

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

[2013] NZREADT 66

Reference No: READT 013/13

**IN THE MATTER OF**

of an appeal under s 111 of the  
Real Estate Agents Act 2008

**BETWEEN**

**GEORGE GOODHEW**

Appellant

**AND**

**REAL ESTATE AGENTS  
AUTHORITY (CAC20004)**

First Respondent

**AND**

**MARK SCOTT**

Second Respondent

**MEMBERS OF TRIBUNAL**

Ms K Davenport QC - Chairperson  
Mr J Gaukrodger - Member  
Mr G Denley - Member

**COUNSEL**

Ms J MacGibbon for the Real Estate Agents Authority  
Mr D James for Mr Goodhew

**DECISION ON THE PAPERS**

**INTERIM DECISION OF THE TRIBUNAL ON ISSUE OF THE APPEAL**

***Introduction***

[1] The Tribunal has now had the opportunity of reading the submissions of counsel for Mr Goodhew and for the Real Estate Agents Authority, the affidavit of

Gerald Martin Gallacher and reviewing the documents contained in the Bundle of Documents.

[2] In the conference on 27<sup>th</sup> March 2013 the Tribunal agreed that it would issue a decision on the papers concerning the issues of the appeal.

### ***Decision***

[3] The Tribunal have determined that there is sufficient prima facie case shown in the evidence of the Real Estate Agents Authority, to enable the charge to proceed.

### ***Reasons***

[4] Counsel for Mr Goodhew raised a number of issues which he submitted showed that there was limited factual material and documentation on which the CAC could have made a finding to lay a charge. He submitted that:

- [a] there was no evidence that the complainant could not gain access to the property across the stream to the beach;
- [b] there was no evidence the Maori land between the beach and the subject property was not a reserve in the sense that it is not likely to be built upon;
- [c] there was no evidence of any Maori claims which would affect the claimant's capacity to live on and enjoy the subject property; and
- [d] there was no evidence of any adverse resource consent issues that were not apparent to the complainant or at all.

[5] As the Real Estate Agents Authority submits, there is sufficient evidence on which the CAC could reach a decision to lay a charge. For example they say that Mr Goodhew acknowledges saying that the land in front of the subject property was a reserve. However, it is acknowledged by all to be Maori land.

[6] The Tribunal have carefully considered these points and it appears that there is a degree of factual dispute between the complainant and Mr Goodhew's evidence.

[7] The issue of whose evidence is to be preferred and whether the evidence put before the Tribunal will be sufficient to establish that Mr Goodhew's conduct was a wilful or reckless contravention of Rule 6.4 pursuant to s 73 of the Real Estate Agents Act 2008, will be a question of fact to be determined after the evidence of Mr Scott, Mr Goodhew and any other relevant witnesses have been heard.

[8] Accordingly, the Tribunal determine that there is sufficient evidence to allow the charge to proceed. The appeal will be determined at the conclusion hearing on the charge laid against Mr Goodhew.

[9] The Tribunal draw the parties to the attention of s 116 of the Real Estate Agents Act.

**DATED** at AUCKLAND this 5th day of August 2013

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Ms K G Davenport QC  
Chairperson

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Mr J Gaukrodger  
Member

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G Denley  
Member