

In the Privy Council

11/83

ON APPEAL

FROM THE SUPREME COURT OF HONG KONG

(APPELLATE JURISDICTION)
CIVIL APPEAL NO. 23 OF 1979

(On appeal from High Court Action No. 2927 of 1973)

BETWEEN

SANG LEE INVESTMENT CO. LTD. *Appellant* (The Third Party in High Court Action No. 2927 of 1973)

and

WING KWAI INVESTMENT CO. LTD. *1st Respondent* (The Plaintiff in High Court Action No. 2927 of 1973)

BALL LAND INVESTMENT CO. LTD. *2nd Respondent* (The Defendant in High Court Action No. 2927 of 1973)
(In Liquidation)

RECORD OF PROCEEDINGS

Volume I

LOVELL, WHITE & KING
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Solicitors for the
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THE OFFICIAL RECEIVER
Solicitors for the
2nd Respondent

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PART I

No.	Description of Document	Date
<p>IN THE SUPREME COURT OF HONG KONG HIGH COURT NO. 2927 OF 1973</p> <hr/>		
1	Memorandum of Appearance of Defendant	8th October 1973
2	Third Party Notice	18th October 1973
3	The affirmation of Li Ho Yuen and exhibits annexed thereto	24th October 1973
4	Notice to Act from Messrs. W.I. Cheung & Co.	25th February 1974
5	Summons for Directions of the Third Party proceedings	4th July 1974
6	Summons for Directions	2nd April 1976
7	Inter Parties Summons	26th April 1976
8	Certificate of Non-Delivery of Defence	26th April 1976
9	Third Party's application for enlargement of time for filing Defence to Plaintiff's claim together with copy of Affidavit of Amelia Mak with exhibit thereto	3rd May 1976
10	Summons by Third Party for enlargement of time to file a Defence to the Plaintiff's Claim	10th July 1976
11	Inter Parties Summons to amend Statement of Claim of the Defendant against the Third Party	19th January 1977
12	Inter Parties Summons by Defendant for an extension of time to amend their Reply and Defence to Counterclaim	25th February 1977
13	Inter Parties Summons by W. I. Cheung & Co. for Preservation Order	22nd April 1977
14	Affidavit of Ramon Kant with List of Documents	21st July 1977
15	Inter Parties Summons by Third Party for leave to set case down for trial out of time	27th July 1977
16	Application to set case down for trial	29th July 1977
17	Notice to set a case down for trial	29th July 1977
18	List of documents of the Plaintiff	17th September 1977
19	Affirmation of Lai Kwai Tim verifying the List of documents	17th September 1977
20	Inter Parties Summons for Order to vacate date fixed for hearing	26th May 1978
21	Affirmation of Lai Kwai Tim	26th May 1978
22	Affirmation of Ramon Kent	9th June 1978
23	Affidavit of Amelia Mak	9th June 1978
24	Summons from Third Party for leave to reamend its Defence and Counterclaim to the Defendant's Statement of Claim	15th September 1978
25	Summons from Third Party for leave to amend its Defence to the Plaintiff's Statement of Claim	20th September 1978
26	Inter Parties for leave to amend the Statement of Claim	23rd September 1978
27	Notice to the Defendant to produce documents	13th December 1978
28	Writ of Subpoena to Mok Tsze Fung	15th December 1978
29	Praecipe for subpoena to Mok Tsze Fung	15th December 1978
30	Writ of Subpoena to Mok Sum Lan	4th January 1979
31	Praecipe for Subpoena to Mok Sum Lan	4th January 1979
32	Notice to the 3rd Party to produce documents	4th January 1979
33	Writ of Subpoena to Tam Bun San	15th January 1979
34	Praecipe for Writ of Subpoena to Tam Bun San	15th January 1979
35	Writ of Subpoena to So Lai	15th January 1979
36	Praecipe for Subpoena to So Le	15th January 1979
37	Writ of Subpoena to Ho Wai Sin	15th January 1979
38	Praecipe for Subpoena to Ho Wai Sin	15th January 1979
39	Supplemental List of documents by Defendant	16th January 1979
40	Writ of Subpoena to Wong Sui Chor	26th January 1979

No.	Description of Document	Date
41	Praecipe for Subpoena to Wong Sui Chor	26th January 1979
42	Writ of Subpoena to Benard J. Young	3rd February 1979
43	Praecipe for Bernard J. Young	3rd February 1979
44	Notice of Motion for leave to appeal to Her Majesty in Council	28th July 1980
45	Notice of Application for leave to appeal to Privy Council.	13th September 1980

PART II
FROM THE AGREED BUNDLES OF DOCUMENT

Mark	Description of Document	Date
B-1	Reassignment of 152/1335th part share of and in section B of subsection 4 of Section B of Quarry Bay Marine Lot No. 1, the remaining Portion of Subsection 4 of Section B of Quarry Bay Marine Lot No. 1 and The Remaining Portion of Section B of Quarry Bay Marine Lot No. 1 (152 flats in Wai Lee Building and Po Lee Building) in consideration of \$325,409.35 as registered at the Land Office by Memorial No. 691431.	2nd September 1969
B-2	Reassignment of 21/1335th part of share of and in Section b of Subsection 4 of Section B of Quarry Bay Marine Lot No. 1 The Remaining Portion of Subsection 4 of Section B of Quarry Bay Marine Lot No. 1 Subsection 5 of Section B of Quarry Bay Marine Lot No. 1 (21 flats in Wai Lee Building and Po Lee Building) in consideration of \$75,038.02 as registered at the Land Office by Memorial No. 663062.	1st February 1969
B-3	Reassignment of 34 flats in Wai Lee Building and Po Lee Building in consideration of \$153,834.20 as registered at the Land Office by Memorial No. 647846.	14th October 1968
B-4	The reassignment from Building Mortgage Memorial No. 450176 and Further Charges Memorial Nos. 518835 and 572743 of all remaining units in Wai Lee and Po Lee Building from Bank of East Asia dated 3rd August, 1973 under Memorial No. 1015449.	3rd August 1973
E-1	A bundle of sales report	
E-2	Sales report of Sang Lee Investment Co. Ltd.	31st October 1962
E-3	Letter by Sang Lee Investment Co. Ltd. to Far East Land Investment & Guarantee Co. Ltd.	3rd December 1962
E-4	A note of Wing Kwai Investment Co. Ltd.	5th December 1962
E-5	A note of Sang Lee Investment Co. Ltd.	26th February 1963
E-6	Letter by Sang Lee Investment Co. Ltd. to Ball Land Investment Co. Ltd.	21st May 1963
E-7	Letter by Sang Lee Investment Co. Ltd. to Ball Land Investment Co. Ltd.	10th August 1963
E-8	Letter by Sang Lee Investment Co. Ltd. to Ball Land Investment Co. Ltd.	12th November 1963
E-9	Statement of Account by Ball Land Investment Co. Ltd. to Ball Land Investment Co. Ltd.	21st February 1964
E-10	Letter by Sang Lee Investment Co. Ltd. to Ball Land Investment Co. Ltd.	11st May 1964
E-11	Letter by Sang Lee Investment Co. Ltd. to Ball Land Investment Co. Ltd.	30th July 1964
E-12	A note by Sang Lee on Refund of Cancellation	
E-13	Letter by Sang Lee Investment Co. Ltd. to Ball Land Investment Co. Ltd.	28th January 1965
E-14	Letter by Sang Lee Investment Co. Ltd. to Ball Land Investment Co. Ltd.	12th April, 1965
E-15	Letter by Sang Lee Investment Co. Ltd. to Ball Land Investment Co. Ltd.	5th July 1965
E-16	Letter by Sang Lee Investment Co. Ltd.	30th September 1965
F-1	Cancellation Agreement made between Sang Lee Investment Co. Ltd. and Wong Woon with Memorial No. 513630	15th December 1965
F-2	Instruction for Sale No. 518 in respect of Flat No. B1608.	6th July 1970
F-3	Instruction for Sale No. 519 in respect of Flat No. B808.	6th July 1970
F-4	Cancellation Agreement with Memorial No. 749454.	11th July 1970
F-5	Cancellation Agreement made between Sang Lee Investment Co. Ltd. and Grace Tong with Memorial No. 749452	17th July 1970
F-6	Instruction for Sale No. 521 in respect of Flat No. 1419.	24th July 1970

Mark	Description of Document	Date
F-7	Cancellation Agreement made between Sang Lee Investment Co. Ltd. and Poon To with Memorial No. 754242	31st July 1970
F-8	Cancellation Agreement made between Sang Lee Investment Co. Ltd. and Lo Sau Yung with Memorial No. 754243	31st July 1970
F-9	Cancellation Agreement made between Sang Lee Investment Co. Ltd. and Chan Wood Nui and Yu Yoo Woon with Memorial No. 773512	3rd August 1970
F-10	Instruction for Sale No. 526 in respect of Flat No. B722.	18th August 1970
F-11	Instruction for Sale No. 530 in respect of Flat No. B8409.	27th August 1970
F-12	Assignment made between Sang Lee Investment Co. Ltd. and Cheng Shui Sang and Ho Sau Shan with Memorial No. 770736	21st October 1970
F-13	Assignment made between Sang Lee Investment Co. Ltd. and Au Yeung Han and Wong Wing Yin and Wong Jei Ming with Memorial No. 770744	21st October 1970
F-14	Assignment made between Sang Lee Investment Co. Ltd. and Cheng Shui Sang and Lester Ma with Memorial No. 772056	22nd October 1970
F-15	Assignment made between Sang Lee and Cheng Shui Sang and Chu See Lau with Memorial No. 773437	28th October 1970
F-16	Assignment made between Sang Lee Investment Co. Ltd. and Cheng Shui Sang and Hau Chi Ngai and Cheng Wai Yat with Memorial No. 773448.	29th October 1970
F-17	Assignment made between Sang Lee Investment Co. Ltd. and Wong Wing Yin and Chow Chu with Memorial No. 773451	30th October 1970
F-18	Assignment made between Sang Lee Investment Co. Ltd. and Cheng Shui Sang and Leung Lun and Leung Mow Sum with Memorial No. 770743.	31st October 1970
F-19	Instruction for Sale No. 532 in respect of Flat No. B123.	8th September 1970
F-20	Instruction for Sale No. 542 in respect of Flat No. B1205.	1st December 1970
F-21	Assignment made between Sang Lee Investment Co. Ltd. and Wong Wing Yin and Cheng Kok Po with Memorial No. 789909.	22nd January 1971
F-22	Assignment made between Sang Lee Investment Co. Ltd. and Chan Wood Nui and Yu Yoo Woon with Memorial No. 773512	22nd January 1971
F-23	Assignment made between Sang Lee Investment Co. Ltd. and Cheng Shui Sang and John Chuang with Memorial No. 789925.	23rd January 1971
F-24	Instruction for Sale No. 552 in respect of Flat No. B906.	17th April 1971
F-25	Assignment made between Sang Lee Investment Co. Ltd. and Cheng Shui Sang and Mui Wai Kun with Memorial No. 818048.	2nd July 1971
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G-2	Letter by the Graudeur Engineering Co. to Lo Hoi Ming with certified translation	20th January 1965
G-3	Letter by E.Y. Wu to Nam Sang Construction Co. Ltd.	28th April 1965
G-4	Letter by Nam Sang Building Construction Co. Ltd. to Sang Lee Investment Co. Ltd.	8th December 1965
G-5	Letter by Nam Sang Building Construction Co. Ltd. to Architect Ng Yiu Wai	27th January 1966
G-6	Certificate by Wu C.N. Chow & Associates	8th March 1966
G-7	Letter by Sang Lee Investment Co. Ltd. to Architect Ng Yiu Wai with translation	22nd March 1966
G-8	Letter by Lo Hoi Ming to the Graudeur Engineering Co. with translation	27th August 1970
G-9	Receipt given by Sang Lee Investment Co. Ltd. to Mr. Lo Hoi Ming with translation	3rd September 1970
G-10	Letter by Sang Lee Investment Co. Ltd. to Ball Land Investment Co. Ltd.	27th November 1970
G-11	Letter addressed to Sang Lee Investment Co. Ltd.	24th December 1970
G-12	Letter by Y.C. Yung & Co. to Wing Kwai Investment Co. Ltd.	30th April 1971
G-13	Letter by Wing Kwai to Sang Lee Investment Co. Ltd.	4th May 1971
G-14	Letter by the Royal Observatory to Philip Remedios & Co.	6th January 1972
G-15	Letter by Philip Remedios & Co. to the Official Receiver	10th February 1972

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G-16	Letter by Philip Remedios & Co. to the Official Receiver and Liquidator	14th March 1972
G-17	Letter by the Official Receiver to Philip Remedios & Co.	18th March 1972
G-18	Letter by the Official Receiver to Philip Remedios & Co.	28th September 1972
G-19	Letter by the Official Receiver to Philip Remedios & Co.	15th December 1972
G-20	Letter by Philip Remedios & Co. to the Official Receiver and Liquidator	23rd February 1973
G-21	Letter by the Official Receiver to Philip Remedios & Co.	27th February 1973
G-22	Letter by the Official Receiver to Philip Remedios & Co.	9th March 1973
G-23	Letter by the Official Receiver and Liquidator to Philip Remedios & Co.	22nd March 1973
G-24	Letter by the Official Receiver and Liquidator to Philip Remedios & Co.	22nd March 1973
G-25	Letter by Philip Remedios & Co. to the Official Receiver and Liquidator	31st March 1973
G-26	Letter by the Official Receiver and Liquidator to Mr. Mok Tsze Fung	1st May 1973
G-27	Letter by the Official Receiver and Liquidator to Philip Remedios & Co.	1st May 1973
G-28	Letter by T.F. Mok to Lowe Bingham & Matthews and Jackman Choy & Co.	1st May 1973
G-29	Letter by Jackman Choy & Co. to The Far East Land Investment & Guarantee Co. Ltd.	2nd May 1973
G-30	Letter by Mok Tsze Fung to the Official Receiver and Liquidator.	14th May 1973
G-31	Letter by Philip Remedios & Co. to the Official Receiver and Liquidator	12th July 1973
G-32	Letter by Philip Remedios & Co. to the Official Receiver and Liquidator	13th July 1973
G-33	Letter by Philip Remedios & Co. to the Official Receiver and Liquidator	23rd August 1973
G-34	Letter by the Official Receiver and Liquidator to Philip Remedios & Co.	11th September 1973
G-35	Letter by the Official Receiver and Liquidator to H.H. Lau & W.S. Lo.	18th September 1973
G-36	Letter by the Official Receiver and Liquidator to Philip Remedios & Co.	19th September 1973
G-37	Letter by H.H. & Co. to the Official Receiver and Liquidator.	25th September 1973
G-38	Letter by Philip Remedios & Co. to the Official Receiver and Liquidator	1st October 1973
G-39	Letter by the Official Receiver to Hon. & Co.	3rd October 1973
G-40	Letter by Philip Remedios & Co. to the Official Receiver and Liquidator	9th October 1973
G-41	Letter by the Philip Remedios & Co. to the Official Receiver and Liquidator	18th October 1973
G-42	Letter by the Official Receiver and Liquidator to Philip Remedios & Co.	19th October 1973
G-43	Letter by W.I. Cheung & Co. to Messrs. H.H. Lau & W.S. Lo	17th June 1974
G-44	Letter by Messrs H.H. Lau & W.S. Lo to W.I. Cheung & Co.	26th June 1974
G-45	Letter by Philip Remedios & Co. to Bernard Wong & Co.	13th November 1974
G-46	Letter by the Official Receiver to W.I. Cheung & Co.	12th April 1976
G-47	Letter by Lowe Bingham and Matthews Price Waterhouse & Co. to Philip Remedios & Co.	13th November 1976
G-48	Letter by W.I. Cheung & Co. to H.H. Lau & Co.	8th February 1977
G-49	Letter by W.I. Cheung & Co. to H.H. Lau & Co.	11th February 1977
G-50	Letter by Philip Remedios & Co. to S.C. Mok & Co.	2nd August 1977
G-51	Letter by S.C. Mok & Co. to Philip Remedios & Co.	3rd August 1977
G-52	Letter by S.C. Mok & Co. to Philip Remedios & Co.	15th August 1977
G-53	Letter by Philip Remedios & Co. to H.H. Lau & Co.	10th February 1978
G-54	Letter by H.H. Lau & Co. to Philip Remedios & Co.	14th February 1978
G-55	Letter by Philip Remedios & Co. to H.H. Lau & Co.	17th February 1978
G-56	Letter by H.H. Lau & Co. to Philip Remedios & Co.	28th February 1978
G-57	Letter by Philip Remedios & Co. to H.H. Lau & Co.	2nd March 1978
G-58	Letter by Philip Remedios & Co. to the Official Receiver and Liquidator	6th March 1978
G-59	Letter by Philip Remedios & Co. to S.C. Mok & Co.	13th March 1978
G-60	Letter by H.H. Lau & Co. to Philip Remedios & Co.	14th March 1978
G-61	Letter by Philip Remedios & Co. to H.H. Lau & Co.	15th March 1978
G-62	Letter by S.C. Mok & Co. to Philip Remedios & Co.	15th March 1978
G-63	Letter by H.H. Lau & Co. to Philip Remedios & Co.	16th March 1978
G-64	Letter by Philip Remedios & Co. to the Land Office	16th March 1978
G-65	Letter by H.H. Lau & Co. to Philip Remedios & Co.	17th March 1978
G-66	Letter by Philip Remedios & Co. to H.H. Lau & Co.	17th March 1978
G-67	Letter by Philip Remedios & Co. to H.H. Lau & Co.	30th March 1978

Mark	Description of Documents	Date
H-1	Original Agreement for Sale and Purchase with Memorial No. 393459	14th March 1963
H-2	Original Agreement for Sale and Purchase with Memorial No. 393461	14th March 1963
H-3	Original Agreement for Sale and Purchase with Memorial No. 393462	14th March 1963
H-4	Original Agreement for Sale and Purchase with Memorial No. 393463	14th March 1963
H-5	Original Agreement for Sale and Purchase with Memorial No. 615580	14th March 1963
H-6	Statements of Accounts for the Plaintiff for the year ended 31st March 1963 and the Auditors' report thereon.	31st March 1963
H-7	Copy of counterfoil of Sang Lee's cheque No. 3609652 and its certified translation.	17th July 1963
H-8	Copy of counterfoil of Sang Lee's cheque No. 3657869 and its certified translation.	29th January 1964
H-9	Circular dated the 16th December 1964 issued by the 3rd Party with its certified translation	16th December 1964
H-10	Building Agreement made between Nam Sang Building Construction Co. Ltd. and the 3rd Party.	14th January 1965
H-11	Copy of counterfoil of Sang Lee's cheque No. 3837872 and its certified translation.	31st August 1965
H-12	Copy of counterfoil of Sang Lee's cheque No. 3837872 and its certified translation.	31st August 1965
H-13	Copy of counterfoil of Sang Lee's cheque No. 3837861 and its certified translation.	31st August 1965
H-14	Copy of receipt No. 228 given by the 3rd Party to Nam Sang Building Construction Co. Ltd.	17th January 1967
H-15	Copy of counterfoil of Sang Lee's cheque No. 3837871 and its certified translation.	31st August 1965
H-16	Copy of counterfoil of Sang Lee's cheque No. 3837885 and its certified translation.	16th September 1965
H-17	Supplementary Agreement made between Nam Sang Building Construction Co. Ltd. and the 3rd Party	20th May 1966
H-18	Occupation Permit in respect of Wai Lee Building	27th October 1967
H-19	Name-lists of owners of flats in Tak Lee, Wai Lee and Po Lee Buildings with their certified translation	
H-20	A bundle of Memorials of Assignments executed by the 3rd Party as Vendors	
H-21	Sales brochures of Tak Lee, Wai Lee and Po Lee Building	
H-22	Sketch plan on the ground and 5th floors of Wai Lee and Po Lee Building	
H-23	Copy of Assignment Memorial No. 699997	

PART III FROM THE PLAINTIFF'S DOCUMENTS

Mark	Description of Document	Date
1	Agreement for Sale and Purchase in 1962 made between Wing Kwai Investment Co. Ltd. and Mok Sum Lan	Undated
2	Agreement in 1962 made between Wing Kwai Investment Co. Ltd. and Mok Tsze Fung	Undated
3	Agreement for Sale and Purchase in 1962 made between Wing Kwai Investment Co. Ltd. and Chan Kwok Wah and Lau Shiu Man.	Undated
4	Agreement for Sale and Purchase in 1962 made between Wing Kwai Investment Co. Ltd. and Lee King Fun	Undated
5	Agreement for Sale and Purchase in 1962 made between Wing Kwai Investment Co. Ltd. and Lo Hoi Ming.	Undated
6	Agreement for Sale and Purchase in 1962 made between Wing Kwai Investment Co. Ltd. and Luna Wong.	Undated
7	Tai Tung Trading Co.'s Bank Statement from Wing On Bank Ltd. for the months of February to July 1962 and for December 1962.	Undated
8	Agreement for Sale and Purchase in 1963 made between Wing Kwai Investment Co. Ltd. and Mok Tsze Fung	Undated
9	Agreement for Sale and Purchase with Memorial No. 393456.	21st February 1963
10	Agreement for Sale and Purchase with Memorial No. 393460.	14th March 1963

Mark	Description of Document	Date
11	Agreement for Sale and Purchase made between the Plaintiff and Luna Wong	14th March 1963
12	Agreement for Sale and Purchase made between Wing Kwai Investment Co. Ltd. as Vendor and Shun Cheong S.N. Co. Ltd. as Purchase	Undated
13	Wing Kwai's vouchers	
14	Architect's certificate	
15	Chart	

PART IV FROM THE THIRD PARTY'S DOCUMENTS

Mark	Description of Document	Date
1	Cash Voucher of Sang Lee Investment Co. Ltd.	16th September 1965
2	Cash Voucher of Sang Lee Investment Co. Ltd.	13th August 1963
3	Cash Voucher of Sang Lee Investment Co. Ltd.	31st August 1965
4	Extract from Sang Lee Investment Co. Ltd's ledger	31st December 1965
5	Cash Voucher of Sang Lee Investment Co. Ltd.	31st December 1965
6	Chinese Memorandum	31st December 1965
7	A bundle of Sales ledger cards of flats in Tak Lee, Wai Lee and Po Lee Building	
8	A bundle of Instructions and Supplementary Instructions of sale of flats in Tak Lee, Wai Lee and Po Lee Building	
9	A bundle of cash books of Sang Lee Investment Co. Ltd.	
10	Ledger of the Joint Venture for the period between 1962/63 to January 1972.	

WRIT OF SUMMONS
IN THE SUPREME COURT OF HONG KONG
ORIGINAL JURISDICTION

No. 1

Writ of Summons
dated 3.10.1973

BETWEEN

WING KWAI INVESTMENT CO. LTD. Plaintiff

and

BALL LAND INVESTMENT CO., LTD. Defendant

(in Liquidation)

10 ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom
of Great Britain and Northern Ireland and of Our other realms and territories Queen,
Head of the Commonwealth, Defender of the Faith:

To: Ball Land Investment Co., Ltd. a limited company in liquidation
whose liquidator is the Official Receiver and Liquidator Registrar
General's Department, Central Government Offices, West Wing, 11th
floor, Hong Kong and whose registered office is situate at Room No.
1535 Central Building, Victoria in the Colony of Hong Kong.

20 We command you that within eight days after the service of this writ on
you, inclusive of the day of service, you do cause an appearance to be entered for
you in an action at the suit of

Wing Kwai Investment Company Limited whose registered office
is situate at Luen Hing Shing Building, 13th floor, Des Voeux
Road, Central, Victoria aforesaid.

and take notice that in default of your so doing the Plaintiff may proceed therein,
and judgment may be given in your absence.

WITNESS the Honourable MR. JUSTICE GEOFFREY GOULD BRIGGS,

Chief Justice of Our said Court, the 3rd day of October, 1973.

(sd.) J.R. OLIVER
Registrar.

30 Note:— This Writ may not be served more than twelve calendar months
after the above date unless renewed by order of the court.

Directions for Entering Appearance

The Defendant may enter an appearance in person or by a Solicitor either

Supreme Court
of Hong Kong
High Court

(1) by handing in the appropriate forms, duly completed, at the Registry of the Supreme Court in Victoria, Hong Kong, or (2) by sending them to the Registry by post.

No. 1

Writ of Summons
dated 3.10.1973

~~Note:— If the defendant enters an appearance, then, unless a summons for judgment is served on him in the meantime, he must also serve a defence on the solicitor for the plaintiff within 14 days after the last day of the time limited for entering an appearance, otherwise judgment may be entered against him without notice.~~

INDORSEMENT OF CLAIM

The Plaintiff's claim against the Defendant is for:—

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- (1) Specific performance of an agreement in writing dated the 20th day of February, 1963, by which the Defendant agreed to sell and the Plaintiff agreed to buy 47 equal undivided 1,335th shares of and in all that piece or parcel of ground situate lying and being at Quarry Bay in the said Colony and registered in the Land Office as the Remaining Portion of Section B of Quarry Bay Marine Lot No. 1 together with the like parts or shares of and in the messuages or buildings now erected thereon as more specifically described in the said agreement.
- (2) An Order in accordance with Clause 5 of the said agreement that the Defendant do cause the assignment under the said agreement to be executed by all necessary parties and in particular by Sang Lee Investment Company, Limited.
- (3) Further and in the alternative, damages for breach of the said agreement.
- (4) Such further or other relief as may be just.
- (5) Costs of this action.

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Counsel for the Plaintiff.

And the sum of \$350.00 (or such sum as may be allowed on taxation) for costs, and also, if the Plaintiff obtains an order for substituted service, the further sum of \$250.00 (or such sum as may be allowed on taxation). ~~If the amount claimed and costs be paid to the Plaintiff or Solicitors within 8 days after service hereof, (inclusive of the day of service) further proceedings will be stayed.~~

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This Writ was issued by MESSRS. PHILIP REMEDIOS & CO., of Rooms Nos. 633-5, Alexandra House, 6th floor, Victoria, Hong Kong, Solicitors for the Plaintiff, whose address is registered office is situate at Luen Hing Shing Building 13th floor, Des Voeux Road Central, Victoria aforesaid.

IN THE SUPREME COURT OF HONG KONG
COMPANIES (WINDING-UP)
No. 28 OF 1971

Supreme Court
of Hong Kong
High Court

IN THE MATTER of the Companies
Ordinance (Cap. 32)

No. 2

and

IN THE MATTER of Ball Land
Investment Company Limited.

Order Before
The Honourable
Mr. Justice
Cons in
Chambers
Dated 15.9.1973

BEFORE THE HONOURABLE MR. JUSTICE CONS, IN CHAMBERS

ORDER

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Upon hearing Counsel for the Applicant and the Official Receiver, the provisional liquidator of the affairs of the above company Ball Land Investment Company Limited, and upon reading the affirmation of Lai Kwai Tim filed herein on the 3rd day of July, 1973 IT IS ORDERED that:—

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1. Notwithstanding the Order of this Court dated the 26th day of November, 1971, to wind up the said Ball Land Investment Company Limited, the applicant may be at liberty to commence and carry on an action in the said Supreme Court against the said Ball Land Investment Company Limited, for specific performance and/or damages for breach of an agreement dated the 20th day of February, 1963, for sale and purchase of 47 equal undivided 1,335th shares of and in all that piece or parcel of ground situate lying and being at Quarry Bay in the said Colony and Registered in the Land Office as the Remaining Portion of Section B of Quarry Bay Marine Lot No. 1 together with the like parts or shares of and in the messuages or building now erected thereon and together with the right to the exclusive possession of the 47 flats more specifically described in the said agreement (hereinafter referred to as "the said property").

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2. The Official Receiver and Liquidator of Ball Land Investment Company Limited shall within 14 days of service on him of the writ commencing the said action, issue a Third Party Notice against Sang Lee Investment Company Limited claiming:

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- (i) an Order for specific performance of an agreement in writing dated the 17th day of January, 1963, by which the said Sang Lee Investment Company Limited agreed to sell and Ball Land Investment Company Limited agreed to buy the said property;
- (ii) an Order that Sang Lee Investment Company Limited pursuant to clause 5 of the agreement recited in this clause do cause the assignment under the said recited agreement to be executed by Sang Lee Investment Company Limited and all other necessary parties;
- (iii) damages for breach of the said recited agreement including but not restricted to an indemnity against all damages and costs which may be awarded to the Applicant in these proceedings;
- (iv) an account of the joint venture between Ball Land Investment Company Limited and Sang Lee Investment Company Limited and of the proceeds of sale of certain parts of the said property received by Sang Lee Investment Company Limited as agents for Ball Land Investment Company Limited;

Supreme Court
of Hong Kong
High Court

No. 2

Order Before
The Honourable
Mr. Justice
Cons in
Chambers
Dated 15.9.1973

- (v) such further or other relief as may be just; and
(vi) the costs of the action.
3. Ball Land Investment Company Limited shall not discontinue the said Third Party proceedings without prior leave of the Court on notice to the Applicant.
4. (a) The Applicant shall at its own cost appoint solicitors and Counsel to conduct the said Third Party proceedings on behalf of the Official Receiver and Liquidator of Ball Land Investment Company Limited and the solicitors so appointed shall confirm in writing to the Official Receiver and Liquidator that save as hereinafter provided they will not look to the Official Receiver and Liquidator for any costs, counsel's fees or other expenses incurred in the said Third Party proceedings. 10
- (b) The Applicant shall indemnify the Official Receiver and Liquidator against any party and party costs which may be awarded against him (other than costs awarded for wilful default) in the said Third Party proceedings and will deposit with the Official Receiver and Liquidator the sum of \$20,000.00 as security for such indemnity and shall further furnish a Bank Guarantee of such indemnity to the satisfaction of the Official Receiver and Liquidator in such sum as may be agreed between the Official Receiver and Liquidator and the Applicant.
- (c) Provided that if the Applicant should fail in the claim against the said Ball Land Investment Company Limited for specific performance the aforesaid obligation of the Applicant to appoint and pay for solicitors and counsel and to indemnify the Official Receiver and Liquidator shall not apply to any costs incurred by the Official Receiver and Liquidator or the said Ball Land Investment Company Limited in the said Third Party proceedings after the dismissal of the said claim for specific performance. 20
- (d) The Applicant will pay to the Official Receiver and Liquidator such sum as will be sufficient to tender the balance of the purchase price (if any) of the said property to Sang Lee Investment Company Limited and all costs charges and expenses in connection therewith Provided That the Official Receiver and Liquidator shall refund the said sum to the Applicant if and when Sang Lee Investment Company Limited refuses the said tender or the Official Receiver and Liquidator declines to assign or cause to be assigned the said property to the Applicant. 30
5. The sanction of the Court is given to the Official Receiver and Liquidator to bring the aforesaid Third Party proceedings against Sang Lee Investment Company Limited in the name and on behalf of Ball Land Investment Company Limited.
6. Liberty to apply. 40
- Dated the 15th day of September, 1973.

Assistant Registrar

AMENDED STATEMENT OF CLAIM

Supreme Court
of Hong Kong
High Court

No. 3

Amended
Statement of
Claim
dated 15.12.1978

1. The Plaintiff is a company incorporated with limited liability in accordance with the laws of the Colony of Hong Kong whose registered office is situate at Luen Hing Shing Building, 13th floor, Des Voeux Road Central Victoria in the said Colony.

2. The Defendant is a company incorporated with limited liability in accordance with the said laws and is in liquidation whose Liquidator is the Official Receiver and Liquidator, Registrar General's Department, 10th Floor, Sutherland House, 3 Chater Road, Victoria aforesaid and whose registered office is situate at Room 1535 Central Building, Victoria.

10 3. In or about the month of October 1961 one Mok Tsze Fung entered into an agreement with Davie, Boag & Company Limited, to purchase a piece of land namely the Remaining Portion of Section B of Quarry Bay Marine Lot No. 1 (hereinafter referred to as "the said property"). On the same day the said Mok Tsze Fung made a Declaration of Trust to the effect that such purchase was made on behalf of Sang Lee Investment Company Limited. The said Mok Tsze Fung had at that time orally agreed with Sang Lee Investment Company Limited a company incorporated under the Companies Ordinance Cap. 32 whose registered office is situate at 1202 Bell House, 525-543 Nathan Road, 12th floor Kowloon that a syndicate to be formed
20 by him would acquire and develop the said property in equal partnership with Sang Lee Investment Company Limited. The said Mok Tsze Fung then formed a syndicate for the purpose of entering into such partnership, and received moneys from participants in such syndicate and paid moneys to Sang Lee Investment Company Limited, using the name of Far East Land Investment & Guarantee Company one of the companies of the said Mok Tsze Fung.

30 4. Subsequently on the 4th December, 1962 the Defendant was incorporated. After such incorporation the Defendant took over the said syndicate, wherefore by a partnership agreement in writing dated the 31st day of December 1962 (hereinafter referred to as "the Partnership Agreement") the Defendant agreed to enter into a single joint venture with Sang Lee Investment Company Limited to purchase, develop and turn to account the said property.

5. In or about the month of February 1962, the said syndicate and the said Sang Lee Investment Company Limited orally agreed that there should be an interim division of some of the assets of the said partnership alternatively of the rights in the assets of the said joint venture. By the terms of such agreement each of the said partners was to be entitled to 2 of the blocks of the said development. The said oral agreement was subsequently varied to the extent that:—

(a) The said Sang Lee Investment Company Limited would take \$1,135,560.60 out of the income of the said partnership ~~by then~~ received or to be received instead of 2 blocks as aforesaid and

40 (b) The ~~Defendant~~ syndicate would take 2 of the said block by way of purchase in the sum of \$1,261,734.00 ~~and would be credited in such purchase with~~ The syndicate would notionally borrow from

the said partnership the sum of \$1,135,560.60 which sum would be credited to the syndicate against the said purchase leaving a balance of \$126,173.40 payable. The accounts of both the syndicate (subsequently the Defendant) and the said Sang Lee Investment Company Limited, in the said partnership were in fact debited with the said sum of \$1,135,560.00 and the account of the syndicate (subsequently the Defendant) in such partnership was credited with the same sum against the purchase price of the said 2 blocks.

5A. Pursuant to the oral agreement referred to in the foregoing paragraph, the syndicate, in the name of the said Far East Land Investment & Guarantee Company Limited, and the said Sang Lee Investment Company Limited entered into an agreement in writing in or about February 1962 by which the syndicate purchased the said 2 blocks, namely, blocks 1 and 3 of Wai Lee Building, to be erected upon the said property, for the sum of \$1,261,734.00. The said agreement was subsequently destroyed when it was replaced by the agreement pleaded in paragraph 6 hereunder. 10

6. After its incorporation, the Defendant was substituted for the said syndicate ~~in the oral agreement as varied set out in paragraph 5 hereof~~ wherefore by an agreement in writing made between Sang Lee Investment Company Limited and the Defendant dated the 17th day of January 1963, (hereinafter referred to as "the 1st Sale and Purchase Agreement") the said Sang Lee Investment company Limited agreed to sell to the Defendant 47 equal univided 1335th parts or shares of and in the messuages or buildings to be erected on the said property as more fully described therein together with the full and exclusive right and privilege to hold and enjoy the 47 flats in the building known as Wai Lee Building to be erected on the said property namely the said 2 blocks. The Plaintiff will refer at trial to the 1st Sale and Purchase Agreement for the full terms and effects thereof. The 1st Sale and Purchase Agreement was in the same terms as the agreement pleaded in the foregoing paragraph save that the name of the purchaser therein became the Defendant instead of the said Far East Land Investment & Guarantee Company. 20 30

7. By an ~~oral~~ agreement in writing made between the said syndicate using the name of the said Far East Land Investment & Guarantee Company Limited and the Plaintiff in or about February 1962 (after the said ~~verbal~~ oral agreement for the interim divison of assets) the said syndicate agreed to sell the said 2 blocks to the Plaintiff for the price of \$771,875.50 which said sum was either in part paid by the Plaintiff to the said syndicate ~~or was credited~~ and in part debited by the said syndicate against moneys received or held by the said syndicate ~~to~~ for the account of the Plaintiff ~~against money received by the syndicate for the account of the Plaintiff~~ on divers dated between the 20th day of February 1962 and the 7th day of July 1962. After the Defendant took over the syndicate as aforesaid, the said ~~oral~~ agreement was ~~reduced into writing on~~ destroyed and was replaced by an agreement in writing dated the 20th day of February 1963 (hereinafter referred to as "the 2nd Sale and Purchase Agreement") whereby the Defendant agreed to sell and the Plaintiff agreed to buy the said 2 blocks 40

for the said price of \$771,875.50. By the ~~3rd~~ 2nd Sale and Purchase Agreement, the Defendant acknowledged that the said price of \$771,875.50 had been paid by the Plaintiff to the Defendant.

Supreme Court
of Hong Kong
High Court

No. 3

Amended
Statement of
Claim
dated 15.12.1978

10 8. Clause 5 of the 2nd Sale and Purchase Agreement provides that on issuance by the Building Authority of the Occupation Certificate in respect of the said 2 blocks the Defendant and all other necessary parties (if any) shall execute a proper assignment of the said properties agreed to be sold subject as thereafter appearing but otherwise free of incumbrances. The Plaintiff will refer at trial to the 2nd Sale and Purchase Agreement for the full terms and effect thereof.

9. The said Occupation Certificate for the said 2 blocks was issued on the 27th day of October, 1967.

10. Possession of the 47 flats sold under the 1st and 2nd Sale and Purchase Agreements was given to the Plaintiff and/or their subpurchasers or lessees shortly after the Occupation Certificate was issued.

20 11. By an action in the Supreme Court of Hong Kong intitule Original Jurisdiction Action No. 44 of 1971, three of the directors of the said Sang Lee Investment Company Limited namely Kwan Fan Fat, Ma To Sang and Hudson Chen Wood, claimed against Sang Lee Investment Company Limited and the Defendant the sum of \$1,559,200 as moneys lent by them to the said joint venture with interest at 2% per month. In the said proceedings the said Sang Lee Investment Company Limited consented to judgment and the Defendant herein obtained conditional leave to defend the said Action. The defendant was unable to pay into Court the sum of \$400,000.00 within 21 days as ordered, and judgment for the amount claimed was entered against it on the 3rd day of September, 1971.

30 12. By a petition filed on the 5th day of November, 1971 in companies (Winding-Up) No. 25 of 1971 in the Supreme Court of this Colony, the said Kwan Fan Fat, Ma To Sang and Hudson Chen Wood petitioned for the winding-up of the Defendant herein for failure to satisfy the aforesaid judgment. A Winding-up Order was made on such petition on the 26th day of November, 1971.

13. Despite repeated requests and in breach of its obligation under Clause 5 of the 2nd Sale and Purchase Agreement, the Defendant and/or its liquidator have notwithstanding the issuance of the said Occupation Certificate failed to execute an assignment of the premises sold by the 2nd Sale and Purchase Agreement in favour of the Plaintiff or to cause such an assignment to be executed by a necessary party namely the said Sang Lee Investment Company Limited WHEREFORE the Plaintiff claims against the Defendant:-

1. Specific performance of the 2nd Sale and Purchase Agreement.
2. An order that the Defendant and/or its liquidator do cause an assignment of the premises sold by the 2nd Sales and Purchase Agreement

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Supreme Court
of Hong Kong
High Court

No. 3

Amended
Statement of
Claim
dated 15.12.1978

to the Plaintiff or its nominee or nominees to be executed by all necessary parties and in particular by the said Sang Lee Investment Company Limited.

3. Further and in the alternative, damages for breach of the 2nd Sale and Purchase Agreement.
4. Such further or other relief as may be just.
5. Costs of this Action.

~~sd. Charles Ching~~
~~Counsel for the Plaintiff~~

~~Dated the 18th day of February 1974.~~

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Counsel for the Plaintiff
Dated the 15th day of December 1978.

**RE-RE-AMENDED DEFENCE AND COUNTERCLAIM OF THE
THIRD PARTY TO THE PLAINTIFF'S STATEMENT OF CLAIM**

Supreme Court
of Hong Kong
High Court

No. 4

Re-Re-Amended
Defence and
Counterclaim
of the Third
Party to the
Plaintiff's
Statement of
Claim
dated 28.11.1979

1. (i) Paragraphs 1, 2, 3 and 4 of the Amended Statement of Claim are admitted.
- (ii) In further answer to Paragraph 4 of the Amended Statement of Claim, the Third Party says that the promoters of the syndicate were the promoters of the Defendant and the Defendant was incorporated as part of a scheme particulars whereof are set out in paragraph 8 below.
- 10 2. No admission is made as to Paragraphs 5 and 5A of the Statement of Claim. The alleged Agreement between the Third Party and Far East Land Investment and Guarantee Company Limited is denied.
- 20 3. ~~Paragraph 6 of the Amended Statement of Claim is admitted.~~ Save that after its incorporation, the Defendant by an agreement in writing made between the Third Party and the Defendant dated the 17th day of January, 1963, (hereinafter referred to as 'the 1st Sale and Purchase Agreement'), the Third Party agreed to sell to the Defendant 47 equal undivided 1335th parts or shares of and in the messuages or buildings to be erected on the said property as more fully described therein together with the full and exclusive right and privilege to hold and enjoy the 47 flats in the building known as Wai Lee Building to be erected on the said property) (hereinafter referred to as the "said 2 blocks"). At the time of the execution of the 1st Sale and Purchase Agreement Kwan Fan Fat on behalf of the Third Party sought and obtained an assurance from Mr. S.C. Mok Solicitor for the Defendant that whether in the event of the development being less successful than anticipated the Third Party could retain the said 2 blocks as security, and that despite the receipt clause in the 1st Sale and Purchase Agreement the Third Party could refuse to execute any assignment should there be no profits. Paragraph 6 of the Amended Statement of Claim is not admitted.
- 30 4. ~~As to Paragraph 7 of the Statement of Claim.~~ No admission is made to paragraph 7 of the Amended Statement of Claim. It is not admitted that the sum of \$771,875.50 or at all was paid by the Plaintiff to the said syndicate to the account of the Plaintiff or debited by the said syndicate against moneys received by the syndicate for the account of the Plaintiff on divers dates between the 20th February 1962 and the 7th day of July 1962 as alleged or at all. It is not admitted that the Defendant had received any moneys for the account of the Plaintiff as alleged or at all. It is asserted that no money or moneys worth passed from the Plaintiff to the syndicate or the Defendant as alleged or at all.
- 40 4A. That the said alleged agreement or the 2nd Sale and Purchase Agreement was entered into in breach of the Defendant's fiduciary duty as a partner in the joint venture.
5. Paragraphs 8 and 9 of the Amended Statement of Claim are admitted.
6. ~~No admission is made as to Paragraph 10 of the Amended Statement of Claim is denied.~~

7. Paragraphs 11 and 12 of the Amended Statement of Claim are admitted.

8. As to paragraph 13 of the Amended Statement of Claim, the Third Party says that the Plaintiff is not entitled to specific performance of the said 2nd Sale and Purchase agreement for one or all of the following reasons:—

(i) The purchase price of \$771,875.50 was never paid by the Plaintiff to the Defendant.

(ii) a. The 2nd Sale and Purchase Agreement was executed by a Mr. Lai Kwai Tim acting on behalf of both the Plaintiff and the Defendant.

b. The Plaintiff knew at all material times that:—

(1) ~~The said property was supposed to have been purchased for \$1,261,734.00 and that the sale of the same to the Plaintiff for \$771,875.50 would result in loss of \$489,858.50.~~ The said property was purchased by the Defendant from the Third Party for a sum of \$1,261,734.00 \$1,135,560.00 of which was notionally expressed in the first sale and purchase agreement to have been paid but which in fact was never paid and that the sale of the same to the Plaintiff for \$771,875.50 would result in a loss of \$489,858.50 to the syndicate and the Defendant.

(2) That the Defendant was indebted to the Plaintiff Third Party in the sum of \$1,261,734.00 in respect of the purchase price payable for the said 2 blocks.

That the alleged agreement made between the said syndicate in the name of the said Far East Land Investment and Guarantee Company Limited and the Plaintiff (hereinafter referred to as "the said alleged agreement") or the 2nd Sale and Purchase Agreement was entered into as a device to divest the syndicate or the Defendant of its assets.

~~(4) That the 2nd sale and purchase agreement was entered into as a device to divest the Defendant of its assets.~~

~~(5)~~(4) That the said alleged agreement and the 2nd sale and purchase agreement if performed would reduce the ability or result in the inability of the syndicate and the Defendant respectively to fulfil its obligation under its joint venture with the Third Party.

(6) That the said alleged agreement and the 2nd sale and purchase agreement were executed in order to defraud the

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creditors of the syndicate and the Defendant respectively of which the Third Party was one.

Supreme Court
of Hong Kong
High Court

(iii) The said alleged agreement or the 2nd Sale and Purchase agreement was entered into in order to enable the said syndicate or the Defendant unlawfully to reduce or refund its capital and to pay purported dividends notwithstanding that no profits had yet been made.

No. 4

Re-Re-Amended
Defence and
Counterclaim
of the Third
Party to the
Plaintiff's
Statement of
Claim

dated 28.11.1979

(iv) the 2nd sale and purchase agreement was not a bona fide sale. The said alleged agreement and the 2nd Sale and Purchase agreement were intended as a cloak to disguise the reality which was as follows:-

(a) The Defendant never had an issued capital of \$640,000.00 or alternatively if the Defendant had an issued capital of \$640,000.00 the 2nd Sale and Purchase agreement enabled the Defendant to refund its capital to its shareholders.

(b) Upon incorporation, the Defendant was already divested of its interest in 47 flats.

(c) No real consideration passed from the Plaintiff to the Defendant.

(d) The transaction was not effected by money or moneys worth.

(e) The said 2nd sale and purchase agreement was entered into so that the Defendant could refund capital to the Defendant's shareholders and paid dividends to the same notwithstanding that the Defendant had made no profit.

(f) That the said alleged agreement was a notional sale of the 47 flats to the Plaintiff with a view to enable the members of the syndicate to recoup their investments before the Defendant commenced business.

(8A) If, which is not admitted, the Defendant had at any material time lent to the shareholder a sum of \$640,000.00 as is now alleged by the Plaintiff, the said alleged loan was part and partial of the transaction pleaded in Paragraph 8 above and infringes the provisions of Section 48(D) of the companies ordinance.

9. In the premises, by reason of the matters pleaded hereinbefore the 2nd sale and purchase agreement is tainted with illegality and is void and/or unenforceable.

10. Further and alternatively, if which is denied, that the 2nd sale and purchase agreement is enforceable, the Defendant is unable or entitled to specifically perform the same in that the Third Party is entitled to a Vendor's lien on the said 2 blocks in that the Defendant has not paid the purchase price or at all.

11. (i) If which is not admitted, the 1st and/or the 2nd Sale and Purchase

Supreme Court
of Hong Kong
High Court

No. 4

Re-Re-Amended
Defence and
Counterclaim
of the Third
Party to the
Plaintiff's
Statement of
Claim
dated 28.11.1979

Agreements are valid and/or enforceable, at the various dates particularized hereinbelow the Third Party acting as agent for the syndicate the Defendant and/or the Plaintiff entered into sale and purchase agreements to sell the flats set out in the first column hereunder, and in respect of the proceeds of sale thereof paid to the syndicate, the Defendant and/or the Plaintiff the sums set out in the last column hereunder:

Price	Flat No.	Name of Purchasers	Date of Sale	Total Instalment Received	Amount paid the Defendant by Third Party	
\$31,183.80	503	Lo Yin Ching	11. 5.62	\$19,308.80	\$17,408.80	10
35,630.00	701	Leung Yin Pui	9. 6.62	34,038.00	28,775.00	
41,506.00	801	Fung Chia Chu and Leung Wai Yoa	9. 6.62	27,056.80	25,910.00	
31,287.80	803	Fan Yuk Yee	21. 6.62	21,259.80	20,395.80	
41,506.00	1001	Lau Yin and Woo Kwai Won	4. 4.62	10,439.00	10,439.00	
41,363.00	1101	Tsao Wen Wei	7. 5.62	40,103.00	31,283.00	20
31,183.80	1103	Tsao Wen Wei	7. 5.62	30,233.80	23,583.80	
29,557.80	1703	Cheng Kung Sze	16.10.63	7,842.90	7,842.90	
28,972.00	2001	Law Tak Ching	8. 7.63	13,568.00	13,568.00	
25,904.40	2003	Law Tak Ching	8. 7.63	10,063.20	10,063.20	
					\$189,269.50	
					=====	

- (ii) In respect of some of the flats pleaded in sub-paragraph (i) thereof the purchasers refused to complete the sale when the Defendant was unable to convey the legal estate thereto. Accordingly the Third Party assigned to the Purchasers other flats owned by the Joint Venture in exchange for the flats agreed to be sold, crediting to the purchasers the proceeds of sale set out in sub-paragraph (i) hereunder: 30

PARTICULARS

FLAT	EXCHANGED FOR FLAT NO.
503	B805
701	B306 & B307
801	B1122 & 1123
803	C1312 & 1313
1101 & 1103	B308, B309 & B914
1703	B1704

- (iii) Further, the Third Party on behalf of the Joint Venture upon the request of the purchasers of flat No. 1001, 2001 and 2003 refunded the instalments paid by them for the said flats. 40

- (iv) By reason of the matters aforesaid if which is denied the 1st sale and

purchase agreement is enforceable the Third Party is entitled to be assigned the flats referred to in sub-paragraphs (ii) and (iii) herein upon payment of the purchase price.

Supreme Court
of Hong Kong
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No. 4

Re-Re-Amended
Defence and
Counterclaim
of the Third
Party to the
Plaintiff's
Statement of
Claim
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(v) Further or alternatively, the Plaintiff is liable to pay to the Third Party on behalf of the Joint Venture the value of the flats pleaded in sub-paragraph (ii) hereof and/or to refund to the Third Party as aforesaid the sum of \$189,269.50 pleaded in sub-paragraph (i) hereof.

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(vi) In so far as the transactions pleaded in sub-paragraphs (ii) and (iii) above took place before the incorporation of the Defendant, the same were adopted by the Defendant after its incorporation.

(vii) Further or alternatively, the Defendant has never refunded to the Third Party or to the Joint Venture any of the proceeds of sale in respect of the flats pleaded in sub-paragraphs (ii) and (iii) above. Third Party has, in law, a lien on the said flats and is entitled to retain the legal estate in respect of the said proceeds.

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~~11~~.12. Further or alternatively, the Third Party is entitled to refuse to specifically perform the 2nd sale and purchase agreement by reason of the fact that \$771,785.50 or at all was not paid to the Defendant by the Plaintiff or that the sum of \$1,261,734.00 was not paid to the Third Party by the Defendant as alleged or at all.

~~12~~.13. Save as hereinbefore expressly admitted the Third Party denies each and every allegation of fact contained in the Amended Statement of Claim as if the same were herein set forth and traversed seriatim.

COUNTERCLAIM

1. The Third Party repeats Paragraphs ~~5-8~~ and ~~6-11~~ hereinbefore and claims:—

(1) An order that the 2nd sale and purchase agreement be set aside.

(2) A declaration that the 2nd sale and purchase agreement is unenforceable.

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(3) Under paragraph 13(A)(v) hereof, \$189,269.50.

(4) A declaration that the Joint Venture is beneficially entitled to Flats 503, 701, 801, 803, 1101, 1103 and 1703 referred to in paragraph 13(A)(ii) hereof.

(5)

~~(3)~~ Further and other relief as may be just.

Dated the 28th day of November, 1979.

Robert C. Tang
Counsel for the Third Party

**REQUEST FOR FURTHER AND BETTER PARTICULARS OF
THE THIRD PARTY'S DEFENCE TO THE PLAINTIFF'S CLAIM**

No. 5

Request for
Further and
Better
Particulars
of The Third
Party's
Defence to
the Plaintiff's
claim
dated 22.10.1976

The Plaintiff requests the following further and better particulars of the Third Party's Defence:—

UNDER PARAGRAPH 8(ii)(b)(3)

Of the allegation that the Plaintiff knew at all material times that the 2nd Sale and Purchase Agreement was entered into as a device to divest the Defendant of its assets, state how it constituted such a device.

UNDER PARAGRAPH 8(ii)(b)(4)

Of the allegation that the Plaintiff knew at all material times that the 2nd Sale and Purchase Agreement amounted in effect to a reduction of capital of the Defendant, state how it amounted to such a reduction and the amount of capital reduced.

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UNDER PARAGRAPH 8(ii)(b)(5)

Of the allegation that the Plaintiff knew at all material times that the 2nd Sale and Purchase Agreement if performed would result in the inability of the Defendant to fulfil its obligation under its joint venture with the Third Party, state:

- (1) the particulars of all the facts on which the Third Party relies in alleging such knowledge on the part of the Plaintiff;
- (2) the extent of the alleged inability.
- (3) how it is alleged that the performance of the 2nd Sale and Purchase Agreement at the material time would result in the inability of the Defendant to fulfil its obligations under its joint venture with the Third Party.

20

UNDER PARAGRAPH 8(ii)(b)(6)

Of the allegation that the Plaintiff knew at all material times that the 2nd Sale and Purchase Agreement was executed in order to defraud the creditors of the Defendant of which the Third Party was one, state:

- (1) the particulars of all the facts on which the Third Party relies in alleging such knowledge on the part of the Plaintiff;
- (2) the person/persons and/or company/companies which planned to defraud or defrauded the creditors of the Defendant;
- (3) the particulars of the fraud committed or planned to be committed by such person/persons and/or company/companies;

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- (4) the extent of the alleged debts owed by the Defendant to the Third Party; Supreme Court of Hong Kong High Court
- (5) the particulars of how such debts were incurred by the Defendant to the Third Party. No. 5

sd. Philip Remedios & Co.
Solicitors for the Plaintiff.

Dated the 22nd day of October 1976.

Request for
Further and
Better
Particulars
of The Third
Party's
Defence to
the Plaintiff's
claim
dated 22.10.1976

**FURTHER & BETTER PARTICULARS OF THE THIRD
PARTY'S DEFENCE TO THE PLAINTIFF'S CLAIM**

No. 6

UNDER PARAGRAPH 8(ii)(b)(3)

Further &
Better
Particulars
of the
Third Party's
Defence to
the Plaintiff's
claim.

It constituted a device in that as a result of the Second Sale and Purchase Agreement, the Defendant lost \$489,858.50 being the difference between the Defendant's unpaid purchase price of \$1,261,734 and the sale price to the Plaintiff of \$771,875.00 and that at the material time the said property constituted the whole or substantially the whole assets of the Defendant.

dated 5.1.1977

UNDER PARAGRAPH 8(ii)(b)(4)

At the time of the Second Sale and Purchase Agreement, no profits had been made by the said joint venture and the said property constituted part of the capital of the Defendant. By the Second Sale and Purchase Agreement, the Defendant rid itself of the said property at a loss of \$489,858.50. The amount of capital reduced was \$489,858.50.

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UNDER PARAGRAPH 8(ii)(b)(5)

(1) The Plaintiff knew by its managing director, a Mr. Lai Kwai Tim that:

- (i) the Defendant had a paid-up capital of \$640,000.00.
- (ii) that the purchase price of \$1,262,734.00 had not been paid to the Third Party and was payable to the Third Party.
- (iii) The Defendant was liable to contribute to the joint venture the sum of \$387,854.19 on or before 10th day of January 1963, the sum of \$526,635.81 on or before 30th day of June 1963 and \$1,523,610.00 on or before 30th December 1974 and a moiety of such interest as may be payable to Davie Boag and Company Limited and the Defendant was liable to contribute to the joint venture for the development if and when the need should arise. 20
- (iv) The said property was at the material time the only or almost the only asset of the Defendant.
- (v) The Defendant was selling the said property at less than their market value, and the Third Party contends that the said property had a market value of at least \$1,261,734.00 and the Defendant was thereby deprived of the means with which to make the aforesaid contributions. 30
- (vi) The Defendant was to use the proceeds of sale of the said property to make or help make its said contributions.

(2) No such allegation was made in Paragraph 8(ii)(b)(5).

Supreme Court
of Hong Kong
High Court

UNDER PARAGRAPH 8(ii)(b)(6)

No. 6

(1) The Third Party repeats the particulars given under Paragraph 8(ii)(b)(5) hereof.

Further &
Better
Particulars
of the
Third Party's
Defence to
the Plaintiff's
claim.

dated 5.1.1977

(2) Mr. Lai Kwai Tim, the Plaintiff and the Defendant.

(3) The sale of the said property to the Plaintiff at \$771,875.50 resulting in the inability on the part of Defendant to make the said contributions. The Third Party repeats the particulars given under Paragraph 8(ii)(b)(4) hereof.

10 (4) \$4,299,890.05 plus interest from 31st October 1971 until repayment.

(5) Sang Lee's account

Balance at 31st October 1971 \$2,370,491.93

Rental Deposit received at 31st October 1971 18,059.00

Accounts payable as at 31st October 1971 329,652.84

Loan from Directors of Sang Lee
Investment Company Limited
Principal 2,888,800.00

Interest up to 19th September 1970
at 2% per month 701,087.95

20 \$3,589,887.95

Loss up to 31st March 1971 3,419,162.39

Less capital 1,127,474.00

Total liabilities 2,291,688.39

\$8,599,780.11

Defendant's share of above as at 31st October 1971
plus interest on the same from 31st October 1971
and accruing. \$4,299,890.055

Dated the 5th day of January 1977

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Robert C. Tang
Counsel for the Third Party

RE-RE-AMENDED REPLY TO THIRD PARTY'S DEFENCE TO THE
PLAINTIFF'S CLAIM

No. 7

Re-Re-Amended
Reply to Third
Party's Defence
to the
Plaintiff's
claim
dated 30.11.1979

1. Save where the same consists of admissions, the Plaintiff joints issue with the Third Party on its Re-Re-Amended Defence.
2. The Plaintiff will also rely on the matters pleaded in the Defendant's Re-Re-Re-Amended Statement of Claim and Re-Amended Reply against the Third Party as far as the same are relevant to the issues between the Plaintiff and the Third Party.
3. In answer to paragraph 4, 8(i) and 9 of the Re-Re-Amended Defence, the Plaintiff did pay the sum of \$771,875.50 ~~to the Defendant and/or~~ the syndicate. At all material times the Defendant and the Third Party were aware that the said sum had been paid to the syndicate. 10
4. In answer to paragraph 8(ii)(a) of the Re-Re-Amended Defence, it is admitted that the 2nd Sale and Purchase Agreement was executed by Mr. Lai Kwai Tim acting on behalf of both the Plaintiff and the Defendant. The Third Party was, at all material times, aware of the fact that Mr. Lai Kwai Tim was a director of both the Plaintiff and the Defendant. Mr. Lai Kwai Tim was duly authorised by the respective boards of directors of the Plaintiff and the Defendant to sign for and on their behalf.
5. In answer to paragraph 8(ii)(b)(2) of the Re-Re-Amended Defence the Plaintiff denies that the Defendant was indebted to the ~~Plaintiff~~ Third Party in the sum of \$1,261,734.00 as alleged. 20
6. In answer to paragraph 8(ii)(b)(3) of the Re-Re-Amended Defence the Plaintiff denies that the 2nd Sale and Purchase Agreement was entered into as a device to divest the Defendant of its assets or that the said property constituted the whole or substantially the whole assets of the Defendant. The Plaintiff knew that the Defendant was a partner with the Third Party in a joint venture to acquire, develop and turn to account the property mentioned in paragraph 3 of the Amended Statement of Claim and at the material time the Plaintiff knew the Defendant regarded the said partnership as a very profitable one and by far the most valuable asset of the Defendant. If, which is not admitted, there was such a device the Plaintiff did not know of such device. The 2 blocks which were the subject of the 1st and 2nd Sale and Purchase Agreements were and are a small part of the said property, being 47 out of 1335 units. The Plaintiff says that the price of \$771,875.50 paid by it for the said premises was a fair price. 30
7. In answer to paragraph 8(ii)(b)(4) (iii) of the Re-Re-Amended Defence the Plaintiff denies that the 2nd Sale and Purchase Agreement amounted in effect to a reduction of capital of the Defendant or that sale of the said premises at a loss could be constructed as a reduction of capital. If, which is not admitted, the sale did amount to a reduction of capital, the Plaintiff did not know of the same. In 40

the further alternative, any alleged reduction of capital on the part of the Defendant is not a defence to the Plaintiff's claim.

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of Hong Kong
High Court

No. 7

Re-Re-Amended
Reply to Third
Party's Defence
to the
Plaintiff's
claim
dated 30.11.1979

10 7A. On taking over the said syndicate as pleaded in paragraph 4 of the Amended Statement of Claim, the Defendant acquired and thereafter held as assets of the Defendant the interest of the said syndicate in the joint venture and in the said property with the benefit of and subject to the oral and written agreements pleaded in paragraphs 5, 5A and 7 of the Amended Statement of Claim. In the circumstances, the assets of the Defendant at no time comprised any interest in the joint venture not subject to agreement for the sale to the Plaintiff of the premises the subject of the 2nd Sale and Purchase Agreement at the price of \$771,875.50.

7B. Further or in the alternative, the 2nd Sale and Purchase Agreement replaced the agreement of February 1962 between the Plaintiff and the syndicate as pleaded in paragraph 7 of the Amended Statement of Claim. At the date of the agreement which was replaced, the Defendant had not been incorporated. By the date of the Defendant's incorporation, namely, 4th December 1962, the entire purchase price of \$771,875.50 had been received by the syndicate as pleaded in paragraph 7 of the Amended Statement of Claim.

20 8. In answer to paragraph 8(ii)(b)(5) (4) of the Re-Re-Amended Defence the Plaintiff denies that the 2nd Sale and Purchase Agreement, if performed, would result in the inability of the Defendant to fulfil its obligations under its joint venture with the Third Party. ~~The Plaintiff further denies that the purchase price of \$1,262,734.00 had not been paid to the Third Party by the Defendant and says that by the 1st Sale and Purchase Agreement the Third Party had acknowledged the receipt of the said sum from the Defendant. If which is not admitted, the said sum had not been paid the Plaintiff did not know of it. If the Defendant would be unable to fulfil its obligations the same is a result of the Third Party's actions, inter alia, as follows'—~~

30 (a) The Third Party, in or about the month of August 1965 received from Nam Sang Construction Company Limited, the contractor engaged by the Third Party on behalf of the joint venture for the construction of the buildings forming the subject-matter of the joint venture, the sum of \$135,000.00 as a commission for engaging the said contractors for the said construction work. The said commission ~~was not disclosed to the Defendant and was set~~ should have been credited by the Third Party to the joint venture but was not.

(b) The Third Party had sold flats belonging to the joint venture to their nominees or employees at gross undervalue.

PARTICULARS

Name of Purchaser	Flat Purchased	Consideration
40 Wong Wing Yiu	No. 11 on 7th floor, Wai Lee Building	\$19,256.00

Supreme Court of Hong Kong High Court	Wong Wing Yiu	No. 8 on 8th floor, Wai Lee Building	\$21,420.00	
No. 7	Wong Wing Yiu	No. 7 on 16th floor, Wai Lee Building	\$23,310.00	
Re-Re-Amended Reply to Third Party's Defence to the Plaintiff's claim dated 30.11.1979	Wong Wing Yiu	No. 8 on 16th floor, Wai Lee Building	\$21,420.00	
	Wong Wing Yiu	No. 21 on 12th floor, Wai Lee Building	\$16,688.00	
	Cheng Shui Sang	No. 19 on 14th floor, Wai Lee Building	\$16,184.00	10
	Cheng Shui Sang	No. 5 on 12th floor, Wai Lee Building	\$29,530.00	
	Cheng Shui Sang	No. 6 on 9th floor, Wai Lee Building	\$22,428.00	
	Cheng Shui Sang	No. 14 on 3rd floor, Wai Lee Building	\$18,032.00	
	Cheng Shui Sang	No. 23 on 1st floor, Wai Lee Building	\$20,760.00	

- (c) The Third Party as manager of the Joint Venture business caused the Joint Venture to incur unnecessary liability for interest in the following manner:— 20
- (i) by clause 2(d) of the Agreement for Sale and Purchase with Davie Boag & Co. Ltd. recited in paragraph 3 of the Statement of Claim, the balance of the purchase price amounting to \$3,045,600.00 was payable by the Third Party to Davie Boag & Co. Ltd. on completion of the purchase of the said property and by clause 3 of the said Agreement interest was payable on the said sum of \$3,045,600.00 from the date when vacant possession of the said premises was made available to the Third Party until completion of the purchase, at the rate of 8% per annum; 30
- (ii) vacant possession of the said premises was made available to the Third Party in or about the month of July 1963;
- (iii) at the time when vacant possession was made available as aforesaid the Third Party had or should have had a very large sum of money belonging to the joint venture in its possession and the

Third Party could and should have abated interest to Davie Boag & Co. Ltd. by paying to Davie Boag & Co. Ltd. the whole or a portion of the said balance of the purchase price but the Third Party failed to abate interest as aforesaid and further failed to account to the joint venture for any interest earned from the credit balance of the joint venture with the Third Party;

10 (iv) in consequence of the Third Party's failure to abate interest payable to Davie Boag & Co. Ltd. the joint venture incurred liability and paid the sum of \$365,925.60 to Davie Boag & Co. Ltd. as interest on the said sum of \$3,045,600.00 for the period from July 1963 to December 1965:

20 (v) when a part of the said balance of purchase price namely the sum of \$1,293,305.22 was paid to Davie Boag & Co. Ltd. in July of 1964, the Third Party had or should have had sufficient funds belonging to the joint venture to pay the said sum to Davie Boag & Co. Ltd., instead of paying the sum from the joint venture funds in its possession, the Third Party on the 22nd of July 1964 borrowed from Bank of East Asia Ltd. the sum of \$1,500,000.00 on the security of a mortgage of the joint venture property and the Third Party charged the interest payable under this mortgage to the account of the joint venture with the Third Party; furthermore, when the remaining balance of the purchase price payable to Davie Boag & Co. Ltd. was paid in the month of January 1965 the Third Party had or should have had funds belonging to the joint venture sufficient to pay the said balance of the purchase price and yet the Third Party again borrowed a further sum of \$1,500,000.00 from Bank of East Asia Ltd. on the security of a Further Charge of the joint venture property and again charged the interest payable thereunder to the account of the joint venture with the Third Party.

30 **PARTICULARS OF INTEREST PAID AS AFORESAID**

(1)	To Davie Boag & Co. Ltd. interest of \$3,049,380.00 at 8% per annum from July 1963 to December 1965	\$365,925.00
(2)	To Bank of East Asia Ltd. interest on the 1st loan of \$1,500,000.00 from the 22nd of July 1964 to the 22nd of March 1965	\$120,000.00
(3)	To Bank of East Asia Ltd. interest on the 2nd loan of \$1,500,000.00 from the 8th of January 1965 to the 7th day of March 1965	\$ 45,000.00

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- (d) Further, the Third Party was in breach of its fiduciary duty as a managing partner and in breach of its obligation as attorney of the joint venture sold the properties particularised hereunder at a gross undervalue. The market values of the properties in question at the material time ranged from about \$80.00 per sq. ft. to \$120.00 per sq. ft.

PARTICULARS

WAI LEE BUILDING:—

- | | |
|---|----|
| (1) Block No. 7 on the 21st floor
(area: 372.46 sq. ft.)
Purchaser: Wong Suet Fong
Sale price: \$20,607.00 (\$55.33 per sq. ft.)
Assignment dated 20.7.1970
Market value: \$80.00 per sq. ft.
Undervalue: \$24.67 per sq. ft. | 10 |
| (2) Block No. 4 on the 17th floor
(area: 325.95 sq. ft.)
Purchaser: Cheung Kung Sze
Sale price: \$19,601.00 (\$60.13 per sq. ft.)
Assignment dated 10.9.1970
Market value: \$92.00 per sq. ft.
Undervalue: \$31.87 per sq. ft. | 20 |
| (3) Block No. 4 on the 22nd floor
(area: 305.32 sq. ft.)
Purchaser: United Chinese Bank Ltd.
Sale price: \$19,278.00 (\$63.14 per sq. ft.)
Assignment dated 11.2.1971
Market value: \$110.00 per sq. ft.
Undervalue: \$46.86 per sq. ft. | |
| (4) Block No. 6 on the 22nd floor
(area: 351.07 sq. ft.)
Purchaser: United Chinese Bank Ltd.
Sale price: \$21,672.00 (\$61.73 per sq. ft.)
Assignment dated 11.2.1971
Market value: \$110.00 per sq. ft.
Undervalue: \$48.27 per sq. ft. | 30 |
| (5) Block No. 15 on the 14th floor
(area: 308.30 sq. ft.)
Purchaser: United Chinese Bank Ltd.
Sale price: \$17,304.00 (\$56.13 per sq. ft.)
Assignment dated 26.2.1971
Market value: \$110.00 per sq. ft.
Undervalue: \$53.87 per sq. ft. | 40 |

10	<p>(6) Block No. 5 on the 22nd floor (area: 329.53 sq. ft.) Purchaser: United Chinese Bank Ltd. Sale price: \$21,042.00 (\$63.85 per sq. ft.) Assignment dated 26.2.1971 Market value: \$110.00 per sq. ft. Undervalue: \$46.15 per sq. ft.</p> <p>(7) Block No. 5 on the 3rd floor (area: 355.00 sq. ft.) Purchaser: Leung Shing Sheung Sale price: \$11,460.00 (\$61.73 per sq. ft.) Assignment dated 23.6.1970 Market value: \$77.00 per sq. ft. Undervalue: \$15.27 per sq. ft.</p>	<p>Supreme Court of Hong Kong High Court</p> <p>No. 7</p> <p>Re-Re-Amended Reply to Third Party's Defence to the Plaintiff's claim dated 30.11.1979</p>
20	<p>(8) Block No. 6 on the 14th floor (area: 372.32 sq. ft.) Purchaser: Ng Wai Hing Sale price: \$19,990.40 (\$53.69 per sq. ft.) Assignment dated 17.6.1970 Market value: \$77.00 per sq. ft. Undervalue: \$23.21 per sq. ft.</p>	
30	<p>(9) Block No. 1 Po Lee Building, 12th floor Purchaser: Sum May Hung Sale Price: \$27,000.00 Date of Assignment: 15th March 1975 Market value: \$60,000.00</p> <p>(10) Block No. 6 Po Lee Building, 12th floor Purchaser: Chu Fun alias Chu To Fun Sale price: \$21,730.40 Date of Assignment: 13th August 1973 Market value: \$65,000.00</p> <p>(11) Block No. 1 Po Lee Building, 13th floor Purchaser: Leung Kam Tin Sale price: \$25,000.00 Date of Assignment: 14th July 1975 Market value: \$70,000.00</p>	

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- (e) The Third Party has not sold the following properties of the partnership, the value whereof amounts to \$6,553,911.50.

PO LEE BUILDING:—

- (1) Ground floor: Shops C & D
Shops E & F
- (2) 13th floor: Flat No. 9
- (3) Roof floor:
- (4) 2/1335 shares of basement of Po Lee & Wai Lee Building.

WAI LEE BUILDING:—

- (1) Ground floor: Shops A & B
- (2) 6th floor: Flat No. 18
- (3) 8th floor: Flat No. 21
- (4) 9th floor: Flat No. 10
- (5) 13th floor: Flat No. 20
- (6) 14th floor: Flat No. 8
- (7) 15th floor: Flat No. 7
- (8) 16th floor: Flat No. 10
- (9) 1st-21st floor: Flat No. 1
Flat No. 3
- (10) 22nd floor: Flat No. 1
Flat No. 3
- (11) 23rd floor: Flat No. 1
Flat No. 3
- (12) Roof floor:

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8A. Further or in the alternative, the Plaintiff denies that the purchase price of \$1,262,734.00 had not been passed to the Third Party by the Defendant and says that by the 1st Sale and Purchase Agreement the Third Party had acknowledged the receipt of the said sum from the Defendant. If, which is not admitted, the said sum had not been paid, the Plaintiff did not know about it. Further, if, which

is not admitted, the said sum had not been paid and was payable to the Third Party, the Plaintiff says:

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(a) The Third Party and the Defendant are, and each of them is, estopped by the said acknowledgement of receipt (as against the Plaintiff) from denying receipt of the said sum or any part thereof has not been paid to the Third Party; and

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(b) The Third Party is by reason of the matters set out in paragraph 11 hereunder and paragraph 10 of the Amended Statement of Claim estopped from denying that the 2nd Sale and Purchase Agreement ought to be performed.

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9. In further answer to paragraph 8(ii)(b)(5)(4) of the Re-Re-Amended ~~Statement~~ of Defence, the Plaintiff says that the contributions which the Third Party alleges the Defendant was liable to make were intended as contributions towards payment of the purchase price of the property purchased from Davie Boag & Co. Ltd. as aforesaid. The Third Party as manager of the joint venture with the Defendant had sold numerous flats and units in the joint venture property and the proceeds of sale thereof were sufficient to pay and some of the said proceeds were in fact used by the Third Party to pay off the said purchase price without requiring any contribution from either of the joint venture partners.

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PARTICULARS

(a) On or about the 10th January 1963 when it is alleged that the Defendant was required to contribute to the joint venture the sum of \$387,854.19, the Third Party had or should have had in its possession partnership funds greatly in excess of twice that sum and it paid to Davie Boag & Co. Ltd. the sum of \$775,708.38 from this sum without requiring any contribution from either joint venture partner.

(b) On or about the 30th of June 1963 when it is alleged that the Defendant was required to contribute to the joint venture \$520,635.81, the Third Party as such manager as aforesaid had or should have had in its possession partnership funds greatly in excess of twice that sum and it paid to Davie Boag & Co. Ltd. the sum of \$1,053,271.62 without requiring any contribution from either joint venture partner.

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(c) In or about the month of July 1964 when the Third Party by arrangement with the said Davie Boag & Co. Ltd. paid to Davie Boag & Co. Ltd. the sum of \$1,293,350.22 being a part of the payment due on or before the 30th of December 1964, the Third Party had or should have had in its possession funds belonging to the partnership far in excess of the said sum and could and should have paid Davie Boag & Co. Ltd. without requiring any contribution from the Defendant. The Third Party in fact made no such contribution

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itself but, instead of paying the said sum out of partnership funds as aforesaid, borrowed the sum of \$1,500,000.00 from Bank of East Asia Ltd. on the security of joint venture property to make the said payment.

- (d) In or about the month of January 1965 the Third Party paid to the said Davie Boag & Co. Ltd. the balance of the sum payable on or before the 30th of December 1964 amounting to \$1,756,074.78. At the said time the Third Party had or should have had in its possession funds belonging to the partnership sufficient to pay and could and should have paid the said sum to Davie Boag & Co. Ltd. from such funds without requiring contribution from the Defendant. Neither the Defendant nor the Third Party made any contribution to the said sum and the Third Party instead of paying the said sum out of partnership funds borrowed the sum of \$1,500,000.00 from Bank of East Asia Ltd. on the security of a mortgage of the partnership property and paid Davie Boag & Co. Ltd. therefrom.

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10. In answer to paragraph 8(ii)(b)(6)(5) of the Re-Re-Amended Defence the Plaintiff denies that the 2nd Sale and Purchase Agreement was executed in order to defraud the creditors of the Defendant and repeats paragraphs 7, 8 and 9 hereof. The Plaintiff does not admit that the Third Party is a creditor of the Defendant to the extent of \$4,299,890.05 or at all.

20

11. In further answer to paragraph 8 of the Re-Re-Amended Defence the Plaintiff says that at all material times the Third Party knew of the sale of the said premises by the Defendant to the Plaintiff and by its acts acquiesced in such sale.

PARTICULARS

The Third Party with full knowledge of such sale, acted as agents for the Plaintiff in the re-sale and leasing of flats and units in the said premises for and on behalf of the Plaintiff. Further the Plaintiff repeats paragraph 10 of the Amended Statement of Claim.

12. In answer to paragraph 11(i) of the Re-Re-Amended Defence, the Plaintiff says as follows:—

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- (i) The price of flat 701 should be \$41,506.00 instead of \$35,630.00 as pleaded.
- (ii) The price of flat 2001 should be \$38,972.00 instead of \$28,972.00 as pleaded.
- (iii) The price of flat 2003 should be \$28,904.40 instead of \$25,904.40 as pleaded.
- (iv) The Plaintiff does not admit that the total amount of instalments received by the Third Party is as set out therein.

- (v) The figure "\$17,408.80" below the words "Amount paid to the Defendant by Third Party" should read "\$18,358.80".
- (vi) Parts of the purchase price of 3 of the flats mentioned therein, namely, 1001, 2001 and 2003 totalling \$34,070.20 had been debited by the Third Party against the Defendant and/or Plaintiff after cancellation by the purchasers.
- (vii) No admission is made as to what if any sums of money have been paid by the Third Party to the Plaintiff in relation to any of these flats.

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10 13. In answer to paragraph 11(ii) of the Re-Re-Amended Defence, the Plaintiff says as follows:—

- (i) It is denied that there was any act of exchange involved in the Third Party assigning other flats to purchasers as alleged.
- (ii) The agreements between the purchasers and the Third Party in relation to the flats in question were simply cancelled.
- (iii) If, which is denied, there was any inability on the part of the Defendant to convey the legal estate in the flats in question, such inability was caused solely by the default or acts on the part of the Third Party.

20 (iv) If, which is denied, there was any inability to convey the legal estate as aforesaid, such inability had nothing to do with the Plaintiff.

(v) If, which is denied, there was any act of exchange as alleged, the same was done without the authority by the Defendant and/or the Plaintiff.

14. (i) By reason aforesaid it is denied that the Third Party has any entitlement to the flats in question as pleaded in paragraph 11(iv) of the Re-Re-Amended Defence or at all.

30 (ii) If, which is denied, the Third Party had acquired any interest in the flats in question, the acquisition of such interest is not supported or evidenced by any memorandum in writing signed by the party to be charged, or its agent.

(iii) The Third Party gave possession of the flats to the Defendant, alternatively to the Plaintiff.

15. In answer to paragraph 11(v) of the Re-Re-Amended Defence, if which is denied, the Plaintiff is liable to pay to the Third Party the sum of \$189,269.50 as

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pleaded, or, any sum, the Plaintiff says that such debt is statute-barred by virtue of section 4 of the Limitation Ordinance, Cap. 347.

