



HIGH COURT OF AUSTRALIA

6 December 2023

REAL ESTATE TOOL BOX PTY LTD & ORS v CAMPAIGNTRACK PTY LTD & ANOR [2023] HCA 38

Today, the High Court allowed an appeal from a judgment of the Full Court of the Federal Court of Australia. The principal issue was whether the appellants had authorised, within the meaning of s 36(1) of the *Copyright Act 1968* (Cth), the doing by another person of any act comprised in copyright owned by the first respondent.

In August 2016, Mr Semmens, a software developer who had previously infringed copyright when creating a cloud-based real estate marketing system named "DreamDesk", was instructed by Mr Stoner, a director of the real estate franchisor Biggin & Scott Corporate Pty Ltd ("Biggin & Scott"), to "build a web to print delivery system that does not breach any other companies IP or ownership, in particular Dream Desk or Campaign Track". This led to the development of the "Real Estate Tool Box" software ("Toolbox") and the incorporation of Real Estate Tool Box Pty Ltd. However, unbeknownst to Biggin & Scott, Mr Stoner and other persons and entities involved in the Toolbox venture ("the appellants"), in developing Toolbox Mr Semmens (and developers working under his supervision) had in fact infringed copyright in DreamDesk, which was then owned by the first respondent, Campaigntrack Pty Ltd ("Campaigntrack"). Mr Semmens had reproduced the whole or parts of the "DreamDesk Source Code Works", "DreamDesk Database and Table Works" and "DreamDesk PDF Works". Moreover, the use thereafter of Toolbox involved a reproduction of a substantial part of the DreamDesk Source Code Works.

Before the primary judge, Campaigntrack alleged that the appellants had authorised the infringing acts for the purposes of s 36(1) of the *Copyright Act*. The primary judge held that the authorisation case was not made out against any of the appellants. On appeal, a majority of the Full Court held that the appellants had authorised the infringement of copyright from 29 September 2016 until June 2018 because of their indifference to the development of Toolbox following receipt of a letter on 29 September 2016 that was said to put the appellants on notice of Campaigntrack's claims of copyright infringement. On that basis, the appellants knew, or had reason to suspect, that Mr Semmens either had copied, or would likely copy, aspects of the DreamDesk data or source code and took no or insufficient steps to prevent the conduct.

The High Court unanimously held that none of the appellants had authorised the acts comprising the infringement of copyright. This was a case where up until, and including, 29 September 2016 the appellants, having engaged Mr Semmens as the third party developer with the expertise they lacked, and having instructed him specifically not to infringe copyright, simply and reasonably did not consider it their business to interfere any further while Mr Semmens did the job they asked him to do. Although, following receipt of the letter of 29 September 2016, the appellants had some reason to suspect that the infringing acts might be occurring, given the manner in which the case was conducted at first instance, the Court could not conclude that the appellants, after 29 September 2016, omitted to take reasonable steps that they ought to have taken to prevent or avoid the infringing acts.

- *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.*