

17/79

No. 13 1977.

In the Privy Council

ON APPEAL

FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN

PAO ON	<i>1st Appellant</i>
HO MEI-CHUN	<i>2nd Appellant</i>
PAO LAP-CHUNG	<i>3rd Appellant</i>

AND

LAU YIU-LONG	<i>1st Respondent</i>
BENJAMIN LAU KAM CHING	<i>2nd Respondent</i>

RECORD OF PROCEEDINGS

HASTINGS & CO.,
Solicitors for the Appellants

YUNG, YU, YUEN & CO.
Solicitors for the Respondents

In the Privy Council

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PAO ON	<i>1st Appellant</i>
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AND

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BENJAMIN LAU KAM CHING	<i>2nd Respondent</i>

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In the Privy Council

**ON APPEAL
FROM THE COURT OF APPEAL OF HONG KONG**

BETWEEN

PAO ON *1st Appellant*
 HO MEI-CHUN *2nd Appellant*
 PAO LAP-CHUNG *3rd Appellant*

AND

LAU YIU-LONG *1st Respondent*
 BENJAMIN LAU KAM CHING *2nd Respondent*

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page
<p><i>IN THE SUPREME COURT OF HONG KONG</i> <i>High Court Action No. 1159 of 1974</i></p>			
1.	Further Re-amended Writ of Summons and Statement of Claim	10th May 1974	9
2.	Amended Defence	23rd July 1974	17
3.	Amended Reply	16th October 1974	21
4.	Notes of evidence taken by the Honourable Mr. Justice F. S. Li	_____	23
5.	Judgment of the Honourable Mr. Justice F. S. Li	17th February 1976	96
6.	Judgment Order	17th February 1976	127

<i>No.</i>	<i>Description of Document</i>	<i>Date</i>	<i>Page</i>
<i>IN THE SUPREME COURT OF HONG KONG IN THE COURT OF APPEAL <u>CIVIL APPEAL OF 13 of 1976</u></i>			
7.	Notice of Motion of Appeal	25th March 1976	131
8.	Notice of Motion of Cross-Appeal	29th March 1976	133
9.	Amended Respondent's Notice	4th May 1976	135
10.	Judgment of the Honourable Sir Geoffrey Briggs, Chief Justice	5th November 1976	137
11.	Judgment of the Honourable Mr. Justice McMullin	5th November 1976	153
12.	Judgment of the Honourable Mr. Justice Leonard	5th November 1976	165
13.	Order of the Court of Appeal	5th November 1976	180
14.	Notice of Motion For Leave To Appeal	9th November 1976	181
15.	Notice of Application For Leave To Appeal	11th November 1976	182
16.	Order of the Court of Appeal granting leave to appeal to the Privy Council	19th November 1976	183

EXHIBITS

<i>Exhibit Mark</i>	<i>Description of Document</i>	<i>Date</i>	<i>Page</i>
A	Bundle of agreed documents		187
B	Cancelled Agreement	27th February 1973	240
B1	Copy of Cancelled Agreement	27th February 1973	243
C	Copy Main Agreement	27th February 1973	246
C1	Photocopy of Main Agreement	27th February 1973	251
C2	Photocopy of Main Agreement produced to Court by J. Sun	27th February 1973	256
C3	Letter from C. Mar Fan & Associates to Far East Exchange Ltd.	27th February 1973	261
F	Letter from C. Mar Fan & Associates to Far East Exchange Ltd.	7th March 1973	262

DOCUMENTS NOT PRINTED

<i>Exhibit Mark</i>	<i>Description of Document</i>	<i>Date</i>
A28-29	Daily quotation sheet of the Far East Exchange Ltd.	1st May 1974
D.	Prospectus of Fu Chip	9th February 1973
E.	Contract Notes Nos. 1529, 1530, 1531, 1532, 1533, 1726, 1734, 1744, 1773 and 2242	23rd Feb. 1973 — 19 March 1973

In the Supreme Court of Hong Kong

High Court

Action No. 1159 of 1974

In the Privy Council

ON APPEAL

FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN

PAO ON *1st Appellant*
 HO MEI CHUN *2nd Appellant*
 PAO LAP CHUNG *3rd Appellant*

AND

LAU YIU LONG *1st Respondent*
 BENJAMIN LAU KAM CHING *2nd Respondent*

RECORD OF PROCEEDINGS

Amended as in green
 this 4th day of Decem-
 ber 1974 pursuant to
 Order of Mr. Registrar
 Rhind dated the 27th
 day of November,
 1974.

Amended as in red
 this 22nd day of June
 1974 pursuant to
 Order 20 rule 3 of
 the Rules of Supreme
 Court, 1967.

(*Sd.*) B. L. JONES
*Acting Deputy
 Registrar.*

1974, No. 1159 *In the Supreme
 Court of
 Hong Kong
 High Court*

IN THE SUPREME COURT OF HONG KONG

BETWEEN:—

HIGH COURT

PAO ON
 HO MEI CHUN
 PAO LAP CHUNG

and

LAU YIU LONG
 BENJAMIN LAU KAM CHING

1st Plaintiff,
2nd Plaintiff,
3rd Plaintiff,

1st Defendant,
2nd Defendant,

No. 1
 Further Re-
 amended Writ
 of Summons
 and Statement
 of Claim
 10th May 1974

(*Sd.*) BARNES
*Acting Assistant
 Registrar.*

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:

*In the Supreme
Court of
Hong Kong
High Court*

No. 1
Further Re-
amended Writ
of Summons
and Statement
of Claim
10th May 1974
(continued)

To: Lau Yiu Long and Benjamin Lau Kam Ching both of No. 33, Wing Lok Street, Ground Floor, Victoria in the Colony of Hong Kong.

We command you that within eight days after the service of this writ on you, inclusive of the day of service, you do cause an appearance to be entered for you in an action at the suit of Pao On, Ho Mei Chun and Pao Lap Chung all of No. 238, Sha Tsui Road, Third Floor, Tsuen Wan, New Territories 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
10 Court, this ~~10th~~ day of ~~May~~ 1974.

~~-21st~~ June 1974.

~~-27th~~ Nov. 1974.

14th July 1975.

J. R. OLIVER
Registrar.



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

Directions for Entering Appearance

20 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.

STATEMENT OF CLAIM

30 1. The 1st and 2nd Defendants were at all material times directors of Fu Chip Investment Company (hereinafter referred to as "Fu Chip").

2. In consideration of the 1st, 2nd and 3rd Plaintiffs agreeing at the 1st and 2nd Defendants' request to sell to Fu Chip under an agreement dated 27th February 1973 (hereinafter referred to as "the said agreement") made between the Plaintiffs Tsuen Wan Shing On Estate Company Limited (hereinafter referred to as "the Company") and Fu Chip all of the Plaintiffs' shares in the Company 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 price for each said Fu Chip share was deemed to be \$2.50 under the said agreement, the 1st and 2nd Defendants

*In the Supreme
Court of
Hong Kong
High Court*

(i) agreed and guaranteed that the closing market value on the following marketing date immediately after 30th April 1974 for 2,520,000 shares in Fu Chip (being 60% of the said 4,200,000 shares) should be \$2.50 per share that is a total value of \$6,300,000.00.

No. 1
Further Re-
amended Writ
of Summons
and Statement
of Claim
10th May 1974
(continued)

10 (ii) agreed to indemnify the Plaintiffs and keep them indemnified against any damages, losses and other expenses which the Plaintiffs may sustain or incur in the event of the closing market price for shares in Fu Chip according to the Far East Exchange Limited falling short of \$2.50 per share on the following marketing date immediately after 30th April 1974.

The said agreement is evidenced by a document dated 4th May 1973 signed by the 1st and 2nd Defendants to which the Plaintiffs will refer at trial for its full terms and effect.

20 3. The marketing date immediately following after 30th April 1974 was 1st May 1974. The closing market price for shares in Fu Chip according to the Far East Exchange Limited on 1st May 1974 was \$0.36 per share and thus fell short of \$2.50 per share.

4. By reason of the foregoing the Plaintiffs have sustained, incurred and suffered loss and damage.

PARTICULARS

The value of 2,520,000 shares in Fu Chip at \$2.50 per share	6,300,000.00
The value of 2,520,000 shares in Fu Chip at \$.36 per share	907,200.00
	<hr/>
Difference	5,392,800.00

5. The Defendants have failed to indemnify the Plaintiffs against the said loss and damage or any part thereof in spite of the Plaintiffs' demands. And the Plaintiffs claim:

- 30 (i) Damages in the said sum of \$5,392,800.00.
(ii) Interest.
(iii) Costs.
(iv) Further or other relief.

FURTHER RE-AMENDED STATEMENT OF CLAIM:

1. The 1st and 2nd Defendants were at all material times directors of Fu Chip Investment Company (hereinafter referred to as "Fu Chip").

2. In consideration of the 1st, 2nd and 3rd Plaintiffs orally agreeing in the middle of February 1973 (the exact date of which the Plaintiffs cannot now remember) at the 1st and 2nd Defendants' request to sell to Fu Chip under an agreement dated 27th February 1973 (hereinafter referred to as "the said agreement") made between the Plaintiffs Tsuen Wan Shing On Estate Company Limited (hereinafter referred to as "the Company") and Fu Chip all of the Plaintiffs' shares in the Company Tsuen Wan Shing On Estate Company Limited (hereinafter referred to as "the Company") for the consideration of \$10,500,000.00 to be satisfied by the allotment of 4,200,000 ordinary shares of \$1 each in Fu Chip and that the market price for each said Fu Chip shares was deemed to be \$2.50 under the said agreement, the 1st and 2nd Defendants.

- 10 (i) agreed and guaranteed that the closing market value on the following marketing date immediately after 30th April 1974 for 2,520,000 shares in Fu Chip (being 60% of the said 4,200,000 shares) should be not less than \$2.50 per share that is a total value of not less than \$6,300,000.00.
- 20 (ii) agreed to indemnify the Plaintiffs and keep them indemnified in respect of the said 2,520,000 shares against any damages, losses and other expenses which the Plaintiffs may sustain or incur in the event of the closing market price for shares in Fu Chip according to the Far East Exchange Limited falling short of \$2.50 per share on the following marketing date immediately after 30th April 1974.

(hereinafter referred to as "the said oral agreement"). The said oral agreement is evidenced by a document dated 4th May 1973 signed by the 1st and 2nd Defendants to which the Plaintiffs will refer at trial for its full terms and effect.

3. By a written agreement dated 27th February 1973 (hereinafter referred to as "the said written agreement of sale and purchase") made between the Plaintiffs the Company and Fu Chip the Plaintiffs agreed to sell and Fu Chip agreed to purchase all of the Plaintiffs' shares in the Company for the consideration of \$10,500,000.00 by the allotment of 4,200,000 ordinary shares of \$1 each in Fu Chip upon the terms therein set out.

4. In the alternative to paragraph 2 above:

- (1) On 27th February 1973 the 1st, 2nd and 3rd Plaintiffs signed the said written agreement of sale and purchase at Golden City Restaurant in the presence of the 1st and 2nd Defendants.
- (2) At the same time and place the 1st, 2nd and 3rd Plaintiffs signed

a document (hereinafter referred to as "the said document") believing the same to record the said oral agreement set out in paragraphs 2(i) and 2(ii) above.

10 (3)(a) The said written agreement for sale and purchase was handed over to the Plaintiffs at or about 1 p.m. on 27th February 1973 when the Plaintiffs the 1st Defendant and Chow Hin Yau of Messrs. Hastings & Co. met for lunch at the said Golden City Restaurant. In the course of the said lunch the said Chow explained the contents of the said written agreement for sale and purchase to the Plaintiffs and the 1st Defendant informed the Plaintiffs that the document containing the said guarantee and indemnity was not available as it was in the possession of the 2nd Defendant. The said Chow left after lunch at about 1.45 p.m. before the 2nd Defendant arrived sometime after 2 p.m. with the said document.

(b) There was insufficient time for the 1st, 2nd and 3rd Plaintiffs to go through the said written agreement for sale and purchase and the said document thoroughly as the Defendants stated that they the said written agreement for sale and purchase and the said document must be rushed to Messrs. Yung, Yu, Yuen & Co. for the Solicitor's signature and then to the Far East Exchange Limited.

20 (4) The said document in fact contained an agreement dated 27th February 1973 under which the 1st, 2nd and 3rd Plaintiffs agreed to sell to the 1st Defendant 2,520,000 shares in Fu Chip for the price of \$6,300,000.00 and completion thereof would take place on or before 30th April 1974.

(5) After their signature the Plaintiffs were not given and did not have a copy of the said Written agreement for sale and purchase or the said document.

30 (6) In late April 1973 one Chan Kwai Wah then a member of the Company's staff acting on the Plaintiffs' behalf inspected and took copies of the said agreement for sale and purchase and the said document at Messrs. Yung, Yu, Yuen & Co. and discovered the true contents of the said document.

(7) Negotiations on the discrepancy between the said document and the said oral agreement to guarantee and indemnify were conducted between the 1st Plaintiff, the said Chan Kwai Wah acting for the Plaintiffs and the 1st Defendant acting for the Defendants.

(8) In consideration of the cancellation of the agreement contained in the said document, on 4th May 1973 the 1st and 2nd Defendants agreed and guaranteed in writing as set out in paragraph 2(i) above and agreed in writing to indemnify as set out in paragraph 2(ii) above.

5. In the further alternative in consideration of the 1st, 2nd and 3rd Plaintiffs entering into the agreement in writing dated 4th May 1973 and signed by each of the Plaintiffs under which inter alia

40 (1) the Plaintiffs jointly and severally agreed and guaranteed that each of the Plaintiffs shall retain in his or her own right in Fu Chip 60% of the shares allotted to the Plaintiffs under the said main agreement and

shall not sell or transfer the same on or before the end of April 1974 and to indemnify and keep the Defendants indemnified from and against any losses damages and expenses in connection therewith.

and (2) the Plaintiffs granted to the Defendants the option to purchase back 2,520,000 shares in Fu Chip (being Serial Nos. 9651 to 10910 inclusive) at the price of \$2.50 per share upon the happening of certain events specified therein, on 4th May 1973 the 1st and 2nd Defendants agreed and guaranteed in writing as set out in paragraph 2(i) above and agreed in writing to indemnify as set out in paragraph 2(ii) above.

- 10 6. In the further alternative in consideration of the performance by each of the Plaintiffs of their obligations under the said written agreement for sale and purchase particularly completion thereunder, on or about 4th May 1973 the 1st and 2nd Defendants agreed and guaranteed in writing as set out in paragraph 2(i) above and agreed in writing to indemnify as set out in paragraph 2(ii) above.
- ~~3.~~ 7. The marketing date immediately following after 30th April 1974 was 1st May 1974. The closing market price for shares in Fu Chip according to the Far East Exchange Limited on 1st May 1974 was \$0.36 per share and thus fell short of \$2.50 per share.
- 20 ~~4.~~ 8. By reason of the foregoing the Plaintiffs have sustained, incurred and suffered loss and damage.

PARTICULARS

The value of 2,520,000 shares in Fu Chip at \$2.50 per share	\$6,300,000.00
The value of 2,520,000 shares in Fu Chip at \$0.36 per share	907,200.00
	<hr/>
Difference	\$5,392,800.00
	<hr/>

- ~~5.~~ 9. The Defendants have failed to indemnify the Plaintiffs against the said loss and damage or any part thereof in spite of the Plaintiffs' demands.
10. In the further alternative
- 30 (i) If which is denied, the said guarantee and indemnity in writing on 4th May 1973 by the 1st and 2nd Defendants is invalid or ineffective, the 1st, 2nd and 3rd Plaintiffs and the 1st Defendant are then bound by the said document (subsidiary agreement).
- (2) In breach of the said document the 1st Defendant has failed to perform his obligations thereunder as a result of which the Plaintiffs have suffered loss and damage; the Plaintiffs repeat the particulars given in paragraph 8 above.

(3) The Plaintiffs have at all material times been and are now ready and willing to fulfill their obligations under the said document.

*In the Supreme
Court of
Hong Kong
High Court*

AND the Plaintiffs claim:

- (1) Damages in the said sum of \$5,392,800.00.
- (1A) In the alternative to (1), (a) specific performance of the said document, and (b) damages in addition to or in lieu of specific performance.
- (2) Interest.
- (3) Cost.
- (4) Further or other relief.

No. 1
Further Re-
amended Writ
of Summons
and Statement
of Claim
10th May 1974
(continued)

10

~~ANDREW LI,~~
~~Counsel for the Plaintiffs~~

~~Dated the 10th day of May 1974.~~

~~ANDREW LI,~~
~~Counsel for the Plaintiffs~~

~~Dated the 22nd day of June 1974.~~

~~ANDREW LI,~~
~~Counsel for the Plaintiffs~~

~~Dated the 27th day of November 1974.~~

S. Gittins, Q.C.
Counsel for the Plaintiffs

20

Dated the 14th day of July 1975.

IN THE SUPREME COURT OF HONG KONG
ORIGINAL JURISDICTION

BETWEEN

PAO ON

1st Plaintiff,

HO MEI CHUN

2nd Plaintiff,

PAO LAP CHUNG

3rd Plaintiff,

and

LAU YIU LONG

1st Defendant,

BENJAMIN LAU KAM CHING

2nd Defendant,

No. 2
Amended
Defence
23rd July 1974

10

AMENDED DEFENCE

1. Paragraph 1 of the Amended Statement of Claim is admitted. Fu Chip Investment Company Limited (hereinafter called Fu Chip) was at all material times listed with the Far East Exchange Limited.

2. Paragraph 2 of the Amended Statement of Claim is denied save as expressly admitted hereinbelow.

20 3. By an agreement in writing dated 27/2/1973 (hereinafter called the Main Agreement) entered into between the Plaintiffs of the one part, Tsuen Wan Shing On Estate Company Limited (hereinafter called the Company) of the second part, and Fu Chip of the third part, the Plaintiffs agreed to sell and Fu Chip agreed to buy all their holdings totalling 4000 shares in the Company for a consideration of \$10,500,000.00 to be satisfied by the allotment by Fu Chip of 4,200,000 ordinary shares of \$1.00 each, the market value of the said shares being deemed to be \$2.50 per share for the purpose of the purchase price payable by Fu Chip under the said agreement.

30 4. Clause 3 of the Main Agreement stipulated, inter alia, that the purchase must be completed at the offices of Messrs. Yung, Yu, Yuen & Co. on or before 31/3/73. Clause 4 thereof stipulated, inter alia, that the Plaintiffs and each of them must retain in their own right in Fu Chip 60% of the shares allotted to them under the Main Agreement and must not sell or transfer the same on or before the end of April 1974.

5. By a further agreement in writing dated 27/2/73 (hereinafter called the subsidiary agreement) made between the Plaintiffs of the one part and the 1st Defendant of the other part, the Plaintiffs agreed to sell and the 1st Defendant agreed to buy 2,520,000 shares in Fu Chip at a total price

of \$6,300,000.00 calculated at the rate of \$2.50 per share of \$1.00 each, such sale and purchase to be completed on or before 30/4/74. The said 2,520,000 shares represent 60% of the total shares which Fu Chip had agreed to allot to the Plaintiffs under the Main Agreement.

6. On or about 27/2/73 Fu Chip notified the Far East Exchange Limited of the execution of the Main Agreement and applied to list the shares intended to be allotted thereunder. On 16/3/73 Fu Chip made a public announcement that it had agreed to purchase all the issued shares of and in the Company.

10 7. On about 28/3/73 the date for completion under the Main Agreement was extended by agreement of the parties to 30/4/73. The said agreement is contained in or evidenced by an endorsement on the back of the Main Agreement.

8. On or about 31/3/73, Fu Chip's said application to the Far East Exchange Limited was approved.

20 9. On or about 24/4/73, the 1st Defendant met the 1st Plaintiff at Wing On & Co., The Hong Kong Chinese Bank Building, and explained the importance of the Plaintiffs completing the sale and purchase under the Main Agreement. The 1st Plaintiff thereupon orally alleged that the subsidiary Agreement did not accurately incorporate what had been agreed between the parties (which allegation is denied) and that despite the terms thereof the Plaintiffs had never agreed to sell to the 1st Defendant the shares stated therein (which allegation is also denied). The 1st Plaintiff further said that the Plaintiffs required a "guarantee" from the Defendants to the effect that the price for 60% of the Fu Chip shares to be allotted under the Main Agreement would not be less than \$2.50 per share for a period of one year therefrom and orally intimated that unless such a guarantee was forthcoming the purchase and sale under the Main Agreement would not be completed.

30 10. On 28/4/73 Messrs. Yung, Yu, Yuen & Co., Solicitors for Fu Chip, wrote to Messrs. Hastings & Co., Solicitors for the Plaintiffs, reminding them that the completion date under the Main Agreement would be due on 30/4/73.

11. The Plaintiffs failed to complete on 30/4/73.

12. On or about 1/5/73 the 1st Defendant met the 1st Plaintiff at the offices of the said Wing On & Co. and told him that the sale and purchase must be completed as otherwise the public would lose confidence in Fu Chip's shares since, following the application to the Stock Exchange, a public announcement had been made as aforesaid.

40 13. On or about 3/5/73 one Chan Kwai Wah, a member of the Company's staff acting on behalf of the Plaintiffs and each of them met the 1st Defendant at No. 33 Wing Lok Street, Ground floor and orally informed the 1st Defendant that the Plaintiffs and each of them would not complete

the sale and purchase under the Main Agreement unless, inter alia, (a) the Subsidiary Agreement was cancelled, (b) a "guarantee" was given by the Defendants to the effect that the price for 60% of the Fu Chip shares to be allotted would not be less than \$2.50 per share for a period of one year therefrom and that the Defendants would compensate the Plaintiffs if the price would be less than the said amount.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

No. 2
Amended
Defence
23rd July 1974
(continued)

10 14. In the premises, the Plaintiffs and each of them were unlawfully threatening to break and/or repudiate the Main Agreement as varied and was attempting to procure a "guarantee" in the terms aforesaid by means of the said threat. The Plaintiffs at all material times knew that the Defendants were concerned about the detrimental effect on the share prices of Fu Chip if the Main Agreement was not completed and/or if litigation ensued as a result of the Plaintiffs' repudiation thereof.

15. Acting under the aforesaid threat, the Defendants signed a document dated 4/5/73 in terms therein set out (hereinafter called the said "guarantee").

20 16. The said "Guarantee" signed by the Defendants was addressed to the Plaintiffs and was under the caption of "Tsuen Wan Shing On Estate Company Limited". The consideration for the said "guarantee" was expressed therein as follows:—

30 "IN CONSIDERATION of your having at our request agreed to sell all of your shares of and in the above mentioned company whose registered office is situate at 274 Sha Tsui Road, Ground Floor, Tsuen Wan, New Territories in the Colony of Hong Kong for the consideration of \$10,500,000.00 by the allotment of 4,200,000 ordinary shares of \$1.00 each in Fu Chip Investment Company Limited whose registered office is situate at No. 33 Wing Lok Street Victoria in the said Colony of Hong Kong and that the market value for the said ordinary shares of the said Fu Chip Investment Company Limited shall be deemed as \$2.50 for each of \$1.00 shares under an Agreement for sale and purchase made between the parties thereto and dated the 27th day of February 1973.".

17. The Defendants therefore say that the said "Guarantee" was given for a past consideration.

18. Further and/or alternatively the Defendants say that the said "Guarantee" was given by reason of the Plaintiffs' said unlawful threat to break and/or repudiate the Main Agreement in consequence of which the said "Guarantee" is unenforceable and/or null and of no effect.

19. Paragraph 3 of the Amended Statement of Claim is admitted. The agreement pleaded therein is the Main Agreement mentioned hereinabove.

40 20. As to paragraph 4 of the Amended Statement of Claim the Defendants say as follows:—

(a) At about noon on the 27/2/73 the parties to the Main Agreement and the Subsidiary Agreement met and the Plaintiffs perused the drafts of the said Agreements at the Golden City Restaurant. One Chow Hin Yau of Messrs. Hastings & Co., Solicitors, was present and perused and interpreted the drafts of the said Agreements to the Plaintiffs;

(b) The Main Agreement and the Subsidiary Agreement were both executed at the aforesaid offices of Wing On & Co. on the afternoon of the said 27/2/73.

10 (c) Both agreements incorporated what had been agreed between the parties;

(d) The 1st Plaintiff did as pleaded in paragraph 10 above orally allege that the Subsidiary Agreement did not accurately incorporate what had been agreed (which allegation is denied);

(e) It is admitted that the Subsidiary Agreement was cancelled on 4/5/73 pursuant to the request of the Plaintiffs in the circumstances pleaded above;

20 (ee) The said cancellation of the subsidiary agreement was effected by a bilateral discharge of obligations thereunder. Further and/or alternatively the Defendants say that the Plaintiffs are now estopped from relying on the subsidiary agreement by reason of (a) the said consideration and/or (b) the Plaintiffs' refusal to abide by its terms".

(f) Save as expressly admitted hereinbefore, no admissions are made as to paragraph 4 of the Amended Statement of Claim.

21. It is also admitted that on 4/5/73 a purported "Guarantee" was signed by the Plaintiffs and given to the Defendants. The Defendants will refer to the said document at the trial for its full terms and effect (if any) but save as aforesaid, paragraph 5 of the Amended Statement of Claim is denied.

22. Paragraph 6 of the Amended Statement of Claim is denied.

23. Paragraph 7 of the Amended Statement of Claim is admitted.

30 24. Save that the Defendants have not indemnified the Plaintiffs in respect of the alleged loss, no admissions are made as to paragraphs 8 and 9 of the Amended Statement of Claim.

25. In the premises the Plaintiffs are not entitled to the relief as claimed or at all.

~~Denis Chang~~
~~Counsel for the Defendants.~~

~~Dated this 23rd day of July, 1974.~~

Denis Chang
Counsel for the Defendants.

40 Dated this 14th day of July, 1975.

IN THE SUPREME COURT OF HONG KONG
ORIGINAL JURISDICTION

No. 3
Amended Reply
16th Oct. 1974.

BETWEEN:—

PAO ON

1st Plaintiff,

HO MEI CHUN

2nd Plaintiff,

PAO LAP CHUNG

3rd Plaintiff,

and

LAU YIU LONG

1st Defendant,

10

BENJAMIN LAU KAM CHING

2nd Defendant,

AMENDED REPLY

1. Save and in so far as the same consists of admissions the Plaintiffs join issue with the Defendant upon his Defence.

2. The Plaintiffs admit paragraphs 1, 7 and 10 of the Defence. **Messrs. Hastings & Co. were only acting for Tsuen Wan Shing On Estate Company Limited in the sale of flats and were not acting as the Plaintiffs' solicitors. Save as aforesaid paragraph 10 of the Defence is admitted.** Save for the dates pleaded therein of which the Plaintiffs have no knowledge paragraphs 6 and 8 of the Defence are admitted.

20

3. As to paragraph 11 of the Defence the Plaintiffs say that completion did not take place on 30th April 1973.

4. The Plaintiffs deny paragraph 9 of the Defence.

5. As to paragraph 12 of the Defence the Plaintiffs say that:—

(1) On or about 1st May 1973 the 1st Defendant met the 1st Plaintiff at the 1st Plaintiff's offices at Wing On & Co.

(2) The 1st Defendant asked the 1st Plaintiff to complete the said written agreement dated 27th February 1973 pleaded in paragraph 3 of the Statement of Claim and referred to therein as the said written agreement of sale and purchase. The 1st Defendant did not say that the public would otherwise lose confidence in Fu Chip.

30

(3) The 1st Plaintiff told the 1st Defendant that the Plaintiffs would complete the said written agreement of sale and purchase if the 1st Defendant would provide them with a guarantee and indemnity in accordance with the agreement pleaded in paragraph 2 of the Statement of Claim and referred to therein as the said oral agreement.

(4) The 1st Defendant admitted that there was a mistake in that the document pleaded in paragraph 4(2) of the Statement of Claim did not contain the said guarantee and indemnity in accordance with the said oral agreement.

(5) The 1st Defendant stated that the Defendants were prepared to give the said guarantee and indemnity and that it would be prepared by Messrs. Yung, Yu, Yuen & Co.

6. As to paragraph 13 of the Defence the Plaintiffs say that

10 (1) Chan Kwai Wah acting on behalf of the Plaintiffs met the 1st Defendant at his offices at No. 33, Wing Lok Street on a day after 29th April 1974.

(2) The said Chan told the 1st Defendant that the Plaintiffs would not complete the said written agreement of sale and purchase unless the Defendants provided them with a guarantee and indemnity in accordance with the said oral agreement.

(3) The said Chan inquired of the 1st Defendant when the said guarantee and indemnity would be provided.

20 7. As to paragraphs 14, 15 and 18 of the Defence the Plaintiffs say that the Defendants signed the guarantee on 4th May 1973 freely and not under the threat alleged or any other threat.

8. The Plaintiffs will contend that the Defendants are estopped from alleging that the guarantee given by them dated 4th May 1973 is invalid or ineffective.

PARTICULARS

30 By giving and signing the said guarantee, the Defendants represented to the Plaintiffs that it is valid and effective. In reliance upon such representation which was intended to be acted upon by the Plaintiffs, the Plaintiffs agreed to the cancellation of the said document referred to in paragraph 4(2) of the Statement of Claim and thereby changed their position to their detriment.

~~—ANDREW LI~~

~~—Counsel for the Plaintiffs.~~

~~Dated the 16th day of October 1974.~~

SAM GITTINS

Counsel for the Plaintiffs.

Dated the 14th day of July 1975

IN THE SUPREME COURT OF HONG KONG
ORIGINAL JURISDICTION
ACTION NO. 1159 OF 1974

No. 4
Judge's Notes

BETWEEN:—

PAO ON

1st Plaintiff,

HO MEI CHUN

2nd Plaintiff,

PAO LAP CHUNG

3rd Plaintiff,

and

LAU YIU LONG

1st Defendant,

10

BENJAMIN LAU KAM CHING

2nd Defendant,

Coram: Li, J. in Court

Date: 14th July 1975

18th and 21st-22nd July 1975

at 10 a.m.

JUDGE'S NOTES

Gittins Q.C., & A. Li (Hastings & Co.) for plaintiffs

Zimmern Q.C., & B. Wong (Yung, Yu, Yuen & Co.) for defendants

Gittins: Some amendments

Amend Statement of Claim and Reply as indicated in draft.

20

Statement of Claim: Addition of paragraph 10 and 1(A) in Prayer.

Reply: Quality admission of paragraph 10 of Defence.

Proposed amendments proposed on 10/7/75. sent to defendant solicitors.

Defendant wants to amend Defence.

Further amendment to Reply by insertion of adding a paragraph 8 (estoppel).

30

Zimmern: Amendment up to purple ink not opposed, except as to costs for consequential amendments. As to 3rd amendment object to because of late stage and nature.

Gittins: This is purely a matter of law. No inquiry needed. Leave to amend in terms in respect of all applications.

Zimmern: Reamendment of Defence necessary.

Defence amended as indicated in new copy by insertion of paragraph 20(ee).

Leave to amend Statement of Claim and Reply in terms and leave to amend Defence consequential upon amendment of Statement of Claim in term.

Reservice dispense with.

10

Costs of amendment reserved.

Gittins: Question of admisibility of parole evidence.

Intend to adduce evidence first and then argument on question later.

Facts: Plaintiffs, husband, wife and son. In February 1973 they own all shares in Company — Tsuen Wan Shing On Co. Ltd.

Only asset: multi-storey building — Wing On Building.
Near completion, some units sold.

Plaintiff's case:

20

Negotiations for sale of all plaintiffs' shares between defendants personally, defendants on behalf of Fu Chip, Plaintiffs personally and plaintiffs on behalf of Shing On Co.

Orally agreed as to price — \$10,500,000 by 4,200,000 shares in Fu Chip valued at \$2.50.

Plaintiffs would guarantee to defendants and Fu Chip that plaintiffs would not dispose of 60% of the Fu Chip shares for one year.

Plaintiff required a guarantee that they would get at least \$2.50 a share for this 60% so withheld after one year.

All part and parcel of agreement.

Documents executed.

30

Guarantee to plaintiff which, after some mishaps signed 4/5/74.

Agreed bundle — at p.37.

Guarantee to 3 plaintiffs signed by both defendants.

On 1/5/74 — shares down to 36 cents per share.

See p.50 — Letter to defendants by plaintiffs solicitors asking for sum.

Failed to pay.

Defendant case: Deny any oral agreement.

Allege 2 agreements dated 27/2/73

1st agreement — sale by plaintiffs and undertakings by plaintiffs.
P.1-6 of bundle

(No witness to plaintiffs' signatures).

2nd agreement — p.7.

Para. 3 conflicts with para. 4(k) of 1st agreement.

Written on 1st page — "cancel"

No signature — Plaintiffs' copy.

Defence copy: Cancelled with signatures.

Original: Cancelled with signatures of all parties.

Agreed — Exhibit A.

Document dated 27/2/73 — Exhibit B.

10

Defence continued: In April 1973 plaintiff expressed dissatisfaction with subsidiary agreement and threatened to back out from main agreement.

Guarantee then given.

(a) Unenforceable because duress

(b) Unenforceable because past consideration

Details of Statement of Claim —

Para. 5 — 2 documents on 4/5/73

Para. 10 — reply on subsidiary agreement alternatively.

20

The Defence in details:

1. Admits Para. 1

2. Denies oral agreement.

3. Cites main agreement

Observes:

Subsidiary agreement must be related to main agreement.

Plaintiff undertook to retain 60%.

Subsidiary agreement in conflict if sold on or behalf 30/4/74 — untidy piece of drafting.

30

6. — admitted except as to dates.

7. — admitted

8. — admitted except as to date.

9. — Different versions as to events leading to signing of guarantee Wing On & Co. — plaintiffs' sharebrokers firm.

10. — Hastings — solicitors for Co. only, not for plaintiffs.

Yung, Yu, Yuen & Co. solicitors for plaintiffs and defendants.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

No. 4
Judge's Notes
(continued)

12. — denied.
13.)
14.) Threat
15.)
16. — Past consideration.
18. — threat
19. — Golden City meeting — substantially same as Statement of Claim except that it alleges both drafts explained.

Issues of Facts:

- 10 1. Preliminary negotiations was there oral agreements as alleged?
2. On 27/2/73 circumstances whether both explained to plaintiffs.
3. Signing of guarantee — fact leading to Law:
 1. To what extent parole evidence admissible to show circumstances leading to guarantee.
 2. Question of consideration for the guarantee.
 3. Question of duress on guarantee.
 4. If guarantee ineffective is cancelled agreement revived or plaintiffs estopped for making this contention.
- 20 5. Whether Defendant estopped from contending guarantee invalid.

Documents —

10.)
 -) listing and meeting of Fu Chip.
11.)
13. — Far East agreed 31/3/73
14. — return resigned
18. — Transfer of shares
23. — By 28/4/73 defendants aware of plaintiffs' dissatisfaction.
- 30 24. — 4/5/73 letter from Yung, Yu, Yuen & Co. threatening proceedings
25. and 26. — Draft guarantee
30. — 33. — Transfers from plaintiffs to Fu Chip dated 4/5/73.
42. — Plaintiffs' paid own share of Yung, Yu, Yuen & Co. costs — later repaid.

Not allegation of threat and duress raised till pleadings.
Adjourned to 2.30 p.m.

Sgd. Simon F. S. Li.

Services of Court Reporter dispensed with because none is available.

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Ho Mei Chun (Affirmed) P.W.1.

*Plaintiffs'
Evidence*

Of 148 Prince Edward Road 8th floor Kowloon. 2nd plaintiff of this action. Wife of 1st plaintiff Mother of 3rd plaintiff.

No. 4
P.W.1
Ho Mei Chun
Examination

Came to Hong Kong about 1949/50 from City of Cham Kong — Kwong Chow Wan. Husband came about one month before me. Before we came we were jewellery business and goldsmith. My son, 3rd plaintiff, born in Cham Kong.

10 After we came to Hong Kong we were in ornament business — jewellery business. In the beginning we had partners. Later husband and I the only 2 partners. Firm name: Sai Sing Jewellery at Tsuen Wan N.T. — still is.

Apart from this, after the riot in 1967, we went into construction business.

Decision in business of Sai Sing made by both of us after joint discussions. Both of us fully aware of what went on. Business of Sai Sing successful after a time.

Construction business capital from profits made and some money I brought to Hong Kong, some money from overseas. Profits made in Sai Sing.

20 The Tsuen Wan Shing On Co. Ltd. formed about end of 1970. It's a construction business. It owned a building in Tsuen Wan. Incorporation of Co. was for that purpose.

Before February 1973 my husband and I occasionally met the defendants in architect's office. We saw one another occasionally.

In addition we were in stocks and shares business. We are members of the Kam Ngan Stock Exchange Golden and Silver Exchange true we obtained a licence of stock broker's in Kam Ngan Stock Exchange. The firm name is Wing On & Co. in Room 1203 12th floor Hong Kong Chinese Bank.

30 By construction I meant buying land and getting contractor to build on it. How it is explained to me I'll say that after 1967 we entered into investment real estate business. We bought land to be built on by others.

I do not understand English. Even my standard in Chinese is not high. No formal education in Chinese. Can read simple document in Chinese.

My husband only up to primary school standard in English and Chinese. P.27 in Exhibit A not written by me. Nor my husband. P.34 in Exhibit A not written by me or my husband. P.49 of Exhibit A not written by me or my husband.

Husband's standard only equivalent to primary standard. He studied only in village school. No English taught.

10 When we came to Hong Kong son was only a few months old. He had not completed his junior middle school — about Form 2 or Form 3 standard. He then joined in business in shop (Sai Sing) as assistant. He is now a trading clerk in the trading hall.

The sale and purchase of Shing On shares to Fu Chip first raised about February 1973 when Lau Yiu Long came up to Wing On & Co. to ask me. My husband was present. He asked whether our Wing On Building could be acquired by Fu Chip by way of a takeover. Wing On Building was owned by Tsuen Wan Shing On Investment Co. Ltd. My husband laughed and I said "That could be considered".

20 Then he arranged to meet my husband and me for tea at the Peninsula after office hours. We accepted. We went the same day. On that occasion there were my husband, self, Lau Yiu Long and his wife. Lau asked me about the construction of Wing On Building. I told him there were 72 units for residence, a total area of about 9,000 sq.ft. for commercial purposes located on 2nd and 3rd floors and about 4,800 sq.ft. on ground floor. He asked if he could go and have a look at the site straight away. So we went to Tsuen Wan with them to show the place. They took us in their car.

On our way Lau mentioned that if take over bid successful the Fu Chip would strengthen its reputation. He said that up till then all the buildings own or built by Fu Chip were of Chinese tenement type but not as good as the building in question.

30 On our way back from Tsuen Wan while in car Mr. Lau asked me my terms. I named price at \$11,000,000.00. Lau said he would consult his brother Lau Kam Ching and would let me know.

40 Two or three days later Lau Yiu Long came to our office again. He said they had no ready cash but proposed to allot shares to us valued at \$2.50 each — in all 3,500,000 shares. He meant the Fu Chip shares. He also said that if this was acceptable then they would be in position to utilise the 3 or 4 millions dollars already received by Shing On to finance other projects of Fu Chip. As the offer fell short of our terms. We did not accept it. Lau also said if we accepted the offer the shares issued to us should not be sold within one year. I said, "Now you do not allow us to sell the shares what guarantee can you give especially Shing On had already received considerable proceeds in cash? Lau said "Definitely you are guaranteed by Lau Yiu Long, Lau Kam Ching and Fu Chip". The guarantee, he said, was

that the price per share of Fu Chip would not fall below \$2.50 within one year. Question of what's going to happen if they did fall below \$2.50 was not yet varied. After I refused to accept this offer Lau left without an agreement.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

About 1 or 2 days later Lau came again and offered 3,800,000 shares instead. I still rejected the offer. He left.

*Plaintiffs'
Evidence*

10 Again about 1 or 2 days later Lau came to Wing On and Co. He offered up to 4,200,000 shares. I discussed matter with my husband and finding that the offer was not far short of \$11,000,000 we decided to accept. However, I asked Lau to guarantee that the whole of 4,200,000 shares would not fall below \$2.50 each within one year and that the name of Wing On Building could not be changed. Again Lau said he would consult his younger brother Lau Kam Ching.

No. 4
P.W.1
Ho Mei Chun
Examination
(continued)

20 On 5th occasion Lau came and said he could only guarantee up to 60% of the shares. Not reasonable to guarantee the lot. This was again 1 or 2 days after. I discussed this with husband. Eventually we accepted offer on such conditions. Also we were not allowed to sell the shares within one year otherwise we would have to pay compensation for their loss. That only applied to 60% of the shares issued to us. The guarantee also only extended to the 60%.

Lau said to me that within one year I was allowed to sell 60% of shares or I would have to compensate any loss he might sustain. On the other hand we would guarantee that the price of 60% of the shares up to end of April 1974 and if by then the price fell below \$2.50 he would compensate me with the difference between the price at the close of market at Far East Exchange on that day and \$2.50 per share or, alternatively, he would pay \$6,300,000 to repurchase this 2,520,000 shares on the 30/4/74.

30 There was no change as to guarantors. They would be Lau brothers and Fu Chip. The other condition as to no change of name of building agreed.

Lau also suggested share certificates to be deposited with a certificated accountant. I refused. Eventually I was required to give a written undertaking.

The guarantee only operative if price of shares below \$2.50 each, otherwise I'll not be obliged to sell.

Adjourned to 9.45 a.m.

Sgd. Simon F. S. Li

Ho Mei Chun (R.F.A.) P.W.1.
Evidence-in-chief continued.

40 After when we reach an agreement we tried to fix a time to go to meet at solicitors' office. This was about 22/2/73. It was the Yung, Yu, Yuen

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Plaintiffs'
Evidence*

No. 4
P.W.1
Ho Mei Chun
Examination
(continued)

& Co. Mr Yuen Pak Yiu acted for both parties. I went with my husband, Lau Yiu Long and Lau Kam Ching — 4 of us.

At Mr. Yuen's office we told Yuen that Shing On selling to Fu Chip. Also informed him that Fu Chip was to take over Shing On Co. at 4.2 million shares as consideration. The shares valued at \$2.50 each equal to \$10.5 million. That is price \$10,500,000.00 to be represented by 4,200,000 shares valued at \$2.50 each. It was also pointed out that there was a guarantee of 60% that the price would not fall below \$2.50 each within one year. The guarantee was to be given to us by Fu Chip Co., Lau Yiu Long and Lau Kam Ching. With amplification that should the shares fall below \$2.50 by end of April 1974 we would be paid the difference between \$2.50 and the closing price of that day. The other party had option to buy back shares for us for \$6.3 million. If the price should be above \$2.50 per share we would not be obliged to sell to them. Each and every of these points told to Mr. Yuen. Lau Yiu Long said that we were not to sell the 2,520,000 shares within one year or we would have to compensate the other party for losses. No other condition by the other party I meant Lau Yiu Long, Lam Kam Ching and Fu Chip. At that time there were only 5 of us.

10

20

*Exhibit A
P.1-6*

Then on the 27/2/73 at noon time Lau Yiu Long rang me. I answered. He made arrangement to have tea with us at the Golden City Restaurant. We agreed. No mention made as to purpose of meeting. We met at about 1 p.m. My son, Pao Lap Chung, my husband, myself and Mr. Chow Hin Yau went. For the other side only Lau Yiu Long present. Lau said that the agreement in respect of the take over of Shing On by Fu Chip had been prepared and he produced it. This is the agreement — P.1-6 of Exhibit A. I identify my signature and those of my husband's and son's. As we don't know English Chow with us. My husband asked Chow explained to us. Chow did not explain in full. He only told the gist of agreement. Chow was not there specifically. He used to lunch with us and happened to be there.

30

*Exhibit A
P.7-9*

No other document produced. I see the document copied P7-9 of Exhibit A. I identify the signatures of mine, my husband and son. This was not produced at lunch. It was produced on ground floor at lobby where met Lau Kam Ching who came along with this document. By then Chow had left — he left after he read agreement of sale by Shing On to Fu Chip. He left before we left our table.

When downstairs my son was about to leave. Lau Yiu Long asked him not to go yet because his younger brother was bringing over the letter of guarantee. No sooner had Lau said this Lau Kam Ching came in. The 2 Lau's said this was a document of mutual guarantee and asked us to sign.

40

By that time we had already signed the main agreement of sale upstairs. My husband signed first, then I signed and then my son. Then Lau Yiu Long signed. Lau said that as his younger brother not present he would take it home for his younger brother's signature.

On the ground floor Lau Yiu Long said that the document was a matter of mutual guarantee and we were to sign it there and then so that he had to

rush it to the Far East Exchange. No one was there to explain the contents to us. My son not very good in English. Since they were in such a hurry, I took his words for it and besides he said Yuen prepared the document I trusted him and other solicitors. We signed. Lau signed first. Then my husband, I and my son signed in that order. Again Lau Yiu Long said Lau Kam Ching would take it back for signing. After this Lau Kam Ching took all documents and left. Lam Yiu Long said we would be supplied with photostat copies after everything completed.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Plaintiffs'
Evidence*

No. 4
P.W.1
Ho Mei Chun
Examination

(continued)

After this completion date of main agreement extend one month.

- 10 On 28/3/73 Lau Yiu Long brought the agreement for extension for us to sign. Enclosed on back of agreement it was probably signed in our office. Up till 28/3/73 we had received no copy of the agreements.

In April 1973 my husband went to Tai Wan. Having refreshed my memory by seeing my husband's passport I say that he left 18/4/73 and returned on 29/4/73. Up to time my husband left I still had no copy of the agreements. Before husband left for Tai Wan he said the title deeds of Wing On Building could be handed over on receipt of copy of the guarantee. Title deeds with Hastings & Co. solicitors responsible for sale of the units. Chow Hin Yau looked after the matter.

- 20 On one occasion Chow rang me saying Yung, Yu, Yuen & Co. were asking for title deeds. I told Chow that we still had not yet received the document of guarantee. Fearing that the title deeds had already been handed over I asked to get the document of guarantee at once. However I was told that Yung, Yu Yuen & Co. only pressed for title deeds to be handed over.

- 30 Then I sent employee Chan Kwai Wah to go to Lau Yiu Loug's office to collect a copy of the mutual guarantee. That was before my husband returned. Chan, I understand, saw Lau Kam Ching. Chan returned with a photostat copy of the mutual guarantee. Chan then explained the document to me. He said he was not too clear but in his opinion he was not sure it too looked like a guarantee but more like an advanced sale of commodities. I told Chan to wait till the return of my husband when all documents were to be handed over and we could discuss the matter.

- 40 Husband returned on 29/4/73 in the afternoon and went direct to office. I informed him of the position. Husband rang Lau Yiu Long and accused Lau of breach of faith. Husband saw Chan who told him of the document of mutual guarantee. I was present. It's after our discussion that my husband rang Lau Yiu Long in my presence. He asked Lau how he could change a guarantee to an agreement of advanced sale of commodities. My husband said if Lau had made a mistake in this he should put it right. As I did not hear what Lau said I asked husband what Lau said. Then my husband rang off after he said "If you want to take legal action by all means".

On 30/4/73 in forenoon my husband sent Chan Kwai Wah to Lau Yiu Long's office to ask Lau to rectify the matter so that we could complete in time. I was present. Chan went. On his return from that errand Chan

told me and husband that Lau warned that if we did not honour of the transfer and the terms of the guarantee he would take legal action against us.

In the afternoon of 30/4/73 nothing happened. I can't remember.

But on a day between 30/4/73 and 3/5/73 Lau came to our office. He said "Very well if it does not work let's make a fresh one". One day after this occasion Chan Kwai Wah went to Yung, Yu, Yuen & Co. to see if document ready. There he met Lau Yiu Long at solicitor's office.

10 On Chan's return he brought a draft for us to approve. As we knew no English we asked Chow Hin Yan to go through it. Draft taken to Chow by Chan. Chow was to advise us whether the draft was in form of a guarantee or yet another agreement for advanced sale. When Chow returned the draft with amendments to us the draft was taken to Yung, Yu, Yuen & Co. Again returned to us after amendments faired by Yung, Yu, Yuen & Co. We again sent it to Chow.

20 Chow returned final draft to us and we sent it back to Yung, Yu, Yuen & Co. The documents at P37-38 and at P39 of Exhibit A are those signed on 4/5/73. I identify my signature on P39 of Exhibit A. Signed in presence of Philip Yuen. I received message to go to Yung, Yu, Yuen & Co. to sign. I attended in the afternoon of 4/5/73. My husband, my son, myself, Chan Kwai Wah, Lau Yiu Long, Lau Kam Ching and Philip Yuen present. Contents of document explained to us by Philip Yuen.

Adjourned to 2.30 p.m.

Sgd. Simon F. S. Li

Ho Mei Chun (R.F.A.) P.W.1.

Evidence-in-chief continued.

30 Apart from that document I signed explained to me, Exhibit B which was cancelled also explained to me. Also the letter of indemnity explained to me. In all 3 documents — one I guarantee not to sell for one year, one he guaranteed us and one cancelled document. I signed the cancelled document and the guarantee I gave them. I did not sign their guarantee to me. All 3 explained to me by Mr. Yuen. In course of explanation by Yuen I raised a question as to why Fu Chip did not join in the guarantee as guarantor. Mr. Yuen told me that a list Co. would not give a guarantee. I was satisfied with his answer. Mr. Yuen further said Lau Yiu Long was chairman of Board of Fu Chip and Lau Kam Ching was managing director and both of them in effect the Co. and that their signatures were as effective as the Co. I also questioned why no mentioned was made that the name of Wing On Building should not be changed. That clause was added before document was signed.

40 Probably the cancelled document was signed first and then I signed my guarantee not to sell the second. Anyway the 3 documents were signed one after the other.

Then we all went to Mr. Mar Fan, the accountant, to collect the shares — our group and the 2 Lau's.

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Court of
Hong Kong
Original
Jurisdiction*

I see P34 of Exhibit A. This was signed by Lau Yiu Long in our office after we had been to Mr. Mar Fan. He signed this after Chan Kwai Wah handed to him the articles set out therein and Lau acknowledged receipt.

*Plaintiffs'
Evidence*

I see P49 of Exhibit A (P45 is translation) and say that we sent it out on 30/3/74.

No. 4
P.W.1
Ho Mei Chun
Examination
(continued)

10 I see P42-43 of Exhibit A. It's a copy of cheque for \$4,757 payable to Yung, Yu, Yuen & Co. drawn by me dated 11/7/73. Some one reported we were required by that firm to pay a fee, solicitor's fees for the Shing On, Fu Chip transaction. So I sent the cheque. Later a refund was made — about 1 week after. At that time my husband away. There was a long distance call and he told me Lau promised to pay all the fees. I sent foki to take up matter with Lau Yiu Long. Then refund made by Solicitor.

*Exhibit A
P.42-43*

At the end of February 1973 before I signed document on 27/2/73 the value of Fu Chip shares I can't remember.

Cross-examination:

P.W.1
Ho Mei Chun
Cross-
examination

- 20
1. In morning of 27/2/73 Lau Yiu Long asked you to lunch at Golden City Restaurant?
Yes.
 2. That was you and your husband's habitual place for lunch?
More often than not.
 3. You have a table reserved daily?
For one period only.
 4. In the period of early 1973?
Usually went there but can't remember if reserved table.
Table will be found for me.
 5. Lau Yiu Long habitual customer of Tai Tung Restaurant?
I do not know. I did not know.
 - 30
 6. Chow Hin Yan habitually lunched with you at Golden City?
Sometimes.
 7. More often than not?
Correct.
 8. Said Lau Yiu Long invited you to Golden City?
Yes.
 9. On 1st floor?
Yes.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Plaintiffs'
Evidence*

No. 4
P.W.1
Ho Mei Chun
Cross-
examination
(continued)

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10. Co-incident to invite you to your habitual place?
He did so because he knew I always had my lunch there.
11. Any reason why he should know?
By conversation with him he knew we went to Golden City.
12. And you never knew about him?
No.
13. Lau gave no reason for that invitation?
No.
14. Certain of that?
Yes.
15. Arrangement made with you?
He rang up and I answered the call. Or he might have come to our office to arrange.
16. With whom he made this arrangement — you or your husband?
My husband.
17. Did your husband tell you the reason for the invitation?
No.
18. No reason advanced for that invitation to luncheon date?
No.
19. Up to time you arrived at Golden City you know of no other reason than to have lunch?
Correct.
20. That applied to your husband and son?
Correct.
21. Only then a legal document shown to you?
Yes.
22. Lau Yiu Long was alone?
Yes.
23. After Chow explained document to you, you signed it?
Yes. But after Chow left the table.
24. How many times did you sign that document?
Once.
25. Sure?
Yes.
26. Your husband and son?
Also once each.
27. After signing you handed back to Lau Liu Long?
Yes.
28. Did not even get a copy of it?
Correct.

