

32/83

O N A P P E A L

FROM THE SUPREME COURT OF HONG KONG
COURT OF APPEAL

B E T W E E N :

EDWARD WONG FINANCE COMPANY LIMITED Appellants
(Plaintiffs)

- and -

10 JOHNSON STOKES AND MASTER Respondents
(a firm) (Fifth
Defendants and
Third Party)

CASE FOR THE RESPONDENTS

RECORD

INTRODUCTION

20 This is an appeal by leave of the Court of Appeal in Hong Kong from a Judgment of that Court (Roberts C.J. and Silke J.; Li J.A. dissenting) allowing with costs an Appeal by the Respondents from the Judgment of Penlington J. in the Supreme Court of Hong Kong High Court dated 13th August 1980. pp.584 and 586 p. 44

30 In summary the question for decision on this Appeal is whether the Respondents who are a large and long established firm of Solicitors in Hong Kong acted negligently and in breach of duty towards their client the Appellant and proposed Mortgagee in a conveyancing transaction when in accordance with an established conveyancing practice in Hong Kong they paid over completion monies received from their client to another Solicitor namely, Danny Yiu, who was acting for the vendor, against certain undertakings given by him, he subsequently having absconded with the funds without fulfilling his undertakings.

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FACTS

pp.588-593 The premises in question were the Ground Floor of a factory building at 76 Hung To Road, Kwun Tong ("the premises"). They were occupied as tenant by Po Fung Finishing Works Limited ("Po Fung") of which the 2nd, 3rd and 4th Defendants were Directors. The owner of the whole building was a Mr. Ho Sau Ki. Ho Sau Ki had agreed to sell the whole building to Lucky Time Finance Co. Limited ("Lucky Time") for \$3,800,000.00 by an Agreement dated 17th December 1975. Lucky Time by a further Agreement of the same date had in turn agreed to sell the whole building to Chan Sun Ming and Kai Ming Investment Company Limited ("Kai Ming") for \$5,250,000.00.

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Completion under both Agreements was to be on 29th January 1976. Chan Sun Ming and Kai Ming had agreed between them that Chan Sun Ming would be getting the Ground Floor for \$1,740,000.00 and Kai Ming was to get the upper Floors for \$3,510,000.00.

p. 660 20

Chan Sun Ming had then approached Shum Ka Ching(the Third Defendant) and offered to sell the Ground Floor to Mr. Shum's Company Po Fung for \$1,850,000.00. Mr. Shum accepted Mr. Chan's offer and two documents in Chinese were signed and deposits totalling \$185,000.00 were paid on behalf of Po Fung to Chan.

pp.659-662

In order to complete the purchase Mr. Shum needed to raise finance and for this purpose he went on 21.1.76 to see Mr. Edward Wong of the Plaintiff Company which carried on business as a Licensed Money-Lender. Mr. Wong had had other dealings with Po Fung and had known the Directors personally for several years.

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Mr. Wong agreed that the Plaintiff would finance the purchase on the security of a debenture and personal guarantees from the Second, Third and Fourth Defendants and accordingly he arranged to go immediately to see a Miss Leung Wai Ling ("Miss Leung") an Assistant Solicitor employed by the Respondents at their offices which were in the same building as those of the Plaintiffs. Miss Leung was in charge of the conveyancing section of the Respondents office under the supervision of a Partner and had acted for Mr. Wong and various of his Companies in several previous transactions.

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Miss Leung was informed by Mr. Wong of the proposed transaction and asked to complete the legal formalities which she agreed to do. Prior to going to see Mr. Wong Mr. Shum had purchased a "shelf" company from his Accountant which he intended to use as a vehicle for the purchase. The company was called North American Meat Packing Co. Limited ("N.A.M.P.Ltd.").

