

BETWEEN:

CASTLE CONSTRUCTIONS PTY LIMITED
Appellant

and

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SAHAB HOLDINGS PTY LTD
First Respondent

ANNOTATED

REGISTRAR-GENERAL
Second Respondent

SECOND RESPONDENT'S CHRONOLOGY

Part 1 – Internet Publication

This Chronology is in a form suitable for publication on the internet.

Part II – Principal Events Leading to the Litigation.

20 October 1921 Lands that later became 134 Sailors Bay Road and 69 Strathallen Avenue were part of a larger parcel of land held in common ownership by Walter William Charles Middleton and Alice Beatrice Middleton who subdivided part (Lot 3) to create two allotments which became 67 Strathallen Avenue and 69 Strathallen Avenue respectively.¹

The subdivision of Lot 7 resulted in what is now 134 Sailors Bay (being Lot A in DP 404929).²

26 October 1921 The Middletons transferred 69 Strathallen Avenue to Cyril Hugh Davis by Memorandum of Transfer A752953³. The instrument recited the transfer by the Middletons (as transferors) to Mr Davis (as transferee) of part of the land in Certificate of Title Volume 2978 Folio 91 being part of Lot 3 of

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¹ AB265.30-50

² AB265.23. The location of the properties is shown in the sketches and plan at AB259, AB207 and 208.

³ AB266.10. A copy of the transfer is at AB70

THE SECOND RESPONDENT'S CHRONOLOGY dated 29 January 2013 is filed by:

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Section 3 Deposited Plan 7122 as shown on the sketch plan annexed thereto and marked with the letter "A" and edged red:

"Together with the right of way shown in the said sketch and therein edged blue (such right of way being limited as stated in the covenants hereinafter mentioned).

And the transferee covenants with the transferors as set out in the Schedule of Covenants hereto annexed and marked 'B'".⁴

- 10 19 November 1921 Registrar General issued a new Certificate of Title to Mr Davis being Volume 3253 Folio 73 in consequence of the registration of the Middleton transfer.⁵
- 4 April 1922 By Memorandum of Transfer No A802709 dated 4 April 1922, Cyril Hugh Davis transferred the whole of the land in Certificate of Title Volume 3253 Folio 73 being 69 Strathallen Avenue to Gordon Victor Cormack.⁶
- 18 January 1960 By Memorandum of Transfer H403542 dated 18 January 1960 the executors of the Middletons transferred Lot A (being 134 Sailors Bay Road) to Andrew Stewart Townsend and Dulcie Doreen Townsend.⁷
- 20 13 September 1960 Certificate of Title Volume 7987 Folio 98 was issued pursuant to transfer H403542.⁸
- June 2001 134 Sailors Bay Road was acquired by the Appellant, Castle Constructions Pty Ltd ("Castle")⁹
- 3 September 2001 Castle, through its solicitor, William Samuel Dockrill, lodged with the Registrar-General a Request 7924028W seeking the cancellation by the Registrar General of the right of way.¹⁰ The Registrar General then cancelled or deleted the right of way from the folios in the Register retained by him for the

⁴ AB266.30

⁵ AB267.29. A copy of the Certificate of Title is at AB83

⁶ AB268.30. A copy of the Transfer is at AB85 but is illegible.

⁷ AB268.50.

⁸ AB268.60. A copy of the Certificate Title is at AB63.

⁹ AB269.20

¹⁰ AB269.40. A copy of the Request is at AB78. A copy of the solicitor's declaration is at AB80.

purposes of the Act relating to 134 Sailors Bay Road(as the servient tenement) and 69 Strathallen Avenue (as the dominant tenement).¹¹

22 December 2006 The First Respondent, Sahab Holdings Pty Ltd ("Sahab") purchased 69 Strathallen Avenue and the contract for sale was completed on 5 April 2007.¹²

22 September 2008 Sahab lodged with the Registrar General a Request AE234360.¹³ The Request was:

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"To restore to the folios of the Register of the servient and dominant tenements the right of way referred to in the registered dealing. Section 136(1) of the Real Property Act, 1900."

2 October 2008 The Registrar-General responded to the 2008 Request and concluded that he was not prepared to grant the Request and restore the right of way to the folios for 69 Strathallen Avenue and 134 Sailors Bay Road.¹⁴

14 October 2008 Sahab's solicitors responded by letter in which they forshadowed litigation and asserted that Sahab was entitled to institute review proceedings in the Supreme Court pursuant to s 122 of the Act.¹⁵

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20 October 2008 The Registrar General by letter gave further reasons for rejecting Sahab's Request.¹⁶

7 November 2008 Sahab filed a summons in Equity Division of Supreme Court to which it initially joined the Registrar-General as the only defendant.¹⁷

23 December 2008 By Notice of Motion Castle sought to be joined as a defendant to the proceedings.¹⁸

¹¹ 261.50

¹² 274.10

¹³ 274.10. A copy of the Request is at AB40 and the accompanying solicitors declaration is at AB41-46

¹⁴ AB47-48

¹⁵ AB275.10.

