

UNDER

THE COMMISSIONS OF INQUIRY
ACT 1908

IN THE MATTER OF

THE CANTERBURY EARTHQUAKES
ROYAL COMMISSION

**SUBMISSIONS ON BEHALF OF GRENADIER REAL ESTATE LIMITED
TRADING AS NAI HARCOURTS IN RELATION TO THE BUILDING AT
593 COLOMBO ST, CHRISTCHURCH**

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1.0 Overview

- 1.1 The building at 593 Colombo Street, Christchurch was owned by a family called Chang,¹ most of who lived overseas during the relevant periods.
- 1.2 The Changs approached Mr Chapman of NAI Harcourts a couple of weeks before the 4 September 2010 earthquake and inquired about building management services. Mr Chapman met with their representatives and gave them details of NAI Harcourts standard terms and conditions. However, Mr Chapman did not hear back from the Changs until shortly after the 4 September earthquake.
- 1.3 Mr Chapman assisted the Changs in dealing with the aftermath of that earthquake. However at no stage was NAI Harcourts engaged by the Changs to act as building managers. NAI Harcourts did not receive any payment for any attendances by Mr Chapman.
- 1.4 On 23 January 2011², Joy Chang representing the owners sent an email to Mr Chapman informing him that they wanted to hold off making any repairs to the property, presumably referring to the repairs recommended by Holmes Consulting Limited ("Holmes"), and that the Changs would manage the building themselves.
- 1.5 It is a feature of NAI Harcourts involvement with the building at this time that:
 - (1) They were never formally engaged by the Changs;
 - (2) They assisted the Changs to facilitate engineering services from Holmes including building damage assessment and the design and specification of repairs;

¹ Southern Ink Lease: BUI.COL593.0056.4

² BUI.COL593.0057.1

- (3) They communicated with the Chang's tenant Mr Parkin of Southern Ink, by email and telephone.
- (4) As a result both Mr Parkin and Holmes appear to have assumed that they were managing the building.
- 1.6 At the time NAI Harcourts had approximately 100 buildings in Christchurch under their management. This included approximately 30 buildings in the CBD.
- 1.7 Immediately after the September earthquake, NAI Harcourts instructed Holmes to carry out building assessments and advise on necessary repairs. NAI Harcourts received and collated information for their building owner clients and in many instances organised immediate temporary repairs.
- 1.8 This was a significant task carried out by the small management team at NAI Harcourts to the best of their ability at the time, despite having to continue to work and live with the difficulties and stress of a major natural disaster. NAI Harcourts approach was responsible and timely under the circumstances – confirmed by Mr Seville of Holmes.³
- 1.9 Southern Ink was the only tenant remaining in the building after the 4 September 2010 earthquake. Mr Parkin the proprietor returned to the building and continued with his business. He was able to do so because the Christchurch City Council ("CCC") had placed a green placard on his shop window⁴ – despite other parts of the same building receiving yellow placards.
- 1.10 There followed communications between Mr Parkin, Mr Chapman, the engineers from Holmes (Mr Seville and Mr Boyd), and the Changs which unfortunately did not result in any change to the green placard status of Southern Ink's premises. The net result was that Southern

³ Trans.20111213.20P20

⁴ Trans.20111213.48/49

Ink was still in the building at the time of the earthquake on 22 February 2011. This reflects obvious anomalies in the CCC placarding system at the time, and the clarity of advice and communications between Holmes, NAI Harcourts, the Changs and Mr Parkin.

- 1.11 NAI Harcourts says that no one party is to blame for this. Any clarity over the position now is due to the benefit of hindsight. It is submitted that as a result, it would not be just and reasonable to make any adverse finding against any individual or business; nor would such findings be in accordance with the Royal Commission's terms of reference.

2.0 Harcourts Relationship with the Building Owner

- 2.1 It appears that the Changs had owned the premises at 593 Colombo Street for many years. However it was not in very good repair. Mr Parkin complained that it was very difficult to get hold of the "old" property manager.⁵
- 2.2 Mr Chapman had met representatives of the Changs in August 2010 to discuss what management services NAI Harcourts could offer and on what terms and conditions. However he did not hear back from them until he received an email from Joy Chang on 7 September 2010, in which she told him that the building had been damaged in the earthquake on 4 September 2010⁶. On 10 September 2010, Bowen Chang emailed Mr Chapman seeking assistance to have an engineering assessment of the building, and advice on repairs.⁷ Despite the lack of any firm commitment from the Changs to appoint NAI Harcourts as managers, Mr Chapman helped them to obtain engineering advice from Holmes.

