



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

BETWEEN:

FARM TRANSPARENCY INTERNATIONAL LIMITED
Appellant

and

THE GAME MEATS COMPANY OF AUSTRALIA PTY LTD
Respondent

RESPONDENT’S OUTLINE OF ORAL SUBMISSIONS

Part I – Certification

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

Part II – Outline

2. FTI’s repeated admitted trespasses were ‘among the most obvious examples of intentional wrongdoing that one might imagine’: PJ[249]; **RS[5]–[9]**.
3. The contumacious nature of its wrongdoing, coupled with its positive intention to harm Game Meats to its own advantage, justifies equitable relief. The prospect of very serious harm to the operations, reputation and value of Game Meats’ business is real, and has been forestalled to date only by the existence of interlocutory relief: **RS[18], [29], [34]**.
4. The prize in this litigation is the control of the images.

Notice of Contention: injunctive relief should be granted as a remedy for trespass

5. The Full Court should also have granted injunctive relief against publication of the images, in equity’s auxiliary jurisdiction to remedy trespasses (and their continuing effects): **RS[30], [43]–[44]**.

Smethurst v Commissioner of Police (2020) 272 CLR 177 at [68] (Kiefel CJ, Bell and Keane JJ), [122]–[123] (Gageler J), [158] (Nettle J), [165], [177], [183], [196] (Gordon J), [248], [253], [261]–[262] (Edelman J) (**JBA vol 4 tab 22**)

Patrick Stevedores Operations No 2 Pty Ltd v Maritime Union of Australia (1998) 195 CLR 1 at 31 [33] (**JBA vol 4 tab 21**)

Colls v Home and Colonial Stores Ltd [1904] AC 179 at 193 (**JBA vol 5 tab 26**)

6. The continuing effects of the trespasses arose from the fundamental nature of the right infringed: namely, the right to exclusive possession, including the right to exclude

others from viewing or exposing what occurred therein: **RS[34]**.

7. An injunction can be granted to restrain the use of information obtained by trespass: **RS[35]–[37]**:

Smethurst v Commissioner of Police (2020) 272 CLR 177 at [122]–[123] (Gageler J), [158] (Nettle J), [165], [177], [183], [196] (Gordon J), [248], [253], [261]–[262] (Edelman J) (**JBA vol 4 tab 22**)

8. Intentional wrongdoing on the part of the defendant, and an intention positively to cause harm, weigh in favour of injunctive relief: **RS[38]–[43]**.
9. FTI’s contentions about ‘continuing trespass’ raise a false issue. Rather, the continuing *effects* of its trespasses exist, and may be remedied, for as long as it retains and threatens to broadcast the images: **RS[32]**, cf **AS[42]–[58]**, **Reply [12]**.
10. FTI did not press for, or obtain, any positive finding that Game Meats breached the law, or otherwise committed an iniquity, that could deprive it of injunctive relief; and did not raise any other relevant discretionary reason to refuse relief. The primary judge found that the nature of the events depicted in the images did not serve as a discretionary basis upon which to deny Game Meats relief in equity: PJ[107]–[110], [185]. That remained unchallenged before the Full Court: FC[34], [37]. FTI is bound by the way it conducted its case below: **RS[6]–[7]**.
11. The factual assertions in **Reply [2]** are inaccurate.¹ The new contention of an ‘objective’ breach, being sufficiently ‘unlawful’ to deprive Game Meats of relief, is inconsistent with the findings of the lower courts; and is one for which FTI candidly admits there is a lack of sufficient evidence before this Court: **Reply [13]**.

Appeal: the Full Court was right to declare that a constructive trust arose

12. The constructive trust declared by the Full Court was justified by principle. The legal right with which FTI deliberately interfered was straightforwardly Game Meats’ right to exclusive possession of its premises: **RS[10]–[12]**, cf **AS[20]–[29]**.
13. There is no reason to depart from this Court’s statement of principle of in *Lenah*: **RS[13]–[16]**, cf **AS[22]–[23]**, **Reply [9]**.

¹ In particular, the references in fn 3 are to descriptions of FTI’s own documents and contentions: they are not ‘concessions’ by Game Meats; which plainly did not ‘concede’ that it was disentitled to relief.

Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd (2001) 208 CLR 199 at 246 [102] (Gummow and Hayne JJ); 231 [58] (Gaudron J), 320 [309] (Callinan J) (**JBA vol 3 tab 8**)

14. Copyright is capable of being held on constructive trust: **RS[13]–[14]**.

Copyright Act 1968 (Cth) ss 9(3), 13(2), 86 (**JBA vol 1 tab 3**)

15. The unconscientious assertion of legal rights is a familiar context in which constructive trusts arise. Constructive trusts can arise from a defendant's wrongdoing even in the absence of prior ownership of the trust property by the claimant; and in the absence of a prior fiduciary relationship: **RS[16]–[22]**, cf **AS[24]–[30]**.

16. The character of FTI's wrongdoing was rightly identified as being unconscientious, and as justifying relief by way of declaring that a constructive trust arose: **RS[19]–[26]**, cf **AS[31]–[34]**, **[38]–[39]**, **Reply [3]–[6]**.

17. The Court may always mould the relief to the circumstances of the case. This case involved deliberate wrongdoing intended to cause harm; no third party is relevantly affected or has an interest in the trust property; and there is no discretionary reason to decline relief: **RS[23]–[29]**, cf **AS[35]–[36]**, **Reply [7]–[10]**.

Giumelli v Giumelli (1999) 196 CLR 101 at 111–12 [3]–[4] (**JBA vol 4 tab 17**)

18. The Court's existing ability to shape equitable remedies (including the principles of accessory liability of third parties in equity) is sufficient to protect the interests both of Game Meats *and* of regulators or legitimate media organisations that are uninvolved in FTI's wrongdoing. However, damages are inadequate; and any relief that left Farm Transparency free to profit from its wrongdoing, and to misuse the copyright in the images, would equally be inadequate: **RS[20]**, **[29]**, cf **AS[40]–[42]**.

Dated 5 May 2026

Paul Hayes

Adrian Anderson

James McComish