

HO Chiu Kwong Paul' s

Observation, Comments and/or Queries

This is not a legal opinion as it is far below the acceptable professional standard. I do not owe any duty of care to anyone arising or deriving from accessing and/or reading the content of this message directly or indirectly. I only share my observation, comments and/or queries to those who wish to know my view without any obligation on my part.

PRELIMINARY

1. There was a serious argument on the renovation issue in 2005 causing the promise of not initiating any renovation given by Mr. Michael Price of Lei King Wan (Management) Ltd. and this promise expires in the last quarter of 2010;
2. In the forum organized by the management company months ago, there was a question on the ownership of the external wall being raised. The management company instructed Li, Kwok & Law, Solicitors, (hereinafter called "LKL") to give their legal opinion on the ownership and other issues;
3. LKL expressed their opinion on the issues per their letter ref:

KKY/LR/BM/10-22307 dated 20th September, 2010 (LKL Letter);

4. I do not agree with certain LKL' s legal opinion about the ownership of the external wall of Lei King Wan (LKW) and express my observation, comments and queries through this statement. My expression must be read in conjunction with LKL Letter;
5. LKW has four sites and each site has its own Deed of Mutual Covenant (DMC). But each DMC is basically the same and I take DMC of Site B as example to prepare this message;
6. If anyone wishes to have his/her own independent legal advice, he/she may consider/need to seek the legal opinion from those truly professional legal adviser(s). The legal adviser who has sound knowledge in conveyancing may not mean that he/she has good knowledge on land law, tort law, contract law, agency law, trust law;

LIABILITY FOR REPAIR AND MAINTENANCE OF EXTERNAL WALL

7. Paragraph A1 of LKL Letter states that the ownership of external wall is owned by the developer (Braemar West Ltd., a subsidiary of Swire Pacific Group). I agree with this observation. Later on, the developer divided the project into common parts and individual units

for sale;

8. Section 2 of BMO states : -

" owner" means

- (a) a person who for the time being appears from the records at the Land Registry to be the owner of an undivided share in land on which there is a building; and
- (b) a registered mortgagee in possession of such share

"common parts" means

- (a) the whole of a building, except such parts as have been specified or designated in an instrument registered in the Land Registry as being for the exclusive use, occupation or enjoyment of an owner; and
- (b) unless so specified or designated, those parts specified in Schedule 1

9. The external wall was converted as individual unit from the common parts by clause 1.01 of DMC which was registered in Land Registry under memorial number 3783301 on 1 August 1988. Clause 1.01 states :

"Retained Areas"

Include the flat roofs, spaces, store rooms and areas within the Land and the Buildings as shown coloured yellow on the plans annexed hereto and are more particularly mentioned in the First Schedule hereto and all services and facilities therein or thereon and the external walls of the Buildings. Once any such Retained Areas are sold to purchasers (other than to the Associated Companies or to the Manager), such areas shall immediately upon assignment cease to be Retained Areas;

“Unit”

means a Flat or a Shop or any Retained Areas or Space or an External Wall or the Car Park or any Car Parking Space therein of and in the Land and the Buildings and the Unit of which an Owner is entitled to the exclusive use occupation and enjoyment shall be referred to as “that Owner’ s Unit” ;

10. Clause 4.01 of DMC states : -

4.01 The Assignor and/or its successors and assigns of the relevant rights and/or the Associated Companies (and the expression “the Assignor” in this Clause 4.01 shall mean and include the Assignor specifically named in this Deed

and/or its successors and/or assigns of the relevant right and/or the Associated Companies) shall for as long as it remains the legal or beneficial owner of any Undivided Share have the sole and absolute right in its absolute and unfettered discretion at any time or times and from time to time as it shall deem fit : -

“(c) (with or without the consent of the Manager) to affix maintain alter renew ad remove any one or more chimneys, signs, advertisements (illuminated or otherwise), masts, aerials and lighting and other fixtures and articles of whatsoever kind on any part or parts of the Land and the Buildings (including without limitation to the external wall and/or the roofs thereof) the exclusive right to hold use occupy and enjoy which has not been assigned or granted to any other person other than the Manager or any other Assignor and/or on any part or parts of the Common Parts PROVIDED ALWAYS that any such chimney, sign, advertisement, mast, aerial or lighting

or other fixture and articles shall not materially interfere with the exclusive use occupation and enjoyment by other Owners of the Units owned by them and to enter into and upon any part of the Land or the Buildings with or without workmen and equipment at all reasonable times on giving prior written notice (save in case of emergency) for any or all of the purpose aforesaid and to grant licence or otherwise permit or grant the right so to do any of the aforesaid to any other person on such terms as the Assignor may deed fit;

