

IN THE SUPREME COURT OF NEW ZEALAND

SC 133/2017
[2018] NZSC 18

BETWEEN GUIRONG WEN
 Applicant

AND KOK ANN NGOI
 First Respondent

SUNLINE ESTATE LIMITED
Second Respondent

Court: Elias CJ, William Young and O'Regan JJ

Counsel: D R Bigio QC and H M Z Ford for Applicant
 D J Goddard QC, S A Barker and O C Gascoigne for First and
 Second Respondents

Judgment: 5 March 2018

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B Costs of \$2,500 are awarded to the respondents.

REASONS

[1] In issue in this litigation is whether there was a concluded contract for the purchase by the first respondent, Dr Kok Ann Ngoi, from the applicant, Ms Guirong Wen, of a property at Karaka near Auckland.

[2] By 13 January 2014, the parties had been negotiating in respect of the property for some time and there was in existence a form of agreement which recorded offers made by Dr Ngoi and counter-offers made by Ms Wen. On that day, Dr Ngoi told Ms Wen's agent that he would pay any price less than \$5.3m. He initialled the form of agreement beside a blank space in which Ms Wen, if she wished to proceed, was to insert a price that was less than \$5.3m.

[3] The agent met with Ms Wen the following day, ie 14 January. This was shortly before 5.00pm. Following a discussion or discussions, the detail of which is disputed, the agent inserted a price of “\$5,280,000” in the blank space and Ms Wen initialled the change. At 5.30pm, the agent left Ms Wen’s home and telephoned Dr Ngoi to tell him what had happened and to confirm that there was a binding contract. At 5.37pm, Ms Wen telephoned the agent. There is dispute as to what was discussed between them. The agent met with Dr Ngoi around 5.45pm and handed him a copy of the contract. In response to a question from Dr Ngoi as to whether he should re-initial beside the price, the agent told him that this was unnecessary because there was already a binding contract.

[4] Two days later, on 16 January, Ms Wen instructed the agent to contact Dr Ngoi to cancel the contract and now denies the existence of a binding contract.

[5] Ms Wen refusing to settle in accordance with the agreement, Dr Ngoi sought specific performance in the High Court.¹ This claim was unsuccessful but Dr Ngoi’s appeal to the Court of Appeal was allowed.² Ms Wen now seeks leave to appeal to this Court.

[6] The facts are highly unusual. They are also still, at least in part, in dispute. This is because the Court of Appeal granted Dr Ngoi leave to adduce further evidence on appeal directed to the events which immediately preceded the insertion of “\$5,280,000” in the form of agreement and the initialling of that price by Ms Wen.³ The approach eventually taken by the Court of Appeal in allowing the appeal meant it did not have to address the significance of that evidence. So the factual position in respect of this aspect of the case is still unresolved.

[7] Counsel for the applicant contends that the proposed appeal raises issues of public or general importance particularly as to: (a) the authority of real estate agents to commit their principals; and (b) the principles to be applied in determining the point at which a concluded contract for the sale of real property emerges from a process of offer and counter-offer.

¹ *Ngoi v Wen* [2016] NZHC 1621 (Edwards J).

² *Ngoi v Wen* [2017] NZCA 519 (Kós P, Woolford and Collins JJ).

³ *Ngoi v Wen* [2017] NZCA 85 (French, Miller and Winkelmann JJ).

[8] We accept that if leave to appeal were granted, the Court would be required to address the issues just identified. This, however, would be in the context of peculiar and still heavily disputed facts which are highly relevant to determining the actual authority of the agent and the particular manner in which the parties envisaged that a concluded contract would be entered into. Against this background, we are of the view that the appeal does not in fact raise issues of public or general importance.⁴

[9] For the sake of completeness only (because counsel for Ms Wen did not rely on the miscarriage ground), we see no appearance of a miscarriage of justice.

[10] Accordingly, the application for leave to appeal is dismissed.

[11] Costs of \$2,500 are awarded to the respondents.

Solicitors:
Pidgeon Law, Auckland for Applicant
Buddle Findlay, Wellington for Respondents

⁴ Supreme Court Act 2003, s 13(2); Senior Courts Act 2016, 74(2).