16. It is denied that at law the Third Party had or could have had any lien as alleged in paragraph 11(vii) of the Re-Re-Amended Defence or at all. The Third Party gave possession of the flats to the Defendant, alternatively the Plaintiff, and thereby lost any lien which it might have had.

17. Further or in the alternative, if, which is denied, the Plaintiff is liable to pay any sum to the Third Party, the Plaintiff will seek to set off against the same the sum of \$161,489.90 being instalments collected by the Third Party on behalf of the Plaintiff in respect of the sale of the following flats, namely, 203, 303, 403, 601, 603, 703, 1003, 1203, 1501, 1801 and 1803.

10

DEFENCE TO COUNTERCLAIM

18.12. The Plaintiff repeats the Amended Statement of Claim herein and the Re-Amended Reply hereinabove and denies the Third Party's Counterclaim.

~~Dated the 12th day of October, 1976.~~

~~sd. Patrick Fung
Counsel for the Plaintiff~~

~~sd. Patrick Fung
Counsel for the Plaintiff~~

~~Counsel for the Plaintiff
Dated the 21st day of December 1978~~

20

sd. Patrick Fung
Counsel for the Plaintiff
Dated the 30th day of November, 1979

**RE-RE-RE-AMENDED STATEMENT OF CLAIM OF THE
DEFENDANT AGAINST 3RD PARTY**

Supreme Court
of Hong Kong
High Court

No. 8

Re-Re-Re-
Amended
Statement of
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against 3rd
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dated 14.11.1979

1. The Defendant is a company incorporated with limited liability in Hong Kong and is in liquidation. Its registered office is situate at Room 155, Central Building Victoria in the Colony of Hong Kong.

2. The 3rd Party is a company incorporated with limited liability in Hong Kong with its registered office situate at 1202-3 Bell House, Nos. 525-543 Nathan Road Kowloon in the said Colony of Hong Kong.

10 3. By an Agreement in writing dated 25th October 1961 made between Davie Boag & Co. Ltd. of the one part and one Mok Tsze Fung of the other part the said Davie Boag & Co. Ltd. agreed to sell and the said Mok Tsze Fung agreed to purchase, inter alia, the piece or parcel of ground situate at and being at Quarry Bay registered in the Land Office as the Remaining Portion of Section B of Quarry Bay Marine Lot No. 1 (hereinafter called "the said property").

4. By a Declaration of Trust dated 25th October 1961 the said Mok Tsze Fung declared that he entered into the aforesaid agreement as a trustee of the 3rd Party.

20 5. At the time of the said Declaration of Trust there was already an oral agreement between the said Mok Tsze Fung and the 3rd Party to form a syndicate for the purposes pleaded in the next paragraph hereinbelow.

6. The said Mok Tsze Fung subsequently formed a syndicate for the purpose of entering into a partnership in equal shares with the 3rd Party to acquire, develop and turn to account the said property. At all material times Mok Tsze Fung and/or Far East Land Investment & Guarantee Co. Ltd. acted as agents for the syndicate.

7. The said syndicate then entered into partnership with the 3rd Party for the purposes aforesaid.

30 8. In about the month of February 1962 the said syndicate the 3rd Party orally agreed that there should be an interim division of some of the assets of the said partnership. By the terms of such agreement each of the said partners would be entitled to two blocks of the said development.

9. At about the same time, an oral agreement was entered into between the said syndicate and the Plaintiff whereby the said syndicate agreed to sell the said two blocks to the Plaintiff for \$771,875.00. The said sum has been paid by the plaintiff to the syndicate.

10. On the 4th December 1962 the Defendant company was incorporated. After such incorporation the Defendant took over the said syndicate and by a Partnership Agreement dated 31st December 1962 (hereinafter called "the said Partnership Agreement") the Defendant agreed to enter into a single venture with the 3rd Party to purchase, develop, and turn to account the said Lot.

11. Immediately prior to or upon the incorporation of the Defendant, the said oral agreement was varied to the extent that:

- (a) the 3rd Party would take \$1,135,560.00 out of the income of the said partnership by then received instead of two blocks as aforesaid and
- (b) the Defendant would after incorporation purchase two of the said blocks for the sum of \$1,261,734.00 and would be credited in such purchase with the sum of \$1,135,560.00 leaving a balance of \$126,173.40 payable.

10

12. Pursuant to the said agreement varied as aforesaid the Defendant entered into an Agreement with the 3rd Party dated 17th day of January 1963 (hereinafter referred to the said Sale and Purchase Agreement) whereby the 3rd Party agreed to sell to the Defendant the messuages or buildings to be erected on the property as more fully described therein together with the full exclusive right to hold and enjoy the 47 flats in the building known as Wai Lee Building to be erected on the said property namely the said two blocks. The Defendant will refer at the trial to the said Sale and Purchase Agreement for its full terms and effect. The property agreed to be sold under the said Sale and Purchase Agreement will hereafter be called "the said premises".

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13. The said Sale and Purchase Agreement stipulated that the purchase price of the said premises would be \$1,261,734.00 whereof \$1,135,560.00 was acknowledged to have been paid by the Defendant to the 3rd Party as deposit and part payment of the purchase price and the balance in the sum of \$126,173.40 was to be paid on completion as thereinafter provided.

30

14. Clause 5 of the said Sale and Purchase Agreement stipulated that upon issuance of the Occupation Certificate in respect of the said premises and payment of the purchase price by 3rd Party and all other necessary parties (if any) would execute a proper assignment of the said premises to the Defendant or its successors or assigns free from incumbrances.

15. Clause 12 of the said Sale and Purchase Agreement stipulated that in the event of the 3rd Party failing to complete the sale and accordance with the terms of the said Sale and Purchase Agreement it would not be necessary for the Defendant to tender an assignment to the 3rd Party for execution before taking proceedings for specific performance of the said Sale and Purchase Agreement.

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16. Pursuant to the oral agreement matters pleaded in paragraph 9 above, an

agreement dated 20th February 1963 was entered into between the Defendant and the Plaintiff whereby the Defendant agreed to sell and the Plaintiff agreed to purchase the said premises for the price of \$771,875.50 acknowledged to have been received and to complete the said sale and purchase upon the issuance of the Occupation Certificate.

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17. The said Occupation Certificate was issued on the 27th October 1967.

18. Possession of the said premises was given to the Plaintiff and/or its sub-purchasers or lessees by the direction of the Defendant shortly after the said Occupation Permit was issued.

10 19. However, the area of the said premises fell short of the area agreed to be sold by 296.50 square feet. Under Clause 4 of the said Sale and Purchase Agreement the 3rd Party must abate the purchase price by a sum calculated on the purchase price per square foot below the area agreed to be sold. The Defendant therefore is as against the 3rd Party entitled to an abatement of the price in the sum of \$20,716.46 as particularised hereinbelow.

PARTICULARS

Occupation area specified in Clause 4(1) of the Agreement between Sang Lee and Ball Land		18,059 sq. ft.
Purchase price	\$1,261,734.00	
20 Purchase price per sq. ft.	69.87	
Actual Area by measurement		17,762.50 sq. ft.
Shortage of area		296.50 sq. ft.
Abatement in price (\$69.87 x 296.50)	\$ 20,716.46	
	=====	

30 20. Further under the said Clause 4 the 3rd Party must within 912 working days from the date of completion of piling complete the building, in default of which the Defendant would be entitled to interest at 1% per month or on moneys paid under the Sale and Purchase Agreement. By reason of the above matters the Defendant is entitled to interest for late completion in the total sum of \$95,387.04 computed in the matter particularised hereinbelow or alternatively such other sum as the Court or Registrar may assess.

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Piling completed on 3rd March 1964

O.C. issued on 27th October 1967

Supreme Court of Hong Kong High Court No. 8 Re-Re-Re- Amended Statement of Claim of the Defendant against 3rd Party. dated 14.11.1979	Number of days from 3.3.1964 to 27.10.1967 Working days (excluding days of adverse weather) from 3.3.1974 to 27.10.1967 Stipulated days for completion Delay Interest for late completion at 1% per month (\$1,135,560 x 1/100 x 252/30)	1334 days 1164 days 912 days 252 days \$95,387.04 =====
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21. Further, the Defendant was at all material times and is willing and able to perform its obligation under the said Sale and Purchase Agreement. The 3rd Party, however, was unwilling or unable to complete free from incumbrances. 10

22. Despite repeated requests, however, and in breach of agreement, the 3rd Party refused and/or failed to execute an assignment of the said premises in favour of the Defendant or its nominees.

23. The Defendant further says that under the said Partnership Agreement the 3rd Party was given the management of the business of the joint venture and agreed, inter alia, to devote its whole time and attention thereto and to carry on and manage the same for the common benefit of the parties to the utmost of its skill and ability and to be faithful and just to the other in all dealings and transactions. By Clause 13 thereof the 3rd Party agreed that it would keep proper books and accounts of all its transactions on behalf of the said business. Further, by a Power of Attorney dated 31st December 1962 the Defendant appointed the 3rd Party as its Attorney for, inter alia, the sale or disposal of the said property or part thereof and matters incidental thereto. In breach of agreement and of its fiduciary duties thereunder, the 3rd Party sold or caused part of the said property to be sold but has not accounted to the Defendant in respect of the proceeds of sale. 20

24. Further, despite repeated requests, the 3rd Party has failed to render any or any proper accounts to the Defendant in respect of its dealings with the said property.

25. Further, the 3rd Party has failed to render proper accounts of the joint venture to the Defendant and, in so far as may be necessary the Defendant will rely on the following matters and on the matters pleaded in paragraph 26 and 27 below:— 30

- (a) The 3rd Party was the manager of the Joint Venture as aforesaid but it did not establish a bank account for the Joint Venture and instead paid all sums received by it on behalf of the Joint Venture into its own bank accounts and purportedly paid the accounts of the Joint Venture from these same bank accounts. Payments purportedly made

by the 3rd Party in respect of the partnership were debited and amounts received were credited to the 3rd Party's current account with the Joint Venture in the ledgers of the Joint Venture kept by the 3rd Party.

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- (b) No journal voucher or journal book, which record or should have recorded, inter alia, the price at which each unit or flat was sold, has been produced by the 3rd Party for inspection by the Defendant.
 - (c) Up to 31/3/1963 transactions were entered in the ledgers by the 3rd Party according to the dates such transactions took place. But for the years ended 31/3/1964 to 1969, the 3rd Party's said current account, as it now appears, was irregularly kept in that receipts and payments were not entered item by item but purported transactions were summarised and entered in totals on the last day of the financial year despite the fact that corresponding entries on the deposit side of the Double Entry Book-Keeping System were individually entered item by item in other ledger accounts.
 - (d) Mortgages and bank loans charged upon the property of the joint venture were not or not adequately reflected in the ledgers of the joint venture.

20 26. The Defendant further says that the 3rd Party caused the Joint Venture to incur unnecessary liability for interest in the following manner:—

- 30
- (a) by Clause 2(d) of the Agreement for Sale and Purchase with Davie Boag & Co. Ltd. referred to in paragraph 3 hereof, the balance of the purchase price amounting to \$3,045,600 was payable by the 3rd Party to Davie Boag & Co. Ltd. on completion of the purchase of the said property and by clause 3 of the said Agreement interest was payable on the said sum of \$3,045,600 from the date when vacant possession of the said premises was made available to the 3rd Party until completion of the purchase at the rate of 8% per annum.
 - (b) vacant possession of the said premises was made available to the 3rd Party in or about the month of July 1963.
 - (c) at the time when vacant possession was made available as aforesaid the 3rd Party had or should have had a very large sum of money belonging to the Joint Venture in its possession and the 3rd Party could and should have abated interest to Davie Boag & Co. Ltd. by paying to Davie Boag & Co. Ltd. the whole or a portion of the said balance of the purchase price but the 3rd Party failed to abate interest as aforesaid and further failed to account to the Joint Venture for any interest earned from the credit balance of the Joint Venture with the 3rd Party;
 - (d) in consequence of the 3rd Party's failure to abate interest payable to
- 40

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Davie Boag & Co. Ltd. the joint Venture incurred liability and paid the sum of \$365,925.60 to Davie Boag & Co. Ltd. as interest on the said sum of \$3,045,600 for the period from July 1963 to December 1965.

- (e) when a part of the said balance of purchase price namely the sum of \$1,293,305.22 was paid to Davie Boag & Co. Ltd. in July of 1964, the 3rd Party had or should have had sufficient funds belonging to the Joint Venture to pay the said sum to Davie Boag & Co. Ltd. Instead of paying the sum from Joint Venture funds in its possession, the 3rd Party on the 22nd of July 1964 borrowed from Bank of East Asia Ltd., the sum of \$1,500,000 on the security of a mortgage of the Joint Venture property and the 3rd Party charged the interest payable under this mortgage to the account of the Joint Venture with the 3rd Party. Furthermore when the remaining balance of the purchase price payable to Davie Boag & Co. Ltd. was paid in the month of January 1965 the 3rd Party had or should have had funds belonging to the Joint Venture sufficient to pay the said balance of the purchase price and yet the 3rd Party again borrowed a further sum of \$1,500,000 from Bank of East Asia Ltd., on the security of a Further Charge of the Joint Venture property and again charged the interest payable thereunder to the account of the Joint Venture with the 3rd Party.

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PARTICULARS OF INTEREST PAID AS AFORESAID

- | | |
|---|--------------|
| (1) To Davie Boag & Co. Ltd. interest on \$3,049,380.00 at 8% per annum from July 1963 to December 1965 | \$365,925.60 |
| (2) To Bank of East Asia Ltd. interest on the 1st loan of \$1,500,000 from the 22nd of July 1964 to the 22nd of March 1965 | \$120,000.00 |
| (3) To Bank of East Asia Ltd. interest on the 2nd loan of \$1,500,000 from the day of 8th January 1965 to the 7th day of March 1965 | \$45,000.00 |

30

27. Further, the 3rd Party received a sum of \$135,000 expressed to be "commission" from the contractor of the Joint Venture namely Nam Sang Building Construction Co. Ltd. (hereinafter called "Nam Sang") on 31st August 1965 in respect of the Joint Venture development but fraudulently failed to account for the same or any part thereof to the partnership or in the Joint Venture ledgers kept by the 3rd Party. Further and/or alternatively the Defendant says that the 3rd Party has fraudulently caused an entry to be made in the Joint Venture ledgers to the effect that on 31st August 1965 a sum of \$150,000 was paid out to the said Nam Sang ~~Building Construction Co. Ltd.~~, when in truth and in fact no such sum was

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paid out and if any sum was paid out on the said date to ~~the said Nam Sang Building Construction Co. Ltd.~~ the same did not exceed \$15,000.

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28. Further without the knowledge or consent of the Defendant, the 3rd Party purported to sell the following properties belonging to the partnership to its employees or agents one Wong Wing Yiu and one Cheung Shui Sang at such prices as would enable them to make an inordinate profit thereon for themselves purportedly as confirmors without accounting to the partnership for the same or any part thereof.

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10	No of Flat	Date of Assignment	Alleged price of sale to	Confirmor's profit
	F15 (1) Flat No. 11 7th Floor, Wai Lee Building	Purchaser – Chu Soo Lan, 28th October 1970 Confirmor – Cheng Shui Sang	i) Confirmor – \$19,256.00 ii) Purchaser – \$28,500.00	\$ 9,244.00
	F17 (2) Flat No. 8 8th Floor, Wai Lee Building	Purchaser – Hau Chi Ngai and Cheng Wai Lai, 29th October 1970 Confirmor – Cheng Shui Sang	i) Confirmor – \$21,420.00 ii) Purchaser – \$30,500.00	\$ 9,080.00
20	F3 (3) Flat No. 21 12th Floor, Wai Lee Building	Purchaser – Betty Hee Scott, 18th June 1970 Confirmor – Wong Wing Yiu	i) Confirmor – \$16,688.00 ii) Purchaser – \$21,000.00	\$ 4,312.00
	F13 (4) Flat No.19 14th Floor, Wai Lee Building	Purchaser – Lester Ma, 22nd October 1970 Confirmor – Cheng Shui Sang	i) Confirmor – \$16,184.00 ii) Purchaser – \$23,500.00	\$ 7,316.00
30	F18 (5) Flat No. 7 16th Floor, Wai Lee Building	Purchaser – Cheng Kwok Po Confirmor – Wong Wing Yiu	i) Confirmor – \$23,310.00 ii) Purchaser – \$38,000.00	\$ 14,690.00
	F21 (6) Flat No. 8 16th Floor, Wai Lee Building	Purchaser – Chow Chu, 30th October, 1970 Confirmor – Wong Wing Yiu	i) Confirmor – \$21,420.00 ii) Purchaser – \$31,000.00	\$ 9,580.00
40				

Supreme Court of Hong Kong High Court No. 8	F29 (7)	Flat No. 6, 9th Floor, Wai Lee Building	Purchaser – Mui Wai Kam, 2nd July 1971 Confirmor – Cheng Shui Sang	i) Confirmor – \$22,428.00 ii) Purchaser – \$39,000.00	\$16,572.00	
	F10 (8)	Flat No. 14 3rd Floor, and Flat no. 14 15, 4th 3rd Floor, Wai Lee Building	Purchaser – Leung How Sum and Leung Lun 21st October 1970 Ho Sau Shou Shan 21st October 1970. Confirmor – Cheng Shui Sang	i) Confirmor – \$18,032.00 ii) Purchaser – \$28,000.00 i) Confirmor – \$18,088.00 ii) Purchaser – \$28,000.00	\$ 9,968.00 \$ 9,912.00	10
	F24 (9)	Flat No. 23 1st Floor, Wai Lee Building	Purchaser – So Wen Sin 22nd January 1971 Confirmor – Cheng Shui Sang	i) Confirmor – \$20,260.00 ii) Purchaser – \$30,000.00	\$ 9,240.00	
	F27 (10)	Flat No. 1205	Purchaser – John Chuang, 23rd January, 1971 Confirmor – Cheng Shui Sang	i) Confirmor – \$29,530.00 ii) Purchaser – \$35,100.00	\$ 5,520.00	20
	F5 (11)	Flat No. 409	Purchaser – Wong Joi Hing, 21st October, 1970 1st Confirmor – Au Yeung Hau 2nd Confirmor – Wong Wing Yiu	i) 1st Confirmor – \$22,796.00 ii) 2nd Confirmor – \$23,500.00 iii) Purchaser – \$30,000.00	\$ 704.00 \$ 6,500.00	

29. Further, the 3rd Party was in breach of its fiduciary duty and as a managing partner and in breach of its obligation as an attorney under the said Power of Attorney sold the properties particularised hereunder at a gross undervalue. The market values of the properties in question at the material time ranged from about \$80.00 per sq. ft. to \$120.00 per sq. ft. 30

PARTICULARS

WAI LEE BUILDING: –

- (1) Block No. 7 on the 21st floor (area: 372.46 sq.ft.)
Purchaser – Wong Suet Fong
Sale price: \$20,607.00 (\$55.33 per sq. ft.)

	Assignment dated 20/7/1970 Market value: \$80.00 per sq. ft. about \$74 Undervalue: \$24.67 per sq. ft. about \$18.67 per sq. ft.	Supreme Court of Hong Kong High Court
	(2) Block No. 4 on the 17th floor (area: 325.95 sq. ft.) Purchaser – Cheng Kung Sze Sale price: \$19,601.00 (\$60.13 per sq. ft.) Assignment dated 10/9/1970 Market value: \$92.00 per sq. ft. about \$74. Undervalue: \$21.07 per sq. ft. about \$13.87	No. 8 Re-Re-Re- Amended Statement of Claim of the Defendant against 3rd Party.
10	(3) Block No. 4 on the 22nd floor (area: 305.32 sq. ft.) Purchaser – United Chinese Bank Ltd. Sale price: \$19,278.00 (\$63.14 per sq. ft.) Assignment dated 11/2/1971 Market value: \$110.00 per sq. ft. at least \$75 Undervalue: \$46.00 per sq. ft. at least \$11.96	dated 14.11.1979
20	(4) Block No. 6 on the 22nd floor (area: 351.07 sq. ft.) Purchaser – United Chinese Bank Ltd. Sale price: \$21,672.00 (\$61.73 per sq. ft.) Assignment dated 11/2/1971 Market value: \$110.00 per sq. ft. at least \$75 Undervalue: \$43.27 per sq. ft. at least \$13.27	
	(5) Block No. 15 on the 14th floor (area: 308.30 sq. ft.) Purchaser – United Chinese Bank Ltd. Sale price: \$17,304.00 (\$56.14 per sq. ft.) Assignment dated 26/2/1971 Market value: \$110.00 per sq. ft. at least \$75 Undervalue: \$53.87 per sq. ft. at least \$18.96	
30	(6) Block No. 5 on the 22nd floor (area: 329.53 sq. ft.) Purchaser – United Chinese Bank Ltd. Sale price: \$21,042.00 (\$63.85 per sq. ft.) Assignment dated 26/2/1971 Market value: \$110.00 per sq. ft. at least \$75 Undervalue: \$46.15 per sq. ft. at least \$11.15	
	(7) Block No. 5 on the 3rd floor (area: 355.00 sq. ft.) Purchaser – Leung Shing Sheung Sale price: \$21,460.00 (\$61.73 per sq. ft.) Assignment dated 23/6/1970 Market value: \$77.00 per sq. ft. about \$74 Undervalue: \$16.27 per sq. ft. about \$12.27	
40	(8) Block No. 6 on the 14th floor (area: 372.32 sq. ft.) Purchaser – Ng Wai Hing	

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Sale price: \$19,990.40 (\$53.69 per sq. ft.)
Assignment dated 17/6/1970
Market value: \$77.00 per sq. ft. about \$74.00
Undervalue: \$22.31 per sq. ft. about \$20.31

30. The properties in paragraph 3 included those particularised below which have up-to-date not been sold.

PO LEE BUILDING:—

- | | | |
|---|----------------------------|----|
| (1) Ground floor: | Shops C & D
Shops E & F | |
| (2) 13th floor: | Flat No. 9 | 10 |
| (3) Roof floor: | | |
| (4) 2/1335 shares of basement of Po Lee & Wai Lee Building. | | |

WAI LEE BUILDING:—

- | | | |
|----------------------------------|--|----|
| (1) Ground floor: | Shops A & B | |
| (2) 6th floor: | Flat No. 18 | |
| (3) 8th floor: | Flat No. 21 | |
| (4) 9th floor: | Flat No. 10 | |
| (5) 13th floor: | Flat No. 20 | |
| (6) 14th floor: | Flat No. 8 | |
| (7) 15th floor: | Flat No. 7 | 20 |
| (8) 16th floor: | Flat No. 10 | |
| (9) 1st = 21st floor: | Flat No. 1
Flat No. 2 | |
| (10) 22nd floor: | Flat No. 1
Flat No. 2 | |
| (11) 23rd floor: | Flat No. 1
Flat No. 2 | |
| (12) Roof floor: | | |

30a. (i) On respectively 13th August, 16th September and 31st December, 1965 \$180,000.00, \$60,000.00 and a further \$60,000.00 were recorded by the 3rd Party in the Joint Venture Ledger (Defendant's Documents 13 – folio 27 1965/66) as having been paid by the 3rd Party for the account of the Joint Venture to Nam Sang as "gratuities". In truth and in fact, only \$180,000.00 thereof was paid to Nam Sang (by way of a cheque No. 3837861 see counterfoil H-21 of Agreed Documents) and a cash cheque for \$60,000.00 No. 3837885 (see counterfoil H-22 of Agreed documents) was drawn out by the 3rd Party and wrongfully appropriated for its own use, and a further \$60,000.00 was similarly appropriated.

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(ii) On respectively 17th July, 1963 and 29th January, 1964 two sums of \$20,000.00 each were charged to the Joint Venture as having been paid out as "commission for sales" (Defendant's Documents 13 – folio 6 1963/64). In truth and in fact, two cash cheques No. 3609652 (ss counterfoil H-17 of Agreed Documents) and No. 3657869 (see counterfoil H-18 of Agreed Documents) were drawn out to Kwan Sai Tak, an officer of the 3rd Party.

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(iii) The 3rd Party used the monies of the Joint Venture to purchase 20270 piculs of steels at the approximate cost of \$600,000.00 but resold the same to the Nam Sang at \$782,719.34 and wrongfully charged the Joint Venture with the said sum of \$782,719.34 as the costs of steel bars (Defendant's Documents 13-folio 27 1965/66) without accounting for the difference of \$182,719.34, thereby making a secret profit.

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31. By reason of the matters complained of in paragraphs 23, 24, 25, 26, 27, 28 ~~and/or~~ 29 and/or 30a above the Defendant says that the 3rd Party has acted (i) breach of agreement (ii) in breach of its fiduciary duties (iii) in fraud of or otherwise abused the powers entrusted to it by the joint venture as aforesaid and/or (iv) in fraud of the Defendant as a partner in the venture. The Defendant seeks an account on the footing of wilful default.

32. On the 26th November 1971 the Defendant was wound up by the Court pursuant to a Winding-up petition filed on the 5th November 1971 in Companies Winding-up No. 25 of 1971 in the Supreme Court of this Colony.

33. On the 15th day of September 1973, however, the Hon. Mr Justice Cons in the said Winding-up proceedings ordered the Official Receiver and Liquidator of the Defendant to issue a 3rd Party notice against the 3rd Party in these proceedings.

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34. By reason of the 3rd Party's breach of agreement as aforesaid, the Defendant has suffered loss and damage. AND THE DEFENDANT THEREFORE CLAIMS AGAINST THE 3RD PARTY:—

(a) An order for specific performance of the said Sale and Purchase Agreement dated 17th January 1973 with abatement of the price;

Supreme Court
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No. 8

Re- Re-Re-
Amended
Statement of
Claim of the
Defendant
against 3rd
Party.
dated 14.11.1979

- (b) An order that the 3rd Party pursuant to Clause 5 of the said agreement do cause an assignment in favour of the Plaintiff or alternatively the Defendant to be executed by the 3rd Party herein and all other necessary parties;
- (c) Damages for breach of the said Sale and Purchase Agreement including but not restricted to an indemnity for all damages and costs which may be awarded to the Plaintiff in these proceedings;
- (cc) Damages for breach of the partnership agreement;
- (ccc) Damages for fraud and/or breach of fiduciary duties;
- (d) An account of the joint venture between the Defendant and the 3rd Party and the proceeds of sale and certain parts of the said property received by the 3rd Party for the Defendant;
- (dd) Further and/or alternatively an account of the Joint Venture on the footing of wilful default;
- (e) Such further and/or other relief as may be just;
- (f) Costs.

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sd. Denis Chang
Counsel for the Defendant

**FURTHER RE-RE-AMENDED DEFENCE AND COUNTERCLAIM
OF THE THIRD PARTY TO THE DEFENDANT'S CLAIM**

Supreme Court
of Hong Kong
High Court

No. 9

Further Re-Re-
amended
Defence and
Counterclaim
of the third
party to the
Defendant's
claim
dated 8.2.1979

1. Paragraphs 1 to 7 of the Amended Statement of Claim of the Defendant are admitted.
2. No admission is made as to Paragraphs 8 or 9 of the Amended Statement of Claim of the Defendant.
3. Paragraph 10 of the Amended Statement of Claim of the Defendant is admitted.
- 10 4. Save that it was agreed between the Defendant and the Third Party that the Defendant would after incorporation purchased two of the said blocks for the sum of \$1,261,734.00 no admission is made as to Paragraph 11 of the Amended Statement of Claim of the Defendant.
5. Save that it is admitted that the sale and purchase agreement dated the 17th January 1963 was made between the Defendant and the Third Party (hereinafter referred to as the 'first sale and purchase agreement'), no admission is made as to Paragraph 12 of the Amended Statement of Claim of the Defendant.
- 20 5a. At the time of the execution of the 1st sale and purchase agreement, Kwan Fan Fat on behalf of the Third Party sought and obtained an assurance from S.C. Mok solicitor for the Defendant that whether in the event of the development being less successful than anticipated the Third Party could retain the said two blocks as security, and that despite the receipt clause in the 1st sale and purchase agreement the Third Party could refuse to execute any assignment should there be no profits.
6. As to Paragraph 13 of the Amended Statement of Claim of the Defendant save that the defendant never paid to the Third Party the sum of \$1,135,560.60 or at all, Paragraph 13 of the Amended Statement of Claim of the Defendant is admitted.
- 30 7. Save that, if which is denied the first sale and purchase agreement is enforceable, the Third Party would execute a formal assignment of the said premises upon payment of the full purchase price namely \$1,261,734.00 no admission is made as to Paragraph 14 of the Defendant's Amended Statement of Claim.
8. No admission is made to Paragraph 16 of the Amended Statement of Claim of the Defendant.
9. Paragraph 17 of the Amended Statement of Claim is admitted.
10. No admission is made as to Paragraph 18 of the Amended Statement of Claim of the Defendant.
11. As to paragraph 19 of the Amended Statement of Claim of the Defendant;

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Further Re-Re-
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Defence and
Counterclaim
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party to the
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claim
dated 8.2.1979

(i) It is not agreed that the area of the said premises fell short of the area agreed to be sold by 296.5 sq. ft. or at all.

(ii) Save as aforesaid Paragraph 19 of the Amended Statement of Claim of the Defendant is admitted.

12. No admission is made as to Paragraph 20 of the Amended Statement of Claim of the Defendant. If which is denied, the completion of the building was delayed, the delay was caused by the failure of the Defendant's part to pay its contribution and the said partnership agreement.

13. Paragraph 21 of the Amended Statement of Claim of the Defendant is denied. If which is denied, the 1st Sale and purchase agreement is enforceable the Third Party is ready and willing to assign the said premises to the Defendant on payment of the purchase price of \$1,216,634.00. 10

13A. (i) At the various dates particularized hereinbelow the Third Party acting as agent for the syndicate and for the Defendant entered into sale and purchase agreements to sell the flats set out in the first column hereunder, and in respect of the proceeds of sale thereof paid to the syndicate or to the Defendant the sums set out in the last column hereunder:

Price	Flat No.	Name of Purchasers	Date of Sale	Total Instalment Received	Amount Paid to be Defendant by Third Party
\$31,183.80	503	Lo Yin Ching	11. 5.62	\$19,308.80	\$17,408.80
35,630.00	701	Leung Yin Pui	9. 6.62	34,038.00	28,775.00
41,506.00	801	Fung Chia Chu and Leung Wai Yoa	9. 6.62	27,056.80	25,910.00
31,287.80	803	Fan Yuk Yee	21. 6.62	21,259.80	20,395.80
41,506.00	1001	Lau Yin & Woo Kwai Won	4. 4.62	10,439.00	10,439.00
41,363.00	1101	Tsao Wen Wai	7. 5.62	40,103.00	31,283.00
31,183.80	1103	Tsao Wen Wai	7. 5.62	30,233.80	23,583.80
29,557.80	1703	Cheng Kung Sze	16.10.63	7,842.90	7,842.90
28,972.00	2001	Law Tak Ching	8. 7.63	13,568.00	13,568.00
25,904.40	2003	Law Tak Ching	8. 7.63	10,063.20	10,063.20
					\$189,269.50 =====

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(ii) In respect of some of the flats pleaded in sub-paragraph (i) thereof the purchasers refused to complete the sale when the Defendant was unable to convey the legal estate thereto. Accordingly the Third Party assigned to the purchasers other flats owned by the Joint Venture in exchange for the flats agreed to be sold, crediting to the purchasers the proceeds of sale set out in sub-paragraph (i) hereof. 40

PARTICULARS

**Supreme Court
of Hong Kong
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FLAT	EXCHANGED FOR FLAT NO.
503	B805
701	B306 & 307
801	B1122 & 1123
803	C1312 & 1313
1101 & 1103	B308, B309 & B914
1703	B1704

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Defence and
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(iii) Further, the Third Party on behalf of the Joint Venture upon the request of the purchasers of flats No. 1001, 2001 and 2003 refunded the instalments paid by them for the said flats.

(iv) By reason of the matters aforesaid if which is denied the 1st sale and purchase agreement is enforceable the Third Party is entitled to be assigned the flats referred to in sub-paragraphs (ii) and (iii) hereto upon payment of the purchase price.

(v) Further or alternatively, the Defendant is liable to pay to the Third Party on behalf of the Joint Venture the value of the flats pleaded in sub-paragraph (ii) hereof and/or to refund to the Third Party as aforesaid the sum of \$189,269.50 pleaded in sub-paragraph (i) hereof.

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(vi) In so far as the transactions pleaded in sub-paragraphs (ii) and (iii) above took place before the incorporation of the Defendant, the same were adopted by the Defendant after its incorporation.

(vii) Further or alternatively, the Defendant has never refunded to the Third Party or to the Joint Venture any of the proceeds of sale in respect of the flats pleaded in sub-paragraphs (ii) and (iii) above. Third Party has, in law, a lien on the said flats and is entitled to retain the legal estate in respect of the said proceeds.

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14. Paragraph 22 of the Amended Statement of Claim of the Defendant is denied save that the Third Party refused and failed to execute an assignment of the said premises in favour of the Defendant or at all.

15. As to Paragraph 23 of the Amended Statement of Claim of the Defendant it is denied that the Third Party did not sell or cause part of the said property to be sold and/or has failed to account to the Defendant for the same in respect of the proceeds of the sale.

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Defence and
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of the third
party to the
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16. Paragraph 24 of the Amended Statement of Claim of the Defendant is denied.

17. Paragraphs 25, 26 and 27 of the Statement of Claim of the Defendant are admitted.

18. The Defendant was incorporated on 4th December 1962 allegedly with a fully paid up capital of \$640,000.00 since the incorporation the Defendant had not increased its paid up capital.

19. (i) By the said partnership agreement the Defendant agreed to pay to the Third Party as its contribution the following sums:

\$387,854.10 on or about 15.1.1963

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\$526,635.81 on or before 30.6.1963

(ii) The Defendant has failed and/or refused to pay any of the said instalments.

20. The Defendant never paid for the said premises as alleged or at all.

21. The agreement dated the 20th February 1963 alleged to have been made between the Defendant and the Plaintiff for the sale of the said premises to the Plaintiff for the sum of \$771,875.00 was an agreement made to divest the Defendant of its assets. As the Defendant purchased the said premises for \$1,261,734.00 the said sale to the Plaintiff resulted in a loss of ~~\$489,850.00~~ \$459,850.00 and the Defendant was left in no position to fulfil its obligation towards the Third Party under the said partnership agreement.

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22. (i) At the time of the making of the agreement dated the 20th February 1963, the said Third Party was a creditor of the Defendant to the sum of \$1,261,734.00 under the said sale and purchase agreement and was entitled to be paid the 3 sums pleaded in Paragraph 19 hereof.

(ii) By the purported sale of the said premises to the Plaintiff the Defendant put itself in a position where it could not fulfil its obligation either under the sale and purchase agreement or under the said partnership agreement.

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23. At all material times the Plaintiff knew that the said agreement dated the 20th February 1963 was entered into by the Defendant in order to strip the Defendant's company of its assets.

24. At all material times the Plaintiff knew that the Defendant had not paid to the Plaintiff the said purchase price of \$1,261,734.00 for the said premises or at all.

25. The parties to the agreement dated 20th February 1963 did not and never intended to give effect to the said agreement. The said agreement was a mere sham and was intended as a cloak to disguise the reality which was as follows:—

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of Hong Kong
High Court**

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- (a) The Defendant never had an issued capital of \$640,000.00 or alternatively if the Defendant had an issued capital of \$640,000.00 the sale and purchase agreement dated 20th February 1963 enabled the Defendant to refund its capital to its shareholders.
- (b) Upon incorporation the Defendant was divested of its interest in the 47 flats.
- (c) No real consideration passed from the Plaintiff to the Defendant.
- (d) The transaction was not effected by money or money worth.
- (e) The said sale and purchase agreement dated 20th February 1963 was entered into so that the Defendant could refund capital to the Defendant's shareholders and paid dividends to the same notwithstanding that the Defendant had made no profit.

25(A) In the premises, by reason of the unlawful acts of the Defendant and the Plaintiff as pleaded herein, the sale and purchase agreement of 20th February 1963 is tainted with illegality and is void and/or unenforceable.

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25(A)(a) The 1st sale and purchase agreement was entered into in January 1963 as part of the scheme pleaded in Paragraph 24 and 25 hereof. It was executed by Lai Kwai Tim and Lo Hoi Ming on behalf of the Defendant who have full knowledge of the said scheme, the 1st sale and purchase agreement is accordingly tainted with illegality and is void and unenforceable.

25(A)(b) If which is not admitted the Defendant had at any material time lent to the Defendant's shareholders the sum of \$640,000.00 as is now alleged by the Defendant, the said alleged loan was part and partial of the transaction pleaded in Paragraph 25, 25(A) and 25(A)(a) above and infringe the provisions of Section 48(1) of the Companies Ordinance.

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25(B) Further and in the alternative, even if, which is denied that the sale and purchase agreement between the Third Party and the Defendant is enforceable, the Third Party is entitled to a Vendor's lien on the said property in that the Defendant has not paid the purchase price or at all.

- 26. (i) It is denied that the Third Party has failed to render proper accounts of the Joint Venture as alleged or at all.
- (ii) Mr Lee Shiu Man a director of the Defendant was the person who was in charge of the account of the Joint Venture.

- (iii) All income and outgoings of the Joint Venture were entered into the agency account in the books of the Third Party:
- (iv) Save as aforesaid, Paragraph 25 of the Amended Statement of Claim is denied.
27. As to Paragraph 26 of the Amended Statement of Claim
- (i) Paragraph 26(a) is admitted.
- (ii) No admission is made to Paragraph 26(d)
- (iii) (a) In July 1963, the Joint Venture had a credit balance of \$1,569,921.17, the same was kept in hand to help to meet the contingent liability of the Joint Venture. Approximately \$800,000 of which was spent in the purchase of iron required for the building work. 10
- (b) In 1963, the Joint Venture had contingent building costs commitment of approximately \$13,715,750.
- (c) Further or alternatively the Joint Venture did not have sufficient funds to pay David Boag Co. Ltd. as alleged or at all.
- (d) Save as aforesaid, Paragraph 26(c) is denied.
- (iv) No admission is made to Paragraph 26(d).
- (v) It is not admitted that the Third Party had or should have had sufficient funds as alleged or at all. 20
- (vi) The mortgage pleaded in Paragraph 26(e) is admitted.
- (vii) The mortgage pleaded in Paragraph 26(f) is admitted.
- (viii) Save as aforesaid, Paragraph 26 is denied.
- ~~28. (i) The Third Party was appointed as agent for the Joint Venture, as such the Third Party was by the agreement of the defendant entitled to the commission of \$135,000.00 pleaded in Paragraph 27 of the Amended Statement of Claim.~~
28. (i) In answer to Paragraph 27 of the Amended Statement of Claim, the Third Party says that it was entitled to the commission of \$135,000.00 as remuneration for the supervisory services provided to Nam Sang Building Construction Co. Ltd. by the Third Party. 30
- (ii) Nam Sang Building Construction Co. Ltd. was paid \$150,000.00.
- ~~28.~~29. As to Paragraph 28 of the Amended Statement of Claim.

(i) It was denied that the Third Party sold the flats to Wong Wing Yiu or Cheng Shiu Sang at such prices as would enable them to make an inordinate profit as alleged or at all.

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of Hong Kong
High Court

(ii) All the flats pleaded therein were sold before 1963 to customers who might have in turn later sold to Wong Wing Yiu, an employee of the Third Party or Cheng Shiu Sang, not an employee of the Third Party at the time of the sales to the said customers by Third Party the flats were sold at their then current market price.

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Further Re-Re-
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Defence and
Counterclaim
of the third
party to the
Defendant's
claim
dated 8.2.1979

~~29~~:30. As to Paragraph 29 of the Amended Statement of Claim:

(i) It is denied that at the material times, the market values ranged from \$80.00 per sq. ft. to \$120.00 per sq. ft.

(ii) It is denied that the sales were at a gross undervalue as alleged or at all.

(iii) Insofar as the sales to United Chinese Bank Ltd. were concerned, those sales were made at the instigation and with the approval of the Defendant.

~~30~~:31. As to Paragraph 30 of the Amended Statement of Claim the only properties which had not been sold are:

(i) 995-997 King's Road, Basement Nos. 1, 2, 3, 4 and 5.

(ii) 995 King's Road, Ground Floor, Units C, D, E, F and cocklofts.

(iii) 997 King's Road, 15th floor, Flat 1522.

(iv) Save as aforesaid Paragraph 30 is denied.

~~25~~:32. Save as hereinbefore expressly admitted the Third Party denies each and every allegation contained in the Defendant's Amended Statement of Claim.

COUNTERCLAIM

~~26~~:33. The Third Party repeats its defence herein.

~~27~~:34. In the premises, the Third Party is entitled to be paid by the Defendant \$1,261,734.00 before the Third Party is obliged to assign the said premises to the Defendant.

30 ~~28~~:35. Despite repeated requests, the Defendant has failed and/refused to pay the Third Party any of the same pleaded in Paragraph 19 hereof.

~~29~~:36. In the premises, the Third Party is entitled to be paid by the Defendant the sum of \$2,348,100.00.

And the Third Party Counterclaims:—

~~(I) Under Paragraph 27 hereof, \$1,261,734.00.~~

~~(II) Under Paragraph 29 hereof, \$2,438,100.00.~~

~~(III) Alternatively to (I), a declaration that the Defendant is not entitled to an assignment of the said premises before payment by it to the Defendant of the sum of \$1,261,734.00 and interests thereon at such rate and for such period as to the Court may seem just.~~

~~(IV) Interests thereon for such period and at such rate as to the Court may seem just.~~

(V) An order that the sales and purchase agreement dated 20th February 1963 be set aside. 10

(1) A declaration that the agreement dated 17th January 1963 made between the Defendant and the Third Party is not enforceable.

(2) Under paragraph 13(A)(V) hereof, \$189,269.50.

(3) Alternatively to (1), a declaration that the Third Party is entitled to a vendor's lien on the property the subject of the said agreement dated 17th January 1973.

(4) Under paragraph 36 hereof \$2,438,100.00.

(5) A declaration that the Joint Venture is beneficially entitled to Flats 503, 701, 801, 803, 1101, 1103 and 1703 referred to in paragraph 13(A)(ii) hereof. 20

(6) A declaration that the sale and purchase agreement dated 20th February 1963 made between the Plaintiff and the Defendant ought to be set aside.

(7) An order that the sale and purchase agreement dated 20th February 1963 made between the Plaintiff and the Defendant be set aside.

(8) Interests.

~~Dated this 7th day of May 1975.~~

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~~Robert C. Tang
Counsel for the Third Party~~

~~Dated this 4th day of February 1977.~~

~~Robert C. Tang
Counsel for the Third Party~~

Supreme Court
of Hong Kong
High Court

No. 9

~~Dated this 19th day of December 1978.~~

~~Robert C. Tang
Counsel for the Third Party~~

Further ^{Re-}Re-
amended
Defence and
Counterclaim
of the third
party to the
Defendant's
claim
dated 8.2.1979

~~Dated this 16th day of January 1979.~~

~~Robert C. Tang
Counsel for the Third Party~~

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Dated this 8th day of February 1979.

Robert C. Tang
Counsel for the Third Party

Supreme Court
of Hong Kong
High Court

**LETTER FROM MESSRS. W.I. CHEUNG & CO. TO
MESSRS. H.H. LAU & CO.**

No. 10

Our Ref: AC/73-1710
Your Ref: HH/20664/75

Dated 11th February 1977.

Letter from
Messrs. W.I.
Cheung & Co.
to Messrs.
H.H. Lau &
Co.
dated 11.2.1977

Messrs. H.H. Lau & Co.,
Solicitors,
Hong Kong.

Dear Sirs,

**Re: High Court Action No. 2927 of 1973
(Ball Land Investment Co. Ltd. and
Sang Lee Investment Co. Ltd.)**

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We refer to the amended Defence and Counter-claim served on us yesterday and are advised by Counsel that the Defendants are entitled to the following further and better particulars:—

1. As regards Paragraph 23 of the amended Defence, please state all the facts and circumstances relied upon in support of the allegation (a) that the Agreement was entered into by the Defendant in order to strip the Defendant's Company of its assets & (b) that the Plaintiff knew about the alleged purpose.

2. As regards Paragraph 26(iii)(a); (1) of the allegation that the joint venture had a credit balance of \$1,565,921.17 "kept at hand", please state where it was kept and if it was kept in a bank, identify the bank; (2) of the allegation that the said sum was kept to help meet contingent liabilities of the joint venture, please specify what the contingent liabilities were and the amount of each such liability & (3) We are extremely surprised to note that "iron" was "required for the building work". Please give particulars of the seller and the date of purchase of the "iron" and how such "iron" was required for the building works of the Joint Venture.

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3. Under Paragraph 26(iii)(b) of the Statement of Defence of the allegation that the Joint Venture had building costs commitment of approximately \$13,715,750.00 in 1963, please specify:

(1) the names and addresses of the persons firms or corporations to whom the Joint Venture had incurred these commitments.

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(2) the amount of each such commitment.

4. As regards Paragraph 27(i) of the amended Defence please specify whether the "Agreement" therein referred to under which the Third Party claims to be entitled to the commission was written or oral — if written, identify the document and the clause thereof and if oral, identify the persons between whom the agreement was reached and the place and the time when the Agreement was reached.

5. Under Paragraph 29(iii) of the amended Defence of the allegation that the sales to the United Chinese Bank Limited "were made at the mitigation and approval of the Defendant", please specify how the Defendant mitigated and approved the sales to the said bank, if in writing, identify the document and if oral, identify the person or persons who mitigated and approved specifying the time or times and place or places where the same occurred.

We shall be much obliged if you will furnish us with the further and better particulars requested so as to avoid the cost of an application to the Court.

Yours faithfully,
sd. W.I. Cheung & Co.

Supreme Court
of Hong Kong
High Court

No. 10

Letter from
Messrs. W.I.
Cheung & Co.
to Messrs.
H.H. Lau &
Co.
dated 11.2.1977

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AC/an

**FURTHER AND BETTER PARTICULARS OF THE THIRD PARTY'S DEFENCE
AND COUNTERCLAIM TO THE DEFENDANT'S CLAIM**

No. 11

UNDER PARAGRAPH 23 THEREOF

Further and
Better
Particulars
of the Third
Defence and
Counterclaim
to the
Defendant's
claim
dated 12.7.1977

(a) That the Agreement was entered into by the Defendant in order to strip the Defendant's company of its assets and it constituted a device in that as a result of the Agreement, the Defendant lost \$489,858.50 being the difference between the Defendant's unpaid purchase price of \$1,267,734.00 and the sale price to the Plaintiff of \$771,875.00 and that at the material time the said property constituted the whole or substantially the whole assets of the Defendant.

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(b) That the Plaintiff knew about the aforesaid purpose by its managing director a Mr. Lai Kwai Tim who executed the agreement on behalf of the Plaintiff and the sale and purchase agreement dated 17th January 1963 on behalf of the Defendant.

UNDER PARAGRAPH 26(iii)(a) THEREOF

(1) That the joint venture had a credit balance of \$1,565,921.17 which was kept with the Bank of East Asia Limited.

(2) That the contingent liabilities then anticipated were:—

(a) liabilities to pay for the construction work;

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(b) liabilities to pay for the balance of the purchase price of the land.

(3) (a) Part of the iron which included steel bars required and suitable for use in the building work was given to Nam Sang Building Construction Company Limited and the rest which were not suitable for use were subsequently sold and the proceeds of the sale was loaned to one Hing Fat Land Investment & Loan Company Limited at a rate of interest of 0.75% per month;

(b) The name of the steel bar supplier was Messrs. Van Shung Chong Hong of Room 202, Commercial House, No. 39 Des Voeux Road Central, Hong Kong.

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UNDER PARAGRAPH 26(iii)(b) THEREOF

Details of building costs commitment of approximately \$13,715,750.00 in 1963 are as follows:—

Q.B.M.L.Is. B.R.P. – King's Road
(South Block) Total Construction cost

	estimated as per debit note No. 125/J245 dated 23.1.1964 from the Grandeur Engineering Co. attach (copy)	\$ 7,350,000.00	Supreme Court of Hong Kong High Court
	(North Block) Total estimated construction costs as per copy of debit note No. 106/J245B dated 7.5.1963 from the Grandeur Engineering Co. attached	6,600,000.00	No. 11 Further and Better Particulars of the Third Defence and Counterclaim to the Defendant's claim dated 12.7.1977
	Total estimated construction cost	\$13,950,000.00	
10	Less: Payments of architect fee to the Grandeur Engineering Co.:—		
	for South Block:		
	13.11.62 \$110,250.00		
	7. 2.64 \$ 25,000.00		
		\$135,250.00	
	for North Block:		
	9. 5.64 99,000.00	234,250.00	
		<u> </u>	
		\$13,715,750.00	
		<u> </u>	

UNDER PARAGRAPH 27(i) THEREOF

20 The Agreement was entered into orally by Mr. Kwan Fan Fat and Lo
Hoi Ming at the office of the Third Party.

Dated this 12th day of July 1977.

sd. Robert Tang
Counsel for the Third Party

RE-AMENDED DEFENDANT'S REPLY AND DEFENCE TO
COUNTERCLAIM OF THIRD PARTY

No. 12

Re-amended
Defendant's
Reply and
Defence to
Counterclaim
of Third
Party
dated 2.3.1977

1. The Defendant joins issue with the Third Party on its Defence save for admissions contained therein.

2. The partnership Agreement dated 31st December 1962 contained a recital to the effect that the parties had agreed that the Defendant would contribute the sum of \$3,048,300.00 being one moiety of the price of the property agreed to be purchased from Davie Boag & Co. Ltd. under the Agreement dated 25th October 1961 pleaded in paragraph 3 of the Defendant's Statement of Claim. The said sum was to be paid by way of the following instalments:—

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- (a) The sum of \$609,120.00 on the date of the Partnership Agreement;
- (b) The sum of \$387,854.10 on or before the 15th day of January 1963;
- (c) the sum of \$526,635.81 on or before the 30th day of June 1963;
- (d) The balance of the price of \$1,523,610.00 on or before the 30th December 1964.

3. Pursuant to the above the Defendant duly paid to the Third Party the sum of \$609,120.00, the said payment being acknowledged in the said Partnership Agreement.

4. Shortly before the contribution of \$387,854.19 became due Mok Tse Fung on behalf of the Defendant and Kwan Fan Fat on behalf of the Third Party entered into an oral agreement whereby no contribution was required to be made by one party to the other so long as the partnership had funds to pay Davie Boag & Co. Ltd. the three instalments of purchase price payable under the said Agreement with Davie Boag & Co. Ltd. The partnership had funds to and did not make the payments in full satisfaction of the purchase price, accelerating part of the third instalment by the payment of \$1,293,305.22 at about the end of July 1964 for the purpose of obtaining earlier possession of part of the property purchased but deferring payment of the balance of the third instalment amounting to \$1,756,074.78 to January 1965 on account of the late delivery by Davie Boag & Co. Ltd. of the remainder of the said property.

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5. To the extent and in the manner aforesaid the Partnership Agreement was varied. Further and/or alternatively the Defendant says that by reason of the aforesaid matters the contributions were in fact satisfied and/or paid by the Defendant from the share of the Defendant in the funds of the partnership directly appropriated for the payment of the purchase price as aforesaid.

6. The Defendant therefore denies that there was any default under the partnership agreement as alleged or at all.

6A. Further and in so far as may be necessary the Defendant adopts and relies on the matters pleaded in paragraphs 8, 9 and 11 of the Re-amended Reply of the Plaintiff to the Third Party's Defence.

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10 7. Further the Defendant repeats paragraphs 8, 11 and 13 of its Re-amended Statement of Claim and says that it has at all material times relied on the fact that, pursuant to the agreement between the parties, the Defendant was credited and/or was treated as having been credited with the sum of \$1,135,560.00 in connection with its purchase of the premises in suit. The said credit was contained in and/or evidenced by an acknowledgment by the Third Party in the relevant Sale and Purchase Agreement to the effect that \$1,135,560.00 had been paid by the Defendant to the Third Party. By reason of the aforesaid matters and/or by reason of the said acknowledgment the Third Party is estopped from alleging that any part of the said sum of \$1,135,560.00 has not been paid.

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High Court

No. 12

Re-amended
Defendant's
Reply and
Defence to
Counterclaim
of Third
Party
dated 2.3.1977

7A. In answer to paragraph ~~25(ii)~~ 26(ii) of the Third Party's Amended Defence to the Defendant's Amended Statement of Claim, the Defendant says as follows:—

- 20
- (1) Lee Shui Man was at all material times employed by the Third Party and had been so employed long before the joint venture started.
 - (2) As far as the Defendant is aware, the accounts of the Third Party including the joint venture were actually kept by a Mr. Sin Chai Yee and Mr. Sin Chai Cheong till 1966 or 1967 and thereafter by a Miss Kwan Lan Fong who were both the employees of the Third Party.
 - (3) Insofar as Lee Shiu Man was nominally the accountant of the Third Party or otherwise dealt with or had access to the accounts of the joint venture, he did so exclusively as the employee of the Third Party. He was not appointed by the Defendant nor did he report back to the Defendant thereon.
 - (4) Although Lee Shiu Man was a director of the Defendant he was only a minor shareholder of the Company and his shareholding (including shares held in trust for his sister-in-law) amounting only to approximately 3% of the issued capital. He resigned as a director of the Defendant in or about the year 1968.

COUNTERCLAIM

30 8. The Defendant repeats the Reply herein.

9. Each and every allegation of the Counterclaim not expressly admitted hereinbefore is denied.

10. In the premises the Third Party is not entitled to the relief as claim or at all.

Denis Chang
COUNSEL FOR THE DEFENDANT

~~Dated the 2nd day of March, 1977.~~

ORDER
BEFORE THE HON. JUSTICE MCMULLIN IN COURT

No. 13

UPON HEARING Counsel for the Plaintiff, Counsel for the Defendant and Counsel for the Third Party, it is ordered by consent that:

Order of
The Hon.
Mr. Justice
McMullin
dated 7.2.1979

1. In the event of the Defendant succeeding in obtaining an order for specific performance of the sales and purchase agreement dated 17th January 1963 as prayed for in Paragraph 34(a) of the Defendant's Statement of Claim, the balance of the price payable shall be abated to the extent that the balance shall be \$96,000.00 in settlement of the Claim in Paragraphs 19 and 20 of the Defendant's Statement of Claim. The said \$96,000.00 shall be paid into Court by the Plaintiff in pursuance of an offer made in Court by the Plaintiff's Counsel to pay the balance of the purchase price, pending the trial of the matters mentioned in paragraph 3 below. 10
2. That the trial of the issues in Paragraph 13A of the Third Party's Defence be adjourned and that pending the determination of the issue in Paragraph 13(A) aforesaid, in the event of the Defendant obtaining an order for specific performance as prayed for in Paragraph 34(a) of the Defendant's Statement of Claim, such order shall have no effect as regard the following flats: 503, 701, 801, 803, 1101, 1103 and 1703 pending the determination of the issues in Paragraph 13A aforesaid. 20
3. That the trial of the issues in Paragraphs 23 and 31 of the Defendant's Statement of Claim be adjourned.
4. That as regards the issues adjourned pursuant to Paragraphs 3 and 4 hereinbefore the parties shall have liberty to apply to Court to restore the same for hearing.

Dated this 7th day of February 1979.

Registrar.

ORDER
BEFORE THE HONOURABLE MR. JUSTICE MCMULLIN

Supreme Court
of Hong Kong
High Court

UPON HEARING Counsel for the Plaintiff, for the Defendant and for the Third Party.

No. 14

AND UPON READING the pleadings

Order of
The Hon.
Mr. Justice
McMullin
dated 10.3.1979

AND UPON HEARING the evidence and what was alleged by Counsel for the Plaintiff for the Defendant and for the Third Party.

AND UPON the parties by their counsel agreeing by consent that this action should proceed subject to and in the manner specified in the Order herein dated the 6th day of February 1979.

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THIS COURT DOTH DECLARE that

(1) subject to the terms of the Order dated the 6th day of February 1979 aforesaid the agreement dated the 17 day of January 1963 made between the Third Party as Vendor and the Defendant as Purchaser and referred to in paragraph 12 of the Re-amended Statement of Claim of the Defendant against the Third Party herein ought to be specifically performed and carried into execution and

(2) subject to the terms of the order dated the 6th day of February 1979 aforesaid the agreement dated the 20th day of February 1963 made between the Defendant as Vendor and the Plaintiff as Purchaser and referred to in paragraph 7 of the Amended Statement of Claim of the Plaintiff herein ought to be specifically performed and carried into execution and DOTH ORDER AND ADJUDGE the same accordingly. And This Court Doth Order that save as aforesaid the Defendant and/or its Liquidator and the Third Party do cause an assignment of the premises forming the subject matter of the 2 said agreements to the Plaintiff or its nominee or nominees to be executed by all necessary parties subject to the Plaintiff paying into Court the sum of \$96,000.00 pursuant to the said Order dated the 6th day of February 1979.

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AND THIS COURT DOTH ORDER that the Counterclaim of the Third Party against the Defendant do stand dismissed out of this Court.

AND IT IS ORDERED that the Plaintiff's and the Defendant's costs of this action up to and including the date of the signing of this Order be paid by the Third Party.

AND IT IS FURTHER ORDERED that the parties have general liberty to apply. Certified for two Counsel for the both the Plaintiff and the Defendant.

Dated the 10th day of March, 1979.

sd. S.H. Mayo
Registrar.

JUDGMENT OF MCMULLIN, J.

The Plaintiff, Wing Kwai Investment Co. Ltd., claims specific performance of an agreement in writing entered into between itself and the defendant, Ball Land Investment Co. Ltd., on the 20th of February 1963. The defendant does not purport to resist this claim but in its turn claims from the third party, Sang Lee Investment Co. Ltd., specific performance of an agreement in writing dated 19th of January 1963 whereby the third party undertook to assign, upon stipulated conditions, the same property to the defendant. Subsidiary forms of relief are claimed by both the Plaintiff and defendant companies. The third party was given leave to defend the plaintiff's action in lieu of Ball Land by an order of the Registrar on the 17th of July 1974 and it also put in a defence to the defendant's statement of claim. Replies to these pleadings were put in by the plaintiff and defendant. The original writ of summons was issued on the 3rd of October 1973. Between then and the commencement of the trial on the 8th of January 1979 all these pleadings have been variously and extensively amended and further amendments were made with the leave of the court in the course of the hearing.

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In this action we are concerned with the breakdown in contractual arrangements made between the three parties to the suit arising from a very large scheme for the development of property in the Quarry Bay area conceived as long ago as 1961. Mr. T.F. Mok and Mr. F.F. Kwan – the principal protagonists behind the several corporate identities which feature in the action – are elderly businessmen with considerable experience in this field. Their association goes back to a period predating the Second World War at a time when Mr. Mok was employed as clerk and interpreter in a lawyer's firm. It appears to have been an association both of friendship and business advantage. They collaborated in at least one other similar land development scheme in the recent past which, I think, may be assumed to have proceeded to a successful conclusion since it was consummated without resulting in any of the legal acrimony which has arisen in the present case. They are each associated with various companies either as shareholders or directors and Mr. Mok is the founder and guiding spirit behind the defendant company as is Mr. Kwan in relation to the company named as third party in this action. Notwithstanding the antagonisms of litigation they profess to retain a friendly regard each for the other.

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In 1961 Mr. Mok became interested in a site in Quarry Bay. He negotiated with Messrs. Davie Boag Ltd. who owned the site. The price eventually agreed was \$6,090,200. Since the scheme which he had in mind was a very large one he sought assistance. He approached his old friend Mr. F.F. Kwan, then a director of Sang Lee (the third party in the present proceedings) a company in which Mr. Mok was himself at that time one of three permanent directors, a position he only relinquished in 1967. It was agreed that Sang Lee would put up the necessary 10% deposit on the purchase price of the Davie Boag site. Mr Kwan also agreed to the remainder of the proposal which was that Mr. Mok would get together a syndicate of wealthy businessmen who would enter into a partnership with Sang Lee to share equally in the costs and ultimate profits from the development of that site by putting up a large number of multi-storey buildings thereon. Mr. Mok

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thereafter collected about him a group of 18 people to form his syndicate. Among the syndicate members was a son of Mr. Kwan a Mr. KWAN Kong-pui. The membership also included Mr. LEE Shiu-man, then secretary to the Sang Lee Company and personal assistant to Mr. F.F. Kwan. At this preliminary stage the affairs of the syndicate were, with the consent of its members, being conducted in the name of the Far East Land Investment and Guarantee Company another company under the control of Mr. T.F. Mok. It is common ground that from the outset it was envisaged that the syndicate itself would in due course be incorporated' as a company with limited liability. Meanwhile however, in or
10 about the month of October 1962 Mr. T.F. Mok collected from all his colleagues in the syndicate contributions towards the capital of that body. In this way sums totalling \$640,000 were contributed. Of that figure some \$628,000 had been paid by the syndicate members by the 9th October 1961. The remaining \$12,000 was contributed by one of their number Mr. LO Hoi-ming on or about the 31st of March 1962 but prior to that, on the 25th of October 1961, the agreement for purchase and sale of the Quarry Bay property had been signed by Mr. T.F. Mok as purchaser and by an authorised representative of Messrs. Davie Boag & Co. Ltd. for the vendors. The deposit of \$609,120 supplied by Sang Lee was paid over on the same date. This agreement made provision for the payment of the balance of the
20 purchase price by various instalments and it also provided for the giving of vacant possession. These provisions were modified by a supplemental agreement dated 6th of December 1962. It is unnecessary to dwell upon the details of these two agreements. Following upon a re-assessment of the area to be transferred the lot was divided into two for the purpose of giving vacant possession. Ultimately the full purchase price to Davie Boag was paid and vacant possession of the two portions comprising the whole site was given on two separate dates the whole purchase arrangements being completed by assignments dated the 22nd of July 1964 and the 2nd of January 1965.

On the 25th of October, the date of the sale and purchase agreement
30 between himself and Messrs. Davie Boag, Mr. Mok had also executed a deed of trust whereby it was declared that the land which was the subject matter of the agreement of purchase and sale was to be held by him upon trust for Sang Lee Investment Co. Ltd. (third party).

It is agreed by all parties that out of the capital sum collected by Mr. Mok from the members of the syndicate an amount totalling \$563,737 was paid to the third party, the Sang Lee Company, as the contribution of the syndicate to the joint venture capital. Of that sum \$253,800 constituted the syndicate's half share in the commission (amounting to over half a million dollars) paid by the joint venture to Mr. T.F. Mok. \$304,560 was received by the third party as the
40 syndicate's half share in the initial deposit made to Messrs. Davie Boag. Two smaller sums for other purposes which need not concern us made up the total and there were equivalent payments made for the same purposes by the Sang Lee Company.

I have described Mr. F.F. Kwan as the guiding spirit behind the Sang Lee Company. On paper that might seem to be an exaggeration because he owned

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only 25% of the shares and another director, Mr. MA To-sang was actually chairman of the board holding 35%. I do not think that the description is an exaggeration however. Mr. Kwan has been involved with land investment and mortgage business since 1924 and although he professed to have had little experience in the kind of land development involved in the Quarry Bay site he also told the court that the Sang Lee Company had been set up at the suggestion of Mr. T.F. Mok in order to engage in such business and units in its first project known as Kam Ping House were already being sold when Mr. Mok approached him in October 1961 with the suggestion concerning the Quarry Bay development. Mr. Kwan became chairman of the board of Sang Lee in 1978. At all events I am satisfied that the preliminary discussions concerning the Quarry Bay development were primarily between Mr. Mok and Mr. Kwan and it is clear from minutes of meetings of the joint venture concerning that development that Mr. Kwan was frequently present at such meetings and occasionally took the chair. While, therefore, he was reluctant to admit too much in the way of a detailed knowledge concerning the progress and operation of the scheme, and sought as far as possible to place himself in the background of the picture, I am satisfied that he took an active part in discussions at meetings and may fairly be regarded as the moving spirit behind the company inasmuch as it was founded at his instance after discussions with Mr. Mok and he, like Mok who was also a director of Sang Lee – the third party – was active in discussions and decisions concerning the progress of the construction project. In particular I am satisfied that at the very outset there were discussion involving Mr. Kwan and Mr. Mok concerning the profit which was expected to derive from the sale of the flats. Both Mr. Mok and Mr. Kwan show a disposition to place the onus upon the other for proposing certain very sanguine estimates. Figures between 10 and 20 million dollars of profit have been mentioned in the evidence as the expectation of the participating partners. On the whole I think it is more likely that it was Mr. Mok who expressed the firmest opinions on this matter. The business thus undertaken may fairly be described as the “forward selling” of flats as yet unconstructed. It does not seem to me to matter whose spectacles had the rosier tint at that time, but it seems quite clear, notwithstanding Mr. Kwan’s disclaimers and Mr. Mok’s temporizing, that there was, as counsel for the plaintiff has put it, a distinct euphoria in the air and that everybody connected with the project had in 1962 a high expectation of a very profitable outcome. That is an important fact for it is undoubtedly the case that it was that assurance of ultimate profit which encouraged the partners to the joint venture early in 1962, and long before any formal agreement of partnership had been drawn up, to embark upon the transactions with which this suit is primarily concerned. Although much of the evidence both of Mr. Mok and Mr. Kwan was disappointingly vague and unspecific it is undisputed that, even thus early, money in considerable quantities had begun to accrue to the credit of the joint venture. Even before plans for the buildings had been prepared and passed a brochure advertising the intentions of the participant companies had been published. Its terms were enticing. Flats at prices reasonable for the time were offered on instalment payment terms at a low rate of interest. The response was gratifying. There is some evidence that deposits in respect of at least 600 of those units had come in by the early months of 1962. At this stage the oral arrangements between the partners (later to be confirmed in the partnership agreement Document A8)

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10 included the establishing of the third party as the business manager of the joint
venture with sole and exclusive responsibility for its management. One of the directors
Mr. KAN Man who also a shareholder was to be in charge of the technical side of
the venture regarding the preparation of plans etc. LEE Shiu-man, the secretary of
the third party and assistant to Mr. Kwan, appears to have been in charge of accounts
for the joint venture at least for part of the time though CHAN Kwok-wah, a share-
holder of the defendant, also seems to have performed this function. It was agreed
from the outset that the third party would account to the syndicate members for
all sums received on account of the joint venture project. It will be remembered
that at this stage the defendant company had not yet entered the picture. Its pre-
decessor was constituted by the syndicate members represented corporately by
Mr. Mok's company, Far East Land Investment and Guarantee Co. What happened
next is in dispute and the evidence concerning it is not particularly satisfactory.
According to Mr. Mok, he and Mr. Kwan, perceiving that things were going very
well, hit upon the idea of sweetening the long wait until the eventual division
profits some years in the future by an equal distribution of present benefit
between the partners deriving from the revenue then already accrued and accru-
ing to the credit of the joint venture from deposits received from purchasers of
flats. This matter, Mr. Mok says, was discussed between himself and Mr. Kwan at
20 various of their regular lunch time meetings about this time fairly early in 1962.
At this point since revenue was coming in very freely (and this is conceded by
both sides) it was, I think, the expectation alike of Mr. Kwan and Mr. Mok that,
notwithstanding the heavy costs of construction which faced the project and the
outstanding balance of purchase money yet to be paid to Messrs. Davie Boag &
Co. Ltd., the whole enterprise would nevertheless be self-financing out of current
revenue. Mr. Kwan was not prepared to concede that but I have no doubt at all
that he did share in the prevalent optimism and that if asked for it at that time
such would have been his opinion. It is not entirely clear whether Mr. Mok's first
30 proposal was that each of the partners should actually take money out of the
revenues accrued but at any rate in cross-examination he made it quite clear that
the agreement was that each of the partners should take as its separate property
two of the many multi-storey blocks of buildings which were all then still at the
planning stage. These blocks would be allocated to each partner at something
less than the list price. The partners would be liable to pay that price to the joint
venture. Sang Lee would receive such moneys as agent for the joint venture and
each of the partners would be free then to sell on to outside purchasers at what-
ever profit they might achieve. The Quarry Bay development scheme as it then
appeared upon the drawing board, and as it was ultimately carried into reality,
40 comprised three separate estates or areas each consisting of a number of multi-
storey blocks of flats. The bottom storey of each block consisted of shops and
the upper storeys of residential units. Each estate had a name. One was called
Tak Lee, another Wai Lee and the third Po Lee. Mr. Mok chose two blocks in
the Wai Lee Estate. Originally these were numbered Blocks 1 & 2 but following
some modification of the layout of the plans were later re-numbered 1 & 3.

We came thus to what is the most fundamental and crucial issue in the
case. It is common ground that a written agreement for the sale and purchase of
Blocks 1 & 3 was drawn up by Mr. S.C. Mok, a solicitor and the son of Mr. T.F. Mok,

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sometime in March 1962 the purchase price being \$1,261,734.00. That agreement was signed on behalf of Sang Lee by Mr. Kwan. It is not now before the court because it was replaced by an agreement in identical terms in January 1962 at which time the defendant company, Ball Land Investment Co. Ltd., appeared on the scene with all the syndicate members becoming either shareholders or directors therein. That agreement – Document A4 in the case – was signed on behalf of Sang Lee (third party) by KWAN Sai-tak, the son of Mr. F.F. Kwan. KWAN Sai-tak was a director of the third party. On behalf of the defendant company it was signed by Mr. LO Hoi-ming one of the former syndicate members and that at that date a director and shareholder of the defendant company. The other signatory for the defendant company was Mr. LAI Kwai-tim the managing director and effectively the owner of the plaintiff company himself also a syndicate member and, at this date, a director and shareholder in the defendant company. There is no dispute as to the genuineness of this document and all parties are content to regard it as a re-enactment by the syndicate members in their new corporate identity of what had been done in their name by Far East Land Investment Guarantee Company prior to their incorporation. What is denied however is that the purchase price or any part of it has ever been paid. That is the root of this action as it is the substance alike of the plaintiff's claim for specific performance against the defendant and of the defendant's identical claim against the third party. We are here in the presence of a somewhat unusual circumstance, in that the pleadings of the defendant and of the plaintiff march step for step together and are not in any significant sense at odds. Both complain of the failure on the part of the third party to complete contractual arrangements by assignments which it is alleged have for many years been justly due and from which they and many sub-purchasers under them have been for many years withheld without good cause. It is common ground between the plaintiff and the defendant that before the incorporation of the latter on the 4th December 1962, and while the syndicate was still represented by Far East Land Investment & Guarantee Co., the property, Blocks 1 & 3, which it had purported to purchase under the sale and purchase agreement from the third party sometime in March of 1962 was sold enbloc shortly thereafter to the plaintiff Wing Kwai Investment Co. Ltd. the stated purchase price being \$771,875.50. The latter agreement is likewise not before this court having been replaced by a confirmatory agreement (Document A5) executed by the defendant and the plaintiff after the incorporation of the former in December 1962. It is common ground that A4 and A5 are in terms identical with the agreements which they replaced including of course the stipulated purchase price in each case. The sale to the plaintiff was at a price which was about 50% of the stated list price to purchasers in the open market and some \$489,858 less than the price agreed between the defendant and the third party for the same property. That disparity in price features as an element in one of the arguments urged on behalf of the third party against both the plaintiff and the defendant in their claims for specific performance. I must consider that in due course but I must first deal with the most fundamental consideration of all viz. : whether there was such a completed sale and purchase between the third party and the defendant as entitles the latter to demand that the property be now assigned formally to it.

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I have noted already that the interests of the plaintiff and the defendant are closely coincident in this litigation; effectively the only difference between

10 them is that they make their claims against the third party on the footing of separate and different instruments. The authenticity of those instruments is not impugned at any rate in the sense that it is agreed upon all sides that the agreements (A4 and A5) were executed on behalf of the various companies by persons authorised to do so and with the intention of creating the contractual relations detailed in each instrument. At the outset and upon the pleadings of the third party it is true that the reality of the transaction covered by Document A5 was impugned and that agreement was said to be in the nature of a sham. In its defence to the plaintiff's statement of claim the third party expressly pleads that the purchase price of \$771,875.50 was never paid by the plaintiff. In the course of the trial however, and at a fairly advanced stage thereof, an agreed statement of facts was submitted by counsel in which amongst other matters it was admitted that that sum as pleaded in paragraph 7 of the plaintiff's statement of claim had been paid. I may say that I have thereby been relieved of a considerable analytical labour for the payment by Mr. LAI Kwai-tim took an unusually circuitous route involving payment by cheques drawn upon another of Mr. Lai's companies, the crediting to him in the joint venture's accounts of sums received from syndicate members who had purchased some of the flats and including even sums contributed by Mr. T.F. Mok the guiding spirit behind the vendor company. This concession however goes no further than this : that it is now conceded by the third party that the defendant did genuinely endeavour to transmit Blocks 1 & 3 to the plaintiff and did receive money's worth therefor and the allegation persists on the pleadings and in the argument that the alleged sale and purchase between the plaintiff and the defendant was in the nature of "a device" and part of a scheme consented to both by the plaintiff and the defendant whereby the syndicate members, of whom, of course, LAI Kwai-tim himself was one, would obtain the advantage of both sales to the detriment of the joint venture.

30 At the outset of this long trial and at its conclusion Mr. Ching for the plaintiff put the issues before the court touching the case of his client in the following way:

- “1. Did the plaintiff pay \$771,875.50 to the syndicate that transaction being acknowledged later by the defendant company under the agreement A4?
2. (a) Did the defendant pay \$1,135,560.60 to the third party?
(b) If that sum was not paid is there an estoppel on which the plaintiff can rely?
3. Is there any other reason to deny specific performance of the plaintiff's agreement?”

40 The first of those issues has gone, as I have mentioned above, and now, as it seems to me, the remaining two issues so stated are the basic issues which I have to decide as between all parties before the court. I will interject here, somewhat parenthetically, and by way of clearing the ground, that no argument has been founded

for the third party on the absence of the original agreements signed by Far East on behalf of the syndicate and the agreements contained in Documents A4 and A5 have been accepted by all parties as effectively the formal acknowledgment by the parties thereto of what had been done in the name of the syndicate members and the third party a year earlier.

I turn now to the first of these two issues. It is the defendant's case that true payment has been made to the third party in the sum of \$1,135,560.60 being 90% of the stated purchase price of \$1,261,734.00. The balance of \$126,173.40 as stated in the agreement was to be paid upon completion. It has been the defendant's contention for years, and remains so at the present time, that it is fully prepared to pay this balance upon the third party undertaking to complete the assignment. Here it must be mentioned, by way of further ground clearing, that in the fourth week of the trial I acceded to a request by counsel to defer the trial of certain major issues disclosed upon the pleadings until the issue as to specific performance should be disposed of. The issues thus postponed concerned the taking of accounts between the third party and the defendant involving somewhat complicated cross-allegations as to various alleged misfeasances and failures in discharge of mutual responsibilities. Similar allegations of breach of fiduciary duty are made in the plaintiff's reply to the third party's defence to the plaintiff's statement of claim. I mention these matters now because although they are not presently before me for decision the issues thus postponed included an allegation that the premises purchased fell short of the agreed area by some 296.50 square feet and the sum in the region of \$20,000 was claimed in abatement of the outstanding balance of the purchase price. Included therefore in the order which I made on that day was an order by consent that in the event of the defendant succeeding and getting its order for specific performance the balance of the price payable should be abated to a figure of \$96,000. Mr. Ching on behalf of his client undertook at the same time to assure the court that his client was prepared to pay that sum upon obtaining an order in its favour on the issue of specific performance. I think it is clear – though it was not actually conceded – that if it should turn out that the purchase price under A4 was never paid by the defendant to the third party then neither the plaintiff nor the defendant can claim specific performance of their agreements. Mr. Denis Chang in his opening address put it that the case for specific performance of the defendant's agreement, Document A4, was independent of that to the plaintiff under A5 and that he was entitled to succeed in his claim even if specific performance was denied to the defendant. In theory that is quite true. However I think it is not sustainable on the facts. One cannot in common sense overlook the close intrication of the affairs of these several companies and their leading figures throughout the period of the joint venture. Mr. LAI Kwai-tim the managing director of the plaintiff company and a director of the defendant was an active participant at meetings of the joint venture representatives and on his own admission had copies of the minutes for all meetings even those which he did not attend. He is one of the signatories on behalf of Ball Land on the document, A4, and he signed the agreement, A5, both on behalf of the defendant company as vendor and on behalf of his own company as purchaser. I am satisfied that he must have been fully aware of all the factors relied upon by the third party in support of the contention that there never was real payment by the defendant company for Blocks 1 & 3 of the Wai Lee section of the Quarry Bay development scheme. I cannot do

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other than hold him as fully fixed with notice of such factors as was Mr. Mok and if the effect of those factors is in truth to render the alleged payment unreal as the third party alleges then a knowledge and appreciation of that unreality must be attributed to his company equally with the defendant and the result must be that in purporting to take on purchase from the defendant the plaintiff company was purporting to take from a body which had, to its knowledge, no right of property to sell or assign.

