

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTOPHER R. KENRICK,

Plaintiff-Appellee,

v

LUANN M. KENRICK,

Defendant-Appellant,

and

LEWIS MASTERS,

Intervenor-Appellant.

UNPUBLISHED

December 20, 2002

No. 228571

Ottawa Circuit Court

LC No. 97-029291-DM

Before: Jansen, P.J. and Smolenski and Wilder, JJ.

JANSEN, J. (*dissenting*).

I would affirm the trial court's order denying defendant and intervenor's motion to compel payment of the equitable mortgage. As the trial court correctly found, Mr. Masters was a "mere volunteer" in paying the mortgage indebtedness. See *Lentz v Stoflet*, 280 Mich 446, 449-450; 273 NW 763 (1937) ("Subrogation is an equitable doctrine depending upon no contract or privity, and proper to apply whenever persons other than mere volunteers pay a debt or demand which in equity and good conscience should have been satisfied by another.") As the trial court pointed out, "Mr. Masters did not pay the parties' mortgage at the behest of Mr. Kenrick, nor did he even discuss his intentions to make the payment with Mr. Kendrick." Rather, Mr. Masters sought plaintiff's agreement to repay him only after making the mortgage payment. Consequently, there is nothing to indicate that Mr. Masters acted in reliance upon plaintiff's agreement to repay him. Because an agreement or intent to repay must be established before an equitable lien may be imposed and because Mr. Masters did not rely upon plaintiff's intent to repay him, the trial court properly refused defendant's and intervenor's request for equitable subrogation. See *Schrot v Garnett*, 370 Mich 161, 163; 121 NW2d 722 (1963).

Contrary to the majority's position, the circumstances of this case are clearly distinguishable from those presented in *Smith v Sprague*, 244 Mich 577, 580; 222 NW 207 (1928). In *Sprague*, the plaintiff, Elizabeth Smith, was divorced from Emmet Sprague, the son of defendant, Mrs. Etta S. Sprague, and her husband, Mr. Thomas Sprague. Having remained on friendly terms with her former in-laws, plaintiff thus agreed to Mr. Thomas Sprague's request for

a loan to pay his mortgage. In that case, Mrs. Sprague “admitted knowledge of and assent of the understanding.” *Id.* at 579. This is in striking contrast to the present case in which plaintiff, who was in the process of finalizing his divorce from defendant, never sought Mr. Master’s assistance, nor agreed with defendant’s request to seek funds from her father to prevent the foreclosure sale. Unlike *Sprague*, plaintiff was not bound by defendant’s promise to repay her father, who acted as a mere volunteer in paying the parties’ mortgage. Although it is true that plaintiff received a benefit because Mr. Masters’ action canceled the foreclosure proceeding, the law clearly states that subrogation is not available to mere volunteers. For that reason, I would affirm the trial court’s order denying defendant and intervenor’s motion to compel payment of the equitable mortgage.

/s/ Kathleen Jansen