

In the Privy Council

10, 1982

ON APPEAL**FROM THE SUPREME COURT OF HONG KONG****(APPELLATE JURISDICTION)****CIVIL APPEAL NO. 12 OF 1978****(On appeal from High Court Action No. 2459 of 1976, High Court Miscellaneous Proceedings No. 155 of 1977 and High Court Miscellaneous Proceedings No. 540 of 1977)****BETWEEN**

DAVID NG PAK SHING..... *1st Appellant* (The 4th, 5th, 6th and 7th Defendants
 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
 CORPORATION (M) BERHAD Miscellaneous Proceedings No. 540 of
 1977)

RECORD OF PROCEEDINGS**Volume II**

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(APPELLATE JURISDICTION)

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- of a foreign judgment?
- A. It was a ground, not a complaint.
- Q. Does it really now lie in your mouth to say that there has been too much notice or something else?
- A. Where? In Hongkong, you mean, or where?
- Q. In Hongkong, or anywhere.
- A. I think so in Hongkong, yes.
- Q. You don't think that there was too much advertising in Taiwan?
- A. I think in Taiwan it was probably appropriate and proper.
- 10 Q. And in Taiwan of course it didn't affect your own personal interest?
- A. The parties here, so far as we knew they were here, could all be served, that was the three members of the syndicate and the 8th and 9th defendants.
- Q. You were only complaining, is this the position, you were only complaining about the amount of advertising in Hongkong because it affected your own pocket, is that right?
- A. I wouldn't put it as crudely as that.
- Q. You wouldn't put it as crudely as that, very well.
- A. It affects my professional standing.
- Q. Are you saying another reason is it affected your professional standing?
- 20 A. Yes.
- Q. So there were two reasons then why you take exception to the Hong Kong advertisements?
- A. Only one.
- Q. And nothing to do with money?
- A. No.
- Q. Just your professional standing?
- A. Yes.
- Q. So your professional standing is a matter of some considerable importance to you?
- 30 A. It is a matter of pride.
- Q. Only as a matter of pride?
- A. Principally as a matter of pride.
- Q. In what other way does your professional standing matter to you?
- A. I think really it is a matter of pride.
- Q. Only a matter of pride?
- A. I think so, yes.
- Q. It doesn't matter to you whether you are doing anything right or wrong then as long as you keep your professional standing?
- A. That is also a matter of my pride.
- 40 Q. You have told us that you had business dealings in partnership with HO Chapman. Would it be right to say that as a solicitor you have many opportunities to take part in business dealings?
- A. With HO Chapman?
- Q. With anybody.
- A. Normally in my profession I do not enter into business dealings with a client, a person who is purely a client.
- Q. But your profession as a solicitor gives you opportunities, does it not, to take part in business dealings?
- A. I suppose it gives opportunities.

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of Hong Kong
High Court

Defendant's
evidence

No. 40

Melville E. Ives –
cross-examination

Supreme Court
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No. 40

Melville E. Ives –
cross-examination

- Q. In real property dealings, for instance?
A. Yes.
Q. Would you say that you are quite experienced in the ways of the business world?
A. Yes, I suppose so, yes.
Q. And in your business dealings would you apply the same high standards that you apply as a solicitor?
A. Yes.
Q. What about HO Chapman's integrity, what do you say about that?
A. I would say that his integrity is of the highest. 10
Q. And David Ng?
A. I have known David Ng for many years and I have always found his integrity to be very high indeed.
Q. Also as a solicitor you have the opportunity to take directorship, do you not?
A. Not so much the opportunity to take directorship as a result of being a solicitor, sometimes one is asked to.
Q. But you have acted as a director on many occasions?
A. On several occasions.
Q. For different companies?
A. Yes. 20
Q. You are quite experienced in being a company director?
A. Fairly experienced.
Q. And would you apply the same high standards to your duties as a director as you would as a solicitor?
A. Yes.
Q. Tell me sitting nominees, it is pleaded that you own or control it and that is admitted in your defence. What is the position of a sitting nominee?
A. It is a nominee company which is convenient for using as a vehicle for holding shares for clients, for collecting rents for clients, for incorporation of companies. 30
Q. Who are the present shareholders?
A. The present shareholders are four partners.
Q. Yourself?
A. Yes.
Q. Mr. Peter Mo?
A. Yes.
Q. Mr. Winston Chu?
A. Yes.
Q. Mr. Charles Yeung?
A. Yes. 40
Q. All equal shareholders?
A. I think there is one extra share. I think there are five issued shares.
Q. Who has the extra share?
A. I'd rather think that is Mr. Peter Mo. There were five partners at one time who held shares.
Q. And who are the directors presently?
A. The four directors.
Q. I am just wondering, you see, why it is admitted in the defence that you own or control sitting nominees. As a matter of fact you do not own it nor do you

- control it, is that right?
- A. I think that was just a matter of pleading in a statement of claim. I think that was pleaded and I think it was admitted in the defence in as much as it was not a contentious matter. We were not making an issue of that.
- Q. I see, it rather led me astray thinking you had taken over sitting nominees for some time.
- A. No.
- Q. You have dealt with Company Law, have you not?
- A. Yes.
- 10 Q. Are you familiar with Section 48 of the Companies Ordinance?
- A. 48, which one?
- Q. The one that forbids a company providing money directly or indirectly for the purposes of buying its own shares.
- A. Yes.
- Q. You know that a limited company cannot provide money directly or indirectly for the purposes of somebody buying its own shares?
- A. Now you ask me a question, I have got to be careful here. Without seeing the section I cannot say exactly. The law is different here from England.
- Q. Yes, I know that and we all of us here know that.
- 20 A. So I have to refresh my memory to see exactly what the wording is, but in principle that is correct. The point I am getting at is this, that in Hongkong a subsidiary can acquire its parent company's shares.
- Q. No, I am not talking about that.
- A. But apart from that I agree with you.
- Q. That section also forbids colourable transaction, is that right?
- A. Yes.
- Q. You can't pretend that the money is going somewhere else and cannot come back eventually?
- A. Yes.
- 30 Q. You have always been aware of that section, haven't you?
- A. Yes.
- Q. Indeed you know that subsection 3 of section 48 provides the penalty for any officer of the company who is a party to such a dealing?
- A. I can't recall subsection 3. I take it there is such a section.
- Q. Of criminal offence?
- A. I don't know. I take it, you say there is such a crime.
- Q. You accept it. I see that your clerk has arrived back. Would you please have a look at your papers to see if there is a draft of the original contract – a copy of the original contract which you handed to David Ng to take to Taiwan . . .
- 40 How long do you think you would take, Mr. Ives?
- A. I would take quite a long time.
- Q. Ten minutes?
- A. Possibly, yes.
- MR. CHING: My Lord, I think it is a matter of some importance and I am sure Mr. Ives would not like it to be alleged that he has gone back and has it typed now. Therefore I think it is important that we have the original copies now if we can. Would your Lordship feel inclined to give Mr. Ives ten minutes?

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COURT: Yes.

D.W.1 – Melville Ives – On former oath

Defendant's
evidence

XXN. BY MR. CHING – Continues

No. 40

MR. CHING: I am obliged, my Lord. Before I recap, it's been pointed out by my learned friend Mr. Swaine that I made a mistake. It is not, in fact, admitted in the pleading Mr. Ives owns or controls City Nominees. I apologize.

Melville E. Ives –
cross-examination

Mr. Ives, can you keep your voice up. The shorthand writers can't hear you.

A. Yes.

Q. Have you found anything?

10

A. I have found a preliminary working draft.

Q. Yes.

A. It was prepared before the document of the 23rd March, 1977. As I said, it was a preliminary working draft and bears no resemblance to that document at all.

Q. May I see it please.

A. Yes.

Q. This is completely different from the eventual agreement, Document 16A, is it not?

A. It is, yes.

20

Q. Have you nothing, not a copy of –.

A. I can't find a copy of 16A, a draft of 16A.

Q. I don't want it. It suffices for my purpose that it is completely different from the actual agreement. (To Mr. Swaine) Do you want it in?

MR. SWAINE: My Lord, I think there is a technical rule – I came across this some 12 years ago – I think there is a technical rule that if one asks a witness in the box to produce a document and he produces it in the box, it becomes an exhibit, whether one likes it or not.

COURT: But you can do away with it if it has no use. There is no point in putting it in.

30

MR. CHING: Well, let's have it in to save time. Number please?

CLERK: P10.

Q. Mr. Ives, just so there is no misunderstanding, you can't find a copy of the document which you handed to David NG for him to take to Taiwan?

A. That is correct, yes.

Q. All right. Nor can you find a copy of any draft minute that you asked David NG to take to Taiwan?

A. I have not noticed in my file. I haven't been able to find one.

Q. You haven't been able to find it. You must have had them, Mr. Ives. Does it follow that you must have destroyed them?

40

- A. It is quite probable, yes.
- Q. Not "quite probable." Either you never had them or if you had them, you must have destroyed them – is that right? Supreme Court of Hong Kong High Court
- A. They probably are – have been destroyed in the normal course of events, yes.
- Q. You think they may be somewhere and you can't find them? Defendant's evidence
- A. There is still a possibility that when I go back to my office I can see if there are any other documents. I don't think so. I doubt it.
- Q. Will you bring them tomorrow, if you find them, please? No. 40
- A. Yes.
- 10 Q. Thank you. Just to get back to Section 48 – have you got a copy there? Melville E. Ives – cross-examination
- A. Yes.
- Q. You will see that it says in Section 48, subsection 1 of the Companies Ordinance, "Subject as provided in this section, it shall not be lawful for a company to give, whether directly or indirectly, whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connexion with a purchase made or to be made by any person of any shares in that company."
- A. Yes.
- Q. Were you aware of that section at all material times?
- 20 A. Yes.
- Q. For the sake of completeness, Mr. Ives, if you will look at subsection 3, "If a company acts in contravention of this section, the company and every officer of the company who is in default shall be liable to a fine of \$2,000."
- A. Yes.
- Q. We will pass from it, Mr. Ives, and come back to it at some future time.
- A. Yes.
- Q. You have, in the course of your professional duties, dealt with matters involving criminal law, have you not?
- A. Very little.
- 30 Q. Very little. But you would not assist any person to evade justice, would you?
- A. Correct.
- Q. Nor would you give aid to a fugitive from justice, would you?
- A. Correct.
- Q. Nor would you assist a fugitive to remain out of the reach of justice, would you?
- A. Correct.
- Q. Apart from the legalities, what about the moralities? How do you feel about giving money to a fugitive from justice?
- A. It is much the same as the legalities.
- 40 Q. You wouldn't do it?
- A. No.
- Q. To what extent does your objection extend, Mr. Ives? You wouldn't give him money – is that right?
- A. Yes. I have given this matter considerable thought and it is not a simple matter at all. For example, there are various police sergeants who are say living in Vancouver quite openly, quite free men.
- Q. Yes.
- A. And one of them may have an attractive house on the Peak.
- Q. Yes.

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cross-examination

- A. And a person may be interested in purchasing that house.
- Q. Yes.
- A. He may discover that it belongs to a certain Sergeant LUI or somebody who is in Vancouver and he may go to Vancouver and ask “How much do you want for that house on the Peak?” and he may buy it from him.
- Q. I am not trying to stop you in any way, but we really mustn't run off. You wouldn't give money?
- A. Not give –
- Q. Apart from purchasing, you wouldn't give him money?
- A. No, no. 10
- Q. But you would purchase his assets, would you?
- A. I honestly don't know. It is a hypothetical question. I don't know.
- Q. Well, it's not a hypothetical question any longer, is it, Mr. Ives? You were going to go out and buy or try to buy CHOO Kim-san's shares. CHOO Kim-san had failed to answer to his bail upon serious criminal charges. You were going to try to buy his assets – is that right?
- A. No.
- Q. You were not going to try and buy CHOO Kim-san's assets?
- A. We were investigating the situation.
- Q. I see. You were investigating? 20
- A. Yes.
- Q. David NG rings you and said, “I found CHOO Kim-san. We are in business.”
- A. Yes.
- Q. Did you say to him, “I am not going to deal with a fugitive from justice”?
- A. Not at that time, no.
- Q. So at that time it was not a hypothetical question, was it? At that time you were intending, if you could, to buy the assets of a fugitive from justice?
- A. We were not “intending” at that time. We were looking into the question. We wanted to see what the situation was. We discussed it between ourselves at great length. 30
- Q. Yes.
- A. And we decided we couldn't make a decision until we knew what the situation was. We even went so far as to consider going to see Mr. Leighton and Mr. Evans of the Commercial Crimes Department, who were in charge of the case, with the information concerning CHOO Kim-san.
- Q. But all with the intention of buying his assets?
- A. We had not made up our mind at that time to do a deal with CHOO Kim-san.
- Q. If you had spoken to Commercial Crimes, you would have spoken to the Attorney-General. You wanted to buy his assets – yes or no?
- A. You might have done if the occasion had arisen but that situation never developed. 40
- Q. Mr. Ives, David NG, according to you, in the course of his Christmas holiday with his children in Bangkok takes time to try and find CHOO Kim-san and he says to you that if he can't find him there he will go immediately to Taipei?
- A. Yes.
- Q. Which he does?
- A. Yes.
- Q. You say that all that was done – the money, the expense and the trouble and the waste of time – without any intention of buying the shares if you could?

- A. We were after the shares. Supreme Court
of Hong Kong
High Court
- Q. You were after the shares?
- A. Yes.
- Q. Just a moment, please. You were after the shares, specifically, you were after CHOO Kim-san's shares? Defendant's
evidence
- A. We were after –
- Q. Please, Mr. Ives. You are a solicitor. You know how evidence should be given, do you not? No. 40
- A. Yes.
- 10 Q. Please answer me "yes" or "no". Specifically you were after CHOO Kim-san's shares? What's your difficulty in giving a "yes" or a "no"? Melville E. Ives –
cross-examination
- A. Because we did not know if they were in fact CHOO Kim-san's shares.
- Q. But the whole scheme, Mr. Ives, was to buy CHOO Kim-san's shares, isn't that right?
- A. You are over-simplifying the case. The whole scheme was to try to acquire the controlling interest of San Imperial Corporation.
- Q. By buying CHOO Kim-san's shares or a large proportion thereof – is that right?
- A. By buying shares in San Imperial Corporation. We caused a search to be made and we found that there was this large holding in the name of Asiatic Nominees. We guessed that this might be shares of CHOO Kim-san.
- 20 Q. And at that stage you wanted to buy his shares if you could?
- A. We –
- Q. Well, yes or no, please, Mr. Ives?
- A. Not necessarily his shares. The emphasis is on "his shares."
- Q. I don't know what that means, Mr. Ives. You knew that Asiatic was his company?
- A. Had a pretty good idea.
- Q. You had a pretty good idea – that's all you had?
- 30 A. Yes.
- Q. You didn't know?
- A. Yes.
- Q. You knew that Asiatic had been his company?
- A. I knew it had been his company, yes.
- Q. You suspected that they were his shares – is that right?
- A. We suspected they were his shares, yes.
- Q. That's why you went looking for him – is that right?
- A. Yes, correct.
- Q. You wanted to buy the shares from him if you could find him and if they were his shares – is that right?
- 40 A. At that particular time we were merely investigating. We had not made a decision –
- Q. Very well. You were investigating with a view to buying his shares?
- A. We were investigating the possibility of acquiring those shares.
- Q. Those shares being CHOO Kim-san's shares?
- A. We did not know that they were actually his shares.
- Q. Do you say that if they had been CHOO Kim-san's shares, you wouldn't have bought them?
- A. If they hadn't been –?

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Defendant's
evidence

No. 40

Melville E. Ives –
cross-examination

- Q. If they had been, you wouldn't have bought them?
- A. If they had been his shares then we would have considered the matter very, very carefully and we would have gone much further in looking into the ethical side etc. before taking further steps. For example, you mentioned the Attorney General, I mentioned the Commercial Crimes Department as a preliminary to that.
- Q. Why did you send David NG to look for CHOO Kim-san?
- A. We sent him to look for CHOO Kim-san because we figured that he would know – they would either be his shares beneficially or he would be able to tell us whose shares they, in fact, were. 10
- Q. Asiatic is a Hong Kong company is it not?
- A. Yes.
- Q. You know a Mr. HO Chung-po?
- A. I know him now.
- Q. You only know him now?
- A. Since, probably, April, I think.
- Q. Since April?
- A. Yes.
- Q. This year?
- A. When I say "know him" – I have had him in the office previously to sign, for example, to sign various declaration trust but I can't say I knew him. 20
- Q. In particular you knew that HO Chung-po was the nominee of CHOO Kim-san in relation to Asiatic nominee?
- A. I knew that – I know now that in 1974 he signed a declaration trust.
- Q. What do you mean you know now – didn't you know in 1974?
- A. Yes, but that was a long time ago and I can't remember all this sort of thing. People come in, sign documents, they go out – a week later you don't even recognize them in the street.
- Q. Yes.
- A. You forget their faces. 30
- Q. Why not go to HO Chung-po and ask him, "Who do these shares belong to?"
- A. For a very good reason. In Hong Kong, you mention the property market, for example, if one starts to make inquiries about a certain property in no time at all, all the brokers in Hong Kong are trying to sell that particular property. So if you want to do business in respect of any particular matter you have got to keep it as quiet as possible.
- Q. Yes.
- A. Until you are ready.
- Q. But it wouldn't matter, would it, if you were to approach the agent of the owner? 40
- A. If we had approached him – I personally, as I say, do not know him, I knew of him – I don't know whether he would start telling friends. There are some people after these shares, and immediately one would have competitors.
- Q. Is it to your knowledge that in Action 1674 David NG swore an affidavit confirming that HO Chung-po was and still is a nominee of CHOO Kim-san?
- A. I don't know that.
- Q. You didn't know that?
- A. No.
- Q. Would you look please at the same affidavit in 1674, David NG, 29th June,

and look at paragraph 10 – sorry, look first at paragraph 9. He says “In my capacity as a director of M.A.F. Credit Limited, I know that Mr. LEE Ing-chee of 13A Kam Wah Building, 516 Nathan Road, Kowloon and who in Action 252 of 1977 in the High Court of Hong Kong in a supplementary affirmation made in the month of May 1977, a copy of which is annexed hereto and marked Exhibit DN2, was in charge of the Defendant’s business interest in Hong Kong.” Paragraph 10, “I refer to Exhibit DN2 and from my own personal knowledge confirm the contents in paragraphs” etc. 3, 4 and so “and also that to the best of my personal knowledge and belief the directors of Asiatic Nominee at all material times were either the employees of the Defendant or his agent.” Have you seen that before?

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of Hong Kong
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Defendant’s
evidence

No. 40

Melville E. Ives –
cross-examination

10

A. No, I have not seen this one before. I have not seen this affidavit before. When I say I saw that other clause before it was in the affidavit of LEE Ing-chee. That’s why I say I have seen that clause before.

Q. Look, Mr. Ives, this is the third time that you have said you hadn’t seen this affidavit. You’re not simply a party to this action. You are the solicitor for the 4th, 5th, 6th and 7th defendants, are you not?

A. Yes. But I did not –

20

Q. And as a solicitor for the 4th – as the solicitor for the 4th, 5th, 6th and 7th defendants, were you not involved in getting up these documents, these files for use in court?

A. I was not concerned with the action of San Imperial Corporation –

Q. That is not what I asked you Mr. Ives. What I asked you was this – as solicitor for the 4th, 5th, 6th and 7th defendants in these proceedings, were you not concerned personally with getting together the documents to be used in court?

A. I did not get –

Q. Please answer me.

A. I was concerned with getting in the documents, yes.

Q. Yes. You still say you didn’t look at this affidavit?

30

A. Correct.

Q. Why not?

A. Because I asked for the affidavit and I never received it. I asked for a sight of this file because I had heard of the proceedings. I asked for a sight of the file but I never received it.

Q. Who did you ask?

A. I asked Donald YAPP.

Q. Donald Yapp of?

A. Philip K.H. WONG.

40

Q. But that blue file has been in court since I think the second day of these proceedings.

A. There have been lots of documents in court.

Q. That’s facetious. You are not only a party. You are the solicitor instructing counsel. As a responsible solicitor who tries to act conscientiously and carefully, how could you expect to instruct counsel without looking at all the documents?

A. As I said right at the very beginning, I am not perfect. I do my best.

Q. You are not perfect. Very well. Now, you will see that paragraph, that last paragraph, paragraph 10 that I read to you specifically confirms from David NG’s own personal knowledge that certain paragraphs in LEE Ing-chee’s

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cross-examination

affidavit are correct, amongst them paragraphs 13 is singled out?

A. Yes.

Q. As being correct.

A. Yes.

Q. Would you now please look at the exhibit, page 57, page 57 is paragraph 13 of LEE Ing-chee's affidavit and he says, "I further aver that Asiatic Nominees Limited never held shares for other persons or corporations except shares held by the Defendant or his companies and never served any person other than the Defendant or his company."

A. Yes.

Q. That is your partner in the syndicate, your co-defendant, your long-time friend of high integrity, who avers to that?

A. Yes.

Q. That that is true?

A. Yes.

Q. He never told you?

A. He never told me what?

Q. He never told you that Asiatic Nominees was the nominee for CHOO Kim-san and nobody else?

A. Yes – We – I don't think he ever –

Q. Mr. Ives, please, may I interrupt you. All of these questions are designed for a yes or no answer.

A. Well, the answer to that one is yes for the first part and no for the second part.

Q. Yes to what?

A. That he told me – sorry, your question was – there were 2 parts to your question.

Q. I thought there was one.

A. Yes, and "never acted for anybody else" – the answer to that part is no.

Q. I see.

A. The part about representing CHOO Kim-san – the answer to that is yes.

Q. Would you look at page 59, that same file. Look at paragraph 19. "By reason of the above matters I verily believe that the said HO Chung-po was and still is a servant and agent of the Defendant." Did David NG ever tell you that?

A. He has mentioned to me that HO Chung-po was working for CHOO Kim-san. He told me that he probably does have some communication with CHOO Kim-san.

Q. Did he tell you that HO Chung-po still is a servant and agent of CHOO Kim-san?

A. Not – He has never actually said in so many words he is still the agent and servant of CHOO Kim-san.

Q. Did he ever say anything to that effect?

A. He has said to the effect that CHOO Kim-san – that HO Chung-po was the agent and servant and probably still does have some sort of communication with CHOO Kim-san.

Q. Did you understand that to mean that so far as he believed HO Chung-po still is a servant and agent of CHOO Kim-san?

A. It could be.

Q. "Could be?"

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- A. I would put it no higher than “could” because I don’t know.
- Q. I see.
- A. It’s a question of degree.
- Q. At what stage of the history of these proceedings did David NG tell you that HO Chung-po was a servant and agent of CHOO Kim-san?
- A. I think that was at the stage when we wanted to inquire into the Malayan proceedings and I got in touch with a solicitor in Malaysia and David NG told me then that he thought that HO Chung-po would have much more information about the Malaysian actions.
- 10 Q. What month of which year was that?
- A. That would be this year; that would be April or May.
- Q. So David NG didn’t tell you anything about HO Chung-po until April or May this year – is that right?
- A. We weren’t concerned with HO Chung-po until –
- Q. Mr. Ives –
- A. – about March, beginning of March.
- Q. I want a yes or no answer, Mr. Ives. Is your evidence that David NG told you nothing about HO Chung-po until April or May this year?
- A. He told me something about HO Chung-po before that.
- 20 Q. When?
- A. It would probably be the beginning of March.
- Q. Yes. What did he –
- A. At about the 10th of March, probably.
- Q. Yes. What did he tell you?
- A. David NG brought back a xerox copy of a blank share transfer from Taiwan and I asked what signature is that, whose signature is that on this document and he said, oh, that’s HO Chung-po.
- Q. He had a xerox of a blank form of transfer?
- A. Correct.
- 30 Q. In relation to Asiatic?
- A. The 15 million Asiatic shares.
- Q. I see. That hasn’t been disclosed, Mr. Ives. Do you know where it is?
- A. I don’t know where it is now.
- Q. May I call upon –
- A. There is a copy somewhere.
- Q. If the solicitor doesn’t know where it is, I don’t suppose his counsel knows where it is. Do you know if it still exists?
- A. I don’t know if it still exists.
- Q. Can you make some effort to find this alleged document?
- 40 A. I can do, yes. I mentioned this in my evidence-in-chief.
- Q. You mentioned what?
- A. This blank –
- Q. – xerox copy of a blank transfer?
- A. I think so, yes.
- Q. I must check my notes because to my recollection this is the first time I have heard anything about it. Mr. Ives, if the shares had still been CHOO Kim-san’s, would you have bought them?
- A. I wouldn’t have bought them unless – How can I put it? It’s rather difficult to put. I would have to be absolutely sure that there would be nothing im-

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cross-examination

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proper, either legally or morally, in buying.

Q. I see. Legally, of course, you had an advice from London?

A. Yes.

Q. What about morally? What do you think now? What would the moralities have been in buying CHOO Kim-san's assets?

A. As I say it is not an easy matter to resolve. I mentioned the case of the police sergeant with the house on the peak. It is not an easy matter to resolve. I don't know the answer –

Q. You don't?

A. – because I did not have to find the answer to this one. 10

Q. Provided the legalities had been clear, would you have bought them?

A. No.

Q. No?

A. Not on legalities alone.

Q. Not on legalities alone?

A. No.

Q. Only on both legalities and moralities?

A. Correct.

Q. Very well, we will go back to that at some other time, Mr. Ives. Now, in Miscellaneous Proceedings No. 159, LEE Kon-wah's action, did you issue a summons dated the 23rd of June this year? I am told that is green file 1, page 77, my Lord. Do you see that? You issued that? 20

A. Yes, correct.

Q. It is a summons for 2 purposes, is it not? The first is to discharge an injunction obtained by LEE Kon-wah?

A. Yes.

Q. And secondly to set aside the registration of LEE Kon-wah's Malaysian judgment?

A. Yes.

Q. That was supported, was it not, Mr. Ives, by an affidavit of David Ng in the same action dated the 23rd of June 1977? I am told that is red file 2, I think it's page 15. Do you recognize that affidavit? 30

A. Yes.

Q. Who drafted that? I mean, did you draft it or did counsel draft it?

A. I'm not sure now. I think counsel drafted it. I can't remember.

Q. I see. Who took the statement upon which it was based?

A. I think I probably did.

Q. And you instructed counsel?

A. Yes.

Q. We draw the affidavit? You caused David NG to swear it? 40

A. I asked him to swear it, yes.

Q. And you filed it?

A. Yes.

Q. You agree with me that affidavit does not disclose the agreement on the 23rd March 1977, Defendant's document 16?

A. I don't think so.

Q. You don't think so?

A. It doesn't appear to be –

Q. You can take it from me, Mr. Ives.

- A. It does not. Supreme Court
of Hong Kong
High Court
- Q. It does not. This affidavit was being filed in what was obviously going to be a complex action – is that right?
- A. Yes.
- Q. There were questions of the registration of foreign judgment? Defendant's
evidence
- A. Yes.
- Q. There were questions of going behind the Malaysian judgment?
- A. Yes. No. 40
- Q. There were complex questions of fact?
- 10 A. Yes. Melville E. Ives –
cross-examination
- Q. And in the normal course such an action would not have come on for hearing for a very long time – do you agree?
- A. Probably not, no.
- Q. And you were faced with an injunction which you were trying to dissolve. Would it not have been important to disclose how it came about that you and David NG and HO Chapman and Fermay came to have an interest in the shares?
- A. Probably that is not relevant to the issue then before the court.
- Q. Is that right now? You would have to show that you were the owner of the shares – is that right? Is that right?
- 20 A. Yes. May I just read –,
- Q. Is it right that you would have to show that you were the owner of the shares?
- A. When you say “you” you mean –?
- Q. Your syndicate and Fermay.
- A. The company?
- Q. Yes.
- A. That is not a syndicate. The company is the owner.
- Q. All right. You would have to show the company was the owner of the shares?
- A. Yes.
- 30 Q. And here was LEE Kon-wah saying in fact the owner is CHOO Kim-san and I want to execute my judgment upon it. Would it not be material to show how it came about that Fermay became the owner of the shares?
- A. May I just see what the contents of the affidavit are first?
- Q. Please.
- A. Yes. I believe your question was, was it relevant –?
- Q. Was it material to show how Fermay came to be the owner of the shares?
- A. One could say that that would be material. I suppose one could go through any affidavit afterwards and say, “That was material.”
- Q. Is that so now, Mr. Ives? Let me repeat. LEE Kon-wah was alleging that these shares were owned and were still owned and are still owned by CHOO Kim-san and he gets an injunction on that basis and along come you and you say, please get rid of that injunction because Fermay is the owner of the shares. How can there be any question, Mr. Ives, about the materiality of the document by which Fermay is alleged to have got title?
- 40 A. I think possibly it is not directly material. This affidavit was the 23rd of June. At that time Fermay was the registered owner of the shares. I would imagine that is the material point.
- Q. You say it was not material to show the court upon applying for an injunction to be dissolved, you say it was not material to show how Fermay got to be

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evidence

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cross-examination

the owner of the shares?

A. May I ask what was the date of the injunction?

Q. I don't know.

A. I think –

Q. 15th – no. You have these summons before you. It must be in the summons. It doesn't matter, does it, Mr. Ives?

A. I think it does, yes. I think that is what is really relevant.

Q. Get him the green file 1, page 77. You can see your summons. The summons must mention the injunction.

A. 6th of April, 1977.

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Q. 6th of April?

A. Yes.

Q. Well?

A. At that time Fermay was already the registered owner of the shares, so I would say –

Q. But you see – I'm sorry, not LEE Kon-wah. I have been making a mistake. It was Malaysian Borneo Finance. I'm sorry. You were saying?

MR. SWAINE: It may or may not have been material but my learned friend is dealing with the dissolving of the injunction. The summons, of course, is not for that purpose. It is one ordering that the registration be set aside. 20

MR. CHING: And thereby getting rid of the injunction. The witness has agreed that there were 2 purposes. You say what Mr. Ives? Fermay was what?

A. At the time the injunction was granted, Fermay was already the registered owner of these shares.

Q. That's the whole point, isn't it? What you are saying Mr. Ives is Fermay was the owner because it was the owner and therefore it is the owner. Is that right?

A. Yes.

Q. That is exactly what you are saying? 30

A. In effect.

Q. And therefore it was immaterial to disclose document 16?

A. Correct.

Q. I suggest to you that if the document existed, the document of the 23rd March, document 16, 16A, existed, it would have been disclosed in that affidavit.

A. I don't see the point of disclosing it.

Q. If the document, if the agreement existed at that time, it would have been disclosed in this affidavit.

A. Fermay was already the registered owner on the 28th of March. I see no purpose at all in disclosing the document of the 23rd of March. 40

Q. I see.

A. That would not be relevant at the time.

Q. But it was disclosed 6 days later. David NG's affidavit in High Court Proceedings, Miscellaneous Proceedings 159, red file 2, page 27 and you will see it is exhibited as the second exhibit. I think it is the second exhibit – no, I'm sorry, I am wrong. 7th exhibit. Do you agree with me that that affidavit 6

days later does disclose the agreement?

A. Yes, but I believe there had been an intervening affidavit on behalf of the plaintiff, had there not? I'm not sure.

Q. I see. Why was it disclosed –

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evidence

COURT: Paragraph what?

MR. CHING: It is paragraph 14K, on the 6th page of red 2, 32, I am told, my Lord. (To Mr. Ives) How does it come about that 6 days later the agreement becomes material?

No. 40

Melville E. Ives –
cross-examination

10 A. It is rather difficult to tell when looking at half a file. I have only got the Defendant's affidavits. If I could see the Plaintiff's affidavits as well, then I could answer the question.

Q. You can't answer me without looking at any other document?

A. No.

Q. Well, it was an affidavit, affirmation of LEE Ing-chee, filed on the 25th June 1977 in those proceedings.

A. Yes.

Q. Would you like to have a look at that?

A. I would please.

Q. Green 3, page 71.

20 A. May I just ask what paragraph of David NG's affidavit are you referring to?

Q. 14K, the agreement, Mr. Ives.

A. Yes. Well, that was as a result of something which was said in chambers.

Q. What? As a result of what said in LEE Ing-chee's affidavit?

A. No, said in chambers.

Q. Said in Chambers?

A. Yes, in regard to the criticism of my first affidavit made in chambers on the 27th of June, I say as follows. Paragraph 14.

Q. Yes. I wasn't there, Mr. Ives. What criticisms do you say were made in chambers on the 27th of June?

30 A. I think the criticism was that the affidavit was not sufficient in its contents.

Q. In what way?

A. I really can't remember.

Q. You can't remember, but as a result of that a document which you say 6 days previously was not material has suddenly become material enough for it to be exhibited?

A. It was exhibited to answer the criticism, not because it was necessary material.

Q. Mr. Ives, if you can't tell me what the criticism was, how can you say that it was exhibited because of that criticism?

A. I believe it was a criticism of counsel, not of the judge.

40 Q. Well, what was the criticism?

A. I think the criticism was to the effect that the affidavit didn't contain something other than facts. I forget what it was. I can't recall the wording of the criticism. I remember it was said and my counsel said, "All right, if you want it, we will give it." It was not much more than a bit of courtroom banter, as far as I can recall.

Q. Not much more than a bit of courtroom banter?

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- A. Yes, as far as I can recall. A question of one-upmanship.
- Q. Sorry?
- A. A matter of one-upmanship, more or less.
- Q. One-upmanship and you responded by exhibiting the immaterial agreement?
- A. Yes.
- Q. You seriously say that?
- A. Yes. The same as we have responded by giving discovery to everything that has been requested.
- Q. I see.
- A. If you want it, we are delighted to be able to give it. 10
- Q. That is the only answer you can give for not disclosing the agreement on the 23rd and then disclosing it on the 29th?
- A. Yes.
- Q. Now, we come to another document, Mr. Ives, document 40 in yellow file 1 which is the alleged agreement between Rocky and the syndicate. That, of course, was a binding contract by which the syndicate was bound to produce the shares and by which James COE or Rocky was bound to pay. Yellow file 1, page 40 – document 40, I should say.
- A. Yes.
- Q. That was a binding contract, was it not? 20
- A. Correct.
- Q. Binding on both sides?
- A. Correct.
- Q. A binding contract is very different from an option, is it not?
- A. Oh, yes.
- Q. And that binding contract, that document 40 was superseded by an option agreement which is document 54 of the same file?
- A. Document 54?
- Q. 54.
- A. As a matter of convenience it has been referred to as an option agreement. It is also a binding contract. 30
- Q. Insofar as the Fermay shares were concerned you had granted an option to James COE, rather than bind him to buy them?
- A. Please, Mr. CHING, I don't want to be trapped by asking me a question which has 2 possible interpretations, then be told afterwards I said that.
- Q. All right. I see.
- A. Now, the agreement of the 12th of May is not solely an option agreement. You distinguish the two, an option agreement and a binding contract.
- Q. All right, Mr. Ives.
- A. Please, may I answer the question properly. The agreement of the 12th of May is also a binding agreement containing an option. 40
- Q. But under the terms of the agreement which is document 54 James COE, whether under the name of Rocky or I.P.C. or anything else was no longer bound to buy the Fermay shares?
- A. That is so, yes.
- Q. That is so. It is quite different from document 40, isn't it?
- A. Yes.
- Q. Yes. Document 40 is dated the 30th of April – is that correct?
- A. Yes.

- Q. Drafted by you? Supreme Court
of Hong Kong
High Court
- A. Yes.
- Q. Document 54 is dated the 12th of May?
- A. Yes.
- Q. Drafted by you? Defendant's
evidence
- A. Yes.
- Q. And David NG's affidavit in Miscellaneous Proceedings 159, this affidavit dated 23rd June 1977, red file 2, page 15, he never alludes to what I will call the Option agreement? No. 40
- 10 A. Correct. Melville E. Ives –
cross-examination
- Q. He does allude to the binding contract, document 40?
- A. Correct.
- Q. Would you look at paragraph 10 to 12 of David NG's affidavit in 159, dated the 23rd of June, please.
- A. That is page?
- Q. I don't know. Page 16, I am told. Paragraphs 10 to 12. Paragraph 10 says, "By an agreement dated 30th April 1977 I agree (1) to sell the whole of the issued and fully paid up shares of Fermay & Co. Ltd. (2) to exercise Fermay Co. Ltd.'s option to acquire 3.5 million shares in San Imperial Corporation Ltd. in the purchaser's favour (3) to cause City Nominees Ltd. to transfer to the purchaser 4.5 million shares held by it for and on my behalf to Rocky Enterprises for \$34.5 million."
- 20 A. Yes.
- Q. And then he exhibits the copy –
- A. Yes.
- Q. – of document No. 40. In paragraph (11) the completion date of that agreement is 31st May 1977. Paragraph (12) – the injunction granted herein by Mr. Justice Trainor made such completion impossible. Now, in those 3 paragraphs he is giving the impression, is he not, that document 40 is the only existing agreement?
- 30 A. Yes.
- Q. Is that right?
- A. That is correct.
- Q. That was false, was it not?
- A. It was a mistake.
- Q. It was a mistake?
- A. I agree, yes.
- Q. It was a mistake?
- A. Yes.
- 40 Q. Who made the mistake?
- A. I think the mistake was my mistake.
- Q. You made the mistake?
- A. I made the mistake, yes.
- Q. In what way did you make the mistake?
- A. For this reason: the 30th April agreement was the document which completed the deal. There is the 23rd of March document for the buying and the 30th April document for the selling, which completed the deal and in my own mind those 2 documents were very much there.
- Q. I see.

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cross-examination

- A. Now, when it came to doing this, this particular affidavit, my mind was concentrating on the 30th April document because that document made the greatest impression on my mind.
- Q. I see.
- A. It was entirely my mistake.
- Q. Well, no, surely not, Mr. Ives. You didn't swear it, did you?
- A. I did not swear it, no.
- Q. David NG swore it, so David NG made a mistake as well?
- A. Yes, but it was my mistake in the drafting.
- Q. So you and David NG both made a mistake? 10
- A. Yes.
- Q. And the mistake went so far that in paragraph 15 on the same page, relying upon document 40, you were asking that the undertaking as to damages should be fortified?
- A. Yes.
- Q. And you got fortification, didn't you?
- A. Yes.
- Q. \$200,000?
- A. Yes.
- Q. Upon the basis of a document that at that time was no longer extant? Is that right? 20
- A. Yes.
- Q. To echo your own words, Mr. Ives, just about everything you could have got wrong was got wrong?
- A. Yes, I think so, yes.
- Q. Then looking at his affidavit of the 29th of June which was filed, according to you, because of certain criticisms or banter or one-upmanship that had occurred in chambers, looking at his affidavit of the 29th June, I am told this is the same file, page 27, will you look at paragraph 14M? "I, on behalf of the syndicate, have by an agreement dated 30th April, agreed to sell a total of 23 million shares in San Imperial"? 30
- A. Yes.
- Q. So he re-confirms does he not –
- A. Yes.
- Q. – that he has one agreement, namely, document 40?
- A. Yes.
- Q. And he re-confirms that that document is still extant?
- A. Yes.
- Q. And still effective? 40
- A. Yes.
- Q. Going on to say "The syndicate stands to gain by that agreement." It stands to gain an enormous profit?
- A. Yes.
- Q. Got it wrong again?
- A. There is no date on this one. What is the date?
- Q. It's the 29th of June. Got that wrong again?
- A. Yes.
- Q. After all the criticisms in chambers that so stung you that you finally came up with document 16, you managed to get it wrong again?

- A. Yes. Supreme Court
of Hong Kong
High Court
- Q. How did it come about?
- A. Because as far as we were concerned, the 30th April document was the turning point in the whole transaction.
- Q. But Mr. Ives, you are a lawyer, you are a solicitor of 30 years' standing, excluding your article, a solicitor who acts in a responsible manner, who tries his best to be conscientious and careful? Defendant's
evidence
- A. Yes. No. 40
- Q. How on earth did this come about?
- 10 A. It is one of those things I can't honestly explain. Melville E. Ives –
cross-examination
- Q. You can't explain?
- A. It's – As I say, the 30th of April agreement was fixed in my mind all the time. The subsequent agreement as far as we were concerned gave us no final benefit at all. It benefitted Rocky, yes, but it did not benefit us. As far as we were concerned, 30th April, that was it, that was a sort of V-J day.
- Q. And, of course, Mr. Ives, once document 40 had been superseded by what I have called the option agreement, James KO could have refused to exercise the option, injunction or no – is that right?
- A. He –
- 20 Q. He was entitled to refuse to exercise his option – is that right?
- A. The wording of that injunction, there is one word there which –
- Q. No, apart from the injunction.
- A. Sorry, I mean the wording of the option, there is one word there which is "exercisable."
- Q. Yes.
- A. If I was re-doing that document today, I would make that "exercised" instead of "exercisable."
- Q. But you didn't, did you? Did you make another mistake?
- 30 A. I don't know whether that was – I don't say that that was a mistake. What I am saying is this. It is a matter of interpretation now whether with the word "exercisable" there it has to be exercised or – I honestly don't know. It's a matter of interpretation.
- Q. Mr. Ives, did you not agree with me previously document 40 is quite different in character from document 54 insofar as document 40 was a binding contract for the Fermay shares, binding on both sides, whereas document 54 gave an option only? Didn't you agree with me?
- A. 54 –
- Q. Didn't you agree with me?
- A. 54 –
- 40 Q. Didn't you agree with me?
- A. 54 is which one? 12th of May?
- Q. Yes.
- A. 54 gives a binding agreement for the sale of 8 million shares.
- Q. Forget the 8 million shares, Mr. Ives.
- A. No, you can't. It is part –
- Q. We will come to them soon enough. You know very well what I am getting at, Mr. Ives.
- A. It is an important part of the document.
- Q. Mr. Ives, did you agree with me that in so far as the Fermay shares were

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concerned, document 40 was a binding contract, binding on both sides?

- A. Yes.
- Q. Whereas document 54 simply gave an option. Did you agree with me?
- A. I did not.
- Q. “No”? In so far as the Fermay shares were concerned, did you not agree with me?
- A. Well, that is different shares, please.
- Q. Don't split hairs with me, Mr. Ives. Are you saying now that there's some doubt in your mind whether the Fermay shares were under a simple option, or whether James Coe was obliged to exercise his option? 10
- A. I'm saying that there was one word I thought that's what you are talking about.
- Q. Don't quibble. You mentioned the one word, Mr. Ives. Don't quibble that word. Are you saying that James Coe, by his own name or Rocky or IPC or any other name, is bound to exercise his option in relation to the Fermay shares? A simple yes or no will do, please.
- A. I cannot answer with a simple yes or no. The question does not lend itself with a simple yes or no.
- Q. The question does lend itself with a simple yes or no. Do you say or do you not say that in so far as the Fermay shares are concerned, in document 54 20 James Coe under his own or any other name is bound to exercise his option to purchase those shares? Yes or no?
- A. I think there is doubt as to him being bound to exercise the option.
- Q. What on earth do you mean? Do you say he is bound? Yes or no?
- A. I hope he is bound.
- Q. Do you say he is bound? Yes or no?
- A. In my opinion, he is bound.
- Q. “He is bound”. So, there is no difference, is there? In so far as the Fermay shares are concerned, between document 40 and document 54 he is bound in both events to buy and you are bound in both documents to give him the 30 shares; is that right?
- A. In a very simplified form, yes.
- Q. Why did you agree with me that in so far as the Fermay shares were concerned, document 40 and document 54 were different?
- A. What did I agree with you then?
- Q. They were different.
- A. There is a difference between the two documents. There's a difference in the operation of the mechanics –
- Q. We are not talking about the mechanics, Mr. Ives. You know full well we are not talking about the mechanics. 40
- A. But what I – well –
- Q. Please listen to my question first.
- A. Hmhm?
- Q. You know full well we are not talking about the mechanics. You know we are talking about the character of the two documents.
- A. The character's very similar. Yes.
- Q. Is there any difference, in so far as the Fermay shares are concerned, in the character of document 40 and the character of document 54?
- A. There is a difference.

- Q. What is the difference? Supreme Court
of Hong Kong
High Court
- A. With the 30 April document the sale is to take place on the date of completion mentioned there – I forgot which date of completion it was.
- Q. It doesn't matter.
- A. But at – I'm sorry – Defendant's
evidence
- Q. What is the difference?
- A. With the May document the completion of the sale of the Fermay shares was postponed. No. 40
- 10 Q. "Postponed". That's a matter of procedure, of mechanics; it's not a difference in character, is it? Melville E. Ives –
cross-examination
- A. That's a matter of opinion there.
- Q. What matter of opinion? You say that the completion date alters the character of a document? Yes or no?
- A. It's not a mere change of completion date. The two documents – If one looks at the two documents, one can see the difference.
- Q. The two documents, Mr. Ives – Of course, one can see the difference. The two documents, in so far as the Fermay shares are concerned, are as different as chalk is from cheese.
- A. Yes.
- 20 Q. Is that not right?
- A. That's what I have been trying to say, and I thought you were trying to say that they were the same. I've been trying to say they are different.
- Q. We'll have notes read back to you, if you like. You say – Let me ask you once more. You say that under document 54 James Coe is bound to exercise his option about the Fermay shares?
- A. My Lord, the intention, as far as I was concerned, I think the parties are concerned, was that he should exercise his option on the finality of these proceedings. The word used is "exercisable" – the option shall be exercised, not the option shall be – one is – the word actually used is "exercisable",
- 30 whereas perhaps it would have been better to have put the word "shall be exercised". I cannot now recall whether that was intended by Mr. Coe's advisers, but now, to me, it's a matter of interpretation.
- Q. Mr. Ives, you are a lawyer, are you not?
- A. Yes.
- Q. You've agreed with me that accuracy in wording is very important, have you not?
- A. Yes.
- Q. You've agreed with me that you drew up document 54, have you not?
- A. Yes.
- 40 Q. Look at document 54, clause 13.
- A. Just a moment.
- Q. Yellow 1.
- A. Clause 13?
- Q. Clause 13. You got it?
- A. Yes.
- Q. "Should the Purchaser fail to pay the balance of the purchase price or any part thereof on the said Fermay shares or the 15 million San Imperial shares under clause 2(b) hereof upon the exercise of the option hereby granted the Vendor shall be entitled to forfeit the deposit, rescind this Agreement and sell

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cross-examination

the said Fermay shares or the San Imperial shares to a third party.”

A. Yes.
Q. “Any increase in price shall be for the Vendor but any deficiency shall be for the Purchaser.”

A. Yes.
Q. “For the purposes of this clause time shall be of the essence. The option shall be exercisable by the Purchaser as soon as the injunctions in High Court Action 252 and the attachment order in High Court Action 2459 and/or any other restrictions on dealing with the shares are lifted and discharged.”

A. Yes. 10
Q. There’s nothing ambiguous about that, is there? As a conveyancing lawyer, as a lawyer who deals with contract, is there anything ambiguous about “shall be exercisable”?

A. I think the interpretation of “the option shall be exercisable by the Purchaser” can give rise to dispute.

Q. Well, I should be very entertained to hear your arguing it, Mr. Ives. Did you hear your leading counsel open your case?

A. Yes.
Q. Did you hear him say that this was an option agreement?

A. Yes. 20
Q. Did you hear him say at any time that James Coe was bound to exercise his option?

A. He did not say that. No.
Q. Has Mr. Swaine defaulted in his instructions?

A. No.

MR. SWAINE: My Lord, I think as to how I opened on my view of the document, that’s a matter for me: it shouldn’t be a matter put to the witness.

MR. CHING: This is not just a witness, it’s the instructing solicitor.

COURT: Carry on.

Q. Well, Mr. Ives, did you tug at counsel’s gown and say, ‘Look, tell him, tell the Court he has got to exercise the option’? 30

A. No. The point is this, I think: If the option is not exercised, then the vendors – they have the four million dollars for the option.

Q. Yes?
A. You see, the clause taken as a whole is not entirely happy. Very often when one drafts a clause which is off the beaten track, one can look at it afterwards and say, ‘Ah, yes, I can improve upon that.’

Q. Are you unfamiliar with drafting option agreements?

A. Option agreements do not arise very often.

Q. Are you familiar or are you not familiar with drafting option agreements? 40
A. That’s almost like stopping beating your wife.

Q. No, it is not, Mr. Ives.

A. I’m saying that option agreements do not arise very often.

Q. Are you familiar or are you not familiar with drafting option agreements?

A. When you say ‘familiar’, do you mean as to what an option is or the wording

- of the agreement, or what?
- Q. Have you ever in your life drafted any other option agreement?
- A. Yes.
- Q. How many option agreements have you drafted, would you say, in the course of thirty years?
- A. I can't say in the course of thirty years.
- Q. Are you without a number?
- A. I would say in the course of the last five years, perhaps, no more than half a dozen.
- 10 Q. You are not a stranger in drafting option agreements.
- A. Well, that is the answer that I gave earlier. Perhaps that –
- Q. What is so singular about the particular facts in this case. Which made this a singular clause? Isn't it just a usual option clause saying when it shall be exercisable?
- A. No, because, you see, this clause has penalties in it as well.
- Q. Yes?
- A. Which is not –
- Q. Are you unfamiliar with penalty clauses?
- A. Penalty clauses do not usually go into an option clause.
- 20 Q. "Do not"?
- A. We do not usually find penalty clauses in an option clause.
- Q. I see. Have you never drafted a contract where there is both a penalty and an option?
- A. I think perhaps this is the first one.
- Q. In thirty years of practice?
- A. Yes.
- Q. This is the first one?
- A. Yes. Yes. With both a penalty and an option in respect of the same –
- Q. I see. I'm afraid we are going round in circles. Now you are saying that he is bound to exercise the option, is that right?
- 30 A. It says, 'The option shall' –
- Q. What do you say? Is he bound or is he not bound, Mr. Ives?
- A. I would prefer it if he was bound. I would like to interpret this –
- Q. You are a lawyer of thirty years' standing, you're a senior partner in a firm which carries ten thousand active files at any one time.
- A. Yes.
- Q. You will be thirty years in the law, excluding your articleship.
- A. Yes.
- Q. You're a conveyancing lawyer, you are familiar with contracts, you draw up conveyances. What do you say is the position? Is he bound or is he not bound? You drafted it. Is he bound or is he not bound?
- 40 A. It's very difficult to say. I think the odds are possibly against him being bound on that clause.
- Q. So, there is a difference, in so far as the Fermay shares are concerned, between document 40 on the one hand and document 54 on the other?
- A. But the clause is worded in a strange way: it's got the penalty clauses as well, which makes it rather different from an ordinary, straight option.
- Q. I suggest to you, Mr. Ives, that it is clear that James Coe is not bound to exercise the option under document 54.

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of Hong Kong
High Court

Defendant's
evidence

No. 40

Melville E. Ives –
cross-examination

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No. 40

Melville E. Ives –
cross-examination

A. May I put it this way: if he does not exercise the option, he is liable for any losses incurred.

Q. He loses his option fee, doesn't he?

A. Yes.

Q. That itself means he's not bound to exercise the option, doesn't it?
That itself means he is not bound to exercise the option, doesn't it?

(A pause here)

Q. Mr. Ives, that itself means he is not bound to exercise the option, doesn't it?

A. I'm just reading 13 again: "Should the Purchaser fail to pay the balance of the purchase price or any part thereof on the said Fermay shares or the 15 million San Imperial shares under clause 2(b) hereof upon the exercise of the option . . ." – No, no, I'm sorry – yes, I want to get this straight.

10

Q. Yes?

A. Where I was reading then was not correct. If he exercises the option and then does not pay, that's when the penalty comes up. I'm sorry, I've misread that.

Q. And if he doesn't exercise the option, he loses the four million dollars.

A. Yes.

Q. And, Mr. Ives, that itself demonstrates that he is not bound to exercise the option, doesn't it?

A. Yes.

20

Q. You seem to have spent the last 45 minutes about something that's strange, to say the least. I suggest to you, you knew full well at all times that James Coe was never bound to exercise that option.

A. When we first drafted this agreement I think it was intended that it should be exercised.

Q. As a lawyer, looking at that document, I suggest to you it was clear to you at all times that James Coe could not have been bound to exercise that option. Do you agree with me?

A. Yes, as it's drawn, I think it's not bound – he's not bound to exercise it.

Q. And that was clear to you at all times, at least during this cross-examination?

30

A. I've had discussions with my friend on this and we were not entirely clear as to what was intended at the time.

Q. Never mind what was intended, Mr. Ives. Do you agree with me that at least during and throughout this cross-examination it's been clear in your mind that James Coe is not bound to exercise that option. Now do you agree with me or do you disagree with me? Could you have sued him for specific performance? Get an order that he shall exercise the option?

A. ". . . shall be exercisable as soon as the injunctions are discharged" – I suppose that means that he must elect at that moment –

Q. And that's been clear to you throughout this cross-examination, has it not?

40

A. Not entirely so.

Q. "Not entirely". Existence of clause 13 is all the more reason why document 54 should have been disclosed, is it not?

A. You see, there are other clauses –.

Q. Just answer my question, please.

A. It should have been disclosed, yes, definitely. I admit it.

Q. And the existence of clause 13 makes it all the more important for it to be

disclosed, does it not?

A. Well, it should have been disclosed, definitely.

Q. Will you answer me, please?

A. I don't think it's as more important than definitely it should have been disclosed.

Q. Then the existence of clause 13 should have prompted you to disclose it, should it not?

A. It should have done, yes.

10 Q. Of course, neither the agreement of 23rd March 1977 (document 16 and 16A), nor the agreement of 30th April (document 40), nor the agreement of the 12th May (document 54) have been stamped, have they?

A. No.

Q. Therefore we only have the word of yourself and of the other members of the syndicate as to when they came into existence.

A. Yes.

MR. CHING: My Lord, would that be a convenient place to break off?

COURT: More than convenient!

MR. YORKE: My Lord, may I make an application –

COURT: Yes?

20 MR. YORKE: We have this morning received notice from Peter Chan, the Secretary, that an attempt has been made to register four thousand shares which were in the name of Asiatic Nominees Limited and on the face of it, at any rate, three of the transfers are dated the 3rd September 1977 and one which was certainly subsequent to that appears to bear the date 10th May 1977, having the same signature of Asiatic as the later ones. My Lord, what I am concerned to do is to take possession, until the trial of this matter, of the shares certificates themselves. Of course, they are sent back to the transferees or transferors and it may be a very long time before we ever see them again or whether we could get new shares certificates issued. My Lord, subject to our checking
30 the terms of the injunction I ask for the moment for a court order under 0.29(2) for detention of the subject-matter, the cause of the action. That would be directed to Peter Chan to retain the shares certificates in their possession pending further order from this Court.

COURT: Who is Peter Chan?

MR. YORKE: They are now the Acting Secretaries – Acting Registrars of the company.

COURT: I see.

40 MR. YORKE: My Lord, I have a letter from them here: they know about the injunction. They sent copies of the transfers, my Lord, and they'd want to know what –

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High Court

Defendant's
evidence

No. 40

Melville E. Ives –
cross-examination

COURT: The defendants are not concerned, is that it?

MR. SWAINE: My Lord, can I see the letter? I don't know if I am concerned or not.

My Lord, I don't wear the hat for San Imperial or, perhaps, I don't wear the wigs for San Imperial, but my instructing solicitors Philip K. H. Wong & Co. are solicitors for San Imperial and I think one must be very careful about making any orders in relation to shares which have come to the Registrars by way of normal broker's intervention. These shares appear to have been purchased in the normal way in the stock market. It just so happens that the original registered owner was Asiatic Nominees and these shares have no doubt changed hands very many times in the course of dealings in the stock market and now appear in the names of people whose names of course I do not know. But the reason I say caution, my Lord, must be exercised and no order made without looking into the circumstances is that the effect of such a restraint may well be to cause suspicion of trading in San Imperial. These are only four thousand shares, my Lord; they are four certificates, four transfers each in respect of one thousand shares; therefore the face value of these transfers – I think the market's been some per cent less – is, my Lord, below four thousand dollars. But although the number of shares is insignificant, any order that your Lordship may make in respect of the transferees, who are not parties to these proceedings, may well have very far-reaching repercussions. 10 20

COURT: Mr. Yorke, these shares are not the subject matter of these proceedings, are they?

MR. YORKE: Oh, yes, indeed, because your Lordship will remember that it is our case that all shares registered in the name of Asiatic Nominees are shares of C.K. San. The transfers out – are disposed of all of their shares by about 426,000. So, these must, if we are right, be part of the 426,000 as to which my learned friend might open the case that holding – that that holding in Asiatic with another holding in Triumphant, to which we'll be entitled in any event, they being parties to the proceedings and not contesting the matter. All I'm asking, my Lord, whether the effect be far-reaching or not, is that some of the shares which have come to light should be held by the Registrars and no transfer is to be effected until this case is disposed of. 30

COURT: Yes?

MR. YORKE: My Lord, in effect I'm attempting to prevent someone procuring the registered title before your Lordship has decided . . .

COURT: May I have a look at that? Yes. Is there anything further, Mr. –

MR. YORKE: My Lord might of course, want to know the only shares which would be caught by that sort of order would be well under a million shares. But, of course, as your Lordship well knows, there are 48 million shares in circulation and of those shares about 25 million have nothing to do with this 40

case at all. So, the Stock Exchange is quite happily trading in 25 million other shares. We are attempting to stop the Asiatic –

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MR. SWAINE: My Lord, I think perhaps the best thing really is to give it a bit of time to consider this and my solicitors may wish to take independent advice because I have no brief for San Imperial.

Defendant's
Evidence

COURT: No, you haven't.

No. 40

MR. SWAINE: It does seem to me that one ought not to make any hasty decisions about this because of the possible far-reaching consequences. I don't think any harm would be done by leaving the matter over for a day or two.

Melville E.
Ives – Cross-
examination

10 COURT: Very well, then, I'll adjourn this matter until tomorrow morning.

MR. SWAINE: Until Monday.

MR. YORKE: May we inform the Registrar that that has been done – that has been held over in the meantime?

COURT: Yes.

D.W.1 – Melville Edward IVES (o.f.o.)

XXN BY MR. CHING (Continues):

Q. Mr. Ives, when James Coe first approached you, it was clear to you, was it not, that he was talking about buying Choo Kim San's shares?

A. That was the impression I got from him. Yes.

20 Q. There was no doubt in your mind about that.

A. Yes.

Q. You agree with me?

A. Yes.

Q. When you sent your telex to London, what you had in mind was that if the syndicate was going to purchase, it was going to purchase from Choo Kim San.

A. I did not know if we were going to purchase from Choo Kim San. I did not know.

Q. You didn't know what?

A. Who at that time actually held the shares.

30 Q. But you were asked – You asked, did you not, Mr. Ives – you asked for counsel's opinion predicated upon the fact that if you made a purchase it would be a purchase from Choo Kim San.

A. Yes.

Q. So, in your own mind is it not the position that if you decided to purchase you would be purchasing from Choo Kim San?

A. No. The position was this: first of all, before one could make any decision at all, it was necessary to gather all the facts.

Q. Mr. Ives, really, the question is . . .

A. I'm sorry, I haven't finished.

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No. 40

Melville E.
Ives – Cross-
examination

- Q. . . . a very simple one.
- A. I haven't quite finished answering your question yet.
- Q. You haven't even begun, Mr. Ives, answering my question.
- A. I'm answering your question.
- Q. My question is this: in your own mind when you sent the telex, if – and I stress the subjunctive 'if' – if you were going to buy shares, you were going to buy them from Choo Kim San; is that right?
- A. No.
- Q. Then why did you ask counsel's opinion concerning purchase?
- A. I was trying to think just now –
- Q. Would you please wait till I finish the question? You may save some time. Why did you in your telex to London seek counsel's advice on the question of the legalities of purchasing from Choo Kim San? 10
- A. Because I was putting up a hypothetical case to counsel as a basis for working out in my own mind what the rights and wrongs might be: in other words, I was trying to gather the facts and the law.
- Q. I see.
- A. And then assess the position. And only after assessing the position would I be in a position to make a decision.
- Q. I see. And you say that in the event the particular decision as to whether or not, morally, ethically or legally, you could buy from Choo Kim San resolved itself? 20
- A. Ultimately it resolved itself.
- Q. Because he didn't own the shares any longer.
- A. Yes.
- Q. So, is it your position that because you never had to – you never did come to any decision as to whether or not you would buy if the shares were still held by Choo Kim San?
- A. That's correct.
- Q. "That is correct". You sent off the telex, Mr. Ives, after David Ng had telephoned you and had said to you – I'll read you what you said: "I've located Choo Kim San. I think we're in business." 30
- A. Correct.
- Q. Doesn't that mean that you were thinking that if you bought the shares you would be buying them from Choo Kim San?
- A. We were considering the matter. At that time it was too early to say we had decided to buy.
- Q. Mr. Ives, I suggest to you that even if the shares had still been owned by Choo Kim San, you would still have bought them from him.
- A. That would have depended upon very many matters. I do not know – I 40
honestly do not know whether I would have bought or not.
- Q. You heard your counsel open this case.
- A. Yes.
- Q. Did you hear him say this –

MR. CHING: My Lord, it's under heading (2) of my learned friend's opening.

- Q. "We make no bones about it. The syndicate was a loose association and they were out to buy shares of Choo Kim San from Choo Kim San." Did you hear

him say that?

A. Yes.

Q. He was wrong, was he?

A. That was a summarisation perhaps of –

Q. Just a minute! Just a minute! “We make no bones about it. The syndicate was a loose association. They were out to buy shares of Choo Kim San from Choo Kim San.” You say that is wrong?

Defendant’s
Evidence

No. 40

A. We were ready to buy the shares.

Q. You say that was wrong, Mr. Ives? Yes or no?

10 A. It is not right, it is not wrong.

Q. It’s neither right nor wrong. It’s a curate’s egg, is it?

A. More or less. Yes. It’s a summarisation of a state of affairs.

Q. I see. So, Mr. Swaine didn’t mean what he said?

A. I’m not saying that. No. I’m saying it is an over-simplification . . .

Q. “It’s an over-simplification”

A. . . . of an event which never arose, in fact.

Q. You see, what Mr. Swaine said was absolutely clear, wasn’t it? “They were out to buy the shares of Choo Kim San from Choo Kim San.” Why do you think that a careful man and a competent silk such as Mr. Swaine should add the words ‘from Choo Kim San’, rather than to stop and say “they were out to buy the shares of Choo Kim San”?

20

A. I have tried to explain several times. We were after those shares. We make no bones about it.

Q. Yes. Why did Mr. –

A. We also were trying to gather the facts together. We didn’t know whether he was in fact still the owner or not. We had to ascertain that.

Q. Just a minute, Mr. Ives. Why do you think Mr. Swaine added the words ‘from Choo Kim San’?

A. Because we were prepared to deal with Choo Kim San if it was proper.

30 Q. ‘Proper’ in what way?

A. Legally, morally. But in the end we never had to resolve that problem.

Q. Let me just read you your counsel’s words again. “They were out to buy the shares of Choo Kim San from Choo Kim San”. Mr. Swaine could have stopped at the first mention of Choo Kim San and could have said ‘they were out to buy the shares of Choo Kim San,’ couldn’t he?

A. He could have done. Yes.

Q. Now, it’s absolutely clear that by adding the words ‘from Choo Kim San’ that the syndicate were out to buy the shares of Choo Kim San. Absolutely clear.

40

A. Now, the sole difference between what you’re trying to make me say and what I’m saying is that one was an unconditional intention and the other was what I’m saying is it was qualified.

Q. I see.

A. That is the sole difference.

Q. I see. Mr. Swaine went on and his very next sentence is this: ‘That was the object as the start of the venture.’

A. Correct.

Q. In other words, at the start of the venture the object was to buy the shares of Choo Kim San from Choo Kim San; is that right?

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No. 40

Melville E.
Ives – Cross-
examination

- A. Yes, but not absolutely unqualified.
Q. So, Mr. Swaine has been careless?
A. No, he summarised something which –
Q. But the clear wording is, is it not, Mr. Ives – the clear wording is, is it not, that you were going to buy the shares from Choo Kim San, if you were going to buy them at all? Is that right?
A. Pardon me. I'm not quite clear.
Q. At the start of the venture you were going to buy the shares, if you bought them at all or you were going to try to buy the shares from Choo Kim San.
A. If he still had them and if everything was in order, legally, morally – 10
otherwise, yes.
Q. I refer you to the Hearsay Notice, which is dated 7th October.

MR. CHING: My Lord, I'm afraid I have lost my numbering. No. 4. I am much obliged. Has your Lordship got the Hearsay Notices bundle?

MR. SWAINE: Brown 1.

MR. CHING: It's the very first one. Your Lordship will see it's the two-page Hearsay Notice, three paragraphs on the second page, concerning David Ng speaking to Choo Kim San.

COURT: Yes?

MR. CHING: I hand you my copy. Have you got a copy? Look at that Hearsay 20
Notice, please.

A. No. 1?

MR. CHING: Possibly for the record, my Lord, if I could have the number from somebody?

MR. SWAINE: No. 4.

MR. CHING: No. 4.

- A. No. 4.
Q. Did you draft that?
A. Notice No. 4, page 2. Just a moment, please.
Q. Did you draft that? 30
A. Just a moment, please. Yes.
Q. You drafted that, did you?
A. I drafted it. I believe it was settled by counsel.
Q. Sorry, you drafted it and . . .
A. I believe settled by counsel. I can't remember –
Q. "Settled by counsel".

COURT: Where is my own copy?

	A. Yes, this is the Court's copy.	Supreme Court of Hong Kong High Court
	MR. CHING: It has fallen onto the floor, I'm afraid. It's page 2 of the bundle, my Lord.	
	Q. Mr. Ives, I think you have just said that you drafted that; is that correct?	Defendant's Evidence
	A. Yes, as far as I can recall, I drafted this and it was settled by counsel.	
	Q. And it was settled by counsel?	No. 40
	A. Yes.	
	Q. Settled upon your instruction?	
	A. Correct.	Melville E. Ives – Cross- examination
10	Q. The signature at the bottom of Peter Mo & Co.	
	A. That's my signature.	
	Q. – is, in fact, your signature?	
	A. Yes.	
	Q. And you served this notice?	
	A. Yes.	
20	Q. You see, it says: "TAKE NOTICE that at the trial of these actions 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 Taipea, namely that he sold his shareholdings in San Imperial Corporation Limited to a Mr. Chow, on or about 30th November, 1976."	
	A. Yes.	
	Q. "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, . . ." – I think that must mean the President Hotel?	
	A. Yes, there were two notices, I believe: one was for the President and one was for the Imperial. That was a drafting error.	
30	Q. ". . . in the following circumstances, namely, when Choo Kim San was told by David Ng that he . . ." – 'he' is David Ng, of course – ". . . that he was interested in buying any share which he" – Choo Kim San – "might have in San Imperial Corporation Limited." You see that?	
	A. Yes.	
	Q. So, David Ng went up there and said to Choo Kim San, 'I'm interested in buying any shares that you may have in San Imperial Corporation.'	
	A. Correct.	
	Q. So, the syndicate was intending to buy from Choo Kim San, if they bought at all.	
40	A. You're asking me, are you?	
	Q. Yes.	
	A. The wording here is 'interested', not 'intended'. There is a difference.	
	Q. I see. Simply just telling him 'I'm interested', not saying 'I want to buy', is it?	
	A. There is a difference.	
	Q. "There is a difference"?	
	A. Definitely. Yes. You're interested in buying something, you carry out full investigation first, etc. etc. and then you make your decision. There is a world	

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Evidence

No. 40

Melville E.
Ives – Cross-
examination

of difference.

- Q. If you say to somebody 'I'm interested in buying your property', –
- A. Yes?
- Q. – does that not mean that he intends to buy the property, if he can?
- A. An intention to buy, I believe, means that everything is in order, there are no more ifs or buts, the intention is not irrevocable but almost – In other words, there's nothing more to be done. That is the definition of 'intention' given in District Courts under the Landlord & Tenants Ordinance on applications to – for possession for development, and I believe that is based on English cases. 10
- Q. Really, now, Mr. Ives, if you go to somebody and say 'I'm interested in buying your property', you are in fact saying to him 'Will you sell your property?'. Isn't that right? Isn't that plain, common English?
- A. That's very much an over-simplification; it's rather a naive approach.
- Q. No, it's not, Mr. Ives. When you go to somebody and say 'I'm interested in buying your property', are you not saying to that person 'I want to buy your property' or 'I'd like to buy your property'. Let's talk terms.?'
- A. If you're interested, that means yes.
- Q. Yes?
- A. That you are ready to negotiate, to investigate.
- Q. Yes? Yes? 20
- A. And, perhaps, if things worked out you might make an offer. But it is in no way binding, it is no –
- Q. We know all that, Mr. Ives. Don't waste time!
- A. That's what you're trying to get me to say, isn't it, Mr. Ching?
- Q. David Ng is saying to Choo Kim San, 'I should like to buy any shares you, Choo Kim San, own in San Imperial. Can we negotiate?' Is that right?
- A. That is not what it says here.
- Q. Isn't that the effect of it, Mr. Ives?
- A. This is 'interested' as at – right in the beginning.

COURT: Presumably the word 'interested' was not your word but David Ng's word to Choo Kim San? 30

A. It was David Ng's word to Choo Kim San. Yes.

COURT: He is a layman?

- A. He's a layman. Yes.
- Q. So, we needn't bother about the Landlord & Tenant legislation. But when you go to somebody, Mr. Ives, and say 'I'm interested in buying your property', you are putting forward an invitation to that person to treat.
- A. In these particular circumstances, the position was we wanted to gather together the facts.
- Q. Please, Mr. Ives, please, we've already spent a great deal of time on this case. Will you please answer a simple question with a simple answer? When you go to somebody and say 'I'm interested in buying your property', you are extending to that person an invitation to treat. Yes or no, please? 40
- A. Not necessarily. But it depends upon the circumstances of the case.
- Q. Do you seriously tell this court, Mr. Ives, that you, for instance, whenever you

- approach somebody and say, 'I am interested in buying your property' when in fact you are not interested at all? Supreme Court of Hong Kong High Court
- A. It depends upon the circumstances. There may be a whole – host of other relevant factors.
- Q. Yes. But whatever else may eventuate, at the time you approached you would be intending to treat with that person, would you not? Defendant's Evidence
- A. In this particular case, no.
- Q. "In this particular case, no." But otherwise, yes; is that right? No. 40
- A. It depends upon the circumstances.
- 10 Q. Let's get this absolutely clear, Mr. Ives. Do you agree with me that when you go to somebody and say 'I'm interested in buying your property', you are extending to that person an invitation to treat? Yes or no? Melville E. Ives – Cross-examination
- A. Well, you're generalising –
- Q. Yes, it is a generalisation. Yes or no, please?
- A. And it would depend entirely upon the circumstances of that particular case.
- Q. But if you weren't interested in treating with that person, why go to him at all?
- A. There could be various reasons. For example, a broker could go to a person.
- 20 Q. Yes, and a broker would go to a person intending to treat with that person, would he not?
- A. He could be merely fishing, for example.
- Q. Mr. David Ng wasn't just fishing in this case, was he?
- A. He was trying to get together information regarding the shares.
- Q. That is nonsense, is it not, Mr. Ives? Look at the Hearsay Notice, drafted by you, settled by your counsel, signed by you, issued by yourself. 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, isn't that as clear as day, Mr. Ives?
- A. He was interested. Yes.
- 30 Q. Interested in what?
- A. He was interested in gathering information.
- Q. "In gathering information". Is that what it says, Mr. Ives: that David Ng said to Choo Kim San, 'I'm trying to find out all I can about the shares you used to hold.' Does it say that?
- A. It does not say that.
- Q. "It does not say that." Does it say that David Ng said to Choo Kim San, 'Do you still own any shares?'
- A. No.
- 40 Q. Does it say that David Ng said to Choo Kim San, 'If you sold your shares, please put me in touch with your buyers?'
- A. No.
- Q. What does it say?
- A. It says there that he was interested in buying any shares which he might have.
- Q. Which he, Choo Kim San, might have?
- A. Yes.
- Q. Let's not labour the point, Mr. Ives. It is clear, is it not, that David Ng said to Choo Kim San: 'I want to treat with you.'? Is that not what it says, in effect?
- A. It says he was interested in buying the shares.
- Q. Does it say in effect that he was interested in treating with Choo Kim San?

Supreme Court
of Hong Kong
High Court

Defendant's
Evidence

No. 40

Melville E.
Ives – Cross-
examination

- A. It says he was interested in buying. It doesn't say he was going to buy or that he would buy. It merely says he was interested in buying.
- Q. In buying what?
- A. The shares of Choo Kim San.
- Q. "Of Choo Kim San". From whom would anyone buy the shares of Choo Kim San if not from Choo Kim San himself?
- A. I'm sorry, I don't quite understand the question.
- Q. He was interested in buying, you say? He was interested in buying the shares, you say? He was interested in buying the shares of Choo Kim San, you say. From whom would he buy the shares of Choo Kim San if not from Choo Kim San himself? 10
- A. If Choo Kim San no longer held those shares.
- Q. That's a lot of nonsense, Mr. Ives.
- A. What is nonsense?
- Q. In buying any shares which he might have.
- A. Sorry, what is nonsense?
- Q. That presupposes, does it not, "If you have shares, I want to buy them?" Let's not talk about any position where he may no longer have had the shares.
- A. Now, Mr. Ching, right at the very beginning I made it clear that we wanted to gather information so we could assess the position to know if we could do anything. 20
- Q. Mr. Ives –
- A. This was a putting out of a feeler so that we could gather the facts together, so that we could make a decision. Until we had all the facts and all the law, we could not make any decision at all.
- Q. Mr. Ives –
- A. Now, that is the basis of the whole thing.
- Q. Mr. Ives –
- A. And taking something out of context like this does not alter that one little bit. The situation still remains the same. 30
- Q. Mr. Ives, from whom would David Ng buy the shares of Choo Kim San if not from Choo Kim San himself?
- A. From whoever was the present owner of the shares.
- Q. The shares of Choo Kim San presupposes that Choo Kim San is still owner. Don't quibble, Mr. Ives. From whom would anybody – David Ng or otherwise – buy shares belonging to Choo Kim San if not from Choo Kim San himself?
- A. At that time we did not know Choo Kim San still had the shares.
- Q. No, no, no, no, no, Mr. Ives. From whom would David Ng buy shares belonging to Choo Kim San if not from Choo Kim San himself?
- A. I see what you're trying to get at. 40
- Q. Well, then, answer it, please.
- A. If Choo Kim San had shares beneficially and if we wanted to buy those shares, well, obviously we would buy them from Choo Kim San, if we wanted to buy those shares.
- Q. Exactly.
- A. Yes.
- Q. And what he was doing was extending to Choo Kim San an invitation to treat, was he not?
- A. He was fishing.

