17/79

IN THE PRIVY COUNCIL — No. 13 of 1977

ON APPEAL
FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN:

PAO ON	1st Appellant (1st Plaintiff)
HO MEI CHUN	2nd Appellant (2nd Plaintiff)
PAO LAP CHUNG	3rd Appellant (3rd Plaintiff)

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- and -

LAU YIU LONG	1st Respondent (1st Defendant)
BENJAMIN LAU KAM CHING	2nd Respondent (2nd Defendant)

CASE FOR THE APPELLANTS

RECORD

1. This is an appeal from a majority judgment of the Court of Appeal of Hong Kong (Leonard and McMullin JJ., Briggs C.J. dissenting) given on 5th November 1976 whereby they allowed an appeal by the Respondents against a judgment dated 17th February 1976 of the Supreme Court of Hong Kong (Li J.) which had ordered the Respondent to pay to the Appellants the sum of HK$5,392,800.00 with interest as from 1st May 1974 to the date of judgment at 6% p.a. and costs to be taxed. The Court of Appeal in overruling the learned trial judge and setting aside his judgment ordered the Appellants to pay the costs of the trial and of the appeal.

p.180
pp.137-179
p.127
pp.96-125

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2. This case arising out of a company take-over transaction entered into in Hong Kong in the period February to May 1973 near the height of the Stock

pp.96 and 18

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RECORD

p.97 and 29
p.189
pp.96-125
pp.137-151
pp.224-225
pp.153-179

Exchange boom. A year later the bubble had burst and the price of the shares with which this case is concerned had slumped to 15% of their agreed 1973 value. The loss fell in the first instance on the Appellants (Plaintiffs of the trial) as the holders of the shares which they had by contract been precluded from selling while they stood at the higher values. The issue on this appeal is whether, as the learned trial judge and the Chief Justice in his dissenting judgment both held, the Appellants are entitled under a written contract of guarantee made with the Respondents and entered into on 4th May 1973 ("the contract of guarantee of 4th May 1973") to recover that loss from the Respondents or whether, as the majority of the Court of Appeal held, there exist reasons why recovery thereunder is precluded.

p.12
pp.187-192
pp.193-194
pp.224-225

3. By the time this case came to trial the pleadings had become somewhat complicated. The Statement of Claim had been amended three times and it relied (inter alia) on various oral agreements and discussions. At the trial a great deal of evidence was called as to the negotiations between the parties leading up to the execution of three written agreements - the first two dated 27th February 1973 and the third being the contract of guarantee of 4th May 1973. The learned trial judge found against the existence of the various oral agreements and he rejected the evidence of the Appellants and preferred that of the Respondents.

4. In view of these findings, against which the Appellants did not cross-appeal in the Court of Appeal, it will be respectfully submitted that in its simplest form the present appeal can be decided in the Appellants' favour by reference to clearly established rules of law and without the necessity to enter upon any discussion of the oral evidence. Only if this approach is rejected is it necessary to enter upon that topic.

5. Accordingly, the Appellants in the first instance, will in this Case set out those essential facts which it is necessary to know by way of background before considering the three written agreements already mentioned.

p.27 and 5

6. The Appellants are a family consisting of

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father (1st Appellant), mother (2nd Appellant) and son (3rd Appellant).

7. The Respondents are two brothers. All effective decisions were taken by the elder brother (1st Respondent); the younger brother (2nd Respondent) on his own admission did what he was told by his elder brother in this transaction. p.86 and 20

8. The Appellants between them owned the entire share capital in Tsuen Wan Shing On Estate Company Limited ("Shing On"). At the material date, February 1973, Shing On owned one substantial asset, namely, a building known as the Wing On Building which was then in the course of construction. p.187 p.63 and 12

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9. The Respondents were directors of and substantial shareholders in Fu Chip Investment Company Limited ("Fu Chip"). On or about 23rd February 1973 Fu Chip became a public company and its shares were quoted and dealt in on the Far East Exchange. p.196 p.111 and 36 p. 61 and 30

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10. On or about 23rd February 1973 discussions began between the Respondents and the Appellants with a view to the acquisition by Fu Chip of the Shing On shares. Fu Chip wished to acquire these shares in order to obtain the Wing On Building. p.103 and 29 p.61 and 39

