



HIGH COURT OF AUSTRALIA

10 April 2013

CASTLE CONSTRUCTIONS PTY LTD v SAHAB HOLDINGS PTY LTD & ANOR

[2013] HCA 11

Today the High Court unanimously allowed an appeal from a decision of the Court of Appeal of the Supreme Court of New South Wales requiring the Registrar-General to restore to the Register an easement which the Registrar-General had deliberately removed. A majority of the Court held that the deliberate removal of an easement from the Register by the Registrar-General was not an "omission" of an easement within the meaning of s 42(1)(a1) of the *Real Property Act* 1900 (NSW) ("the Act"). That provision provides that, subject to some exceptions, a registered proprietor of land holds title free from all other estates and interests. One exception is in the case of the "omission" of an easement.

In 1921, a parcel of land was subdivided and sold. As part of the transaction, an easement of way was created. The easement was in favour of what was to become known as the "Strathallen land", and burdened land that became known as the "Sailors Bay land". In 2001, the appellant, Castle Constructions, became the registered proprietor of the Sailors Bay land and requested that the Registrar-General remove the easement over its land from the Register. The Registrar-General notified the then registered proprietors of the Strathallen land that he intended to remove the easement from the Register. The registered proprietors did not object and, in November 2001, the Registrar-General removed the easement from the Register.

In April 2007, the first respondent, Sahab, became the registered proprietor of the Strathallen land and in September 2008, it asked the Registrar-General to restore the easement to the Register. When the Registrar-General refused to do so, Sahab brought proceedings against the Registrar-General in the Supreme Court of New South Wales, seeking to have the easement restored.

At first instance, the Supreme Court refused to compel the Registrar-General to restore the easement to the Register. Sahab appealed to the Court of Appeal, which allowed the appeal. The Court of Appeal held that the easement had been omitted from the Register within the meaning of s 42(1)(a1) of the Act because "omission" in that section meant simply that the easement was "not there". The Court of Appeal made orders requiring the Registrar-General to restore the easement to the Register. By special leave, Castle Constructions appealed to the High Court.

The High Court allowed the appeal. A majority of the Court held that the easement had not been omitted from the Register because it had been deliberately removed by the Registrar-General. Because this was not a case of the omission of an easement within the meaning of the exception to indefeasibility in s 42(1)(a1) of the Act, Castle Constructions' title to the Sailors Bay land was not subject to the easement.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*