IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1993] SGCA 27

CA 169/1991

Between

Alrich Development Pte Ltd

… *Appellant*

And

Rafiq Jumabhoy

… *Respondent*

GROUNDS OF DECISION

Land — Caveats — Wrongful lodgment

Version No 1: 11 Sep 2026 (01:05 hrs)

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Alrich Development Pte Ltd v Rafiq Jumabhoy

[1993] SGCA 27

CA 169/1991
Chua F A J; Warren Khoo L H J; Lai Kew Chai J
16 April 1993

1 This was an appeal from the decision of the High Court on an application by originating summons under s 111 (1) of the Land Titles Act (Cap 157)(`the Act`) to remove two caveats lodged by the appellants.

2 At the conclusion of the hearing of the appeal, we allowed the appeal with costs here and below. Two members of the Court of Appeal are now setting out the grounds of the full court. FA Chua J, having retired as a judge since the full Court of Appeal pronounced judgment, is therefore not a party to these grounds.

3 The facts are as follows. On 8 June 1990, Mr Jumabhoy, through his attorney, granted an option to one Ms Ho Poh Lin to purchase his property at 36 Ewe Boon Road, Singapore at the price of $2.025m. An option fee of $40,500 was paid. The offer contained in the option remained open for acceptance until 4pm on 8 August 1990. It was provided in the option that to exercise the option Ms Ho must sign the `acceptance copy` of the option in the place indicated and deliver it duly signed together with a deposit of a sum equivalent to 10% of the purchase price (less the option money of $40,500 already paid) made in favour

of Mr Jumabhoy`s solicitors (identified). It was also provided that Ms Ho had the right to nominate another party who was either a Singapore citizen or a Singapore company as defined in the Residential Property Act (Cap 274) to `execute this option provided that you sign and return the nomination form attached to this option`.

4 For reasons which we need not go into, Mr Jumabhoy decided to revoke the option. His solicitors wrote to Ms Ho`s solicitors on 6 August 1990 revoking the option. Ms Ho`s solicitors replied by a letter dated 6 August (which it is common ground was not received until the next day, 7 August) that she did not accept the purported revocation of the option. They also forwarded the duly signed `acceptance copy` of the option together with a cheque for the sum of $162,000, which, together with the $40,500 already paid would amount to 10% of the purchase price as stipulated in the option, together also with the completed nomination form nominating Alrich as the nominees.

5 On 7 August 1990, Alrich lodged a caveat (`the first caveat`) against the property. There followed correspondence between the respective solicitors.

6 Mr Jumabhoy took the position that the purported acceptance of the option was invalid as the option had been revoked. His solicitors returned the cheque for $162,000 and also the option money of $40,500 earlier received. Alrich took the position that the option was open for acceptance until 8 August and the purported revocation was invalid and of no effect.

7 On 14 August, Alrich commenced action in Suit No 1452 of 1990 against Mr Jumabhoy in which they sought specific performance and other remedies.

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8 Mr Jumabhoy resists Alrich`s claims on the ground of misrepresentation among others.

9 On 16 July 1991, Mr Jumabhoy granted another option to one Lee Kang Li to purchase the land. Mr Lee exercised the option on 7 August. The sale was subject to Mr Jumabhoy removing the first caveat. Mr Lee lodged his own caveat on 7 August 1991, but Alrich had on 6 August 1991 lodged their second caveat.

10 On 4 September 1991, Mr Jumabhoy took out the originating summons under s 111(1) of the Act whereby he sought the removal of both caveats lodged by Alrich.

11 The summons was heard by Chao Hick Tin J. The learned judge held that both caveats were not in compliance with the requirements of s 104 of the Act and the form prescribed under it. By order dated 28 November 1991 he ordered the cancellation and removal of both caveats, with a stay pending appeal to this court.

12 It is the decision of the learned judge holding that the second caveat, lodged on 6 August 1991, was invalid that Alrich question in this appeal before us.

