IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 125

Originating Application No 203 of 2023

In the matter of Section 127(4) of
the Land Titles Act

Between

Nimisha Pandey

… *Claimant*

And

Divya Bothra

… *Defendant*

GROUNDS OF DECISION

[Land — Caveats — Remedies of caveatee]

TABLE OF CONTENTS

Nimisha Pandey
v
Divya Bothra

[2023] SGHC 125

General Division of the High Court — Originating Application No 203 of 2023
Goh Yihan JC
30 March 2023

4 May 2023

Goh Yihan JC:

1 The claimant, Ms Nimisha Pandey, was the former owner of a property at [address redacted] (the "Property"). On 14 February 2023, the claimant lodged a caveat against the Property ("the Caveat"). She did this based on an interest in the Property as an unpaid vendor. On 23 February 2023, the defendant, Ms Divya Bothra ("Ms Bothra"), filed an application to cancel the Caveat on the basis that it is vexatious (the "Cancellation Application"). This was done pursuant to s 127(2) of the Land Titles Act 1993 (2020 Rev Ed) ("LTA"). On 3 March 2023, the claimant then filed HC/OC 138/2023 ("OC 138"), together with her husband, Mr Deepak Mishra ("Mr Mishra"), to claim, among others, the balance of the purchase price for the Property (the "Balance Sum").

2 The claimant filed the present application pursuant to s 127(4) of the LTA ("s 127(4)") for two alternative reliefs: (a) an order that the Caveat be maintained until the resolution of OC 138 and any appeal therefrom; or (b) an order that the Balance Sum be paid into court and held pending the resolution of OC 138 and any appeal therefrom.

3 I heard the parties on an expedited basis because, pursuant to s 127(2) of the LTA, the Caveat will be cancelled by 31 March 2023 unless I made an order to the contrary. I allowed prayer (b) of the claimant's application. I now provide the full grounds of my decision as the case presented an opportunity to clarify the interaction and application of ss 127(1), 127(2), and 127(4) of the LTA.

Background facts

4 The relevant background facts centre around three documents: (a) a Sale and Purchase Agreement (the "Agreement") in respect of the Property; (b) a Power of Attorney (the "POA"); and (c) the Caveat. In short, the Agreement and the POA form the basis for the claimant's claim against the defendant in OC 138, which in turn explains the context for which the Caveat was lodged.

5 I turn first to the Agreement. On or about 12 October 2015, the claimant and the defendant entered into the Agreement. The defendant acted through her trustee, Mr Rajesh Bothra ("Mr Bothra"), who is her father. This was because the defendant was not yet at the age of majority at that time. Pursuant to the Agreement, the claimant agreed to sell the Property to the defendant for the total price of $4m (the "Purchase Price"), with an additional stamp duty of $160,000. The Agreement was duly executed by the claimant and Mr Bothra. Clause 3 of

the Agreement provided that the sale was to be completed on 31 March 2016 or any such mutually agreed date between the parties.

6 On 2 July 2016, the title to the Property was eventually transferred to Ms Bothra but without the Purchase Price being paid. The claimant explained that, notwithstanding this transfer, she expected to be paid the Purchase Price in due course. She had allowed the transfer to take place before being paid because of the close relationship between the parties at the time. The claimant's position during the hearing was that she has yet to receive full payment of the Purchase Price. This formed the basis for her lodgement of the Caveat as an unpaid vendor.

7 I turn next to the POA. Subsequently, through a POA dated 8 March 2019, the defendant appointed Mr Mishra as her Attorney in Singapore. The POA specified, among others, that Mr Mishra was appointed as the defendant's true and lawful Attorney to act in, conduct, and manage all her affairs, including but not limited to the Property. More specifically, pursuant to the POA, the defendant conferred broad powers and authority on Mr Mishra to deal with, lease, market, and/or sell the Property. The defendant also empowered Mr Mishra to see to the upkeep and maintenance of the Property, and to do all things in relation to it, for which he would be indemnified.

8 Pursuant to the powers conferred on him in the POA, Mr Mishra managed the Property on behalf of the defendant from 8 March 2019 to 20 January 2023. The latter date was when the defendant revoked the POA. During the period that Mr Mishra was managing the Property, he and his nominees incurred various expenses in relation to the Property. Further, from around 2021 onwards, Mr Mishra also marketed the Property for sale. Eventually, he concluded an arms-length sale of the Property. Pursuant to this

sale, an Option to Purchase the Property was executed on 8 July 2022. The Property was to be sold for $7.4m, and the completion date was to be 3 March 2023.

