

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**CIVIL DIVISION**

**BUILDING AND PROPERTY LIST**

VCAT REFERENCE NO. W47/2014

**CATCHWORDS**

Part IV *Property Law Act* 1958; partition and sale; unequal contribution; liability for residual bank debt

<b>APPLICANT</b>	Ms Julie Monaghan
<b>RESPONDENT</b>	Mr Anthony Saligari
<b>WHERE HELD</b>	Horsham
<b>BEFORE</b>	Member R. Buchanan
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	22 September 2015
<b>DATE OF REASONS</b>	16 October 2015
<b>CITATION</b>	Monaghan v Saligari (Building and Property) [2015] VCAT 1800

**ORDERS**

- 1 The respondent must pay to the applicant compensation fixed at \$13,830.90.
- 2 Liberty is reserved to the applicant to apply for an order that the respondent reimburse to the applicant any part of the Commonwealth Bank of Australia debt (identified in my reasons for decision) which the applicant may pay to Commonwealth Bank of Australia.

**MEMBER R. BUCHANAN**

**APPEARANCES:**

For the Applicant: In person

For the Respondent: In person

## REASONS

### Introduction

- 1 This proceeding involves a dispute about a jointly owned property. One of the owners, Julie Monaghan, sought orders for the sale of the property and the division of the sale proceeds. The other owner, Anthony Saligari, opposed the making of those orders. The property has now been sold and settlement of the sale took place on 12 August 2015.

### Ms Monaghan's evidence

- 2 Ms Monaghan gave evidence that in 2011 her daughter Emily was Mr Saligari's domestic partner. On 19 May 2011 Ms Monaghan and Mr Saligari bought a house property in Murtoa - for Emily and Mr Saligari to live in. The purchase cost was met in part by a payment by Ms Monaghan and the balance of the funds for the purchase was raised by way of a loan from Commonwealth Bank of Australia ("CBA") for which Ms Monaghan and Mr Saligari were jointly liable. The parties' contributions to the acquisition cost was as follows:

	Ms Monaghan	Mr Salagari
Deposit, conveyancing \$20,559.98	20,559.98	-
CBA mortgage loan \$80,587.40	40,293.70	40,293.70
<b>Total</b>	<b>\$60,853.68</b>	<b>\$40,293.70</b>

- 3 On the advice of their solicitor, the parties were registered on title as tenants-in-common, Ms Monaghan as to 3/5 and Mr Saligari as to 2/5.
- 4 Mr Saligari lived in the property throughout the period of the parties' co-ownership, initially with Ms Monaghan's daughter Emily until February 2012 and then from about June or July 2012 with Megan Burgess.
- 5 Ms Monaghan gave evidence about the contributions towards expenses which the parties made during their co-ownership. She also tendered a detailed table which set out all of the payments made by her and Mr Saligari during the co-ownership period. Her evidence was that they had made the following payments:

	Ms Monaghan	Mr Saligari
Mortgage	26,304.26	11,775.74
Insurance	4,201.51	-
Rates	6,566.74	-
Loan insurance	-	1,560
	<b>\$37,072.51</b>	<b>\$13,335.74</b>

- 6 In addition, Ms Monaghan gave evidence that:
- a) At settlement of the sale of the property Victoria Legal Aid, which had placed a caveat on the property, was paid \$1,094.08 to discharge a personal debt of Mr Saligari; GMW Water was paid \$2,637.76 for unpaid water usage charges (total \$ 3,731.84) and
  - b) The proceeds of sale were insufficient to clear the parties' debt to CBA and that a balance of \$5,766.25 was still unpaid.

#### **Mr Saligari's evidence**

- 7 Mr Saligari did not dispute that the parties had agreed that his proportionate share of the property was 2/5.
- 8 It was accepted by both parties that after the property was bought Mr Saligari had agreed that he would pay \$170 per week towards expenses associated with the property, particularly mortgage repayments, insurance and rates. Payment was to be made to a CBA Smart Access Account linked to the CBA mortgage load account. Mr Saligari did not dispute most of Ms Monaghan's evidence, but he gave differing evidence about his contribution to expenses after the purchase of the property. Mr Saligari said that in the first year after the parties bought the property, he made no contribution to the expenses. He then agreed with Ms Monaghan that he would make payments of \$200 per week, to catch up. After about June or July 2012 when Ms Burgess moved into the property as his domestic partner, Mr Saligari or Ms Burgess paid 80% of the promised payments. Mr Saligari also gave evidence that he had also done some repairs to the property, but he was unable to say what they were.

