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IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

M No 2025/88

IN THE MATTER of the Land  
Transfer Act  
1952



BETWEEN EQUITICORP FINANCE  
GROUP LIMITED and  
EQUITICORP FINANCIAL  
SERVICES LIMITED

Applicants

A N D S J SMART and F SMART

First Respondents

A N D ANZ BANKING GROUP NZ  
LIMITED

Second Respondent

Hearing: 9 February 1989

Counsel: M H La Cassie for Applicants  
C M Meechan for Second Respondent  
No appearance by or on behalf of First  
Respondents

Judgment: 17<sup>th</sup> February 1989

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JUDGMENT OF CHILWELL J

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This is an application for an Order under S.145 of the Land Transfer Act 1952 to prevent the lapse of the Applicants' (Equiticorp's) caveat registered against the certificate of title to land situated at 1 Entrican Avenue, Remuera, of which the First Respondents (Mr and Mrs Smart) are the registered proprietors as joint tenants. The application was made after the Second Respondent, ANZ Banking Group NZ Limited, (the Bank) lodged a mortgage given by Mr and Mrs Smart for

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registration and after the District Land Registrar had given Equiticorp the statutory notice under S.145.

Under the caveat which was lodged in the Land Transfer Office on 28 July 1988, Equiticorp claimed an estate or interest in the land by virtue of an unregistered memorandum of mortgage dated 26 July 1988 and made between Equiticorp and Mr and Mrs Smart. The mortgage had been executed by Equiticorp pursuant to Powers of Attorney contained in mortgages of shares dated 21 November 1987 and 17 May 1988.

By written agreement called "Eurocurrency Loan Agreement" dated 13 May 1986, Equiticorp Securities Limited of Hong Kong agreed to lend Mr and Mrs Smart \$500,000 or the equivalent amount in Eurocurrency secured by a mortgage of shares in Smart Group (NZ) Limited. The mortgage security was subsequently replaced by a mortgage of shares dated 21 November 1987 over shares in Richmond Development Corporation Limited. This latter document, in the form of a deed, was executed by Mr and Mrs Smart as mortgagors and Equiticorp Finance Group Limited as mortgagee. It contained provisions for additional security to be given whenever the value of the shares dropped between a stated proportion of the amount of the secured loan and, importantly, the following further provision :

"X1 FURTHER SECURITY AND ATTORNEY

11.1 The Mortgagor will if so requested by the Mortgagee execute such further documents and securities as the Mortgagee shall in the circumstances referred to in clause 10.1 hereof require to further secure to the Mortgagee payment of the Monies Hereby Secured AND the Mortgagor in consideration of the Mortgagee providing the facility referred to in Recital B hereby the Mortgagor doth hereby irrevocably APPOINT the Mortgagee and each director secretary or branch manager for the time being severally to be the true or lawful attorney of the Mortgagor to sign in the Mortgagors name and on its behalf any security which the Mortgagee shall request the Mortgagor to execute pursuant to this clause."

By another agreement made in November 1987 Equiticorp Financial Services Limited agreed to lend Mr Smart \$2,145,753.00. The document evidencing the loan is a mortgage of shares dated 11 November 1987 over shares in Richmond Development Corporation Limited. It is in the form of a deed executed by Mr Smart and the parties are Mr Smart as mortgagor and Equiticorp Financial Services Limited as mortgagee. It also contained provisions for additional security to be given whenever the value of the shares dropped below a stated proportion of the secured loan. There is no provision similar to clause 11.1 above but there is a power of attorney clause which is confined to matters "relating to or touching upon the mortgaged shares". The shares in Richmond Development Corporation Limited were replaced by shares in Richmond Smart Corporation Limited upon a merger of that company and Smart Corporation Limited in February 1988. Additional securities were required by the mortgagee company in April 1988 in consequence of which Mr Smart signed a deed of

guarantee and indemnity dated 17 May 1988 by which she guaranteed to Equiticorp Financial Services Limited and Equiticorp Finance Group Limited (together referred to as Equiticorp) the obligations of her husband under the mortgage of shares dated 11 November 1987 and, though this was not referred to in argument, it seems to extend to all moneys whatever which Mr Smart may owe Equiticorp. She also provided additional security by way of mortgage of shares in Richmond Smart Corporation Limited. The mortgage is in the form of a deed executed by Mrs Smart on 17 May 1988. The parties are Mrs Smart as mortgagor and Equiticorp as mortgagee. In the latter document the mortgage of shares dated 11 November 1987 is referred to as "The On-Shore Mortgage" and there are references to "The Off-Shore Mortgage" which expression is not defined but which arguably means the mortgage of shares dated 21 November 1987 securing the Eurocurrency Loan Agreement. A recital in the mortgage dated 17 May 1988 states that Mrs Smart had agreed to enter into and execute the mortgage to secure her obligations under the guarantee of the same date and:-

