

## **Brenner v First Artists' Management Pty Ltd [1993] 2 VR 221**

<http://lawcasesummaries.com/knowledge-base/brenner-v-first-artists-management-pty-ltd-1993-2-vr-221/>

### **Facts**

- Fenner (plaintiff) was engaged as a manager for Braithwaite (defendant), a pop star
- The fee agreed upon was 15% but it was never decided how exactly that would be calculated
- Later, Braithwaite entered into a contract with First Artists' Management (FAM) which was set up by investors to manage the pop star
- The first plaintiff, Brenner, then joined the management agreement between Braithwaite and Fenner.
- Braithwaite then requested Fenner and Brenner to become directors of FAM, in anticipation of the finalisation of the contract
- The contract never materialised.
- Later, Braithwaite gave notice he (and FAM) were suing
- Braithwaite and Fenner commenced proceedings seeking remuneration.
- FAM dissolved, so they pursued it against Braithwaite.

### **Held**

1. *Byrne J*: There was no contract between the parties, and as such they cannot sue under the contract
2. However, he did allow the claim in restitution.
3. In order for the claim to succeed, the defendant needed to accept constructively or expressly a benefit from the plaintiff, in unjust circumstances, where they did not adequately pay for it.
4. His Honour was concerned that unlike building contracts (where there is a clear and measurable benefit) it can be difficult to measure the benefit of personal services
5. Quote: "It seems to me unlikely that the law would introduce into this area the difficult and somewhat arbitrary distinction which has been drawn into the law of negligence between pure economic loss and physical loss. To take an extreme case, it may be of benefit to an artist simply that it be known that a particular person has accepted the role of his or her manager or that the manager by accepting the artist as a client is then precluded from acting for a competitor of the artist. I have referred to non-economic benefits which may be requested, conferred and accepted. I would need clear authority to deny a claimant the right to restitution for such services when all other requirements of the cause of action are established."