

IN THE SUPREME COURT OF NEW ZEALAND

SC 32/2012  
[2012] NZSC 60

BETWEEN	LOKTRONIC INDUSTRIES LIMITED Applicant
AND	STEPHEN JOHN DIVER First Respondent
AND	SDR LIMITED Second Respondent
AND	ROY BOWYER Third Respondent
AND	TRIMEC TECHNOLOGY PTY LIMITED Fourth Respondent
AND	NEIL RICHARD HINGSTON Fifth Respondent
AND	ASSA ABLOY NEW ZEALAND LIMITED Sixth Respondent

Court: Elias CJ, McGrath and William Young JJ

Counsel: S A Grant and E Krishnan for Applicant  
M H Morrison and K D Puddle for First Respondent  
Z G Kennedy and P D M Johns for Third, Fourth and Sixth  
Respondents  
P L Rice for Fifth Respondent

Judgment: 24 July 2012

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed with costs of \$1,000 payable  
to each set of respondents making submissions.**

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## REASONS

[1] The applicant seeks leave to appeal against a judgment of the Court of Appeal<sup>1</sup> which allowed an appeal against a judgment of the High Court<sup>2</sup> in a claim against the respondents for inducing breaches of contract by unlawful means.

[2] The first ground for the proposed appeal raises an issue concerning an element of the tort: what state of knowledge must be proved against the defendant that its conduct would induce a breach of contract, short of actual knowledge? It was agreed by the parties that proof of actual knowledge is not required, but the applicant wishes to argue in this Court that the Court of Appeal's test, which can shortly be expressed as being, on the applicant's argument, one of wilful blindness, was wrong, and that a "lower threshold" test of reckless indifference satisfies the knowledge element. In the Court of Appeal, knowledge of both the existence of the manufacturing contract which arose from a pattern of dealing between the parties over many years, and that the conduct of the respective respondents would breach both it and an associated distribution contract, was in issue.

[3] The next proposed ground concerns whether the Court of Appeal's judgment reversing the High Court on the facts, was consistent with appellate principles generally. The applicant also takes issue with the Court's application of s 92(1) of the Evidence Act 2006, in relation to the extent of cross-examination of alleged wrongdoers. The applicant contends that the Court's judgment in respect of these matters gives rise to a miscarriage of justice.

[4] We are satisfied that the determinative issues that would arise in the proposed appeal, if we gave leave, would be factual ones rather than issues of principle within s 13(2) of the Supreme Court Act 2003. It is clear that proving knowledge of the applicant's contracts by the respective respondents in the circumstances of this case was an inherently difficult task for the applicant. It is not surprising that different views were reached on the knowledge requirement by the Courts below. We do not think it arguable that the Court of Appeal's approach to the factual issues in its judgment was not open to it, nor that this was a case in which the Court was unable

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<sup>1</sup> *Diver v Loktronic Industries Ltd* [2012] NZCA 131.

<sup>2</sup> *Loktronic Industries Ltd v Diver* HC Auckland CIV-2008-404-4657, 30 March 2011.

to take the different view of the merits it did in deciding that the trial Judge's findings were wrong. We see no arguable miscarriage of justice or error in principle arising from the Court's judgment in this respect, nor from its critical observations concerning the Evidence Act requirements. The Court of Appeal's judgment did not turn on them.

[5] We are also satisfied that the subtlety of the different possible formulations of the standard of knowledge short of actual knowledge that will suffice to prove that element of the tort would not be of significance to the outcome of the appeal if leave were given. Even if the Court were to take the most favourable view of the law to the applicant, it would not succeed in a further appeal on this point.

[6] The application for leave to appeal is accordingly dismissed.

Solicitors:

Baldwins Law Limited, Auckland for Applicant

Lowndes Jordon, Auckland for First Respondent

Minter Ellison Rudd Watts, Auckland for Third, Fourth and Sixth Respondents

Haigh Lyon, Auckland for Fifth Respondent