



Friday, 15 December 2023

Weekly Intellectual Property Law **A Weekly Bulletin listing Decisions** **of Superior Courts of Australia covering Intellectual Property** **Law**

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Executive Summary (One Minute Read)

Court House Capital Pty Ltd v RP Data Pty Limited (FCAFC) - costs order against litigation funder upheld by the Full Court

HABEAS CANEM

McGregor wishes you a happy and peaceful holiday season



Summaries With Link (Five Minute Read)

Court House Capital Pty Ltd v RP Data Pty Limited [2023] FCAFC 192

Full Court of the Federal Court of Australia

Charlesworth, Sarah C Derrington, & Raper JJ

Litigation funding - Hardingham was a professional photographer, who, together with his company REMA, was commissioned by various real estate agencies to produce photographs and floor plans for use in marketing campaigns for the sale or lease of properties, including by upload onto the realestate.com.au platform - the photos and floorplans were maintained after completion of the sale or lease and were made available to subscribers and provided under contract to RP Data for publication via its website - Hardingham and REMA contended that the licence given to the agencies to use the photographs and floor plans was limited, and RP Data had infringed copyright by publishing them on its website - Hardingham and REMA entered into a litigation funding agreement with Court House Capital, and then commenced proceedings - the primary judge dismissed the claim - Hardingham and REMA were ordered to pay RP Data's costs - RP Data then sought that Court House be jointly and severally liable for those costs - the primary judge found that Court House and its activities had a sufficient connection with the principal proceedings for it to be appropriate that a costs order be made against it - Court House appealed - held: s43 of the *Federal Court of Australia Act 1976* (Cth) empowers this Court with a broad, discretionary power to award costs where that discretion is to be exercised judicially and in accordance with general principles pertaining to the law of costs - the power extends to making costs orders against non-parties - the power to order costs against a third party will only be exercised in circumstances where a non-party has a connection to the litigation which is sufficient to warrant the exercise of power - there is no rigid checklist of factors which may be taken into account, and the determination of the nature and extent of the relevant connection will be informed by the character of the non-party - the primary judge had not erred in determining that the absence of an application for security for costs did not preclude the making of the costs order - a third-party costs order is not only made where the conduct of the litigation was unreasonable or improper or comprised an abuse of process - unreasonable or improper conduct of proceedings is a relevant, but not necessary, criterion for the making of non-party costs orders - where a litigation funder has a commercial interest in proceedings, even if it has no control over the proceedings, the requisite connection may nonetheless be established and an adverse costs order made against the funder - Court House facilitated the litigation for its own personal gain, it agreed to fund the litigation and funded senior counsel's fees, and Hardingham and REMA were required to consult with Court House on any issues arising from the conduct or progress of the proceedings and they could not compromise the claim without prior consultation with and consent from Court House - Court House sought to profit, not only by reimbursement of the funds it had outlaid in the proceedings, but also for a 15% uplift on any damages obtained - appeal dismissed.

[Court House Capital Pty Ltd](#)

[From Benchmark Tuesday, 12 December 2023]



Benchmark

INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Minnesota v Torgerson (MINSC) - Odor of marijuana on its own without other facts did not constitute probable cause for warrantless search of vehicle

Summaries With Link (Five Minute Read)

Minnesota v Torgerson 995 N.W.2d 164 (2023)

Supreme Court of Minnesota

Gildea CJ, Anderson, & McKeig JJ

A motor vehicle was stopped by the police because it had too many lights mounted on the grill. When the driver gave his license to the police, the officer stated that he smelled marijuana emanating from the vehicle. When questioned, the driver denied possessing marijuana. After conferring with a second officer, the police ordered the driver and passengers out of the vehicle and conducted a search. In the course of the search, the police discovered a canister of what was later found to be methamphetamine. At trial, the defendant sought to suppress the evidence obtained from the vehicle search on the grounds that there did not exist requisite probable cause for the search. The trial court suppressed the evidence and dismissed the matter. This was affirmed by the Minnesota Court of Appeals. The Minnesota Supreme Court stated that both the US and Minnesota Constitutions protect against unreasonable searches and seizures. Warrantless searches are *per se* unreasonable unless one of the exceptions to the warrant requirement applies. One of these exceptions is the automobile exception which permits the police to search a vehicle without a warrant if there is probable cause to believe the search will result in the discovery of evidence. The Court said that probable cause requires more than suspicion but less than the evidence necessary for conviction. A warrantless search must be based on objective facts and not the subjective good faith of the police. The Court noted that both industrial hemp and medical cannabis were lawful in Minnesota and the possession of a small quantity of marijuana was a petty misdemeanour and not a crime. The Supreme Court stated that, while the odour of marijuana can be a fact that supports probable cause, it is insufficient on its own because of the lawful right to possess medical cannabis under certain circumstances. As there was nothing else to support probable cause, the facts were insufficient to establish a fair probability that the search would yield evidence of criminal conduct. The suppression order was affirmed.

[Minnesota](#)



Poem for Friday

In Memoriam, (Ring out, wild bells)

By: Alfred, Lord Tennyson (1809-1892)

Ring out, wild bells, to the wild sky,
The flying cloud, the frosty light:
The year is dying in the night;
Ring out, wild bells, and let him die.

Ring out the old, ring in the new,
Ring, happy bells, across the snow:
The year is going, let him go;
Ring out the false, ring in the true.

Ring out the grief that saps the mind
For those that here we see no more;
Ring out the feud of rich and poor,
Ring in redress to all mankind.

Ring out a slowly dying cause,
And ancient forms of party strife;
Ring in the nobler modes of life,
With sweeter manners, purer laws.

Ring out the want, the care, the sin,
The faithless coldness of the times;
Ring out, ring out my mournful rhymes
But ring the fuller minstrel in.

Ring out false pride in place and blood,
The civic slander and the spite;
Ring in the love of truth and right,
Ring in the common love of good.

Ring out old shapes of foul disease;
Ring out the narrowing lust of gold;
Ring out the thousand wars of old,
Ring in the thousand years of peace.

Ring in the valiant man and free,



The larger heart, the kindlier hand;
Ring out the darkness of the land,
Ring in the Christ that is to be.

Alfred, Lord Tennyson was born on 6 August 1809, in Somersby, Lincolnshire, England. *Ring Out, Wild Bells*, was part of *In Memoriam*, written to Arthur Henry Hallam, who died at 22. The poem was published in 1850, the year Tennyson was appointed Poet Laureate. The poem is inspired by the English custom to have the ring of bells, muffled to ring out the old year, and then, with muffles removed, to ring in the new year. *Ring Out, Wild Bells*, has been set to music including by Charles Gounod and Percy Fletcher. Alfred, Lord Tennyson died on 6 October 1892.

Ring Out, Wild Bells, Gounod, sung by the Mormon Tabernacle Choir
https://www.youtube.com/watch?v=TVEAt8v7b_g

Ring Out, Wild Bells, from *The Passing of the Year* by Jonathan Dove, Andrew Hon, conductor, sung by the Yale Glee Club
<https://www.youtube.com/watch?v=yPlqqvOM8Og>

Bell Ringing in the Belfry at Great St. Mary's, Cambridge
<https://www.youtube.com/watch?v=KNMFvNZIsCM>

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