

# PRIVATE CAVEATS: FORM 19B WITH BIG CONSEQUENCES

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Section 322 of the National Land Code (NLC) allows a person with a caveatable interest over the land (or an undivided share in the land) to enter a private caveat over the land by using Form 19B of the NLC. This effectively prohibits the registration, endorsement or entry on the register document of title any instrument of dealing executed by or on behalf of the proprietor and any certificate of sale.

It has been recognised by the Malaysian courts that a private caveat can be filed expeditiously by merely filling in the requisite form prescribed under the NLC, stating the nature of the claim the applicable is based, affirming a statutory declaration to verify his claim and paying a small fee to lodge a private caveat.

This article explores caveatable interest, and its consequences against the caveator for a wrongfully entered private caveat.

## What Is A Caveatable Interest?

Not all can enter a private caveat.

Section 323 of the NLC stipulates that *any person or body claiming title to, or any registered interest in, any alienated land, or any right to such title*, may lodge a private caveat to secure its interest. The Federal Court in *Score Options Sdn Bhd v Mexaland Development Sdn Bhd* [2012] 6 MLJ 475 made it clear that only those who have a claim to a registrable interest may enter a private caveat.

The parameters of a caveatable interest have been expounded by the Court of Appeal in the landmark case of *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor* [1995] 1 MLJ 719, at 742), which are,

- i. Any person claiming title to any alienated land;
- ii. Any person claiming any registrable interest in any alienated land; or
- iii. Any person claiming any right to such title or registrable interest.

A private caveat, in practice, is usually entered by a buyer who is in the process of completing his purchase transaction on a property. Pending payment of the full purchase price, the buyer may enter a private caveat over the property to protect his interest over the property.

Another common example would be the case of a financial institution entering a private caveat over the property for the purpose of redeeming the property

from the existing chargee. By securing its interest over the property, the financial institution will only disburse a portion (or all) of its financing facility to enable the property to be redeemed from the existing chargee.

## Does A Shareholder In A Company Have A Caveatable Interest Over A Piece Of Land Owned By The Company?

The short answer is no. The Court found that a shareholder of a company is *sui juris* and has no caveatable interest in his company's land.

In *Tanjung Rhu Land Sdn Bhd & Anor v Kauthar Venture Capital Sdn Bhd & Anor* [2025] 1 CLJ 479 (Tanjung Rhu Land), the first plaintiff is a company whereby the first defendant held 80% of the shares in the company, and the 20% shares were held by the Perbadanan Kemajuan Negeri Kedah (PKNK). The first plaintiff had entered into a joint venture agreement with the second plaintiff to develop three pieces of land.

A private caveat was entered by the first defendant based on the following reasons:

- (a) The first defendant and PKNK became shareholders of the first plaintiff to use the commercial expertise of the first defendant and the 3 pieces of land owned by the first plaintiff to help PKNK achieve its statutory obligations and commercially develop the three pieces of land for the first defendant.
- (b) Although the first defendant and PKNK are shareholders of the first plaintiff, the first defendant and PKNK are always involved in important decisions made by the first plaintiff to develop the three pieces of land holistically that will impact the socio-economy of Langkawi as a whole.

The first and second plaintiffs sought to remove the private caveat lodged by the first defendant, claiming that the first defendant had no caveatable interest.

The Kuala Lumpur High Court found in favour of the plaintiffs and held that the caveat entry application form (Form 19B) filed by the first defendant lacked facts that amounted to a caveatable interest. Referring to the case of *Hew Sook Ying v Hiw Tin Hee* [1992] 3 CLJ 1325 and relying on the doctrine of separate legal entity between a company and its shareholders, the Court found that under company law, a shareholder does not have any personal interest in the assets of the company.

The Court went further to state that a shareholder of a company may enter a caveat belonging to a company, if and only if, the shareholder is doing so in a different capacity – for example, as a purchaser of the land, or as an intended transferee pursuant to any voluntary liquidation exercise pursuant to an order authorising the company to distribute its real properties to its shareholders.

Therefore, based on the case of *Tanjung Rhu Land*, even though the shareholders of the company do have a genuine concern over the management of the property owned by its company, this does not give rise to a caveatable interest on the property.

## Can A Debt Arising From The Failure To Pay Maintenance Charges Give Rise To Caveatable Interest?

This was the question posed before the Shah Alam High Court in *Ridzuan Sulaiman v Perbadanan Pengurusan Subang Square [2025] CLJU 225 (Ridzuan Sulaiman)*.

The defendant is the Management Corporation of Subang Square, who had lodged a private caveat over the property belonging to the plaintiff on account of allegedly unpaid management fees totalling to RM61,546.15. The purpose behind the private caveat was to prevent any transaction on the plaintiff's property until the debt was settled.