- | | | | |
|----|-----|--|--|
| | 29. | When did you see that document again?
Quite long afterwards, can't remember when. | <i>In the Supreme
Court of
Hong Kong
Original
Jurisdiction</i> |
| | 30. | When this case started?
Seems to be so. At least not until I signed the letter of
guarantee. | <i>Plaintiffs'
Evidence</i> |
| | 31. | Where was it?
In possession of Yung, Yu, Yuen & Co. | |
| | 32. | Until production in this Court?
Correct. | No. 4
P.W.1
Ho Mei Chun
Cross-
examination |
| 10 | 33. | Never in possession of your husband, son or self?
Never. | (continued) |
| | 34. | Look at P1 of Exhibit A, we are talking about this document
all along?
I do not know English. | <i>Exhibit A
P.1</i> |
| | 35. | Turn to P5 of Exhibit A, how many times you signed that
document?
Once. | <i>Exhibit A
P.5</i> |
| | 36. | How many times you see your signature?
Two. | |
| 20 | 37. | So you signed twice?
Yes. | |
| | 38. | Why signed twice?
The first signatures are those of shareholders of Shing On.
The second set I don't know why. | |
| | 39. | Who advised to sign twice since Chow had left when you
signed and no solicitor present?
Lau Yiu Long. | |
| | 40. | Trusted him?
Yes. | |
| 30 | 41. | Did you ask him why?
I did. He said something but I do not remember what. | |
| | 42. | Signed according to Lau's direction?
As I understand it the first 3 signatures represent share-
holders and the second 2 signatures as directors of Company. | |
| | 43. | Look at original, what's the impression over your signature
and your husband's?
Shing On Company seal. | |
| | 44. | What was the seal brought to Golden City for?
I did not take it there. Can't remember when applied. | |
| 40 | 45. | How did the seal got on to that document?
I can't remember when it was applied. Certainly not on
that day. | |

*In the Supreme
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Hong Kong
Original
Jurisdiction*

*Plaintiffs'
Evidence*

*Exhibit A
P.34-35*

No. 4
P.W.1
Ho Mei Chun
Cross-
examination

(continued)

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Exhibit C

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46. If your evidence is true the seal could not be there?
Correct. Once I sign P1-5 Exhibit A I never saw it again.
Can't say when applied.
47. You think seal ought to be there?
If we appended signature for a sale it should be. But when
I signed seal not there.
(Original agreement Exhibit C)
48. Look at Exhibit A, P34-35, handing over ceremony where?
In Wing On Company.
49. One item handed over was the seal?
Yes.
50. Thus seal of Shing On Co. kept in office of Wing On Co.?
Not necessarily. Seal moved to Wing On to facilitate hand-
ing over.
51. Busy time at stock market?
Yes.
52. Your husband and you buying and selling shares?
I was. But husband not in stock exchange Co.
He's member and I looked after business.
53. Where was he?
Sometimes in Tsuen Wan jewel shop or Shing On or Wing
On.
54. Defence filed on 24/7/74, now interpret to you para. 20
of Defence. Do you agree or deny?
I disagree. The agreements not signed in Wing On Co.
office. As to whether the agreements incorporated all agreed
terms I knew no English. I took his words for it. I dis-
agree that we came to verbal agreement to sell the Fu Chip
shares only.
55. You agree that the reason why the seal on Exhibit C is that
Exhibit C was signed in Wing On Co. office as alleged by
Defence in para. 20(b)?
I disagree.
56. At least it offers an explanation?
I disagree. When I signed the document there was no seal.
We never put the seal there. We never saw Exhibit C after
signing it.
57. Mised own counsel?
No.
58. Statement of Claim first filed 10/5/74 in which the subsidiary
agreement never alleged and Defence at once asked for
further and better particulars and before any answer given a
new Statement of Claim filed.

Para. 4 of Statement of Claim allege (read to witness).

(presence of defendants (both) contradicting your case in Statement of Claim true or false?

My evidence in witness box is true.

In the Supreme Court of Hong Kong Original Jurisdiction

Plaintiffs' Evidence

59. When you gave instructions you forgot Chow was present at lunch until Defence alleged that Chow explained both documents to you. That's why you had to make up story about the circumstances under which second document signed?

I disagree.

No. 4
P.W.1
Ho Mei Chun
Cross-examination

60. Hence the additional rider in the 3rd amendment of Para. 4(3) put forward story?

I disagree it's without foundation.

(continued)

61. You obsessed with idea to deny understanding the subsidiary document without caring whether you tell the truth?

I disagree. I did not know.

62. Put to you 2 agreements explained to you twice — once by Chow in Golden City and once in your office of Wing On & Co. by your employee Chan — before you signed?

I disagree.

Adjourned to 10 a.m.

Sgd. Simon F. S. Li

Ho Mei Chun (R.F.A.) P.W.1.

Cross-examination continued.

63. On 27/2/73 there's agreement to sell your shares in Shing On in return for payment of Fu Chip shares valued at \$2.50 each. When was this price for Fu Chip shares to be decided as \$2.50 each?

I can't recall. Roughly before 22/2/73.

64. Why said before 22/2/73?

We went to solicitors on or about 22/2/73 for transactions to be given to solicitor.

65. Thus before 22/2/73 reached agreement?

Yes.

66. How many days before 22/2/73?

Few days.

67. Negotiation took 5 meetings?

Yes.

68. Why pinpoint 22/2/73?

We signed on 27/2/73. Agreement reached about one week before. Thus agreement was before 22/2/73.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Plaintiffs'
Evidence*

No. 4
P.W.1
Ho Mei Chun
Cross-
examination
(continued)

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69. Before 27/2/73 anyone of you ever purchased Fu Chip shares for your own account?
Can't recollect.
70. Try?
I was very busy. Can't recall.
Even if I did it would not be a large amount.
71. Was there a market in Fu Chip shares on about 22/7/73?
Possibly. But I can't remember definitely.
72. Yet you agreed to Fu Chip prices to value at \$2.50 each without knowing its true value?
At that time price probably more than \$2.50 each.
73. You came here to say you reached agreement without knowing there's a market for Fu Chip shares or the price?
As for price it's probably higher than \$2.50. It's long time I can't say if it had a market but probably yes. But there was a market.
74. How did you calculate the price at \$2.50 per share?
In fact the value was more than \$2.50 each. According to him the price would not fall below \$2.50 within a year for the 4,200,000 shares.
75. (Question 74 repeated)?
He fixed the price at \$2.50 — Lau fixed it. I accepted price on his guarantee price would not fall below \$2.50.
76. That's 60% — what about the 40%?
I could sell the 40% at once.
77. Why say over \$2.50?
To my knowledge market price over \$2.50.
78. Thus you say as a broker, that the Fu Chip shares had a market in the exchange on that day?
Yes.
79. Can you trace record of such market?
Yes.
80. As stock broker can you remember what Fu Chip shares issued at?
Face value \$1.00.
81. Seen this document before?
Yes.
Document — Exhibit D.
82. Agreement with Fu Chip that shares issued on 23/2/73?
I can't remember date.
83. No market until shares listed how could there be an assessed price of \$2.50?

Exhibit D

It was after Fu Chip shares listed before discussion of take over began.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Plaintiffs'
Evidence*

84. The Fu Chip shares advertised on 6/2/73, according to prospectus allocation by private placing in Far East and Kam Ngan Exchanges. Your husband might got some at \$1 each. Do you agree?

Yes.

85. Your husband kept them instead of selling to clients? Can't remember.

No. 4
P.W.1
Ho Mei Chun
Cross-
examination

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86. Everyone looked upon shares better than money? At that time, yes.

(continued)

87. That's your state of mind and that of your husband's? Yes.

88. At that time before Fu Chip listed Lau Yiu Long had bought and sold shares through your firm? Yes.

89. Lau was out of Hong Kong from 10/2 to 19/2/73? After his return your husband approached him to include Shing On into the issue told Lau he might have to support Fu Chip shares after listing. Lau spent whole day in your office and on 23/2/73 you bought Fu Chip shares for Lau to support market agreed?

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I deny my husband approached Lau.

90. On 23/2/73 Lau in your office for most of the day to watch the market? I can't say for sure.

91. Look at these documents, bought notes issued by you? Yes.

5 notes — Exhibit E.

Exhibit E

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92. That was first day it was listed? I can't remember.

93. That was day 23/2/73 when your husband reproached Lau for not including Shing On?

Can't remember the date. My husband did not approach him. He approached my husband.

94. You, your husband and Lau went to Tsuen Wan in evening to see the Building?

On first time we had tea in Peninsula before going to building.

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95. In evening? Yes.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Plaintiffs'
Evidence*

No. 4
P.W.1
Ho Mei Chun
Cross-
examination
(continued)

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96. On 23/2/73?
Can't be sure.
97. You were interested in a large building in a listed public Company?
When he raised this question when he approached me, of course, I was.
98. Within 3 days agreement reached?
More than 3 days.
99. On 26/2/73 your husband and Lau went to Yung, Yu, Yuen & Co. to give instructions to a clerk Mr. Lau?
I disagree.
100. You never went?
I disagree.
101. Your evidence of your going on 22/2/73 or any time before 22/2/73 to see Philip Yuen at Yung, Yu, Yuen & Co. completely untrue?
I disagree.
102. Yuen confused this with the interview in May 1973?
I disagree.
103. It was then agreed that you would draft the agreements to be ready the next day and your husband invited Lau to go to Golden City for lunch at his table the next day with the draft agreements and that's why Lau and his brother went on 27/2/73?
I disagree.
104. Chow went through the 2 agreements with you and your husband and you were all cheerful Lau Kam Ching left for his office to fetch the Fu Chip to meet you at ground floor of Restaurant. All went back to your office of Wing On Co. All signed after Chan Kwai Wah explained to you that document?
I disagree completely.
105. No oral agreement, the 2 written agreements cover your entire agreements?
There are an oral agreement.
106. Which were told to you by your husband and incorporated?
No. I dispute the document signed in lobby.
107. Even before 27/2/73 you and your husband well known to Yung, Yu, Yuen & Co. people?
Yes.
108. You were their clients?
Yes.

109. What's so difficult to get copy of agreement?
Since Lau promised me one he should give me one.
110. Look at P36 of Exhibit A it's public announcement about
take over and issue of shares to your Co. on 16/3/73 you
know of this?
Yes.
111. On 31/3/73 — Exhibit A-13, — Far East approved
application by Fu Chip to dealings in their new shares in-
cluding your 4,200,000 you also knew?
Yes.
112. Knew that because Lau informed you on 1/4 or 2/4/73?
Can't recall if he telephoned. But I knew of this.
113. On 28/3/73 at solicitors office extension of completion date
because Far East had not yet approved?
Yes.
114. Lau telephoned you on 1/4 or 2/4 that Far East had
approved and you could complete any time you liked?
No. He did not.
115. You said you would let your husband know. He rang you
again next day for news and you again you would let him
know?
No.
116. In early April Lau never rang you?
No.
117. Your husband?
No. No point.
118. Did he write to you or your husband?
No.
119. How did you know of Far East approval?
It was announced in the newspapers everybody knew.
120. On 28/3/73 you went to solicitors to extend agreement?
Not at solicitor — Lau took it to our office to sign extension
for one month.
121. Reason for it?
Because Far East had not approved takeover of our Com-
pany.
122. Takeover by issue of Fu Chip shares?
Correct.
123. Were not you interested to know as to when Far East would
approve?
I was.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Exhibit A
P.36*

*Exhibit A-13
Plaintiffs'
Evidence*

*No. 4(1)
P.W.1
Ho Mei Chun
Cross-
examination
(continued)*

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*In the Supreme
Court of
Original
Hong Kong
Jurisdiction*

*Plaintiffs'
Evidence*

No. 4
P.W.1
Ho Mei Chun
Cross-
examination
(continued)

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Exhibit A-21

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124. Think it was duty of Lau to inform you of approval?
Yes.
125. According to Exhibit A-13 approval given on 31/3/73 and you said it would be duty of Lau to inform you defendants say on 1/4 or 2/4/73 he telephoned to inform you?
Can't remember.
126. Then why you denied this ½ an hour ago?
You did not ask me about that.
127. Question 114 repeated?
No.
128. Question 115 repeated?
No. Had he telephoned and my husband knew about that my husband would not have gone to Tai Wan.
129. Your husband left for convenience?
No.
130. You say all along you never knew of Far East approval?
Correct.
131. Lau will say he tried desperately to telephone your husband and all excuses made to stall him except that husband left for Tai Wan?
Mr. Lau definitely and my husband left for Tai Wan. At time of extension my husband disclosed his intention to go to Tai Wan for a tour.
132. Not until mid April when Lau came to Wing On that you told him your husband in Tai Wan?
But my husband did tell Lau he intended to go.
133. On that occasion you asked Lau about guaranteeing the 40% of shares?
No.
134. Not until about 24/4/73 that you told Lau the subsidiary agreement on 27/2/73 did not represent your intention?
I disagree. It's sometime after 20/4/73 I sent foki for copy of that agreement, found that it did not represent what I agreed I decided to wait for return of my husband.
135. Never spoke to Lau about it?
No.
136. Read Exhibit A-21 you instructed Chow to write this?
Did not give such instructions. At that time Yung, Yu, Yuen & Co. chased Chow for title deeds and Chow informed me. I asked Chow to ask for letter of guarantee for the 2,520,000.

137. You instructed him to write this letter?
No. I merely said that if the other party had my title deeds I must get back guarantee for the 2,520,000 shares. Did not tell him anything else.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

138. Read Exhibit A-22.
Adjourned to 2.30 p.m.

*Plaintiffs'
Evidence*

Sgd. Simon F. S. Li

No. 4
P.W.1
Ho Mei Chun
Cross-
examination
(continued)

Court resumes as before 2.30 p.m.
Ho Mei Chun (R.F.A.) P.W.1.

10 Cross-Examination continued.

138. Read Exhibit A-22, do not now understand the contents?
I do now.

Exhibit A-22

139. Was the contents of this letter related to you by Chow?
He telephoned me saying that the other side denied this.

140. Look at Exhibit A-23, Yung, Yu, Yuen & Co's letter to Hastings do you understand contents?
I do.

Exhibit A-23

141. Mr. Chow related this to you?
I can't remember.

20 142. But this is an important matter, completion on 30/4/73 known to you?
Yes.

143. Willing to complete?
Yes.

144. Did you complete on 30/4/73?
No.

145. Why not?
Because letter of Guarantee did not incorporate my original intention.

30 146. Therefore not prepared to complete?
Correct.

147. Your husband told Lau on 24/4/73?
No.

148. When did you or your husband told Lau?
On 29/4/73 after husband's return.

149. What date of week?
Can't remember.

150. He went to office on Sunday?
No.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Plaintiffs'
Evidence*

No. 4
P.W.1
Ho Mei Chun
Cross-
examination
(continued)

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Exhibit C

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151. If 29/4/73 was a Sunday what you say?
Probably for this matter he gave Lau a telephone call.
152. That's the telephone call about taking action?
Correct.
153. At that time you, husband and son unwilling to complete?
Correct.
154. By then you had known of contents of subsidiary agreement?
Yes.
155. At that time Lau was chairman of Board of Fu Chip?
Yes.
156. He held large block of Fu Chip shares?
Yes.
157. Fu Chip gone public for just about 2 months?
Yes.
158. Fu Chip announced to public that it issued shares to acquire Shing On and applied to Stock Exchange to deal in such shares?
Yes.
159. Obtained approval to deal in such shares?
Yes.
160. Then you told him unwilling to complete tell me what was his position?
Not that I was unwilling but contents of so-called guarantee did not tally with original intention.
161. (Question 160 repeated)?
That I do not know if he failed to abide by original intention.
162. You knew by then you had Lau in your hands?
No.
163. Look at the main agreement which Exhibit C you were going to have 4,200,000 shares of Fu Chip issued to you?
Yes.
164. Upon issue you could sell 40% of them?
165. Of other 60% you had to keep for one year?
Correct.
166. Under the 2nd agreement (subsidiary) you were bound to sell and Lau bound to buy the 60% of such share for delivery against payment on 30/4/73 clear to you?
No.
167. Was that not sufficient guarantee for you by Lau?
No.

168. Why not?
Under Exhibit B, I was restricted. A genuine guarantee would just give safeguard as to the price being \$2.50
169. Why?
That would obliged me to sell if prices went up.
170. That's why, greed prompted you to squeeze Lau even after signing agreement?
No.
171. Under Exhibit B either side stood to gain or lose?
Correct.
172. Lau entered into Exhibit B only because he had confidence in his shares?
I disagree.
173. Why should Lau involve himself even though Fu Chip was the purchaser?
Perhaps he had confidence.
174. You were only selling a building and by the 2 agreements you could sell 40% of shares at above \$2.50 each and the rest of 60% or at least \$2.50 thus your returned safe was not that the true agreement between you?
No.
175. But for your greed on 4/5/73 you had Lau to sign the guarantee — Exhibit A37-38 you understand contents?
Yes.
176. This signed after cancellation of Exhibit B?
Yes.
177. Would you play cards which are so loaded that you will never win?
But once I sit down I have to continue.
178. Would you enter into any business in which you will never make money?
If I am bound by an agreement I would have to.
179. I said would you enter into a contract which bound to lose?
If I had agreed I had to go through with it.
180. Exhibit A-37, can the Lau brothers ever win on this document or make a cent out of it?
Of course not if on this alone.
181. They had to give to you because you had a knife behind them for refusing to complete?
No.

In the Supreme Court of Hong Kong Original Jurisdiction

Plaintiffs' Evidence

No. 4
P.W.1
Ho Mei Chum
Cross-examination

(continued)

Exhibit B

Exhibit A37

Exhibit A37-38

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*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Plaintiffs'
Evidence*

No. 4
P.W.1
Ho Mei Chun
Cross-
examination
(continued) **10**
Exhibit A37-38

182. Can you give one reason why Lau should sign Exhibit A-37-38 for a matter not concerned him?

As first the guarantors to be Fu Chip and Lau brothers. But according to Yuen, solicitor, a listed Co. could not give guarantee and therefore the Lau brothers became guarantor in behalf of Fu Chip.

183. Why should they take personal risk for Fu Chip? Philip Yuen said even he did not read the Exhibit B before but it was alright as sale of commodity. He did not yet gone through this but it was alright. He said that at time of signing Exhibit A37-38.

184. (Question 183 repeated)? Since they were buying our Co. they had to sign this document as guarantor.

185. But they did not buy, the Co. only bought from you, why should the Lau's involve themselves? They were directors of Fu Chip.

186. Laus signed under duress?
No.

187. If Laus did not sign you would not complete?
Correct.

188. On 4/5/73 you, husband and son signed another document Exhibit A-39 you signed it? When I signed it it must have been explained to me.

189. This was signed after Exhibit A37-38 signed?
Correct.

190. This, A-39, drafted same afternoon?
Yes.

Re-examination — nil.

Chan Kwai Wah (Affirmed) P.W.2.

Of 10A Wang Fung Street 4th floor Fung Wong New Village. Employed by Sai Sing Finance Co. It is Ltd. Co. & Mr. & Mrs. Pao have interest in it. Previously employed by Wing On Securities Co. operated by Mr. & Mrs. Pao.

Know of their sale of Shing On shares to Fu Chip Investment Co. Ltd. Lau Yiu Long and Lau Kam Ching acted for Fu Chip. I know them.

Exhibit A-39

Exhibit A37-38

Exhibit A-39

P.W.2 **30**
Chan Kwai Wah
Examination

I first had anything to do with this matter between 25/4/73 and 27/4/75. Can't remember definite date.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

I see Exhibit C, and Exhibit B and say that I have seen them before. The first time I saw them was on or about 27/4/73. Both Exhibits dated 27/2/73. But I never saw them on or about that date.

*Plaintiffs'
Evidence*

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I can remember the date I saw because I was instructed by employer, Mrs. Pao, to collect something. She told me Lau of Fu Chip instructed solicitors to ask her for title deeds. But she would have to have a guarantee for stock price from him before handing over title deeds. She asked if I had received such documents of guarantee. I said never and I never knew of such matter. She instructed me to go to Fu Chip to ask Lau for this document. I went and met Lau Kam Ching who usually searched for document without success. He said he understood matter completed. He took me over to Messrs. Yung, Yu, Yuen & Co. where he found Mr. Yam, the clerk who said everything had been completed. I suggested having a look at the files. He produced a bundle of documents. That was first time I saw Exhibits B and C. I read through them and asked Yam there should be a guarantee. Yam pointed at Exhibit B and said that was the one. I said it looked like an agreement of sale in future. I asked for permission to take photo copy of it. Yam when pointing out Exhibit B said it's the same. When time came the price would be \$2.50 per share.

No. 4
P.W.2
Chan Kwai Wah
Cross-
examination

(continued)

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I took the copy back and explained contents to Mrs. Pao. At that time Mr. Pao was in Tai Wan. Mrs. Pao said that the guarantee as it stood was a bit different from the original intention. She also said that she might wait till Mr. Pao returned and discuss matter.

Mr. Pao returned on 29/4/73. I saw him in the afternoon. On that day I took no part in this dispute. We worked on Sundays.

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My next involvement in this dispute was on 30/4/73. That morning Mr. Pao came in the office with brief case. He opened it and showed me the contents: accounts books of Shing On Co., bank statements, Co. seal. He gave me certain instructions. As result I went to see Lau Yiu Long in the same morning. I failed to find him in his office but found him with Mr. Yam in Yung, Yu, Yuen & Co. I spoke to Lau that Pao returned specially from Tai Wan as he was anxious to have the matter completed as scheduled and according to prior arrangements.

Adjourned to 10 a.m.

Sgd. Simon F. S. Li

In the Supreme
Court of
Hong Kong
Original
Jurisdiction

Plaintiffs'
Evidence

No. 4
P.W.2
Chan Kwai Wah 10
examination
(continued)

17.7.75 10 a.m.
Court resumed.

Chan Kwai Wah (R.F.A.) P.W.2.
Evidence-in-chief continued.

I also told Lau that the letter of guarantee which he promised to give was not yet ready and Pao liked him to have document prepared so that both parties could sign it. I said that Pao had handed everything to me and documents and things of Shing On could be handed over any time. Lau said Pao misunderstood him and that the two documents already signed were the things wanted by Pao. I understood Lau to mean that the two documents signed and retained by Yung, Yu Yuen & Co. were the same wanted by Pao. I said according to Pao what Lau promised was not something that form and that Pao insisted Lau should prepare a letter of guarantee as he promised before Pao would complete the transaction.

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When I mentioned guarantee I did not mention terms of guarantee which were known between them. No. But I did mention to Lau Pao did not want an agreement of sale in advance and would only accept a form originally agreed to viz: a straight guarantee that the value would be same for one year. Lau refused to alter his stand. Lau said Pao misunderstood him and that should Pao refused to give effect to transaction he could sue him. Mr. Yam said: "We can at once get an injunction from the Court". I said, "You should not do that. Besides you are good friends. You have to abide by your mutual agreement. Think it over. I beg leave". So I left.

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On or about 2/5/73 Pao told me something. As result I want to see Lau and found him in Yung, Yu, Yuen & Co. He and Yam was in Yuen's office. I waited a while and they came out. Lau said that Yam had already made out a proper letter of guarantee. Yam gave me a draft and I took it back to Mr. and Mrs. Pao. On instructions I took draft to Mr. Chow of Hastings. As instructed Chow read the draft and typed out another draft for me to take back with first draft. Chow's draft is in Exhibit A-25.

Exhibit A-25

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I conveyed messages for the meeting on 4/5/75 but they also teelphoned me another. On afternoon of 3/5/73 when I took last draft to Yam and Lau at Yung, Yu, Yuen & Co. Yam said it's already. Lau said it's late he arranged with Philip for them to go to Yung, Yu Yuen & Co. at 2 p.m. 4/5/73 to sign the document.

Exhibit B

On 4/5/73 I went to Yung, Yu, Yuen & Co. together with Pao, Mrs. Pao and their son. I was present when Exhibit B was cancelled and other documents signed.

Exhibit B & C

I am definite I did not see Exhibit B or Exhibit C on or about the 27/2/73. Prior to 27/4/73 I did not see or explain these documents to the Paos.

Cross-examination:

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Plaintiffs'
Evidence*

No. 4
P.W.2
Chan Kwai Wah
Cross-
examination
(continued)

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1. Saw Exhibits B & C on 27/4/73 at Yung, Yu, Yuen & Co.?
Yes.
2. You made copies of both to take back to Mrs. Pao?
Yes.
3. Where are they now?
I don't know. I gave them to Mrs. Pao.
4. You are senior employees of Wing On?
Yes. Do every thing for Wing On. But this is Shing On matter.

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5. Never saw documents again?
No.
6. Before going to Yung, Yu, Yuen & Co. on 27/4/73 never heard of Shing On and Fu Chip transaction?
Knew of it but not details.
7. What did you know before Mrs. Pao gave you instructions?
Only that they were selling Shing On to Fu Chip by way of takeover. No mention of price.
8. Before 27/4/73 met Lau?
Yes. Did not know him well.
9. When and where?
Most probably at ten and lunch time.
10. Ever seen them up your office?
No such recollection.
11. You deal with sale and buy notes of Wing On?
I was only an administrative and accounts side but not business.

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12. Buyers' business covered by accounts side?
Yes. But I don't see the person.
13. When people came up to office you see them?
Not from where I got — my back toward them.
14. Know Lau Yiu Long a good customer of your Co.?
I have seen his name several times in accounts notes.
15. You never saw him in your office?
That I can't remember clearly.

To Court: I saw him in March.

16. Did you see him in office before 27/4/73?
I am still not clear. I now say I could not have seen him in office in March. Nor in February.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Plaintiffs'
Evidence*

Exhibit D

No. 4
P.W.2
Chan Kwai Wah **10**
Cross-
examination
(continued)

17. Remember the day when Fu Chip was listed in the Kam Ngan Exchange?
No.
18. Not interested?
It's listed in Far East, not Kam Ngan.
19. Look at Exhibit D, prospectus, your boss had forms for application?
Yes.
20. He never offered you some?
I never did this.
21. Can you now say when Fu Chip listed? — 23/2/73?
Yes.
22. Mrs. Pao admitted Lau Yiu Long in Wing On Office for better part of day, know anything about this?
Really it had not come to my notice.

Exhibit E

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23. Whose initials were this on Exhibit E?
One Mr. Leung who has already left the firm.
24. Recognise the signatures of the Pao's — 3 of them?
Yes.
25. Look at the crossed out signatures recognise them?
Yes. They are the Pao's signatures.

Exhibit B-1

Document — Exhibit B1.

26. You knew your Yiu Long well?
Not well.

Exhibit C

30

27. You on 27/2/73 at office of Wing On applied Co. seal of Shing On on 2 documents i.e. Exhibit C and carbon copy of Exhibit C?
Not so.
28. This is the other copy?
Not so.
29. You did go after explaining the documents?
No such thing.
30. What happened to see Lau Yiu Long and failed to find him, what happened?
Lau Kam Ching told me Yiu Long not in.

31. Knew Lau Kam Ching?
He told me he's Lau Kam Ching.
32. If he did not know you why should he take you to Yung, Yu, Yuen & Co.?
In fact he took me.
33. On 30/4/73 you and Lau Yiu Long never met at Yung, Yu, Yuen & Co.?
We did.
34. Met him at Fu Chip?
Not so.
35. Told Lau that if Lau guarantee 60% he would complete?
Not that way.
36. Lau was mad and told you to get loss (Mrs. Pao wanted 40% and now 60%)?
No.
37. Throughout interview you were very polite?
Not so.
38. No meeting between Lau and You on 1/5/73 because Lau went to Wing On to tackle Pao?
I knew nothing of this.
39. There after you acted as runner between Yung, Yu, Yuen & Co. and Hastings?
For the draft, yes.
40. That's occasion when you and Lau went to see Yam on 3/5/73?
Yes. I saw them 2 together.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Plaintiffs'
Evidence*

No. 4
P.W.2
Chan Kwai Wah
Cross-
examination
(continued)

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Re-examination:

As I said I never applied Shing On Co. seal on Exhibit C or its copy. Also said on 30/4/73 Pao handed me thing including Shing On seal. Prior to 30/4/73 I never saw the Shing On seal at all.

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P.W.2
Chan Kwai Wah
Re-examination

In the Supreme
Court of
Hong Kong
Original
Jurisdiction

Plaintiffs'
Evidence

No. 4
P.W.3
Chow Hin Yau
Examination

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(continued)

Exhibit A1-6

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Exhibit A1-6

Exhibit A-7-9 30

Exhibit A-20

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Chow Hin Yau (Affirmed) P.W.3.

of 462 Nathan Road 5th floor. Clerk of Hastings & Co. Been so since 1/1/46. Known Pao family nearly 10 years. They had landed property transaction in our office. That's why. Apart from so acting now became a family friend of them. I know they have habitual luncheon place at Golden City Restaurant in 1973. Can't remember which floor. In those days I did not lunch with them often. Lunched with them only when they telephoned to ask me — not even few times a month. They asked about once or twice a month.

I see Exhibit A-1 to 6, the main agreement and say I saw it first at end of February 1973. Pao rang me to meet him at the Golden City Restaurant. He did not tell me the purpose of the lunch. When I arrived I saw Mr. and Mrs. Pao with over 10 persons. Can't remember who else. But 1st defendant was there. Mr. Ho San Kuen, solicitor, present. But he did not participate in conversation. He knew the Pao's. I think young Pao was there too. Pao produced a document and asked me to explain and interpret to him. I did, not word for word but only the material parts of document. I did go through Clause 4 with him.

Before then I knew nothing about this transaction. Nor did I know Pao family was going to sell Shing On. That was first time I saw Lau, the 1st defendant. I was asked to explain document simply because I am a family friend. I left the party before 2 p.m. They were still having lunch. Before I left Pao never asked me to explain any other document. Exhibit A1-6 was the only document I saw — no others, none at all. Nor did I see any one signing any document — not even Exhibit A(1-6).

I can't remember if I have met Lau Kam Ching.

I see Exhibit A(7-9) and say that I saw photo copy of it just prior to commencement of proceedings i.e. May 1974. I saw it was brought to me by Chan for that purpose. Can't remember whether I saw it before that. I explained Exhibit 7-9 to Pao after Chan brought it to me. Not before that.

In early 1973 Hastings & Co. acting for Tsuen Wan Shing On Estate Co. Ltd. in sale of units in Wing On Building. I retained title deeds of Wing On.

I see Exhibit A-20. I remember receiving this letter. I rang up either Pao or his wife to ask if I should part with title deeds to Yung, Yu, Yuen & Co. They said no because they wanted to get a guarantee. She said "They have not given us a guarantee. You should not part with title deeds to Yung, Yu, Yuen & Co.". I asked her what was the guarantee. She gave me a figure of so

many shares and so much. Thus I wrote a letter in reply of which Exhibit A-21 is a copy. She just gave me a figure. I had no document to check and I just put it down. I also received later Exhibit A-22. I telephoned Mr. Pao or Mrs. Pao and passed on the message contained in Exhibit A-22. Then I received Exhibit A-23. I took similar action as I took with Exhibit A-22.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Plaintiffs'
Exhibit A21-23*

Exhibit A-25

*No. 4
P.W.3
Chow Hin Yau
Examination
(continued)*

10

I see Exhibit A-25 at end of April Chan Kwai Wah took a draft to me and said Pao wanted me to redraft document in such form as to bind the other party to fulfil a guarantee. Exhibit A-25 is the redraft by me. The undertaking was set out in terms in Exhibit A-25. It was drafted as results of instructions given by Chan and details obtained from first draft brought by Chan.

Can't remember if I was told anything about this deal between 27/2/73 and the time I saw the draft. Can't remember if I had contact with Pao's apart from the telephone conversations over letter from Yung, Yu, Yuen & Co.

20

As to the alterations on Exhibit A-25. I only inserted the 2,520,000 shares etc. done by me. Also the 6th line from bottom by me. Also 30th April in 3rd line from bottom. All other alterations done by someone else. I got figures from Mr. Chan and made alterations in my own draft.

Adjourned to 2.30 p.m.

Sgd. Simon F. S. Li

Resume 2.30 p.m.
Chow Hin Yau (R.F.A.) P.W.2.
Evidence-in-chief continued.

When drafted guarantee I was acting for Pao's as a friend and not professionally. I protected their interests in capacity of a friend.

Cross-examination:

1. In 1973 you were good friend of Pao family?
Yes.
2. To-day how can you remember so vivid a lunch in 27/2/73?
The date approx. So were number of people at the party.
3. Can't tell document a month before?
No.
4. When directed mind to case?
At commencement of action.
5. That is months later?
Yes.
6. What prompted you to remember?
I went through the papers.
7. Look at Exhibit B, why so certain never saw it before at 27/2/73?
That's because I saw only one document on that day.
8. Could make a mistake?
No. I never saw it in February 1973.
9. Based on recollection 14 months later?
Yes.
10. Brain washed?
No.
11. Look at Exhibit C, is this the document you saw?
Yes.
12. Was there a duplicate to it when you saw it?
No. I saw only one. Can't say if original or copy.
13. Did you see this man (Lau Kam Ching) on 27/2/73?
I can't remember that day. Might have seen him later.
He's younger brother.

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Exhibit B

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Exhibit C

- | | | |
|-----|--|--|
| 14. | How know he's younger brother?
May be afterward when he came for title deeds. | <i>In the Supreme
Court of
Hong Kong
Original
Jurisdiction</i> |
| 15. | When?
After transaction in May 1973 or when Co. changed name
to Jack Carter. | <i>Plaintiffs'
Evidence</i> |
| 16. | Met him on 27/2/73?
He might be there but I can't remember. | No. 4
P.W.3
Chow Hin Yau
Cross-
examination |
| 17. | When Pao asked you to lunch always be business?
No. Sometimes just a chat and lunch. | <i>(continued)</i> |
| 10 | 18. On that occasion when was invitation given?
Before lunch. | |
| 19. | You must be interested in Exhibit C when read it?
No. | <i>Exhibit C</i> |
| 20. | Was not Shing On your clients?
Yes. | |
| 21. | Hastings selling its flats?
Yes. | |
| 22. | Were you not interested in firm's practice?
I don't mind. We have been friends for so many years.
We are not instructed to sell. | |
| 20 | 23. Did Pao told you that day about the guarantee?
No. No mention of any guarantee. | |
| 24. | Look at Exhibit A-20, did you contact Mr. Pao?
Can't remember if I rang Pao or Mrs. Pao. | <i>Exhibit A-20</i> |
| 25. | But say in evidence in chief say talked to Mrs. Pao?
I telephoned but can't remember whether Mrs. Pao or Mr.
Pao who might not be in office. | |
| 26. | Why not insist on Mr. Pao?
The same. | |
| 30 | 27. Look at A-21, your instructions from Mrs. Pao only?
Yes. | <i>Exhibit A-21</i> |

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Plaintiffs'
Evidence*

No. 4
P.W.3
Chow Hin Yau
Cross-
examination
(continued)

10

Exhibit A-22

20

Exhibit B

30

28. Who were your clients?
The Tsuen Wan Shing On Investment Ltd.
29. Shares not to be issued to that Co., can you explain?
That what I was told.
30. How could Ltd. Co. asked for guarantee?
I was so informed.
31. You know far more about this matter?
No.
32. Instructed to ask for guarantee for 4,200,000 shares?
I don't know. Pao's told me for sake of convenience for shares to go public to consult Yung, Yu, Yuen & Co. also. That's why papers not in our possession.
33. Look at Exhibit A-22, did you have copy of agreement referred in last para.?
No. I merely rang Mrs. Pao to convey their refusal.
34. Anyway you knew there was an agreement?
Up to that stage we had no copy of the agreement.
35. Could get copy from Yung, Yu, Yuen & Co.?
At that time she was very nervous and feared I had sent title deeds to Yung, Yu, Yuen & Co. That's why I wrote at once.
36. But Yung, Yu, Yuen & Co. said instructed by Tsuen Wan Shing On?
Yes. But I trusted the Pao.
37. Who's your client?
Tsuen Wan Shing On.
38. How do you spell Pao?
P.A.O.
39. Is that why the amendment on 27/2/73 in Exhibit B?
I did not amend it.
40. You were there, saw Exhibit B and advised amendment?
No. I never saw Exhibit B.

Re-examination:

I see Exhibit A-4 the Paos were spelt with a "B" i.e. "BAO". If a legal document describe Pao as Bao and I am asked to read it. I'll ask for I.D. Card.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Plaintiffs'
Evidence*

Pao Lap Chung (Affirmed) P.W.4.

No. 4
P.W.4
Pao Lap Chung
Re-examination

10 Of 1B Mei Fu Sun Chuen 8th floor Kowloon. I'm 3rd plaintiff. Son of 1st plaintiff and 2nd plaintiff. At one time a non-executive director of Tsuen Wan Shing On Investment Ltd. I took no part in negotiations between Shing On and Fu Chip for takeover. Parents tell me.

I see Exhibit C. I identify my signature. I signed on 27/2/73 at Golden City Restaurant, 1st floor. My parents went first I joined them after my work. That's the only one I signed.

Exhibit C

I see Exhibit B. I identify my signature. I signed it on same day at Golden City but not on 1st floor. It's after lunch on ground floor that I signed it.

Exhibit B

20 After signing Exhibit C we continued lunch. Then we left together. On ground floor Lau Yiu Long told me not to leave yet as his brother was bringing another document. I was in a hurry to go back to Tsuen Wan. No sooner than Lau finished asking Lau Kam Ching came with a document saying that it was a mutual guarantee which he had to rush to Far East Exchange. Exhibit B is that document.

My English standard up to Form 2 or Form 3. I did not read it since Lau Yiu Long said it's urgent and my father and mother signed it. So I also signed. Prior to this Lau Kam Ching was not at the table with us.

After signing Exhibit B I left for Tsuen Wan. Did not know where parents went. I never went to Wing On Securities Co. after lunch on that day. Never signed any document at Wing On Co. that day.

30 On 4/5/73 I went with parents to Yung, Yu, Yuen & Co. I see Exhibit A(37-38) and Exhibit B — also Exhibit A-39. Exhibit A(37-38) Guarantee signed by Lau. Exhibit 39 Guarantee signed as Exhibit B cancelled agreement.

Present:

Self, father, mother, Chan, Lau Yiu Long and Lau Kam Ching and Philip Yuen who explained documents to us. Then Guarantees signed and Exhibit B cancelled.

Then all went to Charles Marfan for share scrips.

Cross-examination:

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20

30

1. Where lunches on Thursday 10/7/75?
Can't remember clearly.
2. In 1973 you were an authorised clerk in Kam Ngan Exchange of Wing On Security Co.?
Yes.
3. You were actually trading in February 1973?
Yes.
4. February 1973 was height of share market?
Yes.
5. You were very very busy?
Yes.
6. Why went back to Tsuen Wan in afternoon?
At that time, no afternoon market.
7. No market to enable you to clear booklog?
Yes.
8. Why returned to Tsuen Wan?
Once I handed back the trading notes to Wing On I finished my work.
9. You went back to Wing On to sign four documents?
Not so. Signed 2 in Golden City Restaurant.
10. You only signed one document on ground floor?
Yes.
11. Before signing read it?
No.
12. Knew what you were signing?
Lau said it's mutual guarantee. Besides, I respected father's idea.
13. If father acted like a fool, you as son protect him?
Yes.
14. Shouldn't you try to read document first?
Father trusted Lau Yiu Long and took his word for it. I could sign it if he did.
15. If he's a fool you joined him?
He's normal and he's no fool in signing it.

16. Sure you signed without reading it?

Correct.

17. No amendment made thereon?

No.

18. Remember clearly none?

Right.

19. Only signed one on ground floor?

Yes.

20. Look at Exhibits B and B1, compare them see signature on both?

Yes.

21. Exhibit B and B1 identical copies?

Yes.

22. When did you sign the other?

Can't remember.

23. Look at Exhibit B1 — Page 1, your name typed Bao, who changed it to Pao?

I don't know.

24. You initialed it (amendment)?

Not my initial.

25. Who initialled?

My father.

26. Left with father?

No. On that day, after I signed. I left first.

27. You were last one to sign?

Yes. I left soon after I signed.

28. Look at Exhibit B when did you sign it?

Can't remember.

29. Amend?

Can't remember.

30. Compare Exhibit B and B1, signed your name by same pen? Looks like it.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Plaintiffs'
Exhibit*

No. 4
P.W.4
Pao Lap Chung
Cross-
examination
(continued)

Exhibits B & B1

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*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Plaintiffs'
Evidence*

No. 4
P.W.4
Pao Lap Chung
Cross-
examination
(continued)

31. So's your father's signature?
It does not.
32. Mr. Lau's?
It does not.
33. Was any further party suppose to sign either one of B or B1?
I don't know. Only concerned with my own signature.
Once I signed I left.

Re-examination — Nil.
Plaintiff's evidence.

10 Zimmern:

Not to open
Call witness.

Chu Wing Cheung (Affirmed) D.W.1.

Of 58 King's Road, 13th floor Flat B. I am a certified Public Accountant employed by Charles Marfan & Co. Been so employed since 1952.

I know 1st defendant, Lau Yiu Long. In February 1973 I acted for him in connection with the listing of shares in Fu Chip Investment Co. I have file connecting with certain acquisitions — Prospectus Acquisitions etc. Fu Chip Investment Co. Ltd.

20

I see Exhibit C, I find, in my file, a copy of Exhibit C. This copy came to my possession about time of take over of Shing On. Reading a letter dated 7/3/73 it appears that this copy in question must have reached me before 7/3/73. I produce it.

Exhibit C

Copy of Exhibit C — Exhibit C1.

Once Exhibit C1 reached me it had been kept in file and I had possession of file always.

On Exhibit C1 some writings in red and green ink. Those were mine.

30

Adjourned to 10 a.m.

Sgd. Simon F. S. Li

Re-examination:

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

I see Exhibit A-4 the Paos were spelt with a "B" i.e. "BAO". If a legal document describe Pao as Bao and I am asked to read it. I'll ask for I.D. Card.

*Plaintiffs'
Evidence*

Pao Lap Chung (Affirmed) P.W.4.

No. 4
P.W.4
Pao Lap Chung
Re-examination

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Yes.
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Yes.
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Yes.
6. Why went back to Tsuen Wan in afternoon?
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7. No market to enable you to clear booklog?
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11. Before signing read it?
No.
12. Knew what you were signing?
Lau said it's mutual guarantee. Besides, I respected father's idea.
13. If father acted like a fool, you as son protect him?
Yes.
14. Shouldn't you try to read document first?
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*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Plaintiffs'
Exhibit*

No. 4
P.W.4
Pao Lap Chung
Cross-
examination
(continued)

Exhibits B & B1

10

20

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*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Plaintiffs'
Evidence*

No. 4
P.W.4
Pao Lap Chung
Cross-
examination
(continued)

31. So's your father's signature?

It does not.

32. Mr. Lau's?

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I don't know. Only concerned with my own signature.
Once I signed I left.

Re-examination — Nil.

Plaintiff's evidence.

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Call witness.

Chu Wing Cheung (Affirmed) D.W.1.

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I know 1st defendant, Lau Yiu Long. In February 1973 I acted for him in connection with the listing of shares in Fu Chip Investment Co. I have file connecting with certain acquisitions — Prospectus Acquisitions etc. Fu Chip Investment Co. Ltd.

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Exhibit C

Copy of Exhibit C — Exhibit C1.

Once Exhibit C1 reached me it had been kept in file and I had possession of file always.

On Exhibit C1 some writings in red and green ink. Those were mine.

30

Adjourned to 10 a.m.

Sgd. Simon F. S. Li

Resume 10 a.m.

Gittins: No cross-examination of Chu.
But ask for file to be made Exhibit.
File produced by counsels — Exhibit F.

Lau Yiu Long (Affirmed) D.W.2.

Of Wan Fung Building, 13th floor Flat C-1 at 152 Tin Hau Temple Road Hong Kong. Land investment merchant. Have known 1st plaintiff and 2nd plaintiff since middle of 1971.

10 Prior to transaction in question had other transactions with them. I used to buy and sell shares through their Wing On Securities Co.

In early 1973 I was chairman of Board of Fu Chip. For first time then Fu Chip shares quoted in Stock Exchanges. I see Exhibit D, and say on day it was published I was in Hong Kong. But I was away soon after. On 10/2/73 I went to Macau. Returned on 11/2/73. On 12/2/73 I went to Tai Wan and returned on 19/2/73.

I see document which is my passport. I find relevant entries in in respect of those two trips.

(Gittins agreed as to those dates).

20 On return from Tai Wan I met Mr. Pao on either 20/2/73 or 21/2/73. Pao called at my office to see me. Can only remember important fact. Pao asked me how, as a friend, I failed to notify him as to listing of our shares and that as we were friends he could have been counted in the game. He said that had I notified him beforehand he could have his Wing On Building included in whole scheme. I said I could do nothing as everything had already been completed and that if he still felt interested we could talk about it after listing and then by way of takeover. Pao suggested that on the day of listing I should go to Wing On Co. so that he could watch the market for me. That's all in that meeting.

30 Fu Chip first listed on 23/2/73.

I was already in Wing On before 10 a.m. I went because of Fu Chip shares being listed first day and I wanted to watch the market. I bought Fu Chip shares that morning. I see Exhibit E and say that the first 4 copies all bought notes of Fu Chip shares.

40 After close of market on that day I asked my wife to ring Mrs. Pao. We arranged to meet at lobby of Peninsula Hotel. Mr. and Mrs. Pao, self and my wife met. The purpose was to discuss matter of taking over Tsuen Wan Shing On. I told them as result of our talk the other day I was keenly interested in the take over. I inquired into his intention and ask him to tell me the situation of the building in Tsuen Wan. Mr.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

No. 4
D.W.2
Lau Yiu Long
Examination

(continued)

Exhibit D

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

No. 4
D.W.2
Lau Yiu Long
Examination
(continued)

10

and Mrs. Pao gave detailed account as to situation of building viz. there were 70 odd domestic units all of which had been sold except the 2 units on the top floor, business units on 2nd floor and ground floor had not yet been sold.

I asked for their price. Pao told me that Kieu Fung Sau Kee offered \$8 million and he refused. I asked how much he wanted. He said he would let me know after he worked out the figures.

From the Peninsula the Paos went into our car to go to the site of Wing On Building. It's quite dark. We just had a look outside building. We went back to town and sent the Pao's home. No price was mentioned on route. He arranged to meet me at Wing On on the next day. During the trip no mention was made of the mode of buying the building.

20

On 24/2/73 we met at about 11 a.m. in Wing On Co. I saw both Pao and Mrs. Pao. I asked them the price and he gave it as \$11,000,000. I asked how he worked out that figure to be worth that much. He said he had to work it out again. That morning the mode of transaction was discussed I made it clear it would not be a cash transaction but by allocation of shares. Both had no objection. Before I left I told Pao that he should work out price quicker as I was taking over 3 other building site in the scheme and hope our transaction could be included in time together. Said we were businessmen and had to make decisions quickly.

30

On my return shortly Pao rang me saying he would come to see me. Pao arrived with brochures concerning sale of his building in Tsuen Wan. Also written on a piece of paper setting out prices for the upper floor units and ground floor units together with the prices of units already sold. All these figures added up to \$10,800,000. Also written was that such figure included his undertaking to account for the deposit collected in respect of the units already sold. I replied that the price was clear but I must discuss it with my brother Lau Kam Ching and would meet him following Monday.

40

On following Monday, 26/2/73 we met. We talked about the price. I first offered \$8.5 million. They declined. Mrs. Pao wanted \$11 million. I refused because even figure they worked out was \$10.8 million. Then Mrs. Pao suggested \$10.8 million. Hackling took place and eventually agreed upon figure of \$10.5 million and that payment to be made by way of allocation of shares valued at \$2.50 each. It took only half an hour to reach this agreement. I was anxious to acquire and they were anxious to sell. After agreement reached Mrs. Pao told me she had licence as stock broker and in future we could join to be banker in a game. At that time we were all in high spirit. We met again that afternoon to talk of details of the transaction. I suggested that the share allocated to them should not be sold for one year as to 60%. I gave them the reason.

— that as major shareholder they must support the shares. They were well pleased saying that we were in same boat and hope boat would float.

Then Mrs. Pao asked what happened if shares dropped below \$2.50. I shall I could sign agreement with her to my back the shares at \$2.50 after one year. Both Mr. and Mrs. Pao agreement. Then Pao and I went to see Mr. Yam at Yung, Yu, Yuen & Co. I gave an account to Yam of take over by Fu Chip of Shing On Co. Yam was instructed to prepare two agreements — one for take over of Shing On by Fu Chip by issuing 4.2 million shares of Fu Chip to acquire on shares of Shing On Co.

10

I made clear that tender had to pay for balance of construction costs for Wing On Building — the only asset of Shing On. Also 60% of the shares i.e. 2,520,000 shares of Fu Chip should not be sold within one year. Wing On Building to be completed by the end of June 1973.

The other agreement was that I undertook to buy back from Mr. and Mrs. Pao the \$2,520,000 issued to them at \$2.50 each at the end of one year.

Pao On was present throughout the time I gave these instructions. Yam asked me for specific day. After same discussion we, Pao and I agreed to date to be 30/4/74. Yam repeated all my instructions to us and asked us if that was agreed. Neither Pao nor I objected.

20

I asked Yam when could we signed. Yam said next morning. I asked Pao if alright to sign document at Yung, Yu Yuen & Co. Pao said no and asked me to have tea with him on 4th floor at Golden City Restaurant before 1 p.m. and that I should bring the 2 agreements so that he might show them to Chow Hin Yau of Hastings.

On following morning I and Lau Kam Ching went to Yung, Yu, Yuen & Co. about noon. Yam gave me 4 copies of documents (originals and copies). From there we went to Golden City Restaurant. Before we left Yam explained contents of documents in detail.

30

On arrival at 4th floor of Golden City I saw Pao and Mrs. Pao and others already at the table. All friends of Pao. I handed all 4 documents to Pao. Pao handed them all to Mr. Chow who was introduced to me. Chow was the one who gave evidence yesterday. Chow then proceeded to explain the documents in great details, sentence by sentence to Mr. and Mrs. Pao. In all it took about 20 minutes. But none of the documents was signed there. Throughout that lunch Lau Kam Ching was present.

40

After lunch we followed Pao back to Wing On Co. However, I told Pao to wait for a while on ground floor so that Lau Kam Ching could go back to Wing Lok Street to get the rubber chop. We waited there for about 15 minutes. At that time documents were in Pao's possession. On Lau Kam Ching's return we all walked to Wing On — me, Kam Ching, Mr. & Mrs. Pao and Pao Lap Chung.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

No. 4
D.W.2
Lau Yiu Long
Examination

(continued)

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

No. 4
D.W.2
Lau Yiu Long
Examination 10
(continued)

At Wing On Pao handed the documents to Chan Kwai Wah to read. I knew Chan Kwai Wah. Chan explained generally an outline of such documents. Then we, five of us, signed the documents.

I see Exhibit B, I identify my signature therein. I also identify my signature therein. Also my signature on Exhibit C1. I also identify the signatures of Exhibit C1 as those of Mr. Pao, Mrs. Pao and Pao Lap Chung. I see a seal in middle of page in Exhibit C and say it was applied at the time of signing the documents by Chan Kwai Wah. He applied the seal to 2 documents. After signing the documents returned to me and I at once took them to Mr. Yam of Yung, Yu, Yuen & Co. I got copy of take over agreement to be taken to our accountant Charles Marfan.

20 Subsequently saw the Pao's often. On 27/3/73 I went to Wing On to watch the market. I inquired if work on Wing On Building completed. Pao said it's been completed but no occupation permit yet. Pao then suggested an extension of one month. I said no problem because Far East Exchange to deal in the allocated shares had not yet been approved. So I instructed Yam to draft extension indorsement. Made appointment to have Mr. & Mrs. Pao and Pao Lap Chung to go to Yung, Yu Yuen & Co. to sign the indorsement for extension. It was duly signed in presence of Yam.

Exhibit 13

I see Exhibit 13, I was notified of the contents therein on 2/4/73. I at once notified Mrs. Pao by phone and express my hope that completion of our transaction would take place at an earlier date. Mrs. Pao said she would inform Pao. A day or two later I phone Mrs. Pao again. She said Pao had not quite resolved yet and was still thinking the matter over. I asked her to discuss the matter with him and let me know their decided date for completion.

30 I waited for another week and still had no news. I made many phone calls everywhere to locate Pao. I tried Tin Shin Goldsmith, Sai Sing Goldsmith, Wing On and Pao was not in any of these places. I even telephoned his own home as late as midnight. His servant either he's out to social engagement or at a meeting. Could not contact him. But never told that Pao went away.

40 Then on 16/4/73 or 17/4/73 I went to Wing On Co. and saw Mrs. Pao. I asked her about the date of completion. She said that it's for Pao to decide and Pao was away from Hong Kong. She also requested that I should give a guarantee in respect of the 40% of shares which she could sell at once that such shares should not fall below \$2.50 each within one year. I refused since we had already signed two agreements. I reminded of the agreement concerning the take over and my contract to buy back 60% of the shares was good enough. She said she knew no English and thus blindly signed the agreement about the 2,520,000 shares. Immediately I rebutted that she's in real estate business and that she signed many contracts of such nature and she signed after Chow ex-

plained to her. She insisted I had previously guarantee the price of the 40% as well. No result I left. I at once went to Yuen Pak Yiu to discuss this business.

