



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

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MEDIA RELEASE

**PHILIP WILLIAM ROUTHAN AND JULIE VERONICA ROUTHAN AS TRUSTEES
OF THE KANIERE FAMILY TRUST v PGG WRIGHTSON REAL ESTATE LIMITED**

(SC 45/2023) [2025] NZSC 68

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest: www.courtsofnz.govt.nz.

What this judgment is about

This appeal concerns the proper measure of damages in a claim against a real estate agent who negligently misrepresented a dairy farm’s production levels to the eventual purchaser. The judgment also addresses whether and how New Zealand courts should apply the House of Lords decision in *South Australia Asset Management Corp v York Montague Ltd* (SAAMCO),¹ as refined in subsequent English court decisions.

Background

In 2010, the Routhans bought a dairy farm near Hokitika. The real estate agent, PGG Wrightson Real Estate Ltd (PGG), carelessly misrepresented to the Routhans that the farm’s recent milk production historical average was steady at 103,000 kg of milk solids (kgMS) per season. In fact, the farm’s recent production was substantially less than that, and in decline. The Routhans would not have bought the farm had they known the truth. They never achieved 103,000 kgMS, and the farming business declined until their bank forced them to sell the farm in 2020. The Routhans lost their incoming equity. They sued PGG for damages in negligence and under the Fair Trading Act 1986.

Procedural history

On 21 December 2021, the High Court found PGG liable in negligence and for misleading and deceptive conduct. PGG failed to act as a reasonably prudent real estate agent in various

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

respects, and its negligence caused the Routhans' losses. It ordered PGG to pay the Routhans damages of \$1,697,600, reflecting their losses from the forced sale of the farm and their run-off property they farmed alongside it, their lost investment in capital improvements, and a 20 per cent reduction for contributory negligence relating to unnecessary capital expenditure undertaken by the Routhans.

On 24 April 2023, the Court of Appeal agreed PGG was liable to the Routhans but reduced the award to \$300,000. The Court found that the scope of PGG's duty of care was to provide the Routhans with updated production information so that the Routhans did not pay too much for the farm. PGG had not assumed a responsibility to advise the Routhans on the purchase, so PGG was not liable for all the downstream consequences of their decision. PGG was liable only for the difference between the price the Routhans paid and the true market value of the farm. The Court then made a further deduction to reflect certain omissions by the Routhans which also contributed to the overpayment.

On 22 September 2023, the Supreme Court granted the Routhans leave to appeal (in part) and PGG leave to cross-appeal (in part). The approved question was whether the Court of Appeal was correct in varying the damages awarded in the High Court.

Issues

The Courts below established that PGG is liable to the Routhans. The remaining issue in the Supreme Court is how much PGG must pay, and on what basis. The Court was also asked whether and how New Zealand courts should apply *SAAMCO*. The Court of Appeal applied *SAAMCO* in this case to limit PGG's liability to the difference between the price paid and the value of the farm had PGG's representations been true.

Submissions

The Routhans argued that PGG assumed responsibility for supplying verified production information and should be liable for all foreseeable loss caused by the Routhans' reliance on that information. *SAAMCO* should be applied, if at all, to ensure that the damages awarded reflect the risk assumed by the defendant. At a minimum, the Routhans claimed that their overpayment of \$480,500 and accumulated trading losses to the end of 2015, roughly \$1.1 million, were closely associated with the risk of purchasing an uneconomic farm based on incorrect information.

PGG generally supported the reasoning of the Court of Appeal. PGG's duty did not extend to buying the farm or the risks of farming and it did not cause the losses claimed by the Routhans. On the cross-appeal, PGG relied upon different valuation evidence to argue that the Routhans' overpayment was either nil or \$50,000 at most.

Supreme Court decision

The Supreme Court has allowed the Routhans' appeal by a majority comprising Glazebrook, Kós and Miller JJ, but without fully reinstating the High Court award.

The Court has also unanimously dismissed PGG's cross-appeal (see at [180], [317] and [398]).

The scope of duty principle and the SAAMCO cap

A majority comprising Winkelmann CJ, Glazebrook, Ellen France and Miller JJ confirmed that the “scope of duty” principle, which was discussed in *SAAMCO*, forms part of New Zealand’s law of negligence. The principle requires the court to consider the position at the time the defendant’s duty arose or was assumed and inquire for what kinds of risk was the defendant taking responsibility and whether the allocation of risk was a fair one in the circumstances. This helps to ensure a defendant is liable only for harm that resulted from the risks that made the defendant’s conduct negligent in the first place (see at [139], [150] and [328]).

