LDPE 393/2022

[2024] HKLdT 105

**IN THE LANDS TRIBUNAL OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

APPLICATION NO. LDPE 393 OF 2022

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BETWEEN

|  |  |  |
| --- | --- | --- |
|  | HANTEC INVESTMENT LIMITED  (亨達投資有限公司) | Applicant |
|  |  |  |
|  | and |  |
|  |  |  |
|  | LAM Kan Yau (林鏡有) | Respondent |

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| --- | --- |
| Before: | His Honour Judge S. H. Lee,  Presiding Officer of the Lands Tribunal, in Court |
| Dates of Trial : | 3, 6 - 10 May & 26 June 2024 |
| Date of Judgment: | 31 December 2024 |

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J U D G M E N T

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***A. Who was tenant/licensee during the Material Period?***

1. The foremost major issue of these proceedings is whether the Applicant Hantec Investment Limited (**Hantec**) had, between October 2020 and June 2021 (**the Material Period**), granted a tenancy/licence of the subject lots in dispute (**the Subject Lots**) to *the Respondent* Mr Lam Kan Yau (**Mr Lam**) as it claimed *or* to *one Tan Tat Godown Company Limited* (騰達運輸貨倉有限公司) (**Tan Tat**) as Mr Lam claimed.
2. Hantec was represented by counsels Mr Bosco Cheng (**Mr Cheng**) and Mr Francis Chung at trial whereas counsels Mr Lawrence Pang (**Mr Pang**) and Ms Tiffany Law appeared for Mr Lam at trial.
3. On 24 May 2022, Hantec commenced these proceedings against Mr Lam as its *tenant/licensee* of the Subject Lots seeking, according to its Amended Notice of Application, to recover 1) vacant possession of the Subject Lots, and 2) mesne profits of the Subject Lots at such rate to be assessed *from 4 May 2022* until delivery of their vacant possession.
4. Mr Lam defended these proceedings by saying that Hantec had sued the *wrong* party. He pointed to the facts that Hantec had, in July 2021, sought vacant possession of the Subject Lots by suing Tan Tat as its *tenant and/or licensee* of the same from December 2020 onwards in an action brought in the Court of First Instance[[1]](#footnote-1) (**HC Action**). Tan Tat filed its Defence & Counterclaim of HC Action in December 2021. Hantec later applied in April 2022 for, and was granted, leave to discontinue its claim against Tan Tat in HC Action on 12 May 2022.
5. Mr Lam says in his Notice of Opposition that he and Tan Tat were at all material times and are separate legal entities, that he was not, and is not, the tenant (whether at will or otherwise) or licensee (whether under bare licence or otherwise) of the Subject Lots or any part thereof at any time, and that he was not, and is not, in possession or occupation of the Subject Lots or any part thereof at any time. Rather, it was Tan Tat which was all material times and is the tenant and in possession and occupation of the Subject Lots[[2]](#footnote-2).
6. Were Mr Lam the *correct* party to be sued, it is common ground between Hantec and Mr Lam that factual findings to be made in these proceedings on the issue of *identity* of tenant/licensee during the Material Period is binding, by way of issue estoppel[[3]](#footnote-3), on Tan Tat for the purpose of its counterclaim against Hantec in HC Action that remains to be tried in Court of First Instance.
7. Were Mr Lam sued *correctly*, Hantec’s case is that it had served sufficient notice on Mr Lam and thereby properly terminated such tenant at will or bare licence in his favour over the Subject Lots.

***B. What is the proper amount of mesne profits, if any?***

1. Were he sued *correctly,* and his tenancy or licence over the Subject Lots properly terminated, such that Hantec is entitled to vacant possession of the Subject Lots as it claimed, Mr Lam next contested (and the second major issue of these proceedings is) the amount of mesne profits to be recovered by Hantec for the Subject Lots.
2. While Hantec sought at trial a monthly sum of around **$1.3M** by way of mesne profits, Mr Lam suggested a much lower monthly figure of around **$266,000** only.

***C. Witnesses called at trial***

1. Hantec called at trial two factual witnesses i.e. Mr Yu Yuen Por (**Mr Yu**) and Mr Tuen Chun Sing (**Mr Tuen**), and one expert surveyor i.e. Mr Alnwick C.H. Chan of Knight Frank Petty Limited (**Mr Chan**) in support of its case.
2. Mr Yu was and is a land officer of Kowloon Development Company Limited (**KDCL**), a listed company and an associate company of Hantec. He joined KDCL as a land officer in August 2017 and has remained so until trial. Previously, he worked at Lands Department from 1978 to 2003[[4]](#footnote-4).
3. Mr Tuen is Assistant General Manager of the Land and Business Department of KDCL. He was the superior of Mr Yu shortly before, during and after the Material Period. He first joined KDCL in May 2005 as a property officer. After promotions, his role became supervisory as from 2020 onwards.
4. Mr Lam elected to give evidence to oppose Hantec’s claim and also called one expert surveyor i.e. Mr Cliff C.H. Lau of Landscope Surveyors Limited (**Mr Lau**) to give expert valuation evidence.
5. As part of valuation exercise of the Subject Lots, Mr Chan has inspected them on 9 June 2023 and prepared his valuation report dated 4 May 2023 (**Mr Chan’s Report**). Mr Lau has also inspected the Subject Lots on 3 August 2023 and prepared his valuation report dated 28 September 2023 (**Mr Lau’s Report**). Mr Chan and Mr Lau (**the 2 Experts**) have thereafter complied their joint statement dated 21 March 2024 (**the Joint Statement**).

***D. Background Facts***

1. Most background facts are either common ground or proven by undisputed evidence of the 3 factual witnesses, undisputed/agreed evidence of the 2 Experts, and indisputable contemporaneous documents produced at trial. Mr Lam and Mr Yu had also admitted much under cross-examination. On the basis of all these evidence, I find the background facts as follows.

***D1. The Subject Lots***

1. The Subject Lots are altogether 86 in total number. Their respective section and lot numbers are all set out in Amended Notice of Application. Their total area is, the 2 Experts agreed, **37,186.44 square metre**. They are all located in DD 104, Ngau Tam Mei, Yuen Long. They are situated on the Eastern side of Ching Yau Road and also on the Southern side of Chuk Yau Road.
2. Vehicular access is available at the *main* entrance facing Ching Yau Road which provides a two-lane, two-way traffic flow. There is also a *secondary* entrance facing Chuk Yau Road[[5]](#footnote-5) which provides a one-lane, two way traffic flow with vehicular access.
3. Village houses and agricultural lands are located along Chuk Yau Road. On their respective inspections of the Subject Lots in 2023, the 2 Experts took photos[[6]](#footnote-6) and found them being used for *storage* purpose, be it open storage or covered storage.
4. In the immediate vicinity of the Subject Lots, the surroundings primarily consist, also, of brownfield sites that are used for purposes such as storage, container storage, car-repairing workshop or vehicles parking.
5. In the Amended Notice of Application, the Subject Lots are divided into 2 groups and they were said to be particularized in Appendix I and II annexed thereto. But both appendix are in fact *missing* from the Amended Notice of Application. Luckily, both appendix could still be found within the Notice of Application. The two groups are respectively particularized in Appendix I, and Appendix II, to the Notice of Application and identified in blue, and green, on the plan annexed thereto (**Part I Lots** and **Part II Lots** respectively).
6. Under their Government Leases, the Subject Lots were all described as being used for *agricultural* purpose.
7. Pursuant to Town Planning Ordinance (**TPO**)[[7]](#footnote-7), the Subject Lots were first zoned within Ngau Tam Mei Interim Development Permission Area (**IDPA**) Plan gazetted on *14 September 1990*. They are now zoned within a “Comprehensive Development Area” (for residential use with commercial, open space and other supporting facilities) on Approved Ngau Tam Mei Outline Zoning Plan dated 5 December 2006. There is no “column one uses”[[8]](#footnote-8) in such outline zoning plan, meaning that planning permission is required for the Subject Lots to be used for *storage* purpose unless there is an existing use right.
8. Unless it can be shown that any of the Subject Lots had already been used for storage purpose *as at 14 September 1990* or that planning permission for the same is obtained from Town Planning Board, the Subject Lots could not be so used lawfully and any such usage may result in prosecution and re-entry.
9. Indeed, between 1997 and 2016, the Subject Lots have had a history of more than 25 previous planning applications submitted to Town Planning Board for the application of temporary open storage, temporary warehouse, container storage and related uses, all of which were rejected.
10. And enforcement notices issued under s.23 of TPO by Planning Department (**PD**) could be found registered against some of the Subject Lots as early as in 1997, and registered against some others of the Subject Lots in the subsequent years of 1998, 1999, 2001 to 2005, 2008 to 2014 and 2016[[9]](#footnote-9).

***D2. The Parties***

1. Hantec was and is at all material times since 2009 the registered owner of the Subject Lots. Hantec had purchased all the Subject Lots by stages from 1994 to 2002 and in 2009.
2. Tan Tat was incorporated in March 2002. At all material times since 2003, Tan Tat has carried on a godown business including renting out warehouses and providing services related to handling of containers for profits.
3. In around May 2006, Mr Lam became, and has since then been, the sole shareholder, and one of 2 directors, of Tan Tat. Since January 2013, he also became, and has since then been, the sole director of Tan Tat. But, as early as in 2003, Mr Lam had in fact, he admitted, already been in control of Tan Tat but that he could not be its director due to legal reasons.

***D3. Period from 2003 to September 2020***

1. From around May 2003, Tan Tat (already under Mr Lam’s control as he admitted) started occupying part of the Subject Lots (and using the same for storage purpose) for its business and, over the years, it had expanded its business, came to occupy more and more of the Subject Lots, and eventually occupied all the Subject Lots, for *storage* use by October 2020.
2. Tan Tat did so first as a *sub-tenant* to one Mr Man Kam Po (**Mr Man**) starting from about May 2003 and, after passing away of Mr Man in June 2003, as a *sub-tenant* to one Mr Ngan Ming Ho (**Mr Ngan**) starting from about August 2003 onwards.
3. Tan Tat, *to Mr Lam’s knowledge*, had in about May 2003 entered into a written tenancy agreement with Mr Man but had not done so with Mr Ngan for two decades. As *tenant* of Mr Man (and of Mr Ngan), Tan Tat had paid rent direct to Mr Man (and to Mr Ngan) and not to Hantec.
4. At all material times from April 2003 and from about August 2003, Mr Man and Mr Ngan were respectively *tenant* of Hantec of part or all of the Subject Lots under written tenancy agreement(s). The Subject Lots were mostly let by Hantec to them for agricultural use and/or open storage use.
5. Mr Man’s tenancy with Hantec, and most of Mr Ngan’s tenancies with Hantec over the years, did not prohibit sub-letting. Mr Man, and Mr Ngan, had sublet part or all of the Subject Lots to Tan Tat in their own capacities as *tenant* of Hantec and they were not *authorized representatives* of Hantec. According to Mr Lam, he *knew* of Hantec as *landlord* of Mr Man (and of Mr Ngan) *as early as in 2003*.
6. Mr Ngan’s tenancies were renewed, and his leased areas had expanded over the years until all the Subject Lots were covered. In August 2019, he *last* renewed with Hantec 9 written tenancy agreements over some of the Subject Lots, all for a term of 2 years from 1 July 2019 to 30 June 2021. Mr Yu witnessed Mr Ngan’s execution of these 9 agreements. By their terms, the lots concerned were mostly let by Hantec to Mr Ngan for *agricultural and/or (open) storage* use, but Hantec *gave no guarantee* as to *lawfulness* of such users. Save that for one agreement, the terms of the other agreements did not prohibit sub-letting by Mr Ngan.
7. Mr Lam had from time to time met Mr Yu in person at the Subject Lots between 2017 and 2020 and came to *know* him as Hantec’s site supervisor. In turn, Mr Yu came to *know* that Tan Tat run a storage business at the Subject Lots with Mr Lam being in charge.
8. In order to run its business on such of the Subject Lots (and to use the same for *storage* purpose), Tan Tat had over the years since 2003 erected and/or retained on some of the Subject Lots many structures, which the authorities considered to be unauthorized building works (**UBWs**). Though Mr Lam *knew* of risk of enforcement (and prosecution) for these UBWs, Tan Tat had *persisted* in its practice over the years.
9. At the same time, Tan Tat had applied for as many as 4 times with Hantec’s consent and written authorization for planning permission and/or short term waiver (**STW**) in order to retain these UBWs. Tan Tat failed in its first three applications made respectively in 2003, 2010 and April 2016.
10. Tan Tat managed to succeed in its *fourth* application made in June 2016 with Hantec’s consent and authorization. In about July 2017, STW No.4691 was issued by the government to Hantec retrospectively from 10 November 2010 and on quarterly basis (**2017 STW**) to use 9 lots of the Subject Lots for “*warehouse* (except for dangerous goods) purpose”[[10]](#footnote-10) with *total coverage* not exceeding **4,036 square metre** (and the requisite forbearance fees, administrative fee and deposit were all paid by Tan Tat).
11. Moving back in time, as early as in August 2005, Hantec, and Tan Tat, had received enforcement notice issued by PD under s.23(1) of TPO that “unauthorized development” (including storage use) carried out at some of the Subject Lots should be discontinued by 23 November 2005. The said TPO notice had also been registered at Lands Registry. It was not until after the said “unauthorized development” was discontinued in March 2008 that that another notice issued by PD to Hantec, and Tan Tat, under s.23(8A) of TPO was registered at Lands Registry in May 2008.
12. In April 2015, Hantec was summoned by PD in STS 3030/2015 for breach of s.23(6) of TPO for failing to comply with s.23 TPO notice issued in 2014. Hantec pleaded guilty and was, in July 2015, fined in sum of $180,000. The said fine was, I believe, paid by Mr Ngan, who later got reimbursed by Tan Tat in August 2015[[11]](#footnote-11).
13. In December 2015, Hantec was summoned by PD again in STS 11142/2015 for breach of s.23(6) of TPO for failing to comply with s.23 TPO notice issued in 2014. Hantec pleaded guilty too and was, in February 2016, fined in sum of $60,000. Mr Ngan paid the said fine for Hantec in March 2016 and was, I believe, later reimbursed by Tan Tat.
14. In March 2016, District Lands Office, Yuen Long (**DLO**), had issued warning letters to Hantec requiring it to purge breach of Government Leases of many of the Subject Lots by demolishing UBWs erected thereon without approval and advising it that the government reserves its right *re-enter* the lots concerned.
15. In April 2016, Hantec through its solicitors wrote to Mr Ngan (copied to Mr Lam) demanding him to remove UBWs on some of the Subject Lots as required by DLO’s letter above, or else that legal action may be taken by it.
16. In June 2016, the above March 2016 warning letters were registered at the Lands Registry and DLO advised Hantec by letter on the ground that breach of Government Leases of some of the Subject Lots above had not been rectified.
17. In November 2018, Mr Yu on behalf of Hantec wrote to Mr Ngan referring to his failure to remove UBWs as demanded in 2016 and registration of government warning letters at Land Registry against some of the Subject Lots. Hantec demanded rectification with 28 days and threatened legal action or termination of tenancy in default, and also suggested remedial action by way of STW application be taken. Mr Ngan signed on the letter in acknowledgment.
18. On 20 March 2019, Mr Yu on behalf of Hantec again wrote to Mr Ngan complaining of non-compliance with previous demands to remove UBWs and demanded Mr Ngan to vacate from some of the Subject Lots by 3 April 2019. Mr Ngan also signed on the same in acknowledgment.
19. In May 2019, Hantec’s staff met Mr Ngan in a meeting, during which Mr Ngan promised to remove certain UBWs erected on some of the Subject Lots as a matter of priority or to produce DLO’s exemption papers.
20. On 31 October 2019, Mr Ngan met Hantec’s staff again in another meeting and undertook to remove UBWs erected on some of the Subject Lots *by stages*.
21. On 6 November 2019, Hantec wrote to Mr Ngan referring to the said October 2019 meeting and Mr Ngan’s *undertaking* therein *as per table and plan annexed*, and required him to follow up on the same as soon as possible. Mr Ngan also signed on the same in acknowledgment on 13 November 2019.

