

REMEDIES OF THE CAVEATEE UNDER SECTION 127 OF THE LAND TITLES ACT

This article looks at who is a caveatee for the purposes of section 127 of the Land Titles Act. The focus is on the position of a person who has yet to acquire a registered title or interest in land. Where a caveat is sought to be removed, the question of who bears the onus of proof is also examined. The need for a provision to prevent abuse of the caveat procedure so as to ensure the effectiveness of the remedies provided in section 127 is also discussed.

I. INTRODUCTION

THE Torrens system of land registration and conveyancing, applied in Singapore by the Land Titles Act,¹ has as one of its principal objects to give certainty to title to land and registrable interests in land.² Thus, where, for example, a caveator's claim is baseless or frivolous or vexatious, the Land Titles Act (hereafter "LTA") makes available certain remedies to the caveatee to get the caveat set aside in such cases. This would, in turn, ensure that the caveatee is not left in a precarious position as regards his powers of disposition of his land or interest therein.

Under section 127(1) of the LTA, a caveatee may summon the caveator to attend before the court to show cause why the caveat should not be withdrawn or otherwise removed, and the court may make such order, either *ex parte* or otherwise, as seems just. Alternatively, the caveatee may, under section 127(2) of the LTA, lodge with the Registrar of Titles (hereafter "Registrar") a statutory declaration to the effect that the caveat has been lodged, or is being allowed to remain, vexatiously or frivolously or not in good faith. Where this remedy is adopted, the Registrar shall give notice to the caveator that he intends to and shall cancel the notification of the caveat if within 30 days from the date of the notice, no court order to the contrary is served on him, *ie*, the Registrar,³ or the caveator does not furnish

¹ Cap 157, 1994 Rev Ed.

² See *Gibbs v Messer* [1891] AC 248 at 254. See also Whalan, *The Torrens System In Australia* (1982), at 19-20 and Hinde, McMorland & Sim, *Introduction to Land Law* (2nd ed, 1986), at 47-48.

³ S 127(2)(a), LTA.

to him satisfactory evidence to show that the cancellation should be withheld or deferred.⁴

II. WHO IS A CAVEATEE FOR PURPOSES OF SECTION 127 LTA?

The word "caveatee" is defined in section 4(1) of the LTA to mean "the proprietor or other owner of land described in a caveat and to whom notice of the caveat is required to be given". The word "proprietor" is, in turn, defined in the same section to mean the registered proprietor of an estate or interest in the land⁵ and includes a mortgagee, chargee and lessee. As for "other owner of land", this refers to persons who have an interest in land under general law.⁶ It would appear from the definition of "caveatee" in section 4(1) that, in addition to being "the proprietor or other owner of the land", such a person must also have been described in the caveat lodged by the caveator so as to be notified of the existence of the caveat by the Registrar. In *United Overseas Finance Ltd v Mutu Jeras*,⁷ the plaintiffs, who were equitable mortgagees of the properties in question by virtue of a deed of assignment, had lodged a caveat in respect thereof. The defendant subsequently lodged another caveat against the same properties but did not name the plaintiffs as caveatees in the caveat. On an application by the plaintiffs to have the caveat of the defendant removed, Chan J (as he then was) held, *inter alia*, that the plaintiffs came within the meaning of a caveatee for the purpose of the then section 111(1) of the LTA (which is *in pari materia* with the present section 127(1) of the same Act). Among the reasons given by his Honour for the decision was that the plaintiffs, apart from being the owners of an equitable interest in the properties by virtue of the deed of assignment, had lodged their caveat before the defendant lodged his caveat. Thus, although the plaintiffs were not notified by the Registrar of the defendant's caveat, this breach of duty on the part of the Registrar did not deprive them of their status as caveatees. Moreover, the then section 104(4) of the LTA (the equivalent of the present section 115(1) of the same Act) did not require the caveatee to be identified.⁸ The plaintiffs, accordingly, had the *locus standi* to bring the application which was, however, disallowed on other grounds. The decision in *Mutu Jeras*

⁴ S 127(2)(b), LTA. Another method by which a caveat may be challenged is by way of lodging an inconsistent dealing for registration: s 120, LTA.

⁵ See Tan, *Principles of Singapore Land Law* (1994), at 202.

⁶ *Ibid.* See also *United Overseas Finance Ltd v Mutu Jeras* [1989] 3 MLJ 20 at 22 where the plaintiffs, as owners of an equitable interest in the properties in question by virtue of a deed of assignment, were held to be an owner of land and, thus, coming within the definition of "caveatee" in s 4(1) LTA.

⁷ [1989] 3 MLJ 20.

⁸ *Ibid.*, at 22.

on this issue is now given statutory force in section 127(6) of the LTA.⁹

As the position of a caveatee with an unregistered interest or estate in land is more likely to raise issues in regard to the matter discussed, the following discussion in Part II A and B will focus on this area.