⁵ Trans.20111213.53,

⁶ Trans.20111212.87

⁷ BUI.COL593.0055.1, Chapman reply: BUI.COL593.0055.2

- 2.3 Mr Chapman worked with Holmes Consulting to have this work completed by them. He even managed to obtain funds from the Changs to pay Holmes accounts for this work. (Despite the Changs not paying NAI Harcourts for Mr Chapman's time). Mr Chapman diligently passed on Holmes' reports and advice regarding their recommended building repairs to the Changs.⁸ However this ultimately resulted in an email from Joy Chang on 23 January 2011⁹, informing Mr Chapman that the Changs would not be making the repairs advised by Holmes as necessary at that stage, and that they would manage the building themselves.
- 2.4 Despite this email from Joy Chang, Mr Chapman still sent her the Holmes engineering report on repairs in an email dated 15 February 2011¹⁰ and sought a quote for the work from Spotless Contractors.¹¹
- 2.5 Throughout this time Southern Ink remained in occupation and paid rent directly to the Changs. Following Mr Chapman's intervention, the Changs even agreed to a 30% discount.¹² The Changs also visited the building with Mr. Chapman and the Holmes engineers on 24 November 2011¹³, when the engineers carried out a site assessment. Southern Ink was in occupation, and the inspection group which included the Changs, gained access to some parts of the building including the tattoo parlour, with the assistance of the tenant.¹⁴ So the Changs knew at all times before the 22 February earthquake that:
- (1) The building had been significantly damaged in the September earthquake;
 - (2) Southern Ink was the only remaining tenant still in occupation;

⁸ BUI.COL.0055.1314.20 &21;

⁹ BUI.COL593.0057.1

¹⁰ BUI.COL.0057.7

¹¹ BUI.COL593.0057.12

¹² BUI.COL.0056.23

¹³ Email 19 November 2012 BUI.COL.593.0056.22

¹⁴ Chapman TRANS.20111212.89 at L.15

(3) Holmes who had been engaged by the Changs recommended that structural work was required to repair the building.

2.6 Subsequently the Changs have appeared defensive in Joy Chang's letter to the Royal Commission. Joy Chang advised the Royal Commission through a letter read into the record by Mr Zarifah that they had instructed Harcourts to arrange for repairs to be carried out to the building.¹⁵ But that is totally contrary to her email of 23 January 2011.¹⁶ The Changs never carried out the repairs recommended by Holmes. Therefore there is a strong inference that Joy Chang's statement in the latter read by Mr Zarifah was deliberately untrue, and intended to deflect any potential blame.

2.7 The significance at the time for NAI Harcourts and Mr Chapman was that they did not have the benefit of acting for diligent owners who provided positive feedback and instructions. After all a property manager is only an agent – ultimately the building owner must take the initiative when it comes to deciding on repairs and dealing with tenants, especially in a natural disaster.

3.0 What did Mr Chapman know about the building following the September earthquake?

3.1 NAI Harcourts' limited relationship with the Changs meant that Mr Chapman did not have much knowledge about the building at 593 Colombo Street, or its tenants. He had to rely upon the information provided by Holmes. The extent of the information which Mr Chapman received from Holmes, and his reaction under the circumstances, became something of a vexed question.

3.2 Mr Chapman's position is that:

¹⁵ XXD Chapman TRANS.20111212.105 L. 10 – 30;

¹⁶ BUI.COL593.0057.1

- (1) He had no direct knowledge of the placard status of the building;¹⁷
- (2) He did not turn his mind directly to finding out why Southern Ink was still there – he was only asked by the Changs to help them obtain engineering advice.
- (3) He does not recall receiving any information either verbal or written from Holmes that the entire building should have been yellow stickered, and therefore unoccupied by any tenant at all;
- (4) Despite this Mr Chapman remains adamant that had he known that the entire building should have been the subject of yellow placarding, he would have:
 - (a) Passed this onto the Changs;
 - (b) Advised Southern Ink to leave in the course of his direct communications with Mr Parkin.¹⁸

3.3 There is no evidence to suggest that NAI Harcourts and Mr Chapman were anything but diligent under all of the circumstance. Evidence of this includes:

- (1) The almost immediate retainer (4 September 2010) to Holmes to provide engineering inspections of NAI Harcourts buildings under management, rather than relying just on CCC's rapid assessments;
- (2) The way in which Mr Chapman followed a programme of requesting that Holmes:
 - (a) initially inspect 593 Colombo Street,

¹⁷ TRANS.20111212.97 L.25

¹⁸ XXD Chapman TRANS.20111212.98 L. 15 – 30, TRANS.20111212.118 L.7;

