SAVE FOR THE REDACTED VERSION OF THE AGREED SUMMARY OF FACTS, THE COURT FILE SHALL NOT TO BE SEARCHED COPIED OR INSPECTED WITHOUT LEAVE OF A JUDGE, ON AN APPLICATION MADE ON NOTICE TO ALL PARTIES.

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY
COMMERCIAL LIST

CIV 2015-404-3047
[2016] NZHC 3111

BETWEEN	COMMERCE COMMISSION Plaintiff
AND	BARFOOT & THOMPSON LTD First Defendant
	HARCOURTS GROUP LTD Second Defendant
	L J HOOKER NEW ZEALAND LTD Third Defendant
	RAY WHITE (REAL ESTATE) LTD Fourth Defendant
	PROPERTY PAGE (NZ) LTD Fifth Defendant

Hearing:	16 December 2016
Counsel:	J C L Dixon, L C A Farmer and A McConachy for Plaintiff M Dean QC for First Defendant A Peterson and I Denton for Second Defendant J Craig for Third Defendant S Ladd and J Trezise for Fourth Defendant M N Dunning QC for Fifth Defendant
Judgment:	16 December 2016

(ORAL) JUDGMENT OF HEATH J

Introduction

[1] Part 2 of the Commerce Act 1986 (the Act) is directed at the regulation of trade practices that have the effect or likely effect of substantially lessening competition in a market. Section 27 creates the prohibition. Section 30 deems certain price fixing arrangements to substantially lessen competition.

[2] Sections 27 and 30 of the Act provide:

> **27 Contracts, arrangements, or understandings substantially lessening competition prohibited**
>
> (1) No person shall enter into a contract or arrangement, or arrive at an understanding, containing a provision that has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market.
>
> (2) No person shall give effect to a provision of a contract, arrangement, or understanding that has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market.
>
> (3) Subsection (2) applies in respect of a contract or arrangement entered into, or an understanding arrived at, whether before or after the commencement of this Act.
>
> (4) No provision of a contract, whether made before or after the commencement of this Act, that has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market is enforceable.
>
> **30 Certain provisions of contracts, etc, with respect to prices deemed to substantially lessen competition**
>
> (1) Without limiting the generality of section 27, a provision of a contract, arrangement, or understanding shall be deemed for the purposes of that section to have the purpose, or to have or to be likely to have the effect, of substantially lessening competition in a market if the provision has the purpose, or has or is likely to have the effect of fixing, controlling, or maintaining, or providing for the fixing, controlling, or maintaining, of the price for goods or services, or any discount, allowance, rebate, or credit in relation to goods or services, that are—
>
> (a) supplied or acquired by the parties to the contract, arrangement, or understanding, or by any of them, or by any bodies corporate that are interconnected with any of them, in competition with each other; or
>
> (b) resupplied by persons to whom the goods are supplied by the parties to the contract, arrangement, or understanding, or by any of them, or by any bodies corporate that are interconnected with any of them in competition with each other.

> (2) The reference in subsection (1)(a) to the supply or acquisition of goods or services by persons in competition with each other includes a reference to the supply or acquisition of goods or services by persons who, but for a provision of any contract, arrangement, or understanding would be, or would be likely to be, in competition with each other in relation to the supply or acquisition of the goods or services.

[3] In this proceeding, the Commerce Commission (the Commission) alleges that five companies that are carrying on business as real estate agents (to which I will collectively refer as the "agency defendants") entered into a price fixing arrangement or understanding in contravention of s 27 of the Act. In doing so, the Commission relies on the deeming provisions of s 30. The companies that are alleged to have participated in this arrangement are Barfoot & Thompson ltd, Harcourts Group Ltd (Harcourts), LJ Hooker New Zealand Ltd (LJ Hooker), Ray White (Real Estate) Ltd (Ray White) and Bayley Corporation Ltd (Bayleys). Another company, Property Page (NZ) Ltd (Property Page) is alleged to have unlawfully assisted the other companies to enter into and to give effect to the arrangement.

[4] Bayleys has previously admitted contravening s 27. The Commission and Bayleys agreed that a penalty of $2,200,000 was appropriate to mark Bayleys conduct. That penalty was approved by this Court.[1] As each of the agency defendants are companies, the maximum penalty available is fixed by s 80(2B)(b) of the Act. For corporate entities, the maximum amount that can be imposed by way of penalty is either $10 million or either of three times the commercial gain obtained from the breach (if capable of being readily ascertained) or 10 percent of the offending party's turnover from trading in New Zealand (if the commercial gain cannot be readily ascertained).

