

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

[2023] SGHC 126

Originating Application No 208 of 2023

Between

- (1) Kok Zhen Yen
- (2) Cheong Wee Min

... Claimants

And

Beth Candice Wu

... Defendant

FOUNDATIONS OF DECISION

[Land — Caveats — Remedies of caveatee — Caveator claiming contractual right to sale proceeds of land — Whether contractual right to sale proceeds is an interest in sale proceeds of land — Section 115(3)(a) Land Titles Act 1993 (2020 Rev Ed)]

[Land — Caveats — Wrongful lodgment — Compensation payable]

[Land — Caveats — Wrongful lodgment — Whether declaratory relief should be granted]

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This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Kok Zhen Yen and another

v

Beth Candice Wu

[2023] SGHC 126

General Division of the High Court — Originating Application No 208 of 2023

Goh Yihan JC

10 April 2023

4 May 2023

Goh Yihan JC:

1 The claimants were Ms Kok Zhen Yen (“the first claimant”) and Mr Cheong Wee Min (“the second claimant”). They made this application against the defendant, Ms Beth Candice Wu, for the following orders:

(a) an order requiring the defendant to show cause pursuant to s 127(1) of the Land Titles Act 1993 (2020 Rev Ed) (“LTA”) as to why Caveat No IH/746301F (“the Second Caveat”) lodged by the defendant against [address redacted] (“the Property”) should not be withdrawn or otherwise removed;

(b) a declaration that the defendant has no caveatable interest in the Property;

- (c) a declaration that the Second Caveat was lodged wrongfully, vexatiously, and/or without reasonable cause;
- (d) an order directing the Registrar of Titles, Singapore (“the Registrar”) to cancel or otherwise remove forthwith the Second Caveat from the land register;
- (e) an order restraining the defendant from lodging further caveats against the Property;
- (f) an order that the defendant pays to the claimants damages to be assessed pursuant to s 128(1) of the LTA; and
- (g) an order that the defendant pays to the claimants the costs of and incidental to this application, together with interest pursuant to s 12(1) of the Civil Law Act 1909 (2020 Rev Ed).

2 While the claimants had prayed for eight orders, I found it convenient to deal with these orders along four categories. These were: (a) relief under s 127(1) of the LTA (“s 127(1)”), (b) damages to be assessed under s 128(1) of the LTA (“s 128(1)”), (c) other reliefs including an injunction and various declarations, and (d) the appropriate costs order for this application.

3 At the end of the hearing on 10 April 2023, I allowed the claimants’ application in part and made the orders they had prayed for except for (a) the declarations sought in [1(b)] and [1(c)], and (b) the order that the defendant pays damages sought in [1(f)]. Since this case concerned the novel prayer under Singapore law for an injunction to restrain a caveator from lodging further caveats, I give the full reasons for my decision in these grounds.

Background facts

4 I begin with the relevant background facts. The claimants are husband and wife. Together, they have three adult children. The second of their children is their son, Mr Cheong Jen-Ghis (“CJG”). The defendant is CJG’s wife. This therefore makes the defendant the claimants’ daughter-in-law. CJG is a medical doctor who is based in Australia. The defendant runs various businesses, including an online business selling honey products called “HoneySpree”. CJG and the defendant commenced divorce proceedings in September 2022.

5 The claimants purchased the Property that is the subject of the present case in 2009. The claimants did so for investment reasons. As such, the Property has been rented out since the time it was purchased. The claimants in turn reside in a HDB flat in Bishan. They are the only occupants of this flat because all of their children have moved out after their respective marriages.

6 In 2022, the claimants decided to sell the Property to fund their retirement. Thus, on 9 October 2022, the claimants granted an Option to Purchase (“OTP”) to Chin Fook Chink and Emily Tan Hwee Leng (“the Purchasers”) to purchase the Property at \$1,280,000. Following the grant of the OTP, the Purchasers accepted and exercised the OTP on 15 February 2023.

7 It was through this process that the claimants found out that the defendant had lodged two caveats against the Property. After they had granted the OTP, the claimants found out from their conveyancing solicitors on 6 January 2023 that the defendant had lodged Caveat No IH/666407A against the Property on 7 December 2022 (“the First Caveat”). The First Caveat stated as follows:

INTEREST CLAIMED

I, the Caveator claiming an ESTATE OR INTEREST in the land as a beneficiary of the sale proceeds on having made monthly instalment repayments with effect from October 2015 towards an Equity Term Loan under [Account No. redacted] on a verbal agreement with the registered proprietors that they will make repayment to her when they sell the property herein.

GROUND OF CLAIM

By virtue of

- The Caveator made monthly instalment repayments with effect from October 2015 towards an Equity Term Loan under [Account No. redacted], granted to the registered proprietors by the Mortgagee – the Standard Chartered Bank (Singapore) Limited on a verbal agreement with the registered proprietors that they will make repayment to her when they sell the property herein.

8 The claimants were then advised by their conveyancing solicitors that they would not be able to complete the sale and purchase of the Property unless the First Caveat was cancelled or withdrawn. The claimants therefore instructed their conveyancing solicitors to make an application to the Registrar pursuant to s 127(2) of the LTA (“s 127(2)”) for the First Caveat to be cancelled. The Registrar issued a notice dated 11 January 2023 (“the Notice”) to the defendant, informing her that the First Caveat shall be cancelled unless she obtained a court order to the contrary by 15 February 2023. The defendant did not obtain such a court order by the deadline, nor did she respond to the Notice in any other way. As a result, the First Caveat was cancelled by the Registrar on 15 February 2023.

9 Despite being notified that the First Caveat would lapse by 15 February 2023, the defendant lodged *another* caveat (*ie*, the Second Caveat) against the Property on 7 February 2023. The claimants were notified of the Second Caveat by a notice from the Registrar dated 11 February 2023. The grounds of claim in

the Second Caveat were substantially similar to those in respect of the First Caveat:

INTEREST CLAIMED

I, the Caveator claiming an ESTATE OR INTEREST in the land as Equitable/Beneficial Owner

GROUND OF CLAIM

By virtue of

- The Caveator, by a verbal agreement, which is supported by evidence in writing made with the Registered Proprietors in that the Registered Proprietors will make repayment to the Caveator when they sell the property herein, had with effect from November 2016 made monthly payments into the Registered Proprietors' bank account at Standard Chartered Bank (Singapore) Limited [Account No. redacted] to enable the Registered Proprietors to make use of the monies for monthly instalment repayments to Standard Chartered Bank (Singapore) Limited for an Equity Term Loan granted by the Standard Chartered Bank (Singapore) Limited – the Mortgagee – of the property herein.

