In the Privy Council

ON APPEAL

FROM THE COURT OF APPEAL OF HONG KONG

В	ETW	EEN				
TSE KWONG LAM			 	 	Appellant	
	AN	D				
WONG CHIT SEN			 	 	1st Respondent	
CHING WAI SHORK (or SHOOK)			 	 	2nd Respondent	
CHIT SEN COMPANY LIMITED			 	 	3rd Respondent	

RECORD OF PROCEEDINGS

VOLUME I

HASTINGS & CO.,
Solicitors for the Appellant
JOHNSON, STOKES & MASTER
Solicitors for the Respondents

In the Privy Council

ON APPEAL

FROM THE COURT OF APPEAL OF HONG KONG

TSE KWONG LAM			 	 	Appellant
	ANI	D			
WONG CHIT SEN			 	 	1st Respondent
CHING WAI SHORK (or SHOOK)			 	 	2nd Respondent
CHIT SEN COMPANY LIMITED			 	 	3rd Respondent

RECORD OF PROCEEDINGS

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Solicitors for the Respondents

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Action No.2102 of 1966

In the Supreme Court of Hong Kong Original Jurisdiction

IN THE SUPREME COURT OF HONG KONG

ORIGINAL JURISDICTION

No.1 Writ and Statement of Claim

BETWEEN

WONG CHIT SEN

Plaintiff 31/10/66

and

TSE KWONG LAM

Defendant

ELIZABETH II, BY THE GRACE OF GOD OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND OF HER OTHER REALMS AND TERRITORIES, QUEEN, HEAD OF THE COMMONWEALTH, DEFENDER OF THE FAITH.

To Tse Kwong Lam of Room 903 Central Building, Victoria Hong Kong, Merchant.

We command you that within eight days after the service of this writ on you, exclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of Wong Chit Sen of No.68A, Macdonnell Road, Kam Fai Mansion, Third Floor, Flat A, Victoria, Hong Kong, Merchant. and take notice that in default of your so doing, the plaintiff may proceed therein, and judgment may be given in your absence.

WITNESS, THE HONOURABLE SIR MICHAEL HOGAN, C.M.G.

Chief Justice of Our said Court, the 31st day of October, 1966.

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C.M. STEVENS (L.S.)

Registrar.

In the Supreme Court of Hong Kong Original

Jurisdiction

No.1 Writ and Statement of Claim 31/10/66 (Cont'd)

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STATEMENT OF CLAIM

The Plaintiff Claims :-

- Under and by virtue of a Building Mortgage and three Further Charges dated respectively the 30th November 1963, the 17th July 1964, the 23rd July 1965 and the 10th November 1965. Plaintiff lent to the Defendant divers sums totalling \$2,243,987.00 on the security Nos.52 and 54 Cheung Sha Wan Road Kowloon and the Defendant covenanted with the Plaintiff in the said Building Mortgage and the said Further Charges to pay to the Plaintiff the said sums lent and interest thereon in accordance with the provisions contained in the said Building Mortgage and the said Further Charges.
- Default was made by the Defendant payment of the principal and/or the interest payable under the said Building Mortgage and and in pursuance of Further Charges provisions in that behalf contained in the said Building Mortgage the Plaintiff sold by Public Auctions 6 shops, 12 offices and 36 flats on the 24th June 1966.

PARTICULARS OF PORTIONS OF PROPERTY SOLD BY AUCTION

ALL THOSE 54 equal undivided 90th parts or shares of and in ALL THOSE pieces or parcels of ground situate lying and being at Kowloon in the Colony of Hong Kong and registered in the Land Office as Sections K and L of New Kowloon Inland and in the messuages Lot No.1403 and of erections and buildings thereon known as Nos.52 and 54, Cheung Sha Wan Road, together with the sole and exclusive right and privilege to hold use occupy and enjoy Shops 1 - 6 on the Ground Floor, Offices 1 - 6 on the 1st Floor, Offices 1 - 6 on the 2nd Floor, Flats 1 - 6 on the 3rd Floor, Flats 4 - 6 on the 7th Floor, Flats 1, 4 and 5 on the 8th Floor, Flats 3 - 6 on the 9th Floor, Flats 1, 3, 4, 5 and 6 on the 10th Floor, Flats 3 and 6 on the 11th Floor, Flats 3 - 6 on the 12th Floor, Flats 3, 4 and 6 on the 13th Floor and Flats 1 - 6 on the 14th Floor (totalling 6 shops, 12 offices and 36 flats) and the Roof of the said building.

Divers moneys were repaid by the Defendant In the Supreme from time to time from the Proceeds of Sale of other Flats in the said premises during the period between the 20th October 1964 and the totalling \$817,224.00 full 1966 particulars of which have been supplied to the Defendant.

Hong Kong Original Jurisdiction

No.1 Writ and Statement of Claim 31/10/66

(Cont'd)

PARTICULARS OF AMOUNTS

Repaid up to the 26th July 1966

		Repard up to	the zoth sary	1700
10	30th	October 1964 To	amount repaid this day	\$ 29,000.00
	30th	November 1964	ditto	\$170,000.00
	30th	December 1964	ditto	\$229,000.00
	30th	January 1965	ditto	\$132,000.00
	30th	May 1965	ditto	\$ 35,000.00
	30th	June 1965	ditto	\$ 15,000.00
	30th	October 1965	ditto	\$ 50,000.00
	30th	December 1965	ditto	\$ 5,004.00
	30th	January 1966	ditto	\$ 13,500.00
20	28th	February 1966	ditto	\$ 38,500.00
	30th	March 1966	ditto	\$ 21,000.00
	30th	April 1966	ditto	\$ 31,000.00
	30th	June 1966	ditto	\$ 44,500.00
	26th	July 1966	ditto	\$ 3,720.00
				\$817,224.00

^{4.} A Further sum of \$1,200,000.00 was received by the Plaintiff in respect of the Principal and interest secured by the said building mortgage and further charges in the form of the proceeds from the said sale by Public Auction held on the

No.1 Writ and Statement of Claim 31/10/66 (Cont'd)

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24th June, 1966 of the said shops offices and flats as particularised in paragraph 2 hereof. The said sum was received on the assignment of the said shops offices and flats on the 26th July 1966.

5. The costs and expenses of the aforesaid auction sale are pursuant to the terms of the said building mortgage payable by the Defendant and until paid form part of the Principal thereby secured.

The said costs and expenses amounted to \$17,217.00.

PARTICULARS

Professional Service of Johnson, Stokes & Master

\$ 750.00

Stamp duty on Memorandum of Agreement \$ 3.00

Advertising fee to South
20 China Morning Post 399.00

Advertising fee to Wah Kiu Yat Po 300.00

Advertising fee to Sing Tao
Jih Pao \$ 350.00

Auctioneer's fee \$15,015.00

Printers' charges \$ 400.00 \$16,467.00 \$17,217.00

- 6. The Defendant failed to pay the interest due to the Plaintiff pursuant to the said building mortgage and the said further charges in respect of period the 30th October 1965 to 29th June 1966 and there was due to the Plaintiff on the 29th June 1966 the sum of \$148,875.70 in respect of such interest full particulars whereof have been supplied to the Defendant.
- 7. Since the 26th July 1966 completion of the sale of the only flat remaining mortgaged to the

Plaintiff following the said auction sale namely In the Supreme Flat "2" on the 9th floor of Nos.54 and 52, Court of Cheung Sha Wan Road Kowloon has taken place and a further sum of \$10,000.00 has been received by the Plaintiff in respect thereof. No further security is held by the Plaintiff.

No.1

8. There remains due and payable by the Writ and Defendant to the Plaintiff on the date hereof Statement of Claim 31/10/66

PARTICULARS OF THE AMOUNT REMAINING DUE AND PAYABLE

Principle as per paragraph 1 \$2,243,987.00

Outstanding interest as per paragraph 6 \$ 148,875.70

LESS

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Proceeds of sale of Flats received by the Plaintiff as per paragraph 3 \$ 817,224.00

Proceeds of Property sold by Public Auction as per paragraph 4 \$1,200,000.00

Proceeds of Flat "2" on the 9th Floor of Nos.54 and 52 Cheung Sha Wan Road, Kowloon as per paragraph 7 \$ 10,000.00

\$2,027,224.00 \$ 382,855.70

And the Plaintiff claims against the Defendant, (i) the said sum of \$382,855.70 and (ii) Costs.

JOHNSON, STOKES & MASTER Solicitors for the Plaintiff.

IN THE SUPREME COURT OF HONG KONG

ORIGINAL JURISDICTION

ACTION NO.2102 OF 1966

No.2 Defence & Counterclaim 15/12/66

BETWEEN

WONG CHIT SEN

Plaintiff

and

TSE KWONG LAM

Defendant

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DEFENCE AND COUNTERCLAIM

- 1. Save and except that the Defendant denies that he is indebted to the Plaintiff for the sum of \$2,243,987.00 paragraph 1 of the Statement of Claim is admitted. The Defendant says that only the Mortgage Deed dated the 30th day of November, 1963 contains a receipt clause for the sum of \$730,000.00 being the consideration money and the further sum or sums are to be advanced on payment for the construction costs in respect of the building mortgaged but the other three further charges contain no such receipt clause therein.
- 2. With regard to paragraph 2 of the Statement of Claim the Defendant says that he was unable to redeem the said Mortgage and Charges due to the fact that the Plaintiff rendered no account despite the Defendant's repeated demands before the said auction sale of the property and says that on or about 12th January, 1966 when occupation permit in respect of the said building was obtained the Plaintiff promised to pay \$150,000.00 to the Defendant and to undertake to pay off all debts incurred in the construction of the said building and the other expenses thereof in consideration of extinguishing the right of redemption which the Defendant accepted and acted upon. In the premises the Plaintiff is estopped from denying

the same and exercising the power of sale.

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In the Supreme Court of Hong Kong Original Jurisdiction

The Defendant further says that at the auction sale of the property on 24th June, 1966 the property mentioned in paragraph 2 of the ______Statement of Claim was purchased by Ching Wai No.2 Shork () wife of the Plaintiff acting Defence § as agent for him or for Chit Sen Co. Ltd., a Counterclaim family company, of which both the Plaintiff and 15/12/66 the said Ching Wai Shork are Directors and not (Cont'd) merely shareholders. The Defendant contends that such sale is not a true sale.

Paragraph 3 of the Statement of Claim is not admitted but the Defendant says that certain sums as set out in the unaudited accounts subsequently rendered by the Plaintiff on or about 24th October, 1966 should not be deducted from the proceeds of sale of other flats in the said building because they were not related to the Building Mortgage and Further Charges; and certain sums of balance of proceeds of sale of the flats therein between June and October, 1966 were omitted from the said accounts and from paragraph 3 of the Statement of Claim particulars of amounts thereof.

> Particulars of Sums unrelated to the Building Mortgages :

13/8/64	By China Engineers Ltd. amount for lift instal- lation Invoice No.3 of 1963	\$ 9,800.00
25/6/65	China Light and Power Co. Ltd. Deposit for installation of electric supply to building. Re: Kwong Hing Bldg.	2,500.00
20/8/65	To Hong Kong Government Deposit for water Metres Re: Kwong Hing Building	8,430.00
10/12/65	China Engineers Ltd. Part Payment of amount due in respect of lifts installations.	20,000.00
		\$40,730.00

Particulars of Sums omitted

6-10/66 Balance in respect of proceeds of sale of flats. \$41,500.00

No.2
Defence &
Counterclaim
15/12/66
(Cont'd)

- 5. The Defendant does not admit paragraphs 4 and 5 of the Statement of Claim and alleges that the sale of the mortgaged property even though by auction is not a true sale as stated in paragraphs 2 and 3 herein aforesaid.
- 6. The Defendant does not admit the sum of \$148,875.70 being interest due as alleged in paragraph 6 of the Statement of Claim until a correct and audited account is settled. The Defendant further says that the interest account rendered by the Plaintiff on or about 24th October, 1966 was not correctly calculated in that the sum of \$268,927.00 should not be transferred to principal on which compound interest was charged.
- 7. Until the determination of the Defendant's Counterclaim hereinafter no admission is made in respect of paragraph 8 of the Statement of Claim. In particular, apart from the accounts abovementioned, certain sums not related to the mortgage or charges or overcharged or not supported by receipts were wrongly included in the unaudited principal account rendered by the Plaintiff on or about 24th October, 1966.

<u>Particulars of Sums not related</u> to the Mortgages :

30 12/12/63 Tse Kwong Lam balance of mortgage money (not received)

\$ 21,018.00

13/12/63 Tse Kwong Lam further amount on building mortgage of No.52 & 54 of Cheung Sha Wan Road, Kowloon. (a personal loan)

80,000.00

17/6/65 Yin Cheong Lung Lan Const.
Co. further payment of
construction fees.
(overcharged)

5,000.00

undated	Outstanding interest transferred (not related to mortgages)	268,927.00	In the Supreme Court of Hong Kong Original
11	Paid for lift charges (not related to mortgages)	10,000.00	Jurisdiction
11	Lift Charges (not related to mortgages)	48,500.00	No.2 Defence & Counterclaim
11	Paid in cash (not received)	2,930.00 \$436,375.00	15/12/66 (Cont'd)
<u>Particu</u>	lars of Sums not Supported	•	
Undated	Paid for Pathway charges	3,060.00	
••	Construction charges	59,850.00	
	COUNTERCLAIM	\$62,910.00	

8. By way of counterclaim the Defendant repeated the allegations contained in paragraphs 1,2,3,4,5,6 & 7 of the Defence and says that by reason of the Plaintiff's breach of promise he incurred great trouble and by reason of the fact that the sale by auction of the said property is not a true sale and the price of \$1,200,000.00 was so low as compared with the prices of the sale of the other flats in the same building which are evidence of fraud and further by reason of the fact that the accounts rendered do not represent the true dealings between the Plaintiff and the Defendant, the Defendant is entitled to set aside the said sale and to open the accounts concerned.

And the Defendant conterclaims:

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- (1) To have the sale by auction of the 6 shops, 12 offices and 36 flats of the said building at Nos.52 and 54, Cheung Sha Wan Road, Kowloon set aside.
- (2) To have the accounts rendered by the Plaintiff opened with liberty to surcharge and falsify.

- (3) Damages or further or other relief.
- (4) Costs.

No.2 Defence & Counterclaim 15/12/66 (Cont'd)

Delivered this 15th day of December, 1966.

Signed:

H. C. MIU

Counsel for the Defendant

IN THE SUPREME COURT OF HONG KONG ORIGINAL JURISDICTION

In the Supreme Court of Hong Kong Original Jurisdiction

BETWEEN:

Judgment of Mr. Justice Plaintiff Morley-John in Chambers 16/11/68

No.3

WONG CHIT SEN

and

Defendant

TSE KWONG LAM

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BEFORE THE HONOURABLE MR. JUSTICE MORLEY-JOHN IN CHAMBERS

JUDGMENT

The 16th day of November, 1968

The questions of account in this action having been referred to Mr. Ronald F. S. Li, Certified Accountant and he having found that there is due from the Defendant to the Plaintiff the sum of \$316,383.39 together with interest at the rate of 1.4% per calendar month on \$238,933.39 from 30th June, 1966 to 16th August, 1966 and on \$278,783.39 from 16th August, 1966 to 15th September, 1966 and on \$326,383.39 from 16th September 1966 to 12th October, 1966 and \$316,383.39 from 13th October, 1966 up to the date of repayment and directed that Plaintiff do pay the costs of this arbitration in the sum of \$7,000.00.

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It is this day adjudged that the Plaintiff recover against the said Defendant the sum of \$316,383.39 together with interest at the rate of 1.4% per calendar month on \$238,933.39 from 30th June, 1966 to 16th August, 1966 and on \$278,783.39 from 17th August, 1966 to 15th September, 1966 and on \$326,383.39 from 16th September 1966 to 12th October, 1966 and on \$316.383.39 from 13th October, 1966 up to the date of repayment and costs to be taxed.

No.3 Judgment of Mr. Justice Morley-John in Chambers 16/11/68 (Continued) And it is further ordered that there be a stay of execution until further order on condition that the Defendant prosecute his counter-claim with due diligence and that there be liberty to apply.

Signed (Illigible)

Assistant Registrar.

Amended as in Red this 21st day of July 1970 pursuant to Order of Hon. Mr. Justice Huggins dated the 4th day of April 19 .

Acting Registrar.

Amended as in green dated the 17th day of September 1979 pursuant to the Order of Mr. Registrar Barrington-Jones dated the 1st day of August 1979.

Sd. N. J. Barnett Acting Registrar.

In the Supreme Court of Hong Kong Original Jurisdiction

No.4 Re-amended Statement of Defence to Counterclaim 13/11/78

1966, No.2102

IN THE HIGH COURT OF JUSTICE IN THE SUPREME COURT OF HONG KONG

ORIGINAL JURISDICTION

BETWEEN WONG CHIT SEN

Plaintiff

and

TSE KWONG LAM

Defendant

(By Original Action)

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and

BETWEEN

TSE KWONG LAM

Plaintiff

and

WONG CHIT SEN CHING WAI SHORK (or SHOOK) CHIT SEN COMPANY LIMITED 1st Defendant 2nd Defendant 3rd Defendant

(By Counterclaim)

RE-AMENDED STATEMENT OF DEFENCE TO COUNTERCLAIM

1. Paragraphs 1, 2, 3 and 4 of the

No.4
Re-amended
Statement of
Defence to
Counterclaim 10
13/11/78
(Continued)

Re-amended Counterclaim are admitted.

- 2. At all material times prior to the 24th June 1966 the Plaintiff was the registered owner of the property registered in the Land Office as Section K.I.L. of N.K.I. Lot No.1403 known as Nos.52 and 54 Cheung Sha Wan Road. By a Building Mortgage and three Further Charges dated respectively 30th November 1963, 17th July 1964, 23rd July 1965 and 10th November 1965 the Plaintiff mortgaged and charged to the 1st Defendant the said property as security for money advanced by the 1st Defendant to the Plaintiff.
- 3. The total sum advanced by the 1st Defendant to the Plaintiff as aforesaid was \$2,117,914.10 and total interest accrued on the said mortgage loans calculated up to 29th June 1966 amounted to \$428,797.59.
- 4. By reason of the Plaintiff's default in repayment of the sums advanced by the 1st Defendant to the Plaintiff, the 1st Defendant exercised his powers of sale under the said Mortgage and Further Charges and sold by the public auction six shops, twelve offices and thirty six flats in the said property on the 24th June 1966 and realised the sum of \$1,200,000.00.
- 5. Prior to the sale aforesaid the said property was advertised for sale by the 1st Defendant by advertisement in the South China Morning Post, Wah Kiu Yat Po and Sing Tao Jih Pao.
 - 6. On the 16th November 1968 the 1st Defendant obtained Judgment against the Plaintiff in the sum of \$316,383.39 being the principal and interest outstanding under the said Mortgage and Further Charges less the said proceeds of sale and costs of the said auction. The said Judgment has remained unsatisfied.
- 7. Save as in hereinbefore expressly admitted paragraphs 6 and 7 of the Re-amended Counterclaim are denied.

8. (a) Paragraph 8 of the Re-amended Counterclaim is denied. According to the Report of the Referee dated 26th February 1968 the amount owing to the 1st Defendant at the end of May 1966 was \$1,684,032.25.

In the Supreme Court of Hong Kong Original Jurisdiction

No.4

- (b) The Defendants to the Counterclaim Re-amended further say that they had no knowledge Statement of of the arrangement, if any, between the Defence to Plaintiff to the Counterclaim and Wing Counterclaim On Life Assurance Co. Ltd.

 13/11/78
 (Continued)
- 8A. Each and every allegation in paragraph 8(a) of the Re-amended Counterclaim is denied.

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- 9. The said property was purchased by the 3rd Defendant at the said public auction held on 24th June 1966.
- 10. Paragraph 9 of the Re-amended Counterclaim is admitted and the Defendants will refer to the pleadings filed in this Action with regard to the matter in dispute.
- 11. Paragraph 10 of the Re-amended Counterclaim is admitted.
- 12. The Defendants further say that on the averments in the Re-amended Counterclaim no cause of Action based on fraud or conspiracy has been pleaded and that in consequence thereof the said allegation of fraud and conspiracy ought to be struck out.

Dated the day of November, 1970.

Dated the 13th day of November, 1978.

Ronny F. H. Wong

Counsel for the Defendants

No.5 Re-amended Counterclaim 18/9/80 Amended as in red this 11th day of February 1969 pursuant to the Order of Hon. Mr. Justice Huggins dated the 1st February 1969.

Registrar.

Amended as Green this 9th day of April 1970 pursuant to the Order of the Hon. Mr. Justice Huggins dated the 4th day of April, 1970.

Registrar.

Amended as in purple this 18th day of September 1980 pursuant to the Order made by the Hon. Mr. Justice Zimmern on the 15th November 1978 and to the Order made by Mr. Ryan on the 7th day of August 1980.

1966, No.2102

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

BETWEEN

WONG CHIT SEN

Plaintiff

and

TSE KWONG LAM

Defendant

(by Original Action)

10

and

BETWEEN

TSE KWONG LAM

Plaintiff

and

WONG CHIT SEN
CHING WAI SHORK (or SHOOK)
CHIT SEN COMPANY LIMITED

1st Defendant 2nd Defendant 3rd Defendant

(By Counterclaim)

RE-AMENDED RE-AMENDED COUNTERCLAIM

1. The Plaintiff in this Counterclaim is a

merchant and resides at 23, Ferry Street, 3rd Floor, Kowloon in the Colony of Hong Kong.

In the Supreme
Court of
Hong Kong
Original
Jurisdiction

The 1st Defendant in this Counterclaim is the Plaintiff in the original action. He is a merchant and resides at No.68A, Macdonnell Road, No.5 3rd floor, Flat A, Victoria in the Colony of Re-amended Hong Kong.

No.5
Re-amended
Counterclaim
18/9/80
(Continued)

- 3. The 2nd Defendant is the wife of the 1st (Continued) Defendant and resides at the same address.
- 4. The 3rd Defendant is a limited company incorporated in Hong Kong with its registered office at No.220 Prince Edward Road, 1st floor, Block A, Kowloon in the Colony of Hong Kong. The 3rd Defendant is a private limited company and the shareholders are the 1st and 2nd Defendants and their children. The directors are the 1st and 2nd Defendants and one of their sons.
- 5. The Plaintiff was the registered owner of the property registered in the Land Office as Section K and L of New Kowloon Inland Lot No.1403 and known as No.52 and 54 Cheung Sha Wan Road. By a building mortgage and 3 further charges dated respectively 30th November 1963, 17th July 1964, 23rd July 1965 and 10th November 1965 the Plaintiff mortgaged and charged to the 1st Defendant the said property as security for money which the 1st Defendant was to lend to the Plaintiff.
- 30 6. The 1st Defendant lent money to the Plaintiff upon the abovesaid security but rendered no proper accounts to the Plaintiff and the amount of the Plaintiff's indebtedness was in dispute.
 - 7. On 24th June 1966, the 1st Defendant purported to exercise his power of sale under the abovesaid mortgage and further charges and sold a total of 6 shops, 12 offices and 36 flats in the said property, particulars of which are given in paragraph 2 of the Statement of Claim. These units were sold for a total price of \$1,200,000.00. At the sale the 2nd Defendant purchased these units but the assignment was

No.5 Re-amended Counterclaim 18/9/80 10 (Continued)

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taken in the name of the 3rd Defendant on 23rd July 1966. The Plaintiff will say that this was not a true sale and that the 2nd and 3rd Defendants were acting as the Plaintiff's agent in this sale and that in truth the 1st Defendant was selling to himself. Further or in the alternative, the price of \$1,200,000.00 was a gross undervalue and the Plaintiff will say that 1st, 2nd and 3rd Defendants the acted collusion and in bad faith and in fraud of the Plaintiff in order to deprive him of the true value of the property. The Plaintiff will also rely upon the matters pleaded in paragraph 8 below as evidence of bad faith and fraud. The Plaintiff is entitled to have the said sale and assignment set aside alternatively to receive credit for the true value of the property and to payment of the balance found due upon an account taking for that purpose.

about April 1966 the 1st Defendant pressed the Plaintiff to repay the loans and the Plaintiff agreed to do so upon raising the necessary money on a mortgage of the property after its reconveyance by the 1st Defendant. the Plaintiff entered Thereafter into arrangement with the Wing On Life Assurance Company Limited on 22 Des Voeux Road Central, Hong Kong, for a loan of \$1,500,000.00 upon the security of the said property. This arrangment is evidenced by a letter in Chinese dated 26th April 1966 from the said company to subject to the Plaintiff Plaintiff and was giving his consent and supplying the title deeds and plans to the company's solicitors within seven days. In the Plaintiff's estimate the sum of \$1,500,000.00 was sufficient to pay off the 1st Defendant but when the Plaintiff applied to of the 1st Defendant for the amount his indebtedness, he was told that the figure was \$1.648.941.30. The 1st Defendant refused concede any lower figure. As a result the Plaintiff's arrangement with the Wing On Life Co. Ltd. fell through, Assurance subsequently thereto the 1st Defendant carried out the sale of this property. According to the report of the auditor dated 26th February 1968 pleaded hereinafter, the amount owing to the 1st Defendant at the end of April May 1965 was

\$1,442,914.81\$1,459,990.94. Wherefor the Plaintiff was wrongfully deprived his opportunity to redeem the said property.

In the Supreme Court of Hong Kong Original Jurisdiction

8(a) The 1st Defendant was in breach of contract by his refusal to permit the Plaintiff to redeem No.5 the abovesaid mortgage and further charges Plaintiff's Counterclaim correct amount of the indebtedness as stated in paragraph 8 above. 1st Defendant's breach of contract Plaintiff lost his opportunity to redeem the said property and the Plaintiff has suffered Had the property been redeemed at the damage. price, the Plaintiff's obligations to correct the 1st Defendant would have ceased upon such redemption. and the Plaintiff would have to the lst incurred no further liabilities Defendant. In addition the Plaintiff would have retained his ownership of the property and there would have been no sale by the 1st Defendant. The Plaintiff has accordingly lost his property, the true value of which at material times was far in excesd of the sum of \$1,200,000.00 realized by the 1st Defendant upon the purported sale on 24th June 1966. The true value was about \$2,494,780.00 at that time.

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By 18/9/80 the (Continued)

- 9. Subsequent to the sale on 24th June, 1966, the Defendant alleged that there was still owing to him the sum of \$382,855.70. The Plaintiff disputed this figure.
- 10. By an order in this action dated 3rd March 1967 it was ordered that Mr. Ronald F. S. Li be 30 appointed as arbitrator to consider what amount, if any, was still due and owing by the Plaintiff to the 1st Defendant. The said auditor made his report on 26th February 1968 and found that there was owing to the 1st Defendant the sum of \$316,383.39 on 12th October 1966 with interest. Pursuant to this report, judgment was entered against the Plaintiff on 16th November 1968 for the said sum of money with interest, but it was 40 ordered that there be a stay of execution until further order on condition that the Plaintiff prosecute his Countercliam with due diligence.
 - The Plaintiff counterclaims :-11.

No.5 Re-amended Counterclaim 18/9/80 (Continued)

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- (1) An order to have the said sale and assignment set aside and for an account of the rents and profits which the 1st, 2nd and 3rd Defendants have derived from the property in question, and payment to the Plaintiff of the amount found due.
- (2) Alternatively an account on the basis of what was the true value of the property at the material time and payment over to the Plaintiff of the amount found due together with interest at such rate as may be fixed by the Court.
- (3) Damages for fraud and conspiracy.
- (4) Costs.
- (5) Further and other relief.
- 20 (6) A declaration that the Plaintiff is not liable to pay to the 1st Defendant any part of the 1st Defendant's claim arising after the end of April 1966.
 - (7) Damages for breach of contract under paragraph 8(a) in the sum of \$1,294,780.00 being the difference between the true value of the property at the material time and the price realized upon the purported sale, as well as consequential damages.

Dated the 9th day of April, 1970.

(sd.) John J. Swaine Counsel for the Plaintiff.

Dated the 18th day of September, 1980.

(Signed) H. H. Lau & Co. Solicitors for the Plaintiff.

IN THE SUPREME COURT OF HONG KONG HIGH COURT

In the Supreme Court of Hong Kong High Court

MISCELLANEOUS PROCEEDINGS NO.2102 OF 1976

BETWEEN

TSE Kwong Lam

Plaintiff

Plaintiff's Evidence

and

WONG Chit-sen CHING Wai Shork (or Shook)

1st Defendant

2nd Defendant

3rd Defendant

No.6 P.W.1 TSE Kwong-lam Examination

CHIT Sen Co. Ltd. (Counterclaim)

: 21st November, 1978 at 3.42 p.m.

Coram : Zimmern, J.

Present: Mr. B. Bernacchi, Q.C. and Mr. Patrick Woo (H.H. Lau & Co.) for Plaintiff

Mr. M. Jackson-Lipkin, Q.C. and Mr. Ronnie Wong (Johnson, Stokes & Master)

for Defendants

Transcript of the shorthand notes taken by 20 the Court Reporters of part of the evidence in the above Proceedings.

P.W.1-TSE Kwong-lam (Plaintiff) Affirmed in Punti.

XN. BY MR. BERNACCHI:

- Mr. TSE, you are now residing, I think, at Q. No.691, 14th Floor, Wing Wo Mansion, Nathan Road, Mongkok, Kowloon?
- Yes. Α.
- Now you have been operating the Kwong Lam Q. Investment Company since June 1961 and this company solely deals with the sale and purchase of (landed?) property?
- Yes. Α.
- I now want to come down to the premises in Q. question in this case. Originally, I think it was known as 52, Cheung Sha Wan Road?
- Yes.

Α.

- 29 -

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In the Supreme		
Court of	Q.	And it was - the building - it was a
Hong Kong	•	pre-war building?
High	Α.	Yes.
Court	Q.	And I think you bought that on the 20th
	~ ~	February 19 - I'm sorry - the transaction
		of buying took place between the 20th
Plaintiff's		February 1962 and the 20th September 1963?
Evidence	Α.	Correct.
	Q.	I think that you also bought No.54,
No. 6 10	٧.	Cheung Sha Wan Road on the 22nd of April,
No.6		1963?
P.W.1	Α.	Correct.
TSE Kwong-lam	Q.	Now I think after you had bought the
Examination	٧.	
(Continued)		premises, you had plans to re-develop them into a 15-storey modern mansion?
	٨	Correct.
	Α.	They were old premises you say. Were they
	Q.	
	٨	tenanted with tenants?
	Α.	Yes.
20	Q.	Well now, I think you employed Mr. H.S.
	A	Tam to - as an architect?
	Α.	Yes.
	Q.	And you instructed Messrs. Brutton & Co.,
		Solicitors, to apply for an Exemption
		Order?
	Α.	Yes.
	Q.	I think that the Exemption Orders were
		obtained by Mr. Leslie Wright on the
		instructions of Brutton & Co.?
30	Α.	Yes.
	Q.	Now this whole case started because you
		had to mortgage the property?
	Α.	Yes.
	Q.	Well now, tell us about this mortgage.
	-	How was this arranged?
	Α.	Through the introduction of a friend, I
		came to know Mr. WONG Chit-sen.
	Q.	Yes?
	À.	Mr. WONG Chit-sen gave me a visiting card
40	. = *	on which was printed WONG Ching-ping,
40		W-O-N-G C-H-I-N-G P-I-N-G.
	Q.	Now tell me - I hand up a visiting card -
	₹*	is that the visiting card?
	Α.	Yes.
	Q.	The writing in Chinese on it - whose
	٧.	writing, or do you know whose writing it
		is?
	Α.	Written by Mr. WONG Chit-sen.
	Q.	That or the photostat copy of that is at
Exhibit E90	٧.	That of the photostat copy of that is at

Exh.E90

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COURT: Right. Exhibit E90.

In the Supreme Court of Hong Kong High Court

MR. JACKSON-LIPKIN: My Lord, may I take this opportunity to give you notice. I haven't had time yet but I will be challenging this translation. Having only just seen it, I couldn't tell you before.

Plaintiff's Evidence

COURT: There are some remarkable people in this world. The photostat of the card is printed upside down to the translation.

No.6 P.W.1 TSE Kwong-lam Examination (Continued)

- Q. Yes, go on. You are designated for the purpose of this trial as the claimant and the persons that you are sueing in this aspect of the trial are designated the 1st, 2nd, and 3rd Respondents. The 1st Respondent is Mr. WONG, the 2nd Respondent is Mrs. WONG and the 3rd Respondent is the Limited. Now you have just said that you were introduced to the 1st Respondent by a friend and he gave he and the 1st Respondent gave you a card. What happened then?
- A. It was suggested a building mortgage could be obtained from him by giving the flat the house No.22 and 24 Cheung Sha Wan Road as a security for one and a half million dollars.

COURT: One moment. What ---

INTERPRETER: 22 and 24 Cheung Sha Wan Road for one and a half million.

Q. The land on which these houses stood?
A. That's the house number.

COURT : I thought we were dealing with 52 and 54.

MR. BERNACCHI: Yes, that's right.

COURT: The witness said 22 and 24.

INTERPRETER: 52 and 54.

Q. Now when about was this conversation with the lst (Respondent?)?

In the Supreme Court of It was sometime in November 1963. Α. Hong Kong Q. And eventually а mortgage was High entered into on the 30th of November. Court Α. Q. I'm not going to discuss the actual terms of the mortgage. Plaintiff's But in the conversation that you had with Evidence Mr. WONG leading up to the mortgage, what did Mr. WONG tell you about the proposed terms? 10 No.6 Α. Firstly, for the total mortgage of one and P.W.1 million, I obtained 730,000.00 half TSE Kwong-lam first. The second payment would Examination 770,000.00 dollars. (Continued) Q. Did he say what the - the payment at all in one go or by installments? Α. The first payment of \$730,000.00 was in one go. Q. Yes? 20 Of the \$770,000.00, the second payment, Α. \$150,000.00 was to pay compensation for the tenants. Q. Thank you. Now was that before or after Mr. Wright obtained the Exemption Order for you? Α. The compensation was paid after the ---Q. No, no, no. I'm not talking about when it was paid. I'm talking about in November 1963, when you had a conversation about a proposed mortgage and part of the money -30 \$150,000.00 was to be paid as compensation for the old tenants had Mr. Leslie Wright got you the Exemption Order yet or not? Α. After Mr. Wright had obtained the Exemption Order. I see. Q. So you knew that the compensation would be \$150,000.00. Well, it should be a total of \$230,000.00. Α. The other \$80,000.00 was to be paid out 40 of the \$730,000.00 loan. Q. You mean to say that the compensation was 2 sums - one sum of \$150,000.00 and the other sum of \$80,000.00. Did he say about interest? Α. 1.3% for the \$730,000.00 loan and 1.2% for the second loan - \$770,000.00. Q. Which was 1.2 and which was 1.3 please?

Α.

\$730,000.00 - 1.2% and \$770,000.00 - 1.3%.

Q. And I don't think you said about the installments. Did you and he discuss the installments of the \$770,000.00?

A. By 10 installments.

Q. When were these installments to be paid?

A. Well, it's on the mortgage - the document - I have to check it.

Q. Well, look, I'm asking you not about the mortgage document - the mortgage document is a matter that is for this court to interpret. I am merely asking you about what was discussed between WONG and you. Look, I'm not asking you anything you can't remember and please, if you can't remember, say you can't remember.

A. I don't remember. It's a total of 10 installments.

Q. And installments for payment by WONG to you?

20 A. Ýes.

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- Q. Now again, I'm not dealing with the mortgage deed. Please put your mortgage deed out of your mind. I'm dealing with the conversation that took part between you and WONG in November before the mortgage deed was signed. Was any period of the loan mentioned?
- A. Yes.
- Q. How long was the loan?
- 30 A. One and a half years.
 - Q. Did you ask for one and a half years or did Mr. WONG say "I will give you one and a half years"?
 - A. It was a mutual agreement.
 - Q. All right. Was any method of re-payment discussed?
 - A. Each re-payment should not be less than \$100,000.00.
 - Q. Did he say that or what?
- 40 A. Mr. WONG.
 - Q. Now the solicitors that drew up the mortgage deed were Johnson, Stokes and Master. Did Mr. WONG nominate them or did you nominate them?
 - A. It was appointed by Mr. WONG.
 - Q. Did he say anything about the charges and costs and commissions in connection with the mortgage who was to pay?

A. I paid.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6 P.W.1 TSE Kwong-lam Examination (Continued)

In the Supreme Court of I know. Did he say --- I mean, did you Q. Hong Kong just pay or did you in this conversation -High did he mention this, that you were to pay? Court Α. He wanted me to pay. Now the 2nd Respondent is the wife, Mr. Q. WONG's wife? Plaintiff's Yes. Α. Evidence Now did her name get mentioned in Q. conversation? Yes. 10 Α. No. 6 Who mentioned it and what in Q. P.W.1 connection? TSE Kwong-lam Mr. WONG did. Α. Examination Q. In what connection? (Continued) Mr. WONG mentioned that Mrs. WONG was his Α. and that she was his collecting the interest in future. Q. Now, I think, going ahead several months, if not years, no, quite a number you months, into 20 entered for the agreements sale of units with individual purchasers - an advance sale haven't been built yet advanced sale of units individual purchasers? Yes, I instructed Messrs. WOO & WOO. Α. No, no. I'm not dealing with this. Q. was another deal in the end so don't speak about this matter until I ask you. In fact, you sold various units amounting, I 30 think, to a total of 36 units in all to various purchasers by advanced sales? Yes. Α. Q. And I think from accounts that have been admitted already, most of the money went to Mr. WONG? In fact, don't worry about whether it should have been or not but in fact it did. COURT : Aren't you, Mr. Bernacchi, jumping to evidence conclusions? But surely this 40

COURT: And how were they paid?
MR. BERNACCHI: I'm just bringing up in this
conversation in November of 1963

My

money paid? BERNACCHI:

documents ---

MR.

should be to whom was the purchase

Lord,

on

the

admitted

whether or not ---

COURT : No, no. That is not part of the conversation.

In the Supreme Court of Hong Kong High Court

MR. BERNACCHI: That is the thing.

COURT : That is where I say you are wrong.

Plaintiff's Evidence

MR. BERNACCHI: My Lord, I want in the end to ask him the question, "Was this ever mentioned in this conversation?" In fact, it happened, and then go back to the conversation.

No.6 P.W.1 TSE Kwong-lam Examination (Continued)

COURT : I do not know what happened. I do not. I have only seen certain accounts.

- MR. BERNACCHI: My Lord, then I'll deal with it another way entirely.
- Q. I'm coming back to the conversation that you had with Mr. WONG about the mortgage loan in November of 1963. You have told me that the mortgage loan was 18 months and you could re-pay the mortgage but in sums of not less than a hundred thousand dollars that's what you have already said?
- A. Yes.

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- Q. Was anything else mentioned about re-payment?
- A. He mentioned that I could use the money I obtained from pre-sale of the units to re-pay the building mortgage. But each re-payment should not be less than one hundred thousand dollars.
- Q. "I could" or "I must"?
- A. Must.
- Q. And that was in November of 1963?
- A. Yes.
- Q. So what about if the money came to under \$100,000.00? What about the position then?
- A. Well, I just couldn't make any re-payment with less than \$100,000.00.
 - Q. I'm referring completely to the pre-signing of the mortgage deed.

In the Supreme
Court of
Hong Kong
High
Court

Plaintiff's Evidence

No.6
P.W.1
TSE Kwong-lam
Examination
(Continued)

- MR. JACKSON-LIPKIN : My Lord, I wonder if you would allow me to intervene. I hesitate this early stage but I had always at understood where the parties discussed and bargained and eventually reached agreement and committed themselves the evidence of their toing paper, and froing and bargaining beforehand, inadmissible after they had themselves to paper?
- COURT: It all depends on the circumstances. If it is used to try and vary or add to or detract from a written document, then that is not allowed.
- MR. JACKSON-LIPKIN: The reason I rose was to find out to what end all this questioning is so directed.
- COURT: That wasn't your first question. Your first question was, you thought it was not admissible by the reasons you gave me.

MR. JACKSON-LIPKIN: My Lord, I perfaced by saying I thought that was the rule. That being the rule, what on earth is the purpose of this?

COURT: Because Mr. Bernacchi is not trying to vary, add to or subtract from a written document. There he is nodding his head with approval. I don't see why he should stop this examination-in-chief at this stage.

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MR. JACKSON-LIPKIN: My Lord, if it is an attempt to vary, then I do object to it.

COURT: Mr. Bernacchi, are you trying to vary a document?

MR. BERNACCHI: No, no.

COURT: I didn't think you were.

Q. Now, Mr. TSE, I'm talking about the conversation that you had prior to the execution of the actual mortgage - not in any way to a later conversation or anything like that - not in any way. You've mentioned an incident where you went to WOO & WOO. I'm not asking for

anything that was said in this conversation. I'm just mentioning the original conversation. Now you have given the court the impression, and I don't know whether you meant to or not, that at the original conversation, there was brought up the question of what you should do with the money that you received from advance sale of units, is that right? That was brought up?

A. Yes.

Q. And he said words to the effect, "You must pay that money over to me"?

COURT: No, he didn't say that at all. MR. BERNACCHI: I'm sorry my Lord.

COURT: "WONG mentioned I could use the money from (pre-sale?) re-sale to re-pay the building mortgage but not less than \$100,000.00 at a time." It couldn't have been clearer Mr. Bernacchi. Look, I'm a mortgagee. I do not want to be paid back in dribs and drabs. I want \$100,000.00 at a time.

MR. BERNACCHI: My Lord, then I'll leave it.

- Q. Now the mortgage itself was executed on the 30th of November, 1963?
- A. Yes.
- Q. And I think Mr. WONG advanced you the \$730,000.00 in December?
- 30 A. Yes.
 - Q. Now what was the object of one and a half million dollars? In fact, did you calculate the compensation, the cost of

15-storey building - how did you arrive at this figure of one and a half million?

A. Well, I made a rough estimate. The compensation to the old tenants was about \$230,000.00 and the building cost, the cost of the lifts and piling amounted to one million-odd dollars.

COURT: \$230,000.00 for compensation?
INTERPRETER: Yes, building cost, the cost of
the lifts and piling amounted to one

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6 P.W.1 TSE Kwong-lam Examination (Continued)

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million-odd dollars.

Plaintiff's

The cost of building costs?

Evidence

INTERPRETER: Yes, that's right.

- No.6 P.W.1 TSE Kwong-lam Examination (Continued)
- Now actually the piling in February of 1964, you signed a contract with a piling Q. contractor for \$74,000.00?

the

lifts, piling

Α. Yes.

COURT:

- In June of 1964, you signed a contract Q. with Lam Yu (?), Cheung Lung (?), Lam Kee Construction Company for building works, \$911,000.00?
- Α. Correct.
- In July, 1964, you signed a contract with China Engineers Ltd. for 2 lifts including Q. the fitting works for (\$99,650.00)?
- Α.
- Q. Did you therefore have enough money in or did you need in effect more money - 1.5 million, was it enough or did you in fact 20 need more?
 - One and a half million was not sufficient. Α.
 - think you negotiated for a further Q. charge which he gave you on the 17th of July, 1964?
 - Yes. Α.
 - For \$300,000.00? Q.

July of '64?

MR. BERNACCHI: Yes, 17th of July 1964.

- Now before that, I think in April of 1964, 30 Q. there was an incident where you instructed WOO & WOO, Solicitors?
 - Yes. Α.
 - Tell us about it. Q.
 - I instructed Messrs. WOO & WOO to sell the Α. units at Cheung Sha Wan Road.
 - And I think on the 14th of April, 1964, Q. you signed a letter to WOO & WOO jointly with a purchaser of some units?
- It was handled by Messrs. WOO & WOO. 40 Α.
 - Q. Well, I think this is your carbon copy. Was the original sent to WOO & WOO?
 - Α.
 - And I think you also paid money to Messrs. Q.

WOO & WOO for which they gave you a receipt? Apparantly, you've lost the original.

In the Supreme Court of Hong Kong High Court

COURT: Is there any controversy over this document?

Plaintiff's Evidence

Mr. BERNACCHI: I wouldn't have thought so my
Lord, but---

No.6 P.W.1 TSE Kwong-lam Examination (Continued)

COURT: Yes, but is this so important that there could be a fight about it?

10 MR. BERNACCHI: My learned friend says that he cannot tell me at the moment. Perhaps he can tell me tomorrow morning.

COURT: Well, I'll adjourn now so that you'll know by tomorrow monring. 11 o'clock tomorrow morning.

4.35 p.m. Court adjourns.

21st November, 1978.

22nd November, 1978.

11.05 a.m. Hearing resumes

20 Appearances as before.

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<u>P.W.1 - TSE Kwong-lam</u> (Plaintiff) On former affirmation

XN. BY MR. BERNACCHI(Continues)

MR. BERNACCHI: My Lord, my learned friend now has to say what instructions he has actually about this letter.

MR. WONG: In relation to that particular letter we still require instructions as they have no knowledge whatsoever of that particular piece of transaction.

MR. BERNACCHI: The only thing that I am enquiring of my learned friend is whether he is prepared to accept the carbon copy

that this witness kept of the letter to WOO & WOO or whether he requires Woo & Woo to produce the original.

Plaintiff's Evidence MR. WONG: My Lord, we are content with the carbon copy - there was produced last night a carbon copy of the original letter.

- No.6 P.W.1 TSE Kwong-lam Examination (Continued)
- MR. BERNACCHI: I am grateful if my learned friend is happy with the copy that I produced to your Lordship in the opening.
- Q. I think Mr. Tse, that is a copy of the letter that you and the purchaser sent to Woo & Woo instructions.
- A. Yes.
- Q. And I think that underneath is a copy of the receipt from Woo & Woo of money in respect of this transaction?
- A. Yes.

COURT: Exhibit E?

