

Alive and well

## Vendor and Purchaser Summons: Alive and Well in Hong Kong

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In an article in *The Conveyancer* in 2001 Dr Griffiths<sup>1</sup> described the decline of the vendor and purchaser summons, the summary procedure under section 49(1) of the Law of Property Act 1925 (LPA) by which the court may decide questions of title or contract arising between parties to the sale of land. The gist of the article was that the procedure, although a good idea when instituted by the Conveyancing Act 1874 and re-enacted in the LPA, had almost fallen into disuse. In confirmation, the procedure is, according to the latest edition of Megarry & Wade “little used”.<sup>2</sup>

Yet the vendor and purchaser summons has for the past 25 years had a vigorous existence in Hong Kong. It is the procedure by which many important conveyancing cases involving the title to much valuable property have been resolved there.<sup>3</sup> Many such summonses are issued every year.<sup>4</sup> “This is a vendor and purchaser summons” must be the most frequent introductory phrase to first instance judgments in Hong Kong’s civil courts.

No such procedure existed until 1984 when a Conveyancing and Property Ordinance<sup>5</sup> was first enacted for the then colony. As in England the procedure was promoted as a simple and inexpensive method of settling disputes between vendor and purchaser. The intention was that isolated points of dispute arising in the investigation of title could be resolved speedily and before completion.

Section 12 of the ordinance is based upon, but is slightly different from, section 49(1) of the Law of Property Act 1925 (LPA). Section 12(1) provides that: a vendor or purchaser of land may apply to the court by petition or originating summons in respect of any question arising out of or connected with any contract for the sale or exchange of land (not being a question affecting the existence or validity of the contract or relating to compensation payable by the Government or

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<sup>1</sup> As he then was before ascending to a professorship and the casenote editorship of *The Conveyancer*. [The article is at](#)

<sup>2</sup> Harpum, Bridge and Dixon, *Megarry & Wade, The Law of Real Property* (87<sup>th</sup> Edn, 2008), 15-124.

<sup>3</sup> Eg, *Jumbo King Ltd v Faithful Properties Ltd* (1999) 2 HKCFAR 279; *Kensland Realty Ltd v Whale View Investment Ltd* (2001) 4 HKCFAR 381; and *Polyset Ltd v Panhandat Ltd* (2002) 5 HKCFAR 234.

<sup>4</sup> A Westlaw search during January 2010 of “vendor and purchaser summons” in Hong Kong case law revealed 92 decided cases in the previous ten years in which the phrase has appeared and 278 cases in which the phrase has ever been used. These do not include summonses which do not result in a written judgment.

<sup>5</sup> Chapter 219 of the Laws of Hong Kong.

a public body), and the court may make such order upon the petition or originating summons and as to costs as to the court appears just.

As under the LPA provision, the jurisdiction applies to contracts and not to voluntary arrangements, an applicant may not question the existence of the contract, the procedure cannot be used once the contract has been completed and the court may make any order that appears just. What then are the differences between the two sections and might those differences explain the greater use of the procedure in Hong Kong?

The first difference is that under the Hong Kong provision the applicant is not confined to applying by originating summons but may instead use a petition. The difference provides no explanation for the frequency of vendor and purchaser applications since a petition holds no obvious advantages over an originating summons: in more than 25 years of land-related practice in Hong Kong the present writer has never come across a vendor and purchaser petition.<sup>6</sup> Indeed the procedure is known amongst conveyancers as a vendor and purchaser summons, as in England.

The second difference is that what may be raised with the court for decision under the LPA provision is “any question or any claim for compensation or any question” arising out of the contract whereas the Hong Kong provision simply allows any question arising out of the contract to be raised and expressly excludes any question of public compensation. It is not thought that these are differences of substance. The LPA wording appears to rule out any claim for general damages but specific items of loss, such as the costs of investigating title, can be awarded. The Hong Kong courts have taken a similar attitude, either in simple emulation of the English position without attention to the divergence in statutory wording, or because an assessment of unliquidated damages usually requires oral evidence and cross-examination which is incompatible with the summary nature of the process.

The third difference is that whereas section 49(2) of the LPA specifically empowers the court to order the return of a deposit to the purchaser even where it is the purchaser who is in default, no such power was adopted in section 12 of the ordinance. This is a difference of substance and at least one prominent Hong Kong land judge<sup>7</sup> would have welcomed such a power but its omission by no means explains the popularity of vendor and purchaser applications there. On the contrary, if the court could have ordered the return of deposits to purchasers irrespective of the merits of their case, such applications would surely have been used even more frequently.

