

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

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

**CIV-2019-404-000259  
[2021] NZHC 795**

UNDER

Overseas Investment Act 2005

BETWEEN

CHIEF EXECUTIVE OF LAND  
INFORMATION NEW ZEALAND  
Plaintiff

AND

SMITH ROAD FARM LIMITED  
First Defendant

PARANUI FOREST LIMITED  
Second Defendant

488 MANGANUI ROAD FARM LIMITED  
Third Defendant

Hearing: 14 April 2021

Counsel: KR Muirhead for Plaintiff  
DA Campbell and JS Wang for Defendants

Judgment: 14 April 2021

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**ORAL JUDGMENT OF DOWNS J**

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Solicitors:  
Meredith Connell, Auckland.  
Dentons Kensington Swan, Auckland.

[1] The Overseas Investment Act 2005 regulates investments in New Zealand by persons overseas. The Act recognises it is a privilege for overseas persons to own or control sensitive assets in this country. The three defendants, Smith Road Farm Ltd,<sup>1</sup> Paranui Forest Ltd<sup>2</sup> and 488 Manganui Road Farm Ltd,<sup>3</sup> contravened the Act. The Chief Executive of Land Information New Zealand<sup>4</sup> seeks civil pecuniary penalties and costs. The defendants do not dispute either—indeed anything.

[2] The Song family controlled the defendants. Between 9 August 2011 and 16 February 2016, the defendants acquired interests in sensitive land in Awakino, Ngaruawahia, Awaroa, Paranui and Manganui. The defendants and Song family were overseas persons in terms of the Act. The defendants did not seek permission to obtain interests in any of the properties. Now a little more detail.

[3] On 9 August 2011, Smith Road entered an agreement to purchase land in Awakino comprising 1,100 hectares. Smith Road obtained title 1 December 2011.

[4] On 14 February 2012, Menglu Song, the daughter of Jun Song and Jing Liu, entered an agreement to buy land in Ngaruawahia comprising 1,146 hectares (across nine titles). On 27 February 2012, title was transferred to Smith Road as Ms Song's nominee.

[5] On 24 February 2012, Smith Road entered an agreement to purchase land in Awaroa comprising 284 hectares (across 25 titles). Smith Road gained title 29 February 2012.

[6] The same day, Paranui Forest entered an agreement to purchase Paranui land comprising 786 hectares (across 12 titles).

[7] On 24 December 2015, Jihai Hu, the nephew of Mr Song and Ms Liu, entered an agreement to buy land in Manganui comprising 345 hectares. Manganui Road obtained title 16 February 2016.

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<sup>1</sup> Smith Road.

<sup>2</sup> Paranui Forest.

<sup>3</sup> Manganui Road.

<sup>4</sup> The Chief Executive.

[8] The breaches were serious because the properties are large. Indeed, each is much larger than any other to-date under the Act. Unsurprisingly, the properties are also valuable. The total purchase price was \$12.8 million. The breaches are also serious because the properties were acquired for commercial gain. The Song family wished to diversify their investment portfolio.

[9] The family knew permission was required to buy the land. However, the family was not well served by their lawyer. The breaches reflect negligence, not worse.

[10] The Court of Appeal has warned of the dangers of comparisons with other penalty judgments given the intensely fact-dependent nature of each case. I have considered three: *Chief Executive of Land Information New Zealand v Tang*,<sup>5</sup> *Chief Executive of Land Information New Zealand v Hong*,<sup>6</sup> and *Chief Executive of Land Information New Zealand v BCH Investments Ltd*.<sup>7</sup>

[11] The defendants' culpability is greater than *Tang* and *Hong*, but less than *BCH*.

[12] The Chief Executive contends an appropriate starting range for each of the four properties is between \$170,000 and \$200,000, subject to totality.

[13] The defendants admitted liability promptly; provided "some co-operation" during the investigation, then "fulsome co-operation" during litigation. The defendants have agreed to pay the penalties sought. The Song family are contrite.

[14] Smith Road made a substantial gain in relation to the land at Ngaruawahia. This must be disgorged. The proposed penalty is \$879,304.

[15] The proposed penalty for the land at Awakino and Awaroa is \$236,250. This reflects a totality adjusted starting point of \$315,000, less 25 percent discount for mitigating features.

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<sup>5</sup> *Chief Executive of Land Information New Zealand v Tang* [2018] NZHC 382, (2018) 19 NZCPR 460.

<sup>6</sup> *Chief Executive of Land Information New Zealand v Hong* [2019] NZHC 1561.

<sup>7</sup> *Chief Executive of Land Information New Zealand v BCH Investments Ltd* [2019] NZHC 1630.

[16] The proposed penalty in relation to the Paranui property is \$138,750. This reflects a starting point of \$185,000, less 25 percent discount for mitigating features.

[17] The proposed penalty in relation to the Manganui property is \$127,500. This represents a starting point of \$170,000, again less 25 percent for mitigating features.

[18] The penalties are within the range identified by case law. I order them.

[19] I also order the defendants pay costs of \$16,626.50.

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**Downs J**