

BETWEEN:

CASTLE CONSTRUCTIONS PTY LIMITED
Appellant

and



SAHAB HOLDINGS PTY LTD
First Respondent

REGISTRAR-GENERAL
Registrar-General

FIRST RESPONDENT'S CHRONOLOGY

Part I: Internet publication

- 1 This chronology is in a form suitable for publication on the internet.

Part II: Events

DATE	EVENT	APPEAL BOOK REFERENCE
circa 28.03.1913	Registration of deposited plan 7122	92-97
18.08.1913	By transfer A47502, New North Sydney Investment And Tramway Company Limited sells to Caroline Elizabeth Bakewell (" Bakewell ") part of the land comprised in certificate of title volume 2378 folio 249 being lots 1, 2, 3 and 7 of section 3 in deposited plan 7122 subject to the building covenant created by the transfer	74-77 95
7.10.1919	By Transfer A497096, Bakewell sells to Walter William Charles Middleton and Alice Beatrice Middleton (" Middletons ") land comprised in certificate of title volume 2978 folio 91 being lots 3 and 7 of section 3 in deposited plan 7122	98-100 265(30-45)

DATE	EVENT	APPEAL BOOK REFERENCE
26.10.1921	<p>By transfer A752953, the Middletons sell to Cyril Hugh Davis ("Davis") part of the land in certificate of title volume 2978 folio 91 being part lot 3 of section 3 in deposited plan 7122 which is now known as 69 Strathallen Avenue, Northbridge ("dominant tenement"/"Strathallen Ave Property") and in so doing:</p> <p>(i) grant in favour of the dominant tenement a right of way over part of lot 7 in section 3 in deposited plan 7122 retained by the Middletons which is now known as 134 Sailors Bay Road, Northbridge ("servient tenement"/"SBR Property") and</p> <p>(ii) create a series of covenants affecting the dominant tenement and the servient tenement</p>	<p>70-73 83-84 98-100 122-123 138(10-60) 139(1-30) 174(22-60) 175(1-60) 176(1-60) 177(1-25) 265(46-60) 266(10-60) 267(1-58)</p>
19.11.1921	Certificate of title volume 3253 folio 73 issued to Davis for the dominant tenement	<p>83 267(59-60) 268(1-30)</p>
04.04.1922	By transfer A802709, Davis sells the dominant tenement to Gordon Victor Cormack	<p>85-87 120-121 268(30-33)</p>
20.05.1922	Middletons by transfer A820162 transfer southernmost portion of lot 3 of section 3 in deposited plan 7122 now known as 67 Strathallen Avenue, Northbridge to Gordon Victor Cormack	183(50-60)
16.06.1922	Certificate of title volume 3325 folio 201 issued to the Middletons for lot 7 of section 3 in deposited plan 7122	101-103
05.07.1932	By notice of death C128545, WWC Middleton becomes sole proprietor of lot 7 of section 3 in deposited plan 7122	103

DATE	EVENT	APPEAL BOOK REFERENCE
28.06.1950	By transmission application F239693, Esmond William Charles Middleton, Colin Cole and Adrian Stanley Kidd, as executors of the estate of WWC Middleton ("executors"), become registered proprietors of lot 7 of section 3 in deposited plan 7122	103
07.08.1958	By file plan 404929, lot 7 of section 3 in deposited plan 7122 is subdivided into lots A and B	65 268(40-50)
07.08.1958	By transfer G929816, the executors sell to Ella McNeill (" McNeill ") part of land comprised in certificate of title volume 3325 folio 201 being lot B in file plan 404929 with the benefit of delineated right of way over lot A in file plan 404929. Lot B in file plan 404929 is now known as 136 Sailors Bay Road, Northbridge and is presently owned by a party unrelated to these proceedings. The right of way granted over lot A in favour of lot B covers the same driveway as the right of way created in 1921 by transfer A752953 in favour of the dominant tenement except that the 1958 right of way is free of any covenants	66-69 103 184(1-25) 268(40-50) 269(10-13)
08.09.1960	By transfer H403542, the executors sell to Andrew Stuart Townsend and Dulcie Doreen Townsend (" Townsend s") the remainder of land comprised in certificate of title volume 3325 folio 201 being lot A in file plan 404929 which is now known as 134 Sailors Bay Road, Northbridge (" servient tenement " / " SBR Property ")	103 184(29-40) 268(51-60)
13.09.1960	Certificate of title volume 7987 folio 98 issues to the Townsends for the servient tenement	63-64 268(58-60)
09.06.1964	By transfer J673481, the Townsends sell the servient tenement to Kenneth Berkley Jenkins and Elaine Joyce Jenkins (" Jenkins ")	63-64 125-127 184(40-50)
09.05.1966	By transfer K315999, the Jenkins sell the servient tenement to John Gordon Sprouster and Elsie Sprouster (" Sprousters ")	64