9 As I have mentioned above, the Agreement and the POA provided the background against which the claimant and Mr Mishra commenced OC 138 against the defendant, in which the claimant claims the Balance Sum of $626,422, plus interest and costs pursuant to the Agreement. Additionally, in that action, Mr Mishra also claims $444,311, plus interests and costs pursuant to the POA, which he says is the total sum for which he is entitled to be indemnified by the defendant.

10 In the period leading to the commencement of OC 138, the claimant lodged the Caveat on 14 February 2023 in respect of her claim for the Balance Sum. More specifically, she did this because she suspected that the defendant did not intend to honour her obligation to pay the Balance Sum. Further, because the defendant and her family are presently outside of Singapore, the claimant was concerned that the proceeds from the latest sale of the Property would be moved out of the jurisdiction. This concern was especially pertinent since Mr Bothra had been declared a bankrupt.

11 After the Caveat was lodged, the parties' solicitors exchanged correspondence in relation to their dispute. On 23 February 2023, the defendant filed the Cancellation Application. By a notice pursuant to s 127(2) of the LTA dated 27 February 2023 ("the Notice"), the Registrar of Titles ("the Registrar") notified the claimant that the Caveat will be cancelled on 31 March 2023 unless an order of court to the contrary was served on the Registrar before then. The claimant therefore brought the present application in her own name on an expedited basis for either the Caveat to be maintained, or for the Balance Sum

to be paid into court. Because only the claimant (and not Mr Mishra) was involved in the present case, the POA was not directly relevant to the claimant's justification of the Caveat.

The relevant issues

12 In light of the parties' respective submissions, which I will summarise at the appropriate junctures below, the present application raised the following issues:

(a) First, should the Caveat be maintained?

(b) Second, what is the appropriate order that I should make in the present case?

What is the proper interaction between ss 127(1), 127(2), and 127(4) of the LTA?

13 Before I turn to address the relevant issues, I first address the proper interaction between ss 127(1), 127(2), and 127(4) of the LTA. For convenience, I will henceforth refer to these sections mostly without specifying that they are from the LTA. In my view, it is important to be clear about the ambit of these sections especially because s 127(2) confers an advantage on the caveatee that is not otherwise found in s 127(1). As such, it is crucial to clarify the ambit for invoking s 127(2).

The applicable sections

14 I turn first to the applicable sections in the LTA, and the history behind how they came to be. In the current version of the LTA, ss 127(1), 127(2), and 127(4) provide as follows:

> **Remedies of caveatee**
>
> **127.**—(1) At any time after the lodgment of a caveat, the caveatee may summon the caveator to attend before the court to show cause why the caveat should not be withdrawn or otherwise removed, and the court may make such order, whether in the absence of the caveator or otherwise, as seems just.
>
> (2) A caveatee who contends that a caveat has been lodged, or is being allowed to remain, vexatiously or frivolously or not in good faith, may lodge with the Registrar an application to that effect, whereupon the Registrar must give notice to the caveator that he or she intends to cancel the notification of the caveat, and the Registrar must cancel it unless within 30 days from the date of the service of the notice an order by the court to the contrary is served on the Registrar.
>
> …
>
> (4) A caveator who has been given notice under subsection (2) may, at any time during the currency of the notice, apply to the court for relief, and the court may make such order in the premises as seems just.

15 Significantly, s 127(2) was amended by s 57 of the Land Titles (Amendment) Act 2014 (Act 8 of 2014) ("the 2014 Amendment"). Prior to the 2014 Amendment, s 127(2) provided as follows:

> (2) A caveatee who contends that a caveat has been lodged, or is being allowed to remain, vexatiously or frivolously or not in good faith may lodge with the Registrar a statutory declaration to that effect, whereupon the Registrar shall give notice to the caveator that he intends to cancel the notification of the caveat, and he shall cancel it unless within 30 days from the date of the service of the notice —
>
> > (*a*) an order by the court to the contrary is served on the Registrar; or
> >
> > (*b*) the caveator furnishes to the Registrar satisfactory evidence to show that the cancellation should be withheld or deferred.

Although ss 127(1) and 127(4) were not affected by the 2014 Amendment, I should mention for completeness that s 127(1) was amended by s 147(*c*) of the Courts (Civil and Criminal Justice) Reform Act 2021 (Act 25 of 2021). This

replaced the words "either *ex parte*" in the original s 127(1) with the words "whether in the absence of the caveator". This did not change the substance of s 127(1) and was done to make the language in the section more accessible.

