

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 55/2018
[2019] NZSC 50**

BETWEEN FINN HABIB BATATO
Appellant

AND UNITED STATES OF AMERICA
Respondent

SC 56/2018

BETWEEN MATHIAS ORTMANN
First Appellant

BRAM VAN DER KOLK
Second Appellant

AND UNITED STATES OF AMERICA
Respondent

SC 57/2018

BETWEEN KIM DOTCOM
Appellant

AND UNITED STATES OF AMERICA
Respondent

Court: Winkelmann CJ, Glazebrook, O'Regan, Ellen France and
Williams JJ

Counsel: G M Illingworth QC, P J K Spring and A K Hyde for
Messrs Ortmann and van der Kolk
A G V Rogers for Mr Batato
R M Mansfield and S L Cogan for Mr Dotcom
K Raftery QC for United States of America
C J Woodroffe for applicant to intervene

Judgment: 20 May 2019

JUDGMENT OF THE COURT

A The application for leave to intervene is declined.

B No order as to costs.

REASONS

[1] The appeal in this matter is scheduled for hearing in the week beginning 10 June 2019. James Piper trading as Pipers Intellectual Property has applied for leave to intervene in the hearing.¹

[2] Mr Piper seeks to be heard in relation to the definition of the word “object” in s 131 of the Copyright Act 1994. Mr Piper says the Court’s approach to this aspect of s 131 will have implications for New Zealanders providing such internet provider services.

[3] The application for intervention is opposed by Messrs Ortmann, Van der Kolk and Batato and by the respondent, the United States. Mr Dotcom abides the decision of the Court on the application.

[4] We are not persuaded leave to intervene should be granted. While the appeal raises questions about the meaning of s 131 of the Copyright Act, those questions arise in a particular context, namely, whether the Court of Appeal was correct to find that the appellants’ conduct constitutes an extradition offence. The Court’s determination may have broader implications beyond the present case but that, in itself, is not necessarily a basis for granting leave to intervene. That is particularly so where interpretation of s 131 is a matter canvassed in some detail by the submissions of the parties all of whom are familiar with the issues as they arise in the present context. This is not therefore a case where there is a gap in the cases to be presented which submissions from the intervener will assist to fill.

¹ An earlier application for intervention by Mr Piper was declined on the basis it was premature but could be renewed if leave to appeal was granted.

[5] It follows also that intervention is not necessary to ensure that the Court has appropriate submissions on matters of law and policy. In any event, while counsel explains that Mr Piper is a patent attorney advising those conducting Internet Service Provider services in New Zealand, there is no suggestion the submissions will be representative of, for example, any relevant professional bodies.

[6] The application for leave to intervene is accordingly declined. We make no order as to costs.

Solicitors:

Keegan Alexander, Auckland for Messrs Ortmann and van der Kolk
Anderson Creagh Lai Limited, Auckland for Mr Dotcom
Crown Law Office, Wellington for United States of America

Copy to:

Woodroffe Lawyers, Auckland