***D4. The Material Period from October 2020 to June 2021***

1. Unfortunately, in October 2020, Mr Ngan passed away.
2. Negotiations thereafter ensured between Mr Yu (with Hantec’s instructions and under supervision of his superiors) representing Hantec and Mr Lam over formal agreement(s), if any, to be entered by Hantec with *another* to *replace* Mr Ngan as *tenant/licensee* of the Subject Lots from Hantec. They met each other many times at container yards at the Subject Lots and at Mr Lam’s home and also discussed with one another over the phone many times.
3. At the same time, Tan Tat was *allowed* by Hantec to continue during such negotiations[[12]](#footnote-12) its occupation of the Subject Lots for storage purpose for its business at such sum and rate below agreed between Mr Yu and Mr Lam after discussions i.e.

(1) Part I Lots at a fixed monthly sum of $504,600; and

(2) such of Part II Lots Tan Tat occupied each month at a rate of $1.5 per square feet of actual occupation.

1. In order to ascertain total area of Part II Lots actually occupied by Tan Tat (and to calculate total temporary occupation fee payable thereof) in each month, Mr Yu inspected and took photos of occupied Part II Lots himself in each of the following months.
2. On the following dates between October 2020 and April 2021, Mr Yu issued on behalf of Hantec 7 demand letters to “***Mr Lam***” (“林鏡有先生”) advising *him* the total areas of Part II Lots occupied[[13]](#footnote-13) in the following years and months and requiring *him* to pay the following temporary occupation fees at the rate of $1.5 per square feet[[14]](#footnote-14) (collectively **Part II Demand Letters**) and gave them to Mr Lam.

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|  | Date of Issue | Month & year of occupation | Area occupied | Amount payable |
| 1 | *30 October 2020* | *October 2020* | 41,454 sq ft | $62,181 |
| 2 | 30 November 2020 | November 2020 | 43,854 sq ft | $65,781 |
| 3 | 5 January 2021 | December 2020 | 43,534 sq ft | $65,301 |
| 4 | 25 January 2021 | January 2021 | 42,894 sq ft | $64,341 |
| 5 | 16 February 2021 | February 2021 | 44,814 sq ft | $67,221 |
| 6 | 11 March 2021 | March 2021 | 48,654 sq ft | $72,981 |
| 7 | 27 April 2021 | April 2021 | 49,294 sq ft | $73,941 |

1. Afterwards, Mr Lam gave cheques *drawn by Tan Tat*[[15]](#footnote-15) to Mr Yu each month to settle the above temporary occupation fees of Part II Lots for the month concerned. Mr Yu collected, and sent, them to Hantec.
2. Account department of Hantec thereafter issued as many as 8 undated official receipts addressed to “**Tan Tat**” (“騰達運輸貨倉有限公司”) for payment of occupational fees of Part II Lots for the months of October 2020 to April 2021 (and another undated one for payment made for the month of May 2021) (collectively **Part II Receipts**). Mr Yu collected and gave them in person to Mr Lam.
3. Moving back earlier in time, from December 2020 to unknown dates, account department of Hantec had issued the following 7 debit notes to “**Tan Tat *(Mr Lam)***” (“騰達運輸貨倉有限公司**(林鏡有)**”) requiring rental payment of $504,600 for Part I Lots (collectively **Part I Debit Notes**) in the following years and months and delivered them to Mr Yu for onward delivery to Mr Lam.

|  |  |  |
| --- | --- | --- |
|  | Date of Issue | Period to be covered |
| 1 | *1 December 2020* | *1 to 30 November 2020* |
| 2 | *1 December 2020* | 1 to 31 December 2020 |
| 3 | 1 January 2021 | 1 to 31 January 2021 |
| 4 | Undated | 1 to 28 February 2021 |
| 5 | Undated | 1 to 31 March 2021 |
| 6 | Undated | 1 to 30 April 2021 |
| 7 | Undated | 1. to 31 May 2021 |

1. Mr Lam thereafter gave cheques *drawn by Tan Tat*[[16]](#footnote-16) to Mr Yu each month as rental payment of Part I Lots. Mr Yu collected them and sent them each month to account department of Hantec.
2. Account department of Hantec had thereafter on unknown dates and 1 January 2021 issued 3 official receipts addressed to “**Tan Tat**” (“騰達運輸貨倉有限公司”) for the same for the months from November 2020 to *January* 2021, and had on unknown dates issued another 3 official receipts addressed to “**Tan Tat *(Mr Lam)***” (“騰達運輸貨倉有限公司**(林鏡有)**”) for the same for the months from *March* 2021 to May 2021 (collectively **Part I Receipts**)[[17]](#footnote-17). Mr Yu collected them and thereafter gave them in person to Mr Lam.
3. In the meantime, on 29 November 2020, at request of, and witnessed, by Mr Yu, Mr Lam had provided *his* identity card numbers, signed in his *personal* capacity[[18]](#footnote-18), and gave *his* undertaking to remove[[19]](#footnote-19) UBWs erected on 8 different portions of the Subject Lots by 6 deadlines ranging from 31 December 2020 to 28 February 2022[[20]](#footnote-20) (**the Undertaking**), on an A-3 sized document entitled “Plan Showing The Schedule Time For Demolition Of The Illegal Structures *Within* ***Mr. Lam Kan Yau’s*** *Tenancy Area* at Ngau Tam Mei (*Within 15 months*) (italics and bold supplied)” (**the Demolition Plan**)[[21]](#footnote-21) prepared by Hantec.
4. As recorded by the Demolition Plan, some UBWs at locations of the Subject Lots identified in the Demolition Plan had already been demolished shortly before it was signed by Mr Lam. In December 2020 and January 2021, further UBWs identified in the Demolition Plan were also demolished in line with it.
5. In around February 2021, Mr Yu gave a draft tenancy agreement of Part I Lots in Chinese (**Draft Tenancy Agreement**) and a draft license agreement (准用協議) of Part II Lots in Chinese (**Draft License Agreement**) both prepared by Hantec to Mr Lam for his review. Both drafts had then *not* been signed or executed by anyone on behalf of Hantec.
6. On the face of the Draft Tenancy Agreement, Hantec and *Mr Lam*[[22]](#footnote-22) were stated as the landlord and *tenant* respectively. It was for a fixed term of 2 years from 1 November 2020 to 31 October 2022 and at a monthly rental of $504,600.
7. Material clauses of the Draft Tenancy Agreement for our present purpose include the followings: -

(1) By its clause 11, the tenant agrees to remove structures erected on 3 groups of lots by 5 deadlines ranging from 28 February 2021 and 28 February 2022[[23]](#footnote-23) (in the *same* manners, Mr Lam admitted, required by the Undertaking he signed on the Demolition Plan);

(2) Clause 11 requires the tenant to pay security deposit in the large sum of $4.811 million (**the Security Deposit**) to the landlord upon signing of the agreement; and

(3) Clause 12 specifies the various purposes to which the Security Deposit could be put, including paying for removal expenses of UBWs on Part I Lots; and

(4) Clause 14 allows, inter alia, the landlord to *forfeit* the Security Deposit (and allow the landlord to recover damages from the tenant for breach on indemnity basis) if, among others, the tenant *fails to remove UBWs on Part I Lots on or before specified deadlines*.

1. On the face of the Draft License Agreement, Hantec and *Mr Lam* are stated as the licensor and *licensee*. The duration of the said licence is one of 2 years from 1 November 2020 to 31 October 2022. The licence fee is to be calculated at $1.5 per square feet of area actually occupied in any particular month.
2. Mr Lam *signed* on the execution clause of the Draft License Agreement as *licensee* and, on the next day or so, returned it and the Draft Tenancy Agreement to Mr Yu. He, however, did not sign on the latter. He wrote down on the bottom of the first page of the returned Draft Tenancy Agreement: “可以的話，請接受用騰達公司做租客” (**the Remarks**). Other Chinese words that he put down on its first page include: “請將此租約分成兩份，一份是合法部分，一份是有非法上蓋部分”. At page 3 of the same, Mr Lam also crossed out the sum of “$4.811M” for the Security Deposit and replaced it with the much smaller sum of “$500,000”.
3. Afterwards, Mr Yu sent the 2 returned draft agreements to his superior at Hantec, which *never* prepared (*nor* gave to Mr Lam) another draft license agreement of Part II Lots with *Tan Tat* as the *licensee*. Mr Yu were later instructed by his superiors to continue receiving $504,600 rentals for Part I Lots and occupation fees at $1.5 per square feet of Part II Lots actually occupied, and to continue demanding removal of UBWs at the Subject Lots.
4. At about the same time, in February 2021, Tan Tat engaged a consultant company to advise and prepare for another application of STW to PD for retaining UBWs on some of the Subject Lots (**the intended 2021 Application**). The papers were ready by around April 2021. But, in the end, the intended 2021 Application *never* received Hantec’s approval or authorization.
5. On 16 April 2021, a meeting was held between Mr Lam on one side and Mr Tuen and one Mr Au-Yeung of KDCL[[24]](#footnote-24) representing Hantec on the other side (**the April 2021 Meeting**). Mr Yu had, I accept from him, brought Mr Lam to the venue of the April 2021 Meeting but did not himself participate in the same.
6. During the April 2021 Meeting, Mr Lam requested Hantec to allow him to go ahead with the intended 2021 Application in order to retain UBWs on some of the Subject Lots (and maintain the status quo during the application process) but Hantec disagreed and demanded all UBWs be removed from the Subject Lots in line with the Demolition Plan if negotiations are to be continued. The two sides could not, and did not, reach any agreement at the end of the meeting.
7. Notwithstanding further negotiations were conducted between Mr Tuen and Mr Lam afterwards, negotiation between Hantec and Mr Lam in the end produced no result (and no formal document, or binding agreement, was ever executed by Hantec) over letting and/or licensing of the Subject Lots.
8. Neither did Hantec execute the Draft License Agreement for Part II Lots already signed by Mr Lam as the same together with the Draft Tenancy Agreement for Part I Lots are, I accept from Mr Tuen, part and parcel of a composite package for all the Subject Lots.
9. On 27 May 2021 and 21 June 2021, Hantec through solicitors served written notices to quit on Mr Lam and Tan Tat demanding removal of UBWs erected on the Subject Lots and vacant possession of the Subject Lots by 30 June 2021. However, such demands were not complied with and Tan Tat continued to occupy the Subject Lots until trial.

