

**MALAYSIA**

**IN THE HIGH COURT IN MALAYA AT JOHOR BAHRU**

5

**IN THE STATE OF JOHOR DARUL TAKZIM**

**CASE NO. JA-24NCVC-594-07/2022**

10

Dalam perkara berkenaan hakmilik tanah yang dipegang di bawah HS(D) 74361 PTB 13484 Bandar Johor Bahru, Daerah Johor Bahru

15

Dan

Dalam perkara Seksyen-seksyen 326(3), 327(1), 327(2) dan 329(2) Kanun Tanah Negara 1965

20

Dan

25

Dalam perkara Kaveat Persendirian No. 47999/2019 atas hakmilik tanah HS(D) 74361 PTB 13484 Bandar Johor Bahru, Daerah Johor Bahru

**BETWEEN**

30

**8 BAYVIEW (M) SDN BHD  
(Company No: 1082167-U)**

**...PLAINTIFF**

35

**AND**

40

**ANG SWEE KIONG  
(NRIC: 590513-04-5347)**

**...DEFENDANT**



S/N gM3Us4VW3kaF5Cus1G3JPQ

\*\*Note : Serial number will be used to verify the originality of this document via eFILING portal

## GROUNDS OF DECISION

[1] In this case the plaintiff applied for the caveat filed by the defendant  
5 to be removed. The application filed in enclosure 1 is as follows:

“(1) Menurut Seksyen 327(1) Kanun Tanah Negara 1965, Kaveat  
Persendirian No. 47999/2019 yang dimasukkan oleh Defendan Ang  
Swee Kiong atas hakmilik tanah yang dikenali sebagai HS(D) 74361  
10 PTB 13484 Bandar Johor Bahru, Daerah Johor Bahru hendaklah  
dipotong dan dibatalkan;

(2) Menurut Seksyen 327(2) Kanun Tanah Negara 1965, Pendaftar  
Hakmilik Tanah Negeri Johor dikehendaki memotong Kaveat  
15 Persendirian No. 47999/2019 yang dimasukkan oleh Defendan Ang  
Swee Kiong atas surat hakmilik daftaran tanah yang dikenali sebagai  
HS(D) 74361 PTB 13484 Bandar Johor Bahru, Daerah Johor Bahru; dan

(3) Gantirugi menurut Seksyen 329(1) Kanun Tanah Negara 1965  
20 ditaksirkan dan dibayar oleh Defendan Kepada Plaintiff untuk kerugian  
yang dialami oleh Plaintiff akibat Kaveat Persendirian No. 47999/2019  
yang tersebut di atas;

(4) Kos dibayar oleh Defendan kepada Plaintiff;

(5) Lain-lain perintah atau relif yang difikirkan sesuai dan wajar oleh  
25 Mahkamah yang mulia ini.”

[2] The plaintiff in its submission said:

30  
**1. Background Facts**

The Plaintiff is the registered proprietor of the said Land which it  
purchased sometime in year 2014. As proof of ownership of the said



Land, a copy of land title search results has been exhibited as “YSN-1” in the Plaintiff’s director Yap Soo Ngoh’s affidavit dated 26-4-2022.

**2. The Defendant has no caveatable interest in the said Land**

2.1 The Plaintiff’s application to remove the Defendant’s caveat is based on S.327(1) NLC which provides that:-

“**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.”

2.2 In the hearing of an application under S.327 NLC 1965, the **Caveator/Defendant bears the burden** to prove that it has a caveatable interest. The Federal Court in Nanyang Development (1966) Sdn Bhd v How Swee Poh [1970] 1 MLJ 145 made this legal position very clear when it held that-

“In my view he has not only to state his grounds but to substantiate them before the learned judge. I do not think it is the intention of the law that when a person enters a private caveat against a land he would not be required to prove that he has a good reason in law for doing that and that it should be on the part of the proprietor to satisfy the court that the caveator has not got good grounds for entering the private caveat. In my view therefore, the burden is on the respondent to satisfy the court that he has good grounds for his alleged claim that he had a registrable interest on the land, and all the appellant has to show is that it is the registered proprietor.”