So the wording of the provisions of the LPA and the ordinance do not explain the greater use of the procedure. The procedure is summary, with no pleadings or discovery, so that, if not speedy it is at least faster than normal litigation; but that is so in England too, so cannot explain the procedure’s greater popularity. What then does? The answer

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<sup>6</sup> Quite why the drafters of section 12(1) decided to give this choice is a mystery. The originating summons is the presumed or default originating process under Hong Kong’s rules of civil procedure.

<sup>7</sup> Godfrey J, later a justice of appeal and previously the eminent chancery silk Gerald Godfrey QC in London, who as a first instance judge in the 1980s dealt with many vendor and purchaser applications and delivered several formative decisions.

seems to lie in a combination of the nature of Hong Kong's property market and the special features of its conveyancing.

### **Market volatility**

Flats and houses, shops and offices are treated as vehicles for speculative investment as much as places in which to live or work. As Lord Hoffmann has observed, property in Hong Kong is a commodity.<sup>8</sup> This, and the relatively small size of the market, makes prices especially sensitive to changes in sentiment and leads to both vertiginous rises and precipitous falls in activity and value.

Section 12 was born amidst a period of uncertainty in the property market during economic recession that followed price excesses of the early 1980s and coincided with Sino-British negotiations about the future of the territory. Vendor and purchaser cases were accordingly few in the early years of the section's existence. Towards the end of the decade the market was back in boom but the sharp correction which followed the events at Tiananmen Square of June 4<sup>th</sup>, 1989, and lasted until early 1991, motivated purchasers to withdraw from contracts if a legal excuse could be found: a tactic known to the Cantonese as "tek kai" or "kicking the lease away".<sup>9</sup> Their solicitors therefore scrutinized the title with utmost care and raised requisitions, good, bad and indifferent, with which to test vendors' solicitors and keep the courts busy.

Property prices enjoyed a breathtaking upward run in 1991 and 1992: it was the vendor's turn to attempt to withdraw from transactions. Fuelled by reckless lending and a sense of euphoria which will be familiar to readers in Britain, the run continued, with occasional pauses, until 1997. Then market sentiment was confronted, not (as might have been expected) by concerns associated with the transformation of Hong Kong into a Special Administrative Region (or SAR) of the People's Republic of China but by the economic reality of the Asian financial crisis. That autumn, as invariably happens, the property market followed the stock market downwards, and at a rate which surprised even veterans of Hong Kong crashes. Purchasers began desperately kicking leases again. Disputes between vendor and purchaser swamped the courts.

The years 1998 to 2003 may well come to be viewed as the heyday of the vendor and purchaser summons in Hong Kong. During that period property prices first plunged, losing approximately half their value in less than a year, then briefly stabilized in 1999 before continuing their descent under the impact of successive recessions triggered first by the exploding of the dotcom bubble and later by the advent of Severe Acute Respiratory Syndrome (SARS). So numerous were the vendor and purchaser summonses during those years that the judiciary was obliged to make special arrangements to handle them. In 1998 the first hearing of each summons was converted from a substantive hearing at which the issues might be adjudicated upon, into procedural hearings, all held

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<sup>8</sup> *Jumbo King Ltd v Faithful Properties Ltd* (1999) 2 HKCFAR 279, (1999) 4 HKC 707.

<sup>9</sup> Virtually all land in HK is leasehold; a purchaser acquires the balance of the term of the government lease, or shares in that balance if (as with flats) the land is jointly owned.

on the same day of the week, at which directions would be given as to the further conduct of the case.<sup>10</sup> This was necessitated by the number of cases in which the defendant (usually the vendor) wished to file evidence or in which there was a material dispute of fact so that the matter was unsuitable for resolution by originating summons and the court had to order that the case proceed as if commenced by writ with affidavits standing as pleadings. But it undermined the rationale of the procedure as a summary method of resolving title disputes before completion.

Once the SARS panic had subsided in late 2003, the property market enjoyed a compensatory surge, followed by a period of calm before another surge fuelled by optimism about the Chinese economy. A decline set in thereafter on fears of the effect upon that economy of the travails of western financial institutions, only to be smartly reversed most recently on news of money from the mainland flooding into Hong Kong property. This volatility maintained the vendor and purchaser summons as the vehicle of choice for resolving property disputes.

Market volatility provides the motivation for parties to withdraw from sale and purchase transactions but the occasion or opportunity to do so is provided by peculiar features of the conveyancing system.