13 This caveat was in the standard form prescribed by s 104 of the Act. The form provides for the identification of the land against which the caveat is lodged, as well as the particulars of the caveator and what is sought to be prohibited. There is also provision for the description of (a) the estate or interest claimed and (b) the grounds of claim. Against the heading `Estate or interest claimed,` the guidance notes say:

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> *Specify estate or interest claimed, eg fee simple; for a leasehold estate, to specify particulars of the term if it is shorter than the whole of the unexpired term.*

14 Against the heading `Grounds of claim`, the guidance notes simply say `Specify the grounds of claim.`

15 In the caveat filed, against the `Estate or interest claimed` heading, there were inserted the words `Claims interest as purchaser,` and against the `Ground of claim` heading, there were inserted the words:

> *By virtue of an option dated 8 June 1990 given by the registered proprietor and duly exercised by the caveator on 6 August 1990.*

16 Thus, omitting portions of the form which are not applicable and words not essential to the case, the caveat as lodged reads as follows: `The caveator Alrich Development Pte Ltd claims interest as purchaser by virtue of an option dated 8 June 1990 given by the registered proprietor and duly exercised by the caveator on 6 August 1990 as to the estate or interest of the registered proprietor in the land above described, and hereby prohibits the registration of any instrument affecting the abovementioned land unless the caveator has consented in writing to such registration.`

17 **Grounds of challenge**

18 Mr Jumabhoy challenged the validity of the caveat on the following grounds. First, the estate or interest claimed by Alrich was not stated; merely stating that Alrich claim interest as purchaser is not good enough.

19 Secondly, the statement of the grounds of claim was wrong in that it gave the impression that the option was granted to and exercised by Alrich when the option in fact was granted to Ho.

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20 Thirdly, the statement of grounds was also wrong in that contrary to what was stated the option was not exercised on 6 August, but on 7 August 1990, and a binding contract did not come into being until 7 August.

21 As to the first ground, the learned judge held that the interest claimed was sufficiently clearly stated. He said that the statement in the caveat clearly stated that the caveator claimed as purchaser as to the estate or interest of the registered proprietor.

22 As to the second ground, the learned judge held that it was not necessary for the caveat to state that the option was granted to Ho and that Alrich had exercised it as Ho`s nominees. The learned judge said that Alrich`s claim as purchasers was by virtue of the option which they claim had been properly exercised.

23 As to the third ground, the learned judge upheld Mr Jumabhoy`s objections. He accepted that the acceptance form was signed by Alrich on 6 August. However, as the acceptance form was not delivered to Mr Jumabhoy`s solicitors until 7 August 1990, the contract did not come into being until then. The learned judge held that the caveat was invalid on this ground. He accepted Mr Jumabhoy`s counsel`s argument, based on a string of Australian authorities, that a strict compliance with the formalities of a caveat is required.

24 Before us, substantially the same grounds were canvassed.

25 **The New South Wales tradition**

26 The authorities in favour of a strict and meticulous description of the estate or interest claimed are all from New South Wales. They were all decided

under s 72(2) of the New South Wales Real Property Act 1900, which at the time provided that every caveat prohibiting dealings `shall state the name and address of the caveator, and shall contain a sufficient description to identify the land and the estate or interest therein claimed by the caveator`. The relevant form apparently also required the caveator to state the nature of the estate or interest claimed, and the facts on which the claim was founded.

27 In **Palmer v Wiley** [1906] 23 WN (NSW) 90 a caveat `claiming estate or interest by reason of and under and by virtue of a memorandum of agreement made 30 September 1903 between (three named persons)` was held to be invalid by Pring J on the ground that `it does not show what is the estate or interest that the caveator claims in it. It may be an estate tail, or an estate for years, or some other estate`. The decision in **Palmer v Wiley** [1906] 23 WN (NSW) 90 was followed in **Re Jones** [1935] 35 SR (NSW) 560 and in **Re Fairlie** [1959] 76 WN (NSW) 475

28 In **Re Jones** [1935] 35 SR (NSW) 560 it was held that a caveat claiming `an estate or interest in terms of agreement dated 17 December 1923 to grant and secure to me an extension of memorandum of lease dated 29 November 1923 from William John Jones` was defective because it did not contain a description sufficient to identify the estate or interest claimed by the caveator.

29 In **Re Fairlie** [1959] 76 WN (NSW) 475 it was held that a caveat claiming `an equitable estate or interest in fee simple with the registered proprietor as tenants in common under an agreement for joint venture in respect of the said land subject to the rights of one John McIvor under deed dated 4 September 1957` was struck down because the share which the caveator claimed as a tenant in common was not specified and therefore the quantum of the estate had not been specified.

