

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV 2009-404-001464

UNDER s. 145 Land Transfer Act 1952
IN THE MATTER OF of Caveat No. 7956088.1
BETWEEN KEA CONSULTANTS LIMITED
Applicant
AND HERMES DEVELOPMENTS LIMITED
(IN LIQUIDATION)
Respondent

Hearing: 3 April 2009

Appearances: R O Parmenter for the Applicant
No appearances for the Respondent

Judgment: 3 April 2009

ORAL JUDGMENT OF ASSOCIATE JUDGE CHRISTIANSEN

Counsel:
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Solicitors:
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[1] The applicant applies to sustain its caveat over the respondent's land. The application is opposed. The caveat was lodged pursuant to an agreement to mortgage.

[2] At the time the Registrar's lapse notice issued it appears the respondent was already in liquidation. That fact requires the Court to consider whether by its caveat the applicant seeks to obtain an advantage over other creditors; whether it may cause the respondent company to waste its asset; whether by it, the applicant seeks to prove its claim; and whether the caveat is clearly unsustainable.

[3] In the Court's view and upon the papers before it, in none of the aforementioned respects can it be considered there has been an abuse of process.

[4] The evidence is there is an arguable case the caveat protects a registerable interest.

[5] Accordingly, **I direct:**

- a) There is an order permitting, pursuant to s248(1)(c)(i) and/or (ii) Companies Act 1993, to commence this proceeding.
- b) Until further order of the Court caveat 7956088.1 shall not lapse.
- c) The respondent is to pay the costs of these applications on a category 2(B) basis.

Associate Judge Christiansen