

BETWEEN:

CASTLE CONSTRUCTIONS PTY LIMITED
Appellant



and

SAHAB HOLDINGS PTY LTD
First Respondent

REGISTRAR-GENERAL
Second Respondent

**SECOND RESPONDENT'S REPLY TO FURTHER WRITTEN
SUPPLEMENTARY SUBMISSION**

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1. An unqualified power to correct the Register pursuant to s 12(1)(d) of the *Real Property Act* 1900 (NSW) and the review power in s 122 would be destructive of the aims of the Torrens system by undermining confidence in registered title.
 2. Where the error or omission sought to be corrected relates to an express exception to indefeasibility under s 42(1) no such difficulty arises. Here, as found by the Court of Appeal, correction of the Register does no more than give effect to an exception to indefeasibility which is expressly provided for in the Act¹.
 3. The question arises in the present case, in circumstances where the Registrar General has deliberately cancelled registration of the easement, is that an "omission" within the meaning of s 12 (1) (d) and s 42 (1) (a1)?

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 4. The Registrar General's decision to deliberately cancel registration of a dealing or notification, even where that decision is wrong, should not generally justify an order that the Registrar General exercise the power under s 12 (1) (d) to restore the easement. However, where correction of the Register under s 12 (1) (d) relates to one of the express statutory exceptions

¹ *Sahab Holdings Pty Ltd v Registrar General* [2011] NSWCA 395 at [274] (AB 358)

to indefeasibility (in this case an "omitted" easement protected by s 42 (1) (a1)), the Registrar General's power of correction may be exercised even against the title of a bona fide purchaser having no notice of the omission at the time of his or her own registration. That is because, if the easement can properly be categorized as "omitted" a purchaser takes subject to the easement in any event.

5. The construction of "omitted" in s 12 (1) (d) and s 42 (1) (a1) should be undertaken recognizing the aims of the Torrens system²

10 Dated: 23 January 2013



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² Second Respondent's Submissions at [9] – [13].