IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

GRENADA

CLAIM NO.GDAHCV2014/0465

BETWEEN:

MERRIT JONES

CLAIMANT

AND

ELIZABETH JONES

DEFENDANT

2021: March 1
March 17

JUDGMENT

[1] **ACTIE, J.:** This claim concerns the law of unjust enrichment. On 13th October 2014, the claimant, Mr. Merrit Jones, ("Mr. Jones") filed a claim form together with statement of claim against Ms. Elizabeth Jones ("Ms. Jones") for the following reliefs:

(1) A declaration that pursuant to the ancillary relief order dated 22nd March 2013 in the related matrimonial matter Ms. Jones had the responsibility to service the mortgage from March 2013 or some reasonable time thereafter.

(2) A declaration that sums of money paid by Mr. Jones since March 2013 to service the mortgage obtained from the Grenada Co-operative Bank Limited by the parties in or about June 2005 ("the mortgage") and secured by the former matrimonial homes of the parties ("the Carriacou property"), more particularly described in the schedule annexed to the accompanying statement of claim represent part of the owners' equity in the said Carriacou property.

(3) A declaration that the claimant is the owner of an undivided share in the Carriacou property commensurate with the sums paid by him to service the mortgage of the Carriacou property since March 2013 or from some reasonable time thereafter.

(4) An order for sale of the Carriacou property and that the proceeds of sale distributed in the following order:
   (a) Payment of costs and expenses reasonably incurred as an incidence to the sale;
   (b) Satisfaction of the outstanding mortgage sum;
   (c) Payment to [the] claimant and defendant in proportion to their undivided shares in the Carriacou property.

Background

[2] On 23rd June 2005, the parties as husband and wife, secured a mortgage on the Carriacou property from the Grenada Co-operative Bank Limited ("the Bank") with a monthly repayment sum of $1,349.59. Mr. Jones, a police officer at the rank of sergeant at the time, had an agreement with the Bank, where the monthly repayment sum would be automatically deducted from his salary by the Accountant General. These automatic monthly deductions would only cease with the consent of the Bank.

[3] The parties' marriage was dissolved by decree absolute on 29th December 2010. In an application for ancillary relief, Rhudd J. (Ag) in a judgment delivered on 22nd March 2013 ordered, inter alia, that the Carriacou property is to remain in the possession of Ms. Jones and that she is to assume liability for the payment of the balance of the mortgage secured by that property.

[4] On 25th April 2013, Mrs. Deborah Mitchell, Attorney-at- Law for Mr. Jones, wrote to Bank giving notice of the judgment which ordered that Ms. Jones is to take over the mortgage. However, despite his attorney's letter the monies continued to be deducted by the Bank. A further letter was drafted by Mrs. Mitchell on 28th May 2013.

[5] The attorneys for the Bank by letter dated 5th June 2013 stated that the court in its judgment did not release Mr Jones from his obligations under the mortgage and that the monies would continue to be deducted.

[6] By letter dated 6th June 2013 Ms. Jones' attorney responded to Mr Jones' attorney and states that Ms. Jones is unable to take over of the mortgage and that the court was aware of this.

[7] On 13th October 2014, Mr. Jones filed this claim and avers that Ms. Jones has been unjustly enriched by virtue of the payments made by him since March 2013 to satisfy the mortgage as Ms. Jones never took over the mortgage payments and the bank refused to release the sum monthly deductions.

[8] On 18th November 2014, Ms. Jones filed a defence stating that the court is *functus officio* in relation to the hearing and determination of any rights concerning the Carriacou property. With respect to the allegation that Ms. Jones has not assumed liability for the mortgage, she states that for practical reasons outside of her control she has been unable to comply with the said order, since it did not appear to take the mortgagee bank's interest, as legal owner of the property into consideration. Further, she states that due to limited financial means the Bank has refused to engage her concerning her assuming liability for the mortgage. Ms. Jones denies that she has been unjustly enriched by the payments made by Mr. Jones.

[9] On 15th October 2015, the Learned Master Fidela Corbin Lincoln, as she then was, granted summary judgment for Mr. Jones for reliefs 1 and 2 of his claim form. The remaining reliefs of the claim form were refused. Master Corbin felt compelled to do so, since at that material time the mortgage deed was not disclosed or exhibited before the court by either of the parties. Mr. Jones pursuant to an order of the court dated 3rd December 2015 filed an affidavit on 29th January 2016 exhibiting the mortgage Deed with the Bank.

