

**IN THE DISTRICT COURT  
AT KAIKOHE**

**CRI-2016-027-000966  
[2017] NZDC 26217**

**REAL ESTATE AGENTS AUTHORITY**  
Prosecutor

v

**PAUL ANDREW BAKER**  
Defendant

Hearing: 15 November 2017  
Appearances: N Copeland for the Prosecution  
T Williams for the Defendant  
Judgment: 27 November 2017

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**DECISION OF JUDGE M J HUNT**

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[1] It is alleged that Mr Paul Baker carried out Real Estate Agency Work without being licenced to do so and without being exempt from the requirement to be licenced in relation to the sale of a property at [address deleted – the property] between September 2012 and March 2014.

[2] This is a prosecution pursuant to s 141 Real Estate Agents Act 2008 and carries a maximum penalty of a fine not exceeding \$40,000.

[3] Mr Baker denies the charge.

[4] The prosecution bears the onus of proving the offence beyond reasonable doubt.

[5] Mr Baker gave evidence and called evidence but that does not change the onus on the prosecution or the standard of proof.

[6] It was not in dispute that Mr Baker was not a licensed real estate agent and that he was not exempt because of the statutory exceptions from the requirement to be licenced if he was found to have carried out Real Estate Agency Work. Several matters were agreed and admitted.<sup>1</sup>

[7] The focus of the hearing was on the transaction between [the vendors] as executors in the estate of [name deleted] where the property at [address deleted] was sold to [the purchasers].

[8] A written contract dated 14 November 2013<sup>2</sup> recorded the sale terms. The transaction settled on or about 13 February 2014<sup>3</sup>. At settlement, the purchaser had been changed to [company name deleted – the purchasers’ company]. No issue was raised with that change during the hearing. The evidence was clear that the [purchasers] negotiated to purchase the property and it seems clear they formed the company after the contract but before settlement as an ownership vehicle.

[9] The connection for Mr Baker was that [the deceased] was married to his sister. The trustees of the estate are [the deceased’s] daughters and therefore Mr Baker’s nieces. Furthermore, Mr Baker knew of the property because he expressed an interest in purchasing it at one point and at the relevant times was leasing and farming an adjoining block of land<sup>4</sup>.

[10] There was a preliminary issue at the commencement of the trial relating to the evidence of [purchaser 1]. An application was made to have his written statement admitted as documentary hearsay. It was said that he was unavailable. There was no evidence regarding his availability or unavailability save advice from counsel that he was in Auckland. The application was withdrawn by the prosecution after a brief exchange with the Court and in the face of opposition by Mr Baker. As matters transpired his wife [purchaser 2] was called as a witness by the defence.

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<sup>1</sup> A memorandum of admitted facts was provided

<sup>2</sup> Exhibit 1 contract dated 14 November 2013

<sup>3</sup> Exhibit 6 settlement statement vendor estate [the deceased] purchaser [the company].

<sup>4</sup> Defence exhibit A indicated he is a director of a company that leases a farm

[11] The evidence called by the prosecution came from [vendor 1, vendor 2] and [name deleted – the investigator] who is the investigator for the Real Estate Agents Authority. [The investigator] took a written statement from the defendant<sup>5</sup> and provided a transcript of an audio<sup>6</sup> interview. I was not required to listen to the audio and it was not produced but I read the transcript. There were some minor amendments to the transcript which were noted and agreed to.

## **The Law**

[12] The Real Estate Agents Act 2008 defines Real Estate Agency Work or Agency Work as being:

Any work done or services provided, in trade, on behalf of another person for the purpose of bringing about a transaction; and...<sup>7</sup>

[13] There is an express exclusion at paragraph 4(c) to Real Estate Agency work;

- (c) Does not include –
  - (i) The provision of general advice or materials to assist owners to locate and negotiate with potential buyers.

[14] It is important to note that it is not alleged Mr Baker purported to act as a Real Estate Agent but that he carried out Real Estate Agency work in relation to [the property]. It was accepted he was not exempt but it was argued that any work was only of a kind referred to in para 4 [c].

[15] Mr Williams for the defendant prepared written submissions. They focused on key legal issues and while they anticipated the evidence they were further developed orally having regard to the evidence.

[16] Mr Williams argues that there is a requirement for there to be an “agency” relationship between the defendant and another person and the term “on behalf” in the definition was to be interpreted in that light. He said the role which the prosecution asserted for Mr Baker did not meet the requirements for an agency and that on Mr Bakers account of events it fell well short.

