

## ON APPEAL <br> from the full court of hong kong

## BETWEEN

DAVID SEE CHAI LAM ... ... ... ... ... ... ... ... lst Appellant
THE KA WAH BANK LIMITED ... ... ... ... ... ... $2 n d$ Appellant
and
THE HOUSE OF DIOR LIMITED ... ... ... ... ... ... Respondent

## RECORD OF PROCEEDINGS



JOHNSON, STOKES \& MASTER
Solicitors for the 1st \& 2nd Appellants

PETER MARK \& CO.
Solicitors for the Respondent

## 

ON APPEAL<br>FROM THE FULL COURT OF HONG KONG

## BETWEEN

## DAVID SEE CHAI LAM ... ... ... ... ... ... ... ... lst Appellant <br> THE KA WAH BANK LIMITED ... ... ... ... ... ... 2nd Appellant <br> and <br> THE HOUSE OF DIOR LIMITED ... ... ... ... ... ... Respondent <br> RECORD OF PROCEEDINGS

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# In the Supreme Court of Hong Kong <br> Original Jurisdiction 

O. J. Action No. 2564/1971

## In the 猚rify © Commil

## ON APPEAL <br> from the full court of hong kong

## BETWEEN

DAVID SEE CHAI LAM ... ... .. ... .. ... ... ... lst Appellant
THE KA WAH BANK LIMITED ... ... ... ... ... ... 2nd Appellant
and
THE HOUSE OF DIOR LIMITED ... ... ... ... ... ... Respondent

## RECORD OF PROCEEDINGS

1971, No. 2564
IN THE SUPREME COURT OF HONG KONG

ORIGINAL JURISDICTION

BETWEEN
THE HOUSE OF DIOR LIMITED
Plaintiff
and
DAVID SEE CHAI LAM
THE KA WAH BANK LIMITED 2nd Defendant
SIU SEE LEONG and
EVA SIU CHENG YEE WAN 3 rd Defondants
20 ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Our other realms and territories Queen, Head of the Commonwealth, Defender of the Faith:

To David See Chai Lam of 259 Des Voeux Road Central Ground floor Victoria in the Colony of Hong Kong Gentleman and The Ka Wah Bank Limited whose registered office is situate at 259 Des Voeux Road Central Ground floor Victoria and Siu See Leong Gentleman and Eva Siu

In the Supreme Court of Hong Kong Original Jurisdiction

No. 1
Writ of Summons continued

Cheng Yee Wan Married Woman both of 249 Prince Edward Road 7th floor Kowloon in the Colony of Hong Kong.

We command you that within eight days after the service of this writ on you, inclusive of the day of service, you do cause an appearance to be entered for you in an action at the suit of The House of Dior Limited whose registered office at Grand Building, 11th floor, 15-18, Connaught Road Central, Victoria in the Colony of Hong Kong.
and take notice that in default of your so doing the Plaintiff may proceed therein, and judgment may be given in your absence.

WITNESS the Honourable Sir Ivo Rigby,
Chief Justice of Our said Court, the 4th day of November 1971.
J. R. Oliver

Registrar.
Amended as in Red this 24th day of December, 1971 pursuant to Order of Mr. Registrar F. S. Li dated the 16th day of November, 1971.
(Sd.) S. H. Mayo

## Registrar.

Amended as in Green this 10th day of May, 1973 pursuant to Order of Mr. Justice Li dated the 30th day of October, 1972.

## (Sd.) <br> B. L. Jones <br> Registrar.

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

## Directions for Entering Appearance.

The Defendant may enter an appearance in person or by a Solicitor either (1) by handing in the appropriate forms, duly completed, at the Registry of the Supreme Court in Victoria, Hong Kong, or (2) by sending them to the Registry by post.

Note: - If the Defendant enters an appearance, then, unless a summons for judgment is served on him in the meantime, he must also serve a defence on the solicitor for the Plaintiff within 14 days after the last day of the time limited for entering an appearance, otherwise judgment may be entered against him without notice.

## REAMENDED STATEMENT OF CLAIM

1. The Plaintiff was at all material times and is the registered owner in possession of land and premises registered in the District Office at Tai Po as Section B of Lot No. 535 in Demarcation District 187.

In the Supreme Court of
Hong Kong Original
Jurisdiction
2. The Plaintiff's said land has an area of $4,437.50$ square feet and is Writ of bounded on the north by the Remaining Portion of the said Lot No. 535 Summons and on the south by Section A of the said Lot. It is in the shape of a continued parallelogram. Its east and west boundaries measure 62.50 feet each and its north and south boundaries measure 72.45 feet each.
3. The 1st Defendant was at all material times and is the registered owner in possession of the said Remaining Portion of the said Lot No. 535, which adjoins the Plaintiff's said land as aforesaid and has the same shape and dimensions as the Plaintiff's said land.

3A. The 3rd Defendants were at all material times and are the registered owner in possession of the said Section A of the said Lot No. 535, which adjoins the Plaintiff's said land as aforesaid and has an area of 4,615 square feet, and is in the shape of a parallelogram with its east and west boundaries measuring 65 feet each and its north and south boundaries measuring 72.45 feet each.
4. By an agreement in writing dated the 20th July 1970 the 1st Defendant contracted to sell the said Remaining Portion to the 2nd Defendant.
5. Since in about 1959 or thereafter, the 1st Defendant, its servants or agents having wrongfully built on the Plaintiff's said land a wall along its northern boundary.
6. A plan (hereinafter called "the said Plan") is annexed hereto showing the boundaries of the said Lot No. 535 marked by points $A, B, C$ and $D$, the boundaries of the Plaintiff's said land marked by points E, F, G and H and coloured Pink, the Portion wrongfully build upon by the 1st Defendant as aforesaid hatched Black and the said wall marked by points H and A 1 .

6A. At about the time when the said wall was erected as aforesaid, the 1st Defendant wrongfully entered and took possession of the said portion coloured Pink and hatched Black and has thereafter wrongfully remained in possession thereof and has wrongfully built thereon the said wall as aforesaid and certain other structures including an outside lavatory and a staircase.
7. Despite requests, and 1st and 2nd Defendants have failed or refused to pull down and removed the said wall or the said structures or deliver up possession of the said portion coloured Pink and hatched Black to the Plaintiff.
8. By reason of the matters aforesaid, the Plaintiff has suffered loss and damage.

In the Supreme Court of Hong Kong Original Jurisdiction

No. 1
Writ of Summons continued

## PARTICULARS OF SPECIAL DAMAGE

The Plaintiff is desirous of developing the said Section B by building thereon one detached house consisting of 3 units. General Building plans for such development were approved by the Building Authority on 2nd day of March 1971. The 1st and 2nd Defendants' encroachment as aforesaid is causing delay in such development by reason of the Defendants' said wall standing in the way of one of the 3 units. The Plaintiff intends to let the house upon completion. The Plaintiff has sustained and is sustaining loss of rental income through the delay in completion of the development. Further, by reason of the delay, the Plaintiff is having to build the house in twe or merestages as it may be advised by its arehitect and the total costs of will thereby total costs of construction will be increased as hereinafter pleaded. Further partieulars will be pleaded as the same beome available.
(a) Loss of rent of Units A B \& C, area 1,200, 1,200 and 1,600 sq. feet respectively. Total $4,000 \mathrm{sq}$. ft. $\$ 2$. per sq. ft. $\$ 8,000$ per month from 1/10/71 until delivery up of vacant possession of the area claimed.
(b) Increased building costs (including architect's fees at $5 \%$ ) Present estimated costs of said units ... ... ... ... \$525,000.00 20
Tender received and accepted by Plaintiff in October 1971 for construction of said units ... ... ... ... 320,000.00
\$205,000.00
9. If, which is denied, the said Section B is a rectangle or parallelogram with the said wall as its north boundary, then the Plaintiff says that the said Section B consists of the portion coloured Pink and the Portion Coloured Pink and cross-hatched Black and is designated A1, A2, G and H as shown on the plan annexed hereto (hereinafter called the Second Plan) and has an area of $4,437.50$ square feet or thereabout with its north and south boundaries measuring 71 feet each and its east and west boundaries measuring 62.50 feet each. Save and except that it shows the said portion coloured pink and cross-hatched black, the Second Plan is identical in all respects with the First Plan.

AND the Plaintiff claims:-
(1) As against the 1st and 2nd Defendants, An an order that they forthwith pull down and remove the said wall. and the said structures.
(2) As against the 1 st and 2 nd Defendants, damages.
(3) As against the 1st and 2nd Defendants, A a declaration that the said Section B is coloured Pink including the portion hatched Black and is designated E, F, G and H as shown on the First Plan 40
annexed hereto. and that the said Section B has an area of 4,437.50 square feet and that its east and west boundaries measure 62.50 feet each and its north and south boundaries measure 72.45 feet each
(4) As against the 1 st and 2 nd Defendants, possession of the said portion coloured Pink and hatched Black.
(5) Alternatively, as against the 3rd Defendants, a declaration that the said Section B consists of the portion coloured Pink and the Portion coloured Pink and cross-hatched Black and designated A1, A2, G and H as shown on the Second Plan annexed hereto and that is has an area of $4,437.50$ square feet or thereabout and that its east and west boundaries measure 62.50 feet each and its north and south boundaries 71 feet each.
(6) As against the 3rd Defendants possession of the portion coloured Pink and cross-hatched Black.
(4) (7) As against all Defendants, Further or other relief and such injunctions and mandatary orders as will be effectual to enforce the Plaintiff's rights as aforesaid;
(5) (8) As against all Defendants, Ccosts.

$$
\begin{aligned}
& \text { sd. Robert Wer } \\
& \text { Gounsel for the Plaintiff } \\
& \text { Dated the 3rd day of November } 1971 \text { sd. Robert Wer } \\
& \text { Counsel for the Plaintiff } \\
& \text { Dated the 23rd day of December 1971. } \\
& \text { sd. Denis CHANG } \\
& \text { Counsel for the Plaintiff }
\end{aligned}
$$

Dated the 7th day of May, 1973.
And $\$ 350.00$ (or such sum as may be allowed on taxation) for costs, and also, if the Plaintiff obtains an order for substituted service, the further 30 sum of $\$ 260.00$ (or such sum as may be allowed on taxation). If the amount claimed and costs be paid to the Plaintiff or his Solicitor within 8 days after service hereof, (inclusive of the day of service) further proceedings will be stayed.

This Writ was issued by MESSRS. PETER MARK \& Co., of Grand Building 11th floor, 15-18 Connaught Road Central, Victoria, Hong Kong, Solicitors for the Plaintiff, who reside at/whose address is Grand Building, 11th floor, 15-18 Connaught Road Central, Victoria in the Colony of Hong Kong.
(Sd.) Peter Mark \& Co.

In the Supreme Court of Hong Kong Original Jurisdiction

No. 1 Writ of Summons continued



In the Supreme Court of Hong Kong Original Jurisdiction No. 1
Writ of
Summons
continued

In the Supreme Court of Hong Kong Original Jurisdiction

No. 2
Defence of 1st \& 2nd Defendants

Amended as in Red this 23rd day of February, 1972 pursuant to Order of Mr. Registrar Mayo dated the 25th day of February, 1972.

Registrar.
1971, No. 2564

## IN THE SUPREME COURT OF HONG KONG

ORIGINAL JURISDICTION

BETWEEN

| THE HOUSE OF DIOR LIMITED | Plaintiff |
| :--- | :--- |
| $\quad$ and |  |
| DAVID SEE CHAI LAM | $1 s t$ Defendant |
| THE KA WAH BANK LIMITED | 2nd Defendant |
| SIU KEE LEONG and |  |
| EVA SIU CHENG YEE WAN | 3rd Defendants |

## AMENDED DEFENCE

1. Paragraph 1 of the Amended Statement of Claim is denied. The Plaintiff has only been registered as owner of Section B of Lot 535 in Demarcation District 187 since 14th September, 1970.
2. Paragraph 2 of the Amended Statement of Claim is not admitted. In particular it is denied that the shape of the Plaintiff's land is a parallelogram. The Defendants contend that its correct shape is a rectangle. The Defendants put the Plaintiff to strict proof of the alleged measurements of the said land.
3. It is admitted that the 1st Defendant has at all material times since 22nd July 1958 been the registered owner of the remaining portion of Lot 535. Save as aforesaid no admission is made to paragraph 3 of the Amended Statement of Claim and the Defendants put the Plaintiff to strict proof of the matters alleged therein.

3A. It is admitted that the 3rd Defendants are now the registered owners of Section A of the said Lot. No. 535. Save as aforesaid no admission is made to paragraph 3A of the Amended Statement of Claim.
4. Paragraph 4 of the Amended Statement of Claim is admitted.
5. Paragraph 5 of the Amended Statement of Claim is denied.
6. Paragraph 6 of the Amended Statement of Claim is denied. The Defendants put the Plaintiff to strict proof of the correctness of the alleged first plan annexed to the Amended Statement of Claim.

6A. As to paragraph 6A of the Amended Statement of Claim it is admitted that the 1st Defendant erected the said wall and other structures including an outside lavatory and concrete steps. Save as aforesaid paragraph 6A of the Amended Statement of Claim is denied.

In the Supreme Court of Hong Kons Original Jurisdiction
7. In further answer to the matters alleged in the Amended Statement of Claim the Defendants say as follows:-

10 (i) Section B of Lot 535 was sold to the Plaintiff in September 1970 as a rectangular piece of land having a base of 71 feet.
(ii) The said Section B of Lot 535 has at all material times on all material conveyances been depicted as a rectangle and not as a parallelogram.
(iii) At the time that the Plaintiff purchased Section B of Lot 535 the southern boundary of the said Section was a wall erected parallel to the wall referred to in paragraphs 5 and 6 of the Amended Statement of Claim. The said wall along the southern boundary of Section B included a segment of what is now depicted on the first plan annexed to the Amended Statement of Claim as Section A of Lot 535. The said wall remained in position until some time in or about July/August 1971. In the premises the said Section B was a rectangle at the time that it was purchased by the Plaintiff.
8. The 1st Defendant bought the remaining portion of Lot 535 from Li Mok Cheuk Yin on 15th July, 1958. The wall complained of in paragraphs 5 and 6 of the Amended Statement of Claim was erected in its present position in 1959. At all material times the then owners of Section B of Lot 535 knew that the said wall was being built in its existing position and made no objection thereto. The said wall has remained in its present
30 position without complaint from the owners of Section B of Lot 535 being the Plaintiff's predecessors in title ever since 1959. The said wall was in its present position when the Plaintiff purchased the property. The Plaintiff knew or ought to have known of the existence of the said wall at all material times before completing the purchase of Section B of Lot 535 and before it drew up any plans to redevelop the said property.
9. If which is denied the said wall or any structures of the Defendants are on the Plaintiff's land the Defendants contend that the Plaintiff is barred by the laches and/or acquiescence of itself and its predecessors in title from claiming the relief sought in the Amended Statement of Claim.

40 10. Further or in the alternative if which is denied the said wall or any structures are on Section B of Lot 535 the Plaintiff is estopped from claiming the relief sought in the Amended Statement of Claim in that the owner of Section B the predecessor in title of the Plaintiff at the time the

In the Supreme Court of
Hong Kong Original Jurisdiction

No. 2
Defence of 1 st \& 2nd Defendants continued
said wall and structures were built, stood by and permitted the 1st Defendant without objection to build the said wall and other structures essential to his house knowing that the 1st Defendant was acting in the mistaken belief that he was erecting the wall and the said structures on his own land. The other structures referred to include a septic tank an outside lavatory and concrete steps. The Defendants have been unable to ascertain at the date hereof whether any portion of the main structure of the premises erected on the said remaining portion of Lot 535 is sited on the disputed area hatched black on the first plan annexed to the Amended Statement of Claim.
11. Further or in the alternative if which is denied the said wall or any structures are on the said Section B of Lot 535 the Defendants contend that in the premises this Honourable Court should not grant the Plaintiff equitable relief as sought in the Amended Statement of Claim and will further contend that any damages awarded to the Plaintiff should be in a nominal sum only.
12. Save as hereinbefore expressly admitted each and every allegation made in the Amended Statement of Claim is denied as if each and every such allegation had been set forth herein and traversed seriatim.

Dated the 16th day of December 1972.

> Rierard-Mills-Owens,
> Geunsel for the 1st \& 2nd Defendants
> Jomnsen, Stokis \& MAster,
> solicitors-for the-1st \& 2nd Defendants, 501 Hongkeng \& Shanghai Bank Bldg.,
> 673 Nathan Road, Kowloon.

Dated the 23rd day of February 1972.
Richard Mills-Owens
Counsel for the 1st \& 2nd Defendants
Johnson, Stokes \& Master,
Solicitors for the lst \& 2nd Deft.
501 Hongkong \& Shanghai Bank Bldg.,
673 Nathan Road, Kowloon.

IN THE SUPREME COURT OF HONG KONG

ORIGINAL JURISDICTION

BETWEEN

DEFENCE OF THE 3RD DEFENDANTS

1. No admission is made by the 3rd Defendants as to the allegations of fact contained in Paragraphs 1, 2, 3, 4, 5, 6, 6A, 7 and 8 of the Amended Statement of Claim.
2. As to Paragraphs 3A and 9 of the Amended Statement of Claim, the 3rd Defendants say that they were at all material times and are the registered owners in possession of Section A of Lot No. 535 which has an area of about 4,615 square feet and is in the shape of a rectangle or parallelogram with its east and west boundaries measuring about 65 feet each and its north and south boundaries about 71 feet each. Save as aforesaid, 20 Paragraphs 3A and 9 of the Statement of Claim are denied.
3. Save and except as hereinbefore expressly admitted, the 3rd Defendants make no admission as to each and every allegation in the Statement of Claim.

Counsel for the 3rd Defendants.

Dated the 9th day of February, 1972.

In the Supreme Court of Hong Kong Original
Jurisdiction
No. 4
Judgment of
Mr. Justice S. Li BETWEEN

IN THE SUPREME COURT OF HONG KONG ORIGINAL JURISDICTION

Action No. 2564 of 1971

THE HOUSE OF DIOR LIMITED Plaintiff
and
DAVID SEE CHAI LAM
THE KA WAH BANK LIMITED

1st Defendant
2nd Defendant

Coram: Li, J. in Court
12 Mar 1973

## JUDGMENT

This is an action relating to a plot of land in Shatin near Tai Po Road known as Demarcation District 187 Lot No. 535: (hereinafter referred to as "Lot 535 ") in a dispute between the House of Dior Limited (hereinafter referred to as "the plaintiff") and David See Chai Lam (hereinafter referred to as "the 1st defendant"). The Ka Wah Bank Limited (hereinafter referred to as "the 2nd defendant") and Siu See Leong and Eva Siu (hereinafter referred to as "the 3rd defendant"), as to the shape and boundary of Lot 535 should take. It is an action which would never be necessary and would never be brought but for the gross inefficiency on the part of the New Territories Administration and the complacency of those responsible for the issue of the Crown Lease. The history of this Lot 535 as supported by documentary exhibits put before me and the evidence produced is beyond dispute and is as follows:-

On the 15 th of July, 1952, Lot 535 was put up for auction by the new District Commissioner of the New Territories as a garden lot. The Conditions of Sale with a site plan attached indicate that it had an area of 13,490 square feet in the shape which looked like a rectangle with a base of 71 feet north and south and two sides of 190 feet east and west as shown in Exhibit C1.

> Clause 4 of the General Conditions of Sale provides:-
> "The Purchaser of each lot shall when required by the District Officer and prior to the issue of a Crown Lease, if such is intended to be issued, pay the sum of $\$ 6$ for each boundary stone which shall be fixed by the Director of Public Works at each angle of the new lot marked with the Registry Number of the lot, and the Purchaser shall notify the District Officer when he is ready to have the boundary stones fixed."

Clause 5 of the General Conditions of Sale provides:-
"The Purchaser of each lot shall where such lot is sold as a building lot, build and finish, fit for occupation, before the expiration of twenty-four calendar months from the day of sale, in a good, substantial and workman-like manner, one or more good and permanent messuage or tenement upon some part of such lot with wall of stone or brick and lime-mortar and roof of tiles or such other Mr. Justice S. Li materials and in such manner as may be approved by the District continued Officer, and in all other respects to the satisfaction of the District

Clause 13 of the General Conditions of Sale provides:-
"In the event of the Purchaser of any lot assigning the benefit of the agreement signed by him under General Condition 3 all assignees shall be bound by the General and Special Conditions of Sale, and all powers and remedies shall be enforceable against them to the same extent as if such assignees were the original purchasers."

Clause 14 of the General Conditions of Sale provides:-
"The exact area, boundaries and measurements of each lot shall be determined before the issue of the Crown Lease and the Premium and Crown Rent shall be when adjusted in accordance with the area and the amounts of Premium and Crown Rent at which the lot was sold."

By Memorandum of Agreement Lot 535 was sold on the 15 th of July 1952 to the Hotel Edinburgh Limited - see Exhibit C2.

A house on the southern portion of Lot 535 was built by Hotel Edinburgh Limited in the years 1953/54. There is no precise evidence as to the date of completion of this house but I find on the balance of probabilities that this house must have been built within the year 1953/54 because the Conditions of Sale required that the house be completed in twenty-four calendar months' time, and that the architectural plans were received by
40 the Building Ordinance Office on the 2nd of November 1953. This is further supported by the fact and document that on the 16 th of February 1956 Hotel Edinburgh Limited sold a southern portion of Lot 535 with

In the Supreme
Court of
Hong Kong Original Jurisdiction

No. 4 Judgment of Mr. Justice S. Li continued
a house as shown in Memorandum Registration No. 134455 to one Mr. G. B. King. The southern portion with a house was carved out as Section A of Lot 535 and has a base of 71 feet in the southern boundary and a side of 65 feet east and west giving a total area of approximate 4,615 square feet. The remaining portion of Lot 535 on the north of Section A was sold by the Hotel Edinburgh Limited to one Lee Mok Cheuk Yin on the 23rd of February 1956. This is supported by the documentary evidence Exhibit C4. Memorial No. 134469 which showed the remaining portion has a base of 71 feet adjoining Section A on the south and the sides east and west, a line of 125 feet giving an area of approximate 8,875 square feet.

On the 22nd of June 1957 one half of the remaining portion (hereinafter referred to as Section B) was sold to Chan Yuen Foo. This is evidenced by Memorial No. 136436 Exhibit 6. The sale plan attached to the Memorial showed that it has a base of 71 feet adjoining Section A and the sides east and west of $62 \frac{1}{2}$ feet giving an approximate area of $4,437.5$ square feet.

On the 22nd of July 1958 Madam Lee sold to the 1 st defendant the remaining bit of the northern part of the remaining portion (hereinafter referred to now as the remaining portion) - see Exhibit 5, Memorial No. 138176. The sale plan attached thereto shows a base of 71 feet adjoining the northern boundary of Section $B$ and the sides east and west of $62 \frac{1}{2}$ feet giving the approximate area of also $4,436.5$ square feet.

Section B was subsequently re-sold by the executrix of Chan Yuen Foo to one Chan Yen Ling and Chan Wai Ling on the 28th of June 1965 Exhibit C7.

Later, Section B was sold by Chan Yen Ling and Chan Wai Ling to the plaintiffs on the 13/8/70 and completion took place on the 14/9/70. Then on the 20th of July 1970 the 1st defendant contracted to sell the remaining portion to the 2 nd defendant.

Pausing at this stage, it is pertinent to observe that by 1956, that is, four years after the original sale by auction the Conditions of Sale had been complied with. There should have been a survey and a Crown Lease issued. However, nothing was done. There is no evidence as to who was responsible for the delay. The 1st defendant completed his house on the remaining portion some time in the month of June 1959. This is evidenced because on the 18th of June 1959 there is a letter signed by the District Officer, Tai Po, and addressed to Mr. Li Fook Hon, the architect of the house in the remaining portion as well as to David See Chai Lam, the 1st defendant, in the following terms:-
"Mr. Li Fook Hon, authorized architect, has certified on the 21st of May 1959, in the form contained in D.A.N.T. Completion Certificate that the new building, being one 2-storey R.C.C. building on Lot No. 535 R.P. in DD187, Keng Hau, Shatin, N.T., complies in all respects with the specifications of the plans and structural details and calculations submitted by him and approved by the

District Commissioner, N.T., and that they are structurally safe. In the Supreme Permission is hereby granted to occupy and use the new building for domestic purposes."

Court of Hong Kong Original Jurisdiction
and there was a postscript in the following terms:-
No. 4
"In accordance with the General Condition No. 8 of Government Judgment of Notification No. 364 of 1934, the registered owner is required to Mr. Justice S. Li apply within one month from the date of this occupation certificate continued to the District Officer, Tai Po, for the issue of a Crown Lease in respect of this lot."

The 1st defendant promptly applied for a Crown Lease on the 13th of July 1959. In his letter addressed to the District Officer, Tai Po, he said:-
"In accordance with General Condition No. 8 of Government Notification No. 364 of 1934 I, being registered owner of the twostorey R.C.C. building on Lot No. 535 R.P. in DD187, Keng Hau, Shatin, N.T., hereby apply for the issue of a Crown Lease in respect of the lot.

Your early attention shall be gratefully appreciated."
Apparently, nothing was done to survey the site Lot 535 for the purpose of issuing a Crown Lease. There is certainly no evidence addressed before me as to any step taken for that purpose except a letter dated the 15 th of October 1964 addressed to the 1st defendant by the Crown Lands and Surveys Office. The letter is in the following terms:
"Reference discussion on site between Messrs. Humphrey (L.A. Tai Po) David Lam and Tarrant, 12th October 1964.

As discussed, I have marked by a red line on the three attached plans a suggested orientation for the in part common boundary line between Lots 562 and 535 (R.P.).

This suggested alignment scales about 10 feet and 30 feet from the gate and house side as shown.

If after examination you find the alignment satisfactory I would be grateful if you, as owner of Lots 562 and 535 R.P., would endorse two of the plans as beng satisfactory in orientation for that portion of the boundary line in part common between Lots 562 and 535 R.P. and return same to me. The third copy is for your own retention.

I must point out clearly that this orientation may, up on a full lease survey of 535 R.P., alter the as now registered area of that Lot. However, I understand from our meeting that you are fully $a u$ fait with this.

I return herewith your plan as loaned with thanks."

In the Supreme Court of Hong Kong Original Jurisdiction

No. 4 Judgment of Mr. Justice S. Li continued

The reply by the 1 st defendant to the Crown Lands and Surveys Office is as follows:-
"Sir,
I thank you for your letter of October 15th 1964 together with three plans showing a suggested orientation for the in part common boundary line between Lots 562 and 535 R.P. As owner of both lots, I find this common boundary satisfactory and have endorsed on the plans accordingly and returning two copies to you while retaining one for my use.

Please accept my sincere thanks not only for the trouble which you have taken to work out on site with Mr. Humphrey and myself the suggested orientation of October the 12th of 1964 but also for the fair, friendly and considerate approach which you have taken in this matter."

In short, as we know now and supported by the aforesaid letters Exhibit A3 and Exhibit A4 respectively, no survey was done at all for the purposes of fixing the boundaries of Lot 535 despite that postscript in a letter signed by a District Officer dated the 18th of June 1959.

Coming back to the history of Lot 535 , it will be observed that no survey was done to Lot 535 at all until October 1970 when the plaintiffs acquired Section B and applied for a survey. A survey was completed on the 22nd of December 1970. As a result the plan was completed in the form of Exhibit B9. By that time, it is shown that the shape of Lot 535 is that of a parallelogram instead of a rectangle which was a shape taken for granted by all parties.

Mr. Harland in his evidence for the plaintiff said that a Crown Lease could only be issued after a proper survey and the boundary of the lot determined. But up to date no Crown Lease has been issued in respect of Lot 535. Had there been a proper survey in 1954/55 or even in the year of 1959 as it was requested by the 1st defendant the parties will have been fully aware of their respective rights. The architect of the remaining portion never insisted that a Crown Lease be issued and indeed had not even asked for a survey. The 1st defendant asked for a Crown Lease in respect of Lot 535 remaining portion but none was given to him and no proper survey was conducted. However, he was generous enough to praise the officer of the Crowns and Surveys Department in complimentary terms about the on-site discussion and suggested orientation of a boundary line between Lots 562 and 535. Indeed, I say that the 1 st defendant was complacent because after all the meetings and site visits he never had what he originally applied for namely a Crown Lease for Lot 535 R.P. Had the New Territories Administration been efficient in their work and complied with the request of the 1st defendant in his letter dated the 13th of July 1959 Exhibit A2, a proper survey would have been conducted in that year to be followed by the issue of the Crown Lease. This would have determined the shape
of Lot 535 or even the part of the shape of Lot 535. Had the 1st defendant In the Supreme been less complacent he would have insisted on a proper survey being conducted in 1959 and the shape of Lot 535 would have been finally determined following by the issue of a Crown Lease.

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Hong Kong Original
Jurisdiction

Had either of these events taken place, there should be no dispute as No. 4 to the shape of Lot 535. As it stands, no survey had been done until after Judgment of 18 years Lot 535 had been sold and after 16 years the first house on that Mr. Justice S. Li lot had been built. It is 20 years since the date of the auction and a Crown continued Lease had not been issued. This long delay is the basic reason for the present

The gravemen of the plaintiff's complaint is that the shape of Lot 535 should be in the form of the parallelogram as shown in Exhibit B9 and not a rectangle. On this basis the shape of Section A, Section B and the remaining portion of Lot 535 should all take the shape of a parallelogram as shown in Exhibit B9. It is the plaintiff's contention that the lst and 2nd defendants as the equitable owner and the contractual purchaser respectively of the remaining portion of Lot 535 had encroached upon a strip of land on the north eastern corner of Section B to the extent of about 500 odd square feet as shown coloured pink and hatched in black in the plan attached to the Statement of Claim. The reason for the plaintif's contention is that in 1959 the lst defendant built a wall and some structure along that line from the west to the east on the southern boundary of the remaining portion near the line drawn between the points C 2 and A 1 as shown in Exhibit B9.

Further, and in the alternative, the plaintiff contends that if the shape of Lot 535 were that of a rectangle then the owner of Section A, namely, the 3rd defendants had encroached upon the southern border of Section B to the same extent as shown and coloured pink and crossed hatched black in a plan attached to the Statement of Claim. At the close of the evidence the plaintiff applied for leave to withdraw their claim against the 3rd defendant with no order as to costs. This appears to be inevitable in view of the fact that the only evidence adduced by the plaintiff was that the shape of Lot 535 should be that of a parallelogram as shown in Exhibit B9. The defence of the 1st and 2nd defendant is that they deny the shape of Lot 535 as that of a parallelogram. They contend that there had been no wrongful act on the part of the 1st defendant because the wall was built on the assumption that the site was a rectangle and that the southern wall was perpendicular from west to east. Further, when the wall was built in 1959 there was no protest from the predecessor in title of the plaintiff. It is the 1st and 2nd defendant's contention that there had been acquiescence and laches on the part of the plaintiff's predecessor in title and that binds the plaintiff as well. They further contend that on the balance of convenience and justice there should be no equitable relief in the form of a mandatory injunction. On the question of damages the 1st defendant allege that he did what was in the common belief that he was right and therefore all the plaintiffs would be entitled to are nominal damages even if the plaintiffs had proved their case.

In the Supreme Court of Hong Kong Original
Jurisdiction
No. 4
Judgment of
Mr. Justice S. Li
continued

In view of the pleadings, the issues before me are as follows:-

1. Whether the shape of Lot 535 should be in the form of a parallelogram and consequently the sites within this lot namely Section A, Section B and the remaining portion should also be in the form of parallelogram.
2. If the answer to the first issue is in the affirmative, whether there is any encroachment on the part of the 1 st and 2 nd defendant upon the land in Section B.
3. Even if the answer to the 1 st and 2 nd issue be in the affirmative whether the plaintiff should be given any equitable relief in a form of a mandatory injunction and lastly, whether any damages or substantial damages is to be awarded to the plaintiff who allege to have suffered damage because of the delay caused by the 1 st and 2nd defendant in returning their land to him.

With reference to the 1st issue, it will be observed that no proper survey had been conducted by any proper authority until November/December 1970. By this time two boundary stones marking the northern border of Lot No. 524 a plot of land immediately adjoining the southern border of Lot 535 had been laid.

Further, a house on the southern sub-division known as Section A of Lot 535 and owned by the 3rd defendants as well as another house on the northern sub-division known as the remaining portion of Lot 535 had been built. The plaintiff's land known as Section B of Lot 535 is right in the middle of the two sub-divisions, Section $A$ and the remaining portion. Thus at the time of the survey in 1970 the surveyor, Mr. Hau King Chee, was presented with a fait accompli when he was asked to plot out the dimension of Lot 535. For the purposes of his survey he had the data supplied to him by the District Office, Tai Po, as to the length, the width and the approximate area of this Lot 553. All he could do was to use the two aforesaid boundary stones marking the southern and the northern boundaries of the two adjoining lot namely, Lot 535 and Lot 524 respectively.

Starting with the boundary stone marked C in Exhibit B9, he plotted a straight line between point C and the other boundary stone marked BS on Exhibit B9. Again, using point C as a pivot, he plotted a straight line in the north westerly direction to the length of a hundred and 90 feet between the frontage of the structures in Lot 535 and a public road known as King Hau Road thereby obtaining a point $D$ in Exhibit B9. The line CD in Exhibit B9 then form a western boundary of Lot 535. Then from the line $C D$, he plotted a perpendicular line to $C D$ eastward to the length of 71 feet thereby he obtained the point marked $B$ on the line between point $C$ and BS . From that point B , he plotted a straight line parallel to the line CD to the length of 190 feet. Thus he could determine, by his survey, the four corners of Lot 535 are in a position of $A B C$ and $D$ as shown and coloured pink in Exhibit B9. It now shows that the lot is in the shape of
a parallelogram and gives a correct total area of 13,490 square feet In the Supreme approximately.

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Hong Kong Original
Although the District Commissioner is not concerned with the sub-divisions within Lot 535 yet certain measurements were taken of some points chosen at random. Four of these points are significant, namely point A1 and A2 No. 4 along the line $\mathrm{AB}, \mathrm{C} 1$ and C 2 along the line CD . The distance between Judgment of A to A1 is approximately 80 feet and that between D and C2 is approximately Mr . Justice $\mathrm{S} . \mathrm{Li}$ 70 feet. On Exhibit B9 there is a thin line indicating the southern wall of continued the remaining portion built in 1959. The eastern end of this wall is about 103 feet north of the point A1 and the western end of the same wall is about 8 feet from north of the point C 2 . Thus the eastern and the western ends of the southern wall of the remaining portion adjoining Section B are 77 feet on 62 feet respectively from the point $A$ and point $D$. If the line AD were accepted as the northern boundary of Lot 535 and consequently the northern boundary of the remaining portion of Lot 535 then the total area now occupied by the lst defendant on the remaining portion is approximately 4,935 square feet. However, according to the assignment in Exhibit C5 the 1st defendant is only entitled to a total area of approximately $4,437.5$ square feet. Further, the east and west boundaries of the remaining 20 portion, according to Exhibit C5, should be 62.5 feet each in length and not 77 feet and 62 feet respectively.

