

ON APPEAL*FROM THE SUPREME COURT OF HONG KONG*

(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 12 OF 1978

(On appeal from High Court Action No. 2459 of 1976, High Court Miscellaneous Proceedings No. 155 of 1977 and High Court Miscellaneous Proceedings No. 540 of 1977)

BETWEEN

DAVID NG PAK SHING..... *1st Appellant* (The 4th, 5th, 6th and 7th Defendants
 MELVILLE EDWARD IVES..... *2nd Appellant* in High Court Action No. 2459 of 1976,
 HO CHAPMAN..... *3rd Appellant* High Court Miscellaneous Proceedings
 FERMAY COMPANY, LTD..... *4th Appellant* No. 155 of 1977 and High Court
 Miscellaneous Proceedings No. 540 of
 1977)

and

LEE ING CHEE also known as..... *1st Respondent* (The Plaintiff in High Court Action
 LEE HAI HOCK No. 2459 of 1976)

LEE KON WAH..... *2nd Respondent* (The Plaintiff in High Court
 Miscellaneous Proceedings No. 155 of
 1977)

MALAYSIA BORNEO FINANCE..... *3rd Respondent* (The Plaintiff in High Court
 CORPORATION (M) BERHAD Miscellaneous Proceedings No. 540 of
 1977)

RECORD OF PROCEEDINGS**Volume III**

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In the Privy Council

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HO CHAPMAN.....	<i>3rd Appellant</i>	
FERMAY COMPANY, LTD.....	<i>4th Appellant</i>	

and

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position then is that on the 9th of June you were holding as security for \$16.2M. 23M. Siu King Cheung shares. Supreme Court of Hong Kong High Court

A. Yes.

Q. Would you look at 75 in the bundle, that is James Coe's request to yourself to have the 8 million shares registered in the name of I.P.C. Nominees? Defendant's Evidence

A. Yes.

Q. Was that done?

A. Yes, but it was done in two different lots. No. 40

10 MR. SWAINE: My Lord, Mr. Yorke simply wishes to see them and doesn't require them to be produced. David Ng Pak-shing – Examination

COURT: Yes.

Q. Now going back to the loan agreement of the 9th June, that you see has been stamped \$32,400?

A. Yes.

Q. Backed by the 23 million Shiu King Cheung shares?

A. Yes.

Q. What were you going to do with the agreement and the shares?

A. I intended to go to a bank to borrow some money with the Shiu King Cheung shares as the security.

20 Q. Did you approach the banks for that purpose?

A. Yes, I approached two banks.

Q. Were you successful or unsuccessful?

A. Unsuccessful.

Q. The shares, the 23 million shares were they still good security for 16.2 million?

A. Yes.

Q. So nothing wrong with the security?

A. I don't think so.

Q. Was the money market tight at that time or was it fluid?

A. According to my knowledge it was fluid.

30 Q. Now then having failed to raise money on this agreement and the shares what did you do?

A. I told Mr. Coe about it. I told him that I could not raise a loan.

Q. What did Mr. Coe do?

A. Mr. Coe just asked me if I needed any money for my own expenses, I said yes. Then he asked me how much I needed. I told him that I needed a certain amount of money for the purchase of the shares.

COURT: To buy M.A.F. shares?

A. For the purchase of M.A.F. shares. My Lord, we entered into option agreement with M.A.F. and then we have to pay the balance to the M.A.F.

40 Q. You mean the money payable to M.A.F. for the shares which the syndicate had brought under the option agreement of the 30th March?

A. Yes.

Q. Now we have got to come back to that in a moment, but meanwhile did Mr. James Coe lend you any money?

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Defendant's
Evidence

No. 40

David Ng Pak-
shing –
Examination

- A. Yes.
- Q. How much did he lend on that occasion?
- A. The first time I borrowed \$3,800,000 from him and the second time \$780,000. I only borrowed money from him on two occasions.
- Q. You mean at that time or throughout?
- A. At that time. We later had other transactions.
- Q. All right, we will come to that. Now I have got to go back to the M.A.F. option agreement. Do you remember yesterday we have looked at document 32 confirming that under the option agreement only 3,226,000 shares were available? 10
- A. Yes.
- Q. Then I want you to look at document 46 and you see it is addressed to yourself and Mr. HO Chapman by M.A.F. Corporation and this authorises and requests you to pay the sum of \$4,839,000 as to \$4,800,000 to Oceania Finance and Land Corporation and as to the balance of \$39,000 to M.A.F. direct, do you see that?
- A. Yes.
- Q. The \$4,839,000 being of course the purchase price of the 3,226,000 shares?
- A. Yes.
- Q. Now as briefly as possible would you tell my Lord why the \$4.8 million was to be paid to Oceania? 20
- A. According to my knowledge M.A.F. had an agreement with the Oceania Finance and Land Corporation Limited that M.A.F. had to return \$6 million to the Oceania.
- Q. And do you remember this was in respect of a property deal?
- A. Yes.
- Q. Do you recall the name of the property?
- A. Lung Shan Building, Nos. 140-141 Connaught Road Central.
- Q. Would you look at your document 131 in yellow 2, that is M.A.F. acknowledge receipt from yourself and Mr. HO Chapman of the two cheques, one for \$4.8 million and the other for \$39,000? 30
- A. Yes.
- Q. Now the cheques have already been identified. It is, my Lord, document 109. It is a Bentley's cheque for \$4.8 million, do you remember that?
- A. Yes.
- Q. And it was dated 17th June, 1977?
- A. Yes.
- Q. How were you hoping to honour the \$4.8 million cheque?
- A. At that time we were discussing with the bank, Bank de Indochine, that we would borrow a certain amount of money from the bank with the Shiu King Cheung shares as the securities. 40
- Q. At the time you were negotiating with Bank de Indochine and at the time were the prospects good?
- A. Yes.
- Q. And what subsequently happened?
- A. Eventually I was informed by the bank that their main office – that is to say, their main office in Paris did not approve it.
- Q. And was that why you went to James Coe?
- A. Yes.

- Q. Would you look at 132. Now that is your letter to Oceania, 17th June, enclosing five cheques payable to Hongkong Estates Limited in replacement of the \$4.8 million cheque? Supreme Court of Hong Kong High Court
- A. Yes, but the date was wrong because the girl typist made a mistake about the date. It should be 27th June instead of 17th June. Defendant's Evidence
- Q. All right, then the five cheques have been identified and the dates of these cheques, perhaps write them against the margin for easier identification. No. 40
- 10 MR. CHING: If I may interpose at this stage, Oceania of course is not a party. Oceania is owned by Mr. James Coe who is indirectly a party. I wonder if my learned friend could make available to us the original of document 132. David Ng Pak-shing – Examination
- MR. YORKE: My Lord, the references to the cheques are in yellow 3 148 and the cheques reappear in the Chase Manhattan accounts which have not yet been given to us.
- COURT: Yes, you were going to give the dates of these.
- MR. SWAINE: Yes, my Lord, they were the 25th June, 27th June, 28th June, 28th June again, 29th June.
- Q. Now these cheques total \$4.8 million and you had borrowed, you say, from Mr. James Coe \$3.8 million plus another \$780,000, do you remember saying that?
- 20 A. Yes.
- Q. The \$780,000 loan was that in respect of the payment to M.A.F. or was this something else?
- A. For something else, nothing to do with the M.A.F.
- Q. How much did you borrow from Mr. James Coe for the purpose of paying M.A.F.?
- A. \$3.8 million.
- Q. How did you make up the other \$1 million?
- A. The other million dollars came from another account which Mr. James Coe had with me.
- 30 Q. So from that other million plus the \$3.8 million you borrowed specially from Mr. Coe you found the money to make good the five cheques?
- MR. YORKE: For that matter, that is something which I have also asked for specific discovery a long time ago. The account, the evidence my learned friend mentioned that the million dollars came out of a share balance account which Mr. David Ng had with James Coe, no document was disclosed in relation to that account.
- MR. SWAINE: My Lord, may I check that. I thought we had made discovery of everything. If we haven't, certainly that will be done.
- COURT: Will you see that this is done as quickly as possible?
- 40 MR. SWAINE: Yes, my Lord, I do apologise.

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David Ng Pak-
shing –
Examination

COURT: Does it in effect mean that you had borrowed \$4.8 million or not, quite apart from the \$780,000; does it mean that?

- A. \$3.8 million for loan, that is definite; \$1 million for business account.
Q. Perhaps tell my Lord what the business account was, as plainly as you could make it?
A. To buy additional shares in the market he gave \$1 million on account to buy the San Imperial shares in the market on relisting of the shares. The relisting was on 27th June. So he put \$1 million in my place to buy the shares. That is separate business.

COURT: "He put \$1 million in my place to buy San Imperial shares –.

10

A. I mean on account.

COURT: "– on account on relisting on 22nd June"?

- A. 27th, my Lord.
Q. All right. So that \$4.8 million was the source of the five post-dated cheques – five cheques which you drew payable to Hongkong Estates?
A. Yes.
Q. Now pausing there, James Coe agreed to lend \$3.8 million to yourself for the syndicate, did he ask for anything in return?
A. Interest.
Q. But in addition to interest did he want any indulgence or some favour from the syndicate? 20
A. Yes, he wanted deferred payment.
Q. In respect of what?
A. The loan agreement.
Q. We will take it step by step. Will you look at document 88 in yellow 1 please. Now this is your letter to Mr. James Coe acknowledging receipt of the following post-dated cheques of which there are nine totalling \$13 million, do you see that?
A. Yes.
Q. And do you see the last paragraph: "Upon clearing of all the above cheques it is hereby agreed that the loan agreement dated 9th June, 1977, signed by you will be abandoned." Do you see that? 30
A. Yes.
Q. Now the loan agreement of course was for \$16.2 million, these post-dated cheques are for \$13 million, what about the balance \$3 million odd?
A. The \$3 million was the finders fee.
Q. What about the finders fee?
A. The finders fee was for Mr. HO Chapman and Associates. This was a deferred payment. It didn't have to be paid.

COURT: The payment of the \$3 million was deferred?

40

- A. Yes.
Q. And although payable to HO Chapman and Associates was it for Mr. HO

- Chapman or for the syndicate?
- A. For the syndicate.
- Q. Now then the first of these post-dated cheques is the 20th July?
- A. Yes.
- Q. The \$780,000 was that borrowed before or after the first of the post-dated cheques?
- A. I can remember that it was borrowed before this date.
- Q. And these would all be reflected in your bank accounts, would it not?
- A. Yes.
- 10 Q. The \$780,000 what was that in respect of?
- A. As I did not have the money I got the money from the person who owed me money.
- Q. That person being James Coe?
- A. Yes.
- Q. What was the money he was owing?
- A. The amount in the post-dated cheques here mentioned in document 88.
- Q. So he had lent to you \$4,580,000?
- A. Yes.
- 20 Q. The post-dated cheques, now the dates that these were credited to your account – my Lord, I don't know if your Lordship has taken this down on a former occasion, – they were the 26th July, 27th July, 27th July again, 29th July, 2nd August, 5th August, 9th August, 11th August and 13th August. Mr. Ng, the first three of these post-dated cheques, when they matured and were paid totalling \$4.5 million, what happened to that money?
- A. I used that to pay back to Mr. Coe.
- Q. That is \$4,580,000?
- A. Yes.
- Q. What about the \$80,000?
- A. It was stated in the loan agreement that I would charge him interest and he would charge me interest.
- 30 Q. That is the 1 per cent interest?
- A. Yes.
- Q. And Mr. James Coe what interest was he charging you?
- A. Also 1 per cent.
- COURT: And as a compromise?
- A. Compromise \$80,000.
- COURT: In your favour?
- A. Yes.
- 40 Q. He having given post-dated cheques for \$13 million carrying interest and you having borrowed from him \$4,580,000 carrying interest the balance was in your favour?
- A. Yes.
- Q. The remaining six cheques in document 88 upon their maturity and payment into your account what did you do with the money?
- A. After it was paid into my account I found that it was useless to let money

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idle in my account, therefore I asked James Coe if he needed any money and that I would charge him interest.

Q. At what rate?

A. At 1 per cent per month.

Q. Any security?

A. Yes, the security with 23 million Shiu King Cheung shares.

Q. And they were still in your possession?

A. Yes.

MR. CHING: When do you mean?

MR. SWAINE: When they were making these cross loans.

10

Q. When you were discussing with Mr. James Coe relending the money to him were the 23 million shares still in your possession?

A. Yes.

Q. Was the relending at an interval or soon after the James Coe's cheques had cleared?

A. Soon after.

Q. The money which you got upon payment of the James Coe's cheques was relent to James Coe?

A. Yes.

Q. Upon the security of 23 million Shiu King Cheung shares?

20

A. Yes.

Q. And at a rate of interest of 1 per cent a month?

A. Yes.

COURT: Interest was earned by the syndicate, not by you?

A. Yes.

Q. Have you in fact done a calculation of interest, Mr. Ng, on the post-dated cheques which James Coe has issued to the syndicate?

A. Yes.

Q. Do you have a copy of your calculations handy? (Yellow 5, page 124) Do you identify that as the calculations which you have made on the loan accounts with James Coe?

30

COURT: What page?

MR. SWAINE: 124, my Lord.

Q. And you have worked out the interest at just over \$129,000?

A. Yes.

Q. Now recapping much of what you have already given in evidence, Mr. Ng, would you look at 123, it is called schedule B, and are the first three figures the loans from James Coe totalling \$4,590,000 – the first five figures?

A. Yes.

Q. And the repayments, the first three cheques set out there, are those the first three of the post-dated cheques Mr. James Coe gave the syndicate totalling

40

- \$13 million?
- A. Yes.
- Q. Then page 122, described as schedule A, described as "loan account with Mr. James Coe", the six loans in the middle column totalling \$8.5 million, are these the rest of the post-dated cheques?
- A. Yes.
- Q. And these were the proceeds of the James Coe post-dated cheques which were relented to Mr. James Coe?
- A. Yes.
- 10 Q. The date of the relending appears in the first column?
- A. Yes.

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shing –
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COURT: The relending was done after each cheque was paid in, is that right?

- A. Yes.
- Q. In fact that is to be cross reference to 118, is that correct?
- A. Yes.
- Q. That summarises the payments made by James Coe, the first \$3 million we have evidence about this, and this was in two lots of \$1.5 million and \$1.5 million?
- A. Yes.
- 20 Q. The second figure of \$3 million that is the finder's fee?
- A. Yes.
- Q. That was finally paid on 26th October, 1977?
- A. Yes.
- Q. And then the nine post-dated cheques totalling \$13 million, that comprises the third set of payments?
- A. Yes.
- Q. Giving a total therefore of \$19 million?
- A. Yes.
- Q. Excluding the brokerage and stamp duty?
- 30 A. Yes.
- Q. And the last six of these cheques as they were cleared the proceeds were lent to Mr. James Coe as you have seen at page 122?
- A. Yes.
- Q. Now coming back to 122, the third column shows repayments by James Coe?
- A. Yes.

40 MR. SWAINE: My Lord, the actual cheques have been disclosed in I.P.C.'s further list of documents. Your Lordship will want yellow 4. The first set of papers is the actual discovery and if your Lordship were to look at page 6 of the list your Lordship would see listed under item 5 and the second half of the page, 13 cheques with the following particulars: the dates, the cheque numbers, the banks on which drawn, issued by. The first of these were Siu King Cheung, the rest were James Coe in favour of David Ng and the amounts are set out: \$520,000, \$320,000, \$500,000, \$1,000,000, \$700,000, \$1,200,000 . . . My Lord, the total of these cheques is \$8,629,446.67 which of course corresponds with the total of the repayments at 122 in our yellow 5. We have written to the banks as soon as the matter of further, discovery arose. My Lord, we do

not yet have the cheques from the banks. It may well be we shall have to subpoena them if we do not get them voluntarily, and your Lordship will see over the page, just to round off, discovery given of the finder's fee cheque which is item 36 in the discovery.

Q. Then the position is that the syndicate has received by way of repayment from Mr. Coe \$8,629,446.67 appearing at 122, is that right, Mr. Ng?

A. Yes.

Q. The loan being \$8.5 million the balance being interest as calculated?

A. Yes.

Q. What about these certificates, the shares of Siu King Cheung?

10

A. After he had paid for the debt and the interest the shares were returned to him.

Q. Now the \$200,000 estimated expenses, would you look at document 108 in yellow 2 please. This is James Coe's cheque to yourself in the sum of \$200,000, 15th August, 1977?

A. Yes.

Q. And would you look at 89?

COURT: In yellow 1.

Q. That is your receipt for that cheque?

A. Yes.

20

Q. And has that cheque been cleared and paid?

A. Yes.

Q. Then would you look at document 92, that is your letter to Mr. James Coe?

COURT: 92 what?

MR. SWAINE: Yellow 1, document 92.

Q. And that works out the brokerage and stamp duty on the 8 million shares at \$156,000?

A. Yes.

Q. That is \$44,000 short of \$200,000?

A. And there is another amount of \$32,400, that is the stamp duty on the loan agreement.

30

Q. That is document 71.

A. And the balance is still on account.

Q. That is \$11,600?

A. Yes.

Q. Would you go back to the schedules that we were looking at in yellow 5. Page 121 is a trading account of the syndicate?

A. Yes.

Q. Who prepared this?

A. I did.

40

Q. And that gives a bird's eye-view of the 8 million share transaction?

A. Yes.

MR. SWAINE: My Lord, this has already been identified by Mr. Ives as your Lordship will recall. Supreme Court of Hong Kong High Court

COURT: Yes.

Q. The 8 million shares at \$1.50 give \$12 million?

A. Yes.

Q. Less the M.A.F. shares 3,226,000 at \$1.50 equals \$4,839,000?

A. Yes.

Q. Less sale price of the 2,165,000 shares against your account equals \$3,247,500?

A. Yes.

Defendant's Evidence

No. 40

David Ng Pak-shing – Examination

10 COURT: These are the shares, according to you, you bought in Taiwan?

A. Yes.

Q. And these are for your own account?

A. Yes.

COURT: Before you go on. The option shares with M.A.F. Credit, I thought the agreement was with M.A.F. Corporation?

A. My Lord, when I mentioned M.A.F. I mean the M.A.F. Credit is the holding company, eventually they are the beneficial owner of these shares.

MR. SWAINE: My Lord, strictly it should be of course M.A.F. Credit. This is a home-made account. It is put down M.A.F. Credit because that is the holding company.

20

COURT: Yes.

Q. Then the cost of purchase of the 2,279,000 shares, that would be in the Hongkong stock market, \$1,247,000 odd?

A. Yes.

Q. Then further purchase of 329,400 at \$1 each, that is \$1,576,000 odd?

A. Yes.

COURT: That was also on the Hongkong stock market?

A. My Lord, that was acquired during the suspension.

COURT: The first lot was purchased at how much each?

30 MR. SWAINE: The cost price as given there is \$1,247,064.40.

COURT: At how much?

MR. SWAINE: It works out about 54 cents and the range was, my Lord, I think, from 20 odd to 80 cents.

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shing –
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Q. In fact the 2,279,600 were they all registered together or was there a break?
A. There was a break because errors were found in some of the share certificates, such as wrong signature, wrong chop – chops missing.

Q. Do you recall how many of these were affected?

A. A few tens of thousands of shares, I can't remember clearly.

Q. What about these tens of thousands of shares, were they subsequently registered?

A. Yes.

Q. And were they dealt with together with the 329,400 shares bought privately or separately?

A. Together with the 329,400 shares.

Q. As a matter of arithmetic, Mr. Ng, perhaps you can throw some light on the figures. The shares transferred to I.P.C. were 8 millions?

A. Yes.

Q. The charging order nisi is in respect of 7,631,000 shares?

A. Yes.

Q. That gives a difference of 369,000?

A. Yes.

Q. We know that they were bought during the suspension period 329,400 shares?

A. Yes.

Q. That deducted from 369,000 gives 39,600?

A. Yes.

Q. Would this be the figure for the certificates which were not in order to begin with and were then later registered together with the private purchase?

A. Yes.

Q. So the 329,400 were purchased during the suspension period and then registered after the suspension was lifted, was that the position?

A. Yes.

Q. And you have told my Lord the lifting was on the 27th June?

A. Yes.

Q. And the suspension was in the first week of May?

A. Yes.

MR. SWAINE: My Lord, I have come very close to the end, but I do have a number of minor points to pick up and tidy up. Would this be a convenient point?

D.W.(2)–NG Pak-shing – On former oath

XN. BY MR. SWAINE – Continues

Q. Mr. NG, I would like you to look at your Balance Sheet at 119 in yellow 5, please. I have got a spare set here if you need it, page 119. Who prepared this?

A. I did.

Q. You see it starts off with "Capital A/C"?

A. Yes.

MR. SWAINE: My Lord, if it is convenient perhaps we can dispense with the interpretation if it is simply a matter of figures. (To witness) Are you happy to give me your answers in English?

(Witness replies in English.)

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- A. Yes.
- Q. The Capital A/C, \$1,590,000 – that is explained at Note 1 on page 120?
- A. Yes.
- Q. Shows the contributions of Mr. HO Chapman, Mr. Ives and yourself?
- A. Yes.
- Q. The profit from shares – that is the balance on the trading account at page 121?
- A. Yes.
- 10 Q. The other income is, in fact, the finder's fee, \$3 million?
- A. Yes.
- Q. The interest received is the total of your interest calculations at 124, 125 plus the \$80,000 write-off as a compromise?
- A. Yes.
- Q. Rather, a set-off as a compromise. Then the option fee \$4 million?
- A. Yes.
- Q. The drawings – what does that mean?
- A. That means, you see, the members of the syndicate, they draw from the account.
- 20 Q. The account. As their share of the profits on account?
- A. Yes.
- Q. Which bank account is this that the money has come out from, Mr. NG?
- A. The Hong Kong Industrial and Commercial Bank.

Defendant's
Evidence

No. 40

David Ng Pak-
shing –
Examination

COURT: Are we talking about the drawings?

MR. SWAINE: The drawing out.

COURT: The drawing out, I see.

- A. I would like to add “mostly” but not all, mostly because I have 2 bank accounts.
- Q. And the other account?
- 30 A. Chase Manhattan.
- Q. “Reserve for Tax” – that’s simple. “Expenses payable” – that is note 5 on page 120 – your travelling expenses, the brokerage to Bentley and the retainer’s fee to City Nominees?
- A. Yes.
- Q. Then on the right-hand side “Cash with HO Chapman” – do you know what that is?
- A. This is the money lying with Mr. HO Chapman. In other words, you see, that is the balance of the finder’s fee.
- Q. Balance of the finder’s fee.
- 40 A. Yes.
- Q. The other half has already been distributed – is that right?
- A. Yes, yes.
- Q. The investment with Restormel, 2.5 million – perhaps you had better give this in Chinese – what was that?

(Witness replies in Punti.)

A. We bought a factory from the auction.

COURT: Where? The site?

A. At Kiu Tau Wai, Yuen Long.

Q. And when you say "we", who was that?

A. The syndicate.

Q. "Cash with David NG bank account" – which bank is that?

A. Hong Kong Industrial and Commercial Bank.

Q. "Deposit paid – \$2,200,000" – that is explained at note 7, page 120: \$2 million a reserve for legal fees, \$200,000 with Mr. CHOW?

10

A. Yes.

Q. Leaving a cash balance of \$9,700 odd?

A. Yes.

Q. All right. Now, I want you to think back a little and you will remember that you have given evidence of having seen the notice published by LEE Ing-chee in the papers on the 13th April?

A. Yes.

Q. We know that you went to Taipei for the eighth time between the 13th May and the 17th May?

A. Yes.

20

Q. And this was after you had seen the notice?

A. Yes.

Q. Did that trip have anything to do with the notice?

A. Well, you can say that there is.

Q. Yes. What took place in Taipei?

A. I told Mr. CHOW that there was an injunction in Hong Kong concerning the 15 million shares in the hands of Fermay Co.

Q. In fact I missed out one step in my questions. Would you also please look at 35 in the bundle, yellow 1. Yes. Now, that is the notice published by M.B.F. on the 29th April 1977 saying that they had got injunctions in respect of 17.4 million San Imperial shares?

30

A. Yes.

Q. Were you aware of this before your eighth trip to Taipei?

A. Yes.

Q. All right. So you were telling Mr. CHOW that there had been an injunction in Hong Kong. Yes?

A. Yes.

Q. Yes, continue.

A. And I also told him that it might have something to do with his shares.

Q. Yes.

40

A. And I also told him that there might be some legal matters.

COURT: You told him . . . ?

A. As Mr. and Mrs. CHOW were directors of the Fermay Co. I told them that they must deal with that matter.

- Q. Yes. Supreme Court
of Hong Kong
High Court
- A. And I told them that it had happened in Hong Kong. I also said that if they wanted to deal with the matter they must come to Hong Kong.
- Q. Now, I don't want you to say why they would not come to Hong Kong but continue the conversation with that gap. Defendant's
Evidence
- A. I told them that if they did not come to Hong Kong they must get someone to deal with the matter.
- Q. Yes. No. 40
- 10 A. And I suggested to them that they could ask us – that is, the syndicate – to assist them or they could ask their friends in Hong Kong to assist them and I told them that it would be best for them to authorize a person of the syndicate to be the managing director. David Ng Pak-
shing –
Examination
- Q. Yes.
- A. He said that firstly he didn't want his own name disclosed in this matter. Then I said that I must come to Hong Kong first to ask for the advice of a solicitor to see what we could do to avoid it.
- Q. Yes. When you mentioned solicitor in that context, who were you referring to?
- A. Mr. Ives.
- 20 Q. All right. Then?
- A. Then I said that if they did not want their names to be disclosed in this matter they must resign from the directorship of the company. I said that in that case they might be able to avoid it. That was only my own opinion.
- MR. SWAINE: Perhaps just pausing here, there is a hearsay notice concerning this overlap portion of the discussions with the CHOWs and of course the matter hasn't been argued before the Court but there is a fresh hearsay notice out of this portion of the conversation. I don't know if it would be in order for me to continue on the basis –.
- COURT: Have I seen a copy of it or not?
- 30 MR. SWAINE: My Lord, I don't think it has been seen by the Court. It was filed only 2 days ago. Perhaps just pausing here, Mr. CHING had specifically said he would like to see a hearsay notice. It was quite some time ago. It was sent in some time ago but I am afraid the mechanics of filing –
- COURT: Have Mr. Yorke and Mr. CHING seen them?
- MR. CHING: No, I have not seen it. This is the first I have heard of it.
- MR. SWAINE: This was issued upon Mr. CHING's specific request that this matter be dealt with in a hearsay notice.
- COURT: Perhaps you could show them –.
- 40 MR. YORKE: My Lord, Mr. CHING and I, we don't object to the evidence being given. We are merely commenting on the fact, my Lord, that this is nothing more involved than a transcript. Your Lordship will appreciate that we did

suggest and my learned friend took an adjournment a long time ago in order to get a finality in these matters of Mr. David NG's recollection of what was being said in Taiwan and one merely observes that this adjournment is – I have forgotten the date now – it was around the 20th of October but this notice is dated the 9th of November. Subject to that comment and saying it again later, we have no objection to the evidence being given.

MR. SWAINE: My Lord, the subject matter of this hearsay notice arose I think it must have been in the course of my opening and at the time there were 2 things I thought might have to go into a hearsay notice and I think I did bring this up in the course of my opening submissions to the Court. Mr. CHING thought one of these might be waived but he wanted a hearsay notice for the other which I settled very soon after that request. I regret that the mechanical process of getting it typed and filed has taken so long.

10

COURT: What is the date of this notice?

MR. SWAINE: 9th of November.

COURT: Yes. All this may be commented on again at the final stage of the proceedings.

MR. SWAINE: My learned junior has copies, purely for convenience of reference. I will just pass these . . . My Lord, I think this would be hearsay notice 11, if it would be convenient to follow the numbering which we have adopted.

20

MR. YORKE: It has gone beyond 14 already.

MR. SWAINE: Oh, I see. This will be 15.

(To witness) Yes, you were saying that to avoid disclosure of Mr. CHOW's name – I'm sorry, you expressed the opinion to him that if they wanted to avoid disclosure they might resign from Fermay?

A. Yes.

Q. Yes, continue.

A. After discussion Mr. CHOW told me that he would type me a letter, a letter of their resignation from the directorship, from the company.

Q. Yes.

A. But he did not put down the date therein.

30

COURT: You say he deliberately left it undated?

A. Yes. He said that I could come back to Hong Kong first and he would inform me after the discussion whether or not they would resign from the directorship of the company and whether or not they would appoint me the managing director of the company or he might appoint his friend/friends to be the managing director of the company.

Q. What did he do with this signed but undated letter?

A. He told me to bring the letter back to Mr. Ives first.

- Q. And did you do that? Supreme Court
of Hong Kong
High Court
- A. Yes. I also brought back some letter papers for him.
- Q. Whose letter paper?
- A. Mr. CHOW's company's.
- Q. Letter paper. All right. Would you look at yellow 3 document 34, bottom of page 144. Is that the undated signed letter? Defendant's
Evidence
- A. Yes.
- Q. And what did you do with it on return to Hong Kong? No. 40
- A. I handed it over to Mr. Ives.
- 10 Q. And subsequently did you hear again from Mr. CHOW? David Ng Pak-
shing –
Examination
- A. Yes.
- Q. Yes, tell my Lord.
- A. It was very late – I think it was on or about the 20th May when he telephoned me. He asked me to be the managing director. He said that they have held a meeting. He asked me to tell the solicitor to prepare the minutes of the meeting and then send the copies, the typed copies to Taiwan by mail.
- Q. Yes.
- A. And I told Mr. Ives all this and I told Mr. Ives to prepare the minutes of the meeting.
- 20 Q. What about the letter paper you had brought from Taiwan?
- A. I gave them to Mr. Ives.
- Q. Yes. Subsequently?
- A. After Mr. Ives had prepared it he brought it to me and I sent it to Mr. CHOW for his signature by mail.
- Q. Yes.
- A. And then he sent it back to me and I handed back to Mr. Ives.
- Q. Would you look at document 62 in Yellow 1. Are these the minutes?
- A. Yes.
- 30 Q. That is the minutes which Mr. Ives caused to be typed on Mr. CHOW's letter paper, handed to you, you mailed to Mr. CHOW and he mailed back to you after he had signed it?
- A. Yes.
- Q. One other thing, going back to the meeting with Mr. CHOW during your eighth trip, the 13th May to the 17th May. What about the March 23rd agreement itself? Was that discussed?
- A. Yes.
- Q. Yes. What was the discussion?
- A. I told him that if there were legal proceedings then we could not have the transaction of the 15 million shares done at that time because there was the injunction order, and that in that case we could not pay him the money. That is to say, we could not pay him the money within 90 days according to the agreement.
- 40 Q. Yes.
- A. Then he said, "Well, I have no choice. I can only wait for the outcome of the injunction proceedings." He said that it would be best for him to consult a solicitor first and then fix it up.
- Q. Now, subsequent to all that and subsequent to the telephone call from Mr. CHOW when he said he was agreeable to your being managing director, was there any further telephone contact between you?

Supreme Court
of Hong Kong
High Court

Defendant's
Evidence

No. 40

David Ng Pak-
shing –
Examination

- A. Yes.
- Q. Yes. By what means? Person to person or telephone or by letter or —?
- A. By telephone.
- Q. Who telephoned whom?
- A. Sometimes he telephoned me and sometimes I telephoned him.
- Q. About what month would this be?
- A. July.
- Q. Would you look please at your telephone bills, it is 110 in yellow 2. You remember when you looked at the first bill at document 110, yellow remember in reference to the telephone call on the 5th March you said that the number 27112065 was Mr. CHOW's own number? 10
- A. His home number.
- Q. The "2" being the code number?
- A. Yes.
- Q. Now, if you look at the second page, the top half is a bill for July? The original bills, perhaps you had better look at that because the date doesn't come out very well in the copy. The July bill. How many of these are calls to Mr. CHOW's residential number?
- A. 15th of July.
- Q. That is the first one, is it? The second on the bill itself?
- A. The 16th of July, that is the third one. 20
- Q. Mhm.
- A. 20th of July.
- Q. Yes.
- A. 23rd of July.
- Q. All right. And what were the discussion over the telephone about?
- A. Mostly about someone having gone to Taiwan to see him.
- Q. Yes. Now, is this when he phoned you or when you phoned him?
- A. On the 8th of July he telephoned me first.
- Q. Yes.
- A. And he told me that someone had gone to Taiwan to see him. 30
- Q. Tell the Court what he said.
- A. He said that a man by the name of K.C. WONG or WONG Kai-ching, a solicitor, had gone to see him and he said that this Mr. WONG was his former teacher.
- Q. Was this a Hong Kong solicitor or a Taiwan lawyer?
- A. Taiwan lawyer.
- Q. Yes. Continue.
- A. And that this Mr. WONG had asked him about the Fermay Company or matters about the Fermay Company.
- Q. Yes. 40
- A. He said that he did not answer him. Well, I meant to say that he did not answer this Mr. WONG about matters regarding the Fermay Company. Of course he answered the other things.
- Q. Yes.
- A. Then I said that I would consult my solicitor to see what we should do about it. On that occasion this was discussed.
- Q. Yes. Is there a subsequent occasion?
- A. Yes, subsequently he telephoned me.
- Q. Yes, and what did he say?

A. He said that this lawyer Mr. WONG had gone to see him again and he said that on this occasion Mr. WONG had not gone there alone but Mr. WONG was accompanied by a European. Then I asked him if Mr. WONG and the European had mentioned whom they were acting for.

Supreme Court
of Hong Kong
High Court

Q. Yes.

Defendant's
Evidence

A. He told him that they were acting for Johnson, Stokes and Master. Then I asked him for what they had gone to see him. Mr. CHOW told me that it was also for matters regarding the Fermay Company. Well, I just told him to forget it or not to bother.

No. 40

10 Q. Yes.

A. This is all we talked about on the phone.

Q. And was there any later telephone contact between you?

A. Yes, I telephoned him.

Q. Can you tell what date that was from your phone bill?

A. The 15th of – the 16th of July. Also about these matters.

Q. Yes. Tell my Lord what you said.

A. I told him that Mr. LEE Ing-chee had said that he, Mr. LEE, had seen him before. Then he said, "Which LEE Ing-chee?"

David Ng Pak-
shing –
Examination

COURT: You gave a description?

20 A. Yes, I told him that this Mr. LEE had something to do with the legal matters. I asked him to think it over and to see if he had seen him before.

Q. Yes.

A. In reply Mr. CHOW said that he had never seen him before.

Q. And was that the gist of the conversation?

A. Yes.

Q. Now, on the 20th July, according to the phone bill, you telephoned Mr. CHOW's home number?

A. Yes.

Q. What was that about?

30 A. Also about these legal matters.

Q. Do you have any recollection now or have you forgotten what it was?

A. I can't remember.

Q. All right. I would like you to look at 2 visiting cards which have been produced in evidence. My Lord, these are PD1 and PD2 – brown 3, red tag. These are both visiting cards of Mr. Frank CHOW and on the reverse side is the Chinese characters CHOW Cho-yee. Would you look at the originals, Mr. NG. How did you get these cards Mr. NG? How did I get the cards?

A. I gave them to Mr. Ives.

Q. All right. How did you get those cards?

40 A. On my first trip to Taiwan Mr. CHOW and I exchanged our visiting cards so I got it from Mr. CHOW, that is, PD1.

Q. That is the slightly yellowish card. All right.

COURT: Now, D1.

Q. And the second card?

A. On my second trip to Taiwan Mr. CHOW gave this one PD2 to me.

COURT: Now, D2.

- Q. Why did he give you another card?
A. Mr. CHOW kept me company to a very late hour and I said, well, how can you work again next morning? He said to me, "Don't you worry, I only go out to my office very late in the morning." Then I said, "In that case if I wanted to find you, I won't be able to find you in your office." Then I asked him about his home number. Then he said, "All right, I will give you another visiting card where there is my home number."
Q. And is that when he gave you D2?
A. Yes. 10
Q. And D1 does not give Mr. CHOW's home number – is that right?
A. That's right.
Q. And the number that you have been telephoning long distance – is that in fact the same home number?
A. Yes.
Q. Now, the telex which Messrs Johnson, Stokes & Master exchanged with Mr. Chow's telex confirms that 711 2065 is Mr. Chow's home number.

MR. CHING: He can see that.

- Q. Mr. Ng, according to your bill, you had telephoned long distance to Mr. Chow's home number once in – sorry – on the 5th March, 27th March, 29th March, then in May on the 22nd and the 29th. 20
A. Yes.
Q. In July, on four occasions. Have I got them all, or have I missed out any phone calls? That makes 9, so far. Sorry, there were two occasions in – there were three occasions in April.
A. 14 times all together.
Q. All right, you count 14 times. Have you any doubt in your own mind that you have met Mr. Chow and you have spoken to him?
A. You mean to say that I doubt that that Mr. Chow was not a true one?
Q. Well, have you any doubt in your own mind that you have met Mr. Chow and you have spoken to him? 30
A. No.
Q. No further questions.

XXN. BY MR. CHING:

- Q. Mr. Ng, I don't insist that you give your evidence in English, but it has become apparent, has it not, through your examination-in-chief that your understanding of the English language is quite good.
A. Thank you.
Q. No, I'm asking you a question. Has it or has it not become apparent that your understanding of the English language is quite good? 40
A. Well, it's very difficult for me to say about the standard. If you speak slowly, I can understand it.
Q. I just want there, Mr. Ng, to be absolutely no misunderstanding between you and me; all right?

- A. I hope so. Supreme Court
of Hong Kong
High Court
- 10 Q. I hope so, too. On occasions when your counsel asked you questions and it has been interpreted to you into Cantonese, you have hesitated to answer because of some mistake in the interpretation?
- A. Yes, well, if he spoke slowly, well I could understand it. Defendant's
Evidence
- Q. And there have been occasions when you've corrected the Interpreter when he was speaking in English.
- A. Yes. No. 40
- Q. Can we then be absolutely sure that if I speak slowly enough there will be no misunderstanding between us so far as language is concerned? David Ng Pak-
shing – Cross-
examination
- A. Well, I still hope that I could give my evidence in Cantonese, —.
- Q. Yes, yes.
- A. — my own dialect.
- Q. But can we be sure then that provided I go slowly enough we can be absolutely sure that there will be no misunderstanding between us so far as language is concerned?

COURT: Mr. Ching doesn't want you to speak English.

- A. Yes, you don't mean to say that you want me to give evidence in English. Well, I still give my evidence in Cantonese.
- 20 Q. So, we can be sure, can we, that provided I speak slowly enough there will be no misunderstanding between us so far as language is concerned?
- A. Well, Mr. Ching, is it all right if I don't understand the question I'll ask you?
- Q. Of course, Mr. Ng. But, you see, if I speak slowly enough you will have the advantage of hearing it in English and then to hear it in Cantonese.
- A. Yes.
- Q. If I speak slowly enough, there should be no misunderstanding; and if you should misunderstand, you will say so at once.
- A. Yes. Good.
- 30 Q. Very well. Let's have a bit of personal background, Mr. Ng, because you are a cypher in my mind — an unknown quantity. How old are you, for instance?
- A. 42.
- Q. You are 42 years old. Where were you educated?
- A. May I explain in details, my Lord?
- Q. Would you please answer the question.

COURT: I don't know what you mean.

- Q. Where were you educated?
- A. Well, I never received any actual education.

COURT: "No formal education."

- A. No formal education.
- 40 Q. Did you ever go to school?
- A. Yes, the evening classes.
- Q. "Evening classes". Where?
- A. Hong Kong.

Supreme Court
of Hong Kong
High Court

Defendant's
Evidence

No. 40

David Ng Pak-
shing – Cross-
examination

- Q. Yes, there are a lot of evening classes in Hong Kong, Mr. Ng. Which establishment, please?
- A. Tat Chee English School, and Oriental English evening classes, and technical college, too, sir – the evening classes of the technical College, sir. I first came out to earn a living or to work at the age of 15.
- Q. I see. Where were you studying before you reached the age of 16 – of 15?
- A. I was an orphan in the Po Leung Kuk.
- Q. That's nothing to be ashamed of, Mr. Ng. You seemed to be ashamed of telling us; it may be a misfortune, but it's nothing to be ashamed of, is it?
- A. I don't think so. 10
- Q. When you started work at the age of 15, what were you working as?
- A. I worked as an office boy in Holt's Wharf.
- Q. You worked as an office boy in Holt's Wharf. How long had you worked there?
- A. For five years.
- Q. "Five years".
- A. As an office boy.
- Q. "As an office boy". Meanwhile you were going to evening school?
- A. Yes, sometimes I had to take the day shift and sometimes the night shift. This is why I sometimes had to study in Tat Chee English School and sometimes in 20 the Oriental.
- Q. I see. And after you had worked for five years as an office boy, what then?
- A. I was promoted to Typist.
- Q. To typist at Holt's Wharf?
- A. Yes.
- Q. For how long were you a typist?
- A. For two to three years, and then I was promoted again.
- Q. To what, please?
- A. Accounting clerk.
- Q. "Accounting Clerk". That was when you were about 23 years old? 30
- A. Yes.
- Q. And for how long you were an accounting clerk?
- A. For about two years.
- Q. "About two years".
- A. And then I was again promoted to Manager's Clerk.
- Q. Then as "Manager's Clerk". And then?
- A. I worked until the beginning of 1962, and then I resigned.
- Q. So, when you were about 27 years old you resigned?
- A. Yes, it should be so.
- Q. What did you do then? 40
- A. I worked as Mr. Hareleila's personal accountant in the Hareleila Company.
- Q. I see. And gradually you worked your way up.
- A. Yes.
- Q. You became a stock broker in January of 1973.
- A. You should say I became a member of the Far East Stock Exchange.
- Q. I see. But you didn't actually start doing business as a stock broker until some months later; is that right?
- A. Yes, because at that time I was still working – employed.
- Q. And after you became a stock broker, you continued working on the accounts

- for Hareleila.
- A. At that time I was already promoted to Chief Accountant.
- Q. Yes, you carried on being Chief Accountant.
- A. Yes.
- Q. Would it be right to say then Mr. Ng, as a result of the unfortunate fact of your having been orphaned, that you have no family money behind you?
- A. That's right.
- Q. Yes. And having literally worked your way up the ladder so many years, would it be right to say that you are a hard-working person?
- 10 A. It should be so, sir.
- Q. And you take care, for instance, in your work as Chief Accountant at – you take care to be accurate?
- A. To be careful, sir.
- Q. People rely upon you to do their adding and subtracting and their accounting for them.
- A. No. The accounts were prepared by those people below, sir, and they then handed them over to me, sir.
- Q. All right, if you want me to take it step by step, let's do it this way: When you were still a simple accountant you knew the importance of accuracy in the figures.
- 20 A. Yes.
- Q. And as a chief accountant your responsibility would be to see to it that your subordinates had been accurate in their figures.
- Q. Have you ever done an audit in your life?
- A. I am not a qualified or professional accountant.
- Q. Have you ever done an audit in your life?
- A. To audit is to check the figures to see if they are correct. Well, I have never done that before.
- Q. Have you ever taken part, by way of assisting the auditors, when they are doing an audit?
- 30 A. The auditors asked us questions and we answered. You can't say that I really assisted them.
- Q. All right. And as a stockbroker, do you agree that your integrity is a matter of considerable importance?
- A. Yes.
- Q. People have to trust you with their money.
- A. I trust people and people trust me, sir.
- Q. People have to trust you with their money; people have to trust you with their securities; and the other brokers have to be able to take your word.
- 40 A. Yes, of course.
- Q. And as a hard-working person who recognises the importance of accuracy and of integrity, I trust I am right in assuming that upon becoming a stockbroker you thoroughly familiarised yourself with the law regarding stockbroking?
- A. Well, our Association has its own regulations or by-laws.
- Q. All right. Let's talk about regulations and by-laws first. You would thoroughly familiarise yourself with the regulations and by-laws, would you not?
- A. You mean I myself or generally, sir?
- Q. You, Mr. Ng.
- A. Well, I knew a bit, sir, or I know a bit.

Supreme Court
of Hong Kong
High Court

Defendant's
Evidence

No. 40

David Ng Pak-
shing – Cross-
examination

Q. The seat on the Far East Stock Exchange was in your name.

COURT: (To Interpreter) No, no, "the seat".

INTERPRETER: Oh, the seat. Sorry.

A. My number there is 311.

Q. I know it is, Mr. Ng. If anything went wrong, the Stock Exchange would look to you as being the seat holder; is that right?

A. Yes.

Q. Therefore as a man who knows the value of accuracy, as a man who is a hard worker, who has fought his way up to the top and who knows how important it is that he should be a man of integrity, did you or did you not familiarise yourself thoroughly with the by-laws and regulations of your Exchange? 10

A. Well, you can't say that I familiarised myself with the regulations or by-laws, but I read it.

Q. You wouldn't want to do anything contrary to those regulations and by-laws, would you?

A. Usually we ask the Association what we should do.

Q. Yes. Yes. And the Association always has somebody available to render assistance in case of doubt; is that correct?

A. Yes, we will telephone the office and ask them about it.

Q. Thank you. Would they be able to give you any assistance on any legal matters concerning securities? 20

A. Yes, they would explain to us.

Q. Tell me, tell the court, Mr. Ng, this: have you ever been involved in putting out a prospectus by which the public is invited to subscribe for shares? My question is: have you ever been involved in putting out a prospectus by which the public is invited to subscribe for shares? You know what a prospectus is, Mr. Ng?

A. Yes.

Q. Have you ever been involved in preparing a prospectus? Have you?

A. Yes. 30

Q. You have been? You know the importance of accuracy in a prospectus.

A. This was prepared by the solicitor and the accountant, not by me.

Q. But you know it's important that a prospectus should be accurate.

A. Well, I believe every prospectus is important.

Q. Accuracy, not importance.

A. I believe every one is.

Q. Everyone should be accurate.

A. Should be, sir; because many people would have read the prospectus, sir, therefore it must be accurate.

Q. And because no one would want to mislead the share-buying public. 40

A. Well, it should be so.

Q. Yes. Now, apart from being an accountant and a stockbroker, you have also been a director of both private and public companies; is that right?

A. Yes.

Q. Indeed, you have been chairman of a public company, have you not?

A. I'm still the chairman.

- Q. You are still the chairman. You became the chairman of San Imperial on the 30th May this year, is that right? Supreme Court of Hong Kong High Court
- A. Well, no, I don't think so. I was only a director.
- Q. Were you ever Managing Director of San Imperial?
- A. No. Defendant's Evidence
- Q. Chairman of the Board?
- A. Later I became the Chairman of the Board.
- Q. I see. When was that, please, approximately? No. 40
- A. In about June, sir. – June this year.
- 10 Q. "June this year". After the AGM this year, is that right? David Ng Pak-shing – Cross-examination
- A. Yes.
- Q. And the AGM was held on the 30th May?
- A. Yes.
- Q. And as a director and, indeed, as Chairman of the Board of a public company, once more you would know the importance of not misleading the public; is that right?
- A. What do you mean by leading the public?

COURT: The importance of not misleading the public.

- A. Yes.
- 20 Q. Now, I noticed, Mr. Ng, that throughout the interrogatories you filed affidavits, not affirmations: in other words, you took an oath and I noticed that in courts you swore to tell the truth. Of what religion are you, please?
- A. Catholic.
- Q. Roman Catholic?
- A. Yes.
- Q. And you would know, then, the importance of taking an oath: you must tell the truth under oath.
- A. Yes.
- 30 Q. Possibly I have misunderstood something, Mr. Ng, in the course of these many days. Were you once the chairman of the MAF Group?
- A. Yes.
- Q. Are you still the chairman?
- A. No.
- Q. When did you cease to be the chairman?
- A. I was kicked out on the 1st November.

COURT: When were you kicked in?

A. On the 4th July, sir.

MR. CHING: "Kicked in on Independence Day; kicked out before Guy Fawkes."

- 40 Q. Mr. Ng, you know the importance of telling the truth under oath. What about when you were not under oath? Would you ever say anything untrue if you were not under oath?

MR. CHING: I'm reminded by my learned junior that neither the record nor Mr.

Yorke could get it when Mr. Ng asked me a question in Chinese. I think perhaps it should be interpreted.

INTERPRETER: "Mr. Ching, do you mean that under oath I would not lie?"

Q. No. Let me ask you this again: You have told us that under oath you know the importance of telling the truth. All right?

A. Yes.

Q. What about when you are not under oath? Do you always tell the truth when you are not under oath?

A. Well, this is very wide, sir. Well, if I cheated my own children, what should I say?

Q. I trust you don't cheat your children.

A. Sometimes my children play tricks on me and be disobedient.

Q. So, you cheated them then?

A. Yes, they are children, sir.

Q. What about adults? Would you cheat an adult?

A. Well, this is very wide again, sir.

Q. Yes. Why is it very wide?

A. Well, sometimes I go out for fun and when I go home I cheat my own wife. What should I tell?

Q. You may have the advantage over me there, Mr. Ng. In the course of your business dealings or your dealings with persons other than your wife, would you ever cheat them? 20

A. I don't admit that I would cheat a person, but I do admit sometimes I would make advantages.

Q. Take advantage of them?

INTERPRETER: "Take advantage", sir. Yes.

Q. Sometimes you would say something to them which is not true in order to gain an advantage for yourself; is that right?

A. Well, normally a businessman do, sir.

Q. There again you have an advantage over me. Do you mean to tell this court that all businessmen sometimes say things which aren't true in order to gain an advantage for themselves? 30

A. I believe so, sir.

Q. Including yourself?

A. I'm also a businessman, of course I do, sir. But this is not a cheating.

Q. "This is not cheating". It's just not telling the truth?

A. There are many ways of doing business, sir. Well, how should I explain to you about taking an advantage, sir?

Q. You can start by answering my question. You said that all businessmen do this, that is to say sometimes they don't tell the truth for the sake of getting a personal advantage. Do you include yourself in that class of person? 40

A. I said generally, sir.

Q. Do you include yourself in that class of person?

A. Yes, I admit that, sir, that is to take an advantage.

Q. Of course, this present litigation is very important to you, isn't it?

- A. Well, it should be so. Supreme Court
of Hong Kong
High Court
- Q. "It should be so". Can I correctly assume that you have racked your brains to think about every important detail?
- A. I don't understand this question, sir.
- Q. Well, it's important, so you spent a long time thinking about it and trying to remember the important matters. Defendant's
Evidence
- A. Yes, because I wanted the court to understand more.
- Q. You wouldn't conceal – You would not conceal anything from the court, would you? No. 40
- 10 A. Well, I try my best –
- Q. And you would tell the full story to the court? David Ng Pak-
shing – Cross-
examination
- A. To the best of my memory, sir.
- Q. Can we take it then, Mr. Ng, that you have tried your best to remember all the important matters, that you have told the court all of the important matters and that you have concealed nothing?
- A. Well, I've told the court everything what I could remember. Well, if I could not remember anything, I told my counsel that I could not remember that. And sometimes in answer to a question I said I could not remember.
- 20 Q. Yes. By the way, this seat in the Far East Stock Exchange – who put up the money for it?
- A. From my account.
- Q. Whose money actually was it?
- A. My money.
- Q. How much did it cost you?
- A. Half a million dollars.
- Q. "Half a million dollars" You had half a million dollars in cash in your account?
- A. What – I gave them a cheque and the cheque was not bounced back.
- Q. You had half a million cash in your account?
- 30 A. The cheque was not bounced back, that is to say I had half a million dollars cash in my account.
- Q. All your own money?
- A. Of course, it was my own money.
- Q. I see. How much is that seat worth now?
- A. Well, that I don't know.
- Q. You have no idea?
- A. Well, if you really want me to tell you this, sir, the ratio to a seat in the Kowloon Association is 4:1 (four to one); therefore one is \$40,000 – that is to say, for a seat in the Far East, it's \$160,000.
- 40 Q. I see. And did you include that \$160,000 in the estimate of your worth in late 1976?
- A. This money had been entered into the company's account.
- Q. I see. So, it forms part of the Bentley capital of 1.2 million?
- A. Yes.
- Q. I'm sorry I missed something you said yesterday, Mr. Ng. I think you said you previously had a flat and then you sold it and bought another one; is that right?
- A. Yes.
- Q. What was the address of the flat you sold?
- A. Flat G, 7th floor, Far East Mansion, Middle Road, Kowloon.

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of Hong Kong
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Evidence

No. 40

David Ng Pak-
shing – Cross-
examination

Q. That's 7G, Far East Mansion, Middle Road, Kowloon. When did you sell that flat?

A. Well, I think it was in 1975. I can't remember the date, sir.

Q. To whom did you sell it?

A. I sold it to Hong Kong Estates Limited.

Q. "Hongkong Estates Limited" being a wholly-owned subsidiary of San Imperial?

A. Yes.

Q. What size flat would 7G have been?

A. The usable area was 652 square feet, at the time of sale it was said to be 800-odd square feet. 10

Q. 652 net, 800 gross?

A. Yes.

Q. And when was Far East Mansion put up?

A. I can't remember clearly, sir, but I think this building is 20 years old.

Q. 20-odd years old?

A. I think it's about 20 years.

Q. And you sold it to Hong Kong Estates for how much?

A. I can remember that it was sold for \$200,000 approximately.

Q. "\$200,000." And your present flat – which number is that?

A. Flat A, 13th floor, Far East Mansion. 20

Q. Same building?

A. Same building.

Q. Same building, Flat 13A. Same size building?

A. No, flat G is at the back.

COURT: Size – area.

A. It's much bigger.

Q. "Much bigger". What's the size of your present flat?

A. It's about one thousand-odd square feet.

Q. But, Mr. Ng, a thousand square feet in Middle Road cannot be worth in a 20-year-old building, half a million dollars, can it? Five hundred dollars a square foot in Middle Road for a 20-year-old building. 30

A. Well, it depends. Mr. Ching, if I give you the same amount of money and if you can buy a flat in the Far East Mansion about the same area, I don't think you can buy such a flat there.

COURT: This is Tsimshatsui area, isn't it?

INTERPRETER: Yes.

MR. CHING: Tsimshatsui. Near the old Star Theatre. Near the new Jimmy's Kitchen.

A. No, no, this is opposite to the Sheraton; next to that is Ambassador; opposite is car park and next to that is a government park.

Q. I'm sorry, I had it the wrong way round. 40

A. That's right.

Q. Anyway, after working for 26 years up to late 1976, you had managed to save about 1½ million dollars.

A. Yes, but you can't say that I saved the money.

Q. Well, what would you say?

A. Well, I made profit in business.

Q. You made. Very well. But you had assets of 1.5 –.

A. It is not that I saved the money, sir. I made the money in the business.

A. I see. So, in 26 years you had 1.5 million and then in a period of five months or something rather more or less than one-over-52 of your working career you were going to make over 9 million dollars; is that right?

A. Well, I don't understand this.

10 Q. You don't understand. After 26 years you had 1.5 million dollars' worth of assets. That is your own evidence; is that right?

A. Yes.

Q. Between November or December of 1976 when the scheme about buying San Imperial shares was first mentioned to you up to the 30th April, when the first contract was signed with James Coe, that would have been about five months; is that right?

A. Yes.

Q. Yes. And in that short period of five months you were going to make something in excess of 9 million dollars; is that right?

20 A. No, the syndicate made it –.

Q. No, I'm talking about your own personal share.

MR. SWAINE: "Going to make" . . .

A. How do you work it out?

Q. Well, have you got a piece of paper and a pencil there, please?

MR. SWAINE: Is the translation "You had made" or "you were going to make"?

MR. CHING: "You were going to make".

MR. SWAINE: "You were going to make".

A. Yes.

30 Q. Let's just break that down for the benefit of the court. 2,165,000 shares in Taiwan for your own personal benefit. At a dollar-thirty profit, again, which comes to \$2,814,500; all right? You agree with that figure?

A. Hmhmm.

Q. Yes. 15 million Fermay shares at a profit of 90 cents each is 13½ million, of which your share would be 4,500,000. All right?

A. Yes.

Q. The shares bought in the open market, according to your case, and now standing in Fermay 2,609,000 shares to be sold at a profit of 96 cents each, your one-third share would be \$834,880.

MR. SWAINE: In the name of IPC.

40 Q. In the name of IPC now. And then you had one-third of the finder's fee and

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Evidence

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shing – Cross-
examination

your share would be one million dollars. So, your share was going to be 9,149,380 dollars gross.

A. Well, your calculation should be correct.

Q. Did you charge brokerage on any of these transactions, Mr. Ng?

A. Yes.

Q. How much did brokerage come to – a rough total?

A. Well, I've never worked that out, sir.

Q. Never worked it out?

A. But my employee was responsible for this.

Q. It would be quite a substantial sum of money, would it? 23 million shares – 10

A. About \$200,000.

Q. About two hundred thousand dollars, of which you would take 30 per cent?

A. Yes, the company made two hundred thousand dollars for brokerage, sir.

Q. Mr. Ng, I suggest to you that if there is any truth at all in what you have said concerning the divers agreements – loan agreements, gross agreements, sale and purchase agreements, option agreements, whatever you like to call them – that if there is any truth in any one of those documents, you would do or say anything to keep in your hands a profit of something in excess of 9 million dollars.

COURT: Mr. Ng, do you understand the question in English? You do? 20

A. Well, I don't do anything which is against the law.

Q. I see. But I'm going to point out in the course of next week at least two occasions where you have broken the law, so we will come back to that, Mr. Ng – broken the law by way of criminal offences. All right?

A. Whenever I do one thing, I always consult my solicitors.

Q. I just want to get that down: "Whenever I do . . ."

(Witness says something in Puntì)

Q. Don't interrupt! "Whenever I do one thing, . . ." – can we have the rest of the answer?

COURT REPORTER: (Reads out) "Whenever I do one thing, I always consult my solicitors." 30

MR. CHING: Much obliged.

A. Well, I meant to say the things regarding this case.

Q. Of course, if this money which ostensibly you and the syndicate would be earning in fact belonged to Choo Kim San, you know full well that Choo Kim San could never come and sue you for it, don't you?

A. Why is that? It's Choo Kim San's money?

Q. Well, I put it to you, Mr. Ng, if you don't want to answer it, I'm not going to put it again: you were previously a director of Luen On.

A. Yes. 40

Q. At that time it was a public company.

A. It was in a period when it was to be public company, sir.

Q. You resigned your directorship in Luen On in April of 1973; is that right? Supreme Court
A. Yes. of Hong Kong
Q. Was it not a public . . . High Court

COURT: In April . . . Defendant's
Evidence

INTERPRETER: "April 1973." No. 40

Q. Was it not a public company at that time?
A. Yes.
Q. So, you were a director of Luen On when it was a public company, were you not? David Ng Pak-shing – Cross-examination

10 A. Well, I might have been the director of Luen On Company before it was – it became a public company.

Q. I am not interested in that. You were also a director of Bladon.

A. Yes.

Q. That also was a public company when you were a director.

A. Yes.

Q. In fact, in both of those companies when they were public companies, were you not in fact a nominee director, being a nominee of Choo Kim San?

A. If the companies were public companies, how could I be a nominee, sir?

20 Q. Now, don't be foolish, Mr. Ng. If Mr. Choo Kim San owned fifty-one per cent of the company and said, "David Ng, be my nominee director," you could be, couldn't you?

A. Well, at that time he invited me to be the director of the company.

Q. You were his nominee?

A. No. No, I don't think that it is correct.

Q. In High Court Action 1674 you filed an affidavit dated 29th June, 1977. Do you recall that?

A. May I be shown –

30 Q. Blue file, page 46. All right? Look at paragraph 2 that says this: I was the Director of Luen On Investment Co. Ltd. now known as M.A.F. Credit Limited for the period from 14th November 1972 and resigned on 1st April 1973 and on or about the 16th day of June 1977 I again joined the Board of the said MAF Credit Limited." Going now to paragraph 10 – paragraph 9; I'm sorry: "In my capacity as a Director of MAF Credit Limited I know that Mr. Lee Ing Chee of" – that address – "who in Action No. 252 of 1977 in the High Court of Hong Kong in a Supplementary Affirmation made in the month of May 1977 a copy of which is annexed hereto and marked exhibit "DN-2" was in charge of the Defendant's business interests in Hong Kong." Then in paragraph 10 you go on to refer to Mr. Lee Ing Chee's affidavit and you say, "From my own personal knowledge" you "confirm the contents of paragraphs 3, 4, 5, 6, 7, 10 and so on; is that right?"
40

A. Yes.

Q. Would you now please look at page 55, please, of that same file. That will give you, right at the bottom, paragraph 6 of Lee Ing Chee's affidavit, which you confirm as being true, that says this: "The Defendant also bought a controlling interest in M.A.F. Credit Ltd., then known as Luen On Investment Company Ltd. sometime in December 1972. Thereafter all the directors of

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David Ng Pak-
shing – Cross-
examination

M.A.F. Credit Ltd. were appointed or nominated by the Defendant.” The Defendant is Choo Kim San. Now, you have confirmed that that affidavit is true – that paragraph is true, have you not?

A. “Appointed or nominated” – appoint . . . Well, here it says “appointed or nominated”.

Q. I see. So, you were Choo Kim San’s appointee and not his nominee; is that right?

A. I don’t –

Q. With great respect, I think the answer was –

A. “Appointed or nominated”. Here it says “appointed or nominated”. 10

Q. Yes?

A. Well, I don’t know the meaning of these words in English.

Q. But, Mr. Ng, –

A. But I know the word “appointed”.

Q. But, Mr. Ng, you swore, had you not, you swore a Roman Catholic oath, did you not, that paragraph is true. Sorry, I withdraw that. It’s pointed out by my learned friend that for some reason that was affirmed to be true. You affirmed that to be true. Do you tell this court that you affirmed this to be true – something of which you didn’t even know the meaning?

A. No, I didn’t mean this. 20

Q. But you have said – Sorry?

A. I did not mean this.

Q. You said you don’t know what is meant by the words “appointed or nominated”. Now, I pointed out to you that you affirmed this as true. I ask you once more: Does that mean that you affirmed as true a paragraph the meaning of which you knew not? The answer is yes or no?

A. The solicitor had explained that to me.

Q. Yes?

A. And I said, yes, it was correct.

Q. When the solicitor explained it to you, did you understand it? 30

A. Yes.

Q. Therefore does it follow that even now you understand it? Yes or no? Yes or no?

A. Yes, I do.

Q. Why did you say just now you didn’t know the meaning of the words “appointed or nominated”?

A. Actually – Well, actually Mr. Ching misunderstood me. I said here it says the directors of MAF Credit Limited were appointed or nominated doesn’t mean to say that I myself was appointed or nominated.

MR. CHING: My Lord, perhaps this might be a convenient moment? 40

Appearances as before.

D.W.2 – David NG Pak-shing – O.F.O.

XXN. by MR. CHING (continues):

Q. Mr. Ng, have you ever heard of a company called San International Limited?

- A. I might have. Supreme Court
of Hong Kong
High Court
- Q. In what connection do you think you may have heard of that name?
- A. I believe it was in 1973 when the office of the M.A.F. Company was on the ground floor of No. 59, Des Voeux Road, Central, and at that time my office was on the mezzanine floor of the same building. Defendant's
Evidence
- Q. Yes.
- A. Perhaps this is why I have heard it.
- Q. You cannot think of any other connection in which you have heard that name? No. 40
- A. I can't remember.
- 10 Q. Have you ever held any shares in San International Limited? David Ng Pak-
shing – Cross-
examination
- A. According to my memory, sir, I shouldn't have.
- Q. Do you know what the purpose of that company was?
- A. I don't know.
- Q. Have you ever heard of San International Insurance Limited?
- A. Yes.
- Q. Have you ever been a shareholder in that company?
- A. According to my memory, no.
- Q. No, and in what connection have you heard of San International Limited?

INTERPRETER: San International?

- 20 Q. Insurance Limited – I'm sorry.
- A. This was a subsidiary company of the M.A.F.
- Q. Have you ever heard of it in any other connection?
- A. No.
- Q. Very well. Now when we adjourned on Friday I think you were drawing a distinction between an appointee director and a nominee director. Is that right?
- A. Yes.
- Q. What do you say the difference is?
- A. I think there must be a difference between these two words, otherwise it would not say 'appointed' or 'nominated'.
- 30 Q. I see. What do you say the practical difference is between being nominated on the one hand and being appointed on the other hand?
- A. To my understanding of the English I think the word 'appointed' means invited to work for the company.
- Q. But you would be invited by, in this particular – in this particular case you would have been invited by CHOO Kim-san?
- A. Yes.
- Q. And he would ask you to act as a director in his place?
- A. No, there were many people there.
- Q. Yes. He had a controlling interest in Luen On, and he asked you to be a director?
- 40 A. Yes.
- Q. And he asked you to be a director instead of being one himself. Is that right?
- A. Well, I don't agree with this.
- Q. You don't agree with this. Isn't it true that you, having been appointed or nominated by him, you would have to act in accordance with his instructions?
- A. I was the director of the company and I attend the directors' meetings and there was nothing special for me to do.

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of Hong Kong
High Court

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Evidence

No. 40

David Ng Pak-
shing – Cross-
examination

Q. When you attended directors' meetings, if there was something that CHOO Kim-san wanted to put forward he would ask you to put it forward for him?

A. In that case I must have read it to see what it was before it was put forward.

Q. I see, and if something were put forward that CHOO Kim-san wanted it passed by a resolution, he would instruct you to vote in favour of the resolution?

A. No. There were the minutes of the meeting and I had my own opinion, therefore he could not tell me what to do.

Q. I see. I suggest to you, you were his nominee.

A. No, I don't agree with that.

Q. I suggest that you did his bidding, you did whatever he asked you to. 10

A. Not always, sir.

Q. I suggest you would go along with whatever he wanted.

A. No, not always.

Q. Not always.

MR. SWAINE: I wonder, with respect, is it 'not necessarily' rather than 'not always'?

INTERPRETER: Not always.

COURT: I am bound by the Interpreter, unless . . .

INTERPRETER: It sometimes is, sometimes not. (Interpreter speaks in Chinese.)

COURT: All right. Mr. Ng, you know English, did you say 'not always' or 'not necessarily'? 20

A. It is not necessarily.

Q. Not necessarily. But if you didn't do what he wanted he was in a position to throw you off the board, wasn't he?

A. Actually I did not want to be a director and actually later I resigned.

Q. He was in a position to throw you off the board if you didn't do what he wanted.

A. Yes, of course he had the right to do this.

Q. If you didn't want to be a director why did you become one?

A. At first there were not so many disputes between us, but later it was found that there were disputes, this is why I left. 30

Q. There were many disputes between you, were there, in relation to Luen On?

A. We had different opinions, sir.

Q. Why did you resign?

A. As we had different opinions, sir, so I resigned.

Q. In relation to what did you have differences of opinion?

A. For instance, sometimes he wanted a meeting of the directors and he didn't want the people to attend the meeting, and he did not inform me to go to the meeting.

Q. Could I have that again? He didn't inform people to go? He didn't want people to go? 40

A. He didn't tell me to attend meeting.

Q. Did he ever hold a meeting where he wanted people not to attend?

- A. This I don't know, sir. Sometimes he didn't tell me to attend meeting, sir. Supreme Court
 Q. Is that the only thing that he did that you didn't like? of Hong Kong
 A. There were other things which I did not like. Well, he made decisions for all High Court
 matters.
- Q. Yes, anything else? Defendant's
 A. It happened years ago. How can I remember so many or so much? This is Evidence
 all I can remember now.
- Q. You say that you resigned because of differences in opinion? No. 40
 A. Yes, in the Luen On Company.
- 10 Q. Yes. Differences of opinion about what, Mr. Ng? David Ng Pak-
 A. Well, he made the decisions as to be administration of the company so we had shing – Cross-
 different opinions, sir. examination
- Q. Different opinions about what?
 A. There were many matters in the company and he held – sorry, he made
 decisions for all these matters, but there were also other directors in the com-
 pany so this is why I said we had different opinions.
- Q. Mr. Ng, when somebody insists on doing everything himself, without consulting
 you, that is not a difference of opinion, is it?
 A. I think so. We must discuss about the matters, but he never did.
- 20 Q. I see. Would you say that you had some disagreement about the management
 of the company?
 A. I have already told the Court that in doing everything he made decisions
 according to himself.
- Q. Did you or did you not?
 A. This of course includes the management of the company, sir.
 Q. So you had actual disagreements about the management, did you?
 A. Yes.
 Q. Such as what?
- 30 A. There are many things to do in a company, such as collecting the rent, buying
 or selling properties. Well, he made his own decisions in doing all these matters
 without discussing with the other people, sir.
- Q. I see. So is this the position: there was no actual disagreement about any
 specific point of management, it was just that he did everything on his own?
 A. The greatest difference in our opinion is that he made decisions on his own.
 Q. There was no actual specific point upon which you disagreed? Yes or no.
 A. No. I meant in general, sir, we had different opinions.
 Q. He was the person in full control of Luen On and therefore he thought he
 could do as he liked without consulting you. Is that right?
- 40 A. I think this is what Mr. Choo meant to do, sir. Perhaps he thought that it was
 his company therefore he could do what he liked.
- Q. And you, I suppose, were conscious of your duties as a director of a public
 company?
 A. Yes.
 Q. Did you suspect him of doing anything to his own interests rather than for
 the interests of the company?
 A. This is very difficult for me to say. Actually I did not know much.
 Q. Mr. Ng, the answer is simply yes or no. Did you suspect?
 A. Yes, of course I did.
 Q. So he wasn't the sort of person with whom you would like to be associated

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No. 40

David Ng Pak-
shing – Cross-
examination

in a public company, is that right?

A. Well, I did not have this feeling one day. Gradually I found that I could not get along with him.

Q. So that's another reason, you couldn't get along with him?

A. Yes, in every matter.

Q. So this was not the sort of person with whom you would wish to be associated in a public company? Yes or no.

A. I had this feeling at the time when I resigned, sir.

Q. And I assume – do I assume rightly? – that this is not the sort of person with whom you would wish to be associated in any private venture.

A. It all depends. If it was a public company I would not agree with that.

Q. What about a private venture?

A. It all depends on the situation, sir.

Q. It all depends on the situation. Mr. Ng, here was a man who, because he had control, did what he wanted to do, even though it was in his own interests rather than in the interests of the company; this is a man who didn't consult his fellow-directors; this is a man with whom you had differences of opinion; this is a man with whom you didn't get on; this is a man whom you may have suspected of various things: would you have gone into a private venture with such a person?

A. I might, because it might be wrong in one transaction but it might be right in the other one, sir.

Q. Why did you enter into a partnership with him in Bentley Securities then?

A. I'll explain to you slowly. Firstly, I controlled the Bentley Securities Limited.

Q. Yes. Not Limited, Bentley Securities.

A. Bentley Securities Company, and I held the major shares of the company, sir, and he held the minor shares, and secondly, he had a public company such as the Luen On, and I was in the Stock Exchange business. I was a partner in the Bentley, sir, of course I wanted more business. Well, I just wanted more business.

Q. Did you trust him at that stage?

A. Are you asking me whether I trusted him or he trusted me?

Q. Answer the question which you heard both in English and in Chinese. I'm not here to argue with you, I'm here to ask you questions. You are not here to argue with me, you are here to answer questions. Now answer it.

A. I am not arguing.

Q. Then answer the question.

A. Actually he trusted me and I held the major shares.

Q. Answer the question, please.

A. Yes, I trusted him because he had placed the money with me, sir.

Q. I see. That was the only reason you trusted him?

A. Yes.

Q. Even though you suspected that he may do things for himself rather than for the interests of a company you trusted him?

A. Well, this is a private company and the other one was a public company and he had placed some money with me and I trusted the money.

Q. This was a partnership. You know about partnerships, don't you, Mr. Ng? You know that a partner is liable for all the debts run up by his co-partner?

A. But I had the sole control of the Bentley Company, sir.

- Q. Just answer the question. You know that a partner is liable for the debts run up by his co-partners? Supreme Court of Hong Kong High Court
- A. No. Well, I did not know this very clearly, sir.
- Q. I see. You have been doing accounts for how long?
- A. For ten odd years – for twelve years. Defendant's Evidence
- Q. Twelve years. Did you ever take the precaution of entering into a written agreement with CHOO Kim-san concerning Bentley Securities?
- A. An agreement was drafted but it was not signed. No. 40
- 10 Q. Why didn't you take the precaution of having it signed, having regard to the character of CHOO Kim-san?
- A. Actually it was like this: after he had become a partner of this company he had failed to make any contributions towards the capital. Correction, sir. He did not pay or make the full contribution towards the capital money, sir. David Ng Pak-shing – Cross-examination
- Q. How much did he put up?
- A. I can remember that he only paid two hundred odd thousand dollars but he should pay six hundred thousand dollars.
- Q. Why didn't you get him to sign the agreement?
- A. It is not that I did not ask him to sign the agreement, he refused to sign it.
- 20 Q. Is it not the position that you were willing to enter into a partnership with this man without anything in writing because you were very close to him?
- A. Well, I'll explain to you slowly. It was like this: at the beginning the relation between us was quite good, that is why we went into a business together. Later there was difference in our opinions, sir, therefore I resigned from this company and resigned from the other company and I asked him to pay up the full capital money, sir, but he refused. Then later it was very difficult for me to locate him because he left Hong Kong for other places very often, sir. In the course of looking for him to pay up the capital money I found it very difficult for me to do so and it was too troublesome, therefore I returned the money to him so the agreement was not signed.
- 30 Q. You resigned from Luen On in April because of a difference of opinion with him, and then in the very same month, April of 1973, you went into partnership with him in Bentley Securities. Yes or no. (Witness speaks in Chinese.) Just yes or no.
- A. No. The date or the month is wrong, sir; I have said it in court already, sir. When the business of the Bentley Company was registered it was in March '73, and when I resigned from the Luen On Company it was in April, sir, so I say that the time is not correct.
- Q. Don't try to cloud the issue, Mr. Ng. It doesn't matter a ha'p'orth when you registered Bentley. I'll read you your evidence-in-chief.
- 40 "Q. Was CHOO Kim-san an early partner in Bentley?
- A. In the beginning, yes.
- Q. As from when?
- A. From, say, April or May of '73."
- A. Well, if you want my evidence to be checked, all right, but I can tell you this, that what I said in court is this: that the business of Bentley Company was registered in March '73 and the business of the company was started in April. If you want to check it, by all means.

Q. I don't want to check it, I have a perfectly accurate note of what you said.

“Q. Was CHOO Kim-san an early partner in Bentley?

A. In the beginning, yes.

Q. As from when?

A. From, say, April or May 1973.”

Do you deny you said that?

A. If you insist on saying this I won't argue with you, but this can be proved by the registration certificate.

Q. Never mind the registration certificate, that has nothing whatsoever to do with partnership, has it? 10

A. I will not argue with Mr. Ching any longer.

Q. Did you or did you not say this in reply to these questions? I will even tell you the number of the questions, the twentieth and twenty-first questions asked of you in-chief.

“Q. Was CHOO Kim-san an early partner in Bentley?

A. In the beginning, yes.

Q. As from when?

A. From, say, April or May 1973.”

Did you say that or did you not say that?

A. If you insist on saying this well, I'll say that I can't remember. 20

Q. Was it accurate? If you said that, was it accurate?

A. You mean the date when I resigned from the Luen On Company or when I joined the Bentley Company, sir?

Q. Mr. Ng, for the fourth or fifth time, I can't remember which – listen please, this is what Mr. Swaine asked you:

“Q. Was CHOO Kim-san an early partner in Bentley?

A. In the beginning, yes.

Q. As from when?

A. From, say, April or May 1973.”

If you said that was it true? 30

A. Yes, yes.

MR. SWAINE: Could we have the next question and answer, please?

Q. “Q. You started the firm in March of '73?

A. That was the time of registration.”

I hope that does not affect the price of eggs too badly in the market place today. Three pages later:

“Q. Were you on the board of Bladon?

A. Yes.”

I'm sorry, wrong one. May I have a moment? (Pause) Yes, that's right, I'm sorry.

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“Q. Were you on the board of Bladon?

A. Yes.

Q. Do you remember for how long?

A. About four months.

Q. Do you recall when you left?

A. About April or May 1973.”

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Evidence

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Did you say that?

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shing – Cross-
examination

10 A. Yes.

Q. So we have it then finally, do we not, that you left Luen On and Bladon because of a difference of opinion with CHOO Kim-san in April or May of 1973 and at about the same time you went into partnership with him in Bentley Securities? Is that right? Yes or no.

A. Yes.

Q. Yes. That was because you were very close to him?

A. No.

Q. You were close enough to call Madam Khoo Siew Kim 'Alice' while everybody else called her Mrs. Choo?

20 A. I was not an employee of CHOO Kim-san, and she was introduced to me as 'Alice' so I called her 'Alice'.

Q. In running Bentley Securities would you apply the same high standard to your employees as you apply to yourself?

A. What do you mean by that, sir?

COURT: Apply the same standard, high standard.

A. I was the owner, sir.

Q. You are honest, you are industrious, you wouldn't do anything wrong, you wouldn't mislead: do you insist that your employees in Bentley adopt the same standard?

30 A. Yes, of course.

Q. And if you found someone that wasn't doing something – wasn't doing something right, perhaps he was not doing something particularly honest, you would possibly fire him?

A. Not necessary, sir, I would warn him first.

Q. Have you fired WONG Luk Bor?

A. WONG Luk Bor was not my employee, sir.

Q. He is presently your employee, is he not?

A. At that time he was not my employee, sir.

Q. But he is presently your employee, is he not?

40 A. Yes, he is.

COURT: Since when?