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<sup>5</sup> Exhibit 9

<sup>6</sup> Exhibit 8

<sup>7</sup> Section 4(1)

[17] The prosecution used the term “intermediary” to describe the role Mr Baker played. Mr Williams expressed a preference for the term “go between” however dictionary<sup>8</sup> definitions suggest that no meaningful distinction can be identified between the two terms.

[18] In the search to find a term to distinguish what Mr Baker did from what is caught by the Act, Mr Williams has been caught up in unhelpful semantics. The words “on behalf” are sufficiently clear not to require further definition and allow for an examination of the facts to ascertain whether that is what occurred. The terms “go between” and “intermediary” are interchangeable.

[19] Further developing the point, Mr Williams maintained that “on behalf” required agreement and clear evidence by way of appointment as agent between the defendant and another person for the purposes of bringing about the transaction. Mr Williams focused on the relationship of principal and agent which he said was required and which he said had not been demonstrated.

[20] The reference he relied on in *Maxwell James House v Anor v Real Estate Agents Authority*<sup>9</sup> did not identify what is required for a relationship of principal and agent. The Court said;

[50] This conclusion effectively treats the definition as applying to the overall task the agency is required to perform: once the relationship of principal and agent has been established anything (be it an act or omission) that is related directly or indirectly to that work is liable to be within the definition. This accords with the pivotal nature of the definition in the scheme of the Act and its importance for the achievement of the statutory purpose.

[21] Mr Williams argument was that absent a requirement for agent and principal, the definition of Real Estate Agency work would be absurdly wide<sup>10</sup> and that the prosecution had failed to establish any evidence of a relationship of principal and agent between any of the parties.

[22] The issue of what is required to create such a connection was not addressed. While in some cases the appointment of an “agent” will be a formal appointment in

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<sup>8</sup> Collins internet dictionary – synonyms- intermediary agent medium broker

<sup>9</sup> *Maxwell James House & Anor v Real Estate Agents Authority* [2013] NZHC 1619 at 50

<sup>10</sup> Paragraph 8 Submissions in closing

writing with clearly constrained parameters and agreed terms, in many cases an appointment will be less structured but nevertheless created in substance. The words “on behalf” clearly include the position where there is an undertaking conducted at the request of another person and on their behalf for the purposes of bringing about a transaction. Using the statutory words clearly conveys what is intended without adding any additional gloss to the Act by substituting the terms principal and agent or adding any prescriptive requirement for appointment.

[23] The submissions of Mr Williams contemplate a more structured and prescriptive arrangement of principal and agent than is required. While there was no written agreement for Mr Baker to undertake certain work for both the [purchasers] and the vendor estate that is not conclusive. The requirement for work or services undertaken on behalf of a party does not specify that as a necessary requirement.

[24] Mr Williams submitted that there are several aspects that were not present in this case <sup>11</sup>which indicate that Mr Baker was not carrying out Real Estate Agency Work. I will return to those factors in the analysis.

[25] The list drawn by Mr Williams belies the reality and range of real estate agency work where the communication of offers and negotiation of price is a part of the undertaking and where the express purpose is to bring about a transaction. The activity may fall short of a written offer or acceptance but the definition does not require a transaction be concluded simply that the work done is for that purpose.

[26] The fact that an oral agreement may not be enforceable in a land transaction does not alter the fact that the purpose of the oral exchange is to progress the parties to the stage where binding commitments be made. Mr Williams’ argument would result in a narrow definition where only those things that resulted in a binding agreement were caught. It is the purpose of the work or service that is the focus not the end result.

[27] The fact that the written agreement said that the sale was by private treaty is also not definitive.

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<sup>11</sup> He listed them at para 12 of his submissions

[28] The second legal aspect addressed by Mr Williams relate to whether to the way in which the term “in trade” is to be applied. Mr Williams highlighted that it was not Mr Baker’s trade to be in the buying and selling of real estate. That is ultimately a question of fact but I approach it on the basis that it is not a requirement that he hold himself out as a Real Estate Agent per se, it is simply enough that he is engaged to undertake work of the kind described. It is what he does that is the focus not the description he uses for it.

[29] Here the allegation is that as an act of commerce he took various steps to achieve a sale of the property on behalf of the parties. The definition of trade from the Fair Trading Act <sup>12</sup>provides a helpful definition;

Trade means any trade, business, industry, profession, occupation, activity of commerce, or undertaking relating to the supply or acquisition of goods or services or to the disposition or acquisition of any interest in land.

