

In the Privy Council

ON APPEAL

FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN

TSE KWONG LAM *Appellant*

AND

WONG CHIT SEN *1st Respondent*

CHING WAI SHORK (or SHOOK) *2nd Respondent*

CHIT SEN COMPANY LIMITED *3rd Respondent*

RECORD OF PROCEEDINGS

VOLUME II

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

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AND

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RECORD OF PROCEEDINGS

In the Supreme Court of Hong Kong

High Court

Action No. 2102 of 1966

19th March, 1979 at 10.05 a.m.

Court resumes. Appearances as before.

D.W.1. - WONG Chit-sen Affirmed in Puncti:

XN. BY MR. JACKSON-LIPKIN:

- Q. What is your full name, sir?
A. WONG Chit-sen.
Q. Have you any other name?
A. Alias WONG Ching-ping.
Q. Where do you live?
10 A. 68A, Macdonald Road, 3rd floor.
Q. Who is Mr. YEUNG Tat?
A. I don't know.

COURT: YEUNG Tat or YEUNG Tak.

- A. He is a broker.
Q. A broker of or in what?
A. Property broker.
Q. How long have you known him approximately?
A. For about 20 years.
Q. I want you, please, to carry your mind back
20 to 1963.
A. Yes.
Q. Do you remember Mr. YEUNG Tat telephoning
you about a client?
A. Yes.
Q. Did he identify the client at that time?
A. He did not mention.
Q. Did he tell you what his client wanted?
A. He wished to mortgage the property at 52-54
Cheung Sha Wan Road for \$1 1/2 m.
30 Q. Did he give you any details of the site?
A. Not yet.
Q. Was there an arrangement made about a site
visit?
A. Yes, we went there a few days later.
Q. Was that by arrangement, yes or no?
A. Yes, I went there myself.
Q. At the time of the telephone conversation,
was there any discussion about the terms of
the proposed mortgage?
40 A. That was discussed after I had paid a visit
to the site.
Q. At the time of the telephone conversation,
was anything said about the period of the

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Defendants'
Evidence

No.6
D.W.1
WONG Chit-sen
Examination

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Defendants'
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D.W.:1
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- mortgage?
- Q. How often?
- A. I don't remeber how many times.
- Q. Once or more than once?
- A. More than once.
- Q. During those visits, was there any discussion about the terms of the mortgage, yes or no?
- 10 A. The mortgage was \$1 1/2 m. for one and a half years, payment to be made by two instalments, first payment being \$730,000 and the second one \$770,000.
- Q. Was the identity of the client disclosed to you?
- A. It was not mentioned yet, not until we signed.
- Q. Let's deal with the first of those two parts of the mortgage, the \$730,000. Were you told when that advance was expected to be made?
- 20 A. The first payment in November, 1963.
- Q. Will you please speak up as loudly as you can.
- A. He told me the purpose of the advance of \$730,000 of which \$650,000 was to redeem his deed and the \$80,000 was payment of compensation to the occupants.
- COURT: What was the \$650,000?
- A. For redemption money.
- 30 Q. Mr. WONG, will you please try and help my Lord in this way? I want you to distinguish between what you were told by Mr. YUNG at the meeting and what later happened. At the moment I am only asking what you were told by Mr. YUNG at the meeting following your decision to lend the money. Now if you don't understand any of my questions, please say so at once and I will reframe it for you.
- 40 MR. BERNACCHI: Whilst I am not objecting to this evidence, I gather - perhaps my learned friend will put me right - that it was of a conversation that he had with Mr. YUNG and my client was not present, so that, presumably, it is part of the res gestae. It is not otherwise admissible.

COURT: Unless you are calling Mr. YUNG.
MR. JACKSON-LIPKIN: My Lord, it is not admissible if it could be against Mr. TSE, but it is not hearsay so far as this gentleman is concerned because it is relevant to what he decided to do.

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10 MR. BERNACCHI: My Lord, I am not objecting to the actual evidence, but the weight of the evidence is, of course, entirely a matter of whom my learned friend calls and eventually for yourself.

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Q. You told my Lord that you were given to understand there would be two instalments, the first of \$730,000 and the second of \$770,000. Were you given to understand when the \$730,000 was to be made?

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COURT: He has already told us that, November 1963.

20 MR. JACKSON-LIPKIN: My Lord, he said that is when he did make the payment.

A. Payment was made at the time when the agreements were signed.

Q. What about the balance?

A. To be paid by ten equal instalments as construction money.

MR. JACKSON-LIPKIN: (to interpreter) Did he say, interpreter, 'equal instalments' or 'ten instalments'?

30 A. (after clarification) Not equal instalments, depending on the construction.

Q. When did you first find out that there was an existing mortgage on the property?

A. I did not know at first. I found it out later, but I don't know when.

Q. Did you find it out before or after you were told that the 730,000 would be paid on the execution of the mortgage?

A. After I had made payment.

40 COURT: But you told the Court that \$650,000 was for redemption money. What is redemption money - by redemption of a mortgage? What

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- 10
- is the 650?
- A. He used my money to redeem his deed.
- Q. You told my Lord you found that out later. Was it before or after the mortgage was signed?
- A. At the time when the contract was being prepared, I found out.
- Q. As the sum of \$730,000 was to be advanced at once and the remainder over a period of time, did you make some decision as to interest?
- A. Interest for the first instalment was 1.20 per cent and the second instalment 1.3 per cent.
- Q. Why the difference?
- A. Because the first payment was a lump sum and for the second instalment I had to get money ready for the payment.
- Q. What do you mean you've to get money ready?
- 20 A. Because I had to keep the money before I could pay him.
- Q. Now you told my Lord what you later discovered to be redemption and so on. Was anything said to you about payments for vacant possession?
- A. I understood that part payment or part advance he used to pay for occupier as compensation money, but I did not make such payment myself.
- 30 Q. From whom did you understand that?
- A. I can't remember. I have no idea.
- Q. Did you in your own mind make calculations as to the amount that would be left for the building costs?
- A. To my own knowledge, out of the \$770,000 for the second instalment he had to pay \$150,000 to the occupier.
- Q. Mr. WONG, you are dropping your voice again. Please try and speak louder. Mr. Bernacchi's client can't hear you. Did you know whether or not \$620,000 would be sufficient for the building costs?
- 40 A. I don't know.
- Q. Did you think it would be sufficient?
- A. I thought it would not be sufficient.
- Q. Was there any conversation between you and Mr. YUNG of the actual breakdown of construction costs?
- A. No.

Q. Where did you think the balance of the building costs was going to come from?
A. He said he could sell the units before completion.
Q. Who said?
A. Mr. TSE said.
Q. When?
A. I heard about it. I don't know exactly when.
10 Q. From whom?
A. I don't remember.
Q. Before or after the mortgage was executed that you learned that?
A. After.
Q. Now let's stay please for a moment before the mortgage. Now you've told my Lord you have learned the identity of the client TSE when the mortgage was presented to you for execution. When did you first meet Mr. TSE.
20 A. One or two months after the contract had been signed.
Q. So far as you are concerned, was there anything unusual in the broker doing all the negotiations and your not meeting the client?
A. To me it was not unusual.
Q. Now after the basic terms of the mortgage had been agreed between you and Mr. YUNG, did you go and see a solicitor?
30 A. Yes.
Q. Who?
A. J.S.M.
Q. Had they ever acted for you before?
A. Yes.
Q. Can you remember who it was at J.S.M. whom you saw?
A. Mr. LIU, the clerk.
Q. Is that Mr. LIU Kwing-wah?
40 A. Yes.
Q. Can you remember when you went to see him?
A. I don't remember.
Q. Did you know which solicitors would be acting for Mr. TSE in the matter?
Q. Well when you went to see Mr. LIU, did you find out who was going to act for Mr. TSE?
A. I had no idea. Later I found out Mr. LIU also represented him.
Q. From whom?

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10

- A. Mr. LIU told me himself.
Q. Did you care who would act for Mr. TSE?
A. No.
Q. Did you exert any pressure upon Mr. YUNG to appoint J.S.M. to act for Mr. TSE?
A. No. I knew nothing about it.
Q. Did you exert any pressure on Mr. TSE to go TO J.S.M.?
A. No, no such thing.
Q. Now when you went to see Mr. LIU of J.S.M., was any question of pre-sale of units raised by Mr. LIU?
A. After the visit he phoned me up discussing about it.
Q. What did he discuss?
A. Nothing much. I cared little about it.
Q. But was any suggestion put to you as to what should be done with the proceeds of sale.
A. It was mentioned.
Q. By whom and in what manner?
A. By Mr. LIU
Q. What did he suggest?
A. Mr. TSE requested that \$1,000 should be deducted for his use for the sale of each unit.

20

COURT: From the sale of each unit?
INTERPRETER: Yes, from the sale.

30

- Q. And did you agree?
A. Yes.
Q. Now shortly before Chinese New Year, did you receive a gift from someone?
A. Mr. TSE gave me two pieces of clothes.
Q. Gave you or sent you?
A. Someone sent it to my office.
Q. I mean by that time had you met Mr. TSE?
A. Not yet.
Q. And did you send your thanks to him by post?

Exhibit E19 40

- MR. JACKSON-LIPKIN: My Lord, may he see E19?
A. Yes, I sent my visiting card to thank him.
Q. Have a look at that card. What is it?
A. The visiting card. I sent him for appreciating his sending me the two pieces of cloth.

Q. Can you remember how long after that you first met Mr. TSE?
A. Maybe one or two months later.
Q. Where?
A. Until 1964.
Q. Where?
A. In my office.
Q. Where was that in those days?
A. Pedder House, Pedder Street.
10 Q. Was it by appointment?
A. No.
Q. Can you remember anything that happened at that meeting?
A. I don't remember.
Q. Was there any argument or difference of opinion at that stage?
A. I don't think there was any.
Q. Now Mr. WONG, did Mr. TSE at any time
20 mention to you that he wished to use solicitors other than Johnson, Stokes & Master?
A. No.
Q. Did he ever mention to you the firm of Woo & Woo?
A. I don't remember.
Q. Did he ever complain to you that Johnson, Stokes & Master had been appointed as solicitors for him? Did he ever make a complaint to you that Johnson, Stokes & Master had been acting for him?
30 A. I learned from Mr. LIU that J.S.M. was representing him.
Q. Did Mr. TSE ever make a complaint to you that Johnson, Stokes & Master were acting for him?
A. No.
Q. Did he ever make any complaint to you about the conduct of Johnson, Stokes & Master in relation to the sale of units?
40 MR. BERNACCHI: Well, my Lord, it is a double question. Surely, my learned friend must elect which question to ask.
MR. JACKSON-LIPKIN: My Lord, I was confining the question to one particular aspect of that conduct. I don't think it is a double question but if your Lordship thinks it is
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- No audible reply from his Lordship.
- Q. Did he ever make a complaint to you about Johnson, Stokes & Master's conduct of the sale of units?
- A. No.
- Q. Now in the early days of the mortgage, how was interest paid?
- A. Mr. TSE paid interest direct to my office personally for four times.
- 10 Q. Were you there?
- A. No, I wasn't there.
- Q. Do you know who received the money on your behalf?
- A. Sometimes my wife, sometimes my staff.
- Q. Had you introduced your wife to Mr. TSE?
- A. No, well my wife met him first.
- Q. Where?
- A. No idea. She knew him first.
- 20 Q. How often was your wife in the office in Pedder Street in those days?
- A. She dropped in in the morning, sat for a while, then left.
- Q. How often a week?
- A. Four or five times.
- Q. I want you please to go further forward to the summer of 1964. Did Mr. TSE come to see you in your office?
- A. Yes, one year or so.
- 30 Q. What about?
- A. In July he asked for a further mortgage of \$300,000.
- Q. What for?
- A. For construction money.
- Q. Did he say why he needed the extra money?
- A. Because he found out he had not sufficient money.
- Q. What was your reaction at first?
- A. At first I refused, but he kept begging.
- 40 Q. And you eventually agreed?
- A. Yes.
- Q. What was it that made you agree eventually?
- A. In fact, he could not have sufficient money to complete the construction.
- Q. If he did not complete the construction, would that affect you?
- A. Possibly so.
- Q. Why?
- A. He could not repay me and eventually the property had to be put up for auction.

- Q. Eventually you agreed to advance a further sum, and the sum was 1.4 per cent per month. Was there any disagreement about that proposed rate of interest?
- A. No difference in the opinion.
- Q. I want you to go forward a further year, please, Mr. WONG. Did you make some request the following year to Mr. TSE in relation to redemption?
- 10 A. On the due day, he was not only unable to repay me, he wished for a further mortgage.
- Q. When was that approximately?
- A. Either July or August, 1965, I am not sure.
- Q. You say he was unable to repay. Did you ask him?
- A. I did not press him for payment yet.
- Q. I am not talking about pressing. I said: Did you ask him?
- A. I only mentioned, "You ought to have repaid me but now you want a further mortgage."
- 20 Q. You mentioned repayment, he asked for a further mortgage. Did he explain why he wanted further money?
- A. Also for the construction because he had made a bad estimation and the pre-sale of units was unsatisfactory.
- Q. Now we know that you agreed to make the advance and did. Will you explain to my Lord why?
- 30 A. I couldn't help; no way out. I just had to help him to keep going.
- Q. To keep what going?
- A. To keep going with the construction. I agreed to a further mortgage of \$200,000.
- Q. Now in the autumn of that year, did you learn something about the main contractors' relationship with Mr. TSE?
- A. About that time.
- Q. What did you find out?
- 40 A. He had dispute over money with him.

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COURT: With him. Who is he? With him or them?

- A. Mr. TSE with Lap Kee, the construction company. He could not pay the company in time.
- Q. And with anyone else?
- A. And Shun Cheong Engineering Co.
- Q. Is the English name of that China Engineers?

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- A. Yes.
- Q. And did he ask you for some more money, Mr. TSE?
- A. That was the third occasion.
- Q. Did he ask you for further money?
- A. Yes.
- Q. How much?
- A. \$220,000.
- Q. Did he explain the breakdown of \$220,000 for you?
- A. To pay the two companies I just mentioned.
- Q. How much to each, can you remember?
- A. I'm not sure.
- Q. Did you agree to advance that sum?
- A. That was the final advance.
- Q. Did you agree to advance that sum?
- A. Yes, no choice.
- Q. Why?
- A. To enable him to complete construction.
- Q. Was that money actually used by him to pay the contractors?
- A. Yes, for this advance, yes.
- Q. Did he in fact, so far as you know, discharge the debts to Lam Kee and China Engineers?
- A. More or less discharged.
- Q. But then in the following year in January, did something happen at the building?
- A. He was granted the occupation permit.
- Q. Did Lam Kee do anything at the building?
- 30 COURT: It is not Lam Kee. It is Lap Kee.
- MR. JACKSON-LIPKIN: I think you will find that the documents spell it L-A-M.
- COURT: But the witness has said Lap Kee, has he?
- MR. JACKSON-LIPKIN: My Lord, I don't think it matters. I'm obliged to your Lordship. I think we are talking about the same contractor.
- Q. Did the contractor do something at the building that caused you some concern?
- A. Well, the removal of the doors and the toilet facilities and also the stoppage of the lifts.
- Q. But what removal of doors and by whom?
- 40

- A. The contractors.
Q. What did they do? You haven't told us yet.
A. Beause Mr. TSE was still indebted to them.
Q. So what did they do?
A. Removed the fixtures and the facilities.
Q. Who did?
A. The contractors.
Q. Now you said something about the lifts.
What happened to the lifts?
A. Stopped.
10 Q. By whom?
A. I believe China Engineers.
Q. Why?
A. No payment made.
Q. Did those two matters cause you concern?
A. Yes.
Q. Why?
A. It affected the building itself.

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- MR. JACKSON-LIPKIN: Mr. Interpreter, I'm
20 terribly sorry! Did he say 'yes' when I
asked him, "Did it cause you some
concern?"?

INTERPRETER: Yes.

- Q. Well you say it affected the building
itself. Why should that worry you?
Q. Did you call a meeting?
A. I arranged for an appointment to meet him.
Q. Who?
30 A. Lam Kee and China Engineers.
Q. Anyone else?
A. I don't remember who else.
Q. Was the meeting held?
A. Yes.
Q. Was Mr. TSE present?
A. I don't remember.
Q. And at the meeting, did you agree to do
something?
A. I agreed to pay for his debts.
40 Q. And eventually was a formal agreement drawn
up to record what you had agreed?
A. I am not sure.

MR. JACKSON-LIPKIN: My Lord, may he see A43 to
44?

*Exhibits A43
& A44*

- Q. Can you read any English?
A. No.

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- 10 Q. But a formal agreement was drawn up and signed, was it, whereby you would meet that indebtedness?
A. Yes.
Q. Now you said earlier to my Lord that Mr. TSE made four payments of interest?
A. Yes.
Q. What happened after that?
A. He failed to pay interest.
Q. And did you reach some decision at what should be done?
A. Later it was decided that the payment of interest should be deducted from the payment of construction fees.
Q. Was that communicated to Mr. TSE?
A. He suggested it. Of course, he agreed.
Q. And did he stick to that agreement?
A. From October, 1965 onwards, no money could be deducted.
20 Q. And did you give some instructions to Mr. LIU?
A. Yes, I asked Mr. LIU to press Mr. TSE for payment of interest.
Q. In what manner?
A. By post.
Q. Was that a formal demand threatening sale?
A. It was until April, then I requested Mr. LIU to send him a formal letter.
Q. Did you know that an earlier formal letter had been sent in February 1966?
30 A. I'm not sure. Maybe yes, maybe no. I'm not sure.
Q. Can you really remember anything about that period?
A. Mr. TSE asked me not to press him very hard.
Q. When did he do that?
A. Some time in February, 1966.
Q. Was that after you had given certain instructions to Mr. LIU to write?
40 A. Yes.
Q. Now you say Mr. TSE asked you not to press him so hard. Where was that?
A. He spoke to my wife.
Q. Did he ever speak to you about the February letter?
A. He mentioned it to my wife.
Q. Did he see you at regular intervals during that time?

A. No.
 Q. At irregular intervals?
 A. Irregular intervals.
 Q. When he saw you, did he ever ask you for accounts?
 A. I do not remember.
 Q. Did he ever make any complaint to you about the calculation of interest?
 A. It seems he sent me a letter in March.
 Q. Did he ever express to you a wish to redeem the mortgage?
 10 A. I understood C.C. Lee & Co. had obtained the deed from J.S.M. in order to arrange for mortgage to someone.
 Q. From whom did you learn that and when?
 A. From J.S.M.
 Q. What was the money situation in Hong Kong at that time?
 A. Well it was in a rather slack period. Very few people wanted mortgage to buy property.
 20 Q. Was money easy to come by?
 A. No.
 Q. I want to ask you about the C.C. Lee business. How did that first come to your knowledge?
 A. Mr. LIU told me.
 Q. When? If you can't remember, just say so.
 A. I can't remember. Not sure.
 Q. What did he tell you?
 A. The deed had been lent to Mr. LEE, the
 30 solicitor.
 Q. Did anyone ever tell you of approaches to Wing On Life Insurance Co. Ltd.?
 A. Nobody told me.
 Q. Or of the Hong Kong & Shanghai Bank?
 A. No.
 Q. When Mr. LIU told you that the deeds had been sent to C.C. Lee, did you raise any objection?
 A. I raised no objection.
 40 Q. Now eventually, did you give instructions to Mr. LIU to write another letter of demand?
 A. I don't remember exactly.
 Q. Was a letter of demand threatening sale sent by Mr. LIU?
 A. Asking him what he was to do about it.
 Q. Was that on your instructions?
 A. Yes.

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- Q. Why?
A. I was hoping Mr. Liu was able to succeed in the mortgage so that I could get the money.
Q. But after the letter of demand was written, did Mr. TSE come to see you?
A. No.
Q. Are you understanding my question, Mr. WONG?
A. I said no.
Q. Do you remember a formal demand for repayment of principal and interest being sent out with a threat of sale?
A. Yes.
Q. Was that on your instructions?
A. Yes.
Q. After that was sent, did Mr. TSE come to see you?
A. Yes.
Q. What about?
A. He requested me not to put up the property for auction, that he be allowed to sell the units in order to pay me.
Q. To allow when?
Q. But did he ask for time?

MR. BERNACCHI: Please don't lead.

- A. No, he did not mention for how long. He just asked me not to do so.
Q. Did you agree or refuse?
A. I refused.
Q. Can you please tell my Lord of the reasons for your refusal?
A. Firstly, he had failed to pay me interest for six months. Secondly, the mortgage repayment was due. Thirdly, due to the unsteady situation of Hong Kong, curfew order due to the Star Ferry affair.
Q. Yes, what has that got to do with it?
A. If the units were put up for auction, the whole matter would be over.
Q. What had the Star Ferry riots got to do with that?
A. Disturbances on people's mind; and if I could not control the property properly I would lose everything, capital and interest altogether.
Q. How, you say that Mr. TSE asked to be allowed to sell the remaining units but did

not ask for time ...

MR. BERNACCHI: Mr Lord, he did not.

COURT: That is so.

10 Q. Did time feature in your mind in reaching the decision to refuse his request - may I rephrase that - was time a consideration to you when you said no to Mr. TSE?

A. What about time?

Q. Well, did you think about time?

A. I don't understand.

COURT: This might be about time. 15 minutes.

11.28 a.m. Court adjourns.

11.53 a.m. Court resumes.

Appearances as before.

20 MR. BERNACCHI: My Lord, could the interpreter move his seat whilst he is interpreting and then stand where his seat is and then the witness will be both visible and audible?

COURT: Yes.

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XN. BY MR. JACKSON-LIPKIN: (continues)

30 Q. I was asking you about your reasons for saying no when Mr. TSE asked you not to exercise the power of sale and you've given some reasons, and I asked you whether the question of time was a factor you took into account and you haven't yet answered that question.

A. In respect of what?

Q. Your refusal.

A. Because it was due for payment.

COURT: Mr. Jackson-Lipkin, I think there is confusion here. The time factor has got nothing to do with his reasons for refusing, the time factor was something you asked, when TSE said he would like to sell

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flat by flat, whether TSE has mentioned any time and he said no.

MR. JACKSON-LIPKIN: Yes, my Lord.

COURT: He gave three reasons for his refusal.

MR. JACKSON-LIPKIN: My Lord, I think I had better leave it as it is.

Q. In due course did you give instructions to Mr. LIU to go ahead and arrange for the sale of the property?

A. Yes.

Q. And did you take advice from Mr. LIU as to what was the proper method of sale?

A. Yes, I instructed him to take full responsibility.

Q. But did he give you any advice as to what was the correct method of sale?

A. Yes.

Q. What advice did he give you?

A. He told me there were two ways of auction; firstly, private auction and secondly a public auction. The latter was a fairer one.

Q. And whose decision was it to hold a public auction, yours or Mr. LIU's?

A. He advised me on it and I confirmed.

Q. Did you receive any advice about a reserve price? Just yes or no.

A. Yes, he mentioned the reserve price.

Q. And did you make certain calculations to arrive at a reserve price?

A. Yes.

Q. We know what that reserve price was. Can you tell my Lord how you calculated it?

A. Because of the unsteady political situation in Hong Kong at that time and the better units, the 36 better units had been sold by Mr. TSE and the price of property was dropping at the time, I fixed the remaining 36 domestic units at \$20,000.00 per unit.

COURT: How many units?

A. 36, remaining 36 domestic units.

COURT: (To interpreter) Did you say 36, the better 36 ...

INTERPRETER: Yes, the better 36 sold by Mr. TSE and the remaining 36 domestic ...

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Q. Before you go on to that, may I interrupt you, please.

COURT: Let him translate what has been said so far.

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A. The offices units are on the first and second floors ...

10 Q. Before you go on to the office units, may I ...

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COURT: With respect, Mr. Jackson-Lipkin, the witness has said something which has to be translated ...

MR. JACKSON-LIPKIN: It has been interpreted, has it?

INTERPRETER: He hasn't mentioned the price. I have just finished what he said.

20 COURT: Let me get this down first. "The remaining 36 domestic units I estimated at \$20,000.00", and what?

INTERPRETER: AT \$20,000.00 per unit.

COURT: And?

INTERPRETER: And the offices units on the first and second floors. That is all he said.

COURT: Yes.

Q. You said in relation to the 36 units previously sold that they were the better units. Could you please explain to my Lord what you mean by 'better'?

30 A. Good direction and big size.

Q. Thank you. Now, you were going to say something about the offices on the first and second floors. Would you please continue with that?

A. Altogether 12 units. Well, these units can neither be occupied nor used as offices, so

I fixed the price at \$15,000.00 each.

COURT: Not rentable?

INTERPRETER: Not rentable.

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Q. Can you explain that?

A. Well, nobody wanted these units for domestic or commercial purposes.

Q. You mean anywhere in Hong Kong or in that area or in that building, what do you mean?

A. At that particular moment and that particular area.

Q. There were 12 of those so that is \$180,000.00 isn't it?

A. Yes.

Q. What about the ground floor?

A. Five shop spaces on the average of \$50,000.00 each, various sizes.

Q. Now, was there any demand for those sorts of shops at that time in that area?

A. Not great; close down, no business.

20 Q. I see. Would you have been interested in purchasing the property for yourself if you had been permitted to do so?

A. No.

Q. Why not?

A. It is a question of area.

COURT: When you say area, that can be mixed up with size. When you say area, you say area in terms of size or locality?

A. The locality.

30 Q. Yes?

A. Because the area north of Boundary Street has only a short term.

Q. Was there any other reason why you personally would not be interested even if you were permitted to purchase the property?

40 A. It's difficult to tell about the reasons. Even my own property, I changed the names - the title of the property into my company's name.

Q. So there were personal reasons?

A. Yes.

- Q. Now, the company decided, did it not, that it should bid for the property?
- A. Yes. If nobody bid for it we would like to take it at the reserve price.
- Q. I see. Was there a meeting of the company to decide that?
- A. Yes.
- Q. Who was in the chair?
- A. My wife.
- 10 Q. Why?
- A. Because she represented the company.
- Q. Why should she represent the company on this occasion?
- A. Because I myself was the mortgagee, I had to bid for the property.
- MR. JACKSON-LIPKIN: Mr. Interpreter, are you sure he said "I had to bid"? Didn't he say "I had to auction"?
- MR. BERNACCHI: The question was for you, Mr. Interpreter.
- 20 MR. JACKSON-LIPKIN: The question was for you, Mr. Interpreter. Didn't he say "As I was the mortgagee, I had to auction the property"?
- INTERPRETER: It can be either because he only used one Chinese character 'pak'.
- MR. JACKSON-LIPKIN: Well, perhaps you could clear that up, would you please?
- A. To auction it.
- 30 Q. Just answer this yes or no, please. Had you received advice from your solicitor as to your own legal position as mortgagee? Yes or no.
- A. Yes.
- Q. Thank you. I want to pass, please, to the day of the auction itself. Did you attend?
- A. Yes.
- Q. With anybody?
- A. My wife and my employee.
- 40 Q. Which employee?
- A. Mr. YAU.
- Q. Anyone else?
- A. No. And Mr. LIU and Mr. McElney of J.S.M.

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- 10 Q. Which Mr. LIU? Was he also of J.S.M.?
A. Mr. LIU Kwing-wah.
Q. Before the auction started did you or any
of the four of you speak to the Chinese
assistant to the auctioneer?
A. We approached him as soon as we arrived
about the procedure.
Q. What about the procedure?
A. As to the result of the price of the
auction. He explained the auction
regulation to us generally.
Q. Yes. Did you tell him anything?
A. Well, I told him it would be better for
someone else to offer better bid.
Q. Better bid than what?
A. Better bid than the reserve price.
Q. But how did he know the reserve price?
A. I told him about it at that time.
20 Q. Did you tell him anything else?
A. No. Then we went to see Mr. Watson.
Q. Well, I'll come to that in a moment. Was
anything said to the assistant as to who
would bid on behalf of the company if there
were no other bidders?
A. Yes.
Q. Who told him and what was said?
A. My wife would represent the company.
Q. Yes. Who told him that?
A. I did.
30 Q. Now, you say you were taken in to see Mr.
Watson, who was taken in to see Mr. Watson?
Remember there were four of you, who was
taken in to see Mr. Watson? I am sorry,
there were five of you.
- COURT: It could be three, it could be five, it
could never be four.
- 40 A. Four.
Q. Who went in to see Mr. Watson?
A. Myself, my wife, Mr. LIU Kwing-wah and Mr.
McElney.
Q. Were you introduced to Mr. Watson?
A. Yes, Mr. LIU made the introduction.
Q. Did anyone speak to Mr. Watson?
A. They spoke in English so we went out.
Q. Who spoke in English?
A. Mr. LIU, Mr. McElney and Mr. Watson spoke
in English.

A. For 1 1/2 years.
 Q. Was anything said about the time to complete the building?
 A. It was about 18 months.
 Q. Now can you remember how long after that telephone conversation you visited the site?
 A. About a week later.
 Q. Now you said you went there yourself. Did you mean you went on your own or was there somebody with you?
 A. I went alone.
 Q. Now after you inspected the site, did you make up your mind about Mr. YEUNG's suggestion of \$1 1/2 m.?
 A. Yes, I decided to make such a mortgage.
 Q. Did you communicate that decision to anybody?
 A. I communicated YUNG Tat.
 Q. How?
 A. I asked him to come to me to discuss the terms.
 Q. How?
 A. By phone.

COURT: You mean YUNG Tat or YEUNG Tat?

INTERPRETER: He said YUNG.

COURT: You see, Mr. Jackson-Lipkin, you gave me the name firstly YEUNG Tak. Now it turns out to be YUNG Tat.

MR. JACKSON-LIPKIN: I'm sorry, my Lord, it is very difficult to romanize.

COURT: I appreciate it.

MR. JACKSON-LIPKIN: My Lord, to save possible confusion, may I make the suggestion? May be write down in Chinese characters the gentleman who is the broker?

COURT: I think we are clear now. It is YUNG Tat and not YEUNG Tak.

Q. Now did you in fact have any meetings with Mr. YUNG following that telephone conversation?
 A. Yes, he came to my office.

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- Q. Thank you. So you went out?
A. Yes.
Q. Did you go into the auction room?
A. Yes, I was there.
Q. About how many people were there?
A. About 30 or 40 - about 30.
Q. Was Mr. TSE there?
A. He was there.
Q. Did you speak to him?
A. No, he was talking to his friends.
Q. I want to ask you about the auction itself. How did it commence?
A. At first Mr. Watson announced the auction regulations.
Q. In what language?
A. In English which was interpreted into Chinese by his assistant, a Chinese.
Q. Was anything said by anybody about the reserve price?
A. Mr. Watson announced the reserve price.
Q. In what language?
A. He said the reserve price was 1.2 million dollars.
Q. In what language?
A. He spoke in English which was translated into Chinese.
Q. Then what happened?
A. He asked several times "Any other offer".
Q. In what language?
A. He also spoke in English which was interpreted.
Q. After he said that what happened?
A. Two or three minutes after what he had said, nobody responded.
Q. Did Mr. Watson say anything else?
A. He said "Anybody offers the reserve price, 1.2 million dollars?".
Q. In what language?
A. In English translated into Chinese.
Q. Then what happened?
A. He repeated what he said several times but nobody responded.
Q. Yes. Then what happened?
A. As no one responded so my wife offered the reserve price, 1.2 million dollars.
Q. Now, after she did that did Mr. Watson say anything more?
A. Then he asked "Any better offer?".
Q. In what language?

- A. In English translated into Chinese.
Q. And eventually did he knock the property down to the company for the reserve price?
A. Yes.
Q. Did you observe Mr. TSE during the auction?
A. He was present. He behaved fairly well at that time.
Q. Did he raise any objection to the auction?
A. No; absolutely no.
10 Q. Did he raise any objection to the reserve price?
A. Neither.
Q. Did he raise any objection to the fact that the property was knocked down to the company?

COURT: How did he know that it was knocked down to the company at that stage?

- Q. When your wife bid, how did she bid?
20 A. She uttered in Cantonese.
Q. What?
A. She uttered "I offer 1.2 million dollars. I bid at the reserve price".
Q. When it was knocked down, was it knocked down to your wife or to the company?
A. To my company; she acted as the representative of the company.
Q. Did Mr. Watson announce that "Sold to Chit Sen Company at so much"?
30 A. Yes, sold to Chit Sen Company.
Q. Did Mr. TSE raise any objection to that?
A. No; absolutely no.
Q. Did he raise any objection to your wife's bidding?
A. No.
Q. You've told my Lord that at the beginning of the auction Mr. Watson, through the interpreter, announced the reserve price. Was Mr. TSE present when that announcement was made?
40 A. Yes.
Q. I don't know if you can answer this question or not; if you can't just tell my Lord. Did Mr. TSE know what the reserve price was before Mr. Watson announced it?
A. He ought to have known.
Q. Why?
A. Because he was informed beforehand.

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- Q. By whom?
A. My wife and Mr. LIU.
Q. Where?
A. It's difficult to mention the place.
Q. Well, on the day of the auction or before?
A. Several days before.
Q. That is something you have been told, is it, or were you actually present?
A. I heard.
- 10 MY JACKSON-LIPKIN: Mr Lord, I think I'd better clear that up, if I may.
- Q. When you say you heard it, you mean you heard it with your own ears or somebody told you that it had happened?
A. I heard it with my own ears.
Q. I see. Can you remember how long before the auction that was?
A. Three or four days before.
Q. Now, following the auction did the company try to dispose of the premises, try to sell the premises?
20 A. Yes.
Q. With any success?
A. Not much success; only two or three units in three years.
- COURT: In three years?
- INTERPRETER: Yes.
- Q. I wonder if you could just help my Lord a little further. Did the company try to sell the premises as a whole after the auction?
30 A. That's what was in our mind but it was impossible.
Q. And having found it was impossible did you then try to sell it unit by unit?
A. Yes.
Q. I see. Did you meet Mr. TSE at all after the auction?
A. Yes.
Q. For what purpose?
40 A. He would like to sign an agreement to the effect that the property solely belonged to us.
Q. Did he raise any objection after the

- A. He raised objection afterwards.
Q. When?
A. After we pressed him for paying off the remaining balance.
Q. When was that?
A. I am not sure about the time, about one year after the auction; only an estimation.
Q. My Lord, I have no further questions in chief.

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10 XXN. BY MR. BERNACCHI :-

- Q. Mr. WONG, I want first of all to ask you a few questions about the auction of this property.
A. Yes.
Q. Now, do you remember before the auction commenced Mr. TSE, the claimant, Mr. TSE speaking very loudly to Mr. LIU?
A. I don't know.
20 Q. Well, I mean you were there, did he speak very loudly to Mr. LIU or did he not?
A. I did not know this happened.
Q. Well, your answer can be interpreted in two ways. You can't remember whether this happened or not or you did not hear it happen?
A. I did not hear such thing.
Q. I see. Now, when you say that you were taken in and introduced to Mr. Watson, that would be his private office, would it?
30 A. Yes.
Q. So you and your wife and Mr. LIU and Mr. McElney all went into Mr. Watson's private office just before the commencement of the auction?
A. Yes.
Q. Did you come out with Mr. Watson or did you come out first and Mr. Watson later on?
A. We came out first.
40 Q. Tell me, before your wife bid, before your wife bid at all at the auction, did Mr. Watson know that she was likely to bid?
A. I am not quite sure. I don't remember.

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COURT: What do you mean you are not quite sure, you don't remember; either he knew or he did not know.

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- A. I did not know.
- Q. You don't know whether Mr. Watson knew?
- A. Correct.
- Q. So presumably then he had not been told either by you or by your wife who was with you that she was likely to bid?
- MR. JACKSON-LIPKIN: My Lord, I don't think that is a fair question. This man said he went in, Mr. McElney spoke to Mr. Watson in English, he didn't understand it, he went out.
- COURT: Did Mr. LIU or Mr. McElney know that your wife was going to make a bid?
- A. I believe they knew.
- Q. I see. As you do not know whether Mr. Watson knew your wife was likely to make a bid, presumably you did not tell him, your wife did not tell him and Mr. LIU did not tell him in Chinese?
- 20 A. Well, I didn't know what happened to Mr. LIU.
- Q. Well, you, your wife, Mr. LIU and Mr. McElney went into Mr. Watson's office?
- A. Well, I left the office after introduction.
- Q. Oh, I see. And did your wife leave with you or did your wife stay?
- A. We left together.
- Q. I see. And Mr. LIU and Mr. McElney stayed in Mr. Watson's office?
- 30 A. Yes.
- Q. So if Mr. Wason did know at all it would have been Mr. LIU or Mr. McElney that had informed him?
- A. Possibly so.
- Q. Well, I mean, it is not possibly so, I mean, you and your wife didn't inform him so if he knew at all, perhaps he didn't know, it would have been Mr. LIU or Mr. McElney that informed him?
- 40 MR. JACKSON-LIPKIN: My Lord, I am sorry, but I must object again. That is not a proper conclusion either beacuse his assistant had previously been told and the assistant could have told him. So there were three people who could have told Mr. Watson, not

two.

COURT: What assistant?

10 MR. JACKSON-LIPKIN: My Lord, they said they had a conversation in Cantonese dialect with the assistant before being taken into Watson. The assistant was told that Mrs. WONG would bid on behalf of the company. My learned friend is suggesting to this witness that there were only two possibilities ...

COURT: Just a moment.

MR. BERNACCHI: I acknowledge that there was a conversation and in view of my friend's objection I would clear up this conversation. I do not have it myself recorded that Mrs. WONG ever told the assistant that she would bid on behalf of the company ...

20 COURT: Mr. Bernacchi, "I told him the reserve price ..."

MR. JACKSON-LIPKIN: My Lord, I wonder if during the adjournment we can just check this with the shorthand writer. My recollection is the assistant was told that as well, so that ...

COURT: What about the junior counsel, what have they got to say about it?

MR. WOO: "Then we went to see Mr. Watson. I told him that my wife ..."

30 COURT: Before that.

MR. WOO: According to my notes, "I told him it would be ..."

COURT: The auctioneer's assistant explained the procedure. It is after that.

MR. WOO: I think there is one sentence which appears to say so, "I told him that my wife would represent the company. I told him

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that." That's my note.

MR. BERNACCHI: My Lord, perhaps before you rise, I could ask Mr. WONG to repeat what he had told this assistant.

Q. Mr. WONG, before you went in to see Mr. Watson you had a conversation with his assistant?

A. Yes.

Q. And you told him the reserve price?

A. Yes, that was mentioned.

Q. And did you tell him anything else?

A. I can't remember exactly what else I said.

Q. Well, the only thing that you can remember telling him was the reserve price?

A. Yes.

COURT: Yes, I think this might be a convenient moment.

12.50 p.m. Court adjourns.

2.43 p.m. Court resumes.

Appearance as before.

D.W.L WONG Chit-sen - O.F.A.

XXN. BY MR. BERNACCHI (continues):

Q. Mr. Wong, you were speaking this morning about the information given to your wife that she was bidding. I asked you, "Did you or your wife tell Mr. Watson that she would be bidding?" and you said, "No," and then you answered several other questions.

A. Yes.

Q. Well now, I take it from your subsequent answers this morning that if Mr. Watson knew - perhaps he didn't know, but if he did know he must have been informed either by Mr. Liu or Mr. McElney?

A. Yes.

Q. Thank you. Now you said then that - in fact, you repeated it in cross-examination that you were introduced to Mr. Watson in

his office, and you were speaking of the 24th June, 1966.

A. Yes.

Q. But you knew Mr. Watson from two previous transactions, one in 1965; one was in Prince Edward Road and one, the other, was in Nanking Street.

A. What do you mean?

10 COURT: The suggestion is that you knew Watson before that day.

A. I had seen him at the auctions.

Q. Look, you hadn't just seen him. Now, first of all, Prince Edward Road. This was under a building mortgaged to you. It was put up by Mr. Watson on the 28th of October, 1965, and your company were the purchasers. Isn't that right?

A. I can't remember the time.

20 Q. Well, would you take it from me because I have had a look at the title deeds that the sale was on the 28th of October, 1965, i.e. the year before, and then on the 9th of November, 1965, you bought at the auction on behalf of your company Numbers 14 to 20, Nanking street which were under mortgage to your wife. Isn't that right?

A. I don't understand.

COURT: Why can't you understand?

30 A. I don't understand.

Q. What don't you understand? I have got the actual date from the documents, the title deeds, so take it from me that the actual date is right.

A. Yes.

Q. And on that date you bought on behalf of your company, the 3rd Respondent, property that had been mortgaged to your wife, the 2nd Respondent.

A. Yes.

40 Q. So you knew Mr. Watson very well from those two earlier transactions in the year before.

A. It's not the degree of knowing. I don't wish to comment further. I was instructed that day to him as a

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formality.

Q. As a formality you were introduced to a man that you already knew because of at least two other former transactions?

A. But he didn't know us; Mr. Watson didn't know us.

Q. Well now, I will proceed with what I say on behalf of the Plaintiff occurred at this auction. Now when the auction began the auctioneer announced the reserve price of 1.2 million dollars. I think that - that we are in agreement?

A. Yes.

Q. Now I would suggest that at this stage your wife raised her hand and said, "1.2 million dollars".

A. Yes.

Q. Did Mr. Tse at any time either after it had been knocked down or before it had been knocked down say, "It is not fair?"

A. No.

Q. Did he say anything to the effect why was the reserve price 1.2 million dollars when the mortgage was 1.5 million?

A. No.

Q. Did he say anything about he could have got a mortgage for 1.5 million dollars?

A. No. I noticed this on the pleading.

Q. Did he say anything about it at the auction?

A. No.

Q. According to your version of the auction he said nothing at all, he just attended the auction?

A. Yes.

Q. Now there was - I don't know whether you were in court at the time, but there was a Mr. LEE Kai-kam that gave evidence for the plaintiff as to what happened at the auction ...

MR. BERNACCHI: I am reading actually from page 158; my Lord.

Q. ... and he said several things but in particular he said that the Plaintiff - I'm sorry, that Mr. Tse had said, "It is not fair," and he said that Mr. Tse had said words to the effect "... that when he tried

to mortgage it, he was offered 1.5 million dollars and the property was then being auctioned for only 1.2 million ...". That is what Mr. Lee says happened.

A. It never occurred.

Q. I see. Then he says, "Then this woman acquired this property for 1.2 million dollars by auction." That was what he said. Two have thought that she acquired the property; there couldn't have been any reference to the limited company acquiring the property. Was there any reference to the limited company acquiring the property or not?