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10 What then is the evidence which goes to show as the plaintiff and the defendant maintain, a true purchase and sale of this property? Although the sale and purchase agreements A4 and A5 are on the face of them plain and unambiguous documents the arrangements concerning the alleged interim benefit of which Mr. Mok gave evidence was never made the subject of any written agreement. Since, therefore, we are in a realm of inference and implication from the acts and words of the principal protagonists and the consequences thereof as evidenced by various books of account, receipts and other documents, and since those arrangements, whatever they were, related to non-existent flats I find it helpful to supply a framework for the discernment of the intention of the parties in 1962 the following facts which I find either to be established by the evidence or to be matters of agreement between the parties:

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1. that it was the expectation of all concerned in the partnership that the scheme would be profitable;
 2. that the profits would be considerable;
 3. that even before the incorporation of the defendant considerable sums of money were already being paid in by hopeful purchasers attracted to the scheme;
 4. that by the date of incorporation of the defendant (the 4th of December 1962) a sum nearer three than two million dollars was available in the account of the joint venture for joint venture purposes;
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5. that it was the hope, and probably the expectation, of all concerned that the income then and thereafter generated would be sufficient to cover the land purchase and construction costs without the need for further capital contributions by either of the partners;
 6. that this expectation was not fulfilled and that in the months of July 1964 and January 1965 the third party mortgaged the joint venture of property to secure loans and overdraft facilities in the region of \$3,000,000;
 7. that Mr. Kwan and two co-directors of the third party Mr. Hudson CHEN Wood and Mr. MA To-sang put up a sum of about \$900,000 in or about the year 1967 to effect the release of certain of the

- flats to sub-purchasers at the instance of the Bank of East Asia and that there were other loans by them to the joint venture the total of all such loans being as pleaded by the plaintiff at the date of its writ \$1,559,200.00;
8. that this sum was claimed by the three directors in an action against the joint venture partners founded in the year 1971 in which the defendant company, failing to implement an order of the court directing payment into court of \$400,000 within 21 days, suffered judgment by default to go against it;
 9. that the same three directors caused the defendant company to be put in the hands of the official receiver in winding up proceedings a winding up order being made on the 28th of November 1971 and that the defendant's affairs remain in the hands of the official liquidator to the present date; 10
 10. that notwithstanding these vicissitudes the Quarry Bay project proceeded and all the 1,335 units in many tower blocks in the three estate areas were completed and that most of those units have been sold;
 11. that there are still some such units remaining to be sold at the present date; 20
 12. that none of the purchasers of flats from the plaintiff out of the 47 units ostensibly transferred by the third party to the defendant under A4 and by the defendant to the plaintiff under A5 have yet received their assignments notwithstanding valid existing sale and purchase arrangements made between them and the plaintiff and that the cause of this is the refusal of the third party to complete the assignment to the defendant or to join with the defendant in completing the assignment to the plaintiff;
 13. that by Clause 5 of the sale and purchase agreement between the third party and the defendant (Document A4) it was provided that completion by way of assignment of the property would be made by the execution of an assignment upon the issuance of the occupation certificate by the Building Authority and payment of the balance of the purchase price and that the occupation certificate was issued on the 27th October 1967 and the balance has since been tendered and refused; 30
 14. that actual possession of the 47 flats to which the agreements Documents A4 and A5 relate was given to the plaintiff and plaintiff's sub-purchasers shortly after the occupation certificate was issued;

15. that a formal deed of partnership was entered into by the third party and the defendant company on the 31st of December 1962 some three weeks after the incorporation of the defendant. That is Document A8 in these proceedings and, although Mr. Kwan did not concede the matter, I am satisfied upon the evidence of LAI Kwai-tim that it like A4 and A5 is the formal recognition of a previous agreement to the same effect made between the third party and the syndicate prior to the defendant's incorporation. In that agreement the third party engaged to hold the site in trust for the joint venture.

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10 What the defendant says through the mouth of Mr. T.F. Mok is that in establishing the desired mutual benefit which he maintains was the aim of them both, before the incorporation of the defendant, it was agreed that each should have allocated to it two blocks out of the whole huge development for which they would pay by a "notional borrowing" of the purchase price from the funds of the joint venture and a "notional payment" to the third party as agent for that venture of the same sum as the purchase price of the property.

20 The plaintiff, speaking through Mr. LAI Kwai-tim, makes the same case. Indeed his version of the matter is distinctly the clearer and here at once a difficulty arises in the evidence. In paragraph 5 of the plaintiff's statement of claim the matter is pleaded in the following terms:

"By the terms of such agreement each of the said partners was to be entitled to two blocks of the said development. The said oral agreement was subsequently varied to the extent that:

- (a) the said Sang Lee Investment Co. Ltd. would take \$1,135,560.60 out of the income of the said partnership received or to be received instead of two blocks as aforesaid ..."

30 Yet shortly after the commencement of cross-examination by Mr. Litton (on the 25th January) when he was being asked some general questions as to his opinion of Mr. Kwan's integrity in relation to the handling of money affairs both in previous transactions which they had had together and in the present transaction, Mr. Mok, having made one or two minor complaints, went on to say:

"Another thing I complain of is that in this case while we had agreed each to take two blocks later he took cash instead of two blocks I did not agree to that. I did not even know that he took cash. I learned of that about two years ago."

I may say at once that I do not believe that part of Mr. Mok's evidence any more than I believe Mr. Kwan's assertion that he did not know until 1978 that the defendant had sold Blocks 1 & 3 to the plaintiff.

40 As for Mr. Kwan, however, he maintains that neither of these versions is the truth. Perhaps it would be more accurate to say that he totally disagrees

that there was any arrangement for both partners to appropriate property rights over flats. He admits that there was an arrangement whereby the third party would be credited in the various books of account with a sum equivalent to the sum nominally paid by the defendant in purported purchase of its flats. I have found it very difficult nevertheless to discern from his evidence precisely what he thought was going on. My understanding of his understanding of the results of his conversations with Mr. Mok concerning this matter is to the following effect: It was agreed that the syndicate should appropriate the 47 flats in Blocks 1 & 3 (at that time Blocks 1 & 2) at a price lower than the list price (in view of the syndicate's members being, as he put it, "insiders") upon notional payment of 90 per cent of the purchase price of \$1,135,560.60. Mr. Mok told him that it would not be in his, Mr. Mok's, interest to pay cash and that the amount would be entered in the joint venture books as "current account" the remaining 10 per cent to be paid at the time when the transaction was completed i.e. when the building itself had been completed and presumably when the occupation certificate had been issued. He said that Mr. Mok went on to say that since the syndicate was taking the flats "on current account" it would be fair that the third party should also take from the instalments an equivalent sum to be put into current account. My note of his evidence immediately thereafter is as follows: 10

"He said it was very simple. The money received by Sang Lee was only a transfer of the payment of \$1,135,560. If it were deemed necessary in the future it could be paid back to the joint venture by Sang Lee." 20

Nevertheless I think it is fair to say that the general tenor of his evidence has been that the third party had no actual advantage from this sum nominally put to its credit. He agreed that it was not a loan and he was certain that it was not a gift. It was not exactly to be repayable on demand but the third party was to hold itself ready to repay that money if it became necessary to defray any of the costs of the joint venture. He went on to say that in his opinion all of that sum had eventually been repaid. That would seem to imply that it had been first used but he was not in fact conceding that Sang Lee had used it as its own separate property. What was meant was that since the joint venture ran out of funds composed of deposits from purchasers and eventually had to borrow to keep the scheme going the sum of \$1,135,560.60 nominally set to the third party's account and held together with the general deposit funds (being indeed ear-marked out of them) that sum, though nominally the personal property of the third party, was spent together with all the other funds spent by it as manager of the joint venture upon joint venture business. Mr. Chang elicited from the witness that the joint venture's funds had been lumped together with funds from various other sources and projects in the same account and that moneys drawn from that account were therefore not invariably spent on joint venture business. On its own I would think that that fact is sufficient to dispose of the argument that if there was a loan of the stated figure it was spent wholly upon joint venture business. But quite apart from that I think Mr. Chang was right when he pointed out that the two sums of \$1,135,560.60 appeared regularly, though somewhat variously accounted for, in the balance sheets kept by the third party for the joint venture in every year from 1963 onwards. 30 40

They are therein debited against the accounts of the third party and of the defendant and they persist as unpaid debts. I think therefore that the suggestion that the debt of the third party represented by that figure could be regarded as having been repaid at some intermediate stage when funds available for spending upon the joint venture had become exhausted was fallacious. If it has any validity that is an argument which could in any case only be made when the joint venture project has been wound up and final accounts have been taken. That has not yet been done and although the indications are that the venture may well result in an overall loss even that fact is not certain. If in the end a profit were shown then, as Mr. Chang points out, the "agent's account payable" item in the balance sheet upon which Mr. Litton has heavily relied in this respect would be transformed into an "agent's account receivable" and in that case the sum of \$1,135,560.60 could certainly not be regarded as having been repaid. The persistence of these two counter-balancing sums in the balance sheets of the joint venture denotes the persistence between the defendant, the third party and the joint venture of a claim exercisable by the third party against the two partners to enforce replenishment of the funds received on deposit by the third party on behalf of the joint venture. Mr. Chang stresses the mirror image that these two sums present in the accounts and he enlists the evidence of Mr. Kwan himself who agreed that the crediting of the third party with this sum was done in order to serve the idea of fairness between the parties. For my part I am satisfied that they are to be regarded as loans made by the joint venture to each of the partners. The question remains was the sum thus borrowed by the defendant from the joint venture used in any real sense to pay 90 per cent of the purchase price of the property? It should be noted perhaps at this point that although we are ostensibly dealing with three parties viz. the defendant (Ball Land), the third party (Sang Lee) and the joint venture, when considering the purchase from Sang Lee it must be remembered that Sang Lee held the land in trust for the joint venture and was selling merely as agent for the partners thereto. On the plaintiff's and defendant's argument therefore what we are confronted with is the somewhat unusual situation of a purchaser borrowing from the vendor the money with which to make his purchase. In opening Mr. Ching put it that he made a distinction between a borrowing and repayment however notional in this way and a mere selling upon credit. The underlying idea behind his case and behind that of Mr. Chang is that this notional payment was not fictitious that it resulted in a true transfer of a right of ownership but that the sum thus borrowed remained as a debt outstanding as it were personally on the basis of a loan from the joint venture and not as part of the purchase price.

Counsel for the plaintiff and for the defendant have enumerated a formidable List of items pointing, as they say, in the direction of a completed agreement of sale and purchase. Outstanding among them are the following:

- (1) the fact that the agreement A4 both in the body of the document itself (Clause 3) and in the separate receipt clause immediately thereafter acknowledges receipt of the deposit of \$1,135,560.60, the latter clause being signed on behalf of the third party by the son of Mr. Kwan, i.e. Mr. KWAN Sai-tak. It was admitted by Mr. F.F. Kwan that the predecessor to that document (which had been des-

troyed prior to the incorporation of the defendant company) had been in identical terms with an identical additional receipt clause both the agreement and the separate receipt being signed by Mr. Kwan himself;

- (2) the fact that regularly every year between 1963 and 1970 the accounts kept by the third party for the joint venture, and in particular the balance sheet for each such year show the sum of \$1,135,560.60 as a borrowing by each of the two partners from the joint venture;
- (3) an item in the third party's own ledger purporting to show receipt of that sum from Ball Land against the note "see agreement 17/1/63" i.e. the date of the sale and purchase agreement A4; 10
- (4) the fact that in 1967 the defendant at the request of the third party gave the third party a receipt (plaintiff's document 5) for that sum which the third party then used as collateral further to secure outstanding advances, made to the joint venture on mortgage, by the Bank of East Asia. Counsel rely particularly on the fact that the form of this receipt indicates that the right being offered to the bank by way of further security is a right under a loan and not in relation to unpaid purchase price; 20
- (5) the recital in the deed of mortgage (Document B1) dated 17th of February 1967 in which it is stated that the sum of \$1,135,560.60 is a "loan due and owing by the said Debtor" (i.e. Ball Land) "to the Borrower" (i.e. Sang Lee);
- (6) the fact that the third party accounted both to Far East and to the defendant for moneys received by it for the sale of certain of the units and further that it continued to sell as agent certain units for which it accounted to the plaintiff and that it put those sub-purchasers of the plaintiff into possession, facts which it is said militate against the idea of a sale of the property to the defendant upon credit; 30
- (7) the fact that at a time when the joint venture was running into trouble there were meetings between the partners in which the possibility of selling the entire project was discussed the minutes of which do not anywhere disclose any suggestion that the purchase price had not been paid and was still owing qua purchase price to the joint venture (vide minutes Ex.C7-C12); a circular letter sent out about the same time suggested three possible courses of action predicated on such a possible takeover and is couched in terms which suggest that the two equal sums (\$1,135,560.60) taken out of joint venture funds were not to be accounted for to any such possible purchaser of the project (see Document 136 on the third party's 40

file): "The transferee must agree to ratify this withdrawal and the distribution and must not ask for a return of the money or the property as a condition."

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(8) the fact that the agreements A4 and A5 were both registered in 1963 and that neither the third party nor any other person took steps to vacate those registrations although the fact of registration had been brought to the third party's attention in 1969 (see Document G62).

10 (9) a letter dated 27th of November 1970 from the third party to the defendant in which the sum of \$1,135,560.60 is said to be outstanding on current account without any reference to the purchase price being unpaid.

These are I think the salient items.

20 Much of this formidable attack was adumbrated in the opening address of Mr. Ching. By the time the evidence had concluded and final addresses were heard much of this material might almost be said to have become otiose since by then it was frankly conceded by Mr. Litton on behalf of the third party that, as he put it, "there was no question but that in 1962 and 1963 the third party and the defendant as between themselves had treated the purchase price as having
30 been paid". This certainly accords with Mr. Kwan's evidence, the gist of which was, on this point, that the third party took cash because originally Far East had taken flats. He went on to say that his company had taken cash in the form of entering it into current accounts and it was his understanding that if the joint venture needed to use it the third party would have to give it back. As to the defendant he said "it is true that the third party and the defendant both borrowed \$1,135,560.60 from the joint venture at that time Far East did borrow \$1,135,560.60 and used it to pay 90 per cent of the purchase price of the forty-seven units. The defendant still owed that sum to the third party or the joint venture." At another point when he was being cross-examined as to his alleged ignorance of the sale
30 by the defendant to the plaintiff and he was maintaining stoutly, if somewhat unrealistically, that he had known nothing about it he added: "All along I thought the property was that of the defendant company". In the circumstance it may of course be looked upon as a somewhat unguarded remark since his mind was not being addressed at that particular moment to the question of ownership but I think it is nonetheless revealing.

40 What Mr. Litton says about all these things is simply that although all parties had treated the purchase price as though it had been paid they all knew very well that it had not been paid. But I think this answer will not do. I think it is clear that the parties had chosen a certain mode of payment which, unusual as it was, was prompted by the expectation in everybody's mind of a large and certain eventual profit. It is true that Mr. Kwan positively asserted in evidence that when he was signing the predecessor to the agreement before the court (Document A4) he was moved, in view of the terms of the receipt clauses therein to ask Mr. S.C.

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Mok's opinion as to his position in signing and he said that the latter told him that if the defendant did not pay up in full he, Mr. S.C. Mok, being the solicitor assigned by Mr. Kwan to do this work for him, would not permit the completion of the transaction. This does not quite accord either with what was put to Mr. S.C. Mok in cross-examination or with what is pleaded in paragraph 3 of the third party's defence to the plaintiff's statement of claim. What is said in the defence is that an assurance was obtained from Mr. S.C. Mok that in the event of the development being less successful than anticipated the third party could retain the said two blocks as security and that despite the receipt clause it could refuse to execute the assignment should there be no profit. The suggestion put to Mr. Mok, which he totally repudiated, was roughly to the same effect. I accept what was said by Mr. Mok. I should add that I do so primarily upon my estimate of the two witnesses and the manner of their replies in relation to this matter. But in addition I think that the difference between what was said by Mr. Kwan and what is pleaded upon his behalf may not be without significance.

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For one thing what Mr. Kwan said in court was ambiguous and could have meant no more than that he wished it to be understood that the balance of the purchase price \$126,000 odd must be paid. I bear in mind, however, that the conversation took place seventeen years ago; that Mr. Kwan is an old man who repeatedly complained in the course of his evidence of his failing powers of memory. It could well be that there was a conversation about the right of the third party to retain the legal ownership of the land until everything under the contract had been paid and that Mr. Kwan, speaking now out of a sense of the exigencies which later arose, is forgetful of the harmony which then prevailed and has, wittingly or unwittingly, transformed a minor into a major theme. The result has been a telling discord between what Mr. Kwan more or less concedes to have been the confident consensus of 1962 as to the future of the project and the safeguard which he now claims was nevertheless built in to the agreement. I do not believe that such an assurance was given. Mr. Litton puts it, fairly I think, that I am left with the task of imputing a particular intention to the parties in view of the unusual course which the arrangements took and of the patent fact that the agreement (A4) is perfectly clear in its terms and the equally patent and contradictory fact that it is agreed on all sides that nothing in the nature of money or money's worth then actually changed hands. It is in other words an arrangement of a kind peculiarly fit for an analysis which will have regard to the matrix of circumstances out of which it arose. The contracting parties and their associated colleagues were all experienced businessmen, although I think it is conceded by the defendant and the plaintiff that Mr. Mok had a somewhat special position in as much as Mr. Kwan, and perhaps the others also, regarded him as having an especial competence in legal matters as well as a longer experience of this particular kind of development. The particular form which the scheme took may well have been Mr. Mok's inspiration but nevertheless I think all parties were well aware what it was aimed at and of the kind of measures which, in a practical sense, would be necessary to enable it to achieve its full commercial potential. In interpreting the overall situation as the parties saw it I think therefore that it is timely to enlist, as Mr. Litton asks me to do, the assistance of the "officious by-stander" who, since he was

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introduced by MacKinnon L. J. in *Shirlaw v. Southern Foundries (1926) Ltd.* (1) has assisted the deliberations of courts and lawyers as usefully and almost as frequently as his near relative the man on the Clapham omnibus. What Mr. Litton would have this individual ask of the contracting parties as he surveyed the scene around them and ahead of them in 1962 is firstly, "if at the date of the issue of the occupation permit there have been in fact no profits would you, third party, nevertheless assign the property to the defendant?" Secondly, "If the scheme should prove not to be self-financing, and if the directors of one of the parties should feel impelled out of its own pocket to replenish the funds of the joint venture while the other party contributed nothing, then assuming that the contributing directors were of the third party would the third party nevertheless assign to the defendant?" Thirdly, "before the whole development scheme was finally completed would the defendant be permitted to declare a profit and to appropriate any moneys accruing from sales of units in Blocks 1 & 3?" Now if I may say so with respect those are very heavily loaded questions. Not only are they somewhat rhetorical in nature but they also imply a certain degree of prescience on the part of the questioner as to the actual course that events would take after 1962. I am far from sure that the officious by-stander is permitted to be so inquisitive. Certainly I do not think that he could be expected to be so well informed. He is after all merely a device for determining the full reach of the parties' intentions in the light of what might be expected to be their foresight of commercial consequences. The simpler and more likely question to test those intentions in relation to A4 would have been : "what if the entire development should prove in the end unprofitable?" As I read the evidence of Mr. Lai, Mr. Kwan and Mr. Mok the answer to that question would have been a prompt and uncompromising "that prospect is so unlikely that we are content to contract in the terms we have chosen". The intention of the parties in other words was that, upon the issue of the occupation certificate and payment of the balance the assignment should follow promptly without further ado whatever the interim condition of the project then might be. I hope it will not be thought that I have leaned too heavily upon a convenient myth. But the vital point here is the ascertainment of the true intentions of the contracting parties on a state of facts disclosing two possibilities divided from each other by a fine but necessary distinction. The answer I have given to that hypothetical question is the answer which I believe is forced upon me by the evidence as I find it. That answer being adopted it necessarily follows that the third party was not seeking to have its loan secured upon the land save to the extent of the unpaid balance of the agreed purchase price. The parties had chosen a certain mode of payment and the third party cannot now be permitted to assert a right to payment on a wholly different condition. (*Tankexpress A/S v. Compagnie Financiere Belge Des Petroles S.A.* (2)). The point as to non-payment of the purchase price therefore fails.

As a second line of defence in relation to this primary issue Mr. Litton also took the point that there existed a right in the third party to resist the enforcement of the contract on the basis of unpaid vendor's lien. But that point as it seems

(1) (1939) 2 K.B. 227.

(2) (1949) A.C. 76.

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to me must go with the first. I think some degree of confusion arose concerning it in the course of the hearing in which I myself participated or which at any rate I was unable expeditiously to dispel. In the result the argument led at one point by a side road upon a fairly lengthy excursion through a series of decided cases concerned principally with the question of how the Vendor's lien may persist despite the existence of circumstances which might suggest the acceptance by the Vendor of a mode of payment other than the straight forward cash payment in whole or part of the purchase price. Thus we reviewed in succession *Grant v. Mills* (3); *Rice v. Rice* (4); *Winter v. Lord Anson* (5); and *Mackreth v. Symmons* (6). I do not propose to examine the facts or principles set out in these cases although they were subjected to a careful and close analysis by Mr. Chang. I may say in deference to him that I found that analysis both thorough and perceptive and, although I do not in the end find them of any assistance to what I have to decide, he was led to examine them in some detail in this way by reason of the somewhat oblique purpose to which Mr. Litton sought to put them. In the end I think it was tacitly acknowledged upon all sides that there had been some degree of cross-purposes involved in this part of the argument. For Mr. Litton made it plain ultimately that he did not seek to enlist the support of these authorities other than, as he put it, by way of analogy. Thus for example he pointed to *Grant v. Mills* (3) where a vendor had accepted from the purchaser a bill of exchange in payment of the purchase price that form of payment proving later insubstantial by reason of the bankruptcy of the drawer where it was held that the vendor's lien on the estate for the purchase money was not discharged by the taking of the bills which should be considered not as a security but as a mode of payment only. How could it be said, counsel asked, that in the present case where the mode of payment was less substantial still, amounting only to a book entry in the current account of the joint venture that the purchase price had nevertheless been satisfied when all parties knew that nothing had been paid? He relied upon these cases also to show, as he put it, the tenacity of the vendor's lien and how it persisted even (a) where the conveyance had actually been executed (*Winter v. Lord Anson*, *Rice v. Rice* and *Grant v. Mills*); (b) where the conveyance itself acknowledged receipt of the whole purchase price although no money had changed hands (as in the present case and in *Grant v. Mills*) or else had been received only in part (*Rice v. Rice* and *Winter v. Lord Anson*). He enlisted *Mackreth v. Symmons* to show how the lien binds not only the vendee but also a third party with notice of the nature of the transaction between vendor and purchaser. That he maintained is relevant to the position of the plaintiff in the present case. Finally he pointed out that the lien is not dislodged but passes by subrogation to a third party who has put up the money for the purchase on behalf of an infant purchaser under a security which is unenforceable (*Thurstan v. Nottingham Permanent Benefit Building Society* (7)). It was with specific reference to that particular case Mr. Litton said

(3) E.R. Vol. 35 335.

(4) E.R. Vol. 61 646.

(5) E.R. Vol. 38 658.

(6) E.R. Vol. 33 778.

(7) (1902) 1 Chan. 1.

twice in the course of the hearing that he drew merely analogical support from the authority. Yet it was upon the doctrine of subrogation that the greater part of Mr. Chang's argument on this area of the case was concentrated. Considered at leisure this body of authority commencing with *Thurstan* and culminating in the case of *Orakpo v. Manson Investments Ltd.* (8) appears somewhat remote from the circumstances which concern us here. It seems clear that where there are three parties a vendor, a purchaser and a lender who puts up the money in whole or in part for the purchase then although the vendor gets paid the purchase price the vendor's lien may nevertheless persist and enure to the benefit of the unpaid lender to the extent that the latter has not been paid. The lender in other words is put into the vendor's position as it was prior to the payment of the purchase price. This will not be invariably so and the question whether it is so or not in any given case will depend upon the intention of the parties or as it is said upon whether, as between lender and vendor the parties got what they bargained for. Now if I understand it rightly it was with this latter part of the ratio of those cases and with that part only that Mr. Litton was concerned. As against Mr. Chang's contention (which I think is unassailable) that there is no two party case i.e. no case involving vendor and purchaser solely in which the court has held that the vendor's lien persists after the payment of the purchase price Mr. Litton, seizing upon the three party case principles, would nevertheless have it that there can be occasions when even if the purchase price can be said to have been paid or perhaps treated as paid as between vendor and purchaser the behaviour of the parties and the nature of their bargain generally may be such as to indicate an intent that the vendor's lien should persist. Mr. Chang as though to balance this extreme contention by one as extreme upon his own side has put it forward that even if I were to say that the purchase price had not been paid to any extent I should nevertheless find that the behaviour of the parties in the circumstances generally was such as to establish by necessary implication that there was a consensus between the parties that the lien should go. Now I have no doubt that the parties could by express agreement in a case where the purchase price had not been paid provide that nevertheless the lien should not persist; likewise it would be open to them to agree that where it had been paid in some fashion which did not involve the payment of money the lien should nevertheless be retained. But to come to a conclusion of either kind by pure implication and without the clearest warrant from the evidence would seem to be very difficult in the former case and virtually impossible in the latter. Express words would be necessary in either case. In the present case I see no warrant deriving either from specific authority or general principal or from the evidence itself which would leave any such possibility in the picture.

What Mr. Litton's contention on this part of the case comes down to in the end, I think, is that the whole concept of a notional borrowing and notional paying back is, as he put it, mere "forensic logic" and that there is no reality in the mechanics of accountancy as it appears in the balance sheets and various books of account where the defendant as borrower is debited with the sum of \$1,135,560 and as purchaser is credited with the same sum. That is as far as I can take the points which have been made under the heading of vendor's lien. Mr. Litton I

(8) (1977) 3 All E.R. 1.

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think equates what was done or purported to be done between the parties here with the device of paying by means of what Lord Denning M.R. referred to as "circular cheques" in *Wallersteiner v. Moir* (9). I agree that in all such cases the true nature of the transaction must be carefully searched out but even payment by circular cheque is not necessarily unreal though it may be notional. Unless one can equate notional with fictitious one is not entitled to say that there has been no payment. It all depends on the intention of the parties. If there has been payment no question of a lien can arise to whatever extent the payment has been made. It is perhaps convenient to this point to emphasize certain further features which indicate the reality of the loan and the use of it for purchase. Firstly, it was not disputed that the third party knew that it was the intention of the defendant to buy in order to sell on to sub-purchasers. In order to do so the defendant would need to show good title. This too would be well within the knowledge of the third party. It seems very unlikely that at the time A4 was executed it was the intention of the third party that the defendant should be unable to show good title, subject to the payment of the balance of the purchase price and the issue of the occupation certificate, yet that would necessarily be the effect if A4 was regarded as an unenforceable agreement. Secondly, as Mr. Chang has pointed out if the defendant had sold on at once to a stranger to the syndicate who took without notice of the arrangements between the third party and the defendant it would have been very difficult for the third party to resist a request for an assignment on the part of that purchaser on the basis of the clear terms of A4 once the occupation certificate had been issued and the balance paid. That did not happen but it was something which could readily have been contemplated as likely by the third party. Thirdly, as I have been mentioned earlier the third party actually sold some of the 47 units on behalf of the plaintiff and put those sub-purchasers into possession. At the very least that seems strange conduct on the part of a party who says that at the time of such sub-sales it was well aware that the defendant had no good title to give. Fourthly, as I understood the purport of Mr. Kwan's evidence, he did not in the end maintain that the third party had not had made available to it funds which were repayable; rather it was his contention any such funds as had been made available had been repaid. If there was a loan of that kind to the third party it seems unlikely that the counter balancing arrangement made concerning the defendant would not likewise have been regarded as a loan.

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The point as to estoppel is closely contingent upon the latter considerations but I think it may briefly be disposed of. Mr. Ching and Mr. Chang rely upon the various receipts as raising an estoppel against the third party in respect of any attempt to deny payment. Here again however there is some degree of cross-purposes. Mr. Litton's contention was that there could be no estoppel between immediate parties with notice of the fact that whatever the document said there had not been payment. Mr. Chang has sought to meet this objection upon Mr. Litton's own ground by citing the New Zealand case of *Clark v. Sheehan* (10) but I think Mr. Litton is right to say that that case is not directly in point. It is true that the court held that the defendants could not go behind the wording of a receipt which announced the payment of £4,500 being deposit on a certain house

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(9) (1974) 3 All E.R. 217.
(10) (1967) N.Z.L.R. 1038.

10 whereas no such deposit had been paid to the knowledge of both parties. The truth behind that receipt however was that it was a covert acknowledgment of a reduction, by that amount, of the purchase price of a hotel in a collateral arrangement between the same parties the deduction being in respect of the goodwill of a hotel being bought from the plaintiff by the defendants who, as purchasers in the transaction, were vendors of a house owned by them in the transaction to which the receipt related. While the receipt therefore did not strictly tell the truth it was a means of acknowledging that money's worth actually had been received as was admitted by both parties. In the present case however if it be accepted that payment was made in truth then the point as to estoppel simply does not arise.

20 I come thus to the second and final issue adumbrated at the start – the issue as to illegality. The framework upon which the allegation of illegality is hung is said to be an ingenious scheme devised by T.F. Mok which would ensure himself and his colleagues in the syndicate a “free ride” towards the conclusion of the building project, which was expected to be very profitable, freed from anxiety about any possible financial liabilities which might occur along the way. The four corner posts of that scheme consist of the agreements A4 and A5 and their identical predecessors and in moving to expose and demolish it Mr. Litton invokes the maxim “ex turpi causa non oritur actio”. It will be helpful to recall briefly what occurred. After the syndicate was formed the members contributed \$640,000 as its capital or if that is too precise a term to apply to such a body, then as a fund to contribute to the joint venture which was already envisaged. \$563,000 odd of that sum was combined with an equivalent sum contributed by the third party to effect payment of Mr. T.F. Mok's commission and to make the 10% deposit on the purchase price to Messrs. Davie Boag. Then followed the loan and purchase arrangement and the agreement of sale and purchase between the third party and Far East – the representative of the syndicate: very shortly thereafter followed the sale and purchase agreement to the plaintiff yielding the sum of \$740,000 odd to Far East for the syndicate; then came a payment by Far East out of the funds thus received to the syndicate members of sums equivalent to the original contribution of \$640,000, all of this occurring before the incorporation of the defendant. On the 4th December 1962 the defendant is incorporated and the day after that an additional sum of \$128,000 is paid by Far East to the syndicate members. Finally the agreements between the third party and Far East and Far East and plaintiff are replaced by the agreements represented by Documents A4 and A5, in January and February of 1963 respectively the syndicate members having by then been incorporated as Ball Land Investment Co. Ltd. The substance of the third party's pleadings by way of defence to the claims of both the plaintiff and the defendant are set out in the amended defence to the plaintiff's claim in paragraph 8. Excluding such matter as touches upon the now dead issues deriving from the allegations of non-payment of the purchase price by defendant to the third party and by the plaintiff to the defendant what remains may be reduced to the following contentions: that the intention and effect of these agreements was (1) to refund capital to the defendant shareholders: (2) to pay dividends to the shareholders notwithstanding that the defendant had made no profits: (3) to strip the defendant company of its assets so that it was left in no position to fulfil its obligations towards the third party

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under the partnership agreement (Document A8); (4) alternatively, if the moneys or any part of them paid to the syndicate members are to be regarded not as refunds of capital or payment of dividend but as loans to shareholders following the incorporation of the defendant, then such loans infringe the provisions of Section 48 (1) of the Companies Ordinance and are therefore unlawful. This latter pleading was necessitated as a result of a very late amendment of the third party's defence to the defendant's statement of claim when in the course of the trial Mr. Chang pointed out that the agreement A4 did not seem to be impugned by the third party whereas A5 was. Mr. Litton was permitted to close this gap by an amendment which in effect pleaded that LAI Kwai-tim of the plaintiff company was privy to Mr. T.F. Mok's scheme. This was on the 15th of January in the course of the trial. Some three weeks later, Mr. Chang having introduced the argument that the repayments were to be considered as loans to shareholders and directors and Mr. Ching in the course of the evidence having taken up the same stance, the third party was permitted to make a final amendment pleading section 48 of the Companies Ordinance. I should add that there still remains (paragraph 8 subparagraph 5 of the re-amended defence to the plaintiff's statement of claim) an allegation that the intention behind the agreement was to defraud creditors of the syndicate and of the defendant. This allegation as to fraud was expressly withdrawn by Mr. Litton in the course of the argument. Thus his case as to illegality really comes to this: Firstly, that the contract A4 should not be enforced because it provided a means for the return by the company to its shareholders of the whole of their capital plus a declaration of dividend before any profits had been shown and that such payments are unlawful under the general principles of company law in the absence of an order of the court; secondly, in the alternative, that it should not be enforced even if there was not an unlawful return of capital because even then there was an illegal return of profits to shareholders and that is wrong in itself and furthermore is something so closely intricately with the first payment as to render the whole illegal; thirdly, and in the alternative, that if that be not so the contract A4 should not be enforced because it is tainted with illegality deriving from a breach of section 48(1) of the Companies Ordinance; fourthly that in any event apart from illegality of any of the foregoing kinds A4 constitutes an essential part of the mechanism of an unconscionable scheme devised by Mr. T.F. Mok to ensure a fail-safe passage for himself and his colleagues in the syndicate through any possible vicissitudes of the joint venture to the detriment of its partner and that being so the court should not lend its equitable assistance to the enforcement of it; fifthly, that all these tainting or vitiating factors also affect the contract A5 by reason of the fact that Mr. LAI Kwai-tim and his company have been through-out privy to Mr. Mok's scheme.

Now, as it seems to me, the core of the third party's case on this point is represented by the fourth of the above contentions. I will deal first however with the suggestions of illegality in strictu sensu and of these the one that is logically prior is the suggestion (a) that there has been an unlawful return of capital to shareholders before the incorporation of the company and (b) an unlawful declaration of a profit or dividend in the sum of \$128,000 on the day after the incorporation of the company, the 5th of December 1962. The general principle upon which Mr. Litton relies is well expressed in the textbook on Australian Company Law to which counsel referred me where it is said at page 1570:

“It is generally acknowledged to be a fundamental principle of company law.....that capital must be preserved intact, that is to say, preserved from erosion by deliberate acts done otherwise than in the course of the ordinary operations of the company undertaken in the pursuit of the objects for which it was established.”

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The principle is stated to be for the protection of the creditors. In *re National Funds Assurance Co.* (11) Jessel M. R. put it this way:

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“Creditors have the right...to have the capital kept for the payment of their claims..... The limited company trades upon the representation of being a limited company with a paid-up capital to meet its liabilities. It is wholly inconsistent with that representation that the company, having its capital paid up, should pay it back to its shareholders, and give the creditors nothing at all.”

In *Trever v. Whitworth* (12) Lord Herschell said:

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“The capital may, no doubt, be diminished by expenditure upon and reasonably incidental to all the objects specified. A part of it may be lost in carrying on the business operations authorised. Of this all persons trusting the company are aware, and take the risk. But I think they have a right to rely, and were intended by the Legislature to have a right to rely, on the capital remaining undiminished by any expenditure outside these limits, or by the return of any part of it to the shareholders.”

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Mr. Ching makes a legitimate distinction between the share capital and the assets of a company but I do not think he is quite right to say that the whole purpose of the share capital is to repay to shareholders the amount of their paid up shares on the winding up of the company. That may be one of its purposes for they will be creditors of the company under such circumstances in common with other creditors. Again he points out, by way of extreme illustration, that the company might have a million dollars in paid up shares which it would then dispose of to a charity and if for any reason another company wished to take over that company the shares might be worth virtually nothing but the capital of the company would still be a million dollars. It would however have no assets. Again that seems to me to be a truth in the sense that there is still a nominal capital of a million dollars but that is not a matter of much practical import to any creditors of the company who at the time of such benefaction may have claims outstanding against the company. A company's share capital may be and of course frequently is employed acquiring assets provided what is done is within the purposes covered by the Memorandum of Association. The assets might not be readily convertible into cash in order to pay current debts but that is to be regarded as a foreseeable business risk which has to be undertaken by any persons who, on the faith of the Memorandum of Association and of the stated capital of the company, have entered into business relations with it. I do not think that the distinction

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(11) (1878) 10 Ch. 118 at p. 127

(12) (1887) 12 A.C. 409 at p. 415

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between the capital and the assets of the company is of much assistance in confronting the present problem. In one sense I think it may be correct to say, as counsel for the plaintiff and for the defendant have said, that there was in the strict sense no return of capital to the shareholders. The capital sum of \$640,000 had been used – the greater part of it – in paying Mr. Mok’s commission and in paying a half share of the initial deposit upon the purchase of the land from Messrs. Davie Boag. In this way the defendant acquired an interest in the land and in a venture which was expected to yield millions of profit. Then using the loan acquired from the funds of the joint venture in the hands of the third party the defendant sold part of its property rights in the property in which it had acquired an interest to the plaintiff. One might perhaps justly say that it was selling “notional flats”. The proceeds of that sale were paid to the syndicate members \$640,000 before incorporation and \$128,000 immediately thereafter. It is quite true that this was a sale of only part of the whole property rights in the vastly greater proportion of which the defendant at that time had a firm and reasonable prospect of sharing together with the third party. To that extent its share capital of \$563,000 odd was still tied up in property which though not yet fully paid for was confidently expected to be paid for. \$563,000 could therefore be regarded as the purchase price of a very viable expectation involving, even at that early stage, an equitable interest in a huge piece of valuable land. It must be said at this stage that, if he will forgive the expression, Mr. Ching has blown hot and cold on this question of capital return. In his opening address he undoubtedly adhered to the view that what had been done was to return to the syndicate members their full capital with something in the nature of a bonus on top. The long period of the trial left him with quite sufficient time for reflection to plead in the end, by way of alternative, that there had been no return of capital at all. I think a great part of the reason for that and of the reason for Mr. Litton’s later amendments was the very late production of documents some of which even immediately before trial were still in the defendant’s custody or in that of the official receiver and had not been seen by either side. It is not surprising that Mr. Ching opened as he did for it seems very clear that the syndicate members themselves were of the opinion that what had happened was that their full capital had been returned to them. There are opposing items of evidence on this but the series of receipts given by the syndicate members (later shareholders) which appear in the plaintiff’s bundle as Document 2 acknowledge the various sums paid either as return of capital or as payments of profit. For my own part I am quite satisfied that that is how the syndicate members did regard them and the matter seems to be clinched by the evidence given by Mr. T.F. Mok himself. In answer to questions in cross-examination he admitted that up to October 1963 the moneys which had been returned were regarded by the syndicate members as being safely in their own pockets i.e. not subject to call. It was only thereafter when the auditor from Messrs. Lowe Bingham & Matthews, Mr. B.J. Young, was auditing the books that he said the entries relating to the sums and came to the view that they represented a return of capital and payment of profits to the syndicate members. He told Mr. CHAN Kwok-wah that this could not be done. It was thereafter, according to Mr. Mok, that he and the others were content to regard what has been paid to them as loans made to them by the company. There is no question that thereafter in the books of account kept by the joint venture and the defendant company, the latter description is given to these sums. If they were loans different considera-

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tions will arise and I will come to that later. At the moment what I am concerned with is the alleged unlawfulness of a return of capital and payment of dividends. What we seek here is the substance and not the shadow and it seems to me not to matter greatly what the syndicate members themselves believed had happened in 1962. It was Mr. Ching in summarizing his opponent's argument who said that the scheme attributed to Mr. Mok amounted to the allegation that the syndicate (a) having become a partner of the third party acquired an asset without payment proceeded to dispose of that asset at once for cash at less than the stated value of its notional purchase and then distributed that money to its members; (b) caused itself to be transformed into a limited liability company so that the personal liability of its members was thereafter excluded becoming thus (c) an empty shell to which the third party could no longer look either for payment of its debt or for the discharge of the partnership obligations under the partnership agreement A8. Whether it be termed a return of capital or a stripping of assets the act complained of by the third party is somewhat similar to that reproved by Sir Charles Hall in *Holmes v. Newcastle-Upon-Tyne Freehold Abbatoir Co.* (13) who thought that if a limited company were entitled, in the circumstances then before him, to sell a large portion of its assets and to divide the proceeds amongst its members then: "creditors and people who had trusted them on the faith of their memorandum of association, and of there being £5,000 either to be called up or represented by property which had been acquired through the means of capital found, would be entirely deceived". That case indeed provides a factual situation which is not dissimilar from the circumstances here. There were ten persons who were the co-owners of certain lands which they had purchased with moneys subscribed by them in equal shares. After the land purchase they formed themselves into a limited company, the articles of which contained no power to reduce capital, and after the registration of that company they conveyed those lands to themselves on behalf of the company. There was no other paid up capital except the lands so conveyed and certain moneys expended on the improvement of the land which had also been subscribed equally by the shareholders. The directors afterwards sold a portion of those lands which they alleged were not required for the purposes of the company and sought to divide the proceeds equally between the ten shareholders. It was held that the attempted division of the proceeds was a reduction of capital and was ultra vires and invalid. An obvious difference with the present circumstances consists in the fact that in the present case the paid up capital includes a claim upon a property possibly of vastly greater worth than the property which was sold and the proceeds of the sale of which were distributed. Counsel for the plaintiff and for the defendant point out that this refunding of money to the syndicate members took place before incorporation and they point out that this kind of conduct is not forbidden to partnerships or unlimited companies. Mr. Litton does not dispute that as a legal principle but he asks me to say that since it was, as is admitted, the intention of Mr. Mok and the other syndicate members from the outset to join in the partnership as a limited company and since they were actually represented by a limited company (Far East) up to their incorporation it is only in a nominal or technical sense that the defendant can be said to be not in breach of the law. Secondly, he points to the fact that in any event the \$128,000 was returned the day after incorporation. This is itself, he maintains, is objectionable as in impermissible distribution of

(13) (1875) 1 Ch. 682 at p. 688.

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profits but further he asks me to regard it as so connected with the other payments and with the general disposition of Mr. Mok's plans at that time that it carries its infection back across the barrier of incorporation and taints equally the larger sum. Both payments, as he graphically put it, should be regarded as "fruit of the poisoned tree".

It is here I think that we touch the deepest source of the resentment felt by the third party in respect of its partner's behaviour: in the notion that there was a deliberate attempt on the part of Mr. T.F. Mok to exploit his superior experience and knowledge of the law by a kind of legerdemain which secured for himself and his syndicate associates the protection of limited liability while avoiding the restrictions upon the uses of capital and capital assets which the law imposes in the interests of those who may deal with a company. Fraud is not alleged but something in the nature of a conspiracy hangs in the air. Its source is said to be Mr. Mok's ingenuity if not actually his guile. In pursuing this idea Mr. Litton leans heavily on the fact that from the outset the affairs of the syndicate were dealt with by a limited company (Far East) and he points to the terms of the letter Exh. G70 of the 14th December 1972 sent by Mr. T.F. Mok in the name of Far East to the third party in which it is said that, pending incorporation, the name of Far East had been used and requiring the third party thereafter to accept the defendant company in place of Far East. Mr. Litton also relies upon the minutes of the first meeting of the joint venture directors in which language is used to indicate that everything which had previously been done in the name of the syndicate by Far East was ratified by the defendant and in which Mr. T.F. Mok announces that cash need not be paid for the 47 flats transferred to the defendant. Mr. Ching concedes that from the outset incorporation of the syndicate was intended. To my mind none of this demonstrates an intention from the outset to circumvent the law. If Mr. Mok had been astute to dodge the law in respect of the re-funding of \$640,000 to the syndicate members by two payments in 1962 before incorporation would he have been unaware of the danger of permitting the \$128,000 to be refunded the day after the incorporation at a time when it was clear that the new fledged company could not claim to have made any profits? I do not think so. It is common ground that it was not unlawful for the unincorporated syndicate to receive back that money without any authorisation by a court and technical though this reply to the imputation may be I can see no warrant for extending to what was done by the syndicate in its unincorporated state any sanction of the law which could not have applied to its acts at that time. Equally, however, I must hold that in its incorporated state payment by it of \$128,000 to its shareholders can only be regarded as the distribution of a dividend at a time when no trading profit existed to be divided. But granted that that is so it is still a far cry from the proposition that the company had done something which was not entitled to do under the law to the conclusion that the agreements A4 and A5 which were an essential part of the machinery enabling it to do so must therefore be regarded as tainted with such illegality as to render them void and unenforceable. All that means as I see it is that the directors and shareholders could be compelled at any time to return those moneys to the treasury of the company. Indeed even if I had been compelled to regard that return of \$640,000 as an unauthorised payment out of share capital the same answer

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would have sufficed. That is the conclusion arrived at by the court in the case. In re National Funds Assurance Co. (11) one of the cases relied upon by Mr. Litton as showing the illegality of such payments.

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10 Counsel for the plaintiff and for the defendant have of course sought to evade the imputation of any such illegality by endeavouring to demonstrate that all of the sums were treated by the syndicate members whether corporate or unincorporate as loans made to them by the company. Mr. Chang would have it that that was so from the outset and that this is demonstrated by the fact that in the defendant company's cash book and ledger the list of these moneys opposite the names of those to whom they were returned is placed in the debit column over
20 against those names. The evidence of Mr. B.J. Young of Lowe Bingham and Matthews however seems to show very clearly that when his firm came to audit the accounts of the joint venture he was compelled to point out to CHAN Kwok-Wah, himself a shareholder in both the defendant and the third party and also the accountant of the defendant company at that time, that it was wrong to distribute profits before they had been earned. His evidence was not explicit as to how this conversation had come up but I assume that it referred to the manner in which these returns amounting to \$768,000 should be dealt with in the balance sheet. As to the figures in the defendant's own ledger and cash book upon which
30 Mr. Chang relies I hesitate to draw any conclusion from them for Mr. B. J. Young said of the ledger (Document 12 in the defendant's documents) that the figures shown as debits should all be shown as credits while in the corresponding entries in the cash book (defendant's Document 11) the same figures were shown in the credit column and should be shown in the debit column. In answer to the question "Did the books of the company show that capital was returned to shareholders?" he replied "That was before incorporation of the company. This is however the cash book of the company. The book shows figures which might equally be a note of return of capital or advances to shareholders." The best I can make of this evidence, and of the rest of the evidence touching this topic, is that Mr. Mok, and presumably Mr. LAI Kwai-tim, were alerted to the possibility that something
40 had been done which should not have been done and that thereafter in the joint venture's accounts and presumably in the defendant company's books, entries were made, subsequent to this conversation, to indicate that the payments to the directors and shareholders were in the nature of advances to them by the company. Mr. Litton refers to this as a mere "Cosmetic gloss" upon the accounts adopted to satisfy the auditors. Mr. Lai asserted the reality of this transmutation of profits into loans. Mr. Mok did not deal with it. It was never put to him. I think this must have been because his examination-in-chief took place before Mr. Chang's address and it will be remembered that it was Mr. Chang who first introduced the theme of loans. Thereafter Mr. Litton cross-examined Mr. Mok who, while admitting that an interim benefit was intended, would not admit that this was intended to be a return of capital. Mr. Lai's view was that the other shareholders must have known of this by seeing the sums set to "current assets" in the balance sheet which would be available at the annual general meeting held by the defendant company. That does not seem altogether likely for these meetings appear to have been of a distinctly informal nature held usually at restaurants with families including children present. Mr. B.J. Young however gave more specific evidence. He told the court that in the years when his firm was auditing the accounts of the joint

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venture (Presumably from 1963 onwards) circular forms would be sent out to the individual shareholders and directors in order that they would confirm the state of the accounts and the existence of the debts. These records were no longer available but he professed himself to be satisfied that the auditing of the accounts every year which included a notification of the existence of these debts could not have been so done unless these confirmations had regularly been received. He added that it was often necessary to pursue the person responsible for the accounts, who he named as LEE Shiu-man, in order to get these confirmations returned to him for it appears that the individual shareholders and directors were often lax and tardy in complying. He himself was satisfied as to the reality of these loans and he had never heard their nature questioned. Counsel for the third party pressed him on the question of the qualification or reservation which appears in the balance sheet of the joint venture of 1968, and repeated in succeeding years, in which a doubt is expressed by the auditors as to the possibility of these loans being recoverable. Mr. Litton sought to enlist from the witness an admission that this was because the shareholders and directors did not regard these moneys as returnable i.e. as being loans at all. The witness would not agree to that. He said that this qualification began to be entered because as the years went by there was no movement in this item of the accounts and it was the age of these loans which prompted the entry of the cautionary qualification. I should add that it is undisputed that during these years these debit entries denoting, at least on paper, the extension of credit to the shareholders and directors was the only asset standing in the books of the company apart from a very small figure of cash. On balance it seems to me that the case for loans has been made out. I accept Mr. B.J. Young's evidence that he had instructed a responsible official of the company, CHAN Kwok-wah at that time in charge of the accounts, in the impropriety of what he deemed to have started out as a capital return. I accept Mr. LAI Kwai-tim's evidence that he learned of this from Mr. Chan. I am satisfied that the consequent book entries were not intended as a camouflage but were a formal acknowledgment in the name of the company that these sums were owing to the company. I think it unlikely that most of the directors and shareholders had not been apprised of this fact and that whatever they thought was the nature of the funds at first returned to them they came to realise that a time might come when they would have to render an account of them. But even if that be not true nevertheless the company, Mr. CHAN Kwok-wah and Mr. LAI Kwai-tim, had acknowledged the indebtedness of the shareholders and directors and that I think was enough to bind their colleagues.

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But in any case I do not think it really matters what the shareholders or directors thought. I do not think it even matters what Mr. LAI Kwai-tim or Mr. LEE Shiu-man may have thought. Let it be assumed that all those funds, and not merely the \$128,000, had been impermissibly returned to the directors and shareholders. Once there was a call upon them the impropriety would have been disclosed and they would have been compelled to put the company back into funds.

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But then the argument takes another turn. Since his opponents are eager to press the idea that loans were made to the directors and shareholders

10 Mr. Litton takes them upon their own ground and he argues that this transformation of returned capital into loans offends against the provisions of section 48(1) of the Companies Ordinance in that it amounts to lending by the company of money to its shareholders for the purpose of purchasing their shares. Now it is true that upon the incorporation of the defendant company some 64,000 shares of a normal value of \$10 each were issued to the shareholders in proportions according with the contributions of each to the initial syndicate capital and these shares were credited as fully paid up. In this regard Mr. Litton leans heavily upon the terms of a letter dated the 19th June 1973 (defendant's Document 8) from the solicitors of the plaintiff to the official receiver a letter several pages long each one being signed at the bottom by Mr. Lai. The relevant portion of that letter reads as follows:

“We would like however to draw your attention to the Balance Sheet of Ball Land for the year ended 31st March 1963 and to observe as follows:

(a) The capital of \$640,000 should in our opinion be read contra part of the “Directors Current Account \$456,000” and that part of the “Sundry Debtors and Accounts Receivable” which consists of loans to shareholders who were not directors;

20 (b) Current Liability

The first 2 items of this account namely “Agents Account Payable” and “Wing Kwai Investment Co. Ltd.” total \$1,135,560.00 and this sum corresponds with the sum under the heading “Deposit on Land and Buildings”. It is, in our opinion, fair to assume that these items are contra items.”

30 What these passages means, counsel says, is that the loans referred to therein are set over against the share capital of \$640,000 and that this is a clear admission that the money thus loaned was loaned for the purpose of purchasing those shares. It is far from clear to me that that is so. As Mr. Ching points out the initial capital of the syndicate is utilized to a large extent in the payment of the half share of the deposit of the purchase price to Messrs. Davie Boag and the half share of the commission to Mr. Mok. The sum of \$563,737 appears unchanged, year after year, in the balance sheet of the joint venture as the capital contribution of each of the partners. This is in effect the entry fee paid by each of the partners in acquiring a 50% interest in the joint venture. Although it might be very difficult to evaluate at any given moment, that represented a capital asset in the form of a valuable investment and constituted a valuable backing to the shares. If the shares were fully paid up there was no need of loans to pay for them. The defendant company simply assumed proprietorship over the partnership's assets and its capital and on this view of the matter the shares should then be regarded as issued to the shareholders against value received from them. In any case, if that is a mistaken way of looking at the matter and if what was done can truly be interpreted as advances by the company for the purchase of its own shares the answer given by Mr. Chang would seem to be conclusive against the

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suggestion of illegality. Section 45 of the Companies Act of 1929 is in terms identical with our section 48. The relevant part of section 48(1) reads as follows:

“(1) Subject as provided in this section, it shall not be lawful for a company to give, whether directly or indirectly, and 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 the company.....”

There follows a proviso which does not concern us.

In the case of *re V.G.M. Holdings* (14) a case taken under the 1929 Act it was held that this prohibition did not apply to assistance given in connection with the acquisition of shares by subscription. The prohibition was later extended in England to the subscription for shares by section 54 of the 1948 Companies Act but the Hong Kong Ordinance remains unamended in this particular. Pressing his authority to the full Mr. Chang directs my attention to a passage in a commentary on section 54 which appears in Palmer’s *Company Precedents* 17th Edition at page 427 where it is said:

“Disregard of the provisions of section 54 is punishable by fine: but the agreement between the vendor and purchaser of shares is not rendered invalid thereby, and it has been held that a security given in defiance of the section is not invalid, a decision which seems to a great extent to nullify the effect of the section.”

Mr. Chang says that even were it not for the present condition of the law in Hong Kong and if assistance to the subscription of shares were unlawful the authorities cited in the footnotes to the text for the proposition just now quoted would be sufficient to secure the defendant’s and plaintiff’s arrangements from the imputation of illegality. I confess I am somewhat doubtful of that for the text immediately following the portion that I have read goes on to say:

“The section makes it unlawful to give such a security. It would not seem to be a difficult inference from this that the security if given is unlawful and therefore void. If persons knowingly contravene the section they may be guilty of a criminal conspiracy.”

On the other hand Lord Denning M.R. in *Wallersteiner v. Moir* (9) considering the effect of a breach of section 54 (Page 239D) seems to take the view that the effect is to give rise to a civil claim and that the defaulting director is liable to recoup the company. However this may be, it is evident that there is lacking to the Third Party’s case, in the circumstances as they appear and under the law I find it, such weighty matters of illegality as are constituted either by outright fraud or else by criminal conspiracy such as existed in the case of *Scott v. Brown* (15) (indictable conspiracy) or *Alexander v. Rayson* (16) (a fraud directed at the rating authorities) upon which Mr. Litton has relied in pursuing the theme of illegality.

(14) (1942) Ch. 235.

(15) (1892) 2 Q.B. 724.

(16) (1936) 1 K.B. 169.

In the absence of actionable fraud or indictable conspiracy I must ask finally what it is in the circumstances of the present case that, short of those matters, might yet afford evidence of such unconscionable conduct that the court should not lend its assistance to the enforcement of these agreements.

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10 In the course of a long and carefully articulated argument Mr. Litton
deployed the resources of the maxim "ex turpi causa" against several alternative
interpretations of the defendant's behaviour. With three of those I have already
dealt. The fourth and final alternative was framed by him somewhat in this form:
"T.F. Mok's scheme was intended to have and did have the effect of stripping the
defendant company of its assets. When the defendant entered into the partnership
agreement (Document A8) it was nothing but an empty shell incapable of fulfilling
its share of the obligations under the joint venture and in the event it never did
fulfil those obligations. That upon its own is enough to vitiate Documents A4 and
A5 since these were the instruments by which T.F. Mok effected the consummation
of his scheme." Of the various cases which the counsel cited the particular one which
would seem to come nearest to suiting the intention of this particular argument is
Berg Saddler v. Moore (17). The plaintiff in that case had been a member of a
tobacco association and had been expelled from membership for breach of its rules.
He thereby lost the privilege of access to supplies of cigarettes. He sought, by en-
20 listing the aid of a member of the association in good standing, to circumvent the
effects of the ban. He ordered supplies of tobacco in the name of this member
from a trader who was also a member of the association. He then sent an employee
of his own together with an employee of the member who was his friend to collect
these supplies, but the supplier becoming suspicious of the circumstances refused
to hand the goods over and refused to return the money. The plaintiff brought an
action to recover the purchase price paid but the court rejected his claim and also
refused to order the dealer to deliver the goods to him. The plaintiff appealed but
his appeal was rejected. Mr. Litton relied upon this case as an example of circum-
stances which disclosed nothing worse than a form of moral turpitude which the
30 court might have been expected to overlook. Nevertheless, Lord Wright (page 163)
upon the appeal stigmatized the plaintiff's behaviour as "a criminal attempt to
obtain goods by false pretences" and with this opinion the other two judges agreed.
However I regard the facts which have been put before me I cannot find in them
the substance of a trick of that kind. Mr. Kwan complained at several points that
the third party as manager under the partnership agreement had had the whole
carriage of the joint venture affairs upon its shoulders which included the over-
seeing of the development as it went on and dealing with all the accounts and
collection of moneys from depositors and that nevertheless throughout the many
years that the scheme persisted the defendant had put nothing further into it
after the initial down payment of capital in the sum of \$563,000 odd. The same
40 theme was emphasized by counsel in his address. There are indeed certain elements
in the evidence which taken in isolation from the remainder of the evidence might
tend to show that the third party was heavily imposed upon. Thus there is no
doubt that so far from being self-financing it was thought necessary to support
the development scheme as early as 1964 by mortgaging the site to the Bank of

(17) (1937) 2 K.B. 158.

Supreme Court
of Hong Kong
High Court

No. 15

Judgment of
McMullin, J.
dated 10.3.1979

East Asia. There followed a time of unrest in 1965 – 1967 which included bank runs and riots and by 1967 the mortgage loan and overdraft facilities had mounted to some 7 million dollars. Eventually to release certain of the flats covered by the mortgage three of the directors of the third party viz. Mr. Kwan, Mr. MA To-sang and Mr. Hudson CHEN Wood paid sums totalling initially about \$900,000 by way of loans to the joint venture out of their personal property. Furthermore under the terms of the partnership agreement (Document A8) the defendant had bound himself to pay apart, from the share in the initial deposit on the purchase price of the Davie Boag site, further instalments totalling about \$2½ million. The first of these instalments was to be paid about the 1st of January 1963, the second on or before the 30th of June 1963, and the third on or before the 31st December 1964. It is common ground that the defendant never paid any of these sums and was thus formally in breach of its agreement. The failure to make those payments is covered in paragraph 19 of the third party's defence to the defendant's statement of claim where it is said that the defendant "has failed and/or refused to pay any of the said instalments". In paragraph 4 of the defendant's reply to that pleading it is alleged that there was an oral agreement between Mr. Mok and Mr. Kwan "whereby no contribution was required to be made by one party to the other so long as the partnership had funds to pay Davie Boag & Co. Ltd. the three instalments of purchase price payable under the said agreement with Davie Boag & Co. Ltd." That averment was not supported by the evidence of Mr. Mok who said however that there was sufficient in the deposit received from purchasers account to cover these payments. I was at one point somewhat surprised that nothing very much was made of this either by way of cross-examination or by way of submission to the court. Further reflection upon the evidence as a whole however has persuaded me that this is simply part of the pattern of events which in the end disposes of the suggestion that one of the parties to the partnership was endeavouring dishonestly to overreach the other. In answer to the third party's allegation that the other partner had by cunning means assured to itself "a free ride" on the journey towards the end of the rainbow where both parties confidently expected to find the gold Mr. Chang replies in effect: "tu quoque – you too desired a free ride and in so far as the journey continues have succeeded in getting it." Counsel both for the plaintiff and for the defendant have pointed out that at no time during these many years either before or after the issue of the occupation certificate in 1967 did the third party ever demand that the defendant should (a) pay the balance or any part of the balance of the instalments due to Davie Boag; (b) repay the price of Blocks 1 & 3 to the third party; (c) contribute to the joint venture fresh sums by way of capital. The capital investment of both partners has remained throughout the sum of \$563,737 as shown in the books of account. Though the third party was indeed the active partner in the scheme there is nothing to show that the third party itself contributed anything out of its own coffers to replenish the scheme. The nearest one comes to a call upon Ball Land is to be found in the minutes of the joint meeting of directors on the 26th of July 1966 (Document C2) where the payment of the outstanding mortgage debt of \$1,500,000 on the Tak Lee Building was under discussion and Mr. KAN Man is recorded as saying "as far as our company is concerned, we have done our utmost and therefore we hope that Ball Land will be able to raise part of the money to cope with the situation. We cannot

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rely on one party alone and must put through our united effort in order to achieve success.” He later added that “Money should first be raised from the shareholders or friends and relatives.” The resolution finally adopted was that proposed by Mr. LO Hoi-ming which was that the bank should be approached and offered payment of outstanding interest or, by way of alternative, be asked to transfer the mortgage loan of \$1,500,000 to the mortgage on the Wai Lee and Po Lee buildings. I cannot accept Mr. Kwan’s evidence that he many times asked the defendant company to make financial contributions. The efforts of Mr. Kwan himself and Mr. Hudson CHEN Wood and Mr. MA To-sang personally to keep the venture afloat by their personal efforts is less altruistic than might at first sight appear in the light of the evidence that they made these advances following upon discussions at a joint meeting when the suggestion was made that any of the persons associated with the partners might by lending money to the joint venture do so at a substantial rate of interest. The three directors did take up this offer and interest at 2% per month was charged. When this loan remained unpaid they took action in 1971 against Ball Land and Sang Lee for a sum of about one and a half million dollars and it was this action which caused the defendant company to go into liquidation. I understand that the mortgage debt owing to the bank was finally paid off about the year 1972. It appears that this was done by Mr. Kwan and his colleagues selling various shares and other property and I believe that they are still out of pocket. But unfortunate as that may be it is their personal concern and nothing in the evidence explains why it was found necessary to do things in this way without first calling on the defendant to pay what it owed and perhaps put up some additional capital as well with of course a similar call to the third party. All of this will no doubt be better explained if and when a final accounting is held between the parties. Whatever about Mr. Kwan’s personal grievance I don’t think that the defendant has been shown to have been more in default than was Sang Lee.

I am satisfied that both partners did appropriate partnership assets at an early stage and that neither then nor thereafter for a considerable period of time did they foresee the prospect of ever having to return it to the joint venture. Until the scheme ran upon the rocks sometime about 1970 (by which time according to Mr. B.J. Young the prospect of a profitable outcome had faded out) both partners expected that their “interim benefit” would simply be set off against their individual shares in the final profit. In his opening address Mr. Litton, with commendable objectivity, put the obvious expectations of both partners in 1962 in the form of the following sequence:

- (1) that the assignment of the 47 flats would take place on the issue of the occupation certificate;
- (2) that when the completion of the agreement A4 had taken place, after the issue of the certificate, all the other units in Wai Lee at least which had already been sold by then to outsiders would also be assigned;
- (3) that therefore at that time the joint venture would be in receipt of large sums on completion of all other sales;

- (4) that in the sanguine climate of the time when the occupation certificate had issued and profits were known these would be considerable; and
- (5) that therefore it was in the contemplation of both that there would be no question of the defendant having to pay back the \$1,135,560 because the joint venture would have appropriated from the defendant's share of profits the moneys necessary to discharge its liability to pay the full sum of \$1,260,000.

As for the suggestion that the sale to the plaintiff at a smaller figure than the price notionally paid to the third party is proof of a dishonest intention I do not see it in that light. The third party was taking cash as its share of the "interim benefit". Mr. Kwan himself said that he did not agree to the defendant doing likewise because he did not consider it was as "solidly founded" as the third party. To have sold the flats separately at list price might have meant that no such immediate benefit would accrue to the defendant. In selling as it did, en bloc, it obtained the advantage of an immediate large return at the best price it could obtain. This fact does not furnish good evidence or indeed evidence at all of an intention to play the partner false and thus greatly weaken the project. As Mr. Ching has remarked there would be little point, in view of the great expectations entertained by everybody in 1962, in Mr. T.F. Mok engineering a scheme geared to the idea of failure and likely to promote it. The presence of Mr. Kwan's son, KWAN Kong-pui, upon the board of the defendant as a syndicate member would seem to be an additional guarantee against attempts to circumvent the father. Then there is the letter of the 14th of December 1962 (Document G70) in which the Third Party is required to accept the Defendant in the place of Far East and which, in effect, offers a form of indemnity to the third party for whatever may happen under the partnership agreement. There were also the letters of indemnity given by Mr. LAI Kwai-tim at the instance of Mr. S.C. Mok (plaintiff's Document 17) offering forms of indemnity to such members of the syndicate as would enter into sale and purchase agreements in respect of any of the 47 flats. So far as the personal probity of Mr. Mok was concerned it might be added that it was he who not only bought KWAN Kay, Mr Kwan's son, into the syndicate but also paid his capital contribution of \$40,000. It must be remembered that both the principal protagonists in this case Mr. Mok and Mr. Kwan have complaints to make about each other. One alleges a scheme of duplicity the other a prolonged and gross mismanagement of joint venture funds in its conduct of joint venture business. The first I find to be non-existent and the second awaits the outcome of the next instalment in this battle: the trial on the question of accounts.

I find that insofar as it was intended to return their capital to the syndicate members that was not unlawful at the time when it was done and was not rendered unlawful by the later payment of \$128,000; the latter payment was improper but was later acknowledged by the defendant company to be repayable together with the earlier and larger sum as a loan; these payments whether separately or in combination did not constitute part of a scheme to strip the company of its assets and thus imperil or defeat the purpose of the partnership

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which was to share equally the burdens and advantages of the Quarry Bay development scheme. I find therefore (a) that the 90% of the purchase price of Blocks 1 and 3 was paid by the defendant to the third party; (b) that the "notional" loan whereby this transaction was carried out remains outstanding between the defendant and third party; (c) that nothing in the nature of illegality affects the agreements A4 and A5 so as to oblige me to refuse specific performance and that nothing in the nature of an inequitable or unconscionable conduct affects them to any degree which would permit me in my discretion to refuse such an order. The plaintiff will therefore have an order in terms of paragraph 2 of the prayer in its statement of claim. I make no order in respect of damages or any other order save that the plaintiff should have the costs of the action such costs to be paid by the third party. The defendant likewise will have an order for specific performance for the sale and purchase agreement dated 17th January 1973 an assignment in favour of the defendant to be executed by the third party forthwith. I make no other order save that the defendant should likewise have its costs of the action paid by the third party. The counterclaims will be dismissed with costs.

(A.M. McMullin)
Judge of the High Court

Supreme Court
of Hong Kong
High Court

No. 15

Judgment of
McMullin, J.
dated 10.3.1979

IN THE COURT OF APPEAL
ON APPEAL FROM
THE HIGH COURT OF JUSTICE
(ACTION NO. 2927 OF 1973)

BETWEEN

SANG LEE INVESTMENT CO. LTD.

Appellant
(Third Party)

and

WING KWAI INVESTMENT CO. LTD.

1st Respondent
(Plaintiff)

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BALL LAND INVESTMENT CO. LTD.

2nd Respondent
(Defendant)

NOTICE OF APPEAL

TAKE NOTICE that the Court of Appeal will be moved as soon as Counsel can be heard on behalf of the above-named Third Party on appeal from the Judgment herein of the Honourable Mr. Justice McMullin given at the trial of this action on 10th March 1979 whereby it was adjudged that subject to the order dated 6th February 1979, there be specific performance of the agreement dated 20th February 1963 made between the above-named Plaintiff and the Defendant and the agreement dated 17th January 1963 made between the above-named Defendant and the above-named Third Party and that the above-named Third Party's counterclaim be dismissed with costs for an order that the Plaintiff's claim against the above-named Defendant for specific performance as aforesaid and the above-named Defendant's claim against the above-named Third Party for specific performance as aforesaid be dismissed and the above-named Third Party's counterclaim be allowed with costs.

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AND FURTHER TAKE NOTICE that the grounds of this appeal are:—

1. That the learned judge erred in holding that the above-named Defendant have paid to the above-named Third Party the sum of \$1,135,560.60.
2. That the learned judge erred in holding that the above-named Third Party did not have a vendor's lien over the property in suit for the sum of \$1,135,560.60.
3. That the learned judge erred in holding that the aforesaid agreements dated 20th February 1963 and 17th January 1963 respectively were not tainted with illegality or was not otherwise unenforceable.

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4. That the learned judge erred in holding that there was nothing in the nature of an unequitable or unconscionable conduct on the part of the above-named Defendant which affects the aforesaid agreements to a degree which would permit him to refuse specific performance.

Supreme Court
of Hong Kong
High Court

No. 16

5. That the learned judge erred in failing to find that:—

Notice of
Appeal
dated 30.3.1979

(1) The above-named Defendant purported to and did refund capital to its shareholders without the approval of the Court;

(2) The above-named Defendant purported to and did pay a dividend to its shareholders when no profit had been made;

10 (3) The above-named Defendant purported to and did strip itself of its assets so that it was left in no position to fulfill its obligations to the above-named Third Party under the partnership agreement;

(4) Alternatively, if loans were made to its shareholders by the Defendant, the loans infringed the provisions of section 48(1) of the Companies Ordinance, Cap. 32.

20 (5) That the agreements were entered into as part of an unconscionable scheme to ensure a fail-safe passage for the Defendant to the detriment of its partner, namely, the above-named Third Party.

Dated this 30th day of March 1979.

TAKE NOTICE that the appeal herein has this day been set down in the Appeal List.

sd. H.H. Lau & Co.
Solicitors for the Appellant

Supreme Court
of Hong Kong
High Court

No. 17

1st Respondent's
Notice
Dated 23.4.1979

1ST RESPONDENT'S NOTICE

TAKE NOTICE that the 1st Respondent, while seeking to uphold the judgment entered for the 1st Respondent against the Appellant upon the trial of this action on the grounds on which the such judgment was in fact given, desires to contend, on the appeal, that the said judgment should be affirmed on the following other grounds, namely:—

1. That none of the matters alleged by the Appellant, even if proved, amounted to an illegality or such illegality as would taint any of the agreements in question so as to make it void, unenforceable or not specifically enforceable;
2. That irrespective of whether the treatment in the accounts amounted to actual payment (which the 1st Respondent says it did) the Appellant had, on the facts as found and/or on the evidence before the Court in fact relinquished any vendor's lien which it might have (at least in respect of 90% of the purchase price); 10
3. Further or alternatively the Appellant is in any event, on the facts as found and/or on the evidence before the Court, estopped by its conduct from contesting that the Appellant had been paid the aforesaid portion of the purchase price.

AND FURTHER TAKE NOTICE that the 1st Respondent will apply to the Court of Appeal for an order that the Appellant pay to the 2nd Respondent the costs occasioned by this notice to be taxed. 20

Dated this 23rd day of April 1979.

sd. Philip Remedios & Co.
Solicitors for the 1st Respondent

2ND RESPONDENT'S NOTICE

Supreme Court
of Hong Kong
High Court

No. 18

2nd
Respondent's
Notice
dated 23.4.1979

TAKE NOTICE that the 2nd Respondent, while seeking to uphold the judgment entered for the 2nd Respondent against the Appellant upon the trial of this action on the grounds on which the such judgment was in fact given, desires to content, on the appeal, that the said judgment should be affirmed on the following other grounds, namely:—

1. That in any event the agreement sued upon by the 2nd Respondent (A4) was independent of that sued upon by the 1st Respondent (A5); A4 ought to be specifically performed irrespective of the statue of A5;
- 10 2. That none of the matters alleged by the Appellant, even if proved, amounted to an illegality or such illegality as would taint any of the agreements in question and in particularly would not taint A4 so as to make it void, unenforceable or not specifically enforceable;
3. That irrespective of whether the treatment in the accounts amounted to actual payment (which the 2nd Respondent says it did) the Appellant had, on the facts as found and/or on the evidence before the Court, in fact relinquished any vendor's lien which it might have (at least in respect of 90% of the purchase price);
- 20 4. Further or alternatively the Appellant is in any event, on the facts as found and/or on the evidence before the Court, estopped by its conduct from contesting that the Appellant had been paid the aforesaid portion of the purchase price.

AND FURTHER TAKE NOTICE that the 2nd Respondent will apply to the Court of Appeal for an order that the Appellant pay to the 2nd Respondent the costs occasioned by this notice to be taxed.

Dated this 23rd day of April, 1979.

sd. Chu & Lau
Solicitors for the 2nd Respondent

JUDGE'S NOTE

Denis Chang, Mr. Ozario instructed by (Chu & Lau) for the defendant.
Robert Tang instructed by (H.H. Lau & Co.) for 3rd Party.

Tang Defendant's claim against third party divides into two categories.

1. His claim for account on footing of wilful default.
2. (More important) Claim based on fraud.

As to 1, 3rd party concedes : (a) it ought to have accounted to joint venture for profits derived from sale of steel bars; (b) that 3rd party should have accounted to joint venture for interest during time when joint venture had credit balance with 3rd party; (c) we concede that we have in past wrongfully debited joint venture with interest. Although in 1969 with help of Lowe Bingham & Matthews a re-adjustment was made it is accepted that it could have been more accurately made and therefore defendant is entitled to account in relation to such interest; (d) we concede that 3rd party will account to joint venture for the commission of 135,000. All this I said at opening. I go one step further now. We accept that we will account for commission of 135,000 and will no longer contend that we are not liable to do so.

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This means that defendant will be entitled to account on footing of wilful default limited to those three matters. Chang is not satisfied with account or formula in Re Labbs (?) See Held p. 839. They therefore should have an order for account restricted to the three matters with liberty to defendant to apply to this court for order for further account in respect of any other matters of wilful default should evidence of such emerge in taking of account by Registrar. These concessions are unconditional. Defendant at liberty to cross-examine any of my witnesses on those three matters.

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Rest of defendant's case.

But as to wilful default defendant seeks account generally on this basis.

Six acts of wilful default are pleaded.

- (1) Statement of Claim para. 25 intermingling of funds.
- (2) Incurring of unnecessary interest para. 26. Includes wrongful debiting of interest.
- (3) Profit from steel bars para. 30 at (iii).
- (4) 135,000 commission para. 27.
- (5) WONG Wing-yiu confirmor transactions para. 28.
- (6) Two sums of 60,000 para. 30 at (i)

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We have conceded (2), (3) and (4)

Chang has pointed out that (1) is relevant only in context of (2).
(2) is conceded. So (1) no longer important.

Supreme Court
of Hong Kong
High Court

No. 19

Judge's Note
dated 12.12.1979

10 As to the steel bars, (3) are concerned – although I conceded we failed to account for profits of bars to joint venture we say joint venture has not suffered any loss – say this because joint venture never was debited for purchase price of steel bars. As result of which credit balance of joint venture was higher by account of price of steel bars. In 1969 when major interest adjustments were made by 3rd party with help of Lowe, Bingham & Matthews interest at 1% p.m. was credited to joint venture in respect of the higher balance in favour of joint venture. If one did the arithmetic one would find that the interest paid by 3rd party to joint venture on purchase price of steel bars exceeded the profit ultimately made on realization of the steel bars. On our concession it would mean that the actual profit would be written back into account of joint venture with corresponding adjustment in interest. Third party takes view that if defendant insists on account in relation to profits of steel bars it is entitled to it.

(4) 135,000 commission – a lot to say on this as regards fraud. But for moment on question of account – joint venture ought we concede to have the benefit of commission and this will be written back into joint venture account which will have consequential effect on amount of interest.

20 As to (5) and (6)
(5) Confirmor sales.
para. 28. Defendant's case is based on documents and Madam Wong's evidence.

30 Third party says all confirmor transactions were result of transfer by original purchasers who entered into contract for sale and purchase of flats with Sang Lee – of their interests in the contracts for sale and purchase to WONG Wing-yiu or his nominees. LEE Shiu-man said this was common and was result of private arrangement between original purchaser and the transferee. Third party says that no case of wilful default has been made out for such sales and that as a matter of law such original purchasers were entitled to transfer their interests in sale and purchase agreements with Sang Lee to anyone at all for any consideration at all without being obliged to account for any profit so made. It has never been suggested that employees of Sang Lee were not entitled to purchase of flats in Quarry Bay site.

Madam Wong would transfer to employee of Sang Lee, WONG Wing-yiu, and he was entitled to sell on and not account for any profits. He was in no different position from total stranger to Sang Lee who procured purchaser from Sang Lee to transfer his interest to him.

ORDER

BEFORE THE HONOURABLE MR. JUSTICE MCMULLIN

THIS ACTION coming on for trial on the 28th day of November 1979 and this day before this Court in the presence of Counsel for the Plaintiff for the Defendant and for the Third Party.

AND UPON READING the pleadings.

AND UPON HEARING the evidence and what was stated by Counsel for the Plaintiff, Counsel for the Defendant and Counsel for the Third Party.

THIS COURT DOTH ORDER AND ADJUDGE

- (1) That there be judgement for the Plaintiff on the issues pleaded in paragraph 13A of the Further Re-Amended Defence and Counterclaim of the Third Party to the Defendant and in paragraph 11 of the Re-Re-Amended Defence and Counterclaim filed herein on the 5th day of February 1980 by the Third Party on behalf of the Defendant pursuant to the Order made herein on the 17th day of July 1974; 10
- (2) that the Orders for Specific Performance made herein on the 10th day of March 1979 shall apply to all flats shops and units comprised in the 2 agreements forming the subject-matter of the said Orders for Specific Performance including the 7 flats named in paragraph 2 of the Order made herein on the 6th day of February 1979; 20
- (3) that the Plaintiff and the Defendant be indemnified by the Third Party against any claim from the Plaintiff's sub-purchasers in respect of any claim, damages, compensation costs and interest which the Plaintiff and/or Defendant may suffer or be required to pay in consequence of the Third Party's default or delay in assigning the premises the subject-matter of the said claim for Specific Performance herein;
- (4) that the Third Party do pay all damages suffered by the Plaintiff and the Defendant in Consequence of the Third Party's default or delay in assigning the premises the subject-matter of the claim for Specific Performance here including the costs and stamp duty on the necessary assignments insofar as the same have been increased as a result of the Third Party's said default or delay and that such damages be assessed by the Registrar; 30
- (5) that the Defendant's Further Amended Counterclaim delivered to the Court on the 28th day of November 1979 by the Third Party pursuant to the said Order of the 17th day of July 1974 do stand dismissed out of this Court.

AND IT IS ORDERED that the Plaintiff's and the Defendant's costs of and incidental to the issues pleaded in Paragraph 13A of the said Further

Re-Amended Defence and Counterclaim and in Paragraph 11 of the said Re-Re-Amended Defence and Counterclaim and the said dismissed Counterclaim including the costs of the Defence filled herein on the 30th day of November 1979 be taxed and paid by the Third Party.

Supreme Court
of Hong Kong
High Court

No. 20

AND IT IS FURTHER ORDERED that the parties have general liberty to apply.

Order of
the Honourable
Mr. Justice
McMullin
dated 29.11.1979

Dated the 13th day of March 1980.

Registrar.

JUDGMENT OF MCMULLIN, J.A.

In the course of the former hearing, at the request of the parties, I ordered that the defendant's claim for damages and for an account against its partners should be tried as a separate issue. It is with that issue that I am now solely concerned.

