

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 96 /2023

UNDER the Copyright Act 1994

BETWEEN **IAN JAMES BURDEN**
Appellant

AND **PGT RECLAIMED (INTERNATIONAL) LIMITED**
Second appellant

AND **PLANTATION GROWN TIMBERS (VIETNAM)
LIMITED**
Third appellant

AND **ESR GROUP (NZ) LIMITED**
Respondent

CHRONOLOGY

Dated: 6 March 2024

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G HAZEL
A H BROWN QC, J WACH and J OLIVER-HOOD

CHRONOLOGY OF KEY EVENTS

Date	Event/Description
20 Apr 2013	Date of first sale in New Zealand by ESR of infringing Westbury shoe shine box.
23 Apr 2013	Date of first sale in New Zealand by ESR of infringing Roseberry two-drawer hall table and infringing Roseberry three-drawer bedside cabinet.
12 May 2013	Date of first sale in New Zealand by ESR of infringing Roseberry two over three drawer chest.
7 May 2013	Date of first sale in New Zealand by ESR of infringing Roseberry dining table.
19 May 2013	Date of first sale in New Zealand by ESR of infringing Roseberry two-drawer coffee table with shelf and infringing Roseberry large hutch plus buffet.
29 May 2013	Date of first sale in New Zealand by ESR of infringing Roseberry ladderback chair.
6 Jun 2013	Date of first sale in New Zealand by ESR of infringing Roseberry 1 door display cabinet.
28 Aug 2014	Date on which Court of Appeal found that ESR had knowledge for purposes of copyright infringement by importation cause of action.
4 Sep 2014	PGT's copyright border enforcement notice: Customs notices of determination detaining furniture imported by ESR (INV 17912 and 17913)
12 Sep 2014	PGT's copyright border enforcement notice: Customs notice of determination amended (INV 17913)
18 Sep 2014	Proceedings commenced against ESR by way of statement of claim and given CIV number CIV-2014-404-2456 (the 2456 proceeding).
17 Oct 2014	PGT's copyright border enforcement notice: further Customs notice of determination issued detaining furniture imported by ESR (INV 18043)
22 Oct 2014	PGT's copyright border enforcement notice: further Customs notices of determination issued detaining furniture imported by ESR (INV 18061 and INV 18064)
7–24 Sep 2015	Trial before Duffy J.
7 Jul 2016	Duffy J issues judgment against ESR for copyright infringement in favour of Burden (the liability judgment). The Judge rejects plaintiffs' claim for breach of the Fair Trading Act 1986. The Judge also rejects ESR's counterclaim.
4 Aug 2016	ESR appeals to the Court of Appeal.
17 Aug 2016	Plaintiffs cross-appeal to the Court of Appeal.
26 May 2017	The Court of Appeal dismisses ESR's appeal. It allows the plaintiffs' cross-appeal, substituting Duffy J's judgment for Burden with a new judgment for PGTi and PGTv.
15 May 2019	Plaintiffs apply to amend the third amended statement of claim for the 2456 proceeding for the remedies phase, to include issuing to the public (ie primary infringement) the Roseberry infringing furniture disclosed by ESR on 27 August 2015 and the Westbury infringing furniture disclosed by ESR on 22 November 2018.

3 Jul 2019	Venning J dismisses ESR's strike out application for the issuing to the public cause of action in the 2775 proceeding and the plaintiffs' (alternative) amendment application for the same cause of action in the 2456 proceeding.
29 Oct 2019	Venning J grants ESR leave to appeal his refusal to strike out the issuing to the public cause of action in the 2775 proceeding and Plaintiffs leave to appeal his refusal to allow amendment of the 2456 proceeding pleadings.
12 Nov 2020	The Court of Appeal dismisses ESR's appeal against Venning J's refusal to strike out the 2775 proceeding and allows the Plaintiffs' application to amend the pleadings in the 2456 proceeding to include the issuing to the public cause of action to be heard at the remedies hearing.
23 Mar 2021	Supreme Court dismisses ESR's appeal against Court of Appeal judgment.
27 May 2021	Plaintiffs file fourth amended statement of claim in the 2456 proceeding pursuant to the judgment of the Court of Appeal of 12 November 2020 claiming primary infringement ie issuing to the public the infringing copies of the furniture.
8 Oct 2021	ESR files Fifth Amended Statement of Defence to Plaintiff's fourth amended statement of claim, including a specific admission that the infringing works items 1 – 11 of Schedule 2, and items 1 - 3 of Schedule 3 to the Fourth Amended Statement of Claim reproduce the whole or a substantial part of the Plaintiff's copyright works itemised at 1 to 11 of Schedule 1 to the Fourth Amended Statement of Claim.
27 – 28 June 2022	Remedies hearing before Downs J including primary infringement claim (as allowed by Court of Appeal).
29 July 2022	Downs J judgment delivered finding ESR liable for primary infringement and awarding account of profits.
8 – 9 Feb 2023	Hearing before Court of Appeal
31 July 2023	Court of Appeal judgment delivered overturning Downs J judgment

Counsel has made appropriate inquiries to ascertain whether this chronology contains any suppressed information. Counsel certifies that, to the best of their knowledge, this chronology is suitable for publication (that is, it does not contain any suppressed information).

DATED at Auckland this 6th day of March 2024

Andrew Brown QC / J Oliver-Hood / J R Wach

Counsel for PGT