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A. Well, she got the bid so that's how it was acquired.

Q. Yes, you are right, but do you agree that there was no reference at the auction to the limited company acquiring the property?

A. I disagree.

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Q. And according to you, who said it?

A. My wife represented the company to get the bid.

Q. At this stage I'm not denying that, I am merely asking you was anything said about whether she acquired it for herself or whether she acquired it for the limited company at the auction? (Pause.)

COURT: Mr. Wong, it's not that difficult really if you are trying. Was it ever publicly announced at the auction that Chit Sen Company Limited had bought the property by your wife?

30

A. My wife announced that she obtained the bid on behalf of Chit Sen Company.

Q. Well, in evidence-in-chief you gave a different version. You said:

"Mr. Watson asked if anyone offered the reserve price. As no one offered it my wife offered the reserve price. Again Mr. Watson asked if anyone bid better. No one did, and then

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Now that is a completely different version from the version you now say, that your wife said, "I offer the reserve price on behalf

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- of Chit Sen Company."
- A. What's the difference? She offered 1.2 million dollars.
- Q. The difference is that his Lordship has to eventually decide what did happen or what was - more probably happened at the auction. Now which of the two versions, and it is two versions, would you now say is the right one? One is that your wife said, "On behalf of Chit Sen Comapny I offer 1.2 million." The other one is Mr. Watson knew that your wife was bidding on behalf of the Chit Sen Company, and therefore when hedropped the hammer to your wife's bid he said, "Sold to Chit Sen Company."
- A. I meant both.
- Q. Oh, I see, you meant both, all right. I find it rather hard to understand why you wasted a lot of time telling of how Mr. Watson had been informed that your wife was bidding if your wife openly said at the auction, "I bid 1.2 million dollars for - on behalf of Chit Sen Company."
- A. It's not that I was wasting time, I wasn't clear.
- Q. All right. Now this version of Mr. Lee's of what happened, do you know that he wasn't cross-examined on that version?
- A. As a matter of fact it never occurred how was he cross-examined.
- Q. Anyhow, you can't explain?
- A. It's not that I can't explain in the presence of my solicitor and clerk.
- Q. Oh, I see. Now Mr. Lee also said - I'm sorry, it was Mr. Tse also said that the auction was very poorly attended. You say that about 30 or 40 people attended?
- A. Yes.
- Q. Can you offer any reason for their attendance and then not bidding?
- A. Probably the reserve price was too high.
- Q. I see.
- A. That's why nobody wanted it.
- Q. You see, I put it to you that in fact there was a very poor attendance at the auction and that was why there weren't any other bids. You deny it?
- A. I deny.

- Q. All right. Now you maintain apparently that Mr. Tse knew of the reserve price previously to the auctin.
- A. Yes.
- Q. How do you say that he knew this?
- A. I discussed with him and invited him to ask his friends to join the bid.
- Q. Do you mean that you told him then of the reserve price?
- 10 A. Yes.
- Q. Well, why did you say in evidence-in-chief, "He was informed by my wife and Mr. Liu; I heard?"
- A. After that they reported to me that Mr. Tse had been informed.
- Q. Well, again which is the correct version? In your evidence I mean, at least if possible be consistent. Did you inform him of the reserve price and invite his friends to join or was the position that you merely invited his friends to join and you were informed by Mr. Liu and your wife that he had been informed of the reserve price?
- 20 A. It seems two versions of yours are related to one and each other, it is difficult to distinguish which one.
- Q. Are you going to elect for both again?
- A. What I just said.
- Q. Well, you said in evidence again - in evidence-in-chief, sorry : "He was informed of the reserve price by my wife and Mr. Liu; I heard."
- 30 A. Well, it might be a misunderstanding by "I heard." I meant Mr. Liu told me.
- Q. Well, your counsel - I haven't myself but your counsel has, "I heard with my own ears," but I must say that I only heard you say, "I heard."
- A. By 'heard' I meant he reported to me by phone.
- 40

COURT: Who?

A. Mr. Liu.

Q. But what about - when I said - I deliberately didn't inform you of what you said in-chief, I merely said, "You say that Mr. Tse was informed of the reserve price

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before the auction, how is that?" and you said something completely different. You said, "I invited him to take along his friends to bid and informed him of the reserve price," or words to that effect.

A. Well, although there were two incidents it's more or less the same because I invited him to ask his friends to join the auction for fear that he might consider the price was too low.

Q. Tell me, was that - I'm going to refer to the minutes of the 3rd defendant - the 3rd respondent in a minute, but was that before or after the 3rd respondent had agreed at a directors' meeting to purchase the property at 1.2 million dollars?

A. Before the bid was successful.

Q. I didn't ask you that. You and your wife held a directors' meeting of the limited company?

A. Yes.

Q. And you resolved to bid 1.2 million dollars for this property?

A. Yes.

Q. Now the event that you are speaking of when you invited the plaintiff to come along and bring his friends and you said, "Because I fear that ..." - because you feared that the price was too low, was that before or after the directors' meeting of the limited company, your company?

A. After.

Q. Now you and your wife's place of residence - well, I don't know whether you still reside there but in the 1960s was No.68A, Macdonnell Road, 3rd Floor.

A. Yes.

Q. Do you still reside there or not?

A. Yes.

Q. Now in 1965 you had an office at Room 203B, Pedder Building, Pedder Street?

A. Yes.

Q. Now some time in 1966 you moved your office to Room 504A, Great China House?

A. Yes.

Q. Now WONG Chung-shek is a shareholder of the family company; I think he is your eldest son.

A. Yes.

Q. Now this WONG Chung-shek was in Jesselton, Sabah, between late April, 1965 to towards the end of 1966?

A. Yes.

COURT: April '65 to when?

MR. BERNACCHI: Towards the end of 1966.

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10 Q. Now the 3rd respondent company, Chit Sen Company Limited, was incorporated in late December, 1964 with you and your wife the two subscribers to the memorandum.

A. Including my son, Chung-shek.

Q. He was not a subscriber to the memorandum, he was the 1st shareholder apart from the subscribers to the memorandum.

A. Yes.

Q. And when your family company was registered your registered office was Flat A, 68, Macdonnell Road.

A. Yes.

20 Q. That is your residence?

A. Yes.

Q. Now when your eldest son, WONG Chung-shek, came back from Sabah he took up residence at 16, Fung Wong Terrace, 1st Floor.

A. Yes.

Q. And I believe that in the middle of February 1967, the registered office of the 3rd respondent, Chit Sen Company Limited, was changed to 16, Fung Wong Terrace, ground floor.

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A. Yes.

Q. Was your son residing at 1st floor and ground floor or was ground floor merely solely an office?

A. He resided on the 1st floor; the ground floor was solely for the office.

Q. Any particular reason for changing from your house to immediately below your eldest son's residence?

40

A. No particular reason.

Q. By 1967 you had - your Limited Company had had a number of property transactions, I think, from which they acquired land.

A. Yes.

COURT: Since '67?

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MR. BERNACCHI: By '67.

Q. Thinking back on it, thinking back on it, did you think that it would be better to change the registered office so that it wouldn't appear that it was the same place as your residence?

A. Nothing in particular.

Q. Well, the directors' meetings were still held at your residence, Macdonnell Road, or your office.

A. It varied. Sometimes at both places, no fixed place.

Q. Well, it varied between your residence and your office. Sometimes your residence, sometimes your office.

A. Yes.

Q. And that was so before and after the change of the registered office?

A. Before the registered office was changed I held meetings at my residence.

Q. Well, I am suggesting to you that before and after the registered office was changed you either held meetings in your residence or you held meetings in your office.

COURT: I think that has been agreed long ago.

MR. BERNACCHI: I thought it had but I thought he was prevaricating.

COURT: The difficulty was you made a statement about 10 minutes ago as to where the meetings were held and it was interpreted to the witness as a question, and he answered, "Yes, it was at both places."

MR. BERNACCHI: I see, then I won't proceed with this question.

Q. Mr. Wong, with these preliminary questions I will now refer you to certain meetings of the directors of this family company.

A. Yes.

MR. BERNACCHI: Perhaps he could be shown the Chinese. My Lord, the English translations start from page 117 of Bundle 'C'. I think it is page 79 of the original ...

Exhibit C117

Q. Now this is the first meeting of the directors and all three of you - yourself, your wife and your eldest son - attended as directors.

A. Yes.

Q. And at that meeting you allocated shares: 50 to yourself, 50 to your wife, 50 to your eldest son, 20, 10, 10 to your other children.

10 A. Yes.

Q. These - WONG Chung-on, WONG Chung-ling, WONG Chung-fung, they were students at that time:

A. Yes.

Q. So that your share capital was \$190,000.00.

A. Yes.

Q. Now in fact did you put up the share capital and then distribute it according to these shares?

20 A. Yes.

Q. Now Resolution 4 is: "What should be done if share capital is insufficient for business operations?" Same meeting, and then: "Resolution: Shareholders may voluntarily advance money to the Company at the monthly interest rate of 1 per cent to 1.2 per cent." Now I am suggesting to you upon because you advanced all the money on an interest free basis for the company.

30 Q. Fortunately I have checked up already so if you turn to page 50 of Bundle C.

MR. JACKSON-LIPKIN: My Lord, may I intervene and ask my learned friend when he says he is quite sure, is he talking about all the money or interest free, because if he is talking about all the money our examination of the accounts shows the contrary.

COURT: I don't see why the witness cannot answer this question by himself quite simply.

40 MR. JACKSON-LIPKIN: My Lord, it was a double question.

COURT: It wasn't. It was a perfectly simple question and let me ask it again. Mr.

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WONG, you loaned money to this company off and on, did you?

A. Yes.

COURT: Your own money which you loaned to the company?

A. Yes.

COURT: Did you charge the company interest in respect of these loans?

A. I have to check, check up.

Q. Well now, turn to page 50 please of Bundle C. This is a Balance Sheet, page 50 and 51, for the year ... well, from the period 1st of February 1965 to the 31st of March 1966. There you find "Liabilities, Current Liabilities." Now there is only one loan listed as Current Liabilities and that is: "Loan from a Director - Non-Interest Bearing" and then \$2,554,822.35, and on page 51 you sign this Balance Sheet. Presumably, therefore, you have checked it and found it correct.

A. Yes.

Q. I'm sorry, it is 50 ... No, it's 51 and then 51A is the next sheet.

MR. BERNACCHI: My Lord, I don't know whether you have it split up or you have it as a complete Balance Sheet.

COURT: What?

MR. BERNACCHAI: I have in split up as 50 and 51 and then 51A, another Balance Sheet, but perhaps your Lordship has the 50 and 51 pasted together?

COURT: 51 is the Balance Sheet as the 31st March 1968 and 51A is the Balance Sheet as at 31st of March 1967.

MR. BERNACCHI: Thank you.

Q. So you agree that ... you agree two things. First of all, do you agree that the loan from a director was a loan from you?

- A. Yes.
- Q. Secondly, that it was non-interest bearing?
- A. Yes.
- Q. Thirdly - I'm sorry, it is not just two - thirdly, that it was over two and a half million dollars.
- A. I don't understand accounts. I do not deal with the ...
- 10 Q. Did you sign the Balance Sheet, Mr. WONG, and I'm merely asking you not for the accounts in general, but refreshing your memory because you said it had to be checked up, refreshing your memory that you loaned over two and a half million dollars in 65/66.
- A. But I mixed up with the entires.
- 20 Q. Are you saying that although you signed this Balance Sheet and it shows that the loan from you ... because you say "Loan from a Director" is a loan from you, two and a half million dollars odd, yet you don't want to acknowledge that you did lend two and a half million dollars odd in that year? Are you saying that?
- A. I don't mean that. I don't remember, due to the lapse of time, fifteen or sixteen years ago. I can't remember the exact entries.
- 30 Q. So I am refreshing your memory. These documents are your documents disclosed to the claimant, Mr. TSE, discovery of documents.
- A. But these accounts were prepared by the accountant. I don't even understand what he meant.
- Q. And yet you signed the Balance Sheet?
- A. He mentioned to me roughly at that time. I don't remember exactly what happened.
- 40 Q. Now that your memory is refreshed from this Balance Sheet, do you admit ...
- A. No.
- Q. Well, it is refreshed. Do you admit that you loaned the company interest free over two and a half million dollars during this year 65/66?
- A. It might be so if it is so written here.
- Q. Well, is it so?
- A. Yes, yes, but I'm not clear.
- Q. Look at document 148 in the Chinese, C 148.

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The English is 149.

MR. BERNACCHI: Has your Lordship got the same number as I have?

COURT: We are looking at the company's ledger account, the witness's account with the company.

MR. BERNACCHI: Yes.

Q. Now do you agree with me it is from your file, it's from your company's account, this is your account with the company.

A. Yes.

Q. Now apparently it starts in April 1966, it is the next year to the document that I have previously showed you.

A. Yes.

Q. And the first entry on the right-hand side is: "Balance from previous year" and exactly the same figure appears. Now having shown you something in Chinese as well, would you now agree with and that for the year 65/66 you were the sole lender to the company and you lent over 2,500,000 on an interest free basis?

Q. Thank you. Now I want to ask you questions again on the minutes. The second meeting, 119 of the translation. Only you and your wife attended. From your previous answers, your son had gone away to Jessletion by that time. Again, you took the chair.

30 A. Yes.

Q. Now there is at 6(1) in the matters for discussion: (1) It is proposed to take a mortgage on 13,000 square feet of land at No.4, Peace Avenue, Kowloon, for the sum of \$400,000.00 at the monthly interest rate of 1.3 per cent for a period of one year."

A. Yes.

40 Q. And I'm going ahead to the end of 6: "Resolution: Both proposals are hereby approved. If funds are inadequate, Mr. Wong, the Chairman, will make temporary advancement to meet the shortfall."

A. Yes.

Q. Now in fact I think you made the whole of the sum of 400,000 available as an interest

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free loan to the company.

A. Yes.

10 Q. Now I want to ... I haven't finished with these minutes, but I want you now to refer to the 5th meeting of directors, the minute of the 20th June, 1966, page 122 of the translation. "Regarding the mortgaged property at No.4, Peace Avenue, Kowloon, the owner is unable to redeem the property by the due date and so wishes to offer the site for sale to our Company at the minimum price of \$730,000. Mr. Wong, Chairman, has carefully considered the matter and is of opinion that the location is good and the price is not high. Therefore, the site was purchased during March of this year." The 5th meeting, 20th of June 1966.

A. Yes.

20 Q. Now I have several questions to ask you on that. First of all, am I right in saying that the money, the necessary money, was again advanced by you on an interest free basis?

A. I think probably so although it's difficult to confirm.

30 Q. Do you know now, was it bought subject to the mortgage to you or was it bought for an inclusive price of \$730,000, you paying yourself off first and the balance to the vendor?

INTERPRETER: He doesn't understand.

again.

COURT: Mr. Bernacchi, it might help to save time for this witness if he is allowed to see this ledger account with the company. Then he ought not to have any difficult in answering these questions.

40 MR. BERNACCCHI: I have no objection, but I have only the documents that are furnished by the respondents, which does not include the ledger account. If the ledger account is produced.....

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COURT: It's the witness's account in the ledger with the company. A sample is document C149. Whatever year it was, he ought to be able to answer each question without saying, "I have to check and then check again." Mr. WONG, for the whole year can you point to a single item in which the company has paid you any interest on your loan?

10 A. I don't know. I do not handle the accounts.

COURT: You do not handle the accounts and you do not read accounts? Answer my question. You told me you don't read accounts. Is that what you are saying?

A. I can read the accounts in this way, but not ...

COURT: Well, read that account then.

20 MR. BERNACCHI: Unfortunately, my Lord, this account is the following year. It was bought in the year 65/66 of which these documents only have the total sum of two and a half million dollars.

COURT: Mr. Bernacchi, all I asked him on your behalf was, "Can you point to a single item in the account in which the company has paid you interest on your loan, given all the years which you say are relevant."

MR. BERNACCHI: My Lord, really 1965 and 1966.

30 COURT: Given the accounts for 1965/1966.

MR. BERNACCHI : My Lord, I only have the accounts at page 50 at 51 which are the certified accounts that he has signed, but he says that he doesn't understand them, but that says of course definitely "interest free loan."

COURT: But that's in the English, Mr. Bernacchi.

MR. BERNACCHI: Yes, My Lord.

Q. Would you agree with me that during 1965 and 1966 you lent the money to the company always on a non-interest bearing basis?

A. Of course, basing on this document.

COURT: On what document?

A. The 1965 to 1966 Balance Sheet.

Q. And the 1966 account is your account with the company, your ledger account which is more detailed. So I would repeat his Lordship's question : Can you point to a single item on this account that is interest paid to you?

A. Impossible. I don't remember. You better ask the accountant.

Q. But you can read Chinese?

A. How can I tell one entry from another?

Q. Now coming back to the minutes of the 20th of June. This sum that you paid - I am suggesting that you paid for the purchase of this property out of your loan, that is to say, out of the two and half million odd dollars that you loaned to the company during 1965/66.

A. I'm not clear.

Q. Not clear?

INTERPRETER: He meant he wasn't sure.

Q. Could you check that up or something?

A. How to? I do not handle accounts.

Q. Overnight perhaps you could check that up.

A. All right.

COURT: Mr. WONG, You are ... you were in the mortgage business in a fairly big way. In the year 1965/66 when most people did not have money the market was very tight and you had the cash, obviously. You were in the mortgage market, there's no doubt about that. Are you trying to tell the court now in that kind of business you can't even read simple accounts and you answered counsel's question: "I don't know, I can't read accounts"? Are you really trying to tell the court that? Anyway I further add the type of business in which

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COURT: Are you still trying to tell the court you can't even read simple accounts?

A. I don't know. It is difficult to answer your Lordship. I don't know how.

COURT: I see. The way to answer questions is : "I don't know how to answer"?

A. Yes.

COURT: Carry on, Mr. Bernacchi.

Q. Now do you remember, and if you can't remember say so, whether this price of \$730,000.00 was with the premises free of your own mortgage or whether it was subject to your own mortgage?

A. No.4 Peace Avenue, the mortgage.

COURT: That was mortgaged before, Mr. Bernacchi ...

MR. BERNACCHI: Yes, my Lord, I'm sorry.

COURT: And the actual redemption was sold to the Company.

20 MR. BERNACCHI: I forgot that that was so.

Q. Now Mr. WONG, do you remember was the company, your company, threatening to sell or was it a completely voluntary sale, this sale of No.4 Peace Avenue?

A. No, no force.

Q. I'm not suggesting force.

INTERPRETER: "Press..."

MR. BERNACCHI: Yes, pressure ...

INTERPRETER: "Didn't press."

30 Q. In other words, from the wording it reads: "The owner is unable to redeem the property by the due date and so wishes to offer the site for sale."

A. After he had discussion with us.

Q. There are two things that you, the

company, can do, or perhaps more, but there are two things. One is to extend the time, the second is to exercise your power of sale. There are other matters like foreclosure, but the two principal things are (1) extend your mortgage (2) exercise your power of sale.

A. Yes.

10 Q. Had you indicated to the mortgagee which you would do if he did not sell?

A. I'm sorry, to tell him what?

Q. You mean repeat my question?

A. Yes.

Q. Did you indicate to the mortgagee whether you would extend the time of the mortgage or exercise your power of sale?

20 MR. JACKSON-LIPKIN: My Lord, may I ask to what issue in these proceedings that question is directed? All the other questions they go to an issue which is one of the agreed issues and one of the pleaded issues, but this must be stepping beyond those bounds.

MR. BERNACCHI: My Lord, in my submission, I want to establish whether the price paid was an under-value or a truthful price, bearing in mind that the mortgage was 4 lacs and the purchase price was 7 lacs 30.

30 COURT: I don't understand that. What are you trying to establish?

MR. BERNACCHI: The mortgage on the property in issue was 1.5 million and the sale price was 1.2 million.

COURT: Yes?

MR. BERNACCHI: And I say that that was an under-value.

COURT: Yes?

40 MR. BERNACCHI: This sale was just a little bit earlier but not much earlier. The mortgage was 4 lacs, the sale price 7 lacs 30.

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COURT: But one does not necessarily mortgage a property up to the sale price. You may have a property worth ten million dollars, but your requirements for a loan are only 50,000.

MR. BERNACCHI: My Lord, if your Lordship rules that my question is not relevant I will withdraw it.

COURT: On this point certainly it is not relevant because every mortgager does not mortgage a property up to the hilt. His requirements may not be up to the hilt. That certainly can't help you to establish the point.

MR. BERNACCHI: My Lord, it may eventually be relevant on other points, but I will withdraw it for now.

COURT: Yes.

20 MR. BERNACCHI: And come back to it a little later.

COURT: But on this point I'm afraid you are not even near the mark.

Q. Now I think again Messrs. Johnson, Stokes and Master were the company's solicitors throughout and it was handled by Mr. LUI Kwing-wa.

COURT: Do you mean the Peace Avenue sale?

30 MR. BERNACCHI: The Peace Avenue mortgage and sale.

A. Yes.

Q. Now you were reporting to the board what you had already done, namely, purchased this property.

A. Yes.

Q. And you had signed the Conveyance - I've checked this up so my date is right - you had signed a Conveyance, you yourself, on behalf of the your Company, on the 15th

March, 1966.

A. Yes.

Q. So the relation between you and your company was such that apparently you were given the complete authority to buy property without first obtaining the approval of the company.

A. Yes, sometimes I did because it could be confirmed later.

10 Q. What do you mean by "it could be confirmed" because how could the company not confirm something that has already happened? You had signed the Assignment.

A. It is difficult to answer.

Q. I'm merely saying to you that your relationship with your company was such that you had authority to purchase property without reference to the company as long as it was referred later. I mean, as long as it was formally referred later.

20 A. It's difficult to explain. Sometimes if the other directors were not present and I had to go on with certain transactions, I had to make my own decision.

Q. I'm merely putting to you that your relationship with your company was such that you had implied authority to purchase property.

A. Yes.

30 Q. Thank you. I now want to go back again to the minutes of the second meeting at page 119 of the English translation. "Matters for Discussions: (2) it is proposed to take a mortgage on the whole of 4 storeys of the building at No.64 Cameron Road, Tsim Sha Tsui, for the sum of \$550,000 at the monthly interest rate of 13. per cent for a period of one year."

A. Yes.

40 Q. And again the resolution: "If funds are inadequate, Mr. Wong, the Chairman, will make temporary advancement." In fact, you advanced the money.

A. Yes.

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COURT: These documents have been minuted to read : "It is proposed to take mortgage" rather than "to mortgage."

MR. JACKSON-LIPKIN: Unfortunately, my translation says "the whole of third floor of the building at No.64, Cameron Road" whereas my learned friend's says "the whole of 4 storeys of."

10 COURT: "The whole third floor of the building at No.64."

MR. JACKSON-LIPKIN: Yes, my Lord, that's what I have.

MR. BERNACCHI: Could you check up from the Chinese please? Which is right, "the 4 storeys"? "The whole block of 4 storeys" apparently is the right translation.

COURT: These are not certified translations?

20 MR. BERNACCHI: My Lord, they were presented to us, I am confident, in all good faith. They come from the 3rd Respondent, but there is a court translator's chop, but I must say that my translation says: "the whole of the 4 storeys." Perhaps the court translator could put "the whole block of 4 storeys" which is the Chinese, apparently.

COURT: "The whole block of ...

MR. BERNACCHI: ... of 4 storeys of the building at No.64."

30 MR. JACKSON-LIPKIN: My Lord, if the Interpreter says that is so, of course I will accept it.

COURT: These are your minutes, they were in the Chinese language.

MR. JACKSON-LIPKIN: My Lord, it's in the shorthand note that I made that statement.

Q. Now would you turn to the minutes of the 6th meeting, minutes of the 23rd of June

1966, page 123. "Interest on the mortgage loan for the property at No.64, Cameron Road, Kowloon, has been overdue for over eight months. Notice of payment of interest within one month has been given by Messrs. Johnson, Stokes and Master but no reply has been received. To consider how the matter is to be handled. Resolution: Messrs. Johnson, Stokes & Master is to be instructed to proceed to auction the property as soon as possible at a price not less than \$400,000.00"

10 A. Yes.
Q. And I think Messrs. Johnson, Stokes & Master did auction the property on the 30th of June, 1966.

A. Yes.
Q. And the buyer was your wife, for \$460,000.00

20 A. Yes.
Q. And again when you went to Messrs. Johnson, Stokes & Master you were acting through LUI Kwing-wa.

A. Yes.
Q. And Messrs. Johnson, Stokes & Master were the solicitors for both parties in the original mortgage.

A. I'm not sure.

30 MR. BERNACCHI: I think, Mr. Interpreter, you may have misunderstood my question. Messrs. Johnson, Stokes & Master were the solicitors for both parties in the original mortgage.

A. I don't know.

MR. JACKSON-LIPKIN: My Lord, may I take objection to this question in the morning?

COURT: What is the objection to that question?

40 MR. JACKSON-LIPKIN: My Lord, to what issue is the question directed as to whether J.S.M. acted for both parties or for one party or for the other party, whether it was Mr. LUI or Mr. McElney or anybody else?

COURT: Isn't all Mr. Bernacchi is trying to do

is "What is your modus operandi? How do you do these things?" What is wrong with that?

MR. JACKSON-LIPKIN: My Lord, "How does one do what things?" is the question that I must reiterate.

COURT: The way he enters into mortgages.

MR. JACKSON-LIPKIN: We know the way he entered into the mortgage which is the subject of these proceedings. That is certain. How he entered into other mortgages can have no relevance to this particular mortgage.

COURT: Why not?

MR. JACKSON-LIPKIN: My Lord, because they are not in issue, other mortgages.

COURT: These mortgages which are not in issue Mr. Bernacchi can't cross-examine on?

MR. JACKSON-LIPKIN: No, unless it's relevant.

MR. JACKSON-LIPKIN: My Lord, the modus operandi so far as the mortgage aspect is concerned, that is already established and agreed. 20

COURT: Other cases? Other cases, how does he run his business?

MR. JACKSON-LIPKIN: My Lord, how does he run his business is one thing. Other mortgages is another.

COURT: I can see not the slightest objection to the question asked by Mr. Bernacchi and I allow the question, Mr. Jackson-Lipkin. I adjourn until tomorrow morning, ten o'clock. 30

4.35 p.m. court adjourns

19th March, 1979

20th March, 1979

10.03 a.m. Court resumes Appearance as before.

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XXN. BY MR. BERNACCHI continues:

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10 Q. Mr. WONG, I was cross-examining you on the transaction which is referred to in your directors' meetings, 64 Cameron Road, and I put it to you that Johnson, Stokes & Master acted for both parties in the deed of mortgage and in the indeture of assignment and that LIU Kwing-wah was the interpreter and last night you said you couldn't remember. Have you checked it up? Could you answer it now?

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A. I did not check.

Q. You would not agree with me clearly whether you lent over 2 1/2 m. to the company interest free in 1965/66 and I asked you to check that up. Have you checked that up?

A. I did check up.

20 Q. Do you now confirm that you lent interest free over 2 1/2 m. during these years, 1965/66?

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COURT: Put it it quite clearly, it is the first year of the company's business, 13 months?

A. Yes, I agree.

30 Q. And would you check up, please - you must have the documents - whether I am also right in saying that in this 64 Cameron Road, Johnson, Stokes & Master's clerk LIU Kwing-wah acted for the third respondent, your company, and the mortgagee in the mortgage deed and then again Johnson, Stokes & Master's LIU Kwing-wah, the clerk, acted for both the mortgagee, the third respondent, and your wife in the indenture of assignment.

A. I have no way to find out.

Q. Why not? You have the deeds, your company or your wife have the deeds.

40 A. But the opposite party was J.S.M. I have no way to find out.

Q. What do you mean by the opposite party, please?

A. The Landlord.

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Q. Do you mean the former Crown lessee Mr. CHENG Men-ngau.

MR. JACKSON-LIPKIN: If it will help, we will make the enquiries and give your Lordship the answer. It will certainly save time.

MR. BERNACCHI: Yes, of course. Perhaps could I ask my learned friend another question? Could you also confirm the signature or signatures on the registration. (after talking privately with Mr. Jackson-Lipkin) That will not be available to the Court this afternoon.

20 COURT: There is one little problem with this. In the document of conveyancy, one firm of solicitors might appear to be acting for both sides in that it is witnessing and you get an interpreter - clause interpreted to both parties in the same firm of solicitors but that firm of solicitors might be acting for one side only in respect of the transaction and the other side merely for the purpose of preparing the conveyancing.

MR. BERNACCHI: Yes, my Lord. Perhaps I would address you on that problem in my closing.

COURT: I am not suggesting that it arises in this case. I am saying that this problem can arise in cases of this nature.

30 Q. Now Mr. WONG, the Cameron Road property was, I would remind you, mortgaged, i.e., the mortgagee was the limited company and it was eventually bought by your wife. You've agreed with that already.

A. Yes.

Q. Now you agreed yesterday that the money for the mortgage was advanced by you at that time.

A. Yes.

40 Q. Now when your wife bought the property in her name, did you also advance the money to her to buy the property?

A. No.

Q. So does your wife have a separate source of income?

A. She had money.

Q. I mean without appearing to pry too much into your private lives, from what did she have money other than money that you supplied her with?

A. She had been doing business for the past years.

Q. She had been doing business in combination with you, hadn't she?

10 A. Yes, but we kept separate accounts.

Q. But would it be right in saying that you did business, in effect, in partnership with her until eventually in late December, 1964, you formed this limited company?

A. I started business since 1935.

20 Q. That doesn't answer my question. Would it be right. I don't mind since then when - but before the end of 1964 - she and you had been doing business in partnership and then at the end of 1964 you formed this limited company that you yourself have referred to as 'my company'.

A. Yes.

Q. And although you formed the limited company from time to time thereafter you and she continued to deal with properties in your own name?

A. It depended.

30 Q. Surely, it depended on whether really the limited company was already involved. If the limited company was already involved, then it was useless for the limited company to buy its own property, or she or you bought the property instead.

A. Possibly.

40 Q. Now I want to turn over the page, page 120, the third meeting of directors on the 8th of June. Now again the third meeting was attended by you and your wife with you in the chair.

A. Yes.

Q. Now I want to refer you to item 6(2). Now two blocks of old buildings at No.156 and No.158, Tai Nam Street, Kowloon. This is offered for sale at the minimum price of \$225,000.00.

"Whether(this company) should purchase
the properties for profitable

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redevelopment.

Resolution: It is hereby resolved that the offer be accepted and Messrs. Johnson, Stokes & Master be instructed to arrange for completion of the purchase."

Now you have taken a mortgage of these properties in the name of WONG Ching-ping, haven't you?

Q. And it was then sold by the mortgagor to the limited company.

A. Yes.

Q. Now had the mortgage time expired - in other words, had your rights to sell existed or not?

COURT: Mr. Bernacchi, how does this arise? You asked whether it is the mortgagor who sold.

20 Now you are coming to asking him whether it was the mortgagee exercising the power of sale.

MR. BERNACCHI: What I am merely finding out is whether it was a true sale at arm's length or a false sale because if it had not been sold, he would have exercised his -

COURT: At that time did you as mortgagee have the right to exercise the power of sale, as mortgagee?

A. If it had come to the time to exercise the power of sale, otherwise not.

30 COURT: Did you have a right at the time of this sale and purchase? Did you, as mortgagee, have the right to exercise your power of sale?

A. Yes.

Q. Was the position this: that instead of exercising the power of sale, you arranged for your company to buy the property?

A. Yes, more or less.

40 Q. And I think that the mortgage was for the same sum as you bought the property,

namely, \$225,000.00?

A. I don't remember.

Q. In this case, at one time the stamp duty officer questioned the consideration and suggested that you have to pay extra stamp duty.

A. I do not remember.

10 Q. Well again, would you check it with your legal advisors? I am suggesting to you this and I would suggest it completely and then you check it: that at one time the stamp duty officer was charging you excess stamp duty and then the assignment was dated the 30th of June, 1965, but eventually on the 27th of July, 1965, you convinced the stamp duty officer that no extra stamp duty was required.

20 COURT: What turns on that, Mr. Bernacchi? That the stamp duty officer thought at that time that the consideration was too low but he was able to convince him that it wasn't? What am I supposed to make out of this?

MR. BERNACCHI: The next question and then perhaps I hope it will be clear to you.

30 Q. You see, I suggest that your mortgage was only re-assigned after the stamp duty office had cleared the question of excess stamp duty. In other words, your company took the property subject to the mortgage and then two days later you cleared off the mortgage, whether by an actual payment or a theoretical payment.

A. I don't remember in the lapse of time. It is 15 years ago.

40 Q. I have completely frightened you. What I asked you for is whether this particular property was assigned to you subject to your own mortgage and then your own mortgage was either actually paid off on theoretically paid off two days later.

COURT: Mr. Bernacchi, if the mortgage is sold, the only thing the mortgagor had to sell was the equity of redemption. This witness, in the name of Mr. WONG Ching-ping, was the mortgagee. This

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Exhibit C121

10 A. property purchased, I presume, by the company board was the equity of redemption, right? The witness here was still the mortgagee. You call it the theoretical payment on the re-assignment. Mr. WONG, on the re-assignment, did the company pay you in cash for the mortgage debt or was it merely a book transfer? (to Mr. Bernacchi) That is what you want, isn't it?

10 A. Only a book transfer because we have transactions.

Q. And the original purchase price of \$225,000.00 was that paid by you?

A. Paid by the company.

Q. I know, all right, paid by the company through you giving the company an interest free loan, is that right?

A. Yes.

Q. Thank you. Turn over again to the fourth meeting of directors, page 121. Now again you and your wife attended and you chaired the meeting.

A. Yes.

Q. Now I want to ask you questions on 6(1) first of all.

"It has been reported in the newspapers that the construction site at Nos.218-220, Prince Edward Road, Kowloon, will be put up for auction."

30 And then,

"Resolution: Mr. Wong, chairman, and Wong Ching Wai Shoo Wai Shook, are directed to bid for the properties."

Now this property in Prince Edward Road was under mortgage to you?

A. Yes.

Q. Tell me, why that peculiar wording? "It has been reported in the newspapers." You had arranged for the auction.

40 A. Probably the recorder mistook that was reported on the newspaper.

Q. Oh yes, it wasn't a false report. It has been reported in the newspapers. It was

probably true. But why was it framed in this way and not the chairman said that this property was under mortgage to him and it was being sold by public auction?

A. This is the way to simplify the matter.

COURT: Without saying whether it is a sale by a mortgagor or a sale by a mortgagee?

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A. That is why it said it was reported in the newspaper.

10 Q. You see, I suggest to you that it was deliberately put in that way so that anyone who read the minutes would not know that it was a sale by the mortgagee being you yourself.

A. This was not supposed to be read by the public. It is only for myself and the company's reference.

20 Q. The mortgage itself - and if you don't know, your legal advisers will find out - was dated the 25th of October, 1963 - I am telling you this because I have the records myself - and was for a building mortgage for an aggregate amount of \$2 m.

A. I am not clear.

Q. Perhaps you check that and also check, please, the time.

30 In other words, was it the time allowed, two years, or was it some such time. Now it was sold - you've already admitted this - it was sold at public auction to your company by Mr. Watson. You have already admitted that.

Q. Now it was sold for \$400,000.00.

A. Yes.

Q. Presumably, although it was a building mortgage, no building had been erected.

A. Construction in progress.

40 Q. And again the solicitors acting for both parties - that is acting for you as mortgagee and acting for your company - were Messrs. Johnson, Stokes & Master, the clerk was Mr. LIU Kwong-wah.

A. I am not sure about the mortgagor. We were represented by him.

Q. No, I didn't say mortgagor. I say mortgagee.

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COURT: And the answer, "As far as I am concerned, I know it is J.S.M., but as far as the other party is concerned, I do not know who."

Q. Of course, the other party was not concerned in the sale and purchase because it was a sale by the mortgagee to his company. And I think that your wife handled the bidding for this property.

A. Not clear.

10 Q. Certainly your wife signed the memoranda that is required for registration on behalf of your company. I am telling you that in fact. I am telling you that in effect. So I suggest to you that your mode of operation was whenever you were the mortgagee and you put the property up to the sale and it was sold to your company, your wife signed on behalf of the company. Whenever your wife was the mortgagee or
20 someone else, anybody but you, then you signed on behalf of your company.

A. This occurs to a private firm.

Q. Do I take your answer to mean yes and then you add the answer?

A. Yes.

Q. Now whether it was a private company or not, why was it that you signed whenever the seller was not you, but your wife signed if the seller was you? Why was it?

30 A. This is a family company, not surprising that she represented the company to sign.

Q. But you see, I suggest to you that it was deliberate that you were in control of the company, you signed normally, but if you were the seller you asked your wife to sign. Now that was a deliberate act on your part when you were the seller.

A. I didn't do it deliberately. As a normal practice for a family firm I had to do so.

40 Q. You had to do so but of course, perhaps it would have looked bad if you were the seller and then you signed on behalf of the purchaser.

A. I am ignorant of the law.

Q. I will go on to 6(2):

"Four adjoining premises at Nos.14-20,

Nanking Street, Kowloon, will be put up for auction."

And then the resolution again, that you and your wife should bid for both properties. Now the second property, your wife was the mortgagee.

A. Yes.

Q. And you signed the assignment.

COURT: Was it a sale by mortgagee?

10 MR. BERNACCHI: It was a sale by mortgagee. I'm sorry, my Lord.

Q. Now your wife sold under her power of sale, didn't she?

A. Yes, on due day.

Q. Again, no mention that your wife was the mortgagee as was found in the minutes.

A. It is difficult to tell how the man prepared the record.

20 Q. And the mortgage was - check it up if you like but I have already checked it up - the 8th of July, 1965, for \$600,000.00. It was obviously a short mortgage because you said that the mortgage had expired and so it was sold and it was sold on the 9th of November, 1965 for \$250,000.00. I have checked it up but if you want to, please check it up for yourself and come back later. You have already agreed that it was sold again by Mr. Watson at public auction and again the Johnson, Stokes & Master were acting for both the mortgagee - that is yourself - and your company the purchaser and again LIU Kwing-wah was the clerk handling the matter.

A. Yes.

Q. Now in the English documents you usually sign in English, don't you?

A. Yes.

40 Q. Now again take it from me unless you would like to check it up yourself: in this case you as permanent director of your company, signed in Chinese. I would like to ask you why it was contrary to your usual practice with the English deed of assignment?

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- A. Just signed it casually. I use both methods.
- Q. You see, if you want to be sure, your counsel has requested me to show you, but you did say five minutes ago that you usually sign English deeds in English.
- A. Sometimes different.
- Q. Was there any particular reason why you signed in Chinese?

10 MR. JACKSON-LIPKIN: I have a note - I may be quite wrong - but this witness says, "I signed casually in either way."

MR. BERNACCHI: That was later.

COURT: What does that mean?

MR. JACKSON-LIPKIN: It means that he signs English documents sometimes in English and sometimes in Chinese.

COURT: What does 'casually' mean?

MR. JACKSON-LIPKIN: I have to ask the interpreter.

30 COURT: He doesn't answer for the witness. Nothing to do with the interpreter.

MR. JACKSON-LIPKIN: For example, C51C which is accounts in English, he signed in Chinese whereas C50 signed in English. I don't know what 'casually' means, but he is on record and the documents show that there was a use of both the Chinese signature and the English signature on English documents.

40 COURT: Mr. WONG, when you are signing on behalf of the company as its director, do you sign in Chinese or in English?

A. In what kind of documents?

COURT: In documents signed on behalf of the company as director of the company?

A. Both, either way; sometimes I sign in English on Chinese documents.

Exhibits C51c
& C50

- Q. You agreed with me five minutes ago that you usually signed English documents in English and then five minutes later when I asked you why did you sign this particular document in Chinese, you said, "I signed casually, in either language."
- A. You did not use usually. You asked me 'did you sign this document in Chinese?'
- 10 Q. Well the stenographer will have the court record, but I again suggest to you that you usually, not always, but you usually sign English documents in English, particularly when you are signing on behalf of your limited company.
- A. Yes, I sign English in English documents more.
- Q. And so you have no particular reason why you signed this assignment in Chinese?
- A. No.
- 20 Q. But again, your wife was the mortgagee and she signed as mortgagee and then you signed and not she on behalf of the company.
- A. Yes.
- Q. And I suggest to you that it was a deliberate act: this resolution that you signed one of the documents and your wife signs the other of the transactions - I'm sorry, it wasn't - it was that you and your wife are directed to bid for the said properties, in other words your wife bids for your property and you bid for her property.
- 30 A. That is the way.
- Q. I am suggesting to you that it was a deliberate act, that it sounded better that you would bid for your wife's property and your wife would bid for your property.
- A. I deny.
- 40 COURT: I do not see how it sounds better, Mr. Bernacchi. When Mr. Watson announces the sale, he doesn't point to the seller. He just says: this property is for sale. How does it sound better?
- MR. BERNACCHI: Anyone present at the sale of course --

COURT: How anyone present would know who the

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vendor was?

MR. BERNACCHI: No, my Lord, I agree with you there, but the mortgagor would know if he bids for his own property or she bids for her own property. That is the point that I am making.

Q. And again you have agreed that the money was advanced by you in respect to both these property acquisitions.

10 A. Correct.

MR. JACKSON-LIPKIN: My learned friend very kindly indicated that he is now passing to page C122. I am going to deal with another property. My Lord, may I take one objection and one observation? The first is this: your Lordship ruled against me last night on the question of *modus operandi*. My Lord, the witness has admitted this morning in clear and unequivocal terms how he operated - how the company operated, and I would respectfully suggest to your Lordship that if that is so, there is no need to go through each transaction because he has told your Lordship that when it is his property his wife signs and when it is his wife's property he signs and that as far as he could remember they were interest-free loans. My Lord, there is no need to repeat them.

20

30

COURT: I think that is a matter for Mr. Bernacchi. Mr. Bernacchi is going through item by item, transaction by transaction, and I cannot stop him. Are you prepared to give a list of all the transactions. If you are prepared to do that, I am sure Mr. Bernacchi will say, "I shan't ask any questions on it any further." Would I be right, Mr. Bernacchi?

40 MR. BERNACCHI: Yes, my Lord, you are quite right.

MR. JACKSON-LIPKIN: My Lord, I am addressing your Lordship, of course, only on the *modus*

operandi.