- Q. He was not fishing, was he? Supreme Court
of Hong Kong
High Court
- A. He was. Yes.
- Q. Look at the words, drafted by you, settled by your counsel – he was interested in buying any share which he might have in San Imperial Corporation. That’s a direct invitation to treat, isn’t it? That’s saying to Choo Kim San: ‘Do you still have any shares? If you do, I’d like to buy them.’ Defendant’s
Evidence
- A. It doesn’t – It’s not so strong as ‘I would like to buy’.
- Q. All right. “I’m interested in buying them from you.” No. 40
- A. Interested, yes.
- 10 Q. From you. Melville E.
Ives – Cross-
examination
- A. Interested, yes.
- Q. From Choo Kim San?
- A. Yes.
- Q. It’s absolutely clear, is it not, Mr. Ives, that right from the beginning, your syndicate was prepared to buy from Choo Kim San if he was still the owner.
- A. I must repeat once again, I’m afraid, – this is the fourth time now, I think, so it must be true, according to counsel’s authority – we were trying to gather the information together and the law together and then carry out a full investigation, its assessment, and consider whether we could do anything. Until
- 20 we had gathered that information together, we had agreed we would not do anything in this matter as far as Choo Kim San is concerned.
- Q. David Ng says to you: “I’ve located Choo Kim San. We’re in business”.
- A. Yes.
- Q. You telexed to London on the basis of buying from Choo Kim San.
- A. Yes.
- Q. Your counsel opened that you were going to buy from Choo Kim San.
- A. In fact we were considering buying from Choo Kim San.
- Q. There’s a Hearsay Notice in which David Ng clearly was extending to Choo Kim San an invitation to treat – to buy from Choo Kim San his shares. Do you still say, Mr. Ives, that you had any doubts? Do you still say that you may not have bought the shares if they were still in Choo Kim San’s name?
- 30 A. I’d still say that. Yes. That was the position of the minds of the members of the syndicate as at that time.
- Q. All right. So, all three of you were concerned about the morals.
- A. Yes.
- Q. Right from the beginning?
- A. Right from the beginning. Yes.
- Q. You were asked by your counsel, Mr. Ives, until this notice, that is to say the notice of Lee Ing Chee dated the 30th April this year – until this notice which you saw upon return to Hong Kong which HO Chapman gave you the gist of over the telephone, had you any idea of any claims against Choo Kim San by creditors, you answered, “None at all.”
- 40 A. Correct.
- Q. You knew that Choo Kim San had been charged with massive frauds.
- A. He had been charged with frauds. Yes.
- Q. He’d stolen money, according to the charge, from certain companies.
- A. I don’t know.
- Q. You don’t know what the charges were?
- A. No, I was not acting for him.

Supreme Court
of Hong Kong
High Court

Defendant's
Evidence

No. 40

Melville E.
Ives – Cross-
examination

- Q. You've never known what the charges were?
- A. I knew that one of them was a rather strange charge of obtaining a negotiable instrument or something – negotiable document or something – does not say – All I knew was what I read in the papers.
- Q. And what had you read in the papers?
- A. I can't recall now.
- Q. You can't recall. Can you not even recall that Choo Kim San was charged with fraud?
- A. He was charged with fraud. Yes.
- Q. 'Fraud' means stealing people's money, isn't it? – Taking that which does not belong to you knowingly. 10
- A. Yes, but I don't remember the circumstances of that particular charge.
- Q. Never mind about the circumstances under which he was charged. You knew that he was charged with taking that which did not belong to him.
- A. Yes.
- Q. Is that right?
- A. You said 'massive fraud'. Now I said I knew that he was charged with fraud or something to that effect.
- Q. Do you agree –
- A. But 'massive' is the only thing that I'd qualify. 20
- Q. All right. Drop the word 'massive' if you like.
- A. Yes, right you are.
- Q. 14 million is not massive in your book?
- A. Was he charged with 14 million? I didn't realise the charge was for 14 million dollars.
- Q. You didn't realise. You knew he was charged with taking that which did not belong to him.
- A. I'm sorry, I haven't got the charges in front of me. I – It was –
- Q. He was charged with fraud: he was charged with taking that which did not belong to him. 30
- A. The charges were in the newspapers about a year ago. I cannot remember the date of the charge. Perhaps you could refresh my memory?
- Q. Look at document 51, yellow 1. Would that document jog your memory? Look at the righthand column, third paragraph.
- A. Yes, 14 million dollars, it says.
- Q. You still say that you didn't know of any claims by any possible creditors against the man who'd been charged with fraud and who fled the Colony?
- A. I know nothing about this 14 million dollar fraud. I don't know the circumstances of it at all.
- Q. You didn't think that those people whom it was alleged he'd defrauded would have claims against him personally? 40
- A. I believe one of these charges of fraud arose from a forged minute to obtain a loan of ten million dollars from the First National City Bank which had subsequently been repaid. That was a loan by the First National City Bank to the Imperial Hotel Group and had been repaid. Now I don't know whether that ten million dollars is included in this 14 million dollars or not.
- Q. There is still four million left, isn't there?
- A. Yes, but by the same token I don't know whether the frauds are technical frauds in the sense that ultimately there was no loss of money. There was

- certainly no loss of money on that ten million dollar matter.
- Q. You know that, do you?
- A. Yes.
- Q. When you heard about the advertisements of Lee Ing Chee, you were sufficiently alarmed to come back to Hong Kong as soon as you could?
- A. Yes, I was asked by Mr. Chapman Ho if I could come back.
- Q. Mr. Ives, please answer the question directly. You were sufficiently alarmed?
- A. I was not sufficiently alarmed, no, but I was asked by Mr. Chapman Ho if I could come back as soon as possible and I agreed to do so.
- 10 Q. You agreed to do this –
- A. We were partners together in this thing, he requested me, I acceded to his request.
- Q. Why did you accede to his request?
- A. Because he thought that it was a matter of urgency, so I agreed.
- Q. Did you think it was a matter of urgency?
- A. I thought it was sufficiently important to come back a week earlier than anticipated.
- Q. It concerned you?
- A. I was a – It concerned me, yes, but it didn't alarm me. It concerned me.
- 20 Q. You thought it might jeopardise the deal with James Coe?
- A. I didn't know what the position was. He read the notice to me over the telephone.
- Q. Did you think it might jeopardise the deal with James Coe?
- A. There was a possibility of it, yes.
- Q. Possibility was that somebody –
- A. It was not – It was at that time we had not finalised the deal with James Coe.
- Q. So, it might –
- A. We thought it might jeopardise the sale of the shares and prevent us entering into any agreement whatsoever.
- 30 Q. Yes, because somebody else was laying claim to the shares? Is that right?
- A. Somebody was not laying claim to the shares, but had attached the shares.
- Q. All right, "somebody had attached the shares".
- A. There is a difference.
- Q. I know there's a difference. I doesn't matter, Mr. –
- A. You're asking me to be precise. Please, I must – if I answer, I have to answer correctly; I must know exactly what I'm answering.
- Q. Very well, Mr. Ives. Somebody was trying to get at the shares; is that all right?
- A. You can use that colloquialism. Yes.
- Q. You came back and you searched the file.
- 40 A. Yes.
- Q. Court file?
- A. Yes.
- Q. As a lawyer, is it to your knowledge that an order of the court, whether void or voidable, must be obeyed unless and until it has been set aside?
- A. The court file referred –
- Q. Mr. Ives, as a lawyer, is it to your knowledge that a court order, void or voidable, must be obeyed unless and until it is set aside?
- A. Yes.
- Q. It is effective unless and until it is set aside.

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

A. Yes.

Q. Having regard to an order such as that advertised on the 13th April, you still saw fit – being an officer of this court, you still saw fit to go through with the agreement of the 30th April – document 40?

A. Yes.

Q. Why?

A. Because the shares in question were not the shares of Choo Kim San or Asiatic at that time.

Q. I see. Whose were they at that time?

A. They were the shares of Fermay. 10

Q. And who owned Fermay?

A. The Chows.

Q. “The Chows”. Did you tell James Coe about this order?

A. I did not tell him. No.

Q. Did Ho Chapman tell him about this order?

A. I don't know, but I thought James Coe and his legal advisers knew of the order but it transpires that they did not know about it.

Q. When were you disabused of this idea that they knew of the order?

A. After the agreement of the 30th April.

Q. When? 20

A. Shortly after.

Q. How many days after?

A. About four or five days later.

Q. “About four or five days later”. Would you look, please, at document 40, yellow file 1? Look at the whole of the last page, clause 19. That only mentions Action No. 252.

A. Correct.

Q. It doesn't mention on any other action, does it?

A. Correct.

Q. Why not? 30

A. Because, as I explained, in my own mind the notice in the newspaper did not affect these shares because the shares were registered in the name of Fermay.

Q. I see. And was there any sort of order in 252 at that time?

A. I believe there was an injunction.

Q. Yes. What was the injunction?

A. I can't remember off hand. Perhaps you would be good enough to show it to me?

Q. Well, I haven't got it in hand, Mr. Ives.

Q. There are so many injunctions flying around, I'm sorry I just can't remember.

MR. SWAINE: If it's advertised in the papers, it is in the bundle. It's No. 35. 40

MR. CHING: 35. Thank you.

A. That was the 29th April.

Q. It's dated 28th April, just two days before the agreement. It restrains certain people on the selling, disposing, realising, transferring or otherwise dealing with.

A. Yes.

Q. The 17 million-odd shares in San Imperial held and registered in the name of Asiatic Nominees Limited.

A. Yes.

Q. Was there any particular reason why you didn't mention the order that was

- | | | |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
| | advertised on the 13th April to Mr. James Coe? | Supreme Court
of Hong Kong
High Court |
| | A. Advertised on the – | |
| | Q. On the 13th April. | |
| | A. 13th. Sorry, I thought you said the 30th. Well, first of all, I wasn't here when that was advertised. | Defendant's
Evidence |
| | Q. No, Mr. Ives, was there any reason why you didn't tell James Coe or his advisers about that particular advertisement? | |
| | A. I didn't tell James Coe because I was not acting for him. I didn't tell his advisers because I had the impression, wrongly apparently, that they knew of it. | No. 40 |
| 10 | Q. How did you get that impression? | Melville E.
Ives – Cross-
examination |
| | A. I can't recall now. It's the impression I had. | |
| | Q. Did you have the impression that HO Chapman may have told James Coe? | |
| | A. I thought there had been discussions between HO Chapman and James Coe. | |
| | Q. Does it surprise you to discover that there was none? | |
| | A. I was a little surprised, yes. | |
| | Q. HO Chapman is a man of high integrity. | |
| | A. Yes. | |
| | Q. HO Chapman, your counsel tells us, is a close friend of James Coe and the wife of both are operatic singers. | |
| 20 | A. Yes. | |
| | Q. You still say that HO Chapman is a man of high integrity. | |
| | A. I do, yes. | |
| | Q. You do. | |
| | A. Yes. | |
| | Q. He thought this advertisement on the 13th of April was important enough to cause him to telephone you in London to ask you to get back as soon as you could and he managed to convince you that you should come back as soon as you could. He was a good friend of James Coe but he never told James Coe about it. | |
| 30 | A. I can't say that he did not tell James Coe, but I had the impression that James Coe knew of this. I was rather surprised when I learned later that he did not know. | |
| | Q. If James Coe did not know, then obviously HO Chapman did not tell him, right? | |
| | A. Possibly, yes. | |
| | Q. What do you mean 'possibly', Mr. Ives? If Mr. James Coe did not know, it follows that nobody told him including HO Chapman. | |
| | A. Yes, I suppose so. That must be, yes. | |
| 40 | Q. HO Chapman was so worried about this that he telephoned you and convinced you to come back as soon as you could. He was a good friend of James Coe. He did not tell him, James Coe, about this matter which worried him so badly. You still say he's a man of high integrity. | |
| | A. Yes, definitely. | |
| | Q. And you wouldn't tell us why you got the impression that James Coe knew about the order. | |
| | A. It had been published in the press. I suppose in the China press as well as the English press. I just had the impression that it was known to the parties concerned. | |
| | Q. Did you deliberately suppress it? | |

Supreme Court
of Hong Kong
High Court

Defendant's
Evidence

No. 40

Melville E.
Ives – Cross-
examination

- A. I could hardly suppress something which had been published in the press.
- Q. Did you deliberately refrain from drawing the attention of James Coe and his advisors to this advertisement?
- A. No.
- Q. Did you do anything about that order?
- A. I consulted counsel on it, yes.
- Q. What else did you do about this order?
- A. At that time, I don't think I did anything about it.
- Q. At any time, Mr. Ives – at any time.
- A. At a later stage, a summons was taken out. 10
- Q. An originating summons.
- A. Yes.
- Q. No. 420 of 1977.
- A. Correct.
- Q. To set aside the order.
- A. Yes.
- Q. Why did you do that? It did not affect the shares as far as you were concerned.
- A. That was a tidying up operation that counsel thought would be – was not necessary, but might be desirable from a tidying up point of view.
- Q. I see. You felt it wasn't necessary to get rid of the order. 20
- A. Correct.
- Q. You felt it did not affect the shares.
- A. Correct.
- Q. The Fermay shares. It was only because counsel advised the tidying-up.
- A. Correct.
- Q. Why has that not been proceeded with?
- A. I think because it has been covered – was intended to be covered by the counterclaim in these proceedings. I think there was an overlapping there. I am not quite sure now.
- Q. Mr. Ives, upon what date did you issue originating summons No. 420? 30
- A. I can't remember now.
- Q. June, Mr. Ives?
- A. June?
- Q. June. Nothing has been done since June?
- A. Correct.
- Q. The summons was issued without a supporting affidavit.
- A. Yes.
- Q. Not one other step was taken.
- A. It was issued as a tidying-up operation to . . .
- Q. To leave the position even more untidy. 40
- A. . . . to preserve the position.
- Q. And left the position even more untidy by leaving the summons extent without a supporting affidavit or anything else. Is that how you tidy up?
- A. That is in fact what was done.
- Q. Is that how you tidy up?
- A. That is in fact what was done.
- Q. Is that how you tidy up?
- A. That is in fact what was done.
- Q. You call that a "tidying-up" exercise – by leaving things even more untidy, is

- that right?
- A. That is – that summons was taken out to lock a possible sort of – to round everything off to stop any future come-back at all. It was to preserve the position.
- Q. Now, your counsel has said in relation to the agreement of the 30th of April (Document 40) that Clause 9 (19?) mentioned Action No. 252 only because Philip K.H. WONG & CO. had noticed the injunction.
- A. Yes.
- Q. It followed that if they had not noticed it, you wouldn't have put it into the agreement.
- A. Right.
- Q. You wouldn't have done.
- A. This agreement was drafted by – drawn up by the two solicitors concerned. The notice appeared in the European press on the 29th of April. I don't know what the date was in the Chinese press. Philip WONG made the request that this paragraph go in.
- Q. And if Philip WONG hadn't made that request, you would have bound James Coe to a contract which could not be performed.
- A. Couldn't be performed?
- Q. In view of the injunction.
- A. The injunction refers to shares registered in the name of Asiatic Nominees Ltd.
- Q. I see. So, it did not refer – relate to your shares anyway because your shares were in the name of Fermay.
- A. Yes.
- Q. Then, why mention it in the agreement?
- A. Because Philip WONG requested that it go in. We did not object to it. So it was put in.
- Q. I see, and it was the undertaking in damages in relation to that injunction, was it, that you got fortification.
- A. Yes.
- Q. Why should you get fortification?
- A. 252, yes.
- Q. Why should you get fortification of an undertaking in damages in relation to an injunction that does not affect you?
- A. That's why we asked for fortification.
- Q. Sorry?
- A. That's why we asked.
- Q. That's why you asked for fortification – the injunction did not affect you.
- A. Because we were – the injunction later – if you would please refer to the file. I think this injunction was later extended.
- MR. SWAINE: I think we may be at cross purposes, my Lord. This is the injunction in 252. 252 has not been proceeded with but there were injunctions issued certainly in 2459 and 159. These injunctions were injunctions directed against Mr. Ives, Mr. HO Chapman and Mr. David NG. So that I think is another brand of injunction, not this one.

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. After James Coe had approached you initially, you say he phoned you twice more: once in January and once in February.
- A. Yes.
- Q. And asked what progress you had made.
- A. Yes.
- Q. You say you gave him a non-committed – answer.
- A. Yes.
- Q. What in fact did you say?
- A. I can't remember the exact words. It was something along the lines that 'we are looking into the matter and we will let him know'. 10
- Q. Just that you were looking into the matter.
- A. I can't remember the exact words.
- Q. Did you tell him that you had found CHOO Kim-san?
- A. No.
- Q. Did you tell him you were in the course of negotiating purchase of the shares?
- A. No.
- Q. Why not?
- A. Because we did not want to be committed to James Coe alone. We wanted to deal with others if others were interested. So, the answer was non-committed. 20
- Q. It was his idea in the first place, wasn't it?
- A. Correct, yes.
- Q. And he's a good friend of HO Chapman.
- A. Yes.
- Q. And yet you were prepared to cut him out.
- A. Not cut him out but sell to the highest bidder.
- Q. You weren't even prepared to keep him informed of progress.
- A. This is a matter of business, not a matter of – it's purely business. In business – you may do business with friends, yes, but it's still business.
- Q. He was looking to you to do something about trying to get a controlling interest in San Imperial, was he not? 30
- A. He raised the issue, yes.
- Q. He was looking to you, was he not?
- A. Looking to me for what?
- Q. To see if you could assist him in getting a controlling interest in San Imperial.
- A. He was hoping to acquire and had approached me to see if he could acquire.
- Q. And he was looking to you, was he not, to fulfil his hope – his expectations.
- A. I think 'looking to us'. It depends upon how strongly you put that. He was hoping that he could get it through us, but there was no moral obligation – there was no legal obligation. 40
- Q. He spoke to you in November.
- A. Yes.
- Q. Two weeks later, he phoned and asked you if you had made any progress.
- A. Yes.
- Q. That means he was expecting you to have done something – made some enquiries.
- A. Not necessarily expecting, no.
- Q. He rang you: Have you made any progress?
- A. Yes. He was wondering if I had done anything – whether there was anything
- ...

	Q. . . . Did you say to him: 'I haven't done anything'?	Supreme Court of Hong Kong High Court
	A. No.	
	Q. Did you say that to him?	
	A. No.	
	Q. What did you say?	Defendant's Evidence
	A. I can't remember what I said.	
	Q. You can't remember what you said. You remembered well enough in-chief. (A pause). What did you say?	No. 40
10	A. You mean in November – December?	
	Q. When he first telephoned you.	Melville E. Ives – Cross- examination
	A. I probably said: I am looking into it – something like that, but I can't re- member the exact words.	
	Q. In fact, you were not looking into it, were you?	
	A. I had mentioned it to Chapman HO.	
	Q. Please, can I have a simple answer to a simple question. You were not looking into it, were you?	
	A. I was not looking into it at that moment, no.	
	Q. But you told him you were looking into it.	
20	A. I said I cannot remember his exact words. I said: 'I probably said I was looking into it – something like that, but I can't remember'.	
	Q. If you said that, it wasn't true.	
	MR. SWAINE: It has been put to the . . .	
	MR. CHING: . . . No, no, just a moment. The witness speaks English. If my learned friend wants to read the evidence, the witness would have to leave the court.	
	MR. SWAINE: All I am asking is my learned friend puts things to the witness as being matters which he said in-chief. I know we are all under strain and, my Lord, confusion is possible in all quarters including this table, but I think if matters are being referred to us being said in-chief they ought to be accurate.	
30	MR. CHING: I haven't said that Mr. Ives had said that in-chief. I asked Mr. Ives a question. He said he couldn't remember. I said: "You remembered well enough in-chief and he volunteered. I said something like I am looking into it".	
	Q. If you said that to him it was untrue, is that right?	
	A. I don't remember what I did say to him.	
	Q. If you said it to him, it was untrue, is that right?	
	A. But could I have perhaps what I did say in-chief, then maybe . . .	
	Q. . . . No, you may not. No, you may not yet. You have said . . .	
40	MR. SWAINE: . . . If this is hypothetical, I think in fairness as what he said in-chief has been referred to that particular piece of the evidence could be put to the witness.	
	MR. CHING: My Lord, this is . . .	

COURT: . . . No. I thought the question was clear: "If that had been said, this would be untrue".

MR. CHING: I'm much obliged.

Q. Will you please answer the question.

A. Right. Now, if we are going to be so precise as to little things like that – 'looking into it' is a continuing thing . . .

Q. . . . You hadn't even . . .

A. . . . I had approached Chapman HO.

Q. I see.

A. After that phone call, I got in touch with Chapman HO again. So, that was a continuing thing. So, to say, if I did say, I was looking into it, was not untrue in that sense. 10

Q. After James Coe first spoke to you, you got in touch with Chapman HO.

A. Yes.

Q. You discussed it.

A. Yes.

Q. And you came to the conclusion and Chapman HO came to the conclusion that very little – there was very little hope of achieving this.

A. Yes.

Q. And you took no further steps. 20

A. At that time.

Q. So, you were doing nothing about acquiring the controlling interest of San Imperial at that time, were you?

A. It was not a closed matter.

Q. I see.

A. I had spoken to Chapman HO. He had said there was very little that could be done. If these were the words – he did not say 'nothing can be done, don't waste your time'. It was not a closed matter.

Q. You heard your counsel open your case. You heard him say that when James Coe telephoned you that first time you realized that he was serious. Is that accurate? 30

A. Pardon?

Q. Is that accurate?

A. The first time he phoned me.

Q. Yes. You realized that James Coe was serious.

A. Yes.

Q. That was true, was it?

Q. Mr. Swaine has made no mistake.

A. Yes. When he phoned me – I suppose that was at the beginning of December.

Q. You realized he was serious. 40

A. Then, I realized it was not just an idle enquiry.

COURT: So, you agreed with counsel when you said 'yes'.

A. Yes.

Q. So, before that telephone call. You had not done anything apart from speaking

- to HO Chapman about this at all, had you?
- A. That was all that I had done personally, yes.
- Q. You were not looking into it at all, were you?
- A. Not personally, but I was . . .
- Q. . . . but did you delegate any agent to look into it?
- A. In effect, Chapman HO.
- Q. You asked Chapman HO to look into it.
- A. Yes.
- Q. Even though you did not think James Coe was serious.
- 10 A. I did not say I did not think he was serious. What I did say was after that phone call I knew he was serious. At least, I formed the opinion that he was serious. That doesn't mean that I did not think he was serious before that.
- Q. But you had no opinion – positive opinion that he was serious before that telephone call.
- A. Correct.
- Q. And yet you delegated Chapman HO to look into the matter.
- A. Yes.
- Q. Does that make sense, Mr. Ives?
- A. Why not?
- 20 Q. You say that does make sense, do you?
- A. I think so, yes.
- Q. In casual conversations you did not form the impression that James Coe was interested until he telephoned you in December. Notwithstanding that you had no positive opinion that he was serious, you delegated HO Chapman to look into the matter.
- A. Yes.
- Q. Do you normally behave in that way?
- A. (No answer).
- 30 Q. Do you normally get your wealthy, semi-retired, physically not so active friends to run around looking into things about which you have no positive opinion?
- A. Occasionally, yes.
- Q. I see. All right. And as a matter of fact, Mr. Ives, it is the position, is it not, that you were not necessarily going to sell to James Coe.
- A. Correct, yes.
- Q. Even though it was his idea originally.
- A. We made no commitment to him either morally or otherwise.
- Q. Even though it was his idea originally, it's not necessarily intended to sell to him.
- 40 A. Correct.
- Q. What do you think of the morality of that?
- A. That is a matter of business.
- Q. 'Business' could be substituted by the words 'sheer greed'.
- A. No. There's a difference.
- Q. There's a difference.
- A. World of difference.
- Q. You wanted to make as much money as you could, is that right?
- A. Doesn't counsel ask for the best fees he can get? A businessman . . .
- Q. . . . You are here to answer questions. Mr. Ives, as you well know.

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

- A. A businessman wants to get the best bargain he can get. It's not sheer greed.
- Q. Answer my question please.
- A. It is not sheer greed.
- Q. You were trying to get as much money as you could for the shares.
- A. We were just trying to get the best bargain we could.
- Q. You were trying to get as much money as you could for the shares.
- A. Not necessarily the best money because, as I explained before, one of our problems was capital involvement and we wanted the best bargain with the minimum outlay of capital.
- Q. If somebody else had given you the same sort of facilities that James Coe gave you and offered you twice the price, you would have sold them to the other person. 10
- A. Of course.
- Q. Without having told James Coe first.
- A. What do you mean 'without telling James Coe first'?
- Q. Without offering the shares to James Coe first.
- A. At that price, yes. We could have said: "Look, we have been offered this for the shares. Are you interested – 'yes' or 'no'?"
- Q. I see. You did not think it right to keep him informed, say, in February, how things were going. 20
- A. Because in February we were not in a position to do anything because we did not own the shares or at least we had no contractual right to the shares.
- Q. All right. Now, you have known CHOO Kim san for many years, haven't you?
- A. Yes.
- Q. Would you say he was a shrewd person?
- A. Yes.
- Q. He lived rather frugally, didn't he?
- A. Yes.
- Q. Dressed simply: Hawaiian shirt and a pair of slacks and a pair of white shorts.
- A. No, no. Quite normal. 30
- Q. Quite normal.
- A. I think his dress varied. He would wear suits on occasions, at other times, he would wear Hawaiian shirt perhaps.
- Q. It wasn't extravagant though in any way.
- A. No.
- Q. In fact, he lived with his wife and child at Room 204 of the Imperial Hotel.
- A. Yes.
- Q. And used the same room as his office.
- A. He lived in a room adjacent. I'm not sure.
- Q. CHOO Kim-san took what he could whenever he could, rightfully or wrongfully. 40
- A. The first part I suppose would be a fair assessment of him.
- Q. He took what he could.
- A. Yes, but 'rightfully or wrongfully' – I am not able to comment.
- Q. All right. He took what he could. And what he had he held on to it.
- A. I don't quite know what you mean by that. He lost his empire in Malaysia. He did not hold on to that.
- Q. From your experience, is it not true that it's very difficult to pry anything out of him?

- | | | |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
| | A. He was tight. | Supreme Court of Hong Kong High Court |
| | Q. He was tight. | |
| | A. Yes. | |
| | Q. He was arrested in June. | |
| | A. Yes. | Defendant's Evidence |
| | Q. Last year. | |
| | A. Yes. | |
| | Q. Four months later, he failed to appear for his bail. | No. 40 |
| | A. Yes. | |
| 10 | Q. From your knowledge of the man, do you think he would leave the Colony without making provisions as to his assets. | Melville E. Ives – Cross-examination |
| | A. I was pretty certain he must have made some provisions. | |
| | Q. Yes. He must have made some provisions. 51% – if he still held it – of the San Imperial Holding would have been worth what – \$75M.? Sorry, not that much. 51% would have been worth \$35M. | |
| | A. Yes. | |
| | Q. If he still held it. | |
| | A. 51, yes. | |
| | Q. You knew he used nominees. Did you know why he used nominees? | |
| 20 | A. I don't know why he used nominees, no. | |
| | Q. Is it not common in your experience for certain businessmen – businessmen of a certain type – in Hong Kong to put their assets, for instance, in the names of their wives rather than themselves so that they can avoid execution? | |
| | A. Some might do that. | |
| | Q. Some people do that. | |
| | A. Yes. | |
| | Q. Do you think that's why CHOO Kim-san did that – used nominees? | |
| | A. I have no idea. | |
| | Q. No idea. | |
| 30 | A. I don't know why he did. | |
| | Q. All these years, you have no idea at all why he used nominees? | |
| | A. I never asked. He never told me. | |
| | Q. I am not asking you whether you had asked him. Have you any idea. | |
| | A. I have no idea. | |
| | Q. Sorry? | |
| | A. I have no idea that that was the purpose for doing it. | |
| | Q. You heard LEE Ing-chee give evidence that CHOO Kim-san had said in effect 'Sue me all you want. You'll never get anything from me. Everything I own is in the name of nominees'. | |
| 40 | A. Oh, yes. | |
| | Q. You heard him say that. | |
| | A. Yes. | |
| | Q. Have you any reason to disagree that that was said? | |
| | A. Well, I think we both agreed that CHOO Kim-san was a shrewd man. If he was a shrewd man, I don't think he would set up a position and then tell everybody that he had set it up so that it would be blown. I think it would be the opposite to being shrewd. | |
| | Q. Do you agree that CHOO Kim-san probably used nominees to avoid execution? | |
| | A. It is possible. | |

Supreme Court
of Hong Kong
High Court

Defendant's
Evidence

No. 40

Melville E.
Ives – Cross-
examination

Q. He was constantly involved in litigation, wasn't he? I have sued him four or five times and acted for him twice. How many times have you sued him or acted for him?

A. I have sued him once. I have acted against him twice at least. I have acted for him on a number of occasions. I can't say how many offhand.

Q. He was constantly involved in litigation.

A. He has been, yes.

Q. In some of which he suffered very heavy losses.

A. I don't know. The ones that I was involved only involved a couple of hundred thousand dollars.

Q. If necessary we can bring the court files up, but is it to your knowledge that shortly before he failed to answer his bail he had gone down in a case involving several million dollars?

A. I don't know that.

Q. You don't know. Did you know that in 1975 he had gone down and failed to recover a deposit of something like \$23M. – \$2,300,000?

A. No.

Q. Personally, not his companies.

A. No.

Q. Do you not think that the reason for the use of nominees was to avoid execution?

A. I don't know. If everybody knew he was using nominees, there would be no purpose at all – perhaps he would not achieve that purpose.

Q. I see. What about David NG's relationship with CHOO Kim-san? Did he do a lot of work for CHOO Kim-san?

A. His first contact with CHOO Kim-san was in the handing-over of the Imperial Hotel group. He was then requested by Sir Sik-nin CHAU and Mr. Harilela – Sir Sik-nin CHAU and Ronald LEE to assist in the handing-over, and I believe that took about a month.

COURT: He did a lot of work for CHOO Kim-san.

A. That was the first. He never actually worked for CHOO Kim-san but he acted as broker for loans or tenancies for CHOO Kim-san's companies but he never actually worked for CHOO Kim-san.

Q. Did he do a lot for CHOO Kim-san – as agent, employee . . .

A. . . . For CHOO Kim-san or his companies?

Q. CHOO Kim-san or his companies.

A. For his companies, yes.

Q. For his companies which were controlled by CHOO Kim-san.

A. Yes.

Q. Who would you say was closer to CHOO Kim-san: David NG or you?

A. It is difficult to say. Neither of us were particularly close to him. Both of us did work for him from time to time, but he was not a really likeable man.

Q. Do you know whether David NG ever held shares in any companies as nominee of CHOO Kim-san?

A. I don't know of any shares held by him as nominee, no.

Q. Do you know if David NG had acted as a director – as a nominee of CHOO Kim-san?

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- A. He acted as a director of a company. He was appointed by CHOO Kim-san.
 Q. Would you say that David NG should also have known that CHOO Kim-san habitually used nominees? Supreme Court of Hong Kong High Court
- A. I don't know if he knew enough about CHOO Kim-san to be able to use the term 'habitually', but he certainly knew he used nominees. Defendant's Evidence
- Q. Now, HO Chung-po. When was the first time you heard the name HO Chung-po?
 A. I think that must have been about 1974 when I did a trust deed. No. 40
 Q. Yes.
- 10 (A pause). Melville E. Ives – Cross-examination
- Q. In fact, you executed the trust deed which you showed me yesterday.
 A. Yes, we did the deed.
- (A pause).
- Q. Mr. Ives, this is the file you handed me yesterday.
 A. Yes.
- MR. CHING: I don't particularly want the whole lot in unless my learned friend wants all of it go in.
- Q. I hand you first a letter from that file. Would you look at that please.
- MR. CHING: My Lord, that, I am told, is in Yellow 3, pages 162 and 163.
- 20 (Discussion between court and counsel as to how exhibits produced in court through a witness at the request of the plaintiff should be marked. Court and counsel each to prepare some sort of index showing which document in the yellow bundle has gone in as plaintiff exhibits. Document in question to go in as 'Plaintiff exhibit page 162 to page 163, yellow file 3').
- Q. You see, Mr. Ives, this is a letter addressed to Messrs. Peter Mo & Co. and it is signed, is it not, by Mr. LEE Ing-chee.
 A. Yes.
- COURT: What document is that?
- MR. CHING: Yellow file 3, page 162 and 163. That's the one, my Lord (indicating).
- 30 COURT: 2 pages.
- MR. CHING: 2 pages.
- Q. That asks Messrs. Peter Mo & Co. to 'prepare the following documents which you think legally all right: Trustee Deeds for shareholders to Mr. CHOO Kim-san . . .' – and there's an undertaking letter which we are not concerned with.
 A. Yes.

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of Hong Kong
High Court

Defendant's
Evidence

No. 40

Melville E.
Ives – Cross-
examination

Q. Page 163 – the next page. You will see Asiatic Nominees is at the top half of the page and Triumphant Nominees is at the bottom half of the page.

A. Yes.

Q. Asiatic Nominees – the shareholders were LEE Kee-seng and PANG Wing-fan. They would be nominee shareholders, wouldn't they?

A. Yes.

Q. Board of Directors of Asiatic were HO Chung-po and Madam KHOO Siew-kim.
A. Yes.

Q. And KHOO Siew-kim is the woman who can I say is his wife in Hong Kong?

A. Who is known as Mrs. CHOO.

Q. Triumphant – you will see the shareholders – again nominee shareholders, I think.

A. Yes.

Q. HO Chung-po again.

A. Yes.

Q. And Rita LEE.

A. Yes.

Q. Board of Directors – HO Chung-po and Rita LEE.

A. Yes.

Q. All nominees, aren't they?

A. Yes.

Q. I hand you then a copy of a trust deed. I'm sorry. It has been stapled together. (A pause). I hand you a copy of the trust deed in relation to Triumphant nominees. It appears to have been between HO Chung-po and Rita LEE on the one hand and CHOO Kim-san on the other hand.

MR. CHING: My Lord, this is also in yellow file 3 and is at pages 156, 157 and 158.

Q. I think, Mr. Ives, that is one of the instruments of trust which you found at my request.

A. It is a form – a form of instrument of trust, unsigned, undated.

Q. As far as you recall, did you draft that for the purpose of execution by HO Chung-po and Rita Lee?

A. As far as I can recall, yes.

Q. I hand you another one, Mr. Ives. Is that between LEE Kee-seng and PANG Wing-fan on the one hand and CHOO Kim-san on the other?

MR. CHING: My Lord, yellow file 3, pages 159, 160 and 161.

Q. That's a copy, isn't it – carbon copy.

A. It is a copy – a carbon copy of a form.

Q. Yes.

A. Again, unsigned, undated.

Q. There's no doubt in your mind that they were executed because we have your bills here and the receipts. If you want them . . .

A. . . . Yes. If I could just have a glance at them, then I can verify – I can probably verify.

- (A pause. Witness given relevant documents).
- Supreme Court
of Hong Kong
High Court
- A. Yes. Stamp duty was paid. So, they must have been.
- Q. Yes. They must have been executed.
- A. Stamp duty in respect of the power of attorney – maybe no – sorry – the power of attorney was separate. This was – stamp duty was paid on that. So, presumably, they were executed. Defendant's
Evidence
- Q. Both were executed. No. 40
- A. Yes.
- 10 Q. Thank you. You would agree, would you not, that at that time HO Chung-po was the nominee of CHOO Kim-san in both Asiatic and Triumphant. Melville E.
Ives – Cross-
examination
- A. Yes.
- Q. Would you now please look at your own bundle of documents – yellow files. I would like you to look at first of all document – I will take them in chronological order – in order of pagination so that it will be easier to find, all right?
- A. Yes, thank you.
- Q. Document 9 – first page of document 9.
- A. Yes.
- Q. Drafted by you?
- 20 A. Drafted by me, yes.
- Q. Just a little over half way down the page – signed by HO Chung-po. Is that his signature on the left?
- A. It appears to be, yes.
- Q. Yes.
- A. Yes, that is.
- Q. What do you mean? You witnessed it, didn't you?
- A. Yes. That was – that's his signature.
- Q. That's his signature. And the one on the right is that of K.Y. WOO.
- A. Yes.
- 30 Q. And you witnessed that signature as well.
- A. Correct.
- Q. Would you now go on please – same document – but to the last page of document 9. There, at the top of the page, you see our old friend again – Mr. HO Chung-po, is that right?
- A. Yes.
- Q. His signature.
- A. Along with K.Y. Woo – K.Y. . . .
- Q. . . . And K.Y. Woo.
- A. Yes.
- 40 Q. Would you look at document 17 please.
- A. That is page number . . . ?
- Q. . . . I don't know what the page number is. It is document No. 17.
- A. Oh, yes, yes. Yes, I have got it.
- Q. Transfer form. Is that HO Chung-po's signature for the transferor?
- A. It seems to be, yes.
- Q. Look two pages on – still document 17. The second transfer form – does that appear to be his signature?
- A. Again, it appears to be his signature.

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of Hong Kong
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Defendant's
Evidence

No. 40

Melville E.
Ives – Cross-
examination

Q. 18 please – the option. I'm sorry – yes, the M.A.F. Corporation option agreement.

A. Yes, his signature.

Q. Drafted by you, I think.

A. The option agreement, yes.

Q. Sorry. Let's take that slowly. Document 18 was drafted by you.

A. Yes.

Q. And on the last page of it, there again appears HO Chung-po's signature.

A. Yes.

Q. There is no doubt this time that is HO Chung-po's signature. 10

A. Yes.

Q. Document 25 please. That's the letter to you from Malaysia America Finance Corporation.

A. Yes.

Q. Signed by HO Chung-po.

A. Yes.

Q. 32 please.

A. Yes, HO Chung-po.

Q. That is also HO Chung-po.

A. Yes. 20

MR. CHING: My Lord, I am afraid we will have to go to the second yellow file bottom of 128. I'm sorry – 127.

A. Yes?

Q. The second page of 127. Transfer form.

A. Yes.

Q. Again, it appears to be HO Chung-po's.

A. Yes. I think that's the same as what we saw previously.

Q. Yes. I'm sorry. I beg your pardon. Go to 128 please.

A. Again, we have seen that one previously.

Q. Third page. 30

A. I'm sorry. Third page. Sorry.

Q. 3rd page of 128.

A. That's a share transfer, is it?

Q. Share transfer for 514,200 shares.

A. Oh, yes.

Q. HO Chung-po again.

A. Yes, HO Chung-po, yes.

Q. 129 please, third page. Share transfer form for 1,650,000 shares.

A. Yes, HO Chung-po.

Q. HO Chung-po again. 40

A. Yes.

Q. All right. Did you have any discussions with HO Chung-po concerning the Fermay shares – the 15M. shares?

A. I don't think so, no.

Q. You don't think so.

A. No.

Q. What about the Triumphant shares?

- A. No. Supreme Court
of Hong Kong
High Court
- Q. Or the M.A.F. Finance shares – M.A.F. shares?
- A. No.
- Q. You never spoke to him at all.
- A. No. Defendant's
Evidence
- Q. Do you know if David NG spoke to him.
- A. I don't know.
- Q. You don't know. Do you know if HO Chapman spoke to him? No. 40
- A. I don't know.
- 10 Q. You don't know. Would you look at document 30 please. That's a letter signed Melville E.
Ives – Cross-
examination
by you.
- A. Yes.
- Q. It's addressed to M.A.F. Corporation.
- A. Correct.
- Q. Attention: Mr. HO Chung-po.
- A. Yes.
- Q. Why was it 'Attention! Mr. HO Chung-po'?
- A. I knew that Mr. HO Chung-po was the man operating MAF Corporation. He was a director there.
- 20 Q. Yes.
- A. But this was in relation to the option. It's a natural thing to put it to the attention of Mr. HO.
- Q. I see. Now, HO Chung-po is a director of M.A.F. Credit.
- A. Yes.
- Q. M.A.F. Corporation.
- A. I am not quite sure. I believe he is, but I am not 100% certain.
- Q. Well, Mr. Ives, it has been agreed . . .
- A. . . . I don't deny it.
- Q. No, no.
- 30 A. But I cannot say affirmatively in this case.
- MR. CHING: My Lord, your Lordship recalls two schedules I handed up. It has been now agreed by the respective juniors. my Lord. I don't know if your Lorship has the corrected copy 103 (22?) Brown 3. – P.5.
- Q. Is that the M.A.F. companies one? Have you got a copy, Mr. Ives?
- A. Brown 1?
- Q. Yes. No, Brown 3.
- A. Brown 3. Thank you.
- Q. Let's just run quickly through that. You see, M.A.P. Credit Ltd. is the first page.
- 40 A. Just a minute. Page 1 . . .
- Q. . . . Have you got the one dealing with M.A.F. companies in Hong Kong?
- A. Page . . .
- Q. . . . Page 22.
- A. 22.
- Q. Right.
- A. 'PARTICULARS OF DIRECTORS AND SHAREHOLDERS OF MAF COMPANIES . . . '.

Supreme Court
of Hong Kong
High Court

Defendant's
Evidence

No. 40

Melville E.
Ives – Cross-
examination

- Q. Yes. The first company dealt with is M.A.F. Credit.
A. Yes.
Q. 'DIRECTORS' – the first one is HO Chung-po.
A. Yes.
Q. Next page – M.A.F. Investment.
A. Yes.
Q. The third shareholder is HO Chung-po.
A. Yes.
Q. The first director is HO Chung-po.
A. Yes. 10
Q. Malaysia America Finance – the first director is HO Chung-po, right?
A. Yes.
Q. When I said 'the first', I meant the first-numbered.
A. I am still looking at the M.A.F. Investment for the moment. I see there's no date there. Oh, yes, that's after July.
Q. Yes. The Corporation – he's the first-named one.
A. First-named director.
Q. HO Chung-po – director. M.A.F. Nominees – the first-named is HO Chung-po.
A. Yes, first-named director.
Q. Sorry? 20
A. First-named director.
Q. First-named director.
A. Yes.
Q. Po Tai Land – the second shareholder is HO Chung-po – one share.
A. Yes.
Q. The first director is HO Chung-po.
A. Yes.
Q. Lai Po Investments – . . .

COURT: . . . Just a minute.

MR. CHING: I am not sure if your Lordship has got the corrected copy. 30

COURT: I have got Lai Po. What's the one before Lai Po?

MR. CHING: Po Tai. Oh, I'm sorry, my Lord. Your Lordship will recall when I handed you this, that page has been omitted from your Lordship's copy. We will correct that, my Lord.

COURT: I see.

- A. Yes. Po Tai – there's no date there. I think it has to be adjusted.
Q. In Lai Po, he is not named at all.
A. Just a moment. No.
Q. But Henry LOKE is the fourth director.
A. Of LAI Po. 40
Q. Lai Po.
A. Yes. Was the fourth director. He has resigned.
Q. He has resigned. David NG was appointed the 7th one and James Coe as well.

- A. Yes.
- Q. Sun Po.
- A. Yes?
- Q. Again, HO Chung-po does not appear in name.
- A. Correct.
- Q. Again, Henry LOKE resigned as a director in June.
- A. Yes.
- Q. And David NG and James Coe were appointed.
- A. Yes.
- 10 Q. Kam Yuen.
- A. Yes?
- Q. HO Chung-po does not appear in name.
- A. Yes.
- Q. Again, Henry LOKE resigned in June and David NG and James Coe were appointed.
- A. Correct.
- Q. San International Insurance – second shareholder is HO Chung-po.
- A. Correct.
- Q. The first director is HO Chung-po.
- 20 A. Yes.
- Q. Sanshiba – there's nothing there.
- A. Yes.
- Q. Santromax – you will see that the third director HO Chung-po resigned on 12/7/77.
- A. Yes.
- MR. CHING: My Lord, quite possibly – could we hand your Lordship a fresh copy?
- COURT: Well, you see, I have my personal exhibit file and now I have this Brown file. So, I am trying to check whether anything in my file is also in the new file.
- 30 MR. SWAINE: There is one matter. PO Tai, Mr. Ching has said, was not originally in your Lordship's bundle. I think I am right . . .
- MR. CHING: . . . It was omitted by us.
- MR. SWAINE: Yes. Po Tai was not in the bundle we have agreed and what we have agreed your Lordship will see has been added. So, we know what the position was at various dates. I am informed that Po Tai in fact was not agreed because it was not then in the bundle.
- MR. CHING: I will make enquiries about that. I will deal with this first.
- COURT: It is in now in my brown file.
- 40 MR. SWAINE: But it has not been agreed, my Lord, because at the time of the agreement between junior counsel it wasn't in the file.

COURT: Can it be agreed now?

MR. SWAINE: My Lord, it is a matter of putting in the dates and having it in the same form as the ones that have been agreed. For the time being, my Lord, it is not in the agreed bundle.

Q. Could we go back to the beginning of the bundle again please.

A. The . . .

Q. . . . The schedule we were looking at.

A. Yes.

Q. M.A.F. Credit – you see the 5th director's name?

A. M.A.F., yes.

10

MR. CHING: My Lord, I was just bringing the witness back to the beginning of the schedule – M.A.F. Credit, the 5th named director.

Q. 'David NG Pak-shing (Appointed 16/6/77)'. Agreed?

A. Yes.

Q. M.A.F. Investment – the third one: David NG Pak-shing, appointed 4th of July.

A. Yes.

Q. M.A.F. Corporation – the next page – the 4th one: David NG Pak-shing, appointed 4th of July.

A. Yes.

20

Q. It looks very much, doesn't it, Mr. Ives, that David NG is moving in to the M.A.F. group.

A. Yes. I believe that was done at the suggestion of the Assistant Commissioner of Securities.

Q. I see. Having seen all these mentions of HO Chung-po, would you agree with me that he is a nominee?

A. Who – David NG or HO Chung-po?

Q. HO Chung-po is a nominee of CHOO Kim-san.

A. He was certainly appointed by CHOO Kim-san to those companies, but these companies are different from Asiatic and Triumphant in as much as they are public companies and the directors are appointed at the A.G.M. I haven't got the articles – whether annually or triannually. Maybe the nominee but not . . .

30

Q. . . . If somebody with a major block of shares appoints his nominee.

A. Correct.

Q. You would agree with me. HO Chung-po is still a nominee, servant or agent of CHOO Kim-san.

A. No, I can't agree that.

Q. You can't agree that.

A. No. If a person is nominated to the board of directors of a company (particularly a public company) by the holder of a substantial number of shares, he should act in the interests of that company and not purely in the interests of the person nominating.

40

Q. I see. I see. You wouldn't agree that HO Chung-po is still a servant or agent of CHOO Kim-san.

- A. It doesn't necessarily follow.
- Q. No. Do you agree that he is.
- A. I don't know.
- Q. You don't know. At one time, M.A.F. Corporation were the registrars of San Imperial.
- A. Yes.
- Q. They were registrars throughout the relevant period in 1976?
- A. Yes.
- Q. And in 1977 up to the A.G.M. they were the registrars?
- 10 A. Yes.
- Q. Thereafter Standard Registrars took over for a short while?
- A. Correct.
- Q. And now it is Peter Chan Po Fan?
- A. Yes.
- MR. CHING: I think, my Lord, my learned friend and I have agreed to the Asiatic details as set out in the affidavit of HO Chung-po, the search cards.
- Q. Mr. Ives, is it to your knowledge HO Chung-po filed an affirmation in Action No. 252?
- A. 252 or 159, I am not sure.
- 20 Q. 252.
- A. Yes.
- Q. That is Green 1, my Lord. And he exhibited a number of search cards concerning Asiatic, particulars of directors, form 10, red 1. It has been produced, it's in the court exhibits file, my Lord – P.2. – Have you got brown 3 there? From page 2 onwards. Page 2 is HCP 2 –
- A. The formats?
- Q. Yes. Now it's HCP 2(a), 2(b), 2(c), 2(d). I would like you to go to 2(e), that is page 7.
- A. This is Asiatic Nominees Limited's formats.
- 30 Q. Yes, and you will see HO Chung-po is a director in February 1974?
- A. Yes.
- Q. The next page, HO Chung-po is still a director in March, 1974?
- A. Yes.
- Q. And the next page he is still a director in March, 1976?
- A. Yes.
- Q. And then (h), he resigned on 11th August, 1976. You have no reason to doubt the accuracy of that, have you?
- A. I take that as a public document.
- 40 Q. Yes, quite. Two pages on, then he was reappointed on the 4th February, it is HCP 2(i)?
- A. 2(i), yes.
- Q. He was reappointed on the 4th February?
- A. Yes.
- Q. You accept that as well, of course?
- A. Yes.
- Q. Now, Mr. Ives, last night you said you would try to find this Xerox copy of the transfer form?

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- A. Yes, I had a quick look at them. I couldn't find it. I think it may be – I don't know, I saw it within the last week.
- Q. When did you first see it, Mr. Ives?
- A. I saw that first, I think it was the beginning of March of this year.
- Q. And what was on it?
- A. Just the signature of HO Chung-po and the chop of Asiatic Nominees Limited.
- Q. The chop of Asiatic Nominees?
- A. Yes.
- Q. That's together with his signature as transferor?
- A. As part of the transferors, yes. 10
- Q. Any date stamp – sorry, not date stamp, I mean \$5 stamp?
- A. There was a \$5 stamp at the top right hand corner. I think that was dated 26th September, 1976.
- Q. Would you please carry on trying to find that for us, Mr. Ives?
- A. Yes.
- Q. Now you agree, Mr. Ives, that what Mr. James Coe was wanting was to get hold of CHOO Kim-san's shareholding, his 51%, if possible?
- A. His objective was to get a controlling interest of San Imperial Corporation. Whose shares they were didn't really worry him, but it so happened that he thought those might be available. 20
- Q. Was it just a coincident that CHOO Kim-san holding 51% failed to respond to his bail on the 28th October and then in November, quite incidentally, James Coe comes and talks to him about it?
- A. Obviously that was the motivation for it and that's what he said.
- Q. So let's not beat about the bush on this. The purpose of everybody was to get a controlling interest by getting CHOO Kim-san's shares, is that right?
- A. I have got to be careful here or else you will turn round and say afterwards I said this. He, in order to get a controlling interest of 51%, it transpired that CHOO Kim-san did not own a 51%, so he, James Coe, was interested in getting a controlling interest from whatever source. 30
- Q. And what prompted him was CHOO Kim-san failing to answer to his bail?
- A. Correct, that prompted him.
- Q. And presumably he thought, well, "The man has probably fled the Colony and maybe I can pick these up cheap"?
- A. That's it, yes.
- Q. "Or even if I can't pick these up cheap here is a good opportunity to get control of the company"?
- A. Correct.
- Q. And of course it was obvious to everybody, was it not, Mr. Ives, that you couldn't just go out to the market and buy a controlling interest? 40
- A. Quite.
- Q. So you had – to get a controlling interest, anybody had to have either all the shares of CHOO Kim-san or a large proportion of them, that is right, isn't it?
- A. CHOO Kim-san had in the event 15 million shares. If one was to get hold of those 15 millions then it required a further –
- Q. We will get to the particulars later, Mr. Ives. But as a matter of principle, as it were, as a basis of the whole operation, either you got all of CHOO Kim-san's shares or a large proportion of them or else you would not be able

- | | | |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
| | to get a controlling interest or an effective controlling interest? | Supreme Court of Hong Kong High Court |
| | A. It would have been extremely difficult to have done it without those controlling shares. I don't say it would be impossible but it would be extremely difficult. | |
| | Q. You think you could have gone out to the market and bought an effective controlling interest? | Defendant's Evidence |
| | A. I said I don't say it was impossible but it would be extremely difficult. | |
| | Q. Do you think it would be possible? | No. 40 |
| | A. I said it would not be impossible, but it would be extremely difficult. | |
| 10 | Q. How many shares do you think would give one an effective control? | Melville E. Ives – Cross-examination |
| | A. Effective control, probably one-third. | |
| | Q. About 16 million shares? | |
| | A. Yes. | |
| | Q. And did James Coe want outright control, 51%, or did he want effective control? | |
| | A. He wanted absolute control. He wasn't content with just effective control. | |
| | Q. But in the event at the moment he only has effective control if all the shares are transferred to him? | |
| 20 | A. He has only a couple million shares short. I think he is about 1,200,000 short of absolute control. That can be picked up from the market. | |
| | Q. Now when was it decided that the syndicate should go ahead and buy shares? | |
| | A. That was decided on the Tuesday, I think it was the 4th. | |
| | Q. On the 4th January? | |
| | A. Yes. | |
| | Q. Had there been other discussions within the syndicate before that time? | |
| | A. Yes. | |
| 30 | Q. And I suppose you would agree with me, Mr. Ives, that if one could get someone who owns, say, 1 million shares it is better to buy from him rather than go out to the market and buy smaller lots. It is easier to buy from one person if there is a larger block held by one person? | |
| | A. Yes, but we do not want to pay out \$1 million for shares to individual people. | |
| | Q. No, but if you were going out to the market, for instance, if you were trying to get a controlling interest, you have heard of the 15 million Fermay acquired from Chow and Hwang, and if you could find other people with large block you would prefer to buy the block rather than go out to the market and buy small parcels? | |
| | A. Yes. | |
| | Q. And you say that when David Ng came to the first meeting which you say was December? | |
| 40 | A. Yes. | |
| | Q. The lunch meeting in December? | |
| | A. Yes. | |
| | Q. He said he had discovered that there were large blocks of shares in the name of Asiatic? | |
| | A. Yes. | |
| | Q. Can you recall how many shares he said there were in Asiatic at that time? | |
| | A. I cannot quite think. I think it was 17 million shares. I am not sure. I think there were. | |
| | Q. Did the name Asiatic ring a bell? | |

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- A. I knew the name, yes.
- Q. Did it prompt you to recollect that Triumphant was also a nominee of CHOO Kim-san?
- A. At that time I had forgotten who Triumphant belonged to. I thought that Triumphant was the company of FUNG Wing-tak. I had forgotten about this transfer that I prepared some time previously.
- Q. How did David Ng search, did he search through the share account sheets or is there some ledger membership book?
- A. I don't know. At the present time I believe there is a breakdown of the principal shareholders, major shareholders. I don't know if there was at that time, or whether he just went through physically checking the – 10
- Q. The account cards?
- A. No, I don't know, I was not present.
- Q. You don't know what documents he consulted?
- A. I don't know.
- Q. You see, isn't it strange that he comes out only with the name Asiatic and not with the name Triumphant or M.A.F. Nominees? You have agreed you would like to buy large blocks. Triumphant had about 2 millions. You could buy the Triumphant shares?
- A. The Triumphant – we are talking now about December, aren't we? 20
- Q. All right, in December.
- A. In December the main thing was this: 2 million shares, say, of Triumphant would be useless by themselves.
- Q. But if you could get the Asiatic 15 millions, the Triumphant 2 millions would become significant?
- A. Then it would become significant, yes.
- Q. And other parcels such as that would become significant?
- A. Yes, afterwards, yes.
- Q. Did you ask David Ng how had he found out about Asiatic?
- A. About the shareholding or what? 30
- Q. Yes.
- A. We asked him to make a search and he made a search. I did not ask him how he made the search.
- Q. You did not know if he had spoken to HO Chung-po?
- A. At the time I did not know whether he had made the search at the company's registry or at the registrar's office.
- Q. Had you since discovered how he made the search?
- A. I believe he made it at the registrar's office.
- Q. At that time it would be M.A.F. Corporation?
- A. Yes. 40
- Q. HO Chung-po?
- A. Yes.
- Q. Do you know if he had spoken to HO Chung-po?
- A. I have no idea. I doubt it because the whole object to the exercise, well, is not to disclose our hand.
- Q. Now Mr. Ives, I am going to suggest to you that the agreement of the 23rd March, 1977, document 16 and 16A is not a genuine one.
- A. It is genuine.
- Q. I suggest to you that if it is genuine you know full well that Chow and Hwang

are acting as nominees of CHOO Kim-san.

A. I believe they are acting for their own account.

Q. You have told this court that you came to that belief on the 23rd March, is that right?

A. I said by the 23rd March.

Q. No, no, on the 23rd.

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MR. SWAINE: I don't think that is correct, my Lord.

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MR. CHING: I will consult my note, don't worry about that. "I formed the opinion as at the 23rd March."

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examination

10 A. I think probably what I said was as at the 23rd March I had formed the opinion.

Q. No, you are not going to tell us we all heard it wrong and took it down wrong, are you, Mr. Ives? You were asked this question by your counsel: "David Ng came back from Taiwan on the 1st January. He telephoned you subsequently. The three met on the 4th January. He reported discussions with the Chows. Prior to that you had dictated a telex to London." And counsel said he wanted to explore your state of mind on the subsequent occasion and said this: "Did you form any view as to whether Chow was acting for himself or some other party?" And your answer was, "First of all I was not very happy with the idea of dealing with CHOO Kim-san. When David Ng informed me he had been introduced to the Chows and the Chows had purchased the shares from CHOO Kim-san I was both relieved and sceptical because I was wondering whether the Chows may be another LEE Ing-chee. As time passed between the 4th January and the 23rd March I became more and more satisfied in my own mind that the Chows were entirely independent of CHOO Kim-san. I mentioned yesterday the problem which confronted or worried the syndicate and all these problems had to be resolved by the syndicate." Do you remember that answer?

20

A. Yes.

Q. Is that accurate?

30

A. Yes.

Q. And then you were asked a further question. It is the very next question. Counsel said, "The problem was the authenticity of the shares?" Your answer was this: "One of them. If CHOO Kim-san had been behind the deal I am sure the works would have been oiled to facilitate those problems such as, I think, he would have put the shares into the name of a Hongkong party other than Asiatic Nominees. None of these things was done. Also the negotiations were protracted and I formed the opinion as at the 23rd March that this was a genuine deal with genuine people." Was that accurate?

A. Yes.

40 Q. You formed the opinion as at the 23rd March?

A. It was not suddenly formed the opinion as I said previously there. It was an opinion that built up gradually over that period of two and a half months.

Q. And on the 23rd March you were satisfied?

A. By then I was completely satisfied.

Q. You were convinced on the 23rd March?

A. By then, on the 23rd March I was satisfied.

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- Q. You were convinced?
A. Yes.
Q. What happened on the 23rd March that convinced you?
A. Nothing in particular happened on the 23rd March that convinced me. As I have explained in that statement there this was a building up.
Q. All right, give us the various factors please which built up your belief that Chow and Hwang were genuine people and that this would be a genuine sale?
A. First of all, the negotiations were very protracted. Secondly, nothing concrete was given to us to satisfy us as to the validity of these shares. 10
Q. All right, thirdly?
A. Third thing, one of our big problems was the nett worth of San Imperial Corporation.
Q. Sorry, I am asking you, Mr. Ives, for the reasons that you became convinced that Chow and Hwang were genuine people.
A. Yes, that is what I am giving you.
Q. So "One of our big problems was the nett worth of San Imperial"?
A. Yes, nothing was forthcoming as to the nett worth of that company.
Q. That is the third reason is it?
A. Yes.
Q. Can I read that to you please. "One of our big problems was the nett worth of San Imperial. Nothing was forthcoming as to the nett worth of that company." 20
A. Yes.
Q. All right, any other factors?
A. The sort of lack of – there was cooperation by the Chows, but there was no inspiration by the Chows, if I may put it that way.
Q. That is the fourth reason, is it?
A. Yes.
Q. Can I read that back to you to make sure it is right: "There was cooperation by the Chows but no inspiration by the Chows?" 30
A. Yes.
Q. All right, anything else?
A. I cannot think of anything else off hand. Those in broad terms are the major ones so far. There may have been numerous other events but I cannot think of them at the moment.
Q. In your own mind at the moment these were the four main reasons why you became convinced?
A. Yes.
Q. Were there any factors which made you doubt that they were acting on their own? 40
A. There was a genuine doubt in my own mind right at the beginning, but I don't think there was any event which aggravated that doubt at all.
Q. Up to the 23rd March, you mean?
A. Yes.
Q. In what form did your general doubts take in the beginning? What were you doubting? Why were you doubting?
A. As I mentioned earlier I don't know whether the Chows were just another LEE Ing-chee or HO Chung-po, shall we say.
Q. You were in fact having a little reservation wondering if this was CHOO Kim-

- san using nominees again?
- 10 A. Right in the very beginning, yes, I did have doubt.
- Q. Now let's take your reasons for being convinced: first is that "the negotiations were very protracted"?
- A. Yes.
- Q. But if they had been acting as nominees for CHOO Kim-san they would have been equally protracted, would they not?
- A. If they had been acting as nominees for CHOO Kim-san then CHOO Kim-san would obviously be anxious to get rid of the shares, presumably, and I would have thought myself that the deal would have been put through much more quickly.
- Q. But, Mr. Ives, you said that Mr. CHOO Kim-san was an astute person?
- A. Yes.
- Q. Hard to get anything out of him?
- A. Yes.
- Q. He had been running the company being as major shareholder?
- A. Yes.
- Q. He would know what the shares were worth?
- A. Yes.
- 20 Q. He would know what a controlling interest or an effective majority would worth?
- A. Yes.
- Q. Although he would discount it for the fact that he was on the run?
- A. Yes, but he also knew the creditors were chasing after him. I think we didn't know but he knew that there were creditors chasing after him, and so those shares would have been dangerous assets for him to hang on to. We didn't know that at the time, but in retrospect I think that is a very relevant factor.
- Q. From an original quotation of \$1.00 by the Chows it went down to 80¢ and then to 60¢?
- 30 A. Correct.
- Q. Over the course of not a very long time, correct?
- A. 2½ months.
- Q. And CHOO Kim-san would have wanted to get as much as he could, would he not?
- A. If it had been CHOO Kim-san and if he knew these things against him he would have risked the chance of losing everything, or risked losing everything.
- Q. You don't agree that CHOO Kim-san would have wanted to try and get as much as he could?
- A. He would have had to get as much as he could as quickly as he could.
- 40 Q. I suggest to you that the fact that negotiations were very protracted, as you put it, is not a factor showing that Chow and Hwang were acting for themselves.
- A. I think with hindsight it is the most important factor.
- Q. And was it a factor that had any effect on you at the 23rd March?
- A. At the 23rd March the fact that he had creditors was not known to us, so it didn't have that same impact on us then, but the fact that the negotiations were protracted obviously with persons who did not really know what they were holding, that was the impression what one got, they didn't quite know what to do with them.

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- Q. With what they had, what it was worth?
- A. Yes, they didn't –
- Q. They didn't know?
- A. Yes, for example, they were asking David Ng a lot of questions about what the hotel property was worth, what it would fetch in the market, etc. etc., about the hotel business in Hongkong, various matters like that.
- Q. And at the 23rd March, therefore, the fact that negotiations were protracted was simply a factor, but not the most important factor?
- A. A factor, not the, but a.
- Q. I suggest it could have had no effect on your mind at all, Mr. Ives. 10
- A. It certainly affected my mind.
- Q. Your second reason was that "nothing concrete was given to us to satisfy us as to the validity of these shares." Now how on earth could that be a factor which convinced you that they were genuine?
- A. That the Chows were genuine?
- Q. Yes, how could it be a factor?
- A. Right from the very beginning, one of our principal, I won't say so much bargaining points as problems which were put out to the Chows was the question of the validity of the shares.
- Q. Yes. 20
- A. If the Chows had been nominees of CHOO Kim-san, as an astute man I would have thought that he would have taken steps somehow or other to prove the validity of those shares.
- Q. What steps could he have taken? You see, what you are saying, Mr. Ives, just does not make sense: "I believe they were genuine because they were unable to prove that their shares were genuine". Does that make sense to you in any way?
- A. It does make sense, yes.
- Q. What could CHOO Kim-san have done; what concrete thing could he have done to prove the validity of the shares? 30
- A. He could have, for example, arranged to have the shares transferred.
- Q. To whom?
- A. Say, we had proposals, for example, of transferring the shares to a bank, a bank would not be a mere nominee.
- Q. Just a minute, you say that the Chows could have taken the Hongkong share scrips to a Taiwanese bank to get a loan?
- A. That was a problem because when we suggested that to the Chows they at first were agreeable, but then the banks pointed that out that it could not be done.
- Q. They were agreeable, were they? 40
- A. Yes, that was our suggestion, not their suggestion.
- Q. And so the fact that they never tried to prove to you that their shares were valid convinced you that they were genuine people?
- A. That is one of the factors, yes.
- Q. But surely it is the other way round, Mr. Ives: the fact that they did not convince you, didn't even try to convince you that the shares were valid must surely mean that they would not even know the shares were valid themselves?
- A. Quite.

- Q. Which means in turn that they probably didn't buy them?
 A. They had no more idea whether those shares were genuine at that stage than we did.
 Q. And you took that to mean, to be an indication that they were genuine vendors?
 A. Yes.
 Q. If they had been acting as nominees for CHOO Kim-san of course they still would not have known whether or not the shares were genuine?
 10 A. They undoubtedly would have got something from CHOO Kim-san, some suggestion, some proposal for facilitating a proof of the genuineness of those shares, for example, there is one thing he could have done. If he was still in control, for example, he could have proved the genuineness of those shares by changing the registrar of the company. Now that is something that James Coe, for example, did immediately he got into control, he changed the registrar because that would require an audit of the issued shares and transfers and if there was any duplicity –
 Q. That would take time, wouldn't it?
 A. That would take possibly two weeks or three weeks.
 20 Q. And this is a man, you say, that would have been in a hurry to get rid of these shares, isn't that right?
 A. Yes.
 Q. If he was in a hurry to get rid of these shares do you really expect that he would have changed the registrar and have an audit done?
 A. But in the event it was 2½ months before a deal was finished.
 Q. Your third reason was that one of your big problems was the nett worth of San Imperial and nothing was forthcoming as to the nett worth of that company?
 A. Yes.
 Q. How did that convince you that they were genuine?
 30 A. Again the Chows knew that was one of our problems, the accounts of the company were still being audited, the audit had not been completed, there were problems with the audit, they might possibly have – if they were nominees for CHOO Kim-san some arrangement might have been made for us, I don't know.
 Q. Surely the fact that they knew nothing about the nett worth of the company indicates that they were nominees, surely?
 A. If they were nominees surely the information would have been fed to them.
 Q. Mr. Ives, can you envisage two people in Taiwan buying a massive block of shares of a Hongkong company not knowing what they were worth and not knowing whether or not the scrips were genuine, can you envisage that?
 40 A. At the moment we have a judge who is suing a company for the sale of a piece of land in the middle of nowhere. We have umpteen people who buy shares in I.O.S. or what have you which turns out to be a company without a centre, nowhere you can sue. It happens everyday.
 Q. That is quite different, isn't it, Mr. Ives. Here are two people, strangers to you, fortuitously turned out a massive block of shares in Taiwan for a company in Hongkong; they know nothing about the validity of the share certificates. Do you say they picked them up in the street or CHOO Kim-san made them a present of them or do you say they bought the shares from CHOO Kim-san?
 A. Obviously they bought them.
 Q. Obviously they bought them not knowing whether or not the share certificates were genuine?
 A. They had the share certificates.

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- Q. Not knowing whether the share certificates were genuine?
A. It probably did not occur to them at the time. There were share certificates. They had the seal of the company on them. I suppose on the face of them they were valid share certificates.
- Q. Did you think that?
A. No, because I looked at it from a different point of view. I looked at it from a point of view of a man about to abscond, he could have turned out 10, 15 share certificates, put the seal of the company on them, signed them and they might have been duplicates. That is what occurred to me.
- Q. Apparently it didn't occur to the Chows, is that right? 10
A. Yes, but I was being very careful.
Q. But you said yourself, did you not, a moment ago that they had no more idea about the validity of the certificates than you had?
A. Quite.
Q. So you are seriously telling this court that you thought the genuine people, as you describe, would buy 15 million shares in Taiwan relating to a Hongkong company without knowing about the validity of the share certificates, you are seriously telling the court that?
A. I don't know if it occurred to them.
Q. But you do know they had no idea about the validity? 20
A. I don't know they had no idea of the validity.
Q. But, Mr. Ives, you said it not ten minutes ago.
A. I think I said I don't suppose they had any more idea of the validity than I.
Q. Question: "They did not convince you and this must mean that they did not know whether the shares were valid?" Answer: "They had no more idea that the shares were genuine than I" or "than us."
A. I suppose they had no more idea.
Q. You want to modify that statement?
A. My Lord, whenever I try to qualify a question I am told not to quibble. When I answer a question without asking the court to have the question qualified 30 then it is thrown back at me and said every single word was verbatim.
Q. But, Mr. Ives, again it is as clear as day, isn't it: "They had no more idea about the validity than I (or than we)"?
A. You are putting questions to me that really I am not capable of answering. I have no insight to their mind. I cannot say.
Q. Then why on earth did you give that answer, Mr. Ives?
A. Because in the past when I have qualified what you are saying or try to qualify what you are saying you always say, "Don't quibble" or something like that.
Q. No, Mr. Ives, the question was to the effect –
A. I don't mind a fair cross-examination, Mr. Ching. But please let's keep it 40 fair.
Q. Would you please listen to the question, Mr. Ives? The question was this, Mr. Ives, addressed to you, the last part of it: "They did not know whether shares were valid?" Why couldn't you have said "I don't know"? You know the three words "I don't know"?
A. Yes, I don't know.
Q. Why did you say "They had no more idea than I – that the shares were genuine than I"? Why did you say that?
A. I was trying to give an answer to your question without having to say "I

- don't know."
- Q. How many of your answers, Mr. Ives, have come about as a result of your reluctance to say "I don't know"?
- A. You see, Mr. Ching, this is where I say you are trying to trap me. If I ask for the question to be qualified you get heated; if I don't ask for the question to be qualified –
- Q. Mr. Ives, please answer my question. How many of your answers given in the course of your cross-examination have arisen out of the result of your reluctance to say the three words "I don't know"?
- 10 A. I would say not many.
- Q. Not many, but there have been some?
- A. I cannot recall, but I have tried to give the answers you were seeking where you were insisting on the answers.
- Q. Was I insisting on an answer just now about whether or not they knew the shares were valid?
- A. I am talking about your cross-examination generally when I try to ask you to qualify your question you would get very heated.
- Q. You were asked whether or not the Chows thought the shares were genuine. Answer: "They had no more idea whether these shares were genuine at that time than us." Do you stand by that statement or do you resile from it?
- 20 A. I'll say probably they had no more idea.
- Q. So these people who had bought shares when they didn't know anything about the validity?
- A. I don't know.
- Q. Did it occur to you to be strange that they should have bought these shares?
- A. It didn't occur to me at the time.
- Q. Did it occur to you since?
- A. No.
- Q. Why did you say it didn't occur to you at the time?
- 30 A. Because I have to think over a period of – what is it now – in ten months.
- Q. But it has never occurred to you, do you think isn't it strange that Chow and Hwang should buy these shares? It has never occurred to you.
- A. Not that it was strange that they should buy these shares.
- Q. Do you find it remarkable that they haven't come to Hongkong to contest these proceedings?
- A. No.
- Q. Do you find it remarkable that they handed over share scrips worth to them HK\$9 million against payment of \$92,000?
- A. No.
- 40 Q. Why not?
- A. For several reasons: first of all, they had purchased some shares in Taiwan from a certain person but those shares were securities of another company. They may not – I don't know whether they have considered this aspect of it at that time, but that transaction was probably a breach of the exchange control regulations of Taiwan.
- Q. Yes, I see, the penalty for which, I think one of your telexes says, is at least 7 years or death?
- A. Can be up to death.
- Q. Yes. carry on.

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- A. So having purchased the shares they probably found themselves somewhat in a spot, in other words, they were no longer in a dominating position.
- Q. They couldn't even bargain with you then, could they?
- A. They could bargain, yes.
- Q. All you had to do is to go to the exchange authorities and say these people have done that, isn't that right?
- A. Are you suggesting that –
- Q. Isn't that right? You said they were not a dominant position because they had broken the exchange regulations, the penalty of which can be death. How then can you say, as you have said this morning, that they were very protracted negotiations which convinced you or helped to convince you that they were genuine? 10
- A. That is so, yes.
- Q. This is a hot potato in their hands, isn't it? You could have gone to the exchange authorities and say "these people have broken the law, take off their hands." How could they bargain with you? How could they carry on protracted negotiations with you?
- A. That's why I was able to get them down to 60¢.
- Q. You could have said "You give them to me for 20¢" and they would have to sell them at the risk of their lives? 20
- A. At 20¢ they might have said "no deal".
- Q. At the risk of their lives?
- A. Possibly. They could have thrown the shares into the harbour and that would be the end of that.
- Q. You still don't find it strange that they released \$9 million worth of shares against payment to a complete stranger, against payment of \$92,000?
- A. Not in the circumstances.
- Q. Because they were running scared, were they?
- A. Not running scared. I don't know if they were running scared or not, I don't know. 30
- Q. You say their breach of the exchange regulations was why you were able to get them down to 60 cents?
- A. Probably so.

MR. CHING: My Lord, before I get to the details of this, at least, I am about to go to the details of this, would this be a convenient time to adjourn?

COURT: Yes.

D.W.1 – Melville Ives – On former oath

XXN. BY MR. CHING – Continues

- Q. Mr. Ives, you were giving evidence about what you had discovered about Taiwanese law? 40
- A. Yes.
- Q. When did you first discover that what CHOW and HWANG had done was a breach of the Exchange regulations?
- A. When we suggested – Well, when we thought of the transfer through the

- banks, deposits with the banks, etc, we approached 2 banks and they said it could not be done. I then – It then occurred to me that reasons must be Exchange control regulations. Later on I telexed a firm of lawyers in Taiwan.
- Supreme Court of Hong Kong High Court
- Q. Kirkwood?
- A. Kirkwood, yes, and they confirmed that it would be contrary to Exchange control regulations.
- Defendant's Evidence
- Q. So it wasn't confirmed to you until, oh, about 10 days ago or a week ago?
- A. The actual confirmation, yes.
- No. 40
- 10 Q. Yes, all right. One of the reasons you gave for being convinced that CHOW and HWANG were genuine people was that although they were co-operative, there is no inspiration from them?
- A. Yes.
- Melville E. Ives – Cross-examination
- Q. Of course it was CHOW and HWANG, according to your counsel's opening, who instigated the sale of 2,165,000 shares from LEE and FONG to David NG?
- A. What do you mean by "instigated"?
- Q. Well, they mentioned it to David NG?
- A. Yes.
- 20 Q. So it was inspiration from them in that respect, was that not?
- A. I'd hardly call that inspiration.
- Q. Well, what do you mean by "inspiration"?
- A. Coming up with ideas about how to facilitate the transaction.
- Q. But not coming up with the idea of the transaction itself?
- A. Sorry, we are talking about the 15 million shares or the 2 million shares?
- Q. Any, any shares.
- A. I'm sorry, we must talk about specific shares, other wise I will be told –
- Q. No, no. You say that the CHOWs –
- A. There were 2 separate transactions.
- Q. Yes.
- 30 A. Please, let us deal with one transaction at a time. Then I can answer.
- Q. You say that one of the reasons why you were convinced that the CHOWs were genuine was because they were co-operative but there was no inspiration from them. Now, surely if they instigated the sale of the 2,165,000 shares from LEE and FONG to David NG, there was some inspiration from them, wasn't there?
- A. I'd hardly call that inspiration. As far as the 15 million shares was concerned –
- Q. That's all you want to say about it?
- A. I think that is all that calls for.
- 40 Q. All right. David NG told you about this 2 million odd shares in about February you say?
- A. I think it was February, yes.
- Q. Did he tell you how much he was paying for them?
- A. I can't remember whether he told me at the time when he told me that the shares were available. I can't remember if he told me then the price that they were available for or whether he told me later.
- Q. Well, did he ever tell you?
- A. Yes.
- Q. When?
- A. As I say, I can't remember whether it was at that time or later.

