

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

IN THE MATTER of Consolidated Suit No. 399 of 1976

10 BETWEEN :

FOO STIE WAH (M W) Plaintiff

- and -

NEO TAI KIM Defendant

AND IN THE MATTER of Consolidated Suit No. 637 of 1977

BETWEEN :

NEO TAI KIM Plaintiff

- and -

FOO STIE WAH (M W) Defendant

20 CASE FOR THE RESPONDENT

1. This is an appeal from a judgment of the Court of Appeal in Singapore (Wee Chong Jin C J and Kulasekaram and Rajah J J) dated the 17th September 1981, dismissing with no order as to costs the Appellant's appeal and the Respondent's cross appeal from the judgment of Chua J in the Supreme Court of Singapore dated 27th November 1980 whereby it was ordered that certain properties were the property of the Appellant solely, other properties the property of the Respondent

p 342 & 343

p 314-317

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alone and yet further property of both in equal shares.

2. There were three suits before Chua J namely:

Suit No 3744 of 1976 Between:

p10-19	Foo Stie Wah (M W)	<u>Plaintiff</u>
	and	
	Neo Tai Kim	<u>Defendant</u>

Suit No 3999 of 1976 Between:

p2-9	Foo Stie Wah (M W)	<u>Plaintiff</u>
	and	
	Neo Tai Kim	<u>Defendant</u>

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Suit No 637 of 1977 Between:

p20-33	Neo Tai Kim	<u>Plaintiff</u>
	and	
	Foo Stie Wah	<u>Defendant</u>

The first two suits were consolidated and the third suit was heard immediately after the hearing of the consolidated suits and by agreement the evidence led therein was used in the third suit.

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p292 1.28 3. The Appellant and the Respondent were married in 1951 according to Chinese customary rites. From 1952 up to the 26th May 1974 when the parties separated, they had carried on a number of businesses and had purchased a number of properties which became the subject matter of three suits. The businesses and properties concerned, their respective legal titles and the order of Chua J were as follows:-

<u>Property/ Business</u>	<u>Purchased/ Commenced</u>	<u>Legal Owner</u>	<u>Judgment</u>	<u>Suit</u>
Shamrock Hotel	June 1962	Appellant	Not in dispute	
44 One Tree Hill	July 1963	Respondent	Respondent	3999 of 1976
42 Mt Sinai Avenue	June 1965	Respondent	Equal Shares	3744 of 1976

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	Property/ Business	Purchased/ Commenced	Legal Owner	Judgment	Suit	
	56 Mt Sinai Drive	June 1965	Respondent	Equal Shares	3744 of 1976	p.307 1-2
	2 Grove Lane	July 1970	Respondent	Equal Shares	637 of 1977	p.307 1.3- 43
	Skillets	September 1970	Respondent	Respond- ent	3744 of 1976	p.307 1.44- p.313 1.37
10	36 Belmont Road	June 1971	Respondent	Equal Shares	3999 of 1976	p.307 1.3- 43
	19 Jalan Miriam	February 1972	Respondent	Equal Shares	637 of 1977	p.307 1.3- 43
	Emerald Room +	October 1972	Appellant	Equal Shares	3999 of 1976	p.301 1.49-
	Shindig Club			Not Appealed		p.303 1.39
	4.	The Appellant appealed to the Court of Appeal of Singapore on the 19th December 1980 and the Respondent cross-appealed on the 2nd April 1981.				p.319-328 p.329-330
20	5.	The Court of Appeal of Singapore dismissed both appeals on the 17th September 1981 and on the 11th January 1982 the Court of Appeal of Singapore made an order granting leave to appeal to Her Majesty in Council.				p.331-341 p.347-348
	6.	<u>The Appeal</u>				
30		The Appeal is (inter alia) concerned with one property (44 One Tree Hill) and one business (Skillets) which are legally vested in the sole name of the Respondent, and have been held in concurrent judgments below to belong beneficially to her. The Learned Judge found as a fact that:				
		(i) the property 44 One Tree Hill was purchased with funds from the airport business and a loan arranged by the Appellant in the name of the Respondent; and (ii) the business Skillets was acquired by the Respondent from her own savings and funds from the Emerald Room and without any material assistance from the Appellant. The Court of Appeal of Singapore held that this finding of the Learned Judge (that Skillets was acquired by the Respondent from her own savings and funds from the Emerald Room and without any material assistance from the Appellant) was against the evidence. However the Court of Appeal of				p.305 1.7- 29 p.312 1.24- p.313 1.34
40						p.339 1.40- p.340 1.19

Singapore held that by the doctrine of the presumption of advancement the beneficial ownership followed the conclusion that the Appellant had failed to rebut the presumption of advancement in relation to One Tree Hill and Skillets, or to prove any financial contribution by him to the mortgage repayments to the Asia Commercial Bank or the day to day running of the business or the acquisition of Skillets, with the result that in both cases the beneficial ownership following the legal title.

