

7/85

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

NEO TAI KIM Appellant

- AND -

FOO STIE WAH (M.W.) Respondent

10 In the matter of Consolidated Suit No. 3744 of 1976
and Suit No. 3999 of 1976

B E T W E E N ;

FOO STIE WAH (M.W.) Plaintiff

- AND -

NEO TAI KIM Defendant

And in the matter of Consolidated Suit No.637 of
1977

B E T W E E N :

NEO TAI KIM Plaintiff

- AND -

20 FOO STIE WAH (M.W.) Defendant

CASE FOR THE APPELLANT

Record

1. This is an appeal from a judgment dated 17th September 1981 of the Court of Appeal of the Republic of Singapore (Wee Chong Jin, C.J., Kulasekaram and Rajah JJ.) dismissing an appeal by the present Appellant and dismissing a cross-appeal by the present Respondent from a judgment dated 27th November 1980 and a supplementary judgment dated 29th January 1981 (Chua J.) by which the learned Judge ordered that

pp.331

pp.314

pp.316

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Record

pp.315,
1.3

(1) (a) The Respondent is the sole owner of the business known as the Skillets Coffee House together with all the equipment, furniture and fittings therein and entitled to possession of the premises in which the said business is carried on.

(b) The Appellant do deliver up possession forthwith of the said business and the said premises together with all equipment, furniture and fittings therein to the Respondent. 10

(c) An account be taken before the Registrar of all receipts and payments, dealings and transactions of the business from the 1st June 1974 to the date of delivery up of possession and that payment be made thereof to the Respondent by the Appellant.

pp.315,
1.24

(2) The Respondent is entitled to an equal share in the property known as No.42 Mount Sinai Avenue, Singapore. 20

pp.315,
1.28

(3) The Respondent is entitled to an equal share in the property known as No.56 Mount Sinai Drive, Singapore.

pp.315,
1.32

(4) The Appellant's Counterclaim in Consolidated Suits 3744 of 1976 be dismissed.

pp.315,
1.35

(5) The Respondent is entitled to an equal share in the property known as No.2 Grove Lane, Singapore.

pp.315,
1.39

(6) The Respondent is entitled to an equal share in the property known as No.19 Jalan Mariam, Singapore. 30

pp.315,
1.43

(7) The costs of Suit Nos. 3744 and 3999 of 1976 including the costs of the Counterclaim be paid by the Appellant to the Respondent and the costs of the Consolidated Suit and Counterclaim be paid by the Appellant to the Respondent from the date of consolidation.

pp.316,
1.1

(8) The claim by the Appellant in Suit No.637 of 1977 be dismissed with costs.

pp.317,
1.1

(9) The Appellant do pay forthwith to the Chung Khiaw Bank Limited all sums by way of principal and interest advanced to the Appellant for his personal use in connection with his business the Shamrock Hotel and which are secured by a Mortgage executed by the Respondent as surety at the Appellant's request on the property known as No.44 One Tree Hill, Singapore. 40

(10) The Appellant do pay forthwith to the Malayan Banking Berhad all sums due by way of principal and interest advanced by the said Malayan Banking Berhad to the Appellant for his personal use and secured by a Mortgage executed by the Respondent as surety at the Appellant's request on the property known as No.36 Belmont Road, Singapore. pp.317, 1.11

10 The learned Judge's written judgment was given on the 27th November 1980. pp.290

20 2. The Appellant was at all material times the husband and the Respondent was at all material times his wife. They had been married on the 7th April 1951. The Respondent wife left the Appellant on the 26th May 1974. Between 1951 and 1974 a number of properties were acquired and business enterprises commenced and carried on. These actions were as to whether the Appellant or the Respondent were entitled to these properties and business which were:

- | | | |
|-----|-------------------------------|----------|
| (1) | Skillets Coffee House | Business |
| (2) | 42 Mount Sinai Avenue | House |
| (3) | 56 Mount Sinai Drive | House |
| (4) | 19 Jalan Mariam | House |
| (5) | 2 Grove Lane | House |
| (6) | 44 One Tree Hill | House |
| (7) | 36 Belmont Road | House |
| (8) | Emerald Room and Shindig Club | Business |

30 3. The learned Judge decided and the Court of Appeal so held that the ownership was as follows:

