



## HIGH COURT OF AUSTRALIA

Public Information Officer

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BRENT BURGE, TREVOR ROGERS, BENJAMIN WARREN, BOLD GOLD INVESTMENTS,  
GLEN PETER BOSMAN AND SERGIO EDWARD ZAZA v JOHN HARLEY SWARBRICK

Moulds used in the reproduction of a high-speed yacht did not attract copyright protection as works of artistic craftsmanship, the High Court of Australia held today.

Mr Swarbrick is a naval architect whose Perth company Swarbrick Yachts International Pty Ltd manufactures fibreglass yachts called the JS 9000, sold in Australia and around the world for up to \$65,000. He designed the JS 9000 as a fast boat sailed easily by two or three people. Mr Swarbrick has also designed America's Cup and Whitbread racing yachts. Mr Rogers and Mr Warren were employed by Swarbrick Yachts in the moulding of hulls and decks but left to work for Bold Gold to build a JS 9000 yacht using a hull and deck moulding which Bold Gold bought from Mr Rogers for \$7,500. In late 2002, Mr Swarbrick gave Mr Rogers the moulding in disputed circumstances which have not been resolved. Mr Bosman and Mr Zaza formed Bold Gold Investments for the purpose of acquiring the moulding from Mr Rogers. Mr Burge was engaged as factory operation manager. Work at Bold Gold's factory ceased in September 2003 after Justice Christopher Carr in the Federal Court of Australia granted Mr Swarbrick an interim injunction. The injunction prevents the manufacture of any mould using the JS 9000 hull and deck mouldings and the reproduction of the object called "the plug", a hand-crafted full-scale model of the hull and deck sections of a finished JS 9000. The moulds are exact, although inverted, copies of the plug.

Section 77 of the *Copyright Act* provides for the limitation of copyright protection resulting from use of a corresponding but unregistered design but an exception is provided for "a work of artistic craftsmanship". Justice Carr held that Bold Gold had infringed Mr Swarbrick's copyright in the plug, the hull mould and the hull moulding, being artistic works, and had engaged in conduct which, but for the interim injunction, would have resulted in infringement of his copyright in artistic works being the deck mould and deck moulding. The Full Court dismissed an appeal. Bold Gold and its personnel then appealed to the High Court.

The Court unanimously allowed the appeal. It held that determining whether a work is "a work of artistic craftsmanship" does not turn on assessing the work's beauty or aesthetic appeal or on assessing any harmony between its visual appeal and its utility. The determination turns on the extent to which the work's artistic expression is unconstrained by functional considerations. Whether the plug was a work of artistic craftsmanship did not depend on Mr Swarbrick's intention to design and build a yacht of great aesthetic appeal or on his belief that the JS 9000 had a high level of aesthetic appeal. The visual appeal was secondary to the functional aspects of a sports boat of high speed. The Court held that Justice Carr should have concluded that the plug was not a work of artistic craftsmanship because Mr Swarbrick's work in designing it was not that of an artist-craftsman. It held that Justice Carr was however correct to describe the hull and deck mouldings as manifestations of the plug. The Court rejected a claim that the mouldings are independently works of artistic craftsmanship. It set aside all orders, including the injunction, made by Justice Carr and held that remaining cross-claims be stood over for determination by the Federal Court.

- *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.*