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30 In all these cases, the courts in New South Wales laid down a rather strict rule that the quantum of the estate must be stated. The underlying reason for such a strict approach was not examined or discussed in any of these cases. In essence, the respective courts, all at first instance, proceeded on the basis that an omission to state the quantum of the estate or interest claimed was per se bad.

31 An examination of the question by reference to the purpose and effect of caveats had to await the decision of the Court of Appeal of New South Wales in **Vandyke v Vandyke** [1976] 12 ALR 621 In this case, the caveat claimed estate or interest `pursuant to divorce settlement`.

32 Reynolds JA and Huntley JA did not find it necessary to consider the validity of the caveat as a matter of form. They were of the view that the caveat would have to be removed in any event because the underlying transaction did not support it as the wife had never had any equitable interest in the property.

33 Mahoney JA had no difficulty in holding that a caveat so drawn was ineffective because it did not state the estate or interest claimed by the caveator. He was of the view that the provisions of s 72(2) were mandatory, as opposed to merely directory. Citing authorities, he said that where a privilege or a power to do something which would otherwise not be lawful, or to interfere with the rights of others, prima facie, it is to be expected that the statutory provisions relating to its exercise were intended to be mandatory. He said:

> *In the present case, s 72 grants to a caveator the power to prevent the Registrar-General from recording in the register any dealing prohibited by the caveat. The effect of this upon a registered proprietor is immediate, and, in a particular case, may be drastic. The power may be exercised at the will of the caveator and without the necessity for the caveator to establish, before it is exercised, even a prima facie case for the existence of the estate or interest upon which the exercise of it is based. The only significant statutory sanction upon the proper exercise of it is the*

> *liability to `such compensation as may be just`, recoverable subsequently in an action at law if the power is not properly used: s 98. It is, in my opinion, properly to be inferred that the legislative intention was that such a power should be exercisable only subject to precise compliance with the requirements of s 72(2).*

34 **The dissenting voice in Canberra**

35 A conscious decision to depart from the **Palmer v Wiley** [1906] 23 WN (NSW) 90 line of authorities was taken by Joske J in the Supreme Court of the Australian Capital Territory in the case of **Gasiunas v Meinhold** [1964] 6 FLR 182[1965] ALR 121 The statutory provisions were in similar terms to those in New South Wales when the three first instance cases were decided. The caveat in question claimed `an estate or interest as purchaser under a contract of sale made on or about 26 June 1962` between the applicant and the respondent in the land described. It was submitted that the caveat was defective as it did not state that the claim was as a purchaser of the balance of the term of the Crown lease, and the three New South Wales first instance cases were relied upon.

36 Joske J refused adamantly to follow the New South Wales precedents, clearly of the view that they had all been wrongly decided. He said:

> *The caveat ... lodged by the respondent claims an estate or interest as purchaser in the land comprised in the Crown lease. This appears to me clearly to show the nature of the estate or interest claimed. The caveat also sets out that the claim as purchaser is under a contract of sale made on or about 26 June 1962 between the applicant (the Crown lessee) and the respondent. This clearly shows the facts on which the claim is founded.*

37 **Our views**

38 Section 104(4) of our Land Titles Act requires that a caveat shall contain an accurate description of the interest claimed and such description as may be sufficient to identify the land intended to be affected.

39 The words used are not exactly those used in s 72(2) of the New South Wales Act, either before or after the latter was amended in 1970. The respondent`s counsel laid stress on the `accurate description` in our Act and `sufficient description` in the New South Wales Act.

40 We do not think, however, that for the purpose of resolving the issues at hand, much assistance could be had from drawing such distinctions. A consideration of the workings of the Torrens system of the land title registration and the purpose and function of caveats is more likely to be helpful.