On the 10th of March 1979 I gave judgment for the plaintiff against the defendant and the third party and for the defendant against the third party on their claims for specific performance of certain sale and purchase agreements arising from the joint venture entered upon by the defendant and the third party in 1961 for the development of a site at Quarry Bay.

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It is needless to recapitulate the long and unhappy history of that venture. At the present date the affairs of the defendant, Ball Land Investment Co. Ltd. (hereinafter referred to as "Ball Land") remain in the hands of the official receiver. The partnership between itself and Sang Lee Investment Co. Ltd. (hereinafter referred to as "Sang Lee"), the third party to these proceedings, has not been formally dissolved but it persists in name only and although there still remain some unsold flats in the three estates, which were erected in accordance with the partnership agreement dated the 31st of December 1962, the affairs of the two companies have fallen so far into disarray that the defendant company claims damages both on the footing of fraud and breach of fiduciary duty (paragraph 34 of the statement of claim) and for an account on the like footing paragraph (34(d)) and on the footing of wilful default paragraph (34(dd)).

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It is common ground that Sang Lee was the active partner, charged with the duty of overseeing the work of construction at the Quarry Bay site and the keeping of the all necessary accounts in connection therewith and with managing the joint venture business generally. Throughout the relevant period, from the inception of the scheme up to November 1971 when the defendant company was wound up by order of the court, KWAN Fan-fat was chairman of the board of Sang Lee and was effectively in control of that company, the sales department being in the hands of his son, KWAN Sai-tak. KWAN Fan-fat was one of the petitioners to the winding-up proceedings which were occasioned by the inability of Ball Land to repay monies lent to the joint venture by Mr. Kwan and two other joint venture associates, Mr. Hudson CHEN Wood and Mr. MA To-sang.

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The details of Ball Land's dissatisfaction with the performance of its partner are set forth in paragraphs 23 – 30 in the statement of claim. They rest (a) upon the terms of the partnership agreement, especially Clause 13 of that agreement which obliged Sang Lee to keep proper books of account; (b) on the fiduciary obligations created by the power of attorney given by Ball Land to Sang Lee for the sale and disposal of their joint venture property. Six specific complaints are made. Four of these are conceded by Sang Lee to be justified to the extent that it is admitted that in those four instances there has been wilful default by the third party in failing to observe its duty to account to its partner. The parties are agreed that these omissions constitute wilful default in the sense in which that term has

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been understood in such cases as in *re Young & Harston's Contract* (1) and *re city Equitable Fire Insurance Co.* (2). In other words there has been, in four instances, a knowing and culpable failure on the part of Sang Lee to do what was reasonable under the circumstances. In this regard Mr. Tang made a number of concessions on behalf of his clients.

Supreme Court
of Hong Kong
High Court

No. 21

Judgment of
McMullin, J.A.
dated 3.1.1980

10 I come now to what is conceded by the third party. (1) This concerns paragraph 25 of the statement of claim. It is conceded that no separate bank account was maintained by Sang Lee for the custody of joint venture funds. Mr. KWAN Fan-fat, who in giving evidence seemed little disposed to concede any personal responsibility even for this conceded default, nevertheless agreed that it would have been better had this been done. That such would have been the proper course is all too clear. Mr. Kwan had at the time many large business interests in which Sang Lee was involved. Some of them were with yet other joint ventures with other partners. Yet revenues from the Ball Land joint venture were freely intermingled with other funds in Sang Lee's various bank accounts. These were apparently drawn upon indiscriminately in accordance with the requirements of all Sang Lee's affairs including those of the joint venture with Ball Land. The obvious folly of this haphazard way of dealing with so many different interests is brought home in the second complaint made by the defendant company.

20 (2) This concerns paragraph 26 of the statement of claim. It is conceded that during the earlier period of the partnership, between June 1962 and May 1965, while income from the joint venture showed credit balances over expenditure in its account with Sang Lee, no bank interest was credited in that account to the joint venture although Sang Lee was in effect, as Mr. B.J. Young put it, acting as banker for the joint venture.

30 Further this situation is greatly complicated and confused by two factors. Firstly, interest on the unpaid balance of the purchase price of the Quarry Bay site began to be charged against the joint venture by Sang Lee in July 1963 when vacant possession was given by Messrs. David Boag yet the ledger of the joint venture shows that it was then in credit substantially with Sang Lee. Despite that fact no attempt was made by Sang Lee to pay off any part of the outstanding balance thus eliminating or greatly reducing the element of interest from the account between the partners. Secondly, there is the fact that Sang Lee in 1964 and 1965, when the joint venture was still in credit, raised very large sums from the Bank of East Asia by way of mortgage on the Quarry Bay site and employed at least part of the money thus raised on its business generally outside joint venture affairs. Various figures are given in paragraph 20 of the statement of claim both for the interest charged and the sums raised by way of mortgage. Mr. B.J. Young of Messrs. Lowe, Bingham & Matthews who was called by the third party gave an account of these matters which involved other figures both as regards interest and as regards 40 the money raised by way of mortgage. All of these were connected with a belated

(1) (1886) 31 Ch. D. 168

(2) (1925) 1 Ch. D. 407

attempt by the Third Party in 1969 to adjust the record of interest thus charged or withheld. None of these actual figures were proved and the adjustment attempted by Messrs. Lowe, Bingham & Matthews at the behest of the third party was conceded by Mr. Young to have been itself inadequate. I do not find myself in a position to make any findings as to quantum but it matters not. It is conceded that there will have to be a full and proper account to the Ball Land for interest improperly debited against the joint venture and in respect of interest with which the joint venture should have been but was not credited.

(3) Paragraph 27 of the statement of claim. It is admitted that the joint venture was never credited with the sum of \$135,000 which is said to have been paid by Messrs. Nam Sang Construction Co., the contractors for the joint venture to Sang Lee. The nature of this payment is in dispute. The defendant company relies heavily on it as showing outright fraud on the part of Sang Lee. The third party denies this but concedes that such a payment was made and was in fact, though somewhat obscurely, credited to Nam Sang in the joint venture ledger and that the joint venture has not been given credit for it, and it is conceded that the credit should be given for this sum.

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(4) Finally, as to paragraph 30(iii) in the statement of claim it is admitted that steel bars were purchased by Sang Lee with joint venture money at the cost of \$600,000 and then sold to Nam Sang for \$782,719.34 and that the profit thus realised, \$182,719.34, was not accounted for to the joint venture. It is therefore said that the third party gained itself a secret profit in default of its duty to account to its partner.

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As to these several concessions Mr. Tang for the third party maintains that they are irregularities which entitled the defendant to an order for accounts restricted to those specified items and nothing more. Leaving aside for the moment the question of fraud, which is denied, he asks me to take the course adopted by Mr. Justice Slade in *re Tebbs (deceased) Redfern v. Tebbs and Another* (3) where a general account on the footing of wilful default was refused. He argues that for the court now to order such a general roving enquiry through old records after such a lapse of time, with the main protagonists elderly to start with and now almost all greatly aged or ailing, would be unfair and oppressive.

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Mr. Chang for the defendant company puts it that even on the basis of wilful default such failures as are now admitted are in themselves more than sufficient to support such an order. But further he says that the evidence has disclosed behaviour on the part of Sang Lee which amounts to either actual fraud or, most generously interpreted, at least to fraud in the constructive or equitable sense.

Mr. Tang makes one further concession in this regard. If fraud in the legal sense is proved then he would not resist the wider order which is sought.

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A great part of the evidence and of the argument concerned these specific items which have been pleaded as disclosing fraud.

(3) (1976) 2 All E.R. 858

THE ALLEGED APPROPRIATION OF \$120,000 BY THE THIRD PARTY.
PARAGRAPH 30(i) OF THE STATEMENT OF CLAIM

Supreme Court
of Hong Kong
High Court

No. 21

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McMullin, J.A.
dated 3.1.1980

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The defendant's contention is that whereas the joint venture was debited with the payment of \$300,000, which was ostensibly paid to Nam Sang on the footing of bonus for early completion of the contract, in fact only \$180,000 was ever received by Nam Sang. This latter sum in fact was an advanced payment since, on the terms of the contract with Sang Lee, Nam Sang was only to be paid such bonus (assuming it had earned it) upon completion of the whole work, at a rate of \$4,000 for each day ahead of schedule. No complaint is made of this as an anticipated reward but it is said that the third party while debiting the joint venture with two payments to Nam Sang, one of \$60,000 on the 16th of September 1965 and another in the like sum on the 31st of December 1965, appropriated those sums to its own use.

Mr. LEE Shiu-man, the former accountant of Sang Lee was called to prove that he had, on KWAN Fan-fat's instructions, prepared a cash cheque of \$60,000 which he left in the latter's possession. This was denied by Mr. Kwan who said that he had given the cheque to LEE Shiu-man to give to Nam Sang.

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Proof of misappropriation of the second sum of \$60,000 involved the showing on documentary evidence of a complicated series of transactions between KWAN Fan-fat, Nam Sang and MOK Tse-fung, the moving spirit behind the syndicate which later became Ball Land, the present defendant. Essentially what the defence claims to have established in this regard is that Mr. Mok sought to raise a personal loan from Mr. Kwan. When the latter proved unwilling to oblige him he procured from Nam Sang a receipt for \$60,000 in respect of part of the anticipated bonus which had, of course, not yet been paid or earned by Nam Sang. With this he approached Mr. Kwan and asked him to pay that sum to him out of joint venture funds. This required the sanction of MA To-sang, the then chairman of the Board of Sang Lee, but the latter was unwilling to advance this sum as anticipated bonus. He had indeed objected to the advance, earlier, of \$180,000 by way of anticipated bonus. However, to give KWAN Fan-fat face, according to Mr. Kwan, Mr. Ma agreed that this sum should be advanced on the strength of Mr. Kwan's personal written acknowledgment of debt, referred to as a borrowing note. Eventually this borrowing note was returned to Mr. Kwan. The third party's case as to this particular sum was that the receipt given to T.F. Mok by Nam Sang was evidence that the latter had surrendered its right to that part of the bonus to Mr. Mok and that the joint venture was thus rightly debited with it once Nam Sang had earned that amount of bonus.

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There is much in this arrangement which is obscure and questionable but I cannot find that any such misappropriation has been proved. The evidence of non-receipt was given by LO Yuk-ming, a director of Nam Sang. He said that none of the \$120,000 was ever received by Nam Sang. He admitted that three receipts totalling \$300,000 had been given to Sang Lee. It was an odd custom of his company

to give such advance receipts, prompted, it would appear, by his trust in and respect for KWAN Fan-fat. Like all of the other directorial eminences associated with this ill-fated partnership he is an elderly man with a bad memory speaking of events which occurred some fifteen years ago. Nevertheless the gaps in his knowledge of this troubled past and his explanation of certain aspects of it are of such a kind that I find myself wholly unable to rely on his bald assertion of non-payment. Not only could he give no adequate reason for issuing receipts before payment but the most he could say of his reaction when payment did not follow was that he phoned Mr. Kwan on a number of occasions to jog his memory and when he was put off he simply let the matter go by default. It had never, he said, occurred to him that he should demand payment in writing of these monies.

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The culminating deficiency in his testimony came when he was confronted with the formal pleadings in High Court Action No. 821 of 1968 in which various claims were made by Nam Sang against Sang Lee arising from this very contract. In its reply to Sang Lee's defence and counterclaim in that action Nam Sang expressly admits having received the whole \$300,000. As to this Mr. Lo admitted that it was he who had instructed his solicitors in the matter but he said he had no recollection of having seen that pleading. Again, he could not remember the conversation alleged to have taken place two years ago in which, according to Mr. LEE Shiu-man, the witness had complained of non-payment. He had never informed his brother and co-director, Mr. LO Hoi-ming, that this large sum had not been paid. The latter is a shareholder and director in Ball Land, defence in the present proceedings.

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The documents produced to support the defendant's case on this issue, especially the notes TP5 and TP6 and the receipt TP4, certainly lend some colour to the suggestion that there may have been some secret deal involving MOK Tse-fung (founder of the syndicate which became Ball Land), KWAN Fan-fat, (a director of Sang Lee) and LO Yuk-ming (the principal director of Nam Sang) whereby Mr. Mok and Mr. Kwan were benefited at the expenses of the joint venture. It is however for the defendant to prove that Nam Sang never did receive payment and on Mr. Lo's evidence alone, which is vital on this issue, I find myself unable so to find.

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THE COMMISSION OF \$135,000 (PARAGRAPH 27 OF THE STATEMENT OF CLAIM)

I do not find it necessary to enter into the full details of the evidence or the argument, often close and ingenious, addressed to me on this topic. The basic facts which I find proved are plain enough. KWAN Fan-fat at the meeting of the directors of the joint venture on the 1st December 1964, he himself being in the chair, was given authority to select the contractor and to sign agreements for the work of construction. This authority was given on the suggestion of MOK Tse-fung, a shareholder in Sang Lee and founder of Ball Land. Of the six tenderers only LO Hoi-ming (director of Ball Land and of Nam Sang) was present. Mr. Kwan subsequently selected Nam Sang. The building contract with Nam Sang was signed on the 14th of January 1965 the contract price being \$6,750,000.

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10 On the 9th of February 1965 Mr. Kwan received from Nam Sang a crossed cheque in the sum of \$135,000 made out in favour of Sang Lee. This is admitted to be equivalent to 2% rebate or commission on the contract price. A temporary receipt Exh. P1 dated 9th of February 1965 was issued by Mr. Kwan and a formal receipt on the 31st of August 1965. This latter receipt refers to the payment in respect of "our commission". A carbon copy of this was produced in which the word "our" had been obliterated. It was somewhat tentatively suggested that this is a further indication of sinister motives but for my own part I am unable to attach any clear significance to it. The salient fact however is that this sum has never been credited to the joint venture nor in any way recorded in the joint venture's ledgers nor has it been recorded in Sang Lee's books.

Mr. Kwan's position on this was that when this commission was offered by Nam Sang he had discussed the matter with MOK Tse-fung. Mr. Mok assured him that it would be all right for Sang Lee to accept this sum but Mr. Kwan conceded that the matter had never been put to the board of the joint venture although it is clear from the extant minutes that meetings of the joint venture directors were frequent in 1965 and 1966.

20 To my mind this payment was nothing more or less than an agent's undisclosed commission. It matters not that the cheque was never cashed. There is evidence which shows that it was later cancelled and replaced by two cash cheques made out at KWAN Fan-fat's instance; each for \$67,500 payable to Sang Lee. These likewise were never cashed but in 1967 when the fact that they were now stale was brought to his notice by LEE Shiu-man Mr. Kwan caused an account to be opened in Sang Lee's books in the name of Luen Kee Hong which is admittedly a fictitious company name.

30 The reason given for accepting this rebate was that Nam Sang acknowledged that Sang Lee would have to supply staff to oversee the progress of the building works. No details were given by Mr. Kwan of what was meant by this. I agree with Mr. Chang that that suggestion is a colourable pretence at legitimation. Likewise I agree with him that Mr. Kwan's explanation is not to be accepted when, in effect, he says that he took MOK Tse-fung to be speaking for the partner, Ball Land, when Mr. Mok gave his blessing to this *douceur*. I do not believe that he thought so. Mr. Kwan had for many times acted as chairman of joint venture meetings and those proceedings show in their minutes, as Mr. Chang has pointed out, due sensitivity on the part of those present to questions concerning conflicting interests. Witness the occasion, on the 17th of September 1965, when, with KWAN Fan-fat himself in the chair, LO Hoi-ming was asked to withdraw while discussion proceeded in his absence concerning a part of the construction work about which Nam Sang (LO Hoi-ming's company) and another company were in competition.

40 It is indeed a little difficult to make an appraisal of KWAN Fan-fat's character as it is revealed in those events without slipping into opinions that are either ingenuous or harsh. He is 84 years of age. He has had a long and manifestly successful commercial career in Hong Kong, beginning in a small way about the year 1924. That in itself bespeaks a long acquaintance with the vagaries of business

morality in a world where secret commissions or kickbacks were formerly a matter of course and which even now, despite recent legislation, one suspects are by no means unequivocally condemned in traditional commercial circles.

Mr. Kwan himself I would characterise as somewhat paternalistic in his approach to employees and business associates generally. Mr. B.J. Young described him as a fine old Chinese gentleman. One need not dissent from that estimate in suspecting that it may not tell quite the whole story. I hope I do not either misjudge Mr. Kwan or misrepresent the style of trading in which he formed his business habits 40 to 50 years ago, but I have a distinct impression that he retains a nostalgic allegiance to that traditional style of family trading wherein close relations and mutual dependence within a comparatively small circle may be tolerant of somewhat informal accommodations between trading partners. Mutual understanding may sustain such accommodations where business is on a fairly modest scale. But, when it swells to the level of multi-million dollar combinations in the style of modern incorporated interests such habits may carry with them a pattern of behaviour displaying a commercial morality which, to put it charitably, can seem distinctly loose-jointed.

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Clearly Mr. Kwan was fiercely resentful of the suggestion that he had behaved dishonorably. He has been, at various times, a large creditor of the joint venture and I think that he regards himself as an ill-used benefactor. I think he may honestly have believed that he was justified in what he did but I am reasonably sure that he was aware of the possibility that this commission from Nam Sang might fall subject to enquiry, whether by his colleagues, by public auditors or others, and it was for that reason that the credit to Sang Lee was finally disguised under the name of Luen Kee Hong. I think he must have known that such concealment was in some sense wrong and that that also accounts for the inexplicably complicated exchange of two cash cheques drawn by Sang Lee in its own favour against one crossed cheque drawn in its favour by Nam Sang.

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It may, as Mr. Tang observes, have been a device which left clues to the existence of a secret commission for subsequent inquirers but I doubt whether in 1967 Mr. Kwan would have anticipated any hostile scrutiny of the books. Luen Kee Hong was simply a place of resort should inquiry be made. A timely-erected paper cover should he decide that this credit to Nam Sang be realised without reference to Ball Land.

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I am aware that the evidence is susceptible of a darker interpretation. Undoubtedly the joint venture was debited with a sum for \$150,000 which, adventitiously, was due at about the time when the \$135,000 was paid to Sang Lee. Admittedly only \$50,000 was actually paid to the building contractors and the combined amount of the two stale cheques, which were the occasion of the credit made out to the non-existing Luen Kee Hong, might at any time later be satisfied against the joint venture funds by cheques drawn in favour of Luen Kee Hong. This device could even, as counsel suggests have been intended to enrich Mr. KWAN Fan-fat personally to the prejudice of his own company. The fact remains that no such payments to Luen Kee Hong have ever been made although between 1965 and

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1967, and indeed thereafter, Sang Lee had either funds in the bank or available bank facilities to meet them.

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of Hong Kong
High Court

On the whole therefore I believe that the better view is that this was, as Mr. Chang puts it, a secret commission to Sang Lee which Mr. Kwan in his curious and devious way sought to "wash" through the accounts of Sang Lee. This certainly amounts to equitable fraud in its manifestation of abuse of confidence of the partnership relationship. The partnership relationship being as is conceded a relationship of uberrima fides.

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THE CONFIRMOR SALES (PARAGRAPH 28 OF THE STATEMENT OF CLAIM)

10 It is common ground that in eleven instances Sang Lee on behalf of the joint venture sold flats to outside purchasers who subsequently were unable to keep up the agreed instalment payments of the purchase price stated in their contracts. Each of these purchasers agreed for a stipulated sum to transfer his or her interest in the property to a new purchaser who would take the benefit of the instalments already paid. In each case the original purchaser joined as confirmor in an assignment of the designated flat to the new purchaser by the vendor Sang Lee. With one exception the new purchaser in each case was either WONG Wing-yiu, assistant to KWAN Sai-tak in the Sales Department of Sang Lee, or his brother-in-law, CHENG Shui-sang, a youth of about 21 years at the time of these several arrangements, who is admitted to have been merely Wong's nominee for the purpose of these sales. In each case WONG Wing-yiu and his wife are named as confirmors.

20 In each case KWAN Sai-tak, on behalf of Sang Lee, signed the cancellation agreement and also a form of receipt, referred to in the evidence as the "double receipt", whereby the vendor Sang Lee acknowledged receipt of the amount of any instalments and deposit already paid by the original purchaser and noted that sum as credited to the new purchaser. In the same document the confirmor acknowledges a nominal return of the same sum. Mr. Tang concedes that purchases of this kind by company employees, especially in such circumstances, were undesirable and that a better run company would at any rate have discouraged them. Nevertheless he takes the bold line and maintains that Sang Lee was entitled to sell to any person it chose provided a fair market price was exacted. These two companies which were in partnership were not, he says, averse to transactions of this kind. In witness of this he points to the notional sale of flats to Ball Land with which the first part of this action was mainly concerned and the sale to Wing Kwai by Ball Land thereafter. It is scarcely a convincing parallel. Whatever oddities may have affected that transaction it was a matter of discussion and eventual agreement between the parties to the joint venture. These confirmor sales are a very different matter.

30 It is conceded that all the sales conformed to a certain pattern and counsel on both sides were content to use, for the purpose of illustration, the sale to Madam WONG Tsui-choi of Flat 1221 on the 12th Floor of the Wai Lee Building. By 1966 she had paid a total of \$8,618.40 by way of deposit and instalments out of a stipulated purchase price of \$18,984. In 1969 she was told that the flat was

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ready and she went to consult Sang Lee as to her position. She was told that the balance then due, including accrued interest, was \$50,000. That was said by WONG Wing-yiu. Mr. Tang asks me to disbelieve this part of the evidence it being agreed on both sides that no conceivable computation of interest could have swelled her obligation to such a gross degree. I found her an honest witness and I fully accept this with the rest of her story which was that, though she was astonished, she saw no way to dispute this figure and decided to cut her losses. She was then persuaded to part with her right in the flat for a sum of \$1,500. WONG Wing-yiu thus got the benefit of her instalments and, on paying the balance of the purchase price which, for some reason, had been revised by then from \$18,000 odd to \$16,000 odd, he sold and assigned it to another purchaser on the 18th of June 1970 for \$21,420 thus collecting a further profit of \$4,312. I call it a further profit because this property only fell to be disposed of by him consequent to his acquiring, under the most dubious circumstances, an interest in it worth more than \$8,000 for a payment out of \$1,500 only. Furthermore as Mr. Chang points out WONG Wing-yiu in this way obtained the benefit of the original purchaser's rights without the burden of interest on the unpaid arrears.

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Mr. Tang, as I understand him, would ask me to countenance all of this as nothing more than a permissible deployment of business acumen in a robust exploitation of the exigencies and opportunities of the market. I cannot take that view. In itself this particular transaction smacks of very sharp dealing. There is nothing to indicate that the defendant company were made privy to this or any of the other confirmor deals. It was entitled to be apprised of the manner in which these substituted sales had come about. One hopes that at least some of its directors might have protested the use of shock tactics to shake loose unprofitable customers and acquire others more profitable. But, be that as it may, the point to be taken for present purposes is that a person in a position of trust in Sang Lee was permitted to make considerable profit from joint venture sales by a series of side-deals which, even had they, as bargains, being wholly conscionable, (as some may well have been) were of interest to the joint venture and should have been brought to the attention of all of its participants.

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The agreements for sale and purchase entered into by Sang Lee with the original purchasers provided in each case that if the stated deposit or any instalment should not be paid on the stipulated dates the vendor would be entitled to rescind the sale and to forfeit any sums already paid by way of instalments or deposit, and would thereafter be at liberty to resell. It was specifically provided that on such resale any increase in price recovered over and above the original contract price would belong to the vendor. Had the position of the defaulting purchasers been discussed at meetings of the joint venture directors Sang Lee could have been instructed to implement these provisions or else to settle with these unfortunate customers on such more genial terms as might seem fair and appropriate, as, for example, by returning the deposits (which seems to have been done, in fact, in most cases). Any adventitious profit then resulting would necessarily have been accounted to the partnership. It is no answer to the defendant company's charge to assert that once the right in any of these properties had been transferred to WONG Wing-yiu or his nominee by a freely negotiated bargain the only legitimate interest re-

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maining in the joint venture was to see that the balance of the original purchase price was paid.

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It was I think highly reprehensible for Sang Lee to permit this kind of trafficking by its own employee to the prejudice of its partners. I find no merit in the contention that these sales could not have been prevented by the directors of Sang Lee. There were rights available to Sang Lee under the agreements with the earlier purchasers the use of which vitally concerned the partnership. The failure to consult with its partners before negotiating resales was a clear breach of fiduciary duty.

10 CONCLUSION

We have thus blatant breaches of confidence amounting to equitable fraud at least over the secret commission and the confirmor sales. There is then admittedly wilful default in the failure to account in respect of sales of steel bars whereby a profit of \$187,000 odd was not disclosed. I find that the failure to keep joint venture funds in a separate account and the consequent intermingling of those with Sang Lee's monies is also to be regarded as wilful default in that it was a non-observance of an elementary safeguard which it would have been reasonable to observe. This default indeed underlies much of the difficulties which have arisen between the parties, especially the failure to credit the partnership with interest and the wrongful charging of interest against it. Some four major items of wilful default in all. The facts in *re Tebbs* on which Mr. Tang relies to direct me to the correct form of my order in this case are not of equal gravity with the facts in the present case insofar as the number and nature of the breaches of duty are concerned. The learned judge there declined to direct a general accounting on the footing of a single item of wilful default. He did so as a matter of discretion. But in the course of his judgment he says at page 862:

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“One act of wilful default having been proved, it is common ground that the court has jurisdiction to make an order for an account on the footing of wilful default in respect of the whole estate.”

30 Later he said at page 863:

“Secondly, I cannot believe that the court would decline to make a general order for an account on the footing of wilful default if on the facts of a particular case a number of past breaches of trust of a serious nature were admitted by the trustees at or before the hearing. The court would not, in my judgment, regard the admission as rendering any less necessary the roving enquiry to which an account on the footing of wilful default will give rise.”

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Painful and difficult though the process may prove in view of the long period to be covered and of the failing powers and health of those principally concerned, I think that the manner in which the partnership accounts were dealt with by Sang Lee has been shown to be generally so unsatisfactory that the time has come for a

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general rendering of account between these partners. The defendant will therefore have an order in terms of the prayer in subparagraph (dd) of paragraph 34 of its pleadings, that is an order for an account on the basis of wilful default, together with the costs of this part of the action.

(A.M. McMullin)
Justice of Appeal

ORDER
BEFORE THE HONOURABLE MR. JUSTICE MCMULLIN

Supreme Court
of Hong Kong

No. 22

Order of
the Hon. Mr.
Justice
McMullin
dated 13.3.1980

THIS ACTION coming on for trial on the 28th day of November 1979 and this day before this Court in the presence of Counsel for the Plaintiff for the Defendant and for the Third Party.

AND UPON READING the pleadings.

AND UPON HEARING the evidence and what was alleged by Counsel for the Defendant and for the Third Party.

THIS COURT DOTH DECLARE

- 10 (1) That there be judgment for the Defendant on the issues pleaded in paragraphs 25(a), 26, 27, 28 and 30a(iii) of Re-Re-Re-Amended Statement of Claim of the Defendant against the Third Party filed herein on the 15th day of November 1979 by the Defendant.

DOTH ORDER AND ADJUDGE the same accordingly.

AND This Court Doth Order that the Defendant and/or its liquidator and the Third Party do cause a general account of the Joint Venture to be taken on the footing of wilful default.

- 20 AND THIS COURT DOTH ORDER that damages suffered by the Defendant for breach of the partnership agreement and/or breach of fiduciary duties on the part of the Third Party be assessed subsequent to the said general accounting of the Joint Venture.

AND IT IS ORDERED that the Defendant's costs of this action up to and including the date of the signing of this Order be taxed and paid by the Third Party.

Dated the 13th day of March 1980.

sd. N. J. Burnett
Acting Registrar

JUDGMENT OF MR. JUSTICE CONS, J.A.
(PRESIDENT OF THE COURT OF APPEAL)

No. 23

Judgment of
Mr. Justice
Cons, J.A.
dated 18.7.1980

This appeal stems from an idea, in 1961, to redevelop a plot of land in Quarry Bay by the erection thereon of a high rise complex of three estates, each consisting of blocks of flats with shops on the ground floor and comprising in all 1,335 units. They were to be known as the Po Lee, Wai Lee and Tak Lee Estates.

The man behind the idea was a Mr. T.F. Mok. He had at one time been a clerk and interpreter in a solicitors' firm. His plan was simple. He would sell the intended units not only before they were completed but even before any form of constructions had begun. The purchaser would put down a deposit and then pay instalments, which included a provision for interest, over a period of five years. In this way the whole scheme would be virtually self-financing. It could be got off the ground with little more than the initial deposit on the land, some \$609,000. The eventual profit would be enormous.

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Mr. Mok took the idea to his old friend, Mr. F.F. Kwan. They had collaborated before in at least one other land development, and both were, with one Mr. Ma To Sang, three permanent directors of a company by the name of Sang Lee Investment Co. Ltd. (the appellant in these proceedings and the third party in the proceedings below). Although it was not until a short while later that Mr. Kwan became Chairman of Sang Lee, he was at all material times its guiding spirit. He was also a man experienced in the field of property development. He agreed that Sang Lee would become one of two partners in a joint venture to carry Mr. Mok's plan into reality. His company would act as manager for the joint venture to supervise the constructions and be responsible for the administration and sales. In return it would receive commission.

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The other partner in the joint venture was to be a syndicate of wealthy businessmen, collected and headed by Mr. Mok himself and who would, in due course, be incorporated into a limited company. The syndicate took the name of Ball Land and became later Ball Land Investment Co. Ltd. (the second respondent in these proceedings and the defendant below). One of the members of the syndicate, later a shareholder and director of the company, was a Mr. Lai Kwai Tim.

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These negotiations took place in 1961. The initial agreement to purchase the site was signed on the 25th October (G2). (There was a supplemental agreement in the December (G18)). The vendor was Davie Boag & Co. Ltd. The deposit was paid and \$507,600 as commission to Mr. Mok. There were as well administrative and advertising expenses. All were comfortably covered by a contribution from each partner of approximately \$564,000. On the same day that the agreement was signed Mr. Mok executed a declaration that he held the interest in trust for Sang Lee (G14).

The response from the public was even better than anticipated. Within six months, that is by the end of March, 1962, the joint venture had received almost \$400,000 by way of deposits from intending purchasers.

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THE FORTY-SEVEN FLATS

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Cons, J.A.
dated 18.7.1980

Mr. Mok had promised the members of the syndicate that apart from eventual profit they would have a speedy return of their initial investment. He kept his word. His plan was again simple: to borrow money from the joint venture, use that money to purchase some of the flats to be built by the joint venture and sell the flats immediately at a discount for cash. The cash would then be returned to members of the syndicate.

10 The execution of the plan was more complicated. It will be necessary later to go into detail but for the moment it is sufficient to say that in February, 1962 the joint venture sold forty-seven flats to the syndicate under the name Far East Investment Ltd., a private company belonging to the Mok family which acted on behalf of the syndicate until it was incorporated in its own right. The price agreed was \$1.26 million (we speak in round figures), not quite 20% lower than the list price of those flats. 90% was to be paid immediately, the balance on assignment. Payment was treated in the accounts of the joint venture as a debt due from Ball Land, though it does not actually figure in the balance sheet until the following financial year, that is the year ending 31st March, 1963. To keep matters even within the joint venture Sang Lee was credited with a loan equal to the 90%. This did not figure in the balance sheet until the financial year ending March, 1964.

20 The syndicate immediately sold the forty-seven flats en bloc to Wing Kwai Investment Co. Ltd. (the first respondent in these proceedings and the plaintiff below). That company is accepted to be the alter ego of Mr. Lai Kwai Tim. The price was \$771,875 – 10% down, and the balance by two monthly instalments. This was an apparent loss to the syndicate of nearly half a million dollars but it must be remembered that they were getting immediate cash, at least on paper, sufficient to cover their initial investment. The document show the purchase price as having been paid in full by the 7th July. Thus the syndicate members were able to receive back all that they had put in the previous October.

THE AGREEMENTS

30 The joint venture thus far had been conducted upon a verbal agreement. On the 31st December the same year, that is 1962, a formal partnership agreement between the two companies was drawn up and signed (G34). Ball Land had been formally incorporated as a limited company on the 5th of the month. The capital of the joint venture was to be \$6,097,000, the costs of the land, contributed by the partners in equal shares. Approximately half of each contribution was to be made by the end of June, 1963, the balance on or before the 30th December, 1964. There was provision to increase the capital from time to time and the further contribution, unless otherwise agreed, was also to be in equal shares. The payment of \$609,120 by Ball Land was acknowledged, leaving that company with express
40 future commitments totalling some \$3,049,000. Amongst the other customary provisions in the deed was a requirement for each partner to be 'faithful and just to the other in all dealings or transactions relating to or affecting business'.

The agreements for the sale of the forty-seven flats from Sang Lee to Far East and then from Far East to Wing Kwai had been formally recorded in writing. Early in 1963 those agreements were replaced by further agreements, this time between Sang Lee and Ball Land and between Ball Land and Wing Kwai. Nothing turns upon the fact that the earlier documents are no longer available although we have a draft copy of one. It is accepted by all that the later agreements were intended, and did as between the parties, put Ball Land into exactly the same position that Far East had earlier occupied on behalf of the syndicate. The later agreements are dated respectively the 17th January 1963 (E7) and the 20th February 1963 (E20).

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THE MORTGAGES

Davie Boag conveyed the land to Sang Lee by two assignments. The first was on the 22nd July 1964 (G23). On the same day Sang Lee mortgaged part of the land to the Bank of East Asia for \$3,000,000 by way of an immediate advance of \$1,500,000, an increase of overdraft facilities by \$765,000 and a further advance of \$750,000 to be paid in stages tied to the progress of Po Lee and Wai Lee Estates, the first to be constructed (G46). Interest on the monies was payable at 1% monthly, compound with monthly rests.

On the 28th October, 1964 the first meeting of the joint venture was held between the directors of Sang Lee and Ball Land. Mr. Kwan took the chair. He reported that although there was some cause for concern at the slow progress of the piling work, which had brought complaints from some of the intending purchasers, matters should improve in the coming winter months. At his request the meeting ratified the mortgage he had earlier obtained. With the money thus obtained, the monthly income from instalments of the purchase prices and the raw material already in hand Mr. Kwan felt confident that the financial resources of the joint venture would prove adequate.

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Davie Boag assigned the remaining part of the land on the 7th January 1965 (G28). The following day Sang Lee mortgaged that further part to the bank on terms similar to those of the first mortgage (J232). Although it was expressed as a separate and independent mortgage, which would therefore have raised the total facilities granted by the bank to \$6,000,000, the second mortgage seems to have been treated by everyone merely as additional security for the original \$3,000,000.

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By the end of the year the joint venture was running into financial difficulties. \$2,300,000 were outstanding in unpaid purchase monies and the Bank of East Asia was reluctant to lend more. However, Sang Lee managed to squeeze a further \$700,000 from the bank in January 1966 (G62), and then in March mortgaged some of its own private properties for a further \$750,000 (see note to F41).

During 1966 the situation became worse. In July the bank pressed for repayment. The outstanding purchase monies were said to be \$3,000,000, although they were later found to be only \$1,300,000. Solicitors were instructed to recover

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the monies but little was achieved. The purchasers were not happy with the way things appeared to be going and some actually issued writs. The position was desperate. Both Sang Lee and Ball Land would have liked, if they could, to give up the joint venture, taking out only the \$1,136,000 that each had already received way back in 1962. They needed a third party to take it off their hands, but none was found. There were some negotiations in September, but they fell through.

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The turn of the year saw renewed consultation with the bank. Construction had stopped and drastic action was necessary. In order to satisfy the disgruntled purchasers the bank was willing to assume responsibility for the completion of both the Po Lee and Wai Lee Estates and to advance a further \$3,500,000 to that end. However, it insisted that all the instalment monies received thereafter were to go direct to the bank and that for each completed unit released to the actual purchaser the joint venture would have to reduce the outstanding loans by \$10,000. These terms were agreed (G72). When the accounts were drawn up at the end of March 1967 total advances to the venture had reached the high point of \$7,200,000.

We should add that from the very beginning each and every one of the advances had been backed by the personal guarantee of three of the directors of Sang Lee, that is Mr. Kwan, Mr. Ma To Sang and Mr. Hudson Chen Wood (G58 and ORS).

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THE END

The Po Lee and the Wai Lee Estates were likely to be finished in October 1967. As that month approached the joint venture had again to look for cash, because of the \$10,000 needed for the release of each individual unit to its purchaser. In September (H103) they offered unsold flats to the shareholders of their own companies at 10% discount for cash, or to pay interest at 2% per month to any shareholder willing to lend money on a bare promissory note. There seems to have been no initial response. However, eventually the three directors that we have just mentioned agreed to lend together a total of \$900,000. That was in November 1967 (H105). The money was provided in the following year.

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By March 1969 the financial position had changed very little. The mortgage debt had been reduced only to \$6,916,000 and the bank was again pressing. Some flats were still unsold and there was considerable money outstanding on others. Moreover, the contracting company had sued and obtained judgment against the joint venture. It was decided to sell the unfinished Tak Lee Estate. That realized \$3,560,000. It was less than they had hoped.

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During the next two years the same three directors of Sang Lee lent more money to the joint venture, so that at least the bank was paid off in full by the end of March 1972. The balance sheet then showed a deficit of \$5,714,000. Three quarters of that was the capital and interest due to the three directors. Before then, however, the directors had sued to recover the \$900,000 initially lent. Sang Lee consented to judgment. Ball Land did not satisfy the conditions imposed upon the giving of leave to defend and judgment was entered in default. The directors

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presented a petition to have Ball Land wound up in November 1971. The order was made in the same month. Since then the company has been in the hands of the Official Receiver.

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When the occupation permit was issued on the 27th October 1967 Sang Lee should have assigned the forty-seven flats to Ball Land in accordance with their agreement of the 17th January 1963. They did not do so then nor have they ever done so since. Consequently Ball Land have been unable to give their assignment to Wing Kwai.

On the 3rd October 1973 Wing Kwai issued a writ. They followed with a statement of claim in February 1974 asking for specific performance of the agreement with Ball Land of the 20th February 1963 and for damages. Ball Land brought in Sang Lee as third party. In addition to the claim for specific performance and damages they added their own claim for breach of the partnership agreement, fraud and other breach of fiduciary duties and prayed an account of the joint venture on the footing of wilful default. Sang Lee was given leave to defend directly against Wing Kwai as well as against Ball Land and brought counterclaims against each that the two agreements should be set aside. Other matters were included in the pleadings that are no longer relevant.

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The action did not come on for trial until the 8th January last year. It was then agreed that the trial should be held in two parts, one dealing with the question of specific performance and the other with the partnership issues. Wing Kwai was of course not interested in the latter aspect. The specific performance question was to be dealt with immediately, the partnership issues adjourned to a future date. The balance of the purchase price due from Ball Land upon their agreement was paid into court pending the outcome of the partnership issues. For reasons which now escape us the figure of \$126,000 has been abated to \$96,000.

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The first trial was concluded on the 15th February. Judgment was reserved until the 10th March. Specific performance was ordered of both agreements and Sang Lee's counterclaims dismissed.

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The trial of the partnership issues took place towards the end of last year. In a further reserved judgment the trial judge entered judgment for Ball Land and ordered that an account be taken of the joint venture on the footing of wilful default and that the damages suffered by Ball Land should be assessed subsequent thereto.

Sang Lee lodged notices of appeal against both decisions and the two appeals were directed to be heard together. However, soon after commencement of the hearing before us the appeal against the order for an account was abandoned, together with certain of the grounds of appeal against the orders for specific performance. Before turning to the remainder it is necessary to look more closely at some of the earlier transactions.

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WING KWAI AND THE SYNDICATE

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The syndicate sold the forty-seven flats to Wing Kwai for \$771,875. It was an agreed fact at the trial that payment was made in full. However, only \$248,156, that is less than half, was paid in actual cash (E34 and 35). The rest was accounted for in this way:

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\$328,000 being monies or part of monies originally invested by certain members of the syndicate including Mr. Mok and his daughter and Mr. Lai Kwai Tim; debited in Ball Land's accounts as repaid to the members; credited in Wing Kwai's accounts as part payment of the purchase price of individual flats sold to the members at Sang Lee's list price less 30% (D60 and 61).

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\$ 90,000 being monies invested by the various members of the Mok family in the syndicate and dealt with in a similar manner in the accounts save that it was put as a share in the capital of Wing Kwai rather than against the purchase of any particular flat (D13).

\$ 20,000 being the balance of money originally invested in the syndicate by Mr. Lai Kwai Tim and treated as repaid to him.

\$ 85,719 being a deferred payment against the purchase price of the balance of the forty-seven flats which Sang Lee had agreed to sell on behalf of Ball Land and which Ball Land would otherwise have passed on to Wing Kwai. For the time being this amount was secured by a cheque drawn on behalf of Wing Kwai and which was subsequently returned when the account was cleared, possibly by the 5th December 1962 (see L23, 25 and D19).

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Since the fact of payment was agreed in the court below no evidence was led as to the manner in which it was made. There was therefore no evidence as to whether or not the syndicate members were actually offered or took the flats in lieu of repayment. Mr. Ching, who appears for Wing Kwai, argues that it could be that members did pay actual cash. However, that seems to us most unlikely. The net result is that certain members of the syndicate received in specie part of the assets that the syndicate had purchased; the remainder received back their initial investment in cash. The records show the transactions as being entirely in cash and as taking place on the 11th April and the 28th June 1962 (D48 and 54).

BALL LAND INVESTMENT CO. LTD.

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The limited company was incorporated on the 4th December 1962 with a share capital of \$640,000 divided into 64,000 shares of \$10 each. They were

allotted substantially according to the amount contributed by each member to the syndicate, although there were one or two small changes and whereas there had been eighteen original syndicate members, there are now twenty shareholders.

The very next day, i.e. 5th December, the company paid out \$128,000 to those shareholders who had been members of the syndicate. This represented a 20% bonus on their original investment. Then on the 29th October 1963 \$51,200 was paid out to the then shareholders. All these payments are recorded in the cash ledger as individual items against "current account" (D178 and D182) and in the personal accounts of each shareholder.

It is not so easy to find the next payment out which occurred in March 1966 and totalled \$64,000. The individual sums are recorded in the personal accounts, where they are entered on the 31st March 1966 against "1965 dividend". There is one exception, where the entry appears on the 1st April 1965 and is referred to as "interest for 1965", although the date is perhaps in error (D213). There are no apparent corresponding entries in the cash ledger. One suggestion is an entry of \$64,000 against "interest", and the money could have been part of \$75,000 borrowed from Sang Lee, the balance going out as \$11,000 for Directors' Fees. The difficulty in the way of this suggestion is that the latter entries appear in August 1964, a date which is confirmed by the cheque book stubs of Sang Lee. 10

THE GROUNDS OF APPEAL 20

Although the notice of appeal by its terms asks us to set aside the two agreements of sale and purchase, that aspect is no longer pursued. It is accepted that the two agreements are good as such. What we are asked to say instead is that the conduct of Ball Land and Wing Kwai has been so unconscionable that we ought not in equity to enforce those agreements but rather leave Ball Land and Wing Kwai to their remedies at law. The argument, as we finally understand it to be put, rests on three contentions which either by themselves or in conjunction are sufficient grounds for the refusal of equitable relief.

Firstly it is said that there was a fraudulent scheme between Mr. Mok and Mr. Lai Kwai Tim, and perhaps some other members of the syndicate, and thus between the two companies of Ball Land and Wing Kwai, to strip Ball Land of its assets so that even if the joint venture should fail neither shareholders of Ball Land nor those of Wing Kwai would suffer a loss. Indeed, they would at worst be bound to make small profit while Sang Lee would be left holding the financial baby. It was, it is suggested, a deliberate "fail safe" mechanism. 30

The scheme is to be inferred from the transaction itself. By the time the company was formally incorporated it had no real assets left. The initial investment had been spent. Part had gone into the purchase of the land, but all that remained in that respect was the hope of a profit in the end. Against that the company had incurred a large debt and "a trading loss" of nearly half a million dollars. The shareholders had received back all that they had put in yet they represented to the outside world that the company had a paid up capital of \$640,000. Later the 40

10 shareholders were to take out even more, some of it at a time when they knew the company was about to be called upon for heavy construction costs. When the calls did come they made not the slightest response, unlike their colleagues in Sang Lee, even though they themselves were said to be rich men. What other inference can then be drawn from their forming themselves into a limited company? Had they been honest in their intentions they need not have done so. They might equally well have remained private partners in the joint venture. Even if they were not deliberately fraudulent they knew full well what they were doing and some at least of their actions were unlawful. Their conduct therefore amounted to a civil conspiracy: *Belvoir Finance Co. Ltd. v. Stapleton* (1). That was a case where parties honestly tried to get round the deposit provisions of the Hire-Purchase and Credit Sale Agreements (Control) Order, 1964 by giving a discount on the initial purchase price, but were nevertheless said by Lord Denning, M.R. to be “guilty of conspiracy”.

20 That leads to the second contention that the three payments of \$128,000, \$51,200 and \$64,000 were either an unlawful reduction of capital or an unlawful payment of dividend from non-existent profits, which is much the same thing: *In re Exchange Banking Co.* (2). A recent case in point is the Australian case of *Australian Oil Exploration Ltd. v. Lachberg* (3). A company in serious financial difficulties agreed to sell its most valuable assets, the shareholding in a second company, to the third company, partly for cash and partly for a right to its own shareholders to purchase most of the shares in the third company; the shares to be offered were worth far more than the cash price paid, hence the desire to preserve the interests of the existing shareholders; yet any of those who did not take up the offer would have been left with shares in a company denuded of almost all its assets. The High Court of Australia confirmed the trial judge’s view that the agreement constituted an unauthorized return of capital and was therefore ultra vires and void. To an alternative argument that the company would have been entitled to distribute the proceeds of sale as dividend, the court answered (at p. 133):

30 “It is enough on this point to say that a company has no capital profits available for dividend purposes unless upon a balance of accounts it appears that there has been an accretion to the paid up capital.”

40 At the trial the judge accepted, we think with some hesitation, the argument that all these monies and the earlier repayment of \$640,000 were loans from the company to its shareholders, under which guise they appeared regularly in the balance sheet. He was impressed by the evidence of the witness from the auditors, who said that when he first started to audit the books in 1963 he advised the shareholder then in charge of the accounts, a Mr. Chan Kwok Wah, of the impropriety of returning capital or of distributing profits before they were earned and thereafter year by year he sent out circulars to the various shareholders requiring confirmation of the loans. Although these confirmations were no longer available, the witness was

(1) (1971) 1 Q.B. 210
(2) (1882) 21 Ch. 519
(3) (1958) 101 C.L.R. 119

satisfied that the accounts could not have been made up as they were unless the confirmations had been regularly received back. Mr. Lai Kwai Tim's evidence was that Mr. Chan Kwok Wah had told him that the payments had been changed to loans. The judge accepted that and took the view that even if the other shareholders had not come to realize the position over the years, which he thought they would, they would nevertheless be bound by the acceptance of their colleagues, Mr. Lai and Mr. Chan.

Mr. Ross-Munro, counsel for Sang Lee, respectfully disputes the reasoning of the judge, and further points out that no advice from an auditor can subsequently change the nature of a payment already made. He suggests that it is clear from the whole of the evidence that although the company paid lip service to the auditor's advice, it continued to treat the original and subsequent payments as absolute. He instances the use of the word "dividend" in the accounts and the fact that there is no minute recording the loans. Above all at no time whatsoever has any request been made for repayment, not even by the Official Receiver. Nor, until after the trial started, had anyone offered to repay. A few shareholders have now repaid their part of the \$640,000 in full and most of the others who are still alive have acknowledged their debt and paid 20%. It is of course not unlawful for a company to lend money to its shareholders.

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The third contention of Sang Lee is that Ball Land was in flagrant breach of its fiduciary duties under the partnership agreement and the joint venture generally, in particular by not paying the \$3,480,000 that was expressly provided for in the partnership agreement. This was perhaps excusable in the early years for at that stage the partnership was not short of funds. But Ball Land should have paid later when funds were urgently needed. In fact it did not contribute one single cent to the venture from the date of its incorporation to the order for winding up, and it has adamantly refused to pay its half share of the monies still owing to the three directors of Sang Lee.

20

In addition, the "fail safe" scheme and the return of capital and dividends without profit are themselves breaches of the fiduciary relationship.

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Mr. Ross-Munro argues that there is only one way in which a court of equity can exercise its discretion where one partner thinks of a scheme whereby he can only win and not lose, even though he does not deliberately intend that scheme to operate to the detriment of the other partners, and then proceeds to put that scheme into effect by means which are themselves a series of breaches of company law or practice. The court must refuse equitable relief.

THE ANSWER

The gist of the answer by both Ball Land and Wing Kwai can we think be put as simply as this – "If you think we behave badly, you yourself have behaved far worse; and indeed if it had not been for your misuse of the joint venture funds for your own private ends the joint venture would have weathered the storms of the mid 1960s and come safely to port and perhaps still made a little profit."

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There were other arguments directed to persuading us that there has been no deliberate "fail safe" scheme, and no unlawful reduction of capital or payment of dividends without profits; or that even if there had been illegality, that illegality had been repented in time; that there had been no failure to contribute by Ball Land, for Ball Land had not been asked to do so; and that in any event the two agreements for the sale of the forty-seven flats were independent transactions having no relevance to the internal affairs of the partnership and ought not now to be prejudiced by the private quarrels of the partners.

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SANG LEE'S CONDUCT

10 Sang Lee was the active partner in the joint venture. In particular it was responsible for collecting the monies, paying the bills and keeping the accounts. Yet it opened no separate bank account. Mr. Kwan had other large business interests in which Sang Lee were involved. Some were joint ventures with yet other partners. The revenues from the Ball Land venture were freely intermingled with other Sang Lee funds and were drawn upon indiscriminately as and when Sang Lee required money regardless of whether it was for the joint venture or not. One early consequence of this policy was to saddle the joint venture with debts it need not have incurred. Mr. Chang, counsel for Ball Land, has shown clearly that at least at the time of the first mortgage for \$3,000,000 the joint venture had in fact sufficient funds for its own needs. The year before, when Davie Boag gave vacant possession of the site, the joint venture could have paid off the balance of the purchase price, yet Sang Lee allowed it to incur interest charges thereon until 1964 or 1965. Another consequence of mixing the monies was that Sang Lee failed to obtain any interest upon the admitted credit balances that the joint venture held in the first few years.

20 The question of interest is important, for once monies are borrowed interest is a continuing expense. If there was an error in the first instance that error would be continued and compounded month by month and year by year. Mr. Ross-Munro attempted to show from the accounts that at least a substantial part of all the monies eventually borrowed were expended on the joint venture. With respect we are not so persuaded. Mr. Chang goes to almost the other extreme. He argues that although the joint venture would have had to borrow to some extent it could have raised the necessary amounts comfortably upon its own land without resort to other properties or loans from the three directors. He is confident that when the accounts are ultimately put in order and due allowance made for these and other matters to which we shall refer in a moment -- and we should add, further allowance is made for the greatly increased value of the few flats that still remain unsold -- the joint venture will come out with a profit rather than a loss. We feel the matter is too complicated even to hazard a guess. We are certain however that Ball Land will finish in a considerably better position than it now occupies.

30 One specific transaction was admitted in the second trial below: Sang Lee made a secret profit of \$182,719 upon a consignment of steel bars purchased for the joint venture. Another transaction was admitted in which Sang Lee benefited to the extent of \$125,000, but that it was in any way dishonest was denied.

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The judge dealt with the matter very fully in his second judgment. He came to the conclusion that it was a “secret commission to Sang Lee which Mr. Kwan in his curious and devious way sought to ‘wash’ through the accounts” (A85).

Finally there are what have been called the “confirmor sales”. These were instances where original purchasers defaulted in payment. The sales agreements provided that in that case Sang Lee would be entitled to rescind the sale, forfeit any sums already paid, whether by way of deposit or instalments, and resell the property, retaining to itself any increase in the resale price over and above that of the original sale. However, instead of doing that and accounting to the joint venture for any profits thus made, Sang Lee allowed one of its own employees to take the benefit. He was the assistant to Mr. Kwan’s own son.

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OUR CONCLUSIONS

(a) “THE SCHEME”

The trial judge came to the conclusion that there was no deliberate fraud. His judgment is explicit. He disposes of the suggestion “that one of the partners was endeavouring dishonestly to overreach the other” (59) and later finds “a scheme of duplicity to be non-existent” (A62). That is essentially a finding of fact. We are not persuaded that the transactions speak so strongly for themselves that the finding ought to be reversed. By the same token we are not persuaded that the conduct of Mr. Mok and Mr. Lai amounted to a civil conspiracy. The judge’s finding shows that they did not intend to injure Mr. Kwan and Sang Lee; they intended only to benefit themselves. The case of *Belvoir Finance Co. Ltd. v. Stapleton* can be distinguished. What the parties did there amounted to a crime.

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(b) THE ILLEGAL REDUCTION OF CAPITAL

The judge held that the return of \$640,000 was not illegal because at that time Ball Land was still a partnership and there is no rule of law which prohibits partners returning their own capital to themselves. He thought that “the payment was not subsequently rendered unlawful by the later payment of \$128,000, which was itself improper but later acknowledged to be repayable together with the earlier and larger sum as a loan”.

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We have remarked earlier why the judge considered these and the other payments to be loans. With the greatest respect we disagree with him on this point. When one looks at the whole picture it is obvious, as Mr. Ross-Munro contended, that Ball Land were doing no more than pay lip service to their auditors. The payments were never intended to be nor were they treated as genuine loans. That was only a way of keeping the books. The learned judge commented that what he had to seek was the substance rather than the shadow. With respect, it was only the label that he found. In our view the payments after incorporation were unlawful.

We agree with the judge’s findings as to the \$640,000. That repayment

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was within the law. However equity cannot regard with approval what followed almost immediately, namely the incorporation of the syndicate into a limited company with that money registered as fully paid up capital. All that the company had in point of fact, once the \$128,000 had been paid out, was its hope of eventual profit in the joint venture.

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(c) FAILURE TO CONTRIBUTE

10 It is true that Ball Land did not contribute anything to the joint venture other than its initial investment. It is true that it did not honour its commitment under the partnership agreement or respond to the calls made from 1965 onwards. With respect to Mr. Ching it is a verbal quibble to say that they were not called upon. They knew there was urgent need of money. Minute after minute recorded desperate cries for help. The short answer is that by that time Ball Land was not in a position to help. That is clear from the record (H56). But neither was Sang Lee (H41), which made no attempt to repay the \$1,136,000 taken by it until much later. We do not know whether the individual shareholders of Ball Land could have done anything. There is some dispute whether Mr. Mok was still the wealthy man he had been in 1961. Mr. Kwan and two other directors of Sang Lee still had money. They were prepared to let it be used. However, Mr. Chang has observed – and we think quite rightly – that it was a question of Hobson’s choice once they had committed themselves personally in 1964. They had to make the joint venture survive if at all possible.

SHOULD THERE BE SPECIFIC PERFORMANCE?

It is argued that we ought to concern ourselves only with the conduct of Ball Land and its shareholders. It is they who seek equitable relief and it is they who must show that their conduct has been up to the standards demanded by equity. It is immaterial that Sang Lee may have misbehaved itself as well, and that if the boot were on the other foot the court would refuse them assistance. Equity should stand aloof and leave the parties to their legal remedies.

30 In our view that argument would be correct if there were little to choose between the competing parties – for example with regard to the conduct of Ball Land in reducing itself to a financial shell in 1962. As we have mentioned earlier, equity would not approve of the greater part of its conduct and the remainder was unlawful. Yet Sang Lee knew full well what Ball Land was doing and gave its blessing. It knew that the forty-seven flats would be sold out immediately at a heavy discount. That was the only way for Ball Land to raise immediate cash, which was what both Ball Land and Sang Lee wanted at the time. Sang Lee took cash directly.

40 However there is a great deal more to the present situation than that, and in our view it is Sang Lee which is by far the worse offender. Firstly it abused its position as keeper of the purse strings by using joint venture monies for its own private ends. That was at the root of many of the later financial problems or seeming problems. The trial judge referred to their conduct as “obvious folly”. Mr. Kwan was an experienced businessman. We see it more as a conscious breach of

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obligation. Secondly there is the private profit of \$182,000. And finally the secret commission from the contractor and the confirmor sales. The trial judge described these as “flagrant breaches of confidence amounting to equitable fraud”.

The value of the flats in question is now many many times higher than it was in the 1960s. If the orders for specific performance were revoked, Sang Lee would gain the benefit of half that increase. It would not benefit from all the flats. Sang Lee is willing to complete assignments to any purchaser who is not part of the Mok family nor associated with the syndicate or Wing Kwai. We do not know to how many that might apply. Yet it makes no difference. Sang Lee would still retain properties which long ago it fully intended to belong to Ball Land and which on Mr. Kwan’s own admission, it fully believed to do so. In view of its grave misconduct that would not be fair and just. We think the appeal should be dismissed.

10

PLAINTIFF'S DOCUMENT

Document

AGREEMENT FOR SALE AND PURCHASE BETWEEN
DAVIE BOAG AND COMPANY LIMITED AND
MOK TSZE FUNG

A-1

Agreement for
Sale and
Purchase
Between Davie
Boag and Co. Ltd.
and Mok Tsze
Fung
Dated 25.10.1961

10 AN AGREEMENT made the 25th day of October One thousand nine hundred and sixty one BETWEEN DAVIE BOAG AND COMPANY LIMITED whose registered office is situate at Jardine House, Pedder Street, Victoria in the Colony of Hong Kong (hereinafter called "the Vendor") of the one part and MOK TSZE FUNG (莫子峯) of No. 40, Blue Pool Road, Victoria aforesaid Merchant (hereinafter called "the Purchaser") of the other part.

WHEREBY IT IS AGREED between the parties hereto as follows:—

1. The Vendor will sell and the Purchaser purchase ALL THAT piece or parcel of ground situate lying and being at Quarry Bay in the Colony of Hong Kong and registered in the Land Office as The Remaining Portion of Section B of Quarry Bay Marine Lot Number One having an area of 50,700 square feet or thereabouts TOGETHER with the appurtenances thereto and all the estate right title interest property claim and demand whatsoever of the Vendor therein and thereto EXCEPT AND RESERVED as in the Crown Lease hereinafter referred to is excepted and reserved and excepted and reserved as provided in Clause 4 of this Agreement.

20 2. The purchase price shall be SIX MILLION AND NINETY ONE THOUSAND TWO HUNDRED DOLLARS (HK\$6,091,200.00) calculated at \$120.00 per square foot on an area of 50,700 square feet which shall be paid in the following manners:—

- (a) As to \$609,120.00 10% thereof by way of deposit and in part payment of the purchase price on the signing of this Agreement.
- (b) As to a further \$609,120.00 by way of further deposit on or before the expiration of 6 months from the date hereof.
- (c) As to \$1,827,360.00, 30% thereon on vacant possession being given to the Purchaser as hereinafter provided.
- 30 (d) As to the balance of \$3,045,600.00 on completion as hereinafter provided.

3. The Purchaser shall pay to the Vendor interest on the sum of \$3,045,600.00 from the date on which vacant possession is made available to the Purchaser until completion of the sale and purchase at the rate of eight per cent per annum payable quarterly on the 31st March, the 30th June, the 30th September and the 31st December, in each year.

4. The sale and purchase shall not include the existing building on the site

Document
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Agreement for
Sale and
Purchase
Between Davie
Boag and Co. Ltd.
and Mok Tsze
Fung
Dated 25.10.1961

and the Vendor reserves the right to demolish the existing buildings and to remove the materials derived therefrom and all fixtures and fittings therein before giving vacant possession to the Purchaser. Any buildings not demolished and removed on the date on which vacant possession is given to the Purchaser shall become the property of the Purchaser.

5(a). Vacant possession will be made available to the Purchaser on a date to be notified to the Purchaser by not less than two months' previous notice in writing and in any event not later than the 30th June, 1963.

(b). Provided the sum of \$1,827,360.00 is duly paid by the Purchaser on vacant possession being made available as provided in Clause 2(c) hereof, the Purchaser shall be entitled to enter into and commence construction and other works on the said premises PROVIDED HOWEVER that:—

(i) Until payment has been made of the full purchase price, the Purchaser's possession shall be a tenant at will only and terminable by the Vendor in the event of this Agreement being rescinded pursuant to Clauses 11 or 14 hereof.

(ii) All works and buildings shall be carried out in accordance in all respects which the provisions of the Buildings Ordinance and Regulations and all other relevant Ordinances, regulations and by-laws.

(iii) The Purchaser shall indemnify the Vendor from and against all actions, proceedings, claims, demands, costs and expenses arising directly or indirectly from or as a result of the carrying out of any such works or building on the said premises or any part thereof prior to completion.

(iv) In the event of this Agreement being rescinded by the Vendor pursuant to Clause 11 or 14 hereof all works and buildings carried out or constructed on the said premises shall belong to the Vendor free of any interest or equity in favour of the Purchaser and the Vendor shall not be liable to make any payment by way of compensation or otherwise in respect thereof.

6(a) The purchase shall be completed at the offices of Messrs. Deacons at the expiration of 18 months after vacant possession is made available to the Purchaser when the residue of the purchase money shall be paid and the Vendor and all other necessary parties (if any) shall execute a proper assurance of the premises sold to the Purchaser or his nominee or nominees, sub-purchaser or sub-purchasers.

(b) The Vendor will, if so required by the Purchaser, assign part or parts of the said premises to the Purchaser, his nominee or nominees, sub-purchaser or sub-purchasers prior to the date for completion, subject to the following conditions:—

(i) No more than 5 assignments will be given.

(ii) No assignment shall take place prior to vacant possession being made

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available and the Purchaser paying the sum of \$1,827,360.00 referred to in Clause 2(c) hereof.

Document

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**Agreement for
Sale and
Purchase
Between Davie
Boag and Co. Ltd.
and Mok Tsze
Fung
Dated 25.10.1961**

(iii) Every part assigned shall confirm to any lay out plan or plans approved by the Building Authority and shall include not less than half the width of every road or right of way forming part of the premises hereby agreed to be sold on which the area assigned abuts.

(iv) Payment for each part separately assigned shall be made in full at the date of the assignment.

10

(v) All carving out plans shall be submitted for the approval of the Vendor's architect at the Purchaser's expense, not exceeding \$75.00 for each plan.

(vi) The Purchaser shall pay the Vendor's Solicitors' charges (at half the scale fee) for approving all the assignments on required to the extent that such charges are in excess of the charges which would have been incurred by the Vendor for the approval of a single assignment of the whole premises agreed to be sold.

20

7. The Vendor shall before making vacant possession available to the Purchaser request Hong Kong Government to proceed with the covering in of the nullah separating the premises agreed to be sold from King's Road and shall pay all the costs charged by Government for carrying out this work. As the work is to be carried out by Government the Vendors give no warranty that it will be commenced or completed by any particular date.

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7A. If the Purchaser shall before the date fixed for completion prepare plans and applications for the approval of the Building Authority in connection with the development of the said premises the Vendor will at the request of the Purchaser sign such plans and applications but in that event the Purchaser shall indemnify the Vendor against all actions costs claims and demands arising out of or in connection with such plans and application so signed by the Vendor. The Purchaser shall in all plans and applications to the Building Authority and in all building operations observe perform and be bound by the provisions of the Crown Lease of the Remaining Portion of Section B of Quarry Bay Marine Lot No. 1 and all Town Planning restrictions affecting the said premises and shall indemnify the Vendor against all actions costs claims and demands in respect of any breach or non-observance thereof.

8. The rents and profits shall be received and all outgoings shall be discharged by the Vendor up to but exclusive of the actual day on which vacant possession is made available to the Purchaser and as from and inclusive of that day the rents will be taken and all outgoings discharged by the purchaser. All such rents profit and outgoings shall if necessary be apportioned between the Vendor and Purchaser.

9. The property is sold:—

40

(a) For all the residue of a term of 999 years from the 2nd day of February

<p>Document</p> <p>A-1</p> <p>Agreement for Sale and Purchase Between Davie Boag and Co. Ltd. and Mok Tsze Fung Dated 25.10.1961</p>	<p>1882 created therein by a Crown Lease dated the 31st day of December 1930 and made between His late Majesty King George V of the one part and The Taikoo Sugar Refining Company Limited of the other part subject to the payment of the Crown Rent and to the exception, reservations and due performance of the covenants and conditions by and in the said Crown Lease reserved and contained so far as the same relate to the said premises.</p> <p>(b) Subject to all rights of way, easements, rights and privileges (if any) to which the name is subject and together with the benefit of all rights of way easements rights privileges and appurtenances enjoyed there-with.</p>	<p>10</p>
	<p>10. No error, mis-description or mis-statement shall annul the sale nor shall any compensation be allowed in respect thereof.</p>	
	<p>11. If the Purchaser shall make and insist on any objection or requisition either as to title conveyance or any matter appearing on the title deeds or particulars of conditions or otherwise which the Vendor shall be unable or (on the ground of difficulty delay or expenses or on any other reasonable ground) unwilling to remove or comply with or if the title of the Vendor shall be defective the Vendor shall notwithstanding any previous negotiation or obligation be at liberty to annul the sale in which case the Purchaser shall be entitled to the return of the deposit but without interest costs or compensation.</p>	<p>20</p>
	<p>12. Such of the muniments of title as relate exclusively to the premises hereby agreed to be sold will be delivered to the Purchaser. All other muniments of title in the possession of the Vendor will be retained by the Vendor who will, if on required, give to the Purchaser a covenant for production safe custody and delivery or copies thereof to be prepared by and at the expense of the Purchaser.</p>	
	<p>13. The Vendor shall show a good title to the property at its own expense and shall at the like expense make and furnish to the Purchaser such attested or other copies of any deeds of documents of title, wills and matters of public record as may be necessary to complete such title. The costs of verifying the title by inspection and examination including search fees shall be borne by the Purchaser together with the costs of any attested copies of documents in the Vendor's possession relating as well to the property sold as to other property retained by the Vendor.</p>	<p>30</p>
	<p>14. If the Purchaser shall fail to comply with any of the terms of this Agreement all deposit money paid hereunder by the Purchaser shall be absolutely forfeited to the Vendor who may (without being obliged to tender an assignment) rescind the sale in respect of all parts of the said premises not assigned at the date of such rescission and resell the same either as a whole or in lots and either by public auction or private contract or partly by the one and partly by the other and subject to such conditions and stipulations as to title or otherwise as the Vendor may think fit. Any deficiency arising from such resale and all expenses attending the same or any attempted resale shall be made good and paid by the Purchaser as liquidated damages and any increase in price realised by any such resale shall belong to the Vendor. This clause shall not</p>	<p>40</p>

preclude to be deemed to preclude the Vendor from taking other steps or remedies to enforce the Vendor rights hereunder or otherwise.

Document

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15. In the event of the Vendor failing to complete the sale in accordance with the terms hereof it shall not be necessary for the Purchaser to tender an assignment to the Vendor for execution before taking proceedings to enforce specific performance of this contract or otherwise.

Agreement for
Sale and
Purchase
Between Davie
Boag and Co. Ltd.
and Mok Tsze
Fung
Dated 25.10.1961

16. Subject as provided in Clause 6(b)(vi) hereof each party shall pay its own costs of and incidental to this Agreement and the subsequent assignment.

10 17. Stamp Duty on the assignment pursuant hereto will be payable at the rate of 5%. Accordingly, the Vendor will make a contribution towards such stamp duty equivalent to 2% on the said purchaser consideration of \$6,091,000.00. All other stamp duty shall be borne by the Purchaser.

AS WITNESS the hands of the said parties the day and year first above written.

SIGNED by)
for and on behalf of the Vendor)
in the presence of:)

Solicitor,
Hong Kong.

20 SIGNED by the Purchaser in the)
presence of:—)

Solicitor,
Hong Kong.

30 RECEIVED on the day and year)
first above written of and from)
the Purchaser the sum of SIX)
HUNDRED AND NINE)
THOUSAND ONE HUNDRED)
AND TWENTY DOLLARS being)
the deposit money above)
mentioned) \$609,120.00.

sd. R. E. Moore
Solicitor,
Hong Kong.

DAVIE BOAG & CO. LTD.
sd. A. H. Dinnen
Director

A-1

Agreement for Sale and Purchase Between Davie Boag and Co. Ltd. and Mok Tsze Fung Dated 25.10.1961

Memorial required to be registered in the Land Office according to the provision of the Land Registration Ordinance (Cap. 128)

	Nature and Object of the Instrument to which the Memorial relates.		10
	AGREEMENT FOR SALE AND PURCHASE a copy whereof is annexed hereto: <p style="text-align: center;">RIDER</p> Witness to the signature of Alec H. Dinnen, Director for and on behalf of the Vendor: Raymond Edward Morre, Solicitor, Hong Kong. Witness to the execution thereof by the Purchaser: S.C. Mok, Solicitor, Hong Kong.		
	Date of Instrument	The 25th day of October 1961.	
	Names and Additions of Parties	DAVIE, BOAG AND COMPANY LIMITED whose registered office is situate at Jardine House, Pedder Street, Victoria Hong Kong "the Vendor" MOK TSZE FUNG (莫子峯) of No. 40 Blue Pool Road, Victoria Hong Kong Merchant "the Purchaser"	
	Names and Additions of Witnesses	See RIDER above.	
	Premises affected by the Instrument	THE REMAINING PORTION OF SECTION B OF QUARRY BAY MARINE LOT NO. 1	
	Signature of Parties signing Memorial		
I, Mok Sing Chuen of Messrs. S. C. Mok & Co. duly admitted and enrolled as a solicitor in the Colony of Hong Kong hereby certify that (according to Section VII of Land Registration Ordinance (Cap. 128) the foregoing memorial contains a just and true account of the several particulars therein set forth. Dated the 18th day of December 1961.		Received at the Land Office & Registered as Memorial No. 357032 on 18th Dec. 1961 the day of 19 at o'clock in the noon	30

PLAINTIFF'S DOCUMENT

Document

A DECLARATION OF TRUST BY MOK TSZE FUNG

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A Declaration
of Trust by
Mok Tsze Fung
Dated 25.10.1961

TO ALL TO WHOM these presents shall come I, MOK TSZE FUNG (莫子峯)
of No. 1535 Central Building
Pedder Street Victoria in the Colony of Hong Kong Merchant

SEND GREETING:—

10 WHEREAS by a Memorandum of Agreement of even date herewith made between
DAVIE BOAG & COMPANY LIMITED of the one part and myself of the other part
and registered in the Land office by Memorial No. 357032 in consideration of the sum
SIX MILLION AND NINETY ONE THOUSAND TWO HUNDRED DOLLARS in
Hong Kong Currency (\$6,091,200.00) to be paid by me to the said Davie Boag &
Company Limited it has thereby agreed to assign unto me the premises hereinafter
described.

AND WHEREAS the sum of \$609,120.00 10% of the said purchaser price paid by me
this day as deposit and part payment of the said purchase price was in fact the moneys
belonging to and provided by SANG LEE INVESTMENT COMPANY LIMITED whose
registered office is situated at Room No. 1735 Central Building aforesaid (hereinafter
referred to as "the Beneficiary").

20 NOW THESE PRESENTS WITNESS that I the said MOK TSZE FUNG myself my
executors and administrators DO hereby declare that I stand possessed of All That
estate right interest and benefit of and in ALL THAT portion of the piece or parcel of
ground situate at Quarry Bay in the said Colony of Hong Kong and registered in the
Land Office as The Remaining Portion of Section B of Quarry Bay Marine Lot No. 1
and of and in all messuages erections and buildings (if any) thereon Together with the
exclusive right to the use occupation enjoyment rents and profits of the said premises
And the appurtenances thereto belonging UPON TRUST for the said Beneficiary its
successors and assign AND I hereby agree to assign or convey or otherwise dispose of
my said estate right interest and benefit of and in the said premises at the request and
cost of the Beneficiary to such person or persons at such times and in such manner as
the said Beneficiary shall direct or appoint IN WITNESS whereof I the said MOK
30 TSZE FUNG hereunto set my hand and seal this Twenty Fifth day of October One
thousand nine hundred and sixty one.

SIGNED SEALED AND DELIVERED BY)
the said Mok Tsze Fung in the) sd. T. F. Mok
presence of:—)

sd. S. C. Mok
Solicitor, Hong Kong

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A Declaration of Trust by Mok Tsze Fung Dated 25.10.1961

Memorial required to be registered in the Land Office according to the provision of the Land Registration Ordinance (Cap. 128)

Nature and Object of the Instrument to which the Memorial relates.	
AGREEMENT OF TRUST a copy whereof is annexed hereto:	
Date of Instrument	The 25th day of October 1961
Names and Additions of Parties	MOK TSZE FUNG (莫子峯) of No. 1535 Central Building, Pedder Street Victoria Hong Kong Merchant "the Trustee" SANG LEE INVESTMENT COMPANY LIMITED whose registered office is situate at Room No. 1735 Central Building afore-said "the Beneficiary"
Names and Additions of Witnesses	Witness to the execution thereof by the Trustee: S. C. Mok, Solicitor, Hong Kong.
Premises affected by the Instrument	THE REMAINING PORTION OF SECTION B OF QUARRY BAY MARINE LOT NO. 1
Signature of Parties signing Memorial	
<p>I, Mok Sing Chuen of Messrs. S. C. Mok & Co. duly admitted and enrolled as a solicitor in the Colony of Hong Kong hereby certify that (according to Section VII of Land Registration Ordinance (Cap. 128) the foregoing memorial contains a just and true account of the several particulars therein set forth.</p> <p>Dated the 18th day of December 1961.</p> <p>Solicitor, Hong Kong.</p>	<p>Received at the Land Office & Registered as Memorial No. 357033 on 18th Dec. 1961 the day of 19 at o'clock in the noon</p> <p>Land Officer.</p>

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PLAINTIFF'S DOCUMENT

Document

AGREEMENT OF SALE AND PURCHASE BETWEEN DAVIE
BOAG AND COMPANY LIMITED AND MOK TSZE FUNG

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Agreement of
Sale and
Purchase
Between
Davie Boag
and Co. Ltd.
and Mok Tsze
Fung
Dated 6.12.1962

10 AN AGREEMENT made the Sixth day of December One thousand nine hundred and sixty two BETWEEN DAVIE, BOAG AND COMPANY LIMITED whose registered office is situate at Jardine House, Pedder Street, Victoria in the Colony of Hong Kong (hereinafter called "the Vendor") of the one part and MOK TSZE FUNG (莫子峯) of No. 40, Blue Pool Road, Victoria aforesaid, Merchant (hereinafter called "the Purchaser") of the other part.

WHEREAS:—

(1) This Agreement is made supplemental to an Agreement (hereinafter called "the Principal Agreement") made between the parties hereto and dated the 25th day of October 1961 for the sale and purchase of the remaining Portion of Section B of Quarry Bay Marine Lot Number One (hereinafter called "the said premises").

(2) Since the signing of the Principal Agreement, the area of the said premises has been found to be 50,805 square feet or thereabouts instead of 50,760 square feet or thereabouts as stated in the Principal Agreement.

20 (3) Part of the existing buildings on the premises agreed to be sold and purchased are occupied by W. Haking Industries (Mechanics & Optics) Limited (hereinafter called "Haking").

(4) At the request of Haking, the parties have agreed to amend the provisions of the within written agreement to enable Haking to continue its operation in the existing buildings until December 1963 on the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:—

30 1. Possession of the portion of the said premises having an area of 21,547.455 square feet or thereabouts and coloured Pink on the plan annexed hereto (hereinafter called "the Pink Land") shall be given by the Vendor to the Purchaser on or before the 15th January 1963. The Purchaser accepts the obligation of Haking to vacate the portions of the existing buildings on the pink land on or before the 15th January 1963 as agreed between the Purchaser and Haking and the Vendor shall have fulfilled its obligation under this Clause provided it delivers possession of the pink land and such of the buildings thereon as shall not have been demolished by the Vendor in accordance with Clause 4 of the within written agreement to the Purchaser free of all tenants and occupiers other than Haking and its employees, servants, agents and licensees.

<p>Document</p> <p>A-3</p> <p>Agreement of Sale and Purchase Between Davie Boag and Co. Ltd. and Mok Tsze Fung</p> <p>Dated 6.12.1962</p>	<p>2. Possession of the remainder of the said premises having an area of 29,257.545 square feet or thereabouts and coloured green on the plan annexed hereto (hereinafter called “the green land”) shall be given by the Vendor to the Purchaser on or before the 30th June 1963. The Vendor shall have fulfilled its obligation under this Clause notwithstanding that Haking shall continue to occupy part of the existing building on the green land by agreement with the Purchaser after the 30th June 1963 provided the Vendor shall deliver to the Purchaser possession of the green land and such of the buildings thereon as shall not have been demolished by the Vendor in accordance with Clause 4 of the within written agreement, on or before the 30th June 1963 free of all tenants and occupiers other than Haking and its employees, servants, agents and licensees.</p> <p>3. The Purchaser shall make the following payments to the Vendor in lieu of the payment provided for in Clause 2(c) of the Principal Agreement, namely:—</p> <p style="padding-left: 40px;">(a) The sum of \$775,708.38 being 30% of the purchase price attributable to the area of the pink land on possession being given to the Purchaser as provided in Clause 1 hereof.</p> <p style="padding-left: 40px;">(b) The sum of \$1,053,271.62 being 30% of the purchase price attributable to the area of the green land on possession being given to the Purchaser as provided in Clause 2 hereof.</p> <p>4. The interest payable under Clause 3 of the Principal Agreement shall commence to be payable in respect of the respective proportions of the outstanding balance of the purchase price attributable to the area of the pink land and the green land from the respective dates on which possession of the pink land and the green land is given to the Purchaser as aforesaid. Such respective proportions of the outstanding balance shall be calculated on the revised areas mentioned above after taking into account the payments already made in accordance with the terms of the Principal Agreement prior to the date hereof such payments to be apportioned between the pink land and the green land proportionately to the respective areas thereof.</p> <p>5. The Vendor shall not exercise the right given by Clause 4 of the Principal Agreement to demolish such of the existing buildings as will remain in the occupation of Haking after possession has been given to the Purchaser in accordance with the Agreement between the Purchaser and Haking.</p> <p>6. The date for completion of the assignment of the pink land shall be 18 months after possession of the pink land is given to the Purchaser as aforesaid and the date for completion of the assignment of the green land shall be 18 months after possession of the green land is given to the Purchaser as aforesaid. The proportion of the balance of the purchase price attributable to the pink land and the green land respectively calculated on the revised areas as aforesaid shall be paid on completion of the assignment thereof.</p> <p>7. Clause 6(b)(ii) of the Principal Agreement shall be replaced by the following clause:—</p> <p style="padding-left: 40px;">“No assignment shall take place prior to the Purchaser having paid</p>	<p>10</p> <p>20</p> <p>30</p> <p>40</p>
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to the Vendor the amounts referred to in Clauses 3(a) and (b) of the supplemental agreement dated the 6th day of December 1962”.