ExhibitsE124 20 & E125

MR. BERNACCHI: E.124 and E.125

Now did you speak to any of the respondents regarding this transaction or this proposed transation with Mr. Lam Siu-wah of which this letter deals?

- A. No.
- Q. Never?
- A. No.
- Q. Did it this letter..
- A. Yes, yes, I did I did mention.
- 30 Q. When did you about when, you don't know the exact date, you mentioned it to and who did you mention it to?
 - A. I mentioned this to Mr. WONG and Mr. LIU
 - Q. Now the letter is dated the 14th of April,1964?
 - A. Yes.
 - Q. Reminding you of the date of the letter when about did you speak to them, when about?
- 40 A. On or about the date of it, the \$1,000 deposit was paid.
 - Q. Now the \$1,000.00, the date on the receipt is 8th of April, and the letter is dated the 14th of April can you explain that

at all or not?

I informed Mr. WONG either on the 14th or Α. the 15th.

I see - I know that it is a long time ago Q. can you explain why the receipt is an earlier date than the letter or not?

Because the \$1,000 deposit was paid at Α. Woo & Woo and Company deposit had been paid the solicitors' firm prepared the letter for us to sign.

Now, and then you went to see the 1st Q. respondent, Mr. Wong, just after the date

of the letter?

Α. Correct.

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And I think you also said that you went to Q. see Mr. LIU - did you go to see them both together or did you go see them to separately?

I informed Mr. Wong first, so I went up Α. with Mr. Wong to J.S.M. to see Mr. LIU who was a clerk of the firm.

informed Mr. Wong of Q. transaction what was his reaction?

- He insisted that the transaction should be Α. handled by Mr. LIU King-wah of Johnson, transaction & Master, that no should be carried out by Messrs. Woo & Woo.
- And then you and he went up to see Mr. Q.
 - Then he told me to go to the solicitors' Α. firm.
 - I see so you yourself went without Wong? Q.

Α.

And from that time onwards Johnson, Stokes Q. & Master handled all the agreements for sale and purchase of individual units?

Yes. Α.

I will adjourn for five minutes. COURT:

11.20 a.m. Hearing adjourns. 40

11.30 a.m. Hearing resumes.

Appearances as before.

P.W. 1 - TSE Kwong-lam -On former affirmation. In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

In the Supreme
Court of
Hong Kong
High
Court
———
Plaintiff's
Evidence

No.6

P.W.1

TSE Kwong-lam

Examination

(Continued)

XN. BY MR. BERNACCHI (Continues):

- Q. I think the first agreement for sale and purchase was the latter part of May 1964?
- A. Yes.
- Q. Can you read English or not?
- A. No.

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- Q. I will hand you up what purports to be one agreement for sale and purchase of units dated the 31st of December, 1964, page 16 of the agreed bundle my Lord were all agreements for sale and purchase more or less in the same form?
- A. Yes.
- Q. Yes, now if you would turn over to page 28, there is a schedule, the purchase price was \$175,000.
- A. 28?
- Q. The purchase price was \$175,000?
- A. Yes.
- Then it says, 'As to \$5,000 to the vendor' that is you, 'as to \$170,000, the balance to Messrs. Johnson, Stokes & Master on signing of this agreement'?
 - A. Yes.
 - Q. And I think again every Sale and Purchase Agreement was the same except for a small sum, it was all paid over to Messrs. Johnson, Stokes & Master?
 - A. Correct.
- 30 Q. Now, did you know why that was?
 - A. J.S.M. intended to use this money obtained from the sale..
 - MR. WONG: So sorry, my Lord, the translation has been impeccable, but I think that the witness has said it was intended to lodge the sum with J.S.M. not J.S.M. intended.
 - MR. BERNACCHI: I could but ask the interpreter.
- INTERPRETER: That is how the Chinese, J.S.M. that is what he said J.S.M. intended to
 use the money from sale of property
 towards the building cost.
 - COURT: The intention is stated in the Agreement itself.

MR. BERNACCHI: Oh yes, my Lord, I know my Lord, in fact my complaint is that the building mortgage made provision for the building cost and what happened was that on paper the mortgagee, the 1st respondent, was credited with this money and then advanced it immediately to, fairly immediately to what is his obligations under the mortgage in respect of building costs, so that he actually paid out of his own pocket only a million odd dollars and not two million odd dollars.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6 P.W.1 TSE Kwong-lam Examination (Continued)

COURT: You may proceed - may I say now that Mr. Woo yesterday in his part of the opening dealing with the accounts, I did not understand it at all.

MR. BERNACCHI: I will accept your words and see that your Lordship is made fully aware of the position. I am sorry I don't understand your answer at present - the building mortgage provided for the building cost to be made by Mr. Wong, the 1st respondent in sales?

A. Yes.

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Q. Now do you mean that quite apart from the building mortgage J.S.M. used this money totalling, I think, nearly \$900,000 in all for the building costs quite apart from the mortgage?

A. I mean after the building costs and sundry expenses had been paid the balance would be paid towards the repayment of the loan.

Q. And then?

- A. The building costs amounting to a million odd dollars.
- Q. In other words, you don't say that apart from the money, the two million odd dollars that you had the mortgage for, apart from that and extra to that J.S.M. paid this nine hundred thousand dollars odd towards the building cost you don't mean that?

A. No.

Q. Now I want to come now to the further charge - you mentioned it last night that was executed on the 17th of July, 1964 for \$300,000. Now did you approach Mr. Wong for a further charge or in what way did these negotiations open?

In the Supreme Α. In July 1964 having paid \$960,000 towards Court of the building cost leaving behind Hong Kong balance of about \$500,000 Mr. Wong spoke High Court to me that the balance was not sufficient to cover the building cost, that a further \$500,000 required, of was sum Plaintiff's eventually it was agreed that \$300,000 was Evidence the figure for further charges. Q. So it was at Mr. Wong's suggestion? Α. Yes. Now the interest rate of 1.4 per month -No. 6 10 Q. was any discussion held about that? P.W.1 Α. TSE Kwong-lam What conversation was that? Examination Q. Α. We asked for 1.3 but he refused. (Continued) Q. When you say we, who do you mean? Α. I requested. Q. 1.3 but he said no, 1.4? Α. So I had to agree to 1.4. Q. Now in the course of conversations did you 20 anything about sales, contemplated sales of flats? Α. Yes. Q. In what connection was this conversation he was saying to you you need more money I will give you further charge of half a million dollars, you said yes, I do need more money - I think I only need \$300,000, then you said something about flats - in connection was this conversation about the flats? 30 Because by that time I had already sold Α. four flats having got forty thousand odd dollars as deposit. In what connection was this conversation about advance sale of flats, not the Q. conversation itself or anything else - why did it come up at all? Because he wanted further charges so I Α. suggested I could obtain the money by pre-sale of the flats. 40 Thank you - what did he say - I did not Q. say in what connection did you talk about the flats but in what connection did he talk about the flats - made mention of flats. He suggested that further charges would be Α.

money by pre-sale of the flats.

required, I said no I could raise the

Q. What did he say to that?

He said no, but eventually agreed to give me the further charges of \$300,000. Α.

You said you could raise the money or part Q. of the money for the construction of the flats by presale of units - just wait a minute and he said no - what did you understand by that word 'no'?

By that he meant I must have the further charges of \$300,000. Α.

- Now on the 13th no 23rd of July, 1965 Q. you executed a second further charge for \$200,000.
- Yes. Α.

10

Why was that? Q.

Because at the time when the first further Α. of \$300,000 was assigned building work had not been completed yet.

Was not started? COURT:

INTERPRETER: Had not been completed - had not 20 started, so I asked for further charges.

MR. WONG: I am so sorry - I think the witness said so I asked for extension of term.

INTERPRETER: Yes - he agreed verbally - later a further charge of \$200,000 was requested -I also asked for extension of time.

I am sorry did you request him or did he Q. suggest to you?

12.00 noon: Mr. Jackson-Lipkin enters court.

When the further charges of \$300,000 was 30 A. given I requested extension of time. Yes, go on.

Q.

Mr. Wong wanted me to have further charge Α. of \$200,000 as a security against extension of time.

Yes? Q.

I turned him down because he wanted 1.4 Α. interest.

In fact eventually the further charge was Q.

40 executed, so how was that?

I seek advice from Mr. LIU of J.S.M. Mr. Α. LIU said the \$200,000 was only a security that it would be accounted for in future.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

In the Supreme Court of Hong Kong		Q.	And you in fact executed this further charge?
High Court		Α.	Yes, under the instructions of MR. LIU I signed the charge of \$200,000.
		Q.	This is document 31 to 33, my Lord - now we come to the third further charge that
Plaintiff's Evidence		Α.	you executed on the 10th of November, 1965- What about that?
	10	Q.	I am sorry - it is for two hundred and twenty thousand.
No.6 P.W.1 TSE Kwong-lam Examination (Continued)		Α.	Mr. Wong pressed me for payment of interest. I was then still owing him interest so the further charges of
		Q.	\$220,000 was agreed at interest of 1.4. Just who suggested the further charge - did you suggest or did Mr. Wong suggest it?
		Α.	Mr. Wong did.
	20	Q.	Now did you have a meeting with Mr. Wong?
	20	A. Q.	Yes. Now did you have your own calculations as to interest that was owing?
		Α.	By that time it was roughly \$100,000.
		Q.	If it was in your opinion roughly \$100,000 why was the further charge \$220,000?
		Α.	I asked Mr. Wong since it was about one hundred odd thousand dollars why was it that I should get further charge of \$220,000. His explanation was that that
	30		amount could cover the interest up to 29th of May, 1966.
		Q.	And eventually you agreed to execute this further charge?
		Α.	I did not agree eventually.
		Q.	You did because.
		Α.	At first I did not agree but after I had consulted Mr. LIU of J.S.M. I agreed.
		Q.	Now I will now refer to the original exhibits E.95 to E.123 - Mr. TSE I will
	40		hand you up the interest - the original of the interest receipts and ask you to explain how they came into your possession.
		Α.	These receipts were issued by Mrs. Wong Chit Sen who had obtained interest on behalf of Mr. Wong.
		Q. A.	Well did you pay interest in cash or what? Some by cash, some by cheque - I just cannot remember.

Q. I see, you tendered the interest either by cheque or by cash to her and she received it purportedly on behalf of the 1st Respondent?

A. Yes.

MR. BERNACCHI: Can these be admitted as exhibits my Lord?

MR. JACKSON-LIPKIN: I am not objecting my Lord.

COURT: Very well, E.95 to 123.

- 10 MR. JACKSON-LIPKIN: I presume he says those are the ones could I just see one of them, because there is some red writing I have asked my learned friend if he could possibly help me because my E.95 has some writing in the bottom left-hand corner which apparently is chopped by the Court Translator, but the one your Lordship has lent me has not got that writing on it I shall be grateful of some assistance.
- 20 MR. BERNACCHI: It is not in the same order, my Lord the answer is the exhibits that your Lordship has received, the copies are not in order, the actual 95 is the 30th of May, 1965 and which has the writing on it.
 - MR. JACKSON-LIPKIN: I shan't comment but I am very grateful to my learned friend for explaining it.
- Q. Now I hand up the originals of 87 and 129. What are these documents in Chinese please?
 - A. These documents were supplied to me by Mrs. Wong Chit Sen, Ching Wai-shork or Shook.
 - Q. In other words, the 2nd Respondent?
 - A. Yes.

40

- Q. Do you know whose writing appears do you know whether it is the 1st or the 2nd Respondent's writing?
- A. These are writings of 2nd Respondent, CHING Wai-shook.
- Q. All right, and what are they?
- A. These are accounts supplied by her, but they are not correct.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6 P.W.1 TSE Kwong-lam Examination (Continued)

Exhibits E95 to E123

Plaintiff's Evidence

No.6 P.W.1 TSE Kwong-lam Examination

(Continued)

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- Q. I don't care if they are correct or not -I want to know what accounts they purport to be.
- These are the accounts of the Building Α. Mortgage.
- Q. I see, excluding or including interest?

Including. Α.

Q. Including interest - can these now be marked - there is certified translation pages 87, 88 and 89 and 129.

COURT: There are only three pages here.

- MR. BERNACCHI: These are 129 and 130 and these 87. 88 and 89.
- Q. Now, I would hand you up a document and enquire what it is. The document I have handed up is marked 83-86 inclusive. I am just asking you what it is.
- Well, this the leaflet for the sale of the Α. flats printed by Mr. Wong as advertisement after auction.

MR. BERNACCHI: I'm sorry I misled your Lordship in opening. MY Lord, my learned junior thinks from Document --- page 86 that the answer is right, but at the moment it is not admitted and I would ask you to just admit it in evidence and we will sort it out whether the answer is admitted or not.

- COURT: I don't understand. The witness says the leaflets are for the sale of the flats 30 printed by the first respondent after So, this is really the auction. respondent's document.
 - MR. first BERNACCHI: Ιt is not in the respondent's list of documents.
 - COURT: Nevertheless, you say it is the first respondent's document, you have got In order for it to be it. admissible, you've got to prove it.
- BERNACCHI: Yes, you are right, indeed. MR. 40 will say no more on this document until I have consulted my learned friend.

COURT: In that case I hand it back to you.

MR. BERNACCHI: At present there is no need, my Lord, for your Lordship to actually physically hand it back because it will be referred to again when I've got the ---

COURT: I don't see why the Court should retain documents which have not been accepted. Why can't they remain in your possession?

MR. BERNACCHI: Yes, my Lord. The originals, please, at the moment.

COURT: Look, what's up with the court now is E95-103, E87, 88, 89, E129-130. Now are these exhibits, Mr. Jackson-Lipkin - those numbers that are mentioned just now - are they exhibits of the Court now?

MR. JACKSON-LIPKIN: Yes, my Lord, up to 130. Yes, my Lord, as far as I know, those are

proper exhibits.

- Q. Now, 43. (Now I'm referring to A43, my Lord) Now, the document before you is a signed agreement between Lam Kee Construction Company, Wong Chit Sen and yourself.
 - A. Yes.
 - Q. Signed on the 10th February, 1966?
 - A. Yes.
 - Q. For a sum of \$47,600 apparently paid by Wong Chit Sen, the first respondent, in full discharge of -- full and final settlement of your liabilities' company to this construction company?

A. Yes.

30

- Q. Now, would you explain to the Court how this document came into being and why?
- Q. On the 12th January 1966 after the occupation permit had been issued, there was still an outstanding amount of \$68,000 owing the Lam Kee Construction Company.

Q. Why was that?

40 Å. I had to pay that amount to Lam Kee, so I approached Mr. Wong requesting him to pay for the construction money. I pressed Mr. Wong to pay off the balance, but Mr. Wong alleged that I was still owing him

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

In the Supreme The accounts were still interest. Court of did not Mr. show me. Hong Kong refused to pay that amount. So, towards High -- So, end of January Court Construction Company sent someone remove all the locks and keys from the flats, so that I could not sell the flats Plaintiff's without any keys. So, I pointed out to Evidence Mr. Wong that he would be held responsible for any consequences for refusing further 10 charges. No.6 "refusing" what? Q. P.W.1 Refusing further charges. Α. TSE Kwong-lam Q. Further charges for what? Examination Refusing to pay the money on my behalf. Α. (Continued) And eventually this agreement was entered Q. into? Α. Not yet. Yes. You wanted to say before you signed this, Q. something else happened. What happened? 20 Before I signed this document I wrote to Lam Kee Construction Company asking them Α. to return all the keys and --All right, yes. Now turn to -- I want you Q. Sorry, B23. B23 is a to turn to B36. letter from China Engineers, Ltd. about owing money for the lifts. (Interpreter interpretes this in Chinese) No, just one B24- you paid a part of that moment. money, but not the whole? 30 Yes, paid by JSM from the proceeds of the Α. sale of the flats. Now, this was '65? Q. Yes. Α. What, if anything, happened in '66 about Q. this lift installation? Α. Yes. Well, what happened? Q. Α. In April, 1966, the China Engineering sent some staff to stop the lifts. 40 Q.

What did they say you owed for the lifts by then? Well, the payment of the lifts I was still Α. owing. Do yo remember how much? Is he Q. What sum? referring to B23? Ι owing Α. that time was sixty

thousand-odd dollars.

Lam

Thank you. And I think -- Could I produce Q.

In the Supreme E132, 133? Now I will hand you a document Court of in Chinese. Hong Kong Α. In respect of a sum of \$69,850. High I just want Q. I want to ask you questions. Court to refresh your memory by reading this. Now, this letter requests first respondent Plaintiff's to pay and regard it as part of the Evidence construction costs. Α. Yes. Is your copy of this letter or was this Q. No.6 letter never sent? P.W.1 The original copy was sent to JSM and --Α. TSE Kwong-lam for passing over to Mr. Wong. I wrote Examination this on the advice of Mr. Liu. (Continued) I see. And you handed it to him? Q. Yes. Α. This is your copy of this letter? Q. Α. Very well. (Could that be admitted? It's Q. Exhibits E132 E132 and E133.) Did Mr. Wong, in fact, pay & F133 it? Well, this money was paid in August after Α. the auction of the flats by Lee Fook Shu & The position was that at that time the Q. money was not paid? After his signature he did not pay. Α. At a very much later date when Lee Fook Q. Shu was appointed arbitrator, it agreed that this money should be included as actually paid? After he had audited the accounts. Α. Q. Yes, but it was paid bу Mr. presumably? He was the client of Lee Fook Shu, Α. course it's supposed to be paid by him. Q. Well, as far as you know, it was paid by Wong but at some date after auction. Α. Yes.

40 A. Yes.

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Q. And it was eventually included in Mr. Lee's accounts.

A. Yes.

COURT: Perhaps this is a convenient time? 2.30.

12.50 p.m. Court adjourns.

2.35 p.m. Court resumes Appearances as before.

Plaintiff's Evidence

No.6 10 P.W.1 TSE Kwong-lam Examination (Continued)

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P.W. 1 - TSE Kwong-lam (o.f.a.)

MR. JACKSON-LIPKIN: My Lord, I have been asked to mention to you E83. My Lord, E83 you remember caused a little consternation this morning when it was said to be our document but it was not like anything my clients had seen before. We have now, a few minutes ago, been shown the original. If I may show you the original, you will see at once why ..

COURT: It doesn't matter now. Get the document -- let's get the document in.

My Lord, the document is MR. JACKSON-LIPKIN: undoubtedly ours. We do apologise for not recognising it this morning before having shown it to I'm you; sure understand why. It was an understandable mistake, my Lord, and I apologise if it wasted any time. My Lord, may I respectfully suggest that you have this with the translations -- when I 'this', for the benefit of the shorthand-writer it's E83 to 86.

COURT: What is E83?

MR. JACKSON-LIPKIN: I know not, my Lord.

COURT: Is it your document?

MR. JACKSON-LIPKIN: My Lord, it's produced by my learned friend and I haven't taken instructions as to what it is - only whether it's ours.

MR. BERNACCHI: It is in fact the individual flat sales after the auction.

COURT: Mr. Bernacchi, the position is it is admitted to be a document of the 1st respondent; then it goes on -- the 1st respondent goes on to say, by counsel, "I do not know what it is". I can't accept from the bar, from you Mr. Bernacchi, what it is.

40 MR. BERNACCHI: Would you accept it from the witness if I introduce it in evidence?

COURT: It is an important document.

MR. BERNACCHI: Oh yes, indeed it is; that's why I was so persistent in getting it in.

COURT: Well, Mr. Jackson-Lipkin, do you deny that this document is what Mr. Bernacchi says it is?

MR. JACKSON-LIPKIN: My Lord, 'deny' is rather a strong word. Looking as it myself -- as I've explained I haven't had ..

COURT: You will know I don't expect you to know but I expect you'd like to know.

MR. JACKSON-LIPKIN: Yes, my Lord, but I did say that I hadn't had time to ask him but if your Lordship looks at it, it looks like a price list. I'll find out for you straight away. May I have it back please?

My Lord, it is as I suspected a price list of flats offered for sale.

COURT: When?

MR. JACKSON-LIPKIN: When?

20 COURT: Yes.

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MR. JACKSON-LIPKIN: My Lord, he's not sure. He'd like to go back and check the records. He has an idea but would prefer not to say exactly when it was issued until he's checked.

COURT: May we expect an answer to this one?

MR. JACKSON-LIPKIN: Oh, yes. I shall let my learned friend know this evening and your Lordship know in the morning. May I keep it just for a moment to see if I can find the date for you?

MR. BERNACCHI: The other query that arose, I don't know whether my learned friend has firm instructions on it at the moment or not, it's the admitted letter, the enclosures to the admitted letter. It's E91. Now as originally handed up, the enclosures consisted of three sheets of paper. My Learned friend has subsequently doubted whether all three sheets of

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's Evidence

10 No.6 P.W.1 TSE Kwong-lam Examination (Continued)

paper were in fact enclosed or whether he admits that they were enclosed. does not admit, then of course I'll have to adduce evidence. I do agree that the writing with a later date is not as it was originally enclosed. If you see at page 94, there's some handwriting with a date in - 14th December '66 - that handwriting and date are obviously put on by somebody afterwards.

No, my Lord, we do JACKSON-LIPKIN: MR. admit that that went with the letter. first page certainly, 92, went with the letter; we do not admit with the other. My Lord, I'll tell you about that later. Lord, I have taken instructions on this; to a certain degree I can help you: it was undoubtedly after the auction but I'm afraid I still can't tell you the May I that until exact date. leave My Lord, Thank you, my Lord. tomorrow? may I now hand to your clerk the original brochure of eight sheets and a sheet of translation, a photostat of the inside -and, my Lord, what I'm told I'll have a look at them translations. later if I may.

COURT: Exhibit E83 to what?

MR. JACKSON-LIPKIN: 86, my Lord, may I make one reservation in relation to 86? May I just show your Lordship? This is the document with which we were supplied; the one in front of your Lordship has a lot English and Chinese on it which we've before. May Ι make seen never look at reservation about that and tonight? Thank you, my Lord. May it be released to us this evening?

(Pause)

Surely court hours are not for COURT: We have purpose of sorting out documents? been here for fifteen minutes and not a question has been asked of the witness.

MR. BERNACCHI: Some of that time -- let it rest until tomorrow. I thought it was easily available; it isn't.

XN BY MR. BERNACCHI (continues):

B32, please. I now invite you to look at B32, one of the agreed documents.

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- 54 -

A. Yes.

Q. You were apparently made to sign for the receipt of this letter and you signed your signature where there is Chinese writing?

A. Yes.

Q. And that letter was sent by Johnson, Stokes & Master?

A. Yes.

Q. Now that letter -- you don't speak English but I think you've had it more than once translated to you -- asks for payment of interest in the sum of \$76,548.95 cents up to the 28th February 1966?

A. Yes.

Q. Now did you agree with the amount of interest?

A. It's incorrect.

Q. Did you do anything about it?

A. I raised my objection to Mr. Liu of JSM, saying that I would not make any payment unless the amount was correct.

Q. Did Liu say anything?

- A. Mr. Liu said it has nothing to do with him because the accounts are prepared by Mr. WONG Chit-sen.
- Q. Did you say anything else to Mr. Liu? I mean you said to the court that you said to Mr. Liu that you wouldn't pay any interest until you were asked for the right amount. Did you say anything else to him?
- A. I asked him to prepare an exact account for the building mortgage as well as the interest so that I could make preparation for the redemption of the flats.

Q. What did he say?

- A. He said he could not work it out at that moment but he would inform me in due course, once it's ready.
- 40 Q. Now I want to turn to document 30L, page 38, the same bundle. Now that letter is dated the 28th April 1966?

A. Yes.

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COURT: What are you referring to now? Document....?

MR. BERNACCHI: Page 38, my Lord.

Q. Now this is dated the 28th April 1966.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

In the Supreme Had you received any account that you'd asked for between the 28th February, the Court of Hong Kong date of receipt of the letter 32, and the High 28th April, the date of sending of Court letter of page 38? Α. No. Q. Now had you in that time gone to see Mr. Plaintiff's Liu at all? Evidence Α. Yes. Q. To ask -- well, in connection with this 10 account that you had asked for? No.6 Α. P.W.1 Q. What did you ask him? TSE Kwong-lam Α. I wanted to make repayments but before I Examination could do so I wished to have an exact (Continued) account -- I want to have exact accounts. Well, you're going too fast for me. Q. question -- I know that you asked for -perhaps you asked him several things but first of all I want an answer to what did 20 say when you asked him about accounts? He said the accounts would be passed over Α. to me as soon as they had been audited and compared. Q. Now you've already told the court that you wanted to make repayment. Α. Q. Did you speak to him about that? Α. Yes. 30 Q. What did you say? Α. I said I want to make repayments because I am -- I managed to obtained a loan of \$1 1/2 million.I'm talking about the conversation you had Q. with Mr. Liu when you asked the second time -- you'd asked for the accounts in February - February/March - and he said he'd let you have them later. Then you back to him and asked for 40 accounts again and he said in effect 'not ready yet; I'll let you have them when ready', and then you spoke to him about what you wanted to repay. Α. Yes.

Q.

Now,

MR. JACKSON-LIPKIN: My Lord, with respect, he's

raise this loan of 1 1/2 million or not?

at that time, had you managed

just got the answer to this witness. "Did you tell him you wanted to make repayment?" "Yes." "Did you speak to him about that?" "Yes." "What did you say?" Answer: "I want to make repayments because I have managed to obtain a loan of 1.5 million." My Lord, I did think it was my prerogative to cross-examine.

In the Supreme Court of Hong Kong High Court

Plainitff's Evidence

- No.6 P.W.1 TSE Kwong-lam Examination (Continued)
- 10 COURT: That wasn't cross-examination really.
 MR. BERNACCHI: My Lord, I'll deal with it
 another way.
 - Q. Why did you manage to obtain a loan of 1.5 million? Why not 1.4? Why not 1.6? Why 1.5?
 - A. According to my own calculations, 1.4 million was sufficient to make redemption.
 - MR. BERNACCHI: You stopped him, Mr. Interpreter. You stopped him. He was going to say about -- he hasn't finished.
 - A. Before I received this letter, Mr. Liu had told me that 1.4 million dollars would be sufficient.
 - Q. Before you received this letter? You mean the letter on page 38?
 - A. I refer to the letter dated 28th April asking for repayment of 1.6 million dollars.
 - Q. And that was the reason why you managed to get a mortgage of 1.5 million?

COURT: Surely, Mr. Bernacchi ... "That was why you arranged for a mortgage of a million and a half? You arranged for a million and a half because you thought, or rather according to your calculations you are owing only 1.4 million - in fact he was..."

- A. That's quite right ... Mr. Liu, 1.4 million dollars.
- Q. And in fact it was confirmed by Mr. Liu that it was about 1.4 million?
- A. \$1.42 million.
- Q. I think, amongst other people, you approached the Wing On Bank -- I'm sorry, Wing On Life Insurance Company.

- 57 -

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- A. Yes.
- Q. And I think you ...
- MR. BERNACCHI: Now hand the witness, please, El. I'm sorry, the original is here.
- Plaintiff's Evidence
- Q. I now hand you the original of El with the certified translation. Now would you say how that came into your hands?

No.6
P.W.1 10
TSE Kwong-lam
Examination
(Continued)

- A. After I received this letter from the Wing On Life Insurance Company offering the mortgage loan of \$1 1/2 million, I went to see Mr. Liu.
- Q. Now look, I'm asking you about how you came to receive it from Wing On. Did you go -- did they send it to you? How?
- A. I have to think about it; it's some time ago. The letter was sent by mail.
- Q. When you say you approached the Wing On Life Insurance Company, did you go and see them personally first?
- 20 A. Yes.
 - Q. And then subsequently you say they sent you this letter?
 - A. Right.
 - MR. BERNACCHI: My Lord, can I now make it an exhibit? I think it has been proved as a document he received. Of course, I'm also calling someone from the Wing On. It will only be a document he received.

COURT: Yes.

- MR. BERNACCHI: Whether you admit it now or later, I'm not ...
 COURT: Mr. Jackson-Lipkin?
 - MR. JACKSON-LIPKIN: My Lord, my learned friend says that he's going to call someone from Wing On Life. I have no objection to your Lordship admitting it under those circumstances.

COURT: Right. What's the number?

Exhibits E1 & E2

CLERK: El and 2.

40 Q. Now what did you do as a result of receiving this letter?

A. I therefore notified Mr. Liu and the J.S.M. I showed this letter to Mr. Liu.

Q. Did you tell him anything?

A. I told him that I was ready for repayment; that I had obtained a loan of \$1 1/2 million from Wing On Life Assurance Company.

Q. Did he tell you anything?

A. He said "All right", so I gave Mr. Liu a

photostat copy of this letter.

Tell me you had been told by

Q. Tell me, you had been told by Mr. Liu - in fact he'd substantiated your own accounts that you owed 1.42 million. Was any mention made of accounts at that meeting with Mr. Liu when you showed him the letter?

- A. So I pressed him for the accounts. Mr. Liu told me that I would be supplied with the accounts as soon as they were ready.
- 20 Q. Then where did you go after leaving Mr. Liu's office?
 - A. I notified Mr. WONG Chit-sen.
 - Q. I know. Where did you go, please?
 - A. I went to Mr. Wong's office.
 - Q. Where was that actually?
 - A. I cannot remember.
 - Q. All right. Now was Mr. Wong in or not?
 - A. He was not but his wife was.
 - Q. He was not in but his wife was in?
- 30 INTERPRETER: Yes.
 - Q. What did you do?
 - A. I spoke to Mrs. Wong that I was ready for redemption because I had obtained a loan of \$1 1/2 million.
 - Q. Yes? Did you show the letter or not?
 - A. Yes.
 - Q. Did you leave here a copy or not?
 - A. Yes.
- Q. Now did you hear anything more from either the 1st or 2nd respondents or Mr. Liu in respect to the accounts or your expressed intention to redeem you received this letter on page 38?
 - A. No.
 - Q. I think this letter is -- yes, this letter is dated 26th April. The letter at page 38, bundle B, would have been sent one or two days after your going to Mr. Liu and seeing Mrs. Wong?

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

INTERPRETER: I'm sorry? which page?
Q. The letter dated ...

COURT: ... dated the 26th April and the accounts came in on the 28th April.

Plaintiff's Evidence

A. Yes.

Q. So it would have been one or two days after your visit to Mr. Liu and to Mrs. Wong that you received this letter?

No.6 P.W.1 TSE Kwong-lam 10 Examination (Continued)

MR. JACKSON-LIPKIN: My Lord, before the question is put, this, I apprehend, will be a matter of great contention and I would ask my learned friend not to lead on this because we have jumped a little from a meeting with Mr. Liu described in detail following the receipt of B38 in relation to El and he only said. "After I received the letter I went to see him." It could be that this is the same visit after B38 and I invite my learned friend to rephrase the question.

COURT: To my mind there's no doubt on this witness's evidence that prior to receiving B38 he did not receive any ... "Between B32 and B38 I had seen Liu. I wanted to make repayment and ..." There's no doubt in my mind as to his evidence.

MR. JACKSON-LIPKIN: Well, my Lord, I'm only asking my learned friend to rephrase the same question.

30 COURT: You're told not to lead Mr. Bernacchi.

MR. BERNACCHI: I'll rephrase the question.

- Q. The letter from Wing On is dated the 26th April?
- A. Yes.
- Q. The letter, page 38 of Bundle B, is dated 28th April, i.e., two days later?
- A. Yes.
- Q. How many days, therefore, intervened between the receipt of the letter from Wing On to your taking it to Liu, your

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taking it to Mrs. Wong, and the receipt of the letter?

In the Supreme Court of Hong Kong High Court

MR. JACKSON-LIPKIN: That's worse. MR. BERNACCHI: My lord ...

COURT: Mr. Bernacchi, I feel sorry for the witness. How is he going to understand that question? I certainly don't.

Plaintiff's Evidence

MR. BERNACCHI: I disagree, my Lord, with the contention that it was even leading, the earlier question, but the dates speak for themselves.

No.6 P.W.1 TSE Kwong-lam Examination (Continued)

COURT: I would have thought so.
MR. BERNACCHI: Then I won't pursue that line.

Q. Now I think at the same time you received the formal notice, also from Johnson Stokes & Master the letter at page 39, requiring you to pay the principal and interest owing within one month, otherwise the property would be sold?

20 A. Yes.

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Q. Now did you do anything as a result of this, the receipt of these two letters? Did you do anything?

A. So I went to the Wing On again requesting for the mortgage of \$1.6 million.

Q. Take it slowly, Mr. Tse. I know you did, but step by step by step, please. Now you received these two letters?

A. Yes.

- 30 Q. What did you do before anything else, as a result of these two letters?
 - A. So I first went to the Wing On Life Assurance Company requesting for the sum -- the mortgage sum of \$1.6 million.

Q. Did you do anything else?

- A. But the -- they refused to let me have the mortgage of \$1.6 million.
- Q. I'll come back to that later. Did you do anything else besides going to the Wing On Life Insurance Company, as a result of this letter?
 - A. I wrote to the Governor.

COURT: Look, let me arouse an ire from Mr.

In the Supreme
Court of
Hong Kong
High
Court
———
Plaintiff's
Evidence

No.6

P.W.1

TSE Kwong-lam

Examination

(Continued)

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Jackson-Lipkin. Did you go to Liu or to the 1st respondent and ask why a million six when it ought to be a million four?

- A. I did. Yes, I did. I looked for Mr. Liu.
- Q. And you asked him why a million six and not a million four?
- A. I said "At first you mentioned it was only 1.4 million dollars and that 1.5 million dollars would be sufficient. Now I received a letter saying that the amount was 1.6.".

Q. What did he say?

- A. Mr. Liu said, "Well I can't do anything about it because that was the figure supplied by Mr. Wong.".
- Q. Now was that visit to Mr. Liu before or after you visited the Wing On Life Insurance Company to ask for an increase of the loan to 1.6?
- A. After the Wing On had turned me down, I went to see Mr. Liu.
 - Q. Now between the end of April and the date of the auction, the 24th June, did you visit Mr. Liu or Mr. Wong or both of them about a detailed account?
 - A. I did, on various occasions.
 - Q. On various occasions, did you get a detailed account?
 - A. Not supplied.
- 30 Q. So that when on the day of the auction, you had not yet been supplied with a detailed account?
 - A. No.
 - Q. I'm going to -- I'm coming back to the details of the auction but I'm still on the accounts. I show you a letter in Chinese with a certified translation which is dated the 19th October 1966.
- A. Yes, I wrote a letter to Mr. Wong. This is the copy of it.

COURT: What date's that?

INTERPRETER: 19th -- dated 19th October '66.

- Q. I think you registered it?
- A. Yes.

MR. BERNACCHI: Could that letter be admitted, my Lord?

COURT: What's the number?

MR. BERNACCHI: E143 is the Chinese and E144 the English. I'm sorry, 141 and 142.

Q. Look at the document. Who did you send it to?

A. Mr. WONG Chit-sen.

Q. By what means did you send it?

10 A. By registered letter.

Q. Thank you. Now, on the same date, I think

MR. BERNACCHI: I'm sorry, could that be an exhibit, my Lord?

Q. On the same date - this is E143, 144 - you send another registered letter to Messrs. Johnson Stokes & Massters?

A. Yes.

Q. Asking for the same thing?

20 A. Yes.

Q. And since I am not allowed to lead, by what means did you send it?

A. Registered letter.

Q. Now was -- how did -- or did these two letters arrive beacuse of anything that had occurred previously?

A. The letters were sent as a result of the receipt of certain accounts from Mr. Wong.

Q. What account?

30 A. The accounts were sent to me by JSM on behalf of Mr. Wong.

MR. BERNACCHI: Would you hand -- I think it's 91.

Q. Is this the letter that you are referring to - a letter of the 24th of October, enclosing some accounts?

MR. BERNACCHI: 91, my Lord.

COURT: What 91?

40 MR. BERNACCHI: A91 - admitted letter.

A. But the accounts were not signed.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6 P.W.1 TSE Kwong-lam Examination (Continued)

Exhibits E141 8142

- Q. I know. Is that the letter that you were referring to?
- A. Yes.
- Q. Well look, these 2 letters were sent before this letter, not after.

Plaintiff's Evidence

INTERPRETER: These 2?

MR. BERNACCHI: Yes.

No.6
P.W.1
TSE Kwong-lam
Examination
(Continued)

- A. After.
- Yes, I know. That is the point. So it could not have been because of this letter Q. vou've sent these letters. Now question was any particular reason why you should have sent one letter to the 1st Respondent and one letter to the solicitors Johnson, Stokes & Master on the 19th of October asking for accounts - any particular reasons?
- A. Because they had failed to supply me with the accounts on early occasions although I went up to their office to ask for them.

Q. Although you went up to their offices and you went up to their offices - did you go up to their offices in October?

- A. Yes, I went to both places Mr. WONG's and J.S.M.
- Q. And then you sent the letters after you had been up to both their offices?
- A. Yes.
- Q. Now I want to ask you a few questions on the auction itself.

COURT: Look, we are still in doubt about these 2 sheets of paper, are we not?

- MR. BERNACCHI: My Lord, at the present time my solicitor's clerk is vainly endeavouring to find the original of these 2 sheets. I did not know --- it was at one time shown to my learned friends. They say that it --- my Lord, without getting into a dispute at the moment, I will try and settle this question amicably with my learned friend this evening.
- Q. And I come back to ask you questions as to the auction. Now, I'm referring to the

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24th of June. Did you attend the auction yourself?

A. Yes.

- Q. Was it of your own volition or were you requested to attend by anybody else?
- A. I went there under my own volition with my foki.
- Q. Now before --- well, what did the auctioneer do before the auction actually started?
 - A. He set up a price of 1.2 million dollars.

Q. You mean the reserve price?

A. 1.2 million dollars, yes.

- Q. Now before the auctioneer read the reserve price 1.2 million dollars, did you know the reserve price or not?
- A. Well, I could not have known.
- Q. Well, if you didn't know --- did you know or not?

20 A. No.

- Q. Now was the auction well attended or badly attended or what?
- A. Very few not many.
- Q. Now we've come to the auction itself. The auctioneer says, "Well, the reserve price is 1.2."
- A. Yes.
- Q. Did anybody bid 1.2?

COURT: The question was, "Did anybody bid 1.2?"

30 A. No.

Q. What happened?

- A. Then WONG Chit-sen's wife CHING Wai-shook put up her hand saying 1.2 million dollars.
- Q. Did anybody else put up their hand or give any indication that they were interested?

A. No. Q. What happened then?

- Q. What happened then?
 A. The auctioneer said, "Going, going, gone",
 then down with the hammer, WONG Wai-shook
 with her hands up, so it was so at 1.2
 million dollars. I tried to object but in
 vain.
 - Q. Well now, when you were saying you tried to object in vain, did you say anything?

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

A. Well, yes. I said something.

Q. What did you say and when?

A. I said it's unfair. The auction price was only 1.2 million dollars but the building --- the mortgage was 1.5 million dollars.

Plaintiff's Evidence

MR. WOO: Did he not say that "I could get the mortgage at 1.5"?

No.6 P.W.1. TSE Kwong-lam Examination (Continued) A. I could have gotten a mortgage at 1.5 million dollars.

10 MR. JACKSON-LIPKIN: Mr. Interpreter, could it mean one or the other?

INTERPRETER: I don't think so. Perhaps I missed something from him. I misheard him.

MR. JACKSON-LIPKIN: Well, perhaps --- did you or didn't you? Could you please help my Lord?

INTERPRETER: No, I'm sorry. It could only be translated as "I could have obtained a mortgage of 1.5 million dollars."

- Q. Did anybody say anything when you said this?
- A. Well, my objection was in vain.
- Q. Well, yes, I know your objection was in vain, but did anyone say anything or were you just ignored?
- A. They just ignored me.
- Q. Had you the money to bid at the auction for your own property or not?
- 30 A. No.

(PAUSE. Mr. Bernacchi confers with his assistant.)

Exhibit A

MR. BERNACCHI: I'm referring to Exhibit A, the account 74 - I'm sorry 70 onwards. Now Mr. Interpreter, would you read him the letter?

INTERPRETER: This one?

MR. BERNACCHI: Yes.

(PAUSE. Interpreter reads letter to witness.)

- Q. Now first of all, have you --- after that - this was sent on the 28th of December, 1970?
- A. Yes.
- Q. Now I would remind you that Mr. Ronald Li's report was made in February of 1968. Now have you ever had a signed statement of accounts yourself as opposed to anything that Ronald Li gave you, anything that was given in the Writ of Action in 1966, anything like that? Have you had a signed statement of accounts yourself?

A. You mean the accounts from the solicitor's firm?

Q. The accounts from the solicitor's firm signed by anyone - signed by, well, by the lst or 2nd Respondent?

A. No, not signed.

20 Q. And when they speak in their fourth paragraph of the letter:-

"We should be grateful if you would advise our client that he should in no circumstances set foot in our offices again. Repeatedly he has been to our offices causing a great deal of nuisance and inconvenience to our (Mr. Liu?) and in spite our requests, he failed to leave the premises."

- These visits that you have made to Johnson, Stokes & Master over the years, what were they --- were you requesting anything?
 - A. They sent me an unsigned statement of accounts, so I kept pressing for the accounts at the solicitor's firm.
 - Q. Now, when you say that they gave you an unsigned statement of accounts, are you referring to this letter on the 24th of October, 1966 enclosing accounts?

A. Yes, unsigned.

Q. Now, do you understand accounts yourself?

A. No.

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Q. I mean could you help the court on the accounts that they have enclosed with their letter?

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's

Evidence

A. Yes, I can.

Q. Now, would you turn to 70 - page 70 - A70, that's the first page. Now is it "WONG Chit-sen, Esquire in account with Messrs. Johnson, Stokes & Master"?

A. Yes.

Q. Now what does that mean - "WONG Chit-sen Esquire in account with Messrs. Johnson, Stokes & Master"?

No.6 P.W.1. TSE Kwong-lam Examination (Continued)

- 10 COURT: Is he a professional accountant giving expert evidence?
 - MR. BERNACCHI: I was endeavouring to help you understand these accounts which you stated that you couldn't understand?
 - COURT: You got me wrong Mr. Bernacchi. I said I couldn't understand your learned juniors dealing with the accounts which is quite a different thing from my understanding of the accounts.
- MR. BERNACCHI: My Lord, I will leave it. My Lord, I'm sorry, before I deal with the accounts ---

(PAUSE.)

- Q. Have you studied the accounts that were sent you with this letter of Johnson, Stokes & Master, A78?
- A. Yes.

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- Q. As a man of business, have you any qualification in accounting?
- 30 A. Well, I can distinguish the credits from debits and I know the figures.
 - Q. Well now, from these accounts --- now if you say, "Yes", I'll show you these accounts. If you say, "No", it doesn't matter. From these accounts that you have studied, are you able to say how much money did WONG pay out of his own pocket as opposed to how much money was simply credited to him from sales of units and then paid out to the contractors?

COURT: What's the basis for that question from the accounts?

MR. BERNACCHI: My Lord, I am trying to establish ---

In the Supreme
Court of
Hong Kong
High
Court

COURT: What's the basis for that question from the accounts?

Plaintiff's Evidence

MR. BERNACCHI: My Lord, I am assured that the accounts do --- that anyone that knows about accounting can see that from these accounts, only just over a million dollars was actually paid out from his own pocket.

No.6 P.W.1. TSE Kwong-lam Examination (Continued)

10 COURT: You're going to call a professional accountant to say that?

MR. BERNACCHI: My Lord, I had not intended to although I keep my ---

COURT: Then you'd better do so, hadn't you?

MR. BERNACCHI: My Lord, I think I had. My Lord ---

COURT: Look, my personal note of this witness's answer to your question was, "I cannot understand accounts." It was in answer to your question Mr. Bernacchi, "I cannot understand accounts."

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MR. BERNACCHI: My Lord, there are only 2 things more to do in chief. One is I have now discovered that his own brochure has included and has not been translated. available Ιt is untranslated form and I am sure that the available translation will bе tomorrow morning. The other thing is to clear up with my learned friend whether or not, the accounts were appended to the letter of the 24th of October, 1966 and if they are not admitted, frankly to find my own copy because I can say that I have seen it with my own eyes at one stage in this trial and it's missing now. I'm not saying anything more than that. But if perhaps at this could have an adjournment my stage, I Lord?

COURT: Very well. 10 o'clock tomorrow morning.

4.10 p.m. Court adjourns.

22nd November, 1978.

Plaintiff's Evidence

23rd November, 1978.

10.20 a.m. Hearing resumes

No.6 P.W.1. TSE Kwong-lam Examination (Continued)

Appearances as before.

P.W. 1 - TSE Kwong-lam - On former affirmation

XN. BY MR. BERNACCHI (Continues):

- BERNACCHI: My Lord, I must apologise - I desparately waiting for translation, but it is not possible, and by consent of my learned friend I will hand up the untranslated pamphlet and then give an undertaking to furnish the court with the translation in due course. before I continue I think my learned friend has something to say about a witness.
- MR. JACKSON-LIPKIN: I wonder if your Lordship could help me, if you could give me guidance. I am very troubled about Mr. Ken Watson, the auctioneer. My Lord, he will be out of the Colony from this Saturday until the night of Thursday of next week, my Lord I am sorry until the night of Wednesday of next week. My Lord, first of all may I ask your Lordship are you sitting for the whole of next week for this case?

COURT: Yes.

MR. JACKSON-LIPKIN: I will discuss this with my learned friend Mr. Bernacchi but should it prove necessary, my Lord, would your Lordship permit me to interpose Mr. Watson before he leaves the Colony, in other words, tomorrow?

COURT: Subject to what Mr. Bernacchi has to

say.

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MR. BERNACCHI: My Lord, I have already told my learned friend that I would consent if necessary. The only thing is that I don't think it is necessary because he will not - I mean he will not be through with his evidence by Wednesday of next week, Thursday yes, but not Wednesday. Mr. Watson will be back in Hong Kong on Wednesday evening, he could then be called on Thursday, but if - I don't want to put obstacles in the way - if your Lordship would prefer to play safe and have his evidence tomorrow ..

