

**Fuk Chor Mui v Leung**

2009 NY Slip Op 32677(U)

November 2, 2009

Supreme Court, Nassau County

Docket Number: 3938/06

Judge: Roy S. Mahon

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SCA

**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

**Present:**

**HON. ROY S. MAHON**  
**Justice**

**FUK CHOR MUI,**

**TRIAL/IAS PART 8**

**Plaintiff(s),**

**INDEX NO. 3938/06**

**- against -**

**MOTION SEQUENCE  
NO. 1**

**ALICE LEUNG,**

**MOTION SUBMISSION  
DATE: September 8, 2009**

**Defendant(s).**

**The following papers read on this motion:**

- Order to Show Cause** **X**
- Affidavit in Opposition** **X**
- Supplemental Affidavit in Opposition** **X**
- Reply Affirmation** **X**

Upon the foregoing papers, the motion by plaintiff, brought by Order to Show Cause, for an Order holding Alice Leung in contempt for her failure to abide by the Order of this Court dated January 8, 2009 and entered in the office of the Clerk on January 13, 2009 by virtue of her failure and refusal to sell or to cooperate in the sale of the property located at 15 Oxford Street, Roslyn Heights, NY, her continued failure and refusal to pay any portion of the mortgagee on the property and her obstructing of the sale of the 280 shares of 83-06 Victor Avenue Realty Corp. and the proprietary lease for apartment #6B at 83-06 Victor Avenue, Elmhurst, NY and her failure to provide a full and complete accounting of monies received and expended with regard to the later property, all of the foregoing being required by the Decision of this Court dated January 8, 2009, is determined as hereinafter provided.

In its entirety, the Court in its Decision After Trial dated January 8, 2009 set forth:

"Plaintiff, instituted the instant action seeking partition of premises known as 15 Oxford Street, Roslyn Heights, NY and partition of shares and a proprietary lease of a cooperative apartment known as 83-06 Vietor Avenue, Elmhurst, NY respectively. By his verified complaint, plaintiff also seeks an accounting of rents collected from said premises, the payment of sums due the plaintiff, if any, from the collection of said rents, the appointment of a receiver to receive rents due and unpaid and an order directing payment by the defendant to said receiver for property found by the Courts to belong to the plaintiff and wrongfully transferred by the defendant. The defendant in her verified answer denied the

allegations, except that she admitted she is the fee owner of the premises and plaintiff appears as a mere nominee added to obtain necessary financing for the purchase of property. The parties commenced trial by the Court on September 26, 2008 and concluded trial on September 29, 2008. A copy of the trial transcript was requested by the Court and supplied by the parties. A stipulation was made in open court by and between the parties that the properties herein are not subject to partition and should be sold each as one panel with the proceeds to be divided between the parties in accordance with the Order of the Court.

Plaintiff testified as his sole witness. He stated that he is the joint owner, with right of survivorship, of premises known as 15 Oxford Street, Roslyn Heights, NY with the defendant (*see Court Exhibit #1*). He resides there with the defendant and her daughter. Title was acquired by the parties on March 28, 2001. At the title closing, attended by both the plaintiff and the defendant, the plaintiff paid approximately \$60,000.00 in cash and \$248,000.00 in mortgage proceeds toward the purchase price of \$310,000.00. The mortgage note was signed only by the plaintiff. The defendant paid approximately \$6,000.00 in miscellaneous closing fees (*see Plaintiff's #1 in Evidence*).

On January 27, 2003, the parties refinanced the premises known as 15 Oxford Street, Roslyn Heights, NY in the amount of \$230,000.00. Again, only the plaintiff's name appeared on the mortgage note (*see Plaintiff's #6 in Evidence*). According to the plaintiff, while he was the sole signor of the mortgage notes, it was never his intention to solely shoulder the entire burden of paying the mortgage. Rather, he asked the defendant to share the cost of mortgage payments, in the approximate amount of \$2740.00 per month. Attempts to add the defendant's name to the mortgage note at the time of the refinance of the premises were unsuccessful since the defendant lacked the financial resources needed to undertake payments. All payments for the mortgage on premises at 15 Oxford Street, Roslyn Heights, NY were made by the plaintiff until 2006 when the defendant began making one-half the monthly mortgage payment. Copies of the schedule of payments made by the plaintiff for mortgage and household expenses, together with copies of cancelled checks were introduced into evidence (*see Plaintiff's #2 in Evidence*).