### **Hong Kong peculiarities**

The most fundamental of these features is that there is no system of registered title. There is a Land Registration Ordinance dating from the early colonial years but this created only a register of land lots<sup>11</sup>, with sub-registers showing the registered owner (holder of the Crown lease) and written incumbrances: documents affecting those lots, divisions and shares. There was no guarantee that the registered owner had title. This arrangement has endured to the present despite persistent government promises to adapt it into Torrens-type title registration.<sup>12</sup> In consequence, Hong Kong conveyancing solicitors, unlike their counterparts in England, are obliged to scrutinize all documents of title, a detailed and time-consuming process which often uncovers flaws, especially in the title of older properties.

These flaws may be the result of a laxer approach to scrutiny and approval of title which governed during periods of property confidence and before the colony began producing its own trained conveyancers in the 1970s. Also contributory to title defects are historical events such as the difficulties encountered in ascertaining boundaries and ownership of lots during the land survey that followed the 99-year grant to Britain by Imperial China of the New Territories (90 per cent of the land area of the colony) in 1898

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<sup>10</sup> Court of First Instance of the HKSAR, Practice Direction 5.8.

<sup>11</sup> And of division of and shares in such lots where, as is normally the case, the land is co-owned by flat owners.

<sup>12</sup> A Land Titles Ordinance was actually passed by the Legislative Council in 2004 but only on a pledge by the administration not to bring it into force until after it had been amended; those amendments are currently under consultation and discussion.

and the Japanese invasion and occupation during the Second World War. The latter resulted in the loss or destruction of certain Crown leases held at government or solicitors' offices.

The openness of Hong Kong's economy, its small size and transient population are also factors. Owners of Hong Kong property frequently live or work overseas and give relatives authority to let or sell their property. Foreign banks operating in the local mortgage market execute charges and releases through authorised managers. Powers of attorney given to such people, commonly encountered among title deeds, almost invite problems. In its early years, the vendor and purchaser procedure was often used to resolve questions concerning such powers: questions of execution, scope of authority and proof of non-revocation.<sup>13</sup>

There is little opportunity for avoiding such difficulties by limiting the title to be given. Upon conclusion of negotiations, vendor and purchaser invariably enter into a preliminary agreement on a form supplied by the estate agency brokering the sale and the purchaser pays a substantial initial deposit to signify goodwill. The agreement is usually an immediately binding contract for the sale of the property, even though it may stipulate that either party may withdraw on payment of a financial penalty and provides for the execution of a formal agreement within a few days. Hence by the time solicitors become involved, their clients are bound irrespective of the state of the title. If agreement upon the terms of the formal contract prove impossible, the parties are obliged to proceed to completion on the basis of the preliminary agreement, supplemented by such terms as the law implies, which include the vendor's showing and giving title. This may be compared with the more leisurely procedure in England whereby enquiries are made before any binding agreement and the contract is made well after the price and other essential terms have been informally agreed.

Even if there is no binding preliminary agreement, Hong Kong conveyancing practice is that the deeds are sent by the vendor's solicitors after the making of the formal contract, there being no preliminary enquiries. Consequently requisitions are raised, and title disputes erupt, after the parties are irrevocably bound.

It is standard to include in the contract a clause stating that "time is in every respect of the essence of this agreement", thereby reversing the equitable presumption that contractual terms as to time are not essential. This accords with the businesslike attitude towards property favoured by Hongkongers and has been held to be an implied term even of preliminary agreements. Failure to observe time stipulations thereby becomes a means by which one party (usually the vendor) may allege repudiation of the contract by the other party and refuse to complete, leading to a vendor and purchaser application and, not infrequently, allegations of professional negligence.<sup>14</sup> By contrast the

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<sup>13</sup> See Nield, Powers of Attorney – A Title Headache in *Conveyancing Miscellany, Title and Other Current Problems*, Hong Kong Law Journal Ltd, 1989.

<sup>14</sup> Fn: As where the messenger of the purchaser's solicitor is a few minutes late in delivering completion cheques: *Union Eagle Ltd v Golden Achievement Ltd* [1997] HKLRD 366 (PC).

attitude in England towards time provisions is more relaxed: the equitable attitude is in general left to prevail- so that failure to observe a time limit is not repudiatory and the innocent party may not call the sale off for such failure.

