

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 22/2024

UNDER	Senior Courts Act 2016
IN THE MATTER	of an application for leave to appeal a decision of the Court of Appeal
BETWEEN	SIRPA ELISE ALALÄÄKKÖLÄ Appellant
AND	PAUL ANTHONY PALMER Respondent

RESPONDENT'S OUTLINE OF ORAL ARGUMENT
23 OCTOBER 2024

GASCOIGNE WICKS
LAWYERS
BLLENHEIM

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MAY IT PLEASE THE COURT:

- 1 Counsel for the respondent advise:
 - (a) It is intended appearances for the respondent will be noted in Te Reo Māori in the first instance.
 - (b) Prior to beginning oral submissions an acknowledgment to Mr Fletcher is intended to be made. Mr Fletcher appeared for the respondent in all the lower courts and would have appeared in this Court but for personal circumstances preventing him from doing so.
 - (c) Counsel are unlikely to seek 15 minutes uninterrupted speaking time.
- 2 Set out below is the intended outline of the Respondent's oral argument, with reference to the written submissions.

Opening	EJT	Opening Comments
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Copyright as Property for the Purposes of the PRA

1. Meanings under the Copyright Act 1994	EJT	Respondent's Submissions (RS) [9]-[10], [24], <i>Pacific Software Technology</i> [[44]], <i>Ortmann</i> [[240]]
2. Property under the PRA	EJT	RS [12], [14] – [15], [24], PRA s 2, "property" (b)
3. Extended definitions of property under PRA	EJT	RS [13], [16] – [17], [34] – [35], PRA Section 2, "property" (e), <i>Z v Z</i> [[264]], <i>Reid v Reid</i> [[605]], <i>Clayton v Clayton</i> [[111]]
4. Consistency with statute book and amongst definitions	EJT	RS [18], <i>Clayton v Clayton (Vaughan Road)</i> [[26]], <i>Johnson v Felton</i> [[138]], <i>Agnew v Pardington</i> [[32]]

Copyright is Relationship Property

5. PRA definitions of relationship property and separate property	EJT	RS [19] – [20], PRA s 8 and s 9
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6. Personal property as relationship property	EJT	RS [26] – [28], <i>Clayton v Clayton (Vaughan Road)</i> [[96]]
7. Skills as separate property	EJT	RS [29] – [32], <i>Martin v Polyplas</i> [[1050]], <i>Ortmann</i> at [[241]], <i>Z v Z</i> [[280]]
8. Time copyright is acquired	EJT	RS [40] – [44], Copyright Act, ss 18, 19, 20, PRA s 8, <i>Ortmann</i> at [[241]]
9. Derivative works	EJT	RS [45] – [47]

Antecedent Legislation

10. Early copyright legislation described copyright as ‘property’ in a matrimonial sense	QAD	RS [48] – [58], Copyright Act 1913 [[s22(4)]], Copyright Act 1911 (UK) s16(4)
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Copyright as Relationship Property in International Jurisdictions

11. Relationship Property legislation takes different forms	QAD	Atkin [[1077]], Blumberg [[3]], Boele-Woelki [[234]], CA judgment at [[53]]
12. Copyright law (in the European tradition) has three philosophical starting points	QAD	Eagles [[28]]: Locke (France), Kant (Germany) and Hegel (Anglo-American)
13. United Kingdom, Canada (except Quebec), Australia and the United States share (at least) the economic benefits of copyright created during the relationship	QAD	<i>CB v KB</i> (UK) [[8]], [[43]], <i>MacLellan v MacLellan</i> (New Brunswick) [[12]], <i>Wilton v Myhr</i> (Ontario) [[44]], <i>G & T</i> (Australia) [[109]], <i>Pope & Pope</i> (Australia) [[116]], <i>Marriage of Worth</i> (California) [[4]], <i>Rodrigue v Rodrigue</i> (5th Cir.) [[435]], [[438]]
14. Quebec and France, classes post dissolution earnings as separate property	QAD	<i>Y.H. c W.H.A</i> (Quebec) [[64]], <i>Cinquin c Lecocq</i> (France) [[17]], <i>Janin c Canal</i> (France) [[73]]
15. Germany forbids transfer of copyright except on death	QAD	Urheberrechtsgesetz (UrhG) § [[11]], [[29]]

16.Other European Jurisdictions	QAD	Boele-Woelki [[234]]
17.Recognition of family as central to the creative process	QAD	Itkin [[119]]: Labor (Locke), Personality (Hegel), Utilitarianism (Mill), Post modernism

Moral Rights

18.General	QAD	RS [36], [38]
19.This case	QAD	RS [37], [39]

Other Orders to Be Made

20.Vesting	QAD	RS [64] – [65]
21.Valuation	QAD	RS [66] – [69]
22.Costs	QAD	RS [70]

Date: 23 October 2024

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E-J M Tucker/ Q A M Davies
Counsel for the Respondent

We have made appropriate enquiries 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).