(Emphasis added).



2.3 A perusal of the Defendant's Affidavit-in-reply shows that the **Defendant** has **failed to state any caveatable interest** whatsoever to justify his lodging the Defendant's Caveat. The Defendant averred that there was "a global settlement" in two civil suits and exhibited the Consent Order entered by the parties of the civil suits in his affidavit-in-reply to resist the Plaintiff's application to remove his caveat lodged on the said Land.

2.3.1 With respect, the said Land was not a subject matter in any of the civil suits mentioned and the Defendant has therefore completely failed to discharge his burden of proof by showing caveatable interest on the said Land to justify his caveat – to resist the Plaintiff's application.

2.3.2 As a matter of fact, the Defendant's affidavit did **not** even mention a single fact which could possibly create any caveatable interest in the said Land."

### **Caveatable interest**

[3] In the case of **SCORE OPTIONS SDN BHD v MEXALAND DEVELOPMENT SDN BHD [2012] 6 MLJ 475**, the Federal Court speaking through Arifin Zakaria CJ (as he then was) said:

#### **"CAVEATABLE INTEREST**

[25] A caveat is a creature of statute namely, the NLC and hence it can only be lodged by a claimant who has a caveatable interest under the NLC. The purpose of a caveat is to protect an interest in a land, or a right to an interest in that land (see *Yeong Ah Chee v Lee Chong Hani & Anor and other appeals [1994] 2 MLJ 614* at p 624) and to preserve the status quo of the land pending the enforcement of such interest or right (see *Registrar of Titles, Johore v Temenggong Securities Ltd [1976] 2 MLJ 44* at p 46).



[26] It serves as a substitute for the equitable doctrine of notice under the English land law (see *Eng Mee Yong & Ors v Letchumanan* [1979] 2 MLJ 212 at p 214; *Nanyang Development (1966) Sdn Bhd v How Swee Poh* [1970] 1 MLJ 145; [1969] 1 LNS 116; *Haroon v Nik Mah* [1951] MLJ 209; *Jit Kaur v Pari Singh* [1974] 2 MLJ 199; [1974] 1 LNS 57 and *Butler v Fairclough & Anor* (1917) 23 CLR 78 at p 91).

[27] In a New Zealand case of *Miller v Minister of Mines and Attorney General of New Zealand* [1963] AC 484 at p 497, the Privy Council observed that:

“The caveat procedure is an interim procedure designed to freeze the position until an opportunity has been given to a person claiming right under an unregistered instrument to regularise the position by registering the instrument.”

[4] In the Federal Court case of **TAN ONG BAN v TEOH KIM HENG** [2016] 3 MLJ 23, Arifin Zakaria, the learned CJ (as he then was) again stated:

***“The principle of beneficial ownership***

[33] We will begin with an elucidation of the principle of beneficial ownership which we think is crucial to this case. This principle of beneficial ownership was alluded to by Edgar Joseph JR in *Borneo Housing Mortgage Finance Bhd* where he observed:

“... the contractual events which result in the vendor becoming a bare trustee of the land the subject matter of the agreement of sale and purchase for the purchaser, is on completion, that is to say, upon



receipt by the vendor of the full purchase price,  
timeously paid and when the vendor has given the  
purchaser a duly executed, valid and registrable  
transfer of the land in due form, in favour of the  
purchaser, for it is then the vendor divest himself of  
his interest in the land.”

(Emphasis added)

**[34]** According to this principle, when a purchaser of a property has performed his or her contractual obligation upon the full settlement of the purchase price besides executing all the formal documents to effect the registration of ownership, equity accords him or her with all the rights and privileges of a legal owner over the property. The purchaser thus enjoys the benefit of being the owner of the acquired property even though he or she has yet to become its registered owner.

**[35]** This is clearly demonstrated by the case of *J Raju v Kwong Yik Bank Bhd & Anor* [1994] 2 MLJ 408; [1994] 2 AMR 1220, where the Supreme Court held that:

“... the vendor of the land is only regarded as having divested himself of the beneficial interest in his land and vested it on the purchaser at the time when the purchase money had been paid in full.”

