

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

**CIV 2009-419-001381**

IN THE MATTER OF section 145A Land Transfer Act 1952

BETWEEN TARA DAVIDSON  
Applicant

AND THOMAS JOSEPH BROWN  
Respondent

**FAM 2009-075-000023**

IN THE MATTER OF the Property (Relationships) Act 1976

BETWEEN TARA DAVIDSON  
Applicant

AND THOMAS JOSEPH BROWN  
Respondent

Hearing: 14 December 2009

Counsel: RP Sutton for applicant in both proceedings

Appearance: TJ Brown, respondent in both proceedings, in person

Judgment: 16 December 2009 at 4:15 pm

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**JUDGMENT OF ASSOCIATE JUDGE FAIRE  
[on application that caveat not lapse]**

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Solicitors: Jane Hunter, PO Box 77 Thames for applicant

And To: TJ Brown, 680 Thames Coast Road, Ruamahunga Bay, respondent

## The caveat application

[1] The applicant, in her capacity as administrator of the estate of the late Alison Davidson by virtue of a grant of probate sealed on 22 August 2007, applies for an order that:

the caveat 7440389.1 lodged by her against all that parcel of land

being an estate in fee simple containing 44.7127 hectares more or less being Section 58 Block XI Hastings Survey District and Section 14 and Part Section 5 Block XIV Hastings Survey District and being all the land comprised and described in Certificate of Title Volume 12D Folio 101 (South Auckland Land Registry) (680 Thames Coast Road, Ruamahunga Bay, Thames Coast)

not lapse.

[2] The caveat describes the interest claimed as follows:

An interest as executrix in the Estate of ALISON DAVIDSON who died on the 19<sup>th</sup> day of April 2007 on the grounds that the present registered proprietors shown, namely THOMAS JOSEPH BROWN and ALISON DAVIDSON should be shown as tenants in common in equal shares and not as a joint tenancy and I am entitled by transmission ~~to~~ of the share therein of ALISON DAVIDSON as executrix in her Estate for the protection of the beneficiaries of the Estate and to transfer that interest in the estate to those beneficiaries.

[3] Mr Brown, who acts for himself, opposes the order sought. He pleads the basis for that opposition as follows:

THAT Tara Davidson is explicitly not the sole Executrix of the ESTATE OF ALISON DAVIDSON as this exact situation is not stated in ALISON DAVIDSON'S Will and Tara Davidson is therefore neither the proper party to have filed the Caveat solely nor to bring this action attempting to sustain it; and

THAT the property subject to the Caveat is owned by Thomas Joseph Brown subject to a trust deed dated March 22, 2001 generally known as the Sleeping Fox Trust clearly demonstrating no direct interest by the ESTATE in the property; and

THAT the Applicant has held multiple significant changes of position regarding the Sleeping Fox Trust: by claiming "not "trust" to justify lodging that Caveat; by representing that the trust was an "organisation" in which the deceased "held equal rights of ownership and benefit" to justify misappropriation and concealment of trust-owned valuable farm animals; and, that there is a "trust" in order to justify making a financial claim against the trust; therefore the filing of the Caveat was done in bad faith; and

THAT the matter of Applicant's claim under the Property (Relationships) Act 1976 CIV 2009-075-000023 before the Family Court at Thames, this matter has now been transferred (verbally in Court on 4 November 2009) to the High Court with verbal arguments by Counsel for Tara Davidson against transfer on the claim that the Caveat is a separate issue from that matter; and

THAT the Caveat is therefore a legal nullity and must lapse.

[4] The application followed a notice issued on behalf of the Registrar of Lands, which is dated 22 September 2009 and which advised that application had been made by Mr TJ Brown to lapse the caveat. That has the effect of commencing the procedure under s 145A of the Land Transfer Act 1952.

[5] The application was first called before me on 19 October 2009. At that time I made an order to protect the immediate position to effect that the caveat not lapse pending further order of the Court. I gave directions for the filing and service of a notice of opposition and affidavits and I adjourned the application to 16 November 2009.

[6] On 16 November 2009 and after considering the notice of opposition which had been filed, and having been advised that an order had been made in the Family Court at Thames for the transfer of this proceeding on 4 November 2009, I adjourned the proceeding to 14 December 2009 so that the Family Court file would be available for consideration by the Court.

### **Notice of interest against title**

[7] Mr Brown advised me that a further document had been registered against the subject title. No evidence of this was presented. Mr Sutton was not able to confirm the position. Mr Brown said that the applicant had, indeed, lodged a notice pursuant to s 42 of the Property (Relationships) Act 1976 with the District Land Registrar. The importance of such a notice of interest is that, if it does in fact exist Mr Brown's current attempt to remove the applicant's caveat is thwarted by such registration. Whether or not that subsequent registration is justified has not yet been the subject of any specific application before the Court.

## **The Property (Relationships) Act 1976 application**

[8] The Court file, in relation to this application, was made available to me for the first time on 14 December 2009. It was necessary to stand the proceeding down while the file was located and an opportunity taken to consider it.

