

Encroachments

Amatek Limited v Googoorewon Pty Limited, High Court of Australia, 18 March 1993.

An important lesson can be learnt from the High Court decision of *Amatek Limited v Googoorewon Pty Limited* delivered on 18 March 1993: always obtain a survey and mark your boundaries prior to carrying out building works on your land.

Googoorewon erected, on what it thought was its land, substantial buildings to the value of \$55,000. It was subsequently discovered that the buildings in fact stood on the neighbour's land owned by Amatek. The closest point of any of the buildings to the boundary between Googoorewon's land and Amatek's land was about 40 metres.

Googoorewon applied to the Supreme Court of New South Wales under the Encroachment of Buildings Act, 1922 ("the Act") for an order that Amatek transfer to Googoorewon a triangular parcel of land, being part of Amatek's land adjacent to the common boundary of Amatek's land and Googoorewon's land, including the area on which the buildings stood.

Cohen J held that the Act was "intended to apply only to an owner whose building was meant to be on his own land but which, although partly on that land, extends across to the adjoining land". His Honour did not consider that it was "intended to nor does it provide for buildings that had inadvertently been erected wholly on neighbouring land, nor was it intended to provide for the compulsory transfer of large tracts of land because of that inadvertence". His Honour therefore held that the Court did not have jurisdiction to make the order sought. On appeal by Googoorewon, the Court of Appeal held that there was jurisdiction to make the order. Amatek appealed to the High Court.

The decision of Cohen J was upheld by the High Court. The High Court concluded that an "encroachment" under the Act is an encroachment by a building that traverses the "boundary" between the contiguous parcels of land. Section 3 of the Act (which allows an owner, either adjacent or encroaching, to apply to the Supreme Court for relief in respect of any encroachment) is remedial, but applies only when a building encroaches from the land of the encroaching owner across the boundary on to the contiguous land of the adjacent owner. As there were no buildings encroaching across the boundary between Amatek's land and Googoorewon's land, the order sought by Googoorewon could not be made under the Act.

A report on the earlier NSW Supreme Court, Court of Appeal decision appears in Issue #26 at p52.

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