11. From the above, Retained Areas including External Wall satisfy the definition of owner laid down in section 2 of BMO. Therefore the external wall is owned by the developer. So the developer has their legal obligation to maintain the external wall in accordance with section 34H of BMO. Section 34H is quoted :

“(1) Where a person who owns any part of a building, has the right to the exclusive possession of any part of a building or has the exclusive right to the use, occupation or enjoyment

of that part, as the case may be, but the deed of mutual covenant in respect of the building does not impose an obligation on that person to maintain the part in good repair and condition, that person shall maintain that part in good repair and condition.

(2) The obligation in subsection (1) shall be deemed to be an obligation owed to all owners of the building under the deed of mutual covenant”

12. Paragraph A3 of LKL Letter indicates that the above “exclusive right” may not be considered as the exclusive right in the context of 34H of the BMO and use the subsequent paragraphs to quote the case “The Incorporated Owners of Hong Leong Industrial Complex & Anor. v HL Resources Ltd.” to argue and to discharge the developer’ s legal obligation imposed by section 34H of BMO;
13. Let’ s review the Hong Leong case and see whether it is applicable to LKW or not. This case has two judgments. The first one is delivered by Hon Sakhrani J in Court under HCA 2572/2005 and the second one is delivered by Hon Rogers, VP, Kwan JA and Stone J in Court under CACV 189/2009. The first one is a trial case in Court of

First Instance and the second one is an appeal case in Court of Appeal;

14. The material facts and the judgment of HCA2572/2005 are listed below : -

"4. The 1st defendant was the developer of the building. The 2nd defendant was at all material times until 1 November 2002 the manager of the building responsible for the management, operation, servicing, maintenance and repair and insurance of the building.

"10. The allocation of shares was set out in the Second Schedule to the DMC. 3 shares were allocated to the roof. 58 shares were allocated to the items under "The Developer' s Share' which included :

"(G) Roof:-

Upper parts of Water Tanks, Flat Roof(s) (not specifically assigned)."

"12. The defendants deny that the 1st defendant owned the roof and had the right to the exclusive possession or the right to the exclusive use, occupation or enjoyment of the

same. They also deny that the 1st defendant had the right to the exclusive use, occupation or enjoyment of the external wall.

"63. There is no dispute that the 1st defendant was and is the owner of the part of the developer' s shares allotted to the external wall under the Second Schedule to the DMC.

"66. Clause (j) provides

"No owner other than the First Owner shall exhibit or paint or permit any person to persons to exhibit or paint any advertisement of any description or design whether or not illuminated or otherwise or affix anything or structure on in or ant any portion of the roof, the upper roof (if any) or the external walls of the said building."

"67. The clause does not say that the exclusive right to use, occupy and enjoy the external wall is given to the 1st defendant. Mr. Tang submitted correctly in my view, that the question to consider is whether clause (j) has in effect given to the 1st defendant the exclusive right to use, occupy and enjoy the external wall.

"70. Clearly under section 34H of the Ordinance a person could only be held liable for the expenses for the maintenance of a certain part of the building if it were shown that it had the right to the exclusive possession of that part of the building or had the exclusive right to the use, occupation or enjoyment of that part.

"74. In my judgment clause (j) did not confer on the 1st defendant the exclusive right to the use, occupation and enjoyment of the external wall of the building. Section 34H of the Ordinance can have no application.

15. The material facts and the judgment of CACV 189/2009 are listed below : -

"5. In respect of the walls of the building, at the hearing below the plaintiffs has abandoned all other arguments and simply had relied upon clause (j) of the Fourth Schedule of the DMC as a basis for saying that the first defendant, as the First Owner of the building, was the owner of the external walls of the building and , hence, was responsible for any maintenance

thereof. The judge has little difficulty in holding that clause (j) did not confer exclusive right to the use, occupation or enjoyment of the external walls on the first defendant.

