

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV 2017-404-2678
[2017] NZHC 3279**

IN THE MATTER OF an appeal under sections 113 & 116 of the
Real Estate Agents Act 2008

BETWEEN DERMOT GREGORY NOTTINGHAM,
PHILLIP RAYMOND NOTTINGHAM &
ROBERT EARLE McKINNEY
Plaintiffs

AND REAL ESTATE AGENTS DISCIPLINARY
TRIBUNAL
First Respondent

MARTIN RUSSELL HONEY
Second Respondent

Hearing: On the papers

Judgment: 21 December 2017

JUDGMENT OF DUFFY J

This judgment was delivered by me on 21 December 2017 at 10 am pursuant to
Rule 11.5 of the High Court Rules.

Registrar/ Deputy Registrar

[1] The application for recall of judgment by the plaintiffs has been referred to me for consideration. I have read the application. There is nothing set out in the application that satisfies the tests for recall of judgment.

[2] Rule 11.9 of the High Court Rules provides for the recall of a judgment any time before a formal record of it is drawn up and sealed. The annotation to r 11.9 notes that recall of a judgment is a serious step to be taken only in reasonably well identified situations. The leading statement on recall of judgments is to be found in *Horowhenua County v Nash (No 2)*:¹

Generally speaking a judgment once delivered must stand for better or worse subject, of course, to appeal. Were it otherwise there would be great inconvenience and uncertainty. There are, I think, three categories of cases in which a judgment not perfected may be recalled – first, where since the hearing there has been an amendment to a relevant statute or regulation or a new judicial decision of relevance and high authority; secondly where counsel have failed to direct the court’s attention to a legislative provision of authoritative decision of plain relevance; and thirdly where for some other very special reason justice requires that the judgment be recalled.

[3] In *Unison Networks Ltd v Commerce Commission*² the Court of Appeal concluded that the third category was intended to be narrow and that cases appropriate for recall on that basis are likely to be rare. Examples of cases falling within the third category are set out at 11.901(5) of the High Court Rules. I have carefully considered all of those examples. None of them apply to the circumstances before me. I am satisfied that the present application is not appropriate for recall and accordingly the application for recall is dismissed.

¹ *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (NZSC) at 633.

² *Unison Networks Ltd v Commerce Commission* [2007] NZCA 49.