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

- COURT: There is no question of preferrence here, Mr. Bernacchi, it is a question of here is a witness who will be out of the Colony, and subject to what both of you have to say, is the most convenient time.
- 20 MR. JACKSON-LIPKIN: My Lord, the difficulty is if my learned friend, for example were to call no other evidence by Monday night or something like that, I will be in very great difficulties, that is why I am mentioning it now because I really would be caught then not knowing quite what to do. If he could give us an indication of how many more witnesses I don't think he needs to identify them but how many more we then can work out whether to trouble your Lordship with interposing the witness or not.
 - MR. BERNACCHI: My Lord, I will be calling someone from Wing On Life Insurance, some from
 Harrimans and probably the accountant as
 well, so I will not be finished this week,
 with cross-examination, so I will not be
 finished this week, and therefore my
 learned friend will presumably be calling
 at least the 1st and 2nd Respondents, so
 will not be finished by Wednesday evening.
 - MR. JACKSON-LIPKIN: My Lord, I just cannot have them today I mentioned it as your Lordship has very kindly indicated that

you would help us if we have to put Mr. Watson in - can we tell you tomorrow?

Plaintiff's Evidence COURT: I put it this way, for myself I don't mind when you put this witness in.

No.6 P.W.1. TSE Kwong-lam Examination (Continued) MR. JACKSON-LIPKIN: I am very grateful - we will try and let you know.

COURT: If parties could agree so much the better.

MR. JACKSON-LIPKIN: Thank you, my Lord.

- 10 MR. BERNACCHI: I will agree of course if my learned friend thinks that it is better that he gives evidence tomorrow, I will agree and have no objection.
 - you have already Q. Mr. Tse, given your evidence chief except in for this is your documents. I think own pamphlet that you had made for the sale or pre-sale of the flats?

A. Yes.

- 20 Q. Do you remember when it was printed?
 - A. This pamphlet was printed in either April or May 1964.

MR. BERNACCHI: My Lord, could this be admitted in evidence?

COURT: E?

MR. BERNACCHI: My Lord, could I suggest E145 - it is not at present in the E bundle, but so that I am choosing a number after 144..

COURT: E145.

Exhibit E145

30 MR. BERNACCHI: Yes, my Lord.

- MR. JACKSON-LIPKIN: I wonder if I might see it my Lord. Thank you, my Lord.
- MR. BERNACCHI: My Lord, it comprises apparently a total of nine pages, so that perhaps E.145 onwards E.145 to 153.

COURT: Yes.

MR. BERNACCHI: I am referring to page 151 - do you remember that was printed at the same time as the pamphlet or later?

This was printed last. Α.

By that you mean later? Q.

This was printed first, this later. Α.

152 was printed first and 151 stuck on top Q. printed later - how much later?

10 Α. 151 was printed after the issue of the Occupation Permit.

The issue of the Occupation Permit 0. was January 1965, so was it printed soon after that?

Yes. Α.

Could it be marked and then returned to me Q. for certification - now I hand you up letter from Messrs. Johnson, Stokes Master, of the 24th of October, 1966 with enclosures - now that encloses unsigned accounts?

Α. Yes.

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Could you hand it to the witness please -Q. now the first page the letter itself and the summary of the accounts, which is the page are admitted documents - now second third and fourth pages admitted - now would you say whether when you received this letter in October of 1966, did it or did it not have the last two pages?

Yes, altogether. Α.

Thank you - now with E.91, 92, 93 and 94 -Q. could that also be marked now? Thank you very much.

XXN. BY MR. JACKSON-LIPKIN:

Mr. Tse when you acquired these two sites you obtained them by means of a mortgage did you not?

40 Α. Yes.

Was there a mortgage on each site or did Q. you have two mortgages on two sites? First I purchased 52 on mortgage.

Α.

- Q. Was that Mr. Pavri - was it Pavri name?
- don't know English - I don't Α. Ι English.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6 P.W.1. TSE Kwong-lam Examination (Continued)

Exhibits E91, 92. 93 & 94.

P.W.1 TSE Kwong-lam Cross-Examination

In the Supreme What was the name of the man with whom you Q. Court of had the mortgage? Hong Kong It happened some ten years ago I have to Α. High Court check. Q. There were two mortgages were there not one with a name you cannot remember and Plaintiff's one with Madam WONG Sinn-kwan? Evidence have to Α. still check before Τ remember. further because there was a No. 6 10 mortgage, after that I obtained a building TSE Kwong-lam mortgage from Mr. Wong. Cross-Examination Q. WONG Sinn-kwan is a married woman living in Wongneichong Road? (Continued) Well, I don't know her but the transaction Α. was handled by J.S.M. Q. Was the other transaction handled J.S.M. as well - the first man whose name you don't remember? There were two separate transactions Α. 20 which one are you referring? Q. All Ι want to know, there separate transactions, both handled for you by Johnson, Stokes & Master? Α. Before it was a mortgage to Mr. Wong Chit-sen which was handed by Brutton & Stewart. JACKSON-LIPKIN: MR. My Lord, I now have the correct name - it was not Mr. Pavri but K.S. Pavri and Son Limited - it was a 30 limited company. There were two mortgages, one in respect Α. of 52, the other 54 - which one are you referring? It doesn't matter Mr. Tse - why did you Q. need to pay those off and start a new mortgage with Mr. Wong Chit-sen - Mr. Interpreter may I rephrase that slightly differently - you had obtained money from of this other persons in respect 40 was property on mortgage why necessary to discharge those mortgages and go to an entirely different person for the building? Because Α. intended to Ι purchase this property from Mr. Wong, so that it could help me to re-develop the properties. Mr. Tse, I am sorry I don't understand that - when did you intend to purchase Q.

from Mr. Wong?

MR. BERNACCHI: He did not say purchase - I object my Lord.

In the Supreme Court of Hong Kong High Court

A. I borrowed money from Mr. Wong.

MR. JACKSON-LIPKIN: May the previous answer be read back to your Lordship?

Plaintiff's Evidence

COURT REPORTER: "Because I intended to purchase this property from Mr. Wong so that it could help me to redevelop the properties."

No.6 P.W.1. TSE Kwong-lam Cross-Examination (Continued)

MR. BERNACCHI: I apologise for the English, but I think the Chinese was 'obtained a loan' not purchase.

INTERPRETER: It is a slip of the tongue of the witness - he later corrected himself, 'I obtained a loan from him'

COURT: This witness is not exactly easy to translate because he mumbles a few words, he changes, he mumbles and changes again.

MR. JACKSON-LIPKIN: Thank you, my Lord. Mr. Tse, you were introduced to Mr. Wong by a Mr. YUNG Tat were you not?

A. Mr. CHING.

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- Q. Is that a property broker?
- A. A friend.

Q. Was he a property broker?

A. He was introduced to me but I did not know his occupation.

Q. Mr. Tse, perhaps you misunderstood me the gentleman who introduced you to Mr. Wong Chit-sen was he a property broker?

- A. He introduced me to Mr. Wong Chit-sen but I did not know his occupation. He simply introduced me to know Mr. Wong.
- Q. But this man was your friend you mean you did not know what he did?
- A. He only introduced me to Mr. Wong how could I know what trade he was in?
- Q. Very well but by the time the introduction took place you had already borrowed money from two different mortgagees in relation to the sites?

A. He did not introduce me to them - he only introduced me to know Mr. Wong Chit-sen.

In the Supreme Q. Before you were introduced to Mr. Court of Hong Kong Chit-sen you had already borrowed money to High purchase the sites? Which one are you referring because there Court was a previous one from Mr. Wong. Before you met Mr. Wong you had already borrowed money to purchase the sites? Q. Plaintiff's Evidence I had already purchased the site. Α. By borrowing money for that purpose Q. 10 mortgage? Which one are you referring -TSE Kwong-lam Α. are you Crossreferring to the mortgage with Mr. Wong or Examination the previous occasion? I am referring to the period before you were introduced to Mr. Wong, as you very (Continued) Q. well know. That is different if you are asking for Α. something before. Q. Mr. Tse, please listen to what I am going 20 to say - if you don't understand any question that I put to you please tell me and I will either put it again or rephrase it - do you understand? What are you asking - you ask sometimes before and then after. Α. Q. I will try again. would like to ask Mr. Counsel which transaction - the two transactions before or the mortgage from Mr. Wong. 30 Q. Listen - If I ask you any questions that you don't understand will you please tell me so at once? All right. Α. Q. You borrowed money on two mortgages in order to purchase the two sites 52 and 54? Α. Q. Why was it necessary for you to change mortgagees from those two people to Mr. Wong Chit-sen? 40 Because Α. intended redevelop Ι to property to build six blocks of building with 15 storeys but I had not sufficient Q. Did you approach the other two mortgagees and ask them to assist you? Α. No. Was that because you had been such a bad Q. payer on those mortgages that there would

be no point in asking them?

- A. What do you mean by bad payer?
- Q. Don't ask questions, just answer.

COURT: He is asking for clarification of the question - he does not understand.

- MR. JACKSON-LIPKIN: My Lord, I will take it that he does not understand, I am afraid had you been in default of payments on those earlier mortgages?
- A. How long ago?
- 10 Q. Had you, yes, no or you cannot remember.

COURT: In respect of the mortgages of No.52 and No.54, were you ever in default?

A. I don't understand what is in default because that mortgage was just transferred to Mr. Wong in respect of 52 and 54.

- Q. During the subsistence of those two mortgages were you ever in default, this was the question asked of you and the answer is either yes or no if you are one day late in your interest payment you will be in default you will be considered as in default now have you been in default?
- A. Yes.

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COURT: Yes, Mr. Jackson-Lipkin, he was in default.

- MR. JACKSON_LIPKIN: Thank you my Lord, I am much obliged. Mr. Tse, can you remember when this friend of yours introduced you to Mr. Wong Chit-sen?
- A. Before November 1963, before the money was lent.
- Q. In October 1963 was it?
- A. No, not October between November and December November.
- Q. Mr. Tse, if you don't remember may I suggest you say so to me at once you see December was after the mortgage.
- A. November.
- 40 Q. Thank you and your friend introduced you to him in order to see whether you could agree with Mr. Wong about borrowing money to erect the building?
 - A. Yes.
 - Q. Now in order to know how much you wanted to borrow you had to make the calculation did you not?

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's Evidence

No.6 P.W.1 TSE Kwong-lam Cross -Examination (Continued)

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- A. I was introduced to Mr. Wong for a mortgage of one and a half million dollars.
- Q. When you were asked by Mr. Bernacchi how you arrived at the sum of one and a half million dollars you gave a breakdown breakdown of the figures the first mortgage was \$730,000 you were asked Mr. Tse how you arrived at the figure of one and a half million dollars, you remember being asked?
- A. Who asked me?
- Q. This gentleman here.
- A. I borrowed one and a half million dollars from him.
- Q. My Lord, may I rephrase the question you were asked questions by this gentleman, your counsel, yesterday and the day before one of his questions was how did you calculate that it was one and a half million dollars that you needed from Mr. Wong.
- A. Yes, will you please make it clear it was agreed between me and Mr. Wong the mortgage was 1 1/2 million dollars.
- COURT: Why 1 1/2 million dollars what was your calculation to arrive at the figure of a million and a half?
- A. At first I paid off the previous mortgage with 600 odd thousand dollars and 80 thousand odd interest.
 - COURT: Right that accounts for 700 odd what about the others?
 - A. And the 770 thousand dollars was to be paid by ten instalments.
 - Q. Mr. Tse when you gave your evidence on oath yesterday you said the following:-

"I made an estimate, old tenants \$230,000, building costs, lifts and piling, a million odd"

- A. In respect of the \$230,000 to the tenants for the first mortgage I only paid \$80,000 and \$150,000 was paid from the second mortgage.
- MR. JACKSON-LIPKIN: Mr. Interpreter would you

help me on something - when you put to him my question didn't he say no, and then started making new calculations, and did you then bring him back to my question, isn't that what happened?

INTERPRETER: I don't quite remember.

MR. JACKSON-LIPKIN: If he wished to make an answer contradictory to the earlier one, let him do it, so we will hear it. It is very kind of you to try and help, but I would rather have it that way.

You told my Lord, upon your oath yesterday that your calculations were as follows:-

"Old tenants \$250,000"

A. Yes.

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- Q. "Building costs, lifts and piling, one million odd"?
- A. Yes, a little over one million dollars.
- Q. And that you said was how you calculated you needed 1.5?
- A. I did not say so would you repeat please?
- Q. Then after you had given that calculations you were taken by Mr. Bernacchi through the exact figures actual piling 74,000, actual building 911,000, actual lifts 99.650?
- A. Yes.
- Q. Now Mr. Tse, on whichever of those figures you make a calculation 1.5 was insufficient even to get off the ground, is it not Mr. Interpreter, I am sorry, may I rephrase that whichever way you look at it 1.5 million was insufficient.
 - Q. I intended to use the proceeds of the pre-sale of the properties of the units.
 - Q. If there weren't any...
- MR. BERNACCHI: pre-sale that is misleading the witness he said the pre-sale of units, we know there was ..

COURT: Yes, Mr. Bernacchi.

MR. JACKSON-LIPKIN : I have already thanked my

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

friend for correcting me. When you were making your original calculations of what you needed at the outset you could not then have known what you would raise, if anything, on pre-sales.

Plaintiff's Evidence

Α. I don't understand.

- No.6 P.W.1 TSE Kwong-lam 10
- Cross-Examination (Continued)

Q. When you were introduced to Mr. Wong you needed some money for a building mortgage.

building for the construction work.

You knew you had to pay off a sum of 600 Q. thousand on other mortgages.

COURT: He said so already.

MR. JACKSON-LIPKIN: I haven't put the exact figures to him which I would in a minute.'

COURT: You ought to know the exact figure.

MR. JACKSON-LIPKIN: This is his calculation in advance - he said about \$600,000. He said already, my Lord, the actual figures.

COURT: If you look at the accounts ..

MR. JACKSON-LIPKIN: It is 621,967, my Lord. 20

The amount paid off in both mortgages was just over a quarter of a million dollars.

MR. May I JACKSON-LIPKIN: just get the accounts.

Then there is a further 300-621 thousand ..

JACKSON-LIPKIN: Yes, my Lord, the exact MR. figure is 621,967 including costs.

COURT: 621,967. 30

> JACKSON-LIPKIN: 967 - 192,090, MR. Ιs it 71,120, 358,757, my Lord, that comes to 621,967.

COURT: Yes, I beg your pardon.

MR. JACKSON-LIPKIN: If I sound hesitant about figures it is because my addition and subtraction are very bad - you knew at the outset there would be something in the region of 600,000 to pay off the old mortgage.

A. Yes.

Q. And you told us that you would need 230,000 for old tenants.

10 A. Yes, 230,000.

Q. And you told us that your calculation for building, piling and lifts was a million.

A. One odd million.

- Q. On that rough calculation it was 1.8 million that you would need?
- A. I intended to use the proceeds of the pre-sale of the units for building costs.
- Q. Did you or did you not merely intend to take the 1.5 and then ask for more?

20 A. No.

- Q. On the basis that the mortgagee would have to give you more or the building would not go up and he would have no security?
- A. He wanted me to get further charges because \$300,000 was not sufficient.
- Q. I am asking you about your intention when you asked for 1 1/2 million.
- A. I intended to use the proceeds of the pre-sle of the units to cover the balance of the building costs.

Q. Just before I leave that, the actual figures as they turned up were one million nine that you would need were they not?

- A. From what 1.9 million dollars was calculated?
- Q. The figures that you told my Lord yesterday:-

74,000 for piling 911,000 for the Lam Kei Contract 99,650 for the lifts

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A. Yes.

- Q. 230,000, you said for old tenants and 621 odd thousand for the old mortgage?
- A. Yes.
- Q. Now Mr. Wong, as we know, agreed to advance you the sum you suggested, 1 1/2 million?

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

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Court of
Hong Kong
High
Court

Plaintiff's
Evidence

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No. 6

P.W.1.

Cross-

TSE Kwong-lam

Examination

(Continued)

- A. The first mortgage was 1 1/2 million dollars.
- Q. The answer to my question is yes.
- A. The first mortgage was 1 1/2 million dollars.
- Q. When I want to come to the first mortgage I will do it Mr. Tse you then instructed Johnson, Stokes & Master to act for you in relation to the mortgage did you not I am sorry the proposed mortgage?
- A. I have some explanation.
- Q. Yes, please.
- A. After I and Mr. Wong had come to agreed terms Mr. Wong well aware of the fact that that amount was not sufficient, he agreed to allow me to use the proceeds of the pre-sale of the units to cover the building costs.
- Q. I will just repeat my question after Mr.
 Wong had agreed to advance you 1 1/2
 million you instructed Johnson, Stokes &
 Master to act for you in relation to the
 proposed mortgage?
 - A. Mr. Wong insisted that I should ask Mr. LIU King-wah of the J.S.M. to handle the transaction.
 - Q. Mr. Tse, you are a grownup boy you could have said, 'I would prefer Brutton and Company'?
- 30 A. But to this Mr. Wong did not agree. He insisted that it must ben handled by J.S.M.
 - Q. Would you please look at E.144.
 - MR. BERNACCHI: I think that is wrong.
 - MR. JACKSON-LIPKIN: I am sorry, what is wrong, my Lord if I am doing something wrong I would like to know what it is. That is your signature is it not?
 - A. Yes.
- 40 Q. What does the first sentence say there?
 - COURT: Mr Jackson-Lipkin, he has never denied that - he just said Mr. Wong insisted that he instructed Johnson, Stokes & Master he has merely said it was at the insistence of Mr. Wong.

MR. JACKSON-LIPKIN: My Lord, I will leave that point if your Lordship feels that I made it sufficiently clearly.

Q. Now I want to go back to something you said a moment ago - you said that from the outset Mr. Wong knew that 1 1/2 million was insufficient. Wait a minute I haven't asked you the question - you never actually met Mr. Wong himself till the two of you went to J.S.M. office did you?

Α. It was only through introduction of my friend to Mr. Wong that we came to settle terms otherwise how could we go together

to J.S.M.

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- Q. I entirely agree that was exactly how it was done through the typical local manner, through a middleman Mr. YUNG Tat, the two principals only met after everything was agreed.
- 20 MR. BERNACCHI: I am sorry, it is two questions - he has not mentioned Mr. YUNG Tat yet -I will ask my learned friend to ask him was it Mr. YUNG Tat the broker - he has mentioned an entirely different name.
 - MR. JACKSON-LIPKIN: I am sorry I mentioned Mr. YUNG Tat. I think about twenty minutes ago.
 - COURT: He said a man introduced another party to him - a Mr. CHING
- JACKSON-LIPKIN: Could this name 30 MR. YUNG in some other dialect be CHING?

INTERPRETER: No. he said CHING.

- What are Mr. CHING's other names? Q.
- Α. CHING Shi-wai.
- MR. BERNACCHI: Thank you very much.
- JACKSON-LIPKIN: MR. My Lord, then may rephrase that question - what happened was that all your negotiations with Mr. Wong Chit-sen were done thourgh your friend CHING Shi-wai?
- Α. No, I personally talked to Mr. Wong.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Court

Plaintiff's

Evidence

No. 6
P.W.1.
TSE Kwong-lam
CrossExamination
(Continued)

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Q. Very well, how do you say Mr. Wong knew that 1 1/2 million would not be sufficient for your needs?

A. That was myself plan tht I required 1 1/2 million dollars to which Mr. Wong agreed to the mortgage of the same amount.

Q. Do you understand my question?

A. Would you repeat again?

Q. How do you say that Mr. Wong Chit-sen knew from the beginning that 1 1/2 million would not be sufficient for your needs?

A. I knew that amount was not sufficient to cover the whole building cost, but I intended to use the proceeds of the presale of the units to cover the balance.

MR. JACKSON-LIPKIN: My Lord, I am obviously not going to get an answer, will pass on to something else - would your Lordship give me some indication as to whether you are going to take mid-morning adjournment?

COURT: No, we started late this morning.

- A. I am going to ask you some questions about figures over the whole course of your dealings with Mr. Wong Wong Chit-sen, that is you borrowed from him or had the use of over two million dollars did you not?
- A. No.
- Q. To be exact, \$2,117,940.10 without counting interest?
- A. That figure is not correct.
- Q. You know, do you not that that figure was found to be the corect figure by Mr. Ronald LI Fook-shu?
- A. That figure is not correct. The actual figure should be 1.8 million dollars because Mr. Wong used 820,350.40, the proceeds of the presale of the units used this figure as his capital to pay off the building costs, because they used the bills from proceeds of the presale of the units as capital to pay off the building cost and credited to the accounts.
- Q. If you don't understand me, please say so.
- A. And also used the interest as capital, used the interest as well as the proceeds

as capital, so this accumulated to the amount of over \$2,000,000.

- Q. Are you all right? (Witness breaks down in tears).
- MR. JACKSON-LIPKIN: My Lord, the witness doesn't look as if he is very well at the moment. Do you think we could have a or let him sit down?

COURT: Yes, you see it is part of the fault
which he has - after all these years
nobody - nobody up to now, I understand,
has explained to him that there is a
difference between a straight loan and an
overdraft. It is obviously clear he was
still and is still under the impression
that he was entitled to a balance of a
million and a half at the time.

MR. JACKSON-LIPKIN: Of course your Lordship...

COURT: It is a straight overdraft. Nobody has
ever explained to him that under the
mortgage it was a straight loan account,
and so long as a million and a half is
paid the mortgagee has complied with his
obligation.

MR. JACKSON-LIPKIN: My Lord, of course....

COURT: But once he is cross-examined on this point, he must be of the view, because he does not understand, nobody has ever explained to him earlier ..

30 MR. JACKSON-LIPKIN: My Lord, your Lordship says that nobody has ever explained to him, but may I with the deepest respect say that your Lordship has not yet heard the evidence.

COURT: I would have thought Mr. Jackson-Lipkin, in view of my remark, improper though it may be, I am in your line of thinking on that one.

MR. JACKSON-LIPKIN: My Lord, what I am interested in is this, my Lord, that

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Plaintiff's Evidence

Plaintiff's Evidence

No. 6 P.W.1. TSE Kwong-lam Cross-Examination (Continued)

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I hope to convince you that your Lordship has been misled into that conclusion by the time the evidence has been called

COURT: Seeing the witness is in this state, we had better adjourn for fifteen minutes to

24th November 1978

11.07 a.m. Court resumes

Appearances as before.

MR. BERNACCHI: My Lord, there are some agreed issues to be read out. I think it will take about ten minutes.

MR. JACKSON-LIPKIN: Would you please take directions from my Lord and not from either of us. My Lord, I believe that the

to interfere with that.

COURT: He wasn't being re-sworn: he was being reminded of his former oath.

MR. JACKSON-LIPKIN: I beg your pardon, my Lord. Have you finished reminding him?

20 INTERPRETER: No, not yet. I was just starting. Shall I have him ...?

COURT: Just remind him. Remind him.

P.W.1 - TSE Kwong-lam (o.f.a.)

MR. JACKSON-LIPKIN: My Lord, you will recall we adjourned last evening -- yesterday morning when the witness was indisposed in the course of his evidence.

MR. BERNACCHI: My Lord, I must object to this.

My learned friend is doubting my authority
to agree issues, except that he in the
witness-box -- the witness in the
witness-box is made aware of what is

happening. I have in fact a clerk of my solicitors' firm who will interpret but I take strong personal objection to this procedure.

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COURT: I do not know what the procedure is, Mr. Bernacchi, Mr. Jackson-Lipkin. AS I understand it this witness is in the middle of being cross-examined. So far as I'm concerned he is now in the box to be cross-examined but if counsel wants to .. (inaudible)..., then it's up to counsel to address me.

Plaintiff's Evidence

No. 6
P.W.1.
TSE Kwong-lam
CrossExamination
(Continued)

MR. JACKSON-LIPKIN: My Lord, yes.

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COURT: Are you cross-examining the witness, Mr. Jackson-Lipkin?

MR. JACKSON-LIPKIN: My Lord, I'm just reminding your Lordship what happened because I'm going to say now, so the witness also should know, that I shall be changing the line of cross-examination and reducing the scope of it because of matters that have been agreed. My Lord, I'm not -- your Lordship will give me guidance on this but I had understood that all that we do ought to be translated to somebody who does not speak the language in which we are addressing you.

COURT: He is a witness in the box to be crossexamined. If counsel have agreed to limit
the issues in a certain way, then I
presume the cross-examination would also
be limited, and I do not see why the
witness needs guidance. The witness is
there to answer question, one by one.

MR. JACKSON-LIPKIN: Yes, my Lord: he is also there to know what's happened.

COURT: With respect, why?

MR. JACKSON-LIPKIN: My Lord, he is the claimant.

40 COURT: Does that matter? He is a witness in

the box and it Koesn't matter whether he's the claimant, respondent or whoever he is. He is there in the box to answer questions one by one.

Plaintiff's Evidence

MR. JACKSON-LIPKIN: Yes, my Lord.

No. 6 P.W.1. TSE Kwong-lam Cross-10 Examination (Continued)

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COURT: If counsel cross-examining wants restrict his cross-examination certain way, there is no need to address the witness.

MR. JACKSON-LIPKIN: My Lord, what going to say was this. Your Lordship will recall that we had broken off and I was now going to say that my learned friend and I have agreed on certain issues, which restrict the scope cross-examination.

COURT: Good.

MR. JACKSON-LIPKIN: My Lord, the reason I said that was this, that as I am going to tell 20 you that they are you may wish the witness to stand down.

COURT: If that was in your mind from the beginning, Mr. Jackson-Lipkin, why didn't you say so. Now have you two come to an agreement on issues which you want to announce to the court?

MR. JACKSON-LIPKIN: Yes, my Lord.

COURT: Witness, will you stand down. MR. JACKSON-LIPKIN: My Lord, we haven't, I hope you will appreciate, had time to have the document retyped and with your Lordship's permission I will read what we've agreed and one of us will have them typed for you over the adjournment.

COURT: Thank you.

JACKSON-LIPKIN: MR. Thank you, my Lord. Lord, from this moment on we will restrict ourselves entirely to the following five issues.

(1) Whether the sale was a proper sale or whether in equity it was a sale which and/or set aside damages be awarded for collusion and bad faith (equitable fraud) and/or negligence in relation to the sale. That's the first one, my Lord. My Lord, I hope you will think that this is a proper issue. We have put it in terms which we think it ought -- it really ought to have been from the outset. Lord, the second is this :-

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Plaintiff's Evidence

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TSE Kwong-lam
CrossExamination
(Continued)

Whether in equity the 1st respondent, as mortgagee, should have taken the money paid to him from the pre-sale of units to satisfy interest so that interest would not have been owing.

My Lord, in other words, what ought the 1st respondent in his capacity mortgagee to have done with the proceeds of sale that were paid to him?

My Lord, the third I'm afraid is a little more complicated but it's subdivided.

COURT: Carry on.

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MR. JACKSON-LIPKIN: Thank you, my Lord.

(3A) Did the mortgage deed oblige the 1st respondent, as mortgagee, to release part of his security so as to permit the pre-sale of units?

B.1. Whether in fact the mortgage deed in law or in equity obliged the claimant to pay over the purchase money of the pre-sale of units to the lst respondent.

and 2. Was the claimant so obliged.

My Lord, it's awfully difficult when I'm just reading them but if there were pre-sales permitted by the mortgage deed

Plaintiff's Evidence

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Cross- 10
Examination
(Continued)

at all, did Mr. Tse have to pay the money over to Mr. Wong? That's basically it. And in fact, was he so obliged? Now (4) -- my Lord, it is agreed that I should point out to your Lordship that neither 2 nor 3 are raised in the pleadings but these, my Lord ...

MR. BERNACCHI: My Lord, it is agreed that there is apparently to be an agrument.

MR. JACKSON-LIPKIN: But these are agreed issues and I want your Lordship to appreciate that we have agreed that these be issues notwithstanding the fact it is our case they are not raised on the pleading. The 4th one - it sounds rather familiar to your Lordship -

Whether other like transactions between the 1st, 2nd and 3rd respondents and other landowners are relevant and material to the above issue.

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And lastly, my Lord,

Was the 1st respondent negligent in the keeping and rendering of the accounts of the mortgage so as to entitle the claimant to damages?

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Now, my Lord, that raises some interesting questions of whether there is any duty on a mortgagee to keep accounts. If there is no such duty, as may be the law, then the answer to the question is "No". If there is any authority to support the proposition that there is such a duty, then your Lordship will have to decide whether it was properly discharged.

COURT: I will deal with the issues as they are framed before me. I can see that the ..(inaudible).. Be that as it may.

MR. JACKSON-LIPKIN: My Lord, I said that in relation to issue five because we would not wish your Lordship to think that by

to that we had in any wav agreeing conceived that there is such a duty. my Lord, if we added that in it would become a very long and complicated issue. my Lord, subject to those oral comments in relation to 2 and 3 of the pleading and 5 on the existence of a duty, those are the issues. My Lord, may I ask you, do you wish us to put in to those issues for your own assistance the oral points I have made, because if it will assist you, we can write those in?

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No. 6
P.W.1.
TSE Kwong-lam
CrossExamination
(Continued)

COURT: The oral points you have made are on the record.

MR. JACKSON-LIPKIN: Thank you, my Lord.

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COURT: You cannot put anything in now without the consent or concurrence or agreement of Mr. Bernacchi, so there's no question of my wishing to put in anything, is there?

20 MR. JACKSON-LIPKIN: No, my Lord, but Mr. Bernacchi knew that I was going to take these two points orally. It was just a question of whether you would prefer ..

COURT: Very well, can we get the witness back in the box then?

MR. JACKSON-LIPKIN: Yes, my Lord.

COURT: Unless you have something else to say, Mr. Bernacchi?

MR. BERNACCHI: No, no; I agree to the issues, the oral comments, my learned friend's own comments.

XXN BY MR. JACKSON-LIPKIN (continues):

- Q. Mr. Tse, you told my Lord that before you entered into the original mortgage you had a discussion with Mr. Wong about the pre-sale of units?
- A. About the pre-sale of units?
- Q. Yes. Was that a mistake in the translation of what you wanted to say?

Plaintiff's Evidence COURT: Mr. Tse, you must pay attention to the questions and not let your mind wander. The question was a very clear one and the answer could have been very simple. Now will you please not let your mind wander and listen to the questions and answer those questions?

A. All right.

No. 6 P.W.1.

TSE Kwong-lam 10

Examination (Continued)

COURT: Can you remember the question?

INTERPRETER: Yes, I'll try, my Lord.

A. No, there had been no discussion before I entered into the original mortgage.

Q. What original mortgage do you mean? The one with Mr. Wong or the first charge with Mr. Wong or the ones prior to Mr. Wong?

A. The first mortgage with Mr. WONG Chit-sen for a sum of 1.5 million.

Q. Did you ever have a discussion with Mr. Wong about pre-sale of units?

20 A. When he offered to lend me some money on the additional mortgage, that point was raised.

Q. He offered you money on an additional mortgage. When was that?

A. At first he suggested that I should obtain an additional loan of \$500,000 at 1.4% interest per month. I did not agree.

Q. Mr. Tse, is this your -- I'm sorry.

A. When he made the first offer, the offer was for an additional \$500,000, as I have just said. He made such offer because he thought that I did not have sufficient fund for the development of the site. Shall I continue?

Q. If you wish to.

A. I then raised the question of pre-sale of the units and eventually I agreed to obtain a further loan of \$300,000 at 1.3% interest per month.

40 Q. Is this your case, Mr. Tse, that you never asked for further money; it was just offered to you?

A. He asked me to borrow the money.

Q. And he asked you to borrow more money from him because he thought you hadn't got enough to put up your building, is that

your case?

Α. I did not know what was on Mr. Wong's mind. He agreed to let me have a further loan of \$300,000 but he did not agree to the interest rate being 1.3% per month. He asked for 1.4% per month.

Can you remember when this conversation Q.

When I was asked to obtain a further loan Α. 10 by way of additional mortgage.

Q. Can you remember when that was?

Α. When I was asked to obtain a further \$300,000.

Q. Please try and help me. Can you remember when that was?

Α. Are you asking me about the additional \$300,000?

Q. I'm asking you about the conversation that you have just been telling my Lord about. You mean the \$300,000?

Α. 20

> COURT: You were asked about when did conversation take place about Mr. offering you \$500,000 because you did not have enough?

That was sometime in July 1964. Α.

Q. Shortly before you signed the charge -the further charge on the 17th July, is that right?

MR. JACKSON-LIPKIN: Interpreter, Mr. perhaps I didn't make myself clear. It wasn't 30 came first the charge conversation shortly before the charge, the charge shortly before conversation.

INTERPRETER: I misheard you.

MR. JACKSON-LIPKIN: I'm sorry, my fault. put that again?

INTERPRETER: Please do.

When you said July, 1964, do you mean Q. 40 shortly before the 17th July, when you signed the further charge?

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(Continued)

MR. JACKSON-LIPKIN: My Lord, it's eight ten.

- A. You mean the discussion?
- Q. Yes.
- A. Yes, before the 17th July; the discussion took place before the 17th July.
- Q. In that same month?
- A. In that same month. In July all right but I cannot remember on which date.
- Q. Mr. Tse, in fact had you not agreed very much earlier with Mr. Wong that you would make pre-sales of units?
- A. No, no, not long before the discussion in respect of the additional loan. The discussion was conducted only when the additional \$500,000 loan was offered.
- Q. You're quite sure?
- A. Sure about what?
- Q. About what you've just said.

COURT: I've asked you to listen and I ask you again. Don't answer questions with a question.

A. You mean am I sure of what happened?

COURT: You're sure that there was no discussions about sale of flat prior to the discussion about the \$500,000 loan.

- A. There had been no discussion prior to that when the discussion in respect of the \$1.5 million, there was no such discussion.
- Q. Mr. Tse, I suggest to you that you had an agreement with Mr. Wong much earlier than July concerning the pre-sale of flats.
 - A. There had been no discussion -- there had been no such discussion prior to the offer of the additional \$500,000. When that offer was made by him, I raised the point of raising money by way of pre-sale of units.
- Q. And I further suggest to you that in order to help you personally Mr. Wong agreed that you could retain a proportion of each sale price for your personal use.
 - A. You mean the proceeds of the sale should come to me? No there was nothing of the sort. I passed the proceeds of the sale

to JSM. I passed the proceeds of the sale of the units to JSM.

Q. Mr. Tse, if things are a long time ago and you can't remember, please say so. That last answer I suggest to you was a deliberate lie.

A. I was only allowed to keep \$2,000 for each flat sold and the rest of the money would go to JSM.

10 Q. So the answer was untruthful the first time, was it?

A. Well was your previous question to the effect that Mr. Wong would let me keep the money from the pre-sale of flats?

Q. Are you saying you do not understand my question.

A. I don't understand. Please repeat that.

Q. Mr. Wong agreed with you to help you, that you should be allowed to retain for your own personal use part of the proceeds of each pre-sale.

A. I was allowed to keep \$2,000 for each flat sold; the rest would go to JSM.

Q. Thirty-six flats were sold?

A. Yes. Yes, to me, yes. All along thirty-six flats through me, sold through

Q. Twice thirty-six is seventy-two, is it not?

30 A. Why?

40

MR. JACKSON-LIPKIN: What did he say?

INTERPRETER: He's asking why it should be twice thirty-six.

Q. Don't ask questions: just answer. Twice thirty-six is seventy-two. Thirty-six flats at \$2,000 is \$72,000 -- units.

A. For every flat that I was entitled to \$2,000, then ten flats I would be entitled to \$20,000. Are you asking me the total sum of money I was entitled to?

Q. I'll repeat my question. Thirty-six flats at \$2,000 each is \$72,000 is it not?

A. You mean \$72,000?

INTERPRETER: He's now doing calculations.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's Evidence

No. 6
P.W.1.
TSE Kwong-lam
CrossExamination
(Continued)

A. Is it 72,000? Yes, 72,000.

Q. You pocketed \$140,175 from the proceeds of sale, didn't you? For your own personal use.

A. Over \$140,000?

Q. \$140,175 went into your pocket from the proceeds of sale with the consent of Mr. Wong.

A. What money would that have been?

COURT: Your share of the proceeds of sale. It is suggested to you that you -- that over \$140,000 was paid to you.

A. What money would that have been? Would

that have been interest?

COURT: Paid over to you from the proceeds of sale of the 36 flats. Counsel is saying to you that you actually received over \$140,000.

A. Am I being asked if I had received that

much money, over \$100,000?

20 much m COURT: Yes.

30

- A. Now I don't remember. How can I remember? I don't remember.
- Q. It was far more than \$2,000 a flat which you grudgingly admitted a few minutes ago, was it not?
- A. I cannot remember the figures. It has been over ten years now and at the time I was asked by Mr. Wong that the sales of the flats would have to be handled by JSM and I would be allowed to keep the \$2,000 for each flat sold. If I should ask for more, I would have to have the consent of Mr. Wong, approval of Mr. Wong.

Q. Mr. Tse, first of all, you said that you were not allowed to retain any of the proceeds. Then you said you were allowed

\$2,000 per unit.

A. I was allowed to have 2,000.

40 Q. Then you said if you wanted more than 2,000 you could ask a firm of solicitors for it.

COURT: He didn't say that.

Q. Ask Mr. Wong for it. But in fact you got the money direct from the purchasers,

didn't you? In every case.

MR. BERNACCHI: Wait for an answer, please.

MR. JACKSON-LIPKIN: That's part of question. The interpreter must be allowed time.

Α. When the question was first discussed, Mr. Wong said that I could have \$2,000 per unit, per flat sold. He also said that if I wanted more, I could have more with his consent. He agreed to that.

And that money was paid to you in every case directly by the purchaser, was it Q. Yes or no. Please don't not? make a

speech.

10

Α. Yes, that was the case but that was done with the consent of Mr. Wong.

Q. That is what I suggested to you nearly twenty minutes ago.

- MR. JACKSON-LIPKIN: My Lord, an example, 20 your Lordship wishes to see it, is on page A28.
 - Q. Now that we have got this much in your recollection, can you now remember that you received over 140,000 for your own use, with the consent and approval of Mr. Wong?
 - I cannot remember. Α. It has been a long time.
- Let me see if I can revive your memory. Q. 30 There was a sale to a couple, WONG Ping-hon WONG Chi-kin, and thirty-seven-and-a-half thousand dollars and you kept out of that thirty-twoand-a-half thousand dollars. you remember that?

COURT: Is that document in evidence?

JACKSON-LIPKIN: My Lord, I'm going to -that document is not in evidence, my Lord. It's been disclosed by the other side and it's from their document that we've taken 40 but what we have done for Lordship is to prepare the schedule

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's Evidence

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CrossExamination
(Continued)

showing all of these, breaking them down and giving the dates and the respective amounts and the totals. My Lord, in due course I shall hand it to your Lordship and show it to my learned friends, but it's taken from their document.

COURT: Is there any point in taking us through document by document?

MR. JACKSON-LIPKIN: No, my Lord, but I was taking this as an example: he got $32\ 1/2$ out of $37\ 1/2$.

COURT: What difference would it make whether he had pocketed 140,000 or so ..., as an issue?

MR. JACKSON-LIPKIN: None at all, my Lord. As additions its irrelevant, the amount.

- Q. Do you remember an incident in relation to a flat on the 7th Floor?
- A. You mean one flat? That could not have been the case. I could not have kept over \$30,000 from the proceeds of sale of one flat.
 - Q. Flat No.1 on the 7th Floor, you received the money on the 7th July 1964?
 - A. I did not receive that much.
 - Q. Let me take Flat No.1 on the 12th Floor which you sold with Mr. Wong's permission for \$28,000. You kept out of the proceeds of that sale \$21,000, did you not?
- 30 No, I did not get that much. Α. There was a change of flat after bought it. I have the purchaser refer the to to accounts before can answer that question.
 - Q. Very well, Let me see if I can help you. This was a sale in May 1964, two months before you say there was a first conversation about pre-sales, with Mr. Wong.
- 40 A. Sometime in May I signed an agreement at JSM and it was then, it was in May 1964 that I instructed JSM in respect of matters concerning the pre-sale of units.
 - Q. By agreement with Mr. Wong.

MR. JACKSON-LIPKIN: What I meant was that the signing of the agreement was with the permission of Mr. Wong.

INTERPRETER: With the permission of Mr. Wong. Thank you.

That had nothing to do with Mr. Wong. Α. agreement between JSM and I, It was Mr. Wong's idea that the myself. pre-sale of flats must be handled by JSM. Therefore I signed an agreement with JSM.

You had assigned the whole building by the Q. mortgage to Mr. Wong in November 1963, hadn't you?

Yes, I did, on the 30th November 1963... Α.

And you--I'am sorry. Q.

10

...I obtained a loan of \$1.5 million and Α. as a result of that, I signed that.

You knew that you could not sell any flats Q. without Mr. Wong's permission because they 20 had been assigned to him.

COURT: On what is that based, Mr. Jackson-Lipkin?

MR. JACKSON-LIPKIN: My Lord, because he couldn't...

COURT: What is there to stop me from entering into a sale and purchase agreement with somebody tomorrow for No.1 Queen's Road Central?

MR. JACKSON-LIPKIN: My Lord, I don't...

30 Isn't that the way those -- these COURT: things are done?

MR. JACKSON-LIPKIN: My Lord, I know that your Lordship, if so minded, could sell Queen's Road Central and could be held to the ...

COURT: Well why can't he sell that in the interest...(inaudible)... of the sale of somebody else's property?

MR. JACKSON-LIPKIN: My Lord, I've no doubt at

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

all...

Plaintiff's Evidence COURT: ... for completion....

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TSE Kwong-lam
CrossExamination
(Continued)

10

MR. JACKSON-LIPKIN: My Lord, I've no doubt at all that he could but my question is...

COURT: ...ask the witness -- tell the witness that he cannot do so? Surely it's confusing the issue? You're confusing the witness's....'

MR. JACKSON-LIPKIN: Well I'll re-....

COURT: ... that he can't sell without Mr.
Wong's permission. Why does he need Mr.
Wong's permission?

MR. JACKSON-LIPKIN: My Lord, if your Lordship will permit me, I will come on -- my Lord, I'm coming directly to the point that there was an early agreement, long before July...

COURT: This has been on for half-an-hour, on this point, Mr. Jackson-Lipkin.

- 20 MR. JACKSON-LIPKIN: My Lord, I do appreciate that but I have to get to the point and this witness is not the easiest one to take through to the point.
 - Q. This sale that you say was made in May had Mr. Wong's permission, did it not?
 - was Mr. Wong's idea Α. that transaction in connection of the presale of units must be handled by JSM. minded that the transaction be handled by solicitors' firm. another Woo and the matter was handled by Company, Mr. Liu drafted the agreement. agreement was to the effect that proceeds of the sale of flats would be building cost, for for expenses and also for repayment of the loan.
 - Q. Where is that agreement?
 - A. The document is here.

30

MR. JACKSON-LIPKIN: My Lord, I wonder if ...

COURT: He is referring to the second purchase agreement, is he?

MR. BERNACCHI: May 1964 - \$28,000.

COURT: There is only one sale and purchase agreement?

MR. JACKSON-LIPKIN: I don't think this gentleman was talking about -- He was talking about the one in May 1964.

10 COURT: It's not before the court?

MR. JACKSON-LIPKIN: My Lord, could we produce it at a later stage?

- Q. Later, Mr. Tse, later. Now, could you answer my question? It is a very simple one. The sale arrangement of this flat in May of 1964 was with the permission of Mr. WONG Chit Sen.
- A. Well, Mr. Wong forced me to let J.S.M. handle the sales; in fact, he snatched the matter from Woo & Woo Co. and gave it to J.S.M.
 - MR. BERNACCHI: As regards the copies of the sale and purchase agreements, they are all with Johnson, Stokes & Master, who are now the respondent's solicitors. None are with my own solicitors. So, if my learned friend wants the agreement of May, then he must ask Johnson, Stokes & Master.
- MR. JACKSON-LIPKIN: We have our copy, we haven't the original because we weren't the purchaser.
 - Q. I just want to dispose of a very small point, Mr.Tse. Mr. Wong explained to you, did he not, that if everything was handled by Johnson, Stokes & Master, you would avoid having two sets of solicitors' cost for each transaction.
 - A. No, no, that was not the case. According to the mortgage deed there was no such a

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's Evidence

No. 6
P.W.1. 10
TSE Kwong-lam
CrossExamination
(Continued)

40

- clause as to which solicitors' firm should be handling the sales of the flats. I wish his Lordship could inspect the mortgage deed.
- Q. I want to ask you some questions about interests. The mortgage, as you have told us, was the 30th November. The interest for the first month November to the end of December was paid by you on the second day of the following month, wasn't it?
- A. Yes.
- Q. (My Lord, that's E100.) The interest for the second month December to the end of January was paid by you the following day, was it not, on the 30th January?
- A. Are you saying that I paid --
- MR. BERNACCHI: My Lord, I hate to interrupt my
 learned friend, but surely we are dealing
 with over fourteen years ago now. They
 are now all in evidence produced by this
 witness. He, my learned friend, is merely
 reading off certain receipts. Surely he
 should have the bundle of receipts before
 him to refer to if he is cross-examining
 the witness about specific dates.
- MR. JACKSON-LIPKIN: My Lord, if the witness said he hadn't remembered, I would have asked him to look, but he said 'Yes', so I didn't bother.
 - COURT: I still do not see the point of going through these receipts.
 - MR. JACKSON-LIPKIN: If your Lordship would bear with me, in two more -- two more questions you will see the answer.
 - COURT: You are expecting some words from him, Mr. Jackson-Lipkin, that's why I said something; otherwise, I wouldn't have said a word.
 - MR. JACKSON-LIPKIN: Thank you.
 - Q. The interest for the second month you paid straight away?

