



HIGH COURT OF AUSTRALIA

Public Information Officer

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CONCRETE PTY LIMITED v PARRAMATTA DESIGN & DEVELOPMENTS PTY LIMITED
AND GHASSAN FARES

The buyer of land on which a unit development had been approved had the right to use the plans and drawings produced by the original architect, the High Court of Australia held today.

Landmark Building Developments Pty Limited and Toyama Pty Limited formed a joint venture in 1998 to buy land at Nelson Bay, on the central New South Wales coast, for \$560,000. They intended to build home units for sale upon the land. Architect Ghassan Fares was a principal of both Landmark and Parramatta Design & Developments. The joint venturers paid Mr Fares \$27,000 to prepare the plans to obtain development consent from the Port Stephens Council for a block of eight units. Consent was granted but the joint venturers wished to enlarge their development to 14 units when a 16-unit structure was approved next door. Toyama agreed to the increase when Mr Fares offered to prepare fresh plans without payment. Consent for the 14-unit development, which would last five years, was granted in May 2000. The joint venturers fell out and trustees were appointed by the NSW Supreme Court in December 2002 to sell the land. Concrete bought it in August 2003 for \$2.76 million. Parramatta asserted copyright and refused to let Concrete use the building plans.

Concrete began proceedings in the Federal Court of Australia under section 202 of the *Copyright Act*, alleging that Parramatta and Mr Fares had made unjustifiable threats to bring proceedings for copyright infringement. It sought a declaration that the assertion of copyright was unjustified as it had an implied licence to use the plans after buying land which carried development consent. Parramatta cross-claimed, alleging infringement of copyright. Justice Richard Conti declared the threats were unjustifiable under section 202, held that Concrete had an implied licence to use the plans and drawings, ordered an enquiry into the damages sustained by Concrete due to the threats, and dismissed the cross-claim. On appeal, the Full Court of the Federal Court held that the threats were justified because Concrete had no right to use the plans, and that the trial miscarried in any event because of apprehended bias on the part of Justice Conti due to comments he made during the trial and in his judgment. Concrete appealed to the High Court. Parramatta and Mr Fares sought leave to cross-appeal on the bias issue.

The Court unanimously allowed the appeal with costs, remitted to Justice Conti the question of damages sustained by Concrete, and dismissed the cross-appeal. It held that Concrete had obtained an implied licence to use the plans and drawings when it purchased the land from the joint venturers. The Court held that provision by Parramatta of the plans to the joint venture in the circumstances of the case necessarily involved the agreement to make the plans available for the mutual benefit of the joint venturers, including in the event that their relationship broke down and the joint venture assets were realised. The Court also held that no reasonable apprehension of bias was established on the part of Justice Conti and that the Full Court erred in so holding. Had there been apprehended bias, it should have been resolved first and a new trial ordered, rather than proceeding on the other issues raised in the appeal.

- *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.*