



HIGH COURT OF AUSTRALIA

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Details of Filing

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Form 27F – Outline of oral submissions

Note: see rule 44.08.2.

S53/2024

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN:

HILARY LORRAINE KRAMER
First Appellant

JAIME FERRAR
Second Appellant

and

DAVID LINDSAY STONE
Respondent

RESPONDENT’S OUTLINE OF ORAL SUBMISSIONS

PART I: CERTIFICATION

1. This outline of oral submissions is in a form suitable for publication on the internet.

PART II: OUTLINE OF ORAL SUBMISSIONS

(1) Special leave should be revoked: RS [18]

2. The issues at **AS [2]** do not arise on the primary judge’s finding that Dame Leonie knew at the time of her promise that it would be relied upon by David: **RS [8]–[11]**.
3. The appellants variously misstate — or make veiled challenges to — the primary judge’s other findings, including on points unsuccessfully appealed in the Court of Appeal: **RS [6]–[7], [12]–[17]**.

(2) No authority of this Court supports the appellants

4. There is a distinction between a mere incomplete gift (“I give you property X”) and a promise to do something in the future (“I will, in the future, give you property X”)

on which a person relies to their detriment. A future-looking promise is continuing conduct: **RS [21]–[24]**.

Olsson v Dyson (1969) 120 CLR 365 at 374, 378–9 (**JBA Vol 1 Tab 10 p 451**)

5. *Olsson v Dyson* does not stand for the proposition that where there is a future-looking promise, there must be some other subsequent conduct by the promisor or that the promisor must have subjective knowledge of the promisee’s acts of reliance upon the promise. No other authority of this Court does so: **RS [25]–[28]**.

Waltons Stores (Interstate) Ltd v Maher (1988) 164 CLR 387 at 420, 423, 428–9 (**JBA Vol 2 Tab 15 p 672**)

(3) Principle supports the respondent

6. Equity acts because of the defendant’s responsibility: **RS [29]–[31], [38]**.

Thompson v Palmer (1933) 49 CLR 507 at 547 (**JBA Vol 2 Tab 14 p 626**)

Sidhu v Van Dyke (2014) 251 CLR 505 at [58] (**JBA Vol 2 Tab 12 p 561**)

Crown Melbourne Ltd v Cosmopolitan Hotel (Vic) Pty Ltd (2016) 260 CLR 1 at [39], [141], [217] (**JBA Vol 1 Tab 6 p 217**)

7. The defendant’s responsibility in cases of encouragement flows directly from the acts of encouragement upon which the plaintiff reasonably relied. Knowledge is only potentially relevant in cases of acquiescence: **RS [32]–[37]**.

Craine v Colonial Mutual Fire Insurance Co Ltd (1920) 28 CLR 305 at 327 (**JBA Vol 1 Tab 5 p 198**)

8. This does not lead to any incoherence in doctrine: **RS [39]–[42]**.

Pipikos v Trayans (2018) 265 CLR 522 at [58]–[65] (**JBA Vol 2 Tab 11 p 498**)

(4) The weight of authority supports the respondent

9. Statements in cases involving acquiescence are distinguishable: **RS [43]–[44]**.

Hopgood v Brown [1955] 1 WLR 213 at 223 (**JBA Vol 3 Tab 22 p 884**)

Taylor Fashions Ltd v Liverpool Trustees Co Ltd [1982] 1 QB 133 at 147 (**JBA Vol 3 Tab 33 p 1121**)

10. The cases show careful references to knowledge of detrimental reliance only when discussing the position of a person who acquiesces, rather than one who engages in active conduct: **RS [45]–[47]**.

Ward v Kirkland [1967] Ch 194 at 239 (**JBA Vol 4 Tab 36 p 1258**)

Waltons Stores (Interstate) Ltd v Maher (1988) 164 CLR 387 at 406, 427–8, 461–2 (**JBA Vol 2 Tab 15 p 658**)

11. A requirement of knowledge of detrimental reliance is denied in English authorities and leading Australian and English texts: **RS [50]–[51]**.

Thorner v Major [2009] 1 WLR 776 at [4]–[5] (**JBA Vol 3 Tab 34 p 1138**)

Keane, *Estoppel by Conduct and Election* (3rd ed, 2023) at [11-005] (**JBA Vol 5 Tab 42 p 1539**)

Heydon, Leeming and Turner, *Meagher, Gummow and Lehane: Equity: Doctrines and Remedies* (5th ed, 2015) at [17-095] (**JBA Vol 5 Tab 40 p 1449**)

McFarlane, *The Law of Proprietary Estoppel* (2nd ed, 2020) at [2.37]–[2.38], [2.117] (**JBA Vol 5 Tab 39 p 1330**)

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