COURT: How does he operate? How many transactions were involved?

MR. JACKSON-LIPKIN: My Lord, has your Lordship the agreed issues?

COURT: I do not have the agreed issues before me. Is it on your objection or on your observation you are coming to?

10 MR. JACKSON-LIPKIN: No, I have finished the observation. My Lord, may I respectfully suggest to your Lordship the time has come when your Lordship must decide on item 4 because the modus operandi having been established, any further questions on like transactions must be asked for another purpose. If for another purpose, then I must address your Lordship on the question of whether or not those are relevant. Your Lordship will have observed the limitation of the questions to the modus operandi on which you ruled last night. There is no further allegation being made in respect of any of these transactions. My Lord, I venture to suggest to your Lordship that these other transactions are neither relevant nor material to issues 1, 2 and 3. Your Lordship sees that agreed issue 4 relates, of course, to relevancy and materiality to issues 1, 2 and 3. My Lord, 20 as we are now, the modus operandi has been established, I felt it is a proper time to take objection to any further questions on the other transactions. For example, your Lordship has indicated the number, the detail of other transactions. My Lord, if 30 your Lordship thinks this is not the proper time, I shan't address you on it now. If you think that this is the proper time, I would like an opportunity of doing so.

40 COURT: Mr. Bernacchi?

MR. BERNACCHI: I would strongly say that it is not a proper time in the middle of my cross examination.

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10

COURT: It comes back to the first. Are you prepared to give Mr. Bernacchi a whole list of these transactions?

MR. JACKSON-LIPKIN: My Lord, I am prepared to assist him because he has a list himself in very great detail, by agreeing with him over the adjournment such matters as we can agree. My Lord, I can't last night ask the solicitors to prepare it but he has told this witness that he has a complete list himself. I am prepared to go through with him and agree such things as he asks me provided that they are not offensive. For example, the matters which we have just been dealing with: who signed, who the solicitors were, whether the money was interest free, what the date was, what the address was and so on.

20

COURT: If you can satisfy Mr. Bernacchi on these matters, then Mr. Bernacchi need not cross-examine any more.

MR. JACKSON-LIPKIN: Not on these.

COURT: Not on these points, but I certainly shall not stop Mr. Bernacchi if you can't satisfy him, Mr. Jackson-LIPKIN.

MR. JACKSON-LIPKIN: My Lord, then it is difficult for me to know at what stage. I am to address your Lordship on agreed issue 4 because if I don't take the objection--

30

COURT: If I am prepared to answer you now on this and that is in respect of the first issue - the issue in this case is that the mortgaged property was sold to the mortgagee's own personal private company. My Bernacchi said that was a fraudulent sale; if not, it was a collusive sale. In law there is not the slightest doubt that can be done: a mortgagee in person can sell the property to his company and in many cases completely unimpeded. But the law of equity is also clear on this point: that it is something which a court will look at and will investigate the matter, and Mr.

40

Bernacchi is pursuing that investigation.

MR. JACKON-LIPKIN: My Lord, with the greatest respect, unless a system alleging fraud is alleged and pleaded, this cannot be raised.

10 COURT: You have forgotten what I said in chambers over this matter, Mr. Jackson-Lipkin. I refused Mr. Bernacchi's application but I did say that if in the course of the hearing, in the course of evidence, something which would justify you to apply again to amend the Court will consider.

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MR. JACKSON-LIPKIN: Yes, I appreciate that.

COURT: And there is no way in which you can stop this line at this stage of the proceedings, Mr. Jackson-Lipkin.

MR. JACKSON-LIPKIN: My Lord, may I explain my difficulty to you?

20 COURT: Why are you in difficulty at all at this stage of the proceedings, in the midst of cross-examination?

30 MR. JACKSON-LIPKIN: My Lord, if I leave this until my final address to your Lordship, by that time a whole lot of what your Lordship may later have to decide are inadmissible matters will have been admitted and my Lord, that will render your Lordship's task more difficult and my task more difficult. You will have to shut out from your mind large chunks of evidence which is not admissible.

COURT: What are you suggesting inadmissible? Surely, in the course of the cross-examination, in a case of this case, it is the duty of counsel to probe, isn't it? Isn't that what Mr. Bernacchi is now probing?

MR. JACKSON-LIPKIN: My Lord, he is probing certain matters if he is

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COURT: He has not alleged anything. You are trying to anticipate, Mr. Jackson-Lipkin. Mr. Bernacchi has not said a word. He has made no application to the Court as yet. Surely, the time you object is when he makes an application to the Court.

10 MR. JACKSON-LIPKIN: Which, my Lord, with respect, I don't think that is so because what I am objecting to now is questioning on other like transactions on the basis that those other like transactions are neither relevant nor material to issues 1, 2, and 3.

COURT: I have already told you, Mr. Jackson-Lipkin, I shall not tell you this again: they are relevant to issue 1 and that is on the record.

20 MR. JACKSON-LIPKIN: If they are relevant to issue 1, they cannot be advanced in this court unless they are pleaded. There is clear authority on that, My Lord, and it is a matter on which I shall have to address you.

COURT: Mr. Jackson-Lipkin, Mr. Bernacchi is cross-examining on this issue 1. He is allowed to probe and, Mr. Jackson-Lipkin, I do not intend to stop him from probing.

30 MR. JACKSON-LIPKIN: My Lord, I hear what your Lordship says and after that particular ruling I had made my objection now. I shall have to address your Lordship on this matter later. Would it assist you if I told you now so that you make a note of the cases which I shall refer or shall I mention it later?

COURT: You can do anything you like. Take your choice.

40 MR. JACKSON-LIPKIN: My Lord, what I shall rely on is the Edingburgh Life Assurance case which is in the list and I believe your clerk has a photostat of it and it is report 1911 (1) Irish Reports, page 306.

Mr. Lord, a photostat was supplied to your Lordship's clerk some time ago. My Lord, that would save me having to object each time somebody comes up.

10 COURT: The next point is, Mr. Bernacchi, if Mr. Jackson-Lipkin is going to agree with you on this matter, shall we not take the adjournment now, or by all means take a longer adjournment, so that you can agree on this.

MR. BERNACCHI: Yes, please.

COURT: Are you ready ...

MR. JACKSON-LIPKIN: It won't take us very long, my Lord, because we have got details. They may not be the same full list as my learned friend's but we can go through them now.

COURT: Right. Will that suit you, Mr. Bernacchi?

MR. BERNACCHI: Yes, my Lord.

20 COURT: Let me know when you are ready.

11.17 a.m. Court adjourns.

3.34 p.m. Court resumes.

Appearances as before.

MR. BERNACCHI: My Lord, we have agreed certain facts as to six documents which I would now hand up. There are typographic errors which have been corrected but a clean copy will be available tomorrow but it is only typographic errors.

30 COURT: Six documents?

MR. BERNACCHI: Yes.

COURT: Is there anything else you want to cross-examine in respect of this witness?

MR. BERNACCHI: My Lord, as to payment and there is really very little that I want to cross-examine but if I can proceed with my

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cross-examination I will not refer to anything that has been agreed.

COURT: These are good documents, are they?

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MR. JACKSON-LIPKIN: Yes, my Lord.

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XXN. BY MR. BERNACCHI:- (Continues)

Q. Mr. WONG, I now ask you to turn to page 123 of the English in bundle 'C', 87 in the Chinese now again that is the 6th meeting.

10 Q. Now, 6(1) deals with 64 Cameron Road which I am not going to refer to in view of the agreed facts. 6(3). "It has been reported in the newspapers that a construction site with a concrete erection built up to the fourth storey at Nos. 144-148, Laichikok Road, Kowloon, will be put up for auction on 19th August 1966. This is a good opportunity for property investment." And it was resolved that you "is directed to bid for the property at a price not exceeding \$260,000." Now, page 6 of the agreed facts. The mortgagee was your wife?

A. Yes.

Q. Again, any particular reason for this wording "It is reported in the newspapers", whereas your wife attended the meeting and she was the one that was setting the property for public auction?

A. No particular reasons.

30 Q. Why not say "WONG CHING Wai-shork as mortgagee is selling this property"., why say "It is reported in the newspapers"?

A. By reported in the newspaper it meant it was put up as advertisement on a newspaper.

Q. Oh, yes. I am not saying that the minute contains wrong information, I am saying why when she was there did she not say "I am putting this property up for auction"?"

40 A. Because this minute had to be shown to the partners, the directors.

Q. At that stage the only director apart from yourself and your wife was your eldest son?

A. Well, to be produced to the partners

- subsequently.
- Q. Well, when you speak of partners, do you mean shareholders or do you mean directors?
- A. Shareholders.
- Q. Shareholders. Now, at that time apart from you, your wife and your eldest son, all the other three shareholders were minors still at school?
- A. Yes.
- 10 Q. And you honestly say that it is reported in this manner because it was to be shown to the shareholders?
- A. Yes, you may say so.
- Q. Well, I am not giving evidence, Mr. WONG, it is you.
- A. How to answer?
- Q. Well, I'll suggest to you again that it was reported in this manner so as not to be obvious to anyone reading the minutes that
- 20 it was your wife who was selling the property.
- A. Nothing wrong with it.
- Q. Now, the actual price you paid, it is agreed now, was \$251,000.
- A. Yes.
- Q. Did you furnish this money by loan to the company?
- A. Yes.
- 30 Q. Thank you. Page 124, please, the 7th meeting of directors. I am informed that it is page 89 of the Chinese. Now, that was held on the 15th of October, '66 and by that time your eldest son had come back from Jesseltown and attended the meeting?
- A. Yes.
- Q. And you took the chair as usual?
- A. Yes.
- Q. And you cited then to allocate further shares to the shareholders?
- 40 A. Yes, to extend the share.
- Q. Did you provide the money?
- A. Loan to them which would be repaid later.
- Q. I see. And then 6, interim proposal, "On 6th September 1966 Mr. WONG, Chairman, on behalf of this company successfully bid for nine residential flats in Tsui Ming Building in Po Kong Village Road in N.K.I.L. 2690, Section F, Kowloon, at the price of \$220,000". And then you asked to

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consider whether the purchase should be confirmed. The resolution - the purchase should be confirmed.

A. Yes.

Q. Again, of course, you purchased it first on behalf of the company and then it was, I suggest, for mere formality your reporting this to the company and the company confirmed it?

10 A. Yes, purchased on behalf of the company.

Q. And again you lent the company the money to pay for the property?

A. Yes.

Q. Now, page 125, the 8th meeting on the 20th of January, 1967. Now, attending the meeting - only you and your wife.

A. Yes.

Q. And again you took the chair as you always took the chair except for one occasion which I'll come to?

20

A. Depended.

Q. And do you agree with me that you'd always taken the chair except for one occasion?

A. It is difficult for me to tell. How could I tell who would be the next chairman? I haven't checked it. 70 odd meetings.

Q. Well, look through very repaidly, if you can, this book; that is the directors' meetings. Would you confirm that you'd, except for one occasion, you'd always taken the chair?

30

A. No other person.

Q. Except yourself and you didn't take the chair on one occasion which I will refer you to in a moment. Now, I was dealing with the 8th meeting, the meeting on the 20th of January, 1967. Had the political riots started? It is not - the Star Ferry riots were in April of 1965 or March or April; I am not asking you about the Star Ferry riots but what I should call political riots. Had they started, the political riots of 1967, had they started by January the 20th?

40

A. What is political riot?

Q. You know, the riots in 1967 when all the bombs went off.

A. Well, already started. It took place even in '66.

- Q. Yes, all right. End of '66. Anyhow, it started in January '67? Now, matters for discussion: "All plans for construction of a 15 storey building with four flats on each floor at Nos. 218-220 Prince Edward Road Kowloon have been approved by the PWD. The construction cost is estimated at about \$1,500,000. Owing to insufficient funds, mortgage loan should be obtained to facilitate business turnover." Now, first of all this morning you said when I put to you that although you had taken a building mortgage on this property that in fact no building had been erected, you said the building was in the course of construction?
- 10
- A. Yes, it was in progress.
- Q. Did you pull it down then or what? Because this seems to indicate that the plans for a 15-storey building had been approved by the PWD just before the meeting.
- 20
- A. Actually the building was in progress. May I explain?
- Q. Yes.
- A. We submitted a new plan and there was an old plan for which the construction was in progress.
- Q. But do you mean you pulled down what had been constructed and started again?
- A. No, only the foundation was being laid.
- 30
- Q. I see. Only the foundation was laid and you put plans in for a 15-storey building based on those foundations?
- A. They discovered a large rock on the construction site which caused difficulty to both the contractor and the architect.
- Q. Now, resolution: "The site at Nos. 218-220 Prince Edward Road together with the new erection thereon and 25 flats at Nos. 52 & 54 Cheung Sha Wan Road, are to be mortgaged to Liu Chong Hing Bank for the sum of \$850,000.
- 40
- A. Yes.
- MR. BERNACCHI: My Lord, there is another mistake at page 4 of the agreed facts. The property concerned gives the registration but it does not say, as it should say, that this is 218 to 220 Prince Edward Road. Page 4.

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- 10
- Q. Now, presumably property was depressed at that time, the political riots having started, you say, in the month before?
- A. I am not sure about the exact time.
- Q. You are not sure about the exact time when the political riots started or what time?
- A. Well, I have to think back before I can remember even for a few months before.
- Q. All right. Cut out having started the month before, you agree with me that at that time, the 20th of January, 1967, the political riots had already started?
- A. Yes.
- Q. And they were far worse than the Star Ferry Riots which were a mere drop in the ocean as compared with the political riots of the next year?
- A. I did not compare.
- Q. But you are a man who deals in properties?
- 20
- A. Yes.
- Q. And presumably the property values, because of these political riots, had by January 1967 reached a very low level?
- A. Yes.
- Q. So in October '65 this property had been sold to the company for \$400,000?
- A. It is either '65 or '66. It seems '66.
- Q. Well, please, it has been checked by your own counsel and it is part of the agreed facts. Page 4. It is sold to the company by public auction in October 1965?
- 30
- A. Yes.
- Q. Before the Star Ferry riots, before the political riots of 1967?
- A. Yes.
- Q. So presumably this particular property, Prince Edward Road, would have been worth very much less than \$400,000 in January of 1967?
- 40
- A. I never compared. I am not sure.
- Q. Well, you are a property man and at this time you were wanting to mortgage this property amongst others to the bank at a very bad time.
- A. Yes. The piece of land or the construction site without erection would mean a piece or waste land. Besides we had to do some shoring for the next building.
- Q. So the piece of land at the time when you

mortgaged it would not have been worth very much and by the time the bank doesn't take a mortgage for the full value, the bank takes the mortgage only for part of the value; so considering only this piece or land you would not, I suggest, have got very much on it by way of mortgage to the bank?

A. It is difficult to tell. It so happened.

10 Q. It so happened, Mr. WONG, because you also mortgaged 25 flats at Nos. 52 and 54 Cheung Sha Wan Road, that is the plaintiff's old property.

A. It is quite usual to make such a mortgage. They wanted more security.

Q. But I am saying to you that most of the sum of \$850,000 was obtained by reason of the fact that you were willing to put up 25 flats at the plaintiff's old premises.

20 COURT: I don't think the witness understands what you are getting at. For the sake of argument, 25 flats on his estimate for the purchase of one million two was worth half a million dollars.

MR. BERNACCHI: Oh, yes, my Lord.

COURT: I am talking about this estimate, twenty thousand dollars a flat, that is already five ...

30 MR. BERNACCHI: Of course the time is different. The time was during the riots when property values reached rock bottom. And what I am eventually asking your Lordship to deduce from these mortgages of flats at plaintiff's premises is that they could not have been worth as little as he says they were worth.

40 COURT: But on this document, if I had gone to the bank, Liu Chong Hing Bank, I say "I've got these properties, I want a mortgage for \$850,000." They might say no to me because they don't trust me. But if Mr. WONG goes there, he might be an old customer, "Look, I've got this. I want a million and a half. I am putting up a building for a

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million and a half but I want eight thousand dollars." "Yes, Mr. WONG, of course." This is not evidence of anything of this sort at all, Mr. Bernacchi."

MR. BERNACCHI: My Lord, I'll not labour it if that is your view.

COURT: I mean, it must be so on the general view. If a man goes to a bank, and even on your view, there is no evidence that the market at beginning of '67 was worse than the market after the bank riots. Indeed, if my memory serves me correctly - this is not evidence, it is my memory - after the bank riots the market then did go up slightly and then went down again in 1967.

MR. BERNACCHI: But ...

COURT: Things were looking slightly brighter in '67.

MR. BERNACCHI: I agree entirely until the riots.

20 COURT: So your plans were wrong to begin with. The market ...

MR. BERNACCHI: The riots had already begun by the 25th. My Lord, you are the judge and I won't ...

COURT: No, that is only fair about it.

MR. BERNACCHI: Yes. My Lord, I'll leave it and go back to page 122, the minutes of the 5th meeting on the 20th of June.

30 Q. Those are the minutes that I have already referred you to, that your wife took the chair, the only time that she took the chair in the whole of this minute book.

A. That was mentioned. Yes.

Q. But it was at this particular directors' meeting that you, the company, resolved to buy the plaintiff's premises?

COURT: And resolved up to one million two?

- A. Yes.
- Q. Now, why did your wife take the chair at that meeting and not you?
- A. It is difficult for me to give the reasons.
- Q. Try.
- A. There is no difference either she or I took the chair.
- Q. Well, if it has been a case of she sometimes took the chair and you sometimes took the chair, I would have agreed with you. But it was at this meeting and this meeting only that she took the chair.
- 10 A. Well, I can't remember the purpose of so doing now.
- Q. Well, let me help your memory. Was it because at this meeting a resolution would be brought up to bid for the plaintiff's land and you were the mortgagee?
- A. You may put it that way.
- 20 Q. Thank you. Now, the actual resolution is your wife, director, is instructed - tell me, at that time, the 20th of June, 1966, was she a permanent director or merely a director?
- A. How I positioned her I can't remember. According to the general practice, she must be the permanent director.
- Q. All right. She was instructed to attend the Lammert Brothers at 3 p.m. on 26th of June to bid for Kwong Hing Building at a bidding price not exceeding one million two hundred thousand dollars?
- 30 A. Yes.
- Q. Then (b) "Any shortage in funds shall be met by advancement from Directors".
- A. Yes.
- Q. Now, in fact you lent the whole of the one million two hundred thousand, didn't you?
- A. Yes.
- 40 Q. And you lent it on the 24th of June, 1966? That information can be obtained at page 148 of the English translation of bundle 'C'.
- A. Agree.
- Q. Thank you. Now, I'll go on to another subject and leave the minute books out of it. I want to just ask you a few questions on the certified accounts for the year 1966/67.

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COURT: Document?

MR. BERNACCHI: Actually 51(c) is the page that I am going to ask him.

Q. Now, again you signed this balance sheet in Chinese?

A. Yes.

Q. You see you signed in Chinese?

A. Yes.

Q. And so presumably it was translated to you before you signed it?

A. Yes.

Q. And I see on the left side, current liabilities, director's loan account by that time reached \$3,180,774.01.

A. Yes.

Q. So again you and you only were lending money to the company in that amount on the 31st of March, 1967?

A. Yes.

20 Q. Now, the other side, the asset side, current assets, "Unsold flats". You notice the third item there? That was the unsold flats of the plaintiff's former property.

COURT: Is that 52 Cheung Sha Wan Road?

Q. Had you any unsold flats other than the plaintiff's former flats?

A. I have to check up.

COURT: Surely that can easily be checked up.

30 MR. BERNACCHI: It was only my learned friend querying my statement, my cross-examination ...

MR. JACKSON-LIPKIN: That was a counsel's whisper. There are two different lots there; one is New Kowloon Inland Lot 1403 Section K and L and the other is Kowloon Inland Lot 2690 Section F which is a different site.

40 Q. Would you obtain tomorrow morning the information which you say you have to check whether you had any unsold flats and, if so, how many?

10 COURT: Why should he divulge, Mr. Bernacchi, how many unsold flats he had in 1967? He might have built a million himself. Here the balance sheet says New Kowloon Inland Lot 1403 Section K and L and Kowloon Inland Lot 2690 Section F at cost. They are two different sites. It is easy enough to find out what those sites are. But why should he divulge to you all the unsold flats he had?

MR. BERNACCHI: No, no ...

COURT: But that is what you ask him.

MR. BERNACCHI: It is only with reference to this item.

COURT: I am sure Mr. Jackson-Lipkin will be able to supply this sort of information to you, that saves a lot of time in cross-examination.

20 MR. BERNACCHI: My Lord, it is half past four now, perhaps ...

COURT: We'll adjourn now.

4.32 p.m. Court adjourns.

20th March, 1979.

21st March, 1979.

10.04 a.m. Court resumes.

Appearances as before.

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XXN. BY MR. BERNACCHI (continues):

30 Q. Now a few general questions on these minutes before I leave your company. Now your company's declared object in the first meeting of directors was to invest in properties to generate profits.

A. Yes.

Q. Now in fact what you did was to buy

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properties, redevelop them and sell them either as a whole or flat by flat.

A. Yes.

Q. Now with that object in mind, in fact your company deliberately bid at auction sales where you and your wife were the mortgagee?

A. I don't know what 'deliberately' means.

Q. I will cut it down to two questions then. First of all, your company did in fact bid at auction where you and your wife were the mortgagee?

A. Yes.

Q. And that was a deliberate ...

COURT: Need you use the word 'deliberate', Mr. Bernacchi?

MR. BERNACCHI: No, my Lord.

Q. That was a conscious act - that was a conscious act of your company through you and your wife who were the directors? That was a conscious act of your company through you and your wife who were the directors concerned? I am talking of 1955 - I'm sorry, 1965 throughout 1966 to the beginning of 1967.

A. What act?

Q. The act of bidding at auctions that you and your wife were selling as mortgagee.

A. That's why we held the meetings to decide.

Q. And with the exception of one property in Yee Por Fong, Tsuen Wan, all the properties acquired during 1965 and '66 were acquired in that way?

A. There was no Yee Por Fong.

Q. Oh, I'm sorry, I'm referring to the third meeting of directors, page 120 in the English, 6(1).

A. This was also on mortgage.

Q. To whom?

A. I have to check, I don't know.

Q. Oh, I see, that also was on mortgage either to you or your wife?

A. Yes.

Q. Well then, do you agree that this applied then to all the properties acquired by your company during the years 1965 and 1966?

A. Under those circumstances we had to do so.

Q. Do you agree that that was in fact the case?

A. Yes.

Q. And I put it to you that that was a conscious act on your part.

COURT: What does that mean, Mr. Bernacchi, really what does that mean?

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MR. BERNACCHI: I'm trying to avoid the word 'deliberate'.

10 COURT: 'Deliberate' or 'conscious', why is an adverb or adjective, whatever it is, necessary?

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MR. BERNACCHI: My Lord, I will leave it.

COURT: If he did it, he did it, or if the company did it, the company did it.

MR. BERNACCHI: Yes, my Lord.

20 COURT: If you take out a bid for a property and then you intend to buy it at that price, or try and buy it at that price, rather.

MR. BERNACCHI: What I am of course getting at is ...

COURT: It's not a matter for submission.

Q. Well, I would put to you that that was your method by which you acquired these properties: If you or your wife were mortgagee it was put up for sale and then the company proceeded to bid.

A. Is that illegal?

30 Q. I'm not suggesting it's illegal or legal or anything else, I am just suggesting that that was the method. Do you agree with me?

A. Sometimes I myself acted as a mortgagor.

Q. Look, please, do you agree with me that that was the method that your company acquired these properties?

A. Yes.

Q. Thank you. Now I am going to ask you some general questions on your evidence that you

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- have given to this Court in-chief. Now you said, coming to the plaintiff's that a broker, YUNG Tat, contacted you.
- A. Yes.
- COURT: Mr. Bernacchi, I think we can call him, Mr. Tse, the claimant rather than the plaintiff.
- MR. BERNACCHI: Oh, I'm sorry; the claimant, I'm sorry, my Lord.
- 10 Q. Now Mr. Tse, the claimant, calls him Mr. Ching. Do you know him also by the name of Mr. Ching?
- A. I don't know.
- Q. I see. Well anyhow, did not this broker introduce Tse to you in November before the mortgage was signed?
- A. No.
- Q. Your evidence is that you did not meet Mr. Tse until 2 months after the mortgage was signed?
- 20 A. Yes.
- Q. Well now, in fact - don't worry about why, but in fact Johnson, Stokes & Master, when they put through the mortgage, acted for both parties, you and Mr. Tse.
- A. J.S.M. acted for me.
- Q. I see. Do you not know that J.S.M. also acted for Mr. Tse?
- A. Later I learnt.
- 30 Q. When you say, "Later I learnt," do you mean before or after you executed, i.e. you signed the mortgage?
- A. After I signed.
- Q. How long after you signed?
- A. About 2 months, I'm not sure.
- Q. Did Johnson, Stokes & Master give you a copy of the mortgage deed?
- Q. You are extremely vague about a mortgage in which you were required to pay out a considerable sum of money.
- 40 A. I trusted my lawyer.
- Q. But did not your lawyer supply you with a copy, either at the time or immediately after the registration of the instrument, which was in the same month, July? I'm sorry, that is wrong, I'm sorry. I am

looking at the wrong document. No, it was-the mortgage was dated 30th of November, '63 and it was registered in December.

A. Yes.

MR. BERNACCHI: Page 9, my Lord.

Q. Well now, didn't Johnson, Stokes & Master give you a copy at that time?

10 A. I have to check. Even I was given such a copy, I didn't understand, it had to be explained to me, so I trusted my lawyer.

Q. Tell me, this Mr. LIU Kwing-wah, did he explain to you the contents when you signed it or again did you trust him and sign it not knowing the contents?

A. He did explain to me. I did not sign, no need for me to sign. I did not sign my name for all the mortgage.

20 Q. One of the agreed documents - one of the agreed documents is a copy of the mortgage deed, indenture of mortgage, and at the end of the mortgage, page 8 of the mortgage ...

COURT: What document is that?

MR. BERNACCHI: My Lord, it's page 8.

COURT: What bundle?

MR. BERNACCHI: Oh, I'm sorry. Bundle 'A'.

30 Q. ... it says: "Signed Sealed and Delivered by the Mortgagee in the presence of:" and then appears a solicitor's name, "Signed" and then appears your name.

A. As far as those documents are concerned I can't recall.

Q. Well, I mean now that I remind you that you did actually sign the mortgage deed do you not remember going to Johnson, Stokes & Master's office to sign it?

A. I don't remeber; I thought I didn't.

40 Q. And, you see, I put it to you that apart from any other meeting, that you and the claimant, Mr. Tse, were present together in Johnson, Stokes & Master's office, that LIU Kwing-wah interpreted the document to you

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- both, and then you both signed in the presence of a senior solicitor of Johnson, Stokes & Master's.
- 10 A. I don't remember; I don't remember if it did happen.
- Q. So you really now do not remember whether you first met Mr. Tse 2 months after the mortgage was signed or whether you met him before the mortgage was signed?
- A. It's difficult to tell, it happened so long ago.
- Q. You see, this remark about Mr. Tse wanting to use the monies received from pre-sale of flats to pay the construction costs was, I am putting it to you, made to you before even the mortgage was signed and not afterwards.
- A. I am not clear.
- 20 COURT: You are not clear on that point?
- A. Yes.
- COURT: Wasn't that always done in those days of 1963, '64' '65'? you have a property, the moment you begin to develop, you start selling flats.
- A. It couldn't be sure.
- 30 Q. You see, I put to you that you knew at all times before the mortgage was entered into that it was the intention of Mr. Tse to apply the monies that he received from the pre-sale of flats to pay the construction costs.
- A. It might happen.
- Q. And wasn't that why he only mortgaged for 1.5 million because the rest - there was no need to mortgage for any more, he would have it from pre-sale of flats?
- 40 MR. JACKSON-LIPKIN: My Lord, before this goes any further I wonder if I might intervene? My Lord, this gentleman has said, "It's difficult to tell ..."
- COURT: Which gentleman are you referred to, Mr. Jackson-Lipkin?
- MR. JACKSON-LIPKIN: Mr. Wong. "It's difficult

to tell, it happened so long ago" in answer to a question by Mr. Bernacchi of an alleged conversation before the mortgage. My Lord, due to the diligence of my instructing solicitor, I have found what Mr. Bernacchi's own client said in relation to discussions about pre-sale and the original mortgage, and he said:

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

So that being Mr. Tse's case I venture to suggest its's wrong to put to Mr. Wong ...

COURT: If that is so you must be right, Mr. Jackson-Lipkin.

MR. JACKSON-LIPKIN: My Lord, it is 46 of letter 'B'; the question is 45, letter 'P', and then you see the "D".

20 COURT: In the midst of your cross-examination, if you turn back a page to 45.

MR. JACKSON-LIPKIN: Yes, that's letter 'P', my Lord.

COURT: Letter 'P', yes.

MR. JACKSON-LIPKIN:

" ... you told my Lord that before you entered into the original mortgage you had a discussion with Mr. Wong about the pre-sale of units?

30 A. About the pre-sale of units?

Q. Yes. Was that a mistake in the translation of what you wanted to say?"

And then your Lordship pulled him together and then he said:

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

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

A. The first mortgage with Mr. Wong ...

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for a sum of 1.5 million.

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

COURT: Well, Mr. Bernacchi, it is quite clear enough.

MR. BERNACCHI: My Lord, for the moment it is. Presumably on page 45 the question:

"Mr. Tse, you told my Lord that before you entered into the original mortgage you had a discussion with Mr. Wong about the pre-sale of units?"

that must refer to the evidence-in-chief, presumably. My Lord, I will not continue with this particular question without producing further pages, if any. It may be that my client is mistaken, it may be that this witness was mistaken, but I agree with my learned friend.

20 COURT: It could well be that your client had that intention but did not tell that to Mr. Wong.

Q. Mr. Wong, would you turn to an agreement which is page 16 of bundle 'A'. Now I know you can't read English, but that was a sample of an agreement which was used time and time again between Mr. Tse and the pruchasers of the pre-sale purchasers of units. Now I don't mind how it was that it came to be drawn up by Messrs. Johnson, Stokes & Master, who apparently acted for both parties, or anything like that for the moment, but I tell you as a fact that it was drawn up by Messrs. Johnson, Stokes & Master and that it was signed before Mr. McElney who was the solicitor who dealt with the original mortgage between Mr. Tse and you.

40 A. Yes.
Q. Now presumably you knew of these agreements for sale and purchase?

A. No idea.

Q. Do you mean to say that you didn't know

that Mr. Tse was selling the units as on a pre-sale basis?

A. I knew he was selling units on pre-sale basis but how he entered into agreement with others I didn't know.

Q. Well now turn to page 26.

COURT: A.26?

MR. BERNACCHI: A.26, yes, paragraph 21.

10 Q. "It is hereby specially agreed and declared that (notwithstanding anything to the contrary hereinbefore contained) all sums paid hereunder shall other than the sum paid to the Vendor as set out in the Schedule hereto be held by Messrs. Johnson, Stokes & Master as stakeholders and shall be applied towards

20 (a) paying the cost of the construction of the said building against the Architect's certificates as to the amounts expended thereon

A. I don't know.

Q. Do you honestly mean to say that you didn't know of that clause?

A. I do.

30 Q. But in your evidence-in-chief you mentioned that the claimant, Mr. Tse, said that he wanted to take, I think you said a thousand dollars per unit for his own personal use.

A. Mr. Liu said that was particulars specified in order to protect the interest of the owner.

Q. And you agreed to that, did you?

A. Yes.

Q. Well, what did you expect to be done with the balance of the money received by the solicitors?

40 A. To repay the mortgage so that interest could be reduced.

Q. Not to pay for the construction costs?

A. Some of these amounts were paying towards the construction cost.

Q. With your knowledge and consent?

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- A. I knew that would be done.
Q. And in priority to any payment made on the mortgage?

COURT: You get your priority just because it's headed 21(a) rather than 21(b)?

MR. BERNACCHI: Yes, my Lord. It is a question of interpretation, of course, but are to

"...be held by Messrs. Johnson, Stokes & Master as stakeholders and shall be applied towards

- (a) paying the cost and
(b)"

I will cross-examine later on (b) but I do get my priority because of the (a) and (b), yes, my Lord.

MR. JACKSON-LIPKIN: My learned friend can cross examine on this gentleman's knowledge as much as he likes but he can't cross-examine on interpretation of a document he has never seen.

MR. BERNACCHI: I agree. I am merely putting to the witness that "you knew that the cost of construction was to be paid out of the pre-sale money in priority to any payment on the mortgage?" It is a question of his knowledge.

MR. JACKSON-LIPKIN: Then I have no objection.

A. I did not know.
Q. So your state of knowledge was you knew that some monies had been paid out for construction out of the pre-sale but you didn't know anything else?

A. Yes.

Q. And you consented to this payment out of monies to meet construction costs?

A. Well, although it did happen but under what circumstances it took place I didn't know.

Q. You consented to it happening?

A. Of course I consented.

Q. Yes. Now you say in effect that you didn't

know anything about this agreement between - or these agreements, because there are several, between Mr. Tse and the pre-sale purchasers?

A. I didn't know.

Q. Now I will refer you to two documents, first of all page 26 of the agreement.

MR. BERNACCHI: A.26.

10 COURT: Please, for the purpose of the record, put the number.

Q. A.26, the agreement between Mr. Tse and the sub-purchasers. Now paragraph - clause 21, "... all sums paid hereunder ...", paragraph (a) I have dealt with already. Paragraph (b):

"repayment of the principal for the time being owing under the said Building Mortgage and Further Charge."

20 I haven't asked a question yet, I am just referring you to this paragraph. Now I will refer you to your mortgage with Mr. Tse, you as mortgagee, page 4 of the mortgage, A.4. In the middle of the page, dealing with receipts of money:

"SECONDLY to apply such moneys in or towards satisfaction of the principal and interest for the time being owing on the security ..."

30 I haven't asked you a question yet, I'm sorry. Now you notice that ...

COURT: In what context does this passage come, Mr. Bernacchi?

MR. JACKSON-LIPKIN: Sale by this gentleman under his power of sale, my Lord.

COURT: You just can't ram in a mortgage of this nature, a few words right in the middle, as it were, of this thing. In what context does it apply? This governs, I think, what happens when the mortgagee has

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Exhibit A4

entered into possession.
MR. BERNACCHI: My Lord, I apologise to the Court if it does; I didn't interpret this myself.

COURT: it starts off at A.3.

MR. BERNACCHI: I think, my Lord, you are right. It refers to ...

COURT: No, I think I'm wrong there to say that is at the stage where the mortgagee has entered into possession, it isn't so at all; where the mortgagee has exercised his right of sale. It starts off at A.4 - A.3.

MR. BERNACCHI: Yes, my Lord, I will rephrase my question.

Q. Now, I'm sorry, I made a mistake as to the mortgage deed. This is dealing with when you exercised your right of sale.

20 "SECONDLY .." again "SECONDLY ..." -
page 4 -
"... to apply such moneys in or towards satisfaction of the principal and interest for the time being owing on the security of these presents."

A. What money to pay?

Q. The money that you receive from the sale of the whole block or part of the block.

A. Yes.

30 Q. Now you will notice, therefore, a significant difference that whereas on the agreement for sub-sale of units (b) is "repayment of the principal for the time being owing under the said Building Mortgage ..." you, on your sale, can apply it towards either principal or interest.

A. Yes.

Q. Well now, you say that you had no knowledge of the terms of this sub-agreement?

A. I knew the main points but the exact content I had no idea.

40 Q. You are varying your evidence a little bit. You said specifically 5 or 10 minutes ago that you had no knowledge of 21(a):

"Messrs. Johnson, Stokes & Master as stakeholders .." shall apply the money in "... paying the cost of the construction of the said building...". Now you said specifically that you had no knowledge of that. You said that.

A. I said they made such payment.

Q. They in fact made some payment - such payments and you never objected. You said that.

10

A. Yes.

Q. But you said that you had no knowledge that that was what was in the agreement between Mr. Tse and his sub-purchasers.

A. I meant I did not know that the proceeds from the sale should go towards the payment of the construction cost.

Q. So presumably you had no knowledge of (b), the proceeds of the sale should go towards repayment of the building mortgage - of the principal of the building mortgage?

20

A. That I know.

Q. Oh, I see, you knew (b) and yet you didn't know (a)?

A. I didn't know so much.

Q. Mr. Tse's evidence is that he wanted to go to Messrs. Woo & Woo, that he had already had correspondence with Messrs. Woo & Woo in respect to a unit. He produced the documents and then you got to know of it, you were very annoyed and you said any pre-sale of units must be done through Messrs. Johnson, Stokes & Master. Now you, in your evidence-in-chief, say that is totally untrue.

30

A. That is untrue.

Q. Now it is either one way or the other.

A. I knew nothing about it.

Q. Either he could only pre-sell the flats on your terms laid down through your solicitors, Messrs. Johnson, Stokes & Master, or he could pre-sell the flats through any solicitor in which case, of course, you would have had no control over the terms.

40

A. I believe it would not happen.

Q. What do you mean by that? He has produced documents; he clearly, in fact, instructed Messrs. Woo & Woo on the first pre-sale and

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- for some reason that was not proceeded with, Messrs. Johnson, Stokes & Master took it over. Now he says you insisted, you say you didn't.
- 10 A. Messrs. C.C. Lee acted on his behalf to purchase one unit.
- Q. I think actually you are mistaken about that. Messrs. C.C. Lee acted on his behalf in regard to a transfer of your mortgage and eventually it came to nothing.
- A. That's another thing.
- Q. Yes, all right.
- 20 COURT: Mr. Bernacchi, I hate to interrupt you, but aren't we wasting a lot of time? I know the point of yours, but the certain elementary point, that you persevere with it, surprises me. It is manifestly clear to anybody that a mortgagee would not allow a matter like this to go out of his hands. If the mortgagor wants to sell the flat as far as the mortgagee is concerned he can sell all the flats he wants, but it is only the matter when the vendor, the mortgagor, after completion wants to assign. Then he is going to go cap in hand to the mortgagee, then the mortgagee will say, "Why should I assign it flat by flat?"
- MR. BERNACCHI: Yes, my Lord, but I
- COURT: What is this point you are pressing?
- 30 MR. BERNACCHI: My Lord, I am pressing it only because it has been denied.
- 40 COURT: I doubt if he understands it when you put it really as a matter of law to the witness. The whole proposition is so simple. He can go to Woo & - the mortgagor, Mr. Tse, could have gone to Woo & Woo, nobody could have stopped him, nobody, but it is only after occupation permits are granted, the buyers call him, "Please now you assign my flat," the mortgagor can't assign it, only the mortgagee can assign, so you must get on the right side of the law even for a thing like this. So what is the point in wasting

a lot of time pressing on this point?

MR. BERNACCHI: My Lord, it is of course the wording of the clause that does not ...

COURT: I know what you are getting at as far as wording is concerned, but that's got nothing to do with this point.

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MR. BERNACCHI: Yes, my Lord.

10 Q. The wording of the clause 21(b) - if you like the interpreter will repeat it to you - was not your wording. You knew of this clause but it was not your wording.

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MR. JACKSON-LIPKIN: My Lord, he has said he did not know of the clause, he knew of the facts.

COURT: Let it go, Mr. Jackson-Lipkin.

MR. JACKSON-LIPKIN: Yes, very well, my Lord.

A. What?

20 Q. You say that you did not know of the wording of this clause, you knew of the facts, that the mortgage money was paid to you but you didn't know of the wording of this clause 21(b).

A. That's right, I knew nothing about the wording.

Q. Now when money is paid to you, from your point of view you were fully at liberty to take the money in reduction of the principal or to take the money for interest?

30 A. Yes.

Q. In fact, you usually took the money for repayment of principal?

A. Yes, towards the reduction of principal and interest as well.

Q. Usually towards the reduction of principal?

A. Reduction of principal, then reduction of interest.

40 Q. For instance, if you had - you didn't but if you had taken the money all towards reduction of interest he would not have been owing any interest at all.

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- 10 A. Well, if the amount is sufficient to cover the interest of course it was so, but he was unable to pay me even the sufficient amount to cover the interest because the units were not saleable at the time.
- Q. The amount that he had paid you on the sale of the units as a whole would more than cover the amount that was outstanding as to interest.
- 10 A. But the units were not saleable, only a few units in the early stage, then it stuck.
- Q. You know and I know that he did sell units.
- A. Yes.
- Q. You have admitted that you paid the money you received largely towards principal.
- A. Yes. Whether it was sufficient you have to check the accounts before you can tell.
- Q. I am putting to you if you had allocated toward interest he would not have owed you any interest.
- 20 A. Yes.
- Q. Thank you. Now you've also said, in dealing with this first mortgage, that you did not know that Mr. Tse had gone to Johnson, Stokes & Master as well as you.
- A. Yes.
- Q. What do you mean by that? I mean the mortgage has been produced as an exhibit and it was drawn up by Johnson, Stokes & Master and they were acting, as I've said, for both parties. How could you not have known that? What do you mean by that? How could you not have known that?
- 30 A. I said I didn't know it. I meant I knew at the time when it was explained to me but I forgot afterwards.
- Q. You see, I put it to you that you insisted on Tse going to Johnson, Stokes & Master as your solicitors.
- 40 A. That's a false accusation; I swear on it, I knew nothing about it.
- Q. You said that your wife knew Tse. Do you mean knew Tse before this mortgage transaction?
- A. It never occurred, no.
- Q. I am not saying it did, I am saying what do you mean? You said in the course of your evidence that your wife knew Tse. What do you mean by that?

A. She met him before me - did, and afterwards when she met him again she talked to him without further introduction.

Q. I am trying to discover whether this piece of evidence that you volunteered in your evidence-in-chief has anything relevant to do with this case or not. When do you say that your wife first knew Tse?

A. After the mortgage.

10 Q. I see, all right. Now in the course of your evidence you have described how, especially towards the end of the construction, two building contractors in particular were literally screaming for their money. They hadn't been paid, the occupation certificate was issued and after the occupation certificate was issued one of them stopped the lifts and the other started dismantling the work that he had done.

A. Yes, it did happen.

Q. And you say that it was necessary for you, therefore, to enter into a separate agreement with them to pay them.

A. To enter in the agreement with the contractor directly.

Q. Well now, as you never objected to Johnson, Stokes & Master paying the building contractors from the money that they had received from the pre-sale of units, did you not consider that it was your job to release the money to the building contractors without ever having a separate agreement with them?