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Melville E.
Ives – Cross-
examination

- Q. Approximately when?
A. February.
Q. February?
A. Yes.
Q. How much did he tell you the shares would cost him?
A. He said between 20 and 30 cents a share.
Q. Can you think of any reason why he should have had bought and sold notes executed for 60 cents?
A. Yes.
Q. What is the reason? 10
A. Because under the Stamp Ordinance when you stamp or send any document for stamping ad valorem duty, it is the present value that they stamp on it. If you purchase more cheaply, it doesn't matter. It is the present value that they stamp on it.
Q. I see. All right.
A. The market value at that time was 60 cents. The market value at that time on the Stock Exchange was approximately 60 cents.
Q. 60 cents. Now, you have given your reasons for that particular block being for David NG's own account, namely, that this was not the sort of deal that the syndicate had in mind – paying hard cash, the shares were not going to be authenticated, and that sort of thing? 20
A. Yes.
Q. Would you agree with me, having heard your counsel's opening, that your evidence on that particular point is completely different from the reasons advanced by your counsel in opening?
A. Yes, counsel in opening did say he had also done a lot of legwork and that was also another consideration, as far as there was a chance for him to make a handsome profit there on those particular shares, if they proved to be valid.
Q. But that is not a reason you gave in your evidence, was it?
A. No. The reason I gave is also valid but there was also this other aspect as well. Jolly good luck to him – he's done a lot of hard work. If he makes a profit out of it, good for him. 30
Q. You never said a word about that in your evidence in chief. I will read you your answer. "On return from Taiwan, probably in February, 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 were unacceptable to the Registrar, they might well be a complete loss. HO Chapman 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 the shares would form a part of the overall package." 40
A. Correct.
Q. Now, there is no hint there of rewarding David NG for his legwork or saying "Jolly good luck to you!" is there?
A. No, but that is also part of the –
Q. But you never mentioned it, did you, in your –
A. I'm sorry. I am mentioning it now.
Q. I see. And when your counsel opened, he just happened to forget the reasons

	you gave in chief and gave as the only reason, at least the only reason he mentioned, that it was thought right that David NG should have the shares on his own account because he'd done the legwork, he got them cheap and he put up his own cash?	Supreme Court of Hong Kong High Court
	A. That was also a consideration.	Defendant's Evidence
	Q. Your counsel forgot the rest of it – is that right?	
	A. I don't think he forgot it. That was part of the consideration.	
	Q. But you forgot to mention rewarding David NG in your evidence in chief, is that right?	No. 40
10	A. In my evidence in chief I did not mention that, no.	Melville E. Ives – Cross-examination
	Q. You forgot it?	
	A. I suppose I forgot it, yes.	
	Q. All right. Now, David NG telephoned you on the 23rd March – is that right?	
	A. Yes.	
	Q. Where were you?	
	A. I was in my office.	
	Q. In your office. What time of day was it?	
	A. I believe it was after lunch.	
	Q. After lunch on a weekday?	
20	A. Yes.	
	Q. During working hours?	
	A. Yes.	
	Q. Did he reverse the charges when he telephoned you?	
	A. No.	
	Q. How long did the telephone conversation last?	
	A. It is difficult to say. I would say possibly 10 minutes.	
	Q. 10 minutes to read the agreement to him? You read it yourself, you dictated it yourself?	
	A. Yes, yes.	
30	Q. And you dictated it to him, not to somebody else?	
	A. To him.	
	Q. Does he write shorthand?	
	A. No, he recorded it on a tape.	
	Q. Recorded it on a tape?	
	A. Yes.	
	Q. I see. You do have a telex machine in your office?	
	A. Yes.	
	Q. At that time CHOW had a telex in his office?	
	A. He did, yes.	
40	Q. Why didn't you simply put the whole agreement on the telex?	
	A. I did not personally know that CHOW had a telex machine.	
	Q. I see.	
	A. If I did, I would have telexed it.	
	Q. I see. Was there any desperate hurry? Why didn't you just post him a copy?	
	A. That would probably take 3 days at least.	
	Q. Yes. Was there a desperate hurry?	
	A. I would say not a desperate hurry, but it was desirable to get the deal fixed as soon as possible.	
	Q. I suggest to you, you see, Mr. Ives, that throughout all of these transactions,	

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Evidence

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Melville E.
Ives – Cross-
examination

there are all the marks of a hurry.

- A. But you said “desperate” hurry.
- Q. Or desperate hurry, as you like. Was there hurry?
- A. Hurry, yes.
- Q. Why?
- A. That is one of the features of Hong Kong life. Everything is a hurry.
- Q. Why should you be in a hurry unless you knew that somebody else was after the shares?
- A. I was leaving Hong Kong on the 1st April. This was the 23rd March.
- Q. Yes. 10
- A. We were hoping that we could get a deal fixed before I left Hong Kong.
- Q. But all the details had been agreed by the 23rd March, had they not?
- A. I mean for the sale of the shares.
- Q. For the sale of the shares. I see. All right. We come to Fermay now. Whose idea was it to use Fermay?
- A. You mean Fermay as such or as a company in general?
- Q. Any company which turned out to be Fermay. What was the point of using the Hong Kong company?
- A. There were several features there. First of all, as I mentioned –
- Q. Whose idea was it? 20
- A. To use the Hong Kong company?
- Q. Yes.
- A. It was probably my idea.
- Q. Probably yours. And what was the purpose?
- A. To get the shares, to get the transfer of the shares through in order to prove the validity of the shares.
- Q. So the first purpose was to authenticate the shares?
- A. Correct.
- Q. The second purpose no doubt was to protect the syndicate against buying forged shares or otherwise invalid shares? 30
- A. That was the same as the first.
- Q. Same thing – other side of the coin?
- A. Yes.
- Q. Any question of protecting CHOW and HWANG?
- A. Yes, it would – when the idea was first thought of it was considered it would give them reasonable protection as well.
- Q. In what way?
- A. They would be the shareholders of Fermay.
- Q. They would be the shareholders of Fermay. That doesn't give them protection on its own, does it? 40
- A. In what respect?
- Q. In any respect.
- A. It should do.
- Q. It should do. Because they were shareholders, they would be protected regarding the 15 million shares – is that right?
- A. If they were the shareholders of that company and that company held the San Imperial shares, that would give them a reasonable amount of protection.
- Q. Give them a reasonable?
- A. Amount of protection.

- Q. Amount of protection. As a matter of interest, were the original subscriber shares ever transferred to CHOW and HWANG? Supreme Court of Hong Kong High Court
- A. They were, yes.
- Q. On the 30th March – is that right?
- A. On the 30th March? I can't remember. Defendant's Evidence
- Q. Your partner Mr. Winston CHU wrote a letter to Messrs. Johnson, Stokes on the 16th June in which that date is mentioned?
- A. Yes, probably, yes. No. 40
- Q. There were only 2 issued shares at that time?
- 10 A. Yes. Melville E. Ives – Cross-examination
- Q. Not 1,000 but only 2?
- A. Only 2.
- Q. Would you look at yellow file 1, document 23. Now, that is a return of an allotment, notice of increase in capital?
- A. 23rd, notice of increase.
- Q. Yes. And that is your signature at the bottom?
- A. Yes.
- Q. And you signed it as solicitor for Fermay?
- A. Yes.
- 20 Q. You see the number of shares said to be issued – 8,999,000?
- A. Not "issued", no.
- Q. Sorry, additional capital.
- A. Yes.
- Q. There is 998 missing, isn't there?
- A. That is increase in capital.
- Q. Yes, but there is 998 missing, isn't there?
- A. No.
- Q. You were going to increase it to 9 million? 8,999,000 plus 2 does not equal 9 million.
- 30 A. I know it does not.
- Q. So there is 998 missing?
- A. No.
- Q. No? Well, why not?
- A. I think you misunderstand it. This is a notice of increase of nominal capital.
- Q. Yes.
- A. I'm sorry. There is 1,000.
- Q. Oh, I see. Beyond the issue of 1,000, not the nominal capital of 1,000.
- A. Yes, that's right.
- Q. Look at document 15 then. There you have got the right number, 8,999,998?
- 40 A. We had the right number in the other one too.
- Q. Yes. Look now at document 11 to 12. Those are increasing the capital?
- A. Yes.
- Q. And look at 13.
- A. Yes.
- Q. Now, the fourth paragraph on 13.
- A. Yes.
- Q. "It was unanimously resolved that the new shares of the company be allotted to the present shareholder." Right?
- A. Yes.

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Melville E.
Ives – Cross-
examination

- Q. Dated the 23rd March?
A. Yes.
Q. On the 23rd March the present shareholders were Winston CHU and Charles YEUNG?
A. Yes.
Q. Were the shares allotted to the present shareholders?
A. Winston CHU and Charles YEUNG were holding them for subscriber shares. This is very common practice with share companies, the first 2 shareholders are the subscriber shareholders and they usually hold them as nominees for the persons to whom the shares are ultimately allotted. 10
Q. I see. Now, on the question of authentication, Mr. Ives, would you agree with this, that CHOW and HWANG could have authenticated the shares by simply filling in the transfer forms and sending them to the registrar with a covering letter saying, "When you issue the new shares, please send them to Peter MO & Co. Attention: Mr. Ives"? They could have done that?
A. Could have done that, yes.
Q. Simplest thing in the world, wouldn't it have been?
A. Yes.
Q. So Fermay was, in fact, totally unnecessary was it not?
A. That is not so. 20
Q. For the purposes of authenticating the shares then, Fermay was totally unnecessary?
A. For authenticating the shares, yes.
Q. So the authentication of the shares was not one of the real purposes of Fermay?
A. Please, you can't take one item in isolation –
Q. Why not?
A. This was a complex deal and it had to be – a formula had to be found which would satisfy various requirements. 30
Q. Yes. 30
A. There is no good taking a formula which would satisfy one requirement but not fulfil the others.
Q. Right. Let us suppose that the share transfer forms had been filled in by CHOW and HWANG, sent to the registrars with a covering letter, asking them to send you the new share scrips.
A. Yes.
Q. And let us suppose that was done, you receive the new share scrips.
A. Yes.
Q. The shares would have been authenticated?
A. Correct. 40
Q. The authorized signatories would have been CHOW and HWANG?
A. Correct.
Q. And in that way CHOW and HWANG would have been protected?
A. Correct.
Q. Because although you held the scrip, you would need their signatures to deal with the shares?
A. Correct.
Q. You would be protected in that you would be holding proven share scrips – is that right?

- A. How would we be protected? Supreme Court
of Hong Kong
High Court
- Q. You would be holding proven share certificates, authenticated certificates?
- A. They would be no good to us.
- Q. But they would have been proven to be valid, authenticated?
- A. I agree, yes. Defendant's
Evidence
- Q. Yes. And then Mr. David NG could have taken the transfer form up to Taiwan, the new transfer form.
- A. Yes. No. 40
- 10 Q. Up to Taiwan, paid CHOW and HWANG the 9 million dollars in return for their signatures on the new transfer forms. Could anything be simpler than that? Melville E.
Ives – Cross-
examination
- A. He could have done.
- Q. Could anything be simpler than that?
- A. But there would be the question of paying over the \$9 million.
- Q. You had to pay that anyway, didn't you?
- A. We wanted to avoid having to raise \$9 million cash.
- Q. Yes. You could have paid them when you had your back to back financing?
- A. Yes.
- Q. You had to pay them at some time?
- 20 A. At some time, yes.
- Q. And you could have done it this way and deferred payment until you got your back to back financing – isn't that right?
- A. I'm not saying the way we did it was the only way. The way you have –
- Q. Please answer my question, Mr. Ives. It could have been done in this terribly simple way, without the use of Fermay at all.
- A. It could have been done.
- Q. It could have been done. Well, let us see what actually happened, Mr. Ives.
- A. But then, if it was done that way what address would the CHOWs put on their transfers?
- 30 Q. I don't know! Care of Peter MO & Co. if you like – all right?
- A. Hmhm.
- Q. Does that satisfy you?
- A. Possibly, yes.
- Q. Good. Let us talk about the protection to CHOW and HWANG. Look at document 14 – by the way, before we get there, document 13 at which we have just looked is dated 23rd March?
- A. Yes.
- Q. In fact that is not the accurate date, is it?
- A. That is the accurate date, yes.
- 40 Q. I understood that this was taken up by David NG later or –
- A. That is not the date of the document. That is the date of the meeting, I think you will find.
- Q. Oh, I'm sorry. I've got it wrong. Look at document 14 then – is that an accurate date, 23rd March?
- A. Yes. As I explained just now, that is the date of the meeting, not the date of the document.
- Q. Date of the meeting? You mean they actually held a meeting? It is not a paper meeting? They actually held a meeting?
- A. I believe so, yes.

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Ives – Cross-
examination

- Q. I see. CHOW and his wife, man and wife, CHOW and Madam CHENG Kwai-fong, solemnly got together at room 205 at 200 Nanking E. Road and Mr. CHOW solemnly took the chair, solemnly make a proposal and called for a vote and both he and his wife put up their hands and then they said, "Right! Passed unanimously. What else is there? Well, there is no other business, let's adjourn." All that happened?
- A. Mr. CHING, I don't think I need to answer a facetious question.
- Q. It is not a facetious question! You say that there was a meeting held?
- A. These meetings are not held in solemn manners like that.
- Q. Well, are they held in a humorous manner? 10
- A. They are usually held in a very informal manner.
- Q. A more usual thing, Mr. Ives, is a paper minute, isn't it?
- A. Not necessarily so.
- Q. Not necessarily so? But you say a meeting was held?
- A. I don't know, I wasn't there, but presumably a meeting was held.
- Q. Then why did you say it was the date of the meeting if you don't know if a meeting was held?
- A. I was informed by David NG.
- Q. David NG told you they held a meeting? 20
- A. Yes, they met together.
- Q. I see. All right. When did David NG tell you that?
- A. I was told they met together, the 3 of them, in this office at this address.
- Q. I see. The 3 of them met together at this address?
- A. Yes.
- Q. When did David NG tell you that?
- A. He told me over the telephone. He didn't say the 3 of them over the phone, but he said they had a meeting over the phone and when he came back he told me what had happened.
- Q. When over the phone?
- A. That was after the meeting, in the afternoon of the 23rd. 30
- Q. 23rd?
- A. Yes.
- Q. He told you on the 23rd March that this meeting and been held?
- A. Yes.
- Q. Was that the same telephone conversation upon which you dictated the agreement?
- A. Yes.
- Q. I see. And did you dictate a minute to him?
- A. This minute, he had already taken this form with him.
- Q. I see. 40
- A. But in the form that I had given him the time and date were left blank because I didn't know what that would be. Now, this is the minute – Sorry, which minute are you talking about?
- Q. 14.
- A. 14, sorry, no. This minute 14 was drafted by me after he returned from the 23rd visit.
- Q. Why didn't he tell you on the telephone or he did tell you on the telephone, I'm sorry. But why didn't you dictate the minute to him over the telephone?
- A. He didn't tell me about this particular matter over the phone.

- Q. I understood you said just now he did. Supreme Court
of Hong Kong
High Court
- A. I'm sorry, we are getting awfully confused. You asked me if he had told me of the meeting.
- Q. Yes, and you said yes.
- A. I think he did. Defendant's
Evidence
- Q. You said he told you on the phone on the 23rd. You said he told you in the same telephone conversation at which you dictated the agreement?
- A. Yes. No. 40
- Q. Why didn't you dictate a minute to him about this meeting?
- 10 A. I didn't know what had transpired at the meeting. Melville E.
Ives – Cross-
examination
- Q. He didn't tell you?
- A. I mentioned that, I said he didn't tell me. He just said there had been a meeting.
- Q. Well, look at what the document says, paragraph 2: "It was proposed and unanimously resolved that Messrs. David NG, HO Chapman and Melville Edward Ives, acting jointly or any one or more of them acting singly shall be authorized signatories of the company for the purposes of entering into any contract or signing on behalf of the company any document, receipt, contract, bought and sold note, transfer or any other document of any nature whatsoever and the signature of any one of them shall be binding on the company."
- 20 A. Yes.
- Q. You could have signed the transfer form, then?
- A. Yes.
- Q. And if you had signed the transfer form and got new certificates, with a new transfer form you could have transferred the shares further on your own signature?
- A. I could have done, yes.
- Q. As it turns out, David NG signed the transfer forms?
- A. Yes.
- 30 Q. And so David NG would have his signature on record with the registrar?
- A. Correct.
- Q. And David NG could therefore transfer the new certificates?
- A. Yes.
- Q. And in that way CHOW and HWANG had lost control of the shares, hadn't they?
- A. They had in effect, yes.
- Q. Yes. Then look, will you please, at your supplemental bundle, I think it is yellow 3, document 32 and 33. Those are blank instruments of transfer? Supplemental, 32 and 33. Blank instruments of transfer?
- 40 A. Yes.
- Q. In relation to what shares were they intended to be used?
- A. In relation to the Fermay shares.
- Q. The shares of Fermay itself?
- A. Yes.
- Q. So they didn't even have control of the company, did they?
- A. Not by this time, no.
- Q. They didn't even have control of their own shares in the company?
- A. Correct.
- Q. Look at supplemental document 34. That is an undated letter of resignation?

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examination

- A. Yes.
- Q. And at any time that could have been filed?
- A. It could have been, yes.
- Q. With or without their knowledge?
- A. Correct.
- Q. So they could lose their shares in the company?
- A. They could have done, yes.
- Q. They could have lost their directorships?
- A. Yes.
- Q. And David NG's signature was enough to transfer the San Imperial shares? 10
- A. Yes.
- Q. Then look at document 62. I'm sorry, before we get there, those blank transfer forms were to be kept by you?
- A. Yes.
- Q. So that their shareholding in Fermay was completely at your mercy?
- A. Correct.

MR. CHING: I'm sorry, not supplemental, my Lord. The original.

COURT: I have looked at 32 and 33.

MR. CHING: Yes.

COURT: What was 34? 20

MR. CHING: 34 was the undated letter of resignation, my Lord, following from there.

COURT: Of what page?

MR. CHING: My Lord, it is 144. My Lord, I have just asked whether the blank transfers – that is, pages 142 and 143 – were to be kept by Peter MO. Answer – yes. Question – Their shareholding in Fermay was therefore entirely at your mercy? Answer – yes. (To witness) You know the document?

- A. I know the document.
- Q. Look now please at yellow file 1, document 62. You say that that appointment of David NG as managing director was in order to allow him to instruct solicitors on behalf of Fermay? 30
- A. Yes.
- Q. He didn't have to be managing director for that, did he?
- A. Not necessarily, no.
- Q. No. He didn't need the authority to use the company's seal to do that, did he?
- A. Sometimes people do require a resolution with a seal of the company on it.
- Q. I see. But by that document David NG was given overall power over the company?
- A. Yes.
- Q. So they lost control again, haven't they? 40
- A. Yes.

- Q. And according to your evidence David NG brought back with him from Taiwan both copies of the agreement of the 23rd March? Supreme Court of Hong Kong High Court
- A. On the 23rd March – when he came back.
- Q. When he came back?
- A. Yes, after the 23rd of March meeting. Defendant's Evidence
- Q. He brought both back?
- A. Both signed copies.
- Q. So CHOW and HWANG didn't even have a copy of the contract? No. 40
- 10 A. No, until that was returned. I believe there was a third copy. I believe it was left in Taiwan.
- Q. I see. There is a third copy? Melville E. Ives – Cross-examination
- A. Yes.
- Q. Signed copy?
- A. I believe there was a third signed copy.
- Q. I see. You never told us that before, you know?
- A. I have never seen that myself, but I believe there was.
- Q. You have never seen it. So if it doesn't exist, Mr. Ives, then they didn't even have a copy of the contract?
- A. If it didn't exist, no, unless they had a xerox.
- 20 Q. They have lost entire control Mr. Ives of \$9 million assets against payment of \$92,000. They entrusted a stranger, David NG to bring these documents down to Hong Kong. They entrusted you whom they hadn't even seen, they entrusted you to hold the blank transfer forms of their company which own the assets. Didn't you think that rather strange?
- A. In the circumstances, namely, that they were holding shares that they were not supposed to hold because of exchange control regulations –
- Q. Yes?
- A. It is more perhaps a matter of expediency than strange.
- 30 Q. Of course, CHOO Kim-san knew you as a person, as a director and as his solicitor?
- A. He know me, yes.
- Q. You had represented him?
- A. Yes.
- Q. He had no reason, CHOO Kim-san had no reason to distrust you?
- A. That is so, I believe.
- Q. CHOO Kim-san knew David NG?
- A. Yes.
- Q. He had no reason to distrust David NG?
- A. Possibly so, I believe.
- 40 Q. But those 2 strangers, CHOW and HWANG, what reason did they have to trust you? What reasons did they have to trust David NG?
- A. I don't know what reason they had to trust me, to trust David NG.
- Q. Because they were nominees, doing as CHOO Kim-san directed?
- A. I don't think so, no.
- Q. You don't think so?
- A. No.
- Q. When the agreement document 16A was brought back, it was full of blanks and not only blanks, but blanks with CHOW and HWANG's signatures in the margin against the blanks?

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of Hong Kong
High Court

Defendant's
Evidence

No. 40

Melville E.
Ives – Cross-
examination

- A. Yes.
- Q. Would you look at that please, 16 or 16A, either one will do. It doesn't matter.
- A. Yes.
- Q. Look for instance at clause 2.
- A. Yes.
- Q. Where it says "The purchase price payable by the purchaser for the said shares shall be HK\$9 million." Right?
- A. Sorry – Oh, yes, \$9 million, yes.
- Q. If you had put "\$92,000" in there, there is nothing CHOW and HWANG could have done about that – is that right? 10
- A. That would be right.
- Q. Is that right?
- A. MmHm.
- Q. Very trusting of them, wasn't it?
- A. I don't know that they had much choice really.
- Q. You don't know that they had much choice. This morning when I said, what if you had insisted on paying 20 cents and had threatened to report them to the authorities? You said, Well, they could have thrown them into the sea.
- A. Yes, but if they wanted to sell them, I don't think they had much choice but to trust us. 20
- Q. I see. That is the only explanation you can give for CHOW and HWANG losing complete control against payment of \$92,000 – is that right?
- A. I think so, yes.
- Q. They could, of course, have parcelled up the shares and sent them by registered post to a friend in Hong Kong, don't you think?
- A. They could have done.
- Q. And then no one would ever know that they had the shares and no one would ever know that they had broken exchange regulations?
- A. They could have done. 30
- Q. Why did they choose to trust perfect strangers instead of doing that?
- A. I don't know.
- Q. You don't know. Would you look again at document 16? You will see that provision is made for the date of completion in clause 4 on the second page.
- A. Yes.
- Q. "Completion of the sale and purchase of the said shares shall take place within 90 days from the date of registration."
- A. Yes.
- Q. They were registered on the 28th of March?
- A. Yes. 40
- Q. Registration 28th March, completion therefore would be the 26th of June?
- A. Yes.
- Q. Have you paid them?
- A. We have not paid, no.
- Q. Have you completed?
- A. No.
- Q. Have they pressed you for payment?
- A. No.
- Q. Have they pressed you for completion?

- A. No. Supreme Court
of Hong Kong
High Court
- Q. Have they asked you to return share scrips of San Imperial for 15 million shares?
- A. No.
- Q. Have they asked you to return the blank transfer forms for 15 million San Imperial shares? Defendant's
Evidence
- A. No.
- Q. Have they asked David NG to write to the registrars to say that his signature on its own shall not be operative in transferring the San Imperial shares? No. 40
- 10 A. Not as far as I know. Melville E.
Ives – Cross-
examination
- Q. Have they asked you to return the blank transfer forms?
- A. No.
- Q. Have they asked for the return of the undated letter of resignation?
- A. No, not of me.
- Q. Have they pressed you for anything at all?
- A. They have not pressed, no.
- Q. Have they asked?
- A. I understand they are anxious to get the money.
- Q. Have they asked?
- 20 A. I believe they asked David NG.
- Q. When?
- A. From time to time.
- Q. Sorry?
- A. There have been numerous telephone conversations between David NG and the CHOWs.
- Q. Can you give us the dates. There is no hearsay notice, you see. It is the first we have heard about it.
- A. Well, this is the first it has arisen.
- Q. I see. You didn't think it is a material matter when you say you were convinced by the 23rd March that they were genuine people and subsequently you have become even more convinced; they never pressed you on the evidence so far and now you say they have asked David NG?
- 30 A. Sorry, I don't quite follow what you are saying.
- Q. You said you were convinced by the 23rd of March that they were genuine?
- A. Yes, the people were genuine.
- Q. The people were genuine. You said also that thereafter, after the 23rd March, you were even more convinced that they were genuine?
- A. Yes.
- Q. It would have been a matter of considerable importance, would it not, to have shown this court that these people were so genuine they were ringing you up everyday and saying, "Either give us back the shares or give us our money." Would it not have been important?
- 40 A. There are disclosed frequent connections.
- Q. Would it or would it not have been important, Mr. Ives?
- A. I don't think it is important to the issue. It might be but we did not consider it important at the time.
- Q. I see.
- A. But there have been frequent phone calls as are shown by the telephone bills which have been exhibited.

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of Hong Kong
High Court

Defendant's
Evidence

No. 40

Melville E.
Ives – Cross-
examination

- Q. And were they ever asked to provide a statement or a testimonial or an affidavit?
- A. No.
- Q. No?
- A. They were asked to come to Hong Kong.
- Q. Just a minute. Never been asked for a statement?
- A. Correct.
- Q. You know how important CHOW's evidence could be?
- A. Yes.
- Q. If he were here? 10
- A. Yes.
- Q. Since he is overseas, you are attempting to show that he can't come, a statement would, at least, have been better than nothing.
- A. And that statement could have been used against him in Taiwan, couldn't it.
- Q. I see.
- A. With very telling effect.
- Q. I see. So he was never asked for a statement –
- A. He was –
- Q. – because the statement could be used against him in Taiwan – is that right?
- A. He was asked, I believe, if he'd make a statement. I didn't ask him myself, 20
of course, but he was approached and he declined.
- Q. You said just now a statement such as that could be used with very telling effect against him in Taiwan?
- A. Yes.
- Q. And yet you say he was asked to come to Hong Kong to give evidence?
- A. He was asked to come to Hong Kong to complete this.
- Q. Well, why was he asked to come to Hong Kong?
- A. He was asked to give us –
- Q. If a statement could be used with such telling effect against him, think how devastating it would be if he was to come to give evidence! 30
- A. Let us get this correct. He was asked to come to Hong Kong at the beginning of March to complete this transaction.
- Q. I see. Not for the purposes of this action?
- A. Not for the purposes of this action.
- Q. He has never been asked to come for the purposes of this action?
- A. I can't say. I didn't have the conversation with him. He was asked if he would make a statement. I can't say whether he was asked to come to Hong Kong or not for the purposes of this action.
- Q. By the way, who is holding the 9 million Fermay shares?
- A. The 9 million Fermay shares are filed here at the moment. I am holding those. 40
- Q. You are holding them?
- A. Yes.
- Q. You see, your latest hearsay notice hasn't been formally submitted yet, but all that that telex from Taiwan says is that it was not a breach of their regulations for a citizen of Taiwan to buy shares in a foreign company – correct?
- A. It was a breach of the – I think it is the Central Bank regulations.
- Q. We will have to look at your hearsay notice, Mr. Ives.
- A. Yes.
- Q. Brown 1, red index, page 21. Look at page 27 – I'm sorry, go back, brown 1,

26. Supreme Court of Hong Kong High Court
- A. Yes.
- Q. Paragraph 1.
- A. Yes.
- Q. "Consent of Government is not required to invest outside R.O.C."
- A. Correct. Defendant's Evidence
- Q. "However, consent of Central Bank is required if funds are to be remitted out of R.O.C. for any purpose."
- A. Yes. No. 40
- 10 Q. There was no question of remitting funds out of Taiwan, was there? Melville E. Ives – Cross-examination
- A. There is a subsequent telex –
- Q. Just a minute. Let us take it one by one, Mr. Ives. Was there any question of CHOW and HWANG remitting their funds out of Taiwan?
- A. No.
- Q. No? "Failure to do so" that is to say, failure to get consent, "is violation of foreign exchange control."
- A. Yes.
- Q. If all they had done was to buy the shares –
- A. Yes.
- 20 Q. – from CHOO Kim-san in Taiwan, they had committed no offence?
- A. On what authority?
- Q. Where is your authority that they have committed an offence!
- A. The next telex –
- Q. All right, the next telex. What does that say?
- A. "Purchase by local individual of R.O.C. of shares in a Hong Kong company . . . the transfer of shares . . ."
- Q. "The transfer of shares from AAA to BBB do violate . . ."
- A. Yes.
- 30 Q. But their purchase from CHOO Kim-san when both were in Taiwan was not an offence, was it?
- A. I think so, yes.
- Q. Where is your authority?
- A. "Purchase by local individual of shares in a Hong Kong . . ." ". . . the transfer of shares from AAA Ltd. to BBB Ltd. . . ." If we have got my telex to them, I think that would clarify the position.
- Q. Yellow 3, page 150. That is the first of your telexes. 152 is the second of your telexes and 154 is the third of your telexes. Now, which one do you want?
- A. That last telex we referred to –
- Q. 154.
- 40 A. – is in reply to 154.
- Q. Yes.
- A. "Thank you for your telex in reply to our 17/10/77. We can now pose problem as follows: local R.O.C. resident purchaser purportedly purchased in R.O.C. shares in AAA Ltd., a Hong Kong registered company, paying for them in R.O.C. currency . . ."
- Q. Yes? So what? I asked you whether it was an offence for CHOW and HWANG to have bought the shares from CHOO Kim-san in Taiwan and you said it was. Now, where is it? Where is your authority?
- A. "The purchase by a local individual of R.O.C. shares in Hong Kong company

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of Hong Kong
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Defendant's
Evidence

No. 40

Melville E.
Ives – Cross-
examination

. . . the transfer of shares from AAA Ltd. to BBB Ltd. do violate Central Bank regulations.”

Q. “The transfer of shares . . .” I am talking about the purchase by CHOW and HWANG.

A. I think they are – they mean by “transfer”, purchase. If you wish I can send another telex.

Q. I don't wish. It is quite clear on this telex, is it not, that they committed no offences if they simply purchased the shares in Taiwan while both they and CHOO Kim-san were in Taiwan and paid him in Taiwan?

A. I don't think this is clear. If it is not clear, it could be cleared perhaps by another telex. 10

Q. Look back at your telex 154, “Subsequently purchaser resold the shares to BBB Ltd.” In your own mind, what was “BBB Ltd.”

A. That was Fermay.

Q. Fermay, a Hong Kong company. And it is that that was the offence – is that right?

A. Yes, I think maybe you are right there. Yes.

Q. Yes, maybe I am.

A. I'm sorry, I misread that. But I can send another telex –

Q. Please, not on my account, please, Mr. Ives. 20

A. All right, all right.

Q. All right. You see, Mr. Ives, I suggest to you that by reason of everything we have covered, you must know that CHOW and HWANG were acting as nominees, even if the agreement of 23rd March was a genuine one.

A. I believe they were not acting as nominees.

Q. And for the same reasons I suggest to you that the agreement of the 23rd of March was a sham.

A. It was not a sham.

Q. It was not a sham. By the way, why are you contesting these garnishee proceedings? The garnishee proceedings on the part of LEE Kon-wah and LEE Ing-chee for the proceeds of the sale. Why are you contesting it? 30

A. It is a question of quantum.

Q. Quantum? It is a question of quantum? A question of quantum?

A. Sorry, the garnishee proceedings, sorry. That was the 8.8 –

Q. That's right.

A. Yes.

Q. Why are you contesting that?

A. That is the money that we have to pay to the CHOWs.

Q. Yes. Why are you contesting it?

A. If we did not contest it, if we let the matter go by default, it might be possible for the CHOWs to come back at us. 40

Q. On pain of suffering the death penalty they are going to sue you for the money – is that right? Is that right?

A. There is a problem there, I agree.

Q. There is a problem there. They can't sue you, can they, upon your very own evidence?

A. But while we are doing all this, we may as well get that straight too.

Q. May as well get what straight, Mr. Ives?

A. If there is a court order garnisheeing the 8.8 – garnisheeing order absolute,

that is all right, but while we are in this court with all these other matters, we might as well get everything straightened out.

Supreme Court
of Hong Kong
High Court

Q. Might as well get everything straightened out. What is there to straighten out about the garnishee proceedings? So far as you were concerned, it doesn't matter who you pay as long as you got title – is that right?

Defendant's
Evidence

A. As far as we personally are concerned, yes.

Q. Yes. As long as there is a court order that you shall pay to us, you are protected and you get good title – is that right?

No. 40

A. We get good title, yes.

10 Q. Then why are you contesting the garnishee proceedings? I have been here now for 4 weeks, Mr. Ives. It seems to me I need not have been here for one day.

Melville E.
Ives – Cross-
examination

MR. SWAINE: My Lord, I don't think that is fair because my learned friend will, I am sure, not forget that he has also got a charging order nisi which he seeks to make absolute and he has got injunctions as regards all the shares in question. We are not here simply on the garnishee in the two LEE actions.

COURT: Very well.

MR. CHING: I never said we were, I never said we were.

A. If I might also answer that last question. You were suggesting previously that the CHOWs had no protection at all. We owe them, the CHOWs, an obligation. We are obligated to them.

20

Q. It is a moral obligation?

A. Yes.

Q. You owe them a moral obligation to contest –

A. And a legal obligation.

Q. Please listen – you owe them a moral obligation to contest the garnishee proceedings, is that right?

A. No, to pay them the purchase money and a legal obligation.

Q. When they can't even be bothered to come here themselves?

A. It is not a question, you have seen before, of not bothering to come.

30

Q. You know that for a fact?

A. It seems to be, yes.

Q. Seems to be?

A. Yes.

Q. That is all you want to say about why you are contesting the garnishee order?

A. At the moment, yes.

Q. At the moment. But you haven't even pleaded double jeopardy. You haven't even pleaded that you might be sued in Taiwan.

A. I don't think so, no.

Q. You are not relying on that?

40

A. No.

Q. Let us come now, Mr. Ives, to the question of your telex to London – document 123, in yellow file 2.

Q. We come now, Mr. Ives, to the question of your telex to London – document 123 in yellow file 2. Why did you get an opinion from Hong Kong?

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of Hong Kong
High Court

Defendant's
Evidence

No. 40

Melville E.
Ives – Cross-
examination

- A. First of all, if you see that, we got an opinion within a matter of forty-eight hours.
- Q. Yes, speed was of the essence, was it?
- A. I've waited – very often waited six months or more for an opinion in Hong Kong.
- Q. Speed was of the essence, was it?
- A. Not of the essence, but as soon as possible. But, as I have said, I have often waited for six months or more for an opinion in Hong Kong. It certainly was desirable to get it fairly quickly.
- Q. Look at the bottom line of your telex, the words "Fees are at your discretion. Please telex counsel's opinion or a summary." So, you were in a hurry, weren't you? 10
- A. That's right, I telexed. Yes.
- Q. Look at the top now.
- A. Yes?
- Q. "A company director (the Director) was charged under various heads including fraud. Shortly before trial the director absconded and is now residing in Formosa which has no extradition treaty or diplomatic relations with Hong-kong." 20
- A. Yes.
- Q. "XXX Ltd. and YYY Ltd." – now, is that Asiatic and Triumphant?
- A. Yes.
- Q. All right. "Of which the director is neither shareholder nor director holds substantial shareholding as nominee for the director in AAA Ltd." –
- A. Yes.
- Q. What is AAA Ltd.?
- A. That was intended to be San Imperial.
- Q. "San Imperial". "And BBB Ltd." What's BBB Ltd.?
- A. MAF Credit Ltd.
- Q. "MAF Credit". "All the charges brought against the director were in respect of CCC Ltd." What is CCC Ltd.? 30
- A. What's the name of that company? –
- Q. Southern Land? Asia Land?
- A. Asialand.
- Q. "Asia land". "All the charges brought against the director were in respect of Asialand save one charge to the effect that he forged a signature on a resolution purportedly passed by Board of San Imperial to mortgage certain assets of San Imperial. This mortgage has since been repaid and no loss was incurred by San Imperial. The director has now indicated to our client that the director is willing to sell to client the Director's beneficial holdings in San Imperial and MAF Credit which are held by Asiatic and Triumphant as his nominee." 40
- A. Yes.
- Q. "Can you please obtain counsel's opinion 1) Can client safely purchase shares from Asiatic and Triumphant knowing that proceeds could be used to sustain a fugitive beyond the jurisdiction. 2) There being no exchange control restrictions can Asiatic and Triumphant safely remit proceeds to the Director as beneficial owner he being a fugitive."
- A. Yes.
- Q. Now, I opened upon this, Mr. Ives. You heard me open on this?

- A. Yes. Supreme Court
of Hong Kong
High Court
- Q. You've heard your counsel interject while I was commenting upon this telex.
- A. I can't really recall now, I remember he –
- Q. You remember Mr. Swaine standing up and saying something to the effect about being sure I wouldn't want to take a false point and that this telex had been sent off before David Ng had reported to you. Defendant's
Evidence
- A. But that's his interjection. I can't remember.
- Q. You can't remember. That interjection is not accurate – David Ng had reported to you. No. 40
- 10 A. David Ng reported to me about the Chows. Melville E.
Ives – Cross-
examination
- Q. Very well. Let's not confuse the issue. You said he telephoned you on the 3rd January and said, "I have located Choo Kim San".
- A. Yes.
- Q. "We're in business."
- A. Yes.
- Q. Now, was your counsel wrong in saying that this telex was sent before David Ng had reported to you, or should he have said . . .
- A. Reported to me –
- Q. . . . before David Ng had reported fully to you?
- 20 A. Yes, fully, yes.
- Q. "Fully". All right.
- A. He reported to me that he had made contact. Yes. I dictated –
- Q. And "We're in business".
- A. Yes.
- Q. "We should be able to buy, he's willing to sell".
- A. "It looks as if we are in business."
- Q. Sorry, "It looks as if we're in business"?
- A. I think the words were, "It looks as if we're in business" or something like that.
- 30 Q. You were thinking at that time that it was Choo Kim San who was going to sell to you.
- A. We went through this morning.
- Q. No, we haven't, Mr. Ives. Just answer the question.
- A. At this time the question of whether or not there was going to be a sale and purchase was not in issue. At this time it was a question of where were the shares, who had the shares and could we acquire the shares legally and morally.
- Q. Where for you sent off the telex; is that right?
- A. As a starting point, yes.
- Q. Your telex appears to me, Mr. Ives, to be most carefully drafted, as carefully drafted as an examination question. Do you agree?
- 40 A. I wanted to get an answer, so –
- Q. You're talking there of buying from the director, remitting funds to the director.
- A. When one seeks counsel's opinion, one doesn't conceal from counsel the possibilities. If one wants an opinion on those facts, one has to put the facts as bluntly as they can, as –
- Q. I see. I suggest to you –
- A. You want to know the worst, in other words; it's no good getting an answer which pleases, one wants to get the answer for the worst possible situation.

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of Hong Kong
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Defendant's
Evidence

No. 40

Melville E.
Ives – Cross-
examination

And in this telex I tried to create what I consider to be the worst possible situation.

Q. I see, just in case?

A. Just in case what?

Q. Just in case it did turn out to be Choo Kim San who was selling, or who had the shares?

A. No, not just in case he should be – in order to get a starting point so that we could consider what our position was.

Q. Well, why mention the director at all? Why do you shy away from this, Mr. Ives?

A. Why I shy away from what?

Q. From admitting that you would have bought from Choo Kim San if he'd been the owner. You see, I can see no logical reason for it; nor can I see any logical defence in your position in that respect having regard to the documents. And I put it to you now as plainly as I can that the reason you shy away from admitting that Choo Kim San – or that you might have bought from Choo Kim San or that you were willing to buy from Choo Kim San is because you know full well if there is anything genuine at all about that agreement of the 23rd March, Chow and Hwang were nominees; that's why you shy away from admitting.

A. No.

Q. "No"? Then why do you shy away?

A. Because right from the very beginning we felt very unhappy about dealing with Choo Kim San.

Q. And as a result you sent David Ng looking for Choo Kim San, you incurred expenses, you telexed to London on the basis that you were buying from Choo Kim San, you incurred further expenses getting counsel's opinion . . .

A. Yes.

Q. . . . on the basis that you were buying from Choo Kim San.

A. On the basis that we might possibly find that Choo Kim San's the man we had to deal with.

Q. Look at document 124, the telex in reply. Now, the paragraphs are not numbered, but one can see that it consists of three paragraphs. Would you look at the last paragraph, which says: "In civil law it may be arguable that the share purchase contract may be unenforceable as against public policy although there is no actual authority for this. However, presumably both parties intend to perform contract so that this point should not arise. Of course Hong Kong criminal court may have power to order attachment of shares if director is convicted. If so, this would prevent transaction for reasons other than whether an offence committed by client or by either company." What effect that paragraph had on your mind?

A. Last paragraph?

Q. Yes.

A. No particular effect.

Q. "No particular effect". And just quite coincidentally, marvelously to your relief it turned out the next day, the day after David Ng had reported to you, it turned out that you weren't buying from Choo Kim San at all but from two other fellas, quite coincidentally.

A. It happened that way. Yes.

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- Q. You are quite sure that Chow and Hwang were not brought in after the event just to cover up and to protect against the position envisaged in that last paragraph? Supreme Court of Hong Kong High Court
- A. No.
- Q. Page 124. Defendant's Evidence
- A. Definitely not.
- Q. "Definitely not". Of course, if you could show that you had purchased from someone other than Choo Kim San, you have nothing to worry about: you have nothing to worry about in so far as that last paragraph is concerned, have you? No. 40
- 10 A. That would be so, I suppose. Yes. But that last paragraph gave us –
- Q. If that person from whom you bought – that third party from whom you bought happened to be in Taiwan and inaccessible to the courts in Hong Kong, then there'd just be nothing anyone can do about it. Would that be so?
- A. It would be so. Yes.
- Q. You told this court that your syndicate went out on to the open market and started to buy after the lunch on the 4th January.
- A. Yes.
- Q. How is it that the first bought note is 3rd January? Melville E. Ives – Cross-examination
- 20 A. Because although it was decided actually to start buying at that luncheon meeting, David Ng had bought some shares the day before.
- Q. Why had he done that?
- A. I suppose he thought 'may as well get on with it'.
- Q. Without having consulted the syndicate?
- A. It was not of any great – great amount.
- Q. Never mind the amount. Without consulting the syndicate he went out and started – started off with – on the plan which hadn't even yet come into being?
- 30 A. If this – other two members of the syndicate had objected, I'm sure David Ng would have said, "All right, I'll keep them for myself, no matter."
- Q. All right. Let's come now to your back-to-back financing deals with James Coe. Now, James Coe had 23 million Siu King Cheung shares.
- A. Yes.
- Q. Just a coincidence that there are 23 million Siu King Cheung shares on the one hand and 23 million San Imperial shares in question on the other?
- A. I suppose so. Yes.
- Q. Now, Siu King Cheung shares at a par value of one dollar?
- A. They are. I'm not sure. I think they are.
- Q. And the San Imperial shares at a par value of one dollar?
- 40 A. Yes.
- Q. All this back-to-back financing business, David Ng is deemed to have lent James Coe 16.2 million dollars?
- A. Yes.
- Q. And James Coe has put up his 23 million Siu King Cheung shares as collateral?
- A. Correct.
- Q. And then James Coe is deemed to have paid for the San Imperial shares?
- A. Yes.
- Q. What does that really amount to, Mr. Ives? Is it not simply window dressing?
- A. It is not window dressing. No.

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Evidence

No. 40

Melville E.
Ives – Cross-
examination

Q. All you had to do was to have James Coe deposit his 23 million Siu King Cheung shares with you as collateral for some future payment for the shares – for the San Imperial shares – deferred payment upon deposit for collateral. Perfectly simple, isn't it?

A. It was a similar type of transaction but in a different – slightly different way –

Q. Or if James Coe had wanted to raise money on his 23 million Siu King Cheung shares, he could have taken them to his bank and asked for an overdraft against this security, couldn't he?

A. He could have done.

Q. "Could have done".

A. But it was his requirement that David – it was his requirement that David Ng raise money on his behalf.

Q. Why should he do that – pay – get David Ng to raise the cash, pay one per cent commission, pay one percent per month interest; one per cent commission on 16.2 million dollars is \$162,000, isn't it?

A. Yes.

Q. If he went to the bank, would he have to pay a commission?

A. Yes.

Q. He would have to pay commission to the bank?

A. Yes.

Q. Upon deposit of shares as collateral for overdraft, he would have to pay commission?

A. Yes.

Q. Which banks do this?

A. Most of the banks. I can't say all of them, but I know Hang Seng Bank does it. Most of the banks dealing with property transactions, they require commission.

Q. Talking about commission, not handling charges.

A. Well, what is the difference?

Q. The difference is, I'm told, half a per cent instead of one per cent.

A. It's usually half a per cent. Yes.

Q. So, he was going to pay one – he was going to pay twice the amount?

A. Yes.

Q. Why?

A. I don't know why.

Q. You don't know why. He could have gone to the bank, he could have got a loan quite easily – an overdraft quite easily.

A. I don't know why James Coe chose to do it that way.

Q. He could have got an overdraft quite easily on the security of the 23 million Siu King Cheung shares.

A. He could have done it, but he didn't choose to do it that way. He must have had his own reasons.

Q. I suggest to you the reason was he tried to make it look as if property in the shares had already passed to James Coe.

A. In which shares?

Q. The 8 million now standing in IPC. There is no other explanation, is there? There is no other reasonable or logical explanation.

A. I see no reason –

Q. Please listen to my question. To play around with deeming to be paid and

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deeming to be repaid, and all the rest of it. There is no other reason, is there, except to try to make it look as if there's been a fait accompli James Coe is already the owner of the shares and therefore we can't touch them. Now, you give us some other logical, reasonable, creditable explanation that you can give.

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A. This was a non-completion as happens very often. There was nothing peculiar about this transaction at all.

Q. I see.

No. 40

10 A. James Coe could have gone to his bankers and raised a loan on his Siu King Cheung shares. The intention was that David Ng would refinance by depositing those shares with the bank. It would be the same thing done in another way.

Melville E.
Ives – Cross-
examination

Q. You keep using this magic word 'refinance' as if it was some sort of –

A. There's nothing magic about it.

Q. It still doesn't explain why this arabesque was gone through when a simple loan from the bank would have sufficed. When did James Coe take over Oceania?

A. He took over Oceania – I don't know when.

Q. About June this year?

A. Probably. I don't know.

20 Q. Well, I have the papers: he started taking over sometime in June.

A. Hmhm.

Q. And finished as far as I recall August or September.

A. Hmmhm.

Q. Can you tell us why a man who already has tried to buy the parent company should buy a wholly owned subsidiary of that parent company?

A. He didn't buy, did he?

Q. He didn't buy it?

A. I don't think so.

Q. Siu King Cheung bought it?

30 A. Yes.

Q. He's in control of Siu King Cheung?

A. Yes, it's a public company.

Q. But he's in control of Siu King Cheung.

A. Yes.

Q. And you have told us that James Coe wasn't personally buying San Imperial; he was doing so for Siu King Cheung.

A. Yes.

Q. Is that right?

A. Yes.

40 Q. Let's not quibble about the names.

A. Yes.

Q. Why would a man buy a wholly owned subsidiary of a parent company which he was in the course of buying?

A. I don't know what his motives and objects were, but that was his business. I was not acting for him. I have no – I have knowledge of the transaction, but I don't know the details of the transaction.

Q. You see, Mr. Ives, in June he already had the 8 million shares in I.P.C.; correct?

A. Yes.

- Q. The only other large block was the 15 million in Fermay, which were frozen.
- A. Yes.
- Q. With his eight million shares he had effective control of San Imperial already, didn't he?
- A. Yes.
- Q. Can you think of any logical reason for his buying a wholly owned subsidiary when he's trying – when he's already got effective control of the parent company? Can you explain that?
- A. I was not acting for him. I don't know –
- Q. You just have no explanation whatsoever? 10
- A. I've never enquired as to why he did it. I don't know.
- Q. Don't you think it's strange?
- A. I can't say whether it's strange or not without knowing the details.
- Q. All right.
- A. The reasons for doing it. There may be a very good logical reason. I don't know.
- Q. All right, we'll ask him about it. I think you have agreed with me that it was you who drafted document 18 in yellow file 1 – the MAF option agreement.
- A. Yes.
- Q. And I think you agreed it was signed by Ho Chung Po. 20
- A. Correct.
- Q. The option for six million shares or such lesser number as the intending vendor may have.
- A. Correct.
- Q. Is there any particular reason for inserting the figure 6 million?
- A. The MAF people requested six million – the figure 6 million to be put in. We did not want more than six million. They wanted to get an option for – to give us an option for as large a number as possible. We didn't want more than 6 million.
- Q. Why didn't they put 20 million? 30
- A. Because we didn't want 20 million.
- Q. You didn't want 6 either, but you put it in.
- A. Put it in. Yes.
- Q. Why? What's the magic about the figure 6?
- A. We were prepared to take up to six at that time.
- Q. I see. You were prepared to take up to six million, even though James Coe is only something like a million-odd short of an outright majority. Why did you want the extra shares?
- A. Pardon?
- Q. Why would you want the extra shares over and above 51 per cent? 40
- A. We wanted the shares at the time we believed that they had far fewer than six million shares. They insisted on six million being inserted there.
- Q. Yes. You say you were willing to take six million?
- A. If necessary, yes.
- Q. What do you mean "if necessary"?
- A. If they could produce six million.
- Q. If they had them, you would have taken them?
- A. Yes.
- Q. That would have given you – That would have given James Coe shareholdings

- in excess of 51 per cent.
- 10 A. It might have done. Yes.
- Q. What do you mean "it might have done"? He's got 23 million now.
- A. Yes.
- Q. But if he is supposed to have 23 million now, he's only a million-odd short of an outright majority. If he were taking up the balance between 6 million on the one hand and 3,226,000 on the other, he would have more than an outright majority.
- A. Not too many more, because part of the shares he's got now are these option shares.
- Q. Yes?
- A. We didn't know at the time whether we could —
- Q. All right. Would you look now at yellow file 1, page 30? That's a letter for the attention of Ho Chung Po and it was by that letter that you exercised an option on behalf of David Ng and HO Chapman.
- A. Yes.
- Q. In effect, on behalf of the syndicate.
- A. Yes.
- 20 Q. You see the second paragraph says: "We understand that in fact of the 6 million shares mentioned in the option agreement you have 3,226,000 shares only. Messrs. David Ng and Ho Chapman wish to exercise the option in respect of those shares on the basis that the shares be transferred to us forthwith on the basis that payment be made to you within three months from the date of this letter or the shares be re-transferred to you . . ." etc.
- A. Yes.
- Q. You were exercising the option on the condition that you pay within three months of the 22nd April.
- A. Yes.
- Q. Three months from the 22nd April would bring you to 22nd July.
- 30 A. Yes.
- Q. Right. Look now at document 32. HO Chung Po writing back to you.
- A. Yes.
- Q. Third paragraph: "We understand that Messrs. David Ng & Ho Chapman have agreed to accept this number of shares and the relevant shares together with blank transfer forms are now in your possession."
- A. Yes.
- Q. "These shares and transfers are sent to you on the strict understanding that the shares will be put into the name of City Nominees Limited for the account of David Ng & Ho Chapman that either payment for the shares shall be made at the rate of HK\$1.50 per share within three months from the 22nd April 1977 or the shares shall be returnable."
- 40 A. Yes.
- Q. So, they're agreeing three months.
- A. Yes.
- Q. Pay by 22nd July 1977.
- A. Yes.
- Q. Right. Look now at document 131, yellow 2. Now, that letter, Mr. Ives, pretends to be a letter acknowledging receipt of two cheques —
- A. Yes.

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Melville E.
Ives — Cross-
examination

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Melville E.
Ives – Cross-
examination

- Q. The first one being TL 104460, 4.8 million dollars.
- A. Correct.
- Q. That's the Bentley Securities cheque.
- A. Correct.
- Q. It was sent under cover of a letter dated – or the receipt is acknowledged by letter dated the 14th June 1977.
- A. Yes.
- Q. You see the date?
- A. Yes.
- Q. The syndicate didn't have the money yet at that time – they didn't have the 4.8 to pay; is that right? 10
- A. Not at that particular moment.
- Q. Then why was payment made more than a month sooner than it had to be made?
- A. Because the completion with the James Coe Group had taken place and so it was appropriate to complete this transaction also.
- Q. Even though you don't have the money – Even though you don't have the money and you don't have to pay for another month and a half, you sent the cheque over?
- A. It was expected – the cheque was postdated, I think, three days. 20
- Q. The cheque was dated the 17th June?
- A. 17th, yes.
- Q. But payment wasn't due until the 22nd July.
- A. That is so, but there was no reason for waiting.
- Q. No reason for waiting when you didn't have the money?
- A. Because this was tied up with another part of the transaction.
- Q. Tied up with what other part of the transaction?
- A. There was the transaction between MAF and Oceania.
- Q. Oh, yes. Let's look at that, Mr. Ives. Document 9. It's in yellow file 1. Our old friend HO Chung Po again: "IT IS HEREBY AGREED AND CONFIRMED 30 that in consideration of the sum of \$1.00 now paid by the within named MAF Investment Limited (called MAF) to the within named Oceania Finance & Land Corporation Limited (called Oceania) and the further sum of \$4,799,999 to be paid . . ." Pausing there, you add the one dollar to that and you get 4.8 million, don't you?
- A. Yes.
- Q. Just a coincidence that it was the same as the amount you had to pay for the 3,226,000 shares.
- A. One was related to the other.
- Q. Yes, because it was, wasn't it, to be paid by MAF to Oceania on or before 40 22nd July, the exact date upon which the option shares had to be paid for.
- A. That was part of the back-to-back method.
- Q. "Part of the back-to-back method".
- A. What we had been paying for.
- Q. Tell us this: Why should MAF Investment allow money – I'm sorry, I'll rephrase that. MAF Investment had to pay Oceania six million dollars.
- A. Correct.
- Q. Why should MAF Corporation pay instead?
- A. MAF Corporation is a subsidiary . . .

- Q. Of what? Supreme Court
of Hong Kong
High Court
- A. . . . of MAF Credit.
- Q. Yes, it's not a subsidiary of MAF Investment, is it?
- A. I can't quite remember the structure now.
- Q. They are both subsidiaries wholly owned by MAF Credit? Defendant's
Evidence
- A. They are associated companies.
- Q. "Associated companies"?
- A. Yes. No. 40
- 10 Q. Do you know any reason why Corporation should take advantage of this money?
- A. Why the Corporation should take advantage – Melville E.
Ives – Cross-
examination
- Q. Sorry – MAF Investment owed Oceania. Why should Corporation pay Investment's debts?
- A. I don't know what their internal arrangements were. But there may have been internal indebtedness and credits between the parent companies and the associated companies.
- Q. I see. From your counsel's opening I'd rather gathered that the case was that it's all in the family – the MAF Group.
- A. As it very often happens in these companies.
- 20 Q. I see. And was Oceania paid?
- A. Pardon? Was Oceania paid?
- Q. Was Oceania paid any money?
- A. Yes.
- Q. It was?
- A. Yes.
- Q. You're sure it was Oceania and not Hong Kong Estates?
- A. Sorry, sorry. The cheque was drawn for 4.8 million in favour of Oceania.
- Q. Yes?
- 30 A. Because of the failure of the re-financing of the loan, that cheque was later exchanged for five cheques, I think it was.
- Q. Yes?
- A. Four for one million dollars each and one for eight hundred thousand dollars, in favour of Hong Kong Estates.
- Q. Yes, why in favour of Hong Kong Estates?
- A. The reason was this – if you would bear with me just a little while, please – Hong Kong Estates had deposited with MAF Group a sum of money. I think it was five million dollars or something.

COURT: Deposited with the MAF Group?

- 40 A. Yes.
- Q. "MAF Group"?
- A. Yes.
- Q. Which particular company of the Group?
- A. I don't know. It is in the Annual Reports.
- Q. All right. Hong Kong Estates had deposited . . .
- A. Five million dollars.
- Q. "Five million dollars"?
- A. Yes, with the MAF Group, apparently as a loan.

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Evidence

No. 40

Melville E.
Ives – Cross-
examination

- Q. Yes?
- A. It would seem from the annual report of the San Imperial Corporation that the then directors, Dr. Ooi, Henry Loke and Jo Kim See(?), were very concerned about that loan, and an arrangement was made between the San Imperial Group and the MAF Group to uplift that loan. The means of uplifting the loan was this: the MAF Group had no cash or insufficient cash, but they had a property under development, namely property 149 Connaught Road –
- Q. That's the same one, 140 –
- A. Yes, this property –
- Q. 140-141, Connaught Road. 10
- A. And so it was agreed between the two groups that San Imperial would purchase that property and that the loan of 5 million dollars be used as a deposit. Now, if your Lordship would kindly look at document No. 9, you will see that the deposits there on the last page before the signatures are scheduled, that there is 5 million dollars being deposited.
- Q. I see. Was that money –
- A. Already paid before the signing of this agreement.
- Q. That was the original five million you were talking about?
- A. Yes, already paid before the signing of this agreement.
- Q. Yes? 20
- A. Now, to come to your specific question – I think that's your specific question – Oceania was a finance company as is indicated by its name, but the 5 million dollars in fact belonged to Hong Kong Estates.
- Q. I see. So that's why Hong Kong Estates was –
- A. So, the loan was made by the San Imperial Group through Oceania.
- Q. Yes?
- A. But when the money was returned, it was returned to Hong Kong Estates.
- Q. You keep talking of the MAF Group and the San Imperial Group.
- A. Yes.
- Q. Because you think it's all in the family – the MAF and San Imperial – 30
- A. No, no, two different groups.
- Q. Yes, I know – two different families.
- A. Two different families, yes.
- Q. You see, Mr. Ives, the way it seems to me is that the MAF Group or one or the other of the companies in the MAF Group owed money to the San Imperial Group or one or other of its companies.
- A. Yes.
- Q. Depending upon its internal accounting.
- A. Yes.
- Q. The money of which we are speaking at the moment is 4.8 million dollars. 40
- A. Yes.
- Q. The syndicate purported to pay 4.8 million dollars to MAF Corporation to obtain 3,226,000 shares in San Imperial.
- A. Correct.
- Q. In fact, that 4.8 million – the source of that 4.8 million was the money which the MAF Group owed to the San Imperial Group.
- A. The source of the –
- Q. – of the 4.8 million.
- A. No, no.

- | | | |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
| | Q. It wasn't? Where have I gone wrong? | Supreme Court
of Hong Kong
High Court |
| | A. The syndicate was purchasing those shares from the MAF Group. | |
| | Q. Yes? | |
| | A. The price was – | |
| | Q. 4.8 million? | Defendant's
Evidence |
| | A. 4.9, I think. | |
| | Q. 4.839? | |
| | A. 4.839 – | No. 40 |
| | Q. So, 4.84 for ease of reference, all right? | |
| 10 | A. We'll round it off as 4.8. | Melville E.
Ives – Cross-
examination |
| | Q. All right. | |
| | A. So, the syndicate had to pay – | |
| | Q. – MAF Corporation? | |
| | A. – MAF Corporation. | |
| | Q. Yes? | |
| | A. The syndicate was also concerned to see that the San Imperial Group got paid. | |
| | Q. Yes? | |
| | A. Because you will recall that that was one of the terms of the agreement with James Coe that there should be 6 million dollars coming into – | |
| 20 | Q. We'll come to that in a moment. Yes? | |
| | A. – into the company – into the San Imperial Group. | |
| | Q. Yes? | |
| | A. On the sale of this particular property. | |
| | Q. On the cancellation of that contract? | |
| | A. On the cancellation of this contract. Yes. Now, the MAF Group was built up around a deposit taking company. | |
| | Q. Yes? | |
| | A. That would be MAF Finance, I think it was. | |
| | Q. MAF Corporation? | |
| 30 | A. Was it Corporation? Sorry. It was built up around that deposit-taking company. We had no idea again because there were no accounts as to how many – as to the amount of the outstanding deposits. Those outstanding deposits were creditors of the company. We didn't know if MAF – if the MAF Group was solvent or insolvent. | |
| | Q. Hmhmn? | |
| | A. We did not want that money for the purchase of the shares to go into the accounts of MAF, otherwise it might never come out again. | |
| | Q. Yes? So, what did you do instead? | |
| 40 | A. So, it was arranged – both MAF and the syndicate agreed – that the cheque should be drawn in favour of Oceania at the direction of MAF, so that we could settle the price for the shares and this money could also be used as repayment of the settlement sum under the cancellation of the agreement. | |
| | Q. Mr. Ives, however one puts it, was this not all window-dressing to disguise a breach of section 48 of the Companies Ordinance? | |
| | A. Definitely not. | |
| | Q. This was money owed to San Imperial by the MAF Group and the money was, in fact, used by the syndicate to purchase the shares of San Imperial. | |
| | A. No, no. | |
| | Q. No? | |

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No. 40

Melville E.
Ives – Cross-
examination

- A. No.
- Q. Where have I gone wrong?
- A. I've just told you.
- Q. I'm sorry, I don't understand.
- A. It's a question of –
- Q. Let me ask you this: where did the 4.8 million paid by the syndicate come from?
- A. The money for the purchase of the shares?
- Q. Yes?
- A. The shares from MAF came from Bentley. 10
- Q. Came from whom?
- A. Bentley.
- Q. Bentley?
- A. I think the cheque was a Bentley cheque.
- Q. That cheque was never even presented, was it?
- A. No.
- Q. Where did the actual money come from?
- A. That cheque –
- Q. Or was it a cross-receipt again, or something?
- A. That cheque was never presented because the financing arrangement – there were two banks, I think one was the Banque de l'Indochine, I'm not sure which other bank, they had indicated that they would refinance this transaction and at the last minute they declined to do so. 20
- Q. So, where did the 4.8 million come from?
- A. I think that could best be asked when Mr. Ng is giving evidence. He, I believe, would draw up a statement of accounts. It's rather difficult.
- Q. You don't know where the 4.8 million came from?
- A. That particular 4.8 million, as I said, came from Bentley.
- Q. No. Look at document 132, yellow file 2. That's the 4.8 million I'm talking about. 30
- A. But this was later –
- Q. I don't care when it was. The cheque TL 104460 was never cashed, was it?
- A. Correct. That's the 4.8 million.
- Q. And these five cheques in document 132 replaced it; is that right?
- A. Now, I can't quite recall whether these are in or out. What happened – when the original cheque for 4.8 million could not be met, David Ng approached James Coe and asked him for a loan.
- Q. Yes? Did James Coe give him a loan?
- A. James Coe made – He made him a loan.
- Q. "Made him a loan". How much? 40
- A. 4. – I'm not sure, I haven't got the figures in front of me. I think perhaps this had better be given by David Ng; he's got the figures. It would be far easier to follow from his figures.

COURT: I'll have to adjourn in five minutes as I have a meeting with the Chief Justice.

MR. CHING: My Lord, that would be a convenient place for me as it is for your Lordship. Now, my Lord, there's one matter upon which we have to see your

Lordship and that's the matter of additional dates.

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of Hong Kong
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COURT: I think we are all right up to the end of November.

MR. CHING: Perhaps we could mention this on Monday morning, my Lord.

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COURT: Yes.

No. 40

Appearances as before.

(Application by Mr. Yorke for interim preservation of certain Asiatic Nominees shares mentioned earlier in the morning in chambers pending the outcome of these proceedings. Interim order accordingly made by court).

Melville E.
Ives – Cross-
examination

D.W.1 – Melville Edward IVES

10 XXN. BY MR. CHING (Continuation)

Q. Mr. Ives, there are a number of small points I want to clear up about Fermay. Is it to your knowledge that your firm wrote a letter to Messrs. Johnson, Stokes & Master dated the 16th of June this year? I think it was written by Mr. CHU actually.

A. I know he wrote a letter to Johnson, Stokes & Master, but I did not see it until afterwards.

Q. I see. Well, perhaps we could just refer to it.

MR. CHING: It is page 61, my Lord, in what I have – a black colour file, called 'Plaintiff's Exhibits'. Black 4, page 61.

20 Q. Would you read that please, Mr. Ives. Have you got it, Mr. Ives?

A. Yes, I have got it.

Q. I don't want to waste too much time on it, Mr. Ives, but look at paragraph 7 on the first page. That says: "Particulars of Directors dated 31st March 1977 to the effect that Mr. Chaw-I Chow and Madam Shang Pai Hwang were duly appointed directors of the company were duly filed with the Companies Registry on 2nd April 1977.

A. Yes.

Q. I think you will agree that that's a mistake, would you not? In fact, the particulars were not filed until well into June.

30 A. I don't think that's correct.

Q. You don't think that's correct.

A. I haven't got the particulars in front of me.

Q. I see. All right. Let's not waste time on it. Look at paragraph 8 on the next page. There again, it says: "On 20th May 1977 one Mr. David NG Pak Shing was appointed as Managing Director of the Company and Particulars of Directors dated 4th June 1977 reporting such appointment was duly filed with the Companies Registry."

A. Yes.

Q. Would you agree that it was in fact filed on the 19th of June and not the 4th

of June?

- A. I can't say without seeing the documents.
Q. You can't say. Very well. Now, Mr. Ives, we move on to another small point. Mr. Ives, do you recall you told the court that David NG brought back to Hong Kong two copies of the 23rd March document.

MR. CHING: Document 16A.

- Q. You say you think he left a copy with the CHOWs.
A. I believe there's a third copy which he left with the CHOWs.
Q. Yes. I notice, you see, that on document 16A, although the margin is signed against the blank space by CHOW and HWANG, it hasn't been signed by anybody on behalf of the syndicate. Perhaps you would like to look at it. 10
A. Yes. That is so, yes. That's correct, yes.
Q. Do you know if the copy which was left with CHOW and HWANG bore David NG's signature on the margin or do you not know?
A. I don't know.
Q. You don't know. Very well. Do you – a third point, Mr. Ives. Do you know a Mr. Henry LOKE?
A. Yes.
Q. In December last year, he was one of the directors of San Imperial, is that right? 20
A. I think so. He was a director, but when he became a director I am not sure.
Q. I see. In December of 1976, was his firm acting as the solicitors for San Imperial?
A. You mean in relation to a money-changer's kiosk?
Q. What I mean is this: you will notice, for instance, that on the annual report it says 'Auditors: so-and-so; Solicitors: so-and-so'. Did Peter Mo & Co. appear as solicitors for San Imperial?
A. Yes. I think that that was just a repeat by the draftsman of the annual report. At that time, WOO, KWAN, LEE & LO were acting – or the company – as the company's solicitors. 30
Q. I see.
A. But as I had previously dealt with certain agreements on behalf of the hotel they came back to me for repeats of those agreements.
Q. I see. This execution order that was advertised on the 30th of April this year – 13th of April, I'm sorry.
A. 13th.
Q. 13th of April this year. It is now to your knowledge, is it not, that it was served in December on Mr. Henry LOKE.
A. I have inspected the file and I have seen that there were certain endorsements made on the file, yes. 40
Q. That it was served on Henry LOKE – can you recall that?
A. I believe – I am trying to recollect – I believe it was served on Henry LOKE. I can't say definitely. I think so. I cannot remember the date.
Q. I see, but Henry LOKE never consulted you about this being served on him.
A. No, no.
Q. Very well. We will leave that, Mr. Ives. I want to ask you now about the transfer forms. Have you found the xerox copies?

- A. No. Supreme Court
of Hong Kong
High Court
- Q. You have told the court that on the 28th of March, you got the transfer forms back. At least, they were sent back to you by the registrars.
- A. Well, 'back' is . . .
- Q. . . I'm sorry, the wrong word. They were sent to you from the registrars. Defendant's
Evidence
- A. Yes.
- Q. Can you recall what was on the form – on the forms for the 15M. San Imperial when you got them from the registrars on the 28th of March? Can you recall what was on them? No. 40
- 10 A. Yes. The two sets of signatures were there. Melville E.
Ives – Cross-
examination
- Q. The transferor's and transferee's signatures.
- A. Transferor and transferee.
- Q. Was the quantity of shares on them?
- A. I have tried to refresh my memory on this one – both my own personal memory and by asking my staff in the office.
- Q. Yes. Can you recall?
- A. So far as I can gather, the numbers of the certificates were on the documents.
- Q. The numbers of the certificates.
- A. The numbers of the certificates, but not the number of shares.
- 20 Q. Not the quantity of shares.
- A. Correct, yes.
- Q. What about the name of the transferor – Asiatic Nominees? Was that on it?
- A. I can't recall. I can't recall.
- Q. You can't recall. Fair enough.
- A. I think 'Asiatic Nominees' was there, yes.
- Q. And the consideration – 'value received' – was that there?
- A. I don't think that was there.
- Q. And the name and address of the transferee – was that there?
- A. Apparently, that was not there, no.
- 30 Q. Yes. I have been handed, Mr. Ives, the two original transfer forms.
- A. Yes.
- Q. I think they should go in. So, would you have a look at them please.
- MR. CHING: My Lord, these are in fact the originals of document 17 in yellow file 1.
- Q. Now, Mr. Ives, would you just look at them. They might possibly refresh your memory as to what was or what was not on them when you got them from the registrars.
- MR. SWAINE: These are to be separately marked.
- MR. CHING: I think they should be separately marked, my Lord.
- 40 CLERK: Exhibit P.11A and B.
- A. Yes. I think what I have just said is correct.
- Q. In other words, 'value received' was not there and the name and address of the transferee was not there.

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Evidence

No. 40

Melville E.
Ives – Cross-
examination

- A. I think that's correct, yes.
- Q. And so far as you recall, the quantity of shares was not there although the number of the certificates was there.
- A. Correct, yes.
- Q. In fact, Mr. Ives, the name of 'Fermay Company Limited' and the address of 'Bank of Canton Building, 4th floor' – that was typed in your office, was it not?
- A. I believe so, yes.

COURT: What was typed?

MR. CHING: 'Fermay Company Limited', 'Bank of Canton Building, 4th floor' etc. 10
– the name and address of the transferee.

- Q. In fact, Mr. Ives, if you look at document 62 in yellow file 1 . . .
- A. . . . Sorry, I don't have file 1.

(Witness given file).

- Q. Document 62.
- A. Yes.
- Q. That's the same typewriter, is it not, as the name and address on document 17 – on the transfer forms.
- A. I think it's the same typewriter.
- Q. Well, in any event, were those particulars – the consideration and the name 20
and address of the transferee inserted upon your instructions on the 28th
of March in Hong Kong?
- A. When you say 'on my instructions' – what happened was I understand the
registrars telephoned my secretary and asked for the address of Fermay.
- Q. Yes?
- A. I think they asked her then to type it in.
- Q. I see.
- A. I don't think I actually gave instructions myself.
- Q. I see, but Mr. Ives I don't want you to – but I suggest to you that the type-
writing of the name and address of the transferee on the transfer forms is 30
from the same typewriter as that which typed document 62.
- A. I say they were both done by typewriters in our office.
- Q. In your office.
- A. Right. I.B.M. typewriters.
- Q. Have you any idea why the registrars should ring your secretary for the name
and address of Fermay?
- A. I suppose they were aware that we were acting for Fermay.
- Q. Do you know how they were aware of that?
- A. I am not sure of this.
- Q. And when you say aware that you were acting for Fermay – in what way do 40
you think the registrars were aware? In what respect do you think the registrars
were aware that you were acting for Fermay?
- A. I don't know.
- Q. Here are two transfer forms which are somehow or other delivered to the

registrars without the name of Fermay appearing thereon. Have you any explanation for why the registrars should contact your firm or you or your secretary? Supreme Court of Hong Kong High Court

A. They had obviously been told to contact me, but I don't know by whom.

Q. I see. By the way, have you got the transfer forms in front of you? Defendant's Evidence

A. No.

(Witness fetches documents in question). No. 40

10 Q. You see, on both of them, there's the name and address of the witness. Who is he please? Witness for the signature of the transferee – 'WONG' something 'Bor', is it? Melville E. Ives – Cross-examination

A. I don't know who that is. I think it is 'WONG', isn't it – 'WONG – Bor'. I don't know.

COURT: Let me see it.

A. 'WONG' something.

Q. Before we leave that, the signature of the transferee is David NG, isn't it?

A. Yes, yes.

Q. You don't know who this 'WONG' person is.

A. I don't know.

Q. Have you ever seen that signature before? The signature of the witness.

20 A. I may have seen it before, but I don't recall it.

Q. But you have no idea who that person is.

A. I have no idea.

Q. Would you look please at document 83 in yellow file 1. That's a sold note. 'Sold by CITY NOMINEES LIMITED to IPC NOMINEES LIMITED 7,631,000 shares of \$1.00 each in San Imperial Corporation Ltd. in consideration of the sum of \$11,446,500.00 at \$1.50 per share on 15th day of June, 1977.' That's the same signature, is it not?

A. The same signature as 'WONG'? May I see it please?

30 Q. If you refer back to either the original or document 17, you will see it's the same signature, isn't it?

A. Yes, it appears to be the same signature.

Q. Who is that person whose signature appears on 83?

A. I think it is WONG Bor.

Q. But it's sold by City Nominees, Mr. Ives.

A. Yes.

Q. That person was signing on behalf of City Nominees of which you are a shareholder and director. How did it come about that that person signed on the sold note?

40 A. Sold note usually is not signed by the seller. For example, a broker will usually sign the sold note.

Q. But did this particular transaction go through a broker – the 17M. (7M. ?) odd shares?

A. This particular transaction, no.

Q. No. By whose authority did the transferor sign that sold note?

A. The sole purpose of a sold note is for the purposes of paying stamp revenue

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Melville E.
Ives – Cross-
examination

and . . .

- Q. . . . By whose authority did that person sign the sold note on behalf of City Nominees?
- A. I don't think any express authority was ever given.
- Q. City Nominees is a company of which you are a shareholder and director. The shares were being sold by the syndicate to I.P.C. Nominees.
- A. Yes.
- Q. A sold note comes into existence and you don't know who signed it or who gave the authority to sign it.
- A. Correct. No express authority was given. 10
- Q. But do you think there was implied authority?
- A. I think so. There probably would.
- Q. You say 'implied authority'. 'Implied authority' to whom? Who was it?
- A. To the party having the conduct of the transaction or even a transferee to prepare the necessary bought and sold notes for the purposes of stamping the same. Nothing turns on the bought and sold note. It's merely a document presented for stamping purposes.
- Q. You say implied authority was given to the person in charge of the transaction.
- A. Having the conduct of the transaction.
- Q. Having the conduct of the transaction. 20
- A. Yes.
- Q. Who would that be?
- A. That would be, I suppose, David NG and Chapman HO.
- Q. David NG and Chapman HO. Why should David NG sign on behalf of City Nominees or authorize somebody to sign on behalf of City Nominees?
- A. I don't think it requires express authority to sign a document such as this. As I say, it's merely a document to evidence paying of stamp duty.
- Q. You see, Mr. Ives, the signature appears above the word 'Transferor'. One would imagine looking at that – certainly, I imagine the Stamp Commissioner looking at that would conclude that that person was signing for and on behalf 30
of City Nominees with their own authority, isn't that right?
- A. Implied authority, yes.
- Q. But, in fact, you don't know who or what he was.
- A. I don't know. He's probably an employee of David NG.
- Q. I see.
- A. But I am only guessing when I say that.
- Q. I'm sorry?
- A. I am only guessing when I say that.
- Q. You are only guessing. Look at 84. It's the same person signing the bought note for the transferee. 40
- A. Correct.
- Q. You don't know how that came about.
- A. I don't know. Same circumstances, probably.
- Q. I see. Look at document 128 in yellow file 2. (A pause). You will see that that's a bought note. "Bought by David NG from Chaw-I CHOW and Shang-pai HWANG . . ." – and it gives their address. The transferee: Chaw-I CHOW and Shang-pai HWANG. Again, there's the same signature.
- A. Yes, seems to be, yes.
- Q. And the next page – it doesn't have a separate number – is the sold note

- relating to 515,000 shares.
- A. Yes. Supreme Court
of Hong Kong
High Court
- Q. Again, the same transferor.
- A. Yes.
- Q. If you look at page 129 and the page after that, those are the bought and sold notes for the 1,650,000 shares bought by David NG and sold by CHOW and HWANG. Defendant's
Evidence
- A. Yes. No. 40
- Q. Again, same signatures for the transferee and transferor.
- 10 A. Yes. Melville E.
Ives – Cross-
examination
- Q. You have no idea who this person is or who authorized him to sign this bought and sold note.
- A. When I say 'I have no idea', as I say, . . .
- Q. . . . You have made a guess.
- A. I have made a guess, yes.
- Q. You don't know.
- A. I don't know. Definitely not.
- Q. Now, we will leave that. Where was the 8.8M. payable to CHOW and HWANG to come from?
- 20 A. From the sale of the Fermay shares.
- Q. So, you don't have it at the moment. You have to wait until James Coe pays you.
- A. Correct.
- Q. All right. What I am going to do, Mr. Ives, for the sake of clarity is to put to you the case of LEE Ing-chee and LEE Hon-wah as a result of the evidence we have heard so far.
- A. Yes.
- Q. I just want to inform you so that it is on the record and in fairness to you to give you a chance to comment upon it, all right?
- 30 A. Yes.
- Q. This relates to the agreement of the 23rd of March, 1977 – document 16A – by which CHOW and HWANG appeared to have sold to the syndicate.
- A. Yes.
- Q. Now, my first suggestion to you, Mr. Ives, is that if that agreement was a genuine one then whether or not the syndicate knew of it CHOW and HWANG were in fact the nominees of CHOO Kim-san. Would you like to comment on that?
- A. I think that's not correct.
- 40 Q. You think that's not correct. The second suggestion I put to you, Mr. Ives, is again if that document – if that agreement was a genuine one then the syndicate knew at all material times that CHOW and HWANG were nominees for CHOO Kim-san and in fact the syndicate was buying from CHOO Kim-san.
- A. We certainly did not know that.
- Q. Very well. The third suggestion is this, Mr. Ives: that that agreement is not a genuine one and that in fact the syndicate was buying from CHOO Kim-san – I'm sorry – was not a genuine one and the syndicate was simply looking after the assets of CHOO Kim-san.
- A. That agreement is a genuine agreement.
- Q. You see, I will put to you the steps by which I arrive – the main steps – the

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broad steps by which I arrive at that conclusion. I suggest that having received the telex from London which is document 124 in yellow file 2 the syndicate became nervous as a result of the last paragraph which spoke of the possibility of the sale being set aside and therefore . . .

