



## Supreme Court of New Zealand

6 March 2009

### **MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

***Mark Moncrieff Stevens and Others v Premium Real Estate Ltd***  
**(SC 23/2008 [2009] NZSC 15)**

### **PRESS SUMMARY**

**This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

In February 2004, Mr and Mrs Stevens granted Premium Real Estate Ltd a sole agency for the sale of their Auckland residence. At the time, the Stevens believed their property was worth \$3m. In April 2004, based on the advice of their agent, the Stevens agreed to sell their property for \$2.575m. Settlement occurred in July 2004. At the time of sale, the Stevens were unaware that the purchaser was a property speculator for whom the agent engaged by the Stevens was already acting in relation to other properties. Four months later the purchaser resold the property for \$3.555m. Premium acted in both property sales by the Stevens and the subsequent purchaser.

Finding the Stevens' property to be worth \$3.25m at the time of its initial sale, the High Court held Premium liable for breach of fiduciary duty. The High Court ordered Premium to pay damages of \$675,000 (\$3.25m - \$2.575m) and to disgorge commission received on the property's sale of \$67,050. The Court of Appeal dismissed Premium's appeal against liability but reduced the monetary award to \$225,000 without forfeiture of the commission.

The Supreme Court has unanimously dismissed Premium's appeal against liability and, by majority, allowed the Stevens' appeal against the quantum of compensation awarded to them by the Court of Appeal. It has held that Premium's agent deliberately misled the Stevens about the purchaser's purpose in acquiring their property and that the Courts below were correct to find that a breach of the fiduciary duty of loyalty was committed. Premium is ordered to pay damages of \$659,813 to the Stevens (the difference in net proceeds of a sale of \$3.25m and a sale at \$2.575m). The High Court's order for repayment of the commission of \$67,050 is restored as Premium has not earned it by good faith performance.

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