



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN: **CESSNOCK CITY COUNCIL ABN 60 919 148 928**
Appellant

and

123 259 932 PTY LTD ACN 123 259 932
Respondent

APPELLANT'S CHRONOLOGY

Part I: Certification

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

Part II: List of principal events leading to the litigation

Date	Event	Reference
Circa 1998	The appellant (Cessnock City Council) calls for expressions of interest for the management and/or development of Cessnock airport.	PJ [1], [10]; AJ [6] (CAB 8, 10, 119)
17 November 1998	Aviation & Leisure Corporation Pty Ltd (ALC) lodges an expression of interest in relation to Cessnock airport.	PJ [11]; AJ [7] (CAB 10, 119)
July 2002	The appellant resolves to lease parts of the airport to ALC.	PJ [12]; AJ [8] (CAB 10, 120)
12 December 2003	The appellant, in its capacity as applicant developer and registered proprietor, lodges a development application (DA) for the land comprising Cessnock airport that would see the land: (i) consolidated into one lot; and	PJ [16]; AJ [9] (CAB 11-12, 120)

Date	Event	Reference
	then (ii) subdivided into 25 lots. One of the lots to be subdivided is known as proposed “Lot 104”.	
17 November 2004	The appellant, in its capacity as approving authority under the <i>Environmental Planning and Assessment Act 1979</i> (NSW), approves the above DA, subject to a condition that the proposed lots be connected to the sewerage system	PJ [24]; AJ [12] (CAB 14, 121)
7 November 2005	DP1064825 is registered, consolidating the airport land into two lots.	AJ [13] (CAB 121)
March 2004	The appellant and ALC execute a lease for parts of Cessnock airport and a management agreement.	PJ [21]; AJ [8] (CAB 13, 120)
April 2005	The lawyer of Mr James Johnston (who subsequently became the respondent’s principal) submits a DA with the appellant for the construction of an aircraft hangar on proposed Lot 104.	PJ [34]; AJ [14] (CAB 16, 121)
28 July 2006	The appellant grants development consent in respect of the hangar on proposed Lot 104.	PJ [38]; AJ [14] (CAB 17, 121)
Latter half of 2006	Mr Johnston begins construction of the hangar on proposed Lot 104.	PJ [39]; AJ [27] (CAB 17, 127)
27 December 2006	The respondent is incorporated (as Cutty Sark Holdings Pty Ltd).	PJ [44] (CAB 19)
May 2007	Mr Johnston ceases to be a director and shareholder of the respondent.	PJ [126] (CAB 43)
26 July 2007	The “Agreement for Lease” (AFL) is executed by the appellant, having previously been executed by the respondent (although the agreement was dated 16 January 2008).	PJ [52]; AJ [15] (CAB 21, 121-122); ABFM 4-107

Date	Event	Reference
July 2009 to November 2009	The respondent conducts an adventure flight business from the hangar. The business ceased operation when Mr Johnston appreciated that it was not profitable.	PJ [57]; AJ [28] (CAB 23, 127)
August 2009 until June 2011	Cutty Sark hosts corporate events from the hangar and sub-licences the hangar. This becomes “completely unsustainable” in Mr Johnston’s words in June 2011.	PJ [61]; AJ [28] (CAB 23-24, 127)
September 2009 to February 2010	The respondent uses the hangar as a museum. This business was also unprofitable	PJ [58]; AJ [28] (CAB 23, 127)
1 February 2010	Woromar Pty Ltd, the company retained by the appellant to co-ordinate the works required to fulfil the conditions of the development consent for the sub-division of the airport, issues a report stating that it estimates a further \$1,317,764 is required to be spent by the appellant to comply with the conditions of the development consent.	PJ [66] (CAB 25)
2010	Part of the appellant submits a discretionary bid to the Council’s Infrastructure Strategy Section seeking funding in the amount of \$1,317,800 for the “Hunter Valley Airport Development Consent”. The discretionary bid is refused.	PJ [67] (CAB 25)
By October 2010	Mr Johnston tries to sell the hangar. He places an advertisement in “Aviation Trader” magazine for its sale by tender, which states that sealed bids would be opened at noon on 15 October 2010.	PJ [73]; AJ [29] (CAB 27, 127)
8 March 2011	Mr Johnston receives an email from “Cameron MacDonald” which purported to make an offer to purchase the hangar for \$2,375,000.	PJ [78], AJ [29] (CAB 28, 127)
29 June 2011	Ms Lea Rosser, who was then the General Manager of the appellant, has a conversation with Mr Peter Roberts of ALC and Mr Alan Revell (a consultant to ALC), during which she says that the appellant “won’t be proceeding with the subdivision of the land at the	PJ [84]; AJ [30] (CAB 30, 127-128)

