

**SUPREME COURT OF QUEENSLAND**

CITATION: *Reliance Developments Sunshine Coast Pty Ltd v Joiner*  
[2026] QSC 130

PARTIES: **RELIANCE DEVELOPMENTS SUNSHINE COAST  
PTY LTD ACN 695 326 339**  
(Respondent/Plaintiff)  
v  
**MATTHEW JOINER AS AGENT FOR AMAL  
TRUSTEES LIMITED ACN 609 737 064 IN ITS  
CAPACITY AS MORTGAGEE EXERCISING POWER  
OF SALE UNDER REGISTERED MORTGAGE NO  
721861054**  
(Applicant/Defendant)

FILE NO/S: BS1941 of 2026

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court

DELIVERED ON: 15 June 2026

DELIVERED AT: Brisbane

HEARING DATE: 9 June 2026

JUDGE: Morrison J

ORDER: **1. Leave be granted to file the amended application.**  
**2. Upon the respondent, by its Counsel, giving the usual undertaking as to damages, and further undertaking that the sum presently held in trust will be maintained subject to further order from this Court:**  
**a. the application is dismissed;**  
**b. the applicant pay the respondent's costs to be assessed on the standard basis, or as agreed.**

CATCHWORDS: REAL PROPERTY – CAVEATS AGAINST DEALINGS – REMOVAL – PARTICULAR CASES – where Applicant contracted to sell property to Respondent subject to termination of a prior contract of sale with a third party – where Applicant purported to terminate contract with third party and notified Respondent – where third party disputes its contract was validly terminated and lodged a caveat, which third party allowed to lapse – where Applicant then purported to terminate contract with Respondent – where Respondent affirmed its contract, commenced proceedings seeking specific performance and lodged its own caveat – where Applicant

applies to remove Respondent’s caveat and then intends to settle contract with third party – whether Respondent’s caveat should be removed

*Land Title Act 1994* (Qld), s 126(4)(b), s 127

*Allens Asphalt Pty Ltd v SPM Group Pty Ltd* [2010] 1 Qd R 202; [2009] QCA 134, applied

*Belrose RB1 Pty Ltd v Oldfield* [2025] NSWSC 603, cited  
*Bensons Property Group Pty Ltd v Key Infrastructure Australia Pty Ltd* (2022) 37 BCL 248; [2021] VSCA 69, cited  
*BP Refinery (Westernport) Pty Ltd v Shire of Hastings* (1977) 180 CLR 266, cited

*Buchanan v Crown and Gleeson Business Finance Pty Ltd* (2006) 13 BPR 24,513; [2006] NSWSC 1465, applied

*Codelfa Construction Pty Ltd v State Rail Authority (NSW)* (1982) 149 CLR 337; [1982] HCA 24, cited

*Custom Credit Corporation Limited v Ravi Nominees Pty Ltd* (1992) 8 WAR 42, cited

*Leros Pty Ltd v Terara Pty Ltd* (1992) 174 CLR 407; [1992] HCA 22, cited

*Rankin Investments (Qld) Pty Ltd v CMC Property Pty Ltd* [2021] QCA 156, considered

*Ross Cook and Brett Cook Pty Ltd v Bli Bli #1 Pty Ltd* (2009) 1 LT(A)R 273; [2009] QSC 300, applied

COUNSEL: S Lee for the Applicant  
 J Menzies for the Respondent

SOLICITORS: HWLE Lawyers for the Applicant  
 Gadens Lawyers for the Respondent

- [1] The Applicant (“**Joiner**”) applies pursuant to s 127 of the *Land Title Act 1994* (Qld) to remove a caveat lodged by the Respondent (“**Reliance**”). The caveat was lodged by Reliance to protect its rights under a contract for sale of land in relation to a development site at Caloundra. Joiner is the vendor under the contract.

### **Background**

- [2] Karam Boutique Residential 1 Pty Ltd is the registered owner of two adjacent lots at Caloundra (together “**the property**”).
- [3] Amal Trustees Limited (“**Amal**”) holds a mortgage over the property.
- [4] On 24 April 2025, Joiner was appointed as Amal’s agent to exercise the mortgagee’s power of sale. In that capacity, Joiner entered into a contract with Reliance dated 20 February 2026 for the sale of the property for \$2,850,000.
- [5] Reliance’s contract was conditional upon termination, by 19 February 2026, of a prior contract for the sale of the property to a different purchaser, Ruby 3.10 Pty Ltd (“**Ruby**”).