41 In **Abigail v Lapin** [1934] All ER Rep 720 a case on appeal from the High Court of Australia originating from the Supreme Court of New South Wales, Lord Wright said (at p 725):

> *It is a system for the registration of title, not of deeds; the statutory form of transfer gives a title in equity until registration, but when registered it has the effect of a deed and is effective to pass the legal title; upon the registration of a transfer, the estate or interest of the transferor as set forth in such instrument, with all rights, powers, and privileges thereto belonging or appertaining, is to pass to the transferee. No notice of trusts may be entered in the register book, but it has long been held that equitable claims and interests in land are recognized under the Real Property Acts.*

42 **Purpose and function of caveats**

43 As to the purpose and function of a caveat, Lord Wright (continuing from the above) said:

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> *For the protection of such equitable interests or estates, the Act provides that a caveat may be lodged with the registrar by any person claiming as cestui que trust, or under any unregistered instrument or any other estate or interest; the effect of the caveat is that no instrument will be registered while the caveat is in force affecting the land, estate or interest until after a certain notice to the person lodging the caveat. Thus, though the legal interest is in general determined by the registered transfer, and is in law subject only to registered mortgages or other charges, the register may bear on its face a notice of equitable claims, so as to warn persons dealing in respect of the land and to enable the equitable claimant to protect his claim by enabling him to bring an action if his claim be disputed.*

44 A caveat has been described as `nothing more than statutory injunction to keep the property in status quo until the court has had an opportunity of discovering what are the rights of the parties: per Owen J in **Re Hitchcock** [1990] 4 WN 62 It is not for the purpose of giving notice to the world of a claim by the caveator to an estate or interest in the land, but for the purpose of prohibiting the caveator`s interest from being defeated by the registration of a dealing without the caveator having had an opportunity to invoke the assistance of the court to give effect to his interest: **Butler v Fairclough** [1917] 23 CLR 78 **J & H Just (Holdings) Pty Ltd v Bank of New South Wales** [1971] 125 CLR 546 at pp 552 and 556; **Kerabee Park Pty Ltd v Daley** [1978] 2 NSWLR 222 at p 228.

45 As Mahoney JA in **Vandyke v Vandyke** [1976] 12 ALR 621 pointed out, a person need not show that he in fact has a caveatable interest before he is allowed to lodge a caveat. The opening words of s 104 (corresponding to the New South Wales s 72) make it clear that any person claiming an interest in registered land may do so. Where there is any dispute in regard to the right of the caveator to file the caveat, the Act provides a mechanism for a reasonably speedy resolution of the dispute. Section 105 provides that upon the registration of the caveat, the registrar shall give immediate notice to the caveatee of the

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lodgment of the caveat. Section 111 provides that at any time after the lodgment of a caveat, the caveatee may summon the caveator to attend before the court to show cause why the caveat should not be withdrawn or otherwise removed, and the court may make such order, either ex parte or otherwise, as seems just.

46 In addition to these remedies, where the caveatee considers that a caveat has been lodged vexatiously or frivolously or not in good faith, he may lodge a statutory declaration to that effect. Upon the lodgment of such a statutory declaration, the registrar shall give the caveator notice that he intends to cancel the notification of the caveat, and the registrar shall cancel it unless within 21 days from the date of the notice an order by the court to the contrary is served on the registrar, or the caveator furnishes to the registrar satisfactory evidence to show that the cancellation should be withheld or deferred.

47 Section 112 further provides for the award of compensation at the suit of anyone who has sustained damage by reason of a caveat having been wrongfully lodged.

48 The scheme of the Act is thus designed to strike a balance between the interests of the caveator and those of the caveatee. On the one hand, it enables a person who claims to have an equitable interest in land on the register to notify his claim by the simple and inexpensive process of lodging an instrument in the prescribed form without having to prove his claim. On the other hand, it allows the caveatee, if he disputes the right of the caveator to lodge a caveat, to take steps to have the caveat removed. It provides a mechanism for the resolution of any such disputes. If the caveatee has suffered any damage as a result of a wrongful lodgment of a caveat, he has a statutory right of compensation.

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49 So far as the form of the caveat is concerned, it is important to bear in mind that it is merely a notification that the caveator claims to have an unregistrable interest, a claim which he will be prepared to make good if challenged. We do not think that s 104 of the Act contemplates that the caveator should give elaborate details of his claim within the rather narrow confines of the form of caveat. If it was otherwise, one would expect to see provisions requiring the lodgment of supporting documents or at least a much more elaborate form for the caveat .

50 Where a caveat is challenged, it is primarily the right to lodge it that is challenged. The contest in regard to the validity of the caveat should not be so much on the form of it as the underlying transaction giving rise or alleged to give rise to a caveatable interest. When a right to caveat is challenged, the full facts giving rise to the right or the alleged right must necessarily be gone into by the court. It is highly unlikely that such cases could ever be decided without reference to facts external to the four corners of the caveat form.

