

IN THE SUPREME COURT OF NEW ZEALAND

SC 127/2011  
[2012] NZSC 13

BETWEEN	XING HUA (DAVID) DU Applicant
AND	MING GU Respondent

Court: Elias CJ, McGrath and William Young JJ

Counsel: C T Patterson and E Grove for Applicant  
G P Blanchard for Respondent

Judgment: 6 March 2012

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed with costs of \$2500 to the respondent.**

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**REASONS**

[1] This application for leave to appeal is concerned with whether the applicant, a real estate agent, was in breach of the Real Estate Agents Act 1976 by entering into a joint venture contract with the respondent for the development of land she owned while the applicant's employers had it listed for sale.

[2] The central issue is whether the applicant had validly terminated the listing agreement prior to entering into the joint venture. It is now common ground that the applicant had power to terminate that listing agreement on reasonable notice under an implied term. The High Court<sup>1</sup> and Court of Appeal<sup>2</sup> held that, by his words and conduct, the applicant gave eleven days' notice to terminate the listing before it was

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<sup>1</sup> *Xing Hua (David) Du v Ming Du* HC Auckland CIV-2009-404-577, 7 December 2010.

<sup>2</sup> *Ming Gu v Xing Hua (David) Du* [2011] NZCA 577.

effectively terminated by removal of the listing from his employer's computer. The Court of Appeal held that at least fourteen days' notice of termination had to be given, so that the listing agreement remained in force at the time that the parties entered into the joint venture contract. This was in breach of ss 63 and 64 of the Real Estate Agents Act and the joint venture contract was accordingly voidable at the option of the respondent. In the proposed further appeal, this Court would be asked to decide whether the agent had complied with the implied term of the listing agreement by giving notice of termination of eleven rather than fourteen days, so that its notice was valid and effective, and the joint venture contract remained binding.

[3] We consider that this issue would raise no question of general commercial significance or general or public importance. The Court of Appeal's judgment turns on what is reasonable notice on the terms of the standard contract of a particular company in an unusual factual context. We are satisfied that the Court of Appeal's application of the 1976 Act to the particular circumstances does not give rise to an arguable question of law. Nor does the contention that there was a repudiation of the contract by the applicant which was accepted by the respondent.

[4] In these circumstances the applicant has not met the statutory requirements for a further appeal and the application for leave to appeal is dismissed.

Solicitors:  
Bute Law, Auckland for Applicant  
Ross Holmes Lawyers, Auckland for Respondent