The plaintiff, being the registered proprietor, claimed that he had initially secured a purchaser over his property on 13.04.2022 for RM1.6 million. However, the deal fell through after the intended purchaser discovered the private caveat lodged by the defendant. On 22.08.2024, the plaintiff was only able to sell his property at a lowered consideration of RM945,000.

The defendant relied on Section 77 of the Strata Management Act (SMA), which stipulates that the plaintiff, as the proprietor, shall guarantee the payment of amounts lawfully incurred by the management corporation, the defendant. This was rejected by the High Court as Section 77 of the SMA is irrelevant to the question of caveatable interest. Furthermore, as decided by the Federal Court in *Dubon Bhd v Wisma Cosway Management Corporation [2020] 6 CLJ 589*, debt owing to the management corporation is not a secured debt, much less a registrable interest or claim to the title to the property which it relates.

Alternatively, the defendant argued that the NLC form for private caveats distinguished between "Kaveat Persendirian Atas Tanah" (a private caveat over the land) and "Kaveat Persendirian Atas Kepentingan" (a private caveat over the interest on the land). The defendant sought to claim that the private caveat entered was to bind the interest on the land, instead of the title of the property. This too, was rejected by the High Court as the defendant had failed to submit how the defendant's interest fell within the parameters of Section 323 of the NLC and the categories of persons entitled to enter a caveat as enunciated in *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng @ Tan Tien Chi and anor [1995] 3 CLJ 520*.

Ultimately, the Court decided that the defendant never had a caveatable interest in the property. The interest was a contractual claim on a debt. The defendant, as the management corporation, is not entitled to claim for title of the property or any registrable interest in the property.

## Loss And Damages For A Wrongfully Entered Private Caveat

If a private caveat was entered on a property without reasonable cause, Section 329 of the NLC provides that the caveator will be liable to pay compensation to any person or body who suffers any damage or loss due to the wrongful caveat.

Damages under Section 329 of the NLC must be assessed in accordance with the principles of the law of tort (*Quill Construction Sdn Bhd v Tan Hor Teng @ Tan Tien*

*Chi* [2003] 6 MLJ 279 and *Lo Foi v Lee Ah Hong @ Lee Lum Sow* [1997] MLJU 310), where the damages suffered must be reasonably foreseeable and that the damages suffered were real and actual.

### ***Ridzuan Sulaiman v Perbadanan Pengurusan Subang Square* [2025] CLJU 225**

In the *Ridzuan Sulaiman* case discussed earlier, the plaintiff claimed that due to the wrongfully entered caveat by the defendant, the intended purchaser pulled out of the transaction. Thereafter, he was unable to get another sale at the same price. There was a price difference of RM655,000 in the sale of the property.

The defendant, in attempting to argue against the plaintiff's claim for damages, claimed that the intended selling price of RM1.6 million for the property in 2022 was too high compared to the market valuation of RM900,000 in 2023. Furthermore, the defendant alleged that the plaintiff's claims were merely corroborated by the plaintiff in an affidavit, but not by the intended purchaser, nor any of the witnesses to the Offer to Buy or the law firm handling the conveyancing transaction. The plaintiff had also failed to provide evidence of encashment of the earnest deposit or payment of the compensation to the purchaser.

The High Court considered the defendant's arguments and rejected the defendant's assertion that the plaintiff fabricated the Offer to Buy and its cancellation was made wholly on the basis of speculation. Without any evidence of falsification, the Court is unable to accept such arguments.

The Court in *Ridzuan Sulaiman* took the view that foreseeability as a factual element does not require actual knowledge of the specific cause or kind of the loss. It is sufficient as long as constructive knowledge of the losses suffered is foreseeable – in this case, it was reasonably foreseeable that a wrongfully entered caveat would result in the loss of interest by the intended purchaser.

### ***Silveron Builders Sdn Bhd v YHL Property Sdn Bhd* [2025] 5 MLJ 830**

In this case, the question posed before the Court of Appeal was whether the party who entered the private caveat wrongfully is liable for reasonably foreseeable losses caused by the entry of the private caveat.

The respondent (YHL) had entered into a joint venture agreement with a developer to develop a piece of land owned by YHL in Johor Bahru. Under the terms of the joint venture agreement, YHL is required to enable the land to be used as security for the developer to obtain bank loans to finance the development. The developer was able to secure two loans amounting to RM36 million from two banks, Maybank and RHB, for bridging financing related to the development on the land, which were conditional upon YHL providing the land as security for the land and the registration of a third party charge on YHL's land. The developer had incurred stamp duty payment of RM60,000 to the Stamp Duty Collector for the purpose of the disbursement of the Maybank loan.