A. Scope of Section 127(6) LTA

Section 127(6) reads as follows:

For the purposes of this section, a person claiming an estate or interest in the land under another caveat shall be deemed to be a caveatee.¹⁰

It is clear that this provision covers a *Mutu Jeras*-type of situation, *ie*, one where the caveatee enters an earlier caveat followed by a later caveat lodged by the caveator. It is equally clear that as section 127(6) is a deeming provision, its operation in such a situation is not dependent on whether the caveatee is named or identified in the caveat lodged by the caveator as would seem to be required by the definition of "caveatee" in section 4(1) of the LTA.¹¹ To construe otherwise would be to do injustice to the situation. Not only would it result in rendering section 127(6) redundant in the situation under consideration (for, then, the operation of this subsection would depend on not only whether the caveatee has entered a caveat but also on whether he is named in the caveator's caveat at the latter's absolute discretion), it would also make a mockery of this aspect of the definition of "caveatee" in section 4(1) of the LTA. In fact, in *Mutu Jeras*, Chan J, as noted above, was of the view that in such a situation, the Registrar was under a duty to notify the caveatee of the caveat and that a breach of such a duty could not deprive the caveatee of his status as caveatee. Although Chan J, at the same time, seemed to suggest that the status of a person as a caveatee is dependent on whether or not he is required to be named in the caveat lodged by the caveator,¹² it is respectfully submitted that this should not be so in a case where section 127(6) applies.

⁹ See also Tan, *supra*, note 5.

¹⁰ S 127(6) of the LTA was introduced by the Land Titles Bill (Bill No 36/92) which came into force on 15 March 1994 *vide* GN S78/94 as the Land Titles Act (Cap 157, 1994 Rev Ed).

¹¹ See also s 115(1)(a) of the LTA which, unlike the former s 104(4) of the LTA, makes it mandatory for the caveator, when lodging a caveat, to name the caveatee.

¹² *Supra*, note 7, at 22-23. It is respectfully submitted, as will be seen in the discussion below, that although *Mutu Jeras* was decided under the former s 104(4) of the LTA which did not require the caveatee to be identified, this requirement now stipulated in s 115(1)(a) of the LTA should make no difference to the decision of Chan J. It may also be noted that *Mutu Jeras* was decided before s 127(6) was introduced in the 1994 Revised Edition of the Land Titles Act (Cap 157). See, *supra*, note 10.

What is the position if the caveatee's caveat is lodged *subsequent* to that of the caveator? Does section 127(6) apply to such a situation which is the reverse of the fact situation in *Mutu Jeras*? Assuming that the earlier caveat lodged by the caveator is frivolous or vexatious, there would appear to be no good reason for disallowing the application of section 127(6) in such a situation. First, there is nothing in the language used in section 127(6) which suggests that the provision is not applicable. It is submitted that section 127(6) is intended to cover other situations where the caveatee has lodged a caveat and is not limited in its application to only a *Mutu Jeras*-type of situation. Section 127(6) does not say that the person who is deemed to be a caveatee must have claimed an estate or interest under another *earlier* caveat. It is immaterial when the caveat was lodged so long as he (the caveatee) has lodged a caveat to protect his estate or interest in the land. Section 127(2), in fact, allows the caveatee to seek the Registrar's assistance in setting aside a caveat which is lodged frivolously or vexatiously. Second, a caveatee in such a situation need not be described in the caveat lodged by the caveator¹³ as section 127(6) is a deeming provision. In fact, it would not be possible for the caveator to do so as the caveatee's interest may have only arisen subsequent to the lodgment of the caveator's caveat and in such a situation, even in the absence of section 127(6), there is no good reason to deny the caveatee the right to set aside the caveat. Third, it is trite law that the lodgment of a caveat does not create or enhance the caveator's claim to an interest in the land.¹⁴ Accordingly, as the caveator's claim cannot be taken to be one that is already proved at that point in time, the caveatee is entitled to have it set aside, especially where it is alleged to have been lodged frivolously or vexatiously. As noted earlier on, unless there is made available to the caveatee a mechanism for a reasonably speedy resolution of the dispute, the very concept of certainty in the Torrens system of land registration and conveyancing which the LTA was enacted to introduce and preserve, would be negated and eradicated. It may be pertinent to note that in the situation being considered, the issue of priority of unregistered interests does not arise. Section 49 of the LTA must be taken to refer to an interest or estate in land recognised as such by law¹⁵ and not one in respect of which the caveator's claim is baseless or frivolous or vexatious.

Even where the caveat lodged by the caveator is not baseless, frivolous or vexatious and is lodged earlier than that of the caveatee, section 127(6) should still apply to the situation at hand. As between the caveator and

¹³ See the definition of "caveatee" in s 4(1) and the requirement in s 115(1)(a) of the LTA.

¹⁴ See *Re Hitchcock* (1900) 17 WN 62 at 63; *Butler v Fairclough* (1917) 23 CLR 78 at 84; *City Development Ltd v Goh Yoke Hian & Ors* [1990] 3 MLJ 8 at 13 and s 49(3) LTA.

¹⁵ See definition of "interest" in s 4(1) LTA.

caveatee, the one who is applying to remove the other's caveat would be the caveatee. This will enable the applicant-caveatee to dispute the right of the other party to lodge the caveat. In lodging the caveat, the caveator is merely alleging that he has a claim to an interest or estate in the land which is as yet not proved. There is, accordingly, no good reason, at this point in time, to deny the applicant-caveatee the right to dispute the lodgment of the caveat which, as seen above, does not evidence, much less create, any interest in land.¹⁶ Moreover, such an approach tends towards certainty in land conveyancing as it provides an avenue for a reasonably speedy resolution of the dispute.

