

COMMISSION RESUMES ON 15 MARCH 2012 AT 9.00 AM**738 COLOMBO STREET****CONTINUED FROM THURSDAY 1 MARCH 2012**

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JUSTICE COOPER:

Yes well this morning we're resuming our hearing which had to be adjourned into the circumstances of the failure of the building at 738 Colombo Street where Desley Thompson was tragically killed. I welcome back to this resumed hearing her mother, Rae, and other members of the family and friends. Good morning to you.

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Yes, now, I'll just take appearances thank you.

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APPEARANCES: DUNCAN LAING AND NADINE DAINES FOR THE CHRISTCHURCH CITY COUNCIL; RICHARD SMEDLEY FOR ANDREW BELL AND LUKE REES-THOMAS; GLENN JONES FOR POWELL FENWICK

MR ZARIFEH:

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Sir, the hearing was adjourned from the 1st of March essentially so that we could hear the evidence of Mr Rees-Thomas. As it's transpired there are a number of witnesses to be called this morning to conclude this hearing. Mr Rees-Thomas will give evidence. So will Andrew Bell. They're both from Knight Frank and Mr Bell will give evidence because he was involved with the management of the property in the early stages after the September earthquake, and then Mr Rees-Thomas took over. Mr Smedley, as he's indicated, is acting for Knight Frank and for those two witnesses and he will call their evidence shortly. Listed as Craig Lewis from Lewis Bradford. The Commissioners will remember hearing from him in relation to the property at 753 Colombo across the road. And not listed there but Hamish MacKinven, who was also a witness, structural engineer, who gave evidence on that 753. I intend to call him because he deals with some of the facts that are raised by the evidence of Mr Rees-Thomas and Mr Bell. And Akira Yoshikane is an

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email only. It's got their written statement, he's not being called. Mr Liu, the property owner, is in the back of the Court with his interpreter and he's got a copy of the new statements and information and so he's present, Sir. So I'll leave the calling of Mr Bell and then Mr Rees-Thomas to Mr Smedley.

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JUSTICE COOPER ADDRESSES MR SMEDLEY RE STATEMENT

MR SMEDLEY CALLS:

ANDREW BELL (SWORN)

10 Q. Mr Bell, you are Andrew David Bell and live in Christchurch.

A. I am.

Q. Thank you. Could you please start reading your brief from paragraph 2.

WITNESS READS BRIEF OF EVIDENCE

15 A. I am providing evidence to the Royal Commission relating to Knight Frank's involvement with the building situated at 738 Colombo Street, in particular after the September earthquake in relation to assessments obtained.

I am a director of property management for Knight Frank and have been so since 2007.

20 At the time of the September earthquake I was responsible for overseeing the management of a portfolio in excess of 100 commercial properties (valued in excess of \$300m dollars), leased to in excess of 500 tenants. In addition, I oversaw the management of a residential management portfolio comprising in excess of 500 private homes. I
25 also personally managed a portfolio of approximately 30 commercial properties.

Prior to Knight Frank I have been involved in the management and development of shopping and retail centres in Christchurch for eight years.

30 I am aware that there has been some criticism of Mr Luke Rees-Thomas non-appearance following the late summoning of him to this hearing.

It was I who instructed Mr Rees-Thomas not to attend the hearing because I felt he and Knight Frank were unprepared to answer

questions at the hearing, given the short notice received. We had previously complied promptly with requests for documentation from the Commission and I confirm that there was no intention to avoid our responsibilities by not attending. I apologise for any inconvenience that my decision has caused the Commission and any distress that has been suffered by the family of Desley Thompson as a result. Given the gravity and importance of the hearing I felt it appropriate that we prepare more fully in order to properly assist the Commission.

Our intention has always been to provide the Commission with all of the facts and to do so means that I, as well as Mr Rees-Thomas, should give evidence, given that the two of us were property managers at different times of 738 Colombo Street during the period after 4 September 2010.

I was the property manager of the buildings situated at 736 and 738 Colombo Street between 21st of August 2008 and 27th of October 2010. Accordingly, I was property manager of 738 Colombo Street, known as the OK Gift Shop, when the earthquake of 4th of September 2010 occurred.

Management of the properties at 736 and 738 Colombo Street was transitioned to Mr Rees-Thomas from 27th of October 2010.

As stated above my portfolio included overseeing over 100 commercial properties.

The properties situated at 736 and 738 Colombo Street stand out as being quite different from the other properties I managed for a number of reasons:

The tenant of 738 Colombo Street, (Akira, of the OK Gift Shop), sold the premises to the current owner, Mr Liu;

As part of our obligations as property manager, we have an obligation to report to property owners. However, many emails and correspondence sent to Mr Liu were never answered or responded to. In many cases phone calls to Mr Liu were unanswered and messages not responded to;

Akira and his staff as tenant and Mr Liu communicated with each other directly about many matters concerning 738 and as an ex-owner of the property the tenant was more understanding of the property itself and active in its management and maintenance than was normally expected of a tenant.

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There has always been some confusion as to the correct address for 738 Colombo Street. Occasionally it is referred to as 740 Colombo Street or 738/740 Colombo Street. I mention this only because some of the documents refer to 738 as 740.

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I have never before in my life experienced an event that could have prepared me for the aftermath and, particularly, the scale of the Canterbury earthquakes.

During the week following the 4th of September earthquake I experienced a huge learning curve as a property manager and director of our division with such responsibility. It involved, amongst other things, identifying and prioritising issues relating to all of the commercial and residential properties within our portfolio, one of which was 738 Colombo Street. Not having had to arrange for engineering reports for a large number of buildings at short notice before, an initial period was spent identifying and locating suitable engineers to inspect and report on the buildings within our portfolio.

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Knight Frank has always treated 736 and 738 Colombo Street as one property because they are owned by the same owner, Mr Liu. They are connected on the upper floor and they're covered by the same insurance policy.

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0918

EXAMINATION CONTINUES: MR SMEDLEY

Q. Excuse me Mr Bell. Can I stop you there for a minute?

A. Yep.

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Q. Can we have document BUI –

MR ZARIFEH:

Your Honour I think there's a problem with Trial Director and we can't call up documents at the moment. Maybe in five minutes they'll be able to but I think –

5 **JUSTICE COOPER:**

Well why don't we just keep going and then we'll come back to the documents. If that's all right Mr Smedley?

