

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 105/2013  
[2013] NZSC 120**

BETWEEN                            PETER WILLIAM MAWHINNEY  
    Applicant

AND                                     NAGS HEAD HORSE HOTEL LIMITED  
    Respondent

Court:                                 Elias CJ, McGrath and Glazebrook JJ

Counsel:                             Applicant (In Person)  
    L A O'Gorman and D T Broadmore for Respondent

Judgment:                            14 November 2013

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**JUDGMENT OF THE COURT**

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- A     The application for leave to appeal is dismissed.**
  - B     The applicant is to pay to the respondent costs of \$2,500.**
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**REASONS**

[1]     The applicant seeks leave to appeal against the judgment of the Court of Appeal in relation to a dispute over which of two mortgages registered against the title to a property in Waitakere, and respectively held by the applicant and the respondent, has priority.<sup>1</sup> In August 2010, the then registered owner of the property, Sixty-Six Auckland Limited and the respondent entered into a deed of priority giving the respondent's mortgage priority over two mortgages then held by Sixty-Six Auckland Limited. One of these mortgages has since been transferred to the applicant, who at the time of transfer, knew of the priority agreement.

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<sup>1</sup>     *Mawhinney v Nags Head Horse Hotel Ltd* [2013] NZCA 401.

[2] The respondent sought to enforce the deed of priority. An Associate Judge entered summary judgment in favour of the respondent, in accordance with its entitlement under the deed of priority. The Court ordered the applicant to take steps to give effect on the register to the priority of the respondent's mortgage.<sup>2</sup> The applicant appealed to the Court of Appeal. Many of his grounds of appeal related to two transfers of title to the property and one unregistered transfer following sale of the property, which have occurred since the deed of priority was signed. The applicant submitted that these have been effective in law to discharge the respondent's mortgage or, at least, raise factual issues concerning its status that should be determined at trial. The applicant's appeal was dismissed.

[3] In this Court the applicant seeks leave to bring a further appeal focusing on issues relating to the unregistered sale of the property, in 2012, to a company called End of the Line Limited. The applicant submits that End of the Line Limited had no notice or knowledge of the priority agreement at the time of the sale and purchase and, in particular, that no such knowledge on the part of End of the Line Limited's attorney can be attributed to the company. He says that End of the Line Limited is, accordingly, entitled to have the mortgage held by the respondent discharged when the transfer documents are registered under the Land Transfer Act 1952.

[4] The applicant seeks to challenge the Court of Appeal's finding of fact that the purported sale of the property to End of the Line Limited was executed by that company's attorney who had notice of the priority agreement. The factual matters concerning End of the Line Limited do not however give rise to any issues of legal principle or of general or public importance and the applicant has raised no other arguable challenge to the legal principles on which this case was decided by the Court of Appeal. We are accordingly satisfied that the submissions of the applicant, including his draft amended submissions, raise no issue that meets the requirements of s 13(2) of the Supreme Court Act 2003.

[5] Overall we are satisfied that nothing in the particular transactions in 2012 involving End of the Line Limited was effective to defeat the priority of the

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<sup>2</sup> *Nags Head Horse Hotel Ltd v Forest Trustee Ltd* [2012] NZHC 3271.

respondent's mortgage and that nothing in the applicant's submissions raises arguable issues in that respect.

[6] The application is dismissed with costs of \$2,500 to be paid by the applicant to the respondent.

Solicitors:  
Buddle Findlay for Respondent