

45/82

No. 34 of 1981

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL OF THE REPUBLIC
OF SINGAPORE IN PROCEEDINGS NO. 52 OF 1980

BETWEEN :

KAOLIM PRIVATE LIMITED

Appellant
(Defendant)

- and -

UNITED OVERSEAS LAND LIMITED

Respondent
(Plaintiff)

RECORD OF PROCEEDINGS

MESSRS. FRESHFIELDS,
Grindall House,
25 Newgate Street,
London EC1A 7LH.

Solicitors for the
Appellant

MESSRS. COWARD CHANCE,
Royex House,
Aldermanbury Square,
London, EC2V 7LD.

Solicitors for the
Respondent

O N A P P E A L

FROM THE COURT OF APPEAL OF THE REPUBLIC
OF SINGAPORE IN PROCEEDINGS NO. 52 OF 1980

B E T W E E N :

KAOLIM PRIVATE LIMITED (Defendant) Appellant

- and -

UNITED OVERSEAS LAND LIMITED (Plaintiff) Respondent

RECORD OF PROCEEDINGS

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ORIGINATING SUMMONS

No. 1
Originating
Summons
9th April 1980
(continued)

LET all parties concerned attend before the Judge in Chambers on Monday the 14th day of April 1980 at the hour of 10.30 o'clock in the forenoon on the hearing of an application by the Plaintiffs herein for the following orders:

1. A Declaration that on a true and proper construction of Condition 16(c) of the Conditions of Tender read with Condition 6 of The (Revised) Singapore Conditions of Sale, the Plaintiffs (as purchasers) are under no obligation to the Defendants (as mortgagees) or to Kaolim(Private) Ltd. (as the registered proprietors) to pay property tax in arrears up to the date of completion and payable in respect of the property comprised in Lots 156-2, 156-3 and 156-16 of Town Subdivision XIX together with the building erected thereon known as Kaolim Building. 10
2. A Declaration that the Defendants are under an obligation to apply the proceeds of sale of the said property in accordance with Section 26(3) of the Conveyancing And Law of Property Act. 20
3. A Declaration that, if the Plaintiffs are found to have contracted with the Defendants to pay the said arrears of property tax, the Plaintiffs are entitled to set off the said arrears of property tax against the surplus arising out of the proceeds of sale and held by the Defendants in trust for Kaolim (Private) Ltd. after satisfying the Defendants' claims in respect of the said proceeds.
4. Alternatively to 3 above, a Declaration that, if the Plaintiffs are found to have contracted with the Defendants to pay the said arrears of property tax, the Plaintiffs are subrogated to the rights of Kaolim (Private) Ltd. to the extent of the amount paid in any surplus the proceeds of sale and arising from and held by the Defendants after satisfying the Defendants' claims in respect of the said proceeds. 30
5. A Declaration that the Plaintiffs are, upon payment of the purchase price entitled to a Transfer duly executed by the Defendants in exercise of their power as mortgagees under the Mortgage No. I/49153A registered on July 24, 1976. 40

6. Such further or other order in the premises as to the Court deems fit.

In the Supreme
Court

7. Costs.

No. 1

Dated this 9th day of April 1980.

Originating
Summons

9th April 1980

sd. LOW WEE PING

(continued)

Dy. Registrar

10 This Summons is taken out by Messrs. Shook Lin & Bok, 5th Floor, Malayan Bank Chambers, Fullerton Square, Singapore Solicitors for the said Plaintiffs whose address is at 3301, 3rd Floor, Merlin Plaza, 7500 Beach Road, Singapore 0719.

NOTE:- This summons may not be served more than 12 calendar months after the above date unless renewed by order of the Court.

If a defendant does not attend personally or by his counsel or solicitor at the time and place abovementioned such order will be made as the Court may think just and expedient.

To: The Defendants and their Solicitors..

In the Supreme
Court

NO. 2

Plaintiff's
Evidence

AFFIDAVIT OF MICHAEL LIE

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

No. 2

Affidavit of
Michael Lie

Originating Summons

No. 153 of 1980

9th April 1980

In the matter of the Conditions of Tender relating
to sale of the lands and premises comprised on
Lots 156-2, 156-3 and 156-16 of Town
Subdivision XIX by Far Eastern Bank Limited to
United Overseas Land Limited

10

And

In the Matter of the Land Titles Act, (Cap. 276)
the Conveyancing And Law of Property Act
(Cap. 268) and the Property Tax Act (Cap. 235)

B E T W E E N

UNITED OVERSEAS LAND LIMITED Plaintiffs

And

FAR EASTERN BANK LIMITED Defendants

A F F I D A V I T

I, MICHAEL LIE of 3-301, 3rd Floor, Merlin Plaza,
7500 Beach Road, Singapore 0719 do solemnly and sincerely
affirm as follows:-

20

1. I am the Assistant General Manager of United
Overseas Land Limited, the Plaintiffs herein and the facts
hereinafter deposed are within my personal knowledge unless
expressly otherwise qualified.

2. In the forenoon of 20th of March 1980 the Plaintiffs
submitted a Tender for the purchase of the lands and
premises described in the Originating Summons herein
(hereinafter referred to as "the said lands and premises").

30

3. The Tender was submitted to the office of M/s Chung
& Co, solicitors for Far Eastern Bank Limited. The
Defendants were selling the premises as mortgagees.

4. I annex hereto and mark "A" a copy of the Conditions of Tender which contains at pages 7 and 8 thereof the form of Tender submitted by the Plaintiffs.

In the Supreme
Court

Plaintiff's
Evidence

5. Since Condition 29 of the Conditions of Tender expressly incorporates the General Conditions of Sale known as The (Revised) Singapore Conditions of Sale, I annex hereto and mark as "B" a copy of the (Revised) Singapore Conditions of Sale.

No. 2
Affidavit of
Michael Lie
9th April 1980

10 6. By a letter dated the 20th of March 1980 a copy of which is annexed hereto and marked "C" the said M/s Chung & Co. on behalf of the Defendants informed the Plaintiffs that the Plaintiffs' said Tender was accepted and that the 20% deposit, which was paid by the Plaintiffs together with the Plaintiffs' Tender, have been appropriated by the Defendants in accordance with the Conditions of Tender.

(continued)

20 7. On the 2nd day of April 1980 the Memorandum of Agreement contained at pages 8 and 9 of Annexure A was signed by the Plaintiffs and sent to the said M/s Chung & Co. by M/s Shook Lin & Bok. A copy of copy of M/s Shook Lin & Bok's letter is annexed hereto and marked "D".

8. Also on the said date namely the 2nd day of April 1980 M/s Shook Lin & Bok, solicitors for the Plaintiffs received from the Property Tax Division of the Inland Revenue Department a copy letter dated the 31st day of March 1980 a copy of which is annexed hereto and marked "E".

30 9. On the 5th day of April, 1980 the said M/s Shook Lin & Bok received from M/s Chung & Co a copy letter dated 2nd day of April 1980 addressed to the Comptroller of Property Tax a copy of which is annexed hereto and marked "F".

10. From Annexures E and F it is clear that -

(a) The Property Tax Division is requesting the Defendants for payment of arrears of property tax (up to 30th of June 1980) with interest and penalties in the amount of \$521, 242. 53.

40 (b) M/s Chung & Co relying on Condition 16 of the Conditions of Sale have taken the stand that the whole of the said property tax should be paid by the Plaintiffs.

In the Supreme
Court
Plaintiff's
Evidence

No. 2

Affidavit of
Michael Lie
9th April 1980
(continued)

11. On or about the 7th day of April 1980 the said M/s Shook Lin & Bok wrote to the Comptroller of Property Tax disagreeing with the stand taken by the said M/s Chung & Co and a copy of the letter of the said M/s Shook Lin & Bok is annexed hereto and marked "G".

12. I further annex hereto and mark as "H" a copy of copy of the Certificate of Title for the said lands and premises. This Honourable Court will note that there are two mortgages in favour of the Defendants from this exhibit and 4 Caveats lodged against the said lands and premises. I have been advised by the Plaintiffs' solicitors and I verily believe that -

10

(a) In Civil Suit No. 3170 of 1979 there is a claim by Kaolim Private Limited, the Mortgagors for a declaration that the said Second Mortgage executed in favour of the Defendants be declared null and void and of no effect.

(b) That although the Statement of Claim in the said Civil Suit had been struck out and appeal had been lodged.

20

13. When M/s Shook Lin & Bok wrote to the said M/s Chung & Co on the 2nd day of April 1980 as per Annexure "D" the Defendants were asked whether they were exercising their right of sale under the 1st and/or 2nd Mortgage. The said M/s Chung & Co in reply by a letter of the 2nd day of April, 1980 a copy of which is annexed hereto and marked "I" relied on Conditions 13 and 14 of the Conditions of Tender.

14. On the 7th day of April 1980 the said M/s Shook Lin & Bok sent to the said M/s Chung & Co a draft Transfer for their approval and a copy of copy of this letter is annexed hereto and marked "J" together with a copy of the draft Transfer. The said M/s Chung & Co have not returned the draft Transfer.

30

15. On the 8th day of April 1980 I telephoned one Ng Eng Hua the Assistant Manager of the Defendants who informed me that the Mortgagor Kaolim Private Limited is only indebted to the Defendants in a sum not exceeding \$5 million.

40

16. I have been advised by the Plaintiffs' solicitors and I verily believe that on a proper construction of the Conditions of Tender, the Plaintiffs are under no

obligation to pay the arrears of property tax in respect of the property payable up to the date of completion and that in any event, since the proceeds of sale are more than sufficient to meet both the Defendants' claims as well as the amount of such arrears, the Defendants are bound to pay or cause to be paid the said arrears.

In the Supreme
Court

Plaintiff's
Evidence

No. 2

AFFIRMED to at Singapore)
this 9th day of April, 1980.)

Sd. Michael Lie

Before me,

Sd.

A Commissioner for Oaths.

Affidavit of
Michael Lie

9th April 1980

(continued)

10

This Affidavit is filed on behalf of the Plaintiffs.

EXHIBIT "A" TO THE AFFIDAVIT OF MICHAEL LIE

Exhibit "A" to the
Affidavit of
Michael Lie

PLEASE SEND IN YOUR TENDER TO
M/S. CHUNG & CO. IN ENVELOPE
PROVIDED HEREWITH

SALE BY TENDER

PARTICULARS AND CONDITIONS OF SALE OF

KAOLIM BUILDING

20

PARTICULARS OF PROPERTY

All those pieces of lands situated in the District of Claymore in the Republic of Singapore estimated according to Government Resurvey to contain approximately the area of 474.9 sq metres, 147.3 sq metres and 570.3 sq metres and marked on the Government Resurvey Map as Lots 156-16, 156-3 and 156-2 respectively of Town Sub-division No. XIX which said pieces of lands were comprised in part of Grant No. 67 dated the 30th day of June, 1859 comprised in Certificate of Title Volume 146 Folio 185 dated the 6th day of December 1974.

30

Together with the building erected thereon known as Kaolim Building of No. 20 Kramat Road, Singapore.

This is the exhibit marked A referred to in the Affidavit of Michael Lie affirmed before me this 9th day of April 1980.

Before me,

A Commissioner for Oaths.

Messrs. Chung & Company
Solicitors
Hong Leong Building
Raffles Quay
Singapore.

CONDITIONS OF TENDER

Plaintiff's
Evidence

No. 2

Exhibit "A" to
the Affidavit of
Michael Lie

(continued)

1. (a) Every person or company desiring to purchase the property known as Kaolin Building described in the foregoing Particulars (hereinafter referred to as "the property") shall fill in and sign with his name the form of tender accompanying these conditions and shall send a copy of these conditions with the said form of tender (duly attached thereto filled and signed) in a sealed envelope addressed to Messrs Chung and Company of 16th Floor, Hong Leong Building, Raffles Quay, Singapore, Solicitors for Far Eastern Bank Limited of No. 156, Cecil Street, Singapore (hereinafter called "the Vendors")

10

(b) In the case of a company tendering, a signature of a director or any person having authority to sign on behalf of the company and the stamp of the company must be affixed to the said form.

(c) The sealed envelope containing the said form must reach Messrs Chung and Company not later than 12.00 noon on the 20th day of March, 1980.

2. Every tender shall be accompanied by a cashier's order in the name of the Vendors for a sum equivalent to 20% of the amount of the tender.

20

3. An offer shall be in multiples of \$25,000.00.

4. The Vendors are selling as Mortgagees and the concurrence of any person or persons interested in the property shall not be required nor shall the Vendors be required to enter into any covenant for title.

5. The Vendors do not undertake to accept the highest or any tender.

6. The tenders shall be opened on the 20th March 1980 at 12.00 noon in the office of the Vendors' Solicitors, Messrs. Chung and Company of 16th Floor, Hong Leong Building, Raffles Quay, Singapore. Only persons who have submitted tenders or their representatives may be present at the opening.

30

7. The person or company whose tender is accepted shall be the Purchaser and shall be informed immediately of the acceptance of the tender. If necessary, the Purchaser will be informed by post addressed to the address given in the tender and every letter so sent shall

40

be deemed to have been received in due course.

In the Supreme
Court

8. On the acceptance by the Vendors of a tender, the 20% of the amount tendered accompanying the tender shall immediately constitute the deposit on the sale and these conditions of sale herein shall thereupon form the contract between the Vendors and the Purchaser.

Plaintiff's
Evidence

No. 2

Exhibit "A" to
the Affidavit of
Michael Lie

(continued)

10

9. If a tender is not accepted, the cashier's order accompanying it or the Vendors' cashier's order will be returned immediately after the opening of the tender, by A.R. Registered post and the tenderer is requested to enclose with his tender a self-addressed envelope.

10. The purchase shall be completed and the balance of the purchase price shall be paid on the 21st day of April 1980 in the office of Messrs Chung and Company time in this respect to be of the essence.

20

11. If, for any cause whatsoever, the purchase of the property shall not be completed on the day fixed for completion, the Purchaser making such default shall pay interest on the unpaid purchase money at the rate of 12% per annum from that day until the actual date of completion.

12. The title of the property shall be properly deduced.

13. The Purchaser shall not investigate or call for evidence of any earlier title nor require the production or delivery of any deeds or documents not in the Vendors' possession nor make any requisition or objection whatsoever with reference thereto.

30

14. No objection or requisition shall be made on the ground that any covenant, acknowledgement or undertaking for the production or safe custody of any muniments of title is defective or insufficient or on the ground of the inability of the Vendors to trace or procure the production of any muniments of title.

40

15. No objection shall be made on the ground that any deed, document, Grant of Probate, Letters of Administration or Order of Court has not been registered under any Act Ordinance Rule or Regulation which requires its registration or on account of any deed or document being unstamped or insufficiently stamped and such unregistered or unstamped or insufficiently stamped deed, document, Grant of Probate, Letters of Administration or Order of Court shall if any Purchaser so requires be

registered or stamped at the expense of such Purchaser but if registration of any unregistered document cannot be effected no objection shall be taken to the title on that account.

16. The property is sold subject to:-

- (a) any scheme, layout, matter or thing embodied or shown in the General Improvement Plan and/or the Master Plan and all proposed amendments or addition thereto;
- (b) any proposed scheme effecting the property; and 10
- (c) all notices, charges, Orders of Court, charging orders, caveats and court or other claims affecting the property made or served whether before on or after the date of Sale. The Purchaser shall be deemed to have purchased with full knowledge and notice of all such schemes or proposed schemes, layouts, notices, demands, charges, Orders of Court, charging orders caveats and court or other claims which shall be complied with and discharged by and at the expense of the Purchaser who shall not be entitled to make or raise any objection or requisition whatsoever in respect thereof. 20

17. The Vendors have no notice or knowledge of any encroachment or that the Government or any Local Authority has any immediate intention of acquiring the property or any part thereof for road, backlane, or otherwise but if any such other encroachment shall be found to exist or if the Government or any Local Authority has any such intention the same shall not annul the sale herein nor shall any abatement or compensation be allowed in respect thereof. 30

18. The property is sold without vacant possession and subject to the existing rights of lessees/tenants/occupiers and/or squatters. The Purchaser shall not require from the Vendors any particulars or information to be supplied in respect of such occupation, any rentals or service charges payable or deposits paid by such lessees, tenants and/or occupiers and shall make his own enquiries in respect thereof and shall be deemed to have full knowledge of the same and of the effect thereof and the Vendors shall not be liable in any way for any claims for rentals, service charges, deposits or any payments whatsoever. 40

19. The Purchaser shall be deemed to have actual notice of the state and conditions of the property described in the above Particulars as regards access light, air, drainage and in all other respects and the Purchaser shall not be entitled to make or raise any objection or requisition whatsoever in respect thereof.

In the Supreme
Court

Plaintiff's
Evidence

No. 2

Exhibit "A" to
the Affidavit of
Michael Lie

(continued)

10 20. If at any time after the date of the sale a notice shall be issued or published for the compulsory acquisition of the property under or by virtue of any act or other statutory provision or regulation the same shall not annul the sale or the completion thereof nor shall any claim for compensation be made in respect thereof.

21. Every recital or statement contained in any deed document of assent, statutory declaration or instrument shall be accepted as conclusive evidence of the matter or fact recited stated or declared and no further or other evidence thereof shall be required nor shall any requisition be made in respect thereof.

20 22. The Purchaser shall not require any evidence that Estate Duty has been paid in respect of any death that occurred before the date of sale and no objection or requisition shall be made on the ground that such Estate Duty has not been paid nor shall the non-payment of such duty annul the sale and no abatement or compensation shall be allowed in respect thereof.

30 23. The Purchaser shall assume that every Power of Attorney under which any prior deed was executed contains sufficient powers and was at all material times valid and subsisting no proof thereof and no objection or requisition in respect thereof shall be required or made.

24. The inability of the Vendors to answer any requisitions or any delay in answering the same shall not entitle the Purchaser to refuse to complete or to delay completion.

25. The Purchaser shall not require the production of any certificate or any other evidence of numbering of the property sold herein or that any building stands on or within the boundaries comprised in the lots described and no requisition shall be made in respect thereof.

40 26. The Purchaser shall not require production of the Certificate of Fitness for Occupation in respect of each building and no objection or requisition shall be raised in respect thereof.

In the Supreme
Court

Plaintiff's
Evidence

No. 2

Exhibit "A" to
the Affidavit of
Michael Lie

(continued)

27. The Purchaser shall not be entitled to make any enquiry requisition or objection with regard to any discrepancies in any deed or document or in the spelling of the name of any party thereto.

28. If any error, mis-statement or omission shall appear to have been made in these conditions and the above Particulars with regard to the property such error or mis-statement or omission is not to annul the sale or entitle the Purchaser to be discharged from his purchase nor shall any compensation be paid or allowed to or by, either the Vendors or the Purchasers as the case may be; and all parties shall accept the area as being correct and shall complete the sale and purchase on that basis.

10

29. The property is sold subject to these conditions and also the General Conditions of Sale known as "The (Revised) Singapore Conditions of Sale" and all Purchasers shall be deemed to have full knowledge and notice of the contents and effect thereof; whether they shall actually have inspected a copy or not.

FORM OF TENDER

20

We, UNITED OVERSEAS LAND LIMITED of 3-301 MERLIN PLAZA, BEACH ROAD, SINGAPORE 0719 hereby offer to buy from Far Eastern Bank Limited, the Mortgagees of the property described in the above Particulars and known as Kaolim Building being all those pieces of lands situated in the District of Claymore in the Republic of Singapore estimated according to Government Resurvey to contain approximately the areas of 474.9 sq. metres, 147.3 sq metres and 570.3 sq. metres and marked on the Government Resurvey Map as Lots 156-16, 156-3 and 156-2 respectively of Town Subdivision No. XIX which said pieces of lands were comprised in part of Grant No. 67 dated the 30th day of June 1859 comprised in Certificate of Title Volume 146 Folio 185 dated the 6th day of December 1974 together with the building erected thereon known as Kaolim Building of No. 20 Kramat Road, Singapore for the sum of \$8,000,000/- and We agree that in the event of this offer being accepted subject to and in accordance with the above conditions We will pay the above-mentioned purchase money and carry out and complete the purchase in accordance with the above conditions.

30

40

Dated this 20th day of March 1980.

UNITED OVERSEAS LAND LIMITED

In the Supreme Court

Sd. Pang Leong Siang

Plaintiff's Evidence

PANG LEONG SIANG
General Manager

No. 2

Signature of Purchaser

Exhibit "A" to the Affidavit of Michael Lie

(continued)

10

MEMORANDUM that at the sale by tender this 20th day of March 1980 of the property mentioned in the above Particulars and conditions of sale, UNITED OVERSEAS LAND LIMITED of 3-301 Merlin Plaza, Beach Road, Singapore was the Purchaser subject to the above conditions at the price of \$8,000,000.00 and has paid the sum of \$1,600,000.00 by way of deposit to the Vendors and agrees to pay to the Vendors, Far Eastern Bank Limited the balance of the said purchase money and the Vendors and the Purchaser hereby agree to complete the sale in accordance with the above conditions.