- (b) then carryout a more invasive inspection utilising a building contractor to deconstruct some parts of the building; and
 - (c) Then to prepare a repair specification.
- (3) Mr Seville's (Holmes) endorsement of Mr Chapman in evidence.¹⁹

3.4 Mr Chapman's actions were only called into question at the hearing in respect of his recollection about what he knew about the placard status of the building. Both Mr Boyd and Mr Seville say that they told Mr Chapman that the building ought to be entirely yellow stickered. But there was no evidence from them as to exactly what they said. Neither of them kept any file notes. In the case of Mr Seville, it appears that Mr Chapman did keep a note of a telephone message which he may have left but this did not include any reference to the yellow placard.²⁰

3.5 This must also be considered in the context of Mr Seville's evidence that he knew that Southern Ink was in occupation but that as they were in an area of the building with minimal damage he had little concern for their health and safety and presumably that of their customers.²¹ There is an inference that Mr Seville would not have passed on a more urgent message to Mr Chapman over Southern Ink's occupation than is reflected in the view which he had formed himself.

3.6 Similarly the evidence surrounding Holmes communication of reports which might have advised NAI Harcourts of the yellow placard was imprecise and unreliable. In particular it appears that Harcourts never received an email allegedly sent by Holmes Consulting with a

¹⁹ XXD Seville TRANS.20111213.20

²⁰ Chapman Diary note: BUI.COL593.0061.1

²¹ XXD Seville TRANS.20111213.24/25

significant number of reports attached.²² Even if they had received that email, the reports did not prominently bring attention to the placard status or link this to the fact that Southern Ink were still there.

- 3.7 Mr Chapman was cross-examined by counsel for the Royal Commission on the significance of his reference to “legally occupied” in an email to Mr Parkin of Southern Ink. Mr Chapman explained this in his evidence in chief – he was referring to what needed to be done before the building owner could again let out the unoccupied and damaged parts of the building.²³ This is also reflected Mr Chapman’s email to the Changs dated 15 February 2011 where he refers to work required to re-tenant the building.²⁴ Mr Chapman was not in any way implying that Southern Ink’s occupation was somehow illegal or underhand.
- 3.8 In summary there was a lack of clear communication between the main stakeholders in 593 Colombo Street following the 4 September 2010 earthquake. This started with CCC treating the different street frontages for the building (Colombo/St Asaph) as separate buildings and differentially placarding the various tenancies. That led to Southern Ink receiving a green placard, which caused Mr Parkin to continue to operate his business.
- 3.9 Holmes apparently formed the view that the entire building should be consistently yellow placarded. But it is submitted that Holmes may not have clearly communicated this to the Changs through NAI Harcourts or to Southern Ink. No matter what the reason, the evidence suggests none of these interests fully appreciated the potential danger that Southern Ink and its customers truly faced.

²² Statutory declaration of Chris Chapman 9 February 2012 (Filed with submissions)

²³ TRANS.20111212.92/93

²⁴ BUI.COL593.0057.7” “*Required repairs to enable re-tenanting – red*”

3.10 At the time everyone in Christchurch was working under difficult and unprecedented circumstances. It would be wrong to rely upon a hindsight assessment to single out any one of these parties for blame.

4.0 How could this situation be avoided in the future?

4.1 NAI Harcourts refers to paragraph 45 in its submissions on the PGC Building. It submits that the key to avoiding the exposure of tenants and their customers to undue risk from aftershocks following a major earthquake is for building owner to have a specific disaster plan in place for each building, and for owners and tenants to accept that there will be a necessary period when engineers need uninterrupted access to make a proper assessment.

4.2 Otherwise it is important for building owners to play an active role, even if a property manager is in place.

4.3 Engineering reports must clearly highlight hazards and limitations on occupation, and building owners should react to these immediately.

4.4 On reflection NAI Harcourts believes that there should be public education via media and possibly schools which explain what people should do in an earthquake and afterwards based on the lessons learned since 4 September 2010. This should include clear guidelines as to the responsibility and services offered by each relevant public organisation.

4.5 It has been NAI Harcourts' experience following the serious aftershocks on 23 December 2011 that building tenants and members of the public still do not appreciate the need for post event engineering assessments and as a result are impatient with the required process.

5.0 Conclusion

- 5.1 It is submitted that NAI Harcourts and Mr Chapman voluntarily did their best at the time under difficult circumstances.
- 5.2 NAI Harcourts deeply sympathises with Mr McEachen's family and friends, and Southern Ink's receptionist Bonny who they have learned from Mr Parkin's evidence was badly injured.

Date: 9 February 2012



Philip Rzepecky

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