11. The price for the acquisition of the Shing On shares was agreed as HK$10.5 million. It was further agreed that this price should not be paid in cash but by way of allotment to the Appellant of 4.2 m. ordinary shares of HK$1.00 each in Fu Chip. It was expressly stipulated in the written contract entered into on 27th February 1973 (hereinafter called "the share sale agreement") that "the market value for Fu Chip's share for the purpose of this Agreement shall be deemed as $2.50 for each of $1.00 share." p.62 and 36 pp.187-192 pp.187-188

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12. The share sale agreement is referred to in the Statement of Claim as "the said written agreement of sale and purchase" and in the Defence as "the Main Agreement". The parties thereto were (1) the Appellants (2) Shing On and (3) Fu Chip. Completion was to take place by 31st March 1973, by which date the Fu Chip shares were to be allotted. (By mutual consent the completion date was subsequently postponed by one month. But nothing pp.187-192 p.12 Paragraph 3. p.17 Paragraph 3 p.64 and 15

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p.189
p.62 and 43
p.63(.1
p.71 and 14

turns on this.) An important provision was included in the share sale agreement at the request of the 1st Respondent. The Appellants undertook that they would retain in their own right 60% of the Fu Chip shares allotted to them and would not sell or transfer the same before the end of April 1974 (Clause 4(k)). The 1st Respondent's reason for asking for this stipulation was that the Appellants as major shareholders must support the shares. The Appellants accepted this. It is apparent that what the 1st Respondent had in mind was the depressive effect on the price of Fu Chip shares that would be created if the Appellants were to sell within a short period their entire holding of 4.2 million shares.

13. It is, however, obvious that the Appellants by agreeing to the stipulation postponing their right to sell 60% of their 4.2 million Fu Chip shares (i.e. 2,520,000) for some 13 months after allotment were exposing themselves to the risk that the market price of these shares might fall in the interval. They would then be in the position of having (in effect) sold land at the end of March 1973 (through the medium of a sale of Shing On Shares) and getting in exchange shares 60% of which were frozen as a saleable asset for 13 months.

p.63 and 3
p.71 and 23
p.105 and 6
pp.193-194

14. The Appellants appreciated this risk and sought protection against it. The discussion led to the execution of another written agreement dated 27th February 1973 (hereinafter called "the subsidiary agreement" in the term used in the Defence). The subsidiary agreement was made between the Appellants and the 1st Respondent.

pp.193-194

15. By the subsidiary agreement the Appellants agreed to sell to the 1st Respondent the 2,520,000 Fu Chip shares at a price of HK$2.50 per shares, giving a total purchase price of HK$6,300,000, completion to take place on or before 30th April 1974.

p.193

16. One special feature of the subsidiary agreement was the provision in Clause 1 thereof that the Appellants should sell the shares free from all incumbrances "together with all dividends

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bonus (sic) and issues, if any, accrued or to accrue thereon whether accrued before or after the signing of this Agreement". This provision taken with the share sale agreement meant that the Appellants had to retain the 2,520,000 shares for 13 months whatever happened to the market price and had to hand over to the 1st Respondent all dividends etc. issued in respect of those shares in that period. A further feature of the subsidiary agreement may be noted here. The Appellants were bound to sell and the 1st Respondent was bound to buy at HK$2.50 per share (Clause 2). This protected the Appellants against a fall in the market price. But it also effectively cut them out of any chance to benefit from any rise in the market price (if the Fu Chip shares and/or the market generally continued its steady advice, as to which the parties were optimistic). The 1st Respondent acknowledged in cross-examination that had he been in the Appellants' position he probably would not have contracted as they did. As the learned trial judge found, the 1st Respondent was the more sophisticated of the negotiators and he undoubtedly had the better of the Appellants in the February 1973 negotiations.

pp.193-194

p.108 ((.21-28
p.109 and 19
p.112 (and 20-24
p.68 ((.28-33
p.105 ((.3-6

17. By the end of April 1973 the Appellants were pressing for a renegotiation. They gave various reasons for their actions but as the learned trial judge did not believe them it is sufficient to take his finding that "they realised by then (sc. April 1973) that they had not obtained a good bargain after all." The Appellants intimated to the Respondents that they would not complete the share sale agreement in accordance with its terms unless the Respondents gave them the guarantee which they required in lieu of the subsidiary agreement.