10 However on perusing its Memorandum of Association Miss Leung expressed the view that by reason of its name and its objects the company was inappropriate for use as a land holding company. However she informed Shum that the Respondents could provide a suitable shelf company and accordingly Mr. Shum agreed to purchase the First Defendant, Bovill Investments Limited, from the Respondents for this purpose. The

20 First Defendant subsequently changed its name to Po May Investments Limited.

During the meeting on 21st January Miss Leung was informed by Mr. Wong that the sum to be advanced was about \$1.3 million but that she would be informed of the exact amount later. She was told that Mr. Danny Yiu, Solicitor, was acting for the vendors. There was discussion with regard to the precise form that the Plaintiff's security for the proposed advances would take. Mr.

30 Wong told Miss Leung that the intended completion date was January 26th and that in any event the parties wished the matter concluded prior to Chinese New Year - a four day public holiday commencing on 30th January 1976 - as he would be leaving Hong Kong at that time. As there was an intervening weekend Miss Leung told Mr. Wong and Mr. Shum that she could not arrange all formalities

40 by the 26th January but expected to be able to do so by 27th January.

Following the meeting of 21st January 1976 Miss Leung wrote to the Plaintiff with copies to the Second and Third Defendants acknowledging the Plaintiff's instructions regarding preparation of the security documents for the proposed advance and the instructions of the Second and Third Defendants regarding acquisition of a shelf company. She further

50 wrote to Danny Yiu on the same day asking for the Title Deeds and particulars of the amount required for completion.

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Danny Yiu replied by letter dated 23rd January 1976 enclosing copies of the Title Deeds and giving details of the amounts required for completion and costs and disbursements. He also enclosed a draft assignment of the premises from Ho Sau Ki. The form of draft assignment was unacceptable to Miss Leung as it omitted Chan Sun Ming as confirmer. She spoke to Danny Yiu on the telephone and agreed with him that the trans-
action should be restructured to reflect a
direct sale from Ho Sau Ki and Lucky Time to
Bovill. She had also discussed the matter of
costs of the conveyancing transaction with
him and understood that in accordance with
Hong Kong conveyancing practice he was to
receive full scale costs meaning that either
he was acting for both vendor and purchaser or
that he was acting only for the vendor in
circumstances where the purchaser was
unrepresented. In accordance with such
practice a Solicitor acting only for the vendor
in situations where the purchaser is separately
represented would only be entitled to half
scale costs.

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Miss Leung had arranged with Danny Yiu that "completion" would take place on 27th January 1976 in what is referred to as the "Hong Kong style". The essence of such a form of completion is that completion monies are
forwarded to the vendor's Solicitors in return
for an undertaking by the latter to forward the
necessary documents of Title duly executed
within a stated period.

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p. 610

Miss Leung accordingly wrote to Danny Yiu on 27th January 1976 to inform him that the Respondents would ask their client (the Appellants) to put them in funds to the amount of \$1,355,000.00 and would forward a cheque for that amount against the undertaking of
Danny Yiu to send to her within 10 days all
relevant documents duly executed and to arrange
for registration of certain documents in the
Land Office and that if he was not in a
position to send the documents within that time
he would hold the sum of \$1,355,000.00 to the
Respondents' order and not release it to his
clients. Danny Yiu gave the undertaking as
requested by signing and returning the duplicate
letter of 27th January 1976.

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pp.612-613

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Miss Leung also prepared a letter for

signature by the Third Defendant on behalf of the First Defendant whereby the First Defendant directed the Plaintiff to forward the sum of \$1,355,000.00 to Danny Yiu towards payment of the balance of the purchase price of the premises. This was signed by the Third Defendant for the First Defendant and sent to the Plaintiff by Miss Leung under cover of a letter of the same date, 27th January 1976, requesting the Plaintiff's cheque for \$1,355,000.00 in favour of Danny Yiu.

