

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S270 of 2017

BETWEEN:

HOMAYOUN NOBARANI
Appellant

and

TERESA ANNE MARICONTE
Respondent

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RESPONDENT'S CHRONOLOGY

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RESPONDENT'S CHRONOLOGY

PART I:

1. We certify that this chronology is in a form suitable for publication on the internet.

PART II:

| ENTRY | DATE | EVENT | AB REF. |
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| 1. | 5.12.2013 | Date of testatrix's last will. | AB 475 |
| 2. | 12.12.2013 | Date of testatrix's death. | AB 344 |
| 3. | 23.1.2014 | Caveat filed by Mr Nobarani against a grant of probate of the testatrix's last will ('First Nobarani Caveat'). | AB 29 |
| 4. | 31.1.2014 | Affidavit of Executor sworn by Ms Mariconte. | AB 342 |
| 5. | 5.2.2014 | Caveat filed by the Animal Welfare League ('AWL') against a grant of probate of the testatrix's last will ('AWL Caveat'). | AB 33 |
| 6. | 11.2.2014 | Summons filed by Ms Mariconte seeking an order that she be granted probate of the testatrix's December 2013 Will. | AB 2 |
| 7. | 13.2.2014 | Affidavit of Mr Michael Bradstreet sworn (solicitor who prepared the December 2013 Will and observed the testatrix's capacity to make it). | AB 349 |
| 8. | 14.2.2014 | Notice of Motion filed by Ms Mariconte, seeking an order that the First Caveat and the AWL Caveat cease to be in force. | AB 37 |
| 9. | 24.2.2014 | Senior Deputy Registrar Studdert made the following orders: (a) AWL and Mr Nobarani to file and serve any affidavits relied on within 5 weeks; and, (b) the matter be stood over to the Probate List on 7 April 2014. | AB 27.20 |

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| 10. | 24.2.2014 | Mr Nobarani swears an affidavit in the proceedings. | AB 357 |
| 11. | 31.3.2014 | Affidavit of Mr Daniel Lemesle sworn ('Lemesle Affidavit') filed by AWL. | AB 460 |
| 12. | 15.5.2014 | Statement of Claim filed by Ms Mariconte, seeking an order that she be granted probate of the testatrix's December 2013 Will ('Statement of Claim'). | AB 6 |
| 13. | 23.5.2014 | Affidavit of Mr George Kaloudis sworn ('Kaloudis Affidavit') filed for Ms Mariconte. | AB 468 |
| 14. | 27.6.2014 | Appearance (handwritten) filed by Mr Nobarani. [In the "Title of Proceedings" section of the UPCR form Mr Nobarani wrote his name next to the heading "#Second defendant #Number of defendants (if more than two)". In addition, in the "Appearance" section Mr Nobarani wrote "Defendant H.N."] | AB 46 |
| 15. | 23.7.2014 | Affidavit of Ms Parseghian sworn (independent bystander who witnessed (for Ms Mariconte) the testatrix execute the 5 December 2013 Will). | AB 354 |
| 16. | 23.7.2014 | First Caveat (of Nobarani) lapsed by effluxion of time (SCR r. 78.69(1)). | |
| 17. | 21.8.2014 | AWL filed a Defence and Cross Claim. | AB 640.5 |
| 18. | 15.9.2014 | Caveat (handwritten) filed by Mr Nobarani ('Second Nobarani Caveat') against a grant of probate of the testatrix's last will. | AB 49 |
| 19. | 15.09.2014 | Acting Senior Deputy Registrar Brown made consent orders that: (a) Ms Mariconte serve a Defence to AWL's Cross-Claim by 30 September 2014; (b) AWL serve the affidavits on which it relied by 31 October 2014; and, (c) the matter be listed for further directions on 3 November 2014. | AB 25.60 – 26.10 |
| 20. | 8.10.2014 | Ms Mariconte filed a Defence to AWL's Cross Claim. | AB 640.15 |
| 21. | 3.11.2014 | Acting Senior Deputy Registrar Yoo stands-over the proceedings for directions on 24 November 2014. | AB 25.50 |
| 22. | 24.11.2014 | Directions hearing before Senior Deputy Registrar Studdert. Mr Nobarani appeared unrepresented. | AB 24 |