***D5. Period from July 2021 onwards***

1. As was said above, from July 2021 to May 2022, Hantec pursued against Tan Tat in HC Action as its *tenant/licensee* of the Subject Lots from December 2020 onwards.
2. In the meantime, in August 2021, PD had again written to Hantec advising that storage use at some of the Subject Lots could constitute “unauthorized development” under TPO making it liable to enforcement and/or prosecution.
3. In May 2022, these proceedings were taken out by Hantec against Mr Lam as its *tenant/licensee* of the Subject Lots for the Material Period.
4. From July 2021 to April 2024, payments by way of cheques *drawn by Tan Tat* were still made to Hantec (including by way of ATM machines deposits into its account) purportedly for the Subject Lots in purportedly the same or similar amounts as was made to it during the Material Period.

***E. Assessment of witnesses***

***E1. Mr Yu***

1. I find Mr Yu an honest and reliable witness. Mr Yu was slow in answering questions of Mr Pang and, at times, his memory failed him. However, his evidence is, I think, inherently probable and supported by contemporaneous documents and also by Mr Tuen’s undisputed evidence regarding Hantec’s negotiating stances with Mr Lam to be mentioned below. His evidence was consistent throughout and he was not shaken after cross-examination by Mr Pang.
2. I therefore accept Mr Yu’s evidence and prefer his evidence to those of Mr Lam in case of conflict on my assessment of him and that of Mr Lam below.

***E2. Mr Tuen***

1. Mr Tuen did not, I have to point out, come onto the stage until he got himself involved in direct negotiations with Mr Lam in April 2021 and thereafter. He had no prior direct dealing with Mr Lam and no personal knowledge of Mr Yu’s prior direct dealings with Mr Lam. Due to such limitations, his evidence is therefore of limited assistance to Hantec on the identity issue.
2. However, on top of producing written tenancy agreements entered into by Hantec, Mr Man, Mr Ngan and Tan Tat during the last 2 decades, Mr Tuen also gave important background evidence on Hantec’s 2 key stances on negotiations with Mr Lam, namely, that 1) Hantec would only enter into legal relationship over the Subject Lots with *a real person* as opposed to *a limited company* (**the First Stance**) and 2) *demolition* of UBWs remaining on the Subject Lots was the *key* condition for Hantec to consider whether to let, or grant licence of, them to Mr Lam (**the Second Stance**).
3. Mr Pang did not, I observe, challenge Mr Tuen’s evidence regarding the First and Second Stances. The First Instance was, I think, understandable as a matter of law and also supported by the contents of the Demolition Plan, the Draft Tenancy Agreement and the Draft License Agreement. The Second Stance was, one thinks, explainable by DLO re-entry threat made to Hantec in 2016 and supported by Hantec’s repeated (and failed) efforts since then to require Mr Ngan to remove UBWs on the Subject Lots.
4. For the above reasons, I accept Mr Tuen’s evidence and find that Hantec did hold the First and Second Stances during the Material Period and that Mr Tuen had attempted to carry them out in his direct negotiations with Mr Lam (whose contents were not challenged by Mr Pang in cross-examination) but failed in the end as he explained in his witness statement.

***E3. Mr Lam***

1. I do not find Mr Lam an honest or reliable witness. Let me explain as follows.
2. First, material part of Mr Lam’s evidence is, I observe, inherently unlikely. For example, he did not know Hantec *before* Tan Tat entered into written tenancy agreement with Mr Man in 2003. Mr Man had, he said, shown him Mr Man’s written tenancy with Hantec as *landlord*. Hantec’s status as *landlord* of Mr Man was also recorded in recital of Tan Tat’s written tenancy agreement with Mr Man. As such, I fail to see any objective basis for him to believe (as he claimed) that Mr Man was *also* Hantec’s alleged *authorized representative* of the Subject Lots on top of being its *tenant*.
3. Mr Lam’s claim of big developers enlisting “big brothers”[[25]](#footnote-25) to hold and handle their lands in New Territories is, I am afraid, his bare assertion made for the first time in the box and not found in his witness statement. I find it unbelievable and contrary to the tenancy documentation before me. I do not believe that such documentation was “useless” or “sham” as Mr Lam claimed.
4. Secondly, Mr Lam contradicted himself on material points. Under cross-examination, he insisted on intending to make Tan Tat tenant of Hantec during negotiations but he did not sign on the Demolition Plan with Tan Tat’s company chop. He purported to explain that he did not have it with him as the said plan was given to him at a container site. He however later *agreed* with Mr Cheng that he signed on the said plan in his *personal* capacity. On being re-examined, he answered Mr Pang saying that he signed on it *representing* Tan Tat as he was a mere “paid employee” *representing* Tan Tat all along.
5. I give full weight to Mr Lam’s above admission of signing on the Demolition Plan in his *personal* capacity, which was in line with the writings (and presence of Mr Lam’s identity card numbers) on the same. I find Mr Lam’s excuse of not having company chop with him incredible. He was well aware of the legal distinction between himself and Tan Tat. If he so desired, he could have, one thinks, first found company chop of Tan Tat before he signed, and chopped, on the same. Lastly, he was not only a “paid employee” of Tan Tat but also its sole director and shareholder. He effectively “owned” Tan Tat.
6. Thirdly, Mr Lam was, I observe, effectively shaken by Mr Cheng’s skillful cross-examination on the above and other material points to be mentioned below.
7. Fourthly, Mr Lam’s material evidence is, I think, inconsistent with his own conducts. He tried his best under cross-examination to claim that he did not intend or agree to be licensee of Part II Lots in his *personal* capacity notwithstanding that he had admittedly signed on the Draft License Agreement. He claimed that he was ignorant of its different terms from those of the Draft Tenancy Agreement (and claimed that he would not have signed were he aware of such differences) and stressed that the Draft License Agreement was no more than a temporary, and not a binding, document.
8. However, Mr Lam returned these 2 draft agreements to Mr Yu not on the same day so that he should have more time to read and digest their contents by their return. And he could have easily not put down his signature on the execution clause of the Draft License Agreement and/or included similar handwritings like the Remarks on it as he did with the Draft Tenancy Agreement had he intended (or had he agreed) not to incur personal liability for it, or had he really thought that it was merely a temporary document.
9. For above reasons, I therefore decide not to accept Mr Lam’s evidence unless they are not disputed or amount to admissions of Hantec’s case (in which case I give them full weight).

***E4. The 2 Experts***

1. Unless otherwise stated below, I prefer Mr Chan’s evidence and opinion to those of Mr Lau. I find the former more reliable and credible among the two.
2. Mr Chan was, I observe, more experienced than Mr Lau. And Mr Chan impressed me as being more knowledgeable in Hong Kong valuation practice than Mr Lau is. More importantly, Mr Lau appeared to be partial under Mr Cheng’s cross-examination and refused to consider issues from different perspective unfavorable to Mr Lam. In comparison, Mr Chan’s opinion was, I think, more balanced under cross-examination by Mr Pang.
3. This Tribunal shall of course still pay attention to their differing opinions on each issue and consider them on their individual merits.

***F. Legal principles for resolving identity issue***

1. Mr Cheng has referred this Tribunal to ***Javad v Mohammed Aqil***[1991] 1 WLR 1007, where Nicholls L.J. said at 1012C-1013C as follows:-

“A tenancy, or lease, is an interest in land. With exceptions immaterial for present purposes, a tenancy springs from a *consensual* arrangement between two parties: one person grants to another the right to possession of land for a lesser term than he, the grantor, has in the land. *The extent of the right thus granted and accepted depends* ***primarily*** *upon the* ***intention*** *of the parties*.

As with other *consensually-based* arrangements, *parties frequently proceed with an arrangement whereby one person takes possession of another's land for payment* ***without******having agreed or directed their minds*** *to one or more fundamental aspects of their transaction*. *In such cases* ***the******law****, where appropriate,* ***has to******step in and fill the gaps*** *in a way which is sensible and reasonable. The law will* ***imply****, from what was agreed and all the surrounding circumstances, the terms the parties* ***are to be taken to have intended to apply****.* Thus if one party permits another to go into possession of his land on payment of a rent of so much per week or month, failing more the inference sensibly and reasonably to be drawn is that the parties *intended* that there should be a weekly or monthly tenancy. Likewise, if one party permits another to remain in possession after the expiration of his tenancy. But I emphasise the qualification "failing more." Frequently there will be more. Indeed, nowadays there normally will be other material surrounding circumstances. The simple situation is unlikely to arise often, not least because of the extent to which statute has intervened in landlord-tenant relationships. Where there is more than the simple situation, *the inference sensibly and reasonably to be drawn will depend upon a fair consideration of all the circumstances*, of which the payment of rent on a periodical basis is only one, albeit a very important one. This is so, however large or small may be the amount of the payment.

To this I add one observation, having in mind the facts of the present case. *Where parties are* ***negotiating*** *the terms of a proposed lease, and the prospective tenant is let into possession or permitted to remain in possession in advance of, and in anticipation of, terms being agreed, the fact that the parties have not yet agreed terms will be a factor to be taken into account in* ***ascertaining their intention****. It will often be a weighty factor.* Frequently in such cases a sum called "rent" is paid at once in accordance with the terms of the proposed lease: for example, quarterly in advance. But, depending on all the circumstances, parties are not to be supposed thereby to have agreed that the prospective tenant shall be a quarterly tenant. They cannot sensibly be taken to have agreed that he shall have a periodic tenancy, with all the consequences flowing from that, at a time when they are still not agreed about the terms on which the prospective tenant shall have possession under the proposed lease, and *when he has been permitted to go into possession or remain in possession merely as an* ***interim measure*** *in the* ***expectation*** *that all will be regulated and regularised in due course when terms are agreed and a formal lease granted*.

Of course, *when one party* ***permits another to enter or remain upon his land on payment of a sum of money***, and that other has no statutory entitlement to be there, *almost* ***inevitably*** *there will be some* ***consensual*** *relationship between them*. *It may be no more than* ***a licence*** *determinable at any time,* ***or*** *a* ***tenancy at will****.* *But when and so long as such parties are in the throes of negotiating larger terms, caution must be exercised before* ***inferring*** *or* ***imputing*** *to the parties an* ***intention*** *to give to the occupant more than a very limited interest, be it licence or tenancy*. Otherwise the court would be in danger of inferring or imputing from conduct, such as payment of rent and the carrying out of repairs, whose explanation lies in the parties' expectation that they will be able to reach agreement on the larger terms, an intention to grant a lesser interest, such as a periodic tenancy, which the parties never had in contemplation at all (bold and italics supplied)”

1. The issue on appeal in ***Javad***, supra, was, however, whether the defendant went into occupation of (and paid quarterly rent of) the suit premises while negotiations proceeded for the grant to him a long lease of it as a *tenant at will* as the plaintiff claimed or as *a quarterly tenant* as he contended. No identity issue as arose in these proceedings was, I note, raised or decided on this appeal.
2. Nevertheless, this authority rightly, I think, suggests that that negotiating parties might often fail to agree or direct their attention to identity issue raised in these proceedings while negotiations are on-going and that the key is to ascertain their intention. If necessary, this Tribunal has to infer or impute to the parties what they are to be taken to have intended to apply.
3. Mr Cheng next referred this Tribunal to ***Cartwright: Misrepresentation, Mistake and Non-disclosure*** (6th Ed), where the learned author summarized at §13-19 the following legal tests that a tribunal should apply in order to ascertain “whether there is a contract between two parties, and if so on what terms”, in a case “where the contract is alleged to have been formed by successive communications between the parties”, namely: -

“a. The first question is whether the parties were in fact (*subjectively*) *in agreement* on the *existence* and *terms* of the Contract. If they were, that should be determinative.

b. If the parties were not, in fact, in agreement, then – in the case *where the claimant is seeking to rely on there being a contract on terms x*, *and the defendant* is either denying that there is a contract at all, or *is asserting that there is a contract on terms y* – ***the question becomes whether the claimant can in law hold the defendant to have agreed to a contract on terms x***. *He may do so if*:

i. *the defendant’s words, conduct or (exceptionally) silence* ***would have led*** *a* ***reasonable*** *person in the claimant’s position to* ***believe*** *that the defendant was* ***agreeing*** *to x*; ***and***

ii. *the claimant* ***in fact believed*** *that the defendant was* ***agreeing*** *to x*.

c. If the claimant succeeds in showing that he can hold the defendant to a contract on terms x in accordance with proposition b. above, he has established a contract on terms x *unless the defendant can* ***rebut*** *this by showing that the claimant’s conduct, words or (exceptionally) silence* ***would have led*** *a* ***reasonable*** *person in his position to* ***believe*** *that the claimant was* ***agreeing*** *to y,* ***and*** *that the defendant* ***in fact believed*** *that the claimant was* ***agreeing*** *to y.* In such a case, there is no contract (bold and italics supplied for emphasis).”