[9] The file discloses that on 30 January 2009 the applicant filed an application in the Family Court at Thames, a division of the District Court, seeking orders under the Property (Relationships) Act 1976.

[10] The orders sought in that application are:

- a) An order pursuant to s 88(2) of the Property (Relationships) Act 1976 granting leave to the applicant as personal representative of the late Alison Davidson to apply for an order under s 25(1)(a) of that Act;
- b) An order pursuant to ss 89 and 90 of the Property (Relationships) Act 1976 extending the time for the commencement of the proceeding;
- c) An order pursuant to s 25 of the Property (Relationships) Act 1976 determining the respective shares of Mr Brown and the late Mrs Davidson in their relationship property;
- d) An order pursuant to s 37A of the Property (Relationships) Act 1976 appointing a lawyer to represent Safyra Davidson Brown Brown so that appropriate consideration can be given to orders to protect Safyra Davidson Brown Brown's position pursuant to s 26 of the Property (Relationships) Act 1976; and
- e) An order pursuant to s 33 of the Property (Relationships) Act 1976.

## **The order transferring the proceedings commenced in the Family Court to the High Court**

[11] In a minute dated 10 June 2009, District Court Judge DR Brown identified two specific issues. They were respectively an application for leave to bring the Property (Relationships) Act proceedings and an application to appoint a lawyer to represent a child of the late Mrs Davidson and Mr Brown in those proceedings.

[12] For the reasons set out in his minute of 10 June 2009 Judge Brown directed that a one-hour fixture be arranged to consider those matters.

[13] Judge Brown heard from counsel and Mr Brown on 4 November 2009 and delivered an oral judgment. He concluded in that judgment that:

- a) Leave should be granted under s 88(2) (paragraph 8); and
- b) the appropriate course for him to follow was one authorised by s 22 of the Property (Relationships) Act 1976, namely, the transfer of the proceeding to the High Court.

[14] I need not review the matters that he took in consideration, save for one matter. That matter is the position adopted by Mr Brown in relation to the grant of probate to Ms Davidson and his challenge of that order. Understandably he noted that if that were to be pursued it was a matter reserved entirely to the High Court's jurisdiction.

## **The position of the current proceedings**

[15] In summary, the current proceedings raise three discrete inquiries, namely:

- a) Whether the caveat, and the notice of claim for that matter, should be removed ahead of determination of the Property (Relationships) Act proceedings;

- b) Whether a lawyer should be appointed to represent Safyra Davidson Brown in the Property (Relationships) Act proceedings; and
- c) Resolution of those Property (Relationships) Act proceedings.

[16] I discussed with Mr Brown the position of the caveat proceedings. He accepted the proposition I placed to him that simply dealing with the current caveat application did not advance matters because of the existence of the notice of interest pursuant to s 42 of the Property (Relationships) Act 1976. In addition, from a pragmatic point of view, resolution of those proceedings would simply delay the ultimate determination of the Property (Relationships) Act proceedings. When those matters are brought to bear it is appropriate that, at least at this stage, the application that the caveat not lapse be adjourned to be reviewed from time to time as the Property (Relationships) Act proceedings are case managed either to resolution or to trial. That is the course that I shall adopt and is the reason for the order that I make at the conclusion of this judgment in relation to that proceeding.

[17] Whether a lawyer should be appointed to represent Safyra Davidson Brown pursuant to s 37A of the Property (Relationships) Act 1976 requires determination prior to the substantive proceeding for obvious reasons. I cannot, at this stage, determine whether a lawyer should be appointed pursuant to s 37A of the Property (Relationships) Act 1976 because my jurisdiction does not extend to the making of substantive orders under that Act. I can see the potential interest of Safyra Davidson Brown in respect of any Property (Relationships) Act proceedings brought on behalf of her mother's estate because it has the potential to increase the size of that estate and open up the possibility of a Family Protection Act 1955 claim being made on Safyra Davidson Brown's behalf against her mother's estate. I make that observation in no way intending, however, to pre-determine the outcome of the application to appoint a lawyer to represent Safyra Davidson Brown but simply to observe that this is an issue that cannot be dismissed lightly.

[18] For that reason, and in reliance on r 10.15 of the High Court Rules, I am ordering that that part of the application seeking an order that a lawyer be appointed to represent Safyra Davidson Brown be heard at 10:00 am on 5 February 2010 before

a Judge of this Court. One hour should be sufficient time to dispose of that part of the application. The applicant's counsel will, in the orders that I make, be directed to file and serve, no later than 22 January 2010, a memorandum which:

- a) Contains the consent of a lawyer who is appropriately qualified and suitable to accept appointment pursuant to s 37A; and
- b) Sets out submissions which, in a comprehensive way, contain the justification for the making of such an order in this proceeding. Mr Brown shall file and serve, no later than 3 February 2010, his submissions in answer to the submissions contained in the applicant's solicitor's memorandum.

#### **Directions relating to the substantive property proceedings**

[19] As a result of the order transferring the proceedings to the High Court, the proceedings continue in this Court as if they were commenced in this Court by virtue of s 22(5) of the Property (Relationships) Act 1976.