p.108 ((.11-12
p.65 ((.6-9

18. The upshot of the discussion was that the subsidiary agreement was cancelled and a new agreement, the contract of guarantee of 4th May 1973, was entered into between the Appellants and both the Respondents. (It will be noted that the 2nd Respondent was not a party to the subsidiary agreement. But no importance has hitherto been attached to this point). As this document is of critical importance to the argument which follows the Appellants quote it in full omitting such immaterial details as the addresses of the parties

pp.224-225

RECORDS

and the registered offices of the companies mentioned :

pp.224-225

"IN CONSIDERATION of your having at our request agreed to sell all of your shares of and in the above mentioned Company [viz. Shing On] .... for the consideration of $10,500,000.00 by the allotment of 4,200,000 ordinary shares of $1.00 each in [Fu Chip] .... and that the market value for the said ordinary shares of [Fu Chip] shall be deemed as $2.50 for each of $1.00 share under an agreement for sale and purchase made between the parties thereto and dated the 27th day of February 1973, we LAU YIU LONG .... and BENJAMIN LAU KAM CHING .... the directors of [Fu Chip] HEREBY AGREE AND GUARANTEE the closing market value for 2,520,000 shares (being 60% for the said 4,200,000 ordinary shares) of [Fu Chip] shall be at $2.50 per share and that the total value of 2,520,000 shares shall be of the sum of HK$6,300,000.00 on the following marketing date immediately after the 30th day of April, 1974 AND WE FURTHER AGREE to indemnify and keep you indemnified against any damages, losses and other expenses which you may incur or sustain in the event of the closing market price for the shares of Fu Chip according to The Far East Exchange Limited shall fall short of the sum $2.50 during the said following marketing date immediately after the 30th day of April, 1974 PROVIDED ALWAYS that if we were called upon to indemnify you for the discrepancy between the market value and the said total value of HK$6,300,000.00 we shall have the option of buying from you the said 2,520,000 shares of [Fu Chip] at the price of HK$6,300,000.00 PROVIDED FURTHER THAT should the closing market value of the said 2,520,000.00 shares in Fu Chip exceed the sum of $2.50 per share on the following date immediately after the 30th April, 1976 you shall be at liberty to dispose the same as you may think fit AND WE FURTHER AGREE AND UNDERTAKE that we will not vary or change the name of the Building known as WING ON BUILDING .... erected on TSUEN WAN TOWN LOT NO. 185."

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19. The Appellants have always relied upon the contract of guarantee of 4th May 1973. The Respondents contended that the consideration for this agreement was a past consideration (Defence paragraph 17). The Appellants put this in issue (Reply paragraph 1) and, in case the Respondents should turn out to be right, went on to plead and to call evidence to show that there was further consideration in addition to that stated in the contract of guarantee of 4th May 1973. The Respondents took the position that any evidence to show the existence of additional consideration was inadmissible; that the additional consideration relied on contradicted the consideration expressed in the document; and that if any consideration existed at all it was a promise to perform or the performance of an existing contractual obligation and a promise not to carry out the Appellants' threat to renounce performance of the share sale agreement, and hence the consideration was "tainted" by the threat of unlawful conduct and on grounds of public policy should not be recognised to be good consideration by the Court. The Respondents had a further plea that the contract of guarantee of 4th May 1973 was void on the ground that it was wrongfully procured by 'economic duress' on the part of the Appellants. The learned trial judge and all three members of the Court of Appeal were at one in not assenting to the Respondents' plea of economic duress.

pp.224-225
p.19
p.21
pp.123-125
p.149 (and 15-17
p.163 (and 12-18
p.178 and 35 - p.179 (.3

20. The learned trial judge made no positive finding one way or the other whether the consideration for the contract of guarantee of 4th May 1973 was past. Accordingly one of the Respondents' grounds of appeal in their Notice of Motion of Appeal (Ground (g)) was that the Judge should have held that the consideration was past. The Court of Appeal were unanimously in their favour on this issue.

p.132 and 6
p.138 and 37
pp.156-157
p.169 (and 17-20

21. As will be apparent from what has been stated in Paragraph 19 above, leaving on one side the plea of economic duress, the complications in the case and the need to examine the oral evidence arise in connection with the additional consideration relied upon. But if the consideration expressed on the face of the contract of guarantee of 4th May 1973

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is not in law past consideration the question of additional consideration does not arise.

22. Reverting now to what was said in Paragraph 4 above, the Appellants propose first to challenge the decision of the Court of Appeal that the expressed consideration was a past consideration.