Date	Event	Reference
	Airport” because it “has no intention of spending about a million dollars fixing the sewerage”.	
13 September 2011	Ms Rosser writes to the respondent’s lawyer stating that the appellant “has been unable to achieve the registration of the plan of subdivision within the timeframe anticipated in the [AFL] despite taking all reasonable action to enable that registration”. The appellant also offers the respondent an exclusive licence of 25 years, with identical terms to the draft lease attached to the AFL, or successive leases for 5 years or less.	PJ [88]; AJ [31] (CAB 31, 128)
30 September 2011	Sunset Date under the AFL. At this point the respondent was in arrears in respect of its licence fees in the amount of \$4,704.07.	PJ [2]; AJ [32] (CAB 8, 128); ABFM 15, 163
20 December 2011	The respondent’s lawyer rejects the appellant’s offer in a letter whose terms made it clear that, in the words of the primary judge, the respondent “was endeavouring to use the passage of the Sunset Date as leverage to obtain freehold title to Lot 104 as opposed to leasehold”.	PJ [92], [94]; AJ [31] (CAB 32-34, 128)
22 December 2011	The respondent makes its last (overdue) licence fee payment.	PJ [93] (CAB 34)
2011 to 2012	Mr Johnston decides to sell the aircraft that had been purchased by a Hong Kong Company that he controlled: Cutty Sark Investments (Hong Kong) Limited (Cutty Sark HK). All four aircraft are sold in this period.	PJ [83] (CAB 29)
13-14 March 2012	The respondent seeks a “rent holiday” from the appellant pending resolution of the dispute between the parties.	PJ [98]-[99] (CAB 35-36)
19 April 2012	The respondent ceases to have any directors.	PJ [111]-[112] (CAB 38-39)
Mid-2012	The respondent ceases occupation of proposed Lot 104.	PJ [108]; AJ [34] (CAB 38, 129)

Date	Event	Reference
15 August 2012	The appellant passes a motion to endorse the nomination of Cessnock airport as a major infrastructure project under the Hunter Infrastructure and Investment Fund Grant Program.	PJ [103]; AJ [35] (CAB 37, 129)
22 August 2012	The appellant submits an application for a grant of \$2 million which was intended to put the appellant in a position to buy the hangar from the respondent.	PJ [103]; AJ [35] (CAB 37, 129)
16 September 2012	The appellant was notified that its application for a \$2 million grant was unsuccessful.	PJ [105] (CAB 37)
6 September 2013	Mr Johnston disconnects the power to the hangar, as he was unable to pay electricity bills	PJ [108]; AJ [34] (CAB 38, 129)
January 2014	The appellant publishes the “Cessnock Airport Strategic Plan”, which refers to its vision for “[a] well planned and serviced aerodrome facility managed in a manner that attracts environmentally responsible economic development opportunities to the Cessnock region”.	AJ [35] (CAB 129)
17 June 2014	The respondent’s sole shareholder, Cutty Sark HK, is de-registered	PJ [116]-[117] (CAB 40)
14 August 2014	The appellant lodges an expression of interest for the “Resources for Regions Round of Funding”, seeking \$6.95 million to upgrade the airport and purchase the hangar. Nothing comes of this application.	PJ [110] (CAB 38)
April 2015	The appellant discovers that the respondent has had no directors since 19 April 2012	PJ [114] (CAB 39)
29 May 2015	As at this date, the respondent owes the appellant \$151,357.52 in licence fees.	PJ [117] (CAB 40)
7 September 2015	The respondent is de-registered by ASIC for non-payment of fees	PJ [119]; AJ [36] (CAB 41, 130)
8 September 2015	Mr Chris Eddy, the Airport Manager employed by the appellant, informs another of the appellant’s employees	PJ [120] (CAB 41)

Date	Event	Reference
	that he has inspected the hangar, which was empty; the fuses had been removed; and the electricity supply disconnected.	
18 September 2015	The appellant informs ASIC that the AFL has been terminated.	PJ [124]; AJ [36] (CAB 41-42, 130)
End of September 2015	The respondent owes the appellant about \$162,000 in licence fees arrears.	PJ [117] (CAB 40)
11 May 2016	By agreement with ASIC, the appellant purchases the hangar for \$1.	PJ [127]; AJ [36] (CAB 43, 130)
6 December 2016	The appellant enters into a new lease agreement for the hangar with a new tenant (Onyx Aviation Pty Ltd).	PJ [128]; AJ [36] (CAB 43, 130)
5 June 2017	The respondent is re-instated as a company by an order of the Supreme Court of South Australia.	PJ [130]; AJ [37] (CAB 43, 130)
29 September 2017	The respondent commences a proceeding against the appellant in the Supreme Court of New South Wales.	PJ [1]; AJ [5], [37] (CAB 8, 94, 130)
2020	The appellant produces another “Cessnock Airport Strategic Plan” which states that “[f]uture development and growth should be investigated as funding opportunities arise, and a review of this plan is recommended every five years to determine whether market forces have changed or business opportunities have arisen that could benefit this Airport facility”.	AJ [38]-[39] (CAB 130-131)
18 October 2021	Adamson J hands down judgment in <i>123 259 932 Pty Ltd v Cessnock City Council (No 2)</i> [2021] NSWSC 1329	CAB 5
18 January 2022	The respondent files a notice of appeal from the primary judgment.	CAB 105-111

Date	Event	Reference
20 February 2023	Court of Appeal (Macfarlan, Brereton and Mitchelmore JJA) allows an appeal from the primary judgment.	CAB 112, 194-195
15 September 2023	High Court of Australia (Kiefel CJ and Gleeson J) grants special leave to the appellant to appeal from the judgment of the Court of Appeal.	CAB 238
28 September 2023	The appellant files a notice of appeal from the judgment of the Court of Appeal.	CAB 239-241

Dated: 3 November 2023



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