[5] The Commission and the remaining agency defendants have agreed penalties to reflect admissions on the part of each of those agency defendants that they contravened s 27. The recommended penalties are:

(a) Barfoot & Thompson: $2,575,000

(b) Harcourts: $2,575,000

---

1 *Commerce Commission v Bayley Corporation Ltd* [2016] NZHC 1493.

(c) LJ Hooker: $2,475,000

(d) Ray White: $2,200,000

[6] I am asked to impose each of those penalties under s 80(1) of the Act. In this case, I am also asked to defer payment of relevant penalties on agreed terms in respect of two of the agency defendants.

[7] Property Page was incorporated as a corporate vehicle to facilitate a joint venture among all of the agency defendants in relation to the creation of a website known as realestate.co.nz. While it was initially formed for that and other purposes, the agreement that was reached came into place as a result of discussions at one of its meetings. Because any contravening conduct on the part of Property Page is captured within the conduct of each of the other agency defendants, no penalty is sought against that company.

[8] Much of the information before me is commercially sensitive. I can explain my reasons for approving the proposed penalties without reference to those aspects of the evidence. This judgment may be published in this form, but I shall be making an order restricting access to the Court file to protect the commercially sensitive information.

The Court's approach to fixing penalties

[9] Section 80(1) of the Act empowers the High Court to order that a person pay a pecuniary penalty in such amount as it thinks fit if that party has (among other things) contravened a provision within Part 2 of the Act.[2]

[10] Although it is open to parties to litigation of this type to agree on an appropriate pecuniary penalty, it remains necessary for the Court to give its sanction to it. The authorities make it clear that the Court should acknowledge the public benefits of prompt resolution of penalty proceedings through agreement. The approach that has been consistently applied is for this Court to consider whether the amounts agreed are within an appropriate range, rather than to determine whether the

2 Commerce Act 1986, s 80(1)(a).

penalty is the same as that which would have been imposed by the Judge who hears the penalty proceeding.[3] If so, the agreement will be sanctioned.

[11] I adopt the approach taken by Venning J in *Commerce Commission v Kuehne + Nagel International AG,*[4] in which His Honour emphasised the need for the Court to approach its evaluation of an appropriate penalty in a manner akin to the way in which a criminal sentencing would be undertaken. That means that it is necessary to determine a starting point by reference to the maximum penalties involved, and then to consider relevant aggravating and mitigating factors. That exercise must be undertaken in respect of each of the agency defendants. Their respective level of culpability and mitigating circumstances differ.

[12] In imposing pecuniary penalties, the Court is endeavouring to provide both general deterrence to others in a market who might consider acting in the same or similar way, and specific deterrence to those who have infringed and are subject to a penalty.

[13] It is necessary for such penalties to be pitched at a level which is commercially realistic; namely, one which outweighs the likely profit margin to be obtained from any breach of provisions relating to anti-competitive conduct. After maximum penalties were increased in 2001, the Court of Appeal observed that Parliament had intended "to send a much stronger signal than the current provisions that the deterrence objective will only be served if anti-competitive behaviour is profitless".[5] Deterrence is the primary public policy objective in fixing the level of appropriate penalties.

---

3 Generally, see *Commerce Commission v Alstom Holdings SA* HC Auckland CIV-2007-404-2165, 22 December 2008 (Rodney Hansen J) at para [18], applying a judgment of the Full Court of the Federal Court of Australia in *NW Frozen Foods v ACCC* (1996) 71 FCR 285; *Commerce Commission v New Zealand Diagnostic Group Ltd* HC Auckland CIV-2008-404-4321, 19 July 2010 (Allan J) at para [45]; *Commerce Commission v Geologistics International (Bermuda) Ltd* HC Auckland CIV-2010-404-4590, 22 December 2010 (Allan J) at para [38]; *Commerce Commission v Whirlpool SA* HC Auckland CIV-2011-404-6362, 19 December 2011 (Allan J) at para [15], *Commerce Commission v Kuehne + Nagel International AG* [2014] NZHC 705 at para [21] (Venning J), *Commerce Commission v Envirowaste Services Ltd* [2015] NZHC 2936 at para [27] (Heath J) and *Commerce Commission v PGG Wrightson Ltd* [2015] NZHC 3360 at paras [30]–[32] (Asher J).

