

**JURISDICTION** : SUPREME COURT OF WESTERN AUSTRALIA  
IN CHAMBERS

**CITATION** : RE GWENNETH JOYCE HUNTER; EX PARTE  
FUREY [2017] WASC 22

**CORAM** : REGISTRAR C BOYLE

**HEARD** : ON THE PAPERS

**DELIVERED** : 2 FEBRUARY 2017

**FILE NO/S** : CAV 57 of 2016

**MATTER** : The Estate of GWENNETH JOYCE HUNTER late of  
54 Ford Road, Busselton in the State of Western  
Australia, deceased

EX PARTE

PAMELA VERA FUREY  
Applicant

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*Catchwords:*

Probate and administration - Caveat - Application to extend - Grounds for  
standing - Turns on own facts

*Legislation:*

*Administration Act 1903 (WA), s 8*

*Non-contentious Probate Rules 1967 (WA), r 34*

*Result:*

Application to extend caveat refused

*Category:* B

**Representation:**

*Counsel:*

Applicant : Mr P J Griffin

*Solicitors:*

Applicant : Peter J Griffin & Co

**Case(s) referred to in judgment(s):**

Nil

1     **REGISTRAR C BOYLE:** The question in hand is whether the  
caveator's caveat against a grant, accepted for lodgement on 15 July 2016,  
is to be extended for a further period of six months. The caveator has  
filed what is described as a notice of motion for extension of caveat.  
There is however, no indication that that notice has actually been given, or  
will be given to the applicant for administration described below. In light  
of the disposition of this application that I intend, that is not a point that  
needs to be examined further on this occasion.

2             The estate in question is that of the late Gwenneth Joyce Hunter, who  
died intestate at Busselton on 19 March 2016. She was widowed. The  
three persons thus entitled in distribution to the estate are her daughters  
Kaye Liddle born 14 February 1958 and Pamela Vera Furey born 27  
August 1965 (the caveator) and her son Jim Eric Hunter born 30  
September 1970. There was another daughter who predeceased the  
deceased without leaving issue.

3             On 21 October Jim Eric Hunter applied for letters of administration.  
His sister Kaye Liddle consented to that application. The caveator is of  
course the other sister and she did not consent. Requisitions issued  
pointing to the existence of the caveat. The caveator was advised of the  
application for administration.

4             The caveator has sworn an affidavit of 13 January in support of the  
extension she seeks.

5             Before dealing with the evidence, it is necessary to consider the  
nature and purpose of the probate caveat and the rules surrounding its use.  
The nature of a caveat is summarised in *Tristram & Coote's Probate  
Practice* (27th ed) at 507 as follows:

**Definition**

A caveat is a notice in writing lodged in the Principal Registry of the  
Family Division, or in any district probate registry, by a person wishing to  
show cause against the sealing of a grant, that no grant is to be sealed in  
the estate of the deceased named therein without notice to the person who  
has entered the caveat (NCPR 44) ... No grant, other than a grant ad  
colligenda bona (see pp 386 ff, ante and pp 554 ff, post) or a grant pending  
suit (see pp 384 ff, ante), can be sealed if the registrar has knowledge of an  
effective caveat, but a caveat is not effective to prevent the sealing of a  
grant on the day on which it is entered (r 44 (1)).

The person by whom, or on whose behalf, the caveat is entered, is called  
the caveator.

**Purpose**

The following are some of the purposes for which a caveat may be entered:

- (1) to give time to the caveator to make enquiries and to obtain such information as may enable him to determine whether or not there are grounds for his opposing the grant;
- (2) to give any person interested in the estate an opportunity of bringing any question arising in respect of the grant before the court on summons;
- (3) as a step preliminary to a probate action, or to the issuing of a citation (see p. 523, post).

6 In the former practice of the probate courts before the *Judicature Acts*, the caveat was the first of a number of procedural steps that together formed one of the possible foundations of a contentious action: a caveat might be followed by an appearance, and the appearance by a warning. Provision for appearances and warnings have never appeared in the *Non-contentious Probate Rules 1967 (WA)*. What does appear in r 33 is:

- (3) Subject to subrule (4), a caveat shall remain in force for the space of 6 months only from the day it is entered and then expire and be of no effect, unless otherwise ordered.

7 What is apparent is that a caveat is intended to be a temporary measure only. As a matter of policy, it should be extended only when there is very clear reason to do so. The period for which the extension is sought should be related to the reasons for the extension.

8 A caveat is not a tool to frustrate the granting of administration to an entitled applicant. Much less is it a mechanism for ventilating family hostilities.

9 With that in mind, I turn to the caveator's affidavit. It is not necessary to canvas the content of the affidavit in detail, because nothing in it provides legitimate grounds for extending the caveat. On the contrary, it evidences that the caveator's actions are misconceived.

10 The affidavit recites at length a history of unhappy communications between the caveator and the applicant her brother Jim. It is perfectly clear that there is a history of bad relations between the siblings. Some of the implicit criticisms the caveator makes of Jim have to do with his administration of their mother's affairs during her lifetime.

11 Paradoxically, the caveator also complains (for example at paragraphs 19, 23, 24, 25, 26 and 27, and many other places besides) about Jim's failure to administer the estate of the deceased. This is remarkable, given that Jim is not the holder of a grant of representation but merely a frustrated applicant for letters of administration on intestacy. The caveator is thus complaining that Jim has failed to exercise an authority he does not possess. He does not possess it, at least for the last few months, only because the caveator has by her caveat frustrated him from obtaining it.

12 There is more. Paragraph 22 of the affidavit reads:

On 12 April 2016, I lodged a caveat on the deceased estate's property with Landgate as I was concerned that JIM would make decisions about the property without prior consultation with KAYE or I.

13 This apparently assumes that, even if Jim were to be appointed administrator, he could make no decisions with regard, for example, to the sale of the deceased's real property, 'without prior consultation' with the other two beneficiaries. That is simply wrong. The wrong-headed belief of beneficiaries that executors or administrators are powerless to act without the consent of beneficiaries is a recurring irritant in administration. It is unfortunate to see it being perpetuated in an affidavit drawn by a legal practitioner.

14 For all that is in the affidavit, what is missing is conspicuous. The caveator does not depose to why she seeks an extension of the caveat, in the sense that she needs to make further enquiries in order to form a view, or to institute action she has resolved to take after having formed a view. She foreshadows no intention to commence contentious proceedings for the grant to herself of letters of administration. Instead, her affidavit concludes with the following terse paragraph:

I would propose to lodge an Application for Letters of Administration as sole Administrator of the deceased estate.

15 That would be pointless. There is already on foot an application for administration by one of the three persons entitled in distribution. Another consents to that application. It is only the caveator who is holding up a grant of representation. She has had nine months since the death of the deceased to make an appropriate application. She now foreshadows making a non-contentious application. There is already one non-contentious application on foot, and a contest between siblings as to who should take a grant cannot be resolved in the non-contentious

jurisdiction. If the caveator does not wish a grant to be made to Jim, she must commence contentious proceedings by a writ issued in compliance with *Rules of the Supreme Court 1971 (WA) O 73*.

- 16           The application for an extension of the caveat is refused. I will make a grant on the existing application by Jim on Monday 23 January unless by then this caveator has issued contentious proceedings.