16 The then Senior Minister of State for Law, Ms Indranee Rajah, had explained the legislative impetus behind the 2014 Amendment. At that time, the framework in the Land Titles Act placed the onus of removing a caveat on the property owner. In this regard, Ms Rajah explained that the Ministry of Law had received feedback that this practice was unfair to property owners, as they had to "bear the burden of removing frivolous or vexatious caveats". As such, she stated that the amendment to s 127(2) "puts the onus on the caveator to justify his claim of an interest in the property", which is consistent with the normal burden of proof that he who asserts must prove his assertion (see *Singapore Parliamentary Debates*, *Official Report* (17 February 2014) vol 91 ("*Parliamentary Debates*")).

17 Therefore, and as Professor Kelvin Low ("Professor Low") has explained eloquently, under the framework in the Land Titles Act prior to the 2014 Amendment, the onus of removing a frivolous or vexatious caveat was on the caveatee. Under that framework, if a caveatee took the view that a caveat was frivolous or vexatious, then he would, pursuant to s 127(2), file a statutory declaration with the Registrar to that effect. If the caveator could then *either* obtain a court order for the caveat to be retained (s 127(2)(*a*)) *or* produce satisfactory evidence to the Registrar to show that the cancellation should be withheld or deferred (s 127(2)(*b*)) *or*, the Registrar would allow the caveat to remain. Professor Low explains that the caveator would usually choose the latter, easier course, and produce documentary evidence to the Registrar which on its face justified the claim of an interest in the property. The caveatee would then have to obtain a court order to remove the caveat under s 127(1). By

removing this easier course of action, the 2014 Amendment left to the caveator the only option of obtaining the court order to allow the caveat to remain (see Kelvin Low, "Legislation and Case Law Developments: Damages, Easements, Caveats, Trusts and Proprietary Estoppel" (2014) Prop L Rev 44 at 47 ("*Kelvin Low*")).

The proper ambit of ss 127(1) and 127(2), read with s 127(4) of the LTA

18 In my view, this background as to how s 127(2) came to be in its present form informs how we should now apply it in relation to ss 127(1) and 127(4). I begin with three preliminary points.

The similarities and differences between ss 127(1) and 127(2) of the LTA

19 First, regardless of whether a caveatee relies on s 127(1) or s 127(2), the burden is on the caveator to show cause why the caveat should be maintained. This is expressly provided for in s 127(1), pursuant to which the caveator must attend before the court to show cause why the caveat should be maintained. This is also implicitly provided for in s 127(2) read with s 127(4). This is because pursuant to s 127(2), the caveator must seek a court order to prevent the caveat from being removed at the end of 30 days from the date which the requisite notice was served by the Registrar. In this connection, s 127(4) provides that a caveator who has been given notice under s 127(2) may apply to the court for relief. This therefore provides the caveator with the right to attend before the court, which is necessary if he or she wishes to seek an order that the caveat be maintained.

20 Second, regardless of whether s 127(1) or s 127(2) is invoked, the court remains the only arbiter in any dispute as to whether the caveat should be maintained. This was not always true. Indeed, prior to the 2014 Amendment,

s 127(2)(*b*) empowered the Registrar to decide to withdraw or extend the notice of the intended cancellation if he was furnished with satisfactory evidence that the cancellation should be withheld or deferred. However, since the Registrar has been removed from any role in s 127(2) following the 2014 Amendment, it follows that the court is now the only arbiter in the event of any dispute.

21 Third, putting aside the similarities I have alluded to above, there remain two discernible differences between s 127(1) and s 127(2). The first difference is that s 127(2) expressly provides the grounds as to why a caveat should not be maintained. These are that the caveat had been lodged either (a) vexatiously; (b) frivolously; or (c) not in good faith. In contrast, s 127(1) does not provide such grounds but is framed in an open-ended manner. The second difference is that s 127(2) prescribes a time period by which the caveator must obtain a court order to maintain the caveat concerned, failing which the caveat would automatically be cancelled. This confers a considerable advantage on the caveatee. In contrast, s 127(1) does not provide for such a time period.