[6] On 24 October 2025, Joiner entered into the contract with Ruby. Settlement was originally set for 22 January 2026, but was deferred until 19 February 2026.<sup>1</sup>

[7] On 19 February 2026:

- (a) Ruby failed to settle, purporting to extend the settlement date under clause 6.2 of its contract; and
- (b) Joiner gave notice of termination of the Ruby contract.

[8] Joiner proposed to execute a contract for the property at the same price, with Reliance. The draft contract contained Special Condition 28:

**“28 Termination of Prior Contract**

28.1 In this special condition:

**Prior Contract** means the sale contract dated 24 October 2025 between the Seller and Ruby 3.10 Pty Ltd for the sale and purchase of the Property; and

**Satisfaction date** means 19 February 2026.

28.2 The Buyer acknowledges and agrees that this Contract is subject to and conditional upon termination of the Prior Contract by 5:00pm on the Satisfaction Date, failing which the Seller may terminate this Contract by notice to the Buyer.”

[9] On 19 February 2026, and before Reliance’s contract was executed, Joiner’s solicitor told Reliance that the prior contract with Ruby had been terminated:

“We also confirm that the Prior Contract referenced in Special Condition 28 of the previous version of the contract has been terminated. Accordingly, Special Condition 28 has been deleted in the current version of the contract, which is attached ...”

[10] About 20 minutes later, Joiner told Reliance:

“We have received further instructions from our client and have been asked to reinstate Special Condition 28. Accordingly, please find attached a revised version of the contract reflecting this change.”

[11] On 20 February 2026, Reliance’s contract was executed. The purchase price was the same as that under the Ruby contract.

[12] On 24 February 2026, Ruby lodged a caveat claiming an equitable interest in the property pursuant to its contract.

[13] On 25 February 2026, Reliance sought “formal notice that the Prior Contract has been terminated pursuant to Special Condition 28.5 of the Contract”. Joiner responded:

“Our client hereby confirms that the Prior Contract was terminated on Thursday, 19 February 2026.”

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<sup>1</sup> In what follows, Joiner, Ruby and Reliance acted through solicitors, but for ease of reference I will ascribe steps to them personally.

- [14] On 10 March 2026, Ruby commenced proceedings seeking specific performance of its contract.
- [15] On 20 March 2026, Joiner filed an application for summary judgment and removal of Ruby's caveat.
- [16] By 2 April 2026, Ruby had raised a contention that Joiner's termination was unlawful under Special Condition 16 of the Ruby contract.
- [17] On 2 April 2026, Joiner's application was dismissed by consent.
- [18] On 9 April 2026, Reliance lodged its caveat. It is that caveat which Joiner seeks to remove.
- [19] The settlement date under Reliance's contract was extended to 6 May 2026, on which date Joiner purported to terminate on the basis of Special Condition 10.2, which relevantly provides:
- "10.2 If at any time the Seller is for any reason unable to:
- (a) ...
- (b) provide to the Buyer a transfer of the Land capable of immediate registration (including due to the existence of a caveat, writ or other encumbrance on the title to the Land);
- ...
- then the Seller may, by written notice to the Buyer:
- (e) terminate this contract; or
- (f) extend the Settlement Date until 2 Business Days after the Seller notifies the Buyer that the Seller is able to provide:
- (i) ...
- (ii) a transfer capable of immediate registration;"
- [20] On 6 May 2026, Reliance affirmed the contract.
- [21] On 6 May 2026, Reliance commenced proceedings for specific performance. An issue in that proceeding is whether Joiner validly terminated the contract with Ruby. Joiner alleges that the termination was valid.
- [22] On 22 May 2026, Reliance searched the title and found that Ruby had not given the three months' notice required under s 126(4)(b) of the *Land Title Act*, namely notice to the Registrar that its proceedings had been commenced. Ruby's proceeding commenced on 24 February 2026 and the time ran out on 24 May 2026.
- [23] Reliance filed a request that the caveat be removed from the title.
- [24] On 25 May 2026, Ruby's caveat had lapsed due to non-compliance with s 126(4)(b) of the *Land Title Act*.

- [25] On 1 June 2026, Ruby's caveat was removed from the title.
- [26] Reliance has paid deposits of \$60,000 towards the purchase price, which Joiner continues to hold. Reliance has confirmed that it is ready, willing and able to settle.
- [27] Reliance has paid the full purchase price into the solicitors' trust account pending resolution of the proceedings. In fact, Reliance has put a total of \$3.86m into the trust account, a sum of over \$1m more than the purchase price under the contract.
- [28] Joiner has announced that its preference is to sell to Ruby, and Mr Lee of Counsel, appearing for Joiner, conceded that if the caveat was removed Joiner would settle with Ruby.