MR SMEDLEY:

10 Certainly Sir – If you could carry on reading from paragraph 16.

WITNESS CONTINUES READING BRIEF OF EVIDENCE

A. Accordingly after the September earthquake I attended arranging for an engineer to inspect both 736 and 738 Colombo Street at the same time.

15 However, before those arrangements were made on the 7th of September 2010 the tenant of 738 Colombo Street informed me via telephone that:

(a) an engineer had inspected the premises on behalf of the owner Mr Liu;

20 (b) there was no damage and the building had been green stickered and that accordingly

(c) the store was open or opening for business.

Based on that information I arranged for Hamish MacKinven a structural engineer from Lewis Bradford to report on the condition of the post shop situated at 736 Colombo Street only. A copy of my personal record of this made and emailed to myself on the 7th of September 2010 is attached.

25 During the conversation in which the tenant told me an engineer's inspection had occurred in respect of 738 and that the premises were safe to occupy I requested a copy of the report.

30 On the 9th of September 2010 Mr MacKinven reported to me by email, that he had completed a brief structural inspection of the post shop, 736, and that he had not seen anything structurally that would indicate the

building structure had been compromised. In the final sentence of his email Mr MacKinven told me that *“following this inspection it appears structurally there is no reason this building cannot be occupied.”*

5 I had previously visually externally inspected both 736 and 738 Colombo Street after the September earthquake. To my eyes the damage to the Post Shop was far more severe than to the OK Gift Shop which appeared to have suffered no damage. Indeed the Post Shop was unable to reopen until repairs, including to the smashed glass windows on most levels, had been carried out.

10 Accordingly, given Mr MacKinven’s report that 736 could be re-occupied and the tenant’s assurance that another engineer had confirmed the OK Gift Shop at 738 was fit for occupation I was not concerned about the structural integrity of either 736 or 738 Colombo Street. I then set about arranging remedial work to 736 Colombo Street to remove potential
15 hazards, mainly in the form of broken and damaged glazing.

As stated above I asked the tenant of 738 to send me a copy of the engineer’s report he had commissioned on behalf of the owner. On the 10th of October 2010 Tracey of the OK Gift Shop sent me an email to which was attached the invoice rendered by Powell Fenwick for their
20 first assessment. Tracey also told me that *“Jonathan had spoken to Akira about this”*.

The invoice attached to the email was addressed to the OK Gift Shop and it’s narration stated simply, *“Structural assessment and report.”*

25 Accordingly based on my previous experience with this building and Tracey’s email I believe that Mr Liu was aware that an engineer had inspected 738 and reported that it could be re-occupied. I was also aware that 738 had been green stickered by the Christchurch City Council on the 5th of September 2010.

30 Subsequently on the 27th of October 2010 Mr Rees-Thomas was promoted from the residential property team to commercial property manager and took over my responsibilities in respect of 736 and 738 Colombo Street. I shall therefore leave it to Mr Rees-Thomas to relate what happened after 27th of October 2010.

In conclusion I consider that Knight Frank did everything that it could to ensure premises that it managed were inspected by reputable engineers following the Canterbury earthquakes and that immediate measures were taken to address any resulting hazards present.

5 With respect to 738 Colombo Street apart from sending financial reports to Mr Liu I did not contact him. I believed that he had been kept up-to-date on developments including the structural integrity of the building by his tenant and accordingly was fully aware of the position.

10 I also confirmed that I did not receive any instructions of any sort from Mr Liu following the 4th of September earthquake or any of the subsequent aftershocks.

MR SMEDLEY:

Thank you Mr Bell. Are those – ?

15 **JUSTICE COOPER:**

Well we seem to have a document up. I think the first one.

EXAMINATION CONTINUES: MR SMEDLEY

Q. Mr Bell I'd like you to look at the document that's on the screen. Can you tell the Commission please what that is?

20 A. That is invoice and payment, a record of management contract for Natural Blessing.

Q. Now Mr Bell this document reference was included in paragraph 16 which relates to your evidence on the insurance policy, and for the benefit of the Commission the document reference I'm referring to is
25 BUI.COL738.0032A.1.

DISCUSSION - DOCUMENT

EXAMINATION CONTINUES: MR SMEDLEY

30 A. That is the invoice from Marsh the insurance broker covering the policy that covered 736 and 738 Colombo Street.

Q. And if we could just refer to the next page, 32A.2.

A. Yes that is the summary of the insurance cover and it details the addresses there which refer to 734 and there was sometimes some confusion there as well but what that in fact relates to is to 736, 738
5 Colombo Street insurance policy for both properties.

Q. Thank you. The next document reference I want to take you to you referred to in paragraph 17 of your brief where you talk about a personal record that you emailed to yourself and the document reference is WIT.REE.0002A.80.

10 A. Yes this was a manual record, somewhat primitive, that I kept myself immediately in the aftermath of the 4th of September which is simply a record for myself of the commercial properties that I personally managed and my record of ensuring that action had been taken to organise an engineer. That first page which is showing was, I can't see
15 any colours on it, but essentially it was highlighted with the properties that I had requested an engineer to attend. One of those was the OK Gift Shop at 740 Colombo Street which originally was on my list to request an engineer inspection from.

Q. Thank you and if we can go to the next page, 2A.81.

20 A. Sorry I can't see anything come up there – yes, this is a further attachment to that personal record and highlighted, although I can't see the colours on it, that an engineer has inspected and I deleted the OK Gift Shop from the request for inspections because I was informed on that date, being the 7th of September, that the inspection had already
25 occurred and therefore I noted on there, "Powell Fenwick by tenant," which is my record that it had been inspected and that that had been done by Powell Fenwick as organised by the tenant. Accordingly that property was then deleted from the request list to Lewis Bradford at the time.

30 0928

JUSTICE COOPER:

Q. The rental figure that's recorded there, is that per annum is it – 215,000?

A. That would be per annum.

EXAMINATION CONTINUES: MR SMEDLEY

Q. If we can move on to paragraph 19 of your brief where you talked about an email. The document reference for that is WIT.REE.0002A.79

5 A. That is the email I received from Hamish MacKinven of Lewis Bradford following his inspection of 736 Colombo Street which was done on Thursday the 9th of September and it was done on that date because we had to organise access to the property via the tenants so that he could go through the property. That's his email to me confirming that there
10 was no reason that the building could not be occupied structurally.