*In the Supreme
Court of
Original
Hong Kong
Jurisdiction*

Exhibit 20 was sent on my instructions I saw Mrs. Pao again on 24/4/73 and I asked her why title deeds had not been turned over after our letter in Exhibit 20 dated 19/4/73. She said there could be no transaction unless I gave her a guarantee that the 60% of shares she's not allowed to sell in one year should not fall below \$2.50 each within one year. Again she said I had already agreed with her on that.

*Defence
Evidence*

Exhibit A20-22

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I see Exhibit A-21, letter from Hastings to Yung, Yu, Yuen & Co. dated 25/4/73. Yuen, solicitor, personally explained contents to me: I gave instructions of him to reply which is in Exhibit A-22 dated 27/4/73.

No. 4
D.W.2
Lau Yiu Long
Examination

(continued)

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For rest of April I did not see the Paos again. But instructed Yung, Yu, Yuen & Co. to remind Paos of completion date of transaction. For the same period, however, I saw their employee Chan Kwai Wah who came on the 30/4/73 at noon to my office. He spoke to me politely that Pao had return and instructed him to say Pao was willing to complete the transaction but only on condition that Fu Chip would guarantee the 60% of shares he's not allowed to sell in one year should not fall below \$2.50 each in one year. I flew into a rage at once. I said a few days before Mrs. Pao asked to have guarantee for 40%, then 2 days ago, I receive a letter requiring guarantee of 100% and now you want it from Fu Chip for 60% obviously. They were making things difficult. Chan Kwai Wah then said in nice way that I was not to bother about a woman's talk. I told Chan that it was the last days for the completion and if Pao did not complete I would sue him. Then Chan left.

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Adjourned to 2.30 p.m.

Sgd. Simon F. S. Li

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

No. 4
D.W.2
Lau Yiu Long
Examination
(continued)

Resume 2.30 p.m.
Lau Yiu Long (R.F.A.) D.W.2.
Evidence-in-chief continued.

10 On 1/5/73 I went in morning, to Wing On Co. where I saw Pao. I said to him: "As friend you should not make things so difficult for me. The matter of take over of that building published in the papers, approval to deal given by Exchange. Without completion Fu Chip can't take over the building. That will be bad news in the market. Society will lose confidence in my shares and they will be bound to slump tell me what I can do". Pao was very heated and said "At any rate I won't complete the transaction short of the guarantee". Probably he referred to the one previously mentioned. He said "Are you going to sue me? By all means. I have no fear because I received not a cent of deposit from you." I said: "If I sue you I am forced to do so".

20 Did not see them on 2/5/73. But in morning on 2/5/73 Chan Kwai Wah came to see me in Fu Chip office. Chan said he hope that we would settle the matter. As an employee he did not want to see his boss in law suit. If a guarantee was needed it would settle matter. I said impossible to settle the matter. He said once there's law suit there's nothing to gain. Consequence too obvious. He said as for the guarantee let us not talk of Fu Chip. All that's required was a guarantee that 60% of the shares should not fall below \$2.50 within a year but all 5 directors of Fu Chip should sign it. I said definitely it would not work. I said the existing executor directors were self and brother. The other 3 directors each held only 100,000 to 200,000 shares. They would certainly not be prepared to guarantee involving millions. Chan agreed and said he would talk to Pao.

30 Same day Chan came to my office as again in the afternoon. He said that Pao had agreed to both me and my brother only signing. In addition he raised 2 other requests viz: the name of Wing On should not be changed and that the completion of these units sold through Hastings should be done in Hastings and by Mr. Chow. I said I would give a reply after I consulted my brother Lau Kam Ching.

I did consult Lau Kam Ching and explained the situation to him that we had been cornered and had no alternative. My brother said: "Do as you please". I met Chan on 8/5/73 when he come again about 11.30 a.m. I raised no objection to giving Chow the job but could not have it in document to be prepared by Yung, Yu, Yuen & Co. Chan agreed to pass on message.

40 In the afternoon on 3/5/73 Chan came and said there was no problem. I went with him to see Yam. I told Yam of the additional request about the Guarantee. Yam at once typed out draft along the line I told him for Chan to take it back. Arranged to meet him at Yam's office the next day after he shown draft to Chow.

On 4/5/73 met Chan at Yam's office. He took with him a new draft prepared and handed to Yam. Yam changed few words and typed a 3rd draft for Chan. About 2 p.m. Chan came with yet another new draft. 4th one — to hand to Yam. Yam still disagree with wording but this time he made no alteration. He took it to Mr. Yuen for perusal. Chan rang Pao. Then Yuen spoke to Pao who was invited to go to Yung, Yu, Yuen & Co. to talk, Pao came with his wife and son.

*In the Supreme
Court of
Original
Hong Kong
Jurisdiction*

*Defence
Evidence*

No. 4
D.W.2
Lau Yiu Long
Examination

(continued)

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That was the first time when both side before a solicitor in connection with the subject matter. In their presence Yuen made certain alterations to Chow's draft and explained contents to them. Mrs. Pao insisted on a guarantee by Fu Chip.

I see Exhibit A(37; 38). This is copy of the document I signed on that day. At the time I was unhappy about the requirement that Fu Chip should join in the guarantee. Yuen explained that Fu Chip, could not give such a guarantee for reasons I can't remember. After Exhibit A-(37; 38) signed I suggested going to Charles Marfan to complete the transaction and that plaintiffs should leave 60% of the allotted shares with Charles Marfan.

*Exhibit A37 &
A38*

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Before we signed Exhibit A-(37; 38) both the plaintiffs and we signed for the cancellation of the agreement for sale of 2,520,000 shares — i.e. Exhibit B and Exhibit B1.

Coming back to deposit of shares Mrs. Pao insisted on taking the 60% as well. I suggested one scrip for 2,520,000 shares. She insisted on board-lot scrips. I suggested an indorsement. I was displeased and was choked. I pointed out that if she chose to buy and sell in big quantity. I would be ruined because shares bound to drop.

I see Exhibit A-39, it signed by the Pao's to satisfy me.

Exhibit A-39

Then all of us went to Marfan's office.

30

I see Exhibit A-34, 35. It set out item Co. seal — It's seal of Shing On Co. I obtained possession of that seal after Pao took delivery of the shares. We went to Wing On to delivery of the articles.

*Exhibits A-34 &
A-35*

To Court:

Had Exhibit B not been cancelled I would not intend to ask them to sell to me before end of April 1974. I did not give matter a thought.

Cross-examination:

D.W.2
Lau Yiu Long
Cross-
examination

1. Agreed Mrs. Pao a formidable business woman?
I agree.

2. Mr. Pao a very successful business man?
I agree.

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*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

No. 4
D.W.2
Lau Yiu Long
Cross-
examination
(continued)

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Exhibit A-36(C)

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3. Pao very anxious to acquire a large chunk of shares in a public Co.?
I agree.
4. At that time preferable to hold shares than to hold cash as Mrs. Pao agreed?
I also agree.
5. Many people held that opinion?
Yes.
6. You also of that opinion?
Yes.
7. Share prices going strongly upwards?
Yes.
8. Most felt the prices would continue to go up and not down?
Correct.
9. Look at Exhibit A-36(C) announcing Fu Chip's acquisitions and for Tsuen Wan Shing On for \$10,500,000 to be paid in shares?
Yes.
10. 5¾ millions for Shing On Street property?
Yes.
11. Then announce valuation of Hong Kong auctioneers as to proper price?
Yes.
12. Regarded as proper price?
Yes.
13. Fair, even if payment made in cash and not in shares?
Correct.
14. If you were seller of property for 10½ millions in each how would you view if 60% of the purchase price were deferred for one year?

If sale of one flat for \$100,000 of which \$60,000 deferred for one year I would not go into it.

In short, no.

15. Take Exhibit B and C together, they mean plaintiffs unable to realise 60% of their proceeds of sale for one year?

Yes.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

16. Take Clause 1 of Exhibit B plaintiffs can't mortgage the shares and must hand over all rights accrued before or after signing of agreeing?

It should not be so. Should be after the signing. I should not get dividend after signing but before completion. I had not paid yet.

*Defence
Evidence*

No. 4
D.W.2
Lau Yiu Long
Cross-
examination

10 17. According to Exhibit D your forecast dividend was 8.5 cts. per share?

Yes.

(continued)

18. By Exhibit B sale price fixed at \$2.50 per share?

Right.

19. No provision made for payment of interests to Vendor for freezing their shares and for being deprived of the dividends? When I signed this contract I never thought of such unreasonable arrangement whereby vendors should be deprived of dividends before I paid. Nor had I given any instruction so to do.

20 20. Apart from that, if shares drop below \$2.50 each in value all the vendors have is a right of action because there's no guarantee?

I disagree.

21. Why?

The \$2.50 per share is my guarantee.

22. What if you should refuse to honour the agreement?

Then I'm in the wrong they ought to sue me.

23. Thus on right of action?

Yes.

30 24. Look at Exhibit A-8, you signed before solicitor Yuen?

No. Not signed before Yuen.

25. You had the contents interpreted to you by Yam in details?

26. What is effect of these two agreements to plaintiffs is that they part with all 4,000 shares in Shing On to Fu Chip?

Yes.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

No. 4
D.W.2
Lau Yiu Long
Cross-
examination
(continued)

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Exhibit B

27. In return they get 4.2 million shares of Fu Chip?
Yes.
28. They can sell 40% at once?
Yes.
29. As to 60% of shares representing \$6.3 millions they had to wait one year?
Yes.
30. Precisely the type of transaction you would refuse?
But the seller has never pointed the unreasonable point as counsel described.
I did not press this on them. Did not deliberately treat them in that way until pointed out to me just now.
31. You do know of the unreasonableness in this contract or what way did you not see?
That's getting their dividends before payment to buy the shares.
32. And the bargain you would not accept yourself?
I am not talking about the transaction of about the house. But we're talking about shares which is reasonable.
33. Some because shares not sold for one year same?
No. Cash is definite and can't increase but shares can go up in value.
34. That's advantage of taking shares in price?
Yes. Probably that's why Pao agreed.
35. That being so can you imagine a formidable business people as the Paos would freeze their share value at \$2.50?
To my mind Pao thought with 40% of shares would enable him to have few transactions plus playing bank to and fro he could make big money i.e. manipulate the market.
36. You suggest Pao was going to play bank or your own thought?
In fact Mrs. Pao suggested the joint venture with me.
37. Pao signed Exhibit B without knowing the contents and thought it was a guarantee? And contents never explained to them?
I disagree.

Adjourned to 10 a.m.

Sgd. Simon F. S. Li.

19.7.75 10 a.m.

Court resumes as before.

Lau Yiu Long (R.F.A.) D.W.2.

Cross-examination continued.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

No. 4
D.W.2
Lau Yiu Long
Cross-
examination
(continued)

10

38. Said on 26/2/73 you and Pao agreed on price to be \$10.5 million?

Yes.

39. Then in same afternoon went into details of transaction including your suggestion that 60% of Fu Chip not to be sold in one year?

Yes.

40. You gave reason and advantages in this suggestion — not to depress market?

Correct, if sold in bulk.

41. This was after price of \$10.5 million had been agreed upon?

Yes.

42. This suggestion of yours meant plaintiffs suffered some impairment of the rights in the price?

Correct.

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43. At that stage Mrs. Pao at once raised the question of guarantee?

No.

44. If there was no guarantee no incentive for them to accept an impairment of their rights to the agreed price?

She were asked what happened if in one year the shares drop in value below \$2.50 each. I said if she had that fear I would enter into an agreement to undertake to buy back shares in one year's time. She did not mention guarantee.

30

45. A request for guarantee would not affect the retention of the 60% as your condition?

Correct.

46. In discussing terms of the deal you agreed to indemnify plaintiffs if shares dropped below \$2.50 per share?

No such time. Even last question 45 is hypothetical.

47. Further, in addition to guarantee you were given option to buy back at \$6,300,000?

That was on 4/5/73.

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48. They asked for guarantee at negotiation and you agreed?
Not correct.
49. On 27/2/73 you told plaintiff that Exhibit B was the guarantee and plaintiffs signed without explanation?
No.
50. On Exhibit B as it stood it did not make commercial sense to a business person?
I disagree.
51. Effect of Exhibit C was that Fu Chip would at once get 3.9 million from Shing On?
Agree. But they also got 42 million Fu Chip share at value over \$3 each.
52. What would be effect on you if plaintiffs refused to carry out the terms of Exhibit C?
Very serious. By that time Fu Chip shares on market and had more than 2,000 shareholders. After we made announcement of the acquisition value of shares went up several 10 cents. It showed that the take over gave general impression assets of Fu Chip enhanced. If the deal falls then public would think problem exist in Co. and lose confidence in Fu Chip shares.
53. The share went up 10%?
Yes. Not only because of take over but also because of general condition. But if Fu Chip fails to take over then a very bad news the drop would exceed 20 cents. If falls through Pao lost nothing I would lose a lot. She knew that I bought lots of Fu Chip through her.
54. You know that according to Exhibit C, Fu Chip can sue plaintiffs for specific performance?
Correct. But I would have suffered loss as result of collapse just the same.
55. Share value nothing to Fu Chip?
But would have disastrous effect on my holding or other peoples'.
56. You bought and sold Fu Chip shares at the time?
I went in too late. I had time to buy but not to sell.
57. Had you not sold any Fu Chip shares at all in March 1973?
Can't remember. Even if I did small amount.

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58. The acquisition was to boost the value of Fu Chip shares?
That was our hope.

59. Your buying of large amount of Fu Chip shares was to sell
them later for profit?

Yes.

60. Your buying on 23/2/73 was to push prices up?
Members got placement would sell. I only support the price.
I knew Fu Chip not worth \$3 each then. But in those days
it was a blind chase.

61. Your original holdings cost you no more than \$1 each?
More. At that time I had 2 construction site — advanced
sale of flats had been affected — profit already made. These
2 properties incorporated into Co. These would be worth
\$3 million but they were valued at \$2 million.

62. You put in assets at an under value?
That was true. Can be substantiated by figures.

63. Did you bought a lot of Fu Chip share after 23/3?
Yes.

20

64. Was that not for pushing their price up?
Two reasons for 2 periods.

65. Late February and early March 1973?
In that period, buying to push up market to sell at profit.

66. Pushing up without regard to real asset of Co.?
Correct.

67. Look at Exhibit C and Exhibit A-39, if the Pao sell in breach of Exhibit C, Fu Chip can sue but you can't?
Correct. You have no right of action.

68. Nothing you can do?
Correct.

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69. Look at Exhibit A-39 now, this is a guarantee by plaintiffs
to you and Lau Kam Ching?
Yes.

70. It was in consideration of your guarantee that plaintiffs gave
their guarantee to you not to sell the 60% for one year?
I don't think this restriction has anything to do with my
guarantee. Plaintiffs already bound by Exhibit C.

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71. This is for your benefit?
No. On contrary Exhibit A-39 to my detriment. Drafted by solicitor on Pao's instructions.
72. Upon Exhibit A-39 you do have personal rights and remedies?
Correct.
73. That's if there's any breach by plaintiff of Exhibit C you have personal remedy by Court action or by repurchase?
Correct.
74. These are personal benefits you have gained?
I do not regard these are my benefit. I feel I enjoy my benefit at all.

To Court: Even if my guarantee not counted I still regard no benefit.

Reasons:

If market rises above \$2.50 plaintiff could sell whole lot of 4.2 million shares then plaintiff has nothing to sell. If falls below \$2.50 and plaintiff sells no use for me to buy back at \$2.50.

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75. If market slip because of plaintiffs selling those 60% then under Exhibit A-39 plaintiffs liable to compensate you for any loss you suffer?
To my simple mind, it looks like an advantage.
76. By getting this Exhibit A-39 you obtained good bargain?
No. It's not a good bargain for me.
77. You were well looked after by solicitor?
No. The solicitor very fair and just.
78. Because he's fair and just this benefit given to you because of your guarantee?
Not that. After I was forced to give guarantee there was dispute as to where share of 60% he kept and Exhibit A-39 then signed as compromise.

Exhibits 37-38 30

79. You say discussion as to where the 60% of scrips be kept after you signed Exhibit A-37-38?
Correct.
80. You emphasise the importance as to you kept them?
Yes.
81. Why was there no provision for that in Exhibit C?
I did not think of that at the time.

82. At Yung, Yu, Yuen & Co. thought of further protection?
Yes.
83. You thought about further protection required only after Mrs. Pao given evidence?
Absolutely not. Also present was Mr. Yam and solicitor Yuen. This was not put to Mrs. Pao when she gave evidence.

In the Supreme Court of Hong Kong Original Jurisdiction

Defence Evidence

No. 4
D.W.2
Lau Yiu Long
Cross-examination
(continued)

Adjourned to 10 a.m.

Sgd. Simon F. S. Li

10 Lau Yiu Long (R.F.A.) D.W.2.
Cross-examination continued.

84. In February/March 1973 you bought shares of Fu Chip to boost price?
Yes.
85. You were chairman of Fu Chip?
Yes.
86. Fu Lai also bought Fu Chip shares?
Yes.
- 20 87. Common purpose of you and Fu Lai to buy to boost up price?
88. Lau Kam Ching one of major shareholders of Fu Chip?
Yes.
89. He also bought Fu Chip shares for same purpose?
I must clarify that the one million shares held by him at time of listing entrusted to him by Fu Lai and not his.
He did buy for same purpose. The subsequent purchase for himself.
90. Are Chow Chi Chik as director held 960,000 shares his?
Yes.
- 30 91. Did Chan buy to boost up Fu Chip share prices?
That I don't know.
92. This boosting a considered move of your 3 parties?
Yes. In fact I made that decision.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

No. 4
D.W.2
Lau Yiu Long
Cross-
examination

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(continued)

Exhibit A-39

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Exhibit A37-38

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93. On your own clarification of Lau Kam Ching's 1 million shares that part of prospectus false?
But at that time he made purchase in his name.
94. On page 15 of Exhibit D Lau Kam Ching held one million shares beneficially that is not true?
Before listening the real position was that Fu Lai made loan to Lau Kam Ching to enable him to buy in his name. Fu Lai gave him a cheque paid into his account. He used money to buy this one million shares.
I now say Lau Kam Ching beneficially entitled to the one million shares.
95. On 4/5/73, Exhibit A-39, on that day when you suggested that the 60% should be lodged with Charles Marfan and they refused you that they were unreasonable?
I did at that time.
96. Then you suggested the 60% be given in one certificate and they refused, considered unreasonable?
I did.
97. You got more and more indignant?
Correct.
98. You suggested their indorsement on certificate and again refused?
Correct.
99. You very indignant?
Yes.
100. Your physical and mental condition was such if plaintiffs did not give Exhibit A-39 you'll explode?
Choked as I was I couldn't do a thing since I signed the previous document Exhibit A-37, 38.
101. Much more likely to say some rude words (like "get loss")?
In fact I did not.
102. That's because you got Exhibit A-39?
No. I was so cornered that I could not do anything. If I had anyway out I would not have signed Exhibit A-37, 38.
103. Was that because you thought you were bound by Exhibit A-37, 38?
No. My fear was that they might refuse to complete the transaction.

104. When Exhibit B was cancelled it was on basis that the parties believed that Exhibit A37, 38 would be executed and would be effective?

On basis that Exhibit A-37, 38 would be executed and that Exhibit B would be contradictory to Exhibit A-37, 38.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

105. True that Exhibit A-37, 38 was regarded by you and other party as a substitute for Exhibit B?

Yes. Again I was forced to do so.

No. 4
D.W.2
Lau Yiu Long

106. You regarded yourself as bound by that Exhibit A-37, 38? Yes. Once I signed it I regard it as binding.

Cross-
examination
(continued)

107. Look at Exhibit A-48, 49 dated 30/3/74 you saw it? Yes. Addressed to my brother.

Exhibit A48

108. No reply made? Yes.

109. Was there similar letter addressed to you? Yes — Exhibit A-48(a) and A-49(a).

*Exhibits A-48(a)
& A-49(a)*

110. There was no mention of threat or duress relating to Exhibit A-48, A49, A-48(a) and A-49(a) until 27/7/74? I agree. The reason why I did not reply was this that I was sure there was going to be a law suit and nothing would clear until then and we would wait law suit began and I believed that since I was compelled to sign that document should be regarded as null and void.

111. When did you have that belief? Shortly after 4/5/73. I was very much aggrieved because I was forced to sign this guarantee. I asked Yuen Pak Yiu for advice as to the way out of the bad situation. Yuen said he would seek advice in an opinion from expert. Then I did not know about this until I obtained counsel's opinion, a retired old judge.

112. On 4/5/73 all Shing On shares had been acquired by Fu Chip? Yes, on that very day.

113. Thus from that day no fear of threat by plaintiffs? Correct.

114. Yet you did not see fit to put your objection to plaintiffs on record? At that time I was still under great apprehension of the Paos till they sue me. I had to be nice to them.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

No. 4
D.W.2
Lau Yiu Long
Cross-
examination
(continued)

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115. You have told Court Exhibit B & C contained all agreements in negotiation?
Yes.
116. The 2 documents must be taken together?
Yes.
117. Yet neither B nor C referred to one another, agree?
They both refer to the 60% of the Fu Chip shares not to be sold and I agreed to buy back the 60%. They refer to same thing.
118. At least one part of Exhibit B not according to your instructions — about getting all dividends before buying?
Correct.
119. Gave evidence about 27/3/73 when agreements agreed to be extended one month?
Yes.
120. Having agreed you went to Yam of Yung, Yu, Yuen & Co. to sign the indorsement?
Yes. Pao's and myself.
121. One of reason for extension was that building not completed?
No. That was trivial. The most important was Far East had not approved of trading.
122. Was issue of occupation permit material?
No.
123. Did you ask Pao when he could get permit?
Yes. He gave no definite answer. Only said very soon.
124. Expect to hear from him?
Can't be known. No one can tell when permit can be issued.
125. As to Exhibit C did you have occasion to obtain copies?
Yes. On 27/2/73 after execution I took original to Yam at Yung, Yu, Yuen & Co. and get him to make photo copy of it and I transmitted the copy to Charles Marfan.
126. Apart from that did you obtain any other copy?
No.
127. The originals all kept in solicitor's office?
Yes.

128. You did not obtain copy for Fu Chip file?
No.
129. Since 27/2/73 no need to refer to this document until this thing occurred?
Everything went through secretary's office. We did not have to get cop.
130. Secretary Charles Marfan?
Yes.
131. No good reason for plaintiffs to get copy?
Can't say for them.
132. Where there's difference in version, plaintiff's version Correct?
I disagree.
133. An oral agreement reached between you and plaintiffs before 27/2/73 included terms in Exhibit C and also terms in form of guarantee signed on 4/5/73?
Not that.
134. You thought Exhibit B contained the guarantee?
No.
135. You thought Exhibit B, in effect, gave plaintiffs guarantee?
Yes, in sense that they had to resell to you. It's in form of agreement of sale. They had to sell to me. But guarantee did not give me right to buy back.
136. You considered Exhibit B a guarantee in the broad sense a guarantee for price to be \$2.5 each?
I never considered this as guarantee but binding agreement of sale to me at that price.
137. At Golden City, Lau Kam Ching was not at lunching table?
You are not right.
138. Only Exhibit C was handed over by you at the luncheon table?
No.
139. That Exhibit C was signed at luncheon table?
No.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

No. 4
D.W.2
Lau Yiu Long
Cross-
examination
(continued)

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20

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*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

No. 4
D.W.2
Lau Yiu Long
Cross-
examination
(continued)

10

140. Exhibit B brought in later when the parties in lobby of Golden City?

Not so.

141. No execution of these in Wing On?

I disagree.

142. Instructions given by Pao's and you to Yuen and not to Yam?

Not so.

143. As from 2/4/73 you tried to get Pao?

Correct.

144. None of those telephones got through to Mrs. Pao?

Not only Mrs. Pao but also their children answered call.

145. No such telephone call made?

I disagree.

146. In fact Pao telephoned you on 29/4/73 found out discrepancy in Exhibit B and expressed indignation?

No.

147. On 30/4/73 Chan Kwai Wah repeated Pao's points and persuaded you to keep to oral agreement?

No.

148. You accepted Exhibit A-39 as a bargain for your signing Exhibit A-37, 38?

No.

149. That Exhibit A-37, 38 a true reflection of your original agreement?

Not so.

150. As to Fu Chip shares between 23/2/73 and 27/2/73 prices at Far East between \$2.90 and \$3.50?

Agree.

30

151. But in Exhibit E, the prices you paid were as high as \$4.00? Yes.

152. In Far East Exchange the price on 5/3/73 went up to \$4.60?

I believe so, though can't remember.

153. Near end of March 1973 the prices about \$3.30?
Can't remember. Do not disagree.
154. At same period in Kam Ngan Exchange between \$3.30 and \$3.60?
I don't deny it.
155. On 16/4/73 you said Mrs. Pao threatened not to complete?
Yes.
156. But on 11/4/73 price in Far East was \$2.50 and on 13/4/73 in Kam Ngan \$2.55?
Do not disagree.
157. On the days prior to 13/4/73 price \$2.40?
I do not dispute.
158. By 16/4/73 there's indication of downward trend of Fu Chip shares?
Still there's fluctuation along with main market.
159. But downward trend?
Yes. But that's looking back. At that time no one could see market fell to that extent.
160. On 30/4/73 in Far East nominal was \$2.00?
Yes.
161. Same day at Kam Ngan it was \$1.55?
I believe not as low as that though I have no recollection.
162. Before 27/2/73 the price was well above \$2.50?
Agree.
163. The general expectation of yourself and plaintiffs was that the price would go upwards?
That was my view only. I don't know about them.
164. Since you had that view you thought plaintiffs would agree to be tied down at \$2.50 only?
But that was the actual fact. I agreed to buy back and they agreed to sign willingly.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

No. 4
D.W.2
Lau Yiu Long
Cross-
examination
(continued)

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*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

No. 4
D.W.2
Lau Yiu Long
Cross-
examination **10**
(continued)

*Defence
Evidence*

165. By 16/4/73 price down below \$2.50 and by 30/4/73 parties negotiating the guarantee in terms of Exhibit A-37, 38 prices clearly below \$2.50. At end of April would not an agreement in the line of Exhibit B more attractive to plaintiffs?

I have no way of knowing what they were thinking. Had the Paos been able to foresee shares fall below 40 cts. they would not have forced me to sign Exhibit A-37, 38. They must have expected the shares to rise.

166. On 30/4/73 Fu Chip shares at Kam Ngan \$1.65 nominal? Nominal price can't be a guide. There's no seller.

167. With price so much below \$2.50 would not Exhibit B be attractive to plaintiffs?

No.

168. You say by end of April plaintiffs pressing you for guarantee in terms of Exhibit A-37, 38 without justification?

Yes.

169. That must be because of prior agreement?

I disagree.

Adjourned to 2.30 p.m.

20

Sgd. Simon F. S. Li

D.W.2
Lau Yiu Long
Re-examination

Resumes 2.30 p.m.
Lau Yiu Long (R.F.A.) D.W.2.
Re-examination:

Managing Director of Fu Chip all along. Have all say in Fu Chip. In Exhibit D one million shares allotted to Lau Kam Ching because he held only few shares in Fu Chip because in order to make it look nice when I hold several million shares we give him more shares as window dressing. Close to Lau Kam Ching.

He listens to me in matters concerning Fu Chip.

Exhibit C **30**

I see Exhibit C, over my signature was chop of Fu Chip. In Golden City Lau Kam Ching did not have that chop with him.

*Exhibit B-37
B-38
Exhibit A-39*

On 4/5/73 at time I signed Exhibit B on front page on cancellation I never had Exhibit A-39 in mind. When I signed Exhibit A-37, 38 I also had not in mind that Exhibit A-39 would be signed. On 4/5/73 if I had a choice of either adopting a document Exhibit A-37, 38 or simply leaving Exhibit B in existence. I would, of course, leave Exhibit B in existence.

After 4/5/73 I did not raise any objection because I was under great apprehension of Mr. and Mrs. Pao in two ways.

In the Supreme Court of Hong Kong Original Jurisdiction

- (a) 4.2 million shares already allocated to them and they were in position to sell 1.7 million shares at once. By that time the market gradually sliding down and I had to spend money to support the market. In case of bulk sale I could not afford to support. Easy for them to support it.

Defence Evidence

- (b) I also feared they might leak the news of my guaranteeing the 60% at \$2.50. At that time shares worth only \$1.00 odd. If public knew this it will be disastrous.

No. 4
D.W.2
Lau Yiu Long
Re-examination

10

(continued)

Jeffrey Sun (Sworn) D.W.3.

Defence Evidence

Of 14 Cambridge Road Kowloon Tong. Consulting accountant of Far East Exchange Ltd. Have file in connection with Fu Chip Investment Co. Ltd. with me. This was in my possession in 1973 and been so since.

D.W.3
Jeffrey Sun
Examination

I see Exhibit C and say I have a document similar to it in our file. I produce it.

Exhibit C

Document agreement — Exhibit C2.

Exhibit C-2

Exhibit C2 was one of documents relied on in considering whether to approve dealing in the 7.8 million of Fu Chip shares.

20

Exhibit C2 came to me under a covering letter from Marfan and associates dated the 27/2/73.

I produce that letter.

Letter dated 27/2/73 — Exhibit C3.

Exhibit C-3

Cross-examination:

1. Exhibit C3 refers to the minutes of the 26/2/73 only?

Correct.

2. Not to C2?

Correct.

3. There's a letter dated 7/3/73?

Yes.

4. That letter refers to fact copy on Exhibit C had been submitted to the Exchange?

Yes.

30

D.W.3
Jeffrey Sun
Cross-examination

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

No. 4
D.W.3
Jeffrey Sun
Cross-
examination

(continued)

Re-examination

D.W.2
Lau Yiu Long
Re-examination

D.W.4
Lau Kam Ching
Examination

5. Although not absolutely clear from letter on 27/2/73 Exhibit C submitted but clear that Exhibit C submitted before 7/3/73?

Yes. But the foot note I made then I say it must have been submitted on 27/2/73 because I asked for valuation report which was submitted on the 7/3/73.

6. Could have made that note after 27/2/73 but before 7/3/73?

No. I am certain I made the note on the 27/2/73?

10 Re-examination:

In view of my note I have no doubt I received Exhibit C2 on 27/2/73.

Lau Yiu Long (R.F.A.) recalled D.W.2.

I see Exhibit C2 I identify my signature thereon. Also identify plaintiffs' signatures. With these is the impression of Shing On Investment Co. Ltd.

Lau Kam Ching (Affirmed) D.W.4.

Of 31 Ming Yuen Street West Ground Floor. I am a student of Smith West London College, London. I am resident student.

20

I did not know plaintiffs. I never met them until the signing of the agreement on 27/2/73. At about 11 a.m. on 27/2/73 I was in our office. I went to Yung, Yu, Yuen & Co. with Lau Yiu Long. There we took two agreements altogether 4 copies; original and duplicates. There we saw Yam Kam Hung.

30

From Yung, Yu, Yuen & Co. we went to Golden City Restaurant, 4th floor. There I saw Mr. and Mrs. Pao, Chow Hin Yau and several of their friends. That was my first meeting with Mr. and Mrs. Pao. Lau Yiu Long introduced me to them on arrival. He then handed those agreements to Mr. Pao. Pao then showed the agreements to Chow to peruse. At that stage I was fully aware of the contents of the agreement relating to Fu Chip taking over Shing On. The other one I understood to be an agreement by my brother to undertake to buy back the shares from Mr. and Mrs. Pao.

My brother told me that first. On the day we went to collect the document Yam also explained to us — me and my brother.

40

At Golden City I saw Chow explained those documents to Pao and Mrs. Pao. After he did so hand back the documents to Mr. Pao. While Chow was explaining the documents Pao Lap Chung arrived later as Chow started to explain. After explanation I can't remember what Chow said.

After lunch I went back to our office to fetch the Fu Chip stamp. Before that none of the documents signed. After I got Fu Chip stamp I went back to Golden City and saw Yiu Long and the 3 Paos' on the ground floor. We then all went back on Wing On Investment Co. There Pao showed the documents to Chan Kwai Wah who explained them to Pao. Prior to that meeting I did not know Chan Kwai Wah. After explanation Mr. and Mrs. Pao signed those documents, then Pao Lap Chung and we signed.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

10 I see Exhibit C, and say the impression of Shing On applied immediately after the signatures put on. Chan Kwai Wah applied the impression. After the parties signed the documents I went back to the office. On 23/2/73 I was a director of Fu Chip and its sub-manager. I was not then attached to any College. I went to London in January 1975.

No. 4
D.W.4
Lau Kam Ching
Examination
(continued)

The indorsement on Exhibit C was done on day of agreed extension. I went alone to Yung, Yu, Yuen & Co. to sign it on that day. I was not involved in negotiation for extension. In fact never involved in any negotiation. Just put name on dotted line.

20 I see Exhibit A-37, 38, I signed it because Yiu Long explained if I did not sign it the Paos would refuse to effect transaction thereby causing great bearing on Co. He explained that to me on 3/5/73.

*Exhibits A-37
& A-38*

To Court:

I am 25 now.

The document signed at Yung, Yu, Yuen & Co. Also not involved in negotiation. Then I signed this document there was another document with it — a cancelled document. Exhibit B is that cancelled document. Apart from Exhibit B and Exhibit A-37, 38 and a copy of Exhibit B there was no other document.

30 After signing Exhibit A-37, 38 we were thinking of going over Charles Marfan for documentation. We raised the question of 60% of the shares which was to be kept. Yiu Long suggested those being kept by Charles Marfan. The Pao refused. Then suggested one certificate issued. Again they refused and insisted on having certificates of 2,000 each. Also suggested indorsement of certificate to effect that not to be sold until 30/4/74. They disagreed. Eventually they proposed to give us a guarantee in our favour. We had no alternative but to accept. A fresh document prepared and was signed. That was Exhibit A-39.

40 Between 27/2/73 and 4/5/73 Chan Kwai Wah had been to our office several times. I went to Yung, Yu, Yuen & Co. with him once. Went there to collect a copy of the 2 agreements.

Close to brother Yiu Long. I would not have signed Exhibit A-37, 38 had my brother not explained what Pao's would do. Nor would I have gone to Yung, Yu, Yuen & Co. with Chan Kwai Wah had I not known him before.

I knew market conditions in February 1973. At that time i.e. 27/2/73 no afternoon session in Stock Exchange.

Cross-examination:

10

1. Know English before going to London in 1975?
Yes.
2. Fluent?
Fairly fluent. Can read and write though not efficient in spoken English.
3. How long in Yung, Yu, Yuen & Co. on 4/5/73?
About 2 hours.
4. And on 27/2/73?
Not for long.
5. On 27/2/73 how long you had to wait for Yam?
About ½ an hour.
6. Waited because draft not yet ready?
Right.
7. After ½ an hour still not ready?
I disagree.
8. In Fu Chip you don't exercise executive function?
I have internal administration.
9. Do as told by brother?
Yes.
10. On that day brother told you to wait behind at Yung, Yu Yuen & Co. because Exhibit B was not quite ready?
I disagree.
11. You waited and when arrived at Golden City while Paos and brother waited at lobby?
I disagree I went with brother.
12. The 2 agreement not signed in Wing On?
I am definite they were signed in Wing On.
13. You took Chan Kwai Wah to get copy?
Yes.
14. Because you had no copy in your office?
Correct.
15. On 4/5/73 at Yung, Yu, Yuen & Co. Lau Liu Long was heated because Pao's refusal to accept his suggestion?
Angry but tried to be polite.

20

30

16. Ever seen him explode?
Yes.
17. He was angrier and angrier?
I felt that.
18. With the Pao not budging an inch about the 60% he would have exploded?
No.
19. He would and would say "To hell with it, I have signed the guarantee"?
No.
- 10 20. Before 4/5/73 did he tell you of negotiation?
Did tell me if we did not give guarantee they would not complete. I was puzzled why I had been included. He also told me that if no transaction there would be great loss to Co. He said he was reluctant to give the guarantee but no alternative.
21. Did he tell you he consult lawyer?
Not at the time.
22. Consult other directors — full board?
The other directors were dormant. If they were asked they would refuse to sign.
23. Did he tell other directors?
Mr. Yuen was aware of it because these were prepared in his office.
24. At time of negotiation?
Probably not.
25. Before 4/5/73 signing did Yuen know?
Yiu Long must have told him.
26. Knew his view?
I don't.
27. Agree that your brother told you very little as to negotiations leading up to signing documents on 4/5/73?
I disagree.
28. Exhibit A-39 was part of negotiation in exchange for Exhibit A-37, 38?
No.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

No. 4
D.W.4
Lau Kam Ching
Cross-
examination
(continued)

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*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

No. 4
D.W.4
Lau Kam Ching
Cross-
examination
(continued)

10

29. When signed extension on 28/3/73 knew the reason was that Wing On had no occupation permit?
One of the reasons.
30. Who suggested the extension?
Brother told me was Pao.
31. Pao said occupation permit not issued?
Only minor issue. We could complete without the occupation permit. But until approval to deal share could not be traded.
32. After signing agreements on 27/2/73 no copy kept because no need to refer?
Correct. When we want to we can always contact Yung, Yu, Yuen & Co.
33. You had access to agreements?
Right.

Adjourned to 10 a.m.

Sgd. Simon F. S. Li

22nd July 1975 10 a.m.

Court resumes as before:

- 20 Wong: No re-examination of Lau Kam Ching.
Chang: Technical error of amended Defence.

In Para. 20(ee) "the said consideration" should be "the said cancellation". Leave to correct typographical error by substituting the word "cancellation" for the word "consideration" in para. 20(ee) of the amended Defence.

D.W.5
Yam Kam Hung
Examination

Re-service dispensed with.

Yam Kam Hung (Affirmed) D.W.5.

30

Of 6 Tai Hang Drive 23rd floor Hong Kong. A solicitor's clerk dealing in real estate matter — conveyancing clerk in Yung, Yu, Yuen & Co. Been so employed for 5 years. Prior to that with Peter Ho and Co. for 10 years in same capacity. Work under Mr. Philip Yuen.

First knew Lau Yiu Long in 1971 in connection with conveyancing. Beginning of 1973 came across Fu Chip when Lau transferred his personal properties to Fu Chip.

Know Pao On in 1972. Also in deals in conveyancing.

10 I see Exhibit A-16 an agreement date 27/2/73 — similarly Exhibit C. On afternoon of 26/2/73 i.e. before Exhibit C, Lau Yiu Long and Pao On came to see me and asked the firm to prepare 2 agreements or them — the first being agreement for all the shares in Tsuen Wan Shing On to be transferred to Fu Chip for 10.5 million and for Fu Chip Co. to issue 4.2 million new shares of \$1.00 valued at \$2.50 each and that 60% of such shares to be retained by vendors of the Shing On Co. for one year. The 2nd agreement was an undertaking from Lau Yiu Long to buy back that 60% of the shares from Pao's. Both saw me Lau Yiu Long first to instruct me. Then Pao On instructed me as to organisation of Tsuen Wan Shing On. Pao On was present all the time when Lau gave instructions in Cantonese a dialect know to Pao On.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

No. 4
D.W.5
Yam Kam Hung
Examination
(continued)

I took down all particulars & terms. I then asked Pao On for a copy of the articles of association of his Co. He did by sending some one for it. I drafted the agreements. Did not show to Philip Yuen. I finished on morning of 27/2/73.

20 On about noon Lau Yiu Long and Lau Kam Ching came. Lau asked if I finished the documents. I affirmed and handed one copy of the take over agreement and one copy of sales agreement between Lau Yiu Long and Pao On. Each agreement has a copy. I gave altogether 4 copies.

30 Exhibit C is one of them. I did not give a carbon copy of it because a mistake appeared on 1st line of page 2. At first I put down \$8.4 million. Also whole of page 3 had to be retyped because of some omissions: viz. Clause 4(l) and 4(m). Thus P.3 is the only page with single spacing in type to accommodate the additional clauses. After rectifications of these errors I gave Lau Yiu Long the original one Zerox copy. Gave Xerox copy because pressed for time and did not bother to use carbon paper.

Exhibit C

Another agreement prepared. That is Exhibit B. No error found. This also given to the Lau's.

Exhibit B

Both Exhibit B and C given to Lau's at same time. Impossible to have given one before the other. The 2nd agreement in standard form and ready typed. All I need to do was to fill in the particulars.

Lau's waited only for correcting the error.

The 4 copies were: Original of take over agreement, photo copy of same, Original of sales agreement and carbon copy of sales agreement.

40 Subsequently completion date of take over agreement extended. About end of March 1973, Lau and Pao came to see me asking me to prepare an instrument for extension of the completion of that agreement to the end of April 1973. I typed an indorsement on back sheet of

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

No. 4
D.W.5
Yam Kam Hung
Examination **10**
(continued)

that agreement. This is on Exhibit C. Pao On then took away the document then for signature. Later Exhibit C with returned to me and I saw the signatures.

I see Exhibit A-37, 38. It is a guarantee. About mid April a letter sent from our firm to Hastings asking for title deeds of Shing On Building. Exhibit A-20 is that letter. They replied that their client Pao On asked for a guarantee Exhibit A-21 is their letter. Upon receipt we asked Lau Yiu Long for instruction. Lau said there was no such thing and instructed us to reply to refuse giving such a guarantee. Exhibit A-22 is our reply. Further we wrote in Exhibit A-23 urging them to complete transaction. They never reply. Exhibit A-24 is that second of our letters pressing for completion. This letter was copied to Pao On. Ho Mei Chun and Pao Lap Chung. Still no reply.

After the letter dated 28/4/73, Exhibit A-23, Lau Yiu Long and an employee of Pao On came to see me in afternoon on 3/5/73. He's Chan who told me Pao On and Ho Mei Chun were prepared to complete on condition that Lau Yiu Long and Lau Kam Ching gave guarantee. I at once typed out a draft guarantee and gave it to Chan who said he would show it to Chow Hin Yau. He left.

20 They came between 28/4/73 and 4/5/73.

In the morning on 4/5/73 Chan came with newly typed guarantee to show to me. I added something Chan took it away. Same afternoon Chan came again with a retyped copy which I showed to Philip Yuen. He added something on the draft. So did I.

30 Then Lau Yiu Long, Lau Kam Ching, Pao On, Ho Mei Chun, Pao Lap Chung, Mr. Chan and myself were all in Philip Yuen's office. That's time when Yuen and I added something to draft. I informed Mrs. Pao and her son the corrections made. After they agreed I made a fair copy. After that Yuen and I explained contents to Lau brothers in presence of Pao family. Then Lau brothers signed their names on the document.

After this there was some argument between the Lau brothers and the Pao's. Then Pao's asked me to prepare a guarantee to be given by them to the Lau brothers. I went out of the room to type guarantee to show to Yuen. After he added something I had it retyped. I explained document to Paos'. So did Yuen. Then they signed. Exhibit A-39 is the document they signed.

Exhibit A-39

Exhibit B

40 I see Exhibit B. It's a cancelled document. It's after Lau brothers signed Exhibit A-37, 38 then Exhibit B was cancelled. I wrote the words denoting cancellation after they had signed.

I can't remember if Exhibit A-24 was sent out before or after morning or afternoon. But it was sent before the guarantee signed.

I refer to the documents signed on 27/2/73. All 4 copies returned to me after signing. It's in the afternoon of 27/2/73. I brought them to Philip Yuen's office with Lau Yiu Long. After perusing document Yuen signed as witness for Fu Chip Lau Yiu Long said he needed a copy for filing with Exchange — the take over agreement. A photo copy given to him. Exhibit C2 is copy given to Lau for the purpose. Yuen is away now on holiday.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

10 I mean that the photo copy of Exhibit C taken back by Lau and signed by the Pao's was returned to Lau for filing with Far East Exchange.

No. 4
D.W.5
Yam Kam Hung
Examination
(continued)

Cross-examination:

D.W.5
Yam Kam Hung
Cross-
examination

1. Frequently you took instructions from Yuen after client instructed Yuen?

Usually he told his client to see me outside his office.

2. As a rule Yuen did you take instructions from his clients first?

Correct.

3. You mean client passed on to you before client told Yuen? Sometimes, yes.

20 4. For clients worthy of his personal attention he would see them first before passing them to you?

Correct.

5. At least for routine matters client passed to you? Yes.

6. Yuen was a director of Fu Chip?

I know.

7. Lau's were such clients that they would have direct access to Yuen?

Not always.

30 8. For the agreements as those signed on 27/3/73 Yuen received directed instructions from client and then instructed you?

No.

9. One of the documents you were instructed to prepare was a guarantee?

No.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

No. 4
D.W.5
Yam Kam Hung
Cross-
examination
(continued)

10

Exhibit B

20

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10. The plaintiffs' employee you saw on 3/5/73 was Chan Kwai Wah?
Yes.
11. Remember seeing him a week earlier — about 27/4/73?
Can't remember.
12. He was brought to see you by Lau Kam Ching?
Can't remember.
13. Lau Kam Ching brought Chan because Chan asked to see original documents signed on 27/2/73 and you showed them to him?
I can't remember that.
14. Chan Kwai Wah then asked you where was guarantee and you pointing at Exhibit B and said "This is it"?
No.
15. Chan then said it looked more an advanced sales agreement and you said same effect as guarantee?
No such thing.
16. You say this could not have happened or you say you can't remember if it did because you are busy?
I just can't remember.
17. You arranged for copies of each of the documents to be given to Chan to take away?
Can't remember.
18. During month of February 1973, it was a busy month in solicitor's office because of stock market and real estate market?
Right.
19. Everyone in your firm very busy?
Right.
20. Principals and clerk fully engaged throughout lunch time?
No.
21. In drafting agreements your general practice to follow precedents form as far as possible?
Correct.

22. When pressed for time might follow form not quite suitable for the particular case?
No.
23. No mistake at all?
Sometimes I make mistakes.
24. More likely if very busy?
Normally so.
25. Look at Exhibit C, in Clause 1 no room for "its and his"?
Correct. Should be "then".
26. Look at Exhibit B there are inconsistencies e.g. in recital referring to Paos as registered holders of Fu Chip shares while they were not until completion of Exhibit C?
Correct.
27. Clause 3 of Exhibit B required completion on or before 30/4/73 which is in conflict with Clause 4(k) of Exhibit C?
Correct.
28. You had instruction to prepare guarantee and you found form in Exhibit B as the nearest form and used it for guarantee?
That is not so.
29. The form in Exhibit B commonly used in your office?
No.
30. Such forms you had a lot with blanks to fill in?
Yes.
31. Unless there's frequent demand you would not have so many such form?
But many of forms we have in abundance though not frequently used.
32. You had to draft to form of guarantee on 3/5/73?
Yes.
33. Thus in your firm there was no form for standard guarantee?
Not true. In fact we have.
34. What kind of guarantee precedent you have?
Guarantee for mortgage.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

No. 4
D.W.5
Yam Kam Hung
Cross-
examination
(continued)

Exhibit B

10

20

30

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

*Defence
Evidence*

No. 4
D.W.5
Yam Kam Hung
Cross-
examination
(continued)

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To Court:

35. Those not suitable for documents like Exhibit A-37, 38?
Right.
36. Thus you were in a hurry at that period lead to preparation of documents on 27/2/73?
No. We had a day's time to prepare them.
37. You had instructions to prepare a guarantee in February?
No.
38. You had no suitable forms ready for it?
We did not have standard forms for it.
39. You thought that the form in Exhibit B was suitable for the Parties?
No. Suitable in the light of both parties' instructions only.
40. On morning of 27/2/73 when Lau brothers came to collect the drafts, draft in Exhibit C was ready first and Lau Yiu Long took it away leaving Lau Kam Ching to wait for the other?
That's not so.
41. Remember Chan Kwai Wah also visited you on 30/4/73 and saw Lau Yiu Long with you, passed on Pao's message that Exhibit B was not the parties' original agreement and that Lau should comply by giving a proper guarantee to the Pao's who would not complete until guarantee forthcoming and you said that if Pao did not complete an injunction could be asked from Court to enforce it?
I can't remember.
42. When Exhibit A-37, 38 was drafted on 8/5/73 did you know that Pao's maintained contents of Exhibit B never explained to them?
I did not know.
43. Did you know that Exhibit A-37, 38 was prepared solely because Pao maintained Exhibit B never explained to them before signing and not according to original agreement?
I did not.
44. You knew well that Pao complained document not explained to him?
I did not explain myself. He might have taken the document somewhere and someone might have explained it to him.
- It's normal to have documents signed in solicitor's office and I knew parties did not know English and that it's my duty to explain documents to both parties before execution.

10

- 45. Look at Exhibit A-39, you interpreted document?
Yes.
- 46. Look at Exhibit A-37, 38 there's no interpretation clause?
Correct.
- 47. Similarly both in Exhibit B and Exhibit C again no interpretation clause?
Correct.
- 48. The interpretation clause specifically inserted in Exhibit A-39, the Pao's guarantee because you and Yuen knew the Pao maintained that Exhibit B not interpreted to him?
No.

In the Supreme Court of Hong Kong Original Jurisdiction

Defence Evidence

No. 4
D.W.5
Yam Kam Hung
Cross-examination
(continued)

20

- 49. Then why only Exhibit A-39 singled out to have interpretation clause?
Normally we have it. Exhibit A-39 typed by me. I put that clause in.
- 50. The other three were drafted by you?
As for Exhibit A-37, 38 I typed according to their draft.
- 51. First draft made by you?
Yes.
- 52. Subsequent drafts only amendments?
But they were retyped.
- 53. In preparation of Exhibit A-39 instructed by Pao?
Instructed by Pao. But Lau Yiu Long added interventions.
- 54. Exhibit A-39 gave Lau considerable safeguards?
Yes.
- 55. Which they had not before?
Correct.

30

- 56. Do you agree that Exhibit A-39 was part and parcel of the comprise in Exhibit 37, 38?
No. They signed Exhibit 37, 38 first.
- 57. The guarantee in Exhibit A-39 refers to guarantee in A-37, 38?
Yes.
- 58. Did parties considered these 2 guarantee to be one transaction?
Yes, after Exhibit A-37, 38 had been signed there was an argument.

Defendant's evidence.

IN THE SUPREME COURT OF HONG KONG
ORIGINAL JURISDICTION
ACTION NO. 1159 OF 1974

No. 5
Judgment of
Justice
Simon F. S. Li
17th February,
1976.

BETWEEN:—

PAO ON
HO MEI CHUN
PAO LAP CHUNG

1st Plaintiff,
2nd Plaintiff,
3rd Plaintiff,

and

LAU YIU LONG
BENJAMIN LAU KAM CHING

1st Defendant,
2nd Defendant,

10

Date: 17th February, 1976 at 9.36 a.m.

Coram: LI, J. in Court

JUDGMENT

20 This is an action for breach of a guarantee and indemnity dated 4th
May 1973 (hereinafter referred to as the guarantee). The dispute arises from
a transfer of shares in a takeover bid between the Fu Chip Investment Co.
Ltd. (hereinafter referred to as the Fu Chip) and the Tsuen Wan Shing On
Estate Co. Ltd. (hereinafter referred to as the Shing On) in February 1973.
At that time the plaintiffs Pao On, Ho Mei Chun and Pao Lap Chung (here-
inafter referred to respectively as the 1st plaintiff, 2nd plaintiff, and the 3rd
30 plaintiff) together owned all the shares in the Shing On. On the 27th
February 1973 by an agreement in writing (hereinafter referred to as the main
agreement) Exhibit C between the three plaintiffs of the first part, the Shing
On of the 2nd part and the Fu Chip of the 3rd part the three plaintiffs agreed
to sell and the Fu Chip agreed to buy all the plaintiffs' shares in the Shing
On for \$10.5 million to be paid in the form of 4.2 million of the Fu Chip
30 shares of \$1.00 each to be valued at \$2.50 and allotted by the Fu Chip. The
date of completion was set for the 31st March 1973. At the time the Fu
Chip was a public company the shares of which had been listed in the Far East
Stock Exchange for trading. The 4.2 million shares to be allotted would be
new issues for the purpose of the taking over of the Shing On. Under the
main agreement the three plaintiffs also covenanted not to sell or transfer
60% of the said Fu Chip shares so allotted to them on or before April 1974.
On the same day (that is 27th February 1973) by another agreement (herein-
after referred to as the subsidiary agreement) between the three plaintiffs and
40 the 1st defendant the plaintiffs agreed to sell and the 1st defendant to buy
2,520,000 shares of the Fu Chip (that is the 60% of the Fu Chip shares

allotted to the plaintiffs under the main agreement) at the price of \$2.50 each i.e. total of 6.3 million and that the completion should take place on or before 30th April 1974. Later, by mutual consent, the completion date of the main agreement was postponed to the 30th April 1973.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

10 There is a dispute as to the terms of the subsidiary agreement which dispute is part of the plaintiffs' case and I shall refer to it later. In the meanwhile the Fu Chip notified the Far East Stock Exchange Ltd. of the execution of the main agreement and applied for permission to deal in and for quotation of the new allotment of 4.2 million shares to be allotted to the plaintiffs. The Fu Chip also published an announcement of the main agreement as well as the application. It is observed that in the said announcement the Fu Chip published not only the acquisition of the shares of the Shing On but also the acquisition of other properties for which the Fu Chip shares were allotted and the applications to the Far East Exchange Ltd. for dealings in all such Fu Chip shares. On the 31st March the Far East Stock Exchange Ltd. approved the above mentioned application in respect of the 4.2 million shares to be allotted to the plaintiffs.