A. Well, you put it this way, I don't know how to answer.

Q. You say that you knew nothing about the proposal of Mr. TSe to mortgage to the Wing On Company - Wing On Life Insurance?

40 A. Correct. I learnt it afterwards; I made a mistake the other day. I know when he lodged a counter-claim against me.

Q. Now I ask you to keep that letter before you and I refer you to B.32.

MR. BERNACCHI: Now Mr. Interpreter, will you interpret please.

(Interpreter reads the letter to the witness)

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- Q. Now I have several questions to ask you on this document before I come back to E.1. First of all, do you agree that that was the first time that Mr. TSE had any clear notification from you of the amount of interest that he owed you?
- A. Yes.
- Q. And of course from its contents you see that he had to do something fairly quickly otherwise you would exercise your power of sale.
- A. Yes.
- 10
- COURT: I think, Mr. Bernacchi, we will have our mid-morning adjournment now to give you time to prepare this line of cross-examination.
- MR. BERNACCHI: Thank you, my Lord, because I don't recollect exactly when ...

11.25 a.m. court adjourns

20 11.52 a.m. court resumes

Appearance as before

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XXN BY MR. BERNACCHI CONTINUES:

- Q. Now you just said that B.22, you agree with me was the first notification that Mr. TSE had of the interest owed.
- A. Yes.
- Q. Actually, I don't know whether you know it, but either from you or your wife at about the same time he had a slightly different figure of 82,000 on accounts in Chinese.
- 30 A. I don't know.
- Q. Anyhow, it wasn't from you? It was not from you, the accounts in Chinese of February 1966 - was not from you?

COURT: Well, show him the accounts. What document is it?

MR. BERNACCHI: E.87, and E.129, I think.

COURT: Look, let the witness have the original and somebody let me have a copy.

Q. I'm not asking you any questions on that except do you know if these were from you or from somebody else?

A. This is from us.

Q. From "us" you mean you and your wife?

A. My wife handled the accounts on my behalf.

COURT: This is made out by your wife?

10 A. Yes.

Q. All right. So that by the end of February Mr. TSE had had a letter in English showing interest at about \$76,000.00 odd and an account in

MR. JACKSON-LIPKIN: My Lord, my translation doesn't say anything about interest on E.130. I would ask my learned friend if ...

COURT: I didn't have 130 - now I've got it.

20 MR. JACKSON-LIPKIN: So I would ask my learned friend if he really meant interest.

(Counsel confer)

MR. BERNACCHI: I don't want to waste any time over this document.

Q. This \$82,000.00 still owing, is that interest? Do you know?

A. I don't know.

30 Q. All right. Now having received the letter from the solicitors about interest owing, did Mr. LIU ever tell you that Mr. TSE had been up to see him and protest that he didn't owe as much as in the letter in interest?

A. I don't remember.

Q. Did he ask Mr. LIU for an exact account of what was owing on the Building Mortgage and on interest?

A. I'm not sure.

40 Q. Mr. WONG, I know it was a long time ago, but on some things you appear to have a

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very clear recollection. Now I am now asking whether or not Mr. LIU communicated to you the fact that Mr. TSE wanted a full account of what he owed you on principal and interest.

COURT: When, Mr. Bernacchi?

MR. BERNACCHI: At the end of February or in March '66.

A. I heard about it. It seems it was given to him in February. I'm not sure, or before.

Q. Are you speaking of the document that I have just produced to you?

A. I don't remember clearly.

Q. Well, apart from anything that was given to him in February by your wife. Presumably your wife is coming to give evidence so she will give evidence on what she gave him, if anything. Did Mr. LIU inform you at the end of February or March that Mr. TSE was demanding a full account of what was owed by way of principal and interest on the Building Mortgages?

A. I don't remember this.

Q. Now I want to come to about April, April 1966. Do you know that Mr. LIU told Mr. TSE that he owed you in principal and interest about 1.42 million dollars?

A. I don't know.

Q. Well, do you know where he could have got that figure, 1.42 million dollars?

A. I don't know either.

Q. Well, when you say in answer to my former questions, "I don't know", do you mean to say you don't know anything about it or you have forgotten whether you once knew that Mr. LIU had done this, informed this to Mr. TSE? I am suggesting to you ...

A. I forgot whether it took place.

Q. I see, all right. Now Mr. TSE has already said that the reason why he asked the Wing On Life Assurance for a mortgage of 1.5 million was because Mr. LIU had informed him of this figure of 1.42 million which is just under 1.5. Well now, presumably you don't know anything about that?

Q. All right. Now did Mr. LIU tell you that after receiving this letter, and I am talking about E.1 now, after receiving this letter he took it to show to Mr. LIU?

A. I don't know. I knew nothing about this letter. I suspect very much on seeing this letter.

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COURT: You suspected what?

10 A. He obtained the approval on the 26th of April by means of this letter, but he wrote the appeal, wrote an appeal to the Governor on the 29th of April.

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Q. And in between he had had two notices from Johnson, Stokes & Master saying that you would sell and demanding a total of 1.6 million.

COURT: Show him the letters.

A. That was the ultimatum.

Q. I think it is B.38. B.38 and B.39.

20 A. They worked out the figure themselves.

Q. Oh. "They" is Messrs. Johnson, Stokes & Master?

A. With reference to my wife's account.

Q. I'm sorry, but I don't understand you. Do you mean that they themselves. Messrs. Johnson, Stokes & Master, worked out what was owing and they had as a guide your wife's account or do you mean that your wife gave them the figures?

30 A. Basically they based on my wife's account, but both parties had their own accounts.

COURT: Both parties? Who are both parties?

A. Mr. LIU ...

COURT: Let me get this straight. Basically Johnson, Stokes & Master worked it out from your wife's accounts. Did Mr. LIU have a set of accounts?

A. He recorded all the out-going items.

40 Q. So he would have been - I am referring you now again to March - he would have been in a position to tell Mr. TSE approximately

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- 10
- Q. how much he owed on principal and interest on his own figures?
A. Not based on his, Mr. LIU's accounts.
Q. You said that Mr. LIU had figures of all out-goings.
A. Well, this debit and credit accounts with Mr. TSE in respect of the construction. The amount which Mr. LIU paid to Mr. TSE possibly up to 100,000 to \$200,000. That's from the proceeds of the pre-sale of units.
Q. I put it to you from the answers that you have given since the mid-morning break that Mr. TSE ... I'm sorry, that Mr. LIU was apparently in a position to tell Mr. TSE approximately what was owed as principal and interest to you.
A. Yes.
Q. So if, in fact, he had told Mr. TSE - I'm asking you to suppose for a moment - he had told Mr. TSE that what was owed was 1.42 million, the letters of the 28th of April claiming almost ... well, claiming 1.64 almost .65 million would have been a great surprise to Mr. TSE.
A. Yes.
Q. Now did you know - I'm now going back again because you led me on the referring to this letter, but there is some question I have to put to you of events before these letters were sent. Did you know that Mr. LIU was handed a photostat copy of this letter from Wing On Assurance? I am referring again to before the 28th, but after this letter is received, so it was about the 27th or even date.
A. Yes.
Q. You have never seen a photostat copy of this letter?
A. I only see this one now, not the photostat copy.
- 20
- 30
- 40
- COURT: That's the first time you have seen this letter?
A. The first time. I saw the photostatic copy either in March or April last year after this incident, so I suspected this letter.
Q. After this incident or after this Action?
A. Yes. May I ask Mr. Bernacchi a question?
Q. No, I'm asking you the questions. Now Mr.

LIU did not ever give you his photostat copy?

A. No.

Q. Now did you know that Mr. TSE left Mr. LIU's office and went to your office?

A. No.

Q. He says that you weren't in, but he saw your wife.

A. I don't know either.

10 Q. She didn't inform you of that?

A. What?

Q. That he had been to see her and showed her this letter and he had from Wing On Assurance.

A. She did not tell me.

Q. You see, he says that he left her also with a photostat copy.

A. I don't believe.

20 Q. You see, I suggest to you that it was because you and - when I say "you" I mean you and your wife - suddenly saw that your mortgage was going to be taken over for 1.5 million, that you instructed Johnson, Stokes & Master to send these letters of the 28th of April.

MR. WONG: The question is: "I suggest that it was because you and your wife suddenly saw the mortgage would be taken over for 1.5 million that you instructed J.S.M. to send a letter of demand for 1.6 ..."

30 MR. BERNACCHI: No, I didn't say that. I said "You instructed Johnson, Stokes & Master to send these two letters."

MR. JACKSON-LIPKIN: My Lord, may it be translated again?

COURT: Yes, translate that again.

(Mr. WONG corrects the interpretation)

A. Absolutely no.

40 Q. I see. You see, turning back to the letter B.32, the letter of the 28th of February ...

COURT: When and what?

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MR. BERNACCHI: B.32, my Lord.

Q. Now there Johnson, Stokes & Master say: "Unless the said sum of \$76,548.95 is paid to our client or to us on his behalf on or before the 29th day of March 1966, our client will exercise the power of sale."

A. Yes.

Q. Well now, you in fact didn't exercise your power of sale. In between these dates the Star Ferry riots had started.

Q. It was at Mr. TSE's request. He requested your wife and you consented.

A. Yes.

Q. But suddenly on the 28th of April you sent these letters, I mean B.38 and 39, and you say that it had no connection with this letter from Wing On Insurance about offering to take a mortgage on the property for 1.5 million?

20 A. Absolutely not.

Q. Now did Mr. LIU tell you that after Mr. TSE had received these two letters he had a visit from Mr. LIU? Did he tell you that? Did Mr. LIU tell you that he had had a visit from Mr. TSE?

COURT: What was your question? I got the impression that Mr. LIU was alleged to have visited Mr. TSE. Could you phrase the question over again?

30 Q. After Mr. TSE had received these two letters, did Mr. LIU tell you that Mr. TSE had visited him?

A. I don't remember.

Q. Do you remember anything about what Mr. TSE said to Mr. LIU or Mr. LIU said to Mr. TSE? Do you remember any report of what was said or anything like that?

A. In respect of this letter?

Q. No, in respect of the conversation.

40 A. I don't know.

Q. Apart from anything else that you or may not have been said, Mr. LIU said, "Well, I can't do anything because it was the figure supplied by Mr. WONG." He asked him about 1.64, "Why so much?" and Mr. LIU said, "I can't do anything, it was the figure that

- was supplied by Mr. WONG." Now did you in fact supply him that that figure?
- A. It might be.
- Q. Now between the end of April and the auction, did Mr. TSE ask you personally for detailed accounts?
- A. I'm not clear about this point.
- Q. Do you mean by that that he might have done, but whether he did or not you have forgotten? Is that in effect your answer?
- 10 A. Difficult to tell. He accused that this figure was wrong, but we worked it out on the same basis.
- Q. When you say he accused that this figure was wrong, did he have an interview with you which he said this figure was wrong?
- A. No.
- Q. Well, how do you know that he accused? Did Mr. LIU say that he had accused him or your wife, say, or how do you know that he accused?
- 20 A. Afterwards I heard it was wrong.
- Q. Look, it was wrong ... It was found to be wrong very much later by Mr. Ronald LI, but I'm not referring to that. I am referring to your answer. "He accused that this figure was wrong."
- A. How come I said he accused me of wrong?

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COURT: You have just said so yourself.

- 30 A. I heard it was said wrong, but we said it wasn't wrong.

MR. WONG: Sorry to interrupt, my Lord, but it should be translated that "I heard after the incident that it was said to be wrong." SEE HAU.

COURT: Well, what incident?

- Q. What incident?
- A. After the auction.
- Q. After the auction?
- 40 Q. Mr. WONG, I said clearly and it was clearly interpreted to you that I was dealing with the period between the end of April and the auction at the end of June and you know that very well, when you said he accused

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- that the figure was wrong.
- A. He accused that was wrong, did he show any accounts to prove it?
- Q. I see. In your view it is for him to show accounts to prove that this figure was wrong, not for you to give accurate accounts to him?
- A. Well, I showed him long and big accounts. They showed him, the solicitors showed him the accounts.
- 10
- COURT: Make up your mind what you are saying, Mr. WONG, don't just ramble on. Did you yourself show Mr. TSE the accounts between the end of April and the auction?
- A. No.
- COURT: To your knowledge did anybody else do that?
- A. It might be, but I wasn't sure.
- 20 Q. Apart from anything that you told him, did Mr. LIU tell you that he was demanding accounts from Johnson, Stokes & Master? Did Mr. LIU tell you? That "he" means Mr. Tse. Apart from anything that Mr. TSE told you or asked you, did Mr. LIU tell you that Mr. TSE was demanding accounts from Johnson, Stokes & Master?
- A. I heard about it.
- Q. Did you take steps to supply Johnson, Stokes & Master with the accounts to give to them, to give him?
- 30 A. It seems our company supplied him the accounts through Mr. LIU in Febraury or March.
- COURT: It's got nothing to do with the company. You were personally the mortgagee.
- A. I collected myself.
- Q. When you said "our company" you mean Chit Sen Company Limited?
- A. Yes.
- 40 Q. I repeat my question and I am dealing with the period the end of April to the time of the auction ... the property was sold to your company at the end of June. Did you

take any steps to supply Johnson, Stokes & Master with the accounts to give to him? The end of April to the time that the property was auctioned at the end of June.

A. I wasn't clear.

Q. So that when he says that he asked - again, dealing with this period - that he wasn't supplied, he asked on various occasions but he wasn't supplied, that may well be right.

10 A. It's difficult to tell whether he may be right. I do not handle accounts. You ask me accounts, it's difficult to tell.

Q. So that when he says that even on the day the auction took place he had not yet been supplied with a detailed account, that also may well be right.

A. He can say anything he likes.

Q. "That also may well be right" is the question.

20 A. I dare not answer.

MR. BERNACCHI: My Lord, could the witness be shown the original of E.141. I think there is an original. I'm sorry, it is the duplicate copy.

Q. Would you read through this letter and confirm that you did received it from Mr. TSE?

A. (Witness reads the letter)

Q. How when you have finished reading, would you confirm that you did in fact received this letter from Mr. TSE on the 19th or 30 20th of October 1966?

A. Yes.

Q. I'll take you through the letter quickly. I'm reading of course from the translation at page 142. You see the second sentence: "Within about one week after the sale by auction, I had been to see you on more than ten occasions to (try to) check the 40 accounts with you and to handle all (other) matters." Is that true or not?

A. I don't know whether it did take place, but you could compare the accounts with Mr. LIU.

COURT: Answer the question. Did he go and see you?

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- A. No, he did not see me.
- Q. So did he see you at all after the sale by auction?
- A. He did see me, but I can't tell how long afterwards. Sometimes he met me in the street.
- Q. Did he speak to you? I'm dealing with the period after the sale by auction and before the receipt of this letter in October.
- 10 A. As far as I can recollect, he came up to my office twice, in July, August. he borrowed a total of \$1,000.00 from me once, 700 and then 300. I have receipts from him.
- Q. You know very well, Mr. WONG, that I am talking about accounts, asking you to supply accounts and this letter is asking you to supply accounts. Now did you see him on one or more occasions between the date of the sale by auction and the date of receipt of this letter when he asked you about accounts?
- 20 A. To me, no.
- Q. So that this is an entirely wrong statement: "Within about one week after the sale by auction, I had been to see you on more than ten occasions to (try to) check the accounts with you and to handle all (other) matters." That is entirely wrong?
- A. It's difficult for me to tell it's wrong.
- 30 Q. It's simple to tell, but is it true?
- A. It's untrue.
- Q. Now the next sentence: "However, you were unwilling to check and settle the accounts of receipts and payments in connection with the mortgage loan." Is that true or false?
- A. It's difficult for me to tell whether it's right or wrong.

COURT: Why?

- 40 A. He could have compared the accounts in the solicitors' firm. Why didn't he go there?

COURT: That is not the question asked of you, Mr. WONG.

A. Do I have to answer this question?

COURT: Yes. What do you say?

- A. It might be true. '
Q. It might be true. Incidentally, you said about half an hour ago that when I was questioning you on the accounts and Mr. LIU is alleged by Mr. TSE to have said, in effect, "It's nothing to do with me, these figures were all supplied by Mr. WONG" that that might be true. So obviously ...
10 A. It's how he told me. It's difficult for me to say anything.
Q. So obviously the accounts in Johnson, Stokes & Master may well be different from your accounts?
A. No.
Q. They had accurate accounts, did they?
A. Only a slight difference due to mis-entries.

COURT: Look, Mr. WONG, you rather puzzle me. Mr. Bernacchi, may I ask two questions?

- 20 MR. BERNACCHI: Yes, indeed.

COURT: Firstly, do you pay Johnson, Stokes & Master to keep your mortgage accounts for you?

- A. They work out the charges against me.

COURT: Answer the question. Do you pay Johnson, Stokes & Master fees for keeping accounts for you?

- A. Of course, I paid.

- 30 COURT: You mean you say that Johnson, Stokes & Master were keeping your mortgage accounts for you? Is that what you say? How much interest accrued, how much interest accruing. You say Johnson, Stokes & Master were keeping those accounts for you?

- A. Yes.

COURT: You are sure of that?

- A. Sure, yes. They register for us.

COURT: I'm not talking about any private

individual in the firm, but the firm itself you say were keeping accounts for you and you were paying for the accounts to be kept.

A. Yes.

COURT: Carry on, Mr. Bernacchi.

Q. Then you see: "You said there were not any accounts for checking (and that) "from now on cut into two with a knife."

A. That's what he said.

Q. Yes, but did you say there weren't any accounts for checking? Did you say, in effect, "I've severed all relations with you"?

A. No.

Q. Now the next paragraph you have already answered, you don't know whether that is true or not. "Some time about March, this year I had been to the law firm of Johnson, Stokes & Master on several occasions (trying) to get all the accounts of receipts and payments, bills and (other) documents of the building contractors in connection with the mortgage, but to no avail." You have said already during this morning that you don't know whether that is right or not.

MR. BERNACCHI: Perhaps this might be ...

COURT: Two-thirty.

30 12.58 p.m. Court adjourns

2.34 p.m. Court resumes. 21st March, 1979.

Appearance as before.

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XXN. BY MR. BERNACCHI continues:

Q. Mr. WONG, this morning I was cross-examining you on a letter which you received just after the middle of October, 1966. Now at the same time, do you know

the plaintiff sent a letter to Johnson, Stokes & Master? I am referring to E143-144

A. I did not know.

Q. Now E143. I am not going to ask you anything about it, Mr. WONG, but do you remember seeing this letter before or not?

A. No, I haven't seen it.

10 Q. Now I refer you to E91. Presumably, again, the original is there. This is a letter enclosing accounts. (to interpreter) Now translate to the witness the whole letter. Now do you confirm that you did instruct Johnson, Stokes & Master to, amongst other things, enclose an account of Mr. TSE's indebtedness?

COURT: Does the witness understand?

20 A. I don't understand why this letter? Has it been fully interpreted or translated to him, E91?

INTERPRETER: Yes.

COURT: Before he can answer anything, he must have that letter clearly in his head.

MR. BERNACCHI: I thought that had been done.

INTERPRETER: Yes, sir, it has been.

COURT: Mr. WONG, you understand this letter, E91? Well give it to him once again.

A. I do not understand why this letter was sent by Hong Kong & Shanghai Bank.

30 Q. That is the address. It was sent by Johnson, Stokes & Master.

COURT: Mr. Interpreter, will you please translate the letter to him once again including - -

INTERPRETER: -- everything.

COURT: The whole lot. Show the annexes to the witness page by page. Now before answering any questions, would you like to go through

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& E144*

Exhibit E91

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the annexes first yourself?

A. I have no impression of this because I do not handle these accounts.

COURT: You understand the letter though?

A. Yes, I do.

Q. Now do you confirm what Johnson, Stokes & Master wrote to Mr. TSE,

Q. Amongst other things means that you also threaten through your solcitors to sue him which in fact you did a little later on. But I am dealing with the accounts at the moment. Now did you instruct your solicitors to write to Mr. TSE and enclose a statement of these accounts?

20 COURT: Mr. Bernacchi, don't make it more difficult. Just start on the first sentence of the letter. Did you instruct Johnson, Stokes & Master to write to TSE in connection with this outstanding indebtedness to you?

A. Yes.

COURT: Did you instruct Johnson, Stokes & Master that that indebtedness was \$392,855.77?

A. Yes.

Q. And to continue, did you instruct Johnson, Stokes & Master to attach your accounts with him, with Mr. TSE? In other words, to send your accounts with Mr. TSE?

30 A. I believe my wife sent him the accounts.

Q. Your wife may have made up the accounts. That is your evidence. That has been your evidence repeated a number of times. Did you instruct your solicitors to send a copy of the accounts which you say your wife had made up to Mr. TSE?

A. I am not clear.

Q. Now you have noticed the date, 24th October, 1966.

40 A. Yes.

Q. That would have been about four days after you had received this letter that I was

- cross-examining you on before lunch from Mr. TSE direct to you.
- A. You want me to answer? What?
- Q. Do you agree with me that it was about four days after you received this letter, yes or no? Show him again E141. That letter I think there is evidence at present it was posted, so as it is dated the 19th, you would have received it about the 20th.
- 10 A. I don't know. I can't remember.
- Q. But you see, I suggest that it was as a result of that letter that you took this action.
- A. I don't know. Here it is not mentioned that it was written as a result of this letter. I don't know.
- Q. In other words, it could have been but you don't remember, is that it?
- A. I don't remember.
- 20 Q. Could it have been that he was pressing you still for accounts and your reaction was, "Right, if you are so keen on getting accounts, right. I will give you your accounts and I will threaten to see you for the balance."
- A. No.
- Q. Tell me, you yourself, unsolicited, this morning said that you had lent Mr. TSE a thousand and then another occasion \$500.00.
- 30 COURT: 700 and 300.
- Q. 700 and 300 make a total of a thousand. 700 and 300 after the auction - in the months after the auction.
- A. I did not say one month after.
- Q. No, no, I said in the months after.
- A. Yes, either in July or August.
- Q. Did you think that Mr. TSE was very hard up?
- A. I cannot say whether he was hard up or not, but I thought he was not hard up.
- 40 Q. You thought that he was not hard up and yet you lent him \$700.00 on the occasion and \$300.00 on another occasion in June or July 1966?
- A. He asked for the loan so I lent him the money. How could I tell whether or not he was hard up.

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Exhibit E92

Exhibit B38

- Q. But didn't it occur to you that if a person asked for a loan of \$300.00, he must be pretty hard up.
- A. It did not occur to me.
- Q. You see, I suggest to you that you knew perfectly well in October of 1966 that if you sued him for the outstanding balance, you would in effect have an empty judgment. He wouldn't be able to pay.
- 10 A. That I don't know.
- Q. Now I suggest to you further that you imagined, you thought to yourself, that it was a way of, in effect, showing him up, he was pressing for accounts, pressing for accounts, and you said, "Right, you press for accunts. This is what will happen."
- A. That is your presumption. I did not think so.
- Q. Am I right?
- 20 A. No.
- Q. We turn to the accounts itself. Page 92, first of all. You see the figure just above the proceeds of sale 1.2 m. Now that is \$1,592,855.70. Now have that open and I would ask you to compare it with the figure sent on your instructions as a demand note "If you don't pay then I will sell." It is at page B38. \$1,648,941.30. Now that figure was less one months' interest compared with the figure in E92. So that allowing for that, this whole account shows about \$60,000.00 less than the demand in April. No, it's over. It is almost 70,000. Now can you account for that at all?
- A. I did not know the accounts. I have no impression. I just can't account for it.

COURT: Aren't you in deep water here?

- 40 MR. BERNACCHI: I am always in a bit of deep water when I come to accounts.

COURT: "Repayment of Part of Principal by such part of Proceeds of Sale of Flats received by Mortgagee during period ... 30/6/66, 44,500.00" What do you have in your favour? The top figure is one months' interest.. \$17,217. What is against you is

nearly 50,000. It is \$48,220. You can't reconcile the two figures.

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MR. BERNACCHI: My Lord, then I won't try it.

COURT: Don't let me stop you if I am wrong. It seems to me that you are in deep water here by making this comparison on the figures as they stand. Take your instructions on it by all means.

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10 MR. BERNACCHI: My Lord, I will merely put this to him: that even allowing for proceeds on sale of flats received on the 30th of June and the 26th of July, this figure is still considerably less than the figure that appears in the formal demand of the 28th of April.

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COURT: That surely must be wrong.

COURT: 40 ... 50, one moment. I see what you mean.

20 MR. JACKSON-LIPKIN: May I intervene to say, of course there is an unknown amount of 769,000 because that goes up to the 30th of April but the demand was sent out on the 28th of April.

COURT: You are trying to split hairs, Mr. Jackson-Lipkin.

MR. JACKSON-LIPKIN: Unfortunately, I am not in a position to help you as to whether that was paid at the end of April.

COURT: Fair enough. Go on, Mr. Bernacchi.

30 Q. Do you agree with me that the accounts which Johnson, Stokes & Master enclosed show a marked less amount due to you than the equivalent amount in the letter of Johnson, Stokes & Master of the 28th of April?

A. I am not clear.

Q. You have been in the mortgage business on your own evidence since 1935. So, presumably, apart from anything that your

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Exhibits E93
& E94

- wife does, you yourself are fully acquainted with mortgagees' accounts.
- A. I did not handle accounts.
- Q. Never throughout the time, the many years that you were dealing with mortgagees' accounts? You being the mortgagee, did you handle the accounts?
- A. I never handled the accounts.
- Q. So that you rely entirely on your wife, is that the position?
- A. Or other staff.
- Q. And you are not even in a position to agree or disagree with me when I point out to you that the two figures are apparently very different?
- A. Correct.
- Q. In view of the fact you say that you don't know accounts at all, I won't ask you any questions on E93. I would ask you a few questions on page 94, E94.
- MR. BERNACCHI: Has the sheet of paper that you have now got in front of you, my Lord, finished with the figure on the right-hand side 1,623,858.70?
- COURT: Hm, hm.
- MR. BERNACCHI: That is the page that I want to ask him.
- Q. Now first of all, these particular accounts are not signed, you can see that.
- A. Correct.
- Q. So who do you say they were? Johnson, Stokes & Master's accounts, your wife's accounts, or somebody else in your staff's accounts?
- A. I am not clear.
- Q. In Chinese fashion, is it not usual for the one that is responsible for the accounts to sign them?
- A. You mean who prepared it?
- Q. Yes.
- A. I don't know.
- Q. I mean Mr. Tse, when he was giving evidence, made a lot of the fact that they were not signed both in his evidence-in-chief and in his evidence in

cross-examination, and I am suggesting to you the...

Q Well you will either say it is right or it is not right, but surely it is a simple proposition that in Chinese custom - you are a Chinese gentleman, Mr. WONG - in Chinese accounts, the one that prepared them usually signs them.

10 A. I do not understand this practice.

Q. I will put it in another way. I can assure you that the plaintiff in this court expressed extreme surprise that these accounts were not signed. Does that surprise you?

A. I am not much suprised because I do not understand.

Q. There were some accounts that I was referring to this morning (talks with Mr. WU) E129, the translation is 130, February accounts. Now that was signed by your wife, isn't it, and dated 5th of February, 1966.

20 A. Yes.

Q. E129, the translation is E130. E87 is the first page, the second page is missing and E129 is the third page. It is the first page is missing, E87 is the second page and E129 is the third and final page.

COURT: The first page is missing?

30 Q. The first page is missing. Now having shown you the accounts that your wife did in February of 1966, would you not agree with me that it is the Chinese custom to sign the accounts - that the preparer of the accounts signs them?

A. It is difficult to tell. I have just mentioned I don't know it is practice.

Q. Do you see the item in E94 at the right-hand side in the middle, "Total Amount Due as at 29/6/66"?

40 A. Yes.

Q. Now "B" Principal, "C" Principal, then comes Construction Charges and Life Charges. Now those are in reference to separate agreements which you had with the construction enginner and the lift engineer.

A. Yes.

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*Exhibits E129
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Exhibit E87

Exhibit E94

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- Q. Would you say that it was included in the mortgage or would you say that it was a separate indebtedness entirely?
- A. It was included in the mortgage.
- Q. Why was that? I mean you yourself kept the accounts and instead of paying the complete construction cost you took the money in repayment of the principal.
- A. I do not understand.
- 10 Q. Are construction charges and lift charges normally considered as principal under a mortgage?
- A. I believe this payment should be made by Mr. TSE.
- Q. Take it that they should be made by Mr. TSE, all right. They cannot be included in the mortgage accounts.
- A. I believe interest must be involved because he was still owing interest.
- 20 COURT: Mr. Bernacchi might be wrong, but I think the principal under the mortgage or the charges have exhausted. There was no more principal, no more sums from the principal. TSE could not have paid him because all the mortgages had by then been exhausted when these two sums came along. They would be part of the architect's certificate, wouldn't they not be, the lift charges?
- 30 COURT: It might have been his responsibility to pay out of the mortgage if there had been any promise to pay them under the mortgage. The final charge had all exhausted by then.
- MR. BERNACCHI: Basically, of course, what my client complains of is that Mr. WONG in fact took fairly large sums of money out.
- COURT: That is another matter altogether.
- MR. BERNACCHI: But having done that, he was surely hoist by his own petard when he was
- 40 left with these charges, surely.
- COURT: He will pay unless there is a negotiation. It is as simple as that.

MR. BERNACCHI: The fresh agreement is actually at page A43. My Lord, surely there is nothing in that fresh agreement that involves this sum, one of the two sums, 47,600, as part of the mortgage, i.e. secured on the property.

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COURT: What difference does it make at the end of the day? It is a debt owing by the claimant to the respondent to the claim.

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10 MR. BERNACCHI: Oh yes, my Lord. I am not saying that it is not. Of course, it is a debt owing by the claimant, but I am saying that apparently, and presumably in the demand too, he is including sums totalling almost \$100,000 which were not part of the mortgage. Apart from any submission that I may make as to the true figures being his figures--

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Exhibit A43

COURT: That is something else.

20 MR. BERNACCHI: Apart from anything else, even on his figures, the mortgage, the security of the building by way of mortgage and further charges, was almost \$100,000 less than is shown in these accounts. That is all.

COURT: Then your question is surely the total deal under the mortgage in the region of 1 1/2 m. as compared with 1.64 under B38.

Exhibit B38

30 MR. BERNACCHI: You see, cutting out the construction charges and life charges which were not part of the mortgage, cutting out a month's interest, the total amount due under the mortgage was about 1.5 m. instead of 1.64 m. as shown in B38.

A. I don't know.

COURT: Gentlemen, I'll inconvenience you for about ten minutes.

3.27 p.m. Court adjourns.

3.35 p.m. Court resumes.

40 Appearance as before.

COURT: I do apologise.

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MR. JACKSON-LIPKIN: My Lord, your Lordship has two documents, the statement of agreed facts and the statement of agreed issues. My Lord, may I suggest, with my learned friend's concurrence, they be given identifyin letters. May they be L and M respectively?

COURT: Yes.

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

10 D.W. 1 - WONG Chit-sen o.f.a.
XXN. BY MR. BERNACCHI:- (continues)

Q. Now, just one more question on this construction and lift charges. The money was not finially paid until about August of 1966. I refer to the receipt from LO Kau, B65, B65(A) is the English translation. So part or all of these moneys had not even been paid by you when the property was sold?

20 A. That I am not clear.

Q. So I suggest to you that the demand made in B38 together with B39 in which you were able to sell the property was either deliberately or negligently an exaggerated amount.

A. I don't know.

Q. Now, I will change to interest. Now, I would like the witness to be shown E95 to E123. Did you sign these receipts?

30 A. Not signed by me, my wife signed on my behalf.

Q. I see. But you know these receipts, do you?

A. Yes, I have seen them.

Q. And they are genuine, they are genuine receipts for money received?

A. Yes.

40 Q. All right. Thank you. I would now like to come to A69. Now, I am telling you that this document although admitted, it is in the admitted bundle, was a document prepared by your side, legal advisers of your side.

A. I don't know. How many units?

Q. It shows with the blank spaces the units that you bought at the auction plus the

units that were sold afterwards?

A. Yes.

Q. Now, in the course of your evidence you said that the better of the domestic units were already sold and therefore you put the value of the unsold domestic units at, I think you said, twenty thousand dollars?

A. Yes.

10 Q. Now, I want you to look at the price lists of some - there had been price lists put in but I want you to look at E85 - translation, my Lord, E86.

COURT: These are all domestic units?

MR. BERNACCHI: Yes, my Lord.

Q. One of the original price lists now ...

20 MR. JACKSON-LIPKIN: My Lord, may I ask your Lordship's guidance? I have been very kindly supplied by your clerk with a list of the Es that had been made exhibits by your Lordship. It did not include 85. The only price list that your Lordship exhibited was E151. Your Lordship will recall ...

COURT: I have in exhibit, Mr. Jackson-Lipkin, let's see, 83, 84, 85, 86 but there is no marking on them that they have been made exhibits of the court.

30 MR. JACKSON-LIPKIN: No. I believe that is right. Your Lordship was given at the beginning of the case a very large number of documents that were not agreed and bit by bit your Lordship let them in when they were proved. The only price list that your Lordship allowed in as an exhibit was E151 and not E85; that isn't an exhibit, my Lord. This is the one that your Lordship made an exhibit, not the other one. My Lord, the list I was given was as follows,
40 if it is any help to your Lordship. You made the following exhibits: 87, 89, 90, 91 to 94, 95 to 123, 124, 129 and 130, 141 to 144, 145. And none of the other Es were made exhibits.

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COURT: Perhaps possibly they will be asked to exhibits.

MR. JACKSON-LIPKIN: My Lord, it is a little late when they can't be proved.

COURT: But is there really comment, Mr. Jackson-Lipkin, about these price lists?

MR. JACKSON-LIPKIN: Well, if only we know when each one came out, there will probably be none. The trouble was, your Lordship remembers, there is a large number of them, many different ...

COURT: Yes.

MR. JACKSON-LIPKIN: And we've only had one actually proved. My Lord, I could certainly take instructions over the evening adjournment about putting the others in but I feel right to tell you that.

20 COURT: Thank you, Mr. Jackson-Lipkin. Of course you are quite right to tell me.

MR. BERNACCHI: I think I would indeed accept my learned friend's suggestion and use 151 instead.

30 Q. Now, I don't want you to be confused by the actual prices. We have had evidence about 10 per cent discounts, 20 per cent discounts and that sort of things, but it is a comparison the one price with the other price. Now, presumably it stands to reason that the higher the price the better the flat in one particular block. Now, I hope to cut what would perhaps be a long cross-examination short by asking you to compare the price lists, 151, with the document that has been prepared by your legal advisers, A69. And I would be quite frank with you I am suggesting that your evidence that only the lesser quality flats remained is wrong when you compare these two documents.

40 A. I don't know how to compare. Here is 480,000, it is only here 280 something.

COURT: Mr. WONG, it is you who said the better

- flats had all been sold, the better domestic units had been sold. It is your word.
- 10 A. Yes. Other reason being unsalable due to the situation in Hong Kong, bad situation. The price has dropped.
- Q. I would ask you a few questions on that later. I am asking you to justify your statement that the better flats had all been sold.
- 10 A. Well, all those bigger units facing better directions had been sold out, those from which windows could be opened.
- COURT: Before you commit yourself, you'd better have a look at E150, you'd better have a look.
- A. Unit 1 is better than unit 2. That's what I mean.
- 20 COURT: But unit 2 had all been sold except one that you sold.
- A. Small units.
- Q. Unit 1 was a larger flat?
- A. Yes, apparently yes.
- Q. Unit 1, unit 3, then equal in goodness is unit 2 and unit 6; but the rest, that is the 14th floor, but the rest of unit 6 is better than unit 2?
- A. Apparently yes.
- 30 Q. In order of preference - unit 1, unit 3, unit 6, unit 4, unit 5 and then last is unit 6 - sorry - 1 is the best unit, 3 is the second best, 6 is the third best, 2 is the fourth best, 4 is the fifth best, 5 is the last ...
- COURT: ... The last best, from the way you are going about.
- Q. I am sorry, 5 is the last best. Now, so that the number of units unsold could not be called all the worse units?
- 40 A. But in comparison it is lesser in number. Well, the higher storey is different from the lower ones.
- Q. There were adequate number of lifts,

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Cross-
examination
(Continued)

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weren't there?

A. Yes.

Q. And what do you mean by the higher and the lower, do you mean the higher the better or the higher the worse?

A. The higher the better.

Q. Well, I mean, for instance, the 14th floor was not sold at all.

10 A. It is too high with the roof on top, too hot, leaking.

Q. But there was one very good flat, unit 6 on the 13th floor, there were 3 flats on the 12th floor, unit 3, unit 4 and unit 6. In fact the majority of unit 6 on all the floors were not sold.

A. It is different to tell, probably due to the political situation at the time, it is ...

20 COURT: Mr. WONG, the position is quite simple. What counsel is asking you is : when you put the thing up for auction you made a reserve price of one million two for the whole set and you told this court that there were 36 domestic units remaining, whether that is right or wrong I don't know, and because the better units had been sold you estimated twenty thousand dollars per unit?

A. Yes.

30 COURT: The twenty thousand dollars must at that time have taken into consideration the political, economic and market crises?

A. Yes.

40 COURT: That must have been so. Now, learned counsel is asking you to justify your remark, your evidence that the better flats had been sold. You have been shown exhibitis E150 and 151. Now what do you say in justification that the better flats had been sold?

COURT: Mr. Bernacchi, did I put that in a nutshell?

MR. BERNACCHI: Yes, indeed.

COURT: Well, Mr. WONG, you justify your remark.

A. I have just explained the price was fixed under the consideration that the market price will be deteriorating.

COURT: That was not your evidence. Your evidence was based on "the better flats having been sold I estimated twenty thousand dollars each at that time."

A. Yes.

10 COURT: You were asked to justify why you say the better flats had been sold.

A. I have just explained.

20 Q. But you haven't. I mean, go back to your evidence and said "I was mistaken now that you pointed out to me the previous advertising pamphlet. I withdraw this evidence." All right. You are at liberty to but you cannot surely stick by your evidence that the better flats had been sold when I ask you to compare the flats unsold with the advertised prices of the flats at an earlier date and you want to do so?

A. I gave this remark basing on the fact that I discovered many of the worse units were still unsold. Nobody wanted the roof units.

30 Q. Apart from unit 6, the roof units on the pamphlet advertising the flats for sale were all priced at the same price as the 13th to 12th, the 11th, etc.

A. Generally it was so written in the price list.

Q. Well now, take the 14th floor, unit 1, and take the 5th floor unit 5. Now, surely the 14th floor unit 1 was a much better flat and much more expensive than the 5th floor unit 5?

A. Well, I can't say that.

40 Q. It was considerably larger and at an earlier date it was \$48,800 as compared with \$29,500.00.

A. What are you getting at?

Q. The truth, Mr. WONG.

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- 10
- A. How to compare?
Q. You compared, I didn't. You said that "All the best flats had been sold so I estimated the remainder as only \$20,000.00 each."
A. It depended on when. One moment is different from the other.
Q. It is the comparison that I am referring to, not the actual figures. I don't want to get into an argument with you as to whether the prices of flats when the lists were made were more or less than the prices of flats in June 1966. It is the comparison that I - surely you must ...
A. It is difficult to compare because of the time factor.
Q. It is not difficult to compare when you are not comparing actual figures but differences in figures, the differences in figures persist.
20
A. But there is a time factor. May I give an example?
Q. Well, I put it to you that your evidence that all the best flats had been sold ...
COURT: ... The better.
Q. ... All the better flats had been sold is not right.
A. That's what I did but if you say it is wrong, it is your point of view.
30
COURT: Mr. WONG, you don't seem to be clear about this. You are asked to justify your evidence. You haven't said a word to justify your evidence. How to exercise? I don't understand - How am I proposed to exercise.
Q. Well, you could admit that you were wrong.
A. I consider I was not wrong. How am I supposed to admit it? It's all right if you consider me wrong but it is difficult for me to admit it.
40
Q. Right. Now, I will come to the commercial premises. Presumably you fixed the reserve price a short while before the auction?
A. Yes.

COURT: What premises?

MR. BERNACCHI: The commercial premises.

COURT: Those on the ground floor and the 1st
and 2nd floors?

MR. BERNACCHI: I'll separate them but ...

COURT: Because he separated them. First and
second floor is \$15,000.00 per unit, ground
floor \$50,000.00 per unit.

MR. BERNACCHI: Yes, my Lord.

10 Q. Now I'll deal first with the 1st and second
floors, the offices on the first and second
floors. First of all I remind you of the
situation in Hong Kong. There had been a
bank run in the early part of 1965 and the
Hong Kong land market was beginning to
recover by the end of '65. Then there was
the Star Ferry riots in the early part of
20 1966. Now, these lasted for only two or
three days, I think it was two days but it
might have been three. And a commission of
enquiry was actually setting on the reasons
for the Star Ferry riots by June of 1966.
So presumably again the property market was
beginning to recover. Do you agree with
me?

A. No.

Q. Well, what do you say was the position?
You said - I remind you of your evidence in
chief - you said again and again Star Ferry
30 riots, Star Ferry riots.

A. I did not refer to '67.

COURT: Counsel hasn't referred to '67.

Q. The Star Ferry riots were early in 1966 and
I am putting to you ...

A. Yesterday you mentioned '67.

Q. Well, yesterday was yesterday and that was
in connection with a very different matter.

A. You want me to answer?

40 Q. I want you to answer that my putting to you
that the Star Ferry riots had long since
been over by June 1966 and the property

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market was showing a distinct improvement.
A. What do you expect me to answer?

COURT: Do you agree?

A. I do not agree.

Q. Well, what do you say?

A. Well, I give an example. During '66 and '67 many people took refuge in the States and Canada or elsewhere. Some even sold their flats.

10 Q. During '67 I would agree, not during '66. Star Ferry riots were very minor riots.

A. Not necessarily. It lasted for quite some time.

Q. It lasted for two or three days at the most.

A. More. To my recollection, it is more.

Q. Well, I suggest your recollection is wrong.

A. Difficult to tell. I am not wrong.

20 Q. I suggest that the bank run was over, the Star Ferry riots were over, the political riots of the next year had not begun and the property market was showing a distinct improvement.

A. Well, the slack period for the banks had not been recovered yet. It is not so simple.

Q. It was recovering?

A. I can't say for sure.

30 Q. You are in the property market, you have been in the property market ever since 1935 you say?

A. I dare not believe what you said.

Q. I see.

COURT: Mr. WONG, do you believe what you do?