### Legal Principles

- [29] An application to remove a caveat responds to the purpose of the caveat, namely to act as an injunction against registration of contrary interests and thereby enable a determination of conflicting rights.<sup>2</sup>
- [30] The caveator has the burden of establishing:<sup>3</sup>
- (a) that its claim to an interest in the property raises a serious question to be tried; and
  - (b) if so, that the balance of convenience requires the status quo to be maintained by allowing the caveat to continue.
- [31] It is well established that relevant factors recognised as to the balance of convenience include:<sup>4</sup>
- (a) whether the removal of the caveat will derogate from the caveator's claim; Brereton J observed in *Buchanan v Crown and Gleeson Business Finance Pty Ltd*:<sup>5</sup>

“A highly relevant consideration is whether the removal of the caveat will derogate from the caveator's claim. There is great force in the submission ... that if the removal of the caveat would have the practical effect of deferring the priority of the caveator's equitable mortgage, its removal ought not be countenanced. That view is supported by authority which indicates that **it is a rare case where a valid caveat will be removed for reasons of the balance of convenience**. Thus in *Custom Credit Corp Ltd v Ravi Nominees Pty Ltd* (1992) 8 WAR 42, Owen J said (at 50):

However it seems to me interlocutory removal of a caveat where an arguable case as to the existence of a caveatable interest has been demonstrated would be unusual. It is important to bear in mind the nature and purpose of a

<sup>2</sup> See *Leros Pty Ltd v Terara Pty Ltd* (1992) 174 CLR 407 at 422.

<sup>3</sup> *Allens Asphalt Pty Ltd v SPM Group Pty Ltd* [2010] 1 Qd R 202 at [45], citing: *Re Jorss' Caveat* [1982] Qd R 458 at 464-465; *Re Burman's Caveat* [1994] 1 Qd R 123.

<sup>4</sup> *Ross Cook and Brett Cook Pty Ltd v Bli Bli #1 Pty Ltd* (2009) 1 LT(A)R 273; [2009] QSC 300 at [21].

<sup>5</sup> (2006) 13 BPR 24,513; [2006] NSWSC 1465 at [11]-[12]. Emphasis added.

caveat under the Torrens system. By its very nature the caveatable interest must be a proprietary interest in the land. The purpose of the caveat is to restrain the registered proprietor from dealing with the land in a way which will defeat or derogate from the incidents attaching to that proprietary interest until the respective rights of the parties have been honoured (if there is agreement) or to determine if there is disagreement. In many cases, removal of the caveat will have the effect of destroying for all practical purposes, the benefit of the proprietary interest. For example, a creditor, having a specific security interest in land will rank as an unsecured creditor once the property, the subject of the specific security, no longer exists. This will often be the result of removal of a caveat which permits the registered proprietor to sell the property free from any practical obligation to recount to the secured creditor for the proceeds of sale.

In my view, similar considerations are relevant, if the priority of the caveator's interest will be adversely affected by the removal of the caveat, even if the caveator will retain some interest in the land.”

- (b) whether the caveat goes beyond what is necessary to protect the caveator’s interest;
- (c) whether the party applying for removal of the caveat has an interest in the land superior to that of the caveator and the caveat prevents the applicant from a legitimate exercise of its rights; and
- (d) whether the caveat prevents the registered proprietor from the legitimate exercise of a right in respect of the land.

**Serious question to be tried?**

[32] Ms Menzies of Counsel, appearing for Reliance, submitted that there was a serious question to be tried because:

- (a) the interest claimed by Reliance in the caveat is “an equitable interest as purchaser of an estate in fee simple” pursuant to Reliance’s contract with Joiner; that contract is the subject of proceedings where the relief sought is that Joiner’s purported termination of Reliance’s contract was wrongful and the contract ought to be specifically performed; declaratory relief is also sought to establish Reliance’s entitlement to the property;
- (b) there is a question being litigated as to whether Joiner’s termination was lawful; in that respect Ms Menzies points to the fact that the settlement date could have been extended to 17 July, well after it was possible for Joiner to discover that Ruby’s caveat had lapsed and been removed; Reliance affirmed the contract in the face of the purported termination;
- (c) to the extent that the existence of Ruby’s caveat was the reason for the termination, that ceased to be valid when Ruby’s caveat lapsed and was removed from the title;

