

Lowther v Kim 7/11/02, Randerson J, HC Auckland CP322/02

Successful application to lodge second caveat after first caveat had lapsed - disputed sale and purchase agreement - first defendants (Ks) claimed there was no concluded agreement to sell - whether Mrs K has authority to sign agreement on behalf of husband - Mr K was overseas at the material time - Mrs M signed agency agreement - effect of agreement - plaintiff made offer for property through another agent - plaintiff alleged he believed agent acting on Ks' behalf - whether plaintiff should be permitted to lodge second caveat after lapse of first.

Held, effect of sale and purchase was to create equitable interest in favour of plaintiff and purchaser if binding - s 49A Property Law Act 1952 has no application - no need for Mrs K to have written authority from Mr K contract - plaintiff had satisfied onus of showing arguable case that Mrs K had authority to sign on Mr K's behalf - form of agreement showed Mrs K's willingness to negotiate on Mr K's behalf - no anticipation of input from husband - order made authorising Registrar of Land to receive second caveat.