10 The claimants therefore brought the present application for relief against the defendant in respect of the Second Caveat. In this regard, the parties advanced different accounts as to the defendant's right to lodge the Second Caveat. I will deal with these accounts below.

The relevant issues

11 At this juncture, it would be helpful for me to set out the relevant issues that I had considered. Considering the claimants' prayers and the parties' respective positions, the relevant issues were:

- (a) whether the defendant had discharged her burden in showing cause why the Second Caveat should not be removed pursuant to s 127(1);

- (b) whether the defendant was liable to pay compensation to the claimants pursuant to s 128(1); and
- (c) whether the claimants were entitled to the other reliefs they sought, such as an injunction restraining the defendant from lodging further caveats against the Property, and the various declarations.

12 I had analysed the claimants' prayers in this manner because the reliefs sought actually built on each other in the order of (a) the removal of the Second Caveat under s 127(1), (b) damages in respect of loss caused by the lodgment of the Second Caveat under s 128(1), (c) an injunction to restrain the lodgment of further caveats pursuant to ss 127(1) read with 128(1) of the LTA, and (d) various declarations under the general powers of the High Court. This will become clearer in my analysis below. I will now address each issue in turn.

Whether the defendant had shown cause as to why the Second Caveat should not be removed

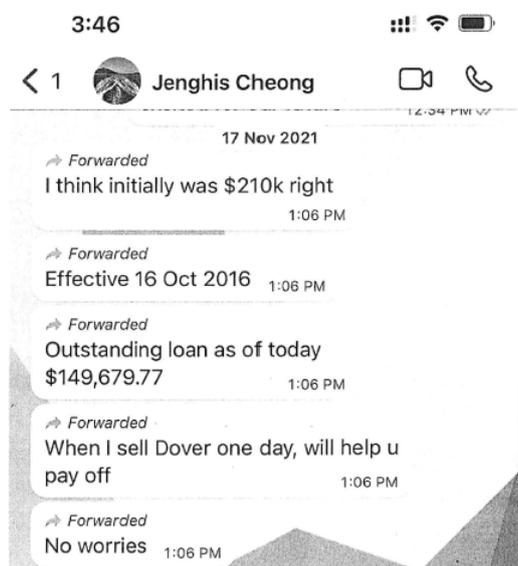
The defendant's position

13 The parties' different positions on this issue centred on whether the defendant had a caveatable interest in the Property. I begin with the defendant's position because the burden was on her, as the caveator, to justify the Second Caveat. In essence, the defendant's position was that the claimants were indebted to her in the sums of \$93,228 and \$15,000. However, only the sum of \$93,228 was relevant because that was what the defendant said was the basis of the Second Caveat.

14 Turning then to the sum of \$93,228, the defendant alleged that she was owed this sum by the claimants because she had been paying them monthly instalment payments to repay a loan secured by the Property. By the defendant's

account, the first claimant had told CJG that the claimants would sponsor his dream to study medicine in Australia. In order to do this, the claimants would apply for a loan from Standard Chartered Bank (“SCB”) to be secured by the Property (“the Housing Loan”). However, the claimants’ combined monthly income was insufficient to support the monthly payments for the Housing Loan. As such, the first claimant allegedly asked the defendant to lend her support by making monthly instalment payments in repayment of the Housing Loan.

15 Further, the first claimant allegedly told the defendant that when the claimants eventually sold the Property, she would get her money back. According to the defendant, this arrangement was supposedly confirmed by the following WhatsApp messages dated 17 November 2021:



16 Assured that she would get her money back, the defendant agreed to make the monthly instalment payments for the claimants to service the Housing Loan. Accordingly, with the defendant’s help, the claimants secured the Housing Loan of \$210,000 from SCB. A total of \$209,679 was transferred to a

Singapore joint account belonging to CJG and the defendant (“the Singapore Joint Account”). This sum was later transferred to an Australian joint account belonging to CJG and the defendant (“the Australian Joint Account”). The defendant said that she had made the first monthly instalment into the first claimant’s MortgageOne Current Account at SCB (“the SCB MortgageOne Account”) in November 2016 and continued to make these payments for a number of years.

17 Further, the defendant maintained that she did not make use of the total sum of \$209,679 for her living expenses. However, she did admit to using A\$115,032 from the Australian Joint Account “[on] one occasion when [she] went short of cash”.¹ The defendant had transferred this amount to HoneySpree’s account on 10 August 2017.² Somewhat contradictorily, the defendant then said that because the sum of \$209,679 was strictly a loan from the claimants to CJG, she “did not use a single cent of funds to deprive [CJG] of the Claimants [*sic*] intention and purpose of borrowing under [the Loan]”.³

18 Accordingly, the defendant lodged the Second Caveat for her claim of \$93,228 from the claimants. This was the exact sum she had paid into the SCB MortgageOne Account to enable the claimants to make monthly instalment repayments for the Housing Loan. The defendant fully expected to be repaid this sum once the claimants have sold the Property.

¹ Affidavit of Beth Candice Wu dated 25 March 2023 (“Defendant’s 1st Affidavit”) at para 30.

² Affidavit of Kok Zhen Yen dated 9 March 2023 (“First Claimant’s 1st Affidavit”) at pp 15 and 242.

³ Defendant’s 1st Affidavit at para 32.

The claimants' position

19 The claimants' position was to deny that they had made any agreement with the defendant that she would be repaid any sum upon the sale of the Property. In fact, the monthly payments made by the defendant were repayments for a personal loan of \$210,000 that the claimants had given to the defendant and CJG ("the Personal Loan"). Thus, by this account, it was the defendant who was indebted to the claimants, and not the other way around.

20 In elaboration, the claimants did not deny that they had wanted to help CJG's pursuit of a medical degree in Australia. In order to help the defendant and CJG with the course fees and their living expenses, the claimants applied for the Housing Loan, which was a second housing loan in addition to their existing housing loan. Following SCB's approval of the Housing Loan on 19 October 2016, the first claimant transferred the sum of \$209,679 to the Singapore Joint Account on three occasions (19 October 2016, 20 October 2016, and 7 November 2016).

21 The claimants said that the understanding between them, the defendant, and CJG was that the defendant and CJG would repay the Personal Loan by making periodic transfers from the Singapore Joint Account to the SCB MortgageOne Account. This was supposed to be a loose arrangement because of the parties' relationship. As such, there was no fixed amount that the defendant and CJG would transfer to the SCB MortgageOne Account every month. The first claimant was satisfied with this arrangement so long as the balance in the SCB MortgageOne Account was enough for the monthly deductions in respect of the Housing Loan. Pursuant to this arrangement, the defendant and CJG began to make monthly transfers from the Singapore Joint Account to the SCB MortgageOne Account. The claimants emphasised that

these repayments for the Personal Loan came from funds owned by the defendant and CJG jointly, and not from the defendant alone. This arrangement continued until September 2022, which was when the defendant and CJG commenced divorce proceedings.

