

**David See Chai Lam and another** - - - *Appellants*

v.

**The House of Dior Limited** - - - *Respondents*

**and Cross-Appeal**

FROM

**THE SUPREME COURT OF HONG KONG**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 23RD OCTOBER 1974

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*Present at the Hearing :*

LORD DIPLOCK

LORD KILBRANDON

LORD SALMON

*[Delivered by LORD DIPLOCK]*

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This appeal from the Supreme Court of Hong Kong in its Appellate Jurisdiction is about a disputed boundary between two of the three sections into which a single building lot, No. 535, of Crown land in the New Territories, has been sub-divided since the original purchase of the lot at auction on 15th July, 1952.

What was purchased was a leasehold interest in the land on which the purchaser covenanted to build one or more messuages or tenements at a cost of at least \$18,000. The purchaser had complied with this covenant by April, 1954. He built a single dwelling house on the southernmost part of the quadrangular lot (the longer sides of which run parallel to one another approximately North and South). He and his successors in title thereupon became entitled to assign the leasehold interest in the whole or any part of the lot. This they did and as a result Lot 535 was eventually sub-divided into three sections, a southern section A, a middle section B, and a northern section, C. At the time of the commencement of this action for trespass, the middle section had become vested in the plaintiffs (The House of Dior Ltd.), who are respondents to this appeal; the northern section had become vested in the first defendant (Lam) who had however contracted to sell his interest to the second defendant (The Ka Wah Bank Ltd.); and the southern section had become vested jointly in two other persons who were also joined as defendants, but the plaintiffs' claim against them was abandoned at the trial. The first and second defendants are the appellants in this appeal. The matter remaining in dispute is as to the position of the boundary between the middle section, B, and the northern section, C. The plaintiffs allege that a boundary wall built by the second defendants is situated on their land, Section B. They claim a mandatory injunction to remove the wall and damages for trespass.

The common root of title to Sections B and C is a Memorandum of Agreement executed on 15th July, 1952, by the original purchaser of the leasehold interest in Lot 535. The lot was described by reference to the Particulars of Sale. These specified its area as 13,490 square feet and its boundary measurements "as per plan deposited in District Office Tai Po". That plan was on a very small scale. It showed Lot 535 as being apparently an oblong in shape and bounded on the South by Lot 524. The length of the longer sides, running approximately North and South, was marked upon the plan as 190'; that of the shorter sides was marked as 71'. These measurements confirm that the shape of the land that was the subject-matter of the agreement was that of a rectangle and not a parallelogram, for if parallel sides of those dimensions enclose an area of 13,490 square feet it is a mathematical certainty that they can only be at right angles to one another.

The Memorandum of Agreement also incorporated the General and Special Conditions of Sale. Condition 5 was the building covenant. It required the purchaser to build one or more messuage or tenement on some part of the lot within two years of the date of sale. Upon completion of the building in accordance with plans approved by the District Commissioner, the purchaser was entitled under Condition 8 to a lease from the Crown of the ground comprised in the lot and was himself required to execute such a lease on demand. Condition 14 on which, in their Lordships' view, this appeal turns, was in the following terms:

"The exact area, boundaries and measurements of each lot shall be determined before the issue of the Crown Lease and the Premium and Crown Rent shall then be adjusted in accordance with the area and the amounts of Premium and Crown Rent at which the lot was sold."

It is not now disputed that under this condition the Crown was entitled to determine the exact area, boundaries and measurements of the lot unilaterally. The agreement of the purchaser to any subsequent adjustment of the boundaries resulting from the determination was not required, although the evidence disclosed that the normal practice was that any discrepancies between the original plan by reference to which the lot was sold and the plan to be attached to the Crown Lease when it was issued, would be the subject of negotiation between the Crown and the lessee.

In their Lordships' view, Condition 4 makes it plain that the way in which this determination was to be made was that the Director of Public Works should fix at each angle of the lot a boundary stone bearing the Registry number of the lot, and that the Director was entitled to do this at any time upon his own initiative without any request by the purchaser.

