IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

M 487/96

BETWEEN TE MAHARANUI JACOB

Plaintiff

AND THE REGISTRAR LAND REGISTRAR FOR THE DISTRICT OF WELLINGTON

First Defendant

AND RAYONIER NEW ZEALAND LIMITED

Second Defendant

Hearing: 13 May 1997

Counsel: G D S Taylor & T G Tetitaha for Plaintiff
H Aikman for the Crown
C B Hall for Second Defendant

Judgment: 20 May 1997

---

JUDGMENT OF MASTER J.C.A. THOMSON

---

Solicitors:
Luckie Hain, Wellington
Crown Law Office, Wellington
Bell Gully, Wellington

The plaintiff has applied to sustain a caveat lodged on 13 March 1991. Her Majesty the Queen was originally the owner of the land but sold it to the second defendant and a transfer was registered on 12 March 1991. Clearly therefore the Crown has no longer any legal interest in the land. The second defendant has now apparently sold part of the land to a third party and wishes to complete settlement. The application to sustain the caveat has a hearing date of 4 June 1997. At a hearing on 29 April 1997 when the fixture was made there were still two interlocutory applications to be dealt with which had been filed by the plaintiff. The first application was to join the Crown as a party. The second sought an order for discovery against the second defendant. I set those down for hearing on 13 May 1997. When first called at 10.00am, Ms Tetitaha sought an adjournment as senior counsel was said not to be available. I adjourned the applications for hearing at 2.15pm. Mr Taylor then appeared and I heard argument. Mr Taylor sought to convince me that it was necessary that the Crown should be made a party for the purposes of the caveat hearing. That was opposed by the Crown. Ms Aikman rightly argued that at this stage the Crown had no interest in the application and no relief could be given against the Crown. The application for discovery against the second defendant sought disclosure of the contract the second defendant had entered into with the third party and documents relating to the second defendant's knowledge of the Maori custom of Wahi tapu before the sale of the land to it in 1991. That application was opposed by the second defendant. After argument I refused both applications and said I would issue this minute.

I sought from Mr Taylor any authority he was aware of supporting interlocutory applications being made and granted prior to a caveat hearing. He was not able to provide any. Clearly that is because the caveat procedure is a summary procedure so that the parties can get a speedy decision as to whether or not the caveator has an arguable case to sustain his caveat until a full hearing can be had.

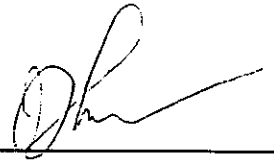
Like summary judgment, indeed more so, in my view interlocutory applications will rarely be appropriate or necessary where a caveat is contested and this is not such a case.

The ground for sustaining the cavet is stated in it to be:

> "By virtue of an Equitable interest in the land arising particularly be wahi tapu (which concept is recognised by the law in the Treaty of Waitangi (State Owned Enterprises) Act 1988 and has been accepted by the Crown in respect of other Crown land) and from the agreement between the Crown and the undersigned to consult to determine its extent in relation to the above described land (which agreement has been recognised in a form of agreement between the Crown and Rayonier New Zealand Limited)."

In my view the plaintiff arguably will have to satisfy the Court that the custom of wahi tapu is in law a sufficient interest to sustain a caveat. The document relied on to support the claim that wahi tapu affects the land the subject of this caveat is referred to in the caveat itself and is an exhibit to the plaintiff's affidavit.

In my view therefore no other documentation should be necessary to determine whether or not the caveat should be sustained until a substantive hearing be had. I therefore refused both applications.



Master J.C.A. Thomson