No. 5
Justice
Judgment of
Simon F. S. Li
27th February
1976.
(continued)

20 On 19th April 1973 Yung, Yu, Yuen & Co., solicitors for the Fu Chip started to press the Shing On for the completion of the main agreement. This led to an exchange of correspondence between Yung, Yu, Yuen & Co., and Hasting & Co. then solicitors for the Shing On. Eventually the main agreement was completed on 4th May 1973 but not after the subsidiary agreement had been cancelled and the guarantee in Exhibit B executed by the 1st defendant and 2nd defendant on the same day. In the guarantee 1st defendant and the 2nd defendant guaranteed that the price of the said 2,520,000 Fu Chip shares would not fall below \$2.50 each on the marketing day immediately following the 30th April 1974 and agreed to indemnify the plaintiffs if the price fell below that mark on the said date. On the 1st May 1974 the market price of the Fu Chip shares quoted at the Exchange was at 30 36 cts. each. The difference in price for the 2,520,000 shares (that is 60%) of the Fu Chip shares so retained by the plaintiffs as covenanted in the main agreement between the market price and the guaranteed price of \$2.50 each is \$5,392,800. The aforesaid details are the background of this action and are not in serious dispute. The substantial difference between the parties are the circumstances under which the guarantee came into being on the 4th May 1973 and the consequences thereof.

40 By their pleadings the plaintiffs' case is that prior to the execution of the main agreement and the subsidiary agreement the parties had negotiations in mid February 1973 when it was orally agreed between the plaintiffs and the defendants that in consideration of the plaintiffs selling to the Fu Chip all of the plaintiffs' shares in the Shing On for the sum of \$10.5 million to be satisfied by the allotment of 4.2 million shares of \$1.00 each in the Fu Chip, the defendants guaranteed that the closing market value on the following marketing date immediately after the 30th April 1974 for the 2,520,000 shares of the 4.2 million shares so allotted to the plaintiffs should not be less than \$2.50 per share and agreed to indemnify the plaintiffs in respect of the said 2,520,000 shares against any loss, damage and other expenses which the plaintiffs might

incur or sustain in the event of the closing market price of the Fu Chip shares falling short of \$2.50 each on the marketing day following the 30th April 1974. Then they gave instructions to the solicitors to reduce the agreements into writing.

- 10 It is contended by the plaintiffs that, whilst the agreement was executed by them in the presence of the two defendants after the gist of the contents were explained to them by a friend who was a solicitor's clerk, the subsidiary agreement was executed by them without any explanation but on the information preferred by the 1st defendant that it contained the guarantee and indemnity as agreed orally between them in mid February 1973. The plaintiffs all signed the subsidiary agreement without reading the documents believing that it contained the guarantee and indemnity as orally in the terms as orally agreed. The subsidiary agreement was in fact one of sale and purchase whereby the plaintiffs agreed to sell 2,520,000 of the Fu Chip shares to the 1st defendant for \$6.3 million, the completion to take place on or before the 30th April. The plaintiffs were never given a copy of either the main agreement or the subsidiary agreement until April 1973 when the plaintiffs discovered the discrepancy of the subsidiary agreement from the oral agreement of mid February 1973. Negotiation ensued and as a result, the
- 20 defendants signed on the 4th May 1973 a document in the terms of the said oral agreement in mid February 1973 in consideration of the cancellation of the subsidiary agreement.

Alternatively, the plaintiffs claim that the defendants signed the guarantee in consideration of the plaintiffs giving a written undertaking to the defendants that the plaintiffs would retain, for one year, 60% of the Fu Chip shares to be allotted to them, would indemnify the defendants of any loss or damages caused by their breach of this undertaking and would give the defendants the option of purchasing the 60% of such Fu Chip shares upon the happening of certain events.

- 30 Further and in the alternative the plaintiffs claim that the said guarantee was signed by the defendants in consideration of the plaintiffs performing their obligations to the Fu Chip on the 4th May 1973 under the main agreement. The plaintiffs further contend alternatively that if the said agreement is invalid then the defendants are still bound by the subsidiary agreement.

On the aforesaid grounds the plaintiffs now claim the total sum of \$5,392,800 the difference between \$6.3 million being the price of the 2,520,000 shares of the Fu Chip calculated at \$2.50 each and \$907,200 being the price of the same calculated at 36 cts. each, the market value of such shares on the 1st May 1974.

- 40 The defence is that there had been no such oral agreement between the parties in mid February 1973 as alleged by the plaintiffs. Both the main agreement and the subsidiary agreement were signed by the plaintiffs on the 27th February 1973 at the office premises of Wing On Co. after the plaintiffs had perused the same and after one Chow Hin Yau had explained the contents of the same to the plaintiffs at lunch in the Golden City Restaurant on the

10 same day. Both the main and subsidiary agreements represented what were agreed upon by the parties thereto. One of the terms of the main agreement was that each of the plaintiffs must retain in their own right 60% of the shares of the Fu Chip to be allotted to him and not to sell the same on or before the 30th April 1974. By the subsidiary agreement the plaintiffs agreed to sell and the 1st defendant to buy the said 60% of the Fu Chip shares so retained by the plaintiffs at \$2.50 each, that is the 2,520,000 Fu Chip shares for \$6.3 million and that the said sale and purchase for the said shares should be completed on or before the 30th April 1974. On or about 27th February 1973 the Fu Chip notified the Far East Exchange Ltd. of the execution of the main agreement and applied to list the shares to be allotted to the plaintiffs for trading. On the 16th March the Fu Chip made a public announcement that it had agreed to purchase all the issued shares in the Shing On. On or about the 28th March the date for completion under the main agreement was extended by consent of the parties to the 30th April 1973. On or about the 31st March, 1974 the said application by the Fu Chip was approved by the Far East Stock Exchange Ltd.

20 On or about the 24th April 1973 the 1st defendant explained to the 1st plaintiff the importance of the plaintiffs completing the transaction in the main agreement. Thereupon the 1st plaintiff alleged that the subsidiary agreement did not represent what had been orally agreed between the plaintiffs and the defendants in that the plaintiffs never agreed to sell to the 1st defendant the said 2,520,000 shares in the Fu Chip as set out in the subsidiary agreement. The 1st plaintiff further required a guarantee from the defendants that the price in respect of the said 2,520,000 Fu Chip shares would not be less than \$2.50 each for one year and said that unless such a guarantee was forthcoming the plaintiffs would refuse to sell the Shing On shares to the Fu Chip. On or about the 1st May 1973 the 1st defendant again impressed upon the 1st plaintiff the importance of the plaintiffs completing the transaction with the Fu Chip and that, in view of the Fu Chip's application to the Far East Stock Exchange Ltd. and the said public announcement made by the Fu Chip on the 16th March 1973 to that effect, the failure on the part of the plaintiffs to complete the said transaction would cause the public to lose confidence in the Fu Chip shares.

30 On the 3rd May 1973, Mr. Chan Kwai Wah, the plaintiffs' agent, met the 1st defendant and repeated the same demand and the same threat that unless the guarantee was forthcoming the plaintiffs would refuse to complete the transaction with the Fu Chip under the main agreement. It was under such threat that the defendants signed the guarantee.

40 In the premises the defendants contend that the said guarantee was signed by the defendants under an unlawful threat to repudiate the main agreement administered by the plaintiffs who knew well of the detrimental effect of such repudiation on the market price of the Fu Chip shares. As such the said guarantee is null and void and unenforceable. In the alternative it is contended that the said guarantee was given for a past consideration. It is denied that the defendants gave the said guarantee in consideration of the plaintiffs giving the defendants a written undertaking to retain 60% of the Fu Chip shares to

be allotted to them under the main agreement and the option referred to in the plaintiffs' Statement of Claim. It is further contended that the subsidiary agreement which had been cancelled by mutual consent cannot be revived simply because of the said guarantee being invalid and that the plaintiffs are estopped from relying on the subsidiary agreement because it had been cancelled and because of the plaintiffs' own refusal to abide by its terms.

10 Joining issue with the defendants in their Reply the plaintiffs deny any conversation on or about the 24th April 1973. The plaintiffs also deny that the 1st defendant mentioned the adverse effect of the plaintiffs' failure to complete the main agreement on public confidence in the Fu Chip. They further allege that on the 1st May the 1st plaintiff did say that the plaintiffs were prepared to complete the transaction under the main agreement only if the defendants would provide the plaintiffs with a guarantee and indemnity in accordance with the oral agreement. Thereupon the 1st defendant admitted that there was a mistake in the subsidiary agreement and that the defendants were prepared to give to the plaintiffs a guarantee and indemnity which would be prepared by Yung, Yu, Yuen & Co. Chan Kwai Wah, the plaintiffs agent, merely repeated the request of the said guarantee in terms of the oral agreement and inquired when such guarantee would be given. As a result
20 the defendants gave the guarantee freely and were under no threat. Finally it is contended that by signing the said guarantee the defendants had represented to the plaintiffs that it was valid. Acting on such representation the plaintiffs agreed to the cancellation of the subsidiary agreement thereby changing their position to their detriment. As such the defendants are estopped from alleging that the said guarantee is ineffective or invalid.

30 Despite the multiplicity of alternative issues of law and facts raised in the pleadings, the ultimate question still is whether the guarantee is binding on the defendants. Further such alternative issues depend largely on the facts of the case. Before an answer for the ultimate question can be found it is necessary first to consider the evidence in order to dispose of the alternative issues.

One of the issues raised is that sometime in mid February 1973 the parties had reached an oral agreement to the effect as pleaded in paragraph 2 of the Statement of Claim. The plaintiffs allege that the guarantee was signed on the 4th May 1973 in order to give effect to the said oral agreement since the subsidiary agreement, Exhibit B, was never read by or explained to the plaintiffs before they signed it and as such never represented the true intention of the parties as expressed in the said oral agreement.

40 According to the 2nd plaintiff there had been negotiations between the plaintiffs and the defendants on five separate occasions over a period of 9 days immediately preceding the 22nd February when they reached the said oral agreement. There and then the 1st plaintiff and the 2nd plaintiff went with the defendants to see Mr. Philip Yuen of Yung, Yu, Yuen & Co. their solicitors (then for both parties) to give instructions personally for reducing the said oral agreement into writing. They told Mr. Yuen that the Fu Chip was to take over the Shing On by allotment to the plaintiffs of 4.2 million Fu Chip shares

10 valued at \$2.50 each and that there should be a guarantee given by the defendants and the Fu Chip that 60% of the 4.2 million Fu Chip shares so allotted would not fall in value to below \$2.50 each for one year after the transaction and that the defendants and the Fu Chip would pay the difference between \$2.50 and the market price of the Fu Chip shares on the marketing day immediately following the 30th April 1974 if the Fu Chip shares should fall below the value of \$2.50 each. On the other hand the 1st defendant demanded that the plaintiffs would not sell the 2,520,000 of the 4.2 million shares within one year or that the plaintiffs would have to compensate the defendants and the Fu Chip for any loss. At around noon on the 27th February the 1st defendant rang the plaintiffs for an appointment to go to tea at the Golden City Restaurant without mentioning the purpose for such a meeting. All the three plaintiffs went bringing with them a solicitor's clerk by the name of Chow Hin Yau. Mr. Chow was a clerk to Hastings & Co. who were then solicitors advising the Shing On. On their arrival they saw only the 1st defendant with a group of the 1st defendant's friends.

20 At the lunch table the 1st defendant produced a copy of the main agreement for their perusal. Mr. Chow then explained to the plaintiffs the gist of the contents of the main agreement and left the party at about 2 p.m. The subsidiary agreement was not produced to the plaintiffs until the parties had finished lunch and were down at the lobby of the Golden City Restaurant. It was produced by the 2nd defendant who did not appear until then. The defendants represented to the plaintiffs that the subsidiary agreement, Exhibit A7-9 was the document of mutual guarantee. No one was there to explain the contents of the subsidiary agreement to the plaintiffs. The plaintiffs did not know English. By that time Chow Hin Yau had left. The plaintiffs signed the subsidiary agreement believing it to be a document of mutual guarantee and in accordance with their oral agreement. Then both the main agreement and the subsidiary agreements were taken away from the plaintiffs who were not given a copy thereof until sometime near the end of April. It is, however, the 2nd plaintiff's evidence that on the 28th March 1973 the 1st defendant took the main agreement only to the plaintiffs' office for their signature for a postponement of the completion date to the 30th April 1973. Again no copy of any agreement was given to the plaintiffs. It was near the end of April when the plaintiffs obtained a copy of the 2 agreements that they found out that the subsidiary agreement was not a document of guarantee but an agreement of purchase and sales.

40 The defence evidence on this point is that there was no oral agreement as alleged by the plaintiffs. Between the 12th February 1973 and 19th February 1973 the 1st defendant was in Taiwan. On the 20th or 21st of February 1973 the 1st plaintiff first indicated to the 1st defendant that he, the 1st plaintiff, was interested in the Shing On being taken over by the Fu Chip. On the 23rd February 1973 the Fu Chip shares were listed on the Far East Stock Exchange for dealing for the first day. On that day the 1st defendant went to the 1st plaintiff's share-brokers firm, the Wing On Company, to watch the market. The 1st defendant bought a fair number of the Fu Chip shares on that day to support the prices of the Fu Chip shares — see Exhibit E, the bought notes. The question of taking over the Shing On was then revived at

the closing of the market for the day. The parties negotiated and bargained over the terms of the take-over several times during the following few days. There was mention as to the form of the guarantee for the value of the Fu Chip shares to be allotted to the plaintiffs in consideration of the take-over of the Shing On. The 1st defendant offered to sign an agreement to buy back 60% of the shares which the plaintiffs were obliged to retain for one year after the completion of the main agreement at the price of \$2.50. This was acceptable to the plaintiffs. The 1st plaintiff and 1st defendant went to see Mr. Yam, a conveyancing clerk in Yung, Yu, Yuen & Company to give instructions for drawing up their agreement. In the presence of the 1st plaintiff the 1st defendant gave instructions to Yam who later repeated such instructions to the parties. Both raised no objection. Yam indicated that the agreement would be ready by the following day. The 1st defendant suggested that the parties should sign the agreement at Yung, Yu, Yuen & Company. However the 1st plaintiff suggested that the 1st defendant should meet him before 1 p.m. at the Golden City Restaurant 4th floor for tea the next day and sign the agreements so that he could show them to Chow Hin Yau of Hastings.

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On the morning of the 27th February 1973 the defendants collected two copies each of the main agreement and the subsidiary agreement in escrow and took them to meet the plaintiffs at the Golden City Restaurant. All the four copies were handed to the 1st plaintiff who asked Chow to explain the contents to him which Chow did. But the agreement was not signed there. The parties then went back to the Wing On Company where the documents were handed to Mr. Chan Kwai Wah who explained generally the outline of the two documents to the plaintiffs who then signed both the main agreement and the subsidiary agreement. The 1st defendant identified Exhibit C as one of the two originals of the main agreement to which the Shing On seal was applied and which was signed by the plaintiffs and the defendants. As to the extension endorsement it was signed on or about the 27th March 1973 at the Yung, Yu, Yuen & Company before Mr. Yam.

40

In view of the evidence it is obvious that the parties could not have reached any oral agreement before the 23rd February 1973. The 1st defendant was away from Hong Kong until 19th February 1973. In any event there was no market price for the Fu Chip shares to form the basis of any bargain before the 23rd February 1973 when such shares were first put on the open market. The 2nd plaintiff's evidence that the parties reached agreement before the 22nd February 1973 and went to Yung, Yu, Yuen & Company to give instructions to reduce the agreement into writing is not reliable. The 2nd plaintiff's only explanation for fixing the price of the Fu Chip shares at \$2.50 each, which is that the 1st defendant simply fixed a price at that level, appears to me to be far fetched. She frankly admitted that she could not remember if the price for the Fu Chip shares were agreed at \$2.50 each only on the 23rd February 1973 and said in cross-examination that it was after the Fu Chip shares were listed before any discussion of the take-over began. This is in direct conflict with her evidence-in-chief and reflects upon the credibility of the 2nd plaintiff's evidence though it is by no means decisive on the question whether there was an oral agreement in terms as alleged by the plaintiffs. Even the 1st defendant's evidence is that prior to the 27th February

1973 the parties had come to terms which were reduced into writing. In his evidence-in-chief the 1st defendant told of their discussion on the 26th February 1973 as follows:—

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

10 “On following Monday, 26/2/73 we met. We talked about the price. I first offered \$8.5 million. They declined. Mrs. Pao wanted \$11 million. I refused because even figure they worked out was only \$10.8 million. Then Mrs. Pao suggested \$10.8 million. Hackling took place and eventually agreed upon figure of \$10.5 million and that payment to be made by allocation of shares valued at \$2.50 each. It took only half an hour to reach this agreement. I was anxious to acquire and they were anxious to sell. After agreement reached Mrs. Pao told me she had licence as stock broker and in future we could join to be banker in a game. At that time we were all in high spirits. We met again that afternoon to talk of details of the transaction. I suggested that the shares allocated to them should not be sold for 1 year as to 60%. I gave them the reason — that as major shareholder they must support the shares. They were well pleased saying that we were in the same boat and hope the boat would float. Then Mrs. Pao asked what happened if the shares dropped below \$2.50. I said I would sign an agreement with her to buy back the shares at \$2.50 after 1 year. Both Mr. and Mrs. Pao agreed. Then Pao and I went to see Mr. Yam at Yung, Yu, Yuen & Company. I gave an account to Yam of the take-over by the Fu Chip of Shing On Company. Yam was instructed to prepare two agreements — one for taking over of Shing On by Fu Chip by issuing 4.2 million shares of Fu Chip to acquire all shares of Shing On Company.”

No. 5
Judgment of
Justice
Simon F. S. Li
17th February,
1976.

(continued)

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30 It is obvious that the parties could not have had any negotiation at a time nine days prior to the 22nd February 1973. It has been proved conclusively that the 1st defendant was in Taiwan during that period up to the 19th February 1973. I believe that the parties did not start negotiation until the 23rd February 1973 when the Fu Chip shares were first traded in the Far East Stock Exchange.

The 1st defendant went on to tell of the circumstances under which the main agreement and the subsidiary agreement were signed as follows:—

“On following morning I and Lau Kam Ching went to Yung, Yu, Yuen & Company about noon. Yam gave us four copies of documents (originals and copies). From there we went to Golden City Restaurant. Before we left Yam explained the contents of documents in detail.

40 On arrival at the 4th floor of Golden City I saw Pao and Mrs. Pao and others already there at the table. All friends of Pao. I handed all four documents to Pao. Pao handed them all to Mr. Chow who was introduced to me. Chow was the one who gave evidence yesterday. Chow then proceeded to explain the documents in great details, sentence by sentence to Mr. and Mrs. Pao. In all it took about 20 minutes. But none of the documents was signed there. Throughout that lunch Lau Kam Ching was present.

After lunch we followed Pao back to Wing On Company. However, I told Pao to wait for a while on the ground floor so that Lau Kam Ching could go back to Wing Lok Street to get the rubber chop. We waited there for about fifteen minutes, at that time documents were in Pao's possession. On Lau Kam Ching's return we all walked to Wing On — me, Kam Ching, Mr. and Mrs. Pao and Pao Lap Chung.

At Wing On Pao handed the documents to Chan Kwai Wah to read. I knew Chan Kwai Wah. Chan explained generally an outline of such documents. Then we, five of us, signed the documents.

10 I see Exhibit B, I identify my signature therein. I also identify my signature therein. Also my signature on Exhibit C-1. I also identify the signatures of Exhibit C-1 as those of Mr. Pao, Mrs. Pao and Pao Lap Chung. I see a seal in the middle of page in Exhibit C and say it was applied at the time of the signing of the documents by Chan Kwai Wah. He applied the seal to two documents. After signing the documents, returned to me and I at once took them to Mr. Yam of Yung, Yu, Yuen & Company. I got copy of take-over agreement to be taken to our accountant Charles Marfan."

20 I am inclined to believe that the 1st defendant's account is accurate to the extent that in the course of the discussion the plaintiffs did not object to the 1st defendant's offer to purchase their retained shares as a sufficient form of guarantee and that such instructions were given to draft the subsidiary agreement to Mr. Yam of Yung, Yu, Yuen and Company rather than to Mr. Yuen himself. It is not part of the plaintiffs' case that either Mr. Yuen or his clerk, Mr. Yam, was negligent. No solicitor worthy of his profession would produce a draft agreement of sales as is the subsidiary agreement while instructions were given to draft a guarantee. Mr. Yau frankly admitted that he merely used the printed standard form of sales for the subsidiary agreement. This accounts for the conflict between the terms of the main agreement

30 and the terms of the subsidiary agreement. In the main agreement the plaintiffs covenanted with the Fu Chip that they would not sell or dispose of 60% of the Fu Chip shares allotted to them within one year of the completion of the transaction. In the subsidiary agreement the plaintiffs agreed to sell 60% of the said shares to the 1st defendant within one year of the completion of the transaction under the main agreement. In the preparation of the subsidiary agreement both the plaintiffs and the defendants were the clients of Yung, Yu, Yuen & Co. I do not believe that any solicitor would so deliberately favour one of his clients to the detriment of the other as to include terms as harsh and prejudicial as those in the subsidiary agreement. Clause
40 1 of the subsidiary agreement provides that:

"1. The Seller shall sell to the Buyer and the Buyer shall buy from the Seller free from all incumbrances the said shares in the said Company together with all dividends bonus and issues, if any, accrued or to accrue thereon whether accrued before or after the signing of this Agreement."

Having heard the evidence of the 2nd plaintiff and the 1st defendant and having seen them in Court I form the opinion that both are fairly sharp

business people each trying to get a better bargain over the other in the take-over negotiation. However, the 1st defendant is of a slightly more sophisticated type. As such he was able to obtain an advantage over the plaintiffs by getting them to agree to the form of transaction as contained in the main agreement and the subsidiary agreement — a transaction he said he would not have entered had he been in the plaintiff's place. I find as a fact that in the course of their negotiation the plaintiffs inquired as to the form of protection they would be given for agreeing to retain 60% of the Fu Chip shares allotted to them under the main agreement for at least one year.

10 Thereupon the 1st defendant offered to repurchase the said shares from them at \$2.50 each at the end of the year. The plaintiffs agreed in principle to this form of safeguard. It was in such circumstances that the 1st plaintiff and the 1st defendant went to give instructions to Mr. Yam of Yung, Yu, Yuen & Co. I am satisfied that everything leading to and including the preparation of the draft agreement were done in a rush. No one including Mr. Yam paid much attention to the legal refinements or the unreasonableness of some of the provisions in the draft subsidiary agreement. However, I am satisfied that at the material time the plaintiffs knew that the subsidiary agreement which they signed would take the form of a sale and purchase agreement.

20 The 2nd plaintiff's evidence as to the circumstances under which they signed the main and subsidiary agreements were full of embellishments. Her evidence is not reliable. I am satisfied that it was her husband, the 1st plaintiff who suggested that the documents should be taken to the Golden City Restaurant for execution. That was the plaintiff's usual place for lunch. There he could bring his friend and a trusted solicitor's clerk, Mr. Chow Hin Yau, to read the documents in draft without causing embarrassment of bringing Mr. Chow to Yung, Yu, Yuen & Co. I cannot accept the plaintiffs' evidence that Mr. Chow went to the Golden City Restaurant without knowing that his assistance was required on that occasion. As to the signing of the

30 subsidiary agreement I accept the evidence given by the 1st defendant, that the draft copies of both the main agreement and the subsidiary agreement were handed to the plaintiffs for perusal that Chow Hin Yau had read and explained the gist of the contents of both draft agreements to the plaintiffs and that the main agreement was signed and sealed at the same time as the subsidiary agreement was signed at the Wing On Company after the plaintiffs' employee Chan Kwai Wah had read through the drafts. The two drafts were prepared by the same person, Mr. Yam, after instructions were given to him at the same time the previous day. Both drafts related to the take over transaction of the Shing On. By their own pleadings the plaintiffs allege that they signed

40 the main agreement at the Golden City Restaurant in the presence of both defendants. This is in conflict with the 2nd plaintiff's evidence that the 2nd defendant was absent when they signed the main agreement. There is another reason which leads me to reject the plaintiff's evidence that they never read the draft agreements before signing them. The 2nd plaintiff maintained that after the documents were signed both the main agreement and the subsidiary agreement were taken away from them by the defendants on the 27th February 1973. At that time the seal of the Shing On had not been applied to the main agreement. Yet one of the originals of the main agreement — Exhibit

10 C2 — which was forwarded to the Far East Stock Exchange on the 27th February 1973 had the seal of Shing On applied to it. Another copy of the original main agreement — Exhibit C1 — which had been kept in the office of Charles Marfan since early March 1973 also bore the Shing On seal. The Shing On seal was at all material times in the possession of the plaintiffs up to the 4th May 1973. This lends support to the 1st defendant's evidence that the main agreement was signed and sealed in the Wing On Company on the 27th February 1973. On the balance of probability I also believe that the subsidiary agreement was signed by the parties in the same place and in the same manner by the parties as alleged by the 1st defendant.

Having found that the plaintiffs signed the subsidiary agreement with full knowledge of the nature of its contents there is no room for doubt that the alleged oral agreement as set out in para. 2 of the Statement of Claim never existed. Had there been such an oral agreement the plaintiffs would have raised an objection before they signed the subsidiary agreement. There is also no merit in the plaintiff's claim that the guarantee was signed on the 4th May 1973 to give effect to the true intention of the parties as expressed in the alleged oral agreement or in rectification of a mistake.

20 There is no necessity to decide on the validity of the subsidiary agreement. It has been cancelled by mutual consent. It is sufficient to say that if the plaintiffs repudiated the subsidiary agreement solely on the ground that it did not represent the true intention of the parties or of non est factum the plaintiff must fail for the reasons I have given.

I will now consider the evidence on the circumstances leading to the signing of the guarantee. The plaintiff's evidence is that the 1st plaintiff left for Taiwan on the 18th April 1973. Shortly after that Mr. Chow Hin Yau of Hastings who looked after the property of the Shing On telephoned the 2nd plaintiff and informed her of a letter from Yung, Yu, Yuen & Co. which reads:

30 "We have instructions from Messrs. Tsuen Wan Shing On Estate Co. Ltd. and Fu Chip Investment Co. Ltd. to deal with the above premises and are informed by Mr. Pao of Tsuen Wan Shing On that the title deeds and documents relating thereto are now in your possession.

We should be much obliged if you would kindly arrange to send us all the title deeds and documents relating thereto to enable us to deal with the same."

The 2nd plaintiff informed Chow that she had not received the guarantee from the defendants. As a result Chow wrote in reply in the following terms:

40 "With reference to your letter of the 19th instant, we are instructed by our clients Messrs. Tsuen Wan Shing On Estate Co. Ltd. to request your clients Messrs. Fu Chip Investment Co. Ltd. through your goodservices to send us on behalf of our clients a guarantee from your clients that the intended allotment of 4,200,000 ordinary shares of your clients would be of the value of the sum \$10,500,000 as mentioned in the Agreement for Sale and Purchase dated the 27th day of February 1973.

We shall be much obliged to hear from you hereon at your earliest convenience.”

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

No. 5

Judgment of
Justice
Simon F. S. Li
17th February,
1976.

(continued)

10 At the same time she sent her employee Chan Kwai Wah to go to collect a copy of what she called “the mutual guarantee”. Chan returned with a copy of the subsidiary agreement. The 2nd plaintiff said that that was the first time she set eyes on the contents of this document which was explained to her. Nothing was done until the 1st plaintiff returned from Taiwan on the 29th April 1973 and all papers were handed to him. The 1st plaintiff took the matter up with the 1st defendant. The 1st plaintiff’s attitude was that
20 unless a guarantee and indemnity for the price of the 2,520,000 Fu Chip shares was given by the defendants the plaintiffs would not complete the main agreement with the Fu Chip. On a day between the 30th April 1973 and the 3rd May 1973 the 1st defendant agreed to make a fresh arrangement. As a result the guarantee was approved in draft between Chow Hin Yau of Hastings on their behalf and Yung, Yu, Yuen & Co. on behalf of the defendants. In the afternoon on the 4th May 1973 they all went to Yung, Yu, Yuen & Co. and signed the documents. The plaintiffs and the defendants signed for the cancellation of the subsidiary agreement — Exhibit B. The plaintiffs signed a guarantee and indemnity — Exhibit A-39 and the defendants
30 signed the guarantee — Exhibit A-37-38. The 2nd plaintiff can’t remember the exact sequence of the documents being signed but says that they were signed one after another. Then the parties went to the office of Charles Marfan to complete the transaction under the main agreement.

40 The defence evidence is that after the main agreement and the subsidiary agreement were signed on the 27th February 1973 he took them back to the office of Yung, Yu, Yuen & Co. He caused copies of the main agreement to be sent to Charles Marfan & Co., the Fu Chip’s secretary and to the Far East Stock Exchange in connection with the Fu Chip’s application for listing the new Fu Chip shares. On the 31st March 1973 the Far East Stock Exchange Ltd. approved the listing of the new shares. On the 2nd April 1973 the 1st defendant telephoned the 2nd plaintiff to inform her of the approval and asked the plaintiffs to complete the transaction with the Fu Chip. The 2nd plaintiff stated that her husband was still thinking over the matter. Since then the plaintiffs continued to avoid an answer on the excuse that the 1st plaintiff was away. On the 16th April 1973 the 1st defendant telephoned the 2nd plaintiff on the same subject. When the 2nd plaintiff asked for a guarantee as to the Fu Chip shares which the plaintiff agreed to retain for one year under the main agreement. This dispute continued in correspondence between the parties’ solicitors until the 4th May 1973 when the draft guarantee was agreeable to both parties. The defendants agreed to give the guarantee solely because the plaintiffs threatened to repudiate the main agreement with the Fu Chip. The parties signed the cancellation of the subsidiary agreement first, then the guarantee. There was a further dispute as to how the plaintiffs could ensure that they would not dispose of the 60% of the Fu Chip shares to be allotted to them. This resulted in the signing of another document by the plaintiffs to indemnify the defendants should they (the Plaintiffs) dispose of the said Fu Chip shares in breach of the main agreement.

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I have already found that there was no oral agreement between the parties in mid February 1973 for a guarantee to be given by the defendants and that the plaintiffs knew of the nature of the subsidiary agreement. There is nothing to form the basis of the plaintiff's demand for the guarantee as told in the 2nd plaintiff's evidence. Exhibit 21 was written by Chow Hin Yau on instructions of the 2nd plaintiff. Had there been an oral agreement as alleged Mr. Chow would have written for a guarantee of 60% only of the shares so allotted to the plaintiffs and not for 100% of them. Mr. Chow said that the 2nd plaintiff gave the figure to him before he wrote Exhibit 21. I find as a fact that the only reason why the plaintiffs asked for a guarantee in April 1973 is that they realised by then that they had not obtained a good bargain after all. That probably is the reason for the Plaintiffs' change of attitude in April 1973. The evidence is that both parties were keen to go through the transactions at the time the main agreement was signed. There is also evidence that by early April the 1st plaintiff had known of the approval to deal in the Fu Chip shares to be allotted to the plaintiffs by the Far East Stock Exchange. His departure for Taiwan before the completion of the main agreement is difficult to understand. In this connection I find the 2nd plaintiff's evidence that the 1st defendant did not inform the plaintiffs of the said approval in April illogical and unsatisfactory.

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There is also evidence that both the plaintiffs and the defendants were optimistic about the price of the Fu Chip shares. In fact the feeling was such that it was better to hold shares than cash. Although the price of the Fu Chip shares suffered a slight set back in late April 1973 it was considered that that was in sympathy with the general market. At that time the plaintiffs and the defendants could not have foreseen that the market, including the Fu Chip shares would continue to slump to such an extent as was found in the latter part of 1973. The 1st plaintiff's decision to go to Taiwan was made probably in order to play for time and to enable the 2nd plaintiff to start a new bargain. No reason was given for the necessity of his Taiwan trip. It is more inexplicable why he should leave at a time when it was essential for him to remain in Hong Kong to complete the main agreement with the Fu Chip. He knew by that time an announcement of the acquisition by the Fu Chip of the Shing On shares had been made to the public. He knew also that the defendants were anxious to see to that the Fu Chip completing the transaction. He knew that the longer the defendants had to wait the better bargaining power he would have in his hand. In short he knew he had the upper hand over the defendants who would have to agree even if he wanted something more than the original bargain viz: the subsidiary agreement. In my opinion his threat of refusing to complete was, for the plaintiffs, a good starting point for a new bargain and his temporary absence a very shrewd move.

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It is not necessary for me to decide on the sequence in which the guarantee, the cancellation of the subsidiary agreement and the indemnity, Exhibit A-39, were signed. The 2nd plaintiff's evidence on this point is hazy. The defence evidence is that the cancellation of the subsidiary agreement was signed first. However, subject to the question of admissibility of extrinsic evidence, a question I shall deal with later, I am of the opinion that the

10 guarantee was signed by the defendants solely to induce the plaintiffs to complete the main transaction and nothing else. Had the indemnity, Exhibit A-39, been a consideration for the guarantee it would have been included in the text of the guarantee in however general a term. It will be observed that the draft of the guarantee had been through the hands of solicitors' clerks at least 3 or 4 times and was finally submitted to a solicitor who had read and explained it to the parties before execution. On this point I am inclined to accept the 1st defendant's evidence that the indemnity, Exhibit A-39, was signed by the plaintiffs on a subsequent demand by the defendants after the guarantee had been signed. As to the cancellation it is the plaintiffs' own evidence that it was cancelled for one reason and one reason alone viz: it did not represent their true intention. The guarantee was to replace it.

20 It remains for me to consider how in fact this alleged threat on the part of the plaintiffs affected the defendants. That the defendants were thoroughly disgruntled is beyond doubt. Because of the plaintiffs' change they had to give up what they considered to be a very good bargain in the subsidiary agreement. In its place they were asked to sign a guarantee as to the price of a block of shares in the Fu Chip. In this way they could gain nothing even if the price should go up. At the time the main agreement was signed the parties were optimistic as well as enthusiastic. In the words of the 1st defendant the plaintiffs were hoping to "play bank" together with him on the Fu Chip shares — meaning controlling the market of such shares by buying and selling. There was some evidence that the price of the Fu Chip shares in April was not as high as it was in February or March 1973. But the price for such shares was still much higher than its normal value of \$1.00 each. Further the 1st defendant was still fairly confident. In cross-examination he said: "I continued to buy the Fu Chip shares to support the price. I knew

30 the Fu Chip shares were not worth \$3.00 each then. But in those days it was a blind chase." The 1st defendant frankly admitted that in February and March he purchased a lot of the Fu Chip shares in order to push up the price and then resell at a profit.

In answer to questions in cross-examination about the price movements of the Fu Chip shares the 1st defendant said:

Q. As to Fu Chip shares between 23rd February 1973 and 27th February 1973 prices at Far East between \$2.90 and \$3.50?

A. Agree.

Q. But in Exhibit E, the prices you paid were as high as \$4.00?

A. Yes.

40 Q. In Far East Exchange the price on 5th March 1973 went up to \$4.60?

A. I believe so, though can't remember.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

No. 5
Judgment of
Justice
Simon F. S. Li
17th February,
1976.

(continued)

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- Q. Near end of March 1973 the prices about \$3.30?
A. Can't remember. Don't disagree.
- Q. At same period in Kam Ngan Exchange between \$3.30 and \$3.60?
A. I don't deny it.
- Q. On 16th April you said Mrs. Pao threatened not to complete?
A. Yes.
- Q. But on 11th April price in Far East was \$2.80 and on 13th April Kam Ngan \$2.55?
A. Do not disagree.
- Q. On the days prior to 13th April price \$2.40?
A. I do not dispute.
- Q. By 16th April there is indication of downward trend of Fu Chip shares?
A. Still there is fluctuation along with main market.
- Q. But downward trend?
A. Yes. But that is looking back. At that time no one could see the market fell to that extent.
- Q. On 30th April 1973 in Far East nominal was \$2.00?
A. Yes.

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- Q. Same day at Kam Ngan it was \$1.55?
A. I believe not as low as that though I have no recollection.
- Q. Before 27th February 1973 the price was well above \$2.50?
A. Agree.
- Q. The general expectation of yourself and the plaintiffs was that the price would go upwards?
A. That was my view only. I don't know about them.
- Q. Since you had that view you thought plaintiffs would agree to be tied down at \$2.50 only?
A. But that was the actual fact. I agreed to buy back and they agreed to sign willingly.

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- Q. By 16th April price down to \$2.50 and by 30th April 1973 parties negotiating the guarantee in terms of Exhibit A-37-38 prices clearly below \$2.50. At the end of April would not an agreement in the line of Exhibit B be more attractive to the plaintiffs?

A. I have no way of knowing what they were thinking. Had the Pao's been able to foresee shares fall below 40 cts. they would not force me to sign Exhibit A-37-38. They must have expected the shares to rise.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

Q. On 30th April 1973 Fu Chip shares at Kam Ngan at \$1.65 nominal?

A. Nominal price can't be a guide. There is no seller.

Q. With price so much below \$2.50 would not Exhibit B be attractive to the plaintiffs?

A. No.

No. 5
Judgment of
Justice
Simon F. S. Li
17th February,
1976.

(continued)

10 As to his reaction to the plaintiffs' threat to refuse completing the main agreement the 1st defendant said in cross-examination:—

Q. What would be the effect on you if plaintiffs refused to carry out the terms of Exhibit C?

A. Very serious. By the time Fu Chip shares on the market had more than 2,000 shareholders. After we made announcement of the acquisition value of shares went up several 10 cts. It showed that the take over gave general impression assets of Fu Chip enhanced. If the deal falls then public would think problem exists in Company and lose confidence in Fu Chip shares.

20 Q. The shares went up 10%?

A. Yes. Not only because of takeover but also because of general condition. But if Fu Chip fails to take over then a very bad news the drop would be exceeding 20 cts. If falls through Pao lost nothing I would lose a lot. She knew that I bought lots of Fu Chip through her.

30 These words reflect the optimism and hope of the 1st defendant when he yielded to the plaintiffs' demand for a guarantee. At the time the demand was made the 1st defendant placed the matter in the hands of his solicitors. He had proper legal advice. He knew very well whether he gave the guarantee or not the main agreement between the Fu Chip and the plaintiffs was still valid as a separate document. The Fu Chip could have sued the plaintiffs for specific performance or for damages. Out of the original issued and paid up capital of 12,600,000 shares in the Fu Chip the 1st defendant owned 6,531,000 shares (see Exhibit D at page 17). In addition he had purchased more since the listing of such shares. His brother, the 2nd defendant owned 1,500,000 million shares. Between the two of them they owned the controlling interests of the Fu Chip. By then the 1st defendant had already set himself about in manipulating the price of the Fu Chip shares by buying and selling. If the defendants refused to give the guarantee on the Fu Chip shares, then the Fu

10 Chip shares might drop a few 10 cts. in price only if the general condition of the market remained bullish. It would be possible for the 1st defendant to push the price up again with his manipulation. The Fu Chip, after all, is an investment Company. All its assets consist of landed property. So long as the properties in the Fu Chip have been quoted in their true value the success or failure in the taking over of the Shing On could not have affected the true value of the Fu Chip shares. Whatever set back in the market price of the Fu Chip shares could not have sent them below their true value. Even if it did, the defendants might have suffered a temporary paper loss of profit but would not have suffered a financial ruin. The 1st defendant did threaten that the Fu Chip would sue the plaintiffs on the main agreement. However, in the end he chose to avoid litigation and yielded to the plaintiffs' demand. The 1st defendant must have considered the matter thoroughly in the light of the then marketing condition and formed the opinion that the risk in giving the guarantee was more apparent than real. As I have said earlier on, neither party at the time could have foreseen the stock market subsequently slumping in such manner. Had the plaintiffs realised that the prices in general in the stock market would fall to the extent as we now know then they would not even bother to demand for the guarantee. They would be quite satisfied with the subsidiary agreement. Therefore I find as a fact that when the defendants agreed to sign the guarantee neither they nor the plaintiffs envisaged a drastic fall of the market and that the defendants never expected that on the guarantee they might be required to compensate the plaintiffs in terms of millions of dollars. This was an error of judgment in a business deal. The defendants were reluctant to be deprived of a good bargain — the subsidiary agreement. But I find that they were quite prepared to take a calculated risk (which at the time appeared to be very little) in order to pacify the plaintiffs who were adamant. It was in such circumstances that the guarantee was given.

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40 Having come to the aforesaid conclusions on the facts of this case I shall deal now with some questions of law and other alternative issues before I return to the ultimate question — the binding effect of the guarantee. The first question is whether extrinsic evidence is admissible to show the circumstances under which the various documents were signed or for the interpretation of the guarantee. Here the plaintiff pleaded that they signed the subsidiary agreement without knowing its contents which never reflected the genuine intention of the parties. On the other hand the defendants plead that the guarantee was signed under duress or as the result of an unconscionable bargain. Both are relevant issues or questions relevant to the issue. It is only proper that parole evidence should be admissible to show the circumstances leading to the execution of both documents. Extrinsic evidence is admissible to prove any matter which by substantive law affects the validity of a document or entitles a party to any relief in respect thereof. See Phipson on evidence — p. 1789 and p. 1802. Learned Counsel for the parties have not seriously challenged the admissibility of extrinsic evidence relating to the execution of these two documents. Mr. Zimmern for the defendants, however, contends that the extrinsic evidence is not admissible to contradict or vary the plain terms of the guarantee. The guarantee — Exhibit B, reads as follows:

“In consideration of your having at our request agreed to sell all your shares of and in the above mentioned Company whose registered

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office is situate at 274 Sha Tsui Road Ground Floor Tsuen Wan New Territories in the Colony of Hong Kong for the consideration of \$10,500,000 by the allotment of 4,200,000 shares of \$1.00 each of Fu Chip Investment Company Limited whose registered office is situate at No. 33 Wing Lok Street Victoria in the said Colony of Hong Kong and that the market value for the said ordinary shares of the said Fu Chip Investment Company Limited shall be deemed as \$2.50 for each of the \$1.00 shares under an Agreement for sale and purchase made between the parties thereto and dated the 27th day of February 1973, we Lau Yiu Long of No. 152 Tin Hau Temple Road, Flat C1, Summit Court, 14th Floor in the Colony of Hong Kong Kowloon Merchant and Benjamin Lau Kam Ching of No. 31 Ming Yuen Street West, Basement in the said Colony of Hong Kong Merchant the director of the said Fu Chip Investment Company, Limited hereby agree and guarantee the market value for the said 4,200,000 ordinary shares of the said Fu Chip Investment Company shall be \$2.50 per share and that the total value shall be of the sum of \$6,300,000 for the period between 15th of April 1974 to the 30th 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 market price according to The Far East Stock Exchange Ltd. shall fall short of the \$2.50 during the said period between 15th April 1974 and the 30th April 1974 that no time or indulgence granted for the said Fu Chip Investment Company Limited shall exonerate our liabilities hereunder."

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It is submitted that the consideration referred therein was a past consideration. Any extrinsic evidence tending to prove a present or executory consideration would be in contradiction of a plain term of the guarantee and as such should be inadmissible. Mr. Gittins for the plaintiffs contends, however, that the form of the guarantee is exactly the same as those contained in the Encyclopaedia of Forms and Precedents (See Vol. 9 Encyclopaedia of Forms and Precedents p. 777-824) and that extrinsic evidence is always admissible to show the true consideration — in the present case, the plaintiffs completion of the main agreement with the Fu Chip.

The common law rule that no extrinsic evidence is admissible to contradict the plain terms of a written agreement has been subject matter of many judicial interpretations which indicate a fair number of exceptions. Thus in para. 650 of Chitty on Contracts it is said.

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"Extrinsic evidence may therefore be admitted to show want of or failure of the consideration stated to have been given in a written instrument. Thus the words in a bill of exchange 'for value received' do not preclude the court from finding that no consideration has in fact been given. Extrinsic evidence is also admissible to prove the true consideration where no consideration has been stated or where the consideration is inaccurately recorded. Also an additional consideration may be proved, provided it does not contradict the stated consideration. 'The rule is that, where there is one consideration stated in a deed, you may prove any other consideration which existed, not in contradiction to the

instrument; and it is not in contradiction to the instrument to prove a larger consideration than that which is stated.”

In the case of *Wood v. Wise*⁽¹⁾ where a lease of rent restricted premises was expressed to be granted “in consideration of the sum of £850” in addition to the rent reserved in the lease extrinsic evidence was admitted to show that the sum of £850 expressed in the lease was in fact commuted rent intended by the landlord and tenant and not a premium or a condition of the grant. Evershed M. R. said at p. 39 as follows:

10 “There was a good deal of discussion of the question whether it was permissible for the court to hear extrinsic evidence of the bargain made, or whether the court in this matter was confined to the deed. It is convenient for me to deal first with that point, and I conclude that extrinsic evidence was clearly admissible, though the result of so concluding is far from decisive of the case. I note that this is not an action on the deed; the question here is whether the plaintiff has a statutory right of action under section 2(5) of the Act of 1949. Moreover, if she has, then prima facie the defendant has done that which was illegal, and for which he is liable to criminal proceedings. As a matter of principle, therefore, evidence must be admissible to prove the true nature of the transaction; but, further, the evidence is required not to vary the deed, but with a view to explaining and proving what was in truth the consideration. For this purpose extrinsic evidence has always been admissible.”

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Romer L. J. said at p. 54:

“Moreover, the extrinsic evidence is not sought to be introduced in the present case with a view to contradicting anything that is expressed in the lease, but in order to show what was the true nature of the £850, which, it is to be observed, is nowhere described in the lease as a ‘premium’.”

In *Goldshede v. Swan*⁽²⁾ the consideration expressed in a guarantee for a loan was:

30 “In consideration of your having this day advanced to our client, Mr. Vermon Dolphin of Piccadilly, in the county of Middlesex, the sum of £750, secured by his warrant of attorney, payable on the 22nd day of August next, we hereby jointly and severally undertake to pay the same on the said 22nd day of August, or so soon afterwards as you apply for same, in case default should be made in payment of the sum of £750.”

(1) (1955) 2 Q.B. 29.

(2) (1847-8) 1 Ex. p. 154.

It was held that extrinsic evidence was admissible to show that the consideration expressed in the document of guarantee was in fact an executory consideration. At p. 159 Pollock, C. B. said:

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

10 “Where any written instrument is ambiguous, evidence is receivable to construe its meaning, but not to alter or vary in any manner the terms of that instrument. Here it was proved, that the guarantee was given, and that the money was thereupon advanced. In the case of *Butcher v. Stewart*, the memorandum was held to be prospective, and judgment was given for the plaintiff. That case is very similar to the present. It was a special case, and was very recently decided. The present case also falls within the same principle as that of *Haigh v. Brooks*. The expression ‘this day’ may mean something which has been done, or which is to be done this day. Evidence may therefore be properly admitted to explain its meaning, though not to contradict it. The words are not to have that grammatical strictness of construction put upon them for which the defendant’s counsel contends; but such a one as will explain the meaning of the parties.”

—
No. 5
Judgment of
Justice
Simon F. S. Li
17th February,
1976.

(continued)

20 The principle of extrinsic evidence being admissible to prove additional consideration to the consideration expressed in a power of attorney was approved in *Frith v. Frith*⁽³⁾ where Lord Atkinson citing the case of *Clifford v. Turrell* said:

“The Vice-Chancellor (Sir L. Shadwell) in delivering judgment in the case, lays down, in the opinion of their Lordships correctly, the rule of law upon this subject. He said:

‘Rules of law may exclude parol evidence where a written instrument stands in competition with it, but it has long been settled that it is not within any rule of this nature to adduce evidence of a consideration additional to what is stated in a written instrument.’

And then added:

30 ‘The rule is, that where there is one consideration stated in the deed, you may prove any other consideration which existed, not in contradiction to the instrument; and it is not in contradiction to the instrument to prove a larger consideration than that which is stated.’

Their Lordships think the present case comes within that rule, that the evidence proposed to be given did not contradict the deed, and that the

(3) (1906) A.C. 254

appellant's first contention is well founded."

In *Turner v. Forwood And Another*⁽⁴⁾ Lord Goddard, C.J. went further to say at p. 747:

"Clifford v. Turrell appears to lay down in the clearest possible terms that, at any rate, where there is a nominal consideration — evidence is always admissible to show that the true consideration was something more than the consideration stated in the written agreement, be it under hand or under seal."

10 The principle obtained from these authorities shows that extrinsic evidence is admissible to explain a consideration which has been inaccurately described in an instrument as past consideration or smaller consideration. In the present case the extrinsic evidence purports to explain that the consideration which was described in the guarantee as "having agreed to sell" in accordance with the terms of the main agreement of the 27th February 1973 was in fact an executory consideration of "agreeing to sell" or "agreeing to complete the

20 sale" on the 4th May 1973. Following the same reasoning which fell from the learned Chief Baron, I am of the opinion that extrinsic evidence in the present case is admissible to explain the terms in the guarantee. Such evidence is not contradictory. On the contrary it purports to show the true nature of the consideration. Indeed it is the Defence case that the plaintiffs demanded the guarantee as a condition for their willingness to complete the sale of the main agreement. I am of the opinion that parol evidence or extrinsic evidence is properly admissible in the present case for the interpretation of the consideration expressed in the guarantee.

30 There is a subsidiary and related contention to this. It is suggested that an agreement to do something which the plaintiffs were under a legal duty to do to a third party could not constitute a valuable consideration. The plaintiffs were under a duty to the Fu Chip to complete the sale of the Shing On shares to the Fu Chip under the main agreement. Thus their agreement with the defendants to do the same was in fact no consideration at all.

In my opinion this problem is more juristic as a mental exercise than judicial. In the words of the learned authors of Cheshire and Fifoot in the *Law of Contract* (8th edition) "the paucity of modern litigation on the question suggests that it is not a pressing problem". Having considered the relevant authorities the principle obtained, as I understand it, is that the performance of or a promise to perform a duty to a third party is valuable consideration for endorsing a promise by the promisor provided that such performance of or

(4) (1951) 1 A.E.R. 746.

undertaking to perform the said duty is to the detriment of the promisee or to the benefit of the promisor. See Cheshire and Fifoot on Law of Contract 8th edition p. 92-95, Chitty on Contracts Vol. 1 23rd edition para. 130-132; also Shadwell v. Shadwell⁽⁵⁾; Scotsen v. Pegg⁽⁶⁾; Turner v. Owen⁽⁷⁾ and Chichester v. Cobb⁽⁸⁾. This principle was the ratio in Scotsen v. Pegg which received the approval of the majority decision of the Privy Council in New Zealand was Shipping v. Satterthwaite⁽⁹⁾ where Lord Wilberforce at page 1020 said:

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

No. 5
Judgment of
Justice
Simon F. S. Li
17th February,
1976.

(continued)

10 “In their Lordships’ opinion, consideration may quite well be provided by the stevedore, as suggested, even though (or if) it was already under an obligation to discharge to the carrier. (There is no direct evidence of the existence or nature of this obligation, but their Lordships are prepared to assume it.) An agreement to do an act which the promisor is under an existing obligation to a third party to do, may quite well amount to valid consideration and does so in the present case: the promisee obtains the benefit of a direct obligation which he can enforce. This proposition is illustrated and supported by Scotsen v. Pegg which their Lordships consider to be good law.”

20 In the present case the promise or act of selling the Shing On share to the Fu Chip by the plaintiffs could be valuable consideration for the guarantee signed by the defendants.

Such act or promise might not be to the detriment of the plaintiffs. But it was for the benefit of the defendants. In the words of the 1st defendant he was anxious that the plaintiffs should complete the transaction in the main agreement. Their refusal to complete would affect the share price of the Fu Chip of which he was the majority shareholder. It is the defendants’ case that the guarantee was signed solely on the plaintiffs’ demand for the guarantee before the plaintiff would perform the main agreement. Although the defendants were unwilling they eventually signed the guarantee so that the plaintiffs would complete the transaction.

30 It is contended by the plaintiffs that the guarantee was signed in consideration of the cancellation of the subsidiary agreement. Such cancellation would, of course, be sufficient consideration if it was the true intention of the parties. I have found as a fact that that was not so.

(5) (1860) 9 C.B. (NS) 159

(6) (1861) 6 H and N295

(7) (1862) 3 F and F 176

(8) 1866 4 L.T. 433

(9) 1974 1 A and R 1015

The guarantee never referred to the cancellation of the subsidiary agreement as a consideration. The plaintiffs' evidence is such that at all material times they never suggested the cancellation of the subsidiary agreement as a quid pro quo for the guarantee. On the contrary, the plaintiffs' evidence is that the terms of the subsidiary agreement never represented their true intention and should be cancelled in any event and should be replaced by a guarantee which would give effect to their true intention. The evidence of the 2nd plaintiff and that of Chan Kwai Wah suggest that the plaintiffs would refuse to complete the transaction under the main agreement with the

10 Fu Chip unless the defendants give them a guarantee as to the price of the Fu Chip shares allotted to them. In his evidence in chief Chan Kwai Wah said "I did mention to Lau that Pao did not want an agreement of sale in advance and would only accept a form originally agreed to viz: a straight guarantee that the value would be the same for one year".

