

致:立法會發展事務委員會秘書

立法會:發展事務委員會於 2013 年 7 月 15 日舉行會議聽取公眾就根據公務員建屋合作社計劃興建的公務員樓宇的重建問題意見書。

1. 我在此必須說出以下前港英政府不道德行為及現訴求。
2. 在兩份政府當年賣地的通告(Secretariat Standing Circular No. of 11 June 1956) (SSC No.9))及 Secretariat Temporary Circular No. 74 of 10 December, 1952(STC No.74))內完全沒有條款規定合作社持份者現時賣出物業受到管制及要補地價給政府。在上述兩份通告只定規定在賣地之後的 20 年之內不得將單位自由轉讓。管制自由出讓及要補地價只是在 80 年代當合作社申請解散時，政府強行修改原有地契條款，強逼合作社補地價後才可將單位出售。
3. 在 80 年代末及 90 年代初所有合作社極為不滿政府管制及補地價所為，籌集資金尋求法律意見，其中一位很有名氣的御用大律師及另外一位大律師的法律意見均指出根據 SSC No.9 政府無法理依據在賣地 20 年之後繼續管制合作社自由轉讓及補地價。因此其中 20 個合作社在 1994 年聯名入稟高等法院，要求頒令命政府無條件撤回管制合作社自由轉讓及補地價的行政措施。
4. 很不幸在高院正式開庭聆訊前，當年港英政府用極不道德手法令訴訟終止，這是政府刻意任命代表 20 個原告合作社進行訴訟的大律師為法官。該位大律師立即放棄代表合作社及出任法官。依合約 20 個原告合作社需支付了大量律師費給其團隊，剩餘的款項約 50 萬元，此不足以另聘大律師再進行訴訟，即使再成功籌集資金進行訴訟，各原告合作社恐怕政府到時再用其他不道德手法阻止訴訟進行。唯有徹底放棄。
5. 最後各原告合作社為進行解散行動，必須向政府提出庭外和解及賠了巨額堂費給政府。
6. 在此我們很明白到當年港英政府的行為是非常不道德。政府和市民之間有爭拗應通過法庭解決，但當年港英政府知道管制合作社自由轉讓及補地價是理虧及恐怕輸掉官司，用此卑鄙下策非負責任政府所為。

現在的訴求

7. 我在此提出這件事情並不是希望再次通過法律來解決有關管制合作社自由轉讓及補地價事項，只希望現今的特區政府了解上述事件及根據上述文件(SSC No.9 and STC No.74)條文的精神而立即無條件撤銷管制自由轉讓及補地價的行政措施。現隨意見書附上當年入稟高院的文件供參考。

房淑蓮:  (簽名)

保安業主立案法團代表

長沙灣，保安道 357-363 号

律師事務所
and
SOLICITORS & NOTARIES
AGENTS FOR TRADE

ESTING OFFICER
RY PUBLIC

Your Ref:

Our Ref:

8th December 1994

The Housing
Co-operative Building
Society Limited.
Kowloon,
Hong Kong.

Dear Sirs,

Re : High Court Action No.12333

Thank you for your kind instructions given to us
to act on your behalf in the above action.

Please be informed that the Writ has been issued
and served on the Attorney General's Chambers on 6th
December 1994. A copy thereof is enclosed herewith for
your reference and retention.

All the particulars put in Schedules I and II
annexed to the Statement of Claims of the Writ in
connection with your society come from either the
information provided by your society or The Hong Kong
Local Civil Servants' Co-operative Building Societies
Federation, Limited or from our searches. Should you find
the same incorrect, kindly notify us thereof.

We shall keep you informed of the progress in due
course. If you have any enquiry, please feel free to
contact our Mr. [redacted] at [redacted] or Mr. [redacted]
at [redacted]

Yours faithfully,

c.c. The Hong Kong Local Civil Servants'
Co-operative Building Societies
Federation Limited
(Attn.: [redacted] enclosure)



1984 , NO. A

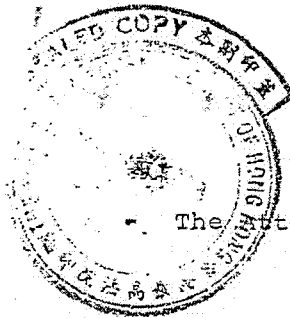
12333

WRIT OF SUMMONS
IN THE SUPREME COURT OF HONG KONG
HIGH COURT

BETWEEN

The Co-operative Building Society, Limited
and others (see attached sheet)

Plaintiffs



and

The Attorney General

Defendant

TO THE DEFENDANT

The Attorney General of 2nd 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 the Supreme Court the accompanying ACKNOWLEDGMENT OF SERVICE stating therein whether you intend to contest these proceedings.

