

*Judgment Book*

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO. HCV0476/2003

BETWEEN	PATRICIA MARIE MATALON	CLAIMANT
AND	JOSEPH ARTHUR MATALON	1 <sup>ST</sup> DEFENDANT
AND	AARON MATALON	2 <sup>ND</sup> DEFENDANT
AND	FORT GEORGE FARMS LTD.	3 <sup>RD</sup> DEFENDANT

Mr. Charles Piper instructed by Piper and Samuda for Claimant

Mr. Derrick Jones and Mr. Nigel Jones instructed by Myers, Fletcher & Gordon for Defendants

**Heard: 13.01.04 and 04.02.04**

**Straw, J.**

The Claimant, Mrs. Patricia Matalon is the wife of the 1st Defendant, Mr. Joseph Matalon. They are separated. However, as it usually is in these cases, there are certain financial issues that have to be resolved between them.

Mrs. Matalon owns ¼ share in a company, Fort George Farms Limited, which is the 3<sup>rd</sup> Defendant. Joseph Matalon also owns ¼ share.

The remaining two (2) shares are owned by Aaron Matalon, the 2<sup>nd</sup> Defendant and the father of Joseph Matalon.

Mrs. Matalon has brought a claim against all 3 Defendants by virtue of the Married Women's Property Act for the separation<sup>o</sup> of her interest in Fort George Farms Limited and is seeking the following relief:

1. A Declaration pursuant to the provisions of the Married Women's Property Act, that the Claimant is entitled to a one quarter (1/4) share and interest in all that parcel of land known as Fort George Great House, Camberwell in the parish of Saint Mary owned by Fort George Farms Limited which Company's shares are owned, as to one quarter thereof, by the Claimant, as to one half thereof by the First Defendant and as to one quarter thereof by the Second Defendant.
2. An Order that the value of each of the issued shares of Fort George Farms Limited be assessed by such reputable independent valuator as the Court may consider fit, such valuation to be concluded within six (6) weeks of the date of the order therefore and delivery by the appointed valuator to the Attorneys-at-Law for each of the Parties.
3. The costs of valuing the said shares including the valuator's costs of providing the report, be paid by the First Defendant.

4. Upon receipt of such valuation, the Claimant is to give notice pursuant to Article 19A of the Articles of Association of Fort George Farms Limited, to the Secretary of the said Company and the First and Second Defendants' Attorneys-at-Law, offering her said share to the First and Second Defendants and, in relation to the said offer, Article 17 (ii) of the Articles of Association of the said company shall apply.
5. In the event that the First and Second Defendants or either of them neglect or refuse to purchase the Claimant's share in the said Fort George Farms Limited, the Claimant is at liberty to sell or transfer her said shares to such person or persons as she deems fit and, upon presenting the said transfer for registration, tendering the required fee, and presenting the certificate for her share to the Directors, the Directors of the said Fort George Farms Limited shall register the transferee named in the said transfer notwithstanding the discretion to decline to register the said share contained in Article 28 of the said Company's Article of Association.
6. Further or alternatively, in the event that the First and Second Defendants or either of them neglect or refuse to purchase the Claimant's share in the said Fort George Farms Limited the assets of the said company, Fort George Farms Limited, are to be sold by

public auction or private treaty, the Claimant's Attorneys-at-Law to have the carriage of sale.

7. In the event of the sale of the assets of Fort George Farms Limited, the net proceeds of the said sale remaining after payment of the reasonable costs of the sale and the reasonable expenses of the said Company, are to be distributed between the shareholders of the said company in proportion to their shareholding interests as reflected by their shares therein.

#### **Application by Defendants**

The Defendants have filed an application seeking to have the Claimant's statement of case struck out on the grounds that it discloses no reasonable grounds for bringing a claim (per 26.3 (1) (c) CPR).

#### **Submission by Attorneys for the Defendants**

Mr. Derrick Jones submits that there is no basis for a claim for separation of interest and an award for interest in property owned by Fort George Farms Limited by virtue of the Married Women's Property Act or any other law applicable in Jamaica.

He contends that the Claimant is the legal and beneficial owner of 1 share in the company and, subject to the provisions of the Articles and Memorandum, she is at liberty to do what she pleases with her share.

Articles 28 and 29 of the Articles of Association regulate the transfer of shares and the Claimant has not followed the procedure set out therein.