B. *Must Caveatee be Named or Described in Caveat?*

By the definition in section 4(1) of the LTA, a "caveatee" is one who is also described in the caveat lodged by the caveator and to whom notice of the caveat is required to be given. In regard to the second limb of the definition, Chan J in *Mutu Jeras* took the view that it is circuitous as the relevant provision, *ie*, the former section 105(1) (now section 117(1)) of the LTA, referred only to notice being given to the caveatee without identifying those owners or claimants to whom notice must be given.¹⁷ As to the aspect of the definition that the caveatee be described in the caveat, Chan J in *Mutu Jeras* held that even though the plaintiffs in the case before him had not been identified as caveatees in the defendant's caveat, this did not deprive the plaintiffs of their status as caveatees as the former section 104(4) of the LTA did not require the caveatee to be identified. This would seem to suggest that if the caveatee is required by a statutory provision to be identified in the caveat lodged by the caveator but was not, the caveatee would be deprived of his status as such. The present section 115(1) of the LTA, which replaces the former section 104(4), does require in paragraph (a) that the caveatee be named in the caveat lodged by the caveator. Does this mean that a person who is a caveatee if not described in the caveat will necessarily lose his status as a caveatee? It is respectfully submitted, for the reasons discussed below, that the requirement in section 115(1)(a) of the LTA should not have this effect.

It should be obvious that persons who are caveatees for purposes of section 127 are those with a registered title or interest in land. This is clear from the definitions of "caveatee" and "proprietor" in section 4(1) of the LTA. The same goes for persons coming within section 127(6) as discussed in Part II A. Although the definition of "caveatee" in section 4(1) of the LTA would seem to require them to be described in the caveat lodged by

¹⁶ See *supra*, note 14.

¹⁷ *Supra*, note 7, at 22. See also Tan, *supra*, note 5, at 201.

the caveator, it is submitted that the fact that they have not been so described would not deprive them of the *locus standi* to apply for the removal of the caveat. For the former category of persons, *ie*, one with a registered title or interest, he can rely on the registered title or interest as *prima facie* evidence of his unfettered right to deal with the land or interest as he pleases but for the lodgment of the caveat. For the latter category of persons, they are deemed to be caveatees for the purposes of section 127 of the LTA. So long as they should, in the circumstances, be described in the caveat by the caveator but were not, should not cause them to lose their status as caveatees for the purposes of section 127 of the LTA. In this regard, it is submitted that, for these categories of caveatees, the approach of Chan J in *Mutu Jeras* which can be taken to lay down the general principle that the fact that a caveatee is not named in the caveat lodged by the caveator, should not, in appropriate circumstances, deprive the caveatee of his status as such, is to be welcomed.

A more complex situation arises where a person whose title or interest has yet to be registered and who does not lodge a caveat, seeks to come within the definition of "caveatee" for the purposes of section 127 of the LTA. Such a person, as noted above, would come within "or other owner of land" in the definition of "caveatee" in section 4(1) of the LTA as he has an interest in land under general law. However, if he has not been described in the caveat by the caveator such that he is not notified by the Registrar of the caveat, can he be said to be a caveatee? One can think of a situation where an equitable mortgagee who has taken the land as security subsequently finds that a caveat is lodged against the land. Should he be allowed forthwith to go under section 127 to attempt to have the caveat set aside if the mortgagor (the registered proprietor of the land), for some reason or other, chooses not to do so? As noted above, there are two distinct categories of caveatees for the purposes of section 127 of the LTA, *viz*, those who have lodged a caveat and are deemed to be caveatees under section 127(6) of the LTA and those who have a registered title to or interest in land. The definition of "caveatee" in section 4(1) of the LTA would suggest that there is a possible third category of caveatees. This third category refers to persons such as the equitable mortgagee above who has an interest in land under general law but who has yet to lodge a caveat in respect of the interest claimed. Can such a person be regarded as coming within the definition of "caveatee" in section 4(1) of the LTA? While the lodgment of a caveat by such a person (which, in fact, is the practical thing to do) would bring him within the deeming provision of section 127(6) of the LTA such that he need not satisfy the definition of "caveatee" in section 4(1) of the LTA, there is nothing in the said definition which requires a caveat to be lodged before such a person can be regarded as a caveatee. It is unlikely that the definition of "caveatee" in section 4(1)

of the LTA envisages a situation where a caveat is lodged as this is already taken care of in a specific provision, *viz.* section 127(6) of the LTA. This would strongly suggest that there is the third category of caveatees as described above which may come within the definition of "caveatee" in section 4(1) of the LTA. In any event, the entry of a caveat, apart from having the effect in section 127(6) of the LTA and prohibiting inconsistent dealings,¹⁸ determines the question of priority of unregistered interests.¹⁹ However, such a question is only relevant after a preliminary question has been determined, *viz.* whether the caveator's claim to an unregistered interest in land does raise a serious question to be tried, such that, on the balance of convenience, it would be better to maintain the *status quo* of the parties until the trial of the action by allowing the caveat lodged by the caveator to remain.²⁰ If the caveator fails on this preliminary question, his caveat would not be allowed to be maintained and must be removed in which case no question of priority would arise.