4 *Commerce Commission v Kuehne + Nagel International AG* [2014] NZHC 705, at para [21].

5 *Telecom Corporation of New Zealand Ltd v Commerce Commission* [2012] NZCA 344 at para [53], quoting Commerce Amendment Bill 2001 (296-2) (select committee report) at 23.

[14] In determining individual penalties, the aggravating factors relating to the conduct will generally fall into three categories:

(a) The first involves an assessment of the particular party's culpability. Those who initiate anti-competitive behaviour will ordinarily be treated more harshly than those who carry out express instructions to implement an arrangement.

(b) The second is duration. The period over which the contravening conduct occurs is a relevant factor to be taken into account.

(c) The third involves causation. The question here is whether anti-competitive behaviour caused loss to any person or produced significant gain for the enterprise which undertook the contravening conduct.

The nature of the arrangement

[15] The arrangement in this case has become known as the "PPL Agreement". I shall simply refer to it as "the Agreement". It had its genesis as an industry response to an announcement by TradeMe that it intended to change its pricing model when posting a standard advertisement on its property website. TradeMe had decided to move from a subscription based model to one based on a fee that was charged for each specific listing. That change was likely to increase substantially costs incurred by real estate agencies when listing vendor clients' properties for sale on TradeMe.

[16] From about 2005 until sometime in 2013, TradeMe had operated a subscription based pricing model. TradeMe would charge agencies a capped subscription fee for an unlimited number of standard property listings. For real estate agent companies, the effect of that model was to enable an unlimited number of standard listings to be uploaded onto TradeMe's website in exchange for a monthly subscription fee. At that time, TradeMe's presence in the market offering such services was dominant. One of the reasons why the agency defendants started to develop www.realestate.co.nz was to provide some real competition to TradeMe.

[17] When TradeMe changed its pricing model, it was necessary for a real estate agent to absorb the individual listing costs itself or to pass those costs on to the vendors.

[18] TradeMe advised participants in the real estate industry that it intended to discontinue its subscription model, in August 2013. At that stage, it advised that a fee of $159 per standard listing would be charged, with no cap on the fee for a set number of listings.

[19] On 19 August 2013, an agenda for a meeting of Property Page was circulated to representatives of the agency defendants. The agenda stated:

> 1. The purpose of this meeting is to focus on the real estate portal market in New Zealand and explore options for the industry/PPL to take more leadership in this market to both limit the ability of media owned sites to "ramp" their incomes at the industry and industry clients' expense and to also drive the continued growth and success of our industry owned site, www.realestate.co.nz and our own individual company sites.
>
> 2. To commence the meeting I would ask that all attendees come prepared to openly discuss current market activity from media companies, www.trademe.co.nz and any other players in this market regarding both establishment of new relationships and also proposed subscription model changes.
>
> 3. The intended outcome of this meeting is to identify and agree, if possible, a combined approach to the issue of portal support which achieves our goals of reducing fee creep and increasing effectiveness for clients and real estate companies in regard to portal marketing. It goes without saying that this must be achieved without breaching legislative requirements and also avoiding generating any "significant" internal conflict among our sales force.

[20] The Property Page meeting was held on 29 August 2013. It was attended by senior representatives of Barfoot & Thompson, Harcourts, LJ Hooker, Ray White and Bayleys. The minutes of that meeting recorded that those present had discussed the pricing proposals received from TradeMe and had agreed that a solution was needed (among other things) to "protect our industry from what we believe will be rapidly increasing price creep, as we have seen in other markets".

[21] At the meeting, those present agreed on an approach to respond to the change in TradeMe's pricing model. The minutes of that meeting record:

i. All properties uploaded to www.trademe.co.nz will be funded by the vendor from the commencement of the proposed new regime.

ii. 100% of properties will continue to be uploaded to www.realestate.co.nz

iii. A strong focus on selling premium marketing options on realestate.co.nz will be adopted by all companies. Inclusion in all standard auction packages was one suggestion tabled.

iv. www.realestate.co.nz will be requested to develop a marketing plan, and collateral for driving internal (industry) knowledge and support of the site. Materials for external (clients) to drive public recognition will also feature.

v. The Board of realestate.co.nz will be asked to confirm in writing to all subscribers that their current subscription modal [sic] and pricing structure will remain in place for the coming year.

