


CASE SUMMARY: Sidoti v Hardy

[2021] NSWCA 105

Description: Squatting in the dunny lane: defeasibility of limited title

	
70	Real property
70K1188-K1432	Torrens title
70K1238-K1279	Indefeasibility of title
70K1242-K1269	Exceptions to indefeasibility
70K1253	Wrong description of parcels

defeasibility of limited title — description not reflecting occupational boundaries

What constitutes ‘any wrong description of parcels or of boundaries’?

A parcel of land was converted in September 2005 from old system and was brought under the [REAL PROPERTY ACT 1900 \(NSW\)](#) in a qualified and limited folio. The title remained limited at the time when the appellants acquired the parcel in 2018. The primary judge found that the respondent neighbour’s adverse possession of a strip of land at the end of the appellants’ backyard commenced from at least early 2005, possibly even 2002. The appellants argued they had acquired an indefeasible title.

Held:

(1) (by Basten JA) Section 28U prevents the registered proprietor obtaining an indefeasible title with respect to land “incorrectly included” in a limited folio, as a result of ‘any wrong description of parcels or of boundaries’. No explanation was provided as to how a title which involved no wrong description of parcels or boundaries when created could fall within that description after it was created, by maintaining unlawful possession for 12 years. The transfer to the appellants, for valuable consideration, of land contained in a limited folio, conveyed an estate and interest, on registration of the transfer, free of the respondent’s claim.

(2) (by Brereton JA) In the context of a limited folio created by the Registrar-General pursuant to conversion action, there will be a “wrong description” if the description of the land in the limited folio does not reflect the occupational boundaries with the result that it includes land in which a person other than the registered proprietor has an existing possessory interest – whether that claim is crystallised or inchoate. The strip of land, subject as it was to the respondent’s inchoate possessory claim, was included “by wrong description of parcels or of boundaries” in the limited folio for the appellants’ property, and their title was subject to the adverse interest of the respondent who was entitled to enforce it in the present proceedings.

(3) (by Simpson AJA) The respondent could not have had possessory title to the strip of land at the time the limited folio was created. There was no ‘wrong description of any parcel or boundary’ at that time. Section 28U(2) did not operate to counter the effect of s 42(1).