

**IN THE SOLOMON ISLANDS COURT OF APPEAL**

**NATURE OF JURISDICTION:** Appeal from Judgment of the High Court of Solomon Islands (Cameron J)

**COURT FILE NUMBER:** Civil Appeal Case No. 7 of 2010 (On Appeal from High Court Civil Case No. 92 of 2010 & Civil Case No. 99 of 2010)

**DATE OF HEARING:** 6 October 2010

**DATE OF JUDGMENT:** 6 October 2010

**THE COURT:** Auld, P  
Adams, JA.  
Hansen, JA.

**PARTIES:** Francis CHOW Appellant  
  
-V-  
Cathleen Alisa Katia Douglas CHOW Respondent

**ADVOCATES:**

**Appellant:** Mr Chris Hapa for Francis Chow

**Respondent:** Ms Maelyn Bird for Cathleen Alisa Katia Douglas CHOW

**KEY WORDS:**

**EX TEMPORE/RESERVED** Ex Tempore

**ALLOWED/DISMISSED:** Allowed

**PAGES:** 1 – 4

## JUDGMENT OF THE COURT

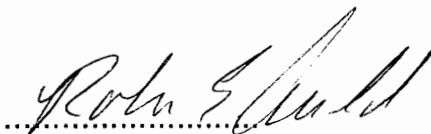
1. This is an appeal on behalf of Mr Francis Chow, the husband of Catherine Chow, from a judgment of Mr Justice Cameron on 12<sup>th</sup> of May 2010 denying him summary judgment and dismissing his claims outright in two property claims brought by him in March 2010 against Mrs Chow.
2. The first claim is for \$470,000.00, part of the proceeds of sale of \$900,000.00 of 5,000.00 shares held by him in a company called Lime Lounge Limited. He maintains that his wife wrongfully obtained that sum by taking a cheque in that amount drawn in his favour and negotiating it in her favour. The second claim is for \$50,000.00 in respect of the proceeds of a cheque drawn by his wife to cash for her own benefit on the account of another company in which he and she were shareholders. Those transactions took place some years ago while Mr and Mrs Chow were living together as man and wife, and, she maintains, they then regarded the monies as part of their joint matrimonial assets. Both claims seemed to have been instituted shortly after the parties separated in January of this year.
3. In the two sets of proceedings Mr Chow claims that he holds and owns the property and any proceeds of sale in trust for their children and not for himself or Mrs Chow. The property and any proceeds of sale, he maintains, are therefore trust property and cannot form part of their joint matrimonial property, or indeed property to which either of them is entitled on any other basis. It is on that ground that he sought summary judgment in both claims.
4. On the hearing before Mr Justice Cameron, Mrs Chow maintained that the shares in Lime Lounge Limited were held in trust for her and that Mr Chow had agreed to her having the \$50,000.00 and applying the two cheque proceeds to her own benefit. She, or her counsel, also informed the Judge that she had initiated divorce proceedings against Mr Chow, including claims for ancillary relief under the Matrimonial Causes Act 1970, so that any dispute about the ownership of either set of monies could be resolved in those proceedings. The proceedings had not actually been formally instituted at that stage, prompting Mr Chow some initial concern about possible deception by his wife of the Court, but nothing now turns on that – a clerical error in her solicitor's office – soon rectified.

5. Mr Justice Cameron rejected Mr Chow's applications for summary judgment in both matters. He went further, he also dismissed the claims to which they had been attached in their entirety, indicating that all matters should now be left to the court in the matrimonial proceedings of which Mrs Chow had told him.
6. In so ordering the Judge drew what he called a strong inference that Mr Chow's claims and the applications for summary judgment had been prompted by the break-up of the marriage, and expressed the view that they were not clear-cut cases of Mr Chow's entitlement to the monies to the exclusion of Mrs Chow. He was of the view that there was an arguable case that they formed part of the matrimonial property, and that the issue should be resolved as part of the division of such property in the matrimonial proceedings. So, on that reasoning, he dismissed Mr Chow's applications and, as I've said, also the claims as a whole.
7. Mr Chow now challenges the Judge's decision in both respects, but particularly the outright dismissal of his claims which he reasserts deserve a hearing.
8. Mrs Chow's case on the appeal is that her defence in the present proceedings deserves to be heard and that they should continue unless and until they, or the Court resolves them in the matrimonial proceedings now also in play.
9. Whatever the status of the divorce proceedings when Mr Justice Cameron heard the application for summary judgment, it cannot in our view bear on the determination he had to make whether Mr Chow's claims were so clear and overwhelming that Mrs Chow had no reasonably arguable defence of him. Nor indeed can it bear on the unsolicited decision he went on to take in dismissing both Mr Chow's claims in their entirety. In the break-up of a marriage, especially one in which there has been an accumulation of assets of over time and where there has been joint involvement in control in the handling and destination of those assets, spouses' interests in property held by them jointly or separately are rarely clear-cut. If the parties are at odds in such matters, their respective claims require careful examination, whether by continuation of the present civil proceedings (not attenuated by summary judgment) or by matrimonial proceedings.
10. In our view, Mr Justice Cameron correctly dismissed Mr Chow's applications for summary judgment, and Mr Hapa, for Mr Chow, does not seriously argue to the contrary today. He is more concerned with the Judge's dismissal of the claims in their

entirety, which were not sought at the hearing before him nor canvassed in argument before him, and in respect of which he gave no warning of his intention.

11. The respective claims of the parties on those two claims should be determined after consideration of all the relevant evidence on both sides either in continuance of this action, or as part a division of matrimonial property in the divorce proceedings now in process.
  
12. Accordingly, we dismiss Mr Chow's appeal against the Judge's dismissal of applications for summary judgment, but allow his appeal against the Judge's purported dismissal of the claims outright.
  
13. Accordingly, the Court Orders that the present action should be reinstated. How the matter should proceed as between it and the matrimonial proceedings will be a matter for the High Court and the parties.

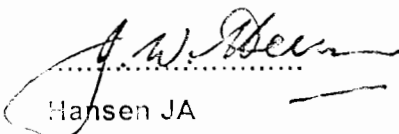
Costs in Cause.



**Sir Robin Auld P**  
**President of the Court of Appeal**



**Adams JA**  
**Member of the Court of Appeal**



**Hansen JA**  
**Member of the Court of Appeal**