Purchase Money	..	\$8,000,000.00
Deposit	..	<u>\$1,600,000.00</u>
Balance	..	\$6,400,000.00

20

SIGNED BY THE VENDOR)

in the presence of:)

.....
Signature of Vendor

SIGNED BY THE PURCHASER)

in the presence of:)

.....
Signature of Purchaser

In the Supreme
Court

Plaintiff's
Evidence

No. 2

Exhibit "B" to
the Affidavit of
Michael Lie

EXHIBIT "B" TO THE AFFIDAVIT OF MICHAEL LIE

This is the Exhibit marked B
referred to in the Affidavit of
Michael Lie sworn before me this
9th day of April 1980

Before me,

A Commissioner for Oaths.

THE (revised) SINGAPORE CONDITIONS OF SALE

- Biddings 1. The highest bidder shall be the Purchaser and if any dispute arises as to any bidding the property shall be put up again at the last undisputed bidding. There shall be a reserve price and the Vendor or his Agent may bid. The amount of advance of each bidding shall be regulated by the Auctioneer who may, when the property is offered for sale in lots, alter the order of the lots or put up any lot or lots separately or together in any combination, and may withdraw the property or any lot without declaring the reserve price; and no bidding shall be retracted. 10
- Deposit 2. The purchaser shall immediately after the sale pay to the Auctioneer as stakeholder a deposit of twenty-five per cent. on the amount of the purchase money. 20
- No abstract to be required 3. The purchaser shall not except at his own expense be entitled to an abstract of title, but such deeds or documents of title as are in the possession of the Vendor or his Mortgagees will be deposited at the office of the Vendor's Solicitor, or the Mortgagee's Solicitor, for ten days from the day of sale for inspection by the Purchaser or his Solicitor. The expense of producing such muniments of title as are in the possession of Mortgagees whom the Vendor is entitled to redeem shall be borne by the Vendor 30
- Requisitions 4. The purchaser shall within ten days from the day of sale, or within such extended time as the Vendor's Solicitor may in writing allow deliver to the Vendor's Solicitor a statement in writing of his objections or requisitions, if any, in respect of the title, particulars, sale plan and these conditions, and every objection or requisition not so stated shall be considered as waived. For the purpose of this condition, time shall be deemed to be the essence of the contract.
- Vendor's power of rescission 5. If the purchaser shall make and insist on any objection 40

or requisition either as to title, Conveyance or any matter appearing on the Particulars, Sale Plans, Conditions or otherwise, which the Vendor shall be unable, or on the ground of difficulty, delay or expense or on any other reasonable ground, be unwilling to remove or comply with, the Vendor shall, notwithstanding any previous negotiation or litigation, be at liberty, on giving to the Purchaser or his Solicitor not less than ten days' notice in writing to annul the sale, in which case, unless the objection or requisition shall have been in the meantime withdrawn, the sale shall at the expiration of the notice be annulled, the Purchaser being in that event entitled to a return of the deposit but without interest, costs or compensation.

10

6. The outgoing will be discharged by the Vendor down to the day fixed for completion, as from which day all outgoing shall be discharged by and the rents and profits or possession shall belong to the Purchaser, (such outgoing, rents and profits, if necessary, being apportioned) but the Purchaser shall nevertheless not be let into actual possession or receipt of rents and profits until completion of the purchase, and the Purchaser shall on completion pay to the Vendor a due proportion of the current rents less the like proportion of the current outgoing.

20

7. If from any cause whatever (other than the wilful default of the Vendor) the purchase shall not be completed on the day fixed for completion, the Purchaser shall pay to the Vendor interest on the balance of the purchase money at the rate of eight per cent. per annum, or the Vendor may elect to treat the actual day of completion as the day fixed for completion, and in that case shall be entitled to the rents and profits less outgoing (to be apportioned if necessary) up to the actual day of completion in lieu of interest as aforesaid. The Purchaser shall not be entitled to any compensation for the Vendor's delay unless contumacious. The stipulations contained in this clause are without prejudice to the rights under any other of these conditions.

30

8. Provided always (and notwithstanding anything hereinbefore contained to the contrary) that if the delay in completion shall arise wholly from a cause other than the default or neglect of the Purchaser, and if he shall (at his own risk) pay the balance of the purchase money into any Bank of good repute on a separate account in the name of the Purchaser or his Solicitor bearing interest at the current rate, and shall give written notice thereof

40

In the Supreme
Court

Plaintiff's
Evidence

No. 2

Exhibit "B" to
the Affidavit of
Michael Lie

(continued)

Outgoings, rents and
profits until completion

Completion delayed -
interest

Completion delayed -
payment into bank

In the Supreme Court

Plaintiff's Evidence

No. 2
Exhibit "B" to the
Affidavit of Michael Lie
(continued)

State of property as to
repair &c.

Production to purchaser of
counterparts of leases &c
and of deeds containing
restrictive covenants or
grants or reservations of
casements or other rights

to the Vendor or his Solicitor, the Vendor shall thereafter be satisfied with the interest allowed by such Bank in lieu of interest, rents and profits as aforesaid.

9. The Purchaser shall be deemed to have notice of the actual state and condition of the property as regards access, repair, light, air, drainage and in all other respects.

10. Where the property is sold subject to any lease or tenancy or to any restrictive covenants, easement, or other right specified in the particulars, Special Conditions or Contract the Counterpart or a copy of every such lease or tenancy agreement and a copy or sufficient abstract of any deed containing such restrictive covenants or the grant or reservation of any such easement or other right will be produced and may be inspected at the office of the Vendor's Solicitor during the seven days preceding the sale and the Purchaser (whether inspecting the same or not) shall be deemed to have full notice of the contents thereof notwithstanding any partial incomplete or inaccurate statement of such contents or of the effect thereof or of the terms of any tenancy in the Particulars Special Conditions or Contract, and in any case in which there is no written Tenancy Agreement or the Vendor has no counterpart or copy of a Lease written Tenancy Agreement correspondence or other document affecting the rights of a tenant as aforesaid the Purchaser shall be satisfied with such evidence of the same as the Vendor may be able to furnish.

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20

Mis-description

11. The property is believed and shall be taken to be correctly described as to quantity and otherwise and is sold subject to all chief, quit, and other rents and outgoings and to all incidents of tenure, rights of way, and other rights and easements (if any) affecting the same and if any error, misstatement, or omission (not of a serious or vital nature nor considerably affecting the value of the property) shall be discovered in the Particulars Special Conditions or Contract the same shall not annul the sale nor shall any compensation be allowed by or to either party in respect thereof.

30

Demands of local
authorities &c.

12. The Purchaser shall on completion repay to the Vendor the amount of any expenses incurred by him in complying with any requirement made between the dates of sale and completion by the Municipal Commissioners or other Local Authority (or by any Landlord or Superior Landlord of any Leasehold property) and in case any such

40

requirement shall not have been complied with before completion of the purchase, the Purchaser shall indemnify the Vendor against the same. Provided always that the Vendor shall before incurring any expense for the purpose aforesaid afford to the Purchaser a reasonable opportunity of complying with such requirement.

In the Supreme Court

Plaintiff's Evidence

No. 2

Exhibit "B" to the Affidavit of Michael Lie

10

13. The Purchaser shall admit the identity of the property purchased by him with that described in the muniments offered by the Vendor as containing the title thereto without requiring any further evidence thereof other than such if any as may be afforded by a comparison of the descriptions in the particulars and muniments, whether such descriptions correspond or not and the Vendor shall not be required to explain or reconcile any difference in the description and no requisition or objection shall be made in respect thereof.

(continued)

Identity

20

14. The costs of any resurvey required by Ordinance No. 148 (Registration of Deeds) shall be borne by the Purchaser and the absence of any resurvey shall not be a ground for delay in completing the sale.

Costs of survey

15. The property is sold subject to any Government or Municipal back lane or improvement scheme whatever affecting the same, whether mentioned in the Particulars or not, and the Purchaser shall be deemed to have full knowledge of the nature and affect thereof and shall make no objection or requisition in respect thereof.

Improvement Schemes

30

16. The Vendor has no notice or knowledge of any encroachment, but if any such shall be found to exist, the same shall not annul the sale nor shall any abatement or compensation be allowed in respect thereof.

Encroachments

17. The Purchaser shall assume unless the contrary appear that every title deed which purports to have been executed by any party thereto by his attorney was in fact duly executed under a valid and subsisting Power of Attorney giving all necessary power to the attorney to execute the same and if any such Power of Attorney has been deposited in the Supreme Court of the Colony the production thereof or of a copy thereof shall not be required by the Purchaser.

Deeds executed by Attorney

40

18. Any Voluntary Conveyance or Settlement forming part of the Vendor's title but bearing date 2 years or more prior to the sale shall be deemed valid and unimpeachable, and the Purchaser shall assume that the grantor or

Where a voluntary conveyance on the title

<p>In the Supreme Court</p> <hr/> <p>Plaintiff's Evidence</p> <p>No. 2</p> <p>Exhibit "B" to the Affidavit of Michael Lie</p> <p>(continued)</p>	<p>settlor was amply solvent at the date of execution thereof, unless it shall appear that steps have been taken or something has occurred to impeach or render the same invalid. Where any such Voluntary Conveyance or Settlement appears to have been executed less than 3 years prior to the sale the Vendor shall indemnify the Purchaser against any death duties which may become payable on the death of the grantor or settlor within 3 years from the date thereof, and no objection shall be founded on the existence of any such liability.</p>	<p>10</p>
<p>Deed or document executed by Corporation, Company or Society</p>	<p>19. Where any deed or document appearing on the title purports to be executed by or on behalf of any Corporation or Company, no information or evidence shall be required as to the constitution or regulation of such Corporation or Company, or as to the appointment or authority of any person purporting to act as a Trustee, Director, Manager, Treasurer, Secretary or other officer thereof, and it shall be assumed (unless the contrary appear) that such execution by such Corporation, Company, or Society, of such deed or document, was in all respects valid and regular.</p>	<p>20</p>
<p>Outstanding legal estate</p>	<p>20. Every bare legal estate (if any) outstanding more than 12 years before the date of the sale which may be required to be got in by the purchaser shall be traced and got in at his expense.</p>	
<p>Unregistered and unstamped documents</p>	<p>21. No objection shall be made by the Purchaser to the Title on the ground that any deed, Order of Court, Probate, Letters of Administration or other document dated more than 12 years before the date of sale has not been registered under any Act or Ordinance, under which it should or might have been registered, or on account of any deed order of Court or other document dated more than 12 years before the date of sale being unstamped or insufficiently stamped, and any such unregistered or unstamped document shall (if the Purchaser so requires) be registered and/or stamped at the expense of the Purchaser but if registration or stamping of the same cannot be effected no objection shall be taken to the title on that account.</p>	<p>30</p>
<p>Special provisions in case of statutory land grants and leaseholds</p>	<p>22. When the property sold is land held under Statutory Land Grant or is leasehold the following provisions shall apply:-</p>	<p>40</p>
<p>(inspection of S.L.G. or of lease)</p>	<p>(a) The Statutory Land Grant or Lease under which the property is held by the Vendor or a copy thereof will be produced and may be inspected at the Office of the Vendor's Solicitor during the seven days</p>	

preceding the sale and the Purchaser, whether inspecting the same or not shall be deemed to have full notice of the contents thereof, notwithstanding any partial, incomplete or inaccurate statement of such contents or of the effect thereof in the Particulars, Special Conditions or Contract.

In the Supreme
Court

Plaintiff's
Evidence

No. 2
Exhibit "B" to the
Affidavit of Michael Lie
(continued)

(last receipt evidence)
(Authority of receipt-
given)

10

- (b) The receipt for the last payment of rent accrued due prior to completion shall be conclusive evidence of the performance and observance of all covenants and conditions contained or implied in the Statutory Land Grant or the Lease and every Superior Lease of the property, or that any breach has been effectually waived down to the time of actual completion, and no proof shall be required of the authority of the person giving such receipt.

And in the case of leasehold property the following provisions shall also apply.

20

- (c) Where any necessary consent or licence cannot be obtained the Vendor may rescind the contract on the same terms as if the Purchaser had insisted on a requisition with which he was unable to comply.

(Consent or licence
unprocurable)

- (d) No objection shall be taken on the ground that the property sold is part only of that comprised in the Lease Underlease or any Superior Lease or that the covenants in the Lease or Underlease do not correspond with those in any Superior Lease.

(Other property
comprised - variance
between covenants)

30

23. Where more than one lot or parts of more than one lot are subject to the same lease or tenancy, the rent mentioned in the particulars shall be apportioned as the rent incident to the reversion thereof, and the respective purchasers shall not require the consent of any tenant to such apportionment or require such rent to be legally apportioned.

Apportionment of
rent between Lots

40

24. The Purchaser shall subject to the consent of the Insurance Office being obtained by him and payment of a due proportion of the premium from date of sale be entitled to the benefit of any subsisting insurance, but the Vendor shall be under no obligation to keep the same on foot, and subsection 13 of section 3 of Ordinance 36 (Conveyancing and Law of Property) shall not apply to this sale.

Fire and other
insurances

25. On payment of the balance of the purchase money the Vendor and all other necessary parties (if any) will

Conveyance

In the Supreme Court

Plaintiff's Evidence

No. 2

Exhibit "B" to the Affidavit of Michael Lie
(continued)
Covenants for title by trustees &c.

execute a proper assurance of the property to the Purchaser, but such assurance and every other instrument which shall be required by the Purchaser for getting in, surrendering or releasing any outstanding estate right title or interest shall be prepared by and at the expense of the Purchaser but the expense of perusal on behalf of and execution by the Vendor and all necessary conveying or concurring parties to every such assurance or instrument shall be borne by the Vendor.

26. Any incumbrancer, person occupying a fiduciary position conveying or concurring in the conveyance or assurance of the property to the Purchaser shall respectively be required to give only such covenants for Title with such qualifications, as are usual in such cases. 10

Plan on conveyance

27. If the Purchaser desires to place a plan on his Conveyance, the Vendor shall be entitled to have the effect thereof controlled by appropriate words indicating that it is used only as assisting and explaining the written description of the property and not as governing that description. 20

Indemnity to vendor against continuing liability

28. Whenever the Vendor will remain subject to any obligation or liability he shall be entitled to have a sufficient covenant of indemnity inserted in the Conveyance, and an acknowledgment of his right to production of the Conveyance or (at his own expense as regards engrossment and stamp) a duplicate thereof.

Custody of muniments

29. Such documents of title in the Vendor's possession as relate to any of the property sold and also to other property in which the Vendor has an interest shall be retained by the Vendor. Such as relate exclusively to any one lot shall after completion be delivered to the Purchaser of such lot, and such as relate exclusively to any two or more lots sold shall, after the completion of the purchase of all such lots, be delivered to the Purchaser paying the highest purchase money in respect of such lots. Any Purchaser receiving or the Vendor retaining any documents under this condition shall give to every Purchaser of property to which they relate, who shall require the same, an acknowledgment of the right of such purchaser to production and delivery of copies thereof and also, unless the Vendor occupies a fiduciary position, an undertaking for safe custody thereof. Every acknowledgment or undertaking given under this condition shall be prepared by and at the expense of the person to whom it is given, but shall be perused and executed by the person giving the same at his expense. 30 40

In the Supreme
Court

Plaintiff's Evidence

No. 2

Exhibit "B" to the
Affidavit of Michael Lie

(continued)

Vendor's rights on
Purchaser's breach

10 30. If the Purchaser shall fail to comply with these or the Special Conditions or the Contract, the Vendor shall be at liberty (after ten days' written notice to the Purchaser or his Solicitor) to treat the deposit as forfeited and without tendering an assurance to resell the property by Public Auction or Private Contract subject to such conditions and generally in such manner as he may think fit with power to vary or rescind any contract for sale buy in at any auction and resell and the deficiency in price (if any) arising on sale and all expenses of and incident to a resale or attempted resale shall be made good and paid by the Purchaser and be recoverable by the Vendor as liquidated damages, the Purchaser receiving credit for the deposit, but any increase of price on a resale shall belong to the Vendor.

31. On a sale in Lots these Conditions shall (where the context admits) apply to each lot.

Sale in lots

20 32. These conditions and the Special Conditions and Contract shall be liberally construed, so that singular may include plural, masculine include feminine, "person" include a body of persons or corporation, and conveyance include assignment and all other (if any) necessary or reasonable adaptations to the Particulars, Special Conditions, or Contract shall be considered as made.

Interpretation

33. The marginal notes are only intended to assist reference and shall have no effect on construction.

Marginal notes

30 34. In case of conflict or repugnancy between the above Conditions and any Special Conditions imposed on any sale, the Special Conditions shall prevail and the above Conditions shall be deemed to be modified so far only as is necessary to give full effect to such Special Conditions.

Special conditions

In the Supreme
Court

EXHIBIT "C" TO THE AFFIDAVIT OF MICHAEL LIE

Plaintiff's
Evidence

No. 2

Exhibit "C" to
the Affidavit of
Michael Lie

CHUNG & CO.,
Advocates and Solicitors.

16th Floor,
Hong Leong Building,
Raffles Quay,
Singapore 0104

Your Ref:
Our Ref: LLS/HM/641/79

20th March 1980.

M/s. United Overseas Land Ltd.,
Unit 3-301 Merlin Plaza,
Beach Road,
Singapore.

10

BY HAND

Dear Sirs,

re: Kaolim Building

We act for Messrs. Far Eastern Bank Ltd.,

We are instructed to inform you that your Tender was accepted at 12 noon today and you are now the Purchaser of the above property known as Kaolim Building under and by virtue of Condition 7 of the Conditions of Tender. The 20% deposit has been appropriated by our clients in accordance with the said Conditions.

20

We confirm that your representative will be signing the Memorandum in our office very shortly together with a representative of our clients.

Yours faithfully,

c. c. M/s Far Eastern
Bank Ltd.
Singapore.

Sd. Chung & Co.

This is the exhibit marked C referred to in the Affidavit of Michael Lie affirmed before me this 9th day of April 1980.

30

Before me,

Sd.

A Commissioner for Oaths.

EXHIBIT "D" TO THE AFFIDAVIT OF MICHAEL LIE

In the Supreme
Court

This is the exhibit marked D referred to in the Affidavit of Michael Lie affirmed/sworn before me this 9th day of April 1980.

Plaintiff's
Evidence

No. 2

Exhibit "D" to
the Affidavit of
Michael Lie

Before me,

Sd.

A Commissioner for Oaths

10 LLS/HM/FT/641/79

CYC/1060-126/UOL

April 2, 1980

Dear Sirs,

Re: Kaolim Building

We refer to your letter of the 25th day of March, 1980 and the telephone conversation between your Miss Leong and us this morning whereby you were kind enough to agree that we may send to you our requisitions at the end of today.

20 Enclosed herewith you will find our requisitions in duplicate and shall be grateful if you will return to us one copy with your answers thereto.

We understand that in Civil Suit No. 3170 of 1979 there is a claim by Kaolim Pte. Ltd. for a declaration that the Second Mortgage executed in your clients' favour be declared null and void and of no effect and that although the statement of claim has been ordered to be struck out the matter is now under appeal.

30 Since your clients are exercising their right of sale as mortgagees, please let us know whether such right of sale is exercised under the First and/or Second Mortgage.

We return herewith your schedule duly signed by us in acknowledgement together with the Memorandum of Agreement signed by our client.

Yours faithfully,

40 M/s Chung & Co.,
16th Floor,
Hong Leong Building,
Raffles Quay,
Singapore 0104.
ADC

b. c. United Overseas Land Ltd.,
3-301, 3rd Floor, Merlin Plaza,
7500 Beach Road,
Singapore 0719.
(P/LP/KB/80/2)

In the Supreme Court

EXHIBIT "E" TO THE AFFIDAVIT OF MICHAEL LIE

Plaintiff's Evidence

No. 2

Exhibit "E" to the Affidavit of Michael Lie

Your Ref: YYY/?/35- Inland Revenue Department,
765. Property Tax Division,
City Hall, St. Andrew's Road,
Singapore 0617
In reply please quote- Republic of Singapore.
No. CF/8440284 Tel. 328191
Date 31 Mar 80

The Manager
Far Eastern Bank Ltd.
Far Eastern Bank Building
156 Cecil Street, Singapore 0104

This is the exhibit marked E referred to in the Affidavit of Michael Lie affirmed/ sworn before me this 9th day of April 1980.

10

Before me,

Sd.

A Commissioner for Oaths

Dear Sirs,

20 KRAMAT LANE
(KAOLIM BUILDING)

1. I refer to your letter dated 23.10.79. 20
2. I understand that the abovementioned property has been sold to the United Overseas Land.
3. As property tax is a first charge on the property, kindly let me have immediately your cheque for \$521,242.53 in settlement of the arrears of property tax arrived at as follows:-

Balance as at 31.12.79 B/F	\$459,291.43	
Add: Property tax for half year ending 30.6.80	\$55,025.00	
Notice & ? fees	\$ 6.00	30
Penalty	\$ 2,751.25	
Interest	\$ 4,168.85	<u>61,951.10</u>
Total:	\$521,242.53	<u> </u>

Yours faithfully,

Sd. Illegible
For Comptroller of Property Tax.

cc. M/s Chung & Co. M/s Boswell Hsieh & Lim,
(Attn. Mr. K.S. Chung) (Your Ref: RH/NHF/79:)

M/s Yoong & Co. M/s Shook Lin & Bok,
(Your Ref: YWP/93/79) (Attn: Mr. Kinston Chan)

In the Supreme
Court

Plaintiff's
Evidence

No. 2

Exhibit "E" to
the Affidavit of
Michael Lie

(continued)

EXHIBIT "F" TO THE AFFIDAVIT OF MICHAEL LIE

Exhibit "F" to
the Affidavit of
Michael Lie

This is the exhibit marked F referred
to in the Affidavit of Michael Lie
affirmed/sworn before me this 9th day
of April 1980.

