

## Caveats and Caveatable Interests: Recent Guidance from the Courts

**Caveats are a powerful tool for protecting interests in land, but they are frequently misunderstood and misused. Recent decisions emphasise that not every commercial expectation or contractual right can support a caveat against dealings. This article provides a refresher on how caveats operate and highlights recent cases that illustrate when caveats will be upheld.**

### Caveats – a high-level reminder

A caveat is a notice recorded on a property title to protect an existing legal or equitable interest in land. It operates as a warning to the registered owner and third parties that another person claims an interest that may be affected by a proposed dealing. A caveat does not create rights; it simply preserves them until the claim is resolved.

### Types of caveats

The Land Transfer Act 2017 provides for several types of caveats, including Registrar's caveats and caveats relating to prescriptive titles or access strips. In practice, however, caveats against dealings with land are the most common and are the focus of this article\*.

### Caveats against dealings

Caveats against dealings serve two key purposes:

1. to prevent registration of dealings that would defeat the claimed interest; and

2. to give notice to the registered owner and anyone searching the title that an interest is asserted.

Given they prevent registration of subsequent dealings, these caveats often become contentious and are frequently challenged.

### Caveatable interests and registration requirements

Only certain interests can support a caveat. The caveator must be able to show an arguable proprietary interest, typically derived from or binding on the registered owner. Informal promises or mere expectations will not usually suffice, and courts take a strict approach to these requirements.

### Compensation risk

A person who lodges a caveat without reasonable cause may be liable to pay compensation to anyone who suffers loss as a result. This risk can extend beyond the caveator to include solicitors or agents involved in lodging the caveat.

### **Ponsonby 235 Ltd v Matariki Ponsonby Ltd [2025] NZHC 3175**

The High Court confirmed that a right of first refusal (RFR) in a lease does not, by itself, create an equitable interest in land capable of supporting a caveat. An RFR only becomes an interest in land once it is triggered (for example, by the lessor agreeing to sell to a third party) and the holder is able to seek specific performance.

In this case, although the lessee held a registered lease containing an RFR, no equitable interest existed when the lease was granted. The RFR was later triggered when the lessor entered into a conditional agreement for sale and purchase with a third party, which temporarily gave rise to a caveatable interest. When the transaction did not proceed, the lessee's triggered interest came to an end, leaving it with only a bare RFR.

### **Sidey v Ngatapa Ltd [2025] NZCA 609**

The Court of Appeal confirmed that a purchaser under a conditional agreement for sale and purchase does not

\* Unless the context requires otherwise, references to "caveat" in this article mean a caveat against dealings.

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hold a caveatable interest if the agreement has been validly cancelled, even where the parties continue negotiations after the time for confirming conditions has expired.

The purchaser failed to confirm a due diligence condition by the contractual deadline. Although extensions were agreed on two occasions and discussions continued afterwards, no confirmation was given. When the vendor later received a higher offer, it cancelled the agreement. The purchaser lodged a caveat, arguing that the vendor had affirmed the contract by continuing negotiations.

The Court rejected that argument. Affirmation must be clear and unequivocal, and ongoing discussions alone did not amount to affirmation. On the facts, no enforceable agreement to sell the land existed. As the original agreement had been validly cancelled and no replacement agreement had been formed, the purchaser did not have an interest in land capable of supporting a caveat.

### **Lifestyle Loans Ltd v Pope [2025] NZHC 2181**

The High Court reaffirmed that an unsecured loan does not give rise to a caveatable interest capable of supporting a caveat against dealings, even where funds are advanced to enable the purchase of land.

Lifestyle Loans Ltd (**Lifestyle Loans**) advanced funds to Mr Pope on an informal basis to assist with the settlement of a property purchase. There was no agreement for security when the funds were advanced, and no mortgage or caveat was registered. When the loan was not repaid following the sale of the property, and replacement properties were acquired using sale proceeds, Lifestyle Loans lodged a caveat against dealings and applied for an order that it not lapse.

Lifestyle Loans argued that security had been intended, or alternatively that the use of sale proceeds to acquire new properties amounted to a fraud justifying the imposition of an institutional constructive trust, which would also amount to a caveatable interest. The Court

rejected those arguments. On the evidence, the arrangement was an unsecured loan only, and the lender never had an interest in the original property or any reasonable expectation of acquiring an interest in the subsequent properties.

The Court held that a failure to repay a loan, without more, did not amount to fraud in equity capable of supporting a constructive trust. In the absence of an arguable proprietary interest, there was no basis to sustain a caveat against dealings, and the caveat was ordered to lapse.

### **Key takeaways**

- A caveat can be lodged only where there is an arguable legal or equitable interest in land. Purely contractual or personal rights are insufficient.
- A right of first refusal does not create an interest in land unless and until it is actually triggered. Until then, it will not usually justify a caveat.
- If conditions under a sale and purchase agreement are not confirmed on time and the agreement is validly cancelled, the purchaser has no caveatable interest in land, even if negotiations continue.
- Advancing unsecured funds to assist with a property purchase does not, by itself, give rise to a proprietary interest or justify lodging a caveat.
- Caveats carry real risk. Lodging a caveat without reasonable cause can expose the caveator to removal applications and potential compensation claims.

### **Closing comments**

These decisions reinforce that care needs to be taken before lodging a caveat to ensure a proper proprietary interest exists. Used correctly, caveats remain a valuable tool, but the courts will not hesitate to remove them in the absence of that foundation.