Indeed such intention was manifested in the letter of Hastings, acting for the Shing On, to Yung, Yu, Yuen & Company — Exhibit A-21. At that time, predominant in the mind of the plaintiffs was that the subsidiary agreement should be cancelled in any event but they would not complete the transaction with the Fu Chip unless the defendants gave them the guarantee.

20 I have found as a fact that there was no oral agreement as alleged by the plaintiffs and that the subsidiary agreement was not signed by mistake. There is no basis for this claim.

In view of the foregoing I also find that even if the guarantee is invalid such finding will not bring the subsidiary agreement back into force. The general rule is that a rescission is implied where the parties have effected such an alteration of the terms as to substitute a new contract in place of the old. If a rescission is effected the contract is extinguished and it cannot afterwards be set up again by one of the parties against the other. The decisions in **Egremont v. Courtenay**⁽¹⁰⁾ and in **Firth v. Midland Railway Co.**⁽¹¹⁾ are not

30 true contradictions to this principle.

In the Egremont case the surrender of the old lease depended on the validity of the new lease. Once the new lease was held invalid it is not surprising that the surrender was equally inoperative. This is evident in the judgment of Coleridge, J. who said at p. 686:

(10) (1843) A.E.R. 685

(11) (1875) 20 Eq. 100

“There were the counterparts of three leases produced, of the respective dates of 1755, 1785 and 1812; and the plaintiff’s case was that the two latter were invalid, which was admitted, and that the last was granted in consideration of the surrender of the first, and operated as a surrender of it. This was necessary to his case, as one of the lives on which the lease of 1755 was granted was still in being, and that lease still in force unless so surrendered. But the defendant contended that the surrender having been made wholly in consideration of the grant of a new and valid lease, did not take effect because the new lease was invalid.”

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and again at page 688:

“We have had occasion to consider this doctrine in another case of the same sort, and to examine the decisions at some length, and we need not now repeat that examination, contenting ourselves with saying the principal to be found laid down by Lord Mansfield in *Wilson v. Sewell* (1766) 1 Wm. Bl. 617 4 Burr at p. 1980 and *Davision d. Bromley v. Stanley* (1768) 4 Burr. at p. 2213 seems to us the true one; that when a new lease does not pass an interest according to the contract, the acceptance of it will not operate as a surrender of the former lease; that, in the case of a surrender implied by law from the acceptance of a new lease, the condition ought also to be understood as implied by law, making void the surrender in case the new lease should be made void; and that in case the express surrender is so expressed as to show the intention of the parties to make the surrender only in consideration of the grant, the sound construction of such an instrument, in order to effectuate the intention of the parties, would make the surrender also conditional, to be void in case the grant should be void.”

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30 In *Firth’s* case the new agreement merely provided a substituted mode of precisely what was required to be done in the old agreement. When the substituted mode of performance could not be carried out specific performance was ordered in accordance with the old agreement.

40 In the *Egremont* case the consideration for the surrender of the old lease was the grant of a new lease. In the *Firth* case the substance of the new agreement was a variation of the mode of the performance of what was to be done under the old agreement. It was in such circumstances that the terms of the old agreement were received when those of the new agreement became void or voidable. In the present case the plaintiff pleaded that the subsidiary agreement (the old agreement) was void because the parties were not *ad idem* and that it was voidable on the ground of *non est factum*. The guarantee, (the new agreement) made no reference to the old agreement

as consideration for the new agreement. It is the plaintiffs' case that the subsidiary agreement was rescinded on such grounds. The basis for the guarantee, according to the plaintiffs' pleadings, is that it gave effect to the true intention of the parties who had a verbal agreement in mid February 1973. To hold that the invalidity of the guarantee alone could cause a resurrection of the subsidiary agreement would be wrong in law and amounting to allowing the plaintiffs to approbate and reprobate in saying that the subsidiary agreement was invalid and valid in the same breath.

10 It is alleged that the defendants' conduct in signing and giving the guarantee constitute a representation that the guarantee is valid and effective so as to induce the plaintiffs to complete the transaction with the Fu Chip. Relying on such representation the plaintiffs acted to their detriment by agreeing to cancel the subsidiary agreement. The short answer to this contention is that it was the plaintiffs who demanded the guarantee because the subsidiary agreement never represented their true intention. The demand by the plaintiffs was not induced by the defendants' representation. I have found that the plaintiffs would demand for the cancellation of the subsidiary agreement in any event. In my opinion this plea revolves round the question
20 of an unconscienable bargain. If the guarantee was signed without any threat then the plaintiffs can sue upon the guarantee. Otherwise the plaintiffs cannot rely on estoppel to change the nature of a voidable document (i.e. the subsidiary agreement). Estoppel is an equitable remedy which is not available to any party who comes to Court with tainted hands.

30 Lastly I will consider the ultimate question — the binding effect of the guarantee on the defendants. I have found that the plaintiffs, well knowing the detrimental effect on the price of the Fu Chip shares and on the defendants' financial position if they refused to honour the main agreement with the Fu Chip, threatened to repudiate the main agreement unless the defendants signed the guarantee. Learned Counsel contends that the guarantee was signed under a threat or as a result of an unconscienable bargain. It falls upon me to find whether in law and in fact such a threat renders the guarantee unenforceable. A number of cases have been cited as relevant to this question of law.

In *D. & C. Builders Ltd. v. Rees*⁽¹²⁾ it was held that financial intimidation would vitiate a true accord to accept a lesser sum than the amount of the debt so that the creditor was not barred from suing for the balance by accepting the lesser sum. In that case the creditors were, to the knowledge of the

(12) (1966) 2 Q.B. 617.

debtor, in desperate financial straits. The debtor then indicated to them that he (the debtor) would pay a lesser sum in satisfaction or nothing. In the words of Danckworts L. J. at p. 626:

“The Rees really behaved very badly. They knew of the plaintiffs’ financial difficulties and used their awkward situation to intimidate them. The plaintiffs did not wish to accept the sum of £300 in discharge of the debt of £482, but were desperate to get some money.”

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

—
No. 5
Judgment of
Justice
Simon F. S. Li
17th February,
1976.
(continued)

10 The case of *Rookes v. Barnard*⁽¹³⁾ is the authority for the proposition that the tort of intimidation comprehends not only threats of criminal or tortious acts but also threats of breaches of contract.

In *Barton v. Armstrong and others*⁽¹⁴⁾ it was held that where the plaintiff proved that threats were used (in that case, threats of murder) and the threats were a reason for the plaintiff executing a deed the plaintiff was entitled to relief to have the deed set aside even though he might well have entered into the contract if no threats had been uttered to induce him to do so and that it was for the defendant to prove that the threats and unlawful pressure did not in fact contribute to the plaintiffs’ decision to sign the deed.

20 The case of *Lloyds Bank v. Bundy*⁽¹⁵⁾ appeared to have been decided on special circumstances. It was decided on the basis of a breach of fiduciary care on the part of the Bank towards its client, an old man, who executed a guarantee and a charge on his property in order to assist his son from financial ruin. The Court of Appeal held on evidence that the Bank failed to ensure that the client had independent and informed advice whether there was any prospect of the son’s Company’s affairs becoming viable and that there was inequality of bargaining power. Having enunciated the general rule of the law that no bargain would be upset which was the result of the ordinary interplay of forces Lord Denning M. R. said at p. 763:

30 “Yet there are exceptions to this general rule. There are cases in our books in which the courts will set aside a contract, or a transfer of property, when the parties have not met on equal terms, when the one is so strong in bargaining power and the other so weak that, as a matter of common fairness, it is not right that the strong should be allowed to push the weak to the wall. Hitherto those exceptional cases have been treated each as a separate category in itself. But I think the time has come when we should seek to find a principle to unite them. I put on one side contracts or transactions which are voidable for fraud or misrepresentation or mistake. All those are governed by settled principles. I go only to those where there has been inequality of bargaining power, such as to merit the intervention of the court.”

40 (13) (1964) A.C. 1129
(14) (1975) 2 W.L.R. 1050
(15) (1974) 3 A.E.R. 757

He went on to give a number of examples in cases where the court would grant relief and said in conclusion at p. 765:

“Gathering all together, I would suggest that through all those instances there runs a single thread. They rest on ‘inequality of bargaining power’. By virtue of it, the English law gives relief to one who, without independent advice, enters into a contract on terms which are very unfair or transfers property for a consideration which is grossly inadequate, when his bargaining power is grievously impaired by reason of his own needs or desires, or by his own ignorance or infirmity, coupled with undue influences or pressures brought to bear on him by or for the benefit of the other. When I use the word ‘undue’ I do not mean to suggest that the principle depends on proof of any wrongdoing. The one who stipulates for an unfair advantage may be moved solely by his own self-interest, unconscious of the distress he is bringing to the other. I have also avoided any reference to the will of the one being ‘dominated’ or ‘overcome’ by the other. One who is in extreme need may knowingly consent to a most improvident bargain, solely to relieve the straits in which he finds himself. Again, I do not mean to suggest that every transaction is saved by independent advice. But the absence of it may be fatal. With these explanations, I hope this principle will be found to reconcile the cases.”

10

20

On this point Sir Eric Sachs said at p. 771:

“As regards the wider areas covered in masterly survey in the judgment of Lord Denning M. R., but not raised *arguendo*, I do not venture to express an opinion — though having some sympathy with the views that the courts should be able to give relief to a party who has been subject to undue pressure as defined in the concluding passage of his judgment on that point.”

This principle was further explained by Lord Denning M. R. in Clifford
30 Davis Management Ltd. v. W. E. A. Records Ltd.⁽¹⁶⁾ where he said at p. 64:

“Reading those speeches in the House of Lords, they afford support for the principles we endeavoured to state at the end of last term about inequality of bargaining power. It was in *Lloyds Bank Ltd. v. Bundy* (1974) 3 W.L.R. 501. *Instone’s case* (1974) 1 W. L. R. 1308 provides a good instance of those principles. The parties there had not met on equal terms: the one was so strong in bargaining power and the other so weak that, as a matter of common fairness it was not right that the strong should be allowed to push the weak to the wall.

40

In the present case I would not presume to come to any final opinion. It is only interlocutory. But there are ingredients which may be said to go to make up a case of inequality of bargaining power.”

He went on to give all the instances of the unconscionable bargain and said: “For these reasons it may well be said that there was such inequality of bargaining power that the agreement should not be enforced and that the assignment of copy-right was invalid and should be set aside.”

(16) (1975) 1 W.L.R. 61.

10 In view of the foregoing the principle is that the Court will not upset a contract if it is simply the result of the ordinary interplay of forces. However the Court will not enforce a contract which is forced upon a party who stands in such unequal bargaining power that he is driven to the wall and derives virtually no benefit from the contract or, at best, in obviously unconscionable bargain. To this principle the facts in the Bundy case, the Clifford Davis case and the D. & C. Builders case are classic examples. In this connection the Court will look into the bargaining power of the parties bearing in mind that a threat of breach of contract may well be a form of intimidation so as to place one party in an advantageous position and that once it is proved that the threat is a reason for the other party to enter into the contract it is up to the threatening party to prove that the threat did not in fact contribute to the other party entering into the contract.

20 In the present case I find as a fact that the defendants signed the guarantee in error of judgment by yielding to the plaintiffs' demand. The 1st defendant said that if the plaintiffs repudiated the main agreement the drop in price of the Fu Chip shares could exceed 20 cents. That was not more than 5 per cent of the highest value paid for the Fu Chip shares in March 1973. That would not cause the financial ruin of the defendants. When cross-examined on this point, the allegation of threat, the 1st defendant's evidence was as follows:

Q. Is it true that Exhibits A37 and 38 were regarded by you and the other party as a substitute for Exhibit B?

A. Yes. Again I was forced to do so.

Q. You regarded yourself as bound by that Exhibit A37 and 38?

A. Yes. Once signed I regarded as binding.

Q. Look at Exhibit A48 and 49 dated 30/3/74. You saw it?

A. Yes, addressed to my brother.

Q. No reply made?

30 A. Yes.

Q. Was there similar letter addressed to you?

A. Yes. A48A, A49A.

Q. There was no mention of threat or duress relating to A48 and A49, A48A and A49A until the 21st July, 1974?

10

A. I agree. The reason why I did not reply was this: that I was sure there was going to be a law suit and nothing would clear it until then and we would wait for the law suit to begin and I believed that since I was compelled to sign, that document should be regarded as null and void.

Q. When did you have that belief?

A. Shortly after the 4th May 1973. I was very much aggrieved because I was forced to sign this guarantee. I asked Yuen Pak Yu for advice as to the way out of the bad situation. Yuen said we would seek advice or opinion from an expert. I did not know about this until I obtained counsel's opinion, a retired old judge.

Q. On the 4th May all the Shing On shares had been acquired by Fu Chip?

A. Yes, on that day.

Q. Thus from that day no fear of threat by the plaintiffs?

A. Correct.

Q. Yet you did not see fit to put your objection to the plaintiffs on record?

20

A. At that time I was still under great apprehension of the plaintiff till they sued me, I had to be nice to them.

Q. You have told the court that Exhibit B and C contained all the agreements and negotiations.

A. Yes.

I am sure that prior to the 4th May 1973 the defendants particularly the 1st defendant, regarded the plaintiffs' refusal to complete as unreasonable rather than that of a threat. Otherwise they would have raised the point much earlier.

40

Further, the defendants owned the controlling interests of the Fu Chip. They could have stood firm and caused the Fu Chip to sue the plaintiffs for breach of the main agreement.

In the business world it is a frequent occurrence that the contracting parties are not equal in bargaining power. So long as the law of supply and demand obtains in matters of economics it does not require great imagination to accept such a phenomenon. So long as one party does not make such

unconscienable demand as to give virtually nothing in return or that the other party is not driven to desperation for the bargain one has to accept that the contract is simply the result of ordinary interplay of forces.

*In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

10 Having regard to the circumstances of the present case I am of the opinion that the defendants merely yielded to a temptation of taking the easy way out to solve a problem by accepting a risk far greater than their expectation. The defendants' position was much stronger than that of the farmer in the Bundy case and the builder in the D. & C. Builder case. In the circumstances of this case I find that the case does not merit the intervention of the Court for the guarantee to be declared unenforceable. In short the defendants are bound by the guarantee. There will be judgment for the plaintiff in the sum of \$5,392,800.00 with costs.

No. 5
Judgment of
Justice
Simon F. S. Li
17th February,
1976.
(continued)

Dated the 17th day of February, 1976.

(Simon F. S. Li)

S. Gittins Q. C. and A. Li (Hastings & Company) for the Plaintiffs

Zimmern Q. C. & R. Wong (Yung, Yu, Yuen & Company) for the Defendants.

1974, No. 1159 *In the Supreme
Court of
Hong Kong
Original
Jurisdiction*

IN THE SUPREME COURT OF HONG KONG
HIGH COURT

BETWEEN:—

PAO ON
HO MEI CHUN
PAO LAP CHUNG
and
LAU YIU LONG
BENJAMIN LAU KAM CHING

1st Plaintiff,

2nd Plaintiff,

3rd Plaintiff,

1st Defendant,

2nd Defendant,

No. 6
Judgment of
Justice
Simon F. S. Li
17th February,
1976.
(continued)

10

BEFORE HIS HONOURABLE MR. JUSTICE LI, IN COURT

JUDGMENT

Dated and entered 17th day of February, 1976

This action having been tried before the Honourable Mr. Justice Li without a jury, at the Supreme Court of Justice, Hong Kong, and the said Mr. Justice Li having on the 17th day of February, 1976 ordered that Judgment to the Plaintiffs in the sum of \$5,392,800:00 with costs.

20 IT IS ADJUDGED that the Defendants do pay the Plaintiffs the sum of \$5,392,800:00 with interest as from the 1st day of May, 1974 to the date of Judgment at the rate of 6% per annum, and costs to be taxed.

IT IS FURTHER ORDERED that execution be stayed pending appeal.

Sgd. J. R. OLIVER (L.S.)
REGISTRAR.

IN THE SUPREME COURT OF HONG KONG

IN THE COURT OF APPEAL

(CIVIL APPEAL NO. 13 of 1976)

(on Appeal from H. C. Action No. 1159 of 1974)

IN THE COURT OF APPEAL

(on Appeal from H. C. Action No. 1159 of 1974)

No. 7

Notice of Motion of Appeal.

25th March, 1976.

BETWEEN:—

LAU YIU LONG

1st Appellant

(1st Defendant)

BENJAMIN LAU KAM CHING

2nd Appellant

(2nd Defendant)

and

PAO ON

1st Respondent

(1st Plaintiff)

HO MEI CHUN

2nd Respondent

(2nd Plaintiff)

PAO LAP CHUNG

3rd Respondent

(3rd Plaintiff)

10

NOTICE OF MOTION OF APPEAL

20

TAKE NOTICE that the Court of Appeal will be moved so soon as Counsel can be heard on the hearing of an appeal on the part of the 1st and 2nd Appellants against a decision of the Honourable Mr. Justice Li given on 17th February 1976 whereby he gave judgment for the Respondents in the sum of \$5,392,800.00 with interest as from the 1st day of May, 1974 to the date of Judgment at the rate of 6% per annum and costs to be taxed.

AND TAKE NOTICE that the grounds of the appeal are as follows:—

(a) That on the findings of fact made by the learned judge he erred in law in not having found in favour of the Appellants;

(b) Further and/or alternatively that the learned judge erred in law in holding that extrinsic evidence is admissible to “interpret” the statement of purported consideration in the “guarantee”;

30

(c) Further and/or alternatively the “interpretation” by the learned judge was in fact contrary to the statement of purported consideration in the “guarantee”;

(d) Further and/or alternatively the learned judge erred in fact and/or law in holding that the promise or act of selling the Shing On shares to the Fu Chip by the respondents could be valuable consideration for the said “guarantee”;

(e) Further and/or alternatively the learned judge failed to make any finding as to whether the said promise or act was in fact a sufficient consideration;

(f) Further and/or alternatively the said promise or act was not in the circumstances in fact a sufficient consideration;

(g) Further and/or alternatively if there was any consideration the same was past;

10 (h) Further and/or alternatively the said guarantee was exacted from the Appellants or otherwise procured by means of an unlawful threat or alternatively by means of an unreasonable and mala fide act on the part of the Respondents and is therefore unenforceable in equity;

(i) Further and/or alternatively the learned judge erred in fact and/or in law in applying a test of "financial ruin" in determining whether it was such duress as to entitle equity to intervene;

(j) Further and/or alternatively the learned judge erred in fact and/or in law in holding the Respondent's refusal to complete was merely unreasonable and not a threat;

(k) There was such duress as to vitiate or make the guarantee unenforceable;

20 (l) Generally that the decision of the judge is not warranted by the findings and/or evidence.

AND FURTHER TAKE NOTICE that on the appeal, the Appellants will ask the Court of Appeal:—

(a) To allow the Appeal and set aside the learned judge's decision;

(b) To award costs here and in the Court below in favour of the Appellants;

(c) Such further or other order or directions as the Court of Appeal thinks just.

30 AND FURTHER TAKE NOTICE that the Appellants intend to set this Appeal on the appeal's list.

Dated this 25th day of March, 1976.

DENIS CHANG

COUNSEL FOR THE APPELLANTS.

40 TO: the above-named 1st Respondent Pao On, the above-named 2nd Respondent Ho Mei Chun and the above-named 3rd Respondent Pao Lap Chung and their Solicitors Messrs. Hastings & Co., Hong Kong.

1974, No. 1159 *In the Court of Appeal*

No. 8

Application of Motion of Cross-Appeal.

29th March, 1976.

IN THE COURT OF APPEAL
(On Appeal from Action No. 1159 of 1974)

BETWEEN:— LAU YIU LONG

1st Appellant
(1st Defendant)

BENJAMIN LAU KAM CHING

2nd Appellant
(2nd Defendant)

and

PAO ON

1st Respondent
(1st Plaintiff)

HO MEI CHUN

2nd Respondent
(2nd Plaintiff)

PAO LAP CHUNG

3rd Respondent
(3rd Plaintiff)

NOTICE OF MOTION OF CROSS APPEAL

TAKE NOTICE that the Court of Appeal will be moved so soon as Counsel can be heard on behalf of the 1st, 2nd and 3rd Respondents on cross appeal from the Order of the Honourable Mr. Justice Li given at the conclusion of the trial of this action on the 17th day of February 1976 whereby he ordered that execution be stayed until the hearing of the appeal herein on the judgment given by him on the 17th February 1976 for the Respondents in the sum of \$5,392,800.00 with interest therein at 6% per annum as from the 1st day of May 1974 to the date of judgment and for costs to be taxed for an Order that the said Order for Stay of Execution of the said judgment debt be set aside.

AND FOR an Order that the Appellants pay to the Respondents the costs of and occasioned by this Cross Appeal.

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

1. That the learned Judge erred in law in exercising his discretion in granting the said stay of execution in the absence of special circumstances.
2. That the learned Judge erred in law in regarding the inability of the 1st and 2nd Appellants to pay the said judgment debt as constituting circumstances which justified the exercise of his discretion in granting the said stay of execution.

*In the Court of
Appeal*

No. 8

Notice of
Motion of
Cross-Appeal.

29th March,
1976.

(continued)

3. That there was no evidence that the 1st, 2nd and 3rd Respondents would be unable or unlikely to pay back to the 1st and 2nd Appellants the judgment debt in the event of the Appeal of the 1st and 2nd Appellants herein being allowed.

AND FURTHER TAKE NOTICE that the Respondents intend to set this Cross Appeal down in the Appeal list.

Dated this 29th day of March 1976.

ANDREW LI
COUNSEL FOR THE RESPONDENTS

10 To: The abovenamed 1st Appellant Lau Yiu Long, the 2nd Appellant Benjamin Lau Kam Ching and their solicitors Messrs. Yung, Yu Yuen & Co.

HASTINGS & CO.
SOLICITORS FOR THE RESPONDENTS

Dated the 29th day of March 1976

1974, No. 1159 *In the Court of Appeal*

IN THE COURT OF APPEAL
(On Appeal from Action No. 1159 of 1974)

No. 9

Amended Respondents' Notice.

4th May, 1976.

BETWEEN:—

LAU YIU LONG

*1st Appellant
(1st Defendant)*

BENJAMIN LAU KAM CHING

*2nd Appellant
(2nd Defendant)*

and

PAO ON

*1st Respondent
(1st Plaintiff)*

HO MEI CHUN

*2nd Respondent
(2nd Plaintiff)*

PAO LAP CHUNG

*3rd Respondent
(3rd Plaintiff)*

10

AMENDED RESPONDENTS' NOTICE UNDER ORDER 59,
RULE 6(2)

20 TAKE NOTICE that the Respondents, while seeking to uphold the verdicts given and judgments entered for the Respondents against the Appellants upon the trial of this action on the grounds on which such verdicts were in fact given and judgments in fact entered, desire to contend on the appeal that the verdicts and judgments should be affirmed on the following other grounds namely:—

That on the learned judge's finding of fact that:—

a. the subsidiary agreement represented the intention of the parties; and

b. the guarantee was to replace the subsidiary agreement:

he ought to have found that the cancellation of the subsidiary agreement was consideration for the guarantee

30 The Respondents will further contend on the appeal that the learned Judge's conclusion that there was good consideration in law for the guarantee should be affirmed on the ground that the execution by the Respondents of the indemnity and guarantee dated 4th May 1973 in favour of the Appellants (which is on page 188 of the Appeal bundle) which was done contemporaneously with the execution of the guarantee sued upon constituted good consideration in law for the guarantee.

*In the Court of
Appeal*

No. 9

Amended
Respondents'
Notice.

4th May, 1976.
(continued)

The Respondents will further contend on the appeal if necessary that if the guarantee was invalid for any reason the cancellation of the subsidiary agreement was likewise invalid, with the result that the subsidiary agreement remained in full force and effect; and in the event of the Court of Appeal taking that view the Respondents will ask for the alternative reliefs prayed for in paragraph 1A of the prayer of the Statement of Claim.

AND FURTHER TAKE NOTICE that the Respondents will apply to the Court of Appeal for an Order that the Appellants pay to the Respondents the costs occasioned by this notice to be taxed.

10 Dated this 4th day of May, 1976.

HASTINGS & CO.
Solicitors for the Respondents

To: the abovenamed 1st Appellant
Lau Yiu Long and the above-
named 2nd Appellant Benjamin
Lau Kam Ching and their
solicitors Messrs. Yung, Yu
Yuen & Co. Hong Kong.

1976 No. 13 *In the Court of*
(Civil) *Appeal of*
Hong Kong

IN THE COURT OF APPEAL

On Appeal from the High Court

BETWEEN:—

LAU YIU LONG

BENJAMIN LAU KAM CHING

and

PAO ON

HO MEI CHUN

PAO LAP CHUNG

No. 10
Judgment of the
Hon. Sir
Geoffrey
Briggs C. J.
5th November
1976

Respondents

Appellants

10

Coram: Briggs, C.J.
McMullin & Leonard, JJ.

Date: 5th November, 1976.

J U D G M E N T

Briggs C.J.: This is an appeal from a decision of the High Court giving judgment to the plaintiff respondents for the sum of \$5,392,800 with costs.

20 At the relevant time the plaintiffs owned all the shares in a private company known as the Tsuen Wan Shing On Estate Company Limited (hereinafter referred to as 'the Shing On'). The defendants were the majority shareholders in a public company known as the Fu Chip Investment Company Limited (hereinafter called 'the Fu Chip').

30 By an agreement dated February 27th, 1973 the Fu Chip agreed to purchase all the shares in the Shing On. The purchase price was stated to be \$10,500,000. At that period of time, owing to the conditions of the stock market vendors commonly preferred payment in shares rather than in money. One term of the agreement stated that the purchase price would be satisfied by the allotment of 4,200,000 ordinary shares of \$1 each in the Fu Chip at an agreed market price of \$2.50 for each \$1 share.

The agreement also provided that the closing date for completion was to be March 31, 1973. This was later extended to April 30th, 1973.

In actual fact that completion of the sale took place on May 4th, 1973 when 4,200,000 shares in Fu Chip were transferred to Shing On.

On the same date, May 4th, 1973, the defendants signed a guarantee in favour of the plaintiffs. This was to the effect that the defendants

guaranteed that the value of a \$1 share in the Fu Chip would be \$2.50 on the following marketing date immediately after April 30th, 1974, i.e. one year after the revised date of the completion of the sale. The guarantee further provided that the defendants would indemnify the plaintiffs for any loss they might suffer if the market value of the shares fell below that price on that date to the extent of 60% of the total number of shares. If the defendants were called upon to indemnify the plaintiffs for any discrepancy the defendants would have the option to purchase 60% of the shares, i.e. 2,520,000 shares at \$2.50 i.e. \$6,300,000.

10 On the date in question, May 1st, 1974, the market price of one Fu Chip share was 36 cents. The plaintiffs therefore claimed \$5,392,800 i.e. the difference between the then market price of the shares at 36 cents per share and the guaranteed price of \$2.50 per share. As I have said, judgment was given for the plaintiffs in that amount.

20 It was the contention of the defendants that the consideration stated in the guarantee was past consideration and hence no consideration: and that the plaintiffs could not succeed. However, the trial judge allowed extrinsic evidence to be called to explain the meaning of the guarantee. And he held that the guarantee was given for good consideration after considering such evidence. The first point for decision is, therefore, : "was the trial judge right to allow such evidence to be called?"

The Shing On and the Fu Chip were not parties to the guarantee. It is addressed by the defendants to the plaintiffs and the relevant part reads as follows:—

"Re: Tsuen Wan Shing On Estate
Company Limited

30 IN CONSIDERATION of your having at our request agreed to sell all of your shares of and in the above mentioned company
..... 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 the said 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 defendants) the directors of the said Fu Chip
HEREBY AGREE and GUARANTEE

There is no doubt that on its face the consideration expressed is past consideration.

40 The trial judge allowed evidence to the effect that contemporaneously with the signing of the agreement to sell the shares on February 27th, 1973 (which I shall refer to as 'the main agreement') the parties signed a second agreement (which I shall call 'the subsidiary agreement'). By this subsidiary agreement the plaintiffs agreed with the first defendant to sell back 60% of

the Fu Chip shares at the agreed price of \$2.50 on year later, i.e. on April 30th, 1974. This subsidiary agreement was cancelled by the parties on the same day as the guarantee referred to above was signed: and the main agreement completed. On the same date, May 4th, 1973 by yet another instrument (which for convenience I shall refer to as "the indemnity") the plaintiffs agreed with the defendants not to part with the 60% of the Fu Chip shares which were the subject matter of the guarantee for one year, i.e. those shares or any part of them were not to be put on the market before April 30th, 1974.

*In the Court of
Appeal
Hong Kong*

No. 10
Judgment of the
Hon. Sir
Geoffrey
Briggs C. J.
5th November
1976.

(continued)

10 After admitting such and other extrinsic evidence the trial judge held that the true consideration for the guarantee was the completion by the plaintiffs of the main agreement, the agreement made by them with Fu Chip.

Counsel for the appellants raised six main issues which cover his grounds of appeal and also certain matters raised in the respondents' notice of appeal.

These issues are, first, that the trial judge was wrong in admitting extrinsic evidence to explain the clear words of the guarantee.

20 Secondly, even if the extrinsic evidence was rightly admitted, the finding of the judge that the true consideration for the guarantee was the performance of the main agreement was a finding that there was not good consideration since the performance of an existing obligation to a third party does not constitute good consideration.

Thirdly, that on the true reading of the facts as found by the judge the guarantee was signed under a threat that unless a guarantee was forthcoming the plaintiffs would not complete the main agreement. And that the court should not and indeed will not enforce a contract made in such circumstances.

30 The fourth issue deals with the question of whether the cancellation of the subsidiary agreement on May 4th, 1973 was the consideration for the guarantee.

The fifth issue raises the question whether the indemnity also signed on May 4th, 1973 was the consideration for the guarantee.

And finally, the sixth issue: if the correct view is, as the appellants aver it is, that there was no good consideration for the guarantee and it is void, does this revive the cancelled subsidiary agreement?

The first issue is, as I have already stated: Was the trial judge wrong in admitting extrinsic evidence to explain the words of the written guarantee?

40 The general rule seems to be that the court will always allow the admission of extrinsic evidence to construe a written contract, to prove the circumstances in which the contract was made, or to describe the factual background to the contract. There is a famous passage in the judgment of Lord Wilberforce in the case of **Prenn v. Simmonds**⁽¹⁾ which is material here. He said:—

(1) (1971) 1 W.L.R. 1381 at pp. 1383-4

10

“The time has long passed when agreements, even those under seal, were isolated from the matrix of facts in which they were set and interpreted purely on internal linguistic considerations. There is no need to appeal here to any modern, anti-literal tendencies, for Lord Blackburn’s well-known judgment in **River Wear Commissioners v. Adamson** (1877 2 App. Cas. 743, 763) provides ample warrant for a liberal approach. We must, as he said, inquire beyond the language and see what the circumstances were with reference to which the words were used, and the object, appearing from those circumstances, which the person using them had in view. Moreover, at any rate since 1859 (**Macdonald v. Longbottom** 1 E. & E. 977) it has been clear enough that evidence of mutually known facts may be admitted to identify the meaning of a descriptive term.”

A later passage in his judgment reads as follows:—

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“In my opinion, then, evidence of negotiations, or of the parties’ intentions, and a fortiori of Dr. Simmonds’ intentions, ought not to be received, and evidence should be restricted to evidence of the factual background known to the parties at or before the date of the contract, including evidence of the ‘genesis’ and objectively the ‘aim’ of the transaction.”

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Both parties knew the following circumstances which preceded and surrounded the signing of the guarantee on May 4th, 1973. In February 1973 the main agreement between Shing On and Fu Chip had been signed and its contents were well known to the parties to this action. The purchase price for all the plaintiffs’ shares in Shing On was agreed to be an allotment of shares in Fu Chip at an agreed price. The defendants wanted the plaintiffs to agree that they, the plaintiffs, would not part with 60% of the Fu Chip shares allotted to them for one year; the defendants being keenly interested that the market should not be flooded with Fu Chip shares because they were majority shareholders in that company.

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There was a discussion as to what would happen if the price of Fu Chip shares fell. And both parties wanted some protection from a possible fall in the value of the shares in 1973-4. It was first agreed that the first defendant would buy back from the plaintiffs 60% of the allotted shares at the agreed price one year after the date of the agreement. This would confer a benefit on the first defendant if the value of the shares in Fu Chip increased. We know now that the price of the shares fell from \$2.50 to 36 cents per share. But in February 1973 the stock market in Hong Kong was booming. When the agreement was explained to the plaintiffs in April 1973 they were dissatisfied. What they had always wanted was a straight guarantee. They wanted the benefit of any rise in the shares and to be protected against any fall.

The first defendant was anxious for the completion of the main agreement. An announcement as to the terms of that agreement had been made public. Fu Chip is a public company and if the main agreement was not

completed it might well affect the price of the Fu Chip shares in the market. There were further discussions and the plaintiffs decided not to complete the main agreement without the guarantee.

*In the Court of
Appeal of
Hong Kong*

No. 10
Judgment of the
Hon. Sir
Geoffrey
Briggs C. J.
5th November
1976
(continued)

10 There were, therefore, two alternatives open to the defendants. They could, because they were majority shareholders in Fu Chip, ensure that Fu Chip sued the Shing On for specific performance of the main agreement or they could give a guarantee to the plaintiffs. They chose the latter course because an action for specific performance would take a long time and because the giving of a guarantee would not alter the defendants' position save minimally. The defendants would forego the right to buy back the shares if they increased in value. The defendants thought that the shares would not fall in value but, if there was a fall, it would not be by much.

The defendants signed the guarantee because he wanted the completion of the main agreement: it was an inducement to secure that event. Hence the guarantee replaced the previous agreement to repurchase the shares referred to above as 'the subsidiary agreement'.

20 On May 4th, 1973, there was an argument as to the share certificates and where they should be kept. This was resolved by the signing of the indemnity to which I have referred above. All this, the signing of the guarantee and indemnity, and the cancellation of the subsidiary agreement was part of the completion of the main agreement. All this took place on the same day, May 4th, 1973.

It is the contention of the plaintiffs that the guarantee must be construed against that background. The object for which the guarantee was signed was the completion of the main agreement between Shing On (the plaintiffs) and Fu Chip. The defendants' whole purpose was to secure that end.

30 The first words of the guarantee read thus: ". . . . in consideration of your having at our request agreed to sell all of your shares". In the context of the above facts that can only mean "complete the sale" of the shares. And all those facts were known to both parties.

The case of Milner v. Staffordshire Congregational Union (Inc.)⁽²⁾, it was held that "a sale" is made when a contract is entered into. In the guarantee, the phrase "under an agreement for sale and purchase" is used. The guarantee does not provide for the entering into a sale. Under the guarantee the parties are agreeing to complete the sale. The consideration is the completion or performance of the sale.

40 It was pointed out for the defendants that the court will not admit extrinsic evidence to vary or to contradict the written words of the contract: and reliance was placed on Frith v. Frith⁽³⁾ where it was held in effect that extrinsic evidence would not be admitted to prove a consideration different from that

(2) (1956) Ch. 275.

(3) (1906) A.C. 254.

contained in the instrument but would be admitted to show an additional consideration.

The rule is expressed in Halsbury (4th Ed. Vol. 12 at para. 1487) as follows:—

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“1487. 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 to the instrument to prove a larger consideration than that which is stated.”

The defendants say that the effect of the extrinsic evidence in this case is to change the meaning of the guarantee. As drafted, it is argued, the guarantee binds the defendants immediately. The extrinsic evidence converts the guarantee into an “if” contract, i.e. if the plaintiffs complete the main agreement the defendants will be bound by the guarantee. The extrinsic evidence seeks to prove a consideration different from that stated in the document, not an additional consideration to what is there expressed.

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Various other cases were cited on this aspect of the case. I am satisfied that the law is correctly stated in the passage I have quoted above from Halsbury. The distinction is a fine one. But, in my opinion, the extrinsic evidence was rightly admitted in this case to explain the surrounding circumstances of the guarantee, and the background to it. It was adding to and explaining the terms contained in the instrument. It is proving the real consideration for the guarantee. It is not proving a consideration which is different from that contained in the instrument itself.

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It is true that the guarantee contains no promise on its face that the plaintiffs would complete the purchase of the shares. Thus, the guarantee can be read as an “if” contract. That is what the parties intended, the evidence clearly shows this. Acting on legal advice, the cancellation of the subsidiary agreement and the signing of the guarantee, the indemnity and the completion of the sale of the shares all took place contemporaneously. The plaintiffs and the defendants performing their respective parts of the main agreement.

In the event, therefore, I hold that the extrinsic evidence was rightly admitted by the trial judge in this case.

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The second issue can only arise if it is accepted that the judge was right to admit extrinsic evidence. The judge found that the true consideration for the guarantee was the performance by the plaintiffs in their capacity as Shing On of the main agreement, the agreement with Fu Chip. The point at issue is whether the performance of an existing obligation to a third party can constitute good consideration for a fresh promise.

In paragraph 132 of the 23rd Edition of Chitty on Contracts it is stated that there is little authority on this point. The learned editor then gives an example of a case where he considers that a promise to perform an existing duty owed to a third party "should be capable of constituting consideration". The example given is:—

" . . . where C promises A some benefit in return for A's promise not to carry out his intention to break a contract with the B company, in which C has an interest."

10 This example is very close to the facts in the present case, except that we are here dealing not with a promise not to break the contract with the B company but with the actual performance of that contract. The defendants had an interest in the performance by the Shing On of their contract with Fu Chip because the defendants were the majority shareholders in the Fu Chip.

The plaintiffs contend that it is settled law that a promise to perform an existing contract or the actual performance of that contract is good consideration to support a contract with a person who is not a party to the former contract. The defendants' case is that this is not so in every case: that there is no such general rule.

The headline to Scotsen v. Pegg⁽⁴⁾ reads in part thus:—

20 "The performance of an act which a person has agreed with another to perform, is a good consideration to support a contract with a third person if the latter derives a benefit from the performance."

Wilde, B. is quoted in the report of that case as saying (at p.299):—

30 "It often happens that when goods arrive in a ship, and there is a lien upon them, a merchant who wants to get possession of the goods promises to pay the lien if the master will deliver them to him. A man may be bound by his contract to do a particular thing, but while it is doubtful whether or no he will do it, if a third person steps in and says, 'I will pay you if you will do it,' the performance is a valid consideration for the payment."

In his judgment at p.300, he states the law thus:—

40 "But if a person chooses to promise to pay a sum of money in order to induce another to perform that which he has already contracted with a third person to do, I confess I cannot see why such a promise should not be binding. Here the defendant, who was a stranger to the original contract, induced the plaintiffs to part with the cargo, which they might not otherwise have been willing to do, and the delivery of it to the defendant was a benefit to him. I accede to the proposition that, if a person contracts with another to do a certain thing, he cannot make the performance of it a consideration for a new promise to the same individual. But there is no authority for the proposition that where there has been a promise to one person to do a certain thing, it is not possible to make a valid promise to another to do the same thing."

(4) (1861) 6 H.N. 295.

This case was held to be good law and was followed in the New Zealand case Satterthwaite v. N.Z. Shipping Company⁽⁵⁾. In the present case the benefit to the defendants was the immediate performance of the main agreement and the defendants was not entitled to this in law. The defendants benefited as shareholders. It was this that was the consideration in the present case.

An interesting argument was put forward by the defendants. It was that there is no general rule to this effect: each case must be looked at separately because historically the rule is based on reasons of public policy.

- 10 The old cases of Harris v. Watson⁽⁶⁾ and Stilk v. Myrick⁽⁷⁾ were quoted as authority for this. These are famous sailor cases, and are authority for the proposition that the performance of an obligation already owed to a person cannot be good consideration for a fresh promise by that same person. The basis for the rule is stated to be public policy. It is urged by the defendants that the same question of public policy arises where there is a promise to perform a duty to a third person or where there is a performance of that duty in consideration for a fresh promise. Further, that the court in the present case should for reasons of public policy hold that the promise to perform the main agreement, since it included a threat not to complete that agreement unless the guarantee was given, was not good consideration for the guarantee. The rule is not that such a promise i.e. to perform an existing obligation to a third party can never be good consideration, it is a matter of public policy. If the courts think that public policy so requires they will hold that such a promise is not good consideration. Every case must be looked at individually. Here, because of the threat of the plaintiffs not to complete the main agreement the courts should hold that there was no consideration. It was admitted that no case directly on this point could be found but the defendants relied on first principles as referred to above.

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30 Mr. Balcombe, for the defendants, also referred to American textbook authorities and to the case of De Cicco v. Schweizer⁽⁸⁾. It appears from the judgment of Cardozo, J. in that case that at any rate the courts of New York are, in his own words, "committed to the view that a promise by A to B to induce him not to break his contract with C is void."

This judgment was explained in Corbin on Contracts at paragraph 177. But I think that paragraph 176 correctly states the modern rule. It reads as follows:—

"Performance of a pre-existing duty owed to the present promisor is generally held not to be a sufficient consideration; and the American Law Institute states this as the prevailing rule, even though some cases are and

- 40 (5) (1971) Lloyds L.R. 399 at p.409.
(6) (1791) Peake 102
(7) (1809) 2 Camp. 317
(8) (1917) 117 N.E. Rep. 807.

10 ought to be decided otherwise. But suppose that the pre-existing duty is owed to a third person and not to the promisor. Is the performance of this kind of duty a sufficient consideration for a promise? The American Law Institute has stated that it is sufficient. This should be supported for two reasons: (1) the promisor gets the exact consideration for which he bargains, one to which he previously had no right and one that he might never have received; (2) there are no sound reasons of social policy for not applying in this case the ordinary rules as to sufficiency of consideration. The performance is bargained for, it is beneficial to the promisor, the promisee has forborne to seek a rescission or discharge from the third person to whom the duty was owed, and there is almost never any probability that the promisee has been in position to use or has in fact used any economic coercion to induce the making of the promise. There is now a strong tendency for the courts to support these statements and to enforce the promise. The reasons that may be advanced to support the rule that is applied in the two-party cases, weak enough as they often are in those cases, are scarcely applicable at all in three-party cases."

20 I agree that the three-party cases must be distinguished from the two-party cases. In my view, Scotson v. Pegg⁽⁴⁾ is still good law. And, subject to what I have to say below as to duress, I think the Judge correctly held that there was good consideration in this case. The defendants as promisors received a benefit from the performance of the main agreement. They avoided a fall in the value of the Fu Chip shares which might have occurred had completion of the main agreement been delayed.

The third issue is: Will the court enforce an agreement which has been made under duress? The word 'duress' being used in the context to mean 'improper economic pressure'.

30 The duress complained of is, of course, the threat that the plaintiffs would not complete the main agreement unless the defendants gave them a guarantee in substitution for the subsidiary agreement. The case for the defendants is that the signing of the guarantee in these circumstances resulted in at least a voidable contract as it was signed under economic pressure. And that the courts will not enforce a contract where that contract has been entered into under economic duress.

40 It was suggested by the defendants that the doctrine of economic duress or business compulsion was part of the law of England. Attention was drawn to the case of Lloyds Bank v. Bundy⁽⁹⁾ in which Denning, M. R. suggested that the courts should have power to set aside a contract where there has been inequality of bargaining power and that this should be a general rule. In that judgment, however, he admits that there was no such general rule. Inequality of bargaining power is not of itself a ground for setting aside a

(4) (1861) 6 H.N. 295.

(9) (1975) 1 Q.B. 326

contract. It may be an element to be taken into account in reaching a conclusion whether a defence of undue influence, or restraint of trade has been made out; or to decide whether a certain clause in a contract should be construed as a penalty or forfeiture clause.

10 For example, in Schroeder Music Publishing Company v. Macauley⁽¹⁰⁾, the point at issue was whether a contract made between a young unknown songwriter and a firm of musical publishers was in restraint of trade. One reason the House of Lords gave for so holding was the inequality of the bargaining position of the parties. But it is clear from the report that this was only one reason for the decision. The duration of the contract and the nature of certain oppressive terms were also given as cumulative reasons for the decision.

The ratio decidendi of Lloyds Bank v. Bundy⁽⁹⁾ was not an application of the doctrine of economic duress. It was a case in which a fiduciary relationship between the parties was proved and hence a presumption of undue influence arose.

In Williston on Contracts, which I understand is a leading American textbook, the following passage occurs at paragraph 1617:—

20 “While there is disagreement among the courts as to what degree of coercion is necessary to a finding of economic duress, there is general agreement as to its basic elements:

1. The party alleging economic duress must show that he has been the victim of a wrongful or unlawful act or threat, and
2. Such act or threat must be one which deprives the victim of his unfettered will.

30 As a direct result of these elements, the party threatened must be compelled to make a disproportionate exchange of values or to give up something for nothing. If the payment or exchange is made with the hope of obtaining a gain, there is not duress, it must be made solely for the purpose of protecting the victim's business or property interests. Finally, the party threatened must have no adequate legal remedy.”

It would appear from this that there may well be such a doctrine as was referred to by Denning, M.R. in Lloyds Bank v. Bundy⁽⁹⁾ is part of the law of America or, at any rate, may soon become part of the law. I say this, for there are further passages qualifying the above quotation later in the book. Be that as it may I am satisfied that it forms no part of the law of England.

(10) (1974) 1 W.L.R. 1302.

The defendants relied on other cases to advance their argument on this issue. But I do not think that they are authority for the proposition that the doctrine of economic duress exists as part of our law. In Ormes v. Beadel⁽¹¹⁾ a builder, who was nearly insolvent, and under great pressure from his workmen, who were said to be starving and angry made a contract with the owner's architect who put improper pressure on him (the builder). There was clearly a case of actual undue influence. The case of Rookes v. Barnard⁽¹²⁾ was a case which established that the tort of intimidation was an established tort.

*In the Court of
Appeal
Hong Kong*

No. 10
Judgment of the
Hon. Sir
Geoffrey
Briggs C. J.
5th November
1976.
(continued)

10 In the case of D. C. Builder v. Rees⁽¹³⁾, the plaintiffs, jobbing builders, were owed a sum of money by the defendants. When the plaintiffs were desperate for money, the defendants offered to pay a lesser sum or nothing. Because of their bad financial position which was known to the defendants the plaintiffs agreed. It was held that they could recover the balance later. The ratio decidendi of this case is that there was no true accord between the parties. The second contract, the contract to accept less than the amount due could not be relied on by the defendants because there was no consideration for it.

20 The next point to decide is: When does a threat to break a contract with a third party constitute duress so as to render any contract made thereafter void or voidable?

The defendants placed reliance on the case of Barton v. Armstrong⁽¹⁴⁾. That case clearly shows that the point to be decided is: Did the threat or unlawful pressure appreciably contribute to the decision to enter into the contract? It is a question of fact or of the correct inference to be drawn from the facts in each case. In that case, the appellant was threatened with murder if he would not sign a certain deed. He did sign the deed but the principal reason for so doing was financial necessity. The Privy Council stated the rule thus:

30 "1. That the equitable rule, which enabled a contract entered into as a result of fraudulent misrepresentation to be set aside, applied in cases of duress so that if the respondent's threats were a reason for the appellant executing the deed he was entitled to relief even though he might well have entered into the contract if the respondent had uttered no threats to induce him to do so.

2. That it was for the respondent to prove that the threats and unlawful pressure did not in fact contribute to the appellant's decision

(9) (1975 1 Q.B. 326.

(11) (1860) 2 Giff 166.

40 (12) (1964) A.C. 1129.

(13) (1966) 2 Q.B. 617.

(14) (1976) A.C. 104.

to sign the deed and, since the proper inference to be drawn from the facts found was that although the appellant might have executed the deed even if the respondent had not made any threats, the threats and unlawful pressure did in fact contribute to the appellant's decision to sign the deed, the deeds were executed under duress and were void so far as the appellant was concerned."

10 A threat must be distinguished from driving a hard bargain. Where a person has two courses open to him and deliberately chooses one course having exercised his own judgment freely beforehand he cannot rely on the fact that there has been a threat to take a certain course, a threat which has not affected his choice. The question here is: Was the refusal not to complete the main agreement more than part of a negotiation between two parties — both of whom knew exactly what they were doing — and who were engaged in hard bargaining?

In Williston on Contracts, the following passage appears:—

20 "Whenever a party to a contract seeks the best possible terms, there can be no rescission merely upon the grounds of 'driving a hard bargain.' Merely taking advantage of another's financial difficulty is not duress. Rather, the person alleging financial difficulty must allege that it was contributed to or caused by one accused of coercion."

The word used was 'threat'; that word was used by the Judge and also appears in the evidence. It is, perhaps, an unfortunate word to use in the circumstances of this case, having as it does overtures of physical violence. In that sense, of course, there was no 'threat'. Do the facts show that the 'threat' influenced the defendants when they signed the guarantee in place of the subsidiary agreement and the main agreement was completed?

30 It is necessary to go back to the facts of the case. The facts clearly show that the Parties were all business people, eager to make the best possible bargain. This was not the case of a giant corporation bargaining with a 'little man'. The parties were equal as to their bargaining power and the Judge so held, though he said that he thought the first defendant was more sophisticated than Mrs. Pao, who conducted most of the negotiations on the plaintiffs' behalf. The substitution of the guarantee and indemnity for the subsidiary agreement cannot be said to be 'unfair' to or an exertion of improper pressure upon the defendants. This was an ordinary business negotiation. No one expected any great fall in the value of the shares at the time. There was no undue haste as to the signing of the guarantee. The first defendant consulted his solicitor and would seem to have exercised his own judgment, and entered into the guarantee with his eyes open and willingly.

40 The guarantee may be said to have been an error of judgment but that can only be said to be the case now, with hindsight. The evidence is that the first defendant thought — at the time of signing the guarantee — that the price of the shares might fall a little during the year 1973-74 but he took that risk, referred to in the judgment as 'a calculated risk'. The defendants were not getting something for nothing. They had no right to enforce the main agreement but they wanted immediate completion of it. For if the plaintiffs failed

to complete and Fu Chip brought an action for specific performance against Shing On, the value of the shares of the defendants in Fu Chip might fall, a figure of 20 cents per share being referred to. But this is not to say that if they had taken that course, if they had waited for judgment in an action of specific performance that the defendants would have faced ruin. The defendants appear to have been aware of their position and of the position of Fu Chip when the guarantee and indemnity were signed. They could, in the words of the Judge "have stood firm and caused the Fu Chip to sue the plaintiffs for breach of the main agreement", they chose not to do so.

10 On those facts it seems to me that the correct inference to draw is that the "threat" as such did not influence the conduct of the defendants.

It was a case of driving a hard bargain. The parties were of equal status. Each knew what he was doing. And in the words of the Judge 'the defendants took a calculated risk'.

It follows therefore that on this issue I do not accept that the 'threat' operated on the mind of the defendants. There was no duress in the sense in which that word is used in this branch of the law.

The fourth issue is whether the cancellation of the subsidiary agreement was the true consideration for the guarantee.

20 I do not think that the cancellation of the subsidiary agreement was the consideration for the guarantee per se. Indeed, the Judge found as a fact that it was not. However, the cancellation was part of the arrangement for the completion of the main agreement. It was cancelled by mutual agreement as part and parcel of this: it does not stand alone. The consideration for the guarantee was the whole arrangement for the completion of the main agreement of which the cancellation of the subsidiary agreement formed part.

30 The Judge found that the plaintiffs wanted the subsidiary agreement to be cancelled in any event. But there is no evidence that this was what the defendants wanted. The defendants agreed to the cancellation only as part of the whole arrangement. The cancellation cannot be considered in vacuo. To hold that the true consideration for the cancellation was the reliance of the mutual obligation under the subsidiary agreement is against the weight of the evidence.

40 The fifth issue is: Was the true consideration for the guarantee the indemnity given by the defendants on May 4th, 1973? This is a minor matter if only for the fact that the wording of the instrument itself is very difficult to interpret. The plaintiffs appear to have guaranteed that they would not part with their Fu Chip shares for one year but if they did, the defendants would have the option to buy back those very shares, the shares which the plaintiffs have already parted with. This is not very sensible.

Paragraph (k) of the main agreement reads thus:

"(k) Each of the Vendors shall retain in his own right in Fu Chip 60% of the shares allotted to him under this Agreement and shall not sell or transfer the same on or before the end of April 1974."

It is true that if the plaintiffs were in breach of the provisions of that paragraph, Fu Chip would have a right of action against them. And it is also true that the indemnity, like the cancellation of the subsidiary agreement was part of the whole arrangement of the completion. But the evidence clearly shows that the indemnity was, in Mr. Balcombe's phrase 'an afterthought' it was made and signed after the guarantee had been given, and after the cancellation of the subsidiary agreement. I do not think, therefore, that it was the consideration for the guarantee.

10 The sixth and last issue is: If the guarantee is invalid being given for past or for no consideration, does the subsidiary agreement revive? It is unnecessary for me to answer this question as I have already stated that I believe the guarantee to have been given for good consideration.