It may also be noted that the definition of "caveatee" in section 4(1) of the LTA merely requires the caveator to describe a person who is the "other owner of land" in the caveat so that the Registrar can give notice of the caveat to the latter. Such a person, who may be the equitable mortgagee in the above example, may have yet to lodge a caveat. Where he is named in the caveat by the caveator, he would qualify as a caveatee for the purposes of section 127 of the LTA. Where he is not so named, it would appear that he would not be regarded as a caveatee. For such a person, his status as a caveatee would appear to depend much on what the caveator does which, it is submitted, is open to abuse. It is respectfully submitted that where the caveator omits naming such a person in the caveat, either intentionally or through error, such omission should not deprive the person concerned of his status as caveatee for the purposes of section 127. The status of a person as a caveatee should not depend on such subjective factor as the ulterior motive of the caveator whether to name him in the caveat or not.

In the light of the above discussion, it is submitted that to disallow a person, such as the equitable mortgagee above, the *locus standi* to go forthwith under section 127 of the LTA to ask for the merits of the caveat

¹⁸ S 115(2), LTA.

¹⁹ S 49(1), LTA.

²⁰ See *Eng Mee Yong & Ors v V Letchumanan* [1979] 2 MLJ 212 at 215, a decision of the Privy Council on the Malaysian National Land Code 1965. The principle laid down in *Eng Mee Yong* has been applied in a number of local cases: see *Societe Generale v Good Property Land Development Pte Ltd* [1989] 2 MLJ 24 at 27; *Tan Cheow Gek & Anor v Gimly Holdings Pte Ltd* [1992] 2 SLR 817 at 826 and *Ow Chor Seng v Tjinta Pte Ltd in Liquidation* [1995] 1 SLR 49 at 53.

to be determined by the court²¹ or Registrar²² is to assume the validity of the alleged claim of the caveator by the mere lodgment of his caveat. So long as the equitable mortgagee's claim to an unregistered interest in the land is not baseless (and as the lodgment of a caveat does not create or evidence any interest in land),²³ there is no reason why he should be denied this right. In any event, as will be seen below, the onus is on him to begin by satisfying the court that the caveat ought to be removed from the land register.

What then of the requirement in section 115(1)(a) of the LTA which requires the caveatee to be identified? Although Chan J (as he then was) in *Mutu Jeras* seemed to suggest that compliance with such a requirement may be material in determining the right of a caveatee to set aside a caveat,²⁴ it is respectfully submitted that such a requirement should not be a material consideration in the determination of the status of a person as a caveatee for the purposes of section 127 of the LTA. The requirements in section 115(1) of the LTA serve the purpose of enabling "the proprietor to know, or find out the case which he has to meet".²⁵ They have to be complied with by the caveator so as to ensure the validity of his very own caveat lodged against the land. These requirements do not appear to be directed towards determining whether the person concerned is a caveatee or not. Further, a caveat is merely a notification that the caveator claims to have an interest in land, a claim he is prepared to make good if challenged.²⁶ Accordingly, it can be seen that the requirement in section 115(1)(a) of the LTA has no significant bearing on the question of the status of a person as a caveatee. Rather, non-compliance with this statutory requirement on the part of the caveator would raise issues in regard to the validity of the caveat lodged. These issues are, however, not within the scope of the present discussion.²⁷

Finally, one may consider the position of a person, such as an equitable mortgagee, who acquires his unregistered interest after the caveator has lodged his caveat. Can such a person, who has yet to lodge his inconsistent dealing for registration,²⁸ forthwith seek the removal of the caveat under

²¹ S 127(1),(2)(a), LTA.

²² S 127(2)(b), LTA.

²³ See *supra*, note 14.

²⁴ *Supra*, note 7, at 22-23.

²⁵ Tan, *supra*, note 5, at 197.

²⁶ *Alrich Development Pte Ltd v Rafiq Jumabhoy* [1993] 2 SLR 446 at 453.

²⁷ See Tan, *supra*, note 5, at 197-198 for a discussion of these issues.

²⁸ S 120 of the LTA lays down the procedure for challenging a caveat where an inconsistent dealing is lodged for registration. S 127 of the LTA would appear to apply in cases where no inconsistent dealing has yet been lodged for registration.

section 127 of the LTA if the registered proprietor of the land (the mortgagor), for some reason or other, chooses not to do so? If he lodges a caveat, he would come within section 127(6) of the LTA as discussed in Part II A above. Where no caveat is lodged, it is submitted that such a person should still be entitled to the remedies laid down in section 127 of the LTA for the reasons advanced above, *viz*, that the merits of the caveat lodged by the caveator should be allowed to be scrutinized as a preliminary issue at this point in time as its mere lodgment does not *per se* establish that the caveator has already proved his claim to an interest in land and that to ensure certainty in land conveyancing, an avenue for a reasonably speedy resolution of the dispute should be made available. It is obvious that he will not be named in the caveat lodged by the caveator as his interest arises subsequent to the lodgment of the caveat. So long as his claim to an unregistered interest in land is genuinely affected by the lodgment of the caveat, there appears to be no cogent reason to deny him the right to, at least, have the merits of the caveat determined under section 127 of the LTA. To construe otherwise would be to leave him without a remedy, at least, at this point in time.