However, Maybank cancelled its loan and RHB refused to drawdown on the promised loans as third party charge in favour of the banks cannot be registered due to the existence of a private caveat on the land lodged by the appellant (Silveron). Despite receiving notices from YHL's solicitors requesting to withdraw the private caveat and advising that any damages sustained due to the wrongful caveat could be substantial, Silveron still refused to withdraw the private caveat.

In order to continue with the development of the land, the developer had no choice but to take short-term loans from other sources at a higher interest rate. This resulted in the developer having incurred additional financing costs of RM1,022,472, which includes stamp duty paid on the earlier Maybank loan and additional interest rates incurred. Under the terms of the Joint Venture Agreement, this amount is to be indemnified by YHL to the developer.

YHL sought to claim damages from Silveron for the wrongful caveat at the sum of RM1,022,472, which was the amount indemnified by YHL to the developer for additional financing costs incurred. The High Court allowed YHL's claim against Silveron and ordered Silveron to pay YHL the amount of indemnity paid by YHL to the developer. Silveron appealed against the High Court's decision.

Silveron made the following arguments: -

- (1) the additional financing costs suffered as a result of the caveat were the developer's costs, not YHL's;
- (2) pursuant to the terms of the Joint Venture Agreement, there were no actual losses suffered by YHL as these were expenses to be incurred by the developer; and
- (3) YHL's obligation under the Joint Venture Agreement was to furnish the land for development, it did not include providing the land free from encumbrances or to indemnify the developer against losses suffered due to wrongfully entered caveats on the land.

The Court of Appeal rejected Silveron's argument. Even though it was found that YHL does not have the contractual obligation to indemnify the developer under the Joint Venture Agreement, YHL was statutorily entitled to compensation pursuant to Section 329 of the NLC for the amount it had paid to indemnify the developer of the additional financing costs.

In making its finding, the Court of Appeal had at paragraph 30 in its judgment listed the applicable legal principles governing claims for compensation under Section 329 of the NLC: -

- (a) To succeed in a claim for compensation for the wrong entry of a caveat, the claimant must prove to have suffered damage or loss by reason of the wrongful entry (*Cheng Chin Chong v Shak Heng & Sons Sdn Bhd* [1982] 1 MLJ 160);
- (b) Compensation can only be awarded for actual damages that are reasonably foreseeable (*Quill Construction Sdn Bhd v Tan Hor Teng @ Tan Tien Chi & Anor; Lo Foi v Lee Ah Hong @ Lee Lum Sow & Ors* [1997] MLJU 310); and

(c) Courts will not award damages where the claimant fails to prove actual loss. The claimant must prove that the damages suffered are real and actual (*Mawar Biru Sdn Bhd v Lim Kai Chew* [1992] 1 MLJ 336).

Were the damages claimed by YHL against Silveron reasonably foreseeable?

Yes. The Court of Appeal found that due to the wrongful private caveat entered by Silveron, the charge could not be registered, ultimately Maybank and RHB would not proceed to drawdown on the promised loans. It was also reasonably foreseeable that the developer would seek alternative sources of financing so as to avoid delay in the completion of its project, which could lead to more severe financial ramifications. With regards to the RM60,000 stamp duty, which was also claimed by YHL, the Court of Appeal decided that it was reasonably foreseeable for the developer to pay stamp duty in order to register the third party charge over the land for the loan.

Ultimately, the damages sought to be claimed by YHL against Silveron were reasonably foreseeable as YHL would be required to indemnify the developer against the additional financing costs.

## Conclusion

It has been noted by Malaysian Courts that the responsibility of the officers at the Land Registry is to register the private caveat, without having to verify the contents of the application to ensure that the caveatower indeed has a caveatable interest in the subject land (Section 324(1) of the NLC). The entry of a private caveat by the officers of the Land Registry is purely an administrative function (*Nanyang Development (1996) Sdn Bhd v How Swee Poh* ([1970] 1 MLJ 145).

A wrongfully entered private caveat may cause serious ramifications to the registered proprietor of the affected property as elucidated in the cases highlighted in this article. However, the Court in *Tanjung Rhu Land* stated that this is a "necessary evil". If the Land Registry steps in and requires verification for every private caveat entered, it would defeat the fundamental objective of a private caveat – that is to preserve the status quo of a land speedily without applying for an injunction (*Tanjung Rhu Land* at [27]).

Though private caveats may be regarded by proprietors affected by private caveats as restrictive, intrusive and even disruptive, these are the very reason why private caveats play an important role in safeguarding interests of a claimant. If exercised responsibly and in good faith, a private caveat ensures that the interests of a claimant are protected.

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