10

Before me,

Sd.

A Commissioner for Oaths

CHUNG & CO.,
Advocates & Solicitors

16th Floor,
Hong Leong Building
Raffles Quay,
Singapore 0104

Your Ref: CF/8440284

Our Ref: KSC/CH/641/79

2nd April 1980

20

The Comptroller of Property Tax,
Inland Revenue Department,
Property Tax Division,
Singapore.

Dear Sir,

Re: Kaolim Building

We thank you for the copy of your letter dated the
31st March 1980 to our clients, Messrs. Far Eastern
Bank Limited.

30

We are aware that the property tax is a first
charge on the above property. Under the Contract for
Sale of the 20th March 1980, Condition 16 goes as follows:-

- "16. The property is sold subject to:-
(a) any scheme, layout, matter or thing

In the Supreme
Court

Plaintiff's
Evidence

No. 2

Exhibit "F" to
the Affidavit of
Michael Lie

(continued)

embodied or shown in the General
Improvement Plan and/or the Master Plan
and all proposed amendments or addition
thereto;

(b) any proposed scheme effecting the property;
and

(c) all notices, charges, Orders of Court,
charging orders, caveats and court or other
claims affecting the property made or
served whether before on or after the date
of Sale. The Purchaser shall be deemed to
have purchased with full knowledge and
notice of all such schemes or proposed
schemes, layouts, notices, demands,
charges, Orders of Court, charging orders
caveats and court or other claims which
shall be complied with and discharged by
and at the expense of the Purchaser who
shall not be entitled to make or raise any
objection or requisition whatsoever in
respect thereof. "

10

20

The claim for property tax should be made to the Purchaser,
Messrs. United Overseas Land Limited whose Solicitors
as you already know are Messrs. Shook Lin & Bok. Your
notice of demand for property tax should be complied with
and discharged by and at the expense of the Purchaser.

We are therefore advising our clients accordingly.

Yours faithfully,

Sd.

c. c. Ms. Boswell Hsieh & Lim,
Singapore.
Ref: RH/NHF/80/1s1

30

c. c. Ms. Shook Lin & Bok,
Singapore.
Ref: CYC/1060-126/UOL

EXHIBIT "G" TO THE AFFIDAVIT OF MICHAEL LIE

In the Supreme
Court

CF/8440284

Plaintiff's
Evidence

CYC/1060-126/UOL

April 7, 1980

No. 2

Dear Sir,

Re: Kaolim Building

Exhibit "G" to
the Affidavit of
Michael Lie
Letter from
Shook Lin & Bok

We refer to the letter from Chung & Co. to you dated the 2nd day of April, 1980.

10 We disagree with the interpretation of Chung & Co. that under Conditions 16 our clients are responsible for the property tax. In our view the property tax is an outgoing which is to be apportioned under the Revised Conditions of Sale which has been incorporated by the Conditions of Tender. In any event the word "charge" in Condition 16 cannot be interpreted to include a statutory charge in your favour.

Yours faithfully,

20 The Comptroller of Property Tax,
Inland Revenue Department,
Property Tax Division,
Singapore 0617.

c. c. M/s Chung & Co.,
16th Floor,
Hong Leong Building,
Raffles Quay,
Singapore 0104.

30 c. c. M/s Boswell Hsieh & Lim,
Grand Building,
17B Philip Street,
Singapore 0104.

ADC

b. c. United Overseas Land Limited

This is the exhibit marked G referred to in the Affidavit of Michael Lie affirmed/sworn before me this 9th day of April 1980.

Before me,

sd.

A Commissioner for Oaths.

In the Supreme Court

EXHIBIT "H" TO THE AFFIDAVIT OF MICHAEL LIE
REPUBLIC OF SINGAPORE

Plaintiff's Evidence

Conversion No. C/11208

(CERTIFICATE OF TITLE)

No. 2

Land- Register

Exhibit "H" to the Affidavit of Michael Lie

Volume 146 Folio 185

Kaolim Building

THE COCKPIT HOTEL LIMITED of Nos. 6 & 7, Oxley Rise, Singapore, is the proprietor of an estate in fee simple SUBJECT TO the encumbrances and other interests registered or notified hereon and SUBJECT ALSO TO any subsisting exceptions, reservations, covenants and conditions contained or implied in the Grant from the Crown hereinafter referred to in ALL those pieces of lands situated in TOWN SUBDIVISION NO. XIX, SINGAPORE being LOTS 156-16, 156-3 and 156-2 containing the areas of 474.9 square metres, 147.3 square metres and 570.3 square metres or thereabouts respectively and bounded as appear in the plans annexed hereto and therein coloured blue WHICH said Lot 156-16 is delineated on Certified Plan No. 6788 and WHICH said Lots 156-3 and 156-2 are delineated on Certified Plan No. 9104 filed in the Office of the Chief Surveyor and which lands were comprised in a grant from the Crown dated the 30th day of June 1859 and registered in the Office of the Commissioner of Lands as Indenture No. 67, District of Claymore.

The Seal of the Registrar of Titles was hereunto affixed and this Certificate of Title was embodied in the land-register on the 6th day of December 1974.

Sd. (Illegible)

Assistant Registrar of Titles

CAUTION

The Certificate of Title is held subject to any interest which may have affected the Lands comprised herein at the date of issue hereof.

This is the exhibit marked H referred to in the Affidavit of Michael Lie affirmed/sworn before me this 9th day of April 1980.

(Illegible)

Before me,

Asst. Registrar of Titles

Sd.

A Commissioner for Oaths

PHOTOCOPY

ONLY

In the Supreme Court

Plaintiff's Evidence

No. 2

Exhibit "H" to the Affidavit of Michael Lie

(continued)

NOTICE
MORTGAGE TO SIM LIM FINANCE LIMITED
DEEDS VOL. 1996 No. 112
REGISTERED IN THE
REGISTRY OF TITLES
Singapore
[Signature]

~~11/30/1977~~
CANCELLED?
11 30 am
[Signature]

No. 1/32868 MORTGAGE TO FAR EASTERN BANK LTD.
OF THE WITHIN LAND
REGISTERED ON 20th DECEMBER 1976 AT 9:00 am
[Signature]
Asst. Registrar of Titles
REGISTRY OF TITLES
SINGAPORE

No. 1/34036A MORTGAGE TO SIM LIM FINANCE LIMITED
OF THE WITHIN LAND
REGISTERED ON 5th MARCH 1976 AT 3:00 pm
DISCHARGED
[Signature]
Asst. Registrar of Titles

~~1/15/1977~~
~~21 9 77~~
~~12 10 77~~
[Signature]

CAVEAT No. CV/15195 NOTICE
OF CAVEAT No. CV/15195 LODGED BY COCKPIT HOTEL LIMITED OVER THE WITHIN LANDS ON 28th SEPTEMBER 1977 AND RETURNED DULY AMENDED ON 20th OCTOBER 1977
DATED 18. 4. 1977
Asst. REGISTRAR OF TITLES

~~1/15/1977~~
TOM 1/4912A
T 1/45195A
M 1/45144A
[Signature]

~~CV/25725~~
~~10.50 am~~
~~11.5.77~~
~~10.22.77~~
[Signature]

In A/ 7577
Cancellation of mortgage herein registered in Registry
Deeds Vol. 1996 No. 112
whereby cancelled was application (T/A) 7577
DATED 24. 7. 1976
Asst. Registrar of Titles

NOTICE
OF CAVEAT No. CV/25725 LODGED BY CORPORATE SERVICES (PTE) LTD. OVER THE WITHIN LAND ON 11th MAY 1979
DATED 26. 5. 1979 BY REGISTRAR OF TITLES
[Signature]

No. 1/49192A EXCHARGE
OF THE WITHIN LAND
REGISTERED ON 24th JULY 1976 AT 10:30 am
Asst. Registrar of Titles

NOTICE
OF CAVEAT No. CV/ [redacted] LODGED BY CORPORATE SERVICES (PTE) LTD OVER THE WITHIN LAND ON 7th FEBRUARY 1980 AT 10:30 AM
DATED 7 FEB 1980 BY REGISTRAR OF TITLES
[Stamp: NOTICE ERROR, STAMPED BY REGISTRAR OF TITLES, DATED 7 FEB 1980]

No. 1/49199A MORTGAGE TO KAOLIM (PRIVATE) LIMITED
OF THE WITHIN LAND
REGISTERED ON 24th JULY 1976 AT 10:30 am
Asst. Registrar of Titles

NOTICE
OF CAVEAT No. CV/34199 LODGED BY CORPORATE SERVICES (PTE) LTD OVER THE WITHIN LAND ON 28th FEBRUARY 1980 AT 3:32 AM
DATED 08 FEB 1980 BY REGISTRAR OF TITLES

No. 1/49194A MORTGAGE TO FAR EASTERN BANK LTD.
OF THE WITHIN LAND
REGISTERED ON 24th JULY 1976 AT 10:30 am
Asst. Registrar of Titles

NOTICE
OF CAVEAT No. CV/34242 LODGED BY COCKPIT HOTEL (PRIVATE) LIMITED OVER THE WITHIN LAND ON 28th FEBRUARY 1980 AT 3:58 AM
DATED 08 FEB 1980 BY REGISTRAR OF TITLES

In the Supreme
Court

EXHIBIT "I" TO THE AFFIDAVIT OF MICHAEL LIE

Plaintiff's
Evidence

No. 2

Exhibit "I" to
the Affidavit of
Michael Lie

CHUNG & CO.
Advocates and Solicitors.

16th Floor,
Hong Leong Building
Raffles Quay,
Singapore 0104

Your Ref: CYC/1060-126/UOL

Our Ref: KSC/CH/641/79

2nd April 1980

Ms. Shook Lin & Bok,
Singapore.

10

Dear Sirs,

re: Kaolim Building

We thank you for your letter of the 2nd instant
and return herewith your Requisitions duly answered.

As to your enquiry in paragraphs 3 and 4 of your
letter under reply, we will refer you to Conditions 13 and
14 of the Tender which now forms a contract between our
respective clients.

However, without prejudice to Conditions 13 and 14,
we have to advise you that Suit No. 3170 of 1979 was also
dismissed and it is for you as Solicitors for the Purchaser
to ascertain the position in connection therewith.

20

encls.

Yours faithfully,

Sd. CHUNG & CO.

This is the exhibit marked I referred to in the
Affidavit of Michael Lie affirmed/sworn before
me this 9th day of April 1980.

Before me,

Sd.

30

A Commissioner for Oaths.

EXHIBIT "J" TO THE AFFIDAVIT OF MICHAEL LIE

In the Supreme
Court

This is the exhibit marked J referred to in the Affidavit of Michael Lie affirmed/sworn before me this 9th day of April 1980.

Plaintiff's
Evidence

No. 2

Before me,

Sd.

A Commissioner for Oaths.

Exhibit "J" to
the Affidavit of
Michael Lie
Letter from
Shook Lin &
Bok.

KSC/CH/641/79

CYC/1060-126/UOL

April 7, 1980

10 Dear Sirs,

Re: Kaolim Building

We thank you for your letter of the 2nd day of April, 1980 addressed to us. You have not understood our letter to you of the 2nd day of April, 1980.

We asked you by our said letter whether in selling the premises you were exercising your right of sale as mortgagees under the First and/or Second Mortgage.

20 Conditions 13 and 14 of the Tender are not answers to our question. In any case we enclose herewith draft Transfer for your approval. Please revert to us within 2 days from the date hereof on whether the draft is approved.

We would point out that we disagree with your interpretation of Conditions 16 contained in your letter of the 2nd day of April, 1980 to the Comptroller of Property Tax. We are taking out a Vendor and Purchaser Summons and in the event of your not reverting to us with your approval on the draft Transfer within the time limit hereinbefore stipulated, we shall also ask the Court to decide in the said Summons this dispute between us

30 Yours faithfully,

M/s Chung & Co.,
16th Floor,

Hong Leong Building,
Raffles Quay,
Singapore 0104.

ADC

b. c. United Overseas Land Ltd.,
3-301, 3rd Floor,
Merlin Plaza,
7500 Beach Road.
(P/LP/KB/80/2)

In the Supreme
Court

SHOOK LIN & BOK:

Plaintiff's
Evidence

CHUNG & CO.:

LAND TITLES ACT

No. 2

T R A N S F E R

Exhibit "J" to
the Affidavit of
Michael Lie

(By Mortgagee exercising power of sale)

9th April 1980
(continued)

We, FAR EASTERN BANK LTD., a Company incorporated in the Republic of Singapore and having its Registered Office at No. 156 Cecil Street, Singapore (hereinafter called "the Transferor") being registered as the proprietor of an estate as Mortgagee under and by virtue of an Instrument of Mortgage No. I/49194A (hereinafter referred to as "the Mortgage") in consideration of Dollars Eight million (\$8,000,000.00) paid to us by UNITED OVERSEAS LAND LIMITED a company incorporated in the Republic of Singapore and having its registered office at 3-301, Merlin Plaza, Beach Road, Singapore (hereinafter called "the Transferee") and in exercise of our power of sale as such Mortgagee conferred on us by the Conveyancing and Law of Property Act (Chapter 268) HEREBY TRANSFER to the Transferee ALL THAT our registered estate or interest and all the estate and interest of KAOLIM (PRIVATE) LIMITED, a company incorporated in the Republic of Singapore and having its registered office at No. 20, Swiss Club Road, Singapore, the Mortgagor in the land hereinafter described BUT SUBJECT to all subsisting encumbrances registered or notified in the land-register.

DESCRIPTION OF LAND

<u>Reference to Land Register</u>		Town Sub-division.	Description of Land (whether whole or part)	
Volume	Folio			
146	185	XIX	156-16, 156-3 and 156-2	The whole of Lots 156-16, 156-3 and 156-2 of Town Sub division XIX, together with the building erected thereon and known as Kaolim Building, No. 20, Kramat Road, Singapore.

In the Supreme
Court

NO. 3

Plaintiff's
Evidence

2ND AFFIDAVIT OF MICHAEL LIE

IN THE HIGH COURT OF THE REPUBLIC
OF SINGAPORE

No. 3

2nd Affidavit of
Michael Lie

Originating Summons)

11th April 1980

No. 153 of 1980)

In the Matter of the Conditions of Tender relating to sale
of the lands and premises comprised on Lots 156-2
156-3 and 156-16 of Town Subdivision XIX by Far
Eastern Bank Limited to United Overseas Land Limited

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And

In the Matter of the Land Titles Act, (Cap. 276) the
Conveyancing And Law of Property Act (Cap. 268) and
the Property Tax Act (Cap. 235)

B E T W E E N

UNITED OVERSEAS LAND LIMITED

Plaintiffs

And

FAR EASTERN BANK LIMITED Defendants

A F F I D A V I T

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I, Michael Lie of 3-301, 3rd Floor, Merlin Plaza,
7500 Beach Road, Singapore 0719 do solemnly and
sincerely affirm as follows:-

1. I am the Assistant General Manager of United
Overseas Land Limited, the Plaintiffs herein and the
facts hereinafter deposed are within my personal
knowledge unless expressly otherwise qualified.

2. I have been advised by the Plaintiffs' solicitors
that they have been allowed to examine the records of
this Honourable Court in Suit No. 3089 of 1979.

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3. I annex hereto and mark as "A" a copy of the
Affidavit of Kadarisman affirmed on the 9th day of
November, 1979 and filed on the 10th day of November,
1979 together with all the exhibits thereof.

4. At the time when the Plaintiffs submitted their bid to purchase the said property, the Plaintiffs were not aware of the nature of the claim of Corporate Services Pte. Ltd. in Suit No. 3089 of 1979 nor of the relationship between the directors of Far Eastern Bank Limited and the directors of Corporate Services Pte. Ltd. as alleged in the Affidavit of Kadarisman.

In the Supreme
Court

Plaintiff's
Evidence

No. 3

2nd Affidavit of
Michael Lie

11th April 1980

(continued)

AFFIRMED to at Singapore)
this 11th day of April 1980.) Sd. Michael Lie

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Before me,

Sd.

A Commissioner for Oaths.

This Affidavit is filed on behalf of the Plaintiffs.

EXHIBIT "A" TO THE 2ND AFFIDAVIT OF MICHAEL LIE

Exhibit "A" to
the 2nd Affidavit
of Michael Lie

This is the exhibit marked K1 referred to in the Affidavit of Michael Lie affirmed/sworn before me this 9th day of April 1980.

Before me,

Sd.

20

A Commissioner for Oaths

Suit No. 3089)
of 1979)

B E T W E E N :

CORPORATE SERVICES (PTE) LTD. Plaintiffs

And

KAOLIM (PRIVATE) LIMITED Defendants

A F F I D A V I T

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I, KADARISMAN of Jalan Gunung Sahari 1/5, Jakarta, Republic of Indonesia, Company Director, do hereby declare and affirm and say as follows:-

1. I am the Chairman of the Defendants which is a company incorporated in Singapore on 29th August 1975. It has only one substantial asset namely the Kaolim

In the Supreme
Court

Plaintiff's
Evidence

No. 3

Exhibit "A" to
the 2nd Affidavit
of Michael Lie
(continued)

Building (formerly known as Joiner Building) at No. 20, Kramat Lane, Singapore, erected on Lots 156-16, 156-3 and 156-2 of TS XIX. The Defendants have eight shareholders and six of whom reside in Indonesia. The whole of the company's undertaking is vested in the Kaolim Building (formerly known as Joiner Building) the purchase of which was completed in Singapore on or about 4th June 1976 with the assistance of NG ENG KIAT, the Managing Director of the Far Eastern Bank Ltd. and concurrently also the Manager of the Plaintiff company, who arranged a mortgage loan of \$3,000,000/- from his bank to enable the Defendants to complete the purchase of the property from Messrs. Cockpit Hotel Pte. Ltd. for \$4,850,000-00. NG ENG KIAT knew at all material times that the Defendants had no other assets of substantial value other than the Kaolim Building, as it was through the introduction of one HOO LIONG THING, the then Chairman and Managing Director of Messrs. Cockpit Hotel Pte. Ltd. in 1976 that I came to know NG ENG KIAT. A copy of a sale agreement which I signed with HOO LIONG THING in Jakarta on 25th October 1975 wherein it is stated that the property known as Kaolim Building (formerly known as Joiner Building) was then worth about \$6,000,000-00 is annexed hereto and marked "K-1". Copies of this sale agreement and another agreement which I and HOO LIONG THING signed in Singapore a few days later were given by me to NG ENG KIAT when we entered into negotiations for a mortgage loan to finance the purchase.

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2. The actual moneys which I had spent on Kaolim Building was more than \$4,850,000-00 as in 1975 the property was then in the final stages of construction in Singapore. The Defendants had to spend about \$200,000-00 to air-condition the building. The understanding I had with HOO LIONG THING then was that if within one year I found the property was economically unprofitable, then he would undertake to repurchase same from me.

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3. Since November 1977 there is a pending court case in Suit No. 3331 of 1977 between Messrs. Cockpit Hotel Pte. Ltd. as Plaintiffs and Kaolim Pte. Ltd. as Defendants wherein the Plaintiffs are claiming a sum of \$449,285.72 as alleged unpaid balance of purchase price from the Defendants, plus \$150,914-46 as alleged arrears of interests up to 1977 and another sum of \$8,658-00 as alleged apportioned share of property tax. In addition Messrs. Cockpit Pte. Ltd. had lodged a

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Caveat No. CV/15195 on 28th Sept., 1977 prohibiting the registration of any transfer of the property unless the consent in writing of the Caveator is first obtained. To the best of my knowledge this Suit No. 3331 of 1977 has not been disposed of and the Caveat is still in force. A copy of this Caveat is annexed hereto and marked *K-2*.

In the Supreme
Court

Plaintiff's
Evidence

No. 3

Exhibit "A" to the
2nd Affidavit of
Michael Lie

(continued)

10 4. The law firm of Messrs. Toh & Toh (formerly known as Messrs. Tan & Toh) was at all material times the solicitors acting for the Far Eastern Bank Ltd. and to the best of my knowledge received instructions from time to time from NG ENG KIAT, the Managing Director of the bank. Sometime in 1977 and 1978 this firm had written letters of demand for arrears of mortgage interests from the Defendants and in December 1977 had even taken legal action against the Defendants by putting up the Kaolim Building for sale by public auction through Messrs. Kiong Chai Woon & Co. Ltd. a company of auctioneers. This sale by public auction
20 was later withdrawn when the Defendants paid in moneys to the bank to reduce the amount of the overdraft.