The proper application of ss 127(1) and 127(2), read with s 127(4) of the LTA

22 With these three preliminary points in mind, I come now to the proper application of ss 127(1) and 127(2), read with s 127(4). I agree with Professor Low that the 2014 Amendment has the potential to confuse the relationship between ss 127(1) and 127(2) (see *Kelvin Low* at 47). However, in interpreting s 127 in the light of the 2014 Amendment, I must assume that Parliament does not legislate in vain, nor does it legislate tautologously (see the Court of Appeal decision of *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [38]). As such, I have to interpret ss 127(1) and 127(2), read with s 127(4), in a manner that gives significance to every word in the sections (see

further the Court of Appeal decision of *JD Ltd v Comptroller of Income Tax* [2006] 1 SLR(R) 484 at [43]).

23 In my view, the current framework within s 127 is premised on two situations in which a dissatisfied caveatee may ask for a caveat to be removed, unified by the general proposition that the burden of ultimately justifying the caveat lies on the caveator. These two situations are: (a) specifically, where a caveat was lodged vexatiously, frivolously, or not in good faith ("Situation A"); and (b) generally, where a caveat should be removed for any other reason ("Situation B") (see also *Kelvin Low* at 47: "Caveatees who were dissatisfied with caveats with reasons other than those enumerated under s 127(2) were expected to resort to s 127(1)"). With this in mind, I come to the interpretation of s 127(2), which concerns Situation A.

(1) Situation A: s 127(2) read with s 127(4) of the LTA

24 In my view, Situation A is covered by s 127(2) read with s 127(4). Section 127(4) provides the caveator with the avenue to apply to court to obtain an order for the caveat to remain. It is clear from the relevant parliamentary debates that the 2014 Amendment was targeted at Situation A (see *Parliamentary Debates*). Therefore, s 127(2) was amended to place a greater burden on the caveator to justify the caveat by requiring the caveator to obtain a court order that the caveat should not be removed. This was in addition to the stipulation in s 127(2) that unless the caveat could be justified within a 30-day period from the time the notice was served on the caveator, it would be removed. In my view, Situation A confers this advantage on the caveatee because of the potentially egregious reasons behind why the caveator lodged the caveat in the first place. Certainly, if the caveator lodged the caveat vexatiously, frivolously,

or not in good faith in the first place, then it stands to reason that the caveat should be removed as expeditiously and as efficiently as possible.

25 Given that s 127(2) is meant to provide an expeditious and efficient way for the caveatee to contest that a caveat was lodged vexatiously, frivolously, or not in good faith, it is understandable why the caveatee need only lodge with the Registrar a simple application to that effect. It is unclear from s 127(2) whether the caveatee needs to provide at least some reason for his contention that the caveat was lodged vexatiously, frivolously, or not in good faith. However, it appears that Form 100, which is used by the Singapore Land Authority for an application to cancel a vexatious caveat, simply requires the caveatee to *assert*, without more, that the caveat was lodged vexatiously, frivolously, or not in good faith. Parenthetically, I would suggest for the authorities to consider whether it is preferable to require the caveatee to explain, even if briefly, why he or she has asserted that the caveat was lodged vexatiously, frivolously, or not in good faith. This would not only enable the caveator to understand the serious allegation that has been made against him or her, but also stamp out any frivolous complaints made by a caveatee. This is also in line with the principle that he or she who asserts must prove or at least particularise his or her assertion, which, in this case, is that a caveat has been lodged vexatiously, frivolously, or not in good faith. Indeed, in the relatively short space of 30 days after the date of service of the Registrar's notice, within which the caveator must justify the caveat, it would make sense for the caveator to know the case that he or she has to meet.

26 Once the caveatee has made the required application with the Registrar, the burden is on the caveator to, in the words of Ms Indranee Rajah, "justify his claim of an interest in the property" (see *Parliamentary Debates*). As to what the caveator must do exactly, I take as the starting point the Court of Appeal's

(albeit *obiter*) guidance in *Ho Soo Fong and another v Standard Chartered Bank* [2007] 2 SLR(R) 181 on the meaning of "vexatious" in the context of s 127(2). Chan Sek Keong CJ had said this at [36]:

> Finally, the word "vexatiously" would imply an improper motive. In our view, "vexatiously" means having the objective of wishing to annoy or not intending to lead to a serious result: see *Goh Koon Suan v Heng Gek Kiau* [1990] 2 SLR(R) 705. Further, s 127(2) of the LTA allows a caveatee who contends that a caveat has been lodged or is being allowed to remain, *inter alia*, vexatiously, to lodge with the Registrar of Titles a statutory declaration to that effect. This is a simpler method of removing the caveat than by court order. As Baalman suggested in *The Singapore Torrens System* at p 208, referring to the predecessor provision of s 127(2), this remedy is directed primarily against eccentric individuals whose claim to land is only imaginary. *Thus, the Registrar of Titles should not cancel a caveat where there is even a semblance of good faith on the part of the caveator; that is a matter for the court.* In our view, this suggests that the word "vexatiously" implies that the lodgment of the caveat was utterly groundless and would clearly have no prospect of withstanding a challenge to cancel it.
>
> [emphasis added]

