

HOTLINE COMMUNICATIONS LTD V HINKLEY & ORS [1999] VSC 74

Supreme Court of Victoria – 24 March 1999

FACTS

Hinkley was the initial author of a computer program called Hotline. He came into contact with some Canadians and together they incorporated and became shareholders in Hotline Communications (“Hotline”). Hotline took over the development of the computer program.

The Canadian failed to provide promised finance to Hotline and Hinkley became disillusioned with Hotline. Hinkley therefore without warning to the other shareholders shut down the Hotline website, encrypted the source code for the computer program, told customers that Hotline was no longer in business, and returned to Australia.

Hotline issued an ex parte application and obtained an anton piller order against Hinkley and orders that Hinkley disclose the key to the encrypted computer program and copies of the computer program. An injunction was also obtained to prevent Hinkley from disclosing any confidential information about the computer program to any person other than Hotline.

Hotline went to Hinkley’s premises and obtained the computer programs on CD and also took Hinkley’s computer which contained the hard drive with computer programs.

Hinkley applied to set aside the anton piller order and the injunction and also applied for security of costs.

ISSUES

Should the injunction or anton piller order be set aside and should Hotline provide security for an undertaking to pay damages

if the anton piller order was found to have been improperly obtained after a trial of this proceeding?

Should the Court order that Hotline provide security for costs?

FINDING

The balance of convenience favoured the injunction remaining in place. There was no reason why the anton piller order should be set aside and the computer or computer programs returned to Hinkley.

However, since Hotline was a foreign corporation with no assets in Australia it was ordered that security be provided for the anton piller order and for the future costs of this proceeding.

QUOTE

Warren J said:

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“The plaintiffs [Hotline] submit that it is crucial to the business of Hotline Communications that it retain exclusive possession, custody and use of AW [the computer program].

The plaintiffs allege that in the absence of exclusive possession they are at risk of losing the value of the intellectual property.

Furthermore, the plaintiffs are concerned that if they do not have exclusive possession of the property it will place them at risk that the information may be placed on the Internet. ...

I consider that the balance of convenience lies with the Plaintiffs in that unless it has exclusive possession of the intellectual property in Hotline and AW the value of that intellectual property will be or potentially will be lost.”

IMPACT

A reminder that there are quite powerful legal remedies to prevent the misuse of confidential information and copyrighted material.

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