30 5. At all material times NG ENG KIAT as the Managing Director of the Far Eastern Bank Ltd. knew very well the financial condition of the Defendants. I can remember that the Defendants had requested a firm of valuers Messrs. Victor & Mendez Pte. Ltd. to make a valuation of the Kaolim Building to enable the Defendants to apply for a second mortgage loan from the Far Eastern Bank Ltd. A copy of the valuation report dated 3rd August 1976 which valued the property at \$6,500,000-00 had been given by me personally to NG ENG KIAT before the bank agreed to increase the amount of overdraft facilities by another \$500,000-00 in November 1976 making the total limit up to \$3,500,000-00. NG ENG KIAT is also aware at all material times that I and three other directors of the Defendants namely LIN YEW SHU, TJIO SIONG KANG also known as SUGIANTO and TEDDY HARYAAI had signed personal guarantees on
40 the 4th June 1976 in favour of the bank undertaking to pay on demand all moneys which may be owing from Kaolim Pte. Ltd. to the bank. The personal guarantees were to be continuing guarantees to the extent of \$3,000,000-00. A copy of this personal guarantee in favour of the bank is annexed hereto and marked *K-3*.

6. I am advised and verily believe that under the provisions of Section 132-C of the Companies Act the

In the Supreme
Court

Plaintiff's
Evidence

No. 3

Exhibit "A" to
the 2nd Affidavit
of Michael Lie

(continued)

directors of the Defendants (three of whom are Indonesians) are prohibited from carrying into effect any proposals for disposing of the whole of the Company's undertaking or property (in this case the Kaolin Building) without the proposals being first approved by the Company in general meeting. In this case there has been no general meeting of shareholders being called and I have at no time been advised that such a course of action is necessary.

7. The affidavit of S. RAJENDRAN, the solicitor for the Plaintiffs, sworn to and filed herein on or about 5th November, 1979 has been read over and explained to me. The Defendant company was not aware at all material times about the correspondence between Messrs. Toh & Toh and Messrs. Khattar, Wong & Partners wherein a fresh option was requested for and then granted to Messrs. Corporate Services Pte. Ltd. on or about 9th April 1979 without the written authority or permission of the Defendants. As a matter of fact the Defendants had not received the option fee of \$1,000-00 for the first option which was granted on 9th March 1979. The Defendants were not even aware that a second sum of \$1,000-00 had been paid for the alleged second option until very much later when the matter was taken over from Messrs. Toh & Toh by Messrs. Boswell, Hsieh & Lim who were instructed by me to probe into all the facts of this case including the true identities of the purchasing parties. We have since discovered that the Plaintiffs are a company incorporated in Singapore in 1970 having a paid up capital of only \$2-00 and the shares of which were held by a holding company known as Messrs. Chee Tat Realty Pte. Ltd., the registered manager and director of which is NG ENG KIAT who is also the Managing Director of the Defendants' banker, the Far Eastern Bank Ltd. He is also a director of the Plaintiff company, the other directors being his wife, KANG POAY HONG, and his brothers NG ENG GHEE and NG ENG TEE. The four of them are also directors of Messrs. Chee Tat Realty Pte. Ltd. As to Messrs. L.M.N. Pte. Ltd. we have since discovered that it has a paid up capital of \$2,000,000-00 of which 1,199,998 shares of \$1-00 each were held by the same holding company, Messrs. Chee Tat Realty Pte. Ltd. The directors of Messrs. L.M.N. Realty Pte. Ltd. are also NG ENG KIAT, the Managing Director of the Far Eastern Bank Ltd. and manager and director of the Plaintiffs, his wife KANG POAY HONG and his brothers NG ENG GHEE and NG ENG TEE. As to the shareholders of the Far Eastern Bank Ltd., the shares held by NG ENG KIAT and immediate family are as follows: -

	(a)	Messrs. Chee Tat Realty Pte Ltd. holding	....	219,483 shares	In the Supreme Court
	(b)	NG ENG KIAT holding	....	3,489,333 shares	<u>Plaintiff's Evidence</u>
	(c)	His wife, KANG POAY HONG holding	....	840,233 shares	No. 3
	(d)	His uncle, Datuk NG QUEE LAM holding	899,966 shares	Exhibit "A" to the 2nd Affidavit of Michael Lie (continued)

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8. Sometime in early February 1979 the Defendants were owing the Far Eastern Bank Ltd. about \$3,700,000-00 under two mortgage deeds executed by the Defendants in favour of the bank in June 1976 and November 1976. One MOK THYE MENG, a sub-manager of the bank, was sent by NG ENG KIAT to enquire whether the Defendants would sell its only asset the Kaolim Building if he or NG ENG KIAT or the bank could find a buyer for the property. MOK THYE MENG said there were Hongkong buyers interested in the property as the market was rising and he suggested that the Defendants should sell if a good price was obtained. Alternatively, the bank might have to take drastic action under the two mortgage deeds and the personal guarantees signed by me and three other persons. This would mean loss of face to me and also personal loss. As a result of this talk the Defendants wrote a letter to the bank on the 15th February 1979 stating that the Defendants would agree to dispose of the property only when the bank could find a buyer who could offer a price in the region of \$5,500,000-00 and above. Later on when I came out to Singapore again from Jakarta, I was informed by MOK THYE MENG, the sub-manager, that in the opinion of NG ENG KIAT, the Managing Director of the bank, the asking price of \$5,500,000-00 and above was too high and the Hongkong buyers were not willing to pay the price which in my opinion was very reasonable bearing in mind that we had a previous valuation in 1976 stating the property was worth about \$6,500,000-00. Then on or about the 3rd March 1979 MOK THYE MENG personally drafted a letter which he suggested that the Defendants should send to the bank reducing the price to about \$5,100,000-00. He personally assured me the bank would use its best efforts to get as high a price as possible. On his assurances the Defendants sent another letter on or about 3rd March 1979

In the Supreme
Court

Plaintiff's
Evidence

No. 3

Exhibit "A" to
the 2nd Affidavit
of Michael Lie

(continued)

to the bank in accordance with the draft made by MOK THYE MENG. Two days later MOK THYE MENG again called at the hotel where I was staying and informed me that NG ENG KIAT was not happy with the letter of the 3rd March 1979. He said that there was a Hongkong party who was very interested in the property and made a calculation for me that if the Defendants were to sell at about \$4,800,000-00 immediately we would have a balance sum of about \$1,000,000-00 for the other shareholders after we had paid off the mortgage loan of about 10
\$3,700,000-00 or thereabouts then owing to the bank. He suggested that we should grant an option for one month and in the meantime he and NG ENG KIAT would try to get a higher price for the property. At no time did he say or disclose to me that NG ENG KIAT or his family were interested in acquiring the property from the Defendants at below market value. He assured me that \$4,800,000-00 was a fair price, and we would collect the 10% deposit first once an agreement of sale was signed. Under the pressure of MOK THYE MENG and his 20
Managing Director and the bank, and on his assurances that a sum of about \$1,000,000-00 could still be left for me to distribute to all the minority shareholders, I agreed to his suggestion to write another letter to the bank. MOK THYE MENG once again offered to draft the letter for the Defendants which was then sent by the Defendants to the bank on or about 5th March 1979. In this letter the bank was requested to find a better price for the Defendants if it was possible. We have since discovered that the bank and its officers had not bothered 30
to find a buyer for the Defendants.

9. Then suddenly on or about the 8th March 1979 I received an urgent telephone call from MOK THYE MENG telling me that he had found a Hongkong buyer and stating that I must return immediately to Singapore. He said that we should give an option for one month to this buyer and he would get the documents ready for me to sign in Singapore.

10. On the morning of the 9th March 1979 I came out to Singapore and went to the bank premises of the Far Eastern Bank Ltd. to look up MOK THYE MENG, the 40
sub-manager. He told me the Defendants should use the services of the bank's solicitors who could do things quicker. He then brought me to the offices of Messrs. Toh & Toh on the 5th floor of the same bank building. As I could not speak or read English, MOK THYE MENG acted as interpreter for me. When I and another director

of the Defendants by the name of SUGIANTO entered the law offices of Messrs. Toh & Toh we were introduced to JULIET TOH who was sitting in her desk. We were asked to sit on a sofa and MOK THYE MENG then brought me several copies of identical option forms which had obviously been prepared beforehand in readiness for my visit. While MOK THYE MENG was explaining to me the contents of the option I heard JULIET TOH talking over the phone to NG ENG KIAT. MOK THYE MENG told me that the option would be for one month and that on exercising of the option the 10% deposit of \$480,000-00 would immediately be released to the Defendants. According to him under the then state of affairs of the Defendants, a net balance of about \$1,000,000-00 should be available to the shareholders for distribution once the only asset is sold and if the company were to be wound up. We stayed in the offices of Messrs. Toh & Toh for only a short time and to the best of my recollection I must have signed about four identical option forms and handed to MOK THYE MENG before we all left the law firm's office. The option fee of \$1,000-00 was not paid to me or the Defendants and no advice was given to me that a general meeting of shareholders must be called in order to comply with Section 132C of the Companies Act.

11. While we were on the way out of the law firm I asked MOK THYE MENG as to the identity of the interested buyer. He said that it was some Hongkong people who would incidentally be paying him a commission for his efforts. He said that he does not want to earn any commission from the Defendants but suggested that the Defendants could buy him a car once the sale is completed. He said that he had sold his car and enquired whether we could lend him the use of a Mercedes car No. EG 9339T which belonged to one of our directors. We then and there handed over to MOK THYE MENG the keys of the Mercedes Car the same morning of the 9th March 1979 and he had been using it for over two months before he returned it.

12. I have checked through my passport and discovered that throughout the rest of the month in March 1979 I did not return to Singapore. I have not given any further instructions to JULIET TOH in March 1979 nor have I been to her office in the following month of April 1979. I was not aware that the Plaintiffs through its solicitors had asked for a fresh option on 23rd March 1979. Copies of the three letters dated 23rd March 1979, 26th March 1979 and 6th April 1979 were not sent to the Defendants at the material times and we were not informed that any option

In the Supreme
Court

Plaintiff's
Evidence

No. 3

Exhibit "A" to
the 2nd Affidavit
of Michael Lie

(continued)

In the Supreme
Court

Plaintiff's
Evidence

No. 3

Exhibit "A" to
the 2nd Affidavit
of Michael Lie

(continued)

had been exercised until very much later. I kept asking MOK THYE MENG in April and May as to what had happened to the matter. He said that he was still looking for a buyer and he even said that he wanted to go to Hongkong to look up the Hongkong party. To the best of my recollection he made a trip to Hongkong sometime in May or June 1979 and he asked me whether the Defendants could pay for part of his expenses of the Hongkong trip. A sum of \$10,000-00 in cash was paid by SUGIANTO to MOK THYE MENG to pay for his trip to Hongkong to look for the alleged Hongkong purchaser. MOK THYE MENG was sent by SUGIANTO to the airport on his way to Hongkong.

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13. On or about 28th August 1979 the Defendants wrote a letter to Messrs. Toh & Toh enquiring about the matter. A copy of the said letter is annexed hereto and marked *K-4*. In her reply to us dated 29th August 1979 (a copy of which is also annexed and marked *K-5*) Messrs. Toh & Toh informed us that the option was duly exercised by the Plaintiffs on the 10th March 1979 which we have since discovered is an untruth. We have since been informed by Messrs. Khattar, Wong & Partners that the Plaintiffs had exercised a second fresh option (which we had not given) on the 9th May 1979. It is our contention that this purported option is invalid.

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14. The solicitors for the Defendants wrote on 15th September 1979 to Messrs. Toh & Toh on behalf of the Defendants repudiating the entire sale transaction. We have also informed Messrs. Toh & Toh that if MOK THYE MENG gave instructions or made use of the blank option forms which I was requested by him to sign at the offices of JULIET TOH on the 9th March 1979 to grant a purported second option to the Plaintiffs then such action on his part was unauthorised. I am advised that no person would ever grant two options on one day for the sale of a property.

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15. As the result of the discoveries made by us it is my contention that there has been a conspiracy on the part of the bank and its officers and agents, namely NG ENG KIAT and MOK THYE MENG, in attempting by unfair means to get the Defendants to sell its only property to NG ENG KIAT and his family at well below market price. I have been advised that such action is inequitable and the purported second option ought to be set aside.

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16. Furthermore, even Messrs. Khattar Wong & Partners in their letter to Messrs. Toh & Toh on 23rd

March 1979 had pointed out the unusual nature of the purported second option, a material particular of which was deliberately left blank. This is the date of completion. Since the Defendants were owing moneys to the bank it is obvious the sale if valid must be completed as early as possible to save interests for the Defendant. Interests were running at the rate of over \$30,000-00 a month against the Defendants and according to an estimate made by Messrs. Khattar Wong & Partners on 20th September 1979 the amount of the sale price would not even be sufficient to clear off all the bank mortgage encumbrances as well as the claims from Messrs. Cockpit Hotel Pte. Ltd. and the Comptroller of Property Tax. A copy of a letter dated 20th September 1979 from Messrs. Khattar Wong & Partners to our solicitors Messrs. Boswell, Hsieh & Lim is annexed hereto and marked *K-6*.

In the Supreme
Court

Plaintiff's
Evidence

No. 3

Exhibit "A" to
the 2nd Affidavit
of Michael Lie

(continued)

17. From the statement of account given by Messrs. Khattar Wong & Partners it is apparent that in all the circumstances of this case no order for specific performance ought to be given. Besides, the Defendants had been receiving several offers from interested parties willing to pay up to \$6,000,000-00 for the property. One Indonesian group is willing to pay up to \$6,300,000-00 to purchase the property from us. On the 3rd October 1979 the Defendants had instructed its solicitors to write to the Far Eastern Bank Ltd. complaining about the unfair advantage taken by MOK THYE MENG and NG ENG KIAT as the servants and agents of the bank. We had then requested that the bank put up the property for sale by public auction so that the matter can be closed and at the same time asking for the redemption statement. When I personally came out from Jakarta on or about the 9th October 1979 MOK THYE MENG called upon me at my hotel on two occasions to try to explain away his role in inducing me to sell the property at below market value. On one occasion he even brought along one NG ENG TEE, a director of the Plaintiffs, to see me to get me to agree to convey the property to the Plaintiffs and settle the case. A copy of our solicitors letter dated 12th October 1979 referring to the two meetings at my hotel is annexed hereto and marked *K-7*. I also enclose hereto a copy of a reply dated the 16th October 1979 written by the bank to my solicitors admitting that MOK THYE MENG had called upon me with NG ENG TEE, but denying that he called as a representative of the bank, which is not true. I had rung up the bank on or about the 9th October 1979 requesting to talk to NG ENG KIAT and to enquire whether the bank would

In the Supreme Court

Plaintiff's Evidence

No. 3

Exhibit "A" to the 2nd Affidavit of Michael Lie (continued)

agree to sell the property by public auction or by private treaty. I was put in touch with MOK THYE MENG who informed me then that NG ENG KIAT was not in Singapore and he suggested that he would like to call upon me at my hotel in the evening. The bank's letter dated 16th October 1979 is annexed hereto and marked *K-8*.

18. The Defendants have since commenced an action in Suit No. 3170 of 1979 against the bank as first defendant, the Plaintiffs Messrs. Corporate Services Pte. Ltd. as second defendant, NG ENG KIAT as third defendant and MOK THYE MENG as fourth defendant, claiming inter alia that the purported second option dated 10th March 1979 is invalid. A copy of the Writ of Summons is annexed hereto and marked *K-9*.

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19. I am advised and verily believe that in all the circumstances the Defendants have a valid defence to the action and I humbly pray for an order dismissing the application and that the Defendants be given leave to defend the case.

AFFIRMED at SINGAPORE)
this 9th day of November)
1979 by KADARISMAN) Sd.
through the interpretation)
of A Sworn Interpreter of)
the Court.)

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Before me:-

Sd. KOH KIT HENG

A Commissioner for Oaths,
Singapore.
Koh Kit Keng

A G R E E M E N T

30

The undersigned, respectively:

1. HOO LIONG THING, residing in Singapore 9, Penang Road/Oxley Rise, hereinafter called The First Party (Vendor).
2. KADARISMAN, residing in Jakarta-Indonesia, Jalan Gunung Sahari I/5, hereinafter called The Second Party (Purchaser).

hereby enter into an Agreement for the transaction of an office building with the following conditions:

In the Supreme
Court

Clause I

Plaintiff's
Evidence

No. 3

Exhibit "A" to
the 2nd Affidavit
of Michael Lie
(continued)

10 The First Party sells to the Second Party and the Second Party purchases from the First Party an Office Building consisting of five (5) storeys together with its freehold land, which includes the 'Ground Floor' known as the "Joiner Building" situated at KRAMAT LANE, SINGAPORE, an area of about 30, 000 square feet and all rights that have been or will be in the future, obtained.

Clause II

The First Party provides an unspecified period credit of 70% (seventy per cent) of its maximum value at interest rate of 9-13½% per annum to the Second Party.

Clause III

The First Party undertakes that this transaction shall be executed by the complete transfer of all papers connected with the Office Building to the Second Party.

Clause IV

20 The First Party shall assist the Second Party, within 2 (two) months after the date of this Agreement of Sale, in obtaining tenants of all spaces in the said Office Building.

Clause V

30 The First payment to be paid by the Second Party to the First Party is in the sum of S\$1, 000, 000 (Singapore Dollars One Million), and the balance of S\$3, 850, 000 (Singapore Dollars Three Million and Eight Hundred and Fifty Thousand) shall be charged on the unspecified period credit account in the name of the Second Party as referred to in Clause II above after all relevant documents have been received by the Second Party and duly transferred into the name of the Second Party or his appointee.

Clause VI

The sale price of the said Building is for S\$4, 850, 000 (Singapore Dollars Four Million Eight Hundred and Fifty Thousand) and the First Party gives

In the Supreme
Court

Plaintiff's
Evidence

No. 3
Exhibit "A" to
the 2nd Affidavit
of Michael Lie
(continued)

the estimated price from a Singapore Consultant at
S \$6, 000, 000 (Singapore Dollars Six Million).

Clause VII

The First Party assures the Second Party that,
within 1 (one) year, if the Second Party were to suffer
losses, the First Party shall re-purchase the said
Office Building from the Second Party at the same price
plus the Bank interest that has been paid by the Second
Party.

In WITNESS WHEREOF this Agreement of Sale
has been duly signed at Jakarta on the 25th of October,
1975 voluntarily and without any compulsion from
whomsoever and that it is made in four copies duly
stamped.

10

Made at:- Jakarta

Dated: 25 October 75.

THE FIRST PARTY:

THE SECOND PARTY:

signed.

signed.

(KADARISMAN)

(HOO LIONG THING)

This is the Exhibit marked *K-1*
referred to in the affidavit of
Kadarisman affirmed before me
this 7th day of April 1978.

20

Before me,

Sd.

A Commissioner for Oaths

This is the exhibit marked 'K1'
referred to in the Affidavit of
Kadarisman and sworn before
me this 9th day of November 1979.

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Before me,

Sd.

A Commissioner for Oaths

This is the exhibit marked 'K2' referred to in the Affidavit of Kadarisman and sworn before me this 9th day of November 1979.

In the Supreme Court

Plaintiff's Evidence

No. 3

Exhibit "A" to the 2nd Affidavit of Michael Lie

(continued)

Before me,

Sd.

A Commissioner for Oaths

LAND TITLES ACT

(Section 100)

C A V E A T

10 To:

The Registrar of Titles
Singapore.

20 TAKE NOTICE that COCKPIT HOTEL LIMITED a Company incorporated in Singapore and having its registered office at 6 & 7 Oxley Rise Singapore (hereinafter called "the Caveator") claiming interest as Vendor under an Agreement dated the 28th day of October 1975 and made between the Caveator of the one part and Kadarisman care of No. 10A Greenwood Avenue Singapore of the other part and to a Letter of Authority dated 21st November 1975 in respect of the lands hereinafter described HEREBY PROHIBIT the registration of any instrument made by any person other than the registered Mortgagee in exercise of its powers under Mortgages Nos. 1/49194A and 1/5296B as Mortgagee affecting the said land unless the Caveator has consented in writing to such registration. ALL notices required to be served on the Caveator in respect of this Caveat may be served at Messrs Chor Pee & Hin Hiong of 9th Floor UIC Building, Shenton Way, Singapore 1, Advocates and Solicitors.

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DESCRIPTION OF LAND

Reference to Land Register	Town Sub-division	Lot	Description of land (whether whole or part)
Volume Folio			
146 185	XIX	156-16	The whole of Lot 156-16

In the Supreme
Court

Plaintiff's
Evidence

No. 3

Exhibit "A" to
the 2nd Affidavit
of Michael Lie

(continuation)

156-3
156-2

of Town Subdivision XIX
together with the building
erected thereon and known
as 18 Kramat Lane
Singapore and Lots 156-3
and 156-2 of Town Sub-
division XIX together with
the building erected thereon
and known as Kaolim
Building.

10

Dated this 28th day of September 1977.

SIGNED by the Caveator by its)
Solicitor Katherine Yeargaik Pek)
in the presence of:)

Sd.

I, (illegible)
the Caveator hereby certify pursuant to Section 50 of the
Land Titles Act that this instrument is correct for the
purposes of the said Act.