The whole trouble in the case arises from the fact that, despite the lapse of nearly twenty years between the original purchase and the commencement of this action, no Crown Lease of any part of Lot 535 has yet been issued and all the relevant conveyances of leasehold interests in each of the three sections into which the lot has now been sub-divided took place before any boundary stones had been fixed by the Director of Public Works. This was not done until December 1970. When it was, the straight lines joining the four boundary stones showed Lot 535 not as a rectangle but as a parallelogram with a southern boundary contiguous throughout its length to Lot 524. As in the original plan the boundaries on the East and West were 190' long and the perpendicular distance between them was 71'; but the boundaries on the North and South instead of being 71' were 72.45'. This was because although the South-

West and North-West corners were at the same points as in the original plan, the South-East corner had been moved some 14·5' to the North, and the North-East corner had been moved a similar distance to the North so as to enable the re-aligned quadrilateral to enclose the same area viz. 13,490 square feet as the rectangle shown on the original plan had done. As a result a triangular area of about 500 square feet which had been within the southernmost boundary of the rectangular Lot 535 shown on the original plan was transferred to the adjoining Lot 524, and a similar triangular area was added to Lot 535 beyond the northernmost boundary line of the former rectangle.

This came about because the boundary stone at the South-West corner of Lot 535 was fixed at the same point as the boundary stone which was found to be there at the time of the survey in August, 1970. It bore the Registry number 524 and marked the North-West corner of Lot 524. There was also found another boundary stone bearing the same Registry number some 90' away in an approximately easterly direction and marking the North-East corner of Lot 524. The boundary stone at the North-West corner of Lot 535 was accordingly fixed on the straight line joining these two boundary stones of Lot 524. The original plan by reference to which Lot 535 had been sold in July 1952 had shown its southern boundary as being the same length as and co-terminous with the northern boundary of Lot 524. There is no evidence as to the date between July, 1952, and the survey in August, 1970, on which the northern boundary of Lot 524 had been extended some 20' further to the East, nor is there any evidence as to when between those two dates the boundary stones of Lot 524 were fixed.

In their Lordships' view the fixing of the boundary stones of Lot 535 by the Director of Public Works in December, 1970, constituted the determination of "the exact area, boundaries and measurements" of the entire lot within the meaning of Condition 14 of the Conditions of Sale incorporated in the Memorandum of Agreement of 15th July, 1952, which is the common root of the title to all three Sections, A, B and C, into which the entire lot has been sub-divided. They agree with the Supreme Court in its Appellate Jurisdiction that in holding that the boundaries of Lot 535 had not yet been fixed the trial judge (Simon Li J.) was in error. He dismissed the plaintiffs' action on the ground that it was premature. The real question in this appeal is what effect this determination of the exact boundaries of Lot 535 had upon the boundary between Section B and Section C of Lot 535 which had been conveyed to the respondents and the appellants respectively before the determination had been made.

On appeal from the dismissal of the action by the trial judge, the Supreme Court of Hong Kong held that the effect of the adjustment of the external boundaries of the entire lot so as to make it a parallelogram instead of a rectangle was to change the position of the internal boundaries between Section A and Section B and between Section B and Section C so as to make these boundaries run parallel to the adjusted northern and southern boundaries of the entire lot, thus turning each of the sections from rectangles into parallelograms. In their Lordships' view, however, the question can only be answered by considering what were the boundaries of the land in which the equitable leasehold interest was assigned to the respective purchasers of Sections B and C by the conveyances executed when Lot 535 was sub-divided into these two sections.

There is no evidence that at the date of the Memorandum of Agreement of 22nd July, 1952, the exact boundaries of the adjacent Lot 524

had already been determined. Nor is there any evidence that the Crown did not have a good title to grant to the original purchaser of Lot 535 the leasehold interest in the whole of the land included within the boundaries of the rectangular plot 190' long and 71' wide delineated in the deposited plan referred to in that agreement. By Condition 14, however, so long as the purchaser's leasehold interest remained an equitable interest only, his title to particular areas included in the lot and adjacent to any of its boundaries as delineated in the deposited plan was subject to defeasance in the event that at some later date the Crown should determine the exact boundaries to be in a slightly different position from those delineated on the plan. Similarly upon such determination the purchaser might acquire a leasehold interest in other land not included within the boundaries delineated. Nevertheless, unless and until a determination having this result was made, the original purchaser and his successors in title possessed a good title to an equitable leasehold interest in the whole of the land within the boundaries delineated in the deposited plan.