A. He was my employee in the Tai Pan Building Management Limited in the middle of '76.

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examination

- Q. Is he an employee of Bentley Securities?
A. In our companies it's like this, that the two companies, Bentley and Tai Pan, share the same office and so work of the two companies was done together or by the same employees.
- Q. I see. But strictly he is an employee only of Tai Pan, is that right?
A. Well, he is being paid by the Tai Pan Company so he is under the pay-roll of the Tai Pan Company.
- Q. But he does work for both companies, Bentley Securities and Tai Pan?
A. Yes, whenever he was asked to do the work he did it.
- Q. Who signed the cheques for Bentley? 10
A. I did.
Q. You were the only signatory?
A. At the beginning CHOO Kim-san could also sign the cheques.
- Q. I see. After he left the partnership you were the only signatory on the Bentley bank account?
A. No, Mr. Harilela could also sign the cheques.
Q. But there is just the two of you, nobody else could sign?
A. Yes, this is what I can remember, sir.
- Q. And do the cheques need one signature or two?
A. One signature. 20
Q. Mr. Harilela – do I assume again correctly? – would be too busy with his other affairs to come along to Bentley and sign cheques.
A. No.
Q. Do you mean I'm right?
A. That's right.
Q. That's right.
A. He did not come to the Bentley Company to sign cheques.
- Q. You have told us that you bought 514,200 San Imperial Shares in Taipei but you paid for them as if there were 515,000.
A. Yes. 30
Q. When you paid, did you deduct the brokerage?
A. Yes.
Q. And when you paid, did you deduct the stamp duty?
A. Yes.
Q. On what value did you calculate the stamp duty for deduction?
A. The market price.
Q. Well, what was it? Ten cents, twenty cents, thirty cents, forty cents?
A. About thirty cents or forty cents; the difference was very small.
Q. Very small, and indeed, it was a very small sum anyway, wasn't it?
A. It was not much, sir. 40
Q. You agreed to buy those shares on your fourth trip which occurred between the 9th and the 13th of February?
A. Yes.
Q. You actually paid for them, you got the script and the transfer forms on your fifth trip between the 27th of February and the 2nd of March?
A. Yes.
Q. May I show you now an extract from the Stamp Ordinance, Cap. 117? On the first page of that extract, Mr. Ng, you will see Section 50:

“Any person who commits or attempts to commit any offence shall be liable on summary conviction to a fine of \$10,000 and to imprisonment for 1 year.”

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Do you see that? Just look at the first page.

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Evidence

A. I have looked.

Q. Do you see that?

A. Yes, I have.

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Q. Now look at the next page and look at Section 30, sub-section (1):

“Any person who effects any sale or purchase of shares or marketable securities as an agent or as a principal shall forthwith –

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shing – Cross-
examination

10

(a) make and execute a contract note . . .”

Do you see that?

A. Yes.

Q. Did you forthwith make and execute a contract note for the 514,200 shares?

A. I told my employee to do it at once.

Q. I see. And you told your employee to stamp it at twenty cents?

A. Yes.

Q. He came back and he told you they were insisting at sixty cents – sixty?

A. No. When he came back he said that those shares could not be stamped at twenty cents, it must be at the market price.

20

Q. And what was the market price then? Just approximately, I don't want the exact figure.

A. Forty odd cents or fifty cents.

Q. But you didn't tell your foki, “Well, draw up another note, put it at forty or fifty cents,” did you?

A. I asked him to tell the – or to explain to the people in the Treasury, sir.

Q. Yes, but they still weren't convinced?

A. They refused to have the shares stamped.

Q. And so the shares, the share script and the transfer forms were put in your safe until the 29th of March?

30

A. Yes, it was overlooked.

Q. It was overlooked.

A. I did not remember the shares.

Q. Wait for your answer to be interpreted, please.

A. It was overlooked, I did not remember the shares.

Q. Will you look now at Section 30 again, sub-section (1) sub-paragraph (b):

“cause the note to be stamped;”

I'll read it to you so that it makes sense. You were a purchaser:

“Any person who effects any sale or purchase of shares or marketable securities as an agent or as a principal shall forthwith –

40

(b). cause the note to be stamped . . .”

Did you cause the note to be stamped forthwith?

COURT: I think I ought to tell you that, having read these sections, if you feel that your answers might incriminate yourself then you are not obliged to answer them.

Q. Do you wish to answer?

A. I don't wish to answer.

Q. You don't wish to answer.

A. I don't wish to answer.

Q. Would you look, please, at Section 30, sub-section 3, capital 'A' – 3A? It's a separate sub-section:

“Every contract note shall be duly stamped within 2 days after the sale or purchase to which it relates has been effected.”

Do you see that?

A. Yes.

Q. Again you need not answer if you feel the answer will incriminate you.

COURT: Which section is it?

MR. CHING: Sub-section 3, capital 'A'.

Q. Now once more you need not answer if you feel the answer may incriminate you.

A. I don't wish to answer.

Q. You don't wish to answer. You haven't heard the question yet.

A. The question was translated to me, sir.

Q. All I've asked you is, “Have you seen that?” You don't wish to answer?

INTERPRETER: “Do you wish to answer that or do you think it would incriminate you?” “I don't want to answer.”

Q. Let me clear it up, let me ask you this. I will tell you first you need not answer if you feel it may incriminate you. Did you duly stamp the contract note within two days of effecting the purchase?

A. I don't wish to answer.

Q. You do not wish to answer – you see Mr. Ng, I told you on Friday I will show you the two criminal offences that you have committed – this is one of them. What is the difference in the amount of stamps for 515 thousand shares at twenty cents on one hand and at sixty cents say on the other hand – what is the difference in the stamp duty?

A. The difference was very little.

Q. Since I am cross-examining a man who hopes to be worth something like ten or eleven million dollars in the near future, your idea of what is very little may be very different from what my idea was – what was the figure?

COURT: About.

10

20

30

A. They were 80 dollars and 240 dollars, so the difference was only 160 dollars.
Q. Only 160 dollars, which is literally nothing to a man with 10 million dollars, is it? Supreme Court of Hong Kong High Court

A. When the employee came back he did not tell me, therefore, it was put in the safe and forgotten. I have already told you that it was overlooked. I think it might be that. Defendant's Evidence

MR. SWAINE: My Lord, may I ask for the court's indulgence and have Mr. David NG leave the room. No. 40

10.21 a.m. Witness leaves the court.

David Ng Pak-shing – Cross-examination

10 MR. SWAINE: My Lord, I myself have not looked into the question of whether an offence might have been committed under the provision to which my learned friend has referred, but I understand that leading counsel, not myself, had advised on this and the advice then was that if the transaction was carried on out of the jurisdiction, the document was not liable to be stamped, and if so then of course the question of penalties does not arise. It might be that if David Ng is advised, taking that in these premises, and therefore the question of incrimination does not arise, he will be agreeable and desirous of answering the question which he has declined to answer so far.

MR. CHING: This is a matter for him.

20 MR. SWAINE: As it has been, as your Lordship did intervene and remained that he was not obliged to answer on the grounds of incrimination, he declined, but if advised that it is, at the very least, arguable whether an offence has been committed he may wish to answer.

COURT: I said that until I have looked into it I can only see on the face of it, it appears that an offence has been committed. Are you asking me now to tell him that it is arguable that an offence has not been committed? If that is what you want me to do then I must look into the question.

MR. SWAINE: If I were to inform him that it is certainly by no means clear that an offence has been committed.

30 COURT: I suppose this matter can be cleared up in re-examination.

MR. SWAINE: If my learned friends are prepared to do it in that way.

COURT: This question has been raised in cross-examination. It is open to you to re-examine on it, isn't it?

MR. SWAINE: I am quite prepared to do it that way.

MR. CHING: Possibly, my learned friend when he re-examines will also verify why, bearing in mind that leading counsel advised that it did not have to be stamped, why it was stamped at all, because the witness himself chose not to answer,

there it is – it is open to him to say I did these things upon leading counsel's advice – he has not.

COURT: Is it your instruction, Mr. Swaine, that Mr. Ng was advised?

MR. SWAINE: My Lord . . .

COURT: An offence had not been committed?

MR. SWAINE: My Lord, I am informed by my learned junior that the advice was given to I.P.C. not David Ng, but it would cover the same type of transaction. If the sale and purchase arose out of the jurisdiction then it would not be liable to stamping.

COURT: One has the position that if the leading counsel advised, presumably somebody had done a little bit of research into it before advising I.P.C. on that. 10

MR. SWAINE: Yes.

MR. CHING: I.P.C. hadn't even been informed at this stage when he bought the shares.

MR. SWAINE: It is a point of principle on which the leading counsel advised. I am informed David Ng was not the recipient of that advice. Your Lordship has put the question to him on the basis that it would be self-incriminating. In fact it may not be, and if he was so informed or advised, maybe that he may wish to answer the question. 20

COURT: As I say this should be left to re-examination because if you are asking me now to tell him that these answers may not be incriminating or are not incriminating that would involve some research on my part before I say this.

MR. SWAINE: I would be quite happy to leave it to re-examination.

MR. CHING: Obligated. Possibly, in the meantime my learned friend will look at subsection 8 of Section 30.

11.26 a.m. Witness enters court.

D.W.2 – David NG Pak-shing – On former oath

XXN. BY MR. CHING (Continues):

Q. Mr. Ng, is it your evidence that your employee took the Bought and Sold Note to the Treasury and tried to stamp it for twenty cents? 30

A. Yes.

Q. The Treasury refused?

A. Right.

- Q. Your employee tried to convince them? Supreme Court
A. Yes. of Hong Kong
Q. He failed? High Court
A. Yes.
- Q. He then brought back the share certificates – transfer forms and the Brought Defendant's
and Sold Note and locked them in the safe? Evidence
A. He informed me of that and I told him to go to the Treasury to try to con-
vince those people again. No. 40
- 10 Q. I see, and did he do so?
A. That I don't know – I don't know whether he went again or not.
Q. Did you ask him?
A. When he came back he just locked the shares in the safe – he came and locked
up these shares in the safe.
- Q. He locked up these shares in the safe – does it not show a rather mean or
parsimonious or greedy streak in you that you should send your foki to the
Treasury twice to argue about 160 dollars?
A. This is not the question whether it is greedy or not. I felt that I bought the
shares at twenty cents so I thought that the shares should be stamped at
twenty cents.
- 20 Q. And it was as a matter of principle was it that you sent your foki along twice
about a difference of 160 dollars?
A. Yes.
- Q. I am going to read to you a question which was asked by your counsel and
when answered, you interrupted the interpreter and gave your answer in
English. The question was in relation to the 514,200 shares – your counsel
asked you, 'What did you do with the certificates and the transfer forms?'
Interpret that first please – then your answer was interpreted before you
interrupted the interpreter and you said, 'As I bought these shares for twenty
cents per share I could,' and then you interrupted the interpreter and gave the
30 rest of your answer in English and this is what you said in English, "I am a
broker of the Far East Stock Exchange – the price suppose 40 cents I cannot
say 36 cents. I must mark it 40 cents. I want to stamp it I must put the
market-price not the price I pay in Taiwan. I could not use my broker's form
for stamping". Do you recall saying that?
A. Yes.
- Q. Why did you get your foki to take along the transfer form, mark it twenty
cents and send him back to argue about it twice when you yourself knew that
you had to mark it at the market-price not the price you paid?
A. At that time I was explaining to the court about the listing of the shares, as
40 to how the shares should be stamped.
Q. Exactly Mr. Ng.
A. There are two ways for stamping – one is that you can go to the Treasury to
have the shares stamped and (2) is that you can put the stamps on to the
certificate or the transfer forms in your own office here – I am sorry on the
broker's form.
- Q. Mr. Ng, the question is this, knowing that you had to stamp it at the market-
price, why did you make out a Bought and Sold Note at twenty cents and send
your foki back to argue about it twice?
A. I have already explained that this is a matter of principle.

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evidence

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David Ng Pak-
shing – Cross-
examination

- Q. Let me just put it once more to make it absolutely clear – you knew you had to stamp at the market-price why did you mark the Bought and Sold Note at twenty cents?
- A. If you go to the Treasury to have them stamped the explanation might be accepted by the Treasury and the shares might be stamped at twenty cents.
- Q. I see – I am going to read you now a question and answer which is three questions just after the one I have already read – you were asked, ‘You failed to stamp at twenty cents what did you do?’ Your answer was, ‘My employee just locked the shares up in the safe and waited for the price to go down to twenty cents to stamp.’ Did you say your employee did this on his own initiative? 10
- A. Yes.
- Q. On his own initiative?
- A. Yes, I believe so because later I asked this employee why he had not informed me. In reply he said he had locked up the shares in the safe and waited.
- Q. Not to put – to find a point on it, Mr. David Ng, I suggest to you that that last answer is a deliberate lie.
- A. I don’t admit it is so.
- Q. You see the rest of your answer to Mr. Swaine’s question was, ‘Eventually we waited until the 29th of March and then they were stamped’, do you recall saying that? 20
- A. Yes.
- Q. Eventually we waited until the 29th of March, and then they were stamped’ – you deliberately waited did you not?
- A. No.
- Q. Then why did you say, ‘Eventually we waited until the 29th of March’ – why didn’t you say, ‘Eventually my foki told me quite coincidentally on the 29th of March that he had not yet stamped it.’ Why say, ‘Eventually we waited until the 29th of March and then they were stamped’?
- A. This is the truth – you asked me a question and in answer I said, ‘We waited until the 29th of March and the shares were stamped then.’ 30
- Q. No, it was your own counsel who asked you – I will read you the entire question and the entire answer Mr. Ng:–
- “You failed at twenty cents, what did you do?
- A. My employee just locked the shares up in the safe and waited for the price to go down to twenty cents. Eventually we waited until the 29th of March and then they were stamped.”
- A. Yes.
- Q. How could it be, ‘We waited – eventually we waited until 29th of March’, when you say your foki locked the shares in the safe to wait for it to come down to twenty cents on his own initiative. 40
- A. This is the usual way of chatting but you are being fault-finding – but now if you want to say anything I will say that.
- Q. You will say anything I want you to say now, is that right?
- A. If you want to argue on these points like this, you want me to say anything I will say so.
- Q. I have told you Mr. Ng I am not here to argue with you – are you now adopt-

- ing the attitude that you will say whatever I want you to say?
- A. No.
- Q. Then answer my question please – how is it possible on one hand to say it was your own employee’s initiative to lock up the shares in the safe to wait for them to go down to twenty cents, on one hand, and then in the next breach to say, ‘We waited eventually until the 29th of March and then they were stamped, on the other?’
- A. When the foki came back he locked the shares up in the safe and the 515 thousand shares were stamped at the same time with the 1,650,000.
- 10 Q. Is it possible that you deliberately waited until you were going to stamp the 15 million shares before you stamped the 515 thousand – you were deliberately waiting for the 15 million block and do it – listen to the question and there will be no misunderstanding Mr. Ng – at the same time, is that what you now say?
- A. No.
- Q. What then are you saying – why bring in the 15 million at all – the 1.65 I am sorry? You were waiting for the 1.65 – no I am sorry, is it the position that you were deliberately waiting for the 1.65 million before you stamped the 515 thousand?
- 20 A. No.
- Q. No, then let’s not have anything about the 1.65 million now – I might ask you for I think the bit about the foki – how is it possible to say on one hand that the foki on his own initiative locked up the shares in the safe to wait for the price to come down to twenty cents and yet you say in the next breath, ‘Eventually we waited until 29th of March and then they were stamped’ – now one or other must be untrue – which is the untruth?
- A. It was like this that I asked this foki why the shares were not stamped and in reply this foki said to me that we could wait until the price dropped to say about twenty cents.
- 30 Q. When did he tell you this?
- A. I cannot remember.
- Q. I see – why did you eventually wait until the 29th of March before they were stamped?
- A. When I was prepared to take the 1.65 million shares to the Treasury for stamping my foki told me that the 515 thousand shares were not yet stamped.
- Q. You were asked by your counsel after the answer which I have repeated to you five or six times, namely ‘Eventually we waited until the 29th of March and then they were stamped’, the next question from your counsel was, ‘Why the 29th of March?’ And your answer was, ‘Because the transaction of 15 million shares was also successful’ – do you remember saying that?
- 40 A. I told counsel that the Treasury told my foki that we should not argue with them – if we want the shares to be stamped they must be stamped at sixty cents.
- Q. And that is why you answered, ‘Because the transaction of 15 million shares was also successful’ – is that right?
- A. Yes, because the 15 million shares were bought at sixty cents so they would be stamped at sixty cents, and therefore I said that since that was the case, the 515 thousand shares were to be stamped at sixty cents too.
- Q. I suggest to you Mr. Ng, that you deliberately lied to this court in saying that

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shing – Cross-
examination

it was the foki's own initiative to lock up the shares and wait for twenty cents so as to avoid any possibility that it may be said that you personally were guilty of a criminal offence.

A. I did not lie.

Q. You agreed to buy the 1.65 million on your fifth trip to Taiwan, is that right?

A. Yes.

Q. Did you get the certificates and pay for the shares on your sixth visit?

A. Yes.

Q. The Bought and Sold note for those shares was also not stamped within two days was it? 10

A. I don't admit it.

Q. You came back on the 26th of March.

A. Mr. Ching, the 26th of March was a Saturday, sir.

Q. I see – you stamped it on the 29th of March?

A. Yes.

Q. So you say you were within time?

A. Yes.

Q. You knew then that you were required to stamp within two days?

A. I did not know these regulations at that time I only knew that I will be fined ten times. 20

Q. I said to you on Friday I will point out to you two occasions you broke the criminal law next week – you answer was, 'Whenever I do one thing I always consult my solicitors – I mean to say things regarding this case.' Do you recall that particular passage?

A. Yes.

Q. Did you consult your solicitors about stamping the Bought and Sold Notes for the 515 thousand shares and the 1.65 million shares?

A. No.

Q. No – would you look please at document 54 in Yellow File 1, last page is your signature is it not? 30

A. Yes.

Q. And that agreement gives James Coe or Rocky Enterprises or whoever it may be, the option to buy the 15 million shares in the name of Fermay?

A. Yes.

Q. Look will you please back at Cap. 117 – look at sub-section 6:–

“The provisions of this Ordinance . . .”

30, sub-section 6:–

“The provisions of this Ordinance as to contract notes shall apply to any contract under which an option is given or taken to purchase or sell any shares or marketable securities at a future time at a certain price, as it applies to the sale or purchase of any shares or marketable securities, but the stamp duty on such a contract shall be one-half only of that chargeable on a contract note:” 40

That says quite clearly does it not that when you have an option to buy shares at a future date at a certain price you have to pay half the stamp duty

on the option contract itself – is document 54 stamped on any amount of money? Supreme Court of Hong Kong High Court

A. Not here.

Q. Not here – has it been stamped elsewhere?

A. I don't know – I was not responsible for having the agreements stamped.

Defendant's Evidence

Q. You signed it, didn't you?

A. Yes.

Q. You are a stock-broker aren't you – you are an accountant aren't you?

No. 40

A. Yes.

10 Q. You are very careful not to do anything wrong aren't you?

A. I try my best.

Q. You agree that the document 54 is not stamped – just yes or no.

David Ng Pak-shing – Cross-examination

A. Yes, I agree.

Q. Look now please at document 18 – that is the document by which HO Chung-po gave you and Ho Chapman an option to purchase shares in San Imperial – HO Chung-po on behalf of San Imperial Corporation?

A. Yes.

Q. Is that stamped?

A. No.

20 Q. The option was exercised was it not?

A. Yes.

Q. Would you look back at Cap. 117 and look at sub-section 7 of Section 30:–

“Any contract note made or executed in pursuance and it consequence of the exercise of an option given or taken under a contract duly stamped in accordance with the provisions of sub-section (6) shall be charged with one-half only of the duty which would otherwise have been chargeable thereon under this section.”

In other words, when you sign an option agreement you pay half the stamp, when you exercise the option you pay the other half of the stamp?

30 A. I never signed – this is an option agreement and this was prepared by the solicitors and the other side signed this agreement.

Q. All right – I was not insisting for an answer to that last question – look at page 45, it is part of the schedule of the Stamp Ordinance – look at Item 18A(1), Note in the Ordinance – it is the last page of the bundle I have handed you, right at the top 18A(1):–

“CONTRACT NOTE for the sale or purchase of any shares or marketable securities, not being jobbing business, on every note required to be made under section 30(1).”

40 It is \$4 for every thousand, right – 4 per mille, last page of the bundle I handed you – that is right, right at the top – it is 4 per mille, isn't it?

A. Yes.

Q. So we are no longer talking about peanuts even to a man of ten million dollars are we – we are talking about something in the region of 120 thousand dollars worth of stamp which has not been paid?

A. The 3,226 thousand shares bought from the M.A.F. were stamped and there

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was a Contract Note.

Q. I see, thank you. The employee involved in taking the Bought and Sold Notes to the Treasury – the Bought and Sold note for the 515,000 shares – that was Mr. WONG Luk-por, was it?

A. Yes.

Q. You say that he is still in your employ – that means you haven't fired him?

A. Right.

Q. Have you reprimanded him?

A. Of course I did.

Q. Why?

A. I asked him why he had done that on his own initiative and never informed me of it.

Q. So you reprimanded him even though you did not know whether any law had been broken?

A. The reason why I reprimanded him was because the Association told us . . .

10

COURT: The Stock Exchange.

A. The Far East Stock Exchange had told us that if we failed to stamp the shares we would be fined ten times as much.

Q. The solicitor who drew up both document 54 and document 18 was Mr. Ives?

A. I believe that document 18 was drafted by Mr. Ives.

20

Q. Yes.

A. But document 54 was drafted by two solicitor's firms.

Q. I see.

A. The solicitors for the buyer and the seller.

Q. You said just now that you were not responsible for stamping, who was?

A. I think it should be the solicitor's firms.

Q. I see – I will come to something else now Mr. Ng – yes. I might as well – I am sorry, before I come to something else, I might as well show you this in the Schedule to the last page of the Ordinance I have shown you – you see sub-paragraph (c), about the middle of the page, person who has to stamp it – persons liable, sorry:–

30

“The agent or, where no agent, the principal effecting the sale or purchase.”

Either as an agent or principal, you would be liable wouldn't you?

A. This is the first time I have seen this section.

Q. I see, as a stock-broker, this is the first time you have seen it, is that right?

A. Some of the brokers are even – are illiterate.

Q. Your Stock Exchange have people available to whom you can go for advice?

A. Whenever we have any doubt we ask them.

Q. And you have a solicitor who is a member of your Syndicate?

40

A. Regarding the stamp duties of the shares bought and sold we usually ask the people in the Stock Exchange.

Q. And in this case you do nothing without getting legal advice first?

A. Buying or selling shares is very common, sir. If we have any doubts we will ask the people in the Far East Stock Exchange.

- Q. Are you going to go back to your company now and fire WONG Luk-por?
 A. I don't think it is as serious as that.
 Q. Well look at document 57 in Yellow File (1), that is a clipping from the South China Morning Post, although the date does not appear on it, I will tell you it appeared on the 1st of June this year – I am told by my learned friend Mr. Yorke, Mr. Ng, that those instructing him, have served a notice to admit this particular document, but so far there has been no reaction. Now did you see this in the papers?
 A. Yes.
 10 Q. Have you read it before?
 A. Yes.
 Q. Just so that there shall be no misunderstanding between us, I am going to read it to you again. It starts off, as you can see:–

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“San Imperial ready to fight for \$1.56 million.

The new Chairman of San Imperial Corporation Ltd., Mr. David Ng.”

That is you, isn't it?

- A. Yes.
 Q. “. . . yesterday said his company will take legal action to recover \$1,576,000 from the former Chairman, Mr. Choo Kim-san.”
 20 Did you say that?
 A. Yes.
 Q. “He said the company lawyers have also written to the Companies Registry requesting permission to rename the company ‘Imperial Corporation Ltd.’ ”
 You said that as well did you not?
 A. Yes.
 Q. “Mr. Choo was associated with a group of companies in Southeast Asia bearing the name ‘San’. Mr. Ng is determined to drop San from his company's name.”
 30 Is that right – did you say that – did you say that?
 A. Yes.
 Q. “Mr. Ng will call an extraordinary meeting of shareholders to ratify the new name if the Companies Registry permits.”

Did you say that?

- A. Yes.
 Q. Now the next paragraph is something your auditors are alleged to have said, so I won't read that to you, but the paragraph after:–

- 40 “Mr. Ng said he met officers of the office of the Commissioner for Securities on Wednesday and informed them that the special audit of San Imperial's accounts covering the second half of last year will be available in about 10 days.”

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Did you say that?

A. Yes.

Q. "He is eager to have San Imperial shares relisted as quickly as possible."

Did you say that?

A. Yes.

Q. Now the next paragraph does not concern not, but then the last paragraph on that column says:—

"Mr. Ng said he has no intention to dispose of Imperial Hotel or any other assets of the group at present."

10

Did you say that?

A. Yes.

Q. "We incurred a loss of \$400,000 last year. But so far this year we have done quite well in both the hotel and property sectors."

Did you say that?

A. Yes.

Q. "He blamed the 'yo-yo' price fluctuations of his company's shares before suspension on speculation by a local newsletter in late April that Malaysian interests were taking over the company. This, he said, caused San Imperial share prices to skyrocket."

20

Did you say that?

A. I did say something to this effect.

Q. Yes, all right and this next paragraph goes on about your talking of recruiting directors of more ability – you did say that did you?

A. Yes.

Q. "Mr. Ng is a stockbroker and property developer. He became chairman of San Imperial at a directors' meeting on May 31, one day after the company's annual general meeting which returned Dr. Ooi Seng-poy as chairman and Mr. Henry Loke and Mr. Johannes Jorgensen as directors."

30

Mr. Ng said he is on San Imperial's board representing City Nominees Ltd., one of the major shareholders of the company. The three directors returned at the AGM on May 30 remain on the board, although none of them holds any San Imperial shares."

Did you say that?

A. Yes.

Q. "Mr. Ng said he has a good working relationship with the other directors but expressed surprise at the small stake of Mr. Choo in the company."

Is that true – did you say and do that?

40

A. What do you mean by do?

Q. Expressed surprise – you said you had good working relationship with the other directors – you expressed surprise at the small stake of Mr. Choo in the company. Supreme Court of Hong Kong High Court

A. It was like this – he asked me, ‘Are you surprised?’ I said, ‘I am.’

Q. ‘He’ being the reporter – Alan HO? Defendant’s Evidence

A. Yes.

Q. In the next paragraph it says:–

No. 40

According to the share register, Mr. Choo only had 57,600 shares on May 16. He is a minority shareholder.

David Ng Pak-shing – Cross-examination

10 ‘City Nominees is one of the largest shareholders of the company. That is why in mid-April lawyers were instructed to claim a directorship for me on San Imperial’s board to represent City Nominees.’ ”

That is in direct quotation marks – did you say those two things?

A. Yes.

Q. The last paragraph says:–

“City Nominees is believed to hold about eight million shares of San Imperial, which has an issued share capital of 48.2 million shares.”

Mr. Ng, in so far as that newspaper clipping purports to quote you or to report things that you said, you have agreed that it is true, it is accurate.

20 A. I have told Mr. Alan HO that there was a mistake in the advertisement – misunderstanding – not mistake.

Q. Mr. Ng, I asked you paragraph by paragraph – that was the whole purpose of my asking you paragraph by paragraph whether it was right and in each case you said ‘yes’, except in relation to expressing surprise where you said it was in reply to a question. Now which other part do you say is a misunderstanding?

A. There was some misunderstanding in this paragraph, starting with,

“Mr. Ng is a stockbroker and property developer”

and so on.

COURT: Which paragraph is that?

30 MR. CHING: Right-hand side, my Lord, third paragraph.

COURT: Third on the right-hand side.

MR. CHING: “Mr. Ng is a stockbroker and property developer.”

A. Another paragraph above that, sir, starting with, “One important task”.

Q. Both.

A. There is a little bit of misunderstanding in this paragraph.

Q. But you do not take exception to anything else in this article. I suggest to you, Mr. NG, that it is literally disgraceful for a chairman of a public company to

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make assertions or to say things that are reported in this document.

- A. This is what you think; if you say that this is the disgrace on my part.
Q. Would you please look at document 42 in yellow file 1. It is an undertaking signed by you, is it not?

Defendant's
Evidence

- A. Yes.
Q. Look at paragraph 2:

No. 40

“ . . . that immediately after the signing of this Undertaking we shall cause to be sold the property Nos. 16-22 Oxford Road at \$2.5 million and shall use our best endeavours to procure a sale of the property Nos. 2-10 Pilkem Street (Bangkok Hotel) at \$7.5 million . . . ”

David Ng Pak-
shing – Cross-
examination

10

You realize you gave that undertaking on the 30th of April?

- A. Yes.
Q. Turn to document 54. Look at page 3 of document 54, clause 5. It says:

“5. It is of the essence and are conditions of this Agreement that:–
.....

(c) subject as hereinafter provided on completion of the said 1st lot of San Imperial shares under clause 2(b) above San Imperial shall remain the registered owner of or otherwise beneficially entitled to the following properties:–”

And small (v) is Oxford Road. Over the page, (vi) is Bangkok Hotel. Do you see that? 20

- A. Yes.
Q. Now under Document 54, did you still have an outstanding undertaking to sell Oxford Road or the Bangkok Hotel?
A. Mr. COE thought that these two properties not worth as the value listed in the agreement, document 54, as \$2.5M. and \$7.5M. and I made the undertaking to ensure him that these two properties were actually worthy of those two values, 2.5 and 7.5.

- Q. Do you tell this court that the document 42, the undertaking, isn't really an undertaking, you weren't really going to sell, you were merely assuring him what large amount of money that it was worth? 30

- A. That is to say, if these two properties were to be sold, the price would be at least that much.
Q. Mr. NG, you better go back to document 42. Let's read the whole of document 42. It is headed "Undertaking", not "Guarantee", do you agree? Not assurance, not guarantee. It is headed "Undertaking". Do you agree? You agree?

- A. Yes.
Q. It is addressed to Rocky Enterprises and it says,

“IN CONSIDERATION of your entering into an Agreement for Sale and Purchase at our request to purchase 23,000,000 San Imperial shares, we, the undersigned, being the vendors in the said AGREEMENT FOR Sale and Purchase hereby undertake:–

40

2. that immediately after the signing of this Undertaking we shall cause to be sold the property . . .”

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– so and so. Weren’t you promising him that immediately upon signing, namely, on the 30th of April, you would cause the properties to be sold or at least to use your best endeavours to sell?

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Evidence

A. Yes.

Q. And the undertaking survived, did it not, even when document 54 came into being: you were still going to sell, is it not?

No. 40

A. It depends on Mr. COE.

10 Q. All right. I won’t waste time with it, Mr. NG. Go back to document 57. Look at the last paragraph on the left-hand side, will you:

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shing – Cross-
examination

“Mr. Ng said he has no intention to dispose of Imperial Hotel or any other assets of the group at present.”

Is that true or is that false?

A. It is true, sir.

Q. So you had on the 1st of June no intention of disposing of any of the assets of the San Imperial Group, is that right?

A. I was speaking for myself.

Q. But by document 42, you had undertaken to sell two properties, hadn’t you?

20 A. Yes, if the Rocky Company did not tell me to sell those two properties, I couldn’t sell them.

Q. Look at document 42 and point out to my Lord, please, any word in the subjunctive mood, particularly the word “if”? Is it there?

A. No.

Q. No, it is not there. You are a man who is careful. You are a man who realises the value of accuracy. Don’t you think that the share-buying public would be very interested to know that Mr. James COE thought these two properties bad holding? Don’t you think the share-buying public would be interested in knowing that in fact you had undertaken to sell these two properties? You think they would be interested?

30

A. But I never thought about this.

Q. You never thought about it. As a chairman of a public company making a public statement to be read by the share-buying public, a man who knows the value of accuracy and who is careful, you never considered whether or not the share-buying public would be interested in knowing of the intended or proposed sale of the company’s assets?

A. The reporter asked me if I had an intention to dispose of the –

Q. No, no.

A. – assets.

40 Q. No, no. You said just now – I’m sure my Lord heard it – he asked you whether (speaks Punt) San Imperial had the intention to sell. Is that what you said just now?

A. The reporter asked me that.

Q. Did you say to this court just now the reporter asked you whether San Imperial had the intention to sell. Did you say that yes or no?

A. Yes, he asked me that.

- Q. Did San Imperial have the intention to selling?
A. This is a matter for the board to sell. I didn't have the intention to dispose of them.
Q. You did not have the intention to dispose of the Oxford Road properties or the Pilkem Street properties, is that what you say?
A. Yes, I myself, that is right, otherwise why should I have argued with Mr. COE?
Q. In other words, you had no intention of standing by your undertaking to Rocky Enterprise, is that right, is that right, yes or no?
A. You have to give me time to answer the question, sir.
Q. Yes or no. Is it right or not? It only takes one word, Mr. NG. 10
A. You must give me time to think it over. You did not give me time but scold me.

COURT: Answer it now.

- A. You can say whatever you like.
Q. Let me ask you this. I am not saying anything, Mr. NG. Let me ask you this: is that an honourable way for a chairman of a public company to behave or does it, on the other hand, display the business ethics of an alleycat?
A. Will you please repeat it?
Q. Is that an honourable and proper way for the chairman of a public company to behave or does that, on the other hand, display the business ethics of an alleycat? 20
A. Of course not, sir.

MR. CHING: Would that be a convenient place to break off?

D.W.2 – David NG Pak-shing – o.f.o.

XXN. BY MR. CHING – continues:

- Q. Mr. NG, before I forget, you mentioned this morning that stamp duty had been paid on the 3,226,000 shares obtained from MAF Corporation.
A. Yes, they were stamped.
Q. Was there a bought and sold note?
A. Yes. 30
Q. Could you possibly bring that for us tomorrow morning?
A. Yes.
Q. Thank you. Now we can get back to document 57. I was asking you about the intention you expressed of not disposing of any of the assets of the San Imperial Hotel. We have been told by your counsel that it was you who was to arrange the financing and the re-financing by which James COE was to pay for the shares, is that true?
A. Yes.
Q. Would you look at document 9, please? That was a document by which Oceania and MAF Investment agreed to cancel a contract by which Oceania was going to get \$6m. in exchange for its interest in 140-141 Connaught Road. 40
A. Yes.
Q. And it is dated the 12th of May.

- A. Yes. Supreme Court
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- Q. Would you look at document 48, please? You will see that that is a minute of a meeting of the board of directors of San Imperial held on the 3rd of May by which the second resolution agrees that the agreement of the 18th of January concerning 140-141 Connaught Road Central should be cancelled. Defendant's
Evidence
- A. Yes.
- Q. And since you were in charge of the financing and re-financing does it follow that you were fully aware of such matters as disclosed in document 48 and in document 9? No. 40
- 10 A. I can't remember whether I knew it at that time. David Ng Pak-
shing – Cross-
examination
- Q. Mr. NG, you were in charge of the financing and re-financing, were you not?
- A. Yes.
- Q. Do you say that Mr. Ives is all on a frolic of his own without consulting you about the cancellation of that agreement?
- A. At that time I was not even a director of the San Imperial.
- Q. Yes, we all know that, but you were in charge of the financing and re-financing and document 9 was an integral part of the financing and re-financing. You say you knew nothing about it at the time?
- A. I have already said that I now can't remember whether I knew it at the time.
- 20 Q. I suggest to you that that is an obviously untrue answer, Mr. David NG. Would you look at yellow file 5, page 111? That is the chairman's statement of San Imperial, right?
- A. Yes.
- Q. There is your name as chairman of the board.
- A. Yes.
- Q. It is your statement?
- A. Yes.
- Q. It is dated the 15th of June.
- A. Yes.
- 30 Q. How long do you think it took to write out this statement, to have it checked, get all the precis to produce a brief, correct the brief and then to have it printed finally?
- A. Not for long.
- Q. Two or three weeks?
- A. Less than that. This statement has been corrected by the Security Commissioner.
- Q. Look at the 4th paragraph:
- 40 "Your board has also made a decision to relieve the burden of Capital commitment of the total consideration of \$14,000,000.00 by cancellation of the option of purchasing half of the interest in a property, which is in course of construction, situated at Connaught Road, Central, Hong Kong, . . ., by paying a compensation of \$500,000.00 for the work done so far."
- A. Yes, I have seen it.
- Q. In other words, San Imperial was getting rid of its interest in 140-141 Connaught Road Central, is that right?
- A. Yes.

- Q. You made that known to the public on the 15th of June?
A. Yes.
Q. Yet on the 1st of June, document 57, you said that you had no intention of disposing of the assets of Imperial Hotel.
A. At that time, sir, we haven't bought the property at Loong San Building yet. It was only an option. According to my knowledge, sir, the building was not sold until the construction was completed. Therefore, to my knowledge, it was only an option, sir.
Q. Look at the second page of document 9 and tell me, please, where it says anything in the entire agreement of the 18th of January, where it says anything about the option – option to purchase that is. To save you time, Mr. NG, there is an option mentioned in clause 13 and that is the option to cancel. It is on page 6: option to purchase or to cancel. That is the only place it is mentioned. 10
A. Document 9 in yellow 1 was not prepared by me, sir, but –
Q. But you knew about it.
A. – the chairman's statement was prepared by me.
Q. But you knew about document 9. You were in charge of the financing and refinancing and that document was an integral part of the financing and refinancing. You knew about it, didn't you? 20
A. This is about the financing of the San Imperial Company. The financing and refinancing mentioned by you was about myself and Mr. James COE, so they are two different things.
Q. Do you say that document 9 in yellow file 1 had nothing to do with the financing and refinancing?
A. You mean financing of the company or –
Q. Financing and refinancing of James COE in buying the San Imperial shares. Do you say that document 9 has nothing to do with it?
A. This I don't know.
Q. You don't know? You have no idea at all? 30
A. I have no knowledge of these legal documents.
Q. Just look at the first page of document 9 and read it to yourself.
A. This is the cancellation of the agreement between MAF and the Oceania.
Q. Did it have anything to do with the financing and refinancing of James COE in the purchase of the San Imperial shares? Just yes or no, please.
A. At the time when this document, document 9 in yellow 1, was signed, no.
Q. I see. The date, the 12th of May, just happens to coincide with document 54 by which James COE was given an option over the Fermay shares, is that right? Just a coincidence, is that correct?
A. Yes, well if they are so. 40
Q. And under the MAF Corporation option, you had three months to pay?
A. Yes.
Q. You exercised the option on the 22nd of April?
A. Yes.
Q. So you had to pay by the 22nd of July?
A. Yes.
Q. Look at document 9. \$4.8m. is payable on the 22nd of July. Is that another coincidence? \$4,799,999.00 payable on the 22nd of July. Is that another coincidence?

- A. But here it says “on or before the 22nd.”
- Q. But never mind “on or before”. The date is just a coincidence, is it?
- A. This I don’t know. This is a matter between the MAF company and the Oceania.
- Q. So far as you know, the date 22nd of July in that document is just coincidentally the same date upon which you had to pay MAF Corporation for the shares, is that right?
- A. Yes, it may be so.
- Q. And the amount you had to pay MAF Corporation was \$4,839,000, just coincidental, \$4,800,000 by that document, another coincidence, is it?
- A. It was worked out like this. It was 3,226,000 times \$1.50.
- Q. Just another coincidence?
- A. Yes.
- Q. And when your counsel opened on the basis that that document 9, was an integral part of the financing and refinancing, he was wrong, was he?
- A. Who is wrong, sir?
- Q. Your counsel.
- A. Why is he wrong?
- Q. You say that had nothing to do with the refinancing and the financing. Your counsel says it is an integral part of it. He was wrong, was he?
- A. They were coincidences and coincidence and coincidence, but the figures happened to be similar or the same.
- Q. I am not even going to waste my time telling you what Mr. Ives said in evidence, Mr. NG. I simply suggest to you that you are deliberately lying to get out of that paragraph on document 57, the last paragraph on the left-hand column.
- A. No.
- Q. Oceania was sold to Mr. James COE, was it not?
- A. Later, yes.
- Q. How late?
- A. At the end of June, sir.
- Q. For how long did negotiations carry on before he bought Oceania?
- A. A few days, not long.
- Q. James COE was able to establish the value and the worth of Oceania within a few days.
- A. This is a matter for James COE.
- Q. Do you or do you not say that within a few days James COE was able to establish the value of Oceania?
- A. Of course, otherwise it won’t have been sold.
- Q. Do you or do you not say that he was able to establish the value of Oceania in a few days?
- A. I believe so, sir.
- Q. Do you say that within a few days he was able to discover whether or not there were outstanding claims or possible claims against the Oceania?
- A. I am not James COE.
- Q. Do you say that James COE within a few days was able to arrange for the stock exchange to allow him to issue 7 million shares to buy Oceania?
- A. This was done by James COE. How could I know?
- Q. Did you negotiate with James COE in the sale of Oceania.

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- A. You mean the sale of San Imperial to James COE?
Q. That is right.
A. Of course, there are minutes of meetings, sir.
Q. Did you negotiate with him?
A. There was a board meeting, so that is to say I negotiated.
Q. When?
A. I can't remember. I think it was in June or the end of June, sir.
Q. I suggest to you it must have been before you gave this interview with Mr. Alan HO which appears in document 57.
A. You said that this was dated the 1st of June, sir? 10
Q. That's right.
A. That was at the end of June, sir.
Q. In a few days the man issues shares, gets leave of the stock exchange to deal in 7 million extra shares and completes the purchase of a company – all in a few days.
A. This was done by James COE. How could I know.
Q. All right. Look at document 57, the right-hand column, four paragraphs from the bottom:

"Mr. Ng said he has a good working relationship with the other directors but expressed surprise at the small stake of Mr. CHOO in the company." 20

A. Yes, I have seen it.
Q. That was, at best, only a half truth, wasn't it?
A. I did say this at the time of the interview.
Q. And it was only at best a half truth, wasn't it?
A. I don't think so.
Q. You knew that CHOO Kim-san had, for instance, 15 million shares and more in Asiatic – 15 million and more in San Imperial in the name of Asiatic.
A. You mean at the time of the interview?
Q. No. Even if what you are saying is true, previously he did own that? 30
A. Yes, he did.
Q. And he had lots of shares, according to you, in MAF Nominees and in MAF Corporation.
A. This I don't agree, sir.
Q. Didn't you say in your evidence-in-chief that in December you have discovered that CHOO Kim-san had shares in MAF Nominees and in MAF Corporation?
A. That is MAF Credit.
Q. I will check my notes this evening and we will come back to it. For the moment it suffices to ask you this: you knew very well, didn't you, that by the 1st of June, CHOO Kim-san had a very small shareholding only because 40
you had purported to buy all of his shares.
A. Am I allowed to tell you about the interview, sir?
Q. I don't know what you want to say, Mr. NG, but you have told us before lunch that the reporter asked you if you were surprised that CHOO Kim-san had such a small holding and you said yes.
A. The reporter said to me that Mr. CHOO had 57,600 shares and he asked me if I was surprised and I said I was.

Q. Mr. NG, I asked you specifically about that paragraph:

“According to the share register, Mr. Choo only had 57,600 shares on May 16.”

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And you agreed that you said it.

A. At that time the reporter asked me how many shares in his own name did Mr. CHOO have and I said Mr. CHOO had 57,600 shares and then the reporter asked me, “Are you surprised by Mr. CHOO’s having a small stake in the company?” I said I was.

No. 40

Q. But you couldn’t then, could you, because you knew why he only had a small stake, according to you: it is because you bought his shares.

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shing – Cross-
examination

10

A. That was the conversation, sir. He asked me whether I was surprised and I said I was.

Q. Why didn’t you say, “I’m not surprised because he had massive shareholdings which I have bought.”

A. If he asked me in such a way, I would have answered him like this, but he did not ask me like this.

Q. You knew very well that CHOO Kim-san used nominees, didn’t you?

A. Yes.

20

Q. Then why did you agree that you were surprised that only 57,600 shares were in his own name? What surprised you about that?

A. That was his question and I asked him like that.

Q. Why didn’t you say no, “I’m not surprised.”?

A. I could have said that.

Q. In fact, were you surprised?

A. And I could have also said the other one.

Q. In fact were you surprised?

A. You mean at the time when the reporter asked me was I surprised?

30

Q. Let’s be fair to you, Mr. NG. We have been talking of nothing else in the last ten minutes and you understand the English language. Were you in fact surprised?

A. Yes, I was.

Q. Why?

A. I was surprised as to why Mr. CHOO had 57,600 shares in his own name.

Q. You mean to say you were surprised he had shares in his own name at all?

A. Yes.

Q. But that wasn’t the question you were asked. You were asked, according to you, whether or not you were surprised that CHOO Kim-san only had 57,600 shares in his own name and you agreed. Why were you surprised?

A. But I answered the question and I said I was surprised.

40

Q. You were surprised that he only had 57,600 shares?

A. Yes, in his own name.

Q. You expressed surprise at the small stake he had.

A. This is a general conversation at the time of the interview. This is written by a reporter. Do you mean to say that I coached the reporter what to write and how to write?

Q. Mr. NG, you are the most dreadful and most awful liar.

MR. SWAINE: That, my Lord, really is something which counsel should not stoop to say.

MR. CHING: Why not?

COURT: Get on with it.

Q. Mr. NG, you agreed that those two paragraphs were correct, three and four paragraphs from the end?

A. Yes, it is true that he had 57,600 shares in his own name.

Q. Do not pretend to misunderstand me. Right at the beginning of the cross-examination I tried to ensure that you would not misunderstand the question and indeed you are not misunderstanding me although you are pretending to. You agreed this morning that those two paragraphs were accurate and you said them or words to that effect, yes or no? 10

A. Yes.

Q. So there is no question of your teaching the reporter what to say or how to write, is there?

A. I told him and he wrote this.

Q. Why were you surprised that CHOO Kim-san only had 57,600 shares in his own name?

A. I don't know why I was surprised.

Q. Because you were lying to the reporter. 20

A. No, according to the share register, Mr. CHOO did have 57,600 shares, or you can check on it.

Q. I am going to try one last time. Why did you express surprise that CHOO Kim-san only had 57,600 shares in his own name?

A. I don't know why I was surprised.

Q. You were lying to the reporter.

A. No.

Q. And as chairman of a public company, you were lying to the public.

A. I can't see why you said I lied to the reporter.

Q. All right, that's all you want to say about it. You know Mr. HO Chung-po, don't you? 30

A. Yes.

Q. When did you first meet him?

A. I can't remember when. I first met him at the time when my office was on the upper floor and when MAF office was on the ground floor.

Q. When was that? Which year?

A. In about 1973.

Q. And it is true, is it not, that as from that time onwards you knew that HO Chung-po was acting as servant, agent and nominee of CHOO Kim-san?

A. I knew that Mr. HO Chung-po was his employee. 40

Q. And his nominee?

A. This I don't know.

Q. Look at your affidavit in 1674, blue file, page 46. Do you remember swearing that affidavit?

A. Yes.

Q. You exhibited an affidavit of LEE Ing-chee as DN-2?

- A. Yes.
- Q. That begins at page 54. Look at the last page of that please, page 59. After going through a great deal of facts in the body of his affidavit, Mr. LEE Ing-chee ends up in paragraph 19 by saying, "By reason of the above matters, I verily believe that the said HO Chung-po was and still is a servant and agent of the Defendant." Do you see that?
- A. Yes.
- Q. Do you agree that HO Chung-po was and still is a servant and agent of the defendant?
- 10 A. In my affidavit I said I agreed with what Mr. LEE Ing-chee said in his affidavit or affirmation.
- Q. Do you say that you merely agree that LEE Ing-chee verily believes? Is that right?
- A. Yes, but I did not believe that until I saw it.
- Q. I see, but after having seen it, you believed that HO Chung-po was and still is a servant and agent of the defendant?
- A. Yes, at the time when this was prepared, when LEE Ing-chee's affirmation was prepared.
- Q. Then you believed, at that time you believed that HO Chung-po was and still is a servant and agent of CHOO Kim-san?
- 20 A. Yes.
- Q. Look at page 47 please, the same file. Paragraph 9, "In my capacity as a Director of MAF Credit Limited I know that Mr. LEE Ing-chee of No. 13A Kam Wah Building 516 Nathan Road, Kowloon and who is in Action No. 252 of 1977 in the High Court of Hong Kong in a Supplementary Affirmation made in the month of May 1977 a copy of which is annexed hereto and marked exhibit 'DN-2' was in charge of the Defendant's business interests in Hong Kong." Paragraph 10: "I refer to exhibit 'DN-2' and from my own personal knowledge confirm the contents of . . ." – various paragraphs – ". . . all inclusive and also that to the best of my personal knowledge and belief that the Directors of Asiatic Nominees at all material times were either the employees of the Defendant or his agent." "The Directors of Asiatic Nominees at all material times were either the employees of the Defendant or his agent", is that sentence true?
- 30 A. I believe what Mr. LEE Ing-chee said in his affirmation in paragraphs 3, 4(i), (ii), (iii) and paragraphs 5, 6, 7, 10, 11, 13, 14 and 18.
- Q. Why does it then say "and also that to the best of my personal knowledge and belief"?
- A. I knew that Mr. HO Chung-po was Mr. Choo's foki and Mr. Lee said that Mr. Ho was Mr. Choo's nominee, this is why I knew.
- 40 Q. But you say from the best of your personal knowledge and belief, "the Directors of Asiatic Nominees at all material times were either the employees of the Defendant or his agent".
- A. Yes, that was my personal knowledge. I knew that Mr. HO Chung-po was Mr. Choo's foki.
- Q. You knew that at divers times HO Chung-po was director of Asiatic Nominees?
- A. That was said in Mr. LEE Ing-chee's affirmation.
- Q. No, no, no, Mr. Ng. Paragraph 10 of your affidavit on page 47, "to the best of my personal knowledge and belief the Directors of Asiatic Nominees at all

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material times were either the employees of the Defendant or his agent”.

- A. I told my solicitor that and my affidavit was prepared by my solicitor.
- Q. Yes, so?
- A. He prepared the affidavit in such a way and then I signed it after it was prepared.
- Q. You are a person who is careful to tell the truth, especially under oath?
- A. This is true.
- Q. Does it then follow that you knew at all material times that HO Chung-po, insofar as Asiatic was concerned, was a nominee of CHOO Kim-san?
- A. Yes.
- Q. Thank you. Now Mr. Ng, you said that you knew of no claim against CHOO Kim-san when you purchased the shares from Chow and Hwang.

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COURT: Mr. Ching, could you repeat it?

- Q. Did you know there were no claims or did you – I am sorry. Did you know there were no claims, or is it the position as far as you knew there were no claims, or is it the position that you did not know whether – sorry, I am getting very confused.

(Court Reporter reads back the last question)

- A. Nobody claimed against CHOO Kim-san.
- Q. You knew that as a fact?
- A. Yes, apart from the criminal case by the Government.
- Q. In answer to my Lord who asked you, “Did you even suspect any claims?” you said, “No, I didn’t even suspect any claims.” Is that right?
- A. No, I did not suspect.
- Q. Did you not know of a claim numbered 578 of 1975 in which Harilela’s Properties and Investments Limited was suing, amongst other people, CHOO Kim-san?
- A. Yes, it may be so.
- Q. Do you know that CHOO Kim-san was added as a defendant in that action in July of 1976?
- A. Which case? You mean the case by Mr. Harilela?
- Q. Yes.
- A. Yes.
- Q. Then how can you say that when you purchased the shares from Chow and Hwang, you didn’t even suspect any claim against CHOO Kim-san?
- A. But according to my knowledge, that action was dropped.
- Q. When was it dropped?
- A. After Mr. CHOO Kim-san had absconded, Mr. Harilela said that he would not take any more action.
- Q. Was the action actually withdrawn?
- A. That I don’t know. It was not my action.
- Q. I want to refer you now to your affidavit in action No. 159 dated 29th of June, 1977 which is to be found in red file 2 beginning at page 27. Would you look please at paragraph 9 which is to be found on page 30? Does it say this, “There were many telephone conversations between the said Lee Ing Chee

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and me between October and December 1976. Mr. Harilela was suing Lee Ing Chee and the Defendant and an Insurance company in respect of a fire claim and Lee Ing Chee would often telephone me and asked me to intercede with Mr. Harilela not to press the claim against him"? As far as you knew, as late as December of 1976, that action was still carrying on, is that right?

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A. But this claim was against four parties, it was not against Mr. CHOO Kim-san alone.

Q. I see.

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10 A. Therefore Mr. Harilela said that since Mr. CHOO Kim-san had already absconded, so he was not in a position to sue him or to put up a claim against him.

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Q. Most of your working life has been spent with Harilela?

A. Yes.

Q. You knew that CHOO Kim-san used nominees for his assets?

A. Yes.

Q. You discovered 15 million shares in San Imperial in the name of Asiatic Nominees?

A. Yes.

Q. You thought they still belonged to CHOO Kim-san?

20 A. Yes.

Q. Did you say to your old friend, your old employer who had brought you so far along the road from your orphanage, "Good heavens! You don't have to drop the case against CHOO Kim-san, he has got 15 million shares in San Imperial in the name of Asiatic Nominees"? Did you say that to Mr. Harilela?

A. How can you say that he helped me since I was an orphan?

Q. You came from an orphanage, you started working and he had brought you so far along the line?

A. This was a matter for Mr. Harilela, how did that have anything to do with me? Why should I bother to tell him all this?

30 Q. Why should he bother to tell you that he was dropping the action against CHOO Kim-san?

A. He still intended to sue LEE Ing-chee.

Q. What did it have to do with you that he still intended to sue LEE Ing-chee?

A. Mr. LEE Ing-chee telephoned me asking me to help him by asking Mr. Harilela to drop the case or not to sue him.

Q. You were then still in charge of supervising the accounts of the Harilela group?

A. No. It was in 1976, no.

Q. I see. What were you doing for living in 1976 apart from Bentley?

40 A. I have told you already that I was receiving \$10,000 from the Tai Pang Building Management Limited every month.

Q. Who is the beneficial owner of the shares in Tai Pang?

A. There were two people, LEE Shu-keung and LEE Kwok-wing.

Q. And Harilela was your partner in Bentley?

A. Yes.

Q. Harilela or his company was a client of Tai Pang?

A. Yes.

Q. You had been employed by him for many years?

A. Yes, at Harilela.

Q. He is sufficiently friendly with you to allow you to draw cheques on Bentley

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Securities for your own purposes?

- A. Yes.
- Q. And yet you never told him – did you, Mr. Ng – you never told him that CHOO Kim-san still had a massive shareholding in San Imperial under the name of Asiatic?
- A. No.
- Q. Why not?
- A. Why should I?
- Q. You felt no compulsion as a friend, as a partner, as an ex-employee?
- A. This claim was against the four parties. Since only one of the parties had absconded, that didn't mean to say that the plaintiff had to drop the claim against the other three. He still could go along with the other three. 10
- Q. Now Mr. Ng, you were in court, I think, when your counsel cross-examined LEE Ing-chee, is that right?
- A. Yes, I was.
- Q. You heard your counsel cross-examine LEE Ing-chee about his putting the address of San Imperial on the writ as being the address of CHOO Kim-san in this action? Sorry, Imperial Hotel.
- A. Yes.
- Q. You heard your counsel suggest to LEE Ing-chee that he was thereby trying to give a false picture of CHOO Kim-san being likely to be in the Colony? 20
- A. Yes, I heard it.
- Q. Do you subscribe to that view, to that suggestion? Do you agree?
- A. I don't want to express my opinion about the counsel's cross examination.
- Q. Don't be shy, Mr. Ng. Do you agree with counsel's suggestion that by putting the address of the Imperial Hotel on the writ, LEE Ing-chee had tried to give a false picture of CHOO Kim-san being likely to be in the Colony?
- A. Yes.
- Q. I hand you a copy of a writ.
- MR. CHING: This is a new document, my Lord. I am sorry, I haven't got a spare copy at the moment. 30
- Q. That's the writ of summons in 1674, San Imperial against CHOO Kim-san, correct?
- A. Yes.
- Q. Dated the 29th of June, 1977, correct?
- A. Yes.
- Q. At which time you were chairman of San Imperial, correct?
- A. Yes.
- Q. You gave instructions to Messrs. Philip K.H. Wong to issue that writ, correct?
- A. The Board did it.
- Q. What's the address of the Imperial Hotel? 40
- A. This address.
- Q. This address?
- A. 32-34 Nathan Road.
- Q. 32-34 Nathan Road? So were you try to mislead the court by putting in that address? I mean – you say you agree LEE Ing-chee was trying to mislead the court by putting in that address, are you trying to mislead the court?
- A. At that time I told my solicitor that the last known address of Mr. CHOO

Kim-san was Nos. 32-34 Nathan Road, so how could I know how the solicitor prepared the writ?

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Q. Wasn't his last known address, so far as you were concerned, the coffee shop of the President Hotel in Taipei?

A. This I don't agree. I can explain it.

Q. Look at blue file please, page 49.

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MR. CHING: Oh, I am sorry, that hasn't got a number yet, my Lord, the writ.

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CLERK: Exhibit P.18.

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10 Q. Page 49 of blue file is part of your affidavit. Would you see paragraph 17?

This is what it says: "If the Defendant is still in Hong Kong it is probable that he will try to leave Hong Kong to avoid prosecution." Did you say that? Did you say that? Yes or no?

A. I did have the intention, but these words were not uttered by me.

Q. You swore them to be true, did you not, or you affirmed them to be true at least? Are they in fact true?

A. The first sentence?

Q. Yes.

A. I told my solicitor something to this effect in general, but this was prepared by the solicitor, I did not actually utter all these words.

20 Q. Yes, you did because you affirmed the affidavit. Listen please. You affirmed the affidavit. When you affirmed it on the 29th of June, was there any question in your mind that CHOO Kim-san might be in Hong Kong?

A. The solicitor asked me if Mr. Choo was a citizen of the Republic of China, I told him that he was a Malaysian, but he was holding a passport of the Republic of China.

Q. Will you please, Mr. Ng, will you please try very very hard to answer my question?

COURT: Mr. Ching, the interpreter hasn't finished interpreting.

A. I said that Mr. Choo was holding a passport of Malaysia.

30 Q. Will you try please, Mr. Ng, try very hard to answer my question? When you affirmed paragraph 17 of that affirmation on the 29th of June, 1977, was there any question in your mind that CHOO Kim-san might be in Hong Kong?

A. I told my solicitor that Mr. Choo might be in Hong Kong and might be everywhere in the world.

Q. Anywhere in the world?

A. I mean everywhere.

Q. Did he fail to answer to his bail on the 28th of October, 1976?

A. This was what was said in the newspaper.

Q. No doubt, it is true in your mind?

40 A. That's right.

Q. You saw him in Taiwan on December 30, 1976? Sorry, the 31st.

A. Yes.

Q. He had a woman with him who was not Alice?

A. Right.

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Q. He told you you had come too late, he had already sold all his shares in San Imperial?

A. Yes.

Q. Between December 31, 1976 and the 23rd of March, 1977, you had purchased from Chow and Hwang and Lee and Fong CHOO Kim-san's shares in San Imperial?

A. Yes.

Q. You are still saying that on the 29th of June, 1977, you thought there was a possibility, however remote, that Mr. CHOO Kim-san was in Hong Kong?

A. Here says "if".

Q. It presupposes a possibility, doesn't it?

A. Yes.

Q. Look at the next sentence, "If" – since you are so keen to point out the word "if" – "If he has left Hong Kong it is highly probable that he will return to Hong Kong in the foreseeable future." You like the word "if" there, Mr. Ng, "if he has left Hong Kong"?

A. This was all prepared by the solicitor and these are the words used by the solicitor. You are asking me about the words used, they are all used by the solicitor.

Q. I am asking you about the words which you affirmed to be true. All right? Let's have no more nonsense about this being prepared by a solicitor, and I am asking you as a man who is careful about what he says under oath and who knows the value of accuracy, so let's have no more nonsense about this being the solicitor's words. All right? "If he has left Hong Kong" – you knew very well he had left Hong Kong, didn't you?

A. Yes.

Q. Why then did you affirm "if he has left Hong Kong"?

A. I told my solicitor what I meant. I don't understand it.

Q. I see. Does it say either in that paragraph or anywhere else in the affidavit that you had seen CHOO Kim-san in Taipei in December of 1976?

A. In that case, I would have to read through the whole affidavit, otherwise I won't be able to answer this question.

Q. You can take my word for it that it doesn't appear. Why do you think it doesn't appear? Why do you think it doesn't appear in your affidavit that you had seen him in Taipei on the 30th of December, 1976?

A. But paragraph 16, the solicitor asked me the whereabouts of Mr. CHOO Kim-san and I told him that I did not know.

Q. Yes, the last sentence of paragraph 16 – thank you for reminding me – "The Defendant's whereabouts are unknown." Do you think he had left Taipei? On the 29th of June this year, did you think that CHOO Kim-san had left Taipei?

A. I believe that – as he was holding a Malaysian passport, therefore he might not be in Taiwan.

Q. And when you made this affirmation, was there any thought in your mind that it was highly probable that CHOO Kim-san would return to Hong Kong in the foreseeable future?

A. The solicitor asked me if Mr. Choo would probably come back to Hong Kong, and in answer I said he would.

Q. Did you genuinely believe that it was highly probable that he would return to

Hong Kong in the foreseeable future?

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A. It's not odd at all if he came back.

Q. Will you please answer me?

A. I did think about it.

Q. Did you think that it was highly probable that he would return to Hong Kong in the foreseeable future?

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A. Yes, it was highly probable.

Q. Highly probable. Then you carried on to say, "In either event it is highly likely that he will liquidate his assets in Hong Kong and have them transferred out of Hong Kong from the reach of his creditors." Why didn't you carry on and say, "Indeed I myself have bought 17 million odd shares that previously belonged to him"?

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A. It was prepared after the discussion with the solicitor.

Q. All right. That's all you want to say, that's all you want to say.

MR. SWAINE: He hasn't quite finished.

A. This action was against CHOO Kim-san. He still had some shares with the MAF Credit. We thought that the shares might be CHOO Kim-san's, but we lost in that action.

Q. I suggest to you, Mr. David NG, that you would say anything on oath or affirmation or otherwise if it is to your own benefit. I suggest to you, Mr. David NG, that you would say anything on oath or affirmation or otherwise as long as it is to your own benefit.

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A. No, I don't admit that.

Q. Look back at page 47. You will see that you here specifically adopt certain paragraphs of LEE Ing-chee's affidavit including paragraph 11, is that right?

A. Yes.

Q. Would you look at that please? Paragraph 11 of LEE Ing-chee's affidavit begins on page 56 of the same file, "On or about December 1972, the Defendant instructed me to form or purchase a shell company for him to be his nominee company so that he could transfer his holdings in San Imperial Corporation Ltd., M.A.F. Credit Ltd. and other company to his nominee company. I accordingly approached C.M. Wong . . ." – I'm afraid mine is cut off – ". . . their then office at Room 709-710 Alexandra House, Hong Kong which was and still is a firm of certified accountants and purchased from them Asiatic Nominees Ltd. at the price of less than HK\$2,000 which said sum was paid by the Defendant. Soon after the takeover of Asiatic Nominees Ltd., the Defendant transferred his holdings in San Imperial Corporation Ltd. and other company to Asiatic Nominees Ltd., but was and still is the beneficial owner of the said 17,421,960 shares in San Imperial." You, Mr. Ng, affirmed in particular that particular paragraph was true, did you not?

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COURT: When did LEE Ing-chee make this affirmation?

MR. CHING: May, my Lord, 1977.

Q. It's a simple question, Mr. Ng. You affirmed that that particular paragraph was true, did you not? Yes?

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- A. Yes.
- Q. Was it in fact true?
- A. According to what I am reading here, I say it is not true.
- Q. Then why did you affirm it in particular to be true?
- A. I don't know why. This was prepared by the solicitor.
- Q. I thought we had agreed, Mr. Ng, we wouldn't have that again. You affirmed it to be true, you know the value of the accuracy of words, you are a careful man, you always tell the truth whether or not you are under oath or affirmation, how came you to affirm the truth of that particular paragraph?
- A. I don't know. 10
- Q. You don't know? You have no explanation at all?
- A. I have no explanation at all.
- Q. Let me suggest the explanation to you. Firstly, you would say anything for your own benefit.
- A. No.
- Q. And secondly, it was to your benefit to say that that was true in that particular action because you were trying to show in that particular action that CHOO Kim-san used to leave his assets in the name of his nominees.
- A. I did not have the intention at that time.
- Q. You didn't have what intention? 20
- A. At that time the action was against CHOO Kim-san.
- Q. At that time you didn't have what intention?
- A. It was not to my benefit.
- Q. At that time you didn't have what intention? You didn't have what intention?
- A. I did not have the intention to mention about these hidings. (Witness points at paragraph 11)
- Q. I see. Do you mean to say you didn't have the intention of trying to persuade the court that CHOO Kim-san was using nominees? Is that right?
- A. No.
- Q. You agree with me? Is that what you said, that you did not have the intention – is this correct – you did not have the intention of trying to persuade the court that CHOO Kim-san used nominees? 30
- A. No. I did say that he used nominees.
- Q. Well then what was the intention that you did not have? What was the hiding that you did not wish to mention?
- A. I gave Mr. LEE Ing-chee's affirmation to the solicitor and the solicitor prepared my affidavit according to Mr. Lee's affidavit.
- Q. Not according to your instructions?
- A. I handed that to him. This action was against CHOO Kim-san.
- Q. We all know that. What intention was it that you did not have? 40
- A. I did not intend to hide anything. Everything is open.
- Q. So you never told the court you had seen CHOO Kim-san in Taipei, you never told the court that you had bought his shares, instead you told the court that if he has been to Hong Kong he might leave, and if he has gone he might come back, and finally, you told the court that CHOO Kim-san was and is still the beneficial owner of the said 17,421,960 shares in San Imperial?
- A. I told the solicitor everything.
- Q. And then you affirmed that it was true, you affirmed that what they had written down was true, is that right?

- A. I don't know whether he put down every word I said in the affidavit. Supreme Court
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- A. And you affirmed that it was true?
- A. I did sign that.
- Q. For the purposes of getting an ex parte injunction?
- A. I know nothing about the legal matters. Defendant's
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- Q. You would say anything, Mr. Ng, if it is for your own benefit?
- A. What benefit do I have about this action? I was only chasing him after the debt
for the company. No. 40
- Q. For the company, the controlling interest of which you were selling to James
COE at a massive profit, is that right? David Ng Pak-
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- 10 A. Yes.
- Q. Why didn't you go after the 422,000 odd shares of San Imperial still in
Asiatic?
- A. 420?
- Q. 422 odd thousand of shares.
- A. Where was it?
- Q. In the name of Asiatic.
- A. That had been seized by them because of that action.
- Q. That's very interesting. Mr. Ng, you see, Mr. Ives said he wasn't worried about
the attachment because shares were already in Fermay's name.
- 20 A. Case No. 252.
- Q. And that's why you didn't go after the balance of the Asiatic shares?
- A. You have already got that because of the injunction.
- MR. CHING: May I have a moment?
- Q. I am reminded that we do have an order against 15,000,000 MAF Credit
shares. What you were talking about in Action 1674 was 9,000,000 out of
those 15,000,000?
- A. Those were the shares of the MAF Credit.
- Q. Yes, we had an order against them.
- 30 A. Later according to a letter, JSM dropped that case.
- Q. We will check that up, Mr. Ng. Would you agree with me that you did not
disclose the contract between yourself on the one hand and Chow and Hwang
on the other hand until the 29th of June, 1977?
- A. I left all the legal matters to Messrs. Peter Mo & Co.
- Q. Messrs. . . .?
- A. Peter Mo & Co.
- Q. Peter Mo & Co. Didn't you even bother to read your affidavits before you
swore that they were true or affirmed that they were true?
- A. Yes, of course. Since the solicitor said it was correct then I signed it.
- 40 Q. Did you read it?
- A. Of course I did.
- Q. If there was anything you didn't understand, did you ask for an interpretation?
- A. Yes.
- Q. Would you take it from me that the contract of the 23rd of March was never
disclosed until the 29th of June?
- A. Yes.
- Q. You seem to have become very friendly with Mr. Chow.

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A. Yes, you may say that.

Q. Did you go out with him on the town, without his wife?

A. Yes.

Q. Of course, he had told you he didn't want his name used in any action in Hong Kong, is that right?

A. Yes.

Q. Is that the reason why the agreement of 23rd of March was never disclosed until the 29th of June?

MR. SWAINE: My Lord, I think perhaps in fairness to the witness he ought to be made aware . . .

10

MR. CHING: Could the witness leave the room if something is going to be said?

MR. SWAINE: Yes.

4.17 p.m. witness leaves courtroom.

MR. SWAINE: I think in fairness to the witness, who obviously has forgotten the dates on which he has made various affidavits, it ought to be made clear that the first affidavit he filed in the proceedings in which we are involved, my Lord, was on the 23rd of June, and in six days, that is on the 29th, the details were gone into and the agreement with the Chows was disclosed, so it is not as if there was a great gap of time between the first and the second affidavits.

COURT: Yes.

20

MR. CHING: May the witness now come back?

4.18 p.m. witness returns to witness-box.

Q. Do you agree that in Action 159 you swore an affidavit on the 23rd of June in which you never mentioned that the agreement between the syndicate and James Coe dated the 30th of April had not been disclosed? I'm sorry – let me put that again. Do you agree that in Action 159 you swore an affidavit on the 23rd of June relying upon the agreement between the syndicate and James Coe dated the 30th of April and without disclosing the agreement of the 12th of May?

MR. SWAINE: It's the red file.

30

CLERK: Red 2, 15.

Q. Red 2, page 15. Do you see that affidavit? It's dated the 23rd of June and it relies upon the agreement of 30th of April. Paragraph 10. Right?

A. Yes.

Q. In fact, at that time the agreement of the 30th of April had been superseded by the agreement of the 12th of May.

A. Yes.

- Q. You were trying by that affidavit to set aside the registration of a foreign judgment. Is that right? Supreme Court of Hong Kong High Court
- A. Yes.
- Q. Yes. You've said that you looked through your affidavits before you signed them, and if there was anything you didn't understand you would ask for an interpretation. Is that right? Defendant's Evidence
- A. Yes.
- Q. Why then did you swear paragraph 10 of that affidavit on page 16? Why did you swear it? No. 40
- 10 A. I can't remember why.
- Q. You can't remember why. You have no other explanation? Were you deliberately pressing the agreement of the 12th of May? David Ng Pak-shing – Cross-examination
- A. Everything was prepared by the solicitor. Even the whole case was prepared by the solicitor.
- Q. Why did you swear paragraph 10? A careful man who wants to tell the truth under oath or otherwise, who knows the value of accuracy. Why did you swear paragraph 10?
- A. I don't know why.
- 20 Q. You don't know why. You swore another affidavit in the same action which you will find at page 27 of the same file, and that's dated the 29th of June, and once more you did not disclose the agreement of the 12th of May but relied upon the agreement of the 30th of April. Paragraph 14(m) on page 33. Why did you swear that?
- A. I don't know why, sir.
- Q. Mr. Ng, do you realise how serious this is? You have made two false affidavits. Are you content, are you content with simply saying you don't know why yourself you swore it?
- A. I can't say why unless I ask my solicitor about it.
- 30 Q. No, no, Mr. Ng. Let's go through the whole catechism again. You are a careful man; you know the value of accuracy; you wouldn't say anything untrue; you read through the affidavits before you swore them; you asked for interpretation of anything you didn't understand; you would never say anything untrue. You've sworn two false affidavits. Are you content to say that you don't know why you swore them? Is that the measure of your integrity that you would have us believe?
- A. Suppose the solicitor omitted something in the affidavit and then the affidavit was read over to me, then I signed it.
- 40 Q. Wouldn't you immediately say, "Good heavens, you've got the wrong agreement there, it's the 12th of May, isn't it? The 30th of April has been superseded"?
- A. This I did not notice.
- Q. Who was the solicitor?
- A. Perhaps I was too negligent.
- Q. Who was the solicitor?
- A. Mr. Ives.
- Q. Mr. Ives, a solicitor of 30 years' experience, number two partner, well known for conveyancing, knows the value of precision, careful wording. You, a stock-broker, experienced accountant who knows the value of accuracy in words and in figures, and how not to mislead people either as an accountant or as a

director or as a chairman or as anything else. You both just happened to overlook it?

- A. What can I do? It was overlooked, it was overlooked.
- Q. You tried, Mr. Ives tried, to get these actions stopped without their ever having their merits explored, didn't you?
- A. What has that to do with the agreement on the 12th of May that you say has been overlooked?
- Q. I didn't say it had been overlooked, you said.
- A. I say I was negligent.
- Q. And you got 159 struck out, you got the registration set aside, didn't you? 10

MR. SWAINE: My learned friend must not jump from one point to another without mentioning the in between which is that surely by then the agreement of the 12th of May was disclosed. I am sure also my learned friend will not overlook the fact that these affidavits went to fortification, and even if the injunctions had been discharged the charging orders would have required a trial; no question of stopping the trial.

MR. CHING: The agreement of 12th of May, my Lord, was not disclosed until after, I think it was 12th of July – the 15th of July when I secured orders nisi from Mr. Justice Li. My learned friend will not forget that. My learned friend will not forget that the registration of the judgment in 159 has been set aside and is presently on appeal. My learned friend will not forget that the Court was deceived by these affidavits in so far as they matter. 20

- Q. And you, Mr. Ng, have no explanation?
- A. To explain what?
- Q. To explain how you came to overlook so vital a document as the 12th of May agreement.
- A. It was overlooked, it was overlooked; I have admitted that. Why should you carry on? I have admitted that I overlooked that.
- Q. You were trying by those two affidavits, amongst other things, to get fortification of an undertaking in damages, is that right? You wanted the plaintiffs to put some money in court in case they were wrong in getting the injunction. 30
- A. I was told by the solicitor.
- Q. It would have made a great difference, wouldn't it, if the Court had known that instead of a binding agreement there was simply an option which might or might not be exercised, whether or not the injunction existed? (Interpreter speaks.)

MR. CHING: Well, my Lord, if the interpretation is going to cause difficulties, it's possibly a matter of comment rather than a question.

- Q. I suggest to you, Mr. David Ng, that you, Melville Edward Ives and HO Chapman, throughout these proceedings and related proceedings, adopted every tactic of harassment to try and get the proceedings stopped without the merits being gone into. 40
- A. This is a legal matter, sir, I don't understand it.
- Q. You knew you'd asked for security for costs?

- A. I asked my solicitor if I could claim for costs and my solicitor told me that I could. Supreme Court of Hong Kong High Court
- Q. Did you know that you had asked for security for costs?
- A. Yes.
- Q. Did you know that if those costs were not put up the action would have been stayed or even struck out? Defendant's Evidence
- A. Yes, I was told by the solicitor, sir.
- Q. You know you asked for fortification of the injunction – of the undertaking in damages, I'm sorry. No. 40
- 10 A. Yes.
- Q. Did you know that if that fortification had not been supplied the injunctions would have gone? David Ng Pak-shing – Cross-examination

INTERPRETER: . . . supplies?

- Q. If the fortification had not been put up the injunctions would have gone.
- A. Later the solicitor explained to me like this.
- Q. Until recently you have been the, I think, managing director of the M.A.F. Group – chairman, I'm sorry, chairman of the board.
- A. Up to the 1st of November.
- Q. Up to the first of November. Before the 1st of November you had access to the records of M.A.F. – of the M.A.F. Group?
- 20 A. Yes.
- Q. I asked, you see, for your counsel to agree that HO Chung-po was director of Thai M.A.F. The answer I've now been given is you can't agree it because you are no longer a director. You could have found out for us if you had wanted to, couldn't you?
- A. Yes, before the 1st of November.
- Q. Would you agree that HO Chung-po was a director in April of this year, of Thai M.A.F., that is?
- A. I have never checked on it.
- 30 Q. Weren't you asked to check before the 1st of November?
- A. I was never asked to do this.
- Q. When did you become chairman . . .

MR. TANG: My Lord, I can assure my learned friend that I personally was given the task of enquiring of Mr. Ng as – perhaps I should rephrase this. I was asked by Mr. Fung, my learned friend Mr. Ching's junior, to agree to a list of directors of Thai M.A.F. prepared by the plaintiffs. I was not asked in particular whether or not Mr. Ho was a director of Thai M.A.F. in April or otherwise. It was only after the 1st of November that I remembered to ask Mr. Ng. The answer that I got from him was that he had been kicked out of the board of M.A.F. by the plaintiffs in this action and therefore he was not in a position to agree to a list of directors.

40

MR. CHING: I take my learned friend's word for it, of course.

- Q. You were the chairman in April, were you not?
- A. I was not.

Q. April of this year?

A. No.

Q. I'm sorry, I'm mistaken. You know nothing then, I suppose, about this warrant of arrest that has been issued against LEE Ing-chee?

A. Yes, I know that.

Q. Do you know that the books of Thai M.A.F. show a loan to LEE Ing-chee of the amount that he is alleged to have stolen?

MR. SWAINE: My Lord, I think before words are put into the witness's mouth and he is bludgeoned into a reply, if the books are the very same books that have been exhibited they do not show any such thing. They show an indebtedness, not a loan. 10

MR. CHING: They show an indebtedness.

MR. SWAINE: An indebtedness.

MR. CHING: Oh, I see.

MR. SWAINE: Not a loan. An indebtedness can arise in various ways.

MR. CHING: No doubt, my Lord, in the same way that Mr. Ives knew that Mr. CHOO Kim-san had been prosecuted for fraud but didn't know of anyone who had any claim against him. My Lord, I am about to pass to a new topic.

Appearances as before.

MR. SWAINE: My Lord, with the consent of my learned friend Mr. Ching, I propose, in order to rectify an omission I have completely forgotten about the formal proof of the testimonial of Madam LAU – your Lordship will remember you had ruled the document was admissible subject to proof of the document itself . . . 20

COURT: Yes.

MR. SWAINE: We have to do this through Mr. David Ng.

COURT: Yes.

MR. SWAINE: My Lord, in fact I am reminded by my learned junior that in your ruling your Lordship had said that you would like to see the original before giving the direction as to how the document . . . 30

COURT: Yes.

MR. SWAINE: . . . be proved.

COURT: Yes, on the face of it, it appears to be an original document. I will therefore accept it on its production.

MR. SWAINE: Your Lordship, that means no further proof is necessary. I am obliged. Supreme Court of Hong Kong High Court

CLERK: Exhibit D.9.

D.W.2 – David NG Pak-shing – On former oath

Defendant's Evidence

XXN. BY MR. CHING (Continues):

No. 40

Q. Mr. David Ng, have you brought the Bought and Sold Note for the 3,226,000 shares?

David Ng Pak-shing – Cross-examination

A. Yes, I have given to my counsel.

10 Q. That is not what I was talking about Mr. Ng. You said yesterday did you not of the Bought and Sold note for the 3,226,000 shares from M.A.F. Corporation.