"17. In my view the judge was quite correct in his conclusion in respect of the external walls and the plaintiffs can do no better by replying in this court on the arguments that they abandoned in the court below.

16. From the above two judgments, the defendant (means developer) denied to own the external wall and the judges did not find any legal argument or evidence to support that the external wall is owned by the defendant in accordance with the definition appears in section 2 of BMO. Therefore I totally agree with the judgments being delivered by the two Courts;
17. In LKW case, the external wall is included in the Retained Areas and the Retained Areas falls within the definition of Unit defined in clause 1.01 of DMC. It means that external wall satisfies the definition of section 2 of BMO and has its ownership status same as

other units of LKW. Therefore, the Hong Leong case is distinguished from LKW case and this case is not applicable to LKW situation;

18. Paragraph A5 of LKL Letter states "In our case, although there is no clause to the effect that manager's approval has to be sought before putting up anything on the external wall, arguably clause 8.01(bb) of the DMC may be construed to mean that the manager may allow others to use the external wall by not taking action against those owners if in the opinion of the manager such user are not undesirable and would not constitute nuisance to other occupiers. The argument in Hong Leong Industrial Complex may apply as in our case as the other owners' right may not be weaker or less than those in that case, and the developer may not be caught by 34H of the BMO before the assignment of the Retained Areas to the manager" ;

19. Before I discuss the contents of paragraph A5 of LKL Letter, clause 8.01(bb) is quoted below for better understanding : -

"8.01 Subject to the rights of the Assignor and/or its successors and assigns and/or the Associated Companies contained

in this Deed, any owner shall at all times hereafter be bound by and shall observed and perform the following covenants, provisions, restrictions, stipulations and prohibitions : -

“(bb) Not to erect or permit or suffer to be erected any radio or television aerial or advertising sign or to keep, hang or exhibit or permit or suffer to be kept hung or exhibited any washing, cloth, clothing or any unsightly objects or store or permit or suffer to be stored any utensils or other articles upon the upper roofs, roofs, flat roofs, verandahs, balconies, canopies or external walls, corridors, lift lobbies, entrance halls of any of the Buildings or any other Common Areas or Common Services and Facilities which in the opinion of the Manager shall be undesirable or constitute a nuisance to other Owners or occupiers of any part of the Buildings and the Manager shall have the right to remove such articles and to make good all damage caused thereby without notice at the cost of offending

Owner;

20. By reading the clause 8.01(bb) carefully, it is not difficult to know that no owner is allowed to put those objects in his/her Unit including external wall and/or in common areas/facilities to create a nuisance to other owners or occupiers. By complying with this clause, it has nothing to do with the conversion of ownership of external wall into the Common Areas. If there is any dispute between the Owners about the erection of those object(s) in his/her Unit including external wall and/or in common areas/facilities constituting a nuisance to other Owners or occupiers, the opinion of the Manager shall determine whether it is a nuisance or not. If the opinion of the Manager determines a nuisance, those objects should be removed. It is in consistent with clause 8.01(aa) which states "Not to do or permit or suffer to be done any act or thing which may be or become a nuisance to the other Owners or occupiers of any part of the Buildings" . Since LKL has different opinion, if their interpretation per paragraph A5 of LKL Letter is correct, it will mean that all the Units having verandahs, balconies, including the Retained Areas, external walls, roof flats,

will be converted into Common Areas. The reason is that verandahs or balconies are formed an integral part of unit A, H of Yat Wah Mansion, for example. By using LKL' s interpretation, unit A, H of Yat Wah Mansion, for example, should be part of Common Areas and the owners or occupiers of unit A, H of Yat Wah Mansion, for example, occupy the said unit may have committed an offence against section 34I of BMO. In accordance with section 101I of Criminal Procedure Ordinance, Chapter 221, the owners or occupiers may be punished with the maximum penalty of 7 years imprisonment. Besides the statutory punishment, the family life of the concerned units will suffer the interruption/destruction due to the legal principle of slave land. I do not believe LKL expressed the correct interpretation on clause 8.01(bb) of DMC and wish LKL to explain to all the owners of LKW about this;

