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**LOW
PRIORITY**

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M 2148/98

WZLR

UNDER the Land Transfer Act 1952

IN THE MATTER of an application pursuant to
s 145 of the said Act, that a caveat
not lapse

BETWEEN **FRUS LIMITED (in liquidation)**
formerly known as **Harrison
Homes Limited**

Plaintiff

AND **RIVIERA PROPERTIES
LIMITED**

Defendant

Hearing: 17 December 1998

Counsel: SJ Christmas for plaintiff
KH Datt for defendant

Judgment: 23 December 1998

JUDGMENT OF MASTER FAIRE

Solicitors:
McVeagh Fleming, DX BX 10647 for plaintiff
Tetley-Jones Thom Sexton, DX CP 20001 for defendant

- [1] The plaintiff applies for an order that a caveat not lapse.
- [2] Mr Datt, for the defendant, raised a preliminary point. He submitted that the applicant had not within 14 days after receipt of notice from the District Land Registrar given notice to the District Land Registrar that application for an order that a caveat not lapse has been made to the High Court. In support of his submissions he relied on affidavit evidence produced by the plaintiff. The first is an affidavit by BE Williams. He says

On or about 19 November 1998 the plaintiff was served with a notice from the District Land Registrar ...

- [3] In an affidavit filed by Mr DB Thomas, solicitor, he says that

Notice was received by my office by postal delivery to the street address for my office no sooner than Friday, 20 November 1998 or Monday, 23 November 1998 which would be consistent with my experience of the Land Transfer Office practice.

- [4] He next referred me to the affidavit of JT Varney which deposed that the application was filed and served on the District Land Registrar on 10 December 1998.
- [5] Mr Datt concluded that a period in excess of 14 days had expired by the time the application was both filed in the High Court and served on the District Land Registrar.
- [6] Miss Christmas submitted that the position had arisen because of advice received from the District Land Registrar's office to the effect that the District Land Registrar would not act on the notice thereby physically lapsing the caveat until 11 December 1998. That action is apparently taken because no doubt the view was adopted that where postal advice is given a period of 5 days should be allowed. Five days in normal circumstances would be expected to be the time taken for postal dispatches to be received. In essence, the District Land Registrar relies upon *Wilson v Moir* [1916] NZLR 480, 482 where Sim J, referring to the equivalent section in the Land Transfer Act 1915 said that

A notice which is forwarded through the Post Office ought not to be treated as having been served until in the ordinary course of post it would reach the postal town to which it was directed and be available for delivery to the person to whom it was addressed.

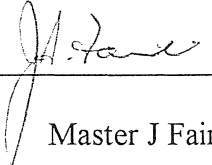
[7] The above, however, does not address the specific issued raised by this case. In short, does a caveat lapse by a failure to notify without any further action by the District Land Registrar? Section 145 of the Land Transfer Act 1952 says that a caveat shall

be deemed to have lapsed as to that land ... unless notice is, within the said 14 days, given to the Registrar.

[8] Notice was not given within the required 14 day period. It follows from the language used that the caveat is deemed to have lapsed, ie has lapsed. No further action is required.

[9] Accordingly, I reach the view that the plaintiff has not complied with the first limb of s 145 of the Land Transfer Act. The result is that the application must be dismissed.

[10] I reserve costs.


Master J Faire