

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 45/2023
[2023] NZSC 127

BETWEEN PHILIP WILLIAM ROUTHAN AND
JULIE VERONICA ROUTHAN AS
TRUSTEES OF THE KANIERE FAMILY
TRUST
Applicants

AND PGG WRIGHTSON REAL ESTATE
LIMITED
Respondent

Court: Glazebrook, O'Regan and Kós JJ

Counsel: D R Kalderimis, T Nelson and O T H Neas for Applicants
L J Taylor KC and M E Parker for Respondent

Judgment: 22 September 2023

JUDGMENT OF THE COURT

- A The application for an extension of time to apply for leave to cross-appeal is granted.**
- B Leave to appeal and cross-appeal is granted in part (*PGG Wrightson Real Estate Ltd v Routhan* [2023] NZCA 123).**
- C The approved question is whether the Court of Appeal was correct in varying the damages awarded in the High Court.**
- D The applications for leave to appeal and cross-appeal are otherwise dismissed.**
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REASONS

[1] The focus of the approved question is on the Court of Appeal's application of the so-called *SAAMCO* principle limiting liability in the case of the provision of information to a ceiling based on a difference in value.¹ However the question permits, at a secondary level and in order to ensure quantum may be resolved in this Court, either party to pursue other arguments relating to the measure of damages awarded, as advanced in their leave to appeal and cross-appeal submissions. The application for an extension of time to apply for leave to cross-appeal accordingly is granted, there being no prejudice to the applicants.

[2] Leave is declined for the first ground of appeal proposed by the applicants, in which they seek to challenge concurrent conclusions of the High Court and Court of Appeal that the agent's representation, while admittedly negligent, was nonetheless not deceitful.² The principles relating to deceit are settled and do not require further review.³ To accede to this ground of appeal would, under the guise of an issue of principle, require the Court to re-examine factual questions of credibility on which the High Court Judge was best placed to make a finding, and where her conclusions have been upheld by the Court of Appeal. We see no likelihood of a substantial miscarriage of justice in that respect.⁴

[3] Leave is likewise declined for the respondent to cross-appeal the concurrent conclusions of the High Court and Court of Appeal that the applicants would not have purchased the farm had the misrepresentation not been made. This proposed ground also turns wholly on the evaluation of the evidence made by the Courts below. We see no likelihood of a substantial miscarriage of justice in this respect either.

¹ Expounded in *South Australia Asset Management Corp v York Montague Ltd* [1997] AC 191 (HL).

² *Routhan v PGG Wrightson Real Estate Ltd* [2021] NZHC 3585, (2021) 16 TCLR 274 (Dunningham J); and *PGG Wrightson Real Estate Ltd v Routhan* [2023] NZCA 123, (2023) 24 NZCPR 97 (Gilbert, Mallon and Wylie JJ).

³ See *Amatal Corp Ltd v Maruha Corp* [2007] 1 NZLR 608 (CA) at [46] and [50].

⁴ Senior Courts Act 2016, s 74(2)(b). As to what is required for a substantial miscarriage in civil cases, see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60; (2006) 18 PRNZ 369 at [5].

[4] Accordingly, and to the extent stated in [1], leave to appeal and cross-appeal is granted in part. The applications for leave to appeal and cross-appeal are otherwise dismissed.

Solicitors:

Luke Cunningham Clere, Wellington for Applicants

Parker Cowan Lawyers, Queenstown for Respondent