

IN THE SUPREME COURT
OF NEW SOUTH WALES
SYDNEY REGISTRY
COURT OF APPEAL
CA No:
SC Common Law No: 20073 of 2003

Form 60A
[Pt51,r5(1)]

The proceedings in respect of which leave to appeal is sought were heard on 30 October 2006, 31 October 2006, 1 November 2006 and 2 November 2006 and decided on 7 May 2007. Leave to appeal was granted on

NOTICE OF APPEAL WITH APPOINTMENT

Filed for
The Salvation Army (South Australia
Property Trust)

The appellant appeals from the decision of Simpson J.

**The Salvation Army (South Australia
Property Trust)**
Appellant

GROUND(S):

Graham Rundle
Respondent

1 Her Honour erred in applying section 48 of the *Limitation of Actions Act 1936 (S.A)* without giving effect to the amendments to that section by the *Law Reform (lpp Recommendations) Act 2004 (S.A)*.

In the Court below:
Supreme Court of New South Wales

Graham Rundle
Plaintiff

2 Her Honour erred in holding that the Respondent had ascertained facts material to his case less than 12 months before commencing proceedings.

**The Salvation Army (South Australia
Property Trust)**
First Defendant

Keith Ellis
Second Defendant
Harris Freidman Hyde Page
Lawyers
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3 Her Honour erred in holding that, in all the circumstances of the

case, it was just to grant an extension of time.

- 4 Her Honour failed to give reasons as to why, in all the circumstances of the case, it was just to grant an extension of time.
- 5 Her Honour erred in treating the Appellant as having an onus to establish not only the prejudice suffered by reason of the Respondent's delay in commencing the proceedings, but also to establish where it was not so prejudiced.
- 6 Her Honour erred in taking into account witness statements viewed on a *voir dire* but which were not in evidence on the application to extend time.
- 7 Her Honour erred in taking into account the prosecution of old complaints of sexual assault in the criminal courts as a reason why a fair trial could take place in respect of the Respondent's allegations against the Appellant.
- 8 Her Honour erred in taking into account a pending criminal prosecution of one of the alleged assailants, in the absence of any evidence that the criminal investigation had yielded any evidence which would reduce the prejudice asserted by the Appellant.
- 9 Her Honour erred in taking into account submissions made by the Appellant to two inquiries in South Australia, and inferring without any proper basis for doing so that the Appellant was not prejudiced by reason of its participation in those inquiries.
- 10 Her Honour erred in ordering the Appellant to pay the Respondent's costs of the application to extend time.
- 11 Her Honour ought to have held, applying section 48 of the *Limitation of Actions Act 1936 (S.A)* as amended by the *Law Reform (Ipp Recommendations) Act 2004 (S.A)*:

- (a) that the Respondent had not ascertained facts material to his case less than 12 months before commencing proceedings;
- (b) that a fair trial was no longer possible;
- (c) that, in all the circumstances of the case, it was not just to grant an extension of time,

and dismissed the Respondent's motion for an extension of time with costs.

ORDERS SOUGHT:

- 1 Appeal allowed.
- 2 Respondent's motion for an extension of time dismissed.
- 3 Respondent to pay the costs of the appeal.
- 4 Respondent to pay the costs of the motion to extend time.

To the Respondent:

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Before you take any steps in these proceedings you must enter an appearance in the Registry.

Appellant:

The Salvation Army (South Australia) Property Trust

Solicitor

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