

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 23/2008  
[2009] NZSC 31**

BETWEEN	MARK MONCRIEFF STEVENS AND OTHERS Appellants
AND	PREMIUM REAL ESTATE LTD Respondent

Court: Elias CJ, Blanchard, Tipping, McGrath and Gault JJ

Counsel: W Akel and N M Alley for Appellants  
P J Napier for Respondent

Judgment: 3 April 2009

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**JUDGMENT OF THE COURT (RECALL APPLICATION)**

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**The application for recall is dismissed with costs of \$2,500 to the appellants.**

**REASONS**

[1] The respondent seeks recall of this Court’s judgment of 6 March 2009.<sup>1</sup> It wishes to have a question relating to the market value of the property referred back to the Court of Appeal. This was not however a matter which the respondent sought to raise in connection with its opposition to the appellants’ leave application in this Court. No notice of intention to support the judgment of the Court of Appeal on this ground was given by the respondent nor did it seek to challenge the market value figure adopted by the Court of Appeal in its own application for leave.

[2] Very significantly, notwithstanding that one of the approved grounds on which the Stevens were granted leave was “whether the Court of Appeal adopted the

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<sup>1</sup> [2009] NZSC 15.

correct approach to the assessment of damages and correctly fixed the quantum of damages”, the respondent did not seek to have the valuers’ evidence included in the Case on Appeal despite having the omission of that material from the draft Case expressly drawn to the attention of its counsel and solicitors by the solicitors for the Stevens.

[3] Furthermore, at the hearing, when it was pointed out from the Bench that this Court was at a disadvantage concerning the assessment of market value because the valuation reports were not before it, no attempt was made, even at that late hour, to have the Court receive them.

[4] The respondent chose not to have this Court examine the basis on which the trial Judge made her assessment of market value, except on the limited argument which is mentioned in para [87] of the reasons and without reference to valuation reports. Having proceeded in that way, the respondent must now accept the finality of the judgment of this Court. No proper basis for the recall of the judgment has been made out. It is not in the interests of justice that having with apparent deliberation omitted to provide sufficient support for its argument on valuation, the respondent should be given an opportunity of remedying that omission in the manner which it now proposes. The judgment of this Court must stand.

Solicitors:  
Simpson Grierson, Auckland for Appellants  
Keegan Alexander, Auckland for Respondent