¹⁶ AB275.10. A copy of the letter is at AB49.

¹⁷ AB262.10. (Not produced)

- 17 February 2009 Amended Summons filed joining Castle as second defendant.¹⁹
- 26 May 2009 Hearing of Amended Summons commenced before Slattery J. At that point the Registrar-General had filed a submitting appearance and took no part in the argument.²⁰
- 27 May 2009 His Honour gave leave to Sahab to advance its claim for principal relief by moving for the Registrar-General to give reasons for the 2001 decision.²¹
- 28 May 2009 Notice of Motion filed returnable 5 June 2009.²²
- 10 5 June 2009 Registrar-General was invited to consider whether he wished to make submissions on the substantive issues in the proceedings. The Registrar General appeared and was directed either to file an unconditional appearance or to file an application for leave under UCPR 2005 (NSW) r 6.11(2) to make submissions despite filing a submitting appearance. Written submissions were filed as to his powers and functions.²³
- 26 June 2009 Argument on the May motion was heard.²⁴
- 26 October 2009 Primary Judge delivered his judgment on the May motion.²⁵
- 20 13 November 2009 Registrar-General complied with his Honour's order to provide his reasons for the 2001 decision.²⁶ Supplementary submissions were then filed by all parties to advance or resist Sahab's claims for final relief based on the Registrar-General's reasons.²⁷

¹⁸ AB262.30. (Not produced)

¹⁹ AB262.30. A copy of the Amended Summons is at AB1.

²⁰ AB262.50

²¹ AB263.10

²² AB263.10

²³ AB263.20

²⁴ AB263.40

²⁵ AB263.50. A copy of the judgment is at AB135.

²⁶ A copy of the reasons (not tendered in court) is at AB105.

²⁷ 264.10

- 8 March 2010 His Honour delivered judgment (the second judgment) on the substantive issues in which he rejected the various statutory bases which Sahab had advanced in support of the proposition that the Registrar-General was bound to correct the Register and reinstate the right of way to the folios of 134 Sailors Bay as the servient tenement and 69 Strathallen Avenue as the dominant tenement.²⁸
- 31 March 2010 Argument with respect to costs was heard.²⁹
- 5 May 2010 His Honour delivered judgment (the third judgment) dismissing Sahab's Amended Summons.³⁰
- 10 3 August 2012 Sahab filed in the New South Wales Court of Appeal a Notice of Appeal against his Honour's order dismissing the Amended Summons.³¹
- 7 February 2011 Castle filed an amended Notice of Contention³².
- 15 December 2011 The New South Wales Court of Appeal delivered judgment and directed the parties prepare draft orders to give effect to the judgment.³³
- 5 April 2012 The New South Wales Court of Appeal delivered judgment and made, inter alia, the following orders:
- 20 (1) *Appeal allowed.*
- (2) *Set aside Orders 2 and 4 made by Slattery J on 5 May 2010 and so much of Order 3 as provided that there be no orders as to the costs as between the appellant and the second respondent.*
- (3) *Declare that the right of way created by transfer A752953 ("right of way") over part of the freehold property comprised in certificate of title folio identifier A/404929 known as 134 Sailors Bay Road, Northbridge ("servient tenement") in favour of the freehold property comprised in certificate of title folio identifier 1/726736 known as 69 Strathallen Avenue, Northbridge ("dominant tenement") were*
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²⁸ AB264.20. A copy of the second judgment is at AB169

²⁹ AB264.40.

³⁰ AB264.40. A copy of the third judgment is at AB209. A copy of the order is at AB225.

³¹ A copy of the Notice of Appeal is at AB231.

³² A copy of the Notice of Contention is at AB240.

³³ A copy of the judgment is at AB248-363

erroneously omitted from the folios of the Register for both servient and dominant tenements on or about 22 November 2001 when the first respondent acceded to request 7924023 lodged by the second respondent.

(4) Order that the first respondent restore to the folios of the Register for both servient and dominant tenements the recording of the right of way.

(5) Order that the second respondent deliver or take all steps within its power to cause to be delivered up to the first respondent the certificate of title for the servient tenement for the purpose of being amended by the first respondent to bring it into conformity with the folio of the Register for the servient tenement as amended pursuant to Order 4.³⁴

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7 September 2012 The High Court of Australia granted special leave to Castle to appeal to that Court from the whole of the judgment and orders of the Court of Appeal of the Supreme Court of New South Wales made on 5 April 2012.³⁵

20 September 2012 Castle filed its Notice of Appeal³⁶.

27 September 2012 Sahab filed a Notice of Cross Appeal.³⁷

20 2 October 2012 Sahab filed a Notice of Contention.³⁸

Dated: 29 January 2013



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Counsel for the Second Respondent

³⁴ A copy of the judgment is at AB382. A copy of the orders is at AB392.

³⁵ A copy of the order is at AB395.

³⁶ AB398

³⁷ AB411

³⁸ AB402