51 All these considerations lead us to the view that it is not necessary to state in a caveat in exhaustive detail either the estate and interest claimed or the ground of claim. So long as the terms of the caveat gives a fair indication of what estate or interest the caveator claims and the ground of his claim, that is all that is required for the purpose of notifying it.

52 While the requirement of the Act of an accurate description should always be followed, the court should not be astute to find fault with the terms of a caveat so long as they are not positively misleading and the interests of others are not prejudiced. The court should guard against the harm of striking out a caveat for some minor defect of form where the underlying basis for the claim is unimpeachable.

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53 The New South Wales cases which we have referred to earlier show only too well the ease with which a caveat might be criticized not only for what is included but also for what is omitted.

54 **The instant case**

55 Turning to the instant cases, and in the light of our general observations above, we think that there is no substance in the criticism that the caveat in question does not state the quantum of the estate or interest claimed. It seems to us that when it is stated, without qualification, that the caveator `claims interest as purchaser` the claim must be understood as extending to the whole of the estate or interest which the registered proprietor has in the land in question.

56 The land register kept by the registrar shows the extent of the estate or interest of registered proprietors. See s 22 ff. The extent of the estate or interest of the registered proprietor could always be ascertained by an inspection of the land register. In this case, the certificate of title, a copy of which was produced by Mr Jumabhoy in his affidavit, shows that he is the registered proprietor of an estate in fee simple in the land in question.

57 We are therefore of the view that the words `claims interest as purchaser` followed by a description of an option duly exercised are apt to show that the caveator claims to have contracted to purchase the whole of the estate or interest of the registered proprietor. We thus reach a conclusion similar to that of Joske J in **Gasiunas v Meinhold** [1964] 6 FLR 182[1965] ALR 121 above in relation to the caveat before him containing a similar form of wording.

58 Counsel for Mr Jumabhoy suggested that, following the example in the guidance notes, the proper words to have been inserted should have been `fee

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simple`. We respectfully disagree. What the caveator could properly claim to have at the time of lodging the caveat was only an equitable interest in the land by virtue of having concluded, as he claimed, a contract for the purchase of it. He had not yet got the legal estate. The words `fee simple` would have been quite misleading in these circumstances.

59 As to the criticisms of the stated ground of claim, it has not been demonstrated why it is essential to state to whom the option had in the first instance been given. It has not been demonstrated why it should matter that the option was in the first instance given to Mdm Ho and that the party who purported to exercise it was Alrich.

60 As to the criticism that the caveat wrongly stated that the option was exercised on the 6 August 1990 when the purported acceptance of the option was on 7 August, we think that if this is an error it is one without much consequence. The registered proprietor has not been misled. He had received the purported acceptance of the option and he knew that Alrich had purported to accept it. There is no evidence of any other transactions between him and Alrich or with other parties that would result in any confusion as to the identity of the claimant or the date the claimed interest arose. No harm has been shown to have resulted; neither has

61 Mr Jumabhoy claimed that any has resulted. Indeed, the date of the exercise of the option could well have been omitted without any harm. It may be that if there had been another purchaser who had been given an option and had exercised it on or about the date stated in Alrich`s caveat, a confusion and possibly misrepresentation could have resulted. But this was not the case.

62 **Conclusion**

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63 We therefore agree with the learned judge on his views as to the first two grounds stated earlier on which Mr Jumabhoy sought to challenge the validity of the caveat. However, we respectfully differ from the views of the learned judge as to the third ground, ie that the caveat wrongly stated the date on which the option could properly be said to have been exercised. The appeal had been brought solely on these grounds. The position regarding the underlying transaction is the subject matter of Suit No 1452 of 1990. It was not before us. On the views we took of the grounds canvassed before us, we therefore allowed the appeal, with costs here and below. We ordered that the amount deposited by the appellants as security for costs be returned to them.

64 **Outcome:**

65 Appeal allowed.

Chua F A J
Warren Khoo L H J
Lai Kew Chai J

Cheong Yuen Hee and Tan Kay Khai (Chua, Hay & Wee) for the appellants
Gan Hiang Chye and Chew Kherk Ying (Allen & Gledhill) for the respondent

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