



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

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Details of Filing

File Number: M105/2025
File Title: Farm Transparency International Limited v. The Game Meats C
Registry: Melbourne
Document filed: Form 27F - Appellant's Outline of Oral Submissions
Filing party: Appellant
Date filed: 05 May 2026

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

Kiefel CJ and Keane J (Steward J agreeing) held that the law of trespass “provides a right to damages but not one to prevent the use of information obtained as a result of the trespass” ([42]); see also [37]-[42]. Edelman J also held that the “the general law does not prohibit trespassers ... from publishing or communicating non-confidential information” ([255]); see also [223]-[255].

4. ***Smethurst v Commissioner of Police*** (Vol 4, Tab 22) is distinct from the present case, including because the tort was committed by the holder of a public office, the relevant tort was trespass to a chattel (a mobile phone), and the information at issue was private information of a natural person. The reasoning (at least) of Kiefel CJ, Bell and Keane JJ stands against the notion that an injunction would issue to “reverse” the consequence of a trespass, where the injunction would not protect a legal or equitable right: [48], [76]-[77]. See also Nettle J at [149]-[157]; Edelman J at [205], [240]-[244], [248], [261]-[271].
5. Hence existing authority presented (and presents) an obstacle to GMC’s claim. The right to exclusive possession of premises does not equate to a legally cognised privacy interest of the occupier in any information as to the conduct of activity on the property which is amenable to protection on the basis that it was obtained by trespass: AS [53]-[55].

Constructive trust – appeal grounds 1, 2 & 3

6. [Grounds 1 & 2] The “principle” on which the Full Court relied to declare a constructive trust overstated what Gummow and Hayne JJ said in [101] of *Lenah*, and elevated that overstatement to the level of a principle of direct application. The Full Court also overstated the authority of the supposed “principle” in *Lenah*: AS [22]-[23]; ARS [9]. The “principle” so derived, and applied by the Full Court, was given little if any content: AS [24]-[30]. The “reasoning” towards the result that a constructive trust was declared depended on a private subjective evaluation of FTI’s conduct: AS [31]-[34], [38]-[39]; also ARS [3]-[4]. The declaration of a constructive trust is, in addition, incoherent with the *Copyright Act 1968* and the general law: ARS [5]-[8]. Declaration of a trust does substantially more than protect any underlying privacy interest of GMC; it transforms legal rights and confers proprietary rights on GMC to which it can have no equity.
7. [Ground 3] The Full Court failed in its duty to consider any lesser relief available to quell the controversy: *Bathurst City Council* (Vol 3, Tab 10), [42]. Damages, including the exemplary damages granted, were adequate relief: AS [40]-[42]; ARS [10].

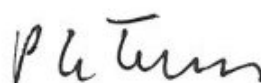
Injunction – notice of contention

8. Because injunctive relief in equity’s auxiliary jurisdiction was not dealt with by the Full Court, GMC is seeking in this Court to overturn a discretionary decision of the primary judge to refuse injunctive relief. It is for GMC to demonstrate *House v The King* error. Neither GMC’s notice of contention, nor its written submissions, identifies any such error.
9. The primary judge’s application of the law was orthodox. As his Honour correctly held, the trespass is complete; any future publication of the footage would not constitute an act of trespass: AS [46]-[51]; ARS [11]-[12]. Even if the “privacy” interest that GMC seeks to protect could be amenable to relief by an injunction, his Honour identified and applied correct principle in determining not to grant an injunction for a completed tort (being *Patrick Stevedores: Vol 4 Tab 21*): AS [56]-[58].
10. Furthermore, if *House v The King* error were identified, injunctive relief were available, and this Court thought it appropriate to re-exercise the discretion, injunctive relief ought to be refused: (a) in circumstances where there has already been a substantial loss of any privacy interest in the footage through the publication of information as to what it reveals; (b) the footage reveals an iniquity: ARS [2], [13]; and (c) the conduct depicted in the footage is of legitimate public interest: ARS [13].

Dated: 5 May 2026



Nick Wood



Peter Turner