(see also *M & J Frozen Food Sdn Bhd and Peninsular Land Development Sdn Bhd v K Ahmad* [1970] 1 MLJ 149).

**[36]** The principle of beneficial ownership differentiate between the rights of a purchaser of a property who has fully settled the purchase price with one who has not. This principle clothes a purchaser who has settled the full purchase price with a distinct



privilege equivalent to a legal owner, although he or she has yet to be registered as the proprietor of the property.

5                   [37] Under this principle of beneficial ownership, the vendor becomes  
a bare trustee for the purchaser in respect of the transacted  
property, while the purchaser assumes the position of beneficial  
owner having right in rem over the property. The purchaser is  
commonly accepted as having a beneficial interest in the land on  
the execution of the contract and upon which specific  
10 performance may be granted by the court. This beneficial interest  
is also sufficient to entitle the purchaser to enter a caveat under  
the NLC.

15                   [38] On the other hand, a purchaser who has not settled the full  
purchase price does not enjoy such benefit. The right of such  
purchaser is contractual in nature and in personam. He or she  
does not have any beneficial interest in the property. In the event  
of dispute, such purchaser can only institute action against the  
vendor with whom he or she has contracted. In other words, such  
20 purchaser merely enjoys a contractual right or a right in  
personam.

25                   [39] In short, a beneficial or equitable owner of a property stands in  
the same position as the legal owner in terms of enforcing  
proprietary rights against the world at large. The only  
difference is that a beneficial owner is yet to be vested with the  
legal title.

30                   [5] In the case of **CHONG TONG HAW (as administrator of the  
estate of Chong Ket Kin, deceased) v CHONG CHEE KEONG [2021]  
9 MLJ 52**, my learned sister Faizah Jamaludin J held as follows:



**“LAW ON REMOVAL OF PRIVATE CAVEATS**

**[24]** The law on the removal of private caveats is well settled. Any person or body who is aggrieved by the existence of a private caveat on a land may apply at any time to court for an order for the removal of the caveat under s 327 of the NLC, which states:

**“327 Removal of private caveat by the court**

*(1) 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.”*

**[25]** The prerequisite for any application for the removal of a private caveat under s 327(1) of the NLC is that the application must be made by a person or a body ‘aggrieved’ by the existence of the private caveat.

**[26]** The exception to this requirement is where the applicant is the caveatee ie, the registered owner of the land. The Privy Council in *Eng Mee Yong & Ors v V Letchumanan* [1979] 2 MLJ 212; [1979] 1 LNS 18 held that where the applicant for the removal of caveat under s 327 is the caveatee, the applicant can rely upon his registered title as prima facie evidence of his unfettered right to deal with the land as he pleases. The caveatee does not have to prove that he is a ‘person or body aggrieved’ by the existence of the private caveat.

**[27]** Upon an application by a person aggrieved or a caveatee for the removal of a private caveat, the onus is on the caveator to satisfy the court that there are sufficient grounds in fact and law for the





caveat to continue remaining on the land. Lord Diplock, delivering the judgment of the board of the Privy Council in *Eng Mee Yong* explained at p 215 of [1979] 2 MLJ 212; [1979] 1 LNS 18:

5                                “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  
10                                are sufficient grounds in fact and law for continuing  
                                      in force a caveat which prevents him from doing so.  
                                      So where, as in the instant case, the only parties to  
                                      an application under s 327 are caveatee and  
                                      caveator there is no difference between what the  
                                      caveator must establish to obtain an extension of  
15                                the caveat under s 326 and what he must establish  
                                      to defeat the caveatee’s application for removal of  
                                      the caveat under s 327.”