A. . . . The . . .

Q. . . . and therefore CHOW and HWANG were inserted to make it look as if the shares had not come from CHOO Kim-san.

A. That's not correct. The last paragraph of that telex played no part at all in our dealings in this matter.

Q. I suggest then that Fermay was inserted as a colourful and unnecessary factor by which to make it to appear even more as if the shares had nothing to do with CHOO Kim-san. 10

A. That's not correct. Fermay was brought in principally to prove the shares and also as a convenient vehicle for the subsequent transfer of shares.

Q. I suggest to you that CHOW and HWANG having been brought in and Fermay having been brought in CHOW and HWANG were then ostensibly in control of Fermay but since they were simply inserted for colourful purposes control had to be taken away from them and indeed control was taken away from them.

A. There's rather a lot to comment on. 20

Q. Sorry. Would you like me to break it up?

A. Yes, yes, please.

Q. That CHOW and HWANG and Fermay having been brought in, CHOW and HWANG had ostensible control of the Fermay shares because they had ostensible control of the company.

A. Yes.

Q. And then because of that some way had to be found to divest them of their control of the company and thereby divest them of their control of the shares.

A. It was only necessary to divest them of control on completion as in any other transaction but not in any other . . . 30

Q. . . . But they had been divested of their control now, would you agree?

A. That's correct.

Q. A completion has not come about.

A. That was not a common step in the evolution.

Q. In the . . .

A. . . . In the original concept that was not a common step.

Q. That was not a common step.

A. They should divest themselves of control. That was only – that only arose because of subsequent events as a matter of convenience.

Q. Yes. In fact they have lost control, in fact there's not yet been a completion – that's right? 40

A. That's correct.

Q. Now, one of the reasons you gave, Mr. Ives, for thinking that CHOW and HWANG were not nominees was that you said that if CHOO Kim-san had been involved – I think the expression you used was – 'the works would have been oiled'.

A. Yes.

Q. Mr. Ives, on the 28th of March – I'm sorry, I'm sorry. I will go back a bit. We know from your counsel that on the 27th of March this year, the registrars

- had not yet received the certificates and the transfer forms.
- A. Yes. Supreme Court
of Hong Kong
High Court
- Q. We know that by the 28th of March, the registrars had received them.
- A. Yes.
- Q. The registrars received them on the 28th of March, got in touch with your secretary & sent the transfer forms to you. Defendant's
Evidence
- A. Yes.
- Q. The particulars were inserted and they were sent back to the registrars and the new certificates were issued all on the same day. No. 40
- 10 A. That's correct. Melville E.
Ives – Cross-
examination
- Q. A one-day transaction.
- A. Yes.
- Q. Mr. Ives, isn't that very very unusual to have a transfer of shares go through in one day?
- A. It's unusual in the normal course of things I do agree, but, in this particular case, there were perhaps very special circumstances . . .
- Q. Such as what?
- A. . . . as far as the registrars were concerned.
- Q. The registrars were then M.A.F. Corporation.
- 20 A. Yes. The registrars would recognise that this was in effect the new controller of the company. I believe that David NG had asked them to – 'please expedite matters'.
- Q. And 'them' being M.A.F. Corporation.
- A. The registrars, yes.
- Q. M.A.F. Corporation.
- A. The registrars, yes. I don't know who, but – and in those circumstances, presumably, the registrars thought it prudent to assist the new owner by doing an immediate transfer.
- Q. The person in charge of the registers of course is Mr. HO Chung-po.
- 30 A. That is so, yes. At least, he was in charge of the company, but whether he actually did the registration I don't know.
- Q. I am not suggesting that he actually did the registration. He was the man in control of the company.
- A. Yes.
- Q. Very well. I will leave Fermay now altogether, Mr. Ives, and come back to the shares in I.P.C. Now, I want to ask you first about the \$4.8M. that was payable to M.A.F. Corporation for the 3,226,000 shares.
- A. Yes.
- 40 Q. Now, we had it from your counsel in opening that on the 30th of April, the syndicate had received from James Coe a total of \$1.5M. in hard cash.
- A. Yes. I think that's correct, yes.
- Q. I won't bother about how it was made up.
- A. Yes.
- Q. But your syndicate had received 1.5M.
- A. Yes.
- Q. We had it also from your counsel that on the 8th of June this year, the syndicate received a further 1.5M. hard cash from James Coe.
- A. Yes.
- Q. So, the result of that is, by the 8th of June, the syndicate had received a total

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Ives – Cross-
examination

of \$3M. in hard cash.

- A. Correct.
- Q. Would you look now please at document 88 in yellow file 1. Now, Mr. Ives, we have heard about the background to this – how the re-financing fell through and all the rest of it. I am not concerned with that aspect for the moment, but you will see that that's a letter dated the 25th of June.
- A. Yes.
- Q. From David NG.
- A. Yes.
- Q. To James Coe, acknowledging receipt of these post-dated cheques totalling 10
13M.
- A. Correct.
- Q. The first of those cheques for 1.5M. is dated the 20th of July, 1977.
- A. Yes.
- Q. And one would expect, would one not, that if the cheque was deposited on the 20th of July 1977, it would have been cleared by the 21st or the 22nd in the normal course of events.
- A. Let's check the dates.
- Q. It was a Wednesday, Mr. Ives.
- A. It was a Wednesday, wasn't it? Normally, if it was dated the 20th . . . 20
- Q. Yes?
- A. . . . it would normally be presented on the 20th. A cheque of this amount should be cleared by the following day.
- Q. By the following day.
- A. Yes.
- Q. So, by the following day – by the 21st of July – the syndicate would have had a further 1.5M. . . .
- A. Yes.
- Q. . . . added to the 3M. already received. By the 21st of July, the syndicate would have had \$4.5M. in cash. 30
- A. (No answer).
- Q. I know it wasn't in fact – Mr. Ives, I don't want to mislead you and the court. I know that that cheque was not in fact cleared until some time later.
- A. Yes.
- Q. But, on the face of it, looking at the cheque as it were in your hands, on the 20th of July, one would expect that on the 21st of July . . .
- A. . . . One would have expected.
- Q. You would have \$4.5M. in cash.
- A. Yes.
- Q. And when the M.A.F. Corporation option was exercised, it was exercised on 40
the 22nd of April. That's document 30 if you want to look at it.
- A. That is – yes.
- Q. And it was to be '3 months' to pay.
- A. Correct.
- Q. '3 months' was confirmed by M.A.F. Corporation by document 32.
- A. Yes.
- Q. Therefore, you did not have to pay – the syndicate did not have to pay the 4.8M. until the 22nd of July on the face of those letters.
- A. On the face of those letters, yes, but I believe though under our agreement

- that Rocky would have to get \$6M. into the hands . . .
- Q. . . . Yes. I will come to that later, Mr. Ives. I know it's all tied up. Supreme Court of Hong Kong High Court
- A. Yes, but I mean as far as the time factor is concerned, this is not the only time element. The other time element also . . .
- Q. . . . Yes, I understand. We will come to that in a moment, Mr. Ives. You had, until the 22nd of July, to pay on the face of documents 30 and 32. Defendant's Evidence
- A. Yes.
- Q. But as early as the 25th of June (that's document 88), it must have appeared to the syndicate that by the 21st or the 22nd of July (that's the same dead-line for the remainder of the M.A.F. Corporation shares) . . . No. 40
- 10 A. Yes. Melville E. Ives – Cross-examination
- Q. . . . the syndicate should have in hand \$4.5M.
- A. Yes.
- Q. Which is 300,000 short . . .
- A. Yes.
- Q. . . . of the 4.8M. which you had to pay to the Corporation.
- A. Correct.
- Q. Why was it necessary in those circumstances for David NG to ask James Coe for a loan? Surely, the syndicate could have put up the additional \$300,000, could they not?
- 20 A. Yes. The principal problem as far as the syndicate was concerned – at least myself in particular – was I was very uneasy about the financial position of the M.A.F. group.
- Q. We will come to the mechanics in a moment.
- A. Yes. But that's why we decided that we should put through that part of the transaction, namely, getting the money out of M.A.F. into Oceania as quickly as possible.
- Q. Yes. We will come to that fact in a moment, but the syndicate already – sorry – the syndicate must have thought that they would only be \$300,000 short of the 4.8M.
- 30 A. By the 22nd . . .
- Q. . . . Why was it necessary to get a loan from James Coe?
- A. Yes, that would be July.
- Q. Yes.
- A. July the 20th.
- Q. Yes. Why was it necessary to get a loan from James Coe when the syndicate would have had in hand \$4.5M. and when Mr. HO Chapman, according to his affidavit, had arranged the facilities of \$1M. from Banque Belge?
- A. Yes. "Now, the date of the cheque for 4.8M. was . . .
- 40 Q. . . . 17th of June.
- A. 17th of June, yes.
- Q. The original cheque.
- A. Yes. Now, the position was this as I tried to explain just now. We were very unhappy about the financial position of M.A.F. For example, there could have been a garnishee by creditors of M.A.F. in respect of this payment due to them for the shares and then there would have been no money available to put into the coffers of the San Imperial group in respect of the Connaught Road premises.
- Q. Yes, I understand.

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Ives – Cross-
examination

- A. There was a term which was of the essence of the agreement that there should be \$6M. forthcoming from that. So, in my – it was my opinion (I think my partners in the syndicate also held the same opinion) that it was prudent to wipe off M.A.F. as quickly as possible so that nothing could go wrong in that respect.
- Q. But when was that decided?
- A. That was right in the very beginning. When I said 'right in the very beginning', I mean as at the date of completion of the transaction with I.P.C.
- Q. That's 9th of June.
- A. 9th of June, yes. 10
- Q. You are saying by the 9th of June, you wanted to complete the transaction as quickly as possible to ensure that when you paid the Corporation the shares the Corporation or the M.A.F. group would still be able to pay the 6M. back to the San Imperial group.
- A. Yes.
- Q. Because of the Connaught Road deal.
- A. Yes. At least the 4.8 . . .
- Q. . . . The 4.8 part of it.
- A. Part of it, yes. If there was a default on the rest of it, we could carry it.
- Q. So, what you are saying in fact is that although you might have thought you would have 4.5M. by the 21st of July you wanted to bring it forward. 20
- A. Yes.
- Q. To protect San Imperial or to protect that particular clause in your deal with Rocky.
- A. Correct.
- Q. Very well. So, for that reason, you – David NG asked James Coe for a loan.
- A. Yes.
- Q. Did you know that David NG had asked him for a loan?
- A. At the time, I did not know. David NG said he would see if he could raise the money. 30
- Q. Yes. On the 9th of June, there was completion.
- A. Correct, yes.
- Q. And we have been told by counsel how David NG was to go out with the 23M. Siu King Cheung shares and the loan agreement of the 9th of June to try to get re-financing and he failed.
- A. Correct, yes.
- Q. Do you know the date upon which it became apparent that he had failed?
- A. I am not sure of the exact date. I think it was within five days.
- Q. It must have been before the 17th of June, otherwise the \$4.8M. cheque would have been presented and balanced. 40
- A. Yes.
- Q. So, between the 9th and the 17th, he had failed.
- A. I can't say. David NG would be able to say exactly when.
- Q. But you were a member of the syndicate. Weren't you kept informed?
- A. Yes, he kept me informed, but I left the financing arrangements entirely to him. I cannot say exactly when this happened and when exactly that happened.
- Q. I see. We were told by counsel that it was proposed to get this re-financing and it failed.
- A. Yes.

	Q. Wherefor the payments of James Coe had to be re-arranged.	Supreme Court of Hong Kong High Court
	A. Yes.	
	Q. And the re-arrangements resulted in document 88.	
	A. Yes.	
	Q. 9 post-dated cheques.	Defendant's Evidence
	A. Yes.	
	Q. So, James Coe did not have the money on the 9th of June.	
	A. He did not have the available cash . . .	No. 40
	Q. Yes.	
10	A. . . . to make the payment. No.	
	Q. Yes. How then was it possible to borrow from him \$3.8M.?	Melville E. Ives – Cross- examination
	A. I don't know how he managed that.	
	Q. You don't know how he managed that.	
	A. That was arranged between David NG and James Coe.	
	Q. I see. Was there actually 3.8M. or was it a paper transaction? Do you know that?	
	A. I don't know exactly how it was done. I know it was done, but I don't know the mechanics.	
20	Q. Did you know if it was David NG's personal money or Siu King Cheung's or Oceanias or whose money it was – or James Coe's? I'm sorry. I said 'David NG'. That's wrong. It should be 'James Coe'.	
	A. Yes.	
	Q. Do you know whose money it was?	
	A. I cannot say now.	
	Q. You cannot say now.	
	A. I can't say.	
	Q. Were you not kept informed of these proceedings?	
	A. Not of the details, no, because there had been several changes in it as it went along and I lost track of the whole thing.	
30	Q. But surely you must have been interested in what was happening, were you not, Mr. Ives?	
	A. I was very interested, yes.	
	Q. If these deals were all genuine, you must have been very worried about where the money was coming from so far as James Coe was concerned because you had to pay CHOW and HWANG \$8.8M.	
	A. I was not worried in the sense that I doubted whether he could pay because he's a man of substantial means. It was just a question of the mechanics for effecting payment.	
40	Q. But CHOW and HWANG could not be expected to know that James Coe was a man of substantial means and trust him to pay later, could they?	
	A. Sorry. Can I have the question again?	
	Q. You see, you were supposed to pay CHOW and HWANG 8.8M.	
	A. Yes.	
	Q. It doesn't matter whether the money was generated by the 15M. Fermay shares or the 8M. I.P.C. shares, you had to pay the 8.8M.	
	A. Yes, in respect of – but that was in respect of the same lot of shares.	
	Q. But weren't you personally worried about how you were going to pay CHOW and HWANG if James Coe did not come up with the money?	
	A. But James Coe had given these post-dated cheques. I have no doubt at all	

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in my own mind that he would be able to make the payment. David NG was apparently in contact with the CHOWs. I suppose he kept them informed. I don't know exactly what he told them, but I suppose he kept them informed.

Q. I see. All right. Let's go now to this Connaught Road matter. Would you look first at document 24, yellow file 1. Who drafted that?

A. Just a minute. Sorry. I have got the wrong file.

Q. Yellow file 1, document 24.

A. Do you mean document No. 9?

Q. No. 24. It's a draft agreement. Someone has written on the top '2nd draft'.

A. Yes, I have got it.

Q. Who drafted that?

A. Yes. Just a moment please.

Q. Who drafted that?

A. This seems to be Philip K.H. Wong's draft.

Q. But of course, Mr. Ives, the solicitor's name would appear on the back sheet but the draft could have been going backwards and forwards and solicitors making amendments and suggestions throughout.

A. Yes.

Q. Do you have any hand in drafting this particular one?

A. I had a hand in it, yes.

Q. Well, could you look at the third page of it please. Right at the top of the page, you will get a sub-paragraph (e) which is in fact Clause 7(e), and it says: 'Notwithstanding Clause 7(d) above the Vendors shall cause San Imperial to sell and dispose of its interests in the properties listed above as Nos. 140-142 . . .' – I think that's a mistake, it should be '140-141' – '. . . Connaught Road Central for cash at \$6,000,000 . . .', right?

A. Yes.

Q. But, in fact, the property was worth \$14M., was it not?

A. That would have been with the building on it. The agreement itself was – I mean the agreement – No. 9, I think it is, . . .

Q. Yes. We will come to that in a moment.

A. . . . was for a completed project.

Q. Yes.

A. That's 14M. for the land and building.

Q. Oceania had to pay M.A.F. Investment 14M.

A. Yes.

Q. You were or whoever drafted this was proposing to sell for 6M. So, you see, the point is: there's no talk here of breaking the agreement which is document 9, it's simply just to sell the Connaught Road Central property for 6M. It is not quite right, is it?

A. If you get down to the legal technicalities, yes. It should have been perhaps to cancel.

Q. To cancel the agreement and get back \$6M.

A. Rather than to sell.

Q. And before we leave that do you know when this draft came into being?

A. No, I can't say definitely because there were negotiations before the 1st of April and there had been negotiations again after the 20th of April in which I was involved. It could have been either before the 1st of April or after the 20th of April.

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- Q. Look at document 40 please in the same file. That's the actual agreement of the 30th of April. Supreme Court of Hong Kong High Court
- A. Yes.
- Q. Would you look at the second page, Clause 7(c).
- A. Yes. Defendant's Evidence
- Q. 'Subject as hereinafter provided on completion San Imperial shall remain the registered owner of or otherwise beneficially entitled to . . .' – and then '(iii) \$6 million cash representing 140 and 141 Connaught Road Central, Hong Kong' again. No. 40
- 10 A. Correct. Melville E. Ives – Cross-examination
- Q. That's not strictly accurate because by the 30th of April there's no question of their remaining the owner of \$6M. cash.
- A. But if you look at the beginning of Clause 7, it says – it states that: 'It is of the essence and are conditions of this agreement that: –'.
- Q. Yes.
- A. In other words, we had to achieve that situation.
- Q. But 'shall remain' means that on the 30th of April instead of having the agreement (Document 9) San Imperial already had \$6M. representing Connaught Road Central.
- 20 A. Not on the 30th of April.
- Q. It says 'shall remain', does it not – 'San Imperial shall remain the registered owner of or otherwise beneficially entitled to the \$6M. cash . . .' . . .
- A. Yes.
- Q. . . . ' . . . representing 140 and 141 . . . '.
- A. Yes.
- Q. That's not right either again.
- A. It is, yes. It says: 'Subject as hereinafter provided on completion – San Imperial shall be beneficially entitled to the following . . .' – and that's the \$6M.
- 30 Q. No. That does not make sense, does it? You can't read it 'San Imperial shall beneficially entitled to'; you can only read it 'San Imperial shall remain beneficially entitled to'.
- A. (No answer).
- Q. But, at that time, there was no question of they having 6M. instead of an interest in 140/141 Connaught Road, was there? Was there another mistake?
- A. There was, yes. In negotiations with James Coe, he definitely did not want that property. It was of the essence of the transaction that the San Imperial group would hold \$6M. or be entitled to \$6M. in lieu of that property.
- Q. You will agree that 'shall remain' are not accurate.
- 40 A. I would agree with you.
- Q. 'Shall be' would have been better.
- A. Yes, I would agree with you.
- Q. All right. In any event, by document 40, the syndicate was bound to substitute \$6M. in San Imperial for the interest in the Connaught Road property.
- A. Correct, yes.
- Q. Would you look now at document 9, the second page onwards. That's an agreement dated the 18th of January 1977. Mr. Ives, so far as you know, is that a genuine agreement?
- A. Yes. As far as I know, I have no reason to believe that it is otherwise in-

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genuine. On Friday, I referred to the annual report of the company – the Chairman of the company – which refers to this transaction, and I think also the interim report of the Special Investigator – Inspector – I am not sure now offhand whether it's in the Special Inspector's report of M.A.F. or in the special audit of San Imperial – but that again it's mentioned there and the reasons are given which I gave to the court on Friday as to why this document was entered into.

- Q. Would you look at the 8th page please, the end of the schedule.
A. Yes.
Q. Do you know if the first \$5M. were in fact ever paid? 10
A. Again, as I have mentioned on Friday, there was apparently a loan made by Oceania or through Oceania to M.A.F. This document was entered into in order to uplift that loan and get an asset of substance in exchange.
Q. Yes, but you don't – you have never seen the cheque for \$5M.
A. No, but it is in the accounts – audited accounts of San Imperial.
Q. Mr. Ives, I think you will agree with me that with CHOO Kim-san in the chair, almost anything could have happened. Of course, CHOO Kim-san was controlling both groups of companies at one time.
A. Yes, but there was this special inspector appointed in respect of M.A.F. – Anderson & Partners, I believe it was . . . 20
Q. Yes.
A. . . . who are international accountants.
Q. Yes.
Q. And they appeared to be perfectly satisfied that that was correct.
Q. But you have never seen the cheque for \$5M.
A. No, definitely not.
Q. What about the second cheque – 1.5M.? Have you ever seen that?
A. I have never seen that either.
Q. But the only reason you were satisfied that 6.5 had been paid is by reference to these reports and to the audit. 30
A. That's the position today, but at the time that we were doing these negotiations we did not know the background to this transaction.
Q. For all you knew, the 6.5M. had never been paid.
A. Well, we had no idea.
Q. You had no idea.
A. We had no idea.
Q. Of course, if you look at the last page you will see it is signed by – the agreement is signed by our two old friends: HO Chung-po and Henry Loke.
A. Yes.
Q. Would you look back at the first page now of document 9. Just above the signatures – it's dated the 12th of May '77. The handwriting is in your hand. 40
A. That's in my handwriting, yes.
Q. Is there any significance in the fact that the cancellation of the agreement of the 18th of January took place on the 12th, exactly the same date as document 54 which was a document by which James Coe was given an option over the 15M. Fermay shares and whereby the original agreement of the 30th of April was superseded?
A. I think it is a pure coincidence.
Q. Pure coincidence.

- A. Yes. The two parties, as far as I can remember, did not come in together. I don't know if they came in on the same date. I can't remember.
- 10 Q. I see. If you look at the first page of document 9, you will see: 'IT IS HEREBY AGREED AND CONFIRMED that in consideration of the sum of \$1.00 now paid by the within named M.A.F. Investment . . . to the within named Oceania . . . and the further sum of \$4,799,999.00 to be paid by M.A.F. to Oceania on or before the 22nd July . . .' Now, that \$4,799,999.00 plus \$1 comes to \$4.8M.
- A. Yes.
- 10 Q. Is there any coincidence between that particular \$4.8 million and the \$4.8 million that you have to pay M.A.F. Corporation?
- A. No, the two were tied together because M.A.F. Corporation had no money. We were able to persuade them to effect this transaction because they would be getting cash in promptly from us for the purchase of the shares.
- Q. M.A.F. Corporation, you say, had no money. What about the M.A.F. Investment, did they have money?
- A. I don't know. I certainly believe they had nothing like \$4.8 million or \$6 million.
- 20 Q. Why do you think then that M.A.F. Investment should agree to the cancellation of the agreement of the 18th January and thereby have to pay out \$6 million?
- A. Because in fact they were making \$500,000 on the cancellation of the agreement.
- Q. Surely, Mr. Ives, it is one thing to make \$500,000, it is another thing to have to pay out \$6 million, isn't it?
- A. Yes.
- Q. If they had no money to pay why were they willing to break the contract?
- A. Because they were getting money from the sale of these shares.
- Q. The M.A.F. group you mean?
- 30 A. Yes.
- Q. But in the end what happened, Mr. Ives, is this, is it not, that the shares had gone out of the control of the M.A.F. group and the M.A.F. group had got nothing in return except \$500,000, is that right?
- A. Now –
- Q. Do you see the point I make?
- A. They also got back this property which presumably was worth \$6 million, that is the M.A.F. group got back this property which was worth presumably \$6 million plus.
- 40 Q. Of course at that time, that is to say, in May, Henry Loke and HO Chung-po were directors of a group of companies in the San Imperial group and the M.A.F. group?
- A. I think you are not quite right there. Henry Loke, I am not sure, I think Henry Loke was only a director of the San Imperial group. Even there I don't know how many companies of the group he was a director of. But I don't think he was a director of M.A.F.
- Q. You think Henry Loke is not a director of any of the M.A.F. companies?
- A. That is as far as I can recall. I am not certain, but I believe that is the position.
- Q. Now there are some further documents brought forward by I.P.C. discovery file. What I am looking for, Mr. Ives, is a Bentley's letter to yourself on the

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7th July – These were additional documents, my Lord, yellow 3, page 130. That is a letter from David Ng to you dated 7th July?

A. Yes.

Q. And he refers to the 23 million Siu King Cheung shares for security on a loan of \$16,200,000?

A. Yes.

Q. He said: "I refer to my telephone conversation with you yesterday and wish to confirm my instructions are that the securities will be held by your office until such time the total loan is fully settled. Enclosed is a list of the loan a/c as at 5-7-77 for your reference." If you look at the next page there is the account. The first entry is "Loan taken on 9-6-77: 16,200,000.00. Less payment received on 18-6-77: 4,800,000.00" What does that mean?

A. I believe that refers to – it doesn't say with whom this statement of account is.

Q. It is obviously with James Coe.

A. It is a sort of global statement, I think, rather than a specific statement.

Q. It is obviously a statement of account between David Ng on behalf of the syndicate on the one hand and James Coe on the other because this schedule is attached to a letter sent to you relating to the securities of 23 million shares on a loan of \$16.2 million.

A. Yes.

Q. What is that entry "Payment received \$4.8 million"?

A. I believe that refers to certain cheques that James Coe gave to David Ng, but I am not sure.

Q. You see, I can't understand it at all, Mr. Ives.

A. But I don't think this is a proper statement of account. It is sort of to give a general picture, I think, rather than a proper accounting statement. I must admit I don't understand it either.

Q. All right, we have to ask David Ng about that, Mr. Ives. While you have that bundle – there in front of you – I am sorry, wrong bundle. Is it to your knowledge that, without going to the document, Mr. Ives, at the moment, that James Coe took over Oceania in accordance with an agreement dated 22nd June?

A. Agreement between whom?

Q. James Coe took over Oceania.

A. Yes, in accordance with an agreement dated 22nd June between whom?

Q. James Coe and San Imperial.

A. I know nothing about that.

Q. Will you take it from me for the moment, Mr. Ives, that there is that agreement disclosed and it is dated 22nd June?

A. Yes.

Q. There is apparently no file yet. Could I hand you this copy. Could I hand your Lordship this bundle which has been disclosed. It is the fifth page I want, document 3 in the bundle. Have you had a quick look at that?

A. Yes, I am on page 3 now . . . yes.

Q. Have you seen that before?

A. I have not seen this before, no. I have heard that there was a taking over of this company by exchange of shares but I Had no idea of the details.

Q. Will you see it is dated 22nd June?

- A. Yes. Supreme Court
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High Court
- Q. Do you agree with me having looked quickly through it that there is nothing said there between the vendor and the purchaser about Connaught Road?
- A. That is so, yes.
- Q. If you look at the last page before the back sheet you will see it is signed for the vendor, the vendor being San Imperial, by David Ng? Defendant's
Evidence
- A. Yes.
- Q. Signed by the purchaser by a Mr. Tsang? No. 40
- A. Yes.
- 10 Q. That is the first time you see that agreement? Melville E.
Ives -- Cross-
examination
- A. Correct.
- Q. All right, we will put that bundle away now, Mr. Ives. Would you look back at yellow 1, document 82. Is that a document written by your firm?
- A. Correct, yes.
- Q. Was it written by you?
- A. Yes, dictated by me.
- Q. Dated 15th June and addressed to Oceania?
- A. Yes.
- Q. Attention James Coe?
- 20 A. Yes.
- Q. Why did you write to Oceania on the 15th June attention James Coe?
- A. You mean why attention James Coe?
- Q. Yes, the agreement did not come into being until the 22nd.
- A. Yes, because James Coe by then, I believe, was a director of the San Imperial group of companies and he after all was the purchaser of, or the person intending to purchase the controlling interest.
- Q. Surely you will do what you have done at the bottom, c.c. M.A.F. Investment Limited. Why didn't you c.c. James Coe instead of attention James Coe?
- A. I want to make sure that it got into the hands of James Coe.
- 30 Q. Surely there is even more reason to say c.c. James Coe?
- A. No, attention James Coe would normally be sufficient.
- Q. So on the 15th June you sent along the cheque for \$4.8 million, the Bentley's cheque for \$4.8 million?
- A. Correct.
- Q. Did you know that by that time that the refinancing arrangements had collapsed, had failed?
- A. Not by then, no.
- Q. When did you get to know that?
- A. I cannot say exactly. It was round about that time, but —.
- 40 Q. Now you told us on Friday evening that the money was eventually paid to Hongkong Estates, that is document 132 in yellow file 2. I think, please correct me if I am wrong, I think you said that the reason was that Oceania owed Hongkong Estates some money, is that right?
- A. No, the other way round. The position was this, Hongkong Estates had money available. Oceania was a finance company of the same group. So Oceania acting as its agent loaned the money to M.A.F. and the loan was made, as I understand it, in the name of Oceania.
- Q. So it was Hongkong Estates' money all the time although it was in Oceania's name?

- A. Yes, this is what I gathered from the various reports that I have mentioned earlier.
- Q. You see, your learned counsel in opening said the money was paid to Hongkong Estates because at that time Oceania was no longer a part of San Imperial and it was San Imperial's money. That must have been wrong then, the reason given by your counsel must have been wrong?
- A. I don't think it is necessarily wrong. Some of this information, the information that I have just given in court has been deemed in the last ten days or so.
- Q. As a one-third partner of this syndicate you were not kept fully informed of all these steps?
- A. I was told, yes.
- Q. Were you consulted about the legalities of the steps that were being taken?
- A. There seems to be nothing illegal about it.
- Q. Were you consulted?
- A. Not of the legality.
- Q. You were not consulted about the legalities? You were not kept informed of any steps that were being taken, is that right?
- A. I was being kept informed, yes, but I'm afraid I lost track of the various steps, for example, the statement that, such as, was in that letter which you showed me just now, which has just been referred to me just now, like you I did not really understand I got the gist of the thing, but I didn't fully understand the whys and wherefores of it.
- Q. Mr. Ives, I don't want to prolong this. I simply go to suggest to you, and leave the rest of this to Mr. Yorke, I suggest to you that the transmission of the shares into I.P.C. was also simply a colourable one.
- A. That is not correct, it's a genuine transmission.

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MR. CHING: Thank you. No further question.

MR. SWAINE: My Lord, perhaps to clear my own mind on this, I have no intention of a one-upmanship as regards the mode of cross-examination, but is it being suggested as part of the case for the Lees that the agreement of the 30th March, that is the M.A.F. option agreement, is a sham, the agreement of the 30th April with Rocky is a sham, and the 12th May substitution agreement with Rocky is also a sham?

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COURT: Mr. Ching.

MR. CHING: I don't remember exactly what is in my pleading now, my Lord, but I think my learned friend is right.

MR. SWAINE: That is part of your case?

MR. CHING: Yes.

XXN. BY MR. YORKE:

Q. Mr. Ives, without advertising would it be fair to say that you are known in Hongkong as a particularly competent conveyancer and draftsman?

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- A. I suppose generally speaking I am one of the better known. Supreme Court
of Hong Kong
High Court
- Q. What you aim for in that capacity is clarity, precision and the avoidance of ambiguity?
- A. Yes.
- Q. No doubt, like all of us, you are occasionally fallible, but not where you could help it, and you would be particularly careful in important matters? Defendant's
Evidence
- A. Yes.
- Q. I will leave that for the moment. You four times in the course of your evidence-in-chief and in answer to Mr. Ching referred to having legal and moral obligations? No. 40
- 10 A. Yes. Melville E.
Ives – Cross-
examination
- Q. But on the one time when Mr. Ching asked you to separate the two, that was in relation to Mr. James Coe who had first thought of the transaction, who was a good friend at least of Mr. HO Chapman, you said that there was no moral obligation because it was business?
- A. Yes, that's correct.
- Q. Do you in fact recognise any moral obligation independently of a legal obligation?
- A. In what particular –
- 20 Q. You used the expression you had legal and moral obligations to people on the one occasion when it was specifically put to you, that is in relation to Mr. James Coe, there being no legal obligation you recognised no moral obligation?
- A. I don't think there was any moral obligation to Mr. James Coe at that stage. We never indicated to him that we were prepared to do business with him.
- Q. And the only reason therefore why you did do business with him was because he was prepared to set up a kind of manner to beg people which minimized the extent to which you had to find your own funds?
- A. Yes, that is quite so.
- Q. Had it not been for that you would have dealt with other persons and you know at least three people whom you regarded as realistic alternatives? 30
- A. Yes.
- Q. Who had the assets to – Mr. Coe had to make good their bargains?
- A. Who believed so, yes.
- Q. Coming back to the morality again, do you yourself or as a solicitor see any moral difference between the use of the assets of CHOO Kim-san to pay a creditor who has been defrauded or to make a quick killing for a business syndicate?
- A. I don't really see the difference, no. I can see that it is an interesting situation, but I am not sure if there is a difference.
- 40 Q. That's why I am asking you whether you recognise if there is a moral distinction between the use of the assets of a fugitive from justice to pay his existing creditors or to just make a quick profit in a purchase and resale?
- A. I don't think so, no.
- Q. So you would not regard the moral claims of either LEE Ing-chee, LEE Kon-wah or M.B.F. as asserting any right to these funds independently of the law?
- A. No.
- Q. So it is another case where for a moment one asks you to separate legal and moral obligations, or moral obligation collapses?
- A. I wouldn't say collapses. I would say does not arise.

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- Q. Let's take the third case, that is, your obligation to Chow and Hwang. You said you had a legal and moral obligations to them. In the event this case goes against you would you pay them anything out of your own pocket?
- A. If it goes against me, no.
- Q. So your moral obligation actually does not carry any money with it?
- A. No, I don't mean it that way. What I mean is this, if one enters into a legal obligation somewhere and we will say perhaps there is a loop-hole in the agreement, one does not exercise, necessarily exercise one's legal rights to one's advantage, to the disadvantage of the party you are dealing with. You act according to the spirit of the agreement. You get a moral obligation there, for example. 10
- Q. Where moral obligation would come into the matter that is where you will find ambiguity in the legal rights and you would resolve them in favour of the spirit of the agreement?
- A. Yes.
- Q. Does it arise anywhere in this case?
- A. I cannot think of anything off-hand.
- Q. If you do perhaps you would tell us. So we can now deal with the legal situation and put your views on morality on one side. Can you just go back to the deal which you were going to do with Mr. James Coe for a moment. You have said right at the beginning of your evidence-in-chief that you considered that the shares were worth on the basis that you got controlling interest between \$1.60 and \$1.70 per share? 20
- A. Yes.
- Q. And you arranged to sell them to Mr. James Coe or the people he nominated at the price of \$1.50?
- A. Yes.
- Q. Plus a finder's fee which, on your estimate, lifted the figure up to approximately, you said, one – they took the price to \$1.70 per share? 30
- A. Yes.
- Q. \$1.70 per share is the highest of the bracket of your valuation of the worth of the company?
- A. Yes.
- Q. You, between you as a syndicate were going to make a gross profit in the order of \$20 million?
- A. Yes.
- Q. What was Mr. Coe going to make? You were selling him shares at 1.70?
- A. I don't know, I did not ask him, but he thought it was a worthwhile transaction at that price, others thought that it's a worthwhile transaction at a similar price. The hotel industry in Hongkong is booming, the real estates position in Hongkong is very good. I suppose it was considered to be a good and worthwhile deal. 40
- Q. But you had taken all those factors into account when with the expertise of Mr. David Ng you put the figure 1.60/1.70 on the shares?
- A. Yes.
- Q. And it never occurred to you that there might perhaps be something curious about the situation where you were able to sell property in a deal out of which you were making an enormous profit on a very small outlay to someone at full value?

- A. It was an opportunity. I just took the opportunity. Supreme Court
of Hong Kong
High Court
- Q. I accept that you took the opportunity, but I just wonder if you ever thought there was something slightly odd?
- A. No.
- Q. Do you now think, it is drawn to your attention that you were getting 100 per cent of the asking price, the maximum asking price, that there might be something odd about it? Defendant's
Evidence
- A. In my conveyancing practice I often see properties, for example, I have one about nine months ago in Kwun Tong bought for about \$6 million and sold for \$13 million, I think it was one month later, and you get circumstances like that. It is nothing odd. No. 40

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- 10 Q. You see, people buy bargains, they bought for less value and they resell on a higher value, but here you got your top figure straightaway?
- A. Not straightaway.
- Q. A matter of a few weeks? How many weeks was it in your own mind, deliberately not putting dates to you, how many weeks was it in your own mind from the time you decided to go ahead on, say, 4th or 5th January to the time that you assured Mr. Coe?
- A. I suppose, during this period from the 4th/5th January onwards Chapman Ho was constantly discussing with various people the possible sale of this property, that would be 2½ months.
- 20 Q. Ten weeks?
- A. Then weeks, yes.
- Q. From starting out on the event to having somebody who was prepared to pay you enough money to make \$20 million profit?
- A. (No audible reply.)
- Q. Coming to the general question I have asked you about: As a conveyancer you go for, and as a draftsman, for clarity, precision and avoidance of ambiguity. I take it you feel the same way about affidavits?
- 30 A. Yes.
- Q. Affidavits should be accurate; it should be truthful, very important they should contain no white lies?
- A. Yes.
- Q. You know what I mean by white lies?
- A. Yes.
- Q. And you are familiar with the expression that affidavits should be full in fact?
- A. Yes.
- Q. And of course that is an obligation not only on parties to a case but on their solicitors and counsel?
- 40 A. Yes.
- Q. And you know that is a particularly important matter in interlocutory proceeding because there is generally no cross-examination?
- A. Yes.
- Q. And it would be a miscarriage of justice were relief to be denied to somebody in interlocutory proceedings whereby the action might become worthless or a judgment aborted because of something happened in the interlocutory proceedings?
- A. Yes.
- Q. I therefore take it you would be horrified at any suggestion that you would

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do anything in drafting affidavits to get the court advantage or to stifle an action from proceedings to trial?

A. I agree, yes.

Q. Would you look at red bundle 2, page 53 please, David Ng's affidavit in Action 2459 dated 27th July?

A. Yes.

Q. Would you just look at the last two sentences or paragraph 18. Would you say this affidavit must have been drafted on facts supplied to you?

A. Correct.

Q. Did you yourself draft it having settled by counsel? 10

A. I supplied all the facts to counsel some time previously and this was drawn and settled by counsel.

Q. And on all the facts having been supplied by you?

A. Yes.

Q. "I have paid for 3,226,000 shares by cheques which have been cleared. There is exhibited hereto marked 'E' a copy of a letter dated 14th June 1977 from MAF Corporation (H.K.) Limited acknowledges receipt of the payment by cheques." That document you would now find in yellow 2, page 131?

A. Yes.

Q. Tell me, Mr. Ives, looking at those two sentences there now I wouldn't be putting words into your mouth, would I, if I suggested that that affidavit is intended to convey the impression that the two cheques referred to in that letter have been cleared? 20

A. I think so, yes.

Q. And that statement is untrue?

A. This was the 27th July, I am not sure whether the subsequent cheques, I cannot say off-hand whether there were subsequent cheques, that were substituted for this cheque had been cleared by the 27th July.

Q. But they hadn't been cleared, you knew, didn't you, at that time that cheque of \$4.8 million couldn't be met by Bentley Securities because they hadn't got money and had been replaced three days later by a series of different cheques to a different payee bearing different dates? 30

A. Yes.

Q. So again those two sentences convey the impression that the cheques whose receipt is acknowledged in 131 had been cleared and paid in settlement of the purchase price of those shares and that impression is wholly false?

A. I believe that at the time of this affidavit payments had been made, but I am not sure.

Q. Stop there, Mr. Ives. Just turn over 131 and look at 132, would you? You see there is a replacement three days later, isn't it? 40

A. Yes.

Q. And you knew all about it, didn't you?

A. As I have said before, I got rather confused with the variations in the financing.

Q. Let's see if you agree first. The impression which the affidavit gives is false? You have not actually answered that question, Mr. Ives.

A. I am not able to say that unless I know that these cheques which were given in substitution for the \$4.8 million cheque had been cleared at this time. You are saying the impression given by the affidavit is false?

Q. Yes.

- A. If the shares had been paid for at that time that is the impression.
- Q. No, would you please look again at the affidavit, Mr. Ives. Come to it as a judge to whom it is directed: "I have paid for 3,226,000 shares by cheques which have been cleared. There is exhibited hereto marked "E" a copy of a letter dated 14th June 1977 from MAF Corporation (H.K.) Limited acknowledges receipt of the payment by cheques."
- A. Yes, I agree with you it is not accurate.
- Q. It is wholly false, isn't it?
- 10 A. It is not accurate. I don't know if it is correct to say it is false in that sense if the payment had been in fact made by them. There would have been definitely a mis-statement of the affairs, but it would not be perhaps a false statement.
- Q. What is your definition of false? It is either true or not true. I suggest to you that the cheque No. TL104460 had not been paid and never was paid and never could be paid because there was no money to meet it.
- A. I agree to the first two, the third one, and it could be paid.
- Q. Well, that is fair enough . . . and that is inclined to give the judge to whom it is addressed the impression it had been paid?
- A. I agree absolutely this is not accurate.
- 20 Q. So on that particular occasion the document which was placed upon all the facts supplied by you and which bears your firm's name on the back sheet was neither clear nor precise nor had it avoided any ambiguity?
- A. Correct.
- Q. Can you think of any reason why counsel in possession, as you say, of all the facts, that is to say, told that the cheque had not been paid and had been substituted with five other cheques payable to another payee would have omitted to mention that in the affidavit?
- A. The only reason I think is this: the situation became exceedingly complicated. I myself lost track of what happened with the finance. It was changing almost
- 30 everyday.
- Q. This matter was going on before Mr. Justice Zimmern at the time, wasn't it?
- A. Yes.
- Q. And you were attempting to do two things both of which would have had the effect of preventing this action coming for trial. One was to get the registration of judgment set aside?
- A. Yes.
- Q. And the other was – which I will come back to a moment later – to obtain fortification at a very high figure of between 10 and \$35 million which on affidavit Mr. David Ng did not believe that M.B.F. could provide?
- 40 A. Yes.
- Q. So either getting the registration setting aside or getting a high figure for fortification would effectively have brought the proceedings to an end at interlocutory stage?
- A. The high fortification could not have brought the –
- Q. Well, Mr. David Ng went on oath as believing M.B.F. as probably insolvent?
- A. Yes.
- Q. So it would in effect have stopped proceedings in an interlocutory stage?
- A. It might have done.
- Q. That's what you were trying to do, wasn't it, Mr. Ives?

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- A. If we have achieved that, yes, it would have been very nice.
- Q. Do you think that you might have succeeded, as you did, before Mr. Justice Zimmern if you had not sought to create the impression by paragraph 18 that you had paid in full for the shares to the vendor of the shares out of the syndicate's money and had told him instead that the syndicate had not got the money, the cheque had not been paid or they had to borrow the money from somebody else and siphoned it straight back to him?
- A. I think that if we had stated that it would have made our claim for fortification even stronger because we had been put into this situation as a result of these injunctions and I would say we were not concealing from the court relevant facts. We were failing to put before the court those facts which would have been to our advantage rather than to our disadvantage, which I think would make our case that much stronger to say, "We have this cheque for \$4.8 million, we could not go through with this cheque because of the failure to raise money on the re-financing, etc., etc." I think that would have made our case stronger. So it is not a question of concealing, it is a question of overlooking facts, even facts in our favour. 10
- Q. I am not quite sure whether I understand you. Are you saying this was omitted deliberately or that it was an accident which happened to be of some advantage to us rather than to you? 20
- A. The latter, yes.
- Q. You don't think that perhaps Mr. Justice Zimmern might want to know a great deal more about these self-cancelling transactions?
- A. I don't know.
- Q. It hasn't escaped your memory, has it, that we only got the April, May and June bank statements which show self-cancelled transactions last Tuesday, 1st November?
- A. Yes.
- Q. We got all the other bank statements but not those until – this trial has been going on for four weeks? 30
- A. Yes.
- Q. And I had to get up three times in court one morning to ask for specific discovery?
- A. They were Bentley's statements.
- Q. And the Chase Manhattan Bank's statements?
- A. Right.
- Q. The first time when you knew about the self-cancelling statements Mr. Justice Zimmern didn't know about them, did he?
- A. No.
- Q. Don't you think he might be interested? 40
- A. I don't know.
- Q. I put it to you that those last two sentences are in the classic phrase: *suppressio veri suggestio falsi*. Isn't that an accurate description of those last two sentences?
- A. It is not a suppression of the truth. A more accurate statement would, I think, have been to the advantage of the defendant.
- Q. Whether it is a advantage or not it would be a matter for my Lord to consider. It may not be relevant. I am merely suggesting to you that the accurate description of that part of the affidavit is *suppressio veri suggestio falsi*.

- A. You might be able to say that, yes. Supreme Court of Hong Kong High Court
- Q. Do you think that is the only example where affidavits in which you have some responsibility contain unfortunate lapse of this kind in this matter?
- A. No, there is one other lapse.
- Q. The one you mentioned – the mistake about failing to mention a supplement? Defendant's Evidence
- A. Yes.
- Q. Yes, I will have to mention that again. Do you know now that the bank account which Mr. David Ng opened to put these reciprocating cheques was opened for that purpose? No. 40
- 10 A. I know now. Melville E. Ives – Cross-examination
- Q. You already had two bank accounts, at least, quite apart from the bank accounts of Bentley Securities?
- A. Yes.
- Q. But this bank account was opened purely to put these transactions through?
- A. Yes.
- Q. At a bank in which he did not previously hold an account?
- A. I believe that is correct, yes. But Mr. Ng did not consult me on that, I am not sure, but I believe that is so.
- 20 Q. If you look at document 132, yellow 2, in front of you, you see, sending off a number of post-dated cheques, five post-dated cheques?
- A. Yes.
- Q. If you look at page 1 of the Chase Manhattan bundle of bank statements – I don't think they have yet become an exhibit, I don't think they have – it says the bank account was opened with a deposit of \$10,000 on the 22nd June?
- A. Yes.
- Q. Five days after the post-dated cheques had been sent off in yellow 2, 132?
- A. Yes.
- 30 Q. You know enough about financial matter, Mr. Ives, to know that a bank would not give you a cheque book until you have money in the account unless you are an existing customer opening a new account or you are backed by some other existing customers?
- A. That is pretty standard, yes.
- Q. So there must be somebody with a bank account at Chase Manhattan who is associated with this transaction and who was vouching for the arrangement, otherwise a cheque book could not have been issued and cheques drawn five days before the account was opened? You see, 17th June; the first payment-in opening the account, 23rd June.
- A. I am not quite sure. These cheques of Bentley Securities are drawn on –
- 40 Q. Chase Manhattan Bank, it says so.
- A. Yes.
- Q. It says – if you like I can show you the cheques in the bundle.
- A. I don't know. I had no control over these accounts.
- Q. No.
- A. I am not sure if these cheques are drawn –
- Q. They all appear on page 2 and if you were to number the cheques in the latter one, 132, that is 1, 2, 3, 4, 5, you would find they are cheque Nos. 1, 2, 3, 4 and 5 on page 2.
- A. Yes.

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- Q. All I am putting to you is there must be somebody who is associated with this transaction who has an account with the Chase Manhattan and who was vouching for that account, otherwise a cheque book could not have come into the possession of David Ng in order to write post-dated cheques five days before the account is actually opened with the payment of money?
- A. I agree that would be the usual situation, but whether that was the situation here I don't know.
- Q. But in fact you have not discovered any document relating to the opening of that bank account or any account associated with it?
- A. No. 10
- Q. To go back now, coming to the affidavits and take perhaps the affidavits sworn a little earlier in June, you take the affidavit of 23rd June in 159. You will find it in red 2 pages 8 to 13.
- A. Yes.
- Q. Could you remember that affidavit or would you like to refresh your memory? If you read it all the way through it nowhere says that you – or indicates that you are a member of this syndicate?
- A. I can't recall. I think there is an affidavit which does set out who the members of the syndicate are.
- Q. Yes, that's later. But that is an affidavit being sworn by you as a solicitor of the Supreme Court saying all sort of complimentary things about the parties to the action and adding your weight on the fact that you had attended the party with the Chief Justice of Hong Kong in support of the integrity of the persons concerned and it unhappily omits to state that you have an interest in the outcome of the proceedings? 20
- A. That comment about the Chief Justice was a retort because of an implication in a previous affidavit by Mr. Christopher Wilson about being present when something was done.
- Q. But the point of my question, Mr. Ives, is the affidavit unhappily omits to state that you have an interest in the outcome of the proceedings? 30
- A. I don't think it is stated here. If you say it doesn't –
- Q. I will show you where it does, in the same bundle in fact. The affidavit sworn in the same proceedings by Mr. David NG, which is the next affidavit in the bundle, pages 15 to 17, likewise does not disclose that you are a member of the syndicate.
- A. Mhm.
- Q. Mhm. Didn't you think that very important, for a solicitor of the Supreme Court when swearing an affidavit in an interlocutory matter apparently as a disinterested stranger, should draw the court's attention to the fact that he is also a party interested? Mr. Ives, I will show you where you subsequently did tell the court that you are a member, but I am asking you, at the time these 2 affidavits were sworn by you and Mr. NG, did you not think it was relevant to tell the court that you had a financial interest in the outcome of the proceedings? 40
- A. Yes. The affidavit to which you are referring was the 23rd June. The fact that I was a member of the syndicate was brought out in my affidavit of the 29th June which I made to bring that matter out, because it was considered –
- Q. Mr. Ives, I will just ask you the question, please for the third time. Did you not think it important when you and Mr. NG swore the affidavits of the 23rd

June, to draw the court's attention to the fact that you were not a disinterested solicitor vouching for the integrity of the parties but yourself had an interest in the outcome of the proceedings?

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A. We considered it important. That is why we did the affidavit of the 29th of June, to bring that to the court's attention.

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Q. Mr. Ives, let's just try again, for the fourth time. When you swore your affidavit of the 23rd June, at that time did you not think it important – swearing an affidavit vouching for the integrity, high moral standing and business reputation of other people – to draw the court's attention to the fact that you had a financial interest in the outcome of –

No. 40

A. It is a relevant matter, yes. It is relevant. "Important" – strictly speaking, I would think it should make no difference as to the personalities involved.

Melville E.
Ives – Cross-
examination

Q. You see, what you did say at the foot of paragraph 14 which you will find on page 11 – would you just read paragraph which is half a page and I am sure you will read it quicker than I will. Correct?

A. Yes.

Q. Now, read the last sentence, "However, over and above this I know of no special link between the defendant and the three persons I have referred to . . . which are David NG, HO Chapman, Mr. Harilela, "or myself."

A. Yes.

Q. There was of course the link between 3 of the 4 persons who were the syndicate, who were about to make a profit of \$20 million and you specifically referred to yourself?

A. Yes. You see, we were referring to the link as between CHOO Kim-san on the one side and the 3 persons mentioned or myself on the other side and the reason I mentioned myself there was of course I was involved in the transaction.

Q. You were involved in the transaction but you omitted to tell Mr. Justice Zimmern at that time that you were involved in the transaction.

A. But I referred to myself because I was not, I was not intending to conceal the fact –

Q. It would have been accurate if you had gone on ". . . or myself other than the fact I am a member of the syndicate with Mr. David NG and HO Chapman who hope to make \$20 million this month if your Lordship stops these proceedings."

A. I think it would not have been an appropriate addition to this paragraph.

Q. Yes. In fact what happened was that Mr. HO Chapman swore an affidavit and he said that you were a member of the syndicate, and that will be found at page 23 of the bundle – page 22, paragraph 8, and it is only when he has done that that at page 25 you then swore an affidavit where you then confirmed that you are a member of the syndicate.

A. It can't be said that only when he had done that, because both those affidavits were done at the same time, for the same purposes.

Q. The reason may be that Mr. HO Chapman was insisting that the full truth was told.

A. No, it was because we had realized that although I had referred to myself in the previous affidavits, we had not made it clear that we were –

Q. There is – No damage was done in the end, Mr. Ives, but, again looking back at that affidavit, do you not think again that you have failed to achieve clarity,

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Ives – Cross-
examination

precision and avoidance of ambiguity?

A. In this particular matter, each side was showering affidavits on the other side and what appeared to be sufficient and proper at one stage required further explanation as a result of further affidavits at a later stage.

Q. Affidavits have been showered for 2 months by then?

A. Mmhm.

Q. From the 2nd of May to the 29th July. It is only after we have 2 months of affidavits in that Mr. Melville Ives discloses to the court that he has an interest in the proceedings. That's right, isn't it?

MR. SWAINE: That's June, isn't it?

A. Yes, that would be correct, yes.

Q. Yes. That was perhaps another unhappy mistake, wasn't it?

A. I don't know if the – I can't recall if the agreement had been exhibited previously.

MR. YORKE: My Lord, I am passing to another matter which will take a little bit longer to cross-examine on . . .

D.W.(1) – Melville Ives – On former oath

XXN. BY MR. YORKE – Continues

Q. Mr. Ives, can we turn to another aspect of the affidavits in which you have some responsibility? Look again, would you, at red 2, page 16, paragraph 15? Perhaps again you can read it faster than I can. Just go through it would you?

A. Yes.

Q. Yes, and would you notice the last 2 sentences, "The potential damage is immense."

A. Yes.

Q. "A conservative estimate would put it at 50 cents per share, and no recourse can be had to the Plaintiff in Hong Kong." Then look at page 57 of the same bundle, the third affidavit of David NG of the 27th July. Perhaps you had better start at 56, page 56, paragraph 33. Again would you read 33, 34, 35 quickly yourself.

A. Yes.

Q. Now, there Mr. David NG is asking the court for fortification first in the amount of 50 cents per share and then the whole value of \$1.50 per share?

A. Yes.

Q. Is it the case again that those affidavits were settled by counsel, all the facts having been put in front of counsel by you as instructing solicitor?

A. The facts – the fact regarding the 12th of May agreement –

Q. Had not –

A. – had not been.

Q. I won't ask you about that at the moment. I will, I'm afraid, later but not just now. And of course if paragraph 33 was correct, Mr. NG in the expectation that MBF might become insolvent overnight invited you to put up fortification in the amount of \$34 million, this might perhaps have brought a summary end

	to the proceedings?	Supreme Court of Hong Kong High Court
	A. Yes.	
	Q. Which would have been an agreeable result for you?	
	A. Yes.	
	Q. I remind you of what you said to Mr. CHING yesterday about the word “exercisable” in the Option Agreement which was really the operative one –	Defendant’s Evidence
	A. Yes.	
	Q. And you said, “In my opinion he is bound.”	No. 40
	A. Yes.	
10	Q. Yes.	
	A. I said that, yes.	Melville E. Ives – Cross- examination
	Q. Now, just consider would you, when you are asking for fortification for an undertaking, that would become operative in the event that the Plaintiff lost the action?	
	A. Correct.	
	Q. Because, of course, if he won you would be in the wrong?	
	A. Yes, right.	
	Q. But according to you if the action fail the option had to be exercised?	
	A. Not – if the action fail?	
20	Q. Yes.	
	A. You mean from our point of view?	
	Q. The Plaintiff’s action fail, the option wasn’t exercisable. You said he was bound to exercise –	
	A. Yes, it seems I was wrong on that.	
	Q. That was your opinion?	
	A. Yes.	
	Q. That was your opinion. And Mr. James COE, you told me right at the begin- ning of this cross-examination, was a rich man?	
	A. Yes.	
30	Q. Therefore able to pay?	
	A. If you can enforce it against him.	
	Q. Well, your view was he was bound to. This was your view. Mr. Ives, that means in your view at the time you had an enforceable option against a man with the means to pay. Is that right or wrong?	
	A. It is. I have looked at the position since I was being cross-examined. I agree with Mr. CHING. I don’t think it is enforceable, the option. It appeared to be exercisable at the volition of the purchaser.	
40	Q. Mr. Ives, I would – as a matter of law, for what my opinion is worth – entirely agree with you that is the only possible construction that can be put upon it but that is not the question I am asking. You gave evidence that you thought in your opinion and it was the intention of the parties that it should be bound. That is what you said to Mr. CHING yesterday, isn’t it?	
	A. Yes.	
	Q. So you had a man, James COE, who was bound to pay and who was able to pay – that is correct, is it not?	
	A. Yes.	
	Q. In your opinion?	
	A. Well, if he exercised the option, yes.	
	Q. Mr. Ives, would you tell my Lord how, if Mr. COE was bound to exercise the	

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Ives – Cross-
examination

option and able to pay for it, how you could suffer a loss of 50 cents per share, let alone of \$1.50 per share?

A. If he was bound to exercise it and have the means to pay, there would be no loss – if he was bound to exercise it.

Q. It would be relevant, would it not, for Mr. Justice Zimmern to have known that in your view there were at least 3 other purchasers, apart from Mr. James COE, who were able to pay the same price as Mr. COE?

A. I don't know if that is relevant or not.

Q. Mr. Ives, shall we examine it, if necessary. The effect of Mr. David NG's affidavit, was it not, was to suggest – partially successfully in the event, but that is unimportant – was to suggest to Mr. Justice Zimmern that if this deal went off, the loss to the syndicate could be enormous? That was the object of the fortification.

A. Yes, yes.

Q. And if that was correct you would be entitled to fortification in some degree representing security against the possibility of the plaintiff failing?

A. Yes.

Q. And, therefore, is it not highly relevant for the judge to know whether there are other buyers in the market able and willing to pay the same price?

A. The other buyers to which you refer were in the market April 1977. At the time we were before Mr. Justice Zimmern we were thinking of a trial in, say, March 1978. There was no knowing whether the same buyers would be in the market, what the political situation would be in Hong Kong, what the economic situation would be in Hong Kong, in say March 1978. So I think it is not really relevant that there were other buyers in April 1977.

Q. You don't think perhaps that is a matter for the judge to decide, whether 2 or 3 months earlier there had been not one but 4 buyers in the market, and the only attraction, according to you, with the buyer with whom you did contract was that he was prepared to arrange back to back financing?

A. Yes.

Q. You don't think that in any way you suppressed a relevant matter from your counsel and the judge?

A. No.

Q. And that is your attitude after 30 years in practice as a solicitor?

A. Yes.

Q. It follows, therefore, that in your view it would be unworthy of me to suggest that what you were trying to do was to avoid a trial on the merits by suppressing the facts which might lead to smaller or no fortification?

A. We were certainly not suppressing facts.

Q. And it would be equally unworthy of me to suggest that the reason for suppressing the 12th of May option agreement and putting before Mr. Justice Zimmern only the 30th of April sale agreement which had been superceded was that since on the face of it his Lordship would undoubtedly have read "exercisable" in the way in which now you as well as Mr. CHING and myself agree it should be read, would mean that there would be far fewer shares upon which you would necessarily suffer a loss and therefore the amount of fortification which could be ordered in any event would be much less?

A. No, that is not true. In fact I think the affidavit of Mr. David NG of the 23rd June only refers, in paragraph 15, only refers to the Fermay shares.

- Q. It is a relevant fact, is it not, Mr. Ives? Look at – is that right? Would you look just at the last paragraph that you were looking at, and then if you go to the second affidavit, he asked fortification in the figure of \$35 million? Supreme Court of Hong Kong High Court
- A. That is so, yes, but previously, previously, the previous affidavit had merely referred to the Fermay shares and I think that there had been – a confusion had arisen in the meantime. Defendant's Evidence
- Q. There is no confusion about the figure “\$34,500,000” in paragraph 35 on page 57, is there? No. 40
- 10 A. That is the figure that is confused because previously we had been talking about the Fermay shares only. That figure in paragraph 34 I don't think should have been – sorry, paragraph 35, should have related to the Fermay shares only. Melville E. Ives – Cross-examination
- Q. Look at page 55, paragraph 31, 2 pages earlier, paragraph 31, first sentence, “The effect of the injunctions is to paralyse all dealings with almost 23 million shares in San Imperial.
- A. Yes.
- Q. You say it was related only to Fermay shares?
- A. In the affidavit of the 23rd June, it was definitely related to the Fermay shares –
- 20 Q. I am asking you the figure in –
- A. Yes, I am coming to –
- Q. I'm so sorry.
- A. – to that. I think possibly the reason for that was that further injunctions had been filed – I'm not sure at the moment – which had covered a greater field. That may be the reason for it. I can't recall off-hand but I know the number of shares involved in the injunction seem to increase.
- Q. Charging orders against all 23 million shares, weren't there?
- A. There were –
- 30 Q. Would you like to check? Paragraph 31, page 55 is absolutely accurate as to the effect of the orders which had been made?
- A. That may be it, yes.
- Q. That paragraph is accurate as to the effect –
- A. Yes.
- Q. – of the orders which had been made?
- A. Yes. It could well be, yes.
- Q. Not “could well be” – it is
- A. Yes, yes.
- Q. I am quite happy to give you time –
- A. I accept your word.
- 40 Q. No, don't accept my word. If you want time to look at the document, please say so and I will not rush you. It follows that paragraph 35 is not a mistake but is correct?
- A. In respect of the 23 million shares, yes.
- Q. Now, I am going back to where I was 5 minutes ago. Would it not have been relevant to let Mr. Justice Zimmern know that the 23 million were no longer subject to a sale contract but in part to an option contract which on its true construction Mr. COE was not obliged to exercise?
- A. Yes, I agree that is, yes.
- Q. So that perhaps is another place where you have failed to act with clarity,

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precision and the avoidance of ambiguity – is that right?

- A. Yes, I agree.
- Q. Unfortunate, isn't it, that if Mr. Justice Zimmern accepted any of your contentions, he might have shut out the plaintiff on the wrong grounds – that could have happened, couldn't it?
- A. I don't know.
- Q. You don't know. Very well. Let us see how much further, Mr. Ives, you were careful in the – instructing counsel in the drafting of these affidavits which went out with your name on it. Would you look at page 15 again, David NG's affidavit of the 23rd of June. Perhaps I will read them this time, paragraphs 4 and 5. "In December, 1976, I formed a syndicate with a view to acquiring a 51 per cent shareholding in San Imperial Corporation Limited which is a public Company in Hong Kong. My syndicate started to acquire shares in San Imperial Corporation Limited in the stock markets in Hong Kong in January 1977 and has now acquired a total of 8 million shares." 10
- A. Yes.
- Q. Mr. Ives, to the eyes of a judge reading that for the first time, would it be unfair for me to suggest that those 2 paragraphs indicate that the syndicate has bought 8 million shares in the stock market?
- A. Yes, I do agree that on a first reading of that paragraph that is the meaning one would get from – 20
- Q. On the second, tenth or fiftieth reading, would one get any different meaning?
- A. "... started to acquire shares in San Imperial Corporation Limited on the stock markets in Hong Kong in January 1977 and has now acquired a total of 8 million shares ..." It should have gone on, perhaps, to say "... of which 2 million" or what have you "were required from the stock markets."
- Q. On the second, tenth or fiftieth reading, does it have any different meaning?
- A. No, but I do agree that it could be amplified.
- Q. The truth, of course, was that they had purchased at the most 2.6 million – that is made up of 2,279,600 and 329,400, that is a total of 2,609,000 – which is less than one-third of 8 million. 30
- A. That is from the stock market, yes.
- Q. Don't you think it might have been relevant for Mr. Justice Zimmern to have been told that –
- A. As I say –
- Q. – your own money so far was at risk as opposed to your potential to make a profit, that your own money was at risk as to less than one third of the figure that you were telling his Lordship about?
- A. As I say, this paragraph could have been enlarged, amplified, but the fact that we purchased several million shares from MAF, I don't think in any way would affect the position. 40
- Q. It is not for you to judge, Mr. Ives, when you are proceeding by way of affidavit for interlocutory relief. It's a matter for the judge to decide. You will lay the relevant information before him and it is for him to decide. Is that not right?
- A. That is correct, yes.
- Q. Is this not yet again a case where you have been wanting in clarity, precision and the avoidance of ambiguity?
- A. Perhaps so, yes.
- Q. Perhaps so. You can't give me an unqualified "yes"? 50
- A. I don't think so.
- Q. Mr. Ives, the next question I am going to ask you you may decline to answer if you wish. Is the responsibility for any of the mistakes which I have pointed

- out to you yours or counsel's? Do you wish to answer the question?
- A. The ultimate responsibility must be mine.
- Q. Is that quite right, Mr. Ives? You feed the information to counsel and you see that what he has done afterwards is in accordance with your instructions, is it not?
- A. Yes, that is why I say the ultimate responsibility is mine.
- Q. The initial and the ultimate responsibility, is it not, Mr. Ives?
- A. But when we talk about initial responsibility, some of the information may have been fed to counsel at a previous date. It may be out of date as at the time of drafting or settling affidavits. There may be something of which counsel is unaware, so I don't think it could be said –
- 10 Q. Paragraph 5 on page 15 was never true, was it, out of date or otherwise?
- A. It was never true in the sense that all 8 million shares had been purchased in the stock market but it doesn't – the paragraph indicates that they were purchased in the stock market. It doesn't actually say they were purchased in the stock market and I don't think there was any intention to mislead there. I think it was to distinguish those shares from the Fermay shares. There were 2 separate lots of shares. That was the concept, 2 separate lots of shares.
- Q. You wouldn't go out yourself in paragraph 5 as having made to Mr. Justice Zimmern a full and frank disclosure, would you?
- 20 A. No. I have stated that I think now, on reflection, that paragraph 5 should have been amplified.
- Q. Well, I won't labour the point on the affidavits. Let's see how much more accurate you are when it comes to pleadings. Would you look at green bundle 2, page 203, sub paragraph 4, (f)?
- A. Yes.
- Q. Pleading 2459, the same paragraph, page 35 – document 35, page 143, paragraph 22, 4(b). Just remind me, have CHOW and HWANG ever seen the share certificates registered in the name of Fermay?
- A. No.
- 30 Q. Have they ever seen the initial shares issued in Fermay itself?
- A. No.
- Q. Have they ever seen the increased shares representing the increased share capital in Fermay?
- A. No.
- Q. Has there been any time, any time, after CHOW and HWANG parted with the certificates and transfers to the registers, when the last line of that paragraph been true?
- A. I think it was true until – Just a minute, I can't remember when they sent the signed transfers, I mean the signed transfers of Fermay.
- 40 Q. Look at yellow 1, 14. Keep the pleading open unless you remember it. Authority to sign contract, bought and sold notes and transfers in particular is granted to each member of the syndicate on the same day?
- A. Yes, I suppose it would be true to say that they had lost control of Fermay as at 23rd.
- Q. That is right and that pleading had been filed by the firm of Peter MO & Co. in September of this year?
- A. Yes.
- Q. It wasn't true then either, was it?
- A. They still had legal control over those shares but perhaps they had lost effec-

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tive control.

Q. What does that mean, Mr. Ives?

A. Legally they were still covered by the fact that they were the registered owners of the Fermay shares in Fermay Co. Ltd. although they had actually parted with the transfers.

Q. Mr. CHOW and Madam HWANG were never registered owners, were they, of the shares in San Imperial?

A. No, sorry, I am talking about the shares in the capital of Fermay.

Q. Ah, but just look at the pleading would you?

A. Yes.

Q. What is the pleading talking about?

A. I am talking about the shares in the capital of Fermay. Therefore, the CHOWs were legally owners of those shares. Fermay was the legal owner of the 15 million shares of San Imperial, so on the legal side the CHOWs were in legal control, although they may effectively have abandoned that control by handing over the certificates of the capital of Fermay Co. Ltd.

Q. And all they might have had is an unsigned third copy of the agreement of the 23rd March – is that right?

A. Yes.

Q. And that in your view justifies pleading in September that they “thereby retained control over the said certificates.” 20

A. I don't say that because before this pleading – in fact, I think by the 1st April they were then in possession of the completed copy of the agreement of the 23rd March.

Q. Of course we haven't got that, that depends upon Mr. David NG's evidence to that effect –

A. Correct.

Q. – being accepted?

A. Yes.

Q. Again, was counsel properly instructed and given that document transferring powers away, seeing the resolution of 23rd May making David NG the managing director with full powers, knowing that the shares were in the possession of Peter MO & Co. and that nothing had been sent to Taiwan except possibly that contract, couldn't possibly have pleaded that paragraph could he? 30

A. I don't know. I can't remember exactly what information was before counsel at this time.

Q. Whatever information was before him you were responsible for both as client and solicitor were you not, Mr. Ives?

A. Yes, definitely. 40

Q. Let's just have a look, shall we, at the agreement which may have gone to him some time in April, yellow 1, 16, second page please.

A. Yes.

Q. Have a look at the last 4 lines of paragraph 4, clause 4?

A. Yes.

Q. “Delivery of the Fermay shares and transfers to the Purchaser shall be proof of payment of the balance of the purchase price and the Vendor shall be estopped from denying payment after delivery.”

A. Yes.

- Q. Mr. Ives, counsel experience is sometimes unimportant, but neither Mr. CHING in Hong Kong nor I in London have ever seen such a clause before. Do you commonly use it? Supreme Court of Hong Kong High Court
- A. I don't commonly use it, no. It is drawn especially for this case.
- Q. The fact of it being that the share certificates delivered to you and the power expressly to sign granted to the 3 of you, that any 1 of you can sign a transfer and since something has been paid to CHOW and HWANG – \$92,000 – they will be for ever estopped from ever claiming the remaining 8.8 million – that is correct, isn't it? Defendant's Evidence
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- 10 A. Yes, that is correct. Melville E. Ives – Cross-examination
- Q. And that is the intention of that clause?
- A. Yes, correct.
- Q. In other words, if we are right in our submission, the ultimate goal of these monies is Mr. CHOO Kim-san. The end of clause is perfectly comprehensible because it is intended to prevent even the remotest possibility of CHOW and HWANG ever arguing in any court that they have any right in any further monies?
- A. That was not the intention of that clause, no.
- Q. Then tell my Lord what the intention was.
- 20 A. The intention, when this document was drafted – it was drafted by me – the intention was that when we were ready to complete we would hand over to the CHOWs the balance of the purchase price in exchange for the Fermay shares and transfers and that the delivery of the shares and transfers would be sufficient proof of payment.
- Q. So you don't think that a cancelled cheque or a signed receipt over the local stamp is perhaps the best evidence of payment?
- A. No. At the time that this document was drafted this was thought to be an appropriate clause.
- 30 Q. Well, now, just let me see how that works out, Mr. Ives. This document is dictated over the telephone on to Mr. David NG's tape recorder, intended to be completed at least in part in Taiwan and he is to come back with the share certificates and the resolution of the 23rd March in his briefcase – that's right, isn't it?
- A. Which resolution do you mean there?
- Q. That is the resolution of Y. 1, 14, the one you have just been looking at, the resolution contemporaneous with the agreement entitling each member of the syndicate to –
- A. Yes, yes.
- Q. – to authenticate the share certificate or transfer –
- 40 A. Yes.
- Q. Would you like me to repeat the question?
- A. Just a moment, please.
- Q. By all means have 16 and 14 in front of you. They are both dated the 23rd of March.
- A. Yes, yes.
- Q. I'll repeat –
- A. Would you kindly repeat –
- Q. Yes, of course. Document 16 was dictated over the telephone to David NG on his tape recorder with the intention that it should be completed wholly

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or in part in Taiwan and that he should return with that and document 14, the resolution which he had taken with him – I'm sorry, the draft of 13 and bring those back from Taiwan with him.

A. 14 was something that he arranged with the CHOWs, I believe, in Taiwan while he was there at the time that the agreement was signed.

Q. So that at the time the agreement was signed the parties to it did something wholly inconsistent with that you say was the intention?

A. With my intention when drafting it.

Q. And you never thought that perhaps your moral if not your legal obligation to the – Mr. CHOW and Madam HWANG would require you to provide them with some sort of protection?

10

A. I am trying to give them some sort of protection in respect of the garnishee proceedings now.

Q. Except, of course, you are entirely free to pay the money to CHOO Kim-san, having signed the share transfers, aren't you, and Madam HWANG and Mr. CHOW have no redress. That's right, isn't it?

A. I'm sorry, I didn't get it.

Q. You are entirely free, having signed the share transfers which estops CHOW and HWANG from questioning that they have been paid and you are then wholly free to pay the 8.8 million to CHOO Kim-san.

20

A. This has nothing at all to do with CHOO Kim-san.

Q. So you say, so you say. Well, shall we consider something else and leave some of the mistakes which may have been made. There was a further discovery of last week of a couple of trust deeds which you had drawn up on instructions from LEE Ing-chee on behalf of CHOO Kim-san . . .

A. Yes.

Q. . . . whereby Asiatic and Triumphant were clearly declared to be nominees . . .

A. Yes.

Q. . . . or holding shares in trust for CHOO Kim-san, you remembered that Asiatic who held all the CHOW and HWANG shares were nominees of CHOO Kim-san, but you say you had forgotten that Triumphant was ever a nominee of CHOO Kim-san. You said you forgot it within a week?

30

A. Yes, I had it in my mind that Triumphant belong to FUNG Wing-tat.

Q. When did you first hear of Triumphant in relation to these transactions? Was it when you first heard of FUNG Wing-tat?

A. No, FUNG Wing-tat – I sold a piece of property to him, I think it was in 1973. I sold a piece of property to FUNG Wing-tat and Triumphant Nominees, I believe, was confirmor in practice, played some part in the purchase. I think that was about 1973.

Q. But you said you drafted the trust deed in 1974, you then forgot – your words were, I think in answer to my learned friend Mr. Swaine, you “forgot about it within a week.”

40

A. No, I said people come in and sign documents and perhaps a week later you see the same person in the street and you don't remember –

Q. It happens to counsel as well as solicitor, Mr. Ives. Don't distress yourself about that. When did the name of Triumphant first come to your notice in relation to these transactions?