Again, on Exhibit B 9 , there is another line from the point Cl and A 2 indicating a wall from west to east dividing the two sub-divisions Section A and Section B of Lot 535. The distances between point B point A2 as well as that between point C and point Cl are both 65 feet long. A line from $B$ perpendicular to western line of $C D$ is 71 feet long. This gives the area of Section A , as bounded by the line drawn between point A 2 , point B , point C and point Cl , as approximately 4,615 square feet - a correct area supported by the instrument of assignment Exhibit C3 and an area that the
30 3rd defendants are entitled. Thus if Exhibit B9 were accepted as giving the correct dimensions and adopted as the site plan in the Crown lease to be issued to the plaintiff and the defendants, the following facts are established:-

1. the total area of Lot 535 is approximately 13,490 square feet.
2. the total area occupied by the 1 st defendant is approximately 4,975 square feet.
3. the total area occupied by the 3 rd defendant is 4,615 square feet.
4. the total area occupied and left to the plaintiff is approximately 3,940 square feet. In other words, as far as the plaintiff's entitlement is concerned it is 497.5 square feet short.

According to the evidence of Jacob Wong, Architect, and another witness called by the plaintiff, Section D is short of 514 square feet in area. However, this is not of great significance in principle. Measurements are subject to marginal errors and at this stage I am considering the shape of Lot 535.

In the Supreme The plaintiff relying on Exhibit B9 which is incorporated in a plan attached Court of Hong Kong Original Jurisdiction

No. 4 Judgment of Mr. Justice S. Li
continued
to the Statement of Claim allege that there has been an encroachment by the 1 st defendant to their property to the extent of 497.5 square feet or 514.5 square feet of their property. The plan attached to the Statement of Claim show that the eastern boundary of the remaining portion extend to 77 feet instead of 62.5 feet. As I have said before and I repeat again up to date no boundary stones has been laid at the points $A$ and $D$ of Exhibit B9. Mr. Hau King Chee, the witness, who conducted the survey and prepared Exhibit B9 said that the setting out marks on points A and D were put in accordance with the materials and information supplied by the District Office, Tai Po and that once a setting out mark was put the boundary was final. But he also said that the boundary stones were to indicate the final determination of the boundary of a lot. In cross-examination he failed to give any reasons why the boundary stones were necessary in addition to setting-out marks. Perhaps the evidence of Mr. Anthony John Harland, Senior Estate Surveyor, District Office, Tai Po gives the explanation. He says that when there is an application for a Crown lease he will check the application and then refer the matter to the Crown Land and Surveys Division of the District Commission. Then a survey of the site will be done by the Crown Land and Survey Division. If after the survey, any discrepancy is found between the original sale plan and the proposed Crown lease plan, normally the differences will be settled by negotiation between the Crown and the Crown lessee. It is only after agreement between the Crown and the Crown lessee is reached then a Crown lease plan will be drawn up, boundary stones will then be set up in accordance with the agreed boundary or agreed plan, a Crown lease will be issued. Thus the setting-out marks referred to by Mr. Hau King Chee are really the basic points for the preparation of a setting-out plan for reference in drawing out a Crown lease plan. If the setting-out plan is different from the original sales plan then the differences are to be solved by a process of negotiation. Indeed, Mr. Harland says that in order to decide whether an encroachment on Crown land, and I repeat Crown land, has occurred he would refer to Exhibit B9. Mr. Harland also says that he is not concerned with any encroachment between one sub-division to another of the same lot. He says that before the issue of the Crown lease he will also consult Exhibit B9 in the present case. In cross-examination, however, Mr. Harland concedes that there had been no negotiation between the first or second defendant with the Crown as to the shape of Lot 535. He further concedes that in the contractual relations between the Crown and Crown lessee in this agreement there is still room for negotiation and that up to date no one can say with certainty as to what that the shape of Lot 535 should be a parallelogram. The plan, Exhibit B9, is only a set-out plan.

In view of the evidence the following facts are established:

1. There is certainly a material difference between Exhibit B9 and the original sale plan - the former shows Lot 535 to be a parallelogram, the latter makes out that the same lot is in the shape of a rectangle.
2. It was only as a result of a survey in 1970, some eighteen years In the Supreme after the original sale, that the shape of Lot 535 had been changed to that of a parallelogram.
3. There is no record whatever of any negotiation between the Crown and the Crown lessee relating to the discrepancies in the shape of the same lot.

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Jurisdiction
No. 4
Judgment of Mr. Justice S. Li
4. Apparently, according to the evidence, there is still room for continued negotiation between the Crown and the Crown lessee on this subject.

Up to date, some twenty years after the original sale, no Crown lease has been issued to any Crown lessee involved in Lot 535 . In short, the shape of Lot 535 to date, has not been finally determined. On these facts, Mr . Mills-Owens for the first and second defendants contends that there has been no binding agreement relating to the shape of Lot 535 that it should be a parallelogram. There is certainly room for negotiation and without determining that the shape of Lot 535 it is impossible to say that the first defendant had encroached upon the plaintiff's land. Mr. Gittins, for the plaintiff, however, contends that the shape of the Lot 535 had already been determined by the Crown: Exhibit B9 is the only accurate plan for Lot 535 , there is certainly no alternative proposal by either the first or the
20 second defendant as to what shape the Lot 535 can take, and a parallelogram is the only practical shape that the lot can take.

Having regard to the evidence, particularly the evidence of Mr. Harland, before me I am of the opinion that there is force in Mr. Mills-Owens' argument. In this connection it may be significant to repeat Clause 14 of the Conditions of Sale. It provides that the exact area, boundaries and measurements of each lot shall be determined before the issue of the Crown lease, and the premium and Crown rent shall be when adjusted in accordance with the area and the amount of premium and Crown rent at which the lot was sold. Thus at the fall of the hammer, in the auction sale of Lot 535
30 in 1952 the so-called binding contract between the Crown and the successful bidder, the Edinburgh Hotel Ltd., was no more than an agreement to agree on the exact area, boundaries and measurement of such lot.

In the present case there was certainly a discrepancy regarding the shape of Lot 535 between the original sale plan and the proposed plan by the Crown. The final determination of the shape depends on negotiation between the Crown and the Crown lessee. Hitherto, there has been no negotiation and no finality as to the shape of this lot. There is no certainty as to what would happen after negotiation between the parties. I have no jurisdiction to decide for the parties as to what they may or may not agree, nor do
40 I want to usurp the function of the New Territories Administration or propose to guess what the parties will agree. If the issue of a Crown lease could be delayed for a matter of some twenty years any conjecture as to the future is futile.

It is said that equity looks upon that as done which ought to be done or which is agreed to be done. But the maxim does not extend to things

In the Supreme Court of Hong Kong Original
Jurisdiction
No. 4
Judgment of Mr. Justice S. Li continued
which might have been done nor will equity apply in favour of everybody but only those who have a right to pray that the thing should be done. Thus, where the obligation arises from contracts, what ought to be done is only treated as done in favour of some persons entitled to enforce the contract against the person liable to perform it. The true meaning of the maxim is that equity will treat the subject matter as to colateral consequences and incidents in the same manner as if the final acts contemplated by the parties had been done exactly as they ought to have been, but the contract itself is not valid. The doctrine does not make for the parties' contract different from those they have made for themselves. (See Vol. 14 Halsbury's
Laws of England, 3rd Edition Para. 1001).
Here the contract between the Crown and the Crown Lessee is that the measurement, boundaries and area of Lot 535 are to be determined before the issue of a Crown lease and the way to determine them is by negotiation. Such acts depend upon the parties to the contract and it is not for this court to spell out a contract for them.

There is something more than that. The legal estate of Lot 535 does not vest in the lessees until a Crown lease has been issued. At the fall of the hammer Hotel Edinburgh Limited was an equitable owner. They sub-sold to different persons who cannot have a better title than the original holder. Thus the plaintiffs and all the defendants have merely an equitable interests as tenants in common in indivisible shares relating to the respective areas of Lot 535. The Crown is not concerned with sub-divisions within any lot of Crown land. It appears, therefore, that while each of the sub-purchasers of Edinburgh Hotel Limited may apply for a separate Crown lease yet any negotiation regarding the shape of Lot 535 as a whole requires the concerted action or agreement of all the Crown lessees. Up to now the plaintiffs have not applied for a Crown lease. Even if the plaintiffs had applied for one and applied the setting out plan in Exhibit B9 as the standard for the shape of Lot 535, one can well imagine that the first and second defendants will object to the adoption of Exhibit B9. In this way we are thrown back to negotiation between the Crown and the Crown lessees and we are back where we started. It is also for this reason that I say that I am not prepared to usurp the functions of the parties to the agreement.

For the aforesaid reasons, I feel that the action is premature and the plaintiff fails to establish that the shape of Lot 535 should be that of a parallelogram. Unless and until the shape of Lot 535 has been finally determined to be that of a parallelogram the plaintiff will fail on their own evidence to prove that there had been any encroachment and their action must be dismissed. That disposes of this action.

Once the answer to the first issue is in the negative the other issues are purely academic. However, evidence has been adduced and arguments directed to the various measurements in the sub-divisions of Lot 535 and the damages suffered by the plaintiff. In deference to counsel's efforts and in the event that I am wrong, I would like briefly to refer to the other issues as well.

In the Supreme Court of Hong Kong Original
Jurisdiction
No. 4 Judgment of Mr. Justice S. Li continued
commenced four months before the application for an interim injunction was made. Therefore laches on the part of the plaintiff.

In the case of Inwards v. Baker 19652 Q.B. 29 an injunction sought by the plaintiff was refused because the plaintiff's predecessor in title gave permission to the defendant to build a house upon the land with full knowledge of the former's right and thereby induced the defendant to spend money in building the house under the impression that he would be allowed to live in the house as long as the defendant wished. Similarly, the case of Watt v. Curtland 19671 Ch. 194 and E. R. Ives Investment Ltd. v. High 19672 Q.B. 379 was decided on the same basis that the act done by the defendant was induced by the plaintiff or the plaintiff's predecessor in title with full knowledge of his own right and concession. All these authorities go to show that be it acquiescence or laches they imply a knowledge of the encroachment on the part of the person who seeks the mandatory injunction. Thus in 14 Halsbury Laws of England 638 at para. 1177 the meaning of the term of acquiescence is described. It say that:
"The term "acquiescence" is used in two senses. In its proper legal sense it implies that a person abstains from interfering while a violation of his legal rights is in progress; in another sense it implies that he refrains from seeking redress when a violation of his rights, of which he did not know at the time, is brought to his notice. Here the term is used in the former sense; in the second sense acquiescence is an element in laches.

Acquiescence operates by way of estoppel. It is quiescence in such circumstances that assent may reasonably be inferred, and is an instance of estoppel by words or conduct. Consequently, if the whole circumstances are proper for raising this estoppel, the party acquiescing cannot afterwards complain of the violation of his right. For this purpose the lapse of time is of no importance. He is estopped immediately by his conduct; and hence the effect of acquiescence is expressly preserved by the Limitation Act, 1939. When once the violation has been completed without any knowledge or assent upon the part of the person whose right has been infringed, the legal result is quite different. A right of action has then vested in him which, as a general rule, cannot be divested without accord and satisfaction or release under seal."

In the present case, there is no evidence that either the plaintiff or the plaintiff's predecessor has any knowledge that the shape of Lot 535 is to be in the form of a parallelogram. If the shape of the lot is not in the form of a parallelogram, then there would have been no encroachment on the part of the 1 st and 2 nd defendant. The only indication that the shape of a lot might be in the form of a parallelogram did not arrive until 1970. Indeed, the evidence indicated that everybody took for granted that site was in the shape of a rectangle up to then. Indeed, to impute a such knowledge to the plaintiff or the plaintiff's predecessor amount to expecting the plaintiff to knowing the state of affairs which I do not know even now.

On the issue whether there is any encroachment on the part of the first defendants to Section B I do not have to consider the point whether Lot 535 should take the shape of a rectangle. The action against the third defendant has been withdrawn. If the shape of Lot 535 is definitely that of a parallelogram, it is obvious that there has been an encroachment upon the plaintiff's land in Section B. The encroachment can be easily worked out to be in the proximity of five hundred square feet. No less than three persons have worked out a measurement on the survey, namley Mr. Hau King Chee, Mr. Jacob Wong and Mr. David Anthony Baley. Mr. Hau and Mr. Wong

In the Supreme Court of Hong Kong Original Jurisdiction worked out by comparing these measurements with the measurements contained in the various deeds of assignment.

This leads me to consider further as to the proper remedies I should grant on the basis of the existence of such encroachment. For the first and second defendants, Mr. Mills-Owens contends that the predecessor in title of the plaintiffs had been guilty of laches and acquiescence. It is further contended that such conduct will bar the plaintiffs as successor in title to any equitable remedy even if there had been encroachments. The basis for this contention is that it was as long ago as 1959 that the wall between the remaining portion and Section B was built. No action was taken and no protest was made by the plaintiff's predecessor in title. As a result, the 1st defendant was led to believe that he was entitled to occupy that portion of the land in Section B which is now the subject matter of this action. A large number of authorities have been cited in support of this proposition, but I do not think that it is necessary to refer to all of them in detail.

In a case of Gaskin v. Balls 13 Ch .324 an order of injunction was refused to be extended to a house which had been allowed to remain for 5 years without any complaint. In that case, there was acquiescence on the part of the plaintiff or the plaintiff's predecessor in title who knew of the building covenant restricting the building of the house beyond a certain line.

In the case of Young v. Star Omnibus Co. Ltd. 86 Law Times 41 the plaintiff had knowledge of his right of way at the time the building was erected. Further there was no material damage and as a result an injunction was refused.

In a case of Shepherd Homes Ltd. v. Sandham 19703 W.L.R. 348 an interim injunction was refused because the action for an injunction had

As soon as the plaintiff suspected that the shape is to be in the form of a parallelogram and therefore there has been encroachment on Section B they wrote to the 1st and 2nd defendant about it and action was taken. For this reason, I hold that there was no acquiescence or laches on the partof the plaintiffs so as to bar them from any equitable remedy. But the absence of acquiescence and laches is not the only consideration.

In deciding whether equitable remedies should be granted, there are other factors such as the balance of convenience and whether the plaintiff can be adequately compensated by monetary damages. On the question whether damages is adequate compensation I am of opinion that clearly the plaintiff cannot be compensated by money in the damages the plaintiff suffered.

On the basis that the plaintiffs be given the adequate amount of land as the plaintiffs are entitled, three units of housing project may be built. If the encroachment is allowed to stand, then all the plaintiffs can build in their project is a 2 -unit housing. Taking into consideration the Crown lease having some long years to run and the rise of the property market, I find it impossible to say that the plaintiff's damages by such a difference in units can be adequately compensated by even a substantial sum of money. out houses, water tanks, septic tank and steps. However, I have visited the site and I can see that there are a lot of Crown land available beyond the eastern boundary at the rear of the remaining portion. Further, Crown land is available near and adjacent to the northern boundary of the remaining portion. These out-buildings and tanks can be diverted further down the slope towards and beyond the eastern boundary, provided the New Territories Administration is prepared to rectify the mistake by granting to the first defendant a little bit more of the Crown land. Alternatively, there can be room for extension towards the northern boundary.

Comparing the inconvenience to be suffered by either party, I am of opinion that the balance is in the plaintiffs' favour. It follows that if I have to decide that the shape of Lot 535 should be a parallelogram and therefore sub-division s.B and the remaining portion I would have come to the conclusion that there had been an encroachment on the part of the 1 st and 2 nd defendants. That being so, I would not hesitate to grant a mandatory injunction requiring the first and second defendants to remove the encroaching structures on s.B.

But the plaintiff's claim does not rest on the mandatory injunction. The plaintiff claims that they are entitled to damages for the delay of the building project caused them by the conduct of the 1 st and 2 nd defendants. On this issue I have to look at the plaintiffs' conduct as well. The plaintiff entered into an agreement to sale with their predecessor in title some time in the middle of August. The completion did not take place until the middle of September. There is evidence that the architect of the plaintiff, Mr. Jacob Wong, had surveyed the site some time near the end of August. Indeed he drew a plan to scale and he knew, or he should have known, at that time

In the Supreme Court of Hong Kong Original Jurisdiction

No. 4 Judgment of Mr. Justice S. Li continued
s.B. was not in the shape of a parallelogram. He knew that something was wrong, or he ought to know, that something was wrong. This knowledge can be imputed to the officers of the plaintiff company. Once they knew, they should not have gone on with the completion of the transaction. Mr. Jacob Wong frankly admitted that having found that there had been an encroachment upon s.B he was expecting the encroaching party to rectify the position. There is, of course, nothing wrong in this from of expectation. He is certainly entitled to expect a grievance to be rectified, and a wrong to be put right. However, as a reasonable and prudent man he should have expected that even rectification takes time. He is not to expect the defendants to submit to his demand without any dispute whatever, particularly in view of the uncertainty of the shape of Lot 535. A limited company can only act through its agents and officers and the knowledge of the agent must be imputed to the knowledge of the plaintiff company.

I do not think that I am being unfair to the plaintiff when I say that some of their directors are solicitors and solicitor's clerks and they must have received a report from Mr . Jacob Wong and had the benefit of his professional knowledge and advice and to have received a copy of the plan of his survey in August 1970. Thus before completion they knew that there was something wrong with this site and some time would have to be spent in having the proper rectification. Nonetheless they decided to go on with the completion. In short, they were hoping that the rectification would come sooner, they were speculating and they have brought upon themselves a law suit. If a mandatory injunction were to issue they would have the position rectified.

I do not feel that they can justifiably complain for the delay. They should have expected that. On the claim for damages I would have granted a nominal damage only. If I am wrong in this decision then some inquiry would have to be made to work out the proper damages that the plaintiffs are entitled.

In conclusion, and in short, I find that this action is premature and must be dismissed, because I cannot find with certainty that the shape of Lot 535 should be in the form of a parallelogram. If there is no parallelogram there is no encroachment. However, if I am wrong in holding that I am not certain as to the shape of Lot 535 then I have to hold that there has been an encroachment and the plaintiff is entitled to a mandatory injunction for the removal of the structures that had been erected upon the encroached land in s.B. The plaintiffs, for reasons I have given, are not entitled to any substantial damage other than a nominal damage for the delay in rectifying the position.

In view of the aforesaid, the action by the plaintiff is therefore dismissed with costs.

(Simon F. S. Li)<br>Puisne Judge.

Gittins, Q.C. and Denis Chang (Peter Mark and Co.) for plaintiff
R. Mills-Owens (J.S.M.) for 1 st and 2 nd defendants

Robert Tang (K. Y. Woo and Co.) for 3rd defendant.

1971, No. 2564 In the Supreme Court of Hong Kong Original Jurisdiction No. 4 Judgment of Mr. Justice S. Li
BETWEEN THE HOUSE OF DIOR LIMITED Plaintiff continued
IN THE SUPREME COURT OF HONG KONG ORIGINAL JURISDICTION

and<br>DAVID SEE CHAI LAM $1 s t$ Defendant<br>THE KA WAH BANK LIMITED $2 n d$ Defendant

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## BEFORE THE HONOURABLE MR. JUSTICE LI IN COURT JUDGMENT

The 12th day of March, 1973

This action having on the 9th day of October, 1972 and on subsequent days thereafter, been tried before the Honourable Mr. Justice Li without a jury, at the Supreme Court of Justice, Hong Kong and the said Mr. Justice Li having on the 12th day of March, 1973 ordered that the action against the 1 st and 2 nd Defendants be dismissed with costs.

(Sd.)<br>B. L. Jones<br>Assistant Registrar.

In the Supreme Court of Hong Kong Appellate Jurisdiction Civil Appeal No. 11 of 1973
(on Appeal from O. J. Action No. 2564/71)

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 1
Notice of Motion of Appeal continued
2. That in holding, as he did, that the boundaries could not be fixed prior to the issue of the Crown Lease the learned judge:-
(a) misapprehended the effect of Clause 14 of the General Conditions of sale which provides that "The exact area, boundaries and measurements of each lot shall be determined before the issue of Crown Lease . . . . . . . .";
(b) overlooked the fact that with the survey by the Crown Lands and Surveys Office in November/December 1970 (the results of which were embodied in Exhibit B9) the boundaries of the Lot had already been determined before the issue of the Crown Lease in so far as the contractual rights of the parties are concerned;
3. That in holding, as he did, that the final boundaries of the lot could only be determined by negotiations between the Crown and the Crown lessee and that therefore no encroachment could be proved until these negotiations had taken place and the final boundaries agreed upon:-
(a) the learned judge confused the contractual rights between the parties inter se and the rights of the Crown Lessee vis-a-vis the Crown;
(b) the learned judge confused the contractual rights of the parties with future rights which might or might not be obtained as a result of negotiations.
4. That on the evidence before the learned judge the Appellant had proved on the balance of probabilities that the shape of the Lot was and/or ought to be a parallelogram.
5. Further and/or alternatively that on the evidence before the learned judge encroachment as alleged by the Appellant has been proved on the balance of probabilities.
6. Further and/or alternatively that on the evidence before the learned judge the Respondents would still have encroached on the Appellant's land even if the shape of the lot was not a parallelogram but a rectangle with the base line BC in Exhibit B9.
7. In holding as he did that even if there was an encroachment he would have awarded only nominal damages in respect of the delay, the learned 30 judge erred in fact and in law in that:-
(a) On the evidence substantial damages had been brought about by the encroachment on the part of the Respondents in that the Appellant had been and continues to be delayed in the development of Section B;
(b) The Appellant was not in any way responsible for the delay;
(c) The Appellant was quite entitled to purchase the land for the purpose of redeveloping the same even if the Appellant knew or ought to have known that at the time Section B was not in the shape of a parallelogram.

AND FURTHER TAKE NOTICE that the Appellant would ask the Full In the Supreme Court to make the following orders:-
(a) That the Appeal be allowed and that judgment be entered for the Appellant as claimed with damages to be assessed by the learned Trial Judge and/or Registrar;
(b) That the costs of this Appeal and of the Court below be paid by the Respondents:

No. 1
Notice of Motion of
(c) Such further and/or other orders as the Full Court may think just.

AND FURTHER TAKE NOTICE that the Appellant intend to set the 10 appeal down in the Appeal list.

(Sd.) Denis Chang<br>Counsel for the Appellant.

Dated this 28th day of March, 1973.

Civil Appeal No. 11 of 1973

## IN THE SUPREME COURT OF HONG KONG <br> APPELLATE JURISDICTION <br> (On appeal from O.J. Action No. 2564 of 1971)

BETWEEN

THE HOUSE OF DIOR LIMITED Appellant
and
DAVID SEE CHAI LAM Ist Respondent
THE KA WAH BANK LIMITED 2nd Respondent

In the Supreme Court of
Hong Kong Appellate Jurisdiction

No. 3
Respondents' Notice

## RESPONDENTS' NOTICE

10 TAKE NOTICE that the 1st and 2nd Defendants (1st and 2nd Respondents) intend upon the hearing of the Appeal under the Plaintiff's Notice of Motion of Appeal dated 28th March 1973 from the Judgment of the Honourable Mr. Justice Simon Li given on the 12th day of March 1973 to contend that in the event of the said Appeal being allowed in whole or in part the said Judgment should be varied by a finding that

1. the claim of the Plaintiff is barred by the laches and/or acquiescence of itself and/or of its predecessors in title from the relief sought in the Amended Statement of Claim
2. further or in the alternative the Plaintiff should not be granted

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 4
Judge's Notes BETWEEN
IN THE SUPREME COURT OF HONG KONG ORIGINAL JURISDICTION
Action No. 2564 of 1971

| THE HOUSE OF DIOR LIMITED | Plaintiff |
| :--- | :--- |
| $\quad$ and |  |
| DAVID SEE CHAI LAM | $1 s t$ Defendant |
| THE KA WAH BANK LIMITED | 2nd Defendant |
| SIU SEE LEONG and |  |
| EVA SIU CHENG YEE WAN | $3 r d$ Defendants |

THE HOUSE OF DIOR LIMITED Plaintiff
and
1st Defendant
2nd Defendant
3rd Defendants

9th October, 1972
Coram: Li, J. in Court @ 10 a.m.

## JUDGES NOTES

Gittins, Q.C. and D. Chang (Peter Mark \& Co.) for Plaintiff
R. Mills-Owens (J.S.M.) for 1st and 2nd Defendants
R. Tang (K. Y. Woo \& Co.) for 3rd Defendant

Gittins:
Agreed bundles A, B, C and D.
$\mathrm{A}=$ Letters between parties and Government.
B $=$ Plans.
$C=$ Documents of title.
$\mathrm{D}=$ Correspondence and other documents.
Damages can be referred to Registrar if Plaintiff wins.
B1 - red area $71^{\prime}$ by $190^{\prime}$.
Cl - the same as B 1 .
Crown land 15/7/52 auction
C 1 - is subject matter of No. 11 in B1.
Conditions of sale
Clause 13 and Clause 14 of Cl .
Up to date no Crown lease issued yet.

Gardiner for Edinburgh Hotel Ltd. purchased it.
C2 - Memo of Agreement.
C3 - Carving out by owner of lot.
16/2/56 - Section A
$71^{\prime}$ by $65^{\prime}=4,615$ sq. ft.
Balance $71^{\prime}$ by $125^{\prime}=8,875$ sq. ft.

In the Supreme Court of Hong Kong Appellate
Jurisdiction
No. 4 Judge's Notes continued

C4-23/2/56-R.P. sold.
C6 - Section B sold to Plaintiff's predecessor $71^{\prime}$ by $62.5^{\prime}=4,437.5$ sq. ft. ( $22 / 6 / 57$ )

C5 - The ultimate R.P. sold to 1 st defendant $71^{\prime}$ by $62.5^{\prime}=4,437.5$ sq.ft. $(22 / 7 / 58)$
C7 - Conveyance by Plaintiff's predecessor to Plaintiff of Section B (26/8/65)
C8 - Agreement 13/8/70 - to Plaintiff
Statement of Claim
Para 1 - admitted by D1 and D2 - since Sept. 1970
Para 2 - denied
Para 3.
para 6A - allegation - only wrongful.
Statement of Defence 23/2/72
Para: Have to prove dimensions and shape
Para 5: wrong building
Para 7(i) 71' correct according to C9 and C10. But official dimension subject to Para 13 and 14 of Conditions of Sale.
Statement of Defence by 3rd defendant
Para 3 - Plan C3.
Para 3(7) based on false premises
Bundle
B6: Our plan showing encroachment
B7: Our plan showing an attempt to make use of land.
B8: Supplied by Director of land and Survey in conjunction with letter dated 4/12/70 A8
B9: Further clarifies B8
Our case rests on Exh. B9.

| In the Supreme <br> Court of <br> Hong Kong <br> Appellate <br> Surisdiction | $11.30 \mathrm{a} . \mathrm{m}$. | Adjourned. |
| :--- | :--- | :--- |
| No. 4 <br> Judge's Notes <br> continued | Gittins: | Lesumes, appearances as before. |
|  | The 1,350 sq. ft. on permit |  |
| Defendants |  |  |
| See wrong alignment of 1 st defendant's wall Indicate the <br> Government's view as to area of Section B site. |  |  |

## Bundle A

Al - concerns R.P. - architect
A2 - concerns
A3 - concerns to 1st defendant
The plan is in B 2 .
There doubt as to where northern boundary ended.
A10: Forwarded B9.
A18: Letter J.S. and M.
A36: De Ville to J.S. \& M.
Defendants deny allegation in para 4 of D36.
A39: Letter from J.S. \& M.
A41: Plaintiff suggested meeting.
A44-5: Letters to Government departments. 20
Bundle D - Relevant to damages
D41 - Reason for refusal to grant permit to commence work.
Comments on defence
Para 8.
No complaint because no one know there was an encroachment.

Para 9.
Acquiescence implies knowledge of encroachment.
Para 10.
We thought they were doing the right thing - build 30 within their own area.

Look at
Limitation Ordinance Cap. 347 Section 7 (2) Well within limit to recover land Section 36.
12.50 p.m. Adjourned to 2.30 p..m.

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 4 Judge's Notes continued
(Sgd.) Simon F. S. Li
2.30 p.m. Resumes, appearances as before.

Mills-Owens -
Misunderstanding in agreed Bundles

14 Hals Law 3rd Edition 638
Para 1177 - 1180

- in particular last sentence of 1178. Plaintiff must know of his own legal rights. If knew plaintiff were entitled their doctrine applicable. Otherwise not. Can only acquiesces with something you know about.
See
Ives v. High 19672 QB 379.
Westgate asked to remove premises. Distinguished from present case.
See
Ramsden v. Dyson LRIHL 1866129 at 140
The previous owner must have knowledge of infringement of right stood by in silence not enough

14 Hals. p. 241 para 449
Plaintiff must be found to have stood by in knowledge See

Lyrich v. Commissioner of Sewers of the City of London

Vol. 32 ch. 72 at 84.

No knowledge till plans given.
Snells Equity 26th edition P. 625-6
Also 629
Plaintiff's predecessor in title had no knowledge.
Inward v. Baker
19652 QB 29
No acquiescence or laches in this case.
Def: If plaintiff wins only nominal damage and nothing else.
See
Snell Supra P. 705
21 Law Halls. P. 377-8 Para 792.
Evidence:
We have witnesses including Government officers.
On 9/9/72 plaintiff made earlier application affidavit to Registrar under 0.38 r.2.

Ask for affidavit of De Ville to be admitted.
See 0.41 r. 9 .

## Mills-Owens:

Evidence must be viva voce.
Application to Registrar - thrown out. Deponent should be 20 available to cross-examine. De Ville has no personal knowledge of dispute between parties.

Tang:
Affidavit does not affect D3
No strong objection.
Application refused in view of the fact that this evidence strongly contested and witness not available for crossexamination.
Anthony John Harland (Sworn) P.W. 1
District Office Tai Po - Senior Estate Surveyor since 30
January 1972. Senior Estate Surveyor since April 1971.
Brought file relating to Lot 535 DD 187 - file No TB 33/1/52 II.

There's no sale plan attached. Only plan relating to plot at time it was sold. This is it. This is the original of which B1 is copy and Cl is copy.

Looking at the plan the patch coloured in small scale on In the Supreme face looked like a rectangle.

I see conditions of sale $C 1$. The land sold at a time when plan lacking. Lot required adjustment. There could be alteration of shape - Condition 14.

No Crown lease had been issued. If Crown lease applied for normally done by Land Surveyor.

I have in file a map prepared by Crown Land and Survey dated $16 / 12 / 70$ or $22 / 12 / 70$ - Exh. B9. If Crown Lease applied for I have little to do with it. Application goes to Director of Survey.

I have copy of application by plaintiff for permit - Exh. B11. The area of $1,350 \mathrm{sq}$. ft. as arrowed on plan. The black lines set out boundaries of Section B as based on Crown Land and Surveys Plan concerning only West and East Boundaries. The thin line is a wall. The lines marked by one of map draughtsman.

I have a Crown rent permit given to Mr. and Mrs. Siu in respect of Section A.

Permit - Exh. E.
Also Crown Land Permit to R.P.
Mr. Lam.
Permit - Exh. F.
4.35 p.m. Adjourned to 10 a.m.
(Sgd.) Simon F. S. Li

10th October 1972
10 a.m. Resumes, appearances as before.
Anthony John Harland (R.F.O.) P.W.1.
Chang: Bundle D as changed
Now agreed.
Evidence-in-chief continued.
The above-mentioned are the 3 Crown permits.
I see Exh. E - permit to Section A of Lot 535 and plan attached thereto. On this plan is a parallelogram. This based on plan of Crown Land and Surveys - Exh. B9. This plan is only plan on survey conducted by Crown Lands.

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 4 Judge's Notes continued

When a Crown Lease is issued, I as Senior Estate Surveyor attached to N.T. Administration our office will check application then refer to Crown Lands and Survey division. They will undertake survey for us. If there are discrepancies between original sale plan and the proposed Crown Lease plan these discrepancies are normally settled by negotiation. They are usually of minor nature. When agreement reached between parties the proper Crown Lease plan are drawn up by the Crown Lands and Surveys Office. Then Crown Lease issued. Prior to issued boundary stones are fixed in accordance with agreed boundaries.

The discrepancies may happen in respect of area. Crown Lease not issued until developments completed. There may be cases where buildings built already. Adjustments will be made. The negotiation between Crown land and Crown Lessee.

I see Exh. B9. I see points $\mathrm{A}, \mathrm{B}, \mathrm{C}$ and D on plan. They are co-ordinates of the lot 535 indicating the area occupied. The sale plan is consulted. To decide whether there's any encroachment on Crown Lands by this lot. I would refer to Exh. B9 on A, B, C and $D$. Similarly to find out if any discrepancies. Thus before issue of Crown Lease I would consult B9.

Cross-examination by D1 and D2.

1. You have original sale plan Exh. B1?

A photo copy.
2. It gives precise area of $13,490 \mathrm{sq}$. ft .?

Yes.
3. On mathematics the $71^{\prime}$ by $190^{\prime}$ that would only be a rectangle?

I am inclined to agree. There can be a small discrepancy. Mathematically I agree.
4. The Crown Land and Surveys plan differ from sale plan? 30 There is a slight discrepancy.
5. If you have some total area and some length of $190^{\prime}$ then base line $72.45^{\prime}$ would involve moving the line some $14 \frac{1}{2}^{\prime \prime}$ ?
Yes, possibly.
That's material difference for the lot owners.
6. Shape of lot changed since sale?

Yes.
7. Changed at time of survey in 1970?

Yes.
8. Had there been negotiation with D1 and D2 about change of shape?
I have no record of such.
9. Crown Lease not yet issued?

In the Supreme
Court of
Hong Kong Appellate Jurisdiction

No. 4 Judge's Notes continued

No.
10. Contractual relations between Crown and Lessee in agreement of sale still room for negotiation?
True.
11. To date no one can say what shape lot should take? Not with certainty.
12. One consideration in negotiation the finish building not disturbed?

Correct.
13. Crown would avoid having to have house pulled down? In this issue correct. Now practice all building lots clearly defined before the lot is sold. The problem will not arise now.
14. Is G.N. 364 of 1934 still applicable?

To a certain extent this deals with building area of the lot.
15. Up to date version of that G.N.?

Not to my knowledge.
16. See Exh. A28, implied G.N. 364 amended?

Administratively changed to advantage of developer.
A lot of provision superseded by Building Ordinance.
17. Met Mr. Owen and Mr. Lam in August?

Yes.
18. Showed Owen the plan of house built on Section A of 535?
Yes. It is here.
Plans of house - Exh. G1 and G2.
19. Plans submitted in 1953 ?

In October 1953 and been in custody since.

In the Supreme
Court of Hong Kong Appellate Jurisdiction

No. 4 Judge's Notes continued
20. Approved?

Approved in due course December 1953 with minor amendments.
21. In your opinion building in Section A wrongly aligned?

Possibly, yes.
22. Could have been partly on Section B?

Section A did not come into existence till building completed i.e. lot not yet divided till then.
23. Decided lot to be parallelogram?

Not decided. Only set out plan.
24. The iron spikes etc planned in 1970?

Yes. These on plan.
25. When boundary stones put up.

Only those for Lot 524 . I don't know when put up.
26. You took measurement of lot?

No.
27. You have plans of house in R.P.?

No. They have been lost.
Know have approved.
28. Have you date of their submission and approval?