- A. Well, I paid the interest, all right. I cannot remember when I paid the interest, whether right away or otherwise.
- Q. And the third month and the fourth month you paid interest?

A. Yes, I did.

Q. All on time? Very promptly?

A. I cannot remember if I paid promptly - on time. It has been over then years ago.

10 Q. And you never made another payment of interest after that?

INTERPRETER: "After that:?

Q. After the 4th.

A. I made the last interest payment on the 29th July, 1964 --

MR. WONG (To Interpreter) I think he also said something like 'sik tan'?

INTERPRETER: May I ask him again? I was
 interpreting.

20 A. I was asked to sign a document to the effect that I was owing interest amounting to over -- little over \$140,000 and I was also told by Mr. Wong that this sum of money would become part of the loan and interest would be calculated thereon.

Q. To which you agreed?

A. It was like this: the document was drafted by Johnson, Stokes & Master and it was in English - the document was in English. I was asked to signed that document and, as I understood it, the money would go to the building cost. I was paid no money by J.S.M.

MR. JACKSON-LIPKIN: (to Interpreter) Did he say "notionally regarded as building costs"?

INTERPRETER: "Reckoned as" - "Notionally", yes.
MR. JACKSON-LIPKIN: Yes. Thank you.

Q. When was that?

40 A. Sometime in December, 1964 - I was asked to sign a document on which the figure fifty-seven odd dollars appeared.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Q. "Fifty-seven odd thousand dollars"?

Court INTERPRETER: I'm sorry, "fifty-seven thousand odd dollars appeared" -

Plaintiff's Evidence

A. And there was another document on which the figure \$80,000 odd appeared. Both those figures were not correct.

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TSE Kwong-lam
Cross- 10
Examination
(Continued)

Q. When you were speaking you pointed over towards us over here. What were you intending to indicate by so pointing?

A. I was not - I was not pointing.

Q. I see. Mr. Tse, you understood the purpose of the document to be that the interest would be added to the capital; is that right?

A. No. No, that was not explained to me. When Mr. Liu Kin Wah presented me with the documents and asked me to sign, at first I said I would not sign because I had not checked whether the amount of interests -- the amounts of interest stated therein were correct. I noticed that those two figures being incorrect - the two figures being 57,000 and 80,000. He said that that could be worked out later. I trusted him. I pointed out to Mr. Liu Kin Wah that the figures were not correct. Mr. Liu said that I could work it out with Mr. Wong when I made the payment in future. I trusted Mr. Liu.

30 MR. JACKSON-LIPKIN: I wonder if I may crave your Lordship's indulgence and have the answer read back? It's after the answer, "I made the last interest payment on the 29th July '64"

COURT REPORTER: (Reads out from his notes)

"I was asked to sign a document to the effect that I was owing interest amounting to over -- a little over \$140,000 and I was also told by Mr. Wong that this sum of money would become part of the loan and interest would be calculated thereon."

Q. To which you agreed?

A. It was like this: the document was

40

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drafted by Johnson, Stokes and Master and it was in English. The document was in English. I was asked to sign that document and, as I understood it, the money would go to the building cost. I was paid no money by J.S.M."

MR. JACKSON-LIPKIN: Thank you very much, indeed. My Lord, I wish to pursue the question that remained unanswered. That would involve having his previous answer re-translated to him. I wonder if that could be done or if your Lordship would prefer to get it from the shorthand writer, having it written out and shown to the Interpreter after the luncheon?

COURT: I think it's a bit early.

20

- MR. JACKSON-LIPKIN: Perhaps the shorthand writer could read the answer very slowly to the Interpreter? It's the one following the 29th July, 1964.
- Q. Mr. Tse, I'm going to have read back to you something you said to my Lord a few minutes ago. Please just listen to it and don't make any comment till I ask my question.

COURT REPORTER: (Reads aloud):

I was asked to sign a document to the effect that I was owing interest amounting to over -- a little over \$140,000"...

- There was another document. I signed several documents and one of them had the figure 80,000 dollars appearing on it and there were other documents and the total sum amounted to over 140 thousand dollars something like one hundred forty... something like \$146,000... well, something like \$146,000. They have got those documents.
- Q. Mr. Tse, may I ask you one small favour?

 Just be quiet and don't say anything till
 I ask the next question.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's Evidence

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TSE Kwong-lam
CrossExamination
(Continued)

COURT: Listen, Mr. Tse, don't say a word for the time being. Just listen.

INTERPRETER: His answer was: "The interest document I signed - the interest document or documents" (he did not specify)...." amounted to something over \$140,000."

MR. JACKSON-LIPKIN: Thank you, Mr.
Interpreter. (to Court Reporter) Would
you try again, Mr. Reporter? I think
you'd better start again, please.

COURT REPORTER: (Reads out the following answer)

"I was asked to sign a document to the effect that I was owing interest amounting to a little over \$140,000 and I was also told by Mr. Wong that this sum of money would become part of the loan and interest would be calculated thereon."

- 20 A. No, that was not suggested by Mr. Wong. That was suggested by Mr. Liu. Mr. Liu was the clerk there and he was the person who showed me this document the document in English.
 - Q. You agreed to what Mr. Liu suggested, did you not?
- I was asked to sign. I noticed that the Α. interests shown on those documents were not correct. I pointed that out to Mr. 30 Liu. Mr. Liu said that I could discuss the thing with Mr. Wong when I made the repayments to Mr. repayments to Mr. Wong. The intotalled something over \$140,000. The interests Mr. Liu had said that, I then said: Liu, I trust you." Then I signed. I wish to make further explanation. The document or documents were in English. explained to me that the sum --
- MR. JACKSON-LIPKIN: they are not before your Lordshop yet.
 - A. -- over \$140,000 would be reckoned as building cost. If that sum should be used

as part of the building cost, the money should be paid to me. But no money was paid to me then. If that money was to be used as part of the building cost, the money should have been paid to me and then, through me, paid to Mr. Wong and his wife. But the money was not paid to me.

In the Supreme Court of Hong Kong High Court

Q. Did you sign the document for the fifty-odd thousand dollars?

Plaintiff's Evidence

10 A. I did. Yes, I signed that document - fifty-seven thousand odd dollars.

No. 6
P.W.1.
TSE Kwong-lam
CrossExamination
(Continued)

Q. And you took it away with you?

INTERPRETER: He's also said, "there was
 another one to the amount of eighty
 thousand dollars."

Q. And you took it away with you? Yes or no?
A. I was given some interest documents to sign and I left with....

INTERPRETER: Correction, my Lord.

20 A. I was asked to sign documents one of which had the figure \$57,000. After I singed those documents I was given some documents setting out the interests, and those documents setting out the interests had the signature of Mr. Wong's wife on them; and those documents setting out the interests were in connection with the loan obtained from Mr. Wong.

INTERPRETER: I'm trying to repeat your question - the question about the document of \$57,000.

MR. JACKSON-LIPKIN: Don't worry about it. I haven't forgotten about it. I will come back to it. What's he saying now?

INTERPRETER: He's saying that ...

- A. I signed the document and I was given those documents setting out the interests.
- Q. Interest receipts "sik dan", would that be right?

Plaintiff's Evidence

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TSE Kwong-lam
CrossExamination
(Continued) 10

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INTERPRETER: Could I ask him?

MR. JACKSON-LIPKIN: Yes, please.

INTERPRETER: He does not specify.

MR. JACKSON-LIPKIN: What the two junior counsel have suggested is that the words he used could be translated as 'interest receipts'. You must help me, because my Cantonese is not all that good.

INTERPRETER: Yes, according to what he said, I cannot say whether they were receipts. "Dan" means a document.

MR. JACKSON-LIPKIN: Thank you very much.

Q. Did those documents cancel each other out arithmetically, Mr. Tse? The document that you signed and the numerous interest receipts that you were given later?

INTERPRETER: Now he has confirmed that the
 document setting out the receipts are
 documents -- are receipts, interest
 receipts.

Q. And the sum of money on those other documents you signed equalled the total of the moneys on the interest receipts.

A. Yes. Yes, they were in English and I checked them and they equalled.

Q. Thank you.

A. But compared with my own calculations, those figures were incorrect.

MR. JACKSON-LIPKIN: Before your Lordship
rises, I wonder if I may formally call for
the document that contains the eightythousand figure? I have seen the other
one with the fifty-odd thousand, but I
have never seen the one with the
eighty-odd thousand.

COURT: We are not in possession of those documents..

MR. JACKSON-LIPKIN: My Lord, they are item 28 in his list of documents. We have

the one with eighty-odd never seen Ι thousand. have the one with the fifty-odd thousand; it has not been put before your Lordship; I intend to do so.

In the Supreme Court of Hong Kong High Court

COURT: this, no doubt, concerns the capitalisation of interests.

Plaintiff's Evidence

MR. JACKSON-LIPKIN: I agree.

No. 6

COURT: 2.30.

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P.W.1.

1.00 p.m. Court adjourns.

TSE Kwong-lam Cross-Examination

(Continued)

24th November, 1978. 10

> Court resumes. Appearances 2.33 p.m. as before.

P.W.1 - TSE Kwong-lam (Plaintiff)

MR. JACKSON-LIPKIN: My Lord, may I hand to your Lordship what promised you, a typed copy of the agreed issues and an extra for your clerk for the record. That is an agreed document between Counsel.

XXN. BY MR. JACKSON-LIPKIN (CONTG.):

Plese look at the first page only of this 20 Q. bundle of documents being handed to you Is that the document that you were talking about before lunch?

Yes, this shows the amount of \$57,000.00 Α. odd and this money would go to the --this sum of money had something to do weith the building mortgage.

That was the exact equivalent of the Q. interest receipts from the 30th of July to the 29th of November, was it not?

- My Lord, it's pages 96, MR. JACKSON-LIPKIN: 97, 98, 99, 102, 103, 100 and 101.
- Yes, this is the interest up to the end of Α. November.
- Now you've told us -- you told us before Q. luncheon that you've also signed one for eighty-odd thousand? Did you in fact mean

Plaintiff's Evidence

No. 6
P.W.1.
TSE Kwong-lam
CrossExamination
(Continued)

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one or a number amounting to eighty thousand?

- A. A number of documents.
- Q. Amounting in total to 80, is that what you're saying?
- MR. JACKSON-LIPKIN: Mr. Interpreter, I am told that there can be a certain misunderstanding. Let's start again.
- Q. You've told us before luncheon that you signed a document for fifty-odd thousand and a document for eighty-odd thousand?
- A. Well, I meant to say I signed a number of documents amounting to eighty-thousand-odd dollars and these are the documents; also in respect of the building mortgage, the money would be going to the building costs.
- Q. Now you've said that rather hastily without looking through the bundle Mr. TSE. Let me just take you through it please.
- A. In fact, I signed on 2 separate occasions. On one occasion I signed this document referring to the first document for \$57,962.00 and on the other occasion, I signed the other documents.
- Q. Yes. Right, well, let us look at No. 2 please. That's for the interest for November to December, is it not?
- 30 MR. JACKSON-LIPKIN: My Lord, that's E104, 105.
 - COURT: I haven't the faintest idea what's E104, 105.
 - MR. JACKSON-LIPKIN: My Lord, those are those the receipts beside you.
 - COURT: Mr. Jackson-Lipkin, 104, 105 are receipts...
 - MR. JACKSON-LIPKIN: Yes, my Lord.
 - COURT: ... signed by Mr. WONG?
- MR. JACKSON-LIPKIN: Yes, my Lord. My Lord, that's what this witness was explaining to

you before luncheon. He signed these documents. My Lord, I wonder if it would be possible for the gentleman with the beard to be recalled with his notebook?

In the Supreme Court of Hong Kong High Court

COURT: Is that really necessary because before lunch, he said he signed 2 documents.

Plaintiff's Evidence

MR. JACKSON-LIPKIN: Yes, my Lord.

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No. 6 P.W.1. TSE Kwong-lam Cross-Examination (Continued)

COURT: One was for fifty-odd thousand and one was for eighty-odd thousand.

MR. JACKSON-LIPKIN: Yes, but he's now ---

COURT: A total of about \$140,000.00.

MR. JACKSON-LIPKIN: Yes, and he said that he was given thereupon the interest receipts which amounted to the same amount of money.

COURT: Who will be in possession ---

MR. JACKSON-LIPKIN: My Lord, he received from Mr. WONG Chit-sen. Those are my instructions at the moment and we have obtained these from my learned friend's instructing solicitors. They disclosed them in their list of documents. That's how we got them my Lord.

COURT: If you pay a bill to Watson's and you want the receipt, would Watson's sign a receipt and send it to you?

MR. JACKSON-LIPKIN: Of course, my Lord.

COURT: This would be the witness signing it, would it not, the receipt from what you had sent him?

MR. JACKSON-LIPKIN: Yes, my Lord. (COURT: It would be signed by the witness would it not?)

MR. JACKSON-LIPKIN: Yes, my Lord.

Plaintiff's Evidence

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CrossExamination 10
(Continued)

COURT: Well, where would the original be?

MR. JACKSON-LIPKIN: Well, my Lord, my instructions are that he had been ---

COURT: It is really a matter of instructions? Why should the signatory of the receipt retain the receipt?

MR. JACKSON-LIPKIN: My Lord, because no money had passed and he kept this with those rent receipts which were the equivalent as he told you. He used the word "yat yeung" did he not, in relation to the amount on it.

COURT: This witness does not recall 145 (105?), 146 (106?). You keep on referring 145, 146 to me and I can't understand it.

MR. JACKSON-LIPKIN: My Lord, these are the things that we were discussing before luncheon when he told your Lordship that when he signed these, he then also got the rent and interest receipts which are the "E" numbers and you may remember, we had a little difficulty with the interpretation. Mr. Interpreter at first thought it meant 'document' and later the witness cleared it up and called it 'interest receipts'. And my Lord, the first page, if you would be kind enough to look at it, 57,962 is the identical sum if you add up pages E96, E97, E98, E99, E102, 103, 100 and 101 and he himself has told you in just the last few minutes that that is correct.

COURT: What he said was, "This is the sum up to the end of November."

MR. JACKSON-LIPKIN: Yes, and ---

COURT: He didn't say anything else.

MR. JACKSON-LIPKIN: My Lord, his evidence on oath is that he received the interest receipts when he signed those documents and that they were equal, one to the

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other, and that they balanced each other That was his evidence just before

lunch.

COURT: Yes, carry on.

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- MR. JACKSON-LIPKIN: My Lord, the position very simply is this: this goes back to that answer that was read to him before, that arrangement was, that because couldn't pay the interest, the interest would be added to the principal but the documentation was as he described before luncheon, that this document and the equivalent of it is in the "Es", in the interest receipts.
- Q. Now will you look at the second page? What have you got there? \$15,315.60.
- I signed all these 5 documents at the same Α. time and totalling over eighty thousand dollars.
- 20 Q. Would you be kind enough to look at the one 4th of January 1965, (15,000?). Mr. TSE, would you prefer to see the documents that your solicitors have been holding or are you quite happy to photostats?
 - JACKSON-LIPKIN: My Lord, I've been asked to ask him.
- Which do you want? I don't mind so long Q. as I can keep this interruption short. Use whichever you like but look at the 4th 30 of January for 15,315.60. Have you got it?
 - This one is different. Α. This has nothing to do with interest but referring to the one ---
 - Is that dated the 4th of January ---Q.
 - The 20th of August. Α.
 - Is that dated the 4th of January, 1965 for Q.
- INTERPRETER: He's referring to a document dated 40 20th August, 1965 saying this has nothing to do with interest.
 - Q. TSE will you please look at the document of the 4th of January? Got it?

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's Evidence

No.6 P.W.1. TSE Kwong-lam ¹⁰ Cross-Examination (Continued) That document was one of the ones that you signed at Johnson, Stokes & Master?

A. Yes, I signed them altogether at the same time. But this one was ---

Q. Leave him to answer please?

not one of Α. them. This referring to a document dated the 3rd of December. This one was signed separate occasion sometime in December. The rest of the documents were signed on one occasion apart from this one referring to the document dated the 20th of August, 1965. These documents for a total of over \$80,000.00 covered the interest of the period over 6 months and these documents were signed at the same time, and may I further explain something about ---

COURT: No. you don't explain anymore. Just answer the questions.

20 MR. JACKSON-LIPKIN: My Lord, may he see the original interest receipts which I think are beside you. I think your clerk ---

COURT: The original interest receipts are not beside me. These are copies.

- MR. JACKSON-LIPKIN: They've gone back down.
 Oh, I am sorry my Lord. I thought I saw
 the clerk hand them up.
- Q. Look at the originals, will you please?
 Are those the interest receipts you were
 talking about before luncheon that you
 received as the equivalent of the
 documents over there? Have a look at them
 before you answer.

A. I have to check. Well, these receipts were issued by the representative of the wife of WONG Chit-sen, the representative being Mr. (CHEN?).

COURT: Mr. TSE, we will start all over again.

No, we will start. You just answer questions. Now, will you keep quiet?

Just answer counsel. It is not up to you to try and tell your story to the court. You've got a counsel to do that. You are

not allowed to be your own advocate. will be a very bad thing for you if you try and be your own advocate. Now just questions. answer Carry on, Jackson-Lipkin.

MR. JACKSON-LIPKIN: Thank you, my Lord.

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Before luncheon, you've told my Lord that when you signed the papers for fifty-seven Q. odd thousand and eighty-odd thousand, you were given rent receipts. My question is, are the rent receipts those things there in front of you now?

COURT: He's actually answered the question.

MR. JACKSON-LIPKIN: Oh, has he my Lord?

"I've got to check." Then he went on, and that answer was lost.

MR. JACKSON-LIPKIN: Yes, thank you, my Lord.

- Q. Mr. TSE, please look through those documents now and check that those are the ones you've got when you signed 20 for fifty-seven English papers odd thousand and eighty-odd thousand dollars.

 - Yes, these are the interest receipts. Thank you. Now, I wonder if you can help Q. me with those documents quickly please. You've already identify the first as being July to November. Just look second, please. Fifteen thousand... November. Just look at
- : Mr. Jackson-Lipkin, you're courting trouble again the moment you come to the COURT: 30 second, because he's been insisting the second, the third, up to the end-the end sheet was signed together. We said that at least 3 times.
 - JACKSON-LIPKIN: Yes I know. My Lord: I'm MR. just trying to assist in doing the equivalent for your Lordship because I can't give evidence on it.
 - Was that the equivalent of November and Q.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's Evidence

No. 6
P.W.1.
TSE Kwong-lam
Cross- 10
Examination
(Continued)

December interest?

- MR. JACKSON-LIPKIN: My Lord, I think I could help him if the clerk would be kind enough to show him E104 and E105?
- Q. Mr. TSE, I can help you if you'd just wait a minute. Just please look at the photostat of the interest receipts E104 and 105.
- A. For which month? Well, these receipts were for the sums paid, the sums amounting to over eighty thousand.
- Q. Mr. TSE, you've told my Lord on your oath before luncheon that you've never paid interest after July 1964.
- A. I paid interst up to the 29th of July 1964. After that, I did not pay any interest but I signed some documents instead of paying the interest.
- Q. And got interst receipts?
- 20 A. Well, these are the interest receipts for sums paid -\$140,000.00-odd.

COURT: He is right.

- A. I paid up to the month of July 1964.
- MR. JACKSON-LIPKIN: My Lord, I'm afraid these numbers are totally different from mine. Would you give me a moment? I can find them for you much quicker.
- (PAUSE. Mr. Jackson-Lipkin refers to his notes).
- MR. JACKSON-LIPKIN: My Lord, the numbers that I had read to your Lordship and have gone on the record are the numbers in the bundle agreed on, in fact, and which we've been working on. I've now found they're not the same numbers as your Lordship's. What I will do, my Lord, is to arrange your Lordship's interest receipts in the same number as ours so that the record will be right. May I do that tonight?
- 40 COURT: Very well.

- MR. JACKSON-LIPKIN: Thank you my Lord.
- Q. Just look at this one please?
- MR. BERNACCHI: My Lord, no, I think that when my learned friend reviews the position, it is his numbering that is wrong and not in accordance with your Lordship's order or mine.
- MR. JACKSON-LIPKIN: These are the numbers that you have given us, not you personally, and it's what we've been working on for days.
- 10 COURT: I don't quite see what the fuss is all about. This witness has said, he's paid rent, rather he's paid interest up to the 29th of July, 1964. There's no issue in that?
 - MR. JACKSON-LIPKIN: No.
- COURT: He's also admitted over the course of time, there has been an exchange of receipts for the 1st Respondent's rental receipts. He has signed the receipts acknowledging receipts of sums of money from the 1st Respondent. It's clear as possible evidence of capitalisation of interests.
 - MR. JACKSON-LIPKIN: Thank you my Lord.
 - COURT: This is not a question of thanking me, but it's so clear. What is all this about, I want to know? Now is there any controversy here other than arguments?
- MR. JACKSON-LIPKIN: I should have to ask
 my learned friend but your Lordship will
 appreciate that this is one of the matters
 that my learned friend is relying on.
 - COURT: Yes, but these are factual matters we're dealing with.
 - MR. JACKSON-LIPKIN: My Lord, I assure you that this was not an agreed matter. It may be now.

Plaintiff's Evidence

Plaintiff's Evidence

No. 6
P.W.1.
TSE Kwong-lam
CrossExamination
(Continued)

COURT: But the facts are established, rather agreed, are they not?

MR. BERNACCHI: There is no issue.

MR. JACKSON-LIPKIN: Thank you.

MR. BERNACCHI: There never has been an issue.

COURT: What I can understand, Mr. Bernacchi, is he said this is wrong but the state of facts did exist.

MR. BERNACCHI: Your Lordship is correct.

10 MR. JACKSON-LIPKIN: My Lord, that was not the situation before today, to put it at its lowest. Right now, my Lord, may I have your Lordship's assistance in what we should ---

COURT: There's only one matter left. I think it is your case that these documents were signed on the dates shown there, shown on these receipts. It is his evidence that except for the first one for fifty-odd thousand dollars, the rest are --- the last one was signed on one occasion instead of the date shown as I understand.

MR. JACKSON-LIPKIN: My Lord, the parties aren't at idem on that, but I don't think that that's going to help our Lordship to explore that.

COURT: I may not come to that.

- Q. Now I want to go to the last one of these, because you have said this had nothing to do with interest. Yes, that's 8,430. Whose is the Chinese writing?
 - A. Mine. When I was asked to sign this document by Mr. Liu of J.S.M. I was told that this document, or rather the figure appearing on this document represents the amount J.S.M. was asking for as reimbursement because they paid water and electricity meters deposits for the flats sold.

Q. Yes?

A. And I was further told J.S.M. paid the money out of the proceeds from the sale of the flats.

MR. JACKSON-LIPKIN: A72 my Lord.

A. Later, this document was handed over to the accountant Mr. Li and this sum was reckoned as a further advance from Mr. Wong to me and interest would be calculated thereon. In fact, this sum was paid out of the proceeds of the sale of the flats.

Q. For a water meter?

- A. For water and electricity meters well, I don't read English.
- Q. Well, there's no dispute about it. It is a water meter. Have you finished Mr. TSE?

A. Yes.

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COURT: Why do you say there's no dispute if it doesn't matter? You are pointing out that there are certain accounts?

MR. JACKSON-LIPKIN: Yes, my Lord.

COURT: Is this witness's account, J.S.M.?

MR. JACKSON-LIPKIN: Yes, my Lord.

COURT: This sum was paid out of his account through the Hong Kong Government?

MR. JACKSON-LIPKIN: As he was saying, yes, my Lord.

COURT: That's why he's disputing this? "I
wasn't credited in my account with J.S.M.
by reason of the payments for the flats,
J.S.M. rather credited my account, the sum
of money was paid out of --- why did I
sign this document?

MR. JACKSON-LIPKIN: Yes, my Lord.

Q. Would you put the document away now? Your arrangement with Mr. WONG under the mortgage was that he would pay the

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's Evidence

No. 6 10 P.W.1. TSE Kwong-lam Cross-Examination (Continued)

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building contractor in accordance with the architect's certificate, wasn't it?

- Α. Well, it was specified in the mortgage that the architect would issue a wage certificate and that wage certificate would to J.S.M., and J.S.M. go certificate receiving such from the architect would pay the building contractors.
- Q. There was no other agreement between you and Mr. WONG for the payment of expenses of a building, was there?
- A. Well, in the first mortgage for 1.5 million dollars, it was specified that there would be 10 separate payments for building costs.
- Q. Yes, against architect's certificate?
- A. Well, out of those 10 separate payments, some were for the piling works and some were for payments to the Government for erecting the verandah.
- Q. Yes now, we can read the mortgage ourselves, thank you Mr. TSE. My question is a very simple one. There was no other agreement between you and Mr. WONG for him to pay building costs before you ran into trouble, was there?
- A. What agreement are you referring to?
- Q. You didn't have any other agreement with Mr. WONG whereby he would pay the construction costs, did you?
 - A. Well, are you asking me if there was any other agreement that he should pay me construction costs?
 - Q. That's exactly what I'm asking.
 - A. Well, are you asking me if there was a signed agreement that he should pay the construction costs?
- Q. Was there any other agreement between the 2 of you whereby he would pay the construction costs?
 - A. After the issue of the Occupation Permit, there was an agreement that Mr. WONG would be paying Lam Kee ---

COURT: (What is he supposed to be paying rents?)?

MR. JACKSON-LIPKIN: No my Lord, this is what I

meant by before the trouble, and I have it open before me at this moment.

For dismantling some toilet wares. Α.

TSE, we have got something. We've Q. got that agreement with Lam Kee. listen to the question. Prior to that, was there any agreement between you and Mr. WONG other than the building mortgage related which to the payment construction costs?

What about the agreements in respect of Α. additional loans of \$500,000.00, \$300,000.00 and \$220,000.00?

Q. Are you saying that those obliged Mr. WONG

to pay the construction costs?

You mean the additional loans obtained Α. from the further mortgage?

Q. Do you understand my question?

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Are you asking me if Mr. WONG was further Α. asked to pay construction costs?

- Mr. TSE, apart from the first mortgage and Q. the agreement in relation to Lam Kee, do you say there was any other agreement with Mr. WONG for him to pay the construction costs?
- respect of the additional Α. Well, in \$300,000.00 loan, he said that he thought I would not have sufficient funds for the He was offering me construction costs. that loan for the construction costs to be paid.

Is that the only other agreement relating Q.

- to construction costs, yes or no? Well, does it include the one in respect of Lam Kee, involving Lam Kee? Α.
- MR. JACKSON-LIPKIN: Mr. Interpreter, could you help me please? Did you translate my question earlier, "Prior to Lam Kee..."?

INTERPRETER: Yes, I did.

MR. JACKSON-LIPKIN: Thank you very much. 40

- If excluding Lam Kee, then there would have only been one --- the one in respect of the additional \$300,000.00.
- And that related to payments against Q.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's Evidence

No. 6 P.W.1. TSE Kwong-lam Cross-

Examination (Continued)

architect's certificates, didn't it?

- A. I have to read the agreement that is agreed in connection with the \$300,000.00 loan.
- Q. Mr. TSE, will you take it from me that the document for the \$300,000.00 loan does refer to production of architect's certificates?

MR. JACKSON-LIPKIN: My Lord, it's page All.

- A. You mean the \$300,000.00 loan?
- Q. Yes.

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- A. You mean the solicitor's firm was going to pay the sums upon receipt of the architect's certificate?
- Q. I geuss so. You know you could have saved a lot of time if you said yes. Now when you sold the units, the pre-sale of the units, you entered into an agreement with each of them which contained a clause whereby the purchase money would be paid to Johnson, Stokes & Master?
- A. Yes, that was specified in the agreements.
- Q. Yes, and in those agreements, the arrangement was that the monies would be applied to the costs of construction against architect's certificates and secondly, to repayment of the principal under the mortgage? That's right, isn't it? Is it not right?
- 30 A. No, no, not right.
 - Q. I see, very well.
 - A. No, no, that is not correct. Repayments would only be made if there should be any money left after completion of the building. The total construction cost would be something over 1 million dollars.
 - MR. JACKSON-LIPKIN: My Lord, may he be shown page A26? Mr. Interpreter would you please translate to him Clause 21?

Exhibit A

40 CLERK: Exhibit A.

INTERPRETER: 21. sir.

(PAUSE. Interpreter translates clause.)

MR. JACKSON-LIPKIN: Thank you Mr. Interpreter.

Α. But that was not what was done. proceeds from the sale of the flats were kept by Johnson, Stokes and Master, that used money to pay was construction costs. If the building could not be completed, then there would ---then we would not have been in position to repay the loan. The building had to be completed.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6
P.W. 1.
TSE Kwong-lam
CrossExamination
(Continued)

MR. BERNACCHI: My Lord, I think perhaps did he not say the money does not belong to Mr. WONG?

COURT: That is what the interpreter said from the word go - I think he said it.

MR. BERNACCHI: I must apologise to the interpreter - I think he said also, did not belong to him, belonged to Mr. Wong.

INTERPRETER: Yes, he did.

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20 COURT: Let's change the subject just a short while - his sanity might return - are these to be accepted?

MR. BERNACCHI: Yes, my Lord.

MR. JACKSON-LIPKIN: I did get half-way through the request asking you to accept them and forgot all about it.

COURT: What is to be accepted - these unsigned ..

MR. BERNACCHI: I would prefer if the original carbon copies, they are also unsigned, because they are carbon copies, but the cross-examination was conducted on his carbon copies of the original receipts, which of course he has not got - where the carbon copies are I don't know.

MR. JACKSON-LIPKIN: I think they are over there.

Plaintiff's Evidence

No.6
P.W. 1.
TSE Kwong-lam 10
CrossExamination
(Continued)

COURT: There is obviously an exchange of receipts ...

MR. JACKSON-LIPKIN: My Lord, my instructions are now equated with commonsense, not that those instructions were not commonsense in the first place, but now equated with commonsense - we don't know where the originals are but we do have photostats of the signed originals.

COURT: Well the two of you sort it out.

MR. JACKSON-LIPKIN: My Lord, there is only one thing, the last document - we would have to use that with the Chinese on it, which is in his own handwriting - we would have to use this one, my Lord, in addition to these, and so my Lord, may we have the two bundles put in as agreed.

COURT: Yes.

MR. JACKSON-LIPKIN: Thank you, instead of
the one your Lordship has been handed, my
Lord, I am reminded by my learned junior,
would you lend us your bundle of photostat
copies of interest receipts to put ..

COURT: Yes.

- Q. Now Mr. Tse, any item that was not certified by the architect would have to be debited against your account, would it not, because every agreement that you entered into made payments out dependent on the architect's certificate.
- A. I have to refer to the first agreement it has been over ten years ago, I don't remember.
- Q. Didn't Mr. Liu explain that to you in relation to the water-meter item that you would have to be debited because this is not a matter certified by the architect?
- A. This was a double this money was paid out from the proceeds of the pre-sale of flats, and then this document was handed over to the accountant, Mr. LI Fook-shu as a further advance, so this sum was double.

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Q. Is that what you believe?

COURT: Mr. Jackson-Lipkin, is it a matter of belief - what he is asked here is borne out by the accounts or rather the two parties' additions with Johnson, Stokes & Master - this 8,430 is paid out over this amount - it is not paid out on the first instalment.

MR. JACKSON-LIPKIN: No, my Lord, but ...

- 10 COURT: All he is asked is why should it then
 be that I would sign some document as if I
 received the money from the lst Respondent
 and pay interest on it the accounts do
 not bear this out that is what he said,
 if the account is paid out of the lst
 Respondent's account like the accounts
 paid out, but here it is not paid out of
 the lst instalment account it is paid
 out of my account.
- 20 MR. JACKSON-LIPKIN: I appreciate what he is saying I think your Lordship does not wish me to address you on this this has only been paid out once and not paid twice he has not been debited twice.
 - COURT: I am not talking about the mortgage account, Mr. Jackson-Lipkin, I am talking of the two ledger sheets I have not seen the mortgage account that is another matter altogether.
- 30 MR. JACKSON-LIPKIN: My Lord, I think that that is a matter on which really I should address you on the documents as they stand and not ...
 - COURT: You simply cross-examined him on a matter which is so clear, that is why I pointed out to you because you yourself made the remark it was debited against his account. It was never debited against his account, it was paid out of his account.
- 40 MR. JACKSON-LIPKIN: My Lord, I should have said paid out and debited against -

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's Evidence

No.6.
P.W. 1 10
TSE Kwong-lam
CrossExamination
(Continued)

it is that item there- I think what he is alleging against Johnson, Stokes & Master is they asked for it twice.

- COURT: I don't believe he said that at all this is paid out of my account why should
 it then enter the mortgage account, and I
 paid interest on it as well there was
 money in my account with Johnson, Stokes &
 Master that is what he is saying whether this is right or wrong is another
 matter altogether, Mr. Jackson-Lipkin..
- MR. JACKSON-LIPKIN: What I felt obliged to put to him was what I have that all his agreements related to architect's certificates -- what was so certified as the accounts were separate items I don't think I can take that matter any further, however hard I wish to try. Now I want to pass to something different for a moment please Mr. Tse. You went to a number of solicitors did you not before this Action got on its feet.

A. Yes.

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Q . Thirty-two different firms.

A. I cannot remember now - I am not a computer - I cannot remember now.

Q. Right - well now see if you can help me - back in 1966 when the Occupation Permit was issued you agreed with Mr. Wong that if he paid \$150,000 to you and the remainder of the construction costs you would give up all your rights to redeem the mortgage?

A. You mean Mr. Wong was offering to pay me money - please make it clear.

Q. Mr. Wong = let me put it to you this way, do you say that Mr. Wong promised to pay you \$150,000 and the remainder of the construction costs and you agreed to give up all you rights under the mortgage?

A. There was nothing of the sort.

Q. Nothing remotely resembling that?

A. No, nothing of the sort.

COURT: Your question was that there was an agreement or merely ..

MR. JACKSON-LIPKIN: No, that there was an agreement which was ..

COURT: There was such an agreement - that was your question?

MR. JACKSON-LIPKIN: Yes, my Lord, and he said nothing of the sort.

COURT: Your said there was such an agreement orally?

MR. JACKSON-LIPKIN: No. I did not ...

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10 COURT: But that was your question to him.

MR. JACKSON-LIPKIN: Yes, my Lord, would you bear with me just one moment. This was pleaded on his behalf on a fixed agreement pleaded by him.

COURT: Oh, I see, that is what he pleaded

MR. JACKSON-LIPKIN: That is why I couldn't put it differently - would you mind if we used the photostat with the interpreter - would you just look at the photostat - will you translate this - tell him this is your own pleading served on Mr. Wong and lodged with the court.

MR. BERNACCHI: He is ignorant of the English language - if my learned friend wants to use the pleading he would not be likely to understand or pleading advancing any counter-claim - please let us have the date who it was signed by and then put the passage he is relying on.

passage he is relying on.

JACKSON-LIPKIN: My learned friend wishes to object to these pleadings in re-examination he may, I am going to put to him this document, otherwise we would be engaged in argument about dates and names of counsel for days - please listen to what the interpreter is going to read to you. This is a document served on Mr. Wong and lodged with the High Court on your behalf a long time ago.

40 A. I gave no instructions to that effect - who did that for me?

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

MR. JACKSON-LIPKIN: Mr. Interpreter will you please read from the works, 'The Plaintiff'..

Plaintiff's Evidence MR. BERNACCCHI: No, my Lord, unless your Lordship rules against me, the witness wants to know who did this pleading for him surely he has the right to know.

No.6
P.W.1
TSE Kwong-lam 10
CrossExamination
(Continued)

MR. JACKSON-LIPKIN: My Lord, I haven't even read it yet to him, he does not even know what I am going to read to him, nothing has been translated yet.

COURT: Paragraph 2 of this.

MR. JACKSON-LIPKIN: No, not yet, my Lord, we haven't had time to, there had been so many interruption. Mr. Interpreter, could you please translate to him from, 'The Plaintiff' to the word 'accepted'.

A. Who did it for me - there was nothing of

the sort.

20 Q. You say that you never gave such instructions?

MR. BERNACCHI: He again says who did this for me - surely he is entitled to know.

COURT: Who did this for me - whoever did it, did it without my authority.

- Q. This document-- are you saying you never gave such instructions?
- A. No.
- Q. This document was lodged in this court by the same solicitors who are appearing for you today.
 - A. No.
 - Q. And it was signed on your behalf by a Mr. H.C. Miu.
 - A. No, I never gave a barrister to do that I have been driven to the end of the world by Mr. Wong it is not fair.
 - Q. That was 12 years ago, much nearer the events Mr. Tse.
- 40 A. I did not instruct anyone to do that.
 - Q. Right let me ask you another question is it true..

COURT: Just answer questions.

A. I did not ask him to do that - that was no such item of \$150,000.

Q. He said.

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A. And if I had done that ..

COURT: That is enough - you are there to answer ..

A. If I had done that I would be stormed to death - I have been driven to the end of the world by Mr. Wong, and I have lost everything - I even cannnot afford sending my children to school, and I am now living on plain bread.

MR. JACKSON-LIPKIN: Is he talking about the

past or the present.

MR. BERNACCHI: I think he is - fortunately for him his situation has improved

INTERPRETER: That would require clarification.

COURT: That wasn't in answer to any question so we will just let it be Mr. Tse will you keep quite.

INTERPRETER: He is now saying why should H.C. Miu do a thing for me like that.

MR. JACKSON-LIPKIN: I suggest to you he did it because that is what you told him.

COURT: Mr. Jackson-Lipkin, I don't think it is right for counsel to ask a question in respect of that nature.

MR. JACKSON-LIPKIN: Yes, my Lord = paragraph
6, pare 2. My Lordd, may he see his
signature please - 25th November, 1966 Mr. Interpreter, would you be kind enough
to turn to the third page, whose signature
is that Mr. Tse?

A. In the year 1966.

Q. Yes, that is your signature is it not?

COURT: Is that your signature, yes or no.

A. Yes, this is my signature all right, but it is not like that - he could not have doublecrossed me.

COURT: Mr. Tse, would you kindly keep quiet and only answer questions. You are asked a very simple question, is that your signature.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's Evidence

No.6
P.W.1
TSE Kwong-lam 10
CrossExamination
(Continued)

A. Yes, this is my signature. COURT: Right.

- MR. JACKSON-LIPKIN: May I sit down so that I can share this with Mr. Bernacchi Mr. Interpreter, could you please translate to him, paragraph 6 from 'On' in line 1 to 'accepted' in line 5.
- A. Yes does the English version mean that ?
- Q. That is what you affirmed to be true before a sworn interpreter and a commissioner of oaths.
- A. If I received from him the sum of \$150,000?

COURT: Don't answer the question with a question.

- Q. You affirmed that to be the truth did you not?
- A. I don't know, because as I don't know do not read English besides the sum of \$150,000 has never been paid to me.
- Q. Do you still say that you never gave instructions to that defence to be lodged that was read out to you a few minutes ago?
- A. I was not paid \$150,000.

COURT: You are not asked whether you are paid \$150,000 - you still deny you gave those instructions?

A. It was over ten years ago that I made this affirmation - I did not know know the contents of it because I did not read English.

COURT: Please give me back my file.

- Q. It was translated to you by a sworn interpreter wasn't it?
- A. It was so long ago how can I be expected to remember the execution was laid upon me and I lost everything I even did not have any money for food I pawned everything I had.

Q. Mr. Tse when you swore - when you affirmed that you had agreed to give up your right of redemption in exchange for \$150,000 and

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the remainder of the building costs, was it true?

I never said anything like that, besides Α. he never paid me \$150,000. There nothing of the sort at all..

So the defence is wrong - and your own Q.

affirmation is wrong, is that right?

I do not read English - the counsel Mr. Miu could do anything he liked to do - I Α. did not ask him to ask for \$150,000.

COURT: Are you in a bit of trouble - do you prefer doing this sitting down?

MR. JACKSON-LIPKIN: May I?

Mr. Tse..

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At that time I would be ...

I warn you, you will be in trouble COURT: if you start talking again without being asked a question - I had enough of this.

- Q. That affirmation was lodged with court on your behalf by your present solicitors - are you still saying to my 20 Lord that that was not translated to you before you affirmed it?
 - Α. No, that was not translated to me.
 - Do you remember coming to this building to Q. affirm the truth of that document, going to a court building to affirm the truth of that document?
- Α. That was over ten years ago - I never 30 affirmed anything to the effect that I should be paid \$150,000.
 - Now I want to pass to a different subject. Will you tell him that. I want to ask you Q. some questions about Mrs. WONG. In the early days of the mortgage you paid interest to Mrs. WONG personally did you
 - Yes, I paid to Mrs. WONG Mrs. WONG being Α. the wife of Mr. WONG Chit-sen and she was also the agent for Mr. Wong.
 - Where did you go to pay her the interest? Q.
 - I went to Pedder Building Mr. Wong has Α. two offices - originally Mr. Wong's office was at Pedder Building, then he moved to Tai Ha Building.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's

Evidence

No.6

P.W.1 TSE Kwong-lam Cross-Examination

(Continued)

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COURT: Great China House.

INTERPRETER: Thank you, my Lord.

- Q. Mr. Tse, in those days what did you consider your occupation to be?
- A. I consider myself being in Real Estate business Land Property business.
- Q. Under what name?
- A. Kwong Lam Property Development Company.
- Q. That was yours?
- A. Yes, that was mine.
- Q. When was it founded?
- A. Some time in 1961 I cannot remember clearly.
- Q. Yes, what was Tai Hing Corporation?
- A. Tai Hing Corporation was not mine my friend owned it.
- Q. Which friend?
- A. LEUNG Tai-wah.
- Q. How did Mr. LEUNG come to approach Wayfong Finance for a mortgage on your building if you were not connected with it?
 - A. I did not know what Mr. Leung did.
 - Q. You mean you were unaware that he had approached Wayfong Finance to get a mortgage on your building?
 - A. I was not aware of what he did.
 - Q. You produced a letter addressed to you from the Hong Kong Bank giving you that information B.64
- 30 A. I asked a friend of mine a friend of mine I cannot remember which friend to type a letter addressed to Hong Kong and Shanghai Bank asking them to back me up in the redemption of the building.
 - Q. Mr. Tse, my question was simple, answer it why did you say to my Lord that you had no idea that your friend had asked for a mortgage when you yourself produced the document telling ...
- 40 COURT: He had no idea why ...
 - MR. JACKSON-LIPKIN: Originally he said he did not know he did it 'I did not know what Mr. Leung did' was the answer, my Lord well if your Lordship considers unimportant I will embark on something

else. In December 1965 you had in mind a second mortgage on your building didn't you?

A. 1965 - it has been a long time, how can I be expected to remember - how can I remember?

Q. Do you remember going to a firm of solicitors, C.C. Lee & Co.?

A. Yes, I often visit that solicitors' firm.

Mr. Lee bought a flat from me - he might be buying that for his sister from me at Kwong Hing Building.

Q. Mr. Tse, you approached Mr. WONG Chit=sen and asked whether he would approve of you getting a second mortgage didn't you?

A. It has been a very long time - that was over ten years ago how can I remember - I cannot remember.

Q. And he agreed didn't he?

20 A. It was over ten years ago - I cannot remember if he had I would have done it.

- Q. Mr. Tse, so far as Mr. Wong from forcing you to taking a second mortgage he greed to your getting someone else for a second mortgage I will put it more shortly you told my Lord that Mr. WONG Chit=sen forced you to take a further charge. The truth is, is it not, that he was readily agreeable to your getting a mortgage elsewhere?
- A. No, there was nothing of the sort.
- Q. B.25, 26, 27.

30

A. No, there was nothing of the sort.

MR. JACKSON-LIPKIN: On that happy moment may I suggest an adjournment?

COURT: Even with the new week we are running out of time.

MR. JACKSON-LIPKIN: My lord, perhaps your expectation about speeches might help on Monday.

It is not usual in this sort of cases, but I would ask your Lordship in this particular case to counsel him not to discuss his evidence while he is under cross-examination.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's Evidence

No.6 P.W.1 TSE Kwong-lam Cross-Examination (Continued)

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COURT: I shall do that.

MR. BERNACCHI: My Lord, the other thing is that my learned friend Mr. Woo and I are in a part heard case, an almost finished case actually, before Mr. Justice Yang, so either Mr. Woo or myself will be absent from time to time the early part of next week.

COURT: Surely, as long as one of you is here. Mr. Tse, you have done a lot of talking in court. Now please don't talk about this case with anybody outside this court.

A. No.

COURT: You are not to discuss this case with anybody. Ten o'clock on Monday morning.

4.27 p.m. Court adjourns. 27th November, 1978. 10.07 a.m. Court resumes

Appearance as before.

P.W. 1 - TSE Kwong-lam XXN. BY MR. JACKSON-LIPKIN (Continues):

MR. JACKSON-LIPKIN: Your Lordship will recall I was dealing with B.64 as we rose sorry, my Lord, I have given you the wrong reference - I was dealing with 25, I think, and you may remember that the last answer of the day was "Nothing of the sort happened" when I put to him Mr. Wong had agreed to a second mortgage. That is the last answer we have come to. The actual words are: "No, there was nothing of the sort." My Lord, I wonder if he could be shown Bundle B page 25.

Q. Are you saying that this document also was sent without your permission?

A. This was a matter that happened so long ago, I have no recollection of it.

Besides, I never had any discussion relating to the second mortgage with Mr.

- 134 -

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WONG Chit-sen and the second mortgage to be handled by J.S.M. I never had such discussion with Mr. Wong.

Q. Just look please at pages B.26 and B.27 because back came an answer from Johnson Stokes sending all the title deeds and documents to enable C.C. Lee to proceed with the second mortgage.

A. There was nothing of the sort.

10 Q. Now I want to change the subject. I am going to ask you some questions now about the auction. You received a letter from Johnson Stokes, did you not, saying that the mortgagee Mr. Wong was exercising the power of sale?