"... to secure all further financial accommodation and all other moneys which the Mortgagor (ie Mrs Smart) may now or at any future time become liable to pay to the Mortgagee".

This mortgage also contains provisions for additional security to be given whenever the value of the shares drops below a stated proportion of the moneys secured. There is the following further provision, which

is the same as clause 11.1 previously recited but which includes specific reference to the on-shore and off-shore mortgages:

"X1 FURTHER SECURITY AND ATTORNEY

11.1 The Mortgagor will if so requested by the Mortgagee execute such further documents and securities as the Mortgagee shall in its sole discretion require to further secure to the Mortgagee payment of the Monies Hereby Secured AND the Mortgagor in consideration of the Mortgagee providing the financial accommodation pursuant to the On-Shore Mortgage, the Off-Shore Mortgage and the Guarantee the Mortgagor DOES HEREBY IRREVOCABLY APPOINT the Mortgagee and each director, secretary or branch manager for the time being severally to be the true and lawful attorney of the Mortgagor to sign in the Mortgagor's name and on its behalf any security which the Mortgagee shall request the Mortgagor to execute pursuant to this clause."

The sole deponent in this proceeding, Mr Wright, a corporate executor in Equiticorp, stated in his affidavit that in or about June 1988 the market value of the mortgaged shares fell further. Equiticorp's solicitor wrote to Mr and Mrs Smart by letters dated 24 June and 20 July 1988 requesting additional security - a mortgage over their property situated at No 1 Entrican Avenue, Remuera.

24 June 1988

"RE: EQUITICORP - OUTSTANDING LOAN

We have been instructed by Equiticorp Financial Services Limited and Equiticorp Finance Group Limited.

We refer to the loan obligations that are in default and for which demands have already been made and served upon you.

We have been instructed by our client to rely upon clause XI (11.1) of the mortgage securities signed by you which entitles our client in its sole discretion to obtain further security from you.

In accordance with that clause, we hereby demand that you provide to our client a good registrable mortgage over your property at 1 Entrican Avenue, Remuera, Auckland. The mortgage will be in accordance with the standard Law Society Mortgage Form and is available for execution either at our offices or at the offices of Equiticorp.

Pursuant to the said clause, in the event that you do not provide and execute such a mortgage within seven days, our client intends to rely upon the Power of Attorney clause specifically referred to in the mortgage security, which entitles our client to act as your lawful attorney to sign on your behalf any security which our client may at sole discretion require in respect of the overdue loans.

20 July 1988

RE: EQUITICORP FINANCE GROUP LIMITED -  
OUTSTANDING OBLIGATIONS

We refer to our letter of 24 June 1988 wherein we drew your attention to the fact that your loan obligations are in default and made demand for you to provide to our client company a good registrable mortgage over your residential property at 1 Entrican Avenue, Remuera.

We note that the period of 7 days' notice given to you in our letter of 24 June has now expired and we enclose herewith a Memorandum of Mortgage, in duplicate, in respect of the property at 1 Entrican Avenue owned by you. The document should be signed in the presence of a solicitor or a JP and returned to our offices together with the duplicate copy of Certificate of Title 827/48, marked for the attention of Mr Harford by 5:00 pm Monday 25 July. In the event that the documents are not signed and returned by that time we reserve our rights at that stage to execute duplicate copies of the documents under the power of attorney provision contained in the Mortgages already given to our client company."

Mr Wright deposed that the letters and accompanying mortgage documents were returned by the Post Office as unclaimed. On 26 July the two Equiticorp

companies (Equiticorp) executed the memorandum of mortgage under seal in reliance upon the powers of attorney within the deeds dated 21 November 1987 and 17 May 1988. There are provisions in clause 10 of each deed which require the mortgagor to provide the further security "upon demand" and in each deed that expression is defined to mean:-

"... within 24 hours of receipt by the Mortgagor of demand being made by notice in writing signed by the Mortgagee or any director secretary officer or solicitor of the Mortgagee served upon the person upon whom demand is to be made either personally or in the case of a company at its registered office or by posting by registered letter addressed to the registered office or usual or last known place of abode or business in New Zealand of the addressee. Any registered letter shall be deemed to be served on the date on which such registered letter would in the normal course of post reach the addressee."