20                                [28] Lord Diplock went on to explain the nature of the onus of the  
                                      caveator in an application by the caveatee under s 327 of the NLC  
                                      for the removal of a caveat as below:

25                                *“This is the nature of the onus that lies upon the  
                                      caveator in an application by the caveatee  
                                      under section 327 for removal of a caveat: he 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  
30                                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.”*



S/N gM3Us4VW3kaF5Cus1G3JPQ

\*\*Note : Serial number will be used to verify the originality of this document via eFILING portal

5 [29] Hence, in this instant case, the onus is on the defendant to satisfy this court that the company, on whose behalf he had entered the caveat on the land for, has a **caveatable interest** on the land. Once the defendant has shown: (a) that the company has a **caveatable interest** in the land, he must then show; (b) the plaintiff's application to remove the caveat discloses a serious issue to be tried; and (c) once the defendant has successfully shown (a) and (b), he must then show this court that on a balance of convenience it would be better to maintain the status quo pending the disposal of the company's claim on the land."

10

[6] In the case of **JAYA a/p IN GOPAL v KAMALA a/p VENGADASALAM [2022] MLJU 342**, my learned brother Su Tiang Joo JC stated as follows:

15

**"Removal of Caveat**

20 [18] The National Land Code 1965 (Act 56/1965) relied upon by the Plaintiff without demur from the Defendant has been revised pursuant to section 6(1)(xxiii) of the Revision of Laws Act 1968 (Act 1) and the revised edition, i.e., the National Land Code (Act 828) has come into operation since 15 October 2020. In the further grounds of judgment hereinafter, unless specifically mentioned otherwise, references to the National Land Code (Act 828) ("NLC") is to be taken to refer to the National Land Code (Act 828) (Revised 2020).

25

30 [19] Having made this observation, it is to be noted that the provisions of sections 327(1) and **329(2)** of the **National Land Code** 1965 (Act 56/1965) and that of the NLC are similar and they are reproduced hereunder.



S/N gM3Us4VW3kaF5Cus1G3JPQ

\*\*Note : Serial number will be used to verify the originality of this document via eFILING portal

i) Section 327(1) provides:

“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.”

ii) Section 329(2) provides:

“Where the Court has ordered the removal of any private caveat under section 327, or has refused an application under subsection 326(2) for an extension of time with respect to any such caveat, or where the Registrar has removed any caveat pursuant to subsection 326(3), the Registrar shall not entertain any application for the entry of a further caveat in respect of the land or interest in question it is based on the like claim as that on which the former one was based.”

**[20]** The approach to be undertaken by a court hearing an application under section 327(1) of the NLC for the removal of a private caveat is settled.

**[21]** There are three stages, the first stage is the examination of the grounds expressed in the application for the caveat to ascertain whether the caveator’s claim amounts in law to a caveatable interest; the second stage is to go on to see whether based on the affidavits filed, his or her claim discloses a serious question meriting trial and after crossing these two stages, the third is to ascertain where the balance of justice or convenience lie (see *Luggage Distributors (M) Sdn Bhd v. Tan Hor Teng & Anor* [1995] 3 CLJ 520 (CA)).”



[7] Based on what has been adumbrated above, the balance of justice or convenience lies in favour of the plaintiff for the caveat to be removed.

[8] *Ergo cadit quaestio.*

5

Dated **23<sup>rd</sup> February 2023**

*-Signed-*

10

.....  
(**ASLAM B ZAINUDDIN**)  
**Judge**  
**High Court in Malaya**  
**Johor Bahru**

15

20

25

30

35 *Note: Grounds of judgment is subject to correction of typographical errors, grammatical mistakes and editorial formatting, if any.*



S/N gM3Us4VW3kaF5Cus1G3JPQ

\*\*Note : Serial number will be used to verify the originality of this document via eFILING portal

## **COUNSEL**

### **For the Plaintiff:**

5     **Gan Techiong**  
      **(Wong Wan Ting with him)**  
      Messrs. Gan & Lim  
      Advocates & Solicitors  
      39 Jln Tan Hiok Nee  
10    80000 Johor Bahru

### **For the Defendant:**

15    **Bhavanash Sharma a/l Gurchan Singh Sharma**  
      **Messrs. Bhavanash Sharma**  
      Advocates & Solicitors  
      Level 7-1, No. 2 Jln Solaris  
20    Solaris Mont Kiara  
      50480 Kuala Lumpur



S/N gM3Us4VW3kaF5Cus1G3JPQ

\*\*Note : Serial number will be used to verify the originality of this document via eFILING portal