Document

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8. Save and except as aforesaid the Principal Agreement shall remain in full force and effect.

**Agreement of
Sale and
Purchase
Between
Davie Boag
and Co. Ltd.
and Mok Tsze
Fung**

Dated 6.12.1962

AS WITNESS the hands of the parties hereto the day and year first above written.

SIGNED by)
for and on behalf of the)
Vendor in the presence of: –)

10

SIGNED by the Purchaser)
in the presence of: –)

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Agreement
Between Far
East Land
Investment
and Guarantee
Co. Ltd. and
Wing Kwai
Investment
Company Ltd.
Undated

**UNDATED AGREEMENT BETWEEN FAR EAST LAND INVESTMENT
AND GUARANTEE COMPANY LIMITED and WING KWAI
INVESTMENT COMPANY LIMITED**

AN AGREEMENT made the _____ day of _____ One thousand nine hundred and sixty two BETWEEN FAR EAST LAND INVESTMENT AND GUARANTEE COMPANY LIMITED whose registered office is situate at Room No. 1535 Central Building Pedder Street Victoria in the Colony of Hong Kong (hereinafter called "the Vendor") of the one part and WING KWAI INVESTMENT COMPANY LIMITED whose registered office is situate at No. 60 Queen's Road Central First Floor Victoria aforesaid (hereinafter called "the Purchaser") of the other part

10

WHEREAS Davie, Boag and Company Limited is the registered owner of All That piece or parcel of ground registered in the Land Office as The Remaining Portion of Section B of Quarry Bay Marine Lot No. 1 (hereinafter referred to as "the said premises")

AND WHEREAS by an Agreement dated the 25th day of October 1961 made between the said Davie, Boag and Company Limited of the one part and Mok Tsze Fung of the other part the said Davie, Boag and Company Limited agreed to sell and the said Mok Tsze Fung agreed to purchase the said premises for the consideration herein mentioned

20

AND WHEREAS by a Declaration of Trust dated the 25th day of October 1961 the said Mok Tsze Fung declared that he entered into the aforesaid Agreement for sale and purchase as a Trustee for Sang Lee Investment Company Limited

AND WHEREAS by an Agreement dated the _____ day of _____ 1962 made between the said Sang Lee Investment Company Limited of the one part and the Vendor of the other part the said Sang Lee Investment Company Limited agreed to sell and the Vendor agreed to purchase All That _____ equal undivided _____ parts of shares _____ of _____ and in the said premises for the consideration therein mentioned Together with the exclusive right to the use occupation and enjoyment of All Those flats and/or shops spaces as hereinafter specified of the building to be erected on the said premises and to be entitled "WAI LEE BUILDING"

30

BUILDING	FLOOR	FLAT OR SHOP NUMBER
WAI LEE	GROUND FLOOR and COCKLOFT	Nos. 997 and 999A King's Road
WAI LEE	FIRST FLOOR	Nos. 101 and 103
WAI LEE	SECOND FLOOR	Nos. 201 and 203

BUILDING	FLOOR	FLAT OR SHOP NUMBER	Document
	THIRD FLOOR	Nos. 301 and 303	A-4
	FOURTH FLOOR	Nos. 401 and 403	Agreement Between Far East Land Investment and Guarantee Co. Ltd. and Wing Kwai Investment Company Ltd. Undated
	FIFTH FLOOR	Nos. 501 and 503	
	SIXTH FLOOR	Nos. 601 and 603	
	SEVENTH FLOOR	Nos. 701 and 703	
	EIGHTH FLOOR	Nos. 801 and 803	
	NINTH FLOOR	Nos. 901 and 903	
	TENTH FLOOR	Nos. 1001 and 1003	
10	WAI LEE ELEVENTH FLOOR	Nos. 1101 and 1103	
	WAIL LEE TWELFTH FLOOR	Nos. 1201 and 1203	
	WAI LEE THIRTEENTH FLOOR	Nos. 1301 and 1303	
	WAI LEE FOURTEENTH FLOOR	Nos. 1401 and 1403	
	WAI LEE FIFTEENTH FLOOR	Nos. 1501 and 1503	
	WAI LEE SIXTEENTH FLOOR	Nos. 1601 and 1603	
	WAI LEE SEVENTEENTH FLOOR	Nos. 1701 and 1703	
	WAI LEE EIGHTEENTH FLOOR	Nos. 1801 and 1803	
	WAI LEE NINETEENTH FLOOR	Nos. 1901 and 1903	
	WAI LEE TWENTIETH FLOOR	Nos. 2001 and 2003	
20	WAI LEE TWENTY FIRST FLOOR	Nos. 2101 and 2103	
	WAI LEE TWENTY SECOND FLOOR	Nos. 2201 and 2203	
	WAI LEE TWENTY THIRD FLOOR	Nos. 2301 and 2303	

NOW IT IS HEREBY AGREED as follows:—

1. The Vendor shall sell and the Purchaser shall purchase the said equal undivided _____ parts or shares of and in the said premises Together with the messuages

Document

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Agreement
Between Far
East Land
Investment
and Guarantee
Co. Ltd. and
Wing Kwai
Investment
Company Ltd.
Undated

erections and building therein Together also with the exclusive right to the use occupation and enjoyment of the aforesaid flats except those on the Ground Floor and Cockloft of the said building and the rights of way (if any) easements and appurtenances thereto belonging and all the estate and interest of the Vendor therein and thereto for the residue of the term for which the Vendor now hold the same subject nevertheless to the payment (of the due proportion) of the Crown Rent and the performance of the covenants, conditions and agreements reserved by and contained in the Crown Lease of the said premises and to the existing lettings and tenancies (if any) thereof and to all rights of way and all easements (if any) affecting the said premises SUBJECT ALSO to the terms and conditions of the said Agreement.

10

2. The price shall be DOLLARS SEVEN HUNDRED SEVENTY ONE THOUSAND EIGHT HUNDRED SEVENTY FIVE AND CENTS FIFTY (\$771,875.50) which shall be paid and satisfied by the Purchaser to the Vendor as follows: –

\$77,187.55 to be paid upon signing of this Agreement

\$308,750.20 to be paid on or before the 19th day of March, 1962

\$385,937.75 to be paid on or before the 19th day of April, 1962

3. The purchase shall be completed at the office of Messrs. S. C. Mok & Company Solicitors when the Occupation Permit in respect of the said building has been issued by the Building Authority.

4. The Vendor shall make a good title to the said premises at its own cost.

20

5. If the Purchaser shall insist on any objection or requisite which the Vendor shall be unable or unwilling to remove or comply with the Vendor may by notice in writing to the Purchaser or its Solicitors at any time notwithstanding any negotiation or litigation in respect of such objection or requisition annul the sale and shall thereupon return to such Purchaser deposit by without any interest of costs of the investigation of the title or other compensation or payment whatsoever.

6. On payment of the residue of the said price in manner aforesaid the Vendor and all other necessary parties (if any) shall execute a proper assignment of the said premises to the Purchaser or its nomines or nominees free from encumbrances. Such assignment shall be prepared and executed by all parties and registered at the Land Office at the expenses of any plans therefor.

30

7. Possession will be retained and the rents received and all outgoings discharged by the Vendor up to but exclusive of the actual day of completion and as from any inclusive of that day possession or the rents will be taken and all outgoings discharged by the Purchaser and such rents and outgoings shall if necessary be apportioned between the Vendor and the Purchaser.

8. Subject to the Purchaser obtaining the sanction of the insurance company and paying an apportioned part of current premium from the date hereof the Vendor

will hold the existing policy of insurance on the said premises in trust for the Purchaser in case the purchase shall be completed. The Vendor shall be under no obligation to renew the existing insurance at the expiration thereof but if the Vendor does so the due proportion of the premium paid for such renewal shall on completion be repaid to the Vendor by the Purchaser.

Document
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Agreement
Between Far
East Land
Investment
and Guarantee
Co. Ltd. and
Wing Kwai
Investment
Company Ltd.
Undated

9. The costs, charges and expenses of and relating to this agreement shall be borne by the parties hereto equally.

10. Time shall in every respect be considered as one of the essence of this contract.

10 AS WITNESS the hands of the hands of the said parties hereto the day and year first above written.

SIGNED by
on behalf of the Vendor in the presence)
of:—)

Solicitor, Hong Kong.

SIGNED by
on behalf of the Purchaser in the)
presence of:—)

Solicitor, Hong Kong.

20 INTERPRETED by:—

Clerk to Messrs. S. C. Mok & Company,
Solicitor, Hong Kong.

RECEIVED the day and year first above written)
of and from the Purchaser the above mentioned sum)
of DOLLARS SEVENTY SEVEN THOUSAND ONE) \$77,187.55
HUNDRED EIGHTY SEVEN AND CENTS FIFTY)
FIVE being deposit payable to the Vendor by the)
Purchaser)

WITNES S:—

30 Solicitor, Hong Kong.

PARTNERSHIP AGREEMENT

Partnership
Agreement
Dated 31.12.1962

THIS PARTNERSHIP AGREEMENT is made this Thirty First day of December One thousand nine hundred and sixty two BETWEEN SANG LEE INVESTMENT COMPANY LIMITED whose registered office is situate at 1735 Central Building Victoria in the Colony of Hong Kong of the one part and BALL LAND INVESTMENT COMPANY LIMITED whose registered office is situate at 1535 Central Building aforesaid of the other part.

WHEREAS

(1) Davie Boag & Company Limited is the registered owner of All That piece or parcel of ground situate at Quarry Bay in the said Colony of Hong Kong and registered in the Land Office as the Remaining Portion of Section B of Quarry Bay Marine Lot No. 1 having an area of 50,805 square feet or thereabouts (hereinafter called "the said property"). 10

(2) By an agreement dated the 25th day of October 1961 made between Davie Boag & Company Limited of the one part and Mok Tsze Fung of the other part the said Davie Boag & Company Limited agreed to sell and the said Mok Tsze Fung agreed to purchase inter alia the said property for the consideration therein mentioned as modified by a supplemental agreement dated the 6th day of December 1962.

(3) By a declaration of trust dated the 25th day of October 1961 the said Mok Tsze Fung declared that he entered into the aforesaid Agreement for sale and purchase as a Trustee for Sang Lee Investment Company Limited. 20

(4) Sang Lee Investment Company Limited has agreed to admit BALL LAND INVESTMENT COMPANY LIMITED into the single joint venture for the development of the said property by the erection of new buildings thereon to be known as Tak Lee Building, Wai Lee Building and Po Lee Building and the disposal of all the flats and/or shops therein comprised to willing purchasers for the purpose of gain and upon the treaty for the said joint venture it was agreed that Ball Land Investment Company Limited shall pay to Sang Lee Investment Company Limited for its own use and benefit the sum of \$3,048,300.00 being one moiety of the price of the said property under the above-mentioned agreement by way of the instalments hereunder set out: 30

- (a) The sum of \$609,120.00 on the date hereof.
- (b) The sum of \$387,854.19 on or before the 15th day of January 1963.
- (c) The sum of \$526,635.81 on or before the 30th day of June 1963.
- (d) The balance of the price \$1,523,610.00 on or before the 30th December 1964.

In addition to the payment of the said sum of \$3,048,300.00, Ball Land

Investment Company Limited shall also pay a moiety of such interest as payable to Davie Boag & Company Limited under paragraph 4 of the aforementioned supplemental agreement.

Document

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(5) In pursuance of the said agreement Ball Land Investment Company Limited has paid to Sang Lee Investment Company Limited the said sum of \$609,120.00 being the first instalment payment mentioned in (a) above as Sang Lee Investment Company Limited hereby acknowledges.

Partnership
Agreement

Dated 31.12.1962

10 NOW THIS DEED WITNESSTH that in further pursuance of the said agreement and in consideration of the premises Sang Lee Investment Company Limited and Ball Land Investment Company Limited hereby mutually covenant and agree as follows, that is to say:—

1. Sang Lee Investment Co. Ltd. and Ball Land Investment Company Limited will become and continue partners in the said single joint venture of the development and sale of the said property.

2. The said business shall be carried on at the registered office of Sang Lee Investment Company Limited situate at 1735 Central Building Pedder Street Hong Kong.

20 3. The said property shall belong to the parties hereto in equal shares and shall upon the request at any time of Ball Land Investment Company Limited be at the cost of the parties hereto duly assured to and rested in the parties hereto in joint tenancy and in the mean time shall be held by Sang Lee Investment Company Limited in trust for the parties hereto.

4. The capital of the joint venture shall be the sum of \$6,096,600.00 and the aforementioned interest contributed and paid by the parties hereto in equal moieties as aforesaid.

5. The capital of the partnership may be increased from time to time as the parties hereto shall determine and the amount of any such increase shall unless otherwise agreed be contributed by the parties hereto in equal shares.

30 6. The insurance rent rates and taxes of the said property and the expense of keeping the same and the fixtures and fittings therein in good and substantial repair and of all alterations improvements or additions thereof or thereto respectively and all other outgoings in respect of the same and the salaries and wages of all clerks apprentices servants and workmen employed in the said business and all expenses losses or damages incurred in relation thereto and the interest (if any) on capital payable to either party shall be paid out of the profits or capital of the partnership and in case of deficiency by the parties hereto in equal shares.

7. 2% on the gross proceeds of sale of the flats and shops in the said Tak Lee, Wai Lee and Po Lee less the capital value of the land on which they will be built shall belong to Sang Lee Investment Company Limited only as commission.

Document A-5	8.	The net profits of the joint venture shall belong to the parties hereof in equal shares.	
Partnership Agreement Dated 31.12.1962	9.	Sang Lee Investment Company Limited shall have the sole and exclusive management of the business and shall devote its whole time and attention thereto and carry on the manage the same for the common benefit of the parties hereto to the utmost of its skill and ability with such assistance from time to time of clerks servants workmen or other employees as it shall deem necessary.	
	10.	Each party shall be faithful and just to the other in all dealings and transactions relating to or affecting the business and whenever reasonably required render to it a true account thereof and inform it of all accounts writings or other things affecting the business which shall have come to its hands or knowledge and neither party shall without the consent of the other party employ any of the money goods or affects of the business or pledge the credit thereof except in the ordinary course of business and upon the account or for the benefit of the business Provided that nothing in this clause contained shall be deemed to confer on Ball Land Investment Company Limited any power or authority on behalf of the business which by any other clause of this deed it is precluded from having or exercising.	10
	11.	Neither party shall without the previous consent in writing of the other:—	
	(a)	Enter into any bond or become bail surety or security with or for any person or do or knowingly cause or suffer to be done anything whereby the said property or any part thereof may be seized attached extended or taken in execution.	20
	(b)	Assign mortgage or charge his share in the joint venture or any part of such share or make any other person & Partner with it therein.	
	(c)	Compromise or compound or (except upon payment thereof in full) release or discharge any debot due to the business.	
	12.	Each party shall at all times duly and punctually pay and discharge its separate and private debts and engagements whether present or future and keep the said property and the other party or its successors indemnified therefrom and from all actions proceedings costs claims and demands in respect thereof.	30
	13.	Sang Lee Investment Company Limited shall keep proper books of account of all its transactions on behalf of the business and the accounts thereof shall be kept by or under the supervision of Sang Lee Investment Company who once at least in every month shall furnish to Ball Land Investment Company Limited a summary in writing of the operations of the business from the commencement thereof or from the foot of the last previous summary so as to show as nearly as may be the result of such operations and the position of the business. Such books of account and the said lease and all securities bills of lading books vouchers letters or other documents relating to the business or property shall be kept in the registered office of Sang Lee Investment Company Limited and each party shall at all times have free access to and the right to inspect and copy the same.	40

14. As soon as practicable after the 31st day of March in every year during the continuance of the joint venture a general account and valuation shall be taken and made up to such 31st day of March of the stock-in-trade credits property effects debts and liabilities of the business and of all transactions matters and things usually comprehended in a general account of the like nature. Every such account and valuation shall be balanced agreed to and signed by all the parties hereto except that if any manifest error therein be detected and pointed out by any party to the others or other of them within six months after such signature thereof such error shall forthwith be rectified. Immediately after the signing and setting of every such annual general account and valuation each party shall be entitled to draw out and receive its share of the net profits of the business for the then past year on bringing into account all monthly sums previously drawn out by it under the provisions in that behalf hereinbefore contained.

15. Within 3 months after the determination of the joint venture on completion thereof a final account and valuation of the assets credits debts and liabilities of the business shall be taken made and signed by the parties or their respective representatives in like manner as is hereinbefore directed with regard to the annual account and thereupon (subject as hereinafter provided) the parties hereto or their respective representative shall make due provision for paying and discharging such debts and liabilities and subject thereto and to the payment of any sum which may be due to either party or its representatives for capital contributed in excess of the other party or for interest on capital or undrawn profits or otherwise the assets credits and effects of the joint venture shall be divided between the parties or their respective representatives in equal shares and they shall respectively execute do or concur in all necessary or proper instruments acts matters and things for getting in the outstanding debts and assets of the joint venture and for vesting in the parties entitled thereto the sole right in their respective shares in such assets credits and effects and for mutual release or indemnity or otherwise.

16. All disputes and questions whatsoever which shall either during the joint venture or afterwards arise between the parties hereto or their respective representatives touching this deed or the construction or application thereof or any clause or thing herein contained or any account valuation or division of assets debts or liabilities to be made hereunder or as to any act deed or omission of any part hereto or as to any other matter in any way relating to the joint venture business or the affairs thereof or the rights duties or liabilities of any person under this deed shall be referred to a single arbitrator if the parties agree upon one otherwise to two arbitrators one to be appointed by each party to the difference in accordance with and subject to the provisions of the Arbitration Rules in force in Hong Kong or any statutory modification thereof for the time being in force.

PLAINTIFF'S DOCUMENT

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A POWER OF ATTORNEY

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Power of
Attorney
Dated 31.12.1962

10 A POWER OF ATTORNEY created the Thirty First day of December, One thousand nine hundred and sixty two by us BALL LAND INVESTMENT COMPANY LIMITED whose registered office is situate at 1535 Central Building Pedder Street Victoria in the Colony of Hong Kong WHEREAS we are desirous of authorising SANG LEE INVESTMENT COMPANY LIMITED whose registered office is situate at 1735 Central Building aforesaid to sell and dispose of our messages lands and tenements situated at Victoria in the Land Office as the REMAINING PORTION OF SECTION B OF QUARRY BAY MARINE LOT NO. 1.

NOW THIS DEED WITNESSTH that we the said Ball Land Investment Company Limited irrevocably APPOINT the said Sang Lee Investment Company Limited to be our lawful Attorney for us and in our name and for our use to perform the following acts:—

1. To sell and dispose of all and singular the said property with the appurtenances either by private contract or by public auction and either together or in separate parcels or lots for such price as to them shall seem reasonably.

20 2. Upon the receipt of the consideration or purchase money for the same or any part thereof to give a good receipt therefor which receipt shall exonerate the person paying such money from sealing to the application thereof or being responsible for the loss or misapplication thereof.

3. To sign and seal and as our act and deed deliver any deed or instrument in writing and to do every other thing whatsoever which may be necessary or proper for carrying any agreement for the purchase into complete effect and execution in such manner that all our estate right title and interest in or to the said property and premises with the appurtenances may be effectually and absolutely conveyed and assured unto the purchaser or respective purchasers thereof or unto such other person or persons and for such estate or estates therein and in such manner and form as they shall direct or appoint.

30 AND we the said Ball Land Investment Company Limited hereby declare that all and every the receipts deeds matters and things which shall be by them our said Attorney given made executed or done for the aforesaid purposes shall be as good valid and effectual to all intents and purposes whatsoever as if the same had been signed sealed delivered given or made or done by us in our own proper person.

AND we hereby undertake at all times to ratify whatsoever our said Attorney shall lawfully do or cause to be done in or concerning the premises by virtue of this power of Attorney.

40 IN WITNESS whereof the said Ball Land Investment Company Limited have caused their Common Seal to be hereto affixed the day and year first above written.

Document SIGNED with the Common Seal)
 of Ball Land Investment Company)
A-6 Limited and SIGNED AND DE-)
 LIVERED by in the presence of: –)
Power of
Attorney
Dated 31.12.1962 Solicitor, Hong Kong.

PLAINTIFF'S DOCUMENT

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AGREEMENT DATED 17TH JANUARY 1963 MADE BETWEEN
SANG LEE INVESTMENT COMPANY LIMITED AND
BALL LAND INVESTMENT COMPANY LIMITED

Agreement
Dated 17th
January 1963
made between
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 17.1.1963

10 AN AGREEMENT made the seventeenth day of January One thousand nine hundred and sixty three BETWEEN SANG LEE INVESTMENT COMPANY LIMITED whose registered office is situate at 1735 Central Building Pedder Street Victoria in the Colony of Hong Kong (hereinafter called "the Vendor") of the one part and BALL LAND INVESTMENT COMPANY LIMITED whose registered office is situate at Room No. 1535 Central Building aforesaid (hereinafter called "the Purchaser") of the other part.

W H E R E A S :—

(1) Davie Boag & Company Limited is the registered owner of All That piece or parcel of ground situate lying and being at Quarry Bay in the said Colony of Hong Kong and registered in the Land Office as the Remaining Portion of Section B of Quarry Bay Marine Lot No. 1 having an area of 50,805 sq.ft. or thereabouts 580 sq.ft. whereof to be surrendered to the Hong Kong Government (Hereinafter called "the said property").

20 (2) By an Agreement dated 25th day of October 1961 and made between Davie Boag & Company Limited of the one part and Mok Tsze Fung of the other part whereby the said Davie Boag & Company Limited agreed to sell and the said Mok Tsze Fung agreed to purchase inter alia the said property for the consideration therein mentioned.

(3) By a Declaration of Trust dated 25th day of October 1961 the said Mok Tsze Fung declared that he entered into the aforesaid Agreement as a trustee for the Vendor.

30 (4) Plans and specifications have been prepared by Mr. E.Y. Wu an authorized architect (hereinafter called "the Architect") on the instructions of the Vendor for the erection on the said property three blocks of buildings consisting of 1,335 units and/or parts or shops which plans and specification are now deposited with Messrs. S.C. Mok & Company Solicitors, for specification purposes NOW IT IS HEREBY AGREED as follows:—

1. The Vendor shall sell and the Purchaser shall purchase ALL THOSE Forty-seven equal undivided 1,335th parts and shares of and in the said property TOGETHER with the like parts or shares of and in messuages or buildings to be erected upon the said property and intended to be completed as hereinafter provided and all the estate right title property claim and demand whatsoever of the Vendor therein and thereto such messuages or buildings to be constructed in accordance with the

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Agreement
Dated 17th
January 1963
made between
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 17.1.1963

said plans and specifications prepared by the Architect AND TOGETHER with the full right and privilege to hold and enjoy to the exclusion of the Vendor or other person or persons claiming under or in trust for the Vendor ALL THOSE flats and/or shop spaces as hereinafter specified:—

BUILDING	FLOOR	FLAT OR SHOP NUMBER	OCCUPATION AREA	
WAI LEE	GROUND FLOOR and COCKLOFT	No. 997 King's Road	801	
WAI LEE	FIRST FLOOR	Nos. 101 103	409 350	10
WAI LEE	SECOND FLOOR	Nos. 201 203	409 350	
WAI LEE	THIRD FLOOR	Nos. 301 303	409 350	
WAI LEE	FOURTH FLOOR	Nos. 401 403	409 350	
WAI LEE	FIFTH FLOOR	Nos. 501 503	409 350	
WAI LEE	SIXTH FLOOR	Nos. 601 603	409 350	20
WAI LEE	SEVENTH FLOOR	Nos. 701 703	409 350	
WAI LEE	EIGHTH FLOOR	Nos. 801 803	409 350	
WAI LEE	NINTH FLOOR	Nos. 901 903	409 350	
WAI LEE	TENTH FLOOR	Nos. 1001 1003	409 350	
WAI LEE	ELEVENTH FLOOR	Nos. 1101 1103	409 350	30
WAI LEE	TWELFTH FLOOR	Nos. 1201 1203	409 350	
WAI LEE	THIRTEENTH FLOOR	Nos. 1301 Nos. 1303	409 350	
WAI LEE	FOURTEENTH FLOOR	Nos. 1401 1403	409 350	
WAI LEE	FIFTEENTH FLOOR	Nos. 1501 1503	409 350	

BUILDING	FLOOR	FLAT OR SHOP NUMBER	OCCUPATION AREA	Document
				A-7
WAI LEE	SIXTEENTH FLOOR	Nos. 1601 1603	409 350	Agreement Dated 17th January 1963 made between Sang Lee Investment Co. Ltd. and Ball Land Investment Co. Ltd. Dated 17.1.1963
WAI LEE	SEVENTEENTH FLOOR	Nos. 1701 1703	409 350	
WAI LEE	EIGHTEENTH FLOOR	Nos. 1801 1803	409 350	
10 WAI LEE	NINETEENTH FLOOR	Nos. 1901 1903	409 350	
WAI LEE	TWENTIETH FLOOR	Nos. 2001 2003	409 350	
WAI LEE	TWENTY-FIRST FLOOR	Nos. 2101 2103	409 350	
WAI LEE	TWENTY-SECOND FLOOR	Nos. 2201 2203	383 329	
WAI LEE	TWENTY-THIRD FLOOR	Nos. 2301 2303	319 288	
			Total: 17,258 sq.ft =====	

20 (hereinafter called "the said premises") In the event of the Vendor revising the said plans as mentioned in clause 3 hereof the undivided shares to be assigned to the Purchaser shall be adjusted and calculated as a fraction of the building as a whole relative to the said premises.

2. The price of the said premises shall be DOLLARS ONE MILLION TWO HUNDRED SIXTY ONE THOUSAND SEVEN HUNDRED AND THIRTY FOUR (\$1,261,734.00) whereof \$1,135,560.60 have been this day paid by the Purchaser to the Vendor as deposit and part payment of the purchase price and the balance \$126,173.40 to be paid on completion as hereinafter provided.

30 3. The Vendor reserves to itself the right to amend or modify the said plans and to re-submit the same to the Building Authority at its entire discretion provided that in such revised plans the layout and dimensions of the said premises herein agreed to be sold are not materially altered.

4. The Vendor shall within a period of 912 working days from the date of completion of piling complete the said Building in a good and workmanlike manner

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Agreement
Dated 17th
January 1963
made between
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 17.1.1963

in accordance with the said plans and specification (or any subsequent alteration thereto as aforesaid or as may be required by the Building or other authorities) as approved by the Building Authority. Any variation in the area of the said premises shall be adjusted by payment by or to the Vendor as the case may be of a sum calculated on the Purchase price per square foot in excess or below the area mentioned in the said plans but such variation (if any) shall not entitle the parties hereto to rescind this Agreement. In case of any dispute as to the area agreed to sold, a Certificate signed by Mr. E.Y. Wu Architect of the difference of the area and the price payable therefor shall be final and binding on the parties hereto. In the event of the Vendor being unable to complete the said Building within the said period of 912 working days the Purchaser shall then be entitled to claim interest from the Vendor at the rate of one per-cent per calendar month on all moneys paid under this Agreement but shall not be entitled to rescind this Agreement Provided that the said period of 912 workings days shall not include days of adverse weather, proof of such adverse weather to be upon production of a Certificate given by the Royal Observatory or to be certified by the said Architect nor shall the said period include working days spent in piling laying drainage, connecting service mains making up and surfacing roads or pavements, approval of the said revised plans or issuance of an Occupation Certificate by the Building Authority or delay caused by war, fire, political disturbances, strikes, lockout or any other cause not limited to the preceding cases beyond the control of the Vendor.

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5. On issuance of the Occupation Certificate and payment of the balance of purchase price the Vendor and all other necessary parties (if any) shall execute a proper Assignment of 47/1335th equal undivided parts or shares of and in the said property or as the case may be to the Purchaser or its successors and assigns subject as hereinafter appears but otherwise free from incumbrances. The Assignment shall be in the form usually adopted by the Vendor's Solicitors for the sale of flats.

6. If the Purchaser shall make and insist on any objections or requisition either as to title conveyance or any matter appearing on the title deeds or otherwise which the Vendor shall be unable or (on the ground of difficulty delay or expense or on any other reasonable ground) unwilling to remove or comply with or if the title of the Vendor shall be defective the Vendor shall notwithstanding any previous negotiations or litigation be at liberty to annul the sale in which case the Purchaser shall be entitled to the return of the deposit or deposits but without interest, costs or compensation Provided that the Purchaser shall be deemed to have approved the title prior to entering into possession and shall not be entitled to raise any objection or requisition as to title thereafter.

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7. The said premises are sold for the residue of the term of 999 years from the 2nd day of February 1882 for which the same are held from the Crown subject to and with the benefit of all covenants, rights of way of other easements affecting the same, and subject to and with the benefit of all the aforementioned agreements. No error mis-discription shall annul the sale nor shall any compensation be allowed in respect thereof.

40

8. All charges, costs and expenses for and incidental to the preparation and

execution of the Assignment, Deed of Mutual Covenant and all other relevant deeds and documents and the making of the plans and the inspection and examination and of making and furnishing abstracts of documents and muniments of title and of obtaining making and producing all office attested and other copies of or extracts from records, registers, deeds, wills and other documents of and incidental to the completion of the purchase shall be borne by the Purchaser and the Vendor shall not be required to produce or hand over any deeds other than those in its possession relating exclusively to the said premises.

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Agreement
Dated 17th
January 1963
made between
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 17.1.1963

10 9. The Vendor shall show a good title to the said premises at the Purchaser's expenses and at the like expense shall make and furnish to the Purchaser such attested or other copies of any or documents of title wills and matters of public record as may be necessary to complete such title.

10. Time shall in every respect be of the essence of this Agreement.

20 11. Should the Purchaser fail to effect payment of the balance of purchase price on completion or to observe or comply with any of the condition herein contained the money paid under this Agreement shall be absolutely forfeited to the Vendor who may (without tendering an Assignment to the Purchaser rescind the sale and resell the said premises either by public auction or private contract subject to any stipulation the Vendor may think fit and any deficiency in price and all expenses attending such resale shall be borne by the Purchaser and shall be recoverable by the Vendor as and for liquidated damages. Any increase in price on a resale shall belong to the Vendor.

12. In the event of the Vendor failing to complete the sale in accordance with the terms hereof it shall not be necessary for the Purchaser to tender an Assignment to the Vendor for execution before taking proceeding to enforce specific performance of the Agreement.

13. Two per-cent Ad Valorem Duty payable on this transaction shall be borne and paid by the Purchaser.

30 14. The cost of and incidental to this Agreement shall be borne by the parties hereto in equal shares.

15. On the date of the execution of the said Assignment to the Purchaser the parties hereto shall enter into a Deed of Mutual Covenant in the form adopted by the Vendor's Solicitors for the sale of flats which shall provide inter alia that the Purchaser shall have the full right and liberty to use to the exclusion of the Vendor and all other claiming under it the said premises with the right without reference to the Vendor or making the Vendor and it assigns a party thereto to let, lease, sell, mortgage or otherwise deal with the said premises such deed to be prepared at the expense of the Purchaser.

40 16. If on the completion of the purchase the Vendor has already entered into a Deed of Mutual Covenant with the Purchaser or Purchasers of any other share or

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Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 17.1.1963

shares in the said property and building the Assignment of which has been completed, the Assignment to the Purchaser shall be subject thereto PROVIDED that nothing therein contained shall restrict prejudice or affect the Purchaser's sole and exclusive right to the use possession and enjoyment of the said premises hereby agreed to be sold.

17. The said Deed of Mutual Covenant shall provided for the appointment of an Agent to act on behalf of the Purchaser and all other owners of undivided shares in the said building for the purpose of maintaining in good condition and repair all staircases, halls, passages, elevators, and all other parts of the said building used by them in common and shall also provide for the payment by each of a monthly sum based on their shares in the land to the said Agent out of which he shall pay the wages of all cleaners, elevator Attendants (if any) Watchmen and such other staff such Agent shall in its discretion employ and all other expenses of so maintaining the said Building and the Purchaser hereby agree that the Vendor shall act as the said Agent for a period of three years from the date of the said Occupation Certificate after which time such Agent shall be appointed as the majority of the co-owners shall decide and in accordance with the provisions of the said Deed of Mutual Covenant the fees for such Agent to be paid by the Purchaser.

10

18. The said Deed of Mutual Covenant shall further provide that those portions of the building which are sold for domestic accommodation shall be used for domestic accommodation only and those portions of the said building sold as business premises shall not be used for carrying on the business of funeral parlour coffin shop or blacksmith or any other trade or business which may tend to lower the dignity of the neighbouring shops and the building in which they are situate but to carry on such trades only as may be calculated to enhance the dignity and atmosphere of the building generally and as to the building as a whole not to use any part thereof for any illegal immoral or obnoxious purpose nor to permit anything thereon which may be or become a nuisance to the other owners or occupiers of the said building or any adjoining building AND THAT the Purchaser shall not make any alteration to the beams and pillars of the building AND THAT the Vendor shall have and retain the exclusive use of the Pent House, the Roof and the outside walls of the said building and right to erect neon or other signs thereon without reference to the Agent or co-owners or occupiers of the said building AND THAT no laundry shall be exposed from the side of the building facing King's Road.

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19. All shop fronts to be affixed in the said Building shall be installed at the sole cost of the Purchaser and in accordance with the plans approved by the Agent whose approval shall not be unreasonably withheld. Likewise no external signboard or electric sign shall be installed without the written consent of the Agent.

20. The portion of land forming the scavenging lane at the rear of the said premises shall be surrendered to the Crown as and when the Crown shall require.

40

21. So soon as the Vendor shall have completed the said Building to be erected on the said property and has obtained an Occupation Permit from the Building

Authority in respect thereof and provided that the Purchaser shall have paid all the said instalments then due and payable and has performed all the terms hereof the Purchaser shall be licenced by the Vendor to enter and use the hereinbefore mentioned self-contained flats and/or shop spaces but so that such licence shall not constitute a tenancy thereof notwithstanding the exclusive possession of the said flats and/or shop spaces by the Purchaser and from the date of such licence the Purchaser shall thereafter be responsible for and discharge all rates taxes and outgoings of whatsoever kind in respect of the said flat whether payable by an owner or by an occupier or otherwise howsoever.

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Agreement
Dated 17th
January 1963
made between
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 17.1.1963

10 22. The Purchaser shall observe such House Rules as shall from time to time made by the said Agent.

23. It is hereby specifically agreed that in the event of the said premises or any part thereof being requisitioned by the Government of Hong Kong or other competent Authorities the Purchaser shall notwithstanding such requisition comply with the all the terms and conditions contained herein without any claim for compensation or otherwise and shall not be entitled to rescind this Agreement by virtue thereof.

24. This Agreement is subject to any Agreements either existing or as may be entered into with the Crown for the surrender of any portions of the premises for use as a right of way.

20 AS WITNESS the hands of the said parties the day and year first above written.

SIGNED on behalf of Vendor by Messrs. Kan Man and Kwan Sai Tak, two of its directors in the presence of:—) (sd.) Kan Man) (sd.) Kwan Sai Tak

(sd.)
Solicitor, Hong Kong.

SIGNED on behalf of the Purchaser by Messrs Lo Hoi Ming and Lai Kwai Tim, two of its directors in the presence of:—) (sd.) Lo Hoi Ming) (sd.) Lai Kwai Tim

(sd.)
Solicitor, Hong Kong.

30 INTERPRETED BY:—

(sd.) Lai Kwan Chuen
Clerk to Messrs. S. C. Mok & Company,
Solicitors, Hong Kong.

RECEIVED the day and year first above written)

Document of and from the Purchaser the above mentioned sum)
A-7 of DOLLARS ONE MILLION ONE HUNDRED)
THIRTY FIVE THOUSAND FIVE HUNDRED AND) \$1,135,560.60
SIXTY AND CENTS SIXTY being deposit payable to)
the Vendor by the Purchaser.)

Agreement
Dated 17th
January 1963
made between
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 17.1.1963

WITNESS :-

(sd.)
Solicitor, Hong Kong

(sd.) Kan Man
(sd.) Kwan Sai Tak

PLAINTIFF'S DOCUMENT

Document

AGREEMENT DATED 20TH FEBRUARY 1963 MADE BETWEEN
BALL LAND INVESTMENT COMPANY LIMITED AND
WING KWAI INVESTMENT COMPANY LIMITED

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Agreement
Dated 20th
February 1963
made between
Ball Land
Investment Co.
Ltd. and Wing
Kwai Investment
Co. Ltd.
Dated 20.2.1963

10 AN AGREEMENT made the twentieth day of February One thousand nine hundred and sixty three BETWEEN BALL LAND INVESTMENT COMPANY LIMITED whose registered office is situate at 1535 Central Building Victoria in the Colony of Hong Kong (hereinafter called "the Vendor") of the one part and WING KWAI INVESTMENT COMPANY LIMITED whose registered office is situate at No. 60 Queen's Road Central First floor Victoria aforesaid (hereinafter called "the Purchaser") of the other part

W H E R E A S :—

(1) Davie Boag & Company Limited is the registered owner of all that piece or parcel of ground situate lying and being at Quarry Bay in the said Colony of Hong Kong and registered in the Land Office as THE REMAINING PORTION OF SECTION B OF QUARRY BAY MARINE LOT NO. 1 having an area of 50,805.00 sq.ft., or thereabouts 580.00 sq.ft., whereof to be surrendered to the Hong Kong Government (hereinafter called "the said property")

20 (2) By an Agreement dated 25th day of October 1961 and made between Davie Boag & Company Limited of the one part and Mok Tsze Fung of the other part whereby the said Davie Boag & Company Limited agreed to sell and the said Mok Tsze Fung agreed to purchase inter alia the said property for the consideration therein mentioned.

(3) By a Declaration of Trust dated the 25th day of October 1961 the said Mok Tsze Fung declared that he entered into the aforesaid Agreement as a Trustee for Sang Lee Investment Company Limited.

30 (4) Plans and specifications have been prepared by Mr. E.Y. Wu an authorized Architect (hereinafter called "the Architect") on the instructions of the said Sang Lee Investment Company Limited for the erection on the said property three blocks of buildings consisting of 1,335 units and/or flats or shops which plans and specification are now deposited with Messrs. S.C. Mok & Company Solicitors for specification purposes.

(5) By another agreement dated 17th January 1963 and made between Sang Lee Investment Company Limited of the one part and the Vendor of the other part whereby the said Sang Lee Investment Company Limited agreed to sell and the Vendor agreed to purchase inter alia ALL THOSE 47 equal undivided 1,335th shares of and in the said property together with the exclusive right to the possession use and enjoyment of such flats and shops comprised in the said new building for the consideration therein provided NOW IT IS HEREBY AGREED as follows:—

Document

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Agreement
Dated 20th
February 1963
made between
Ball Land
Investment Co.
Ltd. and Wing
Kwai Investment
Co. Ltd.
Dated 20.2.1963

(1) The Vendor shall sell and the Purchaser shall purchase ALL THOSE Forty-Seven equal undivided 1,335th parts or shares of and in the said property TOGETHER with the like parts or shares of and in the messuages or buildings to be erected upon the said property and intended to be completed as hereinafter provided and all the estate right title property claim and demand whatsoever of the Vendor therein and thereto such messuages or buildings to be constructed in accordance with the said plans and specifications prepared by the Architect AND TOGETHER with the full right and privilege to hold and enjoy to the exclusion of the Vendor or other person or persons claiming under or in trust for the Vendor ALL THOSE FLATS and/or shop spaces as hereinafter specified:—

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BUILDING	FLOOR	FLAT OR SHOP NUMBER	OCCUPATION AREA
WAI LEE	GROUND FLOOR and COCKLOFT	Nos. 997 King's Road	801
WAI LEE	FIRST FLOOR	Nos. 101 103	409 350
WAI LEE	SECOND FLOOR	Nos. 201 203	409 350
WAI LEE	THIRD FLOOR	Nos. 301 303	409 350
WAI LEE	FOURTH FLOOR	Nos. 401 403	409 350
WAI LEE	FIFTH FLOOR	Nos. 501 503	409 350
WAI LEE	SIXTH FLOOR	Nos. 601 603	409 350
WAI LEE	SEVENTH FLOOR	Nos. 701 703	409 350
WAI LEE	EIGHTH FLOOR	Nos. 801 803	409 350
WAI LEE	NINTH FLOOR	Nos. 901 903	409 350
WAI LEE	TENTH FLOOR	Nos. 1001 1003	409 350
WAI LEE	ELEVENTH FLOOR	Nos. 1101 1103	409 350
WAI LEE	TWELFTH FLOOR	Nos. 1201 1203	409 350

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	BUILDING	FLOOR	FLAT OR SHOP NUMBER	OCCUPATION AREA	Document
	WAI LEE	THIRTEENTH FLOOR	Nos. 1301 1303	409 350	A-8
	WAI LEE	FOURTEENTH FLOOR	Nos. 1401 1403	409 350	Agreement Dated 20th February 1963 made between Ball Land Investment Co. Ltd. and Wing Kwai Investment Co. Ltd. Dated 20.2.1963
	WAI LEE	FIFTEENTH FLOOR	Nos. 1501 1503	409 350	
10	WAI LEE	SIXTEENTH FLOOR	Nos. 1601 1603	409 350	
	WAI LEE	SEVENTEENTH FLOOR	Nos. 1701 1703	409 350	
	WAI LEE	EIGHTEENTH FLOOR	Nos. 1801 1803	409 350	
	WAI LEE	NINETEENTH FLOOR	Nos. 1901 1903	409 350	
20	WAI LEE	TWENTIETH FLOOR	Nos. 2001 2003	409 350	
	WAI LEE	TWENTY-FIRST FLOOR	Nos. 2101 2103	409 350	
	WAI LEE	TWENTY-SECOND FLOOR	Nos. 2201 2203	383 329	
	WAI LEE	TWENTY-THIRD FLOOR	Nos. 2301 2303	319 288	
	Total: 17,258 sq.ft.				=====

30 (hereinafter called "the said premises") In the event of the Vendor revising the said plans as mentioned in clause 3 hereof the undivided shares to be assigned to the Purchaser shall be adjusted and calculated as a fraction of the building as a whole relative to the said premises.

2. The price is DOLLARS SEVEN HUNDRED SEVENTY ONE THOUSAND EIGHT HUNDRED SEVENTY FIVE AND CENTS FIFTY (\$771,875.50) and has this day been paid by the Purchaser to the Vendor.

3. The Vendor reserves to itself the right to amend or modify the said plans and to re-submit the same to the Building Authority at its entire discretion provided that in such revised plans the layout and dimensions of the said premises herein agreed to be sold are not materially altered.

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Agreement
Dated 20th
February 1963
made between
Ball Land
Investment Co.
Ltd. and Wing
Kwai Investment
Co. Ltd.
Dated 20.2.1963

4. The Vendor shall within a period of 912 working days from the date of completion of piling complete the said building in a good and workmanlike manner in accordance with the said plans and specification (or any subsequent alterations thereto as aforesaid or as may be required by the Building or other authorities) as approved by the Building Authority. Any variation in the area of the said premises shall be adjusted by payment by or to the Vendor as the case may be of a sum calculated on the Purchase price per square foot in excess or below the area mentioned in the said plans but such variation (if any) shall not entitle in parties hereto to rescind this Agreement. In case of any dispute as to the area agreed to be sold, a Certificate signed by Mr. E.Y. Wu Architect of the difference of the area and the price payable therefor shall be final and binding on the parties hereto. In the event of the Vendor being unable to complete the said Building within the said period of 912 working days the Purchaser shall then be entitled to claim interest from the Vendor at the rate of one per-cent per calendar month on all moneys paid under this Agreement but shall not be entitled to rescind this Agreement Provided that the said period of 912 working days shall not include days of adverse weather, proof of such adverse weather to be upon production of a Certificate given by the Royal Observatory or to be certified by the said Architect nor shall the said period include working days spent in piling laying drainage, connecting service mains making up and surfacing roads or pavements, approval of the said revised plans or issuance of an Occupation Certificate by the Building Authority or delay caused by war, fire, political disturbances, strike, lockout or any other cause not limited to the preceding cases beyond the control of the Vendor.

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5. On issuance of the Occupation Certificate the Vendor and all other necessary parties (if any) shall execute a proper Assignment of Forty-Seven equal undivided parts or shares of and in the said property or as the case may be to the Purchaser or its successors and assigns subject as hereinafter appears but otherwise free from incumbrances. The Assignment shall be in the form usually adopted by the Vendor's Solicitors for the sale of flats.

6. If the Purchaser shall make and insist on any objections or requisition either as to title conveyance or any matter appearing on the title deeds or otherwise which the Vendor shall be unable or (on the ground of difficulty delay or expense or on any other reasonable ground) unwilling to remove or comply with or if the title of the Vendor shall be defective the Vendor shall notwithstanding any previous negotiations or litigation be at liberty to annul the sale in which case the Purchaser shall be entitled to the return of the deposit or deposits but without interest, costs or compensation Provided that the Purchaser shall be deemed to have approved the title prior to entering into possession and shall not be entitled to raise any objection or requisition as to title thereafter.

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7. The said premises are sold for the residue of the term of 999 years from the 2nd day of February 1882 for which the same are held from the Crown subject to and with the benefit of all covenants, rights of way of other easements affecting the same, and subject to and with the benefit of all the aforementioned agreements. No error misdescription shall annul the sale nor shall any compensation be allowed in respect thereof.

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8. All charges, costs and expenses for and incidental to the preparation and execution of the Assignment, Deed of Mutual Covenant and all other relevant deeds and documents and the making of the plans and the inspection and examination and of making and furnishing abstracts of documents and muniments of title and of obtaining making and producing all office attested and other copies of or extracts from records, registers, deeds, wills and other documents of and incidental to the completion of the purchase shall be borne by the Purchaser and the Vendor shall not be required to produce or hand over any deeds other than those in its possession relating exclusively to the said premises.
- 10 9. The Vendor shall show a good title to the said premises at the Purchaser's expense and at the like expense shall make and furnish to the Purchaser such attested or other copies of any or documents of title wills and matters of public record as may be necessary to complete such title.
10. Time shall in every respect be of the essence of this Agreement.
11. Should the Purchaser fail to observe or comply with any of the condition herein contained the money paid under this Agreement shall be absolutely forfeited to the Vendor who may (without tendering an Assignment to the Purchaser rescind the sale and resell the said premises either by public auction or private contract subject to any stipulation the Vendor may think fit and any deficiency in price and all expenses attending such resale shall be borne by the Purchaser and shall be recoverable by the Vendor as and for liquidated damages. Any increase in price on a resale shall belong to the Vendor.
- 20 12. In the event of the Vendor failing to complete the sale in accordance with the terms hereof it shall not be necessary for the Purchaser to tender an Assignment to the Vendor for execution before taking proceeding to enforce specific performance of the Agreement.
13. Two per-cent Ad Valorem Duty payable on this transaction shall be borne and paid by the Purchaser.
- 30 14. The cost of and incidental to this Agreement shall be borne by the parties hereto in equal shares.
15. On the date of the execution of the said Assignment to the Purchaser the parties hereto shall enter into a Deed of Mutual Covenant in the form adopted by the Vendor's Solicitors for the sale of flats which shall provide inter alia that the Purchaser shall have the full right and liberty to use to the exclusion of the Vendor and all others claiming under it the said premises with the right without reference to the Vendor or making the Vendor and it assigns a party thereto to let, lease, sell, mortgage or otherwise deal with the said premises such deed to be prepared at the expense of the Purchaser.
16. If on the completion of the purchase the Vendor has already entered into

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Dated 20th
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Co. Ltd.
Dated 20.2.1963

a Deed of Mutual Covenant with the Purchaser or Purchasers of any other share or shares in the said property and building the Assignment of which has been completed, the Assignment to the Purchaser shall be subject thereto PROVIDED that nothing therein contained shall restrict prejudice or affect the Purchaser's sole and exclusive right to the use possession and enjoyment of the said premises hereby agreed to be sold.

17. The said Deed of Mutual Covenant shall provide for the appointment of an Agent to act on behalf of the Purchaser and all other owners of undivided shares in the said building for the purpose of maintaining in good condition and repair all staircases, halls, passages, elevators, and all other parts of the said building used by them in common and shall also provide for the payment by each of a monthly sum based on their shares in the land to the said Agent out of which he shall pay the wages of all cleaners, elevator Attendants (if any) Watchmen and such other staff such Agent shall in its discretion employ and all other expenses of so maintaining the said Building and the Purchaser hereby agree that the said Sang Lee Investment Company Limited shall act as the said Agent for a period of three years from the date of the said Occupation Certificate after which time such Agent shall be appointed as the majority of the co-owners shall decide and in accordance with the provisions of the said Deed of Mutual Covenant the fees for such Agent to be paid by the Purchaser.

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18. The said Deed of Mutual Covenant shall further provide that those portions of the building which are sold for domestic accommodation shall be used for domestic accommodation only and those portions of the said building sold as business premises shall not be used for carrying on the business of funeral parlour coffin shop or blacksmith or any other trade or business which may tend to lower the dignity of the neighbouring shops and the building in which they are situate but to carry on such trades only as may be calculated to enhance the dignity and atmosphere of the building generally and as to the building as a whole not to use any part thereof for any illegal immoral or obnoxious purpose nor to permit anything thereon which may be or become a nuisance to the other owners or occupiers of the said building or any adjoining building AND THAT the Purchaser shall not make any alteration to the beams and pillars of the building AND THAT the Vendor shall have and retain the exclusive use of the Pent House, the Roof and the outside walls of the said building and right to erect neon or other signs thereon without reference to the Agent or co-owner or occupier of the said building AND THAT no laundry shall be exposed from the side of the building facing King's Road.

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19. All shop fronts to be affixed in the said building shall be installed at the sole cost of the Purchaser and in accordance with the plans approved by the Agent whose approval shall not be unreasonably withheld. Likewise no external signboard or electric sign shall be installed without the written consent of the Agent.

20. The portion of the land forming the scavenging lane at the rear of the said premises shall be surrendered to the Crown as and when the Crown shall require.

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21. So soon as the Vendor shall have completed the said building to be erected on the said property and has obtained an Occupation Permit from the Building

Authority in respect thereof and provided that the Purchaser shall have performed all the terms hereof the Purchaser shall be entitled to vacant possession of the said premises and the Purchaser shall thereafter be responsible for and discharge all rates taxes and outgoings of whatsoever kind in respect of the said flat whether payable by an owner or by an occupier or otherwise howsoever.

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Agreement
Dated 20th
February 1963
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Ball Land
Investment Co.
Ltd. and Wing
Kwai Investment
Co. Ltd.
Dated 20.2.1963

22. The Purchaser shall observe such House Rules as shall from time to time made by the said Agent.

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23. It is hereby specifically agreed that in the event of the said premises or any part thereof being requisitioned by the Government of Hong Kong or other competent Authorities the Purchaser shall notwithstanding such requisition comply with the all the terms and conditions contained herein without any claim for compensation or otherwise and shall not be entitled to rescind this Agreement by virtue thereof.

24. This Agreement is subject to any Agreements either existing or may be entered into with the Crown for the surrender of any portions of the premises for use as a right of way.

AS WITNESS the hands of the said parties the day and year first above written.

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SIGNED on behalf of Vendor by LO HOI)
MING and LAI KWAI TIM of its two directors) (sd.) Lo Hoi Ming
in the presence of:—) (sd.) Lai Kwai Tim

(sd.)
Solicitor, Hong Kong.

SIGNED on behalf of the Purchaser by LAI)
KWAI TIM its managing director in the presence) (sd.) Lai Kwai Tim
of:—)

(sd.)
Solicitor, Hong Kong.

INTERPRETED BY:—

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(sd.) Lai Kwan Chuen
Clerk to Messrs. S. C. Mok & Company,
Solicitors, Hong Kong.

RECEIVED the day and year first above written)
of and from the Purchaser the above mentioned sum)
of DOLLARS SEVEN HUNDRED SEVENTY ONE) \$771,875.50
THOUSAND EIGHT HUNDRED SEVENTY FIVE)
AND CENTS FIFTY being deposit payable to the)
Vendor by the Purchaser.

Document

W I T N E S S : -

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(sd.)

Agreement
Dated 20th
February 1963
made between
Ball Land
Investment Co.
Ltd. and Wing
Kwai Investment
Co. Ltd.
Dated 20.2.1963

Solicitor, Hong Kong

(sd.) Lo Hoi Ming

(sd.) Lai Kwai Tim

Directors of Ball Land Invest-
ment Company Limited.

PLAINTIFF'S DOCUMENT

Document

ASSIGNMENT BETWEEN DAVIE BOAG AND COMPANY LIMITED

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AND SANG LEE INVESTMENT CO. LTD.

Assignment
Between Davie
Boag And
Company Ltd.
and Sang Lee
Investment
Co. Ltd.
Dated 22.7.1964

THIS INDENTURE made the Twenty-second day of July One thousand nine hundred and sixty four BETWEEN DAVIE, BOAG AND COMPANY LIMITED whose registered office is situate at Jardine House Pedder Street Victoria in the Colony of Hong Kong (which Company and its successors in title are where not inapplicable hereinafter included under the designation "the Vendors") of the first part MOK TSZE FUNG (莫子峯) of Room 1724 Central Building Victoria aforesaid Merchant (hereinafter called "the Trustee") of the second part and SANG LEE INVESTMENT COMPANY LIMITED whose registered office is situate at Room No. 1735 Central Building Pedder Street Victoria aforesaid (which Company its successors and assigns are where not inapplicable hereinafter included under the designation "the Purchaser") of the third part WHEREAS by a Crown Lease dated the 31st day of December 1932 made between His late Majesty King George the Fifth of the one part and The Taikoo Sugar Refining Company Limited of the other part His late Majesty demised unto the said The Taikoo Sugar Refining Company Limited their successors and assigns All that piece or parcel of ground situate lying and being at Quarry Bay in the Colony of Hong Kong therein more particularly described and registered in the Land Office as Quarry Bay Marine Lot No. 1 except and reserved as was therein excepted and reserved from the 2nd day of February 1882 for the term of 999 years subject to the rent and covenants therein reserved and contained AND WHEREAS all that portion hereinafter more particularly described of the said Lot is now vested for the residue of the said term of 999 years in the Vendors AND WHEREAS by a Memorandum of Agreement dated the 25th day of October 1961 made between the Vendors of the one part and the Trustee of the other part and registered in the Land Office by Memorial No. 357032 the Vendors agreed to sell and the Trustee agreed to purchase All That portion of the said Lot registered in the Land Office as The Remaining Portion of Section B of Quarry Bay Marine Lot No. 1 (hereinafter called "the said Remaining Portion") for the price of \$6,091,200.00 subject to the terms and conditions therein contained as modified by a further agreement supplemental thereto made between the same parties and dated the 6th day of December 1962 whereby it was provided un-ter alia that the price of the said Remaining Portion was to be \$6,096,600.00 and that completion of the sale and purchase of a portion thereof consisting of about 21,547.545 sq. ft. was to take place in July 1964 on payment of \$2,585,694.60 while completion of the other Portion thereof consisting of 29,257.545 sq. ft. on the 31st day of December 1964 on payment of \$3,510,905.40 AND WHEREAS by a Declaration of Trust dated the 25th day of October 1961 the Trustee thereby declared that he thenceforth stood possessed of the said Remaining Portion Upon Trust for the Purchaser and that the Trustee thereby agreed to assign or convey the said premises at the request and most of the Purchaser to such person or persons at such time or times and in such manner as the Purchaser should direct or appoint AND WHEREAS the Purchaser has called upon the Trustee to assign and transfer to the Purchaser the premises hereinafter more particularly described which the Trustee has agreed to do so AND WHEREAS no

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Assignment
Between Davie
Boag And
Company Ltd.
and Sang Lee
Investment
Co. Ltd.
Dated 22.7.1964

assignment has been executed in respect of the premises intended to be hereinafter assigned either by the Vendors or the Trustee AND WHEREAS the Trustee has requested the Vendors to execute an assignment of the premises hereinafter intended to be assigned direct to the Purchaser which the Vendors have agreed to do in manner hereinafter appearing NOW THIS INDENTURE WITNESSETH that in pursuance of such respective agreements and in consideration of TWO MILLION FIVE HUNDRED EIGHTY FIVE THOUSAND SIX HUNDRED AND NINETY FOUR AND CENTS SIXTY now paid by the Purchaser to the Vendors (on account of the said sum of \$6,096,600.00) at the request and direction of the Trustee (hereby testified) (the receipt whereof the Vendors do hereby acknowledge) the Vendors at the Request and by the direction of the Trustee (testified as aforesaid) DO HEREBY ASSIGN and the Trustee BOTH HEREBY ASSIGN AND CONFIRM unto the Purchaser ALL THAT portion of the said piece or parcel of ground consisting of an area of 21,547.55 or thereabout situate at Quarry Bay aforesaid which portion of the said piece or parcel of ground with its abuttals and dimensions is more particularly delineated and described on the plan hereto annexed and thereon coloured Pink and is intended to be registered in the Land Office as SUBSECTION 4 (Four) OF SECTION B OF QUARRY BAY MARINE LOT NO. 1 together with all messuages erections and buildings thereon (if any) Together also with all rights of way (if any) And all other rights privileges easements and appurtenances thereto belonging And all the estate right title interest property claim and demand of the Vendors and the Trustee respectively therein and thereto except and reserved as in the said Lease is excepted and reserved TO HOLD the said premises unto the Purchaser for the residue now to come of the said term of 999 years SUBJECT to the payment of the proportion hereinafter mentioned of the rent and the performance of the covenants in the said Lease reserved and contained so far as they relate to the hereby assigned premises AND the Vendors hereby covenant with the Purchaser that notwithstanding any act deed or thing by the Vendors done or knowingly omitted or suffered the said Lease is now valid and subsisting and that the rent reserved by and the covenants by the Lessee contained in the said Crown Lease have been paid performed and observed up to the date of these presents AND that the Vendors now have good right to assign the said premises as aforesaid free from incumbrances AND that the Purchaser shall and may henceforth during the residue of the said term of 999 years peaceably and quietly possess and enjoy the said premises and receive the rents and profits thereof without any lawful viction claim or demand whatsoever from or by the Vendors or any person or persons claiming from under or an trust for the Vendors AND that the Vendors and all persons lawfully or equitably claiming under or in Trust for the Vendors shall during the residue of the said term of 999 years at the request and cost of the Purchaser do all acts and execute and sign all deeds and writings reasonably required for perfecting this assignment AND the Trustee doth hereby covenant with the Purchaser that he the Trustee has not done omitted or knowingly suffered or been party or privy to any act deed matter or thing whereby the premises hereby assigned or any part thereof are is or may be impeached or incumbered AND the Purchaser with the object and intention of affording to the Vendors a full and sufficient indemnity but not further or otherwise hereby covenants with Vendors that the Purchaser will during the residue of the said term of 999 years pay the annual Sum of \$112.82 being a proportion of the rent and perform the Lessee's covenants terms and conditions in the said Lease reserved and contained so far as they relate to the hereby assigned premises and indemnify the Vendors against the non-payment of the said rent or the non-

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performance of the said covenants and conditions or any of them.

Document

IN WITNESS whereof the Vendors and the Purchaser have caused their respective Common Seals to be hereto affixed and the Trustee has hereunto set his hand and seal the day and year first above written.

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Assignment
Between Davie
Boag And
Company Ltd.
and Sang Lee
Investment
Co. Ltd.
Dated 22.7.1964

SEALED with the Common Seal of the)
said Davie, Boag and Company Limited)
and SIGNED BY)
in the presence of:—)

Solicitor, Hong Kong.

10 SIGNED SEALED AND DELIVERED)
for the said Mok Tsze Fung in the)
presence of:—)

Clerk to Messrs. S.C. Mok & Company,
Solicitor, Hong Kong.

SEALED with the Common Seal of the)
said Sang Lee Investment Company)
Limited and SIGNED by Messrs. Ma)
To Sang & Hudson C. Wood Two of its)
Directors in the presence of:—)

20 Solicitor, Hong Kong.

RECEIVED the day and year first above written of)
and from the Purchaser the sum of DOLLARS TWO MILLION)
FIVE HUNDRED EIGHTY FIVE THOUSAND SIX)
HUNDRED NINETY FOUR AND CENTS SIXTY being the)
consideration money above expressed to be paid by the)
Purchaser to the Vendors.)

\$2,585,694.60

W I T N E S S : —

Solicitor, Hong Kong.

DEED OF GUARANTEE

Deed of
Guarantee
Dated 8.1.1965

IN consideration of THE BANK OF EAST ASIA LIMITED whose registered office is situate at No. 10 Des Voeux Road Central, Victoria in the Colony of Hong Kong (hereinafter referred to as "the said Bank") having agreed at our request to advance to SANG LEE INVESTMENT COMPANY LIMITED whose registered office is situate at 1735 Central Building, Pedder Street, Victoria aforesaid (hereinafter referred to as "the said Company") a present advance of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00) and to advance to the said Company a further sum of SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$750,000.00) and further to allow the said Company to overdraw its current account with the said Bank to an amount not exceeding SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$750,000.00) upon a Building Mortgage dated the 8th day of January 1965 and registered in the Land Office by Memorial No. 471295 of ALL THAT piece or parcel of ground registered in the Land Office as THE REMAINING PORTION OF SECTION B OF QUARRY BAY MARINE LOT NO. 1 we, KWAN FAN FAT (關 奮 發), MA TO SANG (馬 道 生) and HUDSON CHEN WOOD (吳 百 鎮) all of 1735 Central Building, Pedder Street, Victoria aforesaid, Merchants DO hereby jointly and severally guarantee the due payment of the said principal sum of \$2,250,000.00 and all moneys due and owing in respect of the said overdraft to the extent of \$750,000.00. Together with interest thereon at the rate of \$10.00 per \$1,000.00 per calendar month AND we hereby jointly and severally undertake and covenant with the said Bank that if at any time default shall be made in the payment of the said principal sum of \$2,250,000.00 and all moneys due and owing in respect of the said overdraft interest or any other moneys for the time being due to the said Bank upon the security of the said Building Mortgage we or any of us will on demand pay to the said Bank the whole of the said principal sum of \$2,250,000.00 and all moneys due and owing in respect of the said overdraft, interest and other moneys which shall then be due to the said Bank and will indemnify the said Bank all loss of principal, interest or other moneys secured by the said Building Mortgage and all costs charges losses and expenses whatsoever which the said Bank may incur by reason of any default on the part of the said Company its successors and assigns.

Our liability under this Guarantee shall not be impaired or discharged by reason of any time or other indulgence granted by the said Bank to the said Company.

This Guarantee shall be a continuing guarantee and the benefit thereof shall go to the said Bank or its successors or assigns.

Dated this 8th day of January 1965.

Witness to the signatures of the said
Kwan Fan Fat, Ma To Sang and Hudson Chen Wood:—

Solicitor, Hong Kong.

INTERPRETED by:—

Clerk to Messrs. Lo and Lo,
Solicitors, Hong Kong.

PLAINTIFF'S DOCUMENT

Document

DEED OF GUARANTEE

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Deed of
Guarantee
Dated 1.8.1964

10 IN consideration of THE BANK OF EAST ASIA LIMITED a banking corporation duly incorporated under the Companies Ordinance of Hong Kong and having its registered office at No. 10 Des Voeux Road Central Victoria in the Colony of Hong Kong (hereinafter referred to as "the said Bank") having agreed at our request to advance to SANG LEE INVESTMENT COMPANY LIMITED whose registered office is situate at 1735 Central Building, Pedder Street, Victoria aforesaid (hereinafter referred to as "the said Company") a present advance of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00) and to advance to the said Company to overdraw its current account with the said Bank to an amount not exceeding SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$750,000.00) upon a Building Mortgage dated the 22nd day of July 1964 and registered in the Land Office by Memorial No. of ALL THAT piece or parcel of ground situate lying and being at Quarry Bay in the said Colony of Hong Kong and known and registered in the Land Office as SUBSECTION 3 OF SECTION B OF QUARRY BAY MARINE LOT NO. 1 we, KWAN FAN FAT (關 奮發), MA TO SANG (馬道生) and HUDSON CHEN WOOD (吳百鎮) all of 1735 Central Building, Pedder Street, Victoria aforesaid, Merchants DO hereby jointly and severally guarantee the due payment of the said principal sum of \$2,250,000.00 and all moneys due and owing in respect of the said overdraft to the extent of \$750,000.00. Together with interest thereon at the rate of \$10.00 per \$1,000.00 any time default shall be made in the payment of the said principal sum of \$2,250,000.00 and all moneys due and owing in respect of the said overdraft interest or any other moneys for the time being due to the said Bank upon the security of the said Building Mortgage we or any of us will on demand pay to the said Bank the whole of the said principal sum of \$2,250,000.00 and all moneys due and owing in respect of the said overdraft, interest and other moneys which shall then be due to the said Bank and will indemnify the said Bank all loss of principal, interest or other moneys secured by the said Building Mortgage and all costs charges losses and expenses whatsoever which the said Bank may incur by reason of any default on the part of the said Company its successors and assigns.

Our liability under this Guarantee shall not be impaired or discharged by reason of any time or other indulgence granted by the said Bank to the said Company.

This Guarantee shall be a continuing guarantee and the benefit thereof shall go to the said Bank or its successors or assigns.

Dated this 1st day of August 1964.

Witness to the signatures of the said Kwan Fan Fat,)
Ma To Sang and Hudson Chen Wood:—)

Solicitor, Hong Kong.

40 INTERPRETED by:—
Clerk to Messrs. Lo and Lo,
Solicitors, Hong Kong.

Building Mortgage
Between Sang
Lee Investment
Co. Ltd. And
The Bank of
East Asia Ltd.
Dated 22.7.1964

**BUILDING MORTGAGE BETWEEN SANG LEE INVESTMENT
CO. LTD. AND THE BANK OF EAST ASIA LTD.**

THIS INDENTURE made the 22nd day of July, One thousand nine hundred and sixty four. BETWEEN : SANG LEE INVESTMENT COMPANY LIMITED

whose registered office is situate at Room 1735 Central Building Pedder Street Victoria in the Colony of Hong Kong (which company and its successors and assigns are where not inapplicable hereinafter included under the designation "the Mortgagor") of the one part and THE BANK OF EAST ASIA LIMITED whose registered office is situate at No. 10 Des Voeux Road Central Victoria aforesaid (which bank and its successors and assigns are where not inapplicable hereinafter included under the designation "the Mortgagee") of the other part.

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WHEREAS the premises set out in the First Schedule hereto are now vested in the Mortgagor for the residue now to come of the term of 999 years subject to the rent and lessee's covenants reserved and contained in the Indenture of Crown Lease therein set out.

AND WHEREAS the Mortgagor is proceeding with the erection of Building on the premises in accordance with certain plans and specifications prepared by E.Y. Wu an authorised architect practising in the said Colony of Hong Kong which plans and specifications have been approved by the Director of Public Works under B.O.O. ref No. 2/3031/62.

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AND WHEREAS the Mortgagor has applied to the Mortgagee to make a present advance to the Mortgagor of the sum of \$1,500,000.00 and to advance to the Mortgagor a further sum of \$750,000.00 and to allow the Mortgagor to overdraw its current account with the Mortgagee to the extent of \$750,000.00 (making the total principal sum of \$3,000,000.00) in manner hereinafter provided which the Mortgagee hath agreed to do upon having the repayment of all such advances together with interest thereon secured in manner hereinafter appearing.

NOW THIS INDENTURE WITNESSTH as follows:—

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1. IN consideration of the sum of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS now paid by the Mortgagee to the Mortgagor (the receipt whereof is hereby acknowledged) and of the further sum of SEVEN HUNDRED AND FIFTH THOUSAND DOLLARS to be advanced by the Mortgagee to the Mortgagor as set out in the Second Schedule hereto the Mortgagor hereby covenants with the Mortgagee that subject as hereinafter provided the Mortgagor will on the expiration of 18 months from the date of these presents pay to the Mortgagee all such sums as shall have been advanced by the Mortgagee to the Mortgagor (hereinafter collectively referred to as "the said principal sum") and will as from the date hereof and from the respective dates of the said further advances pay to the Mortgagee interest on the said sum of \$1,500,000.00 and on the said further advances respectively at the rate of

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\$10.00 per \$1,000.00 per calendar month payable monthly in equal calendar monthly payments on the 21st day of each calendar month without deduction AND if the said principal sum or any part thereof shall not be paid on the date of repayment will pay to the Mortgagee interest on so much thereof as shall for the time being unpaid at the rate aforesaid by equal calendar monthly payments on the 21st day of each calendar month without deduction.

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**Building Mortgage
Between Sang
Lee Investment
Co. Ltd. And
The Bank of
East Asia Ltd.
Dated 22.7.1964**

10 2. IN consideration aforesaid the Mortgagee allowing such overdraft by the Mortgagor as aforesaid the Mortgagor hereby covenants with the Mortgagee that the Mortgagor will on demand in writing of the Mortgagee pay to the Mortgagee all sums of money which at the date of such demand shall be owing to the Mortgagee on any account whether alone or jointly with or as surety for any person or persons or for any company or corporation and whether on current account for cheques bills or notes drawn or accepted or endorsed by the Mortgagor or for advances made to the Mortgagor for the Mortgagor's use including interest at the rate of \$10.00 per \$1,000.00 per calendar month such interest to be calculated with monthly rests commission and other customary banking charters AND also to pay interest on such balance from the time of such demand being made until payment at the rate aforesaid.

20 3. FOR the consideration aforesaid the Mortgagor hereby assigns unto the Mortgagee ALL THAT piece or parcel of ground set out in the said First Schedule TOGETHER with all messuages or tenements erections and buildings now in course of erection or hereafter to be erected thereon belonging or in anywise appertaining AND ALL the estate right title interest term and terms of years claims and demands where-soever of the Mortgagor therein and thereto TO HOLD the said premises with their and every of their appurtenances unto the Mortgagee for all the residue now to come and unexpired of the term of 999 years and for all other the estate term and interest of the Mortgagor therein and thereto BUT SUBJECT nevertheless to such rights of way (if any) as at present existing and SUBJECT to the proviso for redemption next hereinafter contained.

30 4. PROVIDED that if the Mortgagor shall on the date of repayment pay to the Mortgagee the said principal sum together with interest thereon as from the date hereof at the rate aforesaid and that if upon payment on demand by the Mortgagor of all moneys in respect of the Mortgagor's current account with the Mortgagee hereinafter covenanted to be paid together with interest for the same at the rate and in manner aforesaid and if there shall be nothing due and owing to the Mortgagee and in respect of the said premises or in respect of the police lighting water and other rates if any assessed on the said premises or insuring any of the said premises from damage by fire together with interest at the rate aforesaid then the Mortgagee shall upon the request and at the costs of the Mortgagor duly discharge this security and reassign the said premises unto the Mortgagor or as the Mortgagor shall direct.

40 5. THE Mortgagor hereby covenants with the Mortgagee as follows:—

(a) So Long as any money shall be owing on this security to keep the said premises in good state of repair and in good and proper sanitary condition and to insure against all loss or damage by fire in the full insurable value thereof in some local office or offices as the Mortgagee shall approve of in writing and punctually to pay all premia payable for such insurance when

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Building Mortgage
Between Sang
Lee Investment
Co. Ltd. And
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due and on demand of the Mortgagee to produce to or leave with the Mortgagee the policy or policies of such insurance and the receipt for every such payment.

(b) That if default shall be made in affecting any repair or in keeping up such insurance or in producing any such policy or receipt to the Mortgagee the Mortgagee may effect such repair or insure and keep insured the said premises or any part thereof in such sum as the Mortgagee shall think fit and that all moneys expended by the Mortgagee for the purpose aforesaid together with interest thereon at the rate aforesaid from the time of the same having been expended shall on deeded to be paid to the Mortgagee by the Mortgagor and until such repayment shall be a charge upon the premises.

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(c) If default shall be made in completing the said building in accordance with the said plans and specifications on or before the 21st day of January 1966 the Mortgagor shall on demand of the Mortgagee repay to the Mortgagee the said principal sum together with interest thereon.

(d) If default shall be made as aforesaid it shall be lawful for the Mortgagee to complete such part of the said buildings as shall have not been completed in accordance with the said plans and specifications or with such alterations or additions or otherwise in such manner as the Mortgagee may think fit and may for that purpose use any materials and plants belonging to the Mortgagor which may be upon the said premises and all expenses incurred by the Mortgagee shall be repaid by the Mortgagor to the Mortgagee with interest at the rate aforesaid and until so repaid shall be added to the moneys hereby secured and shall bear interest at a like rate.

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(e) If on the Mortgagor becoming entitled to call for any of the further advances mentioned in the said Second Schedule hereto the Mortgagee call upon the Mortgagor to accept such advance and the Mortgagor fail to accept such advance then the Mortgagor shall as from the respective dates when the Mortgagee call upon the Mortgagor to accept each advance (the Mortgagor having become entitled to such advance) pay to the Mortgagee interest on the amount of such advance at the rate and in manner aforesaid.

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6. IT IS HEREBY AGREED and DECLARED as follows:—

(a) A demand for payment or any other demand or notice under this security may be made by the Mortgagee by letter sent by post addressed to the Mortgagor at the Mortgagor's last known place of abode or business or left on some part of the premises hereby assigned and every demand or notice so given shall be deemed to have been given on the day after the letter was posted or left as aforesaid.

(b) It shall be lawful for the Mortgagor to hold and enjoy the said premises and take the rents and profits thereof until default shall be made in payment of the moneys hereby secured or the interest thereon or some part thereof respectively contrary to the true intent and meaning of these presents without any interruption by the Mortgagee.

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(c) That during the continuance of this security the Mortgagor shall not be entitled to exercise any powers of leasing or accepting surrenders of leases except with the consent in writing of the Mortgagee.

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10 (d) If default shall be made by the Mortgagor in payment of the moneys hereby secured it shall be lawful for the Mortgagee to enter into and upon and take possession of the said premises and the same thenceforth to hold possess and enjoy and to receive the rents and profits of the said premises without the lawful interruption by the Mortgagor or any other person and to let the same for such term and upon such conditions as the Mortgagee shall think fit and to appoint any person or persons at such remuneration as the Mortgagee shall think proper to collect the rents and profits of the said premises on the Mortgagee's behalf.

**Building Mortgage
Between Sang
Lee Investment
Co. Ltd. And
The Bank of
East Asia Ltd.
Dated 22.7.1964**

20 (e) If default shall be made as aforesaid it shall be lawful for the Mortgagee at any time or times thereafter to sell the said premises or any part or parts thereof either together or in parcels and either by public auction or private contract with power upon any such sale to make any stipulations as to title or evidence or commencement of title or otherwise as the Mortgagee may deem proper with power to buy in or rescind or vary any contract for sale and to resell without being responsible for any loss occasioned thereby and for such purpose to enter into such contracts stipulations and agreements and to execute or do such assurance and things as may be deemed expedient or necessary.

30 (f) The power of letting and sale hereinbefore conferred upon the Mortgagee shall as between the Mortgagee and a tenant or purchaser be exercisable at any time after the execution of this security but as between the Mortgagee and the Mortgagor the Mortgagee shall not exercise the said power of letting or of sale until payment of the money hereby secured has been demanded and the Mortgagor shall have made default for one calendar month in paying the same or until there shall be default in payment of the Crown rent or in performance of any of the covenant's terms and conditions reserved by and contained in the said Crown Lease set out in the said First Schedule or in performance of any of the covenants herein contained but this provision is for the protection of the Mortgagor only and shall not affect a tenant or purchaser or put him upon enquiry whether such default has been made.

40 (g) On any such letting or sale as aforesaid the receipt in writing of the Mortgagee for all or any of the purchase money of the premises sold or for the rent of the premises let shall effectually discharge the person or persons company or corporation paying the same therefrom and from being concerned to see to the application thereof or being accountable for loss non-application or mis-application thereof.

(h) The money which is received by the Mortgagee arising from such sale as aforesaid shall be held by the Mortgagee in trust to be applied first in payment of the expenses incurred on such sale or otherwise in relation

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Building Mortgage
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thereof and secondly in discharge of the moneys if any due under this security and then to pay the surplus if any to the Mortgagor or other person entitled thereto.

- (i) The aforesaid power of letting and sale may be exercised by any person or persons for the time being entitled to receive and give a discharge for the moneys then owing on this security.
- (j) The Mortgagee shall not be answerable for any involuntary losses which may happen in the exercise of the aforesaid powers or trusts or any of them.

THE Mortgagor hereby covenants with the Mortgagee as follows:—

- (a) That the Crown Lease set odd in the said First Schedule is now good valid and subsisting and in no wise void or voidable and that the rent and the covenants terms and conditions reserved and contained therein have been paid performed and observed up to the date hereof. 10
- (b) That the Mortgagor shall and will from time to time during the continuance of this security pay the Crown rent and perform the covenants terms and conditions by and in the said Crown Lease or Conditions reserved and contained and will pay the rates assessed on the said premises and will at all times keep the Mortgagee indemnified against all actions suits expenses and claims which may be incurred or sustained on account of the non-payment of the said rent or rates or the breach of the said covenants terms and conditions or any of them. 20
- (c) That the Mortgagor hath good right to assign the said premises unto the Mortgagee in manner aforesaid free from incumbrances and
- (d) That the Mortgagor and every person having or lawfully or equitably claiming any estate right title interest in or to the said premises or any of them will at all times at the cost until foreclosure or sale of the Mortgagor and afterwards of the person or persons requiring the same execute and do all such lawful assurances and things for the further and more perfectly assuring all or any of the said premises unto the Mortgagee as by the Mortgagee may be reasonably required. 30

8. PROVIDED ALWAYS and it is hereby agreed and declared as follows:—

- (a) NOTHING herein contained shall prejudice or affect any lien to which the Mortgagee is by law entitled or any other securities which the Mortgagee may at the time hold from the Mortgagor or on its account.
- (b) AT any time on receiving notice that the Mortgagor hath incumbered any of the said premises the Mortgagee may close the Mortgagor's then current account and open a new account with it and no money paid or carried to the credit of such new account shall be appropriated towards or

have the effect of discharging any part of the amount owing on this security at the date of such notice.