[30] It would again be artificial and unduly narrow if only those who identified themselves as a Real Estate Agents were caught by the Act. The purpose of the legislation must be to capture those circumstances where people are covert about their conduct but nevertheless are acting in that capacity. That does not broaden the scope of matters to a point where tradesmen engaged in preparing a house for sale would be in difficulty. Their function is to complete the painting of the house for which they are paid and would not in the ordinary understanding extend to being for the purpose of bringing about a transaction.

[31] Direct engagement on behalf of a party or parties with the purpose of bringing about a sale and purchase transactions in trade by the defendant is what is alleged here and if proven is sufficient.

### **Analysis.**

[32] [Vendor 1]’s evidence suffered from the fact that she was not engaged directly with Mr Baker in the course of matters but relied on reports from her sister. She was an active, involved trustee and diligent about the responsibilities of trusteeship. She was mindful that she and her sister had to communicate openly and regularly about

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<sup>12</sup> Section 2 Fair Trading Act 1986

those matters that needed to be addressed in the course of managing their late father's property and I am satisfied that both ensured that there was consensus around any decision making.

[33] Nevertheless, [vendor 1] was not at the forefront of the negotiations and much of what she relied upon was hearsay being reported conversations from her sister about the engagements with Mr Baker. For that reason, I can attach limited weight to the evidence of [vendor 1] and focus on the evidence of [vendor 2].

[34] Some of the conflicts in the evidence between Mr Baker and [vendor 2] were resolved by the evidence of [purchaser 2] who was the buyer of the property.<sup>13</sup> This was particularly the case in terms of the understanding that the [purchasers] had about Mr Baker's role and the functions he performed for them.

[35] [Vendor 2] confirmed that her father had died unexpectedly in 2004 and that as trustees she and her sister [vendor 1] were responsible for administering his estate. This included the property at [address deleted] which is a modestly sized farming block with a house.

[36] Initially the widow of [the deceased] ([vendor 2's] mother) resided on the property but subsequently the house was tenanted. [Vendor 2] and her husband took primary responsibility for the day-to-day management of the property. They felt that they undertook some improvements over time and they applied themselves to the management of the farm as time and circumstances permitted. Mr Baker was disparaging of the state of property and there were further improvements to be done but I accept it was looked after by [vendor 2] and her family in a competent way. It was attractive to the [purchasers] and to Mr Baker.

[37] As time passed the demands of [the property] did become somewhat onerous. The [vendors] had their own property, a busy family life and other work obligations that meant it was difficult to manage all of those within the time available. The collective view of the family was taken that the property might be marketed for sale but there was no haste or pressure around that. Both trustees confirmed that the farm was adequately profitable and that there was no financial pressure to sell. This was in

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<sup>13</sup> Using the company.

contrast to the evidence of Mr Baker who suggested otherwise but who had no first-hand knowledge.

[38] Mr Baker confirms that in his interview where he said he; “Couldn’t tell you how financially strapped, because I wasn’t totally privy to that to that information”.<sup>14</sup> He confirmed he did not see books of account or other financial details.

[39] At the time that they were contemplating selling the trustees had an approach from Mr Baker and his son. His offers were less than the appraisals which [the vendors] had received from agents and so that discussion did not proceed any further. Mr Baker had a working knowledge of the property and a knowledge of the price level at which the property had been appraised by real estate agents. I accept [vendor 2’s] evidence that those appraisals were disclosed to Mr Baker.

[40] The property was then listed for sale with two real estate agents but marketing of the property did not result in any offers.

[41] Mr Baker was visited by the [purchasers] on or about 8 September. Mr Baker says that the [purchasers] asked his view about another property which he thought was not suitable. Mr Baker suggested [the property] although the [purchasers] had previously rejected it based on a Trade me listing price. Mr Baker offered to enquire if it was still for sale which led to the phone call to his sister.

[42] Mr Baker’s sister confirmed the property was still on the market but he was told that any dealings were to be with [the vendors].

[43] On September 29 2013, Mr Baker on behalf of the [purchasers] inquired about the possibility of a sale to “clients” of his. [Vendor 2] kept a diary consistent with her intention to make sure all matters relating to the property were discussed with [vendor 1] and her diary<sup>15</sup> entry recorded:

Paul Baker called about people interested in [the property], he would talk to them to maybe put in an offer.