20 The Judge held that if the guarantee was void the cancelled subsidiary agreement would not revive. He found as a fact that there was an agreement to cancel the subsidiary agreement "in any event". It is clear from the evidence of the first defendant that the cancellation preceded the signing of the guarantee but that the two matters were interwoven. There was to be a replacement of the subsidiary agreement by the guarantee. They were not separate and distinct contracts: the one depended on the other and they were both part of the arrangement for the completion of the main agreement.

It was suggested by Mr. Francis, for the plaintiffs, that the Judge drew the wrong inference from the evidence. It is what the parties agreed on May 4th, that matters here: and that the correct inference is that the subsidiary agreement was cancelled as part of the agreement to give the guarantee. And with respect, I agree with him.

30 The defendants relied on the case of Morris v. Baron⁽¹⁵⁾. In that case it was held that a contract for the sale of goods which was evidenced in writing as required by section 4 of the Sale of Goods Act could be impliedly rescinded by a parol contract for the sale of goods which was not so evidenced and therefore unenforceable.

Lord Dunedin has this to say at page 27:

40 "If, then, the contract exists its existence must be treated as a fact, and it must be looked at to see if apart from enforceability it did or did not put an end to the former contract. For it would be an extraordinary result that although a parol contract to rescind a written contract is good, as to which there is no doubt (Goman v. Salisbury (1684 1 Vern. 240) and Willes J. in Noble v. Ward (L.R. 2 Ex. 135), yet the same thing cannot happen if after rescinding the first contract the parties go on to make another contract which may or may not be enforceable."

And on the following page occurs the passage:—

(15) (1918) A.C.1.

10 "I am fortified in my view by a passage in Fry on Specific Performance (3rd ed.). Sect. 1039 is as follows: 'But where the new contract relied on only as an extinguishment of the old one, the mere fact that it is not in writing, and so could not be put in suit, seems to be no ground for denying its effect in rescinding the original contract. The Statute of Frauds does not make the parol contract void, but only prevents an action upon it; and it does not seem to be necessary to the extinction of one contract by another that the second contract could be actively enforced. The point has never, it is believed, been matter of decision. But in point of principle it seems to stand on the same footing as a simple agreement to rescind.'

*In the Court of
Appeal
Hong Kong*

No. 10
Judgment of the
Hon. Sir
Geoffrey
Briggs C. J.
5th November
1976.
(continued)

20 It is argued that though the guarantee was void it would operate to rescind the subsidiary agreement. I do not think that that is so. In Morris v. Baron⁽¹⁵⁾, the second contract was only unenforceable it was not void. The contract was still a contract. A void contract can have no effect. If I am right it follows that if the guarantee was a void guarantee it operated not at all and the subsidiary agreement is still valid. And the rule in Morris v. Baron⁽¹⁵⁾ does not apply. It follows from this that I would dismiss this appeal.

(Sd.) Geoffrey Briggs, C.J.
President.

(15) (1918) A.C.1.

Balcombe, Q.C., Zimmern, Q.C. & D. Chang (Yung, Yu, Yuen & Co.) for Appellant.

Francis, Q.C., Gittins, Q.C. & A. Li (Hastings & Co.) for Respondent.

1976 No. 13 *In the Court of
Appeal of
Hong Kong*
(Civil)

IN THE COURT OF APPEAL

On Appeal from the High Court

BETWEEN:—

LAU YIU LONG
BENJAMIN LAU KAM CHING

Respondents

No. 11
Judgment of the
Hon Mr. Justice
McMullin
5th November
1976

and

PAO ON
HO MEI CHUN
PAO LAP CHUNG

Appellants

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Coram: Briggs, C.J., McMullin & Leonard, JJ.

Date: 5th November, 1976.

J U D G M E N T

McMullin, J.:

The plaintiffs in this action (respondents in the present appeal) owned all the shares in a private company called the Tsuen Wan Shing On Estate Company Limited. In the year 1973 they decided to sell their entire interest in that company to another company, the Fu Chip Investment Company Limited, a public company, of which the two defendants were the majority shareholders and, effectively, the controllers. At the time of the events with which we are concerned the first defendant was in fact the managing director of the latter company. On the 27th February, 1973, the three plaintiffs, the Shing On Estate Company Ltd. and the Fu Chip Investment Company Ltd. were, all three, parties to a written agreement whereby the plaintiffs and their company as joint vendors agreed to sell the 4,000 ordinary shares in the company, its total share capital, to the Fu Chip Company. The stated consideration for this sale was \$10,500,000. The purchase price was to be paid not in money but by the transfer to the vendors of 4,200,000 ordinary shares in the Fu Chip Company each share being of a nominal value of \$1 per share but each share being deemed, for the purposes of this sale, to have a market value of \$2.50 each. Under Clause 4(k) of the agreement the vendors jointly and severally warranted and undertook with Fu Chip that each of the vendors would retain, in his own right in Fu Chip, 60% of the shares allotted to him under the agreement and would not sell or transfer the same before the end of April 1974. The Fu Chip shares were at that time listed in the Far East Stock Exchange and the stated consideration of 4.2 million shares was a new issue for the purpose of taking over the Shing On Company. On the day upon which the

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agreement was signed (27th February, 1973) the first defendant and the three plaintiffs entered into a further agreement (which has been referred to throughout these proceedings as the subsidiary agreement to set it off from the main agreement) upon the face of which it appears that the first defendant was undertaking to repurchase from the plaintiffs, on or before the 30th April 1974, 60% of the Fu Chip shares paid to the Shing On Company as the purchase price upon the takeover of that company by the Fu Chip Company the price of each share upon repurchase to be \$2.50.

- 10 Thus far the facts are not in dispute and it is common ground that the reason why the main agreement stipulated that the plaintiffs should retain 60% of the Fu Chip shares for one year was because both parties were hopeful of the continued health and good prospects of these shares and the Fu Chip Company, in particular, did not wish the market to be flooded with Fu Chip shares by indiscriminate selling before they should have achieved their further potential. Following the signing of these two agreements the Fu Chip Company notified the Far East Stock Exchange Ltd. of the takeover represented by the main agreement and on the 31st March, 1973, the Far East Stock Exchange Ltd. approved their application to deal in the new allotment of 4.2 million shares, the purchase price of the Shing On Company.
- 20 Again, it is not disputed that completion of the sale of the Shing On Company by transfer of its shares by the plaintiffs was not affected within the time limited in the main agreement. The reason for the delay is in dispute but it is common ground that upon the 4th May 1973 at the office of Messrs. Yung, Yu, Yuen, solicitors, the first defendant and the three plaintiffs purported to cancel the subsidiary agreement and the two defendants and the plaintiffs signed a third document, the agreement which is the root of the matter in dispute between the parties upon the present appeal. The form which this agreement takes is the occasion of the first, and chief, of the three principal grounds of appeal put forward by Mr. Balcombe on behalf of the defendants.
- 30 I shall return to consider the terms of it in due course. It is the foundation of the plaintiffs' claim and it is said by the plaintiffs to represent an enforceable agreement entitling them to the payment of a sum of money equivalent to 60% of the shares at \$2.60 a share or \$6,300,000 less the alleged value of the Fu Chip shares at the end of April 1973. This agreement takes the form of a guarantee by the first defendant that 2,520,000 shares (the 60% of the Fu Chip shares which, by the terms of the main agreement, the plaintiffs were to retain for one year) will retain their value of \$2.50 per share upon the marketing date immediately after the 30th April 1974. This guarantee is coupled with a promise to indemnify
- 40 the plaintiffs against any damage or loss should the shares fall in value below that price. Finally, it is common ground that the price of these shares fell disastrously upon the market during the year 1973 and in the early months of 1974 so that the closing market price on the 1st May 1974 was only 36 cts. per share.

The plaintiffs sought to prove that there had been an oral agreement between the parties whereby the plaintiffs agreed to part with all the shares in the Shing On Company for the price stated in the main agreement and

that as a part of this oral arrangement the defendants would guarantee the price of 60% of the shares in the manner stipulated in the document signed on the 4th May 1974. It was their case that the subsidiary agreement had never been properly explained to them and that they had signed under the belief that it contained the terms which eventually appeared in the guarantee.

*In the Court of
Appeal of
Hong Kong*

No. 11
Judgment of the
Hon. Mr. Justice
McMullin
5th November
1976

(continued)

10 The defendants denied that there had been any completed oral agreement prior to the signing of the main agreement and they maintained that the plaintiffs had been fully instructed in the meaning of both the main agreement and the subsidiary agreement at the time they put their signatures to those documents. The learned trial judge, who analysed and considered the evidence with great care, disbelieved the plaintiffs' story as to the oral agreement and he also found that they were well aware of the nature of the contents of the subsidiary agreement before they signed it. For the defendants it was argued that no good consideration was shown in the document of guarantee and secondly that that argument had in any event been obtained under a threat to break the obligations imposed by the main agreement and was thus vitiated by a degree of compulsion which resulted in its being unenforceable. The learned judge accepted that the evidence
20 showed that the first defendant had only signed the guarantee out of a desire to have the main agreement brought to completion but he would not accept the argument as to duress. He preferred to take the view that the parties were hard-headed business people, on even bargaining terms, and that there was nothing in the situation of the defendants which imperilled them, or the Fu Chip Company, to such an extent as to compel them to accede to the request for a guarantee rather than seeking to enforce their contractual rights by action for specific performance. It was argued for the defendants in the court below, as it has been before us, that the document of guarantee was complete upon its face and that it was therefore improper to have
30 regard to extrinsic evidence to interpret it or explain its terms in any sense other than the words themselves expressed. On this issue the learned judge took the view that he was entitled to have regard to the surrounding circumstances under which the guarantee had come to be made and, having regard to the whole course of conduct of the parties, what he appears to have found is that the consideration was inaccurately described in the guarantee. He said:

"In the present case the promise or act of selling the Shing On shares to the Fu Chip by the plaintiffs could be valuable consideration for the guarantee signed by the defendants."

40 He referred to the principle that extrinsic evidence is not admissible to show a consideration contradictory to the stated consideration but he found nothing in the terms of the document itself which would amount to such a contradiction. It is this finding which raises the first of the six issues argued by Mr. Balcombe and he challenges it in a fundamental way. He does not dispute that it is proper for a court to look at extrinsic circumstances to explain the terms of a document, where there is in it some ambiguity or obscurity, in order to determine what was the true intention of the parties.

In the Court of
Appeal of
Hong Kong

No. 11
Judgment of the
Hon. Mr. Justice
McMullin
5th November .
1976
(continued)

Such ambiguity simply does not exist, he says, on the face of this document. The terms of the guarantee are as follows:

10 "IN CONSIDERATION of your having at our request agreed to sell all of your shares of and in the above mentioned company whose registered office is situate at 274 Sha Tsui Road Ground Floor Tsuen Wan New Territories in the Colony of Hong Kong for the consideration of \$10,500,000.00 by the allotment of 4,200,000 ordinary shares of \$1.00 each in Fu Chip Investment Company Limited whose registered office is situate at No. 33 Wing Lok Street Victoria in the said Colony of Hong Kong and that the market value for the said ordinary shares of the said Fu Chip Investment Company Limited 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 () of No. 152 Tin Hau Temple Road, Flat C1, Summit Court, 14th Floor in the Colony of Hong Kong Merchant and BENJAMIN LAU KAM CHING () of No. 31 Ming Yuen Street West, Basement in the said Colony of Hong Kong Merchant the directors of the said Fu Chip Investment Company Limited HEREBY AGREE AND GUARANTEE the closing market value for 2,520,000 shares (being 60% for the said 4,200,000 ordinary shares) of the said Fu Chip Investment Company Limited 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 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 Investment Company Limited according to The Far East Exchange Limited shall fall short of the sum of \$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 we shall have the option of buying from you the said 2,520,000 shares of Fu Chip Investment Company Limited at the price of HK\$6,300,000 PROVIDED FURTHER THAT should the closing market value of the said 2,520,000 shares in Fu Chip exceed the sum of \$2.50 per share on the following date immediately after the 30th April, 1974 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."

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. As he would have it, there is no room for any construing of these words to produce from them anything other than their plain sense reveals. In particular he disputes the propriety of looking to the conduct of the parties in order to establish reasons upon the evidence for substituting for

the word "sell", which appears in the second line, the phrase: "complete the sale of" as Mr. Francis, for the plaintiffs, would have us do. According to Mr. Francis, the whole course of conduct of the parties should be viewed as one unbroken sequence of contractual endeavour, culminating, on the 4th of May, with the signing of the guarantee and the giving of a reciprocal indemnity by the plaintiffs to safeguard the defendants against loss if they (the plaintiffs) should break their promise not to sell any of the Fu Chip shares before the agreed date. The latter agreement was the subject of one of the several alternatives proposed by plaintiffs' statement of claim to show a good consideration for the giving of the guarantee. In this part of the guarantee, however, it features merely as one of the attendant circumstances in relation to the plaintiffs' attempted rebuttal of the defendants' most fundamental attack upon the validity of the guarantee.

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The defendants' point is, of course, that the agreement is unenforceable as based upon a past consideration. Mr. Francis concedes the inadequacy of the document if it be literally construed but he says that the court is entitled, and indeed obliged, to construe it according to the true intention of the parties as disclosed by the whole course of treating between them. He sought to enlist the aid of the decisions in Frith v. Frith⁽¹⁾; Clifford v. Turrell⁽²⁾; and Turner v. Forwood and Another⁽³⁾. For my part, I cannot regard those cases as giving

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any direct assistance to him. They are, undoubtedly, in point to establish that the court will admit extrinsic evidence to show an additional or larger consideration than that stated in the document. They do not say that where a stated consideration is, for any reason, bad, then evidence is admissible to show a different one. The true ground on which the plaintiffs seeks to uphold the guarantee is, as the learned judge himself perceived, that the consideration is inaccurately stated or, for it comes to the same thing, that the words used do not express the true intention of the parties. Certainly, they do not well

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express the intention of the parties if they are read subject to the gloss which Mr. Francis seeks to apply to them. But here, I think, Mr. Balcombe is right: as they stand the words used are susceptible of a very straight forward meaning. They may be surprising words to find in a context of professional advice but, as they stand, there is no obscurity in them. Unlike the words of the agreement which exercised the court in the case of Goldshede v. Swan⁽⁴⁾, they show no kind of ambiguity, whether patent or latent. Read in their natural sense they yield a meaning which is clear and which does no violence either to the grammar of the text or to the context of the surrounding circumstances; on the contrary it is the gloss which introduces the note of strain. Mr. Francis cited Milner v. Staffordshire Congregational Union (Incorporated)⁽⁵⁾, as authority for his proposition that the word "sell", where it

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appears in the guarantee, ought to be interpreted as meaning "agreed to carry out or to complete the sale of etc." Again, I cannot see how the authority

(1) (1906) A.C. 254.

(2) 14 L.J. Ch. 390.

(3) (1951) 1 All E.R. 746.

(4) (1847-8) 1 Exch. P. 154.

(5) (1956) Ch. 275.

assists him. It is true that in that case the court was addressing itself to the question: "What is a sale, and when is it made?" (See page 280 in the judgment of Danckwerts J., (as he then was).) But the learned judge was there interpreting the meaning of the words "make any sale" which appear in section 29 of the Charitable Trusts Amendment Act of 1855 and his conclusion is confined to the special facts of the case. The plaintiff was claiming back a deposit paid by him under an agreement for the sale and purchase of land, the sale of which required the defendant Union to get the prior permission of the Charity Commissioners, which permission they had not got at the time the agreement was signed. He contended that the purported sale was therefore unlawful. The Union had in fact acquired the necessary permission subsequent to the signing of the agreement and for the defence it was argued that no sale had taken place as there had yet been no transfer but that, since the Union had subsequently obtained permission, it had a valid claim for specific performance of the agreement. It was contended on behalf of the Union that a sale takes place only on a completion by transfer and not earlier. The learned judge found that a sale is made:

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"When a contract is entered into by the owners of the property in question for the sale of the property to some purchaser". (page 282)

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but he made it clear that he was coming to this conclusion in reference to the statutory duty to seek permission for a sale and he added that the matter was not free from doubt. But even if he had intended his observation to be of a more general authority I do not see how that interpretation supports the substitution of terminology argued for here. Even if it were true to say that the sale in the present case had been completed upon the signing of the main agreement so that the mutual obligations of the contracting parties had already been discharged, the whole point of the plaintiffs' present contention is that something over and above what had been done remained to be done and that that was the consideration for the guarantee. The decision in Milner's

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Case⁽⁵⁾ leaves us no further forward in the attempt to show a special meaning in the word "sell" in this case. Leaving out the intermediate wording, which is unnecessary for the point of construction at present being considered, the "consideration" portion of the guarantee reads as follows:

"In consideration of your having at our request agreed to sell all of your shares of and in the above-mentioned company under an agreement for sale and purchase made between the parties thereto and dated the 27th day of February 1973 (the main agreement)" etc.

That seems plain enough but the plaintiffs would have us read it in some such fashion as this:

"In consideration of your having at our request, just now, agreed to

(5) (1956) Ch. 275.

complete the sale by transfer to us of all your shares of and in the above mentioned company, which shares you have already agreed to sell to us for (the stated consideration in the main agreement) under an agreement for sale and purchase made between the parties dated 27th day of February 1973, but which shares have so far not been transferred to us, (the defendants) agree and guarantee etc.”

*In the Court of
Appeal of
Hong Kong*

No. 11
Judgment of the
Hon. Mr. Justice
McMullin
5th November .
1976

(continued)

10 To my mind this is just too much construing. I see nothing in the surrounding circumstances which would compel the insertion of words of that kind into the guarantee in order to resolve anything in the nature of a doubtful meaning or ambiguity. If a paraphrase is to be embarked upon one might as well say that the unspoken clauses in the guarantee could amount to the following:

“Since you have agreed to sell Fu Chip shares at the stated consideration and since you seem inclined to break your bargain with the company and since we are anxious that you should not do so we will offer you something more.”

20 The possibility of two different paraphrases does not mean that there is an ambiguity, for the important difference between them is that the first can be made to correspond with the written document only by the introduction of new words and a new idea while the idea expressed by the latter paraphrase can be accommodated in the text of the guarantee as it stands. “If you will complete the sale” certainly introduces a new idea, the idea which Mr. Balcombe has described as a unilateral or “if” contract. It is wholly different from the idea actually expressed for that is a plain promise to do something in return for something which has already been done; whereas on the plaintiffs’ case, upon the signing of the guarantee there remained something to be done by the defendants, i.e. the transfer of the shares, and this the plaintiffs might never have done. The matter becomes clearer I think if one asks: “What is it in the extrinsic evidence which the judge relied upon which decisively shows the document to bear the meaning which the plaintiffs claim for it?” To my mind the answer must be either “nothing at all”, or else: “the entire body of
30 circumstances leading up to the signing of the guarantee”. But if the latter answer is given then I think it is plain that all of that evidence, with the possible exception of one matter to which I will come later, was admissible in any event (a) because it is relevant to explain the preliminary steps in the parties’ negotiations and precisely how the guarantee had come about; and, (b), because all of it is adumbrated in the pleadings. In other words the learned trial judge was in a sense not really confronted with a decision as to the admissibility of doubtful evidence at all — for (with the exception to which I will come) — none of it that I can see could have been excluded upon any
40 of the settled principles whether it was said to explain the document or not. I think the fact is that where a document is as clear upon its face as is this guarantee, then in most cases, the only evidence which could be relevant to explaining it in a different sense would be direct evidence, from the party upholding it, of some different intention lying behind the language chosen. Such evidence was not proffered in the present case and had it been it must have been excluded under the general rule which excludes parol declarations of intent to explain the meaning of the written words.

Now, as I see it, the only part of the evidence which might be said to explain the terms of the guarantee in a sense other than that which the words themselves clearly convey is that very part which the learned judge expressly rejected viz.: the story of a preliminary oral agreement. That is something which is likewise specifically rejected by the defendants in their pleadings. The record of the proceedings at the trial does not show precisely what part of the evidence was being objected to. The note of the preliminary exchanges between counsel, prior to the opening of the evidence indicates that it was agreed that all the evidence should go in and the question of its admissibility for the purpose of explaining the document should be argued later. The evidence as to a prior oral agreement thereafter went in with the rest and we have no note of the final submissions of counsel. Had that allegation of the defendants been accepted by the judge it would indeed have explained the terms of the guarantee without contradicting them for it would have shown that the guarantee had been, from the outset, among the terms agreed between the parties and the way in which the opening clauses are worded would then be seen in a wholly different light. The guarantee would then appear as one of the subsisting original terms of the oral agreement — temporarily excluded by the mistaken introduction of the subsidiary agreement — but finally re-incorporated, as the written expression of an essential part of the parties' overall initial intentions, following upon the events of the 4th of May. It is plain that the principal acts of the parties on that day were, (a), the cancellation of the subsidiary agreement and (b), the signing of the guarantee. The substance of the plaintiffs' case as to the meaning of those events was that they (the plaintiffs) were rightfully insisting upon the putting into order of the written record of what they maintained had been arranged between them and the defendants prior to any writing. Those arrangements had involved three parties: the plaintiffs, who were the Shing On Company; the Fu Chip Company represented by the defendants; and the defendants in their own right as guarantors. The written documents were supposed to embody these arrangements, but the defendants had duped them with the subsidiary agreement. On that case the plain purpose of what happened on the 4th of May was rectification by substitution of the right term for the wrong one — the wording of the guarantee — more particularly the opening phrase: "In consideration of your having at our request agreed to sell" far more plainly mirrors the idea of rectification by substitution of terms in a pre-existing, wider, three-cornered agreement than it does the notion of a new offer by a stranger founded on a new promise by one of two parties to a bilateral agreement to carry out his existing promise to the other. To my mind substitution not completion was what this part of the extrinsic evidence indicated. This alleged three party oral agreement was the case which the learned judge specifically rejected. What he did then, however, was to interpret the words of the guarantee in the light of the facts as he found them. I think, therefore, that Mr. Balcombe is right when he says that the construction argued for by the plaintiffs would convert the plain meaning of the document into the record of quite a different sort of mutual understanding — it would transform the stated basis of the contract into something quite different. To put it more shortly it would contradict the document. It should be borne in mind that the plaintiffs in this action seek to invoke

10 the equitable jurisdiction of this court by way of specific performance. The learned trial judge, for good reasons, found no substance in the explanation given by the plaintiffs of what moved them to procure the cancellation of the subsidiary agreement. Perhaps the defendants were foolish to give in so easily, but whether or not they were truly forced to do what they did they were undoubtedly unwilling to do so and it is plain that the plaintiffs behaved unconscionably in so imposing upon them. The plaintiffs rely upon what, for convenience, may be referred to as the **Scotson v. Pegg**⁽⁶⁾ principle followed in some later cases. What underlies that line of authority is the

20 contract in which he was interested. Later commentators have fixed upon this aspect of the judgment of Wilde, B. in upholding the validity of the decision (See: Vol. 6 Cambridge Law Journal, citing in support of Professor Corbin 1918 Yale Law Journal 362; and Salmon and Winfield Law of Contracts page 85). When one considers how bare and technical in the present case is the reality of the distinction which the law makes between the identity of the defendants and that of the company which they control; when one considers that it is that somewhat shadowy distinction which alone gives to the plaintiffs ground upon which to argue that the two defendants, as strangers to the main agreement between the two companies, acquired a benefit for themselves in procuring the enforcement of the plaintiffs' existing obligations, and thus that there is good consideration for the guarantee —

30 when one considers the basic unreality of that entire situation, valid though the principles are upon which it is based, one cannot feel that there is any injustice in holding the plaintiffs to the precise words of the document upon which they rely. They repudiated a document which would have fully protected them and which they had no good reason to contest and they did so in the prospect of further advantage to themselves; a party to a contract who prays in aid the technicalities of the law to preserve rights which he has acquired through dubious conduct of that kind must be attentive to the words he uses lest the sword of technicality turn against him. For these reasons I think that the learned trial judge was not justified in resorting

40 to the external circumstances to show that the consideration was inaccurately stated in the document. That being my conclusion I think it must follow that the appeal must be allowed.

I think, however, that Mr. Balcombe is entitled to succeed upon the second of the three main issues proposed though for reasons which do not necessarily follow his argument to its widest extent. He accepts that, in what may be termed the "three party" cases, the courts in England and in

(6) (1861) 6 H.N. 295.

America have in many cases followed the Scotson v. Pegg⁽⁶⁾ line. So far as the English authorities are concerned he is content to point out that there is no case which says that a promise by one of two contracting parties to perform an existing obligation under that contract, or his actual performance of it, is always good consideration to bind a stranger to the contract upon his promise. It may be a good consideration depending on the circumstances of the case (See the Eurymedon Case: 1975 A.C. 154, a Privy Council decision). He also points out that, at least in America there had been many cases in which the courts have refused to hold the stranger bound. A lengthy tally of these is given in a footnote at page 577 of Professor Corbin's Treatise on Contract. Mr. Balcombe suggests — following the line taken by Professor Corbin and echoed with evident approval by Professor Goodhart at page 482-3 of Volume 72 of the Cambridge Law Journal — that public policy ought to be, if not the only, then at least the principal determinant of what is and what is not a good consideration in these cases. He argues that no distinction should be made in this respect between the "two party" and the "three party" cases and his chosen authors certainly seem to support him. For my part, I would prefer to say only that it may be so. It is evident from many learned opinions that the doctrine of consideration which has long been, and which remains, a beacon in straightforward contractual situations can take on the appearance of an ignis fatuus where the complications of several interests enter in. There are many cases in which courts, hard-pressed for a haven of principle, might welcome illumination from a simpler source. It may be that public policy is such a source. I do not think that I need to decide upon that to resolve the question posed here. For as it seems to me, this is a case in which it may fairly be said that the concerns of equity and of public policy run in harness.

It is plain that public policy is no warrant for any general principle against all such third party promises on some such ground as a supposed tendency to infect, as it were, the whole contractual process at its root. Mr. Balcombe does not argue for that and the cases do not support it. I understood him, however, to contend that where, as in the present case, there is an element of coercion — even short of outright duress — it would be against the general welfare to enforce the promise. I would hesitate to say that public policy would oblige the courts to apply such a rule in every case if only because a principle as wide as that might be used to shut the door against a man who had done no more than drive a very hard bargain. I prefer the narrower extension of his argument which — as I understand it — was to the effect that the court should not assist someone who had succeeded in getting what he wanted by dishonest or disreputable means. The consideration might be good in a technical or legalistic sense and yet the bargain based upon it be found voidable. I think that is correct and I realise that it overlaps to some extent what I have found upon the first issue, but I do not think that matters. I think the plaintiffs did behave dishonestly in asserting that they had not got what they bargained for. Using the words used by Professor Corbin to describe one of the vitiating factors affecting such promises (Op. Cit. p. 576), I ask whether they have in fact used any economic coercion to induce the making of the promise and I cannot

(6) (1861) 6 H.N. 295.

say there has been no degree of coercion. I understand "coercion" there to include conduct amounting to no more than sustained and unjustified importunity. No doubt it is in the public interest that commercial engagements freely undertaken should be honourably discharged and not simply broken at whim; the courts would not well protect that interest by enforcing undertakings dishonestly obtained where, in the competition of interests it is clear that although, in one sense, the parties are in agreement it is an agreement clouded by some degree of unfair pressure, more especially where the pressure itself is exerted through leverage upon a bargain not so clouded.

10 In this sense I would therefore hold that the consideration for the promise was not good.

The third main issue raises a challenging point. While, however I am indebted to counsel upon both sides for the extensive and interesting arguments addressed to the court on the somewhat controversial question of economic duress I would prefer not to enter that disputed arena until necessity arises although I am inclined to the view that the doctrine — to whatever extent it may be said to exist in these courts — is not appropriate to the circumstances of the parties in the present case.

20 I do not think that the three subsidiary issues are viable upon the facts as found and I find it unnecessary to deal with the authorities cited in respect of them. I think the learned judge was clearly right to reject the contention (a) that consideration could be found in the cancellation of the subsidiary agreement; or (b) in the giving of an indemnity by the plaintiffs against premature sale of the Fu Chip shares. As to (a) the evidence was that the subsidiary agreement was cancelled before the guarantee was given and the judge in any case found as a fact that the plaintiffs would have insisted on the subsidiary agreement being cancelled in any event. Moreover, as Mr. Balcombe points out, the new bargain, like any agreement, must show something in the nature of a quid pro quo if it is to be enforceable. The defendants would, in effect, be put in the absurd position of saying "In consideration of your accepting the bargain which you want and we don't like we are willing to give up the alternative which we want and you don't like." That would indeed be, as Mr. Balcombe put it a "heads I win tails you lose situation" with no place in it for consideration moving from the promisee. As to (b), there is the finding of the learned trial judge that the indemnity given by the plaintiffs was never intended to constitute the consideration for the giving of the guarantee by the defendants. On the facts that is clear, for the dispute which resulted in the giving of that indemnity only arose after the form of the guarantee had been decided and it only arose because the plaintiffs wanted all the Fu Chip shares to be given over and the defendants wanted to retain the "sale — blocked" 60%. The compromise was the giving of this indemnity by the plaintiffs and the defendants' evidence — which was preferred by the judge generally — was on this point specific. They said the guarantee was given and signed before this dispute and the giving of the indemnity by the plaintiffs.

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As to the third subsidiary issue — the contention that if the guarantee is void the subsidiary agreement will revive and enure to the plaintiffs' benefit

*In the Court of
Appeal of
Hong Kong*

No. 11
Judgment of the
Hon. Mr. Justice
McMullin
5th November .
1976
(continued)

— the evidence once more disposes of that. The agreement was cancelled and that fact signified upon it by the signatures of both parties before the guarantee was settled and signed and the judge's finding, which we cannot disturb, is that it was the intention of the plaintiffs to have the agreement cancelled "in any event". For my part, I am content to accept that finding as justified upon the facts and I do not think that we entitled to disturb it.

For the reasons given earlier I would allow the appeal.

10 Balcombe, Q.C., Zimmern, Q.C. & D. Chang (Yung, Yu, Yuen & Co.) for
Appellants.
Francis, Q.C., Gittins, Q.C. & A. Li (Hastings & Co.) for Respondents.

(Sd.) A. M. McMullen, J.

1976 No. 13 *In the Court of*
(Civil) *Appeal of*
Hong Kong

No. 12
Judgment of the
Hon. Mr. Justice
Leonard
5th November
1976

IN THE COURT OF APPEAL
On Appeal from the High Court

BETWEEN:— LAU YIU LONG
BENJAMIN LAU KAM CHING

Respondents

and

PAO ON
HO MEI CHUN
PAO LAP CHUNG

Appellants

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Coram: Briggs, C. J. McMullin & Leonard, JJ.

Date: 5th November, 1976.

J U D G M E N T

Leonard, J.:

20 This is an appeal from a judgment for the sum of \$5,392,800 and costs arising from a claim by the plaintiffs/respondents for that sum as damages alternatively for specific performance or damages in lieu of or in addition to specific performance of an alleged contract dated the 4th May 1973. The relevant provisions of this contract which I refer to as the "guarantee" read as follows:

30 "Tsuen Wan Shing On Estate Co. Ltd in consideration of your having at our request agreed to sell all of your shares of and in the above-mentioned company for the consideration of \$10,500,000 by the allotment of 4,200,000 ordinary shares of \$1 each in Fu Chip Investment Co. Ltd. and that the market value for the said ordinary shares shall be deemed as \$2.50 for each of \$1 share under an agreement for sale and purchase made between the parties thereto and dated the 27th February 1973, we LAU YIU LONG of and BENJAMIN LAU KAM CHING hereby agree and guarantee the closing market value for 2,520,000 shares (being 60% for the said 4,200,000 ordinary shares) of the said 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 on the following market date immediately after 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

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closing market price for the shares of Fu Chip Investment Co. Ltd. according to Far East Exchange Ltd. shall fall short of the sum of \$2.50 during the said following market date immediately after 30th April 1974 provided always 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 we shall have the option of buying from you the said 2,520,000 shares of Fu Chip at the price of \$6,300,000 provided further that should the closing market value of the said 2,520,000 shares in Fu Chip exceed the sum of \$2.50 per share on the following date immediately after the 30th April 1974 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

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On Building erected on Tsuen Wan Town Lot No. 185.”
The Tsuen Wan Shing On Estate Co. Ltd. to which I refer as “Shing On” was a private limited company, the shares in which were wholly owned by the plaintiffs (respondents), a husband and wife. The Fu Chip Investment Co. Ltd. (“Fu Chip”) was a public company the shares in which were quoted on the Far East Exchange Ltd. The defendants (appellants) were the majority shareholders in Fu Chip and could effectively control its activities.
The principal asset of Shing On was a block of flats in Tsuen Wan almost ready for occupation.

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By an agreement made the 27th February 1973 between the plaintiffs as vendors, the Shing On as confirmors and Fu Chip as purchasers it was agreed that the plaintiffs should sell and Fu Chip should purchase all the shares in Shing On for a purchase price of \$10,500,000 to be satisfied by the allotment of 4,200,000 ordinary shares of \$1 each in Fu Chip the value of the Fu Chip shares being deemed to be \$2.50 each. This agreement provided that the purchase should “be completed at the offices of Messrs. Yung, Yu, Yuen & Co. on or before the 31st March 1973 when Fu Chip will procure at their own cost and expenses and the allotment of 4,200,000 shares of Fu Chip to the vendors free from all liens or encumbrances on or before 31st March 1973.” There follow various covenants on the part of the vendors, one of which was that “each of the vendors shall retain in his own right in Fu Chip 60% of the shares allotted to him under this agreement and shall not sell or transfer the same on or before the end of April 1974”. This agreement further provided that time should in every respect be of the essence of it. By an endorsement on this agreement made on the 28th February 1973 the completion date was extended to 30th April 1973 but save for this modification all the terms and conditions remained in force. On the 27th February 1973 Fu Chip applied, through their secretaries, to the Far East Exchange Ltd. for quotation of a proposed new issue of shares and publicised this proposed takeover and the acquisition of other property to be paid for by the share issue. On the 31st March 1973 Fu Chip received permission from the Far East Exchange Ltd. to deal in and for a quotation for the new shares. This permission was publicised so that if the takeover was not completed public confidence in Fu Chip might have been lost and the value of the defendants’ shareholdings in Fu Chip eroded.

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10 On the 27th February 1973 the plaintiffs had agreed to sell to the defendants for the sum of \$6,300,000 the 2,520,000 shares in Fu Chip which they had undertaken to Fu Chip to retain for one year, delivery of the shares to take place on 30th April 1974. This agreement for sale is referred to throughout as "the subsidiary agreement". It was later cancelled because, although the plaintiffs knew at the time they signed it that it was a sale and purchase agreement, they were dissatisfied with it and realized that they had had a bad bargain since they could not hope for a profit on 60% of the shares to be allotted to them which were tied up for

20 a year. The defendants admitted that it was a bad bargain from the plaintiffs' point of view and that it was not an agreement into which the defendants would have entered if they were in the shoes of the plaintiffs. The main and subsidiary agreements were valid and enforceable agreements on the 30th April 1973 the date which had been fixed for completion of the main agreement. The plaintiffs refused to complete the main agreement on the 30th April 1973 so that by the 4th May 1973 they were in breach. On the 18th April 1973 the first plaintiff had left Hong Kong for Tai Wan where he remained until 29th April 1973. Immediate prior to his going to Tai Wan the plaintiffs had realised that the subsidiary agreement was a

30 bad bargain and they wanted it cancelled. They further wanted the defendants to give them a guarantee that the price at which the shares in Fu Chip would stand on the 30th April 1974, because they would be not less than \$2.50. They had agreed with Fu Chip not to deal with them before that date. The defendants, although willing to cancel the subsidiary agreement, were unwilling to give any guarantee and on their expressing their unwillingness the plaintiffs indicated an intention to repudiate the main agreement with Fu Chip. In the words of the learned trial judge the first plaintiff's attitude was that "unless a guarantee and an indemnity for the price of 2,520,000 Fu Chip shares was given by the defendants the plaintiffs would not complete the main agreement with the Fu Chip." This attitude the first plaintiff had made clear on his return from Tai Wan, the day before the date for completion. Commenting on the first plaintiff's visit to Tai Wan the learned trial judge has this to say:

40 "There is also evidence that by early April the first plaintiff had known of the approval to deal in the Fu Chip shares to be allotted to the plaintiffs by the Far East Stock Exchange. His departure for Tai Wan before the completion of the main agreement is difficult to understand. In this connection I find the second plaintiff's evidence that the first defendant did not inform the plaintiffs of the said approval in April illogical and unsatisfactory."

and again:

"The first plaintiff's decision to go to Tai Wan was made probably in order to play for time and to enable the second plaintiff to start a new bargain. No reason was given for the necessity of his Tai Wan trip. It is more inexplicable why he should leave at a time when it was essential for him to remain in Hong Kong to complete the main agreement with the Fu Chip. He knew by that time an announcement

of the acquisition by the Fu Chip of the Shing On shares had been made to the public. He knew also that the defendants were anxious to see that the Fu Chip completing the transaction. He knew that the longer the defendants had to wait the better bargaining power he would have in his hand. In short he knew he had the upper hand over the defendants who would have to agree even if he wanted something more than the original bargain, viz.: the subsidiary agreement. In my opinion his threat of refusing to complete was for the plaintiffs a good starting point for a new bargain and his temporary absence a very shrewd move."

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20 These (if I may say so with respect) are very shrewd observations. It is important to place them in perspective and in particular in the perspective of the learned trial judge's assessment of the characters of the respective parties. He clearly regarded the second plaintiff as an unsatisfactory witness. The first plaintiff absented himself from the witness-box as he had absented himself from the Colony during the days preceding 29th of April. The learned trial judge describes the respective parties as "both sharp business people trying to get a better bargain". The defendants he regards as "more sophisticated in business" than were the plaintiffs. The plaintiffs' solicitors had requested a "guarantee" on the 25th April 1973 and on receiving this request the first defendant had consulted his solicitors. He had as the learned trial judge noted "proper legal advice". He knew very well whether he gave the guarantee or not the main agreement between Fu Chip and the plaintiffs was still valid as a separate document. The Fu Chip could have sued the plaintiffs for specific performance or for damages. Out of the original issue and paid up capital of 12,600,000 shares in Fu Chip the first defendant owned 6,351,000 shares. In addition he had purchased more since the listing of such shares. The second defendant owned 1,500,000 shares so that between the two of them they owned the controlling interest of the Fu Chip. By then the first defendant had already set himself about in manipulating the price of the Fu Chip shares by buying and selling. If the defendants refused to give the guarantee on the Fu Chip shares then the Fu Chip shares might drop "a few 10 cts. in price only if the general condition of the market remained bullish. It would be possible for the first plaintiff to push the price up again with his manipulation. The Fu Chip after all is an investment company. All of its assets consist of land and property". The plaintiffs, he finds, had as their only reason for asking for the guarantee a realisation that they had not obtained a good bargain. Their method of getting a good bargain was to indicate that they would not complete the main agreement with Fu Chip unless they got the "guarantee" and the sole reason the defendants agreed to give the guarantee was because "the plaintiffs threatened to repudiate the main agreement with Fu Chip." This with respect to the learned trial judge is not expressed with exactness. The defendants agreed to give the guarantee solely because the plaintiffs were in breach of the main agreement with Fu Chip and threatened to continue in breach despite the defendants' request to them to complete.

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Unfortunately the plaintiffs' "calculated risk" or belief that the value of the shares might only drop by 10 cts. or so was unfounded as is now

history the boom exploded and by the 31st April 1974 the shares were worth 36 cts. only. The difference between the price of the shares as at \$2.50 and as at 36 cts. represents the \$5,392,800 making up the judgment awarded to the plaintiffs.

*In the Court of
Appeal of
Hong Kong*

No. 12
Judgment of the
Hon. Mr. Justice
Leonard
5th November
1976

(continued)

10 The notice of appeal adumbrates 11 grounds of appeal and the respondents' amended notice four grounds. These however may be conveniently dealt with under six heads or issues. Firstly was the learned trial judge entitled to have regard to extrinsic evidence in considering whether or not there was adequate consideration for the "guarantee". Secondly was the consideration which he found to exist a good consideration. Thirdly was pressure exerted by the plaintiffs on the defendants which could be said to amount to economic duress thereby rendering them not liable on the guarantee. Fourthly was the cancellation of the subsidiary agreement consideration for the guarantee. Fifthly was the execution of an "indemnity" also of the 4th May consideration for the guarantee and sixthly if the guarantee was invalid was the subsidiary agreement revived.

20 Clearly if we are to consider the terms of the guarantee and the terms of the guarantee alone the plaintiffs could not succeed and the appeal must be allowed. For on the face of it the guarantee was given for a past consideration. The purpose of adducing additional evidence in this case was to show "the real consideration". Such evidence is as a general rule only admissible where "no consideration or a nominal consideration is expressed in the instrument or the consideration is expressed in general terms or is ambiguously stated". (See Halsbury's Laws of England 4th Ed. para. 1487). In Frith v. Frith⁽¹⁾ Lord Atkinson has this to say commenting on rules adumbrated by Vice-Chancellor Shadwell in Clifford v. Turrell⁽²⁾:

30 "Rules of law may exclude parol evidence where a written instrument stands in competition with it, but it has long been settled that it is not within any rule of this nature to adduce evidence of a consideration additional to what is stated in a written instrument."

and then adds:

"The rule is, that where there is one consideration stated in the deed, you may prove any other consideration which existed, not in contradiction to the instrument; and it is not in contradiction to the instrument to prove a larger consideration than that which is stated."

Their Lordships think the present case comes within that rule, that the evidence proposed to be given did not contradict the deed, and that the appellant's first contention is well founded."

40 In Goldshede v. Swan⁽³⁾ the wording of the instrument in question was as follows:

(1) (1906) A.C. 254.

(2) 1 Y. & C. 138.

(3) (1847) Ex. R. 154.

"In consideration of your having this day advanced to our client £750." These words were held to be sufficiently ambiguous to allow what might appear to be a past consideration to be shown as referring to an act committed immediately after the document was executed. Pollock, C.B. observed at page 160:

"The expression 'this day' may mean something which has been done or which is to be done this day. Evidence may therefore be properly admitted to explain its meaning, though not to contradict it."

Parke, B. observed:

- 10 "I am of the same opinion. I entertained some doubt at first, whether the consideration which appears on the face of this guarantee was sufficiently ambiguous to let in an explanation. But, on the authority of the cases of *Haigh v. Brooks* and *Butcher v. Stewart*, I think it is. I think that the evidence was properly admitted not for the purpose of contradicting the instrument, but to explain the meaning of its terms. It was proved that no money had been advanced before the execution of the instrument; it must, therefore, be read as pointing to future advances: and there is nothing inconsistent or unnatural in this construction."

- 20 It will be noted that in paragraph 6 of the amended statement of claim the pleading in this respect reads:

"In the further alternative in consideration of the performance by each of the plaintiffs of their obligations under the said written agreement for sale and purchase particularly completion thereunder, on or about 4th May 1973 the 1st and 2nd defendants agreed and guaranteed in writing"

- 30 The phrase used in the pleading is "in consideration of the performance . . ." not "in consideration of the promise to" perform. Mr. Balcombe has argued that what the judge found as a result of admitting parol evidence was the existence of a unilateral "if" contract and that it was the plaintiffs' case in the court below that the true consideration for the guarantee was completion of the main agreement with Fu Chip. He pointed out that the learned trial judge had noted that this was the argument advanced by Mr. Gittins on behalf of the plaintiffs. It is also to be noted that the learned trial judge had held that:

- 40 "In the present case the extrinsic evidence purports to explain that the consideration which was described in the guarantee as 'having agreed to sell' in accordance with the terms of the main agreement on 27th February 1973 was in fact an executory consideration of 'agreeing to sell' or 'agreeing to complete the sale' on the 4th May 1973."

I am not convinced that the admission of the extrinsic evidence necessarily has the effect of changing the "guarantee" into an "if" contract, but consider that the admission of the extrinsic evidence has the effect of proving a con-

sideration which is additional to the past consideration expressed in the guarantee. The question as I see it, is whether this additional consideration is necessarily contradictory of the terms of the "guarantee". I am not satisfied that it was necessarily contradictory. It is perhaps noteworthy that in the defence the matter is dealt with in this way. A meeting between the first defendant and the first plaintiff is alleged to have taken place on or about the 24th of April 1973. (This could scarcely have been the case since apparently the first plaintiff was out of the Colony until 29th of April.) However the defence goes on to allege that:

10 "The first plaintiff further said that the plaintiffs required a 'guarantee' from the Defendants to the effect that the price for 60% of the Fu Chip shares to be allotted under the Main Agreement would not be less than \$2.50 per share for a period of one year therefrom and orally intimated that unless such a guarantee was forthcoming the purchase and sale under the Main Agreement would not be completed."

The defence goes on to recite the plaintiffs' failure to complete on 30th April and to state that:

20 "On or about 3rd May 1973 a member of the Company's staff acting on behalf of the Plaintiffs and each of them met the 1st Defendant and orally informed the 1st Defendant that the Plaintiffs and each of them would not complete the sale and purchase under the Main Agreement unless, inter alia, a guarantee was given by the Defendants to the effect that the price for 60% of the Fu Chip shares to be allotted would not be less than \$2.50 per share for a period of one year therefrom and that the Defendants would compensate the Plaintiffs if the price would be less than the said amount.

30 In the premises, the Plaintiffs and each of them were unlawfully threatening to break and/or repudiate the main agreement as varied and was attempting to procure a 'guarantee' in the terms aforesaid by means of the said threat."

40 I am satisfied that the fact of the extrinsic evidence is to show this that the consideration for the guarantee was the immediate completion by the defendants of the main agreement of which they were then in breach. I do not consider that its effect is to change the nature of the contract or to make it any the more or any the less an "if" contract than it would be without this consideration but rather that the defendants agreed to render themselves liable in the future in the event of the shares not retaining their value as they professed to do in the guarantee as drawn and that the true mutual consideration given by the plaintiffs was the agreement forthwith to complete the main contract. The additional consideration to be implied by the extrinsic evidence might be expressed by the insertion of the following words:

"and in consideration of your agreeing to repair forthwith your breach of the main agreement by immediate completion of the sale of the said shares to us".

Not without very considerable hesitation have I come to the view that this is an additional consideration rather than a contradictory one.

I pass to the question as to whether or not it was a good one. On the 4th of May 1973 the plaintiffs were in breach of their obligation under the main agreement to complete the sale to Fu Chip. Their breach rendered them liable to an action for specific performance so that their obligation was a continuing one. Accordingly the question at issue here is whether or not performance of an obligation already due to a third party is good consideration. The appellants' interest in the performance by the respondents of their obligation with Fu Chip was considerable and indeed possibly greater than the interest of Fu Chip. It was certainly a different interest. The measure of damages would be different. Fu Chip if refused specific performance would have stood to recover damages based on the difference between the value of the shares in Shing On and the value of the allocation to be made by Fu Chip. The damages which the appellants could hope to recover if the respondents were liable to them directly would be affected by or depend on the loss of confidence which the public might have suffered in Fu Chip and the consequent decline in value of the appellants' shares in Fu Chip. Furthermore by promising to perform their obligation to Fu Chip the respondents assumed a direct responsibility to the appellants and the appellants secured the right to look direct to the respondents for damages rather than causing Fu Chip to do so. The appellants were strangers to the main agreement and the respondents promised the appellants they would complete the main agreement thereby conferring a benefit on the appellants. If these were the only considerations I could see no reason why such a promise could not be regarded as good consideration. This was the reasoning followed by Wilde, B. in Scotson v. Pegg⁽⁴⁾ and I cannot fault his proposition that:

“If a person chooses to promise to pay a sum of money in order to induce another to perform that which he has already contracted with a third person to do, I confess I cannot see why such a promise should not be binding.”

Scotson v. Pegg⁽⁴⁾ followed shortly on the heels of Shadwell v. Shadwell⁽⁵⁾. That was a case in which an uncle promised to make payments to his nephew should the latter fulfil a promise of marriage into which he had entered with one Ellen Nicholl. The marriage duly took place and it was held that the estate of the uncle was liable to the plaintiff on the promise made. A question which Erle, C.J. postulated to himself was:

“Now do these facts show that the promise was in consideration either of a loss to be sustained by the plaintiff or a benefit to be derived from the plaintiff to the uncle, at his, the uncle's, request, “My answer is in the affirmative.”

Later he observed:

“The marriage primarily affects the parties thereto; but in a secondary

(4) 6 H. & N. 295.

(5) (1860) Vol. 9 C.B.N.S. 159.

Keating, J. concurred but Byles, J. dissented stating:

*In the Court of
Appeal of
Hong Kong*

“The well known cases which have been cited at the Bar in support of the position that a promise based on the consideration of doing that which a man is already bound to do is invalid, apply in this case. And it is not necessary, in order to invalidate the consideration, that the plaintiff’s prior obligation to afford that consideration should have been an obligation to the defendant. It may have been an obligation to a third party.”

No. 12
Judgment of the
Hon. Mr. Justice
Leonard
5th November
1976
(continued)

And again:

10 “The reason why the doing what a man is already bound to do is no consideration, is, not only because such a consideration is in judgment of law of no value, but because a man can hardly be allowed to say that the prior legal obligation was not his determining motive. But, whether he can be allowed to say so or not, the plaintiff does not say so here. He does, indeed, make an attempt to meet this difficulty by alleging in the replication to the fourth plea that he married relying on the testator’s promise: but he shrinks from alleging, that, though he had promised to marry before the testator’s promise to him, nevertheless he would have broken his engagement, and would not have married without the testator’s promise. A man may rely on encouragements to the performance of his duty, who yet is prepared to do his duty without these encouragements. At the utmost the allegation that he relied on the testator’s promise seems to me to import no more than that he believed the testator would be as good as his word.

It appears to me, for these reasons, that this letter is no more than a letter of kindness, creating no legal obligation.”

Shadwell v. Shadwell⁽⁵⁾ was the subject of comment in Jones v. Padavatton⁽⁶⁾ at page 621 when Danckwerts, L. J. had this to say:

30 “Counsel for the daughter has drawn our attention to two cases in which it was Shadwell v. Shadwell and Parker v. Parker. The former was a curious case. It was decided by Erle, C. J. and Keating, J. Byles, J. dissenting on pleading point, and depended largely on the true construction of a letter written by an uncle to his nephew. I confess that I should have decided it without hesitation in accordance with the views of Byles, J. but this is of no consequence. Shadwell v. Shadwell laid down no principle of law relevant to what we have to decide; it merely illustrated what could never, I think, be seriously doubted viz., that there may be circumstances in which arrangements between close relatives are intended to have the force of law.”

40 (4) 6 H. & N. 295.

(5) (1860) Vol. 9 CBNS 157.

(6) (1969) 2 All E.R. 616.

- 10 Shadwell v. Shadwell⁽⁵⁾, and Scotson v. Pegg⁽⁴⁾ have been the subject matter of a considerable amount of academic discussion. However notwithstanding the strictures of Salmon, L.J. on Shadwell v. Shadwell⁽⁵⁾ in Jones v. Padavatton⁽⁶⁾, Scotson v. Pegg⁽⁴⁾ undoubtedly remains good law. It has never been overruled. A number of the academic comments have been reviewed by Beattie, J. in the Eurymedon⁽⁷⁾ at page 406. Mr. Balcombe conceded that a promise by B to A that he B would fulfil his promise to C could be good. However although he conceded that such a promise could be good consideration he contended that it was not invariably so and that whether or not it should be regarded as good consideration depended upon the question whether or not it was in accordance with public policy on the facts of the particular case so to regard it. He gained support for this contention not only from certain American cases and academic comments but also from the early "two party" cases of Harris v. Watson and Stilk v. Myrick⁽⁸⁾. These were the famous cases concerning sailors who had entered into articles of service on board ships and due to varying factors had received promises from the captains of the vessels on which they served for additional remuneration for observing the full terms of their contracts. It was held that they were not entitled to this extra remuneration and that it would be contrary to public policy to hold the captains of the vessels obliged to them. In one of these cases that of Harris v. Watson Lord Kenyon observed:
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"If this action was to be supported it would materially affect the navigation of this kingdom. It has been long since determined that when the freight is lost the wages are also lost. This rule was founded on a principle of policy for if the sailors were in all events to have their wages and in times of danger entitled to insist on an extra charge on such a promise as this they would in many cases suffer a ship to sink unless the captain would pay any extravagant demand they might think fit to make."

- 30 In the other case Stilk v. Myrick⁽⁸⁾ again the promise by a master of a vessel of an advance of wages to a sailor for extra work during the voyage was held to be void. Lord Ellenborough observed that he recognised the principle of the case of Harris v. Watson as founded "on just and proper policy. When the defendant entered on board a ship he stipulated to do all the work his situation called upon him to do". If, suggested Mr. Balcombe, the rule that the performance of an obligation already owed to a person cannot be good consideration for a fresh promise by that same person is based on public policy a fortiori questions of public policy should be considered to assist in determining whether on the facts of the particular case the performance of an obligation already owed to a third party was good consideration for a
- 40 fresh promise by the person sought to be made liable. In further support of

(4) 6 H. & N. 295.

