

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

**[2021] NZREADT 26**

**READT 032/19**

IN THE MATTER OF

An appeal under section 111 of the Real Estate Agents Act 2008

BETWEEN

HULAN FENG and JIARUI LI  
Appellants

AND

THE REAL ESTATE AGENTS AUTHORITY  
(CAC 521)  
First Respondent

AND

RUOFEI WU  
Second Respondent

Tribunal:

Mr J Doogue, Deputy Chairperson  
Mr G Denley, Member  
Ms C Sandelin, Member

Submissions by:

Mr T Rea, on behalf of the appellants  
Ms E Mok, on behalf of the Authority

Date of Decision:

16 June 2021

---

**DECISION OF THE TRIBUNAL (recalling decision)**

---

[1] Counsel for the Authority has applied for the recall of the decision issued in this matter on 12 April 2021. The ground on which that application is made is that in its decision, the Tribunal stated an assumption that there was no appeal against the penalty that was imposed upon the appellants.

[2] The submissions filed included the following reference to authority:

The basis for recall was set out in *Horowhenua County v Nash (No 2)*:<sup>1</sup>

Generally speaking, a judgment once delivered must stand for better or worse subject, of course, to appeal. Were it otherwise there would be great inconvenience and uncertainty. There are, I think, three categories of cases in which a judgment not perfected may be recalled- first, where since the hearing there has been an amendment to a relevant statute or regulation or a new judicial decision of relevance and high authority; secondly, where counsel have failed to direct the Court's attention to a legislative provision or authoritative decision of plain relevance; and thirdly, where for some other very special reason justice requires that the judgment be recalled.

[3] Reference was also made to *Brake v Boote*, where judgment was given with interest up to the date of settlement of the transaction in issue.<sup>2</sup> The Judge did not consider the question of interest from the date of settlement to the date of judgment despite the fact that this had been sought by the applicants. The Judge acknowledged that he had not applied his mind to this matter before entering judgment, and was satisfied that it was a case where for a “very special reason justice requires that the judgment failed to determine an issue”. The Judge observed that:

One would hope that it would be a very special occasion when a Judge failed to determine an issue that was properly put before him. I am satisfied that it is, and I am satisfied that justice requires that error to be corrected.

[4] Mr Rea, counsel for the appellants, does not apparently oppose the making of such an order.

[5] Given that the effect of a recall order would be to preserve his clients’ rights of appeal against the penalty that was imposed, there would not seem to be any ground upon which the appellant would sensibly oppose a recall order being made.

---

<sup>1</sup> *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC) at 633.

<sup>2</sup> *Brake v Boote* (1991) 4 PRNZ 86 (HC).

[6] We consider that if the decision in the present case were allowed to stand in its present form, it might be argued that it had the effect of finally disposing of the case when there was still a significant and substantial part of it that was yet to be dealt with, namely, the appeal against sentence. In our view this is a sufficient ground upon which the Tribunal can, and should, order the recall of the decision having regard to the statement of principle contained in *Horowhenua County* and other authorities. There will be an order accordingly.

[7] Our attention has also been drawn to some other minor errors that came about when the decision was being drafted. As well as correcting the point about the appeal against penalty in the decision to be reissued, we shall also deal with those matters.

[8] Pursuant to s 113 of the Real Estate Agents Act 2008, the Tribunal draws the parties' attention to s 116 of the Real Estate Agents Act 2008, which sets out appeal rights. Any appeal must be filed in the High Court within 20 working days of the date on which the Tribunal's decision is served. The procedure to be followed is set out in part 20 of the High Court Rules.

---

Mr J Doogue  
Deputy Chairperson

---

G Denley  
Member

---

C Sandelin  
Member