Q. Thank you. If I could now move on to paragraph 22 of your brief where you talk about another email and the document reference there is WIT.REE.0002A.77.

15 A. That was an email to me from the gift shop, Tracey, enquiring as to the status of some glass repairs that were currently being conducted on the building and also attaching the invoice for payment of the engineering assessment that had been done following the September the 4th earthquake and confirming that the owner had spoken to them as tenant about that previously.

20 Q. Thank you and if I just take you now to paragraph 23 and the document reference there is WIT.REE.0002A.78.

A. Yes that is the copy of the invoice that was received by email from the gift shop for payment of the engineering report that had been done by Powell Fenwick following the September 4 earthquake.

25 Q. And who's it addressed to?

A. It's addressed to the OK Gift Shop.

CROSS-EXAMINATION: MR ZARIFEH

30 Q. The agreement that Simes, and later Knight Frank, had with Mr Liu in relation to 738 Colombo, and I presume 736, would you describe it as a full property management agreement?

A. Yes.

- Q. Mr Liu when he gave evidence on the 1st of March at this hearing said that he essentially left everything to Knight Frank. Would you agree that's how things were in terms of you had free range as property managers to look after the property?
- 5 A. We were obliged to conduct the duties that were within the management contract. There were some exclusions to that but in essence we were obliged to conduct what was in the contract, yes.
- Q. And you've produced, you haven't referred to it, but you've produced a copy of the management agreement?
- 10 A. Yes we did.
- Q. And that appears to be a fairly comprehensive document, would you agree?
- A. Yeah.
- Q. And it included obligations of Knight Frank to inspect and to deal with any damage and repair?
- 15 A. Yes.
- Q. And I think notify the owner if damage was over \$1500, correct?
- A. Yes.
- Q. You said that on the 7th of September following the 4th of September earthquake that you spoke to the tenant, the OK Gift Shop. He told you that there had been an inspection by Powell Fenwick and you requested a copy of that report. Why did you want a copy as the property manager?
- 20 A. Just for our records that I was absolutely satisfied that it had been done and that I could ensure that there was nothing more...
- 25 Q. So as part of the management of the property?
- A. Yes.
- Q. And I think on the 2nd of November we are going to hear from Mr Rees-Thomas that he finally got a copy of it?
- 30 A. Yes.
- Q. So were you chasing that up or not in that interim period?

A. I don't believe so within that interim period, no. I may have done. I don't recall any conversations with Mr Liu in relation to that but certainly we had requested a copy of it and I was satisfied it had been done.

5 Q. And it seems from your evidence and the evidence I anticipate Mr Rees-Thomas is going to give that there wasn't really much contact, if any, with Mr Liu?

A. No.

Q. In the period, well certainly from the September earthquake through to the February earthquake. Is that fair?

10 A. There was some communication. It was limited. It's not evidence but when we looked into our files on the 23rd of September I emailed Mr Liu and his wife, two separate emails, to indicate that we were involved in earthquake clean up if you like, and attending to various issues in relation to all of our properties, and that at that particular point there were two issues. One was some minor bolt tightening issues at his property at 471 Colombo Street, and one was the windows and the glazing at 736 Colombo Street that he should be aware of. And that we would be coming back to him with a more detailed report at some point in the future.

20 Q. I think you've seen an email from Craig Lewis of Lewis Bradford really commenting on the main evidence of Mr Rees-Thomas, and you recall in that he says, and there's obviously a difference in what was communicated or understood about a further detailed inspection of 738. You weren't involved in that in terms of discussions with Lewis Bradford I take it?

25 A. Not at the point, no.

Q. What point did you become involved?

30 A. Well I was involved with Lewis Bradford in relation to the properties immediately after 4th of September exclusively with 736. I had originally expected and anticipated that Lewis Bradford would do both properties as per my record but when I was informed that Powell Fenwick had done 738 then I deleted it. In fact I was delighted it had been done so quickly to be honest.

Q. Mr Lewis says that he made it clear to Knight Frank that Powell Fenwick should do any follow up because they'd been involved. They were involved after September as you said and then as we know after Boxing Day another inspection on the 26th after the Boxing Day quake. Do you recall any of those conversations along those lines at any stage?

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A. No I have no recollection of anything of that nature whatsoever.

Q. The other thing I want to ask you about was Hamish MacKinven from Lewis Bradford gave evidence at a hearing in relation to 753 Colombo, across the road from 738, and as well Craig Lewis gave evidence about that building and Mr MacKinven said that after the Boxing Day quake Lewis Bradford took a slightly different approach to buildings because the Boxing Day aftershock appeared to be on a different fault line and it was closer to the city, and that different approach he said was just a more cautious approach, and he said they did quite a bit of work for Knight Frank and that they conveyed that to Knight Frank that they should perhaps take a more cautious approach with their properties. I'm not saying he said that to you but do you recall anything along those lines?

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A. No he never said that to us at any point. The first time I read those comments was in the media the other day. Having said that we had always taken what we regard to be best practice, cautious approach, with our properties anyway. Our priority from day one after the September the 4th earthquake was safety of our tenants, occupants and the general public without compromise. We've always taken an absolutely cautious approach but we certainly had no such discussion or recommendation.

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0938

Q. Okay and you handed over the management of this building to Mr Rees-Thomas. So you weren't involved then in the arranging of a more detailed inspection from Lewis Bradford?

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A. No I wasn't personally involved in it no.

CROSS-EXAMINATION: MR ELLIOTT

Q. Mr Bell you've just mentioned the philosophy of safety of tenants without compromise and taking a cautious approach. Were you aware at the time of the difference between a brief structural assessment by an engineer and a detailed structural assessment?

5 A. We became very quickly aware of that, yes.

Q. Did you initiate a full structural assessment of 736 or 738 during your time of managing the properties between 4 September and 27 October?

A. Not at that time, no.

10 Q. Do you agree that during a period of heightened seismic activity there is value for tenants and owners in having as much information as possible so they can make an informed decision about occupancy of buildings?

