

IN THE HIGH COURT OF AUSTRALIA  
BRISBANE REGISTRY  
BETWEEN:



B47 of 2018

BRISBANE CITY COUNCIL

Appellant

and

EDWARD AMOS

Respondent

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## RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS

### Part I: Publication

1 These submissions are in a form suitable for publication on the internet.

### Part II: Outline of propositions

(a) *Documents to be handed up*

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2 The Respondent seeks to hand up to the Court (9 copies of each have been provided):

- (a) A table of comparable provisions of the *Limitation Act 1939* (UK) and subsequent Queensland legislation;
- (b) A copy of the report of *Chesworth v Farrar* [1967] 1 QB 407 referred to in paragraph 38 of the Appellant's written submissions and paragraph 56 of the Respondent's, but not included in the Joint Book of Authorities;
- (c) The *Real Property Limitation Act 1874* (UK), referred to in paragraphs 20-26, 32, 46 and 63 of the Respondent's written submissions, and paragraph 7 of the Appellant's submissions in reply, but not included in the Joint Book of Authorities;
- (d) Copies of the *Law Revision Committee Fifth Interim Report 1936* (UK), which we had not obtained before the Joint Book of Authorities was prepared; pages 7-9 and 14 relate to the intention of Parliament in enacting the provisions of the *Limitation Act 1939* (UK) corresponding to sections 10(3A) and 26(1) of the *Limitation of Actions Act 1974*;
- (e) Extracts from *Williams on Vendor and Purchaser*, Vol II (1911) comprising the title page, and pages 1026, 1027, 1045-1048, though the

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only pages we propose to refer to specifically are page 1026 and 1047, the rest being provided for context, if required, relating to one aspect of the application of the present s 26(1) of the Queensland Act.

(b) *Analysis of the text (Respondent's written submissions paras 9-14, 55-61)*

3 The Respondent supports the reasons of Dalton J at AB 57[58]-[61], 59[74]-61[78].

4 It will be submitted first that on an examination the text of the statute, considered as a whole, the proper conclusion is that sections 10(1)(d) and 26(1)  
10 are not inconsistent, in that each is framed in terms of "an action shall not be brought ...". So there is no occasion to determine which is the more specific. However, reference will also be made to *Chesworth v Farrar* at pages 413-414, and to section 10(3) and (3A), in the course of which latter discussion reference will be made to the *Law Revision Committee Fifth Interim Report 1936 (UK)* pages 7-9 and to the *Reprints Act 1992 (Qld)*, sections 7 and 43.

5 In particular, it will be submitted that the analyses of Dalton J at AB68[109]-71[120] and, in relation to s 26(5), of Fraser JA, are correct.

6 Also, the text of s. 10 focuses on the cause or causes of action of which the plaintiff's claim is founded. So one may have one action based on one set of  
20 circumstances, that raises two causes of action, and the application of s 10 applies the relevant provision to each cause of action. For example, if one has a cause of action for breach of contract (for example, against an accountant for breach of a term of the contract to exercise care and skill) arising on the happening of the breach on 1 March 2012, but the same circumstances give rise to a cause of action in negligence for failure to take reasonable care arising on the first suffering of damage on 1 March 2015, then the cause of action for breach of contract will be barred on 1 March 2018, but for the tort of negligence can still be sued on until 1 March 2021.

7 In contrast, the limitation on s 26(1) is founded on a particular attribute of the claim, whatever the cause of action, that is to say, whether the liability is  
30 secured by mortgage (widely defined in s 5) or charge.

(c) *Barnes v Glenton and its reception (written submissions paras. 22-27, 45-54)*

8 The Respondent supports the reasons of Dalton J at AB 61[79]-68[108].

9 As well, as outlined in the Respondent's written submissions, apart from the dictum of McPherson J in *Australia and New Zealand Banking Group Ltd v Douglas Morris Investments Pty Ltd* at pages 282-483, later decisions and texts have accepted the decision in *Barnes v Glenton*.

(d) *Re-enactment of the provisions considered in Sutton v Sutton and Barnes v Glenton (written submissions paras. 28-44)*

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10 It is submitted that the re-enactment of the relevant provisions following the decisions in *Sutton v Sutton* and *Barnes v Glenton*, in light of the understanding of those decisions as demonstrated by texts and reports, should be taken to indicate a legislative intention to give effect to the interpretation given in those cases to predecessors of that section.

11 In addition to the Respondent's written submissions, it is proposed to refer the Court to the *Law Revision Committee Fifth Interim Report 1936 (UK)*, page 14, and to *Williams on Vendor and Purchaser*, Vol II (1911) pages 1026 and 1047.

20 (e) *Application of s 26(5)*

12 The Respondent adopts the analysis of Fraser JA at AB46[21] to 48[27].

(f) *Orders*

13 The Respondent submits that the Court should dismiss the appeal, with costs.

14 In the alternative, if the court allows the appeal in relation to the section 10(1(d) issue, but not in relation to the section 26(5) issue, then it is submitted that the court should remit the matter to the Court of Appeal for determination in  
30 accordance with the Court's reasons, with no order as to costs.

Dated: 9 April 2019



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Lister Harrison QC