21. Regarding paragraph A6 of LKL Letter about the tenancy agreement of the flat roof, I do believe LKL does not have basic logical mind to interpret the legal aspect of the tenancy agreement. The reason is that the external wall per LKL' s legal opinion is a common area and external wall, flat roof are formed part of

Retained Areas. Once external wall is truly converted into common areas, the flat roof will also be converted into common area and does not have any individual owner as defined per section 2 of BMO and any legal agreement relating to flat roof shall be null and void;

22. It is very interesting that paragraph A2 of LKL Letter states "It is also noted that under clause 4.01(c) of the DMC, the Developer is also having the sole and absolute right to fix and to affix and maintain advertisement, aerials, lighting etc. on any part of the land including the external walls, and these rights may be exercised whether with or without the manager's consent" . LKL does not discuss this paragraph against clause 1.01 of the DMC regarding the definition of "Owner" , "Flat" , "Retained Areas" and "Unit" . Since Retained Areas has the same legal status of Flat in the DMC, clause 4.01(c) is only to re-express again the right of the external wall under the Retained Areas and it does not have any conflict with other owners of LKW. I do believe that LKL should explain this paragraph to all the owners of LKW;
23. Another interesting thing is worth to draw all the owners'

attention. Paragraph A3 of LKL Letter states "Despite the above provision, "exclusive right" may not be considered as the exclusive right in the context of 34H of the BMO....." . LKL does not explain the differences between these two "exclusive right" . In accordance with the interpretation of law, I need to make a legal research about the meaning of "exclusive right" via dictionary, Interpretation and General Clauses Ordinance, Chapter 1, BMO or search engine of case law. I cannot find two different meanings of "exclusive right" . I do believe LKL needs to explain to all the owners of LKW about this with their legal reasoning;

24. I cannot only express my view without considering the view of LKL.

I put another scenario that my view is wrong and the view of LKL is correct. What is/are the legal impact and the consequences ?

By assuming the legal view of LKL is correct, the external walls are considered as the common parts in accordance with section 2 of BMO. The responsibility of repairing and maintaining the external wall will fall on the shoulders of all the owners of LKW. Per clause 1.01 of the DMC, external walls are part of the Retained Areas. If external walls are the common parts, the whole Retained Areas

should also be classified as the common parts. The Retained Areas include the flat roofs....., external walls of the Building. In LKW, there are about 100 flat roofs, spaces which are connected to the adjacent units. All these flat roofs, spaces are included in the Retained Areas. By using LKL' s view, all these are common parts and they are occupied by the adjacent units. So the owners or occupiers of these units may have committed an offence of occupying the common parts of the Building against section 34I of BMO. Penalty can be referred to paragraph 20 above. Secondly, the Manager failed to perform their duties imposed by clause 9.03(q) which states "(q) to prevent (by legal proceedings if necessary) any person from unlawfully occupying or using or obstructing any of the Common Areas or the Common Services and Facilities" . Thirdly, more than 100 sets of Tenancy Agreements for Flat Roof, Spaces would be void and null and all these documents are kept in Lands Registry causing the misleading and/or deception. Fourthly, the Assignment dated 19th April, 1994 with memorial number 6020952 filed on 27th May, 1994 is a false document causing the deception to the public. Fifthly, the

ownership of the external walls registered in the Land Register (PRN C0480542, A2579098, A2581718 and A2579906) kept by Land Registry are false causing the deception to the public. Sixthly, the family life of those units connecting to the Flat Roofs may be interfered/destroyed due to the legal principle of Slave Land;

25. LKL issued another letter ref: KKY/LR/BM/10-22307 dated 27th October, 2010 (Supp LKL Letter) saying as follow : -

“With reference to our letter dated 20th September 2010, please note further as follow : -

1. As pointed out in our said letter, we are inclined to the view that the developer may not be caught by section 34H of the Building Management Ordinance when it was still holding the external wall (as part of the retained areas). If that were the case, the responsibility for repair and maintenance of the external wall would be governed by the deed of mutual covenant.
2. Under clause 11.02 of the deed of mutual covenant, the costs or repairing, maintaining, cleaning, painting and decorating the external wall parts of the Land and the Buildings or any part or parts thereof (including the external walls of the Building)

should form part of the management expenses payable by the flat owners. Hence, even if the developer were still holding the external walls, we are inclined to the view that clause 11.02 of the deed of mutual covenant is applicable and the relevant expenses should be borne by the flat owners.”