A. Absolutely.

Q. You mention in your evidence that Knight Frank manages a number of residential and commercial properties.

15 A. Yes.

Q. It's now over a year since February 22 earthquake and we're told that there are still potentially large aftershocks possible. Are owners out there in the market place now initiating full structural seismic assessments of buildings within your portfolio?

20 A. Within our portfolio, um, Knight Frank are encouraging all of our owners as much as we possibly can to have the detailed assessments done now, sooner rather than later. We think it's an excellent initiative and we applaud CERA for requiring that these now be done. We think it will solve a number of issues. Not least of all insurance claims can be
25 settled quicker and we believe that it will give a very good insight into the status of properties right across the board and we think it should be done sooner rather than later and we're actively encouraging our owners to do that. We can't force them to obviously, but we certainly encourage them.

30 Q. Are owners resistant to that or are they taking that advice?

A. I wouldn't say they're resistant to it. I guess a lot of it comes down to economics and you know that is certainly a factor but we believe that it's going to have to be done and we're advising our owners to do it sooner

rather than later – (a) as I said it will help them resolve insurance claims;
(b) it will assist them to know exactly what the status of their property is
and they can then plan to bring it up to code. We're also encouraging
our owners to, where possible, bring their properties up to optimum
code rather than do the minimum possible, and not least of all we
believe that going forward it will be a requirement and it will be dictated
essentially by tenants as to where they will go based upon the status of
the property. So the sooner that owners establish what that status is the
better.

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CROSS-EXAMINATION: MR LAING AND MR JONES – NIL

RE-EXAMINATION: MR SMEDLEY – NIL

QUESTIONS FROM THE COMMISSIONERS – NIL

15 **MR BELL:**

Before I sit down could I please just extend my condolences to the family of
Desley Thompson and those of Knight Frank. It was a terrible tragedy.

WITNESS EXCUSED

MR SMEDLEY CALLS:**LUKE JAMES REES-THOMAS(SWORN)**

Q. Mr Thomas you are Luke James Rees-Thomas and you live in Christchurch.

5 A. That is correct.

Q. Could you please start reading your brief from paragraph 2.

WITNESS READS BRIEF

10 A. I have been asked to provide evidence to the Royal Commission relating to Knight Frank's involvement with the building situated at 738 Colombo Street. In particular, after the September earthquake, in relation to assessments obtained, and then again after the Boxing Day aftershock.

I completed a Diploma of Business at Canterbury University in 2008.

15 I have been a commercial property manager for Knight Frank since the 27th of October 2010. Prior to that, I've had approximately five years experience as a residential property manager in the UK and in New Zealand, including for Housing New Zealand.

20 I apologise for any inconvenience my non-appearance on the 1st of March 2012 has caused the Commission and any distress that may have been caused to Desley Thompson's family as a result. I have not intended to avoid the Royal Commission. Simply put, Knight Frank was under the impression that I would not be required to attend the hearing unless Mr Liu was unable to answer questions. Given that the first summons was served to me on short notice soon after I had returned
25 from an overseas trip Knight Frank did not consider that I was prepared fully enough to inform the Commission of my and Knight Frank's involvement. Accordingly, Andy Bell instructed me that in the circumstances I did not have to appear on the 1st of March.

30 I am grateful for the extra time the adjournment has given me to re-familiarise myself with the file and prepare for this hearing.

As a result I have been able to locate information which I think may assist the Commission.

As part of my promotion to Commercial Property Manager on the 27th of October 2010 I took over management of a number of commercial properties, these properties included 736 and 738 Colombo Street.

5 As far as I am aware there has always been some confusion as to the correct address for 738 Colombo Street. Occasionally it is referred to as 740 Colombo Street or 738/740 Colombo Street. I mention this only because some of the documents refer to 738 as 740.

10 When I took over the responsibility for management of 738 Colombo Street from Andy Bell the earthquake of 4 September 2010 had already occurred.

I was aware that the tenant, Akira, had obtained an engineer's report following the September earthquake and that it had been provided to the owner. At that stage I had not seen a copy of the report and as far as I was aware no-one else at Knight Frank had seen a copy either. That report, the Powell Fenwick Report, was finally emailed to me by Julie from the OK Gift Shop on the 2nd of November 2010.

WITNESS REFERRED TO DOCUMENT WIT.REE.0002A.72

Q. Can you tell the Commission please what that document is?

20 A. Certainly, that is an email from the Ok Gift Shop to me forwarding a copy of the engineer's report which was completed in September.

Q. Thank you. If you could carry on reading.

WITNESS CONTINUES READING BRIEF OF EVIDENCE

A. On its receipt I then emailed it to the City Council in two separate emails.

25 **WITNESS REFERRED TO DOCUMENT WIT.REE.0002A.69**

A. This is an email from myself to the City Council in response to their letter forwarding a copy of our structural engineer's report.

Q. And which report was that?

30 A. This is actually for 736 which was a Lewis Bradford report but there was a duplicate email in respect of 738 as well which included the Powell Fenwick report.

WITNESS REFERRED TO DOCUMENT WIT.REE.0002A.68

0948

- A. Yes, this is actually for 736 which was a Lewis Bradford report but there was a duplicate email in respect of 738 as well which included the Powell Fenwick report.

EXAMINATION CONTINUES: MR SMEDLEY

- 5 Q. If we could just take the witness please to document WIT.REE.0002A.68.
- A. Yes this is the email from myself to the Council in respect of 738 Colombo Street.
- Q. And which was the structural engineer's report you were talking about?
- 10 A. This relates to the Powell Fenwick report completed after September.
- Q. Thank you. If you could carry on reading please from paragraph 12.

WITNESS CONTINUES READING BRIEF OF EVIDENCE

- A. The 9 September report received from Lewis Bradford concerning 736, referred to by Andy Bell, recommended that a full structural seismic assessment be completed on that building, 736, by an engineer. I also noted that the Powell Fenwick report recommended a more detailed structural inspection of 738. Accordingly, after a meeting with the insurer of 736 and 738 I instructed Mr Hamish Mr MacKinven of Lewis Bradford to conduct a structural assessment of 736 and 738 Colombo Street on the 24th of November 2010.
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- Q. And if we could have document WIT.REE.0002A.67 please, and if you could enlarge the top half of that document please. Could you tell the Commission please what this document is?
- A. This is an email from myself to Hamish of Lewis Bradford requesting full structural reports on both buildings, 736 to 740 Colombo Street.
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- Q. Thank you. If you could carry on reading please.