Five submitted $28 / 10 / 58$. Approved on $14 / 11 / 58$.
29. Possible other permits may be misplaced?

There's such possibility.
30. Look at Exh. A1, is that the occupation permit for house on R.P.?
Yes.
31. Exh. A2, is request for Crown Lease?

Yes.
32. Any answer to that letter?

On 13/7/59 letter of application sent. But I can find 30 no record of reply.
33. No boundary stones for Lot 535?

No.

In the Supreme Court of Hong Kong Appellate Jurisdiction If you refer to Exh. B9 you'll see if this house
way the house will come straight on the road.
2. Why?

Difference between plan and actual house on the ground.
3. Nothing to stop owner to build like what's in Exh. G1? No.
4. The R.P. means what remains after taking out Section A? Yes.
5. The area and dimension of R.P. depends on area and dimension of Section A?
Yes.
6. No division of lots till Section A finished?

Correct.
7. Possible to carve rectangle out of larger parallelogram? Yes.
8. Look at Exh. C3, the plan shows conveying a rectangle? True.
9. Then R.P. be what remains after taking this rectangle out?

Correct.
10. G1 shows building on rectangular piece of land?

Basically yes. From plan reference made to base of $50^{\prime}$.
11. Can you say if building moved since 1956 ?

Not that I know.
12. See Exh. B9, why B and C used as co-ordination?

Lot 535 adjoins Lot 524 - B and S boundary stones.
13. The northern border of Lot 535 Crown Land?

Yes.

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 4
Judge's Notes continued
14. Inaccurate to say common boundary between Lot 562 and Lot 535?

Correct according to Exh. B9.
15. When Lot 535 sold, lot 562 used?

Not to my knowledge. Not lot marked on sale plan north of Lot 535 .
16. To carve out $190^{\prime}$ by $71^{\prime}$ how to do it?

I am not professional land surveyor.
17. You choose Lot 524 as starting point?

As indicated in sale plan it's the case.
Re-examination - nil.
Leung Shou Chun (Affirmed) P.W.2.
Of Flat A Everwell Gardens 18th floor Homantin. Attached to Crown Lands and Surveys Office as Senior Land Surveyor N.T. A M \& S.I.

Files relating to Lot 535 of D.D. 187 brought. I see letter 2/10/70 from Jacob Wong to Crown Lands and Survey Office. I read it now. It requested setting out of whole lot of Lot 535 .

Exh. A7 is reply to letter $2 / 10 / 70$.
Letter - Exh. H.
The lot was partly set up in first instance in Exh. B8. Subsequently requested more detail. As a result Exh. B9 was given. That set up the lot. I was not personally concerned with the survey. Mr. Tyler was the person. Mr. Hau King Chee was the person who actually did the survey. My knowledge in this matter derive from the records.

In $\mathrm{B} 9, \mathrm{~A}, \mathrm{~B}, \mathrm{C}$ and D indicate boundaries of Lot 535. A1 and A 2 indicate the points on the line $\mathrm{A}-\mathrm{B} . \mathrm{C} 1$ and C 2 on line $\mathrm{C}-\mathrm{D}$.

The significance of these points show the lines facing Section B of this Lot. A1-C2 line represent a wall. From A1 thin line is approximately $3^{\prime}$. From thin line to C 2 about $8^{\prime}$. Thus the thin line is not a line joining A1 and C2.

Thus from $A$ to the wall (thin line) about $80^{\prime}-3^{\prime}$ and from D to wall $=70^{\prime}-8^{\prime}=62^{\prime}$.

The line near A 2 to Cl is a fence. In middle is a gate
From end of fence to Cl is $5^{\prime}$
From end of fence to A 2 is $1^{\prime}$.
The distance between B and A 2 is $65^{\prime}$
The distance between C and Cl is $65^{\prime}$

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 4
Judge's Notes
continued

The distance between Cl and wall about $=\mathrm{C} 1$ to $\mathrm{C} 2+8^{\prime}=63^{\prime}$
The distance from A 2 to wall $=48^{\prime}$ i.e. $\mathrm{A} 1-\mathrm{A} 2+3^{\prime}$.
C and B.S. (boundary stone) on same point.
But B and B.S. (boundary stone) south east not on same point.

I had been to Section B of Lot 535 a few weeks ago. Along road from Keng Hau were control points for surveys. When carry out survey we look at site and carry out control survey i.e. put permanent marks on ground to determine its position in terms of co-ordinates. Then use instrumental measurements depending on nature of survey we do computation from measurements. May have to visit site again to execute the setting out or more measurements for quantity determination or other survey purpose.

I would go to site.
I have no doubt as to the accuracy of survey in Exh. B9. This is the only survey done.

The distance from A to wall $=77^{\prime}$
The distance from D to wall $=62^{\prime}$
The area bounded by $\mathrm{A}, \mathrm{D}$ and wall is $4,935 \mathrm{sq}$. ft . odd.
The area bounded by wall and fence approximately $4,225 \mathrm{sq} . \mathrm{ft}$.
i.e. $\mathrm{A} 1-\mathrm{A} 2+3^{\prime}+1^{\prime}=49^{\prime}$
$\mathrm{C} 1-\mathrm{C} 2+8^{\prime}+7^{\prime}=70^{\prime} \quad$ mean $59 \frac{1}{2}^{\prime}$
$59 \frac{1}{2}^{\prime} \times 71^{\prime}=4,230 \mathrm{sq} . \mathrm{ft}$.
The area of Section A approximately $4430-4440$ sq. ft .
All aforesaid rough calculations.
No point to indication sub-divisions of a lot. Exh. B9 does not show it.

I see Exh. A10 and say G.B.S. is Government Building Surveyor P.O. T.P. Planning Officer Tai Po. C.E.H./N.T. Chief Engineer Highway, N.T. Tyler my predecessor.

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 4
Judge's Notes continued

I see Exh. B 8 , the dotted line between Cl and A 2 indicates a foot path. This is not shown on Exh. B9. The corners A and $D$ not shown because at first we thought it sufficient to show boundaries concerning Section B.

We prepare the plan for Crown Lease.
Adjourned to 2.30 p.m.
(Sgd.) Simon F. S. Li
2.30 p.m. Resumes, appearances as before.

Leung Shou Chun (R.F.A.) P.W.2.
I now remember the fence to Cl is $5^{\prime}$. Thus the area of 10 $4,153.5$ subject to marginal error of $100 \mathrm{sq} . \mathrm{ft}$.

The marginal error of A to wall subject to marginal error of $1^{\prime}$.
For a parallelogram, the area calculated by multiplying length and height of it. It could be $71^{\prime}$ by length of the side.

The formula for calculating the right angle triangle by using the co-ordinates of the vertices of the polygon.

Cross-examination.

1. In working an area of a right angle triangle?

Yes.
2. Look at Exh. B1, that's sale plan?

Yes.
3. Dimension $190^{\prime}$ by $71^{\prime}$ ?

Yes.
4. That must be a rectangle?

Yes.
5. The shape of lot is now a parallelogram?

Yes.
6. Changed in 1970 ?

Yes.
7. Change in survey done in that year?

Yes.
8. On what occasion you visited land that year?

Can't remember exact date.
9. In last 3 months?

In the Supreme Court of Hong Kong Appellate
Jurisdiction
No. 4
Judge's Notes
continued Section B?

The foot path must be old feature. But by time B9 prepared the survey up-dated by putting the fence. In other word used basic survey plan, when prepared B8. Not so B9.
12. Thus B8 completely out of date?

Yes. As far as details are concerned.
13. What's position regarding B9?

Details up-dated.
14. Why say that?

Because addition of the fence. Prepared after actual survey.
15. Was there the fence when you visited the site?

I remember the wall cover by green plants. But I have no doubt that it's a fence.
16. The distance from B-C and A-D you're sure?

Yes. 72.45'.
17. Different from sale plan?

Correct. In that plan they were $71^{\prime}$.
18. The designation of points $\mathrm{A}, \mathrm{B}, \mathrm{C}$ and $\mathrm{D} \mathrm{A} 1, \mathrm{~A} 2$ and Cl ; C 2 all done in 1970 ?
Yes.
19. Exh. H?

Dated $2 / 10 / 70$. In fact $7 / 9 / 70$.
20. Reply to letter 7/9/70?

We then wrote to D.O.T.P. dated 30/9/70. Reply to client 30/9/70.
21. Second letter from Jacob Wong?

Yes. We referred to D.O.T.P. again. Asked for some information. Received his reply dated 20/10/70.
34. Your knowledge derive more from record than site visit? In the Supreme Correct.
35. Your department make mistakes as to boundary from time to time? Court of Hong Kong Appellate Jurisdiction No. 4 Judge's Notes
36. Look at Exh. A3 it shows Lot 562 and Lot 535 has continued common boundary?
Yes.
37. Yes according to Exh. B9 there's Crown land in between?

Cross-examination by D3.

1. Look at Exh. I there you have a missing strip of Crown land of $2,000 \mathrm{sq} . \mathrm{ft}$.?
Yes.
2. Has the land been recovered?

Yes. Since survey in 1970.
No survey made between 1964 and 1970.
3. In Exh. C1 or B1 is shown Lot 535 having boundary with Lot 524?
Yes.
4. There is no mistake to that?

No. It's in the sale plan. There's no relation with survey.
5. So you measure a $190^{\prime}$ from Lot No. 524?

Yes.
6. Look at Exh. B9, in north Section A is fence. Can you tell distance between northern wall of building to fence?
About $6^{\prime}$ to $7^{\prime}$.
7. Thickness of fence?

I can't tell thickness.
Re-examination - nil.
Hau King Chee (affirmed) P.W.3.
Of 8 Sixth Street ground floor Tai Wai Shatin. Attached to Crown Lands Survey Office as Survey Assistant Class II. Been so for more than 10 years. Having wide experience in surveying Hong 10 Kong.
Have files relating to Lot No. 535 DD 187 with me.
I see Exh. B8 and say I personally visited the site. I first visited the site about middle of November 1970 with purpose of carrying out our surveying work. Went as a team. I discovered boundary stones. These are indicated by small square marked "BS" on Exh. B8. Apart from these there was another stone embedded in wall at south western corner of Lot No. 524.

Having discovered these I started measurements. Had instruments. After that I surveyed corners of walls and houses, also the fences. Then we had to go back to office to work further and calculate the length. I visited site several times. Can't remember exactly. As result B 8 was made.

I see Exh. B9. Between making of B8 and of B9 I visited site again. We went there for purpose of setting out the positions of A and D on Exh. B9. I provided material for making of Exh. B9. which was made as result of our survey.

The iron spike at point B was put in before Exh. B8 was prepared. Iron spike in A put in on 20/12/70. The iron spike were put in before finalisation of Exh. B8.

Adjoined to 10 a.m.
(Sgd.) Simon F. S. Li
11th October 1972
10 a.m. Resumes, appearances as before.
Hau King Chee (R.F.A.) P.W.3.
On Exh. B9 there are 2 dates viz 16/12/70 and 22/12/70 and say the iron spike on "A" was placed in morning of $22 / 12 / 70$. In that afternoon I returned to office and added A and D on the plan and finalised Exh. B9.

Point " D " is a red cut mark in Exh. B9. This was put in In the Supreme also on $22 / 12 / 70$ in the morning.

Points A, B, C and D indicate the boundaries of Lot No. 535.
There is a working diagram which I prepared.
Diagram - Exh. K. Court of Hong Kong Appellate Jurisdiction

From Exh. K, Exh. B8 was made. There is another diagram I made.

Diagram - Exh. L.
Together with Exh. L and Exh. K I. made out Exh. B9.
I am satisfied with the accuracy of the measurements from which Exh. B9 was made.

Cross-examination by D1 and D2.

1. You have no qualification?

No academic one.
2. When were boundary stones of Lot 524 put?

Can't remember.
3. What's purpose of boundary stones?

To serve as final boundary of a place.
4. What's difference between boundary stones and setting out marks?
The former indicate the final determination of boundary of the lot. The latter are marks put down in accordance with the plan.
5. The distinction is that the former is final and the latter is not?
We put setting out marks in accordance with materials or information supplied by D.O.T.P.
6. Quest (5) repeated?

But once setting out mark is put the boundary is determined and also final.
7. Then why have boundary stones?

That I am not clear. Only my superior know.
8. Mr. Harland knows?

Possibly.

In the Supreme Court of
Hong Kong A ppellate Jurisdiction

No. 4 Judge's Notes continued
9. What fence did you survey?

From the square near Al northward to beyond A.
10. From your examination of this Lot, the 3 sections $A$, $B$ and R.P. all encroached on Crown land?
I do not understand you.
11. Section A has a swimming pool on Crown land?

Yes.
12. The R.P. also occupy an area between the R.P. Lot and the road?

Yes.
13. Did you draw up Exh. B9?

No.
14. You are one of team who took measurements?

I was $\mathrm{i} / \mathrm{c}$ of the team.
15. Look at Exh. B9 what is nature of barrier between Section A and Section B?
My survey concerns the whole lot I do not know which is Section A and which is Section B.
16. I merely want to know the nature of line near to Cl and A2 on Exh. B9?
It is a fence. In my memory it's wire netting.
17. Who put in on the plan Exh. B9?

I gave information to my officers to put it down. Told them wire fence.
18. What is the plan for?

I made it for Mr. Tyler to ascertain the boundary of Lot No. 535.
Plan - Exh. M.
19. When did you prepare it?

Immediately after my first survey of site.
20. In mid November 1970?

No. End of November 1970. This for reference only.
21. But what is described in Exh. B9 as a fence is described in Exh. M as a wall?
True. Half wall half fence.
22. Why different?

The scale in B9 is different - $1^{\prime \prime}$ to $100^{\prime}$.
There are in fact 2 lines - one represents the wall and one the fence. The distance between the wall and fence

In the Supreme Court of Hong Kong Appellate Jurisdiction about 1'. Thus the wall ignored in Exh. B9.
23. When did you last visit the site? On 22/12/70.
24. This working drawing Exh. M, what is purpose of different dimension points?
Mainly for to ascertain boundaries of Lot 535 .
25. But there are on Exh. M. at least 2 sets of figures giving the total area of 13,490 sq. ft.?
Yes.
26. These are 2 alternative computations to get some result? Yes. I was instructed by Tyler to do so for him to ascertain the boundary.

Cross-examination by D3.

1. To decide rather than ascertain?

Yes. You can say "decide".
2. What conditions have to be fulfilled before boundary stones set down?
I am not clear.
3. When asked to survey were you given sales plan of the lot?
No.
4. Given any information about this lot?

All informations obtained from District Office Tai Po and passed to me.
5. What were your informations?

He told me the location of the site. Later I had the use of a plan supplied by D.O.T.P.
Plan - Exh. N.
6. At that time did Exh. N have area coloured pink?

Yes.
7. You knew then the significance of the pink area?

Indicated there as Lot 535.

In the Supreme Court of Hong Kong A ppellate Jurisdiction No. 4 Judge's Notes continued
8. From which you know dimensions?

Yes.
9. Compare Exh. N with Exh. B9, on Exh. N Lot 535 has common boundary with Lot 562 . In Exh. B9 there's a strip of Crown land between these two lots, why is B9 different from the plan Exh. N.?
The plan in B9 is correct.
10. Look at Exh. M two sets of possible figure coming to some area 13,490 sq. ft.?
Before final decision no one can tell which is possible. 10
11. One of them chosen?

The red lines represent the decision.
12. Thus there were 3 possible ways?

Yes. Two give some area of 13,490 and one gives 13,750 sq. ft.
13. Is Exh. B9 based on red A B C D in Exh. M?

Yes.
14. How is red A B C D different from the black a B C d in shape?
The difference shown by dotted line in red and in blue. 20
15. What is distance from d to green D in Exh. M ?

About $3^{\prime}$ Green D and red D same position.
16. Distance from A to a ?

About $3^{\prime}$.
17. Thus these are the 2 possible ways to get same result? Yes.
18. B - C line in both ways remain the same?

Correct.
To Court:
In Exh. B9. I was responsible in putting spikes line on A1, 30 $\mathrm{A} 2, \mathrm{Cl}$ and C 2 . These were derived from Exh. B 8 when first survey merely marked up to $\mathrm{A} 1, \mathrm{~A} 2, \mathrm{C} 1$ and C 2 . These four figures only to enable me to draw 2 parallel lines of a certain distance apart.

At time I surveyed site, point $B$ had no boundary stone. Thus I had to put iron spike. However next to $B$ and beyond there was a boundary stone.

Exh. M. was drawn in such way because at the time was to In the Supreme decide that the front of the Lot be the same in length as to the Court of back of the Lot viz. 190.

Re-examination.
Recently I had been to site again. On 4/10/72 I went there Judge's Notes on instruction to wait for Mr. Bailey to tell.
12.50 p.m. Adjourned to 2.30 p.m.
(Sgd.) Simon F. S. Li
2.30 p.m. Resumes, appearances as before.

Cross-examination by D1 and D2.

1. B14 show buildings of different alignment from B13?

On a different boundary line.
2. In Exh. D41, building work in para 3 why refer to south side?

Possibility of wall on south side might be affected.
3. Building on south side could be prejudiced?

It could be.

In the Supreme Reserved cross-examination as to damages. Court of Hong Kong Appellate Jurisdiction

No. 4
Judge's Notes
continued
Cross-examination by D3.

No.

1. Not concerned with location of boundaries?

Re-examination - nil.
Koo Tse Van (affirmed) P.W.5.
Of Flat 1 Mirama Villa Stubbs Road M/D of plaintiff company. Authorized to appear and give evidence.

On 13/8//70 plaintiff purchased Section B Lot 535 D.D. 187 in area of $4,437.50$ sq. ft. Agreement of Sale dated 13/8/70. Exh. C8 10 is the agreement.

Immediately after that instructed architect to develop the site. That was $21 / 8 / 70$ - Wong and Tan.

On 10/9/70 an assignment - Exh. C9 executed. Plaintiff became registered owner.

Plaintiff company purchased site for putting up buildings to let. Originally we were to put up one building containing 4 units. Exh. B12 is block and site plan.

Later there was a change of plan. This was necessitated because there is a change of dimension of the site. Originally it 20 was a rectangle. Later it became a parallelogram.

There was a wall between Section B and R.P. Section and a wall between Section $B$ and Section $A$. I had been to the site.

At time of purchase I went to site once. Later I went many times. At that time the wall on northern side of Section B was, I think, cement wall. I can't remember. It's the same wall now. Position of wall has not changed, since our purchase.

The wall on southern side at time of purchase wall and swimming pool constructed after our purchase of Section B. There was a wall and iron fence. The position of wall and iron fence had not changed in the front. They changed at the back because of swimming pool.

In December 1970 a survey conducted by Crown Lands Surveys Office. Prior to receipt of Exh. B8 I did know already that wall of R.P. was on our land and there was encroachment. But did not know actual area encroached. I knew because after purchase we went to site many times and noticed the wall was built diagonally to our site. How much I did not know. It's the 1st and 2nd
defendants who encroached. Survey took place December 1970. In the Supreme After Government survey I instructed our architect to do further survey of our site in January 1971.

There was a change of plan. The new plan was one of a Court of Hong Kong Appellate Jurisdiction building consisting of 3 units - Exh. B13. But no work commenced No. 4 because permisssion refused. That's building fiats to let for rent. Judge's Notes Architect wrote many times without success simply because of wall of continued R.P. site.

Original 4 units. Then changed to 3 units. Now changed to 2 units. Later a 3rd unit can be built if the wall on northside removed. But will involve a lot of costs. Originally building costs for 4 units was $\$ 320,000$. Now the costs for 2 units - $\$ 442,000$ including forming of foundation.

If rectangle of site 4 units
If parallelogram only 3 units.
But site as it stands only 2 units.
(Mills-Owens object to giving of building costs in absence of pleading)
The building costs of 3 units was $\$ 320,000$ not for 4 units. I made mistake.

One is costs increased due to delay and another due to delay in collecting rent.

To Court:
Difference due to increase in building costs. Architect visited site.

Cross-examination by D1 and D2.

1. Look at Exh. C8 you signed it?

No. Oliver Mark signed on our behalf. I acted as interpreter for vendors. At that time I was Mark's clerk.
2. When did negotiation start for purchase?

Must be 1 or 2 days prior to $13 / 8 / 70$.
3. Who did negotiation on behalf of House of Dior?

Mr. Peter Fok, Oliver Mark and Peter Mark.
4. Can't tell when negotiation commenced?

Only a few days.
5. Your position in plaintiff company?

After execution of this I became a managing director.

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 4 Judge's Notes continued
6. When became director?

After 14/8/70 before end of September 1970.
7. Before that?

Nothing to do with company. But at the time I had already the intention of becoming a share holder of company.
8. Did you not go to see the land before the purchase? Never occurred to me the plan in assignment was wrong.
9. Question (8) repeated?

No. I can't say if I went a few days prior to $13 / 8 / 7010$ or after 13/8/70.
10. Purpose of purchase to build flats to let?

Yes.
Now I say I had been to site once in 1965. I was also commenced with transaction in Exh. C7. Adjourned to 10 a.m.
(Sgd.) Simon F. S. Li

12th October 1972 at 10 a.m.
Resumes, appearances as before.
Koo Tse Van (R.F.A.) P.W.5.
Cross-examination continued.
11. Share of Peter Fok transferred to you in August 1970 and other shareholders Peter Mark, Oliver Mark and a Sung?
Yes.
12. You became director 6/10/70?

Yes.
13. Know Chan Yuen Foo?

Yes.
14. He's dead now?

Yes.
15. Knew his executor Chan Hai Cheng and Tse Yuk Ying? Yes.
16. Also Peter Chan Yen Ling?

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 4 Judge's Notes continued
18. In 1970 transaction identified Chan Yen Ling?

Yes.
19. You saw site 1965 and 1970 ?

Yes.
20. Any difference in the site?

Generally speaking, no. In 1965 I saw open ground. In 1970 there's a playground, a garden and water pump in front and the back of land all in bushes.
21. Any difference in the shape of site?

I did not consider this question at the time.
22. What's purpose of your visit in 1965 ?

I went with Chan Hai Ching for no particular purpose. He asked me to go.
23. Took a good look at site?

No. General look.
24. Before August 1970 did you go?

Not prior to $13 / 8 / 70$. After this I did.
25. Why said yesterday it could be prior to $13 / 8 / 70$ ?

I gave this matter a second thought and I recall.
26. No one looked at land on behalf of purchaser prior to purchase?
The architect had been to the place.
27. Before $13 / 8 / 70$ ?

I don't know. He should.
28. When was architect first instructed?

We started negotiation on deal on 6/8/70. On 8/8/70 an officer of solicitor made search in Land Office.
29. Question (28) repeated?

$$
\text { Between } 6 / 8 / 70 \text { and } 10 / 8 / 70
$$

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 4 Judge's Notes continued
30. Who of House of Dior went to view the site before signing agreement?
I did not go. I don't know if any other went apart from architect.
31. The wall between Section A and Section B was alignment of the wall changed?
The wall itself did not change. Beyond the wall was a swimming pool. The part of wall at the back moved a bit towards Second B.
32. How much?

Don't know.
33. When did move take place?

About 1971.
34. Which month?

Can't remember.
35. Were you not concerned with the move towards Section B? It involved a very small place.
36. Any complaint to owner of Section A?

Yes.
37. In writing?

On $16 / 7 / 71$. Yes. Then $26 / 7 / 71$. After writing of these 2 letters the 3 rd defendant met me once i.e. Siu See Leong. I told him to employ a surveyor or architect to negotiate this question with me. That's in August 1971. On 3/8/71 a letter signed by them sent to Peter Mark \& Co.
38. This wall later moved back to Section A?

No.
39. Received compensation from owners of Section A?

No.
Cross-examination by D3.

1. You refer to Exh. B9. You had visited site after B9 prepared?
Many times.
2. Ever went with surveyor?

Yes. With Mr. Bailey. I went with him to see Section B and the R.P. The door to Section A was lock. So did not go in.
3. Went with architect?

## In the Supreme

 Court of Hong Kong AppellateJurisdiction
No. 4 Judge's Notes

No.
4. With Mr. De Ville?

No.
5. Look at Exh. B9, can you indicate from where wall continued extended?
I mark on Exh. B9 the extension in blue ink.
6. When was extension put in?

In 1971, when swimming pool was built.
7. Can you indicate the movement of wall in 1971?

I mark out in red on Exh. B9.
8. Can't tell how far the wall was moved?

No.
9. As much as one foot?

I did not take measurement.
10. Letter written to 3rd defendant?

The D1 and D2 told us it was D3 who encroached on our land and not D1 and D2. Therefore we approached D3.
11. The letters A35 and A37 written had nothing to do with D3 or movement of wall?
I can't say that. I disagree.
12. When was De Ville instructed?

A letter dated 18/12/70 from De Ville sent to Crown Lands \& Survey Office.
13. Question (12) repeated?

In December 1970.
14. The wall moved prior to $16 / 7 / 71$ ?

Yes.
15. Look at letter 16/7/71 Exh. A35, where have you complained of movement of the wall?
The para about encroachment of our land.

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 4 Judge's Notes continued
16. No mention of wall?

No.
17. Nor mentioned in Exh. A37 letter on $26 / 7 / 71$ ?

That is so.
18. How long before $16 / 7 / 71$ was the wall noticed to have moved?
I don't remember.
19. De Ville properly instructed to write for your company? Yes.
20. Did De Ville go to inspect the site?

I don't know.
21. You once swore an affidavit?

Yes.
22. You exhibited a report by De Ville?

Yes.
23. You have read it?

Yes.
24. You deposed you believe contents of his report?

Yes.
25. Thus De Ville did inspect the site?

I can't really say.
26. Look at Exh. A36 dated $16 / 7 / 71$, understand para 5 thereof?
Yes.
27. Thus on $16 / 7 / 71$ your own expert formed opinion Section A occupied the correct area?
I think I must agree.
28. Thus letter Exh. A35 written solely because of prompting by D1 and D2?
This is only one of the reasons. Secondly we are in 30 the middle and found our dimension smaller than it should be.
29. Apart from their telling you no other reason to write? There's of course encroachment.

On one occasion I went to site and saw workers constructing pool and saw wall constructed. I challenged them. They said it was Crown Land. So I kept quiet. Now I know the pool was on Crown land but a small section of land adjacent to it was land belonging to Section B.

David Anthony Bailey (Sworn) P.W.6.
76D Repulse Bay Road. Partner of Levett and Bailey. Chartered Quantity Surveyor Fellow of Institute of Arbitrators.

Appointed by plaintiff company to make site visit at Lot 535 DD187. I made 2 visits viz: 19/9/72 (morning) and 4/10/72 (afternoon).

Purpose of 1 st visit was to take measurement of the sub-divisions of that Lot. The 2nd visit was to confirm with a Mr. Hau the nature of certain markings I saw in my first visit. Hau was survey assistant of Crown Lands Office.

The measurements I took, on 19/9/72 were walls of the house on the R.P. This was to gain the side width in line parallel with the front and back walls of house.

Starting at the corner of the building next to Section B I measured from edge of building to the outside face of boundary wall in a line in continuation of line of the wall. This was $3^{\prime} 1 \frac{1}{2}^{\prime \prime}$. I mean the building on R.P. and the stone wall which was between R.P. and Section B.

I measured the walls of house on the R.P. - the front walls. These 2 measurements $18^{\prime} 1 \frac{1}{2}^{\prime \prime}$ and $31^{\prime} 9 \frac{1}{2}^{\prime \prime}$. Then beyond the edge of the wall there were a projection of $3^{\prime \prime}$ beyond the face of the plaster wall of the building.

I took further measurement from face of external stone wall of the building to a mark in pavement outside the walls of the house. This was $9^{\prime} 1^{\prime \prime}$.

I refer to Exh. B9. I saw it before.
The $3^{\prime} 1 \frac{1^{\prime \prime}}{}$ from wall to building marked $3^{\prime} 1 \frac{1}{2}{ }^{\prime \prime}$.
The 2nd two measurements also marked on Exh. B9.
The mark in form of a dot of arrow shape. It's in position of point D on the plan.

The total of measurements I made was $62^{\prime} 4 \frac{1^{\prime \prime}}{}$.
Then I measured the rear part of the R.P.

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 4
Judge's Notes continued

In the ground below the back wall there was an iron spike set in cement. As carefully as I could I transferred the point of iron spike to the elevated pavement of the building on the lot and measured the distance from this point to the outside face of the boundary wall next to Section B (same boundary wall). The wall along which I measured was a line A-A1 in Exh. B9. The measurement was made difficult by a building erected near the corner. The measurement obtained by climbing to roof of this building. Thus not precise but I believe correct the measurement of $77^{\prime} 2^{\prime \prime}$. That was a small out house with a dog inside. It's near point A1.

I also obtained measurement of back face of the houses. It's irregular. First distance of edge of house $8^{\prime} 4^{\prime \prime}$. Then a column of $11^{\prime \prime}$. Then next projection $9^{\prime} 10^{\prime \prime}$. Width of extreme face $20^{\prime} 9 \frac{1}{2}^{\prime \prime}$. Then a set back of $2^{\prime} 10^{\prime \prime}$. The last set back at extreme end $7^{\prime} 4 \frac{1}{2}{ }^{\prime \prime}$. From edge of building to outside face of wall $18^{\prime} \frac{1}{2}$.

The total is $68^{\prime} 2 \frac{1}{2}{ }^{\prime \prime}$. Marginal error $6^{\prime \prime}$ i.e. from northern tip of house to outside face of wall separating R.P. and Section.

I took 1 measurement of Section B across from wall of R.P. to wall of Section A and found the distance to be 53' (line taken across about 30 feet away from C2).

I used a $100^{\prime}$ tape which I tested and found accurate on 19/9/72, a 6 foot surveyor's rod. The measurements of the walls of building and along flat pavements would be accurate. Some error would occur in alignment without using a survey instrument. The measurement of $77^{\prime} 2^{\prime \prime}$ may give $6^{\prime \prime}$ marginal error.

The pavement is part of the R.P. property. Point $A$ is about $1^{\prime} 6^{\prime \prime}$ from edge of the wall.

Near south east corner of R.P. there are some tanks. There are steps down to swimming pool. The wall between Section B and R.P. is stone wall about $12^{\prime \prime}$ to $15^{\prime \prime}$ in thickness.

On second visit to confirm markings.
Cross-examination by D1 and D2.

1. You are land surveyor?

No.
2. From your observation, able to agree all sub-divisions spread indiscrimately upon Crown Land?
Building in Section A within boundary.
3. The division of R.P. spread to west and north of building?
Yes.
4. No plan for your measurements?

In the Supreme
No.
5. Building on R.P. not parallel to east and west boundary Jurisdiction of lot?

No.
No. 4
judge's Notes
6. Thus simply measure 2 sides of house gives you no width continued of lot?

No.
7. Building at an ankle to boundaries?
2.50 p.m. Resumes, appearances as before.

David Anthony Bailey (R.F.A.) P.W.6.

## Cross-examination

13. If taken more to rear part what's the distance?

It's $53^{\prime}$. There first is $60^{\prime}$ according to scale of plan.
14. This distance between C 1 and C 2 for the wall? About $68^{\prime}$ to $69^{\prime}$.
15. About point of your measurement of $53^{\prime}$ possibility of error? On plan accurate.

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 4 Judge's Notes continued
16. You did not measure from iron spike to wall?

That's correct.
17. From iron spike so?

No. From transfer to pavement and therefore from pavement.

Cross-examination by D3.

1. At time visited site supplied with B9?

No.
2. Use divider to find out distance between C 2 and point you took measurement between 2 walls?
I make it on Exh. B9.
3. Can you draw a straight line on that point between Section A and R.P. walls?
Acording to Exh. B9 - it is $58^{\prime}$.
4. There's thus difference of $5^{\prime}$ ?

Yes.
5. Made any measurement of Section A?

No.
6. Not C and Cl ?

No.
7. Why not?

Because owner of Section A would not allow it.
8. No attempt to seek permission?

Not when I was there.
9. Why only measure the distance between 2 walls once?

I understood the front boundary correct.
10. Why not measure distance between B and A2?

Because of undergrowth.
11. Why not A1 and A2?

The line completely inaccessable.

Re-examination - nil.

In the Supreme Court of
Hong Kong Appellate
Jurisdiction

Jacob Wong (sworn) P.W.7.
Of 12 Broom Road 2nd floor Partner of Wong and Tan. Authorized Architect H.K.

No. 4
Judge's Notes
Concerned in development of Lot 535 of D.D. 187. Instructed continued August 1970 for development - Peter Mok of House of Dior. I went to site around $10 / 8 / 70$ to see if worth purchasing for development. I found it's covered with undergrowth. There's a barbwire fence along road. There's about $30^{\prime}$ of area $30^{\prime}-35^{\prime}$. It slopes down. The metal swing and traces. Down on slope bushes. On the right masonry wall. On left fence and iron gate.

I did not take measurements. Not told of shape of land. Only that 4,000 odd sq. ft. for development. Could not tell shape. Felt quite rectangular. The wall between Section D and R.P. came up to the road - Keng Hau Street.

I reported suitable for development. No lease checked. Checked general conditions only on 15/8/70. Found rectangular in shape and fit for multi family development. Recommended development.

I went up to site to make survey in late August 1970. This resulted in Exh. B6. But lead pencil mark superimposed after Crown Land Survey in 1970.

Originally I compared survey plan and original plan. I was in doubt. Originally a rectangular.

I last visited site a few months ago. No change since I first saw it.

The pink patch is the area I coloured after adjusting the original plan and the 1970 survey.

First saw walls between Section A and Section B 10/8/70. Since then I noticed it moved closer to Section B along pencil line I mark in B.6. The new wall I discovered in after Crown Lands and Survey people did survey.

The Crown Land and Survey people telephoned me and pointed out measurements to me. I took measurements again and found discrepancies and therefore superimpose the new lines. Wall between A and B later.

Adjourned to 10 a.m.
(Sgd.) Simon F. S. Li

In the Supreme 13th October 1972 at 10.15 a.m.

Court of
Hong Kong Appellate Jurisdiction

No. 4 Judge's Notes continued

Resumes, appearances as before.
Jacob Wong (R.F.O.) P. W.7.
I refer to Exh. B6, I transfer B and C of Exh. B9 to B6 by marks. Similarly A2 and C1. I find the area of R.P. bounded by A, D and the wall between R.P. and Section B to about 4,951 sq. ft. The area of Section B bounded by the 2 walls is $3,922 \mathrm{sq}$. ft. The area of Section A bounded by B, C and wall is $4,615 \mathrm{sq}$. ft .

The aforesaid areas are calculated from my own measurements. The total area of the site is $13,490 \mathrm{sq}$. ft .

The portion of area in pink is $514 \mathrm{sq} . \mathrm{ft}$.
Originally I planned a 4 unit building for Section B because I thought area in rectangular shape. Then found out it's parallelogram. Changed to 3 units. We always think the lines set up by Crown Land will be final. Now plan has to be changed to 2 units. This is similar to 3 unit plan. Once boundary line settled and wall moved back we can add 3rd unit.

The total floor area for the 3 units was $5,080 \mathrm{sq}$. ft. Once split project in 2 will cost more. How much more depend on contractor.

Cross-examination by D1 and D2.

1. Can you tell actual date of your first visit?

About 10/8/70.
2. Been before?

No. But I know district.
3. Next visit?