A. I received two letters, one was in connection with the interest the other was in connection with something like \$1.6 million. I don't know which letter you

are referring to.

- Q. If you wish to refer to both letters let us start with the first. My Lord, the first one, I believe, is 28th February. Perhaps he could be shown that. It is B.32. Just look at this letter, the 28th February sent to you from Johnson Stokes. Is that the one that you were referring to as the first letter?
- A. Yes.

20

- 30 Q. After you received that letter you went to see Mrs. Wong about it, did you not?
 - A. No, I did not. At the time I received this letter I object to J.S.M. setting out the interest on behalf of Mr. Wong.
 - Q. Mr. Tse, we are all well aware of your feelings towards J.S.M. Just try to forget it and answer the question. You spoke to Mrs. Wong on a number of occasions about this letter, did you not?
- 40 A. No.
 - Q. And she told you that after discussion with her husband he had decided not to proceed with the power of sale?
 - A. There was nothing of the kind.
 - Q. You didn't pay any more, did you?
 - A. In respect of what?
 - Q. Principal or interest.
 - A. I raised objection with Mr. LIU Kam-wah of J.S.M. saying that the calculation in

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's Evidence

No.6 P.W.1 TSE Kwong-lam Cross-Examination (Continued)

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respect of the interests was wrong and I refused to pay any interest calculation was not rectified.

you didn't pay anything towards Q. And

principal either, did you?

I asked Mr. Liu to put the calculation Α. right before I'd agree to pay anything. I was prepared to raise the money to repay the capital if the interest calculation should be put right.

will come back to that later. Q. answer to my question is you did not pay anything after that letter of February, is

that right?

No, I did not. I was waiting for the Α.

calculation to be put right.

So the next thing that happened was that a formal letter of demand was sent to you by Q. Johnson Stokes on the 28th April?

20 Yes. Α.

- BERNACCHI: My Lord, has it been translated "the next thing that happened"? Because on his evidence in chief a lot of things happened in between. I don't know whether my learned friend is making anything out of this. But his question was "the next thing that happened".
- JACKSON-LIPKIN: I work out there were 8 weeks in between and I am quite sure there were lots and lots of things happened in 30 between, but what happened in between, my Lord, your Lordship will have to decide in due course.

COURT: Well, did you receive this letter" Ιf you did, what happened?

Q. You received this letter of the April, did you not? Yes, I did.

Α.

And did it enclose a formal requirement to Q. pay?

Α. Yes.

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- And it was a formal requirement to pay all Q. principal money owing addition, the interest owing in respect of it?
- The figures stated in this letter were Α.

incorrect.

- Q. There are no figures in the demand, are there? Perhaps you would be kind enough to translate that, Mr. Interpreter. (Interpreter explains letter to witness.)
- A. This letter seemed to be accompanied by the other letter.
- Q. It was enclosed with the second letter.
- A. This letter came together with the other letter.
 - Q. Yes.
 - A. I had raised objection to Mr. Liu.
 - Q. To what?
 - A. In April Mr. Liu told me that \$1,400,000 would be sufficient to redeem, but when I received the letter I noticed that it would take me \$1,600,000 odd to make the redemption.
- Q. Did you pay anything after that notice of demands?
 - A. When I was told by Mr. Liu that it would take me \$1,400,000 something to redeem the property I was prepared to raise the money to redeem it, I managed to raise \$1.5 million, but when I received the letter I became aware that it would take me \$1.6 million odd to redeem it.
 - Q. Did you pay any money as a result of receiving that demand?
- 30 A. No.
 - Q. Did you offer to pay anything towards the principal or interests after receiving that letter of demand?
- After the receipt of these letters I went Α. along to see Mr. LIU Kam-wah of J.S.M. together with these letters. I asked him why he told me in April that \$1.4 million sufficient would be to redemption and later it was stated in the letter that it would take me \$1.6 million 40 told him redeem it, and I also managed to raise \$1.5 million. He said he made such calculation He said he had instructed by Mr. Wong. nothing to do with it. He did so on the instruction of the person who lent money.
 - Q. Why didn't you write a letter saying "I received the letter of demand, but I have

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's Evidence

No.6 P.W.1 TSE Kwong-lam 10 Cross-Examination (Continued) been told that only \$1,400,000 is due and I am prepared to pay that"?

- A. Because Mr. Liu was the person whom I instructed to handle the sales of the flats and I requested him to supply me with the accounts in connection with the mortgage and also in connection with the sales of the flats. He failed to do so.
- MR. JACKSON-LIPKIN: My Lord, may he see B.58 and B.59?
- Q. But you did write to Mr. and Mrs. Wong, didn't you? That is your writing, isn't it - B.58 and B.59?
- A. I asked someone to write it for me. I signed it. I have some explanation to make concerning this letter.
- Q. All in due course. Do you read Chinese?
- A. Yes, I do.
- Q. Do you know what's in that letter?
- 20 A. Yes, I wrote the letter, but the letter was written as instructed by Mr. Liu.
 - Q. Who wrote it?
 - A. I wrote this letter as instructed by Mr. LIU Kam-wah. I have further explanations to make.
 - Q. Who wrote it?

COURT: He has already said, "I wrote it."

MR. JACKSON-LIPKIN: I am sorry.

- A. I have to explain to the court.
- Q. Nobody can stop you, Mr. Tse. If you want to make an explanation now make it now.
 - A. I objected to the auction and I went to see Mr. Liu before the 17th June, 1966, that is, before this letter. I went to see Mr. Liu. I told him that I would be suffering a lot if the property was to be auctioned. Mr. Liu said that I would not have sufficient money to redeem it because I only had \$1.5 million but the redemption would take \$1.6 million.
 - Q. What auction were you objecting to when you went to see him before the 17th?
 - A. The auction of Kwong Hing Building situated at 52-54 Cheung Sha Wan Road.

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Who told you about that? Q.

I read it in the newspaper. That was in Α. the newspaper.

Q. When?

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I don't remember when I read it. Α. At the same time I was informed by Mr. Liu that Mr. WONG Chit-sen would be auctioning the Mr. Liu at the time told me property. that I did not have sufficient money to redeem the property because the redemption would take me \$1,650,000. He said that I did not have sufficient money to redeem told him that I had already borrowed \$1.5 million from Wing On and I blamed him for not supplying me with the accounts, but just sending me this demand.

Anything else? Q.

I told Mr. Liu that if the property was to be auctioned I would be suffering a lot and there would be nothing for me. 20 Liu suggested to me that I should Mr. write a letter to Mr. and Mrs. Wong asking them for a favour and asking them not to auction the property, instead they would be selling the flats on my behalf and the proceeds from the sale of the flats would go to the repayment of the principal and the interests and should there be anything left the amount left would be paid back to me, and that was why I wrote this letter. 30

You sent this letter on the 17th June, did Q. you not?

Ýes. Α.

Why did you not say in that, "I was told that all I owe was \$1,400,000, now I see Q. \$1.6 is million. I am in difficulty."?

Mr. Liu told me not to mention anything of Α. the kind because that would be offending Mr. Wong. I was entirely at the mercy of 40 Mr. Liu. I was going to do whatever he I was asking them for a told me to. favour.

- I must ask you this next question. Why Q. shuold it be a grown-up man like you do everything that Mr. Liu told you even though you didn't want to?
- Α. The property was going to be auctioned, it's like a man facing a firing squad.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's Evidence

No.6 10 P.W.1 TSE Kwong-lam Cross-Examination (Continued)

Anyway you sent this letter without any Q. reference to figures at all?

Α.

Q. Why did you say in it that the Government had promised to help you raise the money when in fact they had refused so to help you?

Α. I hoped that the Government would help me. At that time I did now know if the

Government was going to help me.

That's unture, isn't it? Q. You had been informed on the 10th June, one week before you sent this letter, that the Government could not and would not help you?

Α. Did I say in this letter the Government would help me? The Government said that the Government could not help me, that's why I wrote in here the Government could not help me. Where did I say that? I did not say that the Government would help me.

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- MR. JACKSON-LIPKIN: My Lord, I should hate there to be any blame attached to this gentleman if there were a mistranslation. My Lord, I know it is irregular but might the interpreter to ask help (Confers with interepreter.)
- That was not written at the direction of Q. Mr. Liu. was it?
- I asked someone to write this letter for Α. 30 I signed the letter all right. hoping that the Government was going to help me.

Q. So this letter-writer also was not following your instructions, is

right?

I asked the writer of this letter to write Α. the letter in such a manner that I would be begging Mr. and Mrs. Wong for a favour, asking them not to auction the property, asking them to sell the flats on my behalf and after deduction of the principal and the interests the remaining part would be given to me.

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BERNACCHI: My Lord, in view of my learned friend's cross-examination I must call for the original of this letter together with the enclosure because from the sense of the letter it was the letter from the Government at page 57 that was enclosed.

- MR. JACKSON-LIPKIN: My Lord, that is Mr. Williams' letter. We have in fact tried to get the file, but I gather with some question of Crown privilege we don't know how many letters were sent and this is all we have at the moment.
- 10 MR. BERNACCHI: My Lord, I am not wanting the file of the Crown. I am wanting the original of Mr. Tse's letter to Mr. Wong which presumably Mr. Wong has, as he has the photostats, with the enclosure which in the context of the letter itself almost must be letter B.57 which is claiming that the Government has refused their request.
 - MR. JACKSON-LIPKIN: My Lord, I have already asked someone to send me the original.
- 20 COURT: Why are we wasting so much time on a very, very minor point?
 - MR. JACKSON-LIPKIN: My Lord, because when we come to the principal issue where there are direct conflicts of facts the truthfulness or credibility on fringe matters would be of immense benefit to your Lordship.
 - COURT: I do see that, but isn't this a very, very minor point?
- 30 MR. JACKSON-LIPKIN: Yes.

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- Q. But you did even suggest in this letter that the flats would be sold on your behalf; you promised to assign the flats absolutely to the Wongs, didn't you? That answer was wrong?
- MR. BERNACCHI: My Lord, I object to that. The letter is clear. The flats have been already assigned in the mortgage, legally speaking. He has said what he means in the letter: "Now I have a small request to

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Plaintiff's Evidence

Plaintiff's Evidence

No.6
P.W.1
TSE Kwong-lam 10
CrossExamination
(Continued)

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you, that I will assign all the flats unsold to you. But I hope that after you have sold all the flats, the proceeds will be used to defray the principal and interest and the balance will be given back to me." Surely what he has been saying is consistent with this letter and with the fact that he is a layman.

- MR. JACKSON-LIPKIN: My Lord, I don't wish to enter into any dispute with my learned friend. I can only go on the answers that were given on affirmation. My Lord, my learned friend objects to the question. It is not of major interest. I shan't enter into any further dispute. I will pass on to something else.
- Q. Not only did you write that letter to Mr. and Mrs. Wong you went to see Mrs. Wong on a number of occasions following the letter of demand, didn't you?
- A. I went to see Mrs. Wong after the issue of the occupation permit on the 12th January, 1966. I asked her to supply me with the accounts.
- COURT: You were asked about after receiving Johnson Stoke's letter, B.38, B.39, dated 28th April.
- A. No, I did not go to see Mrs. Wong after the receipt of this letter (referring to 39).
 - Q. Then you say that you learnt of the auction through the newspapers?

COURT: And from Mr. Liu.

- Q. Oh, sorry which came first?
- A. I read that in the newspapers first. Then I went to see Mr. Liu. Mr. Liu told me that the property was going to be auctioned.
- Q. Was that on the 9th June that you saw it in the Chinese newspapers?
 - A. That I don't remember.
 - Q. You went to see Mr. Liu. You were told, were you not, that on advice a reserve

price had been put on the property?

A. No, I was not told.

Q. And you were aware of a reserve price well before the auction was held?

A. No, I was not aware of that.

Q. Mr. Tse, you complained about it and said it was too low, didn't you?

COURT: Complained to whom?

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Q. You complained to Mrs. Wong about the reserve price, did you not?

A. The person conducting the auction at the Lammert announced that the reserve price

being \$1.2 million.

Q. May I interrupt you, Mr. Tse. I will, I promise, come to the auction in due course. Let us stay with the period before it for the moment.

A. I did not complain to Mrs. Wong that the reserve price being too low.

- MR. JACKSON-LIPKIN: My Lord, may he be shown, I think the Chinese is B.45-B.48, and my Lord, the English is B.40-44. My Lord, in the English I am going to invite your attention to the first line on B.42, in the Chinese to the first column on B.47.
 - Q. Now I am shwoing you or having you shown now the particulars of sale that were published on the 9th June. Will you please look at item 1?

30 A. Yes, I have read it.

Q. Now you saw the particulars and conditions of sale before the auction, didn't you?

A. No, I just read the newspaper.

- Q. Look at B.56 please, is that the advertisement that you saw?
- A. Yes, I read something similar to this in the newspaper to the effect that Nos.52-54 would be auctioned.

MR. JACKSON-LIPKIN: Mr. Interpreter, will you please read to him the 5th and 4th columns from the left.

INTERPRETER: Yes.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

MR. JACKSON-LIPKIN: Mr. Interpreter, I wonder if you could, for the benefit of the shorthand note, please tell us what you have just read in English?

Plaintiff's Evidence

INTERPRETER: What I have just read is: "For particulars and regulations please approach the solicitors for the seller, Johnson Stokes and Masters or the LammertBrothers."

No.6
P.W.1
TSE Kwong-lam
CrossExamination
(Continued)

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- Q. Did you ask Lammert Brothers for the particulars and conditions of sale before the auction, Mr. Tse?
- A. No, I did not. I did not make any enquires.
- Q. It was your property being sold, why didn't you?
- A. My property was going to be auctioned. Making enquiries would not help. That would not serve any purpose. Besides I was in a very bad mood.

Q. I see. I suggest that you did obtain them.

A. No, I did not.

- Q. That you spoke to Mrs. Wong and asked what the reserve price was?
- A. No.
- Q. That you complained about it being too low?

A. No, I did not ask.

- 30 Q. And Mrs. Wong said to you, "Well, if you think you can get a better price, introduce some purchasers."
 - A. I did not talk to her. I did not talk to her about anything. Neither was I notified.
 - Q. Notified about what?
 - A. I was not notified of the date of the auction.
- MR. JACKSON-LIPKIN: Mr. Interpreter I wonder if I could trouble you to pick up (D56?) B56 again and show it to him?

(PAUSE. Interpreter shows witness document.)

Q. Isn't there a date of the auction there?

A. Yes, at the very beginning, the date being the 24th of June, 1966.

Q. Would you be kind enough to read that out?

A. I read that in the newspaper all right, but I had not been so notified before I read it in the newspaper. I immediately went over to J.S.M. to see Mr. Liu representing Mr. WONG Chit-Sen.

Q. Yes. Did you ask him about the particulars and conditions of sale?

A. No, I did not.

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Q. You knew exactly where the auction was to be held?

COURT: If you know, just say yes.

A. I read that in the newspapers.

- Q. And you wrote it in your letter to Mr. and Mrs. Wong also, didn't you?
- MR. JACKSON-LIPKIN: It's in the middle of page 59A, my Lord.
- 20 A. You mean about the auction. I knew that there was going to be an auction. I learnt that from the newspapers.

Q. You wrote it in the letter that you told my Lord you were forced to write by Mr. (Liu?).

- MR. BERNACCHI: No, I'm objecting. He didn't tell my Lord that he was forced to write. He told your Lordship that he was advised to write it in that way by Mr. Liu. .
- 30 Q. In the letter to Mr. and Mrs. Wong of the 17th of June, you recited that the properties are coming up for auction on the 24th of June.
 - A. That was put out in the advertisement in the newspapers.
 - Q. Did you take any steps to try and find prospective purchasers for the 24th of June?
 - A. No.
- 40 MR. JACKSON-LIPKIN: My Lord, I'm going on to the auction itself now. Would your Lordship like to listen to this now or in

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Plaintiff's Evidence

Plaintiff's Evidence

No.6 P.W.1 TSE Kwong-lam Cross-Examination (Continued)

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a few minutes time?

COURT: We will adjourn now.

MR. JACKSON-LIPKIN: If your Lordship wishes.

11.26 a.m. Court adjourns.

11.50 a.m. Court resumes. Appearances as before. Mr. Patrick Woo absent.

P.W.1 - TSE Kwong-lam (Plaintiff) (on former affirmation).

MR. JACKSON-LIPKIN: My Lord, I did look back through my learned junior's notes and I found these 2 answers about the letter on page 59. "I wrote the letter-as instructed by Mr. Liu - I wrote the letter as instructed by (Liu King-wong?)." My Lord, that's where I got the phrase from.

XXN. BY MR. JACKSON-LIPKIN (Contg.):

- Q. Now I want to pass to the day of the auction. You were there, were you not?
- A. Yes.
- 20 Q. Mr. McElney of Johnson, Stokes & Master was there?
 - A. Mr. (LIU Kam-wa?) was also there.

COURT: Your solicitor from Johnson, Stokes and Master ---

MR. JACKSON-LIPKIN: And, and, thank you my Lord.

Q. And there were something like 30 other people present, is that right?

A. There were some people there and now I do not know how many people there were.

Q. And very little interest was displayed by the people there in the property?

COURT: What do you mean by that?

MR. JACKSON-LIPKIN: My Lord, they displayed no interest in what was for sale.

COURT: I can't understand that question unless you say, well, nobody entered into the bidding.

MR. JACKSON-LIPKIN: I'm coming to that in a moment, my Lord.

Q. Nobody made any enquiries about the property?

A. What do you mean by that, "No one made any enquiries about that property?", what do you mean?

Q. Did you hear anyone make any enquiries about the property before the auction started?

A. I did not see any.

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- Q. And when the bidding started, nobody bid? When the bidding was due to start, nobody bid?
- A. The person conducting the auction announced that the reserve price was 1.2 million dollars.

Q. But still, there was no bidding?

A. The wife of Mr. WONG Chit-sen, the agent of Mr. WONG Chit-sen, CHING Wai-Suk, C-H-I-N-G W-A-I S-U-K (Shook?) bid 1.2 million dollars.

Q. Eventually?

A. Yes, eventually, she did.

Q. That was a very depressed time for property sales, wasn't it? Yes or no?

30 A. Not very depressed.

- Q. You've been offering very large discounts in your own pamphlets, haven't you? Yes or no?
- A. I was prepared to sell the flats at lower prices after the issue of the Occupation Permit to enable me to make repayment to Mr. Wong.

Q. In all that time, you had only managed to dispose of 36 units, hadn't you? From 1964 to the summer of 1966, you had only

managed to dispose of 36 units?

A. Yes, yes, only 36 units were sold towards the end of --- towards the end of January 1966, Lam Kee cme along and took away the doors and other things because Johnson, Stokes & Master refused to pay Lam Kee.

Q. Is the answer to my question yes?

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

- A. Yes, 36 units.
- Q. You started off with a price list offering them for sale in '64?
- A. 1964.
- MR. BERNACCHI: My Lord, perhaps I can clear this up. The witness in his examinationin-chief said that the pamphlet had been printed in 1964. The price-list was printed after the Occupation Permit. 10 have since discovered that in the --- the witness that we would be calling from Harriman's - they have the only original which we price-list have now photostated so that if my learned friend like it, I would offer him a The original will be produced photostat. by this witness from Harriman's.

COURT: What do you mean by the original?

- MR. BERNACCHI: The original, well it's

 '64 / '65, this is the price list, this is
 the pamphlet as taken from Harriman's
 file, and we've been querying this witness
 and the answer was, well, this is the
 original for the price list.
 - COURT: No doubt, the price list produced to the court so far shows far lower prices than those published in 1964.
 - MR. BERNACCHI: My Lord, some cases far lower, some cases higher.
- MR. JACKSON-LIPKIN: My Lord, I accept my learned friend's offer but I would like to continue asking questions without referring to documents for the moment. I will accept his offer with gratitude. Yes, thank you very much.
 - MR. BERNACCHI: And, my Lord, if I could hand up to the court a photostat at the moment. As I say, the original will be produced by Harrimans.
- 40 MR. JACKSON-LIPKIN: I'm very much obliged

to my learned friend. I will have a look at it as soon as I can. My Lord, my difficulty is that I haven't until today managed to get hold of a copy of exhibit. So if I may have my question read back to me, I will ask it again

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No. 6
P.W.1.
TSE Kwong-lam
CrossExamination
(Continued)

Court Reporter reads:

- Q. You started off with a price list offering them for sale in '64?
- 10 A. 1964."
 - MR. JACKSON-LIPKIN: Thank you very much.
 - Q. You started off in 1964 with pre-sales of flats on the published price-list, did you not?
 - A. The first one was printed in April.

COURT: What year? A. '64.

Q. Yes. Thereafter, you published a number of other price lists?

A. I don't remember. There was one printed after the issue of the Occupation Permit, allowing a discount of 15%.

Q. And you published another one offering a discount of 20%, didn't you?

A. That was done after the issuing of the Occupation Permit. I was prepared to sell the flats as soon as possible to enable me to make repayments.

Q. And then you published another price-list offering a discount of 25%?

A. That I don't remember. That was so long ago.

Q. Try.

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A. I don't remember it because it has been a long time.

Q. The truth of the matter is that from the spring of 1966, the property market became badly depressed, did it not?

- A. No, it did not occur to me that way. If it had been the case, how would Wing On Assurance have lent me 1.5 million dollars?
 - Q. The Star Ferry Riots took place in April

Plaintiff's Evidence

No. 6
P.W.1.
TSE Kwong-lam
CrossExamination
(Continued)

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1966, did they not?

- A. That I don't remember. If you ask me questions like that which are irrelevant to me, how can I remember?
- Q. They weren't irrelevant to you at the time, were they, Mr. TSE, because you couldn't sell your flats?
- A. Because some accessories like the doors had been removed by Lam Kee and that affected the sale of the flats. I was only able to sell 3 of the flats eventually.
- Q. When do you say the doors were removed?
- A. End of January, 1966; 1966, end of January.
- Q. Yes, and Mr. Wong came to the rescue and paid them off?
- A. I have to explain to the court. At the time, Johnson, Stokes & Master and Mr. Wong Chit-sen refused to pay Lam Kee the construction cost, \$68,000.00. Lam Kee removed the things like the doors and Lam Kee refused to hand out the keys. The flats could not have been sold without keys.
 - Q. Every single payment certified by Mr. Tam your architect had been made by Mr. Wong, hadn't it?
- A. But those payments were not made on time though they had been certified by the architect.
 - Q. Are you serious about that?
 - A. Well, most payments were not on time.
 - Q. Well, I'll come back to that Mr. TSE. But before this passed from you, is that something you've just imagined or are you saying that it in fact is true?
 - A. This is true. Payments to be made must be against the certificate from the architect.
 - Q. Yes.
 - A. The delay in payment caused by Johnson, Stokes & Master resulted in Lam Kee Construction Company not being paid on time.
 - Q. The door incident happened in the middle of January, didn't it?

COURT: Yes or no?

A. That was sometime before the 30th of January, 1966.

Q. The whole thing was settled in a fortnight, wasn't it? Wasn't it?

A. I don't remember.

Q. Well, try because you're putting it up as the reason for not selling flats. How long was the dispute?

A. The dispute lasted up to sometime around

10th of February.

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Look, Mr. TSE. You must confine your COURT: answers. You are doing yourself no good by the answer all way you questions. You are not here to argue the case for yourself, I've already warned you You've got learned counsel to of this. argue the case for you. Unless confine yourself to answering questions, shall be here until Christmas thereafter.

Q. Now we've got so far as the 25%. What was the highest discount that you offered to try and persuade people to buy these units?

A. Well, that was so long ago that I don't remember.

- Q. Now in addition to your offering increasing discounts, you reduced the unit prices as well, didn't you?
- 30 A. The prices were adjusted ---

Q. Downwards?

- A. ... in the price-list issued printed after the issuing of the Occupation Permit.
- Q. Downwards? Yes or no Mr. TSE?
- A. Yes, a bit lower, a bit down in the hope for quicker sales.
- Q. In the hope for quicker sale or in the hope for sale?
- 40 A. In the hope for quicker sales to enable me to make re-payments to Mr. Wong.
 - Q. Now I will ask you the question again. You heard perfectly well I'm sorry you knew perfectly well in 1966 that the property market was very depressed?

A. Not badly depressed, not depressed. If it had been depressed, no one would have lent

money to me.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Q. When you spoke to Mr. (Liu?) as you say you did, did he say something to you about the ever-decreasing value of Mr. Wong's security?

Plaintiff's Evidence

COURT: Look, will you stop asking questions until the question has been completely translated to you, Mr. TSE?

No. 6
P.W.1.
TSE Kwong-lam
Cross- 10
Examination
(Continued)

- A. No, no.
- Q. At the time of the auction, did you have other solicitors than Johnson, Stokes & Master?
- A. Well, did I have any other solicitors in what respect?
- Q. At the time of the auction, Mr. Tse, did you have any other solicitors advising you?
- A. No.
- Q. What had happened to C. C. Lee?
- A. I was not advised by them.
- 20 Q. Had you withdrawn all instructions from them?
 - A. They only handled one flat in (Kwong Hing?) Building. They only handled the sale of one flat in Kwong Hing Building. A relative of Mr. Lee bought a flat in Kwong Hing Building from me. A relative of his bought a flat in Kwong Hing Building from me.
- MR. JACKSON-LIPKIN: My Lord, may I have a moment?

(PAUSE.)

- Q. Can you help me as to which flat that was?
- A. I have to refer to something before I can tell you?
- Q. Yes, I see. Well, you can do that after lunch. But let me get this clear. You say that they were acting on your instructions for the sale of that one flat?
- 40 12.26 p.m. Mr. Patrick Woo enters court.
 - A. In fact, the transaction was handled by J.S.M. and Mr. Lee was only buying this flat for his relative as a purchase.

- COURT: The relationship between them was not solicitor and client, but vendor and purchaser.
- MR. JACKSON-LIPKIN: I see that now my Lord, thank you. My Lord, I can't go on with this cross-examination on this price-list until I've had a chance of looking at it. I will, if I may, come back to it later.
- Q. Now I want, Mr. TSE, again to change the subject entirely. So forget about the auction for the moment.

MR. BERNACCHI: My Lord, excuse us.

(PAUSE. Counsel confer.)

- MR. JACKSON-LIPKIN: My Lord, I hope your Lordship won't consider this an imposition but would your Lordship consider arising at this point? My Lord, it may be of very considerable assistance to you if you were to rise at this point.
- 20 COURT: All right. Of course I will accept a matter like that from the bar but ---
 - MR. JACKSON-LIPKIN: It is serious, my Lord.
 - COURT: May I also draw the attention of the bar to the time factor in this case?
 - MR. JACKSON-LIPKIN: My Lord, that is one of the reasons we've made this request.

COURT: We will resume at 2.30 p.m.

12.30 p.m. Court adjourns.

2.43 p.m. Court resumes.

30 Appearances as before.

P. W. 1 - TSE Kwong-lam (on former Affirmation)

XXN BY MR. JACKSON-LIPKIN (continues):

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's Evidence

No. 6
P.W.1. 10
TSE Kwong-lam
CrossExamination
(Continued)

- Q. Mr. Tse, will you please look again at the affirmation that you swore --- I'm sorry --- the affirmation that you affirmed on the 25th November, 1966? That's the affirmation that was lodged on your behalf by Mr. H. H. Lau & Co.
- A. I do not know what they did with it.
- Q. But you affirmed that in an attempt to get leave to defend this action brought against you by Mr. Wong.

(Witness says something at this point)

Q. Just wait. Now, I've taken you to paragraph 6. I want you now to look at paragraph 7. Your second ground for asking for leave to defend was that there was a number of overcharges and a number of charges that had nothing whatever to do with the mortgage.

(Witness again says something after the interpretation)

COURT: Nobody's asked you a question yet.

- Q. Look, please, will you at the second item that you affirmed was unrelated to the mortgage arrangements and therefore ought not to be included in the accounts.
- A. You mean this eighty thousand dollars?
- Q. Eighty.

COURT: Nobody's asked you a question yet.

INTERPRETER: What he says is that's for vacant possession".

- Q. That eighty thousand was part of the sum you told his Lordship \$230,000 for getting rid of all tenants.
- A. Yes.
- Q. That was one of the original sums you calculated when you first approached Mr. Wong for the loan.
- A. When I first approached Mr. Wong, that approach was for a loan of 1.5 million dollars. Concerning this money for obtaining vacant possession of the premises, the solicitors' firm knew that.
- Q. Mr. Tse, you have told us that was one of

the sums that you included in your calculations when working out how much you needed. Do you want to change that story or is that still what you say?

A. Yes, that was included in calculating the

cost -- the building cost.

Q. Thank you. Now will you explain to his Lordship why you affirmed this in order to get leave to defend and affirmed that that eighty thousand had nothing to do with the mortgage but was a personal loan between Mr. Wong and you?

A. The thing was drafted by solicitors' firm and this was drafted by Mr. Miu. The thing was in English and no one explained to me -- no one explained anything about the 150,000 dollars to me.

Q. Are you listening to the questions you are being asked?

20 A. You were asking me about the eighty thousand dollars?

Q. Yes, I wan't asking you about the \$150,000.

MR. JACKSON-LIPKIN: Mr. Interprter, would you please read to him in Cantonese the words in brackets relating to this item?

INTERPRETER: Yes.

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Q. The words unrelated to the building mortgages but a personal loan. Why did you say that?

A. I did not know how the counsel arrived at this figure. I did not know how the solicitors drated it. I was told to afirm, and I affirmed.

Q. Believing it to be false, you affirmed it to be true ? Is that right? Is that right? Yes or no?

MR. BERNACCHI: Shut up and let him answer.

- 40 MR. JACKSON-LIPKIN: I want a yes or no, please.
 - A. That was prepared -- This was prepared by the lawyer and payments amounting to this amount, referring to \$80,000, were made by

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's Evidence

No. 6 10 P.W.1. TSE Kwong-lam Cross-Examination (Continued)

Johnson, Stokes & Master.

My question was : did you affirm that to Q.

be true, believing it to be untrue? Well, this figure of \$80,000 was correct, Α. this being the money spent for vacant possession of the premises.

Perhaps we misunderstood each other, Mr. Q. You see, you have affirmed there that it was nothing whatever to do with the mortgage arrangements with Mr. Wong.

Mr. H.C. Miu did not tell me that: Α. payments were made by J.S.M.

H.C. That's not Mr. Miu's document. Q. That's your affirmation. You see, as a -- result of Mr. Tse that result. of yours, that the affirmation And Mr. granted you leave to defend. Miu's document wasn't drawn up until after that. Now is there anything you want to say.

Well, I think this figure was prepared by Α. J.S.M.

MR. JACKSON-LIPKIN: My Lord, it is in fact the second item, in paragraph 7 of the defence as well.

Just look at the sixth item, will you? Q. Hong That's the \$8,430 to the Kong You affirmed Government for water metres. there in order to get leave to defend that that was totally unrelated to the building mortgage arrangements.

That was the evidence: he maintains COURT: that until now.

JACKSON-LIPKIN: My Lord, what MR. affirmed here is not only the building mortgage but unrelated building mortgages, and his evidence, rightly, - if I may call it rightly - is that it was part of the arrangements that the sales -- the pre-sales should provide money for these payments, an that those pre-sales were part of the arrangements between him and Mr. Wong.

COURT: Pardon?

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MR. JACKSON-LIPKIN: They were part of the arrangements between him and Mr. Wong effected through Mr. Liu.

COURT: This is what you say. This is not what the witness says.

MR. JACKSON-LIPKIN: My Lord, that's not my evidence - that's not to be our evidence. That's to the contrary

COURT: That's what you suggesed to him. Well, in chief I think he said that Mr. Wong insisted that those sales should take place at Johnson, Stokes & Master.

MR. JACKSON-LIPKIN: Yes, my Lord, I appreciate that that's what he said, but in relation to the 8,430 his case was that that should have been paid by Johnson, Stokes & Master, whereas this affirmation says it has nothing to do with that building mortgage and should never have been included. My Lord, that is a matter for argument. I will come to that later.

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Q. Now, let's look at the last item on that page: \$20,000 to China Engineers, part payment of the amount due.

A. Well, this payment was made by JSM from the proceeds of the presales of units; this payment was not made by Mr. Wong.

Q. This payment was made, according to you, consequent on your arrangements with Mr. Wong, was it not?

MR. BERNACCHI: Sorry, according to you, I think it's incorrect. He has always maintained that Mr. Wong should not have been credited with the proceeds.

MR. JACKSON-LIPKIN: My Lord, I will get the whole paragraph translated because obviously nobody is paying any attention to what he swore. I'm talking about his evidence here.

40 COURT: All this is on his credit, isn't it?

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's Evidence

No. 6
P.W.1.
TSE Kwong-lam
Cross- 10
Examination
(Continued)

MR. JACKSON-LIPKIN: Yes.

Nothing, may I ask you, really -COURT: of Nothing in respect this cross-examination _ this part of cross-examination turns on the case other than his credit.

- MR. JACKSON-LIPKIN: That is so. My Lord, it's only in cases of these matters that very rarely arise that you can get any assistance to know which way to go.
- Q You complained a little earlier today that Mr. Wong had been late in making payments to the builders.
- A. I was complaining that against JSM.
- Q. They were the solicitors for both of you.
- A. They were my solicitors to the extent in handling the pre-sale of flats.
- Q. And from the moneys obtained from the pre-sales of flats you expected, you told us, that the building costs would be paid?

A. Yes.

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- Q. Then why were you complaining when they did that very thing?
- A. They made by "they" I mean JSM made the payments to the constructors late.
- Q. China Engineers Ltd. installed the lifts, did they not?
- A. Yes.
- Q. The charges for installing the lifts were part of the building costs? Yes or no?
- A. Yes.
- Q. You expected, therefore, China Engineers would have to party -- I'm sorry -- JSM would have to pay China Engineers out of the moneys they received?
- A. Yes.
- Q. Then why, in order to get leave to defend, did you say to the judge that China Engineers should not have been paid?
- 40 MR. BERNACCHI: No, no, if my learned friend wishes to pursue this cross-examination on credibility, at least put the questions right. The essential thing that my learned friend wishes to bring out is that in English he said "unrelated to the

building mortgages".

JACKSON-LIPKIN: Not in English. Affirmed MR. the Courts of Justice... the having been first duly interpreted to the Affirmant in the Cantonese dialect of the Chinese language by the present interpreter to Judge de Basto, Lau Chun

"Unrelated MR. BERNACCHI: to the building mortages" in English. That's what I'm 10 referring to.

MR. JACKSON-LIPKIN: Could you read to him the last item, or have you done so already?

Q. Now, is that what you really meant?

Well, this payment was made by JSM with the proceeds of the pre-sale of units. I Α. signed an agreement with JSM to the effect that the proceeds from the pre-sale of making would first be used in units payments for the constructin cost of secondly, for payments in respect sundry erxpenses, and thirdly for the repayment of the building mortgage.

Q. Let me pass on to something else that you have been saying. Turn, please, to page B1. - first architect certificate 30th Look at B12(a). My Lord, the November. B12(b). Receipt translation is December, (You can show it to him in Mr. Interpreter.) You're Chinese,

saying that one is late, are you?

12(a) INTERPRETER:

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I have to look at Mr. Tam's certificate. Α.

MR. JACKSON-LIPKIN: My Lord, this is the first time I have mentioned it.

We have spent half an hour COURT: Lateness? on this. Time and time again he's come up with Johnson, Stokes or JSM were late; we are back to the same thing again.

40 Well, my Lord.... MR. JACKSON-LIPKIN:

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's Evidence

No. 6
P.W.1.
TSE Kwong-lam 10
CrossExamination
(Continued)

- COURT: What is the relevance to the case even if lateness were established or not established, except this credit again?
- MR. JACKSON-LIPKIN: My Lord, I'm trying to show that ones again.
- COURT: All right. Carry on. This is all on credit?
- MR. JACKSON-LIPKIN: Yes, my Lord, it is.
- Q. There is no lateness on that one? All right? Look at the next one, B2, the second certifiate. B12(c) "payment in a couple of days".
- A. I have to check against the architects certificate.
- Q. Well, just do so, if you wish to. Look at B1 and look at B12(a)
- A. I do not read English.
- Q. Well, just stop for a minute, Mr. Tse, I have a different question to ask you. Mr. Interpreter, will you translate that, please. Just stop for a moment, I have a different question to ask him. If you have never checked against the architects certificates, why have you told my Lord so often in the course of this case that the payments were late?
 - A. Yes, I did; I did check; otherwise I would not have known.
 - Q. And it's not true, is it? They were not late.
 - A. Well, payment or payments were late by over a hundred days.
 - Q. Which?

- A Well, some payments were over ten days -- late by over ten days; some were late by over twenty days. I have to check.
- Q. Yes?
- A. I'm asking to be shown with the JSM account.
- 40 Q. You produced in this case all the Lam Kee receipts. You produced all the architects certificates.
 - A. Yes.
 - Q. You tell my Lord if there's anyone who knows where there is a degree of lateness in payment after receipt of the certificate.
 - A. Can I produce Mr. Tam's certificate now?

Q. They are all there.

- Well, I've to check this against the JSM acount.
- You are not going to do that in court. Q. You can do that overnight.

JACKSON-LIPKIN: My Lord, I've prepared a schedule of comparisons for your Lordship, to save time.

I, for one, am not interested.

10 MR. JACKSON-LIPKIN: Very well, my Lord.

You yourself said all this goes COURT: to credit.

- JACKSON-LIPKIN: Yes, my Lord, sooner or MR. later of course you will be faced with a conflict of evidence.
- May this be handed up to the Court? Α.
- Q. What is it?

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- This is a wages certificate issued by ${\rm Mr.}$ H.S. ${\rm Tam.}$ Α.
- MR. JACKSON-LIPKIN: My Lord, it's his version 20 of B97, if my memory serves me right.
 - We've got it already. Thank you. Q. you say you wish us to have this particular one with your writing on it, we've already got a copy.

COURT: Nobody has asked you a question.

- Q. I want to see if you can help me on another matter relating to C.C. Lee & Co. You see, before luncheon you told my Lord that the only matter that C.C. Lee dealt with was the sale and purchase of a flat.
- Mr. Lee Mr. C.C. Lee bought a flat in Α
- Kwong Hing Building from me. (Now, my Lord, B35 and B36 to which I've not yet had your attention called.) But Q. C.C. Lee dealt with two things entirely: the purchse of Flat 4 on the 17th floor and a second mortgage of the building. My Lord, B35 is to C.C. Lee about that

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's

(Continued)

Evidence

assignment, but obviously Mr. Tse was talking about Flat 4, 17th Floor --

COURT: Whose document is this?

No. 6
P.W.1.
TSE Kwong-lam
Cross- 10
Examination

MR. JACKSON-LIPKIN: My Lord, this is a copy of a letter from Johnson, Stokes to C.C. Lee. I'm trying to find out who discovered it. And, my Lord, the next page is the answer to B35 about the title deeds for the preparation of the second mortgage. (To Interpreter) Will you please translate B36? This is the second matter that C.C. Lee was dealing with, not the assignment of Flat 4 on the 17th floor. Could you translate that, please?

INTERPRETER: Is this "fell through"?

MR. JACKSON-LIPKIN: Sorry?

INTERPRETER: I'm asking you whether this is
 "fell through"?

- MR. JACKSON-LIPKIN: That's right "fell through".
 - A. Which twenty title deeds?
 - Q. Have you translated this?
 - A. Which twenty title deeds?

INTERPRETER: He is asking which?

- Q. Never mind. They were the ones sent by Johnson Stokes to C.C. Lee. Now that that letter has been read to you, can you help my Lord and tell him you now remember why the proposed second mortgage fell through?
- 30 A. When was that?
 - Q. March 1966.
 - A. You mean the JSM wrote a letter to --
 - COURT: Look, you went to C.C. Lee & Co. to try and arrange a second mortgage. That is a fact, is it not?
 - A. That was too long ago to remember.

COURT: I think if you try and remember you might remember this one.

A. That was over ten years ago, I cannot remember, if that mortgage was not done.

Q. We can tell it wasn't done. What my Lord and I are asking you is why did it fall through? Why?

A. It was a long time ago, over ten years

ago, how can I remember?

10 Q. All right. Now I want to ask you about Wing On Life Assurance. This is also ten years -- twelve years ago. Who did you deal with in Wing On Life?

A. In April 1966 I was told by Mr. Liu that the redemption of the mortgage would cost me 1.4 million dollars. Then I went along trying to raise the money for the redemption of the mortgage. I went to see Mr. Lo of Wing On Bank.

20 Q. That was just under a month after the C.C.

Lee's second mortgage fell through?

A. Mr. Lo took me to see one Mr. Kwok. I have no recollection of the dealings with C.C. Lee beceause I obtained no loan, that's why I cannot remember.

MR. JACKSON-LIPKIN: Sorry, "I obtained" what?

INTERPRETER: "I did not obtain any loan".

Q. You didn't obtain any loan from Wing On Life either, did you?A. Mr. Kwok agreed to lend me 1.5 million

30 A. Mr. Kwok agreed to lend me 1.5 million dollars on my production of the pricelist.

- Q. Was that the first pricelist with no reductions offered?
- MR. BERNACCHI: I'm sorry, but I have pointed out to my learned friend already this morning that the first pricelist had a ten per cent reduction on it.
- MR. JACKSON-LIPKIN: Would your Lordship give me just a moment to look at the pricelist?
- 40 Q. Did you produce the first pricelist or the later pricelist?

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's Evidence

- No. 6
 P.W.1. 10
 TSE Kwong-lam
 CrossExamination
 (Continued)
- A. The first pricelist the one printed in April 1964.
- Q. And you showed that to Mr. Kwok and he, you say, promised you a loan of one and a half million?
- A. No, no, he did not promise that right away. He accepted the pricelist and he said he had to assess the value of it.
- Q. Any way, you said he eventually offered you a loan of 1 1/2 million?
- A. Yes. There was a letter to this effect.
- Q. Can you tell my Lord what reason you were given for their refusal to lend you 1.6 million.
- A. Upon receipt of that letter I went along to JSM to see Mr. LIU Wing-wah.
- Q. Did you understand my question?
- A. What was it? What happened after the receipt of the leter?
- 20 MR. JACKSON-LIPKIN: My Lord, may the question be read back to him?
 - COURT: Wing On Life Insurance promised you a loan of a million-and-a-half. You went back an told Wing On, "Look, the mortgagee now wants 1.6 million". That's right, isn't it?
 - A. Right.
 - Q. Well why did Wing On turn you down on that \$1.6 million?
- No reply was given to me on that day. I was told they had to make some calculation on the following day. I was told they had access to the value of it and the value would be something around 1.5 million, not 1.6 million. That is why they refused to let me have the loan of 1.6 million.
 - Q. Did they tell you that they had discovered the later price lists with the lower prices and the bigger discounts?
- 40 A. No.
 - Q. Did you try and raise a loan anywhere else?
 - A. If I approached anyone else?

COURT: Yes.

A. I wrote to Hongkong Bank.

Q. But you've told my Lord on Yes, go on.

A. That approach was unsuccessful. I received a letter from Hongkong and Shanghai Bank; that letter was in English - I could not read it. I understood it to mean tht they could not help me.

Q. Did you try anywhere else?

I approached some other banks but those approaches were all fruitless. I don't remember which banks I approached.

Q. Were they all fruitless because it was very difficult at that time to dispose of any of these units in the building?

A. I did not know what views the banks held.

Q. It was very difficult at that time to dispose of the units, was it not?

- A. That was not the case. It was not difficult to dispose of the flats. In fact I had already sold three flats. If there had not been interference from Lam Kee and China Engineers, I would have been in a better position in the disposal of the flats.
 - Q. The reason why you were refused loans was because the value of the building was so low that time but the amount you wanted was almost the total value of the building.

A No.

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- Q. Well, now, let me just test what you've said to my Lord against what you did at the time. Look at B36(a).
- MR. JACKSON-LIPKIN: My Lord, it's the 6th and 7th lines of the main paragraph in the middle of the page, B36.
- MR. JACKSON-LIPKIN: (To Interpreter) Will you translate the sentence beginning, "I have been considerably embarrassed..." -- no, sorry, "As the premises are now ready for occupation...? down to "...rest.".

My Lord, for the benefit of the shorthand note I'd better read that in English:
"As the premises are now ready for occupation and although some of the

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Plaintiff's Evidence

Plaintiff's Evidence

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Examination
(Continued)

flats have been disposed of but due to the difficulty in obtaining buyers for the rest, I have been considerably embarrassed by my inability to liquidae the loan."

INTERPRETER: He's now asking to whom was this letter addressed to.

- Q. That's your letter to His Excellency the Governor, signed by you as you can see there in front of your very nose.
- A. Yes.
- Q. That was true, wasn't it? There was difficulty in obtaining buyers for those units? "Isn't that true?" is the question.
- A. The property market at the time was not that depressed. I was hoping that the Government would help me to repay the loan.
- 20 MR. JACKSON-LIPKIN: Mr. Interpreter, would you please turn to B58.
 - Q. I want you to look at another letter of yours written at the time.
 - MR. JACKSON-LIPKIN: (To Interpreter) The last six characters in the third column of B58, please.

 My Lord, it's the second sentence of the big paragraph of 59A, beginning, "But I was not born at the right time, the flats are not salable.".

 (To Interpreter) Could you read the six characters to him.
 - A. Yes.

30

- Q. That was the truth, wasn't it, that at that time the flats were not salable?
- A. Well the flats were salable, though trading was slow.
- Q. And that is why the building had such a low value in the summer of 1966? Isn't that right?
- A. Well if things in the building had not been removed, the selling of the flats would have been more vivid(?).

Q. Oh, Mr. Tse, you've already told my Lord before lunch that was only an incident of a fortnight in duration way back in January and February.