To:

20

FAR EASTERN BANK LIMITED

In consideration of your opening or continuing an
account with and making advances or otherwise giving
credit or accommodation to MESSRS. KAOLIM PRIVATE
LIMITED, of 20 Swiss Club Road, Singapore 11.
(hereinafter called "the Customer"). We MR.
KADARISMAN of Gunung Sahari 1/5, Jakarta,
Indonesia, MR. LIM YEW SHU of 1673, Queen's Road,
Block 3, Singapore 18, MR. TJIO SIONG KANG of Jalan
Obista, of No. 48 Jakarta, Indonesia, and MR. TEDDY
HARYAAI of Jalan Tamansola Block D, No. 33 Jakarta,
Indonesia, the undersigned hereby jointly and severally
agree with and guarantee you as follows, that is to say:-

30

1. We will pay to you on demand all money which now
is or may during the operation of this agreement be owing
to you from the Customer or remain unpaid on the general
balance of the Customer's account with you including
advances overdrafts discounts bills or notes held by you
on or in respect of which the Customer may be or have
been liable to you commission and other ordinary banking

40

expenses including interest at such rate as may be from time to time agreed between the Customer and you or allowed by you with monthly rests although the relation of banker and customer may have ceased and all costs charges and expenses which you may incur in enforcing or seeking to enforce any security for or obtaining or seeking to obtain payment of all or any part of the money hereby guaranteed.

In the Supreme
Court

Plaintiff's
Evidence

No. 3

Exhibit "A" to
the 2nd Affidavit
of Michael Lie

(continued)

10 2. All moneys received from or on account of the Customer or from any other person or estate or from the realisation of any security or otherwise for the purpose of being applied in reduction of the money in the first paragraph above mentioned shall be treated for all purposes as payments in gross and not as appropriated or attributable to any specific part or item of the said money even if appropriated thereto by the person otherwise entitled so to appropriate. All securities now or at any time held by you shall be treated as securities for the said general balance. We will make no claim to such securities or any part thereof or any interest therein unless and until we have paid all money due from us under this guarantee and you shall have received the full amount of such general balance.

20 3. Should the Customer become bankrupt or insolvent or being an incorporated company shall be wound up, you may prove in the bankruptcy insolvency or winding up of the Customer for the whole amount outstanding against the Customer on such general balance and no money or dividend so received by you shall be treated as received in respect of this guarantee or otherwise in relation to us, but the full amount hereby guaranteed shall be payable by us until you shall have received from all sources one hundred cents in the dollar on the ultimate balance outstanding against the Customer. After you have received such ultimate balance in full any claim on our part to any excess or any securities remaining in your hands shall be matter of adjustment between you us and any other person or persons laying claim thereto.

30 4. This guarantee shall be a continuing guarantee to you to the extent of Dollars Three Million (\$3,000,000/-) for the purpose of securing not merely an equivalent amount but (subject always to the said limit of \$3,000,000/-) the whole of the money or general balance in the first paragraph hereof mentioned notwithstanding any such payments receipts or dividends as are hereinbefore mentioned with interest on the sum claimable from us at

In the Supreme
Court

Plaintiff's
Evidence

No. 3
Exhibit "A" to
the 2nd Affidavit
of Michael Lie
(continued)

the rate of current rate per \$100 per mensem from the date of our receiving demand for payment thereof from which date you may at your discretion refuse further credit to the Customer and close his account.

5. This guarantee shall be without prejudice to and shall not be affected nor shall we or any of us be released or exonerated by any of the matters following: -

(i) Any securities negotiable or otherwise including other guarantees which you may now or at any time hereafter hold from the Customer or any other person or persons in respect of any money hereby guaranteed. 10

(ii) The variation exchange renewal release or modification of any such securities or the refusal or neglect to complete enforce or assign any judgment specialty or other security or instrument negotiable or otherwise and whether satisfied by payment or not.

(iii) Any time given or extended to the Customer and/or any other person or persons including any of ourselves and the parties to any negotiable or other security instrument guarantee or contract or any other indulgence granted to or compromise composition or arrangement made with the Customer and/or any other person or persons whether with or without consent or notice to us. 20

6. This guarantee shall not be determined or affected by the death or insanity of any one or more of us but shall in all respects and for all purposes be binding and operative until determined as to future transactions by fourteen days' notice in writing given to you by us or any one of us by the personal representatives of any of us who may be dead or in case of the insanity of any of us by the person legally entitled to represent the insane person. During the pendency of such notice you may subject always to the aforesaid limit of our liability hereunder fulfil any requirements of the Customer based on agreements express or implied prior to the receipt of such notice and you may afford the Customer such further accommodation as you would have done had you not received such notice and any money thereby due or remaining unpaid at or after the 30 40

expiration of such notice shall form part of the aforesaid general balance.

In the Supreme
Court

Plaintiff's
Evidence

No. 3

Exhibit "A" to
the 2nd Affidavit
of Michael Lie

(continued)

7. Any accounts settled or stated by or between you and the Customer or admitted by or on behalf of the Customer may be adduced by you and shall in that case be accepted by us and each of us and our respective representatives as conclusive evidence that the balance of amount thereby appearing is due from the Customer to the Bank.

10 8. As to each of us any notice may be served on each of us or on the legal personal representatives of each of us either personally or by sending the same through the post in an envelope addressed to the last known place of address of the person to be served, and a notice so sent shall be deemed to be served on the day following that on which it is posted.

20 9. This guarantee shall not be determined or in any way prejudiced by any change in the constitution of the Customer firm whether by retirement expulsion death or admission of any partner or partners amalgamation or otherwise but shall enure and be available for all intents and purposes as if the resulting firm or concern had been the one whose obligations were originally guaranteed.

10. This guarantee shall not be determined or in any way prejudiced by any absorption of or by you or any amalgamation thereof or therewith but shall enure and be available for past and subsequent advances and all other purposes for and by the absorbing or amalgamated company or concern.

30 11. You may enforce this guarantee against us at any time jointly or severally notwithstanding that any bills or other instruments covered by it may be in circulation or outstanding and include the amount of the same or any of them in the said general balance or not at your option and this guarantee shall not be determinable by us except on the terms of our making full provision up to the limit of our guarantee for any then outstanding liabilities or obligations on your part and on the Customer's account.

Dated at Singapore this 4th day of June, 1976.

40

Sd.

MR. KADARISMAN (P/N. W071218)

In the Supreme
Court

Plaintiff's
Evidence

No. 3

Exhibit "A" to
the 2nd Affidavit
of Michael Lie

(continued)

Sd.

MR. LIM YEW SHU (I/C 0578906/J)

Sd.

MR. TJIO SIONG KANG (P/N. W066535)

Sd.

MR. TEDDY HARYAAI (P/N. W087385)

Signatures of Guarantors.

This is the exhibit marked "K3" referred to in the
Affidavit of Kadarisman and sworn before me this
9th day of November 1979.

10

Before me,

Sd. Illegible

A Commissioner for Oaths

KAOLIM (PTE.) LTD. Room No. G5, Kaolim Building,
20 Kramat Lane, Singapore 9.

Our Ref:

Your Ref:

Date 28th August 1979.

Toh & Toh
5D Far Eastern Bank Bldg,
5th Floor
156 Cecil Street
Singapore 1.

20

Dear Sir,

Re: Lots 156-16, 156-3 & 156-2
T.S. XIX Kaolim Building

We refer to your Option dated 10th of March, 1979 in
which the provided date upon the exercising of the Option,
10% of the purchase price must be paid and released to us.

Kindly let us know whether or not the said Option has
been exercised by Messrs. Corporate Services Pte. Ltd.
If so kindly let us have the evidence as to how the sum of

30

money was paid.

Yours faithfully,

KAOLIM PTE. LTD.

Sd.

Directors

cc Far Eastern Bank

This is the exhibit marked 'K4' referred to in the Affidavit of Kadarisman and sworn before me this 9th day of November 1979.

In the Supreme
Court

Plaintiff's
Evidence

No. 3

Exhibit "A" to
the 2nd Affidavit
of Michael Lie

(continued)

10

Before me,

Sd. (illegible)

A Commissioner for Oaths

TOH & TOH

Advocates & Solicitors.

5D Far Eastern Bank Bdg. (5th Floor) 150 Cecil Street
Singapore 0106.

Our Ref: JT/4956/8/79

29th August 1979

20

M/s. Kaolim (Pte.) Ltd.,
Room G. 5,
Kaolim Building,
No. 20 Kramat Lane,
Singapore.

Dear Sirs,

Re: Lots 156-16, 156-3 & 156-2
T.S. XXIX Kaolim Building

We refer to your letter of the 28th August 1979.

30

The Option was duly exercised by M/s. Corporate Services (Pte) Ltd. on the 10th of March 1979: a copy of the said Option together with the Acceptance copy duly signed is herewith enclosed.

The 10% deposit was paid to us by way of United Overseas Bank Ltd. 's cheque No. 4675532 on the 9th of May 1979.

Yours faithfully,

encl:
JT/mh

Sd.

In the Supreme
Court

Plaintiff's
Evidence

No. 3

Exhibit "A" to
the 2nd Affidavit
of Michael Lie

(continued)

This is the exhibit marked 'K5' referred to in the
Affidavit of Kadarisman and sworn before me this
9th day of November 1979

Before me,

Sd. (illegible)

A Commissioner for Oaths

KHATTAR WONG & PARTNERS

This is the exhibit marked 'K6' referred to in the
Affidavit of Kadarisman and sworn before me this
9th day of November 1979.

10

Before me,

Sd. (illegible)

A Commissioner for Oaths

Your Ref: RH/79:(FSH)

Our Ref: WSY. SR. 3173. 79. cgh

20th September 1979

URGENT PLEASE

M/s Boswell, Hsieh & Lim
17-B Grand Building
Phillip Street
Singapore

20

Dear Sirs

Re: Sale of Kaolim Building

We are solicitors for the purchaser of subject property.

We refer to your letter to M/s Toh & Toh of 15th
September 1979, a photocopy of which has been sent to
us for information by the said solicitors who have no
objection to our writing to you as solicitors acting for
the Vendor.

There has been a long delay on the part of your client to
duly complete the sale of subject property to ours. We
understand the problem to be that the purchase price of
\$4, 800, 000 (after deductions for property tax and rental
deposit) will not be sufficient for your client to meet

30

payment to discharge existing encumbrances on the property. A rough estimate of the figures is as follows:-

In the Supreme
Court

Plaintiff's
Evidence

No. 3

Exhibit "A" to
the 2nd Affidavit
of Michael Lie

(continued)

	Purchase price	\$4,800,000
	<u>Less</u>	
	property tax (approx)	\$ 420,000
	rent deposit (approx)	\$ 78,000
	redemption of mortgage (approx)	\$4,000,000
	caveator's claim (approx)	<u>\$ 450,000</u>
10	debt and balance	\$ 148,000

More than ample time has been given for your client
(line illegible)

with your client's directors (in the presence of Mrs. Toh) at which meeting proposals were considered as to how our client could help to absorb the deficient amount so as to enable your client to complete.

Now it would appear from your said letter to M/s Toh & Toh that your client has no intention to perform the contract.

20 Please be informed that we have instructions to forthwith commence legal proceedings against your client. We would be obliged if you could let us know promptly whether you have authority from your client to accept service.

In view of the unwillingness of your client to complete the sale and purchase and the insufficiency of the purchase price as noted above, we must caution that it would, in the circumstances, be wrongful for your client to appropriate and use the 10% deposit for purposes other than to enable your client to complete the sale.

30 Yours faithfully

Sd.

c. c. Client

In the Supreme
Court

Plaintiff's
Evidence

No. 3

Exhibit "A" to
the 2nd Affidavit
of Michael Lie

(continued)

This is the exhibit marked 'K7' referred to in the
Affidavit of Kadarisman and sworn before me this
9th day of November 1979.

RH/LSL/79/(NHF)

Messrs. Far Eastern Bank Ltd.,
Far Eastern Bank Bldg.,
156, Cecil Street,
Singapore.

Dear Sirs,

RE: Kaolim Building & Mortgages to the
Bank

10

We refer to our letter of the 3rd instant to which
we have not had a reply.

We are instructed by Mr. Kadarisman that during
his recent visit to Singapore your assistant manager Mr.
Mock Thye Meng called at the Miramar Hotel on two
occasions to try and explain away his role in inducing
Mr. Kadarisman to sell the company's only asset namely
the Kaolim Building on or about the 9th March, 1979 at
below market price. Mr. Mock called once on the
evening of 9th October, 1979 and again at about 5.45 p.m. on
the following day in the company of a young man by the
name of Mr. Ng Eng Tee.

20

Mr. Kadarisman says he is not satisfied with the
explanations given by Mr. Mock and maintains that he did
not grant a fresh Option on the 6th April, 1979 or on 9th
April, 1979. The use of the alleged second Option was
completely unauthorised and Mr. Kadarisman maintains
it is invalid.

The solicitors for Messrs. Corporate Services
Pte. Ltd. are threatening action based on the said second
Option of April, 1979. We shall resist whatever actions
are taken as in the circumstance of this case it is absurd
for our clients to agree to sell away its only substantial
property without calling a general meeting of shareholders
and the net result of which is that the alleged sale price
of \$4,800,000/- is not sufficient to pay for the redemption
of the bank mortgages with you, and also to pay for the
claims of a plaintiff claimant namely, Messrs. Cockpit
Hotel Ltd. in Suit No. 3331 of 1977 as well as the claims
from the property tax department of Singapore. The
shortfall is about \$150,000.00.

30

40

We have instructions if necessary to join the bank as a party to any court proceedings, and shall be obliged to know who are your solicitors in this case.

In the Supreme
Court

Plaintiff's
Evidence

Yours faithfully,

No. 3

c. c. clients.

This is the exhibit marked 'K8' referred to in the Affidavit of Kadarisman and sworn before me this 9th day of November 1979

Exhibit "A" to
the 2nd Affidavit
of Michael Lie

(continued)

Before me,

10

Sd.

A Commissioner for Oaths

F E B Far Eastern Bank Ltd.,
Main Branch, 156 Cecil Street, Singapore 1.

Your Ref: RH/LSL/79/(NHF)
Our Ref: YYY/nk/35-765 Date 16th October 1979

M/s Boswell, Hsieh & Lim
Advocates & Solicitors
17-B Grand Building
Phillip Street
Singapore 0104

20

Dear Sirs

Re Kaolim Building

Your letter of the 12th October 1979 refers.

We understand that Mr. Mok Thye Meng and Mr. Ng Eng Tee called on Mr. Kadarisman pursuant to his request to meet with them. Mr. Mok went on his own initiative and not as a representative of the Bank.

We reiterate that you are quite at liberty to deal with the property as you see fit.

30

Yours faithfully
FAR EASTERN BANK LTD

Sd. (illegible)

Authorised Signature

In the Supreme
Court

Plaintiff's
Evidence

No. 3

Exhibit "A" to
the 2nd Affidavit
of Michael Lie

(continued)

This is the exhibit marked 'K9' referred to in the
Affidavit of Kadarisman and sworn before me this
9th day of November 1979.

Before me,

Sd.

A Commissioner for Oaths.

WRIT OF SUMMONS

IN THE HIGH COURT OF THE REPUBLIC
OF SINGAPORE

B E T W E E N :

10

KAOLIM (PRIVATE)LIMITED Plaintiff

and

- 1) FAR EASTERN BANK LTD.
- 2) CORPORATE SERVICES PTE. LTD.
- 3) NG ENG KIAT
- 4) MOK THYE MENG Defendants

THE HONOURABLE MR. JUSTICE WEE CHONG JIN,
CHIEF JUSTICE OF SINGAPORE, IN THE NAME AND
ON BEHALF OF THE PRESIDENT OF THE REPUBLIC
OF SINGAPORE.

20

- TO:
- 1) Messrs. Far Eastern Bank, Ltd., a Company
incorporated in Singapore and having its
registered office at 156, Cecil Street, Singapore.
 - 2) Messrs. Corporate Services Pte. Ltd., a
Company incorporated in Singapore and having
its registered office at Unit 805/807, Textile
Centre, 200 Jalan Sultan, Singapore.
 - 3) Mr. Ng Eng Kiat of No. 395 Telok Kurau Road,
Singapore.
 - 4) Mr. Mok Thye Meng of No. 543Q Block 125,
Lorong 1, Toa Payoh, Singapore.

30

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

and take notice, that in default of your so doing the plaintiff may proceed therein to judgment and execution.

In the Supreme Court

WITNESS MR. LOW WEE PING

Plaintiff's Evidence

Registrar of the Supreme Court in Singapore the 24th day of October 1979.

No. 3

Sd.
Plaintiff Solicitors

Sd.
Assistant Registrar
Supreme Court, Singapore

Exhibit "A" to the 2nd Affidavit of Michael Lie
(continued)

10 This Writ may not be served more than twelve calendar months after the above date unless renewed by order of Court.

The defendant (or defendants) may appear hereto by entering appearance (or appearances) either personally or by a solicitor at the Registry of the Supreme Court.

A defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms can be obtained by sending a Postal Order for \$5.00 with an addressed envelope to the Registrar, Supreme Court, Singapore 6.

20 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 immediately following an appearance, otherwise judgment may be entered against him without notice.

INDORSEMENT

See annexure

INDORSEMENT

30 1. The Plaintiff is a company incorporated in Singapore on the 29th day of August 1975. It has one substantial asset, namely a commercial building known as Kaolim Building erected on Lots 156-16, 156-3 and 156-2 of Town Subdivision XIX.

2. The 1st Defendant is and at all material times was the banker for the Plaintiff. The 2nd Defendant is a company incorporated in Singapore on the 15th day of August 1970 having a paid up capital of only \$2-00, the

In the Supreme
Court

Plaintiff's
Evidence

No. 3

Exhibit "A" to
the 2nd Affidavit
of Michael Lie

(continued)

shares of which were held by another holding company known as Messrs. Chee Tat Realty Pte. Ltd., the registered manager of which at all material times was Mr. Ng Eng Kiat, the 3rd Defendant herein. The 3rd Defendant is and at all material times was the Managing Director of the 1st Defendant bank and is also the manager and a substantial shareholder of Messrs. Chee Tat Realty Pte. Ltd. The 4th Defendant is and at all material times was a sub-manager employed by the 1st Defendant bank.

3. The Plaintiff's claim against the Defendants is for damages for conspiracy and fraudulent misrepresentations made by the servants or agents of the 1st Defendant to the Plaintiff in inducing the Plaintiff to sell its only substantial asset namely the Kaolim Building at Kramat Lane, Singapore, at a price which is unconscionable and inequitable and below the current market price.

10

The Plaintiff further claims:-

- (1) A declaration that a purported second option dated 10th March 1979 to sell the only substantial asset of the Plaintiff namely the Kaolim Building (formerly known as Joiner Building) at Kramat Lane, Singapore, at the price of \$4,800,000-00 to the 2nd Defendant is unconscionable, inequitable and invalid and ought to be set aside and delivered up to be cancelled. 20
- (2) A declaration that an Indenture of Second Mortgage No. I/5296B dated the 19th November 1976 and signed by the Plaintiff in favour of the 1st Defendant for further overdraft facilities to the extent of another \$500,000-00 is null and void and of no effect. 30
- (3) An Order that the 1st Defendant do repay to the Plaintiff the legal costs and expenses incurred by the Plaintiff in the execution of the said Second Mortgage of 19th November 1976.
- (4) An Order that the 2nd Defendant do remove the Caveat No. CV/25725 dated 11th May, 1979 prohibiting the Plaintiff from selling or disposing of the Kaolim Building under the provisions of the Land Titles Act.
- (5) An order that the Plaintiff be entitled to sell its property Kaolim Building at a price to be valued either by public auction or by private treaty and 40

utilise the proceeds of sale to redeem the property from the 1st Defendant. In the Supreme Court

(6) Such further or other relief as the Honourable Court may deem fit to grant.

Plaintiff's Evidence

No. 3

(7) Damages and costs against the Defendants.

Exhibit "A" to the 2nd Affidavit of Michael Lie

10 AND \$125-00 (or such sum as may be allowed on taxation) for costs, and a plaintiff obtains an order for substituted service, the further sum of \$60.00 sum as may be allowed on taxation). If the amount claimed and costs be paid to the plaintiff or his solicitors within eight days after service hereof (inclusive of the day of service) further proceedings will be stayed, but if it appears from the indorsement on the Writ that the plaintiff is resident outside the scheduled territories, as defined by the Exchange Control Ordinance or is acting by order or on behalf of a person so resident, or if the defendant is acting for or on behalf of a person so resident, proceedings will only be stayed if the amount claimed for costs is paid into Court within the said time and notice of such payment in is given to the ?.

20

(continued)

Dated this 24th day of October, 1979.

Sd.

Solicitors for the Plaintiff.

This writ is issued by Messrs. Boswell, Hsieh & Lim of No. 17-B Grand Building, Philip Street, Singapore, solicitors for the said plaintiff whose registered office is at No. Far Eastern Bank Building, 156 Cecil Street, Singapore 0106

30 This writ was served by me, (illegible) at 156 Cecil Street, Singapore on Friday the 26th day of October 1979.

Indorsed the 26th day of October 1979.

