



HIGH COURT OF AUSTRALIA

Public Information Officer

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DOVURO PTY LIMITED v ROBERT JOHN WILKINS, EILEEN JOYCE WILKINS, TREVOR IAN WILKINS, SUSAN CAROLINE WILKINS AND LOCHIEL NOMINEES PTY LIMITED AS TRUSTEE FOR THE R & E WILKINS FAMILY TRUST; CROP MARKETING NEW ZEALAND SOCIETY LIMITED; AND QBE INSURANCE (INTERNATIONAL) LIMITED

The High Court of Australia today allowed an appeal by canola seed distributor Dovuro against a finding of negligence after seed it imported contained weed seeds that were declared prohibited species by Western Australian agricultural authorities.

Dovuro imported New Zealand-grown canola seed that was cleared by the Australian Quarantine Inspection Service. The seed contained small amounts of seeds from three common weeds, a common occurrence with such a product. The canola was sold in bags labelled "minimum 99% purity". The weeds were not noxious for humans or animals, and canola seed containing the weed seeds was not prohibited anywhere in Australia. But after Dovuro imported it, distributors had sold it and farmers planted it in 1996, the WA government decided in July 1996 that farmers should take steps to prevent the growth of the weeds and to eradicate any that did grow.

None of the many farmers who sowed Dovuro's seed reported growth of any of the weeds or reported harm to their crops or their land, but they suffered financial loss and expense in preventive measures which they sued to recover. Declarations for two of the three weeds were cancelled in May 1998.

The Wilkines, who planted one tonne of Dovuro's canola seed in April and May 1996, brought action in the Federal Court against Dovuro claiming damages and alleging negligence and contravention of section 52 of the Trade Practices Act. They brought the action as a class action on behalf of WA canola growers who had bought and planted Dovuro seed in 1996. Justice Murray Wilcox held that Dovuro had been negligent but had not contravened section 52.

The Full Court of the Federal Court, by majority, dismissed Dovuro's appeal and Dovuro appealed to the High Court.

The Court, by a 5-2 majority, allowed Dovuro's appeal. The Court held that Dovuro did have a duty of care not to expose the farmers to harm, including financial loss, but the majority held that it did not breach its duty of care. Where none of the seeds were known to be dangerous or had been prohibited, Dovuro could not reasonably have foreseen the actions of the WA government.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*