

In the Privy Council

ON APPEAL

FROM THE COURT OF APPEAL OF HONG KONG

CIVIL APPEAL NO. 184 OF 1980

(On Appeal from High Court Action No. 2401 of 1976)

BETWEEN

EDWARD WONG FINANCE CO. LIMITED

Appellants
(Plaintiffs)

and

JOHNSON STOKES & MASTER (a firm)

Respondents
(5th Defendants and Third Party)

RECORD OF PROCEEDINGS

VOLUME 1

Linklaters & Paines
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London
EC2V 7JA

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London EC2V 5DB

Solicitors for the Appellant

Agents for the Respondents

In the Privy Council

ON APPEAL
FROM THE COURT OF APPEAL OF HONG KONG
CIVIL APPEAL NO. 184 OF 1980
(On Appeal from High Court Action No. 2401 of 1976)

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(Plaintiffs)

and

JOHNSON STOKES & MASTER (a firm) *Respondents*
(5th Defendants and Third Party)

RECORD OF PROCEEDINGS
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91.	Letter from Hang Seng Bank (Trustee) Ltd. to Messrs. Philip K. H. Wong & Co.	28th Aug.	1976
92.	Letter from Messrs. Philip K. H. Wong & Co. to Messrs. C. Y. Kwan & Co.	31st Aug.	1976
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VOLUME 1

PART I

Re-Amended by leave of
Penlington J. on 4th
June 1980.

1976 No. 2401

In the
Supreme
Court of
Hong Kong
High Court
No. 1
Re-Amended
writ with
Statement
of Claim
endorsed
4th June
1980

Amended as in red
this 5th day of
December, 1979
pursuant to the
Order of Mr. Registrar
Barnett dated the
30th day of November
1977
(Sd.) S.H. MAYO
Registrar

Amended as in green
this 11th day of
December 1978
pursuant to the
Order of Mr.
Registrar Mayo
made herein on
the 6th day of
December 1978
L.S.
(Sd.) S.H. Mayo
Registrar

IN THE SUPREME COURT OF HONG KONG
HIGH COURT

BETWEEN

EDWARD WONG FINANCE CO., LIMITED

Plaintiffs

and

POMAY INVESTMENTS LIMITED

(formerly known as

BOVILL INVESTMENTS LIMITED)

DAVID MA POK SUM

SHUM KA CHING

TSIANG HUNG WEN

MESSRS. JOHNSON, STOKES & MASTER

(a firm)

1st Defendants

2nd Defendant

3rd Defendant

4th Defendant

5th Defendants

10

and

MESSRS. JOHNSON, STOKES & MASTER

(a firm)

Third Party

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: 20

To: 1st Defendants POMAY INVESTMENTS LIMITED (formerly known as
BOVILL INVESTMENTS LIMITED) whose registered office is situate at 82,
Hung To Road, Ground Floor, Kwun Tong, Kowloon in the Colony of Hong
Kong.

2nd Defendant DAVID MA POK SUM of 79, Waterloo Road, 6th Floor, Flat
45, Kowloon in the Colony of Hong Kong.

3rd Defendant SHUM KA CHING of 74, Hung To Road, Ground Floor,
Kwun Tong, Kowloon in the Colony of Hong Kong.

4th Defendant TSIANG HUNG WEN of Flat C, 7th Floor, Wanson House, 119, 30
Castle Peak Road, Tsuen Wan, New Territories in the Colony of Hong Kong.

5th Defendants MESSRS. JOHNSON, STOKES & MASTER (a firm) of 403-
413, Hong Kong Bank Building, Victoria in the Colony of Hong Kong.

In the
Supreme
Court of
Hong Kong
High Court
No. 1
Re-Amended
writ with
Statement
of Claim
endorsed
4th June
1980

WE command you that within 8 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 EDWARD WONG FINANCE CO., LIMITED whose registered office is situate at 9th Floor, The Hongkong & Shanghai Bank Building, 673, Nathan Road, Mongkok, Kowloon in the Colony of Hong Kong, 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 SIR GEOFFREY BRIGGS, Chief Justice of Our said Court, the 8th day of November 1976.

S. H. MAYO
Registrar.

10

In the
Supreme
Court of
Hong Kong
High Court
No. 1
Re-Amended
writ with
Statement
of Claim
endorsed
4th June
1980

Note:— This writ may not be served more than 12 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 (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.

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.

10

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

This Writ was issued by MESSRS. DEACONS of Ocean Centre, 8th Floor, Canton Road, Kowloon, Hong Kong, Solicitors for the Plaintiffs whose registered office is situate at 9th Floor, The Hongkong & Shanghai Bank Building, 673, Nathan Road, Mongkok, Kowloon in the Colony of Hong Kong.

Sd. DEACONS
(Sd.) DEACONS
Sd. DEACONS

20

In the
Supreme
Court of
Hong Kong
High Court
No. 1
Re-Amended
writ with
Statement
of Claim
endorsed
4th June
1980

RE-AMENDED STATEMENT OF CLAIM

1. At all material times, the Plaintiffs were and are carrying on the business of a finance company.
2. On the 27th January 1976, at the request of the 1st Defendants, the Plaintiffs lent the sum of \$1,355,000.00 to the 1st Defendants in consideration of, inter alia, interest payable on the same at the rate of 1% per month, such sum and interest being repayable on demand in writing.
3. By a letter to the 1st Defendants dated the 14th October 1976, Messrs. Deacons, Solicitors acting for the Plaintiffs, demanded repayment of the said sum of \$1,355,000.00 together with interest accrued within 7 days thereof. 10
4. As at the 15th October 1976, the 1st Defendants were indebted to the Plaintiffs in the sum of \$1,473,788.33 inclusive of interest.
5. The 1st Defendants have failed or refused to pay the said sum of \$1,473,788.33 to the Plaintiffs or at all.
6. The 2nd, 3rd and 4th Defendants at all material times were and are directors of the 1st Defendants.
7. In consideration of the Plaintiffs making or continuing to make advances or otherwise giving credit facilities to the 1st Defendants, the 2nd, 3rd and 4th Defendants executed a guarantee dated the 27th January 1976 by which they jointly and severally undertook to pay to the Plaintiffs on demand all sums of money which then were or should at any time be owing by the 1st Defendants to the Plaintiffs. 20
8. It was a term of the said guarantee that the liability of the 2nd, 3rd and 4th Defendants thereunder should not exceed the sum of \$1,355,000.00 with interest thereon at the rate of 1% per month from the date of demand by the Plaintiffs for payment. (The rate of interest was expressed in the said guarantee to be 2.1% per month by mistake.)
9. By a letter to each of the 2nd, 3rd and 4th Defendants dated the 21st October 1976, Messrs. Deacons acting for the Plaintiffs made a demand on the 2nd, 3rd and 4th Defendants to pay the sum of \$1,355,000.00 to the Plaintiffs within 7 days thereof whilst reserving the Plaintiffs' right to claim interest under the terms of the said guarantee.
10. The 2nd, 3rd and 4th Defendants have failed or refused to pay the said sum of \$1,355,000.00 to the Plaintiffs or at all. 30
11. The loan of the sum of \$1,665,000.00 by the Plaintiffs to the 1st Defendants as aforesaid was for the express purpose of enabling the 1st Defendants to purchase the property known as the Ground Floor of No. 76 Hung To Road, Kwun Tong, Kowloon (hereinafter together with the undivided share in the land and building pertaining thereto referred to as "the said premises") which forms part of a building standing on Kwun Tong Inland Lot No. 158, the registered owner of which at all material times has been one Ho Sau Ki and which have been subject to mortgages or charges in favour of the Hang Seng Bank Limited to the extent of \$4,400,000.00.

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12. By an agreement dated the 17th December 1975, Ho Sau Ki agreed to sell and one Lucky Time Finance Company Limited agreed to purchase the said land and building free from incumbrances at a price of \$3,800,000.00.

13. By another agreement dated the 17th December 1975, Lucky Time Finance Company Limited agreed to sell and one Kai Ming Investment Company Limited and one Chan Sun Ming as joint purchasers agreed to purchase the interest of the former in the said land and building at a price of \$5,250,000.00.

14. Subsequently, it was agreed between Kai Ming Investment Company Limited and Chan Sun Ming that the latter would purchase only the said premises.

15. By an agreement in writing or evidenced by a memorandum in the Chinese language dated the 30th December 1975, Chan Sun Ming agreed to sell and one Po Fung Finishing Works Limited agreed to purchase all his interest in the said premises at the price of \$1,850,000.00 of which the sum of \$100,000.00 was paid on the 30th December 1975 and the sum of \$85,000.00 was paid on the 15th January 1976 thus leaving a balance of \$1,665,000.00 to be paid on completion. At all material times the said premises had an open market value of not less than the sum of \$1,850,000.00. 10

16. The 5th Defendants are a firm of solicitors.

17. In or about January 1976, the 2nd, 3rd and 4th Defendants purchased a shelf company, namely, the 1st Defendants, from or through the 5th Defendants for the express purpose of acquiring and owning the said premises. 20

18. Po Fung Finishing Works Limited nominated the 1st Defendants to be the purchaser under the agreement pleaded in paragraph 16 hereof and the 1st Defendants agreed to take up the purchase of the said premises. There has never been any written agreement between the 1st Defendants and Chan Sun Ming or Ho Sau Ki.

19. The 1st, 2nd, 3rd and 4th Defendants verbally requested the Plaintiffs to make available credit facilities to the extent of \$1,665,000.00 to enable the 1st Defendants to complete the purchase of the said premises.

20. The 1st, 2nd, 3rd and 4th Defendants offered to provide security for the said credit facilities to the extent of \$1,355,000.00 by the following:

- (a) A charge by way of debenture on the 1st Defendants' undertaking property and assets whatsoever and wheresoever both present and future; 30
- (b) A first legal mortgage of the said premises;
- (c) A guarantee executed by the 2nd, 3rd and 4th Defendants in respect of the credit facilities to be granted by the Plaintiffs to the 1st Defendants.

The Plaintiffs agreed to such request on the Condition that such security would be provided.

21. At all times material to this action, the 5th Defendants by agreement with the Plaintiffs had been retained for consideration as the Plaintiffs' solicitors generally and in

particular to advise them on the legal aspects and effects of the grant of credit facilities by the Plaintiffs to the 1st Defendants, to advise them on the ways and means by which the grant of credit facilities by the Plaintiffs to the 1st Defendants with a safe and sound security could be effected and to prepare the necessary documents for the purpose of effecting the same.

22. It was an implied term of the retainer and agreement aforesaid that the 5th Defendants would exercise all due care, skill and judgment in advising and protecting the interests of the Plaintiffs, especially in relation to all matters arising out of and incidental to the grant of credit facilities by the Plaintiffs to the 1st Defendants and the obtaining of the intended security therefor.

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23. The 5th Defendants acting through a solicitor Miss W. L. Leung employed by them advised the Plaintiffs that the security offered by the 1st Defendants as set out in paragraph 21 hereof should be accepted with the modification that the charge by way of debenture should be specifically on the said premises and not on other assets of the 1st Defendants which advice was accepted by the Plaintiffs.

24. The 5th Defendants prepared, engrossed and witnessed the guarantee referred to in paragraph 8 hereof and caused the 2nd, 3rd and 4th Defendants to execute it.

25. On or about the 27th January 1976 the 5th Defendants prepared, engrossed and caused the 1st Defendants to execute a debenture whereby the 1st Defendants purportedly specifically charged the said premises to the Plaintiffs to secure the advance to the 1st Defendants in accordance with the advice tendered and accepted by the Plaintiffs as pleaded in paragraph 24 hereof. The execution of the Debenture was witnessed by the said Miss W. L. Leung. The Plaintiffs will refer at the trial to the said debenture for its full terms true meaning and effect.

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26. By Clause 3 of the said debenture, the 1st Defendants covenanted with the Plaintiffs that, inter alia, they then had good right to assign the said premises to the Plaintiffs free from incumbrances and, further, the 1st Defendants and every person having or lawfully or equitably claiming any estate, right title and interest in or to the said premises would execute and do all such lawful assurances and things for further and more perfectly assuring the said premises unto the Plaintiffs as might be required.

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27. The 5th Defendants on the 27th January 1976 without the prior knowledge or consent of the Plaintiffs and in purported fulfilment of the duties undertaken by them to the Plaintiffs wrote to Messrs. Danny Yiu & Company, solicitors acting for Ho Sau Ki and/or Chan Sun Ming, the Second paragraph whereof stated that they would ask their clients, the Plaintiffs, to put them in funds with the mortgage proceeds of \$1,355,000.00 towards payment of the purchase price of the said premises upon receipt of Messrs. Danny Yiu & Company's undertaking that:

- (i) Messrs. Danny Yiu & Company would within 10 days upon receipt from the 5th Defendants of their cheque for \$1,355,000.00 send to the 5th Defendants certain documents including the assignment of the said premises to the 1st Defendants duly executed and attested (with the exception of the common seal of the 1st Defendants);

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- (ii) Messrs. Danny Yiu & Company would arrange for the registration at the Land Office as soon as possible of certain documents including the re-assignment of the said premises by Hang Seng Bank Limited to Ho Sau Ki so that the 5th Defendants could proceed with the stamping and registration of the assignment to the 1st Defendants and the mortgage of the said premises by the 1st Defendants to the Plaintiffs with the minimum of delay;
- (iii) If Messrs. Danny Yiu & Company were not in a position to send to the 5th Defendants all the documents specified in that letter within the said 10 days, Messrs. Danny Yiu & Company should hold the said sum of \$1,355,000.00 to the order of the 5th Defendants and should not release the same to their clients. 10

The 5th Defendants requested Messrs. Danny Yiu & Company to give such an undertaking by signing and returning to the 5th Defendants the duplicate of the said letter, with which request Messrs. Danny Yiu & Company complied. The Plaintiffs will refer to the said letter and duplicate for their full terms and effect.

28. The 5th Defendants also:

- (1) Helped the 1st Defendants to prepare a letter dated the 27th January 1976 addressed to the Plaintiffs by which the Defendants directed the Plaintiffs to pay the sum of \$1,355,000.00 to Messrs. Danny Yiu & Company.
- (2) Wrote a letter dated the 27th January 1976 to the Plaintiffs requesting and advising the Plaintiffs to give them a cheque in favour of Danny Yiu & Company for the sum of \$1,355,000.00 "towards payment of the purchase price" of the said premises. 20
- (3) Wrote another letter dated the 27th January 1976 to Messrs. Danny Yiu & Company enclosing 3 cheques drawn by the Plaintiffs for the total sum of \$1,665,000.00 in favour of Messrs. Danny Yiu & Company "towards payment of the balance of the purchase price" of the said premises and asking Messrs. Danny Yiu & Company to note that the said sum of \$1,665,000.00 was sent to them subject to the terms contained in the second paragraph of the letter referred to in paragraph 28 hereof. 30

29. By reason of the retainer pleaded in paragraphs 22 and 23 it was the duty of the 5th Defendants to exercise due care skill and judgment in the performance of their duties towards the Plaintiffs and to take such steps as might be necessary to ensure that the interest of the Plaintiffs were fully protected or alternatively if the interests of the Plaintiffs would not or would not be fully protected to warn the Plaintiffs of the extent and nature of any risks that might be involved in any step in the transaction between the Plaintiffs and the 1st – 4th Defendants.

30. The 5th Defendants failed to exercise due care skill and judgment in the performance of their duties towards the Plaintiffs, to take the necessary steps to protect the interests of the Plaintiffs to warn the Plaintiffs of the risks that were involved in the proposed transaction. 40

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- (1) They failed to ensure that the 1st Defendants executed a proper assignment of the said premises as a purchaser whereby the legal and beneficial interest in the said premises would be vested in the 1st Defendants. In particular the 5th Defendants had seen only a form of assignment showing the Vendor as Ho Sau Ki, and Lucky Time Finance Co. Ltd. as confirmor but without details of the other necessary parties.
- (2) They failed to make any or any sufficient inquiry relating to the due execution of the draft Deed of Mutual Covenant whereby the said building would be managed and whereby the rights of the joint owners inter so would be defined. In particular the draft form of assignment of the said premises shown to the 5th Defendants was only appropriate if such Deed was to be executed by the 1st Defendants. The 5th Defendants failed to arrange such execution or to ensure that the same had been executed. 10
- (3) They failed to make any or any sufficient inquiry with the Hang Seng Bank Limited or its solicitors as to whether such Bank was willing to execute either a re-assignment to Ho Sau Ki of the mortgaged or charged interest in the whole of the said land and building or a re-assignment to Ho Sau Ki of the said premises. In particular the 5th Defendants were on notice that Ho Sau Ki had by 3 separate mortgages charged the whole land and building to Hang Seng Bank Limited to secure banking facilities and advances to the extent of \$4,400,000.00 but had sold the entire property to Lucky Time Finance Company Limited for only \$3,800,000.00. 20
- (3A) They failed to make any or any sufficient inquiry with Messrs. Danny Yiu & Company as to how the aforesaid mortgage in favour of the Hang Seng Bank Limited was proposed to be paid off or discharged.
- (4) They failed to satisfy themselves that Danny Yiu had any authority to receive repayment of mortgage monies on behalf of Hang Seng Bank Limited.
- (5) They failed to warn the Plaintiffs that until such time as either the outstanding Mortgage of \$4,400,000.00 due from Ho Sau Ki to Hang Seng Bank Limited had been repaid in full or until the terms of a partial reassignment of the said premises from Hang Seng Bank Limited to Ho Sau Ki had been agreed and performed the said mortgages by Ho Sau Ki to Hang Seng Bank Limited would take priority over any other deed and (inter alia) that the Debenture executed by the 1st Defendants in favour of the Plaintiffs as pleaded in paragraph 26 would not vest the said premises in the Plaintiffs. 30
- (6) They further failed to warn the Plaintiffs that unless and until such time as Ho Sau Ki, Lucky Time Finance Company Limited, Kai Ming Investment Company Limited, Chan Sun Ming had executed either as vendor or as confirmors an appropriate assignment in favour of the 1st Defendants the 1st Defendants would have no title in the said premises so as to render the said Debenture in favour of the Plaintiffs effective and they further failed to warn the Plaintiffs that the 1st Defendants had no contractual relationship with any of the other aforesaid parties so that the 1st Defendants had no right to insist upon the due execution of any such Deed by Ho Sau Ki or any of the other persons or companies named herein. 40

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- (7) They failed to satisfy themselves that Danny Yiu had any authority to receive payment of the purchase money on behalf of Ho Sau Ki or any of the other persons or companies named in sub-paragraph (6) hereof.
- (8) They failed to advise or apprise the Plaintiffs of the risks involved in advancing the said sum of \$1,665,000.00 before the inquiries referred to in sub-paragraphs (1) to (7) hereof had been made and the results thereof ascertained or advise the Plaintiffs not to proceed with the grant of credit facilities to the 1st Defendants at all in all the circumstances.
- (9) They failed to advise the Plaintiffs to forward the said sum of \$1,665,000.00 including the said sum of \$1,355,000.00 by way of a draft in favour of the Hang Seng Bank Limited against such Bank's undertaking to re-assign the mortgaged or charged interest in the said premises to Ho Sau Ki his purchasers or assigns so as to clear off the prior interest of the Hang Seng Bank Limited. 10
- (10) They failed to advise the Plaintiffs to hand over the said sum of \$1,665,000.00 only against actual delivery of all necessary and duly executed documents vesting the said premises in the 1st Defendants free and clear of all prior charges.
- (11) They failed to advise the Plaintiffs, as an alternative to sub-paragraphs (9) and (10) hereof, to forward the entirety of the said sum of \$1,665,000.00 to the Hang Seng Bank Limited or the solicitors for the Hang Seng Bank Limited against their undertaking not to release any part thereof to the said Hang Seng Bank Limited and/or Ho Sau Ki his purchasers or assigns unless and until a reassignment of the said premises in favour of Ho Sau Ki was first executed. 20
- (12) They advised or caused the Plaintiffs to issue the 3 cheques aforesaid in the total sum of \$1,665,000.00 in favour of Messrs. Danny Yiu & Company.
- (13) They forwarded the said sum of \$1,665,000.00 to Messrs. Danny Yiu & Company only against the signature on the duplicate of the letter dated the 27th January 1976 referred to in paragraph 28 hereof.
- (14) They forwarded the said sum of \$1,665,000.00 to Messrs. Danny Yiu & Company without having previously ascertained that Messrs. Danny Yiu & Company had full authority to accept it either as stakeholder or as the agent of Ho Sau Ki and/or Chan Sun Ming. 30
- (15) They forwarded the said sum of \$1,665,000.00 to Messrs. Danny Yiu & Company without insisting that payment of such should be against delivery to them of all necessary and duly executed documents and title deeds relating to the said premises.
- (16) They forwarded the said sum of \$1,665,000.00 to Messrs. Danny Yiu & Company in the manner aforesaid despite the following matters:
- (i) Messrs. Danny Yiu & Company had a single proprietor, namely, Danny Yiu; 40

- (ii) Danny Yiu had not been in practice for a very long time;
- (iii) Danny Yiu was generally known to the legal profession to be a very heavy gambler;
- (iv) Messrs. Danny Yiu & Company was not by repute or otherwise a substantial firm;
- (v) The Plaintiffs will rely upon the request dated 27th January, 1976 from the 5th Defendants to Messrs. Danny Yiu & Company as evidence that the 5th Defendants knew or suspected that Messrs. Danny Yiu & Company was unreliable and/or inexperienced in the routine practice of conveyancing.

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In the circumstances the 5th Defendants knew or ought to have known that the signature of Messrs. Danny Yiu & Company on the duplicate of the letter dated 27th January 1976 referred to in paragraph 28 hereof and any undertaking constituted thereby (if any, which is not admitted) was worthless.

(17) They forwarded the said sum of \$1,665,000.00 to Messrs. Danny Yiu & Company in the manner aforesaid despite the following additional matters:

- (i) In case the said sum of \$1,665,000.00 or part thereof should be lost as a result of fraud on the part of Danny Yiu or his servants or agents, it would be impossible for the Plaintiffs to be able to resort to any fund or assets in trying to recover any sum lost;
- (ii) The 1st Defendants were a shelf company limited by shares and had no assets.

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(18) They failed to advise or apprise the Plaintiffs of the fact that as at the time of execution of the said debenture and the time of forwarding the said sum of \$1,665,000.00 to Messrs. Danny Yiu & Company, the 1st Defendants were actually not in a position to covenant with the Plaintiffs in the terms referred to in paragraph 27 hereof.

(19) They failed to advise or apprise the Plaintiffs of the risks involved in forwarding the sum of \$1,665,000.00 to Messrs. Danny Yiu & Company in all the circumstances enumerated in sub-paragraphs (13) – (17) hereof.

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(20) They failed to take any or any concrete step with a view to safeguarding the Plaintiffs' interests until the 16th February 1976 when they wrote a letter to Messrs. Danny Yiu & Company of the same date to inquire about the title deeds relating to the said premises.

31. By reason of the aforesaid breaches of contractual duties on the part of the 5th Defendants, the Plaintiffs have suffered loss and damage.

Particulars

The Plaintiffs have suffered loss and damage in the following manner:

- (1) Danny Yiu of Messrs. Danny Yiu & Company has absconded with the said sum of \$1,665,000.00 (of which \$310,000.00 had been provided by the 1st Defendants to the Plaintiffs thus leaving a balance of \$1,355,000.00).
- (2) Chan Sun Ming and/or Ho Sau Ki have denied having received any part of the said sum of \$1,665,000.00 from the 1st Defendants towards the purchase price of the said premises and no part of such money was paid to the Hang Seng Bank Limited.
- (3) In the circumstances, the 1st Defendants have no title to the said premises, and as a result, the said debenture failed to create a charge of the said premises in favour of the Plaintiffs. Had such charge been effective the Plaintiffs, would, upon the default of the 1st Defendants, and within a period not exceeding 3 months thereof, have been able to sell the said premises as mortgagee and thereby realize a net sum exceeding the principal and interest due under the debenture. 10
- (4) The 1st Defendants as the borrower and the 2nd, 3rd and 4th Defendants as the guarantors have denied that they are liable to the Plaintiffs for the said sum of \$1,355,000.00 and interest thereof or at all.
- (5) Even if the Plaintiffs can successfully claim against the 1st Defendants the 1st Defendants, being a shelf company, will not be able to satisfy any judgment against them in favour of the Plaintiffs. 20
- (6) The issuing of the proceedings herein by the Plaintiffs has been necessitated.

AND the Plaintiffs claim:—

I Against the 1st Defendants

- (i) The sum of \$1,295,000.00 referred to in paragraph 5 hereof;
- (ii) Interest thereon at the rate after taking into account a concession in the sum of \$60,000.00 granted by the Plaintiffs of 1% per month from the 27th January 1976 until the date of payment or judgment.

II Against the 2nd, 3rd and 4th Defendants and each of them

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- (i) the sum of \$1,355,000.00 referred to in paragraph 10 hereof;
- (ii) Interest thereon at the rate of 1% per month from the 28th October 1976 until the date of payment or judgment.

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III Against all of the 1st, 2nd, 3rd and 4th Defendants and each of them

- (i) Costs;
- (ii) Further or other relief.

IV Further or in the alternative, against the 5th Defendants

- (i) Damages for breach of contract;
- (ii) As part of damages, in the event of the Plaintiffs failing in their claim herein against any of the 1st, 2nd, 3rd and 4th Defendants, all costs ordered to be paid by the Plaintiffs to any of the 1st, 2nd, 3rd and 4th Defendants;
- (iii) A declaration that the 5th Defendants are liable to the Plaintiffs for any sums and costs awarded against the 1st, 2nd, 3rd or 4th Defendants in favour of the Plaintiffs which the Plaintiffs are unable to recover from such Defendants with due diligence; 10
- (iv) Interest on damages at such rate and from such date as to the Court shall deem fit;
- (vi) Further or other relief.

Patrick Fung
Counsel for the Plaintiffs

In the
Supreme
Court of
Hong Kong
High Court
No. 2
Defence and
Counterclaim
of 1st, 2nd
3rd and 4th
Defendants
8th Dec.,
1976.

IN THE SUPREME COURT OF HONG KONG
HIGH COURT

BETWEEN

EDWARD WONG FINANCE CO., LIMITED

Plaintiffs

and

BOVILL INVESTMENTS LIMITED
DAVID MA POK SUM
SHUM KA CHING
TSIANG HUNG WEN

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

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DEFENCE AND COUNTERCLAIM

DEFENCE OF THE DEFENDANTS

1. Paragraph 1 of the Statement of Claim is admitted. The Plaintiff is put to strict proof that at all material times it was licensed and registered as required by the Laws of Hong Kong to carry on the business of a finance company and to lend money in the course of such business.

2. By a deed of debenture made between the Plaintiff and the 1st Defendant which was executed on or about 27th January 1976 the Plaintiff granted to the 1st Defendant credit facilities to the extent of \$1,355,000.00 upon the terms and securities provided for therein and the 1st Defendant agreed to repay on demand all outstanding sums so advanced with interest thereon at the rate of 1% per month. The Defendants will at trial refer to the said deed of debenture for its full terms and effect.

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3. By the letter dated 27th January 1976 the 1st Defendant gave the following direction to the Plaintiff:

“On the signing of the Debenture by us in your favour for securing credit facilities to the extent of \$1,355,000.00, we hereby direct you to forward to Messrs. Danny Yiu & Co. the sum of \$1,355,000.00 towards payment the balance of the purchase price of Ground Floor of No.76 Hung To Road Kowloon.”

4. (1) The Defendants contend that under such direction no sum is owed by the 1st Defendant to the Plaintiff until the Plaintiff pursuant to such direction has discharged the 1st Defendant’s liability as purchaser to the extent of \$1,355,000.00 for the balance of the purchase price of the said Ground Floor of No. 76 Hung To Road Kowloon.

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(2) The Plaintiff has not pursuant to such direction discharged such liability of the 1st Defendant.

- (3) In the premises the 1st Defendant is not indebted to the Plaintiff in the said sum of \$1,355,000.00 or any part thereof.
5. Save as aforesaid each and every allegation in paragraphs 2, 3 and 5 of the Statement of Claim is denied. It is specifically denied that as at 15th October 1976 or at any time the 1st Defendant was or is indebted to the Plaintiff in any sum at all.
6. The receipt of the letter dated 14th October 1976 pleaded in paragraph 4 of the Statement of Claim is admitted and the Defendants will at trial refer to such letter for its full contents. Save as aforesaid paragraph 4 of the Statement of Claim is not admitted.
7. Save that it is admitted that the 1st Defendant has not paid the sum of \$1,473,788.33 or any part thereof to the Plaintiff since it was and is not obliged to make such payment, paragraph 6 of the Statement of Claim is not admitted. 10
8. Paragraph 7 of the Statement of Claim is admitted.
9. Save that it is not admitted that it contains an accurate summary of the effect of the guarantee dated 27th January 1976 and executed by the 2nd, 3rd and 4th Defendants (hereinafter referred to as "the said guarantee") paragraph 8 of the Statement of Claim is admitted. The Defendants will at trial refer to the said guarantee for its full terms and effect.
10. By an oral agreement made prior to 27th January 1976 between the Plaintiff and the 2nd, 3rd and 4th Defendants it was agreed inter alia that the liability of the 2nd, 3rd and 4th Defendants under the said guarantee which would be executed by them and each of them in the Plaintiff's favour should not exceed in the aggregate \$1,355,000.00 with interest thereon at 1% per month from the date of the Plaintiff's demand for payment. It was intended by the Plaintiff and the 2nd, 3rd and 4th Defendants that as the said guarantee was a guarantee of the indebtedness of the 1st Defendant to the Plaintiff, the rate of interest thereunder should be the same as the rate of interest for such indebtedness namely 1% per month. 20
11. On 27th January 1976 the Plaintiff and the 2nd, 3rd and 4th Defendants signed the said guarantee which was intended to embody the said oral agreement made between them and not otherwise.
12. The said guarantee was executed by the 2nd, 3rd and 4th Defendants in the belief that it embodied the said oral agreement but it does not in fact do so. 30

Particulars

Whereas the said guarantee provided that the liability of the 2nd, 3rd and 4th Defendants thereunder should not exceed in the aggregate \$1,355,000.00 with interest thereon at 2.1 per cent from the date of demand for payment, the actual agreement and true intention of the parties was as pleaded in paragraph 10 above.

13. The said guarantee was drawn up and signed as aforesaid under a mutual mistake of fact namely that it embodied the actual agreement and true intention of the parties as pleaded in paragraph 10 above.

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3rd and 4th
Defendants
8th Dec.,
1976.

14. Alternatively the 2nd, 3rd and 4th Defendants will contend that upon its true construction the provision in the said guarantee which is particularised in paragraph 12 above and does not provide for interest at the rate of 2.1% per month from the date of the Plaintiff's demand for payment.
15. Paragraph 9 of the Statement of Claim is denied.
16. The receipt of the letter dated 21st October 1976 pleaded in paragraph 10 of the Statement of Claim is admitted and the 2nd, 3rd and 4th Defendants will at trial refer to such letter for its full contents. Save as aforesaid paragraph 10 of the Statement of Claim is not admitted.
17. Save that it is admitted that the 2nd, 3rd and 4th Defendants have not paid the sum of \$1,355,000.00 or any part thereof to the Plaintiff since each of them was and is not obliged to make such payment, paragraph 11 of the Statement of Claim is not admitted. 10
18. In the premises the Plaintiff is not entitled to the reliefs claimed against the Defendants or any of them or any other relief.

**COUNTERCLAIM
OF THE 2ND, 3RD AND 4TH DEFENDANTS AGAINST THE PLAINTIFF**

19. The 2nd, 3rd and 4th Defendants repeat their Defence herein. The 2nd, 3rd and 4th Defendants and each of them counterclaims against the Plaintiff for:—
- (1) An order that the said guarantee be rectified so as to embody the said oral agreement in the respect set out in paragraph 12 above and to have the said guarantee treated as being so rectified. 20
 - (2) Costs.
 - (3) Further or other relief.

Andrew Li
Counsel for 1st, 2nd, 3rd, 4th Defendants

Dated the 8th day of December 1976.

In the
Supreme
Court of
Hong Kong
High Court
No. 3
Statement of
Claim by 1st
2nd, 3rd and
4th
Defendants
against the
Third Party
4th Feb.,
1977.

1976, No. 2401

IN THE SUPREME COURT OF HONG KONG
HIGH COURT

BETWEEN

EDWARD WONG FINANCE COMPANY LIMITED Plaintiff

and

BOVILL INVESTMENTS LIMITED 1st Defendant
DAVID MA POK SUM 2nd Defendant
SHUM KA CHING 3rd Defendant
TSIANG HUNG WEN 4th Defendant 10

and

MESSRS. JOHNSON, STOKES & MASTER Third Party
(a firm)

Statement of Claim

by the Defendants against the Third Party pursuant to the Order of
Mr. Registrar Mayo dated 12th January 1977.

1. The Plaintiff claims against the 1st Defendant for the repayment of a debt in the sum of \$1,473,788.33 and interest thereon and the Plaintiff claims against the 2nd, 3rd and 4th Defendants and each of them for the payment of the sum of \$1,355,000.00 and interest thereon under the guarantee dated the 27th January 1976 and executed by the 2nd, 3rd and 4th Defendants in favour of the Plaintiff under which they jointly and severally undertook to pay to the Plaintiff on demand all sums of money which then were or should at any time be owing by the 1st Defendant to the Plaintiff. The Plaintiff's said claims against the Defendants appear from the Writ of Summons and the Statement of Claim endorsed thereto a copy whereof was served on the Third Party on the 6th December 1976. 20
2. The Defendants dispute the Plaintiff's said claims on the grounds appearing in their Defence and Counterclaim. But in any event and/or in the event of the Defendants or any of them being held liable to the Plaintiff, the Defendants and each of them claims against the Third Party for damages for breaches of contract on the part of the Third Party, interest thereon and all costs on a common fund basis incurred by the Defendants in defending this action and the costs of these Third Party Proceedings on the grounds set out below. 30
3. The Third Party are and at all material times were a firm of solicitors carrying on their practice at various addresses in Hong Kong and Kowloon.

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High Court
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Claim by 1st
2nd, 3rd and
4th
Defendants
against the
Third Party
4th Feb.,
1977.

4. On or about 20th February 1976 the 1st Defendant changed its name from Bovill Investments Limited to Po May Investments Limited. The 2nd, 3rd and 4th Defendants are and at all material times were directors of the 1st Defendant, and the 3rd Defendant is and was at all material times its managing director.

5. The 2nd, 3rd and 4th Defendants are and at all material times were also directors of Po Fung Finishing Works Limited and May Fung Industrial Company Limited which have at all material times been associated companies of the 1st Defendant.

6. The said Po Fung Finishing Works Limited and the said May Fung Industrial Company have at all material times carried on business as manufacturers of textile products and garments at Ground Floor No. 76 Hung To Road, Kowloon (hereinafter referred to as "the said premises") which have at all material times been rented by them. 10

7. By an agreement contained in or evidenced by a memorandum in Chinese dated 30th December 1975 signed by one Chan Sun Ming, Chan Sun Ming (hereinafter referred to as "the said vendor") agreed to sell and Po Fung Finishing Works Limited agreed to purchase the said premises free from incumbrances at the price of \$1,850,000.00 of which a sum of \$100,000.00 was paid on the date of the said agreement and a sum of \$85,000.00 was paid on 15th January 1976 leaving a balance of \$1,665,000.00 to be paid on completion (hereinafter referred to as "the said purchase"); the date for the completion of the said purchase was 28th January 1976.

8. On or about 19th January 1976 the 2nd, 3rd and 4th Defendants purchased a shelf company, that is the 1st Defendant, from or through the Third Party. The said Po Fung Finishing Works Limited nominated the 1st Defendant and the 1st Defendant agreed to take up the said purchase. 20

9. The 1st Defendant needed and the Plaintiff was willing to advance credit facilities to the extent of \$1,355,000.00 to enable the 1st Defendant to complete the said purchase (the 1st Defendant paying \$310,000.00 out of its own funds to make up the said balance of the price) on the security of (a) a charge on the 1st Defendant's undertaking property and assets whatsoever and wheresoever both present and future; (b) a legal mortgage of the said premises; and (c) guarantees executed by the 2nd, 3rd and 4th Defendants in respect of such credit facilities to the 1st Defendant. The Defendants were willing to accept such credit facilities and to provide the said security. 30

10. At all material times the Third Party through their employee Miss W.L. Leung, Solicitor, had knowledge of the matters pleaded in paragraphs 4 to 9 inclusive above.

11. The Defendants retained and employed the Third Party as their solicitors for reward (1) to advise them on the legal aspects of all the matters and proposed transactions referred to in paragraph 9 above (hereinafter referred to as "the said matters and proposed transactions"), (2) to advise them on the means by which the said matters and proposed transactions could be effectively achieved including the means and manner by and in which the said sums of \$1,355,000.00 and \$310,000.00 should be paid to the said vendor under the said purchase so as to ensure that the legal mortgage of the said premises by the 1st Defendant to the Plaintiff would be effective; and (3) to draft the necessary documents to achieve the said matters and proposed transactions (hereinafter referred to as "the subject matter of the said retainer"). The Third Party agreed and accepted such retainer and employment (hereinafter referred to as "the said agreement"). 40

12. In the premises it was an implied term of the said agreement that it was the duty of the Third Party that they would exercise all due care skill and diligence in relation to the subject matter of the said retainer.

13. Pursuant to the said agreement, inter alia:

(1) The Third Party advised the Defendants that the 1st Defendant should direct the Plaintiff to forward to Messrs. Danny Yiu & Co. (who were solicitors acting for the said vendor under the said purchase) the said sum of \$1,355,000.00 towards payment of the said balance of the price. By its letter dated 27th February 1976 to the Plaintiff, the 1st Defendant accordingly gave such direction to the Plaintiff.

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(2) The Third Party advised the Defendants that the said sum of \$310,000.00 should be similarly forwarded.

(3) The Third Party sent a letter dated 27th January 1976 to Messrs. Danny Yiu & Co. (hereinafter referred to as "the said 1st letter dated 27th January 1976"), the second paragraph whereof stated that they would ask their clients to put them in funds with the mortgage proceeds of \$1,355,000.00 towards payment of the purchase price of the said premises upon receipt of Messrs. Danny Yiu & Co.'s undertaking (hereinafter referred to as "the said undertakings"):

(i) Messrs. Danny Yiu & Co. would within 10 days upon receipt from the Third Party of their cheque for \$1,355,000.00 send to the Third Party certain documents including the assignment of the said premises to the 1st Defendant duly executed and attested (with the exception of the 1st Defendant's common seal).

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(ii) Messrs. Danny Yiu & Co. would arrange for the registration at the Land Office as soon as possible of certain documents including the reassignment of the said premises from the Hang Seng Bank Limited so that the Third Party could proceed with the stamping and registration of the said assignment to the 1st Defendant and the mortgage of the said premises from the 1st Defendant to the Plaintiff with the minimum of delay.

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(iii) If Messrs. Danny Yiu & Co. were not in a position to send to the Third Party all the documents specified in the said letter within the said 10 days, Messrs. Danny Yiu & Co. should hold the said sum of \$1,355,000.00 to the order of the Third Party and would not release the same to their clients.

The said letter to which the Defendants will at trial refer for its full contents and effect concluded with the following paragraph: "Please give us your undertaking as suggested above by signing and returning to us the duplicate of this letter by the bearer of this letter." Messrs. Danny Yiu & Co. did not give the said undertakings in the manner suggested or at all.

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2nd, 3rd and
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- (4) The Third Party sent another letter dated 27th January 1976 to Messrs. Danny Yiu & Co. and enclosed with it 3 cheques totalling \$1,665,000.00 in favour of Messrs. Danny Yiu & Co. The said letter stated that the said 3 cheques were for the payment of the said balance of the price under the said purchase and noted that the said sum of \$1,665,000.00 was sent by the Third Party subject to the terms referred to in the second paragraph of the said 1st letter dated 27th January 1976.
- (5) The guarantee referred to in paragraph 9(c) above was prepared, engrossed and completed by the Third Party and was duly executed by the 2nd, 3rd and 4th Defendants in favour of the Plaintiff on or about 27th January 1976, (hereinafter referred to as "the said guarantee"). 10
- (6) A debenture containing the said charge and the said legal mortgage referred to in paragraphs 9(a) and 9(b) above was prepared, engrossed and completed by the Third Party and was duly executed by the 1st Defendant in favour of the Plaintiff, (hereinafter referred to as "the said debenture").

14. In breach of the said term of the said agreement, the Third Party failed to exercise any or any due care and skill in relation to the subject matter of the said retainer.

PARTICULARS

- (1) Advising the Defendants as pleaded in paragraphs 13(1) and (2) above.
- (2) Forwarding the said sum of \$1,665,000.00 to Messrs. Danny Yiu & Co. against the said undertakings suggested by the Third Party as pleaded in paragraphs 13(3) and (4) above, (hereinafter referred to as "forwarding the said sum of \$1,665,000.00 to Messrs. Danny Yiu & Co. in the said manner"). 20
- (3) Forwarding the said sum of \$1,665,000.00 to Messrs. Danny Yiu & Co. in spite of the fact that they failed to give the said undertakings in the manner suggested by the Third Party in the said 1st letter dated 27th January 1976 or at all.
- (4) Forwarding the said sum of \$1,665,000.00 to Messrs. Danny Yiu & Co. in the said manner to suit the Third Party's convenience and without any or any due regard to safeguarding the interests of the Defendants.
- (5) Forwarding the said sum of \$1,665,000.00 to Messrs. Danny Yiu & Co. in the said manner having regard to the following matters of which the Third Party had knowledge: 30
(a) Messrs. Danny Yiu & Co. had a single proprietor, namely, Danny Yiu; (b) Messrs. Danny Yiu & Co. was not by repute or otherwise a substantial firm; (c) In the event of the said vendor under the said purchase failing to receive the said sum of \$1,665,000.00 because of fraud committed by Danny Yiu or an employee of his firm, there was no fund established by statute or by the Law Society of Hong Kong or otherwise against which the Defendants can seek compensation.
- (6) Failing to advise or apprise the Defendants of the risks of forwarding the said sum of \$1,665,000.00 to Messrs. Danny Yiu & Co. in the said manner.

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- (7) Forwarding the said sum of \$1,665,000.00 to Messrs. Danny Yiu & Co. in the said manner or at all when they did not have the authority to receive the said sum of \$1,665,000.00 in the said manner or at all.
- (8) Failing to pay the said sum of \$1,665,000.00 to the said vendor under the said purchase against delivery to the Third Party of the necessary documents duly executed and the title deeds in respect of the said premises.
15. By reason of the said breaches of the said term of the said agreement the Defendants have suffered loss and damage.

PARTICULARS

- A. The 1st Defendant 10
Danny Yiu the sole proprietor of Messrs. Danny Yiu & Co. absconded with the said sum of \$1,665,000.00 and the said vendor under the said purchase has denied that it or its agents have received the said sum of \$1,665,000.00. The Plaintiff claims herein against the 1st Defendant for the sum of \$1,473,788.33 (that is the said sum of \$1,355,000.00 and interest thereon up to the issue of the writ herein) and interest thereon and against the 2nd, 3rd and 4th Defendants for the sum of \$1,355,000.00 and interest thereon as pleaded in paragraph 1 above. In the premises the 1st Defendant has suffered loss and damage as follows:—
- (1) If the 1st Defendant became indebted to the Plaintiff in the said sum of \$1,473,788.33 and interest thereon by reason of the matters pleaded herein, the said sum of \$1,473,788.33 and interest thereon. 20
- (2) The said sum of \$310,000.00.
- (3) The equity of redemption in respect of the said premises to which the 1st Defendant would have been entitled, the value thereof was at least about \$490,000.00 in late January 1976, that is \$1,850,000.00 (the price under the said purchase which is evidence of the then market value which was rising) minus \$1,355,000.00 (the mortgage debt).
- (4) The continuous loss of the income of the said premises to which the 1st Defendant would have been entitled amounting to at least \$185,000.00 per annum. 30
- B. The 2nd, 3rd and 4th Defendants
If the 1st Defendant became indebted to the Plaintiff in the said sum of \$1,355,000.00 and interest thereon by reason of the matters pleaded herein and the 2nd, 3rd and 4th Defendants became liable to pay the said sum of \$1,355,000.00 and interest thereon to the Plaintiff under the said guarantee the loss and damage suffered by the 2nd, 3rd and 4th Defendants was the said sum of \$1,355,000.00 and interest thereon.
16. The Defendants require the following question or issue to be determined not only as between the Plaintiff and the Defendant but also as between the Plaintiff and/or the Defendants and the Third Party:— 40

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Claim by 1st
2nd, 3rd and
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- (1) Whether the 1st Defendant is indebted to the Plaintiff in the said sum of \$1,473,788.33 as claimed in the Statement of Claim herein; and or
- (2) Whether the 1st Defendant is and became indebted to the Plaintiff in the said sum of \$1,355,000.00 and interest thereon as a result of the said direction from the 1st Defendant to the Plaintiff (as pleaded in paragraph 13(1) above) and the forwarding of the said sum of \$1,665,000.00 by the Third Party to Messrs. Danny Yiu & Co. in the said manner.

And the Defendants and each of them claims against the Third Party:—

- (1) Damages for the said breaches of the said agreement as particularised in paragraph 15 above. 10
- (2) As part of the damages claimed in (1) above, judgment for any amount which may be found to be due from the Defendants or any of them to the Plaintiff.
- (3) Interest on the damages claimed in (1) above for such period and at such rate as the Court thinks fit.
- (4) Judgment for the amount of any costs which the Defendants or any of them may be adjudged to pay to the Plaintiff and for the amount of their own costs incurred in the defence of this action on a common fund basis and of the proceedings against the Third Party herein.
- (5) Further or other reliefs.

Dated this 4th day of February, 1977.

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Andrew Li
Counsel for the Defendants

IN THE SUPREME COURT OF HONG KONG
HIGH COURT

BETWEEN

EDWARD WONG FINANCE CO., LIMITED

Plaintiff

and

BOVILL INVESTMENTS LIMITED

1st Defendant

DAVID MA POK SUM

2nd Defendant

SHUM KA CHING

3rd Defendant

TSIANG HUNG WEN

4th Defendant 10

and

MESSRS. JOHNSON, STOKES & MASTER (a firm)

Third Party

DEFENCE OF THE THIRD PARTY TO THE
STATEMENT OF CLAIM OF THE DEFENDANTS

1. It is admitted that a copy of the Plaintiff's Writ of Summons with the Statement of Claim endorsed thereon was served upon the Third Party on 6th December, 1976.

2. The Third Party denies that the Defendants are entitled to damages for breaches of contract as alleged or at all.

3. Paragraph 3 of the Defendants' Statement of Claim is admitted.

4. As to paragraph 4 of the Defendants' Statement of Claim the Third Party says:— 20

(i) the 1st Defendant was incorporated on 23rd December, 1975 as Bovill Investments Limited;

(ii) the 1st Defendant by special resolution passed on 12th February, 1976 changed its name to Pomay Investments Limited;

(iii) the Certificate of Incorporation on change of name was given by the Registrar of Companies on 20th February, 1976;

(iv) the 2nd and 3rd Defendants were appointed Directors of the 1st Defendant on 20th January, 1976;

(v) the 4th Defendant was appointed a Director of the 1st Defendant on 26th January, 1976;

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the Third
Party 25th
Feb., 1977.

- (vi) save as aforesaid no admission is made to paragraph 4 of the Defendants' Statement of Claim.
5. No admission is made to paragraphs 5 and 6 of the Defendants' Statement of Claim.
6. As to paragraph 7 of the Defendants' Statement of Claim it is admitted that by a Memorandum in Chinese dated 30th December, 1976 Chan Sun Ming acknowledged receipt of \$100,000 from Po Fung Finishing Works Limited on account of the purchase from him of No. 76 Hung To Road, Ground Floor. The Third Party will refer to the said document at the Trial of this action for its true and proper construction.
7. As to paragraph 8 of the Defendants' Statement of Claim the Third Party says that on 21st January, 1976 the 3rd Defendant came to the office of Miss W.L. Leung an assistant solicitor employed by the Third Party in its Kowloon office and requested Miss Leung to supply a shelf company which the 3rd Defendant and his associates intended to use as a vehicle for the purchase of the said premises. Miss Leung was further informed that the matter was urgent as the parties intended to complete the transaction prior to Chinese New Year which began on Saturday 31st January, 1976. The Third Party agreed to supply a shelf company to the 3rd Defendant and did so supply the 1st Defendant. 10
8. Paragraph 9 of the Defendants' Statement of Claim is admitted save that the Third Party does not admit that the 1st Defendant needed credit facilities to the extent of \$1,355,000.00 or at all and save that the 1st Defendant informed Miss Leung of the Third Party on 27th January, 1976 that it had never been intended to give the Plaintiff a floating charge to secure the advances to be made by the Plaintiff. Miss Leung thereupon obtained confirmation from the Plaintiff for whom the Third Party was acting in the transaction that it was in order to delete reference to the floating charge from the Debenture and Minutes that had already been prepared and engrossed. 20
9. Paragraph 10 of the Defendants' Statement of Claim is denied save as hereinbefore expressly admitted.
10. (i) Paragraph 11 of the Defendants' Statement of Claim is denied.
- (ii) At all material times the Third Party was retained and employed by the Plaintiff as the proposed Mortgagee of the said premises.
- (iii) The Third Party acted for 1st and 3rd Defendants only and for the limited purpose of: – 30
- (a) supplying the 1st Defendant as a shelf company which the 3rd Defendant with his associates the 2nd and 4th Defendants intended to use to purchase the said premises;
- (b) arranging for the change of name of the 1st Defendant;
- (c) preparing various Minutes of Meetings of the Board of Directors and Shareholders of the 1st Defendant and making various returns to the Companies Registry ancillary to the supply of the shelf company and its change of name.

- (iv) The Third Party does not admit that it acted for either the 2nd or the 4th Defendants in any of the matters aforesaid.
- (v) It is specifically denied that the Third Party acted as solicitors for the Defendants or any of them in the matter of the proposed purchase of the said premises or in the matter of the security intended to be furnished by the Defendants to the Plaintiff. The Third Party says that the Defendants were represented in such transactions by Messrs. Danny Yiu and Company. Alternatively the Defendants were unrepresented in such matters.

11. As to paragraph 12 of the Defendants' Statement of Claim the Third Party admits that to the extent that it acted for the Defendants as admitted under paragraph 10 (iii) hereof it was under a duty to exercise all due care, skill and diligence. 10

12. As to paragraph 13 (1) of the Defendants' Statement of Claim it is admitted that the Third Party as solicitors for the Plaintiff prepared the letter of 27th January, 1976 for signature by the 1st Defendant whereby the Plaintiff was authorised and directed to pay the sum of \$1,355,000 to Messrs. Danny Yiu and Company the solicitors acting for the Vendor under the purchase as well as for the Defendants as pleaded aforesaid.

13. As to paragraph 13 (2) of the Defendants' Statement of Claim the 3rd Defendant telephoned the said Miss Leung on 26th January, 1976 to enquire what needed to be done to complete the matter on 27th January, 1976. The said Miss Leung informed him that the balance of the purchase price would have to be paid to Messrs. Danny Yiu and Company as well as their costs. 20

14. (i) As to paragraph 13 (3) of the Defendants' Statement of Claim the first letter of 27th January, 1976 is admitted. The Third Party will refer to the said letter at the Trial of this action for its true and proper construction, full terms and effect.

(ii) The reference to "clients" in the second paragraph of the said letter was a reference to the Plaintiff.

(iii) Messrs. Danny Yiu and Company gave the undertakings requested by signing and returning the duplicate of the said letter to the Third Party by the same Messenger who had delivered it. 30

15. It is admitted that the Third Party sent the second letter of 27th January, 1976 enclosing 3 cashier's orders totalling \$1,665,000 in favour of Messrs. Danny Yiu and Company towards payment of the balance of the purchase price and subject to the terms referred to in the 2nd paragraph of the first letter of 27th January, 1976.

16. It is admitted that a guarantee was prepared engrossed and completed by the Third Party and was duly executed by the 2nd 3rd and 4th Defendants in favour of the Plaintiff on 27th January, 1976.

17. It is admitted that a debenture containing a legal charge and a floating charge was prepared and engrossed by the Third Party. As pleaded aforesaid upon the Defendants indicating that it was not intended to provide a floating charge as part of the security and 40

upon the Plaintiff agreeing to this the floating charge was deleted from the debenture which was then duly executed by the 1st Defendant in favour of the Plaintiff.

18. As to paragraph 14 of the Defendants' Statement of Claim the Third Party repeats paragraphs 10 and 11 hereof. It is denied that the Third Party was in breach of any term of any agreement with the Defendants as alleged or at all. As to the particulars pleaded under paragraph 14 the Third Party says as follows.

19. As to paragraph 14(1) the Third Party repeats paragraphs 12 and 13 hereof.

20. As to paragraph 14(2) the Third Party says that the said sum of \$1,665,000 was forwarded to Messrs. Danny Yiu and Company

(i) in accordance with normal and customary conveyancing practice in Hong Kong 10

(ii) with the knowledge and consent of the Defendants.

21. As to paragraph 14(3) the Third Party repeats paragraph 14(iii) hereof.

22. As to paragraph 14(4) the Third Party says

(i) it was not acting for the Defendants in the matter

(ii) it repeats paragraph 20 hereof

(iii) the Defendants were anxious to ensure that the sale and purchase transaction was finalised before Chinese New Year and the necessity for urgency was impressed upon Miss Leung of the Third Party

(iv) it is denied the said sum was so forwarded for the purpose of suiting the Third Party's convenience. 20

23. As to paragraph 14(5)

(i) it is admitted that the Third Party knew that Danny Yiu was the sole proprietor of Messrs. Danny Yiu and Company

(ii) the Third Party at that time had no reason to doubt the honesty or professional integrity of Danny Yiu a fellow Solicitor and an officer of the Supreme Court

(iii) it is admitted that there was and is no compensation fund established by the Law Society of Hong Kong.

24. As to paragraph 14(6) the Third Party did not at the time consider that it was taking any risk in forwarding the said sum to Messrs. Danny Yiu and Company and in any event as pleaded aforesaid was not acting for the Defendants in the matter. 30

25. (i) As to paragraph 14(7) the Third Party puts the Defendants to proof of the

allegation that Messrs. Danny Yiu and Company did not have authority to receive the said sum in the said manner or at all;

(ii) at all material times Messrs. Danny Yiu and Company represented to the Third Party and held themselves out as having authority to receive the said purchase moneys and the Third Party was entitled to rely upon the said representations of a fellow Solicitor and to forward the said purchase moneys in accordance with normal and customary Hong Kong conveyancing practice;

(iii) the Defendants by letter dated 27th January, 1976 directed the Plaintiff to forward the said sum to Messrs. Danny Yiu and Company.

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26. As to paragraph 14(8) the Third Party repeats that the said sum was forwarded to Messrs. Danny Yiu and Company in accordance with normal and customary Hong Kong conveyancing practice against the undertakings of Messrs. Danny Yiu and Company given by their counter-signing the said letter of 27th January, 1976.

27. Save that it is admitted that Danny Yiu the sole proprietor of Messrs. Danny Yiu and Company has absconded no admission is made as to the alleged or any loss or damage.

28. Save as hereinbefore expressly admitted each and every allegation made in the Defendants' Statement of Claim is denied as if each and every such allegation had been setforth herein and traversed seriatim.

Richard Mills-Owen
Counsel for the Third Party

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Dated the 25th day of February 1977.

In the
Supreme
Court of
Hong Kong
High Court
No. 5
Defence of
5th
Defendants
6th Feb.,
1978.

1976 No. 2401

IN THE SUPREME COURT OF HONG KONG
HIGH COURT

BETWEEN

EDWARD WONG FINANCE COMPANY LIMITED Plaintiff

and

POMAY INVESTMENTS LIMITED
(formerly known as
BOVILL INVESTMENTS LIMITED) 1st Defendant
DAVID MA POK SUM 2nd Defendant 10
SHUM KA CHING 3rd Defendant
TSIANG HUNG WEN 4th Defendant
MESSRS. JOHNSON STOKES & MASTER (a firm) 5th Defendants

and

MESSRS. JOHNSON STOKES & MASTER (a firm) Third Party

DEFENCE OF 5TH DEFENDANTS

1. Paragraph 1 of the Amended Statement of Claim is admitted.
2. As to paragraphs 2 and 3 of the Amended Statement of Claim the 5th Defendants admit only that the Plaintiff lent the sum of \$1,355,000.00 to the 1st Defendant with interest at the rate of 1% per month, such sum and interest being repayable on demand in writing. 20
3. No admission is made as to paragraphs 4, 5 and 6 of the Amended Statement of Claim.
4. As to paragraph 7 of the Amended Statement of Claim the 2nd and 3rd Defendants were appointed Directors of the 1st Defendant on 20th January 1976. The 4th Defendant was appointed a Director of the 1st Defendant on 26th January 1976.
5. Paragraphs 8 and 9 of the Amended Statement of Claim are admitted.
6. No admission is made as to paragraphs 10 and 11 of the Amended Statement of Claim.
7. Paragraph 12 of the Amended Statement of Claim is admitted save that the 5th Defendants admit only that the amount of the said loan was \$1,355,000.00. 30

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Defendants
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8. Paragraphs 13, 14 and 15 of the Amended Statement of Claim are admitted.
9. As to paragraph 16 of the Amended Statement of Claim it is admitted only that the said sums of \$100,000.00 and \$85,000.00 respectively were paid to Chan Sun Ming and that he acknowledged receipt of such payment in writing by receipt dated 30th December 1975 and 15th January 1976.
10. Paragraphs 17 and 18 of the Amended Statement of Claim are admitted.
11. As to paragraph 19 of the Amended Statement of Claim it is admitted that the 1st Defendant was to purchase the said premises. The 5th Defendants say that at all material times Messrs. Danny Yiu & Co. were acting for Ho Sau Ki who was the registered owner of the said premises as well as for Lucky Time Finance Co. Limited ("Lucky Time") who had agreed to purchase the said premises from Ho Sau Ki. The 5th Defendants further say that the duplicate letter of 27th January 1976 signed by Mr. Danny Yiu as Solicitor and Agent for Ho Sau Ki and Lucky Time was a sufficient memorandum in writing evidencing the Agreement whereby the said premises were sold by Ho Sau Ki to Lucky Time and in turn to the 1st Defendant. 10
12. As to paragraph 20 of the Amended Statement of Claim the 5th Defendants say that their instructions from the Plaintiff were to prepare a Debenture to secure credit facilities to the extent of \$1,355,000.00.
13. As to paragraph 21 of the Amended Statement of Claim the 5th Defendants say:—
 - (i) It is admitted that the 1st Defendant offered to provide security for the credit facilities to be advanced to the extent of \$1,355,000.00 by a First Legal Mortgage of the said premises. 20
 - (ii) In addition to the security to be provided by the said First Legal Mortgage the 5th Defendants prepared a guarantee to be signed by the 2nd, 3rd and 4th Defendants.
 - (iii) It had not been agreed that the Plaintiff be given any floating charge over the assets of the 1st Defendant.
14. As to paragraphs 22 and 23 of the Amended Statement of Claim the 5th Defendants say:—
 - (i) On 21st January 1976 the 5th Defendants were instructed by the Plaintiff that it had been agreed between the Plaintiff and the 2nd, 3rd and 4th Defendants that the Plaintiff would advance the sum of \$1,355,000.00 to a Company owned or to be acquired by the 2nd, 3rd and 4th Defendants for the purpose of purchasing the said premises and that the loan was to be secured by a mortgage. 30
 - (ii) The 5th Defendants were instructed as the Plaintiff's Solicitors to prepare the said mortgage.
 - (iii) It is admitted that the 5th Defendants were retained by and acted for the

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Plaintiff as the proposed mortgagee of the said premises which were to be purchased by the 1st Defendant.

- (iv) It is admitted that the 5th Defendants were retained by the Plaintiff to act for it in the matter of the said mortgage and that it was the duty of the 5th Defendants to exercise all due and reasonable care and skill in acting on the Plaintiff's behalf in respect of the said transaction.

15. As to paragraph 24 of the Amended Statement of Claim the 5th Defendants say:—

- (i) They were not asked to advise on the sufficiency of the proposed security to be furnished by the Defendants.

- (ii) It had already been agreed between the Plaintiff and the 3rd Defendant prior to the 5th Defendants being instructed to act on 21st January 1976 that the security to be furnished would comprise a First Legal Mortgage. 10

- (iii) It was proposed that additional security be provided by way of a floating charge over the undertaking and assets of the 1st Defendant and by way of a guarantee to be provided by the 2nd, 3rd and 4th Defendants. The 2nd, 3rd and 4th Defendants agreed to give a guarantee but informed Miss Leung of the 5th Defendants that it had never been intended to give the Plaintiff a floating charge to secure the advances to be made by the Plaintiff. Miss Leung thereupon obtained confirmation from the Plaintiff that it was in order to delete reference to the floating charge from the debenture and minutes that had already been prepared and engrossed. 20

- (iv) The instructions given to Miss Leung of the 5th Defendants by Mr. Edward Wong of the Plaintiff were to prepare the necessary documentation to complete the said proposed transaction.

16. As to paragraph 25 of the Amended Statement of Claim it is admitted that the 5th Defendants prepared and engrossed the said guarantee and that it was executed by the 2nd, 3rd and 4th Defendants and witnessed by Miss Leung.

17. As to paragraph 26 of the Amended Statement of Claim it is admitted that the 5th Defendants prepared and engrossed the said debenture and that the same was executed by the 1st Defendant and witnessed by Miss Leung on 26th January 1976. 30

18. As to paragraph 27 of the Amended Statement of Claim the 5th Defendants will refer to the said Debenture at the trial of this action for its true and proper construction and effect.

19. It is admitted that the 5th Defendants wrote the letter of 27th January 1976 referred to in paragraph 28 of the Amended Statement of Claim. The 5th Defendants say that in writing the said letter of 27th January 1976 they acted in accordance with normal and customary conveyancing practice in Hong Kong and that it was not part of their duty specifically to refer the said letter to the Plaintiff for its consent or approval prior to despatching the same to Messrs. Danny Yiu & Co..

20. As to paragraph 29 of the Amended Statement of Claim
- (i) It is admitted that the 5th Defendants drafted the letter of 27th January 1976 referred to in paragraph 29(1). The said letter was prepared and signed for the further protection and benefit of the Plaintiff.
 - (ii) It is admitted that the 5th Defendants wrote the letters of 27th January 1976 referred to respectively in paragraphs 29(2) and 29(3).
21. As to paragraph 30 of the Amended Statement of Claim the 5th Defendants repeat paragraph 14 hereof.
22. As to paragraph 31 of the Amended Statement of Claim the 5th Defendants deny that they acted in any way in breach of their duty to exercise all due and reasonable care and skill in acting on the Plaintiff's behalf in the said transaction. 10
23. Generally in answer to the allegations of breach of duty made in paragraph 31 of the Amended Statement of Claim the 5th Defendants say as follows:—
- (i) At all times they acted as mortgagee's Solicitors in accordance with normal and customary conveyancing practice in Hong Kong. At no time were they acting as Solicitors for either the Vendors or the Purchasers in the said transaction.
 - (ii) That at the material time they had no reason to doubt the honesty or professional integrity of Danny Yiu a fellow Solicitor and Officer of the Supreme Court. 20
 - (iii) That they did not and had no reason to consider that they were taking any risks in forwarding the said moneys to Messrs. Danny Yiu & Co.
 - (iv) That at all material times Messrs. Danny Yiu & Co. represented to the Defendants and held themselves out as having authority to receive the said purchase moneys and the 5th Defendants were entitled to rely upon the said representations and solemn undertakings of a fellow Solicitor and to forward the purchase moneys in accordance with the normal and customary Hong Kong conveyancing practice against the undertakings of Messrs. Danny Yiu & Co. given by countersigning the duplicate letter of 27th January 1976. The 5th Defendants will refer to the said letter and the undertakings given thereby at the trial of this action for its true and proper construction. 30
 - (v) At all material times Messrs. Danny Yiu & Co. were acting not only as Solicitors for Ho Sau Ki and Lucky Time as Vendors but also for the 1st Defendant as proposed Purchasers of the said premises.
 - (vi) The 5th Defendants at the material time were entitled to rely upon the said undertakings given by Messrs. Danny Yiu & Co. and to forward the purchase moneys to them in accordance with normal and customary conveyancing practice in Hong Kong and the 5th Defendants considered and were entitled to consider that the Plaintiff's interests were adequately protected by the

said undertakings of Messrs. Danny Yiu & Co. in that if the said transaction was not duly completed Messrs. Danny Yiu & Co. had undertaken to hold the said purchase moneys to the order of the 5th Defendants and would return the same on demand.

(vii) The 5th Defendants further say that the Plaintiff knew or ought to have known at the date that the said purchase moneys were forwarded to Messrs. Danny Yiu & Co. that the Deeds and Documents of Title required to perfect its security remained to be executed before it would obtain the security of a mortgage over the said premises, and that having such knowledge it nonetheless concurred with the 1st Defendant in requiring the 5th Defendants to forward the purchase moneys to Messrs. Danny Yiu & Co. on 27th January 1976.

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(viii) If which is denied the 5th Defendants were in breach of any duty owed to the Plaintiff as alleged or at all it is not admitted that any such breach of duty was the cause of or contributed to any loss sustained by the Plaintiff.

24. As to paragraph 31(1) of the Amended Statement of Claim it is admitted that at the date that the said purchase moneys were forwarded to Messrs. Danny Yiu & Co. the 5th Defendants had not yet seen any Assignment of the said premises executed in favour of the 1st Defendant.

25. As to paragraphs 31(2), 31(3), 31(4) and 31(5) of the Amended Statement of Claim the 5th Defendants repeat paragraph 23 hereof. By countersigning the said duplicate letter of 27th January 1976 Messrs. Danny Yiu & Co. undertook inter alia to arrange for the re-assignment of the said premises from Hang Seng Bank Limited to Ho Sau Ki and for the same to be registered with the Land Office. The 5th Defendants say that it was the duty of Messrs. Danny Yiu & Co. who were the Solicitors acting for the Vendors as well as for the 1st Defendant as Purchaser of the said premises to arrange for the mortgage in favour of Hang Seng Bank to be re-assigned and that in the event that they were unable to obtain such re-assignment they were to hold the said moneys to the order of the 5th Defendants.

20

26. As to paragraphs 31(6), 31(8), 31(9), 31(10), 31(11), 31(12), 31(13), 31(14) and 31(15) of the Amended Statement of Claim the 5th Defendants repeat paragraphs 11 and 23 hereof.

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27. As to paragraph 31(7) of the Amended Statement of Claim the 5th Defendants

(i) Repeat paragraph 23 hereof and further say that by countersigning the duplicate letter of 27th January 1976 Messrs. Danny Yiu & Co. represented that they had authority to receive payment of the purchase moneys on behalf of the Vendors and the 5th Defendants did and were entitled to rely upon such representation.

(ii) Further contend that Messrs. Danny Yiu & Co. had actual authority to receive the said purchase moneys on behalf of the Vendors.

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28. As to paragraph 31(16) of the Amended Statement of Claim the 5th Defendants say

- (i) It is admitted that the 5th Defendants knew that Danny Yiu was the sole proprietor of Messrs. Danny Yiu & Co..
- (ii) They repeat paragraph 20 hereof.
- (iii) It is denied that the 5th Defendants knew or suspected that Messrs. Danny Yiu & Co. were unreliable and/or inexperienced in the routine practice of conveyancing.
- (iv) They would not have forwarded the said purchase moneys to Messrs. Danny Yiu & Co. if they had known or suspected that any undertakings given by Messrs. Danny Yiu & Co. were worthless.

29. As to paragraph 31(17) of the Amended Statement of Claim the 5th Defendants 10
say

- (i) They had no reason to suspect or anticipate fraudulent conduct on the part of Danny Yiu his servants or agents.
- (ii) In addition to the security intended to be given by means of the Legal Mortgage over the said premises, the Plaintiff had and still has the security of the personal guarantees given by the 2nd, 3rd and 4th Defendants.
- (iii) If, as the 5th Defendants contend, Messrs. Danny Yiu & Co. had sufficient authority from the Vendors of the said premises to receive the purchase moneys on their behalf, the 1st Defendant had in the premises the right to specific performance of the agreement for sale and purchase of the premises 20
and should have sought such relief.
- (iv) Alternatively the 1st Defendant has a good cause of action against the said Vendors for damages for failure to complete the sale of the said premises to the 1st Defendant.

30. As to paragraphs 31(18), 31(19) and 31(20) of the Amended Statement of Claim the 5th Defendants repeat paragraph 23 hereof.

31. As to paragraph 32 of the Amended Statement of Claim the 5th Defendants say

- (i) It is admitted that Mr. Danny Yiu the sole proprietor of Messrs. Danny Yiu & Co. has absconded but no admission is made as to the alleged or any loss or damage. 30
- (ii) The Plaintiff has a sufficient remedy against the 2nd, 3rd and 4th Defendants under the Instrument of Guarantee of 27th January 1976 and is under a duty to mitigate its loss if any which is not admitted by proceeding diligently against the said 2nd, 3rd and 4th Defendants.
- (iii) If which is not admitted the 5th Defendants were in breach of the alleged or any duty owed to the Plaintiff the 5th Defendants do not admit that the Plaintiff's loss if any flowed from any such breach on the part of the 5th Defendants and put the Plaintiff to proof thereof.

In the
Supreme
Court of
Hong Kong
High Court
No. 5
Defence of
5th
Defendants
6th Feb.,
1978.

- (iv) The Plaintiff at all material times knew that the 1st Defendant was a shelf company and would not have any assets save the amount of the said loan until the said property had been conveyed to it upon completion.
- (v) The 5th Defendants repeat paragraph 29(iii) and 29(iv) hereof.
- (vi) The 1st Defendant at all material times was entitled to specific performance of the Agreement for Sale of the said premises to it by the said Vendors or alternatively was entitled to damages in the event that the Vendors had put it out of their power to give specific performance.
- (vii) It was further the duty of the 1st Defendant to institute proceedings for specific performance and/or damages against the said Vendors to mitigate its loss. 10
- (viii) The said Vendors ought to have been joined by the Plaintiff or alternatively by the 1st Defendant as parties to these proceedings in order that all matters in dispute herein might be effectually and completely determined and adjudicated upon and for the purpose of the Plaintiff and/or 1st Defendant mitigating its loss or damage.

32. Save as hereinbefore expressly admitted each and every allegation made in the Amended Statement of Claim is denied as if each and every such allegation had been set forth herein and traversed seriatim.

Richard Mills-Owens
Counsel for the 5th Defendants

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Dated the 6th day of February 1978.

In the
Supreme
Court of
Hong Kong
High Court
No. 6
Request by
5th
Defendants
for further
and better
particulars
of the
Statement
of Claim
20th Feb.,
1978.

OKTL: VL: ML 76/17770
EW/ew

20th February, 1978

Messrs. Deacons,
6th Floor, Swire House,
Hong Kong.

Dear Sirs,

High Court Action No. 2401/76
Edward Wong Finance Co. Ltd.
-v- Bovill Investments & Others

10

We have been advised by Counsel that our clients are entitled to certain Further and Better Particulars of the Amended Statement of Claim. We are requesting those Particulars in the form of a letter in the first instance and shall be grateful if you will let us know if you are prepared to supply the Further and Better Particulars as follows:—

Under Paragraph 20

- (i) Give particulars of the date, time and place of each verbal request made by each of the 1st, 2nd, 3rd and 4th Defendants.

Under Paragraph 21

Of the words “the 1st, 2nd, 3rd and 4th Defendants offered to provide security”

- (i) State whether such offer was oral or in writing if in writing identifying the document and if oral stating the date time and place that each such offer was made and identifying the person making such offer. 20

Under Paragraph 21

Of the words “the Plaintiffs agreed to such request. . . .”

- (i) State whether such agreement was oral or in writing if in writing identifying the document if oral stating the date time and place of such agreement and the person who so agreed on behalf of the Plaintiffs.

Under Paragraph 22

Of the allegation that the 5th Defendants by agreement with the Plaintiffs had been retained to advise them on the specific matters particularised in paragraph 22 30

- (i) State whether such agreement was oral or in writing if in writing identifying the document if oral stating the date time and place of such agreement and identifying the person who so agreed on behalf of the 5th Defendants and the person who so agreed on behalf of the Plaintiff and stating the precise words relied upon.

- (ii) Is it alleged that the 5th Defendants agreed to advise the Plaintiffs as to the matters set out in paragraph 22 specifically in terms or by implication from the nature of the relationship between the parties? If it is alleged that there was a specific agreement to advise the Plaintiffs as to the matters therein particularised, give full particulars of all words relied upon and state the date time and place and the person by whom such words were spoken as amounting to such agreement.

Under Paragraph 24

Of the allegation that Miss Leung advised the Plaintiffs that there should be a modification to security

- (i) State whether such advice was oral or in writing if in writing identifying the document if oral stating the date time and place and occasion upon which such advice was given. 10
- (ii) Identify the person to whom such advice was given.

Under Paragraph 31(1)u

Of the words “a proper Assignment”

- (i) Is it alleged that the Assignment executed was improper in some way? If so alleged give particulars of all matters relied upon in support of such contention.

Under Paragraph 31(1)

Of the words “but without details of the other necessary parties”

- (i) Give particulars of all persons who it is alleged were other necessary parties. 20

Under Paragraph 31(6)

Of the words “the first defendants had no contractual relationship with any of the other aforesaid parties. . . .”

- (i) Is it the Plaintiff’s case that at no time was there any agreement that the 1st Defendant would purchase the said premises from any other party?
- (ii) If not state what is meant by the said words.

Under Paragraph 31(16)

Of the words “Danny Yiu was generally known to the legal profession to be a very heavy gambler”

- (i) Give particulars of the specific facts documents and overt acts on which the Plaintiff intends to rely in support of such allegation. 30
- (ii) Is it alleged that Danny Yiu was known to the 5th Defendants to be a very heavy gambler?

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(iii) If the answer to (ii) is yes, give particulars of all matters relied upon in support of such allegation.

Under Paragraph 31(16)

Of the allegation that the 5th Defendants knew or ought to have known that the signature of Messrs. Danny Yiu & Co. and any undertaking constituted thereby was worthless

(i) Give full particulars of all matters relied upon in support of such allegation.

(ii) State whether it is intended to rely upon any matters other than those already specifically pleaded and particularised in paragraph 31(16) of the Amended Statement of Claim.

Would you please supply these Further and Better Particulars within the next 14 10 days.

Slaughter and May

27th September, 1978.

In the
Supreme
Court of
Hong Kong
High Court
No. 7
Further and
better
particulars of
the
Statement of
Claim
supplied by
the Plaintiff
to the 5th
Defendants
27th Sept.,
1978.

BY HAND

Messrs. Slaughter and May,
1518 Connaught Centre,
Connaught Road C.,
HONG KONG.

Attn: Miss Amy S. F. Ko

Dear Sirs,

Re: **High Court Action No. 2401/76**
Edward Wong Finance Co. Ltd. -v-
Bovill Investments & Others

10

We refer to the abovementioned matter and furnish herewith our reply to your request for Further and Better Particulars of the Amended Statement of Claim:—

Under Paragraph 20

At a number of meetings between Mr. Edward Wong of the Plaintiffs and the 3rd Defendant either in the office of the Plaintiffs or in some restaurant or cafe nearby in the third and fourth weeks of January 1976, the 3rd Defendant initially on behalf of himself, the 2nd and 4th Defendants and subsequently on behalf of the 1st Defendant made the verbal requests to the Plaintiffs.