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(c) This security shall continue to be valid and binding for all purposes notwithstanding any change by amalgamation consolidation or otherwise which may be made in the constitution of the company by which the business of the Mortgagee may for the time being be carried on and shall be available by the company carrying on that business for the time being.

Building Mortgage
Between Sang
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10 9. THE Mortgagor hereby covenants with the Mortgagee that all monies arising from any sale of any part or share of the said premises or any other income that shall arise from the said premises shall be utilised and expended exclusively for or in connection with the site formation work for and the construction and completion of the said new building and that at the request of the Mortgagee the Mortgagor shall produce a statement of accounts to be certified by an approved authorised accountant to the satisfaction of the Mortgagee that the above conditions have been fulfilled.

20 10. THE Mortgagee hereby covenants with the Mortgagor that the Mortgagee will advance to the Mortgagor the said further sum of \$750,000.00 and will allow the Mortgagor to overdraw its current account to the respective extents as set out in the said Second Schedule hereto PROVIDED that the Mortgagor shall have duly performed all the covenants on the Mortgagor's part hereinbefore contained which ought to have then been performed by the Mortgagor.

THE FIRST SCHEDULE ABOVE REFERRED TO

ALL THAT piece or parcel of ground situate lying and being at Quarry Bay in the said Colony of Hong Kong and known and registered in the Land Office as SUBSECTION 4 OF SECTION B OF QUARRY BAY MARINE LOT NO. 1 which said piece of ground is HELD from the Crown for the residue now to come and unexpired of the term of 999 years from the 2nd day of February 1882 created therein by an Indenture of Crown Lease of the whole of the said Lot dated the 31st day of December 1932 and made between His late Majesty King George V of the one part and The Taikoo Sugar Refining Company Limited of the other part.

30 THE SECOND SCHEDULE ABOVE REFERRED TO

THE Mortgagor shall advance the said further sum of \$750,000.00 to the Mortgagor and shall allow the Mortgagor to overdraw its said current account with the Mortgagee as follows:—

- 40 (a) Upon completion of the said building up to the Third floor level including the laying of cement concrete slab to such floor the Mortgagee shall advance to the Mortgagor the sum of \$150,000.00 and shall all allow the Mortgagor to overdraw its current account to the extent of \$150,000.00.
- (b) Upon completion of the said building up to the Sixth floor level including the laying of cement concret slab to such floor the Mortgagee shall advance to the Mortgagor the sum of \$150,000.00

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and shall allow the Mortgagor to overdraw its current account to the extent of \$300,000.00.

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Building Mortgage
Between Sang
Lee Investment
Co. Ltd. And
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Dated 22.7.1964

(c) Upon completion of the said building up to the Ninth floor level including the laying of cement concrete slab to such floor the Mortgagee shall advance to the Mortgagor the sum of \$150,000.00 and shall allow the Mortgagor to overdraw its current account to the extent of \$450,000.00.

(d) Upon completion of the said building up to the Twelfth floor level including the laying of cement concrete slab to such floor the Mortgagee shall advance to the Mortgagor the sum of \$150,000.00 and shall allow the Mortgagor to overdraw its current account to the extent of \$600,000.00.

(e) Upon completion of the said building up to the Fifteenth floor level including the laying of cement concrete slab to such floor the Mortgagee shall advance to the Mortgagor the sum of \$150,000.00 and shall allow the Mortgagor to overdraw its current account to the extent of \$750,000.00.

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PROVIDED ALWAYS each stage of construction work above mentioned shall be certified by the said Architect or to the satisfaction of the Mortgagee as having been completed before the Mortgagor shall be entitled to call for the advance to be made in respect thereof.

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IN WITNESS whereof the Mortgagor and the Mortgagee have hereunto respectively caused its Common Seals to be hereunto affixed the day and year first above written.

SEALED with the Common Seal of the)
Mortgagor and SIGNED by Ma To Sang,)
Hudson Chen Wood and Kwan Fan Fat)
by his Attorney Kwan Sai Tak three of)
its directors, in the presence of:-)

Solicitor, Hong Kong.

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SEALED with the Common Seal of the)
Mortgagee and SIGNED by Fung Ping)
Fan its Chief Manager and by Kan Yuet)
Hing and Li Fook Wo, two of its)
Directors, in the presence of:-)

INTERPRETED to the Mortgagor by:-

Clerk to Messrs. Lo and Lo,
Solicitors, Hong Kong.

	RECEIVED on the day and year first above written of) and from the Mortgagee the sum of ONE MILLION FIVE) HUNDRED THOUSAND DOLLARS being the consideration) money above expressed to be paid by the Mortgagee to the) Mortgagor.)	\$1,500,000.00.	Document A-12 Building Mortgage Between Sang Lee Investment Co. Ltd. And The Bank of East Asia Ltd. Dated 22.7.1964
	Witness: -		
10	RECEIVED on this 9th day of August 1965 and from) the within name Mortgagee the sum of ONE HUNDRED AND) FIFTY THOUSAND DOLLARS being the further payment set) out in the Second Schedule to the within written Mortgage.)	\$150,000.00.	
	Witness: -		
	RECEIVED on this 4th day of September 1965 and) from the within named Mortgagee the sum of ONE HUNDRED) AND FIFTY THOUSAND DOLLARS being the further payment) set out in the Second Schedule to the within written Mortgage.)	\$150,000.00.	
	Witness: -		
20	RECEIVED on this 28th day of September 1965) and from the within named Mortgagee the sum of ONE) HUNDRED AND FIFTY THOUSAND DOLLARS being) the further payment set out in the Second Schedule to the) within written Mortgage.)	\$150,000.00.	
	Witness: -		
	RECEIVED on this 23rd day of June 1965 and from) the within named Mortgagee the sum of ONE HUNDRED AND) FIFTY THOUSAND DOLLARS being the further payment set) out in the Second Schedule to the within written Indenture.)	\$150,000.00.	
	Witness: -		
30	RECEIVED on this 19th day of July and from the) within named Mortgagee the sum of ONE HUNDRED AND) FIFTY THOUSAND DOLLARS being the further payment set) out in the Second Schedule to the within written Indenture.)	\$150,000.00.	
	Witness: -		

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PLAINTIFF'S DOCUMENT

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CERTIFICATE OF REGISTRATION OF BUILDING MORTGAGE

Certificate of Building Mortgage Dated 11.8.1964

THE COMPANIES ORDINANCE

(Chapter 32 of the Revised Edition, 1950, of the Laws of Hong Kong)

CERTIFICATE OF REGISTRATION

OF

BUILDING MORTGAGE

I hereby certify that a Building Mortgage ----- dated the 22nd day of July 1964 and created by SANG LEE INVESTMENT COMPANY LIMITED for securing a present advance of Hong Kong Dollars ONE MILLION AND FIVE HUNDRED THOUSAND (HK\$1,500,000) and a further sum of Hong Kong Dollars SEVEN HUNDRED AND FIFTY THOUSAND (HK\$750,000) and an overdraft to the extent of Hong Kong Dollars SEVEN HUNDRED AND FIFTY THOUSAND (HK\$750,000) and interest -----

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----- was this day registered pursuant to Section 80.

GIVEN under my hand at Victoria, Hong Kong, this Eleventh day of August 1964.

(K.K. Ng)
Assistant Registrar
for Registrar of companies.

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**ASSIGNMENT BETWEEN DAVIE BOAG AND COMPANY LTD.
AND SANG LEE INVESTMENT CO. LTD.**

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Assignment
Between Davie
Boag And Co.
Ltd. and Sang
Lee Investment
Co. Ltd.
Dated 7.1.1965

THE INDENTURE made the Seventh day of January One thousand nine hundred and sixty Five BETWEEN DAVIE, BOAG & COMPANY LIMITED

whose registered office is situate at Jardine House Pedder Street Victoria in the Colony of Hong Kong (which Company and its successors in title are where not inapplicable hereinafter included under the designation "the Vendors") of the first part MOK TSZE FUNG (莫子峯) of Room 1724 Central Building Victoria aforesaid Merchant (hereinafter called "the Trustee") of the second part and SANG LEE INVESTMENT COMPANY LIMITED whose registered office is situate at Room 1735 Central Building Pedder Street Victoria aforesaid (which Company its successors and assigns are where not inapplicable hereinafter included under the designation "the Purchaser") of the third part WHEREAS by a Crown Lease dated the 31st day of December 1932 made between His late Majesty King George the Fifth of the one part and The Taikoo Sugar Refining Company Limited of the other part His Late Majesty demised into the said The Taikoo Sugar Refining Company Limited their successors and assigns All that piece or parcel of ground situate lying and being at Quarry Bay in the Colony of Hong Kong therein more particularly described and registered in the Land Office at Quarry Bay Marine Lot No. 1 Except and reserved as was therein excepted and reserved from the 2nd day of February 1882 for the term of 999 years subject to the rent and covenants therein reserved and contained AND WHEREAS all that portion hereinafter more particularly described of the said Lot is now vested for the residue of the said term of 999 years in the Vendors AND WHEREAS by a Memorandum of Agreement dated the 25th day of October 1961 made between the Vendors of the one part and the Trustee of the other part and registered in the Land Office by Memorial No. 357032 the Vendors agreed to sell and the Trustee agreed to purchase All that portion of the said Lot registered in the Land Office as The Remaining Portion of Section B of Quarry Bay Marine Lot No. 1 (hereinafter called "the said Remaining Portion") for the price of \$6,091,200.00 subject to the terms and conditions therein contained AND WHEREAS by a further agreement supplemental thereto made between the same parties and dated the 6th day of December 1962 it was provided inter alia that the price of the said Remaining Portion was to be \$6,096,600.00 and that completion of the sale and purchase of a portion thereof consisting of about 21,547.455 sq. ft. was to take place in July 1964 on payment of \$2,585,694.60 while completion of the other Portion thereof consisting of 29,257.545 sq. ft. was to take place on the 31st day of December 1964 on payment of \$3,510,905.40 AND WHEREAS the sale and purchase of the first mentioned portion now registered in the Land Office as Subsection 4 of Section B of Quarry Bay Marine Lot No. 1 was completed by an Assignment dated the Twenty Second day of July 1964 registered in the Land Office by Memorial No. 450175 AND WHEREAS by a Declaration of Trust dated the 25th day of October 1961 the Trustee thereby declared that he thenceforth stood possessed of the said Remaining Portion Upon Trust for the Purchaser and that the Trustee thereby agreed to assign or convey the said premises at the request and cost of the Purchaser to such person or persons at such time or times and in such manner as the Purchaser should

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Assignment
Between Davie
Boag And Co.
Ltd. and Sang
Lee Investment
Co. Ltd.
Dated 7.1.1965

direct or appoint AND WHEREAS the purchaser has called upon the Trustee to assign and transfer to the Purchaser the premises hereinafter more particularly described which the Trustee has agreed to do so AND WHEREAS no assignment has been executed in respect of the premises intended to be hereinafter assigned either by the Vendors or the Trustee AND WHEREAS the Trustee has requested the Vendors to execute an assignment of the premises hereinafter intended to be assigned direct to the Purchaser which the Vendors have agreed to do in manner hereinafter appearing NOW THIS INDENTURE WITNESSETH that in pursuance of such respective agreements and in consideration of THREE MILLION FIVE HUNDRED AND TEN THOUSAND NINE HUNDRED AND FIVE DOLLARS AND FORTY CENTS (\$3,510,905.40) now paid by the Purchaser to the Vendors at the request and direction of the Trustee (hereby testified) (the receipt whereof the Vendors do hereby acknowledge) the Vendors at the request and by the direction of the Trustee testified as aforesaid) DO HEREBY ASSIGN and the Trustee DOTH HEREBY ASSIGN AND CONFIRM unto the Purchaser ALL THAT portion of the said piece or parcel of ground consisting of an area of 25,257.545 sq. ft. or thereabout situate at Quarry Bay aforesaid which portion of the said piece or parcel of ground with its abuttals and dimensions is more particularly delimited and described on the plan hereto annexed and thereon coloured Pink and is intended to be registered in the Land office as THE REMAINING POTION OF SECTION B OF QUARRY BAY MARINE LOT NO. 1 together with all messauages erections and buildings thereon (if any) Together also with all rights of way (if any) and all other rights privileges easements and appurtenances thereto belonging And all the estate right title interest property claim and demand of the Vendors and the Trustee respectively therein and thereto except and reserved as in the said Lease is excepted and reserved TO HOLD the said premises unto the Purchaser for the residue now to come of the said term of 999 years SUBJECT to the payment of the proportion hereinafter mentioned of the rent and the performance of the covenants in the said Lease reserved and contained so far as they relate to the hereby assigned premises AND the Vendors hereby covenant with the Purchaser that notwithstanding any act deed or thing by the Vendors done or knowingly omitted or suffered the said Lease is now valid and subsisting and that the rent reserved by and the covenants by the Lessee contained in the said Crown Lease have been paid performed and observed up to the date of these presents AND that the Vendors now have good right to assign the said premises as aforesaid free from incumbrances AND that the Purchaser shall and may henceforth during the residue of the said term of 999 years peaceably and quietly possess and enjoy the said premises and receive the rents and profits thereof without any lawful eviction claim or demand whatsoever from or by the Vendors or any person or persons claiming from under or in trust for the Vendors AND that the Vendors and all persons lawfully or equitably claiming under or in trust for the Vendors shall during the residue of the said term of 999 years at the request and costs of the Purchaser do all acts and execute and sign all deeds and writings reasonably required for perfecting this assignment AND the Trustee doth hereby covenant with the Purchaser that he the Trustee has not done omitted or knowingly suffered or been party or privy to any act deed matter or thing whereby the premises hereby assigned or any part thereof are is or may be impeached or incumbered AND the purchaser with the object and intention of affording to the Vendors a full and sufficient indemnity but not further or otherwise hereby covenants with Vendors that the Purchaser will during the residue of the said term of 999 years pay the annual sum of \$153.16 being a proportion of the rent and perform the Lessee's

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W I T N E S S :

sd. A. H. DINNEN
sd. J. MACKENZIE
(COMMON SEAL)

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Assignment
Between Davie
Boag And Co.
Ltd. and Sang
Lee Investment
Co. Ltd.
Dated 7.1.1965

sd. Raymond E. Moore
Solicitor, Hong Kong.

THIRD PARTY'S DOCUMENT

Document

BUILDING MORTGAGE BETWEEN SANG LEE INVESTMENT CO. LTD.

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AND THE BANK OF EAST ASIA

Building Mortgage
Between Sang
Lee Investment
Co. Ltd. and
The Bank of
East Asia Ltd.
Dated 8.1.1965

THIS INDENTURE made the 8th day of January One thousand nine hundred and sixty five BETWEEN: SANG LEE INVESTMENT COMPANY LIMITED whose registered office is situate at Room 1735 Central Building Pedder Street Victoria in the Colony of Hong Kong (which company and its successors and assigns are where not inapplicable hereinafter included under the designation "the Mortgagor") of the one part and THE BANK OF EAST ASIA LIMITED whose registered office is situate at No. 10 Des Voeux Road Central Victoria aforesaid (which Bank and its successors and assigns are where not inapplicable hereinafter included under the designation "the Mortgagee") of the other part.

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WHEREAS the premises set out in the First Schedule hereto are now vested in the Mortgagor for the residue now to come of the term of 999 years subject to the rent and lessee's covenants reserved and contained in the Indenture of Crown Lease therein set out.

AND WHEREAS the Mortgagor is proceeding with the erection of a building on the premises in accordance with certain plans and specifications prepared by E. Y. Wu an authorised architect practising in the said Colony of Hong Kong which plans and specifications have been approved by the Director of Public Works under B.O.O. Ref. No. 2/3031/62.

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AND WHEREAS the Mortgagor has applied to the Mortgagee to make a present advance to the Mortgagor of the sum of \$1,500,000.00 and to advance to the Mortgagor a further sum of \$750,000.00 and to allow the Mortgagor to overdraw its current account with the Mortgagee to the extent of \$750,000.00 (making the total principal sum of \$3,000,000.00) in manner hereinafter provided which the Mortgagee hath agreed to do upon having the repayment of all such advances together with interest thereon secured in manner hereinafter appearing.

NOW THIS INDENTURE WITNESSETH as follows:—

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1. IN consideration of the sum of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS now paid by the Mortgagee to the Mortgagor (the receipt whereof is hereby acknowledged) and of the further sum of SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS to be advanced by the Mortgagee to the Mortgagor as set out in the Second Schedule hereto the Mortgagor hereby covenants with the Mortgagee that subject as hereinafter provided the Mortgagor will on the expiration of 18 months from the date of these presents pay to the Mortgagee all such sums as shall have been advanced by the Mortgagee to the Mortgagor (hereinafter collectively referred to as "the said principalsum") and will as from the date hereof and from the respective dates of the said further advances respectively at the rate of \$10.00 per \$1,000.00 per calendar month payable monthly in equal calendar monthly payments on the 29th day of each calendar month without deduction AND if the said principal

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Building Mortgage
Between Sang
Lee Investment
Co. Ltd. and
The Bank of
East Asia Ltd.
Dated 8.1.1965

sum or any part thereof shall not be paid on the date of repayment will pay to the Mortgagee interest on so much thereof as shall for the time being be unpaid at the rate aforesaid by equal calendar monthly payments on the 29th day of each calendar month without deduction.

2. IN consideration aforesaid the Mortgagee allowing such overdraft by the Mortgagor as aforesaid the Mortgagor hereby covenants with the Mortgagee that the Mortgagor will on demand in writing of the Mortgagee pay to the Mortgagee all sums of money which at the date of such demand shall be owing to the Mortgagee on any account whether alone or jointly with or surety for any person or persons or for any company or corporation and whether on current account for cheques bills or notes drawn or accepted or endorsed by the Mortgagor or for advances made to the Mortgagor for the Mortgagor's use including interest at the name of \$10.00 per \$1,000.00 per calendar month such interest to be calculated with monthly rests commission and other customary banking charges AND also to pay interest on such balance from the time of such demand being made until payment at the rate aforesaid.

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3. FOR the consideration aforesaid the Mortgagor hereby assigns unto the Mortgagee ALL THAT piece or parcel of ground set out in the said First Schedule TOGETHER with all messuages or tenements erections and buildings now in course of erection or hereafter to be erected thereon belonging or in anywise appertaining AND ALL the estate right title interest term and terms of years claims and demand where-soever of the Mortgagor therein and thereto TO HOLD the said premises with their and every of their appurtenances unto the Mortgagee for all the residue now to come and unexpired of the term of 999 years and for all other the estate term and interest of the Mortgagor therein and thereto BUT SUBJECT nevertheless to such rights of way (if any) as at present existing and SUBJECT to the proviso for redemption next hereinafter contained.

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4. PROVIDED that if the Mortgagor shall on the date of repayment pay to the Mortgagee the said principal sum together with interest thereon as from the date hereof at the rate aforesaid and that if upon payment on demand by the Mortgagor of all moneys in respect of the Mortgagor's current account with the Mortgagee hereinbefore covenanted to be paid together with interest for the same at the rate and in manner aforesaid and if there shall be nothing due and owing to the Mortgagee in respect of the said premises or in respect of the police lighting water and other rates if any assessed on the said premises or insuring any of the said premises from damage by fire together with interest at the rate aforesaid then the Mortgagee shall upon the request and at the cost of the Mortgagor duly discharge this security and reassign the said premises unto the Mortgagor or as the Mortgagor shall direct.

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5. THE Mortgagor hereby covenants with the Mortgagee as follows:—

(a) So long as any money shall be owing on this security to keep the said premises in a good state of repair and in good and proper sanitary condition and to insure against all loss and damage by fire in the full insurable value thereof in some local office or offices as the Mortgagee shall approve of in writing and punctually to pay all premia payable for such insurance when due and on demand of the Mortgagee to produce to or leave with the Mortgagee the policy or policies of such insurance and the receipt for every such payment.

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(b) That if default shall be made in effecting any repair or in keeping up such insurance or in producing any such policy or receipt to the Mortgagee the Mortgagee may effect such repair or insure and keep insured the said premises or any part thereof on such sum as the Mortgagee shall think fit and that all moneys expended by the Mortgagee for the purpose aforesaid together with interest thereon at the rate aforesaid from the time of the same having been expended shall on demand be paid to the Mortgagee by the Mortgagor and until such repayment shall be a charge upon the premises.

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(c) If default shall be made in completing the said building accordance with the said plans and specifications on or before the 29th day of June 1966 the Mortgagor shall on demand of the Mortgagee repay to the Mortgagee the said principal sum together with interest thereon.

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(d) If default shall be made as aforesaid it shall be lawful for the Mortgagee to complete such part of the said building as shall have not been completed in accordance with the said plans and specifications or with such alterations or additions or otherwise in such manner as the Mortgagee may think fit and may for that purpose use any materials and plants belonging to the Mortgagor which may be upon the said premises and all expenses incurred by the Mortgagee shall be repaid by the Mortgagor to the Mortgagee with interest at the rate aforesaid and until so repaid shall be added to the moneys hereby secured and shall bear interest at a like rate.

(e) If on the Mortgagor becoming entitled to call for any of the further advances mentioned in the said Second Schedule hereto the Mortgagee call upon the Mortgagor to accept such advance and the Mortgagor fail to accept such advance then the Mortgagor shall as from the respective dates when the Mortgagee call upon the Mortgagor to accept each advance (the Mortgagor having become entitled to such advance) pay to the Mortgagee interest on the amount of such advance at the rate and in manner aforesaid.

6. IT IS HEREBY AGREED and DECLARED as follows:—

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(a) A demand for payment or any other demand or notice under this security may be made by the Mortgagee by letter sent by post addressed to the Mortgagor at the Mortgagor's last known place of abode or business or left on some part of the premises hereby assigned and every demand or notice so given shall be deemed to have been given on the day after the letter was posted or left as aforesaid.

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(b) It shall be lawful for the Mortgagor to hold and enjoy the said premises and take the rents and profits thereof until default shall be made in payment of the moneys hereby secured or the interest thereon or some part hereof respectively contrary to the true intent and meaning of these presents without any interruption by the Mortgagee.

(c) That during the continuance of this security the Mortgagor shall not be entitled to exercise any powers of leasing or accepting surrenders of leases except with the consent in writing of the Mortgagee.

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Building Mortgage
Between Sang
Lee Investment
Co. Ltd. and
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Dated 8.1.1965

(d) If default shall be made by the Mortgagor in payment of the moneys hereby secured it shall be lawful for the Mortgagee to enter into and upon and take possession of the said premises and the same thenceforth to hold possess and enjoy and to receive the rents and profits of the said premises without the lawful interruption by the upon such conditions as the Mortgagee shall think fit and to appoint any person or persons at such remuneration as the Mortgagee shall think proper to collect the rents and profits of the said premises on the Mortgagor's behalf.

(e) If default shall be made as aforesaid it shall be lawful for the Mortgagee at any time or times thereafter to sell the said premises or any part or parts thereof either together or in parcels and either by public auction or private contract with power upon any such sale to make any stipulations as to title or evidence or commencement of title or otherwise as the Mortgagee may deem proper with power to buy in or rescind or vary any contract for sale and to resell without being responsible for any loss occasioned thereby and for purpose to enter into such contracts stipulations and agreements and to execute or do such assurance and things as may be deemed expedient or necessary.

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(f) The power of letting and sale hereinbefore conferred upon the Mortgagee shall as between the Mortgagee and a tenant or purchaser be exercisable at any time after the execution of this security but as between the Mortgagee and the Mortgagor the Mortgagee shall not exercise the said power of letting or of sale until payment of the moneys hereby secured has been demanded and the Mortgagor shall have made default for one calendar month in paying the same or until there shall be default in payment of the Crown rent or in performance of any of the covenants terms and conditions reserved by and contained in the said Crown Lease set out in the said First Schedule or in performance of any of the covenants herein contained but this provision is for the protection of the Mortgagor only and shall not affect a tenant or purchaser or put him upon enquiry whether such default has been made.

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(g) On any such letting or sale as aforesaid the receipt in writing of the Mortgagee for all or any of the purchase money of the premises sold or for the rent of the premises let shall effectually discharge the person or persons company or corporation paying the same therefrom and from being concerned to sell to the application thereof or being accountable for the loss non-application or mis-application thereof.

(h) The money which is received by the Mortgagee arising from such sale as aforesaid shall be held by the Mortgagee in trust to be applied first in payment of the expenses incurred on such sale or otherwise in relation thereof and secondly in discharge of the moneys if any due under this security and then to pay the surplus if any to the Mortgagor or other person entitled thereto.

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(i) The aforesaid power of letting and sale may be exercised by any person or persons for the time being entitled to receive and give a discharge for the moneys then owing on this security.

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(j) The Mortgagee shall not be answerable for any involuntary losses which may happen in the exercise of the aforesaid powers or trusts or any of them.

Building Mortgage
Between Sang
Lee Investment
Co. Ltd. and
The Bank of
East Asia Ltd.
Dated 8.1.1965

7. THE Mortgagor hereby covenants with the Mortgagee as follows:—

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(a) That the Crown Lease set out in the said First Schedule is now good and valid and subsisting and in no wise void or voidable and that the rent and the covenants terms and conditions reserved and contained therein have been paid performed and observed up to the date hereof.

(b) That the Mortgagor shall and will from time to time during the continuance of this security pay the Crown rent and perform the covenants terms and conditions reserved and contained therein have been paid performed and observed up to the date hereof.

(c) That the Mortgagor hath good right to assign the said premises unto the Mortgagee in manner aforesaid free from incumbrances and

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(d) That the Mortgagor and every person having or lawfully or equitably claiming any estate right title interest in or to the said premises or any of them will at all times at the cost until fore-closure or sale of the Mortgagor and afterwards of the person or persons requiring the same execute and do all such lawful assurance and things for the further and more perfectly assuring all or any of the said premises unto the Mortgagee as by the Mortgagee may be reasonably required.

8. PROVIDED ALWAYS and it is hereby agreed and declared as follows:—

(a) Nothing herein contained shall prejudice or affect any lien to which the Mortgagee is by law entitled or any other securities which the Mortgagee may at the time hold from the Mortgagor or on its account.

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(b) At any time on receiving notice that the Mortgagor hath in cumbered any of the said premises the Mortgagee may close the Mortgagor's then current account and open a new account with it and no money paid or carried to the credit of such new account shall be appropriated towards or have the effect of discharging any part of the amount owing on this security at the date of such notice.

(c) This security shall continue to be valid and binding for all purpose notwithstanding any change by amalgamation consolidation or otherwise which may be made in the constitution of the company by which the business of the Mortgagee may for the time being be carried on and shall be available by the company carrying on that business for the time being.

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Building Mortgage
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Lee Investment
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9. THE Mortgagor hereby covenants with the Mortgagee that all monies arising from any sale of any part of the said premises or any other income that shall arise from the said premises shall be utilised and expended exclusively for or in connection with the site formation work for and the construction and completion of the said new building and that at the request of the Mortgagor the Mortgagee shall produce a statement of accounts to be certified by an approved authorised accountant to the satisfaction of the Mortgagee that the above conditions has been fulfilled.

10. THE Mortgagee hereby covenants with the Mortgagor that the Mortgagee will advance to the Mortgagor the said further sum of \$750,000.00 and will allow the Mortgagor to overdraw its current account to the respective extents as set out in the said Second Schedule hereto PROVIDED that the Mortgagor shall have duly performed all the covenants on the Mortgagor's part hereinbefore contained which ought to have then been performed by the Mortgagor.

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THE FIRST SCHEDULE ABOVE REFERRED TO

ALL THAT piece or parcel of ground situate lying and being at Quarry Bay in the said Colony of Hong Kong and known and registered in the Land Office as THE REMAINING PORTION OF SECTION B OF QUARRY BAY MARINE LOT NO. 1 which said piece of ground is HELD from the Crown for the residue now to come and unexpired of the term of 999 years from the 2nd day of February 1882 created therein by an Indenture of Crown Lease of the whole of the said Lot dated 31st day of December 1932 and made between His later Majesty King George V of one part and The Taikoo Sugar Refining Company Limited of the other part.

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THE SECOND SCHEDULE ABOVE REFERRED TO

THE Mortgagor shall advance the said further sum of \$750,000.00 to the Mortgagee and shall allow the Mortgagee to overdraw its said current account with the Mortgagee as follows:—

(a) Upon completion of the said building up to the Third floor level including the laying of cement concrete slab to such floor the Mortgagee shall advance to the Mortgagor the sum of \$150,000.00 and shall allow the Mortgagor to overdraw its current account to the extent of \$150,000.00.

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(b) Upon completion of the said building up to the Sixth floor level including the laying of cement concrete slab to such floor the Mortgagee shall advance to the Mortgagor the sum of \$150,000.00 and shall allow the Mortgagor to overdraw its current account to the extent of \$300,000.00.

(c) Upon completion of the said building up to the Ninth floor level including the laying of cement concrete slab to such floor the Mortgagee shall advance to the Mortgagor the sum of \$150,000.00 and shall allow the Mortgagor to overdraw its current to the extent of \$450,000.00.

(d) Upon completion of the said building up to the Twelfth floor level including the laying of cement concrete slab to such floor the Mortgagee shall advance to the Mortgagor the sum of \$150,000.00 and shall allow the Mortgagor to overdraw its current to the extent of \$600,000.00.

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(e) Upon completion of the said building up to the Fifteenth floor level including the laying of cement concrete slab to such floor the Mortgagee shall advance to the Mortgagor the sum of \$150,000.00 and shall allow the Mortgagor to overdraw its current account to the extent of \$750,000.00.

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Building Mortgage
Between Sang
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Dated 8.1.1965

PROVIDED ALWAYS each stage of construction work above mentioned shall be certified by the said Architect as having been completion before the Mortgagor shall be entitled to call for the advance to be made in respect thereof.

IN WITNESS whereof the Mortgagor and the Mortgagee have hereunto respectively caused its Common Seals to be hereunto affixed the day and year first above written.

10

SEALED with the Common Seal of the Mortgagor and SIGNED BY Ma To Sang Kwan Fan Fat and Hudson Chen Wood, three of its Directors in the presence of:—

) sd. Ma To Sang
) sd. Kwan Fan Fat
) sd. Hudson Chen Wood (Seal)
)
)

(Sd) Kenneth Lo
Solicitor,
Hong Kong.

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SEALED with the Common Seal of the Mortgagee and SIGNED By Fung Ping Fan its chief Manager and by Kan Yuet Hing Li Fook Wo two of its Directors in the presence of:—

) sd. Fung Ping Fan
) sd. Kan Yuet Hing (Seal)
) sd. Li Kook Wo
)
)

INTERPRETED to the Mortgagor by:—

(Sd.) Ho Sze Wah
Clerk to Messrs. Lo and Lo
Solicitors & Co., Hong Kong.

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RECEIVED on the day and year first above written and from the Mortgagee the sum of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS being the consideration money above expressed to be paid by the Mortgagee to the Mortgagor.

) \$1,500,000.00
)
)
)

WITNESS:

FURTHER CHARGE

Further Charge
Between Sang
Lee Investment
Co. Ltd. And The
Bank of East Asia
Ltd.
Dated 12.1.1966

THIS INDENTURE made the 12th day of January, One thousand nine hundred and sixty six
BETWEEN the within named SANG LEE INVESTMENT COMPANY LIMITED (which Bank and its successors and assigns are where not inapplicable hereinafter included under the designation "the Mortgagor") of the one part and the within named THE BANK OF EAST ASIA LIMITED (which company and its successors and assigns are where not inapplicable hereinafter included under the designation "the Mortgagee") of the other part.

10

WHEREAS the whole of the within mentioned sum of \$2,250,000.00 has been advanced by the Mortgagee to the Mortgagor and such sums remains owing on the security of the within written Indenture.

AND WHEREAS the within mentioned overdraft to the extent of \$750,000.00 remains current and in operation.

AND WHEREAS the Mortgagee has agreed to lend to the Mortgagor the further sum of \$700,000.00 upon having the repayment thereof with interest thereon at the rate hereinafter secured hereinafter appearing.

NOW THIS INDENTURE WITNESSETH as follows:--

1. That in pursuance of such agreement and in consideration of SEVEN HUNDRED THOUSAND DOLLARS to the Mortgagor now paid by the Mortgagee (the receipt whereof the Mortgagor doth hereby acknowledge) the Mortgagor doth hereby covenant with the Mortgagee that the Mortgagor will pay to the Mortgagee the said sum of \$700,000.00 in the 28th day of May 1966 with interest thereon in the meantime at the rate of \$11.00 per \$1,000.00 per calendar month from the 31st day of December 1965 by equal calendar monthly payments on the 30th day of each and every calendar month without any deduction AND that if the said sum of \$700,000.00 or any part thereof shall remain unpaid after the said 28th day of May 1966 the Mortgagor will so long as the said sum or any part thereof shall remain unpaid pay to the Mortgagee interest for the said sum of \$700,000.00 or for so much thereof as shall for the time being remain unpaid at the rate aforesaid by equal calendar monthly payments on the 30th day of each and every calendar month without any deduction.

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2. The Mortgagor hereby declares that all the premises comprised in and expressed to be assigned by the within written Indenture shall be charged with the payment and shall not be redeemable but upon payment by the Mortgagor to the Mortgagee of as well the said sum of \$700,000.00 and interest for the same according to the covenant hereinbefore contained in that behalf as the within mentioned sum of \$2,250,000.00 and all moneys owing to the Mortgagee in respect of the within mentioned overdraft and the interest due and to become due for the same.

3. All the covenants provisions and powers contained in or subsisting in relation

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to the within written Indenture excluding the covenant for payment of principal and interest but including the provisions relating to the rights of enforcing or redeeming the securities thereby constituted shall be applicable so as to be a further security for the said sum of \$700,000.00 and interest as if such moneys had formed part of the moneys repayment whereof is secured by the within written Indenture.

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Further Charge
Between Sang
Lee Investment
Co. Ltd. And The
Bank of East Asia
Ltd.
Dated 12.1.1966

IN WITNESS whereof the Mortgagor hath caused its Common Seal to be hereunto affixed the day and year first above written.

SEALED with the Common Seal of the Mortgagor)
and SIGNED by Ma To Sang and Kwan Fan Fat)
two of its Directors, in the presence of:—)

10

Solicitor, Hong Kong.

RECEIVED on the day and year first above written of)
the Mortgagee the sum of SEVEN HUNDRED THOUSAND)
DOLLARS being the consideration money above mentioned to be) \$700,000.00.
paid by the Mortgagee to the Mortgagor.)

WITNESS : —

Document

PLAINTIFF'S DOCUMENT

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CERTIFICATE OF THE REGISTRATION OF FURTHER CHARGE

Certificate of
Registration of
Further Charge
Dated 26.1.1966

THE COMPANY ORDINANCE

(Chapter 32 of the Revised Edition, 1950, of the Laws of Hong Kong)

CERTIFICATE OF REGISTRATION

OF

FURTHER CHARGE

I hereby certify that a Further Charge -----
dated the 12th day of January 1966 and created by SANG LEE INVESTMENT
COMPANY LIMITED for securing an immediate advance of Hong Kong Dollars **10**
SEVEN HUNDRED THOUSAND (HK\$700,000) and interest -----

was this day registered pursuant to Section 80.

GIVEN under my hand at Victoria, Hong Kong, this Twenty-sixth day of
January 1966.

(J.C. Koh)
Assistant Registrar
for Registrar of Companies,
Hong Kong.

PLAINTIFF'S DOCUMENT

Document

COLLATERAL MORTGAGE

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Collateral Mortgage
Between The Bank
of East Asia And
Sang Lee Investment
Co. Ltd.
Dated 17.2.1967

10 THIS MORTGAGE is made the 17th day of February One thousand nine hundred and sixty seven BETWEEN SANG LEE INVESTMENT COMPANY LIMITED whose registered office is situate at No. 1735 Central Building Victoria in the Colony of Hong Kong (which company and its successors and assigns are where not inapplicable hereinafter included under the designation "the Borrower") of the one part and THE BANK OF EAST ASIA LIMITED whose registered office is situate at No. 10 Des Voeux Road Central Victoria aforesaid (which bank and its successors and assigns are where not inapplicable hereinafter included under the designation "the Lendor") of the other part.

20 WHEREAS Ball Land Investment Company Limited (hereinafter called "the said Debtor") whose registered office is situate at No. 1535 Central Building aforesaid is indebted to the Borrower in the sum of \$1,135,560.60 being a loan due and owing by the said Debtor to the Borrower the amount of which was advance by the Borrower to the said Debtor by way of set off against the deposit of the same amount paid by the said Debtor to the Borrower under an Agreement dated the 17th day of January 1963 whereby the Borrower agreed to sell and the said Debtor agreed to purchase certain units in a building known as Wai Lee Building King's Road for the price of \$1,261,734.00.

AND WHEREAS by a Building Mortgage (hereinafter called "the said Building Mortgage") dated the 22nd day of July 1964 made between the Borrower of the one part and the Lender of the other part and registered in the Land Office by Memorial No. 450176 All That piece or parcel of ground registered in the Land Office as Subsection 4 of Section B of Quarry Bay Marine Lot No. 1 was assigned unto the Lender by way of Mortgage to secure the repayment of advances totalling \$2,250,000.00 and an overdraft granted to the Borrower to the extent of \$750,000.00 with interest thereon respectively.

30 AND WHEREAS the whole of the said sum of \$2,250,000.00 has been advanced to the Borrower and now remains owing to the Lender on the security of the said Building Mortgage with arrears of interest thereon and the said overdraft to the extent of \$750,000.00 is still current and in operation.

AND WHEREAS by a Further Charge (hereinafter called "the First Further Charge") dated the 12th day of January 1966 made between the Borrower of the one part and the Lender of the other part and registered in the Land Office by Memorial No. 518835 the said Subsection 4 of Section B of Quarry Bay Marine Lot No. 1 was further charged with the payment of the sum of \$700,000.00 advanced by the Lender to the Borrower with interest thereon.

40 AND WHEREAS the said sum of \$700,000.00 remains owing to the Lender on the security of the First Further Charge and the said Building Mortgage with arrears of interest thereon.

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Collateral
Mortgage
Between The
Bank of
East Asia
And Sang Lee
Investment
Co. Ltd.
Dated 17.2.1967

AND WHEREAS by another Further Charge (hereinafter called "the Second Further Charge") dated the _____ day of _____ and made between the Borrower of the one part and the Lender of the other part the said Subsection 4 of Section B of Quarry Bay Marine Lot No. 1 was further charged with the payment of all sums owing under the said overdraft granted to the Borrower which was increased from the extent of \$750,000.00 to the extent of \$4,250,000.00.

AND WHEREAS the said overdraft to the extent of \$4,250,000.00 remains current and in operation.

AND WHEREAS the Lender has requested the Borrower to give further security for the repayment of the sums aforesaid and the Borrower has agreed to give such security for the same as is hereinafter contained.

10

NOW THIS INDENTURE WITNESSETH as follows:—

1. For the consideration aforesaid the Borrower hereby assigns to the Lender All That the said debt or sum of \$1,135,560.60 due and owing to the Borrower from the said Debtor as aforesaid and all interest (if any) due and to become due for the same and the full benefit and advantage thereof TO HOLD the same unto the Lender subject only to the provide for redemption hereinafter contained.

2. PROVIDED ALWAYS as follows:—

(a) If the Borrower shall pay to the Lender the sum of \$2,250,000.00 and all interest due and to become due for the same and shall pay to the Lender all other principal moneys and interest in the said Building Mortgage First Further Charge and Second Further Charge covenanted to be paid by the Lender at any time thereafter or at the request and cost of the Borrower will assign to the Borrower or as the Borrower shall direct the said sum of \$1,135,560.60 and the interest thereon (if any) or otherwise will discharge this security.

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(b) It shall not be incumbent on the Lender to take any steps or institute any proceedings for the recovery of the debt and moneys hereby mortgaged.

(c) It shall be lawful for the Lender at any time to enter into any arrangement or accept any composition in relation to the debt hereby assigned without the concurrence of the Borrower and any such arrangement or composition shall be binding on the Borrower.

30

3. The Borrower hereby covenants with the Lender that the said debt or sum of \$1,135,560.60 is still due and owing to the Borrower from the said Debtor.

4. The Borrower hereby appoints the Lender to be the true and lawful Attorney of the Borrower for the following purposes:—

(a) To demand and receive the said sum of \$1,135,560.60 due and owing to the Borrower from the said Debtor and all interest thereon (if any) and

upon receipt thereof or any part thereof to give and execute good and sufficient releases and discharges for the same.

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(b) Upon non-payment thereof or any part thereof to commence and prosecute in the name of the Lender or in the name of the Borrower any action or proceedings in any Court Justice or to resort to any other procedure allowed by law for recovering and obtaining payment and satisfaction for the same.

Collateral
Mortgage
Between The
Bank of
East Asia
And Sang Lee
Investment
Co. Ltd.

Dated 17.2.1967

(c) Generally to do and execute all such matters acts and things as may be necessary for the purpose of obtaining payment of the said sum of \$1,135,560.60 and interest thereon (if any) as fully and effectually as the Borrower can do.

10

IN WITNESS whereof the Borrower hath caused its Common Seal to be hereunto affixed the day and year first above written.

SEALED with the Commons Seal of the)
Borrower and SIGNED by Ramond Kent)
and Eugene Mok, two of its directors)
in the presence of:--)

Solicitor, Hong Kong.

Document

PLAINTIFF'S DOCUMENT

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CERTIFICATE OF REGISTRATION OF COLLATERAL MORTGAGE

Certificate of
Registration of
Collateral
Mortgage
Dated 2.3.1967

THE COMPANIES ORDINANCE

CERTIFICATE OF REGISTRATION

OF

COLLATERAL MORTGAGE

I hereby certify that a Collateral Mortgage -----
dated the 17th day of February 1967 and created by SANG LEE INVESTMENT
COMPANY LIMITED for securing the sums of Hong Kong Dollars TWO MILLION
TWO HUNDRED AND FIFTY THOUSAND (HK\$2,250,000) and Hong Kong Dollars
SEVEN HUNDRED THOUSAND (HK\$700,000) and an overdraft to the extent of
Hong Kong Dollars THREE MILLION AND FIVE HUNDRED THOUSAND
(HK\$3,500,000) and interest granted under the Building Mortgage dated the 22nd day
of July 1964, a Further Charge dated the 12th day of January 1966 and another
Further Charge dated the 17th day of February 1967 -----

10

was this day registered pursuant to Section 80.

GIVEN under my hand at Victoria, Hong Kong, this Second day of March
1967.

(K.K. Ng)
Assistant Registrar
for Registrar of Companies,
Hong Kong.

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PLAINTIFF'S DOCUMENT

Document

BUILDING FURTHER CHARGE

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Building Further
Charge among
Sang Lee
Investment
Co. Ltd. and
Ma To Sang,
Hudson Chen
Wood, Kwan Fan
Fat and The Bank
of East Asia Ltd.
Dated 17.2.1967

10 THIS INDENTURE made the 17th day of February One thousand nine hundred and sixty seven BETWEEN SANG LEE INVESTMENT COMPANY LIMITED whose registered office is situate at Room 1735 Central Building Pedder Street Victoria in the Colony of Hong Kong (which company and its successors and assigns are where not inapplicable hereinafter included under the designation "the Mortgagor") of the first part MA TO SANG (馬道生), HUDSON CHEN WOOD (吳百鎮) and KWAN FAN FAT (關奮發) all of Room 1735 Central Building Pedder Street Victoria aforesaid Merchants (who and each of whom and whose and each of whose executors administrators and assigns are where not inapplicable hereinafter included under the designation "the Guarantors") of the Second part and THE BANK OF EAST ASIA LIMITED whose registered office is situate at No. 10 Des Voeux Road Central Victoria aforesaid (which bank and its successors and assigns and where not inapplicable hereinafter included under the designation "the Mortgagee") of the third part.

20 WHEREAS by a Building Mortgage (hereinafter called "the said Building Mortgage") dated the 22nd day of July 1964 made between the Mortgagor of the one part and the Mortgagee of the other part and registered in the Land Office by Memorial No. 450176 All That piece or parcel of ground registered in the Land Office as The Remaining Portion of Subsection 4 of Section B of Quarry Bay Marine Lot No. 1 was assigned unto the Mortgagee by way of Mortgage to secure the repayment of advances totalling \$2,250,000.00 and an overdraft granted to the Mortgagor to the extent of \$750,000.00 with interest thereon respectively.

AND WHEREAS the whole of the said sum of \$2,250,000.00 has been advanced to the Mortgagor and now remains owing to the Mortgagee on the security of the said Building Mortgage with arrears of interest thereon respectively.

30 AND WHEREAS by a Further Charge (hereinafter called "the said Further Charge") dated the 12th day of January 1966 made between the Mortgagor of the one part and the Mortgagee of the other part and registered in the Land Office by Memorial No. 518835 the said The Remaining Portion of Subsection 4 of Section B of Quarry Bay Marine Lot No. 1 was further charged with the payment of the sum of \$700,000.00 advanced by the Mortgagee to the Mortgagor with interest thereon.

AND WHEREAS the said sum of \$700,000.00 remains owing to the Mortgagee on the security of the said Further Charge and the said Building Mortgage with arrears of interest thereon.

40 AND WHEREAS by Building Contract (hereinafter called "the said Building Contract") dated the 14th day of January 1965 and made between the Mortgagor of the one part and Nam Sang Building Construction Company Limited (hereinafter called "the General Contract") of the other part the General Contractor agreed to erect

Document

for the Mortgagor a building (hereinafter called "the said building") on the said premises for the remuneration therein mentioned.

A-20

**Building Further
Charge among
Sang Lee
Investment
Co. Ltd. and
Ma To Sang,
Hudson Chen
Wood, Kwan Fan
Fat and The Bank
of East Asia Ltd.
Dated 17.2.1967**

AND WHEREAS the said building is now being erected and Messrs. P.C. Russell, Bailey, Levett and Partners, Chartered Quantity Surveyors (hereinafter called "the Quantity Surveyors") having been appointed as the Quantity Surveyors in respect of the building work.

AND WHEREAS the Mortgagor has through the Guarantors applied to the Mortgagee to increase the extent of the overdraft granted to the Mortgagor on the security of the said Building Mortgage by \$3,500,000.00 that is to say to increase the extent thereof from \$750,000.00 to \$4,250,000.00 such increase to be granted in manner hereinafter provided which the Mortgagee has agreed to do upon having the repayment thereof with interest thereon secured in manner hereinafter appearing.

10

NOW THIS INDENTURE WITNESSETH as follows:—

1. IN consideration of the Mortgagee agreeing to increase the said overdraft from the sum of \$750,000.00 to the sum of \$4,250,000.00 Hong Kong Currency the Mortgagor and each of them the Guarantors hereby jointly and severally covenant with the Mortgagee that the Mortgagor or any of them the Guarantors will on demand in writing of the Mortgagee pay to the Mortgagee all further sums of money (but as regards the Guarantors to a total extent not exceeding \$4,250,000.00) which at the date of such demand according to the books of the Mortgagor and the Mortgagee in accordance with the covenants in that behalf contained in the said Building Mortgage.

20

2. THE Mortgagor hereby declares that all the premises comprised in and expressed to be assigned by the said Building shall be charged with the payment and shall not be redeemable but upon payment by the Mortgagor to the Mortgagee of as well the further principal moneys and interest for the same according to the covenant hereinbefore contained in that behalf as the said sum of \$2,250,000.00 and all other principal moneys owing to the Mortgagee in respect of the said overdraft and the said sum of \$700,000.00 and the interest respectively due and to become due for the same.

3. ALL the covenants provisions and powers contained in or subsisting in relation to the said Building Mortgage including the provisions relating to the rights of enforcing or redeeming the securities thereby constituted shall be applicable so as to be a further security for the principal moneys and interest hereinbefore covenanted to be paid as if such moneys had formed part of the moneys repayment whereof is secured by the said Building Mortgage.

30

4. THE Mortgagee hereby covenants with the Mortgagor that in addition to allowing the Mortgagor to overdraw its current account to the extent of \$750,000.00 as provided in the said Building Mortgagee will allow the Mortgagor to overdraw its current account to the further extent as follows namely:—

(a) Then the General Contractor has carried out any work on the said building under the said Building Contract after the date hereof and the Quantity Surveyors have certified the cost of such work in accordance

40

with the terms of and the prices specified in the said Building Contract then the Mortgagee will allow the Mortgagor to overdraw its current account to a further extent equivalent to 7/12 of the cost of such work as certified by the Quantity Surveyors Provided Always that when the whole of the works comprised in the said Building Contract has been completed the said overdraft shall be increased by the further extent of \$1,400,000.00 but shall not be increased beyond \$1,400,000.00 by reason of the completion of such works.

Document

A-20

Building Further Charge among Sang Lee Investment Co. Ltd. and Ma To Sang, Hudson Chen Wood, Kwan Fan Fat and The Bank of East Asia Ltd. Dated 17.2.1967

10

- (b) When the General Contractor or any other Contractor is entitled to any payment under the terms of any contract relating to the said building and approved by the Mortgagee and such payment is certified by the Quantity Surveyors as due and payable or when any payment is required to be made to the Hong Kong Government in connection with the said building and such payment is certified by the Quantity Surveyors then the Mortgagee will allow the Mortgagor to overdraw its current account to a further extent equivalent to the amount of such payment Provided Always that when the whole of the works comprised in all such Approved contracts have been completed and all necessary payment have been made to the Hong Kong Government the said overdraft shall be increased by the further extent of \$900,000.00 but shall not be increased beyond \$900,000.00 by reason of the completion of such works.

20

5. IT IS HEREBY EXPRESSLY AGREED AND DECLARED that all sums advanced to the Mortgagor under the last preceding clause shall be applied solely and exclusively in payment to the General Contractor or any other Contract under the said Building Contract or any contract approved by the Mortgagee as aforesaid or to the Hong Kong Government in accordance with the certificates of the Quantity Surveyors and the Mortgagee shall be entitled to take such steps as they consider necessary to ensure that such loans are so applied.

30

6. IN any event the Mortgagor shall not overdraw on its overdraft account aforesaid beyond the total extent of \$3,050,000.00 (being the total of the extent of \$750,000.00 secured by the said Building Mortgage the extent of \$1,400,000.00 as provided in clause 4(a) and the extent of \$900,000.00 as provided in clause 4(b) and as regards the extent of \$1,200,000.00 balance of the total extent of \$4,250,000.00 hereinbefore recited the Mortgagor shall not overdraw thereon but the Mortgagee may debit the same with all interest now or hereafter to become due and owing to the Mortgagee by the Mortgagor on any account or loan whatsoever.

40

7. IT IS HEREBY DECLARED that these presents are subject to various Agreements for Sale and Purchase (hereinafter called "the said Seal and Purchase Agreements") made between the Mortgagor of the one part and various purchasers of the other part whereby the Mortgagor agreed respectively to sell to each of the Purchasers parts of the said building which Agreements for Sale and Purchase are registered in the Land Office.

8. THE Mortgagor shall notify each of the Purchasers under the said Sale and

Document
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Building Further
Charge among
Sang Lee
Investment
Co. Ltd. and
Ma To Sang,
Hudson Chen
Wood, Kwan Fan
Fat and The Bank
of East Asia Ltd.
Dated 17.2.1967

Purchase Agreements that for the time being the Mortgagor will not receive any further payments on account of purchase money from any Purchaser until the said building has been completed and the Occupation Certificate has been issued but in case any such purchase money should come into the hands of the Mortgagor the Mortgagor hereby undertake to pay such money to the Mortgagee in reduction of the principal money and interest secured by the said Building Mortgage the said Further Charge or these presents.

9. AT any time after the issue of the Occupation Certificate in respect of the said building and then when the Purchaser of any of the residential flats in the said building has paid the purchase price thereof in full then the Mortgagor shall redeem the said flat on the following terms namely:

- (a) The Mortgagor shall reduce the total principal sum secured by the said Mortgage the said Further Charge or these presents by the sum of \$10,000.00 for each flat so redeemed.
- (b) Such reduction shall be made either by part payment on account of the said principal sums of \$2,250,000.00 or \$700,000.00 or by reducing and limiting the extent of the said overdraft secured by the said Building Mortgage the said Further Charge or these presents or partly by the former way and partly by the latter.
- (c) In case of part payment on account of the said principal sums of \$2,250,000.00 or \$700,000.00 the Mortgagor shall give one calendar month's notice in writing of the Mortgagor's intention to pay off such notice to expire on the 21st day of any calendar month or the Mortgagor shall pay to the Mortgagee one month's extra interest on the amount so repaid in lieu of notice.
- (d) In the case of the extent of the said overdraft being reduced and limited the Mortgagor shall be sufficient to reduce the amount overdrawn on the said overdraft account by \$10,000.00 for each flat redeemed.
- (e) With each flat in the said building so redeemed the Mortgagor shall redeem an appropriate share of and in the said piece or parcel of ground.

10. IT IS HEREBY DECLARED that except as hereby varied the said Building Mortgage and the said Further Charge are hereby confirmed.

11. IT IS HEREBY AGREED as follows:—

- (a) Although as between the Mortgagor and the Guarantors the Guarantors are only securities for the Mortgagor yet as between the Guarantors and the Mortgagee the Guarantors shall be considered as a principal debtor for all the principal and other moneys and interest hereby secured so that the Guarantors shall not be released by time being given to the Mortgagor or by any other variation in the provisions of this deed or

any other act omission matter or thing whatsoever whereby the Guarantors as surety only would have been so released.

Document

A-20

(b) This security shall be constructed as a Guarantee of the whole of the principal moneys and interest owing or to become owing as aforesaid and the Guarantors shall not be entitled as against the Mortgagee to any right of proof in the insolvency of the Mortgagor unless and until the whole of such principal money and interest shall have first been completely discharged or satisfied.

Building Further Charge among Sang Lee Investment Co. Ltd. and Ma To Sang, Hudson Chen Wood, Kwan Fan Fat and The Bank of East Asia Ltd. Dated 17.2.1967

10 IN WITNESS whereof the Mortgagor hath caused its Common Seal to be hereunto affixed the Guarantors have hereunto set their hands and the Mortgagee hath caused its Common Seal to be hereunto affixed the day and year first above written.

SEALED with the Common Seal of the)
Mortgagor and SIGNED by Ramond Kent)
and Engene Mok, two of its Directors)
in the presence of:—)

Solicitor, Hong Kong.

20 SIGNED SEALED and DELIVERED by the)
Guarantors (they having been previously)
identified by)
in the presence of:—)

Solicitor, Hong Kong.

SEALED with the Common Seal of the)
Mortgagee and SIGNED by Fung Ping)
Fan, its Chief Manager and by Wong)
Chung Man and Kan Yuet Hing, two)
of its Directors,)
in the presence of:—)

30 INTERPRETED to the Guarantors
by:

Clerk to Messrs. Lo and Lo,
Solicitors, Hong Kong.

PLAINTIFF'S DOCUMENT

Document

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CERTIFICATE OF REGISTRATION OF BUILDING FURTHER CHARGE

Certificate of
Registration of
Building Further
Charge
Dated 2.3.1967

THE COMPANIES ORDINANCE

CERTIFICATE OF REGISTRATION

OF

BUILDING FURTHER CHARGE

I hereby certify that a Building Further Charge ----- dated the 17th day of February 1967 and created by SANG LEE INVESTMENT COMPANY LIMITED for securing further overdraft facilities to the extent of Hong Kong Dollars THREE MILLION AND FIVE HUNDRED THOUSAND (HK\$3,500,000) and interest -----

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was this day registered pursuant to Section 80.

GIVEN under my hand at Victoria, Hong Kong this Second day of March 1967.

(K.K. Ng)
Assistant Registrar
for Registrar of Companies
Hong Kong.

THIRD PARTY'S DOCUMENT

Document

DEED OF VARIATION OF BUILDING MORTGAGE

A-22

THIS INDENTURE made the 15th day of May One thousand nine hundred and sixty eight BETWEEN SANG LEE INVESTMENT COMPANY LIMITED "Mortgagor" THE BANK OF EAST ASIA LIMITED "Mortgagee".

Deed of
Variation of
Building
Mortgage
Dated 15.5.1968

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WHEREAS by a Building Mortgage dated the 8th day of January 1965 between the Mortgagor of the one part and the Mortgagee of the other part and registered in the Land Office by Memorial No. 471295 All That piece or parcel of ground then registered in the Land Office as The Remaining Portion of Section B of Quarry Bay Marine Lot No. 1 was assigned unto the Mortgagee by way of mortgage for securing advances totalling \$2,250,000.00 and an overdraft to the extent of \$750,000.00 with interest thereon subject to the provide for redemption therein contained.

AND WHEREAS the said piece or parcel of ground comprised in the said Mortgage has now been sub-divided into two separate sections and are now known and registered in the Land Office as Subsection 5 and The Remaining Portion of Section B of Quarry Bay Marine Lot No. 1.

20

AND WHEREAS of the said advances totalling \$2,250,000.00 sums totalling \$1,500,000.00 have been advanced by the Mortgagee to the Mortgagor and the remaining \$750,000.00 has not been advanced.

AND WHEREAS there is no money owing under the overdraft account secured by the said Mortgage.

NOW IT IS INDENTURE WITNESSETH as follows:—

30

1. The Mortgagor hereby releases the Mortgagee from its obligation to advance and the Mortgagee hereby releases the Mortgagor from its obligation to accept the advance of any further sum under the said Mortgage beyond the sum of \$1,500,000.00 already advanced as aforesaid.

2. As from the date hereof the said overdraft secured by the said Mortgage shall be closed and the Mortgagor shall cease to have any right to overdraft on such overdraft account.

3. It is hereby declared that nothing herein contained shall prejudicially affect the security of the Mortgagee upon the premises comprised in and expressed to be assigned by the said Mortgage for the said principal sum of \$1,500,000.00 and for all interest now due or hence forth to accrue thereon.

Document

IN WITNESS whereof the Mortgagor and the Mortgagee have caused their Common Seals respectively to be hereunto affixed the day and year first above written.

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Deed of
Variation of
Building
Mortgage
Dated 15.5.1968

SEALED with the Common Seal of the)
Mortgagor and Signed by)
in the presence of:—)

Solicitor,
Hong Kong.

SEALED with the Common Seal of the)
Mortgagee and Signed by)
in the presence of:—)

Solicitor,
Hong Kong.

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PLAINTIFF'S DOCUMENT

Document

COLLATERAL MORTGAGE

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Collateral Mortgage
Between Sang Lee
Investment Co.
Ltd. And The
Bank of East Asia
Dated 2.9.1969

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THIS INDENTURE made the 2nd day of September One thousand nine hundred and sixty nine BETWEEN: SANG LEE INVESTMENT COMPANY LIMITED whose registered office is situate at Rooms Nos. 1202-3 Bell House Nos. 525-543 Nathan Road Kowloon in the Colony of Hong Kong (which company and its successors and assigns are where not inapplicable hereinafter included under the designation "the Mortgagor") of the one part and THE BANK OF EAST ASIA LIMITED whose registered office is situate at No. 10 Des Voeux Road Central Victoria in the said Colony of Hong Kong (which bank and its successors are where not inapplicable hereinafter included under the designation "the Mortgagee") of the other part.

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WHEREAS by a Building Mortgage (hereinafter called "the Principal Mortgage") dated the 22nd day of July 1964 made between the Mortgagor of the one part and the Mortgagee of the other part and registered in the Land Office by Memorial No. 450176 All That piece or parcel of ground then registered in the Land Office as Subsection 4 of Section B of Quarry Bay Marine Lot No. 1 was assigned unto the Mortgagee by way of mortgage for securing the repayment of advances totalling \$2,250,000.00 and Overdraft granted to the Mortgagor to the extent of \$750,000.00 with interest thereon respectively subject to the proviso for redemption therein contained.

AND WHEREAS by a Further Charge (hereinafter called "the First Further Charge" dated the 12th day of January 1966 made between the Mortgagor of the one part and the Mortgagee of the other part and registered in the Land Office by Memorial No. 518835 the said Subsection 4 of Section B of Quarry Bay Marine Lot No. 1 was further charged with the payment of the sum of \$700,000.00.

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AND WHEREAS by another Further Charge (hereinafter called "the second Further Charge") dated the 17th day of February 1967 made between the Mortgagor of the first part Ma To Sang, Hudson Chen Wood and Kwan Fan Fat (hereinafter called "the Guarantors") of the second part and the Mortgagee of the third part and registered in the Land Office by Memorial No. 572743 the said Subsection 4 of Section B of Quarry Bay Marine Lot No. 1 was further charged with the payment of the principal moneys owing to the Mortgagee in respect of the said Overdraft granted to the Mortgagor the extent of which Overdraft was increased to \$4,250,000.00 with interest thereon.

AND WHEREAS the said sum of \$700,000.00 remains owing on the security of the First Further Charge and the Principal Mortgage.

AND WHEREAS the said Overdraft to the extent of \$4,250,000.00 secured by the Principal Mortgage and the Second Further Charge remains current and in operation.

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AND WHEREAS the whole of the said sum of \$2,250,000.00 has been advanced to the Mortgagor and \$2,131,767.94 part thereof has since been repaid and \$118,232.06 balance thereof now remains owing on the security of the Principal Mortgage Memorial No. 450176.

Document
A-23
Collateral Mortgage
Between Sang Lee
Investment Co.
Ltd. And The
Bank of East Asia
Dated 2.9.1969

AND WHEREAS the premises hereinafter more particularly described and intended to be hereby assigned are now vested in the Mortgagor for the residue of the term of 999 years from the 2nd day of February 1882 granted by a Crown Lease of Quarry Bay Marine Lot No. 1 dated 31st day of December 1932 and made between His late Majesty King George V of the one part and The Taikoo Sugar Refining Company Limited of the other part.

AND WHEREAS the Mortgagor has agreed to give further security for payment of the principal moneys remaining owing under the Principal Mortgage the First Further Charge and the Second Further Charge and interest thereon in manner hereinafter appearing.

10

NOW THIS INDENTURE WITNESSETH as follows:—

1. In pursuance of such Agreement and for consideration aforesaid the Mortgagor hereby assigns unto the Mortgagee ALL THOSE 217 equal undivided 1335th parts or shares of and in ALL THOSE pieces or parcels of ground registered in the Land Office as SUBSECTION 5 OF SECTION B OF QUARRY BAY MARINE LOT NO. 1 and THE REMAINING PORTION OF SECTION B OF QUARRY BAY MARINE LOT NO. 1 and of and in the buildings erected thereon together with the right to the exclusive use occupation and enjoyment of all the flats shops and units in the building erected on Subsection 5 of Section B of Quarry Bay Marine Lot No. 1 (except these already reassigned and released by the Mortgagee from Building Mortgage Memorial No. 471295 under Reassignment Memorial No. 691437) and all rights rights of way (if any) privileges easements and appurtenances to the same premises belonging or in anywise appurtenant and all the estate right title interest term and terms of years claims and demands whatsoever of the Mortgagor therein and thereto TO HOLD the said premises and their and every of their appurtenances unto the Mortgagee for the residue of the said term of 999 years and for all other the estate term and interest of the Mortgagor therein but subject nevertheless to the like proviso for redemption as is now subsisting in respect of the premises now remaining subject to the principal Mortgage and Subject to and with the benefit of a Deed of Covenant Memorial No. 627674.

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2. It is hereby agreed that all the powers provisions and covenants contained and implied in the Principal Mortgage and all other powers and provisions ancillary thereto shall apply to the premises in the Principal Mortgage and hereinbefore respectively assigned and charged as if the said premises in the Principal Mortgage and hereinafter respectively assigned and charged have formed part of the security given by the Principal Mortgage and the covenants other than the covenant for payment and the powers and provisions contained in the Principal Mortgage were herein repeated and set out at length.

IN WITNESS whereof the Mortgagor hath caused its Common Seal to be hereunto affixed the day and year first above written.

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SEALED with the Common Seal of the)
Mortgagor and SIGNED by Hudson Chen)
Wood and Kwai Sai Tak, two of its)
Directors, in the presence of:—)

Solicitor, Hong Kong.

PLAINTIFF'S DOCUMENT

Document

CERTIFICATE OF REGISTRATION OF COLLATERAL MORTGAGE

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Certificate of
Registration of
Collateral
Mortgage
Dated 4.9.1969

THE COMPANIES ORDINANCE

CERTIFICATE OF REGISTRATION

OF

COLLATERAL MORTGAGE

10 I hereby certify that a Collateral Mortgage ----- dated the
2nd day of September 1969 and created by SANG LEE INVESTMENT COMPANY
LIMITED for securing the total sums due and owing granted under a Building Mortgage
dated the 22nd July 1964, a Further Charge dated the 12th January 1966 and a
Further Charge dated the 17th February 1967 -----

was this day registered pursuant to Section 80.

GIVEN under my hand at Victoria, Hong Kong, this Fourth day of
September 1969.

(J.C. Koh)
Assistant Registrar,
Registrar of Companies
Hong Kong.

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CERTIFIED TRANSLATION

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MINUTES OF JOINT MEETING OF DIRECTORS OF

B-1

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
Joint Meeting of
Directors of Sang
Lee Investment
Co. Ltd. and
Ball Land
Investment
Co. Ltd.
Dated 28.10.1964

Date : 28th October, 1964
Time : 1 p.m.
Place : Mexican Room of Gloucester Restaurant
Attendance : Ma To Sang, Mok Tsze Fung, Kwok Wai Hung, Lee Yuen Chan,
Hudson Chen Wood, Ng Jo To, Ma Yau Chim, Lo Hoi Ming,
Kwan Fan Fat, Kwan Sai Tak, Lai Kwai Tim & Lee Siu Man.
10 Chairman : Mr. Kwan Fan Fat
Recorder : Mr. Lee Siu Man

The Secretary announced the notice of calling the meeting (outline of notice)

Firstly, Chairman Mr. Kwan Fan Fat said:

This is the first joint meeting of Sang Lee Investment Co. Ltd. and Ball Land Investment Co. Ltd. As regards the delay in the construction work of Davie Boag Site, I believe that each of you understand. However, owing to the slow process of the construction work, the purchasers often question and push us. Therefore we feel very difficult in dealing therewith. In fact, all aspects and every delay render us impossible to progress. Today, I request you hereby to discuss how to
20 remedy and quicken the construction work hereafter. Mr. Lo Hoi Ming is the one who is most familiar with the construction work.

Mr. Lo Hoi Ming:

Concerning the question as to whether the construction work can be quickened raised by Mr. Kwan just then, this question falls on the Contractor and the management since the present workers are very difficult to employ. With no good organisation and management, it is not easy to work out right. Now, with the help of Mr. Kwan Sai Tak in tightly progressing our construction work, tenders for the superstructure work have been sent out to every contractor which have not been returned yet. However, there is one point I have to raise; I think that the construction work on drainage and sanitary appliances has to be carried out by the same
30 contractor making it much simpler and easy to be managed. Since the sanitary appliances for such construction work are ordinary ones, it is not necessary to make the tenders therefore separately. If everyone of you agree thereto, please write to each contractor for offering the costs at the same time. Moreover, the earliest in the completion of the superstructure work should be the best chosen. Hope that it is preferable to have the completion within 12 or 14 months. As regards Tak Lee Building, foundation laying work can be started after the completion of the piling work.

Mr. Kwan Sai Tak:

40 Relating to the amount of steel used for the superstructure work of Davie Boag Building, I hope that the Architect could inform us at an early date as to such amount in order to make the purchase and not to fall short for the time being.

Document

Mr. Lo Hoi Ming:

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The style and quantity of steel used for Wai Lee and Po Lee Buildings will be listed within this week for the purchase.

Certified
Translation of
Joint Meeting of
Directors of Sang
Lee Investment
Co. Ltd. and
Ball Land
Investment
Co. Ltd.
Dated 28.10.1964

Chairman Mr. Kwan Fan Fat:

Concerning the proposal by Mr. Lo Hoi Ming just then as to the handing of the construction work on drainage and sanitary apparatus to the same contractor, if you agree, please vote.

Mr. Mok Tsze Fung seconded and it was passed unanimously.

Chairman Mr. Kwan Fan Fat:

At present, the contractor is negotiated for the foundation work of Wai Lee Building and agrees to co-operate and is willing to work overnight for the completion thereof. The same situation exists regarding the foundation work of Po Lee Building. Piling work is being carried out on the construction site of Tak Lee Building. It will be completed about 3 weeks' time. This foundation work is much easier and as it is already winter and there is no wind nor rain, I hope that it will not be delayed. Now, a few events have to be ratified because before my trip I discussed with the Bank of East Asia the mortgage in respect of Davie Boag Site to secure \$3,000,000.00 for the completion of the purchase and building, the \$3,000,000.00 with monthly interest of 1% which payment of mortgage money will be available when the construction work of 2nd floor is completed. Later, as completion was split into 2 parts, \$1,500,000.00 of the mortgage money was drawn first in July for the purpose of the completion.

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Mr. Lo Hoi Ming proposed the ratification.

Mr. Lai Kwai Tim seconded and it was passed unanimously.

Chairman Mr. Kwan Fan Fat:

Regarding the financial state of the Construction Site, it is believed that there will not be any great problem because of the following items of sources:

- (1) Raw material in store;
- (2) Income by way of monthly instalments; and
- (3) Mortgage with the Bank,

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hence it can be dealt with adequately. Moreover, the Bank of East Asia planned to purchase the front portion of ground floor, 1st floor and the basement of Tak Lee Building for the sum of about 1 million dollars in cash. However, a condition need to be stipulated that a signboard has to be put up before Tak Lee Building.

Mr. Lo Hoi Ming:

If a signboard is to be hung, it should not exceed 40 feet from the 1st floor in order to avoid interference with the tenants of the upper floors.

Mr. Mok Tsze Fung proposed that Mr. Kwan Fan Fat be authorised absolutely to negotiate with the Bank of East Asia.

Mr. Lo Hoi Ming seconded and it was passed unanimously.

Document

Chairman Mr. Kwan Fan Fat:

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There is one more item that has to be ratified concerning the question of maintenance (outline) of Tak Lee, Wai Lee and Po Lee Buildings. Mr. Mok suggested that a portion thereof should be used as maintenance fund for those buildings since on one hand it would reduce the trouble in the management of the buildings and on the other hand the purchasers would be pleased. It was passed at a meeting of Sang Lee Investment Co. Ltd. Now, by way of this joint meeting, the proposal is made that the 1 million dollars worth shop on the ground floor of Wai Lee Building should be reserved and used as maintenance fund of the said buildings.

Certified
Translation of
Joint Meeting of
Directors of Sang
Lee Investment
Co. Ltd. and
Ball Land
Investment
Co. Ltd.
Dated 28.10.1964

In the future, on the formation of the management committee, the money will be entrusted in accordance with the rules ordained by the agreements between landlords and tenants. At present, it is proposed by Sang Lee Investment Co. Ltd. If you think it is reasonable, please ratify.

Mr. Lai Kwai Tim seconded and it was passed unanimously.

There was no other business and the meeting was dismissed by the Chairman.

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MINUTES OF THE SECOND MEETING OF THE JOINT BOARD OF DIRECTORS

Certified
Translation of
2nd Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 25.11.1964

OF SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Date : 25th November, 1964
Time : 11.30 a.m.
Place : Room 1724, Central Building
Attendance : Lee Yuen Cham, Lo Hoi Ming, Kwan Fan Fat, Mok Tsze Fung,
Hudson Chen Wood, Ng Jo To, Ma Yau Chim, Kwan Sai Tak,
Lee Shiu Man
Chairman : Kwan Fan Fat
Recorder : Mr. Lee Shiu Man

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Passed the previous minute. Mok Tsze Fung proposed. Lo Hoi Ming seconded.
Passed unanimously.

Mr. Kwan Fan Fat:

The object of today's joint meeting is to make known the tenders submitted for constructing the superstructure of Wai Lee and Po Lee Building.

Mr. Lo Hoi Ming:

Concerning the tenders submitted in respect of Wai Lee and Po Lee Building, up till the date of these presents 5 construction companies submitted their tenders, they are:—

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1. Wang Fat Construction Co. Ltd.,
2. Nam Sang Construction Co. Ltd.,
3. Kwong Yik Construction Co. Ltd.,
4. Hip Hing Construction Co. Ltd.
5. Shun Hing Construction Co.

Apart from these, there is a letter written by Luen Hing Engineering Work Co. requesting for an extension of time and their tender will be submitted on the 30th day of this month and there is a letter from Koo Sun Kee requesting that the tender would be submitted on the 1st day of December. It is up to all of you to decide, whether or not the result of these tenders should be disclosed at the same time.

30

Mr. Kwan Sai Tak:

It takes time to work out the tender price and it costs expenses as well. For smooth-progressing sake, shall we wait for them before we disclose the tender.

Mr. Mok Tsze Fung proposed that there should be a disclosure of the tenders right away because 5 companies had already submitted their tenders, apart from those 2 companies whose tenders had not been received. It is unnecessary to wait which will cause further delay. But, in order to preserve the 2 companies' right to submit tender, we shall not decide until the morning of 1st day of December. In that case, both parties would be taken care of.

40

Lee Yuen Cham seconded.

Consent was given unanimously.

The Secretary opened the tenders as follows:--

10

	Price	Days of Completion
1. Wang Hing Construction Co. Ltd.	\$7,950,000.00	660
2. Nam Sang Construction Co. Ltd.	\$7,563,022.00	660
3. Kwong Yik Construction Co.	\$8,076,185.75	540
4. Hip Hing Construction Co. Ltd.	\$6,764,515.60	450
5. Shun Hing Construction Co. (waterpipes and sanitary apparatus not included)	\$5,819,136.10	450

20

Mr. Mok Tsze Fung proposed to let Mr. Lo Hoi Ming, the Architect to check the contents of the tenders, and the matter will be decided in the meeting to be held on 1st December and the directors would individually investigate into the background of the contractors. Then, the 2 companies who had tendered may also join in. This would be favourable for both sides.

Mr. Lee Yuen Cham seconded.

Unanimously passed.

No other business raised. The meeting was dismissed by the Chairman.

Document

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Certified Translation of 2nd Joint Meeting of Directors of Sang Lee Investment Co. Ltd. and Ball Land Investment Co. Ltd. Dated 25.11.1964

MINUTES OF 3RD JOINT MEETING OF DIRECTORS OF

Certified
Translation of
3rd Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 1.12.1964

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Date : 1st December 1964
Time : 11.30 a.m.
Place : Room 1724, Central Building
Attendance : Lo Hoi Ming, Lee Yuen Chan, Mok Tsze Fung, Hudson Chen
Wood, Kwan Fan Fat, Ma Yau Chim, Kwan Sai Tak, Lee Siu
Man.
Chairman : Kwan Fan Fat
Recorder : Lee Siu Man

10

Last minutes of meeting passed, proposed by Mr. Mok Tsze Fung and seconded by Mr. Lo Hoi Ming.

Passed unanimously.

Chairman Mr. Kwan Fan Fat:

It was resolved in the last meeting that each tender was to be sent to the architect Mr. Lo Hoi Ming for examination. Now, the architect has analysed each tender and listed out a report thereon. Please read the said report. Moreover, Luen Hing Construction Co. Ltd. has sent in their tender this morning and Shun Hing Construction Co. Ltd. has delivered to us their bill on sanitary appliances and pipes both of which we request the architect to open.

20

Mr. Lo Hoi Ming:

Now I open the bill of Luen Hing Construction Co. Ltd. which amounts to \$6,699,300.00 and period for completion 600 days. Regarding Shun Hing Construction Co. Ltd., the bill submitted late for pipes and sanitary appliances amounts to \$575,646.00.

Mr. Kwan Sai Tak:

I received the telephone call yesterday from Mr. Lo Yuk Ming of Nam Sang Construction Co. Ltd. who said that since the bill of the said company on sanitary appliances and scaffolding has been over-assessed by \$440,000.00, the said bill should be reduced by \$440,000.00, making the actual sum \$7,123,022.00. Concerning the period for completion, it can be made earlier to be 450 days.

30

Mr. Mok Tsze Fung:

As regards Kwong Yick Construction Co. Ltd., since the bill of the said company on the amount of steel has been over-assessed by one million dollars, I am willing to reduce this sum on the bill making the final amount \$7,076,185.75.

Chairman Mr. Kwan Fan Fat:

Since there are mistakes in the bills from the two companies, we under-

take to eliminate the excess. Now, the bill from those who offered the tender is corrected as follows:—

Document

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		Price	Period for Completion	Certified Translation of 3rd Joint Meeting of Directors of Sang Lee Investment Co. Ltd. and Ball Land Investment Co. Ltd. Dated 1.12.1964
10	1. Shun Hing Construction Co. Ltd.	\$6,394,782.10	450 days	
	2. Luen Hing Construction Co. Ltd.	\$6,699,300.00	600 days	
	3. Hip Hing Construction Co. Ltd.	\$6,764,515.60	450 days	
	4. Kwong Yick Construction Co. Ltd.	\$7,076,185.75	660 days	
	5. Nam Sang Construction Co. Ltd.	\$7,123,022.00	450 days	
	6. Wun Fat Construction Co. Ltd.	\$7,950,000.00	660 days	

Mr. Mok Tsze Fung:

20 Regarding the conditions for construction work, it's best for the contractor to guarantee 10% fixing certain days for one storey and there should be at least 100 workers for the construction work. Since Kwong Yick Construction Co. Ltd. has over-assessed the amount of steel and Nam Sang Construction Co. Ltd. has made some miscalculation, the tenders are quite close. In view of this, I suggest that Mr. Kwan Fan Fat should have absolute authority to manage, choose the contractor and sign agreements.