A. That is my observation.

COURT: Right. Have a look at A69. That doesn't have other flats sold by - that doesn't matter, that is the flat sold by Mr. TSE himself.

40 Q. Mr. WONG, have a look at the 7th floor. A.69. There were three flats sold on the 7th floor in May and June '66.

COURT: Mr. Bernacchi, I think these are the dates of assignment, not the date of sale.

MR. BERNACCHI: I am sorry.

- Q. Well, I suggest to you, Mr. WONG - withdraw that question - I suggest to you, Mr. WONG, that your evidence that the offices on the first and second floors were almost unsalable is just not the position.
- A. They are still unsalable now.
- 10 Q. I see. Surely the reason why you cannot sell it now is because this action is registered against the property therefore any solicitor would advise his clients that if the claimant, Mr. TSE, wins they would not get a good title from you, that is why it is not salable.
- A. Well, we once put up advertisements on the newspaper for sale and also distributed pamphlets.
- 20 Q. In fact in the pamphlets these first and second floors are advertised as approved restaurant site?
- A. Even mortgage at low interest, payment by instalment.
- Q. Did you say yesterday and then you added words which totally incomprehensible to the answer of the question?
- A. What did you ask?
- 30 Q. These first and second floors in the pamphlet are advertised as approved restaurant site, the whole floors, the whole two floors?
- A. So what?

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COURT: Are they rented out?

- A. Yes, it was rented out after quite some time afterwards at low rent.
- Q. As a restaurant or just as offices?
- A. As a primary school.
- Q. As a primary school?
- 40 A. Yes.
- Q. And when you say \$15,000 for these floors, what unit are you dealing with?

INTERPRETER: 15,000.00?

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MR. BERNACCHI: Yes. He said 20,000 for the domestic flat and then 15,000 for the first and second floors.

A. One of the 12 units on the first and second floors.

Q. But the first and second floors, according to the pamphlet, did not have any units; they were approved restaurant site area 3,325 feet, that is square feet?

A. Nobody rented it. I was not supposed to run it myself.

Q. But when estimating in June of 1966 how could you have estimated 15,000 per unit when they weren't divided into units?

A. It was stated in the pamphlet there were 6 units. I did not make it up myself.

COURT: So it could be considered 6 units although it might sell as a total. May this be a convenient moment? 10 o'clock tomorrow morning.

4.38 p.m. Court adjourns

21st March, 1979.

22nd March, 1979

10.00 a.m. Court resumes.

Appearance as before.

COURT: May I remind you this hearing is set down for ten days(Inaudible)

MR. BERNACCHI: Yes, personally I will not be very long. My Lord, could I hand up a clean version of the agreed facts as to other properties?

COURT: Has this been given a number?

MR. BERNACCHI: 'M', my Lord.

COURT: 'M'.

CLERK: The last number is 'K'.

Exhibit M

COURT: The agreed issues were 'L', were they not?

MR. JACKSON-LIPKIN: Your Lordship is quite right, yes. The agreed issues were 'L' and the agreed facts were 'M'.

COURT: Agreed facts 'M'.

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XXN. BY MR. BERNACCHI (continues):

10 Q. Mr. Wong, have I understood your evidence correctly last evening? Did you mean that you put a - you put theoretical divisions along the 1st and 2nd floors like the other floors that had been actually divided and then fixed the price of \$15,000 per theoretical division?

A. But in the assignment it was stated twelve units - twelve divisions, rather.

20 Q. I'm sorry but I'm not with you in your answer. What assignment are you speaking of?

COURT: Was there the usual covenant in respect of this property?

MR. BERNACCHI: Presumably there is because it is mentioned in one of the letters.

COURT: Well, that's probably where it is.

30 MR. BERNACCHI: There is a mention of it in one of the letters. I can only say that a letter that I will be referring to actually in view of one of his answers yesterday in the 'B' bundle, B.35.

COURT: Look, can we cut this short? Mr. Wong, you estimated \$15,000 per unit.

A. Yes.

COURT: Six units, there will be \$90,000 per floor then, 1st and 2nd floors?

A. Yes.

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Exhibit B35

MR. BERNACCHI: Well, I

Q. Do you mean perhaps the units where there were six units on the actual division, the ninety shares? There are various documents in which sub-purchasers take one or more ninetieth share of the property. Is it - in these ninety shares is it six shares per floor?

A. Yes.

10 Q. I see. But I mean why not put it as \$90,000 per share because it was in fact a whole floor? The 1st and 2nd floors were not flats, they were a whole floor.

A. Well, I wasn't sure how that decision arrived at that time.

20 Q. Well, was it arrived at that time at all or are you subsequently trying to justify your reserve price of 1 million 2 by saying, "Ah well now, I assigned \$20 per unit to the domestic flats - \$20,000 per unit to the domestic flats, \$15,000 per unit to the offices, etc.?"

A. It was decided at the time of the auction.
Q. When you say, "It was decided at the time of the auction," do you mean at the day - the day of the auction?

A. About a week before.

30 Q. I see. Now I come to the ground floor then. Now I want to ask you about conditions of ground floor premises generally, not particularly some time in 1966. Now would I be right in saying that shops in Cheung Sha Wan Road generally on the ground floor by the middle of the 1960s were fairly valuable?

A. Well, you had better refer to the price list. Even it was at 20% discount it was still unsaleable.

40 Q. I don't want to go at the moment - I will indeed go into the circumstances again, I have gone into it already; I am speaking generally, without reference to any particular stage or any particular time. Shops, by the middle of the 1960s, in Cheung Sha Wan Road were fairly valuable; to wit, look at the price list indeed, that shows that it was considered fairly valuable.

A. But it so happens sometimes they were unsaleable and not valuable.
 Q. I am merely asking you to agree with me that shops generally in Cheung Sha Wan Road, by the middle of the 1960s, were fairly valuable.
 A. I can't agree.
 Q. Take two dates that are not the dates in question here, 1964 and 1969. All right? We avoid then anything about the bank run, the Star Ferry riots, the political riots of 1967 - 1964 and 1969. Would you agree with me that shops in those two years in Cheung Sha Wan Road were fairly valuable? Ground floor shops.
 A. I do not agree.
 Q. Do you really mean that you don't agree? As an experienced business man, a property dealer from 1935 onward, you really mean that you don't agree?
 A. Yes.
 Q. You see, take this price list 'E' - it's a pamphlet starting from E.145, I think. Now at 151 there is the actual prices that they were selling for although there is an endorsement about a cash discount.
 MR. JACKSON-LIPKIN: My Lord, may I respectfully suggest that that is not the price they were selling for, that's the price Mr. Tse was asking for them.
 MR. BERNACCHI: Yes, I know.
 COURT: Nothing was sold.
 Q. Now would you agree that those prices at the date that this price list was issued were reasonable prices?
 A. It's unreasonable.
 Q. Unreasonable throughout?
 A. It may be said.
 Q. Way back in 1963 you were prepared to give to an unknown person a building mortgage of 1.5 million and subsequently three further charges amounting to 2.2 million in all - 2.2 something million in all.
 A. Yes.
 Q. It wasn't because you knew Mr. Tse because

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Exhibit E151

40

your evidence is that you had not met Mr. Tse.

A. Yes.

Q. It was merely because of the scheme, the scheme in Cheung Sha Wan Road.

A. Yes.

Q. And presumably, because there was no intimate connection between you and Mr. Tse but a purely business arrangement between two strangers, in 1963 you would not have valued the completed premises as little as the mortgage.

A. Well, these prices were fixed in '62 or '63. Generally the constructor or the builder would exaggerate in price a bit.

Q. So is your answer now that when these prices were fixed they were reasonable but a little bit exaggerated?

A. But it was possible for me to allow him such mortgage.

Q. And it was possible for you to allow a complete stranger such a big mortgage because the proposed building and the proposed value of the individual units was as per this price list except that the builder exaggerated a bit?

A. Yes, that's why I started the mortgage with 1.5 million.

MR. BERNACCHI: I think in the answer I think he said "Yes" and then he added something. No, I am asking you Mr. Interpreter. Yes, thank you.

Q. Now why then - now I am dealing with '66, June '66, the middle of June '66. Why then did you value the shops for the purpose of the reserve price at very much less than one third of the average price list in this document 151E?

A. Firstly, because of the situation in Hong Kong; secondly, because it was not expected to be rented or sold in a short period, so we could not fix a high price for that.

Q. You see, in some cases it was even - this value of \$50,000 was even as much as over four times less than - i.e. over a fourth less than the list price. This sum of \$50,000 was even as low as over a fourth of

- the list price.
- A. I consider it's higher.
- Q. Do you say you agree but "I consider it is still high?" Is that right? What's the answer?
- A. I only gave the average because some list price is only 41,000.
- Q. What? Some list price is only 41,000? I am dealing with shops on the ground floor.
- 10 A. Yes, I am referring to the shop space.
- Q. Well, the list prices are 170,000, 199,000, 220,000, 150,000, 120,000 and 130,000.
- A. My mistake. I referred to the area, the feet.
- Q. Some of the units of the shops were small in area, yes, I agree. They varied from 650 square feet to 410. Now coming back to the domestic units, you reduced these from
- 20 the list price about just over a half, a half to a third.
- A. Yes.
- Q. Well, again, why did you reduce the shops by such a
- A. Because of the poor business position in those periods. It took me over two years to sell out two units - to rent out.
- Q. To rent out or sell out or what?
- A. Rent, rent out, at the highest rental of
- 30 \$800.
- Q. The counter-claim was registered later in 1966, and in 1967 through to the middle of 1968 there were these political riots.
- A. Yes.
- Q. Surely that is a sufficient answer to why you had difficulty in renting out these shop spaces?
- A. Yes.
- Q. Yes, all right. Now I would put to you
- 40 that your estimate of the ...
- MR. WONG: I'm sorry. In relation to the last question of my learned friend it seems that the learned interpreter explained it to him and explained to the witness that Mr. Bernacchi is not posing a question, so when the learned interpreter said "Yes" it merely means that the question was interpreted to the witness and that is not

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the witness' answer.

MR. BERNACCHI: Well, I was posing a question and the witness answered "Yes." Surely it is for your learned leader to bring this out in re-examination.

MR. JACKSON-LIPKIN: I wouldn't be able to know, unfortunately, whether that was translated as a statement or translated as a question, and whether the answer was to question or by understanding.

COURT: Is it really that important?

Q. I would put it to you, Mr. Wong, that your estimation of the reserve price was ridiculously or at least very low. (To Interpreter) Use 'very low'.

A. But in auctions anybody can offer a better bid, any price not lower.

Q. But as you have agreed with me before you hoped at that price to get it for your own company.

20

A. If nobody offered any bid then I offer the bid.

Q. No, no, no, that's not right surely, Mr. Wong. You have already given me answers yesterday that the policy of your company was for you and your wife - the mortgages of you and your wife, when they went up for sale, your company bid hoping to obtain the property in that way.

30

A. But still that was a public auction; nobody offered any bid then we took it at the reserve price.

Q. I am merely putting to you in view of your answers that you hoped to acquire this property for your company at this price.

A. We took it at the reserve price only when no one else wanted it.

40

COURT: Is that really so, Mr. Wong? Even on your directors' minutes you said, "At this price it was a good investment."

A. No. Sometimes others offered better bids and acquired the properties.

Q. I don't think so in the years 1965, '66. I

think you were successful every time in carrying out this method of operation.
A. It is not a question of success. In the minutes we mentioned we would not take it if it's over 1.2 million dollars.

COURT: What do the minutes actually say?

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MR. JACKSON-LIPKIN: C.122, my Lord.

10 "Whether this Company should bid for six shop premises on the ground floor and all commercial flats on the first and second floor and thirty-six residential flats on the upper storeys of Kwong Hing Building at Nos.52-54, Cheung Sha Wan Road.

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Resolution:

Exhibit C122

Wong Ching Wai Shook, director, is instructed to attend at Lammbert Brothers at 3 p.m. on 26th June 1966 to bid for Kwong Hing Building at a bidding price not exceeding \$1,200,000.00"

20 COURT: So when I said that it was a good investment I was(Inaudible)

MR. BERNACCHI: On this minute it appears as regards another property and it appears at least two other times on other minutes. I now come to the Conditions of Sale, B.42, B.47 in Chinese. B.42 is the English Conditions of Sale, B.47 is the equivalent Chinese Conditions.

Exhibit B42

Q. Now Condition:

30 "2. The Vendor reserves the right:-

(a) To bid generally by himself or his agents."

Do you see that Condition?

A. Yes, that's how it was written.

Q. Yes. Well now you were bidding - I'm sorry, you were selling as mortgagee. Why did you, as mortgagee, reserve the right to

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- bid generally by yourself or your agents?
- A. I have a company.
- Q. I see. This meant in effect that you reserved the right to bid for your company?
- A. Well, it's permitted by law to do so.
- Q. Don't worry about law, we will ...
- 10 MR. WONG: I'm sorry, I think the witness said, "These are legal documents and I don't understand." Perhaps this could be clarified. I'm so sorry to interrupt.
- INTERPRETER: He didn't say, "I don't understand.."
- MR. JACKSON-LIPKIN: Well, what did he say then?
- COURT: As interpreted.
- Q. Don't worry about law, the law will be looked after by your legal advisers. I am just asking about facts. Do you mean by your last answer that you were reserving the right to bid for your company?
- 20 A. I cannot answer this because my company said we would bid at not exceeding 1.2 million dollars, but otherwise we didn't want it.
- Q. But did you mean by your last answer that you reserved the right to bid 1.2 million dollars for your company, either by you yourself or by your wife as your agent?
- A. It is not a question of reserved the right.
- 30 Q. You gave me an answer. I asked you "Why did you, as mortgagee, reserve the right to bid generally by yourself or your agents?" and your answer was, "I have a company." Now I am asking you what did you mean by this answer, and I am suggesting that you meant that you reserved the right to bid by yourself or your agents because you or your wife wanted to bid for your company.
- A I don't understand what you meant.
- 40 COURT: Is this really important, Mr. Bernacchi? The fact remains that the wife did bid, the company did buy, and there is a minute - minutes of that board to say that "We will buy at this price." What's the point?

MR. BERNACCHI: Yes, I agree - flogging the horse too much.

Q. Now going back to your evidence-in-chief Monday, and today's Thursday, I am afraid, but going back to your evidence-in-chief you said that you sold because of three things: (1) was failure to pay interest, (2) was second mortgage - I'm sorry, the mortgage, not the second mortgage. The mortgage was overdue.

10

A. Yes.

Q. And the third was the curfew because of the Star Ferry riots.

A. Yes.

Q. Now I will deal with (3) first. Now I have already said that whatever the position was in 19.. - in March or April of 1966, by June the Star Ferry riots was a thing of the past, the Commission of Enquiry had almost finished their hearings and everything was reasonably back to normality. Do you not agree with me there?

20

A. But people's minds were still unsettled; many left Colony.

Q. You are confusing again with the riots of 1967. Nobody left the Colony in June; the riots were two or three days, they were over; the curfew might have lasted a day or two longer, I don't know, but it was all over long before June.

30

A. Well, although it's over it so happened.

Q. Yes, but I put it to you that reason (3) of your own reasons doesn't arise; reason (3) being, to use your own words, "The curfew because of the Star Ferry riots."

A. Do I have to answer?

Q. Well, do you agree or not?

A. I do not agree.

Q. I see. Mr. Tse asked you not to sell but you refused. Isn't that right?

40

A. If he had the money I wouldn't sell.

Q. You of course were, by your letters demanding almost 1.6 million.

A. Yes.

Q. Oh, I'm sorry, almost 1.65 million, another \$50,000.

A. Yes.

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*Exhibits B38
& B39*

- Q. Now the second reason: the mortgage was overdue. Now the mortgage had been extended by one year. Wasn't that so?
- A. Yes.
- Q. So that when the letter was sent, the statutory letter was sent which authorised you to sell on the 28th April, 1966, the mortgage was not overdue.
- A. But he was notified in - well, we had to notify Mr. Tse before then, before due date.
- Q. I know, and you notified him by these two fairly formal letters, B38 and B.39. If you want them to be translated of course you can have these translated.
- MR. JACKSON-LIPKIN: My Lord, may I remind your Lordship and my learned friend.
- COURT: Mr. Bernacchi, you stand corrected.
- MR. BERNACCHI: Yes, indeed.
- 20 Q. B.38 and B.39. If you want them translated you are entitled to have them ...
- A. No need.
- Q. ... translated, and in those letters the complaint was that he, Mr. Tse, was in breach of the terms about interest and therefore the principal and interest automatically fell due.
- A. It is not breach, it's owing the interest.
- 30 Q. Yes, all right, owing the interest, and therefore it was because he was owing the interest that your right to sell arose.
- A. Yes.
- Q. Now you have already agreed with me yesterday that if you had put the money repaid to you already out of these pre-sales against interest instead of against principal, no interest would have been owing.
- A. Yes.
- 40 Q. And in fact a considerable amount of money was paid to you during these years from pre-sale of houses.
- A. A few hundred tens of thousand dollars.
- Q. I think about \$800,000.00.
- A. Yes.
- Q. All right. Now, Mr. Wong, a completely

different matter. When I was cross-examining you yesterday I put to you that you instead that Mr. Tse went to Johnson, Stokes & Master to handle his sub-sales of units. Now you denied this, but you added that one sub-sale was handled by Messs. C.C. Lee & Company.

A. Yes.

10 Q. I've now discovered what you must have been referring to. It is letter B.35. Now this is a letter - a copy of a letter from Johnson, Stokes & Masater to Messrs. C.C. Lee & Company. (To Interpreter) Now could you read it to him so that he knows what is is. (Pause) In order words - I am not asking you a quesiton yet - in other words it was not Mr. Tse who went to C.C. Lee & Company, it was one purchaser out of a great number of purchasers that decided to have his own solicitors, but the form of sale from that letter itslef would still have been Messrs. Johnson, Stokes & Master's form.

A. I have heard about this but actually how it happened I didn't know.

30 Q. When you just hear about something it is better not to come out with it in cross-examination as if Mr. Tse deliberately went to C.C. Lee & Company. Now I put it to you, Mr. Wong, one, that you were very keen on your family company buying Mr. Tse's property.

A. I disagree.

Q. So in consequence in other words, you would not give any more time to Mr. Tse.

A. I disagree.

40 Q. I am not suggesting whether legally you had to give more time to Mr. Tse or not, but the fact was that the building was erected, the occupation permit had been issued and the market was recovering from its earlier fall due to the Star Ferry riots. Isn't that the position?

A. I disagree. I meant although the occupation permit had been granted there were lots of questions to be - or matters to be settled. The contractors removed all the fixtures, etc.

Q. According to your accounts, your mortgage

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- accounts, there was a previous default of interest for more than one year before the building was completed.
- 10 A. Not as much as one year, only six months.
Q. But so much so that Mr. Tse invited you to take the interest out of the purchase money for the sale of units.
A. But the units were unsaleable, no money.
Q. You agree that Mr. Tse invited you to take the money out of the units' pre-sale? Yes or no.
A. He did ask but the properties were unsaleable.
Q. And you deliberately extended the mortgage for one year because the building was not yet completed.
A. At his repeated request.
Q. And you acceded to this request?
20 A. Otherwise it had to be put up for auction, then I would complete the construction myself.
Q. You acceded to his request?
A. Yes, at that time, yes.
Q. Once you had a completed building with occupation permit issued you refused his request for further time and insisted on selling. That was the fact. Whether you were legally entitled to do that or not is another matter, but that was in fact what happened.
30 A. Because I had given him the second and third further charges I won't - I was not going to give him the fourth.
Q. I put it to you again that in fact why you refused his request not to sell was because you were very keen on acquiring the property for your company.
A. I totally deny what you said.
40 Q. Now I am suggesting to you that if you had submitted correct accounts to Mr. Tse he would have shown a total indebtedness at that time, in April, of less than 1.5 million. I'm sorry, 'they' would have shown, not 'he' - they would have shown. That is correct, isn't it?
A. Whether it was correct or not one had to make a careful calculation. I didn't handle the account at the time.
Q. And I put it to you that if you had

submitted correct accounts he could have got another mortgage on this property and it would not have had to have been sold.

MR. JACKSON-LIPKIN: My Lord, how can this witness answer that question?

MR. BERNACCHI: Because my case is that his wife had a copy of the letter which must have been shown to me.

10 Q. What is your answer? Yes, no or I don't know.

A. I don't remember now.

Q. Now yesterday, in answer to one of my questions about accounts, you said, "Do I have to keep accounts?" Do you remember that?

A. I do not keep accounts.

Q. Well, surely you meant - perhaps you meant render accounts to Mr. Tse. Is that what you meant?

20 A. Well, if he wanted the accounts the accounts must be shown to him.

Q. I see. In fact, Johnson, Stokes & Master, your solicitors, received all the purchase money, didn't they, all the purchase money from sub-sales?

COURT: That isn't so, Mr. Bernacchi. Mr. Tse had a portion out of it.

MR. BERNACCHI: Oh, I'm sorry.

30 Q. Except a very small portion that Mr. Tse received himself. I'm sorry.

A. Over \$200,000.

Q. Apart from the deduction for Mr. Tse they received all the purchase money?

A. Yes.

Q. Some they paid out for construction, the rest they paid over to you?

A. Yes.

40 Q. So would you agree with me in those circumstances it would have been impossible for Mr. Tse to keep his own accurate accounts of what was due on principal and interest; he could only have a rough idea?

A. I heard that he went to J.S.M. so often

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- that he could obtain the information there.
- 10 Q. I am not going to re-question you on what Mr. Liu told you or anything like that, you know perfectly well of this vital conversation in - I think it was April, 1966. Indeed, you have admitted - well, you have already agreed with me that it was up to you whether you applied the monies you received from Johnson, Stokes & Master towards principal or towards interest.
- A. To repay the capital and to reduce the interest.
- Q. All right. Now eventually in 1966 you sued Mr. Tse on the balance of the account after the sale of the property.
- A. Yes.
- Q. And I think Mr. Tse objected violently at the hearing to the accounts that you presented, or were presented on your behalf.
- 20 A. I don't know.
- Q. What - you don't know what has happened to your own Action?
- A. I did not handle the accounts. I don't know.
- Q. Do you know that as a result of Mr. TSE objecting to your accounts, the court ordered that a full account be taken by a Chartered Accountant, Mr. Ronald LI?
- 30 A. I heard about it. Due to the calculation, different ways of calculating the compound interest, one at \$350,000 and the other \$310,000, a difference of \$40,000.
- Q. As a result of objections to your account by Mr. TSE, the court ordered a full account, not a final account, a full account to be taken by Mr. Ronald LI.
- A. Yes, as an arbiter.
- 40 Q. And you proceeded to take judgment based on this account.
- A. That was the account prepared afterwards and we informed him of the other sum.
- Q. You proceeded to take judgment based on this account, didn't you?
- A. I'm not a judge, how can I tell?
- Q. But you know that you took judgment, not judged, judgment based on this account.
- A. Judgment must be decided by the judge.
- Q. You knew that Mr. Ronald LI took the

accounts and you were awarded judgment in the amount that Mr. Ronald LI said was owed to you.

A. Yes.

Q. So in the end you accepted his, Mr. Ronald LI's, account.

COURT: Well, he was bound to, Mr. Bernacchi.

MR. BERNACCHI: Yes he was, your Lordship. Thank you, Mr. WONG.

10 COURT: Shall we have our mid-morning adjournment now then?

MR. JACKSON-LIPKIN: If that's convenient to your Lordship.

COURT: You are calling a new witness now?

MR. JACKSON-LIPKIN: I will be by the time your Lordship comes back.

COURT: I am so sorry, re-examination.

MR. JACKSON-LIPKIN: She's on a ten-minute call, my Lord.

20 REXN BY MR. JACKSON-LIPKIN:

Q. Mr. WONG, you said earlier to my Lord that if Mr. TSE had paid up you wouldn't have sold the property.

A. Correct.

Q. Which was more important to you, getting back your money or getting hold of this site for your company?

A. Getting back the money.

30 Q. It's now 1979. Have you got your money yet?

A. Not yet.

MR. BERNACCHI: This, I submit, is an unfair question because there is a stay of execution pending the hearing of the counter-claim.

COURT: There is no way he could have acquired the property. I don't see your point in

this at all, Mr. Jackson-Lipkin.

MR. JACKSON-LIPKIN: My Lord, I am glad your Lordship feels that way.

COURT: Say he had the money to repay. The he's just got the re-assignment.

MR. JACKSON-LIPKIN: My Lord, except it was suggested to him that he wasn't interested in the money, he was interested in getting hold of the property.

Q. Mr. WONG, if you had exercised your power of sale before the building had been completed, upon whom would have fallen the burden of completing the building?

A. I took the responsibility.

COURT: Why? I would have thought the purchaser would have to do it. If you exercise your power of sale you sell the property. It is the purchasers who would finish the building.

20 A. I'm sorry, I am not clear.

Q. You said to my learned friend, Mr. Bernacchi; "The building would have had to be put up for auction. Then I would have to complete the construction myself" and I wondered if you could explain that to my Lord.

A. How could I sell it out? I could not gain back my capital.

30 Q. I want you please to look at B.32 and 36 which I don't think was translated to you. I'm sorry, 38.

MR. JACKSON-LIPKIN: B32 and 38, my Lord.

MR. BERNACCHI: Both documents were translated to him. He didn't want B.38 translated to him this morning.

MR. JACKSON-LIPKIN: My Lord, my learned friend must have better hearing than I.

40 Q. You were asked why B.38 was sent out and whether that was because the interest was due and you had the power of sale.

- A. Yes.
- Q. When you were asked that question did you know that it was not B.38 but B.32 that related to interest?
- A. Interest was included in B.38.
- Q. Now you said to my Lord that you had to notify Mr. TSE beforehand.
- A. Yes.
- 10 Q. Was that the reason why B.38 was sent out in April?
- A. Yes.
- MR. JACKSON-LIPKIN: My Lord, I am referring to the last paragraph. Would you show him B.42 please?
- Q. Do you know who drew up those particulars and conditions of sale?
- MR. JACKSON-LIPKIN: The Chinese is B.47, Mr. Interpreter.
- A. It's either by J.S.M. or ...
- 20 COURT: Mr. Jackson-Lipkin, Mr. Bernacchi stopped cross-examining on this when I literally stopped him on that, but do you really need to re-examine on it?
- MR. JACKSON-LIPKIN: My Lord, in view of that observation I certainly do not.
- Q. Would you please look at C.122. I want you please to explain something to my Lord if you can. Look at item (4). It's C.86 in the Chinese.
- 30 MR. JACKSON-LIPKIN: Would you read to him or show him please item (4).
- INTERPRETER: Which meeting, please?
- MR. JACKSON-LIPKIN: The 5th meeting, page 86, item (4). The numbers are at the top in Chinese, Mr. Interpreter. There are two items there. Would you just read them to him please. Do you see that: "Chairman: Wong Ching Wai Shook."

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A. Yes.
Q. "Minutes taken by: Yau Kam Tong."
A. Yes.
Q. Now will you please look at item (7) (2), the third line of characters, and Mr. Interpreter would you please read to him the 7th and 12th characters of the third line of (7) (2). Read kthem aloud. Would you please?

10 MR. JACKSON-LIPKIN: My Lord, at page C.22 it's Mr. WONG, Chairman ...

COURT: There is something wrong here because it says \$730,000, the property.

MR. BERNACCHI: No, I think that remark was in connection with another property again.

COURT: Oh. That perhaps is some mistake in the English.

20 MR. JACKSON-LIPKIN: My Lord, it is the next sentence: "Mr. WONG, Chairman, has carefully considered the matter..."

MR. BERNACCHI: I'm sorry, in this case it was the property and it was a mater of paying the balance. I don't think it was 730,000 plus 40,000, but certainly in the other case it must have been from the dates.

MR. JACKSON-LIPKIN: My Lord, if it is of any importance we can look it up in the Deeds for you.

30 Q. "Mr. Wong, Chairman, has carefully considered the matter and is of opinion that the location is good and the price is not high." Are you able to tell my Lord why it's Mr. Wong, the Chairman, there, but in item (4) it's Mrs. WONG, the Chairman.

COURT: Is that relevant?

MR. JACKSON-LIPKIN: Yes, because Mr. Bernacchi, if you will remember, took a particular point that this was the only meeting that Mrs. WONG was the Chairman. If your

Lordship considers it is unimportant, as I consider it, I'll pass on to something else, but having asked the question I want to get the answer.

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Q. Do you know why you're described as Chairman in one part and your wife in another?

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A. Because I was the mortgagee.

Q. You were the mortgagee of which?

10 A. Of the Kwong Hing mortgage.

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MR. JACKSON-LIPKIN: Is he looking at (7) (2)?

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INTERPRETER: Yes.

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Q. I want to ask you, Mr. WONG, about one or two of these property dealings that you were cross-examined about, and particularly I want to ask you about 218-220 Prince Edward Road. Now we know that the mortgage was for a sum not exceeding two million dollars.

20 A. Yes.

Q. And we know the mortgagor was a Mr. PAK Lam Young (?)

A. Yes.

Q. Can you remember how much in fact was paid under the mortgage?

A. I'm not clear. I believe the interest was long overdue. No reply even though we sent letters.

30 Q. Mr. WONG, do you remember the mortgage provided, and my learned friend showed you, one million dollars straight away and another million dollars during construction?

MR. BERNACCHI: I'm sorry, this was ... my learned friend is mixing up Prince Edward Road and the Plaintiff's property. I didn't even show him the mortgage.

COURT: Whilst you are checking, I'll have the mid-morning adjournment now.

40 11:40 a.m. court adjourns

11:59 a.m. court resumes

Appearances as before

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REXN BY MR. JACKSON-LIPKIN CONTINUES:

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- 10 Q. Mr. WONG, my larned friend Mr. Bernacchi asked you some questions about a property at Prince Edward Road.
- A. Yes.
- Q. Do you remember anything about mortgage arrangements for that property? Yes or no?
- A. I remember some.
- Q. What happened to the mortgagor, Mr. PAK?
- A. I did not see the mortgagor. I don't know him.
- Q. Do you know why the land remained undeveloped for two years?
- A. Originally it was planned to be houses to be erected on the site by a builder. Because the builder had no money to remove sites and a large block was found on the site, nothing further was done. The adjacent building was also in danger of collapse.
- 20

COURT: Collapse?

INTERPRETER: Tilting.

- Q. Mr. WONG, you fixed a bid on reserve price of \$400,000. Did that repay you for the amount you had advanced?
- 30 MR. JACKSON-LIPKIN: What he paid at the auction. I'll put the question again.
- Q. You fixed the reserve price and bid and got the property for 400,000.
- A. No, I lost it.
- Q. Lost what?
- A. The mortgage was one million dollars and it was sold for 400,000 in the auction. One year's interest was in arrears.

MR. JACKSON-LIPKIN: My Lord, I may be mistaken.

COURT: I am perfectly clear on that, Mr. Jackson-Lipkin.

MR. JACKSON-LIPKIN: I may be mistaken, my Lord, but I thought I heard the man say something about having lost 600,000, but it wasn't translated.

COURT: Realization of the security was less than the mortgage.

10 MR. JACKSON-LIPKIN: Your Lordship heard it and understood it. I miraculously understood it, but it hasn't got on the shorthand note.

Q. I want to ask you please about Lai Chi Kok Road. Do you remember how much the mortgage was there?

A. I'm not sure. It seems \$650,000.

Q. That property was sold at auction at a reserve price of \$250,000, wasn't it?

A. Yes.

20 Q. And you paid \$251,000 for it.

A. Yes.

Q. Did you ever get the balance?

A. No.

Q. Mr. WONG, has your company mortgaged a lot of properties over the years?

A. Yes.

Q. And have there been occasions when the mortgages have been repaid in full?

A. Yes.

30 Q. Have there been occasions when you have exercised the power of sale and not succeeded at the auction in getting the property?

A. Yes.

40 MR. BERNACCHI: I'm sorry, I must object because I confined myself to the years 1965 and 1966, not to subsequent years in the 70's. Any answer, therefore, yes or no, would be up to date. It does not arise out of the cross-examination.

MR. JACKSON-LIPKIN: You introduced *modus operandi*; I am re-examining on *modus*

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operandi.

MR. BERNACCHI: I introduced *modus operandi* in the early years of the company.

Q. 23rd of April, 1965 was there a mortgage on 2, Hanoi Road, Kowloon?

A. Yes.

Q. Was that repaid in full?

A. In full.

Q. 1st of May, 1965. Was there a mortgage on 4, Peace Avenue which was repaid in full?

A. Yes.

Q. Was there another ...

MR. BERNACCHI: I'm sorry, but my learned friend is misleading ... 4 Peace Avenue was mortgaged three times. Obviously each time they paid off the mortgage and then mortgaged for more, and the third time they sold the premises to the company.

20 MR. JACKSON-LIPKIN: I am quite content with that intervention, my Lord. As I said, it was another mortgage.

Q. Were there properties that you brought at auction when neither you nor your wife was the mortgagee?

MR. BERNACCHI: Is my learned friend speaking about the early years of the company i.e. '65/'66 or speaking about the later years when the company had money anyhow?

30 MR. JACKSON-LIPKIN: My Lord, can I have an answer to the question first or does your Lordship wish me to reframe it?

COURT: I haven't got the slightest interest in the question or the answer as far as I am concerned, but if you think it's right, if you want an answer, by all means get an answer from him.

A. Yes.

40 Q. If you can't answer these next questions, just say so. Did your wife also grant mortgages in the years '62, '63, '64 and

- '65?
- 10 A. I'm not clear. It may be. I don't remember.
- Q. Now you personally in the years '63/'64, did you grant mortgages other than the ones you have been asked about so far?
- A. Maybe.
- Q. Can you remember? Yes or no?
- A. I have to check.
- Q. Very well, we haven't time to check. I want to ask you about the accounts. If you cannot help me please say so at once. In the accounts that we have had disclosed that we looked at yesterday and the day before, there is a number of items "Interest Paid." Do you know to what that refers? I'm sorry, may I rephrase that. "Interest Paid as a Receipt to the company." Do you know to what that refers?
- 20 A. I'm not clear.
- Q. Thank you. There is also reference in the accounts to "Interest tax being paid by the company." Do you know to what that refers? If you don't know just say so.
- A. I don't remember.
- Q. Very well. Now you were asked about directorship of the company. Is it right that under the Articles you, your wife and your son are and always have been three permanent directors?
- 30 MR. JACKSON-LIPKIN: It's Article 74, my Lord.
- A. Yes.
- Q. Until this Action began, Mr. WONG, did anyone other than members of your family and your Clerk, Mr. YAU, see the minutes? No, I'm sorry ... Apart from members of your family and Mr. YAU, the Clerk, did anyone else see these minutes before the Action began?
- 40 A. I don't know.
- Q. Did you show strangers the minutes?
- A. Probably I showed them because of this case.
- Q. Now would you please turn to C121 and the Chinese is C.84. Look at item (5), will you? Running through these minutes there are notes like that: "Report (Omitted)"

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- 10 A. Yes.
Q. Do you know why Mr. YAU omitted the reports?
A. Because I had no report to make.
Q. I see. So where it says "omitted" in the English it means there was no report. Is that right?
A. Yes.
Q. Thank you. Now I want to ask you about your son, Roberts. Did he stay in Sabah for the whole of the period of time mentioned by Mr. Bernacchi or did he visit Hong Kong?
A. Yes, he visited Hong Kong occasionally.
Q. Would you please look at A.8. Do you see your signature on that page? Do you see your name on that page?
20 A. Yes.
Q. Now that's copy of the original mortgage of 1,500,000 to Mr. TSE. When you signed the original deed at the offices of Johnson, Stokes & Master was Mr. TSE present at the same time?
MR. BERNACCHI: Before this question is translated, I asked a very similar question and the answer was that he might have been, "I can't remember." So surely that is the answer.
30 MR. JACKSON-LIPKIN: My Lord, it wasn't this question. It was so framed that "you mightn't have been able to remember."
COURT: I don't think you can carry that further, Mr. Jackson-Lipkin.
MR. JACKSON-LIPKIN: If your Lordship pleases.
Q. Now you said to Mr. Bernacchi that if you had appropriated money towards interest, Mr. TSE would not have owed you interest. When you said that, to what period of time were you referring?
40 A. I only knew he only paid four months interest and then afterwards he wanted me to make deduction myself.
Q. Now you said to Mr. Bernacchi that you knew

that Mr. TSe had instructed Johnson, Stokes & Master at the time when the mortgage was explained to you. When was the mortgage explained to you?

A. You mean Mr. TSE instructed him to explain to me?

Q. Can you now remember when you first learned that Mr. TSE had instructed Johnson, Stokes & Master to act for him in relation to the mortgage?

10

A. I don't know this.

Q. So far as the accounts were concerned, you said that your wife kept them.

A. Yes.

Q. Was it she who sent them to Johnson, Stokes & Master or you?

A. She did.

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MR. JACKSON-LIPKIN: I'm sorry, I've lost the letter of the 19th of October. Whilst my learned junior is finding it I'll pass on to something else.

20

Q. Will you please look at E.142.

MR. JACKSON-LIPKIN: Show him E.141, Mr. Interpreter, because it's the Chinese.

Q. Which parts of that letter are true and which are not true? Read it carefully.

30

A. "Within about one week after the sale by auction, I had been to see you on more than ten occasions to (try to) check the accounts with you and to handle all (other) matters." Untrue. Then from "However, you were unwilling" down to "from now on cut into two with a knife." Untrue.

Q. Well, now will you please look at E187 and E.129. If you can't answer this question say so immediately. Do you know if those two form part of the same document or whether they are separate accounts? If you don't know, say so.

40

A. I don't know.

Q. Will you please look at B.38. Do you believe that letter to be exaggerated?

MR. BERNACCHI: I'm sorry, what letter? It is a leading question.

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MR. JACKSON-LIPKIN: B.38.

COURT: What do you mean by the letter being exaggerated?

MR. JACKSON-LIPKIN: That was the question put to him, my Lord, that that letter had been deliberately exaggerated.

COURT: That is the sums, not the whole letter. The amounts shown in the letter.

10 MR. JACKSON-LIPKIN: My Lord, I can choose my own English but not anyone else's. I'll put it in my own way.

A. Do you believe that the figures in that letter are exaggerated?

A. I don't know because I don't handle this.

Q. Thank you. You have told my Lord that your wife kept the accounts. Did you take any part at all in the keeping of the accounts or did you leave it entirely to her?

A. I did not help her in any way.

20 Q. Yes, thank you. Now I want to come to the actual mortgage that was granted. You granted 1 1/2 million dollars to Mr. TSE.

A. Yes, in the beginning.

Q. In the beginning. Did you consider that to be a large mortgage considering the plans that you were shown?

A. Not big.

30 Q. Now so far as the later loans are concerned, what would have happened to your security if you hadn't granted Mr. TSE the extra money?

A. No security, but to auction the property.

COURT: You got your answer.

MR. JACKSON-LIPKIN: Yes.

Q. Will you please look now at E.149 and E.150. Let's start with 150. You have already told my Lord about the 14th floor and the roof, but ...

A. Yes.

40 Q. But was there any access to the roof for residents in the building?

COURT: How does this arise?

MR. JACKSON-LIPKIN: Out of the valuation of these flats which - the cross-examination on better or worse.

COURT: He says the better ones had been sold.

MR. JACKSON-LIPKIN: Yes, my Lord, and it was put to him that he was quite wrong. Well, my Lord, perhaps I can make these comments myself, but this particular question of course I can't comment on. The rest is in fact comment on the flats.

COURT: By all means ask him.

Q. Do you know if the top floor had access to the roof?

A. No access except a small hole through which one could climb up the

Q. Up to which floors did the lift go?

A. Up to the 13th floor.

Q. Lastly on the question of this building, the conditions of sale at the auction - I think it's 40 in the English and 48 in the Chinese. B.40 and 48, and tell me at once if you don't know the answer to this question. You see the description of the property there says: "Offices 1-6 on the 1st Floor, Offices 1-6 on the 2nd Floor." Do you know how that description came to be in there?

A. I don't know.

MR. JACKSON-LIPKIN: My Lord, has your Lordship any questions of this witness? My Lord, would that be a convenient moment because I have to get Mrs. WONG here and she has been on ten minutes notice throughout.

COURT: Why isn't she here now?

MR. JACKSON-LIPKIN: Oh, she is here now, I'm sorry. We had instructed that she be on ten minutes notice throughout and I thought I would take a little longer to get her, but in fact I can start her now.

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(Continued)

COURT: You may stand down.

(D.W.1 WONG Chit-sen leaves court room)

COURT: If she is within the court, why is she still not here?

MR. JACKSON-LIPKIN: My Lord, I'm told she is. She has attended each morning and in the afternoon been sent away again.

D.W.2 WONG CHING WAI SHOOK Affirmed in Puncti

XN BY MR. JACKSON-LIPKIN:

10 Q. Is your full name WONG Ching Wai-shook?

A. Yes.

Q. And are you the wife of the last witness, Mr. WONG Chit-sen?

A. Yes.

Q. Do you know a Mr. YUNG Tak?

A. Yes, I knew him after the mortgage.

Q. After which mortgage?

A. After many mortgages.

20 MR. JACKSON-LIPKIN: I'm sorry, I shouldn't have used the word "knew."

Q. Have you met Mr. YUNG Tak?

A. Yes.

Q. Are you acquainted with Mr. YUNG Tak?

A. Yes.

Q. What is he?

A. A broker.

Q. A broker of what?

A. Mortgage broker.

30 Q. How long have you been acquainted with him, approximately?

A. Several years.

Q. Did he act as a broker in relation to any ...

MR. BERNACCHI: No, I'm sorry, but there is a slight dispute as to the name of the broker, whether or not it's ...

COURT: You call him CHING.

MR. BERNACCHI: We call him CHING so whether or

not this is the same man ...

COURT: It is the same man.

MR. BERNACCHI: I think it is, yes.

MR. JACKSON-LIPKIN: My Lord, I was going to ask about the other name.

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COURT: Well, you are certainly leading, to begin with.

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WONG CHING
Wai-Shork
Examination
(Continued)

10 Q. Did he act as broker in relation to any of your mortgage transactions?

A. Yes.

Q. Did he act as broker in relation to any mortgage transactions of the company, Chit Sen Company? If you don't know just say so.