Under Paragraph 21

20

On or about 21st January 1976, Mr. Edward Wong and the 3rd Defendant went to the Kowloon Office of the 5th Defendants to see Miss W.L. Leung and asked her to advise as to how to implement the proposed scheme of the Plaintiffs lending money to the 2nd, 3rd or 4th Defendants or a company of their's to enable them to purchase the said premises in return for adequate security to be given to the Plaintiffs. Miss W.L. Leung suggested to the 3rd Defendant that he, the 2nd and 4th Defendants should acquire a shelf-company (eventually the 1st Defendants) and cause such shelf-company to obtain credit facilities to the extent of \$1,355,000.00 from the Plaintiffs by providing security to the Plaintiffs as listed in paragraphs 21(a), (b) and (c) of the Amended Statement of Claim. Both Mr. Edward Wong and the 3rd Defendant orally agreed to this proposed course. It was in the circumstances, at the time and place, aforesaid that the offer to provide security was made by the 3rd Defendant and the request agreed to by Mr. Edward Wong.

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Under Paragraph 22

- (i) The agreement was oral between Mr. Edward Wong of the Plaintiffs and Miss W.L. Leung of the 5th Defendants at the Kowloon Office of the 5th Defendants when Mr. Edward Wong took the 3rd Defendant there on or about 21st January 1976. Mr. Edward Wong asked Miss W.L. Leung as to how to implement the proposed scheme of the Plaintiffs lending money to the 2nd,

In the
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better
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the
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Claim
supplied by
the Plaintiff
to the 5th
Defendants
27th Sept.,
1978.

3rd or 4th Defendants or a company of their's to enable them to purchase the said premises in return for adequate security to be given to the Plaintiffs. Miss W.L. Leung suggested that the 2nd, 3rd and 4th Defendants should acquire a shelf-company (eventually the 1st Defendants) and cause such shelf-company to obtain credit facilities to the extent of \$1,355,000.00 from the Plaintiffs by providing security to the Plaintiffs as listed in paragraphs 21(a), (b) and (c) of the Amended Statement of Claim. Both Mr. Edward Wong and the 3rd Defendant instructed Miss W.L. Leung to proceed as she had advised.

- (ii) In addition to the matters referred to in (i) above, the Plaintiffs will also rely 10
on the fact that:—
- (a) As at 21st January 1976, the parent company of the Plaintiffs, Messrs. Edward Wong & Company Limited, had been annually retaining the 5th Defendants as their legal advisers; and
- (b) Mr. Edward Wong action on behalf of the Plaintiffs had instructed Miss W.L. Leung on a number of occasions prior to 21st January 1976 to advise on other transactions of a similar nature to be carried out by the Plaintiffs and to implement such transactions.

Under Paragraph 24

It is not alleged that the 5th Defendants expressly advised the Plaintiffs that there 20
should be a modification to the security to be provided by the 1st Defendants. The Plaintiffs say that Mr. Edward Wong instructed Miss W.L. Leung to deal with all the documentation necessary for the Plaintiffs to advance money to the 1st Defendants in return for adequate security and Miss W.L. Leung prepared a debenture which only created a charge specifically on the said premises but not other assets of the 1st Defendants.

Under Paragraph 31(1)

It is alleged that the 5th Defendants did not ensure that the 1st Defendants became 30
a party to an assignment whereby the 1st Defendants acquired the legal and beneficial interest in the said premises free from encumbrances which interest could be charged to the Plaintiffs as security for the loan in question.

Under Paragraph 31(1)

- (i) One Kai Ming Investment Company Limited; and
- (ii) One Mr. Chan Sun Ming.

Under Paragraph 31(6)

The Plaintiffs say that there was no agreement for the sale and purchase of the said premises between the 1st Defendants of the one part and any of Ho Sau Ki, Lucky Time Finance Company Limited, Kai Ming Investment Company Limited and Chan Sun Ming of the other part. There was only an agreement in writing or evidenced by a

In the
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27th Sept.,
1978.

memorandum between Chan Sun Ming and Po Fung Finishing Works Limited (which nominated the 1st Defendants to take up an assignment of the said premises) referred to in paragraph 16 of the Amended Statement of Claim.

Under Paragraph 31(16)

- (i) The 5th Defendants are not entitled to the further and better particulars requested under (i);
- (ii)&(iii) The Plaintiffs are unable to give these further and better particulars at this stage.

Under Paragraph 31(16)

- (i) The full particulars appear under paragraph 31(16) of the Amended Statement of Claim; 10
- (ii) The Plaintiffs do not intend to rely upon matters other than those set out in paragraph 31(16) of the Amended Statement of Claim.

Deacons

In the
Supreme
Court of
Hong Kong
High Court
No. 8 Order
for delivery
of further
and better
particulars of
Statement of
Claim against
the Third
Party 12th
Mar., 1980.

Action No. 2401 of 1976

IN THE SUPREME COURT OF HONG KONG
HIGH COURT

BETWEEN

EDWARD WONG FINANCE CO., LIMITED

Plaintiff

and

POMAY INVESTMENTS LIMITED
(formerly known as Bovill Investments Limited)

1st Defendant

DAVID MA POK SUM

2nd Defendant

SHUM KA CHING

3rd Defendant

TSIANG HUNG WEN

4th Defendant

MESSRS. JOHNSON, STOKES & MASTER
(a firm)

5th Defendant

10

and

MESSRS. JOHNSON, STOKES & MASTER
(a firm)

Third Party

BEFORE MR. REGISTRAR WILSON OF SUPREME COURT IN CHAMBERS

ORDER

UPON HEARING the Solicitors for the Third Party and the Solicitors for 1st and
3rd Defendants and the 2nd and 4th Defendants being absent

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IT IS ORDERED:

- (1) that the Defendants serve on the Third Party within 14 days the following further
and better particulars of the Statement of Claim against the Third Party:

Under Paragraph 11

Of the allegation that the Defendants retained and employed the Third Party as
their Solicitors for reward

- (i) State whether the alleged retainer was oral or in writing if in writing identifying
the document and if oral stating the date time and place that such retainer was
given and identifying by name the person or persons alleged so to have given
the retainer on behalf of each of the Defendants and the person or persons
alleged so to have accepted such retainer on behalf of the Third Party.

30

- (ii) Give particulars of all material facts and overt acts relied upon in support of the

In the
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allegations that the Third Party was employed to advise the Defendants upon the matters itemised under (1) and (2) of paragraph 11.

Under Paragraph 11

Of the allegation that the Third Party agreed and accepted such retainer and employment

(i) State whether such alleged agreement was oral or in writing if in writing identifying the document if oral stating the date time and place of such agreement and identifying the person alleged so to have agreed on behalf of the Third Party.

(2) that the Defendants do pay the Third Party the costs of and occasioned by this application. 10

Dated the 12th day of March 1980.

N. J. Barnett
Acting Registrar.

In the
Supreme
Court of
Hong Kong
High Court
No. 9
Further and
better
particulars of
the
Statement of
Claim against
the Third
Party 25th
Mar., 1980.

No. 2401 of 1976

IN THE SUPREME COURT OF HONG KONG
HIGH COURT

BETWEEN

EDWARD WONG FINANCE CO., LIMITED

Plaintiff

and

POMAY INVESTMENTS LIMITED (formerly known
as BOVILL INVESTMENTS LIMITED)

1st Defendant

DAVID MA POK SUM

2nd Defendant

SHUM KA CHING

3rd Defendant

TSIANG HUNG WEN

4th Defendant

MESSRS. JOHNSON, STOKES & MASTER (a firm)

5th Defendant

10

and

MESSRS. JOHNSON, STOKES & MASTER (a firm)

Third Party

**ANSWER TO THE REQUEST FOR FURTHER & BETTER PARTICULARS
OF THE STATEMENT OF CLAIM OF THE DEFENDANTS AGAINST
THE THIRD PARTY PURSUANT TO THE ORDER MADE BY
MR. REGISTRAR WILSON DATED 12TH MARCH 1980.**

Under Paragraph 11

- (i) The retainer was given orally by the 2nd, 3rd and 4th Defendants to Miss W.L. Leung, a solicitor of the Third Party on or about the 19th January 1976, 27th January 1976 in the office of Johnson, Stokes & Master at Hong Kong & Shanghai Bank Building, 6/F., Hong Kong and by various telephone conversations between the 3rd Defendant and the said Miss W.L. Leung thereafter. 20
- (ii) As disclosed in the meeting between the 2nd, 3rd & 4th Defendants and Miss W.L. Leung of the Third Party on the 19th January 1976 and 27th January 1976 and the various telephone conversation between the Third Defendant and the said Miss W.L. Leung thereafter. Subsequently, a Debenture and 3 Guarantees were prepared by the Third Party and were signed by the 2nd, 3rd and 4th Defendants on or around the 27th January 1976 and the Defendants paid a sum of about \$12,055.00 to the Third Party being their professional charges. 30
- (iii) The agreement was reached orally on or about the 19th January 1976, 27th January 1976 in the office of Johnson, Stokes & Master at Hongkong & Shanghai Bank Building, 6/F., Hong Kong and by the various telephone conversations between the

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the Third
Party 25th
Mar., 1980.

3rd Defendant and Miss W.L. Leung of the Third Party. Miss W.L. Leung of the
Third Party agreed on behalf of the Third Party.

Dated this 25th day of March 1980.

Philip K. H. Wong & Co.
Solicitors for 1st Defendant

In the
Supreme
Court of
Hong Kong
High Court
No. 10
Judgment
of Mr.
Justice
Penlington
13th Aug.,
1980.

1976, No. 2401

IN THE SUPREME COURT OF HONG KONG
HIGH COURT

BETWEEN

EDWARD WONG FINANCE CO., LIMITED

Plaintiffs

and

POMAY INVESTMENTS LIMITED (formerly known
as BOVILL INVESTMENTS LIMITED)

1st Defendants

DAVID MA POK SUM

2nd Defendant

SHUM KA CHING

3rd Defendant

TSIANG HUNG WEN

4th Defendant

MESSRS. JOHNSON, STOKES & MASTER
(a firm)

5th Defendants

10

and

MESSRS. JOHNSON, STOKES & MASTER
(a firm)

Third Party

BEFORE THE HONOURABLE MR. JUSTICE PENLINGTON IN COURT
JUDGMENT

Dated the 13th day of August 1980

This action having been tried before the Honourable Mr. Justice Penlington without a jury, at the Supreme Court of Justice, Hong Kong, and the said Mr. Justice Penlington having on the 13th day of August 1980 ordered that judgment as hereinafter provided be entered for the Plaintiffs.

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IT IS THIS DAY ADJUDGED that the 1st, 2nd, 3rd, 4th and 5th Defendants do pay to the Plaintiffs damages in the sum of \$1,295,000.00 together with compound interest thereon at the rate of 1% per month from the 27th day of January 1976 to the 13th day of August 1980 within 14 days from the date hereof and costs of this action to be taxed.

In the
Supreme
Court of
Hong Kong
High Court
No. 10
Judgment
of Mr.
Justice
Penlington
13th Aug.,
1980.

1976 No. 2401

IN THE SUPREME COURT OF HONG KONG
HIGH COURT

BETWEEN

EDWARD WONG FINANCE CO., LIMITED

Plaintiffs

and

POMAY INVESTMENTS LIMITED (formerly known
as BOVILL INVESTMENTS LIMITED)

1st Defendants

DAVID MA POK SUM

2nd Defendant

SHUM KA CHING

3rd Defendant

10

TSIANG HUNG WEN

4th Defendant

MESSRS. JOHNSON, STOKES & MASTER (a firm)

5th Defendant

and

MESSRS. JOHNSON, STOKES & MASTER (a firm)

Third Party

Date: 13th August 1980
Coram: Penlington, J. in Court

JUDGMENT

This matter raises some interesting points of law but, in the main, the facts are clear and not in dispute.

The plaintiff company is a licensed money-lender and the Managing Director, Mr. Edward Wong, has been acquainted with the 3rd defendant, Shum Ka-ching, for some years and they have had business dealings together. Mr. Shum was, in 1976, a Director of two companies, one of them being the Po Fung Finishing Works Ltd ("Po Fung") which occupied the ground floor of a factory building at 76 Hung To Road, Kwun Tong. The 2nd and 4th Defendants were also directors of that company but Mr. Shum had the largest share and in subsequent events clearly controlled matters on behalf of them all.

In late January 1976 Mr. Shum was approached by one Chan Sun-ming who told him that he and the Kai Ming Investment Co. Ltd. ("Kai Ming") had agreed to buy the whole factory building from the existing owner and that he and Kai Ming would be prepared to sell the ground floor to Po Fung for \$1,850,000. The existing owner at that time was one Ho Sau-ki who had agreed to sell the property to the Lucky Time Finance Co. Ltd. ("Lucky Time") for \$3,800,000 by an agreement dated 17th December 1975 (Page 11 of the agreed bundle 2). Lucky Time by another agreement also dated 17th December 1975 (Page 17 of bundle 2) had in turn agreed to sell the building to Chan Sun-ming and Kai Ming for \$5,250,000. Completion of that sale was to be on the 29th January 1976 at the offices of

Danny Yiu, a solicitor, who had prepared both agreements.

There was another collateral agreement (Page 25 of bundle 2) which set out that in the purchase by Kai Ming and Chan Sun-ming, Kai Ming was purchasing the top floors for \$3,510,000 and Chan Sun-ming the ground floor for \$1,740,000. Chan Sun-ming therefore stood to make \$110,000 on the proposed re-sale to Po Fung.

Shum Ka-ching accepted Chan Sun-ming's offer and a document was signed (Page 22 of bundle 2) dated 30th December 1975. It contains a receipt for the deposit of \$1,001,000 paid by Po Fung to Chan and which sets out the purchase price, that a further deposit of \$85,000 was payable on the 15th January 1976 and that a formal agreement was to be signed at a solicitor's office before the end of January. These two latter documents were referred to in argument as "the Chinese agreements".

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Shum Ka-ching then went to see Edward Wong on the 21st January, by which time the further deposit of \$85,000 had been paid to Chan, and told him he wanted to borrow \$1.3 or \$1.4 million to complete the deal. This Mr. Wong agreed to do on the security of a debenture over the property to be purchased plus a personal guarantee by the 2nd, 3rd and 4th defendants. Mr. Wong had had other dealings with Po Fung and had known the Directors personally for some years.

Mr. Wong and Shum Ka-ching then went to see Miss Yeung, an assistant Solicitor with the 5th defendant, Johnson Stokes and Master ("J.S.M.") Miss Yeung is, subject to the supervision of a partner, in charge of the conveyancing section of J.S.M.'s Kowloon office and has acted for Mr. Wong's company on several previous occasions in connection with advances made on various securities. Shum Ka-ching, however, was not known to Miss Yeung.

20

Mr. Wong said that he did most of the talking at this meeting and Miss Yeung was told of the purchase made by Shum Ka-ching and the arrangement made for mortgaging the property to his Finance Co. Miss Yeung was asked to complete the legal formalities for them. She was informed that the solicitor acting for the vendors was Danny Yiu.

Mr. Shum's evidence about this meeting was that before going to J.S.M. he had purchased a "shelf" company from his accountant he be the vehicle for the purchase. This company was called the North American Meat Packing Co. Ltd. ("N.A.M.P. Ltd") and when he went with Mr. Wong to see Miss Yeung he took along a copy of the memorandum and articles. He also took along the two Chinese agreements.

30

Mr. Shum is a native of Shanghai and speaks Cantonese with an accent. Both he and Mr. Wong speak fluent Shanghaiese and on occasion used that dialect to speak to each other. Miss Yeung does not speak Shanghaiese.

Shum Ka-ching said he showed Miss Yeung the memorandum and articles of N.A.M.P. Ltd and said he wanted to use it to purchase the property and that he would also use it for any future such purchases. Miss Yeung however said that it was not an appropriate name for a landholding company and it was agreed, and I am satisfied it was at Miss Yeung's suggestion, that Shum purchase another shelf company from J.S.M. Miss Yeung made inquiries from her Hong Kong office and was told a company called Bovill Investments Ltd. was available. Shum agreed to buy it and was told that if he wanted to

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change the company's name at any time he could do so. In fact it has been changed since these proceedings were commenced.

Mr. Wong said in evidence that at this meeting the question of what form the security would take was discussed and it was agreed that it should be a debenture given by the new company. Mr. Wong also said that at first this was to be a floating debenture over all the company's assets but later on, at Miss Yeung's suggestion, that clause was removed. Mr. Shum said it was in fact at his request and I think that is more likely.

Miss Yeung made some rough notes at this meeting of the 21st of January (bundle 3 page 22), in which she had recorded that the principal was to be repaid over 7 years with interest at 1% on the reducing balance. This was, however, crossed out and the debenture was drafted to provide for payment on demand. It does seem that nevertheless the parties did intend to have payment made by instalments and in fact debit notes for this were sent out by Mr. Wong's company for some months after the loan was made.

The completion date for the sale was to be the 26th January and it seems clear that both Shum and Wong wanted it done before Chinese New Year, which was the 30th. As there was an intervening week-end Miss Yeung said she could not do it by the 26th but could manage the 27th. I do not believe however, that either Wong or Shum were putting strong pressure on Miss Yeung to complete the matter urgently. Certainly neither had any real reason for demanding speed. Wong would get interest when the money was lent but would in turn be paying interest to his bank and Shum Ka-ching already occupied the premises as a tenant.

Some 4½ years have passed since the meeting on the 21st January in Miss Yeung's office and none of the parties can be expected to accurately recall exactly what was said. I am, however, satisfied that at this meeting both Mr. Shum and Mr. Wong thought Miss Yeung was acting as their solicitor in connection with the whole transaction, i.e. the purchase, the mortgage and the shelf company. Mr. Shum referred to "the solicitors for the other side" and I am sure he considered that his and Mr. Wong's interests were very much the same, as indeed they were in getting a good title, and he believed, and in my opinion had every reason to believe, that Miss Yeung was representing him in the purchase. I am also satisfied that nothing was said or done until Danny Yiu had fled Hong Kong to remove that impression.

There seems to have been some confusion as to what the amount of the loan was to be. Miss Yeung's note refers to \$1.3 m. Mr. Wong said he agreed to \$1.355 m. Mr. Shum says he wanted 70% of the sale price i.e. \$1,095,000. I think in fact the actual amount was not decided at the meeting but it was agreed it would be about \$1.3 m, Miss Yeung to be advised later of the exact amount.

Mr. Shum went back later to J.S.M. with his co-directors, the 2nd and 4th defendants and his wife who was to be a director of the new company. They were seen by Mrs. Cecelia Tsu of J.S.M.'s companies section who explained various papers to them in connection with the company and they signed. She prepared a note of this attendance (Bundle 4 page 86) From this it seems clear that these papers were in fact signed on the 28th January and were back-dated to the 26th.

Following the meeting on the 21st Miss Yeung sent a letter to Edward Wong.

(Bundle 2 page 27) with a copy to the 2nd and 3rd defendants which acknowledges that J.S.M. had received instructions from Mr. Wong to act for him in relation to the debenture and for Mr. Shum and Mr. Ma in relation to the shelf company. Mr. Shum denies ever receiving this letter but, on a balance of probabilities I think he did, and the 5th defendant naturally says it shows that they were acting for Shum Ka-ching only in connection with the shelf company. I do not think it is enough to dispel Mr. Shum's understanding of their relationship. Miss Yeung also wrote to Danny Yiu (Bundle 2 page 23) asking for the necessary deeds so as to prepare the mortgage. In reply she received a letter from him (Bundle 2 page 28) enclosing copies of various documents and the original assignment from Ho Sau-ki and Lucky Time Finance Co. Ltd. to Bovill. Miss Yeung said that before receiving these documents she spoke to Danny Yiu on the phone and because he seemed to have difficulty with it, told him to leave the purchasers name blank in the assignment and she would fill it in. She also said that Danny Yiu, naturally enough, seemed keen to get full scale costs from the transaction, which he would do if either he was acting for both vendor and purchaser or if the purchaser was not represented. If the purchaser was represented by other solicitors he would get only half scale costs from the vendor. In fact he subsequently rendered a bill for \$45,820, including stamp duty, which is full scale fee on the conveyance. Miss Yeung said she was concerned when she received the assignment to see that only Lucky Time Finance Co. Ltd. was recited as a confirmer, but no Chan Sun-ming was not. She spoke to Danny Yiu on the phone about this and he was reluctant to include Chan. It was therefore agreed that Chan should be regarded as a broker and the agreement between him and Shum Ka-ching was to be cancelled. This meant that the assignment would show a consideration of only \$1,740,000 without the profit of \$110,000 Chan was making. Miss Yeung referred to this as "restructuring" and said it was quite normal. Mr. Edmond Cheung, President of the Hong Kong Law Society did not, however, share that opinion. However the only issue to which it is relevant here is that it supports the view that Miss Yeung was doing work which would normally be done by the purchaser's, not the mortgagee's, solicitor.

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It was arranged between Miss Yeung and Danny Yiu that completion, in the manner which has been referred to in these proceedings as the "Hong Kong style", would take place on the 27th January and Miss Yeung said that she told Shum Ka-ching that he should go to Danny Yiu's office to sign some documents and pay the balance of the purchase price plus Danny Yiu's costs. Mr. Shum says he was not so told, and it is clear he did not in fact do so before the 27th. As I have said I doubt whether any of the parties can now give an accurate account of what exactly was said on the various occasions in January 1976 when matters were discussed but it does seem strange if Mr. Shum was told to go to Danny Yiu's office to do something essential for completion that in fact he did not do so. On balance therefore I find that he was not so instructed.

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Miss Yeung then proceeded to draft the debenture and the personal guarantee, which Mr. Shum had not been told about but was apparently always required by the plaintiff if he was lending to a company. The actual preparation of these documents was done by a conveyancing clerk, David Leung, who gave evidence, under Miss Yeung's supervision. There was in fact a fairly serious, and one would have thought obvious, mistake made in the guarantee in that the interest rate was stated as 2.1% not 1% and it was not said what period that covered i.e. monthly or annually. This is perhaps some indication that matters were being done in a hurry but it also seems to show that when they were signed the documents were not read or explained to the signatories as such a mistake would have become apparent.

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Miss Yeung then wrote a letter to Danny Yiu, (Bundle 2 page 32) which formed the basis of the settlement of this transaction. In that letter Miss Yeung said that she would ask her client, the plaintiff, to put her in funds amounting to \$1,355,000 and would forward to Danny Yiu a cheque for that amount on his undertaking to forward to her, within 10 days, all the relevant documents duly executed and he would also arrange for the premises to be re-assigned from the Hang Seng Bank, the existing mortgagees, so she could register the assignment to Bovill and the debenture to Mr. Wong. If he was not in a position to send the documents within that time he was not to release the money to his clients. Danny Yiu was to sign a copy of the letter as indicating he was prepared to give such an undertaking and in fact did so. On the 27th January other important documents were executed. One was a directive, prepared by Miss Yeung, addressed to the plaintiff and signed by the 1st defendant, that on execution of the debenture, he was to forward the advance of \$1,355,000 to Danny Yiu towards payment of the purchase price of the property. The others were letters to the plaintiff reporting that the debenture had been duly executed and asking for a cheque for the advance, which at that stage Miss Yeung still thought was \$1.355 m., and another letter to Danny Yiu sending, not \$1.355 m but \$1.665 m. This was because when Mr. Wong came to Miss Yeung's office with the money it transpired that in addition to the \$1.355 m secured by the debenture, he had also agreed with Mr. Shum to lend him a further \$310,000 on the security of some post-dated cheques. This was something which had not been mentioned to Miss Yeung at all but apparently Mr. Shum had seen Mr. Wong between the 21st and the 27th, told him he did not have enough money to complete the purchase even with Wong's \$1.355 m and Mr. Wong agreed to a further personal advance, at a slightly higher interest rate as it was virtually unsecured. Miss Yeung was naturally surprised at this and said she then realised that Mr. Shum had not been to Danny Yiu's office to pay the balance of the purchase price. However she rang Danny Yiu, confirmed what the balance required was and sent the letter enclosing three cashier orders for a total of \$1.655 m which Wong had brought to her office himself. On the 27th the 2nd, 3rd, 4th defendants had come to Miss Yeung's office and executed the debenture and guarantee. (These are in bundle 3 page 39 and 60). The provision in the debenture which would have brought any other land owned by Bovill into the security was deleted at the request of Mr. Shum and his fellow directors even though in fact Bovill did not then own any other land. These documents were executed and J.S.M.'s two bills of costs were presented to Mr. Shum for payment. These are at bundle 2 page, 43A and 43B, and considerable reliance is placed on them by the 5th defendants as showing that they were not acting for the 1st defendant in relation to the purchase of the property or as mortgagor of the property. They acted for Bovill, they say, only in its purchase from them, plus doing certain secretarial work which was separately charged for. The first bill clearly states that it was for work done in the purchase of the shelf company and says nothing of the purchase of land. The second bill is in fact addressed to the plaintiff but the words "payable by Bovill Investments Ltd." have been added. This bill relates to the loan from the plaintiff secured by the debenture and guarantee. Miss Yeung said that as she had acted for Bovill, or rather its directors, in the purchase of a shelf company there might be some confusion as to whether J.S.M. was acting for them in the purchase and she instructed her conveyancing clerk, David Leung, to explain to Messrs Shum, Ma and Tsiang that that was not so – J.S.M., were not acting for them in the purchase or mortgage.

I accept the first part of that evidence but not the second. I cannot accept that if Miss Yeung was anxious that Messrs Shum, Ma and Tsiang were aware that J.S.M. was not acting in the purchase she did not simply tell them so herself. David Leung says he followed his usual procedure but cannot remember actually telling Mr. Shum that J.S.M. were not

acting for them in the purchase. Over four years have elapsed since these events but by mid-February 1976 it was clear that Danny Yiu had left Hong Kong and the conveyance had gone seriously wrong. It must have been very obvious that the question of who, it anybody, was acting for Bovill in the purchase had become very important and if such a conversation had taken place I think David Leung would have remembered it. I can well believe that his normal practice when presenting a mortgagor with a bill addressed to the mortgagee was to tell him that even though the mortgagee was their client, he must pay it and that may well have been done here. Everybody knew and there is no dispute that J.S.M. were Mr. Wong's solicitors but that is a long way from telling Mr. Shum they were not acting for him in the purchase. I accept Mr. Shum's evidence on that and am satisfied he was never told that until after the Chinese New Year holidays when Danny Yiu's departure had become known.

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There was a conflict in evidence as to whether Miss Yeung told Messrs Shum, Ma and Tsiang to rush over to Danny Yiu's office on the 27th to pay his costs and sign his documents — she says she cannot remember doing so but Mr. Shum says she did. In any event that is in fact what they did and if anything turns on it I accept their evidence. There is no evidence of Mr. Shum being told by anybody at any time why he had to pay Danny Yiu's costs or in what capacity and indeed in its defence the 5th defendant says that Bovill was either represented by Danny Yiu or was unrepresented in the sale. I accept Shum's evidence that he was simply told he had to pay Danny Yiu's costs and did so without questioning why.

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As to events after the Chinese New Year holidays there is a conflict in some of the evidence. It is clear that rumours were spreading that Danny Yiu had fled Hong Kong and certainly he could not be contacted.

Mr. Shum said that about 14 days after he had been to Danny Yiu's office — he had never been there before or met Danny Yiu before — he rang Miss Yeung to find out what was the position in relation to the conveyance and asked if Danny Yiu had forwarded the title deeds. He said that Miss Yeung told him not to worry and completion would take place. However he said he was still worried and went to see the Mr. Wong and they went together to see Miss Yeung.

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Miss Yeung said that Mr. Shum in fact phoned her about not being able to collect rent from a tenant and as a result she wrote to Danny Yiu asking if there was a tenant in part of the premises and she wrote to Danny Yiu asking if that was the case. Mr. Shum in cross-examination says that was not so — in fact he rang because somebody had come to collect rent from him. I am sure this was simply a misunderstanding but it does seem to again indicate that, whatever Miss Yeung's understanding of the position was, Shum looked to her when legal problems arose.

I think it is also clear from the evidence of Mr. Shum and Mr. Wong that they knew that the formal final completion of the matter had not taken place and they were relying on Danny Yiu to deliver the title deeds to Miss Yeung. If they had been told that that was the only way the matter could be dealt with — to rely on Danny Yiu's undertaking being honoured — both would probably have gone ahead. What they were not told was that there was a much safer way of completing the matter which would, however, involve some delay. That was to follow the system used in England and other parts of the Commonwealth of only delivering cash in exchange for completed documents.

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It is not in dispute that Danny Yiu in fact fled Hong Kong without honouring the undertaking he had given and taking with him the money received from the plaintiff.

The 1st, 2nd, 3rd and 4th defendants resist the plaintiff's claim on the grounds that Danny Yiu was a stakeholder and, on the authority of *Sorrell and ors. v. Finch* (1977) A.C. 728 payment to him was not payment of the balance of the purchase price of the property, as set out in the authorisation (2/38) of 27th January. I do not accept that argument. I think the facts here are very different than in *Sorrell v. Finch*, which was payment of a deposit to an estate agent "subject to contract". Here the payment was not a deposit but a final instalment, it was on the basis of a concluded contract and was made to the purchasers solicitor. I am satisfied that payment to a vendors solicitor in those circumstances is the equivalent to payment to the purchaser. If the property had not been assigned by mortgage to the Hang Seng Bank I have no doubt that, if in fact Danny Yiu was acting as their solicitor in the matter, Ho Sau-ki and Lucky Time Finance Co. Ltd. would have been obliged to assign the property to the 1st defendant as they had been paid. 10

The plaintiff did exactly what he was told to do by the 1st defendant – he sent the mortgage money to Danny Yiu in payment of the balance of the purchase price and I do not see that he was required to do further. It is not in dispute that he has, in terms of the debenture and guarantee, demanded payment of his principal and interest but apart from the sum of \$60,000 nothing has in fact been paid to him by the 1st, 2nd, 3rd or 4th defendants. 20

The plaintiff further claims against the 5th defendant for damages for breach of contract and for indemnity in the event of it not being able to recover from the 1st, 2nd, 3rd or 4th defendants. They in turn have joined the 5th defendants as a third party.

It is not in dispute that the 5th defendant acted throughout on behalf of the plaintiff, as his solicitors. They were, therefore, under a duty to exercise reasonable skill in the conduct of his affairs "a solicitor's duty is to use reasonable care and skill in giving such advice as the facts of the particular case demand". Per Salmon L.J. in *Sykes v. Midland Bank Executor Co.* (1971) 1 Q.B. 125. Counsel for the 5th defendant has emphasised that solicitors, like all other professional persons, do not guarantee the successful conclusion of any enterprise nor must they bring the highest possible level of skill to bear. They must only use the degree of skill one would expect from a good competent member of the profession. In particular the 5th defendant says that a professional person is not negligent if he follows a general practice which is accepted by a substantive portion of that profession. I have been referred to cases in support of that proposition which mainly have related to the medical profession, who are I imagine, more vulnerable to such actions than other professions. 30

In *Bolam v. Frien Hospital Management Committee* (1957) 1 W.L.R. 582, it was held that a doctor was not negligent if he adopted a form of procedure which did not involve giving relaxant drugs to a patient about to receive electrical current treatment if there was a substantial and responsible body of professional of opinion which said it was better not to do so, even if another such body was of the opposite opinion. In *Vancouver General Hospital v. McDanial and anr.* 56 Times Reports 56, there were two ways of treating patients who had small-pox and the Privy Council held that as the practice adopted by the appellants was almost universally accepted it was not negligent to follow it. Another case, which does involve conveyancing, is *Simmons v. Pennington and Son* (1955) 1 W.L.R. 183, 40

were solicitors for the vendor had answered a requisition in a way that enabled the purchasers to rescind a contract. It was held that such requisitions had been answered in that way for many years by competent conveyancers and as Lord Denning says at P1 185 the rescision “was not something which could reasonably have been expected to flow from an answer in this form”.

There has been evidence, which I accept, that conveyancing transactions in Hong Kong are almost inevitably done, not in accordance with the traditional way of an actual exchange of money for documents but by one solicitor forwarding cash against another solicitors undertaking to produce, within a reasonable time, registrable documents of title. Clearly this is a procedure which, particularly if there are several parties involved, most of whom may have mortgages which have to be discharged, makes the task of the conveyancers much easier. It also, and I accept the evidence given by Mr. B.S.M. Elney on this point, results in that conveyancing being done more speedily and this is for the benefit of the public. Mr. Edmond Cheung, President of the Hong Kong Law Society, gave evidence for the plaintiff and he said that transactions that he had been involved in which an “English style” completion had been required formed a tiny minority, perhaps 1% of the total, and over many years he had only had about 12. He also said, and this seems to be uncontradicted, that while some solicitors had defrauded their own clients and made off with their money, this case was the first time a conveyancing transaction had not been completed due to a solicitor defaulting on his undertaking. However he also said that if he had been acting in this matter the fact that there appeared to be a very large mortgage on the property, possibly more than the price being paid to Ho Sau-ki would have “rung a warning bell”. He would have made inquiries from the mortgagees solicitors to see how much in fact that mortgage was and, if the purchase money was not sufficient to satisfy it, would take precautions such as sending the purchase money direct to the mortgagee on his undertaking to re-assign the land, or portion of the land, being purchased. Another factor which would have influenced him towards caution was that the purchaser was to be a shelf company with no other assets (it is clear that in this case there would be personal guarantees, for whatever they were worth). Other factors should also be considered. Mr. M’Elney in his evidence said that obviously the size of the other solicitors firm would be very important, one would naturally rely on a firm with several partners, each of whom would be liable for default, and also the amount of money involved.

Mr. Cheung said that Danny Yiu had a reputation as a gambler but Miss Yeung said she did not know that – and indeed she would hardly be expected to know, even if in fact that was so. I place no weight on that.

Mr. Price, in his very able and persuasive submissions said, and I readily accept, that it is all too easy to be wise after the event and the precautions taken by both Mr. Cheung and Mr. McElney are “post Danny Yiu” when the dangers became apparent.

The Hong Kong Law Society had itself apparently been aware of the possible dangers in the Hong Kong style of completion and in April 1965 circulated a report prepared by a sub-committee which, inter alia, stated that if a solicitor for any reason wished to have an English style completion, it would be unethical to refuse. The report refers to the Hong Kong style completion as one which had grown up as a matter of convenience but may leave a solicitor vulnerable.

In March 1966 this report was adopted and it was again stated that if for reasons

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of security a solicitor wished to have a formal completion it was unethical to refuse to comply.

Miss Yeung stated that she had never seen these circulars and she had not been given any standing instructions about vetting other solicitors before accepting an undertaking to complete. I think she should have been given some guidance because, even ignoring these circulars, the dangers with the rapid growth of small solicitors firms in Hong Kong in the 1970s must have been obvious. If one is dealing with a large firm, each of whose partners is personally liable for default, the risk of that taking place is minimal. Here however it seems to me all the relevant considerations pointed towards possible danger Danny Yiu was a one man firm, recently established. The amount involved was substantial, even by Hong Kong's land values. The mortgage to the Hang Seng Bank was apparently very large in relation to the purchase price. The purchasers were small businessmen of no great wealth as they had to borrow almost all the purchase price, and their personal guarantees were of doubtful value.

Taking all those factors into account and avoiding looking at the position with hindsight, it seems to me that the transaction called for some precautions. These could have been such as were stated by Mr. Cheung and Mr. McElney – as sending a cheque direct to the Hang Seng Bank or its solicitors on its undertaking to re-assign. I would have thought it called for even more and that was a proper English style settlement. If Miss Yeung was being pressed to complete I am satisfied she should have informed both Mr. Wong and the directors of Bovill that although she did not know anything specific against Danny Yiu there was a risk in sending a large sum of money to him on the basis of his undertaking and that that risk could be greatly reduced by actual completion procedure. If they then said “we accept the risk, get on with it” Miss Yeung would have done all she was obliged to do. *Buckland v. Mackesy* (1968) Sols. Journal 841. I am satisfied that the style of completion which was generally approved in 1976 was that, while in the great majority of cases an undertaking could be accepted, a solicitor should be aware of the damages and must give thought to the factors involved. If he did so and decided that he could safely accept the undertaking and, on scrutiny, that was a reasonable decision, he is not negligent. However in a small number of cases the solicitor should insist on a proper settlement and every case should be considered accordingly. Here there is no evidence of any such consideration and I held therefore that the general approved practice in Hong Kong was not followed. This particular conveyance called for full consideration of the dangers involved and that consideration was not given.

That, however, is not an end to the matter as between the plaintiff and the 5th defendant. There is very high authority that even if there is a breach of a duty to explain possible dangers, the solicitors will not be liable if the client, although not informed, would have gone ahead anyway. The plaintiff is then entitled only to nominal damages. *Sykes v. Midland Bank Executor Co. Ltd.* (1971) 1 Q.B. 113. In that case there was strong evidence that the client would have entered into a lease agreement even if warned of the presence of an unusually restrictive clause in the lease. Mr. Wong was aware of the reliance on Danny Yiu though not told of ways to avoid such reliance. He says if he had been told there was a risk he would not have gone ahead on that undertaking. He was a mortgagee who had little to gain himself from early completion. I find it difficult to decide this point but on balance I accept his evidence even though obviously it must be tinged with self interest, and hold that, if properly advised of the risk and the alternatives available, Mr. Wong would not have sent his cashier orders to Danny Yiu in the way he did. Neither, I may say, would

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Mr. Shum have so directed him if he had been similarly advised.

I have, I may say, considered the question of negligence on the basis of the Hong Kong Law Society being a separate entity, even though the qualification of most of its members is admission in England, a qualification which has been jealously guarded. There is dicta in English cases that delivery of cash without documents is improper. *Pape v. Westacott* (1894) C.A. 272. Per Lindley L.J. at 278 *Blumbery v. Life Interests etc. Corp.* (1897) 1 Ch. 171.

I turn now to consider the position of the 1st, 2nd, 3rd and 4th defendants against the 5th defendant, who they have joined as a 3rd party. If J.S.M. were also acting for them as solicitors in the conveyance then I think clearly they must be liable for the reasons I have given. 10

I agree with Mr. Price that there was no contractual relationship of solicitor and client between Bovill and J.S.M. as regards the conveyance but on the facts Mr. Shum and his fellow directors believed Miss Yeung was acting for them on the conveyance and relied on her to advise them in relation to it. Mr. Shum went with Mr. Wong to see to the formalities of the sale and I am satisfied that he thought she would be acting both for Mr. Wong and the purchaser, which he then intended to be the N.A.M.P. Ltd. Miss Yeung did not like his shelf company and sold him another one. She negotiated with Danny Yiu in their presence on details of the completion. She re-structured the parties, though Mr. Shum may not have known much about that. At no time did she tell him she was only acting for him in connection with the purchase of the shelf company. Even if he had been told that when presented with J.S.M.'s costs – which I do not accept – it was, in my opinion, too late. I consider that by her conduct Miss Yeung had led Mr. Shum to believe she was acting for him – she says herself he could easily have been confused – I would go further and say he almost certainly came to that conclusion. He regarded his and Mr. Wong's interests as almost identical – as indeed they were – and that Miss Yeung was there to protect them. I do not consider the copy of the letter sent to Mr. Wong setting out the instructions was enough to remove that impression. That I consider she failed to do but I feel I should add that she was only doing what she and hundreds of other solicitors had done before on many occasions without loss. She was never instructed to do otherwise and one has a great deal of sympathy for her position. 20 30

Leading Counsel for the 5th defendant has submitted that the Court should be reluctant indeed to come to a finding which may reflect discredit on a member of a profession. I may say I accepted Miss Yeung as a witness of truth. There were some points, over the years, I think her memory was incorrect but there is nothing whatever in the evidence in this case which in any way reflects ill on her personally.

I am therefore of the opinion that the third party is liable to indemnify the 1st, 2nd, 3rd and 4th defendants on the basis of the line of cases commencing with *Headley Byre and Co. Ltd. v. Heller and Partners Ltd.* (1964) A.C. 465 and including *Midland Bank v. Hett, Stubbs and Kemp*. Miss Yeung should have realised that the directors of Bovill were relying on her advice and in fact did so, in particular in directing Mr. Wong to send the cashier orders to Danny Yiu in the way they did. 40

It was argued that even if liable to him the most the Plaintiff, Mr. Wong, can recover from the 5th Defendant is the amount of the loan plus statutory interest. I do not

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agree. If the 5th Defendant had not been negligent I have no doubt the matter would have been concluded and Mr. Wong would have had his mortgage with the interest payable thereunder, 1% per month.

The 1st, 2nd, 3rd and 4th defendants also claim against the third party for damages, being the sum of \$310,000 which was the additional sum advanced by Mr. Wong, some of which it seems was given to him in the form of cheques and some was advanced on the security of post-dated cheques.

There will be judgment for the Plaintiff against the 1st, 2nd, 3rd and 4th and 5th defendants for \$1,295,000 plus compound interest at 1% per month from the 22nd January 1976 to the 13th day of August 1980, within 14 days from the date hereof and costs to be taxed. The 1st, 2nd, 3rd, 4th and 5th defendants are entitled to be indemnified by the 3rd party against such judgment. 10

There will also be judgment for the 1st defendant against the 5th defendant for \$310,000 plus interest at 10% from 27th January 1976 to date of payment. The 1st defendant to have costs to be taxed.

(R.G. Penlington)
Judge of the High Court

Mr. Oswald Cheung, Q.C. & Patrick Fung (Deacons) for Plaintiff
Mr. R. Tang (P.K.H. Wong & Co.) for D1-4.
Mr. Price, Q.C., & Mr. Mills-Owen (S. & M.) for D5 & 3rd party.

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1976 No. 2401

IN THE SUPREME COURT OF HONG KONG
HIGH COURT

BETWEEN:

EDWARD WONG FINANCE CO., LIMITED Plaintiffs

and

POMAY INVESTMENTS LIMITED (formerly known
as BOVILL INVESTMENTS LIMITED) 1st Defendants
DAVID MA POK SUM 2nd Defendant
SHUM KA CHING 3rd Defendant 10
TSIANG HUNG WEN 4th Defendant
MESSRS. JOHNSON, STOKES & MASTER
(a firm) 5th Defendant

and

MESSRS. JOHNSON, STOKES & MASTER
(a firm) Third Party

BEFORE THE HONOURABLE MR. JUSTICE PENLINGTON IN COURT

ORDER

This action having been tried before the Honourable Mr. Justice Penlington without a jury, at the Supreme Court of Justice, Hong Kong and the said Mr. Justice Penlington having on the 13th day of August, 1980 ordered that judgment as hereinafter provided be entered for the 1st, 2nd, 3rd, 4th and 5th Defendants against the Third Party. 20

IT IS THIS DAY ADJUDGED that the Third Party do indemnify the 1st, 2nd, 3rd, 4th and 5th Defendants for any judgment that the Plaintiffs do have against the 1st, 2nd, 3rd, 4th and 5th Defendants by paying damages in the sum of \$1,295,000.00 together with compound interest thereon at the rate of 1% per month from the 22nd day of January 1976 to the 13th day of August, 1980 within 14 days from the date hereof and costs of this action to be taxed.

IT IS FURTHER ORDERED that judgment be entered for the 1st Defendants against the 5th Defendant for \$310,000.00 plus interest at 10% from 27th January 1976 to date of payment and the 1st Defendants to have costs to be taxed. 30

By consent it is further ordered that execution of the said judgment by the 1st to 4th Defendants against the Third Party be stayed for the period of 6 weeks from the date on which the said judgment be perfected and if within that time, the Third Party gives

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notice of appeal, execution be further stayed until the determination of the appeal or further order.

By consent it is further ordered that taxation of the costs of the said Defendants do proceed and such costs when taxed be paid within 14 days of the Taxing Registrar's Certificate by the said Third Party to the said Defendants' solicitors upon their personal undertaking to return the same if the said appeal be successful.

Dated the 10th day of November, 1980.

N. J. Barnett
Acting Registrar.

In the
Supreme
Court of
Hong Kong
High Court
Plaintiff's
evidence
No. 12
Edward Wong
Ching-mal
examination

IN THE SUPREME COURT OF HONG KONG
HIGH COURT

ACTION NO. 2401 OF 1976

BETWEEN

Edward Wong Finance Co., Ltd.

Plaintiff

and

Bovill Investment Ltd.	1st defendant	
David Ma Pok-sum	2nd defendant	
Shum Ka-ching	3rd defendant	
Tsiang Hung-wen	4th defendant	10
Johnson, Stokes & Master	3rd party	

Date: 3rd of June, 1980 at 3 p.m.
Coram: Penlington, J.
Present: O. Cheung and P. Fung (Deacons) for plaintiff
R. Tang (Philip K. H. Wong) for 1st and 4th defendants
Price and R. Mills-Owens (Slaughter & May) for 5th defendant and 3rd party.

P.W. 1 Edward Wong Ching-mal

Affirmed in punti

XN BY MR. CHEUNG

Q. You are also known as Mr. Edward Wong.
A. That is right. 20
Q. What is your residential address?
A. I reside at Fairland Garden, 7 Ho Man Tin Hill Road, C1, 7th floor.
Q. Are you the managing director of Edward Wong Finance Co. Ltd, the plaintiff?
A. That is right.
Q. Are you a shareholder?
A. That is right.
Q. About roughly what percentage of the issued share capital do you hold in the plaintiff company?
A. My wife and I occupy about 80% of the shares.
Q. Of that 80% also how much do you own? 30
A. About 60% or more but I haven't made the calculation.
Q. Who owns roughly the other 20% of the shares?
A. My Company, the Edward Wong & Co. Ltd, owns the other 20%.
Q. What is the name of Edward Wong Finance Co Ltd, the plaintiff, in Chinese? What do you refer to it?
A. On Tai Choi Mo Co., Ltd.
Q. The operative words are "On Tai"?
A. That is right.
Q. What is the other company, Edward Wong & Co. Ltd., known as?
A. That is On Tai Co. Ltd. 40

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- Q. The distinction being the addition of two words "choi mo" meaning finance.
A. That is right.
Q. Are you managing director of Edward Wong & Co.?
A. That is right.
Q. What percentage of the shares you own in that?
A. My wife and I own 92% of the shares.
Q. Of the 92% what do you own?
A. I own about 70 odd to 80%.
Q. What about the rest of the shares? How many other shareholders? 10
A. The remaining 8% is owned by a friend of mine who is now residing in Japan.
Q. Does he own the share beneficially for his own benefit or does he not?
A. Yes, he owns the shares for his own beneficial benefit.
Q. Does your wife own her shares for her own benefit?
A. It is a family ownership.
Q. Are there any shareholders registered as members who don't own their shares beneficially?
A. No.
Q. Where is the office of the plaintiff company, finance company?
A. The office of the finance company is situated at room 906 Nathan Road, Mongkok, 20 building of the Hong Kong and Shanghai Banking Corporation.
Q. The office of Edward Wong & Co., Ltd.
A. Same address with the room number being different, being 901 to 903.
Q. What is the business of Edward Wong & Co. Ltd?
A. One of import and export.
Q. Of what goods?
A. Garments, cotton yarns and cloth.
Q. In other words textile.
A. Textile and garment.
Q. The business of Edward Wong Finance Co. Ltd? 30
A. Exclusively for the business of finance.
Q. Does it have a licence to carry on the business of money lending?
A. Yes.
Q. Would you produce the licence. I gather it is in the agreed bundle. (Converse with counsel) If that is no longer contested, I don't have to produce it. Do you know the 5th defendant, Johnson, Stokes & Master?
A. Yes.
Q. For how long before January 1976 had you been their client?
A. I believe about 5 or 6 years before January.
Q. Before January, 1976? 40
A. That is right.
Q. At that time did they hold an annual retainer from Edward Wong & Co. and subsidiary companies?
A. That is right.
Q. Did they hold an annual retainer or did they not from the Edward Wong Finance Co Ltd? Did they also hold a retainer from Edward Wong Finance Company?
A. Yes.
Q. How long had you given to Johnson Stokes an annual retainer for Edward Wong Finance Co. Ltd.?
A. Two or three years I think. 50

- Q. Did you or had you before January 1976 put through specific individual legal transactions through Johnson Stokes, the 5th defendant?
- A. Yes.
- Q. What sort of transaction?
- A. Mortgage on machinery, properties, bill of sales.
- Q. Anything else?
- A. And also the purchase of real estate.
- Q. Do you remember how many of those transactions, legal transactions, you had put through Johnson Stokes? 10
- A. I do not recall the exact number but I believe at least there were ten odd or twenty transactions.
- Q. I come to Mr. Shum Ka-ching. How long had you known him before January 1976?
- A. I believe it was a matter of 4 or 5 years.
- Q. In January 1976 was he managing director of Mei Fung Industrial Co Ltd?
- A. That is right.
- Q. Was he also a managing director of Po Fung Finishing Works Ltd?
- A. That is right.
- Q. At that time how long had you known Mr. David Ma, the 2nd defendant? 20
- A. Two or three years.
- Q. How long had you known Mr. Tsiang Hung-wen, the 4th defendant?
- A. Also two or three years.
- Q. Both of them were directors of Po Fung Finishing Works, were they not?
- A. That is right.
- Q. Before that date had Edward Wong & Co. had business with Po Fung and Mei Fung?
- A. Yes.
- Q. In connection with textiles or finishing textiles, right?
- A. That is right.
- Q. Had the plaintiff company, that is to say, the finance company, had financing 30 business with Po Fung?
- A. Yes.
- Q. About the middle of January, 1976 do you remember Mr. Shum coming to see you about a loan for purchasing the ground floor of number 76 Hung To Road?
- A. Yes, I remember.
- Q. Did he produce any documents?
- A. He produced two documents in Chinese.
- Q. Was one of them this document whereby it shows here: agreed to buy the ground floor for 1,850,000. Is it the document? Page 21, my Lord, volume 8. Is that part of the document? 40
- A. That is right.
- Q. Can you remember whether he brought to you the original document or a copy?
- A. I do not remember clearly but it seems to me that it was a copy.
- Q. Did he bring another document? I think he said he brought two documents.
- A. Yes, in Chinese.
- Q. Was the other document this, which is page 23 of volume 3?
- A. That is right.
- Q. Did he indicate to you about how much he wanted to borrow or how much he was short of rather?

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- A. He mentioned the figure of about \$1.4 million.
- Q. Coming back to this document on page 23, can you remember whether he brought the original or copy?
- A. Neither can I remember clearly. Possibly it was a copy.
- Q. Did you consider his request for loan?
- A. Yes, I did.
- Q. Did you agree to grant them a loan?
- A. Yes.
- Q. On what sort of conditions? 10
- A. There were two conditions. One: The property purchased would be held by us as security. The three directors of Mei Fung and Po Fung namely, Mr. Shum Ka-ching, David Ma, and the other, Mr. Tsiang Hung-wen, would stand guarantee personally.
- Q. On that first occasion when Mr. Shum saw you, was he accompanied by anyone else?
- A. He came alone.
- Q. At that time did you agree on a definite amount of money to be lent?
- A. He mentioned the figure of 1.4 million but finally our decision for the loan was 1.355 million. 20
- Q. Was that agreed whilst you were still in your office?
- A. That is right.
- Q. Did he agree to give you the mortgage, a mortgage security, and agree to give you a guarantee?
- A. Yes.
- Q. Tell me was any mention made by Mr. Shum at this time of a company called North American Meat Packing Company?
- A. Yes.
- Q. Did he mention it whilst in your office on this initial occasion?
- A. No. It was not mentioned in my office. It was mentioned when the two of us were at J.S.M. 30
- Q. After your initial interview with him, what did you do?
- A. Mr. Shum and I went down to the J.S.M. office.
- Q. Whom did you see there?
- A. There I saw solicitor Leung Wai-ling.
- Q. That is Miss Leung Wai-ling?
- A. That is right.
- Q. Had you met her before?
- A. Yes, many times.
- Q. Did you or Mr. Shum tell her what the purpose of your visit was? 40
- A. That is right.
- Q. What did you tell her you wanted her to do or her firm rather – wanted them to do?
- A. I informed Miss Leung that we had agreed to have a mortgage on property prepared.
- Q. Anything else?
- A. I requested the J.S.M. to go through the formalities for us.
- Q. Do you remember whether or not she was shown either of the two Chinese agreements that you had seen – did anybody show her?
- A. Yes. We handed to Miss Leung Wai-ling, solicitor, the two documents in Chinese.

- We also informed her that our agreed amount was HK\$1.355 million at the interest rate of 1% per month.
- Q. Did you also mention the personal guarantee you wanted from Mr. Shum, Mr. Ma and Mr. Tsiang?
- A. That is right.
- Q. Did you tell her to prepare that?
- A. That is right.
- Q. Earlier in your evidence you say that it was when you and Mr. Shum saw her that the North American Meat Packing Co. Ltd. was mentioned. 10
- A. That is right.
- Q. Who mentioned it?
- A. Mr. Shum mentioned it.
- Q. Can you please do your best to remember what he actually told Miss Leung?
- A. Mr. Shum told Miss Leung that he intended to purchase the property in the name of North American Meat Packing Company.
- Q. What else did he say? Do you remember he said anything more?
- A. He requested her to complete the procedure as soon as possible.
- Q. Can you remember whether he produced any document or not relating to the meat packing company? 20
- A. I can't remember clearly but I have the impression that he did not produce any document.
- Q. These two Chinese agreements mention certain parties. Page 21 mentions a Mr. Chan Sun-ming who signs it. Can you show him the signature, page 21?
- A. Yes.
- Q. The other document on page 23 has also a name on it, Mr. Chan Sun-ming.
- A. That is right.
- Q. And also the name of the Kai Ming Investment Co. Ltd.
- A. That is right.
- Q. Their names also appear at the end of the document. 30
- A. Yes.
- Q. Can you remember whether Mr. Shum mentioned who was acting for them or how they could be contacted to represent Mr. Chan or Kai Ming? May I rephrase my question, my Lord. Did Mr. Shum mentioned the names of any solicitors or not who might represent Mr. Chan or the Kai Ming Investment Company?
- A. He informed Miss Leung that the solicitor for the other party was Danny Yiu.
- Q. Can you remember apart from the names of Chan Sun-ming and Kai Ming Investment Company were the names of any other parties mentioned?
- A. No.
- Q. Do you remember whether Miss Leung asked any more questions or said anything more about the meat packing company? 40
- A. Initially she said that it did not sound nice to purchase property in the name of a meat company. She suggested buying a new company, a shelf company, to buy the property.
- Q. This was at the same interview at that same place?
- A. Yes.
- Q. Did she suggest from whom Mr. Shum could buy the shelf company?
- A. She suggested buying the shelf company from J.S.M., that is her own solicitor's firm.

- Q. Do you remember anything more said about such purchase, buying such shelf company?
- A. Miss Leung then rang up her firm on the Island to get a list of names of companies for Mr. Shum to make a choice.
- Q. Did she write out a list?
- A. I do not recollect whether or not she wrote out a list.
- Q. But she mentioned a number of names.
- A. I believe so.
- Q. You can't remember? 10
- A. I do not remember clearly because it was not my business any way.
- Q. Do you remember whether he picked a company or not on that occasion?
- A. I believe so. I believe Mr. Shum picked out a company easy to be called and easy to be remembered.
- Q. You can't remember?
- A. I don't quite remember.
- Q. Your object was to have the property as security for your loan and interest, is that right?
- A. That is right.
- Q. It was mentioned in your presence that a shelf company would be used. 20
- A. That is right.
- Q. Can you remember whether or not anything further was said at that first interview on this matter that you and Mr. Shum had with Miss Leung?
- A. I do not remember clearly. However I had already mentioned all the main points of the interview with Miss Leung.
- Q. May I rephrase it, my Lord. Can you remember whether at your first interview with Mr. Shum whether anything about a floating charge or debenture was mentioned?
- A. Yes. It was mentioned in the J.S.M. office. The mortgage of the property would be in the form of a debenture.
- Q. Subsequently did you agree to leave out the floating charge? 30
- A. That is right.
- Q. Do you remember who asked you to agree to it?
- A. I don't quite remember who it was. Any way it was either Miss Leung or Mr. Shum.
- Q. Do you remember whether Miss Leung rang you up on that matter, the floating charge?
- A. Yes, she did.
- Q. You agreed to let it go.
- A. That is right.

MR. CHEUNG: Would your Lordship like a short adjournment?

COURT: Yes. 40

3:45 P.M. Court adjourns

4.05 p.m. Court resumes.

Appearances as before.

P. W. 1 – Edward WONG Ching-mal o.f.a.

XN. BY MR. CHEUNG: Continues

- Q. Now later on in January. . . By the way, can you remember what was the date on which you and Mr. Shum first saw Miss Leung in Johnson, Stokes about this matter?
- A. It was sometime in mid-January, but I do not remember the date.
- Q. Now eventually do you remember receiving a letter from Messrs Johnson, Stokes & Masters, which is on page 36 of volume 2 of the papers, asking you, amongst other things, to let them have cheques for 1,355,000? 10
- A. That's right.
- Q. You read English, do you not?
- A. Yes.
- A. And do you remember receiving the document a copy of which is at page 38 of that volume, signed Bovill?
- A. Yes, that's right.
- Q. And do you remember sending three cashier orders to Johnson, Stokes which are at pages 40, 41 and 42?
- A. That's right. 20
- Q. Now let me go back to your first conversation with Mr. Shum about the loan he wanted. It was finally agreed. . . . I am sorry. The amount of money he required to pay the balance of the purchase price was 1,665,000.
- A. That's right.
- Q. You have finally agreed to lend 1,355,000?
- A. That's right.
- Q. So he had to provide 310,000?
- A. That's right.
- Q. Now did you obtain these cashier orders from the Chartered Bank and the Bangkok Bank? 30
- A. That's right.
- Q. Now was Mr. Shum or his company able to put up the 310,000?
- A. No. Mr. Shum and his company could raise \$185,000.
- Q. Now when did you learn that?
- A. It was about one or two days before I had taken out the bank draft when he came to see me to discuss this matter.
- Q. Will you please tell my Lord what happened on that occasion?
- A. He said he did not have sufficient money to make payment towards the \$310,000.
- Q. He only had 185,000?
- A. That's right. 40
- Q. Did he pay that to you?
- A. Yes, he did.
- Q. How did he pay that to you?
- A. He gave me two cash cheques.

MR. CHEUNG: The correct phraseology is cheques bearing instant date.

INTERPRETER: Instant cheque.

- Q. He gave you two cheques which were immediately payable to the bank?
A. Yes.
Q. What did he discuss with you about the remainder of the money, 125,000?
A. He intended to borrow that amount of money from me.
Q. Yes?
A. In order to make up the \$310,000.
Q. Yes. What next?
A. He gave me two post-dated cheques for that amount. 10
Q. For \$125,000?
A. The two cheques were post-dated one year for the amount of \$185,000.
Q. \$92,500 each?
A. Yes.
Q. Why did he give you two cheques totalling 185,000 when he wanted only 125,000?
A. The balance, the difference between 185,000 and 125,000 was 60,000, and that was a personal loan from him he made from me.
Q. He wanted a personal loan from you for 60,000?
A. No. That is for his company.
Q. Whose company? 20
A. Mr. Shum borrowed \$185,000 from our finance company.
Q. For whom did he borrow?
A. For Po Fung and May Fung.
Q. And you agreed to lend the 185,000?
A. That's right.
Q. And you agreed to take two cheques post dated a year for 185,000?
A. That's right.
Q. Did you require any interest?
A. Yes. He gave me two post-dated cheques in payment of the interest.
Q. And what was the rate of interest agreed between you and he for this loan? 30
A. 1.2 per cent per month.
Q. And the loan was for how long?
A. About one year.
Q. Now you said he gave you two cheques, what were they post-dated to?
A. To my recollection, both cheques were post-dated to the 22nd of January, 1977.
Q. Both the same date?
A. That's right.
Q. And the total amount? About, roughly?
A. 185,000.
Q. No, I am sorry. Let me go back. You agreed that the rate of interest was 1.2 per 40
cent per month?
A. Yes.
Q. I want to be clear. Did he give you any cheques for the interest?
A. Yes.
Q. How many?
A. Two.
Q. Bearing what date?
A. It seems to me the two cheques for the interest was for the month of July, 1976.

- Q. What was the total amount of the two cheques?
A. About 26,000.
Q. Eventually did you get payments on those cheques?
A. I believe so.
Q. Did you eventually get payments on the two post-dated cheques amounting to 185,000?
A. The May Fung eventually owed our company over \$1,000,000. I do not remember whether or not this amount, the amount of \$185,000, was included in this one million odd. 10
Q. Is that money still outstanding, the one million odd dollars?
A. That's right.
Q. Is that apart from the money lent for the purchase of this property?
A. That's right.
Q. Now let me recapitulate. You gave them a further short-term loan of 185,000?
A. That's right.
Q. Did he pay you the 125,000 to make up the 310,000? Mr. Interpreter, I said "paid" not "repaid". You used the word "repaid". Did he pay the 125,000 to make up the 310,000?
A. The \$125,000 was the amount of money financed by our company to him. 20
Q. That's right. Anyway, let me recapitulate once more. You agreed to give them a short-term loan of 185,000?
A. That's right.
Q. To whom did you pay that short-term loan, the amount of that short-term loan?
A. \$125,000 were paid on his behalf towards the balance of the purchase price of the premises.
Q. Originally he had paid you two immediate cheques for 185,000. Now you added, your finance company added 125,000 to that 185,000.
A. That's right.
Q. Now what happened to the . . . As regards to the short-term loan of 185,000, what happened to the other 60,000 left over? 30
A. Mr. Shum made a personal loan from me to get the money to repay me.
Q. Out of the short-term loan of 185,000, there was a balance of \$60,000 left after paying the 125,000 for the purchase of the property.
A. Yes. There was a short-term loan out of the . . .
Q. What happened to the 60,000?
A. It is a personal loan from me. Mr. Shum obtained a personal loan from me.

MR. CHEUNG: Mr. Interpreter, would it be correct to say the answer was, "He used to repay a personal loan to me on a current account"?

INTERPRETER: I agree, yes. 40

- Q. So he used the \$60,000 to repay a personal loan to you on a current account, is that what you are saying?
A. That's right.
Q. Now would you have a look at the letter which is on page 28 of bundle No. 2, page 28 of bundle No. 2. There is a letter from. . . Sorry. I beg your pardon. Did you ever see that? There is a letter from Danny Yiu to Johnson, Stokes. At that time in January, 1976, did you see that letter?

- A. I believe so.
- Q. In January, 1976?
- A. I do not remember the exact date. It seems to me it was either in January '76 or beginning of February '76 when I first saw this letter.
- Q. I see. Now would you turn to page 34 of that bundle? Now this is a letter from Johnson, Stokes to Danny Yiu dated the 27th of January. Have a good look at it. If you don't understand it, then I think we will pause here. Do you understand it? Can you read it?
- A. Yes. 10
- Q. Do you understand roughly what it says?
- A. Yes.
- Q. Can you remember when you first saw that letter?
- A. I believe it was towards the end of January or the beginning of February.
- Q. Now on the 27th of January, you remember sending the three cashier cheques over to Johnson, Stokes?
- A. Yes.
- Q. Chinese New Year was, I think, the 31st of January.
- A. That's right.
- Q. Were you in Hong Kong for the Chinese New Year? 20
- A. No.
- Q. Can you remember when you left Hong Kong?
- A. I believe it was one or two days before the Chinese New Year that I left Hong Kong.
- Q. That is to say either the 29th or 30th of January?
- A. That's right.
- Q. And how long were you away from Hong Kong?
- A. From one week to ten days.
- Q. Now to the best of your recollection, did you see that letter before you left Hong Kong on holiday or after you came back from holiday?
- A. I am not quite sure. 30
- Q. Did you between the time Miss Leung spoke to you about the floating charge and the time you sent her the three cashier orders, do you remember speaking to Miss Leung?
- A. I do not quite remember. However, as we were under the same roof, in the same building, I might have spoken to her or she might have spoken to me, but I am not sure.
- Q. Did you speak to her in relation to this mortgage of No. 76, Hung To Road, ground floor?
- A. Yes, I believe so. I pushed her to proceed as soon as possible because the Chinese New Year was drawing near and I was going away. 40
- Q. What reply did you get?
- A. She said she would try her best to do it.
- Q. And you returned to Hong Kong after a vacation of a week or ten days?
- A. That's right.
- Q. You did go on vacation, didn't you?
- A. Yes.

MR. CHEUNG: Would that be a convenient place to adjourn?

COURT: 10 a.m.

4.35 p.m. Court adjourns.

3rd June, 1980.

AML/C/1

4th June, 1980.

10.15 a.m. Court resumes

Appearances as before.

P.W. 1 – Edward WONG Ching-mal o.f.a.

XN BY MR. CHEUNG (continues)

- Q. After you returned from your vacation over Chinese New Year, would you tell my Lord what happened in relation to this case? 10
- A. On my return from my vacation I had some information that some solicitor or solicitors were not quite all right.
- Q. About how long after you returned from your vacation?
- A. Three or four days after my return.
- Q. Yes, what did you do?
- A. Therefore, Mr. SHUM and I went to see Miss LEUNG, the solicitor, to have a discussion with her.
- Q. Had Mr. SHUM come to your office?
- A. That's right. 20
- Q. Did Mr. SHUM say anything to you?
- A. He also said that a solicitor was not quite all right.
- Q. Was that after you had first heard these rumours or at the same time – about the same time?
- A. I believe it was Mr. SHUM who told me that.
- Q. Did he mention the solicitor's name?
- A. I believe he did so.
- Q. What was the name?
- A. Solicitor YIU.
- Q. You then went down to see Miss LEUNG. Tell us what happened. 30
- A. We told her that we heard that a solicitor was not conducting himself properly and we requested her to investigate into the matter and requested her to complete the transaction.
- Q. Was the solicitor named by either of you?
- A. Yes, we did.
- Q. And the name was?
- A. Solicitor YIU, Danny YIU.
- Q. And what did Miss LEUNG say or do?
- A. Miss LEUNG told us in a loud voice that we did not have to be nervous about that because it was only normal. 40
- Q. Did she say what was normal?

A. We asked her about the condition of the transaction, about the formalities which had not yet completed. She said it was only normal.

MR. CHEUNG: Mr. Interpreter, my learned junior was hearing the witness in Chinese, I wasn't. He suggests the witness said – did the witness say, “We asked whether the transaction had been completed”? What you interpreted, Mr. Interpreter, was, “We asked her to complete the transaction.”

MR. INTERPRETER: Sorry, I don't remember. Will you please ask the witness to repeat?

COURT: My note is, “We told Miss LEUNG that we heard a solicitor was not conducting himself properly, would she please complete the matter.” 10

MR. PRICE: And I have a further note. I have there exactly as your Lordship and a further note after where she had said that there was no reason to be nervous, it was only normal “We asked her about formalities not yet completed.”

MR. CHEUNG: I see. I think that would be sufficient.

MR. PRICE: I am, of course, only recording what the interpreter said, I am not attempting to understand what Mr. WONG actually said.

COURT: My note is, “We asked about the formalities not yet completed. She said it was normal.”

A. Mr. SHUM and I went down to see her saying that we heard that a solicitor was not conducting himself properly. We asked Solicitor LEUNG as to whether or not the formalities for our matter had been completed or not. We said that the title deed had not yet been sent to her. She said in a loud voice that we did not have to be nervous because it was only normal. Upon hearing that we requested her to investigate into the matter clearly. 20

Q. Yes, was anything further discussed or said?

A. After the discussion Mr. SHUM and I left her office.

Q. Can you remember the date of that?

A. It was on either the 15th or the 16th of February.

Q. Or about that time.

A. Or about that time. 30

Q. Did Mr. SHUM go back to your office or what happened?

A. We parted company.

Q. Then what happened next in relation to this matter?

A. On the same day it was either we who went down to Miss LEUNG's office or Miss LEUNG informed us that it has been confirmed – it had been confirmed that Solicitor YIU was in fact not conducting himself properly.

Q. She could have said that either in her office or by some other means, is that what you are saying?

A. Having received that confirmation, that notice, Mr. SHUM and I then went down to Miss LEUNG's office again. 40

- Q. So Mr. SHUM had after parting company with you returned to you.
- A. Mr. SHUM went up to my office and then we went down to Miss LEUNG's office again.
- Q. This was the same day.
- A. Yes, it was on the afternoon of that same day.
- Q. The earlier interview with Miss LEUNG was in the morning, was it?
- A. Early in the morning, some time after 9 o'clock, I think.
- Q. Now, in the afternoon when you and Mr. SHUM saw Miss LEUNG, tell us what happened. 10
- A. She told us that Solicitor YIU had absconded.
- Q. Yes?
- A. At that time she was very busy making telephone calls, doing lots of work.
- Q. Yes?
- A. And she also had a discussion with Mr. Thornhill, manager of J.S.M.
- MR. CHEUNG: I think in fact he was the partner/manager of the Kowloon office, my Lord.
- Q. Did she speak to Mr. Thornhill whilst you and Mr. SHUM were there?
- A. In fact, we – Mr. Thornhill, Miss LEUNG, Mr. SHUM and myself – were there having a discussion. 20
- Q. Is there anything you wish to tell my Lord further about that discussion?
- A. No.
- Q. You then left the office.
- A. That's right.
- Q. What did you next do in relation to this matter?
- A. I had a discussion with a staff of my office.
- Q. As a result?
- A. As a result of which we had to discuss this matter with another solicitor.
- Q. Did you go and see another firm of solicitors?
- A. That's right. 30
- Q. Which firm?
- A. Deacons.
- Q. Where was their office?
- A. At that time the Deacons office on the Kowloon side was at the Tung Ying Building.
- Q. Which road was it in?
- A. Nathan Road.
- Q. Who did you see there?
- A. I saw Mr. Oscar LAI.
- Q. And did you place the matter in his hands? 40
- A. That's right.
- Q. Now, up to the time at any rate of Mr. SHUM telling you that Danny YIU was not conducting himself properly, up to that time, that is to say the 15th or 16th of February, did you know who was the registered owner of the property?
- A. I did not know.
- Q. Did you know from whom Kai Ming Investment Company and Mr. CHAN Sun-ming had agreed to buy the property?

- A. I did not know.
- Q. Had you heard, up to that time, the name of Mr. HO Sau-kei in connection with the property?
- A. No.
- Q. Had you heard of Lucky Time Investment Company?
- A. No.
- Q. Lucky Time Finance Company, I'm sorry. Have you heard of that name?
- A. No, no.
- Q. Up to that time, did you know that the property, the whole of the building and land at 76 Hung To Road, had been mortgaged to the Hang Seng Bank? 10
- A. No.
- Q. Did Miss LEUNG up to that time mention any of those matters to you?
- A. Absolutely not.
- Q. Did you know how she would complete the formalities?
- A. I did not know.
- Q. Now, you told us yesterday that at your first interview with Miss LEUNG on this matter in mid-January either you or Mr. SHUM, I forgot what you said yesterday, had mentioned to Miss LEUNG that Danny YIU represented was it the other side? I forgot. 20
- A. That's right.
- Q. And on the 27th of January you were told to make out three cashier orders in favour of Danny YIU.
- A. She told us to prepare cashier order or cashier orders in the amount of 1.355 million dollars. She did not mention the number of cashier orders to be made. We made out three cashier orders out of our own accord.
- Q. And they were made out in favour of Danny YIU & Co.
- A. It was made out in favour of Danny YIU & Co. on the advice of Miss LEUNG.
- Q. Did she tell you why?
- A. No. 30
- Q. Did she mention to you anything about taking any risk making out cashier orders for Danny YIU?
- A. No.
- Q. Did you up to the time of the 15th or 16th of February know that the Hang Seng Bank had to execute what is called a re-assignment of the property – would have to execute a re-assignment of the property?

MR. CHEUNG (To Interpreter): Do you know what a re-assignment means? Re-assignment of a mortgage.

INTERPRETER: It's a re-transfer.

MR. CHEUNG (To Interpreter): I am advised the correct phrase is . . . (Counsel speaks in Chinese) 40

- A. No.
- Q. What sort of title deeds did you expect Miss LEUNG to prepare for you?

MR. CHEUNG: May I rephrase the question?

- Q. You gave instructions to Miss LEUNG to prepare a debenture with a mortgage on the property and a personal guarantee.
- A. Yes.
- Q. Were you interested in how she did it?
- A. No.
- Q. You left it to her.
- A. That's right.
- Q. And what did you expect the end result to be?
- A. We expected to have from her a valid debenture and also a title deed of the property. 10
- Q. I think you also expected a valid guarantee.
- A. That's right.
- Q. I will put a hypothetical question to you. Now, if Miss LEUNG or anybody in Johnson Stokes had told you when you were sending the cashier orders to Danny YIU that they were relying on the honesty of Danny YIU and that there might be some risk of Danny YIU pocketing the money, would you have done – would you have sent -- would you have agreed to send the cashier orders?
- A. Certainly not.
- Q. I put another hypothetical question. If you had known that the Hang Seng Bank had a mortgage on the property and that Johnson Stokes depended on the honesty of Danny YIU to pay off that mortgage, would you have gone on – would you have sent those cashier orders? 20

MR. CHEUNG: (To Interpreter) May I give it to you again?

- Q. If you had been told that Hang Seng Bank had a mortgage on this property and you had been told Johnson Stokes relied on the honesty of Danny YIU to pay off that mortgage, would you have sent those cashier orders?
- A. I believe I would not.
- Q. Now, up to this time have you been repaid the money lent to the 1st defendant – to Bovill? 30
- A. Completely entirely not – not at all.
- Q. I think you said yesterday, maybe you haven't, the two post-dated cheques for \$185,000, those were paid eventually.
- A. That's right.
- Q. Coming to a slightly different subject. I think yesterday you told my Lord that you own 60 or just about 60 per cent of the shares in Edward Wong Finance Company.
- A. That's right, but out of the 60 per cent I was holding about 20 per cent of the shares as a declaration of trust.
- Q. Are all the shares, those 60 per cent, registered in your name or not?
- A. About 40 per cent of the shares were registered in my own name. 40
- Q. And the other 20 per cent?

INTERPRETER: The three high-ranking officers of his company were holding the shares for him in a declaration of trust.

- Q. Let me put it this way. The other 20 per cent of the shares are registered in the

names of three high officials in your company and they have executed declarations of trust for you in respect of those shares.

A. That's right.

(Mr. CHEUNG confers with Mr. Price)

MR. CHEUNG: My Lord, I am obliged to my friend. There is now no dispute that all these three cashier orders were cashed on or about the 27th of January.

Q. Now, you explained to my Lord that before January, 1976 you had put 10 to 20 mortgages or bills of sale through Johnson Stokes and Master.

A. That's right.

Q. Would I be right in saying that on those occasions you told them what you wanted, you told Johnson Stokes what you wanted them to do?

A. Yes.

Q. Were you ever interested in how they did it?

A. No.

Q. And up to that time had anything gone wrong with any of the transactions?

A. No.

Q. Each time you wanted some valid document.

A. That's right.

Q. That is mortgage or bill of sale or assignment.

A. That's right.

Q. Now, try and think clearly before you answer this question. Had Johnson Stokes on any previous occasion told you that they were sending money to other solicitors trusting the honesty of other solicitors? Was that ever told to you?

A. No.

Q. Did they ever warn you on any of those previous occasions that some risk was being run?

A. No.

Q. Did they ever explain to you how they completed the formalities of the different transactions?

A. No, no, no.

Q. Prior to January, 1976 had you ever heard of Mr. Danny YIU?

A. No.

Q. You had never had any dealings with them either?

A. None at all.

Q. Thank you.

MR. CHEUNG: My Lord, my friend has asked me whether the Re-Amended Statement of Claim is ready. The answer is no, but it would take the form that I intimated it would take yesterday. My learned junior, I apprehend, will do without lunch today.

MR. PRICE: My Lord, I only rise to say this, that although my friend says the form which he indicated yesterday – it was indicated in quite general terms, and looking through the Statement of Claim, it does appear to me, I don't know whether it appears to my friend, Mr. TANG, that the detailed amendments may have some bearing on the cross-examination.

MR. CHEUNG: In that case, my Lord, would your Lordship be good enough to take the mid-morning adjournment now?

11.00 a.m. Court adjourns

11.33 a.m. Court resumes

Appearances as before.

