

U R G E N T

專責委員會(2)文件編號 T38
SC(2) Paper No. T38



便箋 Memo

發文人 From : AD(LA)
受文人 To : DD(C)
本函檔號 Our Ref : HD(LAD) 68/8
來函檔號 Your Ref :
電話 Tel : 2761 7111
來函日期 Dated :
圖文傳真 Fax : 2711 3690
圖文傳真 Fax :
日期 Date : 26 July 2003
總頁數 Total Pages :

Writ of Summons
PSPS Hung Hom Peninsula

Please see the attached writ on the Hung Hom Peninsula *(con)*

2. Let's discuss after you have had the opportunity to study it.

(Anthony WONG)
AD(LA)

Encl.

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CIVIL ACTION NO. 2761 OF 2003

BETWEEN:

FIRST STAR DEVELOPMENT LIMITED

and

THE HONG KONG HOUSING AUTHORITY

1st Defendant

THE SECRETARY FOR JUSTICE
(ON BEHALF OF THE GOVERNMENT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION)

2nd Defendant

To the 1st Defendant of Hong Kong Housing Authority Headquarters, 33 Fat Kwong Street, Ho Man Tin, Kowloon, Hong Kong.

To the 2nd Defendant of 4th Floor, High Block, Queensway Government Offices, 66 Queensway, Hong Kong.

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the back.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the registry of High Court the accompanying ACKNOWLEDGEMENT OF SERVICE stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if return the Acknowledgement without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgement may be entered against you forthwith without further notice.

Issued for the Registry of the High Court this 25th day of July 2003.

Registrar

Note:- This Writ may not be served later than 12 calendar months beginning with that date unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgement of Service are given with the accompanying form.



2003, No. 2761

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
ACTION NO. 2761 OF 2003

BETWEEN

FIRST STAR DEVELOPMENT LIMITED

Plaintiff

and

THE HONG KONG HOUSING AUTHORITY

1st Defendant

THE SECRETARY FOR JUSTICE
(ON BEHALF OF THE GOVERNMENT
OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION)

2nd Defendant

STATEMENT OF CLAIM

1. At all material times, the Plaintiff is a company incorporated by shares in Hong Kong with limited liability under the Companies Ordinance, Cap. 32, Laws of Hong Kong.
2. In around 1979, the Government of Hong Kong ("Government") established the Private Sector Participation Scheme ("PSPS Scheme") for the purpose of assisting Hong Kong residents who fulfilled certain financial criteria set down by the Hong Kong Housing Authority ("Housing Authority") under its statutory duty, to purchase their own

homes at subsidized prices under the Home Ownership Scheme ("HOS").

3. The PSPS Scheme operated as follows:-

- (3.1) The Government invited tenders from proposed developers to lease a particular lot of land for a fixed term of years. Under the PSPS Scheme, the successful tenderer ("Developer") would contract to build and manage a residential estate conforming to certain prescribed conditions and specifications laid down by the Government in the contract.
- (3.2) The Housing Authority, also acting on behalf of the Government, would determine and nominate to whom the Developer could sell each residential unit and at what price. The Developer would nevertheless receive a fixed price as agreed in the contract.
- (3.3) The Developer was prohibited from selling any of the residential units on the open market, and could only sell to purchasers nominated by the Housing Authority.
- (3.4) The Developer was permitted under the contract to build certain units for commercial purposes including car parking spaces and to sell the same on the open market. However, the market reality was that the price of the commercial units was obviously controlled by the price and level of occupation of the residential units.
- (3.5) Before the Developer could agree to assign or assign any of the residential units:-

Not to be supplied by demand

- (a) Pre-Sale Consent had to be granted by the Director of Lands; and
- (b) The Housing Authority had to nominate a purchaser to purchase a specified residential unit from the Developer.
- (3.6) The invariable practices that had always been observed under the PSPS Scheme ("PSPS Practice") (and which became and were implied terms of the Memorandum of Agreement as hereinafter pleaded) were that:-
- (a) All parties including the Government and the Housing Authority would endeavour to facilitate and complete the entire development and sale of all the units without delay and as soon as reasonably possible;
- (b) No party would act deliberately in any way to thwart, obstruct, frustrate or delay the process and progress of either the development of the project or the sale of the units; and
- (c) The Director of Lands acting on behalf of the Government, would grant Pre-Sale Consent without delay and as soon as reasonably possible, and the Housing Authority, would use its utmost endeavours to nominate purchasers to purchase the residential units without delay and as soon as reasonably possible. Further, the grant of Pre-Sale Consent and the nomination of purchasers would be organised and completed well before the completion of construction, and before the granting of the Occupation Permit or Certificate of Compliance.
- Not practice*