22 Accordingly, the claimants argued that defendant had no caveatable interest and therefore no right to lodge any caveat against the Property. Further, the claimants stated that the defendant had lodged the caveats for no other purpose than to cause distress to the claimants and their family.

The applicable law

23 Having set out the parties' respective positions, I turn to the applicable law. The claimants sought relief from the Second Caveat pursuant to s 127(1) of the LTA, which provides as follows:

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.

24 Section 127(1), consistently with s 127(2), places the burden on the caveator to justify the caveat. While 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; or (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) at p 132). As can

be seen from their respective positions, the parties' dispute in the present case was whether the defendant had a caveatable interest.

25 More generally, as I had the occasion to explain in *Nimisha Pandey v Divya Bothra* [2023] SGHC 125 ("*Nimisha Pandey*") at [34], the applicable test to determine whether a defendant has shown cause, why a caveat should not be removed under s 127(1), 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.

26 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. This therefore constitutes a two-stage test. This test has been applied by several cases locally (see, for example, the High Court decisions of *PACC Offshore Services Holdings Ltd v Kensteel Engineering Pte Ltd* [2017] SGHC 175 ("*PACC Offshore*") at [10] and *Eng Bee Properties Pte Ltd v Lee Foong Fatt* [1993] 2 SLR(R) 778 at [26]).

27 On the first stage of the test, the serious question to be tried could be one of facts or law. 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 (at [24]), 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”. This is, of course, a starting position that is subject to the balance of convenience being in favour of maintaining the caveat, as Sundaresh Menon JC (as he then was) observed in the High Court decision of *Tan Yow Kon v Tan Swat Ping and others* [2006] 3 SLR(R) 881 at [87]. Nevertheless, 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]).

28 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). Of course, if the caveator cannot even establish a caveatable interest, then there is no need to consider the balance of convenience of the case.

My decision: the defendant had not shown cause why the Second Caveat should not be removed

29 I decided that the defendant had not shown cause why the Second Caveat should not be removed. More specifically, I found that the defendant had not discharged her burden of showing that she had a caveatable interest in the Property. This meant that there was no serious question to be tried and so the Second Caveat, which has been judicially recognised as being akin to an interim injunction, should be removed. I concluded so for two reasons.

The defendant had not discharged her burden of proving an agreement with the claimants for her to be paid from the sale proceeds of the Property

30 First, I found that there was never any agreement between the claimants and the defendant for the defendant to be paid from the sale proceeds of the Property. Bearing in mind that the burden was on the defendant to justify the Second Caveat, I found that she had not advanced sufficient evidence to discharge the burden of proving such an agreement. In so far as she asserted that the claimants had agreed to repay her the monies she supposedly paid them to service the Housing Loan, the only concrete evidence she adduced was the series of WhatsApp messages dated 17 November 2021. I was not convinced these messages supported any such agreement between the claimants and the defendant. In the first place, it was unclear who sent those messages since they were all marked as being “forwarded” from an unknown person.

31 Further, even if the messages were from the first claimant (as the first claimant’s further affidavit showed to be the case),⁴ that did not assist the defendant because the messages were ambiguous as to their context and meaning. For example, in the most crucial message, *ie*, “[w]hen I sell Dover one day, will help [you] pay off”, it was unclear to me what “help you pay off” meant. Indeed, if at all, this message actually supported the claimants’ account that they had extended a Personal Loan to the defendant and CJG. If the first claimant had said “help you pay off” to CJG, this must have meant that the claimants were not the ones bearing the debt. Instead, assuming that the message came from the first claimant, it would have been the *recipient* of that message who needed help to pay off a debt. This therefore supported the claimants’

⁴ Affidavit of Kok Zhen Yen dated 31 March 2023 (“First Claimant’s 2nd Affidavit”) at p 15.

account that it was the defendant and CJG who were the ones indebted to the claimants, and not the other way around.

32 Given that the defendant had not adduced sufficient evidence to discharge her burden of proving the alleged agreement, it followed that the claimants' version of events was to be preferred. In any event, I found that the claimants' account was also independently believable. First, this was because the claimants had exhibited bank documents that clearly showed the transfer of \$209,679 to the Singapore Joint Account, which was jointly owned by the defendant and CJG. The defendant therefore could not deny that she had received, albeit jointly, the sum of \$209,679 from the claimants.

33 Moreover, there was also clear evidence that the defendant and CJG made periodic payments from their Singapore Joint Account to the SCB MortgageOne Account from November 2016 to August 2022.⁵ This was more readily seen as a repayment of a debt since it was the defendant and CJG who received the \$209,679 from the claimants to begin with. In fact, as the first claimant exhibited in her further affidavit, CJG had created a detailed spreadsheet using Google Sheets when he was making plans for his further studies in Australia. CJG had created and shared this spreadsheet with the defendant on 25 and 30 September 2015, respectively. This spreadsheet clearly referred to "Mum's loan" of \$210,000.⁶ The evidence was therefore clear that the defendant and CJG were indebted to the claimants and paying off that loan.

34 Finally, the defendant had admitted that she had taken out some of the money meant for CJG's tuition fee, amounting to a relatively large sum of

⁵ First Claimant's 1st Affidavit at pp 79–216.

⁶ First Claimant's 2nd Affidavit at pp 23-24.

A\$115,032, to finance her own business, HoneySpree. As the defendant saw fit to use the money that the claimants had provided for her own purposes, this was again more consistent with both the defendant and CJG being indebted to the claimants, rather than the other way around. In any event, beyond a bare assertion in her affidavit that she had repaid this sum, presumably with the aim of suggesting that she had discharged her indebtedness to the claimants, there did not appear to be any documentary evidence to this effect.