P. W. 1 – Edward WONG Ching-mal o.f.a.

MR. CHEUNG: My Lord, I apply for leave to amend the Statement of Claim further as shown in that document. My Lord, my learned friends tell me they don't object subject to payment of cost. Your Lordship will see on page 4 that the figure is – the amount alleged to be loaned is 1355, and that is the amount shown throughout the – or should be the amount shown throughout the writ. And at the end, my Lord, on page 19 of the pleading in the prayer against the 1st defendant, the amended pleading now reads, the sum of \$1,295,000, after taking into account a concession in the sum of \$60,000 made by the plaintiff. My Lord, strictly more accurately it was made by plaintiff's counsel as it has really been written in. 10

And the next paragraph under that prayer claims interest from the 27th of January, 1976 instead of the 16th of October, the reason being, my Lord, the original figure in sub-paragraph 1 of that prayer, \$1,473,788.33, included interest up to the 16th of October. Perhaps your Lordship will endorse on the copy that your Lordship give leave today, the 4th of June, and re-service, my Lord, to be dispensed with. 20

COURT: Leave to amend, service to be dispensed with.

XXN BY MR. TANG

Q. Mr. WONG, you told my Lord that after an initial interview some time in the middle of January you and Mr SHUM went down to the offices of Johnson Stokes and Master and saw Miss LEUNG.

A. That's right.

Q. That initial interview was not the first time Mr. SHUM and you had discussed about this mortgage, was it? 30

A. No.

Q. There had been previous discussions.

A. That's right.

Q. Can you remember when did those previous discussions take place?

A. I remember it was two or three days prior to our seeing Solicitor LEUNG.

Q. Now, in those previous discussions were the terms of the loan agreed?

A. Yes.

Q. And you say you agreed to lend \$1,355,000.

A. That's right.

- Q. And that was to be secured by a mortgage on the property.
- A. That's right.
- Q. And the three guarantees were to be provided by the 2nd, 3rd and 4th defendants.
- A. That's right.
- Q. Was there any discussion about repayments?
- A. Yes.
- Q. How was the loan to be repaid?
- A. I don't quite remember. However, it seems to me it was agreed that the loan was to be repaid over a period of 7 years. 10
- Q. And so the mortgage would be repaid – would the mortgage be repaid by say 84 equal instalments?
- A. I don't quite remember how many years the repayment was to be, but if it were for 7 years, then the repayment should be over a period of 84 instalments.
- Q. I see. 84 monthly instalments, of course. Now, was there any discussion about whether or not it was necessary to engage a solicitor in the preparation of the mortgage?
- A. Yes.
- Q. You needed a solicitor.
- A. That's right. 20
- Q. And the defendant, Mr. SHUM, also needed a solicitor.
- A. Yes.
- Q. Was it decided between you and Mr. SHUM which solicitors to employ?
- A. He asked me as to which solicitor's firm we were to engage. I said that all along I had engaged J.S.M.
- Q. So you told him that they were your regular solicitors.
- A. That's right.
- Q. Going back now to the initial interview that you told my Lord about, on the same day when you and Mr. SHUM went down to see Miss LEUNG. . .
- A. Yes. 30
- Q. . . . Now that interview between you and Mr. SHUM, was it pre-arranged?
- A. Yes.
- Q. And was the subsequent meeting between you and Mr. SHUM and Miss LEUNG also pre-arranged?
- A. Yes.
- Q. In fact, the appointment to see Miss LEUNG was at 9.30 in the morning, was it not?
- A. I don't remember correctly the time.
- Q. Yes, but was it not in the morning?
- A. I believe so.
- Q. And so you and Mr. SHUM went to see Miss LEUNG. 40
- A. That's right.
- Q. And you say you – you said, "We told Miss LEUNG to prepare the formalities, to go through the formalities for us."
- A. That's right.
- Q. Now, did you say during that meeting with Miss LEUNG that it would be better if Mr. SHUM was also represented by her?

COURT: Was also represented. . .

MR. TANG: . . . by her.

- A. I don't remember clearly.
- Q. Do you mean to say you might have said it, but you can't now recall?
- A. That's right.
- Q. Now, you have told my Lord earlier that you realised that you and Mr. SHUM would both need solicitors.
- A. Yes.
- Q. And you said that you told Mr. SHUM that Johnson Stokes were your regular solicitors. 10
- A. That's right.
- Q. Did Mr. SHUM mention whether or not he had any solicitors, regular or otherwise?
- A. He did not tell me.
- Q. Why did you arrange to go to see Miss LEUNG with Mr. SHUM?
- A. It was because we had to inform Miss LEUNG of the kind of formalities we required – procedures or formalities.
- Q. Now, you said you requested Miss LEUNG to go through the formalities or procedure for you and Mr. SHUM. What did Miss LEUNG say to that?
- A. Miss LEUNG wrote down our requirement.
- Q. Did she say whether or not she was prepared to put through with the formalities or procedures for you and Mr. SHUM? 20
- A. Yes, she did.
- Q. Now, you mentioned that earlier on that morning Mr. SHUM had shown you two Chinese documents.
- A. That's right.
- Q. Is it possible that he showed you only one Chinese document that morning?
- A. I can't remember whether he showed me one document or two documents, but in short the document or documents were written in Chinese.
- Q. Now, you mentioned that two or three days before this so-called initial interview you had discussed with Mr. SHUM about the mortgage. 30
- A. That's right.
- Q. Is it possible that it was during those earlier discussions that Mr. SHUM showed you both Chinese documents?
- A. I don't remember whether it was one document or two documents. In short, I saw the document or documents.

COURT: You can't remember if you saw them during those earlier discussions.

- A. Two or three days before the initial meeting with Miss LEUNG I saw document or documents – I don't remember one or two documents.
- Q. It may be more convenient to you if you had the documents in front of you so that we know that we are talking about the same Chinese documents. 40

MR. TANG: They are in Volume 3, my Lord, 21 and 23. The translation is 22 and 25, my Lord.

- A. Yes, these are the documents, the two documents.

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- Q. What you can tell my Lord is that two or three days before this interview Mr. SHUM might have shown you one or both of these documents.
- A. That's right.
- Q. And similarly on the day of the interview Mr. SHUM might have shown you one or both of them.
- A. That's right.
- Q. And would it also follow that when you and Mr. SHUM went down to see Miss LEUNG he might have shown Miss LEUNG either one or both of these documents?
- A. I don't remember clearly whether he showed Miss LEUNG one document or two documents. 10
- Q. But at the interview you remember that Mr. SHUM mentioned the name of North America Meat Packing Co. Ltd.
- A. That's right.
- Q. And you remember Miss LEUNG saying that it was not very appropriate to use a meat packing company to own a property.
- A. That's right.
- Q. And you said that she then rang the Hong Kong office and was given certain names of companies.
- A. That's right. 20
- Q. And you told my Lord that you were not very interested in that.
- A. That's right.
- Q. Now, did you and Mr. SHUM leave the meeting with Miss LEUNG together? Did you and Mr. SHUM leave the meeting with Miss LEUNG together – the two of you?
- A. I don't remember whether it was one way or the other – whether I left first or he left first or we left together.
- Q. I see. Do you recall whether or not in your presence it was arranged that Mr. SHUM should go back and see Miss LEUNG in the afternoon?
- A. It seems to me that was the case. However, I cannot remember clearly. 30
- Q. But so far as you are concerned, you had no further meeting with Miss LEUNG on that day.
- A. I believe so. I believe that is the case.
- Q. You told my Lord that it was suggested – it was decided that the mortgage should take the form of a debenture.
- A. That's right.
- Q. You appreciate the difference, do you not, between a simple mortgage on a piece of property and a debenture which contained a mortgage on a property too?
- A. I don't appreciate the difference clearly.
- Q. In the discussion between you and Mr. SHUM, what was intended to be the document which would convey – which would give to you a mortgage of the property? Was it intended that it should be a mortgage or a debenture? 40
- A. We did not specify how we were going to go through the matter. In short, we wanted a mortgage – “on kit”.
- Q. Who suggested, can you recall, that a debenture should be given?
- A. I believe it was Miss LEUNG's suggestion.
- Q. Did she explain why she suggested that it should take the form of a debenture?
- A. No.
- Q. But you were quite content.

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- A. That's right.
- Q. What about Mr. SHUM, was he agreeable to the suggestion?
- A. I believe he did.
- Q. And you say that you and Mr. SHUM then instructed Miss LEUNG to proceed.
- A. That's right.
- Q. Did she agree to do so?
- A. Yes.
- Q. Now, during that meeting, was the question of the floating charge ever mentioned – floating charge on the assets of the company ever mentioned? 10
- A. No.
- Q. It wouldn't have been very appropriate, would it, because the company was known to be a shelf company?
- A. That's right.
- Q. Now, you told my Lord that the loan was to be repaid by instalments.
- A. That's right.
- Q. Did you or Mr. SHUM tell Miss LEUNG about that?
- A. I believe we did.
- Q. Was that mentioned before or after she suggested that the mortgage should take the form of a debenture? 20
- A. First of all, we informed her that we required a mortgage, a "tay ngat", and we also informed her of our conditions.
- Q. And was one of the conditions that the principal loan would be – that the loan would be repaid by instalments?
- A. That's right.
- Q. And the payment would be by equal monthly instalments.
- A. That's right.
- Q. And was it a matter of importance to you that those instalments should be kept punctually?
- A. That's right. 30
- Q. Now, was it intended that such repayment terms should be embodied in the mortgage to be prepared?
- A. That's right.
- Q. And did you tell Miss LEUNG that?
- A. It was not specifically mentioned. However, we informed her that the repayment by instalment was over a period of years.
- Q. I see. And you have already told my Lord that it might have been 7 years.
- A. That's right.
- Q. Now, if it wasn't 7 years, could it have been any other number of years?
- A. It was possible, because of the large number of business – large volume of business we had over the years. So if it were not for a period of 7 years, the period might have been 5 years or 10 years. 40
- Q. Now, you said Miss LEUNG was taking notes as you and Mr. SHUM were giving her your instructions.
- A. That's right.
- Q. Now, would you look at Volume 2, page 22, please? Have you seen this before?
- A. No.
- Q. Do you recognise what it is?
- A. I believe these are the notes taken by Miss LEUNG when we were giving her

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- instruction.
- Q. Would you look at the top right-hand corner of the document, please? Do you see the word "principal"?
- A. Yes.
- Q. And then in the box, 7 years?
- A. Yes.
- Q. There is a note, I believe, 'on reducing balance'.
- A. Yes.
- Q. And you see that that has been crossed out.
- A. Yes.
- Q. Now, is it possible that you – do you know the debenture which was eventually executed by the 1st defendant contained no reference to fixed monthly repayments?
- A. I am aware of that.

10

- Q. When did you become first aware of that?
- A. I believe it was at the time when copy of the debenture was sent to me by Miss Leung.
- Q. Do you know why the debenture does not contain any reference to repayment by fixed monthly instalments?
- A. Normally and mostly in our business as a financial company the repayment period was not mentioned on the document. Usually the repayment was to be on demand.
- Q. Did you give Miss Leung any specific instructions not to refer to fixed monthly repayment in the debenture? 10
- A. No, I did not.
- Q. When the debenture came, you saw it and it was in the usual form.
- A. That is right.
- Q. I now want to ask you a few questions about events leading up to the 27th of January. You told my Lord that one or two days before the 27th of January Mr. Shum came to see you.
- A. That is right.
- Q. He came to see you in connection with his inability to put up \$310,000.
- A. That is right.
- Q. You told my Lord that he had only \$185,000. 20
- A. That is right.
- Q. To make up that sum he needed another \$125,000.
- A. That is right.
- Q. That was borrowed on the security of two post dated cheques.
- A. On two post dated cheques each amounting to \$92,500.
- Q. Mr. Wong, I would at the moment ask you to ignore this \$60,000 because at the moment it is unimportant. So he borrowed \$125,000 from you and he had \$185,000.
- A. That is right.
- Q. You told my Lord that he paid \$185,000 to you towards the payment of the purchase price. 30
- A. That is right.
- Q. What I would want you to tell my Lord is: Why was it that he should pay you this \$185,000.
- A. It was because he wanted me to have the balance payment all added up together to be sent to the solicitor for the other side.
- Q. Is it what you are saying: The balance of the purchase price payable to the vendor was \$1,665,000?
- A. That is right.
- Q. Of that you say you were to lend \$1,355,000. 40
- A. That is right.
- Q. The 1st defendant would have to provide \$310,000.
- A. That is right.
- Q. So you say he paid you \$310,000 because he wanted you to pay \$310,000 together with your \$1,355,000 to the vendor.
- A. That is right.
- Q. You say that happened one or two days before the 27th of January.
- A. That is right.
- Q. It could have happened on the 26th, that is the day before.

- A. Could have happened on the 26th and might have happened on the same day, that is the 27th.
- Q. What time on the 27th of January did you give Johnson Stokes the three cashier orders? Was it in the morning or in the afternoon?
- A. I believe it was in the afternoon.
- Q. Would you look at volume 2, document 34 please. Page 34, volume 1. This was a letter from Johnson Stokes to Danny Yiu & Co.
- A. That is right.
- Q. You told my Lord yesterday that you believe you have seen this letter towards the end of January or the beginning of February. 10
- A. It is true I said that. I said I have seen the letter towards the end of January and the beginning of February. However, on second thought last night I might have seen the letter in mid February instead.
- Q. What I want to ask you is: Could you have seen this letter before you send the three cashier orders to Johnson Stokes & Master?
- A. No, it could not have been.
- Q. You said you were advised by Miss Leung to make out the cashier orders in favour of Danny Yiu & Co.
- A. That is right. 20
- Q. Did she advise you first orally and then followed by a letter?
- A. I do not recollect now whether or not she had given me the advice orally, however, I have the letter from her giving me such an advice.
- Q. And then you said you went on your vacation.
- A. That is right.
- Q. On your return from vacation Mr. Shum went to see you.
- A. That is right.
- Q. I think you use two different expressions to describe what Mr. Shum told you about Mr Danny Yiu. You said, "They were not quite all right." and then the other expression you use was "not behaving properly." 30

INTERPRETER: Any difference should be attributed to the interpreter.

- Q. Did he actually say to you that Danny Yiu had disappeared?
- A. No. He told me that a solicitor was not conducting himself properly. At that time he did not know that Danny Yiu had absconded.
- Q. Do you mean to say that they told you a solicitor was in trouble but did not know who that solicitor was?
- A. I do not remember clearly now whether or not he said to me at that time whether a specific solicitor was in trouble or just "a" solicitor was in trouble.
- Q. Did he also tell you that he had been pressing Miss Leung for the -- in asking her whether or not she had got the title deeds from Danny Yiu & Co? 40
- A. I do not remember now whether or not Shum told me about that.
- Q. But you said to my Lord that when you and Mr. Shum went down to see Miss Leung, she replied to you in a loud voice that you did not have to be nervous.
- A. That is right.
- Q. You said she said so in a loud voice. Did she appear irritated?
- A. A little bit.
- Q. Such as one would expect from a person who had been pressed many times -- who

- had been asked many times the same question.
- A. Right but I am not sure whether or not Mr. Shum had pressed her for that or not.
- Q. You said she told you and Mr. Shum that title deeds had not been sent over yet.
- A. That is right.
- Q. Before she told you that, had you realised that she did not have the title deeds?
- A. We did not know. We went to see her to ask her whether or not the procedure or formalities had been completed.
- Q. What was the arrangement between you and Mr. Shum about the payment of solicitor's fees in relation to the mortgage? Was there any discussion at all? 10
- A. I do not remember whether or not this matter had been raised.
- Q. Was it the understanding that Mr. Shum would also pay your solicitor's fees?
- A. Normally the solicitor's fees are paid by our clients.
- Q. But there was no specific discussion between you and Mr. Shum.
- A. I believe we had not discussed the question of solicitor's fees.
- Q. When you say "we had not discussed", do you mean not discussed between you and Mr. Shum whether or not in the presence of Miss Leung? You had not discussed this with Mr. Shum in the presence of Miss Leung or otherwise.
- A. On the question of solicitor's fees I do not remember clearly whether or not Miss Leung had raised the matter or whether or not Mr. Shum and I had discussed the matter. 20
- Q. The loan was to be secured by a mortgage of the ground floor and guarantees, personal guarantees.
- A. Yes.
- Q. Of the two securities which would you consider as more important?
- A. Certainly the real estate, the property, was more important.
- Q. I would like to deal with the question of the \$60,000 now. You said Mr. Shum borrowed \$185,000 on the security of two post dated cheques.
- A. That is right.
- Q. You said out of that sum \$125,000 was applied towards the payment of the purchase money. 30
- A. That right.
- Q. \$60,000 was used to repay a personal loan by you to Mr. Shum on a running account.
- A. That is right.
- Q. How much money did Mr. Shum owe you at the time in his running account?
- A. I do not remember the exact amount now. However, on Mei Fung's closing down he owed me \$80,000 or \$100,000, personal loan.
- Q. Does he still owe you that money?
- A. Yes.
- Q. I suggest to you that he never agreed to repay \$60,000 to you in his running account. 40
- A. I don't know what he said. But he agreed to repay me on the personal current account.
- Q. Did he agree to repay you? Did he agree to repay you either one or two days before the 27th of January or on the 27th of January itself?
- A. It was about the 27th.
- Q. How was \$1,355,000 arrived at? How do you arrive at that figure and not \$1.3 million or \$1.4 million?
- A. We paid Danny Yiu an amount of \$1,665 million. Out of this amount an amount of \$310,000 was in respect of the Mei Fung's account.
- Q. I don't think I quite follow. You agreed to lend \$1,355,000. You said that was agreed

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- two or three days before the initial interview as you describe it.
- A. That is right.
- Q. You realise that the purchase price was \$1.85 million.
- A. That is right.
- Q. You also realise that \$185,000, that is 10%, had been paid as a deposit.
- A. That is right.
- Q. Making a balance of \$1,665,000.
- A. That is right.
- Q. You describe to my Lord that on the 27th of January, the 3rd defendant, Mr. Shum, 10
gave you four cheques each for \$92,500 – or about the 27th. Two of them had to
be post dated because he did not have ready cash.
- A. That is right.
- Q. But they were applied as security to secure a short term loan at 1.2% interest per
month.
- A. That is right.
- Q. If we multiply 92,500 four times, one would arrive at 370,000.
- A. That is right.
- Q. As we know, 370,000 is 20% of the purchase price.
- A. That is right. 20
- Q. I think it is usual for banks and financial institutions like yours to lend not more than
70% on a mortgage.
- A. Not necessarily so.
- Q. Be that as it may, what I want you to tell my Lord is how was this \$1,355,000
arrived at? Why this particular figure? Is it a percentage of something?
- A. I don't quite remember now.
- Q. Mr. Wong, you are a person who carries on large business in Hong Kong.
- A. Not necessarily, just the usual business.
- Q. If you lend people money, you have to keep record, otherwise, you would forget, is
it not? 30
- A. Certainly.
- Q. Do you have any record relating to the repayment of \$60,000 to you by Mr. Shum?
- A. It is a personal loan, therefore, it is not recorded.
- Q. You mean you have no record?
- A. That is right.
- Q. I am afraid I have to suggest to you, Mr. Wong, that the arrangement between you
and the 3rd defendant was that the entire amount of \$185,000 borrowed on the
security of the two post dated cheques would be applied towards the payment of
the purchase price.
- A. I am not sure of the meaning of your suggestion as to the \$185,000 but as a matter 40
of fact only \$125,000 were to be applied for the purchase of the land.
- Q. Just one last point, Mr. Shum. Is it correct to say that between the meeting in
January between you, Mr. Shum and Miss Leung and the meeting that you had with
Miss Leung in February there was no meeting between you and Miss Leung in
connection with this particular mortgage?
- A. I do not remember clearly, however, I believe I did not see her during the interval
because towards the Chinese New Year we were quite busy.
- Q. The only conversation that you can remember with her was when you say you
pushed her to proceed as soon as possible because Chinese New Year was coming.

- A. That is right.
- Q. Just one further matter. When the three cashier orders were sent by you to Johnson Stokes, were they sent for the purpose that they be used towards the payment of the purchase price?
- A. That is right.
- Q. That was the only purpose.
- A. That is right.
- Q. You would not have sent the three cashier orders to Johnson Stokes for any other purpose? 10
- A. I would not.
- Q. Nor for any other reason?
- A. I would not.

MR. TANG: Thank you.

XXN BY MR. PRICE

- Q. Mr. Wong, you told his Lordship that there had been a number of transactions of mortgage in which my client, Johnson Stokes & Master, had acted for you or one or other of your companies. Do you remember telling his Lordship that?
- A. That is right.
- Q. There had been a number of such transactions before January 1976, is that correct? 20
Had there been a lot of such transactions?
- A. Yes.
- Q. The total number of transactions in which Johnson Stokes & Master had acted for you, one or other of your companies, before January 1976 was very great indeed, wasn't it – the total number of all transactions.
- A. That is right.
- Q. A part of the total number of transactions was involved in your lending money to people on the security of the mortgages of property, is that correct?
- A. Some on property as security, the other with machines.
- Q. I think you mention, Mr. Wong, bills of sale over machinery as a method of 30
providing security for some loans.
- A. Yes.
- Q. At any rate this is correct, isn't it, that by January 1976 you had considerable experience of using Johnson Stokes & Master in connection with lending money on the security of property.
- A. Yes.
- Q. I think you told his Lordship in answer to a question from Mr. Cheung that nothing had gone wrong with any such transactions.
- A. That is right.
- Q. Are you able to tell his Lordship this: Whether in any of those transactions the 40
money lent by your firm had been sent to other solicitors?
- A. I do not remember clearly, however, this can be traced.
- Q. It can be traced. Perhaps you are now aware that it is a normal practice among solicitors in Hong Kong in property transactions to hand over money to the solicitors acting for the appropriate party.
- A. I am not sure of the actual practice for solicitors here in Hong Kong. But I heard

- that normally the money is to be sent from one solicitor to another solicitor.
- Q. Would this be part of your experience before January 1976 that your company had obtained cheques drawn in favour of other solicitors in relation to mortgage transactions? Was it part of the experience of your firm that in connection with previous mortgage transactions your firm's cheques had been drawn in favour of other solicitors, the solicitors acting for the other side?
- A. If my memory serves me correctly, I believe it did happen before.
- Q. It did happen before?
- A. Because of the short time available, we were advised by our solicitors to write cheque in favour of solicitor of the other side. 10
- Q. Was it not the case in most transactions of loan on security of mortgage that you were concerned to complete the matter quickly?
- A. I am not quite sure of your question. Would you please repeat?
- Q. Was it not the case in the mortgage transactions with which you had been involved that you wanted to complete the matter quickly?
- A. Not necessarily.
- Q. In January 1976 when you were asked or when your firm was asked to provide money payable to solicitor Danny Yiu, did that strike you as in any way unusual?
- A. No. 20
- Q. That would be because it was entirely in accordance with your previous experience of mortgage transactions, is that right?
- A. That is right.
- Q. When Mr. Shum told you for the first time that he was interested in buying the ground floor of number 76, did he on that very first occasion show you a copy or an original of any document?
- A. He came to see me about Mid January. At that time he had already purchased the property. At that time he showed me one document or two documents in the Chinese language.
- Q. Did those two documents show that he had actually paid the total of \$185,000? 30
- A. I remember when he showed me the document or documents he had already paid a deposit of \$100,000.

MR. PRICE: Would your Lordship like to adjourn now?

1:00 p.m. Court adjourns

2:35 p.m. Court Resumes

Appearances as before.

P.W. 1 – WONG Ching-mal o.f.a.

XXN BY MR. PRICE (Continues)

- Q. Could we put before Mr Wong volume 3, page 21 and the translation is page 22 with some subsequent improvements. You told his Lordship that that was the document or one of the documents that were brought to you at that time by Mr. Shum. That is correct, is it? 40

- A. That is right.
- Q. Is it correct that document shows that Mr. Chan Sun Ming had received from Po Fung \$100,000?
- A. That is right.
- Q. It also showed that a further sum of \$85,000 was to be paid on the 15th of January, did it not?
- A. Yes, correct.
- Q. Did you subsequent to this first occasion see with Mr. Shum a document showing that he had actually paid the \$85,000 as well? 10
- A. It seems to me that I did see it.
- Q. Would you look at page 27 in the same bundle. Is that a document which shows that the further \$85,000 had been paid?
- A. The document shows that Mr. Shum had paid a further sum in the amount of \$85,000 to Mr. Chan.
- Q. Are you able now to say whether you saw these two documents on the same occasion or on two separate occasions?
- A. I cannot remember clearly whether or not it was on the same occasion or on different occasions that I saw these two documents.
- Q. Is it not reasonable to assume that there must have been two occasions because you remember so clearly that \$100,000 had been paid when you first saw Mr. Shum? 20
- A. I do not remember clearly whether it was on the same occasion I saw two documents or whether or not it was on two different occasions I saw the two documents.
- Q. Do you then remember clearly that when Mr. Shum first saw you about this matter he had paid \$100,000, not \$185,000?
- A. Neither can I remember clearly when he showed me the document whether or not he had paid \$185,000 or \$100,000.
- Q. You see, in your answers to my questions immediately before lunch you did say that on the first occasion Mr. Shum showed you a document or documents indicating that he had paid \$100,000. 30
- A. That is correct.
- Q. That is correct?
- A. That is correct.
- Q. Would you look at page 23 in the same bundle. In answer to Mr. Cheung's questions you told his Lordship that the two documents you first saw were the document at page 21 and this document at page 23.
- A. Because of the long lapse of time I am a bit confused. I cannot remember clearly whether initially Mr. Shum brought with him one document or two documents. 40
- Q. Does that mean you don't remember clearly whether this document at page 23 was a document which Mr. Shum showed you at all?
- A. I cannot remember clearly.
- Q. At the meetings with Mr. Shum before you saw Miss Leung, did you speak about or hear about Kai Ming Industrial Co?
- A. I do not remember clearly, however, had I seen document 23, then I would have some idea about Kai Ming.
- Q. Did you know, before seeing Miss Leung, that Kai Ming was buying the upper floors of 76 Hung To Road?

- A. The same applies. Had I seen this paper, document 23, I could have known.
- Q. Is it then fair to assume for purposes of this case that you had seen this paper and that you did know that Kai Ming was purchasing the upper floors?
- A. It was possible that I did see it.
- Q. Did Mr. Shum tell you when the purchase was due to be completed?
- A. He told me that the completion was to be due at the end of January 1976.
- Q. Did you at this time consider how much the ground floor alone at 76 Hung To Road might be worth in the market?
- A. Yes, I did give this matter some thought, some consideration, and I was of the opinion that the market price was more or less right, appropriate. 10
- Q. How did you form that opinion?
- A. I often had information concerning the price of certain factories in certain districts.
- Q. Did you know this particular property before Mr. Shum mentioned it to you as a possible purchase?
- A. I knew of the existence of such property, 76 Hung To Road.
- Q. Had you ever been there?
- A. Yes.
- Q. Were you aware that Mr. Shum's companies were occupying the ground floor? 20
- A. Yes, the factory was in use at that time.
- Q. When the matter was discussed between you and Mr. Shum, did you learn that Mr. Chan was not the landlord to whom rent was paid?
- A. I was not quite sure, however, I knew that he was middleman and he had made some money.
- Q. Did you know that because Mr. Shum told you?
- A. Yes.
- Q. Did Mr. Shum mention to you in respect of this project the name of Ho Sau-ki?
- A. No.
- Q. Or Lucky Time Finance Company. 30
- A. No.
- Q. Is it reasonable for purposes of this case to assume that you knew that there were two purchases in Mr. Chan's position, Chan in respect of the ground floor and Kai Ming in respect of the upper floors?
- A. Yes, it is fair.
- Q. Did you ask Mr. Shum, in discussing this matter before you saw Miss Leung, who his landlords were?
- A. I did not.
- Q. Would you turn back to volume 3, the volume you have got, to page 11. Am I right in assuming that at any rate before seeing Miss Leung you had no sight of this document or any copy of it? 40
- A. That is right.
- Q. Can you tell his Lordship when you first saw this document or a copy of it?
- A. Now.
- Q. Look, would you, at page 17. This is the document by which Kai Ming and Chan, whom you did know about, agreed to buy from Lucky Time, the purchaser under the previous document.
- A. Yes.
- Q. Am I right in assuming that you hadn't seen this document or a copy of it before

- you saw Miss Leung?
- A. That is right.
- Q. When did you first see this document or a copy of it?
- A. Now.
- Q. Referring back to answers you have given already, you did appreciate that Mr. Chan was an intermediate purchaser, a middleman you said.
- A. That is right.
- Q. Kai Ming was another middleman?
- A. I don't know whether or not Kai Ming is another middleman. 10
- Q. My question is this: According to Mr. Wong's state of knowledge at the time when he was discussing the matter with Mr. Shum, there might have been any number of previous middlemen, none of them owning the property but only being contractual purchasers.
- A. I knew nothing about other middleman, however, I knew that Mr. Shum was purchasing from Mr. Chan Sun-ming.
- Q. You knew that Chan Sun-ming was a middleman.
- A. That is right.
- Q. Do you think that Mr. Shum, from anything that he said to you, knew who else was interested in the property at the time as purchaser or otherwise? 20
- A. I don't know. What I knew was Mr. Shum was buying the property from Mr. Chan and Mr. Chan being the middleman.
- Q. Did you ask Mr. Shum if he knew what other people were interested in the property as purchasers or otherwise?
- A. I do not remember now whether or not I asked him.
- Q. It was clear to you from the first interview with Mr. Shum that completion was due by the end of January, is that right?
- A. That is right.
- Q. Since Mr. Chan was himself to your knowledge a middleman, wasn't it clear to you that the matter was likely to prove complicated? 30
- A. I do not think so because in the sale and purchase of property in Hong Kong sometimes middlemen are involved.
- Q. Did it occur to you that the property might be subject to a charge in favour of a financier or bank?
- A. This happens only too often.
- Q. Did you ask Mr. Shum whether there was any sum charged on the property?
- A. I did not.

- Q. You didn't ask him. And would it be right to say that you weren't interested in discovering whether there was any charge on the property?
- A. In our case such things were to be. . . were mostly investigated into by our solicitor.

MR. CHEUNG: Would be investigated, not mostly, would be.

INTERPRETER: Would be.

- Q. Now you told his Lordship that when Mr. Shum mentioned this purchase to you, it was to interest you in lending him a sum, and I think you said first about 1.4 million, is that right? 10
- A. That's right.
- Q. Was it at the first meeting with Mr. Shum that you offered to lend 1.355 million?
- A. I agreed finally to lend him that amount of money. However, whether it was I or whether it was Mr. Shum who suggested that figure, I cannot recall now.
- Q. Do you remember if the figure to be lent was the subject of negotiation? Did you negotiate over the amount?'
- A. Certainly.
- Q. So did you offer to lend less than 1.355 and you eventually arrived by negotiation at that figure, is that right?
- A. I do not remember how we arrived at the figure of 1.355 million. However, we finally agreed that that amount was the amount of the loan to him. 20
- Q. Yes. Had you provided any part of the deposit of \$185,000 that Mr. Shum had paid?
- A. Do you mean the first deposit of \$185,000 he paid to Mr. CHAN Sun-ming? If that is the figure you mean, then I say I did not.
- Q. You did not. That was the question and that is the answer. Did you or Mr. Shum, during this negotiation of the amount of the loan, refer to Mr. Shum's ability to provide the balance of the purchase price?
- A. When he borrowed the amount of 1.355 million from me, he told me that he was able to pay the balance of the purchase price. 30
- Q. In your discussion with Mr. Shum, before you saw Miss Leung, was there any reference to this that the property would be purchased in the name of a company?
- A. I believe that had been mentioned.
- Q. You believe it had been mentioned, yes.
- A. That's right.
- Q. Yes, Did Mr. Shum tell you that he had acquired a shelf company to take title to the property?
- A. I remember that he had a company ready by the name of the North American Meat bla-bla-something to purchase the property.
- Q. Did he tell you who had arranged for that company to be available? 40
- A. I remember that there was already a shelf company by the name of the North American Meat bla-bla-something, but how he had acquired that company is beyond my knowledge.
- Q. Were you content at the time of this discussion with Mr. Shum that the property should be purchased in the name of a shelf company?
- A. Yes.

- Q. Was that something that Mr. Shum wanted or you wanted?
- A. It was something Mr. Shum wanted.
- Q. I ask that question because the Chinese receipt showed that Po Fung had paid the money, didn't it?
- A. That's right.
- Q. Would you have preferred Po Fung or May Fung to be the purchasing company?
- A. It makes no difference to me at all.
- Q. Putting it in a different English, it was a matter of indifference to you whether the purchasing company was a shelf company. 10
- A. That's right.
- Q. If that's what Mr. Shum wanted, you were content, is that right?
- A. That's right.
- Q. Would you have required guarantees from directors if the purchase had not been in the name of a shelf company?
- A. All the same I would require.
- Q. Guarantees. Now so far as you were concerned, it was clear that you were going to use solicitors, Johnson, Stokes & Masters, to organize what has been called "the formalities of the transaction", is that right?
- A. That's right. 20
- Q. And did you make it clear to Mr. Shum that the matter would have to be referred to solicitors to deal with the formalities in your usual manner?
- A. Yes, I did.
- Q. When you went subsequently to see Miss Leung, it was clear to you, was it not, that you were going to see her as your solicitor?
- A. You said subsequently?
- Q. When you went to see Miss Leung – when I say "subsequently" I mean the first time that you saw her – it was clear that you were going to see her as your solicitor?
- A. That's right. 30
- Q. You told his Lordship in answer to Mr. Tang's questions that you went to see Miss Leung by pre-arrangement, do you remember that?
- A. That's right.
- Q. You see Miss Leung's recollection is that you came in to see her without a previous appointment, would she be correct?
- A. I do not remember clearly. However, usually when I saw a solicitor, I made an appointment beforehand, but whether or not on this occasion I made pre-arrangement I do not remember clearly. She might be correct.
- Q. I don't think Miss Leung would regard a telephone call, if there was one, immediately before you went to her office as making an appointment. What she says is that you came, so far as she is concerned, without an appointment having been booked in advance. 40
- A. Normally pre-arrangements were made by telephone, asking whether or not the solicitor would be engaged or otherwise. Normally we make pre-arrangements.
- Q. So you and Mr. Shum went down, is it, or up to see Miss Leung because this is in the same building.
- A. Down. Floor No. 9 for us. Floor No. 5 for JSM.
- Q. And did you go down to see her immediately after a meeting at which Shum and you were negotiating?

A. I believe that after we had come to agreement, after appointment had been made, then we went down to see her.

Q. Yes, you went down to see her, yes. If it had been that . . . This suggests that it was immediately after a discussion with Mr. Shum that you went down to the office.

A. But I can't tell you the time difference, whether it was the same morning, or whether it was in the afternoon that I went down to see her, or whether it was one or two hours after the meeting.

Q. Now at that meeting, Miss Leung's recollection is that Mr. Shum produced a copy of the document at page 21, and a copy of the document at page 27, and that Mr. Shum also had with him and produced in the course of the meeting the documents about the North American Meat Packing Company, and the documents in question were the Memorandum and Articles of Association or a copy of them of the North American Meat Company.

A. I do not remember clearly the situation.

Q. And then Mr. Tang asked you to look at the document in volume 2 at page 22, and you said you thought that that was Miss Leung's note taken at the meeting.

A. I believe so.

Q. You read English and probably understand it. Do you read English?

A. I know a little bit of English, simple English then I understand.

Q. Look at the top of that document where the reference is to \$1,300,000. Isn't it reasonable to infer that at this time, on or about the 21st of January, when you first saw Miss Leung that it wasn't absolutely cut and dried that the loan would be 1,355,000?

INTERPRETER: Sorry I can't. . .

MR. PRICE: That it wasn't finally agreed at the date of this meeting between you and Mr. Shum, it wasn't agreed that the loan should be 1.355 million.

A. It could have been possible that I was willing to lend 1.3 million, but eventually I agreed to lend 1.355 million.

Q. Was there at this meeting a reference to a debenture being prepared?

A. I requested Miss Leung to prepare a mortgage, but whether or not it was in the form of a debenture or in any other form, I do not remember now.

Q. And was there reference to the document being in general banking form?

A. Neither can I remember clearly now.

Q. Or that the security was to be for a general banking facility?

A. I do not recollect now whether or not I said it.

Q. At any rate, it is clear that the document that was prepared did not contain any reference to the principal lent being repayable over seven years?

A. Although it was not mentioned in the document prepared, the seven year period for repayment, however, Mr. Shum had mentioned to me that period was to be seven year period.

Q. Mr. Shum had said that he would repay over seven years?

A. By instalments, monthly instalments.

Q. By the end of the meeting, it was clear, wasn't it, that the document to be prepared by Miss Leung was not going to mention that?

COURT: Which meeting?

MR. PRICE: This meeting with Miss Leung.

COURT: In the meeting in Johnson, Stokes.

A. It was mentioned at the meeting that the loan was to be repaid by instalments, monthly instalments over a period of seven years. However, in order to protect the finance company, the solicitors firm would usually, normally prepare the document with the wording "on demand".

Q. And so the repayment of principal on demand as mentioned in the debenture was something upon which you would insist as part of the security document? It was at your insistence that the document referred to the loan as being repayable on demand, is that right? 10

A. No, it is not our insistence.

Q. Not at your insistence, I see. Let me put it in a different way: it is for your protection that the document so states?

A. I believe that is what the solicitors did in order to protect our interests.

MR. PRICE: I don't know whether your Lordship wants an adjournment or not. I am perfectly happy to continue with or without.

COURT: I think we might as well go on.

MR. PRICE: Very well. 20

Q. So we are clear, I think, at this point that although Miss Leung noted in her manuscript note the reference to the principal being repaid over seven years, for your protection she didn't include that in the documentation?

A. That's right.

Q. So that is something that she was clearly doing as your solicitor, not a solicitor to Mr. Shum.

MR. TANG: With respect, my Lord, not a solicitor for Mr. Shum ought to have done.

MR. PRICE: Very well. I don't mind how my friend qualifies that.

Q. That was something which she was clearly doing as your solicitor and not, apparently, as Mr. Shum's solicitor. 30

A. It is positive that Miss Leung was my solicitor, but whether or not she was also acting for Mr. Shum, I don't know.

Q. In the course of this meeting, did Miss Leung look at the Memorandum of the North American Meat Company?

A. I don't know.

MR. CHEUNG: I wonder if somebody could produce the printed copy, not the Xerox but the booklet. Has somebody got a copy? Otherwise this is confusing.

COURT: It is in the Agreed Bundle but not in a convenient form.

MR. CHEUNG: It is a Xerox copy and therefore it wouldn't look like what was produced in the documents. It is not in court, my Lord.

COURT: In that case I had better explain to the witness.

MR. PRICE: What I will do . . . Could he look at volume 4 at page 19? In fact, it starts at page 18, volume 4, page 18. Now what was probably produced would have been a booklet containing. . . Quite a small booklet, the size of that. Let me ask him has he not seen a printed booklet of Memorandum and Articles before this of any company.

10

Q. Mr. Wong, aren't you familiar with the form in which the constitution of a company is set out in a little printed booklet containing the Memorandum and Articles, with on the outside the name of the company, and sometimes the names of solicitors or other professional people who have been concerned in its formation?

A. Yes, I have seen. I know something about it although I am not thoroughly. . .

Q. Do you remember Miss Leung looking at this document at this meeting?

A. I do not remember clearly.

Q. You see she will say that she looked at the Memorandum and Articles of North American, and was amused to see that its primary object was as a pig-breeding company. Did she say something to the effect that this was rather a funny company to have as a purchaser of land?

20

A. I merely heard from Miss Leung saying that it would not seem to be compatible for a meat company to acquire property.

Q. Not compatible for a meat company. I did put it slightly wrongly when I said pig-breeding. It is a dealer in cattle, sheep, pigs, hides, fat. Now at this meeting when speaking with Miss Leung, did you speak in Cantonese?

A. That's correct. The dialect I am using now.

Q. But when speaking at the meeting with Mr. Shum, did you speak in Shanghainese?

A. That's right.

Q. So Miss Leung didn't understand necessarily what passed between you and Mr. Shum in Shanghainese. Miss Leung did not understand what passed between you and Mr. Shum in Shanghainese.

30

MR. CHEUNG: You said, "At your meeting with Mr. Shum."

MR. PRICE: No, with Miss Leung. They used Cantonese to speak to Miss Leung, but between themselves they spoke in Shanghainese.

MR. CHEUNG: He agreed to that?

MR. PRICE: He agreed to that, as I understand it. Is that your Lordship's understanding?

COURT: My note is that at the meeting with Miss Leung, they spoke in Cantonese; at the previous meeting between themselves, they spoke in Shanghainese.

MR. PRICE: I am so sorry. I was talking all about the same meeting.

COURT: I don't think that was clear.

Q. At this meeting with Miss Leung, there was conversation between you and Shum in Shanghainese.

A. I do not remember now clearly whether or not when I was having meeting with Miss Leung I spoke with Mr. Shum in Cantonese or in Shanghainese.

Q. Miss Leung will say that at that meeting when speaking to her, you and Mr. Shum spoke in Cantonese and of course she understood it; when speaking together you spoke in Shanghainese and she didn't understand it.

10

A. But I believe that when we conversed, Mr. Shum and I conversed in Shanghainese, the subject matter of the conversation had nothing to do with Miss Leung, otherwise we would have resorted to Cantonese, because Mr. Shum himself can speak very plain Cantonese.

Q. Let's go back to the shelf company. Miss Leung had said that she thought North American not, you say, compatible – she thinks suitable – as a company to hold the land, who then suggested that another shelf company should be obtained?

A. I do not remember now clearly, but I remember that Mr. Shum had the intention of buying another shelf or shelf company whilst Miss Leung also had the intention of selling a shelf or shelf company to him.

20

Q. Would you remember this that it was Mr. Shum who asked if Miss Leung could supply another shelf company?

A. I believe it is like that: since Miss Leung suggested that it was incompatible for a meat company to buy property, so Mr. Shum suggested buying a company from her.

Q. And is it right that Miss Leung was rather reluctant to be involved in supplying a separate shelf or any shelf company?

A. No. I don't think so. Miss Leung was only too glad to have it, to supply him with the shelf company.

Q. Miss Leung says yes, she did agree but she expressed reluctance to be the vendor of the company.

30

A. I could not read her mind, but I remember that very promptly she rang up her company on the Hong Kong side for a number of companies.

Q. Yes. And it was indicated that the name of the shelf company procured could be changed to whatever name Mr. Shum liked, provided it was available?

A. I don't believe that was the case. Mr. Shum was supplied with a list of names of companies, and finally Mr. Shum picked out one, that being the Bovill.

Q. It may not be very important, but Miss Leung's recollection is that she ascertained that there was a company available, and said that its name could be changed to whatever name Mr. Shum wanted.

A. I don't know.

40

Q. At any rate, Miss Leung did specifically agree to deal with the acquisition of a shelf company for Mr. Shum?

A. That's right.

Q. And do you remember what was said at this meeting about the date for completion of the transaction?

A. I believe both Mr. Shum and I had informed her that the time of the transaction would be at the end of January.

In the
Supreme
Court of
Hong Kong
High Court
Plaintiff's
evidence
No. 12
Edward
Wong
Ching-mal
cross-
examination

- Q. Have you got volume 2 at page 27? Do interpret the letter to Mr. Wong, if you will, Mr. Interpreter. That letter was addressed to your company?
- A. That's right.
- Q. With copies to SHUM Ka-ching and David Ma?
- A. Yes.
- Q. And it does refer to the security as 1.355 million, doesn't it?
- A. That's right.
- Q. So it follows that either at the meeting or before the letter was written on the next day, Miss Leung must have been told that the amount of the loan to be secured was 1.355 million. 10
- A. That's right.
- Q. Do you remember whether it was at the meeting or after the meeting that the figure was fixed at 1.355?
- A. I do not remember whether or not the amount was fixed at a meeting with Miss Leung or thereafter.
- Q. Now you were very near on the 21st and 22nd of January to the Chinese New Year, weren't you?
- A. That's right.
- Q. Were you anxious to have the matter completed in time before you went away for the Chinese New Year? 20
- A. I myself was not anxious, but as the completion day was towards the end of January, whether I was on vacation or not it did not matter, it matters not, because even if I were away, people in my firm could all the same deal with the matter.
- Q. Was it, at any rate, the joint wish of you and Mr. Shum that the matter should be completed as quickly as possible?
- A. That's right.
- Q. And the 26th of January was a day chosen by you and/or Mr. Shum?
- A. I believe both Mr. Shum and I informed her that we expected the matter to be completed by the 26th of January. 30

MR. CHEUNG: Hope, not expected.

MR. PRICE: Hope or expected?

INTERPRETER: More hope than expected.

MR. PRICE: Perhaps as I hoped and expected

- Q. Had any reference been made at the meeting to any contracts, any prior contracts, the contracts by which Mr. Chan had agreed to buy the property? At the meeting with Miss Leung on the 21st of January, was anything said about the contracts by which Mr. Chan had agreed to buy?
- A. I believe that on the 21st of January, Mr. Shum had told Miss Leung everything together with the contract or agreement. It was a contract in Chinese language in which it was said that Mr. Shum was buying the property from Mr. Chan. 40
- Q. But was anything said about the contract by which Mr. Chan had agreed to buy the property? You remember that Mr. Chan was the middleman. Was anything said about the contract by which Mr. Chan had himself agreed to buy the property? At

- the meeting, was anything said about the contract by which Mr. Chan had agreed to buy the property?
- A. I remember that at the meeting Mr. Shum showed the contract to Miss Leung to the effect that Shum had purchased the property from CHAN Sun-ming.
- Q. Yes. Was any mention made of Chan's earlier contract as middleman to buy the property?
- A. If my memory serves me correctly, Mr. Shum showed Miss Leung two contracts in Chinese. One of the contracts indicated that the Po Fung was purchasing the ground floor from CHAN Sun-ming, whereas for the other contract, it was a contract between CHAN Sun-ming and Kai Ming. 10
- Q. Miss Leung's evidence about this will be that the only document. . . that the documents produced by Mr. Shum at this meeting did not include any copy of the Chinese contract between Kai Ming and Chan, that is to say, the one dividing the purchase.
- A. That I don't know.
- Q. And that didn't include any copies of prior agreements under which Kai Ming and Chan had become interested as purchasers of the property.
- A. I don't know that.
- Q. The copies which she eventually had of those documents, those three documents, were the copies supplied by Mr. Danny Yiu? 20
- A. That I don't know.
- Q. The point of these questions is this that the contracts under which Chan was interested, the contracts due for completion on the 29th of January, and all I was concerned to find out was whether that was mentioned, that fact was mentioned at the meeting on the 21st of January attended by you and Shum and Miss Leung.
- A. I do not remember. However, I believe that we suggested the transaction was to be completed a few days earlier, that is, on the 26th of January.

MR. PRICE: My Lord, I don't think I have any more questions about that meeting on the 21st of January, and accordingly I shall be going on towards the quite important matters that happened between then and the 27th, and perhaps your Lordship would think that it is convenient to stop at this moment and deal with those matters tomorrow morning. 30

COURT: Yes.

MR. PRICE: I apologize to the interpreter if my style of questioning is one which he finds a little difficult to deal with. It is going to be worse when we come to hypothetical questions.

COURT: I'm afraid all of us living in Hong Kong have the difficulty, the inevitable difficulty, I'm afraid, of adopting one language to the business language of another. It is inevitable. 40

MR. PRICE: It is a magnificent achievement to be able to interpret so well.

INTERPRETER: I don't deserve your compliment.

COURT: Yes. 10 o'clock.

4.30 p.m. Court adjourns.

4th June, 1980.

KWW/F/1

5th June, 1980

10:05 a.m. Court resumes

P.W. 1 – Wong Ching-mal o.f.a.

XXN BY MR. PRICE

- Q. Before I leave the meeting of the 21st of January, Mr. Wong, was there at that meeting any reference to existing tenancies of the ground floor of the property? 10
- A. Not to my recollection.
- Q. You don't remember objecting to the existence of tenancies?
- A. I do not remember having raised the objection.
- Q. You don't remember that Mr. Shum said that the tenancies were shortly to expire?
- A. I do not remember.
- Q. You told his Lordship that after that meeting and before completion you saw or spoke to Miss Leung a number of times and asked how matters were progressing ... before sending the cheques.
- A. To my recollection after our meeting with Mr. Shum and with Miss Leung there was not much contact. 20
- Q. You did speak to her however and indicate that the matter ought to be completed quickly.
- A. I believe that question of expediting the matter as soon as possible was mentioned at the first meeting, however, I do not recollect now whether or not I spoke to her on the same subject after that.
- Q. You learnt eventually that the matter would be ready for completion on the 27th of January, didn't you?
- A. I believe that that was mentioned on the first meeting that the completion be completed by the 26th of January. 30
- Q. I think, Mr. Wong, you are mistaken. You told his Lordship yesterday that the date mentioned eventually was the 26th of January. You referred yesterday to the 26th of January as the time which Miss Leung was going to try and get things completed for, do you remember that?
- A. On the first occasion when I went to see her with Mr. Shum, we said we, Mr. Shum and I, hoped that the matter be completed by the 26th of January.
- Q. That is what we established yesterday. Now did you subsequently learn that it was to be completed on the 27th of January, not the 26th?
- A. It was subsequently completed on the 27th because I think the matter was not completed in time.
- Q. Miss Leung says that she telephoned your office on the 26th to explain that the 40

- matter would be ready for completion on the 27th.
- A. I do not remember clearly now. It is possible.
- Q. She thinks that she spoke on that occasion not to you but to Johnny Wong, is that possible?
- A. Yes, it is possible.
- Q. What she told him was that the mortgage money must be ready the next day.
- A. I don't know. It is possible.
- Q. Would you look at page 36 in volume 2. Were you in your office when that letter was brought round? 10
- A. I do not remember whether or not I was in my office.
- Q. Look, would you, at page 38.
- A. Yes.
- Q. Are you able to say whether that letter came round to your office with the letter at page 36?
- A. I believe so.
- Q. Was it on receipt of those letters or previously that the instructions were given to the banks to prepare the cheques?
- A. To my recollection it was after receipt of the letters from J.S.M. that we instructed the bank to prepare the cheques. 20
- Q. Your conversation with Mr. Shum about his inability to provide the whole balance of the purchase money – did that occur before you saw those letters?
- A. That is right.
- Q. Did Mr. Shum tell you that Miss Leung had told him to take to Danny Yiu the balance of the purchase money? Did Mr. Shum tell you that Miss Leung had told him to take the balance of the purchase money to Danny Yiu?
- A. In the amount of 1.355 million?
- Q. No, the balance.
- A. Regarding the amount of \$310,000, to my recollection Mr. Shum said that he requested us to have the money paid through J.S.M. together with the principal. 30
- Q. (To interpreter) Mr. Wong thinks that Mr. Shum said that the money was to go through J.S.M., the \$310,000, does he? Is that what Mr. Wong is now saying? I am not clear. Can we start that series of questions again. Just translate these introductory matters and don't ask any questions. Miss Leung says that on the 26th she told Mr. Shum that he would have to go to Danny Yiu the next day to pay his part of the purchase price and any costs payable to Danny Yiu and to sign documents. When Mr. Shum came to tell you that he couldn't provide the balance of the purchase price, did he tell you that on the 27th he had to go to Danny Yiu and make the payments and sign the documents?
- A. Two or three days before the 26th Mr. Shum told me that he could not raise the amount. 40
- Q. So it was before – it was earlier that he told you?
- A. Right. That is correct.
- Q. It follows that, Mr. Wong, Mr. Shum had not at any time according to your answers told you that he was required on the 27th to take money to Danny Yiu and sign documents there.
- A. I do not recollect whether or not he said that to me.
- Q. Look again at the letter at page 36 and the letter at page 38. You were being asked on the 27th to provide a cheque in favour of Danny Yiu for \$1,355,000, weren't

- you?
- A. That is right.
- Q. You obtained the cheques payable immediately from the Chartered Bank and Bangkok Bank.
- A. That is right.
- Q. Was there any particular reason for going to both banks?
- A. This is a question concerning our current account with our banker.
- Q. Understood. Mr. Wong, it is perfectly understandable that you went to two banks but why in respect of the Bangkok Bank were there two cheques and not one? 10
- A. I do not recollect now as to why there were two cheques from the Bangkok Bank. After all I was not the person in charge of that matter.
- Q. Is there any connection between the amount of the cheque at page 41, \$370,000, and what you have told his Lordship about the arrangement with Mr. Shum for Mr. Shum to provide some money and you to make a further loan?
- A. I do not remember clearly how the amount of the cashier orders came into being.
- Q. If I add up the face figures for four of the cheques you'd received or you did receive from Mr. Shum, there were two cheques for \$92,500 that were immediately payable and two postdated cheques for \$92,500. 20
- A. That is right. 20
- Q. Those four cheques together total \$370,000.
- A. That is right.
- Q. Is that, so far as you are concerned, purely a coincidence?
- A. From the way I look at it now, it is possible that the cashier order in the amount of \$370,000 was in exchange for the four cheques each amounting to \$92,500. There maybe other reasons, of course, but as I have said I was not the person in charge of the accounts.
- Q. On the 27th of January did you personally take those three cheques round down to Johnson Stokes & Master's office? 30
- A. Yes, that is so from my recollection.
- Q. It was clear that Miss Leung couldn't understand why the cheques were for more than she asked for.
- A. I believe I went down with Mr. Shum. We informed Miss Leung that out of that amount of money \$310,000 were Mr. Shum's money which was paid together at the same time.
- Q. When you arrived in Miss Leung's office, the three directors, Mr. Shum and this two co-directors, Mr. Tsang and Mr. Ma, were already there, weren't they?
- A. I do not remember clearly whether or not the two other directors were there but I remember clearly that I went down with Mr. Shum.
- Q. It may not be important but that is not Miss Leung's recollection. Miss Leung's recollection is three directors were there when you arrived with the cheques. 40
- A. I do not remember clearly whether or not at that time the other two directors were there.
- Q. Did Miss Leung then tell you that the papers had been made out on the basis that you were lending only \$1,355,000?
- A. I do not remember whether or not she told me that.
- Q. Did you say to her "Don't worry about the extra money. I have made arrangements."?
- A. I do not remember I said that.

- Q. Was it clear to you that Miss Leung had no idea about the details of the arrangements that you had made with Mr. Shum when he had come to tell you he couldn't provide the balance himself. Was it clear to you that Miss Leung was not aware of the arrangements that had been made?
- A. Are you asking me the \$310,000, the amount which he could not raise.
- Q. Yes.
- A. I believe that Miss Leung was not aware of the \$310,000. I think Miss Leung was not aware of the \$310,000 that Mr. Shum was partly short of.
- Q. He was only short of \$125,000. 10
- A. That is right.
- Q. Those arrangements that you had made with Mr. Shum were not explained by you to Miss Leung, were they?
- A. The arrangement of the amount short, in the amount of \$125,000, between myself and Mr. Shum Miss Leung was not aware of.
- Q. After you had taken the cheques and Miss Leung had seen them, do you remember whether she telephoned Danny Yiu?
- A. I did not see.
- Q. She will say that she telephoned Danny Yiu because she was now uncertain as to whether Danny Yiu had received all the money required for completion apart from what was now \$1,665,000. Do you remember a conversation with Mr. Yiu at that time? 20
- A. I do not remember and I don't know what Miss Leung talked to the solicitor of the other party. I remember I gave her three cashier orders and upon receiving a receipt for the three cashier orders I left her office and returned to my own office.
- Q. The receipt for the three cashier orders is at page 37 of volume 2, isn't it?
- A. That is right.
- Q. Look at the cashier orders or the copies at pages 40, 41 and 42. It is clear, isn't it, that each of them was an order payable to Danny Yiu and Co? 30
- A. That is right.
- Q. As a person concerned with finance and banking transaction, you would appreciate that the effect of those cheques was this: That Danny Yiu could cash them and have the money under his control, is that right?
- A. That is right.
- Q. Let me put it this way: If Miss Leung had said to you, you would appreciate, Mr. Wong, that the cheques representing the mortgage money will be at Danny Yiu's disposal if she had said that to you.
- A. Yes.
- Q. Is it not likely that your reaction would have been to say "but that is obvious.?" 40
- A. Yes, I would.
- Q. There was no need, was there, for Miss Leung to point out to you, a financier, something as obvious as that?
- A. That is right.
- Q. Let me jump up in time to your return from your New Year holiday. You told his Lordship that Mr. Shum came to see you.
- A. That is right.
- Q. You told his Lordship that you and Mr. Shum went to see Miss Leung.
- A. That is right.
- Q. What was the purpose of that visit?

- A. Mr. Shum heard that a certain solicitor was not conducting himself properly.
- Q. Yes.
- A. Therefore, we went down to ask her whether or not the formalities for us had been completed or not.
- Q. Why did you think it necessary or worthwhile to go down and see Miss Leung?
- A. Because we were worried as to whether or not the improper conduct of that solicitor had anything to do with our matter.
- Q. When you went to see her, you asked her about formalities of the transaction not yet completed, didn't you? 10
- A. We asked her as to the formalities for our matter had been completed or not.
- Q. It follows, doesn't it, that you knew when the money was paid over on the 27th of January that the documentation of the transaction had still then to be completed.
- A. To my knowledge some of the documents still required completion. (pause) I have something to add. Some of the documents required completion by solicitor of the other side.
- Q. So that you understood on the 27th of January and afterwards that the completion of the documentation was dependent on Mr. Yiu performing his part properly.
- A. That is right.
- Q. You also appreciate that the completion might be adversely affected by his dishonesty if he was dishonest. 20
- A. I do not know.
- Q. Isn't that why you and Shum were so concerned in February that you went to see Miss Leung?
- A. Certainly we were worried about our own matter, that is why we went down to see her and asked her whether or not the formalities had been completed.
- Q. If Mr. Yiu had been dishonest in the completion of your transaction, your transaction might have been affected by his dishonesty.
- A. That is right.
- Q. You told his Lordship that no previous transaction had gone wrong, no previous mortgage transaction had gone wrong, didn't you? 30
- A. That is right.
- Q. Until you suspected that Danny Yiu might have been dishonest, there was nothing abnormal about this mortgage transaction so far as you and your solicitors were concerned, was there?
- A. I am not quite sure of your question.
- Q. Let me put the question in a different way. Until Danny Yiu's dishonesty became a matter to trouble you, there was nothing abnormal about the procedure adopted in respect of the money or the documentation of this transaction so far as you knew.
- A. I can only state my own view and our view is that that sort of transaction had nothing abnormal. It is something between ourselves and our solicitors. 40
- Q. Mr. Wong, it is suggested on your behalf that on or before the 27th of January Miss Leung ought to have explained the risks to you involved in handing over the money to Mr. Yiu and leaving the documentation to be completed in the usual manner by him. That is not a question yet. It is clear that you did not need any explanation of those risks.
- A. Not necessarily so because we are not lawyers. Not necessarily so because we are not belonging to the legal circle.
- Q. But when in February Danny Yiu was reported as having been dishonest you

appreciated without legal advice that your transaction might be adversely affected.

MR. CHEUNG: Forgive me, the witness couldn't remember whether Mr. Shum said a solicitor having conducted himself improperly or whether he named any specific solicitor. My friend's question is prefaced on the basis that he knew it was Danny Yiu when he saw Miss Leung. It is not quite right.

Q. When you went to see Miss Leung in February with Mr. Shum, you appreciated then that if Danny Yiu had been dishonest, that dishonesty might adversely affect your transaction of the 27th of January, is that right?

A. That is right.

10

COURT: Did Mr. Shum say "a solicitor" or did he mention "Danny Yiu"?

A. I do not recollect now whether or not he specified Danny Yiu to be the solicitor.

Q. If I might refer to my note of examination in chief, as I understood it there was a second visit to Miss Leung during which it was confirmed that it was said that solicitor Yiu had absconded.

MR. CHEUNG: That was in the afternoon.

MR. PRICE: That was in the afternoon. That's quite right.

Q. Whether or not Mr. Yiu's name was mentioned at your first visit, your concern about a dishonest solicitor can only have been about the dishonesty of Yiu, if that was so, affecting your transaction. It must be right, mustn't it?

20

A. That is right.

Q. Let me now put to you a hypothetical situation that on the 27th of January Miss Leung explained what was obvious, that paying over your money to Danny Yiu and leaving Danny Yiu to complete the documents was risky if Danny Yiu turned out to be dishonest; that she also explained that this was the normal procedure for completing transactions in Hong Kong and that this was in accordance with the procedure adopted in your previous transactions. Now the question: Is it not obvious that if she had given that explanation, you and Shum would nevertheless have gone ahead with what was done on the 27th of January?

A. You ask me a hypothetical question, so I will give you a hypothetical answer. If Miss Leung had told me that that was the usual practice for my sending the money over and the documentation would have to be completed in that manner, I would have agreed that the money be sent over. But if she had told me that by doing so I was taking a risk, then I would not have sent the money over.

30

Q. But it would have been obvious to you that you were taking the risk, wouldn't it?

A. No, because the money made by us, as a financier, is very little. If we found out that the transaction is questionable, then we definitely would not proceed with the transaction.

Q. Mr. Wong, on the 27th of January the transaction would have appeared to be no more questionable than any previous transaction.

40

A. That is right. Especially J.S.M. is one of the most, if not the most, reputable

- solicitor's firm in Hong Kong, therefore, we do not question anything handled by them.
- Q. But in February you did. You were concerned to question, weren't you, what had been done?
- A. On that occasion we were concerned with the improper conduct of a solicitor as to whether that improper conduct of that solicitor had anything to do with our transaction. We were not questioning her about other things.
- Q. Without prompting from her you knew that there was a risk that dishonesty on the part of the solicitor concerned in your transaction of 27th January might adversely affect it. You have already told his Lordship that. 10
- A. That is right.
- Q. The new feature in February was actual dishonesty. Miss Leung could not nor could anyone on the 27th of January have told you of actual dishonesty but only of a risk inherent in all human transactions that someone relied on might prove to be dishonest.
- A. The question is certainly before it was found out that Danny Yiu was dishonest, Miss Leung was unable to tell. Miss Leung did not know that Danny Yiu was dishonest. Furthermore Miss Leung did not tell me the risk, the risk in this transaction. 20
- Q. She hadn't told you the similar risk in relation to previous transactions, had she?
- A. That is true. She did not.
- Q. Have you had mortgage transactions since February 1976?
- A. I do not remember whether or not I had since conducted any mortgage transaction. There might have been one or two such transactions. But in short these transactions would not have been many.
- Q. With your new solicitors you have or have not mortgage transactions?
- A. Yes.
- Q. Have you told them that they must not adopt what you now know to be the normal procedure in Hong Kong? 30
- A. I informed my new solicitor of the Danny Yiu incident and I requested them to be careful. But what transpired between the solicitors I left the matter entirely for them to decide.
- Q. You haven't issued clear instructions that on no account is money to be handed over to some other solicitor before documents are available.
- A. It is not a question of I have or I have not. It is not just as simple as that. I informed my solicitor of the question arising out of the Danny Yiu incident. I asked my solicitor to be particularly careful on the matter of formalities of procedures. I also completely placed my trust on my solicitor on what was going to happen between the solicitors. 40
- Q. Are you able to say whether in subsequent transactions your solicitors have followed the normal Hong Kong procedure of handing over the money against undertakings to complete the documentation?
- A. I am not sure about the normal practice between solicitors in transactions.
- Q. Although you changed solicitors, there have been some mortgage transactions completed with Johnson Stokes & Master since February 1976.
- A. I do not remember whether or not there had been any. Even if there were, there would not have been many.

Q. No, there haven't been many. But those that there have been, money has been handled over to solicitors against undertakings in accordance with the ordinary procedure in Hong Kong.

MR. CHEUNG: Is my friend suggesting that the witness actually knows . . .

Q. Are you aware of that?

A. What happens between them I don't know.

MR. PRICE: It would be unnecessary to extend this case to bring the documentation for those transactions.

COURT: These are the transactions that Mr. Wong had . . .

10

MR. PRICE: Mr. Wong's company.

COURT: Mr. Wong's company lending the money . . .

MR. PRICE: I haven't got the papers. One was in June 1976 and one in January 1977. I am just asking him whether these transactions are known to him.

A. I do not remember because of the long lapse of time, so many years ago.

Q. Would you accept this: That in relation to those transactions you did not instruct Johnson Stokes & Master that they must not adopt the procedure that had been adopted on the 27th of January, 1976?

A. I do not remember clearly, however, I remember that after the Danny Yiu incident Miss Leung still conducted several businesses for me. She was very careful and nervous.

20

Q. Let's look again at the 27th of January, 1976. You told his Lordship that you didn't know that Hang Seng Bank had a mortgage on the property.

A. That is right.

Q. There was, in my mind at least, some doubt about that because in your evidence in chief you indicated that you had seen the letter at page 32 or the letter at page 34 in bundle 2. Would you look at those. On the second page against the numerical 2, there is reference to arranging a reassignment of the premises from Hang Seng Bank to Ho Sau Kai.

A. Can I . . .

30

Q. Perhaps if I can continue. Is 'reassignment' a term with which you, as a lender on mortgage, are familiar?

A. On this term I have a rough idea about it.

Q. And that rough idea includes that it is something that a mortgagee does when he is paid off?

A. That's right.

Q. Now to be fair to you, it is right that subsequently in your evidence you indicated that it might have been later that you saw this letter or one of them for the first time.

A. Yesterday I said that documents 32 and 33, I did not see it towards the end of January or the beginning of February.

Q. (To Interpreter) He said he had been thinking about it overnight, I think.

A. And yesterday I gave a supplemental answer to that, and that was the document was sent to us in mid February by Deacons. That is what I thought.

Q. Now that's quite right. That is what I was going to refer. Now do you say positively, Mr. Wong, that there was no reference on the 27th of January or in your conversations with Mr. Shum before that date to the Hang Seng Bank as mortgagee of the property.

A. I am positive.

Q. Yes. You did tell his Lordship in answer to a question from me that it happened all too often that premises in which you are interested or became interested as mortgagee were subject to a mortgage in favour of a bank, didn't you? You told his Lordship yesterday that it happened all too often that premises might be subject to a mortgage to a bank.

A. That's right.

Q. So that it would have been quite a normal question to arise in discussing this matter whether the premises were charged to any bank.

A. Discussion with whom? With Mr. Shum or anybody else?

Q. It would have been normal that you might have raised the question -- is there any prior mortgage to clear off?

A. It is normal and usual for property to have been mortgaged to bank or banks, but as to whether or not that piece of property had been mortgaged or not, both Mr. Shum and I did not know. We entrusted the solicitor to find it out for us.

Q. I won't question you about what Mr. Shum knew. I am solely concerned with what you knew. What I suggest is this that in the discussions leading up to or at the 27th of January, some reference to the prior mortgage must have been made.

A. I would like to ask between whom the discussions were conducted.

Q. (To Interpreter) Please tell Mr. Wong it's for me to ask the questions and for him to answer them.

COURT: In your discussions with Mr. Shum, it is put to you that somebody must have mentioned that to you.

A. I do not remember whether or not Mr. Shum raised that question, neither do I remember whether or not I asked him that question.

Q. Let us now make the assumption that Mr. Wong had not heard before the completion on the 27th of January and didn't hear then that there was a prior mortgage. So if he had known, if he had known there was a prior mortgage, it would

have been obvious to you, Mr. Wong, wouldn't it, that Mr. Shum's purchase could not be completed without the prior mortgage being paid off?

A. Had I known that there had been a prior mortgage, then our solicitor would have, first of all, paid off the solicitor for the other side first.

Q. That is not the question I have asked. I asked Mr. Shum could not. . . the purchase by Mr. Shum could not have been completed without the prior mortgage being paid off. The answer to that question is really yes or no.

A. That's right.

Q. Then is it within your knowledge that a mortgagee usually has possession of the title documents of the mortgaged property? 10

A. That's right.

Q. So that if a prior mortgage had existed, if you had known that a prior mortgage existed, you would have appreciated that the title deeds would be under the control of that prior mortgagee?

A. That's right.

Q. Then in connection with . . . Now we move from hypothesis to actual. . . .

COURT: Is this a convenient moment?

MR. PRICE: Sorry, my Lord. I didn't notice the time.

11.40 a.m. Court adjourns.

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12.05 p.m. Court resumes. Appearances as before.

P.W.1 – Edward WONG Ching-mal o.f.a.

XXN. BY MR. PRICE: Continues

Q. So, Mr. Wong, you appreciate as a financier that possession or control of title deeds is a valuable part of the mortgagee's security, is that right?

A. That's right.

Q. Now when it comes to paying off the mortgage and reassigning the secured property to the mortgagor, it is necessary to prepare a document of reassignment to the mortgagor. This is still not a question. It is leading up to a question. The preparation of that document is normally done by the mortgagor's solicitor, and so that he may prepare the document, the mortgagee or his solicitor usually releases the title deeds to the mortgagor's solicitor so that he can prepare the reassignment; in other words, hands over the title deeds. Now here's the question: does it surprise you, Mr. Wong, that mortgagees are willing, before being paid off, that the title deeds should go to the mortgagor's solicitor? 30

A. First of all, you said that the title deed to be handed to the mortgagor's solicitor?

Q. The mortgagor's solicitor so that he can prepare the reassignment.

A. That I understand.

Q. That you understand, yes.

A. But as to the second question, I do not understand. The second point. As to what follows, I do not understand. 40

Q. So that it is no surprise that before the mortgage is repaid, the title deeds, the

valuable part of the security, are quite ordinarily handed over to the mortgagor's solicitor for the preparation of the reassignment document.

A. I am not surprised.

Q. Do you agree that that involves a measure of trust in the mortgagor's solicitor and his honesty?

A. That's right.

Q. And does it surprise you that in the present case the Hang Seng Bank was willing for the title deeds to be entrusted to Danny Yiu for the preparation of the reassignment?

A. I am not surprised.

Q. And you are not surprised because that was an ordinary process relying on the proper conduct of a solicitor, namely, Danny Yiu.

A. The transfer of title deeds from one solicitor to another solicitor for the preparation of the reassignment is the usual thing to be done. That has been done, but whether it had anything to do with Danny Yiu or not, I am not sure.

MR. PRICE: My Lord, this isn't really a question to the witness, but for the record it might be said that. . . this might be noted that the fact that Hang Seng Bank's title deeds went to Danny Yiu on the 23rd of December, 1975 appears from a letter from Hang Seng Bank's solicitors at page 114 in bundle 2. It seems, my Lord, that my questions are not quite in accordance with Hong Kong practice. The mortgagee's solicitors prepare the reassignment, but the other documents, of course, . . . the documents are required for the preparation of the other new title documents that may be required on the occasion of the reassignment. I don't think I need rephrase my questions to Mr. Wong to cover that point.

Q. Now Mr. Wong, we now become hypothetical again. If Miss Leung had been able to put you completely in the picture on the 27th of January, in addition to the other matters that she would or might have explained to you, she could have told you that the prior mortgagee, Hang Seng Bank, had let its title documents go to Danny Yiu. I haven't come to the question. And she would have explained that that involved a degree of trust in Danny Yiu as solicitor, his undertaking to deal properly with the documents being accepted by Hang Seng Bank and its solicitors, C.Y. Kwan.

A. Yes.

Q. And she would have explained that that was absolutely normal procedure. If, however, she was seeking to explain to you every possible risk involved, she might have said Danny Yiu might misuse the title deeds entrusted to him by the bank. Now if your mind had been directed to the sort of risk involved in the normal procedure, would it not have been reassuring that the Hang Seng Bank and its solicitors were relying upon Danny Yiu's honesty in performing his undertaking?

A. That's right.

Q. So that isn't it being wise after the event but looking at the position only with information that was available on the 27th of January only, only that information, isn't it highly probable that if the picture had been fully painted to you on the 27th of January, 1976, you would have said, "Proceed with this transaction in accordance with the ordinary procedure."

A. If she had told me that she had some doubts concerning Danny Yiu, then I would

not have proceeded.

Q. No, but the picture that I am painting is without the benefit of the knowledge of February that Danny Yiu was, in fact, dishonest, without that information.

A. If she told me that there is nothing special, then I would have proceeded with the matter.

MR. PRICE: My Lord, I think after conferring with my learned junior, my learned leading junior, and thinking about it, that I oughtn't to ask further questions of Mr. Wong. I say it in that rather curious way for this reason: there is quite a lot of matter in the pleadings which, I imagine, is going to be put by my learned friend Mr. Oswald Cheung to Miss Leung or to somebody called on my side. And if I am to put to this witness wholly my case, it could be suggested that I ought to put to this witness a lot of that material. I don't want it to be suggested. What I suggest, therefore, is that I sit down at this moment, and that if at any time anyone says that I haven't put to Mr. Wong everything that should have been put to him on a view of the issues as set out in the pleadings, it should be then possible to recall him as I imagine he isn't going off for another Chinese New Year holiday. I don't know whether my friends think that is too unorthodox a position.

10

MR. CHEUNG: I would expect my learned friend to put all matters of fact which he relies on to this witness. I would not expect my friend to question this witness about the formalities of the procedures.

20

MR. PRICE: In particular what is pleaded as Miss Leung's failure to do things because those are matters . . .

MR. CHEUNG: My friend ought to put all matters of fact, and I don't think I can allow my friend to recall the witness to put further facts which he has omitted to put.

MR. PRICE: I think I am quite content with my friend's . . .

INTERPRETER: The witness says he has something else to say.

MR. PRICE: He can say it to . . . The witness can say it to one of my friends in further cross-examination, if Mr. Tang is going to, or to Mr. Oswald Cheung in re-examination.

30

COURT: Is there something you wish to add to your answer?

A. I would like to add that I would proceed on the trust that if there is anything improper on the other side, then my money would be returned to me.

MR. PRICE: By whom?

A. The solicitor for the other side through JSM. That was my understanding.

MR. PRICE: I don't think I need pursue that. I think I have all the material I need for my submission to your Lordship, as far as this witness is concerned.

MR. TANG: My Lord, I would ask your Lordship's leave to further cross examine this witness on matters arising out of my learned friend Mr. Price's cross-examination which is relevant to the third party proceedings.

COURT: Very well.

MR. TANG: I am obliged, my Lord.

FURTHER XXN. BY MR. TANG:

Q. In answer to my learned friend Mr. Price, Mr. Wong, you told my Lord that it was clear to you that you were going to use Johnson, Stokes.

A. That's right.

Q. Now did you say to Mr. Shum that you would insist that the mortgage be prepared by Johnson, Stokes?

A. Yes, I said that.

Q. I would now deal with the question of the North American Meat Packing Company. You told my Lord that you heard Miss Leung say that it would not seem to be compatible for a meat company to own property. You also told my Lord that you could not remember whether or not the Articles of Association of the North American Meat Company was given to Miss Leung at that meeting.

A. That's right.

Q. So when Miss Leung was talking about compatibility, did you understand her to mean that the name itself was incongruous if it were to be used, the name of the company was not suitable?

A. I remember that Miss Leung said that to acquire property in the name of a meat company would not sound nice.

Q. At that meeting do you recall whether or not Mr. Shum told Miss Leung that he had to consult with the 2nd and the 4th defendants before he could decide on whether or not to buy a new shelf company?