- (d) as was pleaded in Reliance’s statement of claim in this court, Joiner was under an implied duty to cooperate and do all things reasonably necessary to permit Reliance to have the benefit of the contract; in breach of that obligation, Joiner did not notify Reliance of Ruby’s caveat or proceedings until 10 April 2026, well after the events, did not reasonably extend the settlement date and purported to terminate;
- (e) Reliance remains ready, willing and able to settle, and has put the purchase price (and more) into trust.
- [33] Ms Menzies offered the usual undertaking to support the caveat’s continuation. In anticipation of the contention, raised in Joiner’s outline, that Reliance had insufficient assets to support such an undertaking, she identified the sum in trust, namely \$3.86m, well over the purchase price.
- [34] Mr Lee contended, in very carefully chosen terms, that there was “no sufficient prima facie case” to justify retention of the caveat. In argument, Mr Lee resisted the proposition that his contentions seemed to accept that there was a serious question to be tried but challenged its strength. He reaffirmed that his contention was that there was not a sufficient serious question to be tried. Matters raised to support that contention included the following.
- [35] Ruby’s caveat prevented settlement with Reliance and therefore Joiner was entitled to terminate under Special Condition 10.2(b) and (e).<sup>6</sup>
- [36] Special Condition 10.2 applies if “for any reason” the Seller is unable to provide a transfer capable of immediate registration, including “due to the existence of a caveat” on the title. That language is absolute in nature and does not admit of exceptions, save for fraud or gross negligence mentioned in Special Condition 10.7, which is not alleged here.
- [37] There could be no implied term as contended, because such a term was not reasonable or equitable, nor necessary to give business efficacy to the contract.<sup>7</sup>
- [38] The contended term as to cooperation cannot be justified by necessity and would be inconsistent with the express terms of the contract,<sup>8</sup> such as Special Condition 23 which provides:
- “23.1 The Buyer acknowledges that the terms set out in this contract constitute the entire and only agreement between the parties in relation to the sale and purchase of the Property.”
- [39] In Special Condition 23.1 the phrase “set out in this contract” must be a reference to express terms or at best terms arising by necessary implication from express words; the contended terms are not of that character.

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<sup>6</sup> For the terms of Special Condition 10.2 see paragraph [19] above.

<sup>7</sup> Relying on *Codelfa Construction Pty Ltd v State Rail Authority (NSW)* (1982) 149 CLR 337 at 346; *BP Refinery (Westernport) Pty Ltd v Shire of Hastings* (1977) 180 CLR 266 at 283.

<sup>8</sup> Relying upon *Belrose RBI Pty Ltd v Oldfield* [2025] NSWSC 603 at [162], [165]; and *Bensons Property Group Pty Ltd v Key Infrastructure Australia Pty Ltd* (2022) 37 BCL 248; [2021] VSCA 69 at [107].

## Consideration

[40] In my respectful view, the contentions by Joiner must be rejected and the proper finding is that a serious question has been demonstrated. The reasons for that conclusion are set out below.

[41] At this stage of the proceedings, it is not possible to finally conclude that Special Condition 10.2(b) has the effect for which Mr Lee contends.

[42] Special Condition 10.2 relevantly provides:

**“10 Seller’s right to extend Settlement Date or terminate contract**

10.2 If at any time the Seller is for any reason unable to:

- (a) ...
- (b) provide to the Buyer a transfer of the Land capable of immediate registration (including due to the existence of a caveat, writ or other encumbrance on the title to the Land);
- (c) ...
- (d) ...

then the Seller may, by written notice to the Buyer:

- (e) terminate this contract; or
- (f) extend the Settlement Date until 2 Business Days after the Seller notifies the Buyer that the Seller is able to provide:
  - (i) ...
  - (ii) a transfer capable of immediate registration;
  - (iii) ...
  - (iv) perform its obligations under the contract.

...

10.6 If this contract is terminated by the Seller under special condition 10.2(e) ... the Deposit will be refunded to the Buyer and to the full extent permitted at law the Buyer will have no further Claim against the Seller.

10.7. Except in the case of fraud or gross negligence by the Seller, the Buyer will not Object in relation to any matter in this special condition 10.”

[43] The operative part of Special Condition 10.2 relied upon is that Joiner was unable, by virtue of Ruby’s caveat, to provide a transfer capable of immediate registration.