Mr. Kwan Fan Fat:

30 On account of your support, I am entrusted to deal without delay and should not shirk my responsibility. As the tender prices are so close together and all of you know each contractor quite well, the most important thing is that the architect should help us with his best since the architect is the leader and we only try our best to supervise the work.

Mr. Lee Yuen Cham:

I was ordered to investigate into the particulars of the contractor with Mr. Ma. As Mr. Ma is not free, I am ordered to do so. I hereby list out the particulars of Shun Hing Construction Co. Ltd. for your examination.

Mr. Lo Hoi Ming:

40 I think that the selection of construction workers should be based on experience since foremen are not easy for us to employ. It is hard to complete without any skilful work. It is suitable for us to take those who have a good name and construction site just completed. Moreover, they are best required to have 7 storeys because they don't have to wait for demolition and as a result it is much quicker.

Mr. Kwan Fan Fat:

Thanks to Mr. Lee Yuen Chan's investigation, Mr. Mok's analysis and the

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Certified
Translation of
3rd Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 1.12.1964

architect's help. Since the rear portion of the construction site was completed and the front portion in process, we wish to advance the date for starting the work. It depends on the help of the architect.

Mr. Kwan Fan Fat:

As regards giving out \$1,000,000.00 worth flats as the maintenance fund for Tak Lee, Wai Lee and Po Lee Buildings, notice therefore has been given to all purchasers.

No other business. Chairman dismissed the meeting.

CERTIFIED TRANSLATION

Document

MINUTES OF THE 6TH MEETING OF THE JOINT BOARD OF DIRECTORS

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OF SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
6th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 7.7.1965

10 Date : 7th July, 1965
Time : 1.00 p.m.
Place : French Room, Gloucester Building
Attendants : Lee Yuen Chan, Kwok Wai Hung, Ma To Sang, Kwan Fan Fat,
Ng Jo To, Kan Man, Kwan Sai Tak, Lai Kwai Tim, Mok Tsze
Fung represented by Chan Kwok Wah, Lo Hoi Ming, Hudson
Chen Wood, Lee Shiu Man
Chairman : Kwan Fan Fat
Recorder : Lee Shiu Man

Minute of the last meeting was passed.

Chairman Kwan Fan Fat:

If all consider that the minutes of the preceding meeting was without errors, please pass the same as correct.

Mr. Lee Yuen Chan proposed. Mr. Kwok Wai Hung seconded. All unanimously approved.

20 Chairman Kwan Fan Fat reported:

A contract had already been signed with Nam Sang Construction Co. in respect of the construction work of Po Lee and Wai Lee Building. The construction work has been smooth-going. Po Lee Building is built up to the 9th floor level, Wai Lee Building is built up to the 5th floor level. The steel price is ascertained according to the market price at \$39 per picul, the aggregate price of which is approximately \$700,000.00. In respect of the Building Mortgage, the Bank of East Asia had performed its obligation and the 1st instalment payable under the said Building Mortgage namely \$800,000.00 had been received.

30 Chairman Kwan Fan Fat:

Today, we are in receipt of the tenders submitted by 2 construction companies in respect of construction work of the foundation and superstructure of Tak Lee Building. The initial intention is to invite various contractors to submit tenders, but owing to some peculiar features of this construction site namely heavy wages in arrear and huge construction costs would make it difficult to submit a tender. Now the tenders submitted by the 2 construction companies are now presented and opened:—

Disclosure of tenders:—

Hing Kee Construction Co. Ltd. (lifts,
electrical appliances, drainage works,
fire-proof not included)

\$7,369,141.44

<p>Document</p> <p>B-4</p> <p>Certified Translation of 6th Joint Meeting of Directors of Sang Lee Investment Co. Ltd. and Ball Land Investment Co. Ltd. Dated 7.7.1965</p>	<p>Nam Sang Construction Co. Ltd. foundation</p> <p>Nam Sang Construction Co. Ltd. super- structure (lifts, electrical appliances, fire-proof, water-tank, pump and motors not included)</p>	<p>\$1,255,545.00</p> <p>\$7,418,205.00</p> <p><u>\$8,673,750.00</u></p>
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Chairman Kwan Fan Fat:

An enquiry need to be made before a report can be presented on whether or not the tender price submitted by Hing Kee Co. include the cost of foundation work. I now hand over the 2 tenders to Architect Mr. Lo Hoi Ming for checking before it can be determined.

10

Unanimously agreed.

No other business raised and the meeting is dismissed.

CERTIFIED TRANSLATION

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MINUTES OF THE 7TH MEETING OF THE JOINT BOARD OF DIRECTORS OF
SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

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Certified
Translation of
7th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Undated

Chairman : Kwan Fan Fat
Recorder : Lee Shiu Man

Passed the minute of the previous meeting.

Chairman Mr. Kwan Fan Fat:

If everybody consider that the minute of the previous meeting is without error, please pass it as confirmation.

10 Lai Kwai Tim proposed. Lee Yuen Chan seconded. All unanimously approved.

Mr. Kwan Fan Fat reported:

Only Hing Kee Construction Co. and Nam Sang Construction Co. had tendered for the construction of Tak Lee Building. The tendered prices of the 2 companies had been checked by the Architect. On comparing the 2 tendered prices, amongst the most important items are concrete and steel and there is a quantity difference between Hing Kee and Nam Sang. Nam Sang indicated that they will wait until Hing Kee had checked the same.

Mr. Kwan Fan Fat:

20 The tendered price of Hing Kee include the foundation amounting to \$7,369,141.44, but did not include the commission payable to the Architect. Besides, no money was intended to be paid as security. The tendered price of Nam Sang Company include the foundation amounts to \$8,673,750.00. Yesterday, Mr. Lo of Nam Sang Co. indicated that for the future prospect of the Company, they voluntarily gave up competing for the said construction work. For several times, I personally talked with Hing Kee as to the methods of payment. The conclusion was the quantity of concrete and steel should be calculated in accordance with the existing price list. Any additional amount shall be calculated in accordance with the price set out in the Price List as additional construction work. Interest should follow the pay-roll issued by the Architect. Interest should be charged at
30 the rate of 0.04% per day on the wages in arrear until completion of the R.C.C. work of the roof top. The above is reported to you for all of you to decide.

Mr. Lee Yuen Chan proposed to entrust the construction work of Tak Lee Building with Hing Kee Construction Co.

Lai Kwai Tim seconded.

Passed unanimously.

No other business raised, the meeting is dismissed.

Document B-5 Certified Translation of 7th Joint Meeting of Directors of Sang Lee Investment Co. Ltd. and Ball Land Investment Co. Ltd. Undated	Attendants :	Lee Yuen Chan, Kwok Wai Hung, Lai Kwai Tim, Ma To Sang, Kwan Fan Fat, Kan Man, Ng Pak Chun, Mok Tsze Fung represented by Mok Sang Chuen, Lo Hoi Ming, Ma Yau Chim, Lee Shiu Man.
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CERTIFIED TRANSLATION

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MINUTES OF THE 8TH MEETING OF THE JOINT BOARD OF DIRECTORS OF
SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

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Certified
Translation of
8th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 17.9.1965

Date : 17th September, 1965
Time : 4:00 p.m.
Place : Room 1724, Central Building
Attendants : Lo Hoi Ming, Kan Man, Ng Pak Chun, Mok Tsze Fung, Kwan
Fan Fat, Ma Yau Chim, Lee Yuen Chan, Kwok Wai Hung, Lee
Shiu Man
10 Chairman : Kwan Fan Fat
Recorder : Lee Shiu Man

Passed the minutes of the preceding meeting.

Chairman Kwan Fan Fat:

If everybody considered that the minutes of the last meeting was without error, please pass the same as correct.

Kan Man proposed, Lee Yuen Chan seconded.

Passed unanimously.

Items reported:—

Mr. Kwan Fan Fat reported:—

20 Today's meeting is to continue the last meeting of the Joint Board of Directors in which it was decided that the term of building undertaking in respect of Tak Lee Building was that the costs of construction work would not be payable until the RCC work of the roof-top is completed. Interest in respect of the wages would be calculated at the rate of 0.04% per day, the superstructure must be completed within 450 days, the foundation work must be completed within 4 months. The building contract would be the same as that of Wai Lee Building. The bonus have to be reduced. It was in respect of this matter that a negotiation was carried out with Hing Kee Construction Co. But Hing Kee Co. replied that they were short of cash recently and could not allow too much delay in payment of wages. In the
30 past, Nam Sang Construction Co. had indicated that they gave up because Hing Kee Co. possessed this favourable condition. Now that Hing Kee Co. had difficulty with allowing delay payment of wages, consequently, it was proposed to reconsider negotiating with Hing Kee as to the methods of payment and Mr. Kan Man was authorised to negotiate. Mr. Kan Man, please report the result of negotiation.

Mr. Kan Man:

For several times, I have negotiated with Hing Kee Construction Co. As to the method of payment, roughly speaking, the conclusion was not taking into account the usual 10% delay payment of wages. Wages for the whole construction work amount to \$4,900,000.00. Money receivable under Bank Mortgage amounts

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Certified
Translation of
8th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 17.9.1965

to \$1,500,000.00 and in fact, only \$3,400,000.00 need be paid. Delay payment of wages amounts to \$1,680,000.00, and daily interest of 0.04% is charged thereon. Details of income and expenditure is tabulated for analysis and presented to the Board for your reference.

Mr. Kwan Fan Fat:

Nam Sang Construction Co. now reconsider to vary the price to \$820,000.00, plastering inclusive. The method of payment is only \$3,000,000.00 need be paid as wages. Not taking into account the sum of \$1,500,000.00 being money receivable under the bank mortgage, only \$1,500,000.00 need be paid as wages. The balance of \$5,000,000.00, being delay payment of wages, is supported by one Japanese Sum Lam Co. Nam Sang Co. supplied the construction material, daily interest of 0.002% was charged upon the material being arrived at the construction site and the said interest is borne by us, but a term attached thereto was that Sum Lam Co. should be entrusted with the duty of purchasing the lifts used in the site. In respect of the above matters, everybody please make a decision.

10

Mok Tsze Fung:

Since Lo Hoi Ming is the director of Ball Land Investment Co. Ltd. as well as the representative of Nam Sang; in order to be fair to everyone, Mr. Lo Hoi Ming please withdraw himself for a minute for us to discuss and decide.

Mr. Lo Hoi Ming stood up, withdrew himself from the Board and went out.

20

Mok Tsze Fung:

Nam Sang Co. can meet our demand by allowing delay payment of wages, notwithstanding the fact that the price is raised by several hundred thousand dollars, it is still worthwhile as we do not need to raise money for paying the construction costs. For the sake of convenience, the price still follow that of Hing Kee amounting to \$1,369,181.44 with an addition of bonus amounting \$600,000.00 and there will not be a big difference between the price set by Nam Sang. What does everybody think?

Value of flats already sold	\$11,444,621.40	
1. Value of the balance of unsold flats	\$ 5,250,612.60	30
2. Estimated interest upon sale of all flats	\$ 2,121,592.80	
3. Unpaid purchase price (up till the 43 instalment) (1st May, 1962 – 30th November, 1965)	\$ 2,288,949.70	
4. From 44th instalment up to 60th instalment (1st Dec., 1962 to 30th April, 1967)	\$ 2,829,374.80	
5. Money receivable on the issuance of occupation permit	\$ 850,857.80	
Total of the above 5 items	\$13,341,387.70	
	=====	

Estimated expenditure if the construction work is completed in accordance with the schedule:—

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1.	Nam Sang's Construction cost in building superstructure	\$2,610,000.00		Certified Translation of 8th Joint Meeting of Directors of Sang Lee Investment Co. Ltd. and Ball Land Investment Co. Ltd. Dated 17.9.1965
2.	Architect's fee	\$ 40,000.00		
3.	Construction costs of lifts	\$ 646,000.00		
4.	Construction costs of electrical appliances	\$ 80,000.00		
5.	Interest payable (per annum)	\$ 300,000.00		
10 6.	Sundries	\$ 100,000.00		
		\$3,836,000.00	\$3,836,000.00	
			\$9,505,387.70	
			=====	
		Repayment to Bank of East Asia	\$3,000,000.00	
		Balance of Profit	\$6,505,387.70	
			=====	
	Our Co's registered capital	\$5,000,000.00		
	Paid-up capital	\$3,605,480.00		
	31st July, 1966.			

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MINUTES OF THE 10TH JOINT MEETING OF DIRECTORS OF

Certified
Translation of
10th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 6.12.1965

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Date : 6th December 1965
Time : 11 a.m.
Place : Room 1724, Central Building
Attendance : Lee Yuen Chan, Mok Tsze Fung, Lo Hoi Ming, Ma Yau Chim,
Kwan Fan Fat, Lai Kwai Tim, Kwan Sai Tak, Lee Siu Man &
Hudson Chen Wood
Chairman : Kwan Fan Fat
Recorder : Lee Siu Man

10

The Secretary read out the minutes of the last meeting (minutes skipped).

The Chairman:

The minutes of the last meeting have been read out by the Secretary. If you consider they are indisputable, please approve them by passing.

Mr. Lai Kwai Tim proposed Mr. Lee Yuen Chan seconded. Passed unanimously.

Mr. Kwan Fan Fat:

The terms on Further Charge for negotiation with the Bank of East Asia as decided at the last meeting vary from those suggested by the said Bank at this meeting. Therefore we make it a topic of our discussion. Recently, Messrs. Ma To Sang and Hudson Chen Wood and I went to the Bank of East Asia. The said Bank offered us 6 terms (lay out for others' attention). I then requested the Bank as to whether they could take the 6 terms as a conversational problem so that we could come back and discuss with you. However, the Bank indicated that these terms were determined by thorough consideration of the Bank.

20

Regarding the 1st term, originally \$1,000,000.00 worth property or stocks were to be given as securities. But now, the value of \$2,000,000 is required and assessed by the Bank. This point is worth discussion. The provisions of the 2nd term are quite reasonable since the loans are spent on the buildings. Concerning the 3rd term, the Bank explained that any one syndicate cannot borrow from the Bank more than 25% of its capital. There is no problem with the 4th term since the conditions for each instalment is examined at any time. I happened to suggest that the 5th term was needless since that the construction work was almost completed. However, the Bank said that in order to deal with the auditor, the report by the surveyor was required as a record. The 6th term provides that the period for guarantee has to be extended for the securities. The provision raises the question with the securities, thus I put forward such point for your discussion.

30

Mr. Mok Tsze Fung:

Regarding the terms suggested by the Bank of East Asia, although it is

reasonable, on the side of ability, if there is no way to follow, it is useless. As the matter is urgent, we have to remedy the same. I think there are 3 points for the resolution:—

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- (1) Ask for unpaid flat price from purchasers since the purchasers of Wai Lee and Po Lee owe the unpaid flat price in the sum of \$2,300.00 which should have been collected.
- (2) Collect from the partners \$2,000,000.00 i.e. \$1,000,000.00 borne by each company.
- (3) Borrow from the Bank by trying to negotiate with other banks which have been entrusted by the Government. Should there be any circumstance such as ours, that is, all flats sold but not enough monies received to deal with the contractor, the Bank ought forthwith to support by lending money.

Certified
Translation of
10th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 6.12.1965

10

I think it is best in the first place to plan to collect the flat price from the purchasers. Since Mr. Lo Hoi Ming is both a contractor and a big share-holder of our company, we would have his substantial support for the time being. Also, Mr. Lo Hoi Ming, the contractor, is to entrust the solicitor to demand payment of the purchase price in order to meet the construction fee. I believe that it will be a solution to this problem.

20 Mr. Kwan Fan Fat proposed to form a sub-committee and ask Messrs. Mok Tsze Fung and Lo Hoi Ming to manage with absolute authority.

Mr. Lee Yuen Cham seconded. Passed unanimously.

No other business. Meeting dismissed.

Document	Items resolved:—
B-7 Certified Translation of 10th Joint Meeting of Directors of Sang Lee Investment Co. Ltd. and Ball Land Investment Co. Ltd. Dated 6.12.1965	<p>Mr. Mok Tsze fung proposed to entrust Nam Sang Construction Co. Ltd. to construct Tak Lee Building in accordance with the following terms:—</p> <ol style="list-style-type: none"> 1. According to the bill of Hing Kee, the price is \$7,369,141.44. 2. Bonus \$600,000.00 3. Amount for practical material including interest. 4. Mortgage money \$1,500,000.00 Payments in accordance with the terms of the mortgage. 5. Beyond 15th floor, pay up to \$1,500,000.00. 6. The whole period for the completion of construction work including footing: 550 working days. 10 7. Construction work on cement concrete limited to 280 working days until the completion of the roof.

Mr. Lee Yuen Chan seconded. Passed unanimously.

Mr. Lo Hoi Ming was invited to attend the meeting, Mr. Mok Tsze Fung repeated the past events to Mr. Lo Hoi Ming who agreed to accept the above terms for construction.

No other business. Chairman dismissed the meeting.

TRANSLATION

Document

MINUTES OF THE 13TH JOINT MEETING OF DIRECTORS OF

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SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
13th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 26.7.1966

Date : 26th July 1966
Time : 12 o'clock in the afternoon
Place : Room 1724, Central Building
Present : Lo Hoi Ming, Kan Man, Lai Kwai Tim, Ng Pak Chun, Li Yuen Chan, Ma Yau Chim, Kwan Sai Tak, Kwok Wai Hung, Li Siu Man
10 Chairman : Kan Man
Recorder : Li Siu Man

The Secretary read the minutes of the last meeting (minutes not copied).

Chairman said:

Please pass and confirm if you consider that the minutes of the last meeting are correct.

Mr. Li Yuen Chan proposed and Mr. Lai Kwai Tim seconded.

Unanimously passed.

Mr. Kan Man said:

20 I attend the meeting on behalf of Mr. Kwan Fan Fat who touring Europe, has asked for leave of absence. The purpose of this joint meeting is to discuss 2 matters:—

- (1) A letter dated 22/7/1966 from Lo Man Kam solicitor, acting for the Bank of East Asia, has been received, requesting that the loan of \$1,500,000 on the mortgage of Tak Lee Building and interest of \$55,000 odd must be settled on or before 12 noon, the 2nd of August 1966.
- (2) How to speed up the construction work of the Wai Lee and Po Lee Buildings.

If you, Mr. Directors, have any view, please bring out for discussion of the meeting.

30 Mr. Lai Kwai Tim said:

We ought to send a representative to plead with the Bank of East Asia. As Sang Lee Company has been fully authorized to deal with matters in connection with the Tak, Wai, Po site, Sang Lee will, perhaps, send a representative to call on the Bank.

Mr. Kan Man said:

Primarily, a representative of course has to be sent to plead with the

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Certified
Translation of
13th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 26.7.1966

Bank, but we must first know how the money can be repaid before we can make any proposal to the Bank. Although in the past Sang Lee was dealing with matters concerning the Tak, Wai, Po site on (the Company's) behalf, yet because this matter is of paramount importance, it is necessary for the 2 companies to adopt some measures and each to send a representative to call at the Bank in order to cope with the situation. No matter what measure – to repay part of the loan or to settle the interest first – is decided before going to plead with the Bank, the 2 companies have to make a contribution. The current account of Sang Lee Company has lent out altogether \$436,176 as at the present month and the directors of Sang Lee have lent their personal properties for raising a mortgage-loan of \$700,000, making a total of \$1,136,176. As far as our company is concerned, we have done our utmost and therefore we hope that Ball will be able to raise part of the money to cope with the situation. We cannot rely on one party alone and must put through our united effort in order to achieve success.

10

Mr. Lo Hoi Ming said:

As far as I am concerned, I am incapable of taking further responsibility because Nam Sang Company, in which I have a share, has/is owed approximately \$800,000 odd.

Mr. Kan Man said:

Regarding method, money can be raised by increasing capital, even allowing a special privilege of 50% (discount). Money should first be raised from the shareholders or friends and relatives. Someone has employed such method to raise a portion of the fund to cope with the situation before.

20

Mr. Lo Hoi Ming proposed:

My personal opinion is that the Bank should first be approached indicating that outstanding interest will first be settled or the said mortgage-loan of \$1,500,000 be transferred to the mortgage of Wai Lee and Po Lee Buildings.

Mr. Lee Yuen Chan seconded and was unanimously passed.

Mr. Kan Man said:

Since it has so decided, will the parties nominate representatives.

30

Mr. Lo Hoi Ming said:

Please wait till tomorrow for the reply which will be given after Ball Company has studied the matter in a meeting.

Mr. Kan Man said:

Under the circumstances, we will have to wait till tomorrow when Ball Company will give a reply after it has studied the matter in a meeting and then we will call at the Bank together.

There being no other business, the meeting closed.

(sd.) Kan Man

TRANSLATION

Document

MINUTES OF THE 14TH JOINT MEETING OF DIRECTORS OF

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SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
14th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 27.7.1966

Date : 27th July 1966
Time : 11.30 a.m.
Place : Room 1724 Central Building
Present : Lai Kwai Tim, Lo Hoi Ming, Kan Man, Kwok Wai Hung, Li Yuen Chan, Kwan Sai Tak, Mok Tsze Fung, Ma Yau Chim, Li Siu Man
10 Chairman : Kan Man
Recorder : Li Siu Man

To pass the minutes of the last meeting.

Chairman said:

Please pass and confirm if you consider that the minutes of the last meeting are correct.

Mr. Lo Hoi Ming proposed and Mr. Li Yuen Chan seconded.

Unanimously passed.

Mr. Kan Man said:

20 The purpose of the meeting held today is to discuss the matters raised at the last meeting, i.e. the letter sent by the Bank of East Asia requesting immediate repayment of the loan of \$1,500,000 on the mortgage of Tak Lee Building together with interest of \$50,000 odd.

Mr. Mok Tsze Fung said:

30 With regard to the question of how to meet the request of the Bank for repayment of the mortgage loan, I think that we must first have a concrete scheme. If \$1,500,000 odd has to be raised, it is impossible under the present circumstances, to raise such a large sum. However, arrangement to raise money for repaying part of the mortgage loan or to settle the outstanding interest first is not practical because interest has to be paid every month, and the method in paying interest constantly will not be a good one. I personally opine that money should be collected from the purchasers because the total price of flats of the Wai Lee and Po Lee Buildings receivable amounts to approximately \$3,000,000 odd. If solicitor is instructed to demand for payment, 100% of this money can be collected which can be applied to the repayment of the mortgage loan and payment of the construction fee.

Mr. Kan Man said:

Since Mr. Mok Tsze Fung is confident that this money can be collected, then we can proceed with the collection on one hand and sending representatives to plead with the Bank on the other.

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Certified Translation of 14th Joint Meeting of Directors of Sang Lee Investment Co. Ltd. and Ball Land Investment Co. Ltd.
Dated 27.7.1966

Mr. Mok Tsze Fung proposed that Mr. Lo Hoi Ming and Mr. Kan Man be nominated to see solicitor Lo Man Kam before the 2nd of August 1966, informing solicitor Lo that the present position of the company could not be able financially to make the repayment and requesting that an extension of 2 months be granted pending collection of the price of flats from the purchasers for repayment; and also to request him to collect the price of flats on (the company's) behalf.

Mr. Li Yuen Chan seconded.

Unanimously passed.

Mr. Kan Man said:

Sang Lee Company has previously sent a letter to Ball Co. because Sang Lee Company has advanced \$400,000 odd and together with the mortgage of personal properties for \$700,000, making a total of \$1,100,000 odd, to the account of the joint venture of Tak, Wai, Po site. The money advanced by the Sang Lee Company was borrowed from other people who have now pressed for repayment and further, it has to bear a monthly interest of \$50,000 odd. 10

Mr. Mok Tsze Fung said:

Since it has now been decided to demand payment of the price of flats from purchasers, the problem will be solved as soon as we know the result.

Mr. Mok Tsze Fung proposed:

Mr. Kan Man and Mr. Lo Hoi Ming be nominated to instruct solicitor to send letters to the purchasers demanding for payment of the price of flats. 20

Mr. Li Yuen Chan seconded and unanimously passed.

Mr. Li Yuen Chan proposed that regular meeting should be held every Thursday at 4.30 p.m. at Room 1724 Central Building henceforth.

Mr. Kwok Wai Hung seconded and unanimously passed.

There being no other business, the meeting closed.

(sd.) Kan Man

TRANSLATION

Document

MINUTES OF THE 15TH JOINT MEETING OF DIRECTORS OF

B-10

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
15th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 11.8.1966

10 Date : 11th August 1966
Time : 4.30 p.m.
Place : Room 1724 Central Building
Present : Lo Hoi Ming, Kan Man, Kwok Wai Hung, Ma Yau Chim, Lai
Kwai Tim, Kwan Sai Tak, Li Yuen Chan, Li Siu Man
Chairman : Kan Man
Recorder : Li Siu Man

To pass the minutes of the last meeting.

Chairman said:

Please pass and confirm if you think that the minutes of the last meeting are correct.

Mr. Lai Kwai Tim proposed, Mr. Li Yuen Chan seconded and unanimously passed.

Mr. Kan Man said:

20 Being nominated at the last joint meeting of Directors to instruct solicitor to demand for payment of the price of flats, I went with Mr. Lo Hoi Ming and Mr. Kwan Sai Tak to see Mr. Liu Kwing Wah of Johnson, Stokes & Master. After detailed discussion with him, Mr. Liu indicated that copies of all the agreements of sale & purchase in respect of Wai Lee, Po Lee Buildings be sent to him for perusal, and a detailed list of assets & liabilities of the said site, whether the un-completed work could be completed, amounts and number of instalments due from each of the purchasers, architect certificate, and estimated time of completion to be sent to him for reference. When he was fully acquainted with everything in connection with the matter, he would then take instruction. (He also indicated) that the money could only be applied to the construction fee of the Wai Lee, Po Lee Buildings and repayment of the loan on the mortgage of these 2 buildings and could not be applied to the repayment of the loan on the mortgage of Tak Lee Building or for other purpose, otherwise the solicitor could not account and explain to the purchasers.

30

Mr. Lo Hoi Ming said:

The said certificate has already been obtained from the architect Ng Yiu Wai, contents of which are, in brief, the roof concrete work has been completed and work would be completed within 6 months.

Mr. Kan Man said:

At present Mok Sing Chuen solicitor has been notified to send over copies of the purchasers agreements to Johnson, Stokes & Master and also to send the list of assets of the site.

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Certified
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15th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 11.8.1966

Mr. Kan Man said:

It is now necessary that the question of how to speed up the construction work of the Wai Lee, Po Lee Buildings be discussed. Since demand for payment of the price of flats is in progress, it is necessary that the question of how to raise funds in order to expedite the completion of the construction work be discussed. Sang Lee Company has previously advanced \$400,000 odd and lent out private properties for raising a mortgage loan of \$700,000. In fact Sang Lee Company itself has no money to make the advance, but the advance was made with money borrowed from Yi Tang Chung. At present Yi Tang Chung is pressing Sang Lee Company for repayment and it is therefore hoped that you can raise funds to repay the loan of Sang Lee.

10

Kwok Wai Hung said:

I propose that a meeting of directors be held at 4 p.m. on the 15th instant at Room 1724 Central Building to discuss how to deal with the loan of \$1,500,000 on the mortgage of Tak Kee Building due to the Bank of East Asia.

Mr. Li Yuen Chan seconded and unanimously passed.

There being no other business, the meeting closed.

(sd.) Kan Man

TRANSLATION

Document

MINUTES OF THE 16TH JOINT MEETING OF DIRECTORS OF

B-11

SANG LEE INVESTMENT CO. LTD. AND BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
16th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 15.8.1966

10 Date : 15th August 1966
Time : 4 p.m.
Place : Room 1724 Central Building
Present : Lo Hoi Ming, Kan Man, Kwok Wai Hung, Ma Yau Chim, Kwan Sai Tak, Li Siu Man
Chairman : Kan Man
Recorder : Li Siu Man

To pass the minutes of the last meeting.

Chairman said:

Please pass and confirm if you consider that the minutes of the last meeting are correct.

Mr. Lo Hoi Ming proposed, Mr. Kwok Wai Hung seconded and unanimously passed.

Mr. Kan Man said:

20 1) In the past, the company frequently sent letters to all purchasers demanding for payment of the price of flats of Wai Lee, Po Lee Buildings, and later the solicitor firm of Brutton was instructed to give notice demanding for payment. Now Johnson, Stokes & Master is to be instructed to demand payment of the outstanding price of flats. Today I went with Mr. Lo Hoi Ming and Mr. Kwan Sai Tak to the office of Johnson, Stokes & Master to discuss at length with Mr. Liu Kwing Wah regarding instruction to press for payment of the outstanding price of flats.

30 2) The main subject to be discussed today is the repayment of the loan of \$1,500,000 and interest of \$55,000 odd on the mortgage of Tak Lee Building as demanded by the Bank of East Asia. Together with Mr. Lo Hoi Ming, I called on the solicitor and the Bank on the 27th ultimo, indicating to them that repayment could not be made at the moment due to the fact that the purchasers owed the price of flats in the amount of several million dollars. The Bank pointed out that there was still one month to go before the date of repayment expired. We requested that we would furnish a reply after having made a concrete scheme of repayment. If you have any good suggestion on this point, please bring out for discussion.

Mr. Li Siu Man said:

Mr. Mok Tsze Fung spoke to me over the phone this morning, asking me to put forward the following matters for discussion of the meeting on his behalf:—

40 1) To hold over temporarily the discussion of the question of repayment of the Tak Lee Building, pending further demanding letter from the Bank,
2) To employ the "Tak Lee Building method" to transfer the Tak Lee Building or the entire business.

Document

Mr. Kwan Sai Tak said:

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Sang Lee Company has been holding regular meetings on every Wednesday and we shall discuss the question at the next meeting. It is hoped that Ball Company will also call a meeting for such discussion.

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Translation of

16th Joint Meeting

of Directors of

Sang Lee

Investment Co.

Ltd. and Ball

Land Investment

Co. Ltd.

Dated 15.8.1966

Mr. Lo Hoi Ming said:

I agree that Ball Company should convene another meeting on the coming Wednesday to discuss the matter, and whatever outcome of that meeting would be brought up for discussion of the regular joint meeting to be held on Thursday next.

There being no other business, the meeting closed.

(sd.) Kan Man 10

TRANSLATION

Document

MINUTES OF THE 17TH JOINT MEETING OF DIRECTORS OF
SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

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Certified
Translation of
17th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 18.8.1966

10 Date : 18th August 1966
Time : 4.30 p.m.
Place : Room 1724 Central Building
Present : Lo Hoi Ming, Kan Man, Li Yuen Chan, Ma Yau Chim, Kwan
Sai Tak, Li Siu Man
Chairman : Kan Man
Recorder : Li Siu Man

To pass the minutes of the last meeting.

Chairman said:

Please pass and confirm if you consider that the minutes of the last meeting are correct.

Mr. Lo Hoi Ming proposed, Mr. Li Yuen Chan seconded and unanimously passed.

Mr. Kan Man said:

20 The regular joint meeting held today is to discuss matters concerning the mortgage of the Tak Lee Building, how to reply to the Bank of East Asia and instruction to solicitor to collect the price of flats. The discussion has been postponed at the last meeting to be resumed today. Has Ball Company made any suggestion for the discussion of all?

Mr. Lo Hoi Ming said:

Ball Company passed 3 resolutions at the meeting held yesterday:—

- 1) To postpone the discussion of the question of repaying the loan on the mortgage of Tak Lee Building,
- 2) To deal with the construction work of Wai Lee, Po Lee Buildings in accordance with the lately executed contract,
- 3) To transfer the Tak Lee site or to transfer the entire business of Tak Lee, Wai Lee, Po Lee.

30 Mr. Kan Man said:

Sang Lee Company also agrees in principle to have the entire business of Tak Lee, Wai Lee, Po Lee transferred. Conditions of the transfer have to be discussed and set should there be any party interested.

Mr. Kan Man said:

What reply should be given to the Bank in connection with the mortgage of Tak Lee Building? Mr. Mok Tsze Fung thinks that a reply should only be made after 22/8/1966 on the ground that the purchasers owe a considerable amount of the price of flats and Johnson, Stokes & Master has now been instructed to demand for payment.

Document B-12 Certified Translation of 17th Joint Meeting of Directors of Sang Lee Investment Co. Ltd. and Ball Land Investment Co. Ltd. Dated 18.8.1966

Mr. Li Yuen Chan said:
 Before sending a reply to the lender, I think that the draft-reply should be referred to Mr. Mok Tsze Fung first because Mr. Mok has legal knowledge. I have known him for over 30 years and I have absolute confidence in him as far as legal matters are concerned.

Mr. Kwan Sai Tak reported:
 1) The solicitors of flat-purchasers of Tak Lee Building have from time to time written letters requesting to return the flats. What should be done?
 2) Tak Lee previously sold out 438 flats, selling price \$8,334,454.40, amount already received \$4,683,804.50

10

At present transferred (? returned)

229 flats, selling price \$4,367,941.00,
 amount already received \$2,481,997.40

Difference

209 flats, selling price \$3,966,513.40
 amount already received \$2,201,807.10

3) Wai Lee unsold (flats):

17 flats value \$287,764.00

Wai Lee (Nos. 1 – 3)

14 flats value \$444,094.00

20

31 flats value \$731,858.00

4) Po Lee unsold (flats)

21 flats value \$444,515.00

Mr. Kwan Sai Tak said:

Since the business of the Tak, Wai, Po site is to be transferred in principle, it would be preferable that the accountant firm of Lowe Bingham & Matthews be engaged to prepare an estimate in order to show that everything is fair and square.

Mr. Lo Hoi Ming said:

The engagement of the accountant firm of Lowe Bingham & Matthews to make the preparation would not be necessary, and an estimate to be prepared by Sang Lee Company would be sufficient.

30

There being no other business, the meeting closed.

(sd.) Kan Man

TRANSLATION

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MINUTES OF THE 18TH JOINT MEETING OF DIRECTORS OF

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SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
18th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 25.8.1966

10 Date : 25th August 1966
Time : 4.30 p.m.
Place : Room 1724 Central Building
Present : Lo Hoi Ming, Kwok Wai Hung, Kwan Sai Tak, Li Yuen Chan,
Lai Kwai Tim, Li Siu Man, Kan Man
Chairman : Kan Man
Recorder : Li Siu Man

To pass and confirm the minutes of the last meeting. Please pass and confirm if you consider that the minutes are correct.

Mr. Kwok Wai Hung proposed, Mr. Li Yuen Chan seconded and unanimously passed.

Mr. Kan Man said:

- 20 1) I called at the Bank of East Asia this morning because the solicitor firm would like to have the Bank's agreement to release the Wai Lee, Po Lee Buildings, unit by unit on redemption of the mortgage before accepting instruction. A list in connection therewith has now been sent.
- 2) Mr. Mok Tsze Fung said at the conference of Sang Lee yesterday that Mr. Lo Hoi Ming was the authorised representative of Ball Company to look for an appropriate method of transfer of the Tak, Wai, Po site, and to work with the representative of Sang Lee Company, Mr. Kan Man, to sell on the most favourable term. Of course, the best term would be: some profit could still be made after deducting the money previously shared. The next best term would be: the money so shared could be covered, and the third would be: part of the money previously shared has to be refunded; but the last method would be the worst and of course, is unsatisfactory.

Mr. Lo Hoi Ming said:

30 Yesterday Mr. Mok Tsze Fung also suggested that Mr. Li Siu Man and myself would have to look into the question of transfer with Sang Lee Company, because I have the knowledge of the construction work and Mr. Li Siu Man has the knowledge of the site accounts. I propose that the accounts of the Tak, Wai, Po site be made up to 25/8/1966 with which we would know what method should be adopted to deal with the transfer.

Mr. Kwan Sai Tak seconded and unanimously passed.

Mr. Kan Man said:

As soon as the accounts are worked out and closed by Sang Lee Company and Mr. Li Siu Man, we will study the matter again together with Mr. Lo Hoi Ming.

There being no other business, the meeting closed.

(sd.) Kan Man

MINUTES OF THE 19TH JOINT MEETING OF DIRECTORS OF

Certified
Translation of
19th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 1.9.1966

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Date	:	1st September 1966
Time	:	4.30 p.m.
Place	:	Room 1724 Central Building
Present	:	Kan Man, Kwan Sai Tak, Li Yuen Chan, Ma Yau Chim, Lo Hoi Ming, Li Siu Man
Chairman	:	Kan Man
Recorder	:	Li Siu Man

10

To pass the minutes of the last meeting.

Chairman said:

Please pass and confirm if you consider that the minutes of the last meeting are correct.

Mr. Lo Hoi Ming proposed, Mr. Li Yuen Chan seconded and unanimously passed.

Reports:—

Mr. Kan Man said:

1) Negotiation with the Bank of East Asia in connection with repayment of the loan on the mortgage of Tak Lee Building lately has not yet produced any result. Discussion will be resumed on the return of Mr. Kwan Fan Fat from his tour in Europe in the middle of the month.

20

2) Also, (we) called on Mr. Liu Kwing Wah at the solicitor office of Johnson, Stokes & Master lately and Mr. Liu has agreed to send letters on the 1st of September to all the tenants demanding for payment of the price of flats. No matter what result is produced, a report will be made to you in due course.

Matters discussed:—

Mr. Lo Hoi Ming said:

Regarding Tak, Wai, Po Buildings, collection of the price of flats from the tenants at the present moment is not as satisfactory as we first thought. It is hoped that the construction work of the building could be completed at an early date because a considerable amount of interest is paid by the company at present.

30

Regarding the question of collection, the best policy is: the purchasers would transact by means of mortgage on the one hand and that would make things easier for the company, and the loan on the mortgage of Tak Lee Building be refunded on the other hand in order that the amount of interest payment be reduced. In case Tak, Wai, Po Buildings are put in the hand of the Government for auction in future, the effect would bring shame to the realty circle. It is hoped that after discussion by the directors, outside share (holders) and new people be invited

to support the completion of the said buildings. At present the realty (market) appears to revive, and the prospect might not be gloomy.

Mr. Kan Man said:

When the estimate of the Tak, Wai, Po Buildings is prepared a few days later, an appointment will immediately be made with Mr. Lo Hoi Ming to discuss and work out a detailed price list before inviting outside share (holders).

There being no other business, the meeting closed.

(sd.) Kan Man

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Certified
Translation of
19th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 1.9.1966

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MINUTES OF THE 20TH JOINT MEETING OF DIRECTORS OF

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
20th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 8.9.1966

Date : 8th September 1966
Time : 4.00 p.m.
Place : Room 1724 Central Building
Present : Li Yuen Chan, Kan Man, Ma Yau Chim, Lai Kwai Tim, Kwan Sai Tak, Li Siu Man
Chairman : Kan Man
Recorder : Li Siu Man

10

To pass the minutes of the last meeting.

Chairman said:

Please pass and confirm if you consider that the minutes of the last meeting are correct.

Mr. Li Yuen Chan proposed, Mr. Lai Kwai Tim seconded and unanimously passed.

Reports:—

Mr. Kan Man said:

- 1) Mr. Liu of Johnson, Stokes & Master has sent over a draft of a letter for perusal (produced for the perusal of all the directors present). Solicitor Mok Sing Chuen has sent a total of 108 copies of the Wai Lee, Po Lee agreements on 2 separate occasions. 20
- 2) The construction work of Wai Lee, Po Lee Buildings has completely stopped for 1 week. Of the present instalment of payable construction fee of \$80,000, \$45,000 has already been paid.
- 3) Purchasers of Tak Lee Building have served writs requesting refund of the price of flats and interest.

Matters discussed:—

Mr. Kan Man said:

According to the present circumstances, although in principle the price of flats may be 100% collectable, yet the money cannot be collected right away to meet this extreme urgency, and further (we) have not any concrete schemes to cope with the demand of the Bank for repayment. Therefore, Sang Lee Company indicates that the company is willing to transfer all the shares held to be treated as settlement of the current account of \$1,135,560.60 drawn and also interest, and let one single party or any third party to assume all the debts, liabilities and construction fee, and all subsequent profit or loss and obligations will have no connection with the transferrer. 30

Mr. Lai Kwai Tim said:

I am willing to accept such arrangement too, but I have only a small share in Ball and therefore we have to wait for the agreement of Mr. Mok Tsze Fung or all the directors of the Ball Company before going ahead.

There being no other business, the meeting closed.

(sd.) Kan Man

Document

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Certified
Translation of
20th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 8.9.1966

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MINUTES OF THE 21ST JOINT MEETING OF DIRECTORS OF

Certified
Translation of
21st Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 15.9.1966

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Date : 15th September, 1966
Time : 4.30 p.m.
Place : Room 1724 Central Building
Present : Li Yuen Chan, Lo Hoi Ming, Kwan Sai Tak, Lai Kwai Tim, Ma
Yau Chim, Kan Man, Li Siu Man
Chairman : Kan Man
Recorder : Li Siu Man

10

To pass the minutes of the last meeting.

Chairman said:

Please pass and confirm if you consider that the minutes of the last meeting are correct.

Mr. Lo Hoi Ming said:

I was absent during the last meeting. Minutes of the last meeting, Reports: item (2) the construction work of Wai Lee, Po Lee Buildings has completely stopped for 1 week should be amended to read "partially stopped".

Chairman said:

That is amended accordingly and please pass and confirm.

20

Mr. Lai Kwai Tim proposed, Mr. Li Yuen Chan seconded and unanimously passed.

Reports:—

Mr. Kan Man said:

- 1) Solicitor Lo Man Kam, representing the purchaser of No.322 Tak Lee Building, has served a writ requesting the refund of \$17,164.40, being price of flat already paid, together with interest. 2 writs have been received so far.
- 2) Of the 3rd instalment of \$80,000 in respect of construction work of Wai Lee, Po Lee Buildings, \$70,000 odd has been paid, and \$60,000 of the 2nd instalment is still unpaid.
- 3) 17 letters in all were sent by Johnson, Stokes & Master demanding for payment of the price of flats.
- 4) The estimate of receipts and payments of Wai Lee, Po Lee Buildings and Tak Lee Building (produced for the perusal of all directors).

30

Matters discussed:—

Mr. Kan Man said:

As authorized by Sang Lee Company, I have conferred with Mr. Lo Hoi

Ming, the authorized representative of Ball Company, many times in connection with the transfer of Tak, Wai, Po Buildings, and have drafted the proposed Conditions of Transfer of Tak, Wai, Po Buildings for discussion of the joint meeting (produced for the perusal of all the directors present).

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Mr. Lo Hoi Ming said:

The said proposed Conditions was made after long study by the only 2 representatives. Any one having valuable suggestion to make, please put forward for discussion. The proposed Conditions will be handed to both companies to be studied at their meetings and then to be decided and carried out at the next regular joint meeting.

10

Certified
Translation of
21st Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 15.9.1966

Mr. Li Yuen Chan seconded and unanimously passed.

There being no other business, the meeting closed.

(sd.) Kan Man

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MINUTES OF THE 22ND JOINT MEETING OF DIRECTORS OF

Certified
Translation of
22nd Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 22.9.1966

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Date : 22nd September, 1966
Time : 4.30 p.m.
Place : Room 1724 Central Building
Present : Li Yuen Chan, Lo Hoi Ming, Kwan Sai Tak, Ma Yau Chim,
Lai Kwai Tim, Kan Man, Li Siu Man
Chairman : Kan Man
Recorder : Li Siu Man

10

To pass the minutes of the last meeting.

The meeting considered the minutes correct and unanimously passed and confirmed.

Mr. Kan Man reported:

1) I went with Mr. Ma Yau Chim and others to see Mr. Liu Kwing Wah of Johnson, Stokes & Master yesterday, and Mr. Liu said that solicitor Mok Sing Chuen had sent over 138 copies of the Wai Lee, Po Lee agreements, out of which demanding letters were sent to 49 selected. At the same time he indicated that it was not proposed to send any more letters until the date of completion of the said buildings was ensured.

2) The writs recently received from the purchasers of Tak Lee Building for the return of flats have been handed over to and to be dealt with by solicitor Mok Sing Chuen. At present, solicitor Mok has written and sent back (the writs), stating that he could not take instruction on the ground that he was acting for both the purchasers and sellers. What should be done?

20

3) Reply has been given to the Bank of East Asia in person, accepting the proposal of the Bank to put up extra security for the mortgage loan but they would discuss the matter and go through formalities as soon as Mr. Kwan Fan Fat has returned and cancelled his leave.

Matters discussed:

Mr. Li Yuen Chan proposed:

The writs served by the purchasers of Tak Lee Building should be handed over to and to be dealt with by Mr. Mok Tsze Fung since he has legal knowledge.

30

Mr. Lai Kwai Tim seconded and unanimously passed.

Mr. Lo Hoi Ming said:

Ball Company has resolved day before yesterday to accept the proposed Conditions of Transfer drafted by myself and Mr. Kan Man, and (proposed) that supplements be added, such as: The balance of 10% \$126,173.40 of the price of Kwai Lee No.1 and No.3 previously taken by Ball Company and the current

account of \$90,000 odd owing to Sang Lee Company be treated as fully settled. The interest charged on the credit balance of the joint venture account should also be treated as fully settled and set off. In truth, Ball Company is incapable of making good the amount.

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Certified
Translation of
22nd Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 22.9.1966

Mr. Kwan Sai Tak said:

Regarding the proposed Conditions, Mr. Kwan Fan Fat has indicated that the prospective transferee would have to keep the previous promise to hand over \$1,000,000 worth of flats as maintenance fund for the building(s) and such promise should be kept notwithstanding the transfer.

10 Mr. Kan Man said:

At present I represent Sang Lee Company to say that the company is willing to make the transfer to Ball Company or to a third party in accordance with the proposed Conditions and the supplemental conditions, giving 5 days for the Ball Company to consider or to look for a third party. Sang Lee Company has no intention of accepting in accordance with the conditions.

Mr. Lo Hoi Ming said:

Regarding this point, I represent Ball Company to say that the company is incapable of accepting and has decided to make the transfer in order not to waste any time. It is also hoped that Sang Lee Company will endeavour to accept so as not to ruin (our) reputation.

20

Mr. Kan Man said:

Since Ball Company does not consider accepting the transfer in order not to waste time, Sang Lee Company will proceed to negotiate with and persuade a third party to invest. What conditions will be put forward by the transferee and what procedures will have to be performed, (we) will have to leave it in the hand of the solicitor of the transferee. During the period before the transfer is completed, this joint meeting will have to be held as usual on every Thursday in the afternoon in order to discuss other minor matters, until such time when all the formalities have been gone through.

30 Mr. Lo Hoi Ming seconded and unanimously passed.

There being no other business, the meeting closed.

(sd.) Kan Man

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MINUTES OF THE 23RD JOINT MEETING OF DIRECTORS OF

Certified
Translation of
23rd Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 30.9.1966

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Date : 30th September, 1966
Time : 4.00 p.m.
Place : Room 1724 Central Building
Present : Li Yuen Chan, Kan Man, Kwan Sai Tak, Lo Hoi Ming, Ma Yau
Chim, Lai Kwai Tim, Li Siu Man
Chairman : Kan Man
Recorder : Li Siu Man

10

To pass the minutes of the last meeting.

Mr. Li Yuen Chan proposed, Mr. Lo Hoi Ming seconded and unanimously passed.

Reports:

Mr. Kan Man reported:

1) The Bank of East Asia again pressed Tak Lee Building for repayment and therefore (I) went on Wednesday last to the Bank for a discussion. The result is that the Bank indicated that the company has to repay at least \$500,000 first or put up properties or stocks of like value as security. I therefore make a report as above. I would like to draw your attention to the fact that before the transfer is completed, both parties have to bear the above responsibility.

20

2) Mr. McElney of Johnson, Stokes & Master indicated that the date of completion of Wai Lee & Po Lee Buildings must be confirmed before demand letters would be sent again.

3) The partial payment of \$2,000 recently made to Johnson, Stokes & Master and the advance payment of \$3,000 made to Seu & Liang, totalling \$5,000, was advanced by private individual and both parties should raise the money for repayment of same.

Mr. Li Siu Man reported:

The last meeting resolved that the writs of the Tak Lee Purchasers be handed over to and to be dealt with by Mr. Mok Tsze Fung and I have handed the writs to Mr. Mok on Tuesday but Mr. Mok asked me to hand them over to Mr. Tam Yuen Chung of Seu & Liang. The matter has forthwith been handed over to Mr. Tam Yuen Chung who retained counsel Liu Tsze Ming to handle the case.

30

Mr. Kan Man said:

Negotiation is being carried on with the third party concerning the question of transfer. However, at the last meeting, Ball Company proposed that a supplemental condition – the balance of 10% \$126,173.40 of the price of flats and the current account of \$91,883 be treated as fully settled – be added

into the proposed Conditions, but the third party considers it an extra item.

Document

Mr. Lo Hoi Ming said:

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The condition to be added to the proposed Conditions is raised by Ball because during the past years, the Tak, Wai, Po site always has a credit balance on which Sang Lee should have to pay interest. Therefore all parties concerned should treat this sum as a set off against the other, and as a matter of fact we are disabled.

Certified
Translation of
23rd Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 30.9.1966

There being no other business, the meeting closed.

(sd.) Kan Man

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MINUTES OF THE 24TH JOINT MEETING OF DIRECTORS OF

Certified
Translation of
24th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 6.10.1966

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Date : 6th October, 1966
Time : 4 p.m.
Place : Room 1724 Central Building
Present : Li Yuen Chan, Lo Hoi Ming, Kwan Sai Tak, Ma Yau Chim, Kan Man, Li Siu Man
Chairman : Kan Man
Recorder : Li Siu Man

10

The minutes of the last meeting passed.

Reports:

Mr. Kan Man said:

1) Since both parties have been willing to transfer the entire business of the Tak, Wai, Po site and Ball Company has raised a condition of transfer at the last meeting, I would like to tell you frankly that it is not Sang Lee Company that accepts the transfer but to get a third party to take over. The matter is still in the course of negotiation at present.

2) At the regular meeting of Sang Lee Company yesterday, Mr. Mok Tsze Fung suggested that no matter who would take over, (our) aim was to finish up the matter. Therefore solicitor should be instructed to sue those purchasers who did not pay the price of flats in order that the judge would pass a judgment ruling that the construction work could not be completed because of the non-payment by the purchasers. This morning I called on Johnson, Stokes & Master with Mr. Mok explaining clearly to the solicitor who requested the architect to certify the date of completion of the foundation work in order that the completion of the said building within a certain period be assured.

20

3) The Bank is still pressing for the repayment of the loan on the mortgage of Tak Lee Building. Finally, the Bank indicated that the Banking Ordinance required the company to provide at least \$500,000 worth of property or cash as additional security. As regards interest payment, we can only play for time and then endeavour to settle by instalments within the year. Even if we have the money we would have to pay the construction fee.

30

There being no other business, the meeting closed.

(sd.) Kan Man

TRANSLATION

Document

MINUTES OF THE 25TH JOINT MEETING OF DIRECTORS OF

B-20

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
25th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 13.10.1966

10 Date : 13th October, 1966
Time : 4 p.m.
Place : Room 1724 Central Building
Present : Li Yuen Chan, Lo Hoi Ming, Kan Man, Ma Yau Chim, Kwan Sai Tak, Li Siu Man
Chairman : Kan Man
Recorder : Li Siu Man

To pass the minutes of the last meeting

Mr. Li Yuen Chan proposed, Mr. Lo Hoi Ming seconded and unanimously passed.

Report:

Mr Kan Man reported:

- 20 1) It was resolved at the joint meeting that writs be served by the solicitor firm and the solicitor firm requested a formal letter instructing the firm to do so. Accordingly, Mr Mok Tsze Fung handed over a draft of the letter. The solicitor firm asked for the supply of the followings-
- (a) The contract with the building contractor executed the 2nd time.
 - (b) The letter authorizing the United Bank to receive the instalment-payments on (the company's) behalf.
 - (c) The photographs of the site showing the present state of the construction work and the materials stored in the site.
 - (d) Architect certificate certifying the date of completion of the foundation work.

Mr. Li Yuen Chan said:

Spoken with Mr. Mok Tsze Fung over the phone and Mr. Mok hoped that (the above) be sent over at an early date in time for the hearing next week.

(sd.) Kan Man

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MINUTES OF THE 26TH JOINT MEETING OF DIRECTORS OF

Certified
Translation of
26th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 20.10.1966

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Date : 20th October, 1966
Time : 4 p.m.
Place : Room 1724 Central Building
Present : Li Yuen Chan, Lo Hoi Ming, Kan Man, Ma Yau Chim, Kwan Sai Tak, Li Siu Man
Chairman : Kan Man
Recorder : Li Siu Man

10

To pass the minutes of the last meeting

Mr. Li Yuen Chan proposed, Mr. Lo Hoi Ming seconded and unanimously passed.

Reports:

Mr. Kan Man reported:

- 1) Phone call from Radio Hong Kong, stating that the purchasers of Tak, Wai, Po Buildings intended to discuss the litigation for recording in the radio station and reply has been sent indicating that (we) have no intention of sending anyone to take part in the discussion for recording.
- 2) Copies of documents requested by the solicitor firm are available, but Mr Mok indicated that for the time being the copies need not be sent until so required.
- 3) Mr. Liu rang up to say that 3 writs would be brought before the court the next day and hearing would take place next week too.
- 4) As the bank wanted additional security for (the mortgage-loan) of Tak Lee Building, it is hoped that any member of the Ball Company would put up either property, shares or cash as security and an interest of 2% would be paid to the one who puts up the security.

20

There being no other business, the meeting closed.

(sd.) Kan Man

TRANSLATION

Document

MINUTES OF THE 27TH JOINT MEETING OF DIRECTORS OF

B-22

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
27th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 27.10.1966

10 Date : 27th October, 1966
Time : 4 p.m.
Place : Room 1724 Central Building
Present : Li Yuen Chan, Lo Hoi Ming, Kwok Wai Hung, Kan Man, Ma
Yau Chim, Li Siu Man
Chairman : Kan Man
Recorder : Li Siu Man

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Reports:

Mr. Kan Man said:

- 20 1) Regarding the request of the Radio Hong Kong to send someone to take part in the discussion on the litigation of Tak, Wai, Po purchasers, a polite reply has been sent explaining that the company has no intention to comment on such legal matter and thanking the station for taking an interest on the subject. So far nothing happens.
- 2) Three separate litigant purchasers appeared in court on the 20/10/66 and the 21st of November has been fixed for the hearing of the cases.
- 3) As the Bank requested additional security for (the mortgage-loan) of Tak Lee Building, the company is willing to pay 2% interest on the property, stocks or cash put up by any person of the two companies as additional security.

(sd.) Kan Man

MINUTES OF THE 28TH JOINT MEETING OF DIRECTORS OF

Certified
Translation of
28th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 3.11.1966
Li Siu Man

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Date : 3rd November, 1966
Time : 4 p.m.
Place : Room 1724 Central Building
Present : Lai Kwai Tim, Ma Yau Chim, Lo Hoi Ming, Li Yuen Chan, Kan Man, Kwan Sai Tak, Li Siu Man
Chairman : Kan Man
Recorder : Li Siu Man

10

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Reports:

Mr. Kan Man reported:

1) The Bank is still pressing for additional security. The Bank previously granted the mortgage loan purely because of the trust in the guarantors since they have had dealings with the Bank for several decades. Hence, it is necessary for the said 3 guarantors to confer and discuss how additional security could be provided. However, the Bank would have to re-consider the matter because of the recent litigation.

20

2) Judging from the present condition in the Colony, it is not easy to carry on any business, particularly the realty business. However, it is fortunate that according to the present estimation, the properties purchased by the company will still yield a profit provided that the company gets support from all concerned, in that sufficient fund can be obtained to tide over the difficulty. Under the present circumstances, the company will have to lawfully demand payment of instalments due from the purchasers on the one hand, and to get financial support from the Bank on the other; but as far as the Bank is concerned, the borrower must provide guarantors as well as adequate security in the form of property, shares or stocks. It is now proposed that whoever earnestly and unconditionally supports us should be given the following benefit:—

30

- (1) A monthly interest of 2% be paid to those who support the company with cash.
- (2) A monthly interest of 2% be paid to those who support the company by putting up properties, shares or other stocks to secure the mortgage to the Bank; but interest payable to the Bank will have to be deducted therefrom.
- (3) The guarantors of the loan raised by the company will be reasonably recompensed.

(4) The above methods of paying interest only apply to the business of the various sites under the control of the company, and payment will be made in proportion to the appropriate guarantors.

Document

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Matters discussed:

Mr. Lo Hoi Ming proposed that 20% of the profit be taken as recompense to the guarantors.

Mr. Kan Man seconded.

There being no other business, the meeting closed.

Certified
Translation of
28th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 3.11.1966

(sd.) Kan Man

MINUTES OF THE 29TH JOINT MEETING OF DIRECTORS OF

Certified Translation of 29th Joint Meeting of Directors of Sang Lee Investment Co. Ltd. and Ball Land Investment Co. Ltd. Dated 10.11.1966

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

- Date : 10th November, 1966
- Time : 4 p.m.
- Place : Room 1724 Central Building
- Present : Li Yuen Chan, Lo Hoi Ming, Kan Man, Kwan Sai Tak, Li Siu Man
- Chairman : Kan Man
- Recorder : Li Siu Man

10

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Reports:

Mr. Kan Man reported:

1) The Bank is at present re-considering the case of the Tak, Wai, Po site and has suggested that a surveyor be engaged by the guarantors to make an estimate (of the value) of Wai Lee, Po Lee buildings as they now stand as well as an estimate of the unfinished construction work and then to make a report to the Bank before the Bank would think matter over.

2) Mr. Mok and I called at the solicitor office of Johnson, Stokes & Master with regard to the question of collecting the price of flats. The solicitor at that time said that judging from the circumstances, the purchasers must pay the money but could not be certain how much would be collected. On the other hand, no matter the purchasers paid the money or not, flats have to be constructed and handed to them. Mr. Mok then replied that Sang Lee has a capital of 3 million odd dollars, and if the money could not be collected the matter would then be referred to the authorities. But the solicitor said that that could not be done because Sang Lee still has several other sites. At that time the solicitor also asked when the flats could be handed over and Mr. Mok said that it could be completed in 3 months.

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There being no other business, the meeting closed.

(sd.) Kan Man

TRANSLATION

Document

MINUTES OF THE 30TH JOINT MEETING OF DIRECTORS OF

B-25

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
30th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 17.11.1966

10 Date : 17th November, 1966
Time : 4 p.m.
Place : Room 1724 Central Building
Present : Li Yuen Chan, Lo Hoi Ming, Kan Man, Ma Yau Chim, Kwan Sai
Tak, Li Siu Man
Chairman : Kan Man
Recorder : Li Siu Man

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Reports:

Mr. Kan Man reported:

1) Received a letter from Francis Chaine & Company representing the Defendant purchasers proposing 5 points of compromise: -

- 20
- 1) The company be responsible to complete the Wai Lee, Po Lee buildings before the end of April 1967 for handing over to the purchasers.
 - 2) The purchasers agree to pay the outstanding and the balance of the price of flats into Liu Chong Hing Bank for the Bank's safe custody.
 - 3) The said depository will immediately hand over the price of flats to the vendor when the 2 buildings are completed and handed to the purchasers at the specified time. If the buildings cannot be completed at the specified time, all the money will then be returned to the purchasers.
 - 4) The vendor will have to pay 10% of the price of flats to the purchasers as compensation for their loss due to delay in handing over the flats.
 - 30 5) Francis Chaine & Company will represent the purchasers to draw up the deeds.

Of the above points the first one is all right, the second has to be decided by the mortgagee and the third point cannot be accepted because it means that no money will be received out of the price of flats. The fourth and the fifth points will be dealt with in line with the original agreement.

- 2) The pleadings from the defendant purchasers, Leung Kam Shiu and Wong Lai Kuen received are now passed to you, the directors present, for perusal.
- 3) The case will be heard by the court on the 21st instant.

40 There being no other business, the meeting closed.

(sd.) Kan Man

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MINUTES OF THE 31ST JOINT MEETING OF DIRECTORS OF

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
31st Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 24.11.1966

Date : 24th November, 1966
Time : 4 p.m.
Place : Room 1724 Central Building
Present : Ma Yau Chim, Lo Hoi Ming, Li Yuen Chan, Kwan Sai Tak, Kan Man
Chairman : Kan Man
Recorder : Kwan Sai Tak

10

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Reports:

Mr. Kan Man reported:

- 1) Regarding the law suit of the purchaser of Wai Lee, Po Lee Buildings, since the other party claimed a compensation exceeding \$5,000, the case was treated as an O.J. action instead of a C.J. action when the case was presented to the court on the 21st instant (Monday) and would be heard by the court on the 25th instant. Whatever the result will be, a report will be made to you later.
- 2) The Bank of East Asia recently requested an additional \$500,000 to secure the mortgage of Tak Lee Building. We have had the agreement of the guarantors to pay this additional amount accordingly.

20

There being no other business, the meeting closed.

(sd.) Kan Man

TRANSLATION

Document

MINUTES OF THE 32ND JOINT MEETING OF DIRECTORS OF

B-27

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
32nd Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 1.12.1966

Date : 1st December, 1966
Time : 4 p.m.
Place : Room 1724 Central Building
Present : Li Yuen Chan, Lo Hoi Ming, Kwan Sai Tak, Kan Man, Li Siu Man
Chairman : Kan Man
Recorder : Li Siu Man

10 To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Reports:

Mr. Kan Man reported:

- 1) The hearing of the law case, now treated as O.J. action, of the purchaser of Wai Lee, Po Lee Buildings has been adjourned.
- 2) The guarantors have accordingly provided an additional \$500,000 security for the mortgage of Tak Lee Building, as requested by the Bank of East Asia.
- 20 3) In order that the problems regarding Wai Lee, Po Lee Buildings be cleared up, Johnson, Stokes & Master has proceeded to demand for payment of the price of flats on the one hand, and I have negotiated with the Bank of East Asia for support on the other. The negotiation is still in progress.

Matters discussed:

Mr. Kan Man said:

As negotiation with the Bank of East Asia is in progress, (we would like to know) how much construction fee is needed for the completion of the work and the building contractor wants at least how much money before handing over the buildings. It is hoped that Mr. Lo Hoi Ming will get the view taken by Nam Sang Company concerning these questions.

30 Mr. Lo Hoi Ming said:

I shall give you an answer as soon as Nam Sang Company has made a calculation.

There being no other business, the meeting closed.

(sd.) Kan Man

MINUTES OF THE 33RD JOINT MEETING OF DIRECTORS OF

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
33rd Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 8.12.1966

Date : 8th December, 1966
Time : 4 p.m.
Place : Room 1724 Central Building
Present : Lo Hoi Ming, Kwan Sai Tak, Ma Yau Chim, Kan Man, Li Siu Man
Chairman : Kan Man
Recorder : Li Siu Man

To pass the minutes of the last meeting

10

The meeting considered the minutes correct and unanimously passed.

Reports:

- 1) We have frequently kept in touch with Johnson, Stokes & Master regarding the Wai Lee, Po Lee law suit, but no definite reply has yet been received.
- 2) Regarding the additional security for the Tak Lee Building requested by the Bank, procedures have now been completed and we need not worry about the question of repayment for the time being.
- 3) Some purchasers of the Wai Lee, Po Lee have instructed solicitors to bring action against us and also demanded the refund of the price of flats. The solicitor firm of Seu & Liang has now been instructed to take the matter in hand.

20

There being no other business, the meeting closed.

(sd.) Kan Man

TRANSLATION

Document

MINUTES OF THE 34TH JOINT MEETING OF DIRECTORS OF

B-29

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
34th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 29.12.1966

Date : 29th December, 1966
Time : 4 p.m.
Place : Room 1724 Central Building
Present : Ma Yau Chim, Kwan Sai Tak, Li Yuen Chan, Lo Hoi Ming, Kan
Man, Li Siu Man
Chairman : Kan Man
10 Recorder : Li Siu Man

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Reports:

- 1) In connection with the law suit of Wai Lee, Po Lee, the solicitor firm of Johnson, Stokes & Master has given us no definite answer so far.
- 2) According to what Mr. Mok said, about 140 purchasers went to the solicitor firm of (Francis) Chaine, solicitor for the other party, to sign their names requesting to have a negotiation with us; but some committee members indicated that they did not agree to the former conditions.
- 20 3) Before the law suit is settled, the Bank of East Asia – mortgagee of our site -- did negotiate with us to find another solution. The negotiation is still in progress at present and a report will be given to you as soon as I receive any positive news.

There being no other business, the meeting closed.

(sd.) Kan Man

B-30

MINUTES OF THE 35TH JOINT MEETING OF DIRECTORS OF

Certified
Translation of
35th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 5.1.1967

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Date : 5th January 1967
Time : 4 p.m.
Place : Room 1724 Central Building
Present : Li Yuen Chan, Lo Hoi Ming, Kan Man, Ma Yau Chim, Kwan Sai Tak, Li Siu Man
Chairman : Kan Man
Recorder : Li Siu Man

10

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Reports:

Mr. Kan Man reported:

The Bank of East Asia, mortgagee of Wai Lee, Po Lee Buildings, repeatedly requested us to repay the money and to settle the outstanding interest. We had discussed the matter many times and considered that we were incapable of doing so at the moment but had to find another solution in solving the problem.

The Bank of East Asia was of the opinion that the outstanding interest had accumulated to a considerable amount, and judging from the progress of the construction work and the time consumed, the Bank was afraid that it would be more difficult for us to repay the mortgage loan and to settle the outstanding interest. The Bank had therefore discussed with us on several occasions hoping to find a reasonable solution from either of the followings:—

20

1) The best would be for us to solve the problem ourselves and to repay the mortgage loan and interest, the quicker the better.

2) For the Bank of East Asia to render assistance in the hope that the unfinished portion of the construction work of Wai Lee, Po Lee Buildings would be completed within a short time. (including collection of the price of flats and the management of the construction work on (the company's behalf).

30

Besides, the Bank of East Asia further asked for additional 4 million worth of properties or stocks as security before the second point would be considered. Our 3 guarantors subsequently held a conference and (agreed) to provide the additional security accordingly. Any reaction of the Bank and any further development of the matter will be reported to you.

There being no other business, the meeting closed.

(sd.) Kan Man

TRANSLATION

Document

MINUTES OF THE 36TH JOINT MEETING OF DIRECTORS OF

B-31

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
36th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 12.1.1967

Date : 12th January, 1967
Time : 4 p.m.
Place : Room 1724 Central Building
Present : Ma Yau Chim, Lo Hoi Ming, Li Yuen Chan, Kwan Sai Tak, Li
Siu Man
Chairman : Kan Man (Kwan Sai Tak acting on his behalf)
Recorder : Li Siu Man

10

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Mr. Kwan Sai Tak reported:

The mortgagee, Bank of East Asia, together with the 3 guarantors intimated to Sang Lee Investment Company Ltd. to send a circular letter to all the purchasers of Wai Lee, Po Lee Buildings informing them of the arrangement proposed by the Bank of East Asia in completing the construction work of the said two buildings. Such letter has been sent out on the 12th instant and (we are) at present waiting for the mortgagee, Bank of East Asia, to carry it out lawfully. The draft of the said letter is attached hereto.

20

(sd.) Kan Man

Document

To:

B-31

7th January 1967

Certified
Translation of
36th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 12.1.1967

Sir/Madam.

During the past months, our company has been looking for ways and means to complete the unfinished construction work of "Wai Lee" and "Po Lee" Buildings, and to-date, our company thinks that the best way to solve the problem is to get the agreement of the Bank of East Asia to handle the matter with full power and to carry on the construction work of the "Wai Lee" and "Po Lee" Buildings until their completion.

The Bank of East Asia has now intimated that the said Bank would be willing to consider taking up the responsibility to complete the construction work of the said "Wai Lee" and "Po Lee" Buildings in order to protect the interest of the purchasers if the greater part of the purchasers consent in writing to the following arrangement:

10

1. The purchasers agree to continue paying the balance of the price of flats to the Bank of East Asia for payment of the construction fee and for repayment of the mortgage loan.
2. The company's primary negotiation with the Nam Sang Construction Company and other building contractors reveals that 6 to 7 months are required for the completion of the 2 buildings, commencing from the date of resumption of work. Henceforth, the construction fee would have to be checked and certified by a noted quantity surveyor appointed by the Bank of East Asia before payment. Our company has no right to use any of the money paid over to the Bank of East Asia by the purchasers. Calamities and accidents beyond human control excepted, if the 2 buildings are not completed in 1967 (as at the date occupation permit is obtained), the Bank of East Asia would be responsible to refund to the purchasers all the money previously paid into the Bank by the purchasers.
3. If the purchasers agree to the above arrangement, kindly sign and return the copy of this letter within 7 days to the Bank of East Asia direct. When the said Bank receives the copies of this letter and considers that quite a number of purchasers have agreed to the aforesaid arrangement, the purchasers would be notified before the 30th of January 1967 whether or not it is accepted. If so, the solicitor firm of Lo & Lo would be instructed to prepare the new agreement, costs of which would be borne by Sang Lee Co.

20

30

The main purpose of the above arrangement is to protect the interest of the purchasers as well as to have the construction work of the 2 buildings completed. It

40

is hoped that the purchasers would grasp the opportunity and sign and return the copy in the enclosed envelope to the Bank of East Asia as soon as possible so that the Bank would take up the matter at an early date.

Document

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SANG LEE INVESTMENT CO. LTD.

Kwan Fan Fat

Manager

Certified Translation of 36th Joint Meeting of Directors of Sang Lee Investment Co. Ltd. and Ball Land Investment Co. Ltd. Dated 12.1.1967

I agree to the above arrangement.

The flat purchased by me is Flat _____, _____ floor Po Lee Building

Price of flat already paid \$

Balance due \$

Purchaser:

(Signature)

10

MINUTES OF THE 37TH JOINT MEETING OF DIRECTORS OF

Certified
Translation of
37th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 19.1.1967

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Date : 19th January, 1967
Time : 4 p.m.
Place : Room 1724 Central Building
Present : Lo Hoi Ming, Li Yuen Chan, Kwan Sai Tak, Ma Yau Chim, Kan Man, Li Siu Man
Chairman : Kan Man
Recorder : Li Siu Man

10

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Resolutions:

1) Letters proposing the speeding up of the unfinished construction work of Wai Lee and Po Lee have been sent to the purchasers by the mortgagee, the Bank of East Asia, on (the company's) behalf several days ago and it is now necessary that we call at and urge the Bank of East Asia to make a decision at an early date.

Mr. Li Yuen Chan proposed and seconded by Mr. Ma Yau Chim.

2) Besides urging the Bank of East Asia, a request should be made to the guarantors for their strong support and assurance that the matter would be carried out smoothly. Mr. Kan Man, Mr. Lo Hoi Ming and Mr. Ma Yau Chim should be appointed to plead with them.

20

Mr. Lo Hoi Ming proposed and seconded by Mr. Li Yuen Chan.

There being no other business, the meeting closed.

(sd.) Kan Man

TRANSLATION

Document

MINUTES OF THE 38TH JOINT MEETING OF DIRECTORS OF

B-33

SANG LEE INVESTMENT CO. LTD. & BALL AND INVESTMENT CO. LTD.

Certified
Translation of
38th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 16.2.1967

Date : 16th February, 1967
Time : 4 p.m.
Place : Room 1724 Central Building
Present : Li Yuen Chan, Lai Kwai Tim, Lo Hoi Ming, Ma Yau Chim, Kwan Sai Tak, Li Siu Man, Kan Man
Chairman : Kan Man
Recorder : Li Siu Man

10

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Reports:

Mr. Kan Man reported:

1) It has been resolved at the last meeting to get the Bank's decision regarding the Wai Lee, Po Lee Buildings after letters were sent to the purchasers, and to ask the guarantors for their strong support. A certain degree of success has been achieved after negotiated with them on several occasions, in that the Bank of East Asia consented to extend a further loan of HK\$2,300,000 for completing the 2 buildings and the guarantors consented to guarantee. We will attend the solicitor office of Lo & Lo tomorrow to deal with the execution of the followings:-

20

- a. The deed of further charge made between Sang Lee and the Bank.
- b. The agreement of payments made between Sang Lee and Nam Sang.
- c. The guarantee made between the Bank of East Asia and the guarantors.

2) The basement of Wai Lee and Po Lee Buildings is valued at \$750,000 to be treated as payment of part of the construction fee to the building contractors.

There being no other business, the meeting closed.

30

(sd.) Kan Man

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MINUTES OF THE 39TH JOINT MEETING OF DIRECTORS OF

Certified
Translation of
39th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 20.2.1967

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Date	:	20th February, 1967
Time	:	4 p.m.
Place	:	Room 1724 Central Building
Present	:	Li Yuen Chan, Kwok Wai Hung, Lai Kwai Tim, Kan Man, Ma Yau Chim, Kwan Sai Tak, Li Siu Man, Lo Hoi Ming
Chairman	:	Kan Man
Recorder	:	Li Siu Man

10

To pass the minutes of the last meeting.

The meeting considered the minutes correct and unanimously passed.

Reports:

Mr. Kan Man reported:

On the 17th instant (Friday), Sang Lee Company represented by Kwan Fan Fat, Ma To Sang, Ng Pak Chun, Kan Man, Ma Yau Chim and Kwan Sai Tak; the Ball Company represented by Lo Hoi Ming, Lai Kwai Tim and Li Siu Man; and Nam Sang Company represented by Mr. Lo Yuk Ming went together to the office of Lo & Lo to execute the relevant deeds of further charge and guarantee etc., as follows:—

20

(1) Deed of the further charge:— Sang Lee Company representative obtains from the Bank of East Asia, a further charge of \$2,300,000, of which \$1,400,000 is earmarked for payment of 7/12 of the construction fee to Nam Sang Company, i.e. \$7 on every \$12. The balance of \$900,000 is for payment of other equipments. A repayment of \$10,000 of the mortgage loan must be made in respect of each flat before it is released.

(2) Agreement of payments of construction fee:— Executed by Sang Lee Company (employer). Nam Sang Company (building contractor) and the Bank of East Asia (lender). The lender is responsible to provide for the payment of the construction fee of not exceeding \$1,400,000, payable every 15 days at 7/12 of the work done as certified by the architect, until occupation permit is obtained. \$100,000 of the balance will be paid in the 4th month after the occupation permit is obtained, \$100,000 in the 5th month, \$100,000 in the 6th month and the remaining retention money will be paid in the 7th month. The building contractor will have to resume work within 4 days after the agreement is signed and to complete the work in 165 fine days. If work is completed before or after the time specified, a reward or penalty of \$2,000 per day, as the case may be, will have to be paid by either of the 2 parties accordingly. If the lender thinks that little progress is made with the work of the building contractor, notice will be given within 14 days and other building contractor will be employed to take up the work.

30

(3) Guarantee:— executed by Messrs. Ma To Sang, Kwan Fan Fat and Ng Pak Chun.

40

Mr. Kan Man said:

The basement of Wai Lee, Po Lee Building is priced at \$750,000 to be sold to a certain construction company. The price of the ground floor, facing King's Road is fixed at \$120 per sq. ft., facing small street at \$70 and the cockloft at \$50, makes up the approximate figure of \$450,000 odd and together with basement, totalling \$1,100,000 odd.

There being no other business, the meeting closed:

(sd.) Kan Man

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**Certified
Translation of
39th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 20.2.1967**

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MINUTES OF THE 41ST JOINT MEETING OF THE DIRECTORS OF

Certified
Translation of
41st Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 9.3.1967

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Date : 9th March, 1967
Time : 4 p.m.
Place : Room 1724 Central Building
Present : Li Yuen Chan, Lo Hoi Ming, Kan Man, Ma Yau Chim, Kwan Sai Tak, Lai Kwai Tim, Li Siu Man
Chairman : Kan Man
Recorder : Li Siu Man

10

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Reports:

Mr. Kan Man reported:

1. The letter from Francis Chaine representing the purchasers of Wai Lee, Po Lee Buildings has been re-directed to us by Johnson, Stokes & Master. The 8 points raised are, briefly as follows:—

(1) To guarantee that the Wai Lee, Po Lee Buildings will be completed before 30/6/1967.

(2) To reduce 10% of the price of flats.

20

(3) To compensate the purchasers with an interest of \$80 per \$10,000 per month for the delay.

(4) To deduct the interest charged from the price of flats to be returned to the purchasers.

(5) The purchasers will in future pay the price of flats to Liu Chong Hing Bank for safe keeping and for payment of the construction fee direct. To engage other architect, foremen and overseers of the site and Sang Lee will be responsible for their payments.

(6) Liu Chong Hing Bank will only pay \$1,500,000 as construction fee. The balance, after deducting compensation to the purchasers for their loss and interest for the delay, will be returned to Sang Lee Company within 5 days after the issue of the occupation permit.

30

(7) All agreements and deeds will be prepared by the solicitor Francis Chaine and the fee thereof will be paid by Sang Lee Company.

(8) Sang Lee Company will be required to pay \$20,000 to the solicitor as costs of the legal action.

2. A purchaser of the Wai Lee Building intended to pay the balance of the price of flat in full and asked for a discount as a special privilege.

3. With regard to the guarantee executed at the solicitor firm of Lo & Lo lately by Messrs. Ma To Sang, Kwan Fan Fat and Ng Pak Chun, Sang Lee Company and Ball Land Company should sign and give to the three guarantors a letter of guarantee.

40

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Certified
Translation of
41st Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 9.3.1967

Resolutions:—

(1) Mr. Li Yuen Chan proposed:— that Mr. Kan Man be appointed as representative to instruct our solicitor to reply to the letter dated 2/3/1967 from Francis Chaine, solicitor for the other party, basing on the following points:—

1. It is difficult, as a matter of fact, to consent to the various points raised in the letter under reply.

2. If both parties can come to another compromise, we will not raise any objection in principle, but we may agree only if materials can first be obtained and that it is reckoned that a certain amount of profit can still be made.

10 3. For computing purpose, what will be the total of the balance if paid in full by the 301 purchasers, represented by the solicitor of the other party.

Lai Kwai Tim seconded and unanimously passed.

(2) The question of what discount be given if the purchaser of the Wai Lee Building would pay the balance in full, should be left to Mr. Kan Man to do whatever is expedient. Unanimously passed.

(3) The joint venture of Sang Lee Company and Ball Company should sign and give a letter of guarantee to Messrs. Ma To Sang, Kwan Fan Fat and Ng Pak Chun.