A. To my recollection, it seems to me that he decided there and then that he would buy a new company.

Q. Is it an impression or a firm recollection?

A. It seems to me it was an impression.

Q. Thank you, Mr. Wong.

REXN. BY MR. CHEUNG:

Q. Mr. Wong, you say you only know simple English?

A. That's right.

Q. When you receive a letter in English in your company, can you read it yourself or do you need help?

A. For simple letters I could read myself.

Q. And others?

A. For the more difficult ones, I would ask my secretary or a director of my firm to read the letter with me, together.

Q. Now you mentioned a Mr. Johnny Wong this morning.

A. Yes.

- Q. What position did he have in your company?
A. He is a director of our finance company.
Q. At that time?
A. That's right.
Q. Is he still a director?
A. Yes.
Q. Now you said you did not yourself decide on the amounts of those three cashier orders.
A. That's right. 10
Q. Do you know who did?
A. I think it was the joint decision of the accountant of our finance firm and that of Johnny Wong.
Q. And the name of your accountant?
A. I have to check because several years ago an accountant of my firm had left, but whether or not that accountant was the accountant, I do not recall now.
Q. You also told his Lordship that in lending out money, your finance company makes very little profit.
A. Yes, that's right.
Q. Will you please explain to my Lord why or explain to my Lord how little the profit is? How little is it? What is the size of it? 20
A. Now I am taking our loan to Mr. Shum at the interest rate of 1 per cent per month.
Q. Yes?
A. We have to pay to our bank 0.8 to 0.85 per cent per month.
Q. Yes?
A. The difference between the 1 per cent and the 0.8 or 0.85 per cent would be our profit.
Q. You borrow money from your banks in order to re-lend it?
A. That's right.
Q. In this transaction with Mr. Shum, did you in fact borrow from one or more banks? 30
A. I might have borrowed money from more than one bank.
Q. Was the whole amount of 1,355,000 borrowed?
A. I do not remember how the funding was because we do not borrow on single transactions.
Q. But in your normal practice the money would be provided by your banks?
A. That's right.
Q. And your profit is just a term, the difference between that you pay and . . .
A. That's right.
Q. Now in all your transactions before this one with Johnson, Stokes, did any of their solicitors explain to you precisely what the different steps in the procedures were for getting a transaction? 40
A. No. Normally no.
Q. Did they ever explain to you, up to the time of this transaction?
A. I do not remember clearly, but normally we instructed our solicitors as to what our requirements were, and then we left the matter of procedure for the solicitors.
Q. I am instructed, perhaps, my specific mention of Johnson, Stokes was not included in the interpretation. In your previous dealings with Johnson, Stokes and Masters, had they ever told you what the steps were in the procedures for getting the transaction completed?

- A. No.
- Q. Did they ever mention to you that sending money to the other side's solicitors might carry some risk?
- A. Never.
- Q. Did they ever say to you if the solicitors on the other side were dishonest, you would take the risk of losing the money?
- A. No.
- Q. If you had been told that, would you have gone on with this transaction?
- A. I would not. 10
- Q. Now I wonder if you could please turn to those two Chinese agreements in bundle 3, 21 and 24. I think you were unable to tell my Lord whether, before you saw Miss Leung on the 21st of January, you had seen both documents together at one time.
- A. I cannot remember clearly.
- Q. But can you remember whether you might have seen both documents but saw them on different occasions?
- A. Possible.
- Q. Would you also kindly turn to the debenture which begins at page 39? Would you also turn to page 56 where it is signed and sealed? Page 56. Can you remember whether you saw that debenture before or after the 27th of January? 20
- A. I cannot remember clearly whether it was on the 27th or it was after the 27th.
- Q. In relation to two letters, that is to say, a letter on page 32 and a copy on page 34, having thought it over after your original answer to me, you told my Lord this morning you think it was Deacons who showed it to you after you consulted them.
- A. I believe Deacons sent a copy of that to me.
- Q. If you don't know that a property offered to you as security was mortgaged or not, what do you do to find out?
- A. I would through the solicitor handling this case to find out clearly.
- Q. You would leave that to your solicitors to find out? 30
- A. That's right.

MR. CHEUNG: My Lord, subject to any questions your Lordship may want to ask, that is my . . .

COURT: Yes. Adjourned to 2.30.

MR. CHEUNG: Would you require the witness back? I will ask him to be here, my Lord.

COURT: Would you come back please?

12.50 p.m. Court adjourns.

2.35 p.m. Court resumes. Appearances as before.

MR. CHEUNG: My Lord, may I have your leave to put two more points to Mr. Wong?

COURT: Yes. 40

P.W.1 – Edward WONG Ching-mal o.f.a.

REXN. BY MR. CHEUNG: Continues

Q. Mr. Wong, you told Mr. Price that at the time this property was mortgaged to you, you thought the price for which he had paid 1,850,000 was about the market value.

A. That's right.

Q. Subsequent to that, would its value have gone up, down or remain the same?

A. It rose very much.

Q. That was in line with other property values in Hong Kong?

10

A. That's right.

Q. Thank you.

BY COURT:

Q. Mr. Wong, when you went to see Miss Leung after you came back from your holiday with Mr. Shum, did she explain to you at that stage how the transaction was being handled? It was being handled on the basis of the money being sent in exchange for an undertaking to produce the title documents.

A. No. She did not explain to me.

Q. When did you first learn that that was in fact the position – the transaction was being done on the basis of the money being paid over in exchange for Mr. Danny Yiu's undertaking?

20

A. I was not informed in particular, but normally I knew that money had to be sent over.

Q. So normally you knew money had to be sent. Did you in fact know before this particular transaction what the normal Hong Kong procedure was?

A. Yes, I knew.

Q. So when you went to see Miss Leung or any subsequent conversations with her after your return from holiday, it was no surprise to you that the money had been paid over on the basis of Mr. Danny Yiu's undertaking?

A. That's right. I was not surprised.

30

Q. Yes. Thank you very much.

MR. CHEUNG: I will call Mr. Edmund Cheung.

P.W. 2 – Edmund CHEUNG Sworn in English

XN. BY MR. CHEUNG:

MR. CHEUNG: My Lord, Mr. Cheung is ill. May he have your Lordship's permission to sit?

COURT: Certainly.

Q. What is your residential address, please?

A. Granville House, Apartment 7 at Magazine Gap Road, Hong Kong.

- Q. Are you a senior partner of Messrs. Edmund Cheung and Company?
A. Yes, I am.
Q. Are you at present the President of the Law Society of Hong Kong?
A. I am.
Q. I wonder if you could please take volume 3 of the documents, page 11. Have you seen that document before?
A. Yes, I have seen it. It is an agreement for sale and purchase.
Q. I'm afraid I can't hear you.
A. Sorry. It is an agreement for sale and purchase I have seen before. I will stand up for the time being until I cannot last any longer. Would it be all right? 10
Q. Would you please turn to page 17?
A. Page ?
Q. 17. Have you seen that agreement before?
A. Yes. I have seen it before.
Q. Please turn to page 21.
A. Yes.
Q. You have seen that and its translation before?
A. I have.
Q. Page 23, you have seen that and its translation before? 20
A. I have.
Q. And page 28 and 27?
A. Yes.
Q. Would you turn to page 39?
A. Yes.
Q. You have seen that before?
A. Yes, I have.
Q. And page 60?
A. Yes.
Q. Page 65? 30
A. Yes, I have seen it.
Q. Page 72?
A. Yes, I have seen it, too.
Q. Would you please also now take volume 2 of the documents in your file? Page 28, a letter from Danny Yiu to Johnson, Stokes, 23rd of January, 1976.
A. Yes.
Q. And pages 34 and 35, a letter from Johnson, Stokes to Danny Yiu, 27th of January, 1976?
A. Yes, I have seen it.
Q. Page 36, a letter from Johnson, Stokes to Edward Wong Finance Company, 27th of January? 40
A. Yes, I have seen that.
Q. Page 37, a receipt for cashier orders, same date?
A. Yes, I have seen it.
Q. Page 38, a letter from Bovill to Edward Wong Finance Company, 27th of January?
A. Yes.
Q. Page 39, a letter from Johnson, Stokes to Danny Yiu forwarding cashier orders, 27th of January, also?
A. Yes.

- Q. And the three cashier orders, pages 40, 41 and 42?
A. Yes.
Q. And am I right in thinking you have seen the reamended statement of claim in this case, the one that contains the red and the green amendments?
A. I have.
Q. And have you seen the 5th defendant's defence?
A. I have.
Q. You have been consulted by Messrs. Deacons about this matter?
A. That's right. 10
Q. And you are familiar with the sequence of events and the documents which I have shown you?
A. I am.
Q. There is one more document which please be good enough to look at, that is the search card from the Land Office, pages 18 and 19. Was a search made on the 24th of January, 1976? You have seen that before, I think?
A. I'm afraid this is the first time I have set my eyes on this one. It is just one of those ordinary search cards made from the Land Office.
Q. And that shows that in January, 1976, the registered owner was one HO Sau-ki?
A. That's right. 20
Q. And on the back of it it shows that in January, 1976 there were three encumbrances against that property being the second, third and fourth entries there?
A. That's correct, yes.
Q. And that showed that the whole property in question had been mortgaged to the Hang Seng Bank up to \$4,400,000.
A. That's correct.
Q. And you also noticed from the documents shown to you today, you have noticed it previously that HO Sau-ki had agreed to sell it to Lucky Times Finance Company for 3,800,000?
A. That's right, yes. 30
Q. Lucky Times by document of the same date had sub-sold it to Kai Ming Investment Company and one Mr. CHAN Sun-ming.
A. That's right, yes.
Q. And the various documents in Chinese show that Kai Ming and Mr. CHAN Sun-ming had agreed to sever the property so that Mr. Chan would get the ground floor and Kai Ming Investment Company Limited the upper floor.
A. That's right, yes.
Q. And Mr. Chan, in turn, had agreed to sell the property to Bovill for \$1,850,000?
A. That's correct.
Q. And that by the 26th of January, Po Fung had paid deposits amounting to \$185,000 to Mr. Chan? 40
A. That's right.
Q. Would it help you, Mr. Cheung, if I handed to you a chart setting out the various transactions as they effected the property in January, 1976? Now in this matter for the plaintiff to get a valid and effective debenture, amongst other things, the Hang Seng Bank would have to execute a reassignment?
A. That's correct.

In the
Supreme
Court of
Hong Kong
High Court
Plaintiff's
evidence
No. 12
Edmund
Cheung
examination.

Q. In Hong Kong, under what conditions would a bank normally execute or agree to execute a re-assignment?

A. Only when the outstanding principal and interest have been paid in full, and only when there is a confirmation that all rates and property tax covering the mortgage period have been satisfied.

Q. I think in many cases bank – banks, rather, want that payment to be made to their solicitors.

A. Oh, yes, invariably.

Q. Now, in a normal case, which solicitor would be responsible for making enquiry of the mortgagee as to the re-assignment? Supposing there is a purchaser, a vendor and a prime mortgagee, which solicitor would make the enquiry about the re-assignment? 10

A. Assuming that there is separate representation for the existing mortgagee, the vendor and the purchaser, then normally the purchaser's solicitors would make enquiries from the vendor's solicitors about the mortgage, and then it is for the vendor's solicitors in turn to make enquiries from the mortgagee's solicitors.

MR. CHEUNG: My Lord, I am certainly having some difficulty hearing and Mr. CHEUNG is obviously in some discomfort. My Lord, neither of my learned friends would object if Mr. CHEUNG were to step down now and give evidence when his voice is better – but meantime not to hold up this case as time is critical. I don't think Mr. TANG has very much to ask. It might be better that way, might it not, Mr. CHEUNG? 20

MR. E. CHEUNG: I don't know. Quite frankly, this has been going on for the last four weeks, I don't know. . .

COURT: I don't think we can really expect any . . .

MR. E. CHEUNG: . . . real improvement in a few days' time.

COURT: I wonder . . .

MR. E. CHEUNG: I would rather have this got over with.

COURT: Could Mr. CHEUNG be seated perhaps down there? You might find it easier – and then he can get closer to the microphone. 30

MR. CHEUNG: Your Lordship may find it easier to hear him without the microphone.

COURT: Let's try that.

MR. E. CHEUNG: I'm so sorry.

COURT: No, no, it's certainly not your fault. If you were to take a seat down there at counsel's table.

MR. E. CHEUNG: Yes, I feel much better sitting down here.

Q. Now, in this case, did an odd fact strike you about the mortgage and the vendor's position?

MR. PRICE: My Lord, I only rise to say this. Mr. CHEUNG hadn't completed the answer – an answer to his question, at least as I recorded it, in which he says normally the purchaser's solicitors would make enquiries from the vendor's solicitor about the prime mortgage and then it is for the vendor's solicitors to make enquiries. Now, it did go on, because I stopped writing.

A. . . . of the mortgagee's solicitor.

MR. PRICE: . . . of the mortgagee's solicitor.

10

Q. Did anything about this matter strike you as being unusual?

A. Yes. The principal money advanced, or rather, the extent of the principal money advanced exceeded the purchase money. That is something rather odd.

Q. And if you had been acting for the plaintiff company in this matter, what would you have thought it prudent to do?

A. I would have made enquiries from the vendor's solicitors which was Danny YIU & Co. as to how the balance of the principal money and interest, if any, was to be paid off to the bank.

Q. Yes?

A. And if the purchase money was insufficient to pay off the bank, then I would take precautionary measures such as sending the money either over to the bank or the bank's solicitors direct to discharge the mortgage, on the bank's undertaking to re-assign the ground floor to the existing – to the vendor and also on the vendor's solicitors undertaking to have the assignment from the vendor to the purchaser duly executed and returned to me in due course.

20

Q. Now, would the fact that a shelf company would have been nominated to take the ultimate assignment – would that have made any difference to your opinion or affected what you might have done in prudence?

A. That, plus the fact that the principal money exceeded the purchase money, would certainly have affected my taking the precautionary measures I have just mentioned, but the mere fact that the purchaser was a shelf company alone would not, I believe, have made me take the precautionary measures.

30

Q. Now, I take it that very frequently in Hong Kong, solicitors for purchaser send money to a vendor's solicitors in return for an undertaking that the assignment would be executed and title deeds delivered.

A. In 99 cases out of a hundred, yes.

Q. When would it not be done?

A. In cases where a brother solicitor does not trust the other side. In other words, when the other side is on your black list, for instance.

Q. You yourself keep a black list, do you?

40

A. Let's put it this way, I keep a white list to protect myself.

Q. That contains the names of solicitors' firms whose undertaking you would accept, is that right?

A. Right.

Q. Firms not on that list, their undertaking you would not accept.

- A. I would not accept an undertaking from the other side and I would insist on formal completion.
- Q. Which means?
- A. Which means that the parties get together, or rather, the parties' solicitors get together at an appointed time and exchange the executed assignment against payment of a cheque or cashier order.
- Q. From what you have said so far you have to do that from time to time.
- A. Yes, that's right.
- Q. Have you known of any objection from a solicitor from the other side to what you required? 10
- A. Relating to formal completion?
- Q. Yes.
- A. Not officially, because the Law Society some time ago issued a circular to its members to the effect that it is quite in order for a solicitor to insist on formal completion and that it would be against professional etiquette to refuse this practice or to object to this practice. Having said this, however, it is inevitable that the other side would not like it.
- Q. But, nevertheless, if the other side is not on your white list, you would insist on it.
- A. Oh, yes, I would, yes. 20
- Q. The circular to which you refer is page 46, Volume 5.
- A. Not this one, no.
- Q. I beg your pardon, I'm sorry. It's page 53. It's part of the same circular.
- A. Completion of Conveyancing Transaction – that's right, yes.
- Q. That's part of a circular that begins at page 46.
- A. Yes, that's right.
- Q. And that had been issued in March, 1966.
- A. That's right, yes.
- Q. You have been in practice in Hong Kong for how long now?
- A. Since February, 1957. 30
- Q. Certainly, if another solicitor firm is on your list, it is much more convenient and time-saving to send money to another firm of solicitors relying on their undertaking.
- A. Definitely, and it is practicable too.
- Q. I think that circular was re-issued in March, 1976 – page 61.
- A. Yes.
- Q. Was that a direct result of the absconding of Danny YIU, do you know?
- A. I'm afraid I don't recall. I don't quite recall.
- Q. Now, would you have a look at the letter Johnson Stokes sent to Danny YIU on the 27th of January, 1976? Again that is page 34 of Volume 2.
- A. Yes. 40
- Q. Do you see there any mention of a Deed of Mutual Covenant such as the one I showed you earlier?
- A. No, I'm afraid not.

COURT: Page?

MR. CHEUNG: 34 and 32 are the same. 32 is obviously office copy; 34 is the one with Danny YIU's signature on both sheets.

Q. If you had been acting for the plaintiff in this matter, what would you have said, if anything, about a Deed of Mutual Covenant?

A. Well, I would have included a Deed of Mutual Covenant in this letter, because it forms part and parcel of the title.

COURT: "I would conclude. . .?"

MR. CHEUNG: I would ask for.

A. I would have included the Deed of Mutual Covenant in this letter, because it formed part and parcel of the title to the property.

Q. You would have required an undertaking that an executed Deed of Mutual Covenant be sent back to you if you had adopted this course. 10

A. Yes, for the obvious reason that without a Deed of Mutual Covenant the assignment which is Item 1A cannot be completed.

Q. And the Deed of Mutual Covenant in this case gave, I think, a fifth part in the land to the – it was intended to give one-fifth interest in the land to the purchaser and also a right to the purchaser to be exclusive user of the ground floor and the right to dispose of it, isn't that right?

A. That's right.

Q. Those are its main features.

A. Yes. 20

Q. It would also define, as I think is done in this case, what areas or facilities are to be . . .

A. Yes.

Q. And without it there wouldn't be a good title.

A. Right.

Q. Now, is there anything in your view unusual in that letter?

A. Apart from the Deed of Mutual Covenant?

Q. Yes. May I direct your attention to the second paragraph which says, "We shall ask our clients to put us in funds with the mortgage proceeds towards payment of the purchase price of these premises upon receipt of your undertaking that. . ." certain things would be done. 30

A. Yes.

Q. And it ends, "Please give us your undertaking as suggested above by signing and returning to us the duplicate of this letter by bearer." What is unusual about that?

A. It's the normal practice for either a mortgagee's solicitor or a purchaser's solicitor to send over the purchase money to the vendor's solicitor under cover of a letter containing an undertaking by the vendor's solicitor to do this, that or the other. It is not, to my mind, the normal practice to ask for an undertaking beforehand.

Q. Normally the letter would say something like this, "We hereby send you the balance of purchase price for this property against your undertaking to deliver to us the assignment in due course." 40

A. Yes, that is the normal practice.

Q. And you say it is unusual to ask for an undertaking before sending such a letter.

A. Yes, I do. Personally, I certainly had not done this.

Q. Have you ever received such a letter from another firm of solicitors asking for your undertaking beforehand?

- A. Never.
- Q. Now, at that time in January, 1976, can you say what sort of reputation Danny YIU had among solicitors in Hong Kong, as far as you knew?
- A. As far as I knew, he had the reputation of a gambler in a big way. In fact, a few months before he absconded, rumour had it that he disappeared from his office for a few days, because he could not meet his debts, and it was a fact that he did disappear from his office, but somehow, however, he re-appeared.

MR. PRICE: My Lord, I merely rise to say this. We have now departed from expert evidence and if there is any better example of what the soldier said is not evidence, I cannot think of a better example than the one we have just had. So I formally object to it. 10

MR. CHEUNG: My Lord, I asked that question, because evidence of a man's reputation is receivable in a court of law though not evidence of his character.

MR. PRICE: But, my Lord, this went beyond evidence. The answer went far beyond that; it went to speak of specific instances as facts, and that was not evidence of reputation, that was evidence of a very different kind.

MR. CHEUNG: I accept that. My question, quite frankly, was to . . .

MR. PRICE: It was the answer I objected to.

COURT: At that time Danny YIU had the reputation of a gambler in a big way. I think that's . . . 20

Q. Can I ask you to speak about one matter of which you have personal knowledge?

A. Yes.

Q. Did a friend of yours consult you about Danny YIU?

A. Yes, that was shortly before he disappeared, or rather, absconded.

Q. Did that friend in your presence telephone Danny YIU?

A. No, it was the other way round. The friend enlisted my assistance in recovering a loan from Danny YIU.

Q. I see. What did you yourself do?

A. I asked a staff member of mine to accompany him to Danny YIU's office, having made an appointment with Danny YIU first. 30

Q. You made an appointment. . .

MR. PRICE: My Lord, I am very sorry. I do appreciate my friend's difficulty, but this, too, is not reputation. This is not evidence; it is hearsay.

COURT: Yes, surely what I can assume is evidence of general repute would normally have come to the ears of solicitors generally. Are we concerned with particular instances which Mr. CHEUNG. . . (inaudible)

MR. CHEUNG: My Lord, I see the objection.

MR. PRICE: My Lord, unless this was a matter of general knowledge, it can't affect my client unless it can be shown that my client knew of it, and for that purpose, it would have to be evidence of something that clearly happened in my client's presence or in the presence of someone who is an agent of my client, so that it does go far beyond what my friend is hoping, quite properly, to achieve, but not by this means.

MR. CHEUNG: My Lord, I see the force of the objection. May I reconsider the matter? Your Lordship will disregard this evidence for the time being. I am sorry I did not give the matter sufficient consideration.

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Q. Now, Mr. CHEUNG, since you have started practice in Hong Kong, have you known solicitors to be prosecuted for fraud in relation to their clients' money?

A. Yes.

Q. Can you name one?

A. That was Christopher Carr in 1961/1962 who used client's money. He was convicted and imprisoned. He was struck off the roll.

Q. And can you recollect whether he was a one-man firm or not?

A. Yes, he was a one-man firm.

Q. He had before that been in another firm of solicitors in Hong Kong.

A. Yes, as an assistant.

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Q. And that firm was?

A. Johnson Stokes and Master.

Q. But he had left them and started his own practice. . .

A. That's right.

Q. . . . when he spent client's money.

A. That's right.

Q. And his prosecution, imprisonment and striking off were public matters – matters of public record.

A. Oh, yes.

Q. After, I think, a trial, was it?

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A. After a trial.

Q. Which took a little time.

A. I think he pleaded guilty to the charges.

Q. Can you name another solicitor who fraudulently made use of his client's money?

A. It was Reginald SIU who used client's money around 1973 and he disappeared and presumably went to Taiwan. He was struck off the roll in January, 1974. He returned to Hong Kong about one or two years ago to surrender himself to the police and he was convicted and given a suspended sentence, I think it was.

Q. Convicted of using his client's money, is that right?

A. Yes.

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Q. Was he a one-man firm?

A. No, he had a partner.

Q. Before 1973 had he been in trouble?

A. He had in the late sixties. He also used client's money, but this was made good by his partner, so no complaint was made to the Law Society.

Q. Can you name a firm solicitor who made use of client's money?

- A. Yes, that was in 1973, a solicitor by the name of MAK Chung-lit who made use of his client's money. He made use of his client's money, but made good the deficit before he was discovered.
- Q. At any rate, did you take part in some proceedings against him yourself?
- A. Yes, I was the prosecutor – a prosecutor before a Disciplinary Committee appointed by the Law Society. He was suspended from practice for 5 years.
- Q. Tell me, because I don't know, if a solicitor is struck off or suspended, is that fact published in the Government Gazette?
- A. Yes, it is. 10
- Q. Is it or is it not published by the Law Society to its members?
- A. Yes.
- Q. By means of a circular?
- A. By means of a circular or bulletin.
- Q. MR. CHEUNG, supposing you are acting for a client, and the solicitors for the other side are on your list, your list of solicitors that you trust, do you explain to your clients the procedure you use for carrying out a transaction?
- A. No, I don't.
- Q. Do you tell them that you are relying on the integrity of the other firm of solicitors?
- A. No, I don't. 20
- Q. If you are not dealing with a solicitor on your list, do you explain to your clients the procedure you use?
- A. I don't, because it is not necessary for me to do so.

MR. CHEUNG: My Lord, may I have a short adjournment just to go through this?

3.45 p.m. Court adjourns

4.00 p.m. Court resumes

Appearances as before.

P.W. 2 – Edmund CHEUNG o.f.o.

XN BY MR. CHEUNG (continues)

- Q. May I ask, Mr. CHEUNG, because I don't know, do you do a lot of conveyancing yourself? 30
- A. Yes, I do.
- Q. Do you look after that side of the firm?
- A. Yes, and some other matters as well.
- Q. Have you done conveyancing ever since you started practising in Hong Kong?
- A. I have.
- Q. Now, you mentioned that with firms on your list you found it convenient and time-saving to send money with a letter saying it is sent on the other side's undertaking. Whose convenience is this?
- A. All parties concerned, I would say. 40
- Q. All parties including the lay clients?
- A. No, by all parties I mean all parties' solicitors.

- Q. And the time saved would that be the time of solicitors?
A. Yes.
Q. And time saved means you can devote that time to work productive of profits.
A. Oh, yes.
Q. I wonder if you would be good enough to have a look at the chart I handed to you.

MR. CHEUNG: My Lord, although it is prepared by my learned junior, could that be marked as an exhibit? Would it be convenient to do so? I don't think we have any exhibits yet, my Lord.

COURT: I think this is the first one.

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Exh. P1 MR. CHEUNG: Exhibit 1.

Q. That sets out the various transactions that have affected the property by the 27th of January, 1976.

A. Yes.

Q. Now, if you look at Messrs. Johnson Stokes' letter again, page 34, Volume 2, you see that they propose an assignment from HO Sau-ki and Lucky Time direct to Bovill without Kai Ming Investment Company or CHAN Sun-ming as intervening parties.

A. Yes.

A. It required cancellation of the agreement between Lucky Time and Kai Ming and CHAN Sun-ming.

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A. That's correct.

Q. It also required an original agreement for sale and purchase between Lucky Time and Bovill. . . .

A. That's right.

Q. . . . which again would cut out Kai Ming and CHAN Sun-ming.

A. That's correct.

Q. Now, knowing of the intermediate interests of Kai Ming and CHAN Sun-ming in this case, what would you, as a prudent solicitor, have done about that – have said about it?

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A. Sorry, I don't quite follow your meaning.

Q. Would you have followed the course and asked for only the documents specified by Messrs. Johnson Stokes in their letter? You notice, for example, that CHAN Sun-ming on his re-sale was making \$110,000.

A. Yes. I would have asked the vendor's solicitors as to how the purchase price is to be adjusted, because the purchase price Bovill was paying was \$1,850,000.

Q. And I think I am correct in saying that in the draft assignment which Danny YIU sent over being document – in Volume 3, I beg your pardon, page 65. The agreement begins at page 65 and on page 67 there is, first of all, a recital that the confirmor Lucky Time had agreed to sell the premises for \$1,740,000.

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A. Yes.

Q. And it further provided that in pursuance of that agreement and in consideration of \$1,740,000 paid by the purchaser, is that correct?

A. Yes, that is what it says.

Q. Would you have any trouble with the difference between what was said to be the

- consideration money and that, in fact, Bovill were paying \$110,000 more?
- A. I certainly would not have accepted the consideration as stated in this assignment.
- Q. Why?
- A. Because I was going to pay \$1,850,000. First of all, I would have to account to the Estate Duty Office for the difference.
- Q. Estate Duty?
- A. Sorry, the Stamp Duty Office for the difference. I need not point out that understanding a consideration is a criminal offence under the Stamp Duty Ordinance. And, secondly, I have to account to my client for the difference of \$110,000 in the consideration. 10
- Q. In other words, there would be loose ends, is that correct?
- A. Yes.
- Q. In the course proposed by Johnson Stokes?
- A. Yes, I would put it higher than that. I would put it higher than loose ends. I simply would not have accepted the assignment with this consideration as it stood.
- Q. Now, that document had been sent to Johnson Stokes. Would you look again at Volume 2 – a letter dated the 23rd of January, page 28?
- A. Yes.
- Q. Now, knowing they were going to use the form of assignment which you have just been looking at, would you have sent the consideration money over on an undertaking or would you have done something else? 20
- A. I would have the consideration money as stated in the assignment clarified to my satisfaction before I send over the money.
- Q. How would you have set about that? Would you have asked questions, is that right, of Danny YIU?
- A. Oh, yes – either over the telephone or by correspondence.
- Q. And in the end, what would you have required?
- A. I would have – for practical purposes I would have required Danny YIU to join CHAN Sun-ming as a second confirmor, because he was going to make the \$110,000. To my mind, that would have been the simplest way out. 30
- Q. In other words, you would not have accepted the assignment in the form that you have seen with the consideration money understated.
- A. Under no circumstances.
- Q. One last question. In dealing with solicitors of good repute on your list, supposing for one moment the transaction miscarried and somebody made off with the purchase money, would you consider that the loss would fall on you or on your client?

MR. PRICE: My Lord, I wonder if that isn't asking a question that should be – it will be addressed in due course by my friend and by me with all the oratory at our respective disposal to your Lordship, but, my Lord, I don't mind, I don't much mind, if an answer is volunteered, but strictly speaking. . . 40

COURT: I think it's a question that I will, at the end of the day, have to decide and the answer given, of course, is in no way binding, but I think it is relevant.

MR. PRICE: Very well, my Lord.

MR. CHEUNG: In that case, I shan't ask him.

COURT: No. As I say, notwithstanding the high authority from which the answer would come, it is a matter for me, but I would like the question answered.

A. I would consider it bad luck on my part.

Q. In other words, you would bear the loss.

A. Yes, it's one of the professional hazards one has to take.

Q. Occupational hazard.

A. Occupational hazards.

Q. Thank you.

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MR. TANG: I have some questions, my Lord.

COURT: I shan't want to go on too late this afternoon. Will you be some time, Mr. TANG?

MR. TANG: I understand from my learned friend Mr. Price that he will not be able to finish today anyway, so it may be convenient if we were to start tomorrow morning.

MR. PRICE: I shall certainly be an hour, I think, giving my best forecast which may prove to be an underestimate.

COURT: I'm afraid, Mr. CHEUNG, you will have to come back anyway. I think we will take the adjournment.

4.20 p.m. Court adjourns

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5th June, 1980.

6th June, 1980.

10.05 a.m. Court resumes. Appearances as before.

MR. CHEUNG: My Lord, would your Lordship be good enough to release Miss LEUNG Wai-ling, the solicitor from Johnson, Stokes, from her subpoena?

COURT: Yes.

MR. CHEUNG: Much obliged.

P.W. 2 -- Edmund CHEUNG o.f.o.

XXN. BY MR. TANG:

- Q. Mr. Cheung, according to your knowledge, what sort of practice did Mr. Danny Yiu have? 10
- A. Mainly conveyancing.
- Q. And do you know how many years of practice he had?
- A. He was admitted in February, 1970.
- Q. Now I would want to draw your attention, Mr. Cheung, to a circula of the Law Society issued in April, 1965. It is in volume 5, my Lord, starting at page 20. Have you seen this before?
- A. Yes, I have.
- Q. And it is accompanied by . . . Your Lordship will recall that my learned friend referred to it in the opening. It was accompanied by a report and recommendation of a sub-committee. My Lord, it starts at page 22. Has your Lordship got that? Page 22. Look under paragraph 1, sub-paragraph A. You will see that its title is "Completion of Conveyancing Transactions" and it reads, "The practice adopted by solicitors in a matter of completion has grown up in Hong Kong merely as a matter of convenience, and it is felt that solicitors should be alerted to the fact that mere compliance with what had been the practice first established when Hong Kong was a far smaller place than today, nevertheless, may leave a petitioner open to claims if completion in the fullest sense miscarries." I would want to direct your attention to the description of Hong Kong as a far smaller place than today. When you commenced your practice, Mr. Cheung, in 1957, how many solicitors were there? 20
- A. Less than 100.
- Q. And how many solicitors were there practising in Hong Kong in January, 1976, approximately?
- A. In 1976 I would say around 500. The figure now is 740.
- Q. And how many solicitors do you know there were in the early '50s in Hong Kong?
- A. Did I know personally?
- Q. Yes.
- A. The vast majority of them. I would say at least three-quarters of them.
- Q. Three-quarters of a hundred? 30
- A. Yes.
- Q. In the '40s? 40

- A. In the '40s?
- Q. Yes. The previous question was in the early '50s. How many would you say there were in the '40s, after the war?
- A. Yes. Immediately after the war, very few. I would say less than 50.
- Q. Before the war?
- A. I wouldn't know.
- Q. I see. Now what I want to find out is how did this practice first become established in Hong Kong. Is it possible that it became established in Hong Kong during the days when there were few solicitors and those few solicitors knew one another very well? 10
- A. Yes, I would agree with you, yes. In fact, they knew each other very well.
- Q. And also with a smaller profession, smaller number of persons, it is easier for one to know whether or not a person is trust-worthy.
- A. Yes, I agree.
- Q. In 1976 when there were 500 solicitors, is it correct to say that any person who was qualified as a solicitor may start his own practice in Hong Kong?
- A. That was the position, yes.
- Q. So I could be a total stranger to Hong Kong but if I had become qualified as a solicitor, I could, as it were, start out on my own in Hong Kong?
- A. Correct. 20
- Q. The position has since been changed. It is now required that the solicitor must have had at least two years of practice. . . practical experience before he can start out on his own firm?
- A. That's right.
- Q. I will now go to a different topic. In non contentious matters in Hong Kong, is it usual for written retainers to be given?
- A. By 'non-contentious', do you mean conveyancing matters?
- Q. Conveyancing matters.
- A. It all depends on what sort of conveyancing matters. If, for instance, a solicitor is instructed by a bank who acts as mortgagee, then the bank would normally write 30 to his solicitor and give written instructions.
- Q. But with an ordinary lay client, would a solicitor . . . would a written retainer be the usual thing.
- A. No. With an ordinary lay client, we normally take verbal instructions from him.
- Q. Would you say that in the case of an ordinary lay client, written retainers in conveyancing matters are the exception rather than the rule?
- A. I agree.
- Q. Now in the case of a mortgage, if you were instructed by a bank to prepare a mortgage, sorry, if you were instructed by any person to prepare a mortgage and the mortgagee were to come up to your office with the mortgagor, what would you 40 normally do?
- A. In what respect?
- Q. In respect of obtaining instructions from them or from the mortgagee.
- A. If they came up together, I would take instructions from both of them, prepare the mortgage and make an appointment for them to come in and sign the mortgage deed later on.
- Q. And would you consider yourself as acting for just one of them or both of them?
- A. For both of them.
- Q. Is it normal in Hong Kong for solicitor in mortgages . . . in preparing mortgages to act for both the mortgagee and the mortgagor?

- A. In the vast majority of such transactions, yes.
- Q. But it would be correct to say whether you represent only one, that is the mortgagee, or whether you represent both the mortgagee and the mortgagor, you would be entitled to the same scale fee?
- A. No. If you act for both parties, you are entitled to the full scale fee. If you act for the mortgagee, you are also entitled to the full scale fee, but if you act for the mortgagor only, you are entitled to only one half of the scale fee.
- Q. So if they were separately represented, 1½ times scale fee would be required?
- A. Yes. 10
- Q. So if they were both represented by the same solicitor, one time scale fee would be required?
- A. That's right.
- Q. But from the solicitor's point of view, it is unimportant, so far as the money side of the matter is concerned, whether he is only acting for the mortgagee or whether he is acting for the mortgagee and the mortgagor, because in either event he would be paid the scale fee only.
- A. That's correct.
- Q. So if the mortgagee and the mortgagor were to come up to your office and they jointly tell you what they require you to do, you would consider yourself as being jointly instructed by them? 20
- A. That's correct.
- Q. Would you ask the mortgagor . . . Sorry. I will rephrase my question. If the mortgagee is what one would describe as a general client or regular client of yours and he were to come up to your office with the mortgagor, you would realise that the mortgagee is coming to you as your regular client?
- A. Right.
- Q. Would you in that kind of circumstances have enquired of the mortgagor whether or not the mortgagor wishes to be separately represented?
- A. Well, as a matter of practice and as a matter of fact, I have personally very seldom asked a mortgagor whether or not he would wish to be separately represented, because the mere fact that he comes in to my office with a mortgagee would indicate to me that he would like me to act for him as well as the mortgagee. And if he would like to be separately represented, I would have thought that he would tell me himself. 30
- Q. So you would take the fact that he came up to your office with the mortgagee and the fact that he jointly with the mortgagee give you instructions as amounting to a retainer to you to also act for him, the mortgagor?
- A. That's right.
- Q. Now if you believe that the mortgagor was, in fact, separately represented although he came up to your office with the mortgagee but you believe that he was being separately represented, what would etiquette in your profession would require that you do? 40
- A. Sorry?
- Q. If you believe him to be separately represented, would the etiquette of your profession require that you should deal with his solicitors rather than to deal with him direct?
- A. Yes. Once I am aware that he is separately represented, I should not deal with him direct. In fact, I should not speak to him. I should not speak to him without his

- solicitor's consent.
- Q. So if they were separately represented and if you want to make some enquiries of him, you would do it through his solicitors?
- A. Yes, I would.
- Q. If you knew that the mortgagor requires the money for the purchase of some property and that a solicitor is acting for the vendor and if you believe that the vendor solicitor was also acting for the mortgagor, then if you want some information relating to the assignment by the vendor to the purchaser, from whom would you make such enquiry? 10
- A. The vendor's solicitor.
- Q. Would it be part . . . would you consider it proper for you to advise that mortgagor where and how he should pay the conveyance money over to the vendor's solicitors?
- A. I am not acting for the mortgagor.
- Q. Now if the mortgagor was represented by the vendor's solicitor in the sale, would you think it proper for you in that kind of situation to advise the mortgagor how and where he should pay the purchase money?
- A. Of course not, because the mortgagor being the purchaser is represented by the vendor's solicitor. 20
- Q. You would leave it to the vendor's solicitor to advise him?
- A. Yes. I wouldn't even speak to him.
- Q. So if in such a situation you know that the mortgagor is represented in the sale by the vendor's solicitor, you would no longer consider the mortgagor to be your client, but you would consider him to be the client of the vendor's solicitor?
- A. Correct.
- Q. And in that case you would have no personal dealings with him?
- A. No.
- Q. So in that case who would witness the mortgage on behalf of the mortgagor?
- A. His solicitor, i.e. the vendor's solicitor. 30
- Q. So would it be correct to say that the mortgage document would be sent by you to the vendor's solicitor in his capacity as the solicitor for the purchaser for execution?
- A. Yes, that's correct.
- Q. Now if the mortgagor happened to be a company, an incorporated company, it would require a resolution of the body, would it not, authorizing the use of the company's seal? If such a company was represented by the vendor's solicitor in the sale, would you draft the resolution for the mortgagor company or would you leave it to the vendor's solicitor, if I can call him that, in his capacity as the mortgagor's solicitor to draft it? 40
- A. The draft should be prepared by the mortgagor's solicitor, because I wouldn't know who is going to sign the mortgage deed.
- Q. Because it would be a matter which you would leave to the mortgagor's solicitors?
- A. Yes.
- Q. If you were to draft such a resolution, you would not be drafting the resolution, would you, as the mortgagee's solicitor because that would have nothing to do with the mortgagee?
- A. No. You are correct. I would be doing that as a matter of convenience. As I said, it ought to be drafted by the mortgagor's solicitor.

Q. Who in this case, you would say, is the vendor's solicitors because he is represented by him in the assignment.

A. Yes.

Q. In Hong Kong it is customary, it is usual, is it not, for the mortgagor to pay the necessary expense relating to the preparation and execution of a mortgage?

A. It is the normal practice, yes. I would say it is the invariable practice.

Q. Preparing the resolution for a mortgagor company would be an additional item of work, would it not?

A. It would, yes.

Q. For which the solicitor is entitled to charge separately?

A. Correct.

Q. Would you consider that as work done for the mortgagor or for the mortgagee?

A. It's work done for the mortgagor but in connection with the mortgage, and therefore the resolution would also go to the mortgagee along with the title deeds.

Q. Assuming then there was an agreement between the mortgagor and the mortgagee that they should each bear half of the costs of the mortgage and this additional item of expenditure, namely, preparation of a resolution is incurred, would the mortgagee have to bear half of that as well or would that be the sole responsibility of the mortgagor?

A. In the absence of express agreement, the costs for the resolution should be paid by the mortgagor.

Q. Alone?

A. Alone.

Q. Now if the mortgagor company and the mortgagee were to come to you and you discover that the mortgagor company is, for one reason or another, unsuitable as a mortgagor and you advise that the mortgagor company . . . sorry, and you advise that different companies should be used for the purpose of the mortgage, and then you agree to procure the sale of a shelf company to the mortgagor, would you consider, in giving that advice, whether you are acting for the mortgagor or for the mortgagee or for both?

A. Insofar as procuring a shelf company for the purpose of the mortgage is concerned, I would consider myself acting for the mortgagor, but when it comes to the mortgage itself, it is a different story.

Q. You would consider yourself acting for both?

A. For both parties.

Q. I think to make it perfectly clear, if a person requires a mortgage so that he can purchase a property, and the mortgagee instructs you to prepare the mortgage, and you realise that the vendor of the property is represented by a different firm of solicitors, and you realise that the mortgagor is represented in the purchase by the vendor's solicitors, in that kind of situation, is it correct to say that you would not have any personal contact with the mortgagor, but such enquiries that you would want to make of the mortgage and conveyance would be done by you to his solicitor?

A. I agree.

Q. And in that kind of situation you would consider yourself . . . you would consider him to be somebody else's client and therefore you should not have any personal contact with him?

A. I agree.

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- Q. And in that kind of situation the mortgage instrument would be witnessed by his own solicitor and not by you?
- A. I agree.
- Q. And you would send the mortgage instrument to the solicitor in the conveyance to approve it?
- A. You mean the solicitor for the vendor and the mortgagor? Yes.
- Q. I would want to show you a document. It is to be found in volume 2 at page 43. It is a copy of the 5th defendant's bill of costs.

MR. PRICE: I happen to be able to see that Mr. Cheung is not looking at the same document as my friend has opened. 10

MR. TANG: It's 43.

MR. PRICE: It has been re-numbered 43B he should be looking at.

MR. TANG: I see. Sorry. It has been re-numbered. Mine retains the old number.

MR. PRICE: There was originally only one 43 and it is the one my friend has opened, but the one Mr. Cheung is looking at is the one that has been inserted after. I don't know which way round it should be.

- Q. What you should do is to look at the bill of costs with the heading "Edward Wong Finance Company Limited" and then underneath it in brackets "Payable by Bovill Investments Limited." Has your Lordship got it? Is it page 43 for your Lordship? 20

COURT: 43B.

- Q. Now you see that this is the 5th defendant's file copy, and the heading is "Edward Wong Finance Company Limited" and in brackets "Payable by Bovill Investments Limited". What can you tell my Lord about that, your understanding of that?

A. Well, the bill is addressed to Edward Wong Finance Company Limited as the mortgagee but payable by Bovill Investments Limited as the mortgagor.

Q. Is that how you would head a bill to?

A. Well, I would do it differently. I would address my bill just to Bovill.

Q. But is there, according to you, any significance in this way of addressing the bill?

A. Quite frankly, I don't see any significance. 30

Q. One point I have missed, I'm afraid, on the question of representation. If you, for any reason, notwithstanding the fact that the mortgagee and the mortgagor came up to see you and that they jointly gave you instructions, you decide not to act for the mortgagor, would you then tell him that you will not act for him?

A. I would, definitely, yes.

Q. You would not, as it were, keep silent and continue to do work as if you were also acting for him?

A. No, by no means.

Q. If you are not acting for . . . if you for any reason do not wish to act for the mortgagor and if the mortgagor is, to your knowledge, unrepresented and if documents have to be executed by the mortgagor, what would you do? What would 40

- you say to him?
- A. I would tell him to go and look for his own solicitor.
- Q. Would you say to him, "Don't accept anything from me. You should be guided by your own solicitor or guided by your own judgment"?
- A. Yes, I would.
- Q. In that kind of situation, would you witness his execution of the document?
- A. I would not.
- Q. You would require it to be witnessed by somebody else?
- A. Yes, I would. 10
- Q. In that kind of situation, would you be, as it were, dealing at arm's length with him?
- A. Yes, I would.
- Q. If you in that kind of situation have to make any enquiries of him, what would you do?
- A. I would do it through his solicitor.
- Q. But if he has no solicitor, what would you do?
- A. If he is unrepresented, I would write to him.
- Q. Would you ask him to come up to your office and make enquiries of him?
- A. Once I have decided not to act for him, I wouldn't want him to come to my office any more. 20
- Q. You would do everything formally, as it were, so if you want to make enquiries of him, you would write to him?
- A. Yes, very formally.
- Q. Again, such a person, if he had to execute a document in English and he does not read English, would you interpret the document to him or would you ask him to get somebody else to interpret it to him?
- A. On the assumption I am not acting for him?
- Q. On the assumption that you are not acting for him and he is unrepresented.
- A. I wouldn't. I wouldn't interpret the contents of the documents to him nor would I ask anybody in my office to do that. 30
- Q. Would you say to him, "You are unrepresented. It would be in your best interest to consult a lawyer but if you would not do so, I cannot force you to, but you had better take this document away, study them carefully and after you have understood them, sign it, have your signature witnessed and return it to me"?
- A. In theory, yes, but in practice it doesn't work.
- Q. In practice, what would you do?
- A. In practice, I would insist that he be represented, because even if he understands the document and even if he signs the document in the presence of a witness, I would not accept the mortgage as having been duly executed and attested, because although there is no legal requirement for a mortgagor's signature to be attested by a solicitor, it is the invariable practice in Hong Kong, at least in the urban areas, that mortgages are. . . sorry, that the execution of mortgages is attested by a solicitor. 40
- Q. In non-urban area, of course, one uses a statutory form and it is executed before a Land Officer?
- A. That's right, and therefore without legal representation it is impossible, in practice, to have the mortgage completed.

- Q. Just one matter which is unrelated to the question of conveyancing or execution of documents. You mentioned that Danny Yiu had the reputation of a gambler in a big way.
- A. Yes.
- Q. Do you mean that he had a reputation of gambling beyond, as it were, his apparent means?
- A. I would say so, yes.
- Q. Because "big way" may mean 5 pounds for somebody and 500 pounds for somebody else. 10
- A. By 'in a big way', I mean thousands and thousands of dollars.
- Q. Now you said when you insist on a formal completion, it is inevitable that the other side will not like it.
- A. Right.
- Q. And does it mean that if you were to insist it, vis-a-vis a certain firm, it is likely that he would insist it if the tables were turned?
- A. Yes, I should think so.
- Q. Thank you, Mr. Cheung.

XXN. BY MR. PRICE:

- Q. When you were answering questions about what I would call 'Hong Kong completion practice' yesterday, Mr. Cheung, you said this that it is very . . . you were asked if it was very frequent in Hong Kong for the purchaser's money in a transaction to be sent to the vendor's solicitor against that solicitor's undertaking to deliver deeds. 20
- A. That's correct, yes. I said that.
- Q. That is the heart of the practice, isn't it?
- A. Yes.
- Q. Delivery of your client's money to the solicitor acting for the other party against an undertaking to produce the completed documentation in due course.
- A. That's the normal practice, yes. 30
- Q. And that contrasts with what has been in England – can I put this to you – the traditional practice under which completion when formally done involves the delivery of money and in exchange for the completed documentation.
- A. Yes, I agree.
- Q. So when we talk about . . . when you speak about insisting on formal completion, what you are speaking about is insisting on an occasion at which in one direction money, in one hand money is handed over and in the other hand documents are taken back.
- A. That's correct.
- Q. And for this purpose, the practice is not one which . . . When we talk about this practice, we are not simply talking about the completion of sales, we are also talking about the completion of mortgages. Again, in the completion of a mortgage, the traditional English style completion would involve handing over the money lent and taking back the security, if you are acting for the mortgagee; whereas the Hong Kong practice deals with that by sending your client mortgagee's money to the other party in exchange for the undertaking . . . I am sorry, to the other party's solicitor in exchange for that solicitor's undertaking to produce the completed 40

- documentation.
- A. That's correct.
- Q. Now I think we have got the practice, to my satisfaction at least, clear. And you said that you thought that you would say that the frequency of the Hong Kong practice as distinct from English style completion is 99 cases out of a hundred. By that I assume you meant to indicate to the judge, would this be right, that it is in a very tiny proportion of cases indeed that the Hong Kong practice is not observed?
- A. I agree, yes, a very tiny proportion. 10
- Q. Suppose I were to suggest that the proportion, the frequency is just as fairly . . . perhaps is more fairly represented if you say 999 cases out of a thousand, would that be in some solicitors' experience in Hong Kong a reasonable description of the frequency?
- A. If you took the total number of transactions in Hong Kong as a whole, I would agree, but if you took some solicitors' firm as a guide, then it could be more than that. It could be more than 0.1%, but if you took all the conveyancing transactions as a whole, I am inclined to agree, because in Hong Kong most of the transactions relate to the multi-storey buildings which involve only one firm of solicitors. In other words, in a multi-storey building consisting of, say, 1,000 units, normally it is one firm of solicitors who would act for both the vendor and the purchasers. 20
- Q. Now it may or may not be necessary for me in due course to call a witness about the Hong Kong practice, because it is clear that there is very little between you and my intended witness Mr. C.H. Wong. Would he be known to you?
- A. Yes.
- Q. If I call him, he will say that he can . . . so far as he is concerned, in his firm, the number of occasions on which there has been an English style completion can be counted, in his experience, on the fingers of one hand. How many times in your experience has the formal completion English style been adopted? I am not asking for an exact figure, just give an impression. 30
- A. Less than a dozen.
- Q. Less than a dozen and you have been in practice since 1957?
- A. I have been practising on my own since 1960.
- Q. Less than a dozen in 20 years?
- A. Yes.
- Q. Now in telling his Lordship about the circumstances, the very rare circumstances in which the Hong Kong practice is not observed, you referred to what I think you called a black list or rather a white list. I think if I have your words exactly, you were . . . you started by referring to a black list and changed to refer to a white list. Now do you mean you have in your firm, Mr. Cheung, an actual list containing many names of the 740 solicitors now in practice in Hong Kong that you regard as your white list? 40
- A. No, I don't mean that.
- Q. What do you mean by your white list? Is it something in your mind or on paper?
- A. It is a mental list.
- Q. Yes, it's a mental list. I think it is important to understand that. It is a mental list, yes. I wonder if there is really a difference in substance between your first reference to a black list and your second reference to a white list, your corrected reference to a white list. Isn't it more likely, having regard to the number, the tiny number

- of transactions in which an English style completion has been insisted on, that it is only if the name of a particular solicitor acting for the other side actually raises a question-mark that you are alerted? Do you follow? That would be a black list, I suggest.
- A. First of all, I did not refer to a black list. I think it's counsel who referred to a black list. It doesn't really matter one way or the other. By 'a white list', I mean a mental list consisting of all the solicitors' firms minus those whom I don't trust.
- Q. So I think that the minused quantity really represents the equivalent of a black list? 10
- A. Yes.
- Q. Now is that minused quantity itself divisible into those you certainly don't trust and those you might perhaps make some sort of enquiry about before having a Hong Kong completion with them?
- A. You could say there could be some grey areas in the black list, and in some cases I might not insist on formal completion if the amount involved is not substantial.
- Q. Now let me ask you this because . . . I remind you if you need reminding, when asking this question, that I am addressing it to the president, the chairman, is it, of the Law Society.
- A. The president. 20
- Q. Are you telling his Lordship that it is or ought to be the practice of every solicitor in Hong Kong, in your view, to keep such a mental black list discriminating between his fellow members of the Law Society appearing in the law list as practitioners of the law?
- A. I don't really think it is for me to answer this question, my Lord, because whether or not you choose to keep a white list or a black list is entirely up to you. It is really for your own protection and for your own interests, but I would have thought that a prudent solicitor would keep such a list in the context of Hong Kong today.
- Q. If somebody was on the mental black list, a person with whom that tiny percentage, tiny proportion of transactions would not follow the Hong Kong style completion, would your black-listing of him extend to other things than Hong Kong style completion? 30
- A. Would you please elaborate on what you mean by 'other things'?
- Q. Yes. You see there are a good many circumstances in which the integrity of a fellow practitioner in practice is relied on in the ordinary transaction of legal business. Let me give you an example.
- A. Please.
- Q. It is the case, isn't it, that at completion of a purchase where there is a prior mortgage, the preparation for completion will involve the re-assignment of the property from the prior mortgagee, and so that the documents, the other documents for completion can be prepared, it would be normal for the prior mortgagee's solicitor to release the title documents to the vendor's solicitor to enable the matter to proceed to completion of the re-assignment of the old mortgage and the completion of the new purchase, that involves a degree of reliance on the vendor's solicitor. 40
- A. Yes, I agree.
- Q. And would this be right, certainly it is correct, according to cases that we learned about as law students, that the possession of title documents at any given moment is capable of misuse by a dishonest or untrustworthy person, would that be right?

- A. Yes.
- Q. Now, if a firm of solicitors appears on your black list, would I be right in supposing that if you were acting for the prior mortgagee, you would not release to him the title documents in preparation for a completion of the kind I mentioned, you would release to him only photocopies.
- A. No, I would not agree.
- Q. You wouldn't agree?
- A. No, I wouldn't agree.
- Q. I see. Why is that then?
- A. Because with a mortgage registered in the Land Office, my client's interests is secured, and by releasing the title deeds and documents to the vendor's solicitors, less the mortgage deed, mind you, less the mortgage deed, there is nothing one can do about the title deeds. If you want to defraud, you cannot use the title deeds to defraud my client, anyway.
- Q. Not to defraud your client. Now you see the English style of completion is one which takes account of this, that a mortgagee may lose his priority by carelessness in the retention of possession of the title documents. Perhaps you will remember that there are cases in the textbooks which we learned as students which revolved around that. Do you remember that?
- A. I have learned about this in my student days, but I must confess I have not practised in the U.K., and so far as the Hong Kong practice is concerned, once a deed of mortgage is registered in the Land Office, that takes priority to the possession of the title deeds, and therefore there is no harm in releasing the title deeds to the vendor's solicitors. As I said, it is the normal practice for me as the mortgagee's solicitor to keep the mortgage deed, because I need that to prepare the re-assignment.
- Q. Yes, I follow that. You would hand over the title deeds to the prior mortgagor, the vendor's solicitor, and you wouldn't, even if he was on the black list, regard it as a precaution that you would wisely take to send him photocopies only?
- A. I wouldn't do that, not as the mortgagee's solicitor.
- Q. If you were acting for a purchaser in connection with a proposed contract of purchase and the vendor was a person . . . one of those strange persons, professional man in practice in Hong Kong but on your black list, your mental black list, would you advise your purchaser, your client, not to pay the deposit to the vendor's solicitor?
- A. If I was acting for the purchaser alone, I wouldn't advise my client not to pay the money to the vendor's solicitor because I am not acting for the vendor.
- Q. Now there are two characters in which the vendor's solicitor might receive, the purchase money, the deposit. . . He was receiving it as agent for the vendor, then the payment would be absolutely safe, but suppose the contract provided or the contract about to be signed provided, as is quite usual, that the deposit should be paid to the vendor's solicitor as stakeholder, would you advise your . . . and suppose that that vendor solicitor appears on your mental black list, would you advise your client not to pay to the vendor solicitor, the stakeholder?
- A. I have not come across a situation like this before, so I have to visualize myself in such a situation and what I should do, and therefore I am taking time to think.
- Q. I quite understand. You are being prompted on my right to suggest that you consult counsel and that would be very good for the other branch of the profession. It is most improper intervention on my part, but can I suggest to you, Mr. Cheung,

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- that you wouldn't, of course you wouldn't, tender any such advice to your client, because this would be such a far departure from all ordinary practice that it wouldn't enter your head to suggest that, would it?
- A. It all depends on the reputation of the vendor's solicitor. If he is really black on my black list, then I would take the unusual precaution of warning my client of the risk in sending the money over to the vendor's solicitor, telling him exactly what I think, and if he still insists that I should do so, i.e. should send over the money, then I would do it, but . . .
- Q. And you would tender that advice to your client on the basis of rumour about the man on your . . . the professional man in practice on your black list? 10
- A. As I said, I would only do so in a very extreme case.
- Q. Very extreme case?
- A. Yes.
- Q. I see. Of course if the solicitor in question absconded the next day, the deposit money, although held by him as stakeholder, would in fact be lost, wouldn't it?
- A. Yes.
- Q. You see in the practice of every profession, there are risks of things going wrong, if you look for risks, aren't there?
- A. Yes, I agree. 20
- Q. And that is true of the Hong Kong completion and of other transactions in the course of legal business, isn't it?
- A. Yes, I agree entirely.

MR. PRICE: I don't know whether this is a moment at which your Lordship would think it appropriate to have a short adjournment.

COURT: Yes.

11.20 a.m. Court adjourns.

11.40 a.m. Court resumes. Appearances as before.

P.W. 2 – Edmund CHEUNG o.f.o.

XXN. BY MR. PRICE: Continues 30

- Q. Mr. Cheung, you told his Lordship yesterday that as far as you knew in January, 1976, Danny Yiu had a reputation of being a gambler in a big way, and you elaborated on that this morning in answer to a question from Mr. Robert Tang. Now as far as you knew, he had a reputation of being a gambler in a big way?
- A. Yes.
- Q. I suppose it is implicit in that statement, isn't it, that some of the 500 solicitors in practice in Hong Kong could have been totally unaware of that reputation?
- A. Yes. It is quite possible that some of our members didn't know of his reputation, but I would have thought that a majority of the solicitors at the time would know about it. 40
- Q. I see. Now you also told his Lordship that his practice was in conveyancing.
- A. Mainly.

- Q. Mainly in conveyancing, and that Hong Kong completion is the norm and English completion the very rare exception.
- A. I agree, yes.
- Q. It is a reasonable inference, isn't it, that a very considerable number of solicitors were not alerted in January, 1976 to anything that would cause them to put Danny Yiu on the black list if they kept one?
- A. It all depends on whether or not you knew about his reputation at the time.
- Q. That's a fair answer. And reputation is necessarily a matter of hearsay, is it not?
- A. I agree, yes. 10
- Q. And a professional man's reputation for integrity is something which is at the heart of his life, isn't it?
- A. Yes, it is, very much so, yes.
- Q. And something of which his profession collectively is and ought to be jealous.
- A. Yes.
- Q. It could be very unfair if a man got onto your black list on the basis of hearsay and rumour, couldn't it?
- A. Yes, I would agree to that.
- Q. I suppose there might come a time at which rumour was so prevalent that the official collective organization of solicitors would hear about it and take some steps about it, is that possible? 20
- A. What do you mean by 'official collective organization'?
- Q. The Law Society.
- A. You mean the council of the Law Society?
- Q. Yes.
- A. The council members were, I think, aware of this in their personal capacity, not in their official capacity as such, but there was not enough for us – by 'us' I mean the council – to take any official steps or action against Danny Yiu.
- Q. I see. Nothing like inviting Danny Yiu . . . There had been nothing like inviting Danny Yiu to meet members of the council? 30
- A. I would put it this way: Danny Yiu had not committed any professional misconduct that would warrant interference by the council.
- Q. In England, Mr. Cheung, if I may put a question which involves giving evidence, the Law Society is sometimes in the embarrassing position of being asked by a non-lawyer what solicitors are available for him to consult. The Law Society does not pick and choose. It sends a list of those . . . it sends an extract from the law list of those solicitors practising in the locality. Would the same practice, approximately, operate in Hong Kong if the officers of the Law Society received such an enquiry?
- A. We do exactly the same thing. Whenever we were asked to appoint or nominate a firm, we just send them a copy of our list of solicitors. 40
- Q. Solicitors in practice?
- A. Yes.
- Q. And that, of course, is on the footing that so far as the profession is concerned, every solicitor is by being in practice a man of integrity and reasonable competence in his profession, is that not right?
- A. He is supposed to be so, yes.
- Q. So that if in, say, December, 1975 somebody had made such an enquiry of the Law Society, it was on the cards that that person might have chosen Danny Yiu from

- a list sent to him as a result of that enquiry?
- A. I would agree, yes.
- Q. The truth – I am not using the word offensively – but the truth is this, isn't it, that in the organization of any profession, it is exceedingly difficult to propose any profession, it is exceedingly difficult to propose any discrimination between or against members on the basis of their integrity, honesty or competence?
- A. I agree.
- Q. You were asked about a number of instances in which particular solicitors had failed to perform in accordance with the integrity which the profession and the public require, weren't you? Now can I take them in turn and quite briefly? In 1961 a solicitor, Christopher Carr, who had used client's money, was convicted and imprisoned and struck off the roll, operating a one-man firm having previously been with a very well-known firm of solicitors. He started his own practice and he pleaded guilty. This is a slightly dangerous question for me to ask you, but I don't want the point to depend wholly on inference. You didn't say that his misuse of client's money caused any particular Hong Kong completion to go wrong. Do you follow what I am saying? 10
- A. I follow what you mean.
- Q. Am I right in inferring that so far as your evidence to the court is concerned, that was not an occasion on which damage flowed to anybody from the adoption of Hong Kong style completion of a conveyancing transaction? 20
- A. No. It did not flow from following the Hong Kong style completion of transaction. I agree entirely with you.
- Q. So that that is merely an indication . . . so that the moral that one would draw from that would be that solicitors, like other men, can on occasion yield to the temptation to be dishonest.
- A. Yes, I agree.
- Q. And anyone would, if I may so put it, that would be obvious to anybody without such an awful warning, wouldn't it, that a solicitor might yield to temptation and prove to be dishonest? 30
- A. Yes.
- Q. It is implicit in human nature whether the man in question is a dustman or a solicitor, isn't it, that dishonesty may overtake him at some stage, if that is in his character?
- A. Yes.
- Q. Let us take Mr. Reginald Siu. I think I will ignore the event you referred to in the late 1960s, because I am right in assuming, am I not, that that was not public knowledge and was not even officially known to the Law Society?
- A. You are correct. 40
- Q. So that we are only concerned with the event you spoke of in '73 and 4. He used client's money about 1973, disappeared, presumably, you said, to Taiwan. I am not quarrelling with 'presumably' and he was struck off the roll in January, 1974 and returned to Hong Kong one or two years ago.
- A. Yes.
- Q. Now in his absconding, was any Hong Kong completion of a conveyancing transaction adversely affected, do you know?
- A. His absconding was certainly connected with conveyancing transactions, but I'm afraid I don't know whether or not it relates to the Hong Kong style completion.

- Q. You didn't give evidence of it as such in chief and therefore I assume that you are not saying that it certainly did. I mean you didn't actually say it was in connection with a conveyancing transaction. Let me take that up. If I am the proposing purchaser of property and I go to solicitors to act for me and I put them in funds for completion of the purchase, and instead of completing . . . instead of doing anything more, my solicitors abscond to Taiwan, run off to Taiwan with my money, that is connected with a conveyancing transaction but has nothing whatever to do with Hong Kong style completion or it going wrong, has it? That could happen in England as well as in Hong Kong? 10
- A. Yes.
- Q. So, at any rate, you don't cite the instance of Reginald Siu as a known occasion when Hong Kong style completion – the adoption of that practice caused damage?
- A. No, I don't.
- Q. Your third instance was MAK Chung-lit, the Scottish Chinese solicitor, and he, you said, made use of client's money, made good the deficit before being discovered and he was suspended from practice for 5 years. May I ask you this before I come to the important question: He has presumably returned to practice now?
- A. He has, yes.
- Q. Does he appear in your black list? I hope it won't be reported, this particular question and answer. 20
- A. Do I have to answer this question?
- Q. Perhaps you oughtn't to. I mean does he now practise? Let me ask you this.
- A. Yes, he is in practice.
- Q. And in conveyancing matters?
- A. I am not quite sure of that because he has resumed practice for only a short time.
- Q. He has only resumed recently?
- A. Yes.
- Q. What is clear, isn't it, that since his name now appears in the law list, if a hypothetical member of the public from an appropriate district wrote in and said, "Give me names of solicitors," his name might appear in the list of solicitors the Law Society sent? 30
- A. His name will appear.

- Q. The presumption of a member of the public being that he is now fully restored to that degree of integrity and trust which a professional man ought to command.
- A. Yes.
- Q. Now, are you able to say whether his misuse of client's money involved some adverse damage that would not have happened if an English style completion of a conveyancing transaction had been adopted?
- A. His misuse of client's funds had nothing whatsoever to do with the method of completion.
- Q. Can I ask you this? Again from my – if my clients were not concerned that this case should resolve the important professional question of the propriety of Hong Kong procedure, I would not ask this dangerous question, but I do so because my clients are anxious that Hong Kong procedure shall be tested in this case. Before Danny YIU absconded, was there any instance within your knowledge where the adoption of Hong Kong style completion of a conveyancing transaction had resulted in actual damage? 10
- A. Not that I know of, no. Not that I know of.
- Q. Can I follow that up a little bit? To what extent then is your description of the white list/black list in your practice – to what extent does that relate to something which in your practice and in your mind has had any emphasis at all only since Danny YIU's departure at the end of January or early in February, 1976? 20
- A. Could you please rephrase the question?
- Q. Yes. To what extent has your evidence to his Lordship about your reservations – the white list, the black list – about Hong Kong style completions of conveyancing transactions, to what extent has that had any emphasis at all in your mind and in your practice only since and as a result of Danny YIU's disappearance at the end of February, 1976 – end of January or early February, 1976?
- A. Well, since Danny YIU's absconding, I certainly have been more alert than before with regard to my professional grounds in conveyancing transactions. Those on my black list I would certainly make enquiries before sending money over to them upon a mere undertaking on paper, i.e., the Hong Kong style completion. And for those whom I cannot trust and in whom there is a real risk of losing my client's money I would insist on formal completion. 30
- Q. Have you in fact insisted on formal completions to a greater extent since January, 1976 than previously?
- A. Well, fortunately or unfortunately I have not very many dealings with those on my black list either before or since the Danny YIU episode.
- Q. You have not had many dealings with those on your black list.
- A. Either before or since.
- Q. So the answer to my question is, is it, that though you have been more alert, in fact the number of occasions has not been any greater when you have refused to adopt the Hong Kong style completion? 40
- A. As far as I am concerned, yes.
- Q. Let's be quite clear about the scale of the penalty for a solicitor for breaking his undertaking and his public trust and running off with the money in a Hong Kong style completion. There is really no chance, is there, of that man – he has taken money, he has broken his undertaking as a solicitor and as an officer of the court – there is really no chance, is there, of his resuming practice ever, would you say?
- A. Yes.

- Q. Let me put it slightly differently. If there is any chance, it must be a very tiny chance, mustn't it?
- A. Yes, I agree. His chances are really very, very slim.
- Q. He hasn't merely taken money, he has broken his undertaking as a solicitor.
- A. Yes, very, very slim indeed.
- Q. So that what we are -- when we are talking about risk involved in a Hong Kong style completion, if there is risk, it is risk that the solicitor to the vendor receiving the money against undertakings to produce the completed documents will put the whole of his professional future, not just at risk, but into the dust bin for the sake of some money. 10
- A. I agree, yes.
- Q. I think you said something to his Lordship yesterday about the convenience and speed of conveyancing using the Hong Kong style of completion, and in your evidence you attributed the advantages of this style of completion as advantages for the lawyers concerned. Do you remember that?
- A. Yes, I do.
- Q. Well, now, can I ask you to think a little more about that? It is clear, isn't it, that time is saved by the adoption of this procedure?
- A. Yes, definitely, yes. 20
- Q. And man power?
- A. Man power too.
- Q. Time and man power. And if time and man power are saved, then -- let's put it the other way round. If more time and more man power had to be utilized in completing conveyancing transactions by adopting a more stilted performance and procedure, the cost would go up, wouldn't it? I'm not talking about the charges to clients for the moment -- the cost of dealing with any conveyancing transaction would go up.
- A. It certainly would, yes.
- Q. And although it doesn't necessarily follow that every increase in the cost of transactions is passed on to the public, the chances are, are they not, that as any important increase in costs, (it) will in the end sooner or later result in higher charges to the public? 30
- A. It will, yes.
- Q. Yes, so that efficient cost-saving procedures are in the interest of the public, and it is in the public interest that they should be adopted by the profession.
- A. I agree entirely.
- Q. I don't know whether I can ask you this. If it's not within your knowledge, you must -- it's nothing you can answer to. It is within your knowledge, from reading professional literature, that even in England procedures have tended recently in relation to completion by post to raise exactly the same sort of questioning that operates in this case here in Hong Kong, in relation to the long-adopted Hong Kong style completion? 40
- A. I am aware of this.
- Q. You are aware of that. So that the pressures of modern commerce and modern life not surprisingly command a speeding up of procedures and an easing of awkwardnesses in the general interest of everyone, would that be right?
- A. I agree, yes, and in this respect Hong Kong is well ahead of U.K.
- Q. Yes, in this respect the Hong Kong practice is well ahead of U.K. and has throughout

your working life been well ahead of U.K.

- A. Yes.
- Q. So would this be right? Would you accept this? Since you are here as an expert witness, I can ask this reasonably of you. In looking at text books which are related solely to English style procedure, you must in Hong Kong make whatever adjustments are necessary to relate it to the Hong Kong scene and procedures, would that be right?
- A. I'm afraid I don't quite follow your point.
- Q. When you look at a text book which describes English conveyancing procedure, you must say to yourself, for example, when a conveyancing text book describes English style completion – you say to yourself automatically, "But that doesn't happen in Hong Kong," don't you? 10
- A. Well, I wouldn't say that doesn't happen in Hong Kong, but that would only happen in Hong Kong in exceptional cases.
- Q. In the tiny number of certain cases that you've described, yes. So that where the English text books describe what is normal there, you would have to re-write the text book so far as it describes what is normal procedure in Hong Kong.
- A. Well, what the text book describes as normal practice in the U.K. does not necessarily mean to say it's normal in Hong Kong, I would say this. 20
- Q. Can I ask you to look at that diagram that appears somewhere – P.1? Diagram P.1? Now, take the position in the last few days of January, 1976, as it was, in this case. By the last few days I mean in the run-up to the 27th of January and at the 27th of January. If the Hong Kong style completion was not to be adopted, but the stilted procedure of insisting on the exchange of documents for money was to be insisted on, how exactly would that have been achieved? I ask you that first and, secondly, how long would it have taken to arrange it?
- A. First of all, if formal completion was to be adopted in this case, I would have ascertained from the vendor's solicitors as to the exact amount of principal and interest payable to the vacating mortgagee, i.e. Hang Seng Bank. 30
- Q. Now, let's assume for this purpose that the figure is, since the facilities go up to \$4,400,000 – let's assume that the actual amount owing when you make the enquiry turns out to be more than the purchase price of the ground floor. Now, making that assumption, how do you say the matter would then be completed?
- A. Well, your assumption, Mr. Price, has made the matter a bit more complicated than I was going to say. But dealing with your assumption, I would have made enquiries from the vendor's solicitors as to how the balance of the principal and interest would be met and if a satisfactory reply was forthcoming, then I would make out a cheque for \$1,355,000 in favour of Hang Seng Bank Ltd, go over to Danny YIU's office on the day of completion, hand this cheque over to Danny YIU or the bank's solicitors if they are represented and tell them, "Here's a cheque representing part of the principal and interest payable to the bank. You make up the balance due to the bank." 40
- Q. You, Danny YIU, make up the balance due to the bank.
- A. Bearing in mind that I have had already a satisfactory reply as to how the balance of the principal and interest was to be paid off.
- Q. Yes.
- A. "And let me have the executed assignment and the memorial and all the other title deeds and documents, and also please let me have the re-assignment duly

executed by the bank and the signed memorial in due course.”

- Q. In due course.
- A. Yes, in due course, because the re-assignment has not been executed by the bank at that stage.
- Q. Let me now – although it interrupts my question, can I take that point up? The re-assignment would not have been executed by the bank at that stage.
- A. No.
- Q. Yes. Well, now, forgive me if my questioning now may need a little correction in order to accord with the local position in Hong Kong. The re-assignment that you speak of is a re-assignment of the legal estate from the bank to which it has been assigned, subject to a proviso for re-assignment, to the then mortgagor, HO Sau-ki. 10
- A. That's right. Either of the ground floor alone which is a partial re-assignment or the whole building.
- Q. Well, now, it follows, doesn't it, that at this completion which you are attending, that legal estate remains and will continue thereafter to remain for some time in the bank.
- A. That's correct.
- Q. It follows, does it not, that any new assignment from vendor to purchaser which you take on that occasion in return for handing over your purchase money is an assignment by somebody who, at the moment he executes it, does not have the legal estate vested in him? 20
- A. That's correct. The assignment was executed in escrow pending the execution of the re-assignment by the bank.
- Q. And when subsequently the re-assignment vests the legal estate bank in the vendor, it's only by some legal fiction or the operation of a stophole that it is immediately transmitted from him to the purchaser, would that be right?
- A. Yes, that's right.
- Q. Well, now, let me ask you this. From your understanding of English style completion, that is, not handing over money, that process you describe does not involve handing over money against documents which immediately transmit the legal estate to its appropriate destination. 30
- A. In this particular case I agree. On the date of completion you don't get the legal estate right away.
- Q. So that since the function of formal completion English style is to exchange money for truly completed transactions, what you describe is not an English style completion, is it?
- A. Well, partly – yes and no.
- Q. Yes and no.
- A. Yes and no. Partly it is formal completion but no because you don't get the re-assignment at the same time. 40
- Q. You see, those instructing me, those instructing me have it very strongly – have put it to me very strongly and I put it to you that true English style completion was virtually impossible to achieve in the circumstances that existed here.
- A. I agree entirely with you.
- Q. That answer is – I mean I don't want the importance of that answer not to be obvious to everybody, but it is important because it is suggested – it is suggested that as the debenture was executed in the present case by – in circumstances in

- which the company executing it did not have the legal estate actually vested in it.
- A. No, not at the time.
- Q. . . . that that was something which could have been – the matters could have been re-arranged so as to avoid that deficiency. Your answer suggests that deficiency would have remained for a period of time even after the completion that you propose you might have attended.
- A. On the basis of a formal completion as you suggest, I'm afraid that's the only thing that can be done, but I would not have done it that way.
- Q. No, I see. 10
- A. May I expand this?
- Q. Yes, do expand it.
- A. If I were the mortgagee's solicitor. . .
- Q. The new mortgagee's solicitor.
- A. The new mortgagee's solicitor – and if the vendor's solicitors were on my black list, then as I said I would have made enquiries either from the vendor's solicitor or the bank's solicitor as to the amount of principal and interest payable on redemption, and having ascertained this figure I would make out a cheque for the amount representing the balance – representing the principal and interest payable to the bank, the cheque being made payable to the bank, and send it over either to the vendor's solicitor or the bank's solicitor – it doesn't really matter which – against the bank's undertaking to send me the re-assignment in due course. 20
- Q. Now, the bank's undertaking or the bank solicitor's undertaking?
- A. The bank solicitor's undertaking, I beg your pardon. I meant the bank solicitor's undertaking and also against the vendor's solicitor's undertaking to send me the re-assignment – sorry, the assignment by the vendor, HO Sau-ki and others, to the purchaser duly executed.
- Q. Now, can I. . . .
- A. May I. . . .
- Q. Oh, yes, do continue, please. 30
- A. On the other hand, if the \$1,355,000 in my hands was not sufficient to pay off the bank, then I would enquire either from the vendor's solicitors or the bank's solicitors as to how the balance was to be made up, and if I had a satisfactory answer, then I would do as I have just described.
- Q. Yes. Well, now, of course the premise for all that is that the vendor's solicitor is on your black list.
- A. Yes.
- Q. And not merely on your black list, but that if he's a man about whom you made enquiries, you're still unsatisfied about sending over the money to him, so he's on your black list still after you've caused some enquiries, I don't know what, to be made about him, you would ask your partners or people in your firm. 40
- A. Excuse me, I would like to add this. As I said yesterday, the fact that the mortgage money exceeded the purchase price of \$3,800,000 would also put me on enquiries.
- Q. I follow that. Now, it would put you on enquiries. You don't say it would put everybody on enquiries, do you?
- A. No, it would put me on enquiries.
- Q. It would put you on enquiries. Let us look at what you are describing. First of all, we are concerned with a proposed mortgage of part only of the mortgaged property, aren't we?