26. Since clause 11.02 of DMC has 7 pages relating to the Contents Annual Budget. If someone wishes to see all 7 pages, please ask Fion Chen of the management office to get a copy for his/her reference. It is quite interesting that LKL does not quote the relevant part in order to support their argument. Let me quote the relevant part for quick reference : -

“11.02 The annual budget shall be in the following parts : -

“(b) The second part shall cover all or such proportionate part of the expenditure which in the opinion of the Manager (whose opinion shall be conclusive and final for all purposes) is specifically referable to the Flats (including for this purpose those Retained Areas which are let or licensed to any person (other than to the Manager) for the

purpose of using it as part of a Flat or in connection with a Flat) of the Building including but without limitation to the following and such expenditure shall be borne by all flat Owners : -

“(ix) the cost of repairing, maintaining, cleaning, painting and decorating the external parts of the Land and the Buildings or any part or parts thereof (including the external walls of the Buildings which include (without limitations) all planters, air-conditioning.....

27. The clause 11.02 of DMC is being used to guide the Estate Manager how to prepare the budget. It does not have any authority being granted to the Estate Manager to use up all the budgeted expenditure. The authority for using the budgeted expenditure is governed by clause 9.03 of DMC which is “Powers and duties of Manager” . In the sub-clause (f), it states “To repair, maintain, clean, paint or otherwise treat or decorate as appropriate, the

structure and fabric of the Buildings and the external walls...”

28. How do we interpret the clause 11.02 and 9.03 of DMC ? We need to know “who is the party to take up the cost of repairing the external wall” . Pursuant to section 34H of BMO, it is the duty of the owner of the external wall, i.e. the developer in LKW case. Also, clause 7.02 of DMC governs the owners’ obligations. It states as follow : -

“7.02 Every Owner shall keep the interior of his Unit(s) and all electrical and sanitary appliances therein in good repair and condition and to maintain the same in a manner so as to avoid any loss, damage, nuisance or annoyance to the Owners or Occupiers of other Units in the Buildings.”

29. It looks that clauses 9.03 and 11.02 of DMC do not in consistent with clause 7.02 of DMC and section 34H of BMO. Did Johnson Stokes and Master prepare the DMC on purpose or negligence to create the conflict OR truly to reflect all the owners’ obligation with a big piece of grey area ?
30. Before I interpret the relationship of the clauses and section 34H mentioned in paragraph 29 above, I need to look into paragraph 11

of Schedule 1 of BMO which states "Fixtures situated in a flat which are used in connection with the enjoyment of any other flat or other portion of the building" . What is the fixture ? In accordance with Oxford Dictionary of Law, 6th Edition, by Elizabeth A. Martin and Jonathan Law, it states "Fixture – A chattel that has been annexed to land or a building so as to become a part of it....." . In LKW situation, there are about 100 units of Flat Roofs which are located in the adjacent to the Flat, such as Yat Wah Manison Flat 2G, and these Flat Roofs are owned by the developer and let to their adjacent flat owners. The fixture to separate the Flat T8G2, for example, and the adjacent Flat Roof is called external wall in accordance with DMC. That is to say, the word "external wall" stated in DMC may not have the same meaning of external wall stated in BMO.

31. Now, I am going to interpret the concerned clauses and section 34H mentioned in paragraph 29 above. Clause 11.01 requires the Estate Manager to prepare the budget. Clause 11.02(b) guides the Estate Manger how to prepare the budget for the domestic Flats saying that "The second part shall cover all or such

proportionate part of the expenditure.....specifically referable to the Flats (including for this purpose those Retained Areas which are let or licensed to any person (other than to the Manager) for the purpose of using it as part of a Flat or in connection with a Flat..” .

That is to say that not all the expenditure should be borne by all the flat Owners. The most important phrase is “such proportionate part” . On the issue of external wall of DMC, part of it is classified as a fixture located in between the Flat Roofs and the adjacent Flat units. This part of the external wall is classified as common parts (areas) in accordance with paragraph 11 of Schedule 1 of BMO.