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<sup>14</sup> Page 7 Paragraph 5 transcript of interview

<sup>15</sup> Exhibit 7

[44] [Vendor 2] was clear that Mr Baker made a series of phone calls regarding the proposals for purchase but that at no time disclosed who the prospective purchasers were. She said that an offer of \$350,000 was rejected as was an offer of \$385,000 but that when asked to settle on a final figure or a bottom line the family met and agreed that \$450,000 was the minimum price that they would accept. That they said was duly communicated to Mr Baker who in turn confirmed that there was an agreed sale at \$450,000. [Vendor 2] then arranged for a rates notice but to be dropped off to Mr Baker so he had the legal description to work from.

[45] Coincidentally the [purchasers] knew [vendor 2] and her family and met [vendor 2]'s husband at a local A&P Show on or about 9 November. The [purchasers] disclosed at that point that they were the successful purchaser because by then the agreed sum of \$450,000 had been settled upon. It was arranged that they would attend the property for a comprehensive viewing and that occurred on 10 November 2013.

[46] Prior to making the offer of \$450,000, the trustees did not know the [purchasers] were the intended purchasers and whilst the [purchasers] had visited the property they did not undertake a comprehensive viewing or make the fact of the viewing known to the vendors. They were reliant upon Mr Baker and his understanding of the property, its suitability for their needs and his indication as to the appropriate pricing. Mr Baker ensured that he was instrumental in securing an agreement by keeping the [purchasers'] identity to himself and funnelling all communication through him. He only referred to the [purchasers] as his clients to [vendor 2].

[47] Mr Baker gave evidence that he had been retained by [vendor 2] as a consultant at about the time he asked if the property was for sale<sup>16</sup> to undertake various aspects of due diligence appraisal relating to the property and its potential for alternate uses and/or possible sale.

[48] Mr Baker's evidence was not credible. It was clear the first dealing with [vendor 2] was on 29 September and the inquiry was whether the property was for sale. He was told it was. If there had been a further discussion about advice from Mr

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<sup>16</sup> This can only have been 29 September 2013.

Baker at a significant cost, I am sure that [vendor 2] would have noted it and consulted her sister. She did not. There was no discussion about farming/consultancy advice. The only purpose of the 29 September call by Mr Baker was to confirm the property was for sale which was the only confirmed outcome of the call. I reject the notion that with little or no information about the farm and input from the [vendors] that Mr Baker could have undertaken any form of comprehensive review of the farming operations let alone to the extent where a charge of \$18,000 (GST inclusive) could be justified.

[49] The situation was one where Mr Baker had a personal interest as he had previously expressed an interest in purchasing or leasing the property and still considered that a lease by him might be an available option. He had an interest in advising the [purchasers] on the basis that they were undertaking enquiries for a suitable block of land. He indicated to them that [the property] was suitable for their needs. He knew the vendors and intended that he would act on their behalf conveying offers and information to the vendors as required to see if a deal could be reached.

[50] The vendors were willing to have Mr Baker undertake the task of relaying their price requirements to an unknown potential buyer with a view to seeing if agreement could be reached on price. This was the key variable to a sale. They had no way of knowing more than Mr Baker had a “client” with an interest in purchasing because that is all he disclosed.

[51] This puts the later assertions and related threats by Mr Baker about a Trade Me viewing by the buyers into context<sup>17</sup>. Mr Baker knew that a Trade me viewing by a buyer might mean a commission was payable to a Real Estate agent but he chose to become instrumental in the transaction rather than refer the buyers back to the Real Estate agents. The motivation for that is easy to understand considering his subsequent actions. He thought he would be paid the equivalent commission himself and when he was not he was upset and used the threat to put pressure on the vendors to pay him.

[52] [Vendor 2] was emphatic that she did not commission Mr Baker to undertake any advisory task let alone the extensive advisory works (to the extent of \$18,000) and I accept her evidence. She was credible and consistent in her evidence. There was a

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<sup>17</sup> Exhibit 5

discussion about a charge later but that related to the sale process and the figure of 4% was mentioned by Mr Baker. That triggered some debate between [the vendors].

[53] Mr Baker rendered an invoice<sup>18</sup> for “professional services and consultation fees as agreed”. The timing of that invoice is a matter of dispute but the fact that it was rendered is not. The bill was \$18,000 including GST. Mr Baker initially said it was for \$15,000 plus GST for works undertaken but accepted that was not correct as \$15,000 plus GST is \$17,250. However, the sum of \$18,000 is 4% of the ultimate sale price<sup>19</sup> and although it does include GST, the relationship to the sale price is no coincidence.