1. While *neither* party had suggested that Hantec had formed legal relationship with *no one* over the Subject Lots during the Material Period and that the principles above are not directly on identity issue raised in these proceedings, if one substitutes *terms X with Mr Lam as tenant/licensee* and *terms Y with Tan Tat as tenant/licensee*, they provide, I think, a well-structured framework to analyze the evidence adduced in these proceedings.
2. On the identity issue raised in these proceedings, Mr Pang first referred this Tribunal to ***Estor Limited v Multifit (UK) Limited*** [2009] EWHC 2565 (TCC), where Mr Justice Akenhead said in non-tenancy case at [26] as follows: -

“Whilst this dictum goes to contractual interpretation, it does highlight the need for an ***objective*** *approach in ascertaining what the parties meant*. Where, as here in this case, one cannot ascertain from the offer and acceptance ***who******the employing party was***, it must be legitimate to *consider what the parties* ***said*** *to each other* and *what they* ***did*** *in the period leading up to the acceptance* in order to *determine* ***who that party was intended to be***. It was accepted, properly, by both Counsel, that in determining a factual issue such as this, t*he court needs to adopt an* ***objective approach*** *and to consider* *the facts known to both parties* and *what was said orally or in writing between the relevant individuals*. The fact that one individual went to or left a meeting, *believing* ***privately*** *that the contract was to be with a particular party*, would be of ***little or no weight* *or assistance*** *in determining who the contract was with*, ***unless*** *there was reliable evidence that* ***that belief was expressed to others*** at the meeting. Obviously, where there was an issue as to the *identity* *of a party entering into a contract*, if there was *evidence that* ***representatives*** *of each party* ***had met*** *before the contract was signed and had* ***said to each other that the contract was to be between X and Y****, that would be* ***admissible* *and relevant*** *in determining who the parties to the contract were to be*. *If however the evidence about what was* ***said*** *and* ***done*** *was* ***not as explicit and clear*** *as that*, *one needs to construe or infer* ***objectively*** *what* ***reasonable parties would have assumed would be the position*** *based on what was said or done*. Thus, it might well be the case that, if one party said that ***payments*** *would be made by X, that would be evidence which would* ***point****,* ***objectively*** *albeit* ***not necessarily conclusively****, to X being one of the parties*. Similarly, *if X and Y in their discussions and correspondence prior to the creation of the contract* ***only talked about X and Y*** *in the context of their discussions, that* ***might well be a factor*** *which* ***objectively*** *pointed to those two parties being parties to the contract* (bold and italics supplied).”

1. ***Estor Limited***, supra, was quoted in the second authority cited by Mr Pang by the name of ***Muneer Hamid (T/A Hamid Properties) v Francis Bradshaw Partnership*** [2013] EWCA Civ 470, where Jackson L.J. said at this non-tenancy appeal at [56] and [57] as follows: -

“In *Estor Ltd v Multifit (UK) Ltd* [2009] EWHC 2565 (TCC) an issue arose as to which company within a group of companies known as Ginger Group was the employer under a building contract. Akenhead J took as his starting point the passage in Lord Hoffmann’s speech in *Investors Compensation Scheme* which I have quoted above. He then stated that *where the* ***identity*** *of* ***a contracting party*** *was* ***unclear***, *it was legitimate to consider what the parties* ***said to each other*** *in the period leading up to the offer and acceptance*. He added that *the correct approach was an* ***objective*** *one*. The court would take into *account* ***facts known to both parties****, but* ***not*** *their* ***private thoughts***. ***I agree with that analysis***.

In my view the principles which emerge from this line of authorities are the following:

* 1. Where an issue arises as to the *identity* of a party referred to in a deed or contract, *extrinsic evidence is admissible* to assist the resolution of that issue.
  2. In determining the *identity* of the contracting party, the court’s approach is ***objective***, *not subjective*. ***The question is what a reasonable person, furnished with the relevant information, would conclude*.** The *private* thoughts *of the protagonists concerning who was contracting with whom* are *irrelevant* and *inadmissible*.
  3. If the extrinsic evidence establishes that a party has been misdescribed in the document, the court may correct that error as a matter of construction without any need for formal rectification.
  4. Where the issue is whether a party signed a document as *principal* or as *agent* for someone else, there is no automatic relaxation of the parol evidence rule. The person who ***signed*** *is* ***the contracting party******unless*** (a) *the* ***document makes clear*** *that he* ***signed*** as agent for a sufficiently identified principal or **as *the officer of a sufficiently identified company***, **or** (b) extrinsic evidence establishes that ***both parties knew he was signing as*** agent or ***company officer*** (bold and italics supplied)”.

1. These 2 authorities cited by Mr Pang helpfully highlighted, I think, that one adopts an objective (and not subjective) approach to consider what parties had said and done with one another (and to ignore their private thoughts not made known to the other) in determining identity issue of contracting party.

***G. Parties’ submissions on identity issue***

1. Mr Pang submitted by reference to ***Estor Limited***, supra, and ***Muneer Hamid***, supra, that a *reasonable* person, furnished with all the relevant information in this case, would inevitably have concluded that *Tan Tat* was Hantec’s tenant/licensee of the Subject Lots during the Material Period.
2. Mr Pang pointed to the following facts I found and the following evidence adduced at trial in support of his aforesaid submissions, namely, that:

(1) Tan Tathad, since 2003, been running its godown business on, and been occupying, the Subject Lots to the knowledge of Hantec not long afterwards;

(2) Hantec had not made known to Mr Lam the First Stance during their negotiations;

(3) Rentals for Part I Lots and occupation fees for Part II Lots during the Material Period were paid by cheques drawn by Tan Tat in favour of Hantec;

(4) Tan Tat’s name was put down by Hantec on all Part I Debit Notes prepared by Hantec;

(5) Tan Tat’s name was found on all Part I Receipts and all Part II Receipts prepared by Hantec;

(6) Mr Lam had made known to Hantec his intention to make Tan Tat the contracting party over the Subject Lots by putting down the Remarks on the returned Draft Tenancy Agreement;

(7) Hantec had not thereafter made known to Mr Lam its rejection of the Remarks; and

(8) Hantec had, with the benefit of legal advice, pursued in HC Action Tan Tat (and not Mr Lam) as its tenant/licensee of the Subject Lots from December 2020 onwards.

1. And Mr Pang submitted that, in view of potentially serious financial consequences for him, it is inherently improbable that Mr Lam would be willing to be *personally* liable as tenant/licensee of the Subject Lots from Hantec.
2. To the contrary, applying ***Cartwright***, supra, Mr Cheng submitted that any *reasonable* person in Hantec’s position, in view of the followings, would have *believed* that, during the Material period, *Mr Lam* (and not Tan Tat) had agreed to be granted a tenancy or license over the Subject Lots by Hantec *pending successful negotiations of the terms of a binding new lease or license* over the same, namely, that: -

(1) Before Mr Ngan’s death, Tan Tat or Mr Lam had no prior dealings or direct relationship with the landlord of the Subject Lots i.e. Hantec;

(2) In negotiating with Hantec, Mr Lam intended to establish a new direct relationship with Hantec by taking Mr Ngan’s place of tenant from Hantec;

(3) Neither Mr Lam nor Tan Tat could take Mr Ngan’s place unless Hantec agrees to it;

(4) To Mr Lam’s knowledge, the 2 previous tenants of the Subject Lots from Hantec were 2 real persons (Mr Man and Mr Ngan) and not limited companies;

(5) Hantec held the First Stance, and the Second Stance, in embarking on negotiations with Mr Lam;

(6) Mr Yu had issued all Part II Demand Letters addressed to Mr Lam only;

(7) Mr Lam’s name was also put down by Hantec on all Part I Debit Notes and some of Part I Receipts;

(8) Hantec had prepared the Demolition Plan in line with the Second Stance for Mr Lam to sign and give the Undertaking in his personal capacity to remove UBWs within his tenancy area within 15 months;

(9) Mr Lam had held himself out to have agreed to incur personal liability over the Subject Lots by giving the Undertaking in his personal capacity by signing on the Demolition Plan;

(10) Hantec had prepared the Draft Tenancy Agreement with Mr Lam as the tenant with personal obligation at clause 11 for him to remove UBWs by stages in line with the Undertaking personally accepted by him by signing on the Demolition Plan;

(11) Hantec had also prepared the Draft License Agreement with Mr Lam as the licensee;

(12) Mr Lam had held himself out to have agreed to all the terms of the Draft License Agreement, including making himself licensee of Part II Lots, by signing on the same and returning it to Mr Yu with no remark;

(13) At no time prior to Mr Lam’s making of the Remarks on the Draft Tenancy Agreement he returned to Mr Yu did Mr Lam make it clear to Hantec that he privately intended to make Tan Tat the other contracting party over the Subject Lots;

(14) Hantec had never responded nor accepted the Remarks lately made by Mr Lam on the returned Draft Tenancy Agreement; and

(15) Mr Lam could thereafter have no basis to believe that Hantec had agreed to the Remarks.

***H. Analysis of parties’ submissions, and further findings, on identity issue***

1. I do not find Tan Tat’s continuous occupation of part or all the Subject Lots running its business since 2003 a weighty pointer in support of Mr Pang’s submissions. I say so because: -

(1) Tan Tat had no prior relationship with Hantec. It did not, for example, hold over as a former *tenant* from Hantec after expiry of its tenancy agreement with Hantec, in which case the weight to be given to this circumstance may be stronger.

(2) It is, I observe, common ground that *Hantec’s consent* is required before another (whoever that may be) is to take Mr Ngan’s place i.e. to establish a new direct relationship with Hantec for the first time.

1. On my acceptance of the First Stance held by Hantec during the Material Period[[26]](#footnote-26), as Mr Yu negotiated with Mr Lam based on specific instructions[[27]](#footnote-27) and were under supervision of his superior, I find it likely, and accept Mr Yu’s evidence in his witness statement[[28]](#footnote-28), that he had acted *in line with the First Stance* in his negotiations with Mr Lam and *expressed* to Mr Lam that negotiations were with *Mr Lam* himself as the other contracting party in potential agreement(s) to be agreed, though he might not have disclosed to Mr Lam that Hantec held the First Stance as a *negotiating stance* as such.
2. I find that Mr Lam had at least *held himself out to have agreed* with Mr Yu’s suggestion above that *he* be considered to be allowed to take over *Mr Ngan’s* place in the said negotiations for any future agreements to be agreed upon (**the Outward Consensus**). It was, one thinks, just natural for Mr Lam to offer *another* *real person* i.e. *himself* to replace Mr Ngan (*a real person*) as Hantec’s *tenant* so as to increase chances of his offer being accepted by Hantec as the past 20 years of experience suggested to Mr Lam.
3. Under cross-examination, Mr Lam also admitted that tenancy negotiations with Hantec to be conducted through Mr Yu were to be conducted on the basis of *him* having “direct dealings” with Hantec[[29]](#footnote-29). I give full weight to this admission.
4. I would, however, prefer Mr Yu’s evidence to that of Mr Lam to find that it was Mr Lam who approached Mr Yu to start such negotiations (and not the other way round).
5. Mr Lam claimed in his witness statement[[30]](#footnote-30) that, during his negotiations with Mr Yu, he was negotiating as Tan Tat’s representative and with the intention to make Tan Tat the tenant as before (I will separately deal with the Remarks below). Had he really had such intention, he had not, I think, *made* such *private intention* of his *known* to Mr Yu. He agreed upon persistent questioning of Mr Cheng that he had *never* *made known* to Mr Yu that he was negotiating with Mr Yu over tenancy matters *as Tan Tat’s director representing Tan Tat*[[31]](#footnote-31).
6. Nonetheless, I do not think that Mr Yu (on behalf of Hantec) and Mr Lam had really *entered* with one another any temporary tenancy or license of the Subject Lots during the Material Period. As was pointed out in ***Javad***, supra, more likely than not, Hantec and Mr Lam had not, I think, directed their attention to their respective interim status during their negotiation process, especially Mr Yu required specific instructions to enter into any tenancy or license binding on his employer.
7. While Tan Tat’s payments of rentals, and occupation fees, of the Subject Lots during the Material Period “would be evidence which would point objectively” to Tan Tat being the other contracting party, that would not be “necessarily conclusive” of the case, as ***Estor Limited***, supra, suggested. Mr Lam could also, I think, have used cheques drawn by Tan Tat to pay for rentals, and occupation fees, of the Subject Lots that he rents but allows Tan Tat to occupy for its business. After all, Mr Lam was effectively the owner of Tan Tat.
8. Looking at all Part I Debits Notes and all Part II Demand Letters available at trial, the *earliest* in time available at trial was Part II Demand Letter dated *30 October 2020* for occupation of Part II Lots for the month of *October 2020*. As it was made at a time *more or less* when Mr Lam and Mr Yu *started* their negotiations, I think one could attach *most* weight to it compared with that for other debits notes and demand letters issued during the Material Period.
9. This earliest one above was issued by Mr Yu addressed to “Mr Lam” *only*, as was the case with *all* Part II Demand Letters. Mr Yu also made it clear, I think, in all their contents that it was Mr Lam’s *personal* liability to pay occupational fees for Part II Lots. Hence, it is I think, *supportive* of the Outward Consensus *reached* between Mr Yu and Mr Lam and *most* *indicative* of Mr Yu’s *belief* of Mr Lam’s holding out *himself* being the other contracting party in any future agreement(s) to be reached after their successful negotiations (if any).
10. It is true that, as Mr Pang stressed, account department of Hantec had 1) issued all Part II Receipts to “**Tan Tat**” only, 2) issued Part I Debit Notes to “**Tan Tat (Mr Lam)**”, 3) issued some Part I Receipts for the earlier months of Material Period to “**Tan Tat**” only, and 4) issued remaining Part I Receipts for latter months to “**Tan Tat (Mr Lam)**”. But I would put *lesser* weight on these documents for the following reasons: -

(1) First, I do not think those at account department of Hantec were privy with Hantec’s negotiation stances and discussions to be able to tell with whom they were held as Mr Yu (or Mr Tuen) was.