It was contended on behalf of the Bank that no valid demand was made within clause 10 nor any valid request made within clause 11.1 so as to provide a foundation for the exercise of the powers of attorney. It was submitted that there was no "receipt by the Mortgagor of demand" because on Mr Wright's evidence it was clearly established that, to the knowledge of Equiticorp, the letters containing the request and demand were returned through the post and never received. This is not a matter which can be resolved on this summary application because it is plainly arguable that service by registered post was agreed to by Mr and Mrs Smart as one method of making demands or requests and the last sentence of the meaning given to the expression "upon demand" which deems service is arguably a "receipt" within the phrase "within 24 hours

of receipt by the Mortgagor". It was further contended on behalf of the Bank that Mr and Mrs Smart did not know that the memorandum of mortgage had been executed on their behalf. Mr Wright deposed that in July 1988 Equiticorp commenced a proceeding for summary judgment against Mr and Mrs Smart for the principal sums and arrears of interest. A compromise was agreed to in August 1988 which included, inter alia, the extension of credit for Mr and Mrs Smart provided they gave substitute security in the form of company debentures from several companies in return for which Equiticorp would withdraw the caveat to enable the Bank to register a memorandum of mortgage. But the new security was never provided. In the absence of any evidence to the contrary it would be proper to draw the inference that Mr and Mrs Smart knew within a reasonable time after the proceeding for summary judgment was served upon them that Equiticorp had exercised the powers of attorney. They definitely knew by the time they agreed to compromise that proceeding. The correspondence annexed to Mr Wright's affidavit indicates that the Bank knew the terms of the compromise and, in the absence of any evidence from the Bank, it is impossible to conclude that Equiticorp's insistence on retaining its caveat has prejudiced the Bank.

The approach to an application under S.145 of the Land Transfer Act is clear. The caveator must show that there is an arguable case, or a serious question to be tried, as to the validity of his claim to have a



caveatable interest under S.137 ie, that he is a person claiming to be entitled to or to be beneficially interested in any land, estate, or interest under the Act by virtue of any unregistered agreement or other instrument. He is entitled to maintain his caveat if he can show that he has the kind of interest which S.137 entitles him to protect. If there are challenges by other parties the caveat should be extended until existing claims by the different parties are determined in actions brought for that purpose. See Holt v Anchorage Management Ltd [1987] 1 NZLR 108. Only when it is plain to the Court that the caveator cannot possibly succeed in establishing his claim against the registered proprietor is it proper to refuse to extend the caveat. Even where there are doubts surrounding the rights of the caveator the proper course is to extend the caveat until the conflicting claims are determined. See Catchpole v Burke [1974] 1 NZLR 620 and Beadel v Moore (1982) 1 NZCPR 510. I therefore accept the submission of counsel for Equiticorp that Equiticorp is not required to demonstrate that it will succeed in an appropriate proceeding to establish its claim to have a caveatable interest; Equiticorp is merely required to demonstrate that it has an arguable case.

There can be no doubt that an unregistered memorandum of mortgage executed in a form approved by the Registrar General of Land, properly executed pursuant to a power of attorney and properly attested, creates an interest in land within S.137 of the Land Transfer Act.

in its face the memorandum of mortgage in this case is a registrable document. It was contended by counsel for the bank that if this be the case the mortgage should have been registered and Equiticorp should not continue to have the protection of the caveat at the time this application was made on 16 December 1988 nearly five months after the memorandum of mortgage was executed and now nearly seven months after execution. Reliance was placed upon the dictum of Lord Guest delivering the judgment of the Privy Counsel in Miller v Minister of Mines [1963] NZLR 560, 569:-

"The caveat procedure is an interim procedure designed to freeze the position until an opportunity has been given to a person claiming a right under an unregistered instrument to regularise the position by registering the instrument."