[54] The agreement regarding \$450,000 as the price was consummated by a written contract prepared by the [purchasers’] solicitor and approved by the lawyer for the estate. There were some minor amendments regarding GST and settlement date. [Vendor 2] consulted Mr Baker about the implications of the GST issue although he may have deferred to accountants and lawyers. The contract was signed on or about 14 November 2013, confirmed on or about 28 November 2013 and settled in February 2014.

[55] Mr Baker’s response to the narrative from [vendor 2] was to say that she was mistaken and wrong. He said there had been no discussions regarding price, there had been an undertaking by him to complete some due diligence as part of a consultancy business that he operated in combination with his lifestyle work and that he had dutifully done that and conveyed the outcome. He could not produce any time records or contemporaneous documents although he acknowledged he maintained a diary at the time. He could not produce any of the workings or due diligence work that he had completed. He said these had been destroyed when he decided not to pursue recovery of the debt. I do not accept that a prudent businessman would have acted in that way.

[56] He said it was a practice in the past that he had undertaken other consulting work but only two instances were drawn to my attention in the invoice book that he produced.<sup>20</sup> The first of which was invoice 699609 which refers only to grazing the

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<sup>18</sup> Exhibit 2

<sup>19</sup> Excluding GST although it was zero rated so the sum payable was \$450,000.

<sup>20</sup> Defence Exhibit B – for the period 2007 to 27 November 2013.

lease and a bill of \$1,500 and the second invoice 699634 which refers to, “Lease negotiation, to meet with yourselves, 25 November 2010 to determine current position” and includes a reference to “Negotiate on your behalf”.

[57] The invoices did not support the proposition that Mr Baker was charging in the order of \$3,000 to \$5,000 per day for consultancy services and he could not point to any other instance where he had charged those sums to clients before or since. His evidence and the interview do confirm that he regarded himself as acting in a professional capacity in dealings relating to farming matters including the sale and purchase of farms.

[58] He also provided a CV<sup>21</sup> outlining his expertise and indicated that amongst other things that he provided independent contract work assessing farm systems and financial viability of farming operations to farmer clients.

[59] [Purchaser 2] was called by the defence and confirmed much of what [vendor 2] had said with only some minor points of difference. What she clearly indicated was Mr Baker was relied upon to identify and communicate with the vendors of the property and they did not know who the vendors were until they had concluded arrangements as to price. Mr Baker was relied upon by them in terms of advising about the suitability of the property and they had regard to his advice in making decisions about the purchase of [the property].

[60] Mr Bakers advice was that the price should be between \$380,000 and \$400,000 but he ascertained that the vendors would accept \$450,000 and the [purchasers] accepted that. They took it that that was the best price that could be negotiated and so relied on Mr Bakers negotiating skills because they asked Mr Baker to communicate the offers and relay the counter proposal and did not ask to deal with the purchasers directly. Mr Bakers role was crucial because he had knowledge that neither party possessed about the other. The [purchasers] rewarded him with a year’s free grazing on the property and were complimentary about the husbandry of the property during that period. They did not receive an invoice for the work Mr Baker

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<sup>21</sup> Defence Exhibit A

had undertaken but the [purchasers] clearly felt a sense that there was work to be paid for and paid in a way they could afford.

[61] Once the matter of price was settled through Mr Baker, the mechanics of a contract and settlement were dealt with by the parties respective solicitors including some details regarding possession and GST.

[62] The involvement of Mr Baker was instrumental from the [purchasers'] point of view and was also essential for the vendor who did not know who the buyer was.

[63] Mr Baker's evidence was to the effect that he had not negotiated price and that had only been concluded when the written offer had been made. He said he had been engaged by the Trust to undertake certain advisory work which he had properly invoiced and that he was not instrumental in the agreement which was ultimately reached. I do not accept that he was engaged by the trustees to undertake advisory work of the kind he described. It is a contrived explanation to explain the invoice.

[64] The invoice reflects the fact that Mr Baker believed he was involved in the sale in a way that was fundamental to the sale. He used his professional skills and knowledge to provide the [purchasers] with particulars of the property and the benefit of his knowledge about its suitability for their needs. He advised them about price and he helped negotiate the key contractual matter of price. Mr Baker called evidence to that effect from [purchaser 2]. If the point of her evidence was that it was to establish that Mr Baker was not doing Real Estate Agency work it served exactly the opposite purpose. He may not have said he was a Real Estate Agent and the [purchasers] knew that but he was doing Real Estate Agency work for them.