(2) Secondly, I accept Mr Yu’s evidence in his affirmation[[32]](#footnote-32) that *receipts* were addressed to “Tan Tat” because the rentals and occupation fees were paid by cheques drawn by Tan Tat. In the box, he further explained that it was *him* who advised account department of Hantec *from where* these payments were *collected*[[33]](#footnote-33)suchthat these receipts were issued addressed to Tan Tat (as, one thinks, there was then *no* written or executed tenancy/license agreement(s) for one to verify).

(3) Thirdly, the name of “**Mr Lam**” was, one notes, still *included* by Hantec as part of the addressees in *all* Part I Debit Notes demanding rentals of Part I Lots and in some Part I Receipts for the latter months of the Material Period.

(4) As it was, I accept, Mr Yu’s evidence that he *advised* those at account department of Hantec to *issue* those *receipts* above with “Mr Lam” *included*, I also see fit to accept his explanation that “**Tan Tat (Mr Lam)**” were meant to mean “**Mr Lam** *care of* Tan Tat”.

(5) I disbelieve Mr Lam taking “**Tan Tat (Mr Lam)**” to mean “Tan Tat: *attention to* Mr Lam” as he claimed. I do not think he “lost sight of” the *different* wordings of these words from “Tan Tat” only as he claimed. He likely, I think, did not dispute such wordings or make enquires on them with Mr Yu as he knew full well of the Outward Consenus and Hantec’s *belief* on the same[[34]](#footnote-34).

1. I agree with Mr Cheng’s submission that Hantec’s preparation of Demolition Plan was *consistent* with the First Stance, the Second Stance and the Outward Consensus. Not only was Mr Lam required to give the Undertaking *personally* himself, the title of the document also included the *consistent* words of “Within ***Mr Lam Kan Yau’s*** *Tenancy Area* at Ngau Tam Mei (italics and bold supplied)”.
2. Mr Lam’s *personal* signature put (*without* company chop of Tan Tat) on the Demolition Plan had further *reinforced*, I think, the Outward Consensus and Hantec’s *belief* in the same, causing it to prepare the Draft Tenancy Agreement and the Draft License Agreement in the ways they were drafted.
3. Mr Lam had continued, I think, to hold himself out as agreeing to the Outward Consensus by signing on, and returning, the Draft License Agreement relating to Part II Lots in the way he did.
4. Under cross-examination, Mr Lam had no choice but to agree with Mr Cheng that, looking at the documents, Hantec’s *belief* all along was to deal and discuss with *him*, such that *he* was required to give the Undertaking in the Demolition Plan, *his name* was put down as the *tenant* in the Draft Tenancy Agreement and that debit notes for rentals were *all* addressed to *him[[35]](#footnote-35)*.
5. Knowing full well of the Outward Consensus that he had held out to agree all along since negotiations began, Mr Lam had, I think, *second thoughts* on *himself* to be the other party for any binding formal tenancy agreement(s) to be executed for Part I Lots (whose UBWs formed the subject matter of removal of *his* Undertaking in the Demolition Plan) and acted contrary to it by *belatedly* putting down the Remarks on the returned Draft Tenancy Agreement in the words he used i.e. “**可以的話**，**請接受**用騰達公司做租客 (粗體及底線後加)”.
6. Mr Lam likely, I think, had the aforesaid second thoughts for Part I Lots due to the intended 2021 Application that he then intended to put through to retain UBWs. That, of course, ran against the Second Stance held by Hantec and caused the said negotiations between Mr Lam and Hantec to break down in the end.
7. Regarding the Remarks, while Hantec had done nothing to reject it as Mr Pang submitted, Hantec did not, I think, agree to it either or did anything to hold itself out as agreeing to it.
8. Therefore, Mr Lam *could* not, I think, have *believed* that *he* had been *let go* as the other party to any binding agreement(s) to be reached on Part I Lots after successful negotiations.

***I. Mr Lam having tenancy at will during the Material Period***

1. In light of my analysis in the last section, applying ***Muneer Hamid***, supra, as Mr Pang suggested, a *reasonable* person, furnished with all the relevant information in this case, would, I think, have concluded that *Mr Lam* was Hantec’s tenant/licensee of the Subject Lots during the Material Period.
2. Applying ***Cartwright***, supra, as Mr Cheng suggested, I agree with him that any *reasonable* person in Hantec’s position would have *believed* that, during the Material period, *Mr Lam* had agreed to the other party over the Subject Lots pending successful negotiations of the terms of binding document(s) over the same.
3. It therefore does not matter which legal route suggested by the two counsels above is more appropriate for me to take. My conclusion would have remained the same in either case.
4. Mr Pang’s submissions that Mr Lam was unlikely to agree to bear *personal* liability for potential serious financial consequences do not, I am afraid, cause me to alter my above conclusion either.
5. I give the following reasons.

(1) First, our exercise of ascertaining parties’ intention during the *interim* period while *negotiations* were going on to agree on terms of formal binding agreement(s) *in the event* of its *successful* conclusion is, as ***Javad***, supra, above demonstrated, an exercise at law to *imply* or *impute* to parties what they are to be *taken* to have intended to apply. Mr Lam’s *real* intention does not, I am afraid, matter.

(2) Second, we are only dealing with parties’ positions during the above *interim* period of a *limited* duration i.e. during the Material Period *before* parties’ negotiations broke down. Mr Lam’s intention could well, one thinks, be different for this *short-term* period as compared to such *long-term* period agreed upon in any future formal binding agreement(s).

(3) After all, “a tenancy at will exists where the tenancy is on terms that either party may determine it at any time”: ***Javad***, supra, at 1009B per Nicholls L.J.

(4) During the above *interim* and *short-term* period, this Tribunal by no means agrees with Mr Pang that Mr Lam would *inevitably* reject to be tenant at will or bare licensee of Hantec to keep Tan Tat’s godown business running on the Subject Lots. It depends on, inter alia, availability of alternative business space open to Tan Tat and the ancillary costs and trouble for the relocation exercise.

1. Neither did Hantec’s prosecution of HC Action against Tan Tat as its *tenant/licensee* cause me to alter my above conclusion either for the following reasons.

(1) While I fully appreciate that Hantec had taken out HC Action by its solicitors, I accept Mr Yu’s explanation in his affirmation that those preparing HC Action had focused *alone* on the receipts issued by Hantec and failed to consider *all* the circumstances of the case (including other pertinent documents like the debit notes, the Demolition Plan, the Draft Tenancy Agreement and the Draft License Agreement etc.). The confusion so caused was not clarified until after counsel’s advice was sought on the evidence supporting Hantec’s claim and after Mr Yu and other relevant staff were consulted.

(2) Were one to focus *alone* on receipts issued by Hantec to Tan Tat during the Material Period in lieu of looking at *all* circumstances of the case as the case law requires, one could well, I think, have arrived at the wrong conclusion as those preparing HC Action did.

1. As to whether one should imply or impute to Hantec and Mr Lam a tenancy at will or bare licence, Mr Pang made, I note, no submission on this issue of secondary importance in his closing submissions.
2. Considering all the circumstances of this case and that “entry into possession while negotiations proceed is one of the classic circumstances in which a tenancy at will may exist”, per Nicholls L.J. at 1019E of ***Javad***, supra, I conclude that it is appropriate for me to imply or impute to Hantec and Mr Lam that Mr Lam was taken to be intended to take a *tenancy at will* (and not a bare licence) of the Subject Lots during the Material Period and I so decide.
3. As such, Hantec has proven, I conclude, that it has sued the *correct* party i.e. Mr Lam in these proceedings.

***J. Mr Lam’s tenancy at will properly terminated by notice***

1. Again, Mr Pang made no submission on this termination issue of secondary importance.
2. In all the circumstances of this case, I find that the two notices dated 27 May 2021 and 21 June 2021 served by solicitors for Hantec on Mr Lam are sufficient at law to determine his tenancy at will by their specified deadline of 30 June 2021.
3. As Mr Lam has failed to arrange for Tan Tat to deliver vacant possession of the Subject Lots to Hantec by 30 June 2021, he became, I find, trespasser of the same *as from 1 July 2021*.
4. This Tribunal will therefore order Mr Lam to return vacant possession of the Subject Lots to Hantec and to pay mesne profits on the same *as from 4 May 2022 as sought by Hantec* until such delivery at such monthly amount to be decided below.

***K. Mesne profits sub-issues in dispute***

1. The 2 Experts have both adopted a market approach to value the Subject Lots as at 4 May 2022. And they have adopted the same direct comparison method in arriving at their respective valuations.
2. The 2 Experts disagreed, however, on the following 4 sub-issues i.e. 1) basis of valuation; 2) valuation methodology; 3) selection of appropriate comparables; and 4) making of adjustments to the selected comparables.
3. Using, and making adjustments to, comparables OS1, OS2 and OS3 *all owned and provided by Hantec*, Mr Chan arrived at an average adjusted unit rate of **$32.34 per square metre** for 19 lots of *authorized* open storage out of the Subject Lots. Applying 50% discount to the said rate, he arrived at an average adjusted unit rate of **$16.17 per square metre** for remaining 67 lots of *unauthorized* open storage. Using his comparable CS1, Mr Chan also arrived at an average adjusted unit rate of **$143.17 per square metre** for *covered* storage under 2017 STW.
4. Applying the said 3 rates above to the above 3 groups of the Subject Lots and adding up the results, Mr Chan valued the Subject Lots as at 4 May 2022 at **$1,299,533 per month**.
5. Mr Lau’s valuation exercise is simpler. He adopted his own comparables C2 and C4, made adjustments to them and arrived at an average adjusted rate of **$7.16 per square metre** for the Subject Lots all valued as *agricultural* lands and used as *unauthorized* open storage. Applying this rate to the total area of 37,186.44 square metre for the Subject Lots, Mr Lau’s valuation of them as at 4 May 2022 amounts to **$266,000 per month** after rounding up.
6. By way of *fallback*, Mr Lau used his 2 comparables LOS1 and LOS2 to arrive at an average adjusted unit rate of **$19.98 per square metre** for such of the Subject Lots valued as *agricultural* lands used as *permitted* open storage. He also arrived at an average adjusted unit rate of **$83.01 per square metre** for those of the Subject Lots valued as *agricultural* lands used as *covered* storage by using his 2 comparables LCS1 and LCS2.

***L. Sub-issue 1 - basis of valuation***

1. In making his valuation, Mr Chan first assumed that the Subject Lots are permitted for *storage* purpose whereas Mr Lau had valued them as *agricultural* lands, making no assumption for storage purpose.
2. Secondly, Mr Chan decided to *give value* to *structures* erected on the Subject Lots covered by 2017 STW whereas Mr Lau considered them *illegal* UBWs and *gave them no value at all*.
3. In disagreeing with Mr Chan, Mr Lau stressed that storage use for the Subject Lots are *unauthorized* under TPO regime unless permission has been obtained or that there is existing use right. Any term of tenancy agreement, or any tenancy agreement, of the Subject Lots which allows or purports to allow storage use even without guarantee of its lawfulness has its legal validity open to doubt.
4. Mr Lau in his evidence also emphasized that STW gave no validity to the above structures if they had not, in the first place, obtained permission and/or approval under Buildings Ordinance.
5. I prefer Mr Chan’s approach above as opposed to that of Mr Lau for the following reasons: -

(1) The Subject Lots were *in fact* used for storage (and not for agricultural) purpose before and during the Material Period notwithstanding the descriptive wordings of the Government Leases, users clause of some previous tenancy agreements between Hantec and Mr Ngan, the risk of enforcement action by PD for “unauthorized development” under TPO (including prosecution) and risk of re-entry by DLO for breach of Government Leases (I accept for some of the Subject Lots, storage use could remain “unauthorized” as the 2 Experts both accepted);

(2) Mr Lam *in fact* found the structures erected on the Subject Lots, including UBWs, useful for Tan Tat’s business, kept/erected them and used them for the said business before and during the Material Period despite he *knew* of the aforesaid risks. In order to retain them, Tan Tat had applied for planning permission and STW in the past, obtained the 2017 STW for Hantec and intended to proceed with the intended 2021 Application (I accept that such UBWs, including those covered by 2017 STW, likely remained illegal under Buildings Ordinance[[36]](#footnote-36) and/or Government Leases, and could be required to be removed by the Building Authority and/or DLO in future);

(3) Mr Pang has not, I note, produced any authority to support Mr Lau’s claim that validity of tenancy agreement of the Subject Lots (or of its users clause) could be successfully challenged on the ground Mr Lau has suggested;

(4) In adopting a market approach as he did with Mr Chan, Mr Lau’s approach above goes *against*, I agree with Mr Cheng, the aforesaid market reality in (1) & (2) above and is contrary to “market reality” principle established by high authorities like ***Penny’s Bay Investment Co Ltd v Director of Lands (No. 2)*** (2017) 20 HKCFAR 465 [82], [86]-[88], ***Transport for London (London Underground Limited) v Spirerose Limited***[2009] 1 WLR 1797 [50] and ***Newbigin (VO) v SJ & J Monk (A Firm)*** [2015] 1 WLR 4817 [7], which state that one must value a property *as it stands* on the valuation date and that one should avoid making *counter-factual* valuation assumption;

(5) Under cross-examination by Mr Cheng, Mr Lau also agreed, to reflect market reality, the risk of enforcement that a prospective tenant[[37]](#footnote-37) knowingly takes to rent a property with illegal UBWs could be regarded as the value attributable to such structures;

(6) In Hong Kong, the courts and tribunals also consider the risk of enforcement action taken, for example, under Buildings Ordinance and take into account any possible enforcement action before attributing value to any unauthorized structures or unauthorized change in use: ***China Orchid International Limited and Others v Fujitec (HK) Company Limited******and Others***[2023] HKLdT 38 [48]-[51], [55]-[61], [73];

(7) Mr Lau frankly admitted in the box that he was not aware of Lands Tribunal’s authorities to the above effect in (6) above; and

(8) In view of highly persuasive and binding authorities in (4) above, Mr Pang had no choice but to concede in his oral closing address to this Tribunal that Mr Chan’s approach is the right one. He also withdrew his fixture arguments raised at paragraphs 41 to 44 of his written closing submissions.