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However when Mr. Wong of the Plaintiff came to Miss Leung's office on the 27th January 1976 with the drafts to be sent to Danny Yiu these totalled \$1,665,000.00. Mr. Wong explained to Miss Leung that this was because the Plaintiff had agreed to advance an additional \$310,000.00 on the security of some post-dated cheques. Miss Leung had not been previously informed of this arrangement but after confirming the amount required for completion on the telephone with Danny Yiu she then sent over the three Cashiers Orders to him under cover of a further letter of 27th January 1976. On the same day the Second, Third and Fourth Defendants attended at the office of Danny Yiu for the purpose of paying his costs and obtained their receipt therefor.

pp.618,
619,620

p.617

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Shortly thereafter Danny Yiu fled from Hong Kong without honouring his undertaking and taking with him a large amount of money including the completion monies received from the Plaintiff in respect of the purchase of the premises. Rumours of his departure spread and the Third Defendant contacted Miss Leung who wrote to Danny Yiu on 16th February 1976 enquiring as to the position. No reply was received. On 17th February 1976 the Fifth Defendants were asked to pass over all relevant documents to new Solicitors acting for the Plaintiff. The sale and purchase of the premises to the First Defendant was thus not completed and the Plaintiff brought these proceedings to recover the sums advanced to the First Defendant together with costs and interest.

THE ISSUES

50 The Plaintiff claims to recover \$1,295,000.00

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p. 674

pp. 7-10

p. 11

and interest from the First Defendant as money lent. The Plaintiff claimed \$1,355,000.00 and interest against the Second, Third and Fourth Defendants on a guarantee executed by them on 27th January 1976. The Plaintiff claimed damages for breach of contract against the Fifth Defendants, who were acting as the Plaintiff's Solicitors in the transaction. The particulars of breach of duty alleged against the Fifth Defendants are spelt out in the Re-Re-Amended Statement of Claim, paragraphs 30-31. The damages sustained are particularised in paragraph 31. 10

pp. 13-15

pp. 16-21

The First, Second, Third and Fourth Defendants defended the Plaintiff's claim on the grounds appearing in their Defence and Counterclaim. The First, Second, Third and Fourth Defendants also claimed relief in Third Party proceedings against the Fifth Defendants, claiming that the Fifth Defendants had also acted as Solicitors for the First, Second, Third and Fourth Defendants in the transaction on the grounds set out in the Third Party Statement of Claim. 20

pp. 27-33

pp. 22-26

The Fifth Defendants in their Defence to the Plaintiff's claim admitted that they acted as Solicitors for the Plaintiff in the transaction and that they owed duties of skill and care. They denied they acted in any way in breach of the duties owed to the Plaintiff. In particular they averred that they had at all material times acted in accordance with normal and customary conveyancing practice in Hong Kong. In their Defence to the Third Party claim of the First, Second, Third and Fourth Defendants the Fifth Defendants denied that they acted as Solicitors for the First, Second, Third or Fourth Defendants in the transaction for any purpose other than the supply of the First Defendant as a shelf company and arranging its change of name, Minutes and returns to the Companies Registry ancillary thereto. In particular the Fifth Defendants denied having acted for the First, Second, Third or Fourth Defendants in any manner relating to the proposed purchase by the First Defendant of the premises or the furnishing of security for advances to be made by the Plaintiff to the First, Second, Third or Fourth Defendants. 30 40 50

10 Insofar as the claim against the Fifth Defendants was concerned, the Judge below accepted the evidence given on behalf of the Plaintiff by the President of the Law Society that conveyancing transactions in Hong Kong were almost inevitably completed not in accordance with the traditional (in England) exchange of money for documents but by what has been referred to as "the Hong Kong style" of completion by one Solicitor forwarding cash by cheque or otherwise against an undertaking on the part of the other Solicitor to produce duly executed documents of title within a reasonable time. He also accepted the evidence of the Senior Partner of the Fifth Defendants that the Hong Kong style of completion resulted in conveyancing being done more speedily and that this was for the public benefit.

p. 52

20 However he then came to the view that because of particular factors involved in the transaction it called for precautions to the extent of an English style completion. He found that Miss Leung of the Fifth Defendants should in the circumstances have informed Mr. Wong of the Plaintiff and the Second, Third and Fourth Defendants that there was a risk in the transaction which could be avoided by an English style completion. He held that Miss Leung had not given the full consideration to the dangers involved which the transaction required and was therefore negligent. He further held that if in fact Mr. Wong of the Plaintiff had been warned of the risk he would not have gone ahead and sent the Cashier Orders to Danny Yiu in the way that he did.