DATE	EVENT	APPEAL BOOK REFERENCE
15.07.1981	By transfer S396373, the Sprousters sell the servient tenement to Leroux Pty Ltd	64
15.12.1987	Registration of deposited plan 726736 by reason of which the dominant tenement becomes lot 1 in that deposited plan	58
19.10.1989	Certificate of title volume 7987 folio 98 for the servient tenement is cancelled and the title reference becomes folio identifier A/404929	61
21.06.2001	Appellant (" Castle ") becomes the registered proprietor of the servient tenement/SBR Property	61 261(30-40)
07.09.2001	Castle lodges with second respondent (" Registrar-General ") request 7924028 seeking cancellation of the "Covenant and Right of Way A752953" ... "due the happening of an agreed event" (" 2001 request "). The request is supported by the declaration of William Samuel Dockrill declared 07.09.2001	78-89 140(1-50) 261(40-50) 269(33-60) 270(1-50)
08.10.2001	Registrar-General sends to Leslie Charles Howard and Edda Maria Howard (" Howards ") as registered proprietors of the dominant tenement notice of receipt of the 2001 request and prospective cancellation of the right of way A752953	47(44-50) 52(39-50) 197(44-45) 246 271(50-60) 272(1-20)
22.11.2001	Registrar-General accedes to the 2001 request by expunging from the folio of the register for the servient tenement covenants and right of way created by transfer A752953	61 140(52-54) 198(13-15) 261(40-50)

DATE	EVENT	APPEAL BOOK REFERENCE
22.12.2006	First respondent ("Sahab") exchanges contracts to purchase the Strathallen Ave Property from the Howards with knowledge that physical entry onto the right of way over the SBR Property had been blocked by the erection of a fence and the right of way was no longer available for use in connection with the Strathallen Avenue Property having been removed from the folio identifier of the servient tenement. Sahab did not otherwise know why the right of way had been cancelled	15 133(42-50) 185(30-40)
10.04.2007	Sahab becomes registered proprietor of the Strathallen Ave Property	124 185(33) 261(55-60) 274(10-12)
22.10.2007	Sahab's solicitors write to Registrar-General questioning whether an error was made in 2001 when the right of way benefitting the Strathallen Avenue Property was extinguished	29-32
30.10.2007	Registrar-General replies to Sahab's solicitors' letter dated 22.10.2007 by advising that the Registrar-General is not prepared to review the decision "to remove Covenant A752953"	33
5.11.2007	Sahab's solicitors write to Registrar-General about the circumstances in which the right of way was extinguished	34-36
12.11.2007	Sahab's solicitors again write to Registrar-General asking for reasons for Registrar-General's decision in 2001 to extinguish right of way in favour of Strathallen Avenue Property	37-38
18.12.2007	Sahab's solicitors write to Registrar-General asking for a response to Sahab's solicitors' letter dated 12.11.2007; also asking for a copy of the notice sent to the Howards in 2001 advising of the Registrar-General's intention to extinguish the right of way	39