4. Pursuant to the PSPS scheme, and on the basis of, and relying upon, and/or induced by the PSPS Practice pleaded above, the Plaintiff submitted a Form of Tender on 25th June 1999 ("Tender") to the Government of the Hong Kong Special Administrative Region (also referred to as the 2nd Defendant herein).
5. Under the terms of the said Tender, the Plaintiff tendered by way of premium for the grant of the lot of land at Kowloon Inland Lot No. 11076, Hung Hom Bay Reclamation Area, Kowloon ("Lot") at a premium of HK\$583 million, for a term of 50 years commencing from the date of the Memorandum of Agreement hereinafter referred to, subject to the General and Special Conditions of Sale annexed thereto.
6. In or about September 1999, the Tender was accepted by the 2nd Defendant. A Memorandum of Agreement dated 22nd October 1999 was thereupon executed between the Plaintiff of the one part and the Chief Executive ("Chief Executive") on behalf of the 2nd Defendant of the other part ("Memorandum of Agreement"), which the Plaintiff avers was subject to and so contained the Implied Terms (as hereinafter pleaded), as a matter of law, or as a matter of necessary implication in order to give business efficacy to the contract, under the Memorandum of Agreement.
7. After the execution of the Memorandum of Agreement and pursuant thereto, the Plaintiff became the Lessee of the Lot and duly proceeded to carry out the development of the project thereat known as the Hung Hom Peninsula ("Development").
8. As both the 2nd Defendant and the 1st Defendant ("the Defendants") have been well aware at all material times, the Plaintiff was induced by,

and relied upon the Defendants' conduct and representations under the PSPS Practice, and upon the Implied Terms (as hereinafter pleaded), as the basis to tender for the Lot and thereafter to enter into the Memorandum of Agreement with the 2nd Defendant, on which basis the Plaintiff had based its tender price and its critical calculations for the related financial arrangements for the Development. The Plaintiff repeats in particular that at all material times, and in accordance with the applicable contractual terms, the invariable practice as between the parties in order to fulfill the applicable contractual terms under the PSPS Practice and under the Implied Terms (as hereinafter pleaded) was that the 1st Defendant also on behalf of the 2nd Defendant would nominate home-owners to purchase the residential units well before the Development was completed.

9. The Plaintiff will refer to the Memorandum of Agreement at the trial hereof for its full terms, meaning and effect in conjunction with the implied terms therein arising, inter alia, from the PSPS Practice under the PSPS Scheme.
10. The Plaintiff avers in the premises that there was to be implied into the Memorandum of Agreement, as a matter of law and as a matter of necessary implication to give business efficacy to the said contract, (alternatively as a collateral contract between the Plaintiff and the 2nd Defendant) that the 2nd Defendant would observe and perform its part of the obligations as follows ("Implied Terms"):-
 - (a) To cooperate with the Plaintiff to implement the said contracts and without delay to take all such steps as are reasonably necessary so to do including in particular to grant Pre-Sale Consent with reasonable dispatch after the Plaintiff's application

(which, as pleaded hereinafter, was made on 31st March 2000 but not granted until 20th November 2002).

- (b) To observe and abide by the PSPS Practice under the PSPS Scheme which had hitherto been observed as between the Plaintiff and both Defendants, and not to resile from the PSPS Practice after it had been acted upon by the Plaintiff in entering into the contract under the Memorandum of Agreement herein, and/or the collateral contract, to the knowledge of the 2nd Defendant and/or the 1st Defendant (as subsequently happened in this case);
- (c) To act reasonably and to exercise reasonable endeavours to procure and to ensure that the 1st Defendant timeously located and nominated suitable purchasers of the residential units;
- (d) To cooperate with and assist the Plaintiff to sell the residential units to suitable nominated purchasers, by having nominated promptly and without delay suitable purchasers to buy the residential units developed by the Plaintiff on the faith of the PSPS Practice, and thereby not to inhibit the optimum reasonably achievable cash flow to the Plaintiff arising from deposits received from and payments made upon completion of sale by suitable nominated purchasers;
- (e) Not to allow, cause, procure or influence the 2nd Defendant's governmental departments or agencies or the 1st Defendant to thwart, obstruct, frustrate or delay the process and progress of either the development of the Development or the sale of the units, including in particular, to refrain from allowing, causing, procuring or influencing the Director of Lands to delay or

obstruct the grant of Pre-Sale Consent to the Plaintiff in contravention of the PSPS Practice and beyond the ordinary course of events;

- (f) To refrain from, or from allowing, such conduct as may be designed to, or would effectively result in, the thwarting, obstructing, frustrating or delaying of the process and progress of either the development of the Development or the sale of the units, whether by acting through its governmental departments or agencies or through the 1st Defendant, or otherwise liaising or colluding or acting in concert with them to the said effect;
 - (g) To persuade and procure the 1st Defendant:
 - (i) to take such actions on its part as are needed for the proper fulfillment of the said contractual terms pleaded above; and
 - (ii) not to thwart, obstruct, frustrate or delay the sale of the residential units and the nomination of purchasers.
11. The Plaintiff avers that the 1st Defendant as a joint contractor (as pleaded hereinbelow) or further and alternatively by reason of the collateral contract (as pleaded hereinbelow) was and is subject therein to like implied obligations, *mutatis mutandis*, as are set out in Paragraph 10 above:

Particulars

- (a) The Memorandum of Agreement (and in particular the Special Conditions therein) imposes duties and obligations and confers

rights upon the 1st Defendant, and certain applicable obligations of the 1st Defendant under the Memorandum of Agreement are to be specifically discharged through the Director of Housing;

- (b) Accordingly, by intervening in the implementation of the Memorandum of Agreement and taking upon itself the discharge of the corresponding obligations under the Memorandum of Agreement, as well as by the receipt of the corresponding rights thereunder, in return for the Plaintiff doing likewise, the 1st Defendant has thereby become bound by the terms of the said contract under the Memorandum of Agreement (including the obligations arising thereunder under the Implied Terms);
- (c) Further or alternatively, by reason of the matters aforesaid and the 1st Defendant's said conduct, a collateral contract between the Plaintiff and the 1st Defendant upon the relevant terms of the Memorandum of Agreement (including the obligations arising thereunder under the Implied Terms) thereby came into existence;
- (d) Further in entering into the Memorandum of Agreement which purports to confer rights and impose obligations on, inter alia, both the 1st and 2nd Defendants, the 2nd Defendant acted for and on behalf of itself and of the 1st Defendant, and each was bound by the said contract under the Memorandum of Agreement (including the obligations arising thereunder under the Implied Terms);
- (e) Further or alternatively, the 1st Defendant was the agent of the 2nd Defendant for all purposes material to the contract under the Memorandum of Agreement (including the obligations arising thereunder under the Implied Terms);

- (f) The 2nd Defendant was and is under an obligation, implied as a matter of necessary implication to give business efficacy to the aforesaid contracts, to persuade and procure and ensure that the 1st Defendant performed and observed all the obligations to be performed by the 1st Defendant under the contracts, including those in Paragraph 10 above;
- (g) Insofar as breaches of the contract under the Memorandum of Agreement (including the obligations arising thereunder under the Implied Terms) are alleged herein against the 1st Defendant, the Plaintiff alleges that thereby for the reasons pleaded above the 2nd Defendant was also in breach of the said implied obligations;
- (h) Unless the context must so exclude, all references in this pleading to things done by, or to be done by or represented or undertaken by the 1st Defendant, should be read as "by the 1st Defendant or by the 2nd Defendant or both of them jointly".
12. Further or alternatively, in the circumstances as hereinbefore pleaded, it was not in the contemplation of the parties, when the Memorandum of Agreement (including the implied obligations arising thereunder under the Implied Terms) was agreed upon and accepted, that the 1st Defendant would deliberately refrain, or be permitted to refrain, from nominating home-owners to purchase the residential units despite the subsequent completion by the Plaintiff of the Development. By reason of the aforesaid, the Defendants are estopped or otherwise precluded, equitably or otherwise, from attempting to force a completely different bargain on the Plaintiff by their unilateral and fundamental departure from the PSPS Practice, as hereinafter described.

13. In or about the beginning of 2000 in reliance upon the aforesaid the Plaintiff duly commenced construction work of the Development. During this material period, the 1st Defendant continuously pressed the Plaintiff hard to complete the Development on time, and the Plaintiff acted accordingly and thereby changed its position to its detriment by incurring further expense.
14. On 31st March 2000, the Plaintiff applied for Pre-Sale Consent in accordance with the PSPS Practice.
15. On 3rd September 2001, the 2nd Defendant, through its Chief Secretary for Administration, announced a suspension of sales of HOS flats by the 1st Defendant and the Hong Kong Housing Society ("the Moratorium"). This Moratorium was due to expire after 30th June 2002. At that time, according to the Plaintiff's Statement of Time of the Development, the development of the Development was not scheduled for completion until August, 2002.
16. On 5th June 2002, the 2nd Defendant's Chief Secretary for Administration, on behalf of the 2nd Defendant, announced and confirmed in a Statement that the Moratorium would cease to apply with effect from 1st July 2002 and that, after that date, the sale of HOS/PSPS flats would resume. It was announced in this Statement that two phases of HOS flats would be put on sale, namely Phase 24A and Phase 24B. The first phase of about 2,400 flats would be sold in September 2002, while the second phase of about 2,500 flats would be sold in April 2003, subject to the market condition.
17. A site-specific list was attached to the said Statement by the Chief Secretary for Administration. However none of the 4,948 flats quota under the Phase 24A and Phase 24B sale programmes were allocated to

the residential units in the Development. Accordingly the 2nd Defendant did not, and was not prepared to, procure the 1st Defendant to nominate, or ensure that it nominated, suitable purchasers of the residential units, and the 1st Defendant thereafter failed or refused to nominate, homeowners to purchase the residential units in the Development on a date earlier than April 2003.