p.53 L1.
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p.53 L.19

30 Insofar as the claim of the First, Second Third and Fourth Defendants against the Fifth Defendants was concerned the Learned Judge held that there was no contractual relationship of Solicitor and client between them. However he went on to hold that because the Third Defendant was of the belief that the Fifth Defendants were also acting for the First, Second, Third and Fourth Defendants and that (as he found) they had not been told that the Fifth Defendants were only acting for the Plaintiff, therefore a duty of care was owed by the Fifth Defendants to the First, Second, Third and Fourth Defendants on the Hedley Byrne principle and that the Fifth Defendants were

p.53 L.23

p.53 L.34

p.53 L.47

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p.54 L.12

50 Insofar as the claim of the First, Second Third and Fourth Defendants against the Fifth Defendants was concerned the Learned Judge held that there was no contractual relationship of Solicitor and client between them. However he went on to hold that because the Third Defendant was of the belief that the Fifth Defendants were also acting for the First, Second, Third and Fourth Defendants and that (as he found) they had not been told that the Fifth Defendants were only acting for the Plaintiff, therefore a duty of care was owed by the Fifth Defendants to the First, Second, Third and Fourth Defendants on the Hedley Byrne principle and that the Fifth Defendants were

p.54 L.38

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p.54 L.26 liable to indemnify the First, Second, Third and Fourth Defendants against their liability to the Plaintiff. In so holding he found that the interests of the Plaintiff (the proposed Mortgagee) and those of the other Defendants (as proposed purchaser and guarantors respectively) were identical.

p. 556 The Fifth Defendants Appealed against the Judge's Order and the Grounds of Appeal are set out in the Notice of Appeal. 10

JUDGMENTS OF THE COURT OF APPEAL

p. 566 The Court of Appeal allowed the Appeal of the Fifth Defendants by a majority; (Roberts C.J. and Silke A.J.A.; Li J.A. dissenting). The Judgment of the Court was given by Roberts C.J. Two main points were argued on the Appeal. The first concerned the duty owed by a Solicitor to his client which involved a scrutiny of conveyancing practice in Hong Kong. The second was whether or not the Fifth Defendants were acting for or owed a duty of care to the First, Second, Third or Fourth Defendants in the transaction of purchase and mortgage of the premises. 20

p. 568

p. 569 L.1 Concurrently with the finding of the Judge below the Court of Appeal found that "virtually every conveyance and mortgage completed in Hong Kong within living memory has been effected by what has become known as the Hong Kong style of completion." 30

p. 568 L.11 It was not in dispute and accepted in the Court of Appeal and below that this was the first occasion on which use of the Hong Kong style had ever resulted in loss to a purchaser, by reason of the dishonesty of a Solicitor acting for the vendor.

The Court went on to consider four questions :-

- "(a) Is the duty of care owed by a Solicitor to his client sufficiently discharged if he follows a general, approved practice? 40
- (b) Would an ordinary reasonable competent Solicitor ("the prudent Solicitor") have followed the Hong Kong style in January 1976 ("1976")?

(c) Should a "prudent Solicitor" have followed the Hong Kong style in 1976?

(d) What is the true "Hong Kong style"; does it contain any preconditions?