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Edmund
Cheung cross-
examination

- A. Yes, we are.
- Q. Which has been treated as one-fifth – an undivided one-fifth share of the building with the right to occupy the ground floor.
- A. Yes.
- Q. And the prior mortgage is of the whole.
- A. Yes.
- Q. Apart from some very special provision in the mortgage, Hang Seng Bank could not be required by HO Sau-ki to accept the release of part – one-fifth of the building and the ground floor from its mortgage without the whole of the mortgage debt being paid off, could it? 10
- A. Well, in the absence of express provision in the mortgage deed, Hang Seng Bank could not be required to do so, but the bank might agree to do so.
- Q. Yes. Well, if it was insisting on its strict position, it wouldn't.
- A. It wouldn't.
- Q. No, and let me ask you this. In your experience, are banks particularly willing to release part of a building from a mortgage in circumstances such as we have here?
- A. No reason why they are not.
- Q. No reason why they are not.
- A. In fact, it is for the benefit of both parties. 20
- Q. Then it would be more satisfactory from the bank, of course, if it was repaid wholly and a re-assignment of the whole to the vendor achieved, wouldn't it?
- A. Not necessarily.
- Q. Wouldn't it?
- A. No, not necessarily, because if the bank were to release the ground floor only and get a substantial amount or an adequate amount in part payment of the principal money, the bank really has nothing to lose.
- Q. Now, what was repayable to the bank as between the two parts of the building would not be of concern only to the bank, it would also be of concern on this picture, wouldn't it, to Kai Ming Investment who had agreed to purchase with CHAN the whole building and then had agreed to a split with CHAN, they taking the upper floors . . . 30
- A. Oh, yes.
- Q. . . . and CHAN taking the ground floors.
- A. It would also affect Kai Ming.
- Q. So it would also affect Kai Ming. So the difficulties of arranging completion other than Hong Kong style or in modified Hong Kong style include, don't they, co-ordinating arrangements with Kai Ming?
- A. If Kai Ming were made a party to the assignment, yes, but as the assignment stood and stands, Kai Ming was not made a party and, therefore, since Kai Ming was allotted the upper floors. . . 40
- Q. Yes.
- A. . . . they were not involved in the transaction or in the completion of the transaction.
- Q. That is quite right, but the amount of money required to pay off the bank would be coming from two sources: Bovill's mortgage would be of the ground floor and whoever was interested – CHAN or Lucky Time or Kai Ming – in the upper floors, wouldn't that be right?
- A. Oh, yes. If you are talking about redemption of the whole building, I agree

- entirely.
- Q. So we have no right on the part of the proposed mortgagor, the new purchaser of the ground floor, to require a partial release of the mortgage. We have no right on his part to require co-ordination with whoever was interested in respect of the upper floors, have we? No right I am talking about now.
- A. I agree.
- Q. And those represent, I suggest to you, very troublesome complications in the way of even modified Hong Kong style completion being adopted – modified. I mean you have agreed that English style completion is really not practical in its strict form. We are now talking about modifications such as you suggest. They could only be adopted by agreement with parties with whom there was no contractual right and upon whom there was no contractual obligation to agree, is that correct? 10
- A. By ‘modified Hong Kong style completion’, do you mean the sort of completion. . .
- Q. That you have described.
- A. . . I have just described?
- Q. Yes. It achieves less than the English style completion, but you are writing in some additional protections that the ordinary Hong Kong completion doesn’t provide.
- A. Let me put it this way. There is really no point in adopting the modified completion I have just described, because the money was going to be paid to the bank in any event. In other words, my cheque for \$1,350,000 was to be made payable to the bank in any event so that there is no point in arranging for a modified Hong Kong style completion. 20
- Q. Yes.
- A. So I’m afraid your question does not arise.
- Q. I see. Well, now, let’s look a little bit more closely into some aspects of this. In a case where property being purchased is subject to a prior mortgage, the right of the purchaser is to have that property assigned to him released from the prior mortgage.
- A. That’s correct.
- Q. And it is his vendor’s responsibility to obtain the release of the prior mortgage. 30
- A. That’s correct.
- Q. And unless the contract is expressed as being subject to or – subject to the prior mortgage, that obligation clearly rests upon the vendor.
- A. That is correct.
- Q. And so in answer to the inquiry that you might direct, might have directed, to the vendor’s solicitor, the vendor’s solicitor might properly, in accordance with the vendor’s obligations, say: “You can leave that to me. It is the vendor’s obligation to see that the prior mortgage is discharged. The vendor will see to that.” Is that not right? He could have said that?
- A. Yes. 40
- Q. And that would be wholly consistent with the contractual position.
- A. Yes, I agree.
- Q. Going a little further – if you had directed your inquiry as to the amount owing on the mortgage to Hang Seng Bank, the bank’s only possible answer would be, “That is a matter of confidence between us and our client, and we must apply to our client for that information.” Either, “We must have our client’s authority,” or “You must apply to our client for that information,” is that not right?
- A. Yes, it’s quite legitimate for the bank to do so.
- Q. Indeed, not merely legitimate, but it would be a breach of its duty as banker to its

client to provide any information without its client's authority to break the confidence between banker and customer, wouldn't it?

A. I wouldn't say it's a breach of confidence between banker and customer in a case of this nature, because when you are acting for a party to a transaction in which a bank is involved as a mortgagee, you are entitled to ask the bank or its solicitor as to the position of the mortgage, including the amount of principal and interest payable on redemption.

Q. Well, I think if I may put it this way. You cannot conceive that the bank's customer being involved in the transaction would not provide the necessary authority if there were any query. That's really what you are saying, isn't it, Mr. CHEUNG? 10

A. What I am saying is in Hong Kong if I were acting for a purchaser of a property which is under mortgage to a bank, I would write to the bank or its solicitor to inquire about the mortgage money and invariably the bank or its solicitor would reply to me giving me sufficient information about the mortgage.

Q. It would be perfectly proper, wouldn't it, to rely – in your view, perfectly proper to rely on the prior mortgage being cleared off in accordance with the contractual position between vendor and purchaser as the exclusive responsibility of the vendor.

A. Yes.

Q. Now, I want to ask you to look at the bundle, Volume 2. Could you have it opened first to page 28? This is a little out of order, but it won't be too illogical. Now, one of your observations – one of your observations about the transaction here was, I think, by a slip, a mistake. Here is Danny YIU writing to Johnson Stokes and Master in response to the request at page 23 for the title deeds, subject to usual undertaking – and he writes sending the following title deeds: Photocopy Lease, that's the head lease; Attested Copy Assignment, that's the assignment to HO Sau-ki, I think; and then Attested Copy Certificate of Incorporation on Change of Names; that's all anterior. You notice that these are only attested copies. Now Attested Copy Agreement for Sale and Purchase of the 17th of December, that's the agreement for sale of the entire building to Lucky Time and the Sub-Sale, Lucky Time to Kai Ming and CHAN; and then Attested Copy Agreement in Chinese Writing dated the 5th of January, that's the division four-fifth/one-fifth between Kai Ming and CHAN; and then Copy Deed of Mutual Covenant and Copy Assignment from HO Sau-ki. Do you see that? 20 30

A. Yes.

Q. And if you remember the file of title documents, Volume 3 – if you can manage to pick up two volumes at the same time – the assignment as drafted is at page 66 in Volume 3, that's the assignment of the one undivided – and the Deed of Mutual Covenant as drafted, it's a draft, is that at page 72.

A. Yes. 40

Q. So what Danny YIU was sending round to the mortgagee's solicitors included Draft Assignment of the ground floor, part only of the whole property, and a Copy Draft Deed of Mutual Covenant.

A. Yes.

Q. So were you – referring to a later letter commenting on the absence of reference to a Deed of Mutual Covenant, I think you were making a little bit of – a slip.

MR. CHEUNG: My question was, "There is no undertaking. . ." (unfinished)

MR. PRICE: No undertaking, we'll come to that.

Q. But it's part of the picture here that the draft documents which Danny YIU sent over included both Assignment and appropriate Deed of Mutual Covenant.

A. That's correct. What I said yesterday was, in answer to counsel, there was no mention of a Deed of Mutual Covenant in the undertaking dated 27th January, 1976.

Q. Well, now, can we look at that? I think you looked at it at page 34 of Volume 2. In fact – and I don't want to quarrel with you, but in fact the Deed of Mutual Covenant is referred to on page 35 in the paragraph numbered (2) of the undertaking – the Assignment, you see, third line, and the Deed of Mutual Covenant. And bearing in mind that we are – this is a letter following the documents that we have seen sent over, it is clear, I think, that the undertaking there referred to did relate to the proposed Deed of Mutual Covenant.

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A. Yes, I agree with you.

Q. I think. . .

A. I agree entirely with you.

Q. This is a point of very minor importance, but I wouldn't like it to . . .

A. Yes, I stand corrected.

Q. . . . to remain as a point of disagreement.

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A. I stand corrected. You are absolutely correct.

COURT: Volume . . .

MR. PRICE: Volume 2 at page 35. Did I confuse your Lordship? I'm sorry.

Q. It may be, of course, that my friend's question had rather led you towards this, I'm not sure. But anyhow that point is out of the way now. Now, that point being out of the way, let me as we pass this little point ask you this. If you pause there, if you pause there and ask: as between vendor and purchaser, whose solicitor is responsible for drafting the assignment, what is your answer?

A. The purchaser's solicitor.

Q. And whose responsibility to provide the Deed of Mutual Covenant?

30

A. The vendor's solicitor.

Q. Yes. So here is Danny YIU providing draft documents which appear to indicate that he is doing something for the vendor and something for the purchaser, would that be right?

COURT: Sorry, you asked who's responsible to draft the Deed of Assignment.

MR. PRICE: The Deed of Assignment, the purchaser's solicitor. Whose responsibility to draft the Deed of Mutual Covenant, the vendor's solicitor. My Lord, I did tell my friends that I rather hoped that I would be through with my questions to Mr. CHEUNG by lunchtime, but it is quite plain that I shall take quite a considerable further time, and if this would be a convenient moment to adjourn, we might – I'm sorry that Mr. CHEUNG is being kept longer than he hoped to.

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COURT: 2.30.

12.58 p.m. Court adjourns

2.38 p.m. Court resumes

Appearances as before.

P.W. 2 – Edmund CHEUNG o.f.o.

XXN BY MR. PRICE (continues)

- Q. Mr. CHEUNG, we had been looking at Volume 2 and had cleared up, I think, the point about there being a Deed of Mutual Covenant and there not being, and we had established that the documents that came from Mr. Danny YIU with the letter of the 23rd of January at page 28 included a Draft Assignment which you would expect to have been drafted by the purchaser's solicitor and the Draft Deed of Mutual Covenant which you would expect to have been drafted by the vendor's solicitor. Now, I'm afraid this would be a little bit hypothetical, but could you have Volume 3 – and if you can keep in mind P.1. Now, let's assume for the moment – let us assume that Mr. SHUM who comes to see you with your client, the proposed mortgagee Mr. WONG – I'm putting you in the position of the solicitor. Let us assume that Mr. SHUM is coming to see you and that it quickly becomes apparent that you are going to act for him, right, not just in relation to the mortgage but in relation to the purchase, the completion of the purchase of the property, right? Would you expect to take from him or receive from him the original of the purchase document under which he was immediately interested? His purchase document – would you expect to receive from him the original purchase contract or document by which he is the purchaser? 10
- A. May I clarify a point with you first? Is Mr. SHUM the purchaser?
- Q. Mr. SHUM is the person so far the purchaser before the shelf company is purchased. He is the director of Po Fung Enterprises which appears as the purchaser in the Chinese document. You see, he is the director of Po Fung and you may remember that Mr. CHAN had issued Chinese receipts for 100,000 pounds received from Po Fung for the purchase of the ground floor and a further 85,000 pounds. . . 20
- A. Dollars.
- Q. . . . making a total of 185,000 deposit.
- A. Dollars.
- Q. Dollars, I'm constantly saying pounds. Let me ask you to open Volume 2 at page 21. Unlike me, I assume you can read page 21 without a translation. I'm sorry, Volume 3, page 21 which you have already got there. Knowing – in the hypothetical position I am putting – that you are going to act for Mr. SHUM or his company as purchaser of the ground floor of the property, would you expect to take from him the original of this receipt, this being his document – his so far document of title as purchaser? 30
- A. Yes, I would.
- Q. You would expect, wouldn't you?
- A. Yes. 40

Q. And you wouldn't expect to have left with you only a photocopy, would you?

A. I would, provided my client, i.e. the purchaser, has the original.

Q. Now, if I turn back in this volume -- the anterior title depended on the Contract for Sale and Purchase by Lucky Time which starts at page 11 and the Contract of Sub-Sale which starts at page 17, that's the sub-sale to Kai Ming and CHAN. Now, if you were going to act for Mr. SHUM or his company as purchaser, and Mr. SHUM had copies of those two contracts, would you expect to receive those copies from him when he instructed you?

A. I would, yes.

Q. So that it would be a little bit surprising that your receipt of those documents is only subsequently and in the circumstances of this case you get copies sent with the letter of 23rd January, 1978 from Danny YIU. That would be surprising, wouldn't it, if you were going to act. . .

A. 1976.

Q. Yes. We can see that the point in time at which Johnson Stokes and Master in fact received copies of those two antecedent agreements was when they received -- at the same time as they received from Danny YIU the drafted Assignment and the drafted Deed of Mutual Covenant with the letter of 23rd January. Now, would that not be consistent with your putting yourself in the position of Miss LEUNG, your acting only for the proposed mortgagee and not for Mr. SHUM or his company as purchaser?

MR. CHEUNG: Sorry, my friend's question really has been so long, I don't know what his assumption. . .

MR. PRICE: Very well, I'll start again.

COURT: Could you break it down?

MR. PRICE: I'll break it down.

Q. Would you put yourself in Miss LEUNG's position?

A. Sorry, who is Miss LEUNG?

Q. Miss LEUNG is the Johnson Stokes and Master solicitor who is actually dealing with the matter.

A. Yes.

Q. When she received the letter of 23rd January, 1976, she received with it and saw for the first time attested copies supplied by Danny YIU of the original Contract of Purchase and the original Contract of Sub-Purchase.

A. Yes.

Q. With that same letter she received Danny YIU's drafts of the Assignment and of the Deed of Mutual Covenant.

A. Yes.

Q. Isn't that receipt at the stage of the important copy contracts, isn't that really and truly consistent with Miss LEUNG and her firm Johnson Stokes and Master acting in the purchase, acting in respect of the mortgagee but not acting for the purchaser on the purchase?

A. The purchaser being Bovill.

- Q. The purchaser being Mr. SHUM at this stage of his company.
- A. I don't think it is conclusive one way or the other.
- Q. Oh, no. I was putting in more consistent with her acting for the mortgagee only and not for the purchaser as such.
- A. If I were acting for the purchaser as well as the mortgagee, I don't see anything inconsistent with receiving these documents of title at the same time. Quite frankly, I don't see anything inconsistent.
- Q. With copy assignment already drafted?
- A. Oh, I see what you mean. Let me explain this. I said this morning that it's the normal practice for the purchaser's solicitor to prepare the assignment, but in a multi-storey building, it is the other way round – it is the normal practice for the purchaser's solicitor to ask the vendor's solicitor for a copy of the standard form of assignment for his guidance in preparing the assignment. 10
- Q. Well, now, I think when you say "standard form", you are there referring, are you not, to a multi-storey building that is going to be in multiple occupation?
- A. Yes.
- Q. Here the building is only being divided into two – ground floor and upper floor. You wouldn't expect in those circumstances there to be a "standard form of assignment" relating to that property for your guidance in preparing the assignment to your purchaser, would you? 20
- A. I wouldn't, but one would expect the assignments relating to the ground floor and the upper floors to be similar and, therefore, it would be convenient for the vendor's solicitor to draft a standard form of assignments for the whole building.
- Q. Yes, I see. Let us now look again at page 34 in Bundle 2. Now, this undertaking refers first in (1) (a) to the assignment to Bovill Investments, the company and purchaser, do you see that?
- A. Yes.
- Q. So Danny YIU undertakes when he returns this copy letter signed, to send that assignment. Now, look at what it says: 30
- ". . . and also your cheque in payment of the stamp duty and registration fee payable on such Assignment."
- Now, in ordinary conveyancing practice, which solicitor would collect from the purchaser the money required to pay the stamp duty on that assignment and the registration fee?
- A. The purchaser's.
- Q. The purchaser's solicitors, yes. So Danny YIU was here giving an undertaking which itself provides an indication, doesn't it, that he was undertaking that part of a lawyer's function collecting stamp duty and registration fee from the purchaser?
- A. Correct, yes. 40
- Q. Can I just take your mind forward a bit to page 45? We'll come back to page 34, so perhaps you could keep your finger in that page. At page 45 we find Danny YIU acknowledging receipt from Bovill Investments Limited of \$45,820 'being payment of our costs and disbursements hereunder'. Now, what is missing from this bundle is Danny YIU's account for which – that which (is) relative to that receipt. So for some reason which I cannot explain, that account is not available, but I am instructed that the size of that sum acknowledged there is consistent with Danny

YIU having received and acknowledging receipt here for a sum which must have included the stamp duty on the assignment. Would that be a reasonable instruction I have received?

A. I agree entirely. It must include stamp duty.

Q. Yes. So if this – the stamp duty, the rate of stamp duty being – I am told – 2¼ per cent, is that right?

A. 2¾ per cent, I think.

Q. Was it in . . .

A. I don't quite recall what's the rate.

Q. Shall I just ask Miss LEUNG? Miss LEUNG from her humbler and perhaps therefore closer to practicality's position says it's 2¼.

A. I accept it.

Q. So that here when the undertaking is given, it is in a form consistent with Danny YIU acting for the purchaser in the purchase, isn't it?

A. Yes.

Q. And the receipt given by Danny YIU to the purchaser is a receipt which is also consistent with that, although we cannot look at the account.

A. Yes, I agree.

Q. And it would not, therefore, be surprising – it is not therefore a matter of surprise that Mr. SHUM had been round to Danny YIU to pay over money to him which must have been or included this \$45,800 pounds – not a matter of surprise.

A. Dollars – not surprising at all.

Q. And if you as a solicitor – just to complete the question about 2.25 per cent, the total of stamp duty on the assignment would be at least \$39,000 dollars. That is a matter of mathematics, isn't it?

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MR. PRICE: About \$40,000 my friend told me on 1.8, and on 1.740, it's \$39,150.

Q. Now, if you can come back to the letter containing the undertaking. Look at the undertaking (1)(b) and (1)(c), will you please? By this time Miss LEUNG acting for the mortgagee – and I'm not – let's ignore for the moment whether she's also acting for the purchaser, but Miss LEUNG on acting for the mortgagee is requiring an undertaking that the intermediate contract between Lucky Time and Kai Ming CHAN shall be cancelled, isn't she? She wants an attested copy of that cancellation . . .

A. Yes.

Q. . . . and a new agreement entered into between Lucky Time and Bovill direct.

A. Yes.

Q. Now, you won't be surprised – it will not come as a surprise to you, I think, when I tell you that Miss LEUNG's evidence will be that her preference was to have CHAN joined in the assignment as second confirmor. That's what you really indicated.

A. Yes, that's what . . .

Q. That would have been her preference, but now put yourself in the position of mortgagee's solicitor only. If you, as mortgagee's solicitor, receive attested copies of the cancellation agreement and a new original agreement entered into with the purchaser or mortgagor, will your client's security be in any way defective or at risk?

A. No, no, except for the question of a consideration stated in the assignment. That needs some adjustment.

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- Q. Well, now, I want to come to that. As I understand it, your objection there as explained to his Lordship yesterday was that some stamp duty – the stamp duty might be underpaid, is that right?
- A. Yes.
- Q. Now, you mentioned buildings just now – buildings in multiple occupation. Would the location Tai Koo Shing be one familiar to you?
- A. Yes.
- Q. As a very large development with blocks in multiple occupation?
- A. Yes.
- Q. Taking that as a typical example of the way that matters are done locally – in the course of putting up an eventually assigning – putting up the building and eventually assigning individual flats in it, this sequence might happen, might it not, that A enters into a contract to purchase a specified undivided part and the right to occupy a particular flat at a time when construction either hasn't started or is still at a very primitive stage? It would be quite normal, wouldn't it?
- A. Yes.
- Q. And A might not be the person to whom the flat in question is ultimately assigned because there might be one, two, three or more sub-purchases between A and the ultimate assignee, would that be a common experience?
- A. Very common.

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- Q. In that case within very common experience at Tai Koo Shing, imagine yourself in the position not of the ultimate assignee but of the ultimate assignee's prospective mortgagee solicitor, right? Would you insist on B, C, D and E joining in as confirmors in the ultimate assignment to the assignee?
- A. It would not be practical to insist on that.
- Q. If you did not and had adopted Miss Leung's style and had said to the other solicitors concerned: procure attested copy of cancellations of intermediate agreements and a new agreement for sale direct to the assignee proposed mortgagor, that, from your client mortgagee's point of view, would have been entirely satisfactory, wouldn't it? 10
- A. It is entirely in order.
- Q. So that I don't leave any loose ends, there still remains, I think, the question of whether the appropriate amount of stamp duty would be paid, doesn't there?
- A. Yes, there is more than that. I mentioned two factors which have to be taken into consideration. One is the question of stamp duty. The other one is the question of the true consideration because it would affect both the purchaser and the mortgagee.
- Q. In your typical transaction, would not the intermediate purchasers have disappeared from the picture completely at the intermediate stage on being paid their turn? 20
- A. They might but that is not my problem. It is for them to sort it out, for the other side to sort it out.
- Q. Yes, that is for them to sort it out. That is absolutely right. When the documents are eventually referred to the Land Office for stamping, the Land Office is able, is it not, and commonly does, refer the question of value to Valuation Office.
- A. The Rating and Valuation Office, yes.
- Q. The purpose of that is to see whether the consideration expressed in the document understates the value on which stamp duty is payable.
- A. Correct.
- Q. Once the Land Office thereafter accepts the deed for registration, there is no further question about stamp duty, is there, that arises? 30
- A. No. The normal practice is for the Land Office to register the assignment first, leaving the question of stamp duty to be assessed later on because it takes months before a valuation may be obtained.
- Q. If we now revert to the letter of undertaking of 27th January, 1976. If any stamp duty in excess of the stamp duty that Mr. Yiu handed over, had the procedure followed its ordinary course – if any stamp duty in addition to that covered by the cheque had been required by the Rating and Valuation Department, that stamp duty would clearly have to come on this form of undertaking, wouldn't it, from Danny Yiu, that additional stamp duty? 40
- A. From the purchaser.
- Q. Yes, but in other words Danny Yiu would have sent a cheque that was itself insufficient to cover the stamp duty and so his undertaking as solicitor would mean that he would have to find a further cheque?
- A. Yes.
- Q. If that involved collecting further money from the client, the purchaser, that would as between solicitors be his responsibility.
- A. Yes.
- Q. On this form of assignment.

- A. Yes.
- Q. Can I put it to you very humbly that although when listening to your evidence yesterday it appeared to me that there might be some defect in the procedure indicated in this letter of undertaking, that is not so on further examination, is that right? The defects that you were describing yesterday really are not in-built in this letter of undertaking, are they?
- A. Are you referring to the consideration?
- Q. To the consideration and to the arrangement for cancelling the intermediate agreement. 10
- A. There is nothing wrong with cancelling the original agreement between Lucky Time and Kai Ming and Chan Sun-ming and substituted a new agreement for it. But I consider the consideration money as irregular.
- Q. Let me ask you this: If you were substituting – because this happens apparently in the Tai Koo Shing situation – if you were substituting a new agreement direct from Lucky Time to Bovill, the only consideration due to Lucky Time is the lower consideration, \$1,740,000, isn't it?
- A. Yes.
- Q. Bovill is being substituted as the purchaser from Lucky Time.
- A. Yes. 20
- Q. What you are really saying, I think, is this: That the assignment by itself may not give all the information that is required for stamping.
- A. What I am saying is if the practice of cancelling the original agreement for sale and purchase and replacing it with a fresh one does not affect the consideration money to be inserted in the assignment, then everything would be in order. But if it does, then one must think of ways and means to overcome the difficulty.
- Q. But on this form of undertaking, that would be a matter for Danny Yiu, wouldn't it?
- A. Not really because as solicitor for the mortgagee, I know that the consideration money is going to be \$1,850,000 and my client is going to advance the money on that basis and if the consideration money is less than that, that would affect my client's security amongst other things. 30
- Q. Could not the intermediate agreement or the cancellation of them be stamped in respect of the additional consideration?
- A. An agreement could be stamped with ad valorem stamp duty, yes.
- Q. So that this is a matter that could be dealt with by Danny Yiu pursuant to that undertaking.
- A. It could, yes.
- Q. If you were acting exclusively for the mortgagee, you would not in fact be affected, would you? 40
- A. As I said, I would.
- Q. When I say you wouldn't be affected, it wouldn't be a matter which you had – in respect of which you had left a loose end when you obtained an undertaking in this form.
- A. There is nothing wrong with this undertaking as such. It is just that the consideration is irregular to my mind. It doesn't tally with the rest of the documents, the consideration money stated in the other documents.
- Q. The consideration money stated in the cancelled document.
- A. Right.

- Q. Yes. As long as the correct amount of stamp duty is paid, this doesn't matter, does it?
- A. It couldn't be the correct amount because the correct consideration is \$1,850,000.
- Q. The assignment will correctly record that Lucky Time has received the consideration due to it, won't it, intermediate agreement having been cancelled?
- A. Right.
- Q. Any stamp duty in respect of the intermediate agreement or their cancellation can be paid in respect of the cancellation, can it not?
- A. I have not come across any case whereby stamp duty is paid on a cancellation of agreement. 10
- Q. Or, if not otherwise paid, can be caught up with when the Rating and Valuation Department is fixing the amount of stamp duty.
- A. Yes.
- Q. So that whatever consideration is stated in the assignment, the duty is payable not on the consideration stated but on the value, isn't it?
- A. Yes.
- Q. So there isn't room here, is there, for any defect in the mortgagee's security if this arrangement is adopted?
- A. There is because when one advances money, one advances money on the value or rather the amount of consideration of the property concerned. 20
- Q. You are saying that is a matter of valuation, are you, of the security?
- A. Of the amount of the consideration of the property concerned and if the property is understated in its consideration, it will affect the security.
- Q. Mr. Cheung, I am sorry, can I probe into that a little bit? It won't affect the validity of the mortgage, will it?
- A. No, it won't.
- Q. Do you mean that the relationship between the money lent and the true value will be thrown out of gear?
- A. Yes. 30
- Q. As long as the mortgagee knows what value he puts on the property and what money he's agreed to lend, that is a matter of valuation rather than law, isn't it?
- A. As long as the mortgagee is made aware of the irregularity, it is all right.
- Q. The figures that matter to the mortgagee is what value he puts upon the property and what sum he is prepared to lend, as long as he is getting of course a legal security, this is right, isn't it?
- A. Let me give you a concrete example. If I were acting for the mortgagee, I would advise the mortgagee of the irregularity. I would tell him that the consideration for the assignment is in fact \$1,740,000 instead of \$1,850,000 and if he is happy with that, well and good. 40
- Q. As long as there is no indication that the mortgagee, your client, is unhappy with the position, you would not be unhappy for him as his professional adviser.
- A. Right.
- Q. I want to ask you a little more, I am afraid. These questions will relate to your answers to Mr. Robert Tang – his questions this morning. Although you gave those answers in relation to a hypothetical situation, I propose to ask you questions by reference to the position as it appears in this case. Assume this, will you, that your regular client, Mr. Wong, arrives in your office and tells you that Mr. Shum's company, and Mr. Shum is there with him, has entered into a contract to buy the

- ground floor of this building and a mortgage has got to be prepared in respect of that. Would it in your view be an important matter of professional etiquette – if you were not going to act for Mr. Shum as purchaser – would it be an important matter of professional etiquette not thereafter to talk about the transaction in Mr. Shum's presence?
- A. I would only talk about the transaction insofar as it relates to the mortgage, for instance, the purchase price, whether or not vacant possession is to be delivered, date of completion, things of that nature.
- Q. If the mortgage loan was going to be guaranteed by the personal guaranties of directors, and Mr. Shum is one of those, it is perfectly reasonable for him to stay in relation to discussion of that. 10
- A. Yes, of course.
- Q. It would also be quite reasonable, wouldn't it, for you to be told, with Mr. Shum there, that he proposed to have the purchase taken in the name of a shelf company without other assets?
- A. Yes.
- Q. If he had with him copy of the memorandum and articles, for you to look at the memorandum and articles of that company.
- A. Yes. 20
- Q. If the company appeared to you for some reason to be unsuitable as of vehicle, would it be contrary to professional etiquette for you to agree, without becoming Mr. Shum's solicitors as purchaser, to find a shelf company for him?
- A. No. There is nothing wrong insofar as professional etiquette is concerned. No.
- Q. It could be in the circumstances quite apparent that you were acting for him in relation to the acquisition and formalities relating to the company although not acting for him as purchaser or for that company as purchaser of the property.
- A. Quite. Yes.
- Q. Look ahead in volume 2 to what I have numbered as 43A which is an account dated 26th of January, 1976. 30
- A. Yes.
- Q. Here is Johnson, Stokes & Master's account rendered to Bovill Investment Limited. We are at the date before the completion of the purchase. Here Johnson, Stokes & Master is submitting an account to Bovill Investment Limited, the new shelf company. That is for their charges relating to the purchase of the shelf company and to consequentials arising from that.
- A. Yes.
- Q. The only place I can find the receipt is in volume 5 at page 78. I think at a late date, my Lord, 43A got inserted in bundle 2 but the accompanying receipt didn't get shifted over. It is volume 4 page 78, I am so sorry. We have the account dated 26th of January and the receipt is dated 27th of January and they connect because not only is the bill number 4280 mentioned, but we see the matter number is also stated on the account and on the receipt. We don't need the receipt further. But look, if you will now, at page 43B in volume 2. The account at page 43B dated 27th of January, that is the completion date in respect of the mortgage Hong Kong style, that has a different matter number WLL 78204, you see that? 40
- A. Yes.
- Q. So it is clear that at any rate as a matter of Johnson, Stokes & Master's accountancy and rendering of accounts, they were distinguishing between what they were doing

- in relation to the mortgage and this separate though related transaction of supplying a company. Nothing wrong with that as a matter of professional conduct?
- A. Nothing at all
- Q. Assume still that Johnson, Stokes are acting for Bovill only in that limited sense and they are acting for Edward Wong as mortgagee, look at the bill at page 43B, does not the heading of that bill indicate that the client is the mortgagee though, as would be normal, that bill is payable as one of the costs of having a mortgage by the mortgagor. That is all the heading indicates, isn't it?
- A. Yes. 10
- Q. There maybe different ways of presenting such a bill but it would be quite wrong to render this bill direct to Bovill Investments Limited, wouldn't it?
- A. No. I won't say so.
- Q. But the fact that it is rendered in this form does emphasize that the client is Edward Wong and that Bovill Investments which has to pay is not the client, doesn't it?
- A. It does give that impression, yes, on the face of these words.
- Q. Look, if we may, at the detail in this bill. The charging as a part of the costs which are presented in this bill to the mortgagee for payment by the mortgagor, nothing at all I think I need ask you to comment on on the first item because preparing a debenture that is the principal item in transaction, isn't it? 20
- A. Yes.
- Q. "Preparing and grossing and completing and joining several guaranty from the directors." you as mortgagee's solicitor would properly, if you were, be concerned to see that the guaranty was in a form presentable, acceptable, to you as solicitor for the mortgagee, wouldn't you?
- A. Yes, I would.
- Q. Then "preparing and completing the particulars of the debenture for filing with the company's registry intending to filing." you, as mortgagee's solicitor, would be concerned with that consequential but important point in relation to your client's security. 30
- A. Yes.
- Q. And then "preparing and completing the director's resolutions authorising the execution of and the affixing of the company's common seal to the debenture." would I not be right in thinking that as mortgagee's solicitor it would be entirely appropriate to concern yourself with the form of those resolutions?
- A. Yes.
- Q. So that all those matters as appearing in this bill submitted to the mortgagee by the mortgagee's solicitors are matters which don't themselves suggest any confusion of function or any division of your responsibilities between mortgagor and mortgagee. This is a bill you could render as exclusively the mortgagee's solicitor. 40
- A. Yes.
- Q. Consider now the position of vendor and purchaser on a sale. Are you familiar with the scale of charges appropriate to the solicitors acting on a transaction of sale and purchase?
- A. I am.
- Q. You are familiar. Suppose there is already a solicitor acting for the vendor and a purchaser has the same solicitor, is that a position that happens in Hong Kong commonly?
- A. Yes, quite common.

- Q. Those strictures which have appeared in England, the division of interest and duty, haven't prevailed in Hong Kong.
- A. No, I am afraid not.
- Q. If the purchaser has the same solicitor, will the solicitor acting for both get one lot of costs, one and a half time scale or more?
- A. Just one lot.
- Q. He'll get one lot of costs. So the total costs of the transaction will be scale times one.
- A. That is right. 10
- Q. If the purchaser has a separate solicitor, what proportion of scale costs will that solicitor charge?
- A. The purchaser's solicitor will be charging the full scale cost of the assignment, let's take the assignment only, and the vendor solicitor will be charging one half of the scale cost.
- Q. That will reduce the costs payable to the vendor's solicitor?
- A. That is right.
- Q. But the total result in costs will be that purchaser's and vendor's solicitors together get roughly one and a half time scale.
- A. That is right. 20
- Q. Assume that you are in the position of proposed mortgagee's solicitor and the proposed mortgagee's solicitor – suppose mortgagee comes to you with his borrower who has contracted to buy a property, the property that is to be mortgaged, one factor affecting the question whether you would act for that person on the purchase would be what it would cost him, wouldn't it?
- A. In the scale fee you mean?
- Q. Yes.
- A. Yes.
- Q. Because you would presumably explain to him that if he hadn't a solicitor already and you were to act for him, there would be one and a half time scale fee altogether payable on the transaction between solicitors for vendor and purchaser, wouldn't it? 30
- A. No.
- Q. You wouldn't explain to him the way in which the scale fee would divide between vendor's and purchaser's solicitor.
- A. Are you talking about the costs in relation to the purchase or the cost in relation to the mortgage?
- Q. No, the cost in relation to the purchase.
- A. The cost in relation to the purchase, the purchaser will only pay one time of the scale fee and that is all. If he has already found a solicitor of his own, there is no point in his coming to me. He needn't two separate sets of solicitors to act for him in the purchase. 40
- Q. Suppose it appears that there is already a solicitor acting for vendor and purchaser, ignore the question of whether you should stop talking to him, it would cost him more, wouldn't it – the purchaser in costs if he changed solicitor for purposes of the purchase to adopt you as his purchaser for everything?
- A. Not necessarily. No. It all depends on the provisions contained in the agreement for sale and purchase. It all depends on what the agreement for sale and purchase says about payment of costs, who is going to pay the costs.

- Q. We know what the head agreement said here. The head agreement said, "The cost will be borne and paid in equal shares"
- A. That is neither here nor there. What if the purchaser instructs his own solicitor? It doesn't say so. It doesn't say who is going to pay the vendor's solicitor's costs, so we are back to square one.
- Q. The only agreements that deal with costs are those in volume 3, the first two agreements and each of those says, "the cost of and incidental to this agreement shall be borne by the parties equally." Is that a usual provision?
- A. That is the usual provision but in more sophisticated agreements for sale and purchase, there is a provision to the effect that in the event of the purchaser instructing a separate solicitor to act for him, then the vendor's solicitor's costs will be paid by so and so. 10

MR. PRICE: I've forgotten that your Lordship is accustomed to the practice of breaking at about ten minutes ago. I have a few more questions and I think I can stop now. Mr. Cheung has had quite a hard time.

3:45 p.m. Court adjourns

4:00 p.m. Court resumes

Appearances as before

P.W. 2 – Edmund Cheung o.f.o. 20

XXN BY MR. PRICE

- Q. In the particular circumstances of this case, Mr. Cheung, Bovill Investments was a newly acquired shelf company and its name was going to be changed and in January 1976 completion of this transaction was regarded by the people concerned as a matter of some urgency. Bearing that in mind I'd like you to think about your answer to the questions that were put to you in respect of the witnessing of the debenture. You said that if you were not acting for the mortgagor, you would not agree to be the witness to the execution of the document, right?
- A. Right.
- Q. Would your answer be affected by the fact that Bovill Investments was a newly acquired shelf company and about to change its name? Would your answer be different? 30
- A. No.
- Q. It won't?
- A. No, it won't.
- Q. You won't go so far as to say that there was something improper in Miss Leung witnessing the affixing of the seal onto the debenture and the signature of the director if she wasn't the solicitor for the purchaser as such.
- A. There is nothing improper about that. But I would have thought that unless you were acting for the mortgagor, you would not subscribe your name as an attesting witness on the mortgage deed. It would be very, very odd indeed. 40
- Q. It is however, isn't it, a matter of some importance to the mortgagee, for whom

you hypothetically are acting, to know that the execution of the document was done in orderly fashion.

A. Yes, but I would not sacrifice regularity to save time or to make it more convenient for me.

Q. You would be more certain of its regularity and of being able to advise your client that the mortgage deed had been properly executed if you had supervised the execution than if you left it to another solicitor, wouldn't it?

A. I would not under any circumstances subscribe my name as an attesting witness unless I was acting for the attesting party.

Q. It isn't necessary for any solicitor to be the witness, is it?

A. No.

Q. It could be a clerk.

A. I said so, yes.

Q. The answer to my earlier question must be "Yes", mustn't it and that question is this: That if you have supervised the execution, you are more confident that the document has been properly executed.

A. Yes.

Q. It must be yes.

A. Yes.

Q. Of course without being solicitor in respect of the purchase of the property Miss Leung and her firm were acting in respect of equity and production of the company, weren't they?

A. Yes.

Q. Doesn't that make it a perfectly reasonable thing for Miss Leung with the company seal in her office and in the time available to be the witness to the execution of the debenture in which her client, the mortgagee, was interested?

A. I will repeat my answer. Unless I was acting for the attesting party, I would not subscribe my name as an attesting witness to the document.

Q. You wouldn't regard it as improper for another solicitor to have taken a different view?

A. I won't, certainly not improper in the sense of professional etiquette. No.

Q. Mr. Cheung, in Hong Kong is the speed with which conveyancing is transacted a matter highly praised by the lawyers and by their clients?

A. Yes, very much so, a speed which cannot be matched elsewhere.

Q. A speed which cannot be matched elsewhere.

MR. PRICE: My Lord, I am deliberately not cross-examining about the question to which I objected at the end of the evidence, but which very helpfully was answered for your Lordship's benefit. It mustn't be thought that by not cross-examining I am accepting the answer.

MR. TANG: With your Lordship's leave, I would like to ask this witness a few more questions.

FURTHER XXN BY MR. TANG

Q. Mr. Cheung, are solicitors same as barristers in the sense that they cannot decline to act for a client in a field in which they normally practise?

- A. I don't think so, no. I think we solicitors are quite entitled to decline to act for a client in the field we practise.
- Q. Even in contentious matters?
- A. Yes, even in contentious matters.
- Q. You said that you were qualified in Hong Kong, but would it be correct to say that you underwent the English Law Society examinations in order to become qualified?
- A. Yes.
- Q. Are you also entitled to practise in England?
- A. Yes, I am. 10
- Q. Would you by any chance be subject to the jurisdiction of the English Law Society?
- A. I am not a member of the English Law Society as such and, therefore, I don't think I am subject to the English Law Society's jurisdiction.
- Q. You mentioned this question of the white list and the black list and my learned friend said that may be unfair, as it were, to rely on rumours. You have told my Lord that it is your opinion that it would be at your risk if you were to send money against an undertaking of a solicitor. When you consider whether or not you ought to trust a fellow solicitor, do you take the following into consideration: First, the amount of money involved, the likelihood that the solicitor would honour his undertaking and also that if he should fail to honour the undertaking, whether or not you would be in a position to make good the loss to your clients? 20
- A. Yes, I would take all these three factors into consideration.
- Q. In fact when you consider whether or not to trust a solicitor, you are actually asking yourself: "Whether or not I would risk sending the money to him at my own risk."
- A. Yes.
- Q. Assuming that the risks were not yours, but assuming that you were to send it at the risk of your client, would you not consider the following: First, the amount involved, secondly, the reputation of the solicitor involved, and, thirdly, whether or not your client can afford to lose that amount of money.
- A. Yes, I would. 30
- Q. If I were a client and I come to you to prepare a transaction for me – take the present case, for instance, if Mr. Shum were to come to you and say, "I want to raise \$1,355,000 on a mortgage and I would want the matter to be dealt with by you. I want this money so that I could complete the purchase. The completion will take place at Danny Yiu & Co." and then on the 27th of January Mr. Shum arrived at your office and he signed the various documents, debentures and guarantees, and then he asked you, "I understand that the money is going to be sent to Danny Yiu & Co. Does it mean that on sending the money over to Danny Yiu & Co. I would have already obtained a good title to the property?" Would your answer to him be: "You would not because you would not obtain a good title until all the other documents are prepared and executed."? 40
- A. Right.
- Q. If he were to say to you, "Am I at any risk at all?", what would you say?
- A. If he asked me this question, then I would have to explain to him the risks involved.
- Q. Assuming that it was not Danny Yiu & Co. but some other firm and assuming that it be the most reputable firm in Hong Kong, there is still a theoretical risk, is there not?
- A. Yes, there is always a potential risk.
- Q. And if Mr. Shum were to ask you, "Is this method of transaction completely free

from risk, theoretical or otherwise?" you would be obliged to tell him that there is some risk.

A. I certainly will, yes.

Q. If Mr. Shum were to say to you, "I am not prepared to take any risk at all." For instance Mr. Shum will say, "I am in fact a trustee for widows and orphans and I cannot take risks of money which do not belong to me." What would you have advised him?

A. I would have advised him either to insist on formal completion or to make out the cheque in favour of the vendor personally. 10

Q. Assuming that the vendor had title to pass at the time.

A. Yes. I am not talking about this particular case.

Q. Is it correct to say that in Hong Kong any lay person who is aware of the fact that he is entitled to – that one can have a physical completion is entitled to insist on it. Any lay person in Hong Kong who is aware of such a thing as physical completion may insist on it.

A. Yes, he has every right to insist on formal completion if he so wishes.

Q. So would it be proper for a solicitor who is consulted by a client to say this to his client, In Hong Kong we solicitors for convenience. . .

COURT: When you say consulted, what do you mean by that? 20

MR. TANG: Maybe if I were to use a more exact word, if he were retained by a client.

Q. Would a solicitor ought to tell him this: "In Hong Kong we solicitors for convenience normally adopt a practice which would involve our sending over the purchase money not against the complete documents of title but against an undertaking of a solicitor to procure that those documents are executed and delivered over to you, the purchaser, but you, as the client, is entitled to insist that physical completion should take place. If physical completion should take place, then the purchase price would only be handed over against the production of all the relevant title documents and you would be at no risk at all." Would you say that this is what a solicitor ought to tell his client in order to give his client a full picture relating to conveyancing in Hong Kong? 30

A. I suppose in an ideal world, yes. As I said yesterday, I have never done this myself. It would be almost impossible in practice to do this in each and every transaction because client cannot tell the difference anyway.

Q. But if you have a client who can understand it, he would appreciate it, would he not?

A. He would, yes.

Q. In your case you have never done it because you have always considered yourself at risk and not your client when you send over money against an undertaking, would that be right? 40

A. I suppose so, yes.

Q. You said that Hong Kong was ahead of England in this kind of completion. Would it be more correct to say that Hong Kong is just different, not ahead, but different?

A. Well, you may put it that way if you like.

Q. But from the point of view of the interest of client, from the point of view of his

- security, which would you say is a better procedure to adopt?
- A. From the point of view of the client's security, of course formal completion is much safer but from the point of view of convenience and speed I am afraid one has to adopt the Hong Kong style of completion.
- Q. You mention the question of speed. Take the average case, for instance, of a vendor, a purchaser, a vacating mortgagee and a new mortgagee. Assuming that physical completion were required, how much more time would you say that would take?
- A. Assuming physical completion were possible under those circumstances, it would require at least another couple of hours more. 10
- Q. Let's examine your answer because you preface it by assuming that physical completion was possible. By "physical completion", it actually means the handing over of the documents against payment, does it not?
- A. Yes.
- Q. It is possible, is it not, for the vacating mortgagee to execute the reassignment in escrol and entrust the document to his solicitor?
- A. In theory, yes. But not mortgagee including banks would do that.
- Q. You mean no mortgagee will sign a reassignment without having first received payment?
- A. Right. 20
- Q. Assuming that to be the case, is it not possible for the vendor to execute an assignment in escrol?
- A. Yes.
- Q. Is it not also possible for the purchaser to execute the assignment in escrol?
- A. Yes.
- Q. Would you say a vacating mortgagee will never sign a reassignment except against payment? What about the new mortgagee? Would he be content to lend the money except against a complete set of title documents?
- A. The new mortgagee would be prepared to part with his money on exchange of executed documents in the case of formal completion. 30
- Q. Assuming in this case the new mortgagee is prepared to lend the money and pay it to his own solicitor, would it then not be possible for the vendor's solicitor, the purchaser's solicitor, if there is one, the new mortgagee's solicitor to attend at the vacating mortgagee's solicitor's office and there hand over the cheque or cashier order and in return the vacating mortgagee then executes the reassignment.
- A. It is possible in theory, yes.
- Q. But in practice why is it not possible?
- A. In practice it is not possible because no mortgagee would ever attend whoever's office it is to execute the reassignment.
- Q. Would he be prepared to execute the reassignment at his own office? 40
- A. He would in his own time.
- Q. Is he entitled to do it at his own time or is he not obliged to do it within a reasonable time of request?
- A. Yes, a reasonable time may mean 7 or 14 days.
- Q. So it would be an extra 7 or 14 days if physical completion were to take place?
- A. Yes, afterwards.
- Q. So it is not impossible but it will take an extra 7 to 14 days.
- A. Right.
- Q. It is less speedy in the sense that an extra 7 or 14 days would be required.

- A. Yes.
- Q. But if a vacating mortgagee were not required, it will take two hours more, so it is less speedy by 2 hours.
- A. Right.
- Q. There is one question about the stamp duty which I have not been quite able to understand. I have brought the Stamp Ordinance here with me. It is chapter 117. I believe the relevant sections are 10 and 36. First, section 36. Section 36, sub-section 4 provides: "Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the same to another person and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance is to be charged with ad valorem duty in respect of the consideration moving from the sub-purchaser." Are you familiar with this sub-section, Mr. Cheung? 10
- A. Yes, I am.
- Q. Does it not mean in the context of the present case that stamp duty would be payable on the consideration moving from the ultimate purchaser?
- A. It should.
- Q. Stamp duty is not merely payable on the consideration receivable by the person who assigns the property. 20
- A. No.
- Q. So in this case the proper stamp duty to be paid would be the consideration moving from Bovill, that would be \$1.85 million.
- A. Right.
- Q. Looking now at section 10 of the Stamp Ordinance. Of course it requires mens rea as almost all criminal offences do. "All the facts and circumstances affecting the liability of any instrument to duty or the amount of the duty with which an instrument is chargeable are to be fully and truly set forth in the instrument and every person who with intent to defraud the government . . ." and then I'll deal with the position of the solicitor ". . . being employed or concerned in or about the preparation of any instrument neglects or omits fully and truly to set forth therein all the said facts and circumstances shall be deemed to commit an offence." So it is the duty of any person who is employed or concerned in the preparation of any document to make sure that the considerations are fully and truly set out. 30
- A. Correct.
- Q. It would not be permissible, would it, for one to rely on the fact that sometimes the amount of stamp duty chargeable is referred to the Rating and Valuation Department for assessment?
- A. It is entirely another matter altogether.
- Q. Is that why you said that you would not have been satisfied with the understatement of the consideration in the assignment in this case? 40
- A. I would not, not in the face of all the documents in my possession.
- Q. It would of course be quite a different matter if one doesn't know whether or not the sub-purchaser is in fact paying more than what the assignor is prepared to execute an assignment for.
- A. Correct.
- Q. On the cancellation of the intermediate agreements, would you look at 2/34. My learned friend has already referred you to paragraph 1b. It refers to the cancellation of the agreement between Lucky Time and Kai Ming and Chan Sun-ming. There is

- no reference, however, to the cancellation of the Chinese agreement between Chan Sun-ming and Po Fung Investment Co., Ltd.
- A. No.
- Q. Would you have insisted on that if you had been acting for the mortgagee? Would you like to look at the Chinese document? It is in bundle 3, document 21, page 21. That is the sub-sale of the ground floor by Mr. Chan to Po Fung.
- A. Yes, I would have insisted on a cancellation of this Chinese document.
- Q. You remember Mr. Price asking you that clearing off the mortgage is the exclusive responsibility of the vendor. That was just before the luncheon adjournment. 10
- A. Yes.
- Q. In a simple case of a vendor and a purchaser and a vacating mortgagee and if you were acting with the purchaser only and completion is to take place on the 27th of January, would it be correct to say that theoretically all that you need to do is to arrive at the office of the vendor's solicitor on the 27th of January having made a search at the Land Registry beforehand, examine those title deeds which are presented to you for examination and see that if they are proper. If they are proper, you will then pay over the purchase money. If not, you would not. That is the theoretical position. 20
- A. Yes.
- Q. You are not really concerned with how the old mortgage was paid off. All that you were concerned to see was that it was actually paid off.
- A. Yes.
- Q. But in practice you would go further and see to it before that day that some arrangement had been made to pay off that mortgage.
- A. Yes.
- Q. Again take another hypothetical situation. Again vendor and purchaser and a vacating mortgagee. The vendor has money. He is quite entitled to say to you, "I am going to pay off the mortgage on my own resources. On the day of completion I want your cashier order against my documents. And it is none of your concern how I pay off the mortgage. In fact if I can procure the mortgagee to grant me a reassignment without payment, that is again none of your concern either." That would be the correct legal and contractual position, would it not? 30
- A. It would but I would not accept his word for it.
- Q. You would examine the title deeds to see that they are all right?
- A. No, I would go further than that. I would insist upon seeing how the mortgage is to be paid off.
- Q. Assuming that he produces a reassignment duly attested, would you not accept it? 40
- A. Yes, I would accept it.
- Q. All that you are concerned to see on completion is that there is a duly attested reassignment, a duly executed assignment by the vendor to you and then you don't care any more.
- A. I don't care any more.
- Q. In a case no matter involving how many parties it would be correct to say that it may take a bit more time but physical completion in Hong Kong is always possible.
- A. Yes, I agree.

REXN BY MR. CHEUNG

Q. Would you like to tell his Lordship about how many solicitors are there on your list approximately whose undertaking you would not accept at present, roughly?

A. Roughly not more than 20 firms.

Q. How many firms of solicitors are there in Hong Kong?

A. 150 about.

Q. What would that number have been in January 1976 if you can remember.

A. I can only make a rough guess, under 100.

10

Q. Total number of solicitor's firms?

A. Firms.

Q. But those whose undertaking you would not accept in January 1976 would number how many firms?

A. About 10.

Q. I think in answering questions from Mr. Price this morning you said if there were a vacating mortgagee, vendor, a purchaser and a new mortgagee, you wanted formal completion. You said, "Make the cheque payable to the vacating mortgagee or his solicitor." is that correct?

A. Yes.

20

Q. You said that is your real safeguard.

A. Yes.

MR. PRICE: I only rise to say yes but only in the case where one of the firms is on the black list. This is a black-listed case.

MR. CHEUNG: Yes, this is a black-listed case. I am much obliged.

Q. That is on the assumption also that the mortgagee's solicitors are not on your black list, the vacating mortgagee's solicitors are not on your black list.

A. It doesn't really matter whether the mortgagee's solicitor is on my black list if I make out a cheque payable to the mortgagee.

Q. Would you make out a cheque payable to the vacating mortgagee's solicitors if those solicitors are on your black list? 30

A. No, I won't.

Q. The situation you dealt with was on the assumption that the vendor's solicitor was on the black list, the vacating mortgagee's solicitor not on your black list.

A. Right.

Q. I think my friend asks you and you say whenever you'd written to a bank which is a vacating mortgagee, they invariably give you the information you require as to how much is required to discharge.

A. Yes.

Q. Would you say that would be the general experience of solicitors in Hong Kong? 40

A. Yes.

Q. You don't know how they get the authority from their client, the mortgagor, but they always seem to come up with the information, is that correct?

A. Correct.

Q. You leave that to them.

- A. Yes.
- Q. You have never known a refusal.
- A. No.
- Q. You also told my friend, I think, it is not unusual for a bank to reassign part of a property mortgage.
- A. It is quite common.
- Q. In fact you have not known refusal.
- A. I have not known refusal. No.
- Q. My friend, Mr. Price, asks you certain questions about Mr. Siu and Mr. Mak, I think you fairly agree with him that none of the absconding in those cases arose out of a completion matter. 10
- A. Correct.
- Q. When you assess whether the undertaking of a solicitor is good or not, does it matter to you what form the dishonesty might take given that there is dishonesty of one kind or another?
- A. It doesn't matter to me what form it takes. No.
- Q. May I just ask you a few questions about Tai Koo Shing. The Vendors would be Swire, is it?
- A. Swire Properties Limited. 20
- Q. May I for short call it Swire?
- A. Yes.
- Q. The situation which my friend contemplated was something like this: Swire sells to A, A sells to B, B sells to C, C sells to D and then D sells to E, E sells to F. F is the ultimate purchaser. Do not Swire carry out their transaction this way: A brings B along to Swire and requests Swire, "Please cancell your agreement with me and give a new agreement to B."
- A. Yes.
- Q. For that in respect of flats in Tai Koo Shing they charge what is called an administration fee or administrative fee of \$2,000? 30
- A. I don't know the exact amount.
- Q. Are there also fees payable to Swire's solicitors?
- A. For the cancellation of the agreement and the fresh agreement, yes.
- Q. The fresh agreement would state that the consideration B would pay to Swire would be the original consideration A had agreed to pay to Swire.
- A. Correct.
- Q. Whatever B has paid A for buying his rights, that is not mentioned in the new agreement.
- A. It is not mentioned in the new agreement.
- Q. There may even be no written agreement between A and B. 40
- A. Correct.
- Q. B then sells his rights to C and he takes C along to Swire and he says to Swire, "Please cancell my agreement with you, give a new agreement to C." Is that correct?
- A. Yes.
- Q. An administrative fee is paid.
- A. Yes.
- Q. Fees are paid to Swire's solicitors. The original consideration which A had agreed to pay Swire is put into this third agreement.
- A. Right.

- Q. The ultimate purchaser who gets a new agreement from Swire has the consideration stated to B what A had originally agreed to pay.
- A. Correct.
- Q. So as far as any solicitor who is acting for Swire or for the ultimate purchaser -- all that he knows is that the consideration is the original consideration.
- A. Right.
- Q. That is different from the facts in this case where Johnson, Stokes & Master knew the price to be paid by Bovill was \$1.85 million, the price to be received by Lucky Time was \$1.74 million. 10
- A. Correct.
- Q. This is, I hope, the last question. My friend says to you if physical completion took place, it would increase costs. Those costs would eventually be passed onto the public. Would you like to express a view as a solicitor whether it is better that costs should be raised or that one individual client who might be a trustee for widows and orphans should lose his money if a solicitor should be in breach of his undertaking?
- A. It is really a difficult question to answer. From a solicitor's point of view, I would prefer the Hong Kong style of completion even if my costs were increased as a result of formal completion because the time consumed and manpower would be almost prohibitive from a solicitor's practice's point of view. If one took the case of a multi storey building of say 500 units and you have, say, 50 purchasers instructing separate solicitors to act for them, the sum total of the amount of time and manpower involved in physical completion would be enormous. 20
- Q. You feel that increased costs may not pay for all that.
- A. It would not compensate for all that. It would from money trade point of view, but it would disrupt the smooth running of a solicitor's practice insofar as the conveyancing side is concerned.
- Q. So far as you are concerned, certainly with multi-story buildings you go on with the Hong Kong style of completion. 30
- A. Certainly, yes. But there is a way out. Apart from formal completion, if I, as solicitor for a purchaser, happens to deal with a solicitor's firm on my black list, all I need to do is to make my cheque payable to the vendor personally and send it over to the vendor's solicitor. That would give me and my client protection because with the cheque, with the order cheque marked "account payee only" it could only be paid into the vendor's account, so that even with a dishonest solicitor on the other side, my client will not suffer any loss. So that would seem to me to be a compromise between the Hong Kong style and the U.K. style of completion.
- Q. But if you were dealing with a solicitor not on your black list, that is to say, one whose undertaking you accept, you would consider it is at your risk, not your client's risk. 40
- A. I would, yes.

BY COURT:

- Q. Do I understand the position that when the settlement takes place, that is the paying over of the funds and exchange for the undertaking, so far as the clients are concerned, they then move into occupation of the premises, interest starts to run on the mortgage. So far as they are concerned, the matter is completed for all

practical purposes. They have done all they have to do.

A. Yes, but the purchaser may not necessarily move into physical occupation because it all depends on whether or not you buy with vacant possession or subject to tenancy. But as far as the parties are concerned, it is all done with.

Q. In fact in the majority of cases, are the parties anxious to move into occupation? Is that one of the advantages of this system that they can get early use of the premises?

A. In a vast majority of cases completion only takes place on the date fixed for completion as provided for in the agreement for sale and purchase. 10

Q. I assume that most firms of solicitors, certainly those with substantial conveyancing practices, would have virtually a standard form of undertaking.

A. Yes.

Q. The one that you have seen from Johnson, Stokes in this matter dated 27th January, would you regard that as a satisfactory standard form?

A. It is satisfactory. But as I said, I have never come across an undertaking asked for beforehand. The usual form of undertaking is contained in a letter in which a cheque representing the purchase price or the balance is sent over to the other side upon the other side's undertaking to do this and that.

Q. In other words, normally the cheques goes with the letter . . . 20

A. Containing the undertaking by the other side.

Q. The method in which this is done, the execution or the signing of a copy, that is standard practice, is it?

A. It is certainly not my standard practice, no.

Q. You would require a letter in exchange.

A. No. If I were acting for the purchaser, I just sent along my letter with a cheque and in the letter will say, "upon your undertaking to do this and that."

Q. What would you expect to receive by way of undertaking from them?

A. The assignment duly executed and any other title deeds and documents.

Q. I am sorry, you say you would send the cheque with a letter saying, "I am sending you this cheque on your undertaking to eventually produce the documents." 30
Wouldn't you expect to give an immediate reply to that of some sort?

A. No.

Q. The mere fact that they have accepted the cheque, you would consider sufficient.

A. Yes, that is sufficient.

Q. In this letter it says that they require the documents within 10 days. If Danny Yiu is not in a position to send them the documents within 10 days, he would hold the money and not pay it over to his client. But it also says that you will arrange for the reassignment of these premises as soon as possible. In your experience does it happen that the documents, the assignment and other relevant documents, are sent to the other solicitors, the purchaser's solicitors, and therefore the money can be released before the reassignment is registered from the previous mortgagee. It seems from that letter that that could have happened. Once the documents, the title documents, were executed, the money could then be released to the vendor but the reassignment may not have been registered. 40

A. The reassignment may not have been ready within the period of 10 days, yes.

Q. Does that not mean that the purchaser or the new mortgagee is not only dependent on the integrity of the vendor's solicitor, he is also dependent on the integrity of the vendor who may have obtained his purchase money but may not have executed –

but the reassignment from his mortgagee might not have been executed. Perhaps I can summarise it. He may not use that money to pay off his mortgage.

A. The invariable practice is this, my Lord: When the vendor's solicitor receives money from the purchaser's solicitor, he would deduct the amount of principal and interest payable to the vacating mortgagee and pay the balance to the vendor. He will not pay the full amount to the vendor leaving the vendor to sort it out with the vacating mortgagee. One never does that. If you have deducted the amount of principal and interest payable to a vacating mortgagee and if you have the assignment to be executed by the vendor, then you are safe to release the balance of the purchase money to the vendor, so the integrity of the vendor doesn't really matter one way or the other. We don't trust the vendor to that extent anyway.

10

Q. Just finally, you say that mortgagees would not execute a release in escrow, in other words, they will not release their mortgage until they actually have their money.

A. In practice, yes. They would not.

Q. But they are prepared for their money to be released on the basis of undertakings to produce the mortgage document.

A. You mean the new mortgagee is prepared to release the money?

Q. He releases his money before he gets his mortgage. It would be rather strange that they are not prepared to execute a reassignment without getting their money but they are prepared, on the other hand, to give money out on a new mortgage before they get the security.

20

A. For practical purposes, yes, because unless a mortgagee is prepared to do that, it is impossible, physically impossible, to complete a transaction.

Q. It's got to be one way or the other.

A. Exactly.

Q. That is simply the way it is done.

A. It is a fact of life.

COURT: Thank you very much, Mr Cheung. 9:30 tomorrow morning.

5.00 p.m. Court adjourns

30

6th June, 1980.

9th June, 1980.

10.15 a.m. Court resumes

Appearances as before.

MR. TANG: May it please you, my Lord. The first witness for the defendant is the 3rd defendant, Mr. SHUM Ka-ching.

D.W. 1 – SHUM Ka-ching Affirmed in Shanghainese

XN BY MR. TANG

Q. Mr. SHUM, what is your residential address?

A. No. 1A Ho Man Tin Street, 2nd floor, Kowloon.

10

Q. And what is your occupation now?

A. I am working in a factory.

Q. And what as – doing what?

A. I am in the business side of that factory.

Q. Concerning sales, I understand.

A. Yes.

Q. And what is the name of the factory?

A. It is Uni. That's my card.

(Card handed to counsel)

A. It's Uni Fabric Industries Limited.

20

Q. In December, 1975 were you the managing director of Po Fung and Mei Fung Companies?

A. Right.

Q. And at that time, in December 1975, they occupied the ground floor of 76 Hung To Road, Kwun Tong.

A. Right.

Q. And at that time they were tenants of the ground floor, were they not? You were tenants.

A. Yes.

Q. Can you remember the name of the landlord?

30

A. I can't quite remember the name. It sounds something like . . .

Q. Mr. SHUM, maybe I can help you.

A. I can't give the English name, but in any event I turned the rent to a law firm, solicitors firm, acting for my landlord, that is, C.Y. KWAN & Co.

Q. Would you look at Volume 2, the documents, please? Volume 2, page 2. This is copy of a tenancy agreement between HO Sau-ki and Po Fung dated the 17th of December, 1974. Would you turn to page 9, please? Do you see your signing it on behalf of Po Fung Finishing Works Ltd?

A. Yes.

Q. So you see that Mr. HO Sau-ki was the landlord and Po Fung was the tenant of part of the ground floor.

40

A. Right.

- Q. If you would now turn to page 13, please. This is a tenancy agreement between same. Mr. HO Sau-ki and Mei Fung Industrial Co. Ltd.
- A. Yes.
- Q. If you turn to page 19, you will find your signature there signing for Mei Fung.
- A. Yes.
- Q. So, having looked at these two documents, can you now tell my Lord if the landlord of the premises was Mr. HO Sau-ku?
- A. Yes.
- Q. Can you read English, Mr. SHUM? 10
- A. No.
- Q. How long have you been living in Hong Kong?
- A. I came to Hong Kong in March, 1950.
- Q. And where did you come from?
- A. From Shanghai.
- Q. And what sort of education did you have when you were in Shanghai?
- A. Due to the Japanese occupation I did not have much education.
- Q. Did you finish secondary education?
- A. No.
- Q. Did you have any time for education at all since you have come to Hong Kong? 20
- A. No.
- Q. And what is your age now?
- A. 51.
- Q. Now, I want to ask you some questions about how you came to agree to purchase the ground floor of No. 76, Hung To Road. Do you know Mr. CHAN Sun-ming?
- A. Originally I did not know him. I did not know him until he approached me.
- Q. When did he approach you?
- A. Towards the end of 1975.
- Q. And did he come to see you at No. 76, Hung To Road?
- A. Yes. 30
- Q. And did he introduce himself to you?
- A. Yes.
- Q. What did he tell you he was?
- A. He told me that he was operating -- he was dealing in paper supplied by China mainland.
- Q. He was the Chinese agent for papers in Hong Kong.
- A. Yes.
- Q. And is Great China Co. Ltd. the name of his company?
- A. Yes.
- Q. Did you know that company by reputation to be a large concern in Hong Kong. 40
- A. I did not realise then. I did not realise this then.
- Q. But subsequently you realised that.
- A. Yes.
- Q. Did he tell you what he wanted to see you for?
- A. Yes, he did.
- Q. What did he say?
- A. He told me that he had already purchased the premises -- 76, Hung To Road, Ground Floor.
- Q. And?

- A. And he also advised me to purchase that place because of this particular nature of my business which was getting more and more prosperous then.
- Q. He realised that you were renting – the two factories with which you were concerned occupied the ground floor.
- A. Yes.
- Q. Did he suggest to you that he was willing to sell the ground floor to you?
- A. Yes, he did.
- Q. Did he mention the price?
- A. Yes, he named the price at 1.85 million dollars. 10
- Q. And what was your response to that?
- A. I agreed to buy the premises as a result of discussions within my companies – Po Fung and Mei Fung.
- Q. Did you discuss with Mei Fung and Po Fung, as it were, on the same occasion that Mr. CHAN Sun-ming went to see you?
- A. Yes, there were such occasions.
- Q. So you, Mr. CHAN and a representative of Po Fung met together. Is that what you are saying?
- A. Yes.
- Q. And whom representing Po Fung? 20
- A. TSIANG Hung-wen and MA Pok-sum.
- Q. Now, would you look at Volume 3, page 21, please? This is a document signed by Mr. CHAN Sun-ming, is it not?
- A. That's right.
- Q. Dated the 30th of December, 1975.
- A. Yes.
- Q. You told my Lord that Mr. CHAN came to see you towards the end of December. Can you tell my Lord by reference to this document when Mr. CHAN Sun-ming came to see you for the first time?
- A. It's rather difficult for me to recollect the exact time? 30
- Q. Say a few days before this?
- A. Quite so.
- Q. By the time this document was signed by Mr. CHAN Sun-ming, it had been agreed between Po Fung and CHAN that Po Fung would purchase the ground floor for 1.85 million dollars.
- A. Yes.
- Q. And that you were to pay a first deposit of a hundred thousand dollars.
- A. Yes.
- Q. And then you were to pay a second deposit on the 15th of January 1976 of \$85,000. 40
- A. That's right.
- Q. Would you look at document 23, please?
- MR. TANG: Translation is at 25, my Lord.
- Q. Have you seen that document before?
- A. I can't recall.
- Q. Now, you see this was dated the 5th of January, 1976.
- A. Yes, I see it now.

- Q. Do you know what this document is about?
- A. Now having been reminded by this I can say that the premises in question were first sold by HO Sau-ki and in turn he sold – Mr. CHAN sold this to us.
- Q. You mean the premises were sold by Mr. HO to Mr. CHAN and Mr. CHAN was to sell it to you.
- A. Right.
- Q. When did you know that? When were you told that?
- A. I can only recall that I had been told so, but I can't recall on which occasion I was told. 10
- Q. Were you told so before or after you paid the deposit of a hundred thousand dollars?
- A. Before I paid the first deposit.
- Q. Now, you said this document reminded you of that.
- A. Yes.
- Q. Can you remember the first time you saw this document – in relation to the payment of a hundred thousand dollars deposit by you to Mr. CHAN?
- A. The three of us went to CHAN Sun-ming's office on Hong Kong side, and on the occasion when I paid a hundred thousand dollars deposit, Mr. CHAN said that he could show us some evidence that he had purchased the premises himself. 20
- Q. Now, that would be – would that be on the 30th of December, 1975, the day on which you paid the deposit of a hundred thousand dollars? If you look at 21 you will see the date.
- A. Most probably on the 30th, yes.
- Q. And you said he would show you some evidence. Can you remember, what evidence he showed you?
- A. I was talking about this document on page 23.
- Q. You see -- I don't know if you notice -- this was dated the 5th of January, 1976.

MR. TANG: And that is at page 26, my Lord.

- A. Right. 30
- Q. Are you saying that you actually saw this document on the 30th on about the 30th of December?
- A. On the occasion he said that he had already purchased the premises and he said he could show us. but I'm not quite sure whether that was this one.
- Q. Did he show you Chinese documents or English documents?
- A. English document.
- Q. Could you understand what the agreement was about?
- A. No, I don't know English.
- Q. Do you know whether or not the 2nd or the 4th defendant can read English?
- A. No, I don't think so. 40
- Q. So you said on the day he showed you some English Documents.
- A. He explained that to us - to me.
- Q. Mr. CHAN.
- A. Yes.
- Q. Now, what did he say to you in explanation?
- A. He said, "Now, I have signed the agreement which showed that I have already purchased the premises and, therefore, I am in a position now to sell the same to you."

- Q. And you accepted that explanation.
A. Right.
Q. Now, did he give you any copy of the English document that he showed you?
A. He probably did.
Q. But do you have a clear recollection whether or not he did?
A. It's such a long time ago, I cannot have a clear recollection.
Q. Would you look at document 27, please? This is a receipt dated the 15th of January, 1976 for the balance of the purchase price – sorry, for the balance of the deposit.
A. Yes. 10
Q. And you paid this deposit on the 15th of January.
A. Right.
Q. And did you pay this again at Mr. CHAN'S office?
A. Yes.
Q. Now, going back now to document 23, can you now tell my Lord, having looked at document 27, whether or not before you paid this \$85,000 deposit you had already seen document 23?
A. I have no recollection.
Q. Can you remember if you were ever given a copy of document 23?
A. I have no recollection. 20
Q. Now, we are now at the stage when you had paid the second deposit of \$85,000 and you realise, do you not, that when the sale is completed you have to pay the balance of 1,665,000 dollars.
A. Right.
Q. Now, I think it's not disputed that neither Po Fung nor Mei Fung had the money – sufficient money.
A. Right.
Q. Were you thinking of raising a loan?
A. Right.
Q. Now, you know Mr. Edward WONG, do you not, of Edward Wong and Company, 30 the plaintiff?
A. Yes.
Q. Did you have any discussion with him relating to a loan?
A. Yes.
Q. Now, can you remember when did you first discuss with Mr. Edward WONG about the possibility of obtaining a loan? Was it before or after the payment of the deposit – the second deposit?
A. Before the second deposit.
Q. Was it before or after the first deposit?
A. That was after. 40
Q. Did you tell him how much you wanted to borrow?
A. I was thinking of raising a loan from a bank, but when I saw Mr. WONG he realised that I was going to purchase the said premises and he himself had a finance company.
Q. So what did he say then?
A. He asked me what percentage of the purchase price of the property can I raise from Hong Kong and Shanghai Bank. I told him that it was 70 per cent of the purchase price I could get.
Q. Before this meeting, had you already made enquiry with the Hong Kong Bank?

- A. Yes, I had.
- Q. So what did he say to that? What did Mr. WONG say to that?
- A. Mr. WONG said that since we were good friends I might as well patronise his finance company on the same terms as what I might have with the Hong Kong and Shanghai Bank.
- Q. Now, what did you understand him to mean by that?
- A. That is, to enter into instalmental payment scheme to the extent of 70 per cent of the purchase price with him.
- Q. And what did you say to that? 10
- A. And the interest proposed was 10 per cent interest.

MR. CHEUNG: The English phrase for “yat fun” is 1 per cent.

MR. INTERPRETER: I asked the witness if it's 1 per cent per month and he said he hadn't got into such detail yet and he said, “On that occasion I had to discuss this matter with my partners – the two partners of Po Fung – before I can give him a definite reply.

MR. CHEUNG: I'm so sorry. I merely intervened in the translation – I know that the Chinese interpreter has a habit of celling 1 per cent per month 10 per cent. ‘Yat fun’ is 10 per cent.

MR. INTERPRETER: It depends on the annual interest or monthly interest. If it's monthly interest it should be 1 per cent. 20

MR. CHEUNG: What were the words he actually used?

MR. INTERPRETER: “Yat fun”.

MR. CHEUNG: 10 per cent. Literally translated into English, it's 10 per cent per annum, but equally in Chinese it's meant 1 per cent, it means 1 per cent.

MR. INTERPRETER: Witness said he hadn't got into such detail with the . . .

MR. PRICE: 1 per cent a month is more than 10 per cent per annum.

COURT: The question is: had it been discussed between you and your partners? Was a rate suggested or mentioned? Did Mr. WONG suggest a rate?

A. Yes, he did. 30

COURT: What was it?

A. To the understanding of most Chinese – 1 per cent per month. In any event, it would be exactly the same interest rate as Hong Kong and Shanghai Bank.

Q. You mentioned that it was an instalmental loan. You mentioned something about instalments.

A. Yes.

Q. Was it discussed how the loan was to be repaid? Over what period of time was

- the loan to be repaid?
- A. Yes.
- Q. How long?
- A. My original intention was a term of 7 years would be most ideal to me, but an enquiry with the Hong Kong and Shanghai Bank revealed that at best I could get 5 years and, therefore, Mr. WONG said that he could likewise only allow me 5 years.
- Q. You said you had discussed with Mr. MA and Mr. TSIANG.
- A. Right.
- Q. After discussion with them, was it agreed that you should borrow the money from Edward Wong Co. rather than the Hong Kong Bank? 10
- A. It was the idea of both Mr. TSIANG and Mr. MA that in view of our close relationship we had better patronise Mr. WONG.
- Q. The loan was to be 70 per cent of the purchase price.
- A. Right.
- Q. Now, at that time had you made up your mind – had you, Mr. TSIANG and Mr. MA made up your minds as to who was to be purchaser, who was to be nominated the purchaser of the ground floor premises?
- A. We decided to use the name of a meat company known as the North American Meat Company. We decided to use that name as the purchaser. 20
- Q. How did you acquire this North American Meat Packing Co. Ltd?
- A. It was, in fact, our public accountant who suggested that we should make use of that company for the purpose of purchasing the property and his reason was that it would take time for us to incorporate the company.
- Q. And how much did you have to pay for North American Meat Packing Company?
- A. Several thousand dollars.
- Q. And was it purchased specifically for the purpose of acquiring the ground floor?
- A. Right.
- Q. Now, can you remember approximately when you acquired the company? Was it before or after you paid the second deposit on the 15th of January, 1976? 30
- A. What I can remember is it was after the payment of the first deposit, but whether or not it was -- whether it was before or after the payment of the second deposit, I cannot have a clear recollection.
- Q. After you had discussed with Mr. MA and Mr. TSIANG and decided to use the plaintiff as a source to an end, did you tell Mr. Edward WONG that?
- A. Yes, I did.
- Q. Now, can you remember approximately when did you tell Mr. WONG that?
- A. Roundabout January, 1976.
- Q. Mr. SHUM, I think it's common ground that some time in January you and Mr. WONG went to see Miss LEUNG of Johnson Stokes. 40
- A. Yes.
- Q. How, there is some doubt as to whether that took place on the 19th or the 21st of January. It doesn't really matter what the date was.
- A. All right.
- Q. With reference to the first time when you and Mr. WONG went to see Miss LEUNG, can you say how many days before that or was it on the same day that you told Mr. WONG that you would use the plaintiff company as the source of finance?
- A. Just a few days.
- Q. Now, anyway, on that day when you went to see Miss LEUNG with Mr. WONG,

- did you go to see Mr. WONG first? On the day on which you and Mr. WONG went to see Miss LEUNG of Johnson Stokes, did you go to see Mr. WONG first before going down to Miss LEUNG's office?
- A. Yes, I met Mr. WONG first and when the purchase was decided Mr. WONG said that we had to have the matter transacted before a solicitor, so he recommended Miss LEUNG, a solicitor.
- Q. Now, before you went to see Mr. WONG that morning, did you know that you – sorry. That meeting with Mr. WONG that morning, was it a pre-arranged meeting? 10
- A. Prior to that, Mr. WONG had made arrangement with Miss LEUNG for both of us to meet her on that morning.
- Q. Yes. No, your meeting with Mr. WONG that morning, was it a pre-arranged meeting?
- A. Yes, we happened to be neighbours at that time.
- Q. So is the answer that it was a pre-arranged meeting?
- A. Right.
- Q. Did he tell you the purpose of that meeting?
- A. Yes, he did.
- Q. And what was the purpose?
- A. He told me that he was going to bring me to Johnson Stokes and Master and he said that he had already had an appointment with Miss LEUNG the solicitor. 20
- Q. Now, that morning did you bring any document with you?
- A. Yes, I did.
- Q. What documents can you remember you brought along?
- A. The documents in relation to the payment of deposit which was 10 per cent of the purchase price.
- Q. That would be document 21 and 27, would it not, in Volume 3?
- A. Right.
- Q. Any other document?
- A. And also Articles and Memorandum of Association of the North American Company. 30
- Q. So you brought along a booklet containing the Articles and Memorandum of North American Company.
- A. Yes.
- Q. Any other documents?
- A. Just these three documents.
- Q. Can you remember why you brought these three documents along with you?
- A. Mr. WONG suggested that we should have this purchase transacted before Miss LEUNG, the solicitor, whom he had already instructed or retained for this purpose, and he also asked me in what name I was going to purchase the premises and I told him and so I saw fit to bring the relevant document in relation to that company and also to bring the deposit receipt. 40
- Q. Now, you told my Lord that on about the 30th of December when you paid the first deposit to Mr. CHAN Sun-ming he showed you some English documents – a hundred thousand dollars.
- A. Yes.
- Q. You say you cannot remember clearly but you might have been given copies of them.
- A. Yes.