27 This is an important passage. It informs us that the word "vexatious" implies that the lodgment of the caveat was "utterly groundless" and thus "would clearly have no prospect of withstanding a challenge to cancel it". Accordingly, in the context before the 2014 Amendment took place, Chan CJ held that "the Registrar … should not cancel a caveat where there is even a semblance of good faith on the part of the caveator …". Parenthetically, in such circumstances where the Registrar upholds the caveat, the learned Chief Justice alluded to how the cancellation of the caveat was "a matter for the court". In my view, this must be understood in the light of s 127(1) which gave (and still gives) the caveatee the right to summon the caveator to attend before the court to show cause why the caveat should not be withdrawn or otherwise removed.

28 In a related vein, although Chan CJ only dealt with the meaning of the word "vexatious", I am of the view that the same or similar meaning can be accorded to the alternative words used in s 127(2), which are "frivolous" and "not in good faith". Indeed, the three alternative grounds in s 127(2) reinforce and complement each other. Accordingly, the import of this passage is clear: s 127(2), whether in its previous or present form, is "directed primarily against eccentric individuals whose claim to land is only imaginary" (see also John Baalman, *The Singapore Torrens System* (The Government of the State of Singapore, 1961) at p 208, and *Kelvin Low* at 47).

29 With the above in mind, I am of the view that when served with a notice pursuant to s 127(2), all that the caveator needs to do, in order to convince the court to make an order for the caveat to remain, is to "furnis[h] … satisfactory evidence to show that the cancellation should be withheld or deferred". Such satisfactory evidence will include documentary evidence that on its face justify the caveator's claim to an interest in the property. This is a relatively low threshold for the caveator to cross. I say this for three reasons. First, this mirrors the position under the previous s 127(2)(*b*), which empowered the Registrar to consider such evidence and maintain the caveat. While s 127(2)(*b*) has been repealed, there is no reason why the provision as to the manner of proof required cannot be retained in relation to obtaining a court order to maintain a caveat. This is because Parliament amended s 127(2) to compel the caveator to come to court, not so much that it wanted to change the manner of proof that a caveator should meet to maintain the caveat.

30 Second, this relatively low threshold for the caveator to cross also reflects the mechanism of s 127(2). In this regard, it will be recalled the caveat concerned will be cancelled unless a court order to the contrary is obtained within 30 days from the date the notice under s 127(2) is served on the caveator.

As such, and as was the case in the present application, the caveator's application to court under s 127(4) would be on an expedited basis. In these circumstances, it would not be fair to expect the caveator to produce anything more than simple and satisfactory evidence to show why the caveat should be maintained. This is also consistent with the fact that the caveatee is only required to make a bare assertion that the caveat was lodged vexatiously, frivolously, or not in good faith. This may be contrasted with the situation under s 127(1), where the caveator is afforded more time to make good his or her claim.

31 Third, and more substantively, requiring the caveator to do no more than furnish such evidence is also in line with the meanings of "vexatious", "frivolous", and "not in good faith". Indeed, all of these words convey an utterly groundless claim to an interest in the property that will surely fail at any challenge (see also the High Court decision of *Tan Yow Kon v Tan Swat Ping and others* [2006] 3 SLR(R) 881 ("*Tan Yow Kon*") at [77]). In this sense, the standard to be applied in assessing the evidence furnished by the caveator is similar to that employed by the courts in deciding whether to strike out pleadings and other documents (see O 9 r 16 of the Rules of Court 2021). This is a high threshold, in that a pleading will not be struck out where it discloses a cause of action with some chance of success, even if the case is weak or not likely to succeed (see, *eg*, the Court of Appeal decision of *Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd v Qinghai Xinyuan Foreign Trade Co Ltd and another and another appeal* [2009] 2 SLR(R) 814 at [172]). In this sense, the evidence required of the pleader, who stands in a similar position as the caveator, is not very high.