In the Supreme
Court

No. 4

Defendant's
Evidence

AFFIDAVIT OF NG CHWEE BENG

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

No. 4

Affidavit of Ng
Chwee Beng

Originating Summons)
No. 153 of 1980)

11th April 1980

In the matter of the Conditions of Tender relating
to sale of the lands and premises comprised on
Lots 156-2, 156-3 and 156-16 of Town Subdivision
XIX by Far Eastern Bank Limited to United
Overseas Land Limited

10

And

In the matter of the Land Titles Act (Cap. 276) the
Conveyancing And Law of Property Act (Cap. 268)
and the Property Tax Act (Cap. 235)

B E T W E E N :

UNITED OVERSEAS LAND LIMITED
Plaintiffs

And

FAR EASTERN BANK LIMITED
Defendants

20

A F F I D A V I T

I, NG CHWEE BENG of No. 156 Cecil Street,
Singapore, affirm and say as follows:-

1. I am the Manager of the Defendants and I am
authorised to make this affidavit on their behalf.
2. I have read what purports to be a copy of the
affidavit of Michael Lie affirmed on the 9th April 1980.
3. With regard to paragraph 7 of the said affidavit,
I am advised by my Solicitors, Messrs. Chung & Co.
that the Memorandum of Agreement contained in pages 8
and 9 of the Conditions of Tender (referred to as annexure
"A" to the affidavit of Michael Lie) and signed by the
Plaintiffs was sent to Messrs. Chung & Co. by Messrs.
Shook Lin & Bok with their letter dated the 2nd April 1980.
This Memorandum was dated by the Defendants or their

30

Solicitors the 20th March 1980. A copy of the Memorandum is annexed hereto and marked "NCB-1"

In the Supreme
Court

Defendant's
Evidence

No. 4

Affidavit of Ng
Chwee Beng

11th April 1980

(continued)

10 4. On the 2nd April 1980 Messrs. Boswell, Hsieh & Lim, Solicitors for the Mortgagors, Kaolim (Private) Limited, wrote to the Comptroller of Property Tax stating that the property was sold by tender and under clause 16(c) of the Conditions of Tender, the Plaintiffs were deemed to have notice of all claims affecting the property and they were required to comply with and discharge all such claims at the expense of the Plaintiffs. A copy of this letter is annexed hereto and marked "NCB-2". A copy of this letter was sent to Messrs. Chung & Co. who as Solicitors for the Defendants have advised the Defendants not to disregard that letter from those Solicitors.

5. On the 5th April 1980, the Defendants' Solicitors wrote to the Plaintiffs' Solicitors requesting them to let them know when the Plaintiffs have paid the sum for property tax amounting to \$521, 242. 53. A copy of this letter is annexed hereto and marked "NCB-3".

20 6. On receipt of the letter dated the 7th April 1980 from the Plaintiffs' Solicitors to Messrs. Chung & Co. and a copy of the Plaintiffs' Solicitors letter also dated the 7th instant to the Comptroller of Property Tax, Defendants' Solicitors wrote to Messrs. Boswell, Hsieh & Lim enquiring whether their clients were prepared to make payment of property tax amounting to over \$520, 000. 00 out of the proceeds of sale of the property. No reply has been received by Defendants' Solicitors to that letter from Messrs. Boswell, Hsieh & Lim.

30 7. As to paragraph 12, I am advised by my Solicitors and verily believe that by letter dated the 2nd April 1980 they informed the Plaintiffs' Solicitors that the Statement of Claim in Suit No. 3170 of 1979 was struck out and also that action was dismissed (as against the Defendants and another). A copy of the Order dated the 22nd February 1980 is annexed hereto and marked "NCB-4".

40 8. As to paragraph 13, I am advised by my Solicitors and verily believe that the Plaintiffs' Solicitors are not entitled to make the requisition referred to therein nor were the Defendants' Solicitors required to answer that requisition.

9. As to paragraph 14 the draft Transfer was returned by the Defendants' Solicitors to the Plaintiffs'

In the Supreme Court

Solicitors duly approved as amended on the 9th April 1980 the day Michael Lie affirmed his affidavit.

Defendant's Evidence

AFFIRMED at Singapore)
this 11th day of April 1980.) Sd. Ng Chwee Beng

No. 4

Affidavit of Ng Chwee Beng

Before me,

Sd. Lim Sin

11th April 1980

A Commissioner for Oaths

(continued)

Exhibit "NCB-1" to the Affidavit of Ng Chwee Beng

This is the exhibit marked NCB-1 referred to in the Affidavit of Ng Chwee Beng sworn before me this 11th day of April 1980. No. 153 of 1980.

10

11th April 1980

Before me,

Sd. Lim Sin

A Commissioner for Oaths.

MEMORANDUM that at the sale by tender this 20th day of March 1980 of the property mentioned in the above Particulars and conditions of sale, UNITED OVERSEAS LAND LIMITED of 3-301 Merlin Plaza, Beach Road, Singapore was the Purchaser subject to the above conditions at the price of \$8,000,000.00 and has paid the sum of \$1,600,000.00 by way of deposit to the Vendors and agrees to pay to the Vendors, Far Eastern Bank Limited the balance of the said purchase money and the Vendors and the Purchaser hereby agree to complete the sale in accordance with the above conditions.

20

Purchase Money	..	\$8,000,000.00
Deposit	..	<u>\$1,600,000.00</u>
Balance	..	<u>\$6,400,000.00</u>

SIGNED BY THE VENDOR) For Far Eastern Bank Ltd.
in the presence of :) Sd.
Assistant General Manager.

30

Witness: Sd.

SIGNED BY THE PURCHASER) Sd.
in the presence of:-)

United Overseas Land Ltd.

Witness: Sd.

PANG LEONG SIANG
General Manager

BOSWELL, HSIEH & LIM, 17-B Grand Building,
Advocates & Solicitors. Phillip Street,
Singapore 1.

In the Supreme
Court

Defendant's
Evidence

Our Ref: RH/NHF/80/1s1
Your Ref: CF/8440284

2nd April 1980

No. 4

Exhibit 'NCB2'
to the Affidavit
of Ng Chwee
Beng

The Comptroller of Property Tax,
Inland Revenue Department,
Property Tax Division,
City Hall,
St. Andrew's Road,
Singapore.

10

Dear Sir,

Re: Kaolim Building and Property Taxes

We refer to your letter of the 31st ultimo
addressed to the Manager of the Far Eastern Bank Ltd.
with copy to us. We are sending a copy to our clients,
the mortgagor of the building.

Our clients instruct us that the property was sold
by tender by the bank, and under Clause 16(c) of the
Tender Conditions of Sale it was stated that the property
was sold subject to all notices, charges, orders of court,
caveats and court or other claims affecting the property
made or served before on or after the sale, and the
purchaser shall be deemed to have notice of all such
claims caveats or orders of court which have to be
complied with and discharged by the purchaser at its
expense.

20

Our instructions are that the purchaser of the
property must discharge the claims from your department,
and that the mortgagee is not entitled to pay off the property
taxes from the proceeds of sale.

30

Yours faithfully,

Sd. Boswell, Hsieh & Lim

c. c. M/s Kaolim Pte. Ltd.,
Singapore.

c. c. Messrs. Chung & Co.,
Singapore.

This is the exhibit marked "NCB-2" referred to
in the Affidavit of Ng Chwee Beng sworn before
me this 11th day of April 1980. No. 153 of 1980.

40

Sd. Lim Sin
A Commissioner for Oaths

In the Supreme Court CYC/1060-126/UOL

Defendant's
Evidence

KSC/FT/641/79

5th April 1980

No. 4

M/s Shook Lin & Bok,
Singapore.

Exhibit "NCB3"
to the Affidavit
of Ng Chwee
Beng

Dear Sirs,

Re: Kaolim Building

Letter from
Boswell Hsieh
& Lim

With reference to our letter of the 2nd instant to the Comptroller of Property Tax, a copy of which was sent to you, will you kindly let us know as soon as possible when your clients have paid the sum due for property tax which comes to \$521,242.53.

10

We enclose herewith a copy of a notice dated the 31st March 1980 from the Comptroller to our clients. After your clients have complied with that notice and discharged the property tax mentioned therein, please inform us accordingly.

Yours faithfully,

enc.

This is the exhibit marked "NCB-3" referred to in the Affidavit of Ng Chwee Beng sworn before me this 11th day of April 1980.

20

Before me,

Sd. Lim Sin

A Commissioner for Oaths.

In the Supreme
Court

Defendant's
Evidence

No. 4

Exhibit "NCB4"
to the Affidavit
of Ng Chwee
Beng

(continued)

2. The Plaintiffs' action against the 1st and 3rd Defendants be dismissed with costs.

3. The 1st and 3rd Defendants be at liberty to enter Judgment herein for their costs including the costs of this application to be taxed.

Dated the 22nd day of February 1980.

Sd.

Assistant Registrar.

No. 5

2nd Affidavit of
Ng Chwee Beng

11th April 1980

NO. 5.

2ND AFFIDAVIT OF NG CHWEE BENG

IN THE HIGH COURT OF THE REPUBLIC OF
SINGAPORE

10

Originating Summons)
No. 153 of 1980)

In the matter of the Conditions of Tender relating to sale of the lands and premises comprised on Lots 156-2, 156-3 and 156-16 of Town Subdivision XIX by Far Eastern Bank Limited to United Overseas Land Limited

And

20

In the matter of the Land Titles Act (Cap. 276) the Conveyancing And Law of Property Act (Cap. 268) and the Property Tax Act (Cap. 235)

B E T W E E N :

UNITED OVERSEAS LAND LIMITED Plaintiffs

And

FAR EASTERN BANK LIMITED Defendants

A F F I D A V I T

I, NG CHWEE BENG of No. 156 Cecil Street, Singapore, affirm and say as follows:-

30

1. I crave leave to refer to paragraph 6 of my affidavit affirmed on the 11th April 1980. There was in fact a reply from Messrs. Boswell, Hsieh & Lim on the 9th April 1980 stating that their clients were not prepared to make payment of the property taxes amounting to about \$520,000.00 from the proceeds of sale.

In the Supreme
Court

Defendant's
Evidence

No. 5

2nd Affidavit of
Ng Chwee Beng

11th April 1980

(continued)

10 2. No reply was received from Messrs. Boswell, Hsieh & Lim in respect of another enquiry made by the Bank's Solicitors as to whether Messrs. Boswell, Hsieh & Lim's clients would wish to be heard at the hearing of the vendor and purchaser summons.

AFFIRMED at Singapore,)
this 11th day of April 1980.) Sd. Ng Chwee Beng

Before me,

Sd. Sim Lin

A Commissioner for Oaths.

NO. 6

AMENDED ORIGINATING SUMMONS

IN THE HIGH COURT OF THE REPUBLIC OF
SINGAPORE

No. 6

Amended
Originating
Summons

19th April 1980

20

Originating Summons)
No. 153 of 1980.)

Amended as underlined in red pursuant to the Order made by the Honourable The Chief Justice in chambers on the 18th day of April, 1980.

Dated the 19th day of April, 1980.

Sd.

Assistant REGISTRAR

30 In the matter of the Conditions of Tender relating to sale of the lands and premises comprised on Lots 156-2, 156-3 and 156-16 of Town Subdivision XIX by Far Eastern Bank Limited to United Overseas Land Limited

And

In the Supreme
Court

In the Matter of the Land Titles Act, (Cap. 276)
the Conveyancing And Law of Property Act
(Cap. 268) and the Property Tax Act (Cap. 144)

B E T W E E N :

No. 6
Amended
Originating
Summons
19th April 1980
(continued)

UNITED OVERSEAS LAND LIMITED Plaintiffs

And

1. FAR EASTERN BANK LIMITED
2. KAOLIM (PRIVATE) LTD. Defendants

AMENDED
ORIGINATING SUMMONS

10

LET all parties concerned attend before the Judge in Chambers on Monday the 14th day of April, 1980 at the hour of 10.30 o'clock in the forenoon on the hearing of an application by the Plaintiffs herein for the following orders:

1. A Declaration that on a true and proper construction of Condition 16(c) of the Conditions of Tender read with Condition 6 of The (Revised) Singapore Conditions of Sale, the Plaintiffs (as purchasers) are under no obligation to the 1st Defendants (as mortgagees) or to Kaolim (Private) LTD. the 2nd Defendants (as the registered proprietors) to pay property tax in arrears up to the date of completion and payable in respect of the property comprised in Lots 156-2, 156-3 and 156-16 of Town Subdivision XIX together with the building erected thereon known as Kaolim Building. 20
2. A Declaration that the 1st Defendants are under an obligation to apply the proceeds of sale of the said property in accordance with Section 26(3) of the Conveyancing And Law of Property Act (Cap. 268) or Section 64(1) of the Land Titles Act (Cap. 276). 30
3. A Declaration that, if the Plaintiffs are found to have contracted with the 1st Defendants to pay the said arrears of property tax, the Plaintiffs are entitled to set off the said arrears of property tax against the surplus arising out of the proceeds of sale and held by the 1st Defendants in trust for Kaolim (Private) Ltd. the 2nd Defendants after satisfying the 1st Defendants' claim in respect of the said proceeds.
4. Alternatively to 3 above, a Declaration that, if the

Plaintiffs are found to have contracted with the 1st Defendants to pay the said arrears of property tax, the Plaintiffs are subrogated to the rights of the 1st Defendants or Kaolim (Private) Ltd. the 2nd Defendants or the Comptroller of Property Tax to the extent of the amount paid in any surplus arising from the proceeds of sale ~~and arising from~~ and held by the 1st Defendants after ~~satisfying the 1st Defendant's claims in respect of the said proceeds~~ in trust for the 2nd Defendants.

In the Supreme
Court

No. 6

Amended
Originating
Summons

19th April 1980

(continued)

10

~~5. A Declaration that the Plaintiffs are, upon payment of the purchase price entitled to a Transfer duly executed by the 1st Defendants in exercise of their power as mortgagees under the Mortgage No. I/48193A registered on July 24, 1976.~~

6. Such further or other order in the premises as to the Court deems fit.

6. Costs.

Dated this 9th day of April, 1980.

Sd. Low Wee Ping

20

Dy. REGISTRAR

This Summons is taken out by Messrs. Shook Lin & Bok, 5th Floor, Malayan Bank Chambers, Fullerton Square, Singapore Solicitors for the said Plaintiffs whose address is at 3301, 3rd Floor, Merlin Plaza, 7500 Beach Road, Singapore 0719.

NOTE:- This summons may not be served more than 12 calendar months after the above date unless renewed by order of the Court.

30

If a defendant does not attend personally or by his counsel or solicitor at the time and place abovementioned such order will be made as the Court may think just and expedient.

To:

1. The 1st Defendants and their Solicitors, Messrs. Chung & Co., Singapore.
2. The 2nd Defendants and their Solicitors, Messrs. Boswell, Hsieh & Lim, Singapore.

In the Supreme
Court

Defendant's
Evidence

No. 7

Affidavit of
Kadarisman

26th April 1980

NO. 7

AFFIDAVIT OF KADARISMAN

IN THE HIGH COURT OF THE REPUBLIC OF
SINGAPORE

Originating Summons)
No. 153 of 1980)

In the matter of the Conditions of Tender relating
to sale of the lands and premises comprised on
Lots 156-2, 156-3 and 156-16 Town Subdivision
XIX by Far Eastern Bank Limited to United
Overseas Land Limited

10

And

In the matter of the Land Titles Act (Cap. 276)
the Conveyancing And Law of Property Tax Act
(Cap. 235)

B E T W E E N :

UNITED OVERSEAS LAND LIMITED Plaintiffs

And

1. FAR EASTERN BANK LIMITED
2. KAOLIM PRIVATE LIMITED Defendants 20

A F F I D A V I T

I, KADARISMAN of Jalan Gunung Sahari of No.
1/5 Jakarta, Republic of Indonesia, hereby sincerely
declare and affirm as follows:-

1. I am the Chairman of the 2nd Defendant Company
whose property known as Kaolim Building was mortgaged
to the 1st Defendant under two Indentures of Mortgages
made on 4th June, 1976 and 19th November 1976.

2. As mortgagee bank the 1st Defendant first put up
the property for sale by public auction on the 8th February 1980 subject to 24 Special Conditions and also the General
Conditions of Sale known as 'The (Revised) Singapore
Conditions of Sale'. I annex hereto and mark "K-1" a
copy of the Conditions of Sale and Special Conditions of
Sale which were prepared by the solicitors for the 1st

Defendant bank for use of the auctioneers who conducted the sale by public auction on 8th February 1980. I am advised that Special Condition 10 in the auction sale is identical to Special Condition 16 of the Tender Conditions of Sale which was imposed by the 1st Defendant as vendor of the property when it decided to sell by tender and not by public auction.

In the Supreme
Court

Defendant's
Evidence

No. 7

Affidavit of
Kadarisman

26th April 1980

(continued)

10 3. I was present at the sale of the property by public auction on 8th February 1980 and to the best of my knowledge one Mr. Wey Kim Long, a manager of the property division of the Plaintiffs, was also present at the auction room on that day. Mr. Wey took part in the bidding for the property on that day, the highest bid of which came to \$8,750,000-00.

4. Unfortunately, the sale by public auction became abortive and the 1st Defendant put up the property for sale by tender by advertising for offers in the local newspapers on the 10th March 1980.

20 5. At all material times the following are the caveats and claims against the property:-

(a) Claims by the Comptroller of Property Tax for arrears of property taxes amounting to about \$521,242-53. Notices for payment had been served on the 1st Defendant and 2nd Defendant;

(b) Claim by Messrs. Cockpit Hotel Ltd. against the 2nd Defendant made in Suit No. 3331 of 1977 for alleged unpaid purchase price as follows:-

(i) \$449,285-72 as the unpaid balance of the purchase money;

30 (ii) \$150,914-46 as interest at the rate of 12.6 per cent per annum from the 24th day of April 1976 to date of writ;

(iii) Interest on the unpaid balance at the rate of 12.6 per cent per annum from the date of writ until payment or judgment;

(iv) \$8,658-00 as apportioned share of property tax and interest thereon at such rate and for such period as this Honourable Court shall think fit;

In the Supreme Court

Defendant's Evidence

No. 7

Affidavit of Kadarisman

26th April 1980

(continued)

(v) A declaration that the Cockpit Hotel Ltd. are entitled (subject to such registered charges as enjoyed priority thereto) to a lien on the said land for securing the payment of the said sum and interest thereof;

(vi) An order for the enforcement of the said lien by sale.

A caveat was filed prohibiting any instrument affecting the property on 28th September 1977.

(c) Claim by Messrs. Corporate Services Pte. Ltd. against the 2nd Defendant for specific performance of an alleged option agreement to purchase the property. A caveat was filed prohibiting the sale or registration of any instrument affecting the property on 11th May 1979. 10

6. I am advised that the 1st Defendant was aware of the above claims when it exercised its power of sale to sell the property. Section 43 of the Property Tax Act provides that every person who sells or transfers any taxable property shall continue to be liable for the payment of property taxes. It is submitted that it is for this reason among others that the 1st Defendant imposes Special Condition 16(C) as a condition of sale of the property. 20

7. I am further advised that the Plaintiffs had already taken the aforesaid claims including arrears of property tax into account when they submitted a tender for the Kaolim Building for a sum of Singapore Dollars Eight Million (S\$8, 000, 000-00) whose tender was confirmed and accepted and as such the Plaintiffs are no longer entitled to off-set against the surplus of the proceeds of sale nor is the doctrine of subrogation applicable to them.

8. I am further advised and verily believe that the term of Clause 16(C) of the Special Condition in the Tender Sale is clear and unequivocal and that the Plaintiffs had by contract assumed a primary responsibility to the Comptroller of Property Tax for which they now do not have any recourse of action against the 2nd Defendants for the balance of the proceeds of sale. 30

Under the circumstances, I humbly pray for an order that the application of the Plaintiffs filed herein may be dismissed with costs.

AFFIRMED AT SINGAPORE)

this 25th day of April, 1980) Sd. KADARISMAN

by KADARISMAN) Before me:-

Sd.

A Commissioner for Oaths, Singapore.

MORTGAGEES' SALE

In the Supreme
Court

PARTICULARS AND CONDITIONS OF SALE

Defendant's
Evidence

OF FREEHOLD LAND AND PREMISES

No. 7

SITUATE AT KRAMAT ROAD

Exhibit 'K1' to
the Affidavit of
Kadarisman

IN THE DISTRICT OF CLAYMORE, SINGAPORE

TO BE SOLD BY PUBLIC AUCTION BY

MESSRS. RICHARD ELLIS, C. H. WILLIAMS (PTE) LTD.

AT THE LECTURE ROOM (GROUND FLOOR)

CHINESE CHAMBER OF COMMERCE, HILL STREET,
SINGAPORE

10

ON FRIDAY 8TH FEBRUARY, 1980

AT 2.30 P.M.

PARTICULARS OF PROPERTY

All those pieces of lands situated in the District of Claymore in the Republic of Singapore estimated according to Government Resurvey to contain approximately the areas of 474.9 sq. metres, 147.3 sq. metres and 570.3 sq metres and marked on the Government Resurvey Map as Lots 156-16, 156-3 and 156-2 respectively of Town Sub-division No. XIX which said pieces of lands were comprised in part of Grant No. 67 dated the 30th day of June, 1859 comprised in Certificate of Title Volume 146 Folio 185 dated the 6th day of December 1974.

20

Together with the building erected thereon known as Kaolim Building of No. 20 Kramat Road, Singapore.

Messrs. CHUNG & COMPANY - Solicitors
Singapore, 22nd January 1980

RICHARD ELLIS, C. H. WILLIAMS
(PTE) LTD.