A. Yes, I understand it – may I explain it?

Q. Please.

A. When the shares were transferred from M.A.F. Nominees to the City Nominees they were not bought yet.

Q. I am sorry, will you pause there please . . .

A. When the shares were transferred from M.A.F. Nominees to the City Nominees they were not bought yet.

Q. The shares have not been bought yet.

20 A. It was in April, on the date between the 20th and the 30th – then the shares were taken to the Treasury for stamping . . .

COURT: Whose shares?

A. (In English) 3.226 million, my Lord.

When the shares were taken to the Treasury for stamping we informed the Treasury that the beneficial ownership had not been changed.

COURT: I think you said you asked whether in those circumstances stamping was necessary?

30 A. Yes, sir – I asked him whether the stamping was necessary under those circumstances. Then the Treasury said that if the beneficial ownership was not changed then it would not be necessary. Then we took the shares to the Registrar's for the purpose of registration and it was endorsed at the back of the Instrument of Transfer that the beneficial ownership was not changed. Then the shares were under the name of City Nominees.

Q. How many shares are we talking about at the moment, 3 million two hundred and twenty-six thousand?

A. Yes.

Q. Have you finished your explanation?

A. No.

Q. Please carry on.

40 A. So at the time when we sold the shares to James Coe the amount of 7,631,000 shares included the 3,226,000 shares.

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shing – Cross-
examination

Q. I see, so there is one Bought and Sold Note at the time when the beneficial ownership was changed including the 3.226?

COURT: What is the number of the Bought and Sold Note?

MR. SWAINE: This is already our Bundle No. 83.

Q. Please correct me if I am wrong Mr. Ng – it seems to me that what happened to the M.A.F. shares, the M.A.F. Corporation shares of 3,226,000 is that they were sold to the Syndicate, who then sold them to I.P.C. Nominee, is that right?

A. There was the Option Agreement, sir, so it went that way.

COURT: To give a simple answer, do you agree with Mr. Ching that the Syndicate bought 3,226,000 shares from M.A.F. Corporation, and then the Syndicate resold to Mr. James Coe – do you agree with that? 10

A. They were sold to James Coe through us.

Q. No, surely James Coe never bought those shares from M.A.F. Corporation did he, or did he?

A. No.

Q. So you see, there were two changes of beneficial ownership were there not – the first change being to the Syndicate and the second change being to Mr. James Coe?

A. This is the same as confirmed more in the business. 20

COURT: The Syndicate must have been beneficial owners of those shares even if only for one second?

A. Yes, I admit that.

COURT: Technically speaking that is the position?

A. Yes.

MR. CHING: My Lord, I think I will leave that. I don't think it is necessary to put this in again since it is in the bundle.

COURT: No.

Q. Now Mr. Ng, I want to take you back over a small part of the ground we covered yesterday – could you tell us this – were the Oxford Road properties ever sold? 30

A. Yes, they were later sold by the San Imperial Company.

Q. You know about when they were sold – approximately, just roughly?

A. In about July.

Q. For what price, can you recall?

A. 2.6 million dollars.

Q. And when you say it was sold by San Imperial, which actual company was the

owner of Oxford Road?

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COURT: Actual ownership.

- A. According to my memory, sir, I think the company should be the Hong Kong Estates Limited. Defendant's Evidence
- Q. What about the Bangkok Hotel, which company owned that property?
- A. According to my memory, sir, the property was owned by Oceania Company. No. 40
- Q. Oceania – has that been sold?
- A. Oceania sold the property to Siu King Cheung – sorry Oceania Company was sold to Siu King Cheung. David Ng Pak-shing – Cross-examination
- 10 Q. Was the property actually sold?
- A. Yes.
- Q. When?
- A. I cannot remember clearly.
- Q. Very roughly.
- A. It was done by Siu King Cheung Company – I think it was at about the end of August.
- Q. For how much, so you know?
- A. 7.4 million dollars.
- 20 Q. I see – will you please look at document 9 again in the Yellow File 1 – you remember we looked at this yesterday, and this involves the Connaught Road property.
- A. Yes.
- Q. I am going to read to you Mr. Ng, a passage from the evidence of Mr. Ives, when he gave evidence in chief on the afternoon of the 2nd of November. Mr. Swaine said he was going to ask Mr. Ives about Oceania and directed his attention to that document – document 9. Mr. Swaine then asked or said to Mr. Ives, “You said that the Syndicate thought the Agreement was not advantageous to Oceania?” And Mr. Ives’ answer, “Yes”. That is to say not the cancellation of the agreement, but the Agreement of the 18th of January.
- 30 A. Yes.
- Q. Now were you consulted about whether or not the Agreement of the 18th of January, which is at page 2 onwards of document 9, were you ever consulted as to whether or not that was advantageous or disadvantageous to Oceania?
- A. Who consulted?
- Q. The three members of the Syndicate.
- COURT: Syndicate – better use the word Syndicate.
- A. I don't remember whether or not I was consulted.
- 40 Q. You cannot remember whether or not you were consulted? The next question that Mr. Swaine asked Mr. Ives was this:– “Did the syndicate do anything about it?” That is to say do anything about the Agreement of the 18th of January, and the answer that came from Mr. Ives was, “Yes, both Ho Chapman and David Ng carried out certain negotiations with the M.A.F. group and the San Imperial group to see if the Agreement could be cancelled.” Did you in fact carry on any negotiations about cancelling that agreement?
- A. I discussed with the San Imperial group, I asked them if the Agreement could

be cancelled, but I don't know whether or not the San Imperial group had asked the M.A.F. group about that.

Q. Did you carry on any negotiations with the M.A.F. group about cancellation?

A. I cannot remember now whether or not I have discussed with the M.A.F. group, sir, but I have asked the San Imperial group to ask M.A.F. group about it.

Q. Who did you ask in the San Imperial group?

A. I asked Dr. ONG and Mr. LUK.

Q. Is this Dr. ONG the or that is spelt OOI?

A. Yes.

Q. The next question that Mr. Swaine asked Mr. Ives . . .

10

COURT: OOI – if you use Cantonese spelling it is very confusing – LOKE.

INTERPRETER: L-O-K-E.

Q. The next question that Mr. Swaine asked Mr. Ives was, "In the event was it cancelled?" Answer, "Yes." "Is that the top page of document 9? Answer, Yes." You see that passage in Mr. Ives' evidence in chief, Mr. Ng, it certainly seems to me to mean that you negotiated the cancellation and you knew about the cancellation, document 9, at all material times – is that the right impression that I got?

A. Yes, I knew it and I did negotiate with those people.

20

Q. You see yesterday when I was asking you about your interview with a newspaper reporter resulting in document 57, you said that at the time you gave the interview you had no knowledge of document 9.

A. I have already said yesterday that this document 9 is an Option Agreement, sir, and it is not to dispose the properties.

Q. Could we please stick to the point Mr. Ng – do you recall saying yesterday that when you gave that interview resulting in document 57, that you had no knowledge of document 9?

A. (Long pause) Are you telling me or is this a question sir?

Q. Sounded like a question to me Mr. Ng.

30

A. Well then I will answer it. Perhaps this is due to my negligence, sir.

Q. I see.

A. Or I could not remember this document at that time.

MR. SWAINE: I think the answer was, 'I cannot remember if I knew it at the time' rather than a positive 'I could not.'

Q. Very well whatever – would you agree with your counsel?

A. Yes.

Q. Would you look at page 8 please of the Agreement of the 18th of January, which is part of document 9, which is the Schedule – do you see the first two figures are five million dollars and \$1,500,000 – do you see that?

40

A. Yes.

Q. The five million dollars – have you ever seen any cheque or any other document showing that it was paid by Oceania to M.A.F. Investment?

A. I have no knowledge of this.

- Q. You see what it seems like to me Mr. Ng, although possibly you may say you have to knowledge of this, is that that five million dollars was never paid. Mr. HO Chung Po was then in trouble because he had to account for the five million dollars, the Agreement of the 18th of January was then entered into for the express purpose of it being cancelled later thereby to kill two birds with one stone, to account for the five million dollars and to pay on the face of it 4.8 million dollars for the shares – that is what it looks like to me – do you agree with that?
- A. That I don't know, sir.
- 10 Q. Well possibly this may assist you – will you look at Yellow File 4 – I think it is document 38 – I don't have the page number of mine – it is a letter dated the 17th of July. Do you see the signature within the chop M.A.F. Investment Limited?
- A. Yes.
- Q. That is HO Chung-po isn't it?
- A. Yes, I can recognise his signature.
- Q. Just below that "Agreed by: Hong Kong Estates Ltd." – that is the signature of CHOO Kim-san, isn't it?
- A. I can recognise that this is his signature.
- 20 Q. CHOO Kim-san on behalf of Hong Kong Estates agreeing with M.A.F. Investment through his nominee, HO Chung-po, and the date is 17th of July, 1976 – that of course, you agree Mr. Ng, was before Mr. CHOO Kim-san absconded from the Colony?
- A. Yes.
- Q. But after he had been arrested and charged and let out on bail?
- A. I believe so.
- Q. You see, it says, "We understand you are interested in purchasing the building known as Loong San Building", and gives the address.
- 30 "We agree to let you have an option to purchase at the price of \$14,000,000.00 at the date of completion. We are prepared to accept a deposit of \$5,000,000.00 and further deposit may be necessary if required from time to time, which is refundable to you without interest or compensation in case you exercise the option not to purchase or the option is cancelled."
- Do you see that.
- A. Yes.
- Q. Possibly you may say again you don't know, but you see it was arranged in July 1976 after he was arrested before he jumped bail, yet the agreement did not come into existence until the 18th of January only to be cancelled, which is very coincidental, dates and figures on the . . .
- 40 A. It is true that I don't know anything about it.
- Q. All right – you don't know anything about that?
- A. I know nothing about this letter, document 38.
- Q. Well since we got on to this question about financing and refinancing, you recall that you were supposed to go out with the Loan Agreement of James Coe and his 23 million Choo Kim-san shares and try to raise some money for the refinancing?

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- A. Yes.
- Q. When did you know that you had failed to obtain a refinancing?
- A. In June – in the middle of June.
- Q. Middle of June – can you give us some more precise date?
- A. I think it was on or about the 20th of June, at the time when my last request was refused – at that time I asked two banks for loans, sir.
- Q. But you had written a cheque on Bentley's Securities for 4.8 million?
- A. Yes.
- Q. Dated the 17th of June?
- A. Yes. 10
- Q. Why was it never presented on the 17th of June?
- A. Because the bank had not agreed to lend me the money – at first the bank people said it is all right – it is all right – it is all right, but eventually they refused to lend me the money.
- Q. To put it shortly, you told James Coe – sorry you told M.A.F. Corporation not to present the cheque, is that right?
- A. That cheque was drawn to the Oceania Company.
- Q. So you told Oceania please not to present the cheque?
- A. Because the bank had not agreed to finance.
- Q. I see – why did you write a cheque on Bentley's Securities rather than on your own personal account? 20
- A. That is because the bank said that it would be better for a loan to be lent to a company instead of a person.
- Q. I see – you borrowed 3.8 million from James Coe?
- A. Yes.
- Q. Do you know from where he got the money?
- A. That I don't know.
- Q. You have no idea whatsoever?
- A. He said that he had fixed it up and he could lend the money to me so why should I ask him about it. 30
- Q. Did Mr. WONG Luk-bor have anything to do with the raising of the money?
- A. If there was anything, sir, it was something between Mr. James Coe and himself – it had nothing to do with me at all, sir.

MR. CHING: May I have a moment, your Honour.

Do you know a Mr. IP Ping-wai?

- A. Yes.
- Q. What does he do for a living?
- A. He buys and sells shares.
- Q. Is he an employee of yours?
- A. He was a representative of my company in the Stock Exchange. 40
- Q. He is or he was?
- A. He is.
- Q. He is your authorised clerk or whatever he is called in the Stock Exchange?
- A. Yes.
- Q. Do you know a Mr. CHAN Tsang-kin?
- A. What is his name in Chinese?
- Q. CHAN Tsang-kin?

- A. No.
- Q. Have you ever heard of a company called Lai Wai Company?
- A. No.
- Q. Do you know of a person called S.W. Cheung?
- A. No.
- Q. All right – would you look at Yellow File 5 please – Yellow File 4, I am sorry, Document 33(a) – there are a number of documents 33(a) – look at the first one – Memorandum of Deposit – just look at the first one – there you see Memorandum of Deposit to Oceania Finance & Land Corporation Ltd., and it was WONG Luk-bor, your employee, who was depositing certain securities with Oceania in return for a loan. Do you accept that from me rather than reading the whole thing through – it will take a long time.
- 10 A. Yes, yes.
- Q. Would you look at the third page, you see it is dated 27th of June, 1977 – all right, the third page of that same document, 27th of June, right? Would you look at the fourth page, you will see that he acknowledges receipt of 1¼ million dollars from Oceania – could I help you perhaps – that acknowledges receipt of 1¼ million dollars, and then rather strangely in the second paragraph asks that the amount be forwarded to Ming Kee – that means he has not got it at all?
- 20 A. I think it is better for Mr. Coe to explain about this.
- Q. Yes, he is an employee . . .
- A. If you ask him, sir – I don't know anything about it.
- Q. I see, you don't know anything about your employee, WONG Yuk-por who appears to live at 21, Section 3 Fuk Wah Village, Ngautaukok in Kowloon, borrowing 1¼ million dollars at ¾% per month interest from Oceania, you don't know anything about that?

COURT: Where does the name WONG Yuk-por appear – does his name appear on it?

30 MR. CHING: Yes, the very first page – there are a number of 33(a)'s my Lord.

COURT: I am on the wrong one.

MR. CHING: It is the very first one 33(a).

COURT: They are all 33(a)'s.

MR. CHING: I am afraid they are all 33(a) – it is not a very good idea – WONG Luk Bor.

INTERPRETER: He said I know nothing about it.

- Q. You knew nothing about it?
- A. I knew nothing about it.
- Q. And this is the first time you have heard about it?
- 40 A. That is right.
- Q. The next page after that, the receipt page, this is the securities which he has

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deposited – the Howard Land Investment Company Ltd. Shares – what is the Howard Land Investment Company Ltd., do you know?

A. I don't know. I think it is better to ask Mr. Coe about it.

Q. The next page appears to be a bill for interest, all right – the page after that is a receipt for the interest and the next page finally on the 27th of October, your Mr. WONG Luk Bor pays back 1¼ million dollars, right?

A. I know nothing about it.

Q. You don't know – you see it is dated 27th of October 1977 – as a matter of interest when was the three million dollars finally paid to the Syndicate?

A. I can remember that it was paid on the 26th of October.

Q. A day before your employee Mr. WONG Luk Bor returns the loan of 1¼ million dollars?

A. Yes.

Q. Look at the next document 33(a) please – there we have your authorised clerk in the Stock Exchange, Mr. IP Ping Wai again depositing securities for a loan. Did you know anything about that?

A. No.

Q. Look at the third page please, dated the 27th of June, isn't it?

A. Yes.

Q. Look at the fourth page please – again he acknowledges receipt of 1¼ million and in the second paragraph says – well I haven't got it yet, isn't it Ming Kee Trading Company Limited – your Mr. IP lives at – your employee Mr. IP who lives at 100 Fu Tau Wat Village in Shaukiwan, borrowing \$1,250,000.00 – you knew nothing about it?

A. I know nothing about it.

Q. Look at the next page please – that lists the securities which Mr. IP had deposited, you see – it is Siu King Cheung Hing Yip Company Limited Shares – do you know if those were shares belonging to Mr. James Coe?

A. Yes, Siu King Cheung Company was actually Mr. Coe's company.

Q. No, listen to the question please – were those shares listed there the property of Mr. James Coe?

A. I believe so.

Q. But Mr. Ng, how has that come about, because you told the court that James Coe had given you 23 million shares in Siu King Cheung, which was his entire holding in Siu King Cheung – so does this mean that you had given Mr. IP Ping-wai two million odd shares to raise the loan?

A. Actually I don't know how many shares Mr. James Coe had.

Q. But Mr. Ng, you gave it in evidence the 23 million was the entire share holding of Mr. James Coe – do you wish to resile from that?

COURT: No, let me remind you – I think I asked you about this to clarify.

MR. CHING: Indeed your Lordship asked it was all he had or so far as he knew was all he had.

COURT: You did say it was a controlling interest, but you agreed.

Q. If that be true, Mr. Ng, then it must follow that you gave some shares to Mr. IP to raise the loan doesn't it?

- A. No, I did not.
- Q. All right – look at the next page please – there we again have a bill for interest, page after that the interest is paid, page after that again one day after you have paid your finder’s fee, your employee who lives in Shaukiwan in the Fu Tau Wat Village pays back 1¼ million dollars – you knew nothing about it?
- A. No.
- Q. All right, we leave that. Now Mr. Ng you borrowed 3.8 million but you wrote out cheques for 4.8 million using the one million dollars that James Coe had deposited with you to buy shares on the market for him?
- 10 A. Yes.
- Q. Did you have his permission to use his own money to pay him or buy shares in this way?
- A. That one million dollars was paid on account. I asked him if that one million dollars could be used and he said it could.
- Q. I see – so in fact you borrowed in effect 4.8 million dollars from him not 3.8 million?
- A. You cannot say that it was a loan because interest was charged on the 3.8 million but not on the one million dollars.
- 20 Q. You borrowed a further 780,000 dollars from him – what was that for?
- A. I cannot remember what that money was for, but I can remember that when I needed money I asked him to return some money to me.
- Q. Mr. Ng, do you often borrow 780,000 dollars and then three or four months later forget what you wanted it for?
- A. No.
- Q. It is not \$780.—, you see, it is 780,000 dollars, one half of what you estimate to be your net worth apart from the profits you hope to gain from these transactions and you cannot remember what you wanted the money for?
- A. If you give me the bank statement then I will be able to explain it to you.
- 30 Q. No, I don’t want you to explain anything Mr. Ng – I want you to tell us for what purpose did you borrow the 780,000 dollars?
- A. I will have to think it over first.
- Q. When did you borrow it firstly, approximately?
- A. In about July.
- Q. Beginning, middle or end of July?
- A. At about middle of July.
- Q. Four months ago – you have to think do you – you have to think why four months ago you borrowed 780,000 dollars?
- A. Now I can remember.
- 40 Q. Now you can remember – I am glad I could refresh your memory so quickly.
- A. Some of the money was used for repayment for the purchase of shares through private arrangements.
- Q. What shares?
- A. San Imperial shares.
- Q. To whom did you pay this – was it Chow and Wong?
- A. Those people who sold those shares to me.
- Q. In Hong Kong?
- A. Yes.
- Q. Did you make these purchases on your own behalf or on behalf of the Syn-

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dicate?

A. The Syndicate.

Q. But how could that be Mr. Ng when both in the opening by your counsel and in your evidence you have said that that loan had nothing to do with the Syndicate – it was your own personal loan?

A. This 780,000 dollars was included in the amount of 4.58 million dollars.

Q. Well bad though my mathematics may be, Mr. Ng, even I could add that up. That is all you want to say about it, all right I won't labour the point.

A. I even used the 4.58 million – I used the 4.5 million dollars in three cheques to pay for the loan, sir.

Q. All right – Mr. Ng you attended quite regularly, did you not, at court during the interlocutory stages of these and the related proceedings?

A. You mean at the first stage – at the time of the opening?

Q. No, I mean the interlocutory stages when there were injunctions and allegations for security and things like that, in 159, for instance?

A. But after I received the documents I handed them over to my solicitors. No, that was heard in chambers, so how could I go into chambers?

Q. No, don't please, Mr. Ng, did you attend at court, at the court building, not this court, any court?

A. Victoria District Court – yes I have been to V.D.C.

Q. Yes, how many times did you think you attended – approximately?

A. Many times.

Q. Many times and you saw, on those many times, did you not a gentleman called Christopher Wilson?

A. At first I did not know that he was Mr. Wilson.

Q. You knew he was a European?

A. Yes.

Q. Rather stout?

A. Not really, sir.

Q. You wouldn't describe him. . . .

A. Not as stout as I am.

Q. You wouldn't describe him as being thin would you?

A. No.

Q. You wouldn't describe him as being thin, would you?

A. No.

Q. Nor yet would you describe him as being average, would you? He's on the heavy side, isn't he?

A. For Europeans he is only on the average.

Q. He wore spectacles.

A. Yes.

Q. Mr. NG, Christopher Wilson gave it in evidence that he never met CHOW Chaw-I and that at the material time there was no other European solicitor from Messrs. Johnson Stokes and Master in Taipei. I noticed that in your evidence-in-chief in this court and in the hearsay notice in brown file 1 page 9, you hadn't given any description other than that he was a European solicitor, but you swore an affidavit in red file 2 page 50 in which you did give a description. Look at paragraph 26 which you will find on page 55. Earlier in the affidavit you have mentioned LEE Ing Chee's affidavit and then you say in paragraph 26:

“26. After reading the said affirmation, I telephoned Mr. Chow to see if what Lee Ing Chee said therein in paragraphs 22 to 27 were true and he told me that they were not. He said at the first interview Hwang was alone, and at the second interview Hwang was with a European solicitor who was described as stout and bespectacled.”

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Now how do you think Mr. CHOW was able to give that description: stout and bespectacled European solicitor?

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A. Mr. CHOW told me that and I passed that to the solicitor.

10 Q. Mr. NG, Christopher Wilson wasn't even challenged about his not seeing CHOW. He wasn't challenged about no other European solicitor from Johnson Stokes being in Taipei at the material time. How would you think that CHOW was able to give a description: stout bespectacled European solicitor?

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COURT: When was this?

MR. CHING: July, filed on the 27th of July.

A. How do I know?

Q. You don't know.

A. This is what he told me and so I told my solicitor.

Q. You see, Mr. NG, given that Christopher Wilson is telling the truth, then Mr. CHOW must be lying, that's right, isn't it?

20 A. Yes, vice versa: if Mr. CHOW told the truth, then Mr. Wilson must be lying.

Q. You can forget that vice versa. And if he was lying, isn't it strange that he should say "stout bespectacled European solicitor"? Why not a thin bald, hawk-like European?

A. I told my solicitor what Mr. CHOW had told me.

Q. You saw Christopher Wilson often. You spoke to CHOW on the phone. CHOW never saw Christopher Wilson. I suggest to you that that description was inserted by you, by you alone, and that you were never told it by CHOW.

A. No.

30 Q. Of the two of you, Mr. CHOW and Mr. David NG, you were the only person who could describe Christopher Wilson, were you not?

A. Mr. CHOW could also describe him if he had seen Mr. Wilson before.

Q. Mr. Wilson wasn't challenged on that, you see, so you can forget that. So you were the only person between the two of you who could describe Mr. Wilson, right? A deliberate lie told by you in the affidavit, wasn't it?

A. No.

Q. A simple case of manufacturing evidence because you thought that Wilson has gone up there. I will just put it in.

A. How did I know that Wilson had gone up there, sir?

40 Q. All right. Now let's go back in time, Mr. NG. So far as you were concerned, you were going to try to buy CHOO Kim-san's shares, is that right?

A. Yes.

Q. You knew that, but to begin with, CHOO Kim-san had bought 51 per cent of San Imperial from Harilela.

A. More than 51 per cent.

Q. And then when Harilela took over Bladon, Harilela paid in part by giving up

yet more San Imperial shares to CHOO Kim-san.

- A. Yes.
Q. And you – to adopt your counsel's words – you made no bones about it: you were out to buy the shares of CHOO Kim-san from CHOO Kim-san.

COURT: The syndicate.

- A. Yes.
Q. And you wouldn't care even if you were dealing with nominees.
A. At that time I suspected that Mr. CHOW was Mr. CHOO's nominee.
Q. Yes, you have said that, but please, Mr. NG, you didn't care even if he was a nominee because you were willing to buy from CHOO Kim-san himself. 10
A. That's right.
Q. I suggest to you that CHOW, HWANG, LEE and FONG were all nominees of CHOO Kim-san.
A. Later I found that they were not.
Q. Oh dear. I suggest to you not only that they were nominees but that you knew at all material times that they were nominees of CHOO Kim-san.
A. No, later I found that they were not.
Q. You told us that when you first met CHOW you asked him why he bought the shares. He did not give you any answer to that question, did he?
A. He did not explain to me in detail. It is because it was not necessary. 20
Q. It wasn't necessary because you knew he was a nominee.
A. I have already said that I suspected that he was Mr. CHOO's nominee.
Q. Did you ask him at any time how much he had paid for the shares?
A. At first I knew nothing about it. Later I learned that he had paid for the shares. If you want me to tell you everything I can tell you, sir.
Q. Just a minute. Have you told your lawyers of these details? Just answer that question yes or no.
A. Not very much in detail, sir. I just told my solicitor the gist.
Q. Has it been explained to you that part of the case of LEE Ing Chee and LEE Kon-wah is that CHOW and HWANG were nominees? 30
A. Yes, this is what they said.
Q. Surely, Mr. NG, you see, we have no hearsay notices about what CHOW may have told you, about how much he paid.
A. This was done by the lawyer, sir.
Q. You told your lawyers about certain conversations that you had with CHOW, is that right? Just answer yes or no, please.
A. Yes, I did.
Q. You told your lawyers about details of those conversations which would tend to show that CHOW was not a nominee. You told your lawyers, is that right, yes or no? 40
A. Yes, I did.
Q. So your lawyers made a mistake in not giving me any hearsay notices about any such conversation, is that right?
A. I don't know whether this is necessary according to the legal procedure, sir, but I have told you everything.
Q. You told your lawyers everything?
A. The gist; I told the lawyers the gist of what had happened.

- Q. Didn't they ask you for details?
A. Nothing particular, sir.
Q. When did you ever ask CHOW how much he had paid?
A. I can remember that should be after the agreement was signed.
Q. Why not ask him before?
A. At first I did not know him very well because the transaction was not done yet, sir. It would be rather odd for me to ask a person like that.
Q. Not at all. It would be a good bargaining weapon, wouldn't it, to ask him how much did you pay, if he says 20 cents then you can say, "Really, you can't expect 300 per cent profit, can you?"
10 A. Perhaps, you, Mr. CHING, do not understand much in doing business because he would not like to tell me that.
Q. But why didn't you ask him?
A. Even if I asked him, he won't have told me the truth. This is business.
Q. Why didn't you ask CHOO Kim-san how much CHOW had paid for the shares?
A. I have already said that in my evidence-in-chief that when Mr. CHOW was speaking to me he was not really friendly with me.
Q. And you felt that you couldn't ask him?
A. Even if I asked him, it would be useless.
20 Q. Did you ask the woman whom he introduced as his wife?
A. No.
Q. Did you ask Madam LAU?
A. No.
Q. Did you ask LEE or FONG how much they had paid?
A. No.
Q. Because you knew that all four of them were nominees?
A. No.
Q. Did you ask CHOW how he had authenticated the share scrips and the transfer forms? How did he find out that they were genuine?
30 A. At that time I told Mr. CHOW that those share certificates could be false or forged and he also agreed. This is why the share certificates were examined later.

COURT: That wasn't the question. Did you ask him how he had authenticated the shares? (to interpreter) How he had authenticated, not how this was to be done. How CHOW had.

A. I asked Mr. CHOW if he knew whether or not they were genuine certificates.

COURT: And you asked him that?

- A. Yes.
Q. You weren't embarrassed at asking him that. He was a man offering to sell you goods and you are saying to him – you asked him, "Are these genuine goods?" You wouldn't embarrass him to ask him that?
A. No, my motive is to help him.
Q. Your motives are to help him when you asked him, "Are these shares genuine or not?" You don't think it bears the implication – the necessary implication that Mr. CHOW might be selling you, knowingly selling you sham goods?

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A. This never occurred to me.
Q. Did you ask LEE and FONG whether they had ever authenticated their shares?
A. I can't remember whether or not I asked him, sir, because when I talked about LEE and FONG, I was not allowed to go on. I was told to go out of this court.

Q. And because of that you cannot remember whether you asked them, is that right?

A. No, no, no.

Q. Then please do answer the question.

A. I didn't mean this.

Q. Well say what you mean please. Did you ever ask them?

A. No.

Q. Why not?

A. I don't know why I did not ask them.

Q. \$433,000 – somewhere between 1/4 and 1/3 of your entire worldly goods. You were paying out to two total strangers bearing in their hands share certificates alleged to have come from a fugitive from justice and you paid them without even enquiring as to whether or not they had authenticated their certificates, is that right?

A. I have already told the court that the transaction was through Mr. CHOW.

Q. And so?

A. Even if when I came back I found the share certificates to be false, I could go to Taiwan again to ask Mr. CHOW about it.

COURT: Did you know how much Mr. CHOW was worth, how wealthy or good he was?

A. I know he is a rich man, sir.

MR. CHING: I wondered if I could ask the shorthand writer, my Lord, to read out the answer before that.

COURT REPORTER: "Even if when I came back I found the share certificates to be false, I could go to Taiwan again to ask Mr. CHOW about it."

COURT: (to interpreter) What the witness said in Chinese "Then I could ask Mr. CHOW to return the money to me."

Q. Is that right?

A. Yes, sir.

Q. All right. I have got that down and I will come back to it later. You asked Mr. CHOW right at the beginning why he had paid the shares. He never told you.

A. That's right, he did not tell me.

Q. And indeed you told this court that he didn't seem to know anything about the company at all.

A. This is what had happened on the first occasion. I have told the truth.

Q. Did you ask him why he had never caused the shares to be registered in his own name?

- A. No.
- Q. Why not?
- A. It happened like this and I have told the truth, sir.
- Q. You never asked him how much he had paid, you never asked him if they had been authenticated, you got no reply as to why he had bought them, you never asked him why he had never registered them in his own name. There can only be one answer, can there not, Mr. NG? He was a nominee and you knew full well he was a nominee and that is why you never asked.
- A. No.
- 10 Q. Did you ever ask CHOO Kim-san what he had done with the rest of his shareholdings, the rest of his 51 per cent plus?
- A. Yes, that was many years ago, sir. Many years ago I asked him about that. That was the 51 per cent he purchased from Mr. Harilela's controlling interest of the company.
- Q. Now since you have seen fit to get this testimony from Madam LAU – I think it is Exh. D9 – I assume correctly, do I not, that you think that she is creditworthy? Since you have gone to the trouble of getting a testimonial from Madam LAU, do I assume correctly that you think that she is creditworthy?
- A. Yes.
- 20 Q. Look at paragraph 3 and paragraph 4 of D9, please”:

“(3) In or about the early part of the 11th Month (November) of the same year, Mrs. Choo asked me to meet her in the Coffee Shop of Wah Kwok Hotel, where she introduced to me her husband, Mr. Choo Kim San (hereinafter called Mr. Choo).

(4) Mr. Choo expressed that his business in Hong Kong was in some difficulties, he wanted to sell some shares which belonged to his group of Companies (it was known later that they were San Imperial Co's Shares) and he asked me to help him to find a purchaser.”

You think that is true, do you?

- 30 A. Yes, I believe so, sir.
- Q. You believe so. Paragraph 5:

“(5) Several days later, I introduced Mr. Choo to a Mr. Chow Shiu Yee, who was a merchant from Taipei, they discussed about the purchasing and selling of the said shares.”

Do you think that is true?

- A. Yes, I believe so.
- Q. Well let's see then what the ramifications are, Mr. NG. First of all, those paragraphs, if true, say that CHOO Kim-san did not know CHOW Chaw-I before November last year. That is right, is it not?
- 40 A. Yes, I believe so.
- Q. The second thing is that here was Mr. CHOO, a stranger to Mr. CHOW, who had said that his business in Hong Kong was in some difficulties, so this man CHOO was a man who was a stranger to CHOW and he was a man whose business in Hong Kong was in some difficulties, right?

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- A. Yes, according to the paragraphs here, yes.
- Q. So what it means overall is that Mr. CHOW, a stranger to Mr. CHOO, bought from Mr. CHOO shares in a company in Hong Kong which was in difficulties, is that right?
- A. Yes, I believe so.
- Q. And you believed that to be true?
- A. Yes.
- Q. A stranger who knows nothing at all about the company, is introduced to a person who says, "My business in Hong Kong is in difficulties, I want to sell you my shares" and the stranger buys them, just like that, without having them authenticated. 10
- A. Yes, what is the question, sir?
- Q. You believe that?
- A. I believe so.
- Q. Now I have been through all this with Mr. Ives. Mr. NG, I trust it won't be necessary to go through it with you, but you will agree with me, will you not, that CHOW and Hwang have lost control of Fermay? I do want to finish you this morning, Mr. NG, but if you insist.
- A. Let me think over it.

COURT: Actually Mr. CHING, the point is abundantly clear. 20

MR. CHING: I'm much obliged. It is a matter of this man's credibility.

- Q. I am not going to waste time. Will you agree, yes or no, they have lost control of Fermay – blank instruments of transfer, resignations, all of this.
- A. Yes, I agree, sir. They are all with the solicitor in the firm.
- Q. Mr. NG, why did you sign the first and third pages of document 17 in yellow file 1? Why did you sign it. Transfer forms, why did you sign?
- A. Mr. CHOW agreed that I could sign my name there.
- Q. You signed it on behalf of Fermay?
- A. Yes.
- Q. Were you a director of Fermay at that time? 30
- A. Not yet.
- Q. Were you a shareholder of Fermay at that time?
- A. No.
- Q. Why did you sign?
- A. He agreed that I could sign my name.
- Q. But why did you want to sign?
- A. He told me to sign my name there and I agreed to.

COURT: Who told you to sign?

- A. Mr. CHOW agreed that I could sign my name.
- Q. Oh no –. 40

COURT: That is not –.

- A. He said to me, "You sign it."

COURT: That is not good enough.

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Q. It is a lot different from saying he agreed, isn't it? Mr. NG, let's cut this short. You signed and because you signed the Registrar would only recognize your signature on any subsequent transfer.

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A. It may be so, sir.

Q. What do you mean "it may be so"? You are a stockbroker, aren't you?

A. I mean to say that this might be what Mr. CHOW thought at that time.

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Q. So he wanted to lose control of the shares at that time by letting you sign and having your signature as the only recognized signature, is that right?

10 A. After it was signed by me, Mr. CHOW got someone else to bring this document back to Hong Kong for the transfer.

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COURT: You have said that. Well in fact you really had no authority to sign on behalf of Fermay, that's right?

A. That's right, but there was a meeting.

COURT: Strictly speaking, you were not authorised to sign?

A. Right, sir.

MR. SWAINE: My Lord, without seeming disrespectful, there is already a minute authorising anyone of the syndicate to be authorised signatories for the company.

20 MR. CHING: Document 14.

COURT: Yes.

MR. CHING: That was the one that was backdated. I think your Lordship was right.

MR. SWAINE: It was on the 23rd. The minute was drawn up after this.

Q. Mr. NG, please let's not get away from the point. It really is a very very simple point. You signed the transfer form and therefore the only signature for subsequent transfers that the registrars would recognize would be yours?

A. Yes.

30 Q. I'm not going to waste time, Mr. NG, asking you why you think CHOW and HWANG were not nominees. Now what I want to do with you now, Mr. NG, is to run very quickly through the timetable and please if I make a mistake, please tell me, otherwise please just answer yes or no. I want to get the schedule straight, all right?

A. Yes.

Q. You were first contacted by HO Chapman in November or December?

A. Yes.

Q. Then there was a lunch meeting?

A. Yes.

Q. And then you made enquiries at the share registry or whatever it was.

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- A. Yes.
- Q. Where was it by the way? What did you check by the way? The share ledger, the account sheets or what?
- A. The share register.
- Q. And then you saw this large block of shares in Asiatic and you thought they were still CHOO Kim-san's?
- A. Yes.
- Q. You went down and then there was a second lunch where you reported it?
- A. Yes.
- Q. And it was decided you should try and find CHOO Kim-san? 10
- A. Yes.
- Q. You tried to find him in Bangkok but failed?
- A. Yes.
- Q. And then you went straight away, you came back to Hong Kong, you went straight away to Taiwan on the 30th of December – not straight away, but almost immediately?
- A. Yes.
- Q. On your first visit to Taiwan, you saw CHOO Kim-san on the 30th of December?
- A. 31st. 20
- Q. I beg your pardon! 31st you saw CHOO Kim-san.
- A. Yes.
- Q. You met CHOW and HWANG the same day.
- A. Yes, in the afternoon.
- Q. And you discovered that CHOW and HWANG were willing to negotiate?
- A. Yes.
- Q. He told you then that he had ten odd million – I think it was the expression.
- A. Yes.
- Q. But you didn't discover exactly how many.
- A. He did mention a figure to me. He said it was about 15 million shares. 30
- Q. I think he said about 15 million, all right.
- A. Yes.
- Q. And the price was not agreed on that occasion?
- A. We haven't mentioned about the price yet.
- Q. You hadn't mentioned about the price, all right.
- A. Because it was not necessary to mention about the price at the first time.
- Q. Then you came back to Hong Kong and on the 3rd of January you started buying on the Hong Kong market.
- A. Yes.
- Q. And on the 4th of January there was a lunch meeting, the syndicate discussed what you had discovered. 40
- A. Yes, made a report.
- Q. Made a report. Just as a matter of interest, Mr. NG, paragraph 9 of your Defence says that the syndicate was formed in January. Would you say that the syndicate was formed at that lunch meeting on the 4th of January?

COURT: Do you agree or not?

- A. Yes, we agreed to buy shares.

- Q. In so far as it is possible to put a date on it, then that would be about the right date? Supreme Court of Hong Kong High Court
- A. Yes.
- Q. Your first visit to Taiwan was the 30th of December to the 1st of January.
- A. Yes. Defendant's Evidence
- Q. Your second visit to Taiwan then was the 9th to the 13th of January?
- A. Yes.
- Q. And on what visit CHOW indicated he wanted over \$1.00 a share. No. 40
- A. Yes.
- 10 Q. And you just told him "that's too much". There was no bargain. No bargain, no conclusion as to the price. David Ng Pak-shing – Cross-examination
- A. That's right.
- Q. At that time you were shown – on that visit, I mean, you were shown some of the certificates, but no transfer forms.
- A. Yes, this is what I can remember.
- Q. And you didn't know whether they were genuine shares or the exact amount that he said he had. He said about 15 million.
- A. Yes, that is right. He showed me some certificates, not all.
- Q. Now the third visit then, 23rd to 27th of January.
- 20 A. Yes.
- Q. You asked him how many he had purchased. He gave you no answer and therefore you still didn't know the exact number of shares that he had.
- A. No, you may be wrong, sir, because I have said that he did mention about it.
- Q. You see, that surprised me because from my notes you weren't told that the amount was 15 million. You were told some time later.
- A. I did say that on the third trip to Taiwan it was mentioned. I did say that the amount of 15 million shares was mentioned and I also said that his friends had some more shares.
- Q. All right. Let's take it slowly. So you say you were told about 15 million at that time.
- 30 A. Yes.
- Q. He still wanted a dollar and you counteroffered to 40 cents.
- A. Yes.
- Q. And you went to the banks to try and get a loan on the shares for the purposes of authenticating the certificates.
- A. Yes, I went with him, sir.
- Q. And on that third visit, you saw the transfer forms. You took xerox copies and brought them back to Hong Kong, is that right?
- A. Yes.
- 40 Q. And you were told that a friend of his had 515,000 shares which he wanted to sell together with the 15 million.
- A. Yes.
- Q. That takes care of the third visit. Now the fourth visit, 9th of February to 13th of February. You took up a draft contract which is Exh. P10 – you could have a look at it if you want to – for 15,515,000 shares. Do you recall? The draft contract, and CHOW said that it was unreasonable – that contract was unreasonable.
- A. I was talking to him with the agreement in my hand and I mentioned the terms and he said that it was not reasonable.

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- Q. Not reasonable. What was he objecting to – the price or the terms of payment or what exactly did he say, first of all?
- A. Both the price and the terms of payment.
- Q. I see. Just about everything was wrong?
- A. Yes.
- Q. On that visit, the fourth visit, you agreed to buy 515,000 shares at 20 cents, less brokerage and less stamp, is that right?
- A. Yes.
- Q. And you agreed that you would pay for them on your next trip?
- A. Yes. 10
- Q. On your return to Hong Kong, the idea of Fermay was suggested and agreed amongst the syndicate.
- A. Yes.
- Q. Your fifth visit then, 27th of February to 2nd of March. You paid for the 515,000 shares.
- A. Yes.
- Q. You paid CHOW on behalf of his friends.
- A. Yes.
- Q. You agreed to buy a further 1,650,000 shares at 20 cents again less stamp and less brokerage. 20
- A. Yes.
- Q. I think something was left out, Mr. NG. You perhaps would supply it now. On that fifth visit, was there an agreement that you should pay for the 1,650,000 on your next trip?
- A. Yes, it is a verbal agreement.
- Q. Orally agreed.
- A. Yes.
- Q. Now please correct – you have already corrected me I think, but you see my notes say that on this visit, the fifth visit, it was the first time you discovered that CHOW had 15 million in fact. You say that is wrong. 30
- A. It had been mentioned at the time when I talked to him with the agreement in my hand.
- Q. You must be right. That must be, my mistake, I'm sorry, and you bargained about the 15 million, he wanted 80 cents you offered 60 cents.
- A. Yes.
- Q. You left without there being a conclusion.
- A. Yes.
- Q. But he telephoned you on the 5th of March and said, "I agree, 60 cents."
- A. Yes.
- Q. So you went up again on the sixth visit, 22nd of March to the 26th of March. 40
Did you pay for the 1,650,000 shares then?
- A. Yes.
- Q. And you paid CHOW on behalf of his friends?
- A. Yes.
- Q. And you took up all the documents you have told us about and they signed them and that sort of thing and they agreed to the idea of Fermay.
- A. The idea of forming Fermay Company had already been mentioned to him on the fifth trip.
- Q. And he had agreed on the fifth trip?

- A. Yes. Supreme Court
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- 10 Q. So on the sixth trip, as a result of that agreement, you brought up all these documents for him?
- A. Yes.
- Q. And he said he would see to it that the certificates and transfer forms would get to the registrar himself, he would see to that part of it? Defendant's
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- A. Yes.
- Q. And of course he signed document 16A, the contract on the 23rd of March, he and his wife signed. No. 40
- 10 A. Yes.
- Q. So for the very first time then, on the sixth visit, there was an agreement between you for the syndicate and CHOW and HWANG concerning the 15 million shares, subject only to the question of proof of the shares and the payment and that sort of thing. David Ng Pak-
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- A. Yes.
- Q. And did you sign the transfer forms, document 17, on that occasion?
- A. Yes.
- 20 Q. Now I am not interested in the 7th or 8th visit, Mr. Ng, so I am not going to ask you about them, but I suggest to you – Mr. Ng, I have already suggested to you that Chow and Hwang were nominees, I have already suggested to you that you knew they were nominees and I now suggest to you that you are still, you personally are still a nominee of CHOO Kim-san.
- A. No.
- Q. Document 17, page 1 and page 3, did you sign them in Taiwan or in Hong Kong?
- A. In Taiwan.
- COURT: Document what?
- MR. CHING: 17, the two transfer forms for the 15,000,000.
- 30 COURT: Mr. Ching, before you go on, I think according to the pleadings, you are basing your claim that these people were acting as nominees.
- MR. CHING: Yes.
- COURT: And I think alternatively in any case, this agreement that we are talking about is not genuine.
- MR. CHING: It's a sham agreement. It's another way of saying that he is still the nominee.
- Q. Mr. Ng, there is something that puzzles me a little bit. You have got document 17 in front of you, haven't you?
- A. Yes.
- 40 Q. Where your signature appears, there is a chop, Fermay Company Limited, authorized signature, correct? Now that is on the third page, but not on the first. I am sorry, it is on the first, but I can't read it.

MR. CHING: Have we got the original, please? The originals were put in. I don't know what the number is.

CLERK: D.8.

MR. CHING: Let me have D.8, please. No, I am sorry, these are the wrong ones. Have you got the other two original transfer forms, please?

COURT: These are not the originals.

MR. CHING: The originals are in.

CLERK: Yes.

MR. CHING: Thank you so much.

Q. I see, there is a chop on both of them, Fermay Company Limited, authorized signature. Would you have a look at one of them, please? Did you put that chop on – did you put on that chop in Taiwan, Taipei? 10

A. Yes, I believe so.

Q. You mean you actually went through the trouble, first of having a chop made, and then taking it up with you for use in Taiwan?

COURT: Including the chop?

A. Even including the seal.

Q. All right, let's leave that for the moment. The signature of WONG Luk-bor against your name, where was that put on? In Hong Kong or Taipei?

A. In Hong Kong. Because the Registrars told me that someone must sign there to verify my signature, therefore I told my foki to go to the Registrars to sign his name there. 20

Q. When did the Registrars contact you for that purpose?

A. It was after the shares and the transfer forms had been taken to the Registrars for the purpose of registration.

Q. They contacted you, did they, and said, "You need a witness to your signature"?

A. Yes. They recognized my signature.

Q. And they telephoned you?

A. Yes, I believe so. 30

Q. Who was it? Mr. HO Chung-po?

A. No, HO Chung-po was not responsible for the registration.

Q. I see. But somebody telephoned you, that would have been on the 28th of March?

A. No, it was after.

Q. After everything had been done?

A. I was told that the signature was omitted there for the verification and then he told me to get someone to sign there.

Q. After what was this?

A. I meant to say that it was after the 28th or the 29th. 40

- Q. I see. Some time after the 28th?
A. Yes.
- Q. Would you look please at yellow file 2, I think, document 129, third page? That is a transfer form for San Imperial shares. There is no witness to the signature of the transferee, is there?
A. That's right.
Q. Nor the transferor's signature, is there?
A. That's right.
- Q. And if you look at 128, the third page, the same thing applies?
10 A. That's right.
Q. We'll leave those for the moment, Mr. Ng. Can you tell us this please, Mr. Ng? Hong Kong Estates, what sort of company was that?
A. What sort of business they are in? I believe it's the real estates.
Q. Were they property developers or what?
A. According to my knowledge, they never re-developed any buildings.
Q. Can you think of any reason why Hong Kong Estates would want to buy a 652 sq. ft. flat in a 20-year-old building in Tsimshatsui?
A. My flat was next to the Imperial Hotel and the Hong Kong Estates Ltd. intended to use that flat as the dormitory for the company.
- 20 Q. And of course, when you sold it to San Imperial, CHOO Kim-san was still in charge, wasn't he?
A. Yes.
Q. Can you tell us this please, Mr. Ng? If you were not sure of getting Chow and Hwang's shares until after your fifth visit after he phoned you on the 5th of March, why did you start buying on the market on the 3rd of January?
A. I have discussed it with Mr. HO Chapman and he said that the price was very low, and even the transaction would not be successful, we could still sell the shares and we wouldn't suffer any loss.
- 30 Q. You see, to my mind you would not have started buying shares, and indeed you would not have continued buying shares on the market unless you knew right from the beginning that the 15,000,000 shares were forthcoming from Chow and Hwang.
A. I don't agree with you.
Q. You don't agree. Do you remember saying in your evidence-in-chief that HO Chapman made a remark at one of these lunch meetings that if you didn't get the 15,000,000 shares or words to that effect, "we are in trouble"? Well, I am going to check my notes. In fact, I have got my learned junior's notes.
A. No no. I believe I never said it.
Q. You believe you never said it.
- 40 MR. CHING: 10th of November, I am told, my Lord, in the morning. My learned friend and my learned junior both have the same note. I have taken it down in question and answer, but I can't find it.

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COURT: I have got that.

MR. CHING: I am obliged.

COURT: "HO Chapman said, 'If it was not successful, there would be trouble.'"

Q. Did you say that?

MR. TANG: I have got it in question and answer form: "Q. What else was said?
A. He was responsible for getting a buyer. He said the buyer liked to have the
controlling interest. We are trying to buy from three different sources. Ho
said, 'If not successful, it would be troublesome.'" – not "trouble".

MR. CHING: No, "there would be trouble".

COURT: I have got "there would be trouble".

MR. TANG: In my note it's "it would be troublesome", and then the next question
was enquiring the stock market in Taiwan.

COURT: And then he mentioned what the three sources were.

10

MR. TANG: The three sources, yes.

MR. CHING: I understand your Lordship has to rise in five minutes' time anyway,
possibly – rather than to keep everybody here – I could check my note on
this and come back to it.

COURT: Very well.

D.W.2 – David NG Pak-shing (4th defendant) – On former oath

XXN. BY MR. CHING: (continues)

Q. Mr. Ng, your counsel asked you about your visit to Taiwan where you were
offered the 514,200 shares, and then he asked you if you reported to the
syndicate upon your return and your answer was, "Yes, when I returned to
Hong Kong, I saw HO Chapman and Ives and told them I was unsuccessful
in the bigger transaction and only got 514,200 shares. HO Chapman said, 'We
don't know if it is true or not. We have discussed it for a long time and yet
we still haven't done it.'" 20

A. Yes.

Q. Your counsel then asked you what was true or false and you replied, "This
included two things. It was not known whether it was a true sale or not or
whether the certificates were genuine or false."

A. Yes.

Q. Then you were asked in relation to the 514,200 or the other 15,000,000 as
well, and this was your reply about which there is now, I assure you, no
dispute, your learned counsel having checked with the shorthand writer – your
answer was, "HO Chapman was responsible for getting buyers. He said the
buyers liked to have the controlling interest. We were trying to buy from three
different sources. HO Chapman said, 'If we were not successful, there would be
trouble.'" Do you recall saying that? 30

A. Yes.

Q. You see, Mr. Ng – I ask you once more – why start buying and continue

buying shares on the Hong Kong market if you did not know that you could get the 15,000,000 from Taiwan?

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A. The price of the shares in the Hong Kong market was not high.

Q. Yes?

A. It was very cheap.

Q. Yes?

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A. And we thought that if we bought the San Imperial shares at that price, even if we sold them out, we would not suffer a loss.

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10 Q. Two pages before in my note, you gave this answer in reply to a question by your counsel, "Then I told Chow and his friends the market price in Hong Kong was only 40¢. If I took 515,000 shares to Hong Kong and sell them in the market, the price would drop to 20¢, so how could I be able to sell the shares?" Do you remember giving that answer?

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A. Yes.

Q. Were you telling Chow and his friends the truth?

A. 50/50. I mean to say that I was taking the advantage. Secondly, if I actually sold out 515,000 shares in the Hong Kong market, the price might well drop to 20¢.

Q. If you sold 2,165,000, it would well drop lower?

20 A. It is possible that there won't be buyers.

Q. You would be stuck with them, wouldn't you?

A. Then we would have to sell the shares gradually, say bit by bit.

Q. We have had a number of reasons given to us for why the 2,165,000 shares should have been for your own account. What is your reason?

A. Mr. Ho and Mr. Ives said to me, "You buy these shares, this is your matter, you fix it up."

Q. Mr. Ng, we have been told that James COE wanted outright control, he wanted 51%, but eventually he settled for effective control, less than 51%.

A. Yes, about 48%.

30 Q. 2,165,000 shares is a comparatively large block of shares, isn't it?

A. Yes.

Q. Do you tell this court that faced with the possibility of the syndicate buying 2,165,000 shares, the syndicate said to you, "Well, you have this for your own account, we are not interested"?

A. At first there were only 514,200 shares. After I bought those shares, they agreed, and later I bought the 1.65 million shares, they also agreed.

40 Q. You have just agreed with me it's a comparatively large block, but in your evidence-in-chief you were asked, "Why were you doing it on your own behalf?" and your answer was this, "Because HO Chapman had already told me if I bought those shares, it was my own business because it was not a large number." Do you remember saying that?

A. At the time when I bought the 514,200 shares, I did not know about the 1.65 million shares.

Q. I see.

A. And after I bought the 514,200 shares, Mr. Ho said even after this, "If you bought any shares, it would be your own shares."

Q. I see. You paid for these 2,000,000 odd shares in cash?

A. Yes.

Q. Without authenticating them first?

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- A. I have already told the court that I would be able to get the money back.
- Q. Yes, that's the third time you have said that, Mr. Ng, once in chief, once before lunch and now once more. You were going to go after Chow to get your money back if the shares were not genuine, is that right?
- A. Yes.
- Q. But Mr. Ng, that cannot be the truth, can it, because you had bought all the 2,165,000 shares, you had paid for all the 2,165,000 shares in cash before you had come to any sort of agreement with Chow at all?
- A. For the 510,000 shares, the total price was only \$100,000 and it was not a large amount. 10
- Q. Never mind whether or not it was a large amount. When you bought, paid for and took delivery of the 514,200 shares, you had not any agreement with Chow at all; in fact, Chow was angry with you and wouldn't negotiate with you and wouldn't reduce his price for you?
- A. Yes.
- Q. So how were you going to pursue Chow for the money if it turned out that the 514,200 shares were false?
- A. Mr. Chow was a man with reputation in Taipei, so I don't think that it would be very difficult for me to pursue him for the money for the shares.
- Q. Pursue him in Taiwan, in Taipei? 20
- A. To ask him for the return of the money. He is a man with reputation and position.
- Q. So Chow was of a class of person that would not want to suffer the embarrassment of being sued by you and he would pay up on your request?
- A. This is what I thought at that time.
- Q. And you told us this morning that – in reply to my Lord, you said that Chow was a very wealthy man.
- A. We know that he is a wealthy man.
- Q. "We know that he is a wealthy man"?
- A. I know. 30
- Q. Why not take the 15,000,000 shares from him on trust? Why not take the 15,000,000 on trust? Why don't you trust him, pay him for the 15,000,000 shares and bring them all back to Hong Kong? After all, you could always go back and sue him, he had face to lose, he had position to lose, he was a very wealthy man, he would have paid you back, wouldn't he?
- A. The amount for the 15,000,000 shares was very large.
- Q. Yes?
- A. The syndicate thought that the less the capital money, the better it would be, but that was a very large amount for the 15,000,000 shares.
- Q. Yes, but you see, all this about Fermay, all this about taking the certificates to the bank to get a loan and thereby proving their authenticity, why bother? Here was a wealthy man with position, status, who wouldn't wish to be embarrassed at being sued, all you had to do, if it turned out to be false, was to go back to him and say "Give me back my money, your shares are no good", isn't that right? 40
- A. There were sequences – there were the first time, second time and third time and there were the fourth time, the fifth time and the sixth time. It was all different.
- Q. And it wasn't until the sixth time that Fermay was agreed upon?

- A. I think it's a bit earlier than the sixth time.
- Q. All right, say the fifth time?
- A. Yes, the fifth time.
- Q. Can I ask you again – why didn't you take the shares on trust? Because he had wealth, he had status, he had a reputation, he would have given you back the money, wouldn't he?
- A. This is a matter for the syndicate. At that time the syndicate did not intend to do it in this way.
- 10 Q. I see. You brought back the 514,200 shares, am I right in assuming that you would have been anxious to prove their authenticity?
- A. Yes, this is why I immediately sent some people to the Treasury to have them stamped.
- Q. And did you then ask your foki, "Look, where are the certificates? Have they gone through the Registrars yet"?
- A. Yesterday I have already admitted that it was the negligence on my own part after the shares were locked up in the safe.
- Q. Careful man, stockbroker, accountant who has paid out a hundred odd thousand dollars for shares which may have been forged, anxious to have them authenticated, and you never enquired from your employees whether or not the shares had come back from the Registrars?
- 20 A. I have already admitted yesterday that it was the negligence on my own part.
- Q. It was not negligence, was it, you knew full well that these were CHOO Kim-san's shares and you were acting as his nominee?
- A. I don't admit that.
- Q. When you paid Chow for the 514,200 shares, you paid by cash, not by cheque?
- A. Yes, cash.
- Q. Did you get a receipt from him?
- A. No.
- 30 Q. When you paid Chow for the 1,650,000 shares, you paid by cash, not by cheque?
- A. Cash.
- Q. Did you get a receipt?
- A. No.
- Q. Why not?
- A. For the purchase and sale of shares, money was paid over at the time when the share certificates were handed over.
- Q. You go into a shop and buy a new tie, they will give you a receipt, won't they?
- 40 A. Yes, for big companies.
- Q. You go into a little compradore store and buy a couple of tins of preserved fruit or something, they will give you a receipt, won't they?
- A. Would not always.
- Q. So the purchase of 2,165,000 shares to the value of \$433,000 would not be sort of transaction for which you would expect a receipt as an accountant?
- A. It did not occur to me.
- Q. It didn't occur to a careful accountant, stockbroker?
- A. It didn't occur to me. I couldn't help it. It didn't occur to me.
- Q. If Lee and Fong were to sue you and said you never paid them, how would

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you have proved the payment?

- A. I have already told the court that that was through Mr. Chow and I have said that I would not do business with Mr. Lee and Mr. Fong directly.
- Q. But you knew that the shares belonged to Lee and Fong, you have even said that you bought them from Lee and Fong through Chow and you have said that you had paid them through Chow?
- A. Yes.
- Q. So how would you have proved payment if Lee and Fong had sued you and alleged that you had not paid?
- A. If there is really such a case, I can sue Mr. Chow for it. 10
- Q. I see. All of this could have been so easily avoided by getting a receipt if any money was paid?
- A. I have already told the court that it didn't occur to me.
- Q. Very well. If Lee and Fong sued you, you would sue Chow. How would you prove as against Chow that you had paid him the money?
- A. I have the shares in my hands.
- Q. But then the whole point would be, you see, that they would be suing you because you had the shares in your hands and you hadn't paid. How would you have proved payment? Mr. David NG, a careful accountant and stockbroker, Chairman of a public company, Director of other companies, how would you have proved payment? 20
- A. Similarly in Hong Kong it is done in this way that payment would be made on handing over of the shares.
- Q. You don't require a receipt?
- A. There will be the bought and sold note, there is no receipt. This is the way we do in Hong Kong.
- Q. If you got a cheque, of course, you could always trace through the accounts and see the cheque, but what if it was cash, Mr. David NG?
- A. This is not the way to do business. Suppose I am the sharebroker, if someone telephoned me and asked me to buy 1,000,000 shares for him, and after I bought the shares I would just inform that person that I had bought 1,000,000 shares for him, that's all. You can't even deny it because when the shares were bought, they were bought. 30
- Q. I see. You said something just now about there being a bought and sold note, right?
- A. Yes.
- Q. You say that that was evidence in some way of your payment of the money?
- A. What I said is this that in Hong Kong there is the bought and sold note, so no receipt is required.
- Q. You said in this particular transaction for the 2,000,000 odd shares from Taiwan, you said there was a bought and sold note after all? 40
- A. No, I didn't say this.
- Q. I beg your pardon. You see, your bought and sold note in this case was first of all drawn up by you; secondly, signed for both transferor and transferee by your ubiquitous employee WONG Luk-bor, drawn up late and stamped late?
- A. Yes. I have admitted that I was negligent, I have admitted that many many times.
- Q. You have told us that some of the shares bought on the market in Hong Kong turned out to be subject to certain difficulties because of defects in the signa-

tures of the transferor.

A. Yes. Suppose some people bought the shares in 1972 and they never had the shares transferred into their own name, the brokers just put the chops at the back to prove that there had been transactions.

Q. The Registrars, of course, are always very careful about – as careful as they can be in comparing the signatures to see if it is the right signature and the right chop, do you agree with that?

A. Yes. This should be the work for the Registrars.

10 Q. Would you look at the original, please, of yellow file 2, document 129? Exhibit D.8C, I think.

MR. CHING: Show him the original, please.

Q. While it is being checked, let me carry on with something else. Before we get to that, Mr. Ng, you said that of the shares you bought in the open market, some were subject to difficulty and therefore you had to go out to the market after the re-listing and buy some more back.

A. Yes.

Q. Did you chase after the broker who had sold to you to make good?

A. Yes, I did.

Q. Then why was it necessary for you to go out and buy some more?

20 A. I still have the records in my office that the registered owner of the shares is now in the U.S.A.

Q. No, Mr. Ng, you know as a stockbroker that when a broker sells shares to another on the stock exchange, the selling broker has to make good his bargain. If he purports to give you X number of San Imperial shares, he is responsible for seeing to it that you do get X numbr of San Imperial shares which can be registered, is he not?

A. Yes, I agree.

30 Q. So all you had to do was to say to the selling broker whose chop would be on the back of the transfer form and from whom you would have obtained a sold note, all you had to do was to go to him and say, "Make good these shares for me. I don't care how you do it, go out to the market yourself and buy them, but make them good to me."

A. Perhaps Mr. Ching does not understand this that sometimes there are a few tens of chops on the back of the transfer form. I would pursue the last one in the roll and that one would pursue the one before him. It takes a very long time to do this.

40 Q. It wouldn't matter to you whether he chased a dozen people. He was responsible to you, he would have to go out to the market himself and buy the shares and give them to you at the price which he had contracted to sell to you even if he had to pay three times dearer, isn't that right?

A. Yes, I admit this. It is a very common thing for a broker to buy some shares after he had sold the shares.

Q. All right.

A. And after all, it was not a large amount, it was only a small amount.

Q. Look at Exhibit D.8C. Look first at the section which says "transfer from". It says "Triumphant Nominees Ltd.". It must be quite obvious that some other name has been rubbed out or typed out and that name has been put on.

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- A. That I don't know. At the time when I received it, it was like this, and I handed the same to the Registrars.
- Q. Don't run on. You told this court you have been a typist. Look at that, look at the back of it and see if you can agree with me that the name has been erased and a new chop put on. Is that right?
- A. Yes.
- Q. Look at the signature of our good friend, the ubiquitous HO Chung-po. You see "Triumphant Nominees" had been chopped over what used to be "Asiatic Nominees"?
- A. Yes. 10
- Q. In March of 1977, who were the Registrars for San Imperial?
- A. San Imperial?
- Q. Yes, the Registrar, the Registrar of San Imperial.
- A. MAF Corporation Limited.
- Q. In March of 1977, what connection did Mr. HO Chung-po have with MAF Corporation?
- A. I believe he was a director of the MAF Corporation.
- Q. He was in charge of MAF Corporation, wasn't he?
- A. Yes, I believe so.
- Q. It never crossed your mind that HO Chung-po might query this particular transfer form? 20
- A. If he thought that this was not a right one, he could always return this to me.
- Q. Would you please answer my question?
- A. No.
- Q. It never crossed your mind to wonder whether or not the Registrars – yes or no?
- A. No.
- Q. That's because you knew very well these were CHOO Kim-san's shares, that's because you knew very well that HO Chung-po was his agent, servant or nominee, and that's because you knew very well it would go through, whatever was on the form? 30
- A. It is true that it never occurred to me. If it was found to be not right, it could always be returned to me.
- Q. Did it ever occur to you to wonder why an old Asiatic form had been used for the transfer of Triumphant shares? Did it ever occur to you to wonder? Capable of yes or no.
- A. I did not discover that at that time.
- Q. You didn't even discover it. Good heavens, Mr. David Ng, a careful accountant and stock-broker, chairman of a public company, as soon as you look at that original document it jumps up and hits you in the eye, doesn't it? 40
- A. If it is so simple like this HO Chung-po could always sign one more time.
- Q. If either he or you had ever realised it would ever come under such close scrutiny in a court of law, yes.
- A. I don't admit it.
- Q. It is a very interesting point you make, anyway. Let me ask you this, Mr. David Ng: nominee companies such as, for instance, the Hang Seng Bank (Nominees), is it to your knowledge that they hand over share scripts together with transfer forms in blank to their customers?
- A. You mean after they signed?

Q. Yes.

A. Yes, it was given out like this.

Q. Well, could I refer you, please, to the affirmation of Mr. HO Chung-po, Red File 2. It begins at page 1, the passage I want is at page 4, paragraph 9. This is what Mr. HO Chung-po has said:

“9. As far as I know, the defendant was ordinarily resident in Malaysia and he came to Hong Kong in 1972 and has resided in both Malaysia and Hong Kong since then.”

Now you can ignore that, I am reading it simply for the sake of completeness.

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10 “He had used the services of the said company . . .” – that’s Asiatic – “. . . to purchase various shares in the name of the company as his nominee, but each time, immediately or sooner after registration of the shares in the said company’s name, it was the practice of the said company to, and the said company did, hand the share certificates to the defendant together with transfer forms signed by the said company in blank. In fact, this is the practice of most if not all nominee companies, for instance, the Hang Seng Bank (Nominees) Limited.”

Now, would you agree that that is true, nominee companies usually do this?

A. I agree, sir.

20 Q. You agree. Look, please, at Yellow 1, document 17, the first and third pages. See if you agree with me that the date stamped is the 27th of September, 1977. The little round chop, 27th.

INTERPRETER: It is not clear.

Q. Well, look at the original then, please, rather than the copy, 27th of September, 1977 – 1976, I beg your pardon, it is my mistake. Give him all four original transfer forms.

CLERK: P.11 A and B.

Q. You have now before you the originals . . .

CLERK: P.17 A and B.

30 Q. . . . all four transfer forms. For the sake of the record could we have the exhibit numbers, please, Mr. Interpreter?

INTERPRETER: P.11 A and B, P.17 A and B.

MR. CHING: P.11A, P.11B, P.17 – no, this is a duplicate copy. P.11A, P.11B – we had them just now.

INTERPRETER: D.8(C) and D.8(A).

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Q. D.8(C) and D.8(A). Will you look at all of those? I'll get you a magnifying glass, if you like. The dates stamped with a \$5 stamp on each of those forms is the 27th of September, 1976. Would you agree with me?

A. Yes.

Q. Which is an agreed fact that on the 11th of August, 1976 – or at least it's common ground that on the 11th of August, 1976, HO Chung-po ceased to have any connection with Asiatic Nominees until some time, I think it was February of '77 – 4th of February, 1977. Can you therefore please explain to this Court how it comes about that his signature appears on an Asiatic transfer form bearing the date 27th of September when he was not connected with the company at all?

A. Of course I'm not in a position to explain it, but if you want my opinion I can tell you.

Q. All right, tell us your opinion.

COURT: Let me have a look.

MR. CHING: D.8(A) and (C), P.11 A and B, because one of them is not relevant, my Lord. My Lord, one of them is not relevant, the Triumphant one is not relevant on this particular point although, my Lord, it may be relevant because it's an old Asiatic form with 'Triumphant' on top of it.

Q. Now what is your opinion, Mr. Ng? What is your opinion?

A. My counsel is now looking at the forms.

Q. Six weeks in the case and your counsel hasn't seen it yet.

MR. SWAINE: I simply want to identify it against my notes, if you please, rather than carry it in my head.

MR. CHING: All right. (Pause.)

MR. SWAINE: Thank you very much for the indulgence.

Q. Now what is your opinion, Mr. Ng?

A. Well, suppose it is the Hang Seng (Nominees) Limited, even if it is Hang Seng (Nominees) Limited the \$5 stamp is not necessary, sir. You can have it stamped at any time you like, even at the time of the sale, but it must be stamped before the actual sale of the shares. This is my knowledge, sir.

Q. It is normal, is it not, Mr. Ng, to put that stamp on first?

A. Not generally, sir. You can have the \$5 stamp stamped at any time, sir. There is no fixed time for the \$5 stamp, but it must be stamped before the bought note and the sold note are stamped.

Q. I see. So you think that what happened . . .

A. This is my knowledge, sir.

Q. I see. You think that what happened was that CHOO Kim-san had the transfer forms and about a month before he fled the Colony he went up and had them stamped, is that right?

A. What I said is only my opinion, sir.

Q. All right.

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A. I do not know what actually happened, sir.

Q. Let me have them, please. I will point out something to you now which is even more curious, Mr. David Ng. Would you look, please, at P.11B first?

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MR. CHING: My Lord, that is document 17, the first page in the bundle. I'm sorry, have I got that right? Is that five or ten million?

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INTERPRETER: Ten million, sir.

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MR. CHING: Ten million. It's the third page in the bundle.

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Q. Do you see those numbers there, the numbers of the share certificates?

INTERPRETER: Yellow 1, yellow 17.

10 Q. Do you see the number of the share certificates? It goes up to – the first group of numbers is 078366 to 078371. Correct?

A. Yes.

Q. Would it surprise you if I could show you that certificate 78371 was not acquired by Asiatic until September of 1976?

A. That I don't know, sir.

Q. Would it surprise you?

A. I will have to look at the date first. If it is that date I'll be surprised.

Q. All right. Look at exhibit P.14, it is in Brown File 3, and look at the fifth page – look at the fifth page.

20 A. Yes.

Q. Take the column bearing the dates. We will take the third date.

MR. CHING: Page 5, my Lord.

Q. Look at the third date in the date column, the 3rd of September, '76. Do you see that? Please, Mr. Ng, do you see the date the 3rd of September, '76?

A. The 3rd of September.

Q. Transfer number 4709, certificate number 78371.

A. Yes.

Q. So you would agree with me, would you not, that Asiatic acquired that certificate on the 3rd of September, '76?

30 A. Yes.

Q. Would you look then back at your exhibit P.11B and you will see, as I have said, 078366 to 078371. Does it surprise you that that whole block was acquired by Asiatic on the 3rd of September?

A. Why do you say that it is odd or strange? I don't think so, sir.

Q. You don't think it strange. All right.

A. Why is it? I can't see it.

Q. All right, you can't see it. Would you look again at page 5 of exhibit P.14? Five lines from the bottom, "3rd of September, certificate 78366". Do you see that?

40 A. Yes.

Q. Two lines below that, "78367". Do you see that?

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examination

- A. Yes.
- Q. The last line "78368".
- A. Yes.
- Q. Then you go back up to seven lines from the bottom "78369".
- A. Yes.
- Q. Two lines further up, "78370".
- A. Yes.
- Q. Of course, we have already seen 78371, right at the top of the page. All acquired on the 3rd of September. Do you agree?
- A. Well, I can't agree with you, Mr. Ching, on this. 10
- Q. Would you like to verify it from the transfer list?
- A. This is the date when they were registered.
- Q. All right. Even if that is so, the date they were registered, it didn't go into their books until the 3rd September, '76. How long do you think it would have taken to get into the books? Two months, three months: what length of time do you think?
- A. This is a matter for the registrar, sir. I don't know, we don't know.
- Q. You see, you see, to be drawing a distinction between date of acquisition and date of registration, is that right?
- A. Well, some people bought the shares in 1972 and they only took the shares to the registrars for registration this year. 20
- Q. All right. Let me put it this way, Mr. David Ng. Those shares never got into the name of Asiatic Nominees until the 3rd of September, all right?
- A. I don't know the actual position at that time because I am not the registrar.
- Q. Would you like to look at the transfer list? They were changing, you see, shares from small blocks into big blocks and these show the dates upon which the share certificates went in.
- A. You mean the consolidation of these shares from small lots into big lots?
- Q. Whatever it was: consolidation, breaking-up, making it bigger, buying, acquiring, whatever you like. That's the first date upon which those numbers got on the record as being share certificates of Asiatic Nominees. 30
- A. You were asking me about the work of the registrars and I told you that I could only express my own opinion; I can't tell you the actual work of the registrars because I don't know.
- Q. Well, just to complete the picture, Mr. Ng, would you look at P.11A now, document 17, the first page. You see that contains a host of numbers, including 7830 to 7831.
- A. You mean 78380 to . . .
- Q. 78380, thank you. If you look at exhibit P.14 again on page 6, if you look at the first entry that is 78378 – I'm sorry, 78373 to 78381, so that includes that first block. The second line from the top, 78373 to 78381 would include 78380 to 78381. 40
- A. Yes.
- Q. There again you will see the date is the 1st of September, 1976.
- A. Yes.
- Q. All right. Now have you any opinion as to how HO Chung-po signed share scripts bearing a date stamped 27th of September – transfer forms bearing the date 27th of September for shares acquired in September, or at least for the certificate numbers allotted in September when he was not anything to

- do with Asiatic in September of '76?
- A. I don't know how to explain because I am not the registrar, but if you want my opinion I can tell you. Supreme Court of Hong Kong High Court
- Q. No, I do not think I want your opinion this time, your counsel can ask you later if he wants it. Was there any desperate hurry or any hurry at all to get these shares into the name of Fermay? The fifteen million shares into the name of Fermay? (To Interpreter) No, was there any hurry? Defendant's Evidence
- A. Yes. No. 40
- Q. What was the hurry?
- 10 A. On the sixth trip to Taiwan Mr. Chow said that he would get someone to bring us the shares for the examination, and if it was proved to be genuine or not after the examination we must inform him. David Ng Pak-shing – Cross-examination
- Q. How does that account for any hurry to get them into the name of Fermay?
- A. That was our understanding that after the examination if the shares were proved to be genuine or not genuine we must report it to him.
- Q. Yes. How many share certificates do you think there were? I suppose we can calculate it but can you give us a rough idea how many certificates there were?
- A. I don't know.
- Q. You don't know. There were a large number, you will agree?
- 20 A. I believe so.
- Q. We can always work it out. How often have you heard of fifteen million shares arriving at a registrar's on one day there being – the certificates and transfer forms, I mean, arriving at the registrars on one day and of their being sent to a solicitor to have bought and sold notes executed that same day, to have them return to the registrars on the same day and for the transfer to be effected, all on the same day? How often have you ever heard of that?
- COURT: (To Interpreter) No, no, no.
- Q. How often have you ever heard of this happening? You don't understand. All right, I will take it step by step. How many times have you ever heard of a share transfer being effected on the same day that the transfer is presented?
- 30 A. It's not strange at all, we have done that for our customers.
- Q. It's a rare occurrence, isn't it?
- A. Yes, I agree.
- Q. How often have you heard of a transfer of fifteen million shares being effected in one day?
- A. We can look at it from two angles, sir. One is that there were only two transfer forms. If we really want to do it we can do it within five or ten minutes.
- Q. But you have to check the share certificates, don't you? Each and every one, don't you?
- 40 A. This is the work for the registrar.
- Q. Yes, yes.
- A. If all the signatures on the forms are the same then they would have only to do with two documents, two transfer forms, so that would be very fast.
- Q. But they would have to check in this case over two hundred share certificates.
- A. It is not difficult at all for the registrar to examine the signatures on the certificates. The only difficult thing for a registrar is to examine the signatures on the transfer forms.

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- Q. Mr. Ng, you don't just examine the signature on the certificate, do you? You examine the whole certificate, don't you?
- A. I have already told you that I could only express my own opinion on this.
- Q. You see, there is a certificate number and then there is the whole form, for instance, the words "Hong Kong Imperial Hotel" underneath. One has to check to see if it's the proper paper. I don't know if you were aware of the Hutchison forged share certificate cases where there were very, very close resemblances to the genuine certificates but when one looked at the printing in the background one could see slight but distinct differences. You see, one has to check the whole certificate, and if there are over two hundred certificates, it takes five minutes each, that's a thousand minutes, isn't it? 10
- A. Since, Mr. Ching, you have mentioned about the Hutchison shares, well, I have the experience of those shares.
- Q. Yes?
- A. After we bought the Hutchison shares we brought a bundle of the shares to the registrars for examination, sir.
- Q. Yes?
- A. In less than five minutes they returned the share certificates to us.
- Q. I see.
- A. It all depends how the registrars do their work. Well, I am only expressing my own opinion, sir. 20
- Q. Mr. Ng, I notice that transfer numbers assigned to the transfer forms for the fifteen million shares are 4826 and 4827 – I'm sorry. Would you have any idea what's happened to – I'm sorry, 4826 and 4828. Would you have any idea of what's happened to 4827? You see, we can't find it anywhere in the transfer list or the share account ledgers or anywhere else. You have no idea?
- A. I have given you the whole book so how could I have a chance to look at it, sir?
- Q. I see.
- A. I have given you all the records. 30
- Q. I hand you the two share certificates for fifteen million shares.

MR. CHING: I don't know if we have got an exhibit number, my Lord. (Pause)
My learned friend tells me he didn't want them damaged by the exhibit mark.

COURT: Well, I have the copies.

MR. CHING: Perhaps – suffice it, we know what he is looking at, my Lord.

COURT: Yes.

- Q. You see, Mr. Ng, that the date upon which – the date which the certificate bears, you will see, if you compare it with the ledger, the transfer list, it is the same date as the transfer. The date of the issue of the certificate is the date of the entry in the ledger. Would you agree with that? 40
- A. There is no ledger for the Fermay Company, sir, here.
- Q. In the big blue ledger; in the big blue book. I don't want to waste time on it if you . . .
- A. Yes, I've seen it.

Q. You agree with me, do you?

A. Yes.

Q. All right, then. Mr. Ng, would you agree with this? Chow and Hwang could have filled in the transfer forms, signed them, sent them down to the registrars with a covering letter asking the registrars to send the new certificates to Messrs. Peter Mo & Company. They could have done that.

A. Yes.

Q. And in that way, if they themselves had signed as transferees, their signatures would be necessary upon any subsequent transfers.

10 A. Yes.

Q. And in that way, if they themselves had signed as transferees, their signatures would be necessary upon any subsequent transfers.

A. Yes.

Q. And they would therefore have remained protected. Is that right?

A. Yes. They are still protected.

Q. No, they are not. We won't go through that, Mr. Ng, but they're not. And if the registrars found that the share certificates were genuine and the transfer forms were genuine they would have sent the new certificates to Messrs. Peter Mo & Company and thereupon you would have proven the authenticity of the shares.

20

A. It could have been done in this way.

Q. And instead of that simple way of doing it, with everybody being protected, Chow and Hwang parted with possession of nine million dollars worth of shares against payment of ninety-two thousand dollars, and lost control of the shares.

A. We trusted them first so we paid them ninety-two thousand dollars first. They could have refused to give us the shares. This is only a matter of trust in doing a business.

MR. CHING: I have no further questions, my Lord.

30 XXN. BY MR. YORKE:

Q. Mr. Ng, you will probably be pleased to know that, I think, with one, possibly two exceptions I'm not going to ask you anything about matters which Mr. Ching has already . . .

INTERPRETER: I'm sorry, Mr. Yorke, he said he can't hear you. Will you please speak a bit louder?

Q. I'm sorry. You will probably be glad to know that I don't propose to ask you, with one, possibly two, exceptions, about anything that Mr. Ching has asked you about.

A. Yes.

40 Q. What I basically want to do is this: Mr. Ching has asked you repeatedly what happened very largely and asked you for an explanation, I propose to suggest to you in a number of cases why things were done.

A. I will be very glad to answer the questions, sir.

Q. I hope so. Before I get down to that I would just like to ask you a number

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of general background matters. I'm afraid they are a bit disconnected, but you will see the reason why in the end.