[65] Mr Baker alleged that the first invoice had been created on 20 October and sent contemporaneously. His point was that it predated the contract becoming unconditional and it was not connected to the contract. [Vendor 2] said that she had not received it and did not accept that it had been sent. She acknowledged receiving only invoices dated 27 November, 20 January and the subsequent letter which included a further copy of the invoice. I accept her evidence. Mr Baker flagged an earlier expectation of payment in a phone conversation once price was agreed but there was no detail of the amount except a reference to 4%.

[66] Mr Baker may have generated an invoice but it was in anticipation of the negotiations which he had initiated and had reached a conclusion being consummated by a written agreement. I do not think it was sent until the contract became unconditional because the entitlement was not triggered until the sale was confirmed. I accept the first invoice received by [vendor 2] was the one dated 27 November 2013.

[67] The invoice is not conclusive evidence of a breach of the Act but the pattern of behaviour and the findings I have made about Mr Baker's engagement are. I am satisfied that he did in fact carry out Real Estate Agent work of a kind that was directly intended to bring about a transaction and did in fact do so.

[68] Furthermore looking at Mr Williams' list of things he said Mr Baker did not do<sup>22</sup>;

- (a) Enter into an agency agreement with the vendors.
- (b) Advertise or market the property.
- (c) Introduce the purchasers to the property.
- (d) Visit the property with the purchasers.
- (e) Negotiate contract terms.
- (f) Prepare the sale and purchase agreement.

[69] Mr Baker did act on behalf of vendor and purchaser. A written agency agreement was not required.

[70] He procured a bottom line figure from the vendor which was accepted and directly led to the contract and the completion of a transaction. That was its purpose. He acted on behalf of the vendor and purchaser.

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<sup>22</sup> Paragraph 12

[71] He did represent to the [purchasers] that the property was suited to their needs and promoted it in that way.

[72] He made an introduction for the buyer to the vendor and he completed the negotiations about price.

[73] He advised the purchaser about the merits of the property and pricing and on his account purported to advise the vendors about the same issues. He regarded himself as having some expertise in these matters having previously dealt with land related transactions. This was work he undertook with the expectation of payment and where the [purchasers] regarded him as having relevant professional competency.

[74] He did not visit the property or prepare the sale and purchase agreement. I do not accept that all of the factors listed were not present. A number were either partly or fully engaged.

[75] Although the vendors thought he was not entitled to payment, I am left with the very clear view that if Mr Baker had been less rapacious in his demands, the matter may have been resolved without complaint.

[76] Both vendor and purchaser had an expectation that Mr Baker would faithfully undertake his function in the negotiations and act on their respective behalf for the purpose of bringing about a transaction. Once the agreement was concluded orally both acted on that agreement to complete the transaction.

[77] Mr Baker's evidence was not credible. The invoice that he rendered was timed to coincide with the confirmation of the contract. It was tendered on or about 27 November. It was not consistent with the pricing that he indicated of \$3,000 to \$5,000 per day for consultancy work. He had not retained any of the workings, did not produce any time record and on his account provided none of the details of his assessment to the vendor. He had no details from the vendor to enable him to complete the work. I am not persuaded at all that there was any truth to the evidence of extensive consultancy work commissioned by the estate or in fact completed by Mr Baker. His evidence did not create any doubt about the evidence of [vendor 2]. She was a truthful and honest witness.

[78] The invoice related to the sale and was based on Mr Baker's assessment that he had been instrumental in bringing about a transaction in circumstances where there was no other commission payable. Mr Baker expected to be paid for achieving a sale of the property.

[79] The [purchasers] relied on Mr Baker to provide details about the property which well beyond general advice and that exclusion does not assist Mr Baker. This was not general advice. It was very targeted and transaction specific work. It was Real Estate Agency work.

[80] Mr Baker called evidence from [witness 1 and witness 2]. They confirmed that Mr Baker had on previous occasions acted in their capacity on assisting buyers to assess the property for suitability. [Witness 1 and witness 2] thought [witness 1] did this in the hope of securing related work subsequently but nevertheless it was in the course of his professional dealings with them and others they introduced.

[81] It follows from all of this that I find that the charge is proven beyond reasonable doubt. The matter of sentencing will be dealt with on 2 March 2018 at 11:45am in Kaikohe. Any submission on sentence are to be filed at least 5 working days prior to sentencing.

M J Hunt  
District Court Judge