vi. To ensure a high level of industry understanding and support a series of Business Owner meetings will be held throughout New Zealand to communicate the new collateral and support plan. Fairfax Moresby (Chair www.realestate.co.nz) and Bryan Thomson will present at these meetings. PPL Directors will attend to provide support. These meetings will be held in October.

vii. Bryan Thomson will contact all significant players in the industry, outside of PPL and NZ Realtors, to gain their understanding of the situation and their support. These companies will include PGGWrightson, The Professionals, First National and Remax.

viii. A meeting of the major Commercial companies will be arranged to explain the situation and seek their support. This meeting will also be utilised to launch the www.realestate.co.nz commercial app. Mike Bayley has offered to assist Bryan with this.

ix. All companies agreed that it is inappropriate to continue to take sponsorship from www.trademe.co.nz or to have their staff attend functions while we do not agree or support their new subscription regime. Any existing commercial agreements in regard to

sponsorship or subscription must obviously be honoured where these are in place however, no new agreements will be sought, or signed once current contractual arrangements expire.

x. [redacted] will be asked to provide a legal opinion to PPL regarding the contents of this plan to ensure the plan and actions within do not in any way contravene NZ law.

(emphasis added)

[22] Property Page sought legal advice on the proposed arrangement. In a legal opinion received on 5 September 2013, it was advised that there was "no clear obstacle" to the adoption of the proposals. Potential issues under s 27 of the Act were addressed, as well as others including potential claims in tort. Unfortunately, the opinion did not refer to or consider s 30 of the Act.[6] It is the deeming provisions of that section that has caught the agency defendants for the purposes of the present proceeding.

[23] Having received legal advice, the parties proceeded to implement the arrangement. By doing so, the agencies involved became complicit to an arrangement that had the effect of fixing or controlling prices that vendors paid to have their properties listed on TradeMe. By operating in that manner, a disincentive was created for any industry participant to offer lower prices for services to its vendor clients. In that way, the arrangement infringed s 27.[7]

[24] In 2014, TradeMe revised its pricing policy and reinstated the original subscription based model. Nevertheless, a number of offices within Barfoot & Thompson, and the LJ Hooker, Harcourts and Bayleys network[8] gave effect to some of the previously agreed arrangements. I make it clear that, on the evidence I have considered for the purposes of this proceeding, I am not convinced that there would be a material ongoing effect at present, though that could be the position if the question were examined more closely. As the point does not affect my conclusion in

---

6 Sections 27 and 30 of the Commerce Act 1986 are set out at para [1] above.

7 Adopting what Courtney J said in *Commerce Commission v Bayley Corporation Ltd* [2016] NZHC 1493, at para [7].

8 The term "network" is used to identify franchisees as coming within the ambit of the arrangement.

relation to the appropriateness of the ranges for penalties identified, I make no further comment on it.

[25] The Commission began its investigation relatively early. Bayleys accepted liability at a relatively early stage and agreed an amount of a pecuniary penalty order. On 1 July 2016, Courtney J made a declaration that its conduct contravened the provisions of s 27, by application of s 30 of the Act, and imposed the recommended penalty of $2,200,000.

Relative culpability

(a) General considerations

[26] I agree with, and adopt, the view expressed by Courtney J in *Commerce Commission v Bayley Corporation Ltd* as to the seriousness of the conduct involved.[9] Summarising Her Honour's views:

(a) The parties to the Agreement were the five largest and most influential real estate companies in New Zealand. A substantial share of the overall market for real estate services is controlled by them.

(b) The Agreement had the potential to affect a large number of transactions for residential properties.

(c) The Agreement was entered into by employees of each company who occupied positions at the highest levels.

(d) The conduct affected ordinary New Zealanders in the buying and selling of houses.

[27] I also accept Courtney J's view of the relevance of the legal advice obtained in relation to the proposed arrangement. While legal advice is a factor to be taken into account in setting a penalty, it should be regarded as the absence of an

---

9 *Commerce Commission v Bayley Corporation Ltd* [2016] NZHC 1493, at para [14].

aggravating factor, rather than one that attracts a credit, by way of mitigation.[10] In the present case, it is accepted that the parties did not deliberately set out to breach the Act. However, they did deliberately engage in conduct that infringed s 27, through the deeming provisions of s 30. I take account of the legal advice in that context.

(b) Aggravating factors

[28] While it is impossible to measure any commercial gain, there was the potential for benefits to flow to each of the agency defendants. While I accept that, broadly speaking, they were equally culpable in entering into the Agreement, the differences in the way they gave effect to it and for what time assume significance in the assessment of the appropriate penalty.