18. Further it was, in effect, the admission or the admitted objective of the 2nd Defendant, and the effect of the aforesaid, that in breach of the terms of the said contracts pleaded above :-

- (a) The 2nd Defendant did not cooperate with the Plaintiff to implement the said contracts by granting Pre-Sale Consent with reasonable dispatch, but instead unreasonably delayed granting the same between the date of application on 31st March 2000 and of the grant of consent on 20th November 2002.
- (b) the 2nd Defendant would not and did not observe and abide by the PSPS Practice under the PSPS Scheme which had, as pleaded above, hitherto invariably been observed and became an implied term, and that the 2nd Defendant resiled from the PSPS Practice and breached the said implied term, notwithstanding that it had been acted upon by the Plaintiff in respect of the contract under the Memorandum of Agreement and/or the collateral contract herein to the knowledge of the 2nd Defendant and the 1st Defendant;
- (c) the 2nd Defendant did not act reasonably, nor exercise reasonable endeavours, to procure and to ensure that the 1st Defendant timeously to locate and nominate suitable purchasers of the residential units;

- (d) the 2nd Defendant did not cooperate with or assist the Plaintiff to sell the residential units to suitable purchasers, or to nominate promptly and without delay suitable purchasers to buy the residential units in the Development developed by the Plaintiff on the faith of the PSPS Practice (and the aforesaid implied terms);
- (e) the 2nd Defendant did not refrain from allowing, causing, procuring or influencing the 2nd Defendant's governmental departments or agencies, or the 1st Defendant, to thwart, obstruct, frustrate or delay the process and progress of either the development of the Development or the sale of the units, including in particular, the allowing, causing, procuring or influencing the Director of Lands and/or the 1st Defendant to delay or obstruct the grant of Pre-Sale Consent to the Plaintiff in contravention of the PSPS Practice and beyond the ordinary course of events;
-
- (f) the 2nd Defendant did not refrain from, or from allowing, such conduct as may be designed to, or would effectively result in, the thwarting, obstructing, frustrating or delaying of the process and progress of either the development of the Development or the sale of the units, whether by acting through its governmental departments or agencies or the 1st Defendant, or otherwise liaising or colluding or acting in concert with them to the said effect;
-
- (g) the 2nd Defendant did not persuade or procure the 1st Defendant:

- (i) to take such actions on its part (including, inter alia, the nomination of suitable purchasers) as are needed for the proper fulfillment of the contractual terms; and
- (ii) to refrain from thwarting, obstructing, frustrating or delaying the sale of residential units and the nomination of purchasers.
-
19. On 6th August 2002, the Occupation Permit for the Development was granted.
20. Despite the fact that Pre-Sale Consent was applied for as early as on 31st March 2000, contrary to the previous procedure and practice under the PSPS Scheme, it was not until over 2½ years later, on 20th November 2002, that the Director of Lands on behalf of the 2nd Defendant granted Pre-Sale Consent, which was almost 4 months after the units had been built.
21. On 21st November 2002, the Certificate of Compliance for the Development was granted. The Development, comprising 2,470 residential units of a total gross floor area of 144,299.926 square metres, and commercial units of a total gross floor area of 3,733.124 square metres and 528 units of car parking spaces was completed.
-
22. Around the middle of November 2002 the 2nd Defendant further changed its housing policies. The revised policies included suspension of any further sale of PSPS flats.
-
23. As at the date hereof, no nomination of suitable purchasers for the purchase of the residential units in the Development has been made (or procured to be made) by the Defendants or either of them, and no sale of

any of the residential units or other units in the Development has been, or could be, made by the Plaintiff.

24. By reason of the aforesaid, the 2nd Defendant, acting under the influence of or in concert with the 1st Defendant, has caused the grant of Pre-Sale Consent by the Director of Lands to be of no effect, and the sale of residential units in the Development and the nomination of purchasers in respect thereof and the sale of other commercial units in the Development, to be thwarted, obstructed, frustrated or delayed. Alternatively, each of the Defendants has caused the grant of Pre-Sale Consent by the Director of Lands, and the sale of residential units in the Development and the nomination of purchasers in respect thereof and the sale of commercial units in the Development, to be thwarted, obstructed, frustrated or delayed.
25. Further, by reason of the aforesaid, the Defendants and each of them have acted in wrongful breach of the contract under the Memorandum of Agreement (including the obligations arising thereunder under the Implied Terms) and/or in wrongful breach of the collateral contracts pleaded above.
26. Further or alternatively, each of the Defendants has entered upon a course of conduct which constituted the tort of procuring a breach of contract as against the Plaintiff, in that:-
 - (a) Each of the Defendants possessed knowledge of an existing contract, namely, the contract under the Memorandum of Agreement (including the obligations arising thereunder under the Implied Terms), and of the collateral contracts pleaded above; and