In any event, a contractual right to the sale proceeds of the Property was not a caveatable interest

35 Second, even if I were to find that the claimants had agreed to repay the monies concerned to the defendant from the proceeds of the sale of the Property, I did not think that such an interest could amount to a caveatable interest. Indeed, there is existing authority that such an interest was not “an interest in the proceeds of sale of land” within the meaning of s 115(3)(a) of the LTA (“s 115(3)(a)”). In the High Court decision of *Salbiah bte Adnan v Micro Credit Pte Ltd* [2015] 1 SLR 601 (“*Salbiah*”), the plaintiff and her former husband, Zam, were joint tenants of their matrimonial home. When they were still married, Zam took out two loans of \$1,000 each from the defendant. He only repaid the first loan but not the second loan. The defendant then lodged a caveat on their matrimonial home on that basis that Zam had agreed to repay the second loan out of the proceeds of the sale of the home. Later, the plaintiff and Zam were divorced in the Syariah Court. The Syariah Court ordered that the matrimonial home be transferred to the plaintiff. But when the plaintiff tried to register the transfer, she found out that she could not do so until the caveat was removed. She therefore sought an order from the High Court to remove the caveat because, among others, the loan did not create an “interest in land” within the meaning of s 115(1) of the then Land Titles Act (Cap 157, 2004 Rev Ed).

36 Edmund Leow JC allowed the plaintiff's application to remove the caveat. The learned judge's primary ground for his decision was that the loan documents did not confer on the defendant any legal, equitable, or contractual interest in the sale proceeds. In particular, there was nothing in the documents which said that the interest in the sale proceeds of the matrimonial home would be assigned to the defendant or held on trust for him. There was also nothing in the documents about any agreement to repay the second loan out of the sale proceeds. But more broadly, the learned judge questioned whether the right to be paid out of the sale proceeds of land should be a caveatable interest under s 115(3)(a) of the then LTA, which is identical with s 115(3)(a) of the present LTA. Section 115(3)(a) provides as follows:

115.—(3) For the purposes of this Part, and without limiting its generality, a reference to a person claiming an interest in land includes a reference to any of the following persons:

(a) any person who has an interest in the proceeds of sale of land, not being an interest arising from a judgment or order for the payment of money;

...

37 Leow JC held (at [33]) that the purpose of s 115(3)(a) is to allow individuals who had a definite entitlement to the sale proceeds of land, but no interest in the land itself, to lodge caveats to protect their interest. As an example of such definite entitlement, the learned judge referred to the interest of a beneficiary under a trust for sale, which imposed a duty on the trustee to sell the land. The learned judge therefore questioned whether s 115(3)(a) was intended to allow a person with a mere right to have his loan repaid out of the sale proceeds of land to lodge a caveat. Indeed, Leow JC thought that the caveator's interest in such a case would be too far removed from the type of interest that s 115(3)(a) was meant to protect.

38 I respectfully agree with Leow JC’s broad conclusion that when a person claims an interest in the sale proceeds of land, his interest is purely monetary in nature (see *Salbiah* at [41]). As such, to allow a person with a mere contractual right to be paid from the sale proceeds of a property to lodge a caveat on that property would, for all intents and purposes, allow such agreements to function as a form of quasi-security. This could not be the purpose of the caveat mechanism (see further, Alvin See, “Identifying an Interest in Land Sufficient to Support a Caveat: *Salbiah Bte Adnan v Micro Credit Pte Ltd* [2014] SGHC 249”, Singapore Law Blog (15 January 2015)).

39 While the claimants also referred to the High Court decision of *Ho Seek Yueng Novel and another v J & V Development Pte Ltd* [2006] 2 SLR(R) 742 and the District Court decision of *Abdul Hamid Bin Mohamed Ismail and others v Shaik Raheem s/o Abdul Shaik Shaik Dawood and another* [2005] SGDC 28 as being “problematic” and being inconsistent with the outcome in *Salbiah*, I expressed no opinion on these cases as it was not necessary to my decision to adopt the reasoning in *Salbiah* given my earlier finding that the defendant did not have a contractual right to the sale proceeds of the Property to begin with. I would, however, draw a distinction between *Salbiah* and the recent decision of *Nimisha Pandey*, where I had held that an unpaid vendor of land is entitled to a vendor’s lien over the land. While it might be said that the unpaid vendor’s entitlement to the purchase sum is contractual as well, the crucial difference between that situation and that in *Salbiah* is that equity recognises a lien for the unpaid purchase money. It is the lien and not any contractual right to the purchase sum that constitutes the caveatable interest under s 115(1) of the LTA (see the High Court decision of *Bestland Development Pte Ltd (in liquidation) v Mani Udomkunnatum and another* [1996] 2 SLR(R) 300 at [15]).

40 When these principles are applied to the present case, this meant that even if the defendant could establish that she had a contractual right to the sale proceeds of the Property by virtue of an agreement between the claimants and her, I did not think that this could amount to a caveatable interest under s 115(3)(a). Accordingly, I granted prayers (a) and (d) of the claimants' application. Specifically, I ordered that the Registrar remove the Second Caveat forthwith from the land register.

Whether the defendant was liable to pay compensation to the claimants pursuant to s 128(1) of the LTA

The parties' positions

41 The claimants also prayed for the defendant to be made liable to pay compensation under s 128(1). However, they made no arguments on this point in their written submissions. To this end, Mr Kishan Pillay ("Mr Pillay") who appeared on behalf of the claimants, clarified that the claimants had included this prayer as they were not sure when the present application would be heard. Indeed, Mr Pillay's point was that if the present application was only heard much later, then the claimants might have suffered losses that the defendant should pay compensation for.

My decision: the defendant was not liable to pay compensation pursuant to s 128(1) of the LTA

42 Having considered the issue, I decided that the defendant was not liable to pay compensation pursuant to s 128(1). To begin with, as noted in Tang Hang Wu and Kelvin F K Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 4th Ed, 2019) at p 398, s 128 of the LTA ("s 128") allows for compensation to be paid for "pecuniary losses" incurred as a result of a wrongful caveat. Section 128(1) provides as follows:

Compensation payable for wrongfully lodging caveats, etc.

128.—(1) Any person who wrongfully, vexatiously or without reasonable cause —

(a) lodges a caveat with the Registrar;

(b) procures the lapsing of such a caveat; or

(c) being the caveator, refuses or fails to withdraw such a caveat after being requested to do so,

is liable to pay compensation to any person who sustains pecuniary loss that is attributable to an act, a refusal or a failure referred to in paragraph (a), (b) or (c).

43 The key question before me was whether the defendant here had lodged the Second Caveat “wrongfully, vexatiously or without reasonable cause”. In this regard, the Court of Appeal in *Ho Soo Fong and another v Standard Chartered Bank* [2007] 2 SLR(R) 181 (“*Ho Soo Fong*”) held at [34] that that “wrongdoing” in s 128(1) of the LTA “should only cover a tort which is done with an improper motive or an extraneous purpose, for example, where the caveator lodged the caveat deliberately in an attempt to infringe the rights of the caveatee”. Chan Sek Keong CJ also explained that the phrase “without reasonable cause” in s 128(1) is concerned with whether the caveator had lodged the caveat without an honest belief based on reasonable grounds that a caveatable interest exists.

