

NMLS

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CIVIL APPEAL NO. 50/98**

**COR: THE HON. MR. JUSTICE RATTRAY, P.  
THE HON. MR. JUSTICE HARRISON, J.A.  
THE HON. MR. JUSTICE LANGRIN, J.A. (Ag.)**

**BETWEEN                      HELGA STOECKERT                      DEFENDANT/APPELLANT**

**AND                              PAUL GEDDES                      PLAINTIFF/ RESPONDENT**

**Nancy Anderson and Michelle Brown instructed by Crafton Miller & Co.  
for Applicant  
Michael Hylton Q.C. for Respondent instructed by Myers Fletcher & Gordon**

**1st, 2nd, 3rd December, 1998 and 1st March, 1999**

**LANGRIN, J.A. (Ag).**

On the 3rd December, 1998 we dismissed this appeal and promised to give our reasons in writing.

The parties Helga Stoeckert and Paul Geddes met in 1959 and developed what is referred to in Jamaica as a common law relationship.

On November 7, 1963 two titles at Volume 996 Folio 248 and Volume 996 Folio 249 were registered in the name of the respondent for premises at 1a Braywick Road, St. Andrew. These properties were re-transferred to Desnoes and Geddes Ltd. on July 20, 1967 and were re-transferred to the respondent on November 2, 1992.

On January 28, 1992 the appellant filed a suit C.L. 1992/S027 against the respondent claiming inter alia a declaration that the respondent is trustee for her for fifty per cent or such other proportion as the Court deems just, of all assets/property acquired in the name of the Defendant during period 1963 to 1991. Her Statement of Claim identifies 1a Braywick Road as their home from 1973 to April, 1991.

The appellant lodged a caveat against both titles on December 21, 1992 claiming an estate and interest in the land by virtue of an action in the Supreme Court referred to (supra). Her statutory declaration in support of the caveat exhibited the Writ of Summons and Statement of Claim in the suit and declared that the case had reached the stage of summons for directions.

On December 19, 1998, a judgment in favour of the appellant was delivered in the relevant suit but the Court found that 1a Braywick Road does not form part of the assets subject to the trust. The respondent appealed this judgment and the appellant lodged a cross-appeal claiming that the premises at 1a Braywick Road should be a part of the assets subject to the constructive trust. The Court of Appeal on the 18th June, 1997 allowed the appeal, set aside the judgment of the court below, entered judgment for the respondent and dismissed the appellant's cross-appeal.

The respondent on the 26th November, 1993 filed an Originating Summons to obtain the removal of the caveat which the appellant had lodged against any dealings affecting the two registered titles.

The Originating Summons was heard before Dukharan J (Ag.) in Chambers on 14th June, 1998. His judgment states inter alia:

"The caveat lodged by the defendant does not state the interest upon which the defendant relies. I am satisfied that the requirement is mandatory and the caveat must specify the interest claimed the defendant must do as the

in the New South Wales Real Property Act does not refer to a declaration on affidavit in support. In any event she submits the caveat and statutory declaration lodged, sufficiently sets out the nature of their interest claimed in compliance with Section 139.

In our view the section imposes a requirement on the part of the caveator to specify and claim a definite estate or interest in the land in issue with which the appellant has failed to comply. This requirement must be considered mandatory. In Statutory Interpretation - A Code (2nd Edition Butterworth 1992) by Francis Bennion the following observation is made at pg. 32:

"Where legislation confers some right or benefit on a person which he would not have had at common law, the conditions laid down as to the accrual of the right or benefits unless purely formal are mandatory. If they are not complied with the right or benefit will not accrue".

There is no common law right to protect an interest in land by way of a caveat and it is therefore a right which is conferred exclusively by statute. The caveator must therefore comply strictly with the requirements set out in statute in order to exercise that right.

We agree with Mr. Michael Hylton Q.C. that the fact that the Registrar of Titles accepted the caveat raised no presumption that it complied with Section 139 of the Act. A similar issue was considered by the Judicial Committee of the Privy Council in ***Registration of Titles, Johore, Bahru v Temehorry Securities Ltd.*** [1977] A.C. 302; where a similar system obtains as the one which applies in Jamaica. At page 308, Lord Diplock who delivered the judgment of the Court had this to say:

"The purpose of a private caveat is to preserve the status quo pending the taking of timeous steps by the applicant to enforce his claim to an interest in the land by proceedings in the courts. If the person whose land or interest is bound by the caveat applies to the registrar for its removal, the registrar must remove it at the expiry of a month unless the court upon the application of the caveator orders otherwise. Any person aggrieved by a

private caveat may apply to the court at any time for an order for its removal. The registrar's function in relation to the entry and removal of private caveats are ministerial only. He is not concerned to enquire into the validity of the claim on which an application for a private caveat is based; and a person who secures the entry of a private caveat without reasonable cause is liable to compensate anyone who suffers loss or damage as a result of such entry".

The caveat should be removed for failure to comply with Section 139 (b) of the Registration of Titles Act.

### **Does the Caveator have a Caveatable Interest?**

Miss Anderson submitted with some force that the caveatable interest of the appellant is her claim to an interest in the premises comprised in the two titles under a constructive trust in an action brought to determine this interest in respect of which an appeal is pending before the Judicial Committee of the Privy Council.

In *Eng Mee Yong V Letchumanan (P.C.)* [1980] A.C. 331 the Judicial Committee of the Privy Council considered an application to the Court by a caveatee under a section (Section 327 of the Malaysia's National Land Code) which is similar to our Section 140 which deals with the effect of lodging caveats with the Registrar and proceedings thereon. At page 335 of the judgment Lord Diplock said:

"The caveat under the Torrens System has often been likened to a statutory injunction of an interlocutory nature restraining the caveatee from dealing with the land pending the determination by the court of the caveator's claim to title to the land, in an ordinary action brought by the caveator against the caveatee for that purpose. Their Lordships accepts this as an apt analogy with its corollary that caveats are available, in appropriate case, for the interim protection of rights to title to land or registrable interest in land that are alleged by the caveator but not yet proved. Nevertheless their Lordships would point out that the issue of a caveat differs from the grant of an interlocutory injunction in that it is issued ex parte by the registrar acting in an administrative capacity without the

intervention of the court and is wholly unsupported by any evidence at all".

The Board went on to emphasize that the burden is on the caveator although he is the defendant in the suit. At page 336 Lord Diplock had this to say:

"In their Lordships' view a distinction must be drawn between cases where the applicant is the registered proprietor of the land (i.e., the caveatee) and cases where the applicant is some other person who claims a right to an interest in it. In the former case the caveatee can rely upon his registered title as prima facie evidence of his unfettered right to deal with the land as he pleases; it is for the caveator to satisfy the court that there are sufficient grounds in fact and law for continuing in force a caveat which prevents him from doing so".

In the instant case both the Supreme Court and the Court of Appeal have held that the appellant has no interest in this property. In any case it is abundantly clear that damages would be an adequate remedy.

Therefore, we could see no ground on which an Appellate Court would be justified in interfering with the way in which the judge exercised his discretion to order the removal of the caveat.

For these reasons we dismissed the appeal with costs to the respondent.