DATE	EVENT	APPEAL BOOK REFERENCE
20.05.2008	Sahab's solicitors write to Castle signaling Sahab's intention to seek relief under s88K of the Conveyancing Act, 1919 (NSW) and offering to pay \$27,500 in return for a grant of a right of carriage way over the SBR Property	129-130
22.05.2008	Castle writes to Sahab's solicitors declining Sahab's offer on the basis that the grant of the right of carriage way sought would prevent Castle from developing the SBR Property in conjunction with the adjoining property known as 136 Sailors Bay Road	131-132
23.05.2008	<p>Sahab's solicitors write to Castle acknowledging, among other matters, that:</p> <ul style="list-style-type: none"> (i) Sahab purchased the Strathallen Ave Property in the knowledge that the previous right of way in favour of this property over the SBR property had been extinguished by administrative act of the Department of Lands; (ii) Sahab purchased the Strathallen Ave Property knowing of rights under s 88K of the Conveyancing Act, 1919 and (iii) Castle had rejected the offer made by Sahab under s 88K of the Conveyancing Act, 1919 	133-134
25.09.2008	Sahab lodges with Registrar-General request AE234360 under s136(1) of the Real Property Act to restore to the folios of the register for the SBR Property and the Strathallen Ave Property the right of way created by transfer A752953 (" 2008 request "). The 2008 request is supported by the declaration of Ken Kanjian declared 22.09.2008	40-46 54-89 261(55-60) 262(1-10) 274(12-41)
02.10.2008	Registrar-General refuses to accede to the 2008 request	47-48 190(40-60) 191(1-25) 274(43-60)

DATE	EVENT	APPEAL BOOK REFERENCE
14.10.2008	Sahab's solicitors write to the Registrar-General remonstrating against the Registrar-General's refusal to accede to the 2008 request and threatening commencement of civil proceedings	49-51 275(1-5)
20.10.2008	Registrar-General writes to Sahab's solicitors and reiterates refusal to accede to 2008 request	52-53 275(6-60) 276(1-15)
07.11.2008	Sahab commences proceedings against Registrar-General seeking relief including reinstatement of the right of way which was extinguished by Registrar-General in 2001 by acceding to the 2001 request	262(10-30) summons not reproduced
12.11.2008	Registrar-General files unconditional notice of appearance	notice of appearance not reproduced
17.12.2008	Registrar-General files amended notice of appearance submitting to the making of all orders sought by Sahab save as to costs	submitting notice of appearance not reproduced
23.12.2008	Castle files notice of motion seeking an order that it be joined as a party to the proceedings	262(30-40) notice of motion not reproduced
06.02.2009	McLaughlin AJ hears Castle's notice of motion which was opposed by Sahab. His Honour determines the motion by making an order joining Castle as a party to the proceedings at first instance	262(30-40) reasons for judgment not reproduced
17.02.2009	Sahab files amended summons consequent on joinder of Castle in proceedings at first instance	1-4 262(30-40)
28.05.2009	Pursuant to leave granted by Slattery J, Sahab files notice of motion seeking an order that Registrar-General provide reasons for acceding to the 2001 request	6-8 263(1-15)

DATE	EVENT	APPEAL BOOK REFERENCE
26.10.2009	Slattery J orders Registrar-General to file an unconditional notice of appearance and to provide Sahab with reasons for his decision to accede to the 2001 request	167(20-35) 263(40-60)
29.10.2009	Registrar-General files further amended notice of appearance	unconditional notice of appearance not reproduced
13.11.2009	Registrar-General provides reasons for acceding to 2001 request	105-108 189(20-60) 264(1-15) 272(20-50)
08.03.2010	Slattery J dismisses Sahab's summons	255(40-45) 264(20-40)
05.05.2010	Slattery J makes orders as to costs	225-226 264(40-50)
25.05.2010	Sahab files notice of intention to appeal	227-230
03.08.2010	Sahab files notice of appeal	231-239
05.10.2010	Sahab files primary written submissions on appeal	submissions not reproduced
12.10.2010	Castle files notice of contention	notice not reproduced
09.11.2010	Castle files written submissions in reply on appeal	submissions not reproduced
26.11.2010	Registrar-General files written submissions in reply on appeal	submissions not reproduced
26.11.2010	Registrar-General sends Sahab's solicitors facsimile transmission enclosing copy of letter dated 08.10.2001 sent by Registrar-General to the Howards	244-246
17.12.2010	Sahab files written submissions in further reply on appeal	submissions not reproduced
07.02.2011	Castle files amended notice of contention	240-243