Q. On the day when you were to go to see Miss LEUNG, why did you not bring those English documents with you - English document or English documents?

MR. TANG: Maybe before this I should clarify.

Q. Can you remember on about the 30th of December were you shown on English document or more than one document?

A. I have no recollection.

Q. On the day when you and Mr. WONG were going to see Miss LEUNG, if you had copies of English document or English documents supplied to you by Mr. CHAN Sun-ming, why did you not bring those along to Miss Leung?

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A. Now I cannot say for sure whether or not I did bring the English document as well.

Q. So you went -- did you go to Mr. WONG'S Office with Mr. WONG?

A. Yes. In fact we went in the same car.

Q. Did you stay any time at all, any length of time at all, in Mr. WONG's office?

A. I cannot be sure whether I spent any time in his office or went to his office at all. Anyway, according to Mr. WONG, arrangement had already been made for us to meet Miss LEUNG at her office. So most probably we went more or less direct.

Q. When you arrived at the offices of Johnson Stokes were you shown in to see Miss LEUNG -- were you and Mr. WONG shown in to see Miss LEUNG?

A. Mr. WONG did the introduction.

20

Q. Was it the first time that you met Miss LEUNG?

A. Right.

Q. Now, in the conversation which ensued between you, Mr. WONG and Miss LEUNG, what dialect did you use?

A. Cantonese.

Q. And can you tell my Lord did you say anything to Miss LEUNG?

A. Mr. WONG did the introduction and explained the purpose of the visit saying that I was going to purchase that place, 76 Hung To Road, and this purchase was going to be transacted before Miss LEUNG the solicitor.

MR. TANG: (To Mr. Interpreter) She was going to represent us.

30

MR. INTERPRETER: Who was to represent both sides.

Q. What do you mean by both sides?

A. By both sides I meant Mr. WONG on one side and North America Company on the other.

Q. What did Miss LEUNG say to that?

A. Miss LEUNG then seemed quite curious that we wanted to use that particular company, North America Company, as the purchaser of the premises because, according to Miss LEUNG, it would sound queer for a company like that to purchase the said premises, but I said that we had already decided to use that particular company or else we wouldn't know what other name can be used or whether other arrangement could be made.

40

Q. And did she say anything to that?

A. Miss LEUNG then suggested that I should use one of the companies recommended by her. She made several phone calls and as a result she recommended a certain

company and said that that would seem to be a more proper company to be used for that purpose and so I decided accordingly.

- Q. Now, did you tell her then and there that you wanted to buy that company?
A. I told her that I could not decide then and there until I have discussions with Mr. MA and Mr. TSIANG and I would let her know by phone.
Q. Now, that company which she said would be more proper, what did you understand her to mean by "more proper"?
A. We have to take a solicitor's word for that. When she said it would be more proper we had to take her word for that.
Q. It may be so, Mr. SHUM, but would you please listen to my question? What did you understand her to mean?
A. It's a question of whether it would sound better to use that particular company recommended by Miss LEUNG than my company, that is, the North American Company. According to her, it did not sound good to use North American Company.
Q. Did she give any other reason as to why you should not use North America Packing Company?

10

MR. TANG: (To Mr. Interpreter) No, no.

- Q. Apart from it not sounding nice, did she have any other reason?
A. What she said was it wouldn't sound good for a meat company to purchase properly.
Q. Mr. SHUM, do you know what an Objects Clause is in a limited company's constitution?

20

(Witness speaks)

- Q. Now, Mr. SHUM, would you please listen to the question and just answer the question, otherwise you would take a long, long time. The question is a rather simple one. Do you know what an Objects Clause is in the constitution of a limited company? Either you know or you don't know.
A. I don't have a full understanding of this, no.
Q. Very few people have a full understanding, but do you understand?
A. I know something about this.
Q. What did you understand the Objects Clause of North American Meat Packing Company to allow?
A. I don't know English, so I don't have much understanding of that.
Q. Was the company – you told Miss LEUNG that you were not able to decide before you consulted Mr. MA and Mr. TSIANG.
A. Right.
Q. Did you arrange with Miss LEUNG as to how you would communicate your decision to her?

30

MR. INTERPRETER: He has said by phone.

40

- Q. I'm sorry. You've said by phone.
A. Yes.

- Q. And did you subsequently discuss the matter with Mr. MA and Mr. TSIANG?
A. Yes.
Q. And you decided to buy a company from Johnson Stokes.
A. Yes.
Q. Was it on the same day that you told Miss LEUNG that?
A. Yes, the same afternoon.
Q. And you told her that you would buy a company.
A. Yes.
Q. And was it a company that you had chosen earlier on that morning – earlier on that day? 10
A. Right.
Q. Was it Bovill Investments Ltd?
A. Bovill, yes.
Q. Now, why would that name sound better?
A. Because by name it's closer, more related – more closely related to Po Fung and Mei Fung – the name being Po Mei in Chinese.
Q. Do you mean to say that you wanted to have the property-owning company – you wanted that company to have the name of Po Mei in Chinese? Mr. SHUM, is that so or not? 20
A. Yes.
Q. And it's because the two companies which occupied the ground floor are Po Fung and Mei Fung. So you take the first character from each of the two names and form Po Mei.
A. Quite so.
Q. And the company which you had chosen earlier that day sounds closer to the Chinese words Po Mei than North America.
A. Right.
Q. Would you pronounce the name for my Lord – what you understand to be the pronunciation of the name of the company suggested to you by Miss LEUNG? 30
A. Po Mei.
Q. Can you pronounce Bovill?

MR. TANG: (To Mr. Interpreter) Can you show him the word and ask him?

A. I don't know English.

MR. TANG: My Lord, maybe this would be a convenient time.

11:35 a.m. Court adjourns

11:55 a.m. Court resumes

Appearances as before.

D.W. 1 - SHUM Ka-ching

o.f.a.

XN BY MR. TANG (continues)

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- Q. Going back slightly in time to the meeting that you had with Miss LEUNG and Mr. WONG on the first morning, did you or Mr. WONG tell her what the amount of the loan was?
- A. Yes.
- Q. How much was it going to be?
- A. A loan equivalent to 70 per cent of the purchase price.
- Q. Who mentioned that?
- A. Mr. WONG spoke to Miss LEUNG that we needed to make an arrangement of instalmental payment for 70 per cent of the purchase price. 10
- Q. Did he mention how long the instalments were going to last?
- A. Yes, he mentioned but I can't say for sure whether he said 5 years or 7 years. It must have been either a 5 year term or 7 year term.
- Q. Was any mention made as to how soon the matter was to be completed?
- A. Yes, Mr. WONG said that he expected that this transaction was to be completed by the 30th of January.
- Q. Did you yourself say anything to Miss LEUNG?
- A. I provided the necessary materials – papers for the purpose of this arrangement, this instalmental arrangement.
- Q. Now, you said you provided the papers. By that you mean the two receipts for the deposit and the constitution – the Articles and Memorandum. 20
- A. For the purpose of this particular arrangement to be effected by Miss LEUNG as a matter of usual procedure.
- Q. On the question of documents you told my Lord that you can't remember whether or not you had been given copies of English documents by Mr. CHAN Sun-ming and you can't remember whether or not you had brought them to Miss LEUNG.
- A. That's right.
- Q. What I want to ask you is this. If you had indeed got copies of those English documents or document, would you have brought them along with you to Miss LEUNG on that day? 30
- A. Yes, in that case I would have done so.
- Q. So we could ask Miss LEUNG that. Did anyone mention anything about who was acting for the vendor of the property in this case?
- A. Mr. CHAN Sun-ming would represent the vendor.
- Q. He was the vendor.
- A. Yes, he was the vendor.
- Q. CHAN Sun-ming was the vendor, but the question that I want to ask you about, Mr. SHUM, is: did anybody mention in the meeting between you, Mr. WONG and Miss LEUNG as to who was acting, which solicitor was acting for the vendor, Mr. CHAN Sun-ming? 40
- A. I can't say for sure whether it was myself or it was Mr. WONG who mentioned the solicitor – Mr. YIU, Danny YIU, YIU Kam-wah.

Q. Was his name mentioned spontaneously by you or Mr. Wong or was it mentioned in response to any inquiry?

A. This was in response to inquiry.

Q. Whose question?

A. Miss Leung.

Q. Can you remember anything else which was said at that meeting?

A. Mr. Wong asked me to pay 20% of the purchase price and after my payment of this 20% of the purchase price it is then for the arrangement to be effected by Miss Leung.

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Q. Was that said in the presence of Miss Leung?

A. Yes.

Q. During that meeting did Miss Leung at any time say that she was not prepared to represent you or your company as your solicitor?

A. No.

Q. Did she mention that she was unwilling to represent you?

A. No, she didn't say that.

Q. Up to that moment had you seen Mr. Danny Yiu at all?

A. No.

Q. But did you know at that meeting that Mr. Danny Yiu was Mr. Chan Sun-ming's solicitor?

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A. Yes.

Q. How did you know that?

A. Mr. Chan told me so.

Q. When did he tell you?

A. This was after the payment of the 10% deposit.

Q. You left the meeting and in the afternoon you said you telephoned Miss Leung and told her that you would purchase a company from her.

A. Right.

Q. In that telephone conversation what did Miss Leung say to you?

30

A. It was Miss Leung who suggested that I should let her know by telephone if we had decided to purchase the company recommended by her. On that afternoon I rang her up and she asked me whether we wanted that company.

Q. You told her that "Yes, we wanted that company."

A. Yes.

Q. What did she say?

A. She told me that she needed two days to make the necessary arrangement.

Q. Paperwork arrangement?

A. Yes, to do the paperwork for the establishment of this new company.

Q. Do you mean for the acquisition of this company by you?

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A. That is right.

Q. Did somebody from her office telephone you about two days later and ask you to go to Johnson Stokes – ask you, Mr. Ma and Mr. Tsiang to go to Johnson Stokes?

A. Yes.

Q. Was it Miss Leung who telephoned you or was it her secretary?

A. Her secretary.

Q. Did you go there on the same day?

A. Yes.

Q. So it was two days after the first meeting that you went back to Johnson Stokes

- office.
- A. Yes.
- Q. Were you shown in to see Miss Leung?
- A. We waited in the reception room for a while.
- Q. And then you were shown in to see Miss Leung, were you?
- A. Yes, the secretary showed us in.
- Q. You and Mr. Ma were shown various documents and were asked to sign them -- sorry, Ma and Mr. Tsiang as well.
- A. And also my wife was there. 10
- Q. Can you recall what were the documents which you signed?
- A. Papers were already typed out and we were brought in to a conference room by the secretary. Miss Leung came in and told us that she had got all the papers ready and it would be for her secretary to explain those papers to us.
- Q. Did her secretary do so?
- A. Yes, she did.
- Q. Can you remember what those documents were about?
- A. They were about our purchase of new company and also about the purchase of the property at Hung To Road.
- Q. Do you actually recall signing documents relating to the purchase of the property on that occasion or could that have taken place on a subsequent occasion? 20
- A. We only signed papers concerning the purchase of a new company on that occasion. As regards the purchase of property, papers were signed on a subsequent occasion.
- Q. Maybe I will show you some of the documents which I think you signed on that day. Would you look at volume 4, page 65 please. I am sorry, it should be page 58. 58 is the correct number. I am sorry. You see your signature, do you not?
- A. Yes, I do.
- Q. The date is probably not important but it was the 20th of January.
- A. Yes.
- Q. Just a confirmation saying that you are willing to be appointed the director of Bovill Investment Co. Ltd. 30
- A. Yes.
- Q. I suppose your wife, Mr. Tsiang and Mr. Ma signed similar documents.
- A. Yes.
- Q. Would you turn now to page 71. This is a document to be filed with the company's registry relating to the particulars of directors.
- A. Yes.
- Q. It is not very important. Can you remember was it signed on the same occasion or a subsequent occasion?
- A. On the same occasion in the conference room as requested by the secretary. 40
- Q. At any rate you signed several company documents. After you signed those documents, was anything said to you by either Miss Leung or her secretary?
- A. After we had signed all the documents as requested, Miss Leung's secretary told us that the procedure was completed and we might leave.
- Q. Was anything said to you on that occasion as to when the mortgage documents would be ready for signature -- the mortgage and the documents relating to the purchase of the ground floor be ready for signature.
- A. We were told that when papers were ready, they would let us know.
- Q. Were you told on the same day as you were signing the company documents?

- A. Yes, the same day.
- Q. Who said that?
- A. The secretary.
- Q. Was she a Miss Chor?
- A. Yes.
- Q. So you left.
- A. Yes.
- Q. What was the next occasion that somebody contacted you from Johnson Stokes?
- A. On the 25th or 26th we received a telephone call telling us to attend at our solicitor's office on the 27th at 2:30 p.m. and for us to bring our cheques along for the purpose of making payments to the solicitor's firm. 10
- Q. Who telephoned you?
- A. The secretary.
- Q. Did you have any conversation on the telephone with Miss Leung between the time after you had signed the company documents and the 27th of January, the day on which you signed the mortgage documents?
- A. Miss Chor rang us up telling us that she was directed by Miss Leung, the solicitor, to inform us that we were to go to the office on the 27th to sign the purchase papers. 20
- Q. Would it be correct to say "purchase and sales documents"?

INTERPRETER: Yes.

- Q. Do I take it that your answer is: You cannot recall whether or not you had any telephone conversation with Miss Leung during that period?
- A. That is right.
- Q. Up to that time have you had any contact at all with Danny Yiu or anybody from Danny Yiu And Co?
- A. No.
- Q. Before the 27th of January did you give four cheques, each for \$92,500, to Mr. Edward Wong of the plaintiff company? 30
- A. Yes.
- Q. Can you remember on which day did that take place?
- A. Two of the cheques, each for \$92,500, were sight cheques.
- Q. Can you remember when you gave those cheques to Mr. Wong? Was it on the 25th, 26th or 27th of January?
- A. I can't remember clearly exactly when I handed these cheques to Mr. Wong. What I can remember is two cheques were sight cheques, the other two were one year post dated cheques.
- Q. So far as the post dated cheques were concerned, did you have to pay interest to Mr. Wong's finance company for them? 40
- A. Yes.
- Q. That was at 1.2% per month interest.
- A. Yes.
- Q. Why did you have to give him two post dated cheques?
- A. The advice I got was: 10% of the purchase price I have to pay Mr. Chan, 10% to Mr. Wong and the remaining 10% would have to be paid on account of the borrowing by way of interest.

- Q. Mr. Shum, maybe I will deal with this slowly. According to you the arrangement between you and Mr. Wong was that he should lend 70% of the purchase price.
- A. Yes.
- Q. Leaving you, therefore, to find 30%.
- A. Yes.
- Q. As to that 30%, 10% you have already paid to Mr. Chan Sun-ming by way of deposit.
- A. Yes.
- Q. The remaining 20% amounted to \$370,000. 10
- A. Yes.
- Q. You had to pay that sum on or before the 27th of January.
- A. Yes.
- Q. Because you were told that the sale and purchase documents were to be signed on that day.
- A. Yes.
- Q. Did you have \$370,000? Did you or your company have \$370,000 then?
- A. The cash we had ready was \$185,000 which was paid by two cheques, sight cheques. The remainder was to be paid by post dated cheques.
- Q. The remainder you were to borrow, were you not, on the security of the post dated 20 cheques?
- A. Yes.
- Q. That is why you have to pay additional interest for that.
- A. Right.
- Q. What did you think was going to happen to the \$370,000 after you had paid them over to Edward Wong? Do you know what was going to happen to the money? What was he going to do with the money?
- A. That would be used for the purpose of purchasing the property. That would be used for the instalmental payment.
- Q. You have told my Lord that in the presence of Miss Leung, Mr. Wong had said that 30 the 20% should be paid to him and then it would be . . .

MR. CHEUNG: I have no recollection that the witness has actually said that.

MR. PRICE: I don't know whether my learned junior's note will confirm this. My friend, Mr. Tang, asked about the meeting "Was anything else said at the meeting?". My Note of the answer was "At this meeting Mr. Wong asked me. . .", that is Mr. Shum, ". . . to pay 20% of the purchase price and after my payment of 20%, the arrangements would be completed by Miss Leung and in whose presence was this said.", in the presence of Miss Leung. That is my note. I don't know whether Mr. Mills Owens' notes substantially agrees with that. That was not long before my friend proceeded for the first time – for the first time mentioned the name of 40 Danny Yiu, 12:05 p.m.

MR. TANG: I am obliged.

- Q. You have told my Lord that in the presence of Miss Leung at the first meeting Mr. Wong asked you to pay the 20% over to him.

MR. PRICE: That doesn't quite confirm because I didn't have any note of whether the answer was that "Mr. Wong asked me to pay the 20% of the purchase price to him." It was "Mr. Wong asked me to pay 20% of the purchase price." I don't think I noted any destination.

MR. CHEUNG: After Danny Yiu was mentioned, the question was asked "Why was his name mentioned?" Answer: "This was in response to a question from Miss Leung. Mr. Wong asked me to pay 20% of purchase price and after my payment of 20% of purchase price, we then for the arrangement to be effected by Miss Leung." I don't think there was anything said by this witness that the 20% was to be paid to Mr. Wong. 10

MR. PRICE: My learned friend is right. I have a reference: "I can't say for sure whether I or Mr. Wong mentioned Danny Yiu." "Was it mentioned in response to inquiry?" Answer: "In response to a question by Miss Leung." "Anything else?" Then follows the bit that I read out from my note. So destination wasn't mentioned according to my note.

MR. CHEUNG: Nor was mine.

- Q. You said at the first meeting between you, Mr. Wong and Miss Leung, Mr. Wong said to you that you were to pay 20% and after the 20% had been paid, the arrangement would be completed by Johnson Stokes. 20
- A. Yes.
- Q. What did you understand him to mean when he said the arrangement would be made by Johnson Stokes or by Miss Leung?
- A. The arrangement in respect of instalment payments.
- Q. According to your understanding to whom was this 20% payable by you?
- A. To the vendor.
- Q. Going back to the four cheques of \$92,500. You said you only had \$185,000 and you had to borrow \$185,000.
- A. Yes.
- Q. After you had borrowed \$185,000 and you had \$185,000 of your own represented by the two sight cheques, what did you do with the money? 30
- A. In what sense?
- Q. You had these two sight cheques for \$185,000. What did you do with them?
- A. For the purchase.
- Q. To whom did you give these two cheques?
- A. To the vendor.
- Q. Did you deliver it physically to the vendor?
- A. No.
- Q. Who was to deliver it? Who was to deliver them for you to the vendor?
- A. It was to be handed over through this finance company. 40
- Q. You said you had to borrow \$185,000 from Mr. Edward Wong or his company.
- A. Yes.
- Q. Did he actually give you cash in the sum of \$185,000?
- A. No. He said he would arrange, make all necessary arrangement, for me.
- Q. What did you understand by "all necessary arrangement"?

- A. He told me that this would be lumped together with the 70% of the purchase price and he would arrange the payment towards the purchase of the property.
- Q. Why did you give him the money represented by the two sight cheques of \$92,500 and why did you let him have the proceeds of the loan of \$185,000 to you in payment of the purchase price?
- A. This was because we had already retained Miss Leung and Miss Leung in turn would contact the solicitor for the vendor.
- Q. Yes but what does that have to do with the money?
- A. Because I was given to understand that I had to tender that money before the papers would be provided for our signature. 10
- Q. Tender the money to whom?
- A. Tender to the solicitor for the vendor, for Mr. Yiu.
- Q. Yes, I understand that. But why did you then pay the money to Mr. Edward Wong?
- A. Because Mr. Wong told me that in order to effect the instalmental payment arrangement, I had to pay the 20% to him.
- Q. I see, to him. You said you were given to understand that you had to tender payment to the vendor's solicitor, Danny Yiu and Co.
- A. Yes. 20
- Q. Who gave you to understand that?
- A. Mr. Chan.
- Q. When did he say that to you?
- A. This was after my payment of 10% deposit.
- Q. But you paid to Mr. Wong nevertheless.
- A. Yes.
- Q. What was your understanding as to what Mr. Wong would do with the money? How Mr. Wong would deal with the money?
- A. Mr. Wong told me that once I handed the money to him, he would make arrangement for me and would also hand all the money to Miss Leung. 30
- Q. All the money? What do you mean? Your 20% or more than that?
- A. As far as I was concerned, I was to pay to the finance company.
- Q. Yes, I know. But you said Mr. Wong said, "all the money", what did you understand him to mean "all the money"?
- A. My understanding was for my part I was merely to pay 20% to Mr. Wong for him to make all the payment arrangement with Miss Leung. It would be for him to arrange with Miss Leung as regards the payment. As for me it would suffice if I paid 20% in the first instance.
- Q. That was your understanding?
- A. Right. 40
- Q. On the 27th of January, 1976 did you and Mr Ma and Mr. Tsiang go up to Miss Leung's office?
- A. Yes.
- Q. Was the arrangement that the three of you should go up there at 2:30 in the afternoon?
- A. Yes.
- Q. Did the three of you go there at 2:30 then?
- A. Yes.
- Q. You saw Miss Leung?

- A. Yes.
- Q. Can you tell my Lord what happened that afternoon?
- A. When we saw Miss Leung that afternoon, she told us that all the papers were ready and properly typed out.
- Q. When she told you that all the papers were ready, what did you understand "all the papers" to refer to?
- A. Papers in respect of the purchase of property, papers for our signature.
- Q. What about mortgage of the property?
- A. Yes, we had to sign mortgage as well. 10
- Q. You signed some documents?
- A. Yes.
- Q. Can you remember what documents you signed?
- A. I remember signing certain undertaking that in event of any failure to pay the instalments, the three of us would be bound individually to pay the money.
- Q. The documents that you were asked to sign that afternoon, were they all in English?
- A. Yes.
- Q. Were those documents explained to you by Miss Leung?
- A. Not all the documents were explained. 20
- Q. I do not mean explanation in detail, but did she explain to you as you signed each document what the document was about?
- A. Yes, that is what she did.
- Q. This document you told my Lord about: If the company were unable to pay the instalments, the three of you would be individually responsible for its payment. Who told you that that was the purpose of the document?
- A. Miss Leung told me that this was the usual procedure for instalment payments.
- Q. Would you look at documents in volume 3, page 65. Sorry, it should be 39. It is the debenture. This is the beginning of the document. I will ask you to turn to page 56 to the end of the document. Do you see your signature at page 56? 30
- A. Yes, I do.
- Q. Was this one of the documents you signed on the 27th of January?
- A. Yes.
- Q. What did you think this document was when you signed it?
- A. Very roughly Miss Leung said that we were to trust her not to worry and everything was in order and we got only to sign. So I could only take her words for that.
- Q. Did you understand that you were signing a mortgage of the property?
- A. Yes.
- Q. So you knew that you were signing a mortgage of the property? 40
- A. Yes.
- Q. Did she go through this document clause by clause with you?
- A. No.
- Q. You said you realised that this was a mortgage document. Who told you that this was a mortgage document?
- A. Miss Leung.
- Q. You took her word for it and you signed the document.
- A. Yes, I did.
- Q. Would you turn to page 60 and 63 please. You knew, did you not, at that time that

- you were required to sign a guarantee?
- A. Yes.
- Q. At page 63 do you see your signature?
- A. Yes.
- Q. In fact you see the signature of Mr. Tsiang and Mr. Ma too, do you not?
- A. Yes.
- Q. Did Miss Leung go through this document clause by clause with you?
- A. I can't say for sure now.
- Q. But she told you that you were signing a guarantee. 10
- A. Yes.
- Q. She also told you that if the company cannot pay, the three of you individually would have to pay the instalments?
- A. Yes.

MR. TANG: My Lord, the time is now 1 o'clock. maybe this would be a convenient moment.

1:00 p.m. Court adjourns

2:10 p.m. Court resumes

Appearances as before.

DW.1 Shum Ka-ching 20

XN BY MR. TANG

- Q. Mr. Shum, just before the luncheon adjournment I was asking you questions about the document that you signed on the 21st (27th?) of January.
- A. Yes.
- Q. You told my Lord that Miss Leung explained the mortgage to you in general terms.
- A. Yes.
- Q. Do you know the difference between a debenture and a mortgage?
- A. I only understand what a mortgage is.
- Q. You knew that the ground floor had to be mortgaged to the plaintiff company as security for this loan, did you not? 30
- A. Yes, I did.
- Q. As to what form that mortgage should take, would it be correct to say you were not very clear about?
- A. Right.
- Q. You mentioned to my Lord on many occasions that it was an instalment repayment loan.
- A. Yes.
- Q. In the mortgage document that you signed on the 27th of January, did you know whether or not that contained any reference to instalment payments? 40
- A. I can't say for sure.
- Q. So far as you are concerned, should that document contain any reference to instalment payments?
- A. Yes.
- Q. By the 27th of January, 1976 had it been agreed between you and Mr. Wong as to

how long the instalment payments were to last?

A. Yes. We had by then agreed on a term of I think it was 5 years.

Q. You thought that a term had been agreed and it was 5 years.

A. Right.

Q. Did you know what the monthly instalment was going to be?

A. Just less than \$30,000 according to the \$29,000 odd documents such as demand note reveals.

MR. CHEUNG: My Lord, I make an objection because the first time instalments were mentioned was in the cross examination by Mr. Tang. There is no pleading which alleges that there was an instalment, payment at all. I am completely taken by surprise. The case has been pleaded on the basis there was a loan repayable on demand. I must object to evidence tending to establish that there was an agreement to pay instalments or that this is a matter which is material in this case. 10

MR. TANG: I think I maybe able to put my learned friend's mind at ease by telling your Lordship that it is not really a matter of importance between the plaintiff and the defendant at all whether or not there was an agreement to repay the loan by instalments. Even between the defendant and the third party it is also not a point of any importance because we have not relied upon that as an act of negligence, as it were, on the part of the third party. But such evidence was introduced in order to, as it were, fill in the background. 20

MR. PRICE: As I put it to Mr. Wong, I think my cross examination of Mr. Wong the position was established by the end of the first meeting he believed this to be agreed that the document, debenture or mortgage, should be a document showing the loan as repayable on demand. That is my recollection but I haven't checked it in the last few minutes.

MR. CHEUNG: Nevertheless, my Lord, none of this was pleaded by any of the defendants and I must object to this point being taken.

MR. PRICE: My Lord, I certainly shan't take it against the plaintiff and the fact it's not pleaded is a matter to which I should undoubtedly refer, not pleaded by the 1st, 2nd, 3rd and 4th defendants. It is a matter on which undoubtedly I shall refer as between defendants one to four and five. 30

(COUNSEL CONFERS)

MR. CHEUNG: My Lord, my friend, Mr. Tang, says he is not taking the point, so I am contented.

Q. Since it maybe a matter of comment, I better ask the witness one or two questions relating to the question of instalment. Whatever the mortgage document should say, is it your evidence that it was agreed it was your understanding that the loan was repayable by instalments?

A. Yes, there would be instalmental payment towards the purchase price. 40

MR. TANG: My learned friend, Mr. Price, said, my Lord, that he may wish to comment on the fact that this had not been pleaded, it may well be that it would be suggested in due course to this witness that his evidence relating to instalment payment is a matter of fabrication by him. I think in view of that I should produce several documents which were sent by the plaintiff company. I think copies of them had been supplied to the third party but I understand from my learned friend that copies had not been supplied to the plaintiff.

MR. CHEUNG: I wasn't given a copy at all. Now that my friend have agreed they don't take this as a substantive point, I am contented.

10

Q. Would you look at these several documents, the six of them. Are they debit notes addressed to the 1st defendant's company by Edward Wong And Co. Ltd?

A. Yes. By these documents we were required to pay a monthly instalment.

MR. TANG: My Lord, perhaps your Lordship would like to look at any one of them. They are the same except they deal with different months. If your Lordship would like to look at the first one, deal with the month of January/February 1976. It refers to repayment of loan, capital, in the sum of \$16,130.95 per month, do you not see that? This is the capital, the principal. And then the interest is \$13,550. It is 1% on the principal. Do you see that?

A. Yes.

20

Q. If you multiply \$16,130.95 by 84, that is 7 years at 12 months each, you'll arrive at \$1,355,000, I think, plus or minus one or two cents.

A. I did not work it out myself in detail at that time.

Q. My learned friend, Mr. Cheung, has checked it. It is correct. I think you can take it from me. In fact I have checked it too myself. It is to the nearest dollar certainly.

A. Yes.

Q. If you were to look at the debit note month by month, you'll see that the same interest payment of \$13,550 was payable according to the debit notes, so it was interest payable at 1% constant rather than on a reducing balance.

A. Yes.

30

Q. Your understanding was that you had to pay monthly instalments of just under \$30,000 a month.

A. Yes.

Q. In the result you did not pay any one of these instalments. Eventually you didn't pay any one of these instalments.

A. That is right.

MR. TANG: Exhibits D1(a) to (f).

Q. We now pass from the question of the instalment payment. When you signed the mortgage document, Mr. Shum, on the 27th of January, did you think that you were signing a valid and effective mortgage of the property?

40

MR. PRICE: I can't think of a more leading question myself.

MR. TANG: I'll rephrase it, my Lord.

- Q. When you signed the mortgage document on the 27th of January, what did you think you were signing?
- A. I understand that I was required by that document I signed to pay the instalments, monthly instalments. That was in relation to instalment payment scheme towards the purchase of the property.
- Q. This question of the instalment payment, did Miss Leung know about it?
- A. Yes.
- Q. How did she know?
- A. Because Mr. Wong had given her this instruction. 10
- Q. In your presence?
- A. Yes, when I was present at the first meeting.
- Q. Did you know when you signed the mortgage document why were you required to sign it, why were you asked to sign it?
- A. Miss Leung said that I was to participate in this purchase scheme and I had to sign.
- Q. Apart from the mortgage document and a guarantee, you signed other documents on the same day, did you not?
- A. Are you referring to the meeting with Miss Leung?
- Q. Yes, still in Johnson Stokes office. Mr. Shum, would you please listen to the question. Apart from signing the mortgage document and a guarantee, you signed other document, did you not, at Miss Leung's office? 20
- A. Yes.
- Q. Would you look at volume 4 page 76 and page 77 please. Do you see your signature at the top of the page?
- A. Yes.
- Q. And then you see your signature again at the bottom of page 76.
- A. Yes.
- Q. And then over the page. Do you know what this document is?
- A. Yes, I understand this to be a document in relation to purchase of the property. 30
- Q. This purports to be minutes of a meeting of the board of directors of Bovill Company. Do you know that?
- A. I know.
- Q. Was this prepared for you by Johnson Stokes?
- A. Yes.
- Q. Did Miss Leung explain this to you clause by clause?
- A. Yes, she did.
- Q. She explained this to you, every clause?
- A. Yes.
- Q. Can you recollect what she told you this document was the contents of this document? 40
- A. I can't remember all of it.
- Q. Maybe we will go and deal with the first clause first. That is the company, that is Po Mei, purchase the ground floor of number 76 Hung To Road from Mr. Ho Sau-ki and Lucky Time Finance Co. Ltd. Have you heard of Lucky Time before?
- A. Yes, I have.
- Q. In what connection?
- A. In connection with property.
- Q. Who mentioned that name to you?

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KWW/M/12

A.

Miss Leung.

Q.

So you heard the name from Miss Leung.

A.

Right.

Q.

Before Miss Leung mentioned this name to you, have you heard of it before?

A.

I have no recollection.

- Q. Why do you say that she was acting for you?
A. Because that was the position as I understood it in the very beginning when Mr. Wong, myself and Miss Leung met the first time. That was what we said, yes.
Q. Now apart from asking you to sign documents, were you presented with two bills by Miss Leung?
A. Yes.
Q. The first one I would want you to look at is in volume 4, page 65. Do you remember being presented with this bill?
A. Yes. 10
Q. \$3,547?
A. Yes.
Q. Now were you presented with this on the 27th of January, the day when you signed the documents?
A. Yes.
Q. Do you know what this bill was about?
A. I was told that this was solicitors' fee in respect of the new company.
Q. And who told you that?
A. Miss Leung.
Q. Are you quite sure that this was presented to you on the same day? Could it have 20
been presented to you one day earlier?
A. I am quite sure it was on the same day, the 27th.
Q. Would you look at volume 2, page 43B?

MR. TANG: I'm afraid, my Lord, the other one apparently had been inserted as 43A. I have overlooked that.

COURT: The one we have just been looking at is . . . ?

MR. TANG: 43A as well. It was a late insertion. The other one was the one for \$3,547. This one is \$14,000.

COURT: Volume?

MR. TANG: 43B in volume 2, my Lord. 30

- Q. Was this bill presented to you on the 27th of January?
A. Yes.
Q. Who presented this bill to you?
A. Miss Leung.
Q. Did she say what this bill was about?
A. She told me that this was a bill for solicitors' fee in respect of the purchase of the property.
Q. Was it the purchase or the mortgage?
A. In other words, it was about the instalmental payment scheme.
Q. I see, instalment payment scheme. Do you mean the mortgage? 40
A. Yes.
Q. Now would you look at the top of the document? Can you read those English words there Edward Wong Finance Company Limited?

- A. No. I don't know English.
- Q. And you paid this on the same day?
- A. Yes.
- Q. Now that afternoon, did you see Mr. Edward Wong at all on the 27th?
- A. No recollection.
- Q. Now after you signed the documents and after you have paid the two bills, what did you do?
- A. I handed a cheque to Miss Leung, a cheque for 12,000 odd dollars. On the question of stamp duty, I enquired from Miss Leung whether or not I should pay also the stamp duty. So Miss Leung asked us to wait for a while while she 'phoned up the solicitors for the other side. 10
- Q. Who was that solicitor for the other side?
- A. A Mr. Yiu. So there was a conversation going on between the two in English which I don't understand. At the end of the conversation, Miss Leung advised me to go over to the solicitors of the other side, Mr. Yiu, and it would be all right for me to pay there, and she advised the three of us to hurry up and to go over there before. . . to arrive there before 5 o'clock.
- Q. Did she say to you why it was that the three of you should go over there before 5 o'clock? 20
- A. She told us that Mr. Yiu, the solicitor, was waiting for us there.
- Q. Waiting for what purpose?
- A. And Miss Leung told me that she had made every arrangement with Mr. Yiu, and it would suffice for us to go over there to sign certain documents.
- Q. And to pay the stamp duty, of course?
- A. Yes.
- Q. Did she say how much the stamp duty was?
- A. As we were short of time, she didn't . . . I don't think she told us the amount.
- Q. Now Miss Leung's office was in Kowloon and Mr. Yiu's office was in Hong Kong, was it not? 30
- A. Right.
- Q. Now before she told you to go over to Danny Yiu's office to sign some documents, did you know that you had to go to Danny Yiu's office to sign any documents that day?
- A. No.
- Q. Now apart from receiving a telephone call from Miss Leung's secretary telling you that the transaction would be completed on the 27th, did you receive any communication at all from Danny Yiu & Company about when the matter would be completed?
- A. No. 40
- Q. So you went with the 2nd and the 4th defendants over to Danny Yiu's office?
- A. Yes.
- Q. Had you been to Mr. Yiu's office before?
- A. No.
- Q. And did you see Mr. Yiu that afternoon?
- A. Yes.
- Q. And had you met him before?
- A. No.
- Q. And did he give you some documents to sign?

- A. Yes.
- Q. Do you know what those documents were?
- A. I saw a certain plan attached to the documents which I signed. . . which I was required to sign.
- Q. You were required to sign documents and the plan as well, were you not?
- A. Indeed.
- Q. Do you know what those documents were about?
- A. Mr. Yiu told me that that was a plan in respect of the property, 76, Hung To Road, and that document had got to be registered with the Government. 10
- Q. That is the plan. What about the other documents, did they also have to be registered?
- A. He told me that all those documents having been signed had got to be presented with the Government.
- Q. Now apart from Mr. Yiu, who else did you see in Mr. Yiu's office?
- A. CHAN Sun-ming.
- Q. I see. Was he there when you arrived?
- A. Yes. He was waiting for us.
- Q. Now before you saw him there, did you know that he was going to be there?
- A. No. 20
- Q. And did you have any conversation with Mr. Chan?
- A. We greeted each other.
- Q. So you signed the document, and did you have to pay anything to Mr. Yiu?
- A. Yes, the stamp duty.
- Q. Now would you look at document 45 in the second volume, please? Did you pay a total of \$45,820?
- A. Yes.
- Q. Now was it all stamp duty or was it stamp duty and something else?
- A. He told me that it was stamp duty, but I was not quite clear about what it was.
- Q. Were you given a bill like the one that you looked at at page 43B in the same volume by Danny Yiu & Company? 30
- A. I have no recollection.
- Q. But you don't have it now, do you?
- A. No.
- Q. Looking at the receipt again at page 45, it actually says that he received \$45,820 from your company being payment of their costs and disbursements, so that means stamp duty plus their costs, the solicitors' costs, and are you telling my Lord that you were not told that that sum included the solicitors' costs?
- A. No, he didn't.
- Q. Now Mr. Yiu, apart from asking you to sign certain documents, apart from asking you to pay 45,000 odd dollars and telling you that the documents required to be registered, did he say anything else to you? 40
- A. He also told me that once I had fulfilled all this requirement, it would be for him to make all necessary arrangements with Miss Leung.
- Q. And did you then leave his office?
- A. Right.
- Q. I understand Chinese New Year was on the 31st of January in that year.
- A. Yes.
- Q. After Chinese New Year, did you do anything?

- A. About a fortnight after I rang up Miss Leung.
- Q. Now why did you ring up Miss Leung?
- A. This was about the title deed that was mentioned by Mr. Yiu.
- Q. Now what did Mr. Yiu say about the title deeds?
- A. After that meeting with Mr. Yiu and after the Chinese New Year, there was a lapse of about a fortnight. I rang up Miss Leung and asked her about the position regarding the instalmental payment scheme.
- Q. And what did she say to that?
- A. Miss Leung said, "Don't press me so hard. I will sort things out for you in any event." 10
- Q. But earlier on you said you rang her about what Mr. Danny Yiu mentioned about the title deeds.
- A. I also asked Miss Leung if Mr. Yiu had forwarded to Miss Leung the title deed.
- Q. So far as your knowledge went, you knew that Mr. Yiu had to forward the title deeds to Miss Leung?
- A. Yes.
- Q. How did you know that?
- A. After the telephone conversation with Miss Leung who tried to reassure me, I then rang up Mr. Yiu, but I could not contact him. 20
- Q. Mr. Shum, you are again not listening to my question. Now would you listen to my question and then answer it, please? You told my Lord that you knew that Mr. Yiu had to forward title deeds to Miss Leung.
- A. Yes.
- Q. Now what I want to find out from you is how did you come to know that Mr. Yiu would have to forward the title deeds to Miss Leung?
- A. Because when Miss Leung was doing this mortgage for us, Mr. Yiu should forward the title deed to Miss Leung. That was what I thought.
- Q. Yes, that is the reason why Mr. Yiu would have to forward the title deeds to Miss Leung, according to you, but that is not the question that I have asked you. The question that I have asked you is how did you know that Mr. Yiu would have to forward some title deeds to Miss Leung? 30
- A. Mr. Yiu had already told me that he would forward these documents to Miss Leung.
- Q. When did Mr. Yiu tell you that?
- A. On the 27th.
- Q. On the afternoon of the 27th?
- A. Yes.
- Q. Same occasion when you went and signed on a plan?
- A. Yes. 40
- Q. So now going back to about a fortnight after the Chinese New Year. You said you telephoned Miss Leung and asked her about the instalment payments.
- A. Yes.
- Q. Apart from instalment payment, did you ring her about anything else?
- A. She appeared to be a bit impatient with me and she said, "I will naturally let you know when I have got them ready."
- Q. Get them ready, get what ready, Mr. Shum?
- A. All this procedure in connection with the mortgage and the deed as well as the instalmental payment scheme.

- Q. Can you remember how many times roughly you telephoned Miss Leung in connection with instalment payments and title deeds?
- A. Many.
- Q. Now what was it that you asked her about the instalment payment, Mr. Shum, that doesn't seem to be very clear? Now what did you ask her about the instalment payments?
- A. I was referring to the mortgage, whether that was . . . the necessary procedure was completed, and also I wanted to know from her whether Mr. Yiu had delivered the deed. 10
- Q. Now after how many telephone calls to her did you telephone Mr. Yiu. . . try to telephone Mr. Yiu and ask him?
- A. I had made several 'phone calls, how many I don't remember.
- Q. Now did you manage to get in touch with Mr. Yiu?
- A. Yes.
- Q. Mr. Yiu?
- A. I tried but unsuccessful.
- Q. Now what was the answer that you were given by people in his office about the whereabouts of Mr. Yiu?
- A. I was merely told that he was not in. 20
- Q. And how many times did you try?
- A. Two or three times.
- Q. And during that period were you telephoning Miss Leung as well?
- A. Yes.
- Q. Now why were you so anxious?
- A. I wanted to tell Miss Leung that I had tried to contact Mr. Yiu but I had never been able to contact him.
- Q. But why did you want to contact either Miss Leung or Mr. Yiu over that period of time?
- A. I did so because Miss Leung had told me that it would take about a fortnight for her to complete the procedure. 30
- Q. Now what had the completion of the procedure got to do with you?
- A. I also told Mr. Wong about my worries arising out of the failure of delivering the title deed to Miss Leung.
- Q. Mr. Shum, you really must listen to my questions and try to answer them. What had completion of the procedure got to do with you?
- A. Because I expected to start the monthly instalments. I expected to start paying the monthly instalments.
- Q. According to your understanding, when would the first instalment be payable?
- A. I have no clear recollection now. 40
- Q. Now eventually did you go and see Mr. Wong, Mr. Edward Wong?
- A. Yes, I did.
- Q. Now what did you say to Mr. Wong?
- A. I asked Mr. Wong whether or not the title deed had been delivered to Miss Leung.
- Q. Yes?
- A. Mr. Wong said that he would try to find out over the 'phone himself, so eventually Mr. Wong and I together went to see Miss Leung.
- Q. Now did your failure to speak to Mr. Yiu on the telephone have anything to do with your going to see Mr. Wong?

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- A. Yes.
- Q. And what had that got to do with it?
- A. That was in connection with the deed of the property we acquired, and I was anxious for the title deed to be delivered.
- Q. Now why were you anxious that the title deeds should be delivered?
- A. Because without that title deed, there could be no instalmental payment scheme.
- Q. I see. How did you know that?
- A. Because this had been discussed between Mr. Wong and myself, and this had been agreed. 10
- Q. What had been agreed?
- A. That the purchase of the property was to be on the basis of instalmental payment.
- Q. And it was your understanding, was it, that you need the title deeds for that?
- A. Yes.
- Q. And so is it also your understanding that to create a valid mortgage you need the title deeds?
- A. Yes.
- Q. Now Mr. Shum, I would want to ask you hypothetical questions now. Now in this case . . . This is not a question, it is just leading up to the question. In this case the balance of the purchase price was sent over to Danny Yiu & Company against Danny Yiu & Company's undertaking to have the proper documents executed and registered, executed and then delivered to Johnson, Stokes? 20
- A. Yes.
- Q. And if Mr. Yiu were dishonest, he could abscond with the money and not produce the necessary title deeds, and in which event you will not have any title deeds at all. You realise that, do you not? Do you follow?
- A. If we were not able to get the title deed, we would not have paid the money.
- Q. But in this case the arrangement between Johnson, Stokes and Danny Yiu & Company was that the money should be delivered to Danny Yiu & Company against Danny Yiu & Company's undertaking to produce the title deeds in due course. That is the arrangement. It may be easier if I were to use the word 'promise'. On Mr. Yiu's promise, rather than undertaking, to produce the title deeds. But if Mr. Yiu was a dishonest man and does not fulfill his promise and disappears from Hong Kong with the purchase money, it would then follow that he will produce no title deeds. 30
- A. Right.
- Q. The money would have become lost.
- A. Right.
- Q. And of course this case is concerned with who should make good the loss. That is a question for my Lord. Now did Miss Leung ever explain to you that the procedure which she was going to adopt in handing over the money to Danny Yiu involved this kind of risk? Did she tell you? 40
- A. No.
- Q. Did she tell you, in the first place, that she was going to send the money over to Danny Yiu against Danny Yiu's promise to produce title deeds in due course?
- A. No.
- Q. Did she tell you how she was going to make the payment?
- A. No. I did not know anything about that.
- Q. Now if Miss Leung . . . and this is now a hypothetical question. If Miss Leung had

- told you that there is a safe method of payment, and if that safe method . . . and that method would involve the handing over of the purchase price against the production and delivery of a full set of title deeds, and that would involve no risk on your part at all, would you have preferred this method? Maybe this is a leading question. If she had told you that there was this alternative method available, what would you have done, that is, payment of the money against delivery of a full set of title deeds and that would have involved no risk on his part or on anybody's part at all.
- A. Of course, I would prefer this immediate exchange method. 10
- Q. But it is common ground that . . . Perhaps I should ask this question. Did Miss Leung ever tell you of this alternative method of completion, that is, document against payment?
- A. No.
- Q. Now at that time Po Fung and May Fung were occupying the entire ground floor, were they not? At that time were Po Fung and May Fung occupying the entire ground floor?
- A. Yes.
- Q. Did you tell Miss Leung in February, 1976 that there was another tenant on the ground floor? The ground floor, apart from you, May Fung and Po Fung, were there any other occupiers of the ground floor at that time? 20
- A. I have no recollection.
- Q. But to the best of your recollection, your two companies occupied the entire ground floor?
- A. At that time?
- Q. Yes.
- A. Yes.
- Q. Did you at any time say to Miss Leung that you wanted to complete this transaction as quickly as possible and preferably on the 26th of January?
- A. Yes. I told Miss Leung that it would be preferable to have the whole thing completed before January. 30
- Q. Before the end of January?
- A. Yes, before the end of January.
- Q. Now if she had told you that if you want speed, you may have to run the risk of losing the money, then what would you have done? If you want to have a speedy completion, you may have to run the risk of losing the money, and what would you have done?
- A. But she did not tell me that.
- Q. But this is a hypothetical question. If she had, what would you have said to her?
- A. I would rather have adopted the safer method. I would not have run the risk of losing my money. 40
- Q. In January, did you know . . . Have you ever heard of Danny Yiu & Company before his name was mentioned to you by a Mr. CHAN Sun-ming?
- A. No.
- Q. Now have you been involved in any property transactions before, before this one?
- A. No. That was my first time.
- Q. Do you know what are the procedures involved in the assignment and mortgage of a property?
- A. No.

- Q. You said you telephoned Miss Leung on many occasions after the 27th of January, did she at any time at all, whether during those telephone conversations or earlier, ever say to you that she was not your solicitor?
- A. Never.
- Q. Did she ever say to you that, "Don't bother me. You are represented by Danny Yiu & Company. You should speak to Danny Yiu."
- A. Never.
- Q. Why did you ring up Danny Yiu in February?
- A. It was because Miss Leung had said that it would not matter much about those things I asked her, but I thought that there had been such a lapse of time, I was getting worried. 10
- Q. You mean it was because Miss Leung's answers did not satisfy you and you were worried that you telephoned Mr. Yiu?
- A. Yes.

MR. TANG: My Lord, I don't know if your Lordship proposes to take a break.

COURT: Yes.

3.50 p.m. Court adjourns.

4.10 p.m. Court resumes. Appearances as before.

D.W.1 SHUM Ka-ching o.f.a. 20

XN. BY MR. TANG: Continues

- Q. Just one last hypothetical question. You told my Lord that on the 27th of January you signed a guarantee.
- A. Yes.
- Q. And the hypothetical question that I would want to ask you is would you have signed that document if you had been warned that there was a possibility that the mortgage of the ground floor may not be valid and effective?
- A. No.
- Q. At the time when you signed the mortgage document and a guarantee, did it ever occur to you that there was a possibility that the transaction might miscarry, the sale and purchase transaction might miscarry? 30
- A. No.
- Q. And you have told my Lord that your attention was never drawn to that possibility?
- A. That's right.
- Q. Thank you, Mr. Shum.

MR. CHEUNG: My Lord, I wonder if your Lordship would be good enough to give me this guidance whether, where there are a plaintiff and various defendants, one of the defendants being the third party, whether counsel for co-defendants cross-examines before counsel for the plaintiff, in other words, do I cross-examine in your Lordship's court before my learned friend or after? 40

COURT: I would have thought in this situation you would cross-examine first.

MR. CHEUNG: Very well, my Lord.

XXN. BY MR. CHEUNG:

- Q. Would you please have a look at document 38 in volume 2? This was explained to you by Miss Leung, was it not?
- A. Roughly.
- Q. You knew when you were signing the document on behalf of Bovill Investments Limited?
- A. Yes. 10
- Q. And you knew you were addressing that letter to Edward Wong Finance Company Limited?
- A. Yes.
- Q. You had by that time signed the debenture, that is to say, the document you thought provided for the instalment payment?
- A. Right.
- Q. You were going to pay part of the balance of the purchase price for this property, you or your companies?
- A. Yes.
- Q. The balance you borrowed from the finance company? 20
- A. Yes.
- Q. And you knew that that letter was one where you told the finance company to send money to Danny Yiu & Company?
- A. Yes.
- Q. And it was to help you to pay the balance of the purchase price?
- A. I understand that this money was to be sent to the other side towards the payment of the purchase price.
- Q. By "the other side", you mean Danny Yiu & Company?
- A. Yes.
- Q. Whom you knew were acting for Mr. Chan? 30
- A. Yes.
- Q. Now did Miss Leung tell you that she would write a letter to the finance company, and ask them to send this money to Johnson, Stokes so that Johnson, Stokes themselves would send it to Mr. Yiu?
- A. She did not make a very clear explanation of the situation. She merely asked me to sign this document.
- Q. But you say that she was acting for you in the matter of purchasing the property?
- A. Yes.
- Q. If she didn't explain in detail to you what she would do, did she at least tell you generally that she would ask for the money to be sent to Johnson, Stokes, and then Johnson, Stokes would send it to Danny Yiu? 40
- A. Yes. That was what she said when she asked me to sign this document.
- Q. Now you say that about a fortnight later it was, was it, when you telephoned Miss Leung to enquire about this transaction, is that correct?
- A. Yes.
- Q. That was a fortnight after the 27th of January, about?

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- A. Yes, after the 27th.
- Q. And did you tell my Lord that Miss Leung had said the formalities would take about a fortnight to complete?
- A. Yes.
- Q. Was that why you rang Miss Leung after about a fortnight?
- A. Exactly.
- Q. When she said various things to you, including that she had not yet received the title deeds, you rang Mr. Yiu's office, is that right?
- A. Yes. 10
- Q. And you say you were unsuccessful in speaking to Mr. Danny Yiu on the telephone?
- A. Right.
- Q. And you say you were told by people in his office that he was not in, is that right?
- A. Right.
- Q. Can you remember about how many times you telephoned Mr. Yiu's office for Mr. Yiu before you and Mr. Wong went to see Miss Leung again?
- A. A number of times but I can't remember how many.
- Q. Five or six times? Ten times, perhaps?
- A. There must have been four or five times.
- Q. Each time you were told he was not there? 20
- A. Right.
- Q. And each time you got a little more anxious, is that correct?
- A. Right.
- Q. Why did you get anxious?
- A. Because he seemed to be always absent although Miss Leung had said that it would be all right.
- Q. Now when you were told more than once he wasn't in, did you ask his people in the office where he was?
- A. No, I didn't. I was only aware that he was not in. It didn't occur to me that I should ask anything more. 30
- Q. Did you tell the people who received the telephone call who you were?
- A. No.
- Q. Never on the five or six . . .
- A. When I was told he was not in, what else could I do then?
- Q. Did you leave a message he should 'phone you back?
- A. I can't remember now.
- Q. Would it have been natural for you to say, "Please ask him to ring me back. I have tried unsuccessfully for a number of times to 'phone him"?
- A. Possibly.
- Q. You were anxious to have the title deeds because the first instalment was about to be due, was it? 40
- A. Yes.
- Q. And I imagine that you were more anxious the third time that you found Mr. Yiu wasn't there than you had been the first time?
- A. Yes.
- Q. And the fourth time you were more anxious than the third?
- A. Yes.
- Q. May I ask, with respect, are you quite an excitable person?
- A. Yes. I am not a very patient man.

- Q. And the fifth time you found that Mr. Yiu wasn't in, you got very impatient, I imagine, didn't you?
- A. I think I have so far tried three times.
- Q. Just now you said four or five.
- A. I got confused with the number of times I contacted Miss Leung. I got confused.
- Q. At any rate, when you saw Mr. Wong, did you tell him you had 'phoned Danny Yiu or tried to 'phone Danny Yiu?
- A. Yes, I did.
- Q. Did you make any mention of the fact that you wondered whether Mr. Yiu had run away? 10
- A. Yes, I did.

MR. CHEUNG: My Lord, would this be a convenient point?

COURT: 10 o'clock.

4.30 p.m. Court adjourns.

9th June, 1980.

10th June, 1980.

10:10 a.m. Court resumes

Appearances as before.

D.W. 1 – Shum Ka-ching o.f.a.

XXN BY MR. CHEUNG

Q. Mr. Shum, in the beginning of 1976 and before that you were quite successful in business.

A. Yes.

Q. I think you have suffered some misfortune since then.

10

A. Right.

Q. The Mei Fung Industrial Co. is in receipt.

A. Right.

Q. Its liability exceeds its asset.

A. Right.

Q. So your shares not worthy.

A. Right.

Q. The 5,200 shares registered in your name – do you own them yourself or do you hold them in trust?

A. Which company?

20

Q. Mei Fung.

A. They are my own shares.

Q. You also own some shares in Po Fung, don't you?

A. Yes.

Q. They are registered in your name but are they your own shares?

A. Of all my shares in that company, 800 shares belong to somebody else using my name. The rest are my own.

Q. You are not any longer a director of Po Fung.

A. No.

Q. Do the liabilities of that company exceed its assets – Po Fung?

30

A. I don't know because I have had nothing to do with that company for two years already.

Q. Forgive me for asking you the next question. But if judgment were given against you for \$2 million or just over \$2 million, can you pay any part of it?

A. No.

MR. CHEUNG: Thank you. My Lord, there are matters of detail in his evidence which don't agree with my client's but these details weren't put to my client, they are not material, and I don't think I will waste the court's time by going through it. I don't accept some of his answers where they differ from my client's.

MR. TANG: Having taken instructions from my other two clients, I have already informed my learned friends and I would now want to inform your Lordship that between the defendant and the third party, the defendant will be contented to pursue a claim

for only \$310,000 and not a claim for \$370,000, therefore, the discrepancy of \$60,000 need no longer trouble your Lordship.

XXN BY MR. PRICE

Q. Mr. Shum, have you had occasion to instruct solicitors in matters other than the present one?

A. Yes.

Q. For yourself and for your companies, Po Fung and Mei Fung?

A. For myself and for Mei Fung but not for Po Fung.

Q. When going to a solicitor to instruct him to represent you or your company, is it obvious to you that you should put him fully in the picture about the matter in respect of which he is to represent? 10

A. Yes, I agree.

Q. It is obvious, isn't it, that a lawyer to represent you must be given by you all the information you have about the matter.

A. Yes.

Q. It is obvious that if you have any documents relating to the matter, you will hand those over to or show them to your lawyer.

A. Insofar as I know, all those documents that I am aware of, yes.

Q. Let me clarify that last answer a little. When asking a solicitor to represent you or your company, it would be your intention to give that solicitor all the documents that you have that are relative to the matter. 20

A. Yes, insofar as there are such documents I can remember. Of course I am a very busy man, I may have forgotten something. But I do intend to let my solicitors have all those documents that I can think of.

Q. Can Mr. Shum look at volume 3. The document beginning at page 11 is a document in English and I won't ask the interpreter to translate it to you but that is a document or rather a copy of document by which Ho Sau-ki had agreed on the 17th of December 1975 to sell to a company called Lucky Time Finance Co Ltd the whole of 76 Hung To Road premises for \$3,800,000. I want you to break down the questions first. Before you saw Mr. Wong, did you know that there had been a sale by Ho Sau-ki to Lucky Time for \$3,800,000? 30

A. I didn't know anything that have taken place in the past. It was not within my knowledge.

Q. Turn to page 17 in the same bundle. That is a copy of an agreement by which Lucky Time agreed to sell the whole building to Kai Ming and Mr. Chan for \$5,250,000. Did you know that Chan Sun-ming and Kai Ming had agreed to buy the property for \$5,250,000 before you saw Mr. Wong about the matter?

A. No.

Q. Did you know before you saw Mr. Wong that Kai Ming and Mr. Chan Sun-ming had agreed to buy the whole building? 40

A. No, I didn't.

Q. You told his Lordship yesterday that you were unable to remember whether you had copies of these two English agreements before you saw Miss Leung.

A. That is right.

Q. You don't remember whether you had copies of them before you saw Miss Leung.

A. I have not seen this particular document.

- Q. Miss Leung obtained copies of those two English agreements after the first meeting that she had with you and Mr. Wong from Danny Yiu.
- A. I know nothing of that.
- Q. They came to her with a letter from Danny Yiu dated 23rd of January, 1976.
- A. I don't know anything of that.
- Q. There is no question yet. Do you agree then that you did not produce at the meeting you had with Mr. Wong and Miss Leung copies of these two English agreements?
- A. That is right. I did not.
- Q. Did you in February or March or thereabouts in 1976 instruct solicitors Messrs. Philip Wong & Co? 10
- A. Yes, I did.
- Q. Would this be right: When you instructed them, the matter was much fresher in your mind than it is today?
- A. Yes, that is right.
- Q. In May 1976 those solicitors writing on your behalf to the Land Office, for your Lordship's reference it is volume 2 page 84, said this about the two English agreements in that letter your solicitors told the Land Office that these two agreements had been prepared and signed at the office of Danny Yiu & Co. as solicitors for the parties thereto. The parties thereto were, of course, in respect of one agreement Ho Sau-ki and Lucky Time, in respect of the other agreement Lucky Time and Kai Ming and Chan Sun-ming. In the letter your solicitors in May 1976 said this: "Our client's agent was given a photostat of it. . . ." that is each agreement, ". . . while he was in the course of negotiation for the purchase of the ground floor of the premises." 20
- A. I won't know of this as this would be a matter between solicitors.
- Q. The person who negotiated the purchase of the ground floor from Mr. Chan was you, Mr. Shum, wasn't it?
- A. At what time? What stage?
- Q. You described yesterday to his Lordship how you negotiated with Mr. Chan for the purchase of the ground floor of the building. 30
- A. Yes.
- Q. And how on the 30th of December 1975 you paid a first deposit of \$100,000.
- A. Yes, I did.
- Q. You were the person who negotiated that purchase, weren't you?
- A. Yes, that is true.
- Q. In the Spring of 1976 you told your then solicitors that you had in the course of that negotiation been given copies of those two English agreements, is that right?
- A. How could I have any specific idea of time when you mention Spring 1976? What month in particular you are referring to? How can I remember anything particular? 40
- Q. Is that Mr. Shum's answer to my question?
- A. Before I give my answer, I must fully understand your question.
- Q. Mr. Shum, you understand my question very well, don't you.
- A. Although I understand your question, I may not understand or realise what you want me to answer.
- Q. Mr. Shum, I want you to answer the truth as simply and accurately as you can without asking yourself what the purpose of my question is.
- A. I will answer whatever I know.
- Q. Let's start this series of questions again. On the 7th of May, 1976 your solicitors

- wrote what has been relayed to you by the interpreter.
- A. I gave my instructions to Messrs. Philip Wong & Co. Whatever he did, I won't fully know.
- Q. But it is clear from that letter that you must have told somebody of that firm that you had been given the English agreements in the course of the negotiation for the purchase of the ground floor. That is clear, isn't it?
- A. I supplied everything to my solicitors.
- Q. You mean to Mr. Wong's firm?
- A. Yes. 10
- Q. Can we not take it as clearly established that you must have told those solicitors that you had been given copies of these English agreements in the course of the negotiation?
- A. I wouldn't know what particular English documents or agreements I had because I don't know English.
- Q. Well, we have that answer. Mr. Shum, I will assume in my next question that you had the English documents in your possession before you went to see Miss Leung. Why did you not produce copies of them to Miss Leung when you went with Mr. Wong to her office for the first time?
- A. If I did have those documents, of course, I must have handed them over to Miss Leung. 20
- Q. Miss Leung will say that you did not. Why did you not hand them over to Miss Leung?
- A. It was because I didn't have them, the English copies, so there won't be the question of handing them over to Miss Leung.
- Q. Let me suggest to you two possible reasons. 1. That you didn't have them. Mr. Shum, that explanation is clearly inconsistent with what solicitors wrote on your behalf on the 7th of May, isn't it? The answer to that question is "yes" or "no".
- A. What happened next concerning my lawyer I won't know because all I did was to hand over things to my solicitor. 30
- Q. The second explanation for your not handing over these important documents to Miss Leung could be this: That when you went with Mr. Wong to see Miss Leung, you were going with him to see his solicitor and not to see yours.
- A. That is not right.
- Q. Has he still got volume 3 in front? Your attention was directed yesterday, Mr. Shum, to the agreements in Chinese script at pages 21 and 27. Those are the documents which show that by the 15th of January you had paid on the 30th of December \$100,000 and on the 15th of January a further 85,000 as deposits for the ground floor premises.
- A. Yes. 40
- Q. Copies of those documents you did take with you on the occasion when you and Mr. Wong saw Miss Leung, didn't you?
- A. Yes.
- Q. Can we look again at the document in Chinese at page 23. This is a copy of a document by which it was agreed between Mr. Chan Sun-ming and Kai Ming that Kai Ming would be the purchaser of the upper floors of the property and Chan Sun-ming the purchaser of the ground floor of the property.
- A. Yes.
- Q. They would, therefore, each be responsible for an appropriate fraction of the total

- purchase price of the whole property.
- A. Yes.
- Q. Before you went with Mr. Wong to see Miss Leung, did you have a copy of that document in your possession?
- A. I can't remember whether I had it or not.
- Q. On the 7th of May, 1976 your then solicitors wrote that "a copy of this agreement in Chinese was handed to our client's agent in the course of the negotiation for the purchase of the ground floor."
- A. I cannot think of that now. 10
- Q. When you went to see Miss Leung, you did not take with you a copy of this Chinese agreement, did you?
- A. I can't recall now.
- Q. What reason can there be for your not having taken that copy of that agreement with you when you went to see Miss Leung?
- A. If I did have this document, I would have brought it with me.
- Q. But you didn't. Does that mean one reason is that you didn't have it?
- A. I can't recall anything about that.
- Q. The second reason, Mr. Shum, could be this: That you were not seeking to put Miss Leung fully in the picture to enable her to act as your solicitor. 20
- A. No, that is not correct.
- Q. The latter explanation is the true explanation, isn't it, Mr. Shum? The explanation why he didn't take this letter with him, this Chinese agreement with him when he first went to see Miss Leung is that he was not then asking her to represent him or his company.
- A. Not so. As Mr. Wong had said, we were to instruct her.
- Q. Mr. Edward Wong is he referring to?
- A. Yes.
- Q. As Mr. Wong had said before you went to see Miss Leung, is that what you are referring to? 30
- A. He had said that as well at that stage.
- Q. When you negotiated with Mr. Chan or rather when Mr. Chan came to see you about the possibility of your purchasing the ground floor, did you know who is your landlord of the ground floor of the premises?
- A. No, I didn't have such knowledge. I only knew that someone always came to collect rent.
- Q. To whom was the rent payable?
- A. My accountant knows to whom the rent was payable. Someone came to collect the rent.
- Q. Did you pay the rent by cheque or in cash? 40
- A. By cheque. It must have been by cheque.
- Q. Do you mean to say that you don't know to whom the cheques were made out?
- A. It was a matter for my accountant and he had English name typed on the cheques.
- Q. We saw yesterday that in volume 2 of the documents at page 2 and at page 13 there were tenancy agreements in 1974 naming Mr. Ho Sau-ki in English and Chinese characters as the landlords of the premises you were renting. Would you look at that. You were shown pages 9 and 19. You were signing one document as managing director of Po Fung and the other agreement as managing director of Mei Fung, is that right?

- A. Yes.
- Q. Are you really telling his Lordship that in December 1975 you didn't know that your landlord was Mr. Ho Sau-ki?
- A. We had been in occupation of the premises for over a decade during which there had been various change of landlords.
- Q. But there had been no change since 1974, had there?
- A. Only at the time when I was called upon to sign these agreements did I notice that the then landlord happened to be Ho Sau-ki. I didn't bother much about that as long as I remained a tenant there and paid my rents. 10
- Q. When in December 1975 Mr Chan approached you and you negotiated for the purchase of the ground floor it became clear to you, didn't it, Mr. Shum, in the course of that negotiation that the whole property was being sold by Mr. HO?
- A. Yes. Had he not visited me on that occasion I wouldn't have known anything about the situation.
- Q. Had who not visited you?
- A. Mr. Chan Sun-ming. Had he not come to me, I would not have known about it.
- Q. Sorry, I must ask that question again. In the course of that negotiation with Mr. Chan, it became clear to you, didn't it, Mr. Shum, that Mr. Ho was selling the whole of the premises? 20
- A. That was what Chan Sun-ming told me.
- Q. Chan Sun-ming told you that Mr. Ho was the landlord with whom a year earlier you had entered into a new tenancy agreement, wasn't it?
- A. Yes.
- Q. Mr. Chan not only told you that Ho was selling the whole property but he also handed you a copy of the agreement by which Ho was selling, is that right?
- A. Can I explain my position first?
- COURT: It is a fairly simple question. Did at that time Mr. Chan give you a copy of the agreement by which Mr. Ho was selling the whole of the property? He did or he didn't? 30
- A. I can't recall.
- Q. Was this an important transaction for you – the purchase of the ground floor for \$1,850,000?
- A. Yes.
- Q. Were you not interested in every detail of the transaction?
- A. Yes.
- Q. Mr. Chan told you that Ho was selling the whole of the property. Did he tell you for what price Ho was selling the whole property?
- A. What Mr. Chan told me was various people were buying the property. Certain upper floors were being purchased by some friends while Chan himself was purchasing the ground floor. 40
- Q. Did Mr. Chan as well as telling you that Mr. Ho who was selling the whole of the property tell you the price at which Mr. Ho was selling the whole of the property? The answer is "yes" or "no".
- A. No, he did not tell me the price.
- Q. Did you ask him?
- A. Yes, I did. I asked him.

- Q. What did he reply?
- A. He told me that several friends of his and he had jointly purchased the whole block.
- Q. He did tell you that. Did he tell you what they were paying for the whole block?
- A. No, he didn't tell me that.
- Q. Did you ask him?
- A. I did ask him but he refused to tell me because he was trying to sell that property to me.
- Q. Did he tell you what price he had agreed to pay as between himself and his friends for the ground floor? 10
- A. All he said was "I am prepared to sell you the ground floor for \$1.85 million."
- Q. When you had paid him \$100,000 or after you had paid him \$100,000, did he tell you the price that he had agreed to pay for the ground floor?
- A. Yes. He did tell me then. That was after the payment of the 10% deposit.
- Q. After the payment of \$100,000 or after the payment of \$185,000?
- A. It was after he had received in full 10% deposit that he told me about that when I asked him.
- Q. Did you discover at the same time how much the whole building was being sold for or rather was being bought for?
- A. He did mention that, something like five point something million dollars but I can't 20 remember the exact amount.
- Q. When he told you that, could it have been then that he handed over to you a copy of the Chinese agreement at page 23 of bundle 3.
- A. I really can't recall whether he did supply me with a copy of that document. No.

Q. And can it have been that time that he supplied you with copies of the English agreement?

A. I can't recall now. I can't say anything for sure.

Q. Looking at the position now, although you can't be sure, it is very probable that when Mr. Chan told you what was being paid for the whole building, he showed you or gave you copies of the Chinese agreement and the English document, isn't it?

A. Really I can't recall anything concerning that.

Q. And that that was what your new solicitors were referring to when they wrote, as they did, on the 7th of May, 1976, is that not right? 10

A. Whatever my lawyer had chosen to do wouldn't be all within my knowledge, would it?

Q. Once you had agreed with Mr. Chan to pay his price of 1,850,000, there was no reason for him to withhold documents from you, was there?

A. He must have given me some more details, but whether or not he supplied me with related documents, really I can't think of that.

Q. Yes. Now you told his Lordship.

COURT: Is this a convenient time?

MR. PRICE: I didn't notice the time. It always seems to go much faster to counsel asking questions than to those who are listening to them. 20

11.35 a.m. Court adjourns.

12.05 p.m. Court resumes. Appearances as before.

D.W.1 – SHUM Ka-ching o.f.a.

XXN. BY MR. PRICE: Continues

Q. Mr. Shum, by the 15th of January you had paid Mr. CHAN Sun-ming \$185,000, hadn't you?

A. Right.

Q. Where did that money come from?

A. It is money from the company, both companies. 30

Q. You mean money lying in current account with the bank?

A. Yes.

Q. Your current accounts, until you made those payments, were fully in credit, weren't they?

A. That was the position. There was ready money.

Q. And then you told his Lordship about your discussions with Mr. Wong as to how you would provide the balance of the purchase price 1,665,000. Do you remember telling his Lordship about that discussion?

A. Yes.

Q. Had you been to The Hong Kong & Shanghai Bank before talking to Mr Wong about the possibility of borrowing money towards the balance of the purchase price? 40

A. Yes.

Q. And what were they willing to do for you?

- A. The time allowed at the longest was 5 years.
- Q. Yes. And how much money would they lend you?
- A. 70 per cent.
- Q. 70 per cent of what?
- A. There were 70 per cent of the purchase price while we had to pay out of our own resource the remaining 30 per cent.
- Q. So you had already paid 185,000?
- A. We would have to pay \$185,000 three times.
- Q. Had you previous experience of borrowing from The Hong Kong & Shanghai Bank? 10
- A. Yes.
- Q. Had you previous experience of borrowing from any other bank?
- A. Yes.
- Q. Was Hong Kong & Shanghai Bank your usual bank at the time?
- A. Yes.
- Q. Would it at that time have been within your understanding that a bank, though saying that it would expect repayment over a period of 5 years, would in fact be entitled to require repayment on demand?
- A. I don't think that is a likely thing to happen because once we have paid up the 30 per cent, the remaining 70 per cent should adequately represent the value of the property. 20
- Q. Had you established with the bank whether the advance from the bank, if it was made, would be repayable on demand?
- A. No, I haven't done so.
- Q. Had you previous experience of borrowing from Mr. Wong or his finance company?
- A. Yes.
- Q. Were you at that time indebted to Mr. Wong or his finance company?
- A. Yes, but not without security, on security.
- Q. You were indebted to Mr. Wong, were you, at that time as opposed to his finance company? 30
- A. No.
- Q. You were indebted to Mr. Wong's finance company at that time, were you?
- A. Yes, I was.
- Q. On security, you said?
- A. Yes.
- Q. On what security?
- A. On a number of post-dated cheques in our favour from our customers.
- Q. You had handed over a number of post-dated cheques to Mr. Wong's finance company?
- A. Besides, there were certain properties utilized for that purpose. 40
- Q. You mean certain properties were also charged to Mr. Wong's finance company?
- A. Yes.
- Q. Were they properties of Po Fung and May Fung?
- A. Properties of May Fung.
- Q. What, approximately, was the scale or total of the indebtedness to Edward Wong at the time when you had your discussions with him about this property? Edward Wong's finance company.
- A. I can't recall now.
- Q. Have you no idea at all?
- A. No idea how much. All I can think of is that we did owe that finance company 50

- money on security, that's all.
- Q. Would it be as little as \$10,000 that was so owed?
- A. Not that little.
- Q. Might it have been as much as a million dollars?
- A. Should the indebtedness be to that extent, it must have been on security.
- Q. You see you were the managing director of May Fung, weren't you, Mr. Shum?
- A. Yes.
- Q. And do I understand your last answer, your last but one answer as meaning that the indebtedness to Edward Wong's finance company may have been more than a million dollars? 10
- A. I can't say for sure. What I can tell you is that for whatever amount he was willing to lend to us, he knew what to look for.
- Q. So the answer to my question is that the indebtedness at this time to Edward Wong's finance company could have been greater than a million dollars, is that right?
- A. I'm afraid I can't tell you off hand. May or may not be.
- Q. And you said that on security of properties of May Fung, what properties did May Fung have?
- A. A certain piece of land.
- Q. It had a certain piece of land, I see. Had that land been bought at the time when you were the managing director of May Fung? 20
- A. Yes.
- Q. So you had previous experience of buying property.
- A. Only limited to that piece of land.
- Q. Where did you live at this time?
- A. At that time I was living next door to Mr. Wong, somewhere in Homantin Hill Road.
- Q. And was that in an apartment or flat?
- A. A flat.
- Q. And how long had you lived there? 30
- A. Slightly over 3 years up to that moment.
- Q. Had you bought that flat from a previous tenant?
- A. Yes, I had.
- Q. So you had personally that experience of dealing with an acquisition of property?
- A. We left all these matters with our lawyers.
- Q. And had there been previous occasions when personally you had bought and sold property, before that?
- A. No, not prior to that, not prior to the acquisition of my own flat.
- Q. Before that, where had you lived then? 40
- A. I had been living in the place I am now living, a place I rented in Boundary Street.
- Q. Did you rent that direct from the landlord and not from a previous tenant?
- A. Yes, direct from the landlord.
- Q. In relation to the two property transactions to which you have referred, the purchase of land by May Fung and the acquisition of your present flat, you said that you left it to your lawyers, is that right?
- A. Yes.
- Q. Did you tell those lawyers everything that you thought they needed to know about the transaction when you asked them to represent you?
- A. Yes, I did. For example, from whom I was purchasing the property.

- Q. And all other relevant information?
- A. Yes.
- Q. Now you told his Lordship that you had a company, North American Meat Company, which you had decided to use as the purchaser of this property. Do you remember telling his Lordship that?
- A. Yes.
- Q. Whose idea was it that there should be a company, a new company for this purpose?
- A. My accountant thought up this idea, because it was necessary to have the property acquired by a limited company. 10
- Q. You already had two limited companies, Po Fung and May Fung, why not one of those?
- A. It was because both companies own machinery and to avoid future confusion, it would seem a better idea to have a third company merely to own properties.
- Q. It would appear to be a good idea to have a third company merely to own property, to avoid future confusion, whose reasoning was that?
- A. This was the result of discussions among the three persons.
- Q. Mr. Ma, Mr. Chan and you, Mr. Shum?
- A. Yes.
- Q. So between you, you arrived at the proposition that you had better have a third company which would become the purchaser of the ground floor of the factory premises, is that right? 20
- A. Right.
- Q. And the reasoning was your three people's reasoning that because the existing companies own machinery and to avoid future confusion, you would have this third company owning the property, is that right?
- A. Yes.
- Q. So when you told his Lordship that your accountant suggested that you should acquire the North American Meat Company for the purpose, the position was this, was it, that you were merely asking the accountant how you could form or acquire that third company? 30
- A. Surely it would not be convenient for the three directors or partners, the three of us, to acquire this property ourselves, and therefore the accountant suggested that idea we eventually adopted, that is, the idea regarding the North American Meat Company, because it would take more than 45 days to have a company, a new company incorporated.
- Q. That is rather a longer answer than I expected, but let me rephrase my question. Before you asked the accountant to help, is this right, you had decided that the purchase should be in the name of a company?
- A. Right. 40
- Q. And what you asked the accountant was should you incorporate a new company or should, as he suggested, should you acquire an existing company, was that right?
- A. Yes, right.
- Q. You did not seek the accountant's advice as to whether any third company was needed, is that right?
- A. That's right.
- Q. And the accountant's suggestion that you should acquire an existing company rather than incorporate a new company was because that would be so much quicker, is that right?