About 18/8/70. Discussed with Reynolds.
4. Got general conditions of grant?

Yes, from owner.
5. Had copy of site plan?

Not attached to general conditions of sale.
6. Date you did survey in Exh. B6?

Late in August 1970.
7. How long took you to produce Exh. B6?

A few days.
8. Did the survey within a few days after he saw In the Supreme

Mr. Reynolds?
Could be.
9. The purpose of your visit?

To discuss the general condition and clarify some of the $\begin{aligned} & \text { No. }{ }^{4}{ }_{\text {Judge's }} \text { Notes }\end{aligned}$ terms in the lease conditions.
I wrote to him on 19/8/70 to confirm our discussions.
10. Exh. B6 done to scale?

Yes.
11. Took measurement?

Yes.
12. By then clear to you site not $71^{\prime}$ by $62.45^{\prime}$ ?

Correct.
13. Told client?

Yes. After I made drawing Exh. B6.
14. Who did you make report to?

To Mr. Koo.
15. You inform Crown Lands?

Yes.
16. Why then went ahead to draw plan on basis site was rectangle?
I could only rely on sale plan or conveyance plan.
17. You planned before boundary settled?

Conveyance plan prepared by architect and I had no reason to doubt its accuracy.
18. When submitted you such plan?

21/9/70 and later approved by Building Authority Exh. B12.
19. When did you next submit the plans?

On 6/2/71 - the 3 unit plan after I found out it was a parallelogram - Exh. B13 is the plan.
20. When drew this plan knew physical of site not as given in your plan?
Correct.

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 4
Judge's Notes continued
21. Such plans resubmitted?

Yes. I had to withdraw first because I found D1 and D2 outer structure sat on my client's site.
22. When submitted further plan?

After Building Office rejected our plan I advised client to have new plans submitted. Eventually new plans submitted on 5/1/72 - Exh. B14. In fact Exh. B14 ( 2 units) based on Exh. B13 less 1 unit.
23. Why same date as $31 / 12 / 70$ ?

I just had not changed the date.
24. When were plans actually drawn?

After I received setting out plans from Crown Lands Office.
25. Ever measured Section A?

No.
26. Measured Section R.P.?

No.
27. Simply deductions?

My mathematical deduction from Crown Lands plan. I took Crown Lands measurement to be accurate and 20 final.
28. What's area enclosed after movement of southern wall?

I made no calculations for that.
29. Ever measured the western line of Section B?

No.
30. Nor the rear of Section B?

No.
Jacob Wong (R.F.O.) P.W.7.
Cross-examination by D3.

1. Yesterday said did survey by using stadia method and 30 to-day said no measurement can you explain?
I surveyed the contours but took no measurements of the walls etc.
2. When said if walls were moved - which wall? I meant the north wall.
3. Section B on higher level than Section A? Yes.
4. Standing on Section B, one can only see the top of the

In the Supreme Court of Hong Kong Appellate Jurisdiction southern wall?
5. If go from A 2 to Cl requires excavation? Yes.

No. 4
Judge's Notes continued

Re-examination - nil.
To Court:
I knew site to be parallelogram on $29 / 12 / 70$. I started to prepare Exh. B13 on $31 / 12 / 70$ - the 3 units plan. But at that time I could see the shape of Section B not a parallelogram. At the time I saw structures adjacent to northern wall. I plan on the assumption that the piece of land in pink in Exh. B6 he returned to our client.

Pegging out site done by Crown Lands. I have no doubt as to size of lot. I know Crown Lands people not concerned with sub-divisions. Only pegged out the complete lot. But I considered the planning ahead had very little risk.

Chang: Ask for leave to amend pleading by adding special damages.
No formulation.
Adjourned to 2.45 p.m.
(Sgd.) Simon F. S. Li
2.45 p.m. Resumes as before in Chambers.

Case adjourned to $9.30 \mathrm{a} . \mathrm{m}$.
30/10/72
to view the site and then resume hearing.
(Sgd.) Simon F. S. Li

30th October 1972 at 11.50 a.m.
Court resumes, appearances as before.
From observations in locus I observe that Boundary Stone near B and boundary stone in C located. Surveyor Mr. Hau explained that his method was to draw straight line between 2 boundary stones and measured from C to $72^{\prime}$ along the straight

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 4 Judge's Notes continued
line between the 2 boundary stones. Using C as a pivot he drew straight line eastward between the front of the houses and road (forced by necessity because of existence of 2 houses) and then from $C D$ drew a perpendicular of $71^{\prime}$. Thus he determined point B. From B drew parallel line to CD forming A.B. Thus he had parallelogram.

Observing marks:
C located, C1 located, A2 approx. position found, C2 approx. position found, A1 located. A located. D located.

Observe marks 212, 201 and 208 (outer wall of R.P.) in one 10 straight line.

Distance between A and 212 approx. 62.5' long.
Out house, septic tank, water tank steps and stone house observed in disputed area.

Jacob Wong recalled
No objection by defendants.
Jacob Wong (Sworn) P.W. 7 recalled.
On $26 / 10 / 72$ re-surveyed site. This plan is result. The thing new are that I now find the wall between points near A 1 and C 2 does not reach the boundary line A.B. By calculation it is $9^{\prime \prime} 20$ short of reaching $A B$ line.

Also from D to wall (i.e. western end of wall) intersecting point of C-D bounding is $62^{\prime}$. The distance between $A$ and eastern end of wall is $77^{\prime}$.

On southern wall find C 1 in position i.e. C to C 1 is $65^{\prime}$. The western end of southern wall to $C$ is less than $65^{\prime}$ by about $9^{\prime \prime}=64^{\prime \prime} 3^{\prime \prime}$.

The eastern end of southern wall cuts $A-B$ line at a point $65^{\prime \prime} 9^{\prime \prime}$ long from point B .

The eastern boundary of Section $B$ is $47^{\prime} 4^{\prime \prime}$ and western 30 boundary about $63^{\prime}$.

Thus R.P. is $71^{\prime}$ times average of 2 opposite side ( $62^{\prime}$ and $77^{\prime}$ ) $=69.5^{\prime}=4,934.5 \mathrm{sq} . \mathrm{ft}$.

Section $B\left(63^{\prime}\right.$ and $\left.47^{\prime} 4^{\prime \prime}\right)=55.12 \times 71^{\prime}=3,912.52$ sq. ft.
Section $A\left(65^{\prime} 9^{\prime \prime}\right.$ and $\left.64^{\prime} 3^{\prime \prime}\right)=65^{\prime} \times 71^{\prime}=$ area $4,615 \mathrm{sq} . \mathrm{ft}$.

Cross-examination by D1 and D2

1. How arrived at $63^{\prime}$ of western boundary of Section B? We found from Crown Land Survey the base line points - co-ordinates - sight C and D points and locating various positions by instruments.
2. Accurate method?

Yes.
3. Distance C and D ? 190'.
4. Add distance of 3 lots - 62, 63 and 65 (or $62,63^{\prime \prime \prime} 9^{\prime \prime}$ and $64^{\prime \prime} 3^{\prime \prime}$ )
5. Distance from southern wall to Cl ?

About 9".
6. Could find A2?

No.
7. Why were calculations not done long before?

I was not asked to do so.
Cross-examination by D3
Tang: Objected to evidence of $9^{\prime \prime}$ encroachment.
Adjourned to 2.30 p.m.
(Sgd.) Simon F. S. Li
2.30 p.m. Court resumes, appearances as before.

Gittins:-
Apply to amend pleadings as shown in letter to J.S. \& M. and particulars attached.

See White Book P. 270 at 18/12/29.
Hayward v. Pullinger Ltd. 1950 1 A.E.R. 581
Special damages are to be pleaded. Technical rule to be observed if insisted on by other parties.

See also
Anglo-Cyprian Trade Agency Ltd. v. Paphos etc. 19511 A.E.R. 873 at 874-5 (D)
(claim made during trial)

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 4 Judge's Notes continued

See also
Ilkiw v. Samuels and others
19632 A.E.R. 879 at 890 (I)
No suggestion that application at hearing ever be refused.
Perrestrello etc v. United Paint Co. Ltd.
19693 A.E.R. 479 at 481
That's a glaringly bad case. Different from present one.
No one prejudiced in this case.

## Mills-Owens:

See Perrestrello's case 1969
And Domsalla v. Barr
19693 A.E.R. 487 at 489
492 (A)
See
The Saumis
1934 Ch. 1 at 29.
Reason for requirement of strict pleading is to put defendant on guard. Defendant may not be taken by surprise.

Defendant can take advice if defendant should pay into court.

Special damages should be pleaded before trial.
Too late for plaintiff to amend now.
Must have pleadings in proper form.
See White Book P. 316 20/5-8/10
Special damages must have been very clear to plaintiff.
Amendment changes claim to different basis - no more allegation of damages for building in 2 stages.

Now only allege increase in building costs.
No justification for late amendment.

Tang: No concern of D3.
Gittins: The amendment sought just amplification of plaintiff's pleading.

When action started thought could build in 2 stages. Now No. 4 endanger wall as alleged by Building Office. Having delayed so Judge's Notes far might as well build in one go.

Order:
The amendment sought is to remedy a technical defect in pleadings. Amplification of the pleadings in original para 8 of statement of claim.

Leave to amend.
Reservice dispensed with.
Costs of $\frac{1}{2}$ day to all defendants in any event.
Adjourned to 10 a.m.
(Sgd.) Simon F. S. Li

31st October, 1972 at 10 a.m.
Resumes, appearances as before.
Jacob Wong (R.F.O.) P.W.7.
recalled for cross-examination
Plan produced - Exh. O.

1. You used stadia map to sight the southern wall? Yes.
2. How?

Used Crown Lands chart and point as bases.
3. Measured by tape?

No.
4. Why?

Could not get into the property.
5. Could get length from B - to wall without entry?

Yes. By calculation - marginal error $2^{\prime \prime}$ to $3^{\prime \prime}$.

In the Supreme Court of Hong Kong Appellate
Jurisdiction
No. 4 Judge's Notes continued
6. From C to outter face of southern wall near C 1 is $64^{\prime} 3^{\prime \prime}$ ?

Yes. But I have not shown thickness of the wall. I calculated the inside of the wall. Part of the $9^{\prime \prime}$ covered by thickness of the wall.
7. Thus outter face of wall just next to C 1 ?

I did not ascertain that.
8. Near A2 could ascertain thickness of the wall?

No. I have not measured it.
9. Which side of wall you chose?

The face adjacent to Section B.
10. They chose outter face?

In surveying I could only see the outter surface of the wall.
11. Simple to measure thickness of wall at eastern extremity of wall?
I did not do it. No necessity to do it.
12. Only at point $5,9^{\prime \prime}$ encroachment?

Yes.
Re-examination - nil.
Plaintiff's case.
Alex See Chun Lam (Sworn) D.W.1.
Brother of D1. Haver power of attorney to represent. Also general managing director of D2 authorized to give evidence.

D1 bought R.P. in 1958 Exh. C4 is the memorial registered in N.T. Office. I was in H.K. when he bought land. I helped him for construction of house. No house then built on R.P. or Section B. There was a house on Section A - quite new. It is the same house now.

There was a fence between Section A and Section B. Between Section B and R.P. there was nothing to separate the two.

The house in R.P. built by end of 1959. The architect was Mr. Li Fook Hon. I see Exh. A1 and say it's related to the house. I inspected site, only informal supervision.

The wall between Section B and R.P. was constructed at the same time as the house. The architect did the layout. The Government Surveyor would check. I still have construction plans of the house.

Plans (3) - P. 1-3.

In the Supreme
Court of
Hong Kong Appellate Jurisdiction various structures: lavatory, septic tank, water tank and steps and a filtration system and pump. If wall had to be moved there will be great trouble. No where to re-site the septic tank etc. It No. 4 involves changing sewage pipe. May have to apply for Crown Judge's Notes land to accommodate them. The wall remains same position since continued 1959.

Their swimming pool was there then. It was built about 1970-1971.

I first made car park near point $D$ in 1967. I own also Lot 562.

Cross-examination - D3.

1. Old wall pulled down Easter 1971? Yes.
2. New wall started summer 1971?

I see Mr. Sai spent some time.

In the Supreme Court of Hong Kons Appellate Jurisdiction

No. 4
Judge's Notes
continued
3. Look at Exh. B9 you say not correct?

I did not say so.
4. Exh. B9 prepared on $22 / 12 / 70$ before new wall built? I can only testify as to best of my memory.
5. You never made measurement?

No.
6. Only your opinion?

Yes.
7. You an expert in this line?

I had been walking through there many times. Only 10 testify as to facts and my observations.
8. Look Exh. C3, drawing does not show house too close to wall?
No. But not as to fact of the original fence position.
9. Incorrect to say that old wall only $1 \frac{1}{2}$ from the house?

I passed by many times. I disagree.
10. The position of old wall as set out in Exh. B9?

I still say not true. In fact in December 1970 no swimming pool either.

Cross-examination by plaintiff.
20

1. Why believe architect responsible for layout?

I went with architect to chart out but not present when Government surveyor checked.
2. Nor record of survey?

Survey and checking different. No survey. Only check the layout.
3. Government surveyor not concerned with sub-division? Correct.
4. Any formal request by you for survey?

No.
5. Look at Exh. A18 (dated $24 / 5 / 71$ ) you know of such working out of the boundary?
No.
6. You refer to serious inconvenience but you have space In the Supreme on northern part of site?
Yes. Crown land.
7. Look at Exh. A3 and Exh. A4, had friendly understanding with Crown the land could be at your disposal?
We are occupying that strip of land.
12. Did you reply by this letter?

My managers' reply.
Letter - Exh. R.
13. Look at Exh. D13 and Exh. D18 complaints of non reply?

Yes. I have seen them.
14. Complained delay cause them trouble?

I told Mr. Koo I would not have written him. Rather my solicitor to handle the case. I did a lot of travelling.
Told Koo to see my lawyer.
15. Koo saw you more than once?

Can't remember.
16. Told Koo that if adjustment needed you would attend to it?
But I must be informed by the District Office. Up to now I have not been informed.

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 4 Judge's Notes continued
17. Look at Exh. D30, in $26 / 8 / 71$ still not fully instructed solicitor?
I told Koo I liked to settle. Told him to get District Office to tell me I did not want to take initiative Koo kept threatening to sue me.
18. Look at Exh. A39, an offer to discuss $31 / 7 / 71$, your view?

Yes.
19. Look at Exh. A41, such offer accepted?

Yes. I saw this.
20. Did you give instructions to reply?

I must have given it in September 1971.
(No reply sent by solicitor)
Adjourned to 2.30. p.m.
(Sgd.) Simon F. S. Li
2.30 p.m. Resumes, appearances as before.

Alex Lam (R.F.O.) D.W.1.
Cross-examination continued.
21. Look at Exh. P1 and Exh. P2, they are amended plans,

Do you know where are the originals?
No. Only one I can locate.
22. When did you locate them?

Early this year.
23. These submitted to N.T. Office for approval?

Yes.
24. But no indication on Exh. P?

No.
25. No indication when approved?

No.
26. Possible place to remove septic tank to is the area to 30 south of swimming pool i.e. move up a bit?
But the swimming pool elevated I do not know how far we have to move.
27. Appreciate possibility of having to move?

Yes.
28. Taken steps to meet contingency?

No.
29. Made measurements?

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 4
Judge's Notes
continued

Yes. But very close to my house.

Re-examination.
I was not consulted by Crown Lands or N.T. Office prior to survey in 1970. No negotiation as to boundary. Referring to Exh. R it was written when I was in Japan.

As to instructions to my solicitors I contacted Mr. Nigel after meeting plaintiff in March 1971. I located plans in January 1971.

No indication of approval. But A1 shows plans and calculations approved. I have not been able to locate the drainage plan.

As to left of swimming pool the the pool in elevated area and the left is sundeck.

D1 and D2's case.

Gittins: My client has no case against D3.
Plaintiff withdraws case against D3 and with no order as to costs.

Tang: $\quad$ Subject to plaintiff brings no case against D3.
By consent between plaintiff and D3.
Leave to plaintiff to withdraw claim against D3 subject to condition that no future action be instituted by plaintiff against D3 in this subject matter.

No order as to costs.
Adjourned to 10 a.m. $2 / 11 / 72$.
(Sgd.) Simon F. S. Li

In the Supreme 2nd November, 1972 at 10 a.m.

Court of
Hong Kong Appellate Jurisdiction

No. 4 Judge's Notes continued

Resumes, appearances as before.
Mills-Owens
Generally:

1. Has plaintiff proved shape of Section B and dimensions?
2. Has plaintiff proved Dl occupied plaintiff's land to which plaintiff entitled?
3. Then what relief?
(a) Equitable relief - hardship
(b) Mometary damages.

No mandatory injunction
Only in event of substantial damages necessary that inquiry need be made.

Statement of Claim
No quarrel para 1 except that plaintiff owner only since 14/8/70.

No quarrel with para 2 except the shape of parallelogram not established - especially the base of $72.45^{\prime}$.

Para 3: Apart from shape and dimension as parallelogram Agreed.

Para 5: Admit wall built. But deny wrongful built or built on plaintiff's land.

Para 6: Disputed. Do not recognise A B C D are points of boundary. E.F.G.H. plaintiff's boundary.

Para 6A: Dispute allegation wrongful.
Para 7: Correct.
Para 8: Denied. If so, self induced.
Facts.
When land sold it was a rectangle having base of $71^{\prime}$ and sides of $190^{\prime}$.

On sale plan - Exh. B1 the area was shown as a rectangle.

Both Harland and Leung admitted shape of lot had been In the Supreme changed since the auction. Further every plans attached to all conveyances as a rectangle. All give base of $71^{\prime}-\mathrm{Cl}$ and $\mathrm{C} 3-\mathrm{C} 6$. All registered in D.O. Tai Po. All building plans B2 to 7 G1 G2 P1 and P3 show sites as rectangles. All received approval by District Commissioner. Exh. A17, A57.

Some date before 1970 boundary stone for Lot 524 set up. continued Crown presented with fait accompli. Then changed to parallelogram.

The wall in dispute in 1959 was erected at right angle and $128^{\prime}$ from point C across the lot. That complied with sale plan in conveyances. D1 entitled to do that and can't say did it wrongfully. Can't be said wrong if Crown chooses to change the shape of the land 11 years later.

Lease: 2 stages.

1. Agreement for lease
2. Lease itself.

Here we have reached first stage only. Before lease issued there'll be negotiations. No boundary stones. Exh. B9 merely a setting out plan. Lot not finally determined. Thus section boundaries can't be determined before that. The boundary is still open to negotiations. The setting out plan only administrative action and forms a guide. By this act can't change the shape of the lot until Crown lease is issued.

Negotiation might change it.
Pending final determination of boundary highly dangerous to grant mandatory injunction.

Building agreement is that lot in shape of rectangle - Cl .
Para 14 of condition of sale can change area etc. only at issue of Crown lease.

The Crown's realignment subject to severe criticism. Drawing to show it can come to most unsual shape.

Wall been there some 13 years. No court would order removal. Remedy in damages not to be against D1 or D2 but only against his vendors or against the Crown.

See Principles of Injunction
21 Hals. Law para 760 at 363.
Here structures: wall, tanks etc completed many years before complaint and proceedings taken.

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 4 Judge's Notes continued

See also
Spry on Equitable Remedies 1971 edition at 468-9.
Hardship for defendants to restore.
Can't be said injunction a fair and reasonable course to take.
See also P. 483-4 - supra.
See
Gastim v. Balls 13 Ch. 324 at 328
Young v. Star Omnibus Bus Co. 86 L.T. 41 at 42
Carriers Co. v.
4 G.J. \& S. 764
10
It's he who must show some material injury caused.
Shepherd Homes Ltd. v. Saandham
19703 W.L.R. 348 at 357 (F)

- 359

Court has to consider fairness of result to both parties.
Kuie v. Jally 19051 Ch. 480 at 495 and 503
No high handed conduct on part of defendant in this case.
No question of secretive action.
Defendant's position!

1. No complaint for 14 years.
2. Removal and re-siting of septic tanks.
3. Destruction of existing features and plumbing works.
4. Re-siting of water tank and filtration plant and passage steps.

Plaintiff's position:

1. Plaintiff bought law suit - they knew land not as it purported to be Koo had been to the site many times Jacob Wong drew a plan to scale. Knew land not a rectangle. Before 10/9/70 he did survey and drew plan. He wrote to District Office on 7/9/70.
Once found something wrong with shape of site should 30 requisition vendor about shape of site etc.
Knowingly brought damages to themselves by preparing plans for site not as it was but as what it might be
2. The fact plaintiff wanted to develop not material.

Laches and acquiescence
Wall apparent to all. Plaintiff's predecessor quite aware of the wall. In Exh. Q - there are communications between D1 and plaintiff's predecessor.

Koo said he could tell site not rectangle. Surely plaintiff's predecessor should be able to notice the same by Solely by the 2 walls.

Plaintiff is in no better position than his predecessor.
See Spry again at 391-2
2.30 p.m. Resumes, appearances as before.

Mills-Owens
Line of cases as to Court's approach to such problem.
Equity binds successor's in title
Ramsden v. Dyson

Honest mistake
"If a stranger . . . prevented"
Koo could see. So could previous owner.
Also P. 168 Dl in Denver. Owner of Section B dead. Too late to sue the architect.

Defendant prejudiced by the delay of time.
Adjourned to 2.30 p.m.
(Sgd.) Simon F. S. Li
In light of aforesaid, unreasonable to allow plaintiff to remove wall and structures.

Defendants prejudiced approved plan lost and architect gone.

$$
1865 \text { L.R. } 1 \text { H.K. } 129 \text { at } 140
$$

Inwards v. Baber
19652 Q.B. 29 at 36


Inducement by father to build
"The son appeals . . . desires to build as his home". Ward v. Kirkland

19671 Ch. 194 at 198 and 235 (C)
238 (B)
See also P. 240-241
Ives v. High

$$
19672 \text { Q.B. } 379 \text { at } 381
$$

394 (F)
399 (D)
404 (F)
Binds successors in title.

## Damages:

Defendants not liable for damages either. What they did at the time was not wrongful.

If damages awarded it should be in a nominal sum or alternatively a sum as recompense for loss of area at same rate as they paid in 1970.

Calculations:

$$
\begin{aligned}
& 14 \frac{1}{2}^{\prime} \quad 71^{\prime}=514.75 \text { sq. ft. } \\
& \mathrm{C} 9=\$ 125,000
\end{aligned}
$$

$$
\text { Proportionately }=\$ \quad 28.16 \text { sq. ft. }
$$

$$
514.75 \text { sq. ft. }=\$ 14,495.36
$$

As to separation value the plaintiff came with knowledge they had not the full area.

## Summary

1. Not proper case to grant equitable relief.
2. Unjust to make defendants liable for something done and not their own fault.

Gittins:
Two main questions.

1. Whether plaintiff has proved case.
2. Whether legal remedies limited.

Onus of first on plaintiff, that of latter on defendants.

In the Supreme
Court of
No authority in equity to expropriate owner from his own land.

See headnote on Ramsden's case.
A. Case in Law:

1. Start off with Exh. C1.

Boundary adjustments only between Crown and Crown lessee.
Can't affect individuals.
2. No survey until plaintiff asked for one by end of 1970.

Before this court it has been proved Exh. B9 is that most accurate plan they have.

No other alternative. Certainly none can defendants suggest.
3. The shape of carved out portions in form of rectangle are not findings and not binding. Depend on shape determined by Crown.
4. The only way is to do according to Exh. B9.
5. That triangle not bought by owner of R.P. but occupied by him.
6. In 1954 northern boundary further north. Nor reason to go so far south.
7. B9 only accurate plan
(a) No suggestion as to how this could be varied to suit defendants.
(b) It's concrete evidence and only acceptable evidence in this court, which is to adjudicate on it.
(c) No rule of law or practice for plaintiff's remedy to await a possible different plan.
(d) If defendant's argument right then defendant allowed to trespass and plaintiff no remedy.
(e) If plaintiff waits for Crown Lease - laches.
(f) Exh. R is evidence of defendant's admission that he can't trespass.

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 4
Judge's Notes continued
8. If D1 had applied for survey he would get Exh. B9 in 1959. D1 tolerated the delay and assumed the risk.
9. D1's act was an act of trespass, even if unwitting. If insisted on survey would have found out in 1959. Thus defendants negligent.
10. Negotiations can only affect Crown and Crown lessee. Not between private individuals.

## B. Equitable Relief

1. Plaintiff not guilty of delay.
2. Knowledge must be attributed to plaintiff or plaintiff's 10 predecessor.
(a) No evidence that plaintiff's predecessor knew of existence of defendant's wall. Though could be reasonable inference.
(b) Knowledge of defendant's structure only. But no allegation or evidence to show that plaintiff's predecessor knew of encroachment. Unfair to impute knowledge to plaintiff's predecessor. In fact para 7 (iii) of statement of defence pleaded contrary.
3. Long trespass no excuse. Not long enough for prescriptive right or squatter's right.
4. Spry on Equity

Requirement
(a) Plaintiff's predecessor could not have failed in restraining defendant if he had in hand Exh. B9.
(b) Neither plaintiff nor predecessor guilty of delay.
5. Balance of convenience

All cases cited were structures on defendant's own land. None was a case of trespass on other people's land. Also knowledge on part of plaintiff who did not complain in first 30 instance.

The Shepherd Homes case, no damage suffered.
6. Defendant had done nothing to help himself or help this court.

As soon as plaintiff had suspicion plaintiff acted with great expedition.
7. Allegation that plaintiff bought law suit trespasser.
8. History of correspondence chronologically

A12 A15 A16 Exh. R Exh. D13 D18
A18 A25 A36 A38 A39 A41
D29 D30 D31 and A41.

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 4 Judge's Notes continued

Equity: See defendant's delaying tactics.
See
Armstrong v. Shepherd and Short
19592 Q.B. 384
also at 394
"To some extent . . . Scale II" at 396.
"I now . . . proprietary rights . . . trivial . . . at all."
In present case no awareness of proprietary rights, by plaintiff's predecessor.
9. Predecessor never gave authority or consent to defendants.

Judgment reserved.
(Sgd.) Simon F. S. Li

12th March 1973 at 9.45 a.m.
Resumes for delivery of judgment.
For reasons given plaintiff's action against D1 and D2 dismissed with costs.
(Sgd.) Simon F. S. Li

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 5 Judgment of Full Court

IN THE SUPREME COURT OF HONG KONG
(APPELLATE JURISDICTION)
CIVIL APPEAL NO. 11 OF 1973
(On appeal from O.J. Action No. 2564 of 1971)
BETWEEN THE HOUSE OF DIOR LIMITED Appellant
and
DAVID SEE CHAI LAM Ist Respondent
THE KA WAH BANK LIMITED 2nd Respondent
Coram: Full Court (Blair-Kerr, S.P.J., McMullin and Pickering, JJ.)

JUDGMENT
Blair-Kerr, S.P.J.:
On 23rd June 1952, The District Commissioner, New Territories caused the following notice to be published in the Government Gazette:-
"It is hereby notified that the following Sale of Crown Land by Public Auction will be held at the District Office Taipo . . . on . . . 15th July 1952. Sale conditions may be obtained and sale plans inspected at the District Office . . .".

The notice gave particulars of 11 different lots situated in different parts of the New Territories. One of these lots was no. 535 in Demarcation District no. 187. This was to be sold as a "building and garden" lot.

The sale plan (Ex. B1) actually consisted of 2 small diagrams on a single sheet. On the lower part of the sheet there was a location diagram 1.6" square. This gave prospective purchasers a general idea of where lot 535 was situated in relation to the 2 villages, Sheung Keng Hau and Hin Tin, in the Shatin District. The other diagram was not much bigger. It indicated that lot 535 was situated south-east of the Kowloon/Shatin Road and that it was north of and contiguous to lot 524 which in turn was north of, and contiguous to, lot 523. No other lot numbers were marked on the diagram. Lot 535 was shaded red; and, so far as one could judge, it was rectangular in shape; but the area shaded red was very small indeed; and I do not see how any one could have been certain that the lot was rectangular. The sides of the shaded area measured $3 / 10$ ths. of an inch by $1 / 10$ th. of an inch, thereby suggesting that it was exactly 3 times as long as it was broad. However that was not so. The diagram indicated that the lot was 190' long by $71^{\prime}$ wide.

One could also say from this very small diagram that the longer boundaries of the lot (i.e. the $190^{\prime}$ boundaries) ran roughly north-north-west/ south-south-east.

Below this diagram there appeared the words: "area: 13,490 sq. ft. or In the Supreme
ac. (about)."
The sale was subject to various General and Special Conditions. General Conditions $4,5,8,13$ and 14 , so far as relevant, read:-
" 4. The purchaser of each lot shall when required by the District Officer and prior to the issue of a Crown lease, if such is intended shall be fixed by the Director of Public Works at each angle of the new lot marked with the Registry number of the lot, and the purchaser shall notify the District Officer when he is ready to have the boundary stones fixed.
5. The purchaser of each lot shall when such lot is sold as a building lot, build and finish, fit for occupation, before the expiration of 24 calendar months from the day of sale, in a good, substantial and workmanlike manner, one or more good and permanent messuage or tenement . . . as may be approved by the District Officer
8. When the conditions herein contained have been complied with to the satisfaction of the District Officer the purchaser of each lot shall be entitled to and shall execute on demand a lease from the Crown . . .
13. In the event of the purchaser of any lot assigning the benefit of the agreement signed by him . . . all assignees shall be bound by the General and Special Conditions of Sale, . . .
14. The exact area, boundaries and measurements of each lot shall be determined before the issue of the Crown lease and Crown rent shall be when adjusted in accordance with the area and the amounts of premium and Crown rent at which the lot was sold."

At the auction on 15th July 1952, lot 535 was sold to Edinburgh Hotels
30 Ltd.; and a house was built by the purchasers on the southern portion of the lot in 1953 or 1954. This southern portion (henceforth to be known as "Section A") was sold by Edinburgh Hotels Ltd. to one G.B. King on 16th February 1956. An architect acting on behalf of one of the parties, or both, drew a sketch plan for attachment to the conveyance. So far as the evidence goes, the only plan of the lot at this time was the sale plan which I have described; and it appears that the architect must have consulted this plan. Clearly, he assumed that the lot was rectangular in shape ( $190^{\prime} \times 71^{\prime}$ ); and the net result was that Edinburgh Hotels Ltd. purported to convey to G.B. King a rectangular piece of land $71^{\prime}$ by $65^{\prime}(4,615 \mathrm{sq} . \mathrm{ft}$.).

40 On 16th February 1956, Edinburgh Hotels Ltd. sold the remainder of the lot to one LI MOK Cheuk-yin. Again, for the purpose of the conveyance, the architect concerned drew a similar sketch plan which purported to indicate that Edinburgh Hotels Ltd. was conveying to the purchaser a rectangular piece of land $71^{\prime} \times 125^{\prime}(8,875 \mathrm{sq}$. ft.).

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 5 Judgment of Full Court continued

On 14th June 1957, LI MOK Cheuk-yin sold half of the $8,875 \mathrm{sq} . \mathrm{ft}$. to one CHAN Yuen-foo. Again, the architect concerned drew a rectangular plan which purported to indicate that the vendor was selling a rectangular piece of land (henceforth to be known as "Section B") $71^{\prime} \times 62.5$ ' ( $4,437.5$ sq. ft.) adjacent to Section $A$ and to the north of it.

On 15th July 1958, LI MOK Cheuk-yin sold the Remaining Portion of the lot to the 1 st defendant. Again, the architect drew a rectangular plan which purported to indicate that the vendor was selling a rectangular piece of ground $71^{\prime} \times 62.5^{\prime}(4,437.5 \mathrm{sq}$. ft.).

On 19th August 1965, the executrix of CHAN Yuen-foo sold Section B to the plaintiffs' predecessors in title; and they sold the section to the plaintiffs on 10th September 1970. Finally, on 20th July 1970, the 1st defendant contracted to sell the Remaining Portion to the 2 nd defendant.

In 1958, the 1st defendant employed an architect to draw up plans for a house on the Remaining Portion. The plans as drawn up included a "block plan" which indicated that lot 535 was a rectangle and contiguous to lot 524. But, the block plan does not purport to give the presumed length of the east and west boundaries of the Remaining Portion or of Sections A or B. Indeed, it would appear that the plan was carelessly drawn. The scale is said to be $50^{\prime}$ to $1^{\prime \prime}$; but the east and west boundaries of both the Remaining Portion and Section B are shown as being less than $1^{\prime \prime}$ on the plan!

However, the plans for the house and the various outhouses (including a septic tank at the south-eastern corner of the Remaining Portion) appear to have been approved as being in accordance with the Buildings Ordinance; and the house was completed in May 1959. The 1st defendant built a wall along what, it is now said, he considered was the southern boundary of his property i.e. between the Remaining Portion and Section B.

On 18th June 1959, the District Officer drew the 1st defendant's attention to General Condition 8 and said that a registered owner, within one month of the date of the occupation certificate, was required to apply for the issue of a Crown lease. On 13th July 1959, the 1 st defendant did apply for a Crown lease; but he was not given one. It appears that he is also the owner of lot 562 which is situated to the north of lot 535 ; and that he was occupying certain Crown land between the two lots. The 1st defendant had been in correspondence with the Crown Lands and Surveys Department in regard to the delineation of the southern boundary of lot 562 and the northern boundary of the Remaining Portion of lot 535 . Why there should have been such inordinate delay in settling this matter is far from clear. At any rate, on 15th October 1964, an official of the Crown Lands and Surveys Department wrote to 1 st defendant enclosing a plan (Ex. B2) and saying:-
". . . I have marked by a red line on the three attached plans a suggested orientation for the in part common boundary line between lots 562 and 535 . . . I must point out clearly that this orientation
may, upon a full lease survey of 535 R.P. alter the as now registered area of that lot. However, I understand from our meeting that you are fully au fait with this."

The plan does not show that lots 562 and 535 have a common boundary only "in part" on the western side. To the east of that, there appears to be a wedge of Crown land between the lots.

It appears that Section B was never occupied or developed in any way by the plaintiffs' predecessors in title. The plaintiffs did purchase it with a view to development; and their architect (Jacob Wong) first visited the site on 10th August 1970. The agreement for sale and purchase was entered into on 13th August 1970. Jacob Wong again visited the site on 18th August 1970. He made a rough survey of the site during the later part of August. On 7th September he requested the District Officer Taipo to "set out" Section B; and, as I have said, 3 days later (10th September 1970) the conveyance was signed.

According to the plaintiffs, their original intention was to build a 4 -unit (2-storey) building on Section B; and they submitted plans (Ex. B12) to the Building Authority for approval on 22nd September 1970. By this date the plaintiffs had been given a Crown permit to occupy the land to the west of Section B, between the section and Keng Hau Road; and the architect was under the erroneous impression that this land formed part of the section; and he prepared his plans for a 4 -unit building accordingly.

On 2nd October 1970 Jacob Wong wrote to the District Officer as follows:-
". . . I understand that the Government will set out whole lots only. I shall be much obliged if you will set out the whole lot No. 535 . . . at your earliest convenience."
The plaintiffs' managing director (Mr. T. V. Koo) is a clerk employed by Peter Mark \& Co. (the plaintiffs' solicitors); and on 29th October the Director 30 of Lanḍs and Surveys wrote to him as follows:-
"With reference to your letter dated 2nd October 1970 concerning the setting out of the above lot I have to inform you that a survey fee of $\$ 853.20$ is payable before this can be carried out . . " .