#### **Ms Burgess's evidence**

- 9 Ms Burgess gave limited evidence. She had made payments to the CBA Smart Access Account, but was unable to say what those payments were or when they were made. She produced some pay-in slips, but they were of limited evidentiary value.

## Findings

- 10 Ms Monaghan produced a statement from CBA for the period 5 August 2014 to 20 June 2015. The statement showed that Mr Saligari made 22 payments of \$170 during the 39 week period covered by the CBA statement. In other words, Mr Saligari only made payments during 56% of the period covered by the CBA statement, rather than 80% of the time, as he had claimed in his evidence. He made no payments of \$200. It should be noted that the present proceeding was begun on 5 May 2014. The CBA statement matched and confirmed the relevant part of the table prepared by Ms Monaghan which, she said, recorded all payments made by her and by Mr Saligari during the period of their co-ownership.
- 11 On the question of what payments the parties made after the purchase of the property, I prefer the evidence of Ms Monaghan because:
- (a) Ms Monaghan tendered a detailed table of the parties' payments, based on her records. The table's accuracy was confirmed by the CBA statement for the period 5 August 2014 to 20 June 2015.
  - (b) Mr Saligari did not produce any records.
  - (c) Mr Saligari's evidence was materially inconsistent with the CBA statement.
- 12 I therefore find that the parties made the following payments:

	<b>Ms Monaghan</b>	<b>Mr Salagari</b>
Deposit, conveyancing \$20,559.98	20,559.98	-
Mortgage \$38,080	26,304.26	11,775.74
Insurance \$4,201.51	4,201.51	-
Rates \$6,566.74	6,566.74	-
Loan insurance \$1,560	-	1,560.00
CBA payout (\$75,904.30) proportional share	45,542.58	30,361.72
<b>Total</b>	<b>\$103,175.07</b>	<b>\$43,697.46</b>

- 13 Consequently, the contributions of the parties to expenses during the co-ownership were as follows:

	<b>Ms Monaghan</b>	<b>Mr Saligari</b>
Contribution	103,175.07	43,697.46
Total cost and expenses \$146,872.53		
Contribution required by each party's proportional entitlement	88,123.52	58,749.01
<b>Under/over payment</b>	<b>+ \$15,051.55</b>	<b>- \$15,051.55</b>

- 14 Ms Monaghan's 3/5 share of the residual CBA debt is \$3,459.75. Since:
- (a) Ms Monaghan has already paid more than that amount by way of excess contributions; and
  - (b) \$3,731.84 of the proceeds of sale were used to pay Mr Saligari's personal debts, to Legal Aid Victoria and to GMW Water
- it follows that it is both just and fair that the residual CBA debt should be paid in full by Mr Saligari.

- 15 Section 233(1) of the *Property Law Act* 1958 provides that:

In any proceeding under this Division, VCAT may order:

- (a) that compensation or reimbursement be paid or made by a co-owner to another co-owner or co-owners.

- 16 At the hearing, it was not clear from the evidence precisely what had been the parties' relative contributions and I indicated that my orders might only deal with the residual CBA debt. I have, however now had the opportunity to collate the figures given by the parties in their evidence. They show that Mr Saligari has enjoyed the benefit of the following, at Ms Monaghan's expense:

Overpayment by Ms Monaghan	\$15,051.55
Ms Monaghan's 3/5 portion of the sum of \$3,731.84 taken at settlement to pay Mr Saligari's personal debts	\$2,239.10
<b>Sub total</b>	<b>\$17,290.65</b>
Less Ms Monaghan's 3/5 portion of the residual CBA debt	\$3,459.75
<b>Total overpayment by Ms Monaghan</b>	<b>\$13,830.90</b>

- 17 In my view it is therefore fair that Mr Saligari should pay compensation to Ms Monaghan of \$13,830.90 and I will make an order to that effect.
- 18 The CBA debt is presently unpaid. Until that debt is paid, the Tribunal cannot make a final order in this proceeding. It may well be that Mr Saligari will not pay the CBA debt in full and that CBA will require Ms Monaghan to make a payment to discharge the CBA debt in whole or in part. Ms Monaghan indicated during the hearing that, in that event, she would wish to apply for an order that Mr Saligari reimburse her for any monies she pays to CBA in discharge of the CBA debt.
- 19 Accordingly, I will reserve liberty to Ms Monaghan to apply for an order that Mr Saligari reimburse to her any part of the CBA debt which she may pay to CBA.

**MEMBER R. BUCHANAN**