The greatest opportunity for attacks upon the vendor's title is however afforded by Hong Kong's building legislation. Concern about the safety of buildings in the crowded colony led during the last century to a series of Buildings Ordinances laying down ever more detailed rules to be observed in building construction. The most basic such rule requires that prior written permission be obtained from the Building Authority before any building work is carried out.<sup>15</sup> Building work is very widely defined so as to include alterations, additions, removal, demolition and virtually every kind of construction, including (in the view of the Building Authority at any rate) everyday household items as canopies, air-conditioner frames and flower racks. But the width of the definition is not widely appreciated by laymen, permission takes time to obtain and may involve payment of a premium for modification of the government grant, and limitation of resources has necessitated that the government postpone enforcement of the law in all but certain priority instances usually involving danger. The result is that many owners do not seek permission before extending or improving their property. In doing so, however, they create what are popularly called "illegal structures" and risk blighting the title, placing a potent weapon into the hands of a future purchaser who has second thoughts about acquiring the property.

The Building Authority has power to order the removal of unauthorized structures and to give an owner notice of the existence of such structures. These orders and notices may be registered as incumbrances. But there is no need for an order or a notice before title is affected, for in decisions upon vendor and purchaser summonses the courts have regarded the risk of enforcement action against unauthorized structures, even if remote, as sufficient to constitute an incumbrance.<sup>16</sup> This is despite the law as to the effect upon title of potential intervention by a public authority being by no means clear.<sup>17</sup>

Since the existence of the structures is against the law and the Building Authority is obliged eventually to take action against them, the consequence is that the very presence of the structures is enough to blight title. A contract to purchase such property becomes in effect an option to purchase: if values are increasing and the prospects of reselling at a profit are good, the purchaser will accept the slight risk of enforcement action (after perhaps first using the unauthorized construction as a reason to negotiate a lower price); if values are falling or uncertain, the purchaser will use the risk as a reason to say that the title is bad.

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<sup>15</sup> Buildings Ordinance Cap 123 LHK, s 14. "Building works" are defined in s 2.

<sup>16</sup> *Giant River v Asie Marketing* [1990] 1 HKLR 297; *Spark Rich (China) Ltd v Valrose Ltd* [2004] 4 HKC 253, CA. The risk must be merely real, that is to say more than merely theoretical or fanciful.

<sup>17</sup> The position is summarized in *Megarry & Wade*, (above) at 15-082. In *Chi Kit Co Ltd v Lucky Health International Enterprises Ltd* (2000) 3 HKCFAR 268 the Court of Final Appeal expressed the view, obiter, that the judicial attitude towards illegal structures was too entrenched to be revised.

During the period 1998 to 2003 a large proportion of the flood of vendor - purchaser disputes involved requisitions concerning illegal structures. Although there have been signs that the courts, particularly at first instance, have realized the folly of the initial strict attitude towards such structures,<sup>18</sup> the basic assumption that unauthorized structures are incumbrances rendering the title defeasible has remained, so providing fuel for title conflagrations.

Judicial resistance to purchasers' use of the strict attitude has taken varied forms. Where the purchaser knew at the time of the contract of the presence of the structure and (because of experience in the property market) of its likely lack of authorization and its likely effect upon title, the purchaser may be found to have waived the defect. Where the purchaser has discovered the illegal structure close to the completion date, strict interpretation and application has been given to contractual time limits (commonly found in Hong Kong sale and purchase agreements) upon raising objections. To the same end liberal interpretation has been applied to clauses which restrict the title which is to be given, or which exclude requisitions, in respect of the presence of unauthorized changes to the property.<sup>19</sup> Where the purchaser has raised the question of unauthorized alterations to the property in good time and the vendor has removed those alterations before completion, the doctrine of substantial performance has been brought into play in answer to the purchaser's complaint that he is not receiving the property contracted for. These circumventions of the consequences of the basic assumption themselves encourage vendors to resist the purchasers' application for declarations that the title is bad or to launch proceedings of their own to seek declarations that the title is good.

The use in Hong Kong conveyancing of two documents containing covenants and conditions, the government lease (or conditions of grant) and the deed of mutual covenant between flat-owners, has multiplied the potential for unauthorized structures to affect title since those deeds will often contain obligations to observe the building legislation and not to make structural alterations. The obligations are not confined to structures but extend to user, an aspect touched upon also by another document of title, the permit to occupy a new building issued by the Building Authority. This permit invariably is phrased so as to grant permission to occupy the building for certain purposes; this has been held (somewhat debateably) to be restrictive of user, thereby giving ammunition to a purchaser where the use has been changed, as often happens in older buildings in the more crowded parts of the SAR.