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| 22. (cont.) | 24.11.2014 | Senior Deputy Registrar Studdert made orders including that: (a) Ms Mariconte serve notices of proceedings on beneficiaries under August 2004 Will; and, (b) refer the matter to Acting Senior Deputy Registrar Bellach. | AB 24.50 |
| 23. | 24.11.2014 | On referral to Acting Senior Deputy Registrar Bellach, Mr Nobarani appeared unrepresented. Acting Senior Deputy Registrar Bellach: (a) fixed the proceedings for hearing before the primary judge on 20–21 May 2015; (b) made the usual order for hearing; ¹ (c) gave leave for AWL and Mr Nobarani to file and serve any further affidavit evidence by 6 March 2015; and, (d) gave leave for Ms Mariconte to serve reply evidence by 1 April 2015. | AB 25.44 AB 25.30 |
| 24. | 23.12.2014 | Notice to Affected Persons (Form 135) ('Notice to Affected Persons') given for Ms Mariconte: SCR r. 78.42. | AB 52 |
| 25. | 14.1.2015 | Ms Mariconte served on Mr Nobarani <i>inter alia</i> the Statement of Claim, Affidavit of Executor, and Notice to Affected Persons. | AB 641.10 |
| 26. | 28.1.2015 | Mr Nobarani filed a further (handwritten) Appearance. [In the "Title of Proceedings" section of the UPCR form Mr Nobarani wrote his name next to the heading "#Second defendant #Number of defendants (if more than two)". In the "Filing Details" section, Mr Nobarani referred to himself as the "second defendant". In the "Appearance" section Mr Nobarani referred to himself as "sec. Defendant".] By filing the Appearance: (a) Mr Nobarani became the second defendant in the proceedings: SCR r. 78.44(2); (b) the proceedings continued as if Mr Nobarani had been joined on 11 February 2014 (see Entry 6) as a defendant by the application for the grant of probate: SCR r. 78.44(3)(a); | AB 64 |

¹ The usual order for hearing is set out in Annexure A of Practice Note No. SC EQ 1 – *Case Management* (v. 1.8.2011 – 30.11.2016) and provides that: "By no later than 3 working days before the trial date the parties are to provide to the Associate to the Trial Judge a Court Book consisting of all evidence, any objections thereto (limited to those that are essential having regard in particular to s 190(3) of the Evidence Act 1995) and a short outline of submissions."

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| 26. (cont.) | 28.1.2015 | (c) the proceedings continued as if Mr Nobarani had been served with that application on the day on which he was served with the Notice to Affected Persons: SCR Rule 78.44(3)(b); namely 14 January 2015 (see Entry 25). | |
| 27. | 10.2.2015 | AWL and Ms Mariconte filed consent orders resolving the probate proceedings as between them. | AB 67 |
| 28. | 12.2.2015 | Mr Nobarani failed to file a Defence to the Statement of Claim within 28 days of being joined as second defendant (see Entry 25), in accordance with UCPR r. 14.3(1). ² | AB 641.10 |
| 29. | 6.3.2015 | Mr Nobarani failed to serve any further evidence (in accordance with the orders made by Acting Senior Deputy Registrar Bellach on 24 November 2014) – see Entry 23, above. | AB 25.30 |
| 30. | 15.3.2015 | Second Caveat of Nobarani lapsed by effluxion of time under SCR r. 78.69(1). | |
| 31. | 19.3.2015 | Notice of Motion filed by Ms Mariconte, seeking an order that judgment be entered against Mr Nobarani with costs. | AB 70 |
| 32. | 30.3.2015 | Directions hearing before Hallen J. Mr Nobarani appeared unrepresented. Hallen J identified that Mr Nobarani had been joined as a defendant to the proceedings. Hallen J then questioned Mr Nobarani as to why he had not put on a defence to the Statement of Claim, and recommended that Mr Nobarani obtain legal advice. Hallen J adjourned the proceedings until Monday, 20 April 2015 in order for Mr Nobarani to obtain legal advice. | AB 24.20 AB 503.8-9 AB 507.15-20 AB 508.47-50 – 509.1-28. |
| 33. | 8.4.2015 | Notice of Appointment of Solicitor filed by Mr David Coleman of Lawyers and Legal Services Sydney Pty Ltd on Mr Nobarani's behalf. | AB 73 |
| 34. | 10.4.2015 | Mr Nobarani filed a Subpoena to Produce Documents to be issued to Focus Eye Centre (Dr Kearns' practice) with a return date of 20 April 2015. The subpoena contained a handwritten notation "Leave granted to issue Duty Registrar 10/4/2015". | AB 77 |