The survey fee was duly paid; and the work of surveying lot 535 commenced about the middle of November 1970. However by 17th November 1970 indeed by 28th July 1970 - the District Officer Taipo had in his possession plans of 535 which were bigger than the small sale plan (Ex. B1); and it is evident from those plans that lot 535 was not rectangular but parallelogrammatic. On 28th July he signed a Crown permit (Ex. E) which authorised
40 the owners of Section A to occupy a portion of Crown land. The plan attached to that permit clearly shows lot 535 as a parallelogram. On 17th November (before the survey), the District Officer forwarded to Mainland Survey Division Taipo a plan (described on its face as "drawing No. TPM 552 $\ldots$. $12 / 11 / 70$ ") showing lot 535 coloured pink. In his covering letter (Ex. N)

In the Supreme he said: "I attach herewith copy of plan showing boundaries of the original

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Judgment of Full Court continued lot 535 ...". It is obvious from this plan that lot 535 (described as "the original" lot 535) was considered to be parallelogrammatic. It is shown as being contiguous to lot 524 in the south and to lot 562 in the north. The plan is marked "area: $13,490 \mathrm{sq}$. ft. (about)" and "subject to survey".

The survey was done by a survey assistant, Mr. HAU King-chee. He said in evidence that when he visited the site in mid-November he found two boundary stones which delineated the northern boundary of lot 524 . One stone was at the south-western corner of lot 535 (the north-western corner of lot 524) i.e. at the point marked C on plan Ex. B8. The other boundary 10 stone was a few feet to the east of lot 535.

Having found these two boundary stones, Mr. Hau plotted a line between them. He then plotted a line $190^{\prime}$ long in a north-westerly direction between the front of the houses built on lot 535 and Keng Hau Road. That was to be the "west" boundary of the lot. The angle formed by the line joining the 2 boundary stones and this west boundary was not a right angle; but Mr . Hau's object was to maintain the perpendicular distance between the west and east boundaries of the lot at $71^{\prime}$. So, he then plotted a line perpendicular to the west boundary line in such a way that the distance between that line to the point where the perpendicular line intersected the line joining the boundary stones, was $71^{\prime}$. He thereby ascertained the southeast corner of lot 535. It is marked B on plan Ex. B8. Having obtained point B , he then plotted a line $190^{\prime}$ long parallel to the west boundary, thereby obtaining the "eastern" boundary of the lot.

This survey was said to be "a partial survey". It was partial only in the sense that the Crown Lands and Surveys Department were not sure what was to be the area of lot 535 because the 1 st defendant was occupying Crown land between lots 535 and 562. If the two lots were to be contiguous, then lot 535 would be 2,140 sq. feet larger than 13,490 sq. feet - the area which was originally sold in 1952. Consequently, Mr. Hau was unable 30 to delineate with certainty the northern boundary of lot 535 .

On 4th December 1970, the Chief Land Surveyor wrote to the District Officer forwarding a copy of the plan (Ex. B8) and in this letter he said:-
"I forward . . . plan . . . showing the setting out of 2 line marks on each of the two north-south boundaries of the above lot. I have pointed out to the architect concerned with the development of section B, Mr. Jacob Wong, to whom a copy of the above plan has been forwarded, that the line marks are in no way intended to indicate the section boundaries. From available information it appears that either a strip of Crown land some $2,140 \mathrm{sq}$. ft. in area lies between lot 562 (setting out plan on. ... dated 15/12/64) and lot 535 (your drawing no. TPM 552 dated $12 / 11 / 70$ ) or alternatively that lot 535 in occupying an area of land some 2,140 sq. ft. in excess of the 13,490 sq. ft. granted. Perhaps you would care to look into this

Clearly, the District Officer must have informed the Chief Land Surveyor that there was to be no change in the area of lot 535 , because on 18th December 1970, the latter wrote to the former enclosing 2 copies of what he described as "a provisional setting out plan" of lot 535 (Ex. J). He said:-
"I have maintained the granted area of $13,490 \mathrm{sq} . \mathrm{ft}$. and made opposite No. 5 sides parallel. Sides AB and CD are equal and have been made the Judgment of same length as the sum of the corresponding sides of the sections Full Court i.e. 190 ft . The right angle width of the lot is 71 ft . - the same continued as the width shown in the assignment plans. Please let me know whether you agree with the boundaries as shown so that I may place pegs at A and D and forward copies of the plan to Mr. Jacob Wong, architect, for the development of section B."

On the the plan (Ex. J.) there is shown an area of Crown land between the northern boundary (AD) of lot 535 and lot 562 . It is also obvious from the line drawn across lot 535 a few feet north of the plotting points, C2 and A1, that the eastern boundary of the Remaining Portion is considerably longer than the western boundary, despite the fact that the plan (Ex. C5) attached to the conveyance of the Remaining Portion in favour of the 1 st defendant shows both east and west boundaries as being 62.5'. Actually, in August, Mr. Jacob Wong had formed the view that the 1st defendant had encroached on Section B. His plan (Ex. B6) was drawn up as a result of his rough survey towards the end of August; and, although it is dated 2nd November, he admitted in cross-examination that it was drawn up a few days after that survey and it clearly shows the alleged encroachment. He also said that he reported the results of his survey to the managing director of the plaintiffs (Mr. Koo).

The District Officer approved of the plan (Ex. J); and, on the morning of 22 nd December 1970, iron spikes in cement were fixed in the ground along the eastern boundary of lot 535 and a red mark was made at the north-western corner ( $D$ on the plans). A plan (Ex. B9), which appears to be identical with the plan Ex. J (except that it does not have the word "provisional" endorsed on it), was forwarded to Mr. Jacob Wong on 22nd December. In his covering letter the Director of Lands and Surveys said:-
". . . the boundaries of the above lot have been set out on the ground as shown on the attached plan. Please take the necessary steps to preserve the survey marks."

A copy of this letter was sent to the Registrar General, the District Officer, Taipo, the Government Building Surveyor, the Chief Engineer Highways, the Traffic Police and Hong Kong Records.

As I have said, the east and west boundaries of the lot as delineated on the plan Ex. B9 are each 190'; the perpendicular distance between the east and west boundaries is $71^{\prime}$; the area of the lot is $13,490 \mathrm{sq} . \mathrm{ft}$.; but, being a parallelogram, in order to get that area, the northern and southern boundaries are not $71^{\prime}$ (as per the original sale plan Ex. B1) but $72.45^{\prime}$.

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The owners of Section A were originally the 3rd defendants. But the plaintiffs very properly withdrew the action as against them. The owners of the section have erected a fence on their northern boundary. Their east and west boundaries are each $65^{\prime}$; and the area occupied by them is $4,615 \mathrm{sq}$. ft., which was the area conveyed to their predecessors in title by Edinburgh Hotels Ltd.

But Section B is no longer $4,437.5 \mathrm{sq}$. ft . It is in fact $3,940 \mathrm{sq} . \mathrm{ft}$. On the other hand, the Remaining Portion is not $4,437 \mathrm{sq}$. ft . (the area conveyed to the 1 st defendant in July 1958). It is now $4,935 \mathrm{sq}$. ft . The eastern boundary of the Remaining Portion as measured from the eastern end of the wall built by the 1 st defendant in 1959 to the north-east corner of the lot is not $62.5^{\prime}$ but $77^{\prime}$. The plaintiffs say that the southern boundary of the Remaining Portion should be a line running parallel to the southern boundary of Section B (i.e. the northern boundary of Section A) thereby making all three sections of the lot parallelograms; but that, as things stand, the 1st defendant has encroached on their land to the extent of $497.5 \mathrm{sq} . \mathrm{ft}$.

I find the 1st defendant's arguments relating to the shape of the lot difficult to understand. He says that in the sale plan the lot was shown as being rectangular; that in preparing the various plans for purposes of conveying the 3 sections and in connection with the building of the two houses, the various architects have drawn the lot on their plans in the shape of a rectangle; that the shape of the lot has now been changed from a rectangle to a parallelogram; that he is not to be blamed for this, trusting as he did to the sale plan which, according to him, showed the lot as being rectangular; that he built his wall in 1959 in the position in which it now is, on his architects' advice; and that, so far as he is concerned, it is in the correct position. Indeed, when he filed his defence he alleged in paragraph 2 that the correct shape of the plaintiffs' land is rectangle, thereby suggesting that the present owners of Section A had encroached on the plaintiffs' land.

If his wall is in the correct position, there is no doubt whatsoever that
is now occupying 497.5 sq . ft. more than was conveyed to him in 1958. Naturally, he does not now suggest that the shape of the whole lot should be a rectangle with a base line BC as shown on the plan Ex. B9 because such a rectangle would incorporate a considerable portion of Keng Hau Road and extend over the steep slope to the west of the road. This would have the effect of placing his swimming pool, all his outhouses (including the septic tank at the south-eastern corner of the Remaining Portion) and even part of the main building on the Remaining Portion, outside the lot altogether! What he says is: the base line BC has changed since the lot was sold in 1952. He says the point B in the plan is now further north than it was in those days. This is tantamount to saying that in 1952, and in 1958, the northern boundary of lot 524 ran more in an east-west direction - and that it has now been changed so as to run more north-east/south-west.

It is difficult to see how the 1 st defendant could ever have thought that. His case is that the sale plan (Ex. Bl) depicted the lot as a rectangle. But it is perfectly obvious from this sale plan that the long boundaries of the lot do not run north/south, but more north-west/south-east; and in my view all this
talk about the shape of the lot having been changed from a rectangle to a parallelogram is largely a red herring. If one compares that sale plan with all subsequent plans, they all show that the lot runs approximately north-west! south-east. The angle formed by the "east" and "west" sides of the lot with due north varies very little from plan to plan. Therefore, if the 1st defendant had really believed that the lot was rectangular and ran roughly north-west/ south-east, he could not have thought that the "southern" boundary of the lot ran more or less east/west, as he now impliedly suggests.

But apart altogether from that, I can find no evidence whatsoever to support the defendants' contention that the northern boundary of lot 524 has been changed since 1952. True, no witness was able to say when the boundary stones for lot 524 were laid; but there was no evidence that the northern boundary of lot 524 had ever been changed. Of course, if, formerly, the northern boundary of lot 524 had run in an east-west direction, as suggested by the 1st defendant, a rectangle drawn on such a base line would again have resulted in most of the lst defendant's house being outside the lot altogether!

During the trial, the 1st defendant adopted a somewhat different approach. The plaintiffs called a Mr. Harland, the Senior Estate Surveyor, Taipo; and the defendants chose to rely heavily on one or two answers which he gave in cross-examination. A note of the relevant part of the cross-examination reads:-
" Q . You mentioned that there would be discussions and negotiations when Crown lease is finally issued, and presumably as it has not yet been issued there is still room for further discussions or negotiations?
A. This is very true.
Q. So one is unable to say at this stage what the precise shape, dimensions or area of the lot will be when the Crown lease is issued?
A. Most certainly. I agree, yes."

In view of those answers, counsel for the 1st defendant submitted to the trial judge that, as no boundary stones had been fixed for the northern boundary of lot 535, and as there was still "room for negotiation" as to the area boundaries and measurements of the lot up till the issue of a Crown lease, it could not be said that the plaintiffs had proved that final area boundaries and measurements of the lot; and therefore that they had not proved that the 1st defendant had encroached on the plaintiffs' land.

The judge accepted this argument and held that the plaintiffs had failed that the action was premature. The judge went further. He said:-
". . . at the fall of the hammer in the auction sale of lot 535 in 1952 the so-called binding contract between the Crown and Edinburgh Hotels Ltd. was no more than an agreement to agree on the exact area, boundaries, and measurements of such lot."

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continued

With respect, I think a great deal too much has been made of these 2 answers by Mr. Harland. The 1st defendant has been occupying Crown land to the north of lot 535 i.e. between that lot and lot 562 . The owners of all three sections of lot 535 are occupying portions of Crown land to the west of the lot as delineated on the plan Ex. B9. The owner of Section A has built a swimming pool on Crown land on the east side of the section. There was no evidence that the Crown had been asked to consider the incorporation into the lot of any of those portions of Crown land to the west, east or north of the present boundaries; but, in my view, when Mr. Harland gave those answers, it may well be that he had in mind the possibility that the various owners might ask for the incorporation into the lot of additional portions of Crown land before any Crown lease is actually issued.

Be that as it may, this is looking to the future, to the possibility that, in the future, one or more of the sub-owners may enter into some other contract with the Crown. The question for this Court is: Have the exact area, boundaries and measurements of lot 535 been determined by the Crown? Has there been a determination?

The answer to that question must surely be "yes". General Condition 14 does not say that the area, boundaries and measurements will be determined by agreement between the parties after negotiation. It says that the area, boundaries and measurements shall be determined; and that means determined by the Crown. And, in my view, there has been a clear determination. It is not for this Court to speculate as to whether the 1st defendant will ask the Crown to incorporate, in any future lease, the strip of Crown land between his Remaining Portion and lot 562 ; or whether the plaintiffs may ask for the incorporation of land to the east of lot 535 as presently delineated (as was suggested at one stage by counsel for the 1st defendant). The point is: there has been a clear determination by the Crown of the area, boundaries and measurements of the lot. If the question of issuing a Crown lease in respect of lot 535 were ever to arise, on the evidence before this Court, and in the absence of any further contracts between the parties, the plan attached to such a lease would, in all probability, be Ex. B9. Therefore, as matters stand, there can be no doubt but that the 1st defendant has encroached on the plaintiffs' land to the extent of $497.5 \mathrm{sq} . \mathrm{ft}$.

Counsel for 1st defendant emphaised that in 1959 the 1st defendant built his wall $128^{\prime}$ from point C on plan Ex. B9. That may well be; but why did he not also take steps to ensure that the other end of the wall was also $128^{\prime}$ from the northern boundary of lot 524? If one thing seems certain in this case it is that the northern boundary of lot 524 has never changed. On the evidence, there appears to be no reason why the 1st defendant, or his architect, should not have been able to ascertain the direction of that northern boundary. If he has done so, he could not have thought that he was entitled to build the wall in the way in which it was built; and it would also have become apparent to him that any future determination of the boundaries of the lot would not have been on the basis of the lot being a rectangle. As I have said, it would have been obvious to any architect that this would have resulted in the lot incorporating a portion of Keng Hau Road and the steep
slope to the west of it. I cannot help wondering whether that wall would have been built in the direction which it was in fact built if Section B had been occupied by its owner in 1959.

After developing his land, the 1st defendant applied for a Crown lease. That is all very well. A careful developer would have asked for the lot to be surveyed and for the issue of a setting out plan before he embarked on development of the Remaining Portion - as the plaintiffs did in 1970.

As it seems to me, the main difficulty in this case is in deciding whether to grant the reliefs sought by the plaintiffs, that is to say (1) a mandatory injunction that the defendants pull down and remove the wall and the various structures on the 497.5 sq . ft. encroachment, and/or (2) damages.

In their defence, the defendants plead thus:-
"9. If, which is denied the said wall or any structures of the defendants are on the plaintiff's land the defendants contend that the plaintiff is barred by the laches and/or acquiescence of itself and its predecessor in title from claiming the relief sought

10. Further, . . . the plaintiff is estopped from claiming the relief sought ... in that the owner of section B the predecessor in title of the plaintiff at the time the said wall and structures were built, stood by and permitted the 1st defendant without objection to build the said wall and other structures essential to his house knowing that the 1st defendant was acting in the mistaken belief that he was erecting the wall and the said structures on his own land."

At the trial, it was not suggested that the plaintiffs had been guilty of laches after purchasing Section B. They very soon let it be known to all concerned that they intended to develop the land. Their own architect did a rough survey towards the end of August; and they applied for a full setting out plan of the lot. But, of course, if their predecessors in title had acquiesced in the encroachment, the plaintiffs would find themselves saddled with the consequences of such acquiescence; and the way it was put both in the court below, and on appeal, was that CHAN Yuen-foo, was the owner of Section B in 1959, well knowing that the 1st defendant was encroaching on Section B, had stood by and permitted this without objection. Furthermore, it was argued that the plaintiffs' immediate predecessors in title had been guilty of laches.

We were referred to the law relating to equitable estoppel, laches and acquiescence, and a number of cases were cited. But, as Mr. Litton for the plaintiffs said, acquiescence presupposes knowledge of what was going on; and the 1st defendant's difficulty was that he was quite unable to call any executrix sold the site, knew what had happened in 1959. It appears that Chan died prior to September 1962 because there was produced in evidence a letter dated 7th September 1962 (Ex. Q) from 1st defendant to Chan's widow. The letter reads in part:--

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"I am a friend of your late husband . . . Our house in Shatin is right next to your lot and we have been looking forward to the pleasure of becoming one of your neighbours in the future.

The piece of land which you own and adjoining our house has been left at its original rural state and this is understandable because you have not commenced building. You may be aware that at its present state it is full of tall weeds and bushes. . . . I suggest for your consideration in allowing me to .
(1) . . . clear all weeds and bushes and rubbish from this lot and perhaps level it somewhat in order to plant trees and flowers there to beautify it.
(2) that I use some barbed wire to fence it off to prevent further rubbish dumpings and from intruders or burglars."

Apart from the fact than CHAN Yuen-foo was registered owner of the Remaining Portion, there was not a scrap of evidence to suggest that he ever visited the site or that he was aware that the 1st defendant had encroached on Section B. This applies equally to the plaintiffs immediate predecessors in title. The evidence suggests the contrary.

The grant of a mandatory injunction would cause the defendants considerable expense and inconvenience. It appears that one consequence of a mandatory order would be that the defendants would have to lift a number of their drains and re-site them elsewhere. The straightening out of the boundary might also result in the defendants having to part which a portion of the surrounds to the swimming pool. The septic tank and various other structures would have to be removed and reconstructed elsewhere. Counsel for the defendants submitted that there was nowhere else on the Remaining Portion to put these structures. The learned judge, having visited the site, does not suggest otherwise. However, he did say this:-
" I have visited the site and I can see that there is a lot of Crown land available beyond the eastern boundary at the rear of the remaining portion. Further, Crown land is available near and adjacent to the northern boundary of the remaining portion. These out-buildings and tanks can be diverted further down the slope towards and beyond the eastern boundary, provided the New Territories Administration is prepared to rectify the mistake by granting to the 1 st defendant a little bit more of the Crown land. Alternatively there can be room for extension towards the northern boundary."

As I have said, I find it difficult to accept the submission that the 1st defendant and his architect made a genuine mistake in 1959. They did not exercise such care as one might reasonably expect from prudent developers. On the other hand, there was nothing in the evidence to suggest that the New Territories Administration might not accede to any reasonable request by the defendants for additional land to the east or the north. I can see no reason why the Administration should not assist the defendants in this way.

If the learned judge had found that the 1st defendant had encroached on the land of the plaintiffs, he would have granted reliefs (1), (3) and (4) as sought in the statement of claim. He said so in his judgment. Having given this matter anxious consideration, I see no reason to differ from the learned judge. In my view, there should be declarations by this Court that Section B, the plaintiff's' land, is that area coloured pink, including the portion hatched black and designated EFG and H on the plan annexed to the statement of claim; that the said Section B has an area of $4,437.50 \mathrm{sq} . \mathrm{ft}$.; that its east and west boundaries measure 62.5'; and that its north and south boundaries measure $72.54^{\prime}$ each. Secondly there should be an order for possession in favour of the plaintiffs in respect of the 497.5 sq . ft . on which the 1st defendant has encroached; and thirdly that the 1st and 2nd defendants be ordered to pull down and remove the wall and various structures at preesnt on the 497.5 sq . ft. encroachment. I would, myself, be prepared to allow the defendants 2 months within which to comply with this mandatory order.

On the question of damages, the case for the plaintiffs is that they had decided to build a 3 -unit building; but owing to the encroachment they are able only to build one consisting of 2 units; and that even if a mandatory order for the rectification of the boundaries is made, they will have lost considerable sums by way of rent owing to the delay. On this aspect of the case, I agree with the conclusion to which the learned judge would have come, if he had found that that the plaintiffs had proved the alleged encroachment. The evidence does suggest that the plaintiffs' managing director (Koo) knew full well about the encroachment prior to 10th September 1970. Jacob Wong had surveyed the site towards the end of August 1970 and he had informed Mr. Koo of the results of that survey. True, as counsel for the plaintiffs said:-
" If I purchase a house and there are trespassing squatters in it, even if, before completion, I become aware that they are there, am I not entitled to complete and then to eject them?'

On the other hand, the plaintiffs must have known that the defendants would require time to rectify their mistake (or the consequences of their negligence, depending on how one views the manner in which the Remaining Portion was developed in 1959). Although I do not agree with the learned judge that this unfortunate mix-up was caused entirely by the negligence of the New Territories Administration, nevertheless taking a broad view of the events as a whole, I agree with the learned judge that justice will be done if the boundaries are now rectified and the plaintiffs be granted nominal damages only.

For the above reasons I would allow the appeal with costs here and in the court below.

(W. A. Blair-Kerr)

Litton, Q.C. and D. Chang (Peter Mark \& Co.) for appellant R. Mills-Owens (Johnson, Stokes \& Master) for respondent.

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 6 Order of the Full Court

IN THE SUPREME COURT OF HONG KONG
APPELLATE JURISDICTION
CIVIL APPEAL NO. 11 OF 1973
(On Appeal from O.J. Action No. 2564/71)

BETWEEN
THE HOUSE OF DIOR LIMITED Appellant
and
DAVID SEE CHAI LAM Ist Respondent
THE KA WAH BANK LIMITED 2nd Respondent

BEFORE THE HONOURABLE MR. JUSTICE BLAIR-KERR, THE HONOURABLE MR. JUSTICE MCMULLIN AND THE HONOURABLE MR. JUSTICE PICKERING IN FULL COURT

## ORDER

On Friday, the 1st day of June, 1973.
Upon reading the notice of motion, dated the 27th day of March, 1973, on behalf of the plaintiff (appellant) by way of appeal from the judgment of the Honourable Mr. Justice Li given on the 12th day of March, 1973 whereby it was ordered that the action against the 1 st and 2 nd defendants (1st and 2nd respondents, respectively) be dismissed with costs.

And upon reading the said judgment.
And upon hearing counsel for the plaintiff (appellant) and counsel for the 1 st and 2 nd defendants ( 1 st and 2 nd respondents, respectively).

It is ordered that this appeal be allowed.
It is further ordered that the said judgment of the Honourable Mr. Justice Li be set aside and that in Lieu thereof this court doth:-
(a) hereby declare that Section B of Lot No. 535 in Demarcation District 187 comprises the area coloured pink, including the portion hatched back and designated E, F, G and H on the First Plan annexed to the statement of claim herein (hereinafter called "the said Section B"); hereby declare that the said Section B has an area of $4,437.50$ square feet and that its east and west boundaries measure 62.50 feet each and its north and south boundaries measure 72.45 feet each;
(b) hereby declare that the said Section B has an area of $4,437.50$ square In the Supreme feet and that its east and west boundaries measure 62.50 feet each Court of and its north and south boundaries measure 72.45 feet each;
(c) hereby order that possession in respect of the 497.50 square feet of land on which the lst defendant has encroached, be given to the No. 6 plaintiff;
(d) hereby order that the 1st and 2nd defendants do within two months continued thereof pull down and remove the wall and various structures erected on the said encroachment of 497.50 square feet of land; and

10 (e) hereby order that the 1st and 2nd defendants do pay the plaintiff nominal damages and costs of the action in the court below to be taxed.

It is further ordered that the costs of this appeal be paid by the 1st and 2nd defendants (1st and 2 nd respondents) to the plaintiff (appellant), such costs to be taxed.

Acting Deputy Registrar.

In the Supreme Court of Hong Kong Appellate
Jurisdiction
No. 7
Notice of Motion for Leave to Appeal

In THE SUPREME COURT OF HONG KONG
APPELLATE JURISDICTION
CIVIL APPEAL NO. 11 OF 1973
(O.J. Action No. 2564 of 1971)

| THE HOUSE OF DIOR LIMITED |  |
| :--- | :--- |
| and | Appellant <br> (Plaintiff) |
| DAVID SEE CHAI LAM | Ist Respondent |

(lst \& 2nd Defendants)

TAKE NOTICE that the Full Court will be moved on Tuesday, the 26th day of June, 1973 at $9.30 \mathrm{a} . \mathrm{m}$. or so soon thereafter as Counsel can be heard on behalf of the abovenamed Respondents that they be granted leave to appeal to Her Majesty in Council pursuant to the provisions contained in the Rules in the Order in Council Regulating Appeals from the Supreme Court or Court of Appeal for Hong Kong to Her Majesty in Council from a judgment of the Full Court given on the 1st day of June 1973 whereby it was adjudged and ordered that the Appeal of the Appellant (Plaintiff) from the judgment of Mr. Justice Li dated 12th March 1973 be allowed and whereby the Full Court further declared that the Appellant's land was as claimed by the Plaintiff and whereby it was further ordered that the Appellant be given possession of 497.5 sq . ft . of land and whereby it was further ordered that the Respondents do pull down and remove the wall and various structures at present on the said 497.5 sq. ft within a period of two months.

AND FURTHER TAKE NOTICE that the Full Court will be moved to grant such leave upon such conditions as it may think fit and reasonable to impose pursuant to the provisions contained in the said Rules.
AND FURTHER TAKE NOTICE that upon the hearing of the Motions aforesaid the Respondents will seek a direction of the Full Court under Rule 5 of the said Rules that execution of the said judgment ordering that the Appellant be given possession of the said 497.5 sq. ft. of land and ordering that the Respondents do pull down and remove the said wall and other structures be suspended pending the Appeal to Her Majesty in Council upon such terms as to the Full Court shall deem just.

Dated this 14th day of June, 1973.

> Richard Mills-Owens, Counsel for Respondents.
> Johnson, STOKES \& MASTER, Solicitors for Respondents.

To the Appellant:-
The House of Dior Limited \& its solicitors, Messrs. Peter Mark \& Co.

$\qquad$

IN THE SUPREME COURT OF HONG KONG
APPELLATE JURISDICTION
CIVIL APPEAL NO. 11 OF 1973
(On appeal from O.J. Action No. 2564 of 1971)

BETWEEN
THE HOUSE OF DIOR LIMITED Appellant and
DAVID SEE CHAI LAM Ist Respondent
THE KA WAH BANK LIMITED 2nd Respondent

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 8 Order of Full Court Granting Leave to Appeal

BEFORE THE HONOURABLE MR. JUSTICE MCMULLIN

## ORDER

UPON HEARING Counsel for the Appellant and Counsel for the Respondents and UPON READING the Affidavits of Tom Kay Tak Tong and Koo Tse Van filed herein.

IT IS ORDERED that:-

1. Leave to appeal to the Privy Council be granted conditional upon security under Rule 4 (a) in the sum of $\$ 30,000.00$ be provided by cash and paid into Court by the Respondents within 14 days and conditional under Rule $4(b)$ upon the record of the appeal

In the Supreme Court of Hong Kong Appellate Jurisdiction

No. 9 Notice of Motion to Full Court

IN THE SUPREME COURT OF HONG KONG
APPELLATE JURISDICTION
CIVIL APPEAL NO. 11 of 1973
(O.J. Action No. 2564 of 1971)

THE HOUSE OF DIOR LIMITED Appellant
and
DAVID SEE CHAI LAM Ist Respondent
THE KA WAH BANK LIMITED 2nd Respondent

TAKE NOTICE that the Full Court will be moved on Tuesday the 24th day of July 1973 at 10 o'clock in the forenoon or so soon thereafter as Counsel can be heard, by Counsel on behalf of the Respondents, David See Chai Lam and the Ka Wah Bank Limited for leave to extend the time for preparing and despatching the Record of these proceedings to England for a further period of two months as from the 7th day of August 1973.

Dated the 18th day of July 1973.

> J. R. Oliver
> Registrar.
> Johnson, Stokes \& MaSTER
> Solicitors for the Respondents.

To the abovenamed Appellant and to Messrs. Peter Mark \& Co.,
Solicitors for the Appellant.
(Estimated time not exceeding 30 minutes)

IN THE SUPREME COURT OF HONG KONG APPELLATE JURISDICTION

CIVIL APPEAL NO. 11 of 1973
(On appeal from O.J. Action No. 2564 of 1971)
$\qquad$

In the Supreme Court of Hong Kong Appellate
Jurisdiction
No. 10 Order Extending Time

BETWEEN THE HOUSE OF DIOR LIMITED Appellant and

DAVID SEE CHAI LAM Ist Respondent
THE KA WAH BANK LIMITED 2nd Respondent

BEFORE THE HONOURABLE MR. JUSTICE PICKERING

## ORDER

UPON HEARING Solicitors for the Appellant and Solicitors for the Respondents and by consent IT IS ORDERED that the time for preparing and despatching the Record of Proceedings to England be extended for a further period of one month as from the 7th day of August 1973 and that the costs of this application be costs in the cause of the appeal. Liberty for both parties to apply generally.

Dated the 24th day of July 1973.

## EXHIBITS

Bundle "A"

## Letters

# Letter from District Office, Tai Po 

Exhibit
to Li Fook Hon, Esq.
18th June, 1959.
T.P. Ref.: T.P. 33/1/52 (III)

Permit No.: 18/T.P./59

Mr. Li Fook Hon, authorized architect, has certified on 21st May, 1959, in the form contained in D.A.N.T. Completion Certificate that the new building, being one two-storey R.C.C. building on Lot Number 535 R.P. in D.D. 187, Keng Hau, Shatin, N.T., complies in all respects with the specifica10 tions of the plans and structural details and calculations submitted by him and approved by the District Commissioner, N.T., and that they are structurally safe. Permission is hereby granted to occupy and use the new building for domestic purposes.

(J. C. C. Walden)<br>District Officer, Tai Po, for District Commissioner, New Territories.

To: LI Fook Hon, Esq., 3, Arbuthnot Rd., Hong Kong.

20 For onward transmission to owner:
David See-Chai Lam, Esq.,
7, Crampian Rd., Kowloon.
N. B. In accordance with General Condition No. 8 of Government Notification No. 364 of 1934, the registered owner is required to apply within one month from the date of this occupation certificate to the District Officer, Taipo, for the issue of a Crown Lease in respect of this lot.
c.c. C., R. \& V.
:cky

Letter from The Ka Wah Bank Ltd.
to District Office, Tai Po.

July 13, 1959
District Officer
District Office, Tai Po
New Territories

Sir:
T.P. Ref.: T.P. 33/1/52 (III)

Permit No.: 18/T.P./59

In accordance with General Condition No. 8 of Government Notification 10 No. 364 of 1934 I, being registered owner of the two-storey R.C.C. building on Lot Number 535 R.P. in D.D. 187, Keng Hau, Shatin, N.T., hereby apply for the issue of a Crown Lease in respect of the lot.

Your early attention shall be gratefully appreciated.

Yours faithfully,
David S. C. LAM.

# Letter from Crown Lands \& Survey Office <br> to David S. C. Lam, Esq. 

## 367/NLT/61

BY REGISTERED POST
15th October, 1964
Mr. David, S. C. Lam,
c/o The Ka Wah Bank Ltd.,
259 Des Voeux Road Central, Hong Kong.

10 Sir,
Lot 535 R.P., D.D. 187
Reference discussion on site between Messrs. Humphrey (L.A. Taipo) David Lam and Tarrant, 12.10.64.
2. As discussed, I have marked by a red line on the three attached plans a suggested orientation for the in part common boundary line between Lots 562 and 535 (R.P.).
3. This suggested alignment scales about 10 feet and 30 feet from the gate and house side as shown.
4. If after examination you find the alignment satisfactory I would be ern if you, as Owner of Lots 562 and 535 R.P., would endorse two of the plans as being satisfactory in orientation for that portion of the boundary line in part common between Lots 562 and 535 R.P. and return same to me. The third copy is for your own retention.
5. I must point out clearly that this orientation may, upon a full lease survey of 535 R.P., alter the as now registered area of that lot. However, I understand from our meeting that you are fully au fait with this.
6. I return herewith your plan as loaned with thanks.

Yours faithfully,
(A. E. Tarrant)

AET/Ycw.

Exhibit

Letter from The Ka Wah Bank Ltd. to Crown Lands \& Survey Office.

October 20, 1964.
The Superintendent of Crown Lands \& Survey, Crown Lands \& Survey Office, Buckingham Building, Nathan Road, Kowloon.

For the kind attention of Mr. A. E. Tarrant

Sir,
Lot 535 R.P., D.D. 187
I thank you for your letter of October 15, 1964 L.S.O. $367 /$ NLT/61 together with three plans showing a suggested orientation for the in part common boundary line between Lots 562 and 535 (R.P.). As owner of both Lots, I find this common boundary satisfactory and have endorsed on the plans accordingly and returning two copies to you while retaining one for my use.

Please accept my sincere thanks not only for the trouble which you have taken to work out on site with Mr. Humphrey and myself the suggested orientation on October 12, 1964 but also for the fair, friendly and considerate 20 approach which you have taken in this matter.

Yours faithfully,
David S. C. Lam.

Encl.

Letter from Wong \& Tang Architects

Our Ref.: 118/70
25th September, 1970.
Mr. David See-Chai Lam, C/O Ka Wah Bank Ltd., 259/265 Des Voeux Road C., Hong Kong.

Dear Sirs,
RE: S.B. of Lot No. 535 King Hau D.D. No. 187 Shatin, N.T.

In accordance with the provisions of Building Ordinance, Chapter 123, Section 110 to 126 , we wish to serve you notice that our clients, The House of Dior Ltd., propose to erect a building on their property at S.B. of Lot No. 187, Shatin, N.T.

Enclosed is a set of drawings showing the proposed development for your purusal.

Your consent in writing would be much appreciated.

> Yours faithfully, JACOB WoNG

JW/rn
C.C. The House of Dior Ltd.,

Exhibit

Letter from Wong \& Tang Architects
to Mr. \& Mrs. Siu See Leong.

Our Ref.: 118/70
25th September, 1970.
Mr. \& Mrs. Siu See Leong, 249 Prince Edward Road, 6th Floor, Kowloon.

## Dear Sirs,

RE: S.B. of Lot No. 535 King Hau

In accordance with the provisions of Building Ordinance, Chapter 123, Section 110 to 126 , we wish to serve you notice that our clients, The House of Dior Ltd., propose to erect a building on their property at S.B. of Lot No. 187, Shatin, N.T.

Enclosed is a set of drawings showing the proposed development for your purusal.

Your consent in writing would be much appreciated.

> Yours faithfully,

JW / rn
C.C. The House of Dior Ltd.,

# Letter from Crown Lands \& Survey Office <br> Exhibit <br> to The House of Dior Ltd. <br> A7 

In Reply Please Quote
L.S.O. L/M 1988/52

Your Ref.: 118/70

Crown Lands \& Survey Office,
Fanling Branch,
Public Works Department, Fanling Survey Camp, Jockey Club Road, Fanling, N.T.

Date: 29th October, 1970.