- | | | |
|-----|-------------------------------|-----------------|
| (1) | Skillets Coffee House | Respondent wife |
| (2) | 42 Mount Sinai Avenue | Equal shares |
| (3) | 56 Mount Sinai Avenue | Equal shares |
| (4) | 19 Jalan Mariam | Equal shares |
| (5) | 2 Grove Lane | Equal shares |
| (6) | 44 One Tree Hill | Respondent wife |
| (7) | 36 Belmont Road | Equal shares |
| (8) | Emerald Room and Shindig Club | Equal shares |

Record

4. The Appellant claims that all these properties and businesses were either owned by him or held on trust for his benefit absolutely and that the decision of the learned Judge and the Court of Appeal should be varied accordingly.

p.10 5. (a) The proceedings commenced on the 15th November 1976 when in Suit No. 3744 of 1976 the Respondent started proceedings against the Appellant for possession and an account in relation to Skillets, the coffee house business. 10

p.14 (b) The Appellant counterclaimed in Suit No. 3744 of 1976 that:

(i) the premises and business of Skillets was held by the Respondent as trustee and nominee of the Appellant for his benefit absolutely;

(ii) No. 42 Mount Sinai Avenue and 56 Mount Sinai Drive were held by the Respondent in trust for the Appellant absolutely. 20

p.2 (c) The Respondent also commenced proceedings on the 10th December 1976 in Suit No. 3999 of 1976 against the Appellant in regard to No. 44 One Tree Hill and No. 36 Belmont Road. Both properties had been purchased in the Respondent's name and were mortgaged to banks. The Respondent claimed that the Appellant should discharge these two mortgages.

p.6 (d) The Appellant counterclaimed in Suit No. 3999 of 1976 that No. 44 One Tree Hill and No. 36 Belmont Road were held by the Respondent in trust for the Appellant absolutely. 30

p.20 (e) The Appellant commenced proceedings on the 8th March 1977 in Suit No. 637 of 1977 claiming that No. 19 Jalan Mariam and No. 2 Grove Lane which were registered in the name of the Respondent were held by the Respondent in trust for the Appellant absolutely.

(f) Suits Nos. 3744 of 1976 and 3999 of 1976 were consolidated and Suit No. 637 of 1977 was ordered to be heard by the learned trial judge immediately after the consolidated actions. At the hearing of the consolidated actions it was agreed that the evidence led in the consolidated actions be used in Suit No. 637 of 1977. 40

(g) The Respondent applied on the 4th March 1977 in Suit No. 3999 of 1976 and obtained an order that the Appellant should pay to the banks the

amounts due on the mortgages on No. 44 One Tree Hill and No. 36 Belmont Road. The Appellant was granted leave to defend the balance of the claim.

Record

(h) The Emerald Room Restaurant and Shindig Club were not the subject of any claim in the actions.

6. The actions were tried by Chua J. who gave a written judgment on the 27th November 1980. The learned Judge held that: pp.290-313

- 10 (a) The parties were married on the 7th April 1951. p.292 1.27
The Appellant then worked by day as a clerk in p.292 1.28
an export and import firm until 1957. From
1952 the Appellant was a partner in the p.292 1.30
Shamrock Hotel and at night the Appellant
worked at the Shamrock Hotel. In 1962 the
Appellant became the sole proprietor of the p.293 1.11
Shamrock Hotel. The Shamrock Hotel contained
the Golden Star Restaurant which in 1966 was
converted into the Emerald Room, a restaurant p.293 1.28
and night-club known as the Shindig Club. By
20 a written mortgage of 15th March 1972 the p.294 1.13
Respondent agreed with the Chung Khiaw Bank
Ltd. to guarantee the Appellant's overdraft
operated under the name of the Emerald Room,
Shamrock Hotel. This mortgage was secured on
No. 44 One Tree Hill.
- (b) In 1957 the Appellant successfully tendered p.292 1.35
for the canteen at the University of Singapore
which was run for two years.
- 30 (c) In 1958 the Appellant successfully tendered
for the Airport Staff Canteen. This was run
until 1960.
- (d) In 1960 the Appellant successfully tendered p.292 1.50
for the catering service at the Paya Lebar
International Airport and this was run as the
International Airport Restaurant until 1964. p.293 1.4
The Appellant was the sole proprietor.
- (e) In 1964 the Appellant successfully tendered p.293 1.15
for the catering services at the new wing
40 of the Paya Lebar International Airport.
The business was carried on in the name of p.293 1.18
International Airport Restaurant which was
registered in the name of the Appellant as the
sole proprietor. This business terminated in p.293 1.23
1969.
- (f) On 1st September 1970 Skillet's Coffee House p.293 1.35
commenced business. An account was opened with
the Asia Commercial Banking Corporation Ltd. p.293 1.42
in the name of Skillet's: this bank allowed
50 overdraft facilities secured by a mortgage p.293 1.44
on No. 42 Mount Sinai Avenue and No. 56 Mount

