

Gitmans v Alexander 6/9/02, Chambers J, HC Auckland CP218-SD02

Unsuccessful application by G - G applied for an injunction restraining A from selling apartments - successful application by A for removal of a caveat - G and A were partners in development of apartments - they fell out before completion of development and hence entered into a settlement contract - A defaulted on some promises and G successfully sued for specific performance - apartments remained registered under the corporate name under which the development took place - A attempted to sell remaining apartments still owned by P in response to s 92 Property Law Act 1952 notice issued by financier - G had unconditional agreement to purchase two of the apartments - neither G nor P had called for settlement to take place - G successfully obtained an interim injunction restraining A from selling the two apartments - G submitted A has no power to exercise mortgagee rights - on grounds that she is not the mortgagee and the equitable rights of G as purchaser predates any interest A may have - G submitted that even if A is mortgagee she is not entitled to rely on financier's notice - G submitted that agreement to sell one of the apartments was a sham and that proposed sales were under-value.

Held, A is clearly the mortgagee and her rights not subject to any prior equity in favour of G - insufficient evidence to support allegation that sale is a sham and that proposed sales are sales at under-value - application for injunction declined - application for removal of caveat granted.