44 For reasons that I will elaborate on below at [71]–[73], on the basis of the affidavits filed for this application, I found that the defendant had entered the Second Caveat wrongfully because she had done so to annoy or harass the claimants. In any event, based on how the defendant had lodged the Second Caveat on 7 February 2023 while choosing not to justify the First Caveat that would have lapsed on 15 February 2023 pursuant to s 127(2), the defendant had lodged the Second Caveat without reasonable cause. She did not have an honest belief based on reasonable grounds that a caveatable interest existed in respect

of the Property because she could not even be bothered to justify the First Caveat.

45 However, beyond this, there was no evidence in the affidavits, nor submissions tendered by the claimants, to support why the defendant should be made liable for damages under s 128(1). In this regard, I am of the view that s 128(1) relates to accrued damage as opposed to future damage. This flows from the Court of Appeal’s characterisation in *Ho Soo Fong* of s 128(1) as creating a statutory tort. It is trite law that, even for torts that are actionable *per se* (*ie*, without the need to prove actionable damage), damages are only awarded for losses that the claimant has actually suffered. In the present case, the only evidence of any suffered damage was the first claimant’s allusion in her first affidavit that the defendant had caused “distress to us and our family”.⁷ There was no other evidence as to the damage that the claimants had suffered as a result of the defendant’s actions. While the first claimant had also alluded to “losses that [the claimants] have suffered or might suffer as a result of her actions”,⁸ these were not particularised or were speculative. Indeed, given that I had ordered the removal of the Second Caveat at the end of the hearing on 10 April 2023, and that the sale of the Property is scheduled to be completed on 3 May 2023, there was no longer any basis for the claimants’ prayer for damages to be assessed pursuant to s 128(1).

46 Accordingly, I dismissed prayer (f) of the claimants’ application and did not order the defendant to pay to the claimants damages to be assessed pursuant to s 128(1). To be fair to the claimants, I accepted Mr Pillay’s explanation on the reason why prayer (f) was included in the first place.

⁷ First Claimant’s 1st Affidavit at para 40.

⁸ First Claimant’s 1st Affidavit at para 44.

Whether the claimants were entitled to the other reliefs they sought

Whether the claimants were entitled to an injunction to restrain the defendant from lodging further caveats against the Property

The parties' positions

47 While the claimants prayed for an injunction to restrain the defendant from lodging further caveats against the Property, they did not make any meaningful written submissions in support of this. The claimants' only submission, which was not helpful at all, was that an injunction should be ordered "given the [d]efendant's conduct".⁹ The defendant likewise did not make any submissions on this point. While Mr Pillay explained that he could not locate any authority on this point and proceeded to make oral submissions before me, I would have benefitted from more detailed and better-researched submissions in this regard. Be that as it may, on the basis of Mr Pillay's oral submissions on this issue, I allowed the prayer for an injunction.

The applicable law

(1) The source of the court's power to grant an injunction

48 I turn first to the applicable law and start with identifying the source of the court's power to grant an injunction. To begin with, there is no provision in the LTA to prohibit a caveator from lodging a further 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 has been removed pursuant to s 127(1) (see Teo Keang Sood, "Remedies of the Caveatee under Section 127 of the Land Titles Act" [1995] SJLS 129 ("*Teo Keang Sood*") at 141). However, Professor Teo Keang Sood ("*Professor Teo*") points out that such a provision

⁹ Claimants' Written Submissions at para 62.

does exist in the then s 121(6) (now s 121(7)) of the LTA. Section 121(7) applies to a caveat which has lapsed at the expiration 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 s 120. Where s 121(7) applies, any further caveat lodged in respect of the same estate or interest in land claimed under the lapsed caveat has no effect unless a court order to the contrary has been obtained. For completeness, s 121(7) provides as follows:

Lapsing of caveats

...

(7) Where a caveat has lapsed under subsection (1)(a), any further caveat lodged in respect of the same estate or interest in land claimed under that lapsed caveat and purporting to be based on the same facts as the lapsed caveat (other than a fresh caveat lodged against any person except the caveatee named in the lapsed caveat) has no effect unless the caveator has obtained permission of the court to lodge the further caveat, and that order or a duly certified copy of that order has to accompany the further caveat when it is lodged with the Registrar.

49 It is curious why a prohibition against the lodgment of a further caveat exists in relation to a caveat that has *lapsed* pursuant to s 121(1)(a) of the LTA, but not in relation to a caveat that has been *removed* pursuant to s 127(1). In this regard, Professor Teo notes that one possible reason for the introduction of the now s 121(7) is to prevent the abuse of the procedure for lodgment of a caveat where s 120 of the LTA is concerned. With the prohibition in s 121(7), a caveator who does nothing to obtain the extension of his caveat, such that it lapses at the expiration of the stated period of 30 days as provided for by s 121(1)(a), cannot lodge a further similar caveat (see *Teo Keang Sood* at 142). However, Professor Teo astutely notes that, without a prohibition similar in substance to the one contained in s 121(7), there would be nothing to stop a caveator from lodging 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 the former caveat. This means that the caveatee would have to go to court again when there is a clear situation of abuse by the caveator.

50 Indeed, in the absence of such a prohibition, it is possible to think of situations involving the abuse of the caveat procedure where s 127 of the LTA is concerned. In a prescient example that is strikingly similar to what the defendant may be doing in the present case, Professor Teo says this (see *Teo Keang Sood* at 143):

... 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.

51 Therefore, the learned author suggests that, to prevent the abuse of the caveat procedure in relation to s 127 of the LTA, “there is much to be said for having a prohibition similar in substance to that in section 121(6) [now s 121(7)] of the same Act”. Professor Teo further notes that such a prohibition would (see *Teo Keang Sood* at 143):

... 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.

52 I respectfully agree with Professor Teo that it is curious why there is no prohibition against the lodgment of a similar caveat after the former caveat has been removed by the court pursuant to s 127(1) (or has lapsed upon the expiry of the 30-day period after the service of the notice under s 127(2)). I would respectfully urge Parliament to consider plugging this lacuna when possible. However, until that happens, it is necessary for the courts to formulate a solution to a very real problem as illustrated by the present case. In my view, in the absence of what is in effect a statutory injunction that automatically applies once the prescribed set of facts are satisfied, the courts can solve the problem, posed by the wrongful lodgment of repeated caveats in the context of s 127, by granting an injunction to restrain such conduct. This is, of course, a less efficient solution than a statutory injunction that applies automatically without the caveatee having to go to court. However, I do not think that the courts can stipulate that such an injunction would apply automatically without the courts' adjudication once certain prescribed facts happen. That would be tantamount to legislating, which is in the exclusive domain of Parliament.