That must be regarded as obiter because it was held that the mining licence in question was governed by the Mining Act 1926 and not by the Land Transfer Act 1952. Because the latter Act had no application it was held that the caveat procedure was inapt for the purpose of securing the registration of the mining licence under the Land Transfer Act. Therefore, there was no estate or interest capable of protection by caveat. However, it is strong obiter given after comprehensive consideration of the Land Transfer Act in relation to caveats. If it is authority for the proposition that a caveat should no longer be maintainable after the expiry of a period beyond which the caveator should have registered the instrument

this is a matter which, in this case, requires investigation by the Court. It has not been fully covered in Mr Wright's affidavit. The Court knows that the parties were involved in negotiations after the proceeding for summary judgment was commenced and that these negotiations involved the caveat. Moreover, when on 10 January 1989 Wylie J extended the caveat by consent to 10 February 1989, counsel had filed a memorandum in which they stated that for some months there had been negotiations between all the parties with a view to rearranging the financial position of Mr and Mrs Smart and should these negotiations prove fruitful Equiticorp would not need to maintain the caveat. I was not advised of the result of the negotiations but Equiticorp was placed in statutory receivership under the Companies Special Investigations Act 1958 on 22 January 1989. The whole question of delay, if relevant, will therefore require proper consideration and it is not appropriate to decide it on this summary application. Another matter relevant to delay will be the whereabouts of the duplicate copy of the certificate of title which has to be produced to the Land Transfer Office as a requirement for registration of Equiticorp's mortgage. The letter of 20 July 1988 called for its production. There is an arguable case on this issue.

However, the present memorandum of mortgage is not in my view registrable. It is trite law that an agent cannot execute a deed so as to bind his principal unless

the authority to execute it is conferred by deed. See 12 Halsburys Laws of England 4th Ed paragraph 1310, Garrow's Real Property In New Zealand 5th Ed 534, and Chitty On Contracts 25th Ed paragraph 2217. The memorandum of mortgage signed by Equiticorp as agents for Mr and Mrs Smart has the force and effect of a deed. See S.157 (2) Land Transfer Act. The deed of mortgage of shares executed by Mr and Mrs Smart on 21 November 1987 (the off-shore mortgage) is not in law a deed because it was not properly attested in terms of S.4 Property Law Act 1952 for the reason that the person who witnessed their signatures did not add to his signature his place of abode and calling or description. Hence the power of attorney in clause 11.1 of that document did not confer authority on Equiticorp to execute a deed, which the memorandum of mortgage effectively is. Nevertheless, and counsel did not address me upon this point, it is my opinion that it is seriously arguable that the agency, being in writing, would authorise Equiticorp to execute an agreement to mortgage otherwise than by deed and that the memorandum of mortgage is at least an agreement to mortgage.

The deed of mortgage of shares executed by Mrs Smart on 17 May 1988 (the on-shore mortgage), is attested in terms of S.4 Property Law Act. The signature of the witness is indistinct on the photocopy of the deed annexed to Mr Wright's affidavit but it appears to be that of Mr Wright and when I compare his signature to his affidavit, which is clear, with the signature on the photocopy deed

(S.19 Evidence Act 1908), I am persuaded that the signatures are the same. Mr Wright added to his signature his place of abode "Auckland" and his calling or description "Corporate Executive". Thus the power of attorney in clause 11.1 of the on-shore deed of mortgage conferred authority on Equiticorp to execute a deed binding Mrs Smart. Counsel for the Bank contended that the District Land Registrar would not accept the power of attorney in the on-shore deed of mortgage for deposit in terms of S.151 Land Transfer Act or regulation 28 of the Land Transfer Regulations 1966 (1966/25). The deposit of the power of attorney is a pre-requisite to registration of the memorandum of mortgage.

S.151 and regulation 28 state:-

"151. Power of attorney to be deposited with Registrar - Every power of attorney intended to be used under this Act, or a duplicate or attested copy thereof, verified to the satisfaction of the Registrar, shall be deposited with the Registrar in manner provided by regulations under this Act, but for the purposes of this Act it shall not be necessary to register any power of attorney."

"28. Powers of attorney - (1) The Registrar may decline to deposit any power of attorney or a duplicate or attested copy thereof, unless the original has been duly signed (or, if executed by a corporation, sealed), duly attested, and, if required by him, duly proved in accordance with sections 158 to 160 of the Act, or duly verified in accordance with section 166 of the Act.

(2) Every power of attorney or duplicate or attested copy thereof deposited with the Registrar shall be on paper of a size and quality approved by the Registrar."

