



HIGH COURT OF AUSTRALIA

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NORTHERN TERRITORY OF AUSTRALIA v VINCENT COLLINS AND MARYANN COLLINS

The grant of licenses by the Northern Territory to harvest cypress pine timber did not amount to contributory infringement of a patent for methods to produce blue cypress oil because the timber was a staple commercial product, the High Court of Australia held today.

Vincent and Maryann Collins have since 1999 owned a patent for methods of producing essential oils from cypress pine. The oil is used in aromatherapy and in cosmetics and body care products, and it may possess anti-bacterial properties and act as a preservative in the treatment of wood. During the 1960s, the NT government planted cypress pine at various sites to try to produce a commercial crop of timber. Results were disappointing and by 1995 the timber was no longer considered to be of suitable commercial quality. However several commercial uses remained for timber harvested from the Howard Springs Plantation outside Darwin, including milling for poles, fencing, flooring and light construction; woodchip mulch; potting mix and firewood. The NT granted four licenses to the Australian Cypress Oil Company (ACOC) from 1998 to 2001 to enter the plantation and take cypress pine timber.

Mr and Mrs Collins commenced proceedings in 2005 in the Federal Court of Australia alleging that the NT was liable under section 117 of the Commonwealth *Patents Act* for infringement by supplying timber to ACOC. Section 117 dealt with contributory infringement of patents by providing that the supply of a product from one person to another was a patent infringement if use of the product would infringe a patent. However, under section 117(2)(b), supply of a “staple commercial product” was not an infringement. Mr and Mrs Collins alleged that ACOC used the bark and wood of the timber to extract blue cypress oil by steam distillation, one of the methods claimed in the patent. The NT denied the validity of the patent and did not admit that ACOC produced blue cypress oil by a process protected by the patent. It also denied that section 117 was engaged by the grant of the licenses, irrespective of whether the patent was valid or whether ACOC used the timber to produce blue cypress oil by a process which infringed the patent. ACOC was not a party to the proceedings.

Justice John Mansfield assumed, without deciding, that the patent was valid but dismissed the proceedings. He held that there was no “supply” within section 117 as the licences merely permitted ACOC to harvest the trees and the NT had not engaged in a sale or other means of supply. Moreover, even if there were a supply by the NT, he held that it was of a “staple commercial product” and thus not an infringement. The Full Court of the Federal Court, by majority, allowed the appeal by Mr and Mrs Collins. It held that, although the conduct of the NT amounted to supply of the timber, in all the circumstances the timber was not a staple commercial product. The NT appealed to the High Court. It argued that the supply of an input for a patented method or process was incapable of engaging the operation of section 117, that the grant of licences to ACOC did not amount to a “supply” of timber for the purposes of section 117, and that the timber was a “staple commercial product” within the meaning of section 117(2)(b).

The Court unanimously allowed the appeal on the third issue. While the Court considered there had been a “supply” of cypress pine timber by the NT for the purposes of the *Patents Act*, it held that the timber was a “staple commercial product”, which meant a product supplied commercially for various uses. The cypress pine was supplied to various licensees for a variety of uses and the supply of this staple commercial product by the NT to ACOC could not infringe the patent according to section 117(2)(b). It followed that the order of Justice Mansfield to dismiss the proceeding against the NT was reinstated.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court’s reasons.*