Duncan Cotterill

Routhan and Anor as Trustees of the Kaniere Family Trust v PGG Wrightson Real Estate Limited [2025] NZSC 60

Supreme Court Clarifies Scope of Duty and Damages in Negligent Misstatement Claims

Dion Morely - Miranda Braddock

Factual background

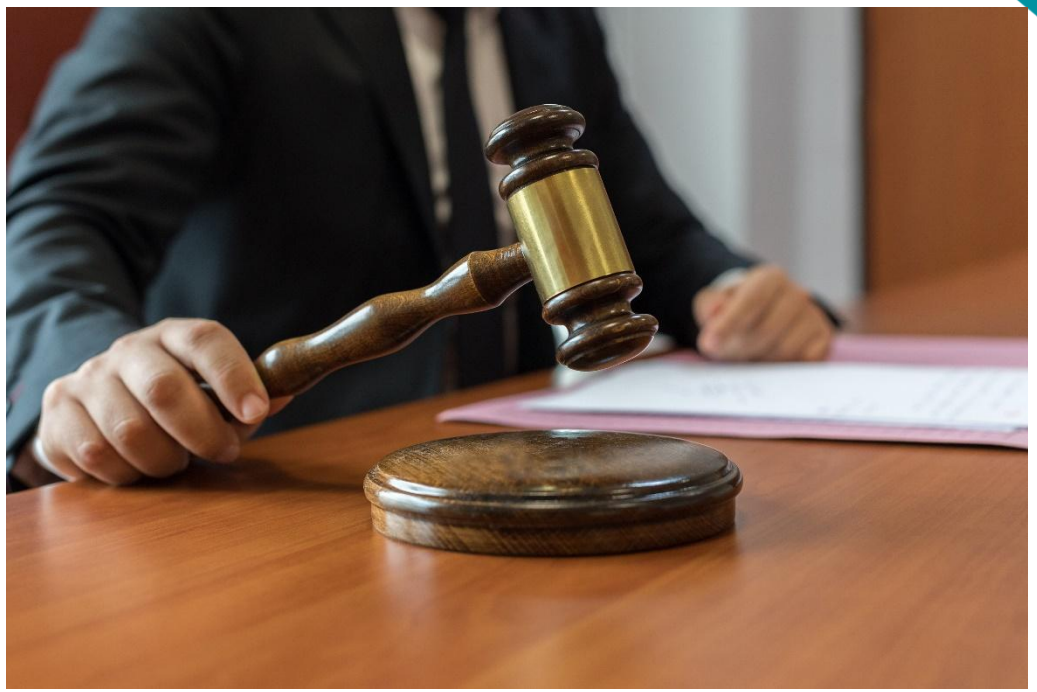
- Case concerned negligent misstatement in sale and purchase of dairy farm in 2010.The Routhans were the purchasers.
- Old brochure stated farm averaged 103,000 kgMS over last three seasons, 260 cows on grass-based system, half herd wintered off each year.
- The Routhans asked Mr Daley of PGG Wrightson to verify production figures with the Vendor.
- Vendor did not verify, only said production had been steady in recent years.
- Mr Daley prepared written proposal for the Routhans' bank using unverified figures.
- PGG's proposal included a disclaimer excluding liability for information obtained from the vendor.
- Mr Daley did not inform the Routhans that the figures had not been verified.

Factual background continued

- Actual production lower and declining – 3-year average 98,729 kgMS.
- After purchase, the Routhans tried to increase production by improving soil, pasture, and herd quality.
- Attempts were unsuccessful; mortgagee forced sale of farm at significant loss.
- The Routhans also suffered revenue shortfall and costs of improvements.
- They issued proceedings against PGG and Mr Daley, alleging that but for PGG's breaches of duty they would not have purchased the farm, and instead would have bought an alternative farm.