The plaintiff stated that the defendant did make payments for household expenses, including telephone bills, oil bills, electricity bills and gas bills. According to the plaintiff, some of these expenses were shared, in part, with himself. Additionally, the defendant expended approximately \$9000.00 to renovate the basement area of 15 Oxford Street into a sewing factory which included the installation of florescent lighting and insulation. Again, according to the plaintiff, these basement modifications have not increased the value of the home, but instead, must be removed to make the home marketable as a residence (*see Plaintiff's #3 and #4 in Evidence*).

In September 2004, the plaintiff and defendant closed title to a cooperative apartment. Two hundred eighty shares of 83-08 Realty Corp., and a proprietary lease for Apt. #6B at 83-06 Vietor Avenue, Elmhurst, NY were issued to the plaintiff and defendant as joint tenants with right of survivorship (*see Court Exhibit #1 - Certificate of Shares and Proprietary Lease*).

The plaintiff purchased the cooperative apartment for the purchase price of \$103,000.00. According to Mr. Mui, he supplied \$80,000.00 in cash for the purchase and financed the balance through a loan. The defendant's name did not appear on the loan, but the defendant did pay some closing costs.

Mr. Mui stated that the arrangement he had with the defendant called for her to collect rent from a tenant at the 83-06 Vietor Avenue, Elmhurst, NY apartment in a monthly amount of approximately \$1200.00 to \$1300.00 and to pay both the monthly mortgage and maintenance costs of the apartment from the collected rent. In 2006, the plaintiff indicated he received notice that payments of his mortgage

for the cooperative apartment were in default. In order to avoid foreclosure, he began making payment of the mortgage expenses for the cooperative apartment and introduced a schedule of payments and cancelled checks to support his testimony (*see Plaintiff's #2 in Evidence*). He was unsure where the defendant has been applying the rents she collected from the premises.

Cross-examination of the plaintiff revealed that prior to the purchase of 15 Oxford Street, Roslyn Heights, NY, the plaintiff and defendant had lived in Jamaica, NY together with the defendant's daughter in some form of a domestic relationship. Finding the quarters they occupied too small for their needs, they decided to purchase a home at 15 Oxford Street, Roslyn Heights, NY. The \$60,000.00 advanced by the plaintiff for the purchase of 15 Oxford Street came from the plaintiff's personal resources and not from the sale of any property in Jamaica, NY. The plaintiff stated that he never represented the defendant to be his wife, nor did he tell the defendant he was purchasing 15 Oxford Street for the defendant and her daughter. Rather, he stated he told the defendant she was expected to pay for one-half the mortgage expenses for the 15 Oxford Street property. Only when she failed to pay did the plaintiff take full responsibility for the payments.

Mr. Mui further testified on cross-examination that at the closing, he was unaware of the form of ownership in which the title to 15 Oxford Street was being placed. This was so because the attorney who appeared for the defendant did not represent him nor did he explain the form of ownership or that he was solely liable on the mortgage note.

As to the 83-06 Vietor Avenue, Elmhurst, NY cooperative apartment, the plaintiff, on cross-examination, stated that he purchased the apartment at the defendant's request and since 2004, has visited the property only twice. He has never collected rent from any tenant at the cooperative apartment or made repairs at the premises.