(5) (1860) Vol. 9 C.B.N.S. 159.

(6) (1969) 2 All E.R. 616.

(7) (1971) 2 Lloyd's Law R. 399.

(8) 6 Esp. 128.

this argument Mr. Balcombe referred to the judgment of the Privy Council in an appeal from the decision of Mr. Justice Beattie in New Zealand Shipping Co. v. Satterthwaite Ltd. (Re Eurymedon)⁽⁹⁾ where their Lordships had this to say:

*In the Court of
Appeal of
Hong Kong*

No. 12
Judgment of the
Hon. Mr. Justice
Leonard
5th November
1976
(continued)

“The following points required mention. 1. In their Lordships’ opinion, consideration may quite well be provided by the appellant, as suggested, even though (or if) it was already under an obligation to discharge to the carrier. (There is no direct evidence of the existence or nature of this obligation, but their Lordships are prepared to assume it.) An agreement

10 to do an act which the promisor is under an existing obligation to a third party to do, may quite well amount to valid consideration and does so in the present case: the promisee obtains the benefit of a direct obligation which he can enforce. This proposition is illustrated and supported by Scotson v. Pegg (1861) 6 H. & N. 295 which their Lordships consider to be good law.”

20 The repeated use of the word “may” coupled with the use of the expression “quite well amount” and the expression “and does so in the present case” indicate that their Lordships had reservations as to whether or not such an agreement was valid in all cases and this passage leaves the door open to disregard consideration of this type when public policy so dictates. Mr. Balcombe further drew our attention to an article by Professor A. L. Goodhart in 72 Law Quarterly Review at page 490 where Professor Goodhart quotes from an article by Professor Corbin in his Treatise on Contracts as follows:

“The performance of duty would not be recognised as sufficient consideration for a promise if such recognition would be injurious to the general welfare.”

Professor Goodhart continues:

30 “If this is the general principle which is followed in these cases then it is not difficult to distinguish between the various situations which may arise. This has been done in the Re-statement of the Law Contracts of the American Law Institute in section 76(a):

‘Any consideration that is not a promise is sufficient except the following (a) an act or forbearance required by a legal duty that is neither doubtful nor the subject of honest and reasonable dispute if the duty is owed either to the promisor or to the public or, if imposed by the law of torts or crimes is owed to a person.’

40 There can be no doubt that it must be against public policy to recognise that the performance of his official duty by a public officer might constitute consideration for the promise of an extra compensation, as it might give rise to the risk of bribery or blackmail. Similarly it is pro-

(9) (1975) A.C. 168.

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bably against public interest to regard the promise of a private individual not to commit a tort or a crime as sufficient consideration. There is greater doubt concerning the performance of a duty already owned by the promisee to the promisor. The weight of authority in the American courts is against its recognition as consideration. Here again there is a risk that the promisee may exact quasi-blackmail by refusing to perform his duty unless he receives additional payment. There are, of course, situations where such a demand may be made by a promisee who knows that the performance of the contract is of special importance to the promisor. On the other hand, the performance of a duty to a third person can be regarded as furnishing adequate consideration without running the risk that the promisee may bring improper pressure to bear in obtaining the promise. The promisor clearly obtains a benefit to which he was not previously entitled, so that there is every reason to hold that he should be bound to perform his own promise. On this point the English and the American cases are in accord."

This last sentence is difficult to reconcile with the statement of Cardozo, J. in De Cicco v. Schweizer (10) where he says at page 808:

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"The courts at this stage are committed to the view that a promise by A to B to induce him not to break his contract with C is void."

The sentence I have underlined is scarcely of universal application as is demonstrated by the facts of the instant case the learned trial judge found that the defendants agreed to give them the guarantee solely because the plaintiffs had threatened to repudiate the main agreement with Fu Chip. Later he expresses the obverse of this statement when he comments:

"I am of the opinion that the guarantee was signed by the defendants solely to induce the plaintiffs to complete the main transaction and nothing else."

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Still later in his judgment the learned trial judge speaking of the appellants has this to say:

"But I found they were quite prepared to take a calculated risk (which at that time appeared to be very little) in order to pacify the plaintiffs who were abamant."

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By "adamant" here I consider I must take him to mean "adamant that they would remain in breach of the main agreement unless they secured the guarantee". The whole tenor of the learned trial judge's judgment and his detailed examination of the facts confirms me in the view that the respondents' attitude throughout was "we will continue in breach of our contract unless you give us this 'guarantee'." This was dishonest. Had a fourth party who had an interest in, for example, selling shares in Fu Chip short urged the plaintiffs to continue in breach of the main agreement he would unquestionably have been guilty of the tort of conspiracy. As it was, they sought to excuse their dishonesty by suggesting a misunderstanding as to the effect of the subsidiary agreement. This suggestion was disbelieved by the trial Judge.

(10) (1917) 117 N.E. Rep. 807.

10 To my mind to regard as valuable consideration a promise given by the respondents under these circumstances not so to continue in breach would be contrary to public policy and contrary to ordinary justice. For the respondents had particularly by the absence of the first respondent until the very last moment placed themselves in a position where a threat to continue to act in breach of the main agreement left the appellants with little choice but to grant the guarantee. This is the more so since they thought that the granting involved little ultimate risk. Mr. Francis, if I understand him correctly, suggests that this line of reasoning involves a complete fallacy and confusion of two things: a confusion of the doctrine of duress with the doctrine of consideration; that the question which should be decided when considering consideration is "was the consideration good on the footing that the guarantee was not vitiated by duress". I have been much attracted by this argument but on reflection am satisfied it seeks to close the door left open by the Privy Council in Satterthwaite's Case⁽⁹⁾ when the possibility of there being cases in which an agreement to do an act which the promisor was under an existing obligation to a third party to do might not amount to valid consideration was clearly envisaged. I consider that to regard this consideration as good would be contrary to public policy particularly in Hong Kong where there is a close relationship between the identity of individuals and the identity of companies in which they have a controlling interest. The respondents could quite justifiably have referred to Shing On as "our company"; that is what it was. The appellants could not as properly have referred to Fu Chip as "our company" but no one in Hong Kong would have been surprised if they did; that it was wellnigh considered so to be by both parties is manifest by the fact that it is in the main agreement that the respondents agreed not to sell 60% of the shares to be allotted to them within one year after the allotment. It is difficult to see how Fu Chip as a limited company would have been damnified by the sale of a large number of its shares immediately after they had been allotted. 20 The appellants would have been so damnified because the value of their holdings would have been diminished. This they wished to avoid. Hence this provision must have been inserted in the main agreement to protect the appellants' shareholdings rather than Fu Chip's interests. The main agreement although nominally between Fu Chip and the respondents was negotiated between the respondents and the appellants and the appellants were concerned in it to preserve not only the right of Fu Chip but also their personal rights as the respondents well knew. It is altogether too facile of the respondents to suggest that Fu Chip had its remedy for the continued breach of the main agreement. It had but the exercise of the right and its attendant delays would 30 injure the appellants by undermining the value of Fu Chip's shares. The respondents were seeking to nullify the possible risk of a fall in value of the 60% shareholding which they agreed to retain for a period of one year rather than to avoid the sale of the Shing On shares. They wished not only to avoid this risk but at the same time preserve to themselves the possibility of a profit on that 60% holding. This they could not do by the subsidiary agreement. They therefore with the consent of the respondents cancelled it. Having cancelled it they still were at risk because of the possibility of a fall 40

(9) (1975) A.C. 168.

10 in the value of the shares in Fu Chip and this risk of loss they sought to obviate by securing the guarantee. I therefore do not consider that one can ignore the fact that they obtained the guarantee by stating that the breach of the main agreement would continue if it were not forthcoming. I do not consider that it is in accordance with public policy in Hong Kong that business men should be encouraged to carry on their business in this fashion (particularly in the rather unhealthy climate which prevailed here in 1973 when all transactions to do with land were hectic and feverous whether or not their behaviour amounted to duress. It is in accordance with public policy that the courts should strive to uphold not only legality in business transactions but also integrity. To countenance as good consideration the reluctant performance by the respondents of their obligations to Fu Chip would be to countenance — a lack of that integrity. For my part I would enter the door clearly left open in *Satterthwaite's Case*⁽⁹⁾ and refuse to regard as good as the additional consideration let in by the extrinsic evidence.

20 I do not find any difficulty in the suggestion that consideration could be found in the cancellation of the subsidiary agreement. The learned trial judge found as a fact that the respondents wished the subsidiary agreement to be cancelled any way whether or not the guarantee was given. The respondents were unwilling to continue to abide by an agreement requiring them to wait for a year for payment for the 60% shareholding without enjoying the possibility of obtaining any profit for waiting. The appellants agreed to release them and that was an end of the matter.

30 Again no consideration can be found in the giving of the indemnity by the respondents against premature sale of the Fu Chip shares. They were not entitled to sell these shares and the only reason they gave this indemnity was because of lack of trust on the part of the appellants. The appellants wished them to accept scrip for the shares in question in the form of one certificate. This they refused to do. The appellants then suggested that the scrip for the shares which they had undertaken not to sell would remain with the secretaries. This again they refused and it was on this account that the indemnity was granted after disposal of all the other matters. In the circumstances I find that no good consideration existed for the granting of the guarantee by the appellants and I would allow this appeal.

40 It is unnecessary for me to embark on a detailed consideration of the doctrine of economic duress. Suffice it to say that I am unconvinced that it can apply in a case such as the present where there was no fiduciary or other special relationship between the parties, where they were persons of equal bargaining power in themselves, at arm's length, and independently advised. The respondents achieved a superior position here because the appellants failed to appreciate, at the time the main agreement was completed, the importance of having an agreement which would render the respondents answerable to them personally for failure to complete. As I see it pressure exercised in that

(9) (1975) A.C. 168.

superior position, in contradistinction to pressure exercised in the superior position resulting from for example some special relationship would not amount to duress. I can see no merit in the argument that the invalidity of the guarantee revived the subsidiary agreement. I would allow this appeal with costs here and below.

*In the Court of
Appeal of
Hong Kong*

No. 12
Judgment of the
Hon. Mr. Justice
Leonard
5th November
1976
(continued)

A. J. Balcombe, Q.C., A. Zimmern, Q.C. & Denis Chang (Yung, Yu Yuen) for appellants/defendants.

H. Francis, Q.C., S. V. Gittins & Andrew Li (Hastings & Co.) for respondents/plaintiffs.

(Sd.) P. F. X. Leonard, J.

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

BETWEEN:— LAU YIU LONG *1st Defendant*
BENJAMIN LAU KAM CHING *2nd Defendant*

and

PAO ON *1st Plaintiff*
HO MEI CHUN *2nd Plaintiff*
PAO LAP CHUNG *3rd Plaintiff*

10

BEFORE THE HONOURABLE SIR GEOFFREY BRIGGS.

CHIEF JUSTICE.

MR. JUSTICE McMULLIN and MR. JUSTICE LEONARD IN COURT

O R D E R

On Friday, the 5th day of November, 1976

20 Upon reading the Notice of Motion, dated the 25th day of March, 1976, on behalf of the 1st and 2nd Defendants by way of appeal from the Judgment of the Honourable Mr. Justice Li given on the 17th day of February, 1976 whereby he gave Judgment for the Plaintiffs in the sum of \$5,392,800.00 with interest as from the 1st day of May, 1974 to the date of Judgment at the rate of 6% per annum and costs to be taxed.

And upon reading the said Judgment.

And upon hearing Counsel for the 1st and 2nd Defendants and Counsel for the 1st, 2nd and 3rd Plaintiffs.

IT IS ORDERED

- 30
1. that this appeal be allowed;
 2. that the said Judgment of the Honourable Mr. Justice Li given on the 17th day of February, 1976 be set aside and that in lieu thereof that Judgment be entered for the defendants and costs to be taxed; and
 3. that the costs of this appeal be paid by the said 1st, 2nd and 3rd Plaintiffs to the said 1st and 2nd Defendants or their Solicitors, such costs to be taxed.

(Sd) S. H. MAYO
Registrar.

No. 13 of 1976 *In the Court of
Appeal
Hong Kong*

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

Motion For
Leave to
Appeal.
9th November,
1976.

PAO ON
HO MEI CHUN
PAO LAP CHUNG

1st Appellant
2nd Appellant
3rd Appellant

No. 14

and

LAU YIU LONG
BENJAMIN LAU KAM CHING

1st Respondent
2nd Respondent

10

NOTICE OF MOTION FOR LEAVE TO APPEAL

TAKE NOTICE that the Court of Appeal will be moved on Friday the 19th day of November 1976 at 9.30 o'clock in the forenoon at the sitting of the Court, or so soon thereafter as Counsel can be heard, by Counsel on behalf of the abovenamed Appellants for:

- 20 (1) an order that leave be granted to the Appellants to Appeal to Her Majesty the Queen in Her Privy Council from the judgment of this Honourable Court pronounced by the Court on the 5th day of November 1976, and
(2) an order that the execution of the judgment against the Appellants as to costs be suspended pending the hearing and judgment of the appeal by Her Majesty the Queen in Her Privy Council upon the Appellants entering into security to the satisfaction of the Court for the due performance of such order as Her Majesty in Council shall think fit to make on the said judgement as to costs.

Dated the 9th day of November 1976.

ANDREW K. N. LI
Counsel for the Appellants.

To the abovenamed Respondents Lau Yiu Long &
Benjamin Lau Kam Ching and their Solicitors
Messrs. Yung, Yu Yuen & Co. Hong Kong.

In the Court of
Appeal of
Hong Kong

NO. 13 of 1976

Notice of
Application
For Leave to
Appeal.
11th November,
1976.

No. 15

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

BETWEEN:—

PAO ON

1st Appellant

HO MEI CHUN

2nd Appellant

PAO LAP CHUNG

3rd Appellant

and

LAU YIU LONG

1st Respondent

10

BENJAMIN LAU KAM CHING

2nd Respondent

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

Order in
Council
Regulating
Appeals from
the Court of
Appeal for
Hong Kong to
Her Majesty
in Council
1909 Rule 3.

TAKE NOTICE that the Court of Appeal will be moved at 9.30 o'clock in the forenoon on Friday, the 19th day of November, 1976 or so soon thereafter as Counsel for the Appellants can be heard for leave to appeal to Her Majesty the Queen in Her Privy Council from the Judgment of this Honourable Court dated 5th November, 1976 in accordance with the attached Notice of Motion.

Dated the 11th day of November, 1976.

20

(Sd) HASTINGS & CO.
Solicitors for the Appellants.

To: Messrs. Lau Yiu Long
& Benjamin Lau Kam Ching
and their Solicitors,
Yung, Yu, Yuen & Co., Hong Kong.

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

BETWEEN:—

LAU YIU LONG

1st Appellant

BENJAMIN LAU KAM CHING

2nd Appellant

and

PAO ON

1st Respondent

HO MEI CHUN

2nd Respondent

PAO LAP CHUNG

3rd Respondent

Order of the
Court of Appeal
granting leave
to appeal to the
Privy Council
19th November,
1976.

No. 16

10

BEFORE THE HONOURABLE SIR GEOFFREY BRIGGS,
CHIEF JUSTICE,

MR. JUSTICE McMULLIN and MR. JUSTICE LEONARD in Court

O R D E R

UPON hearing Counsel for the Appellants and for the Respondents, it was ORDERED that:—

20

1. leave be granted to the Respondents to appeal to Her Majesty the Queen in Her Privy Council from the Judgment of this Court pronounced on the 5th day of November, 1976;
2. the Respondents do enter into good and sufficient security to the satisfaction of the Registrar in the sum of \$30,000.00 within three months from the date hereof for the due prosecution of the Appeal and the payment of all such costs as may become payable to the Appellants in the event of the Respondents' not obtaining an Order granting them final leave to appeal or of the Appeal being dismissed for non-prosecution or of Her Majesty in Council ordering the Respondents to pay the Appellants' costs of the Appeal;
3. the Record be dispatched within five months from the date hereof;
- 30 4. the costs of the Appeal be taxed and paid to the Appellants and the Appellants undertook to repay if the Appeal succeeded in Privy Council; and
5. costs of this application be costs in the Appeal.

Dated the 19th day of November, 1976.

REGISTRAR.

EXHIBITS

THIS AGREEMENT made the 27th day of Feb
One thousand nine hundred and seventy three

Exhibit A1-6
Agreement
27th February
1973

BETWEEN the persons whose names and addresses are set out in
the First and Second Columns of the First Schedule hereto
(hereinafter collectively called "the Vendors") of the first
part TSUEN WAN SHING ON ESTATE COMPANY LIMITED whose registered
office is situate at 274 Sha Tsui Road Ground floor Tsuen Wan
New Territories in the Colony of Hong Kong - - - - -
(hereinafter called "the Company") of the second part and FU
CHIP INVESTMENT COMPANY LIMITED whose registered office is
situate at No.33 Wing Lok Street Victoria in the said Colony of
Hong Kong (hereinafter called "Fu Chip") of the third part
WHEREAS :-

(1) Tsuen Wan Shing On Estate Company Limited (hereinafter
called "the Company") is a private company incorporated in Hong
Kong with limited liability under the Company Ordinance (Chapter
of the Revised Edition 1950 of the Laws of Hong Kong) and has an
issued share capital of \$400,000.00 divided into 4,000 ordinary
shares of \$100.00 each all of which have been issued and are fully
paid as fully paid.

(2) The Vendors are the registered holders of the numbers of
the ordinary shares in the capital of the Company set out opposite
their respective names in the Third Column of the First Schedule
hereto aggregating the whole of the issued capital of the Company
(hereinafter collectively called "the said shares").

NOW IT IS HEREBY AGREED AND DECLARED as follows :-

1. Each of the Vendors shall sell and Fu Chip shall purchase
the number of said shares opposite its or his name in the
First Schedule hereof free from all charges
conditions or other incumbrances and with all rights attaching
thereto.

The purchase price payable by Fu Chip for the said shares



Exhibit A1-6
Agreement
27th February
1973

shall be \$10,500,000.00 by the allotment of 4,200,000 ordinary shares of \$1.00 each in Fu Chip a public company, (the Purchaser) 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.

3. The purchase shall be completed at the offices of Messrs. Yung, Yu, Yuen & Co. on or before the 31st day of March 1973 when Fu Chip will procure at their own costs and expenses and the allotment of 4,200,000 shares of Fu Chip to the Vendors free from all liens or encumbrances, on or before the 31st day of March 1973.

4. The Vendors hereby jointly and severally warrant to and undertake with Fu Chip :-

- (a) That no person has any right to call for the issue of any shares in the capital of the Company.
- (b) That none of the said shares is subject to any charge, lien, incumbrances or objection.
- (c) That the position of the Company as at the 31st day of March 1973 (hereinafter called "the said Date") and the earnings of the Company if any for the year ended on the said Date are as disclosed in the balance sheet and profit and loss account of the Company which will be supplied to Fu Chip made up as at that date.
- (d) That there has been no material change in the position or prospects of the Company since the said Date which has not been disclosed to Fu Chip during the course of negotiations.
- (e) The Company or its subsidiary has not engaged in any business other than the acquisition of the property more specifically set out in the Second Schedule hereto.
- (f) The Company has no mortgages, charges, liens or other

- incumbrances secured over its property or assets other than those incurred in the ordinary course of business.
- (g) All the rates, property tax, if any, of the Company up to the said Date will be paid.
 - (h) Save as disclosed the Company has no outstanding debts liabilities contracts or agreements apart from aforesaid.
 - (i) There are no existing service agreements or contracts between the Company and any directors or executives or employees thereof.
 - (j) There is no litigation or proceedings outstanding or pending or threatened against or relating to the Company and there is no such action or any governmental investigations relating to the Company.
 - (k) Each of the Vendors shall retain in his own right in Fu Chip 60% of the shares allotted to him under this Agreement and shall not sell or transfer the same on or before the end of April 1974.
 - (l) That the Vendors shall refund to the Purchaser all deposit or deposits received by the Vendors for the sale of flats in respect of the hereinafter premises on completion.
 - (m) The Vendors shall complete the said Building and deliver to the Purchaser the Occupation Permit in respect thereof on or before the 30th day of June 1973 and all construction fee and other expenses shall be fully paid and satisfied by the Vendors in respect thereof.
5. The Vendors hereby jointly and severally agree to do execute and perform such further acts deeds and documents and things as Fu Chip may require effectively to pass the ownership of the said shares in Fu Chip free from all charges liens and other adverse interests.
6. The said Fu Chip hereby agree and undertake with the Vendors that Fu Chip will at their own costs and expenses on or before the 31st day of March 1973 procure the allotment of 4,200,000 ordinary common shares of Fu Chip in favour of the Vendors or their respective nominees.
7. The said Fu Chip hereby further warrant and undertake with the Vendors and their shareholders that Fu Chip will observe and perform the terms and conditions on the part of the Company

to be performed and observed all contracts which have been disclosed to Fu Chip.

8. Time shall in every respect be the essence of this Agreement.

9. The legal costs and expenses and the stamp duty on instrument of Transfer shall be borne by the parties equally.

10. All warranties undertakings and agreement given herein by any of the Vendors and Fu Chip shall be binding upon the Vendors and Fu Chip and upon their respective successors legal personal representatives estates and assigns and the benefit of this agreement shall enure for the Vendors' and their executors administrators and estates.

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

THE FIRST SCHEDULE ABOVE REFERRED TO

Column 1	Column 2	Column 3
Names of Vendors	Addresses of Vendors	Share Holdings
Bao On	238 Sha Tsui Road 3rd floor, Tsuen Wan New Territories.	1,000
Ho Mei Chun	- do -	2,000
Bao Lap Chung	- do -	1,000
	Total :-	<u>4,000</u> =====

THE SECOND SCHEDULE ABOVE REFERRED TO

The estate right title interest and benefit of and in All That piece or parcel of ground situate lying and being at Tsuen Wan and registered in the District Office Tsuen Wan as TSUEN WAN TOWN LOT NO.185 Together with the messuages erections and building thereon being 21 storeyed composite Building Subject to all

Agreements for Sale and Purchase as entered into between the Company and the various purchasers.

Exhibit A1-6
Agreement
27th February
1973

SIGNED by the Vendors (who having been previously identified by) in the presence of :-

Handwritten signatures: 包亞松, 何美新, 包亞松

Solicitor,
Hong Kong.

SIGNED by for and on behalf of the Company in the presence of :-

Handwritten signature: 何美新

Solicitor,
Hong Kong.

SIGNED by for and on behalf of Fu Chip Investment Company Limited in the presence of :-

Handwritten signature: 何美新
Stamp: U.C. INVESTMENT COMPANY LIMITED

Handwritten signature of the solicitor

Solicitor,
Hong Kong.

Exhibit A1-6
Agreement
27th February
1973

Dated the 27th day of Feb.

BAO ON and OTHERS

and

FU CHIP INVESTMENT
COMPANY LIMITED

*:*****:

A G R E E M E N T

*****:

YUNG, YU, YUEN & CO.,
SOLICITORS & NOTARIES,
HONG KONG.

AN AGREEMENT made the 27th day of Feb.

Exhibit A7-9
Agreement
27th February
1973

One thousand nine hundred and seventy-three BETWEEN ^{劉色} EAO ON (包晏), HO HEI CHUN (何美行) and ^{包立松} EAO LAP CHONG (包立松) all of No.238 Sha Tsui Road, Third Floor, Tsuen Wan New Territories in the Colony of Hong Kong (hereinafter called "the Seller") of the one part and LAN YIU LONG (梁兆朗) of No.33 Wing Lok Street Ground Floor Victoria in the said Colony of Hong Kong Merchant (hereinafter called "the Buyer") of the other part.

WHEREAS the Seller is the registered holder of 3,320,000 shares in the undertaking called FU CHIP INVESTMENT CO. LTD. (hereinafter called "the Company") AND WHEREAS the Seller hath agreed to sell and the Buyer hath agreed to buy from the Seller the said shares upon the terms and conditions hereinafter appearing NOW IT IS MUTUALLY AGREED by and between the parties hereto as follows :-

1. The Seller shall sell to the Buyer and the Buyer shall buy from the Seller free from all incumbrances the said shares in the said Company together with all dividends bonus and issues; if any, accrued or to accrue thereon whether accrued before or after the signing of this Agreement.

2. The purchase price shall be \$ 6,300,000.00 calculated at the rate of \$ 2.50 per share of \$ 1.00 each fully paid-up whereof a deposit of \$ ----- shall be paid by the Buyer to the Seller upon signing hereof in part payment of the purchase price.

and purchase shall be completed on or before the 30th April, 1974 when the balance of purchase price of \$ 6,300,000.00 will be paid by the Buyer to the

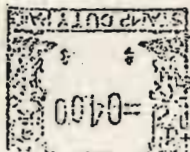


Exhibit A7-9
Agreement
27th February
1973

Seller against the delivery by the Seller of the Shares Scrip in respect of the said shares hereby agreed to be sold together with the forms of Instrument of Transfer duly stamped and signed in favour of the Buyer.

4. Concurrently upon completion of the said sale and purchase hereby agreed the Seller and the Buyer will procure a resolution being passed by the Company which delegate full power and authority to manage the affairs of the Company to the Buyer as executive director whose acts and deeds will be binding on the Company and the Seller agrees to vote at any resolution in accordance with the directions of the Buyer.

5. The Seller hereby warrants that he has good right and full power to sell the said shares in the Company free from any lien or incumbrances.

6. All costs of and incidental to the signing of this Agreement and the stamp duty on this Agreement shall be borne and paid by

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

SIGNED by the Seller in the presence of :-

Paul A
何美新
何之記

Solicitor,
Hong Kong.

SIGNED by the Buyer in the presence of :-

劉兆朗

[Signature]
Solicitor,
Hong Kong.

27th February, 1973

The Chairman
The Listing Sub-Committee
Far East Exchange Limited
HONG KONG

Dear Sir,

Re: Fu Chio Investment Company, Limited

We are instructed by the Board of the above Company to forward herewith a certified copy of the minutes of the Directors Meeting held at 5:00 p. m. on Monday, 26th February, 1973 containing particulars of the proposed new issue of 7,810,000 shares of the Company and apply that quotation of the captioned new issue be approved.

Yours faithfully,

for MARFAN & ASSOCIATES S. O. F. S.



..... Director ..
Marfan & Associates
Secretaries

Exhibit A10-12
Letter from
Marfan &
Associates to
Far East
Exchange Ltd.
27th February
1973

FU CHIP INVESTMENT COMPANY, LIMITED

MINUTES OF MEETING OF DIRECTORS HELD AT THE COMPANY'S REGISTERED OFFICE AT 33 WING LOK STREET, GROUND FLOOR, HONG KONG, ON MONDAY, 26TH FEBRUARY, 1973 AT 5:00 P.M.

- PRESENT : LAU Yiu Long,
WU Yeh Chow,
Phillip YUEN Pak-Yiu,
LAU Mui Hin and
Benjamin LAU Kam Ching
- CHAIRMAN : Mr. LAU Yiu Long took the chair for this meeting.
- QUORUM : A quorum being present, the Chairman declared the meeting opened.
- MINUTES : The minutes for the previous meeting were read and confirmed correct.

REPORT AND RESOLUTIONS :

The Chairman reported that our Company (the Company) has received offers for sale from the following vendors subject to acceptance of the Company within the next two days:

- (1) The shareholders holding 100% of the 4,000 shares in the capital of "Tsuen Wun Shing On Estate Co., Ltd." for acquisition of their shares in that company.

The main asset of that company consists of a 21-storey building, the construction work of which is in progress. A brief description of the building is as follows:-

Location: T. W. T. L. 185 Tai Ho Road, Tsuen Wan

Site Area: 4,800 sq. ft.

Units: Ground floor - 9 shops totalling 4,500 sq. ft.
1st & 2nd floors - commercial flats totalling 9,000 sq. ft.
3rd to 20th floors - domestic flats totalling 39,888 sq. ft.

The proposed consideration is 4,200,000 fully paid shares of \$1.- each in the Company issued at a premium of \$1.50 each.
- (2) The owner of 9 and 11 Shing On Street, Shau Kie Wan.

The site has an area of 2,772 sq. ft. and is located at the business centre near market and the joint redevelopment plan with the owner of No. 13 has been approved.

The proposed consideration is 2,300,000 fully paid shares of \$1.- each in the Company issued at a premium of \$1.50 each.
- (3) The owner of 62 and 64 Catchick Street.

The site area is 1,350 sq. ft. which is near a theatre and opposite to the business centre. The plan for construction of 12 commercial and domestic units has been approved.

...../2

The proposed consideration is 700,000 fully paid shares of \$1.- each in the Company issued at a premium of \$1.50 each.

- (4) The owner of 28 Bonham Strand East.

This is a vacant site of 800 sq. ft. and the plan for construction of a 6-storey commercial building has been approved.

The proposed consideration is 610,000 fully paid shares of \$1. each in the Company issued at a premium of \$1.50 each.

After discussion and verification it is hereby resolved:-

That in view of the fact that today's closing price of our Company's shares as quoted at Far East Exchange Limited is \$2.90, the Board considered that the above offers are acceptable and that Messrs. LAU Yiu Long and LAU Kam Ching be hereby authorised to sign all documents in connection with the above transactions. It is further resolved that:-

- (a) 4,200,000 shares of the Company of \$1.- each credited as fully paid be issued to the existing members of Tsuen Wun Shing On Estate Co., Ltd. at a premium of \$1.50 each in exchange of their 4,000 fully paid shares in that company.
- (b) 2,300,000 shares of the Company of \$1.- each credited as fully paid be issued to the owner of 9 and 11 Shing On Street, at a premium of \$1.50 each for acquisition of his property.
- (c) 700,000 shares of the Company of \$1.- each credited as fully paid be issued to the owner of 62 and 64 Catchick Street, at a premium of \$1.50 each for acquisition of his property.
- (d) 1,000,000 shares of the Company of \$1.- each credited as fully paid be issued to the owner of 28 Bonham Strand East, at a premium of \$1.50 each for acquisition of his property.

There being no other business, the meeting was closed
at 10 p.m..

劉兆朗

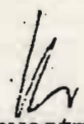
.....
LAU YIU LONG
Chairman

Exhibit A13
Letter from
Far East
Exchange Ltd.
to Marfan &
Associates
31st March
1973

31st March, 1973.

Marfan & Associates,
Room 105 Mercantile Bank Bldg.,
HONG KONG.

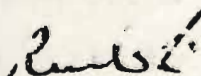
Dear Sir,


Fu Chip Investment Company Limited

I refer to your letter dated 27th February, 1973 applying for official listing on behalf of the subject Company of their 7,810,000 new share of HK\$1.00 each issued for the purpose to acquire properties and the entire issued capital of Tsuen Wun Shing On Estate Company Limited as detailed in your above letter.

I have the pleasure to inform you that our Committee has agreed to grant permission to deal in and for a quotation for such shares.

Yours faithfully,
for FAR EAST EXCHANGE LTD.



(Ronald Li)
Chairman

RL/JS/jh

Form No. X

THE COMPANIES ORDINANCE

Fee \$5.00

Particulars of Directors or Managers and of any changes therein

PURSUANT TO SECTION 158

Presented by ... YUEN, YU, YUEN & CO., SOLLICITORS &C., HONG KONG.

Particulars of the Directors or Managers (a) of ... TSUEN MAN SHING ON BREWERY COMPANY LIMITED

Company, and of any changes therein.

The present Christian name or names and Surname (b)	Any former Christian name or name or Surname	Nationality	Nationality of origin (if other than the present Nationality)	Usual Residential Address	Other business occupation or Directorships, if any. If none, state so (c)	Changes (d)
BAO (or PAO) ON ()				No. 238 Sha Tsui Road 3rd floor Tsuen Wan	Merchant	resigned on /5/1973;
HO MEI CHUN ()				- do -	Housewife	- do -
BAO (or PAO) LAP (or LAB) CHUNG ()				- do -	Merchant	- do -
FU CHIP INVESTMENT COMPANY LIMITED				No. 33 Wing Lok Street Hong Kong		appointed on /5/1973;
LAU YIU LONG ()				No. 132 Tin Hau Temple Road Flat C-1, 14th floor Summit Court Hong Kong	Merchant	- do -

(Signature) Pa

(State whether Director or Manager or Secretary) Director

Dated the May day of 1973

Exhibit A15
Sold Note
10th May 1973

**INSTRUMENT OF
TRANSFER ENDORSED**

SOLD NOTE

I certify that the sum of \$ 729.6.....
has been paid in respect of Stamp Duty
(C/R No. 4222)
Asst. Collector
10 MAY 1973

I, PAO ON

of No. 238, Sha Tsui Rd., 3/F., Tsuen Wan have

sold - 1,000 - shares in Tsuen Wan Shing On Estate

Company, Limited for a consideration of HK\$1,823,670



(Handwritten signature)

.....
(PAO ON)

**INSTRUMENT OF
TRANSFER ENDORSED**

SOLD NOTE

I certify that the sum of \$ 1288.....
has been paid in respect of Stamp Duty
(C/R No. 4222)
Asst. Collector

I, PAO LAP CHUNG

of No. 238, Sha Tsui Rd., 3/F., Tsuen Wan have

sold - 999 - shares in Tsuen Wan Shing On Estate

Company, Limited for a consideration of HK\$1,821,845



(Handwritten signature)
.....
(PAO LAP CHUNG)

Our Ref: 2826-6

Hong Kong, 3rd May, 1973.

Exhibit A-16
Sold Note
10th May 1973

We hereby certify that at the close of business on the
3rd May, 1973 the balance at debit/credit of Tsuen Wan Shing On Estate
Co., Ltd. of No. 274 Sha Tsui Road, Grd. Floor, Tsuen Wan, Kln. Hongkon
in current ~~xxxxxxx~~ deposit account amounted to Hong Kong
Dollars One million, eight hundred & fifteen thousand, three hundred &
twenty only

HK\$ 1,815,320.00

For THE HONG NIN SAVINGS BANK, LTD.

[Handwritten signature]
Authorized signature

INSTRUMENT OF
TRANSFER ENDORSED

SOLD NOTE

10 MAY 73
H K S KONG

I, HO MEI CHUN

I certify that the sum of \$14,592.....
has been paid in respect of Stamp Duty
(C/R No. 4222)
Asst. Collector

of No. 238, Sha Tsui Rd., 3/F., Tsuen Wan, have 10 MAY 1973
sold - 2,000 - shares in Tsuen Wan Shing On Estate
Company, Limited for a consideration of HK\$ 3,647,340.

[Handwritten signature]
.....
(HO MEI CHUN)

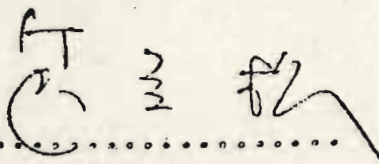
10 MAY 73
H K S KONG

SOLD NOTE



I, PAO LAP CHUNG

of No. 238, Sha Tsui Rd., 3/F., Tsuen Wan have
sold - one - shares in Tsuen Wan Shing On Estate
Company, Limited for a consideration of HK\$ 1, 823. 67.


.....
(PAO LAP CHUNG)

TSUEN WAN SHING ON ESTATE COMPANY LIMITED .

Minutes of an Extraordinary General Meeting of the members of the abovenamed Company held and convened at its registered office on Monday , the 30th day of April 1973 at 11. a.m.

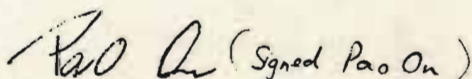
Present :- Bao On
 Ho Mei Chun
 Bao Lap Chung

IT WAS UNANIMOUSLY RESOLVED as follows :- .

1. Mr. Bao On was elected Chairman of the Meeting.
2. That the transfer of shares from the existing shareholders of the Company as registered in the book of the Company to Fu Chip Investment Company Limited and Mr. Lau Yiu Long as follows be approved by the Company :-

<u>Transferor</u>	<u>Transferee</u>	<u>No. of Shares transferred</u>
Bao On	Fu Chip Investment Co. Ltd.	1,000
Ho Mei Chun	- do -	2,000
Bao Lap Chung	- do -	999
- do -	Lau Yiu Long	1
	Total :-	<u>4,000</u>

3. That the resignations tendered by the Directors, namely Bao On, Ho Mei Chun and Bao Lap Chung be accepted and Fu Chip Investment Company Limited and Lau Yiu Long be appointed Directors in place thereof with immediate effect.


Chairman

Particulars of the directors or managers of Fu Chip Investment

Company, Limited and of any changes therein.

The present Christian name or names and surname	Any former Christian name or names or surname	Nationality.	Nationality of origin (if other than the present Nationality)	Usual residential address	Other business occupation or directorships, if any. If none state so	Changes
LAU YIU LONG (劉玉龍)	Nil	British	Chinese	152 Tin Hau Temple Road, Flat C-1, Summit Court, 14th floor, Hong Kong.	Merchant	
WU YEH CHOW (伍業超)	Nil	-do-	-do-	802 Kent Mansion, Tin Hau Temple Road, Hong Kong.	Banker	Resigned on 23.5.74
PHILIP YUEN PAK YIU (袁北怡)	Nil	-do-	-do-	901 Caroline Mansion, Yun Ping Road, Hong Kong.	Solicitor	-do-
LAU MUI HIN (劉美欣)	Nil	Chinese	---	Fontana Garden, 4th floor, 11 Ka Ming Path, Causeway Bay Hong Kong.	Merchant	-do-
BENJAMIN LAU KAM CHING (劉金聲)	Nil	Chinese	---	31 Ming Yuen Street West, Basement, North Point, Hong Kong.	Merchant	-do-

(Signature) Sd./ illegible

(State whether director or manager or secretary) Secretaries

Dated the 24th day of May 1974 .

Exhibit A-20
Letter from
Wong, Yu, Yuen
Co. to
Messrs. Hastings & Co.
19th April 1973

PY:YKH

19th April, 1973

Messrs. Hastings & Co.,
Solicitors &c.,
Hong Kong.

Attention : Mr. Chow

Dear Sirs,

Re: Tsuen Wan Town Lot No.185
Tsuen Wan Shing On Estate Co. Ltd.

We have instructions from Messrs. Tsuen Wan Shing On Estate Co. Ltd. and Fu Chip Investment Co. Ltd. to deal with the above premises and are informed by Mr. Pao On of Tsuen Wan Shing On that the title deeds and documents relating thereto are now in your possession.

We should be much obliged if you would kindly arrange to send us all the title deeds and documents relating thereto to enable us to deal with the same.

Yours faithfully,

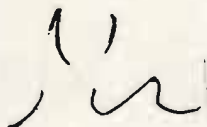


Exhibit A-21
Letter from
Hastings & Co.
to Yung, Yu,
Yuen & Co.
25th April 1973

HASTINGS & CO.

URGENT.

SOLICITORS & NOTARIES

TRADE MARKS & PATENTS AGENTS

22,500
22,500
22,500

ASSISTANT SOLICITOR

22,500
22,500
22,500

OFFICE TEL 255141
245142

YOUR REF PY:YKH.

OUR REF NL/T- /CHCW/73.

MARINA HOUSE, 1ST FLOOR
15-19 QUEEN'S ROAD, C.

TELEGRAPHIC ADDRESS
"SLEMISH" HONG KONG

HONG KONG 25th April, 1973

WHEN REPLYING PLEASE
QUOTE OUR REFERENCE

Messrs. Yung, Yu, Yuen & Co.,
Solicitors & Notaries,
Hong Kong.

Dear Sirs,

Re: Tsuen Wan Town Lot No.185
Tsuen Wan Shing On Estate Co. Ltd.

with reference to your letter of the 19th instant, we are instructed by our clients Messrs. Tsuen Wan Shing On Estate Co. Ltd. to request your clients Messrs. Fu Chip Investment Co. Ltd. through your goodservices to send us on behalf of our clients a guarantee from your clients that the intended allotment of 4,200,000 ordinary shares of your clients would be of the value of the sum \$10,500,000.00 as mentioned in the Agreement for Sale and Purchase dated the 27th day of February, 1973.

We shall be much obliged to hear from you hereon at your earliest convenience.

Yours faithfully,

[Handwritten signature]

Exhibit A-22
Letter from
Yung, Yu, Yuen
& Co.
Hasting & Co.
27th April 1973

HL/T-42/C.A./73

RY:YH

27th April 1973.

Messrs. Hastings & Co.,
Solicitors,
Hong Kong.

Dear Sirs,

Re: Tsuen Wan Town Lot No.185
Tsuen Wan Shing on Estate Co. Ltd.

With reference to your letter of 25th April 1973, we are instructed by our client, Archip Investment Co. Ltd., to draw your client's attention to the provisions contained in the agreement dated the 27th day of February 1973 that the purchase price of \$10,500,000.00 for the shares in Tsuen Wan Shing on Estate Co. Ltd. shall be paid by the allotment of 4,200,000 ordinary shares of \$1.00 each in our client, the market value for which shall be deemed as \$2.50 for each of \$1.00 share, to the Vendors named in the said Agreement.

As no provisions have been made in the said Agreement for the giving of a guarantee as requested in your said letter, our client is not prepared to accede to your client's request.

Yours faithfully,

chc

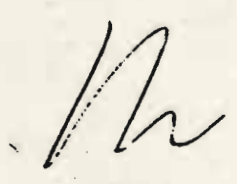


Exhibit A-23
Letter from
Yung, Yu, Yue
& Co. to
Hastings & Co.
28th April 1973

NL/T-42/CHOW/73

PY/YH

28th April 1973

Messrs. Hastings & Co.,
Solicitors & Co.,
Hong Kong.

Dear Sirs,

Re: T.W.T. Lot No. 185.

Further to our letter to you of the 27th instant, we write to inform you that completion of the sale and purchase herein will take place on the 30th April 1973 and that our clients Fu Chip Investment Company Limited are at all times willing and able to complete the purchase of the above property in accordance with the terms of the Agreement for sale and Purchase.

Yours faithfully,

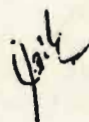


Exhibit A-24
Letter from
Yung, Yu, Yuen
& Co. to
Hastings & Co.
4th May 1973

Y:Y.H:VC

4th May, 1973

Messrs. Hastings & Co.,
Solicitors,
Hong Kong.

Attention: Mr. Chow Hin Yau

Dear Sirs,

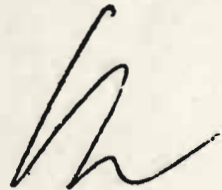
Re: Tsuen Wan Shing On Estate Co. Ltd.

We refer to our previous correspondence herein.

We are instructed to put on record that despite repeated requests, your clients Messrs. Pao On, Ho Kei Chun and Pao Lap Chung, who are the sellers of 4,000 shares in Tsuen Wan Shing On Estate Co. Ltd. have failed to turn up to complete the sale in accordance with the terms of the Agreement entered into between them and our client Fu Chi Investment Co., Ltd.

We are instructed to inform you that unless your clients will immediately take steps to complete the sale, our client would have no alternative but to take proceedings to protect their own rights and to enforce their rights under the sale and purchase agreement without further notice.

Yours faithfully,



c.c. Messrs. Pao On,
Ho Kei Chun and
Pao Lap Chung.

To ²⁷
Mr. Bao On ()
Madam Ho Mei Chun () and
Mr. ~~Bao~~ Lap Chung ()
of No. 230 Sha Tsui Road, ~~3rd Floor~~, ^{9/F}
Tsuen Wan, New Territories.

Re: Tsuen Wan Shing On Estate
Company Limited.

IN CONSIDERATION of your having at our request agreed to sell all of your shares of and in the above mentioned Company whose registered office is situate at 274 Sha Tsui Road Ground Floor Tsuen Wan New Territories in the Colony of Hong Kong for the consideration of \$10,500,000.00 by the allotment of 4,200,000 ordinary shares of \$1.00 each in Fu Chip Investment Company Limited whose registered office is situate at No. 33 Wing Lok Street Victoria in the said Colony of Hong Kong and that the market value for the said ordinary shares of the said Fu Chip Investment Company Limited 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 () of No. 152 Tin Hau Temple Road, Flat G1, Summit Court, 14th Floor in the Colony of Hong Kowloon Merchant and BENJAMIN LAU KAM CHING () of No. 31 Ming Yuen Street West, Basement in the said Colony of Hong Kong Merchant ~~and Lau Mei Hin () of Fortana Gardens 4th Floor, 21 Ka Ming Path, Causeway Bay in the said Colony of Hong Kong Merchant~~ the directors of the said Fu Chip Investment Company Limited HEREBY AGREE AND GUARANTEE ^{for 2,520,000 shares @ \$2.50} the market value ^{of 2,520,000 shares} for said 4,200,000 ordinary shares of the said Fu Chip Investment Company shall be at \$2.50 - - per share and that the total value ^{of 2,520,000 shares} thereof shall be of the sum of ~~\$10,500,000.00 as mentioned in the said Agreement for sale and purchase~~ ^{\$6,800,000.00} for the period ^{from the date of the said Agreement for Sale and Purchase to the 30th April 1974} ~~from the date of the said Agreement for Sale and Purchase to the 31st day of May, 1974~~ AND WE FURTHER AGREE to indemnify and keep you indemnified against any damages, losses and market value of ~~each of the said share shall fall short of the sum \$2.50~~ ^{during the said period} AND WE FURTHER AGREE that no time or indulgence granted by you to the said Fu Chip Investment Company Limited shall exonerate our liabilities hereunder.

Dated the _____ day of _____ 1973. ¹⁷⁰

SIGNED by the said Lau Yiu Long,
Benjamin Lau Kam Ching and ~~Lau Mei Hin~~
~~Lau Mei Hin~~ (they having previously identified by _____) in the presence of :-

Solicitor,
Hong Kong.

Exhibit
A27-27A
Letter
8th May 1973

(TRANSLATION.)

WING ON SECURITY COMPANY

(WING ON & COMPANY)

Room 1203, Chinese Bank Building, Nos.61-63 Des Voeux Road
Central, Hong Kong.

Branch Company: c/o Sai Shing Goldsmith No.274 Sha Tsui Road Tsuen Wan

(RM. 1203, H.K. CHINESE BANK BUILDING
DES VOEUX ROAD C.,
HONG KONG

Tsuen Wan Telephone:
NT 212232
214902

Telephone Nos.
5-255444
5-257673
5-258820
5-258961
5-258919
5-255777

Hong Kong..... 197

Mr. Yam, the Interpreter of
Messrs. Yung, Yu, Yuen & Co.

Please allow the bearer of this letter to bring back two copies
previously
of the Guarantee signed by us and by Mr. Lau Yiu Long and his brother
respectively. Your attention to this is appreciated and will thank you
later on.

With regards to your welfare.

Written by: (Sd.) Pao Ha Mei Chan.

Dated the 8th day of May 1973.

菊余阮律師樓

任師爺

我孝日前興 劉姚郎先生先榮五屬之

保素共西信 諸之素人常下取存者

感 諸 維 費 神 壽 叩 謝

劉

包何君玲 手啟

一九七三年

五月廿日

Exhibit A-30
Instrument of
Transfer
4th May 1973

31423

INSTRUMENT OF TRANSFER



TSUEN WAN SHING ON ESTATE COMPANY LIMITED

I (we) .. PAO ON.....
of No. 236, Sha Tsui Road, 3rd. floor, Tsuen Wan.....in consideration of the
Sum of Dollars. Value Received.....
paid to me (us) by (name in full) FU CHIP INVESTMENT COMPANY LIMITED.....
(occupation).....
of (full address) No. 33 Wing Lok Street, Hong Kong.....
(hereinafter called "the said Transferee") do hereby transfer to the said
Transferee the - 1000 - Shares numbered.....
standing in my (our) name in the Register of TSUEN WAN SHING ON ESTATE
COMPANY LIMITED - - - to hold unto the said Transferee his Executors,
Administrators or Assigns, subject to the several conditions upon which I
(we) hold the same at the time of execution hereof. And I (we) the said
Transferee do hereby agree to take the said Shares subject to the same
conditions.

Witness our hands the 4th day of May 1973.

Witness to the signature of
.....
Address.....

Paon

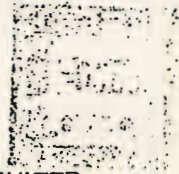
Witness to the signature of
.....
Address.....
Directors

97425

Exhibit A-31
Instrument of
Transfer
4th May 1973

INSTRUMENT OF TRANSFER

TSUEN WAN SHING ON ESTATE COMPANY LIMITED



I (we) HO MEI CHUN
No. 238 Sha Tsui Road 3/F, Tsuen Wan
ofin consideration of the
Sum of Dollars.....Value received.....
paid to me (us) by (name in full) FU CHIP INVESTMENT CO. LTD.
(occupation).....
of (full address) 33 Wing Lok Street Ground floor Hong Kong
(hereinafter called "the said Transferee") do hereby transfer to the said
Transferee the -2000- Shares numbered.....

standing in my (our) name in the Register of TSUEN WAN SHING ON
ESTATE COMPANY LIMITED
to hold unto the said Transferee his Executors,
Administrators or Assigns, subject to the several conditions upon which I
(we) hold the same at the time of execution hereof. And I (we) the said
Transferee do hereby agree to take the said Shares subject to the same
conditions.

Witness our hands the 4th day of May 1973.

Witness to the signature of
.....
Rms. 108-110 No. 9 Ice House Street
Address HONG KONG

何美珍

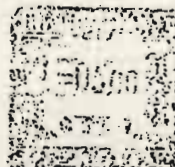
Witness to the signature of
.....
Rms. 108-110 No. 9 Ice House Street
Address HONG KONG

INVESTMENT COMPANY LIMITED
Director

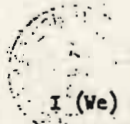
Exhibit A-32
Instrument of
Transfer
4th May 1973

00121

INSTRUMENT OF TRANSFER



TSUEN WAN SHING ON ESTATE COMPANY LIMITED



I (we) PAO LAP CHUNG
of No. 238 Sha Tsui Road Third Floor Tsuen Wan in consideration of the
Sum of Dollars Value Received
paid to me (us) by (name in full) RU.CHIP.INVESTMENT.COMPANY.LIMITED
(occupation)
of (full address) No. Wing Lok Street Hong Kong
(hereinafter called "the said Transferee") do hereby transfer to the said
Transferee the 999 Shares numbered
standing in my (our) name in the Register of TSUEN WAN SHING ON ESTATE
COMPANY LIMITED to hold unto the said Transferee his Executors,
Administrators or Assigns, subject to the several conditions upon which I
(we) hold the same at the time of execution hereof. And I (we) the said
Transferee do hereby agree to take the said Shares subject to the same
conditions.

Witness our hands the 4th day of May 1973.

Witness to the signature of

Guo Jip Macau King

Handwritten signature

Rms. 108-110 No. 9 Lee House Street
Address HONG KONG

Witness to the signature of

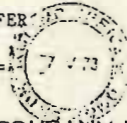
Guo Jip Macau King

TSUEN WAN SHING ON ESTATE COMPANY LIMITED
Handwritten signature

Rms. 108-110 No. 9 Lee House Street
Address HONG KONG

Directors

INSTRUMENT OF TRANSFER



TSUEN WAN SHING ON ESTATE COMPANY LIMITED

I (we) PAO LAP CHUNG
No. 238 Sha -tsui Road 3/F, Tsuen Wan
ofin consideration of the
Sum of Dollars.....value received
paid to me (us) by (name in full)..... LAU YIU LONG
(occupation).....
No. 152 Tin Hau Temple Road Flat C1
of (full address).....Summit Court 4th floor Hong Kong
(hereinafter called "the said Transferee") do hereby transfer to the said
Transferee the.....-1-.....Shares numbered.....

standing in my (our) name in the Register of TSUEN WAN SHING ON
ESTATE COMPANY LIMITED
to hold unto the said Transferee his Executors,
Administrators or Assigns, subject to the several conditions upon which I
(we) hold the same at the time of execution hereof. And I (we) the said
Transferee do hereby agree to take the said Shares subject to the same
conditions.

Witness our hands the...4th.....day of.....May.....1973.

Witness to the signature of
.....Mr. Ip Man Ping.....
Rms. 108-110, No. 9 Lee Hee Street
HONG KONG
Address.....

Witness to the signature of
.....Mr. Ip Man Ping.....
Rms. 108-110, No. 9 Lee Hee Street
HONG KONG
Address.....

富德商業投資有限公司
FU CHIP INVESTMENT COMPANY LTD.
.....Mr. Ip Man Ping.....
Directors

4-5-1973

威安移交富捷投資有限公司件如下:—

1. 威安股票4000股 肆張
2. 公司水印 壹個
3. 銀行戶口用印章 壹個
4. 商業登記証一式
 24543 叁張
5. 有限公司執照
 一式 貳張
6. 康年銀行存款摺一式
 (存款及空摺) 壹本
 入數摺 肆張
7. 康年銀行章程規則
 壹套
8. 康年戶口證明(印) 壹紙

康年銀行存款摺(印) 壹紙
 康年銀行章程規則 壹套
 康年戶口證明(印) 壹紙
 於作人: 岑小北 朗

(TRANSLATION.)


4 - 5 - 1973.