WITNESS CONTINUES READING BRIEF OF EVIDENCE

- A. I sent Mr MacKinven access details for both 736 and 738 on the 25th of November 2010.
- 30 Q. And if we could have on the screen please document WIT.REE.0002A.62. Can you tell the Commission please what this document is?

A. This is a further email from myself to Hamish of Lewis Bradford explaining access for his inspection, noting 736 Colombo Street Post Shop and 738 Colombo Street the OK Gift Shop.

Q. And the subject line reads?

5 A. "736 to 738 Colombo Street."

Q. Thank you. If you could carry on reading from paragraph 13.

WITNESS CONTINUES READING BRIEF OF EVIDENCE

10 A. In any event on the 25th of November 2010 I emailed Julie at the OK Gift Shop to advise her I would visit with a structural engineer to assess the building damage and its safety in full, noting that a brief check had been completed post earthquake.

Q. And if we could have document WIT.REE.0002A.61 please. Could you explain this document please?

15 A. The bottom part is an email from myself to Julie of the OK Gift Shop advising that we will be visiting with a structural engineer and will be visiting after 10.00 am because that's when they open and her response at the top.

Q. And could you confirm the address of the OK Gift Shop please?

A. 738 Colombo Street.

20 Q. Thank you. Please continue reading from paragraph 14.

WITNESS CONTINUES READING BRIEF OF EVIDENCE

25 A. I knew that the Post Shop opened for business at 9.00 am and the OK Gift Shop opened at 10.00 am. Therefore I arranged for the engineer to conduct an assessment of the Post Shop at 736 Colombo Street first to be followed immediately after by 738.

MR SMEDLEY TO JUSTICE COOPER:

30 Now Sir the document contains a typo. That should be WIT.REE.0002A.62 not 61 and we have referred to that before. I don't intend to take Mr Rees-Thomas to it.

EXAMINATION CONTINUES: MR SMEDLEY

Q. If you could carry on please from paragraph 15.

WITNESS CONTINUES READING BRIEF OF EVIDENCE

A. On the 26th of November 2010 I attended with Mr MacKinven of Lewis Bradford at the Post Shop and explained to him that we wanted a structural damage report for both 736 and 738 Colombo Street. I left the premise shortly thereafter assuming that Mr MacKinven would follow my instructions.

However, when I received his report dated the 30th of November 2010 on the 6th of December 2010 –

Q. And if we could go to document WIT.REE.0002A.17 please.

10 A. This is a copy of the report received by Lewis Bradford in conjunction to the Post Shop. It was received on the 6th of December.

Q. Thank you. If you could carry on reading midway through paragraph 16.

WITNESS CONTINUES READING BRIEF OF EVIDENCE

A. I realised that he had only inspected 736 Colombo Street and not 738.

15 Following the above I recall a conversation with a Mr MacKinven in which we discussed that a structural assessment would be required on 738.

In his report dated the 30th of November 2010 Mr MacKinven recommended a full structural assessment be carried out on 736.

20 Therefore after consultation with me the insurer's loss adjuster Phil Buckman instructed Mr MacKinven to perform a full structural assessment on both 736 and 738 Colombo Street which are covered by the same insurance policy.

25 Following the Boxing Day aftershock a report was conducted by the tenant of 738 in conjunction with the owner Mr Liu (I understand) utilising Powell Fenwick again.

JUSTICE COOPER:

30 Q. I don't follow that sentence. What do you mean, "A report was conducted?"

A. I spoke to Julie of the OK Gift shop who advised me that an engineer had visited the building and that the only issue I'm about to say was that

a door needed to be realigned and that they would send us a copy of the report.

EXAMINATION CONTINUES: MR SMEDLEY

5 Q. If you could carry on reading please from the second sentence at paragraph 19.

WITNESS CONTINUES READING BRIEF OF EVIDENCE

10 A. I spoke to Julie of the OK Gift Shop at the time who told me that a report had been arranged and the only maintenance issue was that a front, that the front automatic door needed realignment. I arranged for the door to be repaired. Thereafter the tenant of 738 continued trading after the city council's green sticker had been reapplied. I was sent a copy of the engineer's invoice for reimbursement at the start of February. Knight Frank never received a copy of the report itself.

15 The tenant of 736, the Post Shop, arranged for URS New Zealand Limited through UGL Services to undertake an inspection of 736 following the Boxing Day aftershock. URS sent UGL their report on the 30th of December 2010.

20 Q. And if we could have on the screen please document WIT.REE.0002A.14. Could you tell the Commission please what this document is?

A. Yes this is a copy of the structural assessment completed for the post shop after the Boxing Day aftershock on 736 Colombo Street.

Q. Thank you. If you could carry on reading your brief from just after midway through paragraph 20.

25 A. In their report URS stated that they believed 736 "*can continue to be safely occupied*" and recommended that the building owner carries out further structural inspection.

Given that Lewis Bradford had already

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30 been instructed to conduct a full structural assessment of both 736 and 738 I considered that everything was in hand.

In order to conduct the full structural assessment of 736 and 738 as instructed by Mr Buckman, Mr MacKinven asked me to provide various documents including plans of the building which I obtained from the City Council and sent to him on the 25th of January 2011.

5 **WITNESS REFERRED TO DOCUMENT WIT.REE.0002A.13**

Q. Could you tell the Commission please what this document is?

A. This is an email from myself to Hamish of Lewis Bradford forwarding him copies of plans for 736 and 738 Colombo Street.

WITNESS CONTINUES READING BRIEF AT PARAGRAPH 23

10 A. On the 19th of January 2011 I received an email from FHS Roofing Limited who had been instructed by me to inspect a roof leak at 738.

WITNESS REFERRED TO DOCUMENT WIT.REE.0002A.12

15 In that email it was noted that *“the Colombo Street parapet three metres tall has come adrift from the walls on either side and will need re-fixing to the adjacent buildings to re-secure”*.

