

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 96/2023
[2023] NZSC 159

BETWEEN

IAN JAMES BURDEN
First Applicant

PGT RECLAIMED (INTERNATIONAL)
LIMITED
Second Applicant

PLANTATION GROWN TIMBERS
(VIETNAM) LIMITED
Third Applicant

AND

ESR GROUP (NZ) LIMITED
Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: A H Brown KC, J Oliver-Hood and J R E Wach for Applicants
J G Miles KC and A J Pietras for Respondent

Judgment: 7 December 2023

JUDGMENT OF THE COURT

A The application for leave to appeal is granted (*ESR Group (NZ) Ltd v Burden* [2023] NZCA 335).

B The approved questions are as follows:

- (a) Was the Court of Appeal correct to conclude, for the purposes of s 9(1) of the Copyright Act 1994, that a copyright holder's consent is not necessary for a work to be "in circulation"?**
- (b) Was the Court of Appeal correct to conclude, for the purposes of s 9(1) of the Copyright Act 1994, that circulation outside of New Zealand could constitute "circulation"?**
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Solicitors:
James & Wells Solicitors, Auckland for Applicants
AJ Pietras & Co, Lower Hutt for Respondent