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

Issued from the Registry of the Supreme Court this 6th day of December 1984..

J. Betts
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 Acknowledgment of Service are given with the accompanying form.

THE PLAINTIFFS REFERRED TO HEREIN ARE AS FOLLOWS :-

- (1) THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
- (2) THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
- (3) THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
- (4) GOOD [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
- (5) THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
- (6) [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
- (7) THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
- (8) [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
- (9) THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
- (10) THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
- (11) THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
- (12) THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
- (13) THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
- (14) THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
- (15) THE [REDACTED] HOUSING CO-OPERATIVE BUILDING SOCIETY, LIMITED.
- (16) THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
- (17) [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
- (18) [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
- (19) THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
- (20) THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.

STATEMENT OF CLAIM

1. The Plaintiffs are and were at all material times co-operative building societies registered under the Co-operative Societies Ordinance, Ordinance No.53 of 1956.
2. By a Circular entitled "Secretariat Standing Circular NO. 9" ("SSC9") dated 11 June 1956 and issued by the Colonial Secretariat to Heads of Departments in the Civil Service for transmission to all eligible civil servants, the Colonial Secretary made an offer to all eligible civil servants to provide financial assistance to them by way of loans in consideration for their undertaking the development of available sites for housing and the repayment of the said loans.
3. SSC9 set out the conditions under which the financial assistance was offered ("the Conditions"), as follows:
 - (a) sponsors were to form themselves into co-operative building societies if their schemes were accepted;
 - (b) Crown land, which would be made available at half the upset price, were to be developed to the fullest possible extent;
 - (c) the loans for the purchase of the land and the construction of the buildings and interest at 3 1/2 % per annum payable every six months were to be repaid within a period of twenty years;
 - (d) strict prohibitions on sale or mortgage until the

loans were repaid;

- (e) accommodation for individual officers to be such that no officer would be involved in monthly payments to his co-operative society in excess of one quarter of his total monthly emoluments.

4. (1) Thereupon, various groups of eligible civil servants accepted the offer contained in SSC9 by applying in terms of the offer contained in SSC9.

- (2) Each group was in due course registered under the Co-operative Societies Ordinance, forming the Plaintiffs herein.

5. (1) In the premises, it was agreed between the Government and each Plaintiff that in consideration of the respective Plaintiffs developing their respective sites in accordance with the Conditions in SSC9, the Crown would grant the respective sites to them on condition that sale or mortgage of the respective developments would be prohibited for the period when the respective loans were extant.

- (2) Accordingly, upon repayment of the loans, the prohibition against sale or mortgage of the developments would lapse.

6. The Plaintiffs duly :-

- (1) identified suitable sites for their respective developments;

- (2) retained architects for the preparation of building plans;
 - (3) engaged contractors;
 - (4) supervised the developments;
 - (5) entered into loans with the Government;
 - (6) repaid the loans.
7. The name of each Plaintiff, the respective sites developed by them, the amounts of their respective loans and the dates when their respective loans were entirely repaid are listed in Schedule I hereto.
8. (1) By respective Crown Leases listed in Schedule II hereto and made between the Crown of the one part and each Plaintiff of the other part, the piece of land listed against the name of each Plaintiff was granted and demised by the Crown to the respective Plaintiffs.
- (2) Each Crown Lease contained a covenant stating that each Plaintiff would be entitled to grant sub-leases of the individual flats in the building or buildings erected on the land to members of the Plaintiff and that except as aforesaid the Plaintiff its sub-lessees or other its successors in title would not inter alia sell assign or part with possession of the development or enter into an agreement so to do without the CONSENT IN WRITING OF the Governor given in respect of each such disposition (it being agreed and declared that where his consent is required under the foregoing

covenant the Governor shall have full power as a condition of granting such consent to impose such restrictions terms and conditions whether in respect of the amount of the sale price or in respect of the form of any assignment by which such transaction is effected or otherwise as he may think fit).