[10] Ms. Jones, on 29th April 2016, filed a witness statement where she states that she is a single mother and resides in a house on the Carriacou property. She said that she lives with Sherena Jones, who is a child of both parties. She states that she is unemployed but operates a small bar from her home. She earns an income between $700.00 and $800.00 per month from this bar. She states that she has been unemployed for over 10 years and has no formal educational training.

[11] Ms. Jones asserts that the claimant is gainfully employed and is financially better positioned than she is. She denies that she has been enriched by the payments made by Mr. Jones to the mortgage. She is of the view that if the property is sold, she will have nothing nor will her minor daughter have a home or place to live. Further, she states that she will not be able to purchase another home if the property is sold and will be rendered homeless.

[12] The status quo of the parties have changed since the filing of the claim having regard to the time lapse since the filing of the witness statements and trial. The court was informed that Mr. Jones has started a new family. Ms. Jones presently resides in the USA and their minor daughter has now attained the age of majority.

Law and Analysis

[13] The issue to be determined by the court is whether Ms. Jones has been unjustly enriched at the expense of Mr. Jones and if so, whether Ms. Jones has a viable defence to the claim of unjust enrichment.

[14] Unjust enrichment was defined by Gordon JA in the Court of Appeal decision in **Caribbean Development (Antigua) Limited v Electronic Technology International (Antigua) Ltd**[1] at paragraph 10 where he states:

> "Unjust enrichment presupposes three things. "First the defendant must have been enriched by the receipt of a benefit. Secondly, that benefit must have been gained at the plaintiff's expense. Thirdly, it would be unjust to allow the defendant to retain that benefit." The first and second presuppositions are matters required to be proved by the claimant (respondent) and the third is a matter of legal inference derived from the evidence."

[15] Lord Clarke in the case of **Bank of Cyprus Ltd. v Menelaou**[2] stated as follows:

> "In the course of the argument, there was much discussion of the relevant legal principles. However, in my opinion it is not necessary to resolve all the possible issues which were discussed. It appears to me that this is a case of unjust enrichment. In Benedetti v Sawiris [2013] UKSC 50, [2013] 4 All ER 253, [2014] AC 938 the Supreme Court recognised that it is now well established that the court must ask itself four questions when faced with a claim for unjust enrichment. They are these: (1) Has the defendant been enriched? (2) Was the enrichment at the claimant's expense? (3) Was the enrichment unjust? (4) Are there any defences available to the defendant?[3]"

[16] Given the learning from the authorities above, the court makes the following findings of fact:

(1) The parties in this matter, Mr. and Ms. Jones, jointly secured a mortgage from the Grenada Co-operative Bank Limited, which is evidenced by an Indenture of Mortgage.

(2) The mortgage was for the amount of $150,000.00 at a rate of interest of 9% per annum, with a repayment term of $1,349.59 for 20 years (240) months. The Carriacou property

[1] ANUHCVAP2005/013 at para. 10
[2] [2015] UKSC 66 or [2016] 2 All ER 913
[3] Ibid at para. 18

was used to secure the mortgage together with an assignment of Mr. Jones' salary, inter alia.

(3) Mr. Jones authorised the Accountant General to automatically deduct the monthly sum of $1,349.59 from his salary to service the said mortgage to the Bank commencing July 2005.

(4) The said monthly deductions have been withdrawn since July 2015.

(5) By order of the court dated 22nd March 2013, Ms. Jones was to assume the mortgage and retain possession and ownership of the Carriacou property.

[17] The foregoing evidence is a clear indication that a claim for unjust enrichment has been made out by Mr. Jones. Ms. Jones receives the equitable benefit of the Mr. Jones' monthly payments in the sum of $1,349.59 towards the service of the mortgage. She is the equitable owner of the property pursuant to the order of the court and as such her equity in the property is greatly enriched at Mr. Jones' expense and detriment. Essentially, Mr. Jones is paying for a property in which he has no legal or equitable interest.