Q. If I could just stop you. What is that document on the screen?

A. That is an email from the roofer, the building contractor, reporting back to me after a roof leak I had asked them to inspect, advising that the parapet needed repair.

20 **WITNESS CONTINUES READING BRIEF AT PARAGRAPH 24**

A. I passed this information onto Mr Buckman via email on the 26th of January 2011.

WITNESS REFERRED TO DOCUMENT WIT.REE.0002A.11

Q. Tell the Commission please what this document is?

25 A. Yes, this is an email from myself to the loss adjuster of the building advising of the parapet issue and requesting that we could get this inspected as part of our investigations.

Q. And it doesn't appear on that part of the page that's enlarged but the name of the loss adjuster was?

30 A. Phil Buckman.

WITNESS CONTINUES READING BRIEF FROM SECOND SENTENCE AT PARAGRAPH 24

A. Mr Buckman passed this information on to Mr MacKinven via the email on 28th of January 2011 and asked him to *“inspect this and report as part of your investigations into the damage.”* I know this because the email was copied to me on the same day.

5 Q. And if we could enlarge the upper portion of the same page please. Can you tell the Commission please what that document is?

A. Yes, this is an email forwarding from Phil Buckman, the loss adjuster, to Hamish of Lewis Bradford, requesting that he inspect this issue and the property is 738 Colombo Street.

10 **WITNESS CONTINUES READING BRIEF AT PARAGRAPH 25**

A. The complete Council file for the buildings was not available for viewing until the 8th of February 2011 at which time I informed Mr MacKinven.

WITNESS REFERRED TO DOCUMENT WIT.REE.0002A.10

15 Q. So if you could explain to the Commission what this document is please?

A. That’s an email from myself to Hamish just advising him that the Council file is ready for his viewing and he’s welcome to have a look at the plans at the time.

Q. And the subject line reads?

20 A. “736–738 Colombo Street”.

Q. And if we could enlarge the upper portion of the page please. What’s this document?

A. That is the response from Hamish to my email, the same title – 736–738 Colombo Street – and just acknowledging my email.

25 **WITNESS CONTINUES READING BRIEF AT PARAGRAPH 26**

A. Sadly Lewis Bradford’s structural report was not completed before 22 February 2011 when the tragic earthquake occurred.

30 I confirm that at no time during my involvement as property manager of 736 and 738 Colombo Street did I receive any instruction – oral or otherwise – from Mr Liu in respect of his property.

In summary, the Powell Fenwick report on 738 Colombo Street was commissioned by the tenant of 738 Colombo Street on behalf of its owner Mr Liu.

The Powell Fenwick report was not disclosed to Knight Frank until the 2nd of November at which time I believe it had already been disclosed to Mr Liu.

5 In response to the recommendations in the Powell Fenwick report and the 9 September report in respect of 736 obtained by Knight Frank from Lewis Bradford I instructed Lewis Bradford to conduct a more extensive report for 736 and 738 Colombo Street.

For reasons unbeknown to me Lewis Bradford's report of 30th November 2010 did not cover 738 Colombo Street.

10 Given the recommendations in the 30 November report and the earlier reports, Mr Buckman instructed Lewis Bradford to prepare an even more extensive report which required building plans and the Council file. The complete Council file was not available till the 8th of February 2011 and all of the information requested by Lewis Bradford was supplied to
15 them. However, their more expansive report was not completed before the 22nd of February 2011 when the devastating earthquake occurred.

CROSS-EXAMINATION: MR ZARIFEH

Q. Mr Rees-Thomas, you heard Mr Bell I asked him about why he wanted to obtain the Powell Fenwick report following the September earthquake
20 and I presume you wanted to obtain it for the same reasons?

A. Absolutely, yes. We wanted to follow up on the report and see the wording of the document.

Q. Irrespective of whether Mr Liu got a copy or not?

A. Yes that's correct.

25 Q. And once you got that report on the 2nd of November you said that you saw that it recommended a more detailed inspection?

A. Yes that's correct.

Q. So from your point of view you set about to obtain that?

A. Absolutely, yes.

30 Q. And you've seen Mr Craig Lewis's email responding to in the main your brief or your statement, correct?

A. Yes I have.

Q. And it would appear that there's been a miscommunication or a misunderstanding, would you agree with me?

A. Yes I can agree with that on some level. Our intention all along was always to get a report on 736 and 738 Colombo Street and we expected it to come through in due course.

5

Q. But the net result of you believing that you were communicating that you wanted it on both and Hamish MacKinven believing that he was just doing 736 is that on the 30th of November when you got the report for 736 you didn't get one as well for 738, correct?

10 A. That's correct.

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Q. But in any event the report you got for 736 recommended a more detailed inspection which obviously involved looking at plans etc.

A. Yes, that's correct.

15 Q. And from that point you believed that you were getting one of those for each property.

A. Yes that's correct. At that point the loss adjuster was taking more control of the situation and Lewis Bradford were contracted to them directly and I wasn't privy to information from that point onwards. I always expected that both buildings were going to be inspected and reports as such. Unfortunately that wasn't the case.

20

Q. But it seems from the chronology of events that even if Lewis Bradford had understood that you wanted a detailed inspection of both you wouldn't have got that before the 22nd of February.

25 A. It appears that the time frame was tight and everybody was under a lot of pressure at the time, especially the engineers and I understand that.

Q. Because you didn't get the detailed inspection for 736 before 22 February did you?

A. No we did not.

30 Q. When Hamish MacKinven conducted the initial inspection of 736 he emailed you or Knight Frank on the 9th of September reporting, correct?

A. On the 9th after September?

Q. Yes, the 9th of September.

A. Yes that's correct.

Q. And it appears that it was, you were replying to that email when you instructed him to do an inspection of both.

A. I would have to check the email –

5 **WITNESS REFERRED TO EMAIL 0002A.67**

Q. You refer to it at paragraph 12.

A. Thank you.

Q. So you can see his email at the bottom.

A. Yes.

10 Q. To Andy Bell.

A. Yes.

Q. And then your email at the top, 24 November, to Hamish MacKinven asking for a full structural engineer's report on the building 736–740.

15 A. Yes that's correct, so in response to your question I did respond to his original email.

Q. Right, although his original email's to Andy Bell, isn't it?

A. Yes, that's correct, which was forwarded to me.

20 Q. Right because in the subject you've got "Re 736 Colombo Street Post Shop Building". Is that because that's a reply to the forwarded email you got?