Record

- p.294 1.3 Sinai Drive. A lease was taken of the Skillets premises in the name of the Respondent; further leases in respect of the Skillet premises were executed in the name of the Respondent in 1973 and 1974.
- p.294 1.6
- p.293 1.13 (g) In July 1963 No. 44 One Tree Hill was purchased in the name of the Respondent.
- p.293 1.25 (h) In June 1965 No. 42 Mount Sinai Avenue and No. 56 Mount Sinai Drive were purchased in the name of the Respondent. These were mortgaged to the Asia Commercial Banking Corporation to secure the Skillets overdraft. 10
- p.293 1.44
- p.293 1.33 (i) In July 1970 No.2 Grove Lane was purchased in the name of the Respondent. This was mortgaged by the Respondent on 28th December 1973 to Malayan Banking Berhad to secure a current account in the name of the Respondent.
- p.293 1.48 (j) In June 1971 No. 36 Belmont Road was purchased in the name of the Respondent. This was mortgaged to the Malayan Banking Berhad to secure a current account in the name of the Appellant. 20
- p.294 1.50
- p.294 1.24
- p.294 1.1 (k) In February 1972 No.19 Jalan Mariam was purchased in the name of the Respondent. This was mortgaged by the Respondent on the 25th May 1972 to United Overseas Finance to secure a loan of \$114,000.00.
- p.294 1.24
- p.295 1.3 (l) On the 26th May 1974 the Respondent left the matrimonial home. 30
- p.296 1.35 (m) From the date when the Respondent left the matrimonial home (26th May 1974) the business of Skillets was operated by the Appellant.
- p.297 1.53 (n) Exhibit D1, which purported to show that the Respondent was holding the business of Skillets and the five houses referred to above in trust for the Appellant, was not executed by the Respondent.
- p.301 1.43 (o) The Respondent was a working wife and ran the canteens and the airport restaurants for the Appellant who took no active part in running the businesses. 40
- p.302 1.28 (p) The Respondent worked at the Emerald Room and the Shindig Club every day and she ran the whole business. The Appellant did not take an active part in the running of the business. The Respondent took the cash home

every night and banked the cheques the following day into a bank account opened by the Appellant.

- 10 (q) During the years 1970 to 1974 there were payments made to the Appellant from the business of the Emerald Room by the Respondent who kept records of the cash payments made by her to the Appellant. The Respondent produced Bundle G which contained the records of the cash which she gave to the Appellant. Bundle G, however, is not a complete record, some of the chits were lost. p.302 1.37
- (r) On the authority of Nixon v. Nixon [1969] 1 W.L.R. 1676 the Respondent was entitled to an equal shares in the profits of the Emerald Room and Shindig Club. p.303 1.33
- 20 (s) No.44 One Tree Hill. This house was conveyed to the Respondent by a deed of 31st July 1963. Although in evidence the Respondent was quite definite that she did not sign a mortgage of this property, it is in fact clear that the Respondent did execute a mortgage to the Chung Khiaw Bank. Although in evidence the Respondent claimed to have paid the whole of the purchase price in cash, the Respondent would not have enough savings from her sideline business to purchase this property and the probabilities are that this house was paid for out of the funds of the airport restaurant business and a loan from the bank which the Appellant obtained from the Respondent. This was the first property purchased in the Respondent's name and was the matrimonial home up to April 1972 when they moved. It was the intention of the parties to purchase this house for the Respondent as the matrimonial home. It is not held by the Respondent in trust for the Appellant and is her property. p.303 1.39
p.304 1.50
p.303 1.11
p.305 1.6
p.305 1.12
p.305 1.14
p.305 1.18
p.305 1.22
- 30 (t) No.42 Mount Sinai Avenue: No. 56 Mount Sinai Drive. These houses were both purchased on 30th June 1965. They were bought on instalments paid in cash to the developers. The money was handed over by the Appellant. The receipts were issued in the Respondent's name. The Appellant kept the title deeds. The Appellant made the arrangements for the mortgage of these two properties to secure bank facilities to Skilletts. The Respondent gave a mandate to the Appellant to operate this account. By consent No.42 Mount Sinai Avenue has now been sold and the money used to pay off the bank overdraft. The probabilities are that the instalments for p.305 1.41
p.305 1.44
p.305 1.47
p.305 1.48
p.305 1.2
p.306 1.3
p.306 1.7
p.306 1.13
p.306 1.41
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Record