[18] The court must now consider whether Ms. Jones can avail herself of any defence to the claim of unjust enrichment. **The Halsbury's Laws of England**[4] provides as follows:

> "Even though a claimant may be able to establish that a defendant has been unjustly enriched at his expense, the defendant may still be able to defeat the claimant's claim by reliance on a defence. The principal defences are: (1) change of position; (2) estoppel; (3) bona fide purchase; (4) passing on; (5) impossibility of counter-restitution; (6) illegality; and (7) incapacity. There are other defences of more general application, such as limitation."

[19] A cursory reading of Ms. Jones' defence and witness statement reveals her claim that she is not in a financial position to assume the payments for the mortgage as ordered by the court in previous litigation. Ms. Jones' impecuniosity and inability to take over the mortgage payments are not viable defences in law to this claim for unjust enrichment, especially having regard to the judgment of Rhudd J. in 2013.

[4] Restitution and Unjust Enrichment Vol. 88 (2019): Para 565: Defences available in unjust enrichment claims.

[20] Mr. Jones, authorised the Accountant General in the Ministry of Finance to pay his entire salary to the Bank which could only be revoked with the written consent of the Bank. Ms. Jones although divorced from Mr. Jones is receiving the equitable benefit of his payments towards the mortgage.

[21] Sections 24 and 25 of the Matrimonial Causes Act confer jurisdiction on the court to make property adjustments orders in divorce matters to facilitate a clean break after decree absolute. The wilful refusal by the Bank and the Accountant General to release Mr. Jones's salary from the mortgage debt is a clear contemptuous breach of the Court's order. It is unfortunate that the Bank and the Accountant General were not made parties to the claim or pursued for contempt as they assisted Ms. Jones in depriving Mr. Jones of his monthly earnings from 2013 to date. This is a very unfortunate situation that has left Mr. Jones in a precarious situation.

[22] At the completion of the trial on March 1,2021, the parties were directed to obtain statements from the Mortgagee to give an updated status of the existing mortgage. A statement from the Grenada Co-operative Bank Limited dated March 12, 2021 indicates that Mr. Jones has paid the sum of $129,404.65 for the past eight (8) years, inclusive of interest in the sum of $58,983.11 and principal in the sum of $70,421.54. The current balance on the loan as of March 11,2021 stands at $47, 213.89.

[23] It is evident that Mr. Jones has paid a significant portion of the mortgage debt since the judgment in 2013. It will be unjust for Ms. Jones in light of her equitable ownership to receive the entire equity in the property at Mr. Jones' expense. Equity and fairness dictate that Mr. Jones' monthly payments from 22nd March 2013 (date of the judgment) to present ought to be a judgment debt and a charge on the Carriacou property.

[24] Applying the law to the facts of this case, the court finds in favour of the claimant, Mr. Merrit Jones, that the defendant Ms Elizabeth Jones, has been unjustly enriched at Mr Merrit Jones' expense.

ORDER

[25] In light of the foregoing, it is ordered and declared as follows:

(1) It is declared that the claimant, Merrit Jones, is the owner of an undivided share in the Carriacou property commensurate with the sums paid by him to service the mortgage of the property since the judgment of Rhudd J (Ag) in March 2013.

(2) Judgment is granted to the Mr. Merrit Jones in the sum of $129,404.65 with interest at the rate of 6 % from the date of judgment until payment in full.

(3) Prescribed Costs in the sum of $18,675.58 on the judgment sum pursuant to CPR 65.5.

(4) The property situate at Hillsborough in the island of Carriacou containing by a measurement of Two Thousand One Hundred and Sixty-four square feet (2,164 sq. ft.) English Statute Measure ("the property") which is secured by the Bank is to be valued by a Valuator within 30 days of this judgment. The cost of the valuation is to be paid by Mr Jones and added to the judgment debt.

(5) There shall be vacant possession of the property within 3 months of this judgment.

(6) Thereafter, the Registrar of the High Court is empowered to sell the property via public auction or private treaty for its market value with a reserved price as contained in the valuation.

(7) The following deductions are to be made from the proceeds of sale of the property in this order of priority:

    (a) The remaining balance of the mortgage debt to the Grenada Co-operative Bank Limited.

    (b) The total judgment debt together with interest and prescribed costs awarded to Mr Jones in this order.

    (c) After the above deductions have been allocated the remaining balance of the proceeds of sale, if any, shall go to the defendant and shall be paid directly to Ms. Jones or by payment into court on Ms. Jones behalf.

Agnes Actie
High Court Judge

By the Court

Registrar