

**GINGIS & ANOR V GILBERT & ANOR [2000] VSC 62**

Supreme Court of Victoria – 8 March 2000

**FACTS**

Gingis purchased a real estate business from Gilbert and the purchase price was financed by the National Bank. Gingis defaulted on his loan with the Bank and legal proceedings for enforcement of a mortgage and related guarantees were issued by the Bank against Gingis.

During these proceedings, Gingis obtained copies of documents discovered by the Bank that indicated that Gilbert had made misleading statements about the business to Gingis. Gingis attempted to join Gilbert as a third party to the legal proceedings issued by the Bank but was unsuccessful as the joinder would have delayed the trial of that proceeding. Therefore, Gingis issued separate proceedings against Gilbert.

Gilbert issued an application seeking to strike out the new proceeding on the basis that it was an abuse of process by Gingis to rely on documents discovered by the Bank for the old proceeding.

**ISSUES**

Was it an abuse of process for Gingis to use documents discovered for the purpose of the old proceeding to support the new proceeding?

If there had been an abuse of process, should the new proceeding be struck out?

**FINDING**

It was an abuse for Gingis to use the discovered documents for the new proceeding.

However, the abuse of process did not justify striking out the new proceeding. The Court made a retrospective order that Gingis be given leave to use the information from the discovered documents.

**QUOTE**

Beach J said:

“It is trite law that documents disclosed on discovery are not to be made use of except for the purpose of the action in which they are disclosed. ... And a litigant and his legal advisor on whom a list or affidavit of documents is served or to whom the documents are produced under the discovery process, impliedly undertakes not to use them for a collateral or ulterior purpose. ...

Not only does the undertaking apply to the documents discovered themselves, it also applies to information derived from those documents whether the information is embodied in a copy of stored in the mind. ...

In my opinion the appropriate order to make now in the proceeding is an order nunc pro tunc that the plaintiffs have leave ... to use information contained in the documents produced by National Australia Bank ... for the purpose of instituting this proceeding against the defendants.”

## **IMPACT**

Discovered documents should not be used for a purpose outside the scope of the litigation for the proceeding unless permission is first obtained from the Court.

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