

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 22/2024

UNDER	Supreme Court Rules 2004
IN THE MATTER OF	Appeal against a decision of the Court of Appeal
BETWEEN	SIRPA ELISE ALALAAKKOLA Appellant
AND	PAUL ANTHONY PALMER Respondent

APPELLANT'S OUTLINE OF ORAL ARGUMENT

23 OCTOBER 2024

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Appellant's Outline of Oral Argument

1. Overview – subs §§ 3 – 6
2. Structure of argument
 - 2.1 Brief overview of the copyright argument
 - 2.2 The key issues:
 - Issue # 1- are the copyrights property under the PRA
 - Issue # 2 – if yes, are the copyrights relationship property
 - Issue # 3 - vesting/valuation

Issue # 1- are the copyrights property under the PRA

3. The Copyright Act does not determine the PRA definition of property
 - 3.1 Subs §§ 7
4. The law accommodates varying definitions of property
 - 4.1 Subs §§ 10
5. The Copyright Act and PRA can sit alongside each other
 - 5.1 Subs §§ 2 & 11
6. Interpretation need not be consistent across statute book as a whole
 - 6.1 Subs §§ 18
 - 6.2 *Kennon v Spry* supports proposition
 - 6.3 *Agnew v Pardington* and *Prest v Petrodel Resources* do not apply in this context
7. Copyright is not personal property under s 2(b)
 - 7.1 Subs §§ 11
 - 7.2 *Pacific Software Technology*

8. Copyright is not any other right or interest under s 2(e)
 - 8.1 Subs §§ 14, 15 and 20
 - 8.2 Hunt v Muollo
 - 8.3 Nation v Nation
 - 8.4 Johns v Johns
9. Spirit and policy of PRA can still be achieved with a finding that © is not property
 - 9.1 Subs §§ 16 and 73-76
10. Parliament's intention is consistent with a finding that © is not property
 - 10.1 Subs §§ 18 and 19
11. Copyright is not any estate or interest in real or personal property under s 2(c)
 - 11.1 Subs §§ 22, 24
 - 11.2 *Pacific Software Technology*
 - 11.3 The Family Court correctly recognised that Ms Alalääkkölä's skills and abilities were severable from the paintings she created - subs §§ 90 – 91
12. Property is not anything with a money value
 - 12.1 Respondent's subs §§ 35

Issue # 2 – if yes, are the copyrights relationship property?

13. Copyright is not technically “acquired”
 - 13.1 §§ 77
14. The PRA recognizes the distinction between “acquired” and “created”
 - 14.1 S18(1)(d) PRA

14.2 Corbett and Lai

15. Copyright is not necessarily acquired when the artwork is created

15.1 §§ 79

16. The PRA' interpretation of "acquired" is nuanced

16.1 §§ 80 and 81

16.2 Look at the purpose of the right or interest

- X v X – rights in an employment agreement
- Young v Young – redundancy payment
- Gill v Gill – damages
- Creighton and Greaves v Baldwin – income protection insurance

17. The skills in © are different to other people with skills

17.1 §§ 98 and 99

17.2 *Henkel*

18. The "exceptions" to s 8(1)(e) provide a safeguard for other cases

18.1 §§ 105

The copyright question

19. What is copyright - subs § 25

- Supp BOA: Copinger 801.0278, 801.0279
- Purpose of © protection – subs § 44 - recognise creators' creativity and personality – Corbett & Lai 701.0028, 701.0031
- Visual artists have a wider cultural and societal contribution – new resale right - Supp BOA 801.0264

20. The confusion between attachment and fixation subs § 26 – 27; 52 -53

- Supp BOA: Copinger 801.0274, 801.0281, 801.0282, 801.0283, 801.0284
21. The respondent's erroneous conflation—copyright attaches to the work v earning capacity, artistic skills and ideas - respondent's subs § 29 – 31
 - cf: subs § 92 – 95
 - Originality - Supp BOA: Laddie 801.0237, 801.0240, 801.0241
 22. Why the author's right to manage and control the copyright is critical - §§ 45 – 48 – See: Categories of Appellant's Artworks
 23. The Court of Appeal was wrong to treat copyright as a narrow economic right rather than a broad bundle of rights which included moral rights - subs § 29 -31
 24. The erroneous economic/non-economic rights distinction - subs §§ 56-62; 68
 25. Closet monism and the importance of authors' property rights – subs §§ 63- 65
 - Supp BOA – Frankel 801.0194/5/6; Ginsburg 801.0204/5, 801.0215
 26. Ms Alalääkkölä's economic and moral rights and her reputation and standing as a fine artist cannot be severed §§ 67 – 70
 - Visual artists - royalties from secondary sales as reputation grows - Supp BOA 801.0269

Issue # 3 - vesting/valuation

27. In terms of valuation this Court can and should provide guidance to avoid the copyright being weaponised and the valuation exercise becoming a further area of contention - subs §§ 124 – 130
28. A principled solution requires a recognition of Ms Alalääkkölä's control of the copyright and looking back at the way the parties dealt with the paintings and copyright when married, in order to map a principled way to go forward - subs § 132

- X v X - Supp BOA: [102 – 108] 801.0150, 801.0151
- Fisher - Supp BOA: s21 - contracting out “outward conduct of the parties, at the time, in the context of all surrounding circumstances” - 801.0021
- Valuation – “peculiar position of the parties themselves” - 801.0029, 801.0030
- Orders

29. Orders/directions sought - subs §§ 134 – 137

Dated this 23rd day of October 2024

Clive Elliott KC/Sharon Chandra Counsel for Appellant

We have made appropriate inquiries to ascertain whether this submission contains any suppressed information. To the best of our knowledge, this submission is suitable for publication (that is, it does not contain any suppressed information).