- A. Right.
- Q. Was speed important to you?
- A. Yes.
- Q. Was that because you were an impatient man or for some other reason?
- A. That was because of a decision to have another company to purchase the property, we have got to have a company for that purpose.
- Q. You knew at the time, did you, when the purchase was due to be completed?
- A. In a sense that it had got to be completed by the 30th of January.
- Q. Before the Chinese New Year? 10
- A. Yes, before the Chinese New Year.
- Q. Was the purchase of North American Meat Packing Company Limited referred to as the purchaser of a shelf company when you were talking to the accountant about it?
- A. Yes.
- Q. Was that a term already known to you – shelf company? I withdraw that question. Did you tell the accountant you and your friends, Ma and Chan's reasoning for desiring the purchase to be in the name of a company?
- A. Yes.
- Q. You mean you said to your accountant, "We have decided to buy . . . to have a company as purchaser because May Fung and Po Fung both own machinery, to avoid further confusion, we want a company owning property only," is that right? 20
- A. Yes.
- Q. But you were not asking the accountant, you did not ask the accountant, did you, for advice upon those reasons?
- A. No.
- Q. Now we come to the occasion when you went with Mr Wong to the office of Miss Leung, and you have told his Lordship about that occasion. At that meeting did you tell Miss Leung that Mr. Chan and some friends had agreed to buy the whole property for \$5,250,000? 5 million odd dollars. 30
- A. No.
- Q. Did Mr. Wong tell Miss Leung that?
- A. No. I didn't hear him mention that either.
- Q. Did Mr. Wong know about that before you went to the meeting?
- A. No. I hadn't told him about that.
- Q. Did you tell Miss Leung your reasons for wanting the purchase to be in the name of a company, a new company?
- A. No, I didn't.
- Q. Did you tell Miss Leung that you had been to the Hong Kong & Shanghai Bank first? 40
- A. No.
- Q. Did Mr. Wong refer to that?
- A. I told Mr. Wong about that.
- Q. Did Mr. Wong mention it to Miss Leung?
- A. I did not hear him mention that.
- Q. Was there any reference to the term of the proposed loan as 5 years?
- A. Yes, that was mentioned and also the rate of interest as 1 per cent.
- Q. 5 years was mentioned, was it, you say?
- A. Yes. I heard him say that.

- Q. Yesterday you said to his Lordship that you couldn't remember whether Mr. Wong said 5 or 7 years.
- A. That is the position because in the beginning I asked for 7 years and later on Mr. Wong suggested that since Hong Kong & Shanghai Bank would only allow 5 years, there would be no point for him in allowing anything more than 5 years.
- Q. So is this right, you are changing your evidence from what you said yesterday. You do remember now that Miss Leung was told at this meeting of the period of 5 years, is that right?
- A. I got confused in that aspect. I thought that when I gave evidence that it was the occasion when I was discussing the term with Mr. Wong. 10
- Q. So you are saying now that the term you mentioned to Miss Leung was 5 years, is that right?
- A. The reference to that was made by Mr. Wong.
- Q. Yes. To whom?
- A. To Miss Leung.
- Q. Was any reference made by him in conversation with Miss Leung on this occasion to repayment over 7 years?
- A. No, I can't remember whether any such period was mentioned.
- Q. Is it your recollection that by the end of the meeting, you were undertaking to repay, you were promising to repay Mr. Wong over 5 years or over 7 years? 20
- A. I can't recall now.
- Q. Do you think you can be confusing what was said at the meeting with Miss Leung and what had previously been said between you and Mr. Wong alone?
- A. That is the position. There may have been a confusion.
- Q. In the course of that meeting with Miss Leung, that is the first meeting with Miss Leung, was the amount which Mr. Wong was to lend you finally stated, Mr. Wong's finance company was to lend you finally stated?
- A. Mr. Wong told Miss Leung that he hoped to have an instalmental payment scheme arranged. 30
- Q. My question was: was the amount to be lent to Mr. Shum or his company finally stated at that meeting?
- A. 70 per cent was mentioned.
- Q. Do you mean that what was said was not so many dollars or thereabouts but 70 per cent?
- A. What Mr. Wong told Miss Leung was the total purchase price of the property was 1.85 million dollars of which 10 per cent had already been paid to Mr. Chan, and 20 per cent of that would have to be paid to him, and the remaining part would be the subject matter of instalmental repayment scheme that he was proposing.
- Q. Was a figure mentioned for the loan by Mr. Wong to Mr. Shum or his company? 40
- A. Yes, he did.
- Q. An actual number is what I am asking, an actual number. What actual number was mentioned?
- A. 1.3 million odd dollars.
- Q. The matter was not referred to in percentage terms, the amount of the loan, was it?
- A. 1.85 million dollars I had to pay \$185,000 three times.
- Q. I am sorry. At that meeting the amount of the loan was not referred to in terms of a percentage of the purchase price, is that right or wrong?

- A. Yes, the figure was mentioned.
- Q. What figure was mentioned?
- A. There was a certain paper for me to sign which bears the figure.
- Q. A paper for you to sign on that occasion?
- A. I could only trust my lawyer when there were documents prepared for my signature.
- Q. Now there weren't documents prepared on this occasion, were there? There weren't documents prepared on this occasion, the first meeting with Miss Leung? That is what we are talking about. 10
- A. That's correct.
- Q. And at this meeting the amount to be lent was not finally decided, was it?
- A. It must have been decided because Mr. Wong was giving instructions to Miss Leung.
- Q. Yes. And after this meeting, did you agree that the exact figure . . . with Mr. Wong that the exact figure to be borrowed should be 1.355 million dollars?
- A. Yes. It was as simple as that. As far as I was concerned, I was going to obtain a loan of 70 per cent of the purchase price, and the balance was to be paid by me.
- Q. Was the figure. . . Do you say, Mr. Shum, that the figure of 1.355 million dollars was mentioned at this meeting with Miss Leung?
- A. Frankly, that is not my calculation. My own calculation is something less than that. 20

COURT: Would you please listen to the question? At this meeting with Miss Leung, was that figure mentioned, or was it not mentioned, or is it your evidence you can't remember if it was mentioned, 1.355?

A. I can't remember.

MR. PRICE: My Lord, would that be a convenient moment?

COURT: Yes.

1.05 p.m. Court adjourns.

2.05 p.m. Court resumes. Appearances as before.

D.W.1 – SHUM Ka-ching o.f.a.

XXN. BY MR. PRICE: Continues 30

- Q. Mr. Shum, following the meeting of the 21st of January, Miss Leung wrote to Edward Wong a letter dated the 22nd of January, and sent copies to you and to Mr. Ma. The letter appears at page 27 in volume 2, at the bottom right-hand corner. Now I know you don't read English, Mr. Shum. That is a letter which thanks Edward Wong for instructions to prepare a debenture, to secure credit facilities to the extent of 1.355 million dollars. It goes on, that's the important part. Now Miss Leung says that that figure, the precise figure 1.355 million, was communicated to her by Mr. Wong after the meeting on the previous day. Had you communicated the figure to her as well, 1.355 million?
- A. I can't remember now whether I did or not. 40
- Q. You can't remember whether that. . . You told his Lordship you couldn't remember

- whether that figure was mentioned at the meeting, didn't you?
- A. That's right.
- Q. If Miss Leung received that figure from Mr. Wong alone, that would be because she was acting for his company and not for you, wouldn't it?
- A. I don't agree.
- Q. Was the position this that you were prepared to accept whatever figure as a loan, whatever figure Mr. Wong would lend?
- A. But we had agreed on principle and that is 70 per cent of the purchase price.
- Q. This figure stated in the letter was more than 70 per cent of the purchase price. 10
When you saw the copy letter, did that strike you – the fact that it was more than 70 per cent?
- A. In fact, I came to know that was the figure on the 27th when I attended the office to sign the papers.
- Q. Is Mr. Shum now saying that he didn't know on the 21st or on the 22nd or at any time until the 27th what figure exactly was going to be lent?
- A. All the time up to the 27th, I take it for granted that any figure mentioned could have been representing 70 per cent of the purchase price.
- Q. When you receive letters in English, do you have them explained or translated to you? 20
- A. Yes.
- Q. Did you then have the letter of the 22nd of January at page 27 explained or translated to you when you received the copy of it?
- A. I don't think I have ever seen this letter.
- Q. I put it to you that you must have had it explained or translated to you and that you appreciated that it referred to a loan figure of 1.355 million.
- A. I disagree.
- Q. Was the position this, as far as you were concerned, that defining the precise amount to be lent was a matter which concerned Mr. Wong and therefore concerned Miss Leung and wasn't of much concern to you? 30
- A. Quite so.
- Q. I am sorry we must go back to the beginning of that meeting on the 21st of January. You told his Lordship that Mr. Wong explained the purpose of the visit, saying that you were to purchase the building and, as I wrote it down, this was to be transacted before Miss Leung. You remember telling his Lordship that? And you said that Mr. Wong said that Miss Leung was to represent both sides, that is to say, Mr. Wong on one side and North American on the other. Do you remember saying that? Yes or no?
- A. Yes.
- Q. Now you don't and didn't include in that statement reference to these matters, surely Mr. Wong told Miss Leung that his finance company was to lend you money towards the purchase, didn't he? 40
- A. I think I have said that as well.
- Q. And did he also explain that the amount of that loan was to be charged on the property?
- A. I heard him say that.
- Q. And that it was also to be secured by the personal guarantees of the three directors of Po Fung and May Fung?
- A. Not in the beginning.

- Q. Not at the first meeting?
- A. That's right.
- Q. When was that decided then?
- A. I didn't know anything about that until I attended at the office on the 27th of January, and was somewhat surprised to see a guarantee paper involving us, individual.
- Q. Mr. Wong told his Lordship that the question of the guarantee, personal guarantees had been agreed between you and him before you went to see Miss Leung, is that wrong? 10
- A. No, he is not right.
- Q. So that was something – you've told his Lordship – was done by Miss Leung without instructions from you?
- A. When I was about to sign these papers, that personal guarantee was already ready.
- Q. So if it had been ready by that time, Miss Leung must have prepared it on instructions from Mr. Wong only, is that right?
- A. That's right.
- Q. Yes. When you went to the meeting on the 21st of January, you were going to, with Mr. Wong, to his solicitors, weren't you?
- A. Although I presumed originally Miss Leung was Mr. Wong's solicitor, when we were going there, Mr. Wong made it quite clear to me that it was a usual practice for both parties to have the same lawyer in the matter of preparing the instalmental payment scheme. 20
- Q. Mr. Wong told you that, you say?
- A. Yes.
- Q. That was not said in the presence of Miss Leung, was it?
- A. No.
- Q. Now – yes or no – when you went to Miss Leung, you were going with Mr. Wong to see his solicitor, weren't you?
- A. Right. 30
- Q. So far as Mr. Wong was concerned, the purpose of the visit was to give instructions for the preparation of the documents that would secure his company's loan to you, wasn't it? Again, the answer is yes or no.
- A. Yes.
- Q. And when it came to establishing to Miss Leung's satisfaction the precise amount of the loan, that information came from Mr. Wong alone, didn't it?
- A. Yes, although in the beginning both of us went to see Miss Leung for this purpose.
- Q. And at the meeting you and Mr. Wong had not quite finalized, had you, the amount of the loan? 40
- A. There must have been, mustn't there? There must have been a certain figure supplied.
- Q. And surely this is right, Mr. Shum, at that meeting nothing was actually said to Miss Leung that she was to represent both sides. Nothing was said to that effect, was it?
- A. I disagree.
- Q. And Miss Leung was concerned throughout, apart from the question of the company which I will come . . . ignore the question of the company. Miss Leung's concern was with Mr. Wong's loan and security for it, wasn't it?

- A. Yes.
- Q. At this meeting was the conversation in Cantonese?
- A. Yes.
- Q. When you and Mr. Wong usually converse, is it in Shanghainese?
- A. Yes.
- Q. Were there moments in this meeting when matters between you and Mr. Wong were said in Shanghainese?
- A. I can't remember that now.
- Q. It would be quite natural, wouldn't it? 10
- A. Yes.
- Q. And that's what Miss Leung remembers, that some bits of conversation were between you and Mr. Wong in Shanghainese.
- A. Possibly.
- Q. Yes. And Miss Leung, not understanding Shanghainese, would only take from the meeting what was said to her in Cantonese.
- A. Right.
- Q. In the course of that meeting, Miss Leung is clear that there was reference to payment over 7 years, and no reference to payment over 5 years, could she be correct in that recollection? 20
- A. I can't remember.
- Q. But that by the end of the meeting, it was clear that the document, the charge, would refer to the money as being repayable on demand. She can't be mistaken about that, can she?
- A. I don't think it could have been a loan repayable on demand because, as I understood it, it would be a usual arrangement like what other people usually did.
- Q. You did understand that. It would be a usual arrangement?
- A. Yes.
- Q. And it was not going to contain any reference to the term over which repayments might be made? It was not going to contain any reference to the term or period over which repayments might be made? 30
- A. It is not possible. There must have been a term.
- Q. No. The document, the security, was not going to contain any reference to the period of time over which repayment might be made, was that correct?
- A. Although my memory might fail me, there must have been a term surely in the case of an instalmental payment scheme.
- Q. Whatever might be agreed separately as between you and Mr. Wong, the document was going to have no reference whatever to the period over which repayments might be due. It was clearly established by the end of the meeting, wasn't it?
- A. I am handicapped by my ignorance of English. 40
- Q. I am sorry, but this meeting was conducted, when Miss Leung was part of the conversation, in Cantonese, wasn't it, not in English.
- A. What we intended to do was the preparation of a document, English, into the instalmental payment. Whether it was for 7 years or 5 years, my memory will not be exact.
- Q. When the security document was eventually prepared, it contained no reference to the period over which the money might be repaid, did it?
- A. It would not be for me to say. I don't know English.

- Q. I see. But you were concerned with what the debenture said, weren't you?
- A. All I was concerned with and I would be only satisfied insofar as that was an instalmental scheme, instalmental payment scheme, in the sense of how much to be paid per month.
- Q. In one respect you did challenge the provisions put into the debenture document, didn't you – in one respect?
- A. Right.
- Q. And that was the provision which Miss LEUNG had inserted which charged the money lent from the undertaking property and the assets whatsoever and wheresoever of the company, isn't it, of Bovill? 10
- A. That would be a matter quite past my understanding. All I was concerned with was to have that instalmental payment scheme worked out in respect of this purchase.
- Q. Who was to work it out?
- A. It would be a matter for the finance company. After all, I did not have much knowledge of this sort of thing.
- Q. Does the term "floating charge" mean anything to you, Mr. SHUM?

MR. INTERPRETER: The charge upon all the . . .

MR. PRICE: . . . all the assets of a company. 20

- A. That was not explained to me by Miss LEUNG.
- Q. Now, Miss LEUNG will say that the floating charge which she included in the debenture was struck out after you complained that that was not something that you had agreed to with Mr. WONG. Is that right or wrong?
- A. That was probable.
- Q. Yes. That was something that happened at the later meeting on the 27th, wasn't it? And she telephoned Mr. WONG's office to ascertain that it would be all right to strike out the floating charge, didn't she?
- A. Yes.
- Q. She was checking with her client Mr. WONG that what you told her was correct, wasn't she? 30
- A. Right.
- Q. And having ascertained that it was correct, she then got you to initial, didn't she, the striking out of the floating charge provision in the debenture document?
- A. That's right.
- Q. The position was that in putting that provision into the debenture you thought Miss LEUNG had gone beyond what her client Mr. WONG – I will start that again. In putting that floating charge provision into the debenture, you thought Miss LEUNG had gone beyond what her client, Edward WONG and his company, required, is that right? 40
- A. Right.
- Q. And you did not remember that being mentioned at the earlier meeting on the 21st of January – the floating charge. You did not remember the floating charge being mentioned at the earlier meeting on the 21st of January.
- A. I don't think that was mentioned.
- Q. Right. It hadn't been mentioned and in seeking its deletion from the debenture

- document, who was looking after your interest?
- A. To my mind Miss LEUNG should have been fairer than that by looking after the interest of both sides.
- Q. The truth is that in that matter you were looking after your interest, weren't you?
- A. No, she's got to be fair. She's got to look after my interest as well as his.
- Q. I'm so sorry. In that particular matter of the floating charge, the person looking after your interest was you, Mr. SHUM, not Miss LEUNG, wasn't it?
- A. That was something quite beyond what we had discussed and what we had agreed. We were concerned with the matter of a loan for the purpose of purchasing properties and I just don't know why that was added. 10
- Q. That's your answer, Mr. SHUM. As regards the provision in the – the provision that the security document, the debenture, would say that the money was payable on demand – repayable on demand, you made no quarrel with that proposition, did you, on the 21st of January or at any subsequent time?
- A. I was always under the impression that everything prepared or dealt with by the lawyer must be in order and proper.
- Q. That's your answer, Mr. SHUM. Let's look for a brief moment at page 22 in Volume 2. Now, this is Miss LEUNG's note made at the meeting on 21st January. In the top right-hand corner of that, she made in her handwriting a reference to a possible 7-year period for repayment, and she crossed that out and wrote in that there would be a debenture, and she added to the note letters which indicated to her that the form the debenture would take would not refer to the period – to any period of repayment. 20
- A. That would be a matter for her. I wouldn't know anything about that.
- Q. And that was in accordance with the instructions which she received from Mr. WONG at that meeting, is that right?
- A. I know nothing of that, nor do I understand that either.
- Q. At that meeting, was Miss LEUNG instructed that matters should all be completed on the 26th of January, if possible? 30
- A. That was probable. After all, that was also my understanding, that everything should be completed by the 30th.
- Q. So you told his Lordship that Mr. WONG said he expected things to be completed by the 30th of January, but what I am asking you is different: was Miss LEUNG told by Mr. WONG that the completion should, if possible, be on the 26th of January?
- A. That was probable.
- Q. When that meeting you showed Miss LEUNG – I'm sorry. Did you at that meeting show Miss LEUNG the Memorandum and Articles of Association of your North American Company? 40
- A. Yes, I did.
- Q. Do you recognise this as the booklet containing the Memorandum and Articles of Association of the North American Meat Packing Company?
- A. That looks like it.
- Q. Did she spend a little time opening it and looking for and reading it?
- A. No.
- Q. She did not.
- A. She must have flipped through the pages upon my handing this to her.
- Q. When she looked briefly at it, you told his Lordship, did she say something – that

- this wasn't a very suitable company to be the purchaser?
- A. Right.
- Q. And did you then – let me frame that differently. You did not tell her, did you, that you had purchased that company specially for the purpose of this transaction of purchase?
- A. She asked me what company was going to purchase this property and in answer to that I said it was this North American Meat Company.
- Q. And you handed her the article, the booklet.
- A. Yes. 10
- Q. I shall take that, Mr. SHUM, as an answer that you did not explain to her that you bought the company specially for the purpose.
- A. But I did, I did explain to her.
- Q. You did explain. And did you take to heart her comment that she thought it not a very suitable company to purchase the property?
- A. She commented that it wouldn't sound nice for this meat company to be purchaser of properties. It would be better for some other company by nature of business closer to the matters of land purchase.
- Q. And did you ask her where you could get such a company?
- A. What I said to her was if we're not going to use this company for the purpose of this purchase, in this rush of time, what other company can we have? 20
- Q. And did she indicate that her firm might be able to supply such a company, but she wasn't very keen on doing so?
- A. On the contrary, she appeared to be quite keen on this, when she said, "Yes, we've got some companies for choice."
- Q. She made a telephone call then and there, did she, to somebody else in the firm?
- A. Yes, that's what she did.
- Q. Yes, and she ascertained that if it was needed a company would be available. If it was needed, a company would be available, is that right?
- A. She said she would recommend a certain company to me. 30
- Q. Yes. Now, what was said at the meeting on the 21st of January about the name of the company included this, didn't it, that the name of the company could probably be changed to whatever name you wanted, is that right?
- A. Yes, that is correct.
- Q. And if you decided to have the company, that the matter could be dealt with quickly by somebody else in the firm.
- A. Yes, that is correct.
- Q. And that other person would deal with the change of name.
- A. I would have thought she herself would arrange that for me.
- Q. There was no discussion that day, was there, about whether a name Bovill was very near to Po Fung or Po Mei – no discussion on that day. 40
- A. That is not correct.

MR. PRICE: There is a ruffle on my right suggesting that if this is a moment when your Lordship would like a break, my friend would like it very much and so would I.

3.20 p.m. Court adjourns

3.40 p.m. Court resumes

Appearances as before.

D.W. 1 – SHUM Ka-ching o.f.a.

XXN BY MR. PRICE (continues)

- Q. After the meeting, that is, the first meeting with Miss LEUNG, did you telephone her to say that, yes, you would like to purchase the shelf company from her firm?
A. Yes.
Q. In the next few days, did you telephone or speak to Miss LEUNG by telephone – in the next few days after the 21st?
A. I made a phone call on the same afternoon after I discussed the matter with my other directors. 10
Q. That was about the company.
A. Yes.
Q. Now, did you – what I was asking was after that day, in the next few days, did you speak to Miss LEUNG on the telephone?
A. Miss LEUNG rang me up.
Q. Yes, I see. You remember her ringing you up.
A. Her secretary did so.
Q. Who was her secretary?
A. One Miss TSO. 20
Q. Is that Miss Cecilia TSO or TSU? Is that the person you are referring to?

MR. INTERPRETER: It could be spelt as T-S-O or C-H-O-R.

- Q. Is that the person with whom you remember dealing with some company documents?
A. Miss LEUNG advised me to discuss the matter with other members of my company and once we reached a decision I was to notify the firm, Miss LEUNG's firm, so that they could prepare the company documents for us for signature.
Q. That was done in due course and I will deal with that later as a slightly separate matter. Now, did you hear from Miss LEUNG by telephone that the matter would not be completed on the 26th, but would be ready for completion on the 27th? 30
A. You mean the phone call to me by Miss LEUNG?
Q. Yes.
A. The message was for us to go over there on the 27th at half past two, p.m., to sign papers.
Q. Yes, well, I think you must be mistaken, Mr. SHUM, about the time, but we'll come to that. At any rate, did you receive a message indicating that the completion could not be on the 26th, but could be on the 27th?
A. I cannot remember that.
Q. You cannot remember that. And do you remember asking Miss LEUNG on the telephone what you had to do to complete the matter on the following day? 40
A. No.
Q. And do you remember her telling you that you would have to go, of course, to Danny YIU's office?

- A. That was only made known to me after I had signed all the documents on the afternoon of the 27th.
- Q. And that you would also, at Danny YIU's office, have to pay his costs, whatever they might be, right, pay his costs? This was all on the telephone.
- A. No.
- Q. And that you would also have to pay Danny YIU the balance of the purchase price.
- A. No.
- Q. And that, having been to Danny YIU's office, you would then come to Johnson Stokes and Master's office to complete the mortgage document. 10
- A. No.
- Q. Before the 27th of January, you went to see Mr. WONG to tell him that you hadn't got ready the balance of the purchase price, is that right?
- A. It's not right, because well before that we had had made our arrangement.
- Q. Well before? Well before?
- A. That is, on the occasion when I handed four cheques. By that time, we had already agreed all steps to take. (sic)
- Q. Was that before or after you saw Miss LEUNG for the first time?
- A. That was after the first meeting at Miss LEUNG's office.
- Q. And before the 27th of January. 20
- A. Right.
- Q. Yes. So at some point of time, did you go and tell Mr. WONG that you had not got available enough money to pay the balance of the purchase price?
- A. I can't remember that.
- Q. Why did you make arrangements then to borrow additional money from Mr. WONG?
- A. By the time we had agreed on the matter of instalmental payment scheme, we had already agreed on my further borrowing from Mr. WONG a further 10 per cent. . .
- Q. But that was before you went. . .
- A. . . at the rate of 1 per cent interest – 1.2 per cent interest. 30

MR. CHEUNG: My Lord, I don't know what issue there is between the 5th defendant and this defendant and the 1st defendant on this matter. I'm not sure whether my friend is alleging that these things were told to Miss LEUNG.

MR. PRICE: No, I'm not. The trouble is that what is meant to be an introductory question which should produce a ready answer in accordance with what was said yesterday produces new evidence quite different from what was said yesterday. That's the difficulty. That's why it's so absurd, but let me try. . .

MR. CHEUNG: There's no issue.

MR. PRICE: No, I don't think there is on this particular point. What I was really. . .

- Q. You see, Mr. SHUM, you did tell his Lordship yesterday that before the 27th of January you made arrangements with Mr. WONG about the three \$70,000, you had cash ready \$185,000, and you paid that over to Mr. WONG by two sight cheques and the remainder was to be borrowed on the security of post-dated cheques, right? You told his Lordship that yesterday. Was that arrangement made 40

before or after you saw Miss LEUNG on the 21st of January – before you saw Miss LEUNG with Mr. WONG for the first time on the 21st of January?

MR. INTERPRETER: I didn't get the amount for the two sight cheques.

MR. PRICE: \$185,000.

A. Yes, that was before we met at Miss LEUNG's office.

Q. Before the first meeting with Miss LEUNG.

A. Yes, that had been arranged before the 21st Meeting.

Q. Yes, so it wasn't only, as you told his Lordship yesterday, that that arrangement was made before the 27th of January, that arrangement was made before your first meeting with Miss LEUNG, is that right? 10

A. Right.

Q. I don't want to ask you about the details of that arrangement between you and Mr. WONG nor do I want you to go over that again in your answer to my next question. Did you tell Miss LEUNG on the first meeting with her about those arrangements?

A. I can't remember.

Q. The answer is, of course, you didn't, isn't it?

A. Not that I didn't, but that I can't remember whether I did or not.

Q. And it is correct, isn't it, that she knew nothing about those arrangements that you made with Mr. WONG about the balance of the purchase money? 20

A. It's quite possible, but it's nothing for me to say.

Q. If she had been your solicitor, you would have regarded it as sensible to tell her about all your arrangements in relation to the matter, wouldn't you?

A. I disagree.

Q. When you saw Miss LEUNG on the 27th of January, it was clear to you, was it not, that she was concerned only with getting \$1,355,000 from Edward WONG to Danny YIU?

COURT: On the . . .

Q. On the 27th the figure that she was concerned with as money to be got from Edward WONG to Danny YIU was \$1,355,000, wasn't it? 30

A. Yes.

Q. That's right. And that's the sum of money that was mentioned in the letter that was sent round on that day by Miss LEUNG to Edward Wong Finance Company, isn't it?

A. How the money was going to be paid, I wouldn't know. All I was concerned with was there would be a certain amount to be paid for the purpose of the purchase.

Q. Would you look in Volume 2 at page 38? Is that your signature for and on behalf of Bovill?

A. Yes. 40

Q. And that is a letter telling Edward WONG to forward \$1,355,000. You realise that, Mr. SHUM?

A. Yes, that's correct.

Q. And you realised that at the time when you signed the letter, didn't you?

- A. Yes. . .
- Q. And you realised. . .
- A. . . . but . . .
- Q. I'm sorry, but what?
- A. But I did not know in what form, in what fashion the money was to be paid. What happened at that time was Miss LEUNG asked me who was acting for the other side and I said it was Mr. YIU. Correction – it was Miss LEUNG who told me that the money was going to be paid over to Mr. YIU, the solicitor, for the other side.
- Q. The \$1,355,000. 10
- A. Yes.
- Q. Yes, that's right, 1.355 million dollars.
- A. Yes.
- Q. Why do you say – do you think, Mr. SHUM, that Miss LEUNG was asking Edward Wong Finance Company or proposed mortgagee to provide 1.355 million dollars for payment to Danny YIU? Why?
- A. It was because there was going to be a secured loan for the purchase of the ground floor premises.
- Q. Because Edward Wong Finance Company was providing a loan of that amount, is that right? 20
- A. Yes.
- Q. Why do you say – I mean, what possible reason could there be for her not asking for a larger sum of money in that letter?
- A. I wouldn't know. This was already typed out by Miss LEUNG.
- Q. She had no idea, had she, about the arrangements you had made with Mr. WONG for the balance of the purchase price, is that right?
- A. I would have thought she must have known this, because the remaining 20 per cent of the purchase price was to be handed to the finance company. She must have known that.
- Q. From what source do you say she must have known this? 30
- A. Mr. WONG may have told her about that.
- Q. Mr. WONG may have told her about that. You don't know that Mr. WONG told her about that, do you?
- A. That's right.
- Q. Did you tell her at any time about that?
- A. I did. I did tell Miss LEUNG that I was supposed to let the finance company have the 20 per cent balance.
- Q. Oh, come now. Now, when did you – this is the first time we heard of that. When do you say you told Miss LEUNG that, Mr. SHUM?
- A. I can't remember whether this was on the occasion of signing the papers or not. 40
- Q. Later, on the 27th, after the cheque had arrived, you mean. Is that what you are referring to – cashier orders?
- A. I had not even set eyes on the cashier orders, not even the cashier orders.
- Q. Mr. SHUM, at page 36 in bundle 2 is the covering letter which Miss LEUNG had sent round by hand to Edward Wong Finance Company on the 27th of January accompanied by the letter you had signed. Now, Mr. SHUM, that covering letter too asks only for \$1,355,000, not for any larger sum.

MR. PRICE: It's not a question yet, Mr. Interpreter.

- Q. When sending that letter to Edward Wong, it was clear to Miss LEUNG that the sum expected from Edward Wong was \$1,355,000 only, and so far as you knew, at that moment she had no reason for supposing that any larger sum was going to come from Edward Wong Finance Company, had she?
- A. Nor did I know anything other than the requirement of my signature on the papers as required by the lawyer.
- Q. Is the answer that so far as you knew she had no reason to think that any greater sum than 1.355 million was to come from Edward Wong Finance Company?
- A. I don't understand that. All I was concerned with was I was to sign those papers as I was required. 10
- Q. You see, Mr. SHUM, you have told his Lordship, you have acknowledged that you did not tell Miss LEUNG anything about the arrangements you made with Mr. WONG to deal with the balance of the purchase money, haven't you?
- A. All I was concerned with was the instalmental payment scheme and the purchase of the property for which I instructed my lawyer. I was not concerned with anything else.
- Q. Mr. SHUM, if it is correct that you had not told Miss LEUNG at this point of time that Edward WONG was going to provide the balance of the purchase price, then you had no reason to think – you can see no reason, if you cast your mind to it. . . 20

MR. PRICE: We'll start again.

- Q. Since you have told his Lordship that you had not told her about the arrangements for paying the balance, so far as you knew, Miss LEUNG had no reason for suspecting that any greater sum than 1.355 million was to come from Edward WONG, had she?
- A. How would I know whether she could have known this or not? I'm not a solicitor myself. How could I know all that much?
- Q. Were you present that day when Mr. Edward WONG arrived with the cashier orders?
- A. No, I was not. Since I was not present, I couldn't have seen the cashier order myself.
- Q. I haven't asked that question. What I asked you is, were you present when Mr. WONG arrived with the cashier orders, and your answer is, no. 30
- A. No, I was not present.
- Q. And this means, you say, that you were not present when Mr. WONG arrived at the office of Miss LEUNG on that day.
- A. That is correct, I was not present. I had no idea when Mr. WONG came to Miss LEUNG's office.
- Q. You see, Miss LEUNG says that you were present when Edward WONG arrived in the office that afternoon.
- A. When I was present, I was with the other two, making a total of three of us when we were called upon to sign the papers. 40
- Q. Miss LEUNG says that the three of you were there when Mr. WONG arrived that day, is that wrong?
- A. I can't remember now.
- Q. You can't remember now. And it was very obvious -- it must have been very obvious, Miss LEUNG says, that she was absolutely astonished that the cashier orders were for, in total, a sum greater than 1.355 million.

MR. PRICE: Would you translate that? It's not a question yet.

Q. Did you hear any conversation between her and Mr. WONG about that?

A. I can't remember now.

Q. You can't remember now.

COURT: Mr. SHUM, are you saying you can't remember being present when Mr. WONG came with the cashier orders or you weren't? First of all you said you were not there, now you say you can't remember. What's the position? Were you there or not? If you can't remember, please tell us.

A. Since I did not see Mr. WONG there at that time, I don't think I could have been present at that time at the office. 10

COURT: Your evidence is definite. You were not there when Mr. WONG came with the cashier orders. That is definite. You were not there – not that you can't remember. You were not there.

A. Yes.

COURT: Therefore, you couldn't have heard any conversation.

A. That's correct.

Q. You couldn't have heard the conversation. Weren't you intensely interested, Mr. SHUM, in the completion of the matter that day?

A. Yes, I was. I was intensely interested and it ought to have been completed. 20

Q. And so the arrival of the money from Mr. WONG was a matter in which you were intensely interested, wasn't it?

A. All I know was the transaction, the passing of money, was to take place on that day, but I wouldn't know when.

Q. Mr. SHUM, were you aware that although Miss LEUNG asked for 1.355 million, what arrived were cashier orders for a larger amount?

A. No, I am not aware of that.

Q. I see. You knew then Miss LEUNG had asked for 1.355 million. That's not a question yet. You were not aware that any greater sum than 1.355 million arrived.

A. Right. 30

Q. How was the matter going to be completed that day?

A. As far as I was concerned, I had only Miss LEUNG's words for everything in that I was only required to sign those papers which were already prepared by Miss LEUNG and everything would be in order.

Q. I'm sorry, you haven't answered that question. Let me put it once more. Mr. SHUM, concentrate. You knew that Miss LEUNG had asked for 1.355 million. You did not know, you tell his Lordship, that any larger sum arrived at Miss LEUNG's office. How did you think that the balance of \$310,000 was going to be paid?

A. How come this \$310,000?

A. Forget that sum. How did you think that the extra money over and above 1.355 million was to be paid? 40

A. That would be a matter between Mr. WONG and Miss LEUNG. That wouldn't concern me.

Q. You were not then at all surprised that Miss LEUNG was only asking for 1.355

million, is that correct?

A. How could I know what was going to happen or to be done between Mr. WONG and the solicitor? I was only concerned with signing my name on the papers.

MR. PRICE: I don't know how long my Lord – I'm absolutely happy to continue as long as your Lordship is willing and patient and the energies have not withered away, but I could stop at this moment if that was thought appropriate. Judging by my slowness today, I can't think that my cross-examination of Mr. SHUM will finish before mid-morning tomorrow and it could take a little longer.

MR. CHEUNG: My Lord, I have here a statement from the receiver appointed for Danny YIU and Company accompanied by two affidavits – one from the Secretary of the Law Society and one from Mr. Hammond who was appointed as a solicitor to look after the firm which sets out what happened to Danny YIU. And by consent, my Lord, I put that in. 10

MR. PRICE: We don't quarrel – we don't seek to cross-examine Mr. D'Almada or Mr. Hammond. We are perfectly content with what is stated in there.

COURT: Well, I think probably this is a convenient time to adjourn. I have arranged for another judge to take up my chamber matters for the next three days, so I will be available at 9.30.

(Discussion between court and counsel re sitting hours)

20

MR. CHEUNG: My Lord, could you give that document an exhibit number?

PIExh 2

COURT: Yes, I think that's P.2. That is Plaintiff Exhibit 2 – affidavit. Well, I think we'll simply put P.2 as a report by the receiver on Danny YIU plus supporting documents. Yes, adjourned to 9.30.

4.45 p.m. Court adjourns

10th June, 1980.

11th June, 1980.

9.40 a.m. Court resumes.

D.W.1 – SHUM Ka-ching o.f.a.

XXN. BY MR. PRICE: Continues.

Q. Mr. Shum, I want to ask you about the money that you paid to solicitors on or about the 27th of January, 1976. At Johnson, Stokes & Master's office, you were presented with two bills, were you not?

A. Yes.

Q. Could you pick up volume 2, pages 43A and B? Now do you remember who 10
presented those bills to you?

A. Miss Leung herself.

Q. Did you ever have dealings with a man at Miss Leung's office?

A. No, I can't recall.

Q. You see there is a man named Mr. David LEUNG Lau-kwan.

A. I have no recollection.

Q. And Mr. David Leung can be called and will, if called, give evidence that on the 27th
of January it was he who presented these two bills to you.

A. I have no recollection.

Q. And it was he who had, in fact, been responsible for the preparation of these bills. 20
Now if you don't remember, never mind. See how much of this you do remember
when I mention it.

A. Very well.

Q. Mr. Leung presented these bills to you, one bill is that for \$3,547 and that was
concerned with the acquisition of the shelf company, and it was addressed to Bovill
Investments Limited.

A. I can only remember I received this paper.

Q. And you understood at the time, didn't you, that that was a bill, an account
addressed to your new company?

A. I knew it. 30

Q. And you also knew that it related solely to the acquisition of that company?

A. I was told that this bill was in respect of that.

Q. Now the second bill was a bill addressed to Edward Wong Finance Company and
was in respect of Johnson, Stokes & Master's services to that company in respect of
the loan to you and the security for it. Did you understand that?

A. My understanding at that time was that these were the bills for all the solicitors'
fees in respect of whatever was done by them in this matter. With a total of 12,000
odd dollars, two of which I issued one cheque for the same amount.

Q. Mr. Shum, did you understand that the second bill for \$8,500 was a bill addressed to
Edward Wong and not to you or your company? 40

A. No. I did not realise it.

Q. And that there was no bill for any services to you or to the company apart from
the acquisition bill?

A. I disagree.

Q. Mr. Shum, you did understand, didn't you, that you had to pay the solicitors'

charges for their services to Edward Wong Finance Company?

- A. I did not realise that.
- Q. You didn't realise you had to pay the charges of the solicitors in respect of their services to Edward Wong Finance Company?
- A. All I knew then was I was to foot these two bills, and the figure, the total amount was scribbled down on a piece of paper, namely, 12,000 odd dollars, and I was supposed to pay that.
- Q. Let's break this down a little. Did you think that Edward Wong Finance Company was being separately charged for Johnson, Stokes & Master's services in respect of the mortgage? 10
- A. That was not my understanding. All I understood was that I was to pay all the related costs, and I was handed these bills and I was told to make out a cash cheque.
- Q. Yes. Mr. Shum, you did understand, didn't you, that although you were paying the bill for \$8,500, it was a bill in respect of the solicitors' services to Edward Wong Finance Company?
- A. No. I did not realise that. I knew nothing of that. All I was told was that I was to pay all the solicitors' fees.
- Q. You know, Mr. Shum, Mr. David Leung can and will, if necessary, be called to give evidence, and he is going to tell his Lordship that when presenting the bills, he explains specifically that Johnson, Stokes & Master were not representing you or your company. Now casting your mind back to this occasion, do you remember being told that? 20
- A. That was an occasion when all three of us, Ma, Chan and myself, were present. Everything was being done in a great hurry. We were told to sign papers and we were given the bills and payment was demanded. And then there came the question of payment of stamp duty, and we were told then that this would be an arrangement between solicitors, and there was a telephone conversation between, presumably, solicitors. And as a result of the conversation which was conducted in English, I was told that the stamp duty was to be paid on the other side, at Mr. Yiu's, although I didn't understand the English at all. 30

COURT: Mr. Shum, we have been here a long time. We are going to be here a longer time unless you would listen to the question and answer it, because most of it can be answered yes or no. The question is very simple. Did a David Leung or any member of Johnson, Stokes & Master explain to you, tell you that that firm, Johnson, Stokes & Master, was not acting for you in the matter of mortgage. Now either he did or he didn't or you can't remember.

A. I don't think so or I forget it, I can't remember.

INTERPRETER: The witness keeps on shaking his head. 40

MR. PRICE: The Interpreter says he shook his head from side to side at the same time. I don't know whether that should get into the record.

COURT: Your answer to the question in short is you can't remember, is that right? You are not saying yes, you are not saying no, you are simply saying, "I can't remember"?

A. So be it.

COURT: You are saying, "I can't remember"?

A. Quite.

Q. Now I did want to ask you about what you told his Lordship in your evidence-in-chief and what you have repeated today about the conversation by telephone after you say that you raised the question of stamp duty.

INTERPRETER: I'm afraid I didn't quite catch the whole of the question. I am sorry.

Q. In your evidence-in-chief and again today you referred to a telephone conversation after, you say, you had raised the question of stamp duty. Now Miss Leung agrees with you that there was a conversation between her and Danny Yiu, the solicitor dealing with the purchase, in the course of that day. Now think again, Mr. Shum, please. Do you really say the conversation that you referred to was in English? 10

A. Yes.

Q. You see Miss Leung spoke, whenever she spoke to Danny Yiu, in Cantonese.

A. I disagree.

Q. So there's a disagreement. Miss Leung's evidence will be there was a conversation with Danny Yiu but in Cantonese. What do you say was the cause of that conversation? The conversation that you referred to, you say, was about stamp duty, don't you?

MR. CHEUNG: I don't think the witness quite said that. He raised the question of stamp duty, she rang and spoke to him. 20

Q. You say this conversation took place after you raised the question of stamp duty?

A. Right.

Q. Now the conversation which Miss Leung remembers on this day with Danny Yiu arose after the cashier orders arrived, and Miss Leung spoke to Danny Yiu because the total amount of the cashier orders was more than the sum she was concerned with.

A. I didn't know that.

Q. Do you remember a telephone conversation which Miss Leung made after the cashier orders arrived? 30

A. Really I didn't know this or I couldn't remember this.

Q. Think back now, do you think you can be confusing . . . do you think you can be confused in your memory, and that the occasion for the telephone call that Miss Leung made was not a question of stamp duty but arose out of the amount of the cashier orders?

A. All I was concerned with at that time was we were told, the three of us, to attend at her office, Miss Leung's office in a hurry. Because of that we had to rush across the harbour in a taxi . . . I am sorry, to attend at Mr. Yiu's office rather than Miss Leung's office, Mr. Yiu's office, and that is why we rushed across the harbour in a taxi. When we were there, we were told to sign papers and we were also told to pay stamp duty of a kind. 40

MR. TANG: What the witness said was that, "Miss Leung told the three of us to attend at Danny Yiu's office, and that is why we rushed across the harbour in a taxi."

INTERPRETER: Yes.

COURT: Miss Leung told the three of us to attend at Mr. Yiu's office and . . .

INTERPRETER: And that is why we rushed across the harbour in a taxi.

- Q. But that was not my question, Mr. Shum. My question was, do you think that you can have confused the reason for the telephone conversation? You say it was stamp duty, Miss Leung says it was the arrival of cashier orders for a larger sum than 1.355 million, do you think you can be confused about it?
- A. No, there can be no confusion.
- Q. Now you say that you enquired whether you should also pay stamp duty, what stamp duty were you enquiring about? 10
- A. I understood that in every property transaction there would invariably be a payment of stamp duty.
- Q. From where did you get that understanding?
- A. From my experience, previous experience when I purchased properties.
- Q. You understood that you as purchaser would have to pay stamp duty, is that right?
- A. Indeed.
- Q. Isn't it the case, Mr. Shum, that before this meeting, you had been told the amount of Mr. Yiu's costs and disbursements would be payable by you?
- A. No, the amount had not been mentioned. 20
- Q. Was the amount mentioned at any time before you arrived in Danny Yiu's office?
- A. No.
- Q. Let's look at page 45 in bundle 2, in volume 2. That shows that on the 27th of January there was paid to Danny Yiu & Co. \$45,820.
- A. That's right.
- Q. And is it your evidence to his Lordship that you were told that by Danny Yiu that that was the sum payable by Danny Yiu in his office?
- A. Yes.
- Q. So Danny Yiu was prepared to accept a cheque from you without previous arrangement the \$45,820, is that right? 30
- A. Mr. Yiu, after requiring us to sign certain papers, that finished, he told us that we had to make certain payments, and so I made out a cheque.
- Q. Is that a personal cheque or a cheque on one of your companies?
- A. Company cheque.
- Q. Po Fung or May Fung?
- A. I can't remember for sure whether it was Po Fung's cheque or May Fung's.
- Q. Now you told his Lordship that you don't remember an account or bill, you don't remember an account or bill showing what the money was paid for. Do you remember telling his Lordship that? Yes or no?
- A. What bill? 40
- Q. It is the practice, I understand, in Hong Kong for solicitors to present an account when collecting payment from a client. What you told his Lordship was that you don't remember the bill and that you do not have it now.
- A. Right.
- Q. Now when you told his Lordship that, are we to understand that you cannot remember whether an account was presented to you, but if it was you don't have

- the account now?
- A. Right.
- Q. Have you looked for the account to which the receipt that you have kept relates? The bill, have you looked for the bill to which the receipt for \$45,820 relates?
- A. I haven't searched for it. Even if I have, I have not been successful. But I don't have a company now, how can I have done that?
- Q. Let's break that up. "I haven't searched for it. Even if I have, I have not been successful."
- A. Even if I had, I would not have been successful because I don't have a company, how can I make a search? 10
- Q. Let's enquire about that. When was a receiver appointed of May Fung?
- A. On the 21st of December, 1977.
- Q. Has a receiver been appointed of Po Fung?
- A. No, not for Po Fung because at that time Po Fung's office was within May Fung's office, it was only part of May Fung's office, therefore when May Fung's documents were taken away, the documents included . . . what were taken away included Po Fung's documents.
- Q. Who provided the receipt a copy of which appears at volume 2, page 45?
- A. It may have been found among Po Fung's documents by someone. I myself no longer have this document. 20
- Q. You see in the preparation for this trial, at any rate, a copy of that receipt was provided by your solicitors, Mr. Shum. Did you provide your solicitors with that copy?
- A. One of us, one of the three of us must have provided a copy of this.
- Q. You haven't provided and you haven't looked for the lawyer's bill to which it relates?
- A. No, I haven't.
- Q. Mr. Shum, you accept, don't you, that the sum of \$45,820 which you paid to Danny Yiu included the stamp duty payable in respect of the purchase? 30
- A. I won't know whether or not it included the stamp duty. All that I was concerned with was to make out a cheque for the amount requested.
- Q. But according to you, that was one of the reasons for going to Danny Yiu's office, wasn't it?
- A. Yes, that's right.
- Q. And you had raised the question of the purchaser's stamp duty because of your previous experience of property transactions, is that right?
- A. Right.
- Q. That's your evidence to his Lordship. Did you realise, I will ask the same question again, did you realise when paying Danny Yiu \$45,820 that you were paying for the stamp duty? 40
- A. That was my feeling that it should be an all inclusive amount.
- Q. Are you able to tell his Lordship what else was included in the \$45,820? What else were you paying for?
- A. I don't know. The solicitor asked for that amount, so I made out a cheque accordingly.
- Q. Yes. And the bill refers to "our costs, that is Danny Yiu's costs, and disbursements herein", doesn't it?
- A. Right.
- Q. What costs did you understand that you were paying? 50

- A. The main thing in my mind then was to pay the stamp duty, that is why I had asked Miss Leung whether I should pay the stamp duty as well to her. And once that question was raised, Miss Leung made a 'phone call to Mr. Yiu.
- Q. You see, Mr. Shum, if we were able to refer to the account which you haven't looked for, we would be able to check against the account what this sum of \$45,820 represented, wouldn't we?
- A. Quite so.
- Q. Where did you keep the copy receipt? Where did you keep the copy of this receipt?
- A. Most probably kept by the accountant. 10
- Q. Would the accountant most probably have kept the original receipt?
- A. Right.
- Q. And the original receipts for the sums paid to Johnson, Stokes and Master, the accountant would have cared to it?
- A. Yes.
- Q. Are you satisfied that no further search that can be made by you is of any use in locating the account, the bill?
- A. I am so satisfied.
- Q. Now let's then ask you about what you did at Danny Yiu's, apart from paying this bill. Did you take with you the cashier orders for 1.665 million dollars? 20
- A. No, I did not.
- Q. Those went separately by a messenger from Johnson, Stokes & Master, did you realise that?
- A. No. I don't realise it, nor have I seen it, nor do I know how or in what way it was delivered.
- Q. Did those cashier orders arrive while you were at Danny Yiu's, to your knowledge?
- A. Not that I know of. I have never seen it.
- Q. Did Danny Yiu say to you anything to indicate that the balance of the purchase price had arrived?
- A. No, he did not mention it. All he did was to ask us to sign. 30
- Q. When you were there, did you think that the balance of the purchase price had arrived at Danny Yiu's office?
- A. I did not even think of that, because to my mind everything was going to be arranged between solicitors. I was only concerned with signing the papers as when requested by solicitors.
- Q. Are you able to say how many documents you signed in the office of Danny Yiu on this occasion?
- A. No. I am not able to say that. I can only say that I signed several documents.
- Q. Who was present in the office of Danny Yiu when you were there, are you able to say? 40
- A. CHAN Sun-ming was there.
- Q. Did he sign documents, too?
- A. I don't think I saw him sign. I can't remember that now.
- Q. Are you able to tell his Lordship whether any documents signed by you carried his signature, too? Chan's signature.
- A. I did not take notice of that either, nor do I remember that.
- Q. Why was Chan there? Did you know why he was there?
- A. Nor do I know why. I went there only to find him there.
- Q. Are you able to say to his Lordship whether one of the documents you signed was

a new agreement for the sale and purchase of the property which you signed on behalf of Bovill Investments?

- A. Three of us were there, Ma, Chan and myself. And when we were asked to sign, before us was a document containing a plan.

COURT: What agreement is this?

MR. PRICE: My Lord, if your Lordship turns to page 35 of bundle 2, at the very top of the page, your Lordship will see what Miss Leung, according to the undertaking, was expecting to receive from Danny Yiu. And one of the things expected, according to the undertaking, was an original agreement for sale and purchase between Lucky Time and Bovill Investments. Your Lordship will see that. She was . . . I mean by way of explanation, the undertaking required cancellation of the previous preceding English language agreement, and this was a substitution of a new agreement as well as an assignment. This is the basis of the questioning, my Lord, and I am just seeing if by asking Mr. Shum he can give us any idea what documents he remembers, because, of course, your Lordship appreciates, no documents, in fact, arrived from Danny Yiu.

10

Q. You remember signing one document with a plan?

A. Yes, with colours, too.

Q. Did you sign these documents without having any explanation of their nature?

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A. It was not so. Mr. Yiu told us that that was a document to be registered with the Government authority, and our signatures would be required.

Q. Did you think that could have been an actual document assigning the premises, the ground floor of the building, to Bovill Investments Limited?

A. Yes. That was our understanding, because all three of us were required to sign for the purpose of registration.

Q. That was your understanding. Was the plan . . .

MR. TANG: Did he also say, "Miss Leung already arranged it?"

A. And Miss Leung had already made arrangement over the 'phone, and therefore it would suffice for us to sign the paper.

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Q. When you say she had already made arrangements on the telephone, you mean she had told you on the telephone about documents to be signed at Danny Yiu's office, is that what you mean?

A. I mean there was a telephone arrangement between Miss Leung and Mr. Yiu, and it would be all right for us to sign that document at Mr. Yiu's office.

MR. TANG: Did he say Mr. Yiu told him that he had already arranged on the telephone with Miss Leung, and it would be all right for them to sign the document?

INTERPRETER: I'm afraid I didn't hear that part that "Mr. Yiu told us."

MR. PRICE: Did he, in fact, say that Mr. Yiu told him that Miss Leung said so?

A. Mr. Yiu told us about this.

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- Q. Did Mr. Yiu tell you what document you were signing?
A. He said this was a document in respect of the purchase and sale.
Q. And it was he who explained, was it, that it was a document that would require . . . one of the documents for registration?
A. Yes.
Q. Did he tell you about each document as you signed it?
A. His explanation was those documents we were about to sign would be forwarded for registration.
Q. Did he explain the clauses? Did he explain what was in each document? 10
A. He said this was in respect of 76, Hung To Road, ground floor, and our signatures were required and those papers were for registration.
Q. Yes. And were these documents documents of which you had seen drafts at any previous time? Were these documents documents of which you had previously seen drafts?
A. No.
Q. You were seeing these documents – this must be your evidence – for the first time, is that correct?
A. Right.
Q. And what you paid Danny Yiu in respect of his costs and disbursements, you must have understood, Mr. Shum, included his part in the preparation of these documents, was that right? 20
A. I did not have specific knowledge of that. All I was concerned with was I was required to pay that money.
A. Yes. Were the documents that you signed in English or in Chinese characters? Were the documents in English or in Chinese characters?
A. All in English.
Q. While you were signing those documents, was Mr. Chan present?
A. Yes, he was.
Q. Do you remember him signing anything or doing anything on that occasion? 30
A. I didn't take notice of that. When we were signing, I didn't take notice of what he was doing.
Q. Can you pick up volume 3, page 21? Was it on this occasion that you returned to Mr. Chan the original of that receipt?
A. I have no recollection of that.
Q. Do you remember returning the original of that receipt to Mr. Chan?
A. No recollection. I can't remember whether or not it was returned.
Q. Would you look at page 27 in volume 2? Was it on this occasion in Danny Yiu's office that this . . . that the original of this was returned to Mr Chan?

MR. PRICE: This is the receipt for the \$85,000, my Lord. 40

COURT: Volume . . . ?

MR. PRICE: Volume 2, page 27. Have I got the wrong page number? Volume 3, page 27. I am so sorry, my Lord. Wrong volume. Volume 3, page 27. I was wondering why your Lordship was looking so puzzled.

A. No recollection.

MR. PRICE: I did say volume 3 in relation to the earlier one, my Lord.

- Q. Do you remember returning this document to Mr. Chan on any occasion?
A. No. No recollection.
Q. Now in respect of the receipt dated 30th of January, 1975, that is the one at page 21, the one at page 21, solicitors acting on your behalf wrote on the 7th of May, 1976 – My Lord, it is bundle 2, pages 84 and 5, and the document referred to is that numbered 4 – wrote that “the original of this receipt was returned by our client’s agents to the maker, that is Mr. Chan, sometime in January, 1976.”
A. Which solicitor may I know? 10
Q. That is Mr. Wong, Messrs. Philip K. Wong & Company whose Chinese name is WONG Kin-hung. Now Mr. Shum, in May, 1976, you must have been able to remember returning the receipt to Mr. Chan and the occasion when you did this. You cannot now remember returning the receipt or the occasion. Can you suggest to his Lordship, thinking about the matter now, what was the occasion when you returned the receipt to Mr. Chan?
A. I am not able to suggest, no.
Q. On 27th of January at the meeting in Mr. Danny Yiu’s office, did you have the original of this receipt with you?
A. No. We went there – three of us – without bringing anything. 20
Q. Is it possible, Mr. Shum, that the original of this receipt was already in the possession of Mr. Danny Yiu?
A. I don’t think so because I had never, prior to that, called at his office.
Q. Is it possible that it had already been returned by you to Mr. Chan?
A. I don’t think there was any such possibility.
Q. And so it wasn’t handed over by you at the meeting, you don’t think there was any possibility of it being already in the possession of Mr. Yiu or Mr. Chan, on what subsequent occasion in January 1976 do you think this original could have been handed over to Mr. Chan or to Danny Yiu or to anyone?
A. No impression at all. 30
Q. “No impression”, does that mean “I have no recollection at all”?
A. Right. No recollection.
Q. The two Chinese receipts showed that you had paid Mr. Chan a total of \$185,000, were they important documents, so far as you were concerned, in January, 1976?
A. Yes.
Q. They were, but you are not able to tell his Lordship what happened to them, is that right?
A. If I am to say it now, I can’t recollect anything now about these two documents.
Q. Were the originals of these two receipts ever in your possession?
A. I must have passed these two documents to my accountant once the money had 40
been paid.
Q. Is it a possibility that your accountant handed them at sometime to Mr. Chan?
A. Impossible.
Q. If anyone handed them over to Mr. Chan, would that person be you?
A. Yes, provided of course the other two consented. There were the three of us.
Q. Provided the other two consented. Is it a possibility, Mr. Shum, that you never had the originals but Mr. Chan kept the originals and you had at all times only copies?
A. Impossible.

- Q. That is impossible, why do you say that is impossible?
A. Because when the money was paid over, Mr. Chan himself made out those receipts, and only because of the existence of these original receipts could we provide copies of them.

MR. PRICE: I don't know whether this is a convenient moment.

11.15 a.m. Court adjourns.

11.50 a.m. Court resumes. Appearances as before.

D.W. 1 – SHUM Ka-ching o.f.a.

XXN. BY MR. PRICE: Continues

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- Q. Mr. Shum, did you understand this that when the purchase was completed, your arrangements with Mr. Chan no longer required you to keep the Chinese receipts for \$185,000?
A. If the purchase was completed, I would not care if I did not have the receipt written any more.
Q. Yes. At that occasion in Danny Yiu's office which you have described, are you able to tell his Lordship whether there was any formal agreement signed as between you and Mr. Chan, rather as between Bovill and Mr. Chan?
A. I took those documents we signed to be a formal agreement between Mr. Chan and my company.
Q. You see the receipts which we have looked at in the Chinese language were not formal agreements signed both by Mr. Chan and the purchaser for him, were they?
A. That's right.
Q. And before that meeting in Danny Yiu's office, had there been any formal agreement signed by Mr. Chan and you or one of your companies?
A. No.

20

Q. And did you not appreciate, when you were in Danny YIU's office, or did you appreciate when you were in Danny YIU's office that no such formal agreement would then be required?

A. No, I did not appreciate that.

Q. You did not appreciate that. I see. Did you understand what sum was stated in the assignment document which you signed as the purchase price of the property?

A. I understood it when I signed it.

Q. You did understand it when you signed it. So you understood that \$1,740,000 – did you understand that \$1,740,000 was the purchase price stated in the assignment? 10

A. Yes.

Q. Now, the difference between that and \$1,850,000 is \$110,000, isn't it?

A. That's right.

Q. Do you understand that that was money which Mr. CHAN was to have out of the transaction – \$110,000?

A. Yes.

Q. And I think you told his Lordship at one stage in your evidence that Mr. CHAN had told you he would show you documents indicating that he had himself paid \$100,000, is that right? 20

A. Yes.

Q. So if Mr. CHAN had received from you \$185,000 and had himself paid \$100,000, his \$85,000 was \$25,000 short of his total profit on the deal, wasn't it?

MR. PRICE: Has your Lordship got the arithmetic? Mr. CHAN had received \$185,000 from Po Fung. Mr. CHAN had told Mr. SHUM that he had paid \$100,000 deposit. The difference between those two is \$85,000. So if Mr. CHAN was to get \$110,000, he was \$25,000 short on the deal.

A. Talking about that \$100,000, in the first place what he told me was the total paid by himself and his friends was \$200,000.

Q. I see. Was Mr. CHAN present in Danny YIU's office in order to receive some money, do you know? 30

A. Not that I know of. What arrangement had there been between Mr. CHAN and Mr. YIU would not be within my knowledge.

Q. Can you suggest to his Lordship – can you suggest, Mr. SHUM, to his Lordship any reason for your returning the receipts for \$185,000 to Mr. CHAN?

A. It is my feeling, my personal feeling, once the transaction had been completed as between the two solicitors, Miss LEUNG and Mr. YIU, of course, all these documents would have to be returned.

Q. By whom and to whom as regards these two receipts – by whom and to whom?

A. When the deeds were duly made, completed, I would have thought Mr. CHAN would come to me for these receipts. 40

Q. I see. Why would you have thought that?

A. My feeling is that once the purchase was completed, once the title of the property became mine, Mr. CHAN would like to get back these receipts which were evidence of my paying him that amount.

Q. For what purpose could Mr. CHAN want those receipts, Mr. SHUM?

A. Because the sale had been completed and 76, Hung To Road, ground floor, became

mine, and it would be natural for him to get these receipts from me.

Q. That's your explanation. Mr. SHUM, is it possible that Danny YIU explained to you that the arrangement represented by the receipts for \$185,000 was being cancelled and was not going to be effected by any formal documents on the 27th or at any time?

A. I have no such recollection.

Q. You see, it would be understandable, Mr. SHUM, if the receipts got back to Mr. CHAN, if as a matter of formalities the transaction between you and Mr. CHAN was, by agreement, cancelled.

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MR. INTERPRETER: The receipt was, by agreement, cancelled.

MR. PRICE: The arrangement represented by the receipts as between him and Mr. CHAN was, by agreement, cancelled.

A. On completion of the formality of this transaction, this early arrangement could then be cancelled.

MR. PRICE: He agrees.

A. Right.

Q. And that that cancellation would be accompanied by a new formal agreement for sale and purchase between Lucky Time and Bovill, (To Interpreter): Was that his understanding?

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A. This did not have to worry me – did not have to bother me at all. It would be a matter between solicitors.

Q. Can you tell his Lordship whether you signed or whether you remember signing any paper in connection with the cancellation of the arrangement under which the receipts for \$185,000 had been issued?

A. No recollection.

Q. No recollection. Do you think it could have been in connection with that cancellation that the receipts were handed over by you, the originals?

A. No recollection either.

Q. Now, if that cancellation was arranged by Mr. YIU, the receipts could have been handed over either to Mr. CHAN personally or to Mr. YIU. Are you able to say whether the original receipts were handed over to Mr. CHAN or to Mr. Danny YIU?

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COURT: Hadn't he said clearly, Mr. Price, he can't remember? You're going round this point for quite a while.

MR. PRICE: Yes, my Lord. I think we have got it that he doesn't remember.

Q. Well, now, after the 27th of January, did you return on the following day to the offices of Johnson Stokes and Master?

A. No.

Q. And the purpose of that visit was to see Miss Cecilia TSU.

A. I can't remember when we met Miss Cecilia TSU.

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MR. PRICE: My Lord, that's in Volume 4 at page 86. There's an attendance note.

Q. Well, do you remember an occasion when you told Miss TSU that Miss LOH Chu-feng was to be a director of Bovill?

MR. INTERPRETER: LOH. . .

MR. PRICE: Let me break this question down.

Q. Is your wife's name, Mr. SHUM, Miss LOH Chu-feng?

A. Yes.

Q. Do you remember an occasion when you told Miss TSU that your wife was to be a director of the company Bovill?

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A. Yes.

Q. Was that an occasion when there were present yourself, Mr. SHUM, Mr. TSIANG and Mr. MA?

A. Yes.

Q. And was that an occasion when Miss TSU was dealing with further formalities relating to the company – when Miss TSU was dealing with further formalities relating to the company Bovill?

A. Yes.

Q. And was this an occasion when the question of adding a Chinese name to the Company name was discussed?

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A. On that occasion an arrangement was made by telephone by Miss LEUNG for us to attend her office to sign certain papers, and I understood such formality would have been completed by then. So the Chinese name was not first raised then.

Q. Was this – but this was the meeting that you had with Miss TSU when the question of appointing your wife as a director of the company was considered. Was that the first meeting you had with Miss TSU?

A. Are you talking about the occasion of signing the papers?

Q. Can you remember your first meeting with Miss TSU?

A. No, I have no recollection.

Q. You don't remember. But you did tell his Lordship in your evidence-in-chief about meeting Miss TSU in connection with company matters, didn't you?

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A. Yes.

Q. And the company documents that you referred to were documents which Miss TSU dealt with, is that right?

A. Miss LEUNG had told us it would be all right for Miss TSU to explain everything to us.

Q. To explain these company documents to you, is that what you are referring to?

A. The papers had already been typed out by then.

Q. Yes. Now, this was not the occasion when the document at page 76 of bundle 4 was dealt with, was it? Let's look at the document as page 76. Now, the document at page 76 is a document that Miss LEUNG presented you for signature on the 27th of January.

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A. Yes.

Q. And Miss TSU was not present on that occasion.

A. Right.

- Q. Correct. So in that the minutes of the meeting on that occasion got signed by Mr. SHUM, that's you. Do you see your signature?
- A. Yes.
- Q. By Mr. TSIANG?
- A. Yes.
- Q. Is that his signature?
- A. Yes.
- Q. And Mr. MA?
- A. Yes. 10
- Q. And that is his signature.
- A. Yes.
- Q. And because you quarreled with the reference to a floating charge in the debenture, a change had to be made in the minute numbered three which you initialled.
- A. Yes.
- Q. Now, you remember that as part of the occasion dealt with on the 27th of January, do you?
- A. Yes.
- Q. I am now talking about a separate occasion when it was arranged for you to see Miss TSU. 20
- A. All right.
- Q. Now, do you remember that on that separate occasion Miss TSU was dealing with a number of company matters?
- A. By then Miss LEUNG had told us that Miss TSU would speak to us when everything was ready.
- Q. And that was an occasion when Mrs. SHUM was to be appointed director, is that right?
- A. I can't remember. That had been raised before that meeting.
- Q. That was when Miss TSU took instructions from the three of you which included an instruction that Miss LOH, that is, Mrs. SHUM was to be appointed a director, wasn't it? 30
- A. I can't remember whether such instructions had been given prior to that occasion or were given on that occasion.
- Q. But that was an instruction that was given -- that instruction that Mrs. SHUM was to be appointed a director was an instruction given to Miss TSU, wasn't it?
- A. What I can clearly remember now about what happened then was we were told to attend at her office. So four of us went there and when we arrived there we saw papers ready for our signature -- for the signatures of all four of us.
- Q. Are you suggesting that before you saw Miss TSU that you had told somebody that your wife, Mrs. SHUM, was to be appointed a director? 40
- A. I may have done so, otherwise the papers could not have been prepared in that form.
- Q. Well, now, another matter dealt with at that meeting with Miss TSU and the first meeting -- this was the first meeting with Miss TSU -- was that you told her what shares were to be issued by the company Bovill, do you remember that?
- A. Yes, I must have done so.
- Q. And the meeting was also -- you also told her who would be the banker to the company and who would be able to sign cheques on the bank account, is that right?
- A. Yes.

- Q. Now, it was as a result of what was said by way of instructions to Miss TSU at that meeting that she prepared documents for signature.
- A. Miss TSU spoke to us in Mandarin and she had all the papers ready for our signature when we attended her office. She also said that the company was formed.
- Q. This was quite a long time ago, but did you ask Miss TSU at any time to come to see you at your factory?
- A. No recollection now.
- Q. You see, Miss TSU's recollection is this, that at the first meeting she took instructions; she then prepared documents and on a subsequent occasion brought the documents to your Hung To Road premises for signature. 10
- A. No, that's not correct.
- Q. Well, now, look, will you, at the document. . . Let's open Volume 4 at page 67. Look at the bottom. This is a copy document. Is that your signature at the bottom of the page?
- A. Yes.
- Q. Now, is it possible – this may be a possibility, Mr. SHUM – that in preparing your evidence you have been affected by the date, 26th January, appearing at the top of this document. You see at the top of this document there is a reference to a board meeting as having taken place on the 26th of January, do you see that? Is that date on this document something which you have used to refresh your memory when preparing your evidence in this case? 20
- A. I have no impression.
- Q. Is this one of the documents that Miss TSU got you to sign?
- A. There had been quite a number of documents for our signature, so I have no particular recollection which is which now.
- Q. This particular document is the one which was expressed, and it's Item 7, as recording a resolution that Mr. TSIANG and Mrs. SHUM are appointed directors. Now, do you remember signing a document that you understood to include a provision to that effect? 30
- A. I must have signed such a document, but I have no idea when.
- Q. What Miss TSU will tell his Lordship is this: that she saw you for the first time – she, for the first time -- on the 28th of January and took your instructions, that she subsequently, in accordance with the instructions, prepared company documents.
- A. That is not right.
- Q. And that she brought the company documents to Hung To Road for signature.
- A. I have no recollection.
- Q. Are you saying not that that is not right, but that you have no recollection?
- A. That's right.
- Q. You have no recollection. And she will also tell his Lordship that one of the documents that she brought to you to sign at Hung To Road was the document we are now looking at recording minutes of a meeting of the company. Now, is that something of which you have no recollection? 40
- A. That's right.
- Q. Now, Miss TSU will explain to his Lordship why, although the document was prepared and signed later, it refers to a date -- the 26th of January. But Miss TSU's recollection is very definite -- that she saw you for the first time on the 28th of January.

MR. CHEUNG: My Lord, I am unable to recollect any issue between any of the parties as to when Miss TSU or Miss CHOR first saw this witness, although there is dispute about these formal documents. Perhaps my learned friend can enlighten your Lordship as to the purpose of this cross-examination.

MR. PRICE: I will happily do so. The way in which Mr. SHUM's evidence-in-chief was led indicated that a meeting with Miss TSU was part of the time-table before the meeting on the 27th of January when the three directors saw Miss LEUNG and, accordingly, it is right to correct that. My Lord, I have it very clearly. It was put by my friend, Mr. TANG, in his evidence-in-chief that the time-table before the crucial meeting on the 27th of January included a meeting with Miss TSU before that meeting, not on the 27th, but before that date.

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MR. CHEUNG: I am much obliged. The witness says he can't really remember.

MR. PRICE: He can't really remember. I know it's slow, but I've got to get this right.

Q. Now, Mr. SHUM, your evidence to his Lordship included this: that it was Miss TSU who told you that the purchase – when the purchase would be completed, that is to say, on the 27th of January. Do you remember telling his Lordship that?

MR. PRICE: If I could find the matter. My note reads this: Question – when would the purchase be completed? We were told this on the day when the company documents were completed. We were told it by Miss TSU.

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COURT: This is evidence-in-chief.

MR. PRICE: This is evidence-in-chief and, my Lord, unfortunately I have not performed like good junior counsel. It was certainly on the 9th of June and I think it must have been in the morning after the first break, after my friend had referred Mr. SHUM to various documents in Volume 4. I have shortly before this a reference to Volume 4, page 58, a reference to Volume 4, page 71 and then my note arrives at this question: "When would the purchase be completed," and "We were told . . ."

COURT: Yes, my note is: "We were told when the mortgage documents, etcetera, would be available and we were entitled to sign. The secretary told us this – Miss TSU – on the 25th or 26th."

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MR. PRICE: And that was, "We were told this on the day when the company documents were completed."

MR. TANG: My Lord, my recollection of the evidence was that on that day Mr. SHUM was told by Miss TSU that he will be notified when the documents were ready for signature, and then on the 25th or 26th they received a telephone call telling them to go to Johnson Stokes office on the 27th and that call was made by Miss TSU.

MR. CHEUNG: My friend is quite right. This witness did say in chief the company documents had been signed before the 27th.

MR. PRICE: That's the point.

MR. TANG: I think your Lordship will remember he was shown several documents in chief – documents which he signed on the 23rd.

MR. PRICE: That is quite right, and he went on to say that he was told the date of completion of the purchase by Miss TSU on the day when the company documents were completed – by Miss TSU.

MR. CHEUNG: I have his answer. "Did she say when the papers for the mortgage and the purchase would be ready?" Answer, "We were told that they would let us know when the papers are ready, told us on the same day by the secretary Miss TSU." "When did Johnson Stokes next contact you?" "On the 25th or 26th of January telling us to attend on the 27th." 10

Q. Well, now, all I am seeking to put to you, Mr. SHUM, is this: that Miss TSU cannot have told you anything about the completion – of the day for completion of the mortgage or the purchase, because she saw you, for the first time, on the 28th of January. Now, is that something which you are able now to confirm or do you say that Miss TSU's recollection is wrong?

A. She is not right.

Q. She's not right.

MR. PRICE: With that definite answer, perhaps your Lordship would like to go to lunch. 20

COURT: 2 o'clock.

1.00 p.m. Court adjourns

2.15 p.m. Court resumes

Appearances as before.

D.W. 1 – SHUM Ka-ching o.f.a.

XXN BY MR. PRICE (continues)

Q. Mr. SHUM, the position after the meeting on the 27th about payments to Johnson Stokes and Master was that you had paid two bills: one, as we have seen, relating to the acquisition of the shelf company, and the second, the bill addressed to Edward Wong Finance Company in respect of the debenture. And the second bill included one company matter in which Edward WONG was interested – and that was the preparation and completion of the resolution which Miss LEUNG dealt with. Now, do you remember that in respect of the company matters with which Miss TSU dealt you paid a bill later? 30

A. No recollection.

Q. You see, the documents show that there is an account for \$1,898.

MR. PRICE: My Lord, it's at page 146 of Volume 4 and the total appears at page 148.

- Q. Do you remember paying \$1,898 for further work in respect of the company?
- A. I have no recollection.
- Q. You have no recollection.
- MR. PRICE: My Lord, just for the record the account is at pages 146 to 148. I don't think the actual receipt is here, but there are internal solicitors' papers at 150 and 151 showing that the money was paid.
- Q. Now, just in case you have thought further about the matter since this morning, Mr. SHUM – the account that was submitted, this account refers to a meeting. The first item in it is a meeting with Mr. SHUM, Mr. MA and Mr. TSIANG on the 28th of January, 1976 and receiving their instructions. Now, are you prepared to accept that your first meeting with Miss TSU was on the 28th of January? 10
- A. I have no recollection of that.
- Q. No recollection of that. Very well. Now, I want to remind you, Mr. SHUM, of a question I asked you yesterday and this question was this: before the 27th of January, was there a telephone conversation in which Miss LEUNG told you that you would have to go to Danny YIU's office to pay the balance of the purchase money and his costs?
- A. No.
- Q. You don't remember that I asked you or are you just repeating your answer of yesterday? 20
- A. I don't quite remember.
- Q. You don't quite remember. And she told you that there would be documents for you to sign at Danny YIU's office.
- A. That she did. It was she that told us to go over there to sign papers.
- Q. Now, the form in which I put those questions is this: that she told you that before the 27th of January in the course of a telephone conversation, and we have your answer that that is not in accordance with your recollection.
- MR. PRICE: Before you translate that, it's not a question.
- Q. Now, on the 27th of January, at the meeting in Johnson Stokes and Master's office, did Miss LEUNG ask you, Mr. SHUM, whether you had paid Danny YIU and signed the documents? 30
- A. No, she did not do so on the 27th.
- Q. You see, her evidence will be that she asked whether you had paid Danny YIU and signed the documents and that you told her that you had. Is that contrary to the fact or contrary to your recollection?
- A. By the 27th I had not signed anything at Mr. YIU's office. There was no question of my paying anything either to Mr. YIU by then.
- Q. You see, this was at a time, on the 27th, when Miss LEUNG was under the impression that she would be concerned only with 1.355 million dollars, the amount of the mortgage loan and not with the balance of the money. 40
- MR. PRICE: (To Mr. Interpreter) Would you explain to him it's not a question yet?
- Q. Now, could you have said anything to Miss LEUNG on that day at an early stage

- in the meeting to cause her to believe that you had already been to Danny YIU's office, had signed documents there and had paid Danny YIU money?
- A. Impossible.
- Q. Well, now, it may be that you had not, in fact, been to Danny YIU's, but Miss LEUNG understood from what you told her that you had already been there and had paid. Can you explain how she could have formed that impression?
- A. As far as I was concerned, I was purchasing the property and I was giving instructions to lawyers, therefore, I had to trust the lawyers. If I had not done so, if I had not trusted lawyers, who else could I have trusted? And my part in such a matter was merely to sign papers as and when called upon to do so. 10
- Q. And so it was that when later in the meeting cashier orders for more than 1.355 million dollars arrived with Edward WONG, Miss LEUNG was so surprised that she telephoned Danny YIU to confirm that that figure was correct. Do you remember her surprise and her telephoning Danny YIU?
- A. How can I answer your question when I have never seen such a cashier order?
- Q. I turn now to another matter. Mr. SHUM, your company Po Fung had been tenant of part only of the ground floor at Hung To Road, hadn't it?
- A. Half of it.
- Q. Well, that was described in the tenancy agreement as the mid-portion of Flat B on the ground floor – the mid portion of Flat B on the ground floor. Your company Mei Fung was tenant of another part of the ground floor, wasn't it? 20

(Witness nods)

- Q. The answer is, "Yes."
- A. Each company occupied half of the premises.
- Q. And in Mei Fung's tenancy agreement, the portion which it occupied was described as Flats C and D, is that right?
- A. Mei Fung occupied the rear portion. As far as I am concerned, each had half of the ground floor.
- Q. Well, then, did Flat B consist of the middle portion – mid portion? Did Flat B consist of the mid portion? 30
- A. I have no clear recollection regarding the number of flats – whether any part was Flat C or Flat D.
- Q. You see, you were the managing director of the company in 1974 – of each company in 1974 and thereafter during 1975 and 1976, Mr. SHUM, weren't you?
- A. Right.
- Q. And the agreements – the new tenancy agreements of December, 1974 clearly refer to Flat B and the mid portion and two flats, C and D, the rear portion. What I want to ask you is: was there a front portion or Flat A at Hung To Road?
- A. We occupied the whole of the ground floor and the landlord would know better how the ground floor should be divided into flats. I did not take much notice of what flats the ground floor premises are divided into. All I was concerned with was the ground floor was shared equally by the two companies. 40
- Q. Well, now, in February, 1976 did you speak by telephone to Miss LEUNG and say to her that you were not able to obtain rent from a tenant who occupied part of the premises you had bought?
- A. It was not a question of whether we were able to collect rent, somebody else had

come to collect rent from us and we were quite surprised that this should happen when we had already made the purchase, and that was the question I raised with Miss LEUNG.