A. Well that would have affected people's

faith in me.

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Q. And the value of the building.

A. Yes, likewise, the value; and the lifts were not operating then. You could not go upstairs to inspect the flats.

Q. That was in March, was it not, for a

period of three weeks?

A. That must have affected people's faith in

me, in the building.

Q. That's just what I was going to suggest. Just tell my Lord this. Four years later you instructed a firm called Harrimans to make a retrospective valuation. Did you tell them, four years later, that back in '66 people had lost faith in you and the building? Yes or no? Did you tell them?

A. I was not the person who obtained the service of Harrimans; it was K.B. Chau who obtained the service. I was granted legal aid. I did not even have money for food.

- Q. Could you tell my Lord this, please, then.
 Do you know what instructions were given
 to Harrimans?
- A. I was never in contact with Harrimans. I
 was granted legal aid and Messrs. K.B.
 Chau & Company were assigned and they
 obtained the service of Harrimans.
 - Q. When did you first disclose to your legal advisers in this case your price lists?

A. Two price lists ...

- Q. When? If you can't remember, just say so.
- A. I handed two price lists over to them and I gave them some instructions. I cannot remember when I did that.
- 40 A. Can you remember the year? Was it last year?
 - A. The time they started being my legal representative. Seems to be sometime this year.
 - Q. Thank you.
 - MR. JACKSON-LIPKIN: My Lord, could he see the brochures, I think it's E151 145 to 151.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Plaintiff's Evidence

- Q. Just look, will you please, at this page and tell me if you can help me on it. Am I right in saying that those dotted lines within each unit are suggestions of where partitions could go and not -- do not represent walls?
- A. Yes. Yes, that's for reference.
- Q. In fact, the things that have been referred to as flats in this case were units which the purchaser would have to turn into flats, isn't that right?
- A. There was no partition inside each of these units and it's for the purchaser to erect partitions.
- Q. Thank you. That's all I'm asking you.
- MR. JACKSON-LIPKIN: My Lord, I've finished with the question of value now I'm passing to something else.
- Q. I want to ask you something quite different now, please.
- 20 MR. JACKSON-LIPKIN: My Lord, may he please be shown E87.
 - Q. That document was given to you by Mrs. Wong, was it not?
 - COURT: Look, you were merely asked whether this document was given to you by Mrs. Wong or not.
 - A. I received this document through JSM. There were three sheets one has been missing.
- Q. When were you given it through JSM -- when you given it through JSM, was it Mr. Liu who gave it to you?
 - A. You mean that document there? Yes, that was given to me by Mr. Liu. Mr. Liu was representing Mrs. Wong Madam cheng Wai-suk(?).
 - Q. Do you really care what you say?
 - A. What do you mean, if I care what I'm saying?
- 40 Q. Do you care what you're saying on your oath?
 - A. Mr. LIU Wing-wah of JSM gave it to me.

- Q. Now listen and I will read to you what you said to my Lord in chief: "This was supplied to me by Mrs. Wong. The handwriting is that of Mrs. Wong.". Which of those answers is true that it was supplied to you by Mrs. Wong or that it was supplied to you by Mr. Liu, the solicitor for Mrs. Wong?
- A. That was suplied to me by Mrs. Wong's solicitor, Mr. LIU Wing-wah.

10 Q. In the autumn of 1965?

COURT: Yes or no?

- A. I received this sometime in February 1965. INTERPRETER: First he said in May and then he changed it to February 1965.
- Q. You're sure of that? "Are you sure of that?" is the question.
- A. I received this something in February 1965 from Mr. LIU Kwin(?)-wah.
- Q. I see. You were also shown, from time to time, were you not ...
- A. No, it was not in February 1965; it was given to me in February 1966. That was after the issue of the occupation permit in January of that year that I went to Mr. Liu pressing him for the accounts from Mrs. Wong.
- Q. In the first year of the mortgage, you saw Mrs. Wong on a number of occasions, did you not, for payment of interest?
- 30 A. Yes, I did. Yes, when I paid her the interest.
 - Q. Did she show you rough calculations of the interest so as to enable you to check your records against hers?
 - A. No.

20

- Q. I want to ask you about the records that you say you kept. What happened to those?
- A. Well I do not know if they are still there. It has been over ten years. They might have been discarded.
 - Q. You do not know if they are still where?
 - A. Well what I meant was that I did not know if they were still in existence. Some of them had already been disposed of, thrown away.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

Q. You see, Mr. Tse, you told my Lord a couple of days ago that you were able to say to Mr. Liu that his calculations were wrong because you checked them against your records.

Plaintiff's Evidence A. According to my calculation, \$1.4 million should be sfficient because what Mr. Wong had actually paid was a little over \$1.1 million plus \$300,000-odd interest; \$1.4 million would be sufficient.

No. 6
P.W.1.
TSE Kwong-lam
CrossExamination
(Continued)

Q. You kept regular records of what you thought was owing on principal and interest, didn't you?

A. The accounts were not kept by me personally. I had an employee in my firm who kept the accounts.

Q. Mr. Tse, you know, do you not, that since the auction a number of units in the building have been sold by the purchaser?

20 A. You mean the units sold after Mr. Wong had bought them? I do not know. Well something was done at the Land Office stopping the units to be sold and that was done by K.B. Chau and Company.

Q. My question was, you know, do you not, that Chit Sen & Co. Ltd. did sell a number of units after the purchase at the auction?

A. At first I did not know. I did not know until I instructed my solicitors to make a search at the Land Office; then I became aware of that.

Q. I see. Which solicitors, and when?

A. H.H. Lau & Company; very recently.

MR. JACKSON-LIPKIN: My Lord, I believe that that's all I wish to ask but as there's only seven minutes left, could we rise now and I hope that I'll have no more to ask in the morning, but if I have, it'll be very short indeed.

COURT: Very well. Ten o'clock tomorrow morning.

4.25 p.m. Court adjourns

27th November 1978

28th November, 1978

Court resumes at 10.05 a.m.

Appearances as before. Mr. WOO absent.

P.W.1 - TSE Kwong-lam o.f.a.

REXN. BY MR. BERNACCHI:

MR. BERNACCHI: I gathered, my Lord, my learned friend has no more questions.

Q. Mr. TSE, you said in respect of the two original mortgages - that is right at the bginning of your cross-examination - that J.S. & M. or Johnson, Stokes & Masters handled the transaction and before them Brutton & Stewart. Just to remind you of your answer. I am not asking any questions yet.

A. Yes.

Q. Now you have also given evidence in-chief that you approached Mr. WONG through an intermediary at first. You were introduced to Mr. WONG by an intermediary about a building mortgage.

A. Yes.

20

Q. Now in reference to that event, your interview with Mr. WONG about a building mortgage, when did Johnson, Stokes & Masters take over from Brutton & Stewart as regards the two original mortgages, before or after?

INTERPRETER: After his discussion with Mr. WONG?

30 MR. BERNACCHI: Yes.

- A. It was after I had had a discussion with Mr. WONG that J.S.M. took over from Brutton & Stewart.
- Q. Now any particular reason for that transfer from Brutton & Stewart to Johnson, Stokes & Masters?
- A. Mr. WONG Chik-sang alias Mr. WONG Tsun-ping insisted that the matter be handled by Mr. LIU King-wah of J.S.M.
- 40 Q. So the changeover from Brutton & Stewart

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No. 6 P.W.1. TSE Kwong-lam Re-examination

to Johnson, Stokes & Masters was at Mr. WONG's insistence? Yes or no, please.

Α. Yes, he has so insisted.

Plaintiff's Evidence

No. 6

come to the sale and purchase agreements of the various sales of units. Now was the purchase money handed over by cheque or by cash? Remember the question, Mr. TSE. By cheque or by cash?

P.W.1 TSE Kwong-lam Re-examination 10 Q. (Continued)

Q.

COURT: Mr. Bernacchi, there were 36 sales.

Yes. As his Lordship has said, there were 36 sales. So if some were by cash, some by cheque, say so.

Α. The payments were made to J.S.M. It is for J.S.M. to know.

Q. All right. Well then, in your evidence, you said that certain payments were made to you. Do you mean by that direct from the purchaser to you or do you mean that J.S.M., Johnson, Stokes & Masters, handed over a certain proportion of the purchase money that they have received?

It was like this: when the purchaser came Α. the construction site to purchase a flat, he would pay an initial deposit, a small deposit, and the balance would later be paid to J.S.M. What I received, that is, what our company received was the initial deposit paid on the construction site.

30 Q. I see. Now page 16 to 28. I am going to hand you up an example that has been agreed. This is the agreement for sale and purchase on the last page, at page 18, at the top of the page, purchase money should be \$175,000 which shall be paid by the purchaser to the vendor and to Messrs. Johnson, Stokes & Masters. Just Now page 28, the purchase money moment. mentioned in clause 2 shall be paid by the 40 purchaser to the vendor and to Messrs. Johnson, Stokes & Masters in the manner as follows: \$175,000 being the purchase money, as to \$5,000 part thereof to the vendor and as to \$170,000 the balance thereof to Messrs. Johnson, Stokes Masters on the signing of this agreement. Now just one moment. Do you remember - if

you don't remember say you don't remeber. Do you remember in this case was the \$5,000 paid to you previously and the \$170,000 on the signing of this agreement or was it the \$175,000 all paid together?

A. I cannot remember clearly. It seems to me that the \$170,000 was paid to Johnson, Stokes & Masters and the \$5,000 was paid to our company and that these \$170,000 was for the construction cost?

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- MR. JACKSON-LIPKIN: Before my learned friend passes onto another subject, - I rise with Arising out of the apologies. matter, your Lordship may remember that I gave you a promise that I would hand you and my learned friend a schedule of this purchase. My Lord, I omitted to do so and the reason I have intervened is that my learned friend may inadvertently bring his 20 own witness into a trap by showing him the file and the file is minus this document. Lord, Ι got that have document available for my Lord and for my learned friend which shows exactly what was paid to this gentleman and what was paid to J.S.M. and when in respect of each of the sales. I really do apologize. I meant to hand it to you a long time ago. My Lord, if you think that it is a suitable moment 30 It certainly would prevent now. Bernacchi from stepping into - it's not a concealed trap but a trap.
 - MR. BERNACCHI: No, I would like to continue my re-examination because I am leaving this one more question and then I am leaving this and I do not admit that your document is even missing unless it is proved by someone.
- COURT: No, there are 36 of each sale and purchase agreement floating around in the archives of Johnson, Stokes & Masters or the archives of H.H. Lau and Company, each of them will show this. Where is the relevance for this matter I still don't know.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

- MR. BERNACCHI: I'll ask one more and then finish.
- Q. Was there any brokerage to pay on these sales?

Plaintiff's Evidence

No. 6 P.W.1. Re-examination (Continued)

- COURT: Can you bring that up now in re-examination? This is the re-examination. You are bringing up an entirely new topic and I do not intend to allow it.
- Q. You were cross-examined on certain carbon copies of receipts which were not even signed. It was apparently your carbon copies of receipts, the original of which, presumably, were signed and handed over to Mr. LAU or Mr. WONG. That is to remind you.
- A. You mean the receipts for sums received on the construction site?
- Q. I don't know what they were but you were cross-examined ---

MR. JACKSON-LIPKIN: My learned friend does want the document, so ---

- MR, BERNACCHI: No, I have been handed the document. I haven't even read it.
- Q. You were cross-examined on these documents which are carbon copies of receipts. The first one is for \$57,962.

A. Yes.

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Q. Did you actually sign the original and hand it over to Mr. LAU or Mr. WONG?

A. I signed the original or the originals and handed them to Mr. LIU. In return I got the interest receipts from Mr. LAU. Those interest receipts were signed by Madam CHING Wai-suk on behalf of Mr. WONG and those receipts were handed to me by Mr. LIU.

Q. Now did actual money pass or not?

A. After I signed those papers I was given no money.

Q. Well now what was the reason for this - do you know what was the reason for this transaction whereby you signed certain

receipts and certain receipts were returned to you?

A. I was given some interest receipts in return.

Q. Well was it in connection with any document that you signed at the same time?

COURT: That was a capitalization of interest owing, was it?

Q. Yes or no? Answer his Lordship's question.

COURT: Yes or no?

A. That was what --- (answer unfinished interpreter interrupted by Court)

COURT: And you knew it at that time, did you not?

- Q. Yes or no, please.
- A. I was told at the time that calculations would be made in the future.

COURT: Mr. Jackson-Lipkin, I better hand back this document to you. Should you produce it at some time it could be done by your client.

- MR. JACKSON-LIPKIN: Yes, thank you, my Lord.
- Q. Now you were cross-examined about a fact that you had been to a large number of different firms of solicitors in the course of these 12 years.
- A. Yes.

Now was this simply in connection with the Q. 30 present three respondents, namely, WONG, Mrs. WONG and the WONG family limited company - those were the present three respondents - or against anybody I don't want to know the name or anything like that, but I want to know whether it was simply in connection with this action against the three respondents or against anybody else. Either you say connection only against the 40 respondents or you say against somebody

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6
P.W.1
TSE Kwong-lam
Re-examination
(cont'd)

Plaintiff's Evidence

No.6
P.W.1
TSE Kwong-lam
Re-examination
(cont'd)

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else.

- A. My visits to various firms of solicitor had also something to do with other matters.
- Q. All right. Thank you. Now that you are not on legal aid, you have gone back to the solicitors that you went to originally in 1966.

A. Yes.

Page 57, bundle B. Now this is a letter Q. that you received from the Colonial Secretary on the 10th of June, 1966, acknowledging receipt of your earlier letters to his Excellency the Governor and that the Governor won't informing you purchasing a entertain propewrty anything like that but his Excellency directs me to inform you that his only suggestion is to obtain the advice of an experienced solicitor. I am informing you Now turn to the next letter of that. which is the letter in Chinese written to Mr. and Mrs. WONG dated the 17th of June.

A. Yes.

Q. Now if you see the earlier part of the letter - I am reading from page 59A, my Lord - "so the matter has been delayed repeatedly until last Monday when I received a latter from the Governor enclosed herewith a copy of the letter." Now was the letter enclosed, the letter on page 57 which was received a few days before or was it some other letter?

A. It has been too long a time for me to remember.

- MR. BERNACCHI: Well, I formally call for the original of this letter and the original enclosure if my learned friend's client has not got it.
- MR. JACKSON-LIPKIN: May I produce it after the mid-morning adjournment?
- Q. You said in evidence in cross-examination that because of non-payment of construction fees, Lam Kee took off all the locks in January/February of 1966. Unless you disagree with me, just say yes.

A. That's correct.

Q. Then I think you said that in March, China Engineers stopped the lifts because of non-payment to them.

A. I cannot remember clearly whether it was

in March or April.

a. It could have been both in March and April.

Q. Now you have also said that that had a bad effect, an adverse effect on the sale of units by you to various purchasers.

A. Yes, because that had a bad effect on our faith.

Q. Well now the first of these things: Lam Kee was in January 1966?

A. Yes, in January, yes.

- Q. The last you say ws perhaps in April. In effect, the China Engineers restarted the lifts in about April -
- A. It was on the 18th of April that Mr. LAU asked me to sign a document in Chinese and authorising Mr. WONG Chik-sang to make payment to China Engineers. That is to pay the balance owing to China Engineers.

Q. Did China Engineers restart the lifts in some time in April, 1966, yes or no?

Yes, in April.

Q. Now you were cross-examined on the depressed state of the market in 1966 and it was put to you that was because of the Star Ferry riots in April that year.

COURT: January, I think you said that it's January.

- MR. JACKSON-LIPKIN: Yes, they were in January.
- Q. I'm sorry. Because of the Star Ferry riots in January of that year. Now I think the bank run was some time in 1965.
- 40 A. I don't remember.
 - COURT: May I apologize. Mr. Jackson-Lipkin did say April 1966.
 - Q. Well, I'm sorry. The Star Ferry riots were in April 1966, the bank run was about

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6 P.W.1 TSE Kwong-lam Re-examination (cont'd)

Plaintiff's Evidence

No.6 P.W.1 TSE Kwong-lam Re-examination (cont'd) a year earlier, would you agree?

A. I did not.

Q. I am just asking you to confirm that the bank run occurred a year earlier. I am not saying what effect it had on the market.

COURT: What Mr. Bernacchi is suggesting you is this: in 1965 the Ming Tak Bank the Carton Trust went bankrupt, Hong Kong Bank bought bankrupt, in Hang Seng shares majority What Mr. Bernacchi is Everything was bad. suggesting to you is that even in all those bad times in 1966 you could still sell some flats, why could you not sell them in 1966? (?)

A. The bank run had no bad effect on the property market.

Q. Mr. TSE, don't exaggerate, please. Despite the bank run you could still sell flats, is that right?

A. I managed to sell a few flats until things

were removed from the building.

Q. So would you say that it was outside influences like the bank run in 1965, the Star Ferry riots in 1966 that prevented you from selling flats or the events at that building itself, the removal of locks, the stopping of the lifts, etc.?

MR. JACKSON-LIPKIN: My Lord, may I rist to object this. May I tell you why? There are before your Lordship certain agreed documents. One of the agreed documents, A69, my Lord, shows the dates of sales; the other is 101 which shows the stoppage of the lifts. And you will see there was quite a fair number of sales from the time the lifts were stopped.

MR. BERNACCHI: I am trying to bring out merely that in his opinion - of course, it is your opinion in the end that counts - his opinion.

COURT: Mr. Bernacchi. It is not a question of opinion. It is a matter of evidence.

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But May I say this? I have always taken the view and I still hold the view that I, as a judge, am permitted to take judicial notice of historical events in Hong Kong and in 1964/65/66/67, for years where there was a lot of historical events, not one of them was good.

MR. BERNACCHI: I would myself say that 1965 was the worst year, I think.

COURT: You surprise me, Mr. Bernacchi. Worse than 1967?

MR. BERNACCHI: The riots of 1967. In other words, the property values were just getting to ---

COURT: That is a matter of comment. You say early 1966 the market was improving again until the Star Ferry riots later; then the natural disaster of Juen, 20 in. of rain in an hour then the riots in Macau late in 1966 and then the riots in Hong Kong in 1966; all these historical gevents.

MR. BERNACCHI: Oh yes. I have no more questions.

Witness leaves box.

11.35 a.m. Court resumes. Appearances as before. Mr. Bernacchi absent.

MR. JACKSON-LIPKIN: My Lord, before the next witness is called, would this be an appropriate moment for me to hand that document to your Lordship and tell you what it is. My Learned friend Mr. Bernacchi, of course, has this copy. Now the document is an analysis for your Lordship of existing documents already before the court.

COURT: Is it an agreed document?

MR. JACKSON-LIPKIN: My Lord---

COURT: What's the number.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6 P.W.1 TSE Kwong-lam Re-examination (cont'd)

Plaintiff's Evidence MR. JACKSON-LIPKIN: It hasn't a number my Lord. It's really for your Lordship's assistance. If you wish to give it a number, it would be I suppose (g). My Lord, it lists out the names of the purchasers and the flats that they bought and the purchase price which is page A69 - the final column is taken directly from

No.6 10 P.W.1 TSE Kwong-lam Re-examination (cont'd) COURT: I understand. I understand the document.

MR. JACKSON-LIPKIN: Thank you my Lord. So nothing new is introduced. It is a purely

COURT: I'm perfectly aware of that, out of courtesy I must ask Mr. Woo what he has to say about it.

MR. WOO: May I have a word with my learned friend, my Lord?

20 (PAUSE. Counsel confer.)

MR. WOO: My Lord, I have no objection.

COURT: Give it a number then, (g).

MR. WOO: Thank you my Lord. May I call my next witness my Lord? Mr. NG Sai-cheong is the Assistant Manager of the Wing on Life Assurance Company Limited. N-G S-A-I C-H-E-O-N-G.

No.6 P.W.2 NG Sai-cheong Examination

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P.W.2 - NG Sai-cheong

Sworn in Punti.

XN. BY MR. WOO:

Q. Mr. NG, would you state your address please?

A. My residential address is No.3-B, Robinson Road, 10th Floor.

- Q. You are the Assistant Manager of the Wing On Life Assurance Co. Ltd?
- A. Yes.
- Q. And how long have you been with the company?

A. For 28 years.

Q. I would like to show you a document. May the witness see E1 & 2? Have you seen that document before?

A. Yes, I have.

- Q. Under what cirscumstances have you seen this document?
- A. At the time I was the Chinese Secretary of the company and I wrote this letter on the instructions of the manager.

Q. Who was the manager?

- A. Mr. KWOK Man-cho, K-W-O-K M-A-N C-H-O.
- Q. And is Mr. KWOK still your manager?

A. He is now the General Manager.

Q. I understand Mr. KWOK is now away from Hong Kong?

A. No, he is not in Hong Kong.

Q. You wrote this letter in your own handwriting?

20 A. Yes.

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Q. Now this letter is dated in April 1966?

A. Yes.

- Q. Apart from writing this letter, would you tell my Lord from your own recollection how this letter came to be written?
- A. Normally when a person comes along, approaching our company for a mortgage loan, he would seek Mr. KWOK Man-cho, and after his interview with Mr. KWOK would instruct me to do something.

Q. And in this case, what was your instruction?

- A. I was told by Mr. KWOK that this Mr. TSE Kwong-lam of Kwong Lam Development Company had come to our company for a loan and he would mortgage ---
- MR. JACKSON-LIPKIN: My Lord, what he was told by Mr. KWOK and what Mr. TSE told Mr. KWOK cannot be evidence. He said how he came to write the letter. He was instructed to do so by Mr. KWOK.

COURT: What the witness is saying is there were instructions given to him as a result of which this letter was written. This letter is not hearsay. This letter is not hearsay. He wrote it.

In the Supreme Court of Hong Kong High Court

Plaintiff' Evidence

No.6 P.W.2 NG Sai cheong Examination (cont'd)

MR. JACKSON-LIPKIN: Yes, my Lord. But what he was told by Mr. KWOK about what Mr. TSE said would be hearsay. What he was told by Mr. KWOK to do is not hearsay.

Plaintiff's Evidence Q. Will you confine yourself to what you were told by Mr. KWOK to do? Now you wrote this letter on instruction from Mr. KWOK?

No.6 P.W.2 NG Sai Cheong Examination (cont'd) A. Yes.

10

Q. And whose signature appears on this letter?

A. Mr. KWOK Man-cho's.

Q. Did you see him sign this?

A. Concerning this letter. I did not see him sign it, but I can recognise his handwriting. Normally after a letter like this is written, it would be put in a jacket and would be handed over to him for his signature.

Q. In this instance, was it so done?

20 A. Yes.

Q. And after the letter had been signed, did

you dispatch the letter?

- A. Well, the normal practice is that after the signatory has signed it, the letter would be passed out again and I would put it into an envelope and cause it to be sent out.
- Q. Now in this letter, it states that a sum of 1.5 million dollars interest at the rate of 1.2 for a term of one year, your company is prepared to advance to the person, to Mr. TSE ---

A. Yes.

Q. ... a mortgage of a building, a commercial building?

A. Yes.

40

Q. Now, as Assistant Manager can you say --can you tell my Lord what was and still is
the practice of your company in
calculating what sum to advance concerning
properties?

A. Well, the advanced sum is to be determined upon reviewing the property market at the time and also the economic trend at the

time.

COURT: Now I've got by viewing ..."?

INTERPRETER: The property value at the time, my Lord, and also the economic trend at the time.

In the Supreme Court of Hong Kong High Court

Q. Now before you go into the mechanics as to how you assess the value of a property, of the money to be advanced on the property, what is the practice, and what percentage of the assessed value of the property is your company prepared to advance?

Plaintiff's Evidence

10 A. Normally, if a person has acquired a property very recently, then we would be prepared to advance him a loan not exceeding 70% of the transacted value.

No.6 P.W.2 NG Sai Cheong Examination (cont'd)

- Q. In the case of a new building, what would you do?
- A. Again, 70%.
- Q. Not exceeding?
- A. That would be the most. We would have to consider the area in which the building is located.
- 20 Q. Yes?
 - A. And we also have to consider the value at the time
 - Q. Yes?
 - A. ... for buildings in that area; we would disregard the prices quoted by the one who wants a loan.
 - Q. Any other factors have to be taken into account?
- A. We also have to take into account the economic trend at the time and the property market.
 - Q. So your company will make its own assessment?
 - A. Yes.
 - Q. You say that your company will disregard any prices placed on the premises or the building?

COURT: No, he didn't say that. "Disregard" ---

MR. WOO: Yes, we would not ---

- 40 COURT: "... the intended mortgage or selling price."
 - Q. Will disregard the intended mortgage or selling price? (to court): Much obliged,

In the Supreme
Court of
Hong Kong
High
Court
———
Plaintiff's
Evidence
———
No.6
P.W.2

NG Sai Cheong

Examination

(cont'd)

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my Lord.

A. That is correct. We would have to bas upon our own assessments.

Q. In the case of Mr. TSE's building, of the intended mortgage drawn in this case, did you have any idea of the price asked for the building, he asked for regarding the building?

A. That I did not know. I did not know how much he asked for. He had the discussion

with Mr. KWOK.

Q. To your knowledge, did he produce any documents, brochures, price lists concerning your building?

A. He did.

Q. Did you have knowledge - personal knowledge of that?

A. Normally people approaching us for a loan would come along with such documents,

price lists.

Q. But I'm talking about in this case, in this case. I'm not talking about in general.

A. I did not know if he brought along such documents.

Q. Can you say with your own knowledge that the amount which your company was prepared to advance in 1966 in April - 1.5 million - represents 70% or what per cent of the actual assessed value of the premises?

A. Well, I know of the company practice, that is if the company is advancing a loan to people, the most would be 70% of the value of the property.

Q. Are you saying that in this case, there would be no exception?

A. Should have been no exception.

Q. To your knowledge, after this matter, did Mr. TSE approach the company in any way?

40 A. Yes, he did. He approached our company for something.

Q. Did he ever approach you?

A. No.

Q. Thank you.

P.W.2 NG Sai-cheong Crossexamination

XXN. BY MR. JACKSON-LIPKIN:

Q. Where is Mr. KWOK?

A. He's in the States.

Q. When did he go then?

A. Some 10 days ago, almost a fortnight ago.

Q. How long has he gone for?

- A. Well, his original plan was that he would be returning towards the end of this month.
- Q. ... You may not be able to help us with the next question, but do you know how long ago his journey was planned?

A. Well, he should have left much earlier than leaving this month. He was busily engaged; that's why there was this delay.

Q. Now you said to my Lord earlier, when dealing with the practice of the company, the advanced sum is determined upon viewing the property market at the time and the economic trends at the time?

A. Yes.

20

Q. You then altered it to property value. Did you in fact mean property market or property value?

A. Value.

- Q. Property market was a mistake, was it?
- A? Value should be the correct word, market value.
- Q. Now we're talking about the days when you were the Chinese Secretary; whether the company adhered to its 70% policy or not depended upon who the customer was, isn't that right?
- 30 A. So far as I know, in most cases the advanced loan would not exceed 70% of the value of the property.
 - Q. And that's as far as you can help us, is it? Most of the cases, they would not exceed?
 - A. Well, in very rare cases such as buildings built by ourselves.
 - Q. And people well known to the Directors?
- 40 COURT: Careful Mr. Jackson-Lipkin, this is institutional money.

MR. JACKSON-LIPKIN: That was back in '65, my Lord.

- A. I have not heard of such I don't know.
- Q. A very proper answer. Mr. NG, how do you know that Mr. TSE came back to the company

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6 P.W.2 NG Sai-Cheong Cross-Examination (cont'd)

a second time? Is that something someone told you?

- A. Yes, Mr. KWOK told me about it. Mr. KWOK told me that he came again for a loan and we refused.
- Q. Do you know anymore about the transactions between TSE and your company other than what you've told us now, which is all what you've learnt from Mr. KWOK?
- A. You mean in connection with this proposed loan?
- Q. Yes.

A. No, I know nothing else.

- Q. Do you know that this year a number of enquiries were made of your company to find out why the second loan fell through? Do you know that?
- A. If such enquiry letters should have come in English, then they would not have been handled by me. So far as I am concerned, I have handled no Chinese letters to that effect.
 - Q. But you're the Assistant Manager. Do you mean to say you were never told that there was a whole series of letters from solicitors enquiring about this matter, in April and May and July of this year?
 - A. Because there is another Assistant Manager handling correspondence in English.
- 30 Q. Have you brought the whole file in response to a subpoena which was issued on your company?
 - MR. JACKSON-LIPKIN: Mr. Interpreter, perhaps I didn't make that clear. Can w put the question again?

INTERPRETER: Please.

- Q. You know a subpoena was issued for the production of the whole file at this trial?
- 40 A. But we were later informed by a solicitor's firm that it would not be necessary for us to attend.
 - Q. Which solicitor's firm?
 - A. We were informed by Mr. Gerald Toh.
 - Q. Told to ignore the subpoena? And have you brought the file?

Evidence ____

Plaintiff's

No.6 P.W.2 NG Sai-Cheong Crossexamination 10

20

- A. You mean the letter ---
- Q. No, no, the file.
- A. There is not much of a file.

(PAUSE. Witness searches for letter.)

- A. Well, this is the draft of the letter.
- Q. Yes. Anything else?
- MR. JACKSON-LIPKIN: My Lord, may I explain?
 Those instructing me wrote first of all to
 Wing On Life and ---
- A. This is the letter of authorisation.
- 10 MR. JACKSON-LIPKIN: ... and then they got a reply from T.S.Tong & Co. and eventually we were told by T.S.Tong & Co. that their clients, (that's Wing On Life), were not in a position to make any comment on the question of why the subsequent arrangements fell through so they were asked to bring the whole file.
 - Q. Yes?
 - A. This is the letter of authorisation.
 - Q. That's all you've brought, is it.
- 20 COURT: This witness is not here on subpoena.
 - MR. JACKSON-LIPKIN: My Lord, he has a bundle in front of him but I'm asking if that's all he's got.
 - A. And also this letter.
 - Q. Nothing else in there at all?
 - A. This is the subpoena.
 - Q. Yes? What are the blue things?
 - A. This is the brochure.
 - Q. May I see it?
- 30 MR. JACKSON-LIPKIN: My Lord, may I have a moment to look at it?

(PAUSE. Counsel examine brochure.)

- Q. In that file therefore, there is no copy of a building mortgage or a further charge or a second or third charge?
- A. No, not here in my file.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6 P.W.2 NG Sai-Cheong Crossexamination

COURT: Mr. Woo?

NO RE-XN BY MR. WOO.

COURT: Right, thank you Mr. NG.

Plaintiff's Evidence

MR. NG: I would like to have my letter of authorisation.

No.6

COURT: Is this letter in evidence?

MR. WOO: Yes, my Lord. I believe it's E1 & 2.

MR. JACKSON-LIPKIN: Yes, my Lord, it is.

MR. WOO: Thank you, Mr. NG.

my Lord, my next witness would be a gentleman from Harriman's. According to my instructions, he will be here by 2 o'clock this afternoon.

COURT: Mr. Woo, I'm getting a bit tired of this.

MR. WOO: I ask your Lordshop's indulgence.

COURT: This morning when you were not here, the court had adjourned. Now that you're here, there are no more witnesses. Have you any other witness other than Harriman's, never mind the next one.

MR. WOO: My Lord, unfortunatelty I have no other witness here.

COURT: How many more witnesses are you calling?

MR. WOO: 2 more, my Lord, including Harriman's

COURT: Where's the other?

MR. WOO: The other would be the accountant and I think there's been a slight miscalculation of time ---

COURT: There's a slight miscalculation of what?

In the Supreme Court of Hong Kong High Court

MR. WOO: There had been a mistake concerning the time. We had understand that this morning may have been taken up by re-examination which has ended earlier than expected, and we just have one witness standing by.

Plaintiff's Evidence

COURT: I shall refrain from further comment about it. But in the course of this case, if there is any further conduct of this nature ---

MR. WOO: I can only ---

COURT: ... the comments from the bench will be very severe.

MR. WOO: I do appreciate it my Lord.

COURT: Half-past two.

12.16 p.m. Court adjourns.

2.33 p.m. Court resumes.

20 Appearances as before.

MR. JACKSON-LIPKIN: My learned friend, Mr. Bernacchi, called for the original Chinese letter, my Lord. I do produce it.

COURT: That can be examined after --

MR. WOO: I'm just asking for permission. I was wondering what sort of letter it was.

COURT: Let's not waste time. Mr. Bernacchi called for it, but that can be dealt with later as far as this witness is concerned.

30 MR. WOO: May it please you, my Lord. May I now call the manager of Harriman to give evidence in this case, Mr. Hui.

P.W. 3 - William HSU (Affirmed in English)

No. 6 P.W.3 William Hsu Examination

XN BY MR. WOO:

Plaintiff's

Q. Would you state your name again, please? William Holing HSU. Α.

- Evidence
- I believe you are the -- Would you state Q. your address, please?
- My office address? Α.

Home. Q.

- Home address is at 14A Harris Court, 41 Α. Conduit Road, Hong Kong.
- You are the manager of Harriman Realty Co. Q. Ltd.

Yes. Α.

Q. I believe on the 4th May 1970 you were appointed by K.B. Chau & Co., a firm of solicitors, to carry out a valuation of certain property?

Α.

Yes, my company was appointed by them. And I believe that you, as a result of Q. your survey, you made a report called the Certificate of Valuation of the property 20 52-54, Cheungshawan Road, Kowloon?

Yes. Α.

- And do you now produce a copy of your Q. Certificate of Valuation?
- Yes, this is the report. Α.

COURT: What number?

- I believe you also signed the document. Q.
- MR. My Lord, this is bundle - E3,4,5,6,7, up to 10 my Lord.
- signed 30 Q. Ι understand you this yourself?

Yes, on behalf of Harriman Realty Company. Α.

- Your valuation at page E4, where you state Q. that: "We estimate the present value of the property as at 24th June, 1966, to be HK\$2,206,300.00 dollars".
- The wording is a bit ambiguous. In fact, Α. it should be: "We estimate that the value of the property as at 24th June, 1966 to be HK\$2,206,300."

Without the word "present"? COURT:

That's right. Α.

40

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Court

No. 6 P.W.3.

William Hsu 10 Examination (Continued)

COURT: I see.

Q. And on the next page you put the basis of your valuation.

A. Correct.

Q. Now would you tell my Lord, roughly, how you went about the valuation itself?

Α. When we were appointed to make the valuation for this property in 1970 there few records very of sale properties in 1966 -- certainly not in our 10 own office; therefore we made a search in the Land Office of the records of 52-54. Cheungshawan Road. This was made on the 7th May, 1970. The search revealed that between January and June, 1966 there were assignments registered at the Land Office for this property. However, after June 1966 and about -- till the end of '66 there were three assignments; one was for 20 Flat 4 on the 13th floor, the next one is Flat 5 on the 10 floor, and Flat 2 on the 3rd floor. The one that's Flat 2 was -the assignment was dated 17th November '66 and the consideration was for \$22,000 or equivalent to about \$50.69 per square foot - 50.69. The other two flats were sold at slightly higher prices. We have, however, based our valuation at the lowest price, that is to say \$50.69 per square foot and 30 using that unit rate we compared the list price of the same flat and the result is the list price is higher than this and the actual sale price represented about 63.68 per cent of the list price. We used that as a basis and reduced the list price for the properties and valued accordingly and thereby obtained the total value of 2.2 million and 6,300 dollars. To satisfy ourselves we made searches of records of 40 other properties, one is at Cheungshawan Road, and the other was at Cheungshawan Road. These properties were very close to the property in question and appeared to be comparable. According to the Land Office records there were several sales of flats numbers 1 to 5, Cheungshawan Road in 1966, and the average unit price is \$59.91 per

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No. 6 P.W.3 William Hsu Examination (Continued)

Plaintiff's Evidence

No. 6 P.W.3 William Hsu Examination (Continued)

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square foot. As for shop prices there were only one sale at 80-82, Cheungshawan Road, Shop 'C', and the unit price was 276.52. Now this compares with the average unit price of the valuation for the flat at 55.06 and to the shops 272.60, which is slightly lower than those registered in other companies and we consider this valuation is an appropriate one.

- Q. I believe the property you valued that's the property in question - is a corner site.
- A. Correct.
- Q. And the property you use as comparable is also a corner site; is that right?
- A. That's right.
- Q. Is this one of the copies you made?
- A. Yes.
- 20 Q. What does it show?
 - A. Well, it shows the property and value in the centre.
 - Q. What colour?
 - A. Red colour solid red colour. This one here. 80-82 is this one, and 125 is this one.
 - Q. Do you wish to produce this copy?

Exhibit H

COURT: Exhibit H

MR. WOO: Much obliged, my Lord.

- 30 Q. In your evidence you said you used the lower of the three sales...
 - A. That's correct.
 - Q. ... as your basis of calculation; and also you said you compared that with the pricelist. Now, what pricelist did you use?
 - A. That is the pricelist that is supplied to us by K.B. Chau which is attached to a brochure or sales brochure.
- 40 Q. Do you have that pricelist with you?
 - A. Yes.
 - Q. Would you produce the pricelist?
 - A. That's in another file. Shall I take it out
 - Q. Please.

MR. WOO: My Lord, I believe there's a brochure which appears to be similar to E145 -- E143, except that thereis another pricelist, which is a presalepricelist, I think. My Lord, apart from the pricelist, which is different from E145, may I now ask this witness...

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No. 6 P.W.3 William Hsu Examination (Continued)

EXHIBIT I

Q. Do you now produce this documents?

COURT: Is there a pricelist in that document?

10 MR. WOO: Yes, my Lord.

A. Yes.

COURT: Exhibit I.

MR. WOO: Much obliged, My Lord.

COURT: Is that the original pricelist?

MR. WOO: Yes, my Lord, that is the original pricelist.

COURT: The 1964 one?

MR. WOO: This is the pricelist which was printed at the same time as the brochure, my Lord.

CLERK: I(1-8).

20

- Q. And you said that you calculate the ratio of the actual sale and the pricelist and you come to a figure of 63.68; is that right?
- A. Correct.

COURT: What's this? What's the 63...

MR. WOO: The ratio of the actual sale price and the list, my Lord, was determined.

30 Q. Perhaps would you repeat yourself? Would you repeat your evidence?

COURT: Let's see if I've got this clear. By

the comparable valuation you picked up the lowest flat sold in that area round about that time.

Plaintiff's Evidence

COURT: And it worked out at \$50.69 per square foot.

No. 6 P.W.3 William Hsu Examination (Continued)

A. That's one of the three flats sold.

COURT: One of the three flats. And you used that as the basis and you commered that with the list price and that came to 68 per cent of the list price?

A. 63.68 per cent.

COURT: Oh, "63.63", not 68. "63.68".

- Q. And you used that as your basis of calculation.
- A. Correct.

Yes.

Α.

10

- Q. As listed in the pricelist.
- A. Yes.
- Q. And may I refer back to your report the schedule?
 - A. Yes.
 - Q. Now, this schedule, was it worked out on that basis?
 - A. Yes, it is.
 - Q. The valuation which is in the extreme right column -
 - A. Yes?
 - Q. you've come to a figure of 2,206,300.
 - A. Correct.
- 30 Q. This figure is lower, am I right, than the price quoted in the pricelist concerning the same flats?
 - A. Yes, correct.
 - Q. What is the total and the pricelist?
 - A. Well, you can take this as 63.68 per cent of the list price.
 - Q. Yes. That is the valuation as at the month of June '66?
 - A. Correct.
- 40 Q. And when you make this valuation, apart from the mechanics of things, do you take into consideration the market at the time?

A. Well, we consider the actual sale in the Land Office the best evidence.

Q. I see.

(28/11/78)

EL/Q/5

P.W. 3 - William HSU

Affirmed in English

Plaintiff's Evidence

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Hong Kong

High

Court

No. 6 P.W.3 William Hsu Cross-Examination

XXN. BY MR. JACKSON-LIPKIN:-

Q. May he see B85. Whose signature is that?

A. It is my signature.

- Q. "We acknowledge receipt of your letter of the 1st May..." that's from K.B. Chau & Co.?
 - A. Yes.

10

- Q. Presumably that is the letter of instruction?
- A. Yes.
- Q. And presumably your certificate of valuation is a mistyping where it talks about instructions dated 4th May?
- A. There was a later letter dated 4th May, 1970 from K.B. Chau & Co. The letter dated 1st May 1970, K.B. Chau & Co. instructed us to prepared two valuations one is dated 24th June, 1966 and the other was for the present value and to that Harriman's reply as per this letter you have just referred to. In answer to our letter of 4th May K.B. Chau replied on the 4th May instructing us to carry out the valuation for June 1966 only.
- Yes. Now let us look at what you said in 30 Q. your letter of the 4th May which is in answer to theirs of the 1st - "... and would advise that according to our normal practice, valuations of different dates are treated separately and each chargeable according to our scale fees, as to computations of the values are quite different according to the dates. In this connection, we would also mention that due to the decline in real estimate dealings in 1966, we can only estimate the value in 40 that year without support of records." Was that a true statement of fact when you wrote that?
 - A. Yes, that was, because when we refer to

Plaintiff's Evidence

No. 6 P.W. 3 William Hsu Cross-Examination (Continued)

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the records that is referring to our own records in the office.

- Q. Yes.
- A. It doesn't refer to land office records.
- Q. Was there a decline in real estimate dealings in 1966?
- A. There was.
- Q. Serious?
- A. Quite serious.

10 COURT: As compared with when?

- A. As compared before the bank run in 1965, I believe.
- Q. Did anybody take the trouble to tell you that 36 units had in fact been sold in the years 1965 and 1966?
- instructed Α. we were only to value number of flats. certain No other information was given to us. instructed by K.B. Chau & Co. We were to value specifically certain number of flats; no other information was given to us.

Q. I think you had better tell my Lord what you were instructed to do then.

- A. "All those fifty four equal undivided ninetieth parts or shares of and in all those pieces or parcels of ground situate lying and being at Kowloon in the Colony of Hong Kong and registered in the Land Office as Section K and L of New Kowllon Inland Lot..."
- Q. What you have got in front of your report, is that right?
 - A. That is correct.
 - Q. You see, you mentioned Flat No. 2 on the 3rd floor, did you not?
 - A. Yes.
 - Q. That was the one that was sold for \$22,000 on the 17th November, 1966.
- A. That is the flat in the assignment registered at the land office on 17th November.
 - Q. Now you said something about taking that as the lowest and doing a calculation from that. Is that what you said?
 - A. That is what I said, yes.
 - Q. Did you know that three days before your notional date, flat No. 6 on the 8th floor

was sold for \$22,000 which worked out at \$44.5 a square foot?

- A. No, sir, I am afraid we did not know because there was no assignment registered in the land office for that.
- Q. What did you say this dollars per square foot were for flat 2 on the 3rd floor?

A. \$50.69.

- Q. \$50.69. Welkl now, just help me, will you? Flat 6 on the 8th floor sold on the 21st June 1966 for \$22,000, that is in fact \$44.50 per square foot, is it not?
 - A. Flat did you say flat 6 on the 8th floor?

Q. Yes.

- A. That is not one of the flats we valued.
- Q. I am asking the question because you -- are you a valuer?
- A. I am a manager of Harriman Realty, I am not a surveyor, no.
 - Q. Have you any qualification?

A. Not in that way, no.

- Q. Was there anyone in Harriman's who was a qualified valuer back in 1966?
- A. There was.
- Q. 1966?
- A. 1966, yes.
- Q. 1967?
- A. Yes, up to 1969.
- 30 Q. Up to 1969?
 - A. Yes.
 - Q. And since then?
 - A. Since then there has not been any qualified....
 - Q. Because valuers were very few and far between back in 1966, weren't they?
 - A. We had two in our office at that time.
- Q. Now let us stay for a moment at flat 6 on the 8th floor. That valuation per square foot would alter your estimate of the value of the whole building, would it not?
 - A. With respect, I think it should be clarified as to what footage you use.
 - Q. 494. The one that you took was 503, wasn't it, a difference of 9 square feet?
 - A. 494 is our measurement for flat 6.
 - Q. Yours was?
 - A. 494 square feet.
 - Q. 494, and you divided the price

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No. 6 P.W.3 William Hsu Cross-Examination (Continued)

Plaintiff's Evidence

No.6 P.W.3 William HSU Cross-Examination

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A. Yes, by that.

Q. Yes, and this one is 494 - is this 494?

A. That is so, yes.

- Q. Does that make any difference to your opinion, insofar as you have one, on the valuation of the building?
- A. It would if we had a record of it at the time.
- Q. In other words if you had been told by Messrs. K.B. Chau & Co. of the actual sale prices at the time you would have been then in a position to form a better estimate of the value of the building.

A. It could have been.

- Q. May I take another example. Flat 2 on the 8th floor. \$22,000 which works out at \$49.3. If you had known about that, that would have make a difference, would it not?
- 20 A. Again I have to ask what was the square floor area?
 - Q. We have used your measurements to do the square footage.
 - A. 446 square feet. Yes, it would have made a difference.
 - Q. May I ask you please to look at your own scheduel. Now would you please look at your own schedule. Look at the 7th floor. There are missing from the 7th floor in your own schedule flats 1, 2 and 3, are there not?

A. Correct.

- Q. Did it occur to you in 1970 to say "Why are Flats 1, 2 and 3 missing, because if they had been sold I shall need to know the price."?
- A. Well in actual fact we were not instructed to value those flats and then our search did reveal that there was another document registered in the land office and there was an order, that is other than assignment memorial number 549821...

COURT REPORTER: Sorry and it is what?

A. In addition to the three assignments I have just mentioned there was another assignment memorial No.549821 dated 23rd July, 1966 and this is exercise of power

of sale in mortgage memorial No.421535 and further charge memorial No.446361, 499072 and 511136.

Q. Mr. Hsu, you did know, did you not, that you were being asked to value the building for purposes of litigation?

No, we were not told that. Α.

Did you think at the time you were being Q. asked to value the individual flats?