A. Yes I suppose so.

Q. And I presume that you didn't give that any thought as to any possible –

A. Confusion.

Q. Confusion.

25 A. Not at the time unfortunately, no, I thought that my text was self-explanatory.

WITNESS REFERRED TO DOCUMENT 0002A.65

Q. That's, if you look at the bottom that's you sending an email to Mr Bell.

A. Yes that's correct.

30 Q. And you're referring to meeting with the loss adjuster, and the cracks.

A. Yes that's correct.

Q. And asking, saying that there's a full engineer's report recommended, shall I arrange this?

- A. Yes that's correct.
- Q. So that was in relation to 736 Colombo?
- A. Yes.
- Q. So was that the meeting that Hamish MacKinven attended with you as well?
- 5
- A. No this was the meeting with the loss adjuster which was prior to me advising the engineers to proceed.
- Q. Right but that was a meeting solely about 736.
- A. That was where the bulk of the damage was. However, at that meeting we discussed that was one claim for both buildings, one policy, and overall we would need an assessment.
- 10
- Q. Okay and if you look at, if we go back to the top of the page, you've asked him if you should arrange that and he's said yes please in his reply.
- A. Yes.
- 15
- Q. So did you make a similar inquiry in relation to 738 or not?
- A. To my manager, Andy Bell?
- Q. Yes.
- A. No.
- 20
- Q. Why was that?
- A. Basically all the damage that we noted at the time was at 736 Colombo Street and that was the focus at the time. That was my request to Andy and he was assisting me through things at that time so...
- Q. So why did you need a, if most of the damage was to 736 why did you need one for 738?
- 25
- A. As I say it was the one insurance policy and the one claim and I expected that the loss adjuster would want to get an overall picture of the building for them to ascertain the claim.
- Q. And by then you had the Powell Fenwick report on 738 didn't you?
- 30
- A. Yes that's correct.
- Q. You got that 2nd of November.
- A. Yes.

Q. So do you actually recall reading the Powell Fenwick report and seeing that it recommended a full inspection or a more detailed inspection?

A. Yes I do.

5 **JUSTICE COOPER:**

Q. Can I just ask you about your answer where you said you expected the loss adjuster would want a full report. Why do you say 'I expected'? Had he not said he wanted a report on 738?

10 A. We did discuss it at the time that both buildings. Unfortunately I can't recall the specific conversation that we had but I remember walking away with the belief that both buildings would need to be assessed. However, as I say, we did focus on 736 Colombo Street.

Q. Sorry you did focus on 736?

15 A. Yes we did. At the time of our visit we inspected both buildings with the loss adjuster but as there was a large amount of damage at 736 that was where the focus of the meeting was.

CROSS-EXAMINATION: MR ZARIFEH

Q. So do you think that the loss adjuster might have had the same view then as Hamish MacKinven, that it was 736 only?

20 A. I can't speak for the loss adjuster unfortunately but, as I say, my impression from my meeting with the loss adjuster was that we did need an inspection for both buildings.

Q. You told us about sending the reports to the Council.

A. Yes.

25 Q. And not referred to by you but in the documents you've provided there's an email you might recall from Hamish MacKinven to the Council.

A. Yes.

Q. That's about 736. There doesn't appear to be one about 738 from him.

A. That's right.

30 Q. Can you explain that?

A. Unfortunately not, no.

Q. But, again, that seems consistent with Hamish MacKinven believing he was dealing solely in relation to 736, doesn't it?

A. To be honest I can't comment on that unfortunately, but um as I say I was always under the impression that we'd asked them for reports on both buildings.

5

Q. What about the documentation that was attached to Mr Lewis' email, I presume you've had a look at that. In particular I was wanting to refer you to the short form agreement. Do you recall signing that?

A. Yes I do.

10

Q. That is Lewis Bradford 0.5 I think it is, I'll just get it brought up. Oh 00033.5. So that's the short form agreement signed by yourself down the bottom left.

A. Yes it is.

Q. 25 November, so that's following your instructions about the email that you referred to instructing an inspection of both buildings?

15

A. Yes it is.

Q. That only relates to 736 though, correct?

A. Correct it does.

Q. Was there one completed for 738 or not?

20

A. No there wasn't.

Q. Why was that?

A. Um, there's always been some confusion about the addresses. I was always under the assumption that this covered both buildings as we've mentioned we considered it the one management and I still expected that this would cover the overall picture in both buildings.

25

Q. Right but then this has the address 736 and on an email we referred to a moment ago, an email from Hamish MacKinven, it had 736 Post Shop. The Post Shop was the major tenant in 736 was it?

A. That's correct.

30

Q. And your email referred to 736-740 I think when you referred to both buildings.

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A. My instruction to Hamish?

Q. Yes.

A. Yes, that's correct. As I say there has been some confusion about the address of 738.

Q. So you can't explain why that simply refers to 736 and not 736 to 740?

5 A. All I can say is that it must have been a technical oversight at the time, but my impression all along was that we had requested a report with the overall picture being both buildings.

Q. Okay. Well you met Hamish MacKinven at 736 on the 26th of November?

10 A. That's right.

Q. Paragraph 15.

A. Yes, that's right.

Q. Who else was there?

A. I believe he had a colleague with him as well.

15 Q. Was that I think Geoff Wilson that's mentioned?

A. I can't remember his name unfortunately.

Q. And you didn't, you only looked at 736 while you were there?

A. That's correct. I was there for a short period of time, possibly 45 minutes. As I mentioned we did focus on the Post Shop. That's
20 where the damage was. However, they advised me that it was going to take the better part of the day to complete the report.

Q. For which, for the Post Shop?

A. For the overall, for both buildings.

Q. So obviously in this conversation from what you say you believed that
25 you were instructing Mr MacKinven to inspect and do a detailed inspection for both buildings?