III. REMOVAL OF CAVEAT: ON WHOM LIES THE ONUS OF PROOF?

As noted earlier, a caveatee may, under section 127 of the LTA, either summon the caveator to attend before the court to show cause why the caveat should not be withdrawn or otherwise removed²⁹ or lodge with the Registrar a statutory declaration to the effect that the caveat has been lodged, or is being allowed to remain, vexatiously or frivolously or not in good faith.³⁰ In the latter situation, the Registrar shall notify the caveator that he intends to cancel the notification of the caveat and shall do so within 30 days from the date of the notice unless, within the said period, the caveator either obtains a court order extending the caveat and serve it on him *ie* the Registrar³¹ or furnishes satisfactory evidence to the latter to show that the cancellation should be withheld or deferred.³² Where the court is involved in the caveat proceedings, the question which arises for consideration is which of the two parties, *ie*, the caveator or the caveatee, has the onus to begin by satisfying the court that the caveat ought to remain on or be removed from the land register, as the case may be.

²⁹ S 127(1), LTA.

³⁰ S 127(2), LTA.

³¹ S 127(2)(a), LTA.

³² S 127(2)(b), LTA.

In Australia, the courts in *Re Little; Ex parte Thorne's Bankstown Estate Ltd*³³ and *In re Caveat No 735; Ex parte Davenport*³⁴ have held that in an application for removal of a caveat the onus lies on the caveator as the person asserting the claim to prove that the caveat ought to remain. In New Zealand, the position is the reverse with the court in *In re Peychers' Caveat*³⁵ holding that the onus lies on the person seeking the removal of the caveat. The local position follows that obtained in *Eng Mee Yong & Ors v V Letchumanan*,³⁶ a well-known Privy Council case dealing with section 327(1) of the Malaysian National Land Code 1965, where Lord Diplock in delivering his judgment observed as follows:

In their Lordships' view, a distinction must be drawn between cases where the applicant is the registered proprietor of the land (*ie*, the caveatee) and cases where the applicant is some other person who claims a right to an interest in it. In the former case, the caveatee can rely upon his registered title as *prima facie* evidence of his unfettered right to deal with the land as he pleases; it is for the caveator to satisfy the court that there are sufficient grounds in fact and law for continuing in force a caveat which prevents him from doing so.³⁷

Although the case dealt with section 327(1)³⁸ of the Malaysian National Land Code 1965, local cases³⁹ have, generally, taken the view that Lord Diplock's observations equally apply to the former section 111(1) of the LTA which is *in pari materia* with the present section 127(1) of the same Act. Thus, in *Tan Cheow Gek & Anor v Gimly Holdings Pte Ltd*,⁴⁰ on an application by the registered proprietors of the property to remove a caveat

³³ (1929) 29 SR (NSW) 401 at 404.

³⁴ (1873) 3 QSCR 95 at 97. *Cf In re Caveat No 773, Ex parte Hodgson* (1873) 3 QSCR 158 at 159.

³⁵ [1954] NZLR 285 at 288.

³⁶ [1979] 2 MLJ 212.

³⁷ *Ibid*, at 215.

³⁸ This sub-section reads: "Any person or body aggrieved by the existence of a private caveat may at any time apply to the Court for an order for its removal, and the Court (acting, if the circumstances so require, *ex parte*) may make such order on the application as it may think just."

³⁹ See *Tan Cheow Gek & Anor v Gimly Holdings Pte Ltd* [1992] 2 SLR 817 at 826; *Ow Chor Seng v Tjinta Pte Lid (in Liquidation)* [1995] 1 SLR 48 at 52, where Amarjeet JC stated that the provisions of s 327(1) of the Malaysian National Land Code 1965 are very similar to the former s 111(1) (now s 127(1)) of the LTA, and *Societe Generale v Good Property Land Development Pte Ltd* [1989] 2 MLJ 24 at 27. These cases were decided under the former s 111(1) of the LTA which is *in pari materia* with the present s 127(1) of the same Act.

⁴⁰ [1992] 2 SLR 817.

lodged by the purchaser against the property, Judith Prakash JC (as she then was) rightly held that the onus was on the purchaser to establish why their caveat should stay. Her Honour applied the above observations of Lord Diplock to the facts of the case before her, holding that the registered proprietors of the property, with their registered title, had an absolute right to call upon the purchaser to satisfy the court as to why their caveat should not be removed. In the instant case, the sale and purchase agreement entered into between the parties contravened the Residential Property Act (Cap 274). As her Honour rightly pointed out, this illegality did not affect the right of the registered proprietors to require the purchaser to establish why the caveat should stay as this right arose by virtue of the registered title which they hold and not out of the illegal contract of sale.⁴¹ In the result, as the purchaser was unable to show that they had a caveatable interest owing to the illegality in question, the caveat was ordered removed by the court. Similarly, in *Ow Chor Seng v Tjinta Pte Ltd (in Liquidation)*,⁴² on an application by the plaintiff, as registered proprietor, to set aside a caveat lodged by the defendants against his property, Amarjeet JC held that the onus was on the defendants to begin by satisfying the court that the caveat ought to remain on the land register. As the defendants were able to discharge the onus placed on them, the caveat was allowed to remain.