- (b) Each of the Defendants has interfered with the said existing contracts by speaking, writing, or publishing words which communicated pressure or persuasion to others to breach the contracts, or has done acts inconsistent with the contractual obligations thereunder, thereby causing damage to the Plaintiff.
27. As a consequence of the 1st and/or 2nd Defendants' said conduct, the Plaintiff has suffered and continues to suffer loss and damages (which are still accruing and will require to be assessed) including but not limited to the following:-
- (27.1) Rates were payable and continue to be payable after the issuance of the Occupation Permit;
- (27.2) The Plaintiff is responsible for the payment of Government rents, which would have been payable by the home-owners if the residential units had been sold in accordance with the PSPS Practice;
- (27.3) The Plaintiff has suffered and continues to suffer the loss of management fees, which would have been payable by the home-owners if the residential units had been sold in accordance with the PSPS Practice;
- (27.4) The Plaintiff has incurred and will have to continue to incur very substantial expenses for the regular maintenance of unoccupied idle units;
- (27.5) The Plaintiff will have to incur additional and very substantial expenses for putting the unoccupied idle units into a saleable condition after a long period of non-occupation;

~~(27.6)~~ The buildings will have aged in the meantime with a consequent fall in value of the residential and commercial units;

~~(27.7)~~ The withholding of sale of the residential units in the Development has and will continue to severely handicap the marketability and sale opportunity of the commercial units and car parking spaces in the Development, and thereby result in grave loss of sale proceeds, rental income and management fees for the Plaintiff;

~~(27.8)~~ The Plaintiff has incurred, and will continue to incur, financial charges and additional and very substantial interest due to the delay in the recovery of the capital expenditure invested by the Plaintiff in the Development.

28. In a letter dated 20th May 2003 from the Plaintiff to each of the Defendants, the Plaintiff complained against the Defendants' wrongful conduct and the grave loss and damage which the Defendants' said conduct had caused to the Plaintiff.
29. By a letter dated 12th June 2003 from the Secretary for Housing, Planning & Lands' Office of the 2nd Defendant, the Defendants replied and insisted that they would continue with such course of conduct without regard to the Plaintiff's complaint.
30. By reason of the aforesaid, the Plaintiff has suffered loss and damage which require to be assessed in manner as herein pleaded, and for which the 1st and 2nd Defendants are liable.

31. The Plaintiff claims interest on damages pursuant to sections 48 and 49 of the High Court Ordinance.

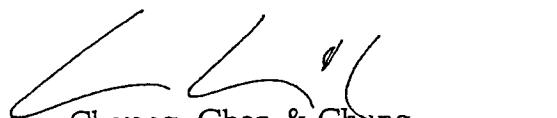
AND THE PLAINTIFF CLAIMS:-

1. Damages to be assessed;
2. Such ancillary relief and appropriate declarations and orders as this court may deem just or expedient to make;
3. Interest;
4. Costs;
5. Further and/or other relief.

Dated this 25th day of July 2003.

John Griffiths S.C., C.M.G., Q.C.
Counsel for the Plaintiff

Rosaline Wong
Counsel for the Plaintiff



Cheung, Chan & Chung
Solicitors for the Plaintiff

香港高等法院

原訟法庭

原告人

對

被告人

致被告人〔姓名〕.....

〔地址〕.....

本傳訊令狀由上述原告人就背頁所列出的索償聲請向你發出。

本令狀傳達給你〔14〕天內，由送達之日起計，你必須清償有關的索償要求，或於夾附的令狀送達認收書內述明是否擬對本訴訟進行抗辯，然後把該認收書交回高等法院登記處。

若你在上述指定期限內不清償有關的索償要求，或不交回送達認收書，或不在交回的送達認收書內述明是否擬提出抗辯，則你不會接獲進一步通知，原告人即可繼續進行訴訟，而屆時法庭亦可逕行判你敗訴。

本令狀由高等法院登記處在年.....月.....日發出。

註： 本令狀必須在發出日期起計 12 個曆月內送達被告人；但經法庭下令准予延期則不在此限。

重要事項

有關填寫送達認收書的須知事項已定載列在夾附表格內。

Acknowledgement of Service of Writ of Summons

(O.12 r.3)

Directions for Acknowledgement of Service

1. The accompanying form of ACKNOWLEDGEMENT OF SERVICE should be detached and completed by a Solicitor acting on behalf of the Defendant or by the Defendant if acting in person. After completion it must be delivered or sent by post to the Registry of the High Court at the following address : -

The High Court Building, LG/1, No. 38 Queensway, Hong Kong

2. A Defendant who states in his Acknowledgement of Service that he intends to contest the proceedings MUST ALSO file a DEFENCE which must be written in the English language with the registry and serve a copy thereof on the Solicitors for the Plaintiff (or on the Plaintiff if acting in person). If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear at the top of the back), the Defence must be filed and served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgement is served on the Defendant. If a Statement of Claim is not indorsed on the Writ, the Defence need not be filed and served until 14 days after a Statement of Claim has been served on the Defendant. If the Defendant fails to file and serve his defence within the appropriate time, the Plaintiff may enter judgement against him without further notice.
3. A STAY OF EXECUTION against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgement is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgement of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his acknowledgement, but he must within that time, ISSUE A SUMMONS for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by installments or otherwise.