A. I don't remember.

Q. Do you know anyone called CHING Shi-wai?

A. I don't.

20 Q. Did you know anything at the beginning of the approach by Mr. YUNG to your husband concerning Mr. TSE's mortgage?

MR. BERNACCHI: I would like it, please, to be asked in a less leading way. Perhaps as a suggestion, and only a suggestion: "Did you know the broker who acted in Mr. TSE's mortgage?"

MR. JACKSON-LIPKIN: I am trying to put it in a less leading way than that.

30 Q. Mrs. WONG, do you know if a broker was involved in the mortgage arrangements between your husband and Mr. TSE?

A. Yes.

Q. Is that something of your own knowledge or something that your husband told you?

A. I knew it myself.

Q. Who was that broker?

A. YUNG Tak.

40 Q. Did you take part in any of the original discussions between Mr. YUNG and your husband concerning the mortgage that was later granted to Mr. TSE? Do you understand the question?

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Examination
(Continued)

- A. Yes I do, but I don't remember.
Q. Now in your own mortgage dealings which firm of solicitors did you use?
A. No fixed one.
Q. What about the company?
A. No.
Q. Who was the bookkeeper of the company?
A. Chit Sen Company.
Q. Yes.
10 A. There was an accountant for the company.
Q. Yes, who was that?
A. Originally Miss LAW, now Mr. KAM.
Q. Now do you mean auditor, accountant or bookkeeper?
A. Only bookkeeper.
Q. When did the change-over take place?
A. I don't remember. Many years ago.
Q. Can you remember when you first met Mr. TSE?
20 A. I don't remember.
Q. Are you able to tell my Lord, if it was before or after the execution of the mortgage between your husband and Mr. TSE?
A. Which mortgage?
Q. The one with Mr. TSE, the 1 1/2 million.
A. Before.
Q. Where and how did you come to meet him?

INTERPRETER: She made a mistake. She gave an
30 answer to the occasions when Mr. YUNG came to see her.

MR. JACKSON-LIPKIN: I am sorry, so may I ask you that again.

Q. Can you remember when you first met Mr. TSE, that is the gentleman here.
A. In January, 1964.
Q. Where?
A. The office in Pedder House,
Q. Whose office in Pedder House?
A. Our office.
40 Q. When you say "our" what do you mean?
A. To Kwan Company Limited.
Q. Whose company is that?
A. Myself, my husband and my son.
Q. Did you go to the offices of the company regularly or irregularly?
A. I went there every morning.

Q. Now in January 1964, when Mr. TSE saw you at the office did he say why he had come?

A. To pay interest.

MR. JACKSON-LIPKIN: My Lord, will your Lordship indicate what is a suitable moment?

COURT: Yes, this is suitable.

12.56 p.m. court adjourns

2.35 p.m. court resumes. 22nd March, 1979

Appearance as before.

10 D.W.2 - CHING Wai-shork o.f.a.

XN. BY MR. JACKSON-LIPKIN continues:

Q. Mrs. WONG, how often did you see Mr. TSE in the office about the payment of interest?

A. I do not remember how often.

Q. Did he actually pay money to you?

A. Paid me four times.

Q. Each time it was interest, was it?

A. Yes.

20 Q. Now did a time come when he said something to you about further payments of interest?

A. I do not understand.

Q. You said only four payments of interest. How many visits did he make?

A. Many times.

Q. And I want you to go to the summer of 1964. Did he speak to you at all about further payments of interest?

A. It was mentioned in June 1964.

Q. What was mentioned?

30 A. He said he had no money to pay interest.

Q. What did you say?

A. I said that he must pay because there were three months' interest in arrears.

Q. Now towards the end of the year did he make a larger payment to make up for arrears?

A. No.

Q. May she see Exh.F? Will you look at page 1 of Exh.F? Can you read English?

A. I can't read English.

40 Q. Will you translate it, please? Do you remember that document?

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Exhibit F

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WONG CHING
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(Continued)

Exhibit E95

Exhibit E96

Exhibit E123

- A. He requested that payment of construction fee to be deducted from the mortgage because he had no money to pay.
- Q. On that day?
- A. I do not remember the date.
- Q. I'm sorry. I do not understand that answer. Could you explain: what has that document got to do with construction?
- A. This document refers to the four months' interest.
- Q. Where was that interest to be paid from?
- A. To be deducted from the mortgage, this 50,000 odd dollars.
- Q. Will you please look at page E95? Do you remember that document?
- A. Yes.
- Q. Who issued that?
- A. I.
- Q. And 96?
- A. I did.
- Q. Just have a look through the remainder of those. Are they all issued by you?
- A. Yes.
- MR. JACKSON-LIPKIN: Mr. Interpreter, did she go right up to E123?
- INTERPRETER: Yes.
- Q. Why was this arrangement to be made that you have just described - that the interest was to be deducted from the mortgage?
- A. Mr. TSE requested that.
- Q. Did you agree?
- A. Mr. WONG agreed.
- Q. How did Mr. WONG agree? Did you speak to him and then let Mr. TSE know or did you call him into the office? How?
- A. Sometimes he requested Mr. WONG directly. In his absence he would ask me. I then asked the consent of Mr. WONG.
- Q. Now who kept the accounts of this mortgage?
- A. I did.
- Q. From the beginning to end?
- A. Yes.
- Q. And did you know about the further advances that were made by your husband?
- A. Yes.
- Q. And did you know about the agreement made

by your husband to pay off China Engineers
and Lam Kee?

A. Yes.

Q. So you were kept informed of what was going
on throughout the whole of the period
1964/5/6?

A. Yes.

Q. Now will you please turn to page B38. Will
you please translate that to her, Mr.
10 Interpreter, the whole letter. From whom
did Johnson, Stokes & Master get the figure
of 1,648,941.30?

A. I supplied them.

Q. Was that, so far as you were concerned, the
correct figure at the 29th of May, 1966?

A. Yes.

Q. Have you recently prepared an analysis to
show how you reached that figure?

A. Yes.

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D.W.2.
WONG CHING
Wai-Shork
Examination
(Continued)

Exhibit B38

20 MR. BERNACCHI: My Lord -

MR. JACKSON-LIPKIN: My Lord, this is going to
save a great deal of oral examination. I
have had this translated and if I ask her
item by item, it is going to take a very
long time.

COURT: Has Mr. Bernacchi seen this document
before?

30 MR. BERNACCHI: I have not seen it before. My
immediate reaction is to the word
'recently'.

COURT: But the books kept by her have been
disclosed.

MR. JACKSON-LIPKIN: Such books as she has
have all been disclosed, my Lord, yes, but
this is to show how she got 1,648 m.
without my having to take her orally
through out.

MR. BERNACCHI: I'm sorry. What books have
been disclosed?

40 MR. JACKSON-LIPKIN: All the accounts that we
have kept have been disclosed.

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Exhibit E

COURT: So these are no more than merely extracts from --

COURT: I do not doubt the good motive, Mr. merely extracts from the books, then where are the books?

MR. BERNACCHI: At present, I would not agree that the books have been disclosed.

MR. JACKSON-LIPKIN: My Lord, we have disclosed all the accounts that we have.

10 COURT: Well then perhaps you might at this stage produce those books which have been disclosed from which the accounts now you want to produce have been extracted.

MR. JACKSON-LIPKIN: My Lord, all the accounts bar one are in E.

20 COURT: Look, it might really save time. This figure of 1,648 m. is an important figure to Mr. Bernacchi. Now you seek to produce an extract made by the witness, the accountant of the respondent.

MR. JACKSON-LIPKIN: I had hoped it would be welcomed but obviously it is not.

COURT: Perhaps the best thing is I might well adjourn for half an hour or something of that nature so that you, Mr. Jackson-Lipkin and Mr. Bernacchi can get on with this one.

30 MR. BERNACCHI: Perhaps it would be better because at present I am absolutely amazed that my learned friend or the witness can extract from bundle E together with a disclosure recently made.

2.55 p.m. Court adjourns.

3.15 p.m. Court resumes. Appearances as before.

MR. BERNACCHI: My Lord, I can't inform you that we have arrived at any conclusion yet. I would like the witness to be asked

several questions in the witness-box before I consider whether this is an admissable document for saving time.

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D.W.2 - CHING Wai-shork o.f.a.

XN. BY MR. JACKSON-LIPKIN continues:

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Q. Mrs. WONG, will you go back to that letter of the 28th of April, 1966? From what books or documents did you get the figure of 1,648,941.30?

No.6

10 A. From our record books.

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Q. Anything else.

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Examination
(Continued)

A. From the figures supplied by the solicitors' firm.

Q. Anything else?

A. No.

COURT: What books and what figures?

MR. JACKSON-LIPKIN: Figures from J.S.M. My Lord, those are the accounts that your Lordship has already looked at. The only thing your Lordship has not seen is this little book.

20

Q. Now when you said the figures from Johnson, Stokes & Master, what figures from Johnson, Stokes & Master, in what documents?

A. The figures of the payments he made.

Q. Who is he?

A. J.S.M.

Q. When you said the payments he made, who is he?

30 A. Master paid us.

Q. A moment ago you said the figures from Johnson, Stokes & Master of monies that he paid, who is he?

A. TSE Kwong-lam.

Q. Now will you please look with me at pages A70.

Exhibit A70

MR. BERNACCHI: My Lord, I object, my Lord. She has already said that she look at the accounts of TSE with Johnson, Stokes & Master. A70 is the account of WONG.

40

MR. JACKSON-LIPKIN: She said figures supplied

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*Exhibits A71
to A73*

by --

COURT: Now as I understand it, the figure of 1.64 m. was obtained from record books - that would be her record books - and figures supplied by Johnson, Stokes & Master. The figures from J.S.M. are the figures of payments made by TSE.

10 MR. JACKSON-LIPKIN: My Lord, I am, of course, going to ask her about A71 to 73 in a moment.

COURT: I do not know what these documents are at this stage.

MR. JACKSON-LIPKIN: Could you give my Lord Bundle A please? My Lord, if it is preferable I will go back. Let's see A71, 2 and 3.

20 COURT: You see, you can't possibly ask her to look at, Mr. Jackson-Lipkin, A70 because A70 deals with the date of August 13, 1966, well after the date of this case.

MR. JACKSON-LIPKIN: I do appreciate that, my Lord, but that wasn't the question. I was going to ask her. I will come back to A70.

Q. Look at A71, 72 and 73. Did you receive from Johnson, Stokes & Master accounts of that nature showing Mr. TSE's payments in the years '64/65 and '66?

A. Yes.

30 Q. Did you receive one showing payments in as well as payments out?

A. Yes.

COURT: Where are they? You are talking of accounts of this nature.

MR. JACKSON-LIPKIN: Now this account goes up to the 18th of June, 1966. It is on page 73.

Q. How often did you receive this type of document from Johnson, Stokes & Master?

A. I do not remember.

Q. In April 1966 --

MR. BERNACCHI: I'm sorry, but these accounts, if they were received, have not been disclosed at all.

10 COURT: Now, Mr. Jackson-Lipkin, as I understand it, off the cuff from memory, A71-73 were supplied by Messrs. Johnson, Stokes & Master to Mr. TSE at Mr. TSE's request. We are not concerned with what Johnson, Stokes & Master supplied TSE. We are concerned with what Johnson, Stokes & Master supplied to the witness. If Johnson, Stokes & Master supplied her with documents where are those documents? It is not a question of documents of this type, of this nature. Where are those documents?

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Examination
(Continued)

Exhibit A71-73

20 MR. JACKSON-LIPKIN: I am just about to ask that question. In April, 1966 when this letter was sent what document of this nature had you received from Johnson, Stokes & Master?

A. I received documents normally I signed for receipt of certain payments.

Q. No, no. I am talking about account. You said to my Lord that --

COURT: One moment. Mr. Interpreter, did not the witness say she never received documents of this nature from Johnson, Stokes & Master at all?

30 A. I have never seen this English document. He supplied documents of that nature to Mr. WONG. I was only aware of the receipt, the individual receipts, the separate receipts.

Q. I'm sorry, when you said earlier that you based the 1,648,000 on figures received from Johnson, Stokes & Master, in what form were they when you received them?

A. It is not an official account. Only a brief note indicating, for instance, \$100,000 being payment of certain things.

40 Q. What happened to all those documents?

A. Still with me.

Q. Where?

A. At home.

COURT: I told you - I gave you all the time you

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- wanted to sort this out.
- MR. JACKSON-LIPKIN: My Lord, it was agreed that I should not ask her but except when she was in the witness-box.
- Q. Will you see that all those documents are produced to your solicitors tonight? All the ones that you can find.
- A. All right.
- Q. Now you mentioned the book. Is this the book?
- 10 A. Yes.
- Q. It refers to lots and lots of people, but pages 142 to 148 refer to Mr. TSE, is that right? Just check.
- A. Yes.
- Q. And the rest of the book, what does that refer to?
- A. Many others.
- Q. Other what?
- 20 A. Record of mortgages.
- Q. Yes, people.
- COURT: What are the pages again?
- MR. JACKSON-LIPKIN: 142, 143, 4, 5. May I just check, 142, 143, 144 ...
- MR. JACKSON-LIPKIN: 142, 3, 4, 7 and 8.
- Q. One mistake was on the page that you are not producing. Now pages 145 and 6 are glued together.
- A. Yes.
- 30 Q. 146 is blank.
- A. Yes.
- Q. And 145 was only entires half way down the page, some of which are crossed out. What was wrong with that, 145, that you abandoned it and started again at 147?
- A. Well I made a mistake. I did not tear it off so I just glued it up.
- Q. What sort of mistake?
- A. I do not remember.
- 40 Q. You can in fact see inside. So have a look and see. Was it an error of mathematical mistake or writing mistake or date mistake? Just have a look.

A. I made a mistake. Instead of writing lift charges, I wrote down solicitors' fees.

Q. And so you've corrected it on the next page?

A. Yes.

10 MR. JACKSON-LIPKIN: My Lord, if my learned friend really wants that page opened we will try and open it without tearing it. My Lord, I'll pass onto something else, but it looks as if I shall have to get her to write out that long document in the witness-box.

Q. I want you please to look at page B32. Will you translate it, interpreter, please? Do you remember learning that that letter had been sent?

A. I worked out the total amount of the interest whereas Mr. WONG instructed the solicitors to send the letter.

20 Q. Yes, after it had been sent, did someone come and see you?

A. Yes.

Q. Who?

A. Mr. TSE.

Q. What about?

A. He requested that the block not to be auctioned, that he would try his best to raise money for the interest.

Q. Did he say how?

30 A. No.

Q. Did you discuss the matter with your husband?

A. Yes.

Q. Did you reach a conclusion as to whether or not the power of sale would be evoked?

A. We did not exercise the power of sale upon his repeated request.

Q. Did you tell him that you would not do so?

A. Yes.

40 Q. Was anything said at all about the sale of units during that conversation?

A. I am not clear.

Q. After that conversation, was any more money received by you?

A. Not interest.

Q. And eventually did you give instructions to send the April letter that we have just

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(Continued)

Exhibit B38
Exhibit E1

- looked at?
- A. Not me, Mr. WONG did.
- Q. But you supplied the figures?
- Q. Did Mr. TSE ever ask you for the amount required to redeem the mortgage before that letter was sent out?
- COURT: Which letter?
- MR. JACKSON-LIPKIN: B38.
- A. No.
- 10 Q. Will you look please at E1? It is the Wing On Life Assurance letter. When did you first see that letter or a copy of that letter?
- A. I haven't seen it.
- Q. Until when? Until this very minute?
- A. When this case was brought about in November my husband told me that.
- Q. Told you what?
- 20 A. There was a letter from Wing On Life Assurance company.
- Q. You see, it has been suggested by Mr. TSE that he came round to your office and gave you a copy of it.
- A. Denied.
- Q. Let's go back to B38 please. After that letter was sent out, did Mr. TSE come to see you again?
- A. Yes.
- Q. What for?
- 30 A. He requested for more time.
- Q. Did you agree?
- A. No.
- Q. Why not?
- A. Because the mortgage was still due and he was still owing interest.
- Q. Would you please look at page B58 and 59? My Lord, it is 59(A) and (B) in your Lordship's bundle. Just look quickly at it please. Did you see that back in 1966?
- 40 A. I don't quite remember.
- Q. What he came to see you asking for more time, did he make any suggestions as to how he would repay the principal or interest?
- A. He said he would try his best to ask for another loan.
- Q. And what did you say to that?

- A. I don't remember how my husband replied him because he was talking to my husband.
- Q. I see. But did he ever say to you that he had in fact got an offer of another loan?
- A. No.
- Q. Did he ever make any suggestion to you that the figure in B38 was excessive?
- A. No.
- Q. Or wrong?
- 10 A. No.
- Q. Eventually, as we know, it was decided to sell the property by public auction?
- A. Yes.
- Q. And you and your husband held a meeting of the company at which a reserve price was fixed?
- A. Yes.
- Q. Was the fact that a reserve price had been fixed ever communicated to Mr. TSE?
- 20 A. I believe Mr. LIU must have notified him.
- Q. I see. But you can't remember?
- A. Correct.
- Q. What about the amount of the reserve price, was that ever communciated to Mr. TSE?
- MR. BERNACCHI: If the witness cannot remember herself whether ...
- COURT: ... whether the reserve price was in fact mentioned ...
- MR. BERNACCHI: I mean it follows.
- 30 Q. Now, did Mr. TSE speak to you about the auction before it took place?
- A. Yes.
- Q. What was the conversation about?
- A. He was notified by the solicitor by letter that the properties were to be auctioned so he came to see me and discussed about it.
- Q. Yes. Tell us about the discussion.
- A. Words to that effect that we should hold up the auction because he had written to the
- 40 Q. Can you remember any other conversation you had with him before the auction after the letter of B38?
- A. Yes, he came to mention that the reserve price seemed to be a bit low, on the low

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- side.
- Q. What did you answer to that?
- A. I said, "If you consider it low, you can find your friend, any friend, to offer better bids."
- Q. Did he ever suggest to you what he thought the proper figure ought to be?
- A. No.
- Q. I must, please come to the day of the auction.
- 10 Q. With whom?
- A. My husband, Mr. LIU, McElney, the lawyer.
- Q. Anyone else?
- A. And one of my colleague Mr. YAU.
- Q. When you got to the auction room did you speak to anybody before the auction?
- A. We did go inside to meet the person in charge of the auction.
- Q. Do you know who that was?
- 20 A. A Chinese as an interpreter for the auctioneer.
- Q. Did you meet the Chinese interpreter first or was he with the auctioneer when you went in?
- A. The auctioneer wasn't there.
- Q. Did you have a conversation with the Chinese person?
- A. I did not.
- Q. Do you remember if anybody did have a conversation with him?
- 30 A. The lawyer spoke to him.
- Q. Can you remember what about?
- MR. BERNACCHI: This is inadmissible really because it is not suggested that Mr. TSE was present. How is it admissible and how is it relevant to the ...
- MR. JACKSON-LIPKIN: Direct evidence of what she saw and heard before the auction. It is not secondary evidence. It is not
- 40 evidence against Mr. TSE.
- COURT: Go ahead.
- MR. JACKSON-LIPKIN: Thank you.
- Q. Can you remember?
- A. The lawyer introduced myself, Mr. WONG to

the Chinese and told him about the reserve price.

Q. Anything else?

A. He told him that if no one offered better price than the reserve price then I would act on behalf of Mr. WONG's company to bid for it.

Q. Did you meet the English auctioneer on that occasion?

10 A. I saw him in the room further in.

Q. I see. For how long?

A. Immediately after.

Q. For what purpose?

A. Because Mr. McElney wanted to see him.

Q. I see. Did you stay there long?

A. For a short while.

Q. Now, let us go to the auction itself. Was Mr. TSE there?

A. Yes.

20 Q. Any other people?

A. Several people were with him.

Q. Are you able now to remember approximately how many people were there?

A. 30 to 40.

Q. And then when the English auctioneer came out, did he make announcements that were translated into Cantonese?

30 COURT: I don't think Mr. Watson needs a translator or interpreter, Mr. Jackson-Lipkin. Yes?

Q. And eventually nobody bid the reserve price so you did?

A. Yes.

Q. Well, after you bid, can you remember what the auctioneer said? If you can't, just say so.

A. He said Chit Sen Company bid at one point two million dollars.

40 Q. Was that immediately after you made your bid or was there a gap in between? Do you understand my question?

A. In a short gap.

Q. And was anything said by the auctioneer in that short gap?

A. He asked twice "Any better offer?".

Q. I see. After Chit Sen purchased the property did it take any steps to try and

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- sell it?
- A. Yes.
- Q. What steps?
- A. Newspaper advertisements and also issuing offer pamphlets.
- Q. Any luck?
- A. No.
- Q. Madam, look back, please, at B38, would you? It is the demanding letter. If I ask you again to calculate that figure on B38, could you do it again for us?
- A. Now?
- Q. Yes. Well, if you had the paper.
- A. May I think? It takes quite some time.
- Q. Well, did you redo the calculation very recently?
- 10
- COURT: On what documents, the basis of the document, Mr. Jackson-Lipkin. Before you can ask that question she would have to produce the document.
- 20
- MR. JACKSON-LIPKIN: But, my Lord, may I get a yes or no first and then I'll ask her ...
- COURT: No, no, you may not ask that question.
- MR. JACKSON-LIPKIN: My Lord, then I can't ask her on what document she based.
- COURT: You can ask her "Have you got those documents?"
- MR. JACKSON-LIPKIN: My Lord, with the greatest respect, unless I ask her did she do the calculation I can't then go on to say "On what document did you base it?", you see. That is my problem.
- 30
- COURT: Ask her about the document.
- Q. If you had to recalculate that figure now, from what documents would you recalculate it?
- A. From my book and the figures supplied by Mr. LIU.
- Q. What figures supplied by Mr. LIU?
- 40
- A. Many payment receipts.
- Q. Well now, back in 1966 when you gave that

figure to Mr. LIU did you believe it to be correct?

A. Yes.

Q. It is being suggested that that was deliberately exaggerated. What do you say to that?

A. No.

Q. Could you demonstrate today that that figure was correct?

10 A. How to demonstrate?

Q. Well, on paper.

A. Well, this figure refers to accounts lasting for two and a half years.

Q. Yes?

A. I've never learned book-keeping, I can only handle simple accounts.

Q. Yes. And you've handled those simple accounts for many years?

A. Yes.

20 Q. If you were supplied with pen and paper now, could you demonstrate to my Lord that that is a correct figure?

A. I can do so but I must do it slowly and take a long time.

Q. Yes. And Mrs. WONG, did you in fact in order to try and help do such an exercise last weekend?

MR. BERNACCHI: No...

30 COURT: No, Mr. Jackson-Lipkin. Look, the whole foundation of the thing is these documents. You can't take it further.

MR. JACKSON-LIPKIN: There are two points, my Lord. One is her belief it as being true and the other is demonstrating that it is true.

COURT: How can she possible demonstrate a set of figures to be true unless you have got the supporting vouchers for them.

40 MR. JACKSON-LIPKIN: My Lord, may I explain? Take, for example, the admitted facts in this case or things that are common ground. In November and December there were two payments amounting in all to, I think, \$730,000. The interest on \$730,000 for one

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month would be 1.2 per cent. So she could write on the left hand side - 670,000 and 60,000 making 730,000 - and on the right hand side she puts 1.2 per cent.

COURT: This is all very interesting but the other side is entitled to see those documents.

10 MR. JACKSON-LIPKIN: My Lord, will your Lordship bear with me one moment? We have, as your Lordship can see, receipts of moneys received and we've also accounts of moneys paid out all the way through and that can all be written on a piece of paper. The arithmetical calculation can be done and your Lordship might see at the end of it the same figure as appears in B38. What weight you attach to that calculation, my Lord, is a matter for you but at least she can demonstrate from the documents
20 before the court at the moment and accepted by both sides as having been paid, that figure of one million six hundred and forty-eight thousand.

COURT: Mr. Bernacchi?

30 MR. BERNACCHI: My objection goes deeper than that. Whilst you were out of court this afternoon, I asked my learned friend precisely what this recent calculation - what was used as the basis for this recent calculation. He told me three things. He told me the account with Johnson, Stokes & Masters. Now, in fact from her evidence, she never had this account. He told me Ronald LI's first report which was later than April and he told me the book which has now been produced. Now, if assuming, as I do indeed, that that was what these figures were obtained from, in my
40 submission, and on her evidence it is entirely inadmissible.

COURT: What is inadmissible?

MR. BERNACCHI: The figures that were calculated the account on because they

were not available to her at the time. So that, in other words, she is justifying her figure now from accounts which weren't available to her at the time.

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10 MR. JACKSON-LIPKIN: My Lord, may I repeat? There are two points, One is this is a correct figure. One is what she believed at the time - was it negligent or
15 10 exaggerating? She wants to demonstrate that it is a correct figure. Now, you have before you the report, your have before you the Johnson, Stokes & Master's account with Mr. TSE and the Johnson, Stokes' account with Mr. WONG. And I don't think you have this other one that my learned friend has. Now, taking those together and putting them on a single piece of paper, she can demonstrate that the figure is correct. It doesn't mean to say - that may help your
20 20 Lordship in reaching your conclusion - but that is not the same thing to say "Those are the documents that I used in 1966". What she is saying is "Standing here today I can show you, my Lord, I was right. Here." And what is wrong with that?

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COURT: But that is what you are saying, the witness says otherwise.

30 MR. JACKSON-LIPKIN: No. My Lord, the witness has merely answered the other questions I put on my learned friend's request of how she calculated it in 1966, not the document she used last weekend. You see, this new document is merely to demonstrate to you that the figure was in fact correct.

COURT: What document does she want to use for that demonstration?

MR. JACKSON-LIPKIN: I'll ask her.

COURT: No, I am asking you.

40 MR. JACKSON-LIPKIN: My Lord, Mr. Ronald LI's report.

COURT: Doesn't Mr. Ronald LI's report, that

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by itself, show that figure in the end? Mr. Ronald LI's report, if I remember correctly, goes through it item by item and says "This has been proved. This hasn't been proved. Out it goes." How can that document be used in order to justify that figure?

10 MR. JACKSON-LIPKIN: Because he disallowed certain figures. Because she did not produce documentary evidence of those figures at the time. But, my Lord, as between the parties, she is bound by the judgment. But in order to demonstrate what she believes to be the accuracy of the figure, she can do the calculation showing from a little book that jotted the accounts of Johnson, Stokes & Master with both parties that that is the correct arithmetical calculation.

20 COURT: How do we know that those deleted by Mr. Ronald LI were not deliberate exaggerations ...

MR. JACKSON-LIPKIN: My Lord, may I ...

COURT: Look, the issue at this point is this, Mr. Jackson-Lipkin. Mr. Bernacchi.

MR. JACKSON-LIPKIN: Yes, my Lord.

COURT: That is all it takes.

30 MR. JACKSON-LIPKIN: But, my Lord, there is the other point whether it in fact is correct. Your Lordship, you see, has an advantage which Mr. Ronald LI never had. You have the advantage that Mr. TSE has admitted on oath that he reached an agreement with this lady that the interest due and payable should be added to the principal and therefore the interest should be charged thereon. Now, that wasn't available to Mr. Ronald LI. Now, admittedly we are bound by the judgment but not by any arithmetic ...

40 COURT: You have another look at Mr. Ronald LI's report. Interest was allowed by Mr.

Ronald LI, with the greatest respect, Mr. Jackson-Lipkin.

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MR. JACKSON-LIPKIN: But, my Lord, certain items of those were not, they were disallowed.

COURT: Why do we waste time about confirming the accuracy of that figure? The sole issue was that at that time in April of 1966 you say the figure was 1.64 million. How did you arrive at that figure?

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10 MR. JACKSON-LIPKIN: Well, my Lord, that of course I regret to say cannot be done till tomorrow morning.

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COURT: Right. Till tomorrow morning then.

MR. JACKSON-LIPKIN: Yes. My Lord, then, If I may, I'll pass to page C51, C52, C55 and C57?

A. What is this?

20 Q. Have you ever seen that? That is the trading and profit and loss account of your company for the year ended 31st of March, 1968. On the debit side there is an item "interest paid". Do you know what that represents?

COURT: What is this? Comapny's ...

MR. JACKSON-LIPKIN: The company's accounts of Chit Sen.

Q. Do you know what that represents? "Interest paid", it says.

30 A. I don't know. I am not clear about the company's accounts.

Q. Very well.

MR. JACKSON-LIPKIN: My Lord, in this position normally I would now just sit down. But in view of the events that had happened and what this lady has said about a number of financial documents she has not shown her solicitors, I must ask your Lordship whether you would grant me this indulgence and rise until tomorrow morning when she

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can produce them or else ...

COURT: All right. 10 o'clock tomorrow.

4.16 p.m. Court adjourns.

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10.10 a.m. Court resumes.

Appearances as before. Mr. M. Jackson-Lipkin
absent.

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10 XN. BY MR. WONG (continues):

MR. WONG: As your Lordship pleases. I am asked
my leader to apologise to your Lordship for
his inability to attend today, and I will
continue with this witness.

COURT: I will adjourn at 4.15 today to deal with
another urgent matter; I do apologise for
that.

Exhibit E87

20 Q. Madam, would you have a look at bundle 'E',
page 87? Would you look through that piece
of document carefully? (Pause.) Can you
recognise the document?

A. Yes.

Q. Who prepared it?

A. I did.

Q. For what purpose?

A. Mr. Tse requested to send him a bill.

Q. Would you look at the last two lines?
There is an entry saying:

"Less the Mortgage loan 2,000,000.00"

30 A. Yes.

Q. Now can you tell the Court when this
document was prepared?

A. Beginning of December.

Q. When this document was prepared in December
was it December '65 or was it December '66?

A. '65.

- Q. When this document was prepared how many sheets are there?
- A. Two sheets.
- Q. Now did you give a copy of this document to Mr. Tse?
- A. Yes.
- Q. After he received this document did he at any time challenge any of its contents?
- A. No.
- 10 Q. Madam, would you now turn to page 129 of the same bundle? Would you go through this document first?
- A. Yes.
- Q. Now who prepared this document.
- A. I did.
- Q. Now why did you prepare this document?
- A. Mr. Tse requested me to do so.
- Q. And when was this document prepared?
- A. 5th of February.
- 20 Q. And did you hand a copy of this document to Mr. Tse?
- A. Yes.
- Q. After he received this document did he at any time challenge its contents?
- A. No.
- Q. Madam, would you now have a look at page 132 of the same bundle?
- A. Yes.
- 30 Q. Now before today, have you seen this document before?
- A. Yes.
- Q. Now, madam, would you now have a look at this record book of yours? All right? Now would you turn to the relevant pages pertaining to the mortgage of Mr. Tse?
- A. Yes.
- Q. Now throughout the subsistence of the mortgage under what principal did you calculate interest due from Mr. Tse?
- 40 A. 1.2 per cent for the \$730,000; 1.3 per cent for the \$770,000.
- Q. Now turning yourself to the second lot of \$730,000 would you now look at bundle 'A', page 6? Have you got that document before you, bundle 'A' page 6? Yes. This deals with the manner in which the second instalment was payable under the mortgage. For example:

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"(d) by a fourth instalment of \$100,000.00 on the 30th day of August 1964 or upon production of the certificate of the ... Architect"

Now just listen to the translation.

A. Yes.

Q. In other words that sum might be payable on the 30th day of August, 1964, or might be payable upon production of the certificate of architect?

A. Yes.

Q. Now you understand so far?

A. Yes.

Q. Now when you computed interest due from Mr. Tse in relation to the balance of \$730,000, with what date did you compute the interest?

COURT: The balance of \$770,000.

MR. WONG: I'm so sorry, \$770,000.

20 A. Well, in respect of the \$770,000 there was a table for the payment in ten instalments.

Q. What was the format of that table?

A. Beginning with \$150,000 to pay off the occupiers - occupants.

MR. BERNACCHI: My Lord, I hate to interrupt so clear an examination-in-chief but in fact what table - if it is a written table then surely it ought to have been produced or said ...

30 COURT: The table, Mr. Bernacchi, is in A.6. That is what they're saying. That is as I understand it.

MR. BERNACCHI: Oh, I see, then I withdraw my objection.

Q. Now, madam, ...

COURT: That is so, isn't it, Mr. Wong?

MR. WONG: That is so, my Lord.

Q. Madam, would you now turn to page 142 of your own booklet?

COURT: 1 ..?

MR. WONG: 142 of her own booklet.

COURT: Have you got copies?

MR. WONG: Yes, my Lord, I'm so sorry.

Q. Now, madam, would you produce your booklet in evidence?

COURT: I am sure Mr. Bernacchi doesn't want the whole book in, only those pages which are relevant to this ...

10 MR. BERNACCHI: The other pages have been sealed up already, and I have no intention of unsealing them. I have asked my learned friend whether the page that is perhaps relevant that has been sealed up has been unsealed. He says no. I don't know whether he can or cannot by the use of steam unseal it. I would like to know what is on that page.

20 COURT: If it comes within the pages of this particular mortgage then the whole thing ought to be divulged, surely.

MR. BERNACCHI: Yes. My Lord, I have no objection to its production through this witness, but of course it has only been divulged yesterday morning and I make no admissions at all in respect of it.

COURT: We will give it an exhibit number then.

CLERK: Exhibit 'N'.

30 Q. Now, madam, perhaps it would be more accurate to ask you to produce page 142 to page 148 in evidence. Madam, would you look at page 142? There are four entries for the year 1964 dated 10th January, 1964, 4th February, 1964, 26th February, 1964 and 30th - I'm so sorry, three entries between January and 26th February, 1964.

A. Yes.

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Exhibit N

*Exhibits
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10

Q. Now how did you compute those entries?

COURT: I don't understand your question. At page 160?

MR. WONG: 142.

COURT: 142. What entries are you referring to?

MR. WONG: I am referring to the fourth line from the top of the seventh line.

COURT: Give me the figures, what are they?

MR. WONG: 8,760 - three figures of 8,760, my Lord.

COURT: Oh, you are dealing with ...

MR. WONG: Interest received, my Lord.

COURT: All right.

Q. Now, madam, no what basis did you arrive at those figures of 8,760?

A. \$730,000 at 1.2% interest.

Q. Now that is in respect of the first instalment under the mortgage?

A. Yes.

20 Q. Now the second instalment under the mortgage was first payable on 30th May.

Q. Now if you want to refresh your memory you can look at bundle 'A' page 6.

A. Yes.

Q. Now then you find an entry at the bottom of the page, August - I'm sorry, the 8th day of July, 1964, for \$50,000.

A. Yes.

30 Q. Now could you tell the Court which instalment - well, could you tell the Court what sort of payment is that \$50,000?

A. To pay the verandah fees.

Q. We see that, according to your record, it was paid on the 8th of July, 1964.

A. Yes.

Q. Now turn back to A.6. Now that, I have reminded you, is the dates for the instalment payments for the sum of \$770,000. Now do you follow me first?

Exhibit A6

- A. Yes.
Q. Now the figure of \$50,000 at page 142:
which instalment was it under the mortgage?
A. Under the \$770,000.
Q. The \$770,000 was payable by ten
instalments.
A. Yes.
Q. And the instalments are set out at page
A.6.
10 A. Yes.
Q. Do you follow?
A. Yes.
Q. Now according to your own record, the sum
of \$50,000 was paid "for balcony."
A. Yes.
Q. Paid on the 8th of July, 1964.
A. Yes.
Q. I would like to ask you which instalment
under the mortgage does this sum of \$50,000
20 correspond to?
A. The second instalment of the \$770,000.
Q. Now if you look then at page A.6, the
second instalment (b) was payable "... on
the 30th day of April 1964 or upon
production of the certificate of the said
Architect ..."
A. Yes.
Q. Do you understand?
A. Yes.
30 Q. Now therefore we have two dates under the
mortgage: there is a date 30th April,
1964, and by page 142 of your own booklet a
date 8th July, 1964. Now the date 8th July
'64 was the date of actual payment?
A. Yes.
Q. And 30th April, 1964 contemplated payment?
A. There was a table listing out a certain
date for payment. Even if he did not pay
out such sum the interest still have to be
40 calculated from that day onwards.
Q. Madam, then for the second instalment
amounting in total to \$770,000 with which
of the two dates that I referred you to did
you compute interest from?
A. I computed interest with reference to the
date on the list.
Q. Which list?

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COURT: A.6. I want to take this note down:

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Exhibit B38

Exhibit N142

Exhibit E132

*Exhibits E87
& E129*

interest was calculated on a table set out in A.6 irrespective of whether the notes were honoured or not.

- Q. Now, madam, would you now look at B.38, which is the letter of demand? Do you want that to be translated to you?
- Q. Now when you furnished the figure of 1.6 million dollars to Johnson, Stokes & Master, that figure included outstanding capital and interest?
- 10 A. Yes.
- Q. Did it include outstanding capital and interest?
- A. Yes.
- Q. Now concentrating first on the interest component of this figure of 1.6, did you arrive at the interest component of this 1.6 million dollars figure in accordance with the principal which you have just told us?
- 20 A. Yes.
- Q. Now would you now turn back to exhibit N, page 142 of your booklet? Now, madam, would you say that your booklet contained accurate entries indicating total payments to Mr. Tse?
- A. Yes.
- Q. Now when you prepared the figure of 1.6 million to Johnson, Stokes & Master, turning now to the principal component, did you utilise this booklet of yours to compute the principal?
- 30 A. Yes.
- Q. Would you turn to exhibit E.132 again, a document which I showed you this morning? All right?
- A. Yes.
- Q. Do you know whether your husband agreed to pay the sum of \$69,850 as indicated in this letter?
- 40 A. Yes, I know.
- Q. When computing your figure of 1.6 million, did you take this letter into consideration?
- A. Yes, it was included.
- Q. Madam, would you now look quickly again at E.87 and E.129? When computing the figure of 1.6 million did you rely upon these two

documents?
A. Relying on my own book.

COURT: So the answer to your question is 'No'.

MR. WONG: No.

Q. Now, Madam, so we know that in arriving at the figure of 1.6 you relied upon E.132 which is a letter from Mr. Tse to your husband and you also relied upon your own booklet.

10 A. Yes.

Q. And in relation to computation of interest you adopted the dates stipulated in the mortgage?

A. Yes.

Q. Now these three relate to principal and interest?

A. Yes.

Q. What about repayments by Mr. Tse? What documents did you rely upon to compute repayments?

20

A. Replying on cheques I received from Mr. Liu, then I make entries into my book.

Q. And in computing the figure of ...

COURT: One moment. "I relied on cheques received from Liu and made entries accordingly." Yes.

Q. And did you enter the amounts of those cheques into that booklet of yours?

A. Yes.

30 Q. As far as you know now did that booklet of yours contain full cheques received as repayments from Mr. Tse?

A. Well, there was one entry which I wrote on a piece of paper attached here, now the slip was missing. Subsequently I was able to find out that sum.

40 Q. Now, madam, would you listen carefully to my question again and just answer yes or no? Now did that record of yours contain complete entries of all cheques paid to you by means of repayment?

COURT: All cheques received from Liu.

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- 10 Q. Yes, all cheques received from Mr. Liu by means of repayment?
A. Yes.
Q. Now, madam, in arriving at the figure of 1.6 did you take into consideration all cheques repaid to you through Mr. Liu up to that date?
A. Yes.
Q. Now, madam, in arriving at the figure of 1.6 did you at any time deliberately inflict the possible indebtedness of Mr. Tse?
A. No.
Q. And did you utilise all care possibly extracted on your part to arrive at that figure?
A. Yes.
- 20 MR. WONG: May I have a moment, please, my Lord? My Lord, I know it is a bit early for the morning adjournment ...
- COURT: Do you have any trouble, Mr. Wong?
- MR. WONG: No. I have to prepare, in my respectful submission, the grounding for the production of this document and I would like to confer with Mr. Bernacchi as to the possibility of its being produced by agreement.
- COURT: Would that be the end of your cross-examination?
- 30 MR. WONG: Yes, my Lord.
- COURT: Mr. Bernacchi, what say you?
- MR. BERNACCHI: I am agreeable to the adjournment but I would like to - I would take a lot of convincing to consent to the production of this document when my learned friend's leader said yesterday the document on which it was prepared.
- 40 COURT: Mr. Wong, yesterday my understanding was that this witness would produce the supporting documents in support of entries in her book, exhibit 'N'.

Exhibit N

MR. WONG: Yes, my Lord.

COURT: I see. There is no offer of production of supporting documents?

MR. WONG: My client did endeavour last night to search for those vouchers but with no avail.

COURT: So the supporting vouchers are not available?

10 MR. WONG: But, my Lord, according to her evidence now there is no reliance on any voucher as such; she only relied on her own booklet, the letter

COURT: Her own booklet?

MR. WONG: Which is exhibit 'L'.

COURT: Her own booklet is exhibit 'N'.

MR. WONG: I'm so sorry, exhibit 'N'.

COURT: Yes. What else?

MR. WONG: Exhibit 'N', the letter, E.132, and the cheques.

20 COURT: May I have a look at exhibit 'N'? (Pause) Mr. Bernacchi, are you agreeable to this application to adjourn for the time being?

MR. BERNACCHI: My Lord, I am quite agreeable but I just sound a word of warning as to my agreement to the document.

COURT: Will it help matters to adjourn? I shall adjourn, let me know when you are ready.

30 MR. WONG: Yes, my Lord.

10.50 a.m. Court adjourns

11.30 a.m. Court resumes

Appearances as before. Mr. M. Jackson-Lipkin absent.

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XN. BY MR. WONG (continues):

MR. WONG: I am indebted to your Lordship for the early adjournment. I have only two more questions for this witness.

Q. Madam, would you turn to bundle 'E' page 132 again? Bundle 'E' page 132. Now would you look through that letter?

A. Yes.

10 Q. When the figure of 1.6 million was furnished to Johnson, Stokes & Master had you actually paid - had your husband actually paid out the sum of 69,850?

A. Not yet.

Q. So that was a prospective liability to China Engineers Ltd. that you took into account?

A. Yes.

20 Q. Did you take into account any other prospective liability in computing the figure of 1.6 million?

A. Yes.

Q. What other prospective liabilities?

A. Payment to Lam Kee and the lift charges.

Q. What approximately was the prospective liabilities to Lam Kee that you took into account? Approximately; if you cannot recall, say so.

A. I can't recall, I made a note of it.

30 COURT: Mr. Bernacchi.

MR. BERNACCHI: My learned junior will be cross-examining.

