



LODGING A CAVEAT AGAINST YOUR OWN TITLE

By Gavin Goffe

A caveat is a type of injunction created by the Registration of Titles Act which can either prevent land from being registered under the Act, or prevent any, or certain kinds of transactions or dealings from being registered in relation to the land in question. In order to lodge a caveat, a person must have an estate or interest in land which is not registered on the title, and quite often will be unregistrable. In this article, we will explore some of the circumstances in which a registered proprietor of land may protect his or her title by registering a caveat against it.

Most often the interest in need of protection will be an equitable interest, such as a purchaser's interest under an agreement for sale that has not yet been completed. The purpose of registering the caveat is to give notice of the equitable interest even though the interest itself is not capable of being registered on the title. It may seem odd, therefore, that a person whose interest in the land is expressed on the face of the Certificate of Title, would either need, or be able to lodge a caveat against his or her own title as a means of protection.

In terms of ability, a registered proprietor cannot simply rely on his or her interest as owner of the property to support a caveat. The authorities state that the registered owner must establish "something over and above that status [of owner] before it can be said that there exists a registrable interest." Examples of that "something over and above" have included interests as a vendor, as landlord and as mortgagor.

In relation to necessity, there are several everyday examples in which registered proprietors would be wise to lodge caveats against their titles:

- (i) To prevent a former spouse or estranged sibling from fraudulently transferring the land to a third party or mortgaging the property. Unfortunately, this is not a rare occurrence in Jamaica, especially where one of the registered owners lives overseas. The National Land Agency is not required to verify the authenticity of signatures on an Instrument of Transfer. Similarly, mortgage lenders are not required to ask for identification from all parties before lending on the security of the property. By the time the unaware spouse or sibling learns of the transfer, it may well be too late and the property might be lawfully owned by, or mortgaged to, an innocent third party.
- (ii) To prevent any unauthorized transactions taking place where the registered proprietor has lost his or her Certificate of Title.
- (iii) To prevent a valid Instrument of Transfer from being registered in favour of a purchaser who has failed to pay the balance purchase price. This could happen if the purchase price is paid by cheque which is dishonoured upon presentation.
- (iv) To prevent tenants from registering a lease against a title that would ordinarily be registrable save for the fact that the parties have agreed that it would not be registered.
- (v) To prevent a mortgagee from unlawfully exercising its power of sale where the mortgagor can prove that the mortgage has been repaid in full but no Discharge of Mortgage has been registered.

Limitations

Before deciding to lodge a caveat, one ought to be aware of several limiting factors.

A caveat, by itself, cannot protect a registered owner from squatters acquiring title to the land by way of adverse possession. Similarly, a squatter who has not yet permanently dispossessed the registered owner cannot lodge a caveat to protect an interest that has not yet accrued.

A caveat does not provide lasting protection. If an instrument is lodged at the National Land Agency that is blocked by the caveat, the Registrar of Titles ought to give the caveator notice of the instrument and warn that the caveat will lapse and the instrument will be registered unless a court order restraining registration is served on the Registrar of Titles within 14 days. A caveat ought not, therefore, to be viewed as an alternative to litigation, but in many cases is only the prelude.

Caveats can also be expensive, as the registration fee is 0.5% of the value of the interest claimed, which may be the full value of the property.

Lodging a caveat does not establish any right or title in the land and has no bearing on the Court's determination of what the parties' respective rights are. By way of illustration, a mortgagor disputing the amount payable under the mortgage will generally still be required by the Court to pay to the mortgagee the full amount claimed as owing before an injunction is granted to restrain the mortgagee's exercise of its power of sale. In that situation the mortgagor could find that the decision to lodge a caveat has reduced the resources available to obtain an injunction from the Court.

A person who lodges a caveat in circumstances where they have no registrable interest in the land capable of supporting the caveat, may be liable to pay compensation to any third party affected by the wrongful lodging. In particular, great care should be exercised before lodging a caveat to prevent a mortgagee from completing a sale to a third party under the powers of sale contained in the mortgage. The Courts have always treated mortgages as sacrosanct and will not allow a caveat to restrain the lawful exercise of the power of sale unless there is clear evidence that the mortgagee is acting unlawfully.

A caveat can provide protection against perceived threats in a way that court injunctions cannot. The registered proprietor needs not know who, or how, or when someone might try to undermine their interest in land but might nonetheless lodge a caveat and receive notice of the threat whilst there is time to take court action, if necessary, to prevent it.

Gavin Goffe is an Associate at Myers, Fletcher & Gordon and a member of the Firm's Litigation Department. Gavin may be contacted at gavin.goffe@mfg.com.jm or through www.myersfletcher.com