Therefore the repairing cost should be budgeted in the annual budget. The next question is “who is the party to repair the rest of the external wall of DMC ?” . Pursuant to section 34H of BMO and clause 7.02, the owner of the external wall is the party to account for all the repairing cost of the external wall, i.e. the developer. The developer may argue that it is the duty of the Estate Manager to repair the external wall pursuant to clause 9.03(f). I do not have any argument about this clause, but the argument is “who is the party to pay the repairing cost ?” . It is quite simple

that the developer should pay all the repairing cost pursuant to section 34H of BMO and clause 7.02 of DMC. Since section 34H of BMO is the legislation and it is the statutory duty, someone may be prosecuted if such person breaches such duties. The punishment can be referred to section 101I of Criminal Procedure Ordinance, Chapter 221.

32. The developer may further argue that the Retained Areas including the external wall were sold and assigned to Lei King Wan (Management) Limited (LKWML) as Trustee for and on behalf of the Owners pursuant to the [Assignment](#) dated 19th April, 1994 registered at the Land Registry under Memorial No. 6020952 on 27th May, 1994, therefore the owner of the Retained Areas including the external wall is all the owners of LKW. In fact, I have asked Fion Chen of the Management Office in last few years about the validity of this Assignment and whether this Assignment will bind on all the owners of LKW or not. I do not receive any reasonable reply from her. I understand that she does not have the necessary legal knowledge and authority to answer my questions, so leave this issue outstanding until someone asks this question publicly. I

also sent my repeated e-mails to Mr. Michael Price, director of LKWML, about this Assignment and do not receive any reply from him. It causes me to generate my suspicious that this Assignment may be a false document. Further, Michael Price does not deny my suspicious in my last e-mail sent to him on October 14, 2010 at 20:04 hours. Disregard my suspicious, I look into the legal aspect of this Assignment. LKWML entered into this Assignment as Trustee for and on behalf of all the Owners. The question is "whether LKWML was authorized by all the Owners to enter into this Assignment or not" . As far as I know since I moved into LKW in June 1990, there is no meeting of the owners or written authorization from all the owners authorizing LKWML to enter into this Assignment for and on behalf of all the Owners. So LKML does not have any authority to enter into this Assignment and this Assignment does not have any legal reason to bind all the owners of LKW. On the other hand, LKWML claimed that they are the trustee, therefore they should have a Trust Deed available to all the beneficiaries for their inspection. So far, I do not aware of having such Trust Deed available in the Management Office and

Michael Price does not confirm that this Assignment is the legitimate legal document. Therefore I have a good reason to suspect that someone may use this Assignment to mislead or deceive the public or the owners of LKW. In accordance with Oxford Dictionary of Law, 6th edition edited by Elizabeth A. Martin and Joanthan Law, "a trust is an arrangement in which a settler transfers property to one or more trustees, who will hold it for the benefit of one or more persons who are entitled to enforce the trust, if necessary by action in the court. Trustee is a person having a nominal title to property that he holds for the benefit of one or more others, the beneficiaries" . Since there is no authority being given to LKWML, it shall mean that LKWML would act as the principal to enter this Assignment and all the terms and conditions shown in this Assignment will bind on LKWML itself, not all the owners of LKW. That is to say the owner of the external wall remains one of the properties of Swire Pacific Group as the developer and LKWML are the members of Swire Pacific Group.

What is the reason to have this Assignment ? I have no idea and let the concerned person(s) to answer it. Is there any shadow

director, defined in section 2 of Companies Ordinance, Chapter 32, to master this arrangement ? This question should be answered by Michael Price or the concerned person. If the developer and/or LKWML confirm(s) that this Assignment is the legitimate legal document, please present the copy of Trust Deed for all the beneficiaries' inspection. If there is no such Trust Deed, please advise who is/are the settler(s) and who is/are the beneficiary(ies) of the Trust. What are the terms of the Trust ? How does the Trust be liquidated ? Who can initiate to liquidate the Trust ? How much is the trust fee to be paid ? Is there any trust fee being paid since the inception of the Assignment ? I believe Michael Price or the concerned person should answer these questions ?