10 Yes. Α.

> Not the building as a whole? Q.

No, not the building as a whole. Α.

- Well, may I proceed then for a moment on Q. basis. Ιt would have been of considerable assistance, would it not, in the valuing of specific flats to know the actual price raised for those that been sold?
- That has been our basis and this is how we Α. 20 come about to use flat 2, 3rd floor, basis of calculation.

That is what a comparable valuation is COURT: all about.

MR. JACKSON-LIPKIN: Yes, my Lord.

- But nobody revealed to you that 36 had Q. been sold?
- No. Α.
- Which made your task in retrospect almost Q. impossible.
- 30 Α. Well that is the basis of my letter, that we have very few records on it.
 - Let me ask you if you would be kind enough to go with me to the 13th Floor --- the Q. 12th Floor. You see, on the 12th Floor you have given a valuation for flats 3, 4, 5 and 6, have you not?
 - Α. Yes.
 - Working out at, I think, between \$56 and Q. \$59 a square foot?

40 Α.

- It could be the case, yes. Now if I were to tell you that flats 1 and Q. 2 had been sold at \$49. and \$50. a square foot, would that not immediately affect the values you have put on the remaining 4
- Α. It would, certainly would.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6 P.W.3 William HSU Cross-Examination (Continued)

Plaintiff's Evidence

No.6 P.W.3 William HSU Cross-Examination (Continued)

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MR. JACKSON-LIPKIN: My Lord, the figures I am giving this witness come from that agreed document that you have seen before.

COURT: All your calculations are based on \$50.69 per square foot.

A. No, my Lord, actually what we have done is - take an example, No.2 is \$50.69 and this is 63.68 per cent of list price and then apply this percentage to the rest of the list price, the unit price will vary.

Q. Your total area in your schedule is 24,061 square foot, is it not?

- A. Well, that I cannot say because we did not add it up actually.
- Q. Well my arithmetic is so bad that, Mr. Hsu, I would ask you, if you have got a machine have you a machine with you?

A. I have got one.

- Q. Quickly do that, because I would like you also to do some division.
 - A. Just the flats or the shops as well?

Q. Plus the shops.

A. Plus the shops.

Q. Yes, please. Come to the shops separately in a moment.

(Witness makes calculation with calculator)

A. The total is 23,823 square feet.

Q. What did you say?

A. 23,823 square feet.

30 Q. All right. Would you please divide \$1,200,000. by 23,823?

A. 50.37.

Q. 50.37. Thank you. Now bearing that -- have you written that on a piece of paper or can you remember it?

A. The last figure is 50.37, yes.

Q. Looking through your schedule, pages E9 and E10, I observe that you have varied the price per square foot from unit to unit.

A. Yes.

40

- Q. How does it come about that two identical units should have a different square footage?
- A. Well, it is in accordance with the list

price.

Q. So when we are on the 10th floor we varied between \$54. a square foot and vaired nearly \$60. a square foot for identical units.

A. If the list price is that way, then the percentage come out the same.

Q. We could do that, Mr. Hsu, but if you were a valuer, would you consider that to be a

proper way of valuing a flat?

A. Well, a valuer has to base on facts. This was the list -- pricelist that was given to us at the time. Of course we have to check whether it is correct or not be checking against the land office records.

Q. Did you ever knew that that pricelist varied from the very day it was published?

A. No.

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COURT: What do you mean by "pricelist varied from the very day it was published?" The witness has given an answer. I cannot understand the question.

MR. JACKSON-LIPKIN: My Lord, I can tell you. We have seen, as shown to us, about three or four different pricelists and you may remember Mr. Tse, in his oral evidence, said that the succeeding pricelists were lower in price and in addition to the lowering of the price he was offering discounts from those.

COURT: That deals with the price.

MR. JACKSON-LIPKIN: Yes, the pricelist. And my Lord, the pricelist this gentleman was given, according to him himself and counsel, was the first one.

COURT: Yes.

MR. JACKSON-LIPKIN: The highest one.

COURT: Yes.

Q. So you never knew that the pricelist by the time of June 1966 were lower than the one you had been given to work on.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6 P.W.3 William HSU Cross-Examination (Continued)

Plaintiff's Evidence

No.6 P.W.3 William HSU Cross-Examination (Continued)

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- A. We knew that the value of the flats were lower because the sale price registered in the land office was lower than the list price, therefore we didn't rely on the list price as our variation.
- Q. Therefore we ...
- A. We did not rely on the list price as our variation true value of the property.
- Q. Let us take E10. I thought you told me that the values in E10 and E9 were taken from the list price.
- A. Yes, when I said that, I am sorry, perhaps I said it wrong. We didn't consider the pricelist at the time of valuation was the correct value of the flats. Certain percentage had to be taken off because some of the flats were sold under that price.
- Q. You took a percentage off the pricelist you were supplied with -- percentage off the pricelist.
 - A. Supplied to us, yes.
 - Q. Supplied to you. Did you know that other pricelists had been published offering considerable discounts off the pricelist?
 - A. Yes.
 - Q. You know that, or did you guess it?
 - A. No, in fact it is printed on this pricelist that there is 10 per cent discount.
 - Q. Did you know before today that that rose from 10 to 15 to 20 to 25?
 - A. I know now, but I did not know before.
 - Q. If you had known that, would that not also have affected what you said in your valuation of 1970?
 - A. I don't think so because when I said the valuation is 63.68 per cent, it is from the original figures. If you discount the original figures then the percentage would be higher.
 - Q. Did you pause to wonder why there was such a big differential in price per square foot of identical units in the building on the pricelist?
 - A. Well there are the aspects, the size of the flat and lots of consideration.
 - Q. You see, taking the floor I chose at random, that is the 10th floor, the price

per square foot varied, as I pointed out to you, between \$54, and \$60. on the same floor.

Yes, average \$55. Α.

- Let us not deal in averages. Did it occur Q. to you then to query that and say "This is a somewhat bizarre pricelist."?
- No, I wouldn't. It is quite common with Α. flats with two sides of windows to fetch a higher price than flats facing the back lane.
 - Q. Well. let us take flats of identical aspect and identical size according to your valuation, for example Flat 3 varied between 54 and 56 1/4.
 - No, acording to our valuation flats 3 are Α. all the same price - flat 3 on the third floor is 28,300, flat 3.

Q.

- Which page are you on?
 I don't have marking on my page. 20 Α. This is the schedule attached to my ... the only different price one is the 14th floor one.
 - Top floor with access to the roof, Q. that was the one ...
 - And it also provides more heat in summer. Α.
 - And what did you value that at? Q.

27,700. Α.

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- Q. That is \$55. isn't it?
- Α. Usually because there ise the difference in the pricelist for that. 30
 - When did you have this search made at the Q. land office?
 - These searches were made on the 7th May Α. 1970.
 - Q. Did you conduct the search?
 - No. My assistant did. Α.
 - What instructions did you give him, what Q. to look for?
- search the property with all Α. the memorials registered against them. 40
 - MR. JACKSON-LIPKIN: Will your Lordship give me a moment? This is so strange that I shall need to look at some other documents. May the witness sit down for a moment while I have a look?

COURT: Yes. Mr. Hsu, would you like to sit down.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6 P.W.3 William HSU Cross-Examination (Continued)

Plaintiff's Evidence

No.6 P.W.3 William HSU Cross-Examination (Continued)

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A. Thank you.

COURT: Mr. Jackson-Lipkin, I realise this is not an easy matter for you in cross-examination. Would you like ten or fifteen minutes?

MR. JACKSON-LIPKIN: My Lord, I would be most obliged. My learned friend, Mr. Woo, I think, has the only copy of all the land register things and I have not had a chance to look at it. It would be very kind of your Lordship if I could have, say, ten minutes.

COURT: I make that offer to you for the simple reason that the basis of that valuation is not shown on the valuation. You must be in difficulty as to the basis of that valuation.

MR. JACKSON-LIPKIN: That is exactly what my difficulty is.

20 COURT: I will give you up to twenty to.

MR. JACKSON-LIPKIN: Thank you, my Lord.

3.30 p.m. Court adjourns

3.45 p.m. Court resumes

Appearances as before (Mr. Bernacchi absent)

P.W. 3 - William HSU (o.f.a.)

MR. JACKSON-LIPKIN: My Lord, I'm very much obliged. Before I go on to the basis of valuation, I must tell your Lordship that through the courtesy of Mr. Woo I have been shown a number of extracts from the Land Office records which show quite a number of sales in addition to those three registered in -- memorialised in 1966. I'm going to show some to the witness.

XXN BY MR. JACKSON-LIPKIN (continues):

Q. Mr. Hsu, you have seen Land Office records

yourself, personally?

A. Yes.

Q. So you would recognise the sort of thing if I showed you a photostat?

A. Yes.

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Q. Would you be kind enough please - if I may borrow these from Mr. Woo for a moment - to look at the sub-division register for Flat 4 on the 6th floor. I'll give them to you all at once, if I may. Flat 2 on the 8th Floor, Flat 6 on the 8th Floor and Flat 2 on the 11th Floor.

MR. JACKSON-LIPKIN: My Lord, it's just some chosen at random.

Q. Now you see those are not the three which you have mentioned and yet those were registered by memorial back in '66, four years before you ordered your staff to make a search.

20 A. Yes.

- Q. First of all, you may not be able to answer this question but do you know how on earth that came about?
- A. On many occasions the Land Office records are sought after by several parties. It could be that on that particular day, when my clerk went to make a search, the records were not available; someone else was using them.

30 Q. I see. If you had known about that, it would have materially affected your conclusion, wouldn't it?

A. Well I see here the Flat 2, 11th Floor, was sold at the same price, \$22,000.

Q. Yes. That is in fact \$49.3 per square foot as opposed to your estimate of 50.6.

A. Yes. Did you say 49. ...?

Q. 49.3.

A. .3.

30 Q. And yours is 50.6, isn't it, for Flat 2? You see, you'd guessed it to be worth twenty-two six.

A. Correct.

Q. Could you tell me what the next one is because you've got the only copy.

A. The next one is Flat 6 on the 8th Floor.

Q. That's \$44.50 cents compared with your

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6 P.W.3 William HSU Cross-Examination (Continued)

eatimate of \$56, \$12 less per square foot. If you'd known about that it would have made a material difference, wouldn't it?

A. Yes.

Plaintiff's Evidence

William HSU

Examination

(Continued)

No.6

P.W.3

Cross-

- Q. Could you please help me with the next one?
- A. No.2 on the 8th Floor; again, 22,000.
- Q. Oh yes, that's the same as before. Next one?
- A. The 11th Floor; there were two Flat 2 one on the 8th, one on the 11th Floor.
- Q. How many did we give for?

A. Four.

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Q. What was the lat one?

- A. The last one is Flat 4, 6th Floor.
- Q. Now that is in relation to one sale of the entire floor, isn't it?
- A. That's the only mortgaged one, yes. I'm not sure the ...
- Q. We can go through the others if you like but we've just taken those as a sample, Mr. Hsu. Now the next thing I'd like to ask you please, Mr. Hsu, is this: as I see the document, you have given a valuation of X dollars, which is in fact the total of the values of the individual flats that you have bestowed on them in the schedule.

A. True, yes.

- 30 Q. But am I not right -- sorry. Do you know that it is a practice in valuation, that the price valued is always less than the sum total of each of the individual units?
 - A. I'm not sure I understand your question.
 - Q. What you've done is to say, "Now there are X flats in my schedule" I haven't added them up but let's call them 'X flats' "They come to \$2,206,300; therefore the building is worth \$2,206,300.

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- COURT: He's not valuing the building as such. He's not called upon to value the building.
- MR. JACKSON-LIPKIN: That is the question I was about to ask him, in view of paragraph 1 at the top of E.5, my Lord.
- COURT: "... (inaudible) ... Cheung Sha Wan and

the right to said exclusive possession of ascertained flats as shown in the schedule."

In the Supreme Court of Hong Kong High Court

MR. JACKSON-LIPKIN: My Lord, would your Lordship assist me by totalling me from what page you're reading?

Plaintiff's Evidence

COURT: The front page.

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No.6 P.W.3 William HSU Cross-Examination (Continued)

- MR. JACKSON-LIPKIN: The front page. I'm sorry, my Lord, I was looking at what he said on the next page which was slightly confusing. "The value of the property with vacant possession", and I was going to ask him about that.
- A. Well that is fifty-four ninetieth share of the building.
- Q. My question is this I appreciate that you are not a valuer, you've told us, but if you had been asked to value the building, such valuation would always be less than the total value of each of the individual units in it.
- A. Or more. Or more. It can be either way. It becomes a package deal.
- Q. It could be either way. Now the next thing I want to ask you is this. The value of a building at a forced sale is almost invariably different from a value at a voluntary sale, is it not?
- at a voluntary sale, is it not?

 A. I'm not sure I can answer that questions because I'm not -- a forced sale, you mean sale under mortgage?

Q. Sale by order of the mortgagees.

- A. Yes; but then it not necessary mean that it's sold to those ... (inaudible)... You can sometimes get the market rate for them.
- Q. Yes, I would accept that you can sometimes get it but bargain hunters very often look for forced sales by mortgagees, do they not?
- A. I think an auctioneer would be able to answer your question better.
- Q. Very well, we shall ask Mr. Watson when he comes. Now I want to ask you about the shops. You -- as I understood your

Plaintiff's Evidence

No.6
P.W.3
William HSU
CrossExamination
(Continued)

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evidence, you said there'd only been one sale at No.82 Cheung Sha Wan Road and none at this building, and you had therefore to work on that sale, is that correct?

- A. That's what I said but I will clarify further. At the date we made a search at ... (inaudible) ..., that was the only search we can find -- only site we can find, Shop 'C'.
- Q. Yes. I wonder if you can help my Lord on this. Did you know that the price of the shops in the published price list had dropped, in some instances by as much as \$50,000 a unit from the price list you'd been shown to the price list at the time of the auction?
- A. Not at the time, no.
- Q. If you had known that, would that not have -- also have affected your estimate?
- 20 A. Not if it's under forced sale -- by auction -- I'm sorry.
 - Q. Let me start that again. That was entirely my fault. Did you know that the price list published by the mortgagor before the auction sale had reduced the price of the shop units in some cases as much as \$50,000 a unit?
 - A. I did not.
- Q. If you had done, would that not also have affected your valuation?
 - A. It would.
 - Q. Can you please tell my Lord something about 80 to 82 Cheung Sha Wan Road. It's on the corner of Wong Chuk Street and Cheung Sha Wan Roads, is it not?
 - A. Yes, it is.
 - Q. Is that one way or two way, Wong Chuk Street?
- A. I don't remember. I think it was one way.

 I didn't inspect the site.
 - Q. Did you inspect any of these of these three sites, Mr. Hsu?
 - A. I inspected 52, 54, yes.
 - Q. I see. Well perhaps you can help us on the ones you do know something about. Was Maple Street at the time one way or two way?
 - A. Maple Street is not a very busy street if I remember correctly. When I went to

inspect it I think it was in mid-morning so there were quite a lot of traffic along Cheung Sha Wan Road but not much traffic along Maple Street.

Q. What's the next-door property like?

A. I believe they were post-war building, earlier than built. (?)

- Q. Yes. Did you send anybody to look at the other two buildings or did you merely cause the examintion to be made in the Land Office records?
- A. I believe my assistant visited to other buildings.
- Q. And then he went off to the Land Office, is that right?
- A. Yes.

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- Q. But you don't know ...
- A. I'm not absolutely certain because this is about nine years or eight years ago.
- 20 Q. Yes; you don't know what he did and you can't remember.
 - A. I can't remember.
 - Q. I wonder if I may go back to your valuation for a moment. The ground floor shops you have varied in price from -- to as 1; ittle as \$241 per square foot to as high as 319 for aedjoining shops. Why is that?
- A. These figure, as I said before, were taken from the original price list and there was percentage applied to it and that is result of the multiplication of the percentage.
 - Q. But percentage -- well even my mathematice will tell me that the percentage modification will produce a result that is exactly the same but lower, as the price list.
- A. Yes. To satisfy ourselves that this is the right method, we take this whole six shops together and found that the average price paid is 272.60 per square foot. This compares with the shop that's sold at No.80, 82 Cheung Sha Wan Road and -- at 276.52 cents.
 - Q. What made yo choose 80 to 82 Cheung Sha Wan Road and not 48 and 50?
 - A. Well it is the next block, the same corner site.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6 P.W.3 William HSU Cross-Examination (Continued)

Plaintiff's Evidence

No.6 P.W.3 William HSU Cross-Examination (Continued)

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Q. So is 48 and 50 - it's right opposite.

A. Well there may not be a record of sales there for existing building, an older building.

Q. You just looked up and down Cheung Sha Wan Road in the Land Office records until you found some sales, is that correct?

A. I must say I didn't do this myself; my assistant did. I expect that's what he did.

Q. You expect that's what he did. Well what I'm asking you is this. You have attributed to next-doors' shops on the ground floor a differential of \$78 a square foot; why is that?

COURT: What do you mean, a "differential of \$78 a square foot"?

- MR. JACKSON-LIPKIN: My Lord, Flat 3 on the ground floor is 497 square feet and he's attributed to it a value of \$319.9 a square foot. The adjoining shop on the ground floor is 487 square feet; that's only a difference of 12 square feet but he's attributed to it \$241.80 cents. That's a difference of \$78 a square foot when the difference in area is only 12 feet.
 - A. May I have a look at the brochure, please?

Q. Yes, please.

- 30 Å. Firstly, the price is fixed by the developers as high the next door. Shop No.3 is valued at 250,000; Shop No.4 is 185,000; and I can see the reason because it's a corner shop.
 - Q. Which page is that?

A. Flat 3.

Q. Flat No.3 is a corner shop?

- A. It's a corner shop with two-street frontage.
- 40 Q. I see. Well let me then ask you about 2 and 5; there's a differential of over \$40 a square foot.

A. Two ...

- Q. Two is 156,552 square feet, 292.6; 5 is 328 square feet, 79,600, which is 242.6.
- A. It's a matter of frontage and depth. The

shop is smaller; No.5 is smaller and not as deep as No.2, and frontage-wise only 3 feet and 6 inch difference. This is usually fixed by the developers; that's how they fix the price.

Q. And you just went on that?

A. Well I see no reason to doubt that this is not the proper way of pricing it.

Q. I see. Did anybody tell you that these units had been up for pre-sle since 1964 and nobody had managed to sell a single one by June 1966?

A. We were not told.

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Q. And nobodyt had been able to sell a single one by 1970.

A. I didn't know about it.

Q. Would that not have made a difference to your vlauation if you had been told that?

COURT: Nobody has been able to sell one by 1970?

MR. JACKSON-LIPKIN: The shops, sir; I'm not talking about the units upstairs.

COURT: Where does that come from?

MR. JACKSON-LIPKIN: That's in our agreed document I think.

COURT: That it was unsold in 1970 is one thing; but nobody had been able to sell one is another altogehter, Mr. Jackson-Lipkin.

- 30 MR. JACKSON-LIPKIN: With great respect, my Lord -- oh, I see what your Lordship is -- I'm putting an interpretation into a question when it should have been factual.
 - Q. I'll rephrase that, Mr. Hsu. Did you know that these shop units had been on offer for pre-sale since 1964?

COURT: Up to when?

MR. JACKSON-LIPKIN: When he was instructed.

A. No, I didn't know.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6 P.W.3 William HSU Cross-Examination (Continued)

COURT: Is that your instructions?

MR. JACKSON-LIPKIN: Yes, my Lord.

Plaintiff's Evidence

No.6
P.W.3
William HSU 10
CrossExamination
(Continued)

- Q. Mr. Hsu, if you had known that between 1964 and 1966 no shop unit had been sold, would that have affected the valuation you made in 1970?
- A. We would have proceeded to carry out the valuation in a similar manner, that is to say, to search whether there are any sale in the neighbourhood of that building and put a price on it, a valuation on it.
- Q. I'm sure you would have gone about it in the same way but wouldn't your conclusion have been coloured by the fact that not one had been sold in the years 64, 65, 66?
- A. Well that is very difficult to say; I mean, there may be no market for it as well.
- Q. Yes?
- 20 A. But it may be kept by the owner for better price.
 - Q. Yes. If you came to the conclusion that there had been no market, would that not have affected your valuation?
 - A. But all vluation is based on the fact -- based on the theory that if it's put on the market it should fetch that much money.
- Q. But when you are confronted with reality
 that they have been put on the market
 and they have not does it affect your
 vluation? You're the person who prepares
 it; you tell us.
 - A. The thing is, when we were instructed to vlue the flats we were not told whether they are vacant on that day or not, 24th June 1966. We were just told to value these shops as if they were unoccupied with vacant possession.
- 40 Q. Perhaps -- I'm sorry, may I put the question to you again. If you had been sol told, would that not have perforce have affected the value you put on them?
 - A. I would have mde a very careful search of prices in the neighbourhood and if I see no difference in locality or (managers?) of these shops, I would pply the price of them -- of this property at that date.

Q. But you didn't know and didn't make such a careful search, is that right?

A. I didn't know -- well nobody advised us that these properties were not sold but we were told to value them with vacant possession.

Q. And the basis of that is a willing buyer and willing seller, isn't it?

A. Yes.

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10 Q. And what if there's an eager seller and no willing buyer? Does that affect your valuation?

A. Well, then, the market is bad; the other properties would not fetch the same price,

a higher price than this.

- Q. Any way, it doesn't matter because you were not told. Now let me put the same thing to you slightly differently. If you had been told that the owner of the property had been eager to sell in order to raise money for building costs but that no sales had been affected, would you have placed a lower price on the shops?
- A. I find this question very difficult to answer.

Q. I appreciate that. If you can't answer, please say so.

A. The reason why I say it is difficult to answer, we were not asked to fix prices for these flats; we were just asked to assess the value of them.

MR.JACKSON-LIPKIN: My Lord, I've only one more question, if you will give me just one moment.

(Pause)

- Q. Do you know for how much this property was sold?
- A. Which property?
- Q. 52 to 54 Cheung Sha Wan Road.
- 40 A. Yes. Sold?
 - Q. Sold at the auction.
 - A. No, I didn't know that.
 - Q. If you -- you didn't know it was sold or you didn't know the price?
 - A. I was told later on it's sold by auction and there's a memorial there which has been searched from the Land Office, which

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Plaintiff's Evidence

No.6 P.W.3 Willian HSU Cross-Examination (Continued)

Plaintiff's Evidence

No.6

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is public records.

- If you take your 50.37 that you mentioned Q. before and apply that to the shops, it brings them out at 403.6, does it not, which is more than the amount that you have attributed to them in your schedule.
- Which shops are you talking about? Α.
- That is the shops on the ground floor. Q.
- Which shop? Α.
- The average of those is 295. Q.
 - The average price we valued is 272. Α.

MR. JACKSON-LIPKIN: Mr. Lord, the rest is arithmetic.

P.W.3 William HSU Re-examination

REXN BY MR. WOO:

- Were you -- you were shown four Q. which were sold in '66. Now I understand that would be, am I right to sy, the medium sale - not the highest, not the lowest - and you have been asked if that would materially affect your calculation.
- Yes. Α.
 - If you had the whole of these memorials Q. with you at the time, would you take an average or you pick out the lowest.
 - Well we would take the average, not the Α. lowest.
 - So it may or may not materially affect Q. your calculation?
 - Not to a great extent, no. Α.
- After all said and done, would you say 30 Q. your valuation of 2.2 million odd is a fair estimate of the market price of the property at the time?
 - In my opinion, yes. Α.
 - After all said and done this afternoon, Q. could it possibly be said 1.2 million is a fair market price?
 - No. Α.
 - Thank you. Q.

40 BY COURT:

- Mr. Hsu, I am not clear on one point. You Q. said you are not a valuer, you are not a surveyor?
- AS. Quite.

A. Since I joined -- I joined Harriman Realty in 1959 and before that I was also dealing with real estate for another company for seven years.

Q. So you have considerable experience of valuations of properties in...

A. ...in Harrimans for more than nineteen years.

Q. Thank you, Mr. Hsu.

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MR. JACKSON-LIPKIN: Before he leaves, my Lord, I may be quite wrong but I thought it was nineteen years' experience with Harriman Realty.

COURT: But before that he was in the property business. You may ask any question you like.

MR. JACKSON-LIPKIN: I am most obliged. my Lord.

FURTHER XXN BY MR. JACKSON-LIPKIN:

Q. How long have you been on the valuation side of Harriman Realty?

A. Well since I was appointed Assistant Manager in 1967.

Q. Thank you.

COURT: Thank you, Mr. Hsu.

MR. WOO: My Lord, may I now call the Accountant, Mr. C.C. Choy.

30 P.W. 4 - CHOY Chun-chung (Sworn in Punti)

XN BY MR. WOO:

Q. Could you state your address, please.

- A. I live at No.38 San Kwong Road, 11th floor.
- Q. I understand that your are a certified public accountant.

A. Yes.

Q. And you carry on the business as accountant at C.C. Choy & Co.?

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6

P.W.3

Further

Cross-

P.W.4

William HSU

Examination

CHOY Chun-Chung

Examination

Plaintiff's Evidence

P.W. 4 CHOY Chun-Chung 10 Examination (Continued)

- A. Yes.
- Q. I believe at the request of one Mr. TSE Kwong-lam you prepared certain accounts?
- A. Yes
- Q. Will you tell my Lord when you were first approached by Mr. Tse?
- A. Sometime in 1975 he approached me for preparing accounts.
- Q. And on what basis were you asked to prepare accounts? What sort of accounts were you asked to prepare?
- A. Account for preparing tax returns and also for calculating interests.
- Q. Did you make a report for Mr. Tse a statement of accounts, in fact? Did you make a copy in 1975?
- A. Yes I did, and I gave him a copy for his inspection.
- Q. I believe more recently you have been asked to make up a very formal copy.
- A. Yes, very recently, when I was asked -- so asked.
- Q. And you made a report and a statement of accounts dated 8th November this year?
- A. Yes.

20

- Q. Now what account is this, will you tell my Lord?
- A. That account is -- shows the interest he ought to pay on a loan be obtained.
- 30 Q. Were you given documents to prepare this account?
 - A. Yes.
 - Q. What documents were you shown?
 - A. I was shown a Receipt & Payments sheet prepared by a solicitors firm.
 - Q. And could you name that solicitors firm?
 - A. It seems to be Johnson, Stokes & Master.
 - Q. Do you have a copy with you?
 - A. Yes.
- 40 Q. Will you show my Lord your copy.
 - A. Mr copy is not here with me.
 - MR. WOO: May the witness see A.71, 72 and 73.
 - Q. Have you seen a copy of those documents before?
 - A. Yes, this is the copy.
 - Q. Apart from that, were you given anything else?
 - A. Yes, there was also a document worked out by Ronald Li & Company.

- Q. I shan't be asking you about the accounts of Mr. Li. Your statement of account dated the 8th November, was it based on Mr.Li's account?
- A. I based upon both, that is, the one prepared by the solicitors firm and by Mr. Li's firm.
- Q. I believe you have a report entitled Accountants Report.
- 10 A. Yes.

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- Q. Do you now produce the report?
- MR. JACKSON-LIPKIN: My Lord, I have two questions to ask through your Lordship. First of all, what is the relevance of this gentleman's own report? Secondly. due to inadvertence, I will concede I have never seen it before a few moments ago, although it is supposed to be in Bundle E. starts off, my Lord, by flatly. contradicting directly the first computation of Mr. Ronald Li Fook-shiu, which is part of the judgment in which your Lordship told us in chambers in positive terms that we couldn't go behind.

MR. WOO: My Lord, I....

MR. JACKSON-LIPKIN: May I just show my learned friend? May I ask ...

COURT: Mr. Jackson-Lipkin, is this your first sight of the report?

MR. JACKSON-LIPKIN: Yes, my Lord.

- GOURT: Since the time is now after half past four, may I suggest to you that you digest it overnight and review the position tomorrow?
 - MR. JACKSON-LIPKIN: I will, my Lord, but I would ask your Lordship to invite my learned friend to consider the possible relevance or otherwise of the same document.

COURT: I think the answer has rather surprised Mr. Woo just now, but be that as it may I

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Plaintiff's Evidence

No. 6 P.W. 4 Choy Chun-Chung

Examination (Continued)

think both of you can digest the matter tomorrow. Ten o'clock tomorrow morning.

4.35 p.m. Court adjourns

Plaintiff's Evidence

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29th November, 19078

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10.02 a.m. Court resumes.

Choy Chun-Chung

Appearances as before.

Examination (Continued)

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MR. JACKSON-LIPKIN: Your Lordship will recall I was enquiring last night as to the relevance of this report. I, if I may, will repeat my enquiry because on the face of it, it appears not to be relevant to any of the issues before your Lordship and I would say that I would like to have an explanation.

COURT: What are your grounds of objection other than relevancy?

MR. JACKSON-LIPKIN: My Lord, a report of an expert, if any expert be called without leave, must be directed to something, that something must be something in issue. This is not directed to anything in issue.

COURT: Would you turn to paragraph 8 please.

MR. JACKSON-LIPKIN: Paragraph 8 of the report?

COURT: Counter-claim.

MR. JACKSON-LIPKIN: I will obey your Lordship's request and turn to paragraph 8 where I see an allegation --

COURT: What they say is, "You demanded of us under document B.."

MR. JACKSON-LIPKIN: Is your Lordship..?

COURT: Messrs. Johnson Stokes & Master's letts.

MR. JACKSON-LIPKIN: Yes, it is pages B38 and 39. 39 is the demand.

In the Supreme Court of Hong Kong High Court

COURT: And 38?

MR. JACKSON-LIPKIN: And 38 is the covering letter as saying --

Plaintiff's Evidence

COURT: "You owe us \$1,648,000."

No. 6 P.W.4 Choy Chun-Chung

MR. JACKSON-LIPKIN: Yes.

COURT: "And the claims as by these accounts issued back at that date, or approximately that date, the sum owed is \$1,400,000." Is 'nt that it's all about?

Examination (Continued)

MR. JACKSON-LIPKIN: No, my Lord.

COURT: Well, whether these accounts are right or proper is another matter.

- MR. JACKSON-LIPKIN: I wouldn't dare to address your Lordship at this stage.
- COURT: You don't address me on that, you address the witness on that, if it is admitted.
- 20 MR. JACKSON-LIPKIN: My Lord, may I put it slightly different. May I ask the witness to endeavour to address your Lordship. My Lord, what I mean is this, that we have, in order to cut out an immense amount of examination and cross-examination, reduced this case to five issues.

COURT: This is the last issue?

- MR. JACKSON-LIPKIN: The fifth issue is an issue of negligence.
- 30 COURT: They are attempting to prove your negligence.
 - MR. JACKSON-LIPKIN: But, my Lord, there are two things in relation to that issue, I venture to disagree with your Lordship. This is a report of the entirety of the

Plaintiff's Evidence

No. 6 P.W.4 Choy Chun-Chung¹⁰

Examination (Continued)

accounting between the parties. The one thing that we cannot do, either of us, is to reopen Mr. Li's account. The first thing that one sees on opening the document is that the amount alleged to have been advanced and therefore due is different from that found by Mr. Ronald Li to be lent and due and never agreed to .

COURT: If you look at the account you will find that it goes up to a certain date.

MR. JACKSON-LIPKIN: Yes, my Lord.

COURT: And the date bears the same date as B.38 - interest from 30/10/65 to 29/5/66, and here it goes up, interest goes up to 29/5/66 - the very first page of this statement of account.

MR. JACKSON_LIPKIN: Yes, my Lord. The amount found due and owing as principal up to that date by Mr. Ronald Li --

20 COURT: And Mr. Ronald Li's account is not in evidence, Mr. Jackson-Lipkin.

MR. JACKSON-LIPKIN: My Lord, with respect, it is part of the pleadings in this matter. It is being used before you. It formed part of the basis of the judgment.

COURT: Mr. Ronald Li's account?

MR. JACKSON-LIPKIN: Yes, my Lord, it was exhibited.

COURT: Tell me what exhibit number it is?

30 MR. JACKSON-LIPKIN: My Lord, I am sorry, I said it was exhibited and formed the basis of the judgment and is in the court documents relating to this case.

COURT: I know nothing about court documents relating to this case. I am only concerned with what has been exhibited before me.

MR. JACKSON-LIPKIN: My Lord, your Lordship is also concerned with the pleadings from the beginning to the end.

the

COURT: The statement of claim is over and bundled. I am only dealing with the counterclaim.

Plaintiff's Evidence

In the Supreme

Court of

Hong Kong

High Court

MR. JACKSON-LIPKIN: My Lord, but your Lordship cannot ignore the existence of the report because you yourself --

No. 6 P.W.4 Choy Chun-Chung

10 COURT: I do not for a moment ignore it, Mr. Jackson-Lipkin. All I have said is that account cannot be re-opened.

Examination (Continued)

MR. JACKSON-LIPKIN: Yes, my Lord.

COURT: That's all I have said.

- MR. JACKSON-LIPKIN: Yes, my Lord, it was those words which I quote that I was relying on in this respect because to try and assert in this document that a lesser figure was advanced is in fact --
- 20 COURT: I do not know because Mr. Li's dealing dealt with the matter as a whole account between the parties. The account appeared as dealt with the matter up to a certain date, the date complained of by the claimant.
 - MR. JACKSON-LIPKIN: My Lord, Mr. Li gave sub-total to the 14th June of over \$2 million and from the period that went up to the 14th --
- 30 COURT: Don't you think, Mr. Jackson-Lipkin, you might address the witness on this rather than me?
 - MR. JACKSON-LIPKIN: I thought you ought to know in relation to re-opening the account there are two entries for the 14th June, the previous one being March, that is, before May, and they are \$120,000 and, my Lord, I make that \$1,910,000 odd which is very different from \$996,000 on the first

Plaintiff's Evidence

No. 6 P.W.4 Choy Chun-Chung₁₀ Examination (Continued) page of this account.

COURT: Mr. Jackson-Lipkin, I am not going to hear you on a comparisson of the accounts. This is a document prepared by the accountant on the claimant's instructions up to a certain date and I am going to rule that it is admissible.

MR. JACKSON-LIPKIN: My Lord, before you actually make your ruling may I come to my second point?

COURT: Yes.

MR. JACKSON-LIPKIN: My second point is this: if it is desired to call an expert then the court's leave should be sought and the court's leave will be granted and it will be limited because if there is one thing which is clear beyond further mention, it is that the opinion of an expert on a matter the court has to decide will never be permitted to be advanced.

COURT: Mr. Jackson-Lipkin, may I answer you that now? In the course of Mr. Bernacchi's opening on this matter I said, "Isn't this a matter for an accountant?" and did not Mr. Bernacchi there and then said, "I shall be calling, or probably calling an accountant"? Were you not fore-warned?

MR. JACKSON-LIPKIN: Yes, my Lord, I would quite understand it if the accountant came forward, said to your Lordship, "Here is Mr. Liu's account of Johnson, Stokes & Master."

COURT: I know nothing about a Mr. Liu's account. All we have before us are two pages, or three pages from the ledgers of Messrs. Johnson, Stokes & Masters containing the account of two of their accounts. As far as I am concerned they are not even mortgaged.

MR. JACKSON-LIPKIN: My Lord, I on therefore

refer to them as Johnson Stokes' ledger accounts and not Liu's. I can quite understand if this man came along "Here are Johnson Stokes' ledger accounts, I have looked at these" - and my Lord, if you will look at these items -"these appear to bе wrong for reason." That Ι could understand that's what I believe Mr. Bernacchi was This, however, going to call. is accountant's report on everything from the beginning, including all the matters finally concluded by the aritrator and that's why, my Lord, I do object to its admission, because on your Lordship's own direction to us we cannot re-open matter You see, if this was directed to the particular point of issue 5, negligence, and directed to the particular point of what is wrong with the ledger accounts because those were the accounts that were rendered and there are no others before you, my Lord, I will understand that it isn't that seeks to re-open anything else.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No. 6 P.W.4 Choy Chun-Chung

Examination (Continued)

COURT: I rule that these accounts are admissible in evidence.

MR. JACKSON-LIPKIN: As your Lordship pleases.

COURT: Call back the witness.

P. W. 4 - CHOY Chun-chung

30 XN. BY MR. WOO (Continues):

WOO: My Lord, perhaps I would in passing tell my learned friend that the reason for calling this accountant is not to re-open the whole account, it is in fact, as your Lordship said, we are attempting to proce īf the accounts were that rendered properly the second, the third and the fourth charges need not be executed, and also that the amount which appears on the 28th April, 1966, would be really not a proper amount and therefore we could possibly redeem it, and that is the reason why this accountant came into this court.

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10

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Q. Mr. Choy, you said you were instructed by Mr. TSE Kwong-lam to look into certain accounts?

A. Yes.

Q. And could you tell my Lord the documents you had been supplied for looking into the accounts?

Plaintiff's Evidence

COURT: One moment, we have got to give an exhibit number to this first - Statement of account, exhibit J.

No. 6
P.W.4 10
Choy Chun-Chung
Examination
(Continued)
Exhibit 1

- Q. What were the documents you were given?
- A. I was given a receipt and payment account prepared by the solicitors' firm.

Q. Which solicitors' firm?

- A. Johnson, Stokes and Master, and I was also given an accountant's report on the calculation of interest prepared by Ronald Li and Company.
- Q. And were you also given other documents, for instance, a building mortgage?

20

- A. Yes, I was.
- Q. How many documents?
- A. One was in connection with the first mortgage \$15 million.

Q. And?

- A. The other document was for a mortgage of \$300,000.
- Q. I think it's \$1.5 million was the first one?

30 A. Yes, \$1.5 million.

Exhibit A5

Q. Now perhaps may the witness look at A.5. Did you see a document similar to that one now before you?

Exhibit A10

- A. Yes, correct.
- Q. And may I also show you a document A.10.

COURT: What is A.5?

- MR. WOO: My Lord, A.1 to A.9 is the building mortgage, my Lord. May the witness see A.10 as well?
- 40 Q. Did you receive also a document similar to the one now before you?
 - A. Yes, I did. I remember the date being the 17th July, that's correct.
 - Q. You said you received certain documents

In the Supreme from a solicitors' firm Messrs. Johnson. Court of Stokes and Master? Hong Kong Α. High Q. May the witness see A.70, 72, 73? Court Yes, that is correct. Α. Q. And I believe you retined copies of that Plaintiff's with you? Evidence Α. Yes, I had them Xeroxed. Q. Now with these documents would you tell my Lord your instructions from Mr. Tse? No. 6 10 Yes. Α. P.W.4 Q. What were your instructions? Choy Chun-Chung Α. He asked me to work out the amount of Examination interest he ought to pay. (Continued) Q. did you work the amount ofinterest? Exhibits A70, Α. I did. 72. 73 Q. And did you not then make a report? Α. Entitled "Statement of Accounts"? 20 Q. Α. Yes. Q. Will you now produce your report? Α. This is my copy. Now will you refer to - this is marked exhibit J, my Lord - Will you now refer to Q. Exhibit J your report and explain to my Lord what in fact you did? The second page of your report you made an Accountants' report? Α. Yes. 30 Will you explain to my Lord how you worked Q. out this report? Α. My method of calculation was first obtain the amount of the loan obtaining by the mortgagor from the mortgagee. worked out the amount of interest on that principal. Q. Perhaps you go slowly and tell my Lord how you worked out? I have stated that on the second page. Α. The loan advanced being \$996,322.80. 40 Now before you proceed from there you put Q. appendix A? Α. Yes. And appendix A, I believe, there are no Q. less than six items? Yes, correct. Α. And will you tell my Lord where you got Q. these figures from, related to any

these documents which was given to you?

Plaintiff's Evidence

- No. 6 P.W.4 10 Choy Chun-Chung Examination (Continued)
- A. I obtained those figures from two documents, the two documents being the document from the solicitors' firm and the other document prepared by LI Fuk-shiu & Co.
- Q. And you arrived at the figure 996,322.80?

A. Yes.

Q. And then what did you do?

A. Plus the total disbursements for construction cost \$970,510.

Q. And how did you get that figure?

- A. I copied that figure from the document prepared by the solicitors' firm.
- Q. So appendix B, the figures are from the document supplied by the solicitors' firm?

A. Yes.

20

Q. And after that what did you do?

A. Less sales proceeds of flats received by the lender. (Witness points to the figure which reads 823,504.00.

Q. And that appears in appendix C?

- A. And that leaves the actual loans advanced.
- Q. Actual loans, when you say advanced is actual loans required, is that right, or advanced?

INTERPRETER: Witness points to the figure 147,006.00.

(Witness replied in Punti, interpreter queried witness.)

- 30 COURT: What he said is "This actually isd the money out of the pocket of the mortgagee."
 - A. Yes.
 - Q. Now you said the interest due from the 30th November, 1963 to the 29th May, 1966, and it appears in appendix D?
 - A. The interest due on the loans advanced should be 365,501.03.
 - Q. If you turn to appendix D you calculate the interest rtes 1.2 and 1.3?

40 A. Yes.

- Q. I will come back to this interest rate later on. Now what happened next?
- A. Then I caused a deduction of 81,390.00 being interest paid by the borrower.

Q. And that is in F. Now how did you get F - would you tell my Lord?

A. In F there is a sum of 142,651.30, this sum not being the interest paid by the borrower.

Q. Where did you get these figures from?

A. I copied these figures from the statement of accounts prepared by LI Fuk-shiu.

Q. Now according to your accounts would it make any difference if - according to the accounts you have before you, would it make any difference if the interest was to be paid off and construction money was to be paid off out of the presale of flats, the proceeds of presale of flats before principal was paid?

A. No, that would make no difference, the

result would have been the same.

COURT: The result would have been the same?

20 A. Because I caused a deduction of \$820,000 odd to be made, that being the money paid.

- Q. Paid to whom?
- A. To the mortgagee.
- Q. Representing what?
- A. It was not specified in either the document prepared by the solicitors; firm or the document prepared by LI Fuk-shiu.
- Q. But you take it as being right anyway?
- A. Yes.
- 30 Q. So would the figure exceed your amount of 1,427,439.83 if the interest was paid off first, the construction money was completely paid off?

COURT: Mr. Woo, your question is quite unintelligible. May I point out to your appendix F here where it sets out the capitalisation of interest.

- MR. WOO: I appreciate it. Perhaps if I may rephrase it.
- 40 Q. Look at appendix F, Mr. Choy and bearing in mind what is stated in appendix F.

INTERPRETER: Witness refers to the figure 224,041.30 saying that "This amount was

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No. 6 P.W.4 Choy Chun-Chung Examination (Continued)

Plaintiff's Evidence

No. 6 P.W.4 Choy Chun-Chung Examination (Continued)

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considered to be the interest paid by the borrower", and witness pointsd to the figure 142,651.30 saying, "This figure represents the amount the borrower signed receipt to the effect that he had received such money but in fact he did not receive such money." Witness then refers to the figure 81,390.00 saying, "This figure represents the amount paid by the borrower as interest."

COURT: Mr. Choy ... you head your appendix F
"No interest was paid for the period from 30/7/64 to 30/5/65...", right?

A. Right.

COURT: The amount in the third column is the interest outstanding, right?

A. Yes.

COURT: Month by month. If you add up the total of the amountns in the third column it would equal to 142,651.30?

A. Yes.

COURT: Therefore to put it simply, this is something of a capitalisation of interest? Surely it is a term you have heard of?

A. Yes.

COURT: This is what it is, isn't it?

A. Yes.

- Q. In your calculation will the amount under the building mortgage and also the further mortgage of \$300,000 be sufficient for Mr. Tse's purpose to have the building completed bearing in mind, of course, the proceeds of presale of flats will be put in as repayment as well, and also for payment of interest?
 - A. According to my calculation this \$1.4 million odd would be sufficient for the completion of the building.
 - Q. And no further money is required?

40 A. No.

Q. Mr. Choy, would it materially affect your way of calculation of 1.427 something million dollars if the principal was paid off and also building cost was paid off by the proceeds of presale of flats and then after that payment of interest, leaving

interest payment as the last - would that affect your way of calculation?

COURT: I don't understand you. Mr. Jackson-Lipkin, I see you are objecting. Do you understand the question?

understand what JACKSON-LIPKIN: MR. I question is getting at, my Lord. going to observe that it is identical to a question which has already been asked and an answer which Mr. Woo obviously doesn't 10 like, which has already been received. Lord, may I read the question to you: "Would it make any difference if the interest was paid off and the construction money paid off out of the presale of flats before the principal money?" That was the question, and the answer was : "No, that make no difference, would the results would have been the same." And then he went on to give some figures. So my Lord. 20 the same question has been asked and the answer has already been received, and if my learned friend foesn't like it, it is something he can agree over at lunch time.

Q. Mr. Choym may I ask you this: if your calculation of interest is up to 24th June, 1966 how much would that be owing, even up to 24th June, 1966?

A. That would be one month's interest more.

If interest was to be calculated at the rate of 1.3 % then there would be a little over \$10,000 more.

Q. Now, if your interest was to be calculated at 1.4 instead of 1.3 throughout, for instance, would that exceed 1.5 millions as your total? Would you like to have a calculator? And even up to 24th June.

A. That would take a very long calculation. I will have to work it out step by step. But the 0.1% of interest would not make much difference.

40

MR. JACKSON-LIPKIN: My Lord, before I commence my cross-examination may I for the purpose of the shorthand note make one comment? My Lord, I do cross-examination without in In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No. 6 P.W.4 Choy Chun-Chung Examination (Continued)

Plaintiff's Evidence

No. 6

any way abandoning my submissions to your Lordship that Mr. Choy should not be called and the report should not have been admitted. My Lord, I would not like it to be said hereafter elsewhere, if we ever get there, that I by cross-examining have abandoned my ...

': Mr. Jackson-lipkin, whether you cross-examine or not is a matter entirely for COURT: you. I have made a ruling on the matter. If you don't like it always take it elsewhere at a later stage.

