



No. C854118
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:)	REASONS FOR JUDGMENT
GLEN PIRIE)	
)	
)	
PLAINTIFF)	OF THE HONOURABLE
)	
AND:)	
)	
ARTHUR E. KNIGHT)	THE CHIEF JUSTICE
)	
DEFENDANT)	

F. G. Potts	:	Counsel for the Plaintiff
H. M. Suiker	:	Counsel for the Defendant
Heard at Vancouver, B.C.	:	October 1, 2, 10 and 15, 1986

As stated to counsel during argument, I have concluded that these parties embarked upon a joint venture or other form of partnership in the acquisition of four units of a Honolulu apartment project. I do not propose to review the evidence but I rely, inter alia, upon the circumstances of the acquisition, the contribution of the Plaintiff to the closing expenses, the repayment of such contribution as a "return of capital", and the subsequent dealings and correspondence between the parties from which I infer the Defendant recognized the entitlement of the Plaintiff to a full accounting.

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2 It is not necessary that I determine precisely why the
3 four units were acquired in the name of the Defendant but I
4 believe it was partly for security reasons, the Defendant
5 having assumed the mortgage obligations, and partly because of
6 a mutual misunderstanding about possible tax advantages which
7 were thought to be more useful to the Defendant with his
8 larger taxable income.

9
10 That being so, the question for decision is whether
11 the "Interim Agreement" of November 9, 1978 divided the
12 partnership assets between the parties and terminated the
13 relationship. I do not think it did because (a) the parties
14 never reached the binding agreement on which units would
15 become the property and responsibility of the Plaintiff, and
16 (b) the parties themselves did not think they had reached a
17 concluded agreement. I think the parties walked away from
18 this "settlement" because it was not completed and I reject
19 the Defendant's suggestion that the Interim Agreement was
20 really an option given to the Plaintiff to acquire two units
21 before the completion date.

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23 It follows that the Plaintiff is entitled to succeed,
24 but counsel have agreed that I should only decide the issue
25 directed by Macdonald, J. in his order dated February 21,
26 1986.


1
2 My answer is that the parties did indeed enter into an
3 equal partnership or joint venture for the four units in
4 question but that there were no other specific terms or agree-
5 ments. Particularly, there was no agreement that the proper-
6 ties had to be sold during the subsidy period. I think it was
7 the intention of the parties that they would sell or hold the
8 properties or some of them as they would agree upon from time
9 to time. As they never agreed on anything, and as the
10 Defendant had the carriage of the business of the venture (as
11 well as the obligations), and as the Plaintiff did not object,
12 the Defendant had a right to sell or otherwise dispose of the
13 properties as he thought fit on the basis that he would
14 account to the Plaintiff as a partner. In other words, all
15 proper expenses must be set off against profits and although
16 it may be beyond the scope of this question, I see no reason
17 why the Defendant could not sell the properties as he did
18 unless negligence or some other breach of duty is established.

19
20 Counsel may reset any remaining issues for trial as
21 they may be advised. They may take an order for an accounting
22 before the Registrar if they wish so to do.

23
24 If the matter ends here the Plaintiff is entitled to
25 the costs of this issue. If there has to be an accounting the
26 costs of that proceeding are reserved to be determined in
27 accordance with the result or outcome of the proceedings
28 before the Registrar.

29
30 Vancouver, B. C.

November 3, 1986


S.J.C.