

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 101/2022
[2022] NZSC 146

BETWEEN DRIVE NZ CLASSIC LIMITED
Applicant

AND LOW VOLUME VEHICLE TECHNICAL
ASSOCIATION INCORPORATED
First Respondent

NEW ZEALAND TRANSPORT AGENCY
Second Respondent

Court: Glazebrook, O'Regan and Kós JJ

Counsel: D P H Jones KC and K I Bond for Applicant
R J Gordon and A S Kirk for First Respondent
N F Flanagan and N E Copeland for Second Respondent

Judgment: 15 December 2022

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant must pay each respondent costs of \$2,500.**
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REASONS

[1] The applicant seeks to challenge the striking out of a claim in negligence against the first respondent (Association) and second respondent (Agency).

[2] The Land Transport Management Act 2003 gives the Agency responsibility for inspection and certification of modified vehicles. Under the Act the Agency contracts the Association to carry out some of these responsibilities, including establishing standards and operational requirements for inspection certification.

[3] Vehicles imported and modified by an associated company of the applicant, for use by disabled drivers, were certified by an Association certifier post-modification.¹ Following complaints, the Agency reviewed the compliance certificates for one of the vehicles, resulting in a requirement for further modifications. The certifier sought design approval for those modification, without success. Negotiations ensued. By the end of 2014 the Agency concluded that although the vehicles were non-compliant with the relevant code, certificates of exemption could be issued for eight of the 10 vehicles.

[4] The applicant claims in negligence, asserting breach of duty of care by the Association in its compliance assessments, and by the Agency in failing to properly supervise the Association and certifiers, resulting in allegedly erroneous assessments made by the Association. The respondents applied to strike out that claim. The High Court declined to do so.² The Court of Appeal, however, allowed the respondents' appeal and struck out the claim.³

Grounds for application

[5] The applicant contends that the Court of Appeal judgment “has the effect of granting a blanket common law immunity for regulators against suit by those directly affected by the regulator’s conduct”. This outcome is said to be the consequence of three primary errors: (1) placing undue weight on the decision in *Attorney-General v Carter*,⁴ while reaching a conclusion inconsistent with the decision in *Oceania Aviation Ltd v Director of Civil Aviation*;⁵ (2) the analysis of proximity; and (3) striking out the claim on a policy limb before a hearing in which evidence was called.

Our assessment

[6] The criteria for leave are not met.⁶ As we see it, this is a case which turns very

¹ The associated company later assigned its claim to the applicant. The validity of that action was in issue in the High Court, but did not need to be considered in the Court of Appeal.

² *Drive NZ Classic Ltd v Low Volume Vehicle Technical Association Inc* [2020] NZHC 3015 (Peters J).

³ *Low Volume Vehicle Technical Association Inc v Drive NZ Classic Ltd* [2022] NZCA 405 (French, Clifford and Courtney JJ).

⁴ *Attorney-General v Carter* [2003] 2 NZLR 160 (CA).

⁵ *Oceania Aviation Ltd v Director of Civil Aviation* CA163/00, 13 March 2001.

⁶ Senior Courts Act 2016, s 74.

much on its particular facts, including the irregular approach taken by the applicant and its associate to the certification process and their subsequent non-exercise of appeal rights. It is not an appropriate case for this Court to reconsider general principles governing private law responsibility for negligence in a regulatory context. The contention recorded at the start of [5] above is not one that can legitimately be drawn from the judgment of the Court of Appeal. Accordingly, we do not consider the appeal to raise a matter of general or public importance, or general commercial significance. Nor do we consider the applicant has established the likelihood of a miscarriage of justice in the outcome below.⁷

Result

[7] The application for leave to appeal is dismissed.

[8] The applicant must pay each respondent costs of \$2,500.

Solicitors:

Braun Bond & Lomas Ltd, Hamilton for Applicant
MinterEllisonRuddWatts, Wellington for First Respondent
Meredith Connell, Auckland for Second Respondent

⁷ Section 74(2)(b). See generally *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].