

PROPERTY AGENTS TRIBUNAL

No 2021-0069T

In the Matter of the *Property Agent and Land Transactions Act 2016* (the Act)

Mr Adrian King (Appellant)

and

Property Agents Board (Board)

and

Mr Robert Sushames (Respondent - Property Agent)

DECISION AND REASONS FOR DECISION

Hearing Date: 3 November 2021

Tribunal: Mr K A M Pitt QC, President

Ms P Corkhill, Member

Mr D Paton, Member

Representation:

Appellant: Written Submissions

Board: No representation as leave granted to withdraw from proceedings

Second Respondent: Written Submissions

DECISION

The Tribunal confirms the decision under appeal.

REASONS FOR DECISION

1. This is an appeal from a decision of the Property Agents Board (the Board) dismissing a complaint by the appellant against the Respondent Property Agent.
2. At all material times the Respondent was a Property Agent and subject to the *Property Agent and Land Transactions Act 2016* (the Act).

3. The substance of the complaint made by the Appellant to the Board was that the Property Agent advertised and sold (the sale) a property in Devonport (the relevant property) when the sale was prevented because of a caveat, thereby committing a “fraud”; similarly that the fact of the sale was “fraudulently” publicised by the Property Agent.
4. The Board considered that the complaint was misconceived, and dismissed it pursuant to section 20(1)(c) of the Act. The Appellant appealed that decision to the Tribunal.
5. For the reasons which follow, the Tribunal is satisfied that the complaint was misconceived, in that there was no effective caveat at the time of the contract for or settlement of the sale, or the publication of the sale, and that the grounds of appeal are similarly misconceived.
6. The material before the Tribunal consists of the documents before the Property Agents Board at the time it made its decision, and the submissions of the Appellant. The detailed facts before the Board are set out in its decision, and it is unnecessary to repeat them here other than as follows. With one exception, the facts arising from the documents are uncontested, but in any event consideration of the appeal is based upon those documents. The documents show the following facts.
7. The contract for sale of the relevant property was made on 27 January 2021. The contract was unconditional, and the property was therefore “sold” on that date in the sense that there was a binding contract. Settlement of the contract took place on 30 March 2021.
8. The factual exemption referred to in paragraph 6 above is as follows. In his complaint form before the Board, the appellant stated that “caveat application was made in March 2121 (sic)”. Leaving aside the year which was obviously 2021, a copy of that caveat application may not have been before the Board at the time it made its decision; the Board noted that “the Application for Caveat provided by the Complainant was dated 27 April 2021”, however that was the date upon which the application was registered.
9. The documents before the Tribunal show the following sequence of events.
10. Bearing the date 22 February 2021, an application for a caveat forbidding registration of dealings with the relevant property, was lodged by the Appellant with the Land Titles Office. The Land Titles Office barcode and the number E253546 was placed at the top of the document, showing it was received by the Land Titles Office. On the top right hand corner of the document was written “Returned copy for resubmit” (the word “Returned” was unclear but that is what it appears to be). No Land Titles Office registration stamp was placed upon the document, and there is nothing to suggest that the application for caveat document was registered at that date; the endorsement suggests that it was to be returned to the caveator, possibly because of an error in the document.
11. Following that sequence of events, a fresh caveat application dated 16 April 2021 was lodged by the Appellant. It was endorsed with the same Land Titles Office number E253546. The words “FRESH INSTRUMENT” were stamped at the top of the document, and a separate registration stamp states “REGISTERED 27 APRIL 2021 RECORDER OF TITLES”. The Tribunal accordingly finds that it was registered on 27 April 2021.

12. The complaint was based upon the proposition that the caveat was effective as from the date of first lodgement of the application, on about 22 February 2021 (or as contended by the Appellant, 25 February 2021). The Appellant had stated in his complaint form to the Board that “land titles cannot exchange when under application”, and continued to rely upon that proposition in his submissions to the Tribunal. That proposition is not correct.
13. The *Land Titles Act* 1980 provides by s 49 that an instrument is not effectual until registered. An ‘instrument’ is defined by s 3 of that Act as including any grant, certificate of title, conveyance, assurance, deed, map, plan, survey, will, probate, or exemplification of will or probate, or any other document in writing relating to the disposition, devolution, or acquisition of land or evidencing title to land. An application for a caveat and caveat fall within that description, and accordingly is not effective unless and until the caveat is registered.
14. It is only in the event that the Recorder does not refuse to register a caveat that he is obliged to record the caveat, and give notice to the registered proprietor: *Land Titles Act* s133(3). It is apparent that the Recorder refused to register the caveat applied for on about 22 or 25 February 2021, and only registered the caveat applied for on 16 April, on 27 April 2021. The caveat was accordingly only effective from the date of registration, which was 27 April 2021.
15. Accordingly, the Tribunal is satisfied that neither at the time of the making of the contract for sale nor at the time of actual settlement, was there a registered caveat forbidding the sale. The sale was valid and effective.
16. No other impropriety of substance was alleged against the Property Agent, in the complaint.
17. There is accordingly no basis for a finding that the Property Agent acted improperly in listing, advertising, selling, or publicising the fact of the sale. The Board correctly dismissed the complaint.
18. The Tribunal accordingly confirms the decision of the Board.

Dated: 3 November 2021

A handwritten signature in black ink, appearing to read 'Keyran Pitt', with a large, stylized flourish at the end.

Keyran Pitt QC, President

RIGHT TO APPEAL DECISIONS OF THE TRIBUNAL

TAKE NOTICE that a person subject to the decision of this Tribunal may appeal under the *Magistrates Court (Administrative Appeals Division) Act 2001* against this decision of the Tribunal; and

An appeal is to be made within 28 days after notice of the Tribunal's decision is given to the Agent or the Board, or within such further period as a magistrate considers is appropriate in the interests of justice.

Also take notice that an appeal to the Magistrates Court (Administrative Appeals Division) **DOES NOT**

- (a) affect the operation of the Tribunal's decision; or
- (b) prevent the taking of action to implement the decision

An order of the Magistrates Court would be necessary to stay an order of the Tribunal.