p.306 1.46 these properties were paid for out of the funds of the International Airport Restaurant and the Emerald Room and from the rents collected. The Respondent was virtually a partner in the business of the International Airport Restaurant and the Emerald Room and was entitled to an equal share in the profits of the two businesses. The Respondent is entitled to an equal share in these two properties. 10

p.307 1.1

p.307 1.3 (u) No.2 Grove Lane, No.19 Jalan Mariam, No.36 Belmont Road. The Appellant made all the arrangements for the purchase of these properties and their subsequent mortgages and the Appellant physically paid the initial payments for the purchase of these properties. The Appellant received the rents for these properties. On 25th February 1974 the Respondent mortgaged No.36 Belmont Road to the Malayan Banking Berhad to secure the overdraft facilities of the Appellant to the extent of \$250,000. The Respondent produced chits in Bundle G as evidence of her handing the money out of the funds of the Emerald Room to the Appellant for the Appellant to pay for the purchase of these properties. The funds for the purchase of these properties came from the business of the Emerald Room. There was no verbal trust. The Respondent is entitled to an equal share in these properties. 20

p.307 1.15

p.307 1.19

p.307 1.20

p.301 1.21

p.307 1.23

p.307 1.27

p.307 1.37

p.307 1.40 (v) Skillets Coffee House. The Respondent is the lessee and liable to the bank for payment of the overdraft. Both husband and wife were in business together. The husband had the Emerald Room and other businesses and the Respondent wanted a business of her own. The Respondent wanted to have a coffee house business and the Appellant agreed to that. The money for commencing the business was paid for out of the business of the Emerald Room and from the savings of the Respondent. The Respondent's nephew helped the Respondent to set up the business. A bank account was opened in the Respondent's name. The payment for the renovation came from the funds of Skillets. The keys of the safe were in the possession of the Respondent until the Appellant took them away from her in May 1974. The income tax returns were made by the Respondent. There was a corroboration in a newspaper report. The Appellant had nothing whatever to do with the business or the running of it. In 1975 the Appellant's brother in dealing with the Registrar of Business Names referred to the "proprietress". 30

p.307 1.43

p.312 1.16

p.312 1.25

p.312 1.29

p.312 1.31

p.312 1.34

p.312 1.45

p.312 1.47

p.312 1.49

p.312 1.51

p.313 1.1

p.313 1.7 40

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The Respondent is the sole owner of Skillets.

7. By a Notice of Appeal dated 19th December 1980 the Appellant appealed to the Court of Appeal against the whole of the decision of the learned Judge. The Appellant's Petition of Appeal setting out the grounds of appeal was dated 19th March 1981.

p.318

p.319

10 8. By an Amended Respondent's Notice dated 21st April 1981 and re-dated 17th August 1981 the Respondent gave notice that she would contend that the decision of the learned Judge ought to be varied on the grounds set out in that Notice. In particular the Respondent contended that the five houses in which she had been held to have an equal share should be declared to belong to the Respondent absolutely.

p.329

20 9. The appeal came before Wee Chong Jin, C.J., Kulasekaram and A.P. Rajah J. A single judgment of the Court of Appeal of the Republic of Singapore was delivered on 17th September 1981. The learned Judge's judgment after summarising the pleadings then continued:

p.331

pp.331-333

30 (a) Both parties led evidence and presented their cases well outside the limits of their pleadings without objection from either side. The Court of Appeal therefore proposed to deal with the appeal on the basis of the evidence presented in the trial Court and on the submissions made by Counsel to the trial Judge.

p.334

(b) At the end of the trial the issues before the learned Judge were:

pp.334-335

A. On the evidence before the trial Court and in accordance with equitable principles relating to trusts, who was or were the beneficial owner or owners of No.44 One Tree Hill, the matrimonial home of the Respondent, the legal estate therein being vested in the Respondent?

40 B. On the evidence before the trial Court and in accordance with equitable principles relating to trusts and according to the law of partnership, who was or were the beneficial owner or owners of (i) No. 36 Belmont Road, (ii) No.42 Mount Sinai Avenue, (iii) No. 56 Mount Sinai Drive, (iv) No.2 Grove Lane and (v) No. 19 Jalan Mariam?