10 Dear Sir,
D.D. 187 Lot No. 535, Keng Hau, Sha Tin.

With reference to your letter dated 2 nd October, 1970 concerning the setting out of the above lot I have to inform you that a survey fee of $\$ 853.20$ is payable before this can be carried out.
2. On receipt of your advice indicating your willingness to pay this amount, a Demand Note will be forwarded to you and survey commenced immediately advice has been received from the Treasury that this has been paid.

(W. J. E. Tyler)

for Director of Lands \& Survey.

Messrs. T. V. Koo
The House Of Dior Ltd., C/O Peter Mark \& Co. Solicitors, Grand Building, 11th Floor, Hong Kong.
/dh

## Exhibit Letter from Fanling Survey Camp, Crown Lands \& Survey Office to The House of Dior Ltd.

Reply Please Quote:
L/M 1988/52

Fanling Survey Camp, Crown Lands \& Survey Office, Public Works Department, Jockey Club Road, Fanling, New Territories.

4th December, 1970.

Messrs. The House of Dior Limited, 11th floor, Grand Building, 15-18, Connaught Road, Central, Hong Kong.

Dear Sir,
Lot No. 535 in D.D. 187, Keng Hau, Sha Tin.
I forward herewith one copy of plan No. NT 1796-S showing the setting out of 2 line marks on each of the two north-south boundaries of the above lot.

Please note that the line marks are in no way intended to indicate the boundaries of Section B.

Yours faithfully,
(W. J. E. Tyler)
for Director of Lands \& Survey.
c.c. D.O. (Tai Po)

WJET : lt

Letter from Mr. M. I. de Ville
to Fanling Survey Camp.
18th December, 1970.
Your Ref.: L/M 1968/52

The Director of Lands \& Survey, Fanling Survey Camp, Jockey Club Road, Fanling, New Territories.

Dear Sir,
10 Lot No. 535 in D.D. 187

Acting on behalf of the House of Dior Limited I would refer to your letter of 29 th October 1970 addressed to my client in which you informed the Company that a fee of $\$ 853.20$ would be payable for "the setting out of the above lot".

Such fee was duly paid and on 4.12 .70 you forwarded your plan NT 1796-S which is very good as far as it goes but it is not a plan of the setting out of the complete Lot No. 535 in D.D. 187.

As you are aware, I think, the Company is interested in Sec. B only but boundary problems having arisen it is necessary to have a plan and 20 dimensions of the whole Lot. I am aware that the setting out of Sections of Lots is not within the province of your Department but delineation of the boundaries of the complete Lot is a reasonable request.

May I therefore trust that you will let me have a setting out plan, with dimensions and area, of the complete Lot No. 535 as soon as possible.

Yours faithfully,

Exhibit A10

## Letter from Crown Lands \& Survey Office to Wong \& Tang Architects.

In Reply Please Quote
L.S.O.: L/M 1988/52

Your Ref.: 118/70

Crown Lands \& Survey Office, Fanling Branch, Public Works Department, Fanling Survey Camp, Jockey Club Road, Fanling, N.T.

Date: 22nd December, 1970.

Dear Sir,
Lot No. 535 in D.D. 187, Keng Hau, Sha Tin.
With reference to your letter dated 16th December, 1970 to D.O. (Tai Po) I have to inform you that the boundaries of the above lot have been set out on the ground as shown on the attached plan.

Yours faithfully,
(W. J. E. Tyler)
for Director of Lands \& Survey.
c.c. Registrar General D.O.T.P.
G.B.S.
C.E.H/N.T.
P.O.T.P.
H.K. Records
$\zeta$ with plan
20

Messrs. Jacob Wong
508, Takshing House,
20, Des Voeux Road, Central,
/cl Hong Kong.


Letter from Mr. M. I. de Ville
to The Ka Wah Bank Limited together with plans.
29th December, 1970.
The Ka Wah Bank Limited, 259 Des Voeux Road C., HONG KONG.

Dear Sirs,
Lot No 535 in D.D. 187
Keng Hau Road, Sha Tin.
The owner of Section B of the above Lot. The House of Dior, on whose behalf I am acting, is about to commence development on this site. However on checking the boundaries of Sec. B it is found that there is a serious discrepancy concerning the alignment of the southern boundary of the R.P. of the Lot of which you are the owner.

The Crown Lands \& Survey Department were requested to set out the original Lot and I enclose a copy of the official plan giving dimensions. From the information thus to hand and according to the plan attached to Memorial No. 138176, being the Conveyance on Sale of the R.P. of Lot 535, it is obvious that the R.P. of the Lot has an excess area and is encroaching over part of Section B as shown hatched green on the enclosed plan.

A line joining points A 1 and C 2 on the setting out plan cannot be taken as the correct boundary between Sec. B \& the R.P.

I would therefore request that you agree to surrender the area hatched green to my client the owner of Sec . B .

If you wish me to meet your Architect/Surveyor concerning the matter I should be pleased to do so and, as the matter is urgent, I should be grateful to have a reply from you within the next fourteen days.

Yours faithfully,

# The Ka Wah Bank Limited, HONG KONG. 

P. S.

I would add that the Government Surveyor does not hold himself responsible for demarcation of Sections of a Lot but only for the setting out of the Lot as a whole thus the points $\mathrm{A}, \mathrm{B}, \mathrm{C} \& \mathrm{D}$ on the plan are the only boundary marks with which he is directly concerned. The other points are what he describes as "line marks which are in no way intended to indicate 10 Section boundaries."


Letter from Messrs. Peter Mark \& Co. to Mr. David See-Chai Lam.
801/70/TVK
19th January, 1971.
Mr. David See-Chai Lam, C/O Ka Wah Bank Ltd., 259 Des Voeux Road Central, HONG KONG.

Dear Sirs, Keng Hau Road, Sha Tin.

We act for The House of Dior Ltd., the registered owner in possession of Section B of Lot No. 535 in D.D. 187, Sha Tin.

We are informed that you are the registered owner in possession of Remaining Portion of the abovementioned Lot and are occupying an excess area over our clients' land as shown on the plan prepared by the Government Surveyor and hatched green on the said plan sent to you by our clients consultant Mr. M. I. De Ville, Chartered Surveyor on the 29th December 1970, but you have failed to comply with request or give any reply.

In the circumstance, we are instructed by our clients to require you 20 to adjust the boundary and make good the same. As our clients now wish to commence development on their land very soon and to avoid loss and damages might be incurred by our clients, we trust that you will instruct your architect and contractors to carry out the adjustment of the boundary within the course of next 2 weeks.

Yours faithfully,
LWK : PF

Letter from Messrs. Peter Mark \& Co. to The Ka Wah Bank Limitd.

801/70/TVK
19th January, 1971.
The Ka Wah Bank Ltd., 259 Des Voeux Road Central, HONG KONG.

Dear Sirs,
Re: Lot No. 535 in D.D. 187, Keng Hau Road, Sha Tin.

We act for The House of Dior Ltd., the registered owner in possession 10 of Section B of Lot No. 535 in D.D. 187, Sha Tin.

We are informed that you are the equitable owner of Remaining Portion of the abovementioned Lot and are occupying an excess area over our clients' land as shown on the plan prepared by the Government Surveyor and hatched green on the said plan sent to you by our clients consultant Mr. M. I. De Ville, Chartered Surveyor on the 29th December 1970, but you have failed to comply with his request or give any reply.

In the circumstance, we are instructed by our clients to require you to adjust the boundary and make good the same. As our clients now wish to commence development on their land very soon and to avoid loss and 20 damages might be incurred by our clients, we trust that you will instruct your architect and contractors to carry out the adjustment of the boundary within the course of next 2 weeks.

Yours faithfully,

LWK : PF

## DISTRICT ADMINISTRATION, NEW TERRITORIES

TAI PO OFFICE.

6th April, 1954

Permit No. $2 / 54$
Ref. No.

Mr. S. C. YUE Authorised Architect has certified on 29th March 1954 in the form contained in Schedule $K$ that the new building being a new domestic house on Lot No. 535 in D.D. 187 at King Hau, Sha Tin, N.T. complies in all respects with the specifications of the plans and R.C.C. calculations submitted by him and approved by the District Commissioner, New Territories, and that it is structurally safe. Permission is hereby granted, to occupy and use the building for domestic purposes.
(D. C. Bray)
for District Commissioner,
New Territories.

To : S. C. YUE

I certified that this is a true copy
(J. W. Bailey)

Senior Estate Surveyor for District Officer, Tai Po

14th June, 1971

Exhibit
A15

# Exhibit Letter from Johnson, Stokes \& Master <br> to Mr. M. I. de Ville. 

Our Ref.: FGN/L3/70/cs Your Ref.:

24th May 1971
Mr. M. I. De Ville, F.R.I.C.S., F.I.ARB., Grand Building, 11th floor, 15-18 Connaught Road C., HONG KONG.

Dear Mr. De Ville,

| Re: | Lot 535 D.D. 187, Shatin | 10 |
| :--- | :--- | ---: |
|  | Keng Hau Road, |  |
|  | Section B and R.P. |  |

With reference to our recent conversation, we have conferred with our client and as a result of such and as a result of further investigation, the following emerges:-

The original plan issued by the Taipo District Office when the property was originally put up for sale by auction shows a rectangle and not a parallelogram. Unfortunately the plan is small but nevertheless no indication of a parallelogram is given.

I would draw to your attention the fact that there have been considerable dealings both with Section A, Section B and to a limited extent with the Remaining Portion and that in all these plans as recorded at the Land Office each of the sections as well as the whole lot is a rectangle and not a parallelogram.

I think that the mistake has occurred probably because the first house to be built, namely Section A, may have for convenience built a garden wall or other enclosure especially the southern boundary in a parallelogram form. Erroneously I think thereafter this has been taken as the correct form of the lot. However, I am assured that the boundary line between Section B and R.P. was most carefully worked out from Crown and other 30 plans at the time and the situation now is that there is in fact no marked boundary on the ground as shown at A D to the north of the lot on the

Crown Survey Plan dated the 22nd December 1970. The position here is that the Crown Land both to the north and to the northeast is all held by the owners of R.P. under Crown Permit and there is no boundary between the permit land and the Remaining Portion. I am convinced that the line A D was achieved by taking a line parallel with the southern boundary of Section A thus erroneously producing the parallelogram. The Line A D should in fact be at a right angle to the line D-C2-C1-C. There are steps built upon this Crown Land merely to enable access to be obtained to the steep hillside garden which lies to the north and to the northeast 10 and there has never been any intention to put these steps inside the lot. If the Crown permit was ever cancelled the steps would be useless and would revert with the land to the Crown.

Certain documents have been procured in substantiation of the foregoing and copies of these are enclosed and listed below as follows:-
(1) Copy plan from original Conditions of Sale.
(2) Copy plan on carving out assignment of Section A. February 1956.
(3) Copy plan from assignment of the then R.P. to our clients predecessors in title (which included what is now Section B).
(4) Copy plan from assignment to Mr. David Lam of R.P., after Section B had been carved out.

Yours sincerely,
F. G. Nigel.

Encl.


SCALE 30 HT －1 INCH


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Exhibit All continued

Exhibit A17 continued


A MEMORIAL required to be regivtered in the Distrisk Adminitration, Now Turritories, at Hong Kong - the provisions of the Lend Registration Ordinance (Cap. 128) and the Now Territorien Ordinance (Cap. 97).




# Letter from Johnson, Stokes \& Master 

Our Ref.: FGN/L3/70/cs
Your Ref.: 801/70/TVK
10th June 1971
Peter Mark \& Co., Grand Building, 11th floor, HONG KONG.

Dear Sirs,
Re: Section $B$ and Remaining Portion of Lot No. 535 in D.D. 187.

With reference to your letter of the 26th May referring to your letter of the 13 th April, I was approached by Mr. De Ville who I understood made approach on behalf of your clients, and having consulted with our clients, a letter was written to Mr. De Ville on the 24th May. A copy of such letter is enclosed herewith. We are not sending the plans as these are somewhat numerous and doubtless you can secure them from Mr De Ville.

Yours faithfully,
F. G. Nigel.

Encl.

# Letter from District Office, Tai Po to Messrs. Peter Mark \& Co. 

Tel.: NT 66-2340
11th June, 1971
Our Ref.: (58) in TP 33/1/52 II
Your Ref.: 801/70/TVK
Messrs. Peter Mark \& Co., Solicitors \& Notaries, Grand Building, 11th floor, 15-18, Connaught Road, C., Hong Kong.

Dear Sir,
D.D. 187 Lot $535 \mathrm{Sec} . \mathrm{B}$

Keng Hau, Sha Tin
I refer to your letter dated 27th May, 1971 and earlier correspondence, and would apologise for delay in giving you a decision on plans for development submitted.

As you are aware, the original Lot 535 was granted under G.N. 364, the Lot later being subdivided. Subsequently with the introduction of the Buildings Ordinance, and its application to New Territories, certain of the provisions of G.N. 364 were overruled or amended, and it is the examination of these modifications and their application to the particular Conditions of Grant relating to this Section of Lot 535 which has required clarification.

I would assure you the matter is receiving constant examination, and would reiterate any apology for the length of time this has taken.

I will write again at the earliest opportunity.

Yours faithfully,
(J. W. Bailey)
for District Officer, Tai Po.

JWB/st

Letter from District Office, Tai Po
to Messrs. Peter Mark \& Co. together with certified occupation permit No. 2/54.

Tel.: NT 66-2340
14th June, 1971
Our Ref.: (44) in TP 33/1/52
Your Ref.: 801/70/TVK

Messrs. Peter Mark \& Co., Solicitors \& Notaries, Grand Building, 11th Floor, 10 15-18 Connaught Road, C., Hong Kong.

Dear Sirs, D.D. 187 Lot No. 535 Sec. A

With reference to your letter dated 9th June, 1971, I forward herewith a certified true copy of the occupation permit in respect of the above lot and you are requested to pay $\$ 5.00$ being the official signature fee of the same.

Yours faithfully,<br>(J. W. Bailey)<br>for District Officer, Tai Po.

20 Encl.

# DISTRICT ADMINISTRATION, NEW TERRITORIES <br> TAI PO OFFICE. 

6th April, 1954
Permit No. 2/54
Ref. No.

Mr. S. C. YUE Authorised Architect has certified on 29th March 1954 in the form contained in Schedule $K$ that the new building being a new domestic house on Lot No. 535 in D.D. 187 at King Hau, Sha Tin, N.T. complies in all respects with the specifications of the plans and R.C.C. calculations submitted by him and approved by the District Commissioner, 10 New Territories, and that it is structurally safe. Permission is hereby granted, to occupy and use the building for domestic purposes.

(D. C. Bray)<br>for District Commissioner,<br>New Territories.

To : S. C. YUE

I certify that this is a true copy

(J. W. Bailey)<br>Senior Estate Surveyor<br>for District Officer, Tai Po.

14th June, 1971.

# Letter from District Office, Tai Po 

to Messrs. Peter Mark \& Co. together with certified occupation permit No. 18/TR/59.

Tel.: NT 66-2340
Our Ref.: (59) in TP 33/1/52 III
Your Ref.: 801/70/TVK
14th June, 1971
Messrs. Peter Mark \& Co., Solicitors \& Notaries,
10 Grand Building, 11th Floor, 15-18 Connaught Road, C., Hong Kong.

## Dear Sirs,

$$
\text { D.D. } 187 \text { Lot } 535 \text { R.P. }
$$

With reference to your letter dated 9th June, 1971 I forward herewith a certified true copy of the occupation permit in respect of the above lot and you are requested to pay $\$ 5.00$ being the official signature fee of the same.

Yours faithfully,<br>(J. W. Bailey) for District Officer, Tai Po.

Encl.
YHY/kc

Exhibit

Mr. LI Fook Hon. authorized architect, has certified on 21st May, 1959, in the form contained in D.A.N.T. Completion Certificate that the new building, being one two-storey R.C.C. building on Lot Number 535 R.P. in D.D. 187, Keng Hau, Shatin, N.T., complies in all respects with the specifications of the plans and structural details and calculations submitted by him and approved by the District Commissioner, N.T., and that they are structurally safe. Permission is hereby granted to occupy and use the 10 new building for domestic purposes.

(J. C. C. Walden)<br>District Officer, Tai Po, for District Commissioner, N.T.

To : LI Fook Hon, Esq.,
3, Arbuthnot Rd., Hong Kong.

For onward transmission to owner:
David See-Chai Lam, Esq., 7, Crampian Road, Kowloon.
N.B. In accordance with General Condition No. 8 of Government Notification No. 364 of 1934, the registered owner is required to apply within one month from the date of this occupation certificate to the District Officer, Taipo, for the issue of a Crown Lease in respect of this lot.
c.c. C., R. \& V.
:cky
I certify that this is a true copy
(J. W. Bailey)

Senior Estate Surveyor, for District Officer, Tai Po.

14th June, 1971.

Letter from Messrs. Peter Mark \& Co.

> to The Chief Surveyor, New Territories Administration.

801/70/PM/TVK
17th June, 1971.
The Chief Surveyor, New Territories Administration, North Kowloon Magistracy Building, 4th Floor, Tai Po Road, KOWLOON.

10 Dear Sir,
Re: Lot No. 535, Sec. B in D.D. 187
Keng Hau, Sha Tin.
We act for the House of Dior Limited, the registered owner of the above premises which is held under G.N. 364 and refer to an application for the approval of the general plans to the proposed development submitted by their Architects to the District Office, Taipo, relating to the compliance with the Lease Conditions.

The said plans were duly approved by the Building Authority on the 2nd day of March, 1971 which approval means that the provisions of the 20 Buildings Ordinance (Cap. 123) have been complied with.

We are instructed to write to you for an early approval of the said application as we have been waiting for this confirmation since 22nd March and time has been marching on since.

For your convenience, we enclose herewith photostat copies of the following:-

1. Senior Surveyor's letter dated 10th September 1970;
2. Approval of plans dated 2nd March 1971;
3. The latest survey plan dated 22nd December 1970 of Lot No. 535 in D.D. 187;
4. Our first letter dated 22nd March 1971 to the District Office;
5. Our second letter dated 3rd May 1971;
6. Our third letter dated 27th May 1971;
7. District Officer's reply dated 11th June 1971;
8. Certified true copy of the Occupation Permit in respect of D.D. 187 Lot No. 535 Sec. A;
9. Certified true copy of the Occupation Permit in respect of D.D. 187 Lot 553 R.P.
and should be most grateful if you would kindly treat this matter as utmost urgent and please let us have your reply at your earliest convenience.

Yours faithfully,

Encl.
PM/yc
c.c. Registrar General's Department (N.T. Section)

Our Ref．：801／70／TVK
16th July 1971.

Mr．Siu See Leong（蘭 師 亮）and Madam Eva Siu Cheng Yee Wan（䔵 䣋 綺 華）， Section A of Lot No． 535 in D．D．187， Sha Tin，N．T．and
249 Prince Edward Road， 7th floor，
10 Kowloon．

Dear Sir／Madam，
re：Section A and Section B of
Lot No． 535 in D．D．187， Keng Hau Road，Sha Tin．

We act for our client，The House of Dior Ltd．，the registered owner of Section B of Lot No． 535 in D．D．187，Sha Tin．

The General Plans for Section B of Lot No． 535 have been approved by the Building Authority under B．O．O．No． $2 / 9253 / 70$ and our client will commence constructions on their site immediately．

We have been informed that you，as the registered owner of Section A of the Lot No．535，have been occupying part of our client＇s land due to the fact that you constructed a parallelogram－shaped site on the rectangular land originally purchased by you．

Under the circumstances，we are instructed by our client to require you to re－adjust the boundary and make good of the same．In order to avoid further loss and damages，we hope that you will instruct your architect and contractors to carry out the re－adjustment on the lot boundary as early as possible．

For your reference，we send you herewith a copy letter dated 24th May， 30 1971，written to Mr．M．I．De Ville，Chartered Surveyor，by Messrs．Johnson， Stokes \＆Master on behalf of the owner of Remaining Portion of this Lot， which speaks for itself．

Yours faithfully，
Peter Mark \＆Co．
Encl．
HC／TVK／chl

Exhibit

Letter from Mr. M. I. de Ville to Johnson, Stokes \& Master.

16th July, 1971.
Messrs. Johnson, Stokes \& Master, Solicitors, Hong Kong.

Dear Mr. Nigel,
Lot 535 in D.D. No. 187
Keng Hau Road, Shatin.
Thank you for your letter of the 24th May in reply to which my 10 comments are as follows:-
(1) The Lot was originally rectangular but later its shape became that of a parallelogram the area however remaining the same.
(2) The plan attached to the Assignment of Sec. B showed the Lot and its sections as being rectangular.
(3) The setting out by the District Office surveyor however shows the Lot as a parallelogram but permitting all sections having their original areas. Unfortunately the R.P. has excess area at the expense of Section B.
(4) The eastern \& western boundaries of the Sections were originally:- 20

Sec. A 65 ft . Now:- 65 ft .
Sec. B. $6^{\prime} 6^{\prime \prime} \quad 55 \mathrm{ft}$. (west), 45 ft . (east)
R.P. $62^{\prime} 6^{\prime \prime} 70 \mathrm{ft}$ ", 80 ft "

The official setting out plan dated 22.12.70. shows the same total length - 190 ft . - of these boundaries and the original dimensions as above can therefore be allotted to the sections and correct areas, as assigned, maintained.
(5) Section A as developed occupies its correct area and has east and west boundaries 65 ft . in length as originally assigned but Sec. B \& R.P. are at variance with the correct dimension - see (4) above - 30 and adjustment is accordingly necessary.
(6) If any of the area of the R.P., as shown coloured pink on the survey plan is claimed to be on Permit could you kindly supply me with a copy of Pemrit plan.

Yours faithfully,
c.c. Messrs. Peter Mark \& Co., Solicitors, Hong Kong.

# Letter from Messrs．Peter Mark \＆Co． 

to Mr．Siu See Leong and Madam Eva Siu Cheng Yee Wan．

Mr．Siu See Leong（婣 師 亮）and
Madam Eva Siu Cheng Yee Wan（䓊 鄭 綺 華）， 249 Prince Edward Road，Kowloon and
Section A of Lot No． 535 in D．D．187，
Keng Hau Road，Sha Tin，
New Territories．

10 Dear Sir／Madam，
re：Section A and B of
Lot No． 535 in D．D．187， Keng Hau Road，Sha Tin．

We refer to our letter dated 16th July 1971 and receive no reply from you．

Unless you agree to re－adjust the lot boundary within 10 days from the date hereof，we have instructions to institute legal proceedings against you for the purpose of determining the lot boundary and to recover damages and loss of profits．

PM／TVK／chl．

Exhibit A26

Letter from Messrs. Peter Mark \& Co. to Messrs. Johnson, Stokes \& Master.

Your Ref.: FGN/L3/70/cs
26th July 1971.
Our Ref.: 801/70/TVK

Messrs. Johnson, Stokes \& Master, Solicitors, Hong Kong.

Dear Sirs,

$$
\begin{array}{ll}
\text { re: } & \text { Section B and R.P. of } \\
\text { Lot No. } 535 \text { in D.D. 187, } \\
\text { Keng Hau Road, Sha Tin. }
\end{array}
$$

With reference to your letter of the 10th June 1971, we regret to inform you that our clients, after careful consideration, cannot accept the explanation given by your clients. In the circumstance, our clients have no alternative but to institute legal proceedings against yours to determine the lot boundary and to recover damages and loss of profits unless this difference could be resolved within the next 10 days.

Perhaps you might wish to take instructions and indicate to us you have instructions to accept service of the Writ of Summons on behalf of your clients in connection with this matter.

Yours faithfully,

PM/TVK/chl

Letter from Johnson, Stokes \& Master

Our Ref.: FGN/L3/70/cs
31st July 1971
Your Ref.: 801/70/TVK

Peter Mark \& Co., Grand Building, 11th floor, HONG KONG

## Dear Sirs,

Re: Section B and R.P. of Lot No. 535 in

We are in receipt of your letter of the 26th July. If your clients feel that proceedings are inevitable, we have instructions to accept service and the proceedings will be defended.

The lot was originally rectangular and all plans recorded by the owners of the property, have followed Government's original plan of the lot being a rectangle. Mr. De Ville has also considered that according to the plan as originally issued by the Taipo District Office that the lot was rectangular. It would seem therefore most relevant to ascertain how and under what circumstances it is alleged by your client that the original lot has in the meantime become a parallelogram. The plan produced by Mr. De Ville has no official status that we can see. Would it not be appropriate to arrange a joint interview with the District Land Office and their Surveyors to discuss this aspect?

If our client is occupying more land than he is entitled to or in the wrong area, he will change his boundaries but at the moment nothing has been established to demonstrate that this is the true state of affairs or whether (if such is the case) those boundaries should be moved.

Alternatively a discussion with you might be helpful.

Yours faithfully,

# Exhibit Letter from Mrs. Eva Siu Cheng Yee Wan A28 to Messrs. Peter Mark \& Co. 

Mrs. Eva Siu Cheng Yee Wah, 249 Prince Edward Road, 7th Floor,
Kowloon, 3rd August, 1971.

Peter Mark \& Co.
Solicitors \& Notaries, Grand Building, 11/F. 15-18 Connaught Rd. C., Hong Kong.

Attention: Mr. Peter Mark

Dear Sir,
Re-adjust the lot boundary of Section A and B of Lot No. 535 in D.D. 187, Keng Hau Road, Sha Tin.

This is to confirm our conversation of today, between your $\mathrm{Mr} . \mathrm{Ku}$ and the undersigned, re the above matter.

We are now proceeding to have the land surveyed by a Public Surveyor, and will furnish you with the report as soon as it is available.

Yours faithfully,
Eva Siu Cheng Yee Wan
Siu See Leong.

801/70/TVK
4th August 1971.
Messrs. Johnson, Stokes \& Master, Solicitors, Hong Kong.

Dear Sirs,
re: Section B and R.P. of Lot No. 535 in D.D. 187, Keng Hau Road, Sha Tin.

10 We acknowledge the receipt of your letter dated the 31st July, 1971, and note that you have instructions to accept service, if necessary. However, proceedings may not be inevitable.

With respect to paragraph 2 of your said letter, we regret that we are unable to agree that the lot was originally rectangular. It may well be that all plans recorded by the owners of the property have been rectangular, but we are of the opinion that they have not followed the Government's original plan.

We have directed Mr. De Ville's attention to your Statement that he "has also considered that according to the plan as originally issued by the
20 Taipo District Officer that the lot was rectangular", but he states emphatically that you have obviously misconstrued what he said because the plan which he produced was official and was obtained from the Taipo District Office, and is clearly not rectangular, you will see from the enclosed photocopy of the Survey Plan.

Nevertheless, we are of the opinion that in the circumstances it is advisable to accept your suggestion "to arrange a joint interview with the District Land Office and their Surveyors to discuss this aspect" as soon as possible. Perhaps you might make an early appointment for this purpose.

If our contention is correct, then the matter can be settled as stated in the
30 last paragraph of your letter, subject, however, to our right to claim damages for the encroachment by your client and loss of profit resulting from the inability to erect the building.

May we please have your reply soon.

> Yours faithfully,

PM/TVK/chl
c.c. Mr. M. I. De Ville.

Exhibit A32

# Letter from Mr. M. I. de Ville <br> Exhibit to District Office, Tai Po. 

T.P. 33 in $1 / 52$

13th September, 1971.

## URGENT

The Senior Estate Surveyor, District Office,
Tai Po, N.T.

Dear Sir,
Lot No. 535 in D.D. 187
Keng Hau Road, Sha Tin.
I am writing on behalf of the registered owner of Section B of the above Lot, The House of Dior Limited, concerning Lot boundaries. A plan dated $22 / 12 / 70$ forwarded by your office to Mr. Jacob Wong, Authorised Architect, shows the Lot in the shape of a parallelogram although Assignment plans show the Lot as being rectangular.

A dispute has arisen concerning the boundary between the R.P. and Section B and we are aware that it is not within your province to settle such dispute, however, if a plan of the Lot as sold is available I would ask you to kindly let me have a copy.

20 It would seem that the Lot was originally rectangular but has now become a parallelogram of equivalent area; if this is so the Sale Plan would confirm such change.

The solicitors for the R.P. owner contend that part of the area occupied by him is on Permit. Should this be the case could you kindly let me have a copy of the Permit Plan.

Yours faithfully,

MID : yc

Exhibit A34

# Letter from Messrs. Peter Mark \& Co. 

Your Ref.: BOO 3/9253/71
Our Ref.: 2571/PM/71
25th November, 1971.
The Office of the Building Authority, Public Works Department, Murray Building, 8-10th Floors, Garden Road,
10 HONG KONG.

Dear Sirs,
Re: King Hau, Shatin - D.D.187,
Lot 535, S.B.
We act for The House of Dior Limited, the registered owner of the abovementioned property with reference to your letter of the 16th November 1971 addressed to our clients' Architect, Mr. Jacob Wong.

Our clients are rather surprised to note that at this late stage you complain of the discrepancies of the existing measurements of the site and details of the approved plan which received your approval as early as 2nd 20 March 1971.

In this connection, our clients wish to refer to a plan prepared by the Crown Lands \& Survey Office of the Public Works Department dated 22nd December 1970, a photostat copy whereof is enclosed herewith for your ease reference. The said plan shows the Remaining Portion with an area of $80^{\prime} \times 72.45^{\prime}$ and $70^{\prime} \times 72.45^{\prime}$ and Section B with area of $45^{\prime} \times 72.45^{\prime}$ and $55^{\prime} \times 72.45^{\prime}$ in parallelogram shape. According to the area in Assignment Memorial No. 136436 of Tai Po District Office in respect of Remaining Portion, the area is $4,347.50^{\circ}$ and the area in Assignment Memorial No. 138176 of Tai Po District Office in respect of Section B, the area is also 4,437.50' both measuring $62.50^{\prime} \times 71^{\prime}$ in rectangle shape. From the above, you will see that the existing wall and other structures in the Remaining Portion have encroached upon our clients' land.

On the 4th November 1971, our clients have instituted legal proceedings in the Supreme Court of Hong Kong viz:- Original Jurisdiction Action

No. 2564 of 1971 against the owner of the land known as D.D. 187, Lot 535, Remaining Portion for an Order that the Defendants forthwith pull down and remove the said wall and a Declaration that the said Section B coloured pink includes the portion hatched black.

We have been advised by Counsel to issue a subpoena to an Officer from the District Office, Tai Po, to produce the copy of the approved plans of the building on the said Remaining Portion and other documents to attend Court to give evidence of such encroachment and to determine whether or not the building now erected thereon was the same as the approved plans and also to issue a subpoena to an Officer from your Office who attended the recent inspection of the said site. In this connection we should be pleased if you would furnish us with the name of the Officer who attended the inspection of the said site at your earliest convenience.

Furthermore, you are now fully aware after the aforesaid inspection that the existing building on the Remaining Portion does not appear to comply with the requirements of Building (Planning) Regulations which apply to all buildings erected after June 1956, we would like to know what actions (if any) you propose to take in this matter.

In view of the pending action in the Court, our clients cannot, at the moment, comply with your request as set out in paragraph 3 of your said20 letter.

Our clients shall be glad if you will kindly re-consider their application and request you to grant your consent to the commencement of works on units $\mathrm{B} \& \mathrm{C}$ only (if required) with an undertaking as to damages by our clients or by their Architect to be furnished.

Your early reply will be much appreciated.

> Yours faithfully,

PM/yc
c.c. Mr. Jacob Wong;

The House of Dior Limited.

# Letter from Messrs. Peter Mark \& Co. to District Office, Tai Po. 

Our Ref.: 2571/71/PM
26th November, 1971.
The District Officer, District Office, Tai Po, New Territories.

Dear Sir,

We act for The House of Dior Limited, the registered owner of Lot 535, S.B. in D.D. 187 with reference to a plan prepared by the Crown Lands \& Survey Office of the Public Works Department dated 22nd December 1970, a photostat copy whereof is enclosed herewith for your ease reference.

The said plan shows the Remaining Portion with an area of $80^{\prime} \times 72.45^{\prime}$ and $70^{\prime} \times 72.45^{\prime}$ and Section B with area $45^{\prime} \times 72.45^{\prime}$ and $55^{\prime} \times 72.45^{\prime}$ in parallelogram shape. According to the area in Assignment Mem. No. 136436 of Tai Po District Office is respect of Remaining Portion, the area is 4,437.50' and the area in Assignment Mem. No. 138176 of Tai Po District Office in
20 respect of Section B, the area is also $4,437.50^{\prime}$ both measuring $62.50^{\prime} \times 71^{\prime}$ in rectangle shape. From the above, you will see that the existing wall and other structures of the Remaining Portion have encroached upon our clients' land.

On the 4th November 1971, our clients have instituted legal proceedings in the Supreme Court of Hong Kong, viz:- Original Jurisdiction Action No. 2564 of 1971 against the owner of the land known as D.D. 187, Lot 535, Remaining Portion, for an Order that the Defendants forthwith pull down and remove the said wall and a Declaration that the said Section B coloured pink includes the portion hatched black.

We have been advised by Council to issue a subpoena to an Officer from
30 the District Office, Tai Po, to produce the copy of the approved plans of the building now standing on the said Remaining Portion and other documents to attend Court to give evidence of such encroachment and to determine whether or not the building now erected thereon was the same as the approved plans or any erected thereafter. Meanwhile, if possible, please supply us a copy of such approved plans. We undertake to pay the prescribed fees upon hearing from you.

Your kind co-operation will be much appreciated.

PM : kc
Yours faithfully,
Peter Mark.

# Exhibit A37 <br> Letter from Wong \& Tang Architects <br> to Messrs. Peter Mark \& Co. together with copy letter from Office of the Building Authority to Mr. Jacob Wong. 

Our Ref.: 118/70
Peter Mark \& Co. Solicitors,
Grand Building,
11th Floor,
15-18 Connaught Road C.,
Hong Kong.

Dear Sir,

RE: D.D. 187 Lot No. 535 S.B. King Hau, Shatin

Enclosed is a copy of letter from the Building Authority, dated 1st December, 1971 which is self-explanatory.

Yours faithfully,
Jacob Wong.

JW/rn
Encl.

COPY

Ref. No.: BOO 3/9253/70
1st December, 1971.
Jacob Wong, Esq., 508 Takshing House, 20 Des Voeux Rd. C., Hong Kong.

Dear Sir,
King Hau, Shatin - D.D. 187 Lot 535 s.B.
10 Further to my letter to you dated 16th Nov., 1971 and in particular to paragraph $2(b)$ of such letter that amended building and foundation plans are required to be submitted. Your superstructural plans submitted to this office on 4th August, 1971 are therefore returned to you herewith for the necessary amendments.

Buildings Ordinance Section 16 (1) (i) refers.

Yours faithfully,
(Ho Peng)
pro Building Authority.

KBL/rl
20 Encl.

# Exhibit A38 <br> Letter from District Office, Tai Po <br> to Messrs. Peter Mark \& Co. 

Tel. T.P. 662340
Our Ref.: (75) in TP 33/1/52 II
Your Ref.: 801/70/PM
8th December, 1971.
Messrs. Peter Mark \& Co., Grand Building, 11th floor, 15-18, Connaught Road, C., Hong Kong.

## Dear Sirs,

D.D. 187 Lot 535 Sec. B \& R.P.

I refer to your letter dated 26th November 1971 regarding the above lots.
Approved plans to buildings erected or to be erected on land granted, are held in the Buildings Ordinance Office.