By parity of reasoning, where an application for removal of a caveat is made under section 127(1) of the LTA by a registered mortgagee or lessee, the onus is on the caveator to establish why his caveat should stay. Although the word "caveatee" was used by Lord Diplock to refer only to the registered proprietor of the land⁴³ (and understandably so, as his Lordship was there dealing with an application by the registered proprietor to remove a caveat), there is no good reason to suppose that the position should be any different for an applicant with a lesser interest which is registered. In fact, the word "proprietor" is defined in section 4(1) of the LTA to include a registered mortgagee, chargee and lessee. Such a lesser interest when registered is equally indefeasible⁴⁴ and the right of the owner of such an interest to deal therewith⁴⁵ is equally interfered with if a caveat is lodged to prohibit the dealing in question. In the Malaysian cases of *Hajah Rajiah bte Hj Man v Tai Cheng Finance Bhd*⁴⁶ and *Tan Lay Soon v Kam Mah Theatre Sdn Bhd*,⁴⁷ Edgar Joseph Jr J rightly regarded a registered chargee

⁴¹ *Ibid.*, at 826.

⁴² [1995] 1 SLR 48.

⁴³ *Supra*, note 36, at 215.

⁴⁴ S 46(1), LTA.

⁴⁵ See, *eg.*, s 63, LTA.

⁴⁶ [1987] 2 CLJ 154 at 155.

⁴⁷ [1990] 2 MLJ 482 at 483.

as being in the same position as a registered proprietor for the purposes of application for removal of a caveat under section 327(1) of the Malaysian National Land Code 1965. His Lordship held that as a registered chargee has a registered interest to rely upon as *prima facie* evidence of his interest in the land, the onus was on the caveator to begin by satisfying the court that the caveat ought to remain.⁴⁸

There may, however, be situations where a strict adherence to the observations of Lord Diplock is not appropriate. In *Societe Generale v Good Property Land Development Pte Ltd*,⁴⁹ the defendants obtained a loan from a syndicate of banks, of which the plaintiffs were members, to finance the purchase of the property in question. In due course the defendants were registered as the proprietors of the property. The plaintiffs were the equitable mortgagees of the property by virtue of an assignment of a building agreement made by the defendants in favour of the plaintiffs so as to secure the repayment of all moneys due under the loan agreement. When the defendants defaulted in their loan repayment, the plaintiffs negotiated to sell the property to a third party. The defendants had in the meantime lodged a caveat against the property. On an application by the plaintiffs to set aside the caveat under the former section 111(1) (now section 127(1)) of the LTA, Chan J (as he then was) held that the onus was on the defendants, as registered proprietors, to begin by satisfying the court that they were justified in lodging the caveat. His Honour was of the view that, based on the evidence before him, blind adherence to the observations of Lord Diplock was inappropriate. His Honour gave his reasons as follows:

Here, the plaintiffs were the lawful assignees of the defendants' right, title and interest in the said property, subject to the defendants' equity of redemption. The defendants no longer had an unfettered right to deal with the property except in accordance with the terms of the security or to redeem the mortgage. Upon any default by the defendants, the plaintiffs as mortgagees would have a superior right to that of the defendants' as mortgagors to deal with the property. The defendants were in default. They lodged their caveat with a view to preventing the plaintiffs from exercising their power of sale which they alleged had not arisen in spite of the default. In these

⁴⁸ For cases which decided to the contrary, see *United Malayan Banking Corp Bhd v Development & Commercial Bank (Ltd) Bhd* [1983] 1 MLJ 165 at 167; *Ismaga Bina Sdn Bhd v Govindasamy* [1994] 1 MLJ 221 at 232; *Citibank, NA v Kwok Chee Loong* [1988] 2 CLJ 758 at 759 and *Oversea-Chinese Banking Corp Ltd v Konsortium Utama Sdn Bhd* [1989] 3 MLJ 501 at 503. For a criticism of these cases, see Teo, "Removal of Private Caveats By the Court" [1994] 3 MLJ lxxxv at lxxxvii-xc.

⁴⁹ [1989] 2 MLJ 24.

circumstances, the defendants must satisfy the court that the power of sale has not arisen and that therefore they were justified in lodging their caveat.⁵⁰

As the defendants failed to establish that their caveat ought to remain on the land register,⁵¹ the court ordered the caveat removed.