A. Yes.

Q. I just want to ask you about, firstly, as a stock-broker you would agree with me that one share in a company is as good as another share, so long as they are all of the same class.

COURT: (To Interpreter) In the same company.

A. Yes, if they are all the same class.

Q. All the same class, and all the companies with which this case has been concerned have, I think, only one class of shares. Is that right?

10

A. Yes.

Q. Yes. So it is like a ten dollar bill. I can exchange one share for another, one ten dollar bill for another, it's the same thing, isn't it?

A. Yes.

Q. The only doubt is ever whether when you first receive a share certificate, or possibly a transfer is to whether it's genuine, but that doubt is resolved as soon as the transfer is registered and a new share issued.

A. Yes.

Q. In relation to all of the Taiwan shares there was, you say, in the minds of all members of the syndicate a doubt as to their authenticity?

20

A. There were doubts in two things, the share certificates and the instruments of transfers.

Q. Thank you, yes, and that applied to all the shares in Taiwan?

A. Yes.

Q. And the object of the Fermay exercise was to make sure that you didn't part with hard cash until the authenticity had been proved?

A. Yes.

Q. I'll leave that for the moment. How many staff do you employ, other than boys and secretaries, in Bentley Securities?

A. Several, sir. They actually do the work for two companies, for Tai Pan and Bentley at the same time.

30

Q. Yes. Well, how many of those people, whether they work for one or two companies, actually carried out deals for customers or in the Market?

A. About seven or eight.

Q. Yes. How many of those persons were concerned with buying in the Market from the 3rd of January onwards in order to collect shares for the syndicate?

A. We asked the brokers in the other Stock Exchange to buy these shares for us, such as Kam Ngan, Hong Kong and the Kowloon.

Q. You bought in all three Markets?

A. Four Markets.

40

Q. Kowloon as well?

A. And Far East too, so four.

Q. Well, you were members of the Far East Exchange.

A. Yes.

Q. How many firms of brokers had you instructed to buy shares on your behalf?

A. One broker in one Stock Exchange. We can't instruct two brokers in one Stock Exchange to buy these shares for us.

- Q. I see. One broker in each Exchange.
- A. Yes.
- Q. And that broker in each case would know that Bentley Securities was a buyer in the Market for any shares that were offered?
- A. Yes, but this was confidential.
- Q. Oh, yes.
- COURT: Tell me, did the syndicate instruct Bentley or some other broker in Far East Stock Exchange to buy San Imperial shares for the syndicate?
- 10 A. The Bentley Company and some other company in the Far East Stock Exchange.
- Q. So they had two companies in one Exchange both instructed to buy?
- A. In the Far East Stock Exchange you can tell your colleagues or fellow-brokers to get these shares for you.
- COURT: I don't follow, Mr. Ng. I thought you said you could only instruct one broker in one Stock Exchange.
- A. My Lord, I mean to the Hong Kong Stock Exchange we instruct one, to the Kam Ngan we instruct one, to the Kowloon Stock Exchange we instruct one, but for our own Stock Exchange we can always ask the fellow-brokers to get the shares for us.
- 20 COURT: I see. So the number is not restricted within your own Exchange, is that what you are saying?
- A. Yes, yes, my Lord.
- Q. But you have to be careful even within your own Exchange, otherwise you might be bidding against yourself?
- A. If we ask our fellow-brokers to buy then we have dropped our number down.
- Q. I see, so that is to prevent you bidding against yourself?
- A. Yes.
- 30 Q. In answering me a moment ago you used, in English, the word 'confidential' which wasn't translated, but it is right, isn't it, that when you carry out an operation of this kind it has to be done confidentially and with considerable skill to avoid driving the Market against you?
- A. Yes.
- Q. But so far as your own office was concerned, the seven people who had authority to deal on your behalf would all know that they had your authority to accept any purchases which the four brokers offered. Is that right?
- A. When you asked me how many employees I have in the company in answer I said I have seven, but actually only two of these seven were authorised to instruct the brokers to buy the shares.
- 40 Q. But if a broker rang up and said, "I've been able to buy ten thousand shares," whoever answered the 'phone would be able to say, "Yes, we'll take them," right? Anyone who answered the 'phone?
- A. Our instruction had a limit in the price. For instance, today we offered that the higher price would be 48 cents, and if the price is higher than that we

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don't want it.

Q. Of course, I accept that, but within the price limit which you are prepared to deal everyone in your office would know that you were a buyer of the San Imperial shares?

A. Yes.

Q. Yes, and of course your office staff know that they must keep this confidential for the – in order to prevent the price rising high against you.

A. Yes.

Q. And for that reason brokers have to be very careful to employ on their staff only people they can trust so that the information that they are a buyer or a seller in the Market does not leak out.

10

A. Well, I think in all lines of business that applies, sir. We only trust honest people, sir.

Q. But it's especially important to a broker?

A. Yes, I agree.

Q. Because once it is known that there is a big buyer in the Market the price goes up because people hold out for higher prices.

A. Yes, it usually happens in this way.

Q. Yes, I agree. Just another small point. How many sheets of Skyprene paper did you bring back from Taiwan with you?

20

A. Several, sir. I didn't count it.

Q. Well, several might be five, it might be fifteen, it might be fifty. What sort of number do you have in mind?

A. It's about – between three and six.

Q. So perhaps we could have the blank sheets disclosed to us tomorrow.

MR. YORKE: I do want the blank sheets disclosed, please. They should have been disclosed already. I would like them disclosed tomorrow morning, please.

A. You say you want them disclosed, but I have already handed them over to my solicitor or my lawyers.

COURT: Well, then it is your solicitor's headache, not yours.

30

Q. I would just like to see them. Another subject: M.A.F. credit. You were – you became the chairman on the 4th of July?

A. Yes.

Q. When did you first expect that you may become a director of M.A.F. Credit?

A. I did not know that sir – the solicitor wrote a letter to the M.A.F. saying that the San Imperial wanted a certain person to be a director thereof.

Q. That is wrote a letter to San Imperial – I am concerned with M.A.F. Credit.

COURT: I think he went on to say, 'Not necessarily me.'

A. The solicitor wrote a letter to the M.A.F. – no letter was written. The solicitor informed the M.A.F. that the San Imperial wanted a certain person to be a director of the M.A.F., but not necessarily me.

40

Q. Which solicitor was that?

A. Messrs. Woo, Kwan, Lee & Lo.

Q. And as a result of that you were appointed a Director and were you appointed Chairman straightaway? Supreme Court of Hong Kong High Court
A. They told us to get the secretary to write a letter to apply for it. Then to my memory we asked Y.S. Cheng, the Secretary of San Imperial to write a letter to apply for it. Defendant's Evidence

COURT: To write to M.A.F.?

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A. Yes, saying that I myself was nominated to be the director.
Q. You being at that time Chairman of San Imperial?
A. Yes.
10 Q. You remained Chairman until you, to use your own expression, you were kicked out on the 1st of November?
A. Well actually it was like this – he said to me, 'You better resign.'
Q. Who said?
A. David Lawrence of Deacons who acts on behalf of Manhattan Finance of Brunei. It is also called M.B.F. Brunei.
Q. Actually on behalf of the Official Receiver of the Government of Brunei?
A. Yes.
Q. Receiver appointed by M.B.F. in Brunei and Deacons acted on his behalf?
A. Yes.
20 Q. Was anyone else kicked out or invited to resign with you?
A. He asked the whole Board to resign.
Q. Can we have their names please?
A. HO Chung Po . . .
Q. I don't want any more names, thank you very much.

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COURT: That is San Imperial you are talking about?

A. (In English) No, the M.A.F. Credit.

COURT: Oh, sorry.

30 Q. The whole Board – the first name you gave us was HO Chung Po – I take it that throughout the time that you were Chairman of M.A.F. Credit you had full access to any information which you required about any aspect of the company's business?
A. Not in a certain period – during that time the Financial Secretary arranged the Inspector to come to inspect the company's affairs, so nothing could be taken out.
Q. Yes, but subject to the requirements on the part of Arthur Anderson, who is the inspector, you had unqualified authority to ascertain anything which was going on in the company, in M.A.F. Credit?
A. Yes, if it is necessary.
40 Q. In particular to call for an examination of records or books in relation to any transaction in which the company had been involved?
A. Yes.
Q. And the same would apply in relation to any of the subsidiary companies of M.A.F. Credit with you as Chairman of the main company?

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- A. Yes, if that was wanted.
- Q. Now I take it you just looked at what you were told to read to page 53 – that contains – you have seen it before do you want to read it now?
- A. Which paragraph or which line do you want me to read?
- Q. Paragraph 18, if you are not familiar with it, just refresh your memory – you know what is in it.
- A. Yes.
- Q. All that information and the exhibits which went to it and so on, which are pages 18 onwards in P.14 now is information which was made available to you in your capacity as Chairman of the company. 10
- A. Yes.
- Q. I take it then that if you found anything going on in the company which was in any way underhand or improper or dishonest you would have investigated it?
- A. Yes, if I knew it, sir.
- Q. Or if you suspected, you would investigate to see if your suspicions were justified?
- A. I will tell the auditor to investigate into this.
- Q. That is if it is a matter of book-keeping.
- A. Y.S. Cheng is also the secretary, sir. He is the auditor and the secretary. 20
- Q. Mr. HO Chung Po remained a director throughout your entire period as Chairman – may we take it from that that you had no suspicion that anything associated with Mr. HO Chung Po was in any way improper or dishonest?
- A. I did suspect.
- Q. Well now can you tell us what you suspected in a few words, or would this be a moment that I might ask his Lordship to adjourn?
- A. A few words – I suspected that the accounts were not clear.

COURT: Not in order.

INTERPRETER: Not in order.

- A. Therefore I told Y.S. Cheng to carry out the auditing. When Mr. Y.S. Cheng was carrying out the auditing the Financial Secretary sent someone to the company to make investigations into the company's affairs. Well I thought that since the Financial Secretary had sent someone to the company to inspect something that would be all right. 30
- Q. If you found – did you yourself have any suspicion Mr. HO Chung Po might have done anything improper or dishonest in relation to any of the matters with respect to which this Action is concerned?
- A. Yes, of course – I have already said it, but since someone had been sent to the company for investigation well I was relieved.
- Q. You said it – Mr. Ng, you are an accountant, you know that the purposes to which the Financial Secretary sent an inspector have little, if anything, and probably nothing to do with this Action. 40
- A. The inspector investigated into the company's affairs. He checked every sheet of the documents – all the documents were sealed when he first came to the company.
- Q. Mr. Ng, you are an accountant – you know the Financial Secretary had not

asked Arthur Anderson to investigate whether or not CHOO Kim-san has an interest in the shares, the 23 million shares which is the subject of this Action – you know that don't you?

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A. The 23 million shares belonged to the San Imperial, so how does it have anything to do with the M.A.F.?

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Q. Exactly Mr. Ng – you know perfectly well –

COURT: I think Mr. Ng, you have in fact already answered the question – perhaps you did not know it yourself – you agreed with counsel that the inspection had nothing to do with the question as to whether CHOO Kim San owned the 23 million shares or anything that we are discussing in these proceedings.

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A. Other than the registration work.

MR. YORKE: It is more than twenty-five to five – this would be a convenient moment my Lord.

Appearances as before.

D.W.2 – David NG Pak-shing – On former oath

XXN. BY MR. YORKE: (continues)

Q. Mr. NG, before the adjournment last night, you had agreed that the matters which the Financial Secretary's inspector was asked to investigate had nothing to do with this case.

A. Yes.

Q. Now on matters which have anything to do with this case, did you have any cause to suspect that Mr. HO Chung-po's behaviour might have been improper or dishonest?

A. Yes.

Q. You did. What matters in relation to Mr. HO Chung-po did you suspect were improper or dishonest?

A. It was about the MAF Credit because he was the chairman as well as the director of the MAF Credit.

Q. I thought you became chairman of MAF Credit, Mr. David NG.

A. At a later stage.

Q. On the 4th of July.

A. 4th of July.

Q. In fact you had become a director on the 16th of June, had you not?

A. Yes, but before that HO Chung-po was the chairman.

COURT: Well can you say from what date to what date he was chairman – HO Chung-po?

A. I think after Mr. San had jumped bail, HO Chung-po became the chairman.

Q. Mr. HO Chung-po is chairman of the company from some time in October 1976 to the 4th of July, 1977. You become chairman on the 4th of July.

40 What is it that you found suspicious, improper or dishonest about the conduct

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of Mr. HO Chung-po?

- A. I suspected everything in respect of the company.
- Q. You understand the English language and you have the benefit of translation as well. The question which I originally asked you is whether you found anything suspicious in the conduct of Mr. HO Chung-po.
- A. Yes, I understand it.
- Q. Very well.
- A. But I myself did not make any investigation, sir. I asked someone to do it.
- Q. You thought that everything that Mr. HO Chung-po had done in connection with the matters, the subject to this action was suspicious. 10
- A. I suspected the registration of the shares, therefore I asked to change the registrars of the San Imperial shares.
- Q. We will come to that in a moment, but what investigation did you cause to be carried out into the conduct of Mr. HO Chung-po?
- A. The investigation was like this: that I suspected the registration, therefore I asked to have the registrars of the San Imperial company changed and, about the accounts sir, I asked the auditor to audit the accounts.
- Q. And you say that is an investigation into Mr. HO Chung-po?
- A. I made investigations into his work but not to his private life such as where he had gone in the night and so on. 20
- Q. Had any of those two matters anything to do with the matters, the subject to this action?
- A. The registrars of the company, of course, have something to do with this case.
- Q. In fact you changed the registrars to Standard Registrars, didn't you?
- A. Yes.
- Q. But you didn't hand over to them or cause to be handed over to them the books and registers which Standard Registrars needed.
- A. I asked to have the registrars of the company changed. Well is it correct that the old registrars had to hand over everything to the new registrars?
- Q. It is a bit difficult for somebody to act as registrar without having the share transfers or other ledgers of the company. Indeed, Mr. NG, you are a stock- 30
broker.
- A. Then the new registrars had to get the books from the old registrars, sir, because they had their instructions.
- Q. And in fact so long as Standard Registrars whom, you will agree, are a firm of the highest respectability, Standard Registrars in Hong Kong?
- A. Well the particulars were first class, sir, but I don't know if their work – or the fees were first class, but I don't know whether their work was first class.
- Q. But you are a stockbroker. You know their reputation in Hong Kong. They are first class registrars? 40
- A. Well no, that company was not really the first class one, sir. There are other companies such as Peat Marwick and Central.
- Q. Standard is a first class firm, too?
- A. I have already said that their fees were first class, but I don't know whether their work was first class.
- Q. But the whole time –
- A. And I think that Peat Marwick and the Central companies are the best companies in Hong Kong.
- Q. Presumably, you thought Standard was good or you wouldn't have changed

to them, especially if you were suspicious about Mr. HO Chung-po in control of the registrars.

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A. Yes, of course.

Q. And during the whole time that Standard Registrars were the registrars of your company, every time a transfer was sent to them for registration, they couldn't do it and had to send the documents back to you at San Imperial or MAF to get it done.

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A. That I don't agree.

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10 Q. With the result that throughout June and July while the interlocutory matters in this case were going on, the solicitors from Johnson, Stokes and Master were not able to get access to the registrars of the company through the official registrars because the registrars hadn't got them, that's right, isn't it?

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A. That I don't agree, sir. At least JSM had obtained something from the Standard.

Q. No doubt my friend or junior will ascertain how many affidavits – whether something was obtained from Standard Registrars. And after about six weeks or so you changed the registrars again to Peter CHAN Po-fun.

A. The reason is that their fees were first class but as to their work I don't think it's first class, sir. That is why it was changed to CHAN Po-fun.

20 Q. So I said my cross-examination would be about reasons and I would be quite wrong if I said the reason for your double change of registrars was that at the time interlocutory proceedings were going on in front of Mr. Justice Zimmern and his Lordship you wanted to make it difficult for anybody to search the share registers.

A. That I don't agree absolutely, sir.

Q. Now let's come back to the difficulty of searching the register at a later stage of your evidence. As you know, I myself have been to your office to look. Let's go back to Mr. HO Chung-po. What is it that you considered to be suspicious and improper or dishonest about his conduct in relation to the matters, the subject of this action – of these actions.

30 A. You mean in the past or now. There is nothing wrong now, sir.

COURT: (to interpreter) I think he says "I have discovered now that there was nothing . . ."

A. I have discovered now that there is nothing wrong now. In the past I suspected that there was something wrong with him but having received the reports, I have discovered that there was nothing wrong, sir.

Q. And you are now satisfied that in relation to the matters, the subject of this action, there is nothing wrong with HO Chung-po.

40 A. What Mr. HO Chung-po had to do with this case is merely the registration of the company's shares, sir. All the Standard Company, Chan Po Fun Company and the inspector sent by the Financial Secretary had examined the registration work of the company and they found nothing wrong according to their reports.

Q. Mr. David NG, when an intelligent man with professional skills answers a question which has not been asked and fails to answer the question which he has been asked, it is permissible for a judge to deduce he has something to hide, do you understand that?

A. You asked me the question and I gave you the answer, sir.

Q. Mr. NG, do you understand that if you refused to answer the question which

has been asked and answer a question which has not been asked, it is permissible for his Lordship to draw the distinction that you have something to hide and are hiding it, do you understand that? Do you understand it?

A. Yes.

Q. Very well. You agreed last night and this morning the Financial Secretary's report has nothing to do with this case, haven't you?

A. Every member of the staff of MAF knew that the inspector sent by the Financial Secretary has sealed all the documents and examined all the documents.

Q. Mr. NG, you agreed last night and this morning that the Financial Secretary's inspector's report has nothing to do with this case. You have agreed that twice, have you not?

A. Yes, I agree.

Q. Then please do not answer that your suspicions about HO Chung-po were unfounded because of the Financial Secretary's report which has nothing to do with the case.

A. All right.

Q. Now I will deal with the registers. The registers of the company are in order, are they not?

A. If there was anything wrong, sir, the registrars should have made a report to the board of directors of the company and up to now we haven't received one.

Q. Because on a handover of registrars the entire share register has to be checked, that's right, isn't it? 10

COURT: I don't think this exchange is necessary. The short answer is yes?

A. Yes.

Q. So there is nothing wrong with the registers now, and we have got rid of the Financial Secretary's report. We have got rid of the registers. On any other matter connected with this case, have you any reason to suspect the behaviour of Mr. HO Chung-po as being either improper or dishonest?

A. The accounts.

Q. The accounts of the company have nothing to do with this case, do they?

A. Well yes. It is true that the accounts have nothing to do with the case. Then apart from this, I did not suspect Mr. HO Chung-po of anything else, sir. 30

Q. And for the first three weeks that this case was going on in front of his Lordship, Mr. HO Chung-po was your co-director on the board, about who you had no suspicions in relation to this case, right?

A. Yes.

Q. So far as you personally are concerned, as one of the three members of the syndicate, you have nothing whatsoever to fear from Mr. HO Chung-po being called to give evidence in support of your case?

A. This is a matter for my lawyers. I myself have no opinion at all in this.

Q. You have nothing to fear. He is an honest truthful man who has done nothing wrong. 40

A. Yes, as to me, sir, this a matter for my lawyers.

Q. You yourself – it is a matter for your lawyers, it is quite right, but you yourself in your mind have nothing to fear from HO Chung-po being called as a witness?

A. Why should I be afraid? I have nothing to fear.

Q. I am going to suggest to you so that you know where my questions are going that you have known since some time in 1976 that HO Chung-po has acted throughout in everything he has done as the nominee of CHOO Kim-san.

A. I did not know that in 1976. I learned about it later.

COURT: When?

A. After I become the director of MAF.

COURT: So you say June 1977?

A. June 1977, yes.

10 Q. But even having found that out as you told my Lord, you had no suspicions that he had anything improper or dishonest in his capacity of acting as nominee for a fugitive of justice, right?

A. Correct.

Q. And I suggest to you that the whole time you were a co-director with HO Chung-po, you knew that he had been acting improperly and dishonestly. Do you agree or not?

A. I only suspected.

Q. And that you dared not dismiss him or ask him for his resignation because if you did he would do as LEE Ing-chee did in Malaysia and tell the truth about the transaction.

20 A. No, that I don't agree, sir. I have brought Mr. HO Chung-po to see Mr. Donald YAP of Messrs. Philip K.H. Wong & Co. and I asked Mr. HO in front of Mr. YAP that if he had worked for Mr. CHOO. Mr. YAP made an affidavit in action No. 1674 saying that I have brought Mr. HO to his office to see him.

Q. And that affidavit, it is page 84 in the blue file, admits allegedly that Mr. HO Chung-po acted throughout as agent for CHOO Kim-san until he jumped bail, paragraph 3 of the affidavit.

A. Yes, this is what he said before Mr. YAP.

30 Q. The question I put to you, you see, I suggested to you that the reason you did not dismiss HO Chung-po, knowing what he had done, was that if you did he would do as LEE Ing-chee did in Malaysia and report the truth of what had really happened.

A. I don't agree at all, sir.

Q. And it was and you knew it an essential part of the deal which CHOO Kim-san had set up that HO Chung-po should be protected, blameless in Hong Kong.

A. That I don't know, sir.

Q. Well for the most of this morning I will be showing you details how this was done, but for the moment —.

A. Yes.

40 Q. — will you just consider Action 1674 since you have mentioned it. That was, on the face of it, an action, was it not, to recover a sum of money of between \$1m. and \$2m. — sorry, \$1.6m. from CHOO Kim-san.

A. This was decided by the board of directors as well as the general meeting of the company.

Q. And you were the chairman of the board of directors at all material times.

A. Yes, after I was selected to be the chairman, I have been the chairman of the

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company even up to now.

Q. Oh yes, and it was you who gave authority for the conduct of the action and swore most of the affidavits.

A. I was authorized by the board of directors to do it.

Q. And in order to recover this sum of 1.6m., you attempted to do two things, didn't you? The first was to obtain a charging order upon the whole of the shareholding of Mr. CHOO Kim-san in MAF Credit.

A. I can remember that according to the injunction, sir, it was only 9 million shares, not all shares.

Q. That was the injunction. The charging order was to be on the whole of the 15,048,000 shares, was it not? 10

A. 48,000. I was told by Mr. YAP, the solicitor, that we had to charge more because of the costs. This is why we intended to charge 15,048,000 shares.

A. And the second thing you attempted to do was to restrain the Official Receiver of the Borneo Company from registering themselves as owners of the shares.

A. This is the solicitor's idea that that should be done.

Q. And you succeeded, his Lordship Mr. Justice YANG granted you an injunction, did he not? I have got the advertisement itself, the 6th of August, a very large notice, granted by Mr. Justice YANG in chambers. You remember this, don't you? I don't need to show you the document itself. 20

A. I only know that we have succeeded, yes, but I don't know whether it was his Lordship Mr. Justice YANG or not.

Q. We wouldn't go through the details. You fought to oppose the registration of the majority shareholding in MAF Credit. I say "majority shareholding, MAF Credit" in the name of the Official Receiver in Brunei.

A. You can't say this because my lawyer told me that according to the legal procedure that should be done step by step and so we did.

Q. You may take advice from your lawyers but you were in control weren't you, Mr. NG?

A. I have already told you yesterday that I was working in MAF on behalf of the San Imperial Company, sir, not for myself. 30

Q. I don't want to have to take half an hour in getting a simple matter dealt with. Your sole object in taking those or your principal object, your principal object, in taking the actions which you did was simply to prevent the Official Receiver in Brunei becoming – registering himself as the holder of the majority shareholding in MAF Credit.

A. Yes, because my lawyer said that he suspected that that was a part of Mr. CHOO's assets or part of the shares belonging to Mr. CHOO.

Q. And I suggest that you did what you did because you knew that the moment the Official Receiver became the majority shareholder you and HO Chung-po would be dismissed as you were. 40

A. I can't agree with you fully because I myself resigned from the board and as far as I know, sir, Mr. HO and one Mr. WOO are still working in the company, K.Y. WOO.

Q. And the reason why you didn't want to be dismissed was that an important part of the whole deal set up with CHOO Kim-san depended upon MAF Credit and San Imperial remaining under the same control for a considerable length of time.

MR. SWAINE: My Lord, I really must interject because my learned friend speaks of a deal. It has not been put to this witness although it has been put in theory to Mr. Ives. I think, as far as the witness is concerned, he is totally in the dark about what the deal is but these questions pre-suppose a deal of which this witness has no knowledge.

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COURT: Very well.

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10 MR. YORKE: That is perfectly fair, Mr. NG. The deal I will put to you in considerable detail as quickly as I can get to it, but the deal, you know, is this: that it was a deal whereby you got CHOO Kim-san's shares largely on a self-financing basis with little or no real money coming into the transaction and then washed them in the market through various companies to make it look as if it was an above board purchase for value by people at arm's length. That is the deal.

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MR. SWAINE: May I interject again because it was going to be put in this package? Can it be made clear whether he got the CHOO Kim-san shares from CHOO Kim-san? Is that part of the suggestion?

MR. YORKE: Yes, yes of course, from CHOO Kim-san.

A. I can't agree with you fully, sir.

Q. What is the bit you can agree with me?

20 A. I agree that I have purchased shares from Mr. CHOO or Mr. CHOO's people.

INTERPRETER: (to Court) He didn't use the word "nominee".

COURT: I thought he did.

INTERPRETER: I asked him whether it is from nominee but he didn't --.

COURT: I thought he did.

(interpreter clarifies)

A. When I said Mr. CHOO's people, I meant to say Mr. CHOO's nominees.

MR. YORKE: I will leave that subject for a moment.

MR. SWAINE: Has he finished?

30 A. If according to my own knowledge of the English about the word "wash", I can't agree with you fully, sir.

Q. I will come back to that later, but I just want to deal with some more general matters. In your capacity as chairman of San Imperial you occupied CHOO Kim-san's own office, did you not?

A. No.

Q. What is the office on the second floor on the left-hand side which your secre-

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tary occupies?

A. It was the office for the managing director or Mr. James COE.

Q. Whose was it before it was Mr. James COE's?

A. Mr. Henry LOKE, the acting managing director.

Q. All the blue cards – that is the shareholders' account cards in San Imperial which are now in that office – are stacked up in a cupboard inside. How long have they been there?

A. They were moved to that place from the MAF from time to time.

Q. Now what do you mean from time to time?

A. I meant to say that it was not in one lot, sir.

Q. But it wouldn't have been. There's too many of them to go in one lot, but when did they get there?

A. Some were in June this year, some in July and some even in August or even in September.

Q. Tell me a little bit about Bentley Securities. You buy shares for many different clients, do you not?

A. Yes.

Q. And you buy shares in many different companies as well.

A. Any shares, sir.

Q. And so any of your customers may hold shares in many different companies? 20

A. Yes, of course.

Q. What sort of records do you keep. If I was a customer and I rang you up and said, "Can you tell me how many shares I have got in a particular company?" Can you tell me how many you bought for me?

A. If you place your shares with me, then I will be able to tell you.

Q. If I bought my shares through you, would you be able to tell me or only if I deposited my shares with you?

A. In that case, we will have to go into the records. Suppose you ask me what have you got three years ago, I must go through the records.

Q. Yes, but the records are available, are they not? 30

A. I'll explain to you. We record all the business done by us in the daily journal and we later enter that into the client's ledger.

Q. And if I look at the client's ledger, it will tell me, will it not, company by company, all the shares that he has bought and sold through you?

A. It should be there.

Q. Suppose now that I am a customer of yours and I have, say, shares in half a dozen different companies and I have been active in the market for the last three years, I ring you up and say, "Mr. David NG, please tell me how many Hong Kong & Shanghai Bank shares have I got," how long will it take you to get an answer? 40

A. It won't take long, but it all depends on the work of the office to see whether it is busy or not.

Q. Of course.

A. I have told you already that it won't take long.

Q. You mean ten minutes, half an hour?

A. One or two days.

Q. One or two days?

A. Yes. We have to check through the records.

Q. Suppose that I only dealt in one share and I only dealt in that share for a

- short period of time, how long would it take to get the same answer of how many shares there were?
- 10 A. It would still take one or two days. It won't make any difference between your acquiring more than a hundred company shares or only one share.
- Q. Thank you very much. One detail about how things are done. This is a blue card. It doesn't matter which one it is. On the top righthand corner, in all the copies his Lordship has, there is a space called "specimen signature".
- A. This is the blue card with the Registrars of the company, but not the blue card of my company.
- 10 Q. I have changed the subject, Mr. Ng.
- A. (In English) I want to understand.
- Q. And the way that the specimen signature usually gets onto the card is on the first transfer coming in, the signature of the transferee is cut out and stuck onto this top corner, that's the usual way of doing it?
- A. Are you talking about the Registrars' work?
- Q. Yes.
- A. I don't know. I don't know anything about the Registrars' work.
- Q. You know this is how it has been largely done in the case of the San Imperial shares, don't you?
- 20 A. I am not clear about the blue cards because I don't know anything about the Registrars' work.
- Q. You never looked at any of those blue cards in the office in the San Imperial Hotel?
- A. Yes, I have. When JSM and Deacons came to ask to see the blue cards, the secretary asked me if we would let them see the blue cards, I said yes. This is why I saw the blue cards.
- Q. Take an example, Mr. David NG. P.14, page 1, which is CHOO Kim-san's own card.
- 30 MR. YORKE: Well, I have asked for these blue cards to be retained in court. Brown 3, P.14, page 1. I have asked and I do insist that these cards are to remain in court and are not taken away.
- Q. Can you see on that – the original has disappeared – can you see on the top right-hand corner that there is a cut-out of Mr. CHOO Kim-san's signature? We know it's his signature, and you can even see on the Xerox a couple of pieces of cellotapes stuck over it to stick it to the card.
- A. Yes.
- Q. And the same thing on page 2 as well?
- A. Yes.
- 40 Q. And that is done because the Registrars in their office, the only way they can know the signature of the transferee is from the transfer form?
- A. Yes.
- Q. And nobody goes to the Registrars and solemnly gives them a copy of their signature, do they?
- A. Unless in special circumstances.
- Q. Yes, of course, the signatures by nominees, by banks, have to be supplied to the Registrar, but individuals and companies with not very large holdings, that's how the Registrar gets the signature, isn't it?

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- A. Very rarely.
- Q. From that it follows that really after the first purchase and registration, the only signature which the Registrars will thereafter recognize in the absence of special instructions is the signature on the first transfer form?
- A. Yes, it should be so.
- Q. Changing the subject – you have given a great deal of evidence about your bargaining with Mr. Chow and Madam Hwang and with Lee and Fong, and you had to pay several visits to negotiate prices, didn't you?
- A. Yes.
- Q. There is nothing unusual about that, is there? 10
- A. That's the normal way in doing business.
- Q. Yes, exactly. The seller asks for a higher price that he hopes to get and the buyer asks for a lower price and you go on and you eventually come together?
- A. Yes.
- Q. If anybody agrees without arguing about the price in a business deal, there is probably something suspicious about it, isn't that correct?
- A. No, not necessarily.
- Q. No, not necessarily, but the normal thing is there is some bargaining about the price, isn't it?
- A. If there was a standard price, then no argument would be necessary. Suppose 20
you buy a flat or a house in a certain district and that there is the standard price of the flats or houses, you don't have to argue upon it.
- Q. Apart from that, in most business deals, there is some haggling going on, isn't there?
- A. Say 50/50.
- Q. Let's come down to some details. You disclosed in yellow 2, 135, that you bought in small parcels a number of shares which we now know to be an average price of \$0.547 – 55¢. Could it be P.15A because it follows on from P.15 which is the turnover? It's the same document which had added to it the share prices. These have been supplied by Francis Zimmern & Co. – it doesn't 30
appear on the two copies because we've had to put two letters together – who are fellow members of the Far East Stock Exchange, are they not? I beg your pardon. I am so sorry. He is a member of the Hong Kong Stock Exchange. But you could check these in a matter of minutes in your office, could you not?
- A. There are the records. There is a report of the Far East Stock Exchange.
- Q. Yes, and you could check these in your office in a matter of minutes, couldn't you, whether this is accurate?

COURT: This sheet of paper.

- A. Yes, it should be so.
- Q. So can we just go on the assumption that Mr. Zimmern has got his figures 40
right? One could see over the period you were buying shares, from January – 3rd of January you started, didn't you? You see, in January the prices were down to a low of 28¢ – I think that was Kam Ngan at the low – and the high of 50¢ on Hong Kong.
- A. Yes.
- Q. Perhaps I should add here – would you agree that although prices are different between different exchanges, the prices never get more than a few cents out of

line because if they do, somebody will quickly arbitrage between exchanges?

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A. About four units.

Q. And then by March, the spread is a low of 45 and the high of 74, both on the Far East Stock Exchange, you see?

A. Yes.

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Q. And by May, the lowest price was Far East Stock Exchange, 87, everybody else was not – all other prices are 90 or above?

A. Yes.

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10 Q. Would it be fair to say that your firm, having seen what the prices were in that period, bought over 2¼ million shares at an average price of just under 55¢ per share must have been buying very skilfully in the market? That's meant to be a compliment, not a trap.

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A. I can explain to you this that sometimes in one hour the price rises to a very high standard. For instance, here it says 99¢ as the highest price in the Far East, but I can tell you this that only a very small amount of shares were bought and sold at 99¢.

Q. Of course.

A. There would rarely be any buyers at such a high price.

20 Q. That seems to have been the all-time high over the period that we have for San Imperial shares. 99 is the highest figure we have for the shares?

A. Yes.

Q. But do you agree with me – my compliment to you, Mr. Ng – that you bought skilfully in the market to get the volume of shares that you did at the price you did?

A. I'll explain to you this that once Sun Hung Kai comes out to buy the shares, the price will rise to a very high standard, in that case we will retreat.

Q. I am trying to pay you a compliment, Mr. Ng. You don't seem to want it.

A. It's not that. I only wish to explain to you what the market is like here.

Q. I know what the market is like, Mr. Ng.

30 A. I thought you only knew about the market in U.K., not in Hong Kong.

Q. There is more to stockbroking than just going in and saying, "I want to buy shares." A good broker can buy and sell at better prices for his client than a bad broker, is that right?

A. Yes, of course.

Q. And the figures at which and the way in which and the parcels in which you bought your shares show skilful broking, right or wrong?

40 MR. SWAINE: I don't wish to take away from Mr. David NG's skills. I think none of this adds to this point, but most of the purchasing in the open market by the syndicate occurred up to the end of March before the price started really going up. That, I think, will take away from the average price.

COURT: I think Mr. Ng is aware of that.

A. Yes. If you want to buy any shares through me, I will be glad to do so.

Q. You see, Mr. Swaine made a very helpful intervention that most of these shares were bought by the end of March, most of them, at which time the high was 74?

A. Yes. If you get the daily report, you will know that the highest price only

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remained there for a very very short period.

Q. Oh, yes, I am not arguing about – Mr. Swaine got up a moment ago and observed – was he correct – that most of the purchases had been done by the end of March, most of the purchases?

A. Yes.

Q. By which time the price had risen by more than 30¢ since Christmas or 40¢?

A. Yes.

Q. And the price thereafter only rose by about 25¢?

A. Yes.

Q. 74 to 99, that's 25. With the market going up 30¢ between 40 and 70, you could buy 2¼ million at 55, why when the market goes up less than that, you couldn't buy another 2¼ million even if you were paying twice your earlier average price, paying a dollar a share? 10

A. I have already told you that once Sun Hung Kai comes out to buy shares, the price will rise very high and no one would like to bid against them.

Q. When did they come into the market?

A. Sun Hung Kai had been discussing with us all along.

Q. When did they come into the market?

A. I think it was in February and March, even in April.

Q. When you were buying? 20

A. Yes, and I had to go to the other stock exchanges to buy the shares.

Q. You see, what you did, instead of going on buying extensively and successfully in the market as you had, was to enter into the MAF Option Agreement at a figure almost three times the figure at which you had previously been buying, that's yellow 1, 18, isn't it?

A. Yes, but that was only an option agreement.

Q. And the option was exercised, was it not?

A. Yes.

Q. I noted that the inspector, for what it is worth, in his report noted that the option agreement was entered into at three times the market price, didn't he? It's yellow 5, page 63. Perhaps you'd better see it, page 63, just about five lines from the bottom. 30

A. Yes.

Q. You see, "In order to repay the remaining \$6,000,000, MAF Corp. sold 3,226,000 shares of San Imperial Corp. Ltd. to Mr. David Ng Pak Shing and Mr. Ho Chapman at \$1.50 per share (approximately 3 times the market price)"?

A. Yes.

Q. The fact which interests the inspector. It interests me, Mr. Ng, you really think that for a parcel of that size it was necessary to deal at three times the market price. 40

A. We wanted to sign an agreement with James COE, but we did not have sufficient shares, that's why we had to buy those shares from him.

Q. Who's "him"?

A. That's MAF.

Q. Why did you say "him"?

A. This is only a difference between Chinese and English.

Q. Thank you. I am sorry about that. Who asked you for the price of \$1.50 per share?

A. You want me to tell you the name of the person?

Q. Yes.

A. HO Chung-po. He said that the price must be the same as the one in the agreement.

COURT: With James COE?

A. Yes.

Q. Had you told him about the James COE agreement?

A. Yes, but skilfully. \$1.50 for the buyer, this is why the price was fixed at \$1.50.

10 Q. You told HO Chung-po you had the agreement with James COE?

A. At the time of the negotiation of the price, the agreement was not signed.

COURT: The point was, did you tell Ho that you had an agreement or you were going to have an agreement with James COE or did you simply say that "we had a buyer"?

A. (In English) We had a buyer.

COURT: You didn't mention names, that's the point.

A. No.

Q. And you didn't have an agreement at that time, did you?

A. You mean the agreement with James COE?

20 Q. Yes.

A. That's right.

Q. As you didn't have an agreement with James COE, how could there be a price for HO Chung-po to know?

A. I have told you already that the price was at \$1.50 for the buyer.

Q. Look at document 40, would you, yellow 1? You will see that the price at the foot of the page in clause 6 is \$1.50.

A. Yes.

30 Q. Document 18, same bundle, at the foot of clause 1, the price is \$1.50. Page 18 and page 40. Now could you tell Mr. HO Chung-po on or before the 30th of March that on the 30th of April, you would agree with James COE a price of \$1.50 per share?

A. I can tell you this that, if my memory is correct, on the 30th of March there was already a negotiation between Messrs. Peter Mo & Co. and Messrs. Philip K.H. Wong & Co. and Mr. Ives had already written a letter to Messrs. Philip K.H. Wong & Co.

COURT: With a draft agreement?

A. And the agreement had already been drafted. I still can remember the wording of that document. It says, "Mr. Ives will be available all the day because Mr. Ives will be on leave."

40 Q. Look at document 20, would you?

A. Here it does say that Mr. Ives will make himself available all day.

- Q. Dated the 31st of March which is the day following your agreement with Mr. HO Chung-po?
- A. Yes.
- Q. And you see at the foot of the page, "There is to be no binding agreement until the two agreements have been signed by both parties"?
- A. Yes.
- Q. So at that stage, as at the 30th of March, there was no binding agreement between you and Mr. Coe?
- A. No.
- Q. So there was no signed agreement which you could show to Mr. HO Chung-po or anyone? 10
- A. No.
- Q. So why do you say that you told him the price which you were going to receive from Mr. James COE skilfully?
- A. I have already told you that I told him that I had a buyer and the buyer offered \$1.50. This is the third time I say it.
- Q. Why was telling a man from whom you wished to buy shares in a deal, why was it skilful to tell him the price that you were going to get?

MR. SWAINE: I am sorry, I think he said he was going to tell you skilfully.

COURT: No, he was telling HO Chung-po skilfully. 20

- Q. Why was it skilful to tell him that you had got a buyer at \$1.50?
- A. Why was it not skilful? I did not mention the name of the buyer, therefore he wouldn't be able to get the business away from me.
- Q. You are a businessman of some skill and some experience, Mr. Ng, aren't you? That's true, isn't it?
- A. A little bit.
- Q. To go to another man and tell him the price at which you are able to conclude a larger deal is to throw away half of your negotiating powers, isn't it?
- A. Mr. HO Chung-po told me at that time that he would only sell the shares to me at the price offered by my buyer. I thought that those shares were very important to us because we did not have sufficient shares. 30
- Q. Why didn't you tell him that your buyer was only going to pay you \$1.25?
- A. I talked to Mr. HO Chung-po as a sharebroker. If I told him that the price was \$1.25 and later he found out in the agreement that it was not \$1.25 and instead it was \$1.50, so how can that be?
- Q. How was he ever going to see a private agreement which had not yet been entered into between your syndicate and Mr. James COE?
- A. This is a question of morality of the broker. If I did that, that is to say, I had cheated my customers or clients.
- Q. You were prepared to drive Mr. Chow and Madam Hwang down to the lowest price you could get, but you were equally prepared to take Mr. HO Chung-po's price without argument? 40
- A. Of course there was an argument over the price, but Mr. HO Chung-po refused to sell the shares.
- Q. How long did you argue with Mr. HO Chung-po?
- A. We have discussed about it for about an hour.

COURT: A long time?

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A. For a long time.

Q. And you didn't go away and say "Well, you might or you might not," and see if he would come up with a better offer on another occasion?

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A. I did not actually leave. I asked for a better price, that is, a lower price. I said, "Would you please reduce the price?" – things like that.

Q. But after an hour's hard bargaining, you gave way and gave Mr. HO Chung-po his asking price which he told you?

No. 40

10 A. Yes, but there was the option. We could refuse to exercise the option, the most thing we would lose was \$50,000 option money.

David Ng Pak-
shing – Cross-
examination

COURT: What was the initial price of the shares Mr. HO Chung-po asked for right from the beginning when you started to discuss?

A. I offered the price first, he said no.

COURT: What did you offer?

A. I offered him the market price.

COURT: And he said no?

A. He said no.

COURT: He made a counter-offer. What was his first counter-offer?

A. Actually it was like this – he asked me, "What do you want the shares for?"

20 COURT: You told him, and then what did he counter-offer?

A. Then he said that he wanted the price offered by the buyer.

COURT: So his first counter-offer was the price to be paid by your buyer?

A. Yes.

COURT: And he made no concession whatsoever after that?

A. Yes.

COURT: This is what I am trying to find out.

Q. Mr. Ng, I don't understand really your last few answers. You said you agreed with him on the price, the same price as your buyer had offered, because that was a matter of your morality as a broker.

30 A. As a sharebroker in the business, this is what one should not do.

Q. But you didn't by any means tell Mr. Chow and Madam Hwang that you were going to get \$1.50 or more for the shares, did you?

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David Ng Pak-
shing – Cross-
examination

- A. No.
- Q. But you charged them brokerage, didn't you?
- A. The shares were bought at \$9,000,000. I don't know whether that was stated in the agreement . . .
- Q. And you charged Lee and Fong?
- A. . . . I mean to say the brokerage.
- Q. You charged – you deducted the brokerage?
- A. That was only the stamp duty.
- Q. And brokerage?
- A. (In English) \$72,000 for stamp duty and \$36 increase of capital. No brokerage stated. 10
- Q. Lee and Fong, you certainly charged brokerage, didn't you?
- A. Yes.
- Q. I take it that your broker's morality stays behind in Kaitak, is that right?

COURT: This is figurative. You did not bring your morality to Taiwan, you left it behind in Hong Kong?

- A. We were talking on the business at that time in buying and selling shares. When I said to you about the morality as a sharebroker, it's because he said that he wanted the price offered by my buyer, and this is why I said that I could not cheat him, otherwise how could I do any more business in this line? 20
- Q. One more thing about that side of it, Mr. Ng, is this that only a fool would ever have told the man from whom he was buying shares in a large quantity the full reason why he was buying them or the price which he was being that because by doing that, it gives away all his negotiating powers.
- A. I have already told you that we did not have sufficient shares and we needed that lot of shares.
- Q. Can you tell me when you reached this agreement with Mr. HO Chung-po?
- A. You mean the option agreement?
- Q. Yes.
- A. I believe it was at the end of March. 30
- Q. We know it was signed on the 30th of March, and by that time Mr. Melville IVES had time to draw it up and somebody had drawn the cheque. I wonder how quickly was it done, one day, two days, a week, what was it?
- A. As soon as we had agreed, we went to the solicitors' firm to sign the agreement.
- Q. Mr. Ng, that cannot possibly be right. You reach an agreement with somebody, you can't then go to a solicitors' firm to sign the agreement because not even Mr. Melville IVES will have an agreement ready for signature before you get there. Now how long before an agreement was signed had you actually agreed after your hour's hard bargaining with Mr. HO Chung-po? 40
- A. It was on the same day. After I had agreed with Mr. HO Chung-po, we informed Mr. Ives to prepare the agreement.
- Q. And he produced the agreement the same day?
- A. Yes, I believe so. It was in the afternoon.
- Q. I suggest to you that you negotiated with Mr. HO Chung-po, so far as you did negotiate, at least six days before document 18 came into existence.
- A. Six days before the signing of the agreement, I was in Taipei.

- Q. I said at least six.
- A. It had been mentioned before, sir.
- Q. Ah, thank you. How long before? At least six days before?
- A. Well, it should be so, sir.
- Q. Yes. So Mr. HO Chung-po knew that you were a potential buyer at least six days before?
- A. Yes.
- Q. So that there was not just one hour's discussion but there were two discussions separated by a week or more?
- 10 A. When I said 'in one hour' I meant to say that after one hour's discussion we came to an agreement, sir, but before that of course we have mentioned it.
- Q. I don't understand the 'of course', Mr. David Ng. You gave his Lordship the impression, I think, that there was only one discussion of one hour until you realised that I could show that that wasn't true; you then remembered that it had been discussed before. Now will you tell his Lordship what was discussed on the other occasion?
- A. I asked him, "You have these shares, do you like to sell them?" sir. Then he said, "If the price is right I will sell the shares, but if the price is not right I will not sell the shares." At that time when we mentioned about it, it was
- 20 Q. That was at least a week before you signed the agreement of the 30th of March?
- A. Yes, you may say so.
- Q. Oh, I do say so. Look at P.14, would you please? It is Brown 3 – Brown 3, P.14. You told us in your affidavit of the 27th of July, which you need not look at again – it is Red 3, page 83 – that you searched the register and you found that M.A.F. had a large shareholding in San Imperial.
- A. Yes.
- Q. Would you look at page 12? You are not looking at the same document as I am you should be looking at P.14 in Brown 3, page 12, it's a bundle of documents. Will you have a look at this, this document is also the same one. Is that
- 30 one of the cards which you saw?
- A. Yes.
- Q. But at the time that you saw it it would be correct, would it not, that the last four entries were not on it because they were part of the mechanics of the option deal, and so you would have seen it with the line there, the '14th of September', as the last entry?
- A. Yes.
- Q. And it would be obvious to you, therefore, as a stock-broker, if not immediately to a layman, obvious to a stock-broker that M.A.F. Corporation hadn't been
- 40 trading in shares for some time?
- A. It should be so, sir.
- Q. Now, will you turn over to page 13. Now I suggest that you either saw in your search – you saw page 13 and you may or may not, I don't know, have seen page 14, but if you saw page 14 then only the first line was there, the '19th of January'.
- A. Yes, I might have.
- Q. Can you remember whether you saw page 14 or only page 13, finishing at the end?

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shing – Cross-
examination

- A. No, I can't.
- Q. Well, in either case, whichever you saw, you would again know, as a stock-broker, that M.A.F. Nominees Limited had not been trading in the market for some time.
- A. I don't quite agree with you, sir.
- Q. Well, you were looking at it some time in March, and the last trading entry was, in fact, the 19th of January.

INTERPRETER: The 9th.

MR. YORKE: No, it's '19th' on the good copies, on the bad copies it's got '9th'. It is the 19th.

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- A. Before March, sir. I made a search before March.
- Q. Yes, yes. If you made the search at Christmas the entries would be the same, wouldn't they?
- A. It should be so.
- Q. Will you just write down the figure at the bottom of page 13 of the balance column, which is 1,069,000. Then would you write down the figure on page 12 which was the balance at the time you saw it, which is 2,157,000. Will you add them up, please?
- A. I have.
- Q. Yes. What does it come to?
- A. 3,226,000.
- Q. Yes. Will you now turn to Yellow 1, page 18, and read clause 2, in particular the second half of it. You had better read clause 1 as well, if you would. Clauses 1 and 2.
- A. Yes, I have.
- Q. Will you now tell my Lord why that clause was put in, 1 and 2? I'm sorry, that is putting the question very badly. Why that is put in the form of an option to purchase six million shares plus the wording in the brackets in clause 2?
- A. I asked HO Chung-po how many shares he had. At first he told me that he had about six million shares. I asked him if he would be able to give me six million shares at the time of the handing over when the transaction was done, and then he said that it might be less than that. I thought that at that time he was talking to me in a way of doing business, sir. This is why this clause was put in.
- Q. What do you mean 'in a way of doing business?' Do you think he wasn't being absolutely frank with you?
- A. Well, I believe so, sir.
- Q. Whereas you, of course, for the reasons you have given my Lord, were being perfectly frank with him?
- A. Yes, because I needed those shares.
- Q. And you were prepared to buy six million at one point five dollars each and pay nine million for them?
- A. This is why the option agreement was signed, in case we did not need that much we could always refuse to buy them.
- Q. No, you look at that agreement. You had to buy every share he had up to

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- six million. There was no provision in it for a partial exercise.
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- A. To my memory, sir, we have mentioned to him that we could refuse to buy the shares. Well, I mean to say that we could refuse to exercise the option agreement.
- Q. Yes, but if you exercised it you had to buy every share they had up to six million.
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- A. Yes.
- Q. You needed three point two to make up twenty-three million, but if you bought six million you would have had more than twenty-five.
- No. 40
- 10 A. Then we could ask our buyer – we could ask our buyer to buy more because at first when we talked about this the amount was twenty-four million two hundred thousand shares.
- David Ng Pak-shing – Cross-examination
- Q. So Mr. Coe, who was content to buy twenty-three million, would in fact have been content also to buy twenty-five million at an increased cost of another five million dollars, about?
- A. It all depends how it was discussed.
- Q. Oh, yes. I'm not going to go into details of that. You see, you knew exactly how many shares M.A.F. Nominees and M.A.F. Corporation had because you had made a note of it when you inspected the register, hadn't you?
- 20 A. Yes, but at that time I did not know whether or not the M.A.F. Company had purchased some more and those shares had not been registered.
- Q. Yes, we are coming to that in just a moment. Would you also look at clause 3 on page 18, and you will see that:
- “Upon the granting of this option . . .” – that is the 30th March – “ . . . the intending Vendor . . .” – that is HO Chung-po – “ . . . shall deposit with Peter Mo & Co. signed stamped transfers in blank form the 6 million shares (or so many as the intending Vendor shall have) together with the relevant certificates.”
- In other words . . .
- 30 A. Yes.
- Q. The moment he signs, and you said you went to Mr. Melville Ives offices, you drew up the agreement and you signed it there and then; the moment he signed he had to deposit straightaway the shares and certificates that he had.
- MR. SWAINE: I'm sorry, but I think my learned friend is mistaken here upon the exercise.
- Q. Paragraph 3:
- “Upon the granting of this option . . .” – not the exercising of this option – paragraph.
- 40 “3. Upon the granting of this option the . . . Vendor shall deposit . . .”
- A. Yes, according to this paragraph.
- Q. Yes. Of course that doesn't mean it's at that second, he has got time to go and collect the share certificates, but the purpose of that is obvious, is it not?

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That is to prevent, on the face of it, HO Chung-po from going into the market that day buying shares at seventy cents which you might have to buy at one dollar fifty.

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- A. Yes, I believe this is what Mr. Ives meant.
Q. Yes. Will you now go back to page 12 of P.14, please? You will see – page 12. You will see six days before document 18 is executed . . .

No. 40

COURT: I'm sorry, P.14?

David Ng Pak-
shing – Cross-
examination

MR. YORKE: P.14, page 12, my Lord.

- Q. Six days before document 18 was executed M.A.F. Corporation had transferred the whole of its shareholding, 2157, to somebody else. 10
A. Yes, according to this exhibit, yes.
Q. And you notice the transfer number is 4820?
A. Yes.
Q. Will you then go to page 14, and you see the number 4820 in the first six entries?
A. Yes.
Q. And that is bringing in the 2157 and at the same time doing a conversion into larger certificates so that you end up on the right-hand side opposite that date with 3,226,000, the figure you worked out.
A. Are you explaining to me, sir? 20
Q. No, you can see this.
A. Yes.
Q. So you see as at the 24th of March Mr. HO Chung-po, if he cared to look at his own register, would see that he owned share certificates for 3,226,000.
A. Yes, it should be so, sir.
Q. You can take it from me that all the rest of the entries on that page, up to and including the 30th of March, are Asiatic Triumphant deals with the exception of the purchase of sixty thousand and one thousand. On the 24th of March it's sixty thousand and one thousand on the 30th of March.
A. Yes. 30
Q. In fact, on second thoughts, don't take it from me. I'll just say this, that whoever is in charge of the register knew as at the 24th of March, which is about the time you first discussed the matter with Mr. HO Chapman, exactly how many shares they had, which number would have corresponded with your own inspection back at Christmas.
A. Yes, the person in charge of the register knew this, yes.
Q. Because there really had been no change since Christmas, had there?
A. It should be so, sir.
Q. And we know that the number that they did deposit was 3,226,000, wasn't it?
A. Yes. 40
Q. So really both – the people on both sides of that agreement on page 18, both you and HO Chung-po both knew that the precise figure of shares available was 3,226,000.
A. I can only say this: that Mr. HO Chung-po might know how many shares he had at that time but I did not know that.
Q. And, in fact, the shares had been transferred out of M.A.F. Corporation into

M.A.F. Nominees on the 24th of March in order for the agreement of the 30th of March to operate upon that one parcel of shares – for the option agreement to operate upon that one parcel of shares.

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shing – Cross-
examination

- 10 A. Yes, according to page 14, here.
- Q. You see, there is no other conceivable reason why, on the 24th of March, Mr. HO Chung-po should have put two parcels of shares together.
- A. I don't know what the reason was. I think Mr. HO Chung-po may know about it.
- Q. Oh, he may well but we are not going to hear from him. You see, what I suggest to you, Mr. Ng, is that if matters happened the way that you have said they happened there is no conceivable reason why document 18 should not have contained the figures 3,226,000.
- A. This I don't know. I have already said that Mr. HO Chung-po might get shares from other sources and put them together.
- Q. But he must have known that he hadn't.
- A. This is a matter for HO Chung-po but I did not know.
- Q. Yes, indeed. You see, Mr. David Ng, this term in brackets in clause 2 and the requirement in clause 3 would make a lot of sense, wouldn't it, if the agreement had actually been entered into in about October of 1976 when nobody knew how many shares M.A.F. would be able to buy in the market.
- 20 A. You mean if?
- Q. I am saying the agreement would make sense if it had been entered into in October, at which time nobody knew how many shares M.A.F. would be able to buy in the market.
- A. Well, I don't agree, sir.
- Q. Because, you see, at any time after the foot of page 13, 23rd of November, or a similar entry on page 12, 14th of September, there was no longer any doubt about how many shares M.A.F. had.
- 30 A. Well, this document can prove at no time that a certain person had so many shares in his hand. Usually in Hong Kong the man, after buying the shares, just put the shares in his home until the company declares its dividend. Well, unless the company had a dividend to pay out so the people would not get their shares transferred or registered in their own names.
- Q. We know that, thank you.
- A. San Imperial shares never declared any dividend in 3 years, but this is why I said that this card may not show or cannot show the actual figure.
- Q. We happen to know that it does show the actual figure because we happen to know the figure, the number of shares which were deposited on the 30th March, 3,226,000.
- 40 A. I was only trying to explain to you, sir, because you said that these – this sort of cards are always accurate.
- Q. No, I am not suggesting that at all, Mr. Ng.
- A. Well, all right, then I misunderstood, I'm sorry.
- Q. I am suggesting to you that the only possible reason for the drafting of the first page of document 18 is that at the time it was drafted neither the draftsman nor the parties knew how many shares were liable to be transferred.
- A. It is sure that Mr. Ives did not know that and it's sure that I did not know that, but Mr. HO Chung-po might know how many shares had been deposited.
- Q. And since there was a week or more between your first discussing it with

Mr. HO Chung-po and this agreement then, on your own evidence about your broker's office, in the couple of days in the meantime the shareholding could have been ascertained if anybody had wanted to know it.

INTERPRETER: The shareholding?

Q. The shareholding of M.A.F. could have been ascertained if anybody had wanted to know it because you had a week and it only takes two days.

A. Do you mean to say that if you wanted to find it out with my firm, with our firm, the Bentley Company?

Q. Mr. Ng . . .

A. From these cards I found that Mr. Ho had these shares in this figure, but I was not sure whether he still had it in his hands because, according to the cards, in September '76 he had 2,157 and in November '76 he had 1,069. 10

Q. And Mr. HO Chung-po, of all people, would have known that he had made no sales and no purchases in the market since then.

A. How could I know that, whether or not he had sold any shares?

MR. YORKE: My Lord, I shall be a few more minutes on this point, perhaps it might be a convenient movement to adjourn, rather than postpone lunch indefinitely.

D.W.2 David NG Pak-shing – On former oath

XXN. BY MR. YORKE (continues):

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Q. Before the adjournment I asked you to explain to us and to his Lordship how it was that the then chairman of San Imperial Registrars didn't really know how many shares his own company had in San Imperial. I suggested to you that a reason for this document being drafted in its form was that at the time it was really entered into the – or drawn up, nobody did know how many shares would be subject to the agreement and that, therefore, put it back some time in October. That's where we had got. You see, there is one other possibility, an alternative date when this agreement might have been drawn up, and it's this, that it was drawn up when the number of shares was known, any time from December onwards, by simply looking at the share register cards, but when the parties didn't want the date, the real date to be known and therefore it was drawn up in the form of an uncertain option in order to avoid the necessity for stamp duty. 30

A. That I don't agree.

Q. Well, you aren't a lawyer, Mr. Ng; it is a matter that stockbrokers should know. Would you look at paragraph (6) of section 31 of the Ordinance – section 30 of the Ordinance, Cap. 117.

COURT: Sorry. Section . . .?

MR. YORKE: 30(6), my Lord, it's page 28 of the Ordinance:

“The provisions of this Ordinance as to contract notes shall apply

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to any contract under which an option is given or taken to purchase or sell any shares or marketable securities at a future time at a certain price, as it applies to the sale or purchase of any shares or marketable securities, but the stamp duty on such a contract shall be one-half only of that chargeable on a contract note: . . .”

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You can understand that in English, can't you, Mr. Ng?

A. Yes.

No. 40

10 Q. And therefore you can see that it might at least be arguable that if the price which will ultimately be paid is unknown because the number of shares is unknown, therefore you do not have a certain price within sub-section (6) and therefore the agreement doesn't need to be stamped.

David Ng Pak-
shing – Cross-
examination

A. I did not know of this regulation, sir. The agreement was prepared by my lawyer. As to whether or not the agreement should be stamped, this is a matter for the solicitor.

20 Q. I entirely accept that the agreement was prepared by your lawyer and stamping was a matter for him. I'm merely pointing out to you that a second reason for drafting the agreement in the form of an option when the shares were certain, the number of shares was in fact known to everybody was that this made it not liable to stamping, and therefore no one independently would attest to the date.

A. That I don't agree, sir.

Q. Yes, and that what was really important about this agreement was that it would eventually be dated on the day after the registration of all the shares coming from Taiwan was effected.

A. The date was put down by the lawyer, sir.

Q. Again I don't dispute that for one moment, Mr. Ng, but the significant thing, is it not, is that the transfers for all the shares coming from Taiwan went through on the 28th and the 29th of March and the date which was filled in here was the next following day?

30 A. This agreement was signed on the 30th of March.

Q. And it was entered into as part of your deal with CHOO Kim-san and his nominees in order to save HO Chung-po from the consequences of certain previous transactions.

A. How could I know if HO Chung-po had any transactions or dealings with the other people? This is the option agreement signed between myself and HO Chung-po.

Q. I'll show you how in a moment. I have already shown it to Mr. Melville Ives, your solicitor, but I'll show it to you as well for a different reason.

A. Good.

40 Q. And two last matters on this: the first is that I suggest to you that there was in existence at the same time another document which we have never been allowed to see and that is a contemporaneous exercise of the option under clause 2 in respect of 3,226,000 shares.

MR. SWAINE: That form of words is not often that important, but just for the record, my learned friend says "A contemporaneous document which we have not been allowed to see." That has never arisen.

MR. YORKE: I substituted the word 'allowed' for 'suppressed', my Lord. I shall later on, I hope this afternoon, begin to show your Lordship some very important documents which should have been disclosed to us long before this trial started but we only got by accident.

Q. It has been suppressed from us that there was, in fact, a contemporaneous exercise of the option under clause 2. You don't agree with that?

A. That I don't know, sir.

COURT: I want to be quite clear on this. What is it that you don't know? You don't know whether it has been suppressed or not, or you don't know whether there was such a document in existence?

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A. I don't know whether there was such an option, sir.

MR. YORKE: Such an exercise of the option.

COURT: That's right. That is what you meant, isn't it?

A. That's right, sir.

Q. The last thing is this: I'm puzzled as to why you repeatedly told his Lordship, both in chief and about three times to me, that you had no choice but to agree to HO Chung-po's terms for this option and to the one fifty price, and at the same time you say you didn't have to exercise it.

COURT: I don't think it's a question. Counsel is reminding you of what you are saying.

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MR. YORKE: I'm much obliged, my Lord.

Q. You see, either you had to have this parcel of shares, in which case you had to pay whatever price was asked for it, or you didn't have to have it, in which case you were in a position to bargain, but you can't have it both ways.

A. To my understanding this option agreement means that on the 30th of March I could buy those shares from him, but if not the fifty thousand dollars option money would be forfeited. On the other hand, the agreement with Mr. Coe was not signed yet but it would be signed, and if the agreement with Mr. Coe was signed then we would not have the sufficient shares, and if that agreement was not signed we would still have time to buy those shares from the open market. This is my explanation that Mr. Ho said that he wanted the price offered by my buyer, and this is why I said that I had no choice.

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Q. But, you see, before the agreement was signed with Mr. Coe you had stopped buying in the open market, hadn't you, virtually?

A. No. I still bought the shares according to the records.

Q. Oh, yes, some shares, but you had virtually stopped.

A. Yes, I still carried on buying shares.

Q. Look at Yellow 2, 135 2. Would you write in line – I think this is correct – dates on the – that No. 4 follows on, does it not, from No. 1 schedule. No. 1 is buying from the 31st of January to the 15th of April, No. 4 Schedule –

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INTERPRETER: Yes.

Q. The first page of 135 – the pages of the schedule are not numbered. Would you like to put on the page the dates of the schedules? No. 1 is the 3rd of January to the 15th of April, No. 4 is the 22nd of April to the 28th of June, so you see schedule No. 4 follows on from schedule No. 1 in point of time. That's correct, isn't it? That's correct, isn't it, Mr. Interpreter?

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INTERPRETER: Yes.

10 Q. Thank you. I just want to see that you are agreeing with me. It's terribly difficult with figures if you go ahead of somebody. Then schedule No. 2 is the 4th of January to the 31st of March and schedule No. 3 is the 31st of March to the 13th of April.

MR. YORKE: If I've given an incorrect date I hope somebody will correct me.

Q. So that schedule No. 3 follows on from schedule No. 2.

A. Yes.

Q. And then Schedule No. 5, I think is the one that you explained where you picked up shares where the Share Certification did not correspond to signatures and so on, is that right – that is the special period – I beg your pardon, that is the special period – just look will you, although it leads up to the suspension period, although it shows four schedules you raise them chronologically there are only two schedules there, that is correct, isn't it?

20

A. You mean according to the dates?

Q. Yes, look at Schedule 1, in effect shows the first three months you were buying at the rate of just under half a million shares a month – you just have to say yes or no to that.

A. Yes.

Q. Then Schedule No. 4 . . .

A. But if the total number of numbers here is half a million, then it is half a million.

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Q. No, the total number is 1.5 million – I said over three months – that makes it just over three months – that makes it just under half a million shares a month.

A. Yes, on an average.

Q. After that date on Schedule 4, you only buy 77 thousand shares in over two months.

A. Yes.

Q. Schedule No. 2 shows that you buy a quarter of a million shares in just under three months?

A. Yes.

40 Q. Which is about – on that about 75 to 80 thousand shares a month?

A. Yes.

Q. And Schedule No. 3 following on shows that you kept up the rate – you bought about the same amount into the middle of April, in the first week by

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buying rather faster, over the month same amount and then stopped as at the 13th of April?

- A. Yes.
- Q. In other words on your own figures you have been enthusiastically in the market, but as soon as you entered into this so-called Option Agreement at a figure of 1.5 -- 1.50 per share, you virtually withdrew from the market and didn't attempt to acquire a similar shareholding in the market, that is right?
- A. Well sometimes it is rather difficult for me to say so -- I do not quite agree with you -- sometimes even if you want to buy shares from the open market you couldn't do so -- once the Sun Hung Kei or Wing Foo companies intended to buy, well the other just stopped. 10
- Q. You see the price in the market was still way below the price with which you had agreed to sell to HO Chung Po wasn't it -- sorry to buy from HO Chung Po?
- A. Yes, I know that it was far below the price agreed in the Option.
- Q. You could have driven your average price -- average purchase price up to 1.40 and still been better off than exercising the option in favour of Mr. HO Chung-po, couldn't you?
- A. Theoretically yes, but practically it is not.
- Q. You could have bought at prices up to \$2.00 provided the average price stayed down at 1.40, you would have made money even after forfeiting the 50,000 fee and brokerage and everything else. 20
- A. Practically it is like this that there must be sellers otherwise you wouldn't be able to buy any shares.
- Q. There were 2½ million sellers in April, May and June weren't there -- three, 3½ million sellers at those prices -- P.15A -- would you have a look at P.15A, I am so sorry . . .
- A. Sometimes though there were large amounts purchased and sold in the market but some of them were sold and purchased through private arrangements through the same broker, therefore the others would not be able to buy those shares from the market. For instance there are some \$1.00 shares and if you read from the newspapers that sometimes there were 10,000 or 20,000 shares purchased and sold but you wouldn't be able to buy those shares from the market. This is the truth -- this is what actually happens in the open market. 30
- Q. You didn't even try did you Mr. David Ng -- that is the point, you did not even try to pick up a holding in the market which would have saved you a million or more dollars as against the price payable under your agreement with M.A.F., Mr. HO Chung Po.
- A. Of course, we wanted to buy the shares but the question is whether there were any sellers. Suppose in the market the first one was No. 49 Sun Hung Kei and the second one was No. 33, Sze Fung Head and Shoulder, and the third one is my number 311 -- well sometimes the sellers just don't want to sell their shares to me. They would like to sell their shares to No. 33, that is the Head and Shoulder -- this is only an example, that is to say I wouldn't be able to buy those shares. 40
- Q. Tell me, does Mr. Harilela have a reputation in Hong Kong of being a very successful and extremely tough business man?
- A. I know that he is a successful man in the business but I don't know whether he is tough or not.

- Q. He has a reputation for driving a hard bargain does he not?
A. No, I don't think so though he is an Indian, sir.
- Q. All right, turn to the last page of document 135 would you, in Yellow 2, 135, last page, immediately before Document 136 – this is what you purchased during the suspension period.
- A. Yes, during the period of suspension I knew that they had those shares, therefore, I asked them to sell those shares to me and they agreed, and after the re-listing of the shares they actually sold those shares to me.
- Q. Strictly speaking they agreed to sell them to you but they couldn't transfer them to you until the suspension is lifted, is that right?
- A. Well I cannot remember what actually happened at that time. Anyway I can remember that Mr. Harilela agreed to sell me the shares and the shares were handed over to me because the relationship between Mr. Harilela and myself was rather good at that time.
- Q. Now the suspension of San Imperial dealings was not on the basis that the company was about to go into liquidation or anything like that was it?
- A. No, because the price was too high.
- Q. And the Exchange wanted to make an investigation before relisting the shares?
- A. Special audit must be submitted.
- Q. You see you bought 200,000 shares – 2,800 shares from Mr. Harilela at some time before the 4th of July at the average price of 76 cents, 76 cents, that is the figure?
- A. It was after the relisting.
- Q. After the relisting at 76 cents.
- A. Yes.
- Q. Mr. Harilela was prepared to sell you shares at 76 cents. Do you really say that you couldn't have bought in the market up to 1.50 – up to 2.00 and still save money as against your option at the price of 1.50 for all the shares?
- A. I have already explained to you that it all depends whether or not there were sellers – if there were no sellers it would be useless.
- Q. I suggest you have seen the turnover about three million in the next three months that you did not even try.
- A. Why not – of course I have told my fokis to try to buy those shares. We offered the price every day.
- Q. Because you knew that you were going to exercise your option because you were already bound to do so.
- A. No.
- Q. Will you look at Yellow 1, page 30 – page 25 I beg your pardon – you see that at the 1st of April, signed by Mr. HO Chung Po and he is on an option to purchase, as required he is depositing with you three million shares, right, or Mr. Ives?
- A. Yes, with Messrs. Peter Mo & Company.
- Q. Then were those shares in fact deposited at the time?
- A. I believe so.
- Q. And look at 27, will you – the 15th of April, total 300,000 shares in the name of City Nominees for the account of Mr. David Ng, you see that?
- A. Yes.
- Q. No. 30 will you – you see the second paragraph:–

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“We understand that in fact of the 6 million shares mentioned in the option agreement you have 3,226,000 shares only.”

Do you see that?

- A. Yes.
- Q. The two previous letters that we have seen add up to 3,300 doesn't it?
- A. If you want me to explain to you what had actually happened I can do so. I believe that the three million shares were handed over by Mr. HO to Mr. Ives in respect of the Option Agreement. As to the 300,000 shares, they are the shares my friends, even including my wife, asked me to buy on their behalf. Well I thought that it was not fair because I have told my secretary that the shares bought through me must be purchased for the Syndicate, therefore these 300,000 shares are not in the same category as the three million shares.

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- Q. I see.

COURT: Were those 300,000 shares eventually appropriated to the Syndicate Account?

- A. (In English) Yes, my Lord.
- Q. Mr. Ng, I don't want to spend time on this immediately, but these 300,000 in effect had nothing to do with the Option Agreement?
- A. Absolutely not.
- Q. We have not had disclosed to us any Schedule which shows the purchasing of those shares have we?
- A. Well I think these 300,000 shares were part of the shares sold to us by the private sellers. I think his Lordship will understand this.

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COURT: Did you say that 300,000 form part of the 3,294,000?

- A. Yes.
- Q. In that case we can put those on one side – it is not part of the Option Agreement – in that case would you now look at page 30 – look at the second line, second paragraph, second line:

“We understand that in fact of the 6 million shares mentioned in the option agreement you have 3,226,000 shares only.”

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- A. Yes.
- Q. We now know that there had been three million share certificates delivered and 300,000 had had nothing to do with the case, that is correct, isn't it?
- A. Yes.
- Q. Now look at Document 32, will you? In reply to the previous letter,

“We confirm that of the total shares submitted in respect of the captioned option agreement only 3,226,000 shares are available and no further shares can be delivered.

We understand that Messrs. David Ng & Ho Chapman have agreed to

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accept this number of shares and the relevant shares together with blank transfer forms are now in your possession.”

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Well if 300,000 was not part – did not include the 226,000 where are the 226,000?

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A. You can work it out from Document 28 in the same file, Yellow 1 – you see 2,388 million shares – if you minus 2,165,000 you get 223

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COURT: Minus what?

A. (In English) Minus the shares on my account – Taiwan shares I bought. 2,165,000 you get 223 thousand shares.

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10 COURT: 223,000 – that is it forms part of that 226.

Q. And you say that is how you explain it?

A. Yes, this is what I believe, sir.

Q. Let us look at P.14, page 14 will you – I just want to ask you to tick, if you would, three share numbers – come down certificate numbers will you to about the seventh line where – the block M.A.F. Nominees in three lines together, the second block of M.A.F. Nominees and three lines together and then M.A.F. Nominees by itself – the first block of four – the first certificate 79547 – just tick it or mark it or underline it, then will you go down to the next block of two M.A.F. Nominees together, second certificate 79552, and the next certificate is 79556 – now you see that none of those numbers, am I right, none of those numbers appear in the block you say on page 28 makes . . .

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A. I explain to you now.

Q. You want to explain something else, yes?

A. For instance you deposit ten certificates with the Hang Seng Bank Nominees, and the numbers of those ten share certificates are from 1 to 10, but at the time when you get these share certificates out of the bank, they may not give you the certificates with the same number, that is from 1 to 10, therefore, although the numbers of the share certificates were all mixed up but there was no mistake as long as the total amount was correct.

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Q. I will take note of that answer – I will use it later – now would you go down the same column, and I think four lines from the bottom against the date 23rd of April, I think there is a little gap in the line, do you see the same share certificate numbers in sequence – 79547, 79552 and 79566, just running over the vertical line – 79556 – the inking is incorrect, what it should be is the 23rd, the two preceding, dates being the 25th, I think that is right, but nothing turns on it anyway.

A. Yes, I have seen it.

Q. And then you see in the line against it 226?

40

A. Yes, I have seen it.

Q. So you see when M.A.F. did come to transfer the shares three million 226, which you see on P.14 page 14 in front of you, you will see the three million immediately above the 226, the shares which they transferred in order to make it up were in largest part not the shares on page 28 which you drew his

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Lordship's attention to.

- A. I have told you what had actually happened according to my own knowledge. As to how the registrars did with the ledger card, such as to adjust or putting some shares to make it up, that I don't know, sir.
- Q. You see your explanation on page 28 had anything to do with it was invented by you on the spur of the moment does not correspond with the ledgers does it?
- A. As a share broker if I put a certain amount of shares with a nominee company I just wanted the same amount of shares back and I won't care about the share certificate numbers. This is actually very common in Hong Kong. You can go to the Hang Seng Bank Nominees and check their ledger with the company's ledger – it is impossible. 10
- Q. Mr. Ng, what you are forgetting is that in order to write on the 22nd of April and tell Mr. Ives that these shares were beneficially owned by you it was necessary for the San Imperial Corporation to have them, wasn't it?
- A. This letter Exhibit 28 is not prepared by me, sir.
- Q. I did not refer you to it – you told his Lordship that adding up the 224 hundred and that that happened to be the 226 hundred, and I am now going to show you that that is not true – you haven't checked it on me so far on showing you the shares that were transferred – would you just go back to P.14, page 14 please and look at the line above the one I was asking you to look at, and you will see the number 79050-94 – go that? 20
- A. Yes.
- Q. Just go back to Document 28, you will find the next two consecutive numbers are on that list – 79095, 96?
- A. Yes.
- Q. You see the bottom?
- A. Yes.
- Q. Then look at the next number, will you, 79116 – look back to page 14 and look at the next group of numbers – 79111-5, followed by 79117-8, missing out No. 8 – sorry missing out No. 6 – 79116, the missing number? 30
- A. Yes.
- Q. And if you look back at Document 28 you will see that the missing number 79116 is on the list – I am not going to waste his Lordship's time going through any more – I put it to you that when the 226 hundred were transferred as part of the 3 million 226 hundred, the shares which were transferred would expressly exclude the shares on page 28.
- A. I have already told you that my only concern is to get the same amount of shares. I don't care how the registrar worked with his ledger. I think it would be better to call the registrar to come to the court to explain this about the ledger card. 40
- Q. Mr. HO Chung-po at the time, wasn't it? We would be delighted if you would call him, delighted.
- A. HO Chung-po was not responsible for this work – it was someone else or some people.
- Q. We shall see whether even that is true on your evidence later – you see it is not a matter how the registrars did their work – those 3,226,000 went to City Nominees did they not?
- A. Yes, I agree.

- Q. And they went to City Nominees on the 25th of April, my Lord, it is my copy that is wrong – they are all 25th of April – it is not the 23rd – it is my copy – I am sorry about that – they are all on the 25th. Supreme Court of Hong Kong High Court
- A. Yes, according to the date in the ledger card.
- Q. Then how on earth can you possibly say that three days before a set of shares have been specifically appropriated to your beneficial ownership by the M.A.F. Corporation – share certificates which they still retained? Defendant's Evidence
- A. This letter, Exhibit 28 was written by M.A.F. Nominees to Messrs. Peter Mo and Company and I did not know anything about it. No. 40
- 10 Q. Just like everything . . .
- A. Later I asked the M.A.F. Nominees to give me back my shares and I was informed by the M.A.F. Nominees that they have deposited a certain amount of shares with Messrs. Peter Mo & Co. and so on, so after checking it was found to be correct. Suppose I have deposited three million shares with the M.A.F. Nominees and the M.A.F. Nominees later inform me that they have deposited 2.5 million shares with Messrs. Peter Mo & Co. and if it was found that there was still a difference, then we just adjusted it. David Ng Pak-shing – Cross-examination
- Q. You see if you look back at page 30, you see Mr. Ives writes with the attention of Mr. HO Chung-po, so it was Mr. HO Chung-po who was dealing with this aspect of it, it was not some other person.
- 20 A. Yes, Mr. HO Chung-po was dealing with the agreement in respect of the 3.226 million shares.
- Q. And if 226,000 shares ever were deposited with Peter Mo & Co. in accordance with the agreement, we have got no document which shows that that is so, nor have we got any document which identifies which shares were deposited, that is right, isn't it?
- A. Yes.
- Q. I suggest to you that the reason for that is because the whole transaction was just window-dressing – unfortunately somebody was a little bit careless.
- 30 A. No, I don't agree.
- Q. Let's deal with another matter of M.A.F. when you swore your affidavit and read through page 53 – now by this, this was sworn on the 27th of July – you have been a director since the 16th of June and Chairman since the 4th of July – I take it you made your own enquiries before you supplied your solicitors with the information upon which that paragraph was drafted, paragraph 18 – did anything strike you as an experienced company director, stock-broker and business man, anything odd about the pattern which was shown by the documents that you were exhibiting to the court at that time?
- A. You mean if I suspected?
- 40 Q. Did anything strike you as odd about those documents?
- A. In what respect?
- Q. Did you examine the documents carefully before you exhibited them to your affidavit and told Mr. Justice Zimmern in the affidavit what it was you suggested they showed?
- A. Well I have read it – I just read it.
- Q. Let's look at the affidavit can we – in the middle of the paragraph after you said Exhibits C.1-4, which is page 18 which has been shown to you:–

“It will be seen from C1 that it shows that as at 31st December”

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that is page 18,

“MAF Corporation (H.K.) Limited was holding 2,150,000 shares of San Imperial – a cost of 4,300,000. C2, C3 and C4”

That is pages 19, 20 and 21 of P.14,

“shows that the slow accumulation of shares from the stock market by MAF Corporation (H.K.) Limited at market prices considerably lower than \$1.50 per share. C4”

the last page,

“shows that by April 1977 MAF Corporation (H.K.) Limited had acquired a total of 3,226,000 shares at a total cost of \$4,780,473.25 which is inclusive of the 2,150,000 shares”

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Then you referred to them being transferred pursuant to your option agreement – I will leave the rest of that paragraph until later – you just look at page 18, C1, Exhibit P.14 – yes, that is right, you see 2.1 million shares in San Imperial Corporation – that is as at 31st December, 1975, isn't it?

