



# Stopping a spouse from selling property

If a husband has an interest in a piece of land which is at risk, he can file a caveat – but that doesn't guarantee he will be successful.

WHEN a landed property is registered in the name of the wife, can the husband stop the wife from selling the property? In particular, can he lodge a caveat?

A husband had purchased a property valued at RM900,000 in the name of the wife. He had paid, in her name, an initial deposit of RM50,000 and the booking fee. In other words, he paid part of the purchase price.

The wife signed the Sale and Purchase Agreement as purchaser. A loan for the balance was obtained from a bank and the difference of RM84,667 between the payment made by the husband and the loan was paid by the wife.

The property was transferred to the wife's name and charged to the bank as security.

When the marriage broke down, the husband left the house. Later, the wife also left the house.

Since she had difficulties in servicing the loan, she decided to sell the property and entered into a Sale

and Purchase Agreement to repay the bank.

When the husband came to know, he entered a private caveat and the wife applied to remove the caveat. The question that arose was whether the husband could lodge a caveat on the ground that he had a beneficial interest.

Apart from the earlier payment, the husband had also paid six monthly instalments and the wife had paid the rest of the instalments, for a much longer period. The husband had not filed a divorce petition at that time.

When a person believes he has an interest in a piece of land, which is threatened or at risk, he can file a caveat because it is a mere registration of an encumbrance and involves only an administrative act. However, if it is not the right thing to do, it will be removed and this is what the wife did by applying to court.

The court reiterated that "it was trite law that only a person or body who has caveatable interest can

lodge a caveat on the land. It is also trite that a caveator must prove the existence of his caveatable interest before the caveat is allowed to stand."

To be caveatable, these claims must represent claims that can lead to the making of a substantive entry on the register, either because the interest will become registrable or because it is one for which equitable relief, by way of specific performance, can be sought to enable ultimate registration.

The husband had allowed the name of the wife to be used as the registered owner of the property. If the husband had an interest in the property but he had chosen to vest the whole of the property in the name of his wife, he could not now claim a caveatable interest.

The court took the view that when a man and a woman enter into a lawful union, all assets acquired during their marriage come under the purview of the Law Reform (Marriage And Divorce) Act 1976.

Section 76 of the Act gives the court power, when granting a decree of divorce or judicial separation, to order the division between the parties of assets acquired during the marriage, whether by their joint efforts or the sole effort of either party. Until the court exercises that power, their respective rights are determined by death, or by divorce or judicial separation.

The court decided that if the husband was trying to protect the matrimonial assets, the evidence did not appear to show him to be doing so. This was because, as the wife alleged, the husband had misappropriated RM115,000 belonging to her and payable to her and thereby deprived her of her ability to service the loan. He had also failed to contribute to the support of the two children.

A further point against the husband was that he had made no attempt to service the loan. This was in the light of the fact that the Sale and Purchase Agreement with

the buyer had been entered into and the purchaser had agreed to service the monthly instalment until the transaction was completed and for the total of such instalments paid to be deducted from the balance purchase price payable to the purchaser.

What about the sum of RM50,000 that the husband had paid earlier? The court found that the facts clearly pointed to an intention on the part of the husband that the contribution was to be a gift to his lawful wife.

In the circumstances, the court held that this was an indeterminate interest. As the husband did not have a title or registrable interest in the property, a caveat could not be lodged and what had been lodged would be removed.

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