The approach of Chan J in *Societe Generale* deals with a situation where the applicant for removal of the caveat is someone other than the registered proprietor or registered lessee, mortgagee or chargee of the land. Does the principle in *Societe Generale* apply to all applicants who have yet to acquire a registered title or interest in the land? It is submitted that the principle therein should be restricted to cases where it can be shown that the applicant has, in substance, a superior right to that of the caveator to deal with the land. Otherwise, the observations of Lord Diplock, as noted above, should apply; the reason being that such an applicant has no registered title or interest to rely upon as *prima facie* evidence of his interest in the land. It is, thus, for him to begin by satisfying the court that there are sufficient grounds in fact and law by which his claim to an interest in the land is affected by the existence of the caveat.⁵²

The above discussion in regard to an application for removal of a caveat under section 127(1) of the LTA should equally apply to a section 127(2)(a) situation where the caveator is seeking an order of the court to extend his caveat.

IV. PROHIBITION ON REPEATED CAVEATS

Under the LTA, there is no provision to prohibit a caveator from lodging a fresh caveat, based on the same facts, in respect of the same estate or interest in land and against the same caveatee after the earlier caveat lodged by him has been removed pursuant to section 127 of the LTA. Such a provision does, however, exist in section 121(6) of the LTA in relation

⁵⁰ *Ibid.*, at 27.

⁵¹ The nature of the onus that lies upon the caveator which he must discharge if he is to succeed in continuing the caveat, is two-fold. This was explained by Lord Diplock in *Eng Mee Yong & Ors v V Letchumanan*, *supra*, note 36, at 215 as follows:

[H]e 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.

⁵² See, however, the Malaysian cases of *Hew Sook Ying v Hiw Tin Hee* [1992] 2 MLJ 189 and *Hiap Yiak Trading Sdn Bhd & Ors v Hong Soon Seng Sdn Bhd* [1990] 2 MLJ 155 which decided to the contrary. For a criticism of these cases, see Teo, *supra*, note 48, at xci-xcii.

to a caveat which has lapsed at the expiration of the period of 30 days (or of such further period as the court may direct) from the date of the service of the notice given pursuant to section 120 of the same Act.⁵³ As may be recalled, under section 120, upon the lodgment of a dealing which is prohibited by a caveat, the Registrar shall serve a notice on the caveator informing the latter of his intention to register the inconsistent dealing unless within 30 days from the date of the service of the notice, the caveator obtains a court order extending the caveat and serves it on the Registrar or the dealing in question has been either withdrawn, uplifted or otherwise becomes incapable of registration.⁵⁴ The prohibition in section 121(6) of the LTA would not apply if the lodgment of the further caveat is with the leave of the court.⁵⁵

One possible reason for the introduction of section 121(6) in the LTA could be to prevent abuse of the procedure for lodgment of caveat where section 120 of the LTA is concerned.⁵⁶ Such a reason should equally apply where section 127 of the LTA is concerned. With the prohibition in section 121(6) of the LTA, a caveator who does nothing to obtain an extension of his caveat so that it lapses at the expiration of the stated period of 30 days as provided in section 121(1)(a) of the LTA, cannot lodge a further similar caveat. Without a prohibition similar in substance to the one contained in section 121(6), there would be nothing to stop a caveator from *entering* a similar caveat in respect of the same estate or interest in land and against the same caveatee after the court has ordered the removal of, or has turned down an application for extension of time of, the earlier caveat under section 127(1) or (2)(a) respectively. It is obvious that the Registrar acts in a purely administrative manner in the matter of the

⁵³ In New Zealand, when any caveat has lapsed, s 148 of the Land Transfer Act 1952 makes it unlawful for the Registrar to receive any further caveat affecting the same land, estate or interest by the same person, or in the same right and for the same cause, except by order of the High Court. For cases in which orders under s 148 were refused, see *Kelly v Bentinck* (1902) 22 NZLR 235 CA; *Bilger v Auckland District Land Register* (1978) 1 NZCPR 30 and *Metcalfe v Skyline Holdings Ltd* (1982) 1 NZCPR 480. In Australia, only in the Australian Capital Territory (Real Property Ordinance 1925) and New South Wales (Real Property Act 1900) are there no statutory provisions to prevent the entry of successive caveats of any kind. In the other states, the restriction on entry of successive caveats varies.

⁵⁴ S 120(1)(a),(b), LTA.

⁵⁵ It may be pertinent to note that the prohibition in s 121(6) was introduced only recently when the 1994 Revised Edition of the Land Titles Act (Cap 157) was brought into force on 15 March 1994 *vide* GN S78/94. This prohibition does not, however, apply in circumstances where a caveat has lapsed at the expiration of 5 years from the date of its lodgment, or where an extension is validly claimed pursuant to s 122 of the LTA, at the expiration of each further 5-year period referred to in s 122. (See the first limb of s 121(6), LTA.)