10 Under (a), the Court accepted that Charlesworth on Negligence Sixth Edition para.202 accurately summarised the law in stating "Compliance with common practice is evidence that reasonable care has been used, but is not conclusive since 'no-one can claim to be excused for want of care because others are as careless as himself'". Thus the Court held that compliance by a member of a profession with a general practice of his profession is strong evidence that he has exercised reasonable care but not conclusive. p.570 L.10 p.570 L.20

20 Under (b), the Court held that what Miss Leung of the Fifth Defendants had done was unquestionably supported by common practice and by the implicit approval of the Law Society contained in a circular dated 30th March 1966. It held that a Hong Kong Solicitor would in 1976 (considering the matter without the benefit of hind-sight) have regarded the Law Society's Circular as authorising him to use the Hong Kong style of completion unless there were warning bells. The Court went on to hold that there were no warning bells and no factors which should have warned Miss Leung that such degree of risk as was always present in the Hong Kong style was enhanced in the particular transaction. p.571 L1.1-29

40 Under (c), the Court whilst recognising the existence of a risk both under the Hong Kong and English style of completion, that loss might be caused by the dishonesty of one of the Solicitors, nevertheless held that the possibility of abuse of the practice was not sufficient to show that it was improvident for a Solicitor to follow it unless the practice involved a substantial degree of risk in theory or had been shown to be dangerous in practice. The Court held it not unreasonable in general terms for a Solicitor to assume that his fellow Solicitor would honour his promise bearing in mind the disastrous professional consequences if he were to act otherwise. Accordingly the Court p.572 L.5

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took the view that there was no reason why a prudent Solicitor should not have adopted the Hong Kong style of completion in 1976.

Under (d), the Court considered the question of whether the true Hong Kong style of completion contained preconditions such as those suggested by Mr. Edmund Cheung, who had testified that he would have taken special precautions in this particular transaction. It had been argued by the Plaintiff that the Hong Kong style completion required a prudent purchaser's Solicitor to ask himself a number of questions before adopting the Hong Kong style of completion. However the Court found that there was no evidence that the precautions that Mr. Cheung, even if not affected by hind-sight, thought desirable, were adopted by any other Solicitors in 1976. Their Lordships could find no evidence that Mr. Cheung was typical of a prudent Hong Kong Solicitor in 1976 and were of the view that he was more careful than the latter might have been in imposing upon himself even greater precautions than that required by the Law Society.

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p.573 L.30

The Court then considered and rejected the Plaintiff's argument that there was a duty on a Solicitor to explain to his client the risks involved in the Hong Kong style of completion. The Court held that in the particular circumstances of the case there was no doubt that if in fact Mr. Wong of the Plaintiff had sought an explanation from Miss Leung he would have been told that the practice which she proposed to follow had been adopted in virtually every Hong Kong conveyance within living memory; that no purchaser had ever lost as a previous result of it; and that the Fifth Defendants had had similar dealings with Danny Yiu without mishap. In the light of such an explanation it was in the Court's view highly improbable that the Plaintiff would nevertheless have insisted on an alternative form of procedure being adopted.

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The Court accordingly concluded that a prudent Solicitor could and would have following the Hong Kong style in 1976 as did Miss Leung, that there were no warning bells and that the Plaintiff had failed to establish negligence on the part of the

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Fifth Defendants. In the light of these findings the Court found it unnecessary then to rule on the question of whether or not any duty of care was owed by the Fifth Defendants to the First, Second, Third and Fourth Defendants on the Hedley Byrne principle.

10 In his dissenting judgment Li J.A. held the Fifth Defendants to have been negligent in the transaction. He held that the test to be applied was an objective test namely that of a reasonable diligent and competent Solicitor; that is to say whether a reasonable diligent and competent Solicitor could foresee in January 1976 that damage could result by adopting the Hong Kong practice of completion. He accepted that Miss Leung complied with the general practice which had been practiced for years without ill results and that this went a long way towards showing that she was not negligent. However he said that a further question to be asked is "Could she foresee the risk of ill result at the material time as an ordinary reasonable prudent person?" He held that the answer must be in the affirmative. He thus held that the Hong Kong practice had in it an inherent risk namely that of a dishonest Solicitor or his Accounting Clerk and therefore he found that to adopt the Hong Kong practice amounted to failing to exercise due care and the ordinary prudence of a reasonable man and accordingly that the Fifth Defendants were negligent.

