

Caveatable interest?

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The recent decision of *Guirgis v JEA Developments Pty Ltd* [2019] NSWSC 164 provides an important reminder to solicitors and licensed conveyancers of the consequences of improperly supporting a caveat application where reasonable steps to inform themselves of the circumstances and evidence supporting the application have not been taken.

Facts

On 15 December 2018, Mr Guirgis (the Purchaser) entered into a contract to purchase a property with settlement due to occur on 25 February 2019. The Purchaser was involved in a Family Court dispute with his wife, Mrs Guirgis.

On 11 February 2019, Mrs Guirgis lodged a caveat through JEA Developments Pty Ltd (the Caveator), a company of which she was the sole director. The caveat specified a claimed interest in the property by virtue of a loan agreement.

The caveat, which was lodged electronically and signed by a licensed conveyancer, certified that to the best of their knowledge, the caveator had a good and valid claim to the property in question.

During the proceedings Mrs Guirgis conceded that she had lodged the caveat as a negotiation tactic in the lead up to a Family Court hearing which was also scheduled to occur on the same day as the property settlement. In fact, she did not really have a caveatable interest in the property. It was later revealed that the conveyancer had not sought any further information about the alleged loan agreement from Mrs Guirgis, nor whether the agreement was oral or in writing. Furthermore, it was found that the conveyancer did

not answer the Purchaser's request for information regarding the loan agreement claimed in the caveat.

Mr Guirgis made an urgent application in the Supreme Court of New South Wales. Mrs Guirgis was ordered to remove the caveat and pay Mr Guirgis' costs. His Honour Kunc J further ordered that the conveyancer appear before the Court and explain why they should not be referred to the Department of Fair Trading in relation to their conduct.

Outcome

The Court found that a caveat lodged by the licensed conveyancer had no merit without evidence to support the claims in the application. It was held that the conveyancer failed to meet their obligations and fell well below the standard of care owed by a reasonable person in that position. The Court emphasised the important role that solicitors and licensed conveyancers play as we move to an electronic conveyancing platform. The validation provided by solicitors and licensed conveyancers is integral to this process, particularly as ordinary members of the public are no longer able to lodge a caveat without the assistance of a 'subscriber' who, in most cases, will be a solicitor or licensed conveyancer.

Practice Tips

Solicitors and licensed conveyancers can minimise the risk to themselves and their client by taking appropriate steps when certifying a caveat:

- ▼ Take reasonable steps to verify the identity of the caveator
- ▼ Hold a properly completed client authorisation
- ▼ Specify the particulars of the legal or equitable estate or interest, or the right arising out of a restrictive covenant to which the caveator claims to be entitled
- ▼ Retain the evidence supporting the caveat

While in this case, the conveyancer escaped further disciplinary action, the message is clear - solicitors and licensed conveyancers are on notice to take appropriate steps to satisfy themselves, through inquiry, that there is a proper basis for lodgement of a caveat.

Milica Vukancic
Claims Solicitor