A. I can't remember. It was probably some time in February, probably. I can't remember. January or February.

- Q. January or February. Would it have been when you saw the share certificate for 1.6 million which was from Triumphant Nominees? Supreme Court of Hong Kong High Court
- A. Yes, that was the shares purchased in –
- Q. – in Taiwan by David NG.
- A. Yes. I don't think I ever saw them. That was when trying to ascertain where other shares might be and also in relation to – I believe it was referred to in injunctions later, but – Defendant's Evidence
- Q. Well, perhaps we can get that another way. After how many visits by David NG to Taiwan did you realize that a company called Triumphant was in business to sell shares? No. 40
- 10 A. I can't say exactly when. At one stage we were trying to find more shares and we came across the name Triumphant then. That would be, I think that probably would be February some time, but I really cannot remember. That was in that period anyway, January, February.
- Q. Anyway, it was some time after the enterprise had got under way?
- A. Yes.
- Q. And after you had begun buying shares in the stock market?
- A. Yes.
- 20 Q. Would you look at Y.2, page 123 please? Would you look at the fourth and fifth lines please. "XXX Ltd. and YYY Ltd. of which the director is neither shareholder nor director holds substantial shareholding as nominee for the director in AAA Ltd. and BBB Ltd."
- A. Yes.
- Q. And you told my learned friend Mr. CHING yesterday, I think it was, that AAA was Asiatic and BBB was Triumphant and you also said –
- A. Yes. I recall now, yes.
- Q. Now, Mr. Ives, if you didn't know that Triumphant was in the business –
- COURT: No –
- 30 Q. Sorry, I misread . . . XXX and YYY. And you said they were Asiatic and Triumphant. How did you know on the 3rd of January which was the date when you say you dictated this below – although it didn't go off till the 4th – how did you know that Triumphant which you have forgotten about is a nominee and didn't know about till February was, in fact, willing to sell shares?
- A. Yes, I recall now. David NG made his search, he informed us of the major shareholders and he stated that the major shareholders were, amongst others, Asiatic Nominees Ltd., Triumphant Nominees Ltd. At that time I raised the point Triumphant – that is, FUNG Wing-tat – and I think we had – there was a discussion at the time as to whether the company was actually FUNG Wing-tat's company or CHOO Kim-san's company and so I put in the YYY there as – to cover both companies but at that particular moment in time I did not know in fact whether Triumphant was also CHOO Kim-san's property, company.
- 40 Q. You have been giving evidence for what, 4 days, I think –
- A. Yes.
- Q. I have some – over 50 pages of notes which I have read twice over the weekend. You have never mentioned until this moment that any company other

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than Asiatic and MAF Corporation had any shares for sale earlier than February of 1977.

A. It didn't have shares for sale, no. Another company had their shares, for example, there is – no, sorry, that is the other way around. That is MAF. We were dealing with MAF as well and –

Q. You see, it wasn't opened by Mr. Swaine either that there was a third company with shares to sell and your own –

A. No, it didn't have shares to sell as far as we were concerned. My point – our point was that the biggest holding was the 15 million. That was the holding we were after.

Q. You mean 17 million?

A. Yes, I believe it was 17 million at that time according to the records.

Q. And the evidence which you gave to my Lord I think in relation to the other company which had shares apart from Asiatic was MAF Corporation. You told his Lordship that they had many millions and you went on to describe how their holding of 2 or 3 million would only be significant if you could get the holding of Asiatic and you have never mentioned Triumphant.

A. At the time of this telex the 2 companies that we were referring to as companies we were interested in included both San Imperial Corporation Ltd. and MAF Corporation Ltd. There were 2 companies involved.

Q. That is AAA and BBB, isn't it?

A. Yes.

Q. I am talking about XXX and YYY.

A. Yes, yes. I can't remember now what the shareholdings were of the individual nominee companies in respect of those 2 property companies.

Q. Mr. Ives, isn't it a little odd that after 4 days of evidence plus the opening by your counsel, the only moment when you suddenly recall Triumphant Nominees had shares to sell prior to that telex is when I cross-examine you about it and very carefully giving you several opportunities to identify when it was that you knew about Triumphant?

A. Yes.

Q. And you know the answers you have given to my Lord.

A. Even at this moment I can't say definitely that I knew in – You see, we were dealing with 2 companies there and Triumphant, I believe, had a substantial number of shares in MAF. I think that is the position. I am quoting purely from memory.

Q. You see, it is the case of the plaintiffs that you knew, probably before – at any rate soon after CHOO Kim-san fled the Colony – that the Asiatic and Triumphant shares were for sale and that when David NG went out to Taiwan, he went out to set the deal up and you sent your telex when he had not reported back – as Mr. Swaine said – not reported back, you already knew there were 2 companies able to sell shares, XXX and YYY. That's right, isn't it?

A. Well, it's – First of all, I believe you said that even before he fled we knew etc. – that is quite wrong, of course. It was not until James COE approached us that this thing was conceived.

Q. I'm not saying that you personally knew. I am saying that just as David NG is the legman for you, HO Chung-po was the legman for CHOO Kim-san and they fixed it up together with your help. That's right, isn't it?

A. I don't think so.

Q. Shall we have a look and see what CHOO Kim-san did? It's implicit, is it not, in your case that CHOO Kim-san in Taiwan must have sold all his shares, or virtually all his shares, for almost – something in the order of ten cents –.

A. I don't know the price. We did sell – They'd be less than 20 cents.

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COURT: What was that?

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A. They'd be less than 20 cents, because that was about the market price at the time.

Q. "That was about . . .

10 A. . . . the market price at the time. At the time that he fled, I think they were maybe less than twenty cents.

Q. Given that they were nearer 40 – between 30 and 40 – we don't know exactly when he fled; we know he didn't turn it when it got to 20 in December. You were quite right.

A. Yes.

Q. But if the two people – Lee and Fan, I think – in Taiwan were prepared to sell at 20 cents, then presumably they must have bought at a lesser price.

A. Presumably, yes.

20 Q. So, he must have been selling for something around ten cents – I mean it might be fifteen?

A. I don't know.

Q. You don't know. But that must be so, mustn't it?

A. Not necessarily so.

Q. I accept the implied correction: it is almost in itself if it is so. Because they sold on within, according to you, within a matter of ten weeks.

A. Many a person has bought shares and sold at a loss.

Q. Oh, yes.

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30 MR. YORKE: If your Lordship would allow me to go back to the previous matter we were dealing with? Of course, my learned friend, Mr. Ching, has found his note of that.

Q. Isn't it what you said in answer to Mr. Ching you said that David Ng came to the luncheon meeting on 4th January and he said –

A. On the 4th January? Yes.

Q. I'm sorry, before that, he located a large block of shares in Asiatic's name. He said, "I thought that 17 million-odd in that name rang a bell." "Did it prompt you at all about Triumphant?" and you said, "At that time I had forgotten about Triumphant." You see, the evidence you gave is you'd forgotten about Triumphant.

A. Yes.

40 Q. You were asked if Asiatic prompted you about Triumphant and your answer was you'd forgotten about it.

A. In my telex of the 4th January – 3rd January, one of the companies referred to there was definitely intended to be Triumphant.

Q. Oh, yes?

A. Yes.

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- Q. We are on that, Mr. Ives; where we differ is how well you knew that Triumphant had shares to sell?
- A. I can't remember, but shares in – but shares to sell either in MAF or – well, we've never – I've never known of shares to sell in MAF. As far as the Imperial is concerned, I can't remember.
- Q. We'll leave that. Now I will go back to C.K. San. Your version probably – I suggest probably the fact that these shares were sold in Taiwan for a comparative song – something under 20 cents, probably ten, fifteen cents a time which, of course, is peanuts in relation to the thirty five million which you put on the whole shareholding. 10
- A. Probably. Yes.
- Q. It's a tenth of their value. Fifteen cents is one-tenth. That's what you say.
- A. No, it wasn't a tenth of the value because the market value was at about – was about 20 –
- Q. But it was a controlling shareholding, wasn't it?
- A. It was an effective controlling share but then CHOO Kim-san had had an effective controlling share in Taiwan and lost control of MBF.
- Q. Yes?
- A. So, to have an effective controlling share is not too safe.
- Q. But Mr. James Ko here – well, the whole syndicate working for him is prepared to settle for less than 51 per cent, wasn't he the – is giving him effective control. 20
- A. On a certain basis, namely with an irrevocable option, etc. to prevent those shares from getting into the hands of other parties.
- Q. Well, I don't want to spend a long time on this part of it. CHOO Kim-san had far and away under his control the largest single block of shares.
- A. Yes.
- Q. He probably had under his control, taking into account the Triumphant, the second largest single one – all equal – second largest block.
- A. I cannot remember how many. 30
- Q. The 2 million sixty-five thousand may have been slightly smaller than MAF.
- A. MAF had the largest.
- Q. So, he held the biggest and one of the next two biggest shareholdings.
- A. Yes.
- Q. Quite apart from any others which he might have through other nominees.
- A. Hmhm.
- Q. So, you say you agree, do you?
- A. Yes.
- Q. And, of course, it wouldn't surprise you to find CHOO Kim-san hadn't limited himself to two nominees. 40
- A. "Had no" . . .
- Q. Hadn't limited himself to only two nominees – wouldn't surprise you, would it?
- A. No, he need not have limited himself to two.
- Q. So, it would be consistent with everything we've heard about him so far. You know about it.
- A. Yes.
- Q. You told his Lordship in cross-examination that he was a shrewd businessman trying to get the best bargain, he took what he could, he was tight.

- A. Yes. Supreme Court
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- Q. Would it surprise you we were able to show from the documents which had been discovered eventually, including one document which we only saw on Friday, that CHOO Kim-san had sent up this whole operation ready to work before he fled the Colony beginning in August? Would it surprise you? Defendant's
Evidence
- A. That would surprise me.
- Q. It would?
- A. That would surprise me. Yes. No. 40
- Q. Why?
- 10 A. When you say "this operation", you mean this transaction? Melville E.
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- Q. A transaction whereby he would be able, having fled the Colony, to realise a substantial sum of money on highly portable assets.
- A. If you mean that he started arranging his affairs in August so that he could flee, that would not surprise me.
- Q. And would it surprise you that he so arranged his affairs in order to go with his shareholdings best distributed to set up some operation of the kind in which your syndicate is now engaged?
- A. I'm not quite sure.
- 20 Q. Well, I'll put it in some other way. I don't want to take too long. Would it surprise you that he had carried out in Hong Kong all the ground work and necessary preliminaries to enable him to dispose from outside the Colony of a very substantial effective controlling shareholding in San Imperial Corporation at a healthy price.
- A. That would not surprise me. No.
- Q. "No." And if he had in fact set up such an arrangement, perhaps it would surprise you if he were then having successfully fled the Colony, to sell the shares for a song.
- A. One can set up a scheme, but need not necessarily go through –
- 30 Q. Of course, we are all fallible, but would it be surprising to find a man of his reputation, described in your words a tight, shrewd businessman, took what he could, astute, set it all up over three months before leaving, arranged for somebody here to run things for him, which I can prove, and then when he gets to Taiwan, to sell it for less than a tenth of the value they can fetch.
- A. I would have said personally that a man who had built two empires, who had lost one in Malaya in circumstances whereby other parties had gained control, I am most surprised that he did not take some effective steps before he fled to convert his shareholdings into cash, because those shares were most vulnerable, and I would have thought that he would have done such a thing before fleeing, not leaving it until after fleeing.
- 40 Q. Of course, when you want to dispose of a large chunk, you can't sell it on the market because it collapses the price, does it?
- A. Yes.
- Q. And so you'd have to take up some sort of a deal of the kind that you set up – that took you several months to do.
- A. We had nothing to do with CHOO Kim-san.
- Q. The deal which you set up.
- A. Yes?
- Q. – to buy and sell a large chunk took several months.
- A. Yes, but that time was mostly spent in negotiations with the Chows, not in the

sale of the shares. The sale of the shares themselves, that did not prove to be particularly difficult because various parties were –

Q. Weren't the negotiations with the Chows for a sale of shares, Mr. Ives?

A. Well, protracted negotiations.

Q. They were negotiations for the sale of shares, were they not?

A. Pardon?

Q. They were negotiations for the sale of shares, were they not?

A. Between the syndicate and the Chows, –

Q. Yes?

A. – there were protracted negotiations, yes. 10

Q. Yes. It took you three months.

A. Yes.

Q. And it might have taken CHOO Kim-san three months and he's coming up for trial.

A. Yes, but between ourselves and ultimate purchasers, it could have been done in a very short period of time.

Q. As it turned out, perhaps Mr. San was unlucky. Anyway, you haven't answered my question, which is would you be surprised if having set up a deal before he goes, he then throws it all away when he gets to Taiwan? Surprising or not? It's capable of a yes or no, I think. 20

A. But the thing is did he throw it away?

Q. Mr. Ives, if you don't want to answer it, I won't pursue it.

A. No, it's – I'm afraid I cannot answer. I don't know if he threw it away.

Q. You don't know. Very well. You really think that Chow, Hwang paid a substantial price in Taiwan for shares in the company in Hong Kong which they didn't even seem to register?

A. Perhaps CHOO Kim-san found he had no alternative.

Q. Throwing it away when he got a deal set up? I'm not going to press you; his Lordship notices your reluctance to answer the question.

MR. YORKE: My Lord, may I pass up a document, P10, I suppose – P11, I think? 30

CLERK: P12.

MR. YORKE: P12.

Q. Mr. Ives, this is not a question, but I'll try and explain the document to you.

A. Yes.

Q. And then ask questions against the background of that. So, just bear with me for a moment, if you would.

A. Yes.

Q. It's an attempt to show on an examination of the document which you now see how CHOO Kim-san set up this arrangement and it's nothing like as complicated as it looks. 40

A. Hmmhmm.

Q. And – except where it's quite obvious it's not the case, the arrow is a transfer of registered shares, the number being shown by the break in the line from one holder to another. In one case, for example, the dotted line marked it down to MAF Corporation and an explanatory note against No. 3 but it's bought by

MAF Corporation but registered in MAF Nominees' name, you see?

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A. Yes.

Q. Well, now, and it shows shares coming from CHOO Kim-san, shares coming from stock market at the top, shares coming from private sellers on the right going to the hands of certain people in Asiatic Nominees (there'd be three holdings aggregated) and then split out four different ways, four holdings coming back into MAF Nominees in the middle and then finally the transfers into City Nominees which, of course, – a last level had been completed but it's not, I hope, misleading, for example, to show fifteen million already in the hands of IPC. You get the general structure?

A. Yes.

Q. Now, what I'm going to attempt to show by examining the documents and showing these transactions going through is what CHOO Kim San did: he was intending to flee the Colony where he had substantial fraud charges hanging over his head, and he got rid, in September, of his nine hundred thousand shareholding in his own name which virtually wiped out what was left of his shareholding in his own name. He also did one other thing; he got HO Chung Po, who was his leg man here – on whom I've got my subpoena in case you want to call him – to purportedly resign from Asiatic Nominees on, I think, the 11th August. He doesn't come back on again until sometime in February, when he happily, you'll remember, decides to pay ten thousand dollars out of his own pocket in order to wind up the company. But, no matter, that's what he does. And Asiatic Nominees who'd always been modestly active in the market, picked up from the stock market some 58,200 shares. I don't think you need do the arithmetic because there are errors in the document, but the totality of them is only a few hundred – it doesn't affect the principle – and you then have this augmented shareholding in Asiatic. What he does within the shareholding, which is not shown in both Asiatic and Triumphant, is he converts a large amount of the scrip into – it's in small denominations, a thousand shares at a time – into large denominations.

A. Yes.

Q. In other words, he's turning small money into big money.

A. Yes.

Q. But he also keeps, in the case of both Asiatic and Triumphant, a substantial holding in small denominations – a dozen times, he turns them all, and we shall suggest that is the obvious thing to do; he takes as much as he'd dare risk in large bills. Large bills are easily traceable and so he also has a lot of small ones in case some of the deal has to go through. You can't trace in small notes, like ransom money. And he then refuses, when he's out of the jurisdiction, to concentrate the whole shareholding into one person until he's been paid, or at least very sure of getting paid, because you can see he's at risk, he's a fugitive, he might be cheated by his own people that he's dealing with. And so he lets one shareholding go out to Fermay which is substantial but which really needs another big block to really give effective control and put somebody into a position whereby they can give themselves 51 per cent by buying in the market without driving the price too hard against them. And, in effect, he leaves MAF Nominees which he's holding as you see from the shares coming into it, a very large holding, although not as big as Fermay, but enough together with Fermay to provide effective control; and he puts or leaves MAF

under the control, as far as the shares were concerned, of his leg man HO Chung Po. Well, I'll go back a little bit, if I may. There is a difficulty for HO Chung Po and it's this: all the Asiatic shares – Asiatic Nominees' shareholding is under the control of CHOO Kim San and that happens to include a shareholding which really belongs to the MAF Corporation.

A. Which holdings?

Q. It's the 2.1 million – 2.15 – 2.15: it really belongs to MAF Corporation; David Ng has sworn so in affidavit and he appears to be right. Now those shares are still in the name of Asiatic. If he takes those away with him as well, which he could, well, in Asiatic's name and you can't tell one share from another – if he takes those away with him as well, then HO Chung Po is going to be in deadly serious trouble, because he was a director of Asiatic Nominees at the time the share transfers were signed; they all bear his signature. Although he resigned on the 11th August, he might have an enormous amount of explaining to do to his other employer, MAF; and MAF say, "Where are the 2.1 million shares which really belong to us which had disappeared and they disappeared on transfer forms bearing your signature." And that would lay Mr. HO Chung Po open to a fraud charge of some four million dollars which is the figure at which the MAF shares were standing in their books. You follow the reasoning?

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A. Yes.

Q. He's on both sides of the deal. There is no way in which there wouldn't be an onerous charge against him.

A. Yes.

Q. And so as part of this price of getting HO Chung Po's co-operation, CHOO Kim San has to forgo their 2.1 million shares and transfer them, just before he flees the Colony, into the name of MAF Corporation who have never been a shareholder of a registered shareholder of San Imperial any time before, so that the books on the shares balance; and that means that there is no longer any possible allegation of fraud that can be levied against HO Chung Po.

30

But there's another difficulty: that those shares stand in the books of MAF Corporation at four million – four million dollars – and if you remember the answer given in re-examination by Mr. Lee Ing Chee, they really got there by a breach of the Companies Ordinance, Section 48. Do you remember that?

A. Which shares are we talking about now?

Q. The shares in the name which – belonging to MAF Corporation but held in the name of Asiatic Nominees.

A. Yes.

Q. And what had happened, if I may refresh your memory, is that CHOO Kim San had owned money to MAF and he gave them a charge of his share in MAF.

40

A. Hmmhmm.

Q. In settlement of that debt – put them into a name of a subsidiary company, because that was a company buying its own shares with its own money illegally and subsequently, as we now know from the interim report of the inspector appointed by the Financial Secretary, those shares were swapped for San Imperial shares.

A. Yes.

Q. And that's how they come in.

A. Yes.

Q. But not the whole lot, but most of them.

A. Yes. One and a half million.

Q. But the trouble is – So, you've got an illegal transaction initiating then entry and a four million dollar debt as well as 2.1 million shares. So, HO Chung Po isn't quite out of the wood because he had been – he sold the shares but there's still an enormous loss if they're sold at any price you can get in the market at the time – 40 cents – because they're standing at 2 dollars. And therefore although he might not be at risk on the shares themselves, he may, since he's on both sides of the fence – Asiatic and MAF – be at risk if MAF, in shaking financial circumstances, turns out to have a very large deficit on this transaction. You see the risk?

10

A. Yes.

Q. So, in order to wipe out the loss on the books, it is necessary for MAF to acquire some more shares so that he can sell the whole lot at a big enough profit to wipe out the whole of the value standing in its book. You see?

A. Hmhm.

Q. And it's not obvious you're going to sell them at only two dollars. Now, the interesting thing is this: MAF deal in the market not for the figure that David Ng says in his Affidavit – 2.1 million – or 2.1, it was – 1,072,000 shares. They deal in the market actually for a very much smaller quantity which is shown there – 7,369; they also pick up – you see the seven hundred thousand going down there?

20

A. Yes.

Q. To a pretended transaction in the market – seven hundred thousand which come direct out of Asiatic Nominees. I'll show you this all on documents in due course. Now, when you add all of those shares up together, if you multiply them by 1.5, which is the share price arranged the following Easter, it exactly wipes out the book debts in MAF's books. Now, these shares, all of them, including the washing in the market, were all bought between the last day of August and the last day of November of 1976 – just entered the market for a very short period, bought enough shares to enable them at a price of 1.5 dollars to wipe out the book debt. And you see we shall say two things: They only went into the market which they'd never done before for a very short time and bought an exact number of shares to wipe out nearly fourteen hundred thousand dollars and a four million debt. They can only do that if they knew that the shares were eventually going to be sold for \$1.5 and that is the price which you, you say, independently you agreed to pay four or five months later in the MAF option. We say that HO Chung Po knew – that's why he arranged the share buying in 1976 – he knew you were going to buy at 1.5 and so he bought enough shares at lower prices to make the total cancel it. So we have another of his attractive, self-cancelling interest into the books and CHOO Kim San has wholly protected his leg man by providing him with shares so that he's not liable to a fraud charge and wholly protected him, protected him against MAF by providing him with enough money to wipe out that account in MAF's books. Are you with me on the story so advanced?

30

A. Hmhm.

Q. And we shall say that the only way he could have known how many shares to buy to do this was by knowing that as part of the deal whereby – whereby

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a potential purchaser such as James Coe would get effective control was that MAF was going to have to be bought out at \$1.5 and he knew you would buy. That was part of the deal.

A. In September?

Q. Yes. Yes. Yes. Yes. Anyway, in August. And the only reason he resigned from August and came back in February and kindly put his hand in his pocket for ten thousand dollars to wind up Asiatic Nominees was to keep himself on one side of the fence whilst these transactions were going on; then he had to come back in in order to conclude the agreement with MAF through you; and we can show Mr. HO Chung Po's involvement in this also in that as a director of MAF Corporation he took no interest, as far as we can see, in the share registers except on two occasions: one is when those seven hundred thousand shares were washed through the market when he personally signed the share register – a huge blue book. Of course, it is somewhere. Is it still here, the register? Well, we'll see it in due course. It's a very, very big blue book; it's about this size (indicates), I brought it back in this morning.

A. I think it's there.

Q. Would somebody pick it up so that his Lordship can see what I'm talking about? That's it. Yes. That's it. That's the blue book. The only time and the only other time he took an interest was when, as you said, at David Ng's request he expedited the Fermay transfer; except on those two occasions Ho Chung Po on documents had never interested himself in the share registration activities of MAF.

And we get the situation whereby on the advice of someone with knowledge of the law, of course, with the way things are turning out, it becomes necessary to interpose what in spy stories are called 'cutouts' between CHOO Kim San and the ultimate purchasers and they are provided by Mr. Chow and Hwang, who are not fictitious figures but who are people who have no interest in the outcome of these proceedings because they had been paid – paid 92 thousand dollars. They may have been paid a bit more by CHOO Kim San – they may have a bit more to come when he eventually gets his money – and it was necessary in the agreement with them to provide that they could not sue for payment, if they had decided to cheat on CHOO Kim San, by making sure they had no control over the transfers and by providing that it was not necessary to pay them any money in order to prevent them from saying they were unpaid. Hence the estoppel provision at the end of Clause 4.

The next thing which was done was to have the Triumphant deal run slightly behind the Fermay deal so that initially whoever was going to do the buying and make a profit of which CHOO Kim San wanted his part, had enough so that they couldn't be welched on – they got about two-thirds of what was available but still needed another big chunk before they could look forward to getting control. That is what is known in England as the 'Stokes and Cambridge principle'. You know Stokes v. Cambridge? There's no reason why you should; it doesn't apply here.

A. No.

Q. If you own the only means of access to a parcel of land, you can charge much more for it than the acreage of land is worth, because it's the key to getting in.

A. Correct.

Q. And even with the 15 million you're still a long way short of control, but with

the other 8 million, then you're pretty well assured. And so that transaction was always kept in step. And in order to control, HO Chung Po took an interest in the registration of the shares to ensure that there was no attempt to sell them elsewhere and dissipate the key money value of the smaller charge, hand it over on a kind of trust, larger charge, and that was done in this way. So, at the end of March the share transfers were registered on consecutive days – Fermay and MAF – and it was only after they had been done the following day that HO Chung Po was prepared to sign the option agreement. In other words, if there had been any attempt to dispose of the 15 million elsewhere and to welch on CHOO Kim San, then the option agreement would not have been entered into and that is why the transactions go through on three consecutive days, because HO Chung Po was keeping in control here.

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Well, that's the way you say it was done, Mr. Ives?

A. You say this was planned in September?

Q. Yes. What I propose to do now – I had thought of doing it with Mr. David Ng, but I understand he's going to give his evidence in Mandarin and it may be that it's easier to do it with you – is to take you through the outline of it because it's only fair you can see how we put our case.

A. Yes.

20 Q. But I can quite understand if you would say, "Then it's going to be a matter better answered by Mr. David Ng."

A. I appreciate that.

Q. But obviously I've got to put the case to somebody.

A. Quite.

MR. YORKE: My Lord, this will take a little time, but I could use part of this afternoon, unless your Lordship wants it to be done in one go?

MR. IVES: If I may mention, I have an appointment with the dentist at about a quarter to 5.

30 MR. YORKE: I trust you're going to find that as painful as my cross-examination, Mr. Ives.

MR. IVES: I'd rather be at the dentist's than here, I'm afraid I must say.

MR. YORKE: My Lord, I'm in your Lordship's hands. I shan't finish tonight.

COURT: 20 minutes is not going to make much difference, does it?

MR. YORKE: No, my Lord.

COURT: Anyway, we'll adjourn now. Very well.

Appearances as before.

D.W.1 – Melville Edward IVES

XXN. BY MR. YORKE (Continuation)

COURT: Mr. Yorke, have you left Exhibit P.12 or are you about to go on to another subject?

MR. YORKE: My Lord, I should be spending quite a long time on P.12.

COURT: Because there are things I don't quite understand. It may become clearer as you go along.

MR. YORKE: I took it rather at a gallop yesterday afternoon. Everybody at this table told me so after the court adjourned. May I just deal with one or two other matters first.

Q. Mr. Ives, I apologize for treating you like this, but in effect these are matters which I would have opened on and the points put to you had I had the documents. I just want to give you a document now and that has nothing to do with cross-examination yesterday. 10

MR. YORKE: It becomes P.12 – P.13. It may require modification later.

CLERK: P.13.

Q. I will tell you what it is. It represents a week-end's work by my junior Mr. Winston POON. It is an attempt to analyse on the documents that we have the payments in and out between everybody looking and about so that we know what was self-cancelling and what was outstanding and where a document is known in court its number is given against the payment, but otherwise this represents the transactions as they were opened by Mr. Swaine and as they were given in evidence by you. 20

A. Yes.

Q. Now, I am not going to cross-examine you on that.

A. Yes.

Q. What I am inviting you to do is when you leave the witness-box to invite perhaps Mr. David NG – whoever you think is appropriate – to see whether there's anything wrong with this, anything being left out, so that – any errors or omissions . . .

A. Yes.

Q. . . . so that when it comes to perhaps Mr. David NG, we shall know at least as to what the payments were, which way they went, there isn't any difference between the parties. For my part at any rate – I don't know about anybody else – I should have no objection to your talking to other people about it notwithstanding the fact that you are giving evidence. 30

A. Yes.

Q. I am sure as a solicitor you will appreciate that you should only talk about these things and not about other things.

A. Yes.

Q. I will certainly not stop you from talking to your counsel or other witnesses about this document. 40

A. Yes. That goes for both documents?

Q. Oh, certainly P.12 – if you like, but I am only asking you, Mr. Ives. I can't

force you. It will be sensible for us all to know there's no difference between the parties as to what the payments were for and which way they went.

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A. Yes.

Q. Now, the next – I am coming to the draft, but in effect I am now putting to you matters which I would have opened on and I want to say two things. The first is: if you think I am going too fast or you want me to do something or do it again, please say so.

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A. Yes.

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Q. And don't take anything for granted.

A. Yes.

Q. Secondly, you will appreciate and I ask you to appreciate that I am certainly not implying in this that you yourself knew what C.K. San was doing.

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A. Yes.

Q. But you do understand as a lawyer and as a member of the syndicate that if any member of your syndicate did know what C.K. San was doing then unfortunately you are deemed to know what's going on together.

A. Yes.

Q. I have already suggested of course that the people who really knew what's going on were HO Chapman (the leg man for C.K. San on one side) and David NG as the leg man on the other side.

A. Yes.

Q. All right. So, therefore, if I say you knew – in case it may well be that you personally Mr. Melville Edward Ives do not know, but I should say the necessary implication is somebody knew – probably David NG. Whether he told you or not, I don't have to prove.

A. Yes.

Q. Well, perhaps one other general matter about P.12. You have it in front of you. You won't need any financial documents this morning at all, so if you want to put them on one side for the moment.

A. Yes.

Q. One other general matter about this is that you see down the middle is a dotted red line.

A. Yes.

Q. And it is our case that all transactions to the left of that line were transactions deriving from C.K. San and under his actual or partial control and are tainted transactions.

A. Yes.

Q. The transactions on the right of that line are, so far as we can see at the moment, transactions in respect of which we would have difficulties in proving that they were tainted.

(Witness nods head).

Q. Sorry, you nodded, Mr. Ives. The shorthand writer does not get the nod.

A. Yes. I am not agreeing. I am just absorbing your statement.

Q. I am not conceding in this case that they are genuine transactions, but I am merely saying as a matter of burden of proof that I can't prove that they were not genuine. The result of that would be, as you will appreciate, that in relation to the 15M. Fermay shares at the bottom left, the 2.1M. coming from

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transfer from Asiatic into M.A.F. Nominees (that's the shares bought privately in Taiwan by Mr. David NG it is said) and the 700,000 which we say "wash" in market' with a '5' against it – that all those shares therefore amount to about 18M. and we would be entitled to some sort of relief; but, in relation to the shares on the right hand side which amounts to some 5M. or so – even if you succeed at the end of the case – nevertheless your syndicate would still be entitled to whatever profit it has made on the shares on the right because we would have no interest therein.

A. Yes.

Q. The other general matter is: you see, there was originally a pencil line which zigs across the page – in effect, what we say is that there are no errors left of that line because all the figures are precisely supported by the documents. 10

A. Yes.

Q. But when you get to the right of that line either as in the case of David NG's purchases in the stock market – we have never seen any documents, so I can't say whether they are right or wrong. In relation to the two transfers (M.A.F. to City and City to I.P.C.) there are certain inconsistencies in the documents which make it difficult to say whether one thing is right or another.

A. Yes.

Q. But the amounts involved are extremely small. It's a few thousands. That's all. I don't myself propose to take any point on the differences. 20

A. Yes.

Q. It in no way affects the principle.

A. Yes.

COURT: So, the red squares represent figures which are not entirely correct.

MR. YORKE: My Lord, yes. They represent two things, my Lord. To the right of the pencil line, there may be errors of a few thousands in them, more likely in the second than in the first; but, also, since shares are coming into those transactions from the left of the dotted line – left of the red line, they include some tainted shares and some untainted shares. Your Lordship will see thus following the line down, for example, under the 'c' of 'stock market', you get 7,000 untainted shares going to M.A.F. Corporation. They then go into M.A.F. Nominees by adding together the 2150 from Asiatic and increasing that figure to 2157. They get into M.A.F. Nominees – it is almost a wholly tainted vehicle – and then come back to City Nominees. So, there, you have 7,000 shares which cross over the red line on the way but really when they get back to City Nominees they are still untainted. This is the better way one could describe it on one piece of paper. 30

Q. Now, what I am going to show you, Mr. Ives, is that this chart is entirely supported by documentation and the inference which I invite his Lordship to draw at the end of the day is that this shows a clearly carefully worked out premediated plan by CHOO Kim-san which was put effectively into operation in Taiwan with the co-operation of Messrs. David NG, HO Chapman – HO Chung-po and CHOW and HWANG. The reason why we have only got it is – and I am having to do it this way with you – is that we have some difficulty in getting at the documents and it was only when we finally got two docu- 40

ments on Friday last week that I was able to produce this chart which is in fact my 9th attempt to construct the deal.

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A. Yes.

Q. Can you tell my Lord why it was that we were never able to get on any inspection, including my own visits, the share ledger card for M.A.F. Corporation?

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A. I have no idea.

Q. You do know of course that we wrote to you and asked for it and you replied yourself on the 24th of October – this is the exhibit to your affidavit in 2459 of the 24th of October – after we had made abortive searches suggesting that we made the searches ourselves.

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A. Yes.

Q. And that we then wrote to you again and you finally on the 27th of October gave us the information we wanted, that is, after the action had been going on for nearly four weeks. That is correct, isn't it?

A. Yes.

Q. Would you like to – it has not been put on any file, but it will be. There's so much paper that it's difficult not to lose track. Is that the letter?

A. Yes.

20 Q. I'll pass it to his Lordship perhaps. Probably, he hasn't seen it so far.

(A pause. Court looks at document in question).

Q. Mr. Ives, may I have that back? We will see that it does get into one of the bundles. The juniors can get together on this.

A. Yes.

Q. It was only then after you had stated that the shares were in the name of M.A.F. Corporation Co. Ltd. – I think it's not on the computer.

COURT: Have you another copy?

MR, YORKE: My Lord, there must be another copy.

(Court given copy).

30 Q. At last, on Friday last week, the blue card for M.A.F. Corporation was produced – but together with the big blue transfer ledger. That was a card which was not made available on any of either Johnson, Stokes & Master's inspections or my own notwithstanding they were in Mr. David NG's office. We asked for it – we asked for the relevant cards. With the assistance of two other people, we searched the bundles. Can you give my Lord any explanations why it was that we were unable to get that one blue card until last Friday?

A. I have no idea. I gave – I made the request that every facility be granted to your clients to make the searches that they wished to make.

Q. But the card was not there, Mr. Ives.

40 A. Yes. I have no idea.

Q. Oh. Let's get down – I am going now to give you a bundle of documents which are copies of the relevant . . .

(A pause).

MR. SWAINE: My Lord, I think the difficulty may have in many cases been one of communication because it wasn't until I myself personally intervened, at Mr. Yorke's request, and understood actually what was wanted that we got the papers produced which he specifically wanted – which I understood he wanted and was able then to pass them on to my clients. We were not asked for, but we voluntarily produced, the big register because we thought that would assist Mr. Yorke in understanding the entries in the blue cards. So, I think we must dispel any suggestion that there was any attempt either not to co-operate or to conceal. As soon as I understood what was wanted and was able to explain to my clients, my Lord, the papers were forthcoming and more than was requested was forthcoming. 10

COURT: Very well.

MR. YORKE: My Lord, I accept my learned friend's explanation which covers all the documents except the M.A.F. Corporation blue card which was not in Mr. David NG's office when I went there and was not then made available. Of course, all the other cards were.

Q. Now, I am now going to pass up to you a bundle of documents. We will put this in a folder later. They are . . .

MR. YORKE: . . . My Lord, perhaps the bundle will be P.14. 20

CLERK: Exhibit P.14.

Q. Most of these documents are already in other bundles.

MR. YORKE: My Lord, at the foot of each of them is written in Mr. Christopher Wilson's writing where they originally came from. Rather than having about six different bundles opened simultaneously, we have collected them all into one place and added one or two documents. Effectively, what your Lordship has in the bundle are those ledger cards of shareholders in San Imperial Corporation which have been produced at various times and exhibited to various affidavits plus certain others (including in particular MAF Corporation which was not found and, finally, at the end, a set of documents of Malaysia America Finance Corporation which was exhibited to Mr. David NG's principal affidavit in the interlocutory proceedings) – and now they are all in one place. 30

Q. Mr. Ives, I am sure you are familiar with the system of share transfers in Hong Kong, are you not?

A. Basically.

Q. Basically. Just so that there can be no mistake, shall we just go through, as it were, a kindergarten exercise to see that we are agreed upon this.

A. Yes.

Q. Because I have found in fact a difference with a stock broker only last week.

A. Yes. 40

- Q. When you buy shares in a company for the first time, you are issued with a certificate which bears a number itself. It is issued in your name – ‘Mr. Melville Ives’ I presume, and it states how many shares you own in the company.
- A. Yes.
- Q. Having bought that from the company if you wish or if you were to sell the shares to somebody else, then you have to deliver to him for delivery to the company that share certificate accompanied by a transfer form which identifies that share certificate number.
- 10 A. Yes.
- Q. And you sign it. Would you just look at one. I think it will be helpful. In Brown 3 – Exhibit P.11A – just as one example.

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(Witness given original).

- Q. This is a transfer form and it states the certificate numbers. That refers of course – it is a transfer by Asiatic Nominees. The certificates would be – Asiatic Nominees is the shareholder and then it has to be – the total is of the number of shares comprised in those certificates which the court has to check. There’s the signature of the transferor and the signature of the transferee. What I want is the little box at the bottom. You see, when that gets to the registrars, the registrars allocate to the transaction which they are being asked to put through a transfer number. You see, there’s a transfer receipt number – in this case, it is ‘4826’. It doesn’t matter.
- 20 A. Yes.
- Q. And that transfer number goes into that big blue book there.
- A. Yes.
- Q. And the same transfer number will appear on the purchase side of the account so that if one examines transfer 4826 in the book we will find sale of shares by Asiatic Nominees – shareholding decreased by that amount, and with the same transfer number a purchase or acquisition as it is called by, in this case, Fermay Co. Ltd. for that amount – shareholding increased by that amount. That’s correct, isn’t it?
- 30 A. The same transfer.
- Q. The same transfer.
- A. Yes.
- Q. And the elegant simplicity of the system and of book-keeping is that at the end of each day’s business the exact balance of shares, transfer, shares acquired . . .
- A. . . . Yes.
- Q. And so, for example, looking at the first page of P.14 – I will take a number which has nothing to do with this case – ‘3637’ on the left. That shows that Mr. C.K. San has transferred out of his ownership three parcels of shares: one of a million and two of 500,000. Do you see that?
- 40 A. Yes.
- Q. And if we went to that ledger for 1974 and look for the transfer number ‘3637’, we will be able to find who he has sold them to.
- A. Yes.

COURT: The transfer number on page 1 of Exhibit P.14 is the same as the transfer

receipt number, is it?

MR. YORKE: Yes, my Lord.

COURT: Yes.

MR. YORKE: Yes. Your Lordship will see it applies in relation to the actual transfer in this case and that number '4826' at the bottom of P.11A will occur on the relevant document.

Q. But the important thing, Mr. Ives, is that that transfer number appears on both the seller's and the buyer's side.

A. Yes.

Q. And in fact it must be, mustn't it, otherwise you couldn't have a nil balance at the end of the day. 10

A. I would imagine so.

MR. YORKE: My Lord, Mr. Swaine invites me to tell your Lordship what's absolutely maddening about this machine which is used by the registrars and that is that the comma is in the wrong place – it's not after the million figure; it's after the hundred thousand figure. It makes one rather dizzy at times, particularly on that copy. It is always – always in the wrong place.

Q. Well now, let's see what CHOO Kim-san did. You will remember, if you look at the document now, that when I say he's a leg man (HO Chung-po) and has resigned from the board of Asiatic Nominees on the, I think, 11th of August 20

...
A. ... Yes.

Q. Sorry. Do you agree that?

A. He told me he resigned. I can't remember.

Q. We should say that was the beginning of the enterprise. Now, if you look at his ledger card, you will see that although he at one time had a lot of shares he had got rid of them and that by the end of 1975 (15th of December, 1975) all he held was in the last column but one, about an inch from the bottom – 1.9M. – 190,000.

A. On my copy, it stops at '6'. Maybe the scotch tape ... 30

Q. ... That's right. It does stop at '6'. The originals are here somewhere. I think they are at the side actually. Will you take it that is in fact ...

A. ... 1.9M.

Q. 1.9M., yes, at the end of December. On the 3rd of November, 1975, on transfer '4168', he disposes of a million shares in fifty thousand shares each. You see, he disposes – '4168' ...

A. ... Yes.

Q. To get rid of certificates 18759 to 778 inclusive which is 20 certificates of 50,000 each.

A. Yes. 40

Q. And which leaves him with a mere – it's a transfer – share transfer of 1M. balance – 957,600.

A. Yes.

- Q. He's left with 900,000 shares. On the 1st of September, 1976, he then transfers all of those shares to the nearest 100,000 – 900,000. You see transfer '4711' – an out-go at 900,000 shares. It's at the bottom. Supreme Court of Hong Kong High Court
- A. I don't think they go out. I think it's a conversion.
- Q. You will see in a moment that it's not a conversion. There is in fact a mistake here, but you are perfectly right that there is a conversion. What he does is to change the shareholding (share certificate ?) of 18537-554 inclusive (50,000 shares each) into 58373-81 (78373-81 ?) (shares of 100,000 each). That's what appears to be there. Defendant's Evidence No. 40
- 10 A. Yes. Melville E. Ives – Cross-examination
- Q. In fact, something rather funny happened because if you turn over the page to page 2 the entry is reversed. The last entry appears to reverse, the one which looking at it made it look like a conversion – don't worry about this Mr. Ives. In fact, it's all a mistake.
- A. Yes. I am looking at the intervening transaction.
- Q. '4712' has nothing to do with the case.
- A. Yes.
- Q. It has nothing to do with the case. It's only transaction '4711' which we are concerned with. Don't worry. In fact, what's happened is that the girls took the entry into the wrong column.
- 20 A. I must say I don't understand this because . . .
- Q. . . . Mr. Ives, there are one or two mistakes. This is an actual – it is an error in the way it has been set out on the form. Fortunately, it's on the first form and it doesn't happen again in any other document. What I – perhaps we have a short circuit – you trying to analyse what you think is a difficulty – by going to page 6, would you? Page 6.
- A. Yes.
- Q. You see at the top of page 6 which is the 21st page of Asiatic Nominees the date '1st of December'. It is transfer No. 4711.
- 30 A. Yes.
- Q. And that has against it certificate numbers '78373-81' inclusive which correspond to those at the bottom of page 1. The same transfer number.
- A. Yes.
- Q. And the same certificate numbers – '78373-81'. Have you got it?
- A. Yes. I still don't understand it. I don't . . .
- Q. . . . Mr. Ives, please, we could look at the ledger, if you like.
- A. Yes.
- Q. Would you accept it from me it's not material, that on pages 1 and 2 the girl operating the machine has made a mistake which is quite irrelevant to this case. That's why I did not want to go through the conversion. It is irrelevant. But, you see, what's important is for '4711' which is a transfer out – she put the figure of 900,000 in the wrong column, but you can see if you really want to satisfy yourself that there must be a transfer out if you look at page 2 because the balance of 957,600 reduces to 57,600 – you see page 2, Mr. Ives?
- 40 A. Yes.
- Q. Just look at page 2.
- A. Yes.
- Q. You see, there's a balance of 900,000 odd and after the transaction is gone through although it shows an acquisition in the wrong column the balance

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reduces to 57,000, whereas of course if it had been an acquisition it would have gone up to 1.8M.

A. Yes. So, that's in the wrong column.

Q. It's in the wrong column. The girl made a mistake. It should be in the transfer column.

A. That's why I couldn't understand it, yes, yes.

Q. It is a mistake I'm afraid. It's annoying when it comes first.

A. Yes.

Q. The important thing is – look at '4711' (It's the transfer number) and you see that group of certificates '78373-81' and when you go to page 6 you see the same transfer number and the same date and the same group of certificates being acquired by Asiatic Nominees. 10

A. In other words, she should have entered the acquisition of those 100,000 each certificates straight into Asiatic Nominees Ltd. and in error she entered them on C.K. San's . . .

Q. . . . No, no, they were C.K. San's shares.

A. Originally, yes.

Q. Yes, up until the 1st of September.

A. Yes.

Q. The error she has made, if it matters, is this – is that that she should never have put on P.14 the numbers '78373-81' because the share certificates he was really selling were '18537-554'. 20

A. At the time, yes.

Q. That's what he was really selling.

A. She should not have put them on Asiatic.

Q. And the share certificates that were issued to C.K. San – to Asiatic were '78373-81'.

A. Yes.

Q. You see, that's why I said it wasn't a conversion as you thought it was at first. 30

A. Yes.

Q. It was a mistake.

A. Yes.

Q. So, there, we have on the 1st of September – I mean, it's now proved to be a mistake – we have Asiatic Nominees acquiring 900,000 shares from C.K. San.

A. Yes.

Q. And if that's right it shows from the balance in the last column but one where the holding of Asiatic goes up from 1.5M. – from 15M. in this case – to – well, somebody has put the dotting in the correct place – to 16.6M. 40

MR. YORKE: Your Lordship will see it's a rather bad copy. The machine copy is still in the wrong place and somebody has put a pencil tick in the right place.

Q. So, there is no doubt what's been there first.

A. (No answer).

(A pause).

- A. There is another conversion here, I think. We have got the 3rd of September for the 1st of September. I suppose that's because of that error. It's got out of order, I suppose. Supreme Court of Hong Kong High Court
- Q. Well, I don't know what the – that may be the explanation.
- A. Yes. Defendant's Evidence
- Q. Because if you look at the earlier pages – 4 and 5 – you will see that page 4, 6 lines from the bottom of the left hand side, they put through transactions of the 1st of September, they then go to the 3rd of September for the next page and a half and then revert back to the 1st of September. You will find this state recurs again and again, Mr. Ives – the 1st and 3rd of September – when the registrars were really doing almost nothing with C.K. San's transactions. No. 40
- 10 A. Yes. Melville E. Ives – Cross-examination
- Q. That again, Mr. Ives, is not a very significant point. Don't worry about that being out of order.
- A. Yes.
- Q. We have established beyond doubt that there was a transfer of 900,000 shares from C.K. San to Asiatic Nominees.
- A. Yes.
- 20 Q. So, that's the first item on P.12. That's right, isn't it?
- A. It seems to be correct, yes, according to these documents.
- Q. Yes. Now, can you think of the reason why Mr. C.K. San might have transferred those shares to Asiatic Nominees out of his own name?
- A. I have no idea.
- Q. We suggest he's making up the parcel in order to put this deal through. Mr. Ives, I am not going to insult your intelligence by repeatedly making that suggestion to you every time we come to a transaction. So, if the suggestion is there, the implied question is there – 'why would he do it except to set up his deal'.
- 30 A. Yes.
- Q. Now, let's look at the next thing that he does and this will go to Triumphant Nominees. Would you look at page 11 of the bundle. This is the page of Triumphant Nominees. You see on the left hand side that they haven't done anything after October '75 – no trading by Triumphant Nominees at which time he held 2.05M. shares, and that figure '2.05M.' you will find is the top left hand figure on P.11 – P.12 – Triumphant Nominees' initial holding.
- A. Exhibit 12.
- Q. On the chart.
- A. Sorry – yes.
- 40 Q. There's the figure '2.05M.' there and it is at the top left corner of P.12.
- A. Yes.
- Q. Now, on the 1st of September, again, you see CHOO Kim-san converts – this is a conversion of a mass of small certificates into one big certificate. That is transfer No. 4708.
- A. Yes.
- Q. And, effectively, what he is doing is . . .

COURT: . . . Sorry?

MR. YORKE: '4708', my Lord, is after the big gap in the second transfer column. It is No. 4708 – transfer No. 4708. Your Lordship, it is not very clear.

MR. YORKE: Oh, I see. Yes.

Q. And what he is in effect doing is what you rightly called a conversion. He is converting small bills into big bills.

A. Yes.

Q. Which is done – has to be done in the company by effectively selling to yourself, and what he has done is to transfer out this mass of certificate numbers for various amounts which appear in the number column and there you have to add up all the figures from '22,000' at the top to '554,000' at the bottom. If you add up that group of figures – sorry, and including the '100,000' – if you add up that lot, they come to 1M.

10

A. Presumably so, yes.

Q. They do. I have checked all these with my machine. They add up to 1M. So, if you put a bracket round the column – all those figures on the right column, they add up to 1M. He, as it were, transfers those out of his name and is issued with one certificate which is No. 78357.

A. Yes. It looks like it. Yes, it is not quite clear. I think it is right.

Q. Again, we have verified all these figures against the blue cards.

A. Yes.

20

Q. So, you can take it from me what he has done from the 1st of September is to turn, for the benefit of Triumphant Nominees, a mass of bills into one big million dollar – million share certificate.

A. Yes.

Q. All right. Let's leave Triumphant for a moment and look if you would at what he did for Asiatic on the same day. If you look at – it is more complicated with Asiatic. Take page 4, will you. This is the one that got out of order. You see page 4 where an inch from the bottom the date changes from the 1st of September to the 3rd of September. It's transfer No. 4709.

A. Yes.

30

Q. And that transfer number continues over the whole of the next page.

A. (No answer).

Q. Do you see that?

A. Yes.

Q. Now, you see what looks at first sight to be a million cancellation entry, one against the other? If you care to work them out and work out the numbers of certificates which are being sold, you will find that what's happened is this: that he has converted 6M. small bills into 6 individual share certificates of a million each.

A. Yes.

40

Q. Can I just show you where they are. In the last of certificate nos – you will find just opposite each of the number of shares acquired – opposite each million figure a number, and if you would just underline or perhaps mark – the first million shares acquired appears in the 4th column – the 5th column – that there is the number – the share certificate 78371. It is the second number down.

A. 78371, yes.

Q. Yes. And if you would like to put just a little tick against it . . .

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COURT: . . . Sorry?

MR. YORKE: Under 'Certificate No.', there is the first entry '78386-7'.

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COURT: Are we looking at page 4?

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MR. YORKE: Page 5. Oh, I'm sorry, page 5.

COURT: '78371' . . .

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MR. YORKE: . . . That's opposite a million acquired.

COURT: Yes.

Q. You got it, Mr. Ives?

- 10 A. Yes.
- Q. If you then go down to the next million shares acquired, you will see against it the number '78370'.
- A. Yes.
- Q. The next million – '78369'.
- A. Yes.
- Q. Almost illegible against the next one – '78366'.
- A. Yes.
- Q. And then against the next one – '78367'.
- A. Yes.
- 20 Q. And the next one – '78368'.
- A. Yes.
- Q. Of course, all those you have picked up are in fact the sequence of six shares (share certificates ?) from '78366' which is the middle one at the bottom up to '78371' at the top.
- A. Yes.
- Q. It is six consequential numbers each for a million.
- A. Yes.
- Q. So, what he has done for Asiatic Nominees on the same day as he did it for Triumphant is to convert a mass of small bills into six large bills.
- 30 A. Yes.
- Q. The next thing is where Mr. HO Chung-po comes into it. Again, it happens on the 1st of September. You will remember that M.A.F. Corporation owned 2.15M. shares in San Imperial.
- A. I can't quite remember the correct number.
- Q. That's in Mr. David NG's affidavit.
- A. Yes.
- Q. 27th of July.
- A. Yes, yes.
- Q. That's the one which – if I may refresh your memory, that's the one which
- 40 we say was acquired by a breach of Section 48.
- A. Yes.

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- Q. And then there was a swop which appears in the Inspector's report.
- A. Yes.
- Q. They were all – they were still held in the name of Asiatic Nominees.
- A. Yes.
- Q. And if you will remember, this is what I said: "Isn't it curious that instead of going off with those share certificates as well, he does something else". Let's see what he does. If you would look at page 4 again. Half way down the page, you will see after the acquiring of a number of shares – the amount of those shares acquired, by the way, is 58,200 – if you add up that lot (that is, 58,200) – and that's the figure on P.12 which appears as coming out of the stock market into Asiatic Nominees . . .
- A. . . . Yes.
- Q. That's one of the things which he did. He mixed it all up. That's where it comes from. We haven't had time to prove that that's a washing-up operation.
- MR. YORKE: My Lord, your Lordship sees that it comes out of 'Stock Market' into 'Asiatic', and we have done the adding up under 'Asiatic Nominees' to show how we eventually got to the figure.
- Q. Now, immediately after that is an apparent series of transfers out. Would you ignore '4697' of a thousand shares which has got, as far as I could see, nothing to do with the case.
- A. Yes.
- Q. And if you add up those shares on the right hand column, they come to 2.15M.
- COURT: All the '4698's?
- MR. YORKE: Yes, my Lord.
- COURT: Added together.
- MR. YORKE: And it comes to 2.15M.
- Q. You must ignore the 1,000, Mr. Ives.
- A. Yes. We have got four lots of half a million and three lots of 50,000.
- Q. Yes.
- A. Yes.
- Q. 2.15M.
- A. Yes.
- Q. Now, if you would now go to page 12. The certificate we have got on Friday – you will see '4698 – the 1st of September' – the transfer number.
- A. Yes.
- Q. There had been issued to the buyer 2.15M. shares.
- A. Yes.
- Q. In a slightly different breakdown of certificates.
- A. Yes.
- Q. Apart from the entry for the 14th of September for 7,000 certificates (shares ?) you will see there is no other trading done by M.A.F. Corporation until the

	24th of March of the following year (1977) when it transferred all of those shares out in one go on '4820'.	Supreme Court of Hong Kong High Court
	A. Yes.	
	Q. And the rubber stamp says 'CEASED' – to be a member.	
	A. Yes.	Defendant's Evidence
	Q. Would you notice what that card also says – that Malaysia America Finance Corporation had not been a shareholder itself of San Imperial prior to the 1st of September.	No. 40
10	A. I would say that it shows that immediately prior to the 1st of September, it's not a shareholder. It doesn't indicate it has never been a shareholder.	Melville E. Ives – Cross-examination
	Q. Well, Mr. Ives, we have spent many weary hours searching the register. We can't find anything to show that they ever claimed to be. If you can come up with some document which shows that they were . . .	
	A. . . . I just want to clarify on that point.	
	Q. If you can come up with some document which shows that they were ever a shareholder, we will be very interested to see it even now.	
	A. (No answer).	
	Q. The next, Mr. Ives, is, is it not, that this account was opened solely for the purpose of holding this parcel of shares.	
20	A. I can't say why this account was opened.	
	Q. You can't say.	
	A. I can't.	
	Q. Sorry. I interrupted you.	
	A. I simply said I can't say why the account was opened. I suppose one can draw various inferences.	
	Q. Yes. Of course, the obvious inference is that it was opened for this one purpose. When you find an account opened to receive a transfer and nothing else done on the account except one very small item which I would suggest is an error – it looks as if it was opened for the purpose of holding for a limited period a single parcel of shares.	
30	A. One could draw that inference, yes.	
	Q. Perhaps that is looking at it with the advantage of hindsight. You see, hindsight is not always incorrect, is it?	
	A. (No answer).	
	Q. You will remember, Mr. Ives, I said to you yesterday that the reason for doing this was to protect HO Chung-po staying in Hong Kong from a charge of fraud or risk the charge of fraud because they had to arrest him for these shares which otherwise CHOO Kim-san could happily have taken off because there's nothing on the Asiatic Nominees certificates – in fact, any particular certificate being beneficially held for San Imperial Corporation, but this man fleeing the Colony arranges before he goes to transfer out of, as it were, his power shares he could have happily taken with him. There must be a reason for him for doing that. He was depriving himself of 2.1M. shares. Do you see that?	
40	A. I don't think it necessarily follows. That's a guess, but it doesn't necessarily follow.	
	Q. What doesn't necessarily follow?	
	A. That is, that he was depriving himself of . . .	
	Q. . . . But, Mr. Ives, surely, that's the one thing which does necessarily follow, isn't it – everything else about HO Chung-po is speculation, but surely the	

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one thing which does follow is that by this operation put through on the 1st of September Mr. CHOO Kim-san was depriving himself of 2.1M. shares.

A. He was being deprived of 2.1M. shares, but how those shares were acquired – I mean, financially, etc., etc., – I don't know.

Q. No, I am not suggesting you do. It doesn't matter. They were shares.

A. I think it is most irrelevant.

Q. Well, do you think that Mr. CHOO Kim-san had a sudden attack of honesty and decided that he would reimburse M.A.F. Corporation in particular before he fled the Colony?

A. We have seen in a previous case where shares were credited to the wrong accounts and then corrected. It may have been – I don't know – CHOO Kim-san may have told his staff 'Oh, buy these shares' and they may have thought he meant them for his own account and it may have been found later that he meant buy them for M.A.F. Corporation – may be paid for by M.A.F. Corporation, I don't know. 10

Q. No. We know how they were acquired – the vast amount of them. You will remember that Mr. CHOO Kim-san owed money to M.A.F. Credit and gave them a parcel of M.A.F. Credit shares. Because that was a breach of the Companies Order, Section 44, they were held in the name of the subsidiary. Those shares were then exchanged for these San Imperial shares. That accounts for 1½M. of them. We don't know where the other million came from. We will find out. But, Mr. Ives, what I am putting to you is – it must be – that one certain thing about doing what CHOO Kim-san did on the 1st of September was that he deprived himself of control over that 2.15M. shares. That's right, isn't it? 20

A. I can't say that it is right. I don't know the circumstances.

Q. You don't, Mr. Ives? Do you have to know the circumstances?

A. You used the words 'deprived himself of control'. If he was never intended to have had control as owner of those shares, then he was never deprived of the control. 30

Q. I see, Mr. Ives, but do remember Mr. CHOO Kim-san is a criminal who has been rooking companies all over the Far East on millions of dollars for three or four years. Do you think he's going to be really serious that before he goes, in a fit of honesty directed to one company only, to very carefully pay to them his debt in shares as opposed to taking them with him as well to Taiwan?

A. That's a rather bold statement.

Q. Yes, answer it, Mr. Ives, if you wish?

A. I really don't know.

Q. My learned friend says have I said they were CHOO Kim-san's. They were Asiatic Nominees' and they were Asiatic Nominees' shares and remember the evidence we have is that Asiatic Nominees held and held only for CHOO Kim-san. You drew the trust deed and we know from the liquidated affidavit that Asiatic have no documents whatsoever. The only way a nominee company dare keep no document whatsoever is that it has only one beneficial owner and therefore since everything goes to him they don't need to keep any records. 40

A. Yes.

Q. So you don't dispute, do you, that Asiatic Nominees was wholly the creature of CHOO Kim-san?

- A. I believe that is the position.
- Q. And therefore CHOO Kim-san's creature, Asiatic Nominees, by this operation on 1st September had deprived itself of control over 2.1 million shares?
- A. From the transaction as recorded in the registers, yes, that would appear to be the position.
- Q. And then of course it is a matter of conjecture as to why he does this. You see, our submission is that it wasn't a fit of honesty towards one particular firm but it was to keep HO Chung-po safe in Hongkong to handle the other end of the transaction. We will look at that in a little more detail later. But for the moment, you see, I have now justified the figure on P.12 of 2,150,000 going into M.A.F. Corporation.

MR. SWAINE: My Lord, I hesitate to rise, but I am still myself in great doubt as to the basis for these questions because it is assumed that Asiatic Nominees held the 2.15 million shares for CHOO Kim-san, but –

MR. YORKE: No, my Lord, I have never disputed the 2.1 million shares were rightfully owned by M.A.F. Credit, but we said they were part of an entire share in the Asiatic which CHOO Kim-san had total control and only by doing this would M.A.F. ever have seen those shares. The beneficial interest is not noted on the share certificates.

- MR. SWAINE: My Lord, the position, as I understand it from the records, is that certainly as early as 1973 because it appears from the annual report which I showed to LEE Ing-chee many moons ago M.A.F. Corp. owned a parcel of shares in San Imperial and that parcel was increased by share swap of two for one wherein by the end of 1975, and that appears also in the 1975 annual report marked M.A.F. Credit, M.A.F. Corporation by the end of 1975 owned the 2.15 million shares which were at that point of time registered in the name of Asiatic Nominees. It may be we are at cross purposes, but I understood the drive or the thrust of these questions to be that the 2.15 million shares although held in the name of Asiatic Nominees were beneficially owned by CHOO Kim-san whereas from my understanding of the record plus the annual report, these shares were held by the Asiatic Nominees for M.A.F. Corporation and this was the case as early as 1973, the position being augmented by the share swap which brought the holding then up to 2.15 million shares.

- MR. YORKE: I am sorry to have misled my learned friend. I have at no time suggested that these 2.1 million, if they could be identified, were beneficially owned by CHOO Kim-san. My Lord, they were the equivalent of dollar notes and your Lordship will see that the situation was, if one looks at page 4, that is the easiest way to do it, at the top of the right hand but one column, the balance column, page 4, as at the 21st July, 1976, before Mr. CHOO Kim-san starts getting ready, that Asiatic Nominees who kept no books and possessed nothing had 17.8 million shares. My Lord, if my learned friend's interjection has any meaning then what he needs to say is that out of that 17.8 million he could point to a parcel of 2.1 million and say these shares were the shares of M.A.F. Corp., and he cannot do that because none of the shares was in any way franked with an interest of M.A.F. Credit. They appear in M.A.F. Credit

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books as an asset, and of course CHOO Kim-san at that time was the boss of M.A.F. Credit and the books reflected what he owned. The truth was that CHOO Kim-san had in law constituted himself the trustee of M.A.F. Credit for 2.1 million shares which he owned. It was in fact the equivalent of a debt, and the curious thing, my Lord, I am saying here is that he paid that debt before he fled the Colony. On the 1st September he transferred out of his holding of 17.8 million which he alone had control, he selected on that day a parcel of shares, and your Lordship can see, if one looks at 4698, the numbers at the left hand side, the bottom transfer but one begins with the number 10857 and the transfer immediately above it is 70804, so about a hundred odd certificates are scattered from the low 100,000 to the high 700,000 which means they were indifferently issued over a period of about five years to have those numbers. You could see how widely scattered those certificates were. He picked up that particular lot of certificates which added up to 2.15 million and transferred those over to M.A.F. Corporation.

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Q. Do you follow that, Mr. Ives?

A. I follow what you are saying.

Q. But in effect he owed M.A.F., let's take it in terms of money, he owed M.A.F. \$2.15 million; he had in the bank \$17 million and there is no way you could identify which notes he had in the bank which ones belong to M.A.F. Corporation, is there?

20

A. You are using a good analogy, of course, shares as you rightly said right at the very beginning are chose in action and so it is not any particular share which is allocated to any particular –

Q. Out of his 17.5 million shares he selected – the notes are in his wallet – 2.15 million shares and paid those over to M.A.F. Corporation?

A. That is what is indicated by this, yes.

Q. And beneficial ownership doesn't come into it, does it?

A. I don't know.

Q. Now let's see the next thing that happens. Now here we start getting a bit out of time. Perhaps we'd better just look at Mr. David Ng's affidavit, red 2, page 53, in the middle of that paragraph, about six lines down, Mr. David Ng said: "This is shown to me and exhibited hereto marked 'B' a copy of a letter dated 23rd July 1977 from Y.S. Cheng and Company, the auditors of MAF Corporation (H.K.) Limited, certifying that MAF Corporation (H.K.) Limited was their beneficial owner. This is shown to me and exhibited hereto marked 'C1-4' a copy of the general ledger of MAF Corporation (H.K.) Limited relating to their acquisition of the 3,226,000 shares. It will be seen from C1 that it shows that as at 31st December 1975 MAF Corporation (H.K.) Limited was holding 2,150,000 shares of San Imperial at a cost of \$4,300,000. C2, C3 and C4 shows that the slow accumulation of shares from the stock market by MAF Corporation (H.K.) Limited at market prices considerably lower than \$1.50 per share. C4 shows that by April 1977 MAF Corporation (H.K.) Limited had acquired a total of 3,226,000 shares at a total cost of \$4,780,473.25 which is inclusive of the 2,150,000 shares referred to above. The 3,226,000 shares were transferred to City Nominees Limited at my request pursuant to an option agreement of 30th March 1977." Stopping there what he is saying is by reference to the exhibits which he shows in his affidavit that M.A.F. Corporation

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owned 2.15 million shares, increased by buying in the market 3,226,000 and that's what he has sold over eventually under an option to you. Well, the inference of that is they held these 2.15 million and bought the rest from the market?

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A. Yes.

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Q. Now I will show you what really happened. Those exhibits we added to the bundle P.14 which you have in front of you, would you just see what they show. If you start at page 18 – my Lord, I just wonder, my Lord, looking at figures and documents it is always a rather heavy going, I wonder whether – perhaps I might suggest a short adjournment before he goes onto the next one. I do know anybody gets dizzy looking at one document with a lot of figures after another.

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A. I am all right at the present moment.

Q. Are you? All right, I will show you this one. Just look at 18, will you? You see it is card No. 1 of the general ledger, No. 1 account and it shows as at the 31st December, 1975 that they held 2.15 million shares?

A. I don't understand the balance figure.

COURT: The balance is dollars.

Q. That is dollars.

20 A. This is an account, not a ledger, it is a general – a cash ledger, not a share ledger.

Q. It is kept in cash. It is showing assets, and the asset is, on this one as a purchase of quoted shares No. 1 account, top left hand corner. It happens to be account No. 212. So they probably got a whole lot of other quoted shares, but on this share they are holding a parcel of 2.15 million with them and that stamps them in at a book value of \$4.3 million and that is the figure Mr. David Ng has corrected in his affidavit?

A. Yes.

30 Q. And since we are looking at that I will show you something else before we come to the dealings. We got supplied by Francis Zimmern and Co. the share dealings on the three main stock exchanges in Hongkong, the prices for the whole period from July 1976 through to June 1977. Would you take it from me, you can verify if you like, that the high point of the San Imperial shares in August 1976 was 42 cents?

A. Yes, I take it.

Q. That meant that assuming, which of course cannot be done, that you could realise a parcel of 2.15 million at the top of the market in August 1976, the market value of those shares would be \$903,000?

A. Yes.

40 Q. So there was a book loss of \$3,397,000 at that time?

A. Yes.

Q. Do you remember that yesterday I said that Mr. CHOO Kim-san had to save HO Chung-po both by giving him the shares and by saving M.A.F. its loss of \$3.3 million?

A. Yes.

Q. Now we see at page 19, the transactions which are carried out, say, in the open market by M.A.F. Corporation Limited, the first thing you notice, remember

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that the previous balance was at December 1975 and they hadn't dealt in the market at all during 1976 until 31st August, the day before the perpetually reoccurring 1st September on the share transfers?

A. Yes.

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Q. And they then apparently buy a whole lot of shares and they end up, you will note the end of that page 20, with their last purchase on 29th November in the same year?

No. 40

A. Yes.

Q. There was something much later which has nothing to do with this case at all. It was after the transaction was over. So you see they went into the market for a period of three months only? 10

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A. That is what this indicates, at that time.

Q. Yes, at that time. Now if you would just turn over now to page 21. Now it is very difficult to read here, but are the dates clear on yours? That is, 23rd April, 23rd April and 29th April?

A. Yes.

Q. And then two entries for the 14th June?

A. Yes.

Q. And would you, as you are looking at 14th June, the second entry, you see it says: "being final payment of our sale of 3266 . . .", that should be "3226", that is a typing error. 20

A. Yes.

Q. So they have been out of the market for three months, they suddenly come into the market again for a week and buy another parcel of shares; they then sell the shares for \$4.8 million plus \$39,000, a total of \$4.839 million?

A. Yes.

Q. And you see that the effect of that payment is to wipe out virtually the entire balance of the cost of the shares to M.A.F. Corporation? You see the balance drops down to a mere \$14,000 or \$15,000?

COURT: I am sorry, I don't quite follow. 30

MR. YORKE: My Lord, look at 21, the purchases which had been made stood the company in as at the 29th April – either of the right hand figures will do – at \$4.78 million. That includes the \$4.3 million of the original 2.15 million which appears at page 18, including that, and they have gone to the market. They have in effect spent another \$480,000 and they then sell the entire package for a figure which balances their expenditure to within \$15,000 odd.

A. I'll say that they bought to average down their costs and they more or less broke even at the end of the day.

Q. I don't dispute that at all, Mr. Ives. But isn't it interesting that starting off with a book loss on these shares which they bought apparently at \$2 each – that is what they stood them in – they buy for three months and then topping up the parcel on a couple of days in April they then sell for a figure which exactly cancels the book loss? 40

A. Not necessarily interesting. I cannot call it interesting.

Q. You don't think it is just another of these self-cancelling interests which crop up all over these days?

- A. No, far from it.
- Q. You see, it looks, does it not, as if Mr. HO Chung-po knew just how many shares to buy, of course in the name of M.A.F. Corporation, in order to effectively cancel out a book debt which he might have to explain if he stayed behind?
- A. I don't see he would have to explain the book debt.
- Q. Because it derives from a breach of section 48; company suffers losses as a result persons responsible may have to make it good.
- 10 MR. SWAINE: That is another point on which a great deal of this theory hangs whether there has been a breach of section 48, my Lord, but nowhere really has that been established.
- MR. YORKE: I have established it in the second answer in the re-examination of LEE Ing-chee. You see we are going to say it is a bit of a coincidence. It is designed just as the transfer of the shares into the name of M.A.F. Corporation got HO Chung-po off one hook, balancing this account got him off another and that number of shares was just too much of a coincidence that at \$1.5 purchase price allegedly fixed these up and that he somehow gets out with no net loss at all. Now that is a matter for inference.
- 20 Q. But this is more interesting. We give you now the figures of trading on the three stock exchanges in the eleven months from August 1976 to June 1977. I think that will be P.15. Now the thing I want you to notice about is this, Mr. Ives. The Far East Stock Exchange in the middle was the listing exchange of San Imperial?
- A. Yes, it was originally listed there, yes.
- Q. And usually you will expect to find that most business in a share is done on the listing exchange? I am talking generally.
- A. I don't think that follows at all because most of the shares in Hongkong, most of the blue chips were originally listed with the Hongkong Stock Exchange but, I think, day after day the Far East . . .
- 30 Q. All right, let's just look at what happened to San Imperial in particular. If you just run your eyes down the Far East as against the Hongkong Stock Exchange you will see that roughly, with fluctuations, that the Far East Stock Exchange deals in about three times as many shares per month as the Hongkong Stock Exchange?
- A. Yes.
- Q. And if you look at the Far East Stock Exchange as against Kam Ngan that, with the exception of October and November, the Far East Stock Exchange does about twice as much business in San Imperial as Kam Ngan?
- A. Very approximately, yes.
- 40 Q. It's a pretty good map. If you put them on a piece of graph paper the lines go up and down together?
- A. Yes.
- Q. Except for October and November?
- A. Yes.
- Q. Which was when M.A.F. Corporation were buying in the market? That's a fact, isn't it?
- A. I don't

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- A. I don't know when they were actually buying.
- Q. If you just look at page 19 in P.14 you will see that the only time that the three stock exchanges get out of line in the volume of business being done is at the time when San Imperial go into the market?
- A. Yes, it would appear to be so.
- Q. When you find an inconsistency in the market pattern, Mr. Ives, don't you suspect that there must be a special circumstance operating? I am not saying there was one here, but don't you suspect?
- A. Not necessarily so. You see in August you have Kam Ngan with only 25,000 shares — 10
- Q. Mr. Ives, the significant thing is that the Far East which is bigger than either of the others by a factor of 3 or 2, depending on which one you are looking at, except when M.A.F. Corporation were allegedly in the market at one period, all the activity goes into one exchange which for those two months, and for those two months only, does more business than Far East Stock Exchange?
- A. Yes, I think there is a special significance in that.
- Q. You see one special significance might be that HO Chung-po had found some complacent brokers who were prepared to wash CHOO Kim-san's shares through their books, so all the business was done where the brokers were — 20
- A. If his broker was a Kam Ngan broker then his broker would normally buy from other Kam Ngan brokers. That would tilt the balance.
- Q. Yes. Well, let's just see more transactions we have been able to analyse. If you look at page 19. Let's look at the largest purchases on this sheet. From the bottom, the third and fourth purchases upwards, you see there are two purchases of 300,000 shares?
- A. Yes.
- Q. And they appear to be bought from two different brokers on two consecutive days? 30
- A. Yes.
- Q. The 28th and 29th October. The date always refers to the last line of the purchases. It is slightly misleading. The first purchase is on the 28th October and the second purchase is on the 29th October?
- A. Yes.
- Q. First thing, you see that the amount of the purchase was at 40 cents?
- A. Yes.
- Q. You see the preceding purchase on the 22nd October was also at 40 cents?
- A. Yes.
- Q. And the preceding one at 40 cents? 40
- A. Yes.
- Q. The preceding one at 40 cents?
- A. Yes.
- Q. The preceding one at 40 cents?
- A. Yes.
- Q. And so on, right back to the 28th September when it was 42 cents?
- A. Yes.
- Q. And you see that the next purchase 20,000 at 42 cents, an absolutely constant market?

- A. Yes. Supreme Court
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- Q. That was October. Let's look at P.15, the figure for the market, would you?
- A. Yes.
- Q. 706,000?
- A. Yes. Defendant's
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- Q. You've got two huge transfers going through representing in one go 45 per cent of the dealings on the market in that month, two together, 90 per cent of the dealings on the market, and the share price does not shift by a cent? No. 40
- A. Yes.
- 10 Q. Again isn't that something which in your experience is unusual? Melville E.
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examination
- A. That is unusual, yes.
- Q. Big buyer or big seller go into the market with a deal ten times any other deals while the biggest deal otherwise is 31,000?
- A. Yes.
- Q. Doesn't on its first, not only on its second, doesn't shift the market by a cent?
- A. Where did those shares come from?
- Q. I am just going to show you. That's a very interesting question. It's a question I would ask too. If you look at page 6, Asiatic Nominees, last time we have looked at 900,000. Now look at transfer 4719, would you, and you will see there is what you rightly call a conversion operation of 400,000 shares in smaller denominations, curious enough, into smaller ones, but that is what happened. Do you see that?
- 20 A. Yes.
- Q. Going the other way from the other transaction which we looked at before which were increases of a small parcel into a big one, but this is turning large shares into small ones, into a thousand each.
- A. I am not sure about this one.
- Q. You just see what it transfers out. If you look at 78373-6, that is four certificates each for 100,000?
- 30 A. Yes.
- Q. And what it gets back is 78401-800, that is 400 certificates of a thousand each?
- A. Yes, I have got here shares acquired 100,000.
- Q. No, 400,000.
- A. Mine is 100,000.
- COURT: Yes, it's 100,000 on mine as well.
- MR. YORKE: My Lord, it is a mistake. What has happened is the photo copy was very bad and I'm afraid the copier has taken the auditor's tick for a one which should be four. My Lord, the original file is here. No doubt you can check it, but I have checked this myself.
- 40 A. I think it would be 400,000 according to the certificate.
- Q. Yes, and we can check it from the blue book. That is the first account. You see, it might look as if it was convenient to get into parcels to be washed through the stock exchange by breaking the big numbers down to small ones, but that is what happened, because if you go on to the 23rd November, you will see the significance of this in a moment, 23rd November Asiatic Nominees

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disposed of – look at the figures on the right hand side, in fact they add up to 700,000 shares?

- A. Yes.
- Q. And they are 300,000, three lots of 100,000 and one of 40,000 and one of 60,000, adding up to 700,000?
- A. Yes.
- Q. Those shares include the shares which were converted on the 14th September?
- A. Yes.
- Q. Which you can do simply by following through the numbers. If you want to do it yourself you start from the bottom one but one, the certificate numbers
-
- A. 401?
- Q. Yes, 401, and you can follow them through. They do work through.
- A. Yes.
- Q. And they are there two transfer numbers 4747 and 4752?
- A. Yes.
- Q. Now would you now look at page 13 and four lines from the bottom, one line goes beyond the marked bottom line, the date is 23rd November.
- A. Yes.
- Q. 4747, on the right hand side 600,000 shares?
- A. Yes.
- Q. And immediately below is 4752 which is for 156,000 shares which, in other words, is also the other 100,000 that we saw on the Asiatic Nominees page, plus 56,000 from somewhere else?
- A. Yes.
- Q. So you see now that to answer your question, Mr. Ives, as to where did the shares come from they came from Asiatic?
- A. Yes.
- Q. In other words, Mr. Ho Chung-po running M.A.F. Corporation picks up some of Mr. CHOO Kim-san's shares, puts them through the market with somebody being prepared to assist him and transfers them into the name of M.A.F. Nominees on behalf of M.A.F. Corporation and they end up as part of the parcel you acquired under your option?
- A. Yes.
- Q. Is that not a classic, simple, straight-forward washing operation?
- A. I don't know what's behind it, I cannot say.
- Q. You don't know what's behind it, I see. I'll invite his Lordship to deduce what's behind it. But on the face of it HO Chung-po – we don't know, we can't prove it yet – he probably signed the transfer certificates as well, but HO Chung-po, when Asiatic had sold the shares to himself whereas MAF Corporation had them, that is what it looks like?
- A. That's what it looks like.
- Q. And of course that explains why the market price wasn't shifted by this huge transaction going through, doesn't it?
- A. Yes.
- Q. Because what they did was to put the transaction through their books at the current market price?
- A. Yes.
- Q. Because, of course, that is a difficulty that anybody faces, I am not saying any

person you know, but if you think about it, in share washing transaction that they've got to put it through at the current market prices, otherwise the different price requires an explanation because the prices were reported to the exchange whether the deal is done on the board or off the board?