Mr. Lo Hoi Ming proposed, Mr. Lai Kwai Tim seconded and unanimously passed.

There being no other business, the meeting closed.

20

(sd.) Kan Man

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MINUTES OF THE 42ND JOINT MEETING OF THE DIRECTORS OF

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
42nd Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 23.3.1967

Date : 23rd March, 1967
Time : 4 p.m.
Place : Room 1724 Central Building
Present : Li Yuen Chan, Lo Hoi Ming, Kan Man, Kwan Sai Tak, Li Siu Man, Lai Kwai Tim
Chairman : Kan Man
Recorder : Li Siu Man

10

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Reports:—

Mr. Kan Man reported:

1) Lately, I went together with Messrs. Mok Tsze Fung, Lo Hoi Ming, Lai Kwai Tim to the solicitor firm of Francis Chaine & Company to have a conference with Mr. regarding the compromise with the purchasers of Po Lee, Wai Lee Buildings. Referring to the 8 points contained in the solicitor's letter dated the 2nd of March, Mr. verbally changed the reduction of the price of flats to 5%, but a commission of 3% to the agent for collecting the price of flats and another 3% commission for selling the unsold flats on (the company's) behalf had to be paid. Just then, we only indicated that a reply would be given after the board made a decision.

20

Mr. Lai Kwai Tim said:

Mr. Mok Tsze Fung spoke with me over the phone day before yesterday and suggested that a decision should be made at an early date as to what reply should be given. I therefore immediately informed Mr. Kwan Sai Tak of Sang Lee Company and Mr. Lo Hoi Ming and others. Mr. Kwan Sai Tak indicated that it would be preferable to put up the matter for discussion at the joint meeting to be held on the coming Thursday.

30

Mr. Li Siu Man said:

Mr. Mok Tsze Fung also spoke with me over the phone this morning about the question of compromise with the purchasers of Wai Lee, Po Lee Buildings, stating that the company would be jeopardized if the conditions raised by the purchasers were turned down and that the goods (flats) could not be handed over. I said that even if the matter was delayed, the only thing was to compensate them with interest for the delay in accordance with the agreement which could not be annulled and asked for Mr. Mok's advice. Mr. Mok replied, saying that we had committed a breach of the agreement because we had stopped work

for 2 years and if the purchasers deemed that we had committed a breach of the agreement, they could refuse to take delivery of the goods (flats). Therefore the matter is now raised for discussion of the meeting.

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Mr. Lo Hoi Ming said:

In fact the work of Wai Lee, Po Lee Buildings never stopped, but only at a certain time just a small number of workers carried out the work. The allegation that the work stopped is really unfounded.

Certified
Translation of
42nd Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 23.3.1967

Mr. Li Siu Man said:

Mr. Lo Hoi Ming is the proprietor of Nam Sang Company and since Mr. Lo indicates that the construction work of Wai Lee, Po Lee Buildings never stopped, naturally what he said is well-founded.

10

Mr. Lo Hoi Ming said:

Of course there is evidence to prove that it is true.

Resolutions:—

Mr. Li Yuen Chan proposed:

That the solicitor Francis Chaine be asked to supply a list of the 301 purchasers whom he is representing.

Mr. Lai Kwai Tim seconded and unanimously passed.

Mr. Li Siu Man proposed:

That Mr. Kan Man to seek the advice of our solicitors, Johnson, Stokes & Master, on the question whether a breach of the agreement has been committed since we did not stop work.

20

Mr. Lo Hoi Ming seconded and unanimously passed.

There being no other business, the meeting closed.

(sd.) Kan Man

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MINUTES OF THE 43RD JOINT MEETING OF THE DIRECTORS OF

Certified
Translation of
43rd Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 6.4.1967

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Date : 6th April, 1967
Time : 4 p.m.
Place : Room 1724 Central Building
Present : Li Yuen Chan, Lo Hoi Ming, Kan Man, Ma Yau Chim, Kwan Sai Tak, Li Siu Man, Lai Kwai Tim
Chairman : Kan Man
Recorder : Li Siu Man

To pass the minutes of the last meeting

10

The meeting considered the minutes correct and unanimously passed.

Reports:

Mr. Kan Man reported:

On examination of the list of 316 purchasers of the Wai Lee, Po Lee Buildings enclosed in the reply dated 23rd of March from the solicitor firm of Francis Chaine, only 234 purchasers could be identified. The rest have either given up the flats or that their names could not be traced, i.e. their names do not appear in (our list of) purchasers. The balance of the price of flats due from the 234 purchasers who could be identified is only \$1,300,000 odd, and yet it was said at the last discussion that approximately \$4,000,000 of the price of flats was due from the purchasers represented by the other party, and that \$1,500,000 could be collected forthwith. If only \$1,300,000 odd could be collected from all the 234 purchasers, it would not help matters at all.

20

Discussion:

Mr. Kan Man said:

Of the 316 purchasers represented by the solicitor Francis Chaine, only 234 purchasers could be identified and the entire balance of the price of flats collectable is a mere \$1,300,000 which would serve no useful purpose for making payments.

Mr. Li Yuen Chan said:

It would be advisable that the solicitor firm of Francis Chaine be asked to make a list giving details of the numbers of flats of and the outstanding balance due from all his clients for easy reference.

30

Mr. Kan Man said:

Regarding the sale of the basement and the ground floor to Kin Hing Land Investment Company Limited, due to a slight difference in measurement of

the staircase, landing etc. the other party requested the difference be charged at half the price. As the amount involved is so small, it is hoped that the Kin Hing Company would accept the price calculated on the original measurement agreed by both parties.

Mr. Lo Hoi Ming said:

This only a small matter and the Kin Hing Company does not intend to argue about this small amount arising out of the measurement.

Resolutions:

Mr. Li Yuen Chan said:

10 (1) Request solicitor Francis Chaine to supply a list of the purchasers represented by him, showing numbers of the flats, prices of the flats already paid and amounts outstanding for reference.

(2) Ask for the opinion of Johnson, Stokes & Master whether we have committed any breach of the Agreement.

Mr. Ma Yau Chim seconded and unanimously passed.

There being no other business, the meeting closed.

(sd.) Kan Man

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Certified
Translation of
43rd Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. Investment
Co. Ltd.
Dated. 6.4.1967

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MINUTES OF THE 44TH JOINT MEETING OF THE DIRECTORS OF

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
44th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 20.4.1967

Date : 20th April, 1967
Time : 4 p.m.
Place : Room 1724 Central Building
Present : Li Yuen Chan, Lo Hoi Ming, Kan Man, Ma Yau Chim, Kwan Sai Tak, Li Siu Man
Chairman : Kan Man
Recorder : Li Siu Man

10

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Reports:

Mr. Kan Man reported:

- (1) A letter has been received from the solicitor Francis Chaine stating that we have delayed our reply to his previous letter for over a month and if no reply is given within days, the conditions for a compromise raised by him would be withdrawn.
- (2) The solicitor firm Johnson, Stokes & Master has given us a reply, stating that we do not commit any breach of the agreement if the construction work of Wai Lee, Po Lee Buildings is not behind time and it would be better if work has never stopped.
- (3) The solicitor firm of Johnson, Stokes & Master has been asked on the very day to reply the solicitor Francis Chaine, telling him that the construction work of Wai Lee, Po Lee Buildings, under the support of the Bank, would be speeded up with the utmost effort and would be completed as quickly as possible.

20

Discussion:

Mr. Li Yuen Chan said:

Since our solicitor has said that there would be no breach of the agreement if (the construction work of) Wai Lee, Po Lee Buildings is not behind time, we would now set our mind at ease and wait for the completion of the said buildings at an early date.

30

Mr. Lo Hoi Ming said:

I am of the opinion that (the work at) our site is not behind time and I am confident that the matter is in our favour. As law is administered with consideration to circumstances, we need not be afraid that the purchasers would not take delivery of the goods (flats).

Mr. Li Siu Man said:

In the last meeting, Mr. Lo Hoi Ming stated that he had every confidence that he could prove that we had not stopped work and work was not behind time. As such, the problem over which we have been worrying could be solved.

Mr. Lo Hoi Ming seconded and unanimously passed.

There being no other business, the meeting closed.

(sd.) Kan Man

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Certified
Translation of
44th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 20.4.1967

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MINUTES OF THE 45TH JOINT MEETING OF THE DIRECTORS OF

Certified
Translation of
45th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 4.5.1967

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Date : 4th May, 1967
Time : 4 p.m.
Place : Room 1724 Central Building
Present : Li Yuen Chan, Lo Hoi Ming, Ma Yau Chim, Kwan Sai Tak, Kan Man, Li Siu Man
Chairman : Kan Man
Recorder : Li Siu Man

10

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Reports:

Mr. Kan Man reported:

(1) Mr. Ma Yau Chim, Mr. Kwan Sai Tak and I made an inspection at the site of Wai Lee, Po Lee the other day. It appears that work has been carried out with quite a speed and it is estimated that under normal condition without any unforeseen obstruction, the buildings could be completed at the time specified.

(2) The progress of the drain-joining work by the Government is quite satisfactory. According to the information given by the sub-contractor Tak Wing Company, all the drain-joining work could be finished at the end of June of the year.

20

(3) The progress of the installation of the lifts is a bit slow. According to the explanation of the Lift Department of the Ryoden Electric Engineering Company, the work of brick-laying, iron-binding and drilling of the lift (well) contracted by the Nam Sang Company was slow and thus slowed down the progress of the installation of the lifts. It is therefore hoped that Nam Sang Company would be more co-operative with the Ryoden Electric Engineering Company so that installation of the lifts could be speeded up and the occupation of the buildings would not be impeded.

30

There being no other business, the meeting closed.

(sd.) Kan Man

TRANSLATION

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MINUTES OF THE 46TH JOINT MEETING OF THE DIRECTORS OF

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SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
46th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 8.6.1967

Date : 8th June, 1967
Time : 4 p.m.
Place : Room 1724 Central Building
Present : Kwan Sai Tak, Lo Hoi Ming, Kan Man, Ma Yau Chim, Li Siu Man, Li Yuen Chan
Chairman : Kan Man
10 Recorder : Li Siu Man

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Reports:

Mr. Kan Man reported:

- (1) In general, the construction work of Wai Lee, Po Lee Buildings is gradually completed by Nam Sang, except in some places glass has not been fitted. Most of the scaffolding can be taken down. Other contracted work, such as the installation of lifts and fire fighting equipments, is now being carried out in succession and it is hoped that the work will be completed as quickly as possible.
20 Judging from the speed the work is being carried out, it is believed that it can be completed within the specified time.
- (2) Recently, some purchasers of the Wai Lee, Po Lee Buildings again convened a meeting to be held on the coming Sunday at the Kin Kwok Restaurant under the name of 'United Nations Association of Hong Kong, Committee of Forward Purchase of Tak, Wai, Po Buildings' for the purpose of asking our company to reduce the interest, to reduce the price and for compensation. Of course, our company will not pay any attention to their meeting, but this is reported to you to give you further information.
- (3) As requested by the Bank of East Asia, the lender, the deeds in respect of Wai Lee, Po Lee Buildings would have to be prepared by the solicitor firm of Lo & Lo. What fee should be paid to the former solicitor you think would be appropriate?
30
- (4) Since Wai Lee, Po Lee Buildings are going to be completed shortly, we need some experienced persons acquainted with the purchasers, to deal with the handing over of the flats at the time of occupation on account of the previous law suit. Sang Lee Company has appointed Mr. Li Siu Man to deal with the handing over of the flats and the management of the buildings as Li Siu Man has much experience in this kind of work. He is now taking care of the management of Kam Ping House and is one of the directors of Ball Company. With the assistance of
40 Mr. Kan Sze Lung and others of the Sang Lee Company, success would be achieved with half the effort.

Document

Resolutions:

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Certified
Translation of
46th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 8.6.1967

Mr. Lo Hoi Ming proposed:

(1) As the lender requested that the deeds be prepared by the solicitor firm to Lo & Lo in future, (we) should consult and discuss with the solicitor S. C. Mok regarding his fee we have to pay.

(2) Since Mr. Li Siu Man is experienced in handing over flats and management of buildings, we should agree to let Mr. Li handle the matter in order to achieve success with half the effort.

Mr. Li Yuen Chan seconded.

Unanimously passed.

There being no other business, the meeting closed.

(sd.) Kan Man

10

TRANSLATION

Document

MINUTES OF THE 47TH JOINT MEETING OF THE DIRECTORS OF

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SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
47th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 22.6.1967

Date : 22nd June, 1967
Time : 4 p.m.
Place : Room 1724 Central Building
Present : Li Siu Man, Kwan Sai Tak, Lo Hoi Ming, Lai Kwai Tim; Ma
Yau Chim, Kan Man
Chairman : Kan Man
10 Recorder : Li Siu Man

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Reports:

Mr. Kan Man reported:

(1) Regarding the request of the lender to have the preparation of the deeds in respect of Wai Lee, Po Lee Buildings transferred to the solicitor firm of Lo & Lo, it would be advisable to consult the solicitor S. C. Mok first.

20 (2) At the meeting held last week at Kin Kwok Restaurant by some purchasers of the Wai Lee, Po Lee Buildings under the name of 'United Nations Association of Hong Kong, Committee of Forward Purchase of Tak, Wai, Po Buildings', a certain person from the said solicitor firm indicated that the Agreement of Sale & Purchase appeared to be more favourable to Sang Lee and it was afraid that the request to waive the interest and to reduce the price would not be accepted easily. After further discussion, they aimed instead at Tak Lee Building as the object of their request.

(3) Many of purchasers of Tak Lee Building came to the office in succession to find out how matter stood regarding the Tak Lee Building. Our company indicated that if they thought fit, they might purchase Wai Lee, Po Lee instead.

30 (4) Many of the purchasers of Wai Lee Building came to the office in succession saying that the passage to the Wai Lee Building was too narrow and asked whether it could be broadened for the convenience of those passing in and out.

Discussion:—

Mr. Kan Man said:

The request of the purchasers of Wai Lee Building to broaden the passage for the convenience of the purchasers in future is reasonable and will Mr. Lo Hoi Ming, for public interest, please surrender 3 feet in width of the shop space on the ground floor intended to be purchased by him?

Document

Mr. Lo Hoi Ming said:

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It is reasonable. For the convenience of the people in future, effort will of course be made to comply with the request.

Certified
Translation of
47th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 22.6.1967

Resolutions:

Mr. Lai Kwai Tim proposed:

Mr. Kan Man and Mr. Lo Hoi Ming be authorized to discuss with the solicitor S. C. Mok what compensation should be paid as fee for preparation of the deeds of Wai Lee, Po Lee.

Mr. Ma Yau Chim seconded and unanimously passed.

There being no other business, the meeting closed.

(sd.) Kan Man

10

TRANSLATION

Document

MINUTES OF THE 48TH JOINT MEETING OF THE DIRECTORS OF

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SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
48th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 6.7.1967

10 Date : 6th July, 1967
Time : 3.30 p.m.
Place : Room 1724 Central Building
Present : Li Yuen Chan, Lo Hoi Ming, Lai Kwai Tim, Kan Man, Ma Yau
Chim, Kwan Sai Tak, Li Siu Man
Chairman : Kan Man
Recorder : Li Siu Man

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Reports:

Mr. Kan Man reported:

- 20 (1) The construction work of Wai Lee, Po Lee Building is nearly finished, leaving some minor work such as painting and fitting of glass etc. It is believed that the work can be completed pretty soon.
- (2) Regarding the preparation of the deeds of Wai Lee, Po Lee Buildings by the solicitor firm of Lo & Lo, Mr. Li Siu Man was asked to get in touch with and to get some information from Mr. Tong Man Leong, because the Tor Po Building of Man Tai Company had previously transferred the preparation of some of the deeds to the solicitor firm of Lo & Lo. It was learnt that the preparation of only a small number of deeds was transferred to the solicitor firm of Lo & Lo and that the solicitor S. C. Mok did not charge any further fee.
- (3) In connection with the action taken against the purchasers of Wai Lee, Po Lee Buildings, the solicitor firm of Johnson, Stokes & Master has sent in a bill of costs in the total amount of \$9,000 odd. Besides the \$2,000 paid at first, \$4,000 has now been paid.

30 Mr. Lo Hoi Ming reported:

The greater part of the constructions work of Wai Lee, Po Lee has been completed. However, the work separately contracted by sub-contractors is delayed and therefore more co-operation is needed. In general, application for the issue of occupation permit may be made not later than the middle of August.

Resolutions:

Mr. Lai Kwai Tim proposed that Mr. Li Siu Man to discuss with solicitor S. C. Mok first in connection with the fee for preparing the deeds of Po Lee, Wai Lee Buildings.

Document **Mr. Lo Hoi Ming seconded and unanimously passed.**

B-42 **There being no other business, the meeting closed.**

**Certified
Translation of
48th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 6.7.1967**

(sd.) Kan Man

TRANSLATION

Document

MINUTES OF THE 48TH (SHOULD BE 49TH) JOINT MEETING OF
THE DIRECTORS OF SANG LEE INVESTMENT CO. LTD. &
BALL LAND INVESTMENT CO. LTD.

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Certified
Translation of
48th (should be
49th) Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 20.7.1967

Date : 20th July, 1967
Time : 3.30 p.m.
Place : Room 1724 Central Building
Present : Kwan Sai Tak, Li Yuen Chan, Ma Yau Chim, Kan Man, Li Siu Man
10 Chairman : Kan Man
Recorder : Li Siu Man

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Reports:

Mr. Kan Man reported:

20 Most of the construction work of Wai Lee, Po Lee Buildings has been completed and Mr. Lo Yuk Ming of Nam Sang Company requested that \$100,000 of the retention money be advanced for financing the operation of his company and for speeding up the work, and assured that the completion of the work would be reported and occupation permit applied before the middle of August of the year. (We) immediately negotiated with the Bank of East Asia to appropriate the money from the loan for payment to the Nam Sang Company. Please ratify.

Mr. Li Siu Man reported:

30 I was appointed at the last meeting to discuss with solicitor S. C. Mok in connection with the preparation of deeds of the Wai Lee, Po Lee Buildings in future. Solicitor S. C. Mok indicated that the question of preparation of the deeds of Wai Lee, Po Lee Buildings rested entirely on the purchasers, because the purchasers have absolute power to instruct any solicitor they preferred. The lender, of course, would have his own solicitor to scrutinize the deeds and therefore in future Sang Lee Company has to bear half of the fee for scrutinizing the deeds extra. If the lender wanted the solicitor firm of Lo & Lo to prepare the deeds, he believed that (we) have no choice.

Resolutions:

Mr. Li Yuen Chan proposed that the advance of \$100,000 of the retention money to Nam Sang Company be ratified.

Mr. Ma Yau Chim seconded and unanimously passed.

There being no other business, the meeting closed.

(sd.) Kan Man

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MINUTES OF THE 53RD JOINT MEETING OF THE DIRECTORS OF

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified Translation of 53rd Joint Meeting of Directors of Sang Lee Investment Co. Ltd. and Ball Land Investment Co. Ltd. Dated 21.9.1967

Date : 21st September, 1967
Time : 3.30 p.m.
Place : Room 1724 Central Building
Present : Li Yuen Chan, Kan Man, Kwan Sai Tak, Ma Yau Chim, Li Siu Man
Chairman : Kan Man
Recorder : Li Siu Man

To pass the minutes of the last meeting 10

The meeting considered the minutes correct and unanimously passed.

Reports:

Mr. Kan Man reported:

1) Last week the Fire Services Department inspected the installation of fire prevention equipments of Wai Lee, Po Lee Buildings contracted by Shun Yick Company and found out that the installation was incomplete due to the lack of 'pressure equipment', required to be installed since 1963. Shun Yick therefore sent in an estimate, treating such equipment as an extra work at the price of \$18,000.00. A consent was made in order to obtain the occupation permit at an early date, and then to go over the account with Nam Sang Construction Company at a later date. 20

2) In future, when the purchasers of Wai Lee, Po Lee Buildings come to occupy their flats and to fetch the deeds (assignments), an amount of \$10,000.00 is needed before a flat is released. At present the shop spaces and basement of the said buildings have not been sold yet, therefore (we) can collect cash, and in order to get money to meet the want, it is proposed that they may be sold at 70%.

Unanimously passed. There being no other business, the meeting closed.

(sd.) Kan Man

TRANSLATION

Document

MINUTES OF THE 54TH JOINT MEETING OF THE DIRECTORS OF

B-45

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
54th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 28.9.1967

Date : 28th September, 1967
Time : 3.30 p.m.
Place : Room 1724 Central Building
Present : Li Yuen Chan, Ma Yau Chim, Kwan Sai Tak, Kan Man, Lai Kwai
Tim (represented by Li Siu Man), Li Siu Man

Reports:

- 10 Mr. Kan Man reported:
- 1) Mr. Lai Kwai Tim has given Mr. Li Siu Man a proxy for attending this Joint Meeting of Directors.
 - 2) Days ago, I went with Mr. Kwan Sai Tak and Mr. Ma Yau Chin to discuss the question in connection with Wai Lee, Po Lee Buildings with solicitor Mr. Lo Tak Cheung of Lo & Lo. The main points of solicitor Lo's reply were that the agreement of sale & purchase did not contain such words as cancellation and forfeiture when overdue, but indicated that the goods (flats), if not taken delivery, could be re-sold and that (the company) could demand for the price of flats if the transaction was not concluded.
 - 20 3) The (bill of) \$18,000 odd, being extra charge for installation of preventive equipment of Wai Lee, Po Lee Buildings, had been signed and returned to Shun Yick Company in order that the progress of the construction work be not impeded anyway.
 - 4) The long delay in installing separate water meters for each floor had been taken up with Lo Kwok Wing of Nam Sang Company who was asked to speed up the installation so as to obtain the occupation permit at an early date. The architect Ng Yiu Wai had forthwith been told to inform Nam Sang Company that the actual construction work could not be accepted as complete and that
30 Nam Sang Company had to be responsible for any loss if the work was delayed further.

Matters for discussion:

Mr. Kan Man proposed:

- 1) As cash is at present needed for financing the operation, any of the shareholders who wishes to buy in cash any of the flats of Wai Lee Building, formerly ordered through Mr. Lo Hoi Ming, can have a 10% discount on the price previously fixed.
- 2) The Wai Lee, Po Lee Buildings can be occupied shortly. No. 997B of the ground floor of Wai Lee Building facing the minor street may be appropriated for the site office to serve the purpose of collecting and paying money and managing the affairs. It will be sold only after all the flats have been sold out.
40
- 3) Anyone who is willing to lend money to the Company on a promissory

Document note, will be given an interest of 2% per month.
Mr. Li Yuen Chan moved that the above resolution be passed.

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Mr. Kwan Sai Tak seconded and unanimously passed.

Certified Translation of 54th Joint Meeting of Directors of Sang Lee Investment Co. Ltd. and Ball Land Investment Co. Ltd.

There being no other business, the meeting closed.

Dated 28.9.1967

(sd.) Kan Man

TRANSLATION

Document

MINUTES OF THE 55TH JOINT MEETING OF THE DIRECTORS OF

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SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
55th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 26.10.1967

Date : 26th October, 1967
Time : 4 p.m.
Place : Room 1724 Central Building
Present : Li Yuen Chan, Kan Man, Ma Yau Chim, Kwan Sai Tak, Lai Kwai
Tim , represented by Li Siu Man, Li Siu Man
Chairman : Kan Man
10 Recorder : Li Siu Man

To pass the minutes of the last meeting

Reports:

Mr. Kan Man reported:

- 20 1) The solicitor T. M. Chow representing , the purchaser of No. 910 Wai Lee Building, asked for refund of the price of flat. The letter from the said solicitor was immediately passed over the lender's solicitor of Lo & Lo for his scrutiny and he was also requested to make a reply on (the company's) behalf. Solicitor Lo indicated that according to the agreement, the said purchaser could not get back the price of flat and he added that the circular letters sent within the month of February were very useful and asked us to let him have all those circular letters for reference.
- 2) Regarding the date of completion of Wai Lee, Po Lee Buildings by Nam Sang Company, some minor work has not been satisfactorily done and therefore letter has been sent to Nam Sang Company denying the date of completion.
- 30 3) As Wai Lee, Po Lee Buildings can be occupied soon and the Bank wants \$10,000 for the release of each flat, money is much needed. It has been resolved at the last meeting that any director or shareholder wishing to purchase any shop space on the ground floor of Wai Lee, Po Lee Buildings in cash could have a 10% discount on the price previously charged on the said shop space for sale to Mr. Lo Hoi Ming.

There being no other business, the meeting closed.

(sd.) Kan Man

B-47

MINUTES OF THE 56TH JOINT MEETING OF DIRECTORS OF

Certified
Translation of
56th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 2.11.1967

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Date : 2nd November, 1967
Time : 4.00 p.m.
Place : Room 1724 Central Building
Present : Li Yuen Chan, Kan Man, Ma Yau Chim, Kwan Sai Tak, Lai Kwai
Tim, represented by Li Siu Man, Li Siu Man
Chairman : Kan Man
Recorder : Li Siu Man

10

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Reports:

Mr. Kan Man reported:

- 1) The occupation permit for Wai Lee, Po Lee Buildings has been officially approved by the Public Works Department.
- 2) The Bank of East Asia again presses us with regard to the question of release of the Wai Lee, Po Lee Buildings.
- 3) Regarding the release of the Wai Lee, Po Lee Building, it is necessary that money be raised and deposited into the Bank of East Asia for the purpose; Mr. Kwan Fan Fat agreed to lend \$450,000 which has been deposited with the Bank of East Asia for the purpose of releasing the Wai Lee, Po Lee Buildings. Mr. Ma To Sang has agreed to lend \$300,000 and Mr. Ng Pak Chun \$150,000 and they are prepared to deposit same into the Bank of East Asia soon to serve the purpose.

20

Matters for discussion:

Mr. Kan Man said:

It has been resolved at the 54th Joint Meeting of directors that any person willing to lend money to the company on a promissory note would be given an interest of 2% per month. The rate of interest fixed then is based on the following calculation: interest on the present mortgage loan is approximately 1.2% per month, and about 1.35% brokerage is needed calculating at 1.5%, and solicitor fee together with stamp duty is approximately 1.6%, and the deduction of interest tax is 15%. All that would come to 1.9% and therefore the interest of 2% fixed then is proper and reasonable.

30

Mr. Kan Man said:

Cash is urgently needed to be paid to and deposited with the Bank of East Asia for the release of Wai Lee, Po Lee Buildings. If you, the directors or

shareholders or any other persons, are willing to lend money on promissory note to the company for use, an interest of 2% will be paid per month. It is hoped that you will render your support.

Mr. Li Yuen Chan proposed that the above motion made by Mr. Kan Man be carried.

Mr. Li Siu Man, proxy of Mr. Lai Kwai Tim, seconded.
Unanimously passed.

There being no other business, the meeting closed.

(sd.) Kan Man

Document

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Certified
Translation of
56th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 2.11.1967

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MINUTES OF THE 58TH JOINT MEETING OF DIRECTORS OF

Certified
Translation of
58th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 30.11.1967

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Date : 30th November, 1967
Time : 4 p.m.
Place : Room 1724 Central Building
Present : Li Yuen Chan, Lai Kwai Tim, Kan Man, Kwan Sai Tak, Li Siu Man
Chairman : Kan Man
Recorder : Li Siu Man

10

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Reports:

Mr. Kan Man reported:

1) Our company has taken over the Wai Lee, Po Lee Buildings from the Nam Sang Construction Company, but part of the work has not been satisfactorily completed.

2) The Bank of East Asia agreed to release one unit of the buildings on repayment of \$10,000 and wanted us to deposit \$900,000 with the Bank. Mr. Kwan Fan Fat lent \$450,000, Mr. Ma To Sang lent \$300,000 and Mr. Ng Pak Chun lent \$150,000 totalling \$900,000 for deposit into the Bank of East Asia to serve the purpose. Our company will make an interest of 2% per month to the above-mentioned three persons in conformity to the resolution passed at the last joint meeting of directors.

20

Matter for discussion:

Mr. Li Yuen Chan proposed:

If there is any breach of the building contract committed by the Nam Sang Company and if any work has been behind time, the said company should be asked to make a compensation.

Mr. Lai Kwai Tim seconded.

30

Unanimously passed.

There being no other business, the meeting closed.

(sd.) Kan Man

TRANSLATION

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MINUTES OF THE 73RD JOINT MEETING OF DIRECTORS OF

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SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
73rd Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 6.3.1969

10 Date : 6th March, 1969
Time : 12 p.m.
Place : Room 1724 Central Building
Present : Lai Kwai Tim, Li Yuen Chan, Lo Hoi Ming, Ma To Sang, Ng
Pak Chun, Kan Man, Kwan Fan Fat, Kwan Sai Tak
Chairman : Kan Man
Recorder : Li Siu Man

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Mr. Kwan Fan Fat addressed the meeting first:

Mr. Kan Man has been presiding at all the joint meetings of the 2 companies in the past and Mr. Kan Man is invited to preside at this meeting too.

Mr. Kan Man said:

20 The purpose of this meeting is to discuss the Tak Lee, Wai Lee, Po Lee site carried on by the 2 companies. I believe all of you are aware that the business of the site is carried on jointly by the 2 companies in partnership and that a mortgage loan has been raised from the bank for payment of the construction fee. Notice and writ were received from the mortgagee, the Bank of East Asia recently, requesting the repayment of the loan on the of Tak Lee, Wai Lee, Po Lee buildings together with interest amounting to some 7 million odd dollars and the 3 guarantors Mr. Ma To Sang, Kwan Fan Fat, Ng Pak Chun immediately called at the Bank of East Asia. Mr. Kwan Fan Fat is invited to report on what has taken place.

Mr. Kwan Fan Fat said:

30 Notice was received from the Bank of East Asia on the 1st instant requesting the immediate repayment of the loan together with interest of \$4,000,000 odd on the mortgage of the Wai Lee Building site and the debt of \$1,600,000 odd due from Tak Lee Building site. I therefore went with Mr. Ma To Sang and Ng Pak Chun to call at the Bank of East Asia on Monday and were asked to contact solicitor Ko Sai Kit of Lo & Lo and thus, we went to see solicitor Ko in the afternoon to give him the following detailed information regarding our financial condition for communication to the Bank of East Asia:

40 (1) \$750,000 odd of the price of flats is at present deposited with the solicitor firm of Lo & Lo and together with \$1,300,000 odd due from those willing to sign agreeing to transact will make a total of \$2,050,000 odd, and adding the stock (unsold flats) at the value of approximately \$3,000,000 odd (already deducted \$900,000 odd payable to the building contractors) and securities, the total will be approximately \$6,000,000 odd. Thus between the 2 figures, the difference is approximately \$1,000,000; but still there is (2) the site of Tak Lee with an area

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Certified
Translation of
73rd Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 6.3.1969

of 23,000 sq. ft., say, at the value of \$100 per sq. ft., it will be sufficient (to make good the deficit). On the 4th instant, the solicitor firm of Lo & Lo served 2 writs for debts, totalling \$7,000,000 odd. At present money has to be raised for repayment of the debts and you are invited to discuss how to solve the problem.

Mr. Li Yuen Chan said:

Since the Bank of East Asia pressed us for repayment, why not approach the banks with foreign capital such as the Shanghai Bank etc. for the transfer of mortgage.

Mr. Kwan Fan Fat said:

Negotiation has been carrying on for the past 10 months with the Shanghai Bank to take over all the mortgages but without any result.

10

Mr. Ng Pak Chun said:

The solutions at present are: (1) to ask the Bank concerned to grant an extension of time (2) to sell the Tak Lee lot for repayment to the Bank. Please suggest what price should be charged.

Mr. Lo Hoi Ming said:

To be priced at \$150 per sq. ft., negotiable.

Mr. Ma To Sang said:

Who should pay the fee for instructing solicitor to represent the 3 guarantors.

20

Resolutions:

Mr. Lo Hoi Ming proposed:

The Tak Lee land be put up for sale at the price of \$150 per sq. ft., but negotiable.

Mr. Lai Kwai Tim proposed:

The fee for instructing solicitor should be borne by Sang Lee Company and Ball Company jointly.

(sd.) Kan Man

TRANSLATION

Document

MINUTES OF THE 74TH JOINT MEETING OF DIRECTORS OF

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SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
74th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 12.3.1969

10 Date : 12th March, 1969
Time : 3.30 p.m.
Place : Room 1724 Central Building
Present : Li Yuen Chan, Kwan Sai Tak, Lai Kwai Tim, Lo Hoi Ming, Ng
Pak Chun, Kan Man
Chairman : Kan Man
Recorder : Li Siu Man

To pass the minutes of the last meeting.

The meeting considered the minutes correct and unanimously passed.

Mr. Kan Man reported:

- 1) Regarding the action taken by the Bank of East Asia, \$2,000 has temporarily been paid as fee for instructing solicitor Wong Kin Hang to admit the amount. Solicitor Wong would again call at the Bank of East Asia and the solicitor firm of Lo & Lo to ask for extension of time so as to provide time for the sale of the land for partial repayment of the loan to the Bank, and both parties would have to bear half of the fee.
- 20 2) You, the directors, are invited to do your best to negotiate with outsiders for the sale of the Tak Lee land at an early date.
- 3) There is at present a client willing to rent a portion of the basement at 60 cents per sq. ft. including rates, and will pay 3 months rental deposit and 1 month rent in advance.
- 4) Nam Sang has obtained judgment in respect of the action. We are willing in all sincerity to have the shop spaces on the ground floor and the basement, measured by both parties, as partial repayment of the outstanding debt (see separate schedule). Mr. Lo Hoi Ming is requested to ask Nam Sang Construction Company to defer execution for the time being in order that the Bank be contacted
- 30 to have same released.

Mr. Li Yuen Chan said:

There is at present a client (Jepson & Co, motorcar department) willing to purchase the Tak Lee Building lot, but difficulty has arisen because of the piling plan. The said architect is Leigh & Orange. What should be done?

Mr. Lo Hoi Ming said:

If the said piling plan is used for putting up garages, by constructing a 12-storey building would be no problem. If Leigh & Orange has any doubt, we can arrange for the architect handling this matter, bringing along the piling plan of Gammon Piling Company, to explain to him.

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Resolutions: That Mr. Kan Man and Mr. Lo Hoi Ming be appointed to explain to Leigh & Orange.

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Certified
Translation of
74th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 12.3.1969

(sd.) Kan Man

TRANSLATION

Document

MINUTES OF THE 75TH JOINT MEETING OF DIRECTORS OF

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SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
75th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 25.3.1969

10 Date : 25th March, 1969
Time : 3.30 p.m.
Place : Room 1724 Central Building
Present : Lai Kwai Tim, Li Yuen Chan, Lo Hoi Ming, Kan Man, Kwan Sai Tak
Chairman : Kan Man
Recorder : Li Siu Man

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Mr. Kan Man said:

Regarding Nam Sang case, Deacons sent us a letter urging us to sign and Mr. Lo Hoi Ming was asked to request (Deacons) to hold over the matter. Mr. Lo Hoi Ming is invited to report on what has taken place.

Mr. Lo Hoi Ming said:

Nam Sang is aware of that and the signing can be held over for the time being.

20 Mr. Kan Man reported:

There is at present a lender buying the Tak Lee Building site but the broker does not think that it can fetch the price of \$150 per foot. Can it be sold at the original price of \$150 per foot but paying a brokerage of 3%. If so, the transaction may be successful. Even if an extra 2% brokerage is paid in this respect, the price of each foot is only \$3 less. It appears that this is not contrary to the resolution. The matter was raised at the regular meeting of Sang Lee Company yesterday and the meeting agreed to sell. \$100,000 desposit has already been received at the office of Philip K. H. Wong & Company to confirm the sale.

(sd.) Kan Man

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MINUTES OF THE 76TH JOINT MEETING OF DIRECTORS OF

Certified
Translation of
76th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 1.5.1969

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Date : 1st May, 1969
Time : 4 p.m.
Place : Room 1724 Central Building
President : Li Yuen Chan, Lo Hoi Ming, Lai Kwai Tim, Kwan Sai Tak,
Kan Man
Chairman : Kan Man
Recorder :

10

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Mr. Kwan Sai Tak said:

I went to the Bank of East Asia days ago to negotiate for the release of the flats accepted by Nam Sang Construction Co. Ltd. as repayment of the outstanding construction fee. A schedule showing the numbers position and prices of the accepted flats was produced for (the Bank's) perusal, and was told that a reply would be given in due course when the Bank has considered the conditions for the release.

Mr. Kan Man said:

(We have been asked) to pay \$28,000 odd, being the fee for preparation of the agreements of sale & purchase of Tak Lee Building by the solicitor firm of S. C. Mok & Company, out of the balance of the proceeds of sale of the Tak Lee Building. A reply should be given stating that it would be accepted.

20

Mr. Kwan Sai Tak said:

The Bank of East Asia agreed to transfer the \$750,000, deposited with the solicitor firm of Lo & Lo, for the release. There are at present 135 flats not yet released.

Mr. Lai Kwai Tim suggested:

The 3% brokerage charged on the sale of Tak Lee Building is a little on the high side and Sang Lee Co. is requested to waive the 2% agent commission charged on the sale of the land.

30

Mr. Kwan Sai Tak said:

The agent commission receivable by Sang Lee Company has accumulated to approximately \$580,000 which should be paid out of the proceeds of sale to Sang Lee Company for payment of rent and salaries when the transaction of Tak Lee Building is completed.

(sd.) Kan Man

TRANSLATION

Document

MINUTES OF THE 78TH JOINT MEETING OF DIRECTORS OF

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SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
78th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 16.8.1969

10 Date : 16th August, 1969
Time : 11 a.m.
Place : Room 1202 Bell House
Present : Kan Man, Lo Hoi Ming, Lai Kwai Tim, Kwan Fan Fat, Kwan
Sai Tak, Li Siu Man, Li Yuen Chan
Chairman : Kwan Fan Fat
Recorder : Li Siu Man

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Reports:—

Mr. Kan Man reported:

Of the flats in the Wai Lee, Po Lee Buildings accepted by Nam Sang Construction Co. Ltd. for off-setting the construction fee, Nam Sang Company is requested to surrender approximately 23'-9" x 12'-0" of the basement adjoining the entrance to the basement of Tak Lee Building as "right of way" so as to provide a passage leading from the basement of Wai Lee Building to the Tak Lee Building.

20 Mr. Lo Hoi Ming is asked to represent Nam Sang Company to be so kind as to surrender that said area.

Mr. Lo Hoi Ming suggested:

Regarding the surrender of 23'-9" x 12'-0", a total area of 285 sq. ft., at the north side of the basement of Wai Lee, Po Lee Buildings purchased by Nam Sang Construction Co., Ltd. as "right of way" in order that one can pass freely from the basement of Wai Lee, arrangement should be made by Sang Lee Company and Ball Company to waive the balance of \$16,000 odd of the price of flats of Nam Sang Company as a compensation for the surrender.

Mr. Lai Kwai Tim seconded and unanimously passed.

30 Mr. Kwan Sai Tak said:

The agreement of sale of the Tak Lee Building will be executed at 3 p.m. on Monday next at the solicitor firm of Lo & Lo.

There being no other business, the meeting closed.

(sd.) Kan Man

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MINUTES OF THE 79TH JOINT MEETING OF DIRECTORS OF

Certified
Translation of
79th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 9.9.1969

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Date : 9th September, 1969
Time : 3.30 p.m.
Place : Room 1202 Bell House
Present : Li Yuen Chan, Lo Hoi Ming, Kwan Fan Fat, Lai Kwai Tim,
Kan Man, Kwan Sai Tak
Chairman : Kwan Fan Fat
Recorder : Li Siu Man

10

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Reports:-

Mr. Kwan Fan Fat reported:

- (1) The assignment of the premises to Nam Sang Construction Co. Ltd. as construction fee has been prepared and Nam Sang Company has also applied to the Land Office to vacate the registration of the prohibitory order(?).
- (2) The agreement of sale of Tak Lee Building is in the course of preparation and the former purchasers of Tak Lee Building will also be taken over by the buyer. Immediately after the agreement is executed, the money will be handed over to the Bank as repayment of the principal and payment of interest.
- (3) The remaining basement, ground floor and upper flats of the Wai Lee, Po Lee Buildings are available for sale and it is hoped that you will employ all possible means to have them sold. As soon as Tak Lee comes into the market, it will be easier for us to know the state of trade.

20

There being no other business, the meeting closed.

(sd.) Kan Man

TRANSLATION

Document

MINUTES OF THE 80TH JOINT MEETING OF DIRECTORS OF

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SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
80th Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 4.3.1970

10 Date : 4th March, 1970
Time : 1 p.m.
Place : Wah Kung Hall, King Wah Restaurant, 2nd floor.
Present : Kan Man, Ng Pak Chun, Kwok Wai Hung, Ma Yau Chim, Lo
Hoi Ming, Kwan Sai Tak, Kwan Fan Fat, Lai Kwai Tim
Chairman : Kwan Fan Fat
Recorder : Li Siu Man

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Reports:

Mr. Kwan Fan Fat reported:

20 Lowe Bingham & Matthews has prepared the annual account of the partnership company (joint venture) for the year 1/4/1968 to 31/3/1969 and it is presented together with a schedule showing the sale of flats of the Wai Lee, Po Lee Buildings and amounts receivable to all the directors present for perusal. Please pass it at the next joint meeting of directors for submission to the Inland Revenue Department.

Mr. Lo Hoi Ming proposed:

Lowe Bingham & Matthews has been slow in preparing the annual account and therefore it should be examined as soon as possible in order that an early submission be made to the Inland Revenue Department. I therefore propose that the next meeting be held on the coming Wednesday (i.e. 11th of March), same time same place.

Mr. Kan Man seconded and passed without any objection.

(sd.) Kan Man

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MINUTES OF THE 81ST JOINT MEETING OF DIRECTORS OF

Certified
Translation of
81st Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 11.3.1970

SANG LEE INVESTMENT CO. LTD. & BALL LAND INVESTMENT CO. LTD.

Date : 11th March, 1970
Time : 1 p.m.
Place : Wah Kung Hall, King Wah Restaurant
Present : Lo Hoi Ming, Kwok Wai Hung, Kan Man, Ma Yau Chim, Lai
Kwai Tim, Kwan Sai Tak, Li Yuen Chan
Chairman : Kan Man
Recorder : Kwan Sai Tak

10

To pass the minutes of the last meeting

The meeting considered the minutes correct and unanimously passed.

Reports:—

Mr. Kwan Sai Tak Reported:

The annual account of the partnership company (joint venture) for the year from 1/4/1968 to 31/3/1969 prepared by Lowe Bingham & Matthews has been presented to all the directors present at the last meeting for perusal. If you consider it satisfactory, please sign your names so that it can be submitted to the Inland Revenue Department.

Resolutions:

20

Mr. Lo Hoi Ming proposed:

The annual account of our partnership (joint venture) for the year 1968/69 be accepted.

Mr. Kan Man seconded and unanimously passed.

Mr. Lai Kwai Tim proposed:

Mr. Li Yuen Chan, Mr. Kwan Sai Tak be appointed to consult solicitor Wong of S. C. Mok & Company and solicitors Yuen Pak Yiu of Yung, Yu, Yuen & Company relating to the purchasers of Wai Lee, Po Lee Buildings who have not yet taken possession of their flats.

Mr. Kan Man seconded and unanimously passed.

30

There being no other business, the meeting closed.

(sd.) Kan Man

TRANSLATION

Document

MINUTES OF THE 82ND JOINT MEETING OF DIRECTORS OF

B-57

SANG LEE INVESTMENT CO. LTD. & BALL AND INVESTMENT CO. LTD.

Certified
Translation of
82nd Joint Meeting
of Directors of
Sang Lee
Investment Co.
Ltd. and Ball
Land Investment
Co. Ltd.
Dated 11.4.1970

10 Date : 11th April, 1970
Time : 1 p.m.
Place : Jam Fair Restaurant, 5th floor
Present : Lo Hoi Ming, Kan Man, Lai Kwai Tim, Kwan Sai Tak, Li Yuen Chan
Chairman : Kan Man
Recorder : Li Siu Man

To pass the minutes of the last meeting

The meeting considered correct and unanimously passed.

Reports:—

Mr. Kwan Sai Tak reported:

- 20 (1) Mr. Li Yuen Chan and I went to see solicitor Wong of S. C. Mok & Co. recently and told him the view taken by solicitor Leung Siu Hon and the steps taken by solicitor Yuen Pak Yiu to confiscate the Tai Lee Building from the purchasers. All relevant papers were handed to solicitor Wong for persual. Solicitor Wong replied a week later, stating that the steps taken by solicitor Yuen Pak Yiu in dealing with the Tai Lee Building were impracticable and we therefore again called on solicitor Yuen who indicated that the matter could be dealt with in the previous manner.
- (2) S. C. Mok & Company has rendered a bill for \$86,175, being half share of the fee for preparing the agreements of Wai Lee, Po Lee, Tak Lee Buildings. What should be done?

Resolutions:

Mr. Kwan Sai Tak proposed:

- 30 (1) Mr. Lai Kwai Tim be requested to consult solicitor Yuen Pak Yiu as to what steps should be taken and what would be the fee.
- (2) Mr. Li Yuen Chan be requested to consult solicitor Wong Chung Keung as to what steps should be taken and what would be the fee.

Mr. Lo Hoi Ming seconded.

Unanimously passed.

There being no other business, the meeting closed.

(sd.) Kan Man

B-58

MINUTES OF THE FIRST MEETING OF THE DIRECTORS OF

Certified
Translation of
Minutes of 1st
Meeting of
The Directors of
Ball Land
Investment Co.
Ltd.
Dated 4.12.1962

BALL LAND INVESTMENT CO. LTD.

Date : 4th December, 1962
Time : 1 p.m.
Place : Office of the Company
Present : Lai Kwai Tim, Mok Tsze Fung, Li Yuen Chan, Kwok Wai Hung,
Lo Hoi Ming, Li Siu Man
Chairman : Mr. Mok Tsze Fung took the chair
Various directors took the seats.

10

The Chairman Mr. Mok Tsze Fung said:

The Company has been registered and duly organised and please ratify the following matters which have been done:—

(1) The Company purchased the entire block of No. 1 and No. 3 Wai Lee Building with a total of 47 units including the ground floors at the purchase price of \$1,261,734.00. \$1,135,560.60 was payable first and the remaining 10%, \$126,173.40 to be settled when occupation permit was available. Cash need not be paid as far as the payable price of building of \$1,135,560.60 was concerned which would be entered into the current account and charged at the interest of 6% per month.

20

(2) The Company subsequently sold the entire block of No. 1 and No. 3 Wai Lee Building, totalling 47 units, to Wing Kwai Investment Co. Ltd. at \$771,875.50, made in one payment.

(3) On the 11th of April 1962, apportioned and returned \$320,000.00 to various shareholders.

(4) On the 26th of June 1962, again apportioned and returned \$320,000.00 to various shareholders.

The above items, having had the consent of various directors, were thus proposed by Mr. Lo Hoi Ming.

Seconded by Mr. Lai Kwai Tim.

30

Unanimously passed.

There being no other business the Chairman declared the meeting closed.

Chairman: Mok Tsze Fung

Translated by : signed
I/T
18.9.72

TRANSLATION

Document

MINUTES OF THE SECOND MEETING OF THE DIRECTORS OF

B-59

BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
Minutes of 2nd
Meeting of
Directors of
Ball Land
Investment
Co. Ltd.
Dated 4.12.1963

Date : 4th December, 1963
Time : 1 p.m.
Place : Office of the Company
Present : Lai Kwai Tim, Kwok Wai Hung, Li Yuen Chan, Li Siu Man,
Lo Hoi Ming

Various directors took the seats.

- 10 Chairman Mr. Mok Tsze Fung, on tour in America, has not yet returned and thus Mr. Lai Kwai Tim was nominated to take the chair in his stead.

Chairman Mr. Lai Kwai Tim took the chair.

The clerk read out the minutes of the last meeting (minutes not recorded)

Chairman said:

Please pass and confirm the minutes of the last meeting if no one raises any objection.

Proposed by Mr. Kwok Wai Hung.

Seconded by Mr. Li Yuen Chan.

Unanimously passed.

- 20 Chairman said:

The audit of the 1963 annual account of the Company by Lowe Bingham & Matthews has been completed and the final account has been prepared for the inspection of the directors. The loss for the year is \$3,287.50 and I propose that it be carried forward to the profit & loss account of the coming year.

Seconded by Mr. Li Siu Man.

Unanimously passed.

Chairman said:

- 30 I propose that the 1st annual meeting of shareholders be held on the 17th December this year at Tai Kam Lung Restaurant 5th floor to receive and consider the 1962/63 general final accounts, to elect directors to fill the vacancy of those retired and to engage auditor etc.

Seconded by Mr. Lo Hoi Ming.

Unanimously passed.

Chairman said:

Lowe Bingham & Matthews asked whether the Company's director-fee has yet been fixed and I propose that the director-fee fixed at \$2,000 for the chairman, \$2,000 for the executive director and \$1,000 for the director.

Document

Seconded by Mr. Kwok Wai Hung.
Unanimously passed.

B-59

Certified
Translation of
Minutes of 2nd
Meeting of
Directors of
Ball Land
Investment
Co. Ltd.
Dated 4.12.1963

There being no other business, the meeting was declared closed.

Signed Chairman: Lai Kwai Tim

Translated by : Signed
I/T
18.9.72

TRANSLATION

Document

MINUTES OF THE THIRD MEETING OF THE DIRECTORS OF

B-60

BALL LAND INVESTMENT CO. LTD.

Certified
Translation of
Minutes of 3rd
Meeting of
Directors of
Ball Land
Investment
Co. Ltd.
Dated 18.8.1964

Date : 18th August, 1964
Time : 1 p.m.
Place : Office of the Company
Present : Lai Kwai Tim, Li Siu Man, Li Yuen Chan, Kwok Wai Hung,
Kwan Kwong Pui, Lo Hoi Ming

Various directors took the seats.

- 10 Chairman Mr. Mok Tsze Fung, on tour in America, has not yet returned and thus Mr. Lai Kwai Tim was nominated to take the chair in his stead.

Chairman Mr. Lai Kwai Tim took the chair.

The clerk read out the minutes of the last meeting (minutes not recorded).

Chairman said:

Please pass and confirm the minutes of the last meeting if no one raises any objection.

Proposed by Mr. Kwok Wai Hung.

Seconded by Mr. Li Yuen Chan.

Unanimously passed.

- 20 Chairman suggested:—

(1) The audit of the 1963/64 general final accounts of the Company by Lowe Bingham & Matthews has been completed and the final account has been prepared for the inspection of the directors. Loss for the year is HK\$14,376.17 to be carried forward to the profit & loss account of the coming year.

(2) 28th August 1964 is appointed to hold the 2nd annual meeting of shareholders of the Company at the Tai Kam Lung Restaurant 5th floor to receive and consider the 1963/64 general final accounts, to elect directors to fill the vacancy of those retired and to engage auditor etc.

- 30 (3) The distribution of director-fee shall be made in accordance with that fixed last year, i.e. chairman \$2,000, executive director \$2,000 and director \$1,000.

Seconded by Mr. Li Siu Man.

Unanimously passed.

There being no other business, the meeting was declared closed.

(sd.) Chairman: Lai Kwai Tim

Translated by : Signed
I/T
18.9.72

**CERTIFIED TRANSLATION
CAPITAL**

Document
C-1
Sheets from
Joint Venture
Ledger

Date	Particulars	Folio	Debit	Credit	Dr. or Cr.	Balance
<i>1963</i>						
4/1	B/Forward from March a/c.			1,127,474.00	Cr.	1,127,474.00
	Carried Forward to Apil c/o		1,127,474.00			
			1,127,474.00	1,127,474.00		
10	<i>1970</i>					
4/1	B/Forward from March a/c.			1,127,474.00	Cr.	1,127,474.00
	<i>1971</i>					
3/31	Transferred to Sang Lee & Ball Land a/c.	J151	1,127,474.00			

Document

**CERTIFIED TRANSLATION
SUPER-STRUCTURE WORK**

C-2

Sheets from
Joint Venture
Ledger

Date	Particulars	Folio	Debit	Credit	Dr. or Cr.	Balance
<i>1965</i>						
5/11	Nam Sang Cons. Co. Ltd.		250,000.00			
5/31	Nam Sang Cons. Co. Ltd.		250,000.00			
6/15	Nam Sang Cons. Co. Ltd.		170,000.00			
6/22	Nam Sang Cons. Co. Ltd.		170,000.00			10
7/2	Nam Sang Cons. Co. Ltd.		150,000.00			
7/22	Nam Sang Cons. Co. Ltd.		150,000.00			
8/6	Nam Sang Cons. Co. Ltd.		150,000.00			
8/13	Nam Sang Cons. Co. Ltd.		180,000.00			
8/24	Nam Sang Cons. Co. Ltd.		51,000.00			
8/24	Nam Sang Cons. Co. Ltd.		99,000.00			
8/31	Nam Sang Cons. Co. Ltd.		150,000.00			
9/8	Nam Sang Cons. Co. Ltd.		100,000.00			
9/9	Nam Sang Cons. Co. Ltd.		782,719.34			
9/14	Nam Sang Cons. Co. Ltd.		50,000.00			20
9/16	Nam Sang Cons. Co. Ltd.		60,000.00			
9/16	Nam Sang Cons. Co. Ltd.		100,000.00			
9/22	Nam Sang Cons. Co. Ltd.		150,700.00			
9/28	Nam Sang Cons. Co. Ltd.		20,000.00	Private water meter installation		
10/1	Nam Sang Cons. Co. Ltd.		150,000.00			
10/14	Nam Sang Cons. Co. Ltd.		150,000.00			
10/19	Nam Sang Cons. Co. Ltd.		50,000.00			
10/25	Nam Sang Cons. Co. Ltd.		50,000.00			
10/29	Nam Sang Cons. Co. Ltd.		100,000.00			
11/5	Nam Sang Cons. Co. Ltd.		20,000.00			30
11/10	Nam Sang Cons. Co. Ltd.		20,000.00		Dr.	3,573,419.34
			3,573,419.34			

	Date	Voucher No.	Accounts & Particulars	Fol.	Receipts	Payment	Balance	Document
								C-2
	<i>1965</i>							Sheets from Joint Venture Ledger
	8/31	112	T.W.P. Buldg.			8,044.60		
	8/31		Bell House		4,788.00			
	8/31		Tai Lee Buldg.		515.00			
	8/31	113	H.S. Bank Corp.			5,955.00		
	8/31		H.S. Bank Corp.			9,752.00		
	8/31	114	Bank of E.A.		15.00			
10	8/31		Stamps duty			15.00		
	8/31	115	Bank of E.A.		15,000.00			
	8/31		Bank of E.A.		67,500.00			
	8/31		Bank of E.A.		67,500.00			
	8/31		T.W.P. Buldg.			150,000.00		
	8/31	116	Exp. for Motor Car			190.00		
	8/31		Sanitary Exp.			100.00		
	8/31		Repair Exp.			10.00		
	8/31	117	Stationery & Painting			413.65		
	8/31		Postage			15.00		
20	8/31		Carriage Ferry Fare			.40		
	8/31		Sundry Exp.			110.50		
	8/31		Foods			160.00		
	<i>1967</i>							
	3/31		Bell House			133,988.79		
	3/31		Management Fee		133,988.79			
	3/31		Insurance			953.20		
	3/31		Prepaid Expenses		953.20			
	3/31		Prepaid Expenses			547.52		
	3/31		Insurance		547.52			
30	3/31		Bank of East Asia			135,000.00		
	3/31		Luen Kee Hong		135,000.00			
	3/31	P.7	Profit & Loss			129,008.00		
	3/31		Kam Ping Bldg.		129,008.00			
	3/31		Audit Fee			4,000.00		
	3/31		Accounts Payable		4,000.00			

Document

C-2a

Cheque to
Sang Lee
Investment
Co. Ltd.
Dated 31.8.1965

CERTIFIED TRANSLATION

Account Payee Only

NAM SANG BUILDING CONSTRUCTION COMPANY LIMITED

HONG KONG 31st AUGUST 1965

No. 038053

PAY TO THE

ORDER OF SANG LEE INVESTMENT CO. LTD. \$135,000.00

DOLLARS EXACTLY \$135000-&-00-CTS

9848-5

UNITED CHINESE BANK, LTD.

(sd.) Lo Yuk Ming

Signature illegible
and crossed

HONG KONG

DIRECTOR

MANAGING
DIRECTOR

CERTIFIED TRANSLATION

LUEN KEE HONG

Document

C-3

Sheets from
Joint Venture
Ledger

Date	Particulars	Folio	Debit	Credit	Dr. or Cr.	Balance
<i>1967</i>						
3/31	Bank of East Asia cheques cancelled, amount of which transferred to a/c. payable			135,000.00		135,000.00
10	Balance carried forward		135,000.00			

Document

C-4

Sheets from
Joint Venture
Ledger

**CERTIFIED TRANSLATION
BALL LAND INVESTMENT CO., LTD.**

Date	Particulars	Folio	Debit	Credit	Dr. or Cr.	Balance
<i>1963</i>						
7/23	Wai Lee Bldg. (Block 1 and 3)		1,135,560.60		Dr.	1,135,560.60
	Carried Forward to April A/C			1,135,560.60		
			1,135,560.60	1,135,560.60		

**CERTIFIED TRANSLATION
DEPOSIT RECEIVED ON PROPERTIES**

Document

C-5

Sheets from
Joint Venture
Ledger

	Date	Particulars	Folio	Debit	Credit	Dr. or Cr.	Balance
	<i>1963</i>						
		Brought Forward		49,663.40	5,449,048.35		
	7/17	B. m/r			7,013.00		
	7/18	B. m/r			6,466.80		
10	7/19	B. m/r			5,462.00		
	7/20	B. m/r			2,360.00		
	7/22	B. m/r			17,219.00		
	7/22	To Refund of A930 Madam Loyaen		6,406.40			
	7/23	B. m/r			10,260.00		
	7/23	Ball Land Investment Co. Ltd. re Wai Lee Block 1 and 3 see agreement 17-1-63			1,135,560.60		
	7/24	B. m/r			22,897.60		
	7/25	B. m/r			7,431.00		
	7/26	B. m/r			14,900.60		
20	7/27	B. m/r			2,502.00		
	7/29	B. m/r			10,584.00		
	7/30	B. m/r			12,503.00		
	7/31	B. m/r			4,680.00		
	8/1	B. m/r			14,985.00		
	8/2	B. m/r			15,410.00		
	8/3	B. m/r			15,738.30		
		To Refund of Aboi		7,833.00			
	8/6	B. m/r			13,458.00		
	8/7	B. m/r			28,967.80		
30	8/8	B. m/r			4,630.00		
	8/9	B. m/r			8,726.20		
	8/10	B. m/r			3,274.00		
		Carried Forward					

Document

C-6

Sheets from
Joint Venture
Ledger

**CERTIFIED TRANSLATION
SANG LEE INVESTMENT CO., LTD.**

Date	Particulars	Folio	Debit	Credit	Dr. or Cr.	Balance
<i>1963</i>						
7/23	To Drawing		1,135,560.60		Dr.	1,135,560.60
	Carried Forward to April a/c.			1,135,560.60		
			1,135,560.60	1,135,560.60		

**CERTIFIED TRANSLATION
MANAGEMENT FEE**

Document

C-6a

**Schedule of
Management Fee
1963-1972**

63/66	\$406,940.63
66/67	\$ 82,908.53
67/68	\$ 81,914.47
68/69	\$100,424.25
69/70	\$105,538.01
70/71	\$ 21,185.05
71/72	\$ 20,283.47
	<hr/>
	\$819,194.41
	=====

10

Document

CERTIFIED TRANSLATION

C-7

MANAGEMENT FEE

Sheets from
Joint Venture
Ledger

Date	Particulars	Folio	Debit	Credit	Dr. or Cr.	Balance
<i>1966</i>						
4/1	B/Forward from March a/c.		406,940.63			
<i>1967</i>						
3/31	Fee for the year		82,908.53			489,849.16
<i>1969</i>						
3/31	Fee to Sang Lee for the year ended 31-3-68		81,914.47			
	ended 31-3-69		100,424.25		Dr.	182,338.72
	Transfer to P.&L.			182,338.72		

						Document
<i>1971</i>						
	5/31	Fee charged by Sang Lee: @2% on D/N. No. S/B 8-10 and C/N. No. S/B. 5-9 for May '71	J.21	604.81		C-7
		@2% on D/N. No. S/B. 1-6 and C/N. No. S/B. 1-4 for April '71	J.22	904.62		Sheets from Joint Venture Ledger
10	6/30	@2% on D/N. No. SB-14 and C/N. No. S/B-10	J.25	145.62	Dr.	1,655.05
	7/31	@2% on D/N. 16-19 and C/N SB 11-13 for July '71	J.34	10,267.26		
	8/31	D/N. S/B-21 and C/N. S/B-14-16 for Aug. '71	J.40	6,992.36		
	9/30	@2% on D/N. S/B-24-26 and C/N. S/B-17-19 for Sept. '71	J.47	167.27		
	10/30	@2% on D/N. S/B-28-30 and C/N. S/B 2-23 for Oct. '71	J.55	488.92		
20	11/30	@2% on D/N. S/B-32-35 and C/N. S/B-24 for Nov. 1971	J.61	228.86		
	12/31	@2% on D/N. S/B 41-44 and C/N. S/B 26-29 for Dec., '71	J.76	199.67	Dr.	19,999.39
<i>1972</i>						
	1/31	@2% on D/N. S/B-47, 48 and C/N. S/B-30-33.	J.84	284.08	Dr.	20,283.47

Document

CERTIFIED TRANSLATION

C-8

INTEREST

Sheets from
Joint Venture
Ledger

Date	Particulars	Folio	Debit	Credit	Dr. or Cr.	Balance
<i>1963</i>						
10/14	To Davie Boag. Int. July-Sept		60,987.60			
12/28	To Davie Boag. Int. Oct. to Dec.		60,987.60		Dr.	121,975.20
			121,975.20			
	Carried Forward to Apr. a/c.			121,975.20		10
			121,975.20	121,975.20		
<i>1964</i>						
4/1	B/Forward from March a/c.		121,975.20		Dr.	121,975.20
5/2	Jan. to March		60,987.60			
7/15	Apr. to June		60,987.60			
7/24	Davie Boag		51,732.21			
8/22	B.E.A. 22/7-8/64		15,000.00			
9/22	B.E.A. 22/8-9		15,000.00			
10/5	Davie Boag July to Sept.		35,121.50			
10/23	B.E.A.		15,000.00			20
11/30	B.E.A.		15,000.00			
12/22	B.E.A.		15,000.00			
<i>1965</i>						
1/6	Davie Boag		35,121.49			
1/26	B.E.A.		15,000.00			
2/1	B.E.A.		15,000.00			
2/12	B.E.A.		15,000.00			
2/27	B.E.A.		15,000.00			
3/22	B.E.A. 22/2 – 3/65		15,000.00			
3/29	B.E.A.		15,000.00		Dr.	530,925.60
			530,925.60			30

		Brought Forward to Apr. a/c.	530,925.60			Document
			530,925.60			C-8
4/1	B/Forward from March a/c.	530,925.60		Dr.	530,925.60	Sheets from Joint Venture Ledger
4/22	22/3-4	15,000.00				
4/29	B.E.A. 30/3-4	15,000.00				
5/22	B.E.A. 22/4-5	15,000.00				
5/31	B.E.A. 30/4-5	15,000.00				
6/22	B.E.A. 22/5-6	15,000.00				
6/26	B.E.A. 30/5-6	15,000.00				
10	7/22	B.E.A. 21/7	16,700.00			
	7/29	B.E.A. 30/6-7	15,000.00			
	8/21	B.E.A. Wai Lee	18,850.00			
	8/28	B.E.A. Tak Lee	15,000.00			
	9/23	B.E.A. Wai Lee	20,400.00			
	9/29	B.E.A. 30/8-9	15,000.00			
	10/22	B.E.A. Wai Lee	22,250.00			
	10/28	B.E.A. Tak Lee	15,000.00			
	11/22	B.E.A. Wai Lee	22,250.00			
	11/29	B.E.A. Tak Lee	15,000.00			
20	12/28	B.E.A. Tak Lee	15,000.00			
	12/31	B.E.A. Wai Lee	22,500.00			
		1966				
	1/20	B.E.A. Wai Lee	27,633.50			
	1/28	B.E.A. Tak Lee	15,000.00			
	2/21	B.E.A. Wai Lee	29,500.00			
	2/21	B.E.A. Wai Lee	1,213.70			
	2/28	B.E.A. Tak Lee	15,000.00			
	3/22	B.E.A. Wai Lee	30,200.00			
			952,422.80			
30	3/30	B.E.A. Tak Lee	15,000.00	Dr.	967,422.80	
4/1	B/Forward from March a/c.	967,422.80				
4/23	Wai Lee	30,200.00				
4/28	Tak Lee	15,000.00				

Document	5/20	Wai Lee		30,200.00				
C-8	5/27	Tak Lee		15,000.00				
Sheets from Joint Venture Ledger	6/22	Wai Lee		30,200.00				
	6/27	Tak Lee		15,000.00				
	7/21	Wai Lee		30,200.00				
	9/12	Wai Lee		60,400.00				
	9/12	Tak Lee		45,000.00				
	10/8	Wai Lee		30,200.00				
	10/8	Tak Lee		15,000.00				
	11/30	Wai Lee		30,200.00			10	
	11/30	Tak Lee		15,000.00				
	12/21	Wai Lee		30,200.00				
	12/21	Tak Lee		15,000.00				
	<i>1967</i>							
		3/29	Wai Lee		30,200.00			
		3/29	Tak Lee		15,000.00			
	3/29	Jan. to March (querdreum)		36,740.70				
	3/31	Wai Lee		60,400.00				
	3/31	Tak Lee		30,000.00		Dr.	1,546,563.50	
	3/31	Adjustment			36,740.70	Dr.	1,509,822.80	
	4/1	B/Forward from March a/c.		1,509,822.80			20	
	4/30	Overdue interest to Ryoden	C.152	7,507.93				
	4/30	Wai Lee – loan	C.153	30,200.00				
	4/30	Tak Lee – loan	C.153	15,000.00		Dr.	1,562,530.73	
	4/30	By transfer to lift a/c.	P.14		7,507.93	Dr.	1,555,022.80	
	5/31	Wai Lee		30,200.00				
	5/31	Tak Lee		15,000.00			1,600,222.80	
	6/29	Tak Lee		15,000.00				
	6/29	Wai Lee		30,200.00				
	6/30	Bank of East Asia – Current a/c.		83,520.77			1,728,943.57	
	7/29	Wai Lee		30,200.00				
	7/29	Tak Lee		15,000.00				
	8/21	Wai Lee		30,200.00				
	8/29	Tak Lee		15,000.00				
	9/29	Wai Lee		30,200.00				

	9/29	Tak Lee	15,000.00		Document
	9/30	Bank of East Asia – Current a/c.	113,672.33	1,978,215.90	C-8
	12/29	Compensative interest to Bunsen Tam (B703)	282.36		Sheets from Joint Venture Ledger
	12/31	Adjustment of interest – Sang Lee		197,193.10	
	<i>1968</i>				
10	3/14	Compensative interest for C603	406.00		
	3/19	Compensative interest for C1011	150.45	1,781,861.61	
	3/31	Compensative interest for B1107	3,113.88	1,784,975.49	
	3/31	Accrued interest to B.E.A.	271,200.00		
	3/31	Transferred to Building Cost a/c.		1,135,009.92	
	3/31	Transferred to Profit & Loss a/c.		154,465.57	
	3/31	Carried Forward to Apr. a/c.		766,700.00	
20	4/1	B/Forward from March a/c.	766,700.00		
	4/30	Chan Shiu Chai for B1308	274.50		
	5/7	Ching Sook Yiu for B1620	180.43		
	5/24	Ho Yuet Hing for C603 (part)	557.00		
	6/4	United Chinese Bank for B2204	83.27		
	6/8	Chow Lai Chun for B822	147.12		
	7/19	The Bank of East Asia -- interest as from 22/9/67 to 21/6/68 for Wai, Po Lee Buldg.	268,272.65		
30		Tak Lee from 30/9/67 to 29/6/68	135,000.00		
	7/19	Leung Siu Ching for B1606	130.84		
	9/20	Cheung King for B1604	172.18		
	<i>1969</i>				
	1/2	Mr. Leung Yiu Pui for B701	3,424.23		
	1/2	Mr. Leung Yiu Pui for B701 Tax	604.27		
40	3/31	Lee Man Kin for C1006 transferred as bal. payment for above flat	182.40		

Document C-8	3/31	Kwong Shui Har for C607 transferred as bal. payment for flat		160.00		
	3/31	Yip Yeung Wai Fun for B1118		1,352.00	Dr.	1,177,240.89
Sheets from Joint Venture Ledger	3/31	By Account Payable			271,200.00	
	3/31	Accrued interest to Bank of East Asia – Tak Lee		331,988.27		
	3/31	Transfer to Profit & Loss a/c.			290,342.86	
	3/31	Interest on Agents C/A – difference between interest calculated and interest charged by Bank of East Asia		23,082.41		10
	3/31	Transfer to P. & L.			23,082.41	
	3/31	Transfer to Building Cost of Tak Lee			947,686.30	
	4/1	B/Forward from March a/c.				
	9/11	Thomas Wang & Co. – k.c.f. 1800/69	J.51	1,871.10		
	10/13	Mr. Ho Yuet Hing – C603 compensative interest (part)	J.63	1,000.00		20
	10/24	Lau Chan & Ko – Compensative interest for B1108	J.67	5,764.50		
10/24	Madam Law Man Wai – partial compensative interest for B1105	J.67	380.40			
11/11	Mr. Ho Yuet Hing – Compensative interest for C603	J.75	2,000.00			
11/20	Mr. Law Ka Yiu – B1713	J.79	142.70			
1970						
	1/27	Leung Ho – for C1507	J.95	283.60		30
	2/24	Leung Ho for C1507	J.103	150.00		
	3/31	Leung Ho for C1507	J.114	150.00	Dr.	11,742.30
	3/31	Accrued interest to Leung Ho for C1507	J.133	307.08	Dr.	12,049.38
	3/31	Sang Lee current account from 1.4.69 – 31.3.70	J.137	656,958.80		
	3/31	Accrued interest to Ryoden on outstanding a/c.	LBJ1	47,832.10		
	3/31	Interest on Directors Loan a/c.	LBJ1	336,330.51		40
	3/31	Difference between interest calculated	LBJ2	615,048.54	Dr.	1,668,219.33

3/31	Compensative interest payable to various clients	LBJ2	26,081.96		Dr.	1,694,007.29	Document
3/31	To reverse J.137 interest on Agency a/c.			656,958.80	Dr.	1,037,342.49	C-8
3/31	Transfer to Profit & Loss a/c.			1,037,342.49			Sheets from Joint Venture Ledger

Document

**CERTIFIED TRANSLATION
INTEREST**

C-8

Sheets from
Joint Venture
Ledger

Date	Particulars	Folio	Debit	Credit	Dr. or Cr.	Balance
<i>1970</i>						
5/1	Tam Ng for C1106 and Leung Ho for C1507	J.11	384.58			
6/4	Compensative interest to Madam Leung Ho for C1507	J.24	157.08			10
6/22	Compensative interest to Madam Rosy Lee for B1305	J.29	929.52		Dr.	1,471.18
9/29	Mdam Chien Chieh Hsin for C.903	J.66	594.26		Dr.	2,065.44
<i>1971</i>						
1/8	Compensative interest paid to Madam Chien Chieh Hsin for C903	J.101	594.26			
1/22	Madam Chien Chieh Hsin for C903	J.104	594.26			20
2/26	Madam Chien Chieh Hsin for C903	J.115	594.26			3,848.22
3/6	Madam Irene Lam for B623	J.119	223.90			
3/9	Adjustment of interest to M/D Chow Lai Chun and Ching Sook Yiu for B822 & 1620	J.122	57.80			
3/30	Mr. Lun Chun Hung for B410		891.76			5,021.68
3/31	Transfer to a/c. Payable			4,963.88		57.80
3/31	Interest charged on loan account of \$1,000,000.00 for the period from 25-3-71 to 31-3-71. @1.4% p.m.	J.143	3,161.29			3,219.09
3/31	Interest on loan from Directors of Sang Lee a/c. @2% p.m. as from 1-4-70 to 31-3-71	J.144	482,293.70		Dr.	485,512.79
3/31	Interest on Directors' Loan a/c. provided as from 1-4-70 to 30-9-70	J.146	207,333.33			40
3/31	Interest on agent's current a/c.	J.147	523,757.71			

	3/31	Ryoden for year ended 31-3-71	J.148	35,162.88				Document
	3/31	Directors' loan a/c. (20-9-70 to 31-3-71)	J.150	274,960.37				C-8
	3/31	Reversed Journal No. J.144	J.152		482,293.70	Dr.	1,044,433.38	Sheets from Joint Venture Ledger
	3/31	Transferred to Profit & Loss a/c.	J.154		1,044,433.38			
	4/30	1.4% p.m. on Loan Account of \$1,000,000.00 for April	J.9	12,869.71				
10	5/31	Interest @1.4% p.m. on Loan Account of \$1,000,000.00 for May	J.20	12,436.62		Dr.	25,306.33	
	6/30	Ryoden Electric Eng. Co. Ltd. on outstanding instalments for the month of April @1.5% p.m.	J.26	2,932.92				
	11/30	Reverse Journal No. 9 and 20	J.62		25,306.33			
	11/30	Revised interest @1.4% p.m. on Loan a/c. from 1-4-71 to 31-10-71	J.63	80,120.96		Dr.	83,053.88	
20	11/30	Interest @1.4% p.m. on Loan a/c. for Nov., 1971	J.64	9,006.34				
	11/30	Interest @1.02076% p.m. on Agent's a/c. – Sang Lee from 1-4-71 to 26-11-71	J.65	211,686.13				
	11/30	Interest @1.02076% p.m. on Agent's a/c. – Sang Lee for Nov.	J.66	3,441.82				
	12/31	Interest @1.4% p.m. on Loan a/c. for Dec., 1971	J.75	8,127.52				
30	12/31	Interest @2% p.m. on Loans a/c. from Directors of Sang Lee from 1-4-71 to 30-11-71	J.77	404,581.47		Dr.	719,897.16	

Document

CERTIFIED TRANSLATION

C-9

PROFIT & LOSS A/C.

Sheets from
Joint Venture
Ledger

Date	Particulars	Folio	Debit	Credit	Dr. or Cr.	Balance	
<i>1969</i>							
4/1	B/Forward from March a/c.		1,139,465.22		Dr.	1,139,465.22	
<i>1970</i>							
3/31	Adjustment for transfer of flats from C1301-2 to B912 & C814 which previously shown in Sales a/c. in the name of C1301	J.119	11,223.20		Dr.	1,150,688.42	10
3/31	Reverse voucher No. J.119	J.124		11,223.20		1,139,465.22	
3/31	Management fee for 31-3-70	LBJ1	105,538.01				
3/31	Audit Fee	LBJ1	3,000.00				
3/31	Land & Building – cost of sales	LBJ1	5,263,091.99				
3/31	Adjustment in respect of previous year	LBJ1	157,424.11				
3/31	Management fee overcharged for 31.3.68 and 31.3.69	LBJ2		83,192.37	Dr.	6,585,326.96	20
3/31	Commission Paid		107,045.05				20
3/31	Discount a/c.			1,268.20			
3/31	Interest Paid		1,037,342.49				
3/31	Interest Received			40,704.14			
3/31	Depreciation on F. & F.		100.00				
3/31	Legal Fee		110,789.20				
3/31	Meeting Expenses		230.60				
3/31	Printing & Stationery		30.00				
3/31	Repairs		6,091.90				
3/31	Rent Received			20,947.00	Dr.	7,784,036.86	30
3/31	Sales			1,461,246.25			
3/31	Sales of Tak Lee			3,568,170.00			
3/31	Postage & Revenue Stamps		128.25				
3/31	Sundry Expenses		4,446.00				
3/31	Wages		2,288.00		Dr.	2,761,482.86	
3/31	Balance c/f.			2,761,482.86			

						Document
1970						
	4/1	B/Forward from March a/c.		2,761,482.86	Dr.	2,761,482.86 C-9
1971						
	3/31	Management fee for year ended 31.3.71 provided 2% of \$1,059,252.35	J.145	21,185.05		
	3/31	Audit fee for year ended 31.3.71	J.145	3,000.00		
	3/31	Crown Rent	J.149	264.70		
10	3/31	Rates	J.149	1,067.28		
	3/31	Transfer to Sang Lee and Ball Land accounts	J.151			2,761,482.86
	3/31	Loss for the year ended 31.3.71 transferred to Sang Lee and Ball Land A/cs.	J.151			932,639.90
	3/31	Cost of sales for the year ended 31.3.71 transferred from Land & Bldg. – Wai, Po Lee A/c.	J.152	811,470.97		
20	3/31	Depreciation on Furniture & Fixtures for the year ended 31.3.71	J.153	100.00	Cr.	95,551.90
	3/31	Transferred from A/cs. of Commission Paid, Interest, Legal Expenses, Meeting Expenses, Postage & Revenue Stamp, Sundry Expenses and Printing Stationery	J.154	1,055,499.01		
30	3/31	Transferred from A/cs. of Interest, Rent Received and Sales	J.155			959,947.11

In the Privy Council

ON APPEAL

FROM THE SUPREME COURT OF HONG KONG

(APPELLATE JURISDICTION)
CIVIL APPEAL NO. 23 OF 1979

(On appeal from High Court Action No. 2927 of 1973)

BETWEEN

SANG LEE INVESTMENT CO. LTD. *Appellant* (The Third Party in High Court Action
No. 2927 of 1973)

and

WING KWAI INVESTMENT CO. LTD. *1st Respondent* (The Plaintiff in High Court Action
No. 2927 of 1973)

BALL LAND INVESTMENT CO. LTD. *2nd Respondent* (The Defendant in High Court Action
(In Liquidation) No. 2927 of 1973)

RECORD OF PROCEEDINGS

Volume I

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