C. On the evidence before the trial Court

and in accordance with equitable principles relating to trusts, who is or are the owner or owners of the business known as Skillets Coffee House together with all the equipment, furniture and fittings therein?

- (c) Issue A: No.44 One Tree Hill. The learned trial Judge did not err in law in his findings. When a person purchases property and pays for it out of his own funds but puts it in the name of another then there is a resulting trust in favour of the purchaser; unless at the time of purchase there was a common intention between the parties that the beneficial interest in the property was to be for the person in whose name the purchase was taken, in which case such a person would become the absolute owner of the property. If the parties are husband and wife and the husband is the provider of the funds for the purchase of the property and puts it in the name of his wife a resulting trust in favour of the husband does not arise as the doctrine of the presumption of advancement comes into play on behalf of the wife to negative the resulting trust in favour of the husband: but this is a rebuttable presumption, the onus of rebuttal being on the husband. The learned trial Judge rightly rejected the Appellant's rebuttal evidence and so there was a presumption of advancement in favour of the Respondent.

- (d) Issue B: The remaining five houses.

pp.337-338

- (i) No.42 Mount Sinai Avenue and No. 56 Mount Sinai Drive. The learned trial Judge rejected the Respondent's claim that she paid for these properties out of her funds. He also did not accept the Appellant's evidence that he had a verbal conversation with the Respondent saying that these two properties were for the Appellant. The learned trial Judge had found that the Respondent was entitled to an equal share in the profits of the International Airport Restaurant and the Emerald Room: on this finding there was no appeal by the Respondent. These two properties, having been bought out of the partnership assets of the two businesses, are partnership property and so are owned by the Appellant and Respondent in equal shares. There is no acceptable evidence either way that, at the time of the purchase of these two properties, the whole of the beneficial interest should be exclusively with one or the

other of the two partners. The presumption of advancement is rebutted and the parties hold in equal shares.

pp.338-339

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(ii) No.2 Grove Lane, No.19 Jalan Mariam and No. 36 Belmont Road. The learned trial Judge was satisfied that the funds for the purchase of these properties came from the Emerald Room, that there was no verbal trust and that the Respondent was entitled to an equal share. There was no acceptable evidence either way that, at the time of the purchase of these three properties, the whole of the beneficial interest in these three properties should be exclusively with one or other of the two partners. As the Appellant and Respondent were partners in the two businesses run by them jointly the presumption of advancement was rebutted and the parties owned in equal shares.

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(e) Issue C: Skillets. The learned trial Judge had found that both Appellant and Respondent has been in business together and that she wanted a coffee house business of her own to which he agreed. On the question of who provided the money for commencing the business of the coffee house the finding of the learned Judge that it was paid for out of the business of the Emerald Room and from the savings of the Respondent was against the evidence. The evidence pointed to the Appellant having provided the monies for the commencement of the business from his own funds. By virtue of the doctrine of presumption of advancement the Respondent is both the legal and the beneficial owner. If the Appellant is to succeed he must rebut the presumption of advancement by showing that the parties had the common intention that the Appellant should be the true owner of the coffee house business and the beneficial owner of the Lease. The Appellant had not done this and the finding of the learned trial Judge must stand.

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pp.339-340

(f) Both the appeal and cross-appeal are dismissed. Each party to bear his or her own costs.

10. The Appellant respectfully submits that the Court of Appeal of the Republic of Singapore erred in the following respects:

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(1) Issue A: No.44 One Tree Hill.

(a) The Court of Appeal should not have relied upon the presumption of advancement. This was not the basis upon which the case was put forward in evidence by the Respondent. The Respondent's case was not

pp.335-337

Record

that the Appellant had purchased the house for her as a matrimonial home; nor was it her case that it had been purchased out of partnership funds as the matrimonial home. This was neither the pleaded case nor the case put forward in evidence.

