

**Wesseling v Biddick 29/10/02, Master Lang, HC Auckland M1214-IM02**

Unsuccessful application for order that caveat not lapse - caveated properties jointly owned by respondent widow and parties' father who had died - widow sued in her own capacity and executor of will - deceased's last will provided for each applicant to receive legacy of \$5,000 and deceased's mother to receive legacy of \$10,000 with residue to pass to respondent - properties against which caveats registered now owned by respondent under survivorship laws - not part of estate and not available to meet legacies - not available to meet any breach of moral duty claim - whether caveat sustainable.

Held, caveat did not show how interest in land derived from registered proprietor - no precise basis for holding that constructive trust existed between father and applicants - basis of application really allegation that widow failed to give due consideration to bringing claim under Property (Relationships) Act 1976 to enable estate to obtain interest in properties - estate would need to show that joint tenancy had been severed or bring a successful claim under Property (Relationships) Act 1976 - no express power in s 145 allowing caveats to be amended - caveat to lapse.