JACKSON-LIPKIN: Yes, my Lord, but I MR. wouldn't like anyone to say at a later stage.

Nobody could accept it otherwise. COURT:

MR. JACKSON-LIPKIN: Thank you.

COURT: I would appreciate it if you will not make such speeches thereafter, for purpose of the court record. 20

JACKSON-LIPKIN: My Lord, such MR. points have been taken before.

XXN. BY MR. JACKSON-LIPKIN: P.W.4

10

Choy Chun-Chung Examination

Cross-

- Mr. Choy, you told my Lord yesterday that Q. you had prepared a report which you now produce from Johnson, Stokes 's ledger accounts and Mr. Ronald Li's report?
- Yes. Α.
- wonder then if you can Q. help me on something. We were supplied before this 30 case began with a report of yours dated possibly appropriately the lst 1975?
 - Yes, at that time I did prepare a report Α. for him.
 - In that report you said this, "At Q. of Mr. TSE Kwong-lam we have request following prepared the Statement of statements prepared from Account Johnson, Stokes and Master Messrs. in account with Messrs. WONG Chit-sen and TSE

40

Kwong-lam." In exhibit J you say that you prepared the statement of account according with a statement and information given to you by Mr. TSE Kwong-lam. Is there any significance, and if so, what, in the difference between these two statements?

- A. No, there is no significance in the difference.
- 10 Q. The one we are dealing with at the moment, J, is according to this statement and information givrn yo you by Mr. Tse, is that right?
 - A. Yes.
 - Q. What do you mean by that sentence?
 - A. Concerning the word "information" I meant to say that I had to ask Mr. TSE Kwong-lam when I failed to understand something whilst reading the statement.
- 20 Q. What is the statement?
 - A. The statements. The statements prepared by the solicitors and the statements prepared by LI Fuk-shiu.
 - Q. Will you please produce for my Lord the documents in which this report is prepared?
 - A. These are the two documents.
 - MR. JACKSON-LIPKIN: My Lord, may I see them on their way to you?
- 30 COURT: Yes.
 - MR. JACKSON-LIPKIN: Much obliged. My Lord, may they be marked received by your Lordship and marked?
 - COURT: Should I give it the same number as J.1?
 - MR. JACKSON-LIPKIN: No, it would be a great help if we could and if you would allow us to work out the numbering letter for you and tell you what it is.
- 40 COURT: I think it might be better to use Ja, Jb and Jc.

MR. JACKSON-LIPKIN: LI Fuk-shiu's report is Ja

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No. 6
P.W.4
Choy Chun-Chung
CrossExamination
(Continued_

Exhibits Ja-Jc

and Johnson, Stokes's is Jb.

Plaintiff's Evidence

COURT: No. this report is Ja, LI Fuk-shiu's is Jb.

- No. 6 P.W.4 Choy Chun-Chung Cross-Examination 10 (Continued)
- JACKSON-LIPKIN: MR. And Johnson Stokes's Thank you, my Lord.
- Q. Do you remember when you first got Mr. Ronald Li's report?

Some time in 1975. Α.

Q. Before you prepared your first report of April 1975?

Yes, before. Α.

Q. And it was on the basis - partly on the basis of Mr. Ronald Li's report that you prepared the 1975 one?

Α.

20

wonder if you could help me on one Q. preliminary point. In 1975 you said that the loans received by Mr. Tse 1,181,318 to December 1965. Why did you choose December 1965?

I prepared that report some years ago. I have no recollection of that report and of Α. the fact how I compiled that report.

- Q. Before I borrow one to show you may I tell you what is puzzling me. You have reported in 1975 that th loans received were more up to December 1965 than you now report were received up to May 1966 and I don't see how that could be possible?
- 30 Α. cannot remember the report compiled some years ago and I compiled this report, the present one.
 - JACKSON-LIPKIN: My Lord, to save time may I suggest that we show it to him during the mid-morning adjournment and I will go on to something else?

COURT: Yes.

- Now I want please to ask you first of all Q. about appendix A. Now in appendix A you set out what you call "loans advanced" and 40 you there have six items?
 - Α. Yes.
 - Q. Now would you please turn to appendix D?

- 23 2 -

first five items there are slightly different order the six items in appendix A, aren't they?

Yes. Α.

The same figures, but you put them in a Q. different order, that's right, isn't it?

Α. Yes, the figures are the same.

Now still with appendix D please, the last Q. figure in appendix D is the final item of the first half of appendix B, am I right? 10

Α.

20

- Q. What on earth are the remaiing three, where did you get them from?
- These three items were arrived at by adding the first six items in appendix C together obtaining a figure of \$610,000.
- \$40,000 from the 3rd August, 1965, but Q. none of the first three or four items in appendix C is August 1965, they October, November or Decembr 1964?
- Because during the period from October 1964 to July 1965 the mortgagee got a total sum of \$610,000. Less the total of Α. first ten items as listed out appendix B the total being \$600,000.

Yes, that leaves \$10,000, I am asking you Q.

about the missing ninety.

That means during that peiod the mortgagee was paid \$10,000 in excess.

COURT: In excess of what? 30

Α. In excess of the money he had advanced.

COURT: But surely whatever is paid into the mortgagee's account the principal owing would so much less?

- Α. Yes, my method of calculation was that the mortgagee after receiving payment from the mortgagor he made further advance advances, then after calculation I found that the mortgagee had received \$10,000 in excess.
- 40 Q. Mr. Choy, the question I am asking you is where on earth did you get the \$40,000, \$30,000 and \$20,000 which are the unexplained items in appendix D. We are not talking about the excess of \$10,000

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No. 6 P.W.4 Choy Chun-Chung Cross-Examination (Continued)

In the Supreme over a mythical date in July 1965. - My Court of Lord, I say mythical because the 600,000 is to the 14th July, 1975 whereas the Hong Kong High 610,000 is to December 1964. Court Where you asking me how I arrived at the Α. figures in these three items, the figures Plaintiff's being 40,000, 30,000, 20,000? Evidence Yes, Mr. Choy, I asked you where you got Q. them from. I got them from appendix B. Α. 10 No. 6 There is no 40,000 anywhere in appendix B. Q. P.W.4 On the 3rd August the mortgagee advanced a Α. Choy Chun-Chung sum of \$50,000 to the mortgagor, less the Cross-\$10,000 that he had received in excess Examination leaving \$40,000. (Continued) On the 3rd August? Q. Yes. Α. you mind Would telling my Lord Q. happened between May and June, and June and July? 20 During the period from October 1974 to Α. July 1965 the mortgagee received a sum of \$610,000 from the process of presale of units. Between the 9th October 1964 and the end Q. December 1964 you say \$179,000 This is 1964. Right? You can received? those two figures together, it \$199,000, isn't it, up to the end December 1964? 30 The total should be 428,000. Α. 170,000 and 29,000 is 199,000, isn't it? Q. You mean these two figures? Α Q. To the end of November. Α. Add the first two figures together. Turn Q. to appendix B, add the first two figures together - right? A difference of 20,000? Have you taken that into account anywhere? That was not taken into account. 40 Α. Let me give you a piece of paper and ask Q. you first of all a simple question. Now Mr. Choy, isn't this how an accountant calculates from day to day, week to week and month to month what interest is due: You take the date when money is paid out

or lent or advanced and you take the date when repayment is received, either from the borrower or by presale of flats; you Uake a deduction for the credit and the intereststill runs on the debit; and you get out a littlemachine or an abacus or your fingers and you calculate the interest; isn't that how interest is calculated in relation to loans? yes or no?

A. No, that is not hie methoid I adopted.

Q. That I know, but it's not the question I asked you.

COURT: Are you exhibiting this?

MR. JACKSON_LIPKIN: My Lord, I am going to ask your Lordship to received it. You'll see that it's taken directly from the report which this gentleman has worked and the prepayments which are taken from the agreed doocument you reeceived yesterday.

COURT: Well -- J, small "d'?

MR. JACKSON LIPKIN: Small 'd'.

Q. May we just look at this togehter for a moment. You see we have done what you have done and worked on the basis of Ronald Li's report, so there you have, first of all, a loan - do you see it? - or an advance (call it what you will) and the 730,000. Now the interest will start running on 730, won't it?

A. Yes.

Q. And 150,000 further is paid out for and on behalf of the borrower, so interest runs on the 880, doesn't it, from that date?

A. Yes.

Q. And then 32,000 is spent and so interest runs from that date on 912, right?

A. Yes.

40

Q. I want you please to look at another piece of papers, also calculated on the same documents as before. Now I wonder if you would be kind enough with your pencil and take this new document and do something with me. You see a misprinted date, the 3rd of the 13th, 1964, which should be the wrd of the 12th. Do you see that? Now would you be kind enough to mark that with

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Plaintiff's Evidence

No. 6 P.W.4 Choy Chun-Chung Cross-Examination (Continued)

an 'F' - that's Appendix F.

MR. JACKSON-LIPKIN: And by coincidence, my Lord, it is also Exhibit F.

Plaintiff's Evidence

COURT: What's....

No. 6 P.W.4 Choy Chun-Chung Cross-Examination (Continued) MR. JACKSON-LIPKIN: This is item \$57,962, my Lord, on the 3rd December, 1964.

COURT: What page?

MR. JACKSON-LIPKIN: The front page, my Lord.

COURT: The 3rd December 1964 is \$100,000.

10 MR. JACKSON-LIPKIN: Well the next one underneath, my Lord; it is meant to be 3rd December as well.

COURT: Yes?

MR. JACKSON-LIPKIN: By some Chinese calculation it has got an extra month.

Q. kind enough, Would you be Mr. please, to mark that with an 'F' because that is your -- that's an item from your Appendix F and is taken directly from Exhibit F. Now go two further down, 20 please, and mark 15,315.60 with an 'F'; then two further down, 13,624.60 with an 'F'; 13,266.60 with an 'F'; 13,872.40 with an 'F'1 14,066.60 with an 'F'; and lastly 14,543.50 with an 'F'. Now assuming, Mr. Choy, that it was agreed between parties that certain unpaid interest would be added to capital and would thus bear interest thereafter, this document is how 30 you would calculate interest on advances and loans, is it not, taking it -- taking the daily situation?

Witness commences reply in Cantonese)

COURT: You are not asked that question. The question asked of you was, if there is an agreement that unpaid interest would be capitalised and if it is capitalised.

isn't that the way it would be done, as shown in this document here?

A. Yes. If there was such an agrement, then the calculation of interest should be like this but I studied the matter with Mr. TSE Kwong-lam; I had discussions with him. He said that he did not receive any money. What he did was assign receipts to be effect that he was receiving money but he di not actually receive any money.

Q. Oh dear, Mr. Choy, it's not quite right, is it, because, you see, you yourself have drawn the conclusion I put to you at the bottom of your page 2: "Interest not actually paid but treated by the lender as having been paid and lent to the borrower again as further loans bearing interest.".

A. This calculation was done according to the statements supplied by LI Fook-shiu that the outstanding interest would become capital and interest would be calculated thereupon, but my own calculation was not so.

MR. JACKSON-LIPKIN: My Lord, would this be an appropriate moment?

COURT: Will you be very much longer?

MR. JACKSON-LIPKIN: Not much longer, my Lord. Would your Lordship admit that last document as a further 'J'?

30 COURT: Yes.

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CLERK: J(e)

MR. JACKSON-LIPKIN: Thank you.

COURT: Fifteen minutes.

11.30 a.m. Court adjourns

11.50 a.m. Court resumes

Appearances as before.

P.W.4 - CHOY Chun-chung (o.f.o.)

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No. 6 P.W.4 Choy Chun-Chung Cross-Examination (Continued)

Plaintiff's Evidence

No. 6
P.W.4
Choy Chun-Chung 10
CrossExamination
(Continued)

XXN BY MR. JACKSON-LIPKIN (continues):

- Q. Mr. Choy, will you please tell my Lord what you were discussing with Mr. TSE Kwon-lam during the adjournment a few minutes ago, while you were under cross-examination?
- A. I had a discussion with him about accounts I prepared for you in 1975.
- Q. And with certain other people?
- A. Yes, later on.
- Q. What about?
- A. About the difference between these two statements referring to J(d) and J(e).
- Q. Weren't you aware that while you were being cross-examined you are not supposed to discuss your evidence with anybody?
- MR. BRROK BERNACCHI: My Lord, I object to that because he is a professinal man. If he asks to speak to anybody, including my client, about accounts, he is not...
 - COURT: Well, Mr. Bernacchi, may I take the blame for that for not warning the witness; then can we come back to the present accounts, the 1975 accounts, which are not before the court? Carry on, Mr...
 - MR. JACKSON-LIPKIN: My Lord, this gentleman did ask in fact whether some could show him the 1975 accounts.
- 30 Q. Were you shown your 1975 reports?
 - A. No.
 - Q. You still want to see them, do you?
 - COURT: They are not before the court; they are completely irrelevant.
 - MR. JACKSON-LIPKIN: My Lord, I'm pleased to hear that and I agree entirely that we should forget about them.
- Q. Now 1978; look at your first page. "Payment o interest are calculated in accordance with receipts available...." what receipts are those?
 - A. I was given no receipts. What I based my

calculations on was the verified receipt items contained in Mr. Li's report.

Q. "... and in accordance with information supplied by Mr. TSE Kwong-lam" What information i relation to intrest did you receive from that gentleman?

A. I received -- I arrived at this figure....

INTERPRETER: Witness refers to figure which reads: \$224,041.30, being the interest payment to 29/5/65 per receipts available (Appendix E).

A. ... according to the information supplied by Mr. TSE Kwong-lam.

Q. Mr. Choy, lt us not misunderstan each other. I am asking you two fairly simple questions about a sentence signed by you as a certified public accountant and addressed to this court. Now it's the last sentence on that page.

A. Well the information supplied to me by Mr. TSE Kwong-lam was that the interest, \$142,000-odd, was not paid by TSE Kwong-lam to the mortgagee.

Q. Yes, what else?

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A. He told me that the interest he had paid was something like 80,000-odd.

Q. So it's that information plus what you found in Ronald Li's report? Nothing else? We can forget all these other owrds here. can we?

A. I don't guit understand the guestion.

- Q. This report we now know is based on a conversation with Mr. TSE that you've told us about an the study of two sets of documents, J(b) and J(c), and nothing else at all.
- A. Nothing else.
- Q. Is that right?

40 A. That's right.

Q. You have, for example, in the preparation of this report totally ignored the interest rates in the second and third charges?

A. That is correct; I ignored that.

Q. Thank you. Now may we go back to where we were, that is, Appendix D. We have dealt In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No. 6
P.W.4
Choy Chun-Chung
CrossExamination
(Continued)

Plaintiff's Evidence

No. 6
P.W.4
Choy Chun-Chung
CrossExamination
(Continued)

with item 1 and item 2 which are asterisked. Now let us take the 32,000. You calculated the interest on that from the 30th June to the 29th May. Why did you choose those two dates? First of all, tell us about the initial date and, secondly, the final date.

- A. Because the 30th June being the date on which the loan was advanced.
- Q. Really? It's not what you say in Appendix A.
- A. The 24th June being the date on which the loan was actually obtained; 30th June being the date on which the agreement was signed.
- Q. What agreement?
- A. Because it was stated in the agreement that on the 30th June a sum of \$90,000 was advanced to him.
- 20 Q. What agreement?
 - A. The first charge agreement. The first mortgage agreement.

COURT: Page A5.

MR. JACKSON-LIPKIN: Page A6, with respect, my Lord. It's item A.

COURT : A6, the 7th line.

- Q. Mr. Choy, if my Lord were to sak me the interest on the third sum, standing where I am, I would obviously choose the end and the beginning of a month and give him a quick figure, but I'm not a certified public accountant putting a report before a court. Interest is calculated from the time the money is actually lent, isn't it?
 - A. I made reference to Mr. Li's report and i his report I notice that the date on which the calculation of interest commenced was the date on which the agreement was signed.
- 40 Q. All right. Would you pass to Apendix E for a moment please. What is Apendix E? Look at the last line.

INTERPRETER: Witness points to the figure

which reads: 224,041.30 and says:-

A. This is the amount the mortgagee claime that he hd received as interest in total.

Q. Wasn't the claim of the mortgagee that the interest had not been paid?

A. Well I do not know what the mortgagee's claim was.

Q. But Mr. TSE himself told you, did he not, that he had never paid the vast majority of these items?

A. Right.

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Q. Why, in your report, do you say "Total Interest Paid"?

A. This the amount the mortgagee reckoned as an amount received by him as interest because TSE Kwong-lam had assigned the sum received to the effect that he, TSE Kwong-lam, had received sums of money.

Q. Where did you say you got Appendix E, which says "Total Interest Paid"? If you did not get -- speak to the mortgagee,

where did you get it from?

A. Because I was informed by Mr. TSE Kwong-lam that the mortgagee considered this being the total amount of interest received by the mortgagee. Besides, I also learned that from Mr. Li's report.

.Q. Mr. Li's report set out things that he found ought to have been paid, did he not? Isn't that right? If you don't remember,

say so and I'll show it to you.

A. I don't remember his actual wording.

Q. Isn't it rather important, if you're preparing an account, to remember the actual wording?

A. Before I made the calculation of interest

.....

INTERPRETER: Witness refers to Appendix E.

A. ...I did not consider that to be very important.

Q. I see. Well now I want to go back plese to Appendix D and I want you to explain to my Lord where you got the 30,000 from.

COURT: Which figure?

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No. 6 P.W.4 Choy Chun-Chung Cross-Examination (Continued)

Plaintiff's Evidence

(Continued)

No. 6
P.W.4
Choy Chun-Chung₁₀
CrossExamination

- MR. JACKSON-LIPKIN: 30, my Lord. We've done right down to 40,000. I'm now asking about the 30,000 from the 4th November to the 29th May.
- A. I obtained this figure of \$30,000 from this figure here in Apendix B dated the 4th November.
- Q. Yes?
- A. \$50,000.
- Q. Yes?
- A. Less \$20,000 received by the mortgagee on the 1st November.

INTERPRETER: Witness refers to item 8 in Appendix C.

- Q. And the 20,000?
- A. On the 29th November the mortgager received a sum of \$50,000.
- Q. Yes?
- A. And minus the payment be made to the mortgagee on the 13th November, the payment being \$30,000.
 - Q. So there's a payment out of 20,000 on the 13th November, is that right -- \$30,000?

INTERPRETER: I beg your pardon, sir?

- Q. You're talking about the 13th November, are you?
- A. Yes.
- Q. That's \$30,000. So the interet should start running from then, should it not?
- 30 A. Interest should run from the 29th November; on that day the loan was actually advanced.
 - Q. How was it advanced?
 - A. I learned that from the documnts supplie by the solicitors firm.
 - Q. Look at J(c).

MR. JACKSON-LIPKIN: My Lord. may he see J(c)?

- Q. From what documnt?
 (Pause)
- 40 Q. The question is, from which account? What are you looking at now? Whose account, Mr. Choy?

A. This the account supplied by the solicitors firm.

Q. In whose name, Mr. Choy?

- A. In mortgagee's account.
- Q. My I see that, please?

INTERPRETER: Witness points to the last but one item.

MR. JACKSON-LIPKIN: Thank you very much. The last but one item on the mortgagee's. Thank you.

Q. Yes, go on.

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A. I caused the interest to be run from that date, the dte being the advance received.

Q. Well I can see November the 3rd, November the 26th and Deember the 28th. Which one are you talking about?

A. 29th November.

INTERPRETER: Witness points to the 1st but one item. He also points to the figure 50,000.

- Q. Yes. That's a further amount to be advanced to Mr. TSE?
- A. Yes.
- Q. Now you have deducted something from it, haven't you?
- A. Yes; I deducted \$30,000 from this.
- Q. Show my Lord on that account where that sum to be deducted appears in the mortgagee's account.
- MR. JACKSON-LIPKIN: My Lord, it's A.70. My
 Lord, it's the next to the last item on
 the left-hand column that he was pointing
 to.
 - A. I have to find the dte first, the date being the 13th November.

COURT: Well my copy is blotted out.

MR. JACKSON-LIPKIN: My Lord, mine is not marked. May I show you mine? It's just there - next to the last - 50,000, my Lord - 26th November. My Lord, somewhere among

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6 P.W.4 CHOY Chun-chung Crossexamination (cont'd)

Plaintiff's Evidence

your Lordship's papers there should be nice clean copy of it; I don't know where it's got to.

What's the date before.... COURT:

MR. JACKSON-LIPKIN: The 3rd.

The 3rd of November? COURT:

MR. JACKSON-LIPKIN: Yes, my Lord.

No.6 P.W.4 CHOY Chun-Chung Cross-10 examination (cont'd)

30

- Well, Mr. Choy, there's nothing -- just Q. look at the mortgagee's account, please. I haven't asked you to look at anything else yet. Where on that account do you see any sum that you, as an account, could deduct from the 50,000?
- I cannot find it here but I may be able to Α. find it in LI Fook-shiu's account.
- JACKSON-LIPKIN: Yes, may he see, please, MR. J(b).
- INTERPRETER: PRETER: Witness points to the third item from the botoom on page 5 of Mr. Li's report dated 13th November 1965. 20
 - But arely that sum is deducted from the Q. item of the 3rd November of 50,000, not of that one and another one. Just look at the account again. Look at the account. If it's a repayment, it comes off that at the 3rd November of 50,000, doesn't it?

INTERPRETER: Where is it?

MR. JACKSON-LIPKIN: By his -- sort of left hand.

Q.

That's right, isn't it, Mr. Choy? Yes. This \$50,000 was the sum from the Α. mortgagee.

Yes; and according to Mr. Li Fook-shiu's Q. account, a few weeks later some money is paid - according to Mr. LI Fook-shiu - out of proceeds of sale; and until it's repaid, interest runs on the whole 50,000, doesn't it? Isn't that right?

- A. According to my method of calculation, that is not corect. The mortgagee had already received the \$20,000; therefore the interest should run on the remaining 30.000.
- Q. Just listen carefully. On the 3rd November, \$50,000 is piad; on the 13th November, \$30,000 is received. Therefore, there should be interest on \$50,000 from the 3rd to the 13th and on \$20,000 from the 13th onwards. Isn't that right?

A. Well the figure dated on the 3rd November is here in my report dated the 4th of November.

- Q. Let us not for the moment worry about one day. Just tell my Lord this. If I advance some money to you and you later give me some money back, you owe me interet for the intervening period on the whole sum and for the subsequent period on the remaining balance; is't that simple, straight forward accounting?
 - A. Yes, but.....
 - Q. Yes?

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- A. Because the mortgagee had received payment from the mortgager before he made further advance to the mortgager.
- Q. Equally he had made earlier advances to the mortgagor.
- 30 A. But the mortgagee had even earlier on received payments from the mortgagor.
 - Q. And even earlier than that he had made advances, isn't that right?
 - A. Take this, for example, the mortgagee received payment o the 13th Novembr 1965.

INTERPRETER: Witness refers to the 9th item of appendix C.

- Q. Yes? Yes? And sixteen days
- A. And it was on the 29th Novembr that he made -- the mortgagee made further advance to the mortgagor.
 - Q. Let me ask you to look at these figurse again. On the 4th November he advanced 50,000 and on the 13th November he received 30,000. Let me ask you this question, Mr. Choy. You said to me a moment ago, "Yes, that is accounting

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6 P.W.4 CHOY Chun-Chung Crossexamination (cont'd)

Plaintiff's Evidence

No.6 P.W.4 10 CHOY Chun-chung Crossexamination (cont'd)

practice but....". Isn't the 'but' that that report of yurs is not ccounting practice but your advancing Mr. TSE's arguments on accounts? Is tht right, plese, first of all?

Α.

- Let him look at J(d), MR. JCKSON-LIPKIN: please.
- \$730,000 advanced at the end of 1963. Q.

Α.

The first repayment of any kind, other Q. than interest, is the 9th October 1964.

Α.

Right; now let us look at the next two Q. items together. The 30th November 1964, 170,000 is received; 3rd December 1964, 100,000 is advanced.

Α. Yes.

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Are you seriously suggesting that Q. should say that 70,000 ws notionally received on the 3rd December?

shoes the method of appendix C my Α. method of calculation an the my calculation being that I....

But you subtract something before it's Q. spent.

INTERPRETER: Excuse me, sir.

mde calculation for the period 9th Α. October to 1st July as one whole period.

Q. 30 Why?

> Because so far s the mortgager Α. concerned he made payments the to mortgagee before the received the advances from the mortgagee.

> Oh dear, Mr. Choy, not even on your own Q. figures is that right. He received \$996,322,80c before he even paid a penny

-- a cent.

Well the only wrong figure is the 170,000. Α.

You mean in your Appendix C? Q. 40

Yes. Α.

Why's tht wrong? Q.

Because I made my calculation considering Α. that as one period and I arrived at the fact tht during that whole period the mortgagee received a total sum of \$610,000.

Q. Why did you do it s one period, ws my quetion. Now don't look at anything; just tell my Lord why - 'dim gai'?

A. Because from that period onwards, the mortgager was receiving proceeds from sales of -- from presales of units.

Q. May we plese look at J(d) again, just for a moment, and quickly. Let us start at 17th June when an advance of \$50,000 was mde. Tht incresed the indebtedness to

\$951,322.80c.

A. Yes.

Q. 15,000 was received on the 7th July, wasn't it, according to your document?

A. Yes.

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- Q. Are you saying tht interst should not run on 951,322.80 between the 17th June and the 7th July?
- A. Well during tht period...

Q. Which period?

- A. From the beginning of this -- that is the 30th November 1963 up to this date, up to the 7th July 1965, interests were running on the on \$996,000.
- Q. Mr. Choy, my question was very simple.
 Look at the 17th June and the 7th July I
 think those were the two figures I gave
 you are you saying that interest
 shouldn't run between those two dates on
 the balance as it was on the 17th June
 until the reduced balance as it was on the
 7th July?
 - A. No, it shouldn't.

Q. Why not?

A. Because I was -- because I caused interest to be run on this figure here, 996,322.80 on the -- dated the 31st July 1964. During that period there were receipts and payments but those receipts and payments set off with one another.

Q. Are you saying that you calculated interest on 996,322.80 all the way through?

A. Yes.

Q. Why? You'd better look at J(e), which is the correct one. Well? This goes up and down, doesn't it? It goes down when Mr.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6 P.W.4 CHOY Chun-chung Crossexamination (cont'd)

Plaintiff's Evidence

10 No.6 P.W.4 CHOY Chun-chung Crossexamination (cont'd)

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TSE, according to you, causes money to be repaid and it goes up when Mr. WONG makes further advances.

Yes, but according to my method of calculation I caused interest tobe run on Α. figure 996,322.80 as throughout, because during that period I considered the payments made by the mortgagor to the mortgagee being set off by the further advances made by the mortgagee mortgagor.

You considered it or Mr. TSE Kwong-lam Q. considered it?

Certainly I had a discussion with Mr. TSE Α. and we both agreed to that because during that period - the period being from the 31st July to the 7th July 1965 - the period being from the 31st July to the 7th July 1965 - we considered that no advances were made to the mortgagor.

When you say 'we', you and TSE Kwong-lam, Q. is that right?

Α. Yes; because we considered that it was not necessary to obtain advances during that period.

I thought you told me that these advances Q. payments of building construction costs?

Yes. Α.

30 Q. And considered those weren't you necessary?

Because over that period the mortgagee had received a sum of \$610,000 which would be Α. sufficient to cover the construction cost over the same period.

Did it occur to you, Mr. Choy, that your Q. duty in preparing an account for the court was to prepare an accountant's analysis of figures and not to advance the arguments of one or other parties?

When I prepared this interest calculation, Α. the calculation was not intended for court proceedings. The calculation was intended for the reference of Mr. TSE.

Mr. Choy, perhaps you would be kind enough Q. look at J(d) and J(e) over adjournment.

COURT: Are you going to be some time with this...?

MR. JACKSON-LIPKIN: My Lord, no, but it is nearly five to one. I wonder if your Lordship would think this an appropriate moment? I don't know whether he's had a chance yet to look at ...

COURT: I do not know how long you're going to be.

MR. JACKSON-LIPKIN: About another 10 half-an-hour.

COURT: I'll adjourn then.

MR. JACKSON-LIPKIN: Mr. Lord, in view of what happened before, would you say soemthing to this gentleman about talking to Mr. TSE? I don't mind if he talks to Mr. Bernacchi or Mr. Woo.

COURT: Mr. Choy, you are a witness in the box; under cross-examination you must not discuss this case with anybody, unless counsel for the claimant wants a word with you.

12.55 p.m. Court adjourns

29th Novembuer, 1978.

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

P.W.4 - Choy Chun Chung

XXN. (CONTG) BY MR. JACKSON-LIPKIN:

Q. Mr. Choy, you didn't tell us the answer to my question which was "What is the significance of the date 29th of May?" You see, you've done everything to the 29th of May.

A. Because I had a discussion with Mr. TSE Kwong Lam and he said that the 29th of May being the date on which he would have to settle accounts with the mortgagee.

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Hong Kong
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Court

Plaintiff's Evidence

No.6 P.W.4 CHOY Chun-chung Crossexamination

Q. I see. Now would you please turn to look at Appendix (d)? In Appendix (d) ---

COURT: (d) or (e)?

MR. JACKSON-LIPKIN: (d) my Lord

Plaintiff's Evidence

Q. You have 9 items?

A. Yes.

- No.6 P.W.4 CHOY Chun-chung 10 Crossexamination (cont'd)
- Q. In Appendix (a), there are 6 the first half of Appendix (b), there are 14 the second half of Appendix (b), there are 5 making a total of 25, is that right?

A. Yes.

- Q. Now I assume you haven't included the last 5 because they're after May?
- A. No, because during the period from the 19th of January'66 to 12 of October 1966, the mortgagee received altogether a sum of \$163,504.00. According to the last 5 items in Appendix (b)...

Q. Yes?

20 A. ... the total amount of paid by the mortgagee was \$120,000.00 --- \$120,510.00.

Q. Yes.

- A. And therefore the mortgagee had received \$42,000.00 odd in excess.
- Q. Well, what about the missing 5 from the first half of Appendix (b)? There are 14 items there. I'm sorry it's rather more than that. That would be missing 11 items. You see the only item from Appendix (b) that you've put in there is \$100,000.00 which is the 29th of December.

A. Yes.

30

- Q. And yet the if I might finish and yet there is in your Appendix (c) a number of items after the 29th of December 1965 received by way of credit.
- A. From 19th of January 1966 onwards...

Q. Yes?

A. The mortgagee received \$163,504.00.

Q. Yes?

- 40 A. Over the same period, the mortgagee paid in total, 5 sums totalling \$120,510.00.
 - Q. Yes, I thought of that. And if your system that you've mentioned before luncheon was correct, there should be an item of \$20,510.00 in Appendix (d), but

there isn't.

A. If there should be a difference, the difference should not be a difference - correction my Lord - the difference should be \$42,000.00 odd and this amount would be the amount received by the mortgagee in excess.

Q. Mr. CHOY, just tell me - you do understand, do you not, that I'm not challenging your arithmetic at all? Do you understand that?

A. Yes, I do.

Q. Now just let me see if I've got this clear. Are you saying that Appendix (d) is restricted to 9 items because you've set off Appendices (b) and (c)?

A. Yes, that is correct.

Q. That is why there are no other items in Appendix (d) from the construction costs?

A. Right.

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Q. Now just 2 more questions for you Mr. CHOY. Do you know or have you ever been told the total cost of demolition, piling, construction, building, installation of lifts, etc. for the building in Cheung Sha Wan Road?

A. I do not know at all.

Q. When you said to my Lord earlier that 1.4 million would be sufficient for the construction of the building and no further money is required, was that a statement made, in retrospect, based on something Mr. TSE Kwong Lam told you?

A. No, no, because after I had arrived at this figure of 1.4 million dollars, I was not supplied with any document relating to construction costs.

COURT: Before the re-examination, I've got one question to ask you Mr. CHOY. Have a look at the first page of your accounts. There is a categorical statement here. "Actual loans advanced - 1,143,328.80" - do you see that?

A. Yes.

COURT: So far as your method of accounting is concerned, interest would have been payable on

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6 P.W.4 CHOY Chun-chung Crossexamination (Cont'd)

Plaintiff's Evidence

No.6

that sum of money?

A. Yes.

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- COURT: Then can you tell me why in your computtion of interest, you have the amount of loans 1.196.322.50?
- amount of loans 1,196,322.50?

 A. Because I did not take into account the \$42,000.00 odd having been received by the mortgagee in excess. I did not charge, or rather I did not cause interest to be run on that amount against the mortgagee.

COURT: Why not? If your method is right, why should your client pay the difference?

- A. Because this difference of \$42,000.00 odd was constituted by various small receipts and the payments.
- COURT: In short, you found it hard to balance your books by your method?
- AL I have failed to cause interest to be run on the \$42,000.00 odd being the sum received in excess by the mortgagee.

COURT: The difference is not forty-odd thousand dollars, the difference is only twenty-odd thousand dollars. If you want the exact sum, the difference is \$22,193.35. How do you account for tht? Sorry the difference is ---

A. The difference should be \$42,994.00.

COURT: So this \$42,000.00 comprise a lot of small sums, you say?

30 A. Yes.

COURT: Yes Mr. Bernacchi - I'm sorry - Mr. Woo.

RE-XN BY MR. WOO:

- P.W. 4 CHOY Chun-chung Re-examination
- Q. Mr. CHOY, you have been during the -before the luncheon adjournment, shown 2 documents Jd and Je?
- A. Yes.
- Q. Now I believe correct me if I'm wrong Je are figures calculated on the basis of capitalised interests?

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A. Yes.

Q. And the extreme right hand column is the balance outstanding on the particular day, principal outstanding on the particular day?

A. Yes.

Q. Now as far as dates are concerned, will you turn to the next page, the 26th of April, 1966, the principal would be 1,272,460.10?

A. Yes.

10

Q. And, that represents the principal outstanding on the basis of capitalised interests?

A. Yes.

Q. And even taking a later date, on the 6th of June, 1966, the principal outstanding would be 1,241,460.10...

A. Yes.

20 Q. ... if this method is adopted?

A. Yes.

Q. Now in Jd, interest was not added into the principal but surely calculations on principal payment and outstanding principal?

A. Correct.

Q. Now coming to the same date - the 26th of April, 1966, - the principal outstanding was 1,129,808.80?

30 A. Yes.

Q. And taking a later date even, on the 6th of July, 1966 - 6th of June rather, 1966, I'm sorry - the principal outstanding would be 1,098,880.80?

A. Correct.

Q. I also understand that this method of calculation accords with your finding as to the principal sum, is that right? Your actual loan advance at page 2 or your account would be 1,143,328.80?

A. Yes, correct.

Q. If your deduct \$8,430.00 from that figure, it makes up the same figure?

A. Yes.

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Q. \$8,430.00 That is document (d).

INTERPRETER: Witness points to 8,430.00 dated the 20th of August '65."

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6 P.W.4 CHOY Chun-chung Re-examination (Continued)

Plaintiff's

CHOY Chun-chung

Re-examination (Continued)

Evidence

No.6

P.W.4

Q. That's right. Now \$8,430.00 appears on the front page of Jd.

A. Yes.

Q. Against the date 20th of August, '65?

A. Yes.

Q. Now apparently when you come to the figure in your accounts, 1,143,328.80, you omitted to add \$8,430.00?

A. Right.

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Q. Now would you tell my Lord the reason for doing that?

A. Because according to the accounts prepared by the solicitors' firm ...

Q. Yes?

A. ... this \$8,000.00 odd was paid directly from the proceeds of pre-sale of units not from the mortgagee.

Q. And can you identify that item from the

document?

20 A. That is on page 2 of the document prepared by the solicitors' firm, the item against the date 20th of August.

MR. WOO: My Lord, it would be ---

INTERPRETER: Witness refers to item which
 reads. "Hong Kong Government ... for water
 meters."

COURT: That's the water charge?

MR. WOO: That's the water charge.

Am I right in saying, Mr. CHOY, whether Q. you calculate according to Jd, that is the document front without in of you, capitalising the interest or calculated according to Je, which suggested to you with capitalised interest added onto it, and the principal, that both figures as at even on the 26th of April or 6th of June 1966, the principal does not exceed 1.3 million outstanding in either case? One is 1.272, the other is 1.129, well, according to the 2 documents before you.

A. I have not made any calculations, I do not know. I cannot be sure. I have to make calculations before I can be sure.

Q. Yes, but assuming the figures are right or

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- 254 -

the calculations are right, which these are the documents shown to you this morning, assuming that it is right either way, either way, how you calculate it, it cannot exceed 1.3 million principal outstanding. Even your calculation does not exceed 1.3.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6 P.W.4 CHOY Chun-chung Re-examination (Continued)

- MR. JACKSON-LIPKIN: My Lord, if it will help, I will concede that arithmetically my learned friend Mr. Woo must be right. It's a matter of pure arithmetic.
- Q. No matter how you deal with the account on that date, I'm saying, whether it's calculated on this basis or on the basis of the document I'm going on the documents ---

COURT: I do not know where Jd and Je is.

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MR. JACKSON-LIPKIN: My Lord, that is read from Mr. Ronald Li's report and from the agreed document on pre-payments and the final column is a running total. The first column of figures is ---

COURT: These come from Mr. Ronald Li's report?

- MR. JACKSON-LIPKIN: No, the first column does my Lord. The second column comes from the agreed document of receipts and pre-sales and the third column is merely an arithmetical total.
- Q. May I show you a document that is B38?
 This is a latter a letter written by a solicitors' firm dated 28th of April, 1966.
 - MR. JACKSON-LIPKIN: Might I ask my learned friend from what aspect of my cross-examination B38 arises?
 - MR. WOO: In that case, I won't go any further.
 - Q. From Ronald Li's account, can you say that on the date mentioned, that is the 6th of

Plaintiff's Evidence

No.6 P.W.4 CHOY Chun-chung Re-examination (Continued)

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June, 1966, or the 26th of April, 1966, what was the principal outstanding, can you say? Well, is it there or not as all? If not all all, then leave it.

A. No, it's not there.

Q. Very well. Mr. CHOY, I understand that coming back to Je and d, is it possible to say from that, from the principal owing on the 26th of April, 1966, from both documents - one is document (d) - principal owing was 1,129,808.80?

A. Yes, yes.

Q. If interest was calculated up to that date, would it exceed 1.5 million?

INTERPRETER: 1.5?

- Q. 1.5 million the principal outstanding was 1.1.
- A. There will be some difficulty in such calculations. The calculation would take some time. Besides, I do not know which interest rate I should use whether it's 1.2% or 1.3%.

Q. Assuming it's 1.4% - the highest rate?

A. I have to make calculations before I know it.

COURT: Did somebody say that the amount of loans outstanding at any time could not be calculated from Mr. Ronald Li's report?

A. No.

Q. You may have said it yourself but you can't remember now. I believe you did say that Mr. CHOY.

COURT: It can easily be done from the schedule.

MR. WOO: I'm much obliged my Lord.

COURT: Be that as it may, Mr. Woo, carry on. Thank you.

MR. JACKSON-LIPKIN: My Lord, before the next witness is called, may I apologise? I did promise your Lordship in the course of the cross-examination with Mr. TSE that I

would produce a single piece of paper, the date of the architect's certificate with the page references, the amount, the date of receipt of the page references and the date of payment and I forgot to hand it to you.

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6

MR. BERNACCHI: My Lord, E & O.E. because I haven't read it myself.

MR. WOO: My Lord, may I call my last witness in this case, Mr. TSE Kai Kam?

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P.W. 5 - LEE Kai Kam (Affirmed in Punti):

XN BY MR. WOO:

P.W.5 LEE Kai Kam Examination

- Q. Mr. Lee, where do you live?
- A. I live at 540, Canton Road, 4th Floor.
- Q. And your present occupation?
- A. I'm a real estate broker.
- Q. Do you know a person, in this case, Mr. Tse Kwong Lam?
- A. Yes.
- 20 Q. How long have you known him?
 - A. Over ten years.
 - Q. And I believe you worked with him at one time?
 - A. Yes.
 - Q. Now, you worked with him as his employee, wasn't it?
 - A. Yes.
 - Q. When was that?
- A. I was working at the sales office at 52-54, Cheung Sha Wan Road. I took people round to inspect the units.
 - Q. And were you employed as a salaried employee or were you working for a commission at that time?
 - A. I was employed on monthly basis.
 - Q. Now, you say you helped Mr. Tse to sell flats?
 - A. Yes, to sell flats and also to take people upstairs to inspect the flats.
- 40 Q. And what period of time was that?
 - A. I worked there for a number of years until the time the building was sold by auction.
 - Q. Now, you say you helped him to sell flats from the building 52-54 Cheung Sha Wan

In the Supreme Road? Court of Yes. Α. Hong Kong You take a prospective purchaser to view Q. High Court the flat? Yes. Α. And when they made up their Plaintiff's Q. purchase the flats, what did you do? Evidence would take this customer to Α. clerk at the sales office on the site for No.6 some formalities to be done. 10 P.W.5 Yes. Do you ever take the purchaser to a Q. LEE Kai Kam solicitors' firm? Examination Α. Yes. (Continued) To which solicitors firm? Q. To Mr. Liu Kin Wah of JSM. Α. Q. Did you go there often? Α. Not often. I only took customers to the solicitors office when a particular customer did not know how to get there. 20 Q. And you know Mr. Liu? Α. Of Ι him course. met when I customers to the solicitors firm. Yes, I knew him. Did you have any difficulty in showing the Q. customers to view the flats? encounter any difficulty at all? Yes, I did encounter difficulties because Α. the keys were not available: the keys were taken by one Mr. Lai Ming, foreman of Lam Kee Construction Company, 30 and the window stays also removed. I had difficulty in showing customers around, because we could not enter those flats without a key. Q. When was that? In January, 1966. Α. Q. Did you have any other difficulties later on? Yes. Α. 40 Q. When was that? Sometime in April the China Engineers Co. Α. removed some accessories from the lifts. The lifts were not operating and I could not take the customers upstairs to view the flats.

And when you find that your customers were

not able to view the property by reason

How long did that last?

I cannot remember.

Q.

Α.

Q.

there was no lift, what did you do?

A. I told my boss, mr. Tse Kwong Lam about it: I told him that as the lifts were not operating I could not take the customers upstairs to view the flats. The flats could not be sold.

Q. Now, eventually I believe, to your knowledge -- you knew that there was an auction of the premises itself?

10 A. Yes.

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- Q. Did you yourself have anything to do with the auction?
- A. On the day of the auction Mr. TSE Kwong Lam asked me to go along with him across the harbour to the Lammert Brothers.

Q. Yes,? Did you go?

A. I did. I did go along with him.

- Q. Anything happened when you arrived at the auctioneer's office?
- 20 A. I saw Mr. TSE Kwong Lam speaking to Mr. Liu Kin Wah very loudly.

Q. Then what happened?

A. Then the auction commenced.

Q. How did it commence?

A. The acutioneer announced that the reserved price for the property 52-54 Cheungshawan Road to be 1.2 million dollars.

Q. What happened next?

- A. Then there was a thin and tall woman raising her hand saying 1.2 million dollars.
 - Q. While she was doing that, did anyone say anything?
 - A. Then my Boss Tse Kwong Lam said loudly: "It's not fair!"

Q. Did he say anything else?

- A. He was saying things to the effect that when he tried to mortgage it, he was offered 1.5 million dollars and the property was then being auctioned for only 1.2 million dollars.
- Q. Did anyone take notice of what he was saying?

A. Well, everybody looked at him.

Q. What happened then?

A. Then this woman acquired this property in Cheungshawan Road for 1.2 million dollars by auction.

Q. Can you remember was the acution well

In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6 P.W.5 LEE Kai Kam Examination (Continued)

Plaintiff's Evidence

No.6 P.W.5 LEE Kai Kam Examination (Continued)

10

attended?

A. I don't quite remember. I cannot remember clearly because that was over ten years ago.

Q. Now, after -- you say that the lady succeeded in getting the proeprty. And then afterwards what happened?

A. Then on the following day my boss returned to the site. I asked him who that woman was. He said she was the wife of WONG Chit-Sen.

Q. Now, before you left that day, did anyone say anything to the lady in question?

A. When the auction was over, I saw my boss approach that woman and I heard him say that the auction was not fair. They had a row. Then I left.

Q. Thank you.

MR. JACKSON-LIPKIN: No questions, my Lord.

20 COURT: Thank you.

MR. BERNACCHI: That is the case for the Plaintiff --- I'm sorry --- for the claimant.

COURT: Case adjourned till 10 o'clock on 19th April --- 19th March in the year 1979.

MR. JACKSON-LIPKIN: Before your Lordship rises, may that last document be marked L---K?

COURT: Yes.

30 MR. JACKSON-LIPKIN: Thank you.

3.50 p.m. Court adjourns.

We certify that to the best of our skill and ability the foregoing is a true transcript of the shorthand notes taken of the evidence in the above proceedings. In the Supreme Court of Hong Kong High Court

Plaintiff's Evidence

No.6

(sd.) illegible

Denise de Sousa

Court Register

(sd.) illegible
N.M. Pereira
Court Reporter

(sd.) illegible
Edmund Loh
Court Reporter

(sd.) illegible
Elizabeth Toy
Court Reporter

(sd.) illegible
Miranda Shui
Court Reporter

(sd.) illegible Susan Lee Court Reporter

Dated the 1st of March, 1979.

In the Privy Council

ON APPEAL

FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN						
TSE KWONG LAM						Appellant
	AND					
WONG CHIT SEN						Ist Respondent
CHING WAI SHORK (or SHOOK)						2nd Respondent
CHIT SEN COMPANY LIMITED						2nd Damandane

RECORD OF PROCEEDINGS

VOLUME I

HASTINGS & CO.,
Solicitors for the Appellant
JOHNSON, STOKES & MASTER
Solicitors for the Respondents