See over for Notes for Guidance

法院傳訊令狀送達認收書

(命令 12 內列規則 3)

填寫送達認收書須知

- 隨傳訊令狀附上的送達認收書，應由被告人的代表律師填寫，或如無律師代表他，則由被告本人把附件拆出填妥，然後送交或用郵遞方式寄交高等法院登記處，該登記處地址是：－香港金鐘道三十八號高等法院大廈。
- 被告人如在令狀送達認收書內表示擬對訴訟提出抗辯時，必須同時以英文填寫一份辯護書呈交高等法院登記處，並把副本一份送達原告人的代表律師（或如原告人並無律師代表他，則送達原告人）。

令狀背面如果載有索償聲請書（即在背頁上端註有「索償聲請書」等字眼）時，被告人須要在認收傳訊令狀期限屆滿後 14 天內，把辯護書呈交高等法院登記處和送達原告人，但如在該段期限內，被告人已接獲原告人呈請法庭判決傳票一份，則不在此限。

傳訊令狀背面如果並未載有索償聲請書時，則被告人僅須在收到索償聲請書滿 14 天後，把辯護書呈交法院和送達原告人。

如被告人於指定期限內不把辯護書呈交法院和送達原告人，則原告人毋須再行通知，即可呈請法庭宣判被告人敗訴。

- 如法庭宣判被告敗訴，而被告人未能清付所判數額時，被告人可向法庭申請暫緩執行查封被告人財物令。如果被告人是由於一筆債務或一筆算定索償款額（即一個固定款額）而被聲訴，而又不擬對該項索償聲請加以抗辯，但卻在傳訊令狀送達認收書第三條問題內述明擬申請延緩執行查封財物令時，則該查封令將予以延緩，在其認收傳訊令狀 14 天後才予執行，但在這段其間內，他必須發出要求延緩行查封令的傳票，並且須夾附一份列明其資產收支狀況的誓章，以作佐證。被告人並須在誓章內述明分期付款數額及期限或其他清償辦法。

(請參閱填寫指南)

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Registry of the High Court.
2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him and a writ served by post or by insertion through the Defendant's letter box is treated as having been served on the seventh day after the date of posting or insertion.
Not applicable if
the defendant is
a company
served at its
registered office.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".
4. Where the Defendant is a FIRM and a Solicitor is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by a Solicitor or by someone authorized to act on behalf of the Company, but the Company can take no further step in the proceedings without a Solicitor acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL Patient, the form must be completed by a Solicitor acting for a guardian *as litem*.
8. A Defendant acting in person may obtain help in completing the form at the Registry of the High Court.
9. These notes deal only with the more usual cases. In case of difficulty a Defendant in person should refer to Paragraph 8 above.

填寫指南

1. 每一位被告人（如超過一名時）必須填妥送達認收書一份，並把認收書交回高等法院登記處。
2. 就如何計算傳訊令狀送達 14 天期限來說，如果傳票令送達被告人本身，則以傳令狀交到被告人手上當天作為送達日期；如以郵遞方式或把傳令放入被告人的信箱方式時，則以傳令狀寄出之日或放入被告信箱之日起計的第七天作為送達日期。
3. 如被告人以另一名稱被聲訴時，則該表格必須由他本人填寫，並須在第一段內加上「以某某名稱被訴」字樣（即載於傳訊令狀上的名稱）。
4. 如被告是一商號，而並沒有委託律師作為代表時，則該表格必須由一名合夥人填寫，並須在第一段內緊隨其姓名之後加寫「某某商號合夥人」字樣。
5. 如被告人是以個人身份用其他姓名經營商號而被聲訴時，則該表格必須由他填寫，並須在第一段內緊隨他本身姓名之後加寫「經營某某商號」字樣。
6. 如被告是一間有限公司，該表格必須由律師代為填寫，但如無律師代表，該公司不得採取進一步訴訟程序。
7. 如被告未成年或是一名精神病患者，則該表格必須由訴訟監護人的代表律師填寫。
8. 如被告人沒有律師代表他，可到高等法院登記處請求協助填寫該表格。
9. 此「填寫指南」只適用於一般案件，沒有律師作代表的被告人遇到困難時，可參閱上文 8 段。

如被告人是一間公司，而傳票是送詳該公司的註冊辦事處，則此條並不適用。

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CIVIL ACTION NO. 2761 OF 2003

BETWEEN:

FIRST STAR DEVELOPMENT LIMITED

Plaintiff

and

THE HONG KONG HOUSING AUTHORITY

1st Defendant

THE SECRETARY FOR JUSTICE

(ON BEHALF OF THE GOVERNMENT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION)

2nd Defendant

**ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS**

If you intend to instruct a Solicitor to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgement being entered against a Defendant whereby he or his Solicitor may have to pay the costs of applying to set it aside.