33. Beside the above arguments or legal reasoning, there are other legal arguments to be considered in case there is any legal litigation, such as reasonableness test, unconscionable contract terms, equity..... I am not going to discuss at this moment as the above arguments are good enough for the management office to find the answer.
34. When I look into Economic Tort which is not part of old (2008/09)

LLB syllabus practically, I have an initial impression that there may have a negative impact on the part of those innocent owners who attend the owners' meeting and vote in favour of passing a resolution to impose the duties of the owners to pay those non-obligatory part of the renovation cost. In view of this sensitive issue, I decide to hold back all my writing about the Economic Tort at this moment and will spend more time to make a further legal research in order to answer the following question : -

“Will those innocent owners of LKW attending the owners' meeting and passing the resolution to impose the duties to those unwilling owners of LKW to contribute those non-obligatory part of the renovation cost commit an offence of conspiracy to blackmail via calculated threat ?”

Those person who have interest to look into this topic may consider to read the following cases : -

- Quinn v Leathem [1901] AC 495
- Allen v Flood [1898] AC 1
- Mogul Steamship Co. Ltd. v McGregor Gow & co. [1892] AC 25
- Temperton v Russell (No.2) [1893] 1 Q.B. 715

OTHER ISSUES IN LKL' S LETTERS

35. Regarding the other issues being raised in LKL' s letters, I am not going to discuss at this moment as those 3 issues are not that important and I do not have a very big difference from LKL' s opinion.

HOME AFFAIRS DEPARTMENT (HAD)

36. Building Management is the responsibility of Home Affairs Department and the responsible person for LKW is Ms Tammy Yu (余丹薇女士) whose office locates at Ground Floor, Eastern Law Courts Building, Sai Wan Ho. Their authority is quite limited by section 40A of BMO which states as follow : -

- "(1) The Authority or an authorized officer may, for the purpose of ascertaining the manner in which a building is being controlled, managed or administered-
- (a) enter and inspect any common parts of a building;
 - (b) attend any general meeting of a corporation;
 - (c) require a corporation or any person managing the building to furnish him with such information in the possession of the corporation or that person, as the

case may be, as the Authority of authorized officer may specify in relation to the control, management and administration of the building;

(d) inspect the books or records of account and other records maintained under section 27(1) including any accounts relating to any fund established and maintained under section 20; and

(e) inspect any other documents or records kept by a corporation in relation to any of its functions, duties or powers.

“(2) Any person who obstructs, or fails to comply with a reasonable requirement of, the Authority or an authorized officer acting under subsection (1) commits an offence and is liable to a fine at level 4.

If there is any person committing an offence against BMO, the officer of HAD does not have any authority to carry out any investigation for the purpose of prosecution. The next question is “which department is the right person to carry out the investigation” . All depend on the nature of the offences. If the

offence(s) relate(s) to corruption, it should be referred to ICAC. If there is no corruption element, it should be referred to Police in accordance with section 10(b) of Police Force Ordinance, Chapter 232, which states "preventing and detecting crimes and offences" .

Being a responsible citizen, we need to seek an amicable way to resolve the dispute. If the dispute cannot be resolved, we may pass it to HAD for mediation as HAD may help to screen the dispute with neutral manner. If it does not work, the last resort is to report crime to either ICAC or Police for investigation for those criminal offence(s).

LI, KWOK & LAW, solicitors

37. LKL is a solicitors firm, having 6 partners, 3 consultants and 5 assistant solicitors. They are qualified professional persons in accordance with Legal Practitioners Ordinance, Chapter 159, and their professional services are governed by the Law Society of Hong Kong and the decided cases. Since I am a layman as I am not a member of the Law Society of Hong Kong or a member of Hong Kong Bar Association and can deduce the above reasoning, LKL should be able to express their legal opinion up to the professional

standard in accordance with the principle laid down in Edward Wong Finance vs Johnson Stokes & Master, a Privy Council case. Anyway it is up to LKL whether they are willing to provide their service up to professional standard or not. If not, I believe LKL should refund all the money being paid for their services to LKWML for account of the trust funds established in accordance with DMC.

LOOKING FORWARD

38. The developer will stand behind their obligation under section 34H of BMO and the Estate Manager will perform their duties in good faith and without bias for the benefit of all the owners as a whole. Also, the Estate Manager will disclose all the matters to their principal in accordance with the Agency Law.

Paul C.K. Ho

Dec. 15, 2010

Webpage : www.hkscandal.com/lkwprivate.html

E-mail : lkwstrike_pro@yahoo.com.hk

Tel : 9371-9435