Decision of High Court

- Court held PGG liable to the Routhans. Found this was a “no transaction” case.
- Routhans would not have purchased but for PGG’s misrepresentations.
- Some improvements (re-pasturing, water system) were justified; others worsened farm’s financial decline.
- Damages not assessed on basis of hypothetical alternative farm.
- Award: ~$1.7m (loss from forced sale + capital improvements) less 20% for contributory negligence.
- PGG argued SAAMCO limited liability. Dunningham J focused on foreseeability of losses

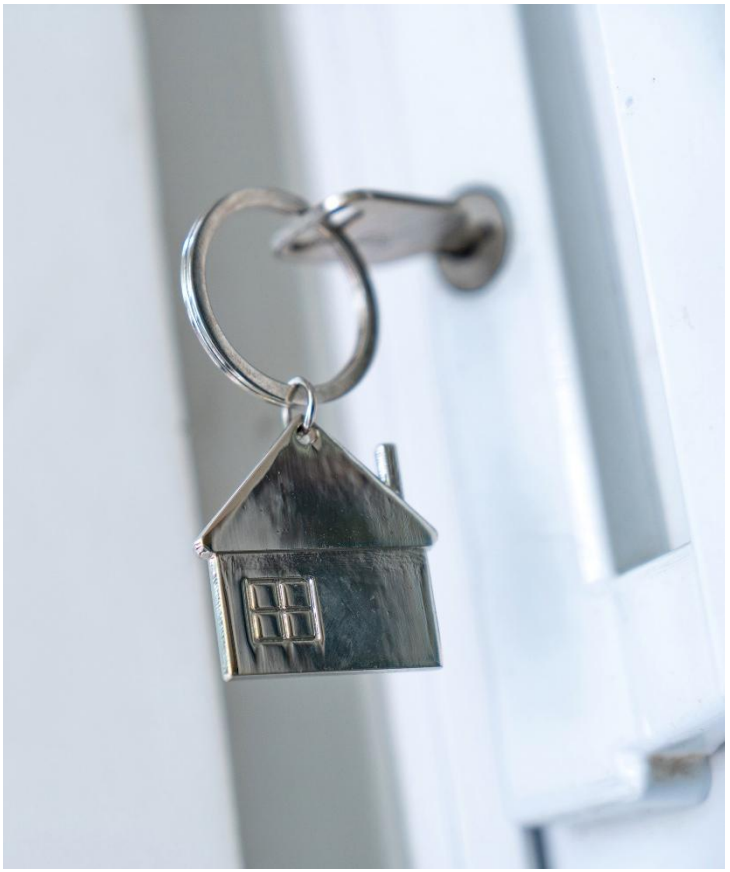


Court of Appeal

- Took different approach to damages, focusing on scope of PGG's duty as agent.
- Duty was to provide information on historic milk production.
- Applied SAAMCO: Scope confined to consequences of incorrect production figures, not advice on overall purchase.
- Liability limited to difference between price paid and true market value.
- Overpayment assessed at $480k, reduced to $300k (not wholly due to production figures).
- Post-purchase losses outside scope. No deduction for contributory negligence.
- *SC granted leave to appeal on the measure and quantum of damages*

The *SAAMCO* principle

- *SAAMCO* (HL 1996): negligent valuations; lenders lost money after market fall.
- Court of Appeal: valuers liable for whole loss (“no transaction”).
- House of Lords: liability capped at difference between negligent valuation and true value at date of valuation.
- Scope of duty: liability only for risks assumed. Advisers liable for decision risk; information providers only for information being wrong.
- Market fall losses not within scope — only losses directly caused by incorrect information are recoverable (“SAAMCO cap”).
- In NZ: principle cited but not consistently applied.



Supreme Court majority

Majority (Glazebrook, Miller and Kós JJ)

- SAAMCO reflects orthodox scope of duty principle, but CoA misapplied it.
- Real risk: farm would not sustain historical production under same grass-based system.
- Rejected SAAMCO cap – losses recoverable where reasonably incurred in attempts to salvage farm, subject to causation/remoteness.
- Recoverable: additional fertiliser, re-pasturing.
- Not recoverable: revenue losses, debt-servicing costs, herd replacement, capital expenditure.
- No discount from overpayment damages – HC and CoA found no contributory negligence or due diligence issue.
- PGG could not rely on its disclaimer – it was too generic, and PGG was not a mere conduit of vendor information.
- Awarded $780,500 plus interest and costs.
- Justice Kos: Agreed with outcome but criticised SAAMCO for muddling duty with causation/remoteness.