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A. Yes.

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Q. And so you must put your price through at a figure which is being reported to the exchange?

A. Yes.

No. 40

10 Q. That means, unfortunately, putting through a deal of this size if anybody else starts looking at it and finds it's difficult to explain how a deal of that size could have been done at that price and the answer is it never was done because the buyer and the seller were not at arm's length?

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A. There would also be the company's auditors of course.

20 Q. Yes, they may be just faced with the documents; they may not have taken the trouble to see how many transactions were done on the exchange at the time. On the face of it the transaction appears to be perfectly regular. It's only when you asked the question where did they come from that we find niggers in the wood-pile and worms in the wood work. So, Mr. Ives, you see now that I claim to have justified some more figures on P.12. Take first the 7,000 from the stock market. That was the one which I said was probably a mistake on the M.A.F. Corporation, remember that?

A. Yes.

30 Q. Just a little lone figure all by itself on page 12, and I think my explanation to that is it is put into the M.A.F. Corporation by mistake; it should have gone to M.A.F. Nominees. Then it is correctly put through there. Then you get, going to M.A.F. Corporation, 2,157,000, which is the 2,150,000 originally owned, transferred to the corporation, plus the 7,000 which is on page 12, on the 24th March when the entire share holding of M.A.F. Corporation is transferred to M.A.F. Nominees and they ceased to be share-holders, and you now see the 700,000 coming down from Asiatic Nominees to M.A.F. Nominees?

A. Yes.

Q. And you see that note 5 "Washed in the market"?

A. Yes.

Q. And what you are left with is the dotted line 369,000 and that figure is the balance of the shares washed through the market. You see, if you add 700,000 to 369,000 you get 1,069,000?

A. Yes.

40 Q. The magic of the figure is that you will see it at the foot of page 13. You see page 13, the last column but one, that is 1,069,000?

A. Yes, that is the balance held by M.A.F. Nominees.

Q. So in effect it is shown that nearly 3/4 to over 2/3 of so-called purchasing in the market –

COURT: I am sorry, this 700,000 is that shown in exhibit P.14?

MR. YORKE: Yes, my Lord, that is the two amounts transferred out by Asiatic Nominees which go out on page 6 under share transfers 4747 and 4752 and come into M.A.F. Nominees at page 13 under the same share transfers, and the

total is 1,069,000 and that is the amount which is eventually transferred to M.A.F. Nominees. So what your Lordship does is to look at notes 3 and 5, or the items which have the numbers 3 and 5 against them on P.12, that note 5 which says "Washed in the market" is the 600,000 plus the 100,000 which went straight through. The 369,000 where note 3 is against it is the balance of 1,069,000 which appears at the foot of page 13. Your Lordship will remember all these shares so-called bought from the stock market were registered in the name of M.A.F. Nominees.

COURT: Yes.

MR. YORKE: And again your Lordship will also see two things –

10

Q. Perhaps I put this to you, Mr. Ives, rather. You see that M.A.F. Nominees account, like the M.A.F. Corporation account, was opened on 20th October. It did not have an account before. You see, it's at P.1, the top of the page, a sort of blue card, and that happens when you get more than one card, but P.1 is the first?

A. Yes.

Q. So again M.A.F. Nominees account was only opened on 20th October?

A. Yes – I don't know if there had previously been an account.

Q. Again, Mr. Ives, we have searched and could find nothing. If you could come up with something else we should be very interested. But on the documents that we have discovered M.A.F. Nominees opened their account and traded in the market for this short period, opening an account to do it?

20

A. Yes.

Q. And we can see that between 2/3 and 3/4 of the shares that went through the account was apparently a washing operation, that's right, isn't it?

A. I don't know if it's washing operation that went, as you said, from Asiatic through the market into M.A.F. Nominees.

Q. Without disturbing the market. So I think it is right, isn't it, that the figure on P.12 I have now shown you where 369,000 comes from is simply the balance of the shares that M.A.F. Nominees bought in the market – sorry, M.A.F. Corporation bought and put into the name of M.A.F. Nominees after you deducted the 700,000 which we can show came straight from Asiatic?

30

A. Yes, I believe that is so. I cannot see definitely that taking all this very, very carefully, but I think that is so.

Q. So that we have now dealt with all the figures inside the pencil line down to M.A.F. Nominees, but before one gets to the 514,200 which is part of the shares allegedly picked up in Taiwan?

A. Yes.

Q. Now you have seen from page 13 that M.A.F. Nominees opened an account where they previously, so far as we can see, had no shareholding in San Imperial?

40

A. Yes.

Q. It's like the M.A.F. Corporation account which comes into existence at the same time, holds parcels of shares and then they are all transferred to you under the option agreement?

A. Yes.

- Q. Again it looks to one, Mr. Ives, as if it was brought into existence for this purpose and when this purpose had been fulfilled it went out of business again? Supreme Court of Hong Kong High Court
- A. For which purpose?
- Q. The purpose of putting through CHOO Kim-san's deal.
- A. Which deal are you talking about? Defendant's Evidence
- Q. The deal this case is about, for him to be able to realise after he fled the Colony the assets which he was taking with him and had not had time to sell before he left? No. 40
- A. (No audible reply.)
- 10 Q. Shall we look at the next transaction, moving across to the left, these are the shares which Mr. David Ng bought from other persons in Taiwan, that's right, isn't it? Melville E. Ives – Cross-examination
- A. You mean on the left of the chart?
- Q. Yes.
- A. Yes, I think that is the correct number, 1,650,000.
- MR. YORKE: I wonder if I could just give you another reference, my Lord, which I did not, I'm sorry. I didn't show your Lordship the 2,157,000 going from MAF Corporation to MAF Nominees. I have justified the figure as a total but I didn't show it going through and it is difficult to find without it being explained. My Lord, it is page 14. I'll come back in a moment but I will just show you how this was done. It is not absolutely clear.
- 20 Have you page 14 open, and just look at back to page 12. You will see transfer number 4820, page 12, under that one MAF Corporation would get rid of the whole 2,157,000 shares they owned?
- A. Yes.
- Q. When you turn to page 14 you can't immediately see against 4820 this entry the figure 2,157,000 and where you get it is this – if you add up the number of shares transferred in the first 3 lines – 32,000 and 783,000 and 28,000 – they come to 843,000?
- 30 A. Yes.
- Q. It's 843,000. If you deduct 843,000 from 3,000,000 –
- A. Mhm.
- Q. – you end up with the figure 2,157,000?
- A. Yes.
- Q. And 3,000,000 is the amount of the 3 million share certificates in the left hand column. There were three 1,000,000 share certificates. Have you got that?
- A. Yes.
- 40 Q. Yes. And so what was happened is that MAF Nominees wanted three large certificates and so they said to the registrars, "Give us three million certificates" and the registrars said to them, "We can't do that with a transfer of only 2,157,000 unless you give us back certificates for 843,000" and so in the course of that deal MAF Nominees handed back the certificates which start the column, the certificate numbers, they handed back 79206, 79137 – that's a mistake, that certificate, a wrong number actually so don't worry about it – and 78860-87, they handed back share certificates for 843,000 in small denominations and were then given three certificates for 1,000,000 each. Or have I lost you?

- A. They haven't . . . yes.
- Q. You see that's what happened. It is puzzling at first, you can't see the figure 2,157,000 on the document but that's how you get it and so I have just now shown you the mechanics of the transfer as at the 24th of March of the shares from MAF Corporation to MAF Nominees, and the 24th March again is a highly significant date. And I should have buttoned something else up. May I have the blue book please? I'm so sorry but there are so many details here I don't keep them all in the right sequence, but before I go on to the 514,000 I should just tell your Lordship something else about the 700,000. The 700,000 transfer went through on the 23rd November. If one looks in the transfer journal, 23rd November, that is a 2-page entry which has the balance, there is that entry, washing entry, you find the figures corresponding exactly to the cards, I think the cards probably go through a carder at the time the ledger is made up, there is a 2-page entry in the wrong order, you see transactions 4742 and 4752 going through – 10
- A. – 4747 –
- Q. 4747 and 4752, can you find them?
- A. 4752, I can see, yes, the whole lot there. Yes, I see the entries here. I'm not quite sure of the amount –
- Q. Don't worry about it – do if you want to, but I'm not. Two things about that Mr. Ives, in that transfer sheet you can see both the transferor and the transferee, can't you, unlike the blue cards, the ledger cards. You can tell from that page who the transferor is and who the transferee is. 20
- A. Yes, that seems to be the case, yes.
- Q. Yes, and so looking at that, from the page itself, you can see straightaway that it is Asiatic selling to MAF, isn't it?
- A. Yes, that seems to be – Well, not "selling" to them, but transferring to them –
- Q. Yes, of course –

COURT: That's MAF Nominees?

- MR. YORKE: MAF Nominees, yes, my Lord. Of course you are quite right, it is not to sell – 30
- A. No, there may be intervening parties. I mean generally, not in this particular case, generally.
- Q. Oh, yes, yes, could be, of course. Would you also look and see at the foot of the second page, there is Mr. HO Chung-po's signature?
- A. Yes.
- Q. And it is also, as far as I can see, going back to 1974, the only time he ever signed a page – certainly in 1976. Very characteristic signature, Mr. HO Chung-po.
- A. Yes, some of the pages are signed, some are not. They seem to be signed – 40
- Q. No, the point is, they are signed, but if there is more than one page per day it is only signed at the end of the day when the balance has to be zeroed.
- A. Yes.
- Q. But there are no unsigned pages if they are the only page per day?
- A. Yes, there seems to be various signatures . . .
- Q. Some of them may have cropped up in this case elsewhere but I am only

concerned with Mr. HO Chung-po.

A. Yes, I noted Mr. LEE Ing-chee's signature there –

Q. I haven't gone back beyond '74, Mr. Ives, I've flipped the pages beyond '74 but –

A. Yes, at the moment it's the only one I have spotted.

Q. Perhaps you might like to show the 2 pages to his Lordship?

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COURT: This is the first page?

No. 40

A. I believe that is the first page.

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10 MR. YORKE: No, my Lord, it's got a signature on the second page and it goes the wrong way round. Your Lordship sees that there one can read Asiatic Nominees as the seller and MAF Nominees as the buyer and that is obvious on the one page, isn't it, Mr. Ives?

A. Yes.

Q. On both transactions?

A. Yes.

Q. And of all people who could have known the names of Asiatic and MAF Nominees, who they were, it's Mr. HO Chung-po?

A. Should be, yes.

20 Q. And so, Mr. HO Chung-po, when he signed this, having checked the page, knew that the deal going through, allegedly through the market was straight from Asiatic to MAF Nominees, staring him in the face?

A. The transfer was from Asiatic to MAF Nominees.

Q. Tell me, would you just go back to Mr. David NG's affidavit, page 50 in red 2, looking specifically at page 53, which describes the buying in the market and exhibits the documents which you, we now have in P14 – that's pages 18 to 21. It's the same, all those documents are now in P14 – that is correct? Who provided all that information of which you were able to instruct counsel to settle the affidavit?

30 A. He made searches himself, I believe and gathered that information. I believe he made searches himself.

Q. Who made the searches?

A. David NG.

Q. Yes, but how did he get the information about what MAF Corporation was doing?

A. I don't know.

Q. Mr. Ives, that is an affidavit for which you have some responsibility. The documents are exhibited thereto. Isn't the province of the documents of some interest to you?

40 A. That is the information he stated that he gathered, he produced certain documents to substantiate it –

Q. Documents 18 to 21 aren't public documents, not company searches. They are the company's internal documents.

A. I don't know how he got that information.

Q. Do you think he might have gotten them from HO Chung-po?

A. It's possible.

Q. Funny how Mr. HO Chung-po crops up all the time, isn't it, on both sides all the time?

A. I believe at this time Mr. David NG was chairman of San Imperial Corporation. San Imperial Corporation, I believe, had 11 million MAF shares, held 11 million MAF shares, a substantial shareholder. I don't know if he was a director of MAF as of the date of the affidavit. He did ultimately become a director.

Q. But that affidavit is dated the 27th of July and he was already a director by then, wasn't he?

A. Yes, so this information would be available.

Q. Yes, provided somebody told him where to look for it?

A. I would imagine as a director – I believe he was chairman of MAF, I don't remember – I'm sure that assistance would be given to him by the staff if he asks for it.

Q. What was the date – Of course assistance should be given to him by the staff. Can we have the date he did become chairman of MAF? 4th of July, was it? I haven't got it in my note, I'm afraid.

MR. SWAINE: 16th of June.

Q. 16th of June. I have now finished with the 700,000 of P12 and we can go to the 514,200 –

COURT: Actually before you do that, I thought I understood the figure 369,000 on the right. I don't think I am entirely clear about the – it is that referred to in exhibit P12 –

MR. YORKE: That's P12, yes, my Lord.

COURT: P14, I mean.

MR. YORKE: My Lord, you can pick that up this way. If you take all the purchases on pages 19, 20 and 21, there is – subject to one error which doesn't matter – it is a total purchase in 30 transactions of 1,069,000 shares and those shares were all held by MAF Nominees Ltd. who at the relevant time held shares only for MAF Corporation. As your Lordship sees from page 13 of P14 where the account was opened on the 20th October 1976, all those purchases and the total figure of 1,069,000 appears in the running balance figure in the last column but one on page 13, just like a bank account which has a running cumulative total. If you deduct from 1,069,000 the figure of 700,000 – which was the washing exercise – you are left with the figure of 369,000 and that is the figure which appears in the middle of the broken line on page 12.

COURT: Do you say it was 1,69 –

MR. YORKE: No, 1,069,000, my Lord. It is the figure from approximately the last column but one on page 13 –

COURT: You take away 700,000 from there . . .

MR. YORKE: You are left with –

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COURT: Oh, I see. I'm sorry, I've got one zero less. Yes.

MR. YORKE: And so, my Lord, what we say is that paragraph 18 of David NG's affidavit of the 27th of July in red 2 page 53 purported to say, information supplied, that MAF Corporation had bought 1,069,000 shares in the market but we say that of those we can show straightaway that 700,000 was not bought in the market, it was a washing operation. That leaves a balance of 369,000 and, my Lord, we haven't had time to go any further than that but what we suspect is that if we had the time to go through the ledger we can find some more, but what we are dealing with – 369,000 – in the context is so small I'm not bothering about it. It was for that reason that I said to Mr. Ives this morning that we are not admitting that they are genuine. We are merely saying we cannot prove at this point that they are false. I shall at the end of the day invite your Lordship to say noscitur a sociis – that so many millions smell that it is highly unlikely that what is left is pure as driven snow. My Lord, would that be a convenient moment?

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Evidence

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Melville E.
Ives – Cross-
examination

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Appearances as before.

D.W. (1) Melville Ives – On former oath

XXN. BY MR. YORKE – Continues

- 20 Q. Mr. Ives, we were just crossing over the red line in P12, having shown you all that we have done on behalf of Mr. CHOO Kim-san on the 1st and 3rd of September in the creation of 2 accounts which never existed before and which appears to have been used only as vehicles to collect together tranches of shares for delivery into your ultimate hands, do you not now agree it does look as if there was a carefully arranged plan at work?
- A. There may have been some plan of CHOO Kim-san but I don't know what it was.
- Q. Yes, very well. But it begins to look like it, doesn't it, when you go into the documents? Too many coincidence for it to have just happened that way?
- 30 A. Well, presumably at that time he was intending to leave Hong Kong, he was doing something.
- Q. Yes, that's right and it is our part that he didn't then – having set all this up – then sell the shares for a song in Taiwan. Well, let's go across to the other transactions. All the share transfers either in the package that went to Fermay or the package that went to David NG and MAF Nominees, were all signed by HO Chung-po – that's right, isn't it?
- A. Sorry?
- Q. All the share transfer forms were signed on behalf of the transferor by HO Chung-po?
- 40 A. The transferor being which one?
- Q. Well, Triumphant or Asiatic.
- A. I think this is probably so but I don't know if I've seen them all.
- Q. Just look at yellow 2, 128, Asiatic to Fermay?

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- A. This is just a bought note.
- Q. Yes. It is page 3.
- A. I see, the third one, yes. Yes, that is HO Chung-po.
- Q. 129, again the third page?
- A. Yes, HO Chung-po.
- Q. That is HO Chung-po and the same being for the Fermay transfers – you remember those, don't you?
- A. Yes.
- Q. And also by HO Chung-po?
- A. Yes.
- Q. You remember that you saw how, this morning, how it had been arranged – we say – by CHOO Kim-san that for both Triumphant and Asiatic, the number of small denominations share certificates, a large number of small certificates, had been changed for a small number of large certificates?
- A. Yes.
- Q. And those large certificates turned up in the transfer from Triumphant to MAF Nominees – 129 which you have just looked at?
- A. Yes.
- Q. 1 large certificate for 45 small ones, and in the 10 million transfer from Asiatic to Fermay?
- A. Yes.
- Q. And all of which certificates came into existence on the 1st or 3rd of September?
- A. It appeared to be so, yes.
- Q. 3 weeks after HO Chung-po had resigned from Asiatic?
- A. Yes.
- Q. So one wonders, does one not, how he could have known the numbers of the certificates before he resigned if they were not to be issued until 3 weeks after he resigned? You see what I am getting at?
- A. Not really, no.
- Q. He resigned and I – it is agreed, I think, there is no dispute about this – it is in the documents if you want to look at it, it is brown 3 –
- A. I'd like to see the certificates.
- Q. Yes, certainly.
- A. Yes, mmhm.
- Q. Yes. Now, insofar as those transfers contained certificates which were not themselves issued until the 1st or 3rd of September, HO Chung-po couldn't have known those numbers at the time he resigned on the 11th of August?
- A. You mean because they were not transferred until –
- Q. I'm not suggesting that's what happened. I merely saying it's obvious, isn't it, that you can't, when you resign from a company on the 11th August, have known the numbers of share certificates which will be issued to it on the 1st or 3rd of September?
- A. I would imagine not, no.
- Q. No. So there are 3 possibilities are there not? One is that HO Chung-po resigned on paper but remained happily signing away in practice?
- A. Mmhm.
- Q. That is one, isn't it?
- A. Yes.

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- Q. Another is he signed wholly blank transfers which bore his name and the stamp for five hundred and no one else's? Supreme Court of Hong Kong High Court
- A. Yes, mmhm.
- Q. And the third is that they were all created when he got back in the saddle after the 4th February? Defendant's Evidence
- A. There is a date stamp is there? I'm not sure . . . I can't see the date . . .
- Q. That is not necessarily put on at the same time as his signatures, is it?
- A. No, but – No. 40
- Q. That's the time he presented it to be stamped?
- 10 A. Yes. Melville E. Ives – Cross-examination
- Q. Which is a different matter?
- A. Yes, there are 3 possibilities.
- Q. If it is either the second or the third, then we have HO Chung-po once again taking an active part in CHOO Kim-san's plan, don't we, signing when he is said to have been resigned and no longer to be a director, or creating these transfers long after Mr. David NG says he was shown them by CHOW and HWANG? This is a possibility, isn't it?
- A. It is a possibility, yes.
- Q. I am only saying that 2 out of the 3 possibilities show another more active involvement of CHOO Kim-san's lieutenant, HO Chung-po?
- 20 A. Yes.
- Q. I am right, am I not, that the private deal which Mr. David NG did in Taiwan upon his version of events was always separate from the 15 million share deal which you did?
- A. Correct.
- Q. It was one which I think the additional shares were first offered to him, were they not, in about February?
- A. I think it was February, yes. I think it was early February.
- Q. Hearsay notice 11 which is in brown 1, defence, which has a red tag on it and I think it is page 19. It is after the red tag.
- 30 A. Yes, 12th of February.
- Q. That is hearsay notice 11?
- A. Yes.
- Q. That, of course, is some 6 weeks after Mr. David NG says he first contacted CHOW and HWANG?
- A. Yes.
- Q. And CHOW and HWANG always had 15 million shares to sell, neither more nor less? They showed in the certificates, didn't they?
- A. Yes.
- 40 Q. 15 million shares?
- A. Yes.
- Q. And then subsequently we have this deal which he – that is Mr. David NG's private deal from the word "go" was unacceptable to you and Mr. HO Chapman?
- A. Yes.
- Q. Because it required financing in cash and it took a risk?
- A. Correct.
- Q. And so that was his private deal?
- A. Yes.

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Melville E.
Ives – Cross-
examination

- Q. 2 things about that – have you any idea why those shares were transferred into the name of MAF Nominees?
- A. To keep them separate from the syndicate shares which were put into City Nominees Ltd.
- Q. And does that really have any meaning, Mr. Ives?
- A. It doesn't achieve anything, no. It was just a convenient way of keeping them separate.
- Q. But what is the point of keeping them separate? It was a separate bundle of shares, the certificates would be issued in the name of whoever it was to be.
- A. There was no point in it really. It was just for convenience. 10
- Q. Any nominee company – can be the Hong Kong Shanghai Bank – would happily handle and keep separate the shares of hundreds of clients.
- A. Yes, there was no point in it. It was just to keep them separate, for the convenience at the time.
- Q. Mr. NG, a stock broker with a seat on the Far East Stock Exchange, he's got Bentley Securities Company, he must – to your knowledge – have access into and knew many nominee companies in the ordinary course of business?
- A. Yes. It was just felt at the time it should be kept separate, so they were kept separate.
- Q. Of course you now know, having seen the documents I have shown you this morning in P14, that MAF Nominees as it were appeared on the 20th October for the first time as a shareholder of San Imperial and effectively goes out of the window again as soon as this transaction is over? 20
- A. Yes.
- Q. Again, is it not a curious coincidence that David NG should have selected that company of all companies as the nominee to hold the 2.1 million odd shares he is buying himself?
- A. Yes, I personally don't know why he selected that company. It was decided to keep it separate.
- Q. Obviously I should ask him. And the fact that MAF Nominees was a company being run by the ubiquitous Mr. HO Chung-po has nothing to do with the case according to you? 30
- A. Not as far as I know.
- Q. Just another coincidence? Would you now please look at exhibit P10 which you will find in brown file 3, at page 72? Remember that is a document you found on going through your files last week?
- A. Yes.
- Q. An early predecessor of the Fermay agreement?
- A. Yes.
- Q. Would you look at the first line of paragraph 1? 40
- A. Yes.
- Q. Do you see the figure "15,515,000"?
- A. Yes.
- Q. That is, in fact, the certificate sold by Asiatic to David NG/MAF Nominees, is it not . . . 515 . . . ?
- A. . . . 515 . . . probably is.
- Q. It is a mistake which has been frequently made in the documentation which is confusing. That was, in fact, 514,200 shares but it has been continuously referred to as ". . . 515 . . ." – would you like to see, for example, page 128

- of yellow 2?
- A. Yes, I know it has been.
- Q. Continuously been referred to by other people perhaps conveniently as a round "515,000"?
- A. Yes.
- Q. If, as you have just told my Lord a moment ago, from the word go these shares being sold by other people in Taiwan were never going to be taken by the syndicate but were to be taken by David NG personally and you and HO Chapman wanted nothing to do with them, why is it that the draft agreement, the first draft agreement, includes those shares?
- 10 A. I don't actually remember doing this draft. It is my draft. I don't actually remember doing it. It was in the very early days of the transaction. I can't actually remember doing this draft. It may be that I asked how many shares altogether for the purposes of calculating the instalment payments. I don't know.
- Q. You see, this has been gone through by your counsel in opening and by you in chief and by me in cross-examination and it has been uniform throughout, as I understood it, that you appeared to confirm 10 minutes ago, that the 514,000 and the 1.65 million is something with which you were not prepared to be associated. You gave a lot of reasons for it –
- 20 A. That's correct.
- Q. – risk and money and the cash – and also whereas you knew that there were 15 million exactly as from the 4th of January, you didn't know about this draft until about the 12th of February. I ask you again, especially if as you say this document was very early days, how was it that that figure was included in the Fermay deal?
- A. This was a very rough draft, as you see, it only had 5 comparatively brief clauses.
- Q. Oh, yes.
- 30 A. It was – Very often when one starts to do a draft, when one starts something and then abandons it and does something else later on, but it is probable that at that time we were talking about instalments, about how to pay the instalments, over what period of time and in calculating the figure we included the 515 shares, the 515,000 shares.
- Q. Well, now, Mr. Ives can that be right? Because I understood the point of the 515,000 and 1.65 million was that there was no question of instalment. It had to be cash.
- A. That is correct, yes. Yes, I agree.
- Q. So if you were thinking about instalments you would have excluded the 515,000 for the purposes of calculation, not included it.
- 40 A. Yes, this was only a very rough draft at this stage –
- Q. However rough it is there was no way you can add 5 million to 10 million and come up with 15,515,000, is there?
- A. That is not 5 million to 10 million. Quite often when doing a draft such as this, one is not concerned with the details. One is first of all concerned with the general form. You get the general form correct, then you go into the details later, and this was probably just a schedule to show how the instalments would be paid so the draft could be built up.
- Q. I accept that may well explain everything in that document. It doesn't explain

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Ives – Cross-
examination

the 3 figures in the middle of the number “. . . 515 . . .” does it, just those 3 figures?

- A. It can well include this figure. As I said, very often when doing a draft one does a very rough draft first of all, putting down more or less any figure, regardless of whether those would be the final figures or not. Then one starts trimming it later.
- Q. And so because of the draft you brought into account a precise amount of shares which from the beginning you yourself did not want to purchase?
- A. That is so, yes.
- Q. Hardly the precise action of an experienced solicitor, Mr. Ives. 10
- A. As I say this is a rough draft and one puts a figure in the rough draft and then corrects the figures if they require correction and –
- Q. Another explanation is that when Mr. David NG is negotiating with CHOO Kim-san in Taiwan, that CHOO Kim-san changed his mind and decided that he wasn't going to let you have any more than 15 million in one package and what I call the key money, the Stokes v. Cambridge principle, have to go into another one and he withdrew the 515?
- A. If David NG was dealing with CHOO Kim-san – which I don't think was so – why should he do that?
- Q. Because CHOO Kim-san wanted the remainder of the shares which he held in Taiwan to go into a company which he had some control through HO Chung-po, and that is why the 515,000 was withdrawn from the Fermay deal and injected with the 1.65 million into MAF. 20
- A. I can't imagine that in a 15 million share transaction half a million shares would make any difference as far as that is concerned.
- Q. Mr. Ives, I accept that. It wasn't that. It was simply that he would retain the remainder of the shares which would include the 515,000 and you didn't, in fact, know how many shares really CHOO Kim-san controlled, did you?
- A. When you say “CHOO Kim-san controlled” – at this time as far as I was concerned, the CHOWs controlled 15 million shares. 30
- Q. And these other people, Messrs. LEE and FONG, about whom we know nothing else, controlled some other shares?
- A. Yes.
- Q. In fact, you didn't even know how many shares MAF controlled?
- A. I didn't personally, no.
- Q. You get the curious position in the option agreement – would you like to look at that, yellow 1, page 18 – remind yourself of clause 3. You'd better look at clause 2 first, the last 4 lines of clause 2, “(or should the intending Vendor not have the full 6 million shares so many shares as the intending Vendor shall have at the said unit price)”? 40
- A. Yes.
- Q. You can see that that agreement would make sense if it was uncertain how many shares the vendor had – some lost, numbers illegible?
- A. Yes.
- Q. But here it was known precisely how many shares MAF Corporation controlled, was it not?
- A. It was not known to us, no.
- Q. Known to them, you see, because we looked this morning at documents 19 to 21, P14, which is their own ledgers and they had 2.15 million which they had

- for years, a couple of years; they had been out in the market buying some for 3 months allegedly and had stopped buying as at the 30th November, and here we are 4 months later and they haven't ventured into the market.
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- A. I believe they did go into the market again.
- Q. Have a look now shall we at page 13, P14. We have this figure at the foot of the page.
- Defendant's Evidence
- A. Sorry, which page?
- Q. Page 13 in P14, MAF Corporation; you see the last entry?
- No. 40
- A. Yes, "1,069,000".
- 10 Q. 1,069,000 and that includes 4 transfers for 32,000 on the 19th of January otherwise they stopped dealing on the 23rd November?
- Melville E. Ives – Cross-examination
- A. Yes.
- Q. Then turn over to page 14 . . .
- A. Yes.
- Q. And they don't enter the market again until at least April when they are selling because all the rest of the transactions on that page are a collection –
- A. Yes.
- Q. So there you are. They had not entered the market for the preceding 4 months on their own ledger – you remember the last deal was on 30th November – and, of course, if you look at page 12, the only other, MAF Corporation with whom the deal was done, of course had never entered the market at all.
- 20 A. Yes, but (a) we had not seen their ledger, and (b) whether or not they had entered the market would not be immediately reflected in these ledger cards.
- Q. Yes. But MAF and HO Chung-po must have known precisely how many shares they had?
- A. On the 30th March, yes.
- Q. So long as they were physically capable of adding together the figures 2,157,000 and 1,069,000 they could have told to a share exactly what they'd got – that's right, isn't it?
- 30 A. They could have done, yes.
- Q. And of all people, the man who knew whether the shares were valid, was HO Chung-po, the registrar?
- A. Yes.
- Q. There was no question of verification. Now, in those circumstances, Mr. Ives, is it again not a little odd that an option clause should be entered into for a figure of up to 6 million when it was absolutely certain to the last share how many shares they'd got?
- A. It was not odd to us at the time.
- Q. Mr. Ives, isn't it odd to you now?
- 40 A. Yes, when one can look back and see the records of everything, yes, one may say "This is odd" but at the time it was far from odd.
- Q. It wouldn't be odd if CHOO Kim-san through his agents had instructed HO Chung-po that the only terms upon which you were going to get shares which you needed in a transfer as opposed to going into the market and driving the price against you was that you would take at \$1.50 every share that HO Chung-po could lay his hands on.
- A. These shares belonged to, beneficially, the MAF Credit Group. The profit from these shares or the benefit from the sale of these shares would presumably go to that group, and not CHOO Kim-san.

- Q. You hope? You didn't know, of course, at that time it was vitally important for Mr. HO Chung-po to avoid getting into trouble with the police. You see, at the time I suggest what was being put upon you, you or Mr. David NG, at the time probably the latter, was that you had agreed blind to purchase from MAF Corporation, HO Chung-po, whatever number of shares he put into the deal and you didn't know how many they'd be.
- A. That is largely so, yes, up to 6 million.
- Q. And the reason you insisted on a limit of 6 million was that at that point, at about 6 million, you would – with the other parts of the deal – have got actual control, you would have got 51%. 10
- A. Correct, yes.
- Q. And that's why the 6 million was put in?
- A. Yes.
- Q. That represented 51%?
- A. Yes.
- Q. And up to that you were being forced to pay 1.5 – no profit in it – whatever figure CHOO Kim-san's minions put through?
- A. They insisted on the same price as we were hoping to get for the shares, namely, 1.50.
- Q. As the financial inspector observed in his report, you paid 3 times the market price for those shares? 20
- A. Yes.
- Q. They had you over a barrel, Mr. Ives – it was all part of the deal.
- A. They had us over the barrel, yes, for the same reason as the case you mentioned, Stokes v. Cambridge.
- Q. And the deal was that you would rescue HO Chung-po out of your own pockets?
- A. I don't think we were rescuing him.
- Q. Interesting sequence of dates, Mr. Ives, that the transfer of the Fermay shares went through on the 28th March, transfer of David NG's shares went through on 29th March and the MAF agreement was signed on the 30th March. 30
- A. Yes.
- Q. Is that all coincidence?
- A. The option agreement of the 30th March does depend upon the validity of the Fermay shares. If the Fermay shares turned out to be worthless, we didn't want to pay the \$50,000 on the 30th March agreement.
- Q. So they were all tied up together?
- A. Yes.
- Q. I don't think I want to ask you anything more about P12, Mr. Ives, but I do want to ask you a little more about Messrs. CHOW and HWANG. Am I right in saying there is nothing which emanates from them which was not typed by you or by your staff or on your instructions, by which I include the dictation – 40
- A. Either drafted in my office or typed in my office – I think that is correct, yes.
- Q. There is nothing which emanates from them in their handwriting?
- A. Correct.
- Q. And there is nothing which emanates from them which was typed, as it were, by them or by their staff or secretaries?
- A. Something typed in their office, yes.

- Q. What is that, which is that? Supreme Court
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- A. That is the agreement 16, the agreement of the 23rd.
- Q. Ah, yes, but that was typed as a result of your dictation?
- A. Yes, yes.
- Q. I regard that as typed by you. Defendant's
Evidence
- A. Yes.
- Q. Nothing that they actually dictated to their secretaries?
- A. No. No. 40
- Q. Or in their office?
- 10 A. No. Melville E.
Ives – Cross-
examination
- Q. It follows therefore that there is no correspondence of any kind with either of them?
- A. Yes, that is so.
- Q. All they have ever done is to append their signatures where required?
- A. Yes.
- Q. And we have heard that the last emperor of Austria was known somewhat irreverently as the Imperial Signing Machine because he signed everything and did nothing?
- A. Mmhm.
- 20 Q. It was the function of CHOW and HWANG here was it not?
- A. That is not their function, no.
- Q. And we have been supplied with David NG's Certificate of Identity and travel documents and he returned from Taiwan on the 17th May this year for the last time?
- A. I can't recall if that is correct.
- Q. That is what the document say?
- A. Yes.
- Q. And he hasn't been back since?
- A. No.
- 30 Q. Has he – May, June, July – any intention of going there, any frustrated intention?
- A. I don't think so, no.
- Q. Would you just look at yellow 1, page 62 please. That is the appointment of Mr. David NG as managing director.
- Q. Since you never corresponded with Chow and Hwang, they never corresponded with you, and they signed everything put in front of them, why did you not simply put that document in an envelope and send it to the address on the letterhead instead of as you did – giving it to Mr. David Ng?
- A. It is a matter of convenience.
- 40 Q. "As a matter of convenience"?
- A. Yes.
- Q. Now, David Ng had come back from Taiwan, he wasn't going back there – had no intention of going back there, and Chow and Hwang would sign anything put in front of them, I ask you again why was it convenient for you to give it to David Ng, who wasn't going back to Taiwan, as opposed to putting it into an envelope without even a compliment slip and sending it to Chow and Hwang in the hope that they would kindly sign it and send it back again?
- A. All communications had been through and with David Ng, so it was natural to

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follow the same procedure.

- Q. So, it's no longer a matter of convenience, it's now natural to follow the same procedure?
- A. A matter of convenience –
- Q. How on earth, Mr. Ives, could Chow and Hwang know when they received an envelope from Hong Kong containing this document and no covering letter whether it came from you or from David Ng?
- A. I don't know whether David Ng put in a compliment slip or not. I don't know.
- Q. Remember I specifically asked when my learned friend Mr. Swaine was on his feet on this point that there was no correspondence and no covering letter and I got up and said, "Does that mean there isn't or there never was?" and he agreed there never was a covering – 10
- A. Yes, I said maybe it was with a compliment slip. I don't know. Maybe.
- Q. Why should it come with a compliment slip? After all, you were an authorised signatory of the company.
- A. But it was sent through David Ng he was the one who was in contact with them.
- Q. You knew that there had never been a word to or from Hong Kong and Taiwan in writing ever? Isn't it very curious that you should give it to David Ng to put it into an envelope and incur the expense on stamp himself? 20
- A. Not too odd. No.
- Q. Of course, if it had gone out from your office, it would have your chop on it and appear in a chit book, wouldn't it?
- A. Not on a chit book. It would have been registered as –
- Q. Or with the mail book?
- A. That would have been regarded as a letter despatched.
- Q. And, of course, we have as it were a contemporaneous record, the date it was despatched.
- A. That would be. Yes.
- Q. How did you come to put the date of 20th May on to a document which you were going to hand to somebody else who was not to go to Taiwan? 30
- A. That, I understood, was the date when the meeting was held.
- Q. That was the –
- A. These are the minutes of a meeting which had been held.
- Q. "– which had been held".
- A. Yes.
- Q. I see. Of course, the alternative – the alternative is this, is it not, Mr. Ives: that what in fact you got from Taiwan was not letterheads of Skyprene International, blank, but letterheads of Skyprene International, signed, blank by Chaw-I Chow. 40
- A. No, this one – this letter was unsigned; it was sent – given to David Ng and it came back into my possession signed.
- Q. You see, if you look at the document itself, it was a very short meeting.
- A. Yes.
- Q. And there weren't enough minutes to fill up the space and for one reason the gap of nearly 3 inches as between the germain of the meeting and Mr. Chaw-I Chow's signature.
- A. Yes.
- Q. You are still sure that before that was typed, his signature wasn't already there

- and that explains why there should be no covering letter?
- A. If I may refer to document 17?
- Q. Document 17?
- A. 17 in the same bundle. You will see there also the gap for the signature is on – on the ‘bought and sold’ note – yes, the gap for the singature is also about the same. It’s my secretary.
- Q. That’s your signature, isn’t it? It is your signature there?
- A. I think so. Yes.
- Q. I’m talking about Chaw-I CHOW’s signature.
- 10 A. No, this was typed in my office. Yes, my secretary usually leaves a fairly substantial gap – not always but quite often she leaves a substantial gap when leaving a space for signature.
- Q. That’s, as it were, a double document for one pair on which it tends to take up the whole page; you’d probably need room for stamp or the stamp office.
- A. All the more reason for making the gap for the signature smaller.
- Q. Doesn’t matter where it’s stamped.
- A. That’s just one of her quirks, I think.
- Q. I just ask you this – Mr. Ching really covered the ground and I just want to ask you two more things about communication with Chow and Hwang. Why did you never write to them and say, “Here, these proceedings have been brought: would you like to come over?”
- 20 A. David Ng was in communication with them; he kept them informed.
- Q. He hasn’t been back since the 17th May. After the 17th May, after you’d sent off document 62, why not just write to him and say, in your capacity not as a member of the syndicate but as a solicitor with perhaps some sense of, as you’d say, moral obligation, why not just write and say that “these proceedings have all been brought, it would be most helpful if you could come over. You said you couldn’t come over in March. Has the position changed? Is your holiday at an end?”
- 30 A. I understand that David Ng had discussed this matter over with them over the telephone.
- Q. And his reporting back to you, you never thought it was worth just in writing saying that?
- A. Correct.
- Q. Of course, if you knew that they had no further interest in the proceedings, you would know there was no point in writing because you either wouldn’t get an answer or the answer you would get would be positively damning.
- A. As far as I am concerned, they do have an interest in these proceedings and that’s why they are being represented through Fermay.
- 40 Q. Why Fermay has been represented and they are not being represented.
- A. That is so. Yes.
- Q. And, you see, in your evidence, do you mean that you regard them as in any way being before the court at this moment?
- A. No, not as the defendants. No.
- Q. You see, when you gave your evidence in chief about this and you were shown this document 62 by Mr. Swaine, you said that David Ng was appointed Managing Director so that he could properly represent the company in these proceedings.
- A. Correct. Yes.

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examination

- Q. Now, you are an experienced man and would you tell my Lord what it is that you are able to do with the authority of document 62 which you did not have prior to the coming into existence of that document?
- A. That is so David Ng could personally instruct ourselves as solicitors in relation to these proceedings on behalf of Fermay.
- Q. And are you telling my Lord that you cannot accept instructions from any director of a company other than Managing Director?
- A. Can do, but it's more convenient to have a director present.
- Q. Why is it more convenient, Mr. Ives?
- A. Decisions may have to be made, instructions taken, – 10
- Q. Look at paragraph – Look at page 14 in the same bundle, would you?
- A. One-four?
- Q. Yes, page 14. Given in general that all authorised signatures, they can sign any document of any nature whatsoever, the signature of anyone of them shall be binding on the company. You're saying that with that authority Mr. David Ng couldn't write to you and bind the company by saying, 'Dear Mr. Ives, please represent Fermay'?
- A. Could have done, perhaps, but it was thought desirable to have it in the form of the resolution of 62.
- Q. Just another funny thing – I mean it smells – these actions – doesn't it? 20
- A. There's nothing funny about that. I don't see how it smells.
- Q. But with that authority on document 14, you could compromise this action on any terms, large, small, generous or mean, sign it yourself and that would bind the company.
- A. I don't think 14 would entitle one to take proceedings or defend proceedings on behalf of the company.
- Q. You don't?
- A. Probably not. I haven't considered that carefully, but possibly not.
- Q. You see, what you might have done when these proceedings began was to have written to Chow and Hwang, if you really believe they couldn't come here, and explain as a lawyer exactly what the situation was and suggest that you would act in the best of their interest and would they agree perhaps that you could deduct your 8.8 million or perhaps share the costs. 30
- A. That would have been a good idea.
- Q. Would you tell me what is your agreement with Chow and Hwang as to the costs of these proceedings?
- A. We have no agreement with Chow and Hwang as to the costs.
- Q. No agreement?
- A. They are not defending –
- Q. So that whatever costs are going to be incurred, that's not going to affect any money which is to be remitted to Taiwan. 40
- A. We haven't considered that. We might come to them afterwards and say, 'Well, look, we incurred these costs.'
- Q. Mr. Ives, I'm told that costs are less significant inter parties in Hong Kong than they are in the United Kingdom, which means that as against the client he has to pay a larger bill. Isn't it therefore important – specially important in Hong Kong to let somebody know whether any bill of costs has been run up against them.
- A. At the moment we are protecting ourselves.

- Q. Hmhm? Supreme Court
of Hong Kong
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- A. That includes Fermay. But legally in this action there is no bill of costs being incurred by the Chows at all.
- Q. Very well. How many times had you actually met Mr. HO Chung Po? I'm talking – I'm sorry – Defendant's
Evidence
- A. Of recent times?
- Q. Yes, recent, recent, in any relevant time, you know, any material time – How many times had you ever met this HO Chung Po? No. 40
- A. I would say four or five times.
- 10 Q. And, among other things, did you negotiate the MAF Corporation agreement with him? Melville E.
Ives – Cross-
examination
- A. No.
- Q. Who with?
- A. The MAF option agreement?
- Q. Yes.
- A. Yes, David Ng and Chapman HO negotiated that.
- Q. I see. So, they were in contact with HO Chung Po.
- A. Yes.
- Q. I notice you witnessed his signature on the 12th May, the amended agreement.
- 20 A. Yes.
- Q. That was just a formal act, was it? You didn't negotiate the agreement itself with him?
- A. I didn't negotiate with him.
- Q. Who did?
- MR. SWAINE: The cancellation agreement?
- MR. YORKE: Yes.
- MR. SWAINE: There were two amendments.
- MR. YORKE: Yellow 1, page 9.
- MR. SWAINE: The cancellation agreement?
- MR. YORKE: Yellow 1, page 9, that's the cancellation agreement of the 12th May.
- A. That's the cancellation of the Connaught Road.
- Q. Yes. Did you negotiate that?
- A. I didn't negotiate that.
- Q. Who did?
- 30 A. I think that was David Ng, Ho Chapman – I don't know if Mr. James Coe had any direct negotiations or not.
- Q. A last matter which goes back to Chow and Hwang. The difficulties under which we now apprehend, they may be – all relate to the possible infringements of, in effect, Republic of China Exchange Control.
- A. Yes.
- Q. The effect of this transaction – these transactions – if you are right, is that the sum of 8.8 million Hong Kong dollars will be remitted to Taiwan.

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examination

- A. I don't know whether that would be remitted to them in Hong Kong currency or in Taiwan currency.
- Q. It doesn't matter. If it's remitted in Taiwan currency, that has to be purchased –
- A. Yes.
- Q. So, the net result of these proceedings would be a substantial inflow of currency to Taiwan.
- A. Yes.
- Q. Do you know of any country in the world which restricts the inflow of foreign currency into its colony, the Central Bank? 10
- A. I think most countries do. Switzerland, for example, puts a penalty on –)
- Q. Switzerland, Mr. Ives, let me remind you – I'm sorry to interrupt you, but I'll tell you exactly what the penalty is. If you make a bank deposit in Switzerland of more than one hundred thousand Swiss francs, the negative interest is going to be 25 per cent a year. It's purely a banking procedure, Switzerland of course having an enormous –
- A. Yes. You get other circumstances whereby permission is required, for example, I believe it is, or maybe it's the National Group which are desirous of opening a TV manufacturing factory somewhere in the United Kingdom and that would be bringing in quite an amount of currency, and I believe that has been turned 20
down.
- Q. I'm afraid if you look at the United Kingdom Foreign Exchange Control legislation of 1947, there is no restriction on bringing money into the country.
- A. Yes.
- Q. Every country sometimes controls bringing in notes for obvious reasons.
- A. Yes.
- Q. But if you stop notes coming in, it may not be worthwhile for people taking notes out.
- A. Yes.
- Q. Is there any country in the world which actually prevents you from bringing 30
foreign currency in?
- A. If it's in exchange for an asset which is in the country.
- Q. You see, Messrs. Chow and Hwang – they went to the Central Bank of Taiwan and said, 'Look, we've done a deal with here which is bringing in nearly nine million dollars foreign currency to Taiwan'; they wouldn't be in danger of a death penalty: they would get a medal, wouldn't they?
- A. Yes, but the original infringement, if you do something wrong and simply because it turns out to be beneficial, it does not make the offence any less.
- Q. I suggest to you that on any known system of foreign exchange control in the 40
world, Chow and Hwang are not and never have been at risk and you know it.

COURT: Mr. Swaine?

MR. SWAINE: My Lord, there are matters arising out of the chart and ledgers which would require my spending some time with Mr. Ives for the purpose of possible clarification, and Mr. Yorke has consented that I do so. My Lord, I know it's only half way through the afternoon, but it may well be that if the donkey work is done this afternoon, far less time would be taken up in re-examination.

COURT: Mr. Yorke?

MR. YORKE: My Lord, in the unusual circumstances of this case, as Mr. Ives is both a solicitor and a party to the proceedings, I have agreed to the discussion taking place.

COURT: Yes?

MR. YORKE: But, my Lord, it is to be limited to the matters arising out of my cross-examination yesterday afternoon and this morning, that is to say, to documents P12, P14 and associated matters, and not to anything wider than that.

10 COURT: Yes, you did indicate that.

MR. CHING: My Lord, may I also say that I'm still interested in seeing the Xerox copy of the transfer forms which Mr. Ives said he saw.

MR. SWAINE: He has not been able to find it.

MR. CHING: He said in the witness-box sometime last week that he'd seen it within the last ten years and surely it cannot be all that difficult to find that particular document, and still we would like to see it.

COURT: Very well.

MR. CHING: My Lord, I could ask for specific discovery and I'd simply ask for it.

20 COURT: I think there are one or two matters on the chart I want to ask Mr. Yorke.
(To witness) You may please sit down.

A. Thank you.

COURT: Mr. Yorke, the fourth defendant brought from Taiwan something like 2.1 million shares; correct?

MR. YORKE: Yes, my Lord.

COURT: I think on his own account.

MR. YORKE: Yes, but, my Lord –

COURT: He said – Now, the chart shows the 51,000 – not 51 – 510,000.

MR. YORKE: 514, plus 1.650. They come in together on the end of MAF.

COURT: I see. The 4th defendant says he brought those from Taiwan.

30 MR. YORKE: Yes –

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examination

COURT: I see.

MR. YORKE: Your Lordship will find the transfer – If I can just give your Lordship the reference in P14, that they are transfers No. 4830 –

COURT: When you say P14, page 14?

MR. YORKE: No, my Lord, it's in bundle P14 – that's the bundle of documents. Exhibit P14 in this bundle.

COURT: Yes, Exhibit P14, page –

MR. YORKE: My Lord, a transfer of 514,200.

COURT: That I've got.

MR. YORKE: That's on page 6. And it is transfer 4831 of the 29th March. 10

COURT: 4 . . .

MR. YORKE: 4831, the very bottom of the page, your Lordship will see 514,200.

COURT: Yes.

MR. YORKE: The transfer from Triumphant is at transfer no. 4830 on page 11. Your Lordship will see it on page 11, bottom of the page, there's a total of – the figures on the righthand side do add up to 1,650,000.

COURT: Yes.

MR. YORKE: And both of those transfers appear on page 14.

COURT: Yes.

MR. YORKE: Under the same numbers. And exactly in the middle of the page, 20 your Lordship will see it's 1.650 and 514.

COURT: Plus the 200.

MR. YORKE: Yes, my Lord, plus the 200.

COURT: Yes.

MR. YORKE: That's the mechanics of the transfer to MAF Nominees. And then those shares subsequently go into the bigger parcel which your Lordship sees on P12 with the first of the red boxes round it.

COURT: I see. Yes. And then the 2¼ million shares which the syndicate bought under local market as shown on the righthand side of the chart.

MR. YORKE: Yes, my Lord.

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COURT: That's the one. Is that shown on Exhibit P14 in any way?

MR. YORKE: No, my Lord. They went into the account eventually of City Nominees.

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COURT: Yes.

No. 40

MR. YORKE: And, my Lord, there are a number – they are to be found in page 17, that's pages 16 and 17.

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examination

COURT: I see.

10 MR. YORKE: But they are mixed up with others. It's rather like Mr. Choo Kim San's account with lots and lots of shares in. I can't pull out pages 16 and 17 which are David Ng's shares – which are the syndicate's shares and which are held for other clients. Well, it may be if I had a little more time I could, but I have not been able to do that.

COURT: I think you have dealt with that. Probably I missed it, and that's the 3.2 million option shares to the MAF Corporation. That is shown on, I think, Exhibit P14 page 12, isn't it? Is that the one?

MR. YORKE: Yes, my Lord, that's correct.

COURT: That is the one. Yes. Is that shown on the chart in any way?

20 MR. YORKE: Yes, my Lord. If your Lordship looks between – going between MAF Corporation and MAF Nominees –

COURT: Yes?

MR. YORKE: – the single black line has 2,157 –

COURT: That's right.

30 MR. YORKE: But it's confused by the fact that what happens is that the one parcel 7,000 shares, which was bought by MAF Corporation, is mistaken: it must have been a mistake – registered in the name of Corporation instead of the name Nominees. But, in fact, that's how the 7,000 gets in there. But it is really quite separate from the original holding. Your Lordship sees the figure 2157 correspond to the figure exactly in the middle of P12. And, my Lord, what may be slightly confusing is that the 3.226 which your Lordship is probably after –

COURT: Yes?

MR. YORKE: – you have to add together the 700,000.

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COURT: In the middle of the chart?

MR. YORKE: In the middle.

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Evidence

COURT: Yes?

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MR. YORKE: The 369,000 with the little (3) against it. Together, that makes up a total of 1.069. And then you add that to the 2.157.

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COURT: I see. Yes.

MR. YORKE: And you get 3.226.

COURT: I see.

MR. YORKE: So, it's really, in effect, my Lord, the three arrows joining together above the name 'Nominees' make up the 3.226; the two arrows joining together above 'MAF' make up the 2.1 million in Taiwan. 10

COURT: I see. And the little red squares represent partially tainted shares –

MR. YORKE: Yes, in so far as any coming from the lefthand side is tainted.

COURT: Yes. Right. Thank you very much.

Appearances as before.

(Counsel answer various queries raised by Court conveyed to them through Clerk before court resumes).

D.W.1 – Melville Edward IVES

RE-XN. BY MR. SWAINE

- Q. Mr. Ives, in the course of your cross-examination by Mr. CHING, you agreed that the 23rd of March '77 agreement with the CHOWs, the 30th of April agreement with Rocky and the 12th of May agreement with Rocky had not been stamped. 20
- A. That's correct, yes.
- Q. Did these agreements require stamping?
- A. They did not require stamping.
- Q. The 9th of June loan agreement which is document 71 in yellow 1 – that was stamped as we have seen for \$32,400.
- A. Yes.
- Q. And the date of the stamp is the 20th of June. 30
- A. Yes.
- Q. That did require stamping.
- A. That required stamping, yes. We had an argument with the Collector of Stamps on that at that time. It does require stamping.

- Q. It was also agreed by you that the court had only the word of yourself and the syndicate as to whether the agreements had come into existence. Now, as regards the 30th of April agreement with Rocky and the 12th of May agreement with Rocky – would that be so? Is it just the word of the syndicate? Supreme Court of Hong Kong High Court
- A. And of course of Rocky – of James Coe. Defendant's Evidence
- Q. And were the agreements witnessed on behalf of Rocky?
- A. They were, yes, by Mr. Philip K.H. WONG. No. 40
- 10 Q. So, there would be the word of James Coe as well as that of Philip K.H. WONG. Melville E. Ives – Re-examination
- A. Correct, yes.
- Q. You were questioned about the frauds charged by – charged against CHOO Kim-san and you said that you believed one of these related to a forged minute for a loan of \$10M. which was subsequently repaid.
- A. Yes.
- Q. Which left on the figures about \$4M.
- A. I said . . .
- Q. . . . It was put to you by Mr. CHING.
- A. Yes.
- 20 Q. Is it to your knowledge whether there had been any claims lodged in court against CHOO Kim-san other than the claims in the M.B.F. and the LEE Ing-chee proceedings?
- A. I know of no other proceedings, no. In that respect, there was a claim – sorry, there was a claim by Imperial Hotel – San Imperial Hotel Corporation – I am not sure which – I think it would be Imperial Hotel Ltd. probably – against CHOO Kim-san for \$1M. odd which was an amount which he had drawn from the company, I believe, for advertising and other expenses which had not been supported by vouchers and the hotel company instituted proceedings against him for that amount. It is reported in the annual report, I think.
- 30 Q. Yes. Do you know who the solicitors were for the plaintiffs in that action?
- A. Previously, the solicitors were WOO, KWAN, LEE and LO. There was a Mr. CHAN in WOO, KWAN, LEE & LO – Christopher CHAN – who was handling the affairs of the San Imperial group. Recently, he had left WOO, KWAN, LEE and LO and joined another firm which has been set up – YU something and CHAN something. It's a new firm.
- Q. Who was the solicitor – which firm was acting for the Imperial Hotel in that action?
- A. Yes. I don't know whether WOO, KWAN, LEE and LO started off the action and then it was transferred to this new firm. There was a Mr. Christopher CHAN who was the solicitor having the conduct of the action. I don't know whether he started off in the one firm and then transferred to the other firm or whether he started off in the new firm.
- 40

COURT: Anyway, Mr. Christopher CHAN was the solicitor.

- A. Christopher CHAN was the solicitor.
- Q. We may be at cross purposes, Mr. Ives. As a matter of fact, on record, I rather thought it was K.H. WONG and Co. acting for San Imperial against CHOO

Kim-san.

A. I think you might be right.

COURT: Is it important?

MR. SWAINE: Not very important.

Q. But your evidence is that until Chapman HO telephoned you in London about the 13th of April notice, you had no knowledge of any claim . . .

A. Correct.

Q. . . . against CHOO Kim-san. Mention was made in cross examination of your not informing James Coe of the attachment which was advertised on the 13th of April.

10

A. Yes.

Q. You said among other things you weren't acting for James Coe.

A. Yes.

Q. He was at that time represented by Philip WONG, but there was no doubt in your mind, was there, that James Coe knew of the injunction in the 2459 action which was advertised on the 29th of April.

A. Yes, correct.

(Mr. CHING and Mr. Swaine confer).

A. 252, I think.

Q. 252, I'm sorry.

20

COURT: 29th . . .

MR. SWAINE: . . . 29th of April.

Q. And it was because of that notice that Philip WONG required and you agreed to the insertion of that last paragraph in the final form of the 30th of April agreement as to certain contingencies which might arise upon that action.

A. Correct.

Q. You will remember, Mr. Ives, that you were cross-examined also by Mr. CHING about the telexes from Kirkwood, the Taiwan firm of lawyers . . .

A. Yes.

Q. . . . as regards whether it was an offence for the CHOWs to purchase San Imperial shares. Do you recall the pleading in the action of the LEEs – 2459 and 155, at paragraph 20(B) in which it was pleaded at the time that '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'. Do you recall that in the pleadings?

30

A. Yes, I do recall that.

Q. That of course was abandoned by Mr. CHING . . .

A. Later on, yes.

Q. . . . later on in his opening.

A. Yes.

40

Q. Do you recall also there's a similar pleading in the statement of claim of

M.B.F. in 540. It is page 12 of the M.B.F. statement of claim, under subparagraph 4(d) which pleads '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'. Do you recall this?

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Evidence

A. Yes.

Q. This pleading has not been abandoned, has it?

A. I don't think so, no.

No. 40

10 Q. You said that you felt you owed the CHOWs a moral obligation as well as a legal obligation to pay them the purchase money.

A. Yes.

Q. And at a later portion of your cross-examination, you said that in seeking to protect their possession you were defending the garnishee proceedings.

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Ives –
Re-examination

A. Yes.

Q. Now, would you consider that your obligations both legal and moral to the CHOWs would have been discharged if the court at the end of the day should make a garnishee order against the CHOWs in respect of the \$8.8M?

A. I think so, yes.

COURT: Mr. Swaine, I am trying to find the 29th of April advertisement.

20 MR. SWAINE: My Lord, this would be of course in yellow 1.

COURT: Document . . .

MR. SWAINE: . . . My Lord, it is 35.

COURT: Oh, yes.

Q. Mr. Ives, you were asked by Mr. CHING whether the 18th of January agreement for the purchase of the Connaught Road property – that's document 9 – was a genuine agreement.

A. Yes.

Q. You of course had nothing to do with the 18th of January agreement.

A. Correct.

30 Q. Although you were involved in its cancellation.

A. Correct.

Q. Your answer was you had no reason to believe otherwise, and among other things you referred to the report of the Special Inspector.

A. Yes.

Q. And is the reference in the Inspector's report that at page 63 of yellow 5? Just have a look at this. Does the Inspector there deal with the circumstances wherein that agreement came to be cancelled?

A. Yes. The third paragraph on this page, half way down the page.

COURT: Starting from 'In 1977, . . .'?

40 MR. SWAINE: "During 1976, Hong Kong Estates was granted an option to purchase the property under development owned by M.A.F. Investment. In connection

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High Court

therewith \$6.5m. was deposited with M.A.F. Corporation . . .” and then the rest follows.

Defendant’s
Evidence

A. Yes, yes.

Q. That’s the agreement in question.

A. Yes.

No. 40

Q. Now, Mr. Ives, dealing with the interlocutory affidavits to which you were cross-examined in some detail as to various omissions – this is a matter of record, but do you recall that the plaintiffs had obtained a charging order first in respect of the 15 million shares and it was only subsequently that they obtained a charging order in respect of the 7.6M. shares. Is that how you recall the sequence of events to be?

Melville E.
Ives –
Re-examination

10

A. The 7. . . .

MR. CHING: . . . Would my learned friend repeat that.

MR. SWAINE: The charging order in respect of the 15M. shares was obtained before the charging order in respect of the 7.6M. shares.

(A pause).

MR. SWAINE: My Lord, I am reminded that before either Mr. CHING or myself came into the picture, the respective counsel were Mr. Litton for the people who Mr. CHING now represents and Mr. Jackson-Lipkin . . .

MR. CHING: . . . No, no. Mr. Litton was for M.B.F.

20

MR. SWAINE: For M.B.F., and Mr. Jackson-Lipkin for Fermay. My Lord, there was a consent agreement as to splitting the issues, i.e., as to the setting-aside to be dealt with first, and if that should fail then the merits to be gone into. My Lord, this accounts for the setting-aside order made by Mr. Justice Zimmern in 159. It was part of that agreement, my Lord, that it be deemed that M.B.F. have a charging order over the 15M. shares. The matter is complicated. This arose before either of us were in the proceedings. The consent order, my Lord, is in the record and there’s a provision . . .

(A pause).

MR. SWAINE: . . . My Lord, there appears to be some disagreement at counsel’s table. May I now leave this, my Lord?

30

COURT: Yes.

Q. Mr. Ives, the suggestion was made that by seeking from Mr. Justice Zimmern fortification for the injunction which the LEEs had obtained, your intention was to suppress the proceedings.

A. Yes.

Q. Do you recall the suggestion?

A. Yes.

- Q. Now, the fortification that was then sought went of course only to the injunction. Supreme Court of Hong Kong High Court
- A. Correct, yes.
- Q. There were still on record the charging orders nisi which LEE Ing-chee and LEE Kon-wah had obtained in respect of the whole parcel of shares – the 2.3M. shares. Defendant's Evidence
- A. Yes.
- Q. Now, had the injunction been discharged for want of fortification, would the charging orders have remained in force? No. 40
- 10 A. Yes, the charging orders would still remain in force, but the injunction would have lapsed. Melville E. Ives – Re-examination
- Q. And with the charging orders, it would be inconvenient to proceed on trial anyway.
- A. It would.
- Q. Mr. Ives, I was not counsel for Fermay at the time, but do you recall – Mr. TANG was of course junior throughout – but . . .
- A. . . . Yes.
- Q. And leading counsel at the time was Mr. Jackson-Lipkin.
- A. Yes.
- 20 Q. Now, do you recall whether before the first affidavit was filed on behalf of Fermay in the 159 action, you had already disclosed to counsel the agreement with the CHOWs of the 23rd of March 1977?
- A. Yes, yes.
- Q. And, indeed, you will recall the second batch of affidavits which you described as having been prompted in part by a one-upmanship stand taken by counsel in chambers.
- A. Yes.
- Q. And in the affidavit filed on behalf of Fermay in the second batch, was there not a reference to counsel advising that facts and not evidence be deposed to?
- 30 A. Yes, there was . . .
- MR. SWAINE: . . . My Lord, this would be red 2, page 31.
- A. Yes, there was a clause to that effect.
- COURT: I think it is Clause 14, is it?
- MR. SWAINE: Clause 14.
- Q. So that the matter rested largely with counsel as to what ought to go into the first batch of affidavits.
- A. Largely so.
- Q. The agreement was disclosed there.
- A. Yes.
- 40 Q. Mr. Ives, a great deal of theory put to you by Mr. Yorke rested on the supposition that there had been on the part of M.A.F. Credit a breach of Section 48 of the Companies Ordinance.
- A. Yes.

(Mr. Yorke clarifies to court what he has said).

Q. The greater emphasis would not be on Section 48. There was some reliance on Section 48 as part of the theory which was put to you.

A. Yes.

Q. Now, the only evidence that we have as to any possible breach of Section 48 is an answer given by Mr. LEE Ing-chee in re-examination by Mr. Yorke of which I have taken I think a verbatim note. Can you recall that the evidence was this: Mr. LEE Ing-chee was asked who arranged for M.A.F. Corporation to hold the \$3M. worth of shares in San Imperial; the answer was: CHOO Kim-san. I'm sorry – \$3M. worth of shares in M.A.F. Credit – in M.A.F. Credit, I'm sorry. 10

COURT: Just a minute.

MR. SWAINE: This would be re-examination on the 27th of October in the afternoon.

COURT: Yes. M.A.F. Credit? I thought according to my note 'who arranged for M.A.F. Corporation to hold the 3M. shares'.

MR. SWAINE: \$3M. worth of shares.

COURT: Well, 3M. shares of a dollar each, according to exhibit D.4 – is it?

MR. SWAINE: Yes, exhibit D.4 in the annual reports.

COURT: Yes, exhibit D.4. D.4 refers to 3M. shares. Anyway, I had better read out what my note says: 20

Q. Who arranged for M.A.F. Corporation to hold the 3M. shares?

A. CHOO Kim-san did.

MR. SWAINE: That's correct, my Lord.

COURT: The terms of their arrangement were because CHOO Kim-san owed M.A.F. Corporation money, so he gave the 3M. shares to M.A.F. Corporation to set off a part of that debt.

MR. SWAINE: That's correct, my Lord.

COURT: And then we have the note in exhibit D.4.

MR. SWAINE: Yes. 30

Q. Do you see in your evidence any possible breach of Section 48, Mr. Ives?

A. I don't – no, I don't know.

Q. Could we go back to the kindergarten principles I think Mr. Yorke described them to be of share transfers, Mr. Ives.

A. Yes.

Q. Mr. Ives, the books would show the transferor and the transferee.

A. Yes.
Q. Would the books show . . .

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High Court

COURT: . . . What books?

MR. SWAINE: The ledger, my Lord.

Defendant's
Evidence

Q. Would that show intermediate dealings in the shares prior to their resting in the final transferee? No. 40

A. No, they would probably – in Hong Kong, there seems in most cases to be a number of transactions taking place before the transfer is lodged for registration. So, the share register would not show those intermediary transactions.

Melville E.
Ives –
Re-examination

10 Q. So, the share register would show transferee and transferor but not any intermediate dealings.

A. Correct.

Q. Now, Mr. Yorke . . .

COURT: . . . If the date of the transfer and the date of the registration of the transferee is only separated by a lapse of, say, 24 hours, then can you draw any conclusion from there?

A. It is most probable there had been no intermediary transactions. Most probably. One can't say 100%. Most probably.

20 Q. Mr. Ives, a great deal of theory and comment was put to yourself by Mr. Yorke. I would reciprocate by asking for your comment and opinion as to whether in all the circumstances of this case in hindsight CHOO Kim-san would have put all his eggs in the Asiatic basket.

A. Definitely not.

Q. Why do you say that?

A. First of all, LEE Ing-chee knew all about Asiatic Nominees. He had given evidence that he appointed one, if not both of the directors of Asiatic Nominees. LEE Ing-chee had told CHOO Kim-san that he, LEE Ing-chee, was going to sue CHOO Kim-san. I think that was in June, 1976.

Q. That's the date I recall from the evidence also.

30 A. Yes.

Q. At the Hyatt Cafe or the Hyatt Hotel Coffee House.

A. CHOO Kim-san would have been the world's No. 1 idiot to have built up a scheme such as this based on putting the substantial amount of shares in question into Asiatic Nominees or leaving them in Asiatic Nominees if this was his scheme as of August/September '76 knowing full well that those shares in Asiatic Nominees would be vulnerable to LEE Ing-chee and M.B.F.

Q. One other assumption which Mr. Yorke made and an important one judging from the interjection made a few minutes ago was that CHOO Kim-san was concerned to save HO Chung-po. Is that an explanation you would give credit to?

40

A. Not really. First of all, I doubt whether either CHOO Kim-san or HO Chung-po were aware of any possible infringement of Section 48 – perhaps even of the existence of Section 48.

Q. Do you see any other reason he might want to bail out HO Chung-po?

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High Court

Defendant's
Evidence

No. 40

Melville E.
Ives –
Re-examination

- A. I don't know.
Q. You were questioned by Mr. Yorke about one of the earlier drafts preceding the 23rd March agreement with the CHOWs.
A. Yes.

MR. SWAINE: This would be P.10, my Lord. Brown 3, page 72.

- A. What's the reference?
Q. It is Brown 3, page 72. You have the exhibit before you, Mr. Ives?
A. Yes.
Q. Now, that draft makes provision for payment of the purchase price by 9 instalments ending in December 1977.
A. Yes.
Q. Do you recall how this came to be?

10

COURT: Recall what?

MR. SWAINE: Recall how this came to be.

- A. As far as I can recall, the three members of the syndicate had a discussion together regarding the proposal we should put to the CHOWs and I started to draft something so that a formal proposal could be put to them, but I abandoned the draft. I can't remember why I abandoned the draft.
Q. This reflected some early thinking on the part of the syndicate.
A. Very early thinking, yes.
Q. Can you see any reason why the syndicate would have got an early working draft going if the whole object of the exercise as embodied in the 23rd March agreement was a sham as is alleged?
A. This would not have been necessary then.

20

MR. SWAINE: I have no further questions, my Lord.

BY COURT

- Q. I think you said James Coe's initial intention was to gain actual control of San Imperial, but at a later stage you agreed he said 'to have effective control'.
A. Correct.
Q. When was that?
A. I think that was after the shares were suspended.
Q. Yes.
A. Perhaps – I think that was the 4th of May.
Q. I see.
A. I think that's correct.
Q. After the suspension of the shares.
A. Yes.
Q. That would be May.
A. Yes.
Q. Would you have a look at the chart again. You have got it in front of you.
A. I have.

30

40

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|----|--------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
| | Q. The 329,400 shares at the right hand corner – these are supposed to be the shares bought by the 4th defendant. | Supreme Court of Hong Kong High Court |
| | A. Yes. | |
| | Q. To make up the 8M. | |
| | A. Bought by the syndicate. | Defendant's Evidence |
| | Q. Bought by the syndicate. | |
| | A. Yes, yes. | |
| | Q. When were they bought, do you remember? | No. 40 |
| 10 | A. Right at the end, as far as I remember. I think those shares were purchased from possibly no more than half a dozen people. | Melville E. Ives – Re-examination |
| | Q. In when? | |
| | A. That's, I believe, after the shares were suspended. | |
| | Q. How soon after, do you remember? This was presumably done over a period of time, not in one day. | |
| | A. Oh, not in one day. | |
| | Q. No, no. | |
| | A. No. | |
| | Q. I mean, what sort of time? | |
| | A. I can't say. Mr. David NG arranged these purchases. I can't say definitely. | |
| 20 | Q. He would know, would he? | |
| | A. He would know, yes. | |

MR. YORKE: There is a document showing that, my Lord.

COURT: Is there?

MR. YORKE: My Lord, it is in yellow 2 – it is in document 135, at page 5.

A. Yes.

(A pause).

MR. YORKE: There is an error as between the document and the affidavit. I haven't been able to see the original documents to check and see which is correct. It does give the dates.

30 COURT: I think the figures don't come to 3 . . .

MR. SWAINE: My Lord, this is not the 329,400 package because your Lordship will see from the first page of 135 the 372,800 makes up part of the 2,279,600 package. My Lord, the 329,400, as your Lordship correctly points out, was purchased with a view to making up the 8M. overall package. It is not to be found in the 135 bundle.

MR. YORKE: I was wrong. Sorry.

MR. SWAINE: My Lord, I think it is in the supplementary bundle because we have since disclosed . . .

COURT: . . . I don't want to spend a lot of time on this. Perhaps you will remember to ask Mr. David NG.

MR. SWAINE: My Lord, the reason it has not really come to the forefront is that this 329,400 does not form part of the 7.6 under the charging order.

COURT: Yes.

MR. SWAINE: My Lord, I will explain why the arithmetic isn't exact. The 7.6, my Lord, excludes this sub-package.

COURT: According to the chart, the total came to just 800 short of the 8M. There is a note which says the 7.631M. 'not verifiable' on the chart.

MR. SWAINE: Your Lordship will see at the end of the day after David NG gives evidence that the 7.6M. is built up of the 5 sub-packages in 135. It does not include the 329,400 although there's a bit of adjustment. My Lord, for the reason that various shares were either not correctly stamped or the signatures weren't right, there had to be an adjustment, my Lord. 10

MR. YORKE: My Lord, it may or may not help to know that the 800 share error could be accounted for by a mistake which has been made several times in the amount transferred from Asiatic for the Taiwan deal. That 514,400 which has been – that 514,200 which has often been referred to as '515' is in the bought & sold note, but that 800 error would produce a round million. It is merely a way in which the discrepancy can be explained. 20

COURT: Yes, I see, all right.

(A pause).

Q. Still on this 329,400 shares – do you know whether they were purchased locally or from Taiwan?

A. I think . . .

Q. . . . If you don't know, say so.

A. I think they were purchased locally, but I am not sure.

Q. Well, David NG will know.

A. Yes, he would know, yes.

MR. SWAINE: My Lord, they were purchased locally. 30

COURT: Sorry?

MR. SWAINE: They were purchased locally.

COURT: I see.

Q. You will remember you said that one of the problems in your attempt to acquire the 15M. shares was the evaluation of San Imperial.

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|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
| A. | Yes. | |
| Q. | Because you did not know whether CHOO Kim-san might have . . . | Supreme Court of Hong Kong High Court |
| A. | . . . Yes. | |
| Q. | And so – rather, Mr. David NG went back to some old evaluations. | |
| A. | Yes. | Defendant's Evidence |
| Q. | When you say 'old evaluations', can you say how old these evaluations were? | |
| A. | I think they were – I am guessing. I think from certain of the correspondence there was a time when there was a move to sell the or to let the Pilkem Street property. | No. 40 |
| 10 | Q. That's in Yaumati. There's correspondence with Tai Pan. Do you remember that now? | Melville E. Ives – |
| A. | Yes. I believe the evaluation was produced by Tai Pan at that time. | Re-examination |

COURT: I can't remember the date – Tai Pan. Is it '77?

MR. SWAINE: I think 75.

COURT: Have you got the month?

MR. SWAINE: It was April '75.

- | | |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Q. | The Pilkem Street property. |
| A. | The Pilkem Street property. The other evaluation report, I think, is in respect of the Imperial Hotel building itself which was produced to David NG when he was negotiating a loan to be secured on the mortgage of that building. Again, this is in the correspondence. |
| 20 | Q. Yes. |

MR. SWAINE: I think that would be May '75.

COURT: Yes.

- | | |
|----|---------------------------------------------------------------------------------------------|
| Q. | I don't know whether you are the best person to explain this, but I am not very clear . . . |
|----|---------------------------------------------------------------------------------------------|

MR. SWAINE: . . . I'm sorry. It's February '76. Document 6. February '76.

COURT: Document 6, yellow 1, is it?

MR. SWAINE: Yellow 1. February '76.

- | | |
|----|------------------------------------------------------------------------------------------------------------------|
| 30 | Q. Would you look at document 71 – I think it is yellow 1 – which relates to a loan of \$17.25M. from James Coe. |
| A. | Yes. |
| Q. | Eventually, the loan was 16.2M. |
| A. | Yes. |
| Q. | How did that come about? |

COURT: I don't think that there was any explanation, was there, Mr. Swaine, on

this.

MR. SWAINE: My Lord, I think I did go into the mechanics of the figures.

COURT: Well, I just want to know how 17.25M. came down to 16.2M.

MR. SWAINE: My Lord, that would be because the package was altered from the entire 23M. shares to an outright purchase of the 8M. shares plus an option in respect of the 15M. shares. The figures got adjusted because of the change in the package and 16.2 was the figure which came out of the wash after making allowance for the option fee. My Lord, I had all these figures at my fingertips when I opened.

COURT: Yes.

10

MR. SWAINE: They will come back to me as I examine Mr. David NG about it.

COURT: Yes, all right. Yes. Perhaps you will make a note of it.

MR. SWAINE: Yes.

COURT: Just one more thing. You said in evidence in chief that on the 9th June, 1977 "we had a host of documentation which was the completion of the first part of the transaction, i.e. between David Ng and I.P.C. in respect of \$8 million"?

A. 8 million shares.

COURT: 8 million shares?

A. Yes.

20

COURT: Yes, thank you very much. Do you want a short adjournment before you start?

MR. SWAINE: I think I might prefer rising a bit earlier.

COURT: We are compelled to have an adjournment because the interpreter is not here.

D.W.2 – NG Pak-shing – Sworn in Punti

XN. BY MR. SWAINE:

Q. Your name is David NG Pak-shing and you are the 4th defendant in these three actions?

A. Yes.

30

Q. Now would you speak up, Mr. Ng, so that everyone here can hear you?

A. Yes.

- Q. Now you live at Far East Mansion, Middle Road, Kowloon, 13th floor, flat A? Supreme Court
A. Yes. of Hong Kong
Q. You had worked for many years for Mr. Hari Harilela and you were the Chief High Court
Accountant of the Harilela group of companies?
A. Yes. Defendant's
Q. In that capacity you also acted as Accounts Supervisor of the Imperial Hotel Evidence
Holdings Limited?
A. Yes. No. 40
Q. When it was under the control of Mr. Harilela?
10 A. Yes. David Ng Pak-
Q. Now we know that Mr. Harilela sold his interest in the Imperial Hotel Holdings shing –
Limited in 1972. Did you have anything further to do with that company after Examination
that event?
A. No, except that I still remained there for handing-over purposes.
Q. As a matter of record Mr. Harilela sold his interest to a group consisting of the
committee of the Far East Stock Exchange and they very quickly sold their
interest to Mr. CHOO Kim-san?
A. That's right.
Q. And when you speak of the hand-over you mean the hand-over to whom?
20 A. I was referring to the handing-over of my work to CHOO Kim-san.
Q. Was that the first occasion you met CHOO Kim-san or had you known him
beforehand?
A. I only met him at the time of the hand-over.
Q. Now we know that you were at one time a director of Luen On Investment
Company Limited?
A. That's right.
Q. And did you serve in an executive or non-executive position?
A. Non-executive.
Q. And how did you get to be a director of Luen On?
30 A. It was like this in view of the necessity of three months time – three or four
months time for the handing-over –

COURT: Handing-over of San Imperial?

