

IN THE SUPREME COURT OF NEW ZEALAND

SC 108/2015  
[2015] NZSC 188

BETWEEN ESCROW HOLDINGS FORTY-ONE  
LIMITED  
First Applicant

KALLINA LIMITED  
Second Applicant

AND DISTRICT COURT AT AUCKLAND  
First Respondent

BODY CORPORATE 341188  
Second Respondent

GEORGE VICTOR WILKINSON AND  
JEREMY KAY COLLINGE AND ORS  
Third to Twelfth Respondents

AUCKLAND COUNCIL  
Thirteenth Respondent

CHANG TJUN CHONG AND ORS  
Fourteenth to Thirty-Ninth Respondents

Court: Elias CJ, William Young and O'Regan JJ

Counsel: J G Miles QC, T J Herbert and R P Thomas for Applicants  
G J Kohler QC for Second to Twelfth Respondents

Judgment: 10 December 2015

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JUDGMENT OF THE COURT

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**A Leave to appeal is granted (*Body Corporate 341188 v District Court at Auckland* [2015] NZCA 393).**

**B The approved ground is:**

**Does the Deed of Covenant (when read alongside the Memorandum of Encumbrance) confer on the registered proprietors of Lot 2 the exclusive right to use the area**

**shown as “A” on the plan attached to the Deed of Covenant (area “A”) for the purposes of car parking and the right to use the right of way shown as “F” and “G” on the same plan to access area “A”?**

**C We make a direction that service on the fourteenth to thirty-ninth respondents be dispensed with.**

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### **REASONS**

[1] The approved ground allows for all three questions set out at [47] of the applicant’s submissions to be advanced on appeal.

[2] We accept the submissions of both the applicants and the second to twelfth respondents that service of the proceedings on the fourteenth to thirty-ninth respondents (the unit holders in the second respondent other than the third to twelfth respondents) is unnecessary given that their interests are represented by the second respondent, they have taken no steps in the High Court or Court of Appeal and they have confirmed in writing that they do not wish to participate in the appeal to this Court.

Solicitors:  
Goodwin Legal, Auckland for Applicants  
Legal Vision, Auckland for Second to Twelfth Respondents