Before proceeding further in this matter, I would suggest you contact the Chief Building Surveyor for the New Territories at Murray Building, Garden Road, Hong Kong, to whom this letter is copied, together with a copy of your letter dated 26th November, 1971.
c.c. C.B.S./N.T.
(Ref. BOO 2/9253/70)
Mainland Survey Div., Tai Po.

Yours faithfully,<br>(J. W. Bailey)<br>Senior Estate Surveyor for District Officer, Tai Po.

JWB : lf

Letter from Wong \& Tang Architects

Your Ref.: B.O.O. 9253/70
Our Ref.: 118/70
17th December, 1971
The Building Ordinance Office, The Building Authority, Murray Building, 8th Floor,
10 Hong Kong.

Dear Sir,
RE: S.B. of Lot No. 535 King Hau D.D. No. 187 Shatin N.T.

Reference is made to your letter dated 16th November, 1971.
My client is now taking the adjacent owners of the above lots to court, for building over his properties.

In view of your above letter, para. 2, my client has instructed me to submit amended plans, for development on the remaining un-obstructed piece of ground as stage 1 ., a second stage amended plans will be submitted, when 20 the court rules on the positions of the boundary fence walls.

Yours sincerely,
Jacob Wong.

JW/rn
c.c. Client.

Exhibit Letter from Messrs. Wong \& Tang Architects

Our Ref.: 118/70
20th December, 1971.
Mr. T. V. Koo,
Peter Mark \& Co. Solicitors, Grand Building, 11th floor, 15-18 Connaught Road Co., Hong Kong.

Dear Sir,

$$
\text { Re: D.D. } 187 \text { Lot No. } 535 \text { S.B. King Hau, Shatin. }
$$

This is to confirm your instructions to amend all General Plans, Structural Plans and Drainage Plans for submission to the Building Authority, and apply for construction of this project in two stages.

The two apartments on the southern side will be constructed in the first stage; the remaining apartment on the northern side will be constructed when the retaining fence wall is removed.

$$
\begin{aligned}
& \text { Yours sincerely, } \\
& \text { JACOB WONG. }
\end{aligned}
$$

JW/rn

# Letter from Messrs. Peter Mark \& Co. 

(75) in TP $33 / 1 / 52$ II

801/71/PM
29th December, 1971.
The District Officer, District Office, Tai Po,
New Territories.

Dear Sir,

$$
\text { Lot } 535 \text { Sec. A, B \& R.P. in D.D. } 187
$$

We thank you for your letter of the 8th December 1971, the contents of which are noted.

Our client's Architect, Mr. Jacob Wong, has contacted the Chief Building Surveyor for the New Territories at Murray Building and has been informed that architectural plans approved prior to 1960 are kept in the District Office. In the circumstances, we should be obliged if you could please supply us copies of the approved plans for the Section A and Remaining Portion of Lot 535 in D.D. 187.

We undertake to pay your prescribed charges.

Yours faithfully, Peter Mark.

PM/chl
c.c. Mr. Jacob Wong.

## Letter from Office of the Building Authority

to Messrs. Peter Mark \& Co.

Ref. No.: BOO 2/9253/70
January, 1972.
Messrs. Peter Mark \& Co., Grand Bldg., 11th floor, 15-18 Connaught Rd. C., Hong Kong.

Dear Sirs,
King Hau, Shatin - D.D. 187 Lot 535 S.B.
I refer to your letter dated 25th Nov., and would confirm the following 10 points for your information.
2. Your clients' architect was made aware of the fact that plans were approved by this office on the 2nd and 30th March, 1971 in the absence of the lease conditions and lease plan in our covering letters dated 2 nd and 29th March, 1971.
3. On the receipt of the lease plan in this office on 8th Sept., 1971 the architect was called on 10th Sept., 1971 and informed verbally of the discrepancies between the approved plan and lease measurements.
4. It is noted from the architects letter dated 6th February, 1971 that he was aware of measurement discrepancies at this stage and had obtained agreement in principle with adjoining lot owners on resiting sub-division boundaries.
5. The plans for the existing building on the Remaining Portion were dealt with by the District Office being prior to the Buildings Ordinance application to New Territories Ordinance No. 27 of 1960.
6. The officer who attended the recent inspection of this site in Mr. C. Briffett, Building Surveyor.
7. No action will be taken concerning the existing building on the Remaining Portion as it is exempt from Ordinance No. 27 of 1960 under Sections 5 and 6 of the said Ordinance.
8. I regret that I cannot reconsider the application for consent until the whole matter of lot boundaries is settled. The delay in dealing with your letter is regretted.

Yours faithfully,
(C. H. Gimson)
$\mathrm{CB} / \mathrm{rl}$
pro Building Authority.

# NT. $103 / 72$ 

GOVERNMENT OF HONG KONG.
Form 12.
BUILDINGS ORDINANCE.
(Chapter 123).
Section 14.
BUILDING (ADMINISTRATION) REGULATIONS.
Regulation 30(1)(a).
Approval of Plans.
B.O.0. Ref. No. $2 / 9253 / 70$

To: ...The House ..of... Diran..ttl,
of hl. Ta. Tash...Nong.
508 Take ashing Hone,
Hong Kong.
Office of the Bulling Authority.


The

## Bulling

plans attached hereto, on which I have signified my approval, are hereby approved.
(No. and Name of Street) <compat>...King....Has, ..... Stative

2. Your attention is drawn to subsection (2) of section 14 of the Buildings Ordinance, which provides that the giving by the Building Authority of his approval to any plans shall not exempt any person from the necessity of obtaining the consent of the Building Authority to the commencement and carrying out of the $\qquad$ Building on such plans. This approval does NOT authorize the commencement or carrying out of any ..........Runildng. works.


## GOVERNMENT OF IIONG KONG. <br> Form 30. <br> BLILDINGS ORDNANCE.

(Chapter 123).

Scction 42

## Permit under Section 42.

smit No. . N. To. . $27 / 72$
.0.0. Ref. No. ......2/9253/70......
0: ... Bis...Ja.00b. Jonns.
508. Takshing. House g..........
hang Kanga $\qquad$
Office of the Building Authority.
26.th. Jamary......., 19.72....

In excrcise of the powers vested in me by section 42 of the Buildings Ordinance, I hereby grant :odification of and/or exemption from the provisions of-

:0. be unaolourea
$\qquad$
$\qquad$
1 respect of proposed
butlains
works at (No. and name of street)
lug. Haug . Sisatin on (Lot No. 'Pormit-Apeo io.) ....D.D. ... 187. 工.Qt. 535.sqB.

This permit is granted subject to the following conditions:-
(a) The work to be carried out in accordance with the plans approved on $\qquad$

## 26. th . J and 1 Hrys, 1972

B.O.O. Ref. No.

2/92533/7.0
$\qquad$
$\qquad$
$\qquad$
$\qquad$
$\qquad$
$\qquad$
$\qquad$
$\qquad$

pro. Building Authority.

Letter from Messrs. Peter Mark \& Co.

Very Urgent<br>By Hand

10th February, 1972.

Messrs. K. Y. Woo \& Co., Solicitors, 1203 Manning House, HONG KONG

## 10 Dear Sirs,

O.J. Action No. 2564 of 1971

Please file your Defence within the time limited by the Order made by the learned Registrar Mr. Simon Mayo on the 26th January 1972.

Yours faithfully,
Peter Mark.

PM/yc

Exhibit A46

Letter from Messrs. Peter Mark \& Co.
to The District Office, Tai Po.
(75) in TP $33 / 1 / 52$ II

10th February, 1972.
801/71/PM

The District Officer, District Office, Tai Po, NEW TERRITORIES.

Dear Sir,
Lot 535 Sec. A, B \& R.P. in D.D. 187

We refer to our letter of the 29th December 1971 and should be obliged if you would kindly let us know when you are in a position to supply us copies of the approved plans for Section A and Remaining Portion of Lot 535 in D.D. 187.

We undertake of course to pay your prescribed charges.

Yours faithfully,
Peter Mark.

PM/yc
c.c. Mr. Jacob Wong.
Letter from District Office, Tai Po.
to Messrs. Peter Mark \& Co.

Tel.: T.P. 662340
Our Ref.: (78) in TP 33/1/52 II
Your Ref.: 801/71/PM
12th February, 1972.
Messrs. Peter Mark \& Co., Grand Building, 11th floor, 15-18, Connaught Road, C.,
10 Hong Kong.

Dear Sirs,
Lot 535 Sec. A, B \& R.P. in D.D. 187.

In reply to your letter of 29th Dec. 1971, I am to advise you that I have been unable to locate the whereabouts of the approved plans for the remaining portion of Lot 535 in D.D. 187. Plans were, however, approved by this office on 14th Nov. 1958 but appear to have been lost subsequently. I regret I am therefore unable to assist you in this matter.

With regard to para. 2 of your letter of 26th Nov. 1971 I take this opportunity of pointing out to you that the plan to which you refer does 20 not indicate the sections of the lot and would draw your attention to a letter of 4th Dec. 1970 from the Director of Lands \& Survey to your client, under ref. LSO L/M 1988/52.

Yours faithfully,
(A. J. Harland)
for District Officer, Tai Po.
AJH: If

## EXHIBITS

## Bundle "B"

## Plans

Letter from District Office, Tai Po
to Messrs. Adolfo Mark Investment Co. Ltd.,

Our Ref.: (73) in TP 33/1/52 II
Your Ref.: 112/71
23rd November, 1971.
Adolfo Mark Investment Co. Ltd., Grand Building, 11th floor,
15-18, Connaught Road, C., Hong Kong.

10 Dear Sirs, D.D. 187 Lot No. 535.

I refer to your letter dated 3rd November, 1971 and now enclose a copy of the Sale Plan relating to this lot as requested.

Yours faithfully,<br>(J. W. Bailey)<br>Senior Estate Surveyor for District Officer, Tai Po.

JWB : If


NoWe

3. Sce wowes to be oun Matis








PDODOSED
157,146








Exhibit
$B l$
continued


Area: $13,490 \mathrm{sq} . \mathrm{ft}$. or . 31 ac. (about)

Scale 8 inches to one mile


Scale 1: 25,000
TAI PO DISTRICT OFFICE NEW TERRITORTES
File No. TP $33 / 1 / 52 \mathrm{II}$ 22.10 .71

M. I. DE VILLE, fri.c.s., F.I.anl.

Chartered Surveyor.


In acceptin: this Permit $I$, the undersigned permittee, fully understand, acknowledge and agree that-

(1) Neither this document nor any occupation of the permit area nor the payment of any fees in respect thercol shall be construed as creating the relationship of landlord and tenant.

(2) The acceptance of fees paid in respect of this permit shall not constitute a waiver of any breach of any of the conditions hercof existing at the date of such acceptance.

(3) No permit, approval or agreement from or with any other department of Government shall constitute a waiver.

(4) Any occupation of the permit area or the erection or maintenance of any structure thereon otherwise than in accordance with the terms and conditions of this permit shall be an offence under section 10 of the Summary Offrnces Ordinance, Cap. 228.


(5) The Lawful Authority may in his absolute discretion cancel this permit on giving three months' notice thercof of his intention so to do.

(6) This permit is granted subject to the General and Special Conditions to bo found on pages 2, 3 and 4 heroof.


Per Pignature of Pernittce.



Witness to Signature of Permittee.
Wirness to Signaharc of Fermilfee................



Interpreted and Explained to Permittee by哏

for District Comp issioner, New Territorles.




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 PROPOSED SIIE FOR

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AREA CALCULATION DIAGRAM

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GROUND $\qquad$ PLAN




## EXHIBITS

## Bundle "C"

Documents of Title


No. 772
District Administration, New Territories.
It is hereby notified that the following Sale of Crown Land by Public Auction will be held at the District Office, Tai Po, at $11.00 \mathrm{a} . \mathrm{m}$. on Tuesday, the 15th day of July, 1952.

Sale conditions may be obtained and sale plans inspected at the District Office, Tai Po.

PARTICULARS OF THE LOTS.

E. E. Teesdale, Acting D.C. N.T.

### 23.6.52

All lots are subject to the General and Special Conditions published in Government Notification No. 364 of 1934 as amended by Government Notification No. 50 of 1940.

The amounts to be expended on the buildings in Serial Nos. 7 to 11 in rateable improvements under the General Conditions No. 5 are $\$ 7,000$, $\$ 10,000, \$ 18,000, \$ 18,000 \& \$ 18,000$.

Exhibit Cl continued

## ADDITIONAL SPECIAL CONDITION TO

 SERIAL NOS. 1, 2, 3, 4 and 6.Half of the area shall be planted with fruit trees within twelve months and the whole area shall be planted with fruit trees within twenty-four months of the date of sale, to the satisfaction of the District Commissioner.

## ADDITIONAL SPECIAL CONDITION TO SERIAL NO. 2.

$\$ 50.00$ Purchaser shall pay to the $\$ 50.00$ over and above the realized price of the lot for the pine trees growing on the lot.

## ADDITIONAL SPECIAL CONDITION TO SERIAL NO. 4.

Reasonable facilities for access to the grave on the lot shall be given at the Ching Ming and Chung Yeung Festivals to the persons entitled, in the opinion of the District Commissioner, to worship at the grave.

## ADDITIONAL SPECIAL CONDITION TO SERIAL NO. 5.

No grave or building of any sort shall be permitted to be constructed on this lot, neither shall conversion be allowed. The use of this lot is strictly restricted to cultivation purposes only, either wet or dry.

## ADDITIONAL SPECIAL CONDITIONS TO SERIAL NOS. 7 TO 11.

(a) Before beginning to build, the Purchaser shall obtain the District Commissioner's permission in writing to do so.
(b) Within two weeks of the completion of the building, the Purchaser shall inform the District Commissioner, in writing, of the fact.
(c) The Purchaser shall maintain the Building, when built, and the whole property concerned in a good state of repair, to the satisfaction of the District Commissioner.

## HONG KONG GOVERNMENT GAZETTE.

Exhibit District Mainland" in the Order in Council dated 15th March, 1906 Special Conditions as are therein referred to by their respective numbers.

30th April, 1934.

## T. S. Whyte-Smith,

 Land Officer.
## GENERAL CONDITIONS OF SALE.

1. The highest bidder above the upset price shall be the Purchaser, and if any dispute arise between two or more bidders for any lot, such lot shall be put up again at a former bidding.
2. No person shall at any bidding advance less than one dollar or such other sum as shall be named at the time of sale.
3. Immediately after the fall of the hammer, the Purchaser of the lot shall sign a Memorandum of Agreement in the form herein-after contained, for completing the purchase in accordance with the general and special conditions of sale and shall, within three days of the day of the sale, pay to the District Officer, for and on behalf of His Majesty the King, the full amount of Premium at which the lot shall have been purchased.
4. The Purchaser of each lot shall, when required by the District Officer and prior to the issue of a Crown Lease, if such is intended to be issued, pay the sum of $\$ 6$ for each boundary stone which shall be fixed by the Director of Public Works at each angle of the new lot marked with the Registry Number of the lot, and the Purchaser shall notify the District Officer when he is ready to have the boundary stones fixed. If it is intended that the angles of the lot shall be covered by building, walls or other erections such notification must be given at least 14 days before the foundations are up to the ground level to enable the boundary stones to be fixed into the erections. If such notification be not given the Director of Public Works shall be at liberty at any time to enter on the lot and to cut into such erection and do any other act necessary for the purpose of fixing the boundary stones. Any expense incurred in consequence shall be borne by the Purchaser and the amount paid into the District Office, within 7 days of receipt of a demand in writing from the District Officer.
5. The Purchaser of each lot shall where such lot is sold as a building lot, build and finish, fit for occupation, before the expiration of twenty-four calendar months from the day of sale, in a good, substantial and workmanlike manner, one or more good and permanent messuage or tenement upon some part of such lot with wall of stone or brick and lime-mortar and roof
of tiles or such other materials and in such manner as may be approved by the District Officer, and in all other respects to the satisfaction of the District Officer and shall expend thereon in rateable improvements not less than the amount specified in the Partificulars and Conditions of Sale. Provided that notwithstanding any default by the Purchaser in complying with this condition as regards any lot, and notwithstanding any acceptance on behalf of the Crown of any Crown rent or rates or other payment whatever, the District Officer may in his discretion and whether the Purchaser consent or not, fix at any time and from time to time any extended period for the completion of any of the said buildings in substitution for the said period of 24 months, and thereupon the obligation hereunder of the Purchaser to complete the said building shall be taken to refer to such substituted period, and the right of re-entry reserved in these conditions shall arise upon default of completion within such substituted period as if it had been the period originally provided.
6. No sewage or refuse water will be allowed to flow from the Lot on to any of the adjoining lands whether belonging to the Crown or to private persons; neither shall any decaying noisome, noxious, excrementitious, or other refuse matter be deposited on any portion of any lot, and in carrying out any works of excavation on any Lot no excavated earth shall be deposited on such lot or on Crown Land adjoining in such manner as shall expose the slopes of such excavated earth to be eroded and washed down by the rains. The Purchaser of each lot shall see that all refuse matters are properly removed daily from off the premises.
7. The Purchaser of each lot shall pay to the District Officer or such other Officer as may be appointed to receive the same the proportionate part of the annual rental specified in the Particulars of Sale of the lot on the 30th day of June in each and every year during the terms of years for which the Lot is sold.
8. When the conditions herein contained have been complied with to the satisfaction of the District Officer the Purchaser of each lot shall be entitled to and shall execute on demand a Lease from the Crown of the ground comprised in each lot for the term of years for which the lot has been sold, at the annual rent stated in the Particulars of Sale of the lot payable yearly on the 30th day of June in each and every year. Such Crown Lease shall unless otherwise provided be in the form set out in Schedule A hereunder and there shall be deemed to be incorporated in such Lease unless otherwise expressly excepted or provided the terms, exceptions, reservations, covenants, conditions, provisoes and agreements contained in Schedule B hereunder which said terms, exceptions, covenants, conditions, provisoes and agreements shall be binding on the Lessee his executors administrators and assigns in the same manner as if they had been incorporated and written in such Lease.
9. If the Purchaser shall fail to pay the premium as provided in Condition 3 hereof His Majesty may either enforce or cancel the sale.

If the Purchaser shall neglect or fail to comply with any other of these conditions, His Majesty may re-enter and resume the property as if no sale had ever taken place in which case the premium paid by the Purchaser shall be wholely forfeited to His Majesty.

In the event of any such cancellation or re-entry as aforesaid His Majesty shall be at full liberty to resell the property at such time and place and in such manner as to His Majesty shall seem fit and in case of a re-sale the increase, if any, of the premium or purchase money shall be retained by His Majesty, and the deficiency, if any, and all costs and expenses shall be made good by the purchaser and be recoverable as liquidated damages.

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10. Possession of each lot shall be given to the Purchaser thereof, and deemed to have been taken by him, on the day of sale.
11. No verandah shall be constructed so as to project over Crown Land.
12. Except with the consent of the Governor, no house erected on the said lot shall be more than two storeys in height.
13. In the event of the Purchaser of any lot assigning the benefit of the agreement signed by him under General Condition 3 all assignees shall be bound by the General and Special Conditions of Sale, and all powers and remedies shall be enforceable against them to the same extent as if such assignees were the original purchasers.
14. The exact area, boundaries and measurements of each lot shall be determined before the issue of the Crown Lease and the Premium and Crown Rent shall be then adjusted in accordance with the area and the amounts of Premium and Crown Rent at which the lot was sold.
15. Without the consent of the District Officer no grave shall be made on, nor shall any human remains be interred in, or deposited on the lot sold either in earthenware jars or otherwise.
16. The purchaser, his executors, administrators or permitted assigns shall not, except by way of mortgage, assign, underlet or part with the possession of or otherwise dispose of the lot or any part thereof or any interest therein nor enter into any agreement so to do, without the previous consent in writing of the District Officer, unless and until the District Officer shall have issued a certificate to the effect that the building condition, if any, has been fulfilled to his satisfaction or if there is no building condition, that the lot has been developed to his satisfaction.
17. Unless otherwise stated in the Special Conditions relating to the sale of the lot the Purchaser shall not have or be entitled to any right of access to the sea or to any right of access to any water which may be near to the lot or on which the same abuts or to any compensation whatever in the event of any reclamation being made between any part of the lot and 40 such sea or water.

SPECIAL CONDITIONS.

1. (a) No buildings of any description shall be erected on the lot.
(b) The Purchaser shall not during the term for which the lot is sold permit or allow the land to remain uncultivated, according to the custom of the country, for a period of six consecutive months at any time after the date on which the lot is sold.
(c) The Crown rent mentioned in the Particulars of Sale is subject to reassessment at the end of the first five years from the date on which the lot is sold and thereafter such rent shall be paid as shall be fairly and impartially fixed by the Surveyor to His Majesty the King or by such other person as shall be appointed by the Governor of Hong Kong for that purpose as the fair and reasonable rental value of Hong Kong for the expiration of the said period of 5 years.
2. (a) Except with the written permission of the District Officer, no building erected on the lot shall be used as a "Chai Tong" or for any other purpose of a similar nature.
(b) No building on site development shall be commenced on the lot until plans in duplicate of such work and a block plan in duplicate showing the position of such work on the lot shall have been submitted to the 20 District Officer. Plans submitted for a new building must be prepared by an authorised architect. Such building shall furthermore be subject to the following rules:-
(1) the street or open space in front of any new buildings shall be at least 25 feet wide.
(2) Open space belonging to the owner shall be provided at the rear of every new building and such open space shall have an area at least equal to half the roofed-over area of the building.
(3) In addition to such open space a scavenging lane shall be provided having a width of 6 feet.
(4) The depth of any new building shall not exceed 35 feet unless sufficient lateral windows are provided.
(5) Without the consent of the District Officer in writing the height of any building shall not exceed 25 feet nor shall any building exceed 2 storeys in height. No storey shall be less than 10 feet in height.
(6) The ground floor of any new building shall be at such a level above the adjoining ground as may in the opinion of the District Officer be necessary to ensure proper drainage, and shall in every case be at least 6 inches above such adjoining ground.
(7) Arrangements in connection with the disposal of sullage sewage and storm-water from the lot to be to the satisfaction of the District Officer and approved by him.
3. No addition or alteration to any building erected on the lot in accordance with these conditions shall be made until plans which comply with Special Condition 2 hereof have been submitted and approved by the District Officer but such plans need not be prepared by an authorised architect unless the alteration or addition is such as to render the whole building a new building within the definition contained in Section 6 (39) of the Public Health and Buildings Ordinance, 1903, or unless such addition or alteration involves the use of reinforced concrete.
4. The Purchaser shall pay into the District Office, on demand, the cost of removing any water main, gas main or service pipe, cable, telegraph or telephone line, sewer or culvert, which the Director of Public Works may consider it necessary to have removed.

SCHEDULE B.<br>(Terms, Exceptions, Reservations, Covenants, Conditions, Provisoes and Agreements incorporated in Crown Lease)

Exhibit Cl continued

1. Whenever the word "Grant" shall be hereafter used the same shall be deemed to include any Grant Demise Lease Agreement for Lease Tenancy or Letting. And whenever the words "the said premises" shall be hereafter used the same shall be deemed to refer to the ground and premises granted or any part or parts thereof.
2. There shall except where otherwise stated be included in every Grant 10 of ground all messuages, erections and buildings thereon, and all the casements and appurtenances whatsoever to the said premises belonging, or in anywise appertaining thereto.
3. There shall be excepted and reserved unto His said Majesty, all Mines, Minerals, Mineral Oils and quarries of Stone, in, under and upon the said premises, and all such Earth, Soil, Marl, Clay, Chalk, Brick-earth, Gravel, Sand, Stone, and Stones, and other Earths or Materials which at any time shall be under or upon the said premises, as His said Majesty may require for the Roads, Public Buildings, or other Public Purposes of the Colony of Hong Kong; with full liberty of Ingress, Egress, and Regress, to and for His said Majesty, 20 and His Agents, Servants, and Workmen at reasonable times in the day with or without horses, carts, carriages, and all other necessary things, into, upon, from and out of the said premises to view dig for, convert and carry away, the said excepted Minerals, Mineral Oil, Stone, Earths and other things respectively, thereby doing as little damage as possible to the lessee. There shall be also excepted full power to His said Majesty, to make and conduct in, over, along, through or under the said premises, all and any Public or Common Sewers, drains, or water-courses, water or other mains, telegraph and telephone lines with full power at all times to enter into and upon the said premises for the purposes of making, laying, erecting, inspecting or repairing the same or otherwise in connection therewith.
4. Every grant shall be subject to all existing Public or Private rights and casements in, over, along through or under the said premises or in any wise appertaining thereto.
5. The Rent reserved shall be paid in Current Money of the said Colony on the thirtieth day of June in every year free and clear from all Taxes, Rates, Charges, Assessments and Deductions whatsoever, charged upon or in respect of the said premises or any part thereof payment of the said Rent for the first year or a proportion thereof as the case may be becoming due on the thirtieth day of June next after the date of the Grant of the premises in respect of which rent is reserved: provided that in the event of any building being erected on any premises expressed to be granted as agricultural or garden ground the rent payable in respect of such premises shall be such sum as shall be specified in the licence for the erection of such building to be granted in manner hereinafter appearing.

Exhibit C1
continued
6. Each Lessee convenants with His said Majesty, in manner following that is to say, that the Lessee shall and will yearly, and every year, during the term granted, well and truly pay or cause to be paid to His said Majesty, the yearly rent stated in the Grant or such other rent or rents as shall become payable under the proviso hereinbefore contained clear of all deductions as aforesaid on the several days and times and in the manner hereinbefore reserved and made payable; and also that the Lessee shall and will at all times during the term of the Grant, bear, pay, and discharge all taxes, rates, charges and assessments whatsoever, which are or shall be assessed or charged upon, or in respect of, the said premises, and every year by annual payments in advance with the rent reserved on the thirtieth day of June in every year: and also that the Lessee shall and will, from time to time, and at all times when, where, and as often as need or occasion shall be and require, at his or her and their proper costs and charges, well, and sufficiently Repair, Uphold, Support, Maintain, Pave, Purge, Scour, Cleanse, Empty, Amend and Keep the messuage or tenement, and all other erections and buildings at any time standing upon the said premises and all the Walls, Banks, Cuttings, Hedges, Ditches, Rails, Lights, Pavements, Privies, Sinks, Drains, and Water-courses thereunto belonging and which shall in anywise belong or appertain unto the same, in, by, and with all and all manner of needful and necessary reparations, cleansing and amendments whatsoever, the whole to be done to the satisfaction of the District Officer. And the said messuage or tenement, erections, buildings and premises, being so well and sufficiently repaired, sustained and amended, at the end or sooner determination of the term granted shall and will peaceably and quietly deliver up to His said Majesty. And also that the Lessee shall and will during the term granted as often as need shall require bear pay and allow a reasonable share and proportion for and towards the costs and charges of making, building, repairing and amending all or any roads, pavements, channels, fences and party walls, draughts private or public sewers and drains requisite for or in or belonging to the said premises. And further it shall be lawful for His said Majesty, by the District Officer, or other person deputed to act for Him twice or oftener in every year during the term granted, at all reasonable times in the day, to enter upon the said premises to view the condition of the same, and of all decays, defects and wants of reparation and amendments, which upon every such view shall be found, to give or leave notice, in writing, at or upon the said premises unto or for the Lessee to repair and amend the same within Three Calendar Months then next following, within which time the Lessee will repair and amend the same accordingly: and further that the Lessee or any other person or persons shall not, nor will, during the continuance of the Grant use, exercise or follow, in or upon the said premises, any noisy, noisome or offensive trade or business whatever, nor convert any ground expressed to be granted as agricultural or garden ground into use for building purposes other than for the proper occupation of the same ground as agricultural or garden ground without the previous Licence of His said Majesty, signified in writing by the Governor of the said Colony, or other person duly authorised in that behalf. And further that the Lessee or any
other person or persons shall not nor will at any time during the said term erect or construct any building or structure of any description on the said premises whether demised as agricultural or garden ground or otherwise without first having obtained the approval thereto of the District Officer, or other person duly authorised by the Governor of the said Colony in that behalf. And also that the Lessee shall not assign, demise, mortgage, or otherwise part with, the said premises or any interest therein for all or any part of the term expressed to be granted without forthwith registering such alienation in the Land Office, or such other Office as may hereafter be instituted for the purposes of Land Registration in the said Colony, and paying the prescribed fees therefor.
7. Provided always, and it is hereby agreed and declared, -
(1) That in case the yearly rent reserved, or any part thereof, shall be in arrear and unpaid by the space of twenty one days next after any of the days whereon the same ought to be paid as aforesaid (whether lawfully demanded or not) or in case of the breach or non-performance of any or either of the covenants and conditions herein or in the said Grant contained, and by or on the part of the Lessee to be kept done and performed then, and either of the said cases, it shall be lawful for His said Majesty, by the Governor of the said Colony or other person duly authorised in that behalf, in and upon the said premises to re-enter, and the same to have again, re-possess, and enjoy as in His former estate as if no Grant of the said premises had been made, and the Lessee and all other occupiers of the said premises thereout to expel, the said Grant or anything contained herein to the contrary notwithstanding.
(2) That His said Majesty shall have full power to resume, enter into and re-take possession of the said premises if required for the improvement of the said Colony or for any other pubilc purpose whatsoever, Three Calendar Months' Notice being given to the Lessee of its being so required, and full and fair compensation for the same being paid to the said Lessee at a valuation, to be fairly and impartially made by the District Officer or other person appointed by His said Majesty and upon the exercise of such power the said term and estate shall respectively cease.
(3) That the Lessee shall where the premises are granted for a term of Seventy-five years commencing on the first day of July one thousand eight hundred and ninety-eight be entitled on the expiration of the said term to a renewed lease of the said premises for the further term of Twenty-four Years less three days, without payment of any Fine or Premium therefore and at the Rent hereinafter mentioned: And His said Majesty will at the request and cost of such Lessee grant unto him or her on the expiration of the said term a new Lease of the said premises for the term of Twenty-four Years less three days at such Rent as shall be fixed by the District

Exhibit
Cl continued

Exhibit
C1 continued

Officer or other person appointed by His said Majesty, as the fair and reasonable rental value of the ground at the date of such renewal: And in all other respects such new Lease shall be granted upon the same terms and under and subject to the same reservations, covenants, stipulations, provisoes and declarations as are contained in such expired lease with the exception of this proviso for renewal.
(4) That the Lessee shall not have or be entitled to any right of access to the sea or to any right of access to any water which may be near to the said premises or on which the same abuts or to any compensation whatever in the event of any reclamation being made 10 between any part of the said premises and such sea or water.
(5) That without the consent of His said Majesty, signifier in n by the Governor of the said Colony or other moin that behalf, on grave shall be made ${ }^{\circ}$ be interred in, or deposited on the said F
"Missing from
Original"
(6) That except with the consent of the said on the said premises shall be more than $t$

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T. P. सotx No. 33. in 7/52.

Govt. Notn. No. ......77?....... if 1057

## MEMORANDUM OF AGREEMENT BY THE PURCHASER

(Government Notification No. 364 of 1934 as amended by Government Notification No. 50 of 1940)

Memorandum that ...J. B. Gardinor on behape of Hotel Edinburgh Lted . . Yarbour View. . wex .. Hotel, Chatham Road, Kowloon. $\qquad$ the personf(A) whose name(f) isfere) hercunder written has(have) been this day declared the highest bidder(s) for the Lot(f) described in the Particulars of Sale and hereunder specified opposite to his(their) (her) said name(s) and signature(t), and does(t) hereby agree to become the Lesseefs) thereof, under and subject to the General and Special Conditions of Sale of such Lot(s), and on histherf) part to perform and abide by the said Conditions, and Additional Special Conditions specified overleaf.


[^1]Witness to Signature of Purchaserfot
(signed). J....... Aserpppa ......................
for District Commissioner, New Territories. .
(signed) Sham Sau
Witness to Signature of District Commissioner, N.T.

## ADDITIONAL SPECIAL CONDITIONS

1. The sum to be expended on the lot in rateable improvements, in accordance with General Condition No. 5 in Government Notification No. 364 of 1934 shall be not less than $\$ .18,000.00$. $\qquad$
2. Before beginning to build, the Purchaser shall obtain the District Commissioner's permission in writing to do so.
3. No building or site development shall be commenced on the lot until the District Commissioner shall have approved in writing the plans submitted in accordance with the Special Condition No. 2 (b) in Government Notification No. 364 of 1934.
4. Within two weeks of the completion of the building, the Purchaser shall inform the District Commissioner, in writing, of the fact.
5. The Purchaser shall maintain the building, when built, and the whole property concerned in a good state of repair, to the satisfaction of the District Commissioner.
6. The lot(g) isfare) subject to Special Conditions, Nos. 2 (a) and (b), 3 and 4 in Government Notification No. 364 of 1934 as amended by Government Notification No. 50 of 1940 .
S. A. of LOT № 535 KING HAU
D. D. No 187 SHATIN N.T.

SCALE 30 FI. $=1 \mathrm{INCH}$



CONVEYANCE ON SALE, (Section 28).
In consideration of $\$ .75,000.00$ $\qquad$ (Dollars Seventy five thousand -.........................
...............-............................... only) this day paid (the receipt whereof is hereby acknowledged) J. B. GARDINER of Harbour View Hotel, Chatham Road, Kowloon in the Colony of Hong Kong for and on behalf or Hotel Edinburgh Limited (1) as Vendor hereby assigns of the said HOTEL EDINBURGH LIMTYED as beneficial owner hereby assigns and .trait .confirms..unto...G.......................................KING..of...MKia.Qra"...7.Mile Stope Shatin.... of in the New Territories. in the said Colony as Purchaser the Lot No. 535 Section A...
(as shown and delineated on the planhereto annexed and thereon coloured Pink)

in. $\qquad$ frureyor Demarcation District No. 187.. $\qquad$ in the New Territories of the Colony for the residue of the term of years created by the Crown Lease thereof, subject to the incumbrances mentioned in the Schedule hereto.
-SCHEDULE.

| Memorial. | -Date. | Parties. | Particulars of Incumbrances. |
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As Witness the hands and seals of the parties this . ./eth day pf........foternernaza, 1956 . SIGNED, SEALED AND DELIVERED by the above named J. B. Gardiner, Hotel Edinburgh Limited and G.....................................King.....(as..to..the..said...... Hotel edinburgh Lofted by the affixation or...its ..Common..seai........................................


Registered by Memorial No ......... 134.4 .4 .5


vol. 76
Fol. $9 /$


## Exhibit

 C4 continued

SCHEDULE.

$A$
Assistant Land Officet, New Territories.
'A' vol. 76 Fol. 94
R2weriontrfay ens 9\%


Exhibit C5 continued

THE NEW TERRITORIES ORDINANCE (CAP. 97).

CONVEYANCE ON SALE, (Section 28.)


In consideratiou of $\$ 30,000$. 0 . 0 .......... (Dollars ..thisty...thousand.



