

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S 136 of 2016

BETWEEN:



DANIEL MATTHEW SIMIC
First Appellant

HAZEL MARY DELANEY
Second Appellant

RICHARD PAUL SAPSFORD
Third Appellant

SIMIC MANAGEMENT INTERNATIONAL PTY LIMITED
ACN 134 150 833 in its own capacity and as trustee for the DANIEL SIMIC FAMILY
TRUST
Fourth Appellant

TRACK & MACHINE OPERATIONS PTY LTD
ACN 134 620 018
Fifth Appellant

and

NEW SOUTH WALES LAND AND HOUSING CORPORATION
ABN 24 960 729 253
First Respondent

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
ABN 11 005 357 522
Second Respondent

NEBAX CONSTRUCTIONS PTY LIMITED
ACN 101 054 068
Third Respondent

APPELLANTS' CHRONOLOGY

Part I:

I certify that this chronology is in a form suitable for publication on the internet.

O'Neill McDonald Lawyers
Level 12, 84 Pitt Street
SYDNEY NSW 2000

Telephone: 02 9221 3600
Fax: 02 9232 4749
Ref: Gregory Matthew McDonald

Part II:

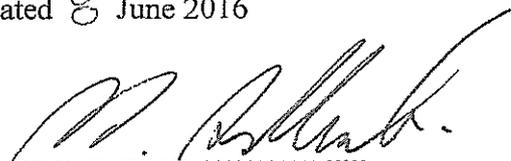
Date	Event	Appeal Book Reference
1 July 2001	Housing Act commences, with the "Department" defined as the Department of Housing.	
21 June 2002	The Third Respondent (Nebax) is registered and the First Appellant ("Mr Simic") becomes a director.	
13 February 2004	Nebax changes its name to Nebax Constructions Australia Pty Limited.	
10 October 2008	Housing NSW becomes the entity name for ABN 45 754 121 940 with the same trading name.	
25 September 2009	ABN for 24 960 729 253 is registered with the First Respondent (the " Corporation ") as the entity name as well as the trading name.	
25 September 2009	Housing NSW Department of Human Services is the entity registered for ABN 84 608 917 940 and with trading names NSW Department of Housing and Housing NSW.	
5 October 2009	Entity registered for ABN 84 608 917 940 is changed to Housing NSW Department of Human Services NSW.	
13 October 2009	Nebax submits tender to the Corporation to demolish and design and construct dwellings at 3-7 Karowa Street Bomaderry (" Bomaderry ").	
1 January 2010	Entity registered for ABN 84 608 917 940 is changed to Housing NSW Department of Human Services.	
4 March 2010	Corporation accepts tender from Nebax and enter into a contract to demolish, design and construct dwellings at Bomaderry. Pursuant to contract, Nebax is required to provide bank guarantees totalling \$146,965.06 in favour of the Corporation.	
18 March 2010	The definition of "Department" in the Housing Act changes to Department of Human Services.	
12 April 2010	The Second Respondent (" ANZ ") and Nebax entered into an Indemnity/Guarantee facility for the provision of, inter alia, bank guarantees (the " IG Facility ").	
16 April 2010	Mr Simic visits the ANZ's Caringbah Business Centre and meets with Adele Hanna (Senior Relationship Manager) and applies on behalf of Nebax for two bank guarantees in favour of "New South Wales Land & Housing Department trading as Housing NSW ABN 45754121940".	

Date	Event	Appeal Book Reference
16 April 2010	ANZ, through Ms Hanna, issues two bank guarantees in favour of "New South Wales Land & Housing Department trading as Housing NSW ABN 45754121940" (the "Undertakings") and provides them to Mr Simic who then provided them to the Corporation.	
16 April 2010	Nebax, through Mr Simic, signed two forms of indemnity in favour of ANZ in respect of the Undertakings issued in favour the New South Wales Land & Housing Department trading as Housing NSW ABN 45754121940.	
1 July 2010	ABN for 45 754 121 940 is cancelled.	
30 June 2011	Entity registered for ABN 84 608 917 940 is changed to the Department of Family and Community Services – Housing NSW.	
6 December 2011	The Corporation and Nebax enter into a deed of settlement following court proceedings before them.	
18 October 2012	ANZ and Nebax enter into an agreement for, inter alia, ANZ to continue to provide the IG Facility.	
6 June 2013	Nebax enter into voluntary administration.	
12 July 2013	Nebax placed into liquidation and ceases trading.	
12 July 2013	ANZ terminate the IG Facility and demand repayment of monies that were or may become owing.	
2 October 2013	The Corporation makes demand on ANZ for payment under the Undertakings.	
9 October 2013	Kemp Strang solicitors, on behalf of ANZ, seek explanation from the Corporation as to its entitlement to claim payment under the Undertakings.	
1 November 2013	The Corporation writes to Kemp Strang asserting a right to payment under the Undertakings.	
5 December 2013	Kemp Strang, on behalf of ANZ, writes to the Corporation rejecting the Corporation's entitlement to demand payment under the Undertakings.	
11 February 2014	The Corporation writes to Kemp Strang against asserting its right to payment under the Undertakings.	
19 February 2014	Kemp Strang, on behalf of ANZ, writes to the Corporation stating that if the name favouree in the Undertakings makes a call on them, ANZ will comply with its obligations under them.	
23 June 2014	The Corporation commences proceedings in the NSW Supreme Court to enforce the Undertakings.	

Date	Event	Appeal Book Reference
5 February 2015	Formal letter of demand from Corporation to ANZ claiming monies under the Undertakings.	
9 March 2015	Judgment of primary judge, Kunc J	
24 March 2015	Orders made by the primary judge .	
2 September 2015	The Appellants pay the total sum of the Undertakings (\$146,965.06) to ANZ.	
29 September 2015	ANZ pay the Corporation the sum of \$146,965.06 pursuant to the Undertakings.	

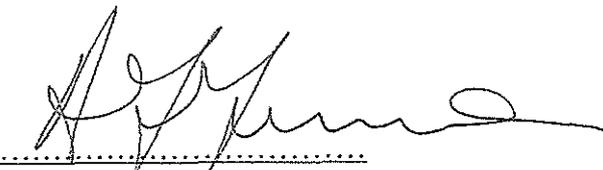
Dated 8 June 2016

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M.A. ASHHURST SC

Tel: 02 8227 4400
Fax: 02 8227 4444
Email: ashhurst.m@universitychambers.com.au

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A. F. FERNON
Tel: 02 8227 4400
Fax: 02 8227 4444
Email: fernon.a@universitychambers.com.au