

# Case study

## Loan and caveat

### Background

Financial Dispute Resolution Service (FDRS) received a complaint from a customer about a loan company. The customer had taken out a loan in early 2020 and the loan company lodged a caveat on the title of a property owned by this customer. Over the course of the loan, the customer fell behind on repayments. The customer requested a change to their repayment schedule and believed an agreement was reached to pay \$20 per week. At this time, they lodged an application for financial hardship which was not approved by the loan company, due to a lack of supporting information. The loan company disputed that an amended repayment plan was agreed, and they pursued the customer for full payments.

During this period, the customer wished to sell their property so they would be able to address the debt they had with loan company. While communicating about the debt, the loan company indicated to the customer that they could not sell the property, given the caveat. The customer was subsequently advised by another financial institution that the loan company had provided incorrect information about the effect of the caveat and that they should not have been prohibited from selling the house. The customer stated that if they had of proceeded with the sale when intended, they would have saved around \$5,000 of interest.

### Next steps

FDRS arranged a mediation but unfortunately no agreement could be reached by the parties. The complaint progressed to adjudication, where an independent person makes a decision from a legal perspective based on the evidence supplied. Both the customer and lender made submissions and provided copies of correspondence. The provider insisted that their representative had not told the customer that they could not sell the house. They also queried whether the customer had seriously considered selling the property.

The customer maintained that they had discussed their intention of selling the property with the loan company on multiple occasions since 2020. In addition, they provided copies of emails with a real estate agent initiating the sales process. The customer also provided a copy of an email from the loan company which included the statement *“We will block all future dealings with your house such as re-finance, sale or any other matters pertaining to the title being required”*.

The adjudicator considered the legalities of a caveat. He determined that the property could go on the market, and be sold, but recognised that there would be difficulties in registering the change of owner on the title without either the loan company consenting to remove the caveat, or the High Court setting it aside. As such, he deemed the correspondence from the loan company to have been incorrect.

The adjudicator also found that the loan company had misdirected the customer on their options with regards to paying the debt. The customer was in arrears and was claiming to have significant financial difficulties. The adjudicator deemed that a reasonable lender would be open with the customer around their options to pay the debt. One option is to apply for hardship (which was applied for here), but another legitimate option is to sell assets such as the house, to free up funds to pay off the loan. The loan company did not demonstrate any communication where it had discussed sale of assets, and the customer supplied emails where the loan company indicated that the only option was to continue with the weekly payments and infers that selling the house was not an option, and that any attempts to sell the property would be “blocked”.

### Outcome

The complaint was upheld. The adjudicator found that the loan company had not acted reasonably, and they were directed to pay \$2000 compensation, to be credited to the loan.