A. Yes.

Q. Can you tell me when San Imperial was last in the market for shares – sorry I beg your pardon M.A.F.

A. M.A.F. Corporation or M.A.F. Nominees?

Q. M.A.F. Corporation, the first general ledger account we are now looking at, it doesn't matter in whose name they were registered. 20

A. How do I know that – how do I know?

Q. You were the Chairman of the company at this time, you were swearing an affidavit in order to give the judge, before whom the matter came, a picture of what you thought he ought to know.

A. It is not that I knew everything of the company, sir, such as daily affairs or business.

Q. But you were swearing an affidavit in which you hoped to get certain relief from Mr. Justice Zimmern which would kill this case dead, therefore, you must have been careful about that you were saying. Did you trouble to enquire when the M.A.F. Corporation have last purchased shares in the market prior to the 31st of December, 1975? 30

A. No, I only asked him to give me the ledger, sir.

Q. Look at the price would you, standing in the books at 4.3 million?

A. Yes.

Q. \$2.00 a share?

A. Yes, it should be.

Q. San Imperial has been out of dividends for two or three years, hasn't it?

A. Yes.

Q. So that must be a very old holding? 40

A. Yes.

Q. Yes, so they haven't been dealing in the market for quite a long time?

A. Yes, it should be so.

- Q. And you as stock-broker, company director and company chairman, can tell that from document 18 if you look at it can't you – page 18? Supreme Court of Hong Kong High Court
- A. Yes.
- Q. Now if you look at P.15A, that is the sheet with the prices and turn-over on it, Exhibit P.15A – marked P.15A – you see that for August of 1976, which is the top line, face value San Imperial shares reached 42 cents, that is on the Far East Stock Exchange, August 1976? Defendant's Evidence
- A. Yes. No. 40
- 10 Q. So according to my calculator the market value of those shares was a maximum of \$903,000. – which shows a book loss of \$3,397,000. – 3,397,000. David Ng Pak-shing – Cross-examination
- A. At market value – yes at market value.
- Q. Obviously you couldn't dump that share holding on the market without pushing the price two to four, could you?
- A. Yes, of course.
- Q. Now at that time Mr. CHOO Kim-san controlled MAF Corporation, didn't he, in practice? Sorry, I'm so sorry! In August, 1976.
- A. Yes, he was in Hong Kong.
- Q. And he and his man HO Chung-po ran MAF Credit and its subsidiaries: MAF Corporation, MAF Nominees, MAF Investment.
- 20 A. Yes, it should be so.
- Q. The man running the companies has been arrested on a charge of fraud, that's right, isn't it?
- A. Yes, Mr. CHOO, yes.
- Q. The man has been arrested on a charge of fraud and the charge contains eight different charges of fraud, all of them involving millions of dollars?
- A. If you say so, yes. I don't know the details.
- Q. I don't suppose you do.
- A. Why he was charged or what he was charged with.
- 30 Q. But look at it from the point of view of the people controlling the company, they know what he is charged with and he knows that he is going to flee the colony.

COURT: It is common sense, isn't it?

- A. Well he should know that beforehand, before he actually fled, sir.
- Q. Yes, quite. Now what do you, as a stockbroker, suppose is likely to happen to the prices of the shares if the head of a company flees the colony on fraud charges – what is going to happen to the prices of shares?
- A. You are asking about my own opinion?

COURT: As a stockbroker.

- Q. As a stockbroker.
- 40 A. Of course, there will be some influence.
- Q. And which way will the influence be, Mr. NG, in Hong Kong?
- A. Of course, drops.
- Q. So the most stupid thing to do would be to buy the shares at that time?
- A. Not necessarily, sir. I don't agree with that. Somebody even bets on a horse that is surely to lose.

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Q. We are not talking about horse racing. We are talking about the Stock Exchange.

A. I was only giving you an example, sir, because you asked for my opinion.

Q. I don't bet on horses, so I will have to take your expert knowledge on that. The probability is that the share price will be depressed by the head of the company disappearing on a charge of fraud, won't they?

A. Yes, I agree, but it all depends to what level the prices would drop; it also depends on the asset backing of the company and there are other reasons too.

Q. Yes, Mr. NG, you can blow all the dust and all the difficulties you would like, but the shares are already standing at a discount of \$1.30 of their asset value backing according to you and you would agree that they would be likely to go down when the news of Mr. CHOO Kim-san leaving the colony became public.

A. At that time he was only arrested. He had not fled yet.

Q. You have agreed with his Lordship that it is a matter of common sense he must have known that he was going to flee the colony.

A. Yes.

Q. And these shares, looking at page 18, proved a thoroughly bad investment for MAF Corporation.

A. You mean the investment of these shares? (interpreter: witness is pointing at 2.15 million shares)

Q. Yes, I am pointing at the book loss at that time of \$3.397m.

A. For shares, before you sold the shares you could not say that you had lost money already.

COURT: It may be fair to say you cannot say that you had lost exactly 3.39 something million dollars, but I think on this you must say that you must have lost money, isn't that right?

A. Yes, I agree.

Q. Yes, thank you very much. Just turn over to page 19 and you see that this company which has not been in the market for a long time before – sorry, not been purchasing shares for a long time before January, 1976 and when its book loss starts, not having been purchasing shares for the first eight months of 1976, on the 31st of August for the first time it starts to buy shares in apparently small quantities.

A. Yes.

Q. Now, isn't that in itself at the time you came to swear your affidavit in July, 1977 – isn't that in itself a strange thing to find: this company has been out of the market for a long time before January, 1976, has bought nothing the first eight months of 1976, and on the last day of the eighth month – six weeks or seven weeks before CHOO Kim-san flees the colony – it starts buying San Imperial shares, isn't that odd?

A. It never occurred to me.

Q. Mr. NG, financial documents very often mean little to people of no training in financial matters, you know that.

A. Yes.

Q. Although things can be explained to people.

A. Yes.

- Q. But you don't have to have financial matters explained to you because, apart from being a company director, you are an accountant and a stockbroker. Supreme Court of Hong Kong High Court
- A. Yes.
- Q. I put it to you, looking at those two pages as an accountant and a stockbroker and an experienced company director, the very fact that the company starts buying against that background stinks, doesn't it? Defendant's Evidence
- A. I, sir, I don't see that there is anything wrong in the statement. The company was dealing in investment of shares and this is the ledger. Everything is recorded here. No. 40
- 10 Q. Oh, exactly. Everything is recorded and I suggest to you that any man who is experienced in financial matters, who looks at documents 18 and 19, who knows that at the time the man controlling the company was under arrest for fraud, that he fled the country in the middle of that period, would, swearing an affidavit a year later, know that the whole thing stinks. David Ng Pak-shing – Cross-examination
- A. If I found here that the shares were bought at 40 cents or 50 cents, there was nothing wrong because after a year there was already the profit, so it is not odd at all.
- Q. But the people who were doing it at that time in 1976 did not know the price was going to go up in 1977, did they?
- 20 A. According to my opinion, it is like this: that the MAF Company had a very close relationship with the San Imperial, therefore they should know the assets backing of the San Imperial Company. Well they bought the shares at 40 cents, perhaps I thought that they were quite clever in doing this.
- Q. Mr. NG, I suggest to you that that is a cynical and deliberate lie.
- A. I was only expressing my own opinion, but this was not done by me, sir.
- Q. But the affidavit was sworn by you, Mr. NG.
- A. You asked me at the time when I made this affidavit was a year after the ledger of 1976 was made, it was odd or not, and in answer I told you that it was not odd at all; but you asked about my opinion.
- 30 Q. Well Mr. NG, let's take your professional skills and education and we are shortly coming to the adjournment, so you can contradict me by getting any textbook which says the contrary to what I am about to tell you. The net asset value is of relevance to the valuation of a company in two situations. (to interpreter) Will you translate that bit by bit otherwise it will be too long. The first is on a sale and purchase of the entire undertaking and the second is on a breakup, whether by liquidation or otherwise, and only on those two occasions can you realize the net asset value of a company. (to interpreter) "Can you realize" means "obtain": "Can you obtain the value of."

COURT: (to interpreter) Not "become aware of."

- 40 A. No, for instance, the Hong Kong Land Investment Company – they can always give you the net asset value at any time you want – the net asset backing.
- Q. Mr. NG, please don't fence with me. I know this subject as well as you do and I know you are not trying to be honest about this.
- A. No, sir, everybody in Hong Kong knows what asset backing is.
- Q. Except you, Mr. NG.
- A. It may be so; perhaps I am not clever enough; I am too dumb. Perhaps what you said have confused me, sir.

Q. Yes, let's go through it again. The net asset value of a company is something which you can realize, in the realization of assets sense, in two situations only: (1) is on a breakup whether by liquidation or otherwise; and the other is on a sale of the entire undertaking.

COURT: Do you accept it?

A. Yes.

Q. And you can only realize it on the second of those two alternatives if the sale is on an assets basis, and that is correct?

A. Yes.

Q. That is to say, to make it quite clear what we are talking about: sale on net asset basis is a sale to a purchaser who wants the land, the buildings, the machinery and so on, but is not interested in the profitability of the company he is buying. 10

A. Yes.

Q. The alternative method of buying a company where somebody's interest is profitability is by a purchase of the net maintainable profit and I am using an accounting term – by purchasing the net maintainable profit excluding special circumstances.

A. I am not a qualified accountant. I only have the experience of an accountant.

COURT: You understand the question? 20

A. Yes.

COURT: So what is the answer? Do you accept that?

A. Yes.

Q. And the purchase of the net maintainable profit is determined by a number of different factors which include the – yes, the final purchase price is determined by the net maintainable profit. (to interpreter) Would you translate that so far if you would.

A. Yes.

Q. In the light of principally the profitability trend, whether it is upwards or downwards. 30

A. Yes.

Q. And the length of time that the current trend has been maintained. And if you went to Peat Marwick and you just mentioned Arthur Anderson, they will value any company for you almost in the world on that or any of the basis I have described.

A. Yes.

Q. In the last case, purchase of the net maintainable profit. If you ask any of their partners or look in any of the textbooks on accounting, you will then find words to this effect: that the purchaser and his financial advisors will look over their shoulders at the net asset backing of the business. 40

A. Yes.

Q. That's right, and if the net asset backing is comparatively high, that will be reflected in adjustment of the purchase price, vice versa if the net asset backing

is comparatively low.

Supreme Court
of Hong Kong
High Court

A. Yes.

Q. Now can we go back to document 19 – page 19? The purchase of a parcel of 7,000 shares could not have been looking for a breakup, a sale on asset value or a sale on profitability, could they?

Defendant's
Evidence

A. No, it doesn't apply at all.

Q. Of course, so you could account for their cleverness if and only if either they predicted the rise that was going to take place in 1977 or if they knew that somebody was going to come in and buy substantive control of the business.

No. 40

10

A. Yes.

David Ng Pak-
shing – Cross-
examination

Q. You see, the man who is merely buying purchasings by way of investment in the Stock Market has no way whatsoever of getting at the net asset value of the business unless he acquires control. That's right, isn't it?

A. Is what you said about this ledger here or in general, sir?

Q. In general, it applies to any company.

A. Yes, I agree.

Q. Do you still say that the purchasers of these small quantities of shares in August were clever or lucky or do you think they perhaps knew something?

20 A. Now you are referring to this ledger?

Q. Yes I am.

A. But you have forgotten one thing, Mr. Yorke. This is: MAF Corporation and San Imperial Company are associates, so they should know.

COURT: Associated company?

A. Associated company, so they should know better what the other company had.

Q. It would have been out of the dividend list in another couple – for two years, with you as chairman, it is still out of the dividend list, that's right, isn't it?

A. I was only there for half a year.

Q. It is still true, isn't it?

30

A. Yes.

Q. And the company had apparently not bought any of these shares the previous eight months of that year or for a few years past, for a long time past.

A. Yes.

Q. And you find now that you think about it and I have drawn your attention to these matters, some of them, that it is very strange to find that this company starts buying these shares in the Stock Market on the 31st of August last year.

40

A. You feel it is odd but I don't think so, sir. I say that because the MAF and the San Imperial are very close associates, so therefore they should know very good the value of the Imperial Hotel or how much it is worth. As to why they had not started to buy the San Imperial shares before that, there might be other reasons, but I don't find it odd at all for them to start buying the shares on the 31st of August.

Q. I am not going to give you or really his Lordship a lesson in elementary investment techniques, but overnight, would you like to look at any books that you know about investment techniques and then come back tomorrow morning and to start off you can tell his Lordship any known established investment corporate which you say would have justified Mr. CHOO Kim-san and Mr. HO

Chung-po authorizing MAF Corporation to start buying in the market in August of 1976. That will save a lot of time.

- A. I don't want to look into any books. I just want to have an early sleep, that's all.

COURT: That is not an answer. What is your answer? We just want an answer.

- A. What is the question?

Q. I want you to come back tomorrow morning with the information – to tell his Lordship of the information available to Mr. CHOO Kim-san and Mr. HO Chung-po which would have justified them going into the market and commencing purchasing shares of San Imperial on the 31st of August, 1976, other than the knowledge that the controlling interest was going to be bought the following Easter.

- A. Yes.

Q. And would you do one other thing, please? That in opening this case, my Lord – page 19 of your Lordship's notes of the 31st of October. It is probably page 115 of your Lordship's manuscript notes, page 19 of the typescript. Mr. Swaine opened in fact that of the three additional matters under point 19: That the

“ . . . 4th defendant had \$1m. available for meeting the first of the cheques but he required an additional \$3.8m., and J. Coe then lent to 4th defendant \$3.8m. by means of four cheques in the sum of \$1m., \$1m., \$1m. and \$800,000 . . .

The \$1m. which 4th defendant had available was money on a share dealing account between himself and J. Coe – that \$1m. was not a loans.”

I twice asked specifically for that account. I must have that tomorrow morning. If I had it, I haven't been able to identify it as being that animal. I am not complaining. If I had it, I would be pointing to it.

- A. Yes.

Q. And lastly, Mr. NG, the third matter is I did ask yesterday for the remainder of the skyprint paper which you brought back. You gave it to your solicitors, three to six sheets. I understand it has disappeared.

- A. I gave them to my lawyers.

Q. Merely on the record, they are no longer available.

Appearances as before.

D.W.2 – David NG Pak-shing – On former oath

XXN. BY MR. YORKE (Continues):

MR. YORKE: Just for the sake of the record where – that the discovery which I asked for last night, that is to say, the one million share dealing account referred to by my learned friend at the close of his opening has now been

identified and it is a document which has just been numbered Yellow 5(1), so it will be, if it isn't now, the first document in Yellow 5. I merely put that on for the sake of the record.

Supreme Court
of Hong Kong
High Court

10 Q. Mr. Ng, last night we had a situation where I had asked you to think overnight of any recognised investment by criteria whereby it would have been sensible, business-like, for M.A.F. Corporation to purchase more San Imperial shares in August of 1976, and that was against the background of a vast book loss on the shares: a share which had been ex dividend for two years or more, and where the current boss of the company knew that he was going to flee the country, and you had agreed that that would probably cause the price to go downwards and, finally, you will remember that you said, speaking as a stock-broker, accountant and a company chairman, business man, you thought they had been clever, and it was your word 'clever' to which I strongly objected and said that was untrue and you knew it, and so that is where the difference comes between us; you are now going to show, by well-known investment criteria, why it was clever to start buying these shares in August.

Defendant's
Evidence

No. 40

David Ng Pak-
shing – Cross-
examination

A. The question you asked me is this: that in 1977, when you thought about the shares bought in '76, a year ago, whether that was clever or not, and I said that it was clever because the price in 1977 had already gone up.

20 Q. Mr. David Ng, you are an accountant, you are a stock-broker, you are a business man and you have been successful so far. Do you know that there is a difference between being clever and being lucky?

A. Yes.

Q. Now was the purchase of these shares in August of 1976 by any known financial standards clever or was it merely, a year later, lucky?

A. If you know the – or if you knew the actual position of the company, you would buy the shares. M.A.F. Corporation and San Imperial were very close companies.

30 Q. What was there – I appreciate, Mr. Ng, that special information and a special situation can be a reason for buying, and that in Hong Kong there are very few restrictions as there are in other countries; in Hong Kong there are very few restrictions on the use of insider information. Given that, what was there that you now say, because you have been chairman of both companies, what was there that M.A.F. Corporation could have known privately about San Imperial in August, 1976, to justify their buying these shares?

A. My opinion is this, that the M.A.F. Corporation knew very clear about the financial position and the assets backing of San Imperial Company.

40 Q. Mr. Ng, I thought we had spent a long, tedious time yesterday afternoon going through assets backing, and you had agreed that you can't get at – you can't realise the assets of a company except on sale of the whole company or in liquidation, and there is no way, is there, that in August M.A.F. could have known that somebody was going to buy a controlling interest in the company the following Easter?

A. Of course they did not know, but they could work it out according to the accounts of the company.

COURT: No. I am just wondering whether the way you use the phrase 'assets backing' is the same as that used by Mr. Yorke.

A. Maybe there's a disagreement.

COURT: But what do you mean by 'assets backing'?

A. Assets backing. We use the company's assets, you see, less what the company owes other people, and there will be a nett asset of the company. By using that nett asset of the company compared with the face value of the shares, you see, that is what the Hong Kong people always understand that is the assets backing, my Lord.

Q. Well, Mr. Ng, you and I are entirely agreed upon that. Let's make sure there is no further misunderstanding between us. A prudent investor does take notice of what the assets backing of a company is, – (To Interpreter) Will you translate as I go along and I will pause, otherwise the question will get too long – and it largely affects price in two ways, that if the price is high in relation to the assets then the company's profitability is crucially dependent upon the quality of its management and therefore the prudent investor has to look for security – sorry – continuity of management, right?

A. Yes.

Q. And so if the assets backing is comparatively low there is – the human risk is very important and this will tend to depress the price a bit down towards the asset backing?

A. Yes.

Q. If, on the other hand, the asset – the nett asset value, asset backing is much higher than the price, then that will tend to keep the price higher because you are no longer at risk, if the company goes into liquidation, you will lose all your money.

A. Yes.

Q. So that the nett asset backing is a moderating factor of price fluctuations. It holds a high price above nett asset backing down a bit; it holds a low price below nett asset backing up a bit.

A. Of course I agree with what you have said. A stock market in Hong Kong is very strange. For instance, the Green Island Cement Company in 1969 and in 1970 they lost millions of dollars in those two years. The reason was that they were trading in cement. As they had land, people still invest their money in the shares. They haven't declared any dividend for a number of years already. As they had land the bank lent them money for the development, and now the Green Island Cement Company shares are considered to be blue chips. You can't explain why the people in Hong Kong or the investors are so interested in land. Theoretically you are right, but it's different from the actual position, sir.

Q. I entirely accept the answer you've given me about Green Island. That is, investors knowing that there is a special situation which was public, not private knowledge; looking for a long term return on their investment. Right?

A. Similarly if M.A.F. Corporation knew the actual situation of the San Imperial Company I don't think it was odd for them to invest their money in the shares of San Imperial.

Q. What was the actual situation in August of 1976 which would lead them, for the first time for years, to start buying these shares, knowing that the chairman was going to flee the country?

- A. I don't know why, sir, because I have nothing to do with the companies, but I can still explain it to you. Supreme Court of Hong Kong High Court
- Q. Do.
- A. But I can only explain to you one thing, sir. Between the end of July and the beginning of August the C.C.O. – that is Commercial Crimes Office – had already made investigations into the accounts of San Imperial Company as well as the accounts of M.A.F. Corporation, but nothing odd was found and they did not tell M.A.F. Corporation not to buy San Imperial shares. Defendant's Evidence
- 10 Q. The Crimes Office doesn't instruct companies whether or not to buy shares even in Hong Kong does it, Mr. Ng? No. 40
- A. Well, what I meant is this, that they did not feel odd at all, so why should I feel odd at that time, sir? David Ng Pak-shing – Cross-examination
- 20 Q. I'll try and get at it another way, Mr. Ng, because I am suggesting to you at the moment you have been unable, and we have been going for nearly half an hour – are unable, having had the night to think about it, to come up with a single reason to justify this purchase other than M.A.F. knowing that the controlling interest is going to be sold some time the following year. Imagine that you are sitting in your office in Bentley Securities at the end of August of 1976, and a client comes into you and he says, "I have got a small amount of money to invest, a few hundred thousand dollars," and you say to him, "Well, I think you ought to invest in San Imperial Corporation," and he says to you, "Hey, they haven't paid a dividend for years. Their boss is on criminal charges – their boss is on criminal charges coming up for trial in October, I can't see why you tell me . . ." You now tell his Lordship why it is you would recommend a purchase of San Imperial shares to your client.
- A. Actually no one has come to ask me for my opinion in the investment of shares.
- 30 Q. I am seeking to make you justify the word that I called a lie yesterday, that it was 'clever' to invest in these shares. You tell his Lordship what advice you, sitting in your office in Bentley Securities in August, would have given to your client; explain your recommendation to buy San Imperial shares so that a year later he would say, "My goodness me, Mr. Ng, what a clever man you were."
- A. Unless I knew the inside information otherwise I would not have recommended.
- 40 Q. Thank you very much. So you are not in a position to advance any reason why it would have been clever to buy these shares in August, 1976?
- A. Well, in August '76 if anyone had come to ask me whether or not it was good to invest money in the San Imperial shares of course I would tell him not to.
- Q. Ah, I'm very grateful. And the only piece of information which we can be certain that was specially available to M.A.F. was that Mr. CHOO Kim-san himself, as his Lordship said is a matter of common sense, knew that he was going to flee the country and that would cause the price probably to go downwards.
- A. Well, I agree.
- Q. So that the only – publicly there was no information to justify the purchase and the only special information available to M.A.F. was a reason for not buying, that the shares would go down.
- A. Yes, I agree, sir.
- Q. Good.

Supreme Court
of Hong Kong
High Court

Defendant's
Evidence

No. 40

David Ng Pak-
shing – Cross-
examination

- A. But I have already agreed to that yesterday, sir.
- Q. Oh, sorry, I missed it. Would you now like to withdraw the evidence that you gave to his Lordship yesterday, that you thought they were clever to buy these shares?
- A. I think there is some misunderstanding between the two of us. I thought – I think that the question you asked me was in August 1977, at that time, whether I thought that it was good for M.A.F. to invest money in the San Imperial shares . . .

COURT: It was 'clever'.

- A. . . . and I said it was clever, but in August 1976 of course it was not clever 10
for M.A.F. to invest money in the San Imperial shares.
- Q. When you swore your affidavit which was going before Mr. Justice Zimmern in July, you swore it to suggest that this was a normal operation in the Stock Market about which no suspicions could be justified.
- A. I did not know the inside information and I did not express my own opinion, sir.
- Q. Mr. David Ng, I won't comment on that. You see, in effect we have only looked at one purchase so far, we haven't gone down the rest of the purchases to see if there is anything suspicious about that, and I have suggested to you yesterday, remember, and you agreed, that financial documents don't always 20
reveal very much to people who don't have any training or practice in financial matters, and you agreed.
- A. This I agree, yes.
- Q. And I am showing to you, and I'm afraid we are taking a long time over it, that anybody with your knowledge of financial accounting and company matters must have known, if he looked at these four sheets, that the whole thing stinks from beginning to end, and that so far from being a regular transaction it calls loudly for explanations.
- A. I did not see anything abnormal, sir. All the time you ask me these questions and I have already answered you that I was unable to see anything abnormal. 30
- Q. You have already told his Lordship that you wouldn't have advised your clients to buy San Imperial in August, 1976.
- A. Yes, of course, if they were my clients, sir.
- Q. Your clients get very good service, Mr. Ng. Did you ask Mr. HO Chung-po why he started buying those shares?
- A. No.
- Q. So there you are, a year later in July you swear an affidavit about this. You find that they've been – you said clever, you now say lucky, to buy these shares, but it never occurred to you to ask your co-director how come they happened to go into the market in '76 and buy some shares on which they 40
made a very handsome profit?
- A. I did not ask him, sir.
- Q. You didn't ask him because you knew. All part of the deal set up by CHOO Kim-san, and you knew it, didn't you?
- A. I knew nothing, sir.
- Q. Well, let's just see what else to anybody who knows something about financial affairs might see suspicious in these documents. Do you see – if you turn over

the page, page 20 . . .

Supreme Court
of Hong Kong
High Court

INTERPRETER: P.14?

- Q. P.14, sorry – page 20. Do you see that they stopped buying on the 29th of November? Defendant's Evidence
- A. Yes.
- Q. Do you notice the price at which they stopped buying? No. 40
- A. Yes.
- Q. Thirty cents.
- A. Yes.
- 10 Q. Whereas at the top of the page they had been buying at 40 cents and the whole of the previous page they had been buying at 40 cents and above.
- A. Yes.
- Q. You see, if they had been buying for a long-term recovery – recovery situation, here the shares were getting cheaper so there was a chance to make a bigger profit, but instead of going in for a bigger profit they stopped buying altogether.
- A. There are reasons in this. The most common reason, I think, is that if you have money you can buy some shares; if you don't have money you don't buy shares.
- 20 Q. Oh, I see. So you think that M.A.F. had run out of money in November?
- A. This is my opinion, sir. You asked me why they stopped buying.
- Q. Have you investigated that?
- A. That I don't know, sir.
- Q. I see. So although you had been a director of the company for four months and chairman of the company, you hadn't bothered to find out what was behind the stopping of buying at the point when the shares became cheapest?
- A. You said that I had been the chairman of the company for four months. Now I explain to you. I became the chairman of the company on the 4th of July.

David Ng Pak-
shing – Cross-
examination

COURT: This year?

- 30 A. This year, and on the 2nd of August the Financial Secretary sent some inspectors to inspect the accounts, sir.
- Q. Before you go on – I'm sorry.
- A. And the inspection or the investigation carried on till October, and in October the present case had already started, sir. Do you expect me to ask the people in the company about every sheet in the accounts of the company?
- Q. No, Mr. Ng, and you don't . . .
- A. In such a short period?
- Q. No, Mr. Ng, I don't expect that and you don't for one moment think that I do. These are documents which you put in an affidavit on the 27th of July, five – six days before the inspectors came to your premises, so don't waste the Court's time by talking about what happened after the 27th of July. Your affidavit in which you attempted to deceive Mr. Justice Zimmern.
- 40 A. There is no question.

MR. SWAINE: The question as it has been put, "You deceived Mr. Justice

Zimmern.”

- A. I did not deceive his Lordship, sir. When the solicitor told me to produce some sheets of the accounts which I did immediately, and I gave those sheets to my solicitor, so how could I study it?
- Q. You swore an affidavit, the contents were true; you swore an affidavit, the effect of which on this matter is that this was an entirely regular, ordinary transaction in the Stock Market. That's the effect of it. I am suggesting to you throughout that this transaction stinks at every entry to anyone with your trained mind.
- A. For instance, could you please give me an example, sir? 10
- Q. Yes, certainly. Why didn't you – You see, the only possible explanation for the buying of these shares other than, other than knowing that they are going to be bought some time in the following year, is buying for long-term recovery, isn't it?
- A. That I don't know, sir.
- Q. I thought last night you would come back with this because it is the one and only standard investment criteria I can think of for buying these shares, buying for long-term recovery, but you don't think that's a reason for buying them?
- A. The reason why I disagreed is that it is a very common thing to buy or sell shares. If you say that there are some reasons will you please tell me, to see if I would agree, sir. 20

COURT: Mr. Ng, the reason has been put to you more than once.

A. Well, actually I don't know the reason, sir.

COURT: I see, all right.

- Q. I'll put it, I hope, very simply, Mr. Ng, that there is only one known – what I know, I may be wrong – one known investment criteria which would have justified the purchase of these shares in August of 1976 onwards and that is buying against a long-term recovery, that you think that they are going to get back up to a much higher value when the company gets back into dividends, the hotel market goes up, heaven knows what. 30
- A. Well, I have no opinion in this. I don't say I do agree or I don't agree.
- Q. And the reason why you have no opinion is because, with your financial expertise, looking at page 20, you can see the trap into which you would fall if you dared to express an opinion.
(Interpreter speaks)

COURT: No. You knew that if you expressed an opinion you would be falling into a trap.

- A. What I meant is this, that I knew nothing – I knew nothing about their purchase or sale of these shares and I have nothing to do with their operations, sir.
- Q. We know that, Mr. Ng, and we know you refrained from asking Mr. HO Chung-po, but you see I had asked you and given you several opportunities, and given you the whole night to think about it, why they should have been bought, and 40

the one explanation which you could have given was that it was bought for long-term recovery, but you daren't give that explanation because you know, looking at page 20, that if they had been bought for long-term recovery then they would have increased their buying when the share price fell.

Supreme Court
of Hong Kong
High Court

Defendant's
Evidence

No. 40

10 A. I have already told you that I did not know anything about their operations, but I can tell you this that if you have money you can buy shares and if you don't have the money you don't buy the shares.

Q. But you haven't troubled to enquire whether they had any money to buy shares in November or December or not.

10 A. Well, how could I ask him that? I was not a member of the board, I had nothing to do with the company, sir, at that time.

David Ng Pak-
shing – Cross-
examination

Q. At the time you swore the affidavit, I suggest to you that it must have looked extremely odd. You saw what was exhibit C.3, your affidavit now at page 20 – extremely odd that they stopped purchasing when they did. You made no enquiries to find out why.

A. I didn't ask, sir.

Q. No.

A. I never asked, sir, even up to today, sir.

Q. You never asked.

20 A. So there won't be any answer.

Q. You didn't ask because you knew, and therefore there was no point in asking.

A. I have already told you that I did not know it and I did not ask. This is why I – this is why I can't give you any answer.

Q. Does the date the 29th of November ring any sort of bell with you? Does it mean anything to you? 76 – I'm sorry, page 6.

A. No.

Q. Would you look at Brown File 1, Plaintiff's Hearsay Notices, page 2.

30 MR. YORKE: My Lord, without giving the reference the contents of this note is also pleaded in the Further and Better Particulars. That is relied upon by the Defendants as part of their case.

Q. This is a hearsay notice which depends entirely upon something which was said to you. Do you see what it is?

“ . . . the following statement made by Choo Kim San in a conversation with David Ng on the 31st December 1976 at 9.30 a.m. in the Coffee Shop of the President Hotel Taipea, namely that he sold his shareholdings in San Imperial Corporation Limited to a Mr. Chow, on or about 30th November, 1976.”

A. Yes.

40 Q. Doesn't it strike you as funny that M.A.F. Corporation leaves the Stock Market on the same day as Mr. CHOO Kim-san told you he had got rid of his shares?

A. This is what actually happened.

Q. You heard it in English. I'm told the interpretation was that the conversation took place on the 30th of December but you were told that, when he said that he had sold the shares, on the 30th of November.

A. This is what Mr. CHOO Kim-san told me, sir.

Supreme Court
of Hong Kong
High Court

Defendant's
Evidence

No. 40

David Ng Pak-
shing – Cross-
examination

Q. I'll ask you again: does the date the 29th November now strike you as an odd date for the M.A.F. Corporation, CHOO Kim-san's old company, to leave the Stock Market, or was this just one of these happy coincidences with which your deals have been surrounded?

INTERPRETER: 'Your deals?'

Q. Your dealings have been surrounded.

COURT: Your dealings have been surrounded with coincidences, do you agree or not – this is one of those?

A. Well, perhaps so.

Q. Can I just give you another date just to complete this and you can check, verify it for yourself, I'm sure. I have just been informed that the last time that San Imperial shares traded at \$2 was the 3rd of May of 1973. No doubt you can check that in your office, if you want. You see, so that shows, looking at page 18, you have the shares in the books at that figure, they must have been some 2½ years old since last trading. 10

A. Yes. According to this document, yes.

Q. This is P.19?

CLERK: P.19.

Q. It is made up partly from P.15A – P.19 – it could have been P.19A, my Lord, because there is another one coming in a moment which goes with it. You see there the green line – that represents trading in San Imperial shares on the Far East Stock Exchange, which is the listing Exchange; the pencil line, the thinnest line if you have the xeroxed copy, shows trading on the Hong Kong Stock Exchange? 20

A. Yes.

Q. And the red line, trading on the Kam Ngan Stock Exchange – and it shows a pattern of trading which shows where trading is high or low, that the Far East Exchange does like twice as much business as Kam Ngan and about three times as much business as Hong Kong, that is right isn't it, and there is nothing peculiar about that? 30

A. No.

Q. It is rather what you expected to find with your knowledge of the stock market?

A. Everybody knows that the turnover of the Far East Exchange is the highest.

Q. And in San Imperial shares too?

A. Usually in any shares, sir.

COURT: The numerals here on the left are orders?

MR. YORKE: 100,000 at the top left-hand corner – sorry those are numbers of the shares. It also shows it applies to high dealing in March, April, May and in times of low dealing in December and February – the pattern is the same? 40

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- 10 A. Yes.
- Q. You see I said this document came partly from P.15A. It does not come wholly from P.15A because I have altered two of the figures – this is P.19B, and I don't want you to be deceived in order that 19A should be misleading, you will find there are a couple of black dots, red dots on the original of P.19A against October and November, so the document does not mislead anybody, those show the real trading on the Kam Ngan Exchange, two black dots in P.19A, they show the real trading, and what I have done on P.19B, which is made – supposed to be overlays, take the left-hand side and show what actually happened in the period – in the period when M.A.F. Corporation were buying shares.
- A. Yes.
- Q. And it shows that instead of what you have just told his Lordship what everybody knows that the Far East Stock Exchange does the most business and that applies to San Imperial shares as well, but in that period it was not true – you see.
- A. Yes.
- Q. May I just give you the figures so it is not misleading – I have extracted the trading of M.A.F. in San Imperial shares which for the month of October was 616,000 shares and for the month of November was 215,000 shares, and in order to produce P.19A, the first one, I have simply taken out the trading of M.A.F. Corporation.
- 20 A. Yes.
- Q. You see Mr. Ng, did this look suspicious to you or is this just another of these coincidences with which dealings with the defendants in this case are surrounded?
- A. I don't know, sir.
- Q. Which you must know, is it suspicious to you because if it is not suspicious it must be another coincidence – is it not suspicious to you that over that one period the volume of trading done on one exchange suddenly goes right out of line both with the trading of the exchanges generally and in this share – suspicious or not suspicious – yes or no?
- 30 A. I myself also see something suspicious here, but it all depends what the reason was at that time, sir.
- Q. You suggest to his Lordship some reason why the exchanges and the shares go right out of pattern just in the period that M.A.F. Corporation is buying shares?
- A. Perhaps some people wanted to get the price of the shares rise to very high standard or some people dealt with their shares through private arrangements – this is only my opinion.
- 40 Q. If you look at P.15A you see that far from the prices rising to a very high standard that it remained almost rigid in September and October – you see the maximum spread of 3.005 cents – maximum spread on the Far East Stock Exchange in 43 and 39½, and in October the fluctuation was the maximum 3 cents on Kam Ngan between 38 and 41.
- A. Yes.
- Q. So it couldn't have been somebody who wanted to get very high prices could it?

COURT: Speculation.

A. I meant to say the speculation, sir. I did not really mean that someone wanted to get the price risen to a very high standard.

Q. Will you just look at another thing – just looking at P.19A and B together as one – you see that the volume of trading on Kam Ngan in October was virtually the same as what it was at its peak in April – you see the two red peaks are about the same aren't they?

A. Yes.

Q. You have already seen that not only was that but there was a sudden upsurge of trading in P.19B, hardly moved at all, but you will also notice that when a similar volume of trading took place on Kam Ngan in April from P.15A the average price was over twice the price of the same volume of trading in October?

10

A. Perhaps it was like this that there was no business in the other days, and suddenly on that day there was a very large lot – about this you better look into the Daily Report.

Q. We will do that Mr. David Ng – what happens if a very large lot is put on to the Stock Exchange on one day instead of going out in parcels over the month – what happens to the price?

A. It all depends whether the deal was through private arrangement or not. If it was through private arrangement the price of the share would not be effected.

20

COURT: Perhaps you use English.

A. (In English) There are one buyer ask for the same broker and there is another buyer ask for the same broker, so they just make agreed price and put it into the board – that is what I mean private arrangement in Chinese.

Q. I did know what private arrangement was – I agree your explanation is absolutely accurate. It applies to any Stock Exchange in the world, but if it is sold through the market what would happen if you dumped a large block?

A. If a large lot say of 400,000, 500,000 or 600,000 or 700,000 shares, if that was sold through the market surely the price would drop.

30

Q. I think you gave evidence day before yesterday that in relation to, when you were in Taiwan you told Messrs. Lee and Fong that if you put 515,000 shares on the market the price would halve?

A. Yes.

Q. Now may I just show you what happened on the daily transaction – look at page 19 would you – sorry Exhibit 14 of the record page 19 – do you in Hong Kong like Stock-brokers in London and New York read the papers thoroughly before you go to the market in the morning?

A. I have never been to England before. No I do not read the papers before I go to the market.

40

Q. Look at the bottom of the page would you – you remember the date is opposite the last line of the entry under description – it is very misleading but it does so, it is in fact what is done – you see on the 28th of October, there is a purchase of 300,000 shares in San Imperial at 40 cents, which price 40 cents has been constant since the 4th of October?

A. Yes.
Q. Looking at that you reckon that that was a sale in the market or a private deal?

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A. You can't see that from here.

Q. What is it likely to be – 300,000 shares – just 100,000 less than your own figure of 400,000 and it goes through at the same price with other deals of 1,000 and 2,000 and 3,000 being going through in the previous – throughout the month and the price does not alter by a cent – I ask you in the light of your own evidence this morning does that look to you like a private deal or like a sale in the market?

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A. This looks to me as this was done through private arrangement or one broker.

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Q. Yes, thank you very much. Now would you look please at Red 1, page 35. That is the South China Morning Post of Friday, October the 29th – whether you read the newspapers before you go to work or not, that is a fairly conspicuous headline, is it not?

A. Yes.

Q. And you see in the very third line it identifies the Corporation, San Imperial before the name of Mr. CHOO Kim-san – what do you suppose that that story is likely to do – likely to do to the price of San Imperial shares.

A. The price would go lower.

Q. Because you yourself were a Crown witness – you were in court on the 28th and knew that CHOO Kim-san had run away even without reading the newspapers, didn't you?

A. I was never informed by the police to go to the court on the 28th.

COURT: Did you know?

A. Yes, I knew.

Q. Would you now go back please to Exhibit P.14, page 19 – you just told my Lord you expected the price to go lower, you knew the headline news in the newspapers, three from the bottom, will you, left-hand side, 29th of October, purchase of 300,000 shares of San Imperial Corporation at H.K.\$40 – 40 cents?

A. Yes.

Q. Mr. David Ng here you just purchased the same size as the previous one, would you agree with me that that looks likely to have been a private deal and not a purchase in the market?

A. Yes.

Q. What about the price – after he jumped bail you told my Lord that you would expect the price to go down, which is commonsense – this is done in the same price as the previous deal before he jumps bail?

A. Yes, this is 40 cents.

Q. Yes, we can see it is 40 cents but you see you would have expected the price to go down but the price hasn't gone down – isn't that suspicious, yes or no?

A. There was something odd.

Q. Something odd – I accept that. Would you like to suggest what might be odd about it, Mr. David Ng?

A. That is to say the price did not go down a bit in a deal as big as this one.

Q. Whether or not and indeed it would be true to find a second large lot of shares

being put on the market the day after the first lot even without knowing that CHOO Kim-san skipped bail, you would have expected the price to go down, would you not?

A. Yes, I agree.

Q. Now would you go back to your affidavit at page 53 in Red File 2 – while it is being brought to you may I remind you that you have just seen 600,000 shares out of a total of just over one million and seventy thousand – my Lord, there is a 2,000 share mistake in the document, I am not talking about that – but you can take one million and seventy thousand roughly, was well over half, nearly two-thirds of all the shares that you have seen on page 19 have gone through in two private deals and the price has not moved – now would you look at what you have said on oath, possibly on oath not affirmation, in the middle of paragraph 18, “C.2, C.3 and C.4” that is to say 19, 20 and 21,

10

“shows that the slow accumulation of shares from the stock market by MAF Corporation (H.K.) Limited at market prices considerably lower than \$1.50 per share.”

There are three mis-statements of fact in that – in that one sentence are there not Mr. David Ng – three mis-statements of fact – one sentence – and the three mis-statements of fact are these:– The first is the use of the adverb ‘slow’ – that is an adjective, ‘slow’ – the adjective ‘slow’ because they were acquired in three months and nearly two-thirds of them were acquired on two consecutive days; it says that they were acquired from the stock market when you were on your own evidence, 600,000 of them must have been acquired in private deals.

20

MR. SWAINE: Just to clear my own mind on this, I wonder if there is a misunderstanding – the private deals, as I understood the matter that has been put by the witness was, the private deals, i.e. one broker acting for the buyer and seller but through the market just the same, and therefore the transaction would be one within the month.

30

COURT: Could you just use English to explain – is there any misunderstanding there between that?

A. (In English) I think Mr. Yorke understands even if through one broker, it consists official – proper in the common market.

Q. But I am talking about private deal which has to be put – it is put through the market, it is not done privately.

A. It is not done privately but put in the market, but consider into one block, that means still in official channel of the four Stock Exchanges.

Q. But the price of the purchaser and the seller is not the market price, but it is agreed privately between them.

40

A. In accordance with the price at that time.

Q. Mr. David Ng, you have told us that if the deal, if those 300,000 shares had been put in the market in either deal the price would have dropped. If the second lot had been put on the market when CHOO Kim-san had fled his

bail and headline in the newspapers that day, the price would have dropped further – both deals went through the apparent market-price. I understood you to agree that indicates that is a private deal where the buyer and the seller have agreed the price amongst themselves and merely put it through the brokers' books.

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A. Yes.

COURT: There is no misunderstanding.

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10 Q. You could not have got – you could not have that price 40 cents in the market by buying and selling in the market because the price would have collapsed.

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A. A bit, sir, drop a bit.

Q. You said it would halve yesterday. And so the deal is agreed to be put through at market-price, but the market-price had been determined by buyers and sellers of small lots buying and selling to each other, and you put the big deal through, you agreed to put it through at the market-price?

A. Yes.

20 Q. I suggest to you Mr. David Ng, that that sentence was written by you with the intention of suggesting to Mr. Justice – not written by you, it was sworn to be accurate by you, initially possibly drafted by your solicitors, I don't know – sworn to it by you with the intention suggesting to Mr. Justice Zimmern that you, Chairman of the company, considered right to say that all these shares have been slowly bought through the stock market at market-price.

A. That means the shares were bought day by day.

Q. Be that as it may, that was a highly misleading statement to make and you knew it.

A. No, I don't agree, sir. According to the ledger we bought from September to November, so that is slow accumulation sir.

30 Q. Mr. David Ng, some people – I am bad at languages, some people are bad at figures, aren't they – some people are just figure blind like some people can't speak languages. If you are figure blind you don't become an accountant or a stock-broker?

A. Yes.

Q. Now look, I suggest to you that anybody knowing nothing about San Imperial, nothing about the fact, looking at this sheet and within thirty seconds would say, 'There is something wrong – something odd, but I would like to look at it.' Just have it in front of you and start at 4th of October, just start below the middle of the page, page 19 and run your eye down the way I did the first time I saw it – look at this: –

40 1,000 shares at 40
 2,000 shares at 40
 2,000 shares at 40
 3,000 shares at 40
 1,000 shares at 40
 300,000 shares at 40
 300,000 shares at 40

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That took what – twenty seconds to say and less to read, doesn't it?

A. What is your question sir?

Q. That anybody, anybody who has got any facility with figures, looking at that as quickly as can be read in ten seconds would say, 'Something out of order there' – it may have an innocent explanation, it may have a complicated one, but there is something in the figures which sticks out like a sore thumb.

A. You still haven't given me your question.

Q. Well I put it this way – there is a slow pattern here like a row going ahead of small deals at the same price, 1,000, 2,000, 3,000, all going through at 40 cents, and then suddenly there are two great holes in the row or mountains in the road of 300,000 shares going through on consecutive days at the same price.

10

A. Yes, I understand but what is your question?

Q. Straightaway there is an inconsistency – an even pattern is badly disturbed, and it is something which to anybody with any financial ability, it required an explanation, do you agree?

A. Yes.

Q. You see if one then looked at the top of the ledger and discovered it is Hong Kong and Shanghai Bank, you would not need to look any further. The 300,000 shares would not disturb the price of Hong Kong Bank much, but this is not, this is San Imperial.

20

A. I agree.

Q. And so the moment somebody like you with financial ability looks at that, you look at it straightaway it requires explanation, you realise it is San Imperial, it could only have been private deals and you could not honestly have told Mr. Justice Zimmern it is all a slow accumulation in the stock market.

A. I did not deceive his Lordship Mr. Justice Zimmern, sir, because Exhibit, the page 19 of Exhibit 14 was exhibited, was annexed to my affidavit and Mr. Justice Zimmern could have a look at page 19.

COURT: I thought Mr. Justice Zimmern was a barrister not an accountant.

30

A. What I meant is this that I did not deceive his Lordship.

Q. You with your financial expertise, you chose – you state something which is highly misleading and inconsistent with the underlying facts. One more – I will just tell you, I won't bother you with it, I have been through it, Mr. Ching and I, in fact, several hundred thousand at least of those shares came straight from Asiatic Nominees.

A. If you say so, yes – I cannot see from this sheet where the shares . . .

Q. I am not . . .

A. . . . came.

Q. I am not going through it . . .

40

A. I agree with you.

Q. We established that – I did it with Mr. Ives. I am not going to do it with you. One more suspicious thing about this, Mr. Ng, this is not just on document alone, look at page 18 will you – page 18 of P.14 – you see an opening balance there of 4.3 million dollars and that showed a book loss in August 1976 of 3.397 million dollars remember?

A. Yes.

Q. Turn to page 21 will you? What is the residual balance there?

A. The last one here is 4,780,473.25.

Q. The residual balance please – final balance.

A. 14,975.75.

Q. Yes, just under 15 thousand dollars?

A. Yes.

Q. So a book loss of just under 3½ million dollars has been wiped out to within – you want to do it with percentages, 31% to 15,000 dollars by purchase made over a period of three months finishing five months before the sale to your Syndicate?

10

A. Yes, I agree.

Q. Don't you think it is curious that Mr. HO Chung-po, possibly Mr. CHOO Kim-san knew just how many shares to buy that would enable them, sold at a price of \$1.50, to wipe out the adverse balance with which the account opened – or is it just another of these happy coincidences like all the rest?

A. This is a matter for the administration of the M.A.F. Company, sir.

Q. Certainly, you haven't asked Mr. HO Chung-po how it happily came about that he bought just enough shares to wipe out the debt?

A. I believe I have asked him about this.

20 Q. So since you are not afraid of him being called as a witness he could happily come and tell us why it was done.

A. This is not a matter for me whether or not he should be called.

Q. Mr. David Ng, I don't mind you telling us what Mr. HO Chung-po told you. Tell us what Mr. HO Chung-po told you.

A. The Security Commissioner had asked him about this, and the C.C.O. had made investigations into the accounts in November and December, and he was interviewed by the Security Commissioner.

COURT: Of 1976 – we haven't got to September 1977 yet.

30 A. (In English) What I mean is this – the C.C.O. inspect – again inspect the accounts of M.A.F. in November or December 1976 and then beginning of 1977 interview has been with the Security Commissioner.

COURT: When did Mr. HO Chung-po tell you this?

A. (In English) Afterwards.

COURT: What do you mean afterwards?

A. (In English) After I see this.

COURT: You said you asked Mr. HO Chung-po about it, he told you these things – when did you ask HO Chung-po about this?

A. (In English) Some time when I joined the Board – it was about June or July.

COURT: June or July – when did he tell you – also June or July?

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A. (In English) Also in June or July.

COURT: What else did he tell you?

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A. (In English) He said these accounts have been asked by the Security Commissioner – the whole story of the selling – of the selling of these San Imperial shares.

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COURT: Anything else?

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A. (In English) That is more or less like this.

Q. And that was in November, December of 1976 and beginning of 1977, right?

A. The C.C.O. inspection was end of 1976. (In English)

Q. Yes?

10

A. (In English) And interview was given after the A.G.M. of M.A.F. Corporation that is some time after March 1977.

Q. If you look at page 21, you will see that the payment of the 4.8 million came through on the 29th of April and it is only when that payment goes through and the final payment made up on the 14th of July – 14th of June, I am sorry, I beg your pardon, they are both on the 14th of June – it is only on the 14th of June, self-cancelling – an almost self-cancelling entry comes in – will you just leave out investigations made in November and December before there had been a sale and tell us Mr. HO Chung-po's explanation of how it was he came to buy just enough shares in three months to wipe out the whole book debt of the company on 1.5 dollar share each sale the following Easter, or is this another of these happy coincidences.

20

COURT: You know exactly what the question is – what did Mr. HO Chung-po say by way of explanation or did he say anything?

A. He did not say anything.

COURT: You asked him but he did not say anything, is that right?

A. Yes.

Q. You asked him but he did not say anything. Could we just go back again to your affidavit page 53 – you told us earlier on, paragraph 18:–

“I will now deal with how the 8 million shares transfer to IPC Nominees Limited by City Nominees Limited were acquired. As for 3,226,000 shares in the name of MAF Credit Limited they were acquired by me at \$1.5 each. I paid for the same by cheque to MAF Corporation (H.K.) Limited which was the beneficial owner of them.”

30

Tell me, at the time that you swore that affidavit had you enquired into, in those name they were registered?

A. You mean the 3.226 million shares?

Q. All of them – yes, all right, that is right, 3.226.

- A. No.
- Q. Now Mr. David Ng, that cannot be true, can it, because you swore an affidavit in July and in December you searched the register and you found the two entries in the names of M.A.F. Corporation, that is P.14, document and M.A.F. Nominees, P.14 document 30, and so you added up the shares, so you did in fact know in whose names they were registered.
- A. Yes, I knew that.
- 10 Q. Just look at P.14 document 12 would you – P.14, page 12. You notice that the account, as it were, is opened on the 1st of September of 1976 in one transfer 4,698 which brings in the whole of 2.5 million – sorry 2.15 million – when you saw the card that was all, probably all that was on it, possibly over 7,000, so it is screamingly obvious, isn't it, it is opened on the 1st of September with one transfer 4,698 bringing in 2.15 million?
- A. Yes.
- Q. When you exhibited page 18, your affidavit, it shows 2.15 held as at 31st of December, 1975, that is the previous year.
- A. Yes.
- Q. Have you wondered where they had been before?
- A. No.
- 20 Q. Because you knew that they weren't at MAF Nominees, didn't you, because Page 13, P14, that account was not opened until the following month, the 20th of October of 1976.
- A. Yes.
- Q. By the time you swore your affidavit, you have been chairman of the company for three weeks, director for a month, and you were concerned with these matters. You say it never crossed your mind to wonder where all the shares had been held. They must have been held, you see, and we now know, for two and a half years because that was the last time they were traded on, \$2; they were all bought on the same day. It didn't cross your mind who held those shares for the previous two and a half years?
- 30 A. I asked someone about these shares.
- Q. Who did you ask?
- A. The registrar.
- Q. What did they tell you?
- A. It was carried forward like this.
- Q. Now Mr. David NG, really, page 18 is not a Registrars' document. It is a company's internal document. Pages 12 and 13 are registrars' documents.
- A. The registrar was the same person as who dealt with the accounts. He was Mr. LEE, sir. I have asked him about it.
- 40 Q. Look at pages 12 and 13, would you? Is it LEE Fai-to?
- A. Yes.
- Q. Oh yes, that is the man who is Mr. HO Chung-po's co-director of Asiatic, isn't it?
- A. I don't know, sir.
- Q. It is agreed. Never mind. Look at 12, you see again to people who are not used to dealing with shares, those documents don't mean very much, but there is nothing carried forward on either of those documents, is there? Let's look at something. There is nothing carried forward on either document when it opened. If you are in doubt, let's see where something is carried forward.

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Would you look at page 14? Now you see, there is an opening balance brought forward: 19th of January, Bal. B/F 10,690.00 and at the top of the page just to the right of the name is "P.2" for page 2. And if you want to see how it works on other cases, as you have got so many of them here, look if you would at say page 11. Let's go back one page: Triumphant Nominees. Top of the page, Balance brought forward 28th of May 20,760.00, right next to the name San Imperial Corporation is P.5, page 5. Now I will come back to pages 12 and 13 and there is no balance brought forward on 12 or 13; and 13 even helps you at the top of the page, it says P.1 and there is now P.2, and you have seen all that. Would you agree with me that there is no balance brought forward in either holding? 10

A. I agree.

Q. Yes, very well. I have to withdraw your answer that we were told this was a balance brought forward because you can see that there were no balances brought forward.

A. When I answered you that question, I was looking at page 18. It says here "Bal B/F".

Q. I wasn't asking you about page 18. I was asking you about pages 12 and 13.

A. Yes, I asked him, yes. He told me that the MAF shares were in the name of the Asiatic Nominees. 20

Q. You told my Lord at the beginning of your evidence that the share is like a \$10 bill, any bill, one is as good as another if the shares were in the name of Asiatic Nominees. Then when you saw cards 12 and 13 or card 12, weren't you a little bit suspicious that just before he fled the colony, CHOO Kim-san had transferred into the name of MAF Corporation Limited in a new account opened for the bills the whole of the 2.157 million shares owned by MAF Credit, just before he fled the colony?

A. Yes, perhaps I do, sir.

Q. You see, before he did that, there would have been no way whatever of being able to say the shares are MAF shares because it was just a holding of just under 18 million in Asiatic Nominees. 30

A. I can't tell the difference, sir.

Q. No, nobody can tell the difference, sir. So as you were suspicious, what enquiries did you make?

A. I asked the auditors.

Q. And what did the auditors tell you?

A. The auditor told me that the 2.15 million shares were carried forward from 1973. It is carried forward from the Annual Report of 1973.

Q. Mr., nobody is doubting that. That is not the question I asked you, and you do know what I am asking you about. 40

A. I haven't finished with my answer.

Q. Sorry, I beg your pardon!

A. In 1974, it is still carried forward in the Annual Report.

Q. Have you finished?

A. No, not yet. And then in 1975 they become the auditors of the company, Y.S. Cheng and Company. Then they discovered these shares are all in the name of Asiatic Nominees Limited. So they said after the fiscal checking – that is what they told me – they requested the board to change the shares in the name of the original – the beneficial owner, the actual beneficial owner.

So at the request of the auditors, the shares were transferred to MAF Corporation Limited. That was the information I obtained at that time.

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Q. Right. We all understand the auditors wanting the shares to be transferred into the name – my question to you is why do you suppose that CHOO Kim-san shortly before he fled the colony, complied with the request of the auditors?

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A. That I don't know, sir. That was his explanation, sir.

Q. I see. You have helped me because our guesswork is being confirmed. The auditors were onto the fact that these shares were held by Asiatic Nominees of whom HO Chung-po and LEE Fai-to were directors and they were the only directors of Asiatic Nominees, and so when CHOO Kim-san had fled the colony the auditors pursued their request for the shares to be transferred. If CHOO Kim-san had taken them with him, the directors of Asiatic Nominees would have been responsible and would have been required to make good to MAF its loss and might also have faced fraud charges, did they?

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(Question repeated by Court Reporter)

COURT: You have heard this repeated in English.

A. That was not a question. That is only his statement.

COURT: Do you accept that that was the position or not?

20 A. Yes, but I have something to express.

Q. Yes, of course.

A. In about the end of July or in August last year, the C.C.O. had made investigation into the accounts. They got all the documents and in fact up to now, up to my knowledge, to the best of my knowledge, there are still some account books and evidence in the hands of C.C.O. I don't think they could do anything at that time.

COURT: When you say you don't think CHOO Kim-san and his people –

A. – and his people could do anything at that time. That is my opinion, my Lord.

30 Q. Except, of course, to flee the colony, taking with him all the shares registered in the name of Asiatic and Triumphant.

A. The police must have been aware of Asiatic Nominees matter.

Q. Mr. David NG, would you like me to show you in fact between the 1st and 3rd of November Mr. CHOO Kim-san converted into large denomination certificates the very certificates that you say you brought back from Taiwan. So you see, this deal 2.157 went through on the 1st of September. You have just told his Lordship in your opinion he could do nothing at that time. Just look at page 5 of P14. I don't have to explain this to you. You will see there on the 3rd of September Mr. CHOO Kim-san was converting a mass of small scrips into six large individual million share scrips.

40

A. I agree with you.

Q. So that as at the 3rd of September, Mr. CHOO Kim san was quite in control

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of the registers of San Imperial, wasn't he?

A. Yes, I agree.

Q. Only one other matter about the – two matters about the figures now. On pages 12 and 13, you say that you were suspicious in that you asked the accountants. In fact the accountants, we now know, were onto the fact that the shares were not held by MAF already. The fact that something was wrong is something which did spring immediately to your mind. With your trade and accounting and stockbroking background, you saw this, realized something, and you asked the accountants about it.

A. Yes, I asked the accountant and the auditors.

10

Q. When was that?

A. Some time when I became the director of MAF. Some time this year in July.

Q. And really, this is something which to anybody who knows his whereabouts in financial documents, it jumps at you straight away that something requires further explanation, and you have got it: it does jump at you straight away that something requires explanation.

A. Yes, I saw that.

Q. Yes, because what jumps at you if you know a little bit more about the facts is that CHOO Kim-san is getting rid of a large shareholding which he could have taken to Taiwan with him and he is getting rid of it, without payment, into the name of a company with which his nominee HO Chung-po is remaining associated. You nodded. Are you agreeing with me?

20

COURT: What is the answer?

A. I don't quite agree.

Q. What don't you agree with?

A. MAF was a public company and the Asiatic was a private company.

Q. So what?

A. If the shares were transferred from Asiatic to MAF that must be accounted for. That must be supported by the accounts.

Q. I am not disputing that for one moment. In the accounts we know that these shares ought to have been in the possession of MAF up to the last two and a half or three years. You know that. What I am saying to you is: once you have seen –.

30

A. Oh, I haven't finished with my answer, sir. Under these circumstances I think that this is a very normal procedure for MAF to get these shares from Asiatic Company.

Q. You think it is a very normal procedure for a man who is about to flee the colony to very kindly pay his debt of 2.157 million shares which he could have taken with him?

A. My opinion is this; that the police at that time was aware of this, that is to say the 2.157 million shares, that Asiatic Company belonged to MAF therefore he would not be able to get those shares.

40

D.W.2 – David NG Pak-shing – On former oath

XXN. BY MR. YORKE continues:

Q. Mr. NG, before the adjournment, you were just explaining to his Lordship the part played by the police in causing Mr. CHOO Kim-san to transfer 2.15 million shares from Asiatic Nominees to MAF Corporation Hong Kong Limited. I didn't immediately follow the police's role. Will you now tell us what the police did?

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A. To save the court's time, I would like to give this particular answer in English.

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COURT: Yes.

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10 A. (speaks English) Presumably, that C.K. San under the pressure of the police, now he has no other choice but transfer the shares from Asiatic Nominees Limited to the MAF Corporation Limited and he knew that MAF Corporation Limited – he was no longer the beneficial owner. I must apologize if I make any grammatical mistakes. Because the beneficial interest has gone to the Brunei, that is the MBF Brunei and that 2.15 million will become the assets, the actual assets in accordance with the books of the MAF Corporation. My Lord, these shares are benefited by the company, not C.K. San any more.

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COURT: Beneficially owned by the –.

A. – by the company, not Mr. C.K. San any more.

COURT: These shares are beneficially owned by the –.

A. – by the MAF Corporation, not –.

20 COURT: – not by C.K. San any more.

A. Any subsequent purchase by the MAF Corporation would therefore be entirely for the MAF Corporation's account. So when he planned to escape or you know what I mean, to run away from Hong Kong, he could not bring the MAF shares with him, and when the police knew that he has jumped bail, they arranged another inspection in the MAF, presumably that the police wanted to find out whether C.K. San has brought the shares belonging to MAF with him. And of course, the police found the shares, you see, they took no further action. There is one more thing I would like to add, my Lord. The Brunei MBF has suffered some sort of bank run "chai tai" – I think in November or so.

30 COURT: 1976?

A. Yes, 1976 I mean, my Lord, so therefore Hong Kong MAF has to support the MBF of Brunei. So maybe the MAF were in financial difficulties and therefore they stopped to buy additional San Imperial shares in the market.

COURT: Stopped to buy any more –.

A. – any more San Imperial shares in the market, but all along these 2.15 million shares together with what they bought in the market are beneficial to the shareholders, not HO Chung-po, nor C.K. San. This is the difference between

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Mr. Yorke and myself. My Yorke based on theory and I based on certain facts, my Lord. I think that is all in my mind.

Q. Let's now, Mr. NG, have the facts about the pressure brought by the police to force CHOO Kim-san to transfer the 2.15 million shares from Asiatic Nominees to MAF Corporation Limited. No theory, just facts, facts about police pressure. Tell us the names of the officers, letters that are written, the nature of the pressure, the dates upon which this was done, why, when and where.

A. Mr. Yorke, I only mention to the court I said based on some facts. My Lord, I said based on some facts, isn't it? 10

Q. The difference between you and me, you said, is that you are talking about facts, I am talking about theory. Now please tell his Lordship the facts about the police pressure on CHOO Kim-san to transfer shares out of the name of Asiatic Nominees into the name of MAF Corporation Limited on the 1st of September.

A. I understand it is Insp. Laydon who was in charge in this case.

Q. Are you going to call him as a witness?

A. That is up to counsel.

Q. Has he been asked to give a proof of evidence?

A. No, that is what I want to explain my opinion to the court. You see, my Lord, I want to give my opinion to the court. 20

Q. The facts, the facts, Mr. NG.

A. I said based on some facts.

Q. The facts.

A. I only mentioned Insp. Laydon was in charge of this.

Q. You can name anybody you like in the police force.

A. But it is Insp. Laydon still in charge of the C.C.O. crime at the present moment.

Q. Do you want me to ask his Lordship for an adjournment so that Insp. Laydon can be called here to tell the court how the police put pressure on a company chairman to transfer certain shares into the company name? 30

A. The pressure may be in that way: C.K. San aware and as well as the board aware that that will be discovered by the police. That may be called pressure.

Q. Oh, I see, the fact that they were aware that it might be discovered?

A. Yes, that is what I mean. I must apologize: my limited English.

Q. Let's do it in Cantonese, if you prefer. But it had already been discovered by the auditors, hadn't it?

A. Yes.

Q. And CHOO Kim-san knew that he was going to leave the colony before he came up for trial. 40

A. Yes.

Q. All he had to do was to wait another six weeks and take with him all the Asiatic Nominee shares.

A. This is what you thought, isn't it?

Q. You see, we didn't know that the auditors had discovered that these shares had not been transferred. You told us today. Is there any correspondence in existence from the auditors querying the failure of the company to procure the registration of the 2.15 million shares in its own name.

A. I believe that there is a letter confirmed by the board to the auditors.

- Q. So it hasn't been disclosed to us notwithstanding the fact that a week ago I suggested to Mr. Ives that the possibility of an offence being committed was the reason for the transfer and you, of course —
- A. At the present moment MAF is under the care of Brunei Government.
- Q. Did the police even know that the auditors had asked for these shares?
- A. That I don't know; not in my capacity.
- Q. So your facts about police pressure are that the police might have been told and might know, but Mr., there is no criminal offence involved, is there? If Mr. CHOO Kim-san has failed to transfer — to actually hand over shares registered in the name of Asiatic Nominees to his own company, to MAF Corporation, but he is holding them on trust for the corporation, there is no criminal offence involved at all, is there?
- A. That I don't know.
- Q. No, you can take it if there were, Mr. Swaine would have got up to suggest it at this moment, and if there is no criminal offence involved the Royal Hong Kong Police are not interested, are they?
- A. That I don't know.
- Q. You do know the difference as an accountant between criminal and civil matters, don't you?
- A. I am handicapped by law. You see, I don't know anything.
- Q. But you know there is a difference between criminal matters and purely matters of civil contracts and so on?
- A. Civil and criminal, that I know.
- Q. And you don't really suppose that criminal law has got anything to do with in whose names shares are registered?
- A. That is what I want to give a better picture to the court. I have explained to the court, whether it is accepted or not by the court, but I try my best to give the facts to the court.
- Q. I don't want to take any kind of advantage of you, so please if you want to have what I am saying continuously translated to you in Cantonese, please say so, but at the moment you are voluntarily choosing to give your evidence in English. It will appear on the record.
- A. I said only particular answer to the judge.
- Q. So much the better. I don't mind you having it twice. Perhaps you will have it translated and then there is no room for misunderstanding. You see, what I put to you is that the moment anybody who has seen document 18 in P14 — that is the opening of the general ledger of MAF, and also — whether he sees page 18 or really knows its contents doesn't matter — and also the moment he sees page 12, the moment he sees that, he will say, "Well how and why did it get there?" You virtually agreed with this morning, didn't you, that if anybody looks at page 18, they know the shares have been owned for a very long time — we now know two and a half years — and the moment he sees page 12, he'd say, "Good Heavens!. That only registered in the name of the company in September 1976." He would say, "Where had they been for the last two and a half years?" It is obvious, isn't it?
- **A. Later I asked and he said that —
- Q. Please, I am going to interrupt. Don't tell what later you did. I merely say, looking at it, somebody who knows something about financial matters, if you know the contents of page 18 — that is to say, that 2.15 million shares

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(**witness resumes giving evidence in Puntì)

have been owned for a long time by MAF Corporation, that as soon as you see page 12, you are bound to say, "Good Heavens! They have only just got them on the register. Where have the shares been for the last two and a half years?" The immediate question is obvious.

A. Yes.

Q. Good. You see, we guessed, Mr. NG, that there was such a card but we didn't know what was on it. We didn't know it only began on the 1st of September. It took us the whole length of this trial until November to get that card. Now you may or may not know something about this. At the time the proceedings were going on before Mr. Justice Zimmern, Mr. Christopher Wilson twice searched the records that were available of shareholdings of the San Imperial Corporation and that card was not found and about the time this trial started, specific enquiries began to be made because we realized that there was something missing. Would you look at black file 3? It hasn't been looked at for a long time. Page 916. Now you see, that is the page, I think it's dated the 13th of October:

10

"We are anxious to inspect the following documents of San Imperial Corporation Ltd.:-

1. The monthly computer print out sheets of the Register of Members from August 1976".

20

- that is, prior to MAF Corporation becoming registered -

"up to the present date.

2. The ledger sheets showing the shareholding of the following members:-

.....

- c). MAF Nominees Ltd.
- d). MAF Corporation (Hong Kong) Ltd.

.....

The above documents are not in the possession of Peter Chang Secretaries, the new share registrars, nor in the possession of Standard Registrars. Our Mr. Wilson was able to inspect some of the above documents at the Imperial Hotel in August and we trust that your clients will be able to locate them quickly so that a further inspection can take place early next week."

30

We didn't get that card which you have been looking at, page 12, and I eventually on, I think, the 23rd of October made a request specifically to Mr. Swaine and you will find a reply to that on the next page 917, 24th of October, Peter Mo:

"In response to the verbal request from (myself) to Mr. Swaine, we

write as follows:”

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And it’s little (g) that matters. It should be “shareholding” We’re never interested in shareholders.

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“(g) As to the request for the names of the shareholding of M.A.F. Corporation (H.K.) Ltd. form December, 1975, we suggest that you make the requisite searches yourselves.”

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10 As we have made four searches already, so it is a significant answer. We then look at the 27th of October. On the 27th of October, something happened. Mr. Wilson gave evidence that he could not find and it was not made available any card of MAF with the name MAF in it, with initials MAF, Malaysian American Finance, or any corporation other than MAF Nominees. Were you in court when he was giving evidence?

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A. No, I was not.

20 Q. I see, you didn’t know that, and he also gave evidence that he had inspected the monthly computer print out sheets which were asked for in the letter on page 916 and he had done so with me and none of the print out sheets made available to us contained any name other than MAF Nominees. And I think you will see that in 923 – difficult to read – again to Peter Mo: “In the light of your letter of the 27th of October . . .” which you have just looked at – you didn’t look at 920? I’m so sorry. I beg your pardon! So look at 920, would you? I have just jumped to that. I beg your pardon! I think what happened after that, you see, we have got the answer telling us that we search the register ourselves, and then Mr. Wilson gave evidence on the 27th of October, and I have spoken to Mr. Swaine in the mean time, and paragraph (g) which tells us to look ourselves is now amplified. It says: In December 1975 2,150,000 shares in San Imperial were registered in the name of Asiatic Nominees and from August 1976 to November 1976 MAF Credit Limited through MAF Corporation acquired 1,076,000 shares in the Stock Exchange, and on the 1st of September 2,150,000 shares were transferred from Asiatic to MAF Corporation Limited. It is the first time we knew that. 24th of March, 30 2,150,000 were transferred to MAF Nominees, and then certain initial information about things that happened later. So it’s only on the 27th of October that we were ever told that shares were registered in the name of MAF Corporation Limited. We asked for the document in 923 in the bundle. We asked – difficult to read – 28th of October:

40 “In light of your letter of the 27th October stating in whose names the shares allegedly purchased in the open market by Malaysia America Finance Corp. (HK) Ltd. were registered we are now advised by counsel to request you to make specific discovery of the share transfer . . .”

– which we knew existed. And then on the 2nd of November, 925:

“We refer to your letter of 27th October, 1977 and to the adjournment granted yesterday (Nov. 1st) by Yang J. in order for you to

consider whether your discovery was complete.

In paragraph 2 you inform us that MAF Credit Ltd. acquired 1,076,000 shares in the Stock Exchanges. Please inform us in whose name they were registered and ask Mr. David Ng to have the San Imperial Registration card or cards available for inspection as soon as possible.

In paragraph 3 you inform us that the 2,150,000 shares were transferred to MAF Corporation (HK) Ltd. Please inform us in whose name they were registered and ask Mr. David Ng to have the San Imperial Registration card or cards available for inspection as soon as possible.”

10

And then on November the 2nd, we have at last got page 12 plus the blue book, page 12 of the Exh. P14. You see, you have agreed that the moment somebody sees page 12, they will realize that CHOO Kim-san has transferred from Asiatic Nominees just before he leaves the colony shares which rightfully belong to but not in the name of MAF Corporation Ltd. Is the fact we have such extraordinary difficulty in finding that card and the fact that we were given computer print outs that didn't contain the name "MAF Corporation" – is that just another of these unhappy coincidences in this case?

- A. That I don't know, sir. I was never present in the registrars' office when they went there for a search. So whenever JSM or Deacons came to make a search in my company I always told my employees to let them do so. 20
- Q. Mr. Wilson and I both went in the end to your office in San Imperial and on your desk were laid out – not your desk – sorry, the desk – I thought your secretary's – the relevant, the blue cards for every company, exhibit, page 12, and two big computer print outs which did not contain – this thick I think, as big as the blue ledger, that big.
- A. That I don't know, sir. I have nothing to do with the registration work.
- Q. So it is just another unhappy coincidence, is it not, that after this trial has been going on for nearly four weeks, we at last see page 12 of P14 and realized what Mr. HO Chung-po and Mr. CHOO Kim-san may have started out doing? 30
- A. You can check page 12 with the large blue ledger.
- Q. We had. We couldn't find it in July, August, September, October and got it in November only.
- A. But that has nothing to do with me at all.
- Q. Another unhappy coincidence. You do realize it's only because we eventually got that card that we were able to guess what we now have confirmed that the auditors of MAF Corporation were already aware of something which we knew they would be bound to find out in the end?
- A. This can be proved by Mr. Y.S. CHENG. 40
- Q. No doubt, he will be called to give evidence. I suggest to you that the suppression of that card for months until we have forced it out was deliberate in order to prevent us getting the clue.
- A. I don't admit that. I have talked with Mr. Simon IP and I have talked with Mr. Wilson, and I said to Mr. Ip that he could come to make investigations into anything.

- Q. I went there myself, Mr. David NG. I went there myself, but the card wasn't there. Let's just leave that. I have got one more matter . . .
- A. But you could ask the Registrars.
- Q. We did. It wasn't there, it wasn't on the print out either. We asked for the print out from August 1976 onwards, what we were given did not include the name of MAF Corporation.
- A. The blue ledger was only prepared once a year. I have told my people to co-operate with the JSM or Deacons whenever they came to make investigations into the documents.
- 10 Q. It doesn't matter. When Mr. Wilson said there were no other cards and no other names in the print out, his evidence wasn't challenged. Now I want to take you back again to affidavit. I'm afraid we have finished with the black file now. Go back to affidavit in red 2, page 53. Look at the end of paragraph 18, please. "I have paid for 3,226,000 shares by cheques which have been cleared. There is exhibited hereto marked 'E' a copy of a letter dated 14th June 1977 from MAF Corporation (H.K.) Limited acknowledge receipt of the payment by cheques." Have you read that?
- A. Yes.
- 20 Q. I have been through this with Mr. Melville IVES, your solicitor, and I am not going to go through the same ground with you, but you knew when you swore that affidavit that the cheques to which you are referring there and the cheques which are referred to in the letter of the 14th of June had not been paid and had been withdrawn immediately after issue because Bentley Securities hadn't got the money to pay them? Look at yellow file 2; page 131, would you? This is Exhibit 'E' to your affidavit. It saves going to the affidavit bundle. Yellow 2, page 131. You see, you carefully exhibit the receipt from MAF, but don't exhibit the cancelled cheques. I'd just like to look at the cheque, that cheque, TL104460. You will find it at page 109, same bundle, 109, page 2. Your signature and the Bentley Securities', 4.8, and it's numbered TL104460.
- 30 A. Yes.
- Q. The reason you didn't exhibit that cheque was because you knew perfectly well that cheque had not been paid?
- COURT: This was the cancelled cheque?
- MR. YORKE: No, my Lord, that had never been cancelled, withdrawn.
- COURT: This was the withdrawn cheque?
- MR. YORKE: Yes, my Lord.
- 40 A. What you have said is right, but it's not the same. When I gave MAF the cheque, the MAF gave me the acknowledgement of the receipt of the cheque. As my cheque was not cleared, then MAF did not have to give me another acknowledgement receipt. Then it became the matter between myself and the Oceania. This is why I said here "I have paid for 3.226 million shares by cheques".
- Q. So that was deliberate, was it?
- A. I told the solicitor what happened and that was prepared by the solicitor.

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- Q. You and Mr. Ives deliberately set out to deceive Mr. Justice Zimmern, didn't you?
- A. I don't agree. The affidavit was sworn on the 27th of July, but the cheques were all cleared on the 22nd of July. The cheques had all been cleared about a month before the date of the affidavit, that is the 27th of July.
- Q. Not the cheques referred to in the affidavit?
- A. I have said here "I have paid by cheques".
- Q. I see. And the next sentence says, "There is exhibited hereto marked. 'E' . . ." – that's 131 in yellow 2 – ". . . a copy of a letter dated 14th June 1977 from MAF Corporation (H.K.) Limited acknowledges receipt of the payment by cheques." You can see that? 10
- A. Yes.
- Q. You are saying that's meant to tell Mr. Justice Zimmern that the cheques which have been paid are different cheques from the cheques which the letter exhibited refers to?
- A. I believe this is what it means. Here, 131, is a receipt from the MAF.
- Q. Of a cheque drawn by you which was never paid on a bank account which hadn't got the money to meet it, is that correct?
- A. This is the receipt from MAF.
- Q. Mr. David NG, look, you have told many lies in this court, please try and tell the truth now. When you drew that cheque for HK\$4,800,000 on the Bentley Securities' account, had you got the money in your bank account to meet it? Yes or no? 20
- A. I have already answered that in the cross-examination by Mr. Ching. I have said that I was expecting finance from the banks.
- Q. I am asking for a different reason from that Mr. Ching was asking and the reason will become apparent in a moment, but at the time that you drew it, you had not got the money in your bank to meet the cheque? Yes or no? Listen.
- A. Of course not at that time. 30
- Q. And the bank did not agree to lend you the money to meet the cheque, yes or no?
- A. Later they refused.
- Q. Yes, and so the cheque was recalled and has never been paid?
- A. That's right.
- Q. Subsequently on the date which you told us was the 27th of June, a set of post-dated cheques were issued which you will find at page 132, and those cheques were subsequently paid?
- A. Yes.
- Q. The reason I am asking you is – and the dates they were paid were between the 27th and the 29th of June? 40
- A. Yes.
- Q. Between the 27th and 29th of June. I suggest to you that you and Mr. Ives deliberately set out to deceive Mr. Justice Zimmern because if you had told the truth, you would have exposed the first of the back-to-back transactions with which the whole of this case is written.
- A. I don't admit that.
- Q. And in order to do that, you caused the MAF ledger to be forged? Now would you look at page 21 of P.14? Now would you look please at the date on which

it is said that MAF was paid 4.8 million?

A. Yes.

Q. 14th of June, isn't it?

A. Yes.

Q. We now know that the first cheque wasn't paid until the 27th of June and payment wasn't completed until the 29th of June.

A. Yes.

Q. And a properly drawn general ledger, even if it had got a payment in on the 14th of June, the moment the cheque was withdrawn, it would have had a contra-entry into it and the true payments would have been entered?