Restrictions contained in older government grants may be obsolete, yet they can found a basis for an objection on title and a vendor and purchaser summons. Hong Kong has no equivalent of section 84 of the LPA which empowers the Lands Tribunal to

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<sup>18</sup> By adopting a liberal approach to waiver of objections, to interpretation of clauses excluding requisitions and to substantial compliance with the contract where the vendor has removed the structure before completion.

<sup>19</sup> Despite high judicial authority that such clauses must be clear and identify the specific defect in title and that the purchaser must be aware of the risk: *Jumbo King* (above) and *Chi Kit* (above).

modify or discharge restrictive covenants because of changes to the character of the property or neighbourhood, so elderly covenants remain in the grant even though they have been roundly ignored by all parties, including the government which might have been expected to issue a replacement lease without the defunct clause. Examples are limitations on the height of buildings, restrictions on the type of building that may be erected and offensive trades clauses forbidding a variety of unlikely uses as well as “licensed victualler”, ruling out restaurants or bars in districts long given over to the entertainment trade. These clauses were all used as a simple form of planning control in the era before Hong Kong acquired a Town Planning Ordinance.

Positive obligations in the government grant also have the potential to lead to title problems, not because they will have been broken but because they take the form of conditions and unless there is proof that they have been complied with, there is no entitlement to a government lease. In the second half of the twentieth century the practice grew up of dispensing with the formality of the issue of a government lease, developer grantees relying instead upon the conditions of grant (a contract for a government lease) as the root of title. But the conditions of grant bestow only an equitable title: they are as good as a lease only if all the conditions within the document have been observed. Legal title therefore depends upon proof that the positive conditions have been complied with. In recent decades the government has institutionalized the process of proof by issuing to grantees certificates or letters of compliance and by legislating that, for conditions of grant made before 1970, compliance is deemed to have occurred and the lease is deemed to have been issued. This means that for many flats and units in buildings a copy of the certificate must be supplied as proof of legal title. If the certificate has been overlooked or is unobtainable an objection may be taken in vendor and purchaser proceedings unless the vendor can somehow otherwise show that the conditions have been complied with.<sup>20</sup>

Hence it may be said that Hong Kong’s system of landholding, by leasehold directly from the sovereign power, has contributed to the incidence of title problems and the use of vendor and purchaser summonses. The system on its own does not cause the problems but only in combination with lax (if convenient) administrative practices.

Convenient, if not lax, solicitor practices have also contributed to the spate of vendor and purchaser applications. “Hong Kong style completion” involves the purchaser delivering solicitor’s cheques or bank drafts for the balance of the price (payable to the vendor’s mortgagee, his solicitor, the building manager, utility providers, the vendor himself, and so on) in exchange for a professionally-binding undertaking by the vendor’s solicitor to deliver an executed and registered assignment within so-many days. To make this work, an adequate time before the completion deadline the vendor has to give to the purchaser instructions as to the payees and amounts of the cheques or drafts.<sup>21</sup> The process requires co-operation and a degree of trust and if that breaks down, the potential for dispute, and a vendor and purchaser summons, is evident.

<sup>20</sup> Conveyancing and Property Ordinance, s14; *Chen v Lord Energy* (1997-98) 1 HKCFAR 365; *Minchest Ltd v Lau Tsui Kwai* [2008] 2 HKC 283

<sup>21</sup> The courts have been willing to imply appropriate terms into the contract: *Kensland Realty Ltd v Whale View Investment Ltd* (2001) 4 HKCFAR 381.



The common aspect of these peculiar title questions which makes them particularly suitable for resolution by the vendor-purchaser procedure is that they are all relatively confined points of law based on facts about which there is unlikely to be a material dispute. The points may therefore be raised by summons and the facts can be set out in an affidavit with exhibited supporting documents, such as the sale and purchase agreement, relevant deeds and correspondence between solicitors. The summons will also suggest the remedies that the applicant is seeking. If the applicant is the purchaser, these will invariably include the return of the deposit.

The Hong Kong practice is for the purchaser to pay a further deposit on the making of the formal sale and purchase agreement. As in England, the amount is traditionally ten per cent of the price (the initial deposit going towards that amount) but since property prices are generally much higher than in less intensely populated places, the figure is of course higher, making worthwhile a purchaser's claim for return of the deposit despite the legal costs. During times of boom, when speculation is common and the risk of sudden price reverses and attempts to avoid the contract by purchasers correspondingly greater, one way for vendors to attempt to protect themselves has been to demand a higher deposit. The Court of Final Appeal however has declared amounts exceeding the conventional ten per cent to be not true deposits (unless there are special circumstances) and therefore returnable in their entirety in the event of the contract failing due to purchasers' default.<sup>22</sup> The court thereby both circumvented the absence of the equivalent of section 49(2) of the LPA and encouraged purchasers to refuse to complete and to seek return of the deposit even where the title is good.