53 I come then to how the courts can grant an injunction in the context of s 127 of the LTA. Although s 127(1) does not expressly provide for the court's power to grant an injunction, it is framed sufficiently wide to accommodate such a power. On its face, s 127(1) provides that after the caveatee has summoned the caveator to show cause before the court as to why the caveat should not be removed, the court "may make such order, whether in the absence of the caveator or otherwise, as seems just". The reference to the court being able to "make such order ... as seems just" clearly allows the court the power to grant an injunction in the appropriate case. This is because there is nothing in s 127(1) or elsewhere in the LTA which may be construed as ousting the High Court's powers granted by para 14 of the First Schedule to the SCJA, read with s 18 of

the same Act. These provisions in the SCJA give the High Court the power to grant all reliefs and remedies in law or in equity, which would include the grant of an injunction, which is an equitable remedy. As such, the phrase “make such order... as seems just” in s 127(1) must be read as giving effect to the High Court’s broad powers under the SCJA, including the power to grant injunctive relief (see generally Philip Jeyaretnam SC and Lau Wen Jin, “Injunctions and Interim Relief” in *Civil Litigation in Singapore* (Francis Xavier SC, gen ed) (Sweet & Maxwell, 2016) at para 4.1.4). This is also similar to the position taken by the Australian state courts in justifying their power to grant injunctive relief of this form (see, eg, the New South Wales Supreme Court decision of *Nguyen v Sage Consultant Group Pty Ltd; Dang v Nguyen (No 3)* [2022] NSWSC 515 at [68]–[72]).

54 Furthermore, this reading of s 127(1) is also consistent with s 130 of the LTA (“s 130”). Section 130 provides as follows:

Right to injunction not affected

130. Nothing in this Part is to be construed as preventing or restricting a caveator from applying for and obtaining from a court an injunction for the purpose of —

(a) restraining the Registrar from registering a dealing the registration of which is prohibited by the caveat; or

(b) restraining another caveator or any party to an action or suit in which the court orders the withdrawal or removal of a caveat or in which it declines to extend the currency of a caveat from lodging another caveat in the same matter.

Section 130 provides generally that nothing in Part 12 of the LTA, in which s 127 belongs, should be construed as restricting a *caveator* from obtaining an injunction. While it is curious that s 130 is only concerned with the *caveator’s* right to an injunction, there is nothing in s 130 which suggests that a *caveatee* is excluded from injunctive relief. In fact, I was of the view that it contemplates

the exact type of injunction that the claimants sought in the present case, albeit in their capacities as *caveatees*.

55 In this regard, s 130(b) suggests that a caveator may obtain an injunction “restraining another caveator ... to an action ... in which the court orders the withdrawal or removal of a caveat ... from lodging another caveat in the same matter”. This was exactly what the claimants sought if they succeeded (and they had) in convincing me to remove the Second Caveat. In particular, the claimants prayed for an injunction to restrain the defendant “from lodging another caveat in the same matter”, which was the Property. Accordingly, while s 130 refers only to a caveator, I held that it does not preclude a caveatee from obtaining injunctive relief and in fact provides examples of the types of injunctions which a caveatee may obtain against an errant caveator.

(2) Principles to guide whether to grant an injunction

56 I come now to the principles to guide a court in deciding whether to grant an injunction to restrain a caveator from lodging a further caveat in respect of a property. I confined the injunction being considered to this form, although there are Australian authorities that suggest a court can grant an injunction in a wider form that is not restricted to only the property concerned (see, for example, the Victoria Supreme Court decision of *Lendlease Communities (Australia) Ltd v Sime Juric* [2018] VSC 107).

57 For reasons that I will now develop, I am of the view that in deciding whether to grant an injunction in the terms described above, it will be helpful for a court to consider the following steps:

- (a) first, to even attract the consideration if an injunction should be granted, it must be considered whether the caveator had committed an act, refusal, or failure referred to in s 128(1); and
- (b) second, if so, notwithstanding that the caveator may be entitled to damages under s 128(1), whether the specific circumstances warrant the grant of an injunction.

The specific circumstances that warrant the grant of an injunction include (a) multiple previous lodgments of caveats in similar terms, (b) intention to annoy or harass the caveatee through the lodgment of the caveats, and (c) potential loss to the caveatee that cannot be adequately compensated by damages.

(A) STEP 1: WHETHER THE CAVEATOR HAD COMMITTED AN ACT, REFUSAL, OR FAILURE REFERRED TO IN S 128(1) OF THE LTA

58 It is necessary to first ascertain the nature of the wrong for which the injunction is sought. In this regard, while I have said that the source of the court's power to grant an injunction can be located in s 127(1) (which is invoked when the caveatee summons the caveator to show cause in court as to why the caveat should not be removed), I am also of the view that not every instance where the caveatee prevails under s 127(1) warrants the grant of an injunction against the caveatee. This is because the purpose of an injunction, broadly speaking, is to prevent the doing or infliction of a wrong. Not every caveat that has been removed pursuant to a caveatee's application under s 127(1) can be said to have resulted from wrongful conduct.

59 Therefore, in the context of a restraint to prevent a caveator from lodging a further caveat, there must preliminarily be an element of wrongdoing in the

caveator’s conduct to warrant the grant of an injunction. As to what “wrongdoing” entails, I find that the answer can be found in s 128. This section is concerned with “[c]ompensation payable for wrongfully lodging caveats, etc” [emphasis added]. As such, if conduct that amounts to “wrongfully lodging caveats” under s 128 can attract compensation, then such conduct can also, in principle, attract injunctive relief. Indeed, the Court of Appeal in *Ho Soo Fong* accepted (at [33]) that the act, refusal, or failure referred to in s 128(1) of the then LTA might be accepted as a new statutory tort. This followed Chao Hick Tin J’s views to the same effect in the High Court decision of *Mookka Pillai Rajagopal and others v Khushvinder Singh Chopra* [1997] 2 SLR(R) 689 (at [21]). This position is also consistent with the well-established principle that a prohibitory injunction is the primary remedy to restrain a tortfeasor from committing a tort in the future (see Andrew Burrows, *Remedies for Torts, Breach of Contract and Equitable Wrongs* (Oxford University Press, 4th Ed, 2019) (“*Burrows*”) at p 443).

60 The act, refusal, or failure referred to in s 128(1) may be crystallised more clearly when the section (which has remained identical in the current version of the LTA) is set out in full:

Compensation payable for wrongfully lodging caveats, etc.