10

A. This is the principle for accounting.

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COURT: You agree with Mr. Yorke or you don't agree with Mr. Yorke?

A. (In English) I agree with Mr. Yorke, but I give an explanation.

COURT: I see. Yes, all right.

A. For the amount here, it's the same as I am telling you to pay some money to someone else and I owe that man money, and then you agree, then you will be responsible for making payments to that man. As for me, it is treated as I have paid the money already. This is a journal entry.

Q. Oh, I know it's a journal entry.

20 A. It's the same as this. This is very common in the business.

Q. Very common in the business to put through an entry as something having been paid 14 days before payment was actually made?

A. I agree with what you have said, but it's like this – if after you had agreed to pay that man money and the cheque you gave to that man was returned, then you would be responsible for that cheque, that man would chase after you for the cheque. If you are unable to fix that up, that man will come to me. Then in that case, I would have it changed here. Then I will fix it up with that man. If you are able to fix it up with that man, then I will not be bothered.

COURT: When was the cheque withdrawn?

30 A. (In English) The letter and the cheque were sent to MAF on the 14th.

COURT: And then the cheque was withdrawn?

A. (In English) The cheque was given to the Oceania by the MAF.

COURT: I thought it was withdrawn, wasn't it?

A. (In English) No, by the Oceania. My Lord, I sent a cheque to MAF for payment and the MAF sent the cheque to Oceania and then Oceania dealt with me direct because of the cheque unable to cash.

COURT: When was this?

A. (In English) This happened after the 17th of June.

MR. YORKE: I went through the actual documents with Mr. Melville IVES where there is a letter from him.

COURT: Yes, I know there is another document.

MR. YORKE: My Lord, it's yellow 1, 82. I have got it. That's Mr. Ives to Oceania asking MAF to issue a formal receipt. We have got no document showing the cancellation at all. My Lord, the cheque was sent on the 14th, the cheque was payable on the 17th, the inference is the cancellation and withdrawal must have been before the 17th.

Q. Would you look at page 82 of yellow 1? You will see that what happened there – in fact Mr. Ives sent the cheques on the 15th of June direct to Oceania with carbon copy to MAF. 10

A. If you look at page 81, you can see that I gave the cheque to MAF, then MAF gave the cheque to Mr. Ives and then Mr. Ives gave the cheque to the Oceania.

Q. So you all know about it. That cheque was payable on the 17th, it wasn't paid, and the new cheques were not issued until the 27th. Document 132 in yellow 2, you said it was misdated and should be the 27th, therefore there was a period of ten days between the 17th and the 27th in which one cheque had been withdrawn and no new cheques had been issued, right or wrong?

A. Yes. 20

Q. I suggest to you that no competent bookkeeper could possibly have let document 21 remain with the amounts discharged throughout that period.

A. This ledger was prepared – page 21 was prepared by the accountant. I don't know.

Q. 16th of June, of course, was the day you became a director, wasn't it?

A. Yes, but I was not the person who prepared the accounts.

Q. I suggest to you that the only explanation for that document is one of two things, either it was originally correctly prepared with a contra-entry in on or before the 17th and a new entry in on the 27th, 29th, and this document has been drawn up since, or the bookkeeper was instructed not to put in the true entries in order to maintain this account. 30

A. No.

Q. And that was done because if any true ledger sheet had been exhibited by Mr. Justice Zimmern, you could not possibly have dared to swear the last four lines in paragraph 18 of page 53 of your affidavit.

A. I don't agree.

Q. One last thing on this. If you look at yellow 2, page 132, you told Mr. Ching in cross-examination that that date June 17 was incorrect and the true date should be the 27th.

A. Yes. 40

Q. Mr. Ching asked that the original letter should be found because the original letter, of course, would have a date chopped on it, and Oceania is under the control of Mr. James COE. Can we have the original letter please?

A. I am not in a position to get you this letter. You'd better ask Mr. James COE for the letter.

- Q. Well now, Mr. Ng, you will be glad that I am turning to another subject. You will remember that the shares which you got from Lee and Fong in Taiwan, you put into the name of MAF Nominees, didn't you? Supreme Court of Hong Kong High Court
- A. Yes, MAF Nominees.
- Q. I don't keep as good a note as my learned friend Mr. Ching of this, I am quite happy to have my note improved upon by somebody else, but the reason which I took down which you gave was that you wanted to keep your shares separate from those of the syndicate. Defendant's Evidence
- A. Yes. No. 40
- 10 Q. My note says, "The shares the syndicate purchased and the shares purchased in the market, they used City Nominees." You put yours into MAF to indicate that the two lots were "mine" and that they had nothing to do with the other lot? David Ng Pak-shing – Cross-examination
- A. Yes.
- 20 Q. But Mr. Ng, at the very beginning of my cross-examination, the very beginning of my cross-examination, you agreed with me that there was no difference between one share and another, and when I was cross-examining you about yellow 1, page 28, and when I drew your attention to the discrepancies between certain share certificate numbers and referred to the share certificate numbers on P.14, page 14, you went at great length – that's just where the share certificate numbers appear – you went at great length and said, "It doesn't matter what the share certificate numbers are. One can be changed to another. They are all the same and it didn't matter." Now Mr. Ng, tell his Lordship why, if what the evidence you gave this morning and yesterday was correct, why it was necessary to keep Lee and Fong purchases in the name of different nominees.
- A. The only purpose is to make it clear.
- Q. To make what clear?
- 30 A. To tell which shares were bought from Taiwan and which shares were bought in Hong Kong.
- Q. What was the point of that?
- A. This is the point. I have already told you that the purpose is to tell which is which, which was from Taiwan and which was from Hong Kong.
- Q. Why?
- A. This is what I thought at that time.
- Q. Why?
- A. I have already answered you.
- Q. No, you haven't.
- A. I have said that I wanted to make it clear.
- 40 Q. To whom? To whom did you want to make it clear?
- A. To the syndicate that those shares were bought by me from Taiwan for myself.
- Q. So what? If this came out of my pocket and this came out of Winston's, what difference does it make?
- A. This is what I thought at that time. Now you ask me this question, of course I am not in a position to answer it. You are now holding two \$10 notes in your hand, of course they are the same.
- Q. So are shares of San Imperial, they can be held in any nominee's name.
- A. Yes, of course, even in Hang Seng Bank Nominees' name or the Hong Kong & Shanghai Banking Corporation Nominees.

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Defendant's
Evidence

No. 40

David Ng Pak-
shing – Cross-
examination

Q. In fact, as you said in relation to yellow 1, page 28, you don't really even care about the certificate numbers so long as they add up to the right number in the end.

A. I have already told you yesterday that this is a letter from the MAF Nominees to Messrs. Peter Mo & Co. and there was no c.c. copy for me.

Q. And it doesn't really matter if they give all those certificates to somebody else as long as the nominees could account for whatever is there, 2,388,000, the beneficial owners will be perfectly happy because one share is just as good as another just as a \$10 bill is just as good as another?

A. Yes, I agree.

Q. Let's consider why you did in fact use MAF Nominees. I suggest to you that you chose MAF Nominees because Messrs. HO Chung-po and CHOO Kim-san insisted that the shares go to MAF Nominees and that was the only name they were prepared to sign on a transfer form.

A. No.

Q. And I suggest that you look at the documents themselves. It's in brown file 3, your exhibits D.8A and C in the name of MAF Nominees, and the reason for that was they would go into the possession of MAF Nominees when MAF Corporation, the Registrars, issued the share certificates and the only person whose signature would then be able to transfer ownership to somebody else would be that of Mr. HO Chung-po or the other signatories who were all employees of the company being run at the time by Mr. HO Chung-po, that is, that MAF group?

A. No.

Q. So that on this vitally important date – we will see why it is important in a moment – the 29th of March, all the Lee and Fong shares, the shares have come back into the control of Mr. HO Chung-po or people acting under his direction?

A. No.

Q. What did happen on the 29th of March – I want you to look at the share transfers. Look at P.14, page 14 again, would you? 29th of March, half way, exactly half way down the page, there was, in the No. of shares acquired, 514000 and 200, that's the shares picked up on D.8A in brown 3, and the entry immediately above that, 1650000, was the other lot you say you got in Taiwan picked up on transfer D.8C in the same bundle. 29th of March, in the name of MAF Nominees, Chairman: HO Chung-po, Registrars: Malaysia America Finance Corp. (HK) Ltd., Chairman: HO Chung-po, or Chairman of the group anyway. And at the moment when the share scrip was actually sealed and stamped and signed, it was in the possession of MAF, HO Chung-po, that's right, isn't it?

A. I trusted MAF Nominees because MAF Nominees was a public company or a subsidiary of a public company.

Q. I see. Public companies never do anything wrong?

A. I don't say this.

Q. Public companies associated with Mr. CHOO Kim-san and others have been known to make off with millions of dollars, haven't they? We must remember the other shares which were also under the control of Mr. HO Chung-po on that magic date, the 29th of March. Can you remember?

A. How can I remember? If you say HO Chung-po was holding some other shares,

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would you please tell me?

Q. I have got a transcript of what you said in chief, Mr. David NG, on the 10th of November. It's just a two-page transcript. I'll read it all. "Q. Now we go back . . ." Sorry, you haven't got a copy. I am so sorry. I have the only copy.

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MR. YORKE: My Lord, I do want him to see this carefully. Could your Lordship take a short adjournment to get it copied? It's only a two-page transcript, it won't take a moment.

Defendant's
Evidence

No. 40

COURT: Yes.

David Ng Pak-
shing – Cross-
examination

D.W.2 – David NG Pak-shing – On former oath

10 MR. YORKE: My Lord, it's entirely my fault, I haven't asked for copies to be made.

XXN. BY MR. YORKE: (continues)

Q. Now you will see this is a transcript of what you said on the 10th of November. I think I'd better read it all.

"Q. Now we go back to the position after you had got the signature of the Chows on the agreement of the 23rd March. Did you report to the members of the syndicate?

A. Yes.

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Q. And what did you do with the documents that you had in your possession?

A. I handed them over to Mr. Ives.

Q. And did you explain about the certificates and transfer forms retained by the Chows?

A. Yes, I told him that they (being Mr. Chow and Mrs. Chow) would get someone to bring them back to Hong Kong.

Q. And subsequently were you in touch with Mr. Chow about this?

A. Yes.

Q. When and in what way?

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A. I came back on the 26th and I asked the people at the registration department whether anybody had brought along any shares. The answer was negative.

Q. Yes?

A. And then on the 27th I telephoned Mr. Chow and asked him about it. Mr. Chow said, 'Don't you worry. I will fix it up.'

Q. I'm sorry, he will fix it up or he has fixed it up?

INTERPRETER: 'Don't you worry. I have fixed it up.'

Q. Subsequent to that, did you yourself see the certificates and transfers?

A. No.

40

Q. Who dealt with them? Do you know who dealt with them?

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High Court

- A. Well, I learned it later.
Q. Yes. Who did? Never mind the details.
A. One Mr. Ho of the . . .

Defendant's
Evidence

COURT: When you say 'one Mr. Ho', do you mean HO Chapman
or . . .

No. 40

- A. Mr. HO Chung Po of the Registration Department told me that
he, Mr. Ho, had already handed them over to Mr. Ives."

David Ng Pak-
shing – Cross-
examination

There was an exchange between counsel and Mr. Swaine said, "My Lord, it's
not an answer that I was seeking to elicit." You see, it was Mr. HO Chung-po
who somehow got possession of the transfers and the share certificates from
Chow and Hwang in Taiwan. You see that? 10

A. The 15,000,000 shares?

Q. Yes, and they likewise – they go through, I think, on the 28th – 28th, 29th –
so those share certificates and those share transfer form which Messrs. Chow
and Hwang weren't prepared to give to you to bring to Hong Kong got directly
into the hands of Mr. HO Chung-po?

A. Mr. Chow and Mrs. Chow got someone to bring the shares to Mr. HO Chung-po
direct. It was not through me.

Q. So all those share certificates and transfer forms were in the hands of Mr. HO
Chung-po on the 28th of March? 20

A. Yes, it should be so.

Q. And on the 29th of March, all the shares you got from Taiwan were also
registered in the name of MAF Nominees in the hands of Mr. HO Chung-po?

A. Yes.

Q. Would you look at P.12 please? That's the chart.

MR. YORKE: Exhibit P.12, my Lord, I am actually putting this chart to the witness
because if I didn't do so, it might deprive my learned friend Mr. Swaine the
chance of re-examining about it. I had not intended to do so, but I do intend
in order to avoid taking a technical advantage.

Q. When I opened this case, Mr. Ng, you were in court, I think, weren't you? You
were in court when I first told his Lordship what my case was? 30

A. Yes, I was in court, but I could hardly hear you.

Q. I am sorry. You are not the only person who has complained about that. You
see, when I opened that, it was a little difficult to see what happened on the
bottom left-hand side of this chart and I think I said "Perhaps there'd be some
sort of trust somewhere by letting the syndicate have a large trunk; neverthe-
less, Mr. CHOO Kim-san retained control of another part," and I referred to an
English case called Stokes v. Cambridge. You needn't worry about that. You
see, I didn't know at that time that the 15,000,000 shares on the 28th, 29th
of March were also under the control of HO Chung-po having been sent to him
from Taiwan, but it now appears that all the shares, all the shares which had
derived from CHOO Kim-san, from Triumphant Nominees, from Asiatic
Nominees, including even those purchased from the stock market, were on
the 28th, 29th of March all under the actual control of HO Chung-po. 40

- A. I don't quite agree with you.
- Q. So every share on the left of the pencil line, the line which is called "no errors", on the 28th, 29th and 30th of March, was all under the control of HO Chung-po?
- A. I don't agree.
- Q. How were they not under the control of HO Chung-po?
- A. When the transfer forms were signed by the transferor and the transferee and after we signed, the transfer forms and the share certificates were taken to the Registrars for the purpose of registration. The Registrars would give you back a receipt. With that receipt, you can get the new issued shares. So can you say that Mr. HO Chung-po was in control of those shares?
- 10 Q. You had receipts for the shares other than the Fermay, the 15,000,000 shares, but you didn't have any receipts for the 15,000,000 because Messrs. Chow and Hwang had not allowed you to bring those shares to Hong Kong?
- A. This is what you think. I don't think it's true. After the receipt was issued by the Registrars, I think the man in Taiwan would try to pass that receipt to Messrs. Peter Mo & Co. and the man would bring back the photostat copies to Mr. Chow and Mrs. Chow, otherwise that man who was supposed to bring it to the solicitors' firm would have a chance to double-cross Mr. Chow and Mrs. Chow.
- 20 Q. What's that man's name?
- A. Who knows? Nobody knows. This is what I think because you ask me. The receipt was for the purpose of getting the new shares. All the companies in Hong Kong are doing it in this way.
- Q. Of course, Mr. Ng, I do know how it is done, but you see, you hadn't got a receipt for the 15,000,000.
- A. Of course I didn't have it. If they asked me to bring the shares back to Hong Kong, then I would have the receipt.
- Q. But they didn't trust you, they wouldn't let you bring them?
- 30 A. I don't know the reason why they didn't get me to bring the shares to Hong Kong.
- Q. And you haven't obtained that receipt from Messrs. Chow and Hwang in the six months since it was issued?
- A. The receipt must be returned to the Registrars for the new shares.
- Q. No doubt, Mr. HO Chung-po can explain all about that when he is called as a witness and you, of course, were Chairman until the 1st of November of this company, so you could – the first four weeks of this trial you were Chairman of the company, you could have investigated and found out what was done?
- A. There was no such necessity.
- 40 Q. And you could have then shown his Lordship whether there was any name on the receipt other than that of Mr. HO Chung-po. I'll tell you one more fact and then I'll explain to you what was done. I notice a curious inconsistency, a split in the behaviour of Messrs. Chow and Hwang that up until the 30th of March, they were always extremely cautious in dealing with you, weren't they? They only let you have Xerox copies of things, they never gave you original documents, is that right?
- A. Yes.
- Q. And you virtually paid them no money except \$92,000 which is peanuts in the context of this case. They did, however, sign a whole series of documents

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examination

which would, once shares were issued in the name of Fermay, give you virtual-ly total control over Fermay and its assets?

- A. Yes.
- Q. After the 30th of March – I'm sorry, one more thing. They would not trust you or they didn't trust you to bring the transfers and the share certificates to Hong Kong between the 26th and 28th of March?
- A. I don't know whether they trusted me or not, but they did not get me to bring those shares to Hong Kong.
- Q. And only Mr. HO Chung-po can tell us who did. But after the 30th of March they are content to make you managing director and abandon control of Fermay altogether. 10
- A. Well, I did not become the managing director of Fermay Company until the 20th of May because there were the legal matters.
- Q. But so far as the evidence in this case is concerned, apart from appointing you managing director on the 13th of May, on the letter-head you brought back from Taiwan yourself, it's typed here – from the moment, from the moment that the Fermay Company actually had any assets worthwhile, Messrs. Chow and Hwang have abandoned all control of that company, or to be more accurate, have never had control of the company once it had got any assets.
- A. In that case they trusted the solicitors' firm, sir. 20
- Q. And from the 30th of March onwards they have expressed not the slightest interest in the outcome of these or any proceedings.
- A. Why not, sir?
- Q. Because on the 30th of March your syndicate, by means which we have not seen, made a very substantial payment of at least ten million dollars to the account of HO Chung-po and CHOO Kim-san, and it was only then that HO Chung-po was prepared to hand over the title to the shares which had been delivered to him from Taiwan, if they ever went to Taiwan.
- A. No.
- Q. And that is the only explanation which fits the caution of Messrs. Chow and Hwang, on your version, up to the 28th, 29th. It is the only explanation which explains the shares coming to Hong Kong, if they did, by an unknown messenger, and it's the only explanation of why they were prepared to abandon control of Fermay completely from the moment it had any assets. 30
- A. I don't agree, sir.
- Q. No, and I simply say that the whole history of CHOO Kim-san in this business was such that he would never have been such a fool as to let his shares get into your hands without payment, and he didn't.
- A. It is not he who sold the shares to me, sir.
- Q. No. 40

MR. YORKE: My Lord, would that be a convenient moment?

Appearances as before.

COURT: Before you start, I just have one question to ask Mr. Ng to clear up.

MR. YORKE: Your Lordship wants to ask me?

COURT: No, to ask Mr. Ng.

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MR. YORKE: I have asked him to stay out of court for a moment.

COURT: No, I want to ask Mr. Ng.

Defendant's
Evidence

MR. YORKE: Yes, my Lord. I want him to go out for a moment if your Lordship doesn't mind. I want to say something to you not in his presence.

No. 40

COURT: I see.

David Ng Pak-
shing – Cross-
examination

10 MR. YORKE: My Lord, it's only this – having left the case at what might have
been an interesting moment last night, I want to make my position on that
clear. Really if the case had been shorter than it is, I would have left it to my
final speech. I think it is probably only fair to my learned friends to say what
I have to say now, or I'll have to say it again and again later. I have put for-
ward a possible, a possible construction of what happened which I can in due
course say fits the facts very much better than the allegations made by the
defendants. My Lord, I am not saying or seeking to prove that is actually what
happened because we don't know definitely. We haven't seen – I would say, of
course – every document, and certainly my construction of what happened has
changed as documents have appeared. Documents which seem to be relevant
become irrelevant and documents which seem to be irrelevant become relevant.
20 My Lord, I will say this that your Lordship tries this matter on the pleadings,
this being a civil matter, and our case is that the shares all did belong to CHOO
Kim-san. Your Lordship is really only trying the question, "Has his ownership
ever been divested from him?" The only way on the pleadings in which it can
be said it had been divested from him is that set up by the defendants which
depends totally on a bona fide sale from vendors in Taiwan. I am simply
concerned to destroy that. I am not concerned to set up affirmatively any
other case, but were the defendants to adopt my argument and say, "Yes,
you are right. That is how it happened. There was a purchase and we have paid
10 million to Mr. CHOO Kim-san," that would not worry me because although
it might defeat this particular action, it would in my judgment – I may be
30 wrong, of course – it would in my judgment give me an absolutely onerous
case in conspiracy to defraud. It's an allegation, my Lord – it isn't open to
me – it's simply on execution of judgment, or it may also entail certain
criminal consequences for almost everybody who has given evidence or sworn
affidavits so far. That doesn't worry me. My Lord, I merely don't want, to
protect myself, a writ making certain grave allegations before your Lordship
gives judgment in the case, merely to cover that possibility, but I merely want
to make it clear now that I am not making a positive averment. I don't have
to. The action is tried on the pleadings. I am merely concerned to destroy the
defence. I am allowing that the defence is plainly improbable and is certainly
40 not the most likely explanation of what happened, but I don't intend – be-
cause I never expect to see all the documents and exhibits and all the bank
accounts, I don't expect to see them . . .

COURT: . . . And there is nothing which has been said so far which necessitates

any amendment to the pleadings?

MR. YORKE: No. I am merely saying there was only one way in which it was said CHOO Kim-san divested himself of the ownership. I am merely saying that can't be true.

COURT: So really the issue is not whether the defendants were CHOO Kim-san's nominees, the issue is whether CHOO Kim-san had divested himself of the ownership of his shares?

MR. YORKE: Exactly. That is what it really comes down to. That's why I put my case in the alternative they were not always nominees but pretending to go through a sale which never was. The alternative is there was a conspiracy to defraud. Of course, they can't succeed by setting up a fraudulent transaction.

10

COURT: You have based your case on an allegation of conspiracy or part of your case on conspiracy?

MR. YORKE: Yes.

COURT: But Mr. Ching's case is not based on conspiracy?

MR. CHING: Not at the moment, my Lord. As my learned friend has rightly said, certain documents have come to light. Indeed, your Lordship will recall that, and I say this in no way critically, I personally was not given the Defendants' Bundle until the day I was opening and your Lordship will recall that I added to my opening on the second day because of what I had seen in the Defendants' Bundle, but your Lordship is right, if I may say so, that presently I have no allegation of conspiracy. Whether or not I shall ask to amend at some later stage, my Lord, it is another matter.

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COURT: Whilst you are on the question of pleadings, if I remember rightly, at some stage it was decided that Rejoinders and things like that should be filed. Has this been done?

MR. CHING: So far as I know, yes.

COURT: I see.

MR. YORKE: That's all, my Lord.

MR. SWAINE: My Lord, I won't make a speech now. I shall leave my comments for the appropriate time. Reference has been made more than once by my learned friend Mr. Ching to his not getting the bundle until very late. He says, of course, that is not a comment made critically. I think it is only fair to redress the scales, so to speak, by pointing out we didn't get the bundle of MBF until the trial had actually started. There was a great deal of pressure getting the case on its feet. I am taken aback by the suggestion by my learned friend Mr. Ching that although he currently does not make an alleged case of

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conspiracy, he is not shutting the door to amending his pleadings. My Lord, I can only express my regrets at this, but if an application is made, of course I will address your Lordship in full.

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COURT: Then I'll consider that.

Defendant's
Evidence

MR. SWAINE: I cannot resist adding that my learned friend Mr. Yorke wants his cake and eat it too in the matter of the cross-examination.

No. 40

(Witness enters court)

David Ng Pak-
shing – Cross-
examination

D.W.2 – David NG Pak-shing (4th Defendant) – On former oath

10 COURT: Now Mr. Ng, before Mr. Yorke resumes his cross-examination, I just want to clear up one point with you. Do you remember yesterday afternoon when we began, you gave me a fairly long answer in English saying that it was more convenient to do this in English and you said this: "Presumably the defendant CHOO Kim-san was under the pressure of the police, he had no other choice but to transfer the shares from Asiatic to MAF Corporation."

A. (In English) I mean inference, you see.

COURT: Yes. "He knew that MAF Corporation was no longer . . ." – this is what I am not very clear about – this is according to my note: "He knew MAF Corporation he was no longer the beneficial owner."

A. (In English) Yes.

20 COURT: What did you mean?

A. (In English) You see, my Lord, in the case 1674, it has been disclosed CHOO Kim-san has given all his shares to the MAF Brunei, and the MBF Brunei . . .

COURT: These are the shares in MAF Corporation, not San Imperial shares?

A. (In English) Yes, so in other words, the MAF controlled . . .

COURT: So you were in fact trying to say that he knew that he was no longer the beneficial owner of the MAF Corporation shares?

A. (In English) Yes. I mean MAF Credit, that is the holding company, my Lord.

COURT: Yes, but you said MAF Corporation. Because he had given those shares to MAF Brunei already?

30 A. (In English) Yes.

COURT: Yes, I understand now.

- Q. Mr. Ng, at the adjournment yesterday I put it to you that as at the crucial dates, 28th, 29th and 30th of March, 1977, Mr. HO Chung-po controlled all the shares on the left of the pencil line on exhibit P.12, and the situation was really rather like a primitive atom bomb which probably depends upon the two halves being brought together, each half by itself is of very little use. And if you put the MAF holding – no matter who is the beneficial owner – the MAF Nominees' holding together with Fermay, you have effective control of San Imperial and the shares are no doubt worth \$1.50 or more. Either holding alone does not give control and either holding alone would interfere considerably with the other. And even if – which I do not concede – you held receipts for the shares in the name of MAF Nominees, you had neither receipts nor shares nor any documents of title to the shares which would go into the Fermay Company, and nothing that you could do, absolutely nothing that you could do to force HO Chung-po to hand over to you share certificates representing the 15,000,000 which were to be transferred to Fermay. On that last point, am I right or wrong? Was there anything you could do to force HO Chung-po to hand over to you the share certificates and transfer forms for the shares which were to go into the name of Fermay? 10
- A. 50/50. 20
- Q. What could you do to make HO Chung-po hand over to you certificates or transfer forms representing the 15,000,000 shares which were to go into the name of Fermay?
- A. A solicitor was acting for the Fermay Company and Mr. HO Chung-po for the Registrars. What could I do? I could do nothing.
- Q. Exactly. But somehow, although you had never been allowed to get your hands on the share certificates and the transfer forms before the 30th of March from Mr. HO Chung-po, they were sent to Hong Kong by somebody else, not by you, somehow on the 30th of March HO Chung-po does hand them over and Messrs. Chow and Hwang take no interest in the matter thereafter. I suggest to you the only possible explanation which fits those facts that we know is that you or somebody, maybe James COE, maybe HO Chapman, maybe somebody we don't know about, paid a very large sum of money to Mr. HO Chung-po or Mr. CHOO Kim-san, and once that payment was known, the Fermay shares were handed over. 30
- A. That I don't know.
- Q. And the real significance of the ease with which you were able to persuade Messrs. Chow and Hwang to give you control over the Fermay Company both as director and having signing powers, ultimately as Managing Director, the real significance of all that is that Chow and Hwang never had any interest whatsoever in Fermay because they were going to get paid on behalf of CHOO Kim-san before Fermay ever became registered as the owner of the shares. 40

COURT: Do you agree?

- A. I don't know the actual position.
- Q. When I have said in that question "paid before the shares were registered in the name of Fermay", I should more accurately have said on registration in

- the name of Fermay. The two happened simultaneously, the shares registered in the name of Fermay, payment to CHOO Kim-san or his nominee.
- A. That I don't know.
- Q. And you see, if that is right, you no longer have to wonder about the paradox of Messrs. Chow and Hwang not being prepared to let you have the share certificates or transfer forms, but being quite happy to let you have the 8.8 million until such time as you chose to pay it to them.
- A. I know nothing of this. This is what you think. I don't know, I have no knowledge of this.
- 10 Q. Just to complete the story, Mr. HO Chung-po, CHOO Kim-san's faithful servant, also had to be given the cheque for \$50,000 which is yellow 2, page 130, which brought into operation the option agreement and thereby ensured that in 90 days' time the MAF ledger account for San Imperial shares would be wiped out at no cost to CHOO Kim-san himself but saving the position of his faithful servant HO Chung-po.
- A. Saving HO Chung-po? That I don't know.
- 20 Q. You see, I am putting it to you that is a much more probable explanation of what happened than your story of buying shares from Messrs. Chow and Hwang and their being quite content to leave it to you to pay the money over to them at some date in the future when they had lost control completely of the company which owns their very valuable assets. Now I am going to show you something else which supports my theory to show Mr. HO Chung-po was worried about these 2.15 million shares and was trying to cover his tracks and very nearly succeeded in doing so. Remember you told my Lord yesterday that there was an earlier meeting with Mr. HO Chung-po a week or more before, you say, the option agreement was entered into on the 30th of March. I suggest to you it was already agreed between you and Mr. HO Chung-po that he would grant you an option over the MAF Corporation's investment in shares in San Imperial, and then Mr. HO Chung-po did a very funny thing.
- 30 Look at exhibit P.14, page 12, please. Here you have a man who is about to give you an option which, on the face of it, entitles him to sell you all the shares that MAF Corporation had in San Imperial which are currently held in two separate accounts, one in the name of MAF Corporation Limited and one in the name of MAF Nominees Limited, and the funny thing he does is to bother on the 24th of March to switch the MAF Corporation's holding which appears on page 12 into the MAF Nominees' holding which appears on page 14 which was an unnecessary and pointless exercise. Can you suggest the reason why he did it?
- A. No, I don't know.
- 40 Q. You see, people don't do things usually without a reason. I suggest to you the reason was the same reason that this card was unavailable to us until November. It's because it contains the figure 2.15 which is obviously the original MAF shareholding, and anybody who is investigating this case would know that figure 2.15 which appears on the right-hand side of the balance column, that is another 7,000 which is unimportant, and he was concerned to hide two things. He wanted to hide the figure 2.15 and the date, the 1st of September, 1976, because those two figures are the clue to the whole of this case, and he hid the 2.15 by doing a share transfer and simultaneously a wholly unnecessary conversion operation. If you look at page 14, after the first balance,

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the first six entries are all under transfer No. 4820, we can't do anything about that because it has to appear in so many places including the blue ledger, that link has to be left in the documents. But you see, you can't see on that document anywhere, although it's transferring 2.157 million shares, the figure 2.157 isn't there and doesn't appear anywhere on that document because what he has done is to simultaneously get rid of some of the existing holding of MAF Nominees, 843,000, which he transferred to somebody else – and I don't know who – and to take three separate certificates for a million shares each, and it's only if you subtract 843,000 from 3,000,000 that you can find the figure 2,157,000. Mr. David NG, you are an experienced accountant and stockbroker, can you give his Lordship some explanation of why Mr. HO Chung-po should have carried out that operation other than to hide from anybody running their eyes through the document the figure 2.15 million?

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A. I don't know.

Q. I can't think of one either, Mr. Ng. I thought about it for a long time.

A. Similarly I can't.

Q. If you can think of one in the course of the morning, perhaps you will tell his Lordship. You haven't asked HO Chung-po, have you?

A. No.

Q. You see, the other thing he did – I want you to go back to page 12 – is that by making that transfer, he caused that particular card to become a dead card. It's that word "ceased" which is so important, you see. I am only guessing that he doesn't destroy the card because it came into existence because the new auditors were worried about this transaction. I am sorry, I put the question badly. It came into existence because the auditors were worried about the 2.15 million shares and therefore this transaction had to come into existence. So even the card had to remain in existence because the auditors were bound to want to see it, but it was kept – I know not on whose instructions – separately so that nobody making a search could find it. And the other thing that he did which he could get away with was to programme the computer to suppress in the print out any reference to MAF Corporation so that on all Mr. Wilson's visits and mine, when we looked at two computer print outs, the name MAF Corporation didn't appear. I will remind you that in black file 3, page 916, the letter which I showed you yesterday . . .

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COURT: Page what?

MR. YORKE: 916, my Lord, black file 3, page 916. It's the 13th of October or the 18th of October, I can't remember now.

INTERPRETER: 13th.

Q. 13th. He specifically asked for the monthly computer print out sheets of the Register of Members from August 1976 – so we knew what we were looking for – up to the present date, and the ones we were provided with did not contain – this wasn't challenged when Mr. Wilson gave evidence – did not contain the name MAF Corporation. Can you suggest to his Lordship any explanation other than the one that I have given, a deliberate act by Mr. HO Chung-po to hide the existence of this card for the non-appearance of share-

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holder MAF Corporation on the print outs Mr. Wilson and I were given?

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A. That I don't know.

Q. And I dare say Mr. HO Chung-po can tell us the reason. And of course at the time that Mr. Wilson and I made our inspection in the office on the 2nd floor of the San Imperial Corporation, you were chairman of both San Imperial and MAF?

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A. Yes.

Q. Mr. Ng, I am now going to put to you something which is not a question at all. I am merely going to tell you, as I did earlier with Mr. Ives, how we say this deal was set up. I am doing it for a technical legal reason which you may not appreciate which is that I must put my case. I should have done it when I made my opening speech, but at that time I hadn't got half of the documents which I have now slowly discovered. Mr. Ng, think yourself into the mind of Mr. CHOO Kim-san in July of last year. He has defrauded companies all over the Far East of sums of money which we think exceed \$40,000,000.

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MR. SWAINE: That has never been proved. The only fraud that we know of is that of which he was charged in Hong Kong. Mr. Ives has said that the bulk of it related to a false minute, but the matter concerned a mortgage which was repaid.

20 COURT: Well, it doesn't really matter how much it was. Anyhow, large sums of money.

MR. YORKE: I have got the indictment, my Lord. It doesn't bear out what Mr. Ives said. It contains nine counts of fraud and only one or two relates to the minutes.

Q. It doesn't matter. He has defrauded companies of a large sum of money, he has been arrested, he is on bail, he is going to stand his trial on the 28th of October, he faces financial ruin and a long prison sentence. He is a clever financial operator, otherwise he wouldn't have been able to get away with what he had, and what he still has in Hong Kong is a virtually controlling interest, effectively controlling interest in San Imperial Hotel.

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COURT: Corporation.

MR. YORKE: I beg your pardon. San Imperial Corporation.

COURT: When you say "he has", do you mean he had?

MR. YORKE: He had. I am trying to think myself into the mind of Mr. CHOO Kim-san back in July of last year.

A. Controlling interest?

COURT: No, he had effective control. Mr. Yorke is simply putting their case to you.

Q. And as you have repeatedly told his Lordship yesterday, the asset backing of the shares was about four to five times what the shares stood at in the stock market. He couldn't dispose of that shareholding on the stock market because you yourself have said even half a million shares were half the price, and he had got nearly 18,000,000.

MR. YORKE: I have got P.12 open in front of me, my Lord. My Lord, I said 18. I should have said nearly 20 because he had 17.8 in Asiatic and 2,000,000 in Triumphant. Sorry.

Q. He had nearly 20,000,000 shares and he had another 900,000, so nearly 21,000,000. I am sorry, my figures get bad all the time. CHOO had nearly 21,000,000 shares. If he tried to get rid of those on the stock market at the price, if he could have found a buyer, it would have dropped to a cent. He couldn't sell them, once he had been arrested for company fraud, to any one buyer in Hong Kong such as Mr. James COE because nobody would trust him. If he had milked other companies, maybe he had milked San Imperial which you yourself say your syndicate suspected when they were first formed and they were worried as to whether or not CHOO Kim-san might have milked the company, so its real net assets were far less than they appeared to be. So he couldn't get a buyer other than somebody who would buy after a thorough investigation of San Imperial's affairs, and even if he could find somebody who was sufficiently liquid to purchase 21,000,000 shares at anything like \$1.50 each – \$35,000,000 – they would want an investigation. There aren't many people who are sufficiently liquid to be able to write a cheque for \$35,000,000, so that would mean money borrowed from a bank, and no bank would lend the money against CHOO Kim-san's securities without, after he had been arrested on company fraud, without an investigation of the company. No investigation could surely be carried out before Mr. CHOO Kim-san had to leave the Colony. In other words, there wasn't time to carry out an investigation, and if after the investigation had been carried out the deal went off, Mr. CHOO Kim-san would be in a very precarious position indeed. So what he does is this: he finds someone, say Mr. James COE, say Mr. HO Chapman, say somebody else, and he sets up a deal with them and he says, "Look, I have got controlling interest in this company. It's worth an enormous amount of money. I can't expect you, knowing what you do about me, to take that on trust, but if you put together the money, I will arrange for the shares to be made available to you when you satisfy yourself that the company really is worth what I say it is. Of course, since I am leaving the Colony, you are going to get these shares at a bargain price, but I shall still get far more money in this way than I ever could by trying to dispose of 21,000,000 shares in the next two or three months in Hong Kong." And so he says, "Look, I have got 21,000,000 shares. They are worth about \$30,000,000, possibly more. Let's split it. Give me half their real value or give me a third of it. You may have to bring other people in, I don't know. I suggest \$10,000,000" – something like that. And incidentally, he says one other thing. He says – because he is very good at this – he says, "I can even show you how. You won't have to find all the money in cash because you can use some of the San Imperial's own assets to finance the purchase." That's very complicated and I'll deal with that a little

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later with a new diagram, but this had the advantage that to the man he was setting up the deal with before he left, he wouldn't have to find anything like the amount of money apparently involved in the transaction. To put it crudely, it was a bunch of crooks carving up San Imperial. And Mr. Ng, CHOO Kim-san doesn't trust his purchaser, the purchaser equally doesn't trust CHOO Kim-san, but there is no honour amongst thieves and that is certainly not at all surprising.

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10 Q. So if the deal is set up on a basis whereby neither side trusts the other, and the deal goes through on a cash basis in such a way that neither side can cheat the other, that is what P.12 really shows – Exhibit P.12 – you have it there – it looks complicated but it is really extremely simple – CHOO Kim-san split his shares into two lots and just like the atom bomb, keeping the bits apart until the 29th of March and the buyer and his people in Hong Kong had one part and CHOO Kim-san and his people, whether in Hong Kong or Taiwan, had the other part – together they gave effective control and were very valuable, separately they were very nice but nowhere near enough. By means of keeping them separate when they came together on the 29th of March neither side trusted the other but it did not matter because the Syndicate would not get the 15 million shares without Mr. CHOO Kim-san being paid in cash and Mr. CHOO Kim-san would not hand over the shares – would hand over the shares on payment because his 15 million would not be any use to him, he couldn't dispose of them except to the holders of the 8 million in M.A.F. or 6 million in M.A.F. or 5½ million. On the 29th of March it was in everybody's interest to do the deal because if they did the deal they all made money, they did not do it they were left each of them with a holding which was of virtually no large value without the other, and two comparatively minor things were agreed between Mr. CHOO Kim-san and his buyer that they would, as it were, muddy the waters by switching the shares around a bit, they would make a few genuine purchases in the stock market to make it look as much as possible like a real genuine transaction, they would provide, I call, cut-outs to hide the presence of Mr. CHOO Kim-san and his nominees in the transaction, and since Mr. CHOO Kim-san could not stay in Hong Kong to complete the deal it would have to be done by his trusted nominee, HO Chung-po and HO Chung-po must be protected in relation to the 2.15 million shares which should have been, but were not, in the beneficial ownership and possession of M.A.F. otherwise Mr. HO Chung-po could not be relied upon, for obvious reasons, to put the deal through on his master's behalf. And lastly, the time – six months or so had to be given for the deal to go through in order to give the buyer a chance to investigate the affairs of the San Imperial Corporation to satisfy himself that however big the profit margin he was not actually buying a company which was worthless. By that means, waiting until, the following Easter Mr. CHOO Kim-san was able to get a much larger sum of money than he could possibly have got at any time by any means between his arrest and his fleeing from the Colony and the buyer and his friends were in a position to make an enormous profit, because obviously CHOO Kim-san was going to let them have the shares for far less than could be got on an honest deal, and in addition as I said before, he was going to show them how they could even finance part of the deal out of the assets of San Imperial, and it may be, I don't know – I can only guess – that the amounts of money which could

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be made available out of the assets of San Imperial were to be enough to cover the monies payable under the option with M.A.F. Nominees, that is to say, the money which was necessary to protect Mr. HO Chung-po, so that the protection of Mr. HO Chung-po did not actually cost Mr. CHOO Kim-san anything other than the handing over the 2.1 million shares and the buyers did not actually have to put their hands into their pockets to find money for themselves for the benefit of Mr. HO Chung-po. I lastly said a few words on Document 12 – it looks complicated – to anybody who is used to company manipulation it is very, very simple, and Mr. CHOO Kim-san and somebody else who was used to managing and manipulating company affairs could set this up on the back of an envelope in half an hour in a coffee shop. That is what I was going to tell you. I don't expect you to answer my question, it is not a question – that is what I have to put to you publicly – I would have said it in opening if I had the document.

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I will just go to the anti-climax into a few details Mr. David Ng. Have you by the way found the original of Yellow 2 page 132 – that is the misdated letter of the 17th.

(Document handed to counsel)

It does not have a stamp on it showing the date on which it was received. You told both Mr. Swaine and Mr. Ching . . .

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MR. SWAINE: Sorry – I think for the record, my Lord, this was produced out of the custody of Benson Cheung not of the witness.

COURT: You want this to go in?

MR. CHING: I called for it.

COURT: Have you seen it?

MR. CHING: Thinking that in the usual business way there would be a receipt stamp showing the date it was received – as long as it is on the record that the original does not have any such stamp on it I don't insist on having it in.

MR. YORKE: I am content also, my Lord. You told both Mr. Swaine and Mr. Ching that you were worried about the authenticity of the document, the share certificates you were to get from Messrs. Chow and Hwang. Now you yourself of course did not trust Mr. CHOW did you?

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A. Not at the beginning, sir.

Q. Oh, would you look at Yellow 1 on page 13 please – page 14, I beg your pardon, page 14 – you see that is dated the 23rd of March, and as at that date you did not trust Mr. CHOW, did you?

A. You can't say that I trusted him fully, but I trusted him quite much, but I did not trust him at all at the beginning, that is to say when I first saw him.

Q. Because you remember the reason that you gave my Lord in chief when Mr. Swaine was talking to you as to why you got that document signed, you argued with him that 'if after examination the shares proved to be genuine and they refused to sell what would I do?' – your evidence, so you got this

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document in case Mr. CHOW welched or reneged on the deal after the shares were proved genuine – so you weren't trusting him?

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A. Not much – there is a limit in trusting people in business.

Q. Yes, thank you, so you suspected that the shares weren't genuine – you said it all along – and you did not trust Mr. CHOW and yet you come back to Hong Kong, firstly with the 514,200 shares and subsequently the 1.6 million shares, as we know they did not go on the register until the 29th of March?

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A. Yes.

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10 Q. Now Mr. Ching cross-examined you about that, that is on the first lot of 514,000, you gave two explanations – one was the trouble your foki had in getting the bought and sold note stamped, so that ended – the shares ended up being locked in the safe – you said you were negligent about it.

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A. I have already apologised for ten times because of this.

Q. Yes, indeed, I am not asking you to apologise on the eleventh, and you also said, well it was only \$100,000.–

A. Yes.

Q. Now if you examine it, that story isn't really true, is it?

A. Why not?

Q. Just think about it.

20 A. It is like this.

Q. Just think about it – it is not that the shares cost you \$100,000.– but that one lot of shares, 514,000 shares was going to make you a profit, that one parcel alone, of nearly three quarters of a million dollars.

A. Yes, if it was successful.

Q. Yes.

A. If it was not successful I might suffer a loss.

Q. Yes, which at the time would have been a profit equal to 50% of what you say was your gross wealth, and the prospect is one piece of paper bought for \$100,000 in Taiwan could increase by 50% your net wealth.

30 A. Yes, now it is sure that it happened that way, but at that time you did not know – you may suffer a loss.

Q. And you would have been excited – this was the most successful deal you have done in your life, if it came off – you would have been excited and wanted to know if that share certificate was genuine.

A. At the time when I got the shares back Mr. CHOW had not agreed to sell me those shares.

COURT: We are not talking about the 15 million shares – we are talking about 514,200.

40 MR. SWAINE: I think the witness was saying in amplification of what he has already said, that is until the 15 million shares deal was concluded he had no way of knowing it was going to make a profit. He may have made a loss on the 5.1 million shares.

MR. YORKE: Yes, I don't challenge that for one moment Mr. David Ng, but nevertheless, if it did go through this was going to make you rich and you would have been more excited about that than any deal you had done, and being so excited, since as you say you also had the possibility of loss in mind, there

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is no way on earth that you would have paid for the 1.6 million until you were satisfied of the authenticity of the 514.

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A. I have already answered that in the cross-examination by Mr. Ching that those two lots of 514,200 and 1.65 million shares were purchased through Mr. CHOW.

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Q. You say for that reason looking not at the cost to you, but the excitement of the potential profit and because this would give you some idea whether the rest of the shares, 15 million which you were setting up this complicated Fermay deal, idea whether any of them were genuine you would have verified the first certificate.

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shing – Cross-
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A. Yes, if that was successful, sir.

Q. And the reason why . . .

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COURT: I don't quite get that – at that time you did not know of course whether the 15 million shares deal would go through or not?

A. Yes.

COURT: And you were, therefore, I think you said in your evidence in chief, you were gambling on the 514,200 and 1.6 million?

A. Yes.

COURT: That is correct, isn't it? Surely looking from the other end, wouldn't it be safer for you to let the 15 million share deal go through and then perhaps buy the 514 or 1.6?

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A. (In English) No, at that time, in my mind it is – I was always under the impression that 15 million shares won't go through, therefore I just bought these shares in case it does not go through, then I will break it into small lots, small lots, small lots, and then dispose it in the market.

MR. CHING: I wonder, my Lord, if I may have the benefit of the shorthand writer's note?

COURT REPORTER: "No, at that time in my mind it is – I was always under the impression that 15 million shares won't go through, therefore I just bought these shares in case it does not go through, then I will break it into small lots, small lots, small lots and then dispose it in the market."

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Q. You see I put it to you, this is in addition to what Mr. Ching put to you, because of the huge potential profit you stood to make if it went through you would have verified the authenticity of the first certificate that came into your hands and the reason you did not was because you never – neither you nor Mr. Ives nor HO Chapman, ever had the slightest doubt that these certificates were genuine.

A. No.

Q. And your story about the foki locking them in the safe to wait for the shares

to drop to 20 cents cannot be true because the shares had never been 20 cents, the market was rising and your firm was known to everybody in the office to be buying on all four Stock Exchanges every share it could get, in which case even the Teaboy in your office would know there was only one way the price could go and that was upwards – it is right, isn't it? Nobody in Bentley Securities could possibly ever have thought the price was going to go down.

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10 A. I have already told you that it was the foki who locked up the shares in the safe and it was then overlooked. I have said it and I am still saying it.

Q. You seriously say a foki whom you trust with the keys of the safe was so stupid to have thought the shares would go down in a rising market with your firm buying to a price they never stood at before?

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shing – Cross-
examination

A. I was explaining to you what the foki did but actually the key was only kept by my secretary and the safe was not even locked by myself. Every day when the business hours were over all the shares were locked in that safe.

Q. If your story is true you must employ the stupidest foki in Hong Kong.

A. He may be the most honest one.

Q. Perhaps we could have him in the witness box and his Lordship can see if he is that stupid.

20 A. This is a matter for my counsel.

Q. Yes, of course. Will you tell my Lord how many bank accounts – with how many different banks you have accounts yourself and Bentley Securities?

A. I have accounts with the Chase Manhattan Bank, the Hong Kong Commercial and Industrial Bank and Hang Seng Bank but there is no operation with the Hang Seng Bank – I only use the Hang Seng Bank to collect the dividends. Because Hang Seng Bank Nominees – so it would be very easy for me to collect the dividends through their Nominees.

Q. I just asked you the names.

30 A. The Bentley Securities have accounts with the Hong Kong Metropolitan Bank and the Hong Kong Industrial and Commercial Bank.

Q. You also have accounts with the First National City Bank, don't you?

A. Yes, but it has been closed a long time ago.

COURT: That was Bentley or yourself?

A. Bentleys.

Q. Would you look at Yellow 5, page 6 – you see that is a bank account with Chase Manhattan which you opened on the 22nd of June and deposited \$10,000 and which is then used for the back to back cheques between yourself and Mr. James Coe.

A. Yes.

40 Q. Why did you open a new bank account with a bank which you did not previously bank just for the purpose of these transactions.

A. For the purpose to have the accounts separated from each other.

Q. Why?

A. It would be clearer.

Q. Money is even clearer than the shares – it doesn't matter which dollars in which account – any competent book-keeper could . . .

A. Yes, what is the matter of opening one more account?

- Q. Why didn't you open with the bank you already have an account?
A. Some people even have as many as eight or ten accounts.
Q. Some people have twenty, some people have one – the question I asked you is why you opened an account with the – a new account with a bank you did not work with before just for these transactions.

A. Firstly it would be clearer for the calculations; secondly this bank was directly opposite to my residence and . . .

Q. How long has it been there?

A. . . . and it was really convenient.

Q. How long has the Chase Manhattan been opposite your residence? 10

A. For over a year, I cannot remember.

Q. Ever since you lived there?

A. No, when I first moved to that address the bank was not there.

Q. I see – can you tell me Mr. David Ng, since this particular account was opened for the purpose of dealing with cheques which are part of a transaction we are concerned with and obviously relevant, why despite repeated requests we did not get these documents until the 2nd of November?

A. You even asked me for the October statement in October how would I be able to give you one? If the solicitor asked me for one thing and if I had it I gave it to him. 20

Q. You see Mr. Ching asked for it mostly and we asked for all bank statements right at the beginning of this case – we rapidly got them up to but not including April, and we refused to look at them until we had them complete, and we finally got them complete with the bank statements after April on November 2nd.

A. When the solicitor asked me for a certain document I gave it to him.

Q. You see Mr. Ng, if you ask me for copies of my bank account, it is the most recent ones that are the easiest to get and the old ones are most difficult to get, but with you it was the other way round.

MR. TANG: My Lord to be fair to the witness I ought to say this – when the bank statements were first asked for they were not asked for – they were asked for in this way – my learned friend Mr. Ching asked for the statements from 1974 onwards, so we supplied them with statements from 1974 onwards. Your Lordship will remember in the opening by my learned friend Mr. Ching, he mentioned that Mr. Ng might have hitched himself on to the stars of CHOO Kim-san, that is why at the time we thought the reason why they wanted the statements was to show that David Ng started with no money and that he had no money to put through the deals in Taiwan. That is why we made discovery of all the bank statements up to April, so that they would have covered all the transactions in Taiwan and that subsequently they asked for statements subsequent to April and they were duly produced to them after we have had an opportunity of examining them ourselves. 40

MR. YORKE: I made it clear throughout this case I have not a shred of any criticism whatsoever of my learned friends Mr. Tang or Mr. Swaine – they have done their duty impeccably. Your Lordship will see shortly but for them we would not have seen certain documents. I merely say that Melville Ives, the solicitor in this case, also an accomplice must have known these documents,

these people must have known their relevance – they should have been in the first of these documents and when bank statements were called for they could have gone on with the transactions with which the statements were concerned. Whilst your Lordship will remember when they were produced I got up and I had to ask for specific discovery of those. You see Mr. David Ng – I suggest to you that you and your fellow members of the Syndicate put your heads together to keep out of the hands of your counsel, Mr. Tang and Mr. Swaine, the documents which show the back to back transactions which went on after the 30th of March.

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10 A. I do not admit that.

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MR. SWAINE: In fact I should interject because now that my memory has been jogged by my learned junior, to begin with my Lord, it certainly appeared to us as counsel that the bank statements which my learned friends were particularly concerned over, which were relevant to the issues, were the early ones, and it was therefore perfectly logical, in our view of the case that the statements up to April only should have been disclosed because it was our conception that the concern of my learned friends was for the earlier bank statements up to the time of the completion of the phony agreement. There is no question of anything being withheld from counsel.

20 MR. YORKE: I accept everything my learned says, but what is important is that our pleadings specifically say, 'No genuine money passed' – if that point is in issue the back to back transactions are the most relevant documents that could possibly be, and with that issue on the pleadings, 'no genuine money passed' perhaps 'no new money passed' that is the expression I think that has been used – yes, my Lord, your Lordship will find it on page 15 – Green 2, page 171 where we specifically pleaded: –

“The transaction herein was not effected by money or monies dehors the transaction.”

30 outside the transaction – a clear plea that there were back to back transactions here and no money coming in, these documents were exactly relevant to that point. That is on the pleadings. I suppose the only way they did not come forward is those documents were withheld from counsel. Mr. Ng, I am just going to show you another document – this will be P.20.

40 MR. SWAINE: My Lord, I am sorry to have to get to my feet again, but the paragraph which my learned friend has read in the pleadings appears in connection with the sub-paragraph 4 at page 12 of the same pleadings which deals entirely with the 15 million shares, the bank statements after March are relevant to James Coe's purchases of the shares i.e. my Lord, they have not come into issue in connection with the 15 million shares. James Coe's purchases are in connection with the 8 million shares.

MR. YORKE: If my learned friend would be good enough to turn to page 176 of the agreed bundle, knowing how thorough he is in these matters, pleading

for 'matters relied upon by the plaintiffs, the transaction herein is not bona fide at arm's length and for full value without notice of any defect in the vendor's title, the plaintiffs repeat sub-paragraphs (A)(4)(a) to (k)'. And (k) my lord is at page 171, 'transaction not effected by money or monies dehors the transaction'. My instructions which had been clearly and abundantly and the correct way of pleading, 'no new money coming in', I repeat back to back transactions were highly relevant. Mr. Melville Ives cannot have misunderstood it. I say again these documents were withheld from counsel and it is repeated again in paragraph 8 at page 176.

COURT: Yes.

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MR. YORKE: Now look at P.20 – it is the best we can – the best we can, my learned friend spent a long time on this – an extract of all the documents which we have in relating to security and finance. Now I think you have all the financial documents listed there chronologically. You look at the left-hand side you will see numbers either 'Y' which is Yellow or 'R' which is Red. The Red are the documents which you produced in the affidavits before Mr. Justice Zimmern and also before his Lordship in the summer. Yellow 1, 2 for discovery which we got when this Action commenced. So you will see that there was a correspondence between what we got in the summer and what we got when this Action commenced. I would like you to run your eye down on it and tell his Lordship how on the documents prior to Yellow 5 how anybody could have guessed that there were these back to back transactions. You see the moment we got Yellow 5 which we got as a result of the bank statements we knew that they were not on the affidavits, they were not in the discovery. We knew there was, as it were, an attempt to refinance the initial purchasers, as it were, alone by the vendor of the purchase price, but we did not know about the Chase Manhattan bank account and the reversal of cheques, deposit of monies by James Coe. Do you understand that? I suggest that that is not just another of the happy coincidences in this case, but it is deliberate to keep out of the sight of the judges the back to back transactions which were going on and are still going on to this day.

20

30

A. I don't agree.

Q. Of course you don't – looking at the amounts of the loans on page 20, on P.20 very substantial sums appear to be going back and forward were they not – 24.75, 17.25, 18.5, 16.2?

A. Yes, if you say so.

Q. Most of them is all phony money – is not real money?

COURT: There is no real money passing to and fro?

A. I don't agree, sir.

Q. Will you look at Yellow 3 page 131 – that is fairly early on, starts at 100, that is Mr. Wong to Mr. Ives:—

40

I understand from Mr. James Coe that the loan of \$16,200,000.00 has been repaid to Mr. David Ng Pak Shing. Will you please take instructions from David. If this is the case please release to me on

behalf of Mr. James Coe the 23,000,000 shares of Siu King Cheung Hing Yip Co. Ltd.”

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Has that been done?

A. The loan of \$16,200,000.00 was mentioned in the agreement and that was later represented by a number of post-dated cheques. Mr. James Coe checked the accounts with me, therefore this 23 million shares were not sent to Mr. Coe.

Defendant's
Evidence

Q. So your answer to my question is that it has not been done – the answer to my question is that has not been done?

No. 40

10 A. This was between Messrs. Philip K.H. Wong & Co. and Mr. Ives and I don't know what actually happened but later the shares were with me.

David Ng Pak-
shing – Cross-
examination

Q. Where are they now?

A. Since Mr. James Coe had made the repayment the shares had been returned to him.

Q. Do you know when the shares were returned to him, because we cannot find any document that shows the return of those shares.

A. At about the end of October to the beginning of November.

20 Q. Oh, that is very interesting – you see Document P.20 does represent our attempt to find every document relating to securities and we may have missed out with so much paper, as far as we can see that is the end of the story, but you now tell his Lordship that some time in October the shares were returned to Mr. James Coe – Mr. Ng since these were very valuable documents securing apparently large sums of money, no doubt there was a covering letter when they were returned, was there not?

A. Not necessarily.

Q. Was there?

A. No.

COURT: Perhaps either your junior or your instructing solicitor could see to it that extra copies are available for the witness.

MR. YORKE: I'm sorry. We did think we had more than enough of everything. He's got one now. We have been making ten of everything.

Q. Mr. NG, this document, when it was drawn up, it's incomplete, Mr. Wilson couldn't make it because there was a difficulty in that we didn't have the files which are now yellow 4 and yellow 5, and I will refresh your memory as to how we got yellow 4 and thereby yellow 5. While Mr. Melville Ives was giving evidence, he referred to a transaction with Oceania and Mr. CHING immediately demanded specific discovery of the relevant documents. Somebody left this court, came back with a file which was handed to Mr. Robert TANG who listed the documents and gave them to us which I can assure you is highly relevant in this case and, unfortunately, they got into Mr. TANG's hands untouched while Mr. Ives is in the witness-box and we now have them. I suggest they are highly relevant documents. 10

MR. SWAINE: I think, to complete the picture, I did open on the Oceania transaction. It wasn't just that it came out in the course of Mr. Ives' evidence.

Q. No receipt?

A. No, the shares were just returned to him.

Q. This is a very casual way to treat \$23m. worth of securities, isn't it? 20

A. This is what we usually do. When money was repaid, we returned the shares to him.

Q. Of course, I am talking about whether you require a receipt for the documents, very valuable documents, these. You see, if you look at P20, it gives you the references when the shares go the other way. In the documents that you did disclose to Mr. Justice Zimmern, you do produce a receipt, you see: it's yellow 1, 78 and red 3, 88, otherwise you thought it necessary to produce a receipt one way and not the other. You say it just so happens that when they go one way there is a receipt and when they go the other way there isn't a receipt?

A. May I have that receipt, please? I want to have a look at it. 30

Q. Certainly, take it.

A. Yes, I did issue this receipt.

Q. It is curious why there is no receipt when the shares go the other way.

A. You mean to say that James COE did not issue me a receipt?

Q. Yes.

A. I returned the shares to him, perhaps I have asked him for a receipt but he did not give me one, but I can't remember what actually happened at that time.

Q. Pretty careless kind of businessman, doesn't bother with receipts for 23m., aren't you, Mr. David NG? 40

A. But all the cheques had been cleared.

Q. You see, Mr. David NG, one advantage of a receipt, like a chop on a letter received, is it tells you when something was done. So I thought you said there isn't any document which would tell us when those shares went back.

A. I have already stated that in the accounts that when and where the shares were

	released.	
	Q. Your accounts don't show the movement of shares, Mr. David NG, do they?	Supreme Court of Hong Kong High Court
	A. This is very difficult to explain. This is the same as you deposit your money with the bank and then you get the money out, but that is all, that is the end of the matter.	Defendant's Evidence
	Q. When you get your money out from the bank, you sign a receipt anyway, and they record a cheque.	
	A. Yes, I understand it.	No. 40
	Q. When you put your –	
10	A. But this is the way we usually deal with the matters.	David Ng Pak-shing – Cross-examination
	Q. I see, in Hong Kong you usually deal with matters of 23 million shares changing hands and no receipt for it?	
	A. No, I didn't mean this.	
	Q. What did you mean?	
	A. He has paid up all the money and I returned the shares to him.	
	Q. He has paid up all the money?	
	A. Yes.	
	Q. So that there is no securities outstanding?	
20	A. I mean that loan, sir. That loan was paid up, therefore I returned the shares to him.	20
	Q. So there is no securities outstanding, that's right?	
	A. There shouldn't be any, air.	
	Q. Let's just see how much money, even on the face of it, has actually come into the deal. This is only on the face of it. P13, please. We had it a long time. We haven't looked at it.	

COURT: Very well.

MR. YORKE: Then I say why was not yellow file 4 disclosed to us? Its relevance again, my Lord, as my Lord will see: the facts of that transaction are even more intricate than we ever supposed. Mr. Robert TANG had a chance I think, to check this and that so far as it goes, from the documents that we have, it is complete. There are no errors except, my Lord, in relation to small matters at the top, for a few hundred dollars here and there – round figures as opposed to precise ones; they don't matter.

Q. What we have done here, Mr. NG – you will get a chance of looking at it more carefully over the adjournment – is to put all the transactions together and showing, in relation to the syndicate, Mr. James COE and anyone else which turns out at all in Hong Kong Estates, how much real money is circulating notwithstanding the enormous payments apparently being made. And to make it easy for you, we have produced another document which perhaps can be called P13A. 10

MR. YORKE: My Lord, it's my fault, my Lord. It is a summary of P13. Can it be P13A?

Q. Mr. NG, just this document P13. To make it easy to do the calculations on P13, what one is looking for is to see how much money really shifts. Now you can ignore effectively everything from the 1st of April – before – because they are very small sums of money and don't affect the principle: the payments out made by you in Taiwan and so on, etc. 20

COURT: Before what date?

MR. YORKE: Before the 1st of April. They are unimportant in the context.

Q. Mr. NG, it is probably easiest if you had a pen or pencil in your hand.

A. Yes.

Q. Yes, first of all, would you bracket the 30th of April to the 8th of June and mark a (1) beside 30th of April to the 8th of June? Just put it on P13 please? You see, that (1), if you go across to P13A, says at the 8th of June James COE is minus \$3M., syndicate is plus \$3M. Do you see that? And then going back to P13, 15th to 18th of June. I have put no change because we have got little tiny sums of \$50,000. I am ignoring the baby sums. As at the end of the 18th of June there has been no change from the previous situation. Then would you put a bracket from 25th of June to 18th of July and if you just work through those sums. It is quite easy because the figures stand out. If you work through that period you will find that James COE is minus \$4.58M. and Hong Kong Estates are plus \$4.8M. – that is \$4.8M. in – and the syndicate is plus \$0.78M., and I suggest you put against that bracket the number (2). You will see on P13A, number (2), the sums have been done for you. Then would you put a little bracket round the 20th to the 26th of July and another bracket round the 27th of July to the 30th of July, and you will find that those two brackets are self-cancelling. Again if you look at P13A I will 30 40

show you how it is worked. 20th to 26th of July, James COE is minus \$1.5, syndicate plus \$1.5. That is then reversed between the 27th and 30th of July. So those two are self-cancelling. Then go down the 2nd and 3rd of August. There is no change because the entries are self-cancelling internally, and then put a bracket from the 4th of August – probably in ink – which we have added in since we found Y4, down to the 10th of August and put a (3) against that.

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Defendant's
Evidence

A. There is no such date as the 4th of August.

No. 40

10 Q. Would you between the 3rd and the 5th of August put the 4th of August and then in the "James Coe Out" immediately above the 1.5M. put in \$520,000? Yellow 4, 35. And then would you put it –.

David Ng Pak-
shing – Cross-
examination

MR. YORKE: My Lord, I wondered if rather than dictating these things, it would be easier to adjourn a few minutes earlier and let the juniors make sure everybody's copy is the same. It is a bit unfair to have Mr. NG do this calculating as it goes. My Lord, unless your Lordship's copy is particularly significantly marked, we will have to update your Lordship's copy as well. I'm sorry about this, but it had to be amended after we got yellow file 4.

D.W.2 – David NG Pak-shing – On former oath

XXN. BY MR. YORKE continues:

20 MR. YORKE: My Lord, owing to the industry of the juniors, documents on P13 have now been amended and brought up-to-date. I think, your Lordship, P13 has been corrected. We haven't had time to correct P13A. The only amendments, my Lord, are on the summary, in the first half, in the last line with 5) against it. We have changed the date to the 30th of August instead of the 16th of August. Then the plus \$0.8m. should become minus \$2.2m.; and against the syndicate, the plus \$0.9m. becomes plus \$3.72. And that necessitates the consequential amendment two-thirds the way down the page against the 5): the plus \$0.8m. becomes minus \$2.2m. and under syndicate the plus \$0.9m. becomes plus \$3.72m. And in the line below that the grand total under James
30 COE becomes minus \$13 – which was minus 10; the minus 10 figure, the bottom left figure, becomes minus 13. And the total for the syndicate becomes 8.02 and the grand total for the syndicate under the bracket becomes 12.82. I think this is correct; I have checked it in rather a hurry.

40 My Lord, I should say that I have ignored in making that calculation two figures. If you could go back to P13, I have ignored the sum of \$200,000 on the 6th of October, the bottom left-hand corner, and I have also ignored, my Lord, all payments after that date, they being payments made after the case started and, perhaps more significantly, after your Lordship rules on a matter of law that the defendants have no locus standi to set aside our judgments in the matter which will proceed on the merits. My Lord, let's not be sufficiently naive to upset any payments made after that date without considerable verification. I don't dispute the cheques went through, my Lord, but what I am not prepared to accept – your Lordship will appreciate why – I am not prepared to accept that all disclosure has been completed.

Q. Now, Mr. David NG, I think that at the adjournment we have just got to the self-cancellation of two bits of entries, 20th to 26th of July and 27th to 30th of July. Have you got those brackets? You have agreed with me that they are self-cancelling. The 2nd and 3rd of August: will you put a bracket round those, that is again internally self-cancelling, 1.5m. in and out both for James COE and the syndicate. Do you see that?

A. Yes.

Q. Thank you. Then if you put a bracket (3), please, from the 4th of August down to the 10th of August and mark that (3). You will see that if you look at P13A, that means that James COE is minus \$2.72m. and the syndicate remains unchanged. Please verify these and make sure that we haven't made a mistake. And then if you take the period – if you bracket, please, around 11th and 12th of August, those two dates, and call that (4). You will see that in that period Mr. James COE is minus \$0.5m. The sign seems to be wrong there. I think it should be plus – yes, plus \$0.5m. And the syndicate is plus \$0.52m.

10

COURT: The ultimate figure does not have to be amended?

MR. YORKE: Yes, it may mean that under James COE, it will mean minus 0.5 becomes plus 0.5 and that will reduce minus 13 to minus 12. My Lord, I will get this checked overnight. I'm sorry.

20

Q. And then lastly would you put a bracket from the 13th of August to the 30th of August and call that (5) and that can be amended by 5) on P13A; it makes James Coe minus \$2.2m. and the syndicate plus \$3.72. And that means that then, subject to verification – the errors can be very trivial in comparison with the point here – this shows that if one pieces all these payments together, quite millions of dollars passing to and fro, round and round, as Mr. Swaine said. You can see every time there was a net change in position as between the parties, there are only five occasions: those are the numbers 1, 2, 3, 4 and 5 on P13A; and the highest net amount of money that Mr. James COE is out of, as it were, is \$12m.

30

Q. Mr. James COE, you will remember, we saw in yellow 2, 131, this morning, demanding his securities back in July. There are now no securities outstanding, but on the \$23m. of shares at 1.50, the total payment due to \$34½m. plus the finder's fee of \$3m. making \$37.5m. due. That's right. He says Fermay shares were deferred. To what date may be another matter. But even, you see, Mr. NG, but even if – which I do not accept – that all the money which has, net, apparently travelled from Mr. James COE to the syndicate, represents less than a third of the monies which were ultimately payable on this purchase. I suggest to you that subject to the correction that was made it would only affect the picture by a million dollars. At the time when his Lordship ruled that this matter would go forward on the merits alone, there had been virtually no real money being introduced from outside into this transaction at all.

40

A. That I don't agree, sir.

Q. And that apart from whatever money may or may not have gone direct to CHOO Kim-san as cash, the object of the exercise was really to finance the

transaction internally by realizing the assets of San Imperial Corporation. No doubt you don't agree with that either.

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A. I don't agree.

Q. Just before I show you another document --

COURT: Before you go on, just to keep the record straight, so the Exh. P13A has been further amended, isn't it? Under James COE, the minus 10.8 now becomes minus 9.8, is that right?

Defendant's
Evidence

No. 40

MR. YORKE: Yes, my Lord.

David Ng Pak-
shing -- Cross-
examination

COURT: And the last figure becomes minus 12.

10 MR. YORKE: Yes, my Lord. What I will do is -- this was done in a hurry -- I will have it rechecked over the weekend. I hope that the final version of both documents will be available on Monday. My Lord, the pattern, of course, is the same even if it was out of a million dollars, but the pattern is the same.

COURT: Yes.

Q. Mr. NG, you will remember answering Mr. Swaine how you came to agree the price, say, between the syndicate and Mr. COE. Now again I'll read you my note:

20 "We met James COE in March and the syndicate decided to sell to James COE what price was demanded. We asked \$1.63. He agreed \$1.63 but he wanted us to put it in the paper as \$1.50 for his own reasons. We suggested we should collect the amounts separately and we call it a finder's fee."

Is there anything about that transaction, as I read it back to you, which either sounds strange to you or reminds you of anything else?

A. No.

Q. The fact that there was no bargaining over the price on a deal of this size -- doesn't that sound strange to you?

A. This must be said in a different way, that I don't know whether or not Mr. HO Chapman had bargained with Mr. COE on the price of the shares.

30 Q. I have the benefit of my learned friend Mr. CHING's note which is much better than mine. He's got the questions, yes.

"You met James COE in March, 1977?

Yes, that was the first time.

Were you present during the negotiations with James COE?

Yes.

The syndicate decided to sell to him?

Yes.

What was James COE's price?

40 We asked for 1.63. He agreed to pay 1.63 and wanted us to put it down on paper as 1.50."

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David Ng Pak-
shing – Cross-
examination

- A. Yes.
- Q. This is in answer to your own counsel. So please don't now say that you weren't present during the negotiations.
- A. I did not really mean this. It is true that I first met Mr. COE in March, 1977 and the negotiation did go on like that, but I don't know whether or not before that, before March 1977, Mr. HO Chapman had discussed the price of the shares with Mr. COE. Because Mr. HO Chapman saw Mr. COE in November therefore I don't know if before March 1977 they had discussed over the price.
- Q. Correct me if I am wrong. I don't remember my learned friend opening the case on the basis that there was some other set of discussion on a previous occasion at which a price of 1.63 was agreed in your absence. At any rate, can you think of any other occasion in the whole of this deal in which a price, the asking price, was agreed? You remember that you haggled with LEE Ing-fong and you haggled with CHOW and HWANG. Do you remember any other occasion when the asking price was agreed? 10
- A. I have already told you what I could remember.
- Q. Let me remind you that the other time the asking price was agreed was with Mr. HO Chung-po, you didn't argue about the price. Was that another of these happy coincidences in the case?
- A. No, but I have already told you what had happened at the time when the negotiation went on. 20
- Q. With HO Chung-po, yes, but I am asking you if it is a coincidence that with Mr. HO Chung-po and with Mr. James COE in Hong Kong the asking price was agreed?

COURT: No bargaining.

- A. When I discussed with Mr. HO Chung-po there was bargaining over the price but when we discussed with Mr. James COE, there was no bargaining, sir.
- Q. Doesn't that strike you as a little strange, that especially in Hong Kong —
- A. Perhaps Mr. HO Chapman had already agreed on that with him before and then I was asked to go to see him. 30
- Q. I see. Mr. HO Chapman omitted to tell you and Mr. Ives that they already agreed the price without consulting you?
- A. I can't remember what it was like, but I have already told you what I could remember and what I knew.
- Q. The price had really been arranged long before, six months earlier, hadn't it, Mr. NG?
- A. No.
- Q. I would like to ask you something that is familiar about that evidence. Is there anything that strikes you as strange in your evidence that I have read to you a moment ago? 40
- A. What do you mean by that?
- Q. If you can't see it for yourself, I will suggest it to you. This wasn't a deal on the Stock Exchange. This was a private bargain for a controlling interest. Quite apart from the fact that it was agreed, is it not very strange to find you going in and say, "We want 1.63 per share, please."?
- A. Sometimes it is quite fast and sometimes it is rather troublesome. It is very difficult to tell.

- Q. Wouldn't you really have gone in and said, "Well we have got a controlling interest or effective controlling interest. We have got 23 million shares. You can have them for \$14m." That is the way you'd have done that kind of a deal, isn't it? Supreme Court of Hong Kong High Court
- A. I have already told you that each one of us was responsible for a part of the work and Mr. HO Chapman was responsible for finding the buyer. Defendant's Evidence
- Q. So, look, I am not talking about finding the buyer. I am talking about the way in which you told his Lordship the price was agreed and you said you got up to him and said, "Please, we would like 1.63" and he agreed, 1.63 per share. No. 40
- 10 A. It did happen like this and I have told you that.
- Q. I know. Isn't it strange? David Ng Pak-shing – Cross-examination
- A. No.
- Q. Well you just told my Lord why Mr. James COE wanted the price fixed at 1.50 on the paper and the 13 cents per share paid separately. Why?
- A. Mr. COE had given me one reason.
- Q. What was that?
- A. But I don't know what the actual reason was.
- Q. What is the reason that he gave?
- A. He said that if the price was to be put down as 1.50 on paper then later he could offer to buy the same shares in the market with the same price – to buy all the shares in the market at the same price.
- 20 Q. Do you know if he has attempted to do any such thing?
- A. This is what he told me.
- Q. My note of here –.
- A. Of course, he is not buying the shares now.
- Q. Oh no. My note of what you say at the time is, "No doubt he had his reasons." But you didn't at that time say what the reason was.
- A. Now you ask me whether I could recollect what the reason was and I could, so I gave you the reason.
- 30 Q. I see, it's just come back to you, I see.
- A. You ask me to think about it and so I did.
- Q. I have one more document to put to you on this – the last matter I want to cross-examine you on. Would you have this new document, P21? It is a rather complicated document. It is the last matter I want to deal with. Now Mr. NG, I'll have to explain the document because it contains a lot of information in one place, but it's probably the only way of making comprehensible what it sets out to prove. The document is in two parts. Will you forget about everything on the top right-hand corner for the moment. This comes in later in the day. Now it is a document which contains circles. In each circle at the top are the names of the people between whom any relevant agreement was concluded. In the bottom half of the circles in every case but one is a short summary of what the effect of the agreement was. Then beside each circle in every case there is a date which is the date of the agreement and on a little tag which your Lordship has – but which doesn't come out on the xerox – underneath the date, a little white tag is the reference to the document where the agreement can be found. And then the circles – some of them – are linked by an arrow, by a black line or an arrow on it and each of those arrows is an indication that the preceding agreement either causes the next one to take place or makes it possible for the next one to take place – the line of causa-
- 40

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Defendant's
Evidence

No. 40

David Ng Pak-
shing – Cross-
examination

tion. Would you just notice, please, how at the bottom right-hand side of the page there are two agreements there: the upper circle 27th of June, 1977 which has reference to yellow 4, and the lower circle in the middle 22nd of June, 1977, reference again to yellow 4. And you will appreciate until yellow file 4 was found in the way that it was, it would have been quite impossible to construct this diagram or even to conceive such a diagram might have any meaning at all. Whilst I am saying that, will you also notice that in the top right-hand separate bundle there is just a single reference to yellow 4, 33. The whole of that upper segment is possible to construct only when that file was found. Now what I will do is to take you through the document and show you how it works. Lastly, the dotted ink line linking the top left-hand circle to the rather small one on the right-hand side with the \$4.8m. in it, is a link to say that these two are associated although we don't know precisely how, but we say that there is a very close connection between these transactions. And would you, lastly – there is a title on the bottom of the page – I have struck it out in some copies. This doesn't mean anything. I have to give it a name when I first did it. Because of certain documents which I have been since I don't think that name is particularly helpful. Probably it refers to something else.

10

Q. Now to start off at the top left-hand corner, we discovered in Yellow file 38, on the 17th July, 1976, there was an agreement entered into. Will you look at it, please? Yellow 4, page 38.

20

MR. YORKE: Yellow 4, my Lord. The difficulty is that it's numbered by document, not by pages, so it's document 38. It is numbered now, it's been done overnight, my Lord. I will give your Lordship the reference.

CLERK: Document 38, page 126.

MR. YORKE: Page 126. It might be helpful to put '126' on the ledger.

Q. Now, that is the agreement between M.A.F. Investments and Hong Kong Estates for a deposit of five million dollars effected on the 17th of July, 1976, after CHOO Kim-san had been arrested, between himself on behalf of Hong Kong Estates and HO Chung-po on behalf of M.A.F. Investments. That is a document – yellow 4 – we are unable to verify that any such investment was made with M.A.F. and that M.A.F. kept the benefit of it, and therefore we suggest the probability is, that like so many of his transactions, CHOO Kim-san took five million dollars out of the Group on that occasion.

30

COURT: I'm sorry, I don't follow. Because the five million dollars was accepted by M.A.F. Investment?

MR. YORKE: Yes, yes, but pocketed by CHOO Kim-san.

COURT: Oh, I see.

MR. YORKE: My Lord, this is not essential. We suspect that it is so . . .

40

COURT: I see.

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High Court

MR. YORKE: . . . but it is not a material point. The same result follows whether it's true or not, but it's very difficult to see why, when he is preparing to flee the country, Mr. CHOO Kim-san should have agreed to this arrangement.

Defendant's
Evidence

10 Q. And then, as Mr. Ching pointed out to you in cross-examination, curiously, this agreement having been set up on the 17th of July, and apparently, apparently a deposit paid, nothing else is done until the 18th of January, 1977. Will you find the agreement which we did have in Yellow 1, page 9. That's on the second page. I won't repeat to you Mr. Ching's cross-examination in which he suggested that the sole purpose of that agreement is that it was set up in order to be cancelled, and thereby on cancellation to create a debt of four point eight million.

No. 40

David Ng Pak-
shing – Cross-
examination

MR. SWAINE: Six million.

MR. YORKE: Six million total; four point eight is the figure that I'm interested in. The total debt is six million.