23. The opening words of the contract of guarantee of 4th May 1973 are as follows :

> "In consideration of your having at our request agreed to sell all of your shares of and in [Shing On] for the consideration of $10,500,000.00 by the allotment of 4,200,000 ordinary shares of $1.00 each in [Fu Chip] and that the market value for the said ordinary shares of [Fu Chip] shall be deemed as $2.50 for each of $1.00 share under an Agreement for sale and purchase made between the parties thereto and dated the 27th day of February 1973, we [the 1st Respondent] and [the 2nd Respondent] the directors of [Fu Chip] hereby agree and guarantee ......"

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pp.155-159

The Respondents contended (in the Court of Appeal the argument is most clearly reflected in the judgment of McMullin J. at pages 155-159) (a) that the expressed consideration was clear and unambiguous and (b) that the parties to a contract are not entitled to contradict the stated consideration. For the purpose of the present argument the Appellants are content to assume the correctness of both these propositions. But it is respectfully submitted that counsel for the Respondents (Mr. Balcombe Q.C. as he then was) was wrong when he argued as follows:

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p.156 and 42

> "The opening words of that document constitute, in Mr. Balcombe's contention, a plain, indeed a classic, example of a past consideration such as the Courts have always held to be insufficient to render enforceable any promise made in return for it."

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On the contrary, if regard is paid, as it should be, to all the words in the document and in particular to the important words "at your request",

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precisely the opposite of Mr. Balcombe's contention is correct. That is to say, the opening words of the document constitute a plain, indeed a classic, example of what has consistently been held not to be past consideration and such as the Court have always held to be sufficient to render enforceable any promise made in return for it (subject always to the Kennedy v. Broun (1863) 13 CBN5 677 type of exception.)

10 24. At the trial counsel for the Appellants drew the attention of the learned trial judge to the fact that the form of the contract of guarantee of 4th May 1973 was exactly the same as those contained in the Encyclopaedia of Forms and Precedents (4th edition 1968) Vol. 9 pp. 777-824. The Judge was in fact referred to the precedents at the following pages : pp. 777, 779, 785, 789, 793, 801, 803, 823 and 824. One of these precedents is in a company law context and deals with dividends:

p.113 and 28

20 Form 3:2 page 793

"Guarantee of payment of dividend on shares
To [shareholder] of [address]
In consideration of your having at my request applied for and having been allotted ..... [preference] shares Nos..... to ..... (both inclusive) in .... Ltd. and having paid the full nominal amount thereof in cash I [guarantor] undertake that in the event of the said company paying in any one year no
30 dividend thereon or a dividend of a rate less than [6] per cent per annum I will within [twenty one] days after the annual general meeting of the said company pay you such dividend or so much thereof as the said company shall not pay ...."

It is submitted that on Mr. Balcombe's argument this precedent would also be another classic example of a past consideration.

25. But this is not the legal position. The
40 precedents in the Encyclopaedia are securely founded upon an established body of case law. The law is simply stated in Halbury's Laws of England 4th Ed. Vol. 9 Title Contracts Paragraph 320 :

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> "an apparent exception to the rule (scilicet that a so-called 'past consideration' is not valuable consideration) is, that where services have been rendered by one person to another at his request, a subsequent promise to pay for those services can be enforced. This is, perhaps, not a real exception to the rule stated above, for in such a case there may be an implied promise to pay for the service, and the subsequent express promise may be treated either as an admission which evidences, or as a positive bargain which fixes, the amount of that reasonable remuneration on the faith of which the service was originally rendered." 10

The authorities cited in support begin with Lampleigh v. Braithwait (1615) Hob. 105 and include the dictum of Bowen L.J. in Re Casey's Patents [1892] 1 Ch. 104, 115. These authorities were not cited to the Courts below but they are very well-known and are the justification for the Encylopaedia of Precedents. 20

26. For the reasons given above the Appellants respectfully submit that on the face of the contract of guarantee of 4th May 1973 no question of past consideration arose.

27. A quite separate argument leads to the same conclusion. Consideration for the Respondents' promises contained in the contract of guarantee of 4th May 1973 can be afforded by any obligation therein undertaken by the Appellants. It is apparent from the passage beginning "Provided always ...." (see the last line of page 224) that the Appellants undertook to the Respondents (a) to retain their Fu Chip shares until the first marketing date after 30th April 1974; i.e. until 1st May 1974 and (b) to sell them to the Respondents at $6,300,000 if the Respondents chose to exercise their option. 30

p.224

28. Reverting once more to the "at your request" point, the Appellants will, if necessary, contend that on the facts it was substantially correct to say that the Respondents (acting by the 1st Respondent) did request the Appellants to contract with Fu Chip on the terms of the share sale 40