Licensed Auctioneers & Valuers

30

In the Supreme
Court

Defendant's
Evidence

No. 7

Exhibit "K1" to
the Affidavit of
Kadarisman

(continued)

Suite 2406, Shaw Centre
Scotts Road
Singapore 0922.
Tel: 2354755

CONDITIONS OF SALE

The property is sold subject to the following Special Conditions and also the General Conditions of Sale known as "The (Revised) Singapore Conditions of Sale" a printed copy of which can be seen at the office of the Auctioneers and will be supplied by the Auctioneers to any Purchaser or intending Purchaser at his request and all Purchasers shall be deemed to have full knowledge and notice of the contents and effect thereof, whether they shall actually have inspected a copy or not. 10

SPECIAL CONDITIONS

1. No infant shall be permitted to bid for or to become the Purchaser of the property.
2. If any person bids at the sale as Agent for or on behalf of any other person he shall inform the Auctioneers immediately the bids for the property is closed and the property has been knocked down to him and he shall then and thereupon immediately produce to the Auctioneers his Power of Attorney or other satisfactory evidence of his authority to act as such Agent and if he fails to do so, the property shall be put up again for sale by the Auctioneers forthwith. 20
3. The Purchaser shall immediately after the sale sign the subjoined agreement and pay to the Auctioneers as Agents for the Vendor a sum equal to twenty per cent (20%) of the purchase price by way of deposit. 30
4. The purchase shall be completed and the balance of the purchase price shall be paid on the 21st day of March, 1980 at the office of Messrs. Chung & Co. of Unit 1602, 16th Floor, Hong Leong Building, Raffles Quay, Singapore. If from any cause whatsoever, the purchase of the property shall not be completed on the day fixed for completion, the Purchaser making such default shall pay interest on the unpaid purchase money at the rate of twelve per cent (12%) per annum from that day until the actual date of completion. 40
5. The Vendors are selling as Mortgagees and the

concurrence of any person or persons interested in the property shall not be required nor shall the Vendors be required to enter into any covenant for title.

In the Supreme
Court

Defendant's
Evidence

No. 7

Exhibit "K1" to
the Affidavit of
Kadarisman

(continued)

6. The title shall be properly deduced.

7. The Purchaser shall not investigate or call for evidence of any earlier title nor require the production or delivery of any deeds or documents not in the Vendors' possession nor make any requisition or objection whatsoever with reference thereto.

10

8. No objection or requisition shall be made on the ground that any covenant, acknowledgement or undertaking for the production or safe custody of any muniments of title is defective or insufficient or on the ground of the inability of the Vendors to trace or procure the production of any muniments of title.

20

9. No objection shall be made on the ground that any deed, document, Grant of Probate, Letters of Administration or Order of Court has not been registered under any Act Ordinance Rule or Regulation which requires its registration or on account of any deed or document being unstamped or insufficiently stamped and such unregistered or unstamped or insufficiently stamped deed, document, Grant of Probate, Letters of Administration or Order of Court shall if any Purchaser so requires be registered or stamped at the expense of such Purchaser but if registration of any unregistered document cannot be effected no objection shall be taken to the title on that account.

10. The property is sold subject to :-

30

(a) any scheme, layout, matter or thing embodied or shown in the General Improvement Plan and/or the Master Plan and all proposed amendments or addition thereto;

(b) any proposed scheme affecting the property; and

(c) all notices charges, Orders of Court, charging orders and court or other claims affecting the property made or served whether before on or after the date of Sale. The Purchaser shall be deemed to have purchased with full knowledge and notice of all such schemes or proposed schemes, layouts, notices, demands, charges,

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In the Supreme
Court

Defendant's
Evidence

No. 7

Exhibit "K1" to
the Affidavit of
Kadarisman

(continued)

Orders of Court, charging orders and court or other claims which shall be complied with and discharged by and at the expense of the Purchaser who shall not be entitled to make or raise any objection or requisition whatsoever in respect thereof.

11. The Vendors have no notice or knowledge of any encroachment or that the Government or any Local Authority has any immediate intention of acquiring the property or any part thereof for road, backlane, or otherwise but if any such other encroachment shall be found to exist or if the Government or any Local Authority has any such intention the same shall not annul the sale herein nor shall any abatement or compensation be allowed in respect thereof.

10

12. The property is sold without vacant possession and subject to the existing rights of lessees/tenants/occupiers and/or squatters. The Purchaser shall not require from the Vendors any particulars or information to be supplied in respect of such occupation, any rentals or service charges payable or deposits paid by such lessees, tenants and/or occupiers and shall make his own enquiries in respect thereof and shall be deemed to have full knowledge of the same and of the effect thereof and the Vendors shall not be liable in any way for any claims for rentals, service charges, deposits or any payments whatsoever.

20

13. The Purchaser shall be deemed to have actual notice of the state and condition of the property described in the Particulars as regards access light, air, drainage and in all other respects and the Purchaser shall not be entitled to make or raise any objection or requisition whatsoever in respect thereof.

30

14. If at any time after the date of the sale a notice shall be issued or published for the compulsory acquisition of the property under or by virtue of any Act or other statutory provision or regulation the same shall not annul the sale or the completion thereof nor shall any claim for compensation be made in respect thereof.

15. Every recital or statement contained in any deed, document of assent, statutory declaration or instrument shall be accepted as conclusive evidence of the matter or fact recited stated or declared and no further or other evidence thereof shall be required nor shall any requisition

40

be made in respect thereof.

In the Supreme
Court

16. The Purchaser shall not require any evidence that Estate Duty has been paid in respect of any death that occurred before the date of sale and no objection or requisition shall be made on the ground that such Estate Duty has not been paid nor shall the non-payment of such duty annul the sale and no abatement or compensation shall be allowed in respect thereof.

Defendant's
Evidence

No. 7

Exhibit "K1" to
the Affidavit of
Kadarisman

10 17. The Purchaser shall assume that every Power of Attorney under which any prior deed was executed contains sufficient powers and was at all material times valid and subsisting no proof thereof and no objection or requisition in respect thereof shall be required or made.

(continued)

18. The inability of the Vendors to answer any requisitions or any delay in answering the same shall not entitle the Purchaser to refuse to complete or to delay completion.

20 19. The Purchaser shall not require the production of any certificate or any other evidence of numbering of the property sold herein or that any building stands on or within the boundaries comprised in the lots described and no requisition shall be made in respect thereof.

20. The Purchaser shall not require production of the Certificate of Fitness for Occupation in respect of each building and no objection or requisition shall be raised in respect thereof.

30 21. The Purchaser shall not be entitled to make any enquiry requisition or objection with regard to any discrepancies in any deed or document or in the spelling of the name of any part thereto.

22. If any error, mis-statement or omission shall appear to have been made in the above Particulars with regard to the property such error or mis-statement or omission is not to annul the sale or entitle the Purchaser to be discharged from his purchase nor shall any compensation be paid or allowed to or by, either the Vendors or Purchaser as the case may be, and all parties shall accept the area as being correct and shall complete the sale and purchase on that basis.

40 23. Any plan or tracing showing the property which may be produced at the sale or annexed or referred to in the

In the Supreme
Court

Defendant's
Evidence

No. 7

Exhibit "K1" to
the Affidavit of
Kadarisman

(continued)

Particulars or these Conditions is intended only for identification purposes and not so as to enlarge or restrict the description of the property contained in the Particulars.

24. The sale is made only on the terms and conditions in the English version of the Particulars and Conditions of Sale. Any translation thereof and any sketch or other plans produced at or before the sale are intended only for the convenience of prospective Purchasers, and no error, mistake or mistranslation appearing therein shall invalidate the sale or give rise to any claim for compensation or reduction of the purchase price.

10

Messrs. CHUNG & COMPANY - Solicitors
Singapore, 22nd January 1980

RICHARD ELLIS, C. H. WILLIAMS
(PTE) Ltd.
Licensed Auctioneers & Valuers.

MORTGAGEES' SALE

FREEHOLD LAND AND PREMISES

SITUATE AT KRAMAT ROAD

IN THE DISTRICT OF CLAYMORE, SINGAPORE

TO BE SOLD BY PUBLIC AUCTION BY

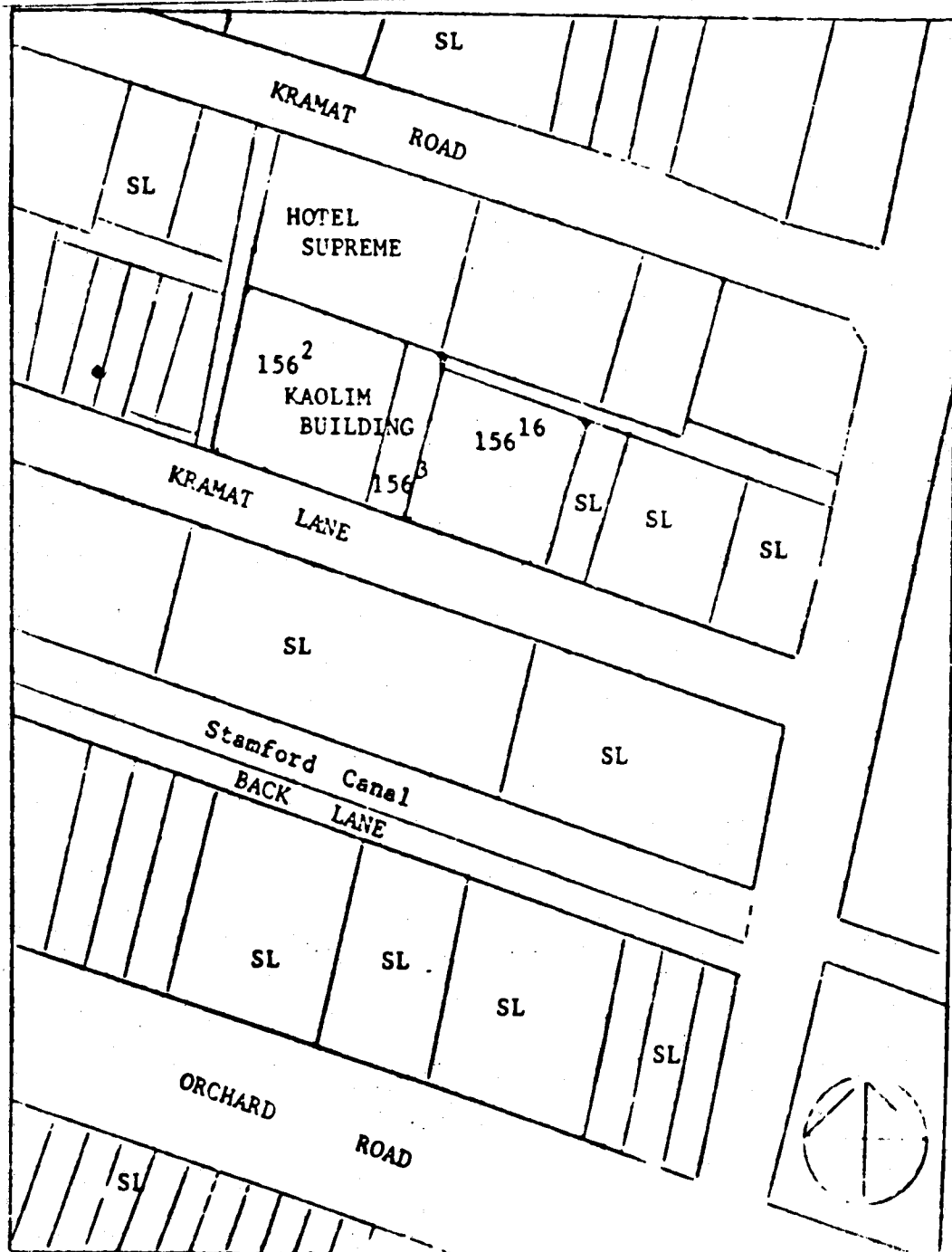
MESSRS. RICHARD ELLIS, C. H. WILLIAMS (PTE) LTD. (continued)

In the Supreme
Court

Defendant's
Evidence

No. 7

Exhibit "K1" to
the Affidavit of
Kadarisman



In the Supreme Court

C O N T R A C T

Defendant's Evidence

No. 7
Exhibit "K1" to the Affidavit of Kadarisman
(continued)

MEMORANDUM - At the sale by auction this day of 1980 of the property described in the foregoing Particulars.....

..... of.....

..... was the highest bidder for and was declared the Purchaser of the said property at the price of Dollars.....

..... (\$) 10

and the said.....

has paid to Messrs RICHARD ELLIS, C. H. WILLIAMS (PTE) LTD. as Agents for and on behalf of the Vendor

..... the sum of Dollars.....

..... (\$)

by way of deposit and agrees to pay the balance of the Purchase money and complete the purchase according to the above Conditions and the said Messrs RICHARD ELLIS, C. H. WILLIAMS (PTE) LTD. as the Vendor's Agents 20

hereby confirm the sale and acknowledge the receipt of the said deposit.

Purchase Money	....	\$
Deposit Paid	....	\$ _____
Balance Payable	....	\$ _____

..... Purchaser

3RD AFFIDAVIT OF MICHAEL LIE

Plaintiff's
Evidence

Originating Summons)
No. 153 of 1980)

No. 8

3rd Affidavit of
Michael Lie

28th April 1980

In the Matter of the Conditions of Tender relating to
sale of the lands and premises comprised on Lots
156-2, 156-3 and 156-16 of Town Subdivision XIX by
Far Eastern Bank Limited to United Overseas Land
Limited

10

And

In the Matter of the Land Titles Act, (Cap. 276) the
Conveyancing And Law of Property Act (Cap. 268)
and the Property Tax Act (Cap. 144)

B E T W E E N :

UNITED OVERSEAS LAND LIMITED

Plaintiffs

And

1. FAR EASTERN BANK LIMITED
2. KAOLIM (PRIVATE) LTD.

Defendants

20

A F F I D A V I T

I, MICHAEL LIE of 3-301, 3rd Floor, Merlin
Plaza, 7500 Beach Road, Singapore 0719 do solemnly and
sincerely affirm as follows:-

1. I am the Assistant General Manager of United
Overseas Land Limited, the Plaintiffs herein and the facts
hereinafter deposed are within my personal knowledge
unless expressly otherwise qualified.

30

2. I have read the Affidavit of Kadarisman filed herein
on the 24th day of April, 1980. With reference to
paragraph 7 thereof, I deny that the Plaintiffs had taken
the alleged claims including arrears of property tax into
account when they submitted a tender of Singapore Dollars
Eight Million (S\$8, 000, 000. 00) for the Kaolim Building.
As the sale was a mortgagee sale by the 1st Mortgagee,

In the Supreme
Court

Plaintiff's
Evidence

No. 8

3rd Affidavit of
Michael Lie

28th April 1980

(continued)

the Plaintiffs assumed that they would be purchasing the property free of all other encumbrances or claims which did not affect the Mortgagee.

AFFIRMED to at Singapore) Sd. Michael Lie
this 26th day of April 1980.)

Before me,

Sd. Selvanathan Kanagaretnam Isaac

A COMMISSIONER FOR OATHS

This Affidavit is filed on behalf of the Plaintiffs.

No. 9

Order of Court

28th April 1980

NO. 9

ORDER OF COURT

IN THE HIGH COURT OF THE REPUBLIC OF
SINGAPORE

Originating Summons)
No. 153 of 1980.)

In the matter of the Conditions of Tender relating to sale of the lands and premises comprised on Lots 156-2, 156-3 and 156-16 of Town Subdivision XIX by Far Eastern Bank Limited to United Overseas Land Limited

And

In the Matter of the Land Titles Act, (Cap. 276)
the Conveyancing And Law of Property Act
(Cap. 268) and the Property Tax Act (Cap. 144)

B E T W E E N :

UNITED OVERSEAS LAND LIMITED Plaintiffs

And

1. FAR EASTERN BANK LIMITED
2. KAOLIM (PRIVATE) LIMITED Defendants

ORDER OF COURT

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20

30

BEFORE THE HONOURABLE THE CHIEF JUSTICE MR. JUSTICE WEE CHONG JIN IN CHAMBERS

In the Supreme Court

No. 9

Order of Court
28th April 1980

(continued)

10 UPON the adjourned application of the abovenamed Plaintiffs made by way of the Amended Originating Summons coming on for hearing this day AND UPON READING the Affidavits of Michael Lie filed herein on the 9th April, 11th April, and 28th April, 1980 respectively together with the exhibits referred to and the affidavit of Ng Chwee Beng filed herein on the 11th day of April, 1980 together with the exhibits referred to and further Affidavit of Ng Chwee Beng filed herein on the 12th day of April, 1980 and the Affidavit of Kadarisman filed herein on the 26th day of April, 1980 together with the exhibits referred to AND UPON HEARING COUNSEL for the Plaintiffs for the 1st and 2nd Defendants THIS COURT DOTH DECLARE that Upon Payment of the arrears of property tax, to the Comptroller of Property Tax at the date of completion in respect of the property comprised in Lots 156-2, 156-3 and 156-16 of Town Sub-division XIX together with the building erected thereon known as Kaolim Building, the Plaintiffs are subrogated to the rights of the Comptroller of Property Tax or the 2nd Defendants to the extent of the amount paid in any surplus arising from the proceeds of sale held in trust for the 2nd Defendants AND IT IS ORDERED that there be no order made as to prayers 1, 2 and 3 as well as to costs.

Dated the 28th day of April, 1980.

Sd. Hg Peng Hong

ASST. REGISTRAR

NO. 10

JUDGE'S MINUTES

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Originating Summons)
No. 153 of 1980)

In the Matter of the Conditions of Tender relating to sale of the lands and premises comprised on Lots 156-2, 156-3 and 156-16 of Town Subdivision XIX by Far Eastern Bank Limited to United Overseas Land Limited

No. 10

Judge's Minutes

28th April 1980

In the Supreme
Court

No. 10

Judge's Minutes

28th April 1980

(continued)

And

In the Matter of the Land Titles Act, (Cap. 276)
the Conveyancing And Law of Property Act
(Cap. 268) and the Property Tax Act (Cap. 144)

B E T W E E N :

UNITED OVERSEAS LAND LIMITED Plaintiffs

And

1. FAR EASTERN BANK LIMITED
2. KAOLIM (PRIVATE) LIMITED Defendants

14.4.80 - For a declaration. Coram: Wee, C.J. 10

Chan for plts.

Tan & Miss Nordin for defts.

Chan:

Arrears of property tax.

(1) Condition 16(c) - submit particulars are too
general and ambiguous - contra proferentum rule.

"Charges" can only mean charges as in "charges and
expenses"; or charges which are imposed by statutory
authorities; or charges which are encumbrances; or
charges which are imposed by statute e. g. property tax - 20
assessments. See word "made" - contra "imposed";
"outgoings" in Singapore Conditions of Sale. If surplus -
it is held in trust for mortgagor and mortgagees are
trustees. Purchaser entitled to set off.

(4) Subrogation.

Court:

Adj. to Friday 18th.

18.4.80

Chan

Tan

30

Court:

Adj. to Monday 28th.

28. 4. 80

Chan for plts.

S. Chan for 2nd deft.

Tan for 1st deft.

Chan conts.

10

(4) Subrogation. Goff law of Restitution. p. 406 etc. p. 409, p. 414-5 Re Downer. Submit subrogated to rights of Comptroller of Property Tax and to rights of 2nd deft in respect of excess after payment of mortgage.

Tan for 1st deft.

- (1) (a) contra proferentum rule does not apply.
(b) outgoings - Tender Conditions override.
(4) Subrogation.

S. Chan

Adopt Tan's argument.

Chan reply:

20

Subrogation - we did not contract with mortgagor but with mortgagee.

Court:

O.I.T. of Prayer 4 except 1st defendant. No order as to costs.

Intld: W. C. J.

In the Supreme
Court

No. 10

Judge's Minutes

28th April 1980

(Continued)

In the Supreme
Court

No. 11

Order of Chief
Justice for
Leave to Appeal

16th May 1980

NO. 11

ORDER OF CHIEF JUSTICE FOR LEAVE TO APPEAL

IN THE HIGH COURT OF THE REPUBLIC OF
SINGAPORE

Originating Summons)
No. 153 of 1980.)

In the Matter of the Conditions of Tender
relating to sale of the lands and premises
comprised on Lots 156-2, 156-3 and 156-16
of Town Subdivision XIX by Far Eastern Bank
Limited to United Overseas Land Limited

10

And

In the Matter of the Land Title Act (Cap. 276)
the Conveyancing and Law of Property Tax Act
(Cap. 144)

B E T W E E N :

UNITED OVERSEAS LAND LIMITED Plaintiff

And

1. FAR EASTERN BANK LIMITED
2. KAOLIM (PRIVATE) LIMITED Defendants 20

ORDER OF COURT

BEFORE THE HONOURABLE THE CHIEF JUSTICE

IN CHAMBERS

UPON THE APPLICATION of the abovenamed
2nd Defendants made by way of Summons-In-Chambers
Entered No. 1989 of 1980 coming on for hearing this day
AND UPON READING the Affidavit of KADARISMAN
filed herein on the 7th day of May 1980 together with the
exhibit referred to AND UPON HEARING Counsel for
the Plaintiffs and for the 2nd Defendant IT IS ORDERED
that :-

30

The 2nd Defendants be granted leave to appeal to
the Court of Appeal from the Order of His Lordship,
The Chief Justice dated the 28th day of April 1980

declaring that upon payment of the arrears of property tax to the Comptroller of Property Tax at the date of completion in respect of the property comprised in Lots 156-2, 156-3 and 156-16 of Town Subdivision XIX together with the building erected thereon known as Kaolim Building, the Plaintiffs are subrogated to the rights of the Comptroller of Property Tax or the 2nd Defendants to the extent of the amount paid in any surplus arising from the proceeds of sale held in trust for the 2nd Defendants.