20 Q. And cancellation agreement you will find on the preceding page of Yellow 1, also document 9, preceding page, and again I won't remind you of my learned friend Mr. Ching's cross-examination, of the happy coincidences, of the date, the amount and the parties to whom it's paid. By cancelling that agreement, which apparently James Coe didn't like at all, Oceania is now free to be sold to Mr. James Coe because it has cancelled this onerous contract. Now that gets you down to the third circle. Let's go back a bit to the left-hand circle, will you? That's the agreements of the 28th to 30th of March which we went through at great length this morning and yesterday; that is between M.A.F. Corporation, etc., you say with CHOO Kim-san and your syndicate, as a result of which the syndicate number under the option agreement now owes four point eight million. Mr. Swaine would like it to be said that it's 4.839, and he is quite correct, since he is dealing with it, Mr. Ng, I shall suggest that they were considerably careful not to have figures matching absolutely because it's too obvious if that's done, but they had to be fairly close together, otherwise it would be necessary to find some real money, and the effect of those agreements of the 28th, 29th and 30th of March as it is stated in the circle, the "Syndicate now has effective control over San Imperial . . ." and can therefore procure any future agreements which San Imperial or its subsidiaries are to enter into, for which purpose – for which purpose, of course, you went on to the board of San Imperial and subsequently became chairman, and in fact it was as a result of your being able to acquire San Imperial and and its subsidiaries to do whatever you wanted, that you were able to procure the agreement of the 12th May which we have just been looking at, which you will remember was – bears Mr. Melville Ives signature as witnesses to everybody else and his hand-writing filling in the date. But before that was entered into there was another agreement entered into which is the lowest of the circles on the left-hand side, that's the agreement of 30th April, which is Yellow 1, page 42, and if you would look at paragraph . . .

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Evidence

No. 40

David Ng Pak-
shing – Cross-
examination

- A. This is not an agreement but an undertaking, sir.
Q. Well, yes, it's an undertaking, it's a different form of agreement; it's an agreement, don't you worry. Look at paragraph – look at your undertaking under paragraph 2:

“. . . immediately after the signing of this . . .” agreement “. . . we shall cause to be sold . . .” one property “. . . and shall use our best endeavours to procure a sale of the property Nos. 2-10 Pilkem Street (Bangkok Hotel) at \$7.5 million . . .”

I am going to suggest to you that this wasn't being done because Mr. James Coe thought it was a bad asset but because it could be easily sold and would be used to finance the purchase. Now would you remember that if you look in the main agreement, if you'd look at page 40 in yellow 1, on the second page under item 7(c)(iii):

“. . . on completion San Imperial shall remain the registered owner of or otherwise beneficially entitled to the following properties:–”

I'm sorry, it's item (vi):

“2-10 Pilkem Street (Bangkok Hotel) notional value . . .” should be seven point five million.

And the syndicate have undertaken to procure that sale of property of which San Imperial is the beneficial owner but, in fact, if you go back to my chart, P.21, what happened is that Oceania is sold on the 22nd of June to Mr. James Coe or his company and you will find that, you see, in this Yellow file 4, page 3 – document 3.

CLERK: Page 12.

MR. YORKE: Yes, it's document 3.

Q. And we know that this . . .

MR. YORKE: It's page 12 now, my Lord, in the bundle.

Q. That's the agreement for the sale and purchase between San Imperial and Siu King Cheung, that is Coe's company, whereby they sell Oceania to James Coe for, I think, some seven million shares which were specially issued in Siu King Cheung instead of cash, and it turns out that the Oceania Hotel – the Bangkok Hotel is the property, not of San Imperial, but of Oceania, which you will see in recital number (2) on the first page:

“The Company is the registered owner of . . . 6, 8, 10 and 12 Pilkem Street . . . let to Bangkok Hotel . . .”

Now you will remember, Mr. Ng, that the 22nd of June is a date which comes

mid-way between the 17th of June and the 27th of June. The 17th of June, remember, being the day on which you drew a cheque in favour of Oceania which was never going to be paid and the 27th of June which was when you drew a series of cheques in favour of Hong Kong Estates instead, and if we look at page 132 of Yellow 4 – or was it document number 132, the bundle has been paginated overnight.

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MR. YORKE: Oh, yes, my Lord, it is 132, it is the correct place now.

No. 40

Q. 132, there we have a letter from Oceania addressed to Bentley Securities, June 27th, and they in effect say that:

David Ng Pak-
shing – Cross-
examination

10 “We confirm our verbal discussion with you and shall be glad if you will kindly cancel the above mentioned cheque . . .”

Of course, we know it had been withdrawn ten days earlier.

“. . . and re-issue cheque to us payable to Messrs. Hong Kong Estates Ltd. . . .” for 4.8 million. ”

“Upon receipt of your cheques, we shall return the said cheque to you for cancellation.”

Signed by Mr. James Coe. A lot of other things happened on that day, but we won't worry about them for the moment because the next thing that happens is that on the 24th of October of this year . . .

20 MR. YORKE: If it can't be admitted I shall have to ask leave to prove the document . . . (Inaudible).

Q. If you will just have a look, please, at document – the third page of this document.

CLERK: P.22.

30 Q. P.22. You will see that before – you know how to read the registers, this is the Bangkok Hotel, and on the 24th October – that's the second column, after the name 'Lawison Textile Company' who was the purchaser from Oceania – the Bangkok Hotel has been sold for seven point four million so Mr. James Coe, you see, has issued shares in his company – seven million shares in his company worth one dollar each thereby acquiring Oceania, and then sells off one of its assets for seven point four million dollars and he still has Oceania and all its other assets, of course.

A. This is the only asset.

Q. So Mr. James Coe has done rather well. He has issued seven million dollars worth of shares, sells off the company's only asset for rather more than that, and he has still got the company. Just pausing there for the moment, Mr. Ng, your syndicate had agreed that San Imperial would sell the Bangkok Hotel in which case, of course, the San Imperial Group would get the money and Mr.

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shing – Cross-
examination

James Coe was going to acquire a controlling interest in the holding company, so why do you suppose that if he was going to buy the whole group, why do you suppose that he wanted to buy one of its subsidiaries separately and earlier?

- A. Perhaps I think it is better to ask Mr. Coe about this.
- Q. Oh, I shall ask Mr. Coe, don't you worry about that, but I should just like you, you initially – after all, you were the vendors, you had agreed, you had agreed, remember, if you look at the document in the bottom left-hand circle, you had undertaken – you pointed out it was an undertaking, not an agreement – to sell the Bangkok Hotel immediately, presumably you would keep your word, but there is nothing I can find in any document which tells me why James Coe, instead of getting you to keep your word and get rid of this apparently nasty asset, instead of doing that, he separately issues shares in his own company in order separately to take over the subsidiary, and then as soon as he has taken over the subsidiary he sells the asset for cash. 10
- A. I don't know.
- Q. Oh, come along. You are an accountant, a business man, a stock-broker: think of a reason.
- A. I don't know.
- Q. You have heard of section 48 of the Companies Ordinance, haven't you? 20
- A. No.
- Q. Well, even if you haven't heard of it, you see, couldn't one reason be this, that if the Bangkok Hotel was sold for seven point four million that money would go into the bank account of San Imperial, and if it went into the bank account of San Imperial it couldn't be used to go into your bank account, Mr. HO Chapman, Mr. Melville Ives' bank account as part of the circulating money whereby this deal is largely paying for itself, and just to help you with the circulation, would you now just look back, please, at P.13, that's the – my industrious Junior, Mr. Winston Poon, has added up. If you look at the payments commencing on the 24th of August which I ignored from my calculations . . . 30

COURT: 24th of October.

- Q. 24th of October, I'm sorry – which I left out of my calculations, they come to just under seven point two million, and you see that they are payments out by Mr. James Coe and in to you, and isn't it – I wonder if you think it's another of these happy coincidences that on the day Mr. James Coe sells the Bangkok Hotel for seven point four million he starts to pay you seven point two million?
- A. I don't know whether or not it is a coincidence but I think Mr. James Coe could answer this question. 40
- Q. Oh, I'm sure, I'm going to ask him too, but let me put it to you, Mr. Ng, you knew all about it.
- A. Well, I knew nothing about Siu King Cheung affairs.
- Q. You agreed to sell Oceania to James Coe, didn't you?
- A. Yes. In return we are given shares.
- Q. Yes. San Imperial Company has got some shares which were issued by S.K.C. but you knew the purpose of the exercise was to enable Mr. James Coe to sell

the Bangkok Hotel and then put the proceeds of sale into this deal which you had fixed up with CHOO Kim-san so that you wouldn't have to put your hands in your pockets for real money.

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A. I don't agree, sir.

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Evidence

COURT: How is that seven point two million dollars made up? Payments from the 24th of October?

No. 40

MR. YORKE: Yes, onwards.

COURT: Until when?

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shing – Cross-
examination

10 MR. YORKE: Until the 31st of October, payments – the balance in the following seven days.

COURT: I see, and they come to how much?

MR. YORKE: Seven point one nine, I think it is, my Lord.

COURT: Yes, that's right.

MR. YORKE: Again, my Lord, one doesn't expect to find the exact correspondence, they are not that stupid, equally one doesn't expect to find a single cheque.

20 Q. Well, Mr. David Ng, perhaps it's just another happy coincidence that on the day when he sells he starts paying the money in, you see, which, if you didn't know about this, it might have looked as if he actually was at last producing some proper money. However, let's look at something else, shall we, now and just leave the bottom of that chart for a moment and look at the top right corner? Now at the top right corner is a rather complicated transaction which I am sure you will recognise fairly soon because about half of it was put to you by Mr. Ching when he cross-examined you. If you would just look at the top of the page: if you can read my handwriting you will see familiar names of Mr. WONG Luk Bor and Mr. IP Ping Wai. Remember, they are your employees who, by another of these happy coincidences, happened on the same day each to borrow one point two five million on the same terms against securities which appear to be securities of Mr. James Coe; it happens to be on the 27th of June which happens to be the date upon which Oceania and your syndicate
30 agreed that money should be paid to Hong Kong Estates. Three other people, or two people and one company, also borrowed similar amounts – sorry, different amounts of money: point seven five to CHAN Tsang-kin, point seven five million to Lai Wai Co. and point six million to S.W. Cheung, and they happily also seem to have done it subject – we are making some investigations in America and we haven't yet got the answer, but that seems also to be Mr. James Coe's property.

MR. YORKE: Oh, my Lord, I'm told the Californian properties are Mr. James Coe's.

- Q. So here you have Mr. James Coe, who is very kindly allowing some people to put up his own property as security for a loan from his own company, Oceania. You see? Remember, Oceania hasn't sold the Bangkok Hotel at that time, but it is nevertheless able to lend on the 27th of June four point six million dollars and it lends that money to these five people, that includes the company, and they say when they borrow it, "Please give it to Ming Kee" and Ming Kee says, "Please give . . ." – gives it to James Coe and James Coe gives it to you and you give it to Hong Kong Estates, and you will see all of those payments going, as it were, round and round if you look at what happened – look at what happened on P.13, just opposite No. 2. You see – there is an extra million involved, I am coming to that in a little while – but you see in effect three point eight coming out from James Coe. Do you see that? 28th of June, it goes into the syndicate and then it goes out of the syndicate again, reading left to right across the page, and then going over to the right-hand side of the page, four point eight million in to Hong Kong Estates, which happily is the same little figure of four point eight, four point six, wandering around. Whilst you are there you might notice that underneath those figures is the figure of \$780,000, which is the next figure afterwards. That's the figure which you will remember was half your nett worth, and when Mr. Ching asked you about it you couldn't remember what you had borrowed it for. 10
- A. I have already answered Mr. Ching.
- Q. Oh, yes, you did, you did in the end; you did in the end, but it was funny you couldn't remember what you had borrowed three-quarters of a million for at first. And then, you see, I mentioned that because, you see, that figure is also on P.21, it's on the right-hand side of the diagram. If you can read my handwriting it says, "5 Nominees plus 1 Nominee", and that Nominee is Mr. James Coe's company itself, Siu King Cheung. That's a little bit late on the 18th of July which is the day it appears on P.13, out from James Coe into you, and that goes all the way round the same little circuit, incidentally also on James Coe's securities, and then we have another of these happy coincidences, you see, if one goes back to the bottom of the chart, the Bangkok Hotel is sold on the 24th. We get four million if you go back to page 13. It starts going out from James Coe and over to you, but if you go back to the chart up there you will see that on the 27th of October all the debts were repaid and, you see, what we say, if you look at what is a little dotted line – on your Lordship's copy it is dotted red – is that rather explains that little 4.8 million you see there by itself in the middle of the right-hand side. What really happened is that Oceania has sold its property, the money is then paid over to James Coe who pays it to the syndicate who use it to repay the loans, and so effectively that money, the Bangkok Hotel money, has actually been used to pay Hong Kong Estates by repaying the loans which the syndicate took apparently, apparently in order to pay Hong Kong Estates. Do you think that's right or do you think that's just another lot of happy coincidences about dates and amounts? 20 30 40
- A. Well, I only agree to a part of this exhibit P.21 but not fully, sir, I don't agree with the other part.
- Q. Which is the part you don't agree with?

COURT: Do you prefer to give it in English?

A. If my Lord can excuse my grammatical mistakes.

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COURT: Oh, don't bother about that. Yes, carry on.

A. This is M.A.F. Investment and Hong Kong Estates. In other words, you see, it is M.A.F. Credit and San Imperial. Do you agree with me, Mr. Yorke?

Defendant's
Evidence

Q. I'm sorry, but I didn't follow your statement.

A. Now M.A.F. Investment Ltd. and Hong Kong Estates Ltd. enter into an agreement. That means, you see, M.A.F. Credit and San Imperial enter into an agreement. Do you agree with me?

No. 40

Q. Yes, yes.

David Ng Pak-
shing – Cross-
examination

10 A. Both these two companies, in the annual report or the books, there is nothing shows that C.K. San has taken away 5 million dollars.

Q. We don't know, Mr. Ng, we have asked for documents about this but we haven't got any. We didn't even know about that agreement, you see, until Yellow file 4 was found while Mr. Ives was in the witness-box.

A. But the report – the annual report has been issued in San Imperial.

Q. Oh, yes, yes.

A. But there is nothing disclosed by the audit . . .

Q. You see, Mr. Ng . . .

20 A. . . . so I and you are the same manner, we don't know, and there is no evidence whatsoever that this money has been taken away by Mr. C.K. San.

Q. Yes.

A. So this is a round circle and circle and circle, there is nothing to do with CHOO Kim-san.

Q. It doesn't matter, you see, we think it was, but it doesn't matter. He told his Lordship – you heard me say that in English – I told his Lordship it doesn't matter if we are wrong about that because even if we are wrong about that and it's not a cover-up operation, it's still a breach of section 48 of the Companies Ordinance, a very clever one, and it's still – this is the important thing – it is still the syndicate being able to put through this deal without having to find any real money, and it's selling off San Imperial's assets to buy San Imperial shares.

30

A. You may say this is business circulation, you see, but at the end of the day the syndicate received 19 million dollars.

Q. Yes.

A. This is – you may say this is business circulation, you see.

Q. Yes, yes.

A. Now, for example, if Mr. Poon, I suppose, you see, to point out this seven million two was paid on the last day of October, but if the Oceania sold that property on that day to collect the full amount of 7.4 million, no deposit has been paid before.

40

Q. It doesn't matter whether the deposit has been paid before, does it?

A. Well, what I mean, this is not coincidence.

Q. No, of course it's not coincidence, I never thought that.

A. I agree, I agree partly, because, you see, I'm not James Coe, I am expressing my opinion. This is a business circulation; this is in business circle.

Q. Yes.

A. Most business men may do it in that way, they may do or they may not do.

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David Ng Pak-
shing – Cross-
examination

Q. You see, that's why when – you may or perhaps you didn't remember me saying this morning when I was outlining the history of how it must have looked to Mr. CHOO Kim-san, perhaps you would have said it was necessary to pay this money, the 3.8 million.

A. But none of the money has been – but none of this money has been gone to CHOO Kim-san nor HO Chung-po. That's what you claim. Do you agree with me?

Q. Well, it's not up to me to agree with you, I'm afraid, Mr. Ng. I have heard your explanation; this is why I suggested to his Lordship that when Mr. CHOO Kim-san set up this deal he pointed out to Mr. James Coe, Mr. HO Chapman, whoever he dealt with, that it was possible to reduce the amount that he actually had to find by using San Imperial's own assets to pay for the further shares and this is, in fact, what has been done.

A. I mean, this is what the – James Coe – if James Coe circulation on this part, this is what's business, you know, experience or something like that.

Q. Yes.

A. I mean that only – this is an explanation.

Q. And, you see, this is why I say we have not begun to have proper discovery in this action which means – let me finish, Mr. Ng: perhaps it would be better if it was translated so there is no doubt about it – why I say we have not begun to have proper discovery in this action because we have not been shown how the money got out of Oceania's bank account into James Coe's bank account; we have not been shown how it was that on the 27th of June Oceania was in a position to lend 4.6 million to your two employees and others for the benefit of Ming Kee, James Coe and yourself, you see, and I don't suppose we ever will, Mr. David Ng, because we shall never see all the bank accounts which have been involved in this transaction. But I want to chase, if I could, just one more million, please. Yellow 5, page 1. Mr. David Ng, you probably know, Ming Kee, of course, is Mr. James Coe's own company, isn't it?

A. I guess so.

Q. It's the same address?

A. I guess so.

Q. Yes. Can I remind you of what Mr. Swaine said in opening his case, and this is his account of the 4.8 million. You remember, when we looked at P.13 there was 3.8 million coming out from James Coe to you and over – but when you went across to Hong Kong Estates there was an extra million, and perhaps it's worth looking, if you would at P.13A, because you will see that although at that time, which is in period 2, although at that time Mr. James Coe transferred 3.8 out of the 4.58 there to you, your syndicate was able to pay the extra million to Hong Kong Estates because in the preceding period, period 1, they had received 3 million from James Coe. Before I go on to this – I'm sorry, I have forgotten one other thing, and that is this: remember I suggested that this whole deal was in fact set up probably before CHOO Kim-san left the Colony? Would you just look at page 10 in Yellow 4, this bundle we have happily got, and remember that the authority – just to remind you that the authority to James Coe to increase his share capital was given on the 5th of November, 1976, and it is that authority which was subsequently used, as you can see on the following page, in order to purchase the shares of Oceania on the 22nd of June, 1977, and again page 10 of Yellow 4. – sorry, page 1 –

page 10 – it’s document 1.

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MR. YORKE: The documents that were put in at the beginning, my Lord.

Q. So again, perhaps it’s another coincidence but it does suggest that Mr. James Coe was getting ready to take over long before you say the first approaches were made.

Defendant’s
Evidence

A. How do I know that, sir?

No. 40

Q. No, you don’t.

A. This is a matter for Siu King Cheung.

David Ng Pak-
shing – Cross-
examination

10

Q. Yes, of course. Well now, I’m sorry, that was just a digression, I wanted to get the date in at the same time as we were looking at P.21. Now we can leave P.21, which is rather a muddled document, and lastly remember that when describing how that 4.8 got to Hong Kong Estates . . .

MR. YORKE: Page 19 of your Lordship’s written notes, typed notes, page 115 of your Lordship’s manuscript.

Q. . . . what Mr. Swaine said was this – have you got a copy? Page 19.

CLERK: Yes.

Q. Page 19, 31st of October. Now you see the middle of the page:

“In the latter part of June, 1977 . . .”

Have you got it?

20

“. . . 4th defendant approached J. Coe for a loan . . .” – that is you – “. . . approached J. Coe for a loan in anticipation of the maturity dates of J. Coe’s nine post-dated cheques and J. Coe agreed. 4th defendant had \$1m. available for meeting the first of the cheques but he required an additional \$3.8 . . . , and J. Coe then lent to 4th defendant . . . 3.8 . . . by means of four cheques in the sum of . . . 1m., . . . 1m., . . . 1m. and . . . 800,000. These cheques were credited to 4th defendant’s account on 28th June, . . . 28th June, . . . 28th June, . . . and 29th June . . . The . . . 1m. which 4th defendant had available was money on a share dealing account between himself and J. Coe – that . . . 1m. was not a loan.”

30

Well, the document which we are told represents the share dealing account has just been discovered to us and that is now the first page of document 1 in Yellow 5. Has he got one?

INTERPRETER: Yes, we’ve borrowed the file from Mr. Tang.

MR. YORKE: Your Lordship has one?

Q. Forgive me, Mr. Ng. We know that is the document, I put it on record yes-

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shing – Cross-
examination

terday; that is meant to be the share trading account. It seems that that account opens on the same day, or possibly the day before, that the other cheques were paid over to you. Is that right? June the 27th. Is that right?

A. Yes.

Q. So as at that moment there had been no dealings between you at all.

A. That I don't agree, sir, because the 27th of June is the date on which the San Imperial shares re-listed in the market.

Q. There had been no previous dealings between you and Mr. James Coe on the 27th of June?

COURT: Do you agree? Before the 27th of June there were no dealings.

10

A. Yes, I agree, sir.

Q. So you did – it was not accurate as my learned friend, Mr. Swaine, on the instructions which he then had, to say that you went to Mr. Coe and said, "Look, I have got to pay 4.8 million, but please will you lend me 3.8 as I have already got a million on account between us?"

COURT: Give a short answer. Was there, on that date, a million dollars on account?

A. Yes.

COURT: There was.

Q. It had been deposited that – it had been deposited with you that day?

A. Yes.

20

COURT: And not before?

A. Yes, that's right.

Q. It really wasn't accurate, when Mr. Swaine opened, to say that you only needed to borrow 3.8 million because you already had a million? The truth was that you hadn't got anything and all of the 4.8 came from Mr. James Coe on the same day or on the same two days.

A. I don't quite agree with you, sir.

Q. What is the bit you don't agree with?

A. Because we knew that the San Imperial shares would be re-listed on the 27th of June, and it was a Monday.

30

Q. Well, you see . . .

A. On Friday and Saturday before that we have already discussed that we should buy more shares from the market after the re-listing of the San Imperial shares.

Q. Look at P.13, would you, it's supported by the documents.

MR. YORKE: My Lord, P.13, it's convenient to pick up the dates of these payments.

Q. You see, if you look at where No. 2 is – I hope you have written No. 2 on the left-hand side, Hong Kong Estates was paid between the 27th and the 29th of June 4.8 million. You see on the right-hand side four cheques for a

million and one for eight – eight hundred thousand, is that right? You look back at your share dealing account and that million dollars stayed in the account for a month, and on July the 23rd \$500,000 was drawn out, on July 20th \$200,000 was drawn out, so you can't possibly say that you borrowed 3.8 million from Mr. James Coe, had a million in a share dealing account which was available to be used and was used to pay 4.8 to Hong Kong Estates.

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A. This one million dollars mentioned there was to be used for the purchase of shares; that was the original purpose.

No. 40

Q. Yes?

10 A. And no interest was charged on that \$1,000,000.

Q. I am not worried about interest. What was it used for?

A. It was to be used for purchasing shares because at that time we did not know how many shares we could buy from the market, and I have asked Mr. Coe if I could use that \$1,000,000. He agreed, he said I could.

Q. But you didn't use it, it stayed in the account untouched till July 23?

A. I started to use that money on the 4th of July because on that day we bought a very little number of shares – 5,000 shares.

Q. So you couldn't have been using it and didn't use it and it wasn't available for payment to Hong Kong Estates, was it?

20 A. In business you can use the money for any purpose, say with that money you do that, with this money you do that.

David Ng Pak-
shing – Cross-
examination

COURT: Let's have a simple answer. Yes or no?

Q. Was this money used to pay Hong Kong Estates?

A. Yes.

Q. Where is it in the account? According to this account, if it is a genuine document, the account wasn't touched except for a minor purchase which is listed after entries on the 23rd and the 20th of July, it wasn't touched for a month.

30 A. This is the accounting system. (In English) If you credit James COE, you can debit my account with Bentley Securities. On the other hand – You may credit James COE's account and debit my account with Bentley Securities. This is the accounting system.

Q. And under your accounting system, you pay out a sum, a million dollars, and don't make any entry in the account? It sounds like the same foki at work, doesn't it, Mr. David NG?

A. (In English) I don't quite agree with you. It depends how the account was operated.

40 Q. Mr. Ng, I entirely agree with you. You are telling me that under your accounting system, you can use money which is made available from share purchases on the same day as you borrow the rest of the money, spend a million of it in paying off Hong Kong Estates and make no entry in the account, then it may be that his Lordship will have to draw certain conclusions about the reason why you keep your books in that way.

A. This is Mr. Coe's ledger. You asked me to produce it, so I did.

Q. I think we can agree on this for the sake of the record that if any of this money was used to pay Hong Kong Estates, there is no record of that fact in your account.

A. Not in the accounts with the Bentley Securities.

Q. I asked for a specific discovery of the ledger account and I was given that document and it was placed on record at the time this was the account.

MR. YORKE: Mr. Ng, I'm afraid I have kept you in the box for a very long time. Thank you.

COURT: How long do you think you will take, Mr. Swaine?

MR. SWAINE: I shall be a while, my Lord.

COURT: We'll adjourn until 10 o'clock tomorrow morning.

Appearances as before. Mr. Yorke absent.

MR. CHING: My Lord, I have been asked by my learned friend Mr. Yorke to hand your Lordship an amended version of P.13A, which your Lordship will recall was a summary of the matters appearing in P.13. I understand that the learned juniors have checked it over in the week-end and it is now accurate. 10

COURT: I see, so that replaces . . .

MR. CHING: That would replace the former . . .

COURT: And will remove the former?

MR. CHING: Remove the former 13A.

D.W.2 – David NG Pak-shing – On former oath

REXN. BY MR. SWAINE:

MR. SWAINE: May it please you my Lord, one point I ought to make before I start re-examining – my Lord it was suggested by Mr. Yorke in cross-examination that Yellow 4 came into being, that is the further discovery on the part of the – sorry Yellow 5, further discovery on the part of the defendants other than the 10th defendant, because Mr. Ives was in the witness box, and there was a suggestion that had that not been the case Yellow 5 might not have been disclosed. My Lord, that is a suggestion I will utterly refute – that is not a point I can really make in re-examination – it has not been put in cross-examination. I would, my Lord, respectively remind the court that when I opened the case for the defendants I opened on the Loans and Reloans, what Mr. Yorke has described as the back to back transactions. I had opened on these and I had undertaken in the course of my opening there would be further discovery as regards the back to back transactions. It is unfair, I submit that the suggestion be made that it came into existence when Mr. Ives was standing in the witness box. 20 30

COURT: I see.

- Q. Mr. Ng, you have been 5½ days in cross-examination and what I have now to do is to re-examine, which means clarifying points made in the cross-examination, and I will do it accordingly, that is by going right back to the beginning of the cross-examination and working my way through the cross-examination. Now you remember very early on in cross-examination by Mr. Ching, the question of your appointment or nomination as a director of Luen On and Bladon was discussed. Now leaving aside the question of names, i.e. whether you were appointed or nominated, in your mind as a director of these two public companies would you have exercised your own judgment in regard to matters effecting these companies or would you simply have done CHOO Kim-san's bidding?
- 10 A. I would use my own judgment.
- Q. Yes, and indeed you resigned from both Boards after serving only a few months, because as you said in chief, of a difference of opinion between yourself and CHOO Kim-san?
- A. Yes.
- Q. Then as regards your short-lived partnership with CHOO Kim-san in Bentley, you remember that the date of business, according to the registration, was March 1973?
- 20 A. Yes.
- Q. Now before the registration date were there already arrangements between you and CHOO Kim-san to start the business?
- A. Yes.
- Q. And when did the discussions with CHOO Kim-san for the partnership of Bentley first begin, roughly?
- A. In about February, sir.
- Q. Now then you remember that you were questioned about the Stamp Ordinance and about Section 30, sub-section (1)(b) and 30(3)(a), and on advice by the court you said you did not wish to answer on the grounds of incrimination. Now Mr. Ng, it is at least arguable whether a transaction effected out of Hong Kong is caught by the provisions of the Stamp Ordinance. Having regard to that do you wish to withdraw any part of your evidence as to when you bought shares in Taiwan or do you maintain the evidence you have already given?
- 30 A. I will maintain my evidence.
- Q. Then also regards the Stamp Ordinance you were referred to the Agreement of the 12th of May, 1977 with Rocky, that is Yellow 1, 54, and it is really a matter of law, but I would ask you to look at paragraph 13, the last sentence which reads:—
- 40 "The option shall be exercisable by the purchaser as soon as the injunctions and the attachment and/or any other restrictions are lifted and discharged."
- Again it is at the very least arguable whether an option of this nature is one which is to be exercised at a fixed time, which is what the Ordinance provides for — is there any part of your evidence concerning the 12th of May agreement that you wish to withdraw in any way?
- A. No.

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Q. Now you were referred to your affidavit in Blue file, page 47. You remember that in paragraph 10 you had adopted, among other paragraphs, paragraph 11 of the affidavit of HO Chung-po – I am sorry of LEE Ing-chee, you remember that?

A. Yes.

Q. And paragraph of Mr. LEE Ing-chee's affidavit at page 56 – sorry at page 56, 57 – I am obliged, contained the statement that 'CHOO Kim-san was and still is the beneficial owner of the said 17,421,960 shares in San Imperial' Now you said upon questioning that according to what you are reading here, that is not true – you remember that evidence?

A. Yes.

Q. Now you remember Mr. Ng that you had made contemporaneous affidavits in the present proceedings which are to be filed in the Red Files, and I shall simply remind you that on the 23rd of June, you had sworn that Fermay was the owner of 15 million San Imperial shares, you can take that from me, and on the 29th of June you had sworn to your seeing CHOO Kim-san in Taipei and to your agreement with the CHOWS?

A. Yes.

Q. The affidavit on which you were cross-examined was sworn on the 29th of June, that is after you had made the affidavit of the 23rd of June when you deposited to Fermay owning the 15 million shares.

A. Yes.

Q. And you maintain that the affidavit in the blue file, which adopts something that LEE Ing-chee said, that part of it to which your attention has been called, that part is not true?

A. Yes.

Q. Now it was pointed out to you in cross-examination that you did not disclose the 23rd March agreement with CHOW and HWANG until the affidavit of the 29th of June. You had of course made the affidavit of the 23rd of June before that?

A. Yes.

Q. Do you remember whether you saw counsel before you made the first affidavit that is the affidavit of the 23rd of June?

A. Yes.

Q. And this would be Mr. TANG and the then leader Mr. Jackson-Lipkin?

A. Yes.

Q. And do you recall whether you disclosed to them before you made your first affidavit the agreement of the 23rd of March?

A. Yes.

Q. Now you were questioned, do you remember, about one of your employees, Mr. IP Ping-wai, whose name is to be found in the Yellow 4 file at 33a, which is one of the 33a documents – which is the second of the 33a documents, and your attention was specifically called to the securities lodged by Mr. IP with Oceania, that is the fifth page of that bundle consisting of Siu King Cheung shares, namely 2,050,000 shares?

A. Yes.

Q. Now will you take it from me that the numbers of these 2,050,000 shares are not the same as the 23 million Siu King Cheung shares lodged with you

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by Mr. James Coe as security under the 12th of May Loan Agreement, the list of shares is to be found at your receipt Yellow 1, document 78. I don't think your Lordship needs trouble to have the document before you – would it surprise you to know Mr. Ng that Mr. James Coe controls shares far in excess of 23 million in Siu King Cheung?

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COURT: It does not surprise you?

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A. No, no, his group had a lot more.

Q. Now the next point in cross-examination concerns C.R. Wilson – do you remember that?

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10 A. Yes.

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Q. And Mr. Wilson, of course is European, he is bespectacled and he is described as stout?

A. Yes.

Q. And it was put to you that you were manufacturing evidence when you said that Mr. Chow told you that he had seen Mr. Wilson in Taipei, and it was suggested to you that the opportunity to manufacture such evidence arose from your having seen Mr. Wilson at the Victoria District Court when the interlocutory proceedings before Mr. Justice Zimmern were in progress. Now then was Mr. Wilson the only solicitor of Johnson, Stokes & Master that you saw at the Victoria District Court during the interlocutory proceedings?

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A. No, he was not the only one.

Q. Who else did you see?

A. Mr. Simon YIP.

Q. Who of course is Chinese?

A. Yes.

COURT: And not stout?

Q. Not stout but he is bespectacled – now did you know Mr. Ng that anyone from Johnson, Stokes & Master was going to Taipei for the purpose of this case?

30

A. No.

Q. But if you had to make a guess would you have guessed Mr. YIP or Mr. Wilson to go to Taipei?

A. I would have guessed Mr. YIP would go to Taipei, sir.

Q. Why would you have so guessed?

A. At least it would be more convenient in the dialect.

Q. Being Chinese?

A. Yes.

Q. Now at various times it was suggested to you that you were a nominee of CHOO Kim-san's and you are still a nominee of CHOO Kim-san's and you denied both suggestions.

40

A. Yes.

Q. Tell me, Mr. Ng, on a purely business basis, is there any reason why you should be a nominee of CHOO Kim-san's and make profits for him?

A. No, I won't.

Q. And for whom were you making the profits on these San Imperial shares?

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- A. For the Syndicate.
- Q. And the 2.165 million shares that you bought in Taiwan in addition to the 15 million shares in Fermay, on whose behalf did you make a profit on those shares?
- A. The 2.165 million shares were mine and the 15 million shares were for the Syndicate.
- Q. You said that you had the registrars of San Imperial changed after you had become Chairman?
- A. Yes.
- Q. And you had also asked the auditors to conduct a special audit of the San Imperial accounts? 10
- A. And it was also on the request of the Security Commission, sir.
- Q. Would you have done these things if you were CHOO Kim-san's nominee?
- A. Why should I – it was not necessary.
- Q. So you would have not?
- A. That is right.
- Q. And San Imperial's Action 1674 of the 29th of June, 1977 to recover the 1.6 million dollars from CHOO Kim-san, do you remember that?
- A. Yes.
- Q. Would you have brought that Action if you were CHOO Kim-san's nominee? 20
- A. Of course not if I were his nominee.
- Q. One point about your Chairmanship of M.A.F Credit hasn't really been cleared – you became Chairman on the 4th of July – on what basis were you able to become Chairman?
- A. As the San Imperial Company had 23% interest in the M.A.F. Credit, the Board of San Imperial said that they should claim the Chairmanship in M.A.F. Credit Company.
- Q. Your attention was also drawn to the Blue file, page 84 – this is an affidavit of Mr. YAP, the solicitor in charge of San Imperial Action 1674, and you remember saying that you had brought Mr. HO Chung-po to see Mr. YAP? 30
- A. Yes.
- Q. And the particular passage that was called to your attention was the paragraph 3, Mr. YAP saying that:–

“HO Chung-po stated that at all times he had been acting for CHOO Kim-san as agent until CHOO Kim-san jumped bail”.

and up to the time that Mr. YAP made this affidavit, was that the extent of your knowledge?

A. Yes.

MR. CHING: My Lord, I hate to interrupt, but there is a matter that has been puzzling me. I wonder if the witness would leave the room. It seems an appropriate time to deal with this. 40

10.40 a.m. Witness leaves Court.

MR. CHING: As your Lordship appreciates I cannot make notes while I am cross-examining – I have not so far asked any of my learned friends to check their

note of that day when – I think it was the second day of my cross-examination of Mr. Ng – I was cross-examining him upon his knowledge that HO Chung-po was a certain agent or nominee of CHOO Kim-san. Your Lordship will recall I took him through his affidavit in the Blue file, and I left that point finally when to my recollection he agreed with me that at all material times he knew that HO Chung-po was ‘a servant, agent or nominee’ of CHOO Kim-san. My Lord, I did not interpose before because that is directly contrary to the answers he gave to Mr. Yorke, but he is now giving answers again directly contrary to the answers to me. I thought it might be an opportune moment, my Lord, to have the note checked to see if my recollection is correct. Certainly when the court rose that evening I asked my learned junior Mr. Fung and I asked Mr. Yorke, whether or not I had secured that admission and they both said to me. ‘Yes, you have.’

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COURT: You say it is on the second day of your cross-examination?

MR. CHING: I think it is the second day.

COURT: Do you remember it was in the forenoon or afternoon?

MR. CHING: Late in the afternoon.

MR. SWAINE: I think it was the cross-examination by Mr. Yorke.

COURT: According to my notes, Mr. Ng said, ‘I look at Page 47’ – he says . . .

20 MR. CHING: 47 was on the point I think of the beneficial ownership of the shares.
No, I am sorry your Lordship is quite right.

COURT: He says he looks at page 47 and then he goes on to say in the next sentence:—

“I knew at all material times HO Chung-po was 1st defendant’s nominee in Asiatic Nominees.”

MR. CHING: It is quite right, my Lord, that is the exact passage to which I refer.

COURT: Then he went on to say:—

“‘When I bought the 15 million shares from the CHOWS, I knew there was no claim against it’. Then I asked him whether he suspected and he said he did.”

30 MR. CHING: He went on to something else after that. My Lord, of course I cannot stop my learned friend re-examining and getting a contrary answer. I just keep wondering the purpose in getting contrary answers in this way. My Lord, my real purpose is to ascertain whether my memory is correct and your Lordship’s notes have borne out my memory.

MR. SWAINE: My Lord, ‘at all material times’ date the question, because what is

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material when Mr. Yorke questioned Mr. Ng, his question was HO Chung-po has acted throughout as nominee, and his answer was, 'I did not know that in 1976' but he knew it later. Again the word 'throughout' dates the question and I think the matter was clinched when the reference was made to HO Chung-po's affidavit where that makes it clear that HO Chung-po acted as agent until CHOO Kim-san jumped bail.

COURT: I am sorry, that perhaps is more a subject of comment in your final address.

10.45 a.m. Witness returns to court.

D.W.2 – David NG Pak-shing – On former oath

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REXN. BY MR. SWAINE (Continues):

Q. Mr. Ng, moving to another point, Mr. Yorke had put to you that the deal was for you to get CHOO Kim-san's shares in a manner that was largely self-financing and then to wash these shares through various companies, do you remember that question?

A. Yes.

Q. And it was further suggested that these shares were to be got from CHOO Kim-san or his agents. Now your answer was that you agreed that you had purchased shares from Mr. CHOO or Mr. CHOO's people and when you said Mr. CHOO's people you meant his nominees – do you remember that answer?

20

A. Yes.

Q. Wait for the question.

Q. Now what people and what nominees did you have reference to as part of your evidence?

A. Well I used that phrase because Mr. Yorke had used that phrase in his question. He used the phrase as 'those people of CHOO Kim-san or his nominees or agents.'

Q. Now what you did not agree with was the washing of the shares, according to your knowledge of English that is the way you put it?

A. Right.

30

Q. Now is then the position that you were accepting Mr. Yorke's hypothesis as to Mr. CHOO or his nominees, and on that hypothesis disagreeing with the washing?

A. Yes.

Q. In fact did you buy any of the shares from Mr. CHOO or Mr. CHOO's people or nominees?

A. No, I don't think so – Mr. Yorke said that he thought those people were CHOO Kim-san's people and I said that those people were not Mr. CHOO's people or his nominees.

Q. The evidence you have given, Mr. Ng, that at the beginning you certainly suspected Mr. CHOW to be CHOO Kim-san's nominee.

40

A. Yes.

Q. But progressively as you dealt with him, you came to the conclusion that he was acting for himself?

- A. Yes.
- Q. You, of course, speak only as to your own knowledge?
- A. Yes.
- Q. Mr. Yorke questioned you about the 30th of March option agreement with M.A.F. Corporation – that is document 18 in Yellow 1 – I don't think you need look at it Mr. Ng, and you remember his putting to you that the Clause 2 provision which was for M.A.F. to sell at your option up to 6 million shares in San Imperial would make sense if that agreement had been entered into in October 1976. Now you have given evidence that you first got together with Mr. HO Chapman and Mr. Ives in November of 1976 and again in December.
- 10 A. Yes.
- Q. Is there any possibility that you entered into the option agreement dated 30th of March, 1977 in October 1976?
- A. No.
- Q. Indeed on the accounts, P.14, page 19, we know that M.A.F. Corporation was buying shares up to the 3rd of November, 1976.
- COURT: Up to when?
- MR. SWAINE: 3rd of November – P.14.
- COURT: Why do you say 3rd of November?
- 20 MR. SWAINE: My Lord, that was the last entry on page 19.
- COURT: But there were further purchases after that.
- MR. SWAINE: That even makes it better from my point of view – I haven't looked at the next page – up to the 29th of November – my Lord, I am very much obliged.
- A. Yes.
- Q. Do you remember also saying that the date on the option agreement was put down by the solicitors?
- A. Yes.
- Q. Now in your own mind was this before or after the 23rd of March agreement was concluded with CHOW and HWANG?
- 30 A. After.
- Q. And was it before or after the registration of the Fermay shares and the 2.165 million shares purchased in Taiwan?
- A. After.
- Q. Indeed if the 15 million shares had failed the examination by the registrar and not registered in the name of Fermay would you have made the option agreement with M.A.F.?
- A. No.
- Q. There would be no point then in getting shares from M.A.F.?
- 40 A. Yes.
- Q. And no point in putting up the 50,000 option fee?
- A. Yes.

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Q. Now you remember it was put to you that after the 30th of March agreement the Syndicate virtually withdrew from the market. Now would you look at Yellow 2, page 135 – perhaps if you have got a pencil and a piece of paper handy – on the first of the lists at page 2, the Syndicate bought shares between the 12th of April and the 17th of April, do you see that – last three days on the 12th, 14th and 15th of April. Correct me if my arithmetic is wrong, but does that total 86,000 shares?

COURT: I am sorry – what dates?

MR. SWAINE: It is page 2 of the first list that there are purchases on the 12th of April, the 14th of April and the 15th of April – my Lord these purchases I have added up as being 86,000. 10

A. Yes.

Q. Then list No. 3, all these are after the 30th of March, do you see that – list No. 3 – that is 75,000 shares – would you put that down?

A. Yes.

Q. List No. 4 – that commences on the 22nd of April – that is 77,000 shares?

A. Yes.

Q. List No. 5 – you explained was all acquired during the suspension period, that is 372,800 shares?

A. Yes.

Q. And these four sub-totals give a total of 610,800. 20

MR. CHING: How much?

MR. SWAINE: 610,800.

A. Yes.

Q. And added to that is the 329,400 shares bought privately during the suspension period. Now that gives 940,200 shares bought after the MAF option agreement.

A. Yes.

Q. And these went towards the 8m. package delivered to IPC.

A. Yes.

Q. Now you will remember that one of the theories put to you by Mr. Yorke was that CHOO Kim-san endeavoured to protect HO Chung-po by making it possible for HO Chung-po long beforehand to sell 3m. odd shares in San Imperial at 1.50 a share. Now that of course, is no more than a theory, but if that theory be correct, do you see any reason why HO Chung-po and CHOO Kim-san should have stopped at 3.2m. shares? Do you see any reason there ought not to have been more than 3.2m. shares so as to give HO Chung-po a profit? 30

A. No.

Q. Can you see any reason why the one theory is better than the other theory?

A. No.

COURT: 3.26m. 40

Q. All right, Mr. Ng in fact, this question I think I can ask you, even though it

involves Mr. Yorke's theory, but an essential part of that theory was that CHOO Kim-san, in order to protect HO Chung-po did not wish the books of MAF Credit to show a book loss on the existing San Imperial shares, the existing shares being at 2.15m. In your experience, Mr. NG, is it common for companies to carry a book loss?

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A. Yes.

Q. One of the points made by Mr. Yorke in cross-examination was that there would be no criminal offence on the part of CHOO Kim-san for simply failing to hand over to MAF the shares which were registered in the name of Asiatic and which he held in trust for MAF, can you remember that?

No. 40

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A. Yes.

Q. That point was made in the context of your evidence that there had been police influence. Now if CHOO Kim-san had fled to Taiwan with certificates which he held upon trust for MAF, would that to your mind be criminal?

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A. Yes.

Q. And was that what you had in mind as to the possible criminality of CHOO Kim-san, had it not been for the police pressure?

MR. CHING: Leading, my Lord.

MR. SWAINE: Very well. I think the point is self-evident.

20 Q. Yes, one point has puzzled Mr. TANG and myself. Mr. NG, we are not sure if we understood you correctly. You remember saying that there had been a cheque made of the certificates in the name of Asiatic but beneficially belonging to MAF Corporation and the cheque you said was made by the auditor.

A. Yes.

Q. Now you said there had been a fiscal or a physical cheque. You said it – was it in English (after hearing the witness explain in Puntì) “physical”?

A. Physical meaning physically counted.

Q. Do you recall when that physical cheque was made?

A. At the time of the auditing, they must be counted by the auditors.

30 COURT: Each year?

A. Each year, this is the work for the auditors. They must count the numbers.

Q. So your answer is really based on your knowledge of their practice rather than the actual facts of this case?

A. Yes.

Q. And in whose physical presence would the auditors expect to find the certificates – the physical possession, I'm sorry.

A. They should be in the company and they should be counted by the auditor and a man of the company together.

Q. In this case, the company being MAF or Asiatic?

40 A. It should be MAF Company.

Q. So if the auditors had done their jobs, these certificates would have been physically verified to have been with MAF at all times.

MR. CHING: I'm sorry. I don't understand.

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- Q. If the auditors had done their jobs, these certificates would have been physical-ly in the possession of MAF at all times (after being spoken to by Mr. CHING) – all right, at the time of the audit.
- A. Yes.
- Q. Now Mr. Yorke put many questions to you concerning page 12 of Exh. P14 which is the ledger card of MAF Corporation in San Imperial. Now Mr. NG, do you remember my asking you for this card while this case was in progress?
- A. Yes.
- Q. And do you remember whether you were able to give it to me within a day or two? 10
- A. No, I tried to find it for many many days.
- Q. And where did you finally find it?
- A. Amongst the dead cards.
- Q. Dead cards, and in fact this card is stamped with the chop “ceased”?
- A. Yes.
- Q. And this card would not have been available among the current records of San Imperial?
- A. That’s right.
- Q. Was there any question of your withholding this card from the plaintiffs?
- A. No, I can tell you the actual situation. In May, the JSM and Deacons went to the registrars to try to find it and how they did it I don’t know. In June and July Mr. Simon IP told me that he wanted the documents in respect of the Asiatic Nominees and the Triumphant Nominees. Then I made an appointment with him. Of course I can’t remember now. I said that I would meet him at 2.30 and I would go with him to try to find it together, but Mr. Simon IP said that he would not be free at 2.30 but he would be free at 4 or 3.30, but I was busy at that time. Then he said that he would go and do the job by himself. Then I telephoned him and asked him if everything was all right and if he had already found it. Then he said, “All right. You are not required. Thank you.” And I can remember that on the second occasion Mr. Wilson came again and looked for the same thing. I can remember that it was at about the lunch hour. 20
- Q. Yes, all right. Mr. NG, I know that from this outpouring you are obviously very aggrieved that it was put to you that this card was deliberately withheld.
- A. Yes.
- Q. You are saying that you have given to the plaintiffs and their legal representa-tives every facility for search.
- A. Yes.
- Q. And at my request, you then spent days searching through the dead records.
- A. I instructed my members of the staff to look for that card amongst the dead cards for three or more days. 30
- Q. Yes, and when you handed me these cards, did you also hand me the San Imperial ledger, the big blue book?
- A. Yes.
- Q. The transfer –.
- A. The transfer ledger, sir.
- Q. And had that been asked for or did you produce it gratuitously.
- A. The plaintiffs never asked me to produce it. I produced it on my own initia-tive. 40

- Q. And you showed it to me explaining that that would help to explain the entries and the cards by cross reference. Supreme Court of Hong Kong High Court
- A. Yes.
- Q. And that was done purely voluntarily?
- A. Yes. Defendant's Evidence
- Q. Well one point I ought to clarify, going back to where I cut you off, Mr. NG. Did anyone from the plaintiffs specifically asked for the blue card in question, that is the MAF share card in San Imperial (to interpreter:) MAF Corporation? No. 40
- A. No one has ever said that he wanted this blue card.
- 10 (Interpreter: that is P12 in Exh. P14) David Ng Pak Shing – Re-examination
- Q. Now page 21 of the same bundle. P14, the two entries there dated the 14th of June showed payments to MAF Corporation of the \$4.839m. in respect of the 3,226,000 shares. Do you remember that?
- A. Yes.
- Q. And it was put to you that you caused the MAF ledger entries to be forged. Is there any truth in that suggestion?
- A. No.
- Q. And you were trying to explain the setting off of one date by another date, do you remember?
- 20 A. Yes.
- Q. The position was that the syndicate owed 4.839m. to MAF Corporation.
- A. Yes.
- Q. MAF Investment owed Oceania \$6m.
- A. Yes.
- Q. By arrangement the syndicate paid Oceania 4.8m.
- A. Yes.
- Q. As a result of this process MAF owed Oceania – did not owe Oceania any further 4.8m.
- A. Yes.
- 30 Q. In the event, did Oceania go against MAF for the 4.8m.
- A. Not to my knowledge, sir.
- Q. And the 4.8m. cheque replacement, that was between the syndicate and Oceania, is that right?
- A. Yes.
- Q. Now Mr. Yorke put certain other theories to you in the course of his cross-examination, Mr. NG, and one of the theories was that HO Chung-po on the 30th of March handed over the certificates in respect of the shares purchased in Taiwan and that a large sum of money was paid to HO Chung-po or CHOO Kim-san before the shares were handed over, do you remember that?
- 40 A. Yes.
- Q. Your answer was that "I don't know."
- A. Yes.
- Q. Did, on what you do know – did anyone pay a large sum of money or any money to HO Chung-po or CHOO Kim-san for the release of the certificates?
- A. No.

COURT: What do you mean "no"? You know it.

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- A. According to my knowledge, sir, no one did that.
- Q. But if \$10m. had been paid to HO Chung-po or CHOO Kim-san, there wouldn't be a garnishee order, would there? That's a comment. Another theory put to you by Mr. Yorke was CHOW and HWANG were prepared to sign over control of Fermay because they were going to be paid on behalf of CHOO Kim-san before the shares were registered in the name of Fermay, can you remember that?
- A. Yes.
- Q. Your answer to that was "I don't know the actual position." But as to what you do know, did anyone make payment to CHOW and HWANG on behalf of CHOO Kim-san? 10
- A. No.
- Q. One further theory of Mr. Yorke's related to page 14 of P14. You will remember his suggesting that the shares in the sixth column totalling 843,000 shares was there for a sinister purpose in order to hide the figure of 2.15m. shares.

COURT: 2.157.

- Q. Your answer was you don't know. You were asked whether you had asked HO Chung-po and your answer was no. Now you have said that you were kicked out of MAF Credit as from the beginning of this month. You also said that HO Chung-po had been relieved of his appointment as a director of MAF. 20

COURT: Credit.

- Q. Credit. But you went on to say that he was still employed by MAF Credit.
- A. Yes, after I left, sir, he still worked in the Fermay.

COURT: He ceased to be a director on the same day as you.

- A. On the same day.
- Q. He still works for MAF Credit and by whom is he employed there?
- A. Those people in Brunei, MBF, Brunei.
- Q. One other theory that Mr. Yorke put forward related to his chart P12. You will remember his putting forward the theory that CHOO Kim-san had split the shares into two lots and kept them separate until the 29th of March. 30
- A. Yes.
- Q. And that putting them together on the 29th of March gave the holder effective control. Now we have already ascertained that the number of shares the syndicate bought in the open market and privately in Hong Kong after the 30th of March came to over 900,000.
- A. Yes.
- Q. And the number being 940,200.
- A. Yes.
- Q. Now we know that there remains outstanding beneficially in CHOO Kim-san a number of shares in the name of Triumphant and a number of shares in the name of Asiatic. And would you take it from me that the plaintiffs have got a charging order nisi against Triumphant in respect of 400,000 shares said to be beneficially owned by CHOO Kim-san and a charging order nisis in respect of 40

422,560 shares in the name of Asiatic. I am going to ask you what you may think a silly question, Mr. NG, but it is in answer to Mr. Yorke's theory: have you or your syndicate obtained these 400 and 422,560 shares?

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A. No.

Q. And these shares totalling over 800,000 would be held towards getting effective control.

Defendant's
Evidence

A. Yes.

Q. But you have not got them?

No. 40

A. No.

10 Q. You will remember giving evidence in-chief that the letter yellow 2, 132 bearing the date the 17th of June, 1977 – was incorrectly dated and you said the correct date should have been the 27th of June, 1977.

David Ng Pak
Shing –
Re-examination

A. Yes.

Q. Now would you look at yellow 4 which is the further bundle of the 10th defendant at page – I'm sorry, it is document 44, and page 132, my Lord. Now you see that is Oceania Letter to Bentley dated the 27th of June, 1977:

“We confirm our verbal discussion with you and shall be glad if you will kindly cancel the above mentioned cheque.”

– that is, the \$4.8m. cheque –

20 “and re-issue cheques to us payable to Messrs. Hong Kong Estates Ltd. totalling \$4,800,000.”

Do you see that, Mr. NG?

A. Yes.

Q. And then if you look at 132, it says very much the same thing:

“Confirming our telephone conversation with your Mr. Coe and as agreed we have pleasure in enclosing herewith as below our cheques payable to Hong Kong Estates Ltd.”

– for 4.8m. Is this the same verbal discussion or telephone conversation that is referred to in both letters?

30 A. Yes.

Q. You will be glad to hear that I am now on the last afternoon's cross-examination, Mr. NG. It was put to you that the highest amount that James COE was out of pocket was \$12m. That is for the period before the commencement of the trial of this action and Mr. Yorke was disregarding payments made after the trial had commenced. Now the payments made after the trial I shall deal with at a proper time, but Mr. Yorke put to you that the \$12m. was less than one-third of the money ultimately payable on the purchase, do you remember that?

A. Yes.

40 Q. But as regards the 8m. shares and the option fee payable by James COE the money actually owing was \$19m., is that correct?

A. Yes.

Q. So that for the period prior to the commencement of the trial James COE

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Evidence

No. 40

David Ng Pak
Shing –
Re-examination

had paid \$12m. out of 19.

A. Yes.

Q. Now one further theory of Mr. Yorke's I shall deal with relates to the chart P21. You will remember this. And you see the circle at the left-hand half.

COURT: I have marked those circles. Everybody does the same thing? Oh yes, that has been done, A, B, C, D, E. If everyone does the same thing it is easier, I think, and that square is J.

Q. Now circle D. Now that contains an essential part of Mr. Yorke's theory and he put it to you as such, namely, between the 28th and the 30th of March, the syndicate had now effective control over San Imperial and could procure future agreements, do you see that? 10

A. Yes.

Q. But we know that after the 30th of March, the syndicate had to buy 940,200 shares in the Stock Exchange and also privately in Hong Kong.

A. Yes.

Q. Would the syndicate have done that if it was unnecessary? (after hearing a part of the witness' answer in Punti) Yes, if it was enough.

A. No, no.

Q. And the 30th of March agreement which eventually yielded 3,226,000 shares, that number by itself was not sufficient? 20

A. That's right.

Q. Now Mr. Yorke cross-examined you about Siu King Cheung purchasing Oceania from San Imperial during June of this year, do you remember?

A. Yes.

Q. And the consideration for that purchase was Siu King Cheung issuing to San Imperial 7m. new shares at a dollar each.

A. Yes.

Q. You were then chairman of San Imperial.

A. Yes.

Q. Did you consider that San Imperial got value for selling Oceania? (to interpreter) Sorry, did you consider that San Imperial got good value for the sale of Oceania? 30

A. Yes.

Q. And did you consider the 7m. Siu King Cheung shares to be good value?

A. Yes.

Q. Do you know what the dividend was last year for Siu King Cheung?

A. To my memory, I think it was 11 cents and bonus share one for ten.

Q. Do you know what the dividend is for this year?

A. 13 cents.

Q. And is that 13 cents payable on the bonus issue of last year? 40

A. Yes.

Q. And what is your expectation as regards Siu King Cheung dividends for next year?

A. At least it would be the same as this year, sir.

Q. And would it be payable on the increased capital?

A. Yes.

Q. So that the 7m. shares issued to San Imperial ought, if your expectations are

- realized, to yield at least 13 cents dividend next year?
- A. Yes. Supreme Court of Hong Kong High Court
- Q. Apart from the Bangkok Hotel property, did Oceania own any other assets?
- A. Not to my knowledge.
- Q. And to your knowledge, that is the only asset? Defendant's Evidence
- A. Yes.
- Q. And do you know at what value the Bangkok Hotel property was carried in the books of Oceania when it was a subsidiary of San Imperial? No. 40
- A. It seems \$5m.
- 10 Q. But your memory, I am advised, is correct. You were getting in exchange for the book value of \$5m., 7 million new shares of Siu King Cheung. David Ng Pak-shing – Re-examination
- A. Yes.
- Q. And is that increment of 2m. reflected in the accounts of San Imperial?
- A. Yes.
- Q. And as a result of that \$2m. increment, has San Imperial been able to show a profit this year?
- A. For the accounting, this is a capital gain, but I believe there is a profit.

COURT: So the books of San Imperial would show a capital gain of \$2m.

- A. Yes.
- 20 Q. My last question for you, Mr. NG. You will remember there was considerable questioning about your \$1m. share account with Mr. James COE.
- A. Yes.
- Q. And you have maintained that the \$1m. was not a loan from James COE.
- A. Yes.
- Q. And you gave us one reason, the fact that this \$1m. did not attract interest.
- A. Yes.
- Q. Whereas the \$3.8m. which you borrowed from James COE did attract interest.
- A. Yes.
- 30 Q. From the point of view of this case, does it give you any advantage to say that you borrowed \$3.8m. from James COE rather than \$4.8m.? Does it make any difference (to interpreter) for this case?
- A. No.

MR. SWAINE: I propose calling Mr. Chapman HO.

D.W.3 – HO Chapman (6th Defendant) – Affirmed in English

Ho Chapman – Examination

XN. BY MR. SWAINE:

- Q. Your name is HO Chapman?
- A. Right.
- Q. And you spell Chapman as one word, C-H-A-P-M-A-N?
- A. Yes.
- 40 Q. And for the record, Mr. Ho, you are the 6th defendant in this case?
- A. Yes, I know.
- Q. Mr. Ho, I understand you have a hearing defect, is that right?
- A. Right. I was wounded in the war.

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of Hong Kong
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Evidence

No. 40

Ho Chapman –
Examination

- Q. And we have all therefore to keep our voices up so that you are able to . . .
- A. No, it just affects me off and on, that's all.
- Q. Now you live at 3B Tak Shing Terrace, 1 Cox's Road, in Kowloon?
- A. Right.
- Q. You are now semi-retired, but you still involve yourself in business if there is a worthwhile project?
- A. Yes.
- Q. Now I am going to hand to you, rather than have you tell us which will take some time, a list of the companies in which you still maintain an executive position plus the companies in which you used to but do not now hold executive positions of importance. 10
- A. Yes.
- Q. Would you look at the list and verify this to be correct, please? This will be D.10. Now the top list are the companies in which you still maintain an executive position.
- A. Right.
- Q. And the position is that in the last column, you are chairman of all the companies listed except for the last which is in New York, and in the case of that company, you are a part owner? 10
- A. Right.
- Q. Your interests relate to Hong Kong and also to Vancouver in Canada, to Penang and also to New York?
- A. Yes.
- Q. You estimate the market value of your holdings in these various companies to be about 14½ million dollars?
- A. Yes, approximately.
- Q. And in addition, you have properties, fixed deposits and other assets totalling about 7½ million dollars?
- A. Yes, approximately.
- Q. Now just a word about the 4th company in that list, namely, Ho Chapman & Associates Ltd. Now that, I understand, is the central administrative office for all your various interests. 30
- A. Right. All the correspondence are directed to there, so I can oversee the whole thing.
- Q. I think you have got to keep your voice up for us too, Mr. Ho.
- A. Okay.
- Q. You have to establish a certain tempo in court . . .
- A. All right.
- Q. . . . which is to speak very slowly so that counsel can take down what you say and you have got to be loud enough so that we can all hear you, all right? 40
- A. Okay.
- Q. You maintain an office at Mohan's Building, 14-16 Hankow Road on the 4th floor, is that right?
- A. Yes.
- Q. And you share a suite or suites with Mr. David NG and you have two out of the five rooms?
- A. Yes.
- Q. But being semi-retired, you are able to put in an afternoon's work only?
- A. Usually.

- Q. Now prior to your going into semi-retirement, you were Managing Director of the Imperial Hotel Holdings Ltd.?
- A. Yes.
- Q. That's the first of the second list. And you were also President of the Singapore Sheraton owned by the Consolidated Holdings Ltd.?
- A. Yes.
- Q. Now in connection with that company, did you hold a Power of Attorney from Mr. Harilela?
- A. Yes.
- 10 Q. Would you look at this and identify the original, Mr. Ho?
- MR. SWAINE: (To Clerk) Put in the copy, please, D.11, and the receipt which is the first page, I suppose that could be D.12 and D.12A.
- COURT: They are altogether, are they?
- MR. SWAINE: Yes.
- COURT: It's the same bundle?
- MR. SWAINE: It's the same bundle.
- COURT: We call it exhibit D.11, starting from the first page, A, B, C.
- Q. You have been very closely associated with Mr. Harilela, have you not, Mr. Chapman HO?
- 20 A. I was his partner.
- Q. You were his partner, and he had appointed you his attorney by this Power of Attorney dated the 30th of June, 1972?
- A. Yes, this is the last one before I retired.
- Q. And before that, had he appointed you as his attorney on a yearly basis?
- A. Yes.
- Q. And did you, pursuant to this Power of Attorney, receive on Mr. Harilela's behalf from Johnson, Stokes & Master \$29,088,000 being the top sheet of that bundle?
- A. Yes.
- 30 Q. This was in respect of the Singapore Sheraton?
- A. It was a deal that we concluded with Johnson, Stokes & Master about selling our controlling shares of this consolidated hotel in Singapore, that's the controlling interests.
- Q. The sale was put through Messrs. Johnson, Stokes & Master, is that what you are saying?
- A. Yes, in Hong Kong.
- Q. Now I want to deal with your connection with the Imperial Hotel in Kowloon.
- A. Yes.
- Q. Let me take this back. Is it correct that your family had owned one-third of the land on which the Imperial Hotel is now erected?
- 40 A. Yes.
- Q. And did you in 1957, together with another group, form a company called the

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of Hong Kong
High Court

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Evidence

No. 40

Ho Chapman –
Examination

Mann Yipe Developments Ltd. to develop a hotel and commercial complex on the site of the Imperial Hotel on a 50/50 basis?

A. Yes.

Q. And were you the Managing Director in charge of the whole development?

A. I was.

Q. The technique, Mr. Ho, is that I can ask you these leading questions until I come to something contentious and then you have got to give evidence without being led by me asking direct questions. Do you follow me?

A. Yes.

Q. So it's plain saying so far.

A. Yes.

Q. Now did the Mann Yipe Development Ltd. eventually sell – I am sorry. Did you then sell your interests in the project to the group headed by Mr. Harilela?

A. No, the whole Mann Yipe . . .

Q. The whole Mann Yipe was sold . . .

A. . . . and I keep part of it.

Q. You kept part of the share of the project?

A. Yes, with Mr. Harilela.

Q. And what was your share?

A. I hold about 10%.

Q. And did you continue to be the project director?

A. Yes.

Q. And was the hotel, on completion, leased to a Philippino group?

A. It was leased to a Philippino group.

Q. Was the management successful?

A. No.

Q. And did you subsequently become Managing Director of the hotel company during the management of the Philippino group?

A. No. After they failed, then we had to take over.

Q. And then you become a partner of Mr. Harilela in real estate business in Hong Kong and in other parts of the world?

A. Yes.

Q. Including Canada, Japan, the U.S., Singapore and Malaysia?

A. Yes.

Q. Now in 1971 did Mr. Harilela decide to go public?

A. Yes.

Q. Incorporating the Imperial Hotel Ltd. in a package for public listing?

A. Yes, it consists of five companies.

Q. Yes, that is the Imperial Hotel Ltd., Hong Kong Estates Ltd. What were the other three?

A. Imperial Restaurant Ltd., Imperial Court and another, Oceania.

Q. And the new public company was called the Imperial Hotel Holdings Ltd.?

A. Yes.

Q. The Chairman of the new company was Sir Sik-nin CHAU, Mr. Harilela was Vice Chairman and you were Managing Director?

A. Yes.

Q. Mr. Ives was a director?

A. Yes.

Q. And Mr. David NG was in overall charge of the accounts?

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- A. Yes, he was the group accountant or supervisor. Supreme Court
of Hong Kong
High Court
- Q. And you held about 10% of the total issued capital in the new company?
- A. Yes.
- Q. Now early in 1972 you decided to retire from the Imperial Hotel Holdings Ltd. because of the headaches the job of Managing Director was giving you, is that right? Defendant's
Evidence
- A. There was too much tension.
- Q. And did you consult Mr. Harilela about your wanting to retire? No. 40
- A. I told him repeatedly.
- 10 Q. And did Mr. Harilela subsequently sell his controlling interests to a group consisting of the committee members of the Far East Stock Exchange? Ho Chapman –
Examination
- A. He tried to have his brothers to learn for a few months and then finally he said, "They can't do it. We have to sell them." Finally it was sold to Mr. Ronald LEE and the group.
- Q. And did the Far East Exchange group subsequently sell their interests to CHOO Kim-san?
- A. Yes.
- Q. Do you recall when the hotel business was handed over to CHOO Kim-san?
- A. I beg your pardon?
- 20 Q. Do you remember when the hotel business was handed over to Mr. CHOO Kim-san?
- A. It started around June and ended on July 31 as far as management was concerned.
- Q. Did you personally supervise the handing over?
- A. I beg your pardon?
- Q. Did you personally supervise the handing over?
- A. Oh, yes.
- Q. Had you met CHOO Kim-san before this?
- A. No.
- 30 Q. You met him then for the first time because of the handing over?
- A. Actually he just came in one day and said, "I am C.K. San."
- Q. That's during the handing over?
- A. Yes.
- Q. Did he ever become a friend of yours?
- A. No.
- Q. Did you mix socially?
- A. No.
- Q. Apart from the handing over, did you have any business dealings with him?
- A. No, but he approached me several times.
- 40 Q. What was your answer?
- A. I said, "I don't want to have anything more to do with you."
- Q. "I do not want to have anything . . ."
- A. I don't want to have anything more to do with business any more, with him, in other words.
- Q. With him. Why was that?
- A. Precisely, I don't like his personality.

MR. SWAINE: My Lord, I shall now go into contentious evidence, it may be a convenient time to break.

COURT: Yes.

Mr. Yorke absent.

D.W.3 – HO Chapman (6th Defendant) – On former oath

XN. BY MR. SWAINE: (continues)

Q. Do you know Mr. James COE, Mr. Ho?

A. Oh, yes.

Q. How well?

A. Quite well, about 10 years ago.

Q. Do your wife and his wife have anything in common?

A. Well, his wife is a classical singer and so is my wife. 10

Q. Do you remember a particular occasion last year when Mr. James COE made an approach to you?

A. You must mean about some time in November?

Q. Yes, what happened?

A. He phoned me up, he said he was interested to buy the shares of C.K. San.

Q. And do you know why he approached you?

A. I presume he must have a good reason because of my previous – all the connections I had with the Imperial Hotel.

Q. And at that time did you do anything about it?

A. I told him I had no more connection with the Imperial Hotel for some time – 20
a few years.

Q. For a few years?

COURT: For some years.

Q. And after that did someone else speak to you about the same topic?

A. Oh, no, not right away.

Q. When?

A. It was some time, I think, in the early part of December, Mr. Ives phoned me up concerning that one gentleman by the name of Mr. Coe who wanted the shares, or rather, he mentioned about controlling shares and asked me if I knew anything about it. I said . . . 30

Q. Slowly. You have got to wait for his Lordship to write this down.

A. I'm sorry.

Q. Controlling shares of what company?

A. Pardon?

Q. Controlling shares of what company?

A. Of San Imperial.

Q. What else did Mr. Ives say to you?

A. Well, he asked whether I knew of any more about this thing or the possibilities also.

Q. So what did you do? 40

A. I said, "If it's James COE, he has already phoned me quite some time ago, but I did not give him anything definite or answer at all."

Q. Slowly. Yes?

- A. Then the matter was just left alone with Mr. Ives stopped calling me after that and I have been thinking – afterwards I had a few words with David NG. I said, “What about the shares of San Imperial that might have been still around with C.K. San?” He said he didn’t know so much, but he would find out. Supreme Court of Hong Kong High Court
- Q. Then what happened? Defendant’s Evidence
- A. Then Mr. Ives phoned me again some time after that. I don’t exactly remember how many days after. He said James COE phoned him again.
- Q. Yes? No. 40
- 10 A. So I told Mr. Ives, “Maybe he is really serious, and if he is really serious, then I will really look into the matter.” Ho Chapman – Examination
- Q. Yes?
- A. Then I had more discussion with David NG and I told him to keep his eyes open and find out exactly what happened to the shares. Then he said he would make a search and find out more details.
- Q. Yes?
- A. Then after that, I think we had a meeting one day some time after – I would say, around the middle of December, we had lunch together.
- Q. You say “we”, who is “we”?
- 20 A. Mr. Ives, David NG and myself. I asked David NG what did he find out, he said he had discovered through a search there were around 17,000,000 shares in the name of Asiatic Nominees which would probably belong to C.K. San.
- Q. Yes?
- A. Then I said, “If this is the case, I think the most important thing for us to find out is, ‘Can we lawfully deal with C.K. San?’ ”
- Q. Yes?
- A. Of course I referred this matter to Mr. Ives. Mr. Ives said he would look into it. Then I said, “I think it is more advisable if Mr. Ives will try right away, as soon as possible, first try to find out all by himself, then get London counsel’s opinion.”
- 30 Q. All this was at the lunch, is that right?
- A. Yes.
- Q. The discussions. What else was discussed?
- A. The next thing we think is how to find, locate C.K. San as he has absconded from Hong Kong, and that is known by everybody.
- Q. He has absconded by jumping bail in October?
- A. Yes. It was all published in the papers.
- COURT: Perhaps it will be easier, Mr. Ho, if you look at me, then you can watch my pen . . .
- A. Yes, I think I’d better do that.
- 40 COURT: . . . to save you the trouble of having to look at Mr. Swaine and then myself. Just watch my pen.
- A. I will do that.
- COURT: Yes, carry on.

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A. Thank you.

Q. So the problem was to find C.K. San?

A. Yes. Then I think David suggested he might be in Thailand because it was rumoured.

Defendant's
Evidence

Q. That C.K. San might be in Thailand?

A. Might be in Thailand.

Q. Yes?

No. 40

A. Then it was suggested he should first go to Thailand. In any case, he was supposed to go for a holiday with his family.

Ho Chapman –
Examination

Q. Yes?

A. Then I think Mr. Ng left Hong Kong just before Christmas.

Q. Before we leave the luncheon meeting, Mr. Ho, was there any other place that was discussed as being a possible place which C.K. San might have gone to other than Thailand?

A. I have no idea.

Q. Yes, but from what you gathered from the newspaper, other sources?

A. Oh, I am sorry, I got the wrong impression.

Q. Thailand was one place that was rumoured?

A. The other place is Taiwan.

Q. So Mr. Ives was to look into the law, Mr. David NG had already made a search and he was going to try to find C.K. San. What were you supposed to do? 20

A. It was arranged that I would be looking for buyers of these controlling shares and to make, secondly, advances of more cash to be settled in the end. I would probably be responsible for more cash.

Q. Now then do you know whether David NG went to Thailand after all?

A. Oh, he did. I think he left just before Christmas and came back on the 29th just before the New Year.

Q. Did he speak to you?

A. Yes, he said he couldn't find him.

Q. And did he leave Hong Kong again? 30

A. He told me – he said he had planned immediately to go to Taiwan.

Q. Did he go to Taiwan?

A. He left the next morning or afternoon, anyway the next day, that's the 30th.

Q. Was he in touch with you after that?

COURT: After what?

MR. SWAINE: After that.

COURT: After what step?

MR. SWAINE: After the 30th, after he had left Hong Kong.

A. Only after he returned to Hong Kong.

Q. And we know that New Year's Eve, 31st, was on a Saturday, New Year's Day was a Sunday. Have I got that right? 40

A. No, I think . . .

Q. I am sorry. New Year's Day was a Saturday.

A. Saturday was the New Year's Day.

- Q. Monday was the 2nd.
A. Monday? No, Sunday.

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of Hong Kong
High Court

COURT: New Year's Day was a Saturday.

Defendant's
Evidence

- A. New Year's Day was a Saturday because we had the races.
Q. Do you recall what date it was that David NG spoke to you after his return?
A. Monday. No. 40
Q. That would be the 3rd of January?
A. It should be.
Q. What did David NG say to you?
10 A. He said he tried to get in touch with me, but he had to go to the races first and that was the day he came back, that was Saturday, and then Sunday I was out and he couldn't get in touch with me. Then he phoned me on Monday morning.
Q. Yes?
A. Then he said he had a lot to tell me, so I told him, "I'll come up to the office in the morning right away." In the office he said he found 15,000,000 shares had fallen into the hands of one Mr. Chow and his wife.
Q. Did he say how they had fallen into the hands of Mr. and Mrs. Chow?
A. Yes, he told me.
20 Q. What did he say?
A. He told me he met C.K. San somehow, and through C.K. San he was able to get in touch with this Mr. Chow and then they started talking about the shares, and this man Mr. Chow said he had bought the shares from C.K. San and he said, "From now on you talk to me."
Q. What else did David NG tell you?
A. He said this Mr. Chow had not exactly expressed complete willingness to sell, but he was almost certain that he would sell, and he said Mr. Chow asked him a lot of questions about Hong Kong hotel industry as a whole and about San Imperial Hotel in particular and expressed more or less he could consider, but never mentioned any price.
30 Q. Consider selling? Consider what?
A. Consider selling.
Q. This was at the office?
A. Yes, that's at my office and his office. We share the same office.
Q. Was Mr. Ives present?
A. No, Mr. Ives wasn't there.
Q. Did you tell David NG to do anything?
A. Yes. I said, "If it's only 15,000,000 shares, it's far from being the controlling interests." So I said, "The value of the whole scheme and people looking for it will be the controlling interests."
40 Q. Slowly.
A. Yes. So I said, "We have to start buying from the market immediately but tactfully."
Q. What was the price of the San Imperial shares in the market at the beginning of January?
A. On that very morning it was around 30¢, but I believe the first lot we bought was just less than that, slightly less than that.

Ho Chapman –
Examination

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Ho Chapman –
Examination

- Q. Were you not afraid to buy the shares in the market if in the end you couldn't buy the 15,000,000 shares in Taiwan?
- A. Not particularly because the price was very very cheap compared to – as the backing value.
- Q. After this did you see Mr. Ives?
- A. Not the same day.
- Q. When?
- A. The next day. David told me he had phoned up already Mr. Ives, but Mr. Ives was busy that day and had to make arrangement for a lunch meeting on the following day. 10
- Q. Then Mr. Ives was put in the picture?
- A. Yes.
- Q. Now we have been referring, for convenience, to the three of you as a syndicate, Mr. Ho. When, in your mind, did the syndicate really start moving? When do you think the syndicate came into being?
- A. I think it started that afternoon after lunch.
- Q. Now one point I want to make clear. David NG went to Thailand and then to Taiwan to look for C.K. San in order to find his shares?
- A. Yes.
- Q. If he had come back saying that the shares were still C.K. San's, would you still have been interested? 20
- A. Of course. Of course, I said, provided the law allows it.
- Q. At that lunch meeting, did the three of you consider any particular problem concerning the 15,000,000 shares?
- A. There were lots of problems.
- Q. Yes?
- A. And I think the most important problem confronting us is the authenticity of the shares and, of course, the price if he is willing to sell.
- Q. If who is willing to sell?
- A. Chow. 30
- Q. Now we shall have to deal with these problems at the appropriate time in your evidence, Mr. Ho, but as regards the price, did the syndicate form any view as to the top price they would be prepared to pay for the 15,000,000 shares?
- A. Definitely. The top price was 60¢.

COURT: You were prepared to go up to 60¢?

- A. The maximum.
- Q. How did you come to fix that price?
- A. You see, not only we have to think of making money . . .
- Q. Slowly.
- A. . . . my concern was how far are we prepared to lose. Suppose we are stuck, then we know where we stand. 40
- Q. When you say suppose you are stuck, what does that mean?
- A. Suppose the buyer, say at that time, say Jimmy COE, being really materialized, then we have ourselves in our hand \$9,000,000 to spend on 15,000,000 shares and we are stuck with that, but on that amount it's okay.

COURT: But on 60¢ it will be okay?

- A. I think so, my Lord. Supreme Court
of Hong Kong
High Court
- Q. Was the 60¢ fixed at that meeting on the 4th or only later?
- A. I think it's – not on the 4th. Well, we were discussing generally. It was fixed later.
- Q. And before you fixed the 60¢ as being a top price, had you yourself done anything about finding a possible buyer? Defendant's
Evidence
- A. The first man who approached me was James COE. Then came several others.
- Q. Did they approach you or you them? No. 40
- A. It's surprising, they all approached me.
- 10 Q. It's the Hong Kong grapevine? Ho Chapman –
Examination
- A. Pardon?
- Q. The Hong Kong grapevine. Sorry, do you know the expression?
- A. I am sorry.
- Q. There were just more rumours in Hong Kong . . .
- A. Maybe so. I suppose so.
- Q. Who were the persons approaching you?
- A. The first man is Mr. Y.Y. CHING, the brother-in-law of Sir FUNG Ping-fan.
- COURT: Brother-in-law of who?
- A. Brother-in-law of Sir FUNG Ping-fan.
- 20 Q. Yes?
- A. And the second man is Mr. T.T. SHU, the ex Deputy Chairman of Dah Sang Bank, but he told me . . .
- Q. Mr. Ho, I don't think we want you to tell us what he told you.
- A. Sorry.
- Q. Anyone else approached you?
- A. And also Sun Hung Kai, Mr. FUNG, FUNG King-hee himself assigning eventually Mr. Paul LAM.
- Q. To talk with you?
- A. To discuss further.
- 30 Q. And apart from these gentlemen, were there other approaches?
- A. There was a couple of others but all through brokers whom I refused to talk to.
- Q. Then your ceiling of 60¢ was fixed having regard to all these factors, possible profit, possible loss if the buyers did not materialize?
- A. Yes.
- Q. Now you have said that the main problem was the authenticity of the 15,000,000 shares. Was anything done to help to resolve that problem?
- A. Well, we thought of many many ways and one of the ways was trying to get these shares mortgaged to a bank in Taiwan who might have a correspondent bank in Hong Kong . . .
- 40 Q. Slowly.
- A. . . . and then make this bank naturally a nominee and they will – the bank will probably send the shares to the Registrar to have them changed into their name, and then the authenticity by then we should be able to prove.
- Q. And was that done?
- A. Mr. David NG approached two banks in Taiwan.