p.575 L.18

p.577 L.30

p.577 L.40

p.578 L.25

40 He further held that notwithstanding the evidence of Mr. Wong of the Plaintiff, that he knew his money was being paid to the vendor's Solicitor before he had received his full entitlement and that there had been previous transactions conducted in the same way without loss, that as Mr. Wong was not informed of any alternative safer method of completion and did not know that he had a choice that he was entitled to a full measure of compensatory damages and not merely to nominal damages.

p.580 L.20

50 Insofar as the relationship between the Fifth Defendants and the other Defendants was concerned, he assumed that there was no contractual relationship apart from that of

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purchasing a shelf company namely, the First Defendant. However he went on to hold that because Miss Leung had drafted documents for the Second, Third and Fourth Defendants to sign on behalf of the First Defendant addressed to the Plaintiff, therefore in the course of discharging her duty to the Plaintiff, the new mortgagee, Miss Leung had adopted an advisory role towards the First, Second, Third and Fourth Defendants in the purchase of the property; that the Second, Third and Fourth Defendants were justified in relying upon her advice and did so to their detriment and that there was therefore a duty of care owed by the Fifth Defendants to the First, Second, Third and Fourth Defendants on the Hedley Byrne principle which had been breached and therefore the Fifth Defendants were liable in negligence to the other Defendants. 10 20

ISSUES BEFORE THE BOARD

The question for decision on this Appeal is summarised in paragraph 2 above. The Fifth Defendants as Solicitors for the Plaintiff were under a duty to use reasonable care and skill in acting on the Plaintiff's behalf in the transaction. However, Solicitors like all professional persons do not guarantee the successful conclusion of any enterprise nor must they bring the highest possible level of skill to bear. The degree of skill required from them is only the skill which one would expect from a good competent member of the profession. In particular the Fifth Defendants submit that a professional person is not negligent if he follows a general practice which is accepted by a substantial portion of the profession. In Vancouver General Hospital v. MacDaniel and Another (1935) 152 LT 56. Lord Alness said at page 57 : 30 40

"That however is not all. Not only do these medical men approve in terms of the Appellants' technique, but they affirm, as will be observed from the passages cited sup, that the technique challenged by the Respondent is in accord with general if not with universal practice today in Canada and the United States. If that be so, it is in their Lordships' opinion, again difficult to affirm that negligence on the part of the Appellants 50

is proved. A Defendant charged with negligence can clear his feet if he shows that he has acted in accord with general and approved practice

Thus the following questions arise:-

- (a) Did the practice of the profession on which the Respondents rely exist?
- 10 (b) If so, was it a reasonable practice?
- (c) Was Miss Leung entitled to rely upon it?
- (d) Was there any duty on Miss Leung to explain to Mr. Wong what risks were involved and that there was a different form of procedure available for completion?
- 20 (e) Even if an explanation had been given would Mr. Wong have gone ahead in any event?

As to (a), there can be no doubt that the Hong Kong style of completion was the recognised and accepted mode of completing conveyancing transactions had had been such for many decades. All of the Judges who heard the case accepted that it existed as a practice of the profession and the evidence was undisputed that 99.9% of conveyancing transactions were completed in accordance with the Hong Kong style of completion. It had not gone wrong before due to a Solicitor's dishonesty. It was for the benefit of the public because it greatly speeded up conveyancing. This is an important consideration in Hong Kong where the property market has been particularly volatile, a factor of which the local Court will have been well aware.

As to (b), the very fact that a responsible and respectable body of Legal Practitioners has for decades past acted in accordance with the established practice of the profession is very strong evidence that it is a reasonable practice. Is it to be said that it is unreasonable because it relied in part upon the professional integrity and honesty of fellow members of the profession? The risk of dishonesty is no doubt foreseeable