² Rule 14.3(1) provides "Subject to these rules, the time limited for a defendant to file a defence is 28 days after service on the defendant of the statement of claim or such other time as the court directs for the filing of a defence."

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| 35. | 20.4.2015 | <p>Directions hearing before Hallen J.</p> <p>Mr Coleman appeared for Mr Nobarani. Hallen J adjourned the proceedings until 23 April 2015 to allow an inspection at the testatrix's premises to occur with a view to Mr Nobarani delivering finding the alleged September 2013 Will.</p> | AB 23.35 |
| 36. | 21.4.2015 | Mr Coleman filed and served on Mr Nobarani a Notice of Intention of Ceasing to Act. | AB 85.40 |
| 37. | 22.4.2015 | <p>Mr Nobarani attended at the testatrix's premises. Mr Bradstreet, Senior and Junior Counsel for Ms Mariconte and Ms Mariconte were present. The inspection to find the "hidden" will was not carried-out.</p> <p>The September 2013 Will was never located, and has never been produced by Mr Nobarani.</p> | <p>AB 529.32 – 530.9</p> <p>AB 644.40</p> |
| 38. | 23.4.2015 | <p>Mr Nobarani appears to have served an unsworn affidavit dated 20 April 2015 (which refers to matters that occurred on 22 April 2018).</p> <p>The affidavit states at [1]: "I am the second defendant in these in the notice of motion."</p> | <p>AB 364</p> <p>AB 365</p> |
| 39. | 23.4.2015 | <p>Directions proceedings and the respondent hearing before Hallen J.</p> <p>Mr Coleman filed a Notice of Ceasing to Act and was granted leave to withdraw by Hallen J.</p> <p>In his address to Hallen J, Mr Nobarani appeared to seek to rely on the unsworn affidavit dated 20 April 2015.</p> <p>Hallen J then made orders and directions for the progression of the proceedings, and once again gave Mr Nobarani a strong warning that he needed to obtain legal advice in relation to the proceedings.</p> <p>The orders made included:</p> <p>(a) a direction that Ms Mariconte ensure that an envelope addressed to Mr Nobarani containing a copy of the Amended Notice of Motion and all affidavits upon which Ms Mariconte intended to rely on in support of the Amended Notice of Motion would be available for collection by Mr Nobarani no later than 4:00 pm on 24 April 2015 from W G McNally Jones Staff, Solicitors;</p> | <p>AB 23.10</p> <p>AB 85 / AB 106.5</p> <p>AB 108.11-17</p> <p>AB 113 AB 113.42-50 – 114.1-7</p> <p>AB 23.20</p> |

