

AUCKLAND REGISTRY

469

IN THE MATTER of the Land Transfer Act 1952 and its amendments

- a n d -

IN THE MATTER of Caveat No.977992.1

BETWEEN

GRIFFIN

APPLICANT

A N D

HAMILTON

RESPONDENT

Judgment: 16 April 1984
Hearing: 16 April 1984
Counsel: R. Johnston for Applicant
A.W. Grove for Respondent

ORAL JUDGMENT OF CASEY J.

This is an application by Hamilton for an order in terms that Mr Griffin's caveat over her property at Wood Street, Ponsonby, be withdrawn but, as Mr Grove now says, she in fact seeks its removal which I think would be the proper order in the circumstances. The caveat had been lodged in support of a claim by Mr Griffin to an equitable interest in Mrs Hamilton's property as a result of work he did during the time they were living together prior to 1981. She applied for its removal on 31st July 1981. The matter came before Holland J. and in a judgment of 19th August he held that on the evidence Mr Griffin had shown a prima facie case to support his claim for an interest, but noted that in most of the reported cases the caveator had been concerned to obtain an order for specific performance, and the removal of the caveat would deprive him of this right. In this case Mr Griffin did not want possession of the property, his main concern being that if it were sold he might be deprived of the benefit of the financial reward to which he feels he is entitled for his share, or that

the Respondent might not have the means to satisfy it. In these circumstances Holland J. felt it proper to reserve the right for either party to apply to the Court should circumstances change.

Presumably these considerations would still apply but the matter is now complicated by the fact that Mr Griffin commenced an action in the High Court under No. 753/81 claiming an interest in the land, and it is clear from the affidavits that it formed the basis of the caveat. However, he did nothing to prosecute the action and it was dismissed on that ground on 1st December 1983 by Sinclair J. Mrs Hamilton obviously thought the dismissal of the action would automatically involve the removal of the caveat, and an application was made to the District Land Registrar on the judgment, but he quite properly pointed out that it made no reference to the caveat. This present application is accordingly taken to remedy that situation and get the title cleared following Mr Griffin's failure to do anything effective over the last three years to enforce his rights.

In the meantime, Counsel inform me that there were other proceedings between these parties culminating in a judgment of Thorp J. of 4th July 1983 on Mrs Hamilton's claims against Mr Griffin in connection with the shareholding and assets of a company in which they were both involved. She received an award of \$31,081.23 against him which has not been met. In his affidavit in reply to the present application Mr Griffin maintained that he had not proceeded with the action 753/81 because he was hopeful the matter would be resolved by agreement, and because he could not afford Counsel to appear on his behalf. These excuses sound very hollow in the light of the other litigation in which he was engaged for what must have been a greater part of this period and there was always legal aid available if he was genuinely unable to afford assistance in his action against Mrs Hamilton in respect of 10 Wood Street.

I find there is really no justification for his

having gone to sleep on his rights against this property for so long and suffered the proceedings on which the caveat was based to be struck out for want of prosecution over two and a half years. Mr Johnston has submitted that in spite of his lack of action, the interest which he claims in this property can still be sustained by the caveat, and I should not go to the stage of directing that it be removed and at least give him the opportunity to start proceedings again. In my view, this would be an abuse of the Court's procedure. He has had his chance and has failed to take it and Mrs Hamilton should not be subjected to the inconvenience and annoyance of having this caveat still registered on the property in respect of a claim which the Applicant has shown such a lack of interest in prosecuting in the past. As I said, if this matter had to be determined on ordinary equitable principles, Mr Griffin has certainly lost any rights he might have. I see no reason why he should still enjoy the protection of the caveat having regard to this background and I am quite sure that if the matter had been raised with Sinclair J. last December, there would have been no question about an order being made at the same time for the removal of the caveat. I propose remedying that oversight. There will be an order accordingly for its removal.

M. G. Casey J.

Solicitors:

Leigh Ann Lawson, Henderson, for Applicant
Anthony Grove & Darlow, Auckland, for Respondent