128.—(1) Any person who wrongfully, vexatiously or without reasonable cause —

- (a) lodges a caveat with the Registrar;
- (b) procures the lapsing of such a caveat; or
- (c) being the caveator, refuses or fails to withdraw such a caveat after being requested to do so,

is liable to pay compensation to any person who sustains pecuniary loss that is attributable to an act, a refusal or a failure referred to in paragraph (a), (b) or (c).

61 In applying this section, it is also important to follow the Court of Appeal’s guidance in *Ho Soo Fong* (at [34]) that “wrongdoing” in s 128(1) of the LTA “should only cover a tort which is done with an improper motive or an extraneous purpose, for example, where the caveator lodged the caveat deliberately in an attempt to infringe the rights of the caveatee”. Chan CJ in *Ho Soo Fong* explained (at [35]) that a wider construction of “wrongfully” could “deter a person who honestly believes that he has reasonable grounds for lodging a caveat from doing so”. In this connection, and as I have mentioned above, the phrase “without reasonable cause” in s 128(1) is concerned with whether the caveator had lodged the caveat without an honest belief based on reasonable grounds that a caveatable interest exists. In my view, these principles apply equally to whether an injunction should be granted to restrain a caveator from lodging further caveats in respect of a property.

(B) STEP 2: WHETHER THE SPECIFIC CIRCUMSTANCES WARRANTED THE GRANT OF AN INJUNCTION

62 Even if a caveatee has committed an act, refusal, or failure referred to in s 128(1) and is liable to pay damages to the caveator, that does not necessarily mean that an injunction will be granted as well. This is because of the well-established principle that an injunction will not be granted if damages are sufficient to protect a claimant’s interests. In this regard, I am of the view that the following factors will tilt the balance in favour of an injunction being granted: (a) multiple previous lodgments of caveats in similar terms; (b) the caveator’s intention to annoy or harass the caveatee through the lodgment of the caveats; and (c) potential loss to the caveatee that cannot be adequately compensated by damages. I have derived these factors from various Australian state cases, in which injunctions have been granted to restrain a caveator from lodging further caveats in respect of a property.

63 First, it is clear that if the caveator lodged multiple caveats in similar terms that have all been removed, then an injunction would be more readily granted to restrain him from lodging a further caveat. Thus, in the Victoria Supreme Court decision of *Andrews Family Holdings Pty Ltd v Yellow Tractor Pty Ltd* [2017] VSC 682 (“*Andrews*”), Annesley entered into a contract to purchase land from the plaintiff, Andrews. Andrews terminated the contract when Annesley defaulted in payment. The defendant company, of which Annesley was a director, and which he had intended to nominate as the purchaser, then lodged a caveat against the land based on the terminated contract. Andrews applied to remove this caveat under s 90(3) of the Transfer of Land Act 1958 (No 6399 of 1958) (Victoria), which provides:

90 (3) Any person who is adversely affected by any such caveat may bring proceedings in a court against the caveator for the removal of the caveat and the court may make such order as the court thinks fit.

64 In the event, Ginnane J allowed the removal of the caveat (at [22]). The learned judge further restrained Annesley from lodging further caveats in respect of the land without leave of court. He held that there was authority allowing him to do this in *Maryvell Investments Pty Ltd v Velissaris* [2008] VSC 19, as well as in the general curial power of the court to grant injunctions (at [23]). In particular, Ginnane J held that this case merited an injunction because Annesley had already caused *two* caveats to be lodged before this and had not suggested that he would stop lodging more (at [24]).

65 Second, if it is clear that the caveatee intended to annoy or harass the caveatee through the lodgment of the caveats, then an injunction would be more readily granted to restrain him or her from lodging a further caveat. Thus, in the Victoria Supreme Court decision of *Wells v Rouse* [2015] VSC 533 (“*Wells*”), Rouse had given Wells a payment when they were in a relationship. While

Wells said this was a gift, Rouse said this was a loan. Wells contracted to sell her property and to purchase another property after the parties' relationship ended. Rouse lodged a caveat against the property. The caveat was justified on the payment by Rouse to Wells.

66 Wells then applied for the removal of the caveat and succeeded. Later, one of Rouse's children lodged a second caveat on the same property. The second caveat claimed an estate or interest as a charge, by virtue of an implied, resulting, or constructive trust. John Dixon J described this as "a nonsense" (at [14]) because it is not possible for an interest as a charge to arise on those grounds. In addition to removing this second caveat, the learned judge also granted an injunction to restrain Rouse and his children from lodging any further caveats. His reasoning in this respect is instructive (at [16]):

I will restrain the defendants for the following reasons. The two caveats that have been lodged, the first by Robert Rouse and the second by Arnand Rouse, both claim the same nonsensical interest. Secondly, the timing of the lodgement of the caveats is instructive. The second caveat of Mr Arnand Rouse was lodged on 16 September 2015, the day that the matter was before McDonald J in the Practice Court for the removal of the first caveat. It is not clear to me whether the caveat was lodged before or after Arnand Rouse became aware of McDonald J's order.

67 As can be seen, Dixon J placed weight on the flimsy justification for the caveat, as well as the suspicious timing in the lodgment of the second caveat, to find, in effect, that Rouse and his children intended to annoy or harass Wells. This was clearly an abuse of the caveat process, which the court should not tolerate.

68 Third, if the potential loss to the caveatee cannot be adequately compensated by damages, then this would be another factor that can lead to the

grant of an injunction. This factor is again demonstrated by *Wells*, where Dixon J gave another reason for granting an injunction there (at [17]):

Further, the correspondence that has passed between Mr Arnand Rouse and the plaintiff's solicitor persuades me that there is a serious risk that, if the defendants are not restrained from filing any further caveats, they are likely to file a further caveat in order to thwart or interfere with the attempts by the plaintiff to complete her sale and purchase. The defendants were put on notice by the plaintiff solicitors that their conduct is causing loss and damage to the plaintiff through the need to postpone the settlement of those contracts. The purchaser of the Trentham land has served a notice of default. The time for remedying that default has now passed entitling the purchaser to rescind that contract. The plaintiff seeks to avoid that consequence by completing the contract as soon as possible.

69 As can be seen from this passage, Dixon J was concerned that Wells would suffer further loss and damage because the caveats were causing the repeated postponement of the sale of her property. While the losses could be made up by damages, this is true only to a certain extent. This is because damages may be incalculable when the loss may involve the loss of an opportunity to sell the property owing to the repeated caveats. Further, this may also be because of the intangible mental harm suffered by the caveatee.

My decision: the claimants were entitled to the injunction sought

70 With the above principles in mind, I decided that the claimants were entitled to an order restraining the defendant from lodging further caveats against the Property. I decided this for the following reasons.