The question of verification under S.151 is a matter for the District Land Registrar. If he required a procedure of verification the same as or similar to that prescribed in S.159 it would be surprising if Mr Wright were unable to find an approved verifier to take Mr Wright's oath or declaration in terms of S.159. There is no evidence before the Court in relation to the requirements of the District Land Registrar for the present case. As a matter of commonsense I am unable to find that Equiticorp cannot possibly succeed in depositing the power of attorney contained in the on-shore mortgage.

In summary, in relation to the two powers of attorney, the position as I find it is:-

(a) The power of attorney granted by Mr and Mrs Smart in the off-shore mortgage (deed of mortgage 21 November 1987) did not confer on Equiticorp authority to execute a memorandum of mortgage having the force and effect of a deed but it is seriously arguable that the agency, being in writing, would authorise Equiticorp to execute an agreement to mortgage otherwise than by deed and that the memorandum of mortgage is at least an agreement to mortgage.

(b) The power of attorney granted by Mrs Smart in the on-shore mortgage (deed of mortgage 17 May 1988) is conferred by deed. Therefore Equiticorp had authority from Mrs Smart to bind her by deed. The deposit of that

power of attorney in the Land Transfer Office is by no means hopeless.

It will be recalled that the memorandum of mortgage of the land in question executed by Equiticorp in reliance upon the two powers of attorney purported to bind Mr and Mrs Smart. In consequence of the situation in (b) above it is seriously arguable that the memorandum of mortgage is registrable against the interest of Mrs Smart in the land in question. Mr and Mrs Smart are registered as proprietors as joint tenants. A joint tenant can in law mortgage his/her interest, the mortgagee can register the mortgage under the Land Transfer Act and the mortgage does not sever the joint tenancy, but the mortgagee's estate or interest will lapse if the mortgagor does not survive his/her co-owner. See Lyons v Lyons [1967] VR 169. If Equiticorp were to limit its claim to having a registrable memorandum of mortgage over Mrs Smart's estate as a joint tenant, as was a possibility suggested by counsel for Equiticorp, the present caveat would require replacement by one so limited.

However, the question whether or not the memorandum of mortgage is registrable is not I think the issue. The issue is whether Equiticorp has an arguable case that it has the kind of estate or interest in the land which s 137 entitles it to protect. It is my judgment that the memorandum of mortgage, whether or not registrable against the estate or interest of Mrs Smart

and though not registrable against the estate or interest of Mr Smart, arguably comes within the description "unregistered agreement of other instrument" which created an equitable mortgage sufficient to support a caveat against the estate of the two registered proprietors. See for example, Merbank Corporation Ltd v Landel Corporation of New Zealand Ltd (1979) 1 NZCPR 33.

Counsel for the Bank contended that an unregistrable interest cannot support a caveat and referred to the doubt expressed in I Hinde McMorland & Sim, Land Law paragraph 2.151. It has been my experience since first commencing practice that caveats have commonly properly been lodged based on beneficial interests in land created by unregistrable agreements or other instruments such as, for example, long term agreements for sale and purchase of land and informal lease agreements. A similar argument was put to and rejected by Gallen J in Superannuation Investments Limited v Camelot Licensed Steak House (Manners Street) Limited (unreported; 10 March 1988; M 695/87; Wellington). Gallen J said at 4-5

:-

"I think that Mr Turkington is right. It does not seem to me that the provisions of the Act contemplate only registrable interests or interests capable of being made registrable being protected in this way. This must follow from the provisions of s.137 itself which refer to an interest in a trust express or implied and it would not be possible to put such an interest on the register. The case of De Luxe Confectionery Limited v Waddington [1958] NZLR 273 was according to an article by Mr E C Adams which appeared in the New Zealand Law Journal 13 April



1958 p.106, one where the document made was not capable of registration presumably because it did not comply with the provisions relating to form contained in the Act. The specific question was not referred to in the De Luxe case although Mr Adams considers that the case is one where the agreement could have been protected by caveat and I think that this must follow when Gresson J referred to the parties being in the same position as if the lease had given a legal estate he must have had in mind that the document was not in that case a registrable document."

Counsel invited me not to follow or apply that dictum. On the contrary, it is my judgment that it expresses the legal position correctly. I have no hesitation in following and applying it to this case.