***M. Sub-issue 2 - valuation methodology***

1. Mr Chan sought by his method to value each of the Subject Lots *individually* and sum up their individual value to arrive at a total market value of the Subject Lots.
2. Mr Chan categorized the Subject Lots into 3 types, namely: 1) *unauthorized* ones for *open* storage; 2) *authorized* ones for *open* storage; and 3) *covered* storage (of 9 lots) subject to 2017 STW.
3. Mr Chan did so because he opined that there are **67** *unauthorized* lots and **19**[[38]](#footnote-38) *authorized* ones[[39]](#footnote-39) and that the two groups entail different rental rates (and should therefore be valued *separately*) as the former carry potential risk of enforcement action. When enforcement actions are taken, landlord will require tenant to cease the unauthorized use, causing disruption to tenant’s business. Such risk is thus reflected as lower rental rates for the former. On the other hand, the latter group does not carry such risk and thus carry higher rental rates.
4. The second group should, in Mr Chan’s view, be valued at 50% discount to that for the first group. In chief[[40]](#footnote-40), he sought to reinforce his judgment of adopting 50% discount rate in treating $180,000 fine imposed in summons STS 3030/2015 as if it were rental for *unauthorized* open storage lots concerned at **$2.6 per square metre** per month during the offence period. He also applied *separately* another *different* rate *without* discount to 9 lots under 2017 STW for their *covered* storage of **4,036 square metre**.
5. In contrast, *all* the Subject Lots should, in Mr Lau’s view, be valued as a whole as, the 2 Experts agreed, there is to be one hypothetical tenancyto be valued.
6. ThoughMr Lau opined that **83** lots of the Subject Lots are *agricultural* lands used for *unauthorized* storage use and that **3** lots are *agricultural* lands with *permitted* open storage use, he made his valuation of all the Subject Lots as a whole using one single rate of *agricultural* lands used for *unauthorized* open storage.
7. As only **3** out of 86 of the Subject Lots are authorized open storage, it is not feasible, claimed Mr Lau, to consolidate the goods from 83 lots to the **3** authorized open storage lots. Even, as claimed by Mr Chan, that **19** lots are authorized open storage lots, it is, Mr Lau claimed, still not feasible to do the same. The risk of being enforced and then being unable to operate on the Subject Lots would *still* be *the same* as if *all* lots are *unauthorized* open storage lots and thus Mr Lau valued *all* the Subject Lots as *unauthorized* open storage lots.
8. Incidentally, Mr Lau expressed the view that, difference of unit rates between that for agricultural lands of the Subject Lots used as *unauthorized* open storage[[41]](#footnote-41) and that for agricultural lands used as *permitted* open storage[[42]](#footnote-42) should be as large as 65%.
9. Mr Chan pointed to the followings trying to make good his claim that **19** (instead of **3** suggested by Mr Lau) out of the Subject Lots should be categorized as *authorized* open storage, namely: -
10. Open storage pre-existing on them identified by him in aerial photos around the gazetting date of Ngau Tam Mei IDPA Plan;
11. Absence of prosecution over them commenced under TPO;
12. Absence of enforcement notice over them issued under TPO;
13. “Open storage” not put down as one of many “unauthorized users” in previous enforcement notices issued over them under TPO;
14. Grant of 2017 STW over 9 of them;
15. His review of previous planning permission applications of the Subject Lots; and
16. His cross-checking against Hantec’s two criminal convictions under TPO as disclosed by Mr Lam.
17. Mr Lau disagreed with Mr Chan’s reading of the pertinent aerial photos.
18. For (2) to (5) in [159] above, Mr Lau gave contrary evidence saying that they had no bearing on the separate issue if there was existing use right of “open storage” for the lots concerned.
19. Regarding (6) in [159] above, Mr Pang had cross-examined Mr Chan to show that Town Planning Board had never, in its rejection reasons, expressly rejected the applications as claimed by Mr Chan “primarily” on any alleged ground of “intensification of storage use” to “other lots having no existing use right for storage use” and “government land”.
20. My conclusions on this sub-issue 2 are the followings: -
21. I find it proper for Mr Chan to draw the inference from (1) to (7) in [159] above to conclude that as many as **19** of the Subject Lots likely had existing use right of “open storage” *as at 14 September 1990* and thus a total of **19** (and not merely **3**) of the Subject Lots have likely enjoyed until today *authorized* open storage use. I would draw the same inference, and categorize the Subject Lots, as Mr Chan did.
22. I prefer, and adopt, Mr Chan’s method of valuing the Subject Lots by way of 3 different groups he suggested with 3 different rates.
23. And I prefer, and accept, the 50% discount rate for *unauthorized* open storage lots adopted by Mr Chan in his valuation.
24. My reasons are as follows.
25. The aerial photos concerned are not, I am afraid, unambiguously clear enough to allow same conclusion to be reached by different viewers. They are liable to be interpreted differently by different viewers easily.
26. Against the background history of many previous failed planning permission applications of the Subject Lots made in the past, many enforcement notices issued by PD over them in the past, and 2 prosecution of Hantec for many of the Subject Lots in the past, PD must, Mr Chan opined and I agree, have likely inspected the subject 19 lots of the Subject Lots and have been consulted by DLO on them in the past and become aware of them being used for “open storage”.
27. Therefore, had these 19 lots had no existing use right of “open storage” as at 14 September 1990, Hantec would likely, Mr Chan opined and I agree, have already been served with enforcement notice on them, would likely had previous enforcement notices served on it over them already marked with “open storage” as “unauthorized users”, or would likely have already been prosecuted by PD for “unauthorized development” over the same.
28. I accept from Mr Chan’s evidence that (6) and (7) in [159] above are not inconsistent with the inference he reached.
29. In particular, on Mr Cheng’s cross-examination of Mr Lau, it had been shown that the planning permission applications concerned *did* *involve* “other lots having no existing use right for storage use” and “government land”. It was therefore not wrong, I think, for Mr Chan to express his “own view” that the said applications were “highly likely” rejected “primarily” for “intensification of storage use” on *these other lots and government lands*.
30. As was shown by the case law on sub-issue 1 above, the courts and tribunal in any dispute would need to take into account, and assess, the risk of enforcement action before attributing the value to any unauthorized structures or unauthorized change in use. So would any prospective tenant knowingly willing to take such risk of enforcement action in renting the Subject Lots in the market.
31. By reaching his inference, and categorizing the Subject Lots, as he did, Mr Chan was, I think, carrying out the same risk assessment exercise as the courts and tribunals in any dispute, and any prospective tenant in the market, would have done in order to decide how much value, if any, should be attributed to the existing “open storage” use of the Subject Lots and the structures erected on those 9 lots of the Subject Lots subject to 2017 STW.
32. Mr Chan’s *separate* valuation method, and *categorization*, is thus perfectly in line, and Mr Lau’s contrary method of valuing the Subject Lots *as a whole* are at variance, with the aforesaid case law cited for deciding sub-issue 1 above.
33. While accepting that there are 3 *authorized* open storage lots, Mr Lau nonetheless valued them as *unauthorized* open storage lots. Such approach is, I think, self-contradictory and, importantly, contradictory to the market reality.
34. One hypothetical tenancy could also, one thinks, have different rental rates applied to different parts or portions of the subject lots depending on their different characteristics.
35. I accept Mr Chan’s evidence that **15,462.23 square metre** of space provided by **19** authorized open storage lots he suggested (and I agree) could flexibly accommodate all goods from **86** lots of the Subject Lots, including by stacking container *over the top* of another container. If it is still not feasible, it is, I agree with him, a matter of incurring further costs to secure additional spaces from nearby brownfield sites (and such additional costs could be converted into *discount* to be applied to rental rates of *unauthorized* open storage lots in much the way as Mr Chan did with fines imposed by court after successful prosecution of “unauthorized development” by PD).
36. Finally, I am satisfied that discount as much as 50% provided for by Mr Chan is more than sufficient to provide for risk of enforcement actions suffered by such **67** lots of the Subject Lots categorized as *unauthorized* open storage lots.
37. I reject the different discount rate of 65% suggested by Mr Lau as it was arrived at by comparing adjusted unit rate of *agricultural* lands used for unauthorized open storage against adjusted unit rate of *agricultural* lands used as permitted open storage as valued by Mr Lau on *his* comparables. Not only there are problems with Mr Lau’s comparables as shall be discussed below, his valuation also fails to accord with market reality of the Subject Lots being permitted for *storage* purpose.

***N. Sub-issues 3 and 4 - selection of comparables, and adjustments to selected comparables***

1. Mr Chan considered the 3 comparables of OS1, OS2 and OS3 owned by Hantec most relevant and suitable comparables for *open* storage and hiscomparable CS1 the most relevant and suitable comparable for *covered* storage.
2. Mr Lau instead considered his 2 own comparables C2 and C4 most relevant comparables for open storage areas[[43]](#footnote-43). As a *fallback*, Mr Lau considered his own comparables LCS1 and LCS2 as relevant comparables for *covered* storage areas, and his own comparables LOS1 and LOS2 as relevant comparables for *open* storage areas.
3. Neither Mr Chan nor Mr Lau agrees with adoption of *any* of the comparables proposed by the other.

***N1. Comparables OS1, OS2 and OS3***

1. I **accept** OS1, OS2 and OS3 as **suitable** comparables for valuing *authorized* open storage lots for the following reasons: -
2. These 3 comparables are, Mr Lau agreed, in close proximity to the Subject Lots (they are in fact nearby lots in Ngau Tam Mei that are also owned, and let, by Hantec to third parties. OS2 and OS3, adjacent to one another, were let by Hantec to the same third party[[44]](#footnote-44)).
3. These 3 transactions are also close in time (January to March 2022) to valuation date of 4 May 2022.
4. In fact, Mr Lau agreed with Mr Cheng that these 3 transactions are relatively better comparables than CS2 and CS4 he used.
5. OS1, the 2 Experts agreed, is *authorized* open storage lot. While Mr Lau asserted that OS2 and OS3 are *unauthorized* open storage lots, I prefer their contrary categorization by Mr Chan for reasons I gave on sub-issue 2.
6. I do not find users clause of tenancy agreements in OS2 and OS3 (or their agreements) problematic as alleged by Mr Lau for reasons given at [150(3)] above.
7. Mr Lau added in the box that he found it suspicious that OS1 carried *similar* unit rate to those of OS2 and OS3, as, in his view, OS1 was for *authorized* open storage while OS2 and OS3 were for *unauthorized* open storage. That suspicion is, however, unfounded as I accept Mr Chan’s views that all 3 of them are for *authorized* open storage.
8. Mr Lau further added in the box that he had reservation of them all having the same source i.e. Hantec. Should this single source have any problem, it could, he worried, affect *all* 3 comparables. And it is thus better, he suggested, to seek comparables *elsewhere* to verify what these 3 comparables show.
9. Mr Lau’s aforesaid reservation is, I think, understandable. But the fatal flaw of it is that he could point to no specific problem in any aspect(s) of these 3 comparables. Neither does Mr Pang’s complaint about Mr Chan not keeping sufficient record of other (considered but rejected) comparables amount to specific problem about any aspect(s) of these 3 comparables.
10. On all the trial evidence, I cannot but accept Mr Chan’s evidence that the 3 transactions represented by OS1, OS2 and OS3 are genuine and arms-length market transactions.
11. Indeed, at the time of these 3 market transactions in January to March 2022, these proceedings have not been taken out. In HC Action then pending, Hantec only sought *fixed* amounts of mesne profit from Tan Tat and not mesne profit *to be assessed*. When these proceedings were taken out in May 2022, Hantec at first did the same against Mr Lam[[45]](#footnote-45). Hantec could therefore not have mesne profit of the Subject Lots in its mind *at all* in entering into these 3 transactions.