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agreement, that the request inported an obligation on the part of the Respondents to pay or reward the Appellants for so agreeing, that initially the payment or reward was embodied in the subsidiary agreement, but on 4th May 1973 the subsidiary agreement was cancelled by mutual agreement and a fairer payment or reward substituted in the form of the contract of guarantee of 4th May 1973.

pp.193-194
pp.242-243
pp.224-225

29. If contrary to the contention advanced above the contract of guarantee of 4th May 1973 does not show a good consideration on its face, it will be necessary to deal with the facts surrounding its conclusion and the proper inferences therefrom.

pp.224-225

30. The Appellants respectfully submit that the proper inferences from the facts found by the trial judge are that the consideration for the contract of guarantee of 4th May 1973 was the cancellation of the subsidiary agreement and the agreement to perform and the performance by the Appellants of their obligations under the share sale agreement. It was all part and parcel of the arrangement for the completion of that agreement as Briggs C.J. concluded.

p.149
((.20-26

31. Whether the consideration for the contract of guarantee of 4th May 1973 consisted of the Appellants' agreement to perform and the performance of their obligations under the share sale agreement and/or the cancellation of the subsidiary agreement, parol evidence thereof was admissible to prove the same. The established rule is thus stated in Halsbury's Laws of England (4th Edition) Volume 12 Title Deeds and other Instruments paragraph 1487 as follows :-

> "Where no consideration, or a nominal consideration, is expressed in the instrument, or the consideration is expressed in general terms or is ambiguously stated extrinsic evidence is admissible to prove the real consideration; and where a substantial consideration is expressed in the instrument, extrinsic evidence is admissible to prove an additional consideration, provided that this is not inconsistent with the terms of the instrument. It is not in contradiction

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to the instrument to prove a larger consideration than that which is stated. Extrinsic evidence is admissible to prove the illegality of the consideration. Extrinsic evidence may also be admitted to prove payment of consideration and to prove by whom it was paid."

p.226

32. The Appellants now accept that a separate document not so far mentioned in this Case, namely, an indemnity contract dated 4th May 1973 executed by them, was not part of such arrangement and was not part of the consideration for the contract of guarantee of 4th May 1973. The learned trial judge's conclusion (which McMullin and Leonard JJ accepted) was that the cancellation of the subsidiary agreement did not constitute consideration. The reason given by the Judge was that on the Appellants' own evidence they wanted the subsidiary agreement to be cancelled in any event because it did not represent their true intentions in February. But the Judge had already rejected the Appellants' evidence to the effect that they were misled and did not understand the February agreement. Accordingly, it is respectfully submitted, that the Judge acted quite inconsistently in approaching the matter as he did.

p.117 (and 30-34
p.163 (and 21-23
p.178 (and 16-23
p.109 ((. 10-12
p.108 ((. 1-5

33. In so far as the consideration consisted only of the Appellants' agreement to perform and their performance of the share sale agreement this would constitute good consideration in law as was held by the learned trial judge and Briggs C.J. The performance of or the promise to perform an existing contractual obligation to a third party constitutes good consideration. The decision in Scotson v Pegg (1861) 6 H & N 295 to that effect was held to be good law by the Privy Council in New Zealand Shipping v Satterthwaite Ltd. [1975] AC 154.

pp.116-117
pp.142-145

34. McMullin and Leonard JJ. held that this did not constitute good consideration on the ground that whilst the promise to perform or the performance of an existing contractual obligation to a third party may constitute good consideration, it did not do so here having regard to the threat by the Appellants not to complete the share sale agreement. The Appellants submit that such a threat cannot in principle render the consideration bad. The rule

pp.161-163 and pp.172-178

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laid down in Scotson v Pegg, which was fortified by the Privy Council in New Zealand Shipping v Satterthwaite Ltd., does not admit of such an approach. In any event the Appellants submit that even if it does, the consideration should not have been held to be bad in this case on the facts. In particular the Respondents and Fu Chip faced with such threat had legal remedies which they could pursue; the Respondents took legal advice; they formed the judgment that the prospect of the price of the shares falling below $2.50 with the consequence that they would become liable was very remove; and the Respondents would not have been faced with financial ruin even if the threat were carried out. Moreover, the Respondents had their own strong commercial reasons for wishing to secure that the share sale agreement was duly completed. They were themselves large shareholders in Fu Chip and had bought shares on the market in order to support the price.

p.111 and 26 - p.112 and 28

35. The Appellants respectuflly submit that the learned trial judge and all the three judges in the Court of Appeal were right in unanimously rejecting the Respondents' contention that the contract of guarantee of 4th May 1973 was void or unenforceable on the ground of duress, having been entered into (so it was alleged) under the Appellants' threat not to complete the share sale agreement. Even if such a threat could in law in any circumstances render a contract void and unenforceable (which the Appellants do not accept), it does not have that effect on the facts of this case, particularly those referred to in paragraph 34 above.