[44] Special Condition 10.7 does not, in my view, support the view that the wording of 10.2 is “absolute in nature”. It provides that the buyer “will not Object in relation to

any matter in this special condition 10”. However, the definition of “Object” in the special conditions confines the scope of the operation of Special Condition 10.2:

“**Object** means to object generally and includes, as appropriate, to:

- (i) object to the title to the Land or of any other item comprising the Property;
- (ii) avoid or attempt to avoid this contract;
- (iii) terminate this contract or refuse to effect settlement of this contract;
- (iv) delay settlement of this contract;
- (v) claim compensation or any reduction in the Purchase Price;
- (vi) retain any part of the Purchase Price;
- (vii) require the Seller to carry out any works to the Property;
- (viii) requisition the Seller;
- (ix) make a Claim; or
- (x) seek an injunction.”

[45] As is evident, the listed matters are all concerned with the buyer taking steps to avoid the contract or diminish its worth in the hands of the seller. That is not the case here, where the buyer seeks to insist on the full benefit of the contract.

[46] None of those provisions, in my view, would necessarily preclude the buyer from seeking the full benefit of the contract. For example, where the seller has the choice of termination or extending the settlement date until the obstacle (delivery of a transfer capable of registration) is removed, as is the case here, I am not persuaded that the clause would necessarily preclude the contention that the seller should be obliged to take steps to deliver the benefit of the contract to the buyer.

[47] Special Condition 10.2 is central to the contention that the terms of this contract would not permit implied terms as to cooperation or to give the benefit of the contract. In my view, that cannot be concluded at this point. Once it is seen that Special Condition 10.2 does not necessarily have that effect, the remaining arguments as to implication lose their cogency.

[48] I do not consider that Special Condition 23.1<sup>9</sup> adds to the strength of the contention as to the insufficiency of a serious question to be tried. The contention is that the phrase “set out in this contract” must be a reference to “express terms or at best terms arising by necessary implication from express words”. That seems to me to unduly confine the scope of Special Condition 23.1. Such clauses depend on their terms and the nature of the implied term alleged. The implication of a term requiring cooperation in delivering the benefit of the contract is not unusual, nor precluded by clauses such as 10.2.

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<sup>9</sup> The terms of which are in paragraph [38] above.

- [49] The contention as to implying a term into this contract was that authority established the conditions for implying such a term, namely that it must: (i) be reasonable and equitable; (ii) be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; (iii) be so obvious that “it goes without saying”; (iv) be capable of clear expression; and (v) not contradict any express term of the contract.<sup>10</sup>
- [50] However, the contention was that those conditions were not satisfied because:
- (a) “[i]t is not reasonable and equitable to require Joiner to pursue expensive and complex litigation against Ruby”;<sup>11</sup> and
  - (b) “pursuit of complex and expensive litigation against Ruby is not ‘reasonably necessary’”.<sup>12</sup>
- [51] But that is not the thrust of the term that Reliance seeks to imply. It is that there was a duty to co-operate, so that Joiner, in the circumstances, was required to do all such things as were necessary to enable the other party (Reliance) to have the benefit of the contract. Clause 10.2 gave the seller alternative courses if it found it was unable to provide to the Buyer a transfer of the Land capable of immediate registration. They were to (a) terminate the contract, or (b) extend the Settlement Date until after the Seller is able to provide a transfer capable of immediate registration.
- [52] Plainly there was a duty to exercise one of the alternative options. Only one option was destructive of the other. That is, choosing to terminate destroyed the option of extending the settlement date, an option which continued to give Reliance the benefit of the contract. Understood in that light, only extension of the settlement date gave the benefit of the contract to Reliance.
- [53] The contract offers no guidance as to which course the seller should adopt. The contractual choice does not require that Joiner “pursue expensive and complex litigation against Ruby”. The choice would obviously be affected by the circumstances at the time.
- [54] In *Rankin Investments (Qld) Pty Ltd v CMC Property Pty Ltd*,<sup>13</sup> the Court of Appeal considered the impact of a clause that provided:
- “There are no agreements, representations or warranties relating to the subject matter of this agreement between the Joint Venturers other than those expressly set out in this agreement.”
- [55] It was contended that the clause made it clear that the parties did not intend to imply a negative stipulation where they had expressly stipulated other negative obligations.
- [56] As to that, Applegarth J said:<sup>14</sup>

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<sup>10</sup> Referring to *BP Refinery (Westernport) Pty Ltd v Shire of Hastings* (1977) 180 CLR 266 at 283; *Belrose RB1 Pty Ltd v Oldfield* [2025] NSWSC 603 at [162], [165].

