

# Conveyancing Service

## New South Wales

### CURRENT BPR AND CASENOTES

Service BPR 238

March 2017

#### ***In this Service:***

**[98786]** *Coffill v Lagudi Holdings Pty Ltd*

Real property — Easements — Extinguishment of easements — Similar rights conferred under two easements over passageway — Whether earlier easement obsolete by reason of change in character of neighbourhood — Whether earlier easement obsolete due to inability to serve or fulfil original purpose or object — Whether plaintiffs would suffer substantial injury through extinguishment of earlier easement

[LexisNexis AU](#) | [Lexis Advance](#)

**[98786]** *Coffill v Lagudi Holdings Pty Ltd*

Real property — Easements — Particular easements and rights — Passageway subject of 1919 and 2008 easements — Whether 1919 easement confers right of pedestrian access in addition to vehicular access — Whether temporal restriction on use of 2008 easement limited to vehicular access

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**[98787]** *Sieve-Storm Pty Ltd (ACN 160 562 354) (as trustee for Affordable Property Trust) v Murphy*

Options to purchase — Residential real property — Rescission of options — Estoppel — Public estoppel — Unjust enrichment — (NSW) Conveyancing Act 1919 Div 9 Pt 4

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**[98788]** *Al Achrafi v Topic*

Contracts — Burden of proof — Whether the plaintiffs or the defendants had the burden of proving that the condition to the defendants' right to rescind the contract for sale had not been satisfied, or satisfied, as the case may be — Consideration of authorities — Held defendants had the burden of proving they had satisfied the condition to their right to rescind the contract

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**[98788]** *Al Achrafi v Topic*

Contracts — Construction of contracts — Contract for sale of land — Clause 28.2 required defendants as vendors to do "everything reasonable" to cause plan of subdivision to be registered within 12 months after the contract date — Clause 28.3.2 permitted the vendor to rescind, but only if the vendor had complied with cl 28.2 — Special condition 48 gave parties an unfettered right of rescission if plan of subdivision not registered within 12 months — Whether the clauses are inconsistent — Consideration of how parties objectively intended the terms to operate — Held

special condition 30.11 in expressly amending cl 28.2 recognized its effectiveness including cl 28.3.2 — Held despite superficial inconsistencies, on proper construction, parties had intended cl 28.3.2 to take effect

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**[98788]** *Al Achrafi v Topic*

Contracts — Rescission — Whether defendants had done everything reasonable to cause the plan of subdivision to be registered within 12 months of the date of the contract — In this instance, defendants were required to have a development plan designed to allow for possible delays and contingencies — Plan needed to take into account evolving circumstances — Defendants asserted that failure of registration in time was due to delay by third parties — Court considered instances of delay in works and payment — Held ultimately defendants did not manage the development project in a proactive manner so as to satisfy the condition to do everything reasonable — Held defendants failed to validly rescind the contract

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**[98788]** *Al Achrafi v Topic*

Real Property — Contract for the sale of land — Defendants as vendors had a conditional right of rescission if plan of subdivision not registered within 12 months — Vendors rescinded when plan of subdivision not registered within period — Whether condition satisfied and rescission valid

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**[98789]** *Kladis v Lowe*

Easements — Development application — Application to construct a driveway — Right of carriageway — Proposal to construct elevated driveway — Whether capable of enjoyment — Whether proposed use unreasonable interference with defendants' rights

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**[98790]** *DM and Longbow Pty Ltd v Registrar-General (NSW)*

Torrens system — Correction of errors or omissions in the register — Whether error capable of correction by Registrar-General

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March 2017

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*In this Service — continued*  
*Service issues to date*

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# Conveyancing

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BEFORE filing this issue, check the FILING RECORD under the **Filing Instructions** Guide Card to ensure that Service 237 has been filed.

**SERVICE 238**

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**18 BPR 12 CASENOTES**

<i>Guide card</i>	<b>Remove old pages</b>	<b>Insert new pages</b>
<b>18 BPR</b>	35,001–35,014 .....	35,001–35,014
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