Shing On deliver to Fu Chip Investment Co. Ltd. the following articles and documents:-

1. 4 Share Certificates of Shing On totalling 4,000 shares.
2. One Seal of the Company.
3. One chop for use for banking purpose.
4. 3 Business Registration Certificates of the same form No.324543.
5. 2 Certificates of incorporation of the limited Company of the same form.
6. One Cheque Book of Hong Nin Saving Bank Ch 85601-25 (counterfoils and blank cheques) - 4 with account entered.
7. One set of approved building plans of Wing On Mansion together with building contract.
8. One duplicate certificate of Hong Nin Bank (A/C 2826-6
money deposited HK\$1,815,320.00)

Received the above articles and documents by:

(Sd.) Lau Yiu Long.



富捷置業有限公司

第一期收購地盤通告

一發行面額壹圓新股四百二十萬股收購荃灣盛安置業有限公司已發行及繳足股本之全部股份該公司之唯一資產乃荃灣天河道西地段 13, 14, 15, 16, 17, 18, 19 榮安大廈該大廈佔地四千八百呎現正興建廿一層商業住宅混合大廈建築面積達五萬二千八百呎。

(二)發行面額壹圓之新股六十壹萬股收購中環文咸東街廿八號吉地該吉地八百呎九九九年期現擬興建六層商業樓宇。

(三)發行面額壹圓之新股七十萬股收購西環吉直街 62, 64 號舊樓該地盤約壹仟叁百呎九九九年期現擬興建多層商業住宅混合樓宇。

(四)發行面額壹圓新股二百三十萬股收購筲箕灣成安街 9, 11 號舊樓及承受與 13 號合作建築合約之一切權益該地盤佔地二千七百餘呎壹百五十年期現擬興建多層商業住宅混合樓宇。

此等股票將與本公司已發行及已繳足股本之股票享有同等權利。

以上肆項因收購而發行之新股已向本公司原已掛牌之有關交易所申請准予掛牌上市惟必須待會方批覆及待股特別大會通過始能生效。董事會估計由於上述肆項收購工作完成致本公司一九七四年三月卅一日前之盈利將有大幅度之增長。

承董事會命 馬炎璋秘書行啓

一九七三年三月十六日

(TRANSLATION)
NAM WAH MAN PAO - Friday, the 16th day of March 1973.

FU CHIP INVESTMENT COMPANY LIMITED

The first announcement of acquiring building sites.

- (1) The issue of 4,200,000 new shares of \$1.00 each (by the Company) for the purpose of acquiring all the paid up shares of Tsuen Wan Shing On Estate Company Limited and that the only property belonging to the said Tsuen Wan Shing On Estate Company Limited was Wing On Mansion standing on T.W. T.L. 185 situated at Tai Ho Road western site consisting of an area of 4800 square feet. The said Mansion consists of 21 storeys now in the course of construction with shops and domestic flats and total floor area will be 52,800 square feet.
- (2) The issue of 610,000 new shares of \$1.00 each (by the Company) for the purpose of acquiring a piece of vacant land situated at No.28 Bonham Road East, Central District consisting of an area of 800 square feet and the term of the (Crown Lease) is 999 years. It is proposed to erect a 6-storeyed commercial building thereon.
- (3) The issue of 700,000 new shares of \$1.00 each (by the Company) for the purpose of acquiring old premises known as Nos.62 and 64 Catchick Street Western District. The site whereof consists of an area of 1,300 square feet and the term of the (Crown Lease) is 999 years. It is proposed to erect multi-storeyed commercial and residential building thereon.
- (4) The issue of 2,300,000 new share of \$1.00 each (by the Company) for the purpose of acquiring old premises known as Nos.9 and 11 Shing On Street, Shaokwan and the right and privileges of and in a building contract in conjunction with No.13 in ^{joint} the building project. The site whereof consists of an area of 2,700 odd square feet and the term of (the Crown Lease) is 150 years. It is proposed to erected multi-storeyed commercial and residential building thereon.

The above-mentioned shares shall have equal right and privilege of the shares of our Company already issued or those shares, the capital thereof has already been fully paid up.

The issue of new shares by way of acquiring under the above-mentioned 4 items have been submitted and applied to the Stock Exchange for and on behalf of the Company for the purpose of the same going to the public market pending a permission or application being granted by the Stock Exchange and the Resolution of the special meeting of the shareholders before becoming effective.

It is estimated by the Board of Directors that the profits before the 31st day of March 1974 will be greatly increased, because of the completion of such acquiring under the above-mentioned 4 items.

By Order of the Board of Directors

MARFAM & ASSOCIATES

Secretaries.

Dated the 16th day of March 1973.

FU CHIP INVESTMENT COMPANY LIMITED

ANNOUNCEMENT

The Directors of Fu Chip Investment Company Limited ("the Company") wish to announce that the Company had entered into four several agreements to acquire the whole issued share capital in Tsuen Wan Shing On Estate Company Limited and the following properties from the undermentioned Vendors for the total consideration of \$19,525,000 which will be satisfied by the issue of 7,810,000 shares of \$1 each in the Company credited as fully paid at \$2.50 each. Full details thereof are set out hereunder.

1. Tsuen Wan Shing On Estate Company Limited:-

The Company will issue 4,200,000 shares of \$1 each in exchange for 4,000 shares of \$100 each fully paid of Tsuen Wan Shing On Estate Company Limited being the whole of its issued capital. This company was incorporated on the 24th day of December, 1970, and owns a piece of valuable land situate at Tsuen Wan Town Lot No. 185 which site comprises of approximately 4,500 square feet on which a 21-storey composite building having a total floor area of approximately 52,800 square feet is in progress for the purpose of resale. The whole building is expected to be completed in or about August, 1973.

2. Fu Lai Land Investment Company Limited, owner of the property known as Section B of Shaukeiwan Inland Lot No. 42 (Nos. 9 and 11, Shing On Street):-

The Company has entered into an Agreement for sale and purchase for the purchase from the abovenamed owner the said property at the price of \$5,750,000 which will be satisfied by the issue of 2,300,000 shares of \$1 each in the Company credited as fully paid at \$2.50 each.

This site comprises of approximately 2,772 square feet on which a six composite building having a total floor area of approximately 9395 square feet is going to be constructed for the purpose of resale. The whole building is expected to be completed on or before December, 1974.

3. Leung Hon Cheung and Lau Yiu Long, owners of the property known as Section D of Inland Lot No. 878 (No. 28 Bonham Strand East):-

The Company has entered into an Agreement for sale and purchase for the purchase from the abovenamed owners the said property at the price of \$1,525,000 which will be satisfied by the issue of 610,000 shares of \$1 each in the Company credited as fully paid at \$2.50 each.

This site comprises of approximately 300 square feet on which a six storey commercial complex having a total floor area of 3,700 square feet is going to be constructed for the purpose of resale. Construction work is in progress and is expected to complete in about November, 1973.

4. Lau Yiu Long, Chou Chi Chik and Poon Yin Kai, owners of the property known as The Remaining Portion of Inland Lot No. 5986 and The Remaining Portion of Inland Lot No. 5985 (62 and 64 Catchick Street):-

The Company has entered into an Agreement for sale and purchase for the purchase from the abovenamed owners the said property at the price of \$1,750,000 which will be satisfied by the issue of 700,000 shares of \$1 each in the Company credited as fully paid at \$2.50 each.

This site comprises of approximately 1,300 square feet on which a six storey building having a total floor area of 4,600 square feet is to be constructed. Construction work will commence soon and is expected to complete about December, 1974. All of the above new shares will rank pari passu with the existing shares of the Company. Application has been made to the Committees of the recognised stock exchanges for permission to deal in and quotation for the new shares now being issued.

A valuation has been caused to be made in respect of all the said properties by Hong Kong Auctioneers & Estate Agency Limited on 2nd March, 1973 as follows:-

(a) Tsuen Wan Town Lot No. 185 -	\$10,560,000
(b) Section D of Inland Lot No. 878 -	\$ 1,750,000
(c) Inland Lot Nos. 5986 and 5985 R.P. -	\$ 1,760,000
(d) Shaueiwan Inland Lot No. 444 Section A and B	\$ 5,750,000

After the acquisition of the shares in the above mentioned companies and the said properties, the Company will have an issued share capital of \$24,610,000 divided into 24,610,000 shares of \$1 each. Based on the professional valuation of the properties, the Company's total assets will be over \$35,000,000. The earnings per share for the year ending 31st March, 1974 will be substantially more than that forecast in the Prospectus dated 9th February, 1973.

Exhibit A37-38
Letter
4th May 1973

To:
Mr. Pao On ()
Madam Ho Mei Chun () and
Mr. Pao Lap Chung (),
No. 274 Sha Tsui Road, Ground Floor,
Tsuen Wan,
New Territories.

Re: Tsuen Wan Shing On Estate
Company Limited

IN CONSIDERATION of your having at our request agreed to sell all of your shares of and in the above mentioned Company whose registered office is situate at 274 Sha Tsui Road Ground Floor Tsuen Wan New Territories in the Colony of Hong Kong for the consideration of \$10,500,000:00 by the allotment of 4,200,000 ordinary shares of \$1.00 each in Fu Chip Investment Company Limited whose registered office is situate at No.33 Wing Lok Street Victoria in the said Colony of Hong Kong and that the market value for the said ordinary shares of the said Fu Chip Investment Company Limited 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 () of No.152 Tin Hau Temple Road, Flat C1, Summit Court, 14th Floor in the Colony of Hong Kong Merchant and BENJAMIN LAU KAM CHING () of No.31 Ming Yuen Street West, Basement in the said Colony of Hong Kong Merchant the directors of the said Fu Chip Investment Company Limited HEREBY AGREE AND GUARANTEE the closing market value for 2,520,000 shares (being 60% for the said 4,200,000 ordinary shares) of the said Fu Chip Investment Company Limited 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 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 Investment Company Limited 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 Investment Company Limited at the price of HK\$6,300,000:00 PROVIDED FURTHER THAT should the closing market value of the said 2,520,000 shares in Fu Chip exceed the sum of \$2:50 per share on the following date immediately after the 30th April, 1974 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 (榮安大廈) erected on TSUEN WAN TOWN LOT NO.185.

Dated the *Twelve* day of *May* 1973.

SIGNED by the said Lau Yiu Long, Benjamin Lau Kam Ching (they having previously been identified by *[Signature]*)

[Handwritten signatures and Chinese characters]

in the presence of :-

[Signature]
Solicitor,
Hong Kong.

Exhibit A39
Letter
4th May 1973

To: Messrs. Lau Yiu Long and
Lau Kam Ching,
No. 33 Wing Lok Street,
Ground Floor,
Hong Kong.

Re: TSUNG WAH SHING ON ESTATE CO. LTD.

IN CONSIDERATION of your guaranteeing to us that the value of 2,520,000 shares of Fu Chip Investment Company Limited on the marketing date immediately following the 30th day of April, 1974 shall not be less than \$2.50 for each of its \$1.00 shares upon the terms and conditions therein mentioned, We, the undersigned hereby jointly and severally AGREE AND GUARANTEE that each of us shall retain in his or her own right in Fu Chip Investment Company Limited 60% of the shares allotted to us under an Agreement dated the 27th day of February, 1973 and shall not sell or transfer the same on or before the end of April 1974 and to indemnify and keep you indemnified from and against any losses, damages and expenses in connection therewith and if you should discover that we or any one of us had transferred sold or otherwise disposed of the whole or any part of our said 2,520,000 shares (being Certificate Serial Nos. 09651 to 10910 inclusive) at any time prior to the said 30th day of April 1974 you shall have an option to buy back from us the said 2,520,000 shares (being Serial Nos. 9651 to 10910 inclusive) at \$2.50 each at any time and in any manner you may deem fit and upon notice (either verbal or in writing) given by you to any one of us (which shall be deemed sufficient notice to every one of us) intimating your intention to exercise your option, we hereby jointly and severally undertake to deliver to you the original shares Certificate Nos. 9651 to 10910 inclusive together with the instruments of transfer and sold notes duly signed for the transfer of the said 2,520,000 shares of Fu Chip Investment Company Limited to you or your nominee against payment of the purchase price within three days from receipt of your notice.

Dated the *fourth* day of *May* 1973.

Pao On, Ho Mei Chuan and Pao Lap Chung

WITNESS *[Signature]*
Solicitors, Hong Kong.
INTERPRETED by *[Signature]*
Clerk to Messrs. Yung, Yui Yuen & Co.,
Solicitors, Hong Kong.

Exhibit A40-4.
Cheque
4th May 1973

DAO HENG BANK LTD. 016
451
 HEAD OFFICE, HONG KONG
 No. 51CA 243440
 一九七三年五月四日
 香港政府
 PAY HONG KONG GOVERNMENT
 H.K. DOLLARS EXACTLY 29184 DOLS 00 CTS \$29,184.00
 A/C NO. 9200-2
 STAMP DUTY PAID
 "243440" 016 451 : 2918400

(TRANSLATION)

DAO HENG BANK LTD.
HEAD OFFICE, HONG KONG

016
451

& Co.

No. 51CA 243440

MAY 1973

PAY HONG KONG GOVERNMENT

or-Bearer

H. K. DOLLARS EXACTLY 29184 DOLS 00 CTS

\$29,184.00

A/C NO. 9200 _ 2
stamp duty paid.

(Chopped) (Wing On Security Co.)

(Sd.) Pao Lap Chung

(Sd.) Ho Mei Chun

" 243440 " 016 " 451 " :

000 2918400 "

D.O.C HENG BANK LTD.

Exhibit
A42-42A
Cheque
11th July 1973

016
451

DAO HENG BANK LTD.
HEAD OFFICE, HONG KONG

一九七三年七月十一日
11 JUL 1973

No. 51CA 276485

匯票
PAY TO THE ORDER OF 翁余阮律師樓
H.K. DOLLARS EXACTLY 4757 DOLS 00 CTS \$ 4757.00

A/C NO. 9200-2

STAMP DUTY PAID

"276485" 016 "451"

總行

(TRANSLATION)
DAO HENG BANK LTD.
HEAD OFFICE, HONG KONG

No. 51CA 276485 11 JUL 1973

PAY YUNG, YU, YUEN SOLICITORS' FIRM or Bearer
H.K. DOLLARS EXACTLY 4757 DOLS 00 CTS. \$4,757.00

a/c No. 9200 - 2
stamp duty paid

"276485" 016 "451"

(Chopped) Wing On Security Company
(Sd.) Pao Lap Chung (Sd.) Ho Mei

Statement of Account

Hong Kong, 19th July, 1972

Messrs. Pao On & Ho Mei Chun

Messrs. YUNG, YU, YUEN & CO. 翁余阮律師行
SOLICITORS & NOTARIES

Yung Kwok Yue
Yu Ping Tsung
Philip Yuen Pak Yiu
Robert Yung Ka Yuen

MANNING HOUSE, 6th FLOOR
TELEPHONES:
(General) 242136 (5 Lines)

Re: 230 and 232 Lockhart Road

By amount received from various Purchasers			
230 Ground Floor	10,000.00		
	100,000.00		
	90,000.00		
	44,000.00		
	<u>244,000.00</u>		✓ 244,000.00
First Floor	10,000.00		
	15,000.00		
	10,000.00		
	<u>25,000.00</u>	2	✓ 60,000.00
Second Floor	5,500.00		
	11,000.00		
	11,000.00		
	27,500.00		
	<u>55,000.00</u>	3	✓ 55,000.00
Third Floor	10,000.00		
	42,000.00		
	<u>52,000.00</u>	4	✓ 52,000.00
Fourth Floor	35,000.00		
	14,000.00		
	6,250.00		
	5,000.00		
	9,000.00		
	<u>69,250.00</u>	5	69,250.00
Fifth Floor	13,000.00		
	13,000.00		
	35,200.00		
	<u>61,200.00</u>	6	✓ 61,200.00
Sixth Floor	2,000.00		
	40,000.00		
	20,000.00		
	<u>62,000.00</u>	7	✓ 62,000.00

Exhibit A43-45
 Statement of
 Account
 19th July 1972

Seventh Floor	13,000.00		
	13,000.00		
	<u>35,200.00</u>		
	61,200.00	8	✓ 61,200.00
Eighth Floor	3,800.00		
	3,000.00		
	13,000.00		
	<u>48,200.00</u>		
	68,000.00	9	✓ 68,000.00
Tenth Floor & 10th floor of 232	28,000.00		
	49,000.00		
	9,000.00		
	3,000.00		
	<u>49,000.00</u>		
	120,000.00	10	120,000.00
Eleventh Floor	1,000.00		
	5,500.00		
	<u>58,300.00</u>		
E. & O. E.	64,800.00	11	✓ 64,800.00

Exhibit A43-45
Statement of
Account
19th July 1972

Statement of Account

Hong Kong, 19th July, 1972

Messrs. Pao On & ho Mei Chun

Messrs. YUNG, YU, YUEN & CO.
SOLICITORS & NOTARIES

Yung Kwok Yuo
Yu Ping Tsung
Philip Yuen Pak Yiu
Robert Yung Ka Yuen

MANNING HOUSE, 8th FLOOR
TELEPHONES:
(General) 24226 (5 Lines)

電話：二四二二六
號
律師
樓行

Re: 230-232 Lockhart Road

Balance B/F	1,040,000.00	1,722,885.00
.Less amount released to you		
✓ 118,200.00		
✓ 158,495.00		
✓ 134,000.00		
✓ 220,000.00		
630,695.00	630,695.00	
Less our costs and disbs. as per Debit Note	695.00	695.00
Less Supervision fee to Hong Kong Government as per Receipt	760.26	760.26
	<u>1,672,150.26</u>	<u>1,722,885.00</u>

Total amount received	1,722,885.00	
Less amount released and paid	<u>1,672,150.26</u>	
BALANCE in your favour	<u>\$20,734.74</u>	

[Handwritten signature]

174,580

E. & O. E.

Exhibit A46
 Cheque from
 Yung, Yu, Yuen
 & Company to
 Pao On &
 Ho Mei Chun

翁余阮律師行
 YUNG, YU, YUEN & COMPANY
 CLIENTS ACCOUNT

020
601

永隆銀行有限公司

CH. NO. HS 105525

DATE

FOR PAY TO THE ORDER OF Pao On & Ho Mei Chun

HONG KONG DOLLARS

HK\$ 18672.00

18672 DOLS 00 CTS

WING LUNG BANK LTD. HEAD OFFICE 116-118, QUEEN'S ROAD CENTRAL, HONG KONG.

A/C NO. 6387

YUNG, YU, YUEN & COMPANY PARTNER

105525 020 601

入 72
 13 7
 25

Exhibit A47
Cheque from
Yung, Yu, Yuen
& Company to
Pao On &
Ho Mei Chun

翁余阮律師行
& Co. YUNG, YU, YUEN & COMPANY
CLIENTS ACCOUNT

020
601

STAMP DUTY PAID

永隆銀行有限公司

支票號碼
CH. NO. HS 106361

日期
DATE

新付
PAY Pao On & Ho Mei Chun

或來人
OR BEARER

HONG KONG
DOLLARS 50734 DOLS 74 CTS

HK\$ 50,734.74

WING LUNG BANK LTD.

YUNG, YU, YUEN & COMPANY

HEAD OFFICE
110-112, QUEEN'S ROAD CENTRAL, HONG KONG.
帳號
A/C NO. 6387

[Signature]
PARTNER

106361 020 601

(TRANSLATION)

(We) beg to inform you that previously you have signed a guarantee in our favour relating to the shares of Fu Chip Investment Company Limited held by us and promising to fulfil such guarantee which will be expired on the 30th day of April this year. We therefore write this letter to notify you beforehand and wish ^{you} to attend thereto thereby enabling us to discuss the matter in time. We shall be grateful for the same.

To

Mr. Lau Kam Ching ~~is~~ the Assistant Managing Director of
Fu Chip Investment Company Limited.

Written by: (Sd.) Pao On
(Sl.) Ho Mei Chun
(Sd.) Pao Lap Chung

Dated the 30th day of March 1974.

逕啟者：前承

台端惠署之保證書有閱本人等持有之富捷置業有限公司股票許以承諾保證一事，將於不年四月三十日期為此持先函奉

達，敬希

此致

抱注，以便到時洽辦，不勝感激為荷

富捷置業有限公司副董事長

劉金澄先生

劉金澄
白
己
主
啟

一九七四年三月三十日

2nd May 74

TW/P-17/GHOW/74(1315)

Messrs. Lau Yiu Long and
Benjamin Lau Kam Ching,
c/o Fu Chip Investment Co. Ltd.,
No. 33, Wing Lok Street,
Ground Floor,
Hong Kong.

Dear Sirs,

Re: Shares in Fu Chip Investment Co. Ltd.

We act for Mr. Pao On, Madam Ho Mei Chun and Mr. Pao Lap Chung and refer you to a Guarantee given by you in their favour on the 4th May 1973 as to the closing market value for 2,520,000 shares of Fu Chip Investment Co. Ltd. to be at \$2.50 per share and that the total value of 2,520,000 shares at \$6,300,000.00 on the following market date immediately after the 30th April 1974.

We are given to understand that the closing market price of the shares of Fu Chip Investment Co. Ltd. on the following market date immediately after the 30th April 1974 was \$0.36 per share according to the Far East Exchange Limited.

We are therefore instructed to call upon you to indemnify our clients as to the loss incurred being the difference between the said \$2.50 per share and \$0.36 per share for 2,520,000 shares pursuant to the said Guarantee. This is calculated at \$5,392,800.00

We are instructed to inform you that unless the said sum of \$5,392,800.00 is paid to us on behalf of our clients within the next three days legal proceedings will be instituted against you for the recovery of the same without further notice.

Yours faithfully,

Exhibit A51
Letter to
Hasting & Co.
from Yung, Yu,
Yuen & Co.
21st May 1974

HONGKONG, 21st May, 1974.

Messrs. Hastings & Co.,
Solicitors,
Hong Kong.

Dear Sirs,

Re: O. J. Action No.1159 of 1974
Pao On, Ho Mei Chun, Pao Lap
Chung v. Lam Yiu Long Benjamin
Lau Kam Ching.

We act for the Defendants in the above action and refer to the Statement of Claim filed herein.

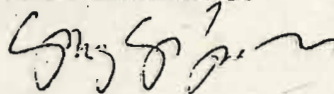
We have been advised by Counsel that the Defendants are entitled to the following further and better particulars before Defence :-

Under paragraph 2 of the Statement of Claim

Of the allegation that the Defendants "agreed and guaranteed" that the closing market value on the following marketing date immediately after 30th April 1974 for 2,520,000 shares in Fu Chip should be \$2.50 per share, please state whether the alleged agreement and/or guarantee was oral or in writing; if oral, specify when and between whom the agreement was made or guarantee given; if in writing, identify each and every document relied upon and the date of execution thereof.

Of the allegation that the Defendants "agreed to indemnify the Plaintiffs", please state whether the alleged agreement was oral or in writing; if oral, specifying when and between whom the agreement was made; if in writing, identify each and every document relied upon and the date of execution thereof.

Yours faithfully,



PY(PH)W416/74/rw/122
TW/P-17/CHOW/74(1315)

URGENT

Messrs. Yung, Yu, Yuen & Co.,
Solicitors,
Hong Kong.

Dear Sirs,

Re: O.J. Action No. 1159 of 1974
Pao On, Ho Mei Chun, Pao Lap Chung
v. Lau Yiu Long and Benjamin Lau
Kam Ching

The following are the further and better particulars of the Statement of Claim requested by your letter dated 21st May 1974 and ordered to be given by the consent order made by Mr. Registrar Jones on the 5th day of June 1974.

Under paragraph 2 of the Statement of Claim

- (1) The agreement and guarantee pleaded in paragraph 2(i) of the Statement of Claim was oral; it was made and given between the 1st Defendant acting on behalf of the Defendants and the 1st and 2nd Plaintiffs acting on behalf of the Plaintiffs in the middle of February 1973 the exact date of which the Plaintiffs cannot now remember.
- (2) As to the agreement to indemnify pleaded in paragraph 2(ii) of the Statement of Claim the Plaintiffs repeat the particulars given under (1) above.

We send you herewith by way of service a copy of the amended Statement of Claim the receipt of which kindly acknowledge.

Yours faithfully,

Enc.

Exhibit B
Agreement
27th February
1973

AN AGREEMENT made the 27th day of
Feb. 1973 One thousand nine hundred and
seventy-three BETWEEN PAO ON (包恩), HO HAI CHUN
(何海春) and PAO LAP CHUNG (包立中) all of No. 238
She Tsui Road, Third Floor, Tuen Mun New Territories in the
Colony of Hong Kong (hereinafter called "the Seller") of the one part and
LAN YIU LONG (藍耀龍) of No. 33 Wing Lok Street Ground
Floor Victoria in the said Colony of Hong Kong (hereinafter called "the Buyer") of the other part.

WHEREAS the Seller is the registered holder of 352,000
shares in the undertaking called FU CHEE INVESTMENT CO. LTD.
(hereinafter called "the Company") AND WHEREAS the Seller
hath agreed to sell and the Buyer hath agreed to buy from the
Seller the said shares upon the terms and conditions
hereinafter appearing.

NOW IT IS MUTUALLY AGREED by and between the parties
hereto as follows:-

1. The Seller shall sell to the Buyer and the Buyer shall buy from the Seller free from all incumbrances the said shares in the said Company together with all dividends bonus and issues, if any, accrued or to accrue thereon whether accrued before or after the signing of this Agreement.
2. The purchase price shall be \$ 6,300,000.00 calculated at the rate of \$ 2.50 per share of \$ 1.00 each fully paid-up whereof a deposit of \$ ----- shall be paid by the Buyer to the Seller upon signing hereof in part payment of the purchase price.

RECEIVED
27 FEB 1973
\$ 6,300,000

The sale and purchase shall be completed on or
before the 30th April, 1973 when the balance of purchase
price of \$ 6,300,000.00 will be paid by the Buyer to the
Seller

Dated the 27th day of Feb. 1973.

Exhibit B
Agreement
27th February
1973

BAC ON and OTHERS

and

LAU YIU LONG

A G R E E M E N T

YUNG, YU, YUEN & CO.,
SOLICITORS & NOTARIES,
HONG KONG.

Exhibit B
Agreement
27th February
1973

Seller against the delivery by the Seller of the Shares Scrip in respect of the said shares hereby agreed to be sold together with the forms of Instrument of Transfer duly stamped and signed in favour of the Buyer.

4. Concurrently upon completion of the said sale and purchase hereby agreed the Seller and the Buyer will procure a resolution being passed by the Company which delegate full power and authority to manage the affairs of the Company to the Buyer as executive director whose acts and deeds will be binding on the Company and the Seller agrees to vote at any resolution in accordance with the directions of the Buyer.

5. The Seller hereby warrants that he has good right and full power to sell the said shares in the Company free from any lien or incumbrances.

6. All costs of and incidental to the signing of this Agreement and the stamp duty on this Agreement shall be borne and paid by

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

SIGNED by the Seller in the presence of :-

[Handwritten signature]

Solicitor,
Hong Kong

SIGNED by the Buyer in the presence of :-

[Handwritten signature]
Solicitor,
Hong Kong.

[Handwritten signature]

[Handwritten signature]
[Handwritten signature]
[Handwritten signature]

A N A G R E E M E N T made the 27th day of Feb.

One thousand nine hundred and seventy-three BETWEEN BAO ON (包安), HO MEI CHUN (何美君) and BAO LAP CHUNG (包立松) all of No.238 Sha Tsui Road, Third Floor, Tsuen Wan New Territories in the Colony of Hong Kong - - - - -

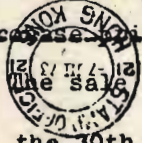
(hereinafter called "the Seller ") of the one part and LAU YIU LONG (劉兆朗) of No.33 Wing Lok Street Ground Floor Victoria in the said Colony of Hong Kong Merchant - - - (hereinafter called "the Buyer") of the other part.

WHEREAS the Seller is the registered holder of 520,000 shares in the undertaking called 'FU CHIP INVESTMENT CO. LTD. (hereinafter called "the Company') AND WHEREAS the Seller hath agreed to sell and the Buyer hath agreed to buy from the Seller the said shares upon the terms and conditions hereinafter appearing

NOW IT IS MUTUALLY AGREED by and between the parties hereto as follows :-

1. The Seller shall sell to the Buyer and the Buyer shall buy from the Seller free from all incumbrances the said shares in the said Company together with all dividends bonus and issues, if any, accrued or to accrue thereon whether accrued before or after the signing of this Agreement.
2. The purchase price shall be \$ 6,300,000.00 calculated at the rate of \$ 2.50 per share of \$ 1.00 each fully paid-up whereof a deposit of \$ ----- shall be paid by the Buyer to the Seller upon signing hereof in part payment of the purchase price.

The sale and purchase shall be completed on or before the 30th April, 1974 when the balance of purchase price of \$ 6,300,000.00 will be paid by the Buyer to the



0820

Exhibit B1
Agreement
27th February
1973

Seller against the delivery by the Seller of the Shares Scrip in respect of the said shares hereby agreed to be sold together with the forms of Instrument of Transfer duly stamped and signed in favour of the Buyer.

4. Concurrently upon completion of the said sale and purchase hereby agreed the Seller and the Buyer will procure a resolution being passed by the Company which delegate full power and authority to manage the affairs of the Company to the Buyer as executive director whose acts and deeds will be binding on the Company and the Seller agrees to vote at any resolution in accordance with the directions of the Buyer.

5. The Seller hereby warrants that he has good right and full power to sell the said shares in the Company free from any lien or incumbrances.

6. All costs of and incidental to the signing of this Agreement and the stamp duty on this Agreement shall be borne and paid by

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

SIGNED by the Seller in the presence of :-

Solicitor,
Hong Kong.

SIGNED by the Buyer in the presence of :-

Solicitor,
Hong Kong.

Dated the 27th day of Feb. 1973.

Exhibit B1
Agreement
27th February
1973

BAO ON and OTHERS

and

LAU YIU LONG

A G R E E M E N T

**YUNG, YU, YUEN & CO.,
SOLICITORS & NOTARIES,
HONG KONG.**

Exhibit C
Agreement
27th February
1973

THIS AGREEMENT made the 27th day of Feb.
One thousand nine hundred and seventy three

BETWEEN the persons whose names and addresses are set out in the First and Second Columns of the First Schedule hereto (hereinafter collectively called "the Vendors") of the first part TSUEN WAN SHING ON ESTATE COMPANY LIMITED whose registered office is situate at 274 Sha Tsui Road Ground floor Tsuen Wan New Territories in the Colony of Hong Kong - - - - - (hereinafter called "the Company") of the second part and FU CHIP INVESTMENT COMPANY LIMITED whose registered office is situate at No.33 Wing Lok Street Victoria in the said Colony of Hong Kong (hereinafter called "Fu Chip") of the third part
WHEREAS :-

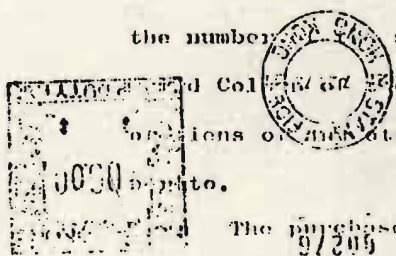
(1) Tsuen Wan Shing On Estate Company Limited (hereinafter called "the Company") is a private company incorporated in Hong Kong with limited liability under the Company Ordinance (Chapter 32 of the Revised Edition 1950 of the Laws of Hong Kong) and has an issued share capital of \$400,000.00 divided into 4,000 ordinary shares of \$100.00 each all of which have been issued and are fully paid as fully paid.

(2) The Vendors are the registered holders of the numbers of the ordinary shares in the capital of the Company set out opposite their respective names in the Third Column of the First Schedule hereto aggregating the whole of the issued capital of the Company (hereinafter collectively called "the said shares").

NOW IT IS HEREBY AGREED AND DECLARED as follows :-

1. Each of the Vendors shall sell and Fu Chip shall purchase the number of said shares opposite its or his name in the First Column of the First Schedule hereof free from all charges and incumbrances and with all rights attaching thereto.

The purchase price payable by Fu Chip for the said shares



shall be \$10,500,000.00 by the allotment of 4,200,000 ordinary shares of \$1.00 each in Fu Chip a public company, (the Purchaser) 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.

3. The purchase shall be completed at the offices of Messrs. Yung, Yu, Yuen & Co. on or before the 31st day of March 1973 when Fu Chip will procure at their own costs and expenses and the allotment of 4,200,000 shares of Fu Chip to the Vendors free from all liens or encumbrances, on or before the 31st day of March 1973.

4. The Vendors hereby jointly and severally warrant to and undertake with Fu Chip :-

- (a) That no person has any right to call for the issue of any shares in the capital of the Company.
- (b) That none of the said shares is subject to any charge lien incumbrances or objection.
- (c) That the position of the Company as at the 31st day of March 1973 (hereinafter called "the said Date") and the earnings of the Company if any for the year ended on the said Date are as disclosed in the balance sheet and profit and loss account of the Company which will be supplied to Fu Chip made up as at that date.
- (d) That there has been no material change in the position or prospects of the Company since the said Date which has not been disclosed to Fu Chip during the course of negotiations.
- (e) The Company or its subsidiary has not engaged in any business other than the acquisition of the property more specifically set out in the Second Schedule hereto.
- (f) The Company has no mortgages charges liens or other

Exhibit C
Agreement
27th February
1973

- incumbrances secured over its property or assets other than those incurred in the ordinary course of business.
- (g) All the rates, property tax, if any, of the Company up to the said Date will be paid.
 - (h) Save as disclosed the Company has no outstanding debts liabilities contracts or agreements apart from aforesaid.
 - (i) There are no existing service agreements or contracts between the Company and any directors or executives or employees thereof.
 - (j) There is no litigation or proceedings outstanding or pending or threatened against or relating to the Company and there is no such action or any governmental investigations relating to the Company.
 - (k) Each of the Vendors shall retain in his own right in Fu Chip 60% of the shares allotted to him under this Agreement and shall not sell or transfer the same on or before the end of April 1974.
 - (l) That the Vendors shall refund to the Purchaser all deposit or deposits received by the Vendors for the sale of flats in respect of the hereinafter premises on completion.
 - (m) The Vendors shall complete the said Building and deliver to the Purchaser the Occupation Permit in respect thereof on or before the 30th day of June 1973 and all construction fee and other expenses shall be fully paid and satisfied by the Vendors in respect thereof.
5. The Vendors hereby jointly and severally agree to do execute and perform such further acts deeds and documents and things as Fu Chip may require effectively to pass the ownership of the said shares in Fu Chip free from all charges liens and other adverse interests.
6. The said Fu Chip hereby agree and undertake with the Vendors that Fu Chip will at their own costs and expenses on or before the 31st day of March 1973 procure the allotment of 4,200,000 ordinary common shares of Fu Chip in favour of the Vendors or their respective nominees.
7. The said Fu Chip hereby further warrant and undertake with the Vendors and their shareholders that Fu Chip will observe and perform the terms and conditions on the part of the Company

to be performed and observed all contracts which have been disclosed to Fu Chip.

8. Time shall in every respect be the essence of this Agreement.

9. The legal costs and expenses and the stamp duty on instrument of Transfer shall be borne by the parties equally.

10. All warranties undertakings and agreement given herein by any of the Vendors and Fu Chip shall be binding upon the Vendors and Fu Chip and upon their respective successors legal personal representatives estates and assigns and the benefit of this Agreement shall enure for the Vendors' and their executors administrators and estates.

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

THE FIRST SCHEDULE ABOVE REFERRED TO

Column 1	Column 2	Column 3
Names of Vendors	Addresses of Vendors	Share Holdings
Bao On	238 Sha Tsui Road 3rd floor, Tsuen Wan New Territories.	1,000
Ho Mei Chun	- do -	2,000
Bao Lap Chung	- do -	1,000
	Total :-	4,000 =====

THE SECOND SCHEDULE ABOVE REFERRED TO

The estate right title interest and benefit of and in All That piece or parcel of ground situate lying and being at Tsuen Wan and registered in the District Office Tsuen Wan as TSUEN WAN TOWN LOT NO.185 Together with the messuages erections and buildings thereon being 21 storied composite Building Subject to all

Exhibit C
Agreement
27th February
1973

THIS AGREEMENT made the 27 day of Feb.
One thousand nine hundred and seventy three

BETWEEN The persons whose names and addresses are set out in the First and Second Columns of the First Schedule hereto (hereinafter collectively called "the Vendors") of the first part TSUEN WAN SHING ON ESTATE COMPANY LIMITED whose registered office is situate at 274 Sha Tsui Road Ground floor Tsuen Wan New Territories in the Colony of Hong Kong - - - - - (hereinafter called "the Company") of the second part and FU CHIP INVESTMENT COMPANY LIMITED whose registered office is situate at No. 33 Wing Lok Street Victoria in the said Colony of Hong Kong (hereinafter called "Fu Chip") of the third part
WHEREAS :- *Articles ?*

(1) Tsuen Wan Shing On Estate Company Limited (hereinafter called "the Company") is a private company incorporated in Hong Kong with limited liability under the Company Ordinance (Chapter 32 of the Revised Edition 1950 of the Laws of Hong Kong) and has an issued share capital of \$400,000.00 divided into 4,000 ordinary shares of \$100.00 each all of which have been issued and are fully paid as fully paid.

(2) The Vendors are the registered holders of the numbers of the ordinary shares in the capital of the Company set out opposite their respective names in the Third Column of the First Schedule hereto aggregating the whole of the issued capital of the Company (hereinafter collectively called "the said shares").

NOW IT IS HEREBY AGREED AND DECLARED as follows :-

1. Each of the Vendors shall sell and Fu Chip shall purchase the number of the said shares opposite its or his name in the Third Column of the First Schedule hereof free from all charges or liens or any other incumbrances and with all rights attaching hereto.
2. The purchase price payable by Fu Chip for the said shares

Agreements for Sale and Purchase as entered into between the Company and the various purchasers.

SIGNED by the Vendors (who having been previously identified by) in the presence of 1-

Bo a
何美新
包三松

Solicitor,
Hong Kong.

SIGNED by

Bo a
何美新

for and on behalf of the Company in the presence of 1-

Solicitor,
Hong Kong.

SIGNED by

for and on behalf of Fu Chip Investment Company Limited in the presence of 1-

Bo a
何美新
INVESTMENT COMPANY LIMITED
何美新

Bo a
何美新
Solicitor,
Hong Kong.

IT IS HEREBY MUTUALLY AGREED between the parties hereto that the within mentioned date for completion of the sale and purchase herein be extended to the 20th April, 1973. Save as above modified all the terms and conditions contained in the within written Agreement shall remain in full force and effect.

Dated the 27th day of Feb. 1973.

Dated the 28th March 1973.
SIGNED by the within mentioned parties in the presence of 1 -

Solicitor, Hong Kong.

FU CHIP INVESTMENT COMPANY LIMITED
何美新
Directors

BAO ON and OTHERS

and

FU CHIP INVESTMENT COMPANY LIMITED
YU, G. YU, YUEN & CO.,
SOLICITORS & NOTARIES,
HONG KONG.

AGREEMENT

Exhibit C-1
Agreement
27th February
1973

shall be \$10,500,000.00 by the allotment of 4,200,000 ordinary shares of \$1.00 each in Fu Chip a public company, (the Purchaser) 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.

3. The purchase shall be completed at the offices of Messrs. Yung, Yu, Yuen & Co. on or before the 31st day of March 1973 when Fu Chip will procure at their own costs and expenses and the allotment of 4,200,000 shares of Fu Chip to the Vendors free from all liens or encumbrances, on or before the 31st day of March 1973.

4. The Vendors hereby jointly and severally warrant to and undertake with Fu Chip :-

- (a) That no person has any right to call for the issue of any shares in the capital of the Company.
- (b) That none of the said shares is subject to any charge lien incumbrances or objection.
- (c) That the position of the Company as at the 31st day of March 1973 (hereinafter called "the said Date") and the earnings of the Company if any for the year ended on the said Date are as disclosed in the balance sheet and profit and loss account of the Company which will be supplied to Fu Chip made up as at that date.
- (d) That there has been no material change in the position or prospects of the Company since the said Date which has not been disclosed to Fu Chip during the course of negotiations.
- (e) The Company or its subsidiary has not engaged in any business other than the acquisition of the property more specifically set out in the Second Schedule hereto.
- (f) The Company has no mortgages charges liens or other

incumbrances removed over its property or assets other than those incurred in the ordinary course of business.

- (g) All the rates, properly tax, if any, of the Company up to the said date will be paid.
 - (h) Save as disclosed the Company has no outstanding debts liabilities contracts or agreements apart from aforesaid.
 - (i) There are no existing service agreements or contracts between the Company and any directors or executives or employees thereof.
 - (j) There is no litigation or proceedings outstanding or pending or threatened against or relating to the Company and there is no such action or any governmental investigations relating to the Company.
 - (k) Each of the Vendors shall retain in his own right in Fu Chip 60% of the shares allotted to him under this Agreement and shall not sell or transfer the same on or before the end of April 1974.
 - (l) That the Vendors shall refund to the Purchaser all deposit or deposits received by the Vendors for the sale of flats in respect of the hereinafter premises on completion.
 - (m) The Vendors shall complete the said building and deliver to the Purchaser the Occupation Permit in respect thereof on or before the 30th day of June 1973 and all construction fee and other expenses shall be fully paid and satisfied by the Vendors in respect thereof.
5. The Vendors heroby jointly and severally agree to do execute and perform such further acts deeds and documents and things as Fu Chip may require effectively to pass the ownership of the said shares in Fu Chip free from all charges liens and other adverse interests.

6. The said Fu Chip heroby agree and undertake with the Vendors that Fu Chip will at their own costs and expenses on or before the 31st day of March 1973 procure the allotment of 4,200,000 ordinary common shares of Fu Chip in favour of the Vendors or their respective nominees.

7. The said Fu Chip heroby further warrant and undertake with the Vendors and their shareholders that Fu Chip will observe and perform the terms and conditions on the part of the Company to be performed and observed all contracts which have been disclosed to Fu Chip.

8. Time shall in every respect be the essence of this Agreement.

9. The legal costs and expenses and the stamp duty on instrument of Transfer shall be borne by the parties equally.

10. All warranties undertakings and agreement given herein by any of the Vendors and Fu Chip shall be binding upon the Vendors and Fu Chip and upon their respective successors legal personal representatives estates and assigns and the benefit of this Agreement shall enure for the Vendors' and their executors administrators and estates.

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

THE FIRST SCHEDULE ABOVE REFERRED TO

Column 1	Column 2	Column 3
Names of Vendors	Addresses of Vendors	Share Holdings

Exhibit C-1
 Agreement
 27th February
 1973

Bao On	238 Sha Tsui Road 3rd floor, Tsuen Wan New Territories.	1,000
Ho Mei Chun	- do -	2,000
Bao Lap Chung	- do -	1,000
Total :-		4,000
		=====

THE SECOND SCHEDULE ABOVE REFERRED TO

The estate right title interest and benefit of and in All
 That piece or parcel of ground situate lying and being at Tsuen
 Wan and registered in the District Office Tsuen Wan as TSUEN WAN
 TOWN LOT NO.185 Together with the messuages erections and building
 thereon being 21 storeyed composite Building Subject to all

Agreements for sale and purchase as entered into between the
 Company and the various purchasers.

SIGNED by the Vendor (who having
 been previously identified by
) in the
 presence of :-

} Bao On
 } 何美群
 } 何美群

Solicitor,
 Hong Kong.

SIGNED by
 for and on behalf of the Company
 in the presence of :-

} Bao On
 } 何美群

Solicitor,
 Hong Kong.

SIGNED by
 for and on behalf of Fu Chip
 Investment Company Limited in
 the presence of :-

} FU CHIP INVESTMENT COMPANY LIMITED
 } 何美群

Solicitor,
 Hong Kong.

Dated the day of 1973.

Exhibit C-1
Agreement
27th February
1973

BAO ON and OTHERS

and

FU CHIP INVESTMENT
COMPANY LIMITED

A G R E E M E N T

YUNG, YU, YUEN & CO.,
SOLICITORS & NOTARIES,
HONG KONG.

Exhibit C2
Agreement
27th February
1973

THIS AGREEMENT made the 27 day of Feb.
One thousand nine hundred and seventy three

BETWEEN the persons whose names and addresses are set out in the First and Second Columns of the First Schedule hereto (hereinafter collectively called "the Vendors") of the first part TSUEN WAN SHING ON ESTATE COMPANY LIMITED whose registered office is situate at 274 Sha Tsui Road Ground floor Tsuen Wan New Territories in the Colony of Hong Kong - - - - - (hereinafter called "the Company") of the second part and FU CHIP INVESTMENT COMPANY LIMITED whose registered office is situate at No. 33 Wing Lok Street Victoria in the said Colony of Hong Kong (hereinafter called "Fu Chip") of the third part

WHEREAS :-

- (1) Tsuen Wan Shing On Estate Company Limited (hereinafter called "the Company") is a private company incorporated in Hong Kong with limited liability under the Company Ordinance (Chapter 32 of the Revised Edition 1950 of the Laws of Hong Kong) and has an issued share capital of \$400,000.00 divided into 4,000 ordinary shares of \$100.00 each all of which have been issued and are fully paid as fully paid.
- (2) The Vendors are the registered holders of the numbers of the ordinary shares in the capital of the Company set out opposite their respective names in the Third Column of the First Schedule hereto aggregating the whole of the issued capital of the Company (hereinafter collectively called "the said shares").

NOW IT IS HEREBY AGREED AND DECLARED as follows :-

- 1. Each of the Vendors shall sell and Fu Chip shall purchase the number of the said shares opposite its or his name in the Third Column of the First Schedule hereof free from all charges or liens or any other incumbrances and with all rights attaching hereto.
- 2. The purchase price payable by Fu Chip for the said shares

shall be \$10,500,000.00 by the allotment of 4,200,000 ordinary shares of \$1.00 each in Fu Chip a public company, (the Purchaser) 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.

*Exhibit C2
Agreement
27th February
1973*

3. The purchase shall be completed at the offices of Messrs. Yung, Yu, Yuen & Co. on or before the 31st day of March 1973 when Fu Chip will procure at their own costs and expenses and the allotment of 4,200,000 shares of Fu Chip to the Vendors free from all liens or encumbrances, on or before the 31st day of March 1973.

4. The Vendors hereby jointly and severally warrant to and undertake with Fu Chip :-

- (a) That no person has any right to call for the issue of any shares in the capital of the Company.
- (b) That none of the said shares is subject to any charge lien incumbrances or objection.
- (c) That the position of the Company as at the 31st day of March 1973 (hereinafter called "the said Date") and the earnings of the Company if any for the year ended on the said Date are as disclosed in the balance sheet and profit and loss account of the Company which will be supplied to Fu Chip made up as at that date.
- (d) That there has been no material change in the position or prospects of the Company since the said Date which has not been disclosed to Fu Chip during the course of negotiations.
- (e) The Company or its subsidiary has not engaged in any business other than the acquisition of the property more specifically set out in the Second Schedule hereto.
- (f) The Company has no mortgages charges liens or other

Exhibit C2
Agreement
27th February
1973

incumbrances secured over its property or assets other than those incurred in the ordinary course of business.

- (g) All the rates, property tax, if any, of the Company up to the said Date will be paid.
- (h) Save as disclosed the Company has no outstanding debts liabilities contracts or agreements apart from aforesaid.
- (i) There are no existing service agreements or contracts between the Company and any directors or executives or employees thereof.
- (j) There is no litigation or proceedings outstanding or pending or threatened against or relating to the Company and there is no such action or any governmental investigations relating to the Company.
- (k) Each of the Vendors shall retain in his own right in Fu Chip 60% of the shares allotted to him under this Agreement and shall not sell or transfer the same on or before the end of April 1974.
- (l) That the Vendors shall refund to the Purchaser all deposit or deposits received by the Vendors for the sale of flats in respect of the hereinafter premises on completion.
- (m) The Vendors shall complete the said Building and deliver to the Purchaser the Occupation Permit in respect thereof on or before the 30th day of June 1973 and all construction fee and other expenses shall be fully paid and satisfied by the Vendors in respect thereof.

5. The Vendors hereby jointly and severally agree to do execute and perform such further acts deeds and documents and things as Fu Chip may require effectively to pass the ownership of the said shares in Fu Chip free from all charges liens and other adverse interests.

6. The said Fu Chip hereby agree and undertake with the Vendors that Fu Chip will at their own costs and expenses on or before the 31st day of March 1973 procure the allotment of 4,200,000 ordinary common shares of Fu Chip in favour of the Vendors or their respective nominees.

7. The said Fu Chip hereby further warrant and undertake with the Vendors and their shareholders that Fu Chip will observe and perform the terms and conditions on the part of the Company

to be performed in all contracts as disclosed to Fu Chip.

8. Time shall in every respect be the essence of this Agreement.

9. The legal costs and expenses and the stamp duty on instrument of Transfer shall be borne by the parties equally.

10. All warranties, undertakings and agreement given herein by any of the Vendors and Fu Chip shall be binding upon the Vendors and Fu Chip and upon their respective successors legal personal representatives estates and assigns and the benefit of this Agreement shall enure for the Vendors' and their executors administrators and estates.

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

THE FIRST SCHEDULE ABOVE REFERRED TO

Column 1 Names of Vendors	Column 2 Addresses of Vendors	Column 3 Share Holdings
Tiao On 姚安	238 Sha Tsui Road 3rd Floor, Tsuen Wan New Territories.	1,000
Ho Hoi Chun 何海村	- do -	2,000
Pao Lap Chung 包立中	- do -	1,000
	Total :-	4,000

THE SECOND SCHEDULE ABOVE REFERRED TO

The estate right title interest and benefit of and in All That piece or parcel of ground situate lying and being at Tsuen Wan and registered in the District Office Tsuen Wan as TSUEN WAN TOWN LOT NO.185 Together with the messuages erections and buildings thereon being 21 storeyed composite Building Subject to all Agreements for Sale and Purchase as entered into between the Company and the various purchasers.

WITNESSED by the Vendors (who having been previously identified by _____) in the presence of :-

Solicitor,
 Hong Kong.

SIGNED by _____
 for and on behalf of the Company
 in the presence of :-

Solicitor,
 Hong Kong.

SIGNED by _____
 for and on behalf of Fu Chip Investment Company Limited in the presence of :-

萬 代 昌 華 有 限 公 司
 FU CHIP INVESTMENT COMPANY LIMITED
 梁 兆 剛

Solicitor,
 Hong Kong.

Exhibit C2
Agreement
27th February
1973

Dated the 27th day of Feb.

BAO ON and OTHERS

and

FU CHIP INVESTMENT
COMPANY LIMITED

A G R E E M E N T

YUNG, YU, YUEN & CO.,
SOLICITORS & NOTARIES,
HONG KONG.

27th February, 1973

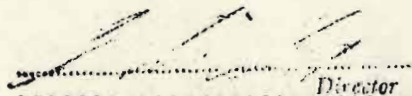
The Chairman
The Listing Sub-Committee
Far East Exchange Limited
HONG KONG

Dear Sir,

Re: Fu Chip Investment Company, Limited

We are instructed by the Board of the above Company to forward herewith a certified copy of the minutes of the Directors Meeting held at 5:00 p. m. on Monday, 26th February, 1973 containing particulars of the proposed new issue of 7, 810, 000 shares of the Company and apply that quotation of the captioned new issue be approved.

Yours faithfully,
for MARFAN & ASSOCIATES Secretaries


.....
Director
.....
Marfan & Associates
Secretaries

J contacted Norman & asked for valuation report
of the properties purchased. He promised to
let me have the information within a week.

Exhibit F
Letter to Far
East Exchange
Limited from
Marfan &
Associates
7th March 1973

MARFAN & ASSOCIATES

URGENT

March 7, 1973

The Chairman
The Listing Sub-Committee
Far East Exchange Limited
HONG KONG

Dear Sir,

Re: Fu Chip Investment Company, Limited

For your consideration, we are directed by the Directors of Fu Chip Investment Company, Limited to forward herewith the following documents in connection with their application for permission to deal in the 7,810,000 new shares proposed to be issued:-

- (a) A Valuation Report from Hong Kong Auctioneers & Estate Agency Limited.
- (b) An audited Balance Sheet as at February 20, 1973 of Tsuen Wan Shing On Estate Company Limited.

Please note that according to Clause 4(f), (i) & (m) of the agreement with the shareholders of Tsuen Wan Shing On Estate Company Limited (a copy of which has already been submitted) the vendors warrant and undertake to discharge the building loan and to refund the receipts in advance from purchasers of flats and to pay the balance of construction cost.

Looking forward to hearing from you soon.

Yours faithfully,

for MARFAN & ASSOCIATES



Director

Secretaries

CWC:IMP
Encl.
cc: Fu Chip Investment
Company, Limited

In the Privy Council

ON APPEAL

FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN

PAO ON	<i>1st Appellant</i>
HO MEI-CHUN	<i>2nd Appellant</i>
PAO LAP-CHUNG	<i>3rd Appellant</i>

AND

LAU YIU-LONG	<i>1st Respondent</i>
BENJAMIN LAU KAM CHING	<i>2nd Respondent</i>

RECORD OF PROCEEDINGS

HASTINGS & CO.,
Solicitors for the Appellants
YUNG, YU, YUEN & CO.
Solicitors for the Respondents