***N2. Comparable C2***

1. I **reject** C2 as suitable comparable for making valuation of authorized “*open* *storage”* lots because I am not satisfied on the evidence before me that it was used for “*open storage”* purpose as at our valuation date of 4 May 2022 or at all as claimed by Mr Lau.
2. My reasons are as follows.
3. The lot concerned had a STW No.2448 granted in 2002 which restricts building thereon not to be used for any purpose other than for “*vehicle repair workshop*”. The said STW was *still referred to* in subject 3-year tenancy agreement to one 陳志揚 dated *5 March 2021*.
4. The term of the tenancy above was from *1 February 2021* to 31 January 2024. The monthly rental is $10,000 only. The lot concerned is only as *small* as 890.31 square metre, *next to Fairview Park*. The tenancy agreement made no reference to *storage* use *at all*.
5. On aerial photo taken on 15 January 2021 i.e. before the entry of, and commencement of, the above tenancy, *vehicles* were seen parked inside the lot concerned.
6. According to land search produced at trial, the lot concerned was sold and assigned by the landlord to one company *in August & September 2022* for *$13.38M*.
7. Mr Lau claimed at p.16 of the Joint Statement to have aerial photos taken on 18 December 2022 which showed the lot being used as open storage without vehicle. But such alleged aerial photo was *never* *produced at all*.
8. Mr Lau further claimed at the same page that, on his inspections *in August and December 2023*, the lot was used for open storage. The 2 photos taken by him on his alleged inspections at best showed, I agree with Mr Chan, *construction works were being carried on the lot, with a crane situated inside and construction materials scattered around the lot*. “Open storage” of goods by way of containers or otherwise was *nowhere* to be seen.

***N3. Comparable C4***

1. I **do not find** C4 suitable comparable for making valuation of authorized open storage lots because, *even on Mr Lau’s own evidence*, it requires adjustments on as many as 5 matters of time, location, accessibility, layout and quantum and adjustments as much as -25% at the most, next at 20% and 10% to be made before it is to be used.
2. This is not to mention that this comparable is located at Leung Uk Tsuen at Pat Heung *significantly farther away* from the Subject Lots as Mr Lau agreed under cross-examination and that Mr Chan asserted that *greater* percentage of adjustment should have been made.
3. I refer to ***Keenrich Trading Limited v The Director of Lands*** [2024] HKLdT11 [16]-[17] and ***Tin Kung Investment Limited v Secretary for Transport***, unreported,LDRW 16/2001, 29 June 2004 [3(1)], cited at paragraphs 63 and 64 of Hantec’s written closing submissions.

***N4. Comparables LOS1 and LOS2***

1. For the reasons below, I **cannot accept** Mr Lau’s suggestion that these 2 fallback comparables are suitable comparable for valuing “*authorized”* *open storage* lots: -

(1) Both are at locations *significantly farther away* from the Subject Lots, with LOS1 at Pat Sha Tusen in Tai Tong and LOS2 at Tong Yan San Tsuen.

(2) Tenancy agreements for both comparables are *outdated*, with that for LOS1 made in September 2019 (commencement date in September 2019 too) and that for LOS2 made in April 2019 (commencement date in January 2019). I agree generally with Mr Chan’s views expressed in the Joint Statement on various limitations of “private flatted factories rental index” published by Rating and Valuation Department (**RVD**) and that time adjustment should be made by comparing *commencement date*, and not *agreement date*, of tenancies if the said index is to be applied.

(3) I disbelieve Mr Lau’s evidence that distance from control point is “not a relevant factor”. Under cross-examination, he also once answered that it is “not a weighty factor”. I generally agree with Mr Chan that distance from the nearest control point and major highway is a weighty factor for storage business in Hong Kong when nowadays most manufactured goods come from the Mainland. *Substantial* location adjustment much more than mere 5% allowed by Mr Lau for LOS1 (and 0% claimed by him for LOS2) is, I agree with Mr Chan, called for in this case[[46]](#footnote-46).

(4) Mr Lau had, I think, also *under-estimated* the relative disadvantage suffered by these two comparables for being accessible by only a one-lane 2-way road without registered deed or right of way. The mere 5% and 15% accessibility adjustments he gave LOS1 and LOS2 respectively are, I think, on the low side. *More* adjustments as suggested by Mr Chan are called for.

(5) Regarding LOS2, though Mr Chan agreed on viewing its photo that open storage was carried out on it, reading clauses 1[[47]](#footnote-47), 2[[48]](#footnote-48) and 6[[49]](#footnote-49) of its tenancy agreement[[50]](#footnote-50), the tenant was，I agree with Mr Chan, likely not allowed to carry on *storage* business but *restricted* to using the lot as “*village house, pigsty and agricultural land*”. As such, LOS2 cannot be a suitable comparable for “authorized” open storage.

***N5. Comparable CS1***

1. I **accept** this comparable found, and suggested, by Mr Chan for valuing *covered* storage not exceeding **4,036 square metre** of 9 of the Subject Lots subject to 2017 STW.
2. I give the following reasons: -

(1) This comparable from DD 107 is also located *within Yuen Long* *not far away* from the Subject Lots[[51]](#footnote-51). The lease was made on 13 May 2021 with 3-year term to commence as from 1 May 2021 i.e. *not long in time* from our valuation date of 4 May 2022. One can drive from it to LMC within **11** minutes (as opposed to **10** minutes from the Subject Lots). And one can reach San Tin Highway on car from the Subject Lots and from this comparable *both* within **4** minutes.

(2) Importantly, in return of monthly rental of $65,000, the landlord provided for the tenant in the lease, and paid for, a STW No.1909 dated 27 November 1997 which allows the lot concerned to be used for “*covered godown* for storage of *wooden board*” not exceeding **588 square metre** as from 1 July 1997 at a quarterly waiver fee of $15,230.

(3) Mr Lau raised 2 objections to the adoption of this comparable. First, illegal structures shall be disregarded in valuation. Secondly, unlike 2017 STW whose forbearance fee was paid by Tan Tat, the waiver fee in this case is payable by the landlord. The first point cannot, I think, hold water as it is contrary to market reality as I held in sub-issue 1. For the second point, Mr Chan had employed a “monthly *net* rent” of $61,905 before he made his adjustments. I believe he had already *deducted* the monthly amount of waiver fee payable by landlord to arrive at this figure. But the calculations are *wrong*. The monthly waiver fee should be $5,077 i.e. $15,230/3. Deducting $5,077 from $65,000, the “monthly *net* rent” should, I think, be **$59,923** instead of $61,905 (and unit rate thus needs to be revised down to **$101.91 per square metre** accordingly i.e.$59,923 / 588 square metre).

***N6. Comparable LCS1***

1. I **do not find** LCS1 suitable comparable for making valuation of *covered* storage subject to 2017 STW at the Subject Lots as there is no evidence STW being applied for as recorded in tenancy agreement of this comparable was *granted* in the end.

***N7. Comparable LCS2***

1. I **also do not find** LCS2 suitable comparable for making valuation of *covered* storage subject to 2017 STW at the Subject Lots. My reasons are: -

(1) It is located at Tong Yan San Tsuen, *significantly farther away* from the Subject Lots as Mr Lau agreed.

(2) The tenancy agreement was *outdated*, made as early as on 10 May 2019, with a 5-year term commencing from 1 September 2019. I repeat my earlier observations about “private flatted factories rental index” published by RVD herein.

(3) Again, Mr Lau made no adjustment for location despite it takes one **18** and **6** minutes to drive from this comparable to LMC and Yuen Long Highway respectively. Substantial adjustment is, I think, called for as suggested by Mr Chan.

(4) STW No.3282 referred to in the tenancy agreement was not produced at trial for my review.

***N8. Adjustments to OS1, OS2 and OS3, and Adjusted unit rates for authorized open storage***

1. For my earlier views about “private flatted factories rental index” published by RVD, I prefer Mr Chan’s respective time adjustments to these 3 comparables to those suggested by Mr Lau. The said index should, I think, be applied in its *entirety* as Mr Chan did.
2. Regarding accessibility of these 3 comparables, I also prefer Mr Chan’s respective adjustments to those proposed by Mr Lau. I cannot believe that OS1 could, as claimed by Mr Lau, be *superior* to the Subject Lots in terms of accessibility when OS1 has *only* one entrance as compared to *two* entrances enjoyed by the Subject Lots[[52]](#footnote-52). I do not believe that the *rear* entrance of the Subject Lots cannot accommodate container trucks as Mr Lau claimed for the *first* time in the box. Had it been so, he would have, one thinks, put it down into the Joint Statement earlier. I do not find Mr Lau’s evidence (and photos) on this issue credible or reliable.
3. Moving to quantum (or size) adjustment, while it is true for Mr Chan to say that different sizes of open storage sites target different logistics markets and different types of goods to be stored, I agree with Mr Lau’s view that a *smaller* *average* unit rate could often be achieved after bargain in a letting of a *larger* area. That makes common sense to me. The size of these 3 comparables are only **3,053.67, 3,911.60** and **4,600.35** **square metre** **respectively**. I think a common **-5%** adjustment should *at least* be made for each of them, if one does not go as far as Mr Lau did from his undisclosed own company research.
4. The 2 Experts agreed on 5% adjustment for redevelopment clause present in tenancy agreements for OS2 and OS3. I agree to adopt.
5. After making adjustments I accept in this section to comparables OS1, OS2 and OS3 I adopt above, adjusted unit rate for valuing *authorized* open storage lots of the Subject Lots is, I think, **$30.72 per square metre**, calculated as follows: -

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | Unit Rate | Time | Access | Site Condition | Quantum | Redevelop-  ment clause | Adjusted  Unit Rate |
| OS1 | $32.13 | -0.9% | 3% | -5% | -5% |  | $29.60 |
| OS2 | $30.38 | -0.5% | 10% | -5% | -5% | 5% | $31.51 |
| OS3 | $29.48 | 1.1% | 10% | -5% | -5% | 5% | $31.06 |
|  | | | | | | **Average** | **$30.72** |

***N9. Adjusted unit rate for unauthorized open storage***

1. Adjusted unit rate for valuing *unauthorized* open storage lots of the Subject Lots is, I calculate, **$15.36 per square metre** (i.e. 50% of $30.72 per square metre) on the opinion of Mr Chan I accept.

***N10. Adjustments to CS1, and Adjusted unit rate for covered storage subject to 2017 STW***

1. For *covered* storage comparable CS1, the 2 Experts both gave 0.1% time adjustment and -5% site condition adjustment. I agree to adopt.
2. On user adjustment, location adjustment and accessibility adjustment, I prefer Mr Chan’s respective percentages of 10%, 0% and 30% to those suggested by Mr Lau.
3. On quantum (or size) adjustment, I agree with Mr Lau that adjustment is called for. The covered area of this comparable as allowed by STW No.1909 can be no more than **588 square metre**.I make a minimum adjustment of **-5%** too.
4. Accordingly, on my *corrected* unit rate for comparable CS1 in [176(3)] above, I arrive at adjusted unit rate of **$131.65 per square metre** for valuing *covered* storage of 9 lots of the Subject Lots subject to 2017 STW, calculated as follows: -

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Unit Rate | Time | User | Access | Site Condition | Quantum | Adjusted Unit Rate |
| $101.91 | 0.1% | 10% | 30% | -5% | -5% | **$131.65** |

***O. Total market value of the Subject Lots as at 4 May 2022***

1. I therefore arrive at total market value of **$1,278,030** ($474,999.71 **+** $531,339.40 + $271,690.91) as at our valuation date for the Subject Lots totaling 37,186.44 square metre as per Mr Chan’s basis and method of valuation calculated as follows: -

(1) 15,462.23 square metre of *authorized* open storage at $30.72 per square metre i.e. $474,999.71;

(2) 4,036 square metre of *covered* storage subject to 2017 STW at $131.65per square metre i.e. $531,339.40; and

(3) 17,688.21 square metre of *unauthorized* open storage at $15.36 per square me i.e. $271,690.91.

***P. Dispositions***

1. On my findings and conclusions above, the Applicant has proven its case against the Respondent.
2. I therefore enter judgment in favour of the Applicant against the Respondent as follows:-

(1) the Respondent do deliver to the Applicant vacant possession of the Subject Lots identified in Appendix I and Appendix II (and marked respectively in blue and green in plan) annexed to Notice of Application;

(2) the Respondent do pay the Applicant mesne profits of the Subject Lots in the monthly sum of $1,278,030 from 4 May 2022 to and inclusive of the actual date of delivery of vacant possession of the Subject Lots;

(3) the Respondent do pay the Applicant interest at half judgment rates on mesne profits in (2) above from 4 May 2024 until judgment; and

(4) solicitors for the Applicant do draft, file and serve this judgment on the Respondent.

1. Let me explain two points about the judgment entered above.
2. First, though Mr Lam began his unlawful possession of the Subject Lots as from 1 July 2021 as I found above, as Hantec only sought mesne profits against him from the *later* date of 4 May 2022, I will grant mesne profits as from the said date and *not earlier*.
3. Secondly, as Hantec has wrongly sued Tan Tat causing delayed commencement of these proceedings and as Mr Lam has arranged Tan Tat to make payments for the Subject Lots from July 2022 to April 2024 as I found above (though at a total sum *lower* than its market value as at 4 May 2022 as I have assessed above), I see fit to decline exercising my discretion to order pre-judgment interest in Hantec’s favour for the *earlier* period from 1 July 2021 to 3 May 2024.