32 The upshot of the above is that the caveator need not, in an application under s 127(4), convince the court that the caveat should be maintained because

there is a serious question to be tried, and that on the balance of convenience it would be better to maintain the status quo until the trial of the action. This, as I will discuss below, is the test to be applied to s 127(1). I am of the view that this test does not apply to s 127(2) because, unlike s 127(1), the caveatee makes a positive case in s 127(2) that the caveat was lodged vexatiously, frivolously, or not in good faith. Having premised the cancellation of the caveat on this basis, it must be that the caveator will defeat the caveatee's claim by showing that there is no basis to the caveatee's claim. There is no further need for the caveator to show, among others, that the caveat should be maintained on the balance of convenience.

(2) Situation B: s 127(1) of the LTA

33 I turn then to Situation B, which is covered by s 127(1). Section 127(1) provides that a caveatee may summon the caveator to attend before the court to show cause why the caveat should not be removed, and the court may make such order as seems just. This, therefore, consistent with s 127(2), places the burden on the caveator to justify the caveat. Although s 127(1) does not state the grounds for the caveat to be cancelled, it is conceivable that the caveatee may raise one of the following grounds, with the burden remaining on the caveator to disprove these grounds and hence justify the caveat: (a) the interest claimed is not a caveatable interest; (b) although the interest claimed is a caveatable interest, the caveator did not in fact have such an interest; and (c) the caveator had a caveatable interest but that interest has ceased to exist (see Alvin See, Yip Man and Goh Yihan, *Property and Trust Law in Singapore* (Wolters Kluwer, 2018) ("*Property and Trust Law in Singapore*") at p 132). However, how the caveator is to do this is quite different from that under s 127(2).

34 In my view, the applicable test is that advanced by the Privy Council in *Eng Mee Yong and others v Letchumanan s/o Velayutham* [1980] AC 331 ("*Eng Mee Yong*"). In *Eng Mee Yong*, the Privy Council laid down the following test for determining whether a caveat should be maintained (at 337):

> [The caveator] must first satisfy the court that on the evidence presented to it his claim to an interest in the property does raise a serious question to be tried; and, having done so, he must go on to show that on the balance of convenience it would be better to maintain the status quo until the trial of the action, by preventing the caveatee from disposing of his land to some third party.

This therefore constitutes a two-stage test. This test has been applied locally (see, *eg*, the High Court decision of *PACC Offshore Services Holdings Ltd v Kensteel Engineering Pte Ltd* [2017] SGHC 175 ("*PACC Offshore*") at [10]).

35 On the first stage of the test, the serious question to be tried could be one of fact or law. For instance, in the High Court decision of *Ow Chor Seng v Tjinta Pte Ltd (in liquidation)* [1994] 3 SLR(R) 536, Amarjeet Singh JC held that the question of whether a mistaken transfer gives rise to a constructive trust was a serious issue to be determined at trial and thus allowed the caveat to remain (at [27]–[28]). In my view, the test in *Eng Mee Yong* is also helpful in dealing with cases where, although the interest claimed is not within the list of recognised caveatable interests, it has the potential of being admitted to the list. In such cases, the caveat should be maintained pending the determination of whether the interest claimed could amount to a caveatable interest.

36 It is also important to keep in mind that the threshold for a "serious question to be tried" is a relatively low one. As noted by the High Court in *Sim Kwang Mui Ivy v Goh Peng Khim* [1994] 2 SLR(R) 814, where the court is "unable to decide on the merits of the claim, then the caveat will be allowed to

stand while the parties go to trial over the claim" (at [24]). The point is that "if a trial is necessary to resolve the dispute as to a caveator's *actual* entitlement or right to an interest in the property in question, that is a reason in favour of maintaining the caveat" [emphasis in original] (see *PACC Offshore* at [34]).

37 As for the second stage regarding the balance of convenience, the critical consideration is the relative financial status of the parties (see *PACC Offshore* at [39]). The court must weigh the likelihood that the caveatee can satisfy the caveator's claim for the underlying debt (should the applicant succeed at trial), against the likelihood that the caveator would be able to compensate the caveatee for wrongly lodging the caveat (should the respondent succeed at trial). The court must consider whether if the caveat was removed, the applicant would be left with only a paper judgment, or whether the respondent would be in a financial position to pay damages should the caveat be wrongly lodged (see *Tan Yow Kon* [85] and [90]). Nevertheless, where the caveator could show that there is a serious question to be tried, the balance of convenience would normally be in favour of allowing the caveat to remain (see *Property and Trust Law in Singapore* at para 317).

38 With the above principles in mind, I turn to the facts of the present case.

Whether the Caveat should be maintained?