In the Supreme
Court
No. 11
Order of Chief
Justice for
Leave to Appeal
16th May 1980
(continued)

10 Dated this 16th day of May 1980.

Sd.

ASSISTANT REGISTRAR

NO. 12

NOTICE OF APPEAL

IN THE COURT OF APPEAL OF THE REPUBLIC OF
SINGAPORE

In the Court of
Appeal

No. 12

Notice of Appeal
26th May 1980

Civil Appeal No. 52 of 1980

B E T W E E N :

KAOLIM (PRIVATE) LIMITED

Appellants

20

And

UNITED OVERSEAS LAND LIMITED

Respondents

(In the Matter of Originating Summons No. 153 of 1980)

In the Matter of the Conditions of Tender relating to sale of the lands and premises comprised on Lots 156-2, 156-3 and 156-16 of Town Subdivision XIX by Far Eastern Bank Limited to United Overseas Land Limited

And

30

In the Matter of the Land Title Act (Cap. 276) the Conveyancing and Law of Property Act (Cap. 268) and the Property Tax Act (Cap. 144)

In the Court of
Appeal

No. 12

Notice of Appeal

26th May 1980

(continued)

B E T W E E N :

UNITED OVERSEAS LAND LIMITED Plaintiffs

And

1. FAR EASTERN BANK LIMITED

2. KAOLIM (PRIVATE) LIMITED Defendants

NOTICE OF APPEAL

TAKE NOTICE that KAOLIM (PRIVATE) LIMITED, the abovenamed Appellants appeal against the decision of the Honourable The Chief Justice given on the 28th day of April 1980 granting a declaration to the Respondents that upon payment of the arrears of property tax, to the Comptroller of Property Tax at the date of completion in respect of the property comprised in Lots 156-2, 156-3 and 156-16 of Town Subdivision XIX together with the building erected thereon known as Kaolim Building, the Plaintiffs are subrogated to the rights of the Comptroller of Property Tax or the 2nd Defendants to the extent of the amount paid in any surplus arising from the proceeds of sale held in trust for the 2nd Defendants.

10

20

Dated this 26th day of May, 1980

Sd.

Solicitors for the Appellants
Messrs. Boswell, Hsieh & Lim
Singapore

TO: The Solicitors for the Respondents,
Messrs. Shook Lin & Bok,
Singapore.

No. 13

Petition of
Appeal

29th July 1980

NO. 13

PETITION OF APPEAL

IN THE COURT OF APPEAL OF THE REPUBLIC
OF SINGAPORE

30

Civil Appeal No. 52 of 1980

B E T W E E N :

KAOLIM (PRIVATE) LIMITED

Appellants

In the Court of
Appeal

And

No. 13

UNITED OVERSEAS LAND LIMITED

Respondents

Petition of
Appeal

(In the Matter of Originating Summons No. 153 of 1980)

29th July 1980

(continued)

In the Matter of the Conditions of Tender
relating to sale of the lands and premises
comprised on Lots 156-2, 156-3 and 156-16
of Town Subdivision XIX by Far Eastern Bank
Limited to United Overseas Land Limited

10

And

In the Matter of the Land Title Act (Cap. 276)
the Conveyancing and Law of Property Act
(Cap. 268) and the Property Tax Act (Cap. 144)

B E T W E E N :

UNITED OVERSEAS LAND LIMITED

Plaintiffs

And

1. FAR EASTERN BANK LIMITED
2. KAOLIM (PRIVATE) LIMITED

Defendants

20

PETITION OF APPEAL

TO THE HONOURABLE THE JUDGES OF THE COURT
OF APPEAL

The Petition of the abovenamed Appellants showeth as
follows:-

1. The appeal arises from an application made in
Originating Summons No. 153 of 1980 by the Respondents
as purchasers of the Kaolim Building erected on Lots
156-2, 156-3 and 156-16 of Town Subdivision from the
mortgagee Far Eastern Bank Limited claiming for the
following orders:-

30

- (1) A Declaration that on a true and proper construction
of Condition 16(c) of the Conditions of Tender read
with Condition 6 of the (Revised) Singapore

In the Court of
Appeal

No. 13

Petition of
Appeal

29th July 1980

(continued)

Conditions of Sale, the Plaintiffs/Respondents (as purchasers) are under no obligation to the 1st Defendants (as mortgagees) or to Kaolim (Private) Limited the 2nd Defendants/Appellants (as the registered proprietors) to pay property tax in arrears up to the date of completion and payable in respect of the property comprised in Lots 156-2, 156-3 and 156-16 of Town Subdivision XIX together with the building erected thereon known as Kaolim Building.

10

- (2) A Declaration that the 1st Defendants are under an obligation to apply the proceeds of sale of the said property in accordance with Section 26(3) of the Conveyancing And Law of Property Act (Cap. 268) or Section 64(1) of the Land Titles Act (Cap. 276).
- (3) A Declaration that, if the Plaintiffs/Respondents are found to have contracted with the 1st Defendants to pay the said arrears of property tax, the Plaintiffs/Respondents are entitled to set off the said arrears of property tax against the surplus arising out of the proceeds of sale and held by the 1st Defendants in trust for Kaolim (Private) Limited, the 2nd Defendants after satisfying the 1st Defendants' claims in respect of the said proceeds.
- (4) Alternatively to 3 above, a Declaration that, if the Plaintiffs/Respondents are found to have contracted with the 1st Defendants to pay the said arrears of property tax, the Plaintiffs/Respondents are subrogated to the rights of the 1st Defendants or Kaolim (Private) Limited, the 2nd Defendants/Appellants or the Comptroller of Property Tax to the extent of the amount paid in any surplus arising from the proceeds of sale and held by the 1st Defendants in trust for the 2nd Defendants/Appellants.

20

30

2. Your Petitioner is dissatisfied with the Order of Court made by the Honourable the Chief Justice on 28th April 1980 in terms of Prayer 4 of the Originating Summons declaring that upon payment of the arrears of property tax to the Comptroller of Property Tax at the date of completion in respect of the property comprised in Lots 156-2, 156-3 and 156-16 of Town Subdivision XIX together with the building erected thereon known as

40

Kaolim Building, the Plaintiffs/Respondents are subrogated to the rights of the Comptroller of Property Tax or the 2nd Defendants/Appellants to the extent of the amount paid in any surplus arising from the proceeds of sale held in trust for the 2nd Defendants/Appellants, having decided to make no orders as to Prayers 1, 2 and 3 of the Originating Summons on the following grounds:-

In the Court of
Appeal

No. 13

Petition of
Appeal

29th July 1980

(continued)

10

(a) Upon a true and proper construction of the terms and conditions of the Tender Agreement of Sale entered into between the 1st Defendants as mortgagees vendors and the Plaintiffs/Respondents as purchasers on 20th March 1980, the purchasers of the Kaolim Building are bound by Condition 16(c) of the said Tender Agreement to pay and discharge the arrears of property taxes before completion of the sale.

20

(b) The Honourable the Chief Justice having found that the Plaintiffs/Respondents had contracted with the 1st Defendants to pay the said arrears of property tax was wrong in law in holding that the Plaintiffs/Respondents were subrogated to the rights of the Appellants or the Comptroller of Property Tax to the extent of the amount paid by the Plaintiffs/Respondents in any surplus arising from the proceeds of sale and held by the mortgagee bank in trust for the Appellants.

30

(c) The Honourable the Chief Justice was wrong in extending the equitable doctrine of subrogation beyond the established categories of suretyship, bills of exchange, insurance and administration of trusts and estates to a case where subrogation was excluded by the terms of the Condition 16(c) of the Tender Agreement of 20th March 1980.

(d) The Plaintiffs/Respondents in making payment of a total sum of \$521,242-53 to the Comptroller of Property Tax before completion of the sale had consciously and without compulsion made a voluntary payment to the Property Tax Department and is not entitled to claim recoupment of same from the Appellants who did not authorise the Plaintiffs/Respondents to pay same.

Dated this 29th day of July, 1980.

40

SOLICITORS for the APPELLANTS,
MESSRS. BOSWELL, HSEIH & LIM,
SINGAPORE.

In the Court of
Appeal

No. 14

Judgment of
Court of Appeal

2nd March 1981

NO. 14

JUDGMENT OF COURT OF APPEAL

IN THE COURT OF APPEAL OF THE REPUBLIC
OF SINGAPORE

CIVIL APPEAL NO. 52 of 1980

B E T W E E N :

KAOLIM PRIVATE LIMITED Appellants

And

UNITED OVERSEAS LAND
LIMITED

Respondents 10

(In the Matter of Originating Summons No. 153 of 1980)

In the Matter of the Conditions of Tender relating
to sale of the lands and premises comprised on
Lots 156-2, 156-3 and 156-16 of Town Subdivision
XIX by Far Eastern Bank Limited to United
Overseas Land Limited

And

In the Matter of the Land Title Act (Cap. 276) the
Conveyancing and Law of Property Act (Cap. 268)
and the Property Tax Act (Cap. 144)

20

B E T W E E N :

UNITED OVERSEAS LAND
LIMITED

Plaintiffs

And

1. FAR EASTERN BANK LIMITED
2. KAOLIM PRIVATE LIMITED

Defendants

CORAM: THE HONOURABLE MR. JUSTICE
KULASEKARAM
THE HONOURABLE MR. JUSTICE T. S.
SINNATHURAY
THE HONOURABLE MR. JUSTICE
D'COTTA

30

IN OPEN COURT
THE 15TH DAY OF JANUARY, 1981.

In the Court of
Appeal

No. 14

THIS APPEAL coming on for hearing this day in the presence of Mr. Robert Hsieh of Counsel for the Appellants and Mr. S. K. Chan of Counsel for the Respondents AND UPON READING the Record of Appeal AND UPON HEARING Counsel as aforesaid IT IS ORDERED that:-

Judgment of
Court of Appeal

2nd March 1981

(continued)

10

1. This Appeal be and is hereby dismissed and that the Order of Court dated the 28th day of April, 1980 of His Honourable The Chief Justice Mr. Justice Wee Chong Jin do stand.
2. The costs of this Appeal be taxed and paid by the Appellants to the Respondents.
3. The sum of \$500/- deposited with the Accountant-General by way of security for the Respondents' costs of the Appeal be paid out to the Respondents or their solicitors.

20

GIVEN under my hand and the Seal of the Court this 3rd day of March 1981.

Sd. Ng Peng Hong

Asst. REGISTRAR

NO. 15

No. 15

REASONS FOR JUDGMENT

Reasons for
Judgment

IN THE COURT OF APPEAL OF THE REPUBLIC OF
SINGAPORE

15th September
1981

CIVIL APPEAL No. 52 of 1980

B E T W E E N :

KAOLIM PRIVATE LIMITED

Appellants

30

And

UNITED OVERSEAS LAND LIMITED

Respondents

(In the Matter of Originating Summons No. 153 of 1980)

In the Court of
Appeal

No. 15

Reasons for
Judgment

15th September
1981

(continued)

In the Matter of the Conditions of Tender relating to
sale of the lands and premises comprised on Lots
156-2, 156-3 and 156-16 of Town Subdivision XIX by Far
Eastern Bank Limited to United Overseas Land Limited

And

In the Matter of the Land Title Act (Cap 276) the
Conveyancing and Law of Property Act (Cap 268) and
the Property Tax Act (Cap 144)

B E T W E E N :

UNITED OVERSEAS LAND LIMITED Plaintiffs 10

And

1. FAR EASTERN BANK LIMITED
2. KAOLIM PRIVATE LIMITED Defendants

Coram: Kulasekaram J.
 Sinnathuray J.
 D'Cotta J.

J U D G M E N T

This appeal relates to the sale of land and building
known as Kaolim Building at No. 20 Kramat Lane (the
property). The appellants were the owners and the
respondents are the purchasers of the property. 20

The owners bought the property in June 1976 for
\$4,850,000. To complete the purchase, they mortgaged
the property to Far Eastern Bank Limited (the Bank) for an
overdraft facility of \$3,000,000. In November 1976 a
second mortgage was made to the Bank to increase the
facility up to \$3,500,000.

On 10th of March 1980, the Bank, in exercise of its
statutory power of sale, offered the property for sale by
tender. On 20th of March, the purchasers' tender was
accepted by the Bank. The property has since been conveyed
to the purchasers. 30

On 2nd of April 1980, the Bank received a letter from
the Property Tax Division of the Inland Revenue dated 31st
of March, wherein the Comptroller of Property Tax (the
Comptroller) said that as the property had been sold, and
property tax is a first charge, "kindly let me have
immediately your cheque for \$521,242.53 in settlement of

the arrears of property tax " due for about three years. Copies of this letter were also sent to the solicitors for the owners, purchasers and the Bank.

In the Court of
Appeal

No. 15

10 On the same day, 2nd of April, the solicitors for the Bank wrote to the Comptroller with copies to the other solicitors that as the property was sold subject to the condition that the purchaser "shall be deemed to have purchased with full knowledge and notice of all . . . charges . . . ", the claim for property tax should be made to the purchasers.

Reasons for
Judgment
15th September
1981

(continued)

The purchasers joined issue with the Bank on the interpretation of the abovementioned condition in the Conditions of Sale in the tender document. They took out a vendor and purchaser summons in which the Bank were the first defendants and the owners the second defendants.

20 The learned Chief Justice who heard the summons granted a declaration in favour of the purchasers that upon payment of the arrears of property tax to the Comptroller at the date of completion in respect of the property, the purchasers are subrogated to the rights of the Comptroller or the owners to the extent of the amount paid in any surplus arising from the proceeds of sale held in trust for the owners.

30 On appeal against the said order, at the hearing before us, it was submitted for the owners that the true and proper construction of the condition is that it was the purchasers who have to pay and discharge the arrears of property tax before the completion of the sale. Another submission was that the learned Chief Justice was wrong in holding that the doctrine of subrogation applied to the facts in this case.

At the conclusion of the hearing, we dismissed the appeal with costs. We now give our reasons.

On the first submission the condition we have referred to is in clause 16(c) of the Conditions of Sale in the tender document which, it is accepted, forms the contract between the Bank and the purchasers. Clause 16(c) provides as follows:

"The property is sold subject to :-

(a) . . .

40

(b) . . .

In the Court of
Appeal

No. 15

Reasons for
Judgment

15th September
1981

(continued)

(c) all notices, charges, Orders of Court, charging orders, caveats and court or other claims affecting the property made or served whether before or after the date of Sale. The Purchaser shall be deemed to have purchased with full knowledge and notice of all such schemes or proposed schemes, layouts, notices, demands, charges, Orders of Court, charging orders caveats and court or other claims which shall be complied with and discharged by and at the expense of the Purchaser who shall not be entitled to make or raise any objection or requisition whatsoever in respect thereof. "

10

It is clear from the order of the learned Chief Justice that he did not construe clause 16(c). We venture to think the reason is that the appellants were not a party to the contract of sale between the Bank and the respondents. The appellants were strangers to the contract. The appellants therefore cannot rely on clause 16(c), or for that matter on any of the other provisions in the said contract (see *Scruttons Ltd v. Midland Silicones Ltd*. (1962) A. C. 446).

20

As regards clause 16(c), we are of the view that it is one of the general standard clauses found in a tender document when an owner offers his property for sale. The clause has no application to sale of property by a mortgagee.

Next, as regards subrogation, as was the view of Lord Edmund-Davies in *Orakpo v. Manson Investments* (1977) 3 W. L. R. page 229 at page 242, we too are of the view that there is no reason why in principle subrogation should be limited to the so far recognised categories of cases i. e. suretyship, bills of exchange, insurance, and administration of trusts and estates. In the same case Lord Diplock at page 234 said that subrogation "is a convenient way of describing a transfer of rights from one person to another, without assignment or assent of the person from whom the rights are transferred and which takes place by operation of law in a whole variety of widely different circumstances. " And Lord Salmon at page 240 said: "The test as to whether the courts will apply the doctrine of subrogation to the facts of any particular case is entirely empirical. It is, I think, impossible to formulate any narrower principle than that the doctrine will be applied only when the courts are satisfied that reason and justice demand that it should be. "

30

4

In this case, property tax of \$521, 242. 53 was due and owing on the property by the owners. Had the Bank under the mortgage paid the tax it could deduct the amount from the proceeds of sale. When the Comptroller came to know that the

10 property had been sold by the Bank, he properly looked to the Bank for payment. He could also look for payment from either the owners or purchasers of the property: see The Property Tax Act (Cap 144). The learned Chief Justice therefore directed the purchasers to pay the arrears of property tax so that the property was freed of the charge. He must have concluded that reason and justice demanded that the purchasers be subrogated either to the rights of the Comptroller or the owners who would be entitled to the surplus of the proceeds of sale of the property held in trust for them by the Bank. In practical terms, the purchasers having paid the Comptroller, they would deduct that amount in making payment of the purchase price to the Bank. We see no reason to interfere with the order of the learned Chief Justice.

In the Court of
Appeal

No. 15

Reasons for
Judgment

15th September
1981

(continued)

Certified True Copy

Signed

(T. Kulasekaram)
Judge

Registrar,
Supreme Court, Singapore.

20

16/9/81

(Signed)
(T. S. Sinnathuray)
Judge

(Signed)
(D. C. D'Cotta)
Judge

SINGAPORE, 15th September, 1981.

NO. 16

No. 16

30 ORDER OF COURT OF APPEAL OF THE REPUBLIC OF
SINGAPORE GRANTING LEAVE TO APPEAL TO THE
JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

Order of Court
of Appeal of the
Republic of
Singapore granting
Leave to Appeal
to the Judicial
Committee of the
Privy Council

IN THE COURT OF APPEAL OF THE REPUBLIC
OF SINGAPORE.

25th May 1981

CIVIL APPEAL NO. 52 of 1980

B E T W E E N :

KAOLIM PRIVATE LIMITED Appellants

And

UNITED OVERSEAS LAND LIMITED
Respondents

In the Court of
Appeal

No. 16

Order of Court
of Appeal of the
Republic of
Singapore grant-
ing Leave to
Appeal to the
Judicial
Committee of
the Privy
Council

25th May 1981

(continued)

(In the Matter of Originating Summons No. 153 of 1980)

In the Matter of the Conditions of Tender
relating to sale of the lands and premises
comprised on Lots 156-2, 156-3 and 156-16
of Town Subdivision XIX by Far Eastern Bank
Limited to United Overseas Land Limited

And

In the Matter of the Land Titles Act (Cap. 276)
the Conveyancing and Law of Property Act
(Cap. 268) and the Property Tax Act (Cap. 144)

10

B E T W E E N :

UNITED OVERSEAS LAND LIMITED

Plaintiffs

And

1. FAR EASTERN BANK LIMITED
2. KAOLIM PRIVATE LIMITED Defendants

ORDER OF COURT

CORAM : THE HONOURABLE THE CHIEF JUSTICE,
MR. JUSTICE WEE CHONG JIN;

THE HONOURABLE MR. JUSTICE F.A. CHUA; 20
and

THE HONOURABLE MR. JUSTICE
KULASEKARAM

IN OPEN COURT

UPON MOTION preferred unto the Court by
Counsel for the abovenamed Appellants coming on for
hearing this day in the presence of Counsel for the
abovenamed Appellants and for the abovenamed
Respondents And Upon Reading the Notice of Motion
herein dated the 14th day of April, 1981 and the
Affidavit of TJIO SIONG KANG filed herein on the 14th
day of April, 1981 THIS COURT DOTH GRANT LEAVE
under Section 3(1)(a)(i)(ii) and (iii) of the Judicial
Committee Act (Cap. 8) to appeal to the Judicial
Committee of Her Britannic Majestic's Privy Council
against the whole of the Judgment of the Court of Appeal
delivered herein at Singapore on the 15th day of January

30

1981.

Dated this 25th day of May 1981.

Sd.

Asst. REGISTRAR

In the Court of
Appeal

No. 16

Order of Court
of Appeal of the
Republic of
Singapore grant-
ing Leave to
Appeal to the
Judicial
Committee of
the Privy
Council

25th May 1981

(continued)

No. 34 of 1981

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF THE REPUBLIC
OF SINGAPORE IN PROCEEDINGS NO. 52 OF 1980

B E T W E E N :

KAOLIM PRIVATE LIMITED

Appellant
(Defendant)

- and -

UNITED OVERSEAS LAND LIMITED

Respondent
(Plaintiff)

RECORD OF PROCEEDINGS

MESSRS. FRESHFIELDS,
Grindall House,
25 Newgate Street,
London EC1A 7LH.

Solicitors for the
Appellant

MESSRS. COWARD CHANCE,
Royex House,
Aldermanbury Square,
London, EC2V 7LD.

Solicitors for the
Respondent