***Q. Costs***

1. Costs normally follow the event after trial.
2. There is, I think, nothing in this case to depart from the above general rule.
3. I therefore make a costs order nisi that the costs of this action, including all reserved costs and costs of this trial, together with certificate for two counsels, be paid by the Respondent to the Applicant to be taxed on High Court scale if not agreed.
4. Finally, I thank counsels of both legal teams for their industry and assistance.

|  |
| --- |
| (Lee Siu-ho) |
| His Honour Judge |
| Presiding Officer |
| Lands Tribunal |

Mr Bosco Cheng & Mr Francis Chung, instructed by So, Lung & Associates, for the Applicant

Mr Lawrence Pang & Ms Tiffany Law, instructed by C. Y. Lam & Co., for the Respondent

1. HCA No.1090/2021 [↑](#footnote-ref-1)
2. Save the Excepted Area as defined (but Mr Pang took no issue on such area in these proceedings) [↑](#footnote-ref-2)
3. On the basis that Tan Tat is privy to Mr Lam and vice versa. [↑](#footnote-ref-3)
4. His last rank with Lands Department was一級地政督察in Chinese. [↑](#footnote-ref-4)
5. See Exhibit R3 for locations of the said main and rear entrances to the Subject Lots [↑](#footnote-ref-5)
6. See Appendix 2 of Mr Chan’s Report and Appendix V of Mr Lau’s Report [↑](#footnote-ref-6)
7. Cap.131 [↑](#footnote-ref-7)
8. Uses that are always permitted [↑](#footnote-ref-8)
9. These enforcement notices by PD are summarized at pp.18 to 23 of Mr Chan’s Report. See also Exhibit A3 for another summary with focus on “unauthorized users” referred thereto (and such of the Subject Lots without enforcement notice *at all*). [↑](#footnote-ref-9)
10. 倉庫（危險品除外）用途 [↑](#footnote-ref-10)
11. On 6 August 2015, a cheque in sum of $180,000 was cleared from Tan Tat’s bank account. [↑](#footnote-ref-11)
12. On 6 May 2024, Mr Yu was recorded on the transcripts to have answered Mr Pang’s questions as follows:

    “問：唔，嗱，同林生商討呢個過程喇，歷時都幾個月時間㗎喎，係咪呀？去到21年嘅4月，其實都未傾得成㗎嘛？

    答：未傾得成，係，啱。

    問：未傾得成嘅？

    答：唔。

    問：**而呢幾個月時間中間呢，亨達就容許林生呢個貨櫃場生意繼續喺度先嘅。**

    答：**係**。

    問：咁等呢個貨櫃場生意可以繼續做生意喇，係咪？

    答：正確。

    問：唔，咁當然就一面交租畀你哋喇可以？

    答：係。

    問：喀，就**邊租邊傾**喇，係咪咁講？可以咁講？

    答：**可以咁講**。 (粗體及底線後加)” [↑](#footnote-ref-12)
13. as shown by maps annexed to the letters [↑](#footnote-ref-13)
14. Except for dates, areas and amounts, the heading in all 7 letters are the same i.e. “有關DD104牛潭尾臨時佔用倉地租金一事” and the wordings thereof in all 7 letters are also the same i.e. “本公司現發信通知**閣下**有關DD104牛潭尾臨時佔用倉地於某日實地視察後，得出某月佔用面積為某平方呎（如附圖所示分佈位置、數量和面積），以每月呎租為港幣$1.5計算得出佔用費為港幣某數。本公司提請**閣下**必須於某日前繳付！(粗體及底線後加)” [↑](#footnote-ref-14)
15. Two cheques in the respective sums of $31,695 and $33,585 both dated 21 January 2021 *drawn by Tan Tat* in favour of Hantec are produced at trial. [↑](#footnote-ref-15)
16. One cheque dated 3 January 2021 in sum of $504,600 *drawn by Tan Tat* in favour of Hantec was produced at trial. [↑](#footnote-ref-16)
17. The receipt for the month of *February* 2021 is missing at trial. [↑](#footnote-ref-17)
18. The Chinese words used above Mr Lam’s signatures and identity card numbers are “承諾人簽署” [↑](#footnote-ref-18)
19. The Chinese words used are “承諾於【某日】之前拆除所有搭建物” [↑](#footnote-ref-19)
20. The other 4 deadlines are 28 February 2021, 30 June 2021, 30 September 2021 and 31 December 2021. Handwritten words were also put down to indicate progress so far, if any, of such removals at the said 8 different portions of the Subject Lots. [↑](#footnote-ref-20)
21. Exhibit A1 [↑](#footnote-ref-21)
22. The Chinese name of tenant was mistakenly written down as “林鏡友” with the word “友” crossed out, and replaced by the word “有” handwritten, by Mr Yu. The English name of Mr Lam was put down correctly as the tenant. [↑](#footnote-ref-22)
23. The other 3 deadlines are 30 June 2021, 30 September 2021 and 31 December 2021. [↑](#footnote-ref-23)
24. General Manager of Land and Business Department of KDCL [↑](#footnote-ref-24)
25. In Mr Lam’s words “大哥” [↑](#footnote-ref-25)
26. Mr Tuen and Mr Yu both called it “the basis of negotiation” with Mr Lam in their witness statements. [↑](#footnote-ref-26)
27. Mr Yu had no general authority as a land officer of KDCL to agree on whatever terms he saw fit: see paragraph 5 of his witness statement. [↑](#footnote-ref-27)
28. Paragraphs 11 to 13 of Mr Yu’s witness statement [↑](#footnote-ref-28)
29. On 7 May 2024, Mr Lam was recorded in transcripts to have answered Mr Cheng’s questions as follow:

    “答：嗱，正確日子唔記得嘞，係**2020年嘅10月**，大約我估計呀，...

    問：唔

    答：...**應該月中咁上下喇**，**余生**嚟倉**同我講**「**顏生佢係醫院，好危險，可能唔得㗎嘞**」，咁呢顏生仲欠緊佢公司租，叫我唔好再交租畀顏生，佢公司呢佢**直接同我deal**，即係**同我**--誒，**同我交易**嘅。**咁就冇耐呢，係經余生安排，上佢公司傾租約** (粗體後加)” [↑](#footnote-ref-29)
30. Paragraph 38 of Mr Lam’s witness statement [↑](#footnote-ref-30)
31. On 7 May 2024, Mr Lam was recorded in transcripts to have answered Mr Cheng’s questions as follow:

    “問：你睇埋封信個內容。

    答：咩呀？

    問：唔係純粹係抬頭寫你個名㗎喎，「本公司現發信通知閣下有關DD104牛潭尾臨時佔用倉地，於2020年10月10日實地視察後，得出10月份佔用面積共為41,454平方尺，以每尺租為港幣$1.5計算，得出佔用費為港幣62,161元正

    本公司提醒閣下必須於2020年11月1日前繳付」，**全部都係講緊你個人㗎喎**。

    答：我都講，由頭到尾，我唔係以呢樣嘢。

    問：嗱，好嘞，繼續睇埋落去嘞。**「如有任何疑問」喎，「請於辦公室內撥電23996354與余先生聯絡」**，「此字係余遠波代行」。即係你睇到呢封信好明顯就係話，**如果你同余先生一路傾所有嘅嘢你都係用騰達公司代表身分去做嘅時候，你應該好明顯就發覺「余生，你搞錯晒喎，你做咩出畀我呀？我由頭到尾係同騰達--代表騰達去傾㗎喎」，咁點解你冇咁做？佢仲歡迎你喺辦公時間打畀佢問𠻹，如果有疑問**。

    答：**我都話我睇漏呢樣嘢喇**，一條大數我都係收緊--一條大數，好大lot嘅嘢，文件出緊畀我，**「騰達貨倉」，attention畀我自己**，咁呢一份--中間一份好細lot嘅就寫咗我個名，**我係完全唔為意呢個**--有呢個分別，我係等緊一份正式嘅租約，故仔就係咁簡單咋嘛。

    問：咁樣講喇，林生。

    答：唔。

    問：我都明嘅，即係我都問咗你一段時間，喀，即係唔好意思呀，職責所在。但係我--我諗情況係咁嘅，**即係你同余生傾嘅，個情況會唔會--點解你呢啲嘢冇乜特別反應，就係因為你根本係一路都係話「哦，咁我哋繼續租喇，我哋繼續租喇，我哋再租喇」，你冇明確咁向余生表明往後任何商討你都係以騰達董事嘅身分同佢傾，你冇咁樣同佢講㗎嘛，係咪呀？啱唔啱呀？回答咗呢條問題先。**

    答：我哋根本唔會諗過，而家我哋間公司run開，run咗十幾廿年，一路用我公司交收，突然間你--而家你出份文件話斷咗--斷咗--由頭到尾唔係--唔係騰達喺度run，我都唔知點講喎。

    問：**答咗我問題先，好唔好？唔該你。**

    答：**可唔可以再講多次你嘅問題？**

    問：**個問題就係其實喺同余生商討個過程，你從來冇向余生表達過「嗱，我哋傾呢啲租務嘅嘢呢，我係以騰達董事嘅身分代表騰達嚟同亨達傾嘅」，冇咁向余生表達過，啱唔啱？**

    答：**可以咁講**，冇諗過有出呢個問題喎，由頭到尾都係公司--對公司做緊嘅嘢，由顏生走咗，上佢公司簽兩份嘢。

    問：**嗱，呢個就係你個人嘅理解喇**。

    答：**係呀，係呀**。(粗體及底線後加)” [↑](#footnote-ref-31)
32. Paragraph 6 of Mr Yu’s affirmation [↑](#footnote-ref-32)
33. On 6 May 2024, Mr Yu was recorded on the transcripts to have answered Mr Pang as follows:

    “問：唔，嗱，睇下答唔答到，都係**亨達裡面嗰個會計部**嘅情況呀。

    公司有系統，收到一張支票之後就會核對邊個嘅租約嚟嘅，咁先出嗰個單據㗎嘛，答唔答到？

    答：**係我哋話畀佢聽嘅**。

    問：你哋話畀佢聽嘅？

    答：係。

    問：唔。

    官：「佢」即係邊個呀而家講緊？

    答：誒，會計部。

    官：「係我哋話畀會計部聽」？

    答：**係我話畀會計部聽**，係嘞。

    問：咁「我哋」係講緊咩嘢人呀？

    答：我哋...

    問：你話「我哋話畀會計部聽」，「我哋」係講緊...

    答：誒，**通常係我**。

    問：通常係你？

    答：係呀。

    問：即係你話畀會計部聽，邊個嘅租--租約嚟嘅？

    答：冇錯，**係由邊度收番嚟嘅**，...

    問：唔。

    答：...喀。

    問：**咁會計部就根據你提供嘅資料就出個單據**？

    答：**係**。

    問：唔，你提供嘅呢個資料呀，對會計部嚟講好重要㗎嘛，係咪？

    答：係。

    問：唔，如果唔係就唔需要問你喇。

    答：係。

    問：唔，會計部就唔會話收到張支票，唔問你屬於邊個嘅，就直接出單㗎嘛，唔會㗎嘛？

    答：唔會 （粗體底線後加）” [↑](#footnote-ref-33)
34. See transcripts of Mr Lam’s answers quoted at footnote 31 [↑](#footnote-ref-34)
35. On 7 May 2024, Mr Lam was recorded in transcripts to have answered Mr Cheng’s questions as follow:

    “問：但係**文件上顯示到**呢，**亨達**嘅**理解**，其實**一路**都係**同緊你個人傾**喎，所以嗰個分期拆卸僭建物嘅書係**要你簽**喇，個草擬嘅租約準用協議**用你個名**喇，而所有呢啲地嘅租單都係**有你個名喺上面喎**，**你同唔同意呀**？

    答：**同意**。（粗體後加）” [↑](#footnote-ref-35)
36. Cap.123 [↑](#footnote-ref-36)
37. Like Mr Lam [↑](#footnote-ref-37)
38. 1 out of this 19 authorized one is partly authorized and party unauthorized i.e. Lot No.1282 S.H. (Part) [↑](#footnote-ref-38)
39. Mr Chan treated *uncovered* part of 9 lots with 2017 STW as *authorized open* storage. [↑](#footnote-ref-39)
40. See Exhibit A6 Mr Chan adopted in chief [↑](#footnote-ref-40)
41. $7.16 per square metre [↑](#footnote-ref-41)
42. $19.98 per square metre [↑](#footnote-ref-42)
43. Mr Lau had discarded his comparables C1 and C3. [↑](#footnote-ref-43)
44. See location plan at p.109 of Mr Chan’s Report [↑](#footnote-ref-44)
45. It was not so amended until leave was given by me on the first day of trial. [↑](#footnote-ref-45)
46. I accept from Mr Chan that it takes **10** minutes to drive from the Subject Lots to Lok Ma Chau control point (**LMC**) and **4** minutes to drive from them to San Tin Highway whereas it takes **21** and **18** minutes to drive from LOS1 and LOS2 to LMC respectively and **11** and **7** minutes to drive from LOS1 and LOS2 to Yuen Long Highway respectively. [↑](#footnote-ref-46)
47. 租客只可根據該物業之地契内所指定之用途，業主均不會負責及承擔租客之一切違規或違法使用該物業之行爲。 [↑](#footnote-ref-47)
48. 該物業屬**村屋、豬欄與農地**，不得對該物業作任何改動或加建，不能儲存危險物品和違禁品或幹一切觸犯香港政府法例之事。 [↑](#footnote-ref-48)
49. 租客要保持該物業的原貌、一切原來設備及間隔。 [↑](#footnote-ref-49)
50. Contrary to the views of Mr Lau, these clauses are not, I think, sham or ineffective but binding as between landlord and tenant. [↑](#footnote-ref-50)
51. See location plan at p.151 of Mr Chan’s Report [↑](#footnote-ref-51)
52. Mr Lau proposed -3% adjustment while Mr Chan proposed 3% adjustment the other way round. [↑](#footnote-ref-52)