The parties' positions

39 The defendant's Cancellation Application was premised on s 127(2). As such, the defendant did not need to particularise her claim that the Caveat was lodged vexatiously, frivolously, or not in good faith in her application to the Registrar. While the burden remained on the claimant to justify the Caveat in the terms I have set out above, it is helpful for me to go through the defendant's

reasons, advanced in her affidavit and submissions, as to why the Caveat was lodged vexatiously, frivolously, or not in good faith.

40 In this regard, the defendant's primary claim was that Mr Bothra made full payment for the Property in 2016. To prove this, Mr Bothra filed a separate affidavit exhibiting some transaction advices which he claimed showed that he had made full payment for the Property.[1] The defendant's secondary claim was that the Caveat was defective on its face, in that the amount of unpaid purchase price was stated to be $1,121,051 but the claimant was claiming only $626,422 as the Balance Sum. According to the defendant, this showed that the claimant cannot be an unpaid vendor as she did not even know the correct amount she alleged she was owed.

41 The claimant's case was that she was an unpaid vendor and was therefore justified in lodging the Caveat. As for the defect on the face of the Caveat, the claimant admitted in her affidavit that there was an error in the Caveat. On its face, there was a discrepancy between the stated $1,121,051 supposedly due and owing, and the claimant's claim of only $626,422 as the Balance Sum. The claimant explained that this difference was due to the inclusion of the sums payable to Mr Mishra under the POA. She said that this was an inadvertent error.

My decision: the Caveat should be maintained

42 I held that the Caveat should be maintained for the following reasons. Preliminarily, it must be kept in mind that the defendant relied on the grounds in s 127(2). Thus, in assessing whether the present facts met the description of

[1] Affidavit of Rajesh Bothra filed on 21 March 2023 at para 10 as well as at pp 27-30.

the grounds listed in s 127(2), the focus was on the specific allegations that the defendant advanced. This was even as the burden remained on the claimant to justify the Caveat by showing, among other things, that the allegations of the defendant were unmeritorious.

The defect on the face of the Caveat was not substantive

43 First, I did not think that the defect on the face of the Caveat showed that it was lodged vexatiously, frivolously, or not in good faith. In this regard, the Court of Appeal had in *Alrich Development Pte Ltd v Rafiq Jumabhoy* [1993] 1 SLR(R) 598 held that it would not entertain the removal of a caveat on the ground that it was defective in form, unless the defects were substantial in the sense of being misleading (at [43]–[45]). The court specified that causes for the removal for a caveat should go to the "underlying transaction giving rise or alleged to give rise to a caveatable interest" (at [43]).

44 Applied to the present case, I decided that while the claimant had stipulated the wrong figure in the Caveat, this was not a defect that affected her underlying claim as an unpaid vendor. Given that the sum stipulated on the Caveat is approximately the sum total of the Balance Sum and Mr Mishra's claim in relation to the POA, I accepted that the claimant had provided a plausible explanation for the defect. In any case, this did not affect the claimant's claim that there were still outstanding sums pursuant to the Agreement.

The claimant provided satisfactory evidence to show a caveatable interest in the Property

45 Second, I found that the claimant provided satisfactory evidence to show a caveatable interest in the Property. In this regard, s 115(1) of the LTA states

that any person who claims an interest in land may lodge a caveat with the Registrar. The reference to "any person" includes the owner of a piece of land. The LTA does not lay down any definition of what amounts to an "interest in land" for the purposes of lodging a caveat. Section 4 merely states that "interest", in relation to land, "means any interest in land recognised as such by law and includes an estate in land". Neither does the LTA set out a list of caveatable interests. Thus, the task of determining whether a certain interest is a caveatable one is left mainly to the courts.

46 With this in mind, it was clear from the evidence, including the Agreement, that the claimant entered into an agreement with Mr Bothra to purchase the Property. I further found that the claimant had raised sufficient evidence to discharge her burden of showing, at this stage of the proceedings, that the Purchase Price had not been fully paid up. In particular, the claimant pointed out that there was a $1,166,278 payment authorised by the defendant on 31 August 2022 for the purpose of "Property consideration payment". If the Purchase Price had been fully paid up in 2016, there is no reason why the defendant would continue to make such payments after that.