DATE	EVENT	APPEAL BOOK REFERENCE
15.12.2011	NSW Court of Appeal delivers judgment no 1	247-363
26.03.2012	NSW Court of Appeal delivers judgment no 2	264-380
05.04.2012	NSW Court of Appeal delivers judgment no 3	381-390
05.04.2012	NSW Court of Appeal makes orders, inter alia, upholding the appeal	391-393
03.05.2012	Castle files in High Court application for special leave to appeal	application not reproduced
07.09.2012	High Court grants Castle special leave to appeal	394-396
20.09.2012	Castle files notice of appeal	397-400
27.09.2012	Sahab files notice of cross appeal	410-412
02.10.2012	Sahab files notice of contention	401-409

Dated: 25 January 2013



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AUSTRALIA WIDE COMPARATIVE ANALYSIS

Legislation	Protection of Registered Proprietor Against Ejectment Proceedings
Real Property Act, 1900 (NSW)	<p>s 118(1): Proceedings for possession or recovery of land do not lie against the registered proprietor except at the instance of an entitled mortgagee, chargee, covenant chargee, lessor or person deprived of land by fraud but in the latter case, only against the person registered as proprietor through fraud or a person other than a bona fide purchaser for value who takes from or through a person registered as proprietor through fraud.</p>
Transfer of Land Act, 1958 (Vic)	<p>s 44(2): No action for ejectment or recovery of damages lies against a registered proprietor who is a bona fide purchaser for value when the proprietor through or under whom he claims was registered through fraud or error.</p>
Land Titles Act, 1994 (Qld)	<p>s 184(2): The registered proprietor is liable to a proceeding for possession of the lot or interest in the lot only if the proceeding is brought by the registered proprietor of an interest affecting the lot.</p> <p>s 184(3): s 184(2) is subject to two exceptions – firstly, statutory exceptions to indefeasibility as provided for in s 185 and, secondly, where there is fraud on the part of the registered proprietor.</p>
Transfer of Land Act, 1893 (WA)	<p>s 199: No action for ejectment or other action for recovery of land lies against the registered proprietor except at the instance of an entitled mortgagee, annuitant, lessor or a person deprived of land through fraud but only in the case of action against the person registered as proprietor through fraud or against a person deriving otherwise than as transferee bona fide for value from or through a person so registered through fraud.</p>
Real Property Act, 1886 (SA)	<p>s 192: An action for possession of land can be brought against a person in possession by:</p> <ul style="list-style-type: none"> (a) the registered proprietor of the land; (b) a mortgagee or encumbrancee entitled to act on default; and (c) a lessor entitled to re-enter the land or forfeit the lease.
Land Titles Act, 1980 (Tas)	<p>s 149: An action for ejectment or other action for recovery of registered land shall not lie against the registered proprietor except at the instance of an entitled mortgagee, encumbrancee, lessor or person deprived of land through fraud as against the person registered as proprietor through fraud or against the person deriving from or through a person so registered through fraud unless a bona fide purchaser for value.</p>

Legislation	Protection of Registered Proprietor Against Ejectment Proceedings
Land Titles Act, 1925 (ACT)	<p>s 152: No action for ejectment or other action for recovery of land lies against the registered proprietor except in the case of an entitled mortgagee, encumbrancee, chargee, lessor or a person deprived of land through fraud as against the person registered as proprietor through fraud or a person deriving otherwise than bona fide for value from or through the person registered by fraud.</p>
Land Titles Act, 2000 (NT)	<p>s 188(2)(c): The registered proprietor is liable to a proceeding for possession of the lot or interest in the lot only if the proceeding is brought by the registered proprietor of an interest affecting the lot.</p> <p>s 188(3): s 188(2) does not apply where there is a statutory exception to indefeasibility under s 189 or where there has been fraud by the registered proprietor whether or not there has been fraud by a person from or through whom the registered proprietor has derived the registered interest.</p>