



HIGH COURT OF AUSTRALIA

7 August 2024

MALLONLAND PTY LTD ACN 051 136 291 & ANOR

v

ADVANTA SEEDS PTY LTD ACN 010 933 061

[2024] HCA 25

Today, the High Court dismissed an appeal from a decision of the Court of Appeal of the Supreme Court of Queensland. The appeal concerned the principles governing when a common law duty to take reasonable care to avoid causing pure economic loss will arise. The issue was whether such a duty arose between the producer of a product and end users of that product.

The respondent ("the producer") was one of two producers of grain sorghum seed for distribution and sale in Australia. The appellants ("the growers") were farmers who conducted businesses involving the cultivation and sale of grain sorghum. In the summer of 2010-2011, the growers purchased bags of seed from a distributor authorised by the producer. The bags bore prominent labels which provided that the "[m]inimum purity" of the seed was "99%". A disclaimer was also printed on the bag which relevantly provided that "[the producer] will not be liable to [the consumer] or any other person for any injury, loss or damage caused or contributed to by [the producer] ... arising out of or related to the use of the product in this bag". If those terms were not agreed to by the consumer, the bag should not be opened and instead returned for a refund.

Some months after the seed was planted, the growers became aware that it was contaminated with the seed of another plant known as shattercane. The growers commenced a class action in the Supreme Court of Queensland in which they alleged that the contaminated grain sorghum seed had caused them pure economic loss in the form of reduced income and increased expenditure. Both the primary judge and the Court of Appeal held that the producer was not liable to the growers in negligence because the producer did not owe them a duty of care.

The High Court dismissed the growers' appeal and held that the producer did not owe the growers a duty to take reasonable care in its grain sorghum seed production process to avoid the risk that the growers would sustain pure economic loss by reason of a hidden defect in the seed. Ordinarily, a person does not owe a duty to take reasonable care to avoid causing reasonably foreseeable pure economic loss to another. Where a defendant has assumed a responsibility towards a plaintiff to take reasonable care to avoid causing economic loss to the plaintiff, a duty of care may well be established. However, the producer had not assumed a responsibility to the growers in this case. The facts also fell far short of identifying a relationship between the producer and the growers that would lead to the existence of a duty to take reasonable care when producing the grain sorghum seed to avoid causing the growers pure economic loss of the type claimed.

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.