XXN. BY MR. WOO:

MR. WOO: May it please you, my Lord.

40 Q. Madam, I just want to ask you a general question. It is true, is it not, that in the case of a mortgage and you are asked for repayment of principal and interest, you ask for the mortgagee to pay under the mortgage and not other agreements as to other loans - pay under the mortgage only?

COURT: Do you mind, Mr. Woo, repeating the question? I can't understand it at all.

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Q. What I want to know is this: you said, madam, prospective liabilities you have to pay you are taking into account. That liability was not under the mortgage, is it? That's true, isn't it? Is that right?

A. But Mr. Tse wrote a letter.

10 Q. Yes, it was a separate agreement to pay. If it is under the mortgage it need not be any other agreement. Would you not agree?

A. I do not agree.

Q. You know very well it's under a separate agreement.

A. Yes.

Q. And yet you say you purposely included it because it is prospective liability of your husband. That is true, isn't it? Am I right? Yes or no.

20 A. Would you repeat?

Q. You included it purposely because you said it was your husband's prospective liability, that is the reason you put it in. Am I right?

A. I included the amount because it was included in the mortgage.

Q. Madam, it isn't. You agreed with me just now it was under a separate agreement.

COURT: What agreement? What document is it?

30 MR. WONG: E.132, my Lord.

MR. WOO: E.132, may the witness see ...

COURT: No, E132 is merely an application.

MR. WOO: E.132 is a Chinese document.

COURT: It is merely an application.

MR. WOO: A.43. Would you explain this document to the witness, please? (To Interpreter)

Exhibit A43

Q. Madam, do you understand English, or can you read English?

A. No.

40 Q. Not a word?

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Exhibit E129

- A. No.
- 10 Q. I see. (To Interpreter) Would you actually explain it to her? Now, madam, this is an agreement made on the 10th of February, Lam Kee Construction Company, and it is true, is it not madam, that it was paid very much later on, the date?
- A. Yes.
- Q. It was paid, in fact, in September, 15th of September 1966?
- A. I don't remember the date.
- Q. Well, I will show you the date later on, but you can take it from me from the documents it was paid on that day, and also the sum owing to China Engineering was not paid until August, 1968 - '66 rather, well after the sale of the property?
- 20 A. Yes.
- Q. Am I right to say, madam, that if you deduct these two sums the principal will reduce accordingly in your calculation?
- A. I don't understand. If these two sums are not included that would be reduced.
- Q. Now, madam, if I may show you document E.129 ...
- 30 COURT: I just want to clear up one point on which I'm still not quite clear. Mr. Woo, at the date at A.43, A.44, 15th of February, all the mortgages and the further charges had been exhausted, had they?
- MR. WOO: Yes, my Lord.
- COURT: Is that right?
- MR. WOO: Yes, because by the 2nd of - that's why I am referring to the document now, my Lord. The document 129 suggested ...
- COURT: E.129.
- MR. WOO: My Lord, yes, E.129.
- 40 Q. Madam, if you look at E.129, the last of these columns from the bottom, I think there is a wrong translation there. The Chinese would be ... (Counsel speaks in

Chinese). That means apart from the mortgage money or minus mortgage money and not deposit. Would you not agree?

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MR. WONG: I accept the interpretation.

COURT: "Minus mortgage money", the translation to be amended if counsel agree.

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MR. WONG: Yes, agreed.

COURT: The word "deposit" to be "mortgage money". Do you agree?

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10 MR. WONG: Yes.

MR. WOO: Yes.

Q. Madam, this document, as far as your evidence is concerned, is that it deals with what was paid out under the mortgage according to your calculation and nothing to do with interest as far as this is concerned. Is that right?

A. Up to the 29th of January.

20 Q. The 29th of January, yes, and the last line says the whole mortgage sum which is the limit of 2 million - that is 2.22 million dollars has been exhausted. In fact there was an outstanding or in excess of the mortgage money to the sum of \$82,286.10.

A. That means he had used 2.3 million odd.

Q. It is 2,230,286.10, that is in fact the total sum altogether he used.

INTERPRETER: 2,230 ...

MR. WOO: 286,10.

30 A. Yes.

Q. Now it is true, is it not, that Mr. Tse asked for, pressed for accounts, and instead of giving him full accounts which you ought to have at the time, you gave him this document on the 2nd of February - on the 5th of February, 1966. That is right, is it not?

A. Three pieces, three sheets.

Q. Mr. TSE will say and has said in evidence

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that this document, E.130 and another document, E.87, was given to him together.

COURT: E.130 is the translation.

MR. WOO: E.129 and E.87, my Lord, I'm sorry, together with another document which he has lost, and it was marked 1 ...

A. I don't remember.

Q. You don't remember. I see. If you look at E.87 it's marked 2 and E.129 is marked 3. Now one more question about E.129, the translation 130. Am I right to say, madam, that the two sums together - 2,220 or 2.22 million plus \$82,2286.10, that is a total of 2230,286.10, represents the principal at the time at the date when this document was given to Mr. TSE - owing.

A. Yes.

Q. So from this document you are saying to Mr. TSE "You owe this much as principal under the mortgage."

A. He did not ask me for a full account during the mortgage period. He only asked me to give him a rough figure about the incoming and outgoing amounts.

Q. He asked you ...

A. Only up to a certain date.

Q. He asked you after the issuing of the occupation permit regarding the building what in fact was due and owing to Mr. WONG, your husband, so as to enable him to redeem the property.

A. No.

Q. That was the reason he asked for accounts.

A. It never occurred. I pressed him for payment of interest. He asked me for the account so I showed him this account.

Q. You see, Mr. TSE asked you to give him a figure which tells him his liabilities under the mortgage, and would you not agree this figure you have given in this sheet of paper is of no help to him at all because you have not included any repayment made.

A. He did not ask me for the accounts. He ...

MR. WONG: So sorry to interrupt the question, my Lord, but the question was posed that

this document did not include any repayment, but at the top of page 129 it indicates quite clearly that the solicitors' office sent along certain figures.

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Q. Yes, but that is not the full repayment, is it? On the 2nd of February .. 5th of February, 1966.

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A. He did not ask me for those accounts.

10 COURT: Madam, put it this way. Supposing he had the money to pay you. He wanted to pay you. Would this account show how much he had to pay you?

A. No.

COURT: Then what is the point of it?

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A. I asked him for payment of interest. He said he still had money with me, so I prepared this list to show him that the money had been exhausted.

20 Q. So you would agree with me then, madam, wouldn't you not, even the letter which you referred to in page 141 - I'm sorry, 132, the date of this letter, the whole money is exhausted. 132 in the Chinese.

Q. And don't you think, madam, that if you asked for repayments under the mortgage, these two sums which had yet to be paid, and this letter is a request only, merely a request, should never be included because you are claiming under a mortgage.

30 A. This I don't know. I only entered this account into the mortgage according to Mr. WONG's instruction.

Q. Madam, am I right to say in listening to your evidence this morning that based on your book, your entry in your book which is now Exhibit N and this letter which has been referred to you at page 132, it is impossible for you to calculate a figure which is shown in a letter 1.6 million. Am I right to say that?

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A. Eventually I worked it out.

Q. Well, if you say that I must tell you this. There is a distinct possibility that I will ask you to do it today in court. I give you that document, I give you that book.

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Are you saying, seriously saying you can calculate a figure which is equal to that of 1.6 million odd dollars as referred in your letter of the 28th of April, 1966? You are not saying that, are you, madam?

A. Someone has to assist me in calculating this complicated figure.

Q. Madam, I'm asking you - will you have sufficient data to do so in this sort of

...

A. Yes, relying on that book.

Q. Are you seriously telling us that? Only the figure in that book plus that letter?

A. And a few documents.

Q. Of which you can't find, missing ones.

A. Some I can find.

Q. But what about the missing one, madam?

A. From my memory.

Q. So it's a guess?

A. Well, I can still compare it with auditor's account.

Q. But this is a very long time ago, your figure was in April, 1966. Madam, let me put this to you. It is true, isn't it not, that with the material you mentioned in evidence this morning, it is virtually impossible, no matter how you do it, to work out a figure of 1.6 million odd without adding figures which cannot be found in any place, through your memory or some other documents you say you lost. It's impossible.

A. It's difficult to tell.

Q. Madam, you have done it. You claim you have done it.

A. Yes, I've done it.

Q. With the assistance of someone very much well trained than yourself, madam.

A. My son helped me in preparing this - so many figures.

Q. Yes, and figures could have been very well juggled around to come to a figure.

A. Of course. That was the account for so many years, ten odd years ago.

Q. Madam, would you think, looking at - and I invite you to look at B.38 - wouldn't it be fair to Mr. TSE and proper and be more honest to include an account in this matter if you have that account so that he could

- possibly check this account? Don't you agree?
- A. I don't understand.
- Q. Madam, you are saying someone is owing you money and interest, principal and interest.
- A. Yes.
- Q. And up to then there was no actual - any figure near to this figure was shown to Mr. TSE. All you have now is a letter demanding for payment.
- 10 Q. Madam, you told Johnson, Stokes & Master, your solicitors, the sum, the figure. That is your evidence.
- A. I don't think so. I consider I must have supplied a detailed figure.
- Q. Very well. YOU say you must have and you are not sure.
- A. I thought I must have.
- Q. You think.
- 20 A. Otherwise how could this figure come out?
- Q. You never know.
- A. I don't. I don't understand.
- Q. But madam, am I right to say that this figure differs even substantially from a later account you made yourself and supplied to Johnson, Stokes & Master. Now may I show you your document, your document starting at page E.91. Don't look at the letter because you don't know how to read English, but look at this document first.
- 30 Now in your evidence you said and your husband said that you supplied Johnson, Stokes & Master, your solicitors, the accounts to be sent to Mr. TSE on the 24th of October, under cover letter dated the 24th of October, 1966.
- MR. WONG: I would like some assistance from my Lord. I don't recall that this witness said in evidence in-chief that she did submit this account to Johnson, Stokes & Master.
- 40
- COURT: You did not refer to it at all?
- MR. WONG: I did not refer to it at all.
- Q. Well, have a look at the document first, madam. You seen that before?

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- A. Yes.
Q. Your document?
A. Yes.
Q. You didn't do it yourself, did you?
A. No.
Q. Who did it?
A. The accountant Mr. Ronald LI.
Q. No, madam, this is not.
- 10 MR. WOO: May the witness be shown the letter at page 91, and Mr. Interpreter would you assist us by explaining the letter to her.
- A. Yes.
Q. You understand that letter, madam?
A. Yes.
Q. Now your husband said you supplied the solicitors, Johnson, Stokes & Master, the letter on this account to be sent to Mr. TSE.
A. This one?
20 Q. Yes, this account. When was this account prepared? Do you know?
A. I don't remember.
Q. You don't remember by whom?
A. The accountant. I don't remember. I don't remember who.
Q. Madam, if it is the accountant, it was done on your instruction and information given to him or heard by you. Is that right?
A. Yes, it is here - 1.6 million dollars.
30 Q. I'm coming to that, madam. Am I right to say this is a result of Mr. TSE pressing for accounts that this was sent to him?
A. I said I don't remember.
Q. Ah, you don't. Madam, I suggest to you this is the only formal account, if it can be considered to be a formal one, prepared by you for the
Q. No, no, madam, I do not deny it. If you say so I have to accept it but it is not signed, is it?
40 A. That I don't know.
Q. There was no comment. Your husband, he may well be, and to be fair to him, he may well be mistaken, said it was prepared by you.
A. I am incapable of so doing.

Mr. Jackson-Lipkin enters court from 12.15 p.m.

- Q. You are incapable of so doing it? Similarly, you are incapable of getting a figure of 1.6 million dollars that accords with your letter dated the 28th of February, 1966 without professional help, you say. Is that right?
- A. I could do it my way slowly. I do not rely on the totalizer. I can use a pen to work it out.
- 10 Q. You have had professional help in trying to prepare some account in that form, is that right, about ten days ago?
- A. I cannot work out this kind of accounts.
- Q. What about working out something like you have done ten days ago, for instance, ten days or last week-end, for instance, in that form.
- A. My son helping me.
- 20 Q. Very well. Now madam, you have been in the business, the mortgage business, lending money for over, say, about thirty years.
- A. Yes.
- Q. And you own companies.
- A. Yes.
- Q. And obviously you have in the past employed accountants in preparing your accounts. Is that right? Not even once?
- A. I did not employ accountant to do my accounts.
- 30 Q. What about the company's accounts?
- A. Yes.
- Q. And there is always the accountant who prepared the account, signing his name, verifying the account. Am I right?
- A. Yes.
- Q. And apart from just verifying, he gives his comments as to certain entries which was not supported by documents or vouchers or where the information came from. Am I right?
- 40 A. I don't understand.
- Q. Well, if something was given to him verbally without support of any documents or vouchers, he would have to say so.
- A. Yes.
- Q. Because he is responsible for preparing that account. He signed it.
- A. Yes.

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COURT: Responsible for the report.

MR. WOO: For a report, yes, my Lord, I am obliged.

Q. And in this particular one there is no such comment or signature.

A. I said I don't remember.

Q. You see, now you agree with me, madam, would you not, rightly or wrongly about the account - I'm not talking about whether it is right or wrong - look at page 94. The figure as at the 29th of June, 1966 was 1,623,050.70.

A. Yes.

Q. On information given by you and material supplied by you, differs from your figure of 1,648,941.30. Am I right, madam?

A. Yes. I have reasons.

Q. Oh yes, we will come to your reasons later on. Eventually, am I right to say a professional accountant, Mr. Ronald LI was employed to look into your accounts, all of them?

A. Yes.

Q. And he arrived at a different figure completely. That is true, isn't it, madam?

A. May I see Ronald LI's report? I don't remember.

Q. Well, I'll come to Ronald LI's report rightway then, madam. Now Mr. Ronald LI's report appears in Bundle B, starting from B.76 to B.84. Madam, this report was shown or rather was prepared and made on the 26th of February, 1968.

A. Yes.

Q. Some two years after your other report, and madam, he based his report from your accounts and nothing else, and also documents made available to him. Am I right, madam? Take it from me that page 76

...

40 A. He was also relying on J.S.M.'s accounts.

Q. Yes, on accounts.

A. Yes.

Q. You supplied him all that you have.

A. Yes.

Q. And he made the account, that is page 76, B.76. I won't trouble you, madam, it

recites the various mortgages and charges. Page 2 he leaves your account, your account at page 92 E. Madam, perhaps I would invite you to put the two documents side by side for easy reference - E.92 and B.27. You can take it from me that he repeats your account on page 92 at page 77B.

A. Yes.

10 Q. And then he proceeded to analyse it on the next page, 78B. Now I'm not going to trouble you with figures because it would take a day if I do, but I would ask you to turn to page 79. At the bottom of page 79, not the grand total, but there are two figures. The date was the 16th of August, 1966 - \$39,850 and that was for payment for the lift.,

A. Yes.

Q. That was the date each payment was made.

20 A. Yes.

Q. And the figure \$47,600 dated the 15th of September, 1966 was the amount paid for Lam Kee Construction Company. You agree now?

A. Yes.

30 Q. Then on page 80 there are various items of which Mr. LI, the accountant, disallowed and the reasons given are either "Not supported by evidence" - that is there is nothing to support it at all - or "Amount over claimed."

A. Yes.

Q. Or "under claimed", yes. The total amount which was disallowed was a rather large figure - it is \$126,072.90. Now this is based on your figure, your figure given in the accounts which you supplied to the defendant, Mr. TSE, through your solicitors.

40 MR. WONG: I am so sorry, my Lord. My recollection and my instructing solicitors' and my leader is that in opening this case we did not accept that document 92, 93 and 95 were annexed to the letters to Johnson, Stokes & Master.

MR. BERNACCHI: My Lord, in opening my learned friend didn't admit that 93 and 94 were attached. Although there was a long

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cross-examination of Mr. TSE that was never put to him. Mr. WONG in his evidence said that the figures on 92, 093 and 94 were supplied by this witness. I think that really ...

10 COURT: Why must there be an argument over a matter like this? Messrs. Johnson, Stokes & Master sent this letter to the claimant and the letter shows clearly it is so much and inclusive up to date. I would have thought Messrs. Johnson, Stokes & Master would have a copy in their own files. Now why can't such a matter be checked up instead of being subject to argument?

MR. WOO: My Lord, the witness says it was sent to Johnson, Stokes & Master.

COURT: Let's have less skirmishing and get on with the issues in the case.

20 Q. Madam, dealing with the account of Mr. LI's first. I will then ask you to turn ... Would you not agree, madam, that these, the figures in the second column after the date at page 80, starting with 50,000, 2,930 and 46,350 etc. are taken from your account at page 93?

A. Yes.

30 Q. And not to go through the whole matter, if I show you 93, for instance, the figure four lines from the top or five lines from the top: Cash 2,930 and immediately after that: Outstanding interest for the period of 30.3 - that is the 30th of March, 1964 to the 29th of July, 1964 transferred from solicitors etc. If you look at the last column, remarked on your figure, the same figure of 46,350 and then: outstanding interest for the period of 30 - again March, 1964, 29th of July, transferred principal. Now that was totally disallowed. I'm not going to go through the lot. So there is in fact an over-claimed figure for reasons unknown to the accountant, and there are other various figures which I'm not going to go through which were completely disallowed on your

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computation as principal, and hence affect the interest claimed. You agree, would you madam? If the principal is wrong, the interest calculated based on the principal or computed from the principal would be equally wrong. Would you agree with me?

A. May I explain first?

Q. Would you agree with me?

A. Would you repeat?

10 Q. If the principal is wrong, the calculation on interest based on that principal would be equally wrong. That's all. A simple question.

A. Yes, wrong.

Q. Yes, so there is nothing to explain, is there?

A. This is not a matter of right or wrong. It is a question of how it was worked out.

20 Q. If you say that, to be fair to someone who is owing you money, would you not, to be very honest, to calculate to his best advantage, not to yourself, not to inflate it but to calculate it in a way that it is most beneficial to him? Would you agree with me?

COURT: You surprise me, Mr. WOO.

A. I don't mean that. You can't put it that way.

30 Q. Well, madam, are you saying that you would calculate it in a way that to give you the best figure? To inflate it? Are you saying that then?

A. No, no I don't mean that.

Q. What do you say?

A. Well, the accountant disallowed the figure because he thought I calculated the interest from the date of the mortgage deed, but not from the actual date of payment.

40 Q. Very well, madam.

COURT: Madam, is that really so, just like you wrote \$6,000 here? Look at 93. Now that is outstanding interest for the period 30 of March, 1964 to 29.7.64 transferred. \$46,350.

A. Yes.

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COURT: Right?

A. Yes.

COURT: When your husband lodged his claim, the Statement of Claim, as showing 2,243 million, and one of the items he claimed is dated the 29th of July, 1964 and it tallies with the date shown at 93 of \$46,350 and the reason given by Mr. LI is 'not supported by evidence.'

10 A. Yes.

COURT: Now does interest need evidence?

A. Yes.

COURT: Interest is a matter of calculation, isn't it?

A. Yes.

COURT: What do you think Mr. LI meant by "not supported by evidence"?

A. We agreed to his disallowance, but I don't agree to Mr. WOO's point of view.

20 Q. Madam, in fact all those that are not supported by evidence are in fact interest payments claimed by you.

A. Yes.

Q. And then it was put into the capital, capitalized, and then calculated thereafter.

A. Yes.

30 Q. That comes to quite a difference, would you not agree, in your calculation on the final claim.

A. I acted on Mr. TSE's instruction.

Q. You mean that Mr. TSE in fact suggested you that that's the way to calculate this? Are you serious about that?

A. He instructed me to use the interest as capital.

40 Q. I'm not complaining that, madam. We are not talking about that. What I am saying is this, a simple proposition. If the interest you claim had not been paid and

- put into ... as capital, by the end of the day it makes a great difference, both the capital and interest due and owing.
- A. Yes.
- Q. And madam, knowing that, one has to be very careful, would you not agree with me?
- A. How carefully?
- Q. Very careful in calculating the interest and principal.
- 10 A. To make no mistake?
- Q. Only make entries which you can support, not just think out in your mind that it may well be that figure and put it in.
- A. Of course.
- Q. And if not certain, you must find it. Would you not agree?
- A. If I knew it was wrong it must be duly rectified.

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20 COURT: Well, if you knew it was wrong. I'm still curious about this sum of \$46,350. Why did Mr. LI disallow it?

A. I don't know myself. Had I known I would not have included it.

COURT: That's all you have to say about it? You do not know where the mistake was made, how the mistake was made?

A. Correct.

30 COURT: Could it be that having capitalized interest, you let the interest remain as was and claimed the same sum over again as capital? Could it be?

COURT: Could it be that you did that no less than six times?

A. I don't know myself.

COURT: Sorry, Mr. WOO, carry on.

MR. WOO: I am obliged, my Lord.

Q. You don't know yourself because you want to support yourself that the figure is over 1.6 million.

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- A. Why didn't you produce the list of the interest which I gave to Mr. TSE and then now you accuse me of doing something wrong.
- Q. Madam, you are not serious, are you, in saying that? The receipts are produced in court and the interest paid are the figures, not these figures being disallowed.
- 10 A. It has nothing to do with the receipts.
- Q. Of course it has nothing to do with the receipts.
- A. I don't know. That's why I asked.
- MR. JACKSON-LIPKIN: My Lord, I may have misheard it and your Lordship will correct me if I am wrong, but this lady said to Mr. WOO: Why don't you produce the list of interest I gave to Mr. TSE? Now you accuse me of doing something wrong." She is not talking about receipts. She was talking about the lists of interest.
- 20

COURT: What lists of interest?

MR. JACKSON-LIPKIN: My Lord, I haven't asked that question, but ...

COURT: But Mr. WOO was not accusing her of anything. Mr. WOO was doing ... just going through Mr. LI's figures. Look at Mr. LI's figures there showing the over-calculaton. What have you to say about that?

- 30 MR. JACKSON-LIPKIN: But his answer to the question was "We have produced all the receipts." As I understand it, this lady was not talking about the receipts but lists of interest handed over.

COURT: Mr. WOO, now that you are sitting down please remain seated. Two-thirty.

12.50 p.m. court adjourns

2.34 p.m. court resumse. 23rd March, 1979

Appearance as before.

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- Q. Madam, you are your own accountant most of the time?
- A. Yes.
- Q. And obviously you are interested in figures. You must have acquainted yourself with the documents concerning accounts in this case.
- 10 A. What I am interesting? I do not understand.
- Q. For instance, the account which you presented to Johnson, Stokes & Master in October, 1966.
- A. Yes.
- Q. Mr. Ronald LEE's report on accounts?
- A. Yes.
- Q. You must have acquainted yourself with that as well?
- A. A little bit.
- 20 Q. When you say a little bit, how much?
- A. Because I do not know the English.
- Q. But the calculation speak for themselves, doesn't it?
- A. Generally, yes.
- Q. And you answered my Lord before the luncheon adjournment, you have not the faintest idea why the deductions were made?
- A. I did not know how the deduction was made.
- 30 Q. Not even looking at the calculations of accounts itself are you saying that?
- A. Because I do not know the English remarks following that.
- Q. You didn't take the trouble to find out from your own account which you must understand, from the figures, you didn't do that, are you saying that?
- A. No.
- Q. Why?
- 40 A. By that time the proceedings had been brought about so I did not take further steps to do that.
- Q. You know that from Mr. Ronald LI's account even up to June, 1966, calculating up to June, 1966, the principal and interest due and owing as at the month of June, 1966 is less than 1.5 m., do you agree with me? Do you know that? If you don't I'll show it to you. Now madam, would you turn to page

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Exhibit B82

2, for instance, of the accounts.

COURT: Document what?

MR. WOO: It is document B at page B82.

Q. Now madam, the total principal was \$2,030,464.10.

A. Yes.

Q. And in fact the total principal in your account, if deducted certain matters, comes to that as well. I would come to that later.

A. Yes.

Q. Now for easy reference, I suppose I should ignore this. Now I go through that : "Total Principal Loans advanced by the

MR. WOO: This is in fact part of 82 which I simplify, cutting out those which do not concern the debit because this report was made, my Lord, in February, 1968, so it includes a lot of items after 29th of June, 1966. "Total Interest ..." - the next line is - "428,797.59." So if you add the two figures up, it would be 2,459,261.69.

A. Yes.

Q. Now we ignore the third line, "Cost of Public Auction" because that was after June and does not concern us. Now "Less: Total Repayments of Mortgage Loans by the Respondent up to 29th June, 1966" and that is 813,504 and "less Total Payments of Interest by the Respondent 224,041.30". Now if we add those two figures - that is 813,504 and 224,041.30, it comes up to 1 m. - that is 1,037,545.30. So then the amount due to you as on the date of the 29th of June, 1966 2,459,261.69 minus the sum 1,037,545.30 making a total of 1,421,716.39.

COURT: Mr. WOO, I do not see why you have been labouring on this point. In Mr. Ronald LI's own account at page 12, if you take away the 17,217 and the 1.2 m. you get this figure here.

MR. WOO: Yes, my Lord. What I am saying is, my Lord, if the calculations have been careful, even including - I just want to put this point to her - including the further charges as you claim you would put in in your calculations, the gross amount would be only 9,000 over 1.5 m., no more, and that, mind you, madam, was two months after your letter of the 28th of February, 1966.

10 A. That is your way of calculatin.
 Q. That is in fact Mr. Ronald LI's copy. If you turn to 83 --
 A. I do not see these accounts.
 Q. Turn to page 83, madam. If you read page B83. "Add: Further Loan advanced by the Claimant on 16th August, 1966 39,850.00" then "Add: Further Loan advanced by the Claimant on 15th September 1966 47,600" -

20 A. all put together --
 A. I can't read this, but just looking at this figure, if you add this figure to the 1.2 m., that is 1.5 m. odd.
 Q. That's right, 1.509.
 A. 1.516 something million.
 Q. Would you look at that calculation?
 A. There are figures including English. I don't understand. Now can I read? It is out of my ability to do so.

30 Q. Now madam, on your own calculation, I will come back to your own calculation at page 92. My Lord, it would be E92. Now your principal is made up of the principal of Mr. LI - the principal calculated by Mr. Ronald LI, 2,030,464, plus the claim amount, plus the lift charges and construction charges all put together. Now I am not going to labour on the point further but I would say this: if you turn

40 to page 94, assuming you are right, even right, on your final figure, 1,623,858.70, if you take away Mr. LI's figure of 126,072.90 --
 A. Yes.
 Q. That is, if I can refer you to my figure, the last column, the figure would be 1,497,785.80, even on your own figures. Never exceed 1.5 m.
 A. No, no, no. Also he took off \$126,000 from

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Exhibit B83

Exhibit E92

Exhibit E94

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- my accounts, but he also took off the payments from Mr. TSE, a few
- 10 Q. I have allowed your calculation of interest of 148,000 as opposed to the interest of Mr. LI's account of 428,000.
- A. From my calculation, the payments from Mr. TSE was \$850,000, but Mr. LI's figure was \$810,000 odd, so there was a deduction.
- Q. Look at page 94, right-hand column, assuming you are right in calculation, Principal B, Principal C - allow that, if you take away the construction money and, incidentally, your construction money is not 59,850, it is 39,850, isn't, because 20,000 has been paid and has been put into your account as well.
- A. We agreed that amount should be paid by J.S.M. but to which entry it was made I don't know.
- 20 Q. It was paid even on your J.S.M.'s account, paid to you, do you agree? You don't need me to go into that.
- A. Yes.
- Q. Even allowing the payment which you had not received - assuming for the time being that you hadn't received 20,000, I put in the 20,000 as well.
- A. Yes.
- 30 Q. But I would deduct the 59,850 out and also Lam Kee's payment is not 49,500, it is 47,600, that's true, isn't it? Even actual payment was 47,600.
- A. I don't remember.
- Q. I will come to that.
- A. You refer to my book. I do not remember.
- Q. Now if you take that figure out, madam, including your interest, the figure would be 1,401,508, would't it, second page?
- 40 A. I don't understand. I am not an accountant. I can't understand your way of working it. I only check the last figure. The balance due by the mortgage was \$390,000 odd plus the 1.2 m., then that was 1.5 something - \$1.59 m.
- Q. 1.509.
- A. 1.592.
- Q. Now madam, what I am trying to make is this: you are not the accountant. You say you are not an accountant.

- A. Correct.
- Q. So you could have made a mistake. I am saying that you could have made a mistake?
- A. I can't guarantee no mistake.
- Q. So you know that.
- A. Yes.
- Q. And your mistake could be disastrous. When I say disastrous, disastrous to the mortgagor.
- 10 A. What can I do? I just made a mistake without noticing.
- Q. But you realize that you may go wrong.
- A. Yes, boldly.
- Q. And well you boldly do it yourself and claim for a sum against the mortgagor.
- A. Yes.
- Q. And if you were careful, you would ask for a professional man to look into your accounts before you ever demanded for your payments, would you not?
- 20 A. I never tried.
- Q. There was no hurry to sell the property, am I right?
- A. Of course not.
- Q. The mortgage was executed for one year and has yet to run?
- A. No more extension.
- Q. No, the year is not up yet.
- A. When?
- 30 Q. Even one month after the mortgage has yet to expire?
- A. Due.

COURT: B39.

- Q. Madam, it is my mistake. The date you issued your letter, there was one month to run.
- A. Yes.
- Q. And you could easily have checked your account in that month.
- 40 A. I did not realize there was a mistake. I had made my own calculation.
- Q. Yes but you said, madam, there is no guarantee you wouldn't make a mistake. There is the danger there, you know it. It is clear to you, not being a professional man or a professional accountant.
- A. Yes.

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- Q. And yet you never do anything?
A. I did nothing.
Q. You see, Mr. TSE says he has been asking for accounts ever since February.
A. No.
Q. You know that he made such a fuss at your business office.
A. That took place much later.
Q. You are saying now that he never asked?
10 A. He asked for the figures which I did supply.
Q. Madam, your figures do not help anyone, does it?
A. I just supplied him with the figures which he requested for, nothing else.
Q. Madam, I put it to you that you very well knew that you may be wrong in your calculations but nevertheless you make a calculation in excess of 1.5 m.
20 A. I do not understand.
Q. Madam, I also put it to you that before that letter you knew that Mr. TSE was able to get another mortgage of 1.5 m. from Wing On Insurance Co.
A. I swear I did not know.
Q. And I put it to you, madam, that knowing that you could get that you are quite content with your own calculation of 1.6 m. because that is well over the limit whereby he could obtain a loan from the Wing On Insurance Co.
30 A. I did not mean that. If he was not satisfied with the accounts why did he not ask either me or J.S.M.?
Q. He said he asked you but you never supplied him.
A. Impossible.
Q. You deny it. Madam, as you say that you are not a professional accountant, I will ask you this question now.. With your entry in your book marked Exh.N and the letter which you say you rely on in your calculatin, it is virtually impossible for you to calculate the figure of 1.6m., is that right? Well the letter at page E132 which states \$69,850. which is only a figure.
40 A. A little less.
Q. 1.4, for instance?

Exhibit N

A. No.

Q. How do you know?

A. At the time when I was working on the figures I knew there was a slight mistake.

Q. Ah! I am putting to you this, madam, if you are now asked to calculate on the datas in your notebook Exh.N. and also that letter which is really nothing but a figure given to you, 69,850, it is impossible for you to calculate the amount and make up the

10 Q. To be very honest?

A. Yes.

Q. That means you can do it now?

A. No, not forthwith. I am so excited, my hands will be trembling.

Q. You worked over the weekened with someone which has professional training.

A. It is only my son, not a trained professional.

20 Q. And there are various items, figures of large sums of figures had to be supplied from somewhere else other than from your book and from this letter.

A. No.

Q. You are sure, madam?

A. It is all in the book.

Q. All in the book?

A. Mostly.

30 Q. I am not talking about mostly. There are large figure which couldn't be found in the book at all.

A. Generally they are all there.

Q. Very well, never mind. Madam, what I am saying is this: say, have it your way if you can. I repeat my question once more so that there is no mistake. I am saying to you from this book - the entries from this book plus the figure which you obtained from a letter, it is impossible, physically

40 impossible - I am putting to you - to calculate a figure equal to that of your letter of the 28th of April, 1966. Now think very carefully before you answer the question.

A. What did he mean? I cannot obtain this figure simply from the accounts from that book?

Q. That is exactly what I am saying, plus the figure in the letter which is no more than five --

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A. This letter is useless. I don't have to refer to it.

Q. Precisely. So on this book --

A. It is all in the book.

Q. Like the figure in that letter and I give you that figure. Can you? No matter how you juggle the figures.

A. I do not have to juggle the figures. I can refer to some documents.

10 Q. But this is the book, you said, this is what you said just now.

A. I relied on this book some ten years ago. That is the way I work on my accounts but now I may forget something which I have to refer to other documents.

COURT: I see. In 1966 it was that book plus memory, not the book alone?

A. At that time I did not have to rely on my memory. I have sufficient evidence and documents to refer to.

20 Q. But now it is impossible. Is that your answer? It is virtually physically impossible, is that right?

A. It is not impossible. It is that I need to do it slowly, with the assistance of my son. I am so confused.

Q. What did your son help you? Writing down what you say?

A. He had to writ out the things for me.

30 Q. What I am saying, madam, apart from your son may held you to writ it down, it is impossible for you to calculate. That is, I ask your son to sit in court to help you and give you that book to calculate the figure. It is impossible and that is the truth of the matter.

40 MR. JACKSON-LIPKIN: My Lord, I don't think that is quite fair. This lady has in fact prepared the document with her son which does show but my learned friend will not allow it to be put before your Lordhsip. To say to her now "you can't do it"--

COURT: Am I to accept it from the Bar that that does show it, Mr. Jackson-Lipkin, and that you can get that figure from the book?

MR. JACKSON-LIPKIN: Yes, my Lord.

COURT: The witness has been challenged three times on the book.

MR. JACKSON-LIPKIN: Oh no, I'm sorry, my Lord. Your Lordship misunderstood me.

COURT: Are we not still on that book - whether the sum of 1.6 m. as shown in B38 could come from that book alone?

10 MR. JACKSON-LIPKIN: No, my Lord, I believe we have passed from that. She said, "It is not impossible. I need to do it slowly with the assistance of my son." "What would your son do?" "He would help me to write things out." Then it was suggested to her it would be impossible for her to do it.

20 COURT: So you rise and say it has been done, meaning of course that it could be done contrary to what Mr. WOO has said, "It cannot be done."

MR. JACKSON-LIPKIN: My Lord, what I am saying is it is not fair to put to the witness, Mr. WOO having seen a document containing the final figure which has been done with the assistance of the son, to say, "You cannot do it" when he has a document in front of him. My Lord, that is not fair.

30 MR. WOO: My Lord, it is understood, my Lord, that document contains various figures of which this witness has already said not in this book, so how could possibly the answer be, "Yes, I can do it."? My learned friend may not be here when this was said.

COURT: I do not pay the slightest regard to what is contained in a document. I have not seen.

40 Q. Madam, I really want an answer from you if I may. The answer is "It is virtually impossible from this book to work out a figure which was disclosed in the letter of the 28th of April 1966," is that right?

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A. No.
Q. You say it is possible, very well.

MR. BERNACCHI: My Lord, I'm sorry. Could I take over the corss-examination now? In fact I have been studying this book whilst my learned friend has been cross-examining.

10 COURT: Now is it right that two counsel should cross-examine the same witness unless there is good reason to it? I know Mr. WONG examined in chief this morning but that was because Mr. JIackson-Lipkin was inadvertently away.

COURT: On the book I would like to ask a couple of questions myself.

BY COURT:-

Q. Madam, you and your husband are mortgagees in a substantial way personally?
A. Yes.
Q. And you yourself are the accountant?
20 A. It is only book-keeping.
Q. And whether it's book-keeping or accounting, the records are kept in exhibit 'N'?
A. Yes.
Q. Ever heard of 'interest tax'?
A. Yes.
Q. How do you account for interst tax in records of that nature? You don't have to answer this question.
30 A. Well, I worked out the interest tax figure on the interest rate 10 odd per cent.
Q. Can you work it out from that book?
A. I worked out the interest tax there.
Q. It is there?
A. Yes.
Q. Find out the item.
A. Well, those figures underlined in red are interest tax.

MR. BERNACCHI: Page what?

40 CLERK: 143.

MR. BERNACCHI: I think then it is debited to

the mortgagor's account for some reason.

COURT: Right. Mr. Bernacchi, you want some time?

MR. BERNACCHI: Yes. Either that or you would permit me, with consent of my learned friend, to cross-examine her on this.

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10 COURT: I don't think it is right and proper unless Mr. Jackson-Lipkin doesn't mind because it is really having two bites. I'll leave myself in your hands, Mr. Jackson-Lipkin.

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MR. JACKSON-LIPKIN: My Lord, if I may, I believe myself that it is open to a leader to step in and take over from his junior at any time but that is usually, in my experience, on a different subject altogether. My Lord, I may be wrong but that is my recollection.

20 COURT: I believe you are right. But this is the same bite.

MR. JACKSON-LIPKIN: Yes, my Lord. Well, I don't want to embarrass my learned friend. I'll be quite happy to have a short adjournment.

COURT: How many more witnesses have you got?

MR. JACKSON-LIPKIN: Five more. One of them, of course will be quite long, Mr. LIU; the others are all very short.

30 MR. BERNACCHI: My Lord, it is not the same bite. I am sorry. It is not cross-examining on accounts at all.

COURT: I see.

MR. BERNACCHI: It is entirely different. On the book but not on accounts at all.

COURT: Very well.

MR. JACKSON-LIPKIN: I wonder whether I might

ask your Lordship's indulgence therefore if my learned friend is going to cross-examine on the pages he has invited me to open in the book which neither of us have seen before. Would you give us a few moment so that Mr. WONG and I may see them?

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COURT: Let me know when you are ready.

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

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3.27 p.m. Court adjourns.

10 3.35 p.m. Court resumes.

Appearances as before.

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

FURTHER XXN. BY MR. BERNACCHI:-

Q. Madam, as produced you had pages 145 and 146 stuck together so that you went on from page 144 to page 147 of exhibit 'N'?

A. Yes.

Q. Do you agree that? I mean, is it a fact?

A. Yes.

20 Q. Now, when did you gum them together?

A. You refer to the date. I just worked up to that date and then I made a mistake and then I glued up the things.

Q. All right. 144 ends in June the 26th, 1965 and page 147 begins on the 7th of July, 1965.

A. Just according to the dates there. I can't remember.

30 Q. I see. I mean, you can take it from me that the last date on page 144 is June the 26th, 1965 and the first date on page 147 is July the 7th, 1965.

A. Yes.

Q. So that would it be you gumed the record sometime between those two dates?

A. I don't remember. It's just gumed up because of the mistakes or something else.

40 Q. Mistakes in recording and you recorded about the time that it happened? I mean, the 7th of July would have been recorded on the 7th of July and then again the 12th of

July would have been recorded on the 12th of July or the 13th of July?

A. May I look at it?

Q. No. I am sorry. You are not, I am afraid, allowed to look at the book just for a while. But I am questioning you. Is this book a book that you kept on a daily basis so that whatever date is there you made the entry on that day or the next day or at the latest two days after?

10 A. Sometimes a few days later. I took some notes from the office and then made entries into the book.

Q. So it would have been within a few days of the date in the book?

A. It depended.

Q. Well, are you telling me that it could have been a year after the event?

A. No.

20 Q. No. So it was a few days?

A. Eight or ten days or even half a month.

Q. All right. So if, and I am telling you it is, if the last date on page 144 is the 26th of June, 1965, and the first date on page 147 is the 7th of July, 1965, the pasting together of these pages, 145 and 146, must have occurred at the end of June/early July, 1965?

A. I don't remember.

30 Q. Look, please, it is your ...

A. Ten odd years ago. How can I remember? I did not glue it up now.

Q. Well either you pasted these together at the time and then carried on or you pasted it up years later, it is either one or the other.

A. At the time when the entries were made I found a mistake, I immediately glued it up.

40 Q. And as the first entry on page 147 is the 7th of July, 1965, would I be right in saying that it was sometime in July 1965 that you pasted these pages together?

COURT: Does that necessarily follow, Mr. Bernacchi?

MR. BERNACCHI: My Lord, I'll ask her - I am not meaning to be unfair to the witness -

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I'll ask her in a different way.

- 10 Q. At any rate, when you worked out what sum was owing to you and your husband to communicate to your solicitors for the purpose of their formal letter of the 28th of April, 1966, presumably you had then discovered the error and pasted the pages together?
- A. I mentioned it was the month of the last entry I immediately glued them up. I don't know now.
- Q. The month of the last entry on what page?
- A. Well, I worked up to the last entry of the last page and then I made a mistake on the next page, I discovered it so I glued up the pages.
- 20 Q. So basing on that last answer, as the last entry on page 144 is the 26th of June '65 and the first entry on page 147 is the 7th of July '65, you must have discovered the mistake in early July?
- A. I said I can't remember.
- Q. Look, I am sorry, but I ...
- MR. JACKSON-LIPKIN: This lady has said three times she can't remember. She has asked to see the book in order to answer. I think it is only fair that she should be allowed to see the book then she might be able to answer.
- 30 MR. BERNACCHI: My Lord, I'll let her see the book if the pages are stuck together again.
- Q. Now, this is the exhibit as presented to the court and you've asked to see it.
- A. May I see inside why it is stuck?
- Q. All right. So give it to me, please. So you, in clarification, you say that you stuck it up after you had seen a wrong entry in the page that you stuck up in effect?
- 40 A. Well, I could see there was an entry there I crossed out - the figures - the letters - two items.
- Q. That entry. I can tell you, its 30th of July, 1965.
- Q. So you mean directly you made a wrong entry

and had to cross it out you pasted the pages up and started again?

A. Ought to be so.

Q. I see. And presumably page 147, no writing would appear on that page until after you had crossed out or pasted it up, pages 145, 146?

A. Yes.

10 Q. Now, I would show you the book, page 145, because at counsel's table we have now managed to get it open. The last entry appears on the 24th of June, 1966.

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COURT: Can I have a look to see what is going on?

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A. Yes.

Q. So that following on your last answer, in April when you worked out the figures for submitting to the solicitors in connection with this formal demand, you'd only got to page 145?

20 A. There were entries afterwards.

COURT: Would you answer the question?