 No. 7 Grampian Road, Kovioon, Hong Konganker Purchaser the Lot No. 535 The Remain perseracene


 in :..............................................-Surwey-ar Demarcation District No. . $2 \mathbb{E} 7 . . . . . . . . .$. in the New Territories of the Colony for the residue of the term of years created by the Crown Lease thereof, Bubject to the incumbrances mentioned in the Schedule hereto. SCHEDULE.

| Maemorial. | Date. | Parties. |  |
| :--- | :---: | :---: | :---: | :---: |
|  |  | N I L |  |

As Witness the hands and seals of the parties this in.fitembthes. day of :.......July.... …ㅈ․․ 231765 ine Porton
$\qquad$ .. 1958


## $\frac{\text { S.G) of LOT NO. } 535 \text { KING HAU }}{\text { D. D.NO. } 187 \text { SHATINN.T. }}$




## Exhibit <br> Cb continued

DISTRICT ADMINISTRATION, NEW TERRITORIES.

THE NEW TERATORIES OROMNATCE (Chapter 97).



CONVEYAHCE ON SALE. (Section 28).
In consideration of $5.33,231: 00$ $\qquad$ (Dollars .Thirty ..three.tiouranal..two-humirece.....

In eisity ene . . . . . - only) this day paid (he receipt whereof is hereby acknowleded)


 C-Coinny of Hone Tong General Building Contractor

Sospegtica $9 . . .-$ tread

 - coloured
 of the Colons for the resirlue of the term of years created by the Crown Lease thereof. cubiect to the incumbrances mentioned in the Schedule hereto,

SCHEDULE


As Witness this hands and seats of the practice this .. .74th........ day of .........June....................... 1057 : SIGNED, SEALED AND DELIVERED by the above named $\dagger$





tho Assistant Land Officer, New Territories.
" 17 ' vol. 76 Fol. 25.7


## D COPY

IUE NAW TEURITORTES ORDTET D. District Officer.Tnipo



 of IInc.s Road 1 gt Floor Victoria in the Colony of Mong inek



 Common in equal shares the Lot Ho. 535 B 7.-.....-- - - - - - . - - -
I.... .. EIKG. KAU $\qquad$ Gatoey-or Domarcition Distiict No. 187 , $\qquad$ in the Netr Territocio bis eqper ticy of the Colony for tho residuo of the torm of yeird created by the Crorn Lease thereofprabject-triotho
 SCHEDTIE Zonith Nansion 7th Floor (Flat E) \&ifétia afore-

As Witacss the hands and secls of the parties this SICTTED, SEALED A DELIVERED by tho abovo named Chiens Hai Tzong alias Chon Chane Eai Juno
 Yıns (thoy baving proviously boon idontiCisan Yon Lingex..............................and... Rotor......... in tho presence of

$$
\begin{aligned}
& \text { Sunfuin, } \because: \because \\
& \text { Solicitor, 日eng Kong: : }
\end{aligned}
$$



## Exhibit

C7
made the 13th day of August One thousand nine hundred and seventy BETWEEN PETER CHAN YEN LING（陳延齢）Gentleman care of 416 Central Building，Victoria in the Colony of Hong Kong and JANET WAI LING CHAN（陳 慧齡）of 26 Underhill Drive Apt． 710 Don Mills Ontario，Canada Spinster（hereinafter called＂the Vendors＂）of the one part and THE HOUSE OF DIOR LIMITED whose registered office is situate at Grand Building，11th floor，Victoria in the Colony of Hong Kong（hereinafter called＂the Purchaser＂）of the other part

## WHEREAS：－

（1）The premises hereinafter agreed to be sold by the Vendors to the Purchasers are vested for the residue of the terms of years created by the Crown Lease thereof in the Vendors as Tenants in Common in equal shares subject to payment of the rent and the performance of the covenants and conditions therein reserved and contained．
（2）The said Peter Chan Yen Ling（one of the Vendors hereto）is irrevocably authorised（such authorisation being warranted and confirmed by the said Peter Chan Yen Ling）to sell the premises to the purchaser at the price of $\$ 125,000: 00$ subject to the terms and conditions hereinafter appearing NOW IT IS AGREED between the parties hereto as follows：－

1．The Vendors will sell and the Purchaser will purchase ALL THAT piece or parcel of ground situate at Shatin and registered at the District Office，Tai Po，New Territories in the Dependency of Kowloon in the Colony of Hong Kong as SECTION B OF LOT NO． 535 in King Hau Demarcation District No． 187 Together with the messuages tenements and other erections and buildings thereon（if any）And Together with appurtenances thereto and all the right title interest property claim and demand whatsoever of the Vendor therein and thereto．

2．The purchase money shall be DOLLARS ONE HUNDRED TWENTY FIVE THOUSAND（ $\$ 125,000: 00$ ）whereof DOLLAR TWENTY FIVE THOUSAND $(\$ 25,000: 00)$ are this day paid to the Vendors as deposit and in part payment of the purchase money．

3．The purchase shall be completed at the office of Messrs．Peter Mark \＆Co．Solicitors within one month from the date hereof when the residue of the purchase money shall be fully paid and the Vendor and all other necessary parties（if any）will execute a proper assurance in favour of the Purchaser his nominee，nominees，sub－purchaser or sub－purchasers of the premises hereby agreed to be sold to the Purchaser free from incumbrances subject only as hereinafter appears，and the Purchaser shall be entitled as from and including the date of completion to the rents and profits or possession of the premises．All outgoings up to but excluding the date of completion shall be discharged by the Vendors．
4. The property is sold:-
(a) For all the residue of a term of 75 years from the 1st day of July 1898 (with a right of renewal for a further term of 24 years less the last three days thereof at a revised Crown Rent) created therein by the Crown Lease Subject to the payment of (a due proportion of the Crown Rent and to the exceptions, reservations and due performance of the covenants and conditions by and in the said Crown Lease reserved and contained so far as the same relate to the said premises;
(b) Subject to all (other) rights of way easement rights and privileges (if any) to which the same is subject and together with the benefit of all rights of way easements rights privileges and appurtenances enjoyed therewith.
5. If the Purchaser shall make and insist on any objection or requisition either as to title conveyance or any matter appearing on the title deeds or particulars or conditions or otherwise which the Vendors shall be unable or on the ground of difficulty delay or expense or on any other reasonable ground unwilling to remove or comply with, the Vendor shall, notwithstanding any previous negotiation or litigation, be at liberty on giving to the Purchaser not less than 7 days' notice in writing to annul the sale, in which case, unless the objection or requisition shall have been in the meantime withdrawn, the sale shall, at the expiration of the notice, be annulled, the Purchaser being in that event entitled to a return of the deposit, but without interest costs or compensation.
6. Such of the muniments of title as relate exclusively to the premises sold will be delivered to the Purchaser. All other muniments of title in the possession of the Vendors will be retained by him and he will, if required. give to the Purchaser a covenant for production and delivery of copies and for sale custody thereof to be prepared by and at the expense of the Purchaser.

30 7. The cost of any incidental to the preparation completion and stamping of this Agreement shall be borne and paid by both parties equally, but the cost of registering this Agreement with the Land Office shall be borne by the Purchaser only. In addition to this, the Purchaser shall bear and pay all the costs of Messrs. Peter Mark \& Co., for services in connection with the sale and purchase of the said premises, including all charges and expenses of and incidental to the preparation and approval of the Assignment of the said premises.
8. The Vendors shall show a good title to the said premises at their own expense and they shall at the like expense make and furnish to the
40 Purchaser such attested or other copies of any deed or document of title will and matter of public record as may be necessary to complete such title. The costs of verifying the title by inspection and examination, including search fees, shall be borne by the Purchaser who shall also, if he requires attested copies of any documents in Vendors' possession relating as well to the said

Exhibit premises sold as to other premises retained by the Vendors, pay the cost of
9. Should the Purchaser fail to observe or comply with any of the conditions herein contained, the deposit shall be absolutely forfeited to the Vendors who may (without tendering an Assignment to the Purchaser) rescind the sale and resell the said premises either by public auction or private contract subject to any stipulations he may think fit, and any deficiency in price and all expenses attending such resale shall be borne by the Purchaser and shall be recoverable by the Vendors as and for liquidated damages. Any increase in price on a resale shall belong to the Vendors.
10. In the event of the Vendors failing to complete the sale in accordance with the terms hereof it shall not be necessary for the Purchaser to tender an Assignment to the Vendors for execution before taking proceedings to enforce specific performance of the contract.
11. No error, mis-statement or mis-description shall annul the sale nor shall any compensation be allowed in respect thereof.
12. On the completion of the purchase the Purchaser shall be entitled as from the date thereof to the benefit of the existing fire insurance, if any, of the said premises hereby agreed to be sold and purchased, and on completion the Purchaser shall repay to the Vendors the insurance premium, if any, as from the date thereof, save that the Vendors shall be under no obligation to insure the said premises, if not already insured, or to renew the existing insurance on the expiration thereof before the date of completion, but if the Vendors shall have done so, the premium paid for such insurance or renewal shall on completion be repaid to the Vendors by the Purchaser.
13. The $2 \%$ Ad Valorem Stamp Duty payable on this transaction shall be borne and paid by the Purchaser PROVIDED that in the event of the consideration stated in the Assignment not being accepted by the Collector of Stamp Revenue as representing the true consideration of the premises hereby agreed to be sold and purchased the additional stamp duties charged by him in accordance with his valuation of the premises shall be borne and paid by the Purchaser.
14. The Vendors shall deliver vacant possession of the premises to the Purchaser on completion.

14A. The said Peter Chan Yen Ling (being one of the Vendors) hereby warrant and undertake that he will in all effort obtain the execution of the Assignment by the said Janet Wai Ling Chan (being the co-owner thereof) within a reasonable time Provided That if the said Peter Chan Yen Ling failed to obtain the proper execution on the Assignment by the said Janet Wai Ling Chan within one month from the date hereof the Purchaser shall notwithstanding the terms and conditions herein contained shall have the right to institute legal proceedings to enforce specific performance of the contract against his own shares of and in the said premises hereby agreed
to be sold but without prejudice to the right to claim any damages against the said Peter Chan Yen Ling for breach of warranty.

Exhibit C8 continued
15. Time shall in every respect be of the essence of this Agreement.
16. In this Agreement, unless the contrary intention appears, words importing the masculine gender shall include females and corporations, and words in the singular shall include the plural, and words in the plural shall include the singular.
17. The Vendors hereby declares and it is of the essence of this Agreement that the Vendors has duly paid all contributions or other payments payable under the said Crown Lease the date of this Agreement and has duly performed and fulfilled all the terms and covenants in the said Crown Lease so far as the same relate to the premises hereby agreed to be assigned.

AS WITNESS the hands of the said parties the day and year first above written.

SIGNED by the said Peter Chan Yen Ling being one of the Vendors hereto and also for and on behalf of the said Janet Chan Wai Ling (another Vendor hereto) (he having previously been identified by:

(Sd.) Peter Chan<br>Peter Chan<br>for Janet Chan Wai Ling

in the presence of:-
Solicitor,
Hong Kong.
SIGNED by O. H. Mark for and on behalf of the Purchaser in the presence Per Pro
THE HOUSE OF DIOR LIMITED of:-

(Sd.) O. H. Mark.

Solicitor, Hong Kong.

INTERPRETED to the Vendor, the said Peter Chan Yen Ling by:

## Clerk to Messrs. Peter Mark \& Co.,

 Solicitors, Hong Kong.RECEIVED the day and year first above written of and from the Purchaser the sum of DOLLARS TWENTY FIVE THOUSAND being $\} \$ 25,000: 00$ the deposit money payable as above mentioned.

WITNESS:-
Solicitor, Hong Kong.

Exhibit
COPT


THAT I DAVID SEE-CHAI LAM, Business Executive, of 661 Ash Street, in the City of Vancouver, Province of British Columbia, for divers good causes and considerations be thereunto moving, HAVE nominated, constituted and appointed, and by these Presents DO NOMINATE, CONSTITUTE and APPOINT my brother, ALEX SHI-CHUN LAM, c/o Ka-Wah Bank, 259 Des Voeux Road, C. Hong Kong

MY true and lawful Attorney, for me and in my name and on my behalf and for my sole and exclusive use and benefit, to demand, recover and whomsoever all and every sum or sums of money, goods, chattels, effects and things whatsoever which now is or are, which shall or may hereafter appear to be due, owing, payable or belonging to me whether for rent or arrears of rent or otherwise in respect of my real estate, or for the principal money and interest now or hereafter to become payable to me upon or in respect of any Agreement, Mortgage or other Security, or for the interest or dividends to accrue or become payable to me for or in respect of any shares, stock or interest which I may now or hereafter hold in any Joint Stock or Incorporated Company or Companies or for any moneys or belonging to me upon any Bond, Note, Bill or Bills of Exchange, balance of Account Current, consignments, contract, decree, judgment, order of execution, or upon any other account.

ALSO to examine, state, settle, liquidate and adjust all or any account or accounts depending between myself and any person or persons, company or companies whomsoever. AND to purchase, sell, sign, draw, make, endorse, accept, discount, transfer, renew, negotiate and in every way deal with any Cheque or Cheques or orders for the payment of Money, Bill or Bills of Exchange, or Note or Notes of Hand, promissory notes, deposit receipts, bonds, debentures, coupons, agreements of sale or other security which shall be requisite. AND also in my name to draw upon any Bank or Banks, Individuals, for any sum or sums of money that is or are or may be to my credit or which I am or may be entitled to receive, and the same to deposit in any Bank or other place, and again at pleasure to draw from time to time as I could do. AND upon the recovery or receipt of all and every or any sum or sums of money, goods, chattels, effects or things due, owing, payable or belonging to me for me and in my name and as my act and deed to sign, execute and deliver such good and sufficient receipts, releases, discharges and acquittances, certificates, re-conveyances, surrenders, assignments, memorials, or other good and effectual discharges as may be requisite, and which receipt, releases and discharges shall exempt the persons paying such moneys, from all responsibility of seeing to the application thereof. AND in case of neglect, refusal or delay on the part of any person or

Exhibit persons, company or companies to make and render just, true and full account,
C10
payment, delivery and satisfaction in the premises, him them or any of them continued payment, delivery and satisfaction in the premises, him, them or any of them thereunto to compel, and for that purpose for me and in my name to make such claims and demands, arrests, seizures, levies, attachments, distraints and sequestrations, or to commence, institute, sue and prosecute to judgment and execution such actions, ejectments, and suits at law or in equity as my said Attorney or Attorneys shall think fit. ALSO to appear before all or any Judges, Magistrates or other Officers of the Courts of Law or Equity, and then and there to sue, plead, answer, defend and reply in all matters and causes concerning the premises.

AND ALSO to exercise and execute all Powers of Sale or Foreclosure, and all other powers and authorities vested in me by any mortgage or mortgages, contract or agreement now or hereafter belonging to me as Mortgagee.

AND ALSO in case of any difference or dispute with any person or persons concerning any of the matters aforesaid, or any other matters that may arise in connection therewith, to submit any such differences and disputes to arbitration or umpirage in such manner as my said Attorney or Attorneys shall see fit. AND to compound, compromise and accept part in satisfaction for the payment of the whole of any debt or sum of money payable to me, or to grant an extension of time for the payment of the same either with or without taking security, and otherwise to act in respect of the same as to my said Attorney or Attorneys shall appear most expedient.

To purchase, rent, sell, exchange, mortgage, lease, surrender. quit claim, and in every way deal with real estate, lands and premises and any interest therein now owned by me or hereafter acquired by me, and execute and deliver deeds, mortgages, agreements, leases, assignments, surrenders, and all other instruments.

AND ALSO for me and in my name, or otherwise on my behalf, to take possession of and to lease, let, sell, manage and improve my real estate, lands, messuages, tenements, and hereditaments, whatsoever, and wheresoever situated, now owned by me or hereafter acquired by or for me and from time to time to appoint any agent or agents, servant or servants, to assist him or them in managing the same, and to displace or remove such agents or servants, and appoint others, using therein the same power and discretion as I might do if personally present.

AND ALSO to sell and absolutely dispose of or exchange said real estate, lands and hereditaments, now owned by me or hereafter acquired by or for me, and also such shares, stocks, bonds, mortgages, and other securities for money as hereinbefore mentioned, either together or in parcels, for such price or prices, and by public auction or private sale or contract as to my said Attorney or Attorneys shall seem reasonable and expedient; AND to grant, remise, release, convey, confirm, assign, transfer, and make over the same respectively to the purchaser or purchasers thereof; with power to give credit for the whole or any part of the purchase money thereof;

AND to permit the same to remain unpaid for whatever time and upon whatever security, real and personal, either comprehending the purchased property or not, as my said Attorney or Attorneys shall think safe and proper.

Exhibit ClO continued

AND ALSO to borrow such sums of money for or in relation to any of the purposes or objects herein, upon the security of any of my property, whether real or personal, and for such purposes to give and execute and acknowledge mortgage or mortgages, containing the usual statutory covenants and powers of sale on default, with such other powers and provisions as he may think proper, as also such notes, bonds or other securities as it may be

AND from time to time, as my said Attorney may see fit, to lend or invest any moneys of mine now in my said Attorney's hands, or hereafter to come into his hands, upon mortgage of real estate or interest therein, or upon such other securities, either real or personal, as my said Attorney may see fit, and upon such terms and conditions as my said Attorney may deem advisable, and from time to time to alter or vary such investments and assign or transfer the same, and, should my said Attorney see fit, to invest such moneys in the purchase in my name of any property, either real or personal, upon such terms and conditions as my said Attorney may see fit.

20 AND FURTHER, for me and in my name and as my act and deed to sign, seal, execute, deliver, and acknowledge all such assurances, deeds, quit claim deeds, covenants, indentures, agreements, assignments, mortgages, releases, and satisfactions of mortgage and other instruments in writing, of whatsoever kind and nature, and generally to deal in and with goods, wares and merchandise, choses in action, and other property in possession or action. and to make, do, and transact all and every kind of business of what nature or kind soever as shall be required, and as my said Attorney or Attorneys shall see fit, for all or any of the purposes aforesaid; AND to sign and give receipts and discharges for all or any of the sum or sums of money which shall come into his or their hands by virtue of the powers herein contained, which receipts, releases, or discharges, whether given in my name or in that of my said Attorney or Attorneys, shall exempt the person or persons paying such sum or sums of money from all responsibility of seeing to the application thereof.

AND ALSO for me and in my name, or otherwise, or on my behalf, to enter into any agreement or arrangements with every or any person to whom I am or shall be indebted touching the payment or satisfaction of his demand, or any part thereof; AND generally to act in relation to my estate and effects, real and personal, now hereafter acquired, as fully and effectually, in all respects, as I could do if personally present.

AND HEREBY GRANT FULL POWER to my said Attorney or Attorneys to substitute and appoint one or more Attorney or Attorneys under him or them, with the same or more limited powers, and such substitute or substitutes at pleasure to remove and others to appoint, I hereby agreeing

Exhibit
and covenanting for my heirs, executors, and administrators, to allow, ratify, and confirm whatsoever my said Attorney or Attorneys or his or their substitute or substitutes shall do or cause to be done in the premises by virtue of these Presents, including in such confirmation whatsoever shall be done between the time of my decease or of the revocation of these Presents, and the time of such decease or revocation becoming known to said Attorney, or such substitute or substitutes.

Notwithstanding any provisions in the foregoing, this Power of Attorney is expressly confined to the following property known as SHATIN PROPERTIES, more particularly described as R.P. of Lot 535 D.D. 187. 10

AS WITNESS my hand and seal this 10th day of November in the year of our Lord one thousand nine hundred and seventy-one.


## EXHIBITS

## D. to R.



In accepting this Permit I，the undersigned permittec，fully understand，acknowledge and agree that－

（1）Neither this document nor any occupation of the permit area nor the payment of any fees in respect thereof shall be construed as creating the relationship of landlord and tenant．

（2）The acceptance of fees paid in respect of this permit shall not constitute a waiver of any breach of any of the conditions hereof existing at the date of such acceptance．

（3）No permit，approval or agreement from or with any other department of Government shall constitute a waiver．

（4）Any occupation of the permit area or the erection or maintenance of any structure thereon otherwise than in accordance Offences．Ordinance，Cap． 228.
 －即香港法例第二二八等第十路之规定，
（5）．The Lawful Authority may in his absolute discretion cancel this permit on giving three months＇notice thereof of his intention so to do．

（6）This permit is granted subject to the General and Special Coiditions to be found on pages 2,3 and 4 hereof．



| Interpreted and Explained to Permittee by绿由 |
| :---: |
|  |  |

for District Commissioner，New Territories．新界吴改器器取

## Exhibit

E continued

## GENERAL CONDITIONS

1. This permit is the property of Government and must be produced for inspection on demand.
2. This permit is not transferable.
3. In the event of any contravention of any of these General or the Special Conditions herecto, this permit may be cancelled forthwith, without compensation or refund of any sum paid.
4. On expiry or cancellation of this permit the permit area shall be cleared to the satisfaction of the District Commissioner New Territories. In default of compliance with this condition such cost as may be incurred by Government in clearing the permit area may be deducted from any deposit held; should any structure or other thing whatsoever be left on the permit area, it shall become the property of Government.
5. Any notice requircd to be given to the permittee may be given by leaving it at his last known address or by sending it thereto by post or by leaving it on the permit area.
6. The permit area shall be adequately drained to the satisfaction of theे District Commissioner New Territories.
7. In the cvent of the permittee being a registered company, no photograph need be affixed to this permit. In all other cases a photograph of the permittee must be affixed overleaf.
8. The pernittec shall comply with any Ordinance or regulation made thereunder insofar as may be applicable to this permit.
9. No structures other than those specified on page 1 shall be erected. Pians of such structures must be approved by and thereafter maintained in a good state of repair to the satisfaction of the District Commissioner New Territories.
10. In the absolute discretion of the Lawful Authority, this permit may be renewed after the date stated overieaf, but such renewal shall be subject to the conditions herein stated and any further conditions which the Lawful Authority may impose, to payment of the prescribed fee for such renewal period and to the attachment hereto of the receipted Demand Note for such fee.
11. If the permittee or any other person is convicted of an offence against:
(a) the Dangerous Drugs Ordinance (Chapter 134); or
(b) the Protection of Women and Juveniles Ordinance (Chapter 213); or
(c) the Gambling Ordinance (Chapter 148);
arising out of the use of any structure on the permit area, the lawful authority may cances the permit without notice and without compensation or refund of any sum paid.




In accepting this Permit I．the undersigned permittee，fully understand，acknowledge and agree that－

（i）Neither this document nor any occupation of the permit area nor the payment of any fees in respect thereof shall be construed as creating the relationship of landlord and tenant．

（2）The aeceptance of fees paid in respect of this permit shall not constitute a waiver of any breach of any of the conditions hereof existing at the date of such acceptance．

（3）No permit，approval or agreement from or with any other department of Government shall constitute a waiver．

（4）Any occupation of the permit arca or the erection or maintenance of any structure thercon otherwise than in accordance with the terms and conditions of this permit shall be an offence under section 9 of the Summary Offences Ordinance，Cap． 228.


（5）The Lawful Authority may in his absolute discretion cancel this permit on giving three months＇notice thereof of his intention so to do．

（6）This permit is granted subject to the General and Special Conditions to．be found on pages 2， 3 and 4 hereof．



見佂節習人采名

Interpreted and Explained to Permittee by经 由


向持炤人睴炦及滕相

## GENERAL CONDITIONS

1. This permit is the property of Government and must be produced for inspection on demand.
2. This permit is not transferable.
3. In the event of any contravention of any of these General or the Special Conditions herelo, this permit may be cancelled forthwith, without compensation or refund of any sum paid.
4. On expiry or cancellation of this permit the permit area shall be cleared to the satisfaction of the District Commissioner New Territories. In default of compliance with this condition such cost as may be incurred by Government in clearing the permit area may be deducted from any deposit held; should any structure or other thing whatsoever be left on the permit area, it shall become the property of Government.
5. Any notice required to be given to the permittec may be given by leaving it at his last known address or by sending it thereto by post or by leaving it on the permit area.
6. The permit area shall be adequately drained to the satisfaction of the District Commissioner New Territories.
7. In the event of the permitice being a registered company, no photograph need be affixed to this permit. In all other cases a photograph of the permittee must be affixed overleaf.
8. The permittec shall comply with any Ordinance or regulation made thereunder insofar as may be applicable to this permit.
9. No structures other than those specified on page 1 shall be erected. Plans of such structures must be approved by and thereafter maintained in a good state of repair to the satisfaction of the District Conmissioner New Territorics.
10. In the abselute discretion of the Lawful Authority, this permit may be renewed after the ciate stated overleaf, but such rencwal shall be subject to the conditions herein stated and any further conditions which the Lawful Authority may impose, to payment of the prescribed fee for such rencwal period and to the attachment hereto of the receipted Demand Note for such fec.
11. If the permittee or any other person is convicted of an offence against:
(a) the Dangerous Drugs Orelinance (Chapter 134); or
(b) the Protection of Women and Juveniles Ordinance (Chapter 213); or
(c) the Gambling Ordinance (Chapter 148);
arising out of the use of any structure on the permit area, the lawiul autincitiy may cancel the permit without notice and without compensation $c:$ refund of any surn paid.



SPECIAL CONDITIONS

## Intakes and Pipe Lines

(1) The position of the intake and pipe-line shall be subject to the approval of the District Officer $\qquad$
(2) The permittee shall carry out all work in connection with the laying and maintenance of the pipe-line, etc. to the satisfaction of the District Officer.
(3) The re-instatement of all road surfaces necessary in consequence of the laying or maintenance of the pipe-line, etc. shall be undertaken
(4) This permit contains no guarantee that the supply of water will be available at all times.
(5) In the event of a storage tank being installed, an efficient ball-cock must be fitted so as to prevent waste of water, and such tank shall be properly covered or screened against the breeding of mosquitoes.
(6) The water may only be used for such purpose or purposes as is prescribed on page 1 .
(7) No obstruction shall be caused to the free flow of the stream/nullah.

20 (8) The permittee must first obtain the permission of the Director of Public Works before opening up any public roadway.
(9) On expiration or cancellation of the permit the permittee shall remove all encroachments at his own expense and defray the cost of making good all damage to road surfaces to the satisfaction of the Director of Public Works.
(10) The faucet end of the pipe-line, together with the draw off taps shall be painted red.
(11) Notices in English and Chinese of not less than 2 inches block letters to be displayed on or near the taps to read 'Water Unfit for Drinking'.



## Letter from Messrs. Wong \& Tang Architects to The District Office, Tai Po.

Our Ref.: 118/70
2nd October, 1970.
The District Officer, The District Office, Tai Po, Tai Po Market,
New Territories.

Dear Sir,
RE: S.B. of Lot No. 535 King Hau, D.D. No. 187 Shatin, N.T.

Reference is made to my letter dated 7th September, 1970, requesting your office to set out the above lot. I understand that the Government will set out whole lots only.

I shall be much obliged if you will set out the whole lot No. 535 King Hau, D.D. No. 187 Shatin N.T. at your earliest convenience.

> Yours sincerely,
> JACOB Wong.

JW / rn
20 C.C. Senior Land Surveyor,
Fan Ling Survey Office,
Crown Lands and Survey Office, P.W.D.
Fan Ling,
New Territories.

MEMO
From Mainland Survey Division, Tai Po. To District Office, Tai Po.
Ref. (15) in L.S.O. L/M 1988/52
Tel. No. N.T. 90-232 Your Ref. (28) in TP 33/1/52 II
Date 4th December, 1970. dated 20th October, 1970.

Lot No. 535 in D.D. 187.

I forward herewith three copies of plan No. NT 1796-8 showing the setting out of 2 line marks on each of the two north-south boundaries of the above lot.
2. I have pointed out to the architect concerned with the development of Section B, Mr. Jacob Wong, to whom a copy of the above plan has been forwarded, that the line marks are in no way intended to indicate the section boundaries.
3. From available information it appears that either a strip of Crown Land, some 2,140 sq. ft. in area, lies between Lot 562 (Setting Out Plan No. NT 1030 dated $15 / 12 / 64$ ) and Lot 535 (Your Drawing No. TPM 552 dated $12 / 11 / 70$ ) or alternatively that Lot 535 is occupying an area of land some 2,140 sq. ft. in excess of the 13,490 sq. ft. granted. Perhaps you would care to took into this and advise me whether you would like me to take any further action.
4. It has also been brought to my attention that the owners of Lot 535 Section A are constructing a swimming pool on what appears to be Crown Land to the east of the section. Again in connection with Section A, one corner of a servant's room in the southewest corner projects about 5 feet over the boundary.

(W. J. E. Tyler)<br>for Chief Land Surveyor (Mainland)<br>Crown Lands \& Survey Office.

c.c. G.B.S. (with print)
$\begin{array}{lll}\text { C.E.H./N.T. } & (\#, & , \\ \text { P.O.T.P. } & (" & ")\end{array}$

WJET : lt

MEMO
From Mainland Survey Division, Tai Po. To District Officer, Tai Po. (Attn. Mr. W. J. Reynolds)
Ref. (16) in L.S.O. L/M 1988/52
Tel. No. N.T. 90-232
Date 18th December, 1970.
Your Ref. (28) in TP 33/1/52 II
dated 20th October, 1970.

## Lot No. 535 in D.D. 187.

Further to my memo of 4th December and our discussion on 11th December I forward herewith two copies of a provisional setting out plan 10 No. NT 1796-S2 showing what I consider to be the most probable position of the above lot.

I have maintained the granted area of 13,490 square feet and made opposite sides parallel. Sides AB and CD are equal and have been made the same length as the sum of the corresponding sides of the sections i.e. 190 feet. The right angle width of the lot is 71 feet - the same as the width shown on the assignment plans.

Please let me know whether you agree with the boundaries as shown so that I may place pegs at A and D and forward copies of the plan to Mr. Jacob Wong, architect for the development of Section B.

## WJET/lt

Exhibit (2)




$\geq$


SCALE too feet to one inch

| A | B |
| :---: | :---: |
| C | D |

SHEET No.

## MEMO

From District Officer, Tai Po. To Mainland Survey Div., Tai Po.
Ref. (34) in TP 33/1/52 II
Tel. No. T.P. $662340 \quad$ Your Ref. (10) in LSO L/M 1988/52
Date 17th November, 1970 dated 2/11/70
D.D. 187 Lot No. 535, Keng Hau, Shatin.

With reference to your memo dated $2 / / 11 / 70$, I attach herewith copy of plan showing boundaries of the original lot No. 535 as requested.

10
(W. J. Reynolds)

Senior Estate Surveyor for District Officer, Tai Po.

WJR: If






Letter from Mr. David See Chai Lam

September 7, 1962.
Mrs. Y. F. Chen, c/o Mr. R. Y. Cheng,
Far East Rubber and Industries Ltd., 529, Windsor House, Hong Kong.

## Dear Mrs. Cheng.

I am a friend of your late husband and both my wife and I went to Taipei a few years ago to attend the Rotary conference when your late husband was one of the delegates. Our house in Shatin is right next to your lot and we have been looking forward to the pleasure of becoming one of your neighbours in the future.

The piece of land which you own and adjoining our house has been left at its original rural state and this is understandable because you have not commenced building. You may be awared that at its present state it is full of tall weeds and bushes.

In the past we have found four snakes which came over to our house from there, also we found one wild cat which stole a few of our chickens also on two occasions burglars hid themselves under the tall grass and came over to our house also some irresponsible persons have left rubbish and litters on your lot. It has been suggested to me by the sub-inspector of the Shatin Police Station that it will be helpful to them if this lot is cleared and fenced off.

I wish, most sincerely and with respect to you as owner, to suggest for your consideration in allowing me to do the followings at my own expenses:

1. That I clear all weeds and bushes and rubbish from this lot and perhaps level it somewhat in order to plant grass and flowers there to beautify it.
2. That I use some barbed wire to fence it off to prevent further rubbish dumpings and from intruders or burglars.

Please be assured that any permission so granted to me shall not constitute permission for occupation and I shall have absolutely no claim either to the costs of the works of clearing, levelling or planting thereon.

I shall be grateful for your consent to signify that you have no objection to the above by signing and returning to me one copy of this letter．

With my best wishes to you and your family．


I have no objection to the above

陳 蒋 海 貞
Signed
for owner

If it is because of sanitary or health reasons that the grass be weeded，I will agree to do so and if there is any thing in my site please tell me to clear it any time．

I，Paul Tsang，of the Judiciary，being a public officer appointed in writing by the Honourable the Chief Justice under section 23 F of the Evidence Ordinance （Cap．8）hereby certify that the fore－ going is a true translation of a Chinese document marked 3767.

Dated 31 Oct 1972.

Paul Tsang
Court Translator．

Letter from The Ka Wah Bank, Ltd. to Messrs. Peter Mark \& Co.

Our Ref. No. A-37/71
22nd January, 1971.
Messrs. Peter Mark \& Co., Solicitors \& Notaries, Grand Building, 11th floor, 15-18, Connaught Road, Central, Hong Kong.

10 Dear Sirs,
Re: Lot No. 535 in D.D. 187, Shatin, Your Ref. $801 / 70 /$ TVK

I reply to your letter of the captioned number, we wish to inform you that the original owner of the said house was Mr. David S. C. Lam who sold it to our bank for the residence of his brother Mr. Alex S. C. Lam, our General Manager.

As Mr. David Lam is now a permanent resident of Canada and his brother Alex S. C. Lam has gone to Japan for a short trip, we are now unable to locate the name and address of the architect for adjustment of boundary 20 within the given time.

We shall immediately present your letter to Mr. Alex S. C. Lam when he returns here.

Yours faithfully,

Part of XXN. of A. J. Harland by Mr. Mills-Owens
10.10.72. @ abt. 10.30 a.m.
Q. You mentioned in your evidence that there were frequently discussions and negotiations with land owners concerned, are you suggesting that there were not discussions or negotiations with the owners of R.P. 535?
A. In what context?
Q. In context of the change of shape of the lot in December 1970?
A. Not that I am aware of.
Q. My instructions are there were no such discussions.
A. I have no record of any.
Q. The position at the moment then is that we have the agreement for sale, and the original sale plan depicting the lot as a rectangle. A Crown Lease may or may not be issued some time in the future, but has not yet been issued?
A. True.
Q. So with regard to the contractual relations between the owners of this land and the Crown, all we have is the original agreement of the lease of 1952 ?
A. Yes.
Q. You mentioned that there would be discussions and negotiations when Crown Lease is finally issued, and presumably as it has not yet been issued there is still room for further discussions or negotiations?
A. This is very true.
Q. So one is unable to say at this stage what the precise shape, dimensions or area of the lot will be when the Crown Lease is issued?
A. Most certainly. I agree, yes.

Certified as checked by
Miss M. Cunningham, C/Reporter.
(R. Atkinson, S.C.R.)

9/5/73

## $\mathfrak{Z n}_{n}$ the 猚rifing $\mathfrak{C u m u c i l}$

## ON APPEAL <br> from the full court of hong kong

## BETWEEN

DAVID SEE CHAI LAM ... ... ... ... ... ... ... ... Ist Appellant
THE KA WAH BANK LIMITED ... ... ... ... ... ... 2nd Appellant
and
THE HOUSE OF DIOR LIMITED ... ... ... ... ... ... Respondent

## RECORD OF PROCEEDINGS

JOHNSON, STOKES \& MASTER
Solicitors for the 1st \& 2nd Appellants

PETER MARK \& CO.
Solicitors for the Respondent


[^0]:    4-
    C 1 P CONSTRUCTION IN PROGRESS

[^1]:    (signed) Cheung Shui Wing