Q. Somebody arrived to collect rent.

A. Yes.

Q. You see, when you told his Lordship in your evidence-in-chief why you spoke to Miss LEUNG after the 27th of January during February, you said that, "About a fortnight later I telephoned to ask about the transaction." Do you remember that? You did not tell his Lordship then that the occasion was that somebody had arrived to collect rent, did you? 10

A. I omitted that part, because it was not raised with me when questions were asked.

Q. Did you pay the rent collector?

A. We objected, because we had already purchased.

Q. I'm sorry. The answer is, "No, I did not." The correct answer to my question is, "No, I did not."

MR. CHEUNG: I thought it was a perfectly natural answer. Your question was . . .

MR. PRICE: My question was, "Did you pay the rent?" The answer was, "I objected because we had already purchased." It did not include an answer to the question.

COURT: You objected and you did not pay. 20

A. And that's why I rang up Miss LEUNG.

Q. Now, you see, Miss LEUNG understood that you were telling her that you could not obtain rent from a tenant who occupied part of the one-fifth share you bought. How could she obtain that impression, Mr. SHUM?

A. How could any tenant from whom we could ask rent (sic), the ground floor flat being only occupied by Po Fung and Mei Fung – only these two companies.

Q. It must be then that if that was Miss LEUNG's understanding, she misunderstood what you had told her. That must be right, mustn't it? If Miss LEUNG understood that you were telling her that you couldn't obtain rent from a tenant who occupied part, she must have misunderstood what you said. 30

A. Of course, she must have done so.

Q. At any rate, was her reply that this was not something with which Johnson Stokes and Master could be concerned as her firm had not represented the purchaser in the transaction?

A. I did not hear that.

- Q. She will say that that was what she told you in reply to what was said on that occasion and that was the end of that telephone conversation. You subsequently spoke to her, did you? You indicated in your next conversation that you had been trying to speak to Danny Yiu but had failed to do so, is that correct? If I may take it in this form: That you had failed to speak to Danny Yiu, you tried to speak to Danny Yiu but failed. So far as Miss Leung was concerned, that was quite natural because having regard to the previous telephone conversation you had been trying to find Danny Yiu, the solicitor who had acted in the purchase of the transaction. Was that not a reasonable understanding on the part of Miss Leung? The position is this: Miss Leung— if I may explain it — Miss Leung was telephoned. She understood that Mr. Shum was complaining that he couldn't get rent from a tenant. Mr. Shum says that it was a different telephone conversation. She says, "It is no good talking to us about that. We didn't act for the purchaser." Mr. Shum next telephoned her and said, "But I can't get hold of Mr. Danny Yiu. I tried without success." My Lord, the relevance of this is as to what was the occasion when telephone conversations started in February. The impression given in the evidence in chief is that it was all connected with anxiety about Danny Yiu and the completion of the transaction. But the purpose of this to put Miss Leung's evidence to this witness that so far as she understood him early in February, he was telephoning her about a matter which had to be referred to the solicitor for the purchaser.

COURT: In other words what you are asking is when he phoned Danny Yiu in early February it was Miss Leung's evidence that was in connection with demand for rent.

MR. PRICE: Whatever he said to Danny Yiu or intended to say, it was the result of this quite simple exchange that she had with him when there was a reference to she thought rent, he says something else.

COURT: The question is: Was his efforts to contact Danny Yiu as a result of this conversation he had with Miss Leung.

- A. No. That was not done as a result of my conversation with Miss Leung over that telephone.
- Q. What then caused you to telephone Danny Yiu?
- A. The purpose of ringing up Mr. Yiu was to find out, to ascertain, from him what the position of the whole building was in relation to my purchase of the ground floor because I had understood other people had purchased the upper floors.
- Q. Did you first telephone Danny Yiu in February or try to telephone him as a result of speaking by telephone to Miss Leung?
- A. It was probably so. It was probably right after the telephone conversation between myself and Miss Leung. But still I can't say I have clear recollection of that.
- Q. So after your first telephone conversation with Miss Leung in February you were seeking to press Danny Yiu, not Miss Leung, is that right?

COURT: In connection with what?

MR. PRICE: I have no idea why he was trying to get hold of Danny Yiu. It is a matter for him.

- Q. For whatever purpose it was, you were seeking to speak to Danny Yiu rather than to Miss Leung, is that correct?
- A. That is not correct.
- Q. Eventually on the 16th of February after one or two telephone calls from you, Miss Leung wrote a letter to Danny Yiu, this is at page 46, volume 2, my Lord, in which she said, "We are informed by the mortgagor, purchaser, that part of the premises is subject to tenancy. Please let us have details of the same and confirm that no construction or key money has been accepted from the tenant." Did you inform Miss Leung at any time that part of the premises was subject to tenancy? 10
- A. I have no recollection.
- Q. It is clear that she must have understood that you had given her that information, isn't it?
- A. There were three of us. Who on earth may have done this I really have no idea.
- Q. You were the spokesman for the three of you, weren't you?
- A. Spokesman may I have been. But this not necessarily follow that I was the only one that did everything.
- Q. Are you suggesting that one of the others spoke to Miss Leung at this time by telephone?
- A. It may or may not have been. I am not able to say. 20
- Q. You told his Lordship that this series of telephone calls started because Miss Leung had said that formalities would take about a fortnight to complete, didn't you?
- A. Yes.
- Q. So far as you explained the position to Miss Leung, the purpose of your telephone conversation with her was because of something to do with the occupation of the premises, wasn't it?
- A. At that time what worried me most was some rumours against Mr. Yiu about his trustworthiness or integrity especially because the upper floors had been purchased by others.
- Q. You were trying to get hold of Danny Yiu because Miss Leung had made it clear to you that the matter which you had raised with her was not her concern but if anybody's, it is his, isn't that right? 30
- A. She has never said that. She has never indicated to me that she was not representing or acting for me.
- Q. When she wrote the letter of 16th February, she had not been told by you of any suspicion about Danny Yiu or anxiety about Danny Yiu's disappearance, did she?
- A. I have no clear recollection whether I had told her about this or not.
- Q. On the 17th of February you told Miss Leung that you had been to Danny Yiu's residential address and had been told by the caretaker that he left with his family and all his luggage, is that right? 40
- A. No, I didn't do that.
- Q. Did you ever tell Miss Leung that?
- A. I did ring up Mr. Yiu's office but I did not go to the place you described.
- Q. I am not asking whether you had been there but did you tell Miss Leung that you had been there and had been told by the care-taker that he left with his family and all his luggage?
- A. No.
- Q. Did you tell Miss Leung that any one else had been to Danny Yiu's residence and had been told by the caretaker that he had left with his family and luggage?

- A. Yes, I did tell Miss Leung that someone had been to – not Mr. Yiu's residence but it was probably his office and couldn't find Mr. Yiu. But Miss Leung didn't seem to accept it from me, believe me.
- Q. On the 17th of February you were actually in Miss Leung's office with Mr. Wong, weren't you?
- A. I can't remember the date but there was an occasion when I went with Mr. Wong.
- Q. You can't remember the date.
- A. No. I even remember when both of us saw her and told her about this, she was getting more and more impatient and almost lost her temper complaining about our bothering her. 10
- Q. I think Mr. Wong said that she spoke in a loud voice.
- A. Mr. Wong was talking in a loud voice.
- Q. Miss Leung had other matters to attend to but as soon as she realised that that was a serious matter about Danny Yiu, she attended to that, didn't she?
- A. Yes. That is right.
- Q. Have you, in respect of this matter, obtained any refund of money from Mr. Chan?
- A. No.
- Q. Or from anyone else?
- A. No. 20
- Q. I must ask you about some of the hypothetical questions that were put to you by Mr. Robert Tang. Suppose you had been told on the 27th of January, either in Miss Leung's office or in Danny Yiu's office, that handing over money against undertakings by the solicitor acting for the vendor was the normal practice in Hong Kong, suppose you had also been told that this normal procedure had never been known to go wrong, it could only go wrong if the solicitor receiving the money was prepared to be dishonest and to give up all possibility of practice again as a solicitor; is it not likely then, Mr. Shum, that you would have agreed to the normal procedure being followed?
- A. No. I would still have felt that this would not be safe enough. 30
- Q. Was it safe to hand over a deposit to Mr. Chan of \$185,000?
- A. Well, this man, Mr. Chan, who did the introduction was a man of means.
- Q. Do you know what procedure would follow in your previous conveyancing transactions for yourself and your company?
- A. No, I do not.
- Q. It is highly probable that on those occasions the normal procedure was followed. It is highly probable because that procedure is followed in almost every conveyancing transaction in Hong Kong.
- A. But in those cases everything was in order and I presume things were done safely. 40
- Q. It is wisdom after the event. It is wisdom after the event to say now, isn't it, that you would have required a different procedure to be followed in this case? It is wisdom after the event.
- A. It has never occurred to me.
- Q. Since the 27th of January, 1976 have you made payments to Mr. Wong?
- A. The cheques.
- Q. Have there been any payments by either of your companies to Mr. Wong personally since the 27th of January, 1976?
- A. You mean cash?

- Q. Any payment.
A. It is very difficult for me to say because the payments of money is usual occurrence between us. We have money dealings.
Q. You have money dealings with Mr. Wong personally?
A. No. Personally, no.
Q. Mr. Wong told his Lordship that in January 1976 there was money owing from you on a personal account, owed to him personally.
A. There must have been a mistake in his recollection.
Q. You have no knowledge of such an account, is that what you are saying? 10
A. That is right.

MR. CHEUNG: Does your Lordship want a short break?

3:30 p.m. Court adjourns

3:50 p.m. Court resumes

Appearances as before.

D. W. 1 – Shum Ka-ching o.f.a.

FURTHER XXN BY MR. CHEUNG

- Q. Mr. Shum, you said payment of money was a usual matter between yourself and Mr. Wong.
A. Right. 20
Q. You had many money dealings with him.
A. Right.
Q. Po Fung had money dealings with him and his companies.
A. Yes, to some extent.
Q. Mei Fung also had dealings with him and his companies.
A. Yes.
Q. You say that the final amount of money that your company agreed to borrow from the finance company was written down on a piece of paper.
A. Yes.
Q. Would that piece of paper be document number 38 in volume 2? You saw that letter yesterday. Do you want that explained to you again? 30
A. No, not necessary.
Q. That is the piece of paper you were referring to.
A. Is that the money for the purpose of purchasing the property?
Q. Yes, the money that was being lent to you by the plaintiff company.
A. On instalmental payment basis.
Q. But the amount of money was \$1,355,000.
A. Yes.
Q. I think you told my Lord that although the original proposal had been a loan of only up to 70%, you can't remember why it was subsequently a bit more. 40
A. Right.
Q. We now know that a sum of \$1,665,000 was sent to Danny Yiu.

- A. Yes.
Q. You agree with that.
A. Yes.

MR. CHEUNG: Thank you.

REXN BY MR. TANG

- Q. Mr. Shum, in answer to my learned friend, Mr. Price, this afternoon you said, "At that time what worried me most was some rumour about Mr. Yiu about his trustworthiness especially because the upper floors had been purchased by others."
A. Yes. 10
Q. What rumour did you hear about Mr. Yiu at that time?
A. About his absconding.
Q. From whom did you hear such rumours?
A. A certain architect who had purchased one of the upper floors.
Q. Did you hear of this rumour before or after you rang Miss Leung about somebody trying to collect rent from you?
A. That was after the telephone call.
Q. The first telephone call that you made to Miss Leung was about somebody trying to collect rent of the ground floor from you.
A. I can't remember whether that was the first telephone call I made to her. 20
Q. But how long after your telephone conversation with Miss Leung when you mentioned to her that somebody had been trying to collect rent from you – did you hear this rumour about Mr. Yiu?
A. Around a week after.
Q. When you rang up Mr. Yiu's office for the first time, had you or had you not heard this rumour about Mr. Yiu? You remember telling my Lord that you telephoned Mr. Yiu's office three times. Before the first time you telephoned his office had you or had you not heard about this rumour about him?
A. Yes, I had already heard this rumour against him by that time.
Q. Did your telephoning Mr. Yiu have anything to do with the rumour that you heard about him? 30
A. Yes, of course. Once we heard such rumours, we were anxious to find out whether Mr. Yiu had indeed absconded.
Q. You were asked by my learned friend, Mr. Price, whether you told Miss Leung that someone had been to Mr. Yiu's home and was told by the care-taker that he had left with his luggage. And you said you told Miss Leung that someone had been to his office but couldn't find Mr. Yiu.
A. Right.
Q. Who would that person be?
A. One Mr. Kwan, one of the purchasers of the upper floors. 40
Q. You said that she seemed not to believe you. Miss Leung seemed not to have believed you.
A. Right.
Q. Was that conversation which you had with Miss Leung face to face or was it on the telephone?
A. First it was over the phone but she didn't seem to believe me and subsequently I

- went with Mr. Wong.
- Q. You said that at that meeting that Mr. Wong and you had with Miss Leung, Mr. Wong was talking loudly, speaking in a loud voice.
- A. Yes.
- Q. Why was that?
- A. Because of Miss Leung's attitude when she was interviewing us and was complaining about our bothering her. Mr. Wong said that she should not have that attitude and she seemed to have failed to sort out things for her client.
- Q. But later on she became serious and attended to it at once. 10
- A. Yes.
- Q. That was what my learned friend suggested to you. What, according to you, she did when she became serious?
- A. Quite probably when she was facing the two of us and she must have sensed the seriousness of this matter and, therefore, she told us that she would do something about this.
- Q. Do you know what she did as a result of it?
- A. That afternoon Mr. Wong rang me up. Mr. Wong's office was just on the lower floor downstairs of J.S.M. office in the same building. Mr. Wong told me that Mr. Yiu had absconded. 20
- Q. Did you to your knowledge know what Miss Leung did as a result of your going to see her with Mr. Wong earlier on that day?
- A. For a second time I went with Mr. Wong to Miss Leung's office. Also present was a European gentleman to whom I was introduced by Mr. Wong. I didn't speak English. The conversation between Mr. Wong and that European was in English and presumably Mr. Wong was enquiring what could be done in the circumstances. The European then advised me to retain another solicitor. That is why eventually I instructed Philip Wong and Co.
- Q. Was that message relayed to you by Mr. Wong that you should retain another solicitor? 30
- A. Yes.
- Q. Did Mr. Wong mention that he was also going to retain another solicitor?
- A. Yes, Mr. Wong did.
- Q. Did you instruct Philip K. H. Wong on the same day or subsequently?
- A. It was too late on that day so I didn't.
- Q. Did you go there the next day?
- A. Yes, I did.
- Q. You are quite sure that you did not go to Philip K. H. Wong on the same day?
- A. Again I have no clear recollection of that. As far as my memory goes, I was advised to get another solicitor and that is why I eventually instructed Philip Wong. 40
- Q. By the time you finished, it was after 6 o'clock you said.
- A. Five or six o'clock.
- Q. Were you told on that occasion by anybody, that is on the day when you were told to retain another solicitor, that Johnson Stokes never acted for you in this matter?
- A. No.
- Q. Would you look at volume 2 page 46 please. It is a letter dated 16th of February from Johnson Stokes to Danny Yiu & Co. In this letter the 5th defendant wrote in the 2nd paragraph "were informed by the mortgagor (the purchaser) that part of the premises is subject to tenancy. Please let us have details of the same and confirm

that no construction or key money has been accepted from the tenant." In the first paragraph it says she asked to hear from Danny Yiu as soon as possible about the balance of the title deeds. Have you any knowledge that this letter was sent by Johnson Stokes to Danny Yiu & Co?

A. I have no recollection.

Q. You have told my Lord on more than one occasion that Mei Fung and Po Fung occupy the entire ground floor of 76 Hung To Road.

A. Yes.

Q. Is it your evidence that you could not have told Miss Leung that there was another tenant on the ground floor occupying portion of the ground floor from whom rent would be collectable? 10

A. No. No, I didn't tell Miss Leung.

Q. You were asked by my learned friend, Mr. Price, whether or not it was possible that you saw Miss Chor for the first time on the 28th of January, that is one day after the completion at Johnson Stokes and Danny Yiu and Co. You said that was not so. Do you remember telling my Lord that two days after your first meeting ever with Miss Leung and Mr. Wong you went to Johnson Stokes to sign certain company documents?

A. Yes. 20

Q. On that occasion you said you went with Mr. Ma and Mr. Tsiang.

A. And also my wife.

Q. On that occasion you said you saw Miss Chor.

A. Yes.

Q. Are you quite sure of that? Could it be that you were only attended to by Miss Leung on that occasion?

A. Papers were signed in the conference room. I am quite sure that it was Miss Chor who took us into that room for that purpose.

Q. It is the third party's case, Mr. Shum, that you only signed company documents on one occasion and that was on the 28th of January. 30

MR. PRICE: Except for the document of the 27th recording the resolution that it was necessary for execution of debenture.

Q. Except the documents which were signed on the 27th of January recording a resolution of the company to authorise you to apply the company seal to the necessary documents? Is that so? Could it possibly be so?

A. That is not correct.

Q. It was also suggested to you by Mr. Price that on the 26th of January she telephoned you and told you that you had to go to Danny Yiu's office to pay the balance of the purchase price and its costs on the 27th. You said that there was no such conversation. 40

A. Right.

Q. On the next day it was suggested to you that you told Miss Leung that you had already been to Danny Yiu's office, paid him and signed the documents. You said that that was not so.

A. Right.

Q. In fact you had not paid Danny Yiu nor signed any documents.

A. Right.

- Q. Can you think of any reason if you had not done either of those things why you should tell Miss Leung that you had?
- A. None whatsoever.
- Q. Would you look at volume 4 page 76. It is minutes of a meeting of the board of directors of Bovill. You had already told my Lord in chief that this was signed on the 27th.
- A. Yes.
- Q. You also told my Lord that this document was explained to you clause by clause.
- A. Yes.
- Q. Would you look at paragraph 3 please. It says, "the company do execute the debenture in favour of the financier." And it then follows the part which had been deleted saying "charging all the undertaking, property and assets of the company whatsoever and wheresoever both present and future including the uncalled capital of the company for the time being." This is the floating charge. You see, you signed your signature against it.
- A. Right.
- Q. Was the deletion made in your presence?
- A. Yes.
- Q. Do you know why it was deleted?
- A. Because when that was explained I refused to sign this document, so Miss Leung rang up Mr. Wong, who was upstairs, explaining the position to him, presumably Mr. Wong consented to its deletion. So eventually it was deleted.
- Q. Would you look at volume 3 at page 39, the debenture. This, I think, has been described to you as the mortgage document. You told my Lord already that this document had not been explained to you paragraph by paragraph.
- A. Right.
- Q. Were you ever told that in this document there contained an identical clause to the one which had been deleted from the minutes? Did anyone say that to you?
- A. No one.

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MR. TANG: My Lord, maybe this would be a convenient time.

COURT: 10 o'clock tomorrow morning.

4:30 p.m Court adjourns

11th June, 1980.

12th June, 1980.

10.08 a.m. Court resumes

Appearances as before, Mr. P. FUNG absent.

D. W. 2 – SHUM Ka-ching o.f.a.

REXN BY MR. TANG (continues)

Q. Mr. SHUM, in answer to my learned friend Mr. Price yesterday you said you don't recall ever meeting Mr. David LEUNG of Johnson Stokes and Master.

A. Right.

Q. It was suggested that he was the person who presented the two bills to you on the 27th of January. You were also asked whether or not you recall him saying to you expressly that Johnson Stokes was not representing you or your company. That's what he expressly said to you. And you said at that time the three of you were present – Mr. TSIANG, Mr. MA and yourself were present. Now, do you recall any occasion at all in connection with this transaction when anybody working for Johnson Stokes – whether anybody working for Johnson Stokes ever said to you that Johnson Stokes were not representing you in this matter? 10

A. I did not hear this.

Q. Now, if you have heard anybody saying that to you, would you remember it? Would it be likely for you to remember it? 20

A. Yes.

Q. Now, if anyone has said that to you, what would you have done?

A. Had that been made known to us, we would have raised our objection because all along we had been thinking that we were so represented.

Q. Now, you said in answer to my learned friend that Miss LEUNG asked you who was acting for the other side in this transaction.

A. Yes.

Q. Did she ever ask you who was acting for you?

A. No.

Q. You told my learned friend – my learned friend suggested to you that you went with Mr. WONG to see Mr. WONG's solicitor, that is, Miss LEUNG, and it was also suggested to you that Miss LEUNG was throughout only concerned with Mr. WONG's loan and the security for it. Now, if Miss LEUNG was to act for Mr. WONG only, can you think of any reason why you should have gone with Mr. WONG to see her? 30

A. I would have had no reason to do that. Had I not been represented by Miss LEUNG, I would have instructed another solicitor.

Q. You told my Lord yesterday that in February after you discovered – after it was confirmed that Mr. YIU had absconded you went and consulted Philip H. WONG and Company. 40

A. Yes.

Q. Now, in December, 1975 and January, 1976 were you then already acquainted with Philip H. WONG and Company?

A. Yes, I was acquainted with him.

- Q. In fact, you were acquainted with Mr. WONG himself.
A. Right.
Q. Was he a friend of yours?
A. For quite some time.
Q. I will now deal with something quite different. You were asked why it was that you thought it was desirable that a third company should be used as the vehicle for the ownership of the ground floor. You remember that.
A. Yes.
Q. And your answer was because both companies owned machineries and would lead to future confusion. 10
A. Right.
Q. Let's look at the ownership of Bovill – of Po May Company. Now, was it the intention that it should have four shareholders?
A. Yes.
Q. You, your wife, Mr. MA and Mr. TSIANG?
A. Right.
Q. Was it the intention that Mr. MA and Mr. TSIANG should between them own a quarter of the shares?
A. Yes. 20
Q. You and your wife would own the rest – the three-quarters.
A. Yes.
Q. So, strictly speaking, it wasn't Po Fung and May Fung buying the property together.
A. Right.
Q. Do you remember that you were questioned by my learned friend as to the two English documents relating to the purchase of the property by Lucky Time from Mr. Ho Sau-ki and then by Kai Ming and Mr. CHAN Sun-ming from Lucky Time? And my learned friend suggested that there were two reasons why you did not give the documents – two possible reasons why you did not give the documents to Miss LEUNG: the first reason was that you did not have them; and the second reason was because when you went with Mr. WONG to see Miss LEUNG you were going to see Mr. WONG's solicitor and not yours. What I want to ask you is, in connection with this transaction, had you ever deliberately kept any documents from Miss LEUNG? 30

MR. PRICE: My Lord, that's a very leading question. I am perfectly willing to confer with my friend as to how he might put the same point. I think from my point of view I ought to object and from his point of view the answer would be subject to very adverse comment by me if he puts it in that form. Perhaps we could have a moment to consider how he might put it.

(Counsel confer)

- COURT: Could he put it in the form whether he had any relevant documents which he did not show to her? 40
Q. If you had the two documents in your possession, did you have any reason for not showing them to Miss LEUNG?
A. That would be impossible for me not to hand over those documents.

MR. TANG: I have no further questions, my Lord.

BY COURT:

Q. Mr. SHUM, you said you knew Philip WONG personally.

A. Yes.

Q. Had he acted for you on any previous occasion?

A. Yes.

Q. In connection with conveyancing in property transaction?

A. He was, in fact, a regular legal adviser. He advises us on company matters as well as property matters.

10

Q. Had he acted for you in connection with the purchase of your flat?

A. No, I did not instruct him in that matter. Everything was done by Hang Seng Bank. So the Hang Seng Bank instructed their solicitors for me again in the matter of instalmental payment scheme.

MR. CHEUNG: I did not quite catch that last part.

COURT: In the matter of payment by instalments.

MR. CHEUNG: Hang Seng Bank instructed their solicitors.

Q. So, the Hang Seng Bank acted – the solicitors for the Hang Seng Bank acted for both you and the bank.

A. Yes.

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Q. On the 27th – I'm sorry, I haven't got this quite clear. Perhaps I should have got it, but on the 27th of January did you go to Johnson Stokes office first and then to Danny YIU's office or the other way round?

A. I went to JSM first.

Q. And you went to Danny YIU's office on that day – once only.

A. Once on the 27th.

Q. Together with the other two defendants?

A. Yes.

Q. When you acquired the North American Meat Packing Company, you got that from, I think, a firm of accountants. You acquired from a firm of accountants.

30

A. Yes.

Q. Were there any solicitors involved in your acquisition of that company – preparation of change of directors, company documents – any solicitors involved?

A. No solicitors firm was to my understanding involved in that. Everything was prepared by our public accountant.

Q. Who was that?

A. Messrs. Man Sang and Co.

Q. And you have referred in your evidence to your accountant on various occasions, you mean a firm of public accountants or your own in-house accountant?

A. I have been referring to both, because we also employ our own accountants, we also instruct public accountants.

40

Q. You said you heard rumours about Danny YIU and I think you said that you went and consulted with a Mr. KWAN who bought the top part of the building.

- A. Yes, one of the purchasers of an upper floor.
- Q. Now, why did these rumours concern -- why were you and Mr. KWAN concerned when you heard these rumours?
- A. It was because Mr. KWAN too had made payments to the same solicitor, Mr. YIU, amounting to several million dollars.
- Q. Yes, but why should YIU's position -- you have paid the money, why should you be concerned about these rumours concerning Danny YIU?
- A. I became concerned because Mr. KWAN told me that he had also paid several million dollars to him and when he wanted to see him he was no more to be seen. 10
- Q. You've said that your position, your financial position has deteriorated considerably since the end of 1975.
- A. Yes.
- Q. That is due to this conveyance going wrong.
- A. Yes, and the landlord required us to vacate the premises. That caused a loss of several hundred thousand dollars.

COURT: Thank you.

MR. CHEUNG: My Lord, may I respectfully ask him to give the full name of Mr. KWAN, the gentleman who had bought one of the upper floors, if he knows?

COURT: Yes. Do you know the full name of Mr. KWAN, the person who . . . 20

A. I'm afraid I can't tell off-hand. I have to find out.

MR. CHEUNG: Ask him with which company Mr. KWAN is connected.

COURT: Do you know with which company he is connected?

A. He is an architect. His office is in Marina House. His payments were made through Messrs. LO and LO. Messrs. LO and LO represented him.

COURT: Do you know his other name or just KWAN?

A. Yes, I addressed him as Mr. KWAN. He had visited me at my office.

MR. CHEUNG: Was he or was he not connected with Kai Ming Investment Limited?

COURT: Was he connected with Kai Ming Investment Company?

A. Yes, he was connected with that company, because he was an architect. 30

MR. CHEUNG: There is a Mr. KWAN in the company search.

COURT: Yes, thank you.

MR. SHUM: May I be released?

MR. PRICE: My Lord, with the greatest possible diffidence, I would like to ask if I can put to Mr. SHUM a few further questions arising out of your Lordship's questions. In this matter, I am wholly in your Lordship's mercy, but your Lordship has raised

some matters which are, of course, very pertinent questions, but there is material there which, from my client's point of view, I oughtn't leave in the air, as Mr. SHUM's answers in some respects have left matters in the air.

In respect of one matter your Lordship asked, the answer that Mr. SHUM gave is really a wholly new matter. I refer to his answer where he indicated, so far as I heard, that his financial position had deteriorated because of the Danny YIU transaction.

My Lord, I am in your Lordship's hands. I invite your Lordship – I apply to your Lordship to allow me to ask a small number of further questions relating to the matters that your Lordship put to him. 10

My practical experience is that some judges' practice is to invite counsel, after the judge has asked the questions, whether they now have any further questions arising out of answers given to the judge. Other judges leave it to counsel to ask if they may. Some judges then say, "No, dear," and other judges say, "Yes, of course." My Lord, the practice is plainly wholly in your Lordship's discretion.

COURT: The question I asked him about his financial position really should be followed on from what Mr. SHUM had said – evidence we had that his condition had changed, and I was just clarifying it. Yes, if you have some questions. . .

MR. PRICE: My Lord, I merely point out that if your Lordship looks at page 23 of Volume 3, one sees a signature. That was the division agreed in Chinese, and though I do not pretend to read Chinese, there is a signature which looks like Daniel or David KWAN. 20

FURTHER XXN BY MR. PRICE

Q. Is there in Chinese a signature of Mr. KWAN for Kai Ming Investment?

A. I can't see any Chinese signature. It's English.

MR. PRICE: Well, my Lord, I think I am perfectly prepared to accept – and the company search shows – that there is a shareholder in Kai Ming called in Chinese KWAN Kai-ming. There are several KWANs.

Q. Is KWAN Kai-ming usually known as Daniel or David KWAN? 30

A. I don't know.

MR. PRICE: Well, my Lord, there it is. Obviously KWAN is a name associated with . . . (unfinished)

Q. Mr. SHUM, you told his Lordship that your financial position in your company deteriorated because of this case.

A. Yes.

Q. But let's examine that. Your actual outlay in respect of this case so far does not include repayment of 1.355 million to Mr. WONG's finance company, does it?

- A. Right, it did not include that amount.
- Q. Yes, so that are you saying that it is in respect of the balance that your financial position – the outlay of the balance has caused an acute deterioration in your financial position?
- A. Not because of that, but because of the requirement for me to move out and in those circumstances I had to stop production for three months.
- Q. Did you not have some land which in August, 1977 you sold for 5.6 million dollars?
- A. Yes.
- Q. And was that a sale to Edward WONG? 10
- A. Yes.
- Q. And was there a mortgage loan to discharge that out of the 5.6 million?

MR. CHEUNG: I don't have your question.

- Q. Was there a mortgage loan to be discharged out of the 5.6 million?
- A. Out of that I paid back the mortgage loan to the bank with which I had this instalmental payment scheme arrangement.
- Q. And over and above the mortgage loan, was there nearly 2 million dollars cleared on that sale?
- A. Over 3 million to the bank.
- Q. You told his Lordship that on the purchase of your flat solicitors for the Hang Seng Bank did the legal work, do you remember that? 20
- A. Yes.
- Q. Did those solicitors submit to you a bill made out in your name?
- A. In my wife's name.
- Q. Now, you told his Lordship that when you heard the rumours about Mr. Danny YIU you were concerned with those rumours because Mr. KWAN had made payments to Danny YIU, you had made payments to Danny YIU and a lot of money had been paid to Danny YIU.
- A. Yes.
- Q. Did you then – is it right then that you believed, as a result of hearing the rumours, that your transaction of the 27th of January could be affected by the disappearance of Danny YIU with the money? 30
- A. Yes, because it was ourselves who had through Miss LEUNG made the purchase of this property.

MR. PRICE: My Lord, I don't think it would be right for me to ask further questions arising out of your Lordship's questions. I must make what I can of those answers.

MR. TANG: To complete the picture, may I ask the witness two or three more questions?

FURTHER REXN BY MR. TANG

- Q. You told my Lord about the sale in 1977 of some land.
- A. Yes. 40
- Q. Why did you sell?
- A. The sale was necessitated by our having to move out of the premises and also because of the stop (stoppage?) of production, and we needed money then – we

needed money and we needed to move to another place.

Q. You said that you were concerned with rumours that you heard about Mr. YIU's disappearance. At the time had you been advised by any legal – by any lawyers as to how his appearance (disappearance?) might or might not affect you?

A. No, no solicitors had advised me on that.

MR. TANG: Thank you.

COURT: Thank you.

MR. TANG: My Lord, my next witness is Mr. MA.

D.W. 2 – MA Pok-sum Affirmed in Puntì

10

XN BY MR. TANG

Q. Mr. MA, in January, 1976 were you a director of Po Fung?

A. Yes.

Q. And at that time was Po Fung occupying part of the ground floor of 76 Hung To Road?

A. Entire ground floor.

Q. Po Fung I am talking about.

A. That's correct – only part of 76, ground floor, Hung To Road.

Q. May Fung occupied a part of the ground floor too.

A. That's right, that's the rear portion of the ground floor.

20

Q. Did anybody else occupy any part of the ground floor at that time?

A. Not to my recollection.

Q. If there were, is it likely that you – how long had Po Fung and May Fung occupied the ground floor up to 1976?

A. I know nothing about May Fung, because I am not a director thereof. As for Po Fung, that has been the case ever since I joined Po Fung in 1973 as a director.

Q. And I take it that you have nothing at all to do with May Fung.

A. That's right.

Q. Some time in January, 1976 it was decided, was it not, that the ground floor of 76 Hung To Road should be purchased?

30

A. That's right.

Q. Now, at that time, who was to be the purchaser?

A. He was CHAN Sun-ming who came to our place unsolicited.

Q. Now, I am talking about the purchaser, not the vendor.

A. The purchaser was a new company formed jointly by Po Fung and May Fung.

Q. And who were to be the shareholders of this new company?

A. For May Fung it was SHUM Ka-ching and his wife; for Po Fung I was one of the shareholders and the other was TSIANG Hung-wen.

Q. And what percentage of the shares were you and Mr. TSIANG to have in this new company?

40

A. I held 12.5 per cent, so did Mr. TSIANG. The remaining 75 per cent was held by Mr. SHUM and his wife.

Q. Was a new company acquired for the purpose?

- A. Yes.
- Q. From whom was it acquired?
- A. It was acquired from our own accountant by the name WONG Man-heung.
- Q. Is he a public accountant?
- A. Yes.
- Q. And did he practise under any particular trading?
- A. It was called the WONG Man-heung Accountants Company.
- Q. And what was the name of the company that you acquired from Mr. WONG?
- A. It was the North American Meat Packing Company. 10
- Q. And can you recall how much did you have to pay for this new company?
- A. About \$5,000.
- Q. Now, you knew at that time, did you not, that an agreement had been reached with Mr. CHAN Sun-ming for the purchase of ground floor for \$1,850,000.
- A. That's right.
- Q. Now, do you recall having a conversation with Mr. SHUM about whether or not the North American Meat Packing Company Limited was suitable or not for the use of the purchase of the property?
- A. Not at the time when the new company was acquired. However, at a later stage he told me something. 20
- Q. What did he say to you at that later stage?
- A. Later after he had seen Miss LEUNG of JSM with Mr. WONG, he said something to me. Miss LEUNG said something to Mr. SHUM and Mr. SHUM told us something as a result of what Miss LEUNG said.
- Q. And what was said?
- A. He said that Miss LEUNG said that that company was not suitable for the acquisition of property.
- Q. Did he give any reason for that?
- A. Yes, he said that that company was merely a meat company.
- Q. And what was the suggestion? 30
- MR. CHEUNG: "He said Miss LEUNG had said that that was only a meat company."
- MR. INTERPRETER: . . . was merely a meat company.
- Q. What was the suggestion?
- A. It was suggested that another company be acquired for the purpose of acquiring premises.
- Q. And where was this other company going to be obtained from?
- A. According to what Miss LEUNG said, her solicitors firm was to look for that company for us.
- Q. In short, eventually you and Mr. SHUM and Mr. TSIANG agreed to acquire another company through Miss LEUNG. 40
- A. Yes, because we trusted the solicitors firm.
- Q. Now, that would be towards the latter part of January, would it not, that conversation - towards the end or the second half of January?
- A. The middle - mid-January.
- Q. Up to that time, had you seen Miss LEUNG -- up to that time?
- A. No.
- Q. Can you remember when was the first time that you saw Miss LEUNG?

A. It should have been on the 27th of January, 1976.

Q. And did you see her at her office?

A. Yes.

Q. And did you go up to her office?

COURT: That was the first time you saw Miss LEUNG on the 27th of January.

A. That's right, my Lord. I saw her at her office.

Q. Was it in the afternoon of that day?

A. It was on the afternoon of that day.

Q. And did you go up together with Mr. SHUM and Mr. TSIANG?

10

A. That's right.

Q. Did anybody else go apart from the three of you?

A. No, not on the 27th. On the 27th only the three of us went.

Q. Did you know why you were going to see Miss LEUNG on that day?

A. We were informed by Mr. SHUM that he had been informed by the solicitors firm to go up there to sign some documents and to bring with us a blank cheque book to make some sort of payments.

Q. So eventually you all arrived there.

A. Right.

Q. And you saw Miss LEUNG – the three of you.

20

A. Yes.

Q. What happened when you saw Miss LEUNG?

A. When she saw us she spoke to the three of us that all the matters in respect of the purchase of the premises had all been fixed up.

Q. Yes.

A. And that we had to sign some documents.

Q. Yes.

A. I don't recollect now what sort of documents she took out first. I remember that she asked Mr. SHUM to sign a certain document saying that all the matters in respect of the purchase of premises had been fixed up, but then she said that there was an amount of money which had to be paid to a solicitor of the other side. First of all, she said that all the matters in respect of the purchase of the premises had been fixed, and then she explained the contents of a letter to the effect that a certain sum of money had to be paid to a solicitor of the other side.

30

Q. Did she say why the money had to be paid?

A. No.

Q. Did Mr. SHUM sign the letter?

A. Yes.

Q. Now, would you look at Volume 2, page 38, please? Now, can you read English, Mr. MA?

40

A. No.

Q. Now, this is a letter – you recognise the signature of Mr. SHUM, do you not?

A. Yes.

Q. It's a letter dated the 27th of January addressed to Edward Wong Finance Company Limited, and it says basically that the debenture had been signed and "we direct you to forward to Danny Yiu and Company the sum of 1.355 million." Now, do you recall whether or not you have seen this letter before?

- A. Yes.
- Q. And when did you see it?
- A. It was the occasion I had just mentioned when Mr. SHUM signed the letter.
- Q. Can you remember what other documents were signed on that day?
- A. There was also a guarantee.
- Q. And that was signed by all three of you.
- A. That's right.
- Q. Did Miss LEUNG say anything to you before the guarantee was signed?
- A. Yes, but very simply. 10
- Q. What did she say?
- A. She said, "Now, everything in respect of the purchase of premises had been fixed up." She said that in default of the instalment payments the three of us had to be held responsible for the payment.
- Q. Personally.
- A. That's right.
- Q. And was that all that she said to you before you signed the guarantee?
- A. Right.
- Q. Now, would you look at Volume 3, the document starting at page 60?
- MR. TANG: It's the guarantee, my Lord. 20
- Q. It starts at page 60, but would you turn to page 63, please? Do you see your signature there beneath Mr. SHUM's signature?
- A. That's right.
- Q. Was this document signed before or after the letter that you have already looked at, that is, Volume 2, page 38?
- A. I cannot recollect.
- Q. You also mentioned that there was a document which Mr. SHUM was required to sign alone.
- A. That was the letter I have mentioned previously.
- Q. Did Mr. SHUM sign any other document apart from that? 30
- A. Not to my recollection.
- MR. INTERPRETER: Sorry. "I can't remember."
- Q. Would you look at Volume 3, page 39? Now, do you recall – was the question of mortgage mentioned on the 27th of January at all by Miss LEUNG?
- A. Not to my recollection.
- Q. What did she say? She asked you to sign a guarantee telling you that you would be personally liable if the company cannot pay the instalments.
- A. That was before I signed page 60.
- Q. Now, when you went there on the 27th, did you not know that a mortgage had been arranged for the purchase of the ground floor? 40
- A. I was not aware of that.
- Q. I see. Now, when did you first become aware that there was to be a mortgage on the ground floor?
- A. It should have been in the month of January, 1976 when SHUM Ka-ching and Edward Wong Finance Company had arrangements for the mortgage.

- Q. You learned of that before or after your visit to Miss LEUNG?
 A. Before I saw Miss LEUNG I knew that the property had to be used as a security.
 Q. Now, on the 27th of January, was there any reference – was there any mention made of instalment payments in the presence of Miss LEUNG apart from the guarantee?
 A. No.
 Q. Were you aware on that day whether or not the guarantees that you gave had anything to do with the mortgage of the property to Edward Wong and Company?
 A. I knew that that amount had something to do with the purchase of the premises. 10
 Q. Would you look at Volume 4, page 76, please? Do you see your signature on that document?
 A. Yes.
 Q. Now, it purports to be minutes of a meeting of the Board of Directors of the new company Bovill held on the 27th of January. Now, do you recall signing this document on the 27th in the presence of Miss LEUNG?
 A. I don't recall whether or not it was on the 27th, but, anyway, when I signed this document Miss LEUNG was there.
 Q. Was this document explained to you by Miss LEUNG?
 A. No. 20
 Q. Did she explain this document to anybody?
 A. I don't remember whether or not she explained the contents to other people, but she did not explain the contents to me.
 Q. Maybe I'll ask the interpreter to explain the contents of this document to you. I think you can forget about the heading because that is no doubt fictitious.

(Interpreter explains document to witness)

MR. TANG: My Lord, maybe this would be a convenient time to take the morning break.

MR. PRICE: My Lord, there are some matters in respect of which my learned friends and I hope to talk to your Lordship during this adjournment while your Lordship is having whatever your Lordship is having about the future of this case – future course. 30

11.29 a.m. Court adjourns

12.08 p.m. Court resumes

Appearances as before, Mr. P. FUNG present.

D.W. 2 – MA Pok-sum o.f.a.

XN BY MR. TANG (continues)

- Q. Mr. MA, do you still have page 76 in front of you, Volume 4? Now that you have had the content of this document explained to you, do you remember seeing such a document on the 27th of January?
 A. Yes. 40

- Q. Was this document explained to you by Miss LEUNG?
A. No.
Q. Was it explained to anybody else in your presence, can you recall?
A. Not to my recollection.
Q. Can you remember how long did you stay in Miss LEUNG's office that afternoon?
A. About one odd hour to two hours.
Q. During that time you have told my Lord that you signed the guarantees, the letter -- Volume 2, 38 -- was signed by Mr. SHUM and you also mentioned that Mr. SHUM was asked to sign some other documents. 10
A. Yes.
Q. Now, did Miss LEUNG stay with you all the time?
A. Yes.
Q. Now, did you see Mr. Edward WONG in the course of that afternoon?
A. I saw him coming in.
Q. Did you see that -- did he stay any time at all in Miss LEUNG's office?
A. Yes, he stayed in Miss LEUNG's office for a very short while.
Q. Do you know why he came to Miss LEUNG's office?
A. I don't know.
Q. Did you see any bank cashier orders that afternoon? 20
A. No.
Q. Was there any discussion that afternoon about any cashier orders at all? I don't mean cheques, I mean cashier orders issued by banks.
A. No.
Q. In the course of that afternoon, were you presented with two bills by Johnson Stokes?
A. Yes.
Q. Can you remember who presented the two bills to you?
A. Miss LEUNG did.
Q. And can you remember in what amount they were? 30
A. One was 8,000 odd, the other 3,000 odd. The total amount would be 12,000 odd.
Q. Would you look at Volume 4, page 65?
- MR. TANG: I'm sorry. I should not be referring him to that. I should be referring him instead -- the document that I ought to be referring him to is 43 A and B in Volume 2, as they have been put together.
- Q. Look at 43A first. Was this one of the two bills presented to you?
A. Yes.
Q. Would you turn over to page 43B? Was this the other bill presented to you?
A. Yes.
Q. Were these two bills paid by cheque? 40
A. Yes.
Q. Now, who filled in the cheque?
A. Mr. SHUM and I.
Q. I don't mean sign. Was it signed by Mr. SHUM and yourself?
A. The cheques were signed by the two of us.
Q. Yes, but who filled in the other particulars?
A. I did.

- Q. And was only one cheque given?
- A. That's right.
- Q. At the time when the two bills were presented, is it possible that somebody might have said to you or Mr. SHUM – I'm sorry. When the two bills were presented, were you together with Mr. SHUM?
- A. Yes.
- Q. How far away were you from him?
- A. Very close.
- Q. As close as I am to you? 10
- A. It couldn't be as far as your distance from me – would be more or less the same distance.
- Q. At the time when the two bills were presented, were they presented to you personally or were they presented to Mr. SHUM?
- A. To Mr. SHUM first.
- Q. At that time did anybody say to Mr. SHUM that Johnson Stokes were not acting for him or his company, but were only acting for Edward Wong and Company?
- A. No.
- Q. Did anyone at any time during your presence there on the 27th of January say anything to that effect? 20
- A. No, no, none at all.
- Q. After the two bills had been – sorry. Would you look at 43A, please? Would you look at the top of the document? Do you see some English words there? Do you see that?
- A. Where?
- Q. At the top of the page – typed on at the very top of the page. I see your copy had been cut off. I will show you my copy. Do you see some words typed on at the top of the page? Can you read those words? Can you understand them?
- A. I know it is our company.
- Q. Did you notice those words when you paid the bill?
- A. To my recollection, there were no such words. 30

- Q. Would it be more correct to say that you cannot remember whether or not there were those words when the bill was presented to you?
- A. That is right. I do not now recollect whether or not there were such words when the bills were presented.
- Q. Would you look at 43b. I think there you see some words typed at the top of the page.
- A. Yes.
- Q. Without explanation to you do you know what those words say?
- A. No. 10
- Q. It says, "Edward Wong Finance Co. Ltd. (payable by Bovill Investments Ltd.)" At the time when you paid the two bills, was your attention drawn to the heading of this bill?
- A. No.
- Q. Looking at it now and having those words explained to you, what significance do you think those words have or any significance at all?
- A. The significance now I feel is as to who ought to have paid the bills.
- Q. According to your understanding who ought to pay the bill.
- A. I feel that the bill should have been paid by Edward Wong Finance Co. Ltd. 20
- Q. Why?
- A. It was because Miss Leung had told us briefly of the contents of the two documents, documents 43a and b.
- Q. What did she say to you?
- A. She said that she found the new company for us. She said she had also made searches for us for the purchase of premises. I felt that for the searches Miss Leung was acting for Edward Wong as well as for us, so I thought that Miss Leung should ask Edward Wong for the payment of the bill.
- Q. Did you pay the bill?
- A. Yes, I did.
- Q. Why did you pay? 30
- A. I paid because I felt that she did something for us. She had done something for us.
- Q. What, according to you, she had done for you?
- A. 1. To look for a new company. 2. She represented Edward Wong and she also represented us for enquiries from the other side. She was representing our interest.
- Q. Did you say to my Lord a moment ago that at the present time you thought that it ought to have been paid by Edward Wong?
- A. Yes.
- Q. Why did you say that?
- A. I now do not remember whether or not there were the headings. Now that I have seen the headings I instinctively feel, intuitively feel, that I alone should not bear the cost. 40
- Q. Who else should bear the cost according to your instinct?
- A. Edward Wong should have also paid at that time.
- Q. After you had paid the two bills, was anything said between the three of you and Miss Leung?
- A. Yes.
- Q. What was that about?
- A. Mr. Shum was acting for our company. Mr. Shum said that as for other charges we should pay Miss Leung.
- Q. Did he elaborate on what he meant by "other charges"?

- A. Stamp duty and solicitor's fee.
- Q. What did Miss Leung say to that?
- A. Miss Leung did not give any spontaneous answer. She picked-up a telephone and had a telephone conversation.
- Q. After that telephone conversation, what did she say?
- A. We heard Miss Leung speaking to solicitor Yiu over the phone.
- Q. Was that conversation in English or in Cantonese?
- A. In English.
- Q. Do you understand what she said to him? 10
- A. No, we did not.
- Q. After the telephone conversation, did she say anything to any of you?
- A. Yes. She said, "Regarding the money now you rush to Danny Yiu's office to pay him."
- Q. When Mr. Shum said "stamp duty and solicitor's fee", what solicitor's fee did you understand him to be referring to?
- A. Our fees to solicitor Leung.
- Q. In relation to what?
- A. In relation to the purchase of the property.
- Q. Did you, all three of you, go to Mr. Danny Yiu's office? 20
- A. There were some other conversations.
- Q. Yes. What other conversations?
- A. Mr. Shum said that "We ought to have paid you." But Miss Leung said that it would be the same.
- Q. And then you left.
- A. Yes.
- Q. What time was it when you arrived at Danny Yiu's office?
- A. Sometime after five.
- Q. At Danny Yiu's office were some documents signed?
- A. Yes. 30
- Q. What documents were signed?
- A. We knew nothing about the contents of the documents but there were some building plan or plans.
- Q. Were the content of those document explained to you by Mr. Yiu or by anybody?
- A. No.
- Q. You just signed those documents.
- A. That is right.
- Q. Did you personally sign?
- A. Yes.
- Q. Why did you sign those documents? 40
- A. It was because before we left, or when we were about to leave, she said that all the documents had been fixed up and we were just to go there to sign and to pay.
- Q. Would you look at document 45 in the second volume please. This is a receipt issued by Danny Yiu & Co. in favour of your company for cost in disbursements in the sum of \$45,820.
- A. Yes.
- Q. Was that sum paid to Danny Yiu & Co. on the 27th?
- A. Yes.
- Q. Suppose you and Mr. Shum signed the cheque.

- A. Right.
- Q. Do you know what that sum included?
- A. I know one thing and one thing only and it included stamp duty. I knew nothing about the rest.
- Q. Apart from this receipt, did Mr. Yiu give you a bill rather like the document that you have looked at, 43a and b?
- A. I do not remember.
- Q. If he had given you such a bill, would you have kept it?
- A. If we had been given that sort of bill, our company would certainly have kept that bill. 10
- Q. Who in your company would have the custody of that document?
- A. The accountant.
- Q. That is an accountant employed by your company, not a public accountant.
- A. That is right.
- Q. Do you know what had happened to the original of document 45 in volume 2, the receipt issued by Danny Yiu & Co?
- A. I don't know.
- Q. Do you know where you obtained a copy of this from?
- A. No, I don't know. 20
- Q. After you'd signed the documents and paid the fee at Danny Yiu & Co, did you then leave?
- A. Not yet. We had still something to say.
- Q. Who said that to you?
- A. Danny Yiu said something. He said, "After I have completed everything for you, I'll hand them to Miss Leung of J.S.M."
- Q. What did you understand him to mean by that?
- A. To my understanding the title deed should have been included.
- Q. What do you mean by that? Mr. Ma, what I would want you to do is to cast your mind back to the 27th of January, 1976 and not to allow your evidence to be coloured by what had transpired since then. I know it is difficult because you are now giving evidence in June 1980. At that time what did you understand Mr. Yiu to mean? 30
- A. Even at that time I thought that the title deeds was the thing he mentioned.
- Q. You mean to say that you understood him to mean that when the title deed was ready, he would give them to Miss Leung?
- A. Yes.
- Q. Ready after what? In what way they would be made ready? What did he have to do in order to make the title deeds ready?
- A. I don't know what sort of ways he had to resort to. 40
- Q. Had you met Mr. Yiu before that day?
- A. Never.
- Q. Was the afternoon of the 27th the first time that you saw Mr. Yiu?
- A. That is right.
- Q. Did you see him after that day?
- A. No.
- Q. Again talking about the 27th of January, 1976 did you know how the purchase money was to be paid?
- A. Yes. I knew.

- Q. How?
- A. The money should have been paid by Edward Wong Finance Company to solicitor of the other side.
- Q. How did you know that?
- A. Because such an arrangement had been made between Mr. Shum and Mr. Wong of the Edward Wong Finance Company.
- Q. Did you know how actually the money was paid?
- A. At that time I did not know what sort of arrangement had been made. I knew that the arrangement was for On Tai, for Edward Wong, to pay to solicitor of the other side. 10
- Q. You knew, did you not, that the money borrowed from Edward Wong & Co. Ltd. was insufficient to pay the balance of the purchase price?
- A. That is right.
- Q. Did you know the balance had to be made up by your company and that you had to make up the balance? The balance of the money had to be paid by you. We are not concerned at the moment as to how that was to be paid. That is right: paid by your company?
- A. Yes.
- Q. Do you know how that was going to be paid, physically to be paid over? 20
- A. I should have thought we had sufficient money. If we did not have sufficient money, we would have to borrow the money in deficiency.
- Q. Let's deal with round figures. Assuming that the balance of the purchase price payable was \$1.5 million, another which you were to borrow \$1.2 million from Edward Wong Co. Ltd, so there is \$300,000 which your company have to pay.
- A. Yes.
- Q. How was this \$300,000 going to be paid towards the payment of the purchase price? Who was going to hand over the money to whom? Did you know? If you didn't know, just say that you didn't know.
- A. Yes, I knew. 30
- Q. How was that going to be paid?
- A. We had already paid 10% of the balance to Chan Sun-ming as a deposit.
- Q. We know that. What about the rest?
- A. As for the other 10% we paid a sight cheque to Edward Wong Finance Company.
- Q. Another 10%, according to you, by post dated cheques post dated one year.
- A. That is right.
- Q. Do you know anything more about the payment?
- A. Yes, about the interest.
- Q. What about the interest?
- A. The interest was one fen (10%) per month. 40
- Q. Interest on what?
- A. For the loan for the purchase of the premises.
- Q. What loan?
- A. The \$1.2 million I have just mentioned.
- Q. Do you know anything else about how the balance of the money was going to be paid?
- A. I don't know.
- Q. I'll just ask you a few hypothetical questions now. At the time when you signed the guarantee, you said you were told that if the company cannot pay the instalments,

- you would have to pay the instalments personally.
- A. But that was in respect of the instalment for the purchase of the premises. It is not in respect of the instalment for the loans.
- Q. Do you mean to say you understood that the money borrowed or to be borrowed would be used towards the purchase of the property?
- A. That is right.
- Q. That was the purchase of the ground floor of number 76 Hung To Road.
- A. Right.
- Q. You had already told my Lord that at the time Mr. Shum had told you that a mortgage of that property would be required. 10
- A. Yes.
- Q. Would you have been prepared to sign the guarantee if there had been no purchase of the property at all?
- A. Absolutely not.
- Q. If there had been no mortgage of that property, would you have been prepared to sign the guarantee?
- A. No.
- Q. You were made a director of the Po Mei Company, were you not? 20
- A. Yes, one of.
- Q. If you were advised on the 27th of January 1976 by Miss Leung that there was a method of completion available to the company which would involve no risk on the part of your company at all because it would be a completion of the transaction against the payment of the necessary money but there was also a method which was widely adopted in Hong Kong and that is adopted for the convenience of solicitors but that would involve some risk because if the solicitor to be trusted under this method were to turn out to be dishonest, the solicitor may have to go to prison for it. If he doesn't have money to pay, then you may lose the money. Which method of completion in that case would you have chosen?
- A. I would have chosen the safety method. I would play safe – the method of payment against document. 30
- Q. After the 27th of January on the next day, did you, Mr. Shum and Mr. Tsiang and Mr. Shum's wife go up to the office of Johnson Stokes?
- A. Yes.
- Q. On that occasion did you then see a Miss Chor?
- A. Yes.
- Q. Was that the first time that you saw Miss Chor?
- A. Yes.
- Q. On that occasion did you sign numerous company documents? 40
- A. Yes.
- Q. Subsequently in February you went up to the office of Johnson Stokes again and signed further company documents.
- A. I do not remember whether or not it was February that I went up to J.S.M. I remember that I certainly did go up again.
- Q. And signed some documents.
- A. Right.

MR. TANG: I have no further questions.

COURT: 2:30 ?

MR. CHEUNG: Yes.

12.55 p.m. Court adjourns

2:35 p.m. Court resumes

Appearances as before.

MR. CHEUNG: I have no questions, my Lord.

D.W.2 Ma Pok-sum o.f.a.

COURT: Mr. Ma, When the Chinese New Year was over, did you hear any rumours or anybody say anything to you concerning solicitor Yiu?

10

A. Yes.

COURT: Who said that to you?

A. Mr. Shum Ka-ching told me that.

COURT: What did he say?

A. He told me that he could not contact Mr. Danny Yiu by phone many times. Moreover, he did not know Mr. Yiu's whereabouts.

COURT: Did that concern you?

A. Yes.

COURT: Why?

A. It was because we knew when we were purchasing the premises, Mr. Danny Yiu was the solicitor for the other side.

20

COURT: In fact if he was the solicitor for the other side, why should that concern you?

A. Because when we visited him, he said he would, after the document had been completed, hand those documents to Miss Leung but we did not know whether or not he had completed the documents.

XXN BY MR. PRICE

Q. Can you look please in volume 3 at page 21, Mr. Ma. That is a copy of a receipt given by Mr. Chan Sun-ming for \$100,000, a deposit received from Po Fung.

A. Yes.

Q. Is that a document you had seen before?

30

In the
Supreme
Court of
Hong Kong
High Court
Defendant's
evidence
No. 12
Ma Pok-
sum cross-
examination

- A. Yes.
- Q. Is that a document of which you had seen the original?
- A. I think I should have seen the original of this document.
- Q. Were you present when Mr. Chan was paid \$100,000?
- A. Yes.
- Q. You were present?
- A. Yes.
- Q. On that occasion was there any photocopy of the original receipt?
- A. I do not remember. 10
- Q. Did Mr. Chan keep a copy of the receipt he had given?
- A. I don't know.
- Q. At the time when that \$100,000 was paid by Po Fung, had it been decided that there should be a new company to be the purchaser of the property?
- A. Yes.
- Q. Had already been decided?
- A. Yes.
- Q. Had it already been decided who would be the shareholders in the new company?
- A. Yes, the four of us.
- Q. When you told his Lordship that the shareholders were to be Mr. Shum and his wife for Mei Fung, and you and Tsiang for Po Fung. . . 20
- A. I should have added that for Mr. Shum, he is the owner of both Po Fung and Mei Fung.
- Q. Mr. Shum is the owner of Po Fung and Mei Fung?
- A. Yes, he had a share.
- Q. When you told his Lordship this morning that Mr. Shum and his wife were to be shareholders for Mei Fung and you and Tsiang were to be shareholders for Po Fung, (to interpreter), can you translate that?
- A. But Mr. Shum was also a shareholder of Po Fung. Three persons were the shareholders of Po Fung. 30
- Q. I think I'll continue my question. When you told his Lordship that, did you mean that the shares in the new company were to be held by as to part on behalf of Mei Fung and as to part on behalf of Po Fung as trustee for – does that mean that you and Tsiang were to hold your shares in the new company as trustees for Po Fung?
- A. No.(Pause) But I do not quite follow you.
- Q. I am only asking Mr. Ma what you meant when you said that, “The share holders would be: for Po Fung, me and Tsiang”. What did you mean by that?
- A. For the Po Fung, myself, Tsiang Hung-wen and Mr. Shum Ka-ching were to represent the Po Fung. Mr. Shum being a partner, shareholder, of the Po Fung himself. 40
- Q. Do you mean that your shares in the new company were to be held by you as representative of Po Fung?
- A. My shares in the new company would be in proportion to the shares I held in the Po Fung.
- Q. Were the shares which Mr. Shum and his wife were to hold in proportion to their shareholding in Po Fung?
- A. No. For Mr. Shum his shares in the new company would be in proportion to the shares he held in Po Fung and Mei Fung together.
- Q. I think I understand. You first saw Miss Leung on the 27th of January, you told his

- Lordship.
- A. Yes.
- Q. Everything that had passed between Miss Leung and Mr. Shum, you could know only from what Mr. Shum told you, is that right?
- A. That is correct. That is certainly the case before the 27th.
- Q. Had you been present when Mr. Shum spoke to Mr. Wong, that is Mr. Edward Wong?
- A. I was not.
- Q. So your knowledge of what had been arranged between Mr. Shum and Mr. Edward Wong must have been derived wholly from what Mr. Shum told you, is that right? 10
- A. That is right.
- Q. You did, however, receive before that day, didn't you, a letter or copy letter from Johnson Stokes & Master, do you remember that?
- A. No.
- Q. Open, will you, volume 2 at page 27. That is a letter in English. Before it is translated to you, can I ask you a preliminary question. There is a letter in English and a copy of it was sent to you. When you received a copy letter in English, what is your practice?
- A. I would look for someone who knew English language to explain the contents of the letter to me. 20
- Q. This was a copy of a letter which Johnson Stokes & Master had sent to Edward Wong Finance Co. with a copy to Mr. Shum and a copy to you. It referred to 76 Hung To Road. In this letter Johnson Stokes & Master thanked Edward Wong Finance Co. for their instructions to prepare a debenture to secure credit facilities to the extent of \$1.355 million. It said how those credit facilities were to be secured. It indicated that the completion of the purchase of the property and the debenture was to take place on the 26th of January. It also said that Johnson Stokes & Master confirmed having received instructions from Mr. Shum and Mr. Ma to acquire a shelf company which would acquire the property and give the debenture. Do you remember receiving that copy letter? 30
- A. I have absolutely never received such a letter.
- Q. You are saying, "I definitely did not receive it."? Is that your answer?
- A. Right.
- Q. That is correct?
- A. That is correct.
- Q. Not "I do not remember whether I received it or not"?
- A. Not that I do not remember but that I am positive that I did not receive it.
- Q. You told his Lordship that Mr. Shum had reported to you Miss Leung's views about the suitability of the meat company to be the purchaser of the property, didn't you? 40
- A. Yes.
- Q. You said that "we three agreed." You and Tsiang agreed with Shum that a new company should be acquired, didn't you?
- A. Yes. Mr. Shum was reporting to us what Miss Leung had said as to the suitability of the meat company.
- Q. Did Mr. Shum tell you after you had agreed that the new company should be acquired that he had received from Johnson Stokes & Master a letter about that?
- A. No.
- Q. Mr. Ma, were you at this time, before you saw Miss Leung for the first time, leaving

- matters to be negotiated by Mr. Shum?
- A. You mean for the purchase of the new company?
- Q. For the purchase of the new company, for the purchase of the property, for the . . .
- A. Yes.
- Q. For the borrowing from Mr. Wong.
- A. Yes, because he was the managing director.
- Q. Did you receive much explanation from Mr. Shum of what he had negotiated with Mr. Wong?
- A. Yes. 10
- Q. When you heard from Mr. Shum that Mr. Wong had agreed to lend money for the purchase of the property, was any amount of loan then mentioned?
- A. At that time the amount was not yet definite.
- Q. I see. Was there a time when the amount became definite?
- A. Yes.
- Q. Who told you?
- A. First of all we checked among ourselves as to how much money we had and then Mr. Shum said that how much money was to be borrowed from the Edward Wong Finance Co.
- Q. When you say "he said", do you mean he told you how much of a loan he had negotiated. . . 20
- A. The amount had not yet been decided.
- Q. . . or how much of a loan he would ask for?
- A. At that time we were prepared to pay 20% of the total price, sales price, 10% having been paid to Chan Sun-ming as deposit.
- Q. There came a time, did there, when Mr. Shum reported to you what figure would actually be borrowed from Mr. Wong?
- A. Yes.
- Q. Was that figure \$1.355 million?
- A. He did not tell us the figure, however, he said that Mr. Wong was merely willing 30 to lend 70% and the other 30% had to be raised by us.
- Q. Did the figure of \$1.355 million ever come to your notice as the amount of the loan?
- A. On the 27th.
- Q. For the first time on the 27th?
- A. That is right. Before that I merely knew of the percentage of the loan.
- Q. Was there a period of time when you thought that you would have ready money available to pay the whole balance of the purchase price over and above the amount of the loan?
- A. As to the 20% we had instant money to pay but as to 30% we were short of just a 40 little bit.
- Q. Was that shortage something that became obvious after Mr. Wong had agreed to make his loan?
- A. We had sufficient money to pay for 20%. But the amount became apparent, obvious, when Mr. Wong insisted that the balance be 30%.
- Q. Let me put it in another way. You told His Lordship that the last 10% of the purchase money was provided by two postdated cheques.
- A. Yes.
- Q. This meant that pending the date on those cheques you were borrowing an amount

of money, didn't it?

A. Yes.

Q. When you learnt that Mr. Wong was going to make a loan, did you at the same time learn that there would be that post dated cheque arrangement?

A. Yes.

- Q. There weren't two stages, one at which Mr. Wong was going to lend a large sum of money, and a second stage when the last 10% was to be provided by two post-dated cheques.
- A. Right.
- Q. There were not two stages?
- A. There were two stages.
- Q. There were two stages, I see. Now let us concentrate then on the second stage. Was that because it was . . . Did the question of post-dated cheques arise because you had to find the balance of the purchase money over and above the amount of Mr. Wong's loan? 10
- A. Yes, that's right, because we did not have sufficient money for the other 10%.
- Q. Was that very shortly before you saw Miss Leung on the 27th of January?
- A. Yes.
- Q. At the time when this stage arrived, did you already know that the purchase was to be completed on the 27th of January?
- A. I knew that the completion ought to have been at the end of January.
- Q. Let me put it this way: Had Mr. Shum already told you the date, the exact date, on which completion was to take place?
- A. Yes. When I said "at the end" or "by the end of January", I meant before the 31st of January. 20
- Q. Now before this question of post-dated cheques arose, to whom did you think the balance of the purchase money over and above the amount lent by Mr. Wong was going to be paid?
- A. At that time we were of the opinion that that amount ought to have been paid to the solicitor for the purchase of the premises on our behalf.
- Q. At that time there was no question of that being paid to Mr. Wong or by Mr. Wong, was there, that balance?
- A. Yes, because at the very beginning Mr. Shum said that he had seen solicitor Leung who was to complete the formalities for us. 30
- Q. I am so sorry, that is not the answer to my question. There was no question at that time before the question of post-dated cheques arose that the balance of the purchase money over and above the amount of Mr. Wong's loan would be paid to Mr. Wong or by Mr. Wong, was there?
- A. I do not know what sort of arrangements were made between Mr. Wong and Mr. Shum. We did not know to whom the money was to be paid. As to whether it was the money to be paid by us to Mr. Wong or Mr. Wong to anybody else, we didn't know.
- Q. While Mr. Wong was proposing to lend only part of the balance of the purchase money, that is to say, 1.355 million, there was no reason for involving him in the payment of any larger sum, was there? 40
- A. But Mr. Shum said that Mr. Wong would be prepared to go about the transaction according to the banking terms, that is why we suggested 80% loan from Mr. Wong. We hoped that he would lend more.
- Q. Was there any reason that you can think of, Mr. Ma, for involving Mr. Wong or his company in the payment of a larger sum than they were going to lend?
- A. But Mr. Wong said that he would give credit facilities in accordance with banking terms, and we made enquiries from The Hong Kong & Shanghai Banking Corporation and we were given to understand that the bank would give us 80%

- loan.
- Q. Mr. Shum told his Lordship about a conversation with Mr. Wong in which Mr. Wong asked Mr. Shum what percentage of the purchase price he could raise from The Hong Kong & Shanghai Bank, and Mr. Shum told Mr. Wong that he could raise 70%. Now you weren't present at the conversations between Mr. Shum and Mr. Wong?
- A. I was not.
- Q. Are you telling his Lordship that you understood that The Hong Kong & Shanghai Bank would advance 80%, not 70%?
- A. To my recollection, that was certainly the case, that was the case at that time. 10
- Q. You remember there were two stages when Mr. Wong was going to lend 70%, and a later stage when he was going to lend an additional amount because you haven't got the ready cash, and that additional amount was going to be covered by post-dated cheques?
- A. We had also given interest for that.
- Q. Do you think you can be mixed up, Mr. Ma, about your recollection of these matters?
- A. In what respect?
- Q. Are you sure that Mr. Shum told you that Hong Kong & Shanghai Bank was prepared to advance 80%? 20
- A. I am not positive on that.
- Q. Are you able to tell his Lordship why Mr. Shum made an arrangement under which Mr. Wong's finance company would actually pay over more money than they were lending?
- A. I don't know why.

MR. PRICE: Would your Lordship wish to adjourn at this moment?

COURT: Yes.

3.30 p.m. Court adjourns.

3.50 p.m. Court resumes. Appearances as before.

D.W. 2 – MA Pok-sum o.f.a. 30

XXN. BY MR. PRICE: Continues

- Q. Mr. Ma, you were asked by Mr. Tang to look at a document in English which is at page 38 of volume 2.
- A. Yes.
- Q. And you told his Lordship that you can't read English but you recognize Shum's signature on this document.
- A. Yes.
- Q. And that you recall seeing this letter at the meeting in Miss Leung's office on the 27th January, 1976.
- A. Yes. 40
- Q. Was that at quite an early stage in the meeting? Was it at an early stage?
- A. It was soon after we had met Miss Leung that I saw this letter.

- Q. Now were you aware that this letter referred to 1.355 million dollars?
A. Yes. Miss Leung mentioned it.
Q. Indeed you told his Lordship a little earlier this afternoon that that figure was known to you for the first time on the 27th of January.
A. Right.
Q. So Miss Leung was getting Mr. Shum to sign a letter addressed to Edward Wong about the money 1.355 million to be secured, wasn't she?
A. Yes, that's right.
Q. Was it clear at that stage that Miss Leung was expecting Mr. Wong's company to provide only 1.355 million? 10
A. Yes.
Q. When that letter was signed by Mr. Shum, did it strike you as odd in any way that it referred only to 1.355 million?
A. You mean did I feel surprised?
Q. Did it strike you as peculiar that it referred to only 1.355 million and not to 1.665 million or some other figure?
A. At that time it did not occur to me so very quickly as being odd, because I thought whatever a solicitor did must be right, and therefore I did not take that into account. 20
Q. At that stage in the meeting, had you any cause to think that Miss Leung was expecting Mr. Wong's company to be involved in the payment of any sum greater than 1.355 million?
A. I did not know what Miss Leung was expecting.
Q. Of course you didn't, but had you any cause to think?

MR. CHEUNG: My friend has not rephrased his question yet.

- Q. Had you any cause to think that Miss Leung appeared to be expecting her client Mr. Wong to be involved with a greater payment than 1.355 million?
A. I myself never expected him to lend us anything more than 1.355 million dollars. 30
Q. When the letter at page 38 was signed by Shum, it referred only to 1.355 million?
A. Yes.
Q. Did you say, "But what about the rest of the money required to complete the purchase"?
A. I did not ask because I felt the matter of the loan had all been fixed up by that time.
Q. But that was the amount of the loan to be secured by the debenture, wasn't it?
A. Not in the form of a debenture but rather in the form of a mortgage on the property.
Q. Did Mr. Shum say, "But what is happening about the rest of the money required for completion"? 40
A. Yes.
Q. Yes, he did?
A. To give him two post-dated cheques.
Q. At this meeting when Mr. Shum signed the letter which referred to 1.355 million, did he say, "But what about the balance of the money required to complete the purchase"?
A. Before the letter was signed, we knew that we were short of money, and the deficiency was to be made out by four cheques payable to the Edward Wong

- Finance Company.
- Q. Yes, now you knew that but I am asking you what happened at the meeting.
- A. No, he had made no mention of that. When we arrived, it was said that Miss Leung had some documents for us to sign, including this one.
- Q. When this document was signed, mentioning only 1.355 million as to come from Edward Wong Finance Company, did Mr. Chan say, "But what about the balance of money required to complete the purchase"?
- A. Mr. Chan did not say anything. It was Mr. Shum who signed the letter, not Mr. Chan.
- Q. And by that time had Mr. Shum before the meeting told you about the arrangements made with Mr. Wong in respect of the extra money? 10
- A. No.
- Q. So far as you knew, had anyone told Miss Leung about the arrangements in respect of the extra money?
- A. Not to my knowledge. I don't know.
- Q. And Miss Leung was not concerned with those arrangements at all, was she?
- A. I don't know whether or not that concerned Miss Leung.
- Q. Had Mr. Shum told you before that meeting that the extra money, that is the money over and above what Mr. Wong was lending, had to be paid to Danny Yiu?
- A. We had cheques made payable to Edward Wong Finance Company. 20
- Q. Your answer is that you had cheques payable to Edward Wong Finance Company, is that right?
- A. That's right. For the deficiency we had cheques made out payable to the Edward Wong Finance Company.
- Q. There was a deficiency and in respect of that deficiency Mr. Shum made at a late stage the arrangements that were made with Mr. Wong, the post-dated cheque arrangements, is that what you are referring to?
- A. That's right.
- Q. It is a slightly different question that I am putting to you. Before you went to the meeting on the 27th of January, had Mr. Shum told you that you had to make a payment to Danny Yiu? 30
- A. Yes. He did mention that payment had to be made to the landlord's solicitor, Danny Yiu.
- Q. And that payment would include the amount of the purchase price not being lent by Edward Wong, is that right?
- A. That's right.
- Q. Had he also told you that you would have to pay to Danny Yiu his costs, Danny Yiu's costs and disbursements?
- A. No. We only knew that we were to pay solicitor Leung.
- Q. Before you went to the meeting, had Mr. Shum mentioned to you the figure of \$45,820 as a sum payable to Danny Yiu? 40
- A. No, because we did not know the amount.
- Q. Had that figure been mentioned?
- A. No.
- Q. When Mr. Shum told you what I call "the extra money", the extra money had to be paid to Danny Yiu, did he say that that would have to be paid on the 27th of January?
- A. No.
- Q. What did he say about it?

- A. Mr. Shum only said that the purchase money had to be paid to Danny Yiu, the vendor's solicitor. Mr. Shum said that the purchase money had to be paid eventually to solicitors for the other side, solicitor Danny Yiu, but that had to be checked by solicitor Leung, Edward Wong's solicitor and our solicitor. And after everything had been checked and found to be okay, after everything had been completed, the money was to be handed by Miss Leung to the solicitor for the other side. Miss Leung did not tell us anything else.
- Q. When you saw at the meeting that Miss Leung was getting Mr. Shum to write a letter about 1.355 million only, where did you think the extra money was coming from? 10
- A. I don't know. I did not know how the money came and how the money was to be sent over.
- Q. And how did you think the money was getting to Danny Yiu?
- A. Miss Leung, solicitor Leung was to send someone to send the money to Danny Yiu.
- Q. Yes. She was to send somebody to Danny Yiu to get 1.355 million dollars, what about the rest?
- A. But I did not know, because I did not see how much money was made out in the cheque or cheques by Edward Wong Finance Company to Danny Yiu.
- Q. But you knew that she was only asking for 1.355 million dollars to be paid to Danny Yiu, didn't you? 20
- A. Yes, that is what I understood.
- Q. I think at some stage you told his Lordship you used the term "general banking facilities", didn't you?

INTERPRETER: Not "general".

- A. Yes. The usual or general banking facilities.
- Q. Is the term "general banking facilities" a term with which you are familiar?
- MR. CHEUNG: "Was there any reason for involving Mr. Wong in paying more than what he was prepared to pay?" Answer, "But Mr. Wong said he would give credit facilities in accordance with banking terms", not "general banking facilities".
- Q. Now can I take it then that . . . Is it right that Mr. Shum reported back to you after his first meeting with Miss Leung? 30
- A. Yes.
- Q. And you told his Lordship that it was after that you agreed to buy the new shelf company.
- A. Yes.
- Q. Did he say anything to you when reporting about that meeting as to the term of the borrowing from Mr. Wong, the term, the period of time?
- A. No, that was not yet mentioned on that occasion. He merely reported to me the acquisition of a new company.
- Q. Was your address at that time 79, Waterloo Road, Kowloon? 40
- A. Yes.
- Q. And your flat was numbered 45 on the 6th floor?
- A. Right.
- Q. That was the address given to Miss Leung and that was the address to which she sent the letter which you can't remember receiving.
- A. Which letter?

- Q. The letter at page 27 of bundle 2 which we referred to earlier this morning.
- A. I did not say I did not remember. I said simply I did not receive it.
- Q. Now when you had the meeting on the 27th of January with Miss Leung, you were – you told my Lord – presented with the two accounts and we looked at them earlier today.
- A. Yes.
- Q. Did you see a man on the staff of Johnson, Stokes & Master on that occasion?
- A. I do not remember whether or not I saw that man.
- Q. You don't remember whether you saw a man?
- A. I do not remember.