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in objective terms. Does the existence of this risk render the whole practice of the profession negligent? For if the existence of such a risk makes it negligent to adopt the Hong Kong style of completion then the entirety of the profession in Hong Kong are necessarily negligent because the Hong Kong style of completion has been in use for decades and is estimated to have been employed in 99.9% of conveyancing transactions. It is submitted that it is not unreasonable for a Solicitor to rely upon the integrity and honesty of a fellow Solicitor and accept his undertaking in the course of a Hong Kong style completion. Solicitors are officers of the Court and the professional consequences of any form of dishonesty whether in the nature of theft or forgery are disastrous. In England completion can be by post and this necessarily involves a reliance upon the honesty of the vendor's Solicitors that for example the documents of title are not forged; and it is a fact that English style completion is not proof against the possible dishonesty of the Vendor's Solicitors. As the Hong Kong practice is one recognised and implicitly approved of by the Law Society it is submitted that it is a reasonable practice and one which any member of the profession is entitled to adopt.

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As to (c), Miss Leung as a member of the profession in Hong Kong was entitled to rely upon and act in accordance with the general established practice and to arrange for completion of the conveyancing transaction in accordance with that practice. There were no "warning bells" to put Miss Leung upon notice that there was any particular risk involved in this transaction over and above such inherent but remote risk of dishonesty which might exist in every conveyancing transaction.

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As to (d), it is submitted that there was clearly no duty on Miss Leung to explain the risks involved to the Plaintiff or to advise that any other form of completion was available. No such duty would arise unless the proposed method to be adopted was one out of the ordinary and not in accordance with accepted practice or was one carrying with it a risk over and above that inherent in the Hong Kong style of completion. A client employing the services of a Solicitor impliedly authorises

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10 him to conduct the transaction in question in accordance with the practices and uses of the profession. The mode of completion is a matter of conveyancing machinery with which a client would not be familiar. It is not the practice to explain such conveyancing machinery and the possibilities for dishonesty and such an explanation need not be given unless the transaction is unusual or out of the ordinary or it is specifically requested. The Court of Appeal were right in holding that no duty of explanation arose.

p.573 L.38

20 As to (e), Mr. Wong knew that the Cashier Orders were made payable to Danny Yiu and Company direct. If therefore he had asked himself whether the transaction carried within itself any risk he would have appreciated the theoretical possibility of loss due to the dishonesty of the vendor's Solicitor. He did not raise any queries of Miss Leung as to this and it is submitted that had he done so he would have received the answer postulated by the Court of Appeal. In the face of such an explanation he would have gone ahead with the transaction without insisting upon any alternative form of completion. In the premises if the Fifth Defendants were negligent because Miss Leung failed to warn the Plaintiff of the possible risk of dishonesty or that there was another form of completion available, the Respondents submit that the Plaintiff would only be entitled to an award of nominal damages. See Sykes v. Midland Bank Executor [1971] 1 QB 113.

p.574 L.1

CONCLUSION

40 The Respondents accordingly submit that the decision of the Court of Appeal ought to be affirmed and that this Appeal should be dismissed with costs for the following amongst other

R E A S O N S

- (1) BECAUSE the Respondents were not negligent or in breach of duty towards the Plaintiff in paying the completion monies over to the vendor's Solicitor in accordance with established Hong Kong conveyancing practice;

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- (2) BECAUSE the Judgment of the Court of Appeal of Roberts C.J. and Silke A.J.A. was right;
- (3) BECAUSE the Respondents were not under any duty to warn the Plaintiff of the risk of dishonesty on the part of the vendor's Solicitor or that there was an alternative method of completion available;
- (4) BECAUSE even if the Plaintiff had been advised of the risk of such dishonesty and that an alternative mode of completion was available, the Plaintiff would not have required any alternative method of completion to be adopted; 10
- (5) BECAUSE therefore only nominal damages flow from any such omission or breach of duty on the Respondents' part.

L. PRICE Q.C.

R. MILLS-OWEN Q.C.

No.15 of 1982

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE SUPREME COURT OF HONG KONG
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COMPANY LIMITED (Plaintiffs)

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JOHNSON STOKES AND Respondents
MASTER (a firm) (Fifth
Defendants
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Party)

CASE FOR THE RESPONDENTS

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