Supreme Court minority

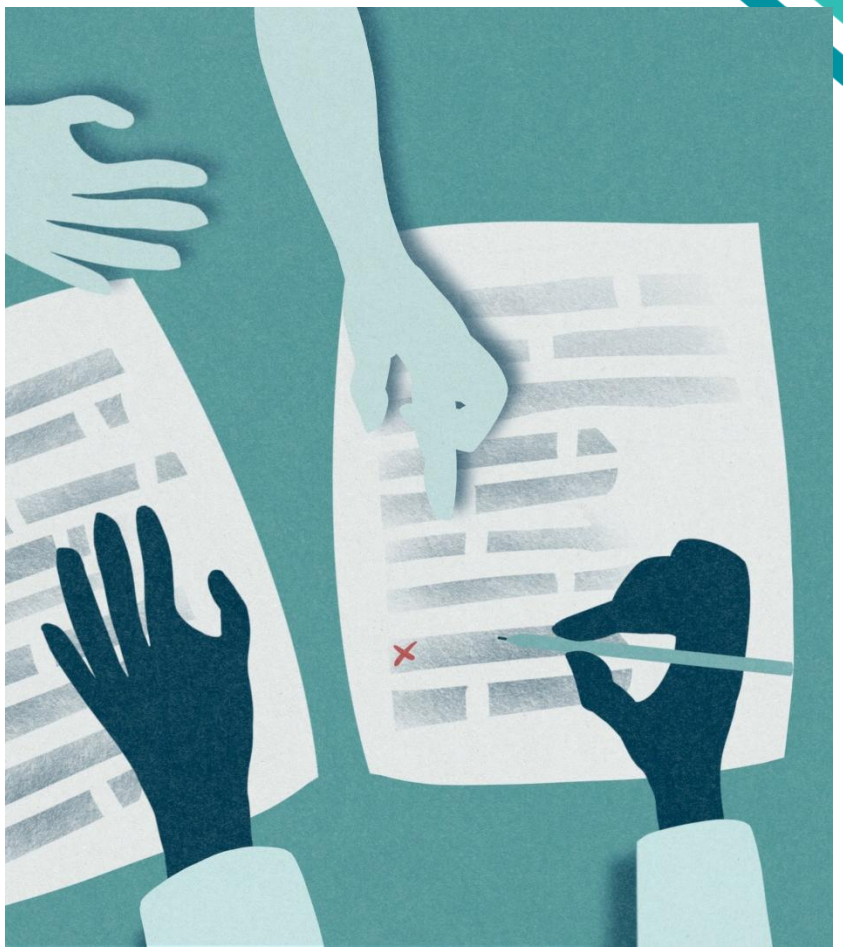
- Winkelmann CJ and Ellen France J: Agreed SAAMCO applies in NZ; scope of duty question is central to breach, loss and causation.
- Rejected rigid “information vs advice” labels, but nature of information gathering/providing role still critical.
- Scope of Mr Daley’s duty confined to risk of overpayment for land, not ongoing farm operation.
- He did not advise on purchase decision or farm management.
- Misrepresentation only gave opportunity for loss; even with correct figures, trading losses likely.
- Post-purchase losses not recoverable; would have upheld CoA award of $300k.
- SAAMCO cap is a useful analytical framework – assists in identifying whether factually caused loss is within the scope of a duty of care.

Summary

- Court confirmed “scope of duty” is an additional limit outside of causation and remoteness.
- SAAMCO cap not the standard measure of loss. Post-transaction losses recoverable if reasonably incurred in attempts to salvage farm, subject to causation/remoteness.
- PGG found liable for post-purchase losses it did not advise on, but which were closely connected to its duty to provide accurate milk production figures.
- Disclaimer ineffective – it only applied to information obtained from the vendor and passed on. PGG was not a mere conduit of information.

Implications

- Liability for negligent information can extend beyond overpayment to costs incurred in pursuing represented outcomes. But limits remain under the “scope of duty” principle – professionals are not guarantors of client ventures.
- Disclaimers may limit liability, but courts construe them narrowly; generic wording unlikely to protect.
- Division in the Supreme Court creates uncertainty. While there was a majority on outcome, no clear majority on the correct legal framework. Claimants are likely to keep testing the boundaries of recoverable loss in negligent misstatement cases.



Duncan Cotterill