### **Modifications to vendor and purchaser summons**

It is routine for the Hong Kong courts to order the return of a deposit where title proves bad. This, and the Court of Final Appeal's approach to excessive deposits, suggests that there must be such a power. Where the title is bad or at least has not been shown to be good, return of the deposit is a natural consequence of a declaration to that effect. Where the title is good but the deposit excessive, the return presumably comes within the power to make "such order as to the court appears just" given by section 12.

This is an illustration of adaptation of the vendor and purchaser procedure to accommodate local conveyancing realities, adaptation which no doubt contributes to the procedure's popularity as a means of resolving disputes. Another is that the courts have taken a flexible attitude towards the requirement in section 12, which is copied from the LPA provision, that the question should arise out of or be connected with the contract and not be a question affecting the existence or validity of the contract. It seems from that requirement and also from the words "[a] vendor or purchaser of any interest in land ...may apply" that the intent of the section is to deal swiftly with questions which

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<sup>22</sup> *Polyset Ltd v Panhandat Ltd* (2002) 5 HKCFAR 234. This, despite express provision in the agreement as to the reason for the greater deposit and a long completion period and use of a shell company as a vehicle for the purchase, both indicia of a speculator-purchaser.

arise between contract and conveyance so as to facilitate completion of the purchase – in other words, that the parties both regard their contract as subsisting and are willing to proceed but need assistance to that end. Hence the typical question should be whether a particular requisition has been satisfactorily answered: if it has, the parties may proceed knowing that there is no problem arising out of the alleged defect; if it has not, the vendor has to find a different answer and the court may indicate what that answer might be. The quintessential remedy on a vendor and purchaser summons is therefore a declaration, which is no doubt why Megarry & Wade presents the vendor and purchaser summons as an aspect of that remedy.<sup>23</sup>

Nevertheless in the usual Hong Kong vendor-purchaser dispute the one thing that the parties agree upon is that their contract no longer exists and there is no prospect of its completion. The purchaser's solicitors will have raised an objection on the title, the vendor's solicitors will have replied, the response to that will be that the reply is unsatisfactory, the further reply will be a reiteration of the earlier one perhaps with some elaboration, this will not satisfy the purchaser, and so the correspondence will proceed, becoming increasingly complicated and argumentative, until completion date has passed. The purchaser will then declare that the vendor is in repudiatory breach for not proving a good title or answering the requisition satisfactorily, accept the repudiation and demand return of the deposit. The vendor will retaliate by declaring that it is the purchaser who has repudiated by failing to complete and that the contract is rescinded. One party, usually the purchaser, will then issue a vendor and purchaser summons.

The courts therefore routinely adjudicate upon vendor-purchaser applications in which, on any view, there is no subsisting contract. This may be justified where the parties agree that their contract is off because then the court is not being asked to rule as to whether the contract exists or not, the issue being who was in default under its terms. But where one of the parties is seeking to hold the other to the bargain and the other is claiming that the contract has been terminated because of the first's repudiatory breach, the case would appear to be outside the scope of the section. However, no such distinction has been observed; this is undoubtedly convenient and may have contributed to the popularity of the vendor and purchaser procedure.

Consistent with the original purpose of the vendor and purchaser summons as a method of ironing out bumps on the road to completion, remedies such as general unliquidated damages (which require quantification) and specific performance have been regarded as inconsistent with the procedure. Consistent with the summary nature of the procedure, it is said that no disputes of fact and no difficult questions or complex issues can be adjudicated upon either. But even these nostrums have been occasionally challenged or violated by Hong Kong judges. This only adds life and health to a procedure which has more or less died in England.

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<sup>23</sup> ~~Fn: Harpum, Bridge and Dixon, Megarry & Wade, *The Law of Real Property*, (7<sup>th</sup> Edn, 2008above)~~, 15-124.

### **Conclusion**

The prospects for the vendor and purchaser summons in the SAR are clouded by the impending land titles legislation. Nevertheless most of the forces outlined above which have led to the popularity of the procedure will continue despite that legislation and so it seems likely that the vendor and purchaser summons will move into healthy middle age in at least one corner of the common law world.