The next important issue raised by counsel for the Bank involves the construction of the two powers of attorney. It was contended that upon a proper construction of clauses 11.1 they did not empower Equiticorp to require Mr and Mrs Smart to supply a mortgage of land. It was conceded by both counsel that powers of attorney are strictly construed and are interpreted as giving only such authority as they confer expressly or by necessary implication. See, for example, Bowstead On Agency 15th Ed 98 and Bryant, Powis, & Bryant Ltd v La Banque Du Peuple [1893] AC 170, per Lord MacNaghten at 177. Counsel for the Bank submitted that the word "securities" in clauses 11.1 is ambiguous and not defined in either deed; because the powers in clauses 11.1 are broadly expressed and the word "securities" is ambiguous the Court should look at the deeds as a whole and in particular to the definitions supplied in the deeds of "Future Security" and "Other Security" :-

"Future security" means any share not being part of the present security which the Mortgagor and Mortgagee agree (whether orally or in writing) after the execution hereof is to be subject hereto including any such share the certificate in respect of which or other evidence to title of which is hereafter deposited by the Mortgagor with the Mortgagee and/or any such share which is included in a list hereafter deposited by the Mortgagor with the Mortgagee which share shall then be deemed to be part of the Mortgaged Shares.

"Other security" includes all forms of documentary intangibles including share warrants and options and such other documents as the Mortgagee may specify from time to time."

Counsel submitted that the extent to which the deeds define "security" in those two contexts does not contemplate or include mortgages of real property; those definitions contemplate securities over company shares, share warrants, share options and the like; the word "securities" in clauses 11.1 ought to be restrictively construed to be confined to the kind of securities in those two definitions and should not be construed to include mortgages of real property. That is an interesting argument. However if clauses 11.1 are taken at face value they seem to me to contemplate mortgages of real estate. It cannot be said that clauses 11.1 cannot possibly be so construed. The construction contended for by counsel for Equiticorp that the clauses do include mortgages of real estate is clearly arguable. A further submission in aid of construction raised by counsel for the Bank related to the effect of the Credit Contracts Act 1981 and the difficulty which Equiticorp faced in completing the disclosure memorandum annexed to the memorandum of mortgage but I do not consider that has any bearing upon the question of construction.

Finally, counsel for the Bank raised the question of conflict of interest between principal and agent and cited Andrews v Ramsay & Co [1903] 2 KB 636 per Alverstone LCJ at 637 who referred to the well known rule that in matters touching agency agents cannot act so as to bind their principals where they have an adverse interest in themselves. It was contended that in this case Equiticorp had acted in its own interests to protect its advances to the detriment of Mr and Mrs Smart who were not in fact notified that the memorandum of mortgage was to be signed on their behalf. Counsel further submitted that the powers in clauses 11.1 could not be used by Equiticorp to grant a mortgage to itself because Equiticorp could not be disinterested. Moreover, there was no disclosure to Mr and Mrs Smart that in executing the memorandum of mortgage Equiticorp was acting for both parties. The short answer to those submissions is that the clauses clearly contemplate the kind of situation which in fact arose and as long as the occasion arose for the proper use of the powers in clauses 11.1 and the agreed procedures were complied with it seems to me impossible to raise the arguments advanced by counsel. I have already dealt with the notification issue.

For the foregoing reasons I find that Equiticorp has shown that there is an arguable case as to the validity of its claim to have a caveatable interest under s.137 of the Land Transfer Act. It should maintain its caveat so that the validity of its claim can be

determined. The Court is not aware whether proceedings have been commenced by Equiticorp or by Mr and Mrs Smart or by the Bank to test the validity of Equiticorp's claim. There will be an order that caveat No B 867974.1 lodged against certificate of title 827/48 (Auckland Registry) do not lapse until further order of the Court with liberty to any party to apply. The reason for granting leave to apply is to encourage the appropriate party to commence the appropriate proceeding, if not already commenced, and to proceed diligently to prosecute it to a hearing. As from the date of delivery of this judgment this order replaces the further interim order made by me on 9 February 1989.

The applicants (Equiticorp) are entitled to costs against the second respondent (the Bank) which I fix at \$1,000 together with disbursements as fixed by the Registrar.



17<sup>TH</sup> February 1989

Solicitors for Applicants :

Rudd Watts & Stone  
AUCKLAND

Solicitors for Second  
Respondent:

Bell Gully Buddle Weir  
AUCKLAND

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