

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 476 OF 2005

BETWEEN ONIS HUNT

CLAIMANT/APPLICANT

AND LENNETH HUNT

DEFENDANT/RESPONDENT

Mrs. Judith Cooper-Batchelor
instructed by Chambers, Bunny & Steer
for Claimant/Applicant

Mrs. Loverne George for Defendant/Respondent

Heard: May 18 and June 30, 2006

McDonald J. Ag.

In the application before this Court filed on 28th July 2005, the claimant seeks an order that the Defendant refund the Claimant 50% of all the mortgage dues paid by him in respect of property at Hope Village District, Williamsfield from the 24th April 2003 until the property is sold.

The parties were separated on the 24th April 2003, decree Nisi of divorce was granted to the defendant.

There is no dispute:-

- i) That the said property at Hope Village District was transferred to the claimant and defendant on 24th January, 2002 as joint tenants.

- ii). That a mortgage was registered on 24th January, 2002 to Jamaica National Building Society to secure two million nine hundred and sixty thousand dollars with interest
- iii) That the said mortgage is in the names of both claimant and defendant.
- iv) That on 26th October 2005 Mr. Justice Wesley James made an order declaring that the claimant and defendant own the said property in equal shares.
- v) That a valuation be agreed upon by the parties within 4 weeks of the order and that the defendant shall have the first option to purchase the claimants share in the said property exercisable within thirty (30) days of the receipt of the valuation failing which the claimant shall have the second option to purchase.
- vi) That if neither party exercises the option to purchase then the property be put up for sale by public auction or private treaty.
- vii) That the claimant has been paying the full mortgage of \$45,000 per month except for two mortgage payments made by the defendant since their separation.
- viii) That the defendant by Information dated 15th April 2004 applied for maintenance for the children in the Mandeville Resident Magistrate's Court and the claimant was ordered to pay \$5,000 per week for both children.

Claimant's Case

Mr. Hunt's case is that before separation on 24th April 2003 he paid all the mortgage payments and after separation he continued to do so, except for two payments.

He stated that he discovered that Mrs. Hunt had paid two months mortgage when he went to pay – this was after they had separated and before

this application was filed i.e. 28th July, 2005. The precise dates of payment were not disclosed to the Court.

He deponed that he gave his Attorney-at-law instructions to inform the defendant through her Attorneys that she needed to pay her share of the mortgage. He was informed by his Attorney Judith Cooper-Batchelor that this was done.

Defendant's Case

Mrs. Hunt maintains that Mr. Hunt is not entitled to the 50% refund as claimed. She relies on an "Agreement" referred to later in this judgment.

She deponed that at no time did Mr. Hunt indicate to her that the Agreement for him to pay her only 50% of the maintenance had changed.

Further, Mr. Hunt had not indicated to her since the separation that she was to pay 50% of the mortgage, and it was only when this application was served on her that she became aware of it.

She stated that he failed to support the children between April 2004 and September 2004. As a result she was forced to file a claim for maintenance in the Resident Magistrates Court.

Mrs. Hunt stated that during the period April 2004 to October 2005, she spent approximately \$1,240,000 on the children while she received approximately \$314,445.17 from Mr. Hunt.

Mr. Hunt denied that he had an "Agreement" with Mrs. Hunt that instead of her paying 50% of the mortgage, he would pay her \$15,000 for maintenance of the children and the other half he would apply to the mortgage payments.

Mrs. Hunt's claim that there was an agreement between the parties with respect to mortgage payments is unsupported by her evidence.

She avers that the agreement stipulates her retaining \$15,000 monthly which represents her half of the monthly mortgage repayments for the children's maintenance. She admits that Mr. Hunt has been meeting the full monthly mortgage repayments of \$45,000. The fact that \$15,000 does not amount to one half of the monthly mortgage dues, is clearly inconsistent with her assertion that there was an agreement between the parties relating to the mortgage payments.

Further, the parties separated in April 2003 Mr. Hunt stated that after the separation Mrs. Hunt made two monthly mortgage repayments, this I accept. He also said that there was no agreement between the parties and I find that none existed.

The parties are co-mortgagors. As co-mortgagor Mr. Hunt has a right to recover one half of such mortgage payments as have been made by him since the separation of the parties.

In dealing with the question of a co-mortgagor's right of recovery as between husband and wife of such proportion of a mortgage debt as his or her co-mortgagor is liable to pay Lord Russell in *Wilson v. Wilson* 2 All ER 447 at page 454 said:

“In the result in my judgment the appeal should be allowed and it should be declared that the wife is entitled to half of the net proceeds of sale of the house. I think, however, that there must be some adjustment in respect of mortgage instalments paid by the husband, between the time when the wife left the matrimonial home in July 1959 and the sale of the house in March 1961. I do not think the presumption of gift can continue to apply after the separation, nor consequently that the husband can be taken to have given to the wife the benefit of half these post separation payments; he is in respect of these payments in the ordinary position of a joint mortgagor redeeming a mortgage and entitled to contribution from the co-mortgagor in proportion to their interests, and from her half of the proceeds of sale, half of such payments should be deducted and added to his half. If necessary, there must be an enquiry to ascertain the amount.”

It is ordered that :-

- (1) Mr. Hunt is entitled to one half of all sums paid by him in relation to the mortgage from April 23, 2003 until the date of sale of the property and redemption of the mortgage.
- (2) Such sum as shall become payable to him should be reduced by one half of the two payments made by Mrs. Hunt.

- (3) One half of the two months payments should be refunded to Mrs. Hunt.
- (4) Costs of the application to the claimant/applicant to be agreed or taxed.