⁵⁶ The Explanatory Statement to the Land Titles Bill (Bill No 36/92), unfortunately, does not state the reasons for the introduction of the section.

lodgment of a caveat by the caveator and is not concerned to consider whether or not the caveator's claim is justified.⁵⁷ This is because of the role which the caveat is designed to play in the Torrens system, *viz.*, for the interim protection of claims to interests in land that are alleged by the caveator but not yet proved.⁵⁸

It is possible to think of situations involving abuse of the caveat procedure where section 127 of the LTA is concerned. For example, in relation to section 127(2), a caveator, when notified by the Registrar of his intention to remove the caveat thereunder, may take no action to obtain a court order extending his caveat or furnish the Registrar with satisfactory evidence to show that his caveat ought not to be cancelled. Upon the cancellation of the caveat by the Registrar and to frustrate the attempts of the registered proprietor of the land to sell the land to potential buyers, the caveator lodges a similar caveat. In doing so, he is abusing the caveat procedure and avoiding the merits of his caveat being determined by the court or by the Registrar under section 127(2)(a) or (b) respectively. A stalemate may arise if the caveator were to resort to such tactics repeatedly whenever he is notified by the Registrar of the impending cancellation of his caveat. To prevent such abuse of the caveat procedure in relation to section 127(2) of the LTA, there is much to be said for having a prohibition similar in substance to that in section 121(6) of the same Act. Such a prohibition would indirectly put pressure on the caveator to have the merits of his caveat determined by the court or the Registrar. Otherwise, once the caveat is removed by the Registrar, the caveator would not be allowed to lodge a further caveat based on the same facts and in respect of the same estate or interest in land.

It may be argued that such a prohibition is unnecessary as the caveatee can always proceed by court action to have such further caveats set aside. That is precisely the point: why should a caveatee be made to go to court when a potential abuse situation can be easily tackled by a statutory provision? To argue for such a prohibition in relation to section 127 of the LTA is not to deny that such a prohibition cannot cover all situations where abuse may occur. In fact, in situations not covered by the prohibition, the court has jurisdiction to decide whether the lodgment of such further caveats is an abuse of the caveat procedure.⁵⁹ However, the fact that the

⁵⁷ S 117(4), LTA. See also *Eng Mee Yong & Ors v V Letchumanan*, *supra*, note 36, at 214.

⁵⁸ It is left to the party concerned to secure the removal of the caveat and to claim compensation from the caveator for any damage he has suffered by reason of the entry of the caveat having been obtained by the caveator without reasonable cause: *Eng Mee Yong & Ors v V Letchumanan*, *supra*, note 36, at 214. See also s 128 of the LTA.

⁵⁹ In the Malaysian case of *Damodaran v Vasudeva* [1974] 1 MLJ 128, a further caveat lodged against the same land at the instance of the same caveator and based on the same grounds while the earlier caveat was still in existence, was set aside by the court on the grounds

court has jurisdiction to deal with cases of abuse of the caveat procedure should not prevent legislative intervention in situations which are warranted. In a situation where the caveator decides to remain idle after being given 30 days to obtain relief from the court or Registrar, his inaction would suggest that he has no good grounds for continuing the caveat. Accordingly, a further similar caveat should not be allowed to be lodged after the cancellation of the earlier caveat. Such a prohibition should also apply where a caveat has been ordered to be removed, or its extension refused, by the court under section 127(1) or (2)(a) of the LTA. As with the prohibition in section 121(6) of the LTA, a further caveat may be lodged in the above suggested prohibited situations only when leave of the court has been obtained by the caveator.⁶⁰

Finally, it may be noted that section 128 of the LTA imposes liability on a caveator to pay compensation to any person who suffers pecuniary loss that is attributable to the caveat being lodged vexatiously or without reasonable cause. While one may argue that section 128 is sufficient to deter the lodgment of further caveats in the situations discussed above, that we have the prohibition in section 121(6) of the LTA testifies to the need for a substantially similar prohibition where section 127 of the LTA is concerned. In any event, to succeed under section 128 of the LTA, it is necessary to show that the pecuniary loss sustained is attributable to the wrongful or vexatious lodgment of the caveat. Merely to show that the caveat was lodged wrongfully or vexatiously without also proving that it resulted in the pecuniary loss suffered, is insufficient.

V. CONCLUSION

It cannot be denied that the introduction of section 127(6) of the LTA has gone some way towards clearing up some of the doubts as to who is a caveatee for the purposes of exercising the remedies under section 127 of the same Act. The position of a person who does not come within section

of abuse of the caveat procedure even though it was not one prohibited under the National Land Code 1965. In Australia, the court would intervene in a proper case to prevent the misuse of the caveat procedure by the lodgment of vexatious successive caveats even where there is no statutory prohibition: see *Stocks and Holdings (Imperial Arcade) Ltd v Fink* (1965) 82 WN (Pt 1)(NSW) 386.

⁶⁰ Under the Malaysian National Land Code 1965, s 329(2) prohibits the Registrar from entering a fresh caveat in respect of the same land or interest in question and based on the like claim as that on which the earlier one was based where the court has ordered the removal of the earlier caveat, or has refused an application for extension of time with respect to the earlier caveat, or where the Registrar has removed the earlier caveat pursuant to s 326(3) of the same Code, the latter provision corresponding to s 127(2) of the LTA. For a recent case in which s 329(2) did not apply, see *Thevathason v Kwong Joon* [1990] 3 MLJ 49.

127(6) of the Act and who has no registered title or interest to show is more doubtful, although there appears to be no cogent reason to deny him the remedies of a caveatee under section 127 of the Act. To ensure that the remedies available under section 127 are not rendered otiose, a provision should be introduced to ensure that there is no abuse of the caveat procedure. This can take the form of a prohibition on the lodgment of further caveats which are designed to undermine the effectiveness of the remedies provided thereunder.

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