Supreme Court
of Hong Kong
High Court

MR. CHING: My Lord, it is something I really object to because my hand is getting very tired. This must be hearsay evidence, we have had it from David NG already, must we write it down all over again?

Defendant's
Evidence

MR. SWAINE: It's not really essential to my case, my Lord. Although we could have an argument, a very fine argument as to admissibility, it is not essential to my case.

No. 40

Ho Chapman –
Examination

Q. Did you yourself do anything about approaching a bank or banks . . .

A. No.

Q. . . . or you left it entirely to David NG?

A. The whole thing was done by David NG.

10

Q. Now do you know whether David Ng subsequently visited Taiwan with a view to negotiating with Mr. & Mrs. Chow?

A. He made – he went many visits.

Q. And did he regularly report to you and to Mr. Ives about his visits?

A. Oh, he always tell me everything after he came back.

Q. According to his report was he making progress with Mr. & Mrs. Chow?

A. Eventually, yes.

Q. And about when would this be?

A. It must be some time – I would say some time in early March.

Q. And by early March had the price been agreed?

20

A. I think it was agreed finally some time between – I don't exactly remember the dates, but between, I would say, middle of March or so and early March; they were discussing a long time.

Q. At what figure, was it agreed?

A. Finally at sixty cents.

Q. Sixty cents. And in the meantime were you negotiating with these possible buyers in Hong Kong? Were you negotiating with buyers in Hong Kong during those months?

A. Yes.

Q. January, February, March?

30

A. Oh yes, oh yes.

Q. And did you form any view as to what the value of the San Imperial shares would be as a controlling interest?

A. At that time we had made a lot of study and we enquired a lot and discussed with different buyers, and we all agreed it should be worth a dollar sixty to a dollar seventy.

Q. Now as regards proving the authenticity of the shares, David Ng was unsuccessful in getting the shares proved by a mortgage to a bank in Taiwan. This was his report to yourself and Mr. Ives.

A. Right. He also failed in one bank in Hong Kong, the Far East Bank.

40

Q. Was some other solution for proving the authenticity considered by the syndicate?

A. Subsequently I think that Mr. Ives suggest the idea of Fermay, a Hong Kong Company, should be used, and I think that must have been dealt with.

Q. What did you understand the Fermay scheme to be?

A. I know about the whole thing, but I don't even know exactly all the details.

Q. Yes. What did you understand the principles to be?

- A. The principle of which is to pay a very small – actually that’s my insistence, pay a very small sum to be able to verify the authenticity, and finally the shares must be sent to Hong Kong to this Company, Fermay, and sent to the Registrar for verification of authenticity. Supreme Court of Hong Kong High Court
- Q. By having the shares transferred? Defendant’s Evidence
- A. By having the shares transferred by the Registrar of San Imperial in Hong Kong.
- Q. To whom? No. 40
- A. To Fermay.
- 10 Q. To Fermay. Now you say a very small sum should be used for that purpose. Do you know what that sum proved to be, how much? Ho Chapman – Examination
- A. It was finally agreed to give him two hundred thousand and as a token, but to be used partly payable to him in cash and partly to be for stamping and so on.
- Q. When you say ‘payable to him’ you mean whom?
- A. The ninety, I was told, by . . .
- Q. To whom?
- A. Mr. Chow.
- Q. Mr. Chow, yes. Now I want you to look at the Agreement between Mr. & Mrs. Chow and David Ng at 16 and 16A of Yellow 1. When did you first see that Agreement, Mr. Ho?
- 20 A. I saw it after, after David Ng came back from Taiwan.
- Q. And what month would that be?
- A. That was March.
- Q. In March. In what month did you see the agreement?
- A. It was also March.
- Q. You saw the agreement in March?
- A. End of March.
- Q. End of March. Now I would like to leave that agreement for the time being. David Ng was travelling a lot to Taiwan: let’s just make it clear, which part of Taiwan?
- 30 A. Taipei.
- Q. Taipei. And in addition to the fifteen million shares did he mention other shares?
- A. He did.
- Q. What did he tell you about the other shares?
- A. It must be the second or third trip of his. He said he was able to locate some cheap shares at twenty cents a share, and I think he told me something like half a million shares first and he said, “There’s possibly another million odd shares.”
- 40 Q. Slowly now.

COURT: Later also how many shares? The second lot.

- A. He said the second lot may be a million odd shares, but he hasn’t got it yet, my Lord.
- Q. Yes?
- A. Then he asked – he said, “Would you, the syndicate, like to have these shares or you people have another suggestion?”
- Q. Yes?

Supreme Court
of Hong Kong
High Court

Defendant's
Evidence

No. 40

Ho Chapman –
Examination

A. And I said, "I think the point is it is different, it is against our basic theory or policy of verifying the authentication, which is different from what we are buying from Chow."

Q. Slowly. Yes.

A. And on that basis he would have to take a risk himself or the syndicate, and I rather the syndicate won't take any risk.

Q. Yes.

A. Because he said, "All the shares that, although they are cheap, it must be fully paid in cash before it's taken back to Hong Kong."

Q. Yes.

A. So finally we decided, and he agreed, that he should have those shares for himself.

Q. For himself. One point I haven't really brought out: the fifteen million shares, you have already said that the syndicate wanted only to spend a token amount in order to prove the authenticity.

A. Yes.

Q. And also to pay something to Mr. Chow. What about the financing of the fifteen million shares? Was this to be cash by the syndicate or how was the syndicate to raise the money?

A. We were to pay by instalments – no, no, pay by deferred payments of, I think, ninety days after registration. 20

Q. H'mm, h'mm, and in those ninety days where was the syndicate expecting to get the money from? It would be eight point eight million dollars.

A. I don't believe I have real problem of raising that much money if, by the end of ninety days, we still couldn't get a buyer. In any case, I think all of them should contribute something and I would probably shoulder the majority.

COURT: When you say "all of them should contribute something" presumably you meant all of you in the syndicate should contribute something?

A. Yes, my Lord.

Q. But if within the ninety days you had a buyer, then what would the position be? 30

A. If we had a buyer then that would be a much easier arrangement. Of course, we will still have to make up a controlling interest, but I am saying that . . .

COURT: Just a moment.

Q. You were saying what?

A. I said but we still have to think of the – make up the controlling interest to buy or to locate some other means to make up a package.

Q. Now I will come to the rest of the package in due time. Now, by the 23rd of March, which is the date of the agreement . . .

A. Agreement. 40

Q. . . how far had you got in your discussions with possible buyers?

A. With James Coe I would say very near, maybe eighty to ninety per cent. With one Mr. T.T. Shu also very close and offer higher, but with different conditions.

Q. All right, I'll come back to that in a moment. Now you said that the syndicate

- had still to look for other sources in order to put together a controlling pack- Supreme Court
age. You were buying in the Hong Kong Stock Market. of Hong Kong
High Court
- A. Stock Market.
- Q. David Ng was negotiating the fifteen million shares . . .
- A. Yes. Defendant's
Evidence
- Q. . . . with Mr. & Mrs. Chow.
- A. Right.
- Q. The cheap shares which the syndicate agreed should be on David Ng's own No. 40
account.
- 10 A. Yes. Ho Chapman –
Examination
- Q. Now were those cheap shares to go into the overall package or to be com-
pletely separate?
- A. If we are short of shares, that is the understanding, then David Ng's shares is
to go into the package.
- Q. But the profit would be for whose account?
- A. For his own account.
- Q. For his account. Now did the syndicate look to any other source for getting
San Imperial shares?
- 20 A. We – I asked David Ng that he must look for other sources, and he told me
he has been making a search and negotiating with M.A.F.
- Q. Did you yourself negotiate with M.A.F.?
- A. No.
- Q. And finally was that source successful?
- A. Yes, in a different way.
- Q. Yes. What way was that?
- A. By way of option, because they want a very high price. The price they asked
is exactly – he said, "Whatever you name in the contract is the price we
want."
- COURT: In which contract?
- 30 A. The contract with the intended buyer from us "is the price we want." That's
what M.A.F. said.
- Q. Was an option agreement concluded with M.A.F., to your knowledge?
- A. The option agreement concluded.
- Q. And was this before or after the 23rd March agreement with Mr. & Mrs. Chow?
- A. Concluded after.
- Q. In fact, would the syndicate have wanted an option agreement with M.A.F.
before concluding the agreement with Mr. & Mrs. Chow?
- A. I'm sorry, I can't hear you. My eyes cannot see very clearly, I have to look at
you and look at your lip movement before I can hear.
- 40 Q. All right, I'll put the question more slowly. In fact, I've forgotten how I put
it. Would the syndicate have wanted the option agreement with M.A.F. before
concluding the agreement with Mr. & Mrs. Chow?
- A. Absolutely no.
- Q. And at what price did the syndicate eventually agree for the price of the
option shares?
- A. One fifty.
- Q. Was there an option fee?

- Supreme Court of Hong Kong High Court
- Defendant's Evidence
- No. 40
- Ho Chapman – Examination
- A. Fifty thousand.
- Q. Fifty thousand. Would you look at document 18 in the same bundle, yellow 1. Is that the option agreement?
- A. (Witness looks at document.) Yes, it is.
- Q. Now your name appears with David Ng's as the intending purchasers, but the negotiations you say were done by David Ng.
- A. It is true.
- Q. But you knew what was going on?
- A. Oh, yes.
- Q. Now the syndicate were not obliged to exercise the option, but if it did exercise the option it would have to pay one fifty per share? 10
- A. Yes.
- Q. Why was it prepared to pay that much?
- A. We want a package. It's a package that makes money.
- Q. And do you know eventually how many shares – sorry. Was the option eventually exercised by the syndicate?
- A. In that option is six million shares.
- Q. Up to six million.
- A. Up to six million, but according to David Ng they never had that much. I don't know why. That's what he said. 20
- Q. And was the option taken up?
- A. Yes, it was taken.
- Q. And how many shares did M.A.F. deliver?
- A. Only just over three million, that's all.
- Q. We know that in the meantime the syndicate was buying shares in the Hong Kong Stock Market.
- A. Yes.
- Q. Progressively. Do you know eventually how many shares were bought in the Hong Kong Stock Market and in Hong Kong?
- A. Just before the – well, there were three stages because David report to me. 30
The first stage was we got about one million and a half, when David came back and told me that he had also about a half million cheap shares from Taiwan, and then the second time was – the second time was he told me the syndicate has about two million two already bought just before the suspension.
- Q. That's bought in Hong Kong?
- A. In Hong Kong Market, the Stock Market; and the third time . . .
- COURT: Just a moment.
- A. Yes, sir, I'm sorry. And the third time was he had to buy more privately after the suspension because we don't have sufficient to meet James Coe's agreement because of suspension. 40
- Q. These shares were bought privately in Hong Kong?
- A. Oh, yes, in Hong Kong.
- Q. After the suspension had started or . . .?
- A. After the suspension had started.
- Q. And during the suspension?
- A. During the suspension.
- Q. Do you remember how many shares approximately the last lot was?

- A. Maybe three or four hundred thousand, I'm not sure.
Q. All right. Then the shares bought in Hong Kong, whether in the Stock Market or privately during the suspension, what was the approximate cost to the syndicate?
A. In Hong Kong?
Q. In Hong Kong.
A. I think the whole thing averaged about fifty cents.

COURT: You are talking about the third lot now?

MR. SWAINE: No, all the Hong Kong purchases, my Lord.

10 COURT: All the Hong Kong purchases.

A. Overall, isn't it, Mr. . . . ?

MR. SWAINE: Yes, overall.

- A. Maybe fifty odd cents.
Q. Fifty odd cents a share. What was your own contribution to the syndicate's outlay altogether?
A. Well, he asked me for a million dollars.
Q. David Ng?
A. Yes.
Q. And did you pay a million dollars?
20 A. Well, I have lots of shares with him. I told him, "Sell some shares, use it. If not, ask me if it's not sufficient."
Q. Now I want to deal in some detail with James Coe.
A. H'mm, h'mm.
Q. Did you have any contact with James Coe during the months of January, February and March?
A. Yes, on March, on March.
Q. And was this person to person or by 'phone?
A. By 'phone, by 'phone.
Q. What happened?
30 A. He asked me, well, since several months has passed whether I have been able to accomplish something and . . .
Q. Yes.
A. And then I told him, "Now we are able to answer you." Then he said, "Will you give me a price?" Then I said, "You know all about the assets" and so on and so forth. He said, "I have made my own enquiries long ago." Then I told him, "If you are still serious, give us a fair price and we'll talk."
Q. Was that on the telephone?
A. On the telephone. Then he said he will be very fair because he has just taken over two other companies. One is Siu King Cheung, the other is Ka Yau or
40 something that name.
Q. Ka Yau.
A. Ka Yau.
Q. Does the name 'Howard' ring a bell to you?

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of Hong Kong
High Court

Defendant's
Evidence

No. 40

Ho Chapman –
Examination

- A. No.
- Q. Is that familiar to you?
- A. No, not familiar to me, but he mentioned particularly two, he said, recently took over and he has paid a very fair price for it and they didn't even bargain – he didn't even bargain, so I said "Okay."
- Q. Slowly.
- A. I said, "Okay, our asking price would be one dollar seventy," and I told him we have been asking other people for a dollar seventy-five, and he knows that people, those two groups. Then he said, "It is not unreasonable to ask this price, but . . ." he said ". . . being friends for so many years I think you can give me some consideration." I said "Okay . . ."
- Q. Slowly.
- A. I said, "Okay, if you are that serious then do not bargain to me alone, let me introduce you to my other partner."
- Q. Until then had you told Mr. James Coe that you were acting alone or acting with – or acting not alone?
- A. I told him I am not acting alone.
- Q. When did you first tell him that?
- A. All along.
- Q. All along, all right. And did you tell him who the other person or persons were or was? 20
- A. I did not tell him until the day we met. I mean – I'm sorry – the day he met David Ng one Sunday.
- Q. Have you told us everything about that telephone conversation?
- A. Oh, yes.
- Q. Then the next thing is there was a meeting on a Sunday?
- A. Yes. The next day was a meeting on Sunday at the Holiday Inn Coffee Shop. I think March 13th, Holiday Inn Coffee Shop.
- Q. And there was yourself, Mr. James Coe and who else? 30
- A. David Ng, that's all.
- Q. What about Mr. Ives?
- A. No, he wasn't present.
- Q. And you introduced . . .?
- A. I introduced him David Ng. I told him he is the active man running the show.
- Q. Well now, running the show means being the boss, but you say running the show.
- A. Well, actually he is the man who goes here and there and so on. He is active, more active, I am a retired man so I couldn't be running around.
- Q. He is the man doing the running around? 40
- A. Yes.
- Q. Did you mention Mr. Ives's part in the syndicate to James Coe?
- A. I did not.
- Q. All right. What did you say to James Coe then at that meeting?
- A. Well, I told him straight, I said, "Look, here's the man, he has been working very hard. Now you want to bargain, now start bargaining," and then I said . . .
- Q. Yes.
- A. Then I told David Ng. I said, "This is James Coe, he is my old friend for many years. He is very serious and he has been the past president of Rotary Club

in Kowloon I think twice and quite a few other things, president of Y.M.C.A. and so on, so I think he means business so let us go . . .”

Supreme Court
of Hong Kong
High Court

Q. Slowly.

A. So I said, “Then let’s come down to earth and really discuss how we can compromise.”

Defendant’s
Evidence

Q. Yes.

A. Then David said, “Okay, five cents on Chapman’s friendship with you.”

Q. So that makes what? One . . .

No. 40

A. One sixty-five.

10 Q. One sixty-five, yes. That was an offer from David Ng?

A. Yes, from David Ng. Then he said, “Well . . .”

Ho Chapman –
Examination

COURT: Who said?

A. James Coe said afterwards, sir. “It’s not bad but give me a little more,” and somehow they agreed to one sixty-three.

Q. Yes, continue.

A. Then it was one thing he particularly mentioned. He said, “I honestly do not mind to pay you people for all the hard work, but there is one thing I would like to make it very clear.”

Q. Slowly.

20 A. Yes. He said, “I would only like to put down in the contract one dollar fifty, and then give you people the thirteen cents in some other way.” Then I said, “Mr. Coe, nothing must be under the table.” “Oh,” he said, “I don’t mean that way.” Then he said, “I am just thinking or rather discussing with you people in what other manner can I do that.” Then I asked him, “Why do you want to make it one fifty in the contract and then give us in another way the balance?”

Q. Yes.

30 A. Then he said, “I have a good reason.” he said, “Suppose, and that I do intend to do one day, I make an offer to buy from the public, I would like only to give a dollar fifty.” Then I said, “In that case pay us in form of finder’s fee.” Then we work it out – we work out on twenty-four million odd shares would amount to just a little bit over three million dollars, and then it was finally settled with make it three million.

Q. So the idea of calling it a finder’s fee was your idea?

A. Yes.

Q. And have you come across this sort of payment before in your business, a finder’s fee?

A. In America, in Canada there is – they always do that.

Q. So at that meeting on the 13th of March one fifty per share was agreed, finder’s fee of three million dollars was agreed?

40 A. Right.

Q. And the number of shares you were talking about at that time was . . .?

A. Twenty-four million and two hundred thousand.

Q. That’s just over 50%?

A. Yes.

Q. Now you said earlier that T.T. Shu’s offer was higher but the conditions were not the same as James Coe’s.

A. I said that.

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of Hong Kong
High Court

Defendant's
Evidence

No. 40

Ho Chapman –
Examination

- Q. Yes. What was more attractive about James Coe's conditions?
- A. Well, T.T. Shu offered one seventy but he said they must – they'd got lots of cash, he showed me.
- Q. I think without telling us what Mr. T.T. Shu said, what was better about James Coe's conditions?
- A. I see, okay. I have to tell you their conditions different from James Coe?
- Q. Yes. What were James Coe's conditions?
- A. We always make it very clear to James Coe that we are doing – what we are doing is to sell him the shares. "Here is the shares we got, we give it to you, from this source, from this source, from this source, but we're not telling you different sources" – I mean we didn't tell him which sources yet, of course, so we tell him this. 10
- Q. So you made it clear to James Coe you were selling him shares?
- A. Not the company.
- Q. Not the company. Now as the seller, what was the difference to you, to the syndicate? What was the difference as the seller between selling shares and selling a company?
- A. Oh, if we are selling the shares or, as a matter of fact, this is the fact, we told him, "You have to make your own enquiries as to the asset, whether they are still – will remain as good as it should be and the control and financing status, and so on and so forth; you have to make your own enquiries. We will only give you – we will only guarantee the shares are good, but not the control of the company." 20
- Q. Now you could only guarantee that the shares were good, i.e. that they were genuine?
- A. Yes, genuine.
- Q. But you could not guarantee what else?
- COURT: Not the control of the company.
- A. Not the control of the company nor many other undertakings, normally as a taking-over of a company controlling interest would normally demand for. 30
- Q. All right. And was James Coe agreeable to those conditions?
- A. Yes, he did.
- Q. What about the financing of the purchase of the shares? Did James Coe offer conditions which were better?
- A. At that moment we haven't come to a – what do you call it? – the complete – the completion of the – or rather, well, that was the matter of between the lawyers how to fix it, I didn't go to that extent with him.
- COURT: You had not come to a final agreement, you mean?
- A. Yes.
- Q. Now that would be on the 13th of March. Why did you not tell James Coe that Melville Ives was one of the syndicate at that time? 40
- A. I don't think it was necessary to tell him.
- Q. Did you tell him subsequently?
- A. No.
- Q. We know that James Coe then instructed Mr. Philip Wong to deal with the

	documentation.	Supreme Court of Hong Kong High Court
	A. Documentation, yes.	
	Q. And we know that the first letter from Peter Mo & Company to Philip K.H. Wong & Company was on the 31st of March.	
	A. H'mm, h'mm.	Defendant's Evidence
	Q. Now I want you to look at the agreement of the 30th of April at 40 in that bundle. Do you recognise it, Mr. Ho? Have a look at it.	
	A. Yes.	No. 40
10	Q. Was that the agreement finally made between the syndicate and James Coe?	
	A. This is the agreement, signed when I was there.	Ho Chapman – Examination
	Q. Yes. Now before that agreement was signed did you see anything in the papers which gave you cause for concern?	
	A. Well, I think they never mentioned that before, or rather James Coe never mentioned it before, but in there there is a guarantee, it must be suggested by their lawyer.	
	Q. Yes, what guarantee?	
	A. The guarantee to pay for execution of David Ng – of their agreement to fulfil their agreement.	
20	Q. We are at cross purposes here Mr. Ho – we know that you did give a guarantee, I will come to that later.	
	A. Oh I see.	
	Q. But before the signing of that agreement did you see something in the newspapers which worried you?	
	A. On April 13, oh yes.	
	Q. Yes?	
	A. I saw the paper about LEE Ing-chee, published in the South China Morning Post.	
	Q. Will you look at document 35, top right-hand gives the number of the document – I am sorry I have given you the wrong one – it is 26.	
30	A. 26, yes.	
	Q. Is that the 13th of April notice that you saw in the papers?	
	A. Yes.	
	Q. And what did you do after you had seen this?	
	A. I phoned up Mr. Ives in London rightaway.	
	Q. Why was that?	
	A. Well I was concerned about it – anything related at all for . . .	
	Q. Because that notice mentions 16½ million shares in San Imperial registered in the name of Asiatic Nominees?	
	A. That is what concerns me.	
40	Q. That is what concerned you – before this date did you know that there were civil claims against C.K. San?	
	A. I beg your pardon?	
	Q. Before this notice did you know that there were civil claims against C.K. San?	
	A. Not at all.	
	Q. And Mr. Ives was in London – did he come back to Hong Kong?	
	A. I told him he must come back to Hong Kong as quickly as possible and he told me he will try his best, and came back to Hong Kong on the 20th.	
	Q. Now we can look at the agreement dated 30th of April – that is No. 40.	
	A. Yes.	

Supreme Court
of Hong Kong
High Court

- Q. Now you mentioned your guarantee – would you look at No. 39?
A. Yes.

Defendant's
Evidence

COURT: What document please – document 39?

No. 40

MR. SWAINE: 39, my Lord, is that the guarantee in question?

Ho Chapman –
Examination

- A. Yes.
Q. It is dated the 30th of April, 1977 – is that the date you signed the document?

- A. Yes.
Q. Why did you give this guarantee?

A. I saw no harm in it.

Q. Why did you give it?

A. Pardon?

Q. Why was it necessary?

A. Well I guess James Coe does not know David Ng well enough – that is one reason I guess.

Q. And the guarantee is on performance by the vendor, that is David Ng, of the agreement and this is a supplemental agreement – now the agreement is document 40, and one of the conditions or clauses that I want you to look at is Clause 7 at page 2 – have you got clause 7?

A. Yes, page 2.

Q. 7(b)?

A. 7(b)?

Q. 7(c) – C for Charlie.

A. It is, 'on completion San Imperial's paid up capital . . .'

Q. No, 'Subject as hereinafter provided on completion San Imperial shall remain the registered owner of or otherwise beneficially entitled to the following properties' – can you see that?

A. You mean (c), I am sorry – yes I saw it.

Q. And:–

“(i) The whole of the building known as Imperial Hotel 30-34
Nathan Road, notional value \$65,000,000.00.”

And those other properties are set out together with notional value?

A. Right.

Q. Why was that put in?

A. Pardon?

Q. Why was that clause put in?

A. I think the clause was put in because the arrangement with James Coe to find out about assets and suggestion of the lawyers.

Q. This was Mr. James Coe wanting an assurance as . . .

A. As to the assets – asset value.

Q. Asset value – now the agreement itself is for David Ng to sell 23 million shares of San Imperial – before that, your discussions with Mr. James Coe were for 24 million plus, you remember that?

A. Yes, I remember.

- Q. Why was it 23 million in the agreement? Supreme Court
of Hong Kong
High Court
- A. Well we told him it is rather difficult to get sufficient under the market suspension and so on, and we told him would he be satisfied with just 23 million shares, and he said he would rather have 23 million shares.
- Q. He would rather have . . . Defendant's
Evidence
- A. Yes, he said he would get the same control just the same.
- Q. Do you know when it was that San Imperial was suspended?
- A. I think in May 4th. No. 40
- Q. Yes, and the date of that agreement is 30th of April?
- 10 A. The agreement is different – I am sorry, yes I understand what you mean. The agreement is made on the 23rd because we have been discussing about the amount of shares which we may not be able to acquire because it has gone very high and so on, and he said he would rather have less, so we settled with 23 million. Mr. Swaine, I am sorry I may be wrong on the suspension date. Ho Chapman –
Examination
- Q. You were right – it was the first week of May.
- A. I am right.
- Q. Now the document called the supplemental agreement, that is document 41, the next one, 41.
- A. Yes.
- 20 Q. Do you remember this – it is for David Ng to use his best endeavours to raise a loan in favour of the purchaser in the sum of \$17,250,000 on the security of 23 million shares of Siu King Cheung.
- A. Yes, I know about it.
- Q. You know about it – you know why this was?
- A. James Coe has not got enough money – he is serious – James Coe has not got enough cash – but he has some Siu King Cheung controlling shares, and both were serious so I suppose that cooks up the arrangement – that is refinancing.
- Q. When you say cook up . . .
- A. Well it is a common American term of course.
- 30 Q. Meaning what?
- A. Meaning to find the right way to do it – some way to do it.
- Q. We are not here to discuss language Mr. HO but ‘to cook up’ can also mean to invent, do you follow me?
- A. No, actually what I really mean is they have to study out ways of how to refinance – this way and that way and finally they cooked up this way – this is what I mean – actually it is very simple.
- Q. The next document I want you to look at is 42 – it is a one-page document called the undertaking.
- A. Yes.
- 40 Q. Do you know about this one?
- A. Yes, I know.
- Q. Do you know why David Ng in paragraph 2 gave the undertaking that the property at Oxford Road shall be sold at \$2.5 million and that their best endeavours would be used to procure the sale of the property at Pilkem Street, that is the Bangkok Hotel at \$7.5 million – do you know what that was?
- A. Because James Coe said he does not think it is worth that much.

MR. CHING: Because James Coe – what wasn't worth that much?

Supreme Court
of Hong Kong
High Court

A. He does not think this property, No. 2-10, the first one is 16-22 Oxford Road and he said it could not worth 2½ million dollars and the other property could not worth 7½ million dollars.

Defendant's
Evidence

Q. Did he say that in terms of capital value or in terms of income yield or what?

A. I think he must have meant both because he said, 'Look the other – first property is mostly only one rented and the rest are partly destroyed', and then he said, 'The second one is a very small rent.'

No. 40

Q. All right – the document following that is No. 43 and the copy there has three lines crossing it out?

Ho Chapman –
Examination

A. Yes.

10

Q. The document, but do you recognise it?

A. Pardon?

Q. Do you recognise the document?

A. Yes, I recognise it.

Q. That is James Coe's undertaking to your company, Ho Chapman & Associates Ltd. for payment of the finder's fee of \$3,000,000.00?

A. Yes.

Q. Were you present when all these agreements were signed and documents and undertakings – were you present when they were all signed?

A. I was present.

20

Q. At the office of . . .

A. Mr. Ives – no sorry the conference room of Peter Mo & Company.

MR. SWAINE: This would be a convenient point, my Lord.

Appearances as before.

Supreme Court
of Hong Kong
High Court

D.W.3 – Chapman HO – o.f.a.

XN. BY MR. SWAINE – continues:

Defendant's
Evidence

10 MR. SWAINE: My Lord, one point arising from something I said yesterday which I ought to correct if I have given the wrong impression. My Lord, I have said that it wasn't essential to my case the matter of David NG going to two banks in Taiwan and a bank in Hong Kong with a view to securing a mortgage in order to prove the authenticity of the shares. I said that in the context of Mr. Chapman HO giving evidence as to what he was told by David NG on Mr. CHING's interjection that this was strictly hearsay and he was weary of taking unnecessary notes. My Lord, I would not wish to give the impression that this piece of evidence from David NG is not relevant to the case. It is relevant.

No. 40

Ho Chapman –
Examination

COURT: Yes, I did understand that.

MR SWAINE: I'm obliged, my Lord.

- 20 Q. Mr. HO, one matter which I did not raise yesterday and I would like to raise this morning: now you will remember that you said on the 13th of March you met David NG at the Holiday Inn Coffee House and there were discussions between yourself, David NG –
- A. – and James COE.
- Q. I'm sorry. I think I have put that the wrong way round. It was James COE who met David NG.
- A. Yes.
- Q. I'm sorry. Then I took you to the documents of the 30th of April. You will remember we started looking at the 30th April agreements.
- A. Yes.
- Q. Between the 13th of March and the 30th of April, did you have further discussions with James COE?
- 30 A. Between the 13th of March –
- Q. – March and the signing of the first agreement.
- A. Oh yes, we met off and on.
- Q. Off and on, and did you have discussions about the transaction?
- A. I think mostly between David and him about the financing.
- Q. But were you present at any meetings?
- A. Most of the meetings.
- Q. And do you know a person named TAO Shiu-kam?
- A. Oh, you must mean the girl called Alice. TAO Shiu-kam is supposed to be at one time the mistress of –
- 40 Q. No, it is Mr. TAO.
- A. Mrs?
- Q. Mr.
- A. Mr.?
- Q. TAO
- A. I don't know.
- Q. Shiu-kam.
- A. No.

Supreme Court
of Hong Kong
High Court

Defendant's
Evidence

No. 40

Ho Chapman –
Examination

- Q. He is a director of Siu King Cheung's.
A. Oh, TAO! Mr. TAO. I'm sorry. I have met him.
Q. And in what connection?
A. He came with James COE.
Q. When?
A. Quite a few times on discussion.
Q. On discussion?
A. Yes.
Q. That is on the transaction?
A. On the transactions. 10
Q. You referred to the mistress of CHOO Kim-san and you referred to her as Alice.
A. Yes.
Q. Did you know her socially or as a friend or why do you call her Alice?
A. She wanted be called Alice because that was when I was first introduced at one time.
Q. So when you were introduced to her, she went by the name of Alice.
A. Yes.
Q. And did you mix with her socially?
A. No.
Q. Now the next thing that I want you to look at is the agreement of the 12th of 20
May, that is document 54 in yellow 1. Now first of all, were you in Hong Kong
on the 12th of May?
A. No.
Q. Where were you at that time?
A. I was in New York.
Q. Do you remember when you left Hong Kong?
A. Yes, May the 3rd.
Q. And when did you get back?
A. I'm not exactly sure, but it is either the 26th or the 29th of May.
Q. And during the time that you were away, were you in touch with either Mr. 30
Ives or Mr. NG?
A. I rang up Mr. Ives almost every other day.
Q. And did you know about this 12th of May agreement beforehand?
A. Well not beforehand, but when I rang him up he told me there's some modi-
fication because of a change of environment and they had to do some change
and make the new agreement.
Q. Now did he say what the change of environment was?
A. He briefly told me about it in the phone and he told me a lot of injunctions
and so on.
Q. And did he tell you about this before the 12th of May, do you remember? 40
A. I beg your pardon?
Q. Did he tell you before the 12th of May?
A. Oh yes. I phoned him after I arrived and then every other day.
Q. And did you agree to the change?
A. Oh yes, I did.
Q. Did he say anything about your guarantee? Do you remember you had signed
a guarantee on the 30th of April in favour of Rocky Enterprises? Did he say
anything about the guarantee?
A. He has specifically said something about that.

- Q. What did he say? Supreme Court
of Hong Kong
High Court
- A. He said, "Since I find the first one and I see no reason why I should not find this one."
- Q. Guarantee in respect of the modified agreement?
- A. Yes, modified agreement. Defendant's
Evidence
- Q. Now I want you to look at document 56; it is the next but one document. It's got the number 56 on the top. Would you look at your signature on the next following page? No. 40
- A. Yes.
- 10 Q. Do you recognize the document? Ho Chapman –
Examination
- A. Yes, of course.
- Q. When did you sign the document?
- A. After I came back. It must be one or two days after I came back.
- Q. Now one other document I would like you to look at is the next agreement also of the 12th of May. The arrangements for David NG to raise money for James COE on the security of the Siu King Cheung shares. Mr. HO, were you involved in that or did you leave it to David NG?
- A. I wasn't involved.
- 20 Q. All right. The next thing that I want you to look at is the documentation of the 9th of June starting from No. 71 and specifically document 80. Would you look at 80?
- A. Yes.
- Q. Is that your signature?
- A. Yes.
- Q. And were you in Hong Kong on the 9th of June?
- A. Oh yes.
- Q. Did you sign this document on the 9th of June?
- A. I did.
- Q. Where?
- 30 A. At the same time.
- Q. Sorry, where?
- A. At Peter MO's conference room.
- Q. And this was the receipt given to James COE for the finder's fee of \$3 m.
- A. Yes.
- Q. But did you actually receive cash or was this simply an exchange of receipts?
- A. It was an exchange of receipts.
- Q. Now would you look at document 71?
- A. Yes, I have got it.
- Q. Do you recognize this document signed by James COE?
- 40 A. Yes.
- Q. And it is a loan agreement between James COE and David NG wherein James COE deposits with David NG 23 million shares in Siu Kin Cheung as security for the loan of \$16,200,000.
- A. Yes, I know about it.
- Q. You know about this transaction? Again were you involved in this or was it left to David NG?
- A. I was not involved.
- Q. But in this matter, was David NG acting for himself or for the syndicate?
- A. Oh, for the syndicate.

Supreme Court
of Hong Kong
High Court

Defendant's
Evidence

No. 40

Ho Chapman –
Examination

Q. Do you know what David NG was to do with this loan agreement and the 23 million Siu King Cheung shares?

A. He told me he can get sub-financing or rather sub-mortgage.

Q. Eventually did he succeed?

A. I know according to him he approached at least two banks which expressed very keen interest. One is Bank Indochine and one is Metropolitan Bank.

Q. To your knowledge, were the 23 million Siu King Cheung shares good security?

A. I think so because it was controlling shares.

Q. And do you know what they were quoted at in the market?

A. Over a dollar.

Q. Now subsequent to the failure of David NG to get a sub-mortgage, do you know what arrangements were made for payment to the syndicate?

A. Not exactly but he briefed me off and on and told me he had problems and so on and then he had to make further negotiations with James COE and pay some by post-dated cheques and so on.

Q. Who paid post-dated cheques?

A. I think James COE paid post-dated cheques, some, and then others David had to pay some post-dated cheques. I don't know.

Q. And David had to pay some post-dated cheques too?

A. I think on the – no, no, sorry. I think if David had to pay a cheque on what, I don't know. He had to pay out a cheque. I don't really know exactly.

Q. But at the end of the day, has the syndicate been paid in full for the 8 million shares transfer to IPC?

A. Yes, including the finder's fees.

Q. In fact, who received the finder's fee?

A. I did.

Q. Did you receive it in the form of a cheque or cash or how?

A. It is a cheque, also post-dated – undated.

Q. And when was it paid, roughly?

A. I think some time in October.

Q. That is last month?

A. Yes, I think. David told me "You can cash it" so I sent for the accountant.

Q. What have you done with the proceeds, \$3 m.?

A. Half a million dollars was reserved. I told the accountant to buy tax coupons of Inland Revenue. A million dollars was still with me. I sent a million and a half to Mr. Ives' office for legal fees retained.

Q. The 500,000 tax coupons are for what tax?

A. Well the finder's fees has to pay tax.

Q. Oh, \$3 m. does not –.

A. 17 per cent of that should work out to about 510,000.

Q. I stand corrected. You've got a much better head than myself this morning. I have got a terrible headache. Perhaps just to clarify a point here. You sent a million five to Mr. Ives, you kept a million five and you told your accountant to use \$500,000 to buy tax coupons for the tax on the finder's fee, is that the position?

A. I told her to go to the Inland Revenue and actually to buy 510 but she was told – the Inland Revenue people explained to her, "You don't need to buy. If you are to pay 510, you are to buy less than that because there is interest involved. You just buy less than that and keep it."

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30

40

COURT: You retained 1 m., is that right?

Supreme Court
of Hong Kong
High Court

A. I have a million with me.

COURT: Mr. Swaine, you said earlier – probably it’s a slip – you said that Mr. HO retained 1½ m.

Defendant’s
Evidence

MR. SWAINE: My Lord, it wasn’t a slip.

No. 40

COURT: It’s 1 m.

Ho Chapman –
Examination

MR. SWAINE: What I wanted to ascertain was whether he had sent a million five to Mr. Ives, he kept a million five and out of that million five he got his secretary to buy \$500,000 worth of tax coupons.

10 Q. Is that the position, or have I got it wrong?

A. Exactly.

Q. That is right?

COURT: I thought you said half a million was for tax coupons.

A. That’s it, yes, my Lord.

COURT: Then you yourself now have what?

A. I m.

Q. The tax coupons came out of the 1 million five that you had originally kept, is that right?

A. 1 m., my Lord.

20 COURT: 1½m. to Mr. Ives.

A. Yes, 1½ m. to Mr. Ives.

Q. And apart from the ½ m. tax coupons, do you know if the syndicate has made a reserve for tax on the rest of the money paid by James COE?

A. I was told so.

Q. So that 500,000 is a separate tax reserve from the reserve made by the syndicate?

A. Correct.

Q. One matter concerning the financial arrangements between David NG and James COE. Now you have said that you were told James COE had paid post-dated cheques to David NG after the sub-mortgage approach had failed. Do you know whether the proceeds of these cheques, of James COE’s cheques, were kept by David NG or did he use the money?

30

A. I know nothing about it, but I think David NG told me he kept the cheques.

~Q. And did he lend the money out or did he put it in a bank?

A. He said he had some – he told me he earned some money out of it. I think he told me about interest.

Q. For himself or for the syndicate.

A. Must be for the syndicate, otherwise he wouldn’t have reported to me.

Supreme Court of Hong Kong High Court

Defendant's Evidence

No. 40

Ho Chapman – examination

Q. And did he tell you how he had earned the interest?

A. No, just very briefly. I don't remember figures and I really don't want to bother with accounts.

Q. You were quite happy to leave it to David NG?

A. It's always been his responsibility. That was the understanding.

Q. Perhaps you could bring your mind to bear on some of the accounts, Mr., apart from the \$3 m. of which you have now kept 1 m., have you received any other money from the syndicate upon the sale of the 8 m. shares to James COE?

A. Oh yes. 10

Q. How much have you drawn, can you remember?

A. Well he gave me back the initial capital and then there was about a million dollars.

Q. Does the name Restormel Ltd. mean anything to you?

A. Yes, of course.

Q. What is it?

A. He asked me if it is a – all right, if I agreed.

COURT: Who asked you?

A. David NG. David NG asked me if I am agreeable to invest on a property and the company he would choose is Restormel. 20

Q. Did you agree?

A. I did.

Q. And apart from David NG, are there any other shareholders?

A. The syndicate.

Q. And the money for the investment, where did that come from?

A. From the syndicate, from what we received.

Q. Tell me, Mr. HO, in the acquisition of the San Imperial shares and in the resale of the San Imperial shares to James COE, on whose behalf were you acting, for whom were you acting?

A. Myself, the syndicate. 30

Q. Were you acting for CHOO Kim-san?

A. CHOO Kim-san, oh no, of course not.

MR. SWAINE: My Lord, I have no further questions.

Ho Chapman – Cross-examination

XXN. BY MR. CHING:

Q. Mr. HO, how would you compare your own business integrity with that of David NG?

A. I'm sorry. I can't hear you.

Q. How would you compare your own business integrity with that of David NG?

A. I think he is a man to be trusted.

Q. You think he is a man to be trusted? 40

A. Also.

Q. High business integrity?

A. He may not worth a lot of money, but I still maintain he is a man to be trusted.

Q. No, no, that is not my question. Would you say he is of high business integrity?

- A. Yes, Mr. CHING. Supreme Court
of Hong Kong
High Court
- Q. He certainly gave me the impression, you see, when he was giving evidence, that he wasn't too concerned about moralities in business. Would you agree with that?
- A. I don't know what he gave you about morality. Defendant's
Evidence
- Q. Would you agree that he is not overly concerned with moralities when he is doing business?
- A. To what extent does that refer to, if you don't mind? No. 40
- 10 Q. Could you just please give me an answer. Would you agree that he is not overly concerned with moralities in doing business?
- A. I think he is concerned with also morality. Forinstance, if I may explain, your Lordship? Ho Chapman –
Cross-
examination
- Q. Go ahead.
- A. For instance, if you ask him to or organize a prostitute joint – if I may say so – I'm sure he would not do it.
- Q. Joint or job?
- A. I said "prostitute joint", in otherwise, a whore, something, or gambling house.
- Q. He wouldn't do that?
- A. I'm sure he wouldn't do it.
- 20 Q. But in bargaining, would he tell the other side something that was not true?
- A. I don't think so.
- Q. Would you tell anything that is not true when you are bargaining?
- A. When I bargain?
- A. Yes.
- Q. Would you say anything that is not true?
- A. I wouldn't.
- Q. You would not. You were going to buy CHOO Kim-san's shares if you could.
- A. Oh yes, if law allows.
- Q. If the law allows, but you were not worried about any question of morality?
- 30 A. I don't think it bears any significance to morality in this case.
- Q. You do not think. Did you not think that possibly you could pick up the share at a bargained price?
- A. I do think that it could be picked up at the bargained price.
- Q. That is why you did it, Mr. HO: you bought cheap to sell dear.
- A. Oh yes, that was the purpose.
- Q. Do you not find it lacking in moralities to take advantage of somebody who has fled the colony and who may be forced to sell at an under value.
- A. I still think it is only business.
- 40 Q. It is only business. Do you think anything of the moralities of providing funds to a fugitive from justice?
- A. That is why I do ask Mr. Ives to send for counsel's opinion from London.
- Q. We will come to that. Apart from the legalities, you were not concerned with the moralities, is that right?
- A. As I said, I don't believe there is any significance to it.
- Q. Well then, let's take it once more. Buying cheap from him, taking advantage of his position, you say is only business, is that right?
- A. That is what I said.
- Q. What about supplying money to a fugitive?
- A. I beg your pardon?

Supreme Court
of Hong Kong
High Court

Defendant's
Evidence

No. 40

Ho Chapman –
Cross-
examination

- Q. Supplying money to a fugitive. Is that immoral or amoral or is it just business?
A. We are not supplying money.
Q. You were prepared to buy from CHOO Kim-san?
A. If the law allows.
Q. Would you please just give me yes or no, all right? You were prepared to buy from CHOO Kim-san.
A. Yes, I said it.
Q. You were therefore going to hand over money to CHOO Kim-san if you had to?
A. Yes.
Q. Did you think anything about the moralities of giving or supplying money whether by way of sale and purchase or otherwise to a fugitive from justice? 10
A. Yes.
Q. You did?
A. I said – please repeat again. I may be mistaken.
Q. Did you think anything about the moralities of supplying money, whether by sale and purchase or otherwise, to a fugitive from justice?
A. I said we were prepared to pay if the law allows it.
Q. Forget the law. I am talking about the morality. Did you think about the moralities of supplying money to a fugitive from justice, whether by way of sale and purchase or otherwise? 20
A. I did not think of that.
Q. It has never occurred to you at any time?
A. No.
Q. No one has mentioned it to you at any time?
A. No.
Q. Do you recall swearing an affidavit, Mr. HO? Do you recall swearing an affidavit?
A. Oh yes.
Q. In the proceedings No. 159? Red 2, page 22. Do you recognize that as being your affidavit – your affirmation, I'm sorry.
A. Yes. 30
Q. It is filed on the 29th of June.
A. Yes.
Q. Now let's see what it says: paragraph 1 says, "I have had read and explained to me the various affidavits and affirmations filed in these proceedings and particularly the two affidavits of David NG Pak-shing filed herein on the 23rd of June, 1977 and the 29th of June, 1977;" Paragraph 2, "The contents of the said affidavits of David NG are to the best of my knowledge and belief true." Now you affirmed those two paragraphs as being true, did you not?
A. Yes.
Q. Were they in fact true? 40
A. To the best of my knowledge, I believe it's true.
Q. I would assume that a businessman of high integrity would have taken the care to read David NG's affidavits before he affirmed that the contents were to the best of his knowledge true.
A. I read that.
Q. You read it. And did you notice, Mr. HO, that the court was being told about a contract for sale and purchase dated the 30th of April?
A. Oh yes.
Q. Not the 12th of May?

- A. I beg your pardon? Supreme Court
of Hong Kong
High Court
- Q. Not the agreement of the 12th of May.
- A. There were two contracts now, isn't it?
- Q. Yes, listen please. David NG's affidavits in June referred to and relied upon the first agreement of the 30th of April and said nothing about the agreement of the 12th of May. Defendant's
Evidence
- A. I don't know about —.
- Q. You don't know about that? No. 40
- A. — the 12th of May agreement until afterwards.
- 10 Q. You didn't know about the 12th of May agreement until afterwards. When did you get to know of the 12th May agreement? Ho Chapman —
Cross-
examination
- A. Oh when I come back, I know of course.
- Q. When was that?
- A. I said end of May I know.
- Q. So let's not have any nonsense about not knowing about it.
- Q. Your affidavit is dated the 29th of June.
- A. That is correct.
- Q. David NG's affidavits are dated the 23rd and 29th of June, is that correct?
- A. Hm, hm.
- 20 Q. They referred to and relied upon the agreement of the 30th of April and never mentioned the agreement of the 12th of May, is that correct?
- A. I did not notice that particular —.
- Q. Mr. HO, do you really expect the court to believe that you just didn't notice?
- A. It is not that. It is the lawyer that prepares the affidavit.
- Q. That seems to be the continual cry, almost a cry from a heart, that it was the lawyers who prepared it. Which lawyers prepared it? Melville Edward Ives, is that right?
- A. I presume so, it must be.
- Q. But you were affirming it, were you not?
- 30 A. I was in the syndicate.
- Q. You were affirming an affidavit — affirming an affirmation, is that right?
- A. Right.
- Q. Would you affirm anything that was not true?
- A. No.
- Q. So let's forget about the lawyers having prepared it, all right? You agree with me that David NG's affirmations referred to and relied upon the agreement of the 30th of April without disclosing the agreement of the 12th of May?
- A. Now that you mention it, I said yes, but I said I did not notice that.
- 40 Q. You didn't notice it. A businessman of considerable experience, chairman of many companies, of high integrity, you didn't notice it, is that right?
- A. Mr. CHING, may I explain?
- Q. Please. Is that right, you just didn't notice?
- A. I left the whole thing to Mr. Ives and David NG. It was an understanding: I don't have to worry the small details.
- Q. But you couldn't tell this court, Mr. HO, that you read those two affidavits of David NG before you swore your oath that's correct, is it not?
- A. I read it through and asked Mr. Ives, "Is everything all right?" and "Is it in order?" He said, "Yes," so I —.
- Q. You read it through, correct?

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- A. Yes, I read it through.
- Q. Do you regard it as a small detail or a small matter that the court should have been misled?
- A. I'm sorry. I don't quite get your point.
- Q. You said you left it to Ives and David NG and you weren't bothering about small matters or words to that effect.
- A. Yes.
- Q. Do you think it is a small matter that the court may have been misled?
- A. I don't know whether this is a small matter or big matter, but it was out of my notice. 10
- Q. You see, you went to America I think you say.
- A. Maybe the 3rd.
- Q. You telephoned Ives as soon as you arrived?
- A. Yes.
- Q. And thereafter you telephoned him every other day?
- A. Yes.
- Q. This deal was a big one even by your standards.
- A. I would say, yes.
- Q. There were massive profits to be made, weren't there? 20
- A. Substantial.
- Q. You call them substantial. I will call them massive.
- A. It is a different point of view.
- Q. You were sufficiently concerned about this deal so that when you saw the advertisement on the 13th of April, you telephoned Ives in London and asked him to come back as soon as he could.
- A. That's right.
- Q. You were sufficiently concerned about this deal so that when you went to America in May, you telephoned Ives as soon as you got there and you telephoned him every other day. 30
- A. Yes.
- Q. You were keeping yourself informed, you were keeping yourself apprised of the developments.
- A. Right.
- Q. So he told you about the difficulties and about the new agreement, correct?
- A. Right.
- Q. How then did you fail to notice – how then, Mr. HO, did you fail to notice that David NG's affidavits made to mention of the second agreement?
- A. As I said, it was out of my notice.
- Q. How did it come about, Mr.? Can you explain how it can be that having read the affidavits of David NG, you failed to notice that he was asserting a contract which, to your knowledge, had already been cancelled? 40
- A. I read the whole thing in Mr. Ives' office when he finished preparing the affidavit. It was just a glance through and I asked him, "Is everything all right?" He said, "Yes." Then I go to swear.
- Q. Are you trying to say that you swore it without making sure that it was true?
- A. To my knowledge, it was true.
- Q. You see, I have demonstrated to you, Mr. HO, that it was untrue. Are you saying that you swore an affidavit not bothering to ensure whether or not it was true?

- A. If Mr. Ives had missed putting it in or Mr. David NG had missed putting it in, I must also miss notice this point. Supreme Court of Hong Kong High Court
- Q. All three of you: one a lawyer, a solicitor of 30 years standing who admits to some renown in conveyancing, who admits that he knows the value of precision; one stockbroker and an accountant, at one time in charge of the Harilela group of companies accounts; and one businessman of high integrity – all just happened to miss the second contract, is that right? Defendant's Evidence
- A. I told you, once again, I miss noticed that. No. 40
- 10 Q. I find great difficulty, Mr. HO, in understanding how you could have missed it, when you were so concerned about what was happening that you telephoned Ives from America every other day, you telephoned him in London asking him to rush back, a man who shows such concern, how on earth was it possible that you missed this point? Ho Chapman – Cross-examination
- A. I am not a lawyer. I don't know what the most important point must be put in. I don't know.
- Q. But you know the difference between the truth and what is not the truth?
- A. I know the difference because Mr. Ives told me there are some modifications, and that was because of the injunctions and that is what I was concerned about. "What about those injunjections and so on". That was how I phoned him.
- 20 Q. You have no other explanation how you came to swear an affidavit – affirm an affirmation which I would tell you, Mr. HO, and I will say to the court, is deliberately misleading the court.
- A. It is untrue.
- Q. In that affidavit you put yourself forward as a man worthy of belief, worthy of credibility, did you not?
- A. I think I should be – call myself that.
- Q. You put yourself forward as a truthful man, a creditworthy man, did you not?
- A. I have been in a worthy position of that.
- 30 Q. Please, Mr. HO. You put yourself forward in the affidavit as a creditworthy man.
- A. Yes.
- Q. You have even said in paragraph 3, "I am a man of some considerable means." You are asking the court to believe you, correct?
- A. I swear an affidavit, of course I expect the court to believe me.
- Q. You were asking the court to act upon your affidavit, were you not?
- A. Act upon the affidavit? That is technical. I don't really understand what it is.
- Q. You don't file an affidavit for no purpose, do you?
- A. I was told to file the affidavit by Mr. Ives and he prepared it and I signed it.
- 40 Q. And did you think it was just like confetti at a wedding: is to be thrown around, or did you think it was for some purpose?
- A. Oh no, it must be for a purpose.
- Q. Exactly. So you were asking the court to believe you and to act upon what you said.
- A. I believe so.
- Q. Look at paragraph 5, will you? "After verifying that there was no legal impediment and having ascertained the various facts, our main concern was how to structure the transaction so as to minimise our risk." What various fact had you ascertained?

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- A. Various facts – I believe it must be how to transfer and so on and so forth.
- Q. Now just a minute. You believe it must be. You affirmed this affirmation. Are you saying you do not know to what your own affirmation was referring?
- A. I did not say I don't know. It was all briefed to me. I was explained everything to me.
- Q. But you say, "I believe that must refer to a certain thing." Don't you know what it refers?
- A. He said quite a few things.
- Q. Now Mr. HO, let's not play around. It is your affirmation. You put yourself forward as a creditworthy person. You asked the court to act upon your words. Do you or do you not say that you do not know to what you were referring when the words "the various facts" were used? 10
- A. Various facts may cover many many things.
- Q. Never mind what it may. Never mind what it might. Never mind what you believe. Please give me a direct answer to a direct question. What were the various facts that had been ascertained?
- A. I don't remember all the various facts that you are referring to.
- Q. Give us some of them.
- A. Mr. Ives explained one from the other.
- Q. No, Mr. HO, let's not go through that again. 20
- A. All right.
- Q. What were the various facts that you were telling the court had been ascertained?
- A. Well he said, "Now all these – these are injunctions. Certain injunctions have nothing to do with these 8 m. shares."
- Q. Just pause there please. So the first fact was that some of these injunctions have nothing to do with these 8 m. shares?
- A. Yes.
- Q. What other acts?
- A. And then he said, "Legally we should be able to proceed with it." 30
- Q. Yes, that is another fact: that there is no legal impediment.
- A. Yes.
- Q. Any other facts?
- A. I don't remember too much.
- Q. What you are saying, Mr. HO, makes absolutely no sense. Look at your affidavit, your affirmation. "After verifying that there was no legal impediment and having ascertained the various facts, our main concern was how to structure the transaction so as to . . ."
- A. I'm sorry, I apologize.
- Q. What on earth has injunctions got to do with that? 40
- A. This has nothing to do with that, I'm sorry.
- Q. Exactly. What – I will ask you once more – were the various facts which you were telling the court had been ascertained?
- A. The various facts he was telling me actually was that he got the London counsel's opinion.
- Q. Who is "he", Melville Ives?
- A. Yes, Mr. Ives.
- Q. He got London counsel's opinion?
- A. Yes.

- Q. Yes.
- A. And he said also that we are not dealing with Mr. CHOO Kim-san.
- Q. When was that? When did he tell you that?
- A. All along when it was explained.
- Q. At the time of your affirming this affirmation?
- A. Yes, on this thing.
- Q. Yes, what else?
- A. And he told me that it is quite legal to buy any shares if you want to in the market and enter into agreement with MAF, and so on.
- 10 Q. But what were the various facts that you were telling the court had been ascertained? That's a simple enough question, Mr. Ho. What were the various facts that you were telling the court had been ascertained?
- A. These are the various facts ascertained by Mr. Ives.
- Q. What were they?
- A. That's what I have just told you.
- Q. "After verifying that there was no legal impediment . . ." – so we can forget about London counsel's opinion – ". . . and having ascertained the various facts" – forgive me, but I don't think you have told us one fact that was ascertained.
- 20 A. I beg your pardon?
- Q. I don't think you have told us one fact that was ascertained.

MR. SWAINE: With respect, one fact is "we were not dealing with CHOO Kim-san".

- Q. I see. All right, one fact. That's one fact, you were not dealing with CHOO Kim-san. What other fact had been ascertained?
- A. I don't think I remember very clearly the other facts.
- Q. The truth of the matter is, Mr. Ho, that you didn't care what this affidavit said, you simply went along and signed it blindly, didn't you?
- A. Oh, no. I relied the whole thing on Mr. Ives. He is our lawyer.
- Q. So you signed it blindly relying upon Ives, is that right?
- 30 A. I didn't say blindly, but I do rely on him. He has been my lawyer for twenty odd years.
- Q. I see. Would you look now at paragraph 6? "By this structuring it was necessary for us to buy only some 8 million shares on the open market in order to acquire a controlling interest." Now Mr. Ho, 8 plus 15 is 23, that was not outright control, was it, although it was effective control?
- A. Mr. James COE agreed that if he could get something like 23 or even 22 million shares, it would be good enough for him.

COURT: When did he agree?

A. Actually all along.

40 COURT: All along? From the beginning?

A. From the very beginning we were talking about 24.20, then . . .

COURT: At what point of time did he agree to have 23 or even 22 million?

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A. At the time when he tells us that he is short of cash.

COURT: When was this?

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A. Eventually quite a few meetings afterwards.

COURT: When was that? What month?

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A. March.

Ho Chapman –
Cross-
examination

COURT: Can you remember whether it was the beginning or middle or end of March?

A. It must be some time like middle or end, about that. He came to my office several times, my Lord.

COURT: I see. James COE said he was short of cash and he would settle for 23 or 10
even 22 million?

A. Yes.

Q. Did you say this happened in March?

A. And continued on also.

Q. Do you know why he should want 23 million? Why shouldn't he be content with 15 million?

A. I don't know.

Q. Did you ever think why he should want 23 million?

A. No.

Q. And not stop short at 15?

20

A. No.

Q. 15 million was at that time – I'm sorry, I'll rephrase that. When the 15 million shares were in Asiatic, in the name of Asiatic, it was the largest single block, was it not?

A. That was told to me by Mr. David NG.

Q. And you say that he was in difficulties with his finance and therefore he agreed to take 23 million instead of 24.2? Is that what you told his Lordship just now?

A. Yes.

Q. But that's not what you said in your evidence-in-chief. Mr. Swaine asked you 30
about the agreement itself for David NG to sell 23 million shares of San Imperial. He asked you, "Before that, were there discussions with James COE for 24 million odd? Why was it 23 million in the agreement?" Your answer was, "We told him it was rather difficult to get sufficient under the market suspension. We told him, "Would he be satisfied with 23 million shares?" He said he would rather have 23 million shares as he would get control all the same." When you were asked about the date of suspension and the date of the contract, you realized you had made a mistake and you said, "We have been discussing the amount of shares we might not be able to get because the price had gone very high. He said he would rather have less and we settled for 23 40
million." Now Mr. Ho, you said to your own counsel that the reason why the

figure was 23 million was because you couldn't get any more shares and you couldn't get any more shares because the price had gone very high. Now you tell us that it was James COE who said "I don't have enough money, 23 million will do", is that right?

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A. No, I didn't say James COE said. I said both reasons because we talked to him and he told us that he'd rather have this.

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Q. Very well.

A. I think it meant the same thing.

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10 Q. Very well. The paragraph in your affirmation goes on, "As the shares were then being quoted at \$0.30 only the capital involved for such purchases was relatively small." So pausing there, you were going to buy 8 million shares, you hoped, at about \$0.30, is that right?

Ho Chapman –
Cross-
examination

A. That was the time when we started, about \$0.30. We bought at, I think, \$0.20, the first lot.

Q. "At one stage I borrowed \$1,000,000.00 from the Banque Belge to assist me in financing the transaction but in the event it was not necessary for me to resort to that facility." Did you borrow a million dollars from Banque Belge?

A. I did borrow a million dollars by arrangement, but I never had to use it because first of all, David asked me how much money I could afford to lend to the syndicate or to him at that time to start with.

20

Q. Yes?

A. I said, "How much money you want?" He said to the point, "Maybe around \$3,000,000." I said, "In that case, it's all right." But I had about \$2,000,000 cash at that time.

Q. Yes?

A. So I made arrangement for a million dollars.

Q. You had \$2,000,000 cash at the time, you made arrangements for a further million?

A. Just in case it is necessary.

30

Q. You see, you never mentioned any of this in your evidence-in-chief. What you said in your evidence-in-chief was that you told David NG to sell off some of the shares which he held for you and he did so and used that money, is that right?

A. The shares mean cash – also with him because I left a lot of shares with him.

Q. When you said you had \$2,000,000 cash, you meant \$2,000,000 in shares?

A. Cash and shares with him. I mean the cash was with me, but the shares were with him, but it's turnable right away into cash when necessary.

Q. Mr. Ho, it's a very short affirmation, but I suggest to you, short though it may be, you just didn't care what you were affirming provided it assisted the syndicate.

40

A. I beg your pardon?

Q. You didn't care what you were affirming provided it assisted the syndicate.

A. Provided . . .

Q. . . . it assisted the syndicate.

A. As I am a retired man, I left the whole thing to Mr. Ives and David NG, and I trust Mr. Ives and Mr. Ng should be able to do it properly.

Q. Now let me take you to another point, Mr. Ho. The option agreement with MAF Corporation, do I understand you correctly that it was David NG and not you who did the negotiation?

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- A. Yes, it's David NG.
- Q. So your knowledge of what was said during the negotiations necessarily comes from David NG, is that right?
- A. Right.
- Q. You see, you said very strange things yesterday. You said in answer to your counsel, "Q. Did you yourself negotiate with MAF? A. No. Q. Was that source successful? A. Yes, in a different way. Q. What way? A. By way of options because they want a very high price." And this is the odd thing you said, Mr. Ho, the price they asked was "whatever you named in the agreement, that's the price we want". Do you notice the odd thing about that, "the price you named in the agreement", in other words, \$1.50, not \$1.63? 10
- A. \$1.50, yes.
- Q. Why do you think MAF should have said to David NG, "I want the price which you have named in the agreement, not the price at which you are actually selling, not the price which you are actually getting, but the price that you named in the agreement"? Why do you think MAF would say a thing like that? Have you any idea?
- A. Mr. Ching, I am not a lawyer. I only interpret the general idea of what he said. I don't exactly know. I wasn't present at the time of the meeting, and what they exactly said, I don't know. 20
- Q. You see, Mr. Ho, it's a very convenient way, isn't it, to show how the price was \$1.50 instead of \$1.63 because if it was MAF saying "I want the same price that you are getting from your buyer", instead of saying that, they say, "Well, I want the price that you named in your agreement"?
- A. They were talking in Chinese. Mr. Ng told me in Chinese.
- Q. Is there any difference in meaning in Chinese and English?
- A. I think what you are trying to tell me is very very technical, highly technical in the law.
- Q. It's nothing to do with the law, it's nothing technical.
- A. Maybe no. I don't know. 30
- Q. My learned friend Mr. Yorke will put it, is this a happy coincidence that they should say "I want the price you named in the agreement" and that the price named in the agreement is different from the real price? Is that a happy coincidence?
- A. I don't understand what "happy coincidence" refers.
- Q. All right. I put it to you now. In fact, of course – do you mean to tell this court that MAF wanted the same price that the syndicate was getting?
- A. Whatever was in the contract with the intended purchaser . . .
- Q. You put your finger right on it yourself, "whatever was in the contract". Why whatever was in the contract? Why do you specify those words so particularly, "whatever was in the contract"? 40
- A. That's what Mr. Ng told me. He said, "Whatever in there in the contract with your intended purchaser, we want that price," in Chinese.
- Q. Do you think in your own mind that what MAF really wanted was to get the same price that the syndicate was going to get? Do you think that's what they wanted.
- A. I don't know what they think, but this is what I was told. They might even want higher, they might expect higher.
- Q. You see, if they wanted the same price you were getting as opposed to the

same price named in the agreement, then David NG must have cheated MAF, mustn't he, because he must have said, "Well, the price we are getting is \$1.50"?

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A. I don't think you can really call it "cheated". I mean it's my personal opinion.

Q. A matter of business, is it?

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A. Yes, that's what I said.

Q. I see, a matter of business of a man with high integrity?

A. I say, for instance, somebody takes the pain to organize and so on, he is entitled to something. So what I would call is a different way of transaction.

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10 Q. Would you look at the agreement of the 30th of April? Sorry, I have lost the document number. Document 40, now Mr. Ho, do you see the first page of that agreement?

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A. I beg your pardon?

Q. Do you see the first page of that agreement?

A. Yes.

Q. Look at paragraph 2, "The sale shall be effected by:– (a) the Vendors selling to the Purchaser the whole of the issued and fully paid up shares of Fermay Company Limited (Fermay) the registered owner of 15 million shares in San Imperial; (b) exercising its option in favour of the Purchaser in respect of 3.5 million shares in San Imperial." Do you see that?

20

A. Yes.

Q. That 3.5 million, was that the MAF Corporation shares being referred to?

A. It must be.

Q. It must be because it's the only option you had?

A. Yes.

Q. Does it mean, Mr. Ho, that by the 30th of April, at the very latest, the syndicate knew that MAF Corporation did not have 6 million shares?

A. 30th?

Q. By the date of this agreement, 30th of April, you will see the date across the top.

30

A. By this time . . .

Q. By this time the syndicate knew that MAF Corporation did not have 6 million shares?

A. Oh, yes.

Q. How was that discovered, do you know?

A. Pardon?

Q. How was that discovered, do you know?

A. Mr. David NG told me right from the very beginning when the option was entered into, they insisted on 6 million shares.

40

Q. Yes?

A. And he told me also that he didn't believe MAF would have 6 million shares.

Q. Yes?

A. But I said, "Well, whether they have 6 million shares or not, it's another thing, but we know one thing for sure, we do require their shares, and if they insist on 6 million, we must take the 6 million." So Mr. Ng told me one thing, "What happens if they don't have enough?" I said, "We'll wait." And then I told him also another thing. I said, "We must not in any case jeopardize this option because MAF shares cost us \$1.50, it is impossible for the syndicate to keep any in stock." But he told me, he assured me, he said, "There isn't

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enough, I am sure.” So I said, “Never mind, we’ll wait and then we’ll see.”
And I think it was around April, towards the end of April anyway, he told me
MAF did not have definitely, he had already confirmed with them. I said, “In
that case, do the best you can.”

Q. And of course, you needed those shares, didn’t you, to put together your
package?

A. Yes, that’s why we accepted the option of even 6 million.

Q. Wasn’t it a matter of importance then to discover as early as possible exactly
how many shares MAF Corporation had?

A. I beg your pardon again?

Q. Wasn’t it then a matter of importance to discover as early as possible how
many shares MAF Corporation had?

A. We need to fulfil the package.

Q. Wasn’t it then – for the third time, Mr. Ho – wasn’t it then important to
discover as early as possible how many shares MAF Corporation had?

A. I think David NG must have kept trying already all the time.

Q. You think David NG must have kept trying all the time?

A. Until it was confirmed they couldn’t produce more.

10

MR. CHING: My Lord, I’m afraid I am caught a little bit short this morning. I don’t
think I have anything more I want to put specifically to the witness. Could I
perhaps have 10 minutes to talk to my learned junior about it?

20

COURT: Yes.

Mr. Yorke absent.

D.W.3 – HO Chapman (6th Defendant) – c.f.a.

XXN. BY MR. CHING: (Continues)

Q. I’ll be a few minutes more. Mr. Ho, I want to read to you an answer which
you gave in your evidence just for the purposes of clearing up something I
don’t understand, all right?

A. Sure.

Q. Now Mr. Swaine asked you about David NG travelling a lot to Taiwan and he
asked you whether David NG had mentioned any other shares apart from the
15 million. Do you recall that?

30

A. Yes.

Q. And he asked you, “What did he tell you about the other shares?” and this is
what I have taken down as your having said – “It must be the second or third
trip of his. He said he was able to locate some cheap shares at \$0.20 per share.
I think he said half a million shares and possibly a million odd more. And then
he asked, he said, ‘The syndicate liked to have these shares or you people have
another suggestion?’ I said, ‘I think the point is, it is different. It is against our
basic policy of verifying the authentication which in different from our buying
from Chow.’ On that basis he would have to take a risk himself or the
syndicate and I’d rather the syndicate didn’t take any risk because he said all
the shares, although cheap, must be fully paid in cash before being taken back

40

- to Hong Kong. Finally, we decided and he agreed that he should have those shares for himself.” All right?
- A. Yes.
- Q. How I would just like to know, was Mr. Ives present during that conversation?
- A. Oh, yes.
- Q. He was present. So all three of you agreed . . .
- A. Oh, yes.
- Q. . . . that David NG was to have these shares at his own risk?
- A. At his own risk, for his own account.
- 10 Q. Would you look please at exhibit P.10, yellow file 2, page 128 please? Sorry, that’s the wrong one. It’s exhibit P.10, brown file 3. Now Mr. Ho, have you ever seen that particular document before?
- A. Did you say 1972?
- Q. Have you seen that document before?
- A. Yes, I have seen that one. I have glanced through it.
- Q. When did you glance through it?
- A. I don’t exactly remember the date.
- Q. It’s a surprising document, isn’t it, Mr. Ho?
- A. Not being a lawyer, I don’t really know whether it’s surprising or not.
- 20 Q. No, not as a matter of law, but having regard to your evidence, it is a surprising document. You see that clause 1 starts off talking about the sale and purchase of 15,515,000 shares, but you say the syndicate was only going to buy 15,000,000. Does it surprise you that the 515,000 has been included?
- A. I believe it must have meant his own half million shares he has talked about.
- Q. Does it surprise you that it is included in this agreement? The syndicate wasn’t interested in the 500 odd thousand for the reason you gave in the passage I read out just now.
- A. This is not agreement signed.
- Q. No, it’s not an agreement signed, but it’s a draft agreement, we have been told.
- 30 Q. You don’t find it surprising that the figure is 15,515,000?
- A. I asked him, he said that the half million shares, he got cheap.
- Q. Why should it be included in this agreement, this draft agreement?
- A. I don’t know. It was drafted by Mr. Ives and Mr. David NG.
- Q. You will see in the second line of clause 1, “at the price of \$0.60 per share”, 15,515,000 at the price of \$0.60 per share, but you have told us, have you not, that David NG was going to buy the half million at \$0.20 per share? Does that surprise you now?
- A. Honestly, I have never gone into details of this thing.
- Q. Look at it now, think about it, does it surprise you?
- 40 A. I did ask him about the half million shares and he just told me that he got half a million cheap, that’s all.
- Q. Let’s not go running around in circles, Mr. Ho. Having regard to your evidence, having regard in particular to the passage which I read to you immediately the court resumed this morning and looking at this draft agreement now, does it surprise you? Does it surprise you, first, that the 515,000 shares should have been included in the same agreement and does it surprise you secondly that they are to be at the price of \$0.60 per share?
- A. I guess it must be – I don’t know. I believe it could be the misunderstanding of Mr. Ives and David NG somehow in drafting this agreement.

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- Q. Mr. Ho, I can assure you that both Mr. Ives and Mr. Ng in giving evidence have stated clearly that these half a million shares were at Mr. David NG's own risk.
- A. I don't know about that thing.
- Q. You see, at the bottom of the figures in clause 1, the price is \$9,309,000. 309,000 of course is 515,000 multiplied by \$0.60.
- A. That's simple arithmetic again.
- Q. Doesn't it surprise you at all? You see, I asked you to clarify your previous answer and you said Ives was there when this conversation took place. Are you saying that an experienced solicitor of 30 years' standing, having been present at that meeting, knowing the basis upon which the syndicate was going to operate, and David NG, stockbroker and accountant, who has assured this court that they know the value of accuracy, would get it all wrong and produce a draft agreement such as this? 10
- A. I think this draft agreement could be wrong.
- Q. You see, Mr. David NG even told this court that he took it up and showed it to Chow as a proposed agreement, Chow was very angry with him.
- A. Chow was angry because possibly -- I don't know, of course -- possibly the 500 odd thousand is not the same price.
- Q. He was getting more, he was getting three times the price, wasn't he? Why should that make him angry? He was getting three times the price, \$0.60 20 instead of \$0.20.
- A. It doesn't belong to Chow.
- Q. The point is, you see, David NG even went so far as to take it up to Taiwan, to take this document up to Taiwan and put it to Chow as a proposed agreement. Why should he do that?
- A. I don't know.
- Q. Does it surprise you that he did that?
- A. Surprise me? I am sorry?
- Q. That David NG should have taken up this agreement to Taiwan.
- A. I don't know whether he did or not. 30
- Q. He says he did. Please accept that from me. Does it surprise you that he did that?
- A. I have no knowledge whether he did or not in the first place and I merely thought . . .
- Q. You can take it from me that he has given evidence that he did do so. Does it surprise you that he should do so?
- A. He might be mistaken.
- Q. You were the only one who had been clear-headed about it, Ives had got it wrong, David NG had got it wrong, is that right?
- A. I didn't say that. I didn't bother on these things. I was not handling this matter. 40
- Q. But it's wrong, isn't it? You agree that that document . . .
- A. It could be wrong, I said.
- Q. What do you mean it could be wrong? Is it or is it not wrong?
- A. If David NG had bought that -- agreed to the \$0.20, this is wrong.
- Q. And by this proposed agreement, the syndicate would have bound itself to buy the 515,000 shares and that would have been wrong, isn't that right? By this proposed, this draft agreement, if it had been signed, the syndicate would have bound itself to buy 515,000 extra shares and that would have been wrong.

- A. I guess that is the reason why this agreement was not signed because it was wrong. Supreme Court of Hong Kong High Court
- Q. The point is, do you agree it was wrong?
- A. Yes, it's not the figure. It should be 15 million.
- Q. Why do you think David NG and Ives both got it wrong? You see, all three of you now come to this court and tell this court that over this 515,000 or the million odd, that was at David NG's own risk, and all three tell the same story although you all three give different reasons. How can you explain that particular document? Have you any explanation? Defendant's Evidence No. 40
- 10 A. May I ask you again? I have to read your lips to . . .
- Q. I am sorry.
- A. You see, I have explained my ears are no good, I have to read your lips to be able to hear.
- Q. How can you explain this agreement, Mr. Ho?
- A. As I said, I had never really gone through this thing and I just happened to know, but by now I can see it, I can say that David must have misinterpreted or Mr. Ives could have misunderstood that 515 (515,000?) shares belonged to Chow.
- Q. An experienced solicitor makes a mistake in a formal document?
- 20 A. It appears to . . .
- Q. An experienced accountant allows a document to be drawn up showing three times the price he is going to take and takes it up and reads it to the other proposed parties. Have you any explanation for that?
- A. My only explanation is Mr. Ives must have mistaken Mr. David NG's opinion or facts or story about the actual relationship or ownership.
- Q. It's not just the ownership, is it, Mr. Ho? It's not just the ownership that is wrong in that document according to your evidence. It's the question of shares, it's the price of some of the shares and it's the contracting parties. To use Mr. Ives's own words, just about everything that could have been wrong was got wrong in that document, wasn't it? In relation to something else – just about everything that could have been got wrong has been got wrong in that document if your evidence is true.
- 30 A. I cannot agree with you, Mr. Ching.
- Q. You can't agree. What is right about that document?
- A. I didn't say this document is right. It could be mistaken by David NG who interpreted to Mr. Ives when they drafted the agreement.
- Q. All right. Almost everything, not everything, almost everything that could have been got wrong has been got wrong in clause 1, different number of shares, wrong contracting parties, three times the price for the 515,000. You couldn't go much more wrong than that, could you?
- 40 A. I don't know.
- Q. If your evidence is true, then that document is wrong. Conversely, if that document is a true document, then your evidence must be false.
- A. If this is a true . . .
- Q. You see the point I am making?
- A. Yes, I follow.
- Q. Do you agree with that?
- A. Pardon?
- Q. Do you agree with me that if your evidence is true, that document is false; if

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Ho Chapman –
Cross-
examination

the document is true, your evidence is false. There is no two ways about it, is there?

A. I am sorry, Mr. Ching, I cannot agree with you.

Q. All right.

A. Because – may I explain?

Q. Please do.

A. My evidence – I think I have nothing to do with it. I said this could be a mistake or misunderstanding of Mr. Ives and David NG.

Q. All right.

A. And if this agreement is genuine, it should have been signed, but it's not signed. 10

Q. Mr. Ho, it wasn't signed because the terms were not agreed, all right? You will see that in the last two clauses, Chow is required to deposit his shares with Peter Mo & Co. pending completion, all right? So let's not worry about its not being signed. Do you seriously consider that your own solicitor whom you used for 20 years and upon whose ability you must have some considerable faith and this business man of high integrity, Mr. David Ng, do you seriously believe or do you seriously ask this court to believe that you believe that they could have made those mistakes because it had been so badly mistaken? Do you ask this court to believe that?

A. It was a draft, I could see there could be a mistake, could be a misunderstanding. 20

Q. Just a minute. Do you say there was a misunderstanding as to what happened when the matter was discussed, or do you say there was a mistake in the drafting of the draft agreement?

A. This draft was made after we discussed.

Q. Yes. Do you say there was a misunderstanding at the discussion or do you say there was a mistake in the drafting?

A. I say this is a mistake here. The misunderstanding is here.

Q. The misunderstanding is in the draft?

A. In the draft. 30

Q. Do you seriously ask the court to believe that?

A. I think that's the truth.

Q. And you seriously ask the court to believe that that is what you genuinely believe?

A. That is what I genuinely believe.

Q. You were willing to spend as much as \$200,000 on the 15 million shares to begin with? You were willing to pay over \$200,000 to begin with?

A. Yes.

Q. There was some slight risk involved?

A. Small risk. 40

Q. We are told that the stamp came to, I think, \$72,000, the increase of Fermay came to another \$36,000 which left Mr. Chow with \$98,000.

A. 92.

Q. \$92,000. So you were willing to risk \$92,000 in his pocket apart from the stamp and other fees, you were willing to risk \$92,000 in his hands, that is correct, isn't it?

A. Oh, yes.

Q. Why were you not willing to risk \$130,000 and buy the 515,000 shares?

A. No, he said – first of all, it's against our principle. It's the kind of risk that we

In the Privy Council**ON APPEAL****FROM THE SUPREME COURT OF HONG KONG****(APPELLATE JURISDICTION)****CIVIL APPEAL NO. 12 OF 1978****(On appeal from High Court Action No. 2459 of 1976, High Court Miscellaneous Proceedings No. 155 of 1977 and High Court Miscellaneous Proceedings No. 540 of 1977)****BETWEEN**

DAVID NG PAK SHING.....	<i>1st Appellant</i>	(The 4th, 5th, 6th and 7th Defendants in High Court Action No. 2459 of 1976, High Court Miscellaneous Proceedings No. 155 of 1977 and High Court Miscellaneous Proceedings No. 540 of 1977)
MELVILLE EDWARD IVES.....	<i>2nd Appellant</i>	
HO CHAPMAN.....	<i>3rd Appellant</i>	
FERMAY COMPANY, LTD.....	<i>4th Appellant</i>	

and

LEE ING CHEE also known as.....	<i>1st Respondent</i>	(The Plaintiff in High Court Action No. 2459 of 1976)
LEE HAI HOCK		

LEE KON WAH.....	<i>2nd Respondent</i>	(The Plaintiff in High Court Miscellaneous Proceedings No. 155 of 1977)
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MALAYSIA BORNEO FINANCE.....	<i>3rd Respondent</i>	(The Plaintiff in High Court Miscellaneous Proceedings No. 540 of 1977)
CORPORATION (M) BERHAD		

RECORD OF PROCEEDINGS**Volume III**

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