

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 26/2021
[2021] NZSC 49

BETWEEN

HELILOGGING LIMITED
(IN RECEIVERSHIP AND IN
LIQUIDATION)
First Applicant

MARK WAYNE FORD AS TRUSTEE OF
THE WESSEX TRUST
Second Applicant

AND

CIVIL AVIATION AUTHORITY
Respondent

Court: William Young, Glazebrook and O'Regan JJ

Counsel: P J Dale QC for Applicants
L J Taylor QC and G M Richards for Respondent

Judgment: 27 May 2021

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicants must pay the respondent costs of \$2,500.

REASONS

[1] Between December 2002 and August 2005, Helilogging Ltd sought regulatory approvals from the Civil Aviation Authority to operate Westland Wessex Mk 2 helicopters for heli-logging purposes. This process concluded on 19 August 2005 when the Director of Civil Aviation, Mr John Jones, declined to grant the approvals

then in issue.¹ Just over nine years later, the applicants commenced proceedings against the Civil Aviation Authority alleging misfeasance in public office and deceit. Following a seven-week trial in the High Court confined to liability, Cooke J dismissed these claims.² In doing so, he concluded that the elements of the claims had not been made out.³ He was therefore not required to determine vicarious liability or limitation issues, albeit that he did address these briefly.⁴ His judgment was upheld by the Court of Appeal⁵ and the applicants now seek leave to appeal to this Court.

[2] There is no dispute as to what is required to be proved to establish liability for misfeasance in public office and deceit and thus no challenge to the legal approaches adopted by Cooke J and the Court of Appeal.

[3] The issues which both Courts had to determine were reasonably complex. They relate to:

- (a) the operation of the Civil Aviation Rules, a reasonably dense and technical legal regime;
- (b) the safety of using ex-military helicopters for purposes for which they were not specifically designed;⁶ and
- (c) what became a tortuous administrative process.

It is also true that, at least on the applicants' case, the amount of money involved is substantial.

¹ Restrictions in the Civil Aviation Rules precluded the use of Westland Wessex Mk 2 type helicopters for the carriage of persons or goods for hire or reward. As well, the airworthiness certificates for the helicopters were tagged with a condition that they not be used for external load operations. In issue were exemptions under s 37 of Civil Aviation Act 1990 to enable the helicopters to be used for heli-logging.

² *Helilogging Ltd (in rec and liq) v Civil Aviation Authority of New Zealand* [2019] NZHC 3305.

³ At [271].

⁴ At [299]–[307].

⁵ *Helilogging Ltd (in rec and liq) v Civil Aviation Authority of New Zealand* [2021] NZCA 21 (Miller, Gilbert and Goddard JJ).

⁶ Westland Wessex series helicopters were manufactured between 1958 and 1970. The Mk 2 – the type in issue in these proceedings – was designed as a troop carrier for the Royal Air Force. It was not designed to be used primarily for high frequency external load operations such as heli-logging.

[4] But all of that recognised, the issues are entirely factual. As well, the dispute involves a very particular set of facts and a process which was concluded nearly 16 years ago. Against that background, the proposed appeal does not involve a matter of general or public importance or of general commercial significance.⁷

[5] The evidence was reviewed in extensive detail by Cooke J and again by the Court of Appeal. The conclusions reached were substantially the same. It follows that there are concurrent findings of fact. Nothing has been advanced to suggest substantial tangible error by either Court. The submissions on behalf of the applicant foreshadow an appeal which, if leave were granted, would substantially be a re-run of the case of the Court of Appeal. For these reasons we see no appearance of a miscarriage of justice.⁸

[6] The application for leave to appeal is accordingly dismissed. The applicants must pay the respondent costs of \$2,500.

Solicitors:
KooTelle Lawyers, Auckland for Applicants
Darroch Forrest Lawyers, Wellington for Respondent

⁷ Senior Courts Act 2016, s 74(2)(a) and (c).

⁸ Section 74(2)(b); and *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].