Kós J dissented as to the analytical framework. He took the view that the scope of duty principle should not represent part of duty analysis in New Zealand, although the underlying extent to which a defendant assumed risk remained useful as a backward-looking cross-check to ensure liability does not extend to risks not assumed by the defendant (see at [239]–[241]).

Separate from the scope of duty principle, *SAAMCO* has been understood as creating a “cap” for liability. If the defendant negligently provided the plaintiff with information for the purpose of helping them to decide upon a course of action, then the defendant’s liability was said to be limited to the foreseeable consequences of that information being wrong.

A majority comprising Glazebrook, Kós and Miller JJ held that the Court of Appeal erred by using the *SAAMCO* cap as the “normal” measure of damages in this case (see at [170] and [279]).

Winkelmann CJ and Ellen France J preferred the view that the *SAAMCO* cap can be a useful tool or cross-check to identify whether loss that was caused in fact by the defendant’s breach falls within the scope of their duty of care (see at [331]).

PGG’s duty of care

Glazebrook, Kós and Miller JJ found that PGG’s duty of care extended both to the risk that the Routhans would pay too much for the farm and to the risk that the Routhans would produce less than the represented historical average following acquisition. That was because of PGG’s role in negotiating and documenting the contract between the Routhans and the vendor. PGG knew why the Routhans wanted the historical production information, it assumed responsibility for having that information verified and updated by the vendor, and it knew the Routhans would rely upon that information because only the vendor (or the dairy company, with the vendor’s authorisation) could verify it (see at [171]–[174] and [278]–[279]).

In dissent, Winkelmann CJ and Ellen France J agreed with the Court of Appeal that the scope of PGG’s duty of care extended only to the risk that the Routhans would pay too much for the farm (see at [10] and [353]–[377]).

The extent of PGG’s liability

The Court was unanimous that PGG could not be held liable for the full extent of post-purchase loss claimed by the Routhans.

Glazebrook, Kós and Miller JJ found that PGG was liable only for the following heads of loss:

- (a) \$480,500, being the amount the Routhans overpaid by reference to expert evidence of the farm's market value had its actual production been known (see at [183] and [317]);
- (b) \$150,000, being the cost of additional fertiliser spent in an attempt to achieve the production they had been led to expect. The farm's capacity to grow grass was crucial to its milk production (see at [209]–[211] and [326]); and
- (c) \$150,000, being the cost of a re-pasturing programme undertaken by the Routhans, on advice, to try improve pasture quality and therefore production (see at [212] and [326]).

Glazebrook, Kós and Miller JJ rejected PGG's arguments that the Routhans were contributorily negligent in respect of the post-purchase losses listed above. The Routhans acted as they did, in respect of that expenditure, because they reasonably relied on information provided by PGG. There was no reason to reject the High Court's findings that the Routhans took appropriate professional advice, were competent dairy farmers who achieved well compared to regional averages, and took reasonable efforts to increase production (see at [231]–[232] and [308]–[312]).

However, the same three Judges found that PGG was not liable for other heads of loss: namely, revenue shortfalls, increased debt servicing costs, additional supplementary feed, and the Routhans' long-term capital investments into the farm. These losses either were not caused in fact by PGG's breach, or they were not reasonably foreseeable, or the evidence did not make clear how much was attributable to PGG's breach, or they were already counted in other awards, notably the overpayment for the farm (see at [206]–[207], [215], [221]–[222], [228] and [324]–[325]).

Winkelmann CJ and Ellen France J dissented. On their view of the scope of PGG's duty, none of the post-purchase losses were properly attributable to PGG's breach. The substantial cause of these losses was the misunderstanding (not created by PGG) as to the farming method the previous owner had used. There were other causes too (see at [15] and [380]–[384]).

Winkelmann CJ, Ellen France and Kós JJ also observed that an award for revenue losses would be an expectation measure (see at [323] and footnote 554).

Result

- A The appeal is allowed. We fix damages payable by the respondent at \$780,500, with interest as specified at [234].
- B The cross-appeal is dismissed.
- C The respondent must pay the appellants one set of costs of \$50,000 plus usual disbursements. We allow for second counsel.

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