

Kak Loui Chan V Zacharia (1984) 154 CLR 178

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Facts

- Plaintiff and defendant were doctors who worked as partners. They rented premises as joint tenants under a three year lease with an option to renew for a further two-year term. At the end of the three year term the doctors agreed to dissolve the partnership. Chan was invited to join Zacharia in exercising the option to renew the lease but declined to do so.
- Afterwards, Chan obtained a new lease of the premises in his sole name, in return for paying the landlord a premium of \$10,000.

Held

- The High Court (Murphy J dissenting) held that by obtaining the new lease the defendant had exploited his fiduciary position as co-partner of the plaintiff. He was ordered to hold the lease on constructive trust for both parties.
- Deane J attached an importance to presumptions. Where a trustee obtains renewal of a lease to himself, the lease being trust property, it is irrefutably presumed that the trustee has obtained the renewal by use of his position as trustee.
- Other fiduciaries including partners that obtain renewal of a lease for themselves, the lease being the subject-matter of the fiduciary relationship, it is rebuttable presumed that the renewal was obtained by use of the fiduciary position.
- The onus rests on the fiduciary to show that he did not obtain renewal of the lease by exploiting his fiduciary position.
- Chan was both a co-trustee with the plaintiff of the doctors' legal rights under the lease, and a co-partner of the medical practice. He was unable to rebut the presumption.
- Deane J also examined the role of deterrence in enforcing fiduciary obligations. Deane J upheld Lord Upjohn's judgment in *Boardman v Phipps*, restating that there must be a 'real sensible' possibility of a conflict of interest and not a remote possibility of conflict which is unlikely to harm the beneficiary.

Quotes

"Indeed, it has been said that a stronger case of fiduciary relationship cannot be conceived than that which exists between partners. ...The relation is based, in some degree, upon a mutual confidence that the partners will engage in some particular kind of activity or transaction for the joint advantage only."

(Deane J at page 196)

Full Text

The full text is available here: <https://jade.io/summary/mnc/1984/HCA/36>

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