[20] There is already filed the application which sets out the orders sought with reference to the legislative provisions relied upon. That part of the application referred to in [10]a) of this judgment has already been dealt with by District Court Judge Brown. Mr Brown has filed and served a document backed *Statement of defence*. It gives a broad basis of the opposition to the orders sought. Affidavits have been filed in support and opposition. I apprehend that further affidavits will be required. I anticipate that when all merit affidavits are filed in support, opposition and reply to the orders sought a statement of issues which require determination at trial will be able to be prepared.

[21] By the combined operation of rr 18.2 and 18.15 of the High Court Rules the evidence to be given on the substantive application is, unless a Judge otherwise directs, to be either:

- a) By means of an agreed statement of facts in accordance with r 9.57; or

b) By affidavits in accordance with rr 9.72 to 9.89.

I therefore take the above matters into account, for the purposes of being satisfied that there is an adequate pleading and a clear statement as to how evidence is to be adduced.

[22] In the process of working through appropriate directions I made arrangements so that the applicant's solicitor on the record, Ms Hunter, could join the hearing. That proved invaluable because it identified two interlocutory areas that need to be addressed. The first relates to discovery. The reason that that is important in this case is that there are both title documents and financial documents that need to be searched and possibly used as a foundation to trace contributions to items of property that are in dispute. In addition, Ms Hunter identified a need to require answers to a short number of interrogatories which are yet to be formally drawn but which are also required, she advises, so that there is a clear understanding of how property, which is in the potential net to be covered by this application, was either acquired, financed and possibly subsequently sold. Both Mr Brown and Ms Hunter were agreed on the timetable directions for the filing of affidavits of documents and notices to interrogate.

[23] Having considered what is required to prepare this case for its next step I am satisfied that by mid-May preparation of the case will be substantially advanced and it is for that reason that, in the orders that are made, a conference is directed which identifies an agenda of matters to be discussed.

### **Jurisdiction**

[24] For the avoidance of doubt I record the basis upon which I have exercised jurisdiction in respect of the matters covered in this judgment. The orders made in respect of the caveat application are made in reliance on s 26I(1)(c) of the Judicature Act 1908 and were made on the basis that I was sitting in Court. The remaining orders are made in the exercise of my Chambers jurisdiction pursuant to r 2.1 of the High Court Rules and were made in chambers.



## **Orders and directions**

[25] Having regard to my examination of the file and having heard from both Mr Sutton and Ms Hunter on behalf of the applicant and Mr Brown I make the following orders:

- a) The application for an order that the caveat not lapse, which currently has the benefit of an interim order, is adjourned to a case management conference to be held at 10:50 am on 18 May 2010 for a mention;
- b) That part of the application for various orders under the Property (Relationships) Act 1976 that seeks an order pursuant to s 37A of the Property (Relationships) Act 1976 for the appointment of a lawyer to represent Safyra Davidson Brown is adjourned for a one-hour fixture to 10:00 am on 5 February 2010 before a Judge of this Court. The applicant shall file and serve a memorandum as set out in this judgment by 22 January 2010. Mr Brown, the respondent, shall file and serve a memorandum in answer thereto covering the matters referred in this judgment by 3 February 2010;
- c) The applicant and the respondent shall file and serve, by 12 March 2010, affidavits of documents in accordance with the High Court Rules and which specifically and list all documents relating to the acquisition, retention, disposal and financing of assets which are, or have been, owned by the deceased and respondent during the course of their marriage from 8 February 1986;
- d) Any notice seeking answers to interrogatories shall be served no later than 9 April 2010. Answers in accordance with the High Court Rules shall be filed and served by 7 May 2010;
- e) A case management conference presided over by an Associate Judge shall be held in the Hamilton High Court by telephone with counsel

and with Mr Brown, if he has not appointed counsel, at 10:50 am on 18 May 2010. The following matters will be discussed at that time:

- i) Fixing a timetable for the filing and service of final merit affidavits in support, opposition and reply;
- ii) Fixing a time for the exchange of memoranda identifying the precise issues which require resolution at trial in relation to the substantive property application;
- iii) disposal of, or setting fixture time for, the conclusion of any outstanding interlocutory matter;
- iv) establishing the trial time required and fixing the trial date and making any specific trial directions that are required; and
- v) discussing the appropriate forum for the discussion of the settlement of this case, whether it be by way of mediation or a Judicial settlement conference and fixing appropriate directions in relation to same.

Memoranda on these matters shall be filed and served two working days before the conference.

### **Costs**

[26] This matter was called in the caveat list which was initially scheduled for 12-noon but because of industrial action was not called until 1:15 pm on 14 December 2009. The matter was stood down because of other Court business to late in the afternoon on 14 December 2009 when the various matters that are covered in this judgment were discussed with counsel and Mr Brown and which occupied approximately 1½ hours. I record this position so that it is appropriately taken into account when costs are ultimately determined. Costs are reserved in respect of the

matters discussed in this judgment.

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JA Faire  
Associate Judge