

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

**[2016] NZREADT 69**

**READT 083/15**

IN THE MATTER OF                      An Appeal under Section 111 of the Real Estate  
Agents Act 2008

BETWEEN                                  JI LI  
Appellant

AND                                        REAL ESTATE AGENTS AUTHORITY (CAC 408)  
First Respondent)

AND                                        PAMELA RILEY AND ANTHONY LOUGHRAN  
Second Respondents

Hearing:                                  On the papers

Tribunal:                                  Hon P J Andrews (Chairperson)  
Mr G Denley (Member)  
Ms N Dangen (Member)

Counsel:                                  Mr W Akel and Mr K Teague, on behalf of the  
Appellant  
Ms C Paterson and Mr J Simpson, on behalf of the  
First Respondent  
Mr T Rea, on behalf of the Second Respondents

Date of Ruling:                          7 October 2016

---

**RULING OF THE TRIBUNAL**  
**(Expert evidence sought to be adduced)**

---

[1] On 30 September 2016 Counsel for the Second Respondents filed a brief of evidence of Mr Murray Stuart Cleland, as expert evidence. Mr Cleland's evidence is in addition to that filed on 26 September 2016. Counsel for the Appellant has objected to Mr Cleland's evidence being adduced.

[2] As set out in the Tribunal's Ruling as to discovery, issued on 4 May 2016, the issues for determination in the appeal are:<sup>1</sup>

[a] Whether there was non-disclosure by either [of the second respondents] of any weathertightness issues and other building issues with the property; and

[b] Whether there was misleading conduct by either [of the second respondents] regarding the auction and subsequent negotiations for sale of the property.

[3] The evidence filed for the Second Respondents on 26 September comprised:

[a] Ms Pamela Riley;

[b] Mr Anthony Loughran;

[c] Ms Nicola Rhodes;

[d] Mr Robert Nelligan; and

[e] Mr Ian Keightley.

[4] Broadly speaking, Mr Keightley's evidence (which relates to the first issue) may be summarised as being expert evidence in relation to a "reasonable licensee's" compliance with r 10.7 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 ("the Rules"), as to disclosure of defects. Mr Cleland's evidence also relates to a "reasonable licensee's" compliance with r 10.7.

---

<sup>1</sup> *Ji Li v Real Estate Agents Authority* [2016] NZREADT 31, at [2].

[5] Counsel for the Appellant objected to Mr Cleland's evidence on two grounds:

[a] It is out of time: evidence for the Second Respondents was to be filed (according to an amended timetable) by 26 September 2016, and Mr Cleland's evidence was not filed until 30 September 2016; and

[b] Mr Cleland's evidence will not further assist the Tribunal, as his and Mr Keightley's evidence are in the same area of expertise, Mr Cleland's evidence is consistent with Mr Keightley's, and Mr Cleland's evidence will not add anything to the evidence already provided.

[6] Counsel for the Second Respondents responded that:

It will be of benefit to the Tribunal to have a peer review of the expert evidence provided by a senior member of the industry. There will be no prejudice to the appellants as there will be nothing unexpected in Mr Cleland's evidence which is consistent with that of Mr Keightley.

[7] The Tribunal has considered whether it should allow Mr Cleland's evidence to be adduced.

[8] If the timing of the filing were the only issue, the Tribunal would have permitted the evidence to be adduced. However, that is not the only issue.

[9] Mr Cleland's evidence is consistent with Mr Keightley's evidence. Mr Keightley has set out, in detail, his opinion on a matter at issue in this appeal. Mr Cleland's evidence supports Mr Keightley's.

[10] We observe that the Tribunal is a specialist Tribunal whose purpose is to examine the reasonableness of licensees' compliance with the Real Estate Agents Act 2008 and the Rules; that is, the area of expertise as to which Mr Keightley will give evidence. Further, counsel for the Second Respondents will have the opportunity to make submissions as to compliance with the Act and the Rules in the particular circumstances of the present case.

[11] However, we see no particular prejudice to the parties, or the hearing, in allowing Mr Cleland's evidence to be adduced.

[12] Pursuant to s 113 of the Act, we record that any person affected by this decision may appeal against it to the High Court by virtue of s 116 of the Act.

---

Hon P J Andrews  
Chairperson

---

Mr G Denley  
Member

---

Ms N Dangen  
Member