



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

28 FEBRUARY 2024

## **MEDIA RELEASE**

**ROUTHAN & ROUTHAN AS TRUSTEES OF THE KANIERE FAMILY TRUST v PGG WRIGHTSON REAL ESTATE LTD**

(SC 45/2023)

**Hearing of the Supreme Court in the Christchurch High Court Monday 11 March – Tuesday 12 March**

## **CASE HISTORY SYNOPSIS**

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court. The synopsis does not comprise part of the reasons for the judgment of the Court of Appeal. A direct link to the judgment is included at the end of this synopsis.

### **Background**

This appeal concerns the proper measure of damages in a claim against a real estate agent for negligent misrepresentation about the production levels of a dairy farm. The appellants purchasers claimed they would not have purchased the farm had they known the correct position. The farm consistently underperformed and was eventually sold in a mortgagee sale. The appellants lost their equity and claimed the agent was liable for all their losses associated with the farming venture.

### **Lower courts**

The appellants brought proceedings in the High Court, claiming the respondent's misrepresentation amounted to negligence, deceit and a breach of s 9 of the Fair Trading Act 1986.

On 21 December 2021, the High Court found in favour of the appellants in respect of the negligence and Fair Trading Act claims, but ruled that the respondent's conduct fell short of the threshold for deceit. The Judge ordered the respondent to pay damages of \$1,697,600, reflecting the appellants' losses from the forced sale of the farm and adjacent run-off property and wasted capital expenditure (with a 20 per cent reduction for contributory negligence).

The respondent challenged various aspects of the High Court's decision in the Court of Appeal, including its calculation of damages. The appellants cross-appealed the deceit finding and the quantum of damages.

On 24 April 2023, the Court of Appeal upheld the High Court’s decision as to liability, but significantly reduced the award of damages. It held that most of the appellants’ losses fell outside the scope of the respondent’s duty of care, which was limited to providing information rather than advice. Damages were reduced to \$300,000 (being the difference between the farm’s actual value and the price paid).

### **This appeal**

On 22 September 2023, the Supreme Court granted the appellants leave to appeal and the respondent leave to cross-appeal. The approved question is whether the Court of Appeal was correct in varying the damages awarded in the High Court.

The focus of the approved question is on the Court of Appeal’s application of the so-called SAAMCO principle, which draws a distinction for the purposes of assessing damages between the provision of information for the purpose of enabling the claimant to decide upon a course of action and the provision of advice as to what course of action the claimant should take.<sup>1</sup> In the former case, liability is said to be limited to the foreseeable consequences of the information being wrong. In addition to this primary focus, the parties may also pursue other arguments relating to the measure of damages awarded.

### **Viewing of hearing**

This hearing of the appeal will be livestreamed. Details about access to the livestream and the conditions of access will be posted on the [Courts of New Zealand website](#) shortly before the hearing. No recording is permitted.

### **The panel**

|                        |                               |   |                                 |                           |
|------------------------|-------------------------------|---|---------------------------------|---------------------------|
| The Hon Justice<br>Kós | The Hon Justice<br>Glazebrook | The Rt Hon<br>Chief Justice<br>Winkelmann | The Hon Justice<br>Ellen France | The Hon Justice<br>Miller |
|------------------------|-------------------------------|---|---------------------------------|---------------------------|

Judges as seen from the public gallery

### **Counsel**

- Philip William Routhan and Julie Veronica Routhan (as trustees of the Kaniere Family Trust) (Appellants/Cross-Respondents): *D R Kalderimis, T Nelson and O T H Neas*
- PGG Wrightson Real Estate Ltd (Respondent/Cross-Appellant): *L J Taylor KC, M E Parker and J Eckford*

### **Sitting hours**

Court will begin at 10:00am and conclude at 4:00pm with adjournments taken from 11:30am to 11:45am and from 1:00pm to 2:15pm. There is no afternoon adjournment.

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

## Enquiries

Any enquiries about the hearing should be directed via email to [supremecourt@justice.govt.nz](mailto:supremecourt@justice.govt.nz).

Contact person:

Sue Leaupepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: [\[2023\] NZCA 123](#) (24 April 2023)

Supreme Court leave decision: [\[2023\] NZSC 127](#) (22 September 2023)