[29] I have had regard to information about the turnover of the respective agency defendants. It is unnecessary to recite that for the purposes of this judgment. Likewise, I have had regard to information about standard TradeMe listing fees on adoption by a particular real estate agent of the vendor funding model. Again, I consider it is unnecessary to include that specific information in this judgment. It is sufficient for me to say that I find that some vendors are likely to have been prejudiced by paying more than they would otherwise have been required to pay for a TradeMe listing had the agency defendants absorbed the relevant costs, and engaged in competition as to the extent to which they were prepared to do so.

[30] I have also had regard to evidence about the market share of each of the agency defendants. That is relevant to the assessment of a starting point, as it affects the degree of influence that each could exert upon the market, and the number of people who would be affected by its conduct.

---

[10] See *Universal Music Australia Pty Ltd v Australian Competition and Consumer Commission* (2003) 201 ALR 636 (FCA) at para 309, *Commerce Commission v Telecom Corporation of New Zealand* (2011) 13 TCLR 270 (HC), *Telecom Corporation of New Zealand v Commerce Commission* [2012] NZCA 344 and *Commerce Commission v New Zealand Bus Ltd (No 2)* [2006] 3 NZCCLR 854 (HC), collected in *Commerce Commission v Bayley Corporation Ltd* [2016] NZHC 1493, at paras [15]–[17].

[31] The Commission suggests the following range of starting points for each of the agency defendants:

(a)	Barfoot & Thompson:	$3.6 million to $4.1 million
(b)	Harcourts:	$3.6 million to $4.1 million
(c)	LJ Hooker:	$3.4 million to $3.9 million
(d)	Ray White:	$3 million to $3.5 million

(c) Common mitigating circumstances

[32] There are a number of mitigating factors that are relevant to all of the agency defendants:

(a) The first is that none of the agency defendants had an intention to breach s 27 of the Act.

(b) The second is that none of the agency defendants has previously contravened the restricted trade practices provisions of s 27.

(c) The third is the context in which the Agreement came to be reached. The Agreement was made in the face of a substantial increase in price required by TradeMe, at a time when www.realestate.co.nz was not fully developed.

[33] In accordance with the Agreement, the agency defendants, except Ray White, through their respective networks, moved to vendor funding of TradeMe's listing fee when a vendor chose to list its property through that website. LJ Hooker's franchisees and offices changed to the per listing pricing model on 1 February 2014. Bayleys' franchisees' offices changed to that model on 1 February 2014 also. Harcourts franchisees and offices changed to that model on 1 April 2014. Barfoot & Thompson changed to that model on 16 June 2014.

(d) Individual mitigating factors

[34] I have heard from counsel for the individual agency defendants as to particular mitigating factors relating to each. I do not go through all of the submissions that they made. I will highlight only a few of the points. Each adopted broader submissions made in relation to the conduct by Mr Dunning QC, who appeared for Property Page.

[35] Ms Dean QC, for Barfoot & Thompson, emphasised the short time within which the Agreement was used in the 64 offices run by Barfoot & Thompson. She advised me that the market for that company was Northland and Auckland, so that any impact was regional rather than national. As with other counsel, she emphasised the development (that was continuing) of a new low priced and effective website that could compete with TradeMe's dominance in the market.

[36] For Harcourts, Mr Peterson emphasised the fact that Harcourts operated on a franchise model. Accordingly, it had less ability to control franchisees than Barfoot & Thompson's ownership model. Nevertheless, he accepted that Harcourts could and did exert some influence on its franchisees. Mr Peterson also emphasised the duration of the implementation of the Agreement and the fact that there was no significant commercial gain for it. Like other counsel, Mr Peterson accepted that there was a potential for gain.

[37] Mr Craig, for LJ Hooker, also relied on the fact that his client operated a franchise model, and to that extent was in a similar position to Harcourts. It did not have power to direct franchisees, only to influence. Mr Craig also pointed to the fact that LJ Hooker was smaller than other franchisors and had a lesser market share. He also pointed to the duration of the conduct.

[38] Mr Ladd, for Ray White, pointed to his client's early admission of liability and co-operation with the Commission. Again, he accepted the potential for commercial gain but submitted none had occurred. Like Harcourts, it too was a franchisor. While smaller than Harcourts and Bayleys, it is a larger operation than LJ Hooker. Mr Ladd pointed to the fact that Ray White maintained a subscription priced model and did not move to a vendor fee absorption arrangement throughout.