<sup>11</sup> Joiner’s outline, paragraph 33.

<sup>12</sup> Joiner’s outline, paragraph 40.

<sup>13</sup> [2021] QCA 156 at [91]. Internal citations omitted.

<sup>14</sup> *Rankin* [2021] QCA 156 at [92]-[95], Sofronoff P concurring. Emphasis added.

[92] This clause is submitted to make clear that the parties did not intend to imply a negative stipulation where they had expressly stipulated other negative obligations.

[93] This submission is unpersuasive. **The operation of what may be described as an “entire agreement clause” depends on its terms and the nature of the implied term that is alleged.**

[94] Here the issue is not whether there was an additional agreement, representation or warranty relating to the subject matter of the agreement other than those expressly set out in it. Instead, it is the proper construction of the express terms that are set out in the agreement and the implications that they convey.

[95] *Hart v MacDonald* illustrates that a clause to the effect that there is no agreement or understanding that is not embodied in the contractual documents does not prevent a stipulation being implied. As Griffith CJ observed, **an entire agreement clause does not prevent a promise being enforced if the promise “arises by necessary implication upon a proper construction of the express words”**. In the same case Isaacs J rejected the notion that the entire agreement clause excluded implications:

‘It excludes what is extraneous to the written contract: but **it does not in terms exclude implications arising on a fair construction of the agreement itself**, and in the absence of definite exclusion, an implication is as much a part of the contract as any term couched in express words.’”

[57] In my view, the fact that there was a duty on Joiner to select an option under Special Condition 10.2, only one of which would give the benefit of the contract to Reliance, coupled with the lack of guidance as to the choice of action under Special Condition 10.2, reveals that it may be successfully argued that the contended implied term meets the requirement set out above.

[58] There is a further consideration. In the proceedings commenced by Ruby, it contends that Joiner’s termination of its contract was invalid. Joiner, however, has defended on the basis that the termination was valid.<sup>15</sup> If Joiner succeeds on that issue, Ruby will have no equitable interest to propound. Therefore, at this stage of the proceedings by Reliance, it is not possible to confidently conclude that Reliance has a later equitable interest, or one that is inferior to that propounded by Ruby in its proceedings.

[59] I therefore consider that Reliance has demonstrated a serious question to be tried.

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<sup>15</sup> Paragraph [31(b)] of Joiner’s defence.

### **Balance of Convenience**

- [60] Notwithstanding the contentions advanced by Joiner, I consider this issue to be relatively clear.
- [61] Joiner would prefer to sell to Ruby and conceded that if the caveat is removed it will settle with Ruby. The accepted effect of that would be to destroy Reliance's interest in the property under its contract of sale.
- [62] As was said in *Buchanan v Crown and Gleeson Business Finance Pty Ltd*<sup>16</sup> and *Custom Credit Corporation Limited v Ravi Nominees Pty Ltd*,<sup>17</sup> it is a rare case where a valid caveat will be removed for reasons of the balance of convenience, and if the removal of the caveat would have the practical effect of deferring the priority of the caveator's equitable mortgage, its removal ought not be countenanced.
- [63] That is the case here, which demonstrates that the balance of convenience favours preservation of Reliance's caveat.

### **Worth of the undertaking**

- [64] There was a challenge to the worth of any undertaking offered by Reliance. However, Reliance offers to maintain the money held in the solicitors' trust account as security for the undertaking. That sum is \$3.86m. It is more than enough to secure the undertaking.

### **An incidental matter**

- [65] At the hearing leave was sought to file an amended application. The only change was to the number of the caveat, and no objection was taken. Therefore, leave ought be granted.

### **Orders**

- [66] For the reasons above, the application to remove the caveat must be dismissed, with costs.
- [67] I order that:
1. Leave be granted to file the amended application.
  2. Upon the applicant, by its Counsel, giving the usual undertaking as to damages, and further undertaking that the sum presently held in trust will be maintained subject to further order from this Court:
    - a. the application is dismissed;
    - b. the applicant pay the respondent's costs to be assessed on the standard basis, or as agreed.

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<sup>16</sup> (2006) 13 BPR 24,513; [2006] NSWSC 1465 at [11].

<sup>17</sup> (1992) 8 WAR 42 at 50.