

JAMAICA

IN THE COURT OF APPEAL

APPLICATION NO 70/2013

**BEFORE: THE HON MR JUSTICE PANTON P
THE HON MR JUSTICE BROOKS JA
THE HON MS JUSTICE LAWRENCE-BESWICK JA (Ag)**

**BETWEEN RAJKUMAR MAHTANI APPLICANT
AND LAVINA MAHTANI RESPONDENT**

Canute Brown instructed by Courtney E. Betty for the applicant

**Linton Gordon and Miss Tamiko Smith instructed by Frater Ennis and Gordon
for the respondent**

29 and 31 July 2013

PANTON P

[1] I have read, in draft, the judgment of Brooks JA. I agree fully with his reasoning and conclusion and have nothing to add.

BROOKS JA

[2] In this application Mr Rajkumar Mahtani seeks permission from this court to appeal against the judgment of E. Brown J, handed down in the Supreme Court of Judicature on 27 June 2013. In that judgment, the learned judge refused Mr Mahtani's

application for an injunction to prevent the Registrar of Titles from registering an instrument of mortgage against a registered title for land in which Mr Mahtani claims an interest. Mr Mahtani also asks this court to issue its own injunction preventing the Registrar of Titles from effecting the registration before the hearing of the requested appeal.

[3] The basis on which Mr Mahtani seeks these orders is that he is a shareholder of a company, AWM's Jamaica Limited, which, he asserts, is the legal owner of the land in question. He asserts that the land was improperly transferred to the registered proprietor, his sister-in-law, Mrs Lavina Mahtani. That transfer, he maintains was done in breach of his rights as a shareholder of the company. The circumstances of the transfer, he further asserts, were in breach of the provisions of the Companies Act and that those circumstances allow him to pursue a claim in his own name, rather than in the name of the company.

[4] Mr Brown, on Mr Mahtani's behalf, argued that the transfer to Mrs Mahtani, done by way of gift, was in breach of the principles governing the liquidation of companies. He pointed to the case of **Chong and Others v Moo Young and Another** (1991) 28 JLR 610 to show that upon liquidation a company's assets cannot just be given away but that the liquidator holds them on trust for the shareholders, who may "call upon him to distribute [those] assets either in their liquidated form or in specie" (page 613F).

[5] Mr Brown argued that the learned judge was correct in finding that Mr Mahtani had raised a serious issue to be tried, but was wrong in finding that Mr Mahtani's

interests could be compensated by an award of damages. According to Mr Brown, the learned judge ignored the fact that Mr Mahtani's interests would be severely prejudiced by a refusal of an injunction, not least of which would be the fact that the trial of the claim to deal with the removal of the caveat, would thereby be rendered otiose, as the Registrar would be at liberty, in the interim, to register the mortgage.

[6] Mrs Mahtani, through her counsel Mr Linton Gordon, strenuously resisted this application. Mr Gordon submitted that not only does Mr Mahtani not have an individual cause of action in respect of this land, since the company is the proper party to institute the claim, but that Mr Mahtani was not even a shareholder of the company when the land was transferred to Mrs Mahtani. Learned counsel produced to us a stamped instrument of transfer of Mr Mahtani's shares in support of his position. The document is dated 6 April 1998 and reveals that the Transfer Tax on the transfer was paid on 18 May 1998. The transfer of the land to Mrs Mahtani was registered on 8 September 2010, which is over a year after Mr Mahtani had ceased to have an interest in the company.

[7] Mr Gordon also pointed to the fact that the registration of the mortgage has already been effected, since Brown J handed down his judgment. That information was conveyed by an affidavit filed in this court by Mrs Mahtani very late in the day. Mr Mahtani would not have had sufficient time to address it's contents and so they will not factor in our decision, despite the fact that it was the subject of submissions by counsel on both sides.

[8] It must be said that Mr Gordon's submissions on the substantive point are unassailable. If, as was confirmed by Mr Brown, Mr Mahtani does not contest the fact that he had executed an instrument of transfer of his shareholding in the company, then Mr Mahtani does not have any interest in this land and has no cause of action in relation thereto. On that basis, his caveat claiming such an interest is not sustainable, and should not be allowed to remain. The learned trial judge was correct in refusing Mr Mahtani's application for an injunction to prevent the removal of such a caveat.

[9] Based on the above, I would make the following orders:

1. The application for permission to appeal is refused.
2. The application for stay of execution of the order of Brown J made on 27 June 2013 is refused.
3. Costs to the respondent to be taxed if not agreed.

LAWRENCE-BESWICK JA (Ag)

[10] I too have read the draft judgment of Brooks JA. I also agree and have nothing to add.

PANTON P

ORDER

1. The application for permission to appeal is refused.
2. The application for stay of execution of the order of Brown J made on 27 June 2013 is refused.
3. Costs to the respondent to be taxed if not agreed.