See Notes 1,
3, 4 and 5

1. State the full name of the Defendant by whom or on whose behalf service of the Writ if being acknowledged.

See
Direction 3

2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

Yes

No

Where words appear between square brackets, delete if inapplicable.

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgement entered by the Plaintiff (tick box)

Service of the Writ is acknowledged accordingly.

(Signed)[Solicitor] ()

[Defendant in person]

Address for service

Notes as to Address for Service

Solicitor Where the Defendant is represented by a Solicitor, state the Solicitor's place of business in Hong Kong

Defendant in person. Where the Defendant is acting in person, he must give his residence OR If he does not reside in Hong Kong, he must give an address in Hong Kong where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Messrs. Cheung, Chan & Chung, Solicitors of Unit 5505, 55th Floor, Hopewell Centre, 183 Queen's Road East, Wanchai, Hong Kong. (Ref: PC/LC/37000/03)

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CIVIL ACTION NO. 2761 OF 2003

BETWEEN:

FIRST STAR DEVELOPMENT LIMITED Plaintiff
and
THE HONG KONG HOUSING AUTHORITY 1st Defendant
THE SECRETARY FOR JUSTICE
(ON BEHALF OF THE GOVERNMENT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION) 2nd Defendant

ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS

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Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgement being entered against a Defendant whereby he or his Solicitor may have to pay the costs of applying to set it aside.

See Notes 1,
3, 4 and 5

1. State the full name of the Defendant by whom or on whose behalf service of the Writ if being acknowledged.

See
Direction 3

2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

Yes

No

Where words
appear between
square brackets,
delete if
inapplicable.

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgement entered by the Plaintiff (tick box)

Service of the Writ is acknowledged accordingly.

(Signed)[Solicitor] ()

[Defendant in person]

Address for service

Notes as to Address for Service

Solicitor Where the Defendant is represented by a Solicitor, state the Solicitor's place of business in Hong Kong

Defendant in person: Where the Defendant is acting in person, he must give his residence OR If he does not reside in Hong Kong, he must give an address in Hong Kong where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Messrs. Cheung, Chan & Chung, Solicitors of Unit 5505, 55th Floor, Hopewell Centre, 183 Queen's Road East, Wanchai, Hong Kong. (Ref: PC/LC/37000/03)

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CIVIL ACTION NO. 2761 OF 2003

BETWEEN:

FIRST STAR DEVELOPMENT LIMITED

Plaintiff

and

THE HONG KONG HOUSING AUTHORITY

1st Defendant

THE SECRETARY FOR JUSTICE

(ON BEHALF OF THE GOVERNMENT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION)

2nd Defendant

ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS

If you intend to instruct a Solicitor to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgement being entered against a Defendant whereby he or his Solicitor may have to pay the costs of applying to set it aside.

See Notes 1.
3, 4 and 5

1. State the full name of the Defendant by whom or on whose behalf service of the Writ if being acknowledged.

See
Direction 3

2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)

Yes

No

Where words
appear between
square brackets.
delete if
inapplicable.

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgement entered by the Plaintiff (*tick box*)

Service of the Writ is acknowledged accordingly.

(Signed)[Solicitor] ()

[Defendant in person]

Address for service

Notes as to Address for Service

Solicitor Where the Defendant is represented by a Solicitor, state the Solicitor's place of business in Hong Kong

Defendant in person. Where the Defendant is acting in person, he must give his residence OR If he does not reside in Hong Kong, he must give an address in Hong Kong where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Messrs. Cheung, Chan & Chung, Solicitors of Unit 5505, 55th Floor, Hopewell Centre, 183 Queen's Road East, Wanchai, Hong Kong. (Ref: PC/LC/37000/03)

年訟案第

宗

香港高等法院

原訟法庭

原告人

對

被告人

傳訊令狀送達認收書

如你擬委託律師付為辦理，須即把這表格交給他處理。

重要事項：填寫這表格前，必須小心閱讀附件內載的填寫須知事項和指南。如所提供的資料有錯漏時，則這份表格可能被退回。

如廷遲填覆，可導致被告人被判敗訴，而被和人或其代表律師申請撤銷原判時，或須付出訟費。

參閱填寫指南
1、3、4 及 5

1. 請填寫認收傳訊令狀的被告人全名；或倘由他人代表認收已送達的令狀時，亦請填寫該名被告人的全名。
2. 請註明被告人是否擬就這宗訴訟提出抗辯（請在適用之方格上「✓」符號）