A. Yes.

Q. Can you remember what you said in that regard?

A. When I met them on site?

30 Q. No about the fact that you wanted both buildings inspected and reported on?

A. Sorry I might have to ask you that again if that's all right?

Q. Can you remember what you actually said to Mr MacKinven to make it clear that you wanted both buildings reported on?

A. Unfortunately I can't recall the conversation.

5 **JUSTICE COOPER:**

Q. By that are you saying you don't remember what was discussed?

A. Yes but again I came away with the impression that they were to – sorry.

CROSS-EXAMINATION CONTINUES: MR ZARIFEH

10 Q. Because you say in 15 that you explained to him that, "We wanted a structural damage report for both 736 and 738 Colombo Street?"

A. Initially that was my original instruction, yes.

Q. But what you're saying is you can't recall what you said to him but you went away with the impression that you'd made it clear that you wanted
15 both?

A. Yes that's right.

Q. And I take it that you accept that, well you understand that he had the impression it was just 736?

A. Yes I understand that now.

20 Q. But when you walked away, when they were still looking at 736, you thought they would go to 738 as in fact your email to the tenant at 738 indicated that –

A. Yes.

Q. – they'd be going there afterwards?

25 A. Yes, that's correct.

Q. Then in paragraph 16 you talk about receiving the report of 30 November.

A. Yes.

Q. And as we've seen that relates only to 736.

30 A. Yes.

Q. So when you got that you would have realised that it only related to 736?

A. That's right. I did.

Q. So I just want to ask you then about the emails that Lewis Bradford had referred to where, and you'll remember them where, the emails that sent the report, attached the report.

5 A. Yes.

Q. And I won't refer them to you unless you want me to but you say, "Thanks for the report which arrived today. Very thorough," was your reply and another one from Hamish MacKinven attaching pdf, "Attached some photos. Drawings are separate to the main body of the report but I'm sure the loss adjuster will sort it out," and you replied, "Cheers for that, Hamish."

10

A. Yes.

Q. Correct?

A. Yep.

15 Q. When you got that report and you could see it was only 736 as it's obviously headed up, why didn't you reply and say, "Where's the 738 report?"

A. Unfortunately I can't answer that but following receipt of the report I do remember speaking to Mr MacKinven but I more vividly recall speaking to Mr Buckman and saying to him, "There's been some confusion. We do need a report for 738 here."

20

Q. Okay. Well you talk about that conversation with Mr MacKinven in paragraph 17 of your brief.

A. Yes.

25 Q. So just tell us about that. What do you recall saying to – and when was it?

A. I believe, it was certainly before Boxing Day. Unfortunately I can't recall the exact conversation but I remember speaking to Hamish around that time.

30 Q. By phone or in person?

A. By phone.

Q. And what, what were you, what did you convey to him then?

- A. Possibly that I'd spoken to the loss adjustor and that we still needed 738 but we would have discussed 736 in that, what was required at the time for that building.
- Q. Sorry you would have discussed 736.
- 5 A. Yes.
- Q. And what, the fact that you wanted a more detailed report?
- A. Well no that was to come from the loss adjustor because at that time he was contracted to him but I recall speaking to Mr MacKinven but very vividly speaking to Mr Buckman about that.
- 10 Q. And so what, were you leaving Mr Buckman to then instruct Mr MacKinven?
- A. Yes, that's correct.
- Q. So is that where you say in paragraph 18 that Mr Buckman instructed Mr MacKinven to do an inspection on both?
- 15 A. Yes that's right.
- Q. So do you know how that was done, that instruction?
- A. I, I've now discovered, I've seen the emails which Mr Lewis has sent through.
- Q. Right which refer to 736?
- 20 A. That's correct.
- Q. So Mr MacKinven obviously got the wrong understanding that you were trying to convey and it would appear Mr Buckman did as well?
- A. So it would seem.
- Q. And you can't explain why that might have been other than that you thought you'd made it clear but?
- 25 A. Yeah, absolutely.
- Q. But you can't recall now exactly what you said but -
- A. No.
- Q. – that was the impression you gave?
- 30 A. Yeah.
- Q. Thank you. Right. So from that point on anyway, and this is prior to Boxing Day, you're under the impression from what you said to

Mr MacKinven and what you said to Mr Buckman that Mr Buckman would be ensuring that a report was obtained for both 736 and 738?

A. Yes, that's correct.

Q. And really you left things there at that point?

5 A. I didn't leave things there, but as I say the loss adjustor more so took control of the situation and contracted Lewis Bradford directly.

Q. Then Boxing Day aftershock occurs. Did you become aware that Powell Fenwick had inspected?

10 A. Yes I did speak to the tenant, Julie of the OK Gift Shop, as I said earlier who had advised me that a report had been arranged. The only issue was the door needed to be re-aligned and I also knew that the council had green stickered the building again.

Q. Okay. Now following September Mr Bell and then yourself obtained a copy of the September report from Powell Fenwick?

15 A. Yes.

Q. Or the Powell Fenwick report?

A. Yep.

Q. But you don't appear to have obtained it for Boxing Day?

A. That's right.

20 Q. Why was that?

A. We did request one from the tenant when I spoke to her but it never actually arrived.

Q. But you didn't, it doesn't seem like you chased it up or –

A. No.

25 Q. – made sure you got one?

A. Well I was happy with the fact that the tenant knew the building very well. They'd relayed that information to me and as I assumed there was a report underway already.

Q. From Mr MacKinven?

30 A. Yes, that's correct.

Q. And Knight Frank didn't ever get a copy of that Powell Fenwick report from Boxing Day?

A. Unfortunately not, no.

- Q. And really the next thing chronologically that happened is communication between you and Mr MacKinven about the plans. Is that correct?
- A. Yes we had the parapet thing from the roofer.
- 5 Q. That was in January?
- A. Correct, yeah.
- Q. So you got, let's deal with that. You got the email from the roofer?
- A. Yes.
- Q. And you, it seems like about a week later you passed that onto
10 Mr Buckman?
- A. Yes that's correct.
- Q. Would that not have been categorised as emergency repairs the, what the roof was raising or not? Did you have to get insurance approval for that, that kind of work?
- 15 A. Not so much their approval but as I say we felt that Mr Buckman was co-ordinating with the engineer. I did feel it was something the engineer
1028 needed to look at. The roofer, I don't believe, had stressed it to me as an urgent situation. He didn't say that the tenants needed to vacate or
20 anything like that but I did feel it needed to be forwarded on.
- Q. Okay, so you forwarded