A. What did he say?

Q. I said that so in April 1966 when you worked out, according to your evidence, the figure that Mr. TSE owed you or your husband for giving to the solicitors, you had only got up to page 145 in your notebook?

A. Which figure? 1.6 million figure?

30 Q. Yes. The figure that the solicitors sent Mr. TSE by letter of the 28th of April '66 formally demanding that sum with the threat of - the formal notice of threat of sale if he doesn't pay it.

A. I worked up to here ...

INTERPRETER: She is pointing to page 147.

A. ... By that time I had made these entries.

40 Q. But how could you when the last entry on page 145 is June 1966, the 24th of June is the date of the sale.

A. I have to make these entries because they promised to pay. Although no interests were calculated but still I have to make

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such entries.

Q. What I am putting to you is that page 147 and page 148 were obviously made after the sale.

A. Yes. Even so I had already had these figures.

Q. What figures are you referring to?

A. Lift charges ...

Q. Which page?

A. I don't have to refer to this. I was aware of those items, the figures.

Q. Would you now agree with me that your book as regards Mr. TSE's account was only written on up to page 145 at the time of the sale?

A. Disagree.

Q. Well, how do you account for the fact that in the pages that you have sealed up the account is carried on to the 24th of June, 1966, the date of the sale?

A. I made a mistake about this, so I copied those entries on to this page 147.

Q. If that is right, it was done after the sale?

A. No.

Q. Well, how do you account for the fact that on page 145 there is an entry the same date as the sale?

A. Well, the date of the auction I just - I made those entries the same as

COURT: All counsel is putting to you is that you glued pages 144, 145 after the 24th of June.

A. Impossible.

Q. Imposisble.

COURT: Then how can you get the date of the 24th of June in page 145 if it has been glued together by then or gummed together?

A. I said I made a note of the accounts in office and then I copied it into this account, I discovered a mistake.

Q. You mean - I am not certain - but are you inferring by that last answer that the whole of this book was prepared after the date of the sale from accounts in the

- offices?
- A. No; partially, like these entries.
- Q. When you say 'like these entries', what entries are you referring to, what page?
- A. Page 147, 24th of June.
- Q. Now, are you agreeing with me now that this page 147 was written some time after the date of the sale?
- A. No, not the upper entries, only the lower entries.
- Q. Well, I suggest to you that whatever the date of the entries on page 144, the entries on page 147 and 148 were made after the date of the sale.
- A. I disagree.
- Q. Do you remember really the date that these pages, pages 145 and 146, were glued up?
- MR. JACKSON-LIPKIN: I thought she has already said twice that she doesn't remember, my Lord.
- Q. In other words, could it have been glued up recently?
- A. No. I haven't looked at this book for ten years.
- Q. It doesn't mean to say that you didn't glue it up recently. Could it have been or not?
- A. I don't remember things like glue it up after the auction.
- Q. Could it have been glued up recently?
- A. Even not impossible.
- Q. Even not impossible. In other words, it is possible?
- MR. WONG: I think she said it is more impossible.
- Q. I am sorry. Even more impossible. And those pages were very hard to unstick. I am not an expert on glue but do you mean to say, really mean to say that they were glued up so firmly over ten years ago that they were that hard to unstick?
- A. I don't know.
- MR. JACKSON-LIPKIN: My Lord, I am prepared to call evidence to help in it but still ...

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Court*

Defendants'
Evidence

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D.W.2.
WONG CHING
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Cross-
Examination
(Continued)

- COURT: In case that two leaders are not careful I might hold a court of enquiry as to who tempered with an exhibit of court.
- MR. JACKSON-LIPKIN: My Lord, may I suggest that my learned friend is bound by the answer he got before, "I don't remember. It is ten year ago.
- MR. BERNACCHI: No, I think
- 10 COURT: The evidence, with respect, Mr. Jackson-Lipkin, is not quite as clear-cut as all that. She has inferred it was not glued up after the 24th ...
- MR. BERNACCHI: No, she has ...
- COURT: She refuses to agree ...
- MR. BERNACCHI: That is right.
- COURT: ... That it was glued up after the 24th of June. So it was not as clear-cut as all that.
- 20 Q. Tell me, why didn't you just scrub all this page 145 out, cross it out and start again on 146?
- INTERPRETER: I am sorry?
- Q. Now, why didn't you scrub out, cross out, anything else and start on this clean page 146?
- A. It is not presentable.
- Q. But it was your own book, it wasn't presented - you didn't expect if at that time, did you, to be presented to court?
- 30 A. I don't like doing that.
- Q. I see. All right. Now, I'll ask you a completely different question. Give that book back to me, please. See what I am doing, please. This exhibit contains a number of scraps of papers. Now, I am removing one scrap of paper and presenting it to you. That is of course removed from 148, for the record. Now, turn to page 132, please.

COURT: What 132?

MR. BERNACCHI: E132.

COURT: What is E132?

MR. BERNACCHI: The letter from Mr. TSE to Mr. WONG about the lifts.

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COURT: Yes.

Q. Now, that is the original of Mr. TSE's copy at 132?

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A. Yes.

10 Q. Well now, as this original was in your book and you actually said that you used it in making calculations about how much money was owing, can you explain why ...

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A. No.

Q. What? That is your evidence in chief. Look, I am sorry ...

A. I put those documents together including some bills for payment of construction fees and letters.

20 Q. Answer my question first, please. You said in your evidence in chief that you used this document - you were referred to 132 which is Mr. TSE's copy. Now, my question has nothing to do with accounts. You've been questioned by my learned friend Mr. WU about accounts. I am asking if as it appears this original was in your possession all the time, can you explain why your lawyers would not admit that this was a genuine document?

30 Q. I see. Did you produce this book - this letter or this book to them?

A. No.

Q. Why not? Did your lawyers not inform you and your husband that all relevant documents had to be disclosed?

A. No, I don't know.

COURT: Mr. Bernacchi, will you be long?

40 MR. BERNACCHI: My Lord, I think perhaps if you adjourn now I'll be about a quarter of an hour.

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COURT: I'll adjourn this case now to Monday 10
o'clock but I am not rising.

4.18 p.m. Court adjourns.

23rd March, 1979.

26th March, 1979.

10.17 a.m. Court resumes.

Appearance as before.

10 MR. BERNACCHI: My Lord, there are a number of,
shall I say, attachments, some in Chinese,
that my learned friend has just had
translated and handed to us now. I don't
know whether he is using them or not, or if
they are admissible if he does; they are
certainly admissible if I use them, but in
view of the fact that I have just been
handed them now - my learned friend says we
have just been handed them now - yes, I
take that point - could I ask for about 10
minutes just to read through and decide
20 whether I want to use them or not?

COURT: So be it. Will you let me know when
you are ready? You want an adjournment for
a few minutes?

MR. BERNACCHI: To read through the fairly
numerous documents which were attached to
the book and now have been translated.

COURT: Very well.

30 MR. BERNACCHI: I think I will be only 10
minutes, but I just want to have a glance
at them.

MR. JACKSON-LIPKIN: May I respectfully suggest,
my Lord, we will try and do it in 10
minutes but could we let you know when we
are ready?

COURT: Yes, let me know when you are ready.

MR. JACKSON-LIPKIN: Thank you.

10.20 a.m. Court adjourns.

11.15 a.m. Court resumes.

Appearance as before.

MR. BERNACCHI: I'm sorry, your Lordship, we kept you so long. The documents required careful investigation.

MR. JACKSON-LIPKIN: My Lord, in accordance with my undertaking I hand back exhibit 'N'.

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10 XXN. BY MR. BERNACCHI (continues):

Q. Madam, last night I was referring you to one of the documents attached to the book, exhibit 'N', which is the original of the document P.132.(?) I think you agreed that it was the original of this document. Mr. Interpreter, hand this book to the witness. One of the documents in this was the original; that document, I think it is.

A. Yes.

20 COURT: What is that document number?

MR. BERNACCHI: Well, it is the original of document E.133 - 132, I'm sorry, the document which this witness says that she used in calculating the principal and interest of the letter of April, '66.

Q. Now, I'm sorry, but why was this letter not produced to your solicitors?

A. Well, I only found these documents some time afterwards when I was looking for the documents.

30

Q. When was some time afterwards, please?

A. This year.

Q. This year?

A. Yes.

Q. Well, you mean between the adjournment and this hearing today?

A. Yes.

Q. Now, I'm sorry, but why should that be? This book - your evidence is that you used

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Exhibit N

Exhibit E132

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*Exhibits B38
& B39*

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this book to get the figure that the solicitors sent to Mr. Tse; the formal demand plus, you said, this letter.

A. I don't understand.

Q. It's simple enough. Your evidence-in-chief was that you used this book, exhibit 'N', plus this letter to get at these figures that the solicitors sent to Mr. Tse in B.38. If you want to be reminded of B.38 by all means.

A. Well, my book contained the accounts of this amount.

Q. You used this book - your evidence-in-chief, you used this book together with this letter to arrive at the figures given by your solicitors to Mr. Tse in these formal letters, B.38 and B.39.

A. I cannot remember whether or not I used this letter as reference because in my account book it contained the figure mentioned in this letter.

Q. That was what you said in your evidence-in-chife, madam. You were specifically referred by your counsel, Mr. Wong, to E.138 and your book and you said - I'm sorry, E.132 and your book, and you said, "Yes, these were the two documents that I used for calculating the interest and the principal." Now you can't remember, did you say? I mean, it's your evidence.

A. I don't remember.

Q. Madam, you know perfectly well, your solicitors must have informed you, that it was necessary for you to produce all your documents and records that were relevant to this case. Why did you not produce this document, exhibit 'N' - the book, exhibit 'N'? Where is the book?

A. I have given him the book.

Q. When?

A. Last year.

Q. Before the hearing?

A. Yes.

Q. So you say that your solicitors, the responsible firm of Johnson, Stokes & Master, were given this book and yet they failed to disclose it? That's your evidence. No, I'm sorry, Mr. Interpreter. There is a process known as discovery.

- Each party is bound to discover to the other party all their documents.
- A. But this was photostated.
- Q. It was photostated. Well, I do not know when it was photostated but I can assure you, madam, that the plaintiff was only given the photostats just before the commencement of your evidence.
- A. How do I know? I don't know the procedure.
- 10 Q. So your evidence is that you produced this book to your solicitors last years, some time before the commencement of the case?
- Q. When you say, "He asked me for the accounts so I showed him the book," who? I mean, the clerk, Mr. Liu, or a solicitor or whom?
- A. Mr. Wong.
- Q. Oh, you mean the barrister, Mr. Wong?
- A. Yes.
- Q. I see. When was this book returned to you?
- 20 Q. You produced it.
- A. He took a glance and then returned it to me.
- Q. And were these documents - there are a number, not only this letter but a number of other documents attached to the exhibit. Were they attached to the exhibit when he took a glance?
- A. No.
- Q. Oh, I see. So when were they attached to the exhibit?
- 30 A. Recently.
- Q. To help you in your calculation, perhaps?
- A. These are not for the accounts.
- Q. All right. Why were they attached? If they were attached recently, why were they attached?
- A. Somebody - drafts for the ten instalment payments in respect of Mr. Tse.
- Q. Somewhere what?
- 40 INTERPRETER: Ten instalments, the payment to Mr. Tse.
- Q. Yes, I agree that they are somewhere, I am going to ask you questions on them, but why were they attached if it wasn't to help you in the calculating?
- A. I attached these documents because I consider very important.

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- 10 Q. So you attached the documents yourself, or someone attached them for you?
A. No, I did it myself.
Q. Well, where did you get this original letter that I am questioning you about? This original letter that was not disclosed.
A. I found it when I was searching for the documents.
Q. When was that?
A. This year.
Q. Well, where? Where did you find it?
A. I have so many documents messed up for my own reference at leisure hours.
20 Q. You see, talking about another document, your leading counsel, Mr. Jackson-Lipkin, in the course of Mr. Tse's evidence - he had refused to admit it, and then he said, "My Lord, the document is undoubtedly ours," and he made a full apology to the Court for refusing to admit the document originally. Not this document, another document.
A. Which one?
Q. That document apparently you didn't disclose to your advisers, legal advisers, at all.
A. Which one?
30 Q. The one in front of you. Why not?
A. I did not know this was required.
Q. Now you said something about the payment of the ten instalments; that you attached these odd documents to do with the payment of the ten instalments, you said.
A. Yes.
Q. This is a letter, the date is the 15th of May, 1965. Now read it through, would you? Now when was this letter received? You can have a look at the date, the 15th of May, 1965.
40 A. I have mentioned I just found these documents recently, I did not handled them.
Q. I see. Do you mean by that that you don't know when the document was received, or what do you mean by that?
A. I do not know when these documents were received, I don't remember.
Q. Now would you, whilst this document is there, would you turn to B.16, please?

Exhibit B16

COURT: Has it been given a number?

MR. BERNACCHI: Well, perhaps

MR. JACKSON-LIPKIN: May I make a suggestion?
The book was 'N'; could the last letter
that was used be N.1 and this one be N.2?

MR. BERNACCHI: That's very acceptable to me.

COURT: E.132 and the original is now N.1.

10 Q. Now do you see B.15, an agreed document -
B.16, sorry, an agreed document? That is
an agreed document. Do you see that?

A. Yes.

Q. Now this has a stamp, "Received this sum."
It is dated the 15th of May, 1965, and it
is for the 6th and 7th instalments and it
is from Lam Kee, signed and chopped.

A. Yes.

20 Q. That is where the similarity ends, the
actual text of this letter is different, it
is more extensive, and there is even a note
about it was paid in 70,000 and 30,000.

COURT: 70,000 and 50,000.

MR. BERNACCHI: The translation that I have
reads 30,000, my Lord. No, no, no, I'm
sorry, it's not that, I'm sorry, my Lord.
Yes, indeed, 70,000 and 50,000 ...

COURT: I see.

MR. BERNACCHI: ... and then there is a note,
70,000 and 30,000 as well.

A. What do you mean?

30 Q. I am pointing out at the moment the
extraordinary dissimilarities in what
purports to be the same document.

COURT: I don't understand, Mr. Bernacchi, one
is an invoice and the other is a receipt.

MR. BERNACCHI: My Lord, yes. I'm sorry, my
Lord, I think that is the explanation.

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& N2*

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Exhibit N3

Q. Now you see the 70,000 and 30,000 - 70,000 and 30,000?

INTERPRETER: 50,000?

Q. No, 70,000 and 30,000, which is somewhere on the original photostat copy. Do you say that you paid Lam Kee by two separate payments at separate dates?

A. May I refer to my book?

10 Q. Yes, but perhaps it would be simpler if you referred to another piece of paper. This is also taken from your loose sheets.

MR. JACKSON-LIPKIN: My Lord, may that be N.3?

Q. You see there that this document - I don't know who it was made by. Was it made by you or someone else?

A. Well, I copied this, translated from English to Chinese, from the mortgage deed from the solicitors' firm.

A. Here we have got ten instalments.

20 Q. Now here you have the 10th instalment and the 11th instalment paid by 70,000 and 30,000.

A. Any problem?

Q. Yes, and the 6th instalment and 7th instalment also 70,000, 70,000, paid 30th of September and 30th of October.

A. Yes.

30 Q. Well, I'm sorry, but - I mean, do you say that these figures - that these dates are correct or not?

A. Well, these are the days for the payment. Even he did not ask for payments the interest still have to be calculated from these days.

Q. Oh, I see. These represent the days that somebody, at some time, calculated the interest from?

A. Yes.

40 Q. I see. Not in any way the actual date of payment?

A. No.

Q. Again when did you disclose all these documents that you attached quite recently to this book to your solicitors?

A. I did not show these documents to my

solicitor.

Q. What about the document, the Chinese document from Lam Kee, exhibit N.2?

A. No, I did not show it.

Q. Well, now turn back to this document, N.2, the Chinese document from Lam Kee. Now would you agree with me that the actual letter starts: "Construction Site at Nos.52-54 ..." etc.?

10 A. Yes.

Q. And you or somebody on your behalf has put in: "Interest 168,000 14 and then a line, 154,000" and then, "In accordance with our date of payment \$70,000 (is to be paid) when up to the top (floor) \$30,000 (when) steel windows (are fixed)."

A. Yes.

Q. You or somebody wrote that in?

A. I do not know who wrote it.

20 Q. Well, did you write it?

A. No.

Q. I see. And ...

A. You ask me all these questions, these documents are not referred to me.

Q. Well, you put them into the book, you said so yourself just recently.

A. Yes.

Q. Why did you put them into the book?

A. I found these documents so I attached them to the book; they were not referring to me.

30 Q. Incidentally, where is the original of this photostat copy?

A. I don't know. I only found these documents so I attach them to the book.

Q. Incidentally, I'm not cross-examining you again on accounts, but in view of this note that someone has written on this letter could you find whether, in fact, this bill was paid as to 70,000 and then 30,000?

40 A. The 30,000 was not actually paid, that was paid when piling took place.

Q. That was paid when piling took place? But you or someone has said, "... (when) steel windows (are fixed)," not when piles are driven.

A. The cost of the piling was only \$90,000, it was not sufficient. He requested that the payment for the steel windows were used to cover the piling expenses, that he would

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not ask for the same amount for installing the steel windows in future.

COURT: Who is he?

A. Mr. Tse. Then I asked the advice of the solicitors and I was advised what it is.

Q. And is this the first time that you have said - make this statement to anybody, in the witness-box?

A. Yes.

10 Q. And then again, when you say "a solicitor" would it be a solicitor or Mr. Liu or whom?

A. I could not speak English, I could only ask Mr. Liu.

Q. I see. So you asked Mr. Liu?

A. Yes.

Q. Now this B.16 then, this is the receipt, and I will take it that it was a receipt in connection with this voucher N.2:

20 "Completion of paving concrete
from the twelfth floor \$70,000

Completion of brick walls from
the first to the fourth floor..\$50,000

Now that was receipted on the 15th of May, the same day apparently as the bill was sent.

A. Yes.

30 Q. But this does not bear any relation to your evidence that an arrangement was come to about advancing Mr. Tse \$30,000 a longtime before.

A. Correct.

Q. Correct that it doesn't bear any relation; these two documents don't bear any relation to your evidence, or what do you mean by 'correct'?

A. I have mentioned that I don't know these.

Q. So why Lam Kee sent this voucher and made this receipt, B.16 and N.2, you don't know?

MR. JACKSON-LIPKIN: My Lord ...

40 A. I don't remember this.

MR. JACKSON-LIPKIN: ... the payment of 120,000 is the subject of an entry on an agreed document showing the date of the architect's certificate, the date of the receipt and the date of the payment of the whole sum. It's in document K, which is an agreed document. These hand-written entries bear no relation whatever to the contents of the document.

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10 MR. BERNACCHI: Thank you, I'm obliged.

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Q. The accountant appointed a long time ago in this case, Mr. Ronald Li, certified that this sum of \$120,000 was paid in one lump sum on the 25th of May, 1965. Now how do you account for that?

A. May I explain the payment for the piling?

20 Q. Not unless it is explaining that the accountant that was agreed upon by both the parties to the appointed certified that it was paid in one lump sum on the 25th of May, 1965. Now either you can account for it or you cannot.

A. Explain what?

Q. You are saying that \$30,000 was paid a long time ago and only 70,000 was paid on this bill.

A. I know nothing about this. I can only refer to the book. You better ask Mr. WONG.

30 Q. I asked you to refer to the book about 20 minutes ago and you said, "I don't have to. Only \$70,000 was paid. I know that." I am talking about May 1965.

A. I asked you to let me see the book. I didn't say that I didn't want to see the book.

Q. The book is there. I handed it to you.

A. I got it just now.

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- Q. I mean look at the book to your heart's content, madam. You said ...
- A. You ask me then I will answer.
- Q. You said without looking at the book, you didn't have to look at the book. "I know that only \$70,000 was paid." Now look at the book.
- A. No, I said only \$120,000 was paid.
- Q. Look at the book for May, 1965. It's about page 142, I think, or 144.
- A. Yes, 70,000 and \$50,000 here paid.
- Q. It would have been very much more helpful, madam, if you had looked at the book when I invited you to look at the book 20 minutes ago.
- A. I was not given the book just then.
- Q. So that it was in fact paid in May.
- A. Yes.
- Q. So all this evidence about piling works cost more than Mr. TSE thought is irrelevant to my questions.
- MR. JACKSON-LIPKIN: My Lord, I really must rise in protest. Has your Lordship the Chinese document?
- COURT: Yes.
- MR. JACKSON-LIPKIN: It's a letter under Lam Kee Construction and it is written and it's translated. Somebody in some other handwriting at some other time has written some words down the side which have nothing to do with the contents of the letter.
- COURT: But that is what you say, it has nothing to do with the contents of the letter. That's what mr. Bernacchi was trying to find out.

MR. JACKSON-LIPKIN: My Lord, all this lady said, to my recollection, was when she was asked about 70 and 50 she didn't need to look at the book because she knew it was there. She never said anything about the book in relation to the \$30,000.

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10 COURT: But she did give the impression, Mr. Jackson-Lipkin, that the full sum need not be paid because the \$30,000 was paid beforehand. What was all this - the ledger or call it what you like, doing in this letter if it is not relevant?

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MR. JACKSON-LIPKIN: The \$30,000 was something to do with piling and steel windows whereas the 70 and 50,000 are fixed instalments.

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COURT: This is the Bernacchi's document and Mr. Bernacchi is entitled to

20 MR. JACKSON-LIPKIN: Oh, of course, my Lord, but it's being put to her that she said something which she didn't. The figures that she said were put in the book and she didn't need to look at were the 70 and 50 which you now see were in the book and which were paid on the due date.

30 COURT: Speaking for myself, I have no doubt otherwise she would not have been able to produce the receipt from Lam Kee. That would be simplicity itself. But the point remains. Mr. Bernacchi is entitled to cross-examine on that curious handwriting and the ledger thereof. What is it doing there? Why he wants to know, I don't know.

MR. JACKSON-LIPKIN: My Lord, I would have no objection to that being put to her.

Q. Anyhow, these peculiar handwritings, as your counsel says, wasn't your handwriting?

A. No.

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*Exhibits N3
& N145*

- Q. Now could you hand the book back to me again.
- MR. BERNACCHI: I think that has been already made an exhibit unless you have got the wrong document.
- COURT: That's N.3, isn't it?
- Q. This is another document. Now this is in English. Do you understand it or not?
- A. Generally, yes.
- 10 Q. I mean, is it just a document that you found recently and you included it in the book?
- A. Yes.
- Q. I see, all right. Now I want to come back to this page 145 please.
- COURT: What 145?
- MR. BERNACCHI: Of Exhibit N.
- 20 Q. interest paid 16,333.20, interest received 630 - 729 in the same figure and all the entries have been crossed out. Now where did you get ... Do you remember where you got this figure? It's a strange figure ending in 20c.
- A. Calculation of the interest. I made a mistake in the calculation so I crossed it out.
- Q. You see, you purported, until you crossed it out, to have been paid interest from June to July, 1965.
- 30 A. This is only a record. It was not paid.
- Q. I mean, I'll come back to my original question. Where did you get the fairly odd figure?
- A. Yes. I had a table to work out the accumulated interest, just like the other entries I made.
- Q. Well, would I be right in thinking then that your final accounts show this figure 16,335 or 33.20 as unpaid?
- A. Not yet.
- 40 Q. I see. So it was a mistake that it was paid when it wasn't paid.

- A. Yes.
- Q. Oh, I'm sorry. I'm still puzzled because if you turn to page 147 this item does not appear on either the debit or the credit column.
- A. It appears on the other side.
- Q. Oh, I see. Where does it appear on the other side, please?
- A. That's the first entry from June to July.
- 10 Q. So in re-calculating you have calculated it 15,909.40.
- A. Yes.
- Q. And you have debited it to this account. Now you said on Friday that having made a mistake you proceeded to stick up the page and begin again on page 147.
- A. Yes.
- Q. But this page 145 you have crossed it out, not stuck it over at that stage, you have crossed it out and then proceeded with other items at a later date.
- 20 A. I made a further mistake again, that's why I stuck that up.
- Q. Where? Where?

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(Interpreter shows the book to Mr. Bernacchi)

- Q. I see. A mistake in what you described it as?
- A. I wrote out "solicitors' firm."
- Q. Yes, crossed it out and wrote what?
- 30 A. Lift charges.
- Q. I see. Which item, \$20,000 or ...

INTERPRETER: It's 398.50.

- Q. As you say, you put in what you say it was and then again proceeded with further entries.
- A. Yes.
- Q. So you didn't either on the first crossing out or on the second crossing out proceed to paste over the pages. You just went on.
- A. Yes.
- 40 Q. Now it appears that in April of 1966 the last entry on this page 145 would have been the 3rd of November, 1965.
- A. Yes.
- Q. And in particular there would be no lift

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- charges, no payment to Lam kee, nothing like that.
- 10 A. Yes.
Q. So I am suggesting to you, madam, that in April 1966 your book, Exhibit N, had only reached the items 3/11/65 and further, that on that item only and the items before you could not have reached the figures you gave to your solicitors, again in April of 1966.
- A. Incorrect.
Q. And I suggest to you that all the entries on pages 145, 147, 148 were made at least after the sale of the property.
- A. Possibly because I have drafted notes to record the accounts.
Q. Is you answer, "Possibly that is correct"?
A. Yes.
Q. Thank you. Now a few general questions which I hope will not take long. You said at the beginning of your evidence that you had no fixed solicitors in your mortgage dealings, nor had the company, meaning the Third Respondent.
- 20 A. Correct.
Q. Now I would put it to you that at least for the first two years of the company's life, 1965 and 1966, they always or almost always used Johnson, Stokes & Master and the clerk Mr LIU.
- 30 A. Not necessarily, not fixed.
Q. Not fixed, but in fact although nobody said the company are only to use Johnson, Stokes & Master, in fact they always used Johnson, Stokes & Master through the clerk Mr LIU.
A. We also used C.Y. Kwan and Lo & Lo and Deacons.
Q. Oh yes, but I'm talking of the years 65 and 66 and I'm talking of the company.
A. I used Lo & Lo in 1965.
- 40 Q. You used it or the company used it?
A. The company.
Q. Is it in the minutes in any way?
A. The Cameron Road mortgage was handled by Lo & Lo.
Q. The Cameron Road mortgage? All right. When you say the Cameron Road mortgage are you referring to the mortgage itself or to the sale, the eventual sale?
A. The mortgage.

- Q. I see. The actual sale was handled by Johnson, Stokes & Master's Interpreter. Mr. LIU.
- A. Yes, the auction was handed by Mr. LIU.
- Q. No, it wasn't an auction, it was a private sale.
- A. Cameron Road?
- Q. Yes.
- A. It was auctioned.
- 10 Q. Well, I won't waste time. The sale was handled by Johnson, Stokes & Master, Interpreter Mr. LIU.
- A. Yes.
- Q. All right. So the actual mortgage you say was handled by Lo & Lo. Any other work in the years 65/66 which was handled by anybody else but Johnson, Stokes & Master's Interpreter, Mr. LIU?
- A. I don't remember.
- 20 Q. All right. Now you also during these years mostly used Johnson, Stokes & Master's clerk, Mr. LIU.
- A. Not necessarily.
- Q. Not necessarily. I didn't say necessarily. You heard the Interpreter say TAI BO FUN which means "mostly."
- A. Yes.
- Q. Yes, thank you. Now you said, dealing with 1964, that you had the To Kwan Company Limited whose shareholders were yourself, your husband and your son.
- 30 A. Yes.
- Q. Why, therefore, did you form Chit Sen Company Limited later in 1964 when you already had what was a family company?
- A. The shareholders for To Kwan Company were only three, and in Chit Sen we had six.
- Q. You and your husband were subscribers to the Memorandum of Chit Sen.
- 40 A. Yes.
- Q. At the first meeting of directors you, your husband and your elder son were each given 50 shares.
- A. Yes.
- Q. Then three younger children who were still students were given 20, 10 and 10 shares respectively.
- A. Yes.
- Q. So that it is these children that you were

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referring to as the extra shareholders?
A. Yes.
Q. Again, I don't know ... Why couldn't you have done the same in To Kwan Company?

COURT: Does that have any relevance, Mr. Bernacchi? With respect, I think it has been admitted ad nauseum, "This is a private company - so what? A family company."

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(Continued)

10 Q. Now you were referred to B.32 and B.32 was the solicitor's letter.

A. Yes.

Q. And then you said that Mr TSE came and saw you and asked you not to exercise the power of sale.

A. Yes.

Q. And according to my notes you said, "We told him we would not exercise the power of sale."

20 A. I told him we would not exercise the power of sale?

Q. After this letter was written, 28th February, so presumably you were referring to some time in March.

A. I had no such power.

Q. Are you now telling the court that you never said, "We told him we would not exercise the power of sale"? You were questioned about this letter and what happened afterwards.

30

A. I did not say so.

Q. It was in your evidence in chief.

COURT: If my memory serves me correctly, she said something of that nature, but it was in a qualified way. It's purely from memory. I have a note in-chief: "I worked out the total amount of interest. TSE came to see me and asked for property not to be auctioned. He said he would try to pay the interest. I discussed the matter with my husband. We did not receive further interest so my husband, WONG, instructed J.S.M. to write B.38. TSE did not ask how much to redeem." That's the evidence in chief.

40

MR. BERNACCHI: My learned junior's note which is very much the same as my note, but in more extended a form, reads: "After the letter had been sent, that is B.32, Mr.TSE came up and asked not to sell the property. He said he would raise the interest. I discussed with my husband and we decided not to exercise the power of sale immediately." Then he goes on...

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10 COURT: That's as far as it goes.

MR. BERNACCHI: Yes, my Lord. Perhaps you may like to give directions for that particular part of the examination in-chief to be typed out by the court stenographer, if you feel it is important, but I can't take it any further than that.

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Q. Now I refer you to the letters again, B.38 and B.39. Did TSE come to see you at all in April, 1966?

20 A. He came to me after he had received the letter.

Q. No, that was at the end of April.

A. Yes.

Q. There are 28 days from the 1st of April to the 28th of April. Now did Mr. TSE come to see you and if so how many times?

A. I don't remember.

30 Q. He may or may not have come to see you and if he had come to see you you don't remember how many times. Is that your answer?

A. Yes.

Q. Now do you remember him coming to see you and handing a copy of E.1?

A. It did not occur.

Q. Well now, why do you say it did not occur when you have already said that you don't recollect whether he came or not, and if he came how many times.

40 A. Although I could not remember how many times he came, but I can remember what he brought along.

Q. Your see, I put it to you that he, having brought along a letter which looked as if he was going to arrange to have the mortgage transferred, you immediately or

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- your husband immediately gave instructions to the solicitors to send him these letters of the 28th of April.
- A. None at all.
- MR. BERNACCHI: Now I'm going on to the auction.
- COURT: We will hear about that this afternoon. Adjourned until two -thirty.
- 12.53 p.m. court adjourns
- 2.34 p.m. Court resumes. 26th March, 1979.
- 10 Appearances as before.
- D.W.2 -CHING wai-shork o.f.a.
- XXN. BY MR. BERNACCHI continues:
- Q. Now just a few more questions, madam. First of all, I would put it to you that any remark that Mr. TSE may have made about the reserve price was made at the auction, do you agree?
- A. Yes.
- 20 Q. Now your husband has already said that you and he attended at least two auctions in 1965, auctions by Mr. Watson.
- A. 1965.
- Q. Yes, I pointed them out to your husband and your husband agreed with me then. It was two of these properties that were bought by your company.
- A. Yes.
- 30 Q. Now why then was it necessary for the lawyer to introduce you and your husband to Mr. Watson because Mr. Watson already knew you and your husband?
- A. I did not know if he remembered or not.
- Q. Now your husband has said that 30 or 40 persons attended the auction and you used the same expression.
- A. Yes.
- 40 Q. Now in property dealings, you have been in property dealings for a long time, your husband has been in property dealings for very much longer.
- A. The same time.

Q. Your husband said in evidence that he has been in property dealings since 1935. Was it the same as you?

A. Yes.

Q. Well now you must have attended hundreds of auctions, if not thousands - at least hundreds of auctions in that time of these many years.

A. No.

10 Q. I mean, we have evidence and you have already admitted it now that you attended auctions in 1965 and 1966.

A. Yes.

Q. Was that a new thing to you - to attend auctions?

A. Not new to me.

Q. So you had attended many before - that is all that I am asking you.

A. Yes, I did attend.

20 Q. Well then why is it that you remember the number of persons that attended this particular auction, 30 to 40 persons?

A. I remember, that is why I remember.

Q. You don't know why you remember but you just remember?

A. Yes.

Q. You see, the evidence for the claimant, Mr. TSE, and his witnesses was that this particular auction was very badly attended.

30 A. According to my recollection, it is 30 or 40.

Q. Now listen carefully to the next question: I would put it to you that at the auction, you held your hand up when the auctioneer mentioned the reserve price. You did not yourself say anything about Chit Sen Co. Ltd.

Q. And bid the reserve price by holding up your hand?

40 A. Yes.

Q. Now do you remember Mr. TSE when the property had been knocked down saying, "Not fair, not fair," or words to that effect?

A. It did not occur.

Q. According to you, he did not say anything then when it went for 1, 2 ...

A. No.

Q. Did not Mr. ATSE confront you either just after the auction and have in effect a row

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Exhibit N4

with you? He spoke harsh words, you spoke harsh words?

A. No.

Q. Now I want you - this is the final document - to refer again to the documents attached to Exh.N. Could this document be a marked N4?

COURT: N4.

10 Q. Now you said before lunch all these documents were found by you and then just recently and clipped into the book.

A. Yes.

Q. Now would you have a look at the document. Was that document made by you or not?

A. Yes.

Q. Well when was it made?

A. I prepared it recently. Well I had drafted the notes before. I just lost it recently.

Q. It was made just recently?

20 A. I have these figures before, not the last two items.

Q. Madam you've said two different things in the last few minutes. You've said you made this document quite recently. Then you said you had these figures before but not the last two items. Do you mean that you had these figures in your head before and then quite recently you jotted them down into writing?

30 A. These figures are shown in the long list. These figures appear in the notice to Mr. TSE for the outstanding interest., the same figures.

Q. I am not worried about where these figures come from for the moment. I am worried about the date that that document was made. Do I understand that it was made quite recently, yes or no?

40 A. I only prepared these one or two days for my own recently.

Q. You only prepared it one or two days ago?

A. Yes.

Q. And in fact the 46 and 53, both on the side of the document and below the document, refer to your own numbering of the exhibits, not the number that they are in court but your own defendant's numbering.

A. No., I just found these two figures somewhere, then I noted it down.

Q. Who gave it to you?

A. I found it here at N.

Q. Look, turn to B32. You see at B32, the figure 46 appears also.

A. Yes.

Q. And on B38 the figure 53 appears also.

A. Yes. Probably I found them here.

10 Q. Those are the numbers of the defendants' affidavit - I'm sorry

Q. I'm sorry, but you put it down, you've admitted to being the originator of this document.

A. Yes. I agree. From the respondents' documents - these two numbers were from the respondents' documents.

Q. Could it be that this list was prepared after the respondents had filed their list before the agreed bundles were made up?

20 A. No, last Friday when the counsel asked me for this list I remembered the numbers, so I put down those numbers.

Q. Those numbers appear on the respondents' list of documents. You remembered them from that, is that what you are saying?

A. Yes.

Q. Well now I want you to answer me this: the heading is interest correction?

30 A. Yes.

Q. What is your meaning of the word 'correction'?

A. I meant I found the mistake in the calculation of this interest. I had since put it down in another piece of paper, the corrected figures.

Q. So in 1966, you didn't have the corrected figures, you had the older figures?

A. No.

40 Q. You see, I put it to you that this document in itself shows that you are now trying in 1979 to justify your figures of 1966.

A. You may refer to Ronald LI's accounts.

Q. Butr you didn't have Ronald LI's accounts in 1966. Where can I find them?

A. But we have submitted accounts for him to work out. These are only up to April.

Q. Do you mean to say that Ronald LI at one time had this book?

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Exhibit N

- 10
- A. Together with this book the documents, bills and the proper accounts I prepared with the reference documents to him.
- Q. Do you mean to say Ronald LI had this book Exh.N, yes or no?
- A. He has seen it.
- Q. He has seen it?
- A. Yes.
- Q. And yet your solicitors - you are saying that although your solicitors were acting for you, at the time of Ronald LI's accounts, they didn't think to discover this book in the respondents' list of documents?
- A. I went with Mr. TSE when I produced this book and the other documents to Ronald LI in the presence of McElney and Mr. LIU.
- 20
- Q. I put it to you that no one in this case had ever, including your own solicitors, have seen the book until very recently.
- A. That I don't know.

REXN.BY MR. WONG

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- 30
- Q. Madam, would you cast your mind back to the very first question which Mr. Bernacchi posed to you after the luncheon adjournment. Now I come to the question you again. I shall put the question to you again. Just listen to the question. Mr. Bernacchi asked you, "I put it to you the remark of Mr. TSE about the reserve price as made at the auction". Now that is Mr. Bernacchi's question.
- A. Yes.
- Q. And did you understand the question when it was first posed to you after the luncheon adjournment?
- A. Yes.
- 40
- Q. Yes now Mr. Bernacchi told you that it is his client's case that the protest of Mr. TSE about the reserve price was made at the auction. Now do you understand me so far?
- A. Yes.
- Q. I would like to ask you whether it was true or not that Mr. TSE protested about the reserve price at the auction?
- A. He did not protest.
- Q. Now madam, would you now turn to Bundle N.

Exhibit N

- Bundle N together with the enclosures, is there any reason why you don't want to disclose these documents? Just yes or no?
- A. Nobody asked me to produce them.
- Q. Now madam, you were asked by the learned judge about the interest entires in Exh.N. For example, at page 143, do you see an entry "2nd October, 1964" for \$4,380. Do you see that?
- 10 A. Yes.
- Q. Now that sum according to page 143 was payment of interest tax?
- A. Yes.
- Q. Now when you prepared the figure of \$1.6 m. for Johnson, Stokes & Master, did you include this entry in that computation"
- A. No, this payment was to be made by us.
- Q. Does that apply to other entries in Exh.N in relation to payment of interest tax?
- 20 A. Yes.

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Re-examination
(Continued)

COURT: The interest would have gone against TSE's account as capital, wouldn't it, as principal, later.

MR. WONG: But this is interest tax.

COURT: I am totally aware of that, Mr. WONG and I am also aware that it is the borrower of the principal to pay the tax in the first instance. Here if the lenders paid it it is debited to the lender's account as principal, I would have thought.

30

- Q. Madam, you are also asked about a figure of \$46,750.
- A. Where?
- Q. In Ronald LI's report.
- A. Where is it?
- Q. Exh. E92.
- A. Yes.
- Q. And may the witness be supplied with Bundle F as well please? Perhaps I'll turn to something else first, madam. Now under the mortgage, you were obliged to pay the piling expenses?
- 40 A. Yes.
- Q. And would you now look at bundle A6? (quotes)

Exhibit E92

Exhibit A6

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"(c) by a third instalment of \$90,000.00 on the 30th day of June 1964 or upon production of the certificate of the said Architect certifying that the piling work on the said pieces or parcels of ground has been completed..."

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10

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MR. BERNACCHI: My Lord, I'm sorry. I do not feel very strongly over this objection but is it open to my learned friend to re-examine on an answer which was not an answer to a question I asked and which was - we wasted some time because she did not answer the question I asked. If your Lordship thinks it is all right, I have no strong feelings, but it was an answer which was not an answer to the question I asked.

Q. Madam, that third instalment of \$90,000 - was it paid in full for piling charges?

A. He requested for 120,000.

20 Q. Tell us about the full arrangement in relation to piling charges then?

A. The piling charges were to be paid by two instalments. When I asked him for payment of interest, he said that could be deducted from the piling charges and that he would pay up the balance in future. May I refer to the book? The first payment was either 5....

Q. Refer to your book by all means.

30 COURT: It is obviously clear: payments were not in accordance with the mortgage because the interest was being capitalized and so much was taken away form the \$1.2 m. mortgage.

MR. WONG: Yes, my Lord. My Lord, the point I was trying to make was that the sum for interst was merely taken away but it was not capitalized again.

COURT: What do you mean 'the sum was not capitalized'?

40 MR. WONG: The sum in relation to interest that was overdue was deducted from the piling charges but there was no separate

charge for the sum that had been deducted from the piling charges.

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COURT: Try again.

MR. WONG: The interest that was overdue was deducted from the piling charges.

COURT: It was deducted from the building mortgage, wasn't it?

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MR. WONG: Yes, deducted from the building mortgage.

10 COURT: It was so much at once loaned, so that was a capitalization of the interest, wasn't it?

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(Continued)

MR. WONG: Yes, my Lord.

COURT: Now what is the next point? The parties are agreed on that. There is no dispute that TSE agreed to the capitalization of the interest.

20 Q. Madam, in relation to your computation of 1.6 m., when did you first discover that there might be errors in that computation? May I put the question differently? Prior to the report of Mr. Ronald LI, did you realize that there might be errors in your computation of 1.6 m.?

A. I did not know.

Q. After the report of Mr. Ronald LI, did you realize that your computation of 1.6 m. might be erroneous?

30 A. In his report he only disallowed those items which were not supported by receipts, but the smaller amounts which were given more than once were not understandable to me because I did not know English.

Q. Turn back to Exh.N again, page 145. Could you mark with an asterisk in red --

Exhibit N145

MR. BERNACCHI: I'm sorry. Basically I would object to marking the original when there are so many photostat copies.

40 Q. Could you mark in a copy of page 145 in red

an asterisk as to which entry in page 145 - which wrong entry in page 145 prompted you to start a new page? Do you understand the question first, madam? Now madam, listen carefully to the question: which particular entry, not entires, which particular entry in page 145 prompted you to start a new page?

A. The entries were not mistaken, only that I did not make neat entries. I wanted it to be copied again. These entries are all present elsewhere.

MR. WONG: That is all I have for re-examination.

MR. BERNACCHI: For what it is worth, I think perhaps this should be admitted. She did in fact mark with an asterisk. Whether she misunderstood the question or whether she thought better of it, it is for you to decide.

In the Privy Council

ON APPEAL

FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN

TSE KWONG LAM *Appellant*

AND

WONG CHIT SEN *1st Respondent*

CHING WAI SHOK (or SHOOK) *2nd Respondent*

CHIT SEN COMPANY LIMITED *3rd Respondent*

RECORD OF PROCEEDINGS

VOLUME II

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