是

否

請參閱填寫須知
事項 3。

3. 如果訴訟是關於聲請被告人清付一筆債務或一筆算定索償款額，而被告人不擬對訴訟加以抗辯時，則須註明是否有意申請延緩執行由原告人呈請法庭裁定的事項。（請在方格加上「✓」符號）

方括弧內不適用
的字句請刪去。

本人現承認已收到傳訊令狀。

〔簽署〕【律師】()

無律師作代表的被告人

認收傳訊令狀地址

填寫有關認收傳訊令狀地址須知：

律師。如被告人由律師代表他，則須填寫律師在香港之辦事處。

沒有律師作代表的被告人一如被告人沒有律師代表他，則他須填寫他本人的住址；或他並非居於香港，則須填寫他在本港的通訊地址。如果被告是一間有限公司時，則須填寫公司的註冊地址或總辦事處地址。

年訟案第

宗

香港高等法院

原訟法庭

原告人

對

被告人

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參閱填寫指南
1、3、4 及 5

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的字句請刪去。

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（簽署）【律師】（）

無律師作代表的被告人
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年訟案第 宗

香港高等法院

原訟法庭

原告人

對

被告人

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參閱填寫指南
1、3、4 及 5

1. 請填寫認收傳訊令狀的被告人全名；或倘由他人代表認收已送達的令狀時，亦請填寫該名被告人的全名。
2. 請註明被告人是否擬就這宗訴訟提出抗辯（請在適用之方格上「✓」符號）

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請參閱填寫須知
事項 3。

3. 如果訴訟是關於聲請被告人清付一筆債務或一筆算定索償款額，而被告人不擬對訴訟加以抗辯時，則須註明是否有意申請延緩執行由原告人呈請法庭裁定的事項。（請在方格加上「✓」符號）

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索償聲請書

若原告人的索償聲請只爲了追討一筆債務或算定索償款額時：在交回送達認收書的規期限內，如果被告人清付所索償款額和訟費 \$_____，倘原告人獲准以間接方式送達令狀時，另加數額\$_____，則本訴訟即予擱置。該筆款項必須付給原告人或其代表律師。

本令狀由原告人申請發出，其住址爲 _____
及 (如原告人並非住在本法庭司法轄區內)其接受送達地址爲 _____

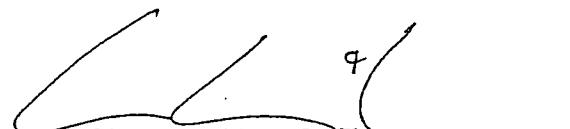
因這是法律文件，忽視它可帶來嚴重的後果。如有
疑問，請儘早向發出文件的高等法院登記處：香港
金鐘道三十八號，高等法院大廈底層一樓（LG 1）
查詢，你亦應考慮聽取律師的意見或是申請法律援
助。

(This is a legal document. The consequences of ignoring it
may be serious. If in doubt, you should enquire as soon as
possible at the Registry of the High Court, Court of First
Instance, No. 38 Queensway, Hong Kong. You should also
consider taking the advice of a Solicitor or applying for Legal
Aid.)

Where the Plaintiff's claim is for a debt or liquidated demand only:

If, within the time for returning the Acknowledgement of Service, the Defendant pays the amount claimed and \$1,550.00 for costs and, if the Plaintiff obtains an order for substituted service, the additional sum of \$500.00, further proceedings will be stayed. The money must be paid to the Plaintiff or his Solicitor.

THIS WRIT was issued by Messrs. Cheung, Chan & Chung of Unit 5505, 55th Floor, Hopewell Centre, 183 Queen's Road East, Wanchai, Hong Kong, Solicitors for the Plaintiff whose registered office is situated at 17th Floor, New World Tower 2, 18 Queen's Road Central, Hong Kong.



Cheung, Chan & Chung
Solicitors for the Plaintiff

2003, No. 2761

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CIVIL ACTION NO. 2761 OF 2003

WRIT OF SUMMONS

Issued on the 25th day of July 2003

BETWEEN

FIRST STAR DEVELOPMENT LIMITED

Plaintiff

and

THE HONG KONG HOUSING AUTHORITY 1st Defendant

THE SECRETARY FOR JUSTICE
(ON BEHALF OF THE GOVERNMENT
OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION)

2nd Defendant

Cheung, Chan & Chung,
Solicitors & Notaries,
Unit 5505, 55th Floor,
Hopewell Centre,
183 Queen's Road East, Wanchai,
Hong Kong
Tel: 2868 2082
Fax: 2845 3467
Ref: PC/LC/37000/03