**[2012] JMCA Civ App 39**

**JAMAICA**

**IN THE COURT OF APPEAL**

**APPLICATION NO 264/2012**

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| **BETWEEN** | **EARLE LEWIS** | **1ST APPLICANT** |
| **AND** | **CAROL LEWIS** | **2ND APPLICANT** |
| **AND** | **VALLEY SLURRY SEAL CO** | **1ST RESPONDENT** |
| **AND** | **VALLEY SLURRY SEAL (CARIBBEAN) LIMITED** | **2ND RESPONDENT** |

**Written submissions filed by Phillipson Partners for the applicants**

**24 December 2012**

**(Considered on paper pursuant to rule 2.10(3) of the Court of Appeal Rules 2002)**

**IN CHAMBERS**

**BROOKS JA**

[1] The applicants, Earle Lewis and Carol Lewis are directors of the 2nd respondent company Valley Slurry Seal (Caribbean) Limited (VSS Caribbean). Mr Earle Lewis is also a minority shareholder in the company. He holds 40% of the shares.

[2] The applicants seek an injunction preventing VSS Caribbean and Valley Slurry Seal Company (Valley Seal) from taking possession of and exporting two pieces of road-

paving equipment (the pavers). These two entities will be collectively referred to as "the companies". According to the applicants, the pavers belong to VSS Caribbean by virtue of the terms of a sublease agreement, under which the pavers were initially imported.

[3] The companies sought and obtained in the Supreme Court, a mandatory injunction ordering the Lewises to deliver up the pavers to the companies and putting the companies in a position where they could export the pavers. Mangatal J, in a comprehensive judgment, also ordered Valley Seal to put a US$75,000.00 bank guarantee in place, in order to re-inforce the companies' undertaking as to damages.

[4] The interconnection of the companies is not without significance. It is to be noted that Valley Seal had leased the pavers from Reed Leasing Group and sub-leased them to VSS (Caribbean). Mr Jeffery Reed is the principal of both Reed Leasing Group and Valley Slurry. Valley Slurry holds 60% of the shares in VSS Caribbean. By virtue of a shareholders' agreement, Mr Reed is the managing director of VSS Caribbean. The applicants are but two of five directors of VSS Caribbean.

[5] The applicants assert that the injunction was wrongly granted. Their application, if successful, would have the awkward result of putting two court orders in conflict with each other. Although they have applied for permission to appeal Mangatal J's judgment (an application which is unnecessary, in light of section 11(1)(f) of the Judicature (Appellate Jurisdiction) Act), they have not applied for a stay of the learned judge's

order. Apart from being misconceived in form, however, the application has other fundamental difficulties.

[6] It is clear to me that the applicants have no basis to retain possession of the pavers. As directors of the company, they have no claim of right which they can properly assert over the pavers. In addition to that, even if they are correct in asserting that VSS Caribbean has acquired an interest in the pavers, Mr Earle Lewis, as a shareholder of that company, which is a separate legal entity, has no entitlement to possession of the company's property. Nor does he have any entitlement to assert any right on behalf of the company (see **Foss v Harbottle** (1843) 2 Hare 461).

[7] Mangatal J carefully considered the various issues involved in an injunction and especially focussed her attention on the fact that the companies had requested a mandatory injunction. The learned judge specifically considered the question of the potential harm resulting from a grant or a refusal of the injunction and said, in part, at paragraph 22 of her judgment:

> "...[The application] fits into [the] usual mould and risk attendant on such applications, which is that more harm or prejudice can potentially occur from granting the injunction than refusing it since the pavers would no longer be available to the Lewises or Valley Slurry Caribbean. In that regard the court needs to try and see if it feels a high degree of assurance that at the trial it will appear that the injunction was at this interlocutory stage rightly granted. – see **Shepherd Homes Ltd. V. Sandham** [1970] 3 All E.R. 409, **NCB v Olint** [[2009] UKPC 16; [2009] 5 LRC 370] cited by the Attorneys for Valley Slurry. In my judgment, the Court can feel that high degree of assurance. There is a strong case for Valley Slurry to argue that the [Lewises] have no justifiable basis for refusing to deliver up the pavers as requested by Valley Slurry."

[8] I unreservedly agree with the learned trial judge. The Lewises have no likelihood of success in their defence to the claim, as it is presently framed, and therefore there is no basis for preventing delivery of the pavers to the companies.

[9] Based on all the above, I hold that the application ought to be refused.

**Order**

[10] (1) The application for an interim injunction against the respondents is refused.

(2) Costs of the application to the respondents. Such costs are to be taxed if not agreed.