- A. Yes. Mr. Choo was quite satisfied with my efficiency in the job and so asked
me if I could help him.
Q. All right, did you then join the board at his invitation?
A. Yes.
Q. And for how long did you serve?
A. For four months.
Q. Why did you leave?
40 A. During that period I had practically nothing to do at all. I stayed there like a
block of wood.
Q. So was it the case that you resigned?
A. Yes, of course, besides differences in opinion.
Q. Between who and who?
A. Between myself and Mr. Choo.
Q. Was it the time that you served as a director between about November 1972
and April 1973?

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Evidence

No. 40

David Ng Pak-
shing –
Examination

- A. Yes, about that.
- Q. And for the record, is Luen On now known as M.A.F. Credit Limited?
- A. That's right.
- Q. You are the managing partner of a stock-broking firm known as Bentley Securities Company, is that right?
- A. Yes.
- Q. And was Mr. CHOO Kim-san an early partner of yours in Bentley?
- A. In the beginning, yes.
- Q. As from when?
- A. This was from, say, April or May 1973. 10
- Q. I think you said you started the firm in March 1973?
- A. That was the time of registration.
- Q. Now before Bentley was registered did you yourself in your own name have a seat in the Far East Stock Exchange?
- A. I became a member of the Far East Stock Exchange on the 3rd January, 1973.
- Q. In your own name?
- A. Yes.
- Q. And is that still the position?
- A. Yes.
- Q. Now then the early partnership between Mr. CHOO Kim-san and yourself in Bentley what was the shareholding? 20
- A. I owned 70 per cent while he 30 per cent.
- Q. And your 70 per cent was that held entirely for your own benefit?
- A. 40 per cent was in fact held for, or on behalf of Mr. Harilela though under my name and the remaining 30 per cent was entirely my own.
- Q. So the position was CHOO Kim-san 30 per cent, yourself 70 per cent of which you beneficially held 30 per cent and 40 per cent you held for Mr. Harilela?
- A. That's right.
- Q. Now when did Mr. Choo retire from that partnership? 30
- A. That was in September, 1974.
- Q. Did anyone come in?
- A. Yes, Mr. Harilela.
- Q. Was the shareholding then adjusted?
- A. Yes.
- Q. In what way?
- A. Then Mr. Harilela came to hold 70 per cent while myself 30 per cent.
- Q. So in fact your beneficial holding remained at 30 per cent and Mr. Harilela had the 40 per cent which you formerly held on his behalf plus the 30 per cent of Mr. CHOO Kim-san's? 40
- A. That's right.
- Q. And is the structure of Bentley reflected in the tax return, document 1 in yellow 1? You have submitted a tax return for the various years. There is one in November 1974 in our bundle, document 1. Does that tax return reflect the structure of Bentley?
- A. Yes.
- Q. What is the present capital then of Bentley?
- A. It is \$1.2 million.
- Q. As from when?

- A. It was from March 1975.
- Q. And before that what was the capital?
- A. It was \$2 million.
- Q. Then I would like to ask you a few questions about Bladon International Investment Limited. We know that it went public some time early in 1973?
- A. Yes.
- Q. Do you know who was responsible for its going public?
- A. It was myself and Mr. Choo.
- Q. And did you yourself bring anything into Bladon when it went public?
- 10 A. I put in my real estate, my properties.
- Q. And was this real estate in your own name or in that of a company?
- A. It was of that of a company.
- Q. The company being the company called Romo Company Limited, is that right?
- A. Yes.
- Q. Of which you were a 55 per cent shareholder?
- A. Yes.
- Q. And Romo owned the property known as Nos. 35 and 37 Sheung Heung Road, 6th and 7th floors?
- A. That's right.
- 20 Q. Now in return for the injection of those properties into Bladon what did Romo get?
- A. Romo got shares in Bladon Company.
- Q. To what value?
- A. \$950,000.
- Q. Was that face value, nominal value?
- A. Yes.
- Q. Of which then did you have 55 per cent?
- A. That's right.
- Q. Were you on the board of Bladon?
- 30 A. Yes, I was.
- Q. And for how long did you remain?
- A. For about 4 months.
- Q. And do you recall when you left?
- A. Some time in April or May 1973.
- Q. Why did you leave?
- A. Again due to differences in opinion with Mr. Choo?
- Q. And you resigned?
- A. Yes.
- 40 Q. For the record, we have in the bundle a document 2 which you need not look at, the annual return of Romo which reflects the structure of Romo?
- A. Yes.
- Q. Now then would it be true to say that you had maintained your association with Mr. Harilela?
- A. Yes.
- Q. And is that association a close one?
- A. Very close one.
- Q. Did you on Mr. Harilela's behalf negotiate any share deal with Mr. CHOO Kim-san?
- A. Yes.

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Evidence

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David Ng Pak-
shing —
Examination

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No. 40

David Ng Pak-
shing –
Examination

- Q. Just tell us what was the result of that negotiation, what did Mr. Harilela hold as a result?
- A. Mr. Harilela as a result acquired a controlling interest in Bladon Company.
- Q. And what did he give up, just the general terms?
- A. Partly by exchange of shares, partly by payment of cash.
- Q. Shares in whose company?
- A. Shares in San Imperial and partly shares in M.A.F. Credit.
- Q. Mr. Harilela's shares in San Imperial and M.A.F. Credit were they controlling shares or minority shares?
- A. Minority interest. 10
- Q. So he gave up minority interests in San Imperial and M.A.F. Credit and got a controlling interest in Bladon?
- A. Plus payment of cash.
- Q. In negotiating this deal did you consider you were acting with a view to Mr. Harilela's interests or Mr. CHOO Kim-san's interests?
- A. It was with a view to Harilela's benefit.
- Q. Now I would like to ask you a few questions about Taipan Building Management Limited. You are a director of Taipan, of course?
- A. Yes.
- Q. And is your wife also a director? 20
- A. Yes.
- Q. Do you earn a fee from Taipan?
- A. Yes.
- Q. How much is that?
- A. \$10,00 per month.
- Q. Now then has Taipan been involved with Mr. Harilela's properties?
- A. Yes.
- Q. And have you produced copies of the agreements between Taipan and three of Mr. Harilela's companies?
- A. Yes. 30

MR. SWAINE: My Lord, these are in yellow 3. I don't think your Lordship needs trouble to look at them. They are page 136 onwards.

COURT: 136 is really a bundle.

- Q. 136 is at the bottom of the page consisting of three agreements. I will give your Lordship the dates. The 2nd July, 1976 in respect of Hotel Holdings Limited, that is the Holiday Inn, is that right?
- A. Yes.
- Q. The 29th June, 1976, that is in respect of Harilela's Properties and Investments Limited?
- A. Yes. 40
- Q. That of course is the old Bladon Limited?
- A. Yes.
- Q. And then on the 30th March, 1976, the Ashoka Investments Limited?
- A. Yes.
- Q. And prior to these agreements there was a letter of appointment from Harilela's to Tai Pan which is document 25, page 135, my Lord, in yellow 3.

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|----|----------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
| | A. Yes. | Supreme Court of Hong Kong High Court |
| | Q. Dated 16th December, 1974? | |
| | A. Yes. | |
| | Q. Appointing Tai Pan as property managers? | |
| | A. Yes. | Defendant's Evidence |
| | Q. And for how long have you been associated with Tai Pan, Mr. Ng? | |
| | A. I had been a director ever since 1971. During this period I once left the board. | |
| | Q. In 1974? | No. 40 |
| | A. Yes, and I later on returned. | |
| 10 | Q. Your wife returned in January 1975 – your wife became a director in January 1975 and you yourself returned in July 1976? | David Ng Pak-shing – Examination |
| | A. Yes. | |
| | Q. Now did Tai Pan have anything to do with Mr. CHOO Kim-san in the sense that was he a director, did he have any interest, was he a shareholder? | |
| | A. Mr. Choo had nothing to do whatsoever with Tai Pan Company. | |
| | Q. Did Tai Pan however do any business with Mr. Choo? | |
| | A. Only as his broker. | |
| | Q. And specifically did Tai Pan in April of 1975 negotiate as broker for the lease of the Jade Imperial Hotel which was owned by the San Imperial group? | |
| 20 | A. Yes. | |
| | Q. Did that lease finally materialise? | |
| | A. Yes, it did. | |
| | Q. And the commission which Tai Pan requested in the correspondence was \$40,000, was that paid? | |
| | A. I believe it has been paid. | |
| | Q. And perhaps leaving aside the exact amount was a commission paid by the San Imperial group to Tai Pan? | |
| | A. Yes. | |
| 30 | Q. In addition did Tai Pan, again as broker, negotiate a loan to the San Imperial group in February 1976 for the sum of \$6 million? | |
| | A. Yes. | |

MR. SWAINE: My Lord, this is document 6.

COURT: Yellow 1, is it?

MR. SWAINE: Yellow 1, my Lord.

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| | Q. Did this loan materialise? | |
| | A. Yes, it did. | |
| | Q. And did Tai Pan get paid a commission by the San Imperial group? | |
| | A. Yes, it did. | |
| 40 | Q. Now, Mr. Ng, I would like to deal with your personal circumstances. Now you were working for Mr. Harilela? | |
| | A. Yes. | |
| | Q. And we know that you were buying in the stock market? | |
| | A. Yes. | |
| | Q. As from about when did you start buying in the Hongkong stock market? | |
| | A. It was some time between 1970 and 1971. | |

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Defendant's
Evidence

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- Q. Were your transactions done through a firm of stock brokers known as Head and Shoulders Company?
- A. Yes.
- Q. Were your share certificates deposited with that company?
- A. Yes, we were doing margin then.
- Q. Then did you in April 1972 sue Head and Shoulders Company in Action 1026 of 1972, document, my Lord, 3 in yellow 3, 113 at the foot of the page.
- A. Yes.
- Q. Among other claims you asked for an account and for the return of the securities? 10
- A. Yes.
- Q. And what was the cost price of the securities in question, how much did you pay for them approximately?
- A. Roughly \$180,000 or \$190,000.
- Q. Was your action with that company finally settled?
- A. Yes.
- Q. When was this approximately?
- A. This was in December 1972.
- Q. Did you get your shares back?
- A. I got them all. 20
- Q. By which time what was the market price of those shares?
- A. They had risen to about \$½ million.
- Q. I think this is common knowledge, but just for the record, this was at the time when the Hongkong stock market was taken off to the nominal price?
- A. Yes.
- Q. And you have already said that in January 1973 you got in your own name a seat in the Far East Stock Exchange?
- A. Yes.
- Q. Did you at the same time get any overdraft facilities? 30
- A. Yes.
- Q. From which bank?
- A. First National City Bank.
- Q. Was the overdraft secured?
- A. I deposited some shares of mine.
- Q. Now then it is common knowledge again that brokers in the stock exchanges were allotted shares comprising the new issues in the market?
- A. Yes.
- Q. And were you as broker given such new issues?
- A. Yes.
- Q. Did you trade in them? 40
- A. Yes.
- Q. Did you make money?
- A. Yes.
- Q. Then we know that you participated in Romo to the extent of 55 per cent. Approximately when was this?
- A. This was in March 1973.
- Q. We know that you got Bladon shares in exchange for the Romo property. What did you do with the Romo shares?
- A. I sold them by lots.

- Q. Approximately at what sort of price was it – the same as the face value or twice or three times or what? Supreme Court of Hong Kong High Court
- A. I sold them for market prices. At that time it was a little over \$2 per share.
- Q. So you more than doubled your Bladon investment?
- A. Yes. Defendant's Evidence
- Q. Now did you remain at Harilela or did you leave his employment?
- A. I resigned on the 1st March, 1973.
- Q. By then stock broking had become very profitable? No. 40
- A. Yes.
- 10 Q. Did you buy a flat for your own residence? David Ng Pak-shing – Examination
- A. Yes, I did.
- Q. Which is this?
- A. Flat G, 7th floor –
- Q. I am sorry, this is your present residence, is that right?
- A. No.
- Q. That was the 13th floor, I am sorry. It is Flat G, on the 7th floor?
- A. 7th floor.
- Q. Of the same building, Far East Mansion?
- A. Yes.
- 20 Q. How much did you pay for it?
- A. I had paid about \$120,000.
- Q. When was this approximately?
- A. This was in 1971.
- Q. We all know properties have gone up over the years. What sort of market value do you put upon it, very roughly?
- A. I would put it at over \$200,000.
- Q. What happened to that property, Mr. Ng?
- A. I have sold it.
- Q. When did you sell it?
- 30 A. It ought to have been in 1975.
- Q. And did you buy a new property?
- A. Yes, I did.
- Q. And is that your present residence, Flat A on the 13th floor?
- A. Yes.
- Q. When you sold Flat G on the 7th floor did you make a profit?
- A. Yes, I did.
- Q. How much did you pay for the present flat?
- A. It was a little over \$300,000, flat together with furniture.
- Q. And what do you put the market value at now approximately?
- 40 A. It ought to yield about \$½ million now.
- Q. We have dealt with your share transactions, Mr. Ng. We know that of course the market slumped very badly after the first quarter of 1973. How did you come out of the market with its ups and its downs?
- A. I have not lost all my money in the stock market in the sense that I still have some money to get along with the business.
- Q. You still own your flat, do you?
- A. Yes.
- Q. And do you have your investment in Bentley Securities?
- A. Yes.

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shing --
Examination

- Q. That is 30 per cent of the revised capital of \$1.2 million?
A. That's right.
Q. Was that money you put into Bentley at the time you were playing in the market?
A. Yes.
Q. Had you invested your money in other forms of investment in addition to your flat and to Bentley?
A. Yes.
Q. In what form?
A. I have interests in a finance company known as Money Finance and Loan Corporation Limited. 10
Q. What was the amount of your investment there?
A. \$400,000.
Q. Anything to do with CHOO Kim-san?
A. Absolutely nothing.
Q. Any other form of investment?
A. I have also interests in Liu Industrial Corporation Limited.
Q. What was the amount of your investment?
A. Over \$100,000 up to \$200,000.
Q. But that company hasn't done very well, has it? 20
A. It has closed down already.
Q. Was it still functioning in the latter part of 1976?
A. Yes.
Q. Anything to do with CHOO Kim-san?
A. No.
Q. In fact the name Liu does that reflect the name of the principal shareholder?
A. Yes, it is indeed his name.
Q. And is one of the Lius a solicitor?
A. Yes, a lady solicitor.
Q. Is she Dorothy Liu? 30
A. I don't know her English name, but the Chinese name is LIU Yiu-chu.
Q. I am now of course focusing on the latter part of 1976. At that time did you still hold shares?
A. Yes, I did.
Q. About how much worth?
A. A little over \$300,000.
Q. So in the latter part of 1976 what would you say was your net worth, i.e. unimcumbent, just approximately?
A. About \$1.5 million.
Q. Now I shall come back to two aspects of your financial position when I come to the right moment of time in the chronology. But in the mean time I shall go on to something else. Now we have heard of your association with Mr. CHOO Kim-san. Would you say he was a friend of yours? 40
A. No.
Q. Do you have anything to do with him socially?
A. No.
Q. Now we know that CHOO Kim-san was charged in June 1976 on various fraud charges in Hongkong and would have been tried in the District Court had he not jumped bail. Were you a witness for the Crown?

- | | | |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
| | A. Yes. | Supreme Court
of Hong Kong
High Court |
| | Q. A willing witness? | |
| | A. Yes. | |
| | Q. Have you ever been on the payroll of CHOO Kim-san? | |
| | A. Absolutely no. | Defendant's
Evidence |
| | Q. And have you ever been his nominee? | |
| | A. No. | |
| | Q. Are you his nominee today? | No. 40 |
| | A. No. | |
| 10 | Q. Or at any time? | David Ng Pak-
shing –
Examination |
| | A. Never. | |
| | Q. Do you know Mr. HO Chapman? He is the 6th defendant. | |
| | A. Yes, I know him. | |
| | Q. Well? | |
| | A. Very well. | |
| | Q. And of course Mr. Ives, the 5th defendant – do you know him well? | |
| | A. Yes. | |
| | Q. Do you recall any contact which Mr. HO Chapman made with you in the
latter part of 1976? | |
| 20 | A. In what respect? | |
| | Q. In respect of the matters in contention in this case. | |
| | A. Yes. | |
| | Q. And do you recall what he said? | |
| | A. This was about the end of November or beginning of December 1976. He
inquired from me is there any way of doing business in acquiring shares in
San Imperial. | |
| | Q. Yes. | |
| | A. I suggested “You can purchase such shares on the market.” He said he did
not mean that. What he meant was the useful thing of acquiring the control-
ling interest in that company. I said, “Let me think about it.” | |
| 30 | Q. Yes. And what happened? | |
| | A. Then again in the beginning of December one afternoon we had a lunch
appointment – that is, myself, Mr. Ives the solicitor and Mr. HO Chapman. | |
| | Q. Yes. | |
| | A. We spoke about the prospect of such acquisition. Mr. HO asked me if I had
any way of doing this, saying that he had an intending purchaser. | |
| | Q. Yes. | |
| | A. I said, “of course I have some way of doing it, but I still have to make some
inquiries.” | |
| 40 | Q. To search? | |
| | A. To make a search. | |
| | Q. Yes. | |
| | A. After that I made a search – after the lunch appointment I went to the office
of San Imperial, the registrar of San Imperial to make a search. | |
| | Q. Yes. | |
| | A. I found that then the largest shareholder was the Asiatic Nominees Ltd. | |
| | Q. Yes. | |
| | A. I was aware then that that Asiatic Nominees Ltd. had something to do with
Mr. CHOO, was in some way related to Mr. CHOO. I also found out that there | |

had not been major changes in the register, so at that time I believed that Mr. CHOO had not yet sold out his holdings. In other words, he had not made any or effected any exchange.

Q. Yes.

A. There hadn't been any changing hands. I came back to Mr. HO to tell him that the shares were still with Mr. CHOO.

Q. Yes. And do you recall how many shares you discovered were in the name of Asiatic?

A. In that search I found it was about 17 million odd shares.

Q. Yes. So you told Mr. HO Chapman? 10

A. Mr. HO then suggested contacting Mr. CHOO.

Q. What about Mr. Ives in the meantime?

A. We made another lunch appointment and I made known the situation.

Q. All right. So it was actually Mr. Ives, Mr. Chapman HO and yourself together who made the —.

A. Yes. We discussed the prospect of the 3 of us going in for this matter, this business.

Q. This business.

A. Mr. HO suggested that there were 2 places Mr. CHOO was most likely to go to, the first place being Thailand, the second being Taiwan. 20

COURT: You said newspaper said he was in Taipei?

A. Yes.

Q. Would this still be in December or later?

A. It was still in December.

Q. All right.

A. Mr. HO suggested that I went to Thailand first. It so happened that I was planning to go to Thailand by that Christmas time so I agreed to go to Thailand in the first instance.

Q. And was anything else discussed at that meeting or was that more or less the gist of it? 30

A. That was about all that was discussed at that meeting.

MR. SWAINE: This would be a convenient break if it suits the court.

D.W.2 – NG Pak-shing – On former oath

XN. BY MR. SWAINE – Continues

Q. We have got to the point Mr. NG, where it was agreed between Mr. Ives, Mr. HO Chapman and yourself that you would go to Thailand first because you wanted to take your family on a holiday anyway.

A. Yes.

Q. And did you, in fact, go?

A. Yes, I did. 40

Q. And do you have your Certificate of Identity travel document with you Mr. NG?

A. I think it is with Mr. Ives.

	Q. I see, all right. Can you recall when it was you went to Thailand then?	Supreme Court of Hong Kong High Court
	A. Yes, this was on the 24th December 1976.	
	Q. And specifically where in Thailand?	
	A. It was Bangkok.	
	Q. And did you try to locate CHOO Kim-san?	Defendant's Evidence
	A. Yes, I did.	
	Q. How?	
	A. He has a branch there known as Thai MAF.	No. 40
	Q. Yes.	
10	A. I went there looking for him, making inquiries whether they had seen Mr. CHOO.	David Ng Pak-shing – Examination
	Q. With or without success?	
	A. I couldn't find him.	
	Q. Did you try elsewhere in Bangkok?	
	A. Yes, I did.	
	Q. Yes, where?	
	A. This included Dusitani which is one of the leading hotels there. I also went to the Oriental Hotel and the Sheraton Hotel. These are the hotels which Hong Kong visitors like to go to. There I had no success.	
20	Q. All right. What did you do?	
	A. So I came back to Hong Kong.	
	Q. Yes.	
	COURT: Came back when?	
	A. It was on the 29th when I came back.	
	Q. Yes. We have here your Certificate of Identity, the travel document, and also a document which perhaps you could identify for the court. What is the other document, Mr. NG? There might be those of us who are not familiar with it.	
	A. This is an entry and exit permit issued by the Republic of China.	
30	Q. In Taiwan?	
	COURT: Have you certified translation for that?	
	MR. SWAINE: My Lord, I'm not sure whether we do. My Lord, we will have that done.	
	COURT: You can have that done –.	
	MR. SWAINE: We have supplied copies.	
	COURT: It's already being done?	
	MR. SWAINE: The originals have long since been made available.	
	MR. CHING: I understand, my Lord, that my learned friend Mr. Yorke has inspected them but I have not seen it. Possibly after your Lordship has seen	
40	it, I can glance at it.	
	COURT: For the sake of completeness, the translation should be available.	

MR. SWAINE: Yes.

MR. YORKE: We have inspected the document and extracted all the exits from Hong Kong from 1973 to 1977. It is a very useful document which saves going through the details.

MR. SWAINE: My Lord, I think perhaps for present purposes, for the purpose of the evidence, it would probably suit Mr. NG better to look at his own document and then tell the court when it was that he left.

COURT: First of all, produce them as D6. Are you going to use all 3 documents?

MR. SWAINE: My Lord, there are 2 books.

COURT: 2 books together with that, so that makes 3 – is that right?

10

MR. SWAINE: Well, these 2 books are stuck together so that is one set and then the Taiwan document is the third set.

CLERK: D6 for the 2 books and D7 for the ROC permit.

MR. SWAINE: My Lord, it may be as well for the record for this witness to tell us something about the ROC permit. Certainly I wasn't aware of the special position until this case.

Why is that document necessary for Hong Kong belongers, Mr. NG?

A. Since there is no diplomatic relations between Hong Kong Government and Taiwan Government, this has been made available for the benefit of Hong Kong and Macau residents.

20

Q. Hmm.

A. Chinese residents.

Q. So that when you leave Hong Kong for Taiwan, would there be an exit chop in your Hong Kong Certificate of Identity?

A. Yes.

Q. When you get to Taiwan does the Taiwan Government chop your Hong Kong certificate?

A. No, they simply ignore this.

Q. So that your entry into Taiwan would appear only in the Taiwan permit?

A. That's right.

30

Q. Then when you return to Hong Kong, would there be an entry chop in your Certificate of Identity?

A. That's right.

Q. Yes. Now, you have told the court then that you returned to Hong Kong on the 29th?

A. Yes.

Q. And did you tell anyone of the results of your trip?

A. Because I was very busy at the time, I merely spoke to Mr. HO.

MR. CHING: I'm sorry, I do hope the interpreter won't mind my suggestion:

“ngor ho chung mong” – “I was in a hurry” or “I was very busy.”

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INTERPRETER: Both in a hurry and busy.

MR. CHING: Thank you.

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Evidence

Q. Why were you in a hurry and busy?

A. It was because I was scheduled to go to Taiwan on the 30th.

No. 40

Q. And did you go?

A. Yes.

Q. All right. And what did you do in Taiwan?

A. To look for Mr. CHOO.

David Ng Pak-
shing –
Examination

10 COURT: In Taipei or Taiwan?

A. In Taipei.

Q. Where did you yourself stay?

A. I stayed at President Hotel.

Q. Any particular reason?

A. That is a very famous hotel as far as Hong Kong visitors are concerned.

Q. Hong Kong visitors, yes. And what did you do there?

A. I then started to look for – I started to see whether I could find some Hong Kong friends in the coffee shop.

Q. Yes.

20 A. I saw some people from Hong Kong but not Mr. CHOO.

Q. And did you tell them – did you speak to them?

A. Yes, I did.

Q. Tell them what you were there for?

A. Yes, I did.

Q. What?

A. I asked if any of them had seen Mr. CHOO.

COURT: This was in the coffee shop?

A. Yes.

COURT: How many people did you speak to?

30 A. Two or three.

COURT: Yes. Carry on.

Q. Right. And you were not successful?

A. They told me something.

Q. What about the following day, the 31st?

A. Early in the morning I got up and went downstairs to have my breakfast. After I had ordered my breakfast I took a look round. I saw a group of people occupying one corner of the restaurant. One person among them looked like Mr. CHOO – appeared to be Mr. CHOO.

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Q. Yes.
A. So I walked up to them to see whether it was any person I was acquainted with.

Q. Yes.
A. I found him to be Mr. CHOO. So I greeted him in the normal way, saying "Good morning" etc.

Q. Yes.
A. He introduced me to a lady sitting next to him. He identified her to me as his wife.

Q. Yes. Had you seen her before, this lady before? 10

A. No.

Q. And when CHOO Kim-san was in Hong Kong, had you met his wife?

A. I have never met his lawful wife.

Q. Was there a Mrs. CHOO in Hong Kong in those days?

A. As far as I knew, he was accompanied by a lady called Alice and the hotel people would call her Mrs. CHOO.

Q. This would be —.

MR. CHING: Just a minute. "The hotel people would call her Mrs. CHOO but I called her Alice."

INTERPRETER: Yes. 20

MR. CHING: I know that but for the sake of the record, I think it should go down.

A. I called her Alice.

Q. Which hotel called her Mrs. CHOO?

A. It is the Hong Kong Imperial Hotel.

Q. The lady you saw at the President Hotel in Taipei was not the same Mrs. CHOO?

A. No, not.

Q. All right. Then apart from exchanging greetings, did you have any discussion with CHOO Kim-san?

A. Yes.

Q. Yes. Tell my Lord that the conversation was. 30

A. I said to him, "I have come to find you. We have some business to discuss." He asked, "What business is there to discuss?" I said, "I am fairly interested in the shares you are holding in the San Imperial." He asked, "Are you going to purchase them?" I said, "No, but some intending buyers would like to purchase them. Are you going to sell them?"

Q. Yes.

A. He said, "You have come just a bit too late. I have already sold them." I thought that he might be telling a lie when he said so. I then asked him when he had sold them. He said, "I sold them in about November." I asked him, "Are you in earnest or are you cheating me?" He was not in a good humour so he said, "It is up to you to believe or not." For the sake of having some business done, I then held my temper and continued to make my inquiry from him. 40

Q. Yes.

A. So I asked him, "Who on earth have you sold the shares to?" he said, "I have

sold them to one Mr. CHOW, a Taiwanese.” I then said, “Can you introduce Mr. CHOW to me?” He said, “Don’t bother me with this troublesome matter.” The lady sitting by him whom he had identified as his wife then said, “Mr. NG has just come from Hong Kong. How can you treat him like this?” His woman then said, “If you don’t want to introduce him yourself, then let Miss LAU do so.”

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Evidence

Q. Yes.

A. Mr. CHOO Kim-san then said to his woman, “In that case, you better call Miss LAU to come over.” His wife then went to make a phone call.

No. 40

10 Q. Yes.

A. I then had some more conversation of a casual nature with him. Shortly after that, his wife came back. She said, “Miss LAU will be in a moment – will come very soon.”

David Ng Pak-
shing –
Examination

Q. Yes.

A. We went on with the casual talk about my visit to Taiwan and other insignificant things. A little over 20 minutes later Miss LAU showed up. Mr. CHOO then introduced Miss LAU to me. Mr. CHOO said, “This is Mr. NG who has just come from Hong Kong and he wishes to know, to meet Mr. CHOW. Perhaps he is going to have some business with him.” Then Miss LAU went to have a phone – to make a phone call. A short while later she returned. She asked me if I would be free at 4 o’clock. I answered in the affirmative. She suggested perhaps we can make arrangement with Mr. CHOW – “I will do this for you, to meet him at Imperial Hotel. I will make arrangement for you to meet Mr. CHOW at Imperial Hotel, Taipei.”

20

COURT: It goes without saying it must be in Taipei, mustn’t it?

MR. SWAINE: One learns to be very precise in the witness box, my Lord.

A. Such casual talk went on for a little longer before the 3 of us parted while I went back to my room in President Hotel.

30 Q. All right. Pausing there, have you seen CHOO Kim-san since that 31st December meeting?

A. No.

Q. Now, you were looking specifically for CHOO Kim-san?

A. Yes.

Q. And you were looking specifically for his shares?

COURT: I think Mr. NG knows English – he has already said “yes” in English.

MR. SWAINE: To the question? I see, all right.

COURT: Yes.

MR. CHING: I wouldn’t like there to be a mistake about it, my Lord. It may be the subject of cross-examination.

40 COURT: Yes. “I was looking specifically for D1.”

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MR. CHING: Just in case there is any quarrel about what he said, I would ask that the question be put to him again in Cantonese and that he should answer in Cantonese.

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Evidence

COURT: Very well.

No. 40

MR. CHING: Your Lordship and I know what the position is but on the record I want there to be no mistake about this.

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shing –
Examination

Q. You were looking specifically for CHOO Kim-san's shares?

A. Yes.

Q. Would you have done business with him?

A. Yes.

Q. Now, CHOO Kim-san was by then a fugitive from justice in Hong Kong. Were you worried about the legal situation?

A. Before I went to Taipei I had studied the situation and had discussed it.

Q. With whom?

A. I mean with Mr. HO and Mr. Ives, the solicitor.

Q. Yes.

A. Mr. HO's idea was for Mr. Ives the solicitor to study the situation to ascertain the legality of the matter. There was a consensus between myself and Mr. HO – that is, we agreed.

Q. That is, Mr. HO and yourself, yes.

A. There was a consensus between Mr. HO and myself should the matter be legal, be lawful, we were certain to proceed with this business.

Q. Now, this was, of course, before you went to Taipei?

A. Right.

Q. And the business being? I want you to tell my Lord what the business was so there's no room for doubt.

A. I mean the acquisition – the prospective acquisition of the shares in San Imperial.

Q. From whom? This is before you went to Taipei.

A. At that time the only person who might have these shares was Mr. CHOO. Certainly we were going to try to acquire these shares from him.

Q. From him. Now, did Mr. Ives indicate what his own position was? That is before you went to Taipei.

A. No, he didn't make any indication.

Q. All right. Now, you had an appointment for 4 o'clock at the Imperial Hotel, Taipei. Did that appointment come about, materialize?

A. Yes, I went there and I saw him.

Q. I'm sorry – who did you see?

A. I was the first to arrive –.

COURT: It doesn't matter about these details, Mr. NG – just tell us who you met, will you?

A. I saw Mr. CHOW, Miss LAU and another woman whom I subsequently understood to be Mrs. CHOW.

Q. Have you met Mr. CHOW before?

A. No.
Q. You arrived first. Did the 3 of them come together?
A. Yes.
Q. Who performed the introductions?
A. It was Miss LAU.
Q. All right. Tell my Lord what happened please.
A. After the introduction by Miss LAU we exchanged our visiting cards. I said to him, "I learned from Mr. CHOO that you have already bought those shares – is that true?" Mr. CHOW said, "Yes." I went on to ask, "What for you bought those shares for? Have you any intention of selling them?" Mr. CHOW said, "Of course I have the intention of selling them." I asked him, "What would be your terms?" He said, "It is not to be decided so quickly. Let's talk about it first." I then said, "What is your suggestion? What is there to talk about?" He then asked me, "Are the shares in San Imperial those of a hotel shares?" He also asked me about the general situation of hotel business in Hong Kong. I told him briefly about it, about the Hong Kong situation of it.

10

20

COURT: This I want to make sure. He asked you "Are the shares in San Imperial those of hotel shares." Did you answer this question? Or did he go on to ask you about the general situation about hotel business in Hong Kong without first waiting for an answer?

A. I answered all his questions.

COURT: So, all right, will you give us the questions and answers. To the question "Are the shares in San Imperial those of hotel shares?" What was your answer?

A. I answered him in the affirmative.

COURT: Yes.

A. Nevertheless, they also had to do with land investment business.

COURT: I see. Yes.

A. He then asked me the general Hotel business situation in Hong Kong.

COURT: And you told him briefly about the situation in Hong Kong?

30

A. Yes.
Q. All right. From that point on?
A. Then he said he had something to attend to. He wasn't free then and asked if he could see me again at 9 a.m. the following day.
Q. Yes.
A. I asked where it would be. He said the very place. It is the Imperial Hotel. With that he left me.
Q. Did you meet again as arranged?
A. Yes.

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COURT: Was there any discussion about the land development then, during this meeting?

A. No.

COURT: I see.

A. No discussion of land development.
Q. And did you meet again as arranged?

A. Yes, we did.

Q. Was Mrs. CHOW present?

A. Yes, she was.

Q. Miss LAU?

A. Yes.

Q. And of course Mr. CHOW?

A. Yes.

Q. And tell my Lord what happened?

A. I mentioned again my interest in acquiring the shares.

Q. Yes.

A. I asked "Exactly how many shares have you purchased?" He did not give me a definite figure other than "10 million odd shares". To my mind then they would represent Mr. CHOO's total holding.

COURT: Did you say "total"?

INTERPRETER: I'm sorry, "Mr. CHOO's holding."

Q. Yes.

A. I then asked him "What price are you asking for to sell them?" Instead of answering me he put a question to me. He asked, "What is the price per share?"

Q. What is the value of the share?

A. "What is the value of each share" – "these shares" –.

COURT: What is it now? "What is the value of these shares?" or "What is the value of each share?"

A. What is the value of each share, talking about these shares.

Q. Yes.

A. I said, "Very hard to say. In the case of odd lots we have the market price. In the case of controlling interest of course it would be higher – the price would be higher." He then asked me, "Exactly what do you have in mind, the price – the value of each share?" I said, "I really have no idea. The Annual Report still has not been issued."

COURT: Before you go on with the conversation, was this statement true or was this just business talk when you say you really did not have any idea because the annual report hadn't been published yet?

A. It was merely business talk as we were talking business then. He said, "Well,

in that case we might leave the matter at that for the time being.” I said, “In that case I shall be leaving, in the sense that I am going to return to Hong Kong.” He suggested in that case we might talk the matter over on my next visit.

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Q. Yes.

Defendant's
Evidence

A. Then Miss LAU left first. Then Mr. and Mrs. CHOW left after.

Q. Did you return to Hong Kong?

A. Yes, on the same day.

No. 40

10 Q. Now, the 1st of January was, of course, New Year's Day and that would be a Saturday – is that right?

A. Yes, that's right.

David Ng Pak-
shing –
Examination

Q. And did you get in touch with either Mr. Ives or Mr. HO Chapman on your return?

A. No, the first thing I did was to rush to the race course.

Q. Yes, we hope you were successful Mr. NG. What I meant was subsequent to your return did you then contact either Mr. NG or Mr. Ives?

A. I tried to locate either of them on Sunday without success but I succeeded on Monday.

Q. With whom?

20 A. I rang up Mr. Ives.

Q. Yes, what did you say?

A. I said to Mr. Ives “I have located Mr. CHOO –”.

COURT: You presumably spoke to Mr. Ives. What did you say in English to Mr. Ives?

(Witness answers in English)

A. I told Mr. Ives, I said, “Mr. Ives, I am back from Taiwan and I have located Mr. CHOO Kim-san. It is likely we are in business.”

COURT: That's all?

(Witness answers in Puntì)

30 A. Yes. Mr. Ives told me that he was very busy. He asked me to arrange a lunch meeting on Tuesday with Chapman, that is, Mr. HO.

Q. Yes.

A. Then I looked for Mr. HO. I phoned. Mr. HO told me, “I am coming out.” In fact, we share the same office.

Q. Yes. This was in Mohan Building?

A. 401-403 Mohan Building.

Q. 401-403 Mohan Building – are these 3 rooms or one big room? Are they connecting rooms?

A. Yes.

40 Q. Connecting rooms. And Mr. HO Chapman and yourself both have your offices in the same set of rooms – is that the position?

A. Yes.

Q. All right. And did you meet Mr. HO Chapman on Monday the 3rd?

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A. Yes, I did.

Q. Did you tell him what had happened in Taiwan?

A. Yes.

Q. And did Mr. HO say anything?

A. He said, "Now that arrangements have been made to meet on Tuesday, let's talk about it then."

Q. Mmhm.

A. I asked him, "What would be our situation now? Shall we start buying some shares?" Mr. HO then asked me "What is the price now?" I said, "The current price is 28 cents to 30 cents."

10

COURT: I think we have got enough details without further details.

Q. All right, we can leave that out for the time being. Did you meet and start to buy shares on the 3rd?

A. Yes, we did.

Q. This detail I must have: were they San Imperial shares?

A. Yes.

Q. All right. Then we go to the 4th January. Did the three of you get together for lunch?

A. Yes.

Q. And what was the decision taken at that meeting?

20

A. I reported to them the whole situation in Taiwan. Mr. Ho suggested, well, there's some chance of –

Q. – of transacting?

A. – transacting.

COURT: Presumably Mr. Ives being there, the meeting was in English?

A. Yes.

COURT: What did Mr. Ho say?

A. (Witness at this point speaks in English) Mr. Ho said, my Lord, "It is likely we can do something." He further said that "perhaps, you see, we can get together, put on some capital and start buying shares."

30

Q. Where? Buying shares where?

A. In Hong Kong.

Q. In the stock market?

A. In the stock market.

Q. "In the stock market". Was that agreed between the three of you?

A. Yes, we agreed.

Q. And what we have been calling the syndicate, that is the three of you, did the syndicate in fact start buying shares in the Hong Kong stock market and onwards?

INTERPRETER: "Start . . ."

40

MR. SWAINE: ". . . buying shares in the Hong Kong stock market from then

onwards.”

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MR. CHING: The question was “from then onwards”. Does my learned friend wish to withdraw the last three words?

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MR. SWAINE: No, I don’t.

MR. CHING: Well, then, please have it put “from then onwards”.

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A. Yes.

Q. Now, what about the shares which Mr. Chow said he had? Was that discussed at the 4th January lunch?

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A. Yes, that was discussed.

10 Q. Was there any particular problem that the three of you discussed in relation to those shares?

A. Yes.

Q. Yes? What was that?

A. Mr. Ives said he wasn’t – “I am not sure whether those are genuine shares or not.”

Q. Yes?

A. (Witness answers in English) “Is there somebody representing Mr. Choo Kim San to approach you?” Then I said, “I don’t know.”

Q. So, at that time did you believe – did you believe Mr. Chow?

20 A. Frankly, I did not fully believe.

Q. Yes?

A. The discussion by the syndicate on that occasion was mainly that I was to – responsible for buying the shares and go for travelling for negotiation.

Q. Where?

A. To Taipei. While Mr. Ives was to look into the legal aspect of the matter, Mr. Ho was responsible for looking for buyers.

Q. Now, at this time – let me put it this way: you had been told earlier that there was a prospective buyer. Were you told who it was? Slowly. You’d better wait for the next question. Wait for the question.

30 A. Well, when I was referring to Mr. Ho’s part, what I meant was he was going to look for buyers in the matter of our selling our shares.

Q. Yes?

A. And this was to be a division of work among us.

COURT: Yes. I don’t think he has answered the question.

Q. The question that I put, Mr. Ng, – listen carefully – is earlier on before you went to Bangkok and Taipei you were told that there was an interested buyer.

A. Yes.

Q. Were you told who that buyer was?

A. Yes.

40 Q. Yes. At that time?

A. Yes.

Q. Who?

A. Mr. James Coe.

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Q. Yes. All right. Now, then, did you yourself negotiate with any buyers following the 4th January discussion, or was that left to Mr. Ho?

A. This business was left with Mr. Ho, although sometimes he had me accompany him.

Q. And was this just of short duration or spread over a period of time – your accompanying Mr. Ho?

A. This happened many times.

Q. "Many times". And when you were present, who were the prospective buyers with whom Mr. Ho was negotiating?

A. Quite a number of them: one was Mr. Tsui –.

Q. T.T. Tsui?

A. Hsu.

Q. He's the man who owns two race horses that have a distinction of being rated zero at the Handicaps. All right. Who else?

A. And Sun Hung Kai Securities.

Q. Who of Sun Hung Kai when you were present?

A. Mr. Paul Lam.

Q. "Paul Lam". Yes. Who else?

A. Who was introduced by Mr. Fung Kei Hing, who would have us to negotiate with Mr. Paul Lam.

Q. Yes. Any other names of prospective buyers?

A. Mr. Tsui, otherwise known as James Coe.

COURT: No, no.

MR. SWAINE: Mr. James Coe himself.

COURT: So far we've got T.T. Hsu, Mr. Paul Lam of Sun Hung Kai, and then Mr. James Coe. Anybody else?

A. And Mr. Y. Y. Ching.

MR. CHING: No relative.

MR. SWAINE: I gather he offered the least price, which probably runs at Fermay.

(Laughter!!)

Q. Were these the only four with which you have personal knowledge?

A. That's all I can remember.

Q. Now, you told my Lord that the shares were selling at 28 to 30 cents when you first started buying. Did you form any estimate of the value of San Imperial shares as a controlling interest?

A. Throughout the period we were doing the acquisition we were looking for materials or information to enable us to make our assessment.

Q. Did you form an assessment?

A. We ascertained the asset backing at about one dollar fifty.

COURT: Have you finished, Mr. Interpreter?

INTERPRETER: Yes.

COURT: Is "ascertained" the correct word?

A. (INTERPRETER) We worked out, rather – We worked out and found the asset backing was about one dollar fifty.

Q. And the feedback that you were getting from the prospective purchasers, did that support your estimate or was it far off the mark? (After the interpretation) No, I'm sorry, I have put it in perhaps jargon form. The reaction you were getting from prospective buyers, was that more or less in line with your estimate?

10 A. More or less.

Q. "More or less". All right. When did you next return to Taipei?

A. On the 7th Mr. Chow rang me up and asked me to go there again.

COURT: So, when did you go?

A. It was on the 9th.

Q. This, of course, was eight days after you had last seen him?

A. Yes.

Q. And the evidence that you have been giving in the last few minutes about negotiations with buyers and buying in the market, that was spread over a period of time?

20 A. Yes.

Q. Now, I'm going back in a sense to the 9th January. And did you meet Mr. Chow?

A. Yes, I did.

Q. What was the discussion?

A. Again on the subject of shares in San Imperial.

Q. Was any price mentioned at this visit?

A. Yes.

Q. Who mentioned the price?

A. Mr. Chow.

30 Q. Yes. Did he name a price?

A. He said, "Over one dollar."

Q. Did you counter-offer?

A. I said that would be far too much.

Q. Did you make a counter-offer?

A. Not at that moment.

Q. Subsequently?

A. I told him that I would discuss it with him only when he would name a lower price.

40 Q. "Lower price". And just to have an idea of the length of your visit, how long were you in Taiwan on that second trip – in Taipei on that second trip? If you look at your document –.

A. I still can remember it. I arrived on the 9th and probably returned on the 13th.

Q. That's correct, is it?

A. That's correct.

Q. And how often did you see Chow during that second trip?

A. Many times. Every day.

Q. "Every day". And during that second trip, did you name a figure to him?

A. No, because our preliminary discussion had not come to anything yet. Surely you have to wait for the other side to give a definite price.

COURT: Just a minute. When you say your 'preliminary discussion had not come to anything yet', as I understand it you meant the syndicate's preliminary discussion rather than the discussion between Mr. Chow and Mr. David Ng? Is that correct?

A. Yes.

COURT: Yes?

10

A. Yes, I was referring to the syndicate.

COURT: I think you went on further to say that the syndicate had not decided on a price.

A. Right.

COURT: Yes?

Q. So, as far as the price went during that second trip, was there any conclusion?

A. No.

Q. Yes. Just one point: Did you see Mrs. Chow during your second trip?

A. Yes, I did.

Q. And was she present every time Mr. Chow was present or not?

20

A. Not every time.

Q. Now, in addition to price, was there any other discussion about the shares themselves?

A. Yes.

Q. Yes?

A. I asked him to show me those shares or share certificates.

Q. Yes?

A. He showed me a bundle of them. It was just a bundle. I have no idea how many there were and I saw that they were shares certificates of those shares in San Imperial.

30

Q. Yes. And did you see in whose names they were?

A. Yes.

Q. Yes?

A. Asiatic Nominees Limited.

Q. And did you say anything to Mr. Chow about these shares – the certificates?

A. Yes.

Q. Yes?

A. I asked him, "Are these certificates genuine ones or sham ones?"

COURT: You actually asked him that, did you? Well, not very tactful, I should think.

40

MR. CHING: I think, with respect, for the benefit of Mr. Yorke I think the answer had better be interpreted. Supreme Court of Hong Kong High Court

A. Something to that effect.

MR. CHING: Sorry, when your Lordship asked him, "Did you actually ask him that?" the answer that I've got is . . . (Mr. Ching says it here in Cantonese) . . . Is that right?

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INTERPRETER: Yes.

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A. Yes, I asked him – I asked him, "Are they genuines or not?"

MR. CHING: No, "genuine or false".

10 INTERPRETER: ". . . or false."

Q. Yes. And what did Mr. Chow say?

A. Well, my experience tells that the proper thing is to have one certificate – share certificate to be accompanied by a transfer form – instrument of transfer. He did not show me instrument of transfer.

COURT: Yes. You were asked what his reaction or what his reply was.

A. He said, "I bought them and these are – these are – they are like that."

Q. When he showed you the bunch of certificates, there were no transfer forms at that time, were there?

A. No.

20 Q. Did you see them subsequently?

A. Yes.

COURT: What do you mean "subsequently"?

MR. SWAINE: I was going to come to this, my Lord.

Q. On this trip or a later trip?

A. On a yet next trip.

Q. All right. We will come to that. Now, then, Mr. Chow said he bought them like that. And was there any further discussion about these certificates?

A. I suggested, "Since you had bought these shares as such, you ought to –

COURT: No, no. "Since you had bought these shares . . .

30 INTERPRETER: ". . . like that . . .

COURT: Hmhm?

INTERPRETER: ". . . you had better have them examined."

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Q. Now, at that time were you making a bargaining point or were you really in earnest about whether these certificates were valid?

A. Both.

Q. "Both". All right. And you suggested to Mr. Chow that he have the certificates examined. What did he say and how did that point develop?

A. He said, "This is a matter for me. We can talk about it later." And nothing developed from that.

Q. So, as far as the second trip was concerned, is that the gist of it?

A. Yes.

Q. And on your return to Hong Kong, did you report to Mr. Ives and Mr. Ho Chapman? 10

A. Yes, I did.

Q. And was there any discussion as to the problem of whether these shares were real or false?

A. Yes.

Q. What was the discussion?

A. I mentioned the possibility of Mr. Tsui issuing false share certificates. They might not be genuine ones.

Q. Yes?

A. For the reason that his company was the registering company. 20

Q. The registrar.

INTERPRETER: "The registrar for those shares."

A. As well as the signatory of the share certificates.

Q. Yes?

A. Mr. Ives then suggested taking those share certificates –

COURT: ". . . to the registrar . . ."

A. – to the registrar for examination. As a solicitor, he might not understand the real problem concerning this. Who could tell people would be willing to hand those – would be willing to produce those share certificates for this purpose?

COURT: Sorry, "As a solicitor he might not understand the real problem concerning this. Who can tell . . ." 30

INTERPRETER: Or, rather, "he couldn't tell – he can't tell that people would be willing to produce those share certificates for this purpose."

COURT: I see. "He can tell people to . . ."

INTERPRETER: "He couldn't tell that people would be willing to produce those share certificates for examination."

(Witness at this point speaks in English)

A. My Lord, I mean – my meaning is this, my Lord: You see, Mr. Ives being a solicitor, he didn't aware the actual real business – what is the actual, real

business, you see; he just asked me to get few certificate and deliver to the registrar for examination. But this is impossible. How can the other party give me few certificate and bring back to Hong Kong for examination? That is what I mean, sir.

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COURT: Yes?

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Q. Was there some other suggestion put forward within the syndicate as to how the shares could be proved?

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A. Yes.

Q. Yes, what was that?

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10 A. Mr. Ho suggested perhaps we can ask Mr. Chow to obtain –

COURT: “. . . a loan . . .”

A. – loans from a bank on the strength –

INTERPRETER: I'm sorry.

A. – loans from a bank with those shares as security.

Q. Yes?

A. In that case, the bank would be in a position to have the share certificates transferred to the name of a nominee.

Q. Nominee bank?

A. Nominee bank.

20 Q. Yes?

A. If those share certificates proved to be false ones, automatically the registrar would declare those – would not accept those share certificates.

Q. “Would you accept”. Yes?

A. In stock business, actually this is the simplest way in examining share certificates.

Q. Yes?

A. We also discussed the question of the price we would be prepared to accept in our haggling – price haggling.

30 Q. All right. Before we come to price haggling and to wind up the afternoon, Mr. Ng, was the method of presenting the certificates to a bank as security – was that idea explored, in fact?

A. Yes, this was on my third visit to Taipei.

Q. Was it explored at the Hong Kong end or the Taipei end, or both?

A. This was on the Taipei end. Both FNCB and Chase Manhattan Bank in Taipei had their branch offices in Hong Kong.

Q. And in Taipei, was an approach made to those two branches?

A. Yes.

Q. Who made the approach?

A. Both Mr. Chow and I went.

40 Q. And did the branch banks accept or reject the idea?

A. They rejected this idea and we were advised to do this in Hong Kong.

MR. SWAINE: My Lord, this would be a convenient moment.

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Appearances as before (Mr. R. TANG absent).

(Discussion between Court and Counsel re the 9-page part transcript of cross-examination of D.W.1 – M.E. Ives on the afternoon of 7.11.77 provided by the Court Reporter concerned.)

- (i) Page 3, line 16 – David NG's affidavit concerning the 2.1M. belonging to M.A.F. Corporation is at Red 2, page 53.
- (ii) Page 6, line 3 – Court to cross out the words 'nearly 14,000 and' which counsel admits having said and now confirms it's a mistake.
- (iii) Counsel to approach Court Reporter concerned for one small correction which he wishes to make.

10

D.W.2 – David NG Pak-shing – On former oath.

XN. BY MR. SWAINE (Continuation)

Q. Yesterday, we have, Mr. NG, already taken a step forward in time when I asked about the validation of the shares held by Mr. CHOW, and you said he and you together went to the branch offices of the City Bank and the Chase Manhattan Bank in Taipei.

A. Yes.

Q. Now then we have only so far spoken of two visits on your part to Taipei: one over the new year and the other between the 9th and the 13th of January.

20

A. Yes.

(10.13 a.m. Mr. R. TANG comes into court).

Q. Your going with Mr. CHOW to these two branches – which trip would that be? Was it a later trip?

A. Yes. The third trip.

COURT: I think he did say yesterday on the third trip.

MR. SWAINE: I am much obliged.

Q. Do you find it easier to think in terms of the dates or the trip number, Mr. NG?

30

A. In terms of trips, sir.

Q. All right. Perhaps you could tell my Lord by checking with your travel documents.

MR. SWAINE: They have been released for copying, my Lord.

COURT: I think you have given us the dates in opening.

MR. SWAINE: Yes, but may I give the dates to Mr. NG so that he can identify them in his mind as being the 1st, 2nd, 3rd and so forth? Supreme Court of Hong Kong High Court

Q. Your first trip, as we know, was the 30th of December to the 1st of January.

A. Yes.

Q. The second trip was the 9th to the 13th.

A. Yes.

Q. Your third trip was the 23rd to the 27th of January.

A. Yes.

Q. Your fourth trip was the 9th to the 13th of February.

10 A. Yes.

Q. Your 5th was the 27th of February to the 2nd of March.

A. Yes.

Q. The 6th was the 22nd to the 26th of March.

A. Yes.

Q. The 7th was April the 1st to April the 4th.

A. Yes.

Q. The 8th was May the 13th to May the 17th.

A. Yes.

20 Q. In addition to these trips, you were on the telephone with Mr. CHOW, were you not?

A. Yes.

Q. And the dates of these phone calls – you can identify from the telephone bills which we have exhibited.

A. Yes.

Q. All right. Now, one point to deal with at this stage: you had, you say, many discussions with Mr. CHOW and Mrs. CHOW was present on a number of these occasions.

A. Yes.

30 Q. Now, were these discussions – let me rephrase it. Where were these discussions held?

A. Sometimes it was in the hotel where I lived, sometimes it was in Mr. CHOW's office and sometimes it was in a restaurant.

Q. Yes. Perhaps Mr. CHOW's office first. Do you remember the address?

(Witness answers in Puntì).

COURT: Nanking Road East.

A. Mr. CHOW's office was at Room 200, No. 205, Nanking Road East, 3rd Section.

Q. And at the restaurant you would be eating and talking business as well.

40 A. We had meals in many different restaurants, but we talked business in Kowloon Restaurant at Sai Moon Ting, Taipei.

Q. At these dinners would it just be yourself and the CHOWs or would some other people sometimes be present?

A. Sometimes, there were other people, sir.

COURT: What – when you talked business at Kowloon Restaurant?

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- A. Yes.
- Q. Now, at any one of these dinners, did you meet anyone that you knew from Hong Kong?
- A. Yes.
- Q. Yes?
- A. On the second trip to Taiwan, Mr. CHOW invited me to a meal. One Mr. CHEUNG Foon was also present. I also knew him, sir. It was on the 10th of January, sir.
- Q. And was CHEUNG Foon present at any of the subsequent dinners?
- A. Yes, sometimes he was, but I can't remember. 10
- Q. You can't remember how many times or . . . ?
- A. . . . I can't remember how many times.
- Q. You had known Mr. CHEUNG Foon in Hong Kong. What did you know him to be?
- A. CHEUNG Foon was in the education circle, sir, and he was the chairman of the Hong Kong Clansmen Association.
- Q. Do you know the name of the association in English, Mr. NG?
- A. I don't know the name in English, sir.
- Q. It is a Hong Kong Clansmen Association. Did you yourself talk to Mr. CHEUNG Foon at any of these dinners? 20
- A. Yes. We just chatted, sir.
- Q. Did you yourself show any interest in this clansmen association?
- A. He invited me to be the Honorary Director of the Clansmen Association.
- Q. It doesn't really matter, but did you accept or reject?
- A. I did not accept or reject, sir. Anyway, I did not join the association at all.
- Q. Yes, all right. Now, can we pass on to your third trip, Mr. NG. In addition to the abortive attempt to transact through the branch banks in Taipei, did anything else happen?
- A. Yes.
- Q. Tell my Lord. 30
- A. I asked Mr. CHOW for the transfer forms.
- Q. Yes?
- A. I also asked him how many shares had he purchased actually, sir. I told him that if these share certificates were not examined, they might be forged or false certificates. Mr. CHOW agreed and he asked me to think about it – as to what we should do when I returned to Hong Kong.
- Q. Was there any discussion as to price on your third visit?
- A. Yes.
- Q. What sort of prices were being discussed at that time?
- A. He asked for \$1 and I suggested the market price. The market price was being 40
40¢ per share, sir. I said if it was 40¢, then we would discuss about it.
- Q. And was the discussion then inconclusive?
- A. Yes.
- Q. All right. Now, is that the gist then of the third meeting?
- A. He gave me the figure about the total number of shares. Some had been purchased by himself and some he had got from his friends.

COURT: 'Some he had bought himself

INTERPRETER: . . . ' . . . and some he had got from his friends'.

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COURT: I think the witness said something else, did he not, Mr. Interpreter?

A. (In English) My Lord, I said some of them he purchased . . .

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COURT: Yes.

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A. . . . some of them he only act for his friends – I mean, he hold it for his friends.

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COURT: Yes.

Q. Did he tell you the total number of shares and how much for himself and how much he held for his friends?

10 A. He said that he himself had 15M. shares and his friend or friends had 515,000 shares.

Q. Now, we know that in Cantonese, there's no plural. Was he speaking of one friend or more than one friend?

MR. CHING: Was he speaking in Cantonese?

MR. SWAINE: Yes. Let's get that.

Q. In what language were you discussing these matters with Mr. CHOW?

A. It's all mixed up: sometimes Mandarin; sometimes in English; if it was not understood, we wrote Chinese characters.

COURT: Because your Mandarin is not so good, is that right?

20 A. Yes, sir.

Q. Was he referring to one friend or more than one friend? Were you able to tell?

INTERPRETER: I believe it was 'friends'.

MR. SWAINE: All right.

Q. You also saw, you say, share transfer forms.

A. Yes. He showed me two, sir.

Q. Do you recall what was on the forms?

A. I can recall that there was a chop in the name of Asiatic Nominees Limited. There was also a signature, and the transfer form was also stamped.

Q. Is there any indication of the number of shares on the transfer forms?

30 A. I can't remember whether there was or there was not.

Q. Well then, Mr. CHOW said that he held these 515,000 shares for his friends. Did he say what he wanted to do with them?

A. Yes, to sell them, sir.

(10.35 a.m. Mr. TANG leaves court.)

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- Q. And was any price mentioned for those shares at that third trip?
A. Well, he said that his own shares and his friends' shares would be sold together.
Q. All right.
A. I have already told you what he said. He asked for \$1 and I gave him 40¢. That was the market price then.
Q. Did anything else occur on the third trip?
A. There was nothing special. This is all I can remember.
Q. All right. Did you report this to your syndicate on your return to Hong Kong?
A. Yes.
Q. Now, we pass on to your 4th trip. Did you see Mr. CHOW on your 4th trip?
A. Yes.
Q. Tell my Lord what happened.
A. Well, before I went to Taiwan, I discussed with Mr. HO. I asked him what price I should give him.

10

COURT: Give Mr. CHOW?

- A. Yes, sir.
A. After discussing with me, Mr. HO said that the highest price I should give was 60¢.
Q. Was Mr. Ives consulted?
A. Yes. I also asked Mr. Ives to prepare a draft of the agreement.

20

(10.38 a.m. Mr. TANG returns to court).

- A. All the terms in that agreement were made by us.
Q. I think you said that draft was prepared for the purpose of your discussions, is that right?
A. Yes.

MR. SWAINE: It has been put in Brown 3, page 72 – P.10.

- Q. Is that the draft, Mr. NG? Look at it.
A. Yes.
Q. Now, that draft sets out payment by 9 instalments ending on the 30th of December, 1977. Whose idea was that?
A. It was Mr. HO's idea as well as mine, sir, on our own part.
Q. Had that been discussed beforehand with Mr. CHOW?
A. No.
Q. All right. It's just for the purpose of your discussions.
A. Yes.
Q. On the 4th trip, what was your discussion with Mr. CHOW?
A. I discussed with him according to the terms of the draft of the agreement, but Mr. CHOW said that it was unreasonable. Therefore, no discussion was necessary.
Q. Yes?
A. Then, on the night before I left Taiwan, we discussed again. On that occasion,

40

- Mr. CHOW's friends were also present.
- Q. And was that again at dinner or . . .
- A. . . . Yes.
- Q. At the Kowloon Restaurant where you normally talked business.
- A. Yes. There were cubicles partitioned in that restaurant, sir.
- Q. What happened then at that dinner?
- A. I carried on discussing with Mr. CHOW on the price. Mr. CHOW said that he could reduce the price to 80¢.
- Q. Yes?
- 10 A. I said: 'No'. I could not offer that price. I asked him to reduce the price again. At that time, it was not happy at all during the conversation, sir. Amongst his friends, there were Mr. FONG (whom I called 'Brother FONG') and one Mr. LEE. I can't remember Mr. LEE's first names.
- Q. I think we all know why you say 'Brother FONG', but for the record: why were you calling him 'Brother FONG'? I think you said 'Big Brother FONG', is that right – 'Big Brother FONG'.
- A. He was older than I was.
- Q. Was it a gesture of respect?
- A. Yes.
- 20 Q. Have you known him before?
- A. No.
- Q. All right. That's for the record. So, continue then, Mr. NG.
- A. Then Mr. CHOW said to them: "What's your opinion?" Then, they said: "Reduce it a bit for Mr. NG".

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COURT: Who said that?

INTERPRETER: Then, his friends said: "Reduce it a bit for Mr. NG".

- A. Then, Mr. CHOW said in a very unhappy manner: "If you like to reduce the price, you do it. I am not going to sell my shares".
- Q. Yes?
- 30 A. Then, Mr. CHOW asked me: "Mr. NG, if they want to sell their shares to you, would you buy them?" Then, I said: "Yes, I would. Why not?" Then, his friends said: "I want cash for the transaction". Then, I said: "If you want cash, let's not talk about it because in that case I would not be in a position to get my money back in case the share certificates were forged or false". They were in Taiwan and I would not be in a position to find them after they had left. Then, I said: "If you really want to sell your shares please do it through Mr. CHOW because in that case I would be in a position to get money back".

COURT: That 'because' was part of your speech or are you doing this by way of explanation in this court here?

- 40 A. I did say that. '. . . because in that case I would be in a position to get money back' – I did say that, sir.
- A. Then, Mr. CHOW agreed. Then, we talked about the price of shares again. I said if they wanted cash for the transaction, I would only offer 20¢.

Q. Was this all at the same dinner?

A. Yes.

Q. All right. Continue, Mr. NG.

A. Then, his friends said: "Why do you offer 20¢ – such a cheap price".

MR. CHING: My Lord, I am not objecting to this nor would I ask your Lordship to stop this. I would merely point out that all of this evidence we have had this morning is way beyond the scope of any of the manifold hearsay notices that have been served upon us. There has been no hearsay notice concerning anything that LEE and FONG said to this witness.

MR. YORKE: My learned friend's objection is made by agreement with me. I likewise do not seek to prevent my friend continuing to adduce all these happy and fortunate recollections that Mr. David NG has had, but notwithstanding that there has been hearsay notice after hearsay notice, my Lord, there's one where there's something said by Mr. LEE and Mr. FONG which was Hearsay Notice 11 in Brown 1 after the 'Defts' red tag at page 19. I am more than happy that Mr. David NG's memory should continuously come back to him; but, of course, I should comment on it later. 10

COURT: Mr. Swaine?

MR. SWAINE: My Lord, the gist of the discussions has certainly been set out in our hearsay notice. Of course, there has been no verbatim setting-out of the discussions. Your Lordship will recall that one of the earlier objects of my putting these hearsay notices in was so that there should be a record of the surrounding circumstances involving the purchase of the shares. 20

MR. CHING: Not the statements themselves.

MR. SWAINE: My Lord, the gist of it, your Lordship will see in Hearsay Notice 11 and also in the Amendment Hearsay Notice No. 8.

COURT: Are you seeking to have this evidence in to show the surrounding circumstances or to show what Mr. LEE and Mr. FONG said was the truth?

MR. SWAINE: My Lord, the surrounding circumstances – I think your Lordship has already ruled on this point, and I certainly would not wish to circumvent your Lordship's ruling; but, unless your Lordship does get the surrounding circumstances, we are going to have the evidence of Mr. NG in isolation and not in context. 30

(A pause).

MR. CHING: My Lord, may I simply add this. I say I do not seek to stop this, but it seems to me to be terribly odd that my learned friend should seek to put in hearsay notices so as to show the surrounding circumstances but not to put in the hearsay statements themselves. My Lord, my learned friend insisted upon hearsay evidence from me because he stood upon his legal

technical right to have advanced notice of the contents of any hearsay evidence. My Lord, I will contend myself at this stage by saying this: if I have had advanced notice of the hearsay he is now calling for, maybe there would have been certain other questions addressed to Mr. Ives, maybe the cross-examination would have been conducted upon a slightly different basis on certain points. I have had no advanced notice such as that upon which my learned friend himself insisted.

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10 MR. YORKE: May I make the same observations, my Lord. In relation to the cross-examination of Mr. Ives in particular, it appears that my learned friend had an extensive proof about P.10, a document which was not disclosed and about which Mr. Ives was unable to assist your Lordship except at a very early stage and under pressure of course under cross-examination. Had we had a hearsay notice containing the relevant particulars of the evidence which is now being given by Mr. David NG, my cross-examination of Mr. Melville Ives on P.10 would have been very much more extensive than it was.

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MR. SWAINE: My Lord, P.10 came up gratuitously and it came up because . . .

MR. CHING: . . . It didn't come up gratuitously. It came up because I demanded it.

MR. SWAINE: May I finish it please.

20 It came up gratuitously in the sense that Mr. CHING asked Mr. Ives to look into his records to produce any early drafts which he might have been able to find. He has found this particular draft. In that sense, that draft came up gratuitously. And, my Lord, in the light of that draft, which did come up in that context, I took instructions before Mr. David NG went into the box as to his recollection of that draft. I can't see how that can be opened to criticism.

30 COURT: No. Surely, if Mr. David NG had said earlier this morning he was going to use the draft as a basis for discussion, this would be a highly relevant matter of which you would presumably have received instructions, and if he is going to give evidence on his conversation with Mr. CHOW and with Mr. LEE and Mr. FONG relating to this draft agreement, then surely this should have been disclosed in the hearsay notice.

MR. SWAINE: Well, my Lord, the conversation with Mr. CHOW as regards the draft was an outright rejection by Mr. CHOW and as the witness has said the dialogue was not resumed until the last day and as I understood the evidence as to the discussions on the 1st day, it is quite independent of the draft – the proposals there were unacceptable, that draft represented the syndicate's then approach, it was rejected out of hand by Mr. CHOW and so they went on to a more fruitful field for discussion.

40 COURT: All right. That's as far as the conversation between Mr. NG and Messrs. LEE and FONG is concerned. Surely, as far as the conversations between

Mr. CHOW and Mr. NG are concerned, the draft agreement did come in in the conversations.

MR. SWAINE: Yes.

COURT: As I have said, we are now talking about Hearsay Notice No. 11. I have already ruled that the statement disclosed in Hearsay Notice No. 11 is inadmissible. If there are any statements which Mr. NG now wants to give evidence on and if those statements go beyond the ambit of the hearsay notice then the statements are not to be accepted as showing the truth of the statements but only the surrounding circumstances.

MR. SWAINE: Yes. That's all I seek to do at this stage of the evidence.

10

Q. All right. Mr. NG, these friends of Mr. CHOW's were protesting at your 20¢.

A. Yes.

Q. Do carry on.

A. Then I told Mr. CHOW and his friends that the market price in Hong Kong was only 40¢. I said if I took 515,000 shares to Hong Kong and sold them in the market the price may well drop to 20¢. So, how would I be able to sell the shares.

Q. Yes?

A. After long discussion, they said: "All right, we will tell you tomorrow morning".

20

INTERPRETER: Sorry, sir.

A. "We will tell you tomorrow". Then I told Mr. CHOW that I was leaving on the following day. So, if his friends handed over certain amount of shares, I asked Mr. CHOW to accept these shares on my behalf. That's all, sir, about this transaction.

Q. 'On the following day', that's on the 13th. Did anything happen? That's the last day of your 4th trip.

A. Mr. CHOW came to see me off and he told me that his friends had handed over certain amount of shares.

MR. CHING: (To Interpreter) Sorry. He said his friends saw him off at the airport.

30

INTERPRETER: Yes – airport. ". . . to see me off at the airport and Mr. CHOW told me that . . ." . . .

COURT: . . . Just a minute.

(A pause. Witness speaks to Interpreter).

A. When I said 'to see me off at the airport', I mean to say that he came to the hotel to see me and then we went to the airport together.

MR. SWAINE: I would kindly request my learned friends not to exhibit merriment

in court while the evidence is in progress. It is hardly fair to the witness. It is not very becoming.

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(A pause).

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MR. CHING: (To Court Reporter) Could I have the answer before I interrupted?

COURT REPORTER: (Reads) "Mr. CHOW came to see me off and he told me that his friends had handed over certain amount of shares."

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Q. Did he say how many shares there were?

A. Yes. 514,200 shares.

Q. Did he say anything else?

10 A. He also told me that his friends insisted that the transaction should be treated at the amount of 515,000 shares, that is to say, they wanted me to pay them 800 shares more.

Q. Yes?

A. Then I said that it was all right, but I would have to deduct the stamp duty and the brokerage from the amount for 514,200 shares, sir. Mr. CHOW said: "You have mentioned that last night. Of course, there would be no doubt about it". At that time, I promised that on my next trip to Taiwan, I would pay the money and get the shares.

Q. And at what price?

20 A. At about 20¢.

Q. That is, the sellers would be paying the stamp duty and brokerage after the 20¢.

A. Yes.

Q. And that was your 4th trip. Did you report this to Mr. Ives and Mr. HO on your return?

A. Yes.

Q. Yes. Tell my Lord what you said.

(Witness speaks to Interpreter).

(A pause).

30 COURT: Yes, Mr. Interpreter?

MR. SWAINE: (To Interpreter) Tell my Lord what the witness said.

INTERPRETER: When I returned to Hong Kong I saw Mr. HO and Mr. Ives and I told them that I had been unsuccessful in Taiwan for the bigger transaction and I only got 514,200 shares. At that time, Mr. HO said: "I don't know if it is true or not. You have discussed for a long time and yet you still have not done it."

Q. What was true or not?

A. This includes two things. It was not known whether it was a true sale or not and it was not known whether the share certificates were genuine or false.

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Q. Now was this in relation to the 514,200 shares or the other 15 millions as well?

A. Both.

Q. What else was said?

A. He was responsible for getting buyers. He said that the buyers liked to have the controlling interest. We were trying to buy shares from three different places – sources. Mr. Ho said that if it was not successful there would be trouble.

Q. In fact we are overlapping other parts of the sequence of events. We know of the purchase in the Hongkong stock market, the enquiries in Taiwan. What about the third source?

A. The third source was the M.A.F. We were discussing at that time. We have made enquiries.

Q. Yes, Mr. Ng.

A. Mr. Ho at that time said, "Let's say that they are your shares now. You buy them." He also said, "When you come back and if the share certificates are genuine you will make money." Therefore they decided that the 514,200 shares to be mine.

Q. That is Mr. Ives and Mr. HO Chapman?

A. Yes.

COURT: Did you agree?

A. Yes.

Q. Was that the gist of your discussion with Mr. Ives and Mr. HO Chapman?

A. There is something more after that, not on the same occasion, but on the next occasion.

Q. Yes.

A. On the second occasion I told Mr. Ho and Mr. Ives that the Chase Manhattan Bank and the First National City Bank in Taipei refused to received those shares.

Q. Yes.

(Witness replied in Puntì, not yet interpreted.)

COURT: You told Mr. Ives and Mr. Ho that you had been to see Mr. Lee of Far East or you were going to see Mr. Lee of Far East, what are you saying?

A. I had seen Mr. Lee of the Far East Bank, a subsidiary bank of the First National City Bank.

COURT: I think you said the general manager or something?

A. The general manager of the Far East Bank.

COURT: About the same matter?

A. Yes.

Q. Was that successful or unsuccessful?

A. Unsuccessful. Then I asked both of them if there was any other way to

examine those share certificates.

Q. Those share certificates being which ones?

A. The 15 million shares.

Q. As to the 514,200 you were prepared to take your own risk?

A. Yes.

Q. Yes.

A. Then Mr. Ives suggested that it would be the best to form a company in Hongkong and they should tell Mr. Chow to transfer those 15 million shares to this company in Hongkong. Mr. Ho thought that it was a good plan. Therefore he agreed. This was what we did on that occasion.

10

Q. Did you understand how transferring the shares to the Hongkong company would help prove the validity of the 15 million shares; did you yourself understand at that time?

A. Yes, if the share certificates were all received or accepted by the registration company that means they were genuine, and if they were rejected by them, then they were false.

Q. Thereafter did you go again to Taipei?

A. Yes.

Q. This would be your fifth trip?

20

A. Yes.

Q. Between 27th February and 2nd March?

A. Yes.

Q. Now did you see Mr. Chow again?

A. Yes.

Q. Tell my Lord what happened?

COURT: Before you go on, it would be right to assume, would it not, that when you talked to Mr. Chow you understood that Mr. Chow also represented his wife Mrs. Chow in these dealings?

A. Yes, this was my understanding.

30 Q. Did you then speak to Mr. Chow on your fifth trip?

A. Yes, Mr. Chow also agreed with that plan.

Q. Yes, any other discussion?

A. We again discussed about a price of the shares.

Q. With or without success?

A. Without success.

COURT: Did you manage to narrow the gap or there was no concession?

A. Yes.

COURT: What was it?

40 A. It was quite close, the difference was quite close. He asked for 80 cents and I offered 60 cents.

COURT: That was on the fifth trip?

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A. Yes. Something else happened on the fifth trip, that is on the night before I left Taiwan. At dinner Mr. Chow told me that his friends had some shares to sell. He asked me if I wanted to buy them.

Q. On that occasion did you meet his friends?

A. Mr. Chow and I went to the restaurant first and his friends arrived at the restaurant later. Mr. Chow asked me if I could offer a higher price, say 30 cents and not 20 cents, and he indicated that there was 1,650,000 shares, and I said to Mr. Chow that if the price was 20 cents then it was all right. I would not buy them if it was 1 cent higher.

Q. At that time were you speaking for yourself or for yourself and the syndicate? 10

A. For myself.

Q. Why were you doing it on your own behalf?

A. Because Mr. Ho had already told me that if I bought those shares that would be my own business.

COURT: Because these were not large numbers?

A. Yes.

Q. And who would be taking the risk of these shares not being genuine?

A. I myself.

Q. Yes, please continue.

A. Later his friends arrived. There were Mr. Fong, Mr. Lee and some other friends. 20
I cannot remember their names.

Q. Can you keep the evidence to what passed between yourself and Mr. Chow?

A. Mr. Chow told me that there were 1,560,000 shares altogether. Then I told him that if the price was 20 cents I would buy them. Then Mr. Chow said, "All right, I'll fix up later."

COURT: "I would be responsible for fixing it up", isn't it?

INTERPRETER: Yes.

A. Then I told him that we would do it in the same way as last time, that is to say, through Mr. Chow.

Q. And refreshing our memories the reason you wanted to do it through Mr. 30
Chow was so that you could have recourse to Mr. Chow?

MR. CHING: He never said that.

MR. SWAINE: Well, can we look back as to why he said he wanted to do it through Mr. Chow.

MR. YORKE: My note in relation to the fourth trip: After the friend said "I want cash", I said, "If you want cash, let's not talk about it. I can't get my money back." I said, "If you really want to sell you must sell through Mr. Chow, then I can get my money back." That is in relation to one transaction and the people present at that time.

MR. SWAINE: But he has just told the court that it was for the same reason that he 40

asked to do business through Mr. Chow. All right, I don't have to dot my Is and cross my Ts.

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Q. It's for the same reason?

A. Yes.

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Q. All right, please continue.

A. Then I told Mr. Chow that if it was done he should inform me the following day because I would be leaving the following day.

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Q. And did he contact you the following day?

10 A. Yes, he came to the hotel where I was living and accompanied me to the airport to see my off.

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Q. Yes, and what took place?

A. He said that he had altogether collected 1,560,000 shares. Then I said the same thing that I would pay him the money on the next trip to Taiwan and to get the shares.

Q. At what price?

A. 20 cents per share and similarly the stamp duty and the brokerage would be deducted from the amount.

Q. What about the earlier lot of 514,200 shares, was that mentioned at your fifth visit?

20 A. Yes, I paid the money and got the shares and took them along with me.

Q. Whom did you pay?

A. I paid Mr. Chow.

Q. And in what currency did you pay?

A. Taiwan currency. They would only receive Taiwan currency.

Q. Now I will at a subsequent point in your evidence, Mr. Ng, go into the mechanics of the payment, how you got the money, how you paid it, at a later point of the evidence when we can deal with the payment at one time. Now you say you got the certificates from Mr. Chow for the 514,200 shares?