On 16th February 1956 Lot 535 as delineated in the deposited plan was divided into two parts. The southern portion, consisting of a rectangle 71' wide from East to West and 65' long from North to South, (now known as Section A) was conveyed to the predecessor in title of the third defendants and the remaining portion, consisting of a rectangle 71' wide from East to West and 125' long from North to South, was conveyed to the common predecessor in title of the appellants and the respondents. On 14th June 1957 this latter portion was sub-divided. The southern half of it consisting of a rectangle 71' wide from East to West and 62.5' long from North to South (now known as Section B) was conveyed to the immediate predecessor in title of the respondents. On 15th July, 1958, the remaining portion, also consisting of a rectangle 71' wide from East to West and 62.5' long from North to South, (now known as Section C) was conveyed to Mr. Lam the first appellant. The disputed boundary is the boundary between Section B and Section C created by these two last-mentioned conveyances. It is identical in each of them and runs in a straight line at right angles to the two sides of the entire Lot 535 starting at a point on the western boundary 127.5' from the South-West corner of the entire lot.

It cannot be disputed that at the dates of these two conveyances in 1957 and 1958 the vendor had a good equitable title enabling him to convey to the purchaser of Section B the leasehold interest in the whole of the land to the South of its common boundary with Section C which he purported to assign by the conveyance to the predecessor in title of the respondents; and that similarly he had a good equitable title enabling him to convey to the purchaser of Section C the leasehold interest in the whole of the land North of that common boundary which he purported to assign by the conveyance to the first appellant. It is true that the leasehold interests so conveyed were subject to the possibility of defeasance at some future date as respects parts of the land comprised in each of the sections adjacent to their respective boundaries on the East and West and, in the case of Section C, its Northern boundary, since these also formed part of the boundaries of the entire Lot 535; but neither leasehold interest was subject to the possibility of defeasance as respects any part of the land adjacent only to the common boundary between Sections B and C, since this did not form any part of the boundaries of the entire Lot 535. It was an internal boundary only which the Crown had no right to adjust under Condition 14.

In the result, however, the determination by the Crown of the exact area, boundaries and measurements of the entire Lot 535, which was

made in December, 1970, made an adjustment to the boundaries of Section A as delineated in the conveyance of 16th February by excluding a triangle of land adjacent to its southern boundary. But it made no adjustment to the boundaries of Section B as delineated in the conveyance of 14th June, 1957. The only adjustment that it made to the boundaries of Section C as delineated in the conveyance of 15th July, 1958, did not result in defeasance as respects any part of the land which was the subject of the conveyance. All that it purported to do was to adjust the northern boundary of Section C so as to include within Lot 535 an additional triangle of land which had not been included in the conveyance of Section C to the predecessor in title of the appellants.

The present appeal is concerned only with the common boundary between Section B and Section C. It is not necessary to consider the effect of that determination upon the title to the triangle of land that is now included in the entire Lot 535 to the North of the boundary of Section C as delineated in the conveyance of 15th July, 1958. In their Lordships' view there is no ground in law for treating the determination of the exact area, boundaries and measurements of the entire Lot 535, as altering the internal boundary between Section B and Section C as fixed by the two conveyances by which the entire lot was sub-divided, but which does not form any part of the external boundaries of the lot itself.

Their Lordships will accordingly humbly advise Her Majesty that this appeal should be allowed and the order of Simon Li J. restored. The respondents were granted special leave to cross-appeal against that part of the judgment appealed from which awarded them nominal damages only but on their Lordships' view of the appeal this issue does not arise and they will humbly advise Her Majesty that the cross-appeal should be dismissed. The respondents must pay the costs of the appellant here and below.

In the Privy Council

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DAVID SEE CHAI LAM AND  
ANOTHER

v.

THE HOUSE OF DIOR LIMITED  
AND CROSS-APPEAL

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DELIVERED BY  
LORD DIPLOCK