



HIGH COURT OF AUSTRALIA

13 December 2023

MITSUBISHI MOTORS AUSTRALIA LTD (ACN 007 870 395) & ANOR v BEGOVIC
[2023] HCA 43

Today, the High Court unanimously allowed an appeal from the Court of Appeal of the Supreme Court of Victoria.

The appeal arose following the purchase by the respondent of a Mitsubishi MQ Triton, from a car dealer (the second appellant) who sold cars supplied by the first appellant. At the time of purchase, the vehicle had applied to its windscreen a fuel consumption label in compliance with provisions of the *Motor Vehicle Standards Act 1989* (Cth) ("the MVS Act") and the *Vehicle Standard (Australian Design Rule 81/02 – Fuel Consumption Labelling for Light Vehicles) 2008* (Cth) ("ADR 81/02"). The respondent became dissatisfied with the vehicle's fuel consumption exceeding the fuel consumption values on the label and filed a claim in the Victorian Civil and Administrative Tribunal ("VCAT") alleging that the appellants had, relevantly, contravened s 18 of the *Australian Consumer Law* ("the ACL") in that the fuel consumption label was misleading and deceptive.

The respondent succeeded before VCAT. The appellants sought and obtained leave to appeal to the Supreme Court of Victoria on questions of law, including, relevantly, whether a manufacturer required by law to apply a label to a vehicle, "the form and content of which are prescribed by law", could be found to have contravened s 18 of the ACL ("the mandatory conduct ground"). The primary judge dismissed the appeal in respect of the mandatory conduct ground. The Court of Appeal dismissed an appeal from the primary judge's decision, holding that the MVS Act and ADR 81/02 did not require the appellants to "offer such a vehicle for sale in the first place", still less "require that a vehicle be offered for sale in circumstances where the representation in the label is misleading or deceptive". The appellants obtained a grant of special leave to appeal to the High Court on two grounds, including the mandatory conduct ground.

The High Court unanimously held in favour of the appellants on the mandatory conduct ground. The Court applied its decision in *R v Credit Tribunal; Ex parte General Motors Acceptance Corporation* (1977) 137 CLR 545 ("*GMAC*") where it was reasoned that "[t]he unexpressed assumption which underlies the prohibition [in the predecessor provision to s 18] is that the conduct ... is not conduct in which the corporation is required to engage by, or under the compulsion of, some other law". The Court considered that, as a part of a national legislative scheme, it is necessary to construe s 18 of the ACL consistently with the provisions of the MVS Act which give effect to ADR 81/02 as a safety standard under the ACL. The resolution in *GMAC* was an outworking of the interpretative principle that, in the event of apparent inconsistency of statutory requirements relating to the same subject matter and enacted by the same legislature, the general provision may need to be subordinated to the specific provision in order to alleviate the apparent conflict. In circumstances where the appellants were bound, respectively, to apply and to maintain the fuel consumption label on the respondent's vehicle, a label the form and content of which were dictated by ADR 81/02, the appellants did not, by that conduct, breach s 18 of the ACL. Accordingly, it was unnecessary for the Court to consider the second ground of appeal.

- *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.*