

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D30348
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Submitted - February 8, 2011

JOSEPH COVELLO, J.P.
PLUMMER E. LOTT
SHERI S. ROMAN
ROBERT J. MILLER, JJ.

2009-03257

DECISION & ORDER

Stephanie Le, respondent, v Kevin Le, defendant-appellant; Lynn J. Brustein-Kampel, etc., et al., nonparty-appellants.

(Index No. 2369/07)

Abel & Brustein-Kampel, P.C., New City, N.Y. (Steven L. Abel of counsel), nonparty-appellant pro se and for nonparty-appellant Lynn J. Brustein-Kampel.

Kevin Le, Pearl River, N.Y., defendant-appellant pro se.

In an action for a divorce and ancillary relief, the nonparties, Lynn J. Brustein-Kampel and Abel & Brustein-Kampel, P.C., appeal, as limited by their brief, from so much of a judgment of the Supreme Court, Rockland County (Christopher, J.), dated February 18, 2009, as failed to award them counsel fees, and the defendant separately appeals, as limited by his brief, from stated portions of the same judgment which, inter alia, upon a decision of the same court dated November 10, 2008, made after a nonjury trial, awarded custody of the parties' three children to the plaintiff, awarded the plaintiff a two-thirds share of the proceeds of the sale of the marital residence with a credit for "the difference between the princip[al] balance of the mortgage as of March 22, 2007 and the amount due at closing, . . . after payment of closing costs and joint liens, as long as there are monies available from the proceeds," directed that the plaintiff was not required to pay maintenance to the defendant for the months that he resided in the marital residence, and awarded the plaintiff child support in the sum of \$50 per month and arrears totaling \$988.33.

ORDERED that the judgment is modified, on the facts and in the exercise of discretion, by deleting the provision thereof awarding the plaintiff a credit for "the difference between

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the princip[al] balance of the mortgage as of March 22, 2007 and the amount due at closing, . . . after payment of closing costs and joint liens as long as there are monies available from the proceeds,” and substituting therefor a provision awarding the plaintiff a credit for 50% of the difference between the principal balance of the mortgage as of March 22, 2007, and the amount due at closing, . . . after payment of closing costs and joint liens, as long as there are monies available from the proceeds; as so modified, the judgment is affirmed insofar as appealed from, without costs and disbursements.

Contrary to the defendant’s contention, the plaintiff is entitled to receive a credit against the proceeds of the sale of the marital residence for the money that she paid to reduce the balance of the mortgage during the pendency of the divorce action (*see Markopoulos v Markopoulos*, 274 AD2d 457). She made these payments without any contribution from the defendant (*see e.g. Freigang v Freigang*, 256 AD2d 539). Where, as here, a party has paid the other party’s share of what proves to be marital debt, such as the mortgage, taxes, and insurance on the marital residence, reimbursement is required (*see generally Epstein v Messner*, 73 AD3d 843). However, the plaintiff was entitled to only a 50% of the reduction in mortgage principal because “[g]enerally it is the responsibility of both parties to maintain the marital residence . . . during the pendency of a matrimonial action” (*Judge v Judge*, 48 AD3d 424, 425 [internal quotation marks and citations omitted]; *see Palumbo v Palumbo*, 10 AD3d 680). Therefore, the Supreme Court improvidently exercised its discretion in awarding the plaintiff a credit for 100% of the payments she made on the marital residence during the divorce proceedings.

The remaining contentions are without merit.

COVELLO, J.P., LOTT, ROMAN and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court