

Warning From the High Court ...

When Purchasing Real Estate, the Purchaser Should Lodge a Caveat Immediately After Exchange of Contracts ...

In August 2005, a firm of accountants had obtained a judgment for money that was owing to them for work that they had done. They were trying to recover the judgment sum.

The debtor (Mr Smith), entered into a contract for the sale of his real estate.

On 24 August 2005, the following events took place:

- At 8.55 am, the solicitors for the purchaser conducted a search at the Land Titles Office prior to settlement. The search disclosed that there was nothing on the title that should prevent settlement.
- Between about 9.20 am and 9.30 am, there were discussions between the solicitors for the purchaser and the solicitors for the accountants and the solicitors for the purchaser were told that the accountants intended to stop the sale. They were not specific as to how they intended to do that.
- At 11.53 am, the accountants had a Writ registered at the office of Land & Property Information without informing the purchasers' solicitors that this had been done.
- At 2.00 pm, settlement of the contract took place.

After settlement, the purchaser tried to register the transfer documents to have the property put into their name but registration was refused because of the prior registration of the Writ at 11.53 am on 24 August 2005.

The High Court said that the registration of the Writ could not be disturbed and took priority. The purchaser was therefore not able to register the transfer of the land into its name.

Whenever property is purchased, immediately after exchange a caveat should be lodged on the land that forbids the registration of any dealing so that what happened in the case of the accountants and the purchaser of Mr Smith's real estate, cannot occur.