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7. The remaining properties are legally vested in the sole name of the Respondent, but were found by the Learned Trial Judge to have been paid for with moneys from businesses in which the Appellant and the Respondent were equal partners. They have been held in concurrent judgments below to belong beneficially to the parties in equal shares, and are the subject of the Appeal and Cross-Appeal.

8. The following considerations are relevant to the Appellant's Claim in the Appeal to be the sole beneficial owner:-

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(1) The properties were not purchased with money belonging to or borrowed by the Appellant, but out of partnership moneys belonging to the parties in equal shares, and with money raised on mortgages of the properties effected by the Respondent and in her sole name.

p.297 1.18-
p.299 1.54
& p.313
1.33

(2) The Learned Trial Judge rejected as a forgery the document D1 which was put forward by the Appellant in support of his claim to be the sole beneficial owner.

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p.229 1.40-
p.230 1.3

(3) In cross-examination the Appellant stated that the legal title to the properties was vested in the Respondent in order to protect her from his creditors in the event of his bankruptcy. The Appellant's stated purpose could not have been achieved unless the beneficial ownership followed the legal title.

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p.224 1.50-
p.226 1.36

(4) The Appellant gave evidence that he caused to be recorded on the Respondent's tax returns the fact that she was the owner of 44 One Tree Hill, 56 Mt Sinai Avenue and 36 Belmont Road.

9. On the findings of fact of the Learned Trial Judge, which he was entitled to make on the evidence before him, the Courts below were entitled and

bound to reject the Appellant's claim to be the sole beneficial owner of these properties.

10. The Cross-Appeal

10 In rejecting the Respondent's claim to be the sole beneficial owner of these properties, and concluding instead that the properties belonged beneficially to the parties in equal shares, the Courts below seem to have assumed that this followed automatically from the fact that the properties were purchased with moneys belonging to various businesses in which the parties were equal partners.

p306 1.40-
p307 1.2 &
p307 1.37-42
p338 1.20-
p339 1.19

20 11. It is respectfully submitted that in this the Courts below fell into error. In effect, they treated the presumption of advancement as rebutted, and the property held on resulting trust, simply because the purchase money was provided by the Respondent as well as by the Appellant. There was no reason to treat these properties any differently from those purchased with the Appellant's own money and put (by way of advancement) into the sole name of the Respondent. The proper inference is to treat the property, so far as purchased with the Appellant's share of the partnership money, as an advancement to the Respondent. Such an inference is supported in the present case by the findings of fact mentioned in para 8 above.

30 12. Where an asset is purchased out of partnership moneys and put into the sole name of one of the partners, it is respectfully submitted that the first question is whether it was intended to take the asset out of the partnership, as on an interim distribution, or not. Where, as in the present case, the asset was not of a kind employed in the partnership business or appearing in the partnership accounts, the natural conclusion is that it was transferred into the name of the recipient in order to take it out of the
40 partnership and vest it solely and beneficially in the recipient.

13. Once this first question is answered in this way, the only remaining question is whether it was the parties' intention that, on the final taking of the partnership accounts, this was to be treated as an interim distribution to the recipient for which credit must be given at the value which the asset had at the date when it was taken out of the partnership. This question was never considered

by the Courts below, though it is possible that their actual decision (that the properties belonged beneficially to the parties in equal shares) was based on some such reasoning. If so, it is submitted that the conclusion was erroneous, because:-

p215 1.28-
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- (1) There was evidence that other assets were similarly taken out of the partnerships and transferred to the Appellant. The natural conclusion is that neither party was to render a strict accounting at the end of the day for the assets taken by each of them respectively. 10
- (2) The actual conclusion, that the properties belong to the parties in equal shares, has very different financial results from treating the Respondent as the sole beneficial owner, but liable to give credit for the value of the properties, as at the dates when they were transferred to her, in the final taking of the partnership accounts. 20

13. It is respectfully submitted that the Appeal ought to be dismissed, and the Cross-Appeal ought to be allowed, for the following among other

R E A S O N S

A. The Appeal

1. Because on the evidence before him the Learned Trial Judge was entitled to find:-
 - (i) as to One Tree Hill, that the Appellant had failed to rebut the presumption of advancement; 30
 - (ii) as to Skillets, that the Appellant did not found, manage or operate, or provide the initial capital for or thereafter make any or any substantial financial contribution to the running of the said business;
 - (iii) as to the remaining properties, that they were purchased with moneys belonging to various businesses in which the parties were equal partners. 40
2. Because on those findings, and in the light of the other evidence before him, the Learned Trial Judge was entitled to reject

the Appellant's claim to be solely and beneficially entitled to these properties.

B. The Cross-Appeal

3. Because the proper conclusion on the evidence was that the properties were transferred to the Respondent in order to take them out of the partnerships, whether with or without (though it is submitted without) an obligation on her part to give credit for them on the final taking of the partnership accounts,

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4. Because the proper inference was that, in so far as the properties were provided out of the Respondent's share of the partnership moneys, they were bought by her, and in so far as they were provided out of the Appellant's share of the partnership moneys, the Appellant failed to rebut the presumption of advancement.

P.J. MILLETT

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M.L. KALLIPETIS

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PRIVY COUNCIL

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