[39] In respect of Barfoot & Thompson, Harcourts and LJ Hooker, the commission proposed a credit of 30 percent to represent each of the mitigating circumstances. In respect of Ray White a credit of 30 to 35 percent is suggested.

(d) Deferral of penalty payments

[40] There are two specific issues that also require determination. Both LJ Hooker and Ray White seek deferral of the time within which the pecuniary penalty must be paid. Each rely on commercial considerations. I have read the evidence relating to them. They attract a degree of commercial confidentiality which means that I shall not refer to them in the course of this judgment. It is sufficient for me to say that I am satisfied that grounds are made out for deferrals.

[41] I am also satisfied that there is jurisdiction to defer payment of a pecuniary penalty order. I refer, in particular, to the observations of Courtney J in her judgment in *Bayleys* in that regard. The Judge said:[11]

> [36] … This is a course that has previously been recognised as within the scope of the Court's discretion. Specifically, it has been accepted in previous cases that the Court has the discretion to direct that penalty payments be spread over time. For example, in *Commerce Commission v Thai Airways* [[2013] NZHC 844], Allan J directed that the penalty be paid in instalments over 18 months because the defendant was experiencing adverse trading conditions and had recently embarked on a fleet replenishment programme.
>
> (footnotes omitted)

[42] So far as LJ Hooker is concerned, the agreed arrangement is for its penalty to be deferred for payment on or before 28 February 2017, with no interest payable until that time. If the penalty were not paid by that date, leave will be reserved for the Commission and LJ Hooker to apply for a variation to the order I shall make. That could be done by joint memorandum, in the event of agreement, or a memorandum setting out the competing views of the parties which may lead to a further hearing, if necessary.

---

[11] *Commerce Commission v Bayley Corporation Ltd* [2016] NZHC 1493, at para [36].

[43] In the case of Ray White, it is able to make a payment of $1,000,000 on or before 23 December 2016 with the balance to be paid in three instalments. I am satisfied that is appropriate.

[44] Although no penalty is to be imposed in relation to Property Page, that company has agreed to make a contribution towards the Commission's investigation costs in the sum of $100,000. No order need be made in that regard.

Result

[45] I am satisfied that the recommended penalties fall within the appropriate range, meet the primary objective of deterrence and reflect relative culpability and mitigating factors. I am also satisfied that the penalties to be imposed reflect the degree of parity required as between the agency defendants and others who have been the subject of pecuniary penalty orders in different proceedings involving responses to the change to the TradeMe website price model.

[46] In those circumstances:

(a) I make a declaration that the conduct of Barfoot & Thompson, Harcourts, LJ Hooker and Ray White contravened s 27 of the Act, by application of s 30.

(b) I impose the following pecuniary penalties:

(i) Barfoot & Thompson: $2,575,000

(ii) Harcourts: $2,575,000

(iii) LJ Hooker: $2,475,000

(iv) Ray White: $2,200,000

(c) I make an order deferring the penalty for LJ Hooker. That shall be paid on or before 28 February 2017. No interest shall apply. Leave is

reserved to the parties to apply in the event of any extension to that order being required, and the terms on which any order might be made.

(d) I make an order deferring payment of the penalty for Ray White. The sum of $1,000,000 shall be paid on or before 23 December 2016. The balance shall be paid in three instalments of $400,000 each, to be paid on the fourth, eighth and twelfth month anniversary of the first payment. No interest is ordered in relation to the deferred parts of the pecuniary penalty.

(e) I make a declaration that Property Page aided, abetted, counselled or procured Barfoot & Thompson, Harcourts, LJ Hooker, Ray White and Bayleys to contravene s 27 of the Act, through the application of s 30. No pecuniary penalty is imposed.

[47] By consent, there is no order as to costs.

[48] Save for the redacted version of the agreed summary of facts, I make an order that the Court file not be searched, copied or inspected without leave of a Judge, on an application to be made on notice to all parties in this proceeding.

[49] I thank counsel for their considerable assistance in the submissions they prepared in advance of the hearing, which has enabled me to give judgment orally today.

P R Heath J

Solicitors:
Meredith Connell, Auckland
Glaister Ennor, Auckland
Wilson Harle, Auckland
Simpson Grierson, Auckland
Bell Gully, Auckland
Counsel:
J C L Dixon, Auckland
M Dean QC, Auckland
M N Dunning QC, Wellington
A Peterson, Auckland