71 First, similar to *Andrews*, the defendant had lodged two caveats against the Property. Both were based on essentially the same grounds that I found to be without basis. The manner in which the defendant lodged the two caveats, especially her failure to respond to the Notice issued pursuant to s 127(2) in relation to the First Caveat, showed that she was likely to lodge further caveats

if not restrained from doing so. In this regard, I noted that the defendant had explained that she did not respond to the Notice because that would have been expensive. However, I found that reason inconsistent with her choosing to defend the Second Caveat in court. Indeed, if she was truly facing financial difficulties, she could have chosen not to respond to the claimants' present application under s 127(1) for her to show cause as to why the Second Caveat should not be removed. In my view, the defendant had not responded to the Notice because she thought she could (and did) lodge repeated caveats against the Property without consequences.

72 Second, I also found on the evidence that the defendant had lodged the caveats with the intention of annoying or harassing the claimants. Similar to *Wells*, the timing of when the First and Second Caveats were lodged was instructive. In my judgment, it was telling that the defendant lodged the Second Caveat on 7 February 2023, in full knowledge that the claimants had applied under s 127(2) to cancel the First Caveat, which would lapse on 15 February 2023. Further, despite knowing that the First Caveat would lapse by 15 February 2023 without her further action, the defendant chose to lodge the Second Caveat a week or so before that, based on substantively the same grounds. This was clearly an abuse of the caveat process because it showed that the defendant did not want to justify the First Caveat on the merits but wanted to maintain her interest in the Property through the Second Caveat. This was unacceptable.

73 Third, I found that the claimants would suffer loss that was difficult to compensate by damages. This was because the sale of the Property may not be completed if that was repeatedly disrupted by the defendant's lodgment of further caveats. I also found that this had obviously caused annoyance and harassment to the claimants, which could not be easily compensated by damages.

74 For all these reasons, I allowed prayer (e) of the claimants' application.

Whether the claimants were entitled to the various declarations

The parties' positions

75 The claimants sought two declarations, namely, (a) a declaration that the defendant has no caveatable interest in the Property, and (b) a declaration that the Second Caveat was lodged wrongfully, vexatiously, and/or without reasonable cause.

76 Unfortunately, the claimants made no written submissions in support of the prayers for the two declarations. The defendant likewise made no submissions. After hearing Mr Pillay's oral submissions that were made on the claimants' behalf, I decided that it was not necessary to make the various declarations.

My decision: it was not necessary to make the various declarations

77 To begin with, a declaration is a remedy by which a court simply pronounces on the rights or even the remedies of the parties, even if such declaration is implicit in all remedies. They may aid in the resolution of a dispute or prevent one from arising, especially if parties in a dispute know what their legal positions are (see *Burrows* at p 504). Under Singapore law, a declaration is classified as a statutory (and not equitable) remedy. In this regard, para 14 of the First Schedule to the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA"), read with s 18 of the same Act, gives the power to the High Court to grant all reliefs and remedies in law or in equity. Thus, the Court of Appeal in *Salijah bte Ab Latef v Mohd Irwan bin Abdullah Teo* [1996] 2 SLR(R) 80 said (at [51]) that "[t]he basis of the power to grant declaratory judgments is

s 18, SCJA, para 14 of the First Schedule of the Act, and O 15 r 16 of the Rules of Court”, with the latter now finding expression in O 4 r 7 of the Rules of Court 2021. Therefore, it is clear that I could make the declarations sought by the claimants in the present case.

78 However, whether I should have made the declarations sought was a different matter. Previously, in the English High Court decision of *Faber v Gosworth Urban District Council* (1903) 88 LT 549, it was said that the discretion to grant declaratory relief should be exercised “with extreme caution” (at 550). However, if ever that sentiment was applied by the Singapore courts, the present view is that there is no need to adopt so cautious an approach. Indeed, Viscount Radcliffe in the Privy Council decision of *Ikebife Ibeneweka v Peter Egbuna* [1964] 1 WLR 219 had said that “the power to grant a declaration should be exercised with a proper sense of responsibility and a full realisation that judicial pronouncements ought not to be issued unless there are circumstances that call for their making” (at 225).

79 This general proposition that declaratory relief will only be granted in the appropriate circumstances was echoed by the Court of Appeal in *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another appeal* [2006] 1 SLR(R) 112. In that case, the court pronounced that a person seeking declaratory relief must satisfy six elements, including that the declaration must be justified by the circumstances of the case (at [14]). For present purposes, I only need to focus on the general proposition of whether it is appropriate to grant the declarations sought.

80 As I have outlined above, the claimants were seeking two declarations in the context of the statutory tort that the defendant had committed under s 127(1) read with s 128(1). As *Burrows* notes, declaratory relief in the context

of contract and tort claims will primarily be to pronounce on whether the defendant's conduct amounted to a breach of contract or a tort, as well as related issues (see *Burrows* at p 506). Thus, in *Société Maritime et Commerciale v Venus Steam Shipping Co Ltd* (1904) 9 Com Cas 289, a declaration was made as to the invalidity of a contract which the defendant had threatened to enforce. Also, in the English Court of Appeal decision of *Harrison v Duke of Rutland* [1893] 1 QB 142, the defendant was granted a declaration that the plaintiff was trespassing when he went on a highway located across the defendant's road so as to prevent the defendant's grouse-shooting. However, these are relatively older cases and there have been few cases since where courts have granted declarations in the context of contract and tort claims.

81 With these principles in mind, I declined to make the two declarations sought by the claimants. In my view, these were unnecessary. These declarations were duplicative of the elements that the claimants needed to satisfy in respect of (a) their application under s 127(1) of the LTA for the defendant to show cause why the Second Caveat should not be removed, and (b) their application for damages to be assessed pursuant to s 128(1) of the LTA. In other words, as I had found in favour of the claimants in respect of their claim for the Second Caveat to be removed under s 127(1), I would necessarily have found that the defendant did not have a caveatable interest in the circumstances of the present case. Therefore, it was not necessary to grant the declarations sought.

Conclusion

82 In conclusion, I granted prayers (a), (d), and (e) of the claimants' application. In sum, I ordered that the defendant show cause as to why the Second Caveat should be maintained and, being dissatisfied with her

justifications, I ordered the Registrar to remove the Second Caveat forthwith. I also ordered that the defendant be restrained from lodging further caveats against the Property. I dismissed all of the claimants' other prayers.

Goh Yihan
Judicial Commissioner

Kishan Pillay s/o Rajagopal Pillay and Chan Michael Karfai
(Breakpoint LLC) for the claimants;
Tan Gee Tuan (Gee Tuan Tan) for the defendant.
