

Copyright Infringement – Stop the Build!

In a Nutshell

In the recent decision of *Coles v Dorner & Ors* [2015] QSC 224 a builder and homeowner were found to have infringed copyright in the construction of a home at Port Douglas and ordered to perform external works to the constructed home to remove certain architectural features. The case is a timely reminder for builders of ramifications where copyright is infringed.

Consequences

In this case a builder and client pressed on with the construction of a home (“House B”) that was substantially the same as another home on the same estate (“House A”) with disregard to the repeated requests of the owner of the copyright in House A to stop work. The Court has ordered that specific works be performed on the exterior of House B to distinguish it from House A by:

1. Removing dormer roofs;
2. Removing arched and circular windows and replacing with square windows;
3. Removing stone edge trim corners and replacing with render.

Mr Coles has not yet elected whether to pursue damages or an account of profits and those matters and costs are still to be determined.

Facts

This is a cautionary tale of two homes in ‘The Sands Estate’, Port Douglas. Mr Coles had purchased House A at lot 16 The Sands, Port Douglas for the sum of \$1,150,000 which was apparently unique to the area. Mr and Mrs Breden having missed out on purchasing lot 16 decided to build their very own version and engaged the builder who had built House A to build the same house on their nearby lot 23 in the same estate for \$1,000,000.

Mr and Mrs Bredens’ intentions became known to Mr Coles and he obtained the copyright in the House A plans by assignment from the designer of the house for a nominal amount of \$110. Mr Coles then informed the Bredens and their builder Port Douglas Builders (“PDB”) that he owned the plans and that he didn’t want a copy of the house built.

Despite Mr Coles’ ownership of the copyright in the plans, his requests for the plans for House B, and his notification that he didn’t want a copy of his house built, the Bredens and their builder continued to build a house which was substantially the same as House A.



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When Mr Coles' requests for construction at lot 23 to cease fell on deaf ears he commenced proceedings seeking an injunction to prevent the construction continuing. By the time the case was heard, however, House B was already at final fix stage.

Issues

Reproduction of a Substantial Part

The Court noted that when determining whether an infringement of copyright has occurred section 14 of the Copyright Act 1968 (Cwlth) requires proof of reproduction of a substantial part of a work rather than complete reproduction.

All experts agreed that a substantial part of House A had been reproduced. A visual comparison of overlays of the plans for House A and House B showed significant points of similarity. There were also identical notations on the two sets of plans, with in one case an error appearing in both sets of plans.

Did the Original Architect Own the Copyright in the Plans?

PDP argued that the architect who produced the plans for House A wasn't the owner of the copyright because those plans weren't an original artistic work. PDP argued that the original client who instructed the architect and had provided the concept for House A held the copyright. It would follow then that the architect couldn't have assigned copyright to Mr Coles.

The Court noted that it was a well established principle that originality in copyright doesn't equate to a novel idea or thought. The principle of originality in copyright involves the work originating with the author and not being copied by the author.

The Court found that the architect was the author of the plans and held copyright in the plans. It was noted that if the rough sketch provided by the architect's clients had been copied then Mr Coles case would fail but that wasn't the material that had been copied. The architect's plans had been copied.

Requirement to Perform External Works to House B

It was significant in this case that PDP and the Bredens were aware that Mr Coles owned copyright in the plans to House A, had objected to House B being built and made representations that construction work in House B cease but construction pressed on regardless. In those circumstances the order for external works was made.

Lessons Learned

- Builders should exercise caution to ensure that when owners request buildings be constructed on plans provided by clients that the client own the copyright in the plans.
- Builders should cease work where an issue of copyright is raised rather than pressing on with the build.
- Where construction is continued and copyright is in issue, builders run the risk that further work may need to be performed to remove similarities to the copied building, together with



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the risk of damages or an account of profits being awarded (depending upon which remedy is pursued by the holder of the copyright).

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