47 I was therefore satisfied that the claimant is an unpaid vendor. In this regard, the claimant's status as an unpaid vendor conferred her an interest in the form of an unpaid vendor's lien over the land. This is capable of being the subject matter of a caveat, as the High Court recognised in *Re Caveat No CV/21366D lodged by Lim Saw Hak and another* [1996] 1 SLR(R) 70 at [15]:

> Equity recognises a lien for unpaid purchase money or obligation. Such a lien is called vendor's lien. It is available in respect of the purchase price or other monetary obligation: see *Uziell-Hamilton v Keen* (1971) 22 P & CR 655. The lien entitles the vendor, subject to the terms of the contract, to retain

> possession and the income of the property between contract and completion: see *In re Hamilton-Snowball's Conveyance* [1959] Ch 308. The equitable lien arises when the contract is made and continues even after possession and title are transferred to the purchaser and remains until the vendor receives the price payable before or at the time of completion. …

The defendant did not adduce credible rebuttable evidence against the claimant's caveatable interest

48 Third, I did not find that the defendant advanced any credible rebuttable evidence against the claimant's caveatable interest. This was given that the evidential burden of proof shifted to her upon the claimant's production of the Agreement and other relevant evidence, even though the legal burden remained with the claimant. In this regard, Mr Bothra's claim that the Purchase Price had been paid in full in 2016 was not convincing. This was because there was evidence that partial payments towards the Purchase Price continued to be made in 2018, 2021, and 2022. In particular, as I alluded to above, there was a $1,166,278 payment authorised by the defendant on 31 August 2022 for the purpose of "Property consideration payment". Further, in relation to the transaction advices tendered by Mr Bothra, I accepted Mr Mishra's explanation that those had nothing to do with the Property. Indeed, the transaction advices were in respect of moneys transferred between companies, and did not appear to have anything to do with either the claimant or the defendant. At the least, neither the defendant nor Mr Bothra had sufficiently explained the relevance of these documents.

49 For completeness, I also considered the defendant's argument that there was no privity of contract between the claimant and the defendant since the Agreement was entered into between the claimant and Mr Bothra. The defendant therefore submitted that the claimant was not entitled to sue the defendant in the present application. Instead, the defendant said that the

claimant should have lodged a proof of debt with the private trustees of Mr Bothra's bankruptcy estate. I disagreed with this argument because the defendant was the one who had filed the Cancellation Application. She must therefore be the right party to sue, in so far as the claimant is trying to maintain the Caveat lodged against the Property.

50 Accordingly, for all these reasons, I found that the claimant had shown satisfactory evidence as to why the Caveat should be maintained. More specifically, in line with s 127(2), I found that the claimant had not lodged the Caveat vexatiously, frivolously, or not in good faith. This was sufficient for me to order, pursuant to s 127(4), for the Caveat to remain. As I explained above, there was no need for the claimant to convince me further that the Caveat should be maintained on a balance of convenience.

The appropriate order

51 For all of these reasons, I was minded allowing the Caveat to be maintained. However, I also recognised that the defendant was concerned about the inability to sell the Property and thereby incurring, among others, interest payments for the late completion of sale. Furthermore, it would be in the interests of all parties for the defendant to complete the sale and receive the moneys that can potentially be used to repay the claimant.

52 Taking into consideration the parties' respective interests, and pursuant to s 127(4) read with s 124(*d*) of the LTA, I ordered that a sum equivalent to the Balance Sum from the sale of the Property pursuant to the Option to Purchase dated 8 July 2022 be paid into court and held pending the resolution of OC 138 and any appeal therefrom, or further order. I should say that this is in line with

other cases which have made similar orders (see, *eg*, *Tan Tow Kon* and *PACC Offshore*).

53 In making this order, I also considered the defendant's argument that there was no deed of assignment to grant priority over the sale proceeds to the claimant in the event of the sale of the Property. Although it was not very clear to me, the defendant appeared to argue that the claimant was not entitled to have a portion of the Balance Sum paid into court and held for her benefit. If so, I did not quite understand this argument. To my mind, it was immaterial whether the sale proceeds in a subsequent sale of the Property were assigned to the claimant or not. This was since the claimant's claim was not on any subsequent sale proceeds. Rather, the claimant's claim is on the unpaid portion of the Purchase Price arising from the original sale of the Property from her to the defendant.

54 Finally, having heard the parties on costs, I fixed costs at $10,000 all-in, to be paid by the defendant to the claimant.

Goh Yihan
Judicial Commissioner

Prakash Pillai, Koh Junxiang and Ng Pi Wei (Clasis LLC)
for the claimant;
Oh Kim Heoh Mimi and Sandra Ooi Hui Shan
(Ethos Law Corporation) for the defendant.