36. If it is held that the threat to break an existing contract with a third party can amount to duress, the Appellants respectfully submit that on the facts of this case the Appellants' threat to break the share sale agreement with Fu Chip did not amount to duress. The proper test is whether the Respondents entered into the contract of guarantee of 4th May 1973 of their own free will, viz. whether they had in practical terms any real choice in the matter. On the facts already referred to the Respondents had in practical terms a real choice in the matter and entered into the guarantee of their own free will in the exercise of that choice, as the learned trial judge and Briggs C.J. in effect concluded.

pp.224-225

p.125 and 4
p.149 and 15

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37. The Respondents contended in the Court of Appeal on the authority or analogy of Barton v Armstrong [1976] A.C. 104 that the Appellants' threat to break the agreement with Fu Chip would be sufficient to vitiate the contract of guarantee of 4th May 1973 once it was shown that it was a reason for the Respondents executing that contract. But in Barton v. Armstrong the relevant threats were threats to murder.

pp.242-243
pp.224-225

38. As contended above, it is the Appellants' case that the cancellation of the subsidiary agreements, its replacement by the contract of guarantee of 4th May 1973 and the agreement to perform or the performance of the share sale agreement were all part and parcel of one arrangement. It follows that the subsidiary agreement was cancelled only because it would be substituted by the contract of guarantee of 4th May 1973. The Appellants submit that, as Briggs C.J. concluded, if the latter were unenforceable or void the former would still be effective and specific performance thereof or damages for its breach should be ordered. The learned trial judge and McMullin and Leonard JJ. wrongly rejected such contention.

p.150 and 25
p.118 and 23
p.164 and 1

39. On 19th November 1976 the Court of Appeal of Hong Kong (Briggs C.J, McMullin and Leonard JJ.) made an Order granting the Appellants leave to appeal to Her Majesty in Council.

p.179 and 3
p.183
p.180

40. The Appellants respectfully submit that the judgment of the Court of Appeal of Hong Kong was wrong and ought to be reversed, that this appeal ought to be allowed with costs and that (1) the learned trial judge's judgment ought to be restored and that the Respondents should be ordered to pay to the Appellants the sum of $5,392,800.00 and interest and the costs of the trial and of the appeal to the Court of Appeal; (2) alternatively, the Respondents should be ordered specifically to perform the subsidiary agreement and to pay to the Appellants forthwith the purchase price of $6,300,000.00 with interest and all such costs; (3) in the further alternative the Respondents should be ordered to pay damages for breach of the subsidiary agreement to the Appellants in the sum of $5,392,800.00 with interest and all such costs.

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REASONS

(1) BECAUSE the contract of guarantee of 4th May 1973 showed on its face that it was supported by good consideration.

(2) BECAUSE there was in fact good consideration for the contract of guarantee of 4th May 1973 and parol evidence was admissible to prove the same.

(3) BECAUSE the promise to perform or the performance of a contract with a third party can constitute good consideration and did so here.

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(4) BECAUSE the true inference from the facts found was that the parties made an overall arrangement in May 1973 covering cancellation of the subsidiary agreement, its replacement by the contract of guarantee of 4th May 1973 and the promise to perform and performance of the share sale agreement.

(5) BECAUSE the contract of guarantee of 4th May 1973 was not void on the ground of duress.

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(6) BECAUSE, if contrary to (5) the contract of guarantee of 4th May 1973 was void, it should have been held that the subsidiary agreement survived and the Appellants should be granted the reliefs to which they are entitled thereunder.

(7) BECAUSE the judgments of the majority of the Court of Appeal were wrong.

(8) BECAUSE, subject to the criticisms hereinbefore made, the judgments of the learned trial judge and of Briggs C.J., were right.

F.P. NEILL

ANDREW LI

No. 13 of 1977

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE COURT OF APPEAL OF HONG KONG

B E T W E E N :

PAO ON
HO MEI CHUN and
PAO LAP CHUNG — Appellants

\- and -

LAU YIU LONG and
BENJAMIN LAU KAM
CHING — Respondents

CASE FOR THE APPELLANTS

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