A. Yes.

30 Q. And did you bring them back to Hongkong?

A. Yes.

Q. Is there any transfer form in respect of those shares?

A. Yes.

Q. Was it one or more?

A. As far as I can remember there was only one.

Q. Now would you look at – my Lord, this would be yellow 2. It is part of the documents numbered 1 to 8. You put in the originals as we go along. Is this the transfer form for the 514,200 shares?

A. Yes.

40 MR. SWAINE: My Lord, ought this to be marked separately or do we just get the same –

MR. CHING: I shall want it in my cross-examination.

MR. YORKE: I would like to see all of these forms together and if it is going to be given an exhibit number could there be a number for the whole lot.

COURT: Exhibit D.8A.

Q. What did you do with the certificates and the transfer form after you had come back to Hongkong?

A. As I bought these shares for 20 cents per share I could not offer a price to sell the shares in the market.

COURT: (To witness) If you could do this in English.

A. Because I am the broker of Far East Stock Exchange the price – suppose, you see, today's price is 40 cents, I cannot say it is 40 cents or 36 cents or 20 cents. I must mark it as 40 cents as opening. In other words, if I want to sell it I have to mark the market price instead of the actual price I bought in Taiwan, therefore I cannot do my stamping in my own office. 10

Q. That is you could not use your broker's form for stamping?

A. Yes, that is what I mean, because each transaction should be stamped.

COURT: Because the market price at that time was 40 cents?

A. Yes.

Q. Now what we do have, Mr. Ng – you better revert to Cantonese – is a bought note and a sold note both stamped on the 29th March?

A. The reason is this, I told my employee to go to the Treasury to stamp.

COURT: To stamp what?

A. The stamp duty for the transaction. 20

COURT: To stamp the transfer form, right?

A. The stamp duty for the transaction, not for the transfer form.

Q. The transfer form was in fact only \$5?

A. Yes.

Q. And you have to stamp the transaction itself?

A. Yes.

COURT: The bought and sold notes?

MR. SWAINE: Yes.

Q. Were these bought and sold notes prepared beforehand?

A. They had to be produced at the time of the stamping, of course. 30

Q. So you sent your employee to the stamp office with the bought and sold notes already prepared?

A. But the date was not written. The date put in there was the date when they were stamped.

Q. And your employee went on the 29th March, did he?

A. No, as I bought the shares at 20 cents each I told my employee to go to the Treasury to have it stamped at the price of 20 cents each. The people of the

Treasury Department refused. They insisted that they should be stamped in accordance to the market price.

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Q. Do you recall about when this was when he went to stamp at 20 cents?

A. After I came back from Taipei I told my employees to do this.

Q. So they failed to stamp at 20 cents?

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A. Right.

Q. What did you do?

A. Then my employees just locked the shares up in the safe and waited until the price had gone down to 20 cents, then they had them stamped.

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10 Q. You were waiting for the price to go down before stamping.

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shing –
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COURT: In the hope that the shares would go down to 20 cents and then they would be stamped, is that right?

Q. It doesn't have to go down to 20 cents, waiting for the price to drop before stamping.

MR. CHING: I certainly heard Mr. Ng say wait till it comes down to 20 cents. My hearing is not that defective.

COURT: As I understood what Mr. Ng meant was that his clerk locked the share certificates in the safe in the hope that the shares would go down to 20 cents and then take the share certificates out for stamping.

20 MR. SWAINE: Very well, my Lord.

Q. You have also said that the price was going up and down?

A. Yes.

Q. So what eventually happened?

A. Eventually we waited until the 29th and then they were stamped.

Q. Why the 29th?

A. The transaction of 15 million shares was also successful.

Q. This is taking a step forward in time, Mr. Ng. The 15 million shares were stamped on the 28th March?

A. Yes.

30 Q. And they were stamped at 60 cents?

A. Yes.

Q. So on the 29th you had the 514,200 shares stamped?

A. Yes.

Q. The bought and sold note shows 60 cents per share?

A. Yes.

Q. Why is that?

A. We were told by the people of the Treasury that it should be stamped at 60 cents.

Q. And the signature which appears for transferee and transferor, do you know it?

40 A. Yes, my employee's signature.

COURT: What was the market price on the 29th March?

A. Between 56 and 60 cents.

COURT: And on the 28th?

A. About the same price.

Q. Now in the bought note the vendors are Chow and Hwang, that is Mr. and Mrs. Chow. Why are their names there?

A. At the time of the discussion they were through them.

Q. And is that the same reason for their names appearing on the sold note?

A. Yes.

Q. All right, now we have gone forward in evidence. We have to go back to just after your fifth visit. What you have told the court is matters pertaining to the registration of the 514,200 shares. Apart from that did you have discussions with your colleagues Mr. Ives and Mr. Chapman Ho? 10

A. Yes.

Q. What were they?

A. I told them what had happened in Taiwan.

Q. That the business had been unsuccessful?

A. Yes.

Q. And did you tell them anything else?

A. The 1,650,000 shares were also mentioned and they also said, "It's also your business." 20

Q. Now you had discussed with Mr. Chow the formation of a Hongkong company?

A. Yes.

Q. Did you report your discussions with Mr. Chow to the syndicate?

A. Yes.

Q. Then did you hear again from Mr. Chow?

A. Yes.

Q. What happened?

A. On the 5th March he gave me a long-distance telephone call, but I was not in, and I rang him back and he was not in. Then he rang me back. 30

COURT: Were you in?

A. Yes.

COURT: Thank you.

Q. Can we look at your telephone bills for these various telephone calls. — My Lord, it would be in yellow 2, 110. — Now that is a telephone bill made up to HO Chapman and Associate Limited?

A. Yes.

Q. And he was sharing an office with yourself, you were saying?

A. Yes.

Q. Did Bentley have facilities for international phone calls? 40

A. No, not at that time.

Q. Then on the bill there is an entry on the 5th March "Taiwan", and the third column "Distant No.", do you know what that is?

- A. Yes. Supreme Court
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- Q. What is it?
- A. That is the telephone number of Mr. Chow.
- Q. And do you know this is his office or his home number?
- A. Home number. Defendant's
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- Q. Now the symbol "RPT", do you know what that is? "Call Type".
- A. I don't know.
- Q. And you would not know the reference No. in the fifth column?
- A. No. No. 40
- 10 Q. The penultimate column "Minutes – 0", "Charge" in the last column "\$2.10", what does that signify to you? David Ng Pak-shing –
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- A. That means the person was not located.
- Q. So you did try to phone Mr. Chow, failed to locate him and you say that he then subsequently phoned to you?
- A. Yes.
- Q. All right, that explains the mechanics. Now what did Mr. Chow say to you on the phone?
- A. Mr. Chow asked me to go to Taipei to talk with him.
- Q. And did he say what he wanted to speak about?
- 20 A. He said that the term was all right, that is to say, he would sell the shares to me at 60 cents. So he said, "Come over."
- Q. Did you report that to your syndicate?
- A. Yes.
- Q. What happened?
- A. They prepared everything and told me to go.

COURT: What was the market price on the 5th March, remember?

A. It was higher.

COURT: How much?

A. I can't remember.

Q. We do have a list of purchases in the open market at that time. Perhaps tell my Lord from the – My Lord, this is the document 135 on the 4th March, there was a small trade at 48 cents.

COURT: Document 135 yellow –.

30 MR. SWAINE: That would be yellow 2, my Lord. Some of these are overlapping because they are in separate statements, but that is the closest, my Lord. On the 10th March there was also a small trade at 48 cents. So that would seem to be, my Lord, about the market price at the time.

Q. All right, the things that were prepared for you, what were they?

A. To my recollection a company was formed called the Fermay Company and there was also a draft agreement.

Q. That draft agreement would be between who and who?

A. Mr. and Mrs. Chow on the other side and we on this side.

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- Q. Yes, anything else prepared?
A. And some transfer forms.
Q. Now you have been saying transfer forms in a rather technical way. You mean the share transfer forms or –
A. Instrument of transfer.
Q. In what company?
A. It was blank. There was no company's name there.

COURT: You can buy them in the market?

- A. Yes.
Q. Yes. 10
A. I can remember that I brought along these documents, but there may be some other things which I cannot remember now.
Q. Your sixth trip to Taipei was between 22nd and 26th March?
A. Yes.
Q. Did you see Mr. Chow?
A. Yes.
Q. Was this the day you arrived or a subsequent date?
A. The day I arrived.
Q. What did you discuss with him?
A. Price was agreed. I told him that a company had been formed, that is to say, 20
I told him that there was already a company.
Q. Which had been formed?
A. Yes.
Q. Anything else on the 22nd, the first day of your sixth trip?
A. After the details were discussed it was arranged that I should go to his office on the following day.
Q. Yes, perhaps just pausing there, was that the first time Mr. Chow had telephoned to you in Hongkong on the 5th March?
A. No.
Q. Do you know why Mr. Chow did not himself come to Hongkong? ? 30
A. Yes.
Q. Because he told you or from some other source?
A. He told me.
Q. What did he tell you?

MR. CHING: Again, my Lord, no hearsay.

MR. CHING: Again, my Lord, there is no hearsay notice.

MR. SWAINE: If my learned friend would just pause to look at hearsay notice 10, paragraph D –

COURT: What does it say? What does paragraph D say?

MR. SWAINE: It was referred to as hearsay notice No. 10. 40

COURT: That is the statement number?

MR. SWAINE: It's paragraph D, my Lord, statement D.

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COURT: Yes, I did rule that this statement was admissible.

MR. CHING: My Lord, your Lordship did rule that the statement was admissible but the question however was "Did you know because he told you or from somewhere else?" Answer: "He told me." And the question to which I – the question which has caused my interjection was "What did he tell you?" And there is no hearsay notice.

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MR. SWAINE: My Lord, maybe we are splitting hairs. I am not seeking to get out of the witness anything more than appears in the hearsay notice –.

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shing –
Examination

10 COURT: Provided it is restricted to something that he learnt –.

MR. CHING: That is very well, my Lord, but the question preceding that one was "Do you know why he himself could not come?"

MR. YORKE: My Lord, this is really my objection, that the question which my learned friend knows he is going to get an answer to is "Why?" and that has never been stated.

MR. SWAINE: Why he didn't come?

MR. YORKE: Yes.

MR. SWAINE: Can we have the witness out of court so that the matter can be argued?

20 (Witness leaves courtroom.)

COURT: This is really the objection, is it – Why he didn't come?

MR. SWAINE: Why he didn't come – because he was unable to. That is all I am seeking to get out of the witness, not a lot of extraneous matters.

MR. CHING: It may be that my learned friend is not trying to get extraneous matters but the form and the direction of the question: "Do you know why CHOW himself didn't come?" Answer: "Yes." "Because he told you or from somewhere else?" Answer: "He told me." And the next question is "What did he tell you?" I don't know what the witness is going to say and I will certainly object to this particular hearsay.

30 COURT: Well, there is a danger that Mr. NG might tell us why and we don't want to know.

MR. YORKE: I take that from this point. I personally don't in the least bit mind Mr. David NG telling us the reason which he now says was given. I am merely making it perfectly clear that there was an opportunity for it to be put into a

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hearsay notice at the right time and it wasn't done. Again, my Lord, I don't object to the evidence being given, provided it is clear it goes beyond the hearsay notice.

Defendant's
Evidence

COURT: All right. Mr. Swaine, it is up to you to see that the witness doesn't go beyond —.

No. 40

MR. SWAINE: All right, my Lord. I might walk this thin ice very carefully indeed and re-put my question so it doesn't cause my learned friends unease.

David Ng Pak-
shing —
Examination

COURT: Would there be any objection to a leading question from Mr. Swaine "Did Mr. CHOW tell you that he was unable to come to Hong Kong?"

MR. SWAINE: That would be the easiest way.

10

MR. CHING: But he has already got that. "Do you know why CHOW himself didn't come?" Answer, "He told me." There it is.

MR. SWAINE: Just that he didn't come, not that he was unable to.

MR. CHING: No, no. "Do you know why he didn't come?" "Yes." "Because he told you?" Answer: "He told me."

COURT: Yes, I see Mr. Swaine's point — not that he didn't come but he was unable. So the operative word is "unable".

(Witness returns to courtroom.)

Q. All right, Mr. NG without going into any further reasons, was he, Mr. CHOW, able or unable to come to Hong Kong?

20

A. No, he was unable to come.

Q. Now, just stop there. Did you then keep your appointment for the following day, this is the second day of your sixth trip?

A. Yes.

Q. And where did you meet?

A. At Mr. CHOW's office.

Q. Was Mrs. CHOW present?

A. Yes.

Q. And what time of day was this? In the morning, afternoon or night?

A. In the morning, at about 11.

30

Q. Yes. And what took place?

A. Firstly, I mentioned to him about the company in Hong Kong.

Q. This is Fermay?

A. Yes. Then I explained to him that that company would be used for the purpose of the transfer and they were the shareholders of that company. When those shares were transferred to that company, they would still be owner of the shares.

Q. What shares?

A. The shares of the San Imperial.

- Q. This is the 15 million shares? Supreme Court
of Hong Kong
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- A. Yes.
- Q. Yes.
- A. And I told him that all those things had been done by a solicitor.
- Q. Did you tell him which solicitor? Defendant's
Evidence
- A. I told him that it was Mr. Ives of Messrs. Peter MO & Co.
- Q. Now, just pausing there, when you were negotiating with the CHOWs, did you indicate to them whether you were negotiating entirely for yourself or for yourself and others? No. 40
- 10 A. I told him that it was for the syndicate.
- Q. Did you tell them who the syndicate was? David Ng Pak-
shing –
Examination
- A. Yes.
- Q. That is, Mr. Ives and Mr. HO Chapman?
- A. Yes, and myself.
- Q. All right. So you said that Mr. Ives was the solicitor and he had done all the paper work?
- A. Yes.
- Q. All right. Do continue.
- A. He saw all the documents.
- 20 Q. The company documents?
- A. Yes.
- Q. Yes.
- A. Then he said, "It is all right."
- Q. Well, perhaps, just pausing there, you say you did sometimes speak in English to Mr. CHOW. He was then able to read English, was he?
- A. Yes.
- Q. Do you know what his business was?
- A. He was the director of the Wah Wah Broadcasting Co.
- Q. All right.
- 30 MR. CHING: I suppose there is a hearsay notice for that?
- MR. SWAINE: My Lord, those calling cards which are in court.
All right. So he read the company document, thought they were all right.
What next?
- A. I told him to hold a meeting there.
- Q: Yes. With whom?
- A. That is, Mr. CHOW and Mrs. CHOW had to hold a meeting to increase the company's assets – capital, up to \$9 million. They agreed and they held a meeting. This part of the company's affairs was done.
- Q. Yes. Now, whose idea was it – Now, would you look at document 13 in Yellow 1? You recognize this document? 40
- A. Yes.
- Q. And do you know who typed it?
- A. I did.
- Q. Where was it typed?
- A. At Mr. CHOW's office.
- Q. On what day?

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Evidence

No. 40

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Examination

- A. On the 23rd of March.
Q. That is the date appearing on the heading?
A. Yes.
Q. Now, did you type this document up out of your own mind or on the basis of something else – on the basis of something to help you?
A. On the basis of some other document.
Q. What other document?
A. The drafts prepared by Mr. Ives.
Q. And that was one of the documents you had brought to Taipei?
A. Yes.
Q. And the signatures on that document, whose are they?
A. The upper one is that of Mr. CHOW and the lower one is that of Mrs. CHOW.
Q. Did you see them sign?
A. Yes.

10

COURT: Mrs. CHOW knows English also?

- A. Yes.
Q. Did you actually hear her speak English? Did you hear her speak English?
A. Yes, a few sentences.
Q. Now, this document which you typed, Mr. NG, is described as “Minutes of the Board of Directors of Fermay” and bears the signatures of Mr. and Mrs. CHOW?
A. Yes.
Q. And it refers to, among other things, “Increase in the capital of Fermay”?
A. Yes.
Q. Was that the meeting you asked them to hold?
A. Yes.
Q. Yes. Now, in the second paragraph, the typing of the figure “15 million” and the figure “9 million” – that appears to be done by a different typewriter?
A. Yes.
Q. When you typed this out in Taipei, did you type with blanks for those 2 figures?
A. Yes.
Q. And why was that?
A. Because at that time the 15 million shares were not examined yet and I did not know how many of them were genuine and how many of them were not genuine. Similarly it was also kept blank in the place where the “\$9 million” was typed because the price of the 15 million shares was at 60 cents.
Q. Did you explain the reason for those blanks to Mr. and Mrs. CHOW?
A. Yes.
Q. And did they agree to leaving them blank?
A. Yes.
Q. And did they sign against the margin?
A. Yes.
Q. Did you tell them what would be done after examination of the shares?
A. Yes. After the examination of the shares, the number of the genuine shares would be put down in the document.
Q. All right. Now, did anything else take place that morning?

40

- A. Yes. Supreme Court
 Q. Yes. of Hong Kong
 A. I requested them to hold a meeting regarding authorizing me – authorizing High Court
 the 3 of us to carry out the things in Hong Kong.
 Q. On behalf of whom? Defendant's
 A. On behalf of Fermay Company – that is to say, Mr. and Mrs. CHOW. Evidence
 Q. And did they agree to authorize the 3 of you?
 A. This was argued at that time. The reason I argued with them was that if after No. 40
 the examination the shares were proved to be genuine and if at that time they
 10 refused to sell the shares to me, what would happen? What could I do?
 Q. Did you finally persuade them?
 A. Yes. David Ng Pak-
 Q. And did they agree? shing –
 A. Yes, a meeting was held. Examination
 Q. Did you go with a draft beforehand or not, for this particular piece of busi-
 ness? Do you remember?
 A. I can't remember.
 Q. All right. Look at 14 – was that typed by you?
 A. No.
 20 Q. All right. So there was these 2 pieces of business. Anything else?
 A. Yes, it is about signing the agreement. I found that I forgot to bring along the
 draft of the agreement.

MR. SWAINE: My Lord, this will take us into the events of the 23rd. If it is convenient to the court, it would be convenient for us.

D.W.2 – NG Pak-shing – On former oath

XN. BY MR. SWAINE – Continues

- Q. Mr. NG, we have stopped at the point where at the CHOWs' office on the
 23rd March you discovered you had forgotten to bring the agreement which
 Mr. Ives had prepared, the draft agreement which Mr. Ives had prepared.
 30 A. Yes.
 Q. What happened then?
 A. Then I suggested to ring back Hong Kong.
 Q. Yes, did you do so?
 A. Yes.
 Q. Yes. From where?
 A. From Mr. CHOW's home. We went to Mr. CHOW's residence for lunch.
 Q. For lunch. And what happened over the phone?
 A. I asked Mr. Ives to repeat it to me once and at the same time I recorded that
 with a tape recorder.
 40 Q. Yes.
 A. Having recorded that I typed out a copy for Mr. CHOW and Mrs. CHOW.
 Q. Yes. Where did you do the typing?
 A. At Mr. CHOW's office.
 Q. So you had gone back to the office after your lunch and after you had spoken
 to Mr. Ives?

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shing –
Examination

A. Yes.
Q. Now, I want you to look at the agreement, at document 16 in yellow 1, 16A is the final exhibit number. Do you recognize that copy agreement?

A. Yes.
Q. What is it?

A. I typed it.
Q. And you see where the typing appears to be different in various places, on the first page against which there are signatures of CHOW and HWANG?

A. Yes.
Q. Was that part of it typed by yourself?

A. No.

Q. And did you type it in blank?

A. Yes.

Q. Why did you leave these blank spaces?

A. In the first part here I did not know whether or not 3 names should be here.

Q. Because?

A. Because when I was there I was the only person who signed it.

10

COURT: What did Mr. Ives tell you?

A. I did not ask him, sir.

Q. Did you ask him on your return?

A. Yes.

Q. And the other blank spaces?

A. As to these 2 blank spaces here, I did not know how many of the share certificates were genuine.

Q. So the same reason as the blanks in the minutes which you had also typed, document 13?

A. Yes.

Q. You remember how many copies of this document you typed? How many copies?

A. 3 copies.

Q. 3 copies. And how many copies were signed?

A. All 3 copies were signed.

Q. Would you look at the last page, please? Do you recognize your signature?

A. Yes, here.

Q. At the bottom of the page?

A. Yes.

Q. And CHOW and HWANG, did they sign in your presence?

A. Yes.

30

COURT: Have you ever drafted or copied a document, agreement, contract, before?

A. I have typed them many times.

40

COURT: This type of agreement?

A. Yes, because I have worked as a typist before.

Q. As a matter of interest, Mr. NG, you were for many years chief accountant

- to the Harilela group – did that involve typing as well?
- A. Yes. Sometimes for confidential documents, I typed them myself.
- Q. Now, if you look at paragraph 2 you will see that the figure “\$200,000” has been typed in as being the amount of the deposit. Paragraph 2 of 16A – do you see it?
- A. Yes.
- Q. How did that deposit amount come to be?
- A. After the draft copy was typed, this had been argued and the “\$200,000” was typed in the agreement later.
- 10 Q. When you say “draft” what did you mean?
- A. Typed the draft copy.
- Q. What draft copy was that?
- A. When I typed the first copy according to the tape recorder, later I found that there were many mistakes and the figure “\$200,000” was typed in the agreement eventually.
- Q. Eventually. You made, in fact, 2 drafts then?
- A. I typed one draft.
- Q. One draft?
- A. And one actual agreement.
- 20 Q. You typed a draft – did that draft have the “\$200,000” on it?
- A. No.
- Q. What was it then?
- A. It was left blank.
- Q. It was left blank.

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shing –
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COURT: I think what you are really trying to say, Mr. NG, is you made the first draft on the basis of the recorder; that contained mistakes, so you made another draft. That’s it, isn’t it? And also in that draft not only were there mistakes but the amount of the deposit was left blank.

MR. SWAINE: The second was a clean –.

30 COURT: You listened to the tape recorder and typed out the draft?

A. Yes.

COURT: There were mistakes?

A. Yes.

COURT: And you also in that mistaken draft left the amount of the deposit blank?

A. Yes.

COURT: There were further discussions or, as you call it, argument about the amount of deposit and after that you typed out a second draft with no mistakes and with the amount inserted?

A. Yes.

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Evidence

No. 40

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shing –
Examination

- Q. In fact, it has been elicited from you that that second typed copy was the one that was signed?
- A. Yes.
- Q. All right. Now, you say there was argument over the \$200,000?
- A. Yes.
- Q. Was there any discussion about the stamp duty for the share transfers and other expenses?
- A. Yes.
- Q. Yes. What was it?
- A. Before I left for Taiwan, Mr. HO said that the smaller amount the deposit money would be, the better it would be. 10
- Q. Yes.
- A. When we talked about the deposit money in Taiwan, Mr. CHOW asked for more – that is, more than \$200,000.
- Q. Can you just come to the question of the expenses?
- A. As to the expenses, they had agreed that they should be responsible for the expenses – that is to say, Mr. CHOW and Mrs. CHOW, their party.
- Q. Why was that?
- A. Because the share certificates had to be taken over to Hong Kong for examination and moreover, Fermay Co. was their company and not our company. This is why I wanted them to be responsible for the expenses. 20
- Q. And did they agree?
- A. Yes.
- Q. And how were these expenses to be paid? Out of what source?
- A. After discussion, it was agreed that the expenses should be deducted from the deposit money.
- Q. And was that in fact done?
- A. Yes.
- Q. When?
- A. At once. 30
- Q. How did you know how much to deduct?
- A. I am a stock broker; I know how to calculate the figures.
- Q. All right. How much did you calculate?
- A. For sale and purchase, it was \$72,000 – for a single one it was \$36,000.
- Q. That's the stamp duty?
- A. Yes.
- Q. One on the bought note and one on the sold note?
- A. Yes.
- Q. And that makes \$72,000?
- A. Yes. 40
- Q. Any other expenses?
- A. The amount for increasing the capital money.
- Q. Of what company?
- A. Fermay Co.
- Q. And how much did you calculate that to be?
- A. It was also \$36,000.
- Q. So that makes \$108,000?
- A. Yes.
- Q. Leaving \$92,000 payable out of the \$200,000?

A. Yes. Supreme Court
Q. And did you pay that to Mr. CHOW? of Hong Kong
A. Yes. High Court

Q. In what form?
A. Cash. Defendant's
Q. Yes. What currency? Evidence

A. Taiwan currency.
Q. All right. We will come to the mechanics of payment later in the evidence. No. 40
Now, you say that you had taken some blank instruments of transfer to
10 Taiwan with you?

A. Yes. David Ng Pak-
Q. And what did you do with them? shing –
A. I explained to them and asked them to sign. Examination

Q. What did you explain?
A. I explained to them that if the share certificates proved to be genuine after
examination, then the transaction would be successful.

Q. Yes. And these instruments of transfer were to be in respect of shares in what
company?

A. According to my recollection, it was Fermay Co.

20 Q. And did the CHOWs sign?

A. Yes.

Q. Would you look at yellow 3 document 32 page 142? Do you recognize these?

A. Yes.

Q. And are these documents that you have been referring to?

A. Yes.

MR. SWAINE: My Lord, we put the originals in as part of D8 exhibits. We are
having a little trouble locating these documents.

There would be one signed by Mr. CHOW and one signed by Mrs. CHOW
– is that right?

30 A. Yes.

Q. And who was to hold these transfers, to keep them?

A. Well, after they were signed, they were handed over to me.

Q. And did you tell them what you were going to do with them?

A. Yes, to hand them back to the solicitors' firm.

Q. Yes, which one?

A. Messrs. Peter MO & Co.

Q. Now, then what about the 15 million San Imperial shares themselves?

A. He did not tell me to bring them back. He said that he would ask someone
else to bring them back to here.

40 Q. And the transfers for those shares?

A. They would be taken back together with the share certificates.

COURT: What will be taken?

MR. SWAINE: The transfer forms. These are the San Imperial transfer forms.

Now, the idea was to get the 15 million shares proved by the transfer
of those shares into the name of Fermay and registered in the name of

Supreme Court
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High Court

Fermay?

A. Yes.

Defendant's
Evidence

Q. Was there any discussion about the new share certificates of San Imperial if and when issued in the name of Fermay?

A. Yes.

Q. What was it?

No. 40

A. He would get someone to bring them to Messrs. Peter MO & Co.

David Ng Pak-
shing –
Examination

COURT: To bring what?

A. The share certificates.

COURT: To bring the 15 million San Imperial share certificates?

10

A. Yes.

Q. That is the new ones after issue?

A. Yes.

Q. In the name of Fermay?

A. Yes.

Q. Now, the 1,650,000 San Imperial shares which you had previously discussed with Mr. CHOW – what was the position about those shares at the time of your sixth trip?

A. After I paid the money I brought them back myself.

Q. And did you pay for them during your sixth trip?

20

A. Yes.

Q. And to whom did you pay the money?

A. To Mr. CHOW.

Q. In what currency?

A. Also in Taiwan currency.

Q. And from whom did you get the certificates?

A. From Mr. CHOW.

Q. With or without the transfer form?

A. Yes, with.

Q. Anything else occurred during your sixth trip?

30

A. Nothing special.

Q. All right. Now, dealing with the 1,650,000 shares further, what did you do with the certificates and transfer form after you got back to Hong Kong?

A. I got my employee to have them stamped.

Q. And were these stamped rightaway or was there a delay?

A. They were stamped on the 29th.

Q. And would you look at 129 in yellow 2, the transfer at 129, the one for the 1,650,000 shares?

A. Yes.

Q. Look at the original.

40

A. Yes.

MR. SWAINE: My Lord, these will go in as part of the D8 exhibits.

CLERK: D8C.

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Q. Now, these were stamped on the 29th March – that is, on the same day as the 514,000 at 128?

A. Yes.

Defendant's
Evidence

Q. On the same day, Mr. NG, you remember that?

A. Yes.

Q. And at 60 cents?

No. 40

A. The market price was 60 cents.

Q. And the signature for transferor and transferee is of the same clerk?

David Ng Pak-
shing –
Examination

10 A. Yes.

Q. All right. What is the name of this clerk?

A. WONG Luk-bor.

Q. If you look at the transfer forms, the name of transferee in each case is MAF Nominees Ltd.?

A. Yes.

Q. Why is that?

A. Well, I placed my shares with MAF.

COURT: Both the 514,000 and the 1,650,000?

A. Yes.

20 Q. The 15 million shares, of course, were to be in the name of Fermay?

A. Yes.

Q. Why did you choose MAF Nominees for these 2 other lots of shares?

A. For the shares the syndicate had purchased from the market the name of City Nominees Ltd. was used. That is to indicate that these 2 lots were mine and they had nothing to do with the other lot.

Q. Now, Mr. NG, I want to deal with the mechanics of payments in Taiwan. Would you look first at document 24 in yellow 3 please, page 134? It is that little slip at the top of the page, document 24 and this is a Wing On draft dated 21st January 1977 payable to your order for US\$20,000?

30 A. Yes.

Q. And it is addressed to the Irving Trust Co. in New York?

A. Yes.

Q. Why did you want this draft?

A. I brought along with me to Taipei and I was prepared to use it there.

Q. Yes, for what purpose?

A. If we have agreed on the discussion of business, then this would be used.

Q. The business being the business with whom?

A. The business with Mr. CHOW.

Q. All right. And do you recall at which trip you brought this draft to Taipei?

40 Would you look at the date of the draft?

A. The third trip.

Q. And what did you do with the draft in Taipei?

A. I went to the branch company of this company, that is, the Irving Trust Co. in Taiwan to get money, to cash the draft.

Q. You cashed the draft in Taipei itself at the branch of Irving Trust?

A. Yes, but they refused to pay me.

- Q. I see. So what did you do?
A. Then I didn't have any choice therefore I could only hand it over to my friend, Mr. LO Sze.
Q. And did you also subsequently seek his assistance or was this once and for all?

COURT: Is that the jeweller?

- A. Yes. Yes, I did.
Q. All right, and Mr. LO Sze is a jeweller. Does he have a business in Hong Kong?
A. Now he has 2 jewellery shops in Hong Kong.
Q. And what was he doing in Taipei?
A. He had a wife in Taipei. 10
Q. Did you subsequently draw this money from Mr. LO?
A. Yes.
Q. All right. Would you also look at page 134 in the same bundle? Now, that again is a Wing On draft dated the 28th February 1977, addressed to Taipan Building Management Ltd., instructing the Bank of America in Taipei to make payment of the sum of HK\$200,000 to yourself?
A. I telephoned from Taipei to Hong Kong and asked the people in my company to remit \$200,000 to me.

COURT: What do you mean? The people in Bentley?

- A. Yes, the employees of the Bentley to remit \$200,000 to me. 20
Q. Sorry, was it Bentley or Taipan?
A. Correction – it is not Bentley. It was Taipan.
Q. And why did you want this particular sum of money?
A. Well, I needed the money to buy the 514,000 shares.
Q. So this would be on your fifth trip which was between the 27th February and the 2nd March?
A. Yes.
Q. Now, would you look at an earlier page, document 12 also in yellow 3? Now, the date of that is the 27th February 1977?
A. Yes. 30
Q. That is the translation?
A. It is not clear in this copy.
Q. Do you recognize the type of document this is Mr. NG? It is issued in your name. Do you see that?
A. Yes.
Q. And do you know what sort of document this is?
A. Yes. If you brought in foreign currency into Taipei, at the time when you are leaving Taipei you must hand this document back to the authorities, otherwise you can't leave Taiwan with the foreign currency.
Q. If you leave without the money, then you don't have to surrender the coupon? 40
A. No.
Q. You don't have to surrender it. And you brought in on the 27th February US\$5,000 and HK\$40,000?
A. Yes.
Q. What did you want that money for?

- A. It was still in the course of discussion, sir. If the transaction was successful I would need some money for that purpose. Supreme Court of Hong Kong High Court
- Q. Which transaction was this?
- A. That is the transaction of fifteen million shares.
- Q. "15 million shares". Then on the 28th, that is the day following, you arranged for the remitting to you of HK\$200,000. Defendant's Evidence
- A. Yes.
- Q. Were you able to cash that draft? No. 40
- A. No. The reason is that my C.I. number was not typed in the draft; therefore —.

10 COURT: "C.I."?

David Ng Pak-shing —
Examination

MR. SWAINE: That's the Certificate of . . .

INTERPRETER: Certificate of Identity, sir.

- A. They refused to pay me.
- Q. So, what did you do then?
- A. Well, I couldn't cash the draft; therefore, when I came back to Hong Kong I cancelled it.
- Q. Was it later re-issued?
- A. Yes.
- Q. For the same amount?
- 20 A. Yes.
- Q. Would you look at yellow 5, page 90A? Is that the cancellation document?
- A. Yes.
- Q. Is 91A the re-issue?
- A. Yes. There is the C.I. number here.
- Q. On 91A?
- A. Yes.

CLERK: 90A is the cancellation; 91A is the re-issue.

- Q. Now, 91A is dated 13th May.
- A. Yes.
- 30 Q. And who cashed it?
- A. I did.
- Q. In Taipei?
- A. Yes.
- Q. And you were there between the 13th May and the 17th May. That would be your eighth trip?
- A. Yes.
- Q. Would it have been on that occasion?
- A. Yes.
- Q. What did you do with the money?
- 40 A. Well, I paid it back to Mr. Lo for the debt.

COURT: Just a minute. The Lo Sze one was US\$20,000, was it?

A. Yes. After that, sir, I borrowed some other money from him, sir.

COURT: So, you paid your debt to Mr. Lo, i.e. US\$20,000 –.

INTERPRETER: "\$20,000".

COURT: – plus some further debts.

MR. SWAINE: I'm sorry, would you ask the question first? I think the witness is shaking his head.

Q. The US\$20,000 you had left with Mr. Lo Sze; is that right?

A. Yes.

Q. So, that was not a debt.

A. No.

Q. Did you get the proceeds of the US\$20,000 from Mr. Lo subsequently?

A. Yes.

Q. All right.

COURT: No, no, US dollars.

MR. SWAINE: The proceeds.

INTERPRETER: The Taiwan currency, sir – the proceeds of the – the proceeds of the 20,000 US dollars.

MR. SWAINE: My Lord, can I just take it from the top again?

COURT: Yes.

Q. You had left the draft for US\$20,000 for Mr. Lo.

A. Yes.

Q. And subsequently you got from him the proceeds of that draft.

A. Yes.

Q. In what currency?

A. Taiwan currency.

Q. He gave you Taiwan currency. And what did you do with that Taiwan money?

A. Well, I brought along and paid Mr. Chow with it.

COURT: For what? For what shares?

A. For the purchase of the shares – 514,200 shares.

COURT: Yes, he specific, Mr. Ng. We are dealing with several lots of shares, you see. Yes? 30

Q. Now, then, the draft for HK\$200,000 you had to cancel and it was re-issued on the 13th May and that you used to repay Mr. Lo.

COURT: Is that so or not?

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A. Yes.

Q. Now, would you explain.

A. Every time when I went to Taiwan I brought along some cash and US dollars and I left the money with Mr. Lo or Mrs. Lo. Whenever I needed money I asked him for the money; and on the 23rd March I needed a large sum of money, some for the purchase of the 1,650,000 shares of San Imperial, sir, and \$92,000 to Mr. Chow for the deposit money for the purchase of the – for the 15 million shares. As I didn't have enough money, I had to borrow money from Mr. Lo, and for the money borrowed I had to pay him interest, and I had to pay him back in two months. And on the eighth trip to Taiwan, that is on the 13th May, two hundred thousand Hong Kong currency was remitted to me from Hong Kong.

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10

Q. Yes, to clear the debt?

A. Yes.

Q. And did that include the interest?

A. Yes.

Q. How much interest was Mr. Lo charging you?

A. One per cent.

20 Q. So, you were bringing money in from time to time, is it, Mr. Ng?

A. Yes.

Q. Sorry, did you say one per cent per month?

A. One per cent per month.

Q. Now, you have already identified the coupon for US\$5,000 and Hong Kong 40,000 on the 27th February. Would you look now at document 13, page 123, also in yellow 3? In fact, a translation error – it's 22,000 US.

A. Well, it should be 22,000 instead of 202,000.

Q. Yes, 22 thousand US and HK\$8,500 on the 22nd March, 1977.

A. Yes.

30 Q. Then document 14, page 124 – that's your coupon for US\$5,000 and HK\$25,000.

A. Yes.

Q. 25,000?

A. Yes.

Q. That's 1st April, 1977?

A. Yes.

Q. And these drafts and coupons amount, in all, to US\$52,000 plus Hong Kong 244,400.

A. Yes. I think it should be 72 . . .

40 Q. I'm sorry I've got the wrong columns. It's US 52,000 and Hong Kong 273,500.

COURT: 2.735 –.

MR. SWAINE: Yes, my Lord, I'm sorry, I was looking at the wrong column.

A. Yes.

COURT: Yes?

Q. Then just to get a rough idea of the Hong Kong equivalent – the US 52,000 at a rate of 4.70 gives HK 244,400.

A. Yes.

Q. You add the two lots together and you get a total of \$517,900.

A. Yes.

Q. And this money went to what purpose, Mr. Ng?

COURT: This represented all the money you brought on all your trips to Taiwan; is that correct?

(Witness now answers in English)

A. My Lord, they allow to bring Taiwan currency without any registration. 10

COURT: That represented all the US dollars and all the Hong Kong dollars?

A. Foreign currency, my Lord.

COURT: Yes?

Q. Did you bring in Taiwan currency?

A. Yes.

Q. How did the money go? How was it spent?

A. Sometimes we went out for fun.

Q. Now we go back to the position after you had got the signatures of the Chows on the agreement of the 23rd March. Did you report to the members of the syndicate?

A. Yes. 20

Q. And what did you do with the documents that you had in your possession?

Q. I handed them over to Mr. Ives.

Q. And did you explain about the certificates and transfer forms retained by the Chows?

A. Yes, I told him that they (being Mr. Chow and Mrs. Chow) would get someone to bring them back to Hong Kong.

Q. And subsequently were you in touch with Mr. Chow about this?

A. Yes.

Q. When and in what way? 30

A. I came back on the 26th and I asked the people at the registration department whether anybody had brought along any shares. The answer was negative.

Q. Yes?

A. And then on the 27th I telephoned Mr. Chow and asked him about it. Mr. Chow said, "Don't you worry. I will fix it up."

Q. I'm sorry, he will fix it up or he has fixed it up?

INTERPRETER: "Don't you worry. I have fixed it up."

Q. Subsequent to that, did you yourself see the certificates and transfers?

A. No. 40

Q. Who dealt with them? Do you know who dealt with them?

A. Well, I learned it later.

Q. Yes. Who did? Never mind the details.

A. One Mr. Ho of the —.

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COURT: When you say "one Mr. Ho", do you mean HO Chapman or . . .

A. Mr. HO Chung Po of the Registration Department told me that he, Mr. Ho, had already handed them over to Mr. Ives. No. 40

MR. CHING: No hearsay notice. My Lord, I trust Mr. HO Chung Po will be called.

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MR. YORKE: Fortunately he is on subpoena within this jurisdiction.

10 MR. SWAINE: I have no intention whatever of calling Mr. HO Chung Po.

MR. CHING: Then my learned friend should never have led that evidence.

MR. SWAINE: My Lord, it's not an answer that I was seeking to elicit.

My purpose of that point was to elicit that Mr. Ives dealt with the certificates and the transfers. He did not himself see them. If that part of the evidence is . . .

COURT: It is hearsay.

MR. SWAINE: . . . to be expunged, my Lord, then I have no objection whatever.

COURT: Very well.

20 Q. Now, meanwhile, you have said that the syndicate was buying shares in the open market.

A. Yes.

Q. Now I would like you to look, please, at document 135 in yellow 2. Now, who prepared 135 as well as the accompanying lists?

A. The employee or employees of my company, that is to say I prepared it.

Q. Sorry —.

INTERPRETER: "The employee or employees of my company prepared it; that is to say I prepared them."

Q. Your staff prepared this?

A. My employees did it, sir; that is to say, I am responsible for these documents.

30 Q. And do these lists set out the purchasers of the San Imperial shares from the stock market?

A. Yes.

Q. And summarising the lists, the numbers of shares are 2,279,600.

A. Yes.

Q. At a cost of 1,247,064.40.

A. Yes.

COURT: The average being what?

MR. SWAINE: It was 54 something cents per share.

COURT: Yes, it's all right.

Q. One small point of interest, Mr. Ng. You will see that List 1 runs from 3rd January to 15th April. Do you see that, Mr. Ng? The second list runs from the 4th January to the 31st March. There is a certain amount of overlap. Why is that?

A. They were prepared by two employees.

Q. I see. And are the bought and sold notes in respect of those purchasers disclosed in the same bundle at 137?

10

A. Yes.

Q. Now we know that trading in the San Imperial shares was suspended sometime in the first week of May 1977.

A. Yes.

Q. You might perhaps just explain about the transactions on List No. 4. The last item there is the 28th June. Do you recall when the shares were re-listed?

A. 27th June, sir.

Q. Do you remember how this particular one came to be dated the 28th June?

A. After we bought all those shares we took the share certificates to the Registration Department for purpose of registration.

20

COURT: To the Registrar's office?

A. To the registrar's office for the purpose of registration, sir. And sometimes some of the share certificates were not in order, such as lack of one chop or wrong signature and on some of the transfer forms the typed letters or figures were not clear.

Q. So, –

A. And so some of the share certificates were rejected by the registrars and therefore I bought the same amount of shares from the market again in order to make it up, sir.

Q. To make it up for whom, for what or to whom?

30

A. To James Coe, sir.

Q. Now, list No. 5 – that relates to three transactions, 7th July, 5th July and the 4th July. That is the date of the stamp duty payment.

A. Yes.

Q. Why are these shares put in a separate list?

A. After certain share is suspended, we brokers cannot buy or sell the shares in the open market, but privately we still can buy or sell. Therefore after it was suspended I bought these shares.

Q. Sorry –

A. I bought these shares after it was suspended or during the time of suspension.

40

Q. Were these shares bought during the suspension or after the suspension?

A. During the period of suspension.

Q. And stamped them afterwards?

A. Yes, and had them stamped after it was re-listed.

Q. All right. Now, these shares bought in the open market at a cost of almost one and a quarter million dollars, whose money was that?

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A. The syndicate.

Q. What was your own contribution to the syndicate in cash?

A. I was prepared to contribute half a million dollars.

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MR. CHING: "Half a million"?

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INTERPRETER: "Half a million".

MR. SWAINE: That's to the syndicate.

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Q. And how much did you contribute?

10 A. I think I actually contributed four hundred thousand to four hundred-odd thousand dollars because I didn't have to contribute as much as that.

Q. And where did your four hundred thousand or four hundred thousand-odd come from?

A. From the Bentley Securities, Ltd.

Q. Which is a partnership of yourself and Mr. Harilela.

A. Yes.

Q. Did you have Mr. Harilela's consent?

A. Yes, it was a verbal consent.

20 Q. Now, then, the money which you used to buy the two lots of shares in Taiwan – the 514,200 and the \$1,650,000 – where did that money come from?

A. I borrowed the money from the Taipan Building Management Limited.

Q. And did you have Taipan's permission for that?

A. Yes, it was agreed by the directors, sir.

Q. Yes. Would you look at document 15 in yellow 3, page 125? Now, that's a copy of the minutes of the Tai Pan's directors on the 31st January 1977. Is that the permission of which you speak?

A. Yes.

Q. Was Mr. Harilela consulted about this?

A. Well, this company Tai Pan had nothing to do with Mr. Harilela.

30 Q. All right. You told my Lord that in October '76 your net worth in terms of property, investments and shares was about 1½ million dollars.

A. Yes.

Q. And of the one and a half million dollars you had \$360,000 invested in Bentley upon the reduced capital.

A. Yes.

Q. Could you have paid for the Taiwan shares, if necessary, without borrowing from Tai Pan?

A. Yes.

Q. You had the property and the investments.

40 A. Yes.

Q. All right. Now, you had earlier said in your evidence that the syndicate was looking to three sources for getting the controlling interest in San Imperial.

A. Yes.

Q. That is the Chows, the Stock Exchange and also MAF.

A. Yes.

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- Q. How did you come to enquire – How did you come to select MAF?
A. I went to make a search with the registrars and I found that MAF had those shares.
Q. At the time of your search, do you remember how many shares were in MAF? When you say 'MAF' now, in whose name were the shares that you found upon search?
A. In both MAF Corporation and MAF Nominees.
Q. Do you recall the date of your search, approximately, Mr. Ng?
A. In both December '76 and the beginning of '77.
Q. And did you on both occasions find that there were shares registered in the name of MAF Nominees and also MAF Corporation? 10
A. Yes.
Q. And as a result of the searches, were negotiations carried out with anyone in MAF?
A. Yes, we made enquires as to whether or not they would sell those shares.

COURT: You made enquiries from whom?

A. Mr. Lee Fai To and Mr. HO Chung Po.

COURT: Of which company?

A. Of MAF. Both of MAF.

COURT: Of MAF Corporation? 20

- A. Yes.
Q. And did these enquiries develop into negotiations?
A. Yes.
Q. On behalf of the syndicate, was it just yourself or – was it just yourself? I'm sorry. Was it only yourself who'd discussed with Mr. Lee and Mr. Ho . . .

INTERPRETER: “. . . or you and the syndicate”?

- Q. . . . or wasn't there someone else?
A. Only myself.
Q. And did those discussions lead to any agreement?
A. Yes. 30
Q. Would you look at document 18 in yellow (1)?

INTERPRETER: The agreement?

MR. SWAINE: Yes.

- Q. Is that the agreement?
A. Yes.
Q. Now, by this agreement MAF Corporation gives to yourself and Mr. HO Chapman the option of purchasing up to six million shares in San Imperial.
A. Yes.

- Q. At a price of one-fifty per share. Supreme Court
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- A. Yes.
- Q. The option fee being fifty thousand dollars.
- A. Yes.
- Q. Why was the syndicate prepared to pay 1.50 per share for these option shares? Defendant's
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- A. Well, he wanted to sell the shares at 1.50.
- Q. Yes. And why was the syndicate prepared to pay 1.50?
- A. We didn't have sufficient shares. We didn't have any choice. But we were not No. 40
bound to buy those shares if we had sufficient shares.
- 10 Q. At that time the syndicate was still buying in the stock market? David Ng Pak-
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- A. Yes.
- Q. And what was your understanding about the option fee of fifty thousand
dollars if the option was not taken up?
- A. It would be forfeited.
- Q. "Forfeited". All right. And was the \$50,000 in fact paid?
- A. Yes.
- Q. Would you look at document 130 in yellow 2? Is that the option fee?
- A. Yes.
- 20 MR. SWAINE: My Lord, I will be going into a new but of course related phase
of the MAF option and it will take a bit of time. Is it convenient to take –
Is this a convenient time to break –.
- COURT: How is our estimate? Does it still hold good?
- MR. SWAINE: I think we are definitely overrunning, my Lord.
- COURT: To what extent? By a couple of days or what?
- MR. SWAINE: I think an estimated two days for Mr. David Ng in chief – he
started, if I remember rightly, mid-morning yesterday. He's running perhaps
about fifty per cent behind time.
- COURT: Of course, we have been rising ten minutes to twenty minutes early every
day. It adds up.
- 30 MR. SWAINE: My Lord, in which case I am quite happy to continue.
- Q. How many shares did MAF deliver under the option agreement?
- A. 3,226,000 shares.
- Q. And would you look, please, at document 30 in yellow 1? Now, this is a
letter from Peter Mo & Co. to MAF Corporation calling for the sale under
the option of 3,226,000 shares.
- A. Yes.
- Q. And will you look at document 32 in which MAF Corporation confirmed
that they have only 3,226,000 shares?
- A. Yes.
- 40 Q. Now, you'll remember that you had been told prior to your trip to Bangkok
and to Taiwan that there was an interested purchaser and this was Mr. James

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Coe.

A. Yes, Mr. James Coe told me that.

COURT: No, Ho Chapman.

A. Mr. Ho told me that it was James Coe – Mr. James Coe was interested in the shares.

Q. Had you yourself known Mr. James Coe at that time?

COURT: "At that time"?

MR. SWAINE: My Lord, in December '76.

A. No.

Q. Do you recall when you first met Mr. James Coe.

10

A. In the middle of March '77.

Q. How did you come to meet him?

A. Mr. Ho made arrangements to meet us together.

Q. And the three of you met?

A. Yes.

Q. Now, you have said that there were other interested buyers. At about what point of time did the syndicate agree to sell to Mr. James Coe?

A. Well, after March, sir, we had discussions with him, that is to say I'd talked with Mr. Ho that we would sell the shares to Mr. James Coe.

Q. Did you yourself negotiate with James Co?

20

A. Well, on every occasion Mr. Ho was present and we discussed or negotiated together.

Q. Yes. You were yourself present during negotiations with Mr. James Coe?

A. Yes.

Q. And why did the syndicate decide to sell to Mr. James Coe?

A. Well, the term was right for us.

Q. The terms being . . .

A. The price was about that amount. James Coe was willing to make back-to-back agreement with us.

MR. SWAINE: Would this be a convenient time? If your Lordship prefers to sit on – 30

COURT: 4.30 sharp.

MR. CHING: Perhaps I could occupy one or two minutes of the court's time. Your Lordship will recall before I closed my case I did ask, subject to formal proof of certain matters – your Lordship will recall that I asked my learned friend whether he could agree on the directorship of Thai MAF; my learned friend has told me that he cannot agree that. My Lord, therefore we should like to issue hearsay notice.

COURT: Yes?

MR. CHING: My Lord, hearsay notices must be issued and filed 21 days after the case is set down for trial. Of course we are well out of time.

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COURT: Yes.

MR. CHING: Therefore we would need your Lordship's leave to issue this notice. I have it here in my hand and I see this has been signed by both Peter Mo and Philip Wong & Company. It is being filed out of time so I need your Lordship's formal leave.

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COURT: Yes.

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10 MR. CHING: I am not being difficult, but I do want to see a Xeroxed copy of the transfer form.

COURT: Yes.

MR. SWAINE: My Lord, we know that Mr. Ives twice in the witness-box said that he had looked and failed to find the document. I have not myself been in touch with him since he left the box. I think he has been taking a well-deserved break from a lot of litigation work. I will endeavour to get in touch with him myself –

20 MR. CHING: He is not only the instructing solicitor, he is a lay client, and whether the rest he's taking is well deserved or otherwise, he has a duty to this court and he has a duty to the co-defendants to come forth with this document which he said towards the end of last week he had seen within the last ten days.

MR. SWAINE: I am simply saying that he has endeavoured to find the document but failed to do so. I will arrange to see him again this afternoon –.

COURT: If he had seen it, it is probably lying about somewhere in the office.

MR. SWAINE: My Lord, I will see what I can do about this.

MR. CHING: I am very much obliged.

30 MR. YORKE: May I mention, my Lord, a couple of points at this moment? The first one: my learned friend said he has no intention whatsoever of calling HO Chung Po and I don't think it will inconvenience anybody if I therefore apply for the discharge of the subpoena I have taken out.

COURT: Yes.

MR. YORKE: The second matter is – I am merely doing it not to inconvenience my learned friend but merely want to put on record that I did ask yesterday that all San Imperial shares owned and registered in the name of any of the defendants should be brought into court. I am in no way – I am not in any

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way suggesting my learned friend is in default.

And the last matter, my Lord, is this: that I know how busy the short-hand writers are, but I have to make an application to your Lordship – I would be grateful if we could have a transcript of a part of the evidence by David Ng – the part which I would like to have (two sections) is both (I think the present writer was in court) from where he said, “I telephoned Mr. Chow; he said, ‘Don’t worry, I have fixed it up’” until he introduced document yellow 2, p.135; and then a subsequent passage towards the end, when my learned friend, Mr. Swaine, asked, “How did you come to select MAF?” until he introduced document yellow 2, p.130. Although we all have a note, I would like to know precisely what words have been used by the witness.

10

Appearances as before.

COURT: Before Mr. NG enters the witness-box – my ever vigilant interpreter has drawn my attention to Exhibit D.8, the transfer form.

MR. SWAINE: Yes, my Lord.

COURT: His eyesight is much better than mine. He spots that underneath the chop for Triumphant is a very faint chop for Asiatic. I don’t know whether you want to make anything of this. I could not see this from the photostat copy that I have.

MR. SWAINE: I see.

20

MR. CHING: We have seen that.

COURT: You have.

MR. CHING: Yes, my Lord.

MR. YORKE: Yes, my Lord.

COURT: So has my ever vigilant interpreter.

MR. SWAINE: This appears to be superimposed.

COURT: Right.

(10.11 a.m. Witness leaves court).

MR. SWAINE: My Lord, . . .

COURT: . . . The witness has gone out.

30

MR. SWAINE: I suggested that he waited outside, my Lord, while I handed up the two blank transfers which Mr. CHING has asked for – the xeroxes – and which after arduous search have now, my Lord, been found. These are there

and I imagine Mr. CHING will want them marked.

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MR. CHING: I should like them in please.

COURT: Yes. Are they defence or plaintiff exhibits? I can't remember now.

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MR. SWAINE: Well, they were not produced out of the witness-box. So, I imagine, my Lord – I am quite easy on this.

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COURT: I can't remember now how this . . .

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MR. CHING: . . . It emanates from cross-examination.

COURT: Of Mr. Ives.

MR. SWAINE: I suppose these technically are plaintiff exhibits.

10 COURT: Yes. All right.

MR. SWAINE: This will be P. . . .

CLERK: . . . P.17.

COURT: May I have a look at it?

MR. SWAINE: P.17A and B. There are two of them.

COURT: 17A and B.

MR. SWAINE: Two xerox blank transfers.

COURT: Yes.

20 MR. SWAINE: My Lord, the only word of explanation which is required upon this – and Mr. CHING tells me that he accepts this from the bar – is the insertion of the figures, I think, in ink of '10,000,000' and '5,000,000'. My Lord, I am instructed that Mr. Ives inserted these, but without the actual certificate numbers he thought it too much of a job and gave up. He started off putting in the '10,000,000' and '5,000,000' without the certificate numbers, my Lord. It became too much of a job and he gave up. I think these were, my Lord, brought back from Taiwan by Mr. David NG on one occasion – the xerox copies.

(A pause).

MR. SWAINE: My Lord, in fact, I have shortened it too much. Mr. Ives instructs me that he did not know what the certificate numbers were.

30 COURT: He did not or he did?

MR. SWAINE: He did not. He did not know what the certificate numbers were, this being before the 23rd of March. He did not know the certificate numbers and so he couldn't insert them and then nothing further was done.

Could Mr. David NG be recalled please?

D.W.2 – David NG Pak-shing – On former oath.

XN. BY MR. SWAINE (Continuation)

Q. Mr. NG, one point which has arisen: you will remember you said that while in Taipei on one of your trips – I have forgotten which one now – you were shown the transfer forms by Mr. CHOW.

A. Yes.

Q. I would like you please to look at two court exhibits – 17A and B. Have you seen these particular copies before?

A. Yes.

Q. Tell my Lord.

A. There were no such figures and words here in this column, sir, about the number of shares, sir (indicating).

Q. After Mr. CHOW had shown you the blank transfer forms, did you do anything with them?

A. I asked him to give me a photostat copy of each of the documents.

Q. Yes. Did you get them?

A. Yes.

Q. What did you do with them?

A. I brought them back to Hong Kong and showed them to the syndicate. Later, I handed them over to Mr. Ives.

Q. There are two things that I ought to have dealt with yesterday and I have to go back now. The 23rd March agreement (16 in yellow 1) – after the blanks were filled in, there were of course two copies which you had brought back to Hong Kong. On your evidence, you left one with Mr. CHOW and you brought two back.

A. Yes.

Q. After the blanks in the Hong Kong copies had been filled in, what did you do with them?

A. I brought one of them back to Mr. CHOW.

Q. Do your recall which trip this was?

A. On the 7th trip, that is, between the 1st of April and the 4th of April.

Q. The minutes (13) which you had also typed in Taiwan on the two blank spaces – after the blanks had been filled in, what did you do with the minutes?

A. I brought a copy back to Mr. CHOW.

Q. And what trip was this?

A. Also on the 7th trip, sir.

Q. Now, would you look at document 14. In evidence, you have said that you had asked for the CHOWs to appoint the syndicate as authorized signatories and after some protest they agreed to do so.

(Interpreter interprets to witness).

MR. SWAINE: Can I put the question again please?

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Q. Leaving aside the document itself, your evidence was that on the 23rd, at your suggestion, the CHOWs after some protest agreed to appoint the syndicate as authorized signatories.

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A. Yes.

Q. And did you report this to the syndicate on your return?

A. Yes.

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Q. Then the document itself (14) – did you do anything with it?

A. I told Mr. Ives about it and asked him to prepare the minutes.

10 Q. After preparation, what then?

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A. Then I brought this copy back to Mr. CHOW for Mr. and Mrs. CHOW to sign on this document.

Q. Which trip was that?

A. It was also on the 7th trip.

Q. And did they sign?

A. Yes, they did.

Q. And what about the signed document?

A. I brought it back to Hong Kong.

20 Q. Did you leave any copy behind or was there no copy or did you bring everything back?

A. Mr. and Mrs. CHOW kept a copy.

COURT: Of the minutes?

A. Yes, sir.

Q. What about the minutes at 13 – did they have a copy?

A. Yes.

Q. One further point I have to go back on to: your friend Mr. LO Sze . . .

COURT: . . . How do you spell the name 'Sze'?

INTERPRETER: 'S-z-e'.

30 Q. . . . lent money to you against payments against drafts. You have told the court how he was able to help you.

A. Yes.

Q. Do you know where he kept the money – his money or your money which you left with him?

A. It was kept in a safe in the hotel – Imperial Hotel, Taipei.

Q. And where did you normally stay on your visits to Taipei?

A. On the first occasion, I lived in the President Hotel; on the second trip, I lived in Wah Shing Hotel . . .

INTERPRETER: . . . Correction, sir: “. . . on the second trip, I lived in the Plaza Hotel; . . .” . . .

40 A. . . . on the trip from the 3rd to the 8th, I lived in the Imperial Hotel.

Q. All right. Now, continuing where we left off yesterday – you had met Mr.

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James Coe in March of this year.

- A. Yes. That was the first time.
- Q. You were present during negotiations with James Coe.
- A. Yes.
- Q. And the syndicate decided to sell to James Coe.
- A. Yes.
- Q. What was Mr. James Coe's price for the San Imperial shares?
- A. We asked for \$1.63.
- Q. Yes?
- A. He agreed to pay \$1.63, but he wanted us to put it down in the papers as \$1.50.
- Q. Yes? 10

(Witness continues to speak in Punti).

- Q. Well, he will tell us his reason. What about the balance of 13¢?
- A. The number of shares times 13¢ was three million dollars according to our calculations, sir. Then, we suggested that if he wanted us to put down in the papers as '\$1.50', we should collect the amounts separately, sir.
- Q. And did he agree to that?
- A. Yes.
- Q. And what was this payment called – what was this payment called – referred to? 20
- A. We call it 'finder's fee'.
- Q. Finder's fee.
- A. Yes.
- Q. Now, we know that Mr. James Coe employed Mr. Philip WONG to conduct the conveyancing for him and Mr. Ives of course acted for the syndicate.
- A. Yes.
- Q. I want you to look at document 40 in yellow 3 – I'm sorry, yellow 1 – it's yellow 1. Now, do you identify your signature at page 6 of the document? 30
- A. Yes.
- Q. Was the document signed on the date of the document, that is, the 30th of April?
- A. Yes.
- Q. Now, that agreement is for yourself as vendor to sell to Rocky Enterprises as purchaser 23M. shares in San Imperial.
- A. Yes.
- Q. Rocky being Mr. James Coe's nominee.
- A. Yes, I knew it, sir.
- Q. And were you acting for yourself or for the syndicate?
- A. The syndicate (in English). For the syndicate, sir. 40
- Q. The number of shares is 23M. which is 1,100,000 shares short of the absolute majority which would have been 24,100,000.
- A. 1,100,000 shares short.
- Q. Why was that?
- A. We did not buy sufficient shares.
- Q. And what you were buying in the stock market towards the end of April – what was the price trend at that time?

- A. It was very high at the end of April, sir.
- Q. According to the lists we looked at yesterday, the syndicate was buying at about 80¢ in the last half of April. Is that your recollection?
- A. Yes.
- Q. Now, I want you to look at Clause 13 of the agreement. That provides: "On completion the Vendors shall at the cost and request of the Purchaser make a loan to the Purchaser of H.K.\$17,250,000 upon the security of a first mortgage of the 23 million San Imperial shares".

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COURT: Do you see that? Page 5 of the agreement – Clause 13.

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- 10 A. Yes.
- Q. Does that work out at exactly half of the total purchase price? Perhaps you had better work it out, Mr. NG.
- A. Yes, yes.
- Q. Now, there was also a supplementary agreement also of the 30th of April at page 41, likewise signed by yourself as the vendor.
- A. Yes.
- Q. Signed on the same date as the main agreement.
- A. Yes.
- 20 Q. And that provides: "The Vendors agree to use their best endeavours to raise a loan in favour of the Purchaser in the sum of \$17,250,000 on the security of 23,000,000 shares of Siu King Cheung Hing Yip Company Ltd. . . .
- A. Yes.
- Q. That would be the other half of the purchase price.
- A. Yes.
- Q. And the security for that other loan is 23M. Siu King Cheung shares.
- A. Yes.
- Q. Now, I want you to look at document 37.

COURT: What was the price of Siu King Cheung shares on the 30th of April?

A. It always remained at \$1 (in English).

30 COURT: You said the . . .

- A. . . . The shares have not been fluctuated too much. It's always \$1. Now, its 1.03 (in English).
- Q. As a stockbroker, Mr. NG, do you know what the yield is today on Siu King Cheung?
- A. You mean the dividend yield? 12¢ per annum, sir.
- Q. And was that the case last year?
- A. I think it must be more or less the same, sir.
- Q. All right, Mr. James Coe can tell us that, but on a dollar that gives a yield of 12%.

40 MR. YORKE: It may or it may not. 'Dividend' and 'yield' are two wholly different concepts. 'Dividend' is what you are paid per share; 'yield' is the percentage you get on that dividend on being paid on the market price of the share. Two

different things. They do affect the value.

MR. SWAINE: Since the market value and the face value happens to be a dollar anyway, it still works out at about 12%. My Lord, I don't want to split hairs on mathematics with my learned friend. It is just that your Lordship has asked about the market price of the shares. They were stable at a dollar and they were yielding a dividend certainly this year of 12¢.

COURT: So the yield and the dividend – the yield was about 12% and the dividend was about 12 cents.

MR. SWAINE: Yes, that's my point. It is still 12%. They were selling for about a dollar. The yield therefore was about 12%. 10

Q. Did you consider the 23M. Siu King Cheung shares in April last year to be good security for \$17½M.

A. Yes, good, because that amounts to the controlling interest of the company, sir.

COURT: Do you know how many shares Mr. James Coe has in Siu King Cheung?

A. The whole lot of 23M. shares belonged to him, sir.

COURT: They represent the whole lot of his holding in Siu King Cheung.

A. Yes, this is what he said.

Q. Do you know what the issued capital was?

A. At that time, the issued capital was about 45M. shares. 20

Q. So, 23M. shares would have been a controlling interest.

A. Yes.

Q. Now, would you look at document 37.

A. Yes.

Q. That is James Coe's guarantee to yourself of performance by Rocky of the 30th of April agreement.

A. Yes.

Q. Why was that given to you? Why did James Coe give you the guarantee?

A. That's because he put 'Rocky Enterprises Company Ltd.' in the agreement at document 40. 30

Q. Yes. And you wish to be assured that James Coe would be bound by that agreement.

A. Yes.

Q. Would you look at document 43. Is that the finder's fee agreement?

A. Yes.

Q. And document 38 – that's Mr. James Coe's agreement to pay 1% commission on any loan which you might be able to raise on the Siu King Cheung security in the sum of \$17½M.

A. Yes.

Q. We have Mr. HO Chapman's guarantee at 39. I will keep my questions for Mr. HO Chapman, but just look at it, will you? 40

- A. Yes.
- Q. Was this document also executed on the 30th of April?
- A. Yes.
- Q. Then finally at 42 is your undertaking to Rocky undertaking that 'we shall cause all directors of San Imperial . . . to resign and nominate nominees of the purchaser . . .', and was that for the purpose of putting Mr. James Coe in control?
- A. Yes.
- Q. All right. Then, paragraph 2 of the undertaking is that 'we shall cause to be sold the property of . . . Oxford Road . . . and shall use our best endeavours to procure a sale of the property . . .' of the Bangkok Hotel. Do you see that?
- A. Yes.
- Q. Were these the properties of the San Imperial group?
- 10 A. Yes.
- Q. Why was that undertaking inserted?
- A. At that time, Mr. James Coe did not like these two properties, that is, the properties at No. 16 to No. 22 Oxford Road and the Bangkok Hotel, because the rent collected from these two properties was very little, sir – was too low.
- Q. In signing these undertakings and agreements, were you acting on your own behalf or on behalf of the syndicate – all the agreements or documents that we have been looking at.
- A. For the syndicate.
- 20 Q. For the syndicate. Now, of course, the agreement was for completion at a specified future date. This was just the agreement, not the completion. Now, how was the syndicate in a position to give these undertakings to Mr. James Coe?
- A. We requested to join the Board of Directors of the San Imperial.
- Q. On the strength of what?
- A. Because at that time we were holding about 8M. shares of the San Imperial.
- Q. What about the Fermay agreement?
- (Witness speaks to Interpreter).
- Q. I'm sorry. Perhaps – you are saying you were endeavouring to get on to the Board on the strength of your 8M. or thereabouts in the San Imperial shares.
- 30 A. Yes.
- Q. Now, Mr. NG, these agreements and documents and undertakings and guarantees which were all executed on the 30th of April – were they meant to be – sorry. Were they meant as business or were these documents merely bits of paper and simply a sham?
- A. Of course, it was business, sir.
- COURT: I'm afraid I still don't understand. You were asked how the syndicate was able to get in – to give James Coe the undertaking. Your answer was 'we requested to join the Board of San Imperial on the strength of the 8M. shares' you were holding. Now, is that an answer to the question? I'm afraid I don't understand.
- 40 A. If we could join the Board of Directors of the San Imperial, sir, we would be able to carry out the undertakings, that is to say, to sell or buy.

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COURT: To sell or buy what?

A. Only to sell, sir.

COURT: The properties.

A. Yes.

Q. And had the syndicate in fact written to San Imperial for the purpose of participation on the Board?

A. Yes. I asked Mr. Ives to write this letter, sir.

Q. And is that the letter at document 29 dated the 22nd of April?

(Interpreter reads letter to witness).

Q. You can read it yourself, can't you, Mr. NG?

A. Yes.

Q. All right. Now, I want you to look at a newspaper advertisement which appeared in the Morning Post on the 13th of April.

10

MR. SWAINE: Page 26 of the same bundle.

Q. Did you see this advertisement when it appeared?

A. Yes.

Q. Did you discuss with anyone?

A. With Mr. HO.

Q. Prior to this notice, were you aware of any claims against CHOO Kim-san?

A. No.

COURT: Did you suspect it?

20

A. No.

Q. After the 30th of April agreement, was there further discussion with Mr. James Coe?

A. Yes.

Q. What was the discussion about?

A. There was an injunction, sir.

Q. Yes?

A. Mr. James Coe asked me what did that injunction mean . . .

Q. Yes?

A. . . . and if it had anything to do with our shares.

30

Q. Yes?

A. Then I suggested that it would be best for us to approach a solicitor to read the contents of the injunction, sir.

Q. Yes?

A. Then Mr. Philip WONG and Mr. Ives discussed with us about the injunction, sir. About the injunction, Mr. Coe was very much annoyed and impatient.

Q. Yes?

A. After the discussion, it was agreed that apart from engaging a solicitor to do that for us – Mr. Coe said that it would be better to read the contents of the 30th of April agreement.

40

COURT: Again?

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A. Again, sir.

Q. Yes?

A. And Mr. Coe said that the Fermay Company's 15M. shares had something to do with the injunction.

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Q. Yes?

A. Then he suggested that it would be better to sign another agreement.

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Q. All right. Was that done?

A. Yes.

10 Q. Would you look at document 54 in yellow 1. Do you see your signature at the last page?

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A. Yes.

Q. Is that the agreement?

A. Yes.

Q. It's dated the 12th of May.

A. Yes.

Q. Now, the gist of the agreement is that Mr. Coe would buy outright not less than 7M. nor more than 8M. San Imperial shares.

A. Yes.

20 Q. And would have an option to buy the 15M. shares in the name of Fermay – Mr. Coe would have the option.

A. Yes.

Q. The agreement provides in Clause 4(b) and (c) for an option fee of \$4M. to be paid by Mr. Coe.

A. Yes.

Q. Then, if you look at paragraph 10, that provides that on completion of the 15M. shares the vendor shall make a loan to the purchaser of \$18,500,000 upon the security of the 23M. San Imperial shares.

A. Yes.

30 Q. Now, 15M. shares at 1.50 a share comes to 22,500,000, is that right?

A. Yes.

Q. Less the option fee of 4M., it comes to 18,500,000.

A. Yes.

Q. And is that how the figure was arrived at?

A. Yes.

Q. Would you look at document 55. That was James Coe's guarantee to yourself for performance by Rocky.

A. Yes.

Q. Was that for the same reason as the earlier guarantee?

40 A. Yes.

Q. There is also a guarantee at 56 given by Mr. Ho Chapman in favour of Rocky. Mr. HO Chapman will tell us about that one.

(A pause).

Q. Now, I want you to look at the documents beginning from 71 in the bundle. You see the documents at 71, 72, 73, 74, 75, 76, 77, 78, 79 and 80? Do you recognise those documents?

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- A. Yes.
- Q. What are these documents in respect of?
- A. In respect of the payments of the transaction, sir.
- Q. What transaction?
- A. The transaction includes the sale of the 8M. shares of San Imperial.
- Q. Yes. In lawyer's language, this is the completion of 8M. shares.
- A. Yes.
- Q. And what else?
- A. It also includes that the \$4M. option fee was for the 15M. shares.
- Q. Yes. All right. We will take these documents one by one. Were these documents executed on the 9th of June, that being the date of each of them? 10
- A. Yes.
- Q. And on the 9th of June, there was to be completion of the 8M. shares at 1.50 a share. That makes 12M.
- A. Yes.
- Q. Perhaps you had better get a piece of paper and a pencil handy. It is easier. It is very simple arithmetic. That's \$12M. for the 8M. shares.
- A. Yes.
- Q. Finder's fee of 3M.
- A. Yes. 20
- Q. 4M. option fee.
- A. Yes.
- Q. That's 19M.
- A. Yes.
- Q. Were there expenses which James Coe had to pay?
- A. Yes. The stamp duty and brokerage.
- Q. What was that estimated to be?
- A. I asked him to pay on account \$200,000.
- Q. So, that's 19.2M.
- A. Yes. 30
- Q. Now, we have the record of payments by James Coe up to this time in two sums of 1.5M. each. Do you recall those payments totalling \$3M.?
- A. Yes.
- Q. That leaves 16.2M.
- A. Yes.
- Q. Now, document 71 is a loan agreement between James Coe as borrower and yourself as lender.
- A. Yes.
- Q. And it provides in the statement of recitals that 'The Lender has advanced to the Borrower the sum of \$16,200,000.00. The Borrower has transferred to the Lender 23 million shares in the capital of Siu King Cheung Hing Yip Company Limited as security for the payment of the said sum of \$16,200,000.' Mr. NG, could you read that? If you can't, of course we can have the interpreter reading it to you. Are you happy to read it for yourself? 40
- A. Yes.
- Q. You remember these clauses?
- A. Yes.
- Q. And is that 16.2M. the same 16.2M. that we worked out?
- A. Yes.

COURT: This agreement therefore superseded the two loan agreements of 17.25M. each, is that correct? Supreme Court of Hong Kong High Court

MR. SWAINE: My Lord, if you are asking the witness . . .

COURT: . . . Yes, I am.

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MR. SWAINE: My Lord, it supersedes one of them, of course.

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COURT: The one of the 30th.

MR. SWAINE: The supplemental agreement.

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COURT: It superseded the supplemental.

MR. SWAINE: Of course, that was the 23M. Siu King Cheung security shares.

10 COURT: Yes.

MR. SWAINE: And this takes the place of that agreement of course with the same security.

Q. Perhaps let's clarify this, Mr. NG. Do you remember the 30th of April supplemental agreement? That will be – it is page 41 of the same bundle.

A. Yes.

Q. That's the agreement where you were to use your best endeavours to raise the \$17¼M. On the security of the 23M. shares of Siu King Cheung.

A. Yes.

20 Q. And the 9th of June loan agreement is for 16.2M. on 23M. Siu King Cheung shares.

A. Yes. This agreement supersedes the last one – the supplemental agreement.

Q. Then the 12th of May agreement (54) – paragraph 10: that provides for a 18½M. loan upon the security of 23M. San Imperial shares on completion of the 15M shares. Is that correct?

A. Yes.

Q. And is that in replacement of the 30th of April main agreement, paragraph 13, which provides for a loan of 17¼M. Upon the security of 23M. San Imperial shares on completion?

A. Yes.

30 MR. SWAINE: My Lord, perhaps also to clear my own mind on this as well.

Q. Under the 30th of April agreement, there was only one block of shares, that is, 23M.

A. Yes.

Q. And the loan arrangements were that on completion of those 23M. shares . . .

(11.18 a.m. Mr. Ching leaves court).

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- Q. . . . – on completion of those 23M. shares, there would be a loan to James Coe of \$17¼M., being half the purchase price against the security of 23M. San Imperial shares.
- A. Yes.
- Q. Then, in the supplemental agreement, the loan provision was for the other half of the purchase price but on the security of the Siu King Cheung shares.
- A. Yes.
- Q. Then by the 12th of May agreement, the package was split into two.
- A. Yes.
- Q. That was the 8M. outright sale. 10
- A. Yes.
- Q. And then there was the option over the 15M.
- A. Yes.
- Q. In respect of the 15M., the provision in the agreement was that upon completion there would be a loan of 18½M. upon the security of the 23M. San Imperial shares.
- A. Yes.
- Q. The loan agreement of the 9th of June was a provision in respect of the completion of the 8M. shares.
- A. Yes. 20
- Q. And the 16.2M. under that loan agreement came out of the 8M. shares completion price.
- A. Yes.
- Q. Plus, as we have seen, the finder's fee.
- A. Yes.
- Q. Plus the option fee.
- A. Yes.
- Q. Less the 3M. already paid.
- A. Yes.
- Q. All right. Would you look at document 72. That is James Coe's receipt to yourself of the sum of \$16.2M. 30
- A. Yes.
- Q. Did money actually pass hands?
- A. No.
- Q. And did you then give Mr. James Coe a cross receipt for 13.2M.?
- A. Yes.
- Q. And did Mr. HO Chapman give Mr. James Coe a cross receipt at 80 for \$3M.?
- A. Yes.
- Q. So, that cleared the 16.2M.
- A. Yes. 40
- Q. But did you receive the 23M. Siu King Cheung shares?
- A. Yes.
- Q. Would you look at document 78. That says: 'Received from James Coe 37 Share Certificates totalling 23,000,000 shares of Siu King Cheung . . . with relative Instrument of Transfer . . . pursuant to the Loan Agreement of the 9th June 1977 between James Coe and myself . . . Can you read that for yourself, Mr. NG? Do you identify that document?
- A. Yes.
- Q. And did you receive the – yes, you said you received the certificate. So the

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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