

High Court, reversing a district court's decision, ruled that he was liable for misrepresentation that led to the loss.

A couple who lost about \$210,000 investing in a New Zealand property will recover the sum from the director of a Singapore real estate company after the High Court ruled that he was liable for **misrepresentation** that led to the loss.

HEADLINES



Court rules estate agency director liable for botched NZ deal, to pay \$210,000 in property investment losses

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The court's decision reverses that of a district court which earlier this year cleared director Jimmy Sim but held his company Faber Property liable.

"If the estate agent is **negligent** and does not do the necessary checks, I do not see why investors should not have a claim against estate agents," wrote Senior Judge Lai Siu Chiu in judgment grounds released on Monday.

The saga began in 2012 when Mr David Haw and his wife, Cindy, paid about \$210,000 for three residential units near Auckland.

Faber had marketed the project, whose developer was New Zealand company Albany Heights Villas (AHVL). The money was paid to Singapore-based Hunter Sterling & Company, which owned AHVL.

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But it turned out that AHVL had neither the land title nor resource consent to develop the parcel. Evidence, however, showed that neither Mr Sim nor an associate director, Ms Belle Seah, knew this then.

AHVL became insolvent and investigations in New Zealand showed that the people behind the project had creamed off "substantial sums" paid as deposits by buyers, including Singaporeans. It was also uncovered that Hunter Sterling was owned by four individuals, including two who were undischarged bankrupts.

The couple, through lawyers Harish Kumar and Jonathan Toh, sued Faber, its sole director and key executive director, Mr Sim, and Ms Seah, for **negligent misrepresentations**.

After winning judgment for \$210,000 in the district court against Faber, the couple appealed to the High Court in October against Mr Sim and Ms Seah, both of whom were not held liable by the district court.

"The appeal was necessary because there was no prospect of recovery against Faber Property as it has no assets and is no longer operating," said Mr Kumar.

Senior Judge Lai said the central issue in the appeal was under what circumstances an agent can be held personally liable for representations made on behalf of his principal.

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Among other things, the couple alleged that **Mr Sim had misrepresented that Faber, Ms Seah and himself had undertaken checks on the project's ownership and legality and done all the relevant due diligence checks on the developer.**

They argued that Mr Sim owed them a personal duty of care, which his lawyer, Mr Akesh Abhilash, disputed, based on the findings of the district judge.

Senior Judge Lai found Mr Sim did, in fact, make the alleged representations to the couple and found on various grounds that "there is nothing preventing Jimmy Sim from having assumed personal responsibility towards the couple for the representations he made".

The judge found that Mr Sim **breached his duty of care** towards the couple, but Ms Seah did not as her role in marketing was to say what she was trained to say as a salesperson.