On re-direct examination, Mr. Mui reiterated his testimony that he did not intend to purchase the 15 Oxford Street property as a gift for the defendant and that he was unaware of the joint form of ownership or that only he was liable on the mortgage note. Rather, the plaintiff said that the defendant originally offered to contribute to the purchase from funds she held in Hong Kong and elsewhere, but was unable to produce them in time for closing. It was his expectation to receive the funds at some later time.

Again, according to the plaintiff, the cooperative apartment at 83-06 Vietor Avenue was purchased as an investment, but was not intended as a gift for the defendant.

After the plaintiff's testimony, the plaintiff rested his case. The defense made no motions at the close of the plaintiff's case, but did elect to present a case. The sole witness for the defense was the defendant Ms. Alice Leung.

Ms. Leung testified that she lives with her daughter at the 15 Oxford Street, Roslyn Heights, NY premises. Her daughter is a third year student at Roslyn High School. According to the defendant, she and the plaintiff purchased the 15 Oxford Street, Roslyn Heights, NY property as a joint residence. At the closing on March 18, 2001, she was represented by an attorney who was chosen by the plaintiff to represent her. At the request of the plaintiff, the attorney specifically drew the deed to reflect the joint tenancy with right of survivorship. While the plaintiff signed the mortgage note, both she and the plaintiff signed the mortgage instrument. This was repeated approximately 2 years later when the parties refinanced the property and the plaintiff again signed the mortgage note and both parties signed the mortgage instrument.

The defendant further stated that the plaintiff never asked the defendant to share the mortgage

expenses of the 15 Oxford Street property between March 2001 and March 2006. Instead, the defendant contributed to other household expenses.

Cross-examination revealed that the defendant is currently employed as a real estate sales person and that the plaintiff at the time of the purchase of 15 Oxford Street property promised to do so for the defendant show as then expecting a child.

After the defendant concluded her testimony, the defense rested its case. No rebuttal case was offered by the plaintiff.

After trial, the Court now makes the following findings of fact and conclusions of law.

In accordance with the stipulation of the parties made in open Court, the title to premises known as 15 Oxford Street, Roslyn Heights, NY and the 280 shares of 83-06 Vietor Avenue Realty Corp and the proprietary lease for apartment #6B at 83-06 Vietor Avenue, Elmhurst, NY shall be sold separately and each as one parcel or item of property. The proceeds will be divided equally between the parties except the following credits will be afforded the parties.

1. The plaintiff will receive a credit for payment made in excess of 50% of the mortgage obligation for the premises known as 15 Oxford Street, Roslyn Heights, NY and 83-06 Vietor Avenue, Elmhurst, NY.
2. The defendant will receive a credit of \$9000.00 for costs sustained in the renovation of the basement of 15 Oxford Street, Roslyn Heights, NY.

Additionally, the defendant is directed to account to the plaintiff for all rents received from the tenant of 83-06 Vietor Avenue, Elmhurst, NY.

This constitutes the decision and Order of the Court. Let judgment enter accordingly."

In support of the instant application, the plaintiff has not included a Judgment in this action that was signed and entered as per the Court's Order upon which the requested relief is based. As such, the plaintiff's application for an Order holding Alice Leung in contempt for her failure to abide by the Order of this Court dated January 8, 2009 and entered in the office of the Clerk on January 13, 2009 by virtue of her failure and refusal to sell or to cooperate in the sale of the property located at 15 Oxford Street, Roslyn Heights, NY, her continued failure and refusal to pay any portion of the mortgagee on the property and her obstructing of the sale of the 280 shares of 83-06 Vietor Avenue Realty Corp. and the proprietary lease for apartment #6B at 83-06 Vietor Avenue, Elmhurst, NY and her failure to provide a full and complete accounting of monies received and expended with regard to the later property, all of the foregoing being required by the Decision of this Court dated January 8, 2009, is denied without prejudice to renew upon proper papers.

SO ORDERED.

DATED: 11/2/2009

*Roy S. Madson*  
.....  
J.S.C

**ENTERED**

NOV 05 2009

NASSAU COUNTY  
COUNTY CLERK'S OFFICE