

IN THE SUPREME COURT OF NEW ZEALAND

**SC 14/2005
[2005] NZSC 49**

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| BETWEEN | PETERSON PORTABLE SAWING SYSTEMS LIMITED First Applicant |
| AND | CARL JAMES PETERSON Second Applicant |
| AND | REX CAMERON LUCAS First Respondent |
| AND | G W LUCAS & SONS PTY LTD Second Respondent |

Hearing: 21 July 2005
Court: Elias CJ and Gault J
Counsel: C L Elliott for Applicants
J G Miles QC for Respondents
Judgment: 25 July 2005

JUDGMENT OF THE COURT

A. Leave to appeal is granted to argue the following ground:

Whether in their assessments of the alleged invalidity of claim 7 of the Lucas patent on the grounds of anticipation and obviousness the Courts below incorrectly applied the relevant legal tests or proceeded on incorrect approaches to interpretation of the claim.

B. The application for leave to appeal on the ground of ambiguity in the claim is dismissed.

REASONS

[1] While the Court is satisfied that there are issues appropriate for determination on a second appeal in respect of the grounds of alleged invalidity of claim 7 as anticipated or obvious, that is not the case in respect of the ground of ambiguity.

[2] It was determined in the High Court and upheld in the Court of Appeal that although there was ambiguity in the claim, a person skilled in the art would have no difficulty in taking the intended meaning. That was upheld in the Court of Appeal. Such determination raises no issue of general public or commercial importance and no question of legal principle. It therefore does not meet the criteria for leave in s 13 of the Supreme Court Act 2003.

[3] Security for costs and a fixture for the hearing of the appeal will be dealt with by the Registrar.

Solicitors:

Gaze Burt, Auckland, for Applicants

Simpson Grierson, Auckland, for Respondents