9. (1) In the premises, the entire agreement between the Government and each Plaintiff was contained in the Conditions in SSC9 and the Crown Lease for each development.

(2) Consequently, although the covenant set out above was silent as to when the Governor would give his consent to sales or other dispositions, it had been agreed in SSC9 that such consent would be given when the loan was entirely repaid.
10. Further or alternatively, on the true construction of the covenant in the Crown Leases in the matrix of facts pleaded in paragraphs 2-5 above, the Governor is obliged to give his consent to the sale of the respective developments or parts thereof after the entire repayment of the respective loans.
11. Further or alternatively, the agreement pleaded in paragraph 5 was a collateral contract between the Crown and each of the groups who subsequently formed the Plaintiffs, whereby it was agreed that in consideration of the respective Plaintiffs developing sites in accordance with

SSC9, the Crown would prohibit the sale or mortgage of the respective developments but only for the period until the respective loans were entirely repaid.

12. Notwithstanding the facts and matters set out above, in a letter dated 16 January 1987 from the Secretary for the Civil Service to the Chairmen of all Co-operative Building Societies including the Plaintiffs, Government stated that it would allow the transfer of legal title from co-operative building societies to individual members and permit the sale or other disposal of such properties but that a restriction would be placed on future sale or other disposal until inter alia, the flat owner had paid to the Government a land premium assessed at two thirds of the "existing use value" of the land on which the building stands.
13. By two letters dated 5 September 1994 and 19 September 1994 respectively from the Plaintiffs' solicitors to the Secretary for the Civil Service, the Plaintiffs asked for confirmation that in the light of the matters pleaded above, Government would be prepared to give consent to the unrestricted sale or other disposal of the Plaintiffs' respective developments or parts thereof without the payment of any premium.
14. By a letter dated 29 September 1994, the Secretary for the Civil Service asserted that Government had a right to charge premium and alleged that there was no legal basis


for waiving that alleged right.


15. By reason of the facts pleaded herein and each of the grounds set out in paragraphs 9-11 above, Government's demand for premium is in breach of the agreement set out in paragraph 9 and/or against the true construction of the Crown Leases set out in paragraph 10 and/or in breach of the collateral contract set out in paragraph 11 and is wrongful.

AND THE PLAINTIFFS CLAIM :

- (1) A Declaration that the Crown is obliged under the agreement as contained in SSC9 and the Crown Lease for each of the Plaintiffs' developments to give its consent to the sale of the respective developments or parts thereof without requiring the payment of any premium.
- (2) A Declaration that on the true construction of the Crown Leases, the Governor is legally obliged to give his consent to the sale of the respective developments or parts thereof without requiring the payment of any premium.
- (3) ~~FURTHER OR~~ alternatively, a Declaration that the Governor is legally obliged under the collateral contract pleaded in paragraph 11 to give his consent to the sale of the respective developments or parts thereof without requiring the payment of any premium.
- (4) Costs.
- (5) Further or other relief.

Dated the 6th day of December 1994.


Counsel for the Plaintiffs


Solicitors for the Plaintiffs

Schedule I and II

22 附上

1994, No.A
IN THE SUPREME COURT OF HONG KONG
HIGH COURT

12933

BETWEEN

THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
THE [REDACTED] MANSION CO-OPERATIVE BUILDING SOCIETY,
LIMITED.
THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
CO [REDACTED] HONG HONG
T [REDACTED] AND THE VICTORIA TECHNICAL
S [REDACTED] LIMITED.
T [REDACTED] FUNG CO-OPERATIVE BUILDING SOCIETY,
LIMITED.
THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
THE [REDACTED] ROAD CO-OPERATIVE BUILDING SOCIETY,
LIMITED.
THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY,
LIMITED.
THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY,
LIMITED.
THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY,
LIMITED.
THE [REDACTED] HOUSING CO-OPERATIVE BUILDING
SOCIETY, LIMITED.
THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY, LIMITED.
THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY,
LIMITED.
THE [REDACTED] CO-OPERATIVE BUILDING SOCIETY,
LIMITED.

PLAINTIFFS

AND

THE ATTORNEY GENERAL

DEFENDANT



WRIT OF SUMMONS

Issued the 6th day of December 1994.

[REDACTED]

Ref : [REDACTED]