- p.304 1.15 (b) The Court of Appeal should have decided this issue on the basis of the case and evidence put forward on behalf of the Respondent that she had provided the money for the purchase of this property from her sideline business at the airport restaurant and that she handed the money to the Appellant who made the payments which evidence the learned Judge did not believe. 10
- p.305 1.11 (c) The Court of Appeal should, from the learned Judge's finding that the Respondent did not have enough savings from her sideline business to purchase this property, have inferred that the property was purchased by the Appellant from his own funds; the Court of Appeal should particularly have borne in mind that it was not the Respondent's case or evidence that the property was purchased with funds from the International Airport Restaurant or the Shamrock Hotel. 20
- p.305 1.18 (d) The Court of Appeal should have accepted that the unchallenged evidence of the Appellant showed that the conduct of the Appellant was consistent only with his having purchased the properties and put them into the Respondent's name with a trust in favour of the Appellant. 30
- p.305 1.20 (e) The Court of Appeal erred in accepting the learned Judge's finding that the house was purchased as a matrimonial home. 40
- p.305 1.20 (f) The Court of Appeal should have taken into account that this property was the matrimonial home up to April 1972 when they moved to Jalan Mutiara and inferred that it ceased to be the matrimonial home.
- p.335 1.17 (g) The Court of Appeal should not have held that before the date of the purchase of this property the Appellant had taken unto himself a second wife in 1954 and had established a matrimonial home for her. 50

Record

- (h) The Court of Appeal should have taken into account the fact that the Respondent (having denied doing so) was held to having executed a mortgage on this property on 31st July 1963 and that the Appellant paid off this mortgage on 6th August 1972. p.304 1.11
- 10 (i) The Court of Appeal should have taken into account the fact that the property was mortgaged a second time on 15th March 1972 for an overdraft account of the Shamrock Hotel. Although the Respondent was the surety for this mortgage she had no right to operate the overdraft account. p.304 1.33
p.304 1.33
p.305 1.45
- (j) The Court of Appeal ought to have taken into account the fact that the Appellant paid the property tax on this property p.304 1.33
- 20 (k) The Court of Appeal should have taken into account the fact that the title deeds were in the Appellant's possession during the two mortgages. p.304 1.33
- (l) If, as the learned trial Judge found, the probabilities were that the mortgage instalments were paid out of the funds of the Airport International Restaurant and Emerald Room, the Court of Appeal should at least have held that the property was held in equal shares. p.305 1.14
p.305 1.24
- (2) Issue B:
- 30 (i) No. 42 Mount Sinai Avenue and No.56 Mount Sinai Drive.
- (a) The Court of Appeal did not attach enough weight to the learned trial Judge's finding that the Respondent would not have had enough savings from her sideline business to pay for these properties. p.306 1.30
- (b) The Court of Appeal ought to have taken into account that the money for the instalments was paid by the Appellant. p.305 1.43
- 40 (c) The Court of Appeal ought to have taken into account the Respondent's admissions that the rents of these properties were collected by the Appellant and that the Appellant paid the property tax. p.306 1.27
- (d) The Court of Appeal ought to have accepted the learned trial Judge's finding that the instalments for these properties were paid out of the funds of p.337 1.12

Record

the International Airport Restaurant and the Emerald Room and the rents collected.

(e) The Court of Appeal ought to have decided that these properties were paid for by the Appellant from his own monies and that he was entitled to the beneficial ownership.

(ii) No. 2 Grove Lane, No.19 Jalan Mariam and No. 36 Belmont Road. 10

p.307 1.9

(a) The Court of Appeal ought to have taken into account that it was not disputed that the Appellant made all the arrangements for the purchase of these three properties and their subsequent mortgages and that physically the Appellant paid the initial payments for the purchase of these properties.

p.307
11.16-21

(b) The Court of Appeal ought to have taken into account that it was not in dispute that the Appellant received the rents for these properties. 20

p.307
11.16-21

p.307 1.37

(c) The Court of Appeal ought not to have accepted the learned trial Judge's finding that the funds for the purchase of these properties came from the business of the Emerald Room.

(3) Issue C: Skillets.

pp.339
11.37-42

(a) The Court of Appeal, having decided that the finding of the learned trial Judge that money for commencing the business of the coffee house was paid for out of the business of the Emerald Room and from the Restaurant's savings was against the evidence and having decided that the Appellant provided the monies from his own funds, ought to have inferred that the Appellant was the beneficial owner. 30

p.339
11.43-46

(b) The Court of Appeal should not have relied upon the presumption of advancement. This was not the basis upon which the case was put forward in evidence by the Respondent. The Respondent's case was not that the Appellant had purchased with his funds not was it her case that it had been purchased out of partnership funds. This was neither the pleaded case nor the case put forward in evidence. 40 50

(c) The Court of Appeal, if it was to apply the presumption of advancement, ought to have held that on the evidence the Appellant had rebutted the presumption of advancement. In particular the evidence adduced by the Respondent was that:

10 (i) a friend of the Appellant asked the Appellant whether a place in the Supreme House (where Skillets was later opened) would be a good place for running a coffee house, that the Appellant discussed the project with her and as a result of her conversation the Appellant went to negotiate for the place; p.308
11.46-53

20 (ii) although the Appellant asked her for the money for the booking fee, the Appellant later negotiated a lease in the Respondent's name and the Appellant paid a deposit of three month's rent; p.309
11.1-5

(iii) the Appellant came to the coffee house to collect the money from her and she gave it to him in cash; p.309
11.43-46

30 (iv) it was the Appellant who arranged the mortgage of the two properties to the Asia Commercial Bank in December 1971. p.310
11.1-5

(d) The Court of Appeal ought to have held that the Appellant was the beneficial owner; alternatively that this was a partnership business held in equal shares.

11. On 11th January 1982 the Court of Appeal of the Republic of Singapore made an order granting the Appellant leave to appeal to the Judicial Committee. p.347

40 12. The Appellant respectfully submits that the judgment of the Court of Appeal of the Republic of Singapore was wrong and ought to be reversed and that this appeal ought to be allowed with costs in the Judicial Committee, in the Court of Appeal and in the High Court for the following (amongst other)

R E A S O N S

BECAUSE

Issue A: No. 44 One Tree Hill.

Record

1. There should have been no presumption of advancement; or if so it was rebutted.
2. The Respondent's case and evidence was that she provided the money for the purchase from her sideline business which the learned trial Judge did not believe.
3. The Appellant purchased from his own funds as the unchallenged evidence shows.
4. The house was not purchased as a matrimonial home: in any event the parties moved to another matrimonial home in April 1972. 10
5. The Appellant had not another wife and matrimonial home from 1954 nor at the time this property was purchased.
6. The Appellant was responsible for various important dealings with this property, mortgages, paying property tax, holding title deeds.
7. If, as the learned trial Judge held, the payments came from the partnership businesses, the property was held in equal shares. 20

Issue B(i): No.42 Mount Sinai Avenue and No.56 Mount Sinai Drive.

8. The Respondent did not have enough savings to purchase these properties.
9. The instalments were paid by the Appellant.
10. The Respondent admitted the rents were collected and the property tax paid by the Appellant. 30
11. The learned trial Judge found that the instalments were paid out of the funds of the International Airport Restaurant and Emerald Room and the rents collected.
12. These properties were paid for by the Appellant from his own monies and he was entitled to the beneficial ownership.

Issue B(ii): No.2 Grove Lane, No. 19 Jalan Mariam and No. 36 Belmont Road. 40

13. The Respondent did not dispute that the Appellant made all the arrangements for the purchase, the mortgages and initial payments.

14. The Respondent did not dispute the Appellant received the rents.
15. These properties were paid for by the Appellant from his own monies and not from the business of the Emerald Room and the Appellant is entitled to the beneficial ownership.

Issue C: Skillets.

- 10 16. The Court of Appeal reversed the learned trial Judge's finding that money for commencing this business had been paid for out of the business of the Emerald Room and from the Respondent's own savings.
17. The Court of Appeal held that the Appellant provided the money for commencing this business from his own funds: the Appellant is therefore the beneficial owner.
- 20 18. There should have been no presumption of advancement; or if so it was rebutted.
19. The Appellant having paid for the business is the beneficial owner; alternatively this business was a partnership business held in equal shares.

DESMOND WRIGHT

HOWARD CASHIN

Dated this day of July 1983.

30 Le Brasseur & Bury,
71, Lincoln's Inn Fields,
London, WC2A 3JF.
Agents for Murphy & Dunbar

To the Judicial Committee

And to

Respondent's Solicitors.

This Case for the Appellant was lodged with the Judicial Committee of the Privy Council on the day of July 1983.

IN THE JUDICIAL COMMITTEE OF THE PRIVY
COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL IN SINGAPORE

BETWEEN:

NEO TAI KIM Appellant

- AND -

FOO STIE WAH (M.W.) Respondent

CASE FOR THE APPELLANT

LE BRASSEUR & BURY,
71, Lincoln's Inn Fields,
London, WC2A 3JF.

Agents for:

MURPHY & DUNBAR,
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Solicitors for the Appellant