

**FERNTREE HOMES PTY LTD V BOHAN [2002] FCA 16**

Federal Court of Australia (Full Court) – 18 January 2002

**FACTS**

Ferntree sued Bohan for breach of copyright in building plans for a project home known as Golden Fern MK2.

The Bohans constructed a home on land in accordance with plans produced by Mr. Dean, an architectural draughtsman. The final structure was very similar in design to the Golden Fern design. The Bohans conceded that the Golden Fern plans were an original artistic work for the purposes of the Copyright Act and that there was copyright on those plans under the Act.

However, the Bohan's and Mr. Dean denied that the plans were in any way derived from the plans for Golden Fern and argued that any similarities were coincidental.

**ISSUES**

Did Mr. Deans plans and the home constructed sufficiently resemble the plans for Golden Fern or a substantial part of those plans?

Was there the required causal link between Ferntree's plans and Mr. Dean's plans and the house constructed?

**FINDING**

The question of whether the plans for Golden Fern were substantially copied in the Bohan's plans was a qualitative and not something that could be measured from the number of differences and number of similarities. It was held Ferntree Homes were not able to sufficiently show that there was a causal link between Mr. Dean's plans and the

Golden Fern Plans and therefore there was no breach of copyright. The judge accepted the Bohan's evidence as to why certain features were included in the plans, which were similar in design but not derived from the plans for Golden Fern.

Further there was not significant evidence produced to show that either Mr. Dean or the Bohan's had visited the display home or had access to the plans for the Fentree home.

**QUOTE**

*"In a case of alleged infringement of plans of a project home, it may be proper to infer the necessary causal link between the copyright plans and those of the alleged infringer from the similarities between the two, coupled with the access which the drawer of the alleged infringer's plans had to the copyright plans.*

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*It is not necessary that the person who drew the later plans should have copied the copyright plans deliberately or intentionally: the causal link may be present even though that person was unaware of the impact which the copyright plans was having upon him or her.*

*But there must have been access to the copyright plans either directly, or indirectly such as through a reproduction of them in three-dimensional form.”*

## **IMPACT**

For the owner of copyright in a project home to show that a person has breached that copyright they must first be able to prove that there are substantial similarities between the two plans.

Secondly, the owner must prove that the drawer of the second plan had access to the plans or a version of the plans to prove that the original plans were in contemplation when the second plans were drawn up.

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