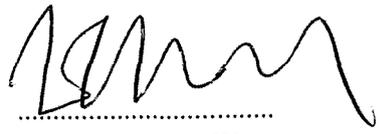
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| 39. (cont.) | 23.4.2015 | <p>(b) a direction that Mr Nobarani collect those documents from Mr Bradstreet's office on or after 4:00 pm on 24 April 2015;</p> <p>(c) a direction that Mr Nobarani file and serve by 4:00 pm on 7 May 2015 any affidavit upon which he intended to rely in opposition of the Amended Notice of Motion;</p> <p>(a) a direction that each party to serve upon the other, and to provide to Slattery J, by 4:00 pm on 13 May 2015 an index of affidavits upon which they intended to rely in relation to the Amended Notice of Motion.</p> | AB 115.5 |
| 40. | 24.4.2015 | Amended Notice of Motion filed by Ms Mariconte, which sought orders including that the First Caveat and the Second Caveat cease to be in force ('Amended Notice of Motion'). | AB 87 |
| 41. | 5.5.2015 | <p>Mr Nobarani swears an affidavit in the proceedings (included in Nobarani's List of Affidavits (AB 387)).</p> <p>Mr Nobarani states at [1]: "I am the second defendant in these proceedings and the respondent in the notice of motion...".</p> | AB 372 AB 373 |
| 42. | 13.5.2015 | <p>Mr Nobarani swears a further affidavit in the proceedings (included in Nobarani's List of Affidavits (AB 387)).</p> <p>Mr Nobarani states at [1]: "<i>I am the second defendant in these proceedings and Ms Mariconte in the notice of motion.</i>"</p> | AB 383 |
| 43. | 13.5.2015 | Mr Nobarani's wife, Marayam Nobarani, signs a statement/affidavit in the proceedings. | AB 482 |
| 44. | 13.5.2015 | <p>Mr Nobarani prepares "<i>Index of the list of Affidavits of Homayoun Nobarani</i>" ('List of Affidavits').</p> <p>Mr Nobarani relied on his affidavits sworn 24 February 2014, 5 May 2015 and 13 May 2015. No reference was made in the List of Affidavits (AB 387) to the Lemesle Affidavit (AB 460).</p> | AB 387 |
| 45. | 14.5.2015 (Thurs) | <p>Directions hearing before Slattery J.</p> <p>Senior Counsel for Ms Mariconte informed the Court that the First Caveat and the Second Caveat had expired due to the effluxion of time.</p> <p>Slattery J directed (<i>inter alia</i>) that the proceedings listed on 20 and 21 May 2015 be "for final hearing on [the] Statement of Claim in addition to any issues on other motions...".</p> | AB 22.40 AB 120.20 |

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| 46. | 15.5.2015 | Mr Nobarani caused a second Subpoena to Produce Documents to be issued to Dr Margaret Kearns of Focus Eye Centre with a return date of 29 May 2017. | AB 90 |
| 47. | 15.5.2015 | Mr Nobarani did not apply to the primary judge for abridged service and production, despite the primary judge's informing Mr Nobarani as to the process to be followed for the issue of subpoenas with abridged time for service. | AB 560.45 – 561.8 |
| 48. | 18.5.2015 (Mon.) | Defence filed by Mr Nobarani. | AB 11 |
| 49. | 20.5.2015 (Weds.) | Day 1 of hearing before Slattery J. Ms Mariconte was represented by Mr Maconachie QC and Mr Hickey. Slattery J granted leave to Ms Mariconte to file in Court an Amended Statement of Claim, which formally added Mr Nobarani as a defendant, together with a prayer for costs. Notice to Produce to Court dated 20 May 2015 (served by Mr Nobarani in court on 20 May 2015) was set aside. | AB 148-227 AB 183.37-38 AB 97; AB 178.30 – 180.44 |
| 50. | 21.5.2015 | Day 2 of hearing before Slattery J. | AB 229-340 |
| 51. | 22.5.2015 | Slattery J delivered <i>ex tempore</i> judgment, granting to Ms Mariconte probate in solemn form of the December 2013 Will with costs. | AB 570 |
| 52. | 13.10.2016 | Mr Nobarani files Amended Notice of Appeal in the Supreme Court of New South Wales. | AB 609 |
| 53. | 4.4.2017 | Appeal heard by Ward and Simpson JJA and Emmett AJA. | AB 615.15 |
| 54. | 5.6.2017 | The Court of Appeal delivered its judgment. | AB 615.20 |

Dated: 14 May 2018


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