Mr. Jones submits further that section 16 of the Married Women's Property Act does not apply to the present case as there is no dispute as to the ownership of her shares; that the company has a personality and identity distinct from its members (per **Salomon vs Salomon** 1897 AC 22) and the assets of the company are not the assets of the shareholders (per **McCaura vs Northern Assurance Company** 1925 AC 619).

The Claimant therefore, cannot properly ask that the Court make an order for her share to be sold and/or that the assets of the company be sold and the proceeds be distributed between the shareholders in proportion to their interest as reflected by the shares.

#### **Submissions by the Attorney for the Claimant**

Mr. Piper referred to Section 16 of the Married Women's Property Act which reads as follows:

*"In any question between husband and wife as to the title to or possession of property, either party --- may apply by summons or otherwise in a summary way to a Judge of the Supreme Court ---; and the Judge of Supreme Court --- may make such order with respect to the property in dispute and as to the costs of and consequent on the application, as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he shall think fit."*

Mr. Piper is contending that although there is no 'dispute' as to the ownership of the share, there is a 'question' arising between the parties for the Court to consider, therefore the Claimant is entitled to seek relief by virtue of Sections 16 and 17 of the above-mentioned Act.

### **Reasons for Judgment**

On reading Section 16 of the Act, I am of the opinion that there is no real distinction between the use of the words 'question' and 'dispute' as argued by Mr. Piper. They appear to be used interchangeable within the section.

Furthermore, the Claimant is not contending that she has followed the procedure set out by the Articles of Association for the transfer of shares.

Fort George Farm Limited is a registered private company. There is no dispute that Mrs. Matalon is the registered holder of 1 of 4 shares in the company, subject to the provisions of the Memorandum and Articles of Association. Articles 27 to 30 regulate the transfer of shares.

If a shareholder wishes to transfer his or her share(s), a certain procedure must be followed.

Article 29 (a) states as follows:

*"Except in the case of the holders of shares by the terms of issue of which the provisions of this*

article are excluded or modified, no member shall be entitled to transfer any share otherwise than in accordance with the following provisions and the Directors shall refuse to register any transfer of shares made or expressed to be made in contravention of the provisions of this article:

- (i) A member desirous of transferring his shares or any of them (hereinafter called "the transferring member") shall give a notice (hereinafter called "the notice of transfer") to the Secretary of the Company containing an offer to sell the same, and stating the number and class of shares which he desires to transfer and the price which he is willing to accept for such shares;
- (ii) The Secretary shall thereupon send to each of the other members a circular containing the same particulars and naming a day (being fourteen days after the service on him of the notice of transfer) on or before which offers to purchase the same will be received. If on or before the day so named offers to purchase the shares --- at the price named shall be received from members of the Company by the Secretary, he shall, as agent for the transferring member and the proposing purchaser --- declare a contract of sale to be concluded and shall give notice thereof to the transferring member and the purchaser ---.
- (iii) ---
- (iv) if within twenty-one days after the service of the notice of transfer on the Secretary the transferring member shall not receive notice that his offer to sell has been accepted on behalf of some member or members of the company, he may within six months from the date of serving the notice (but subject to the provisions of articles 28) sell or otherwise

*dispose of the shares --- to any other person. PROVIDED that such sale or disposal be at a price not less than that named in the notice of transfer; AND PROVIDED FURTHER however that the transferring member if he so desires may transfer during his life time any shares by way of gift to any person if he shall first offer<sup>p</sup> the shares for sale as aforesaid but to the extent only that the offer is not accepted by the other members, or if the other members consent to such transfer;*

(v) ---

(vi) *unless specifically authorized in the notice of transfer the Secretary shall not conclude a contract of sale for any shares of a lesser amount than is specified."*

Article 28 allows the Directors an unqualified discretion to refuse to register any transfer of shares:

*"The Directors may at any time in their absolute and uncontrolled discretion and without assigning any reason decline to register any transfer of shares ---."*

It is quite clear that no valid cause of action exists at this time because of the failure to follow the process described above. However, I am not agreeing with the submissions of Mr. Jones in so far as he is contending that no claim can arise by virtue of the Married Women's Property Act.

If Mrs. Matalon follows the provisions set out in the Articles of Association and is ultimately frustrated by the other Directors from transferring her share on the basis of their unconditional discretion to refuse



to register the transfer, then it may be arguable that there is a question for the Court's consideration between husband and wife over the ownership of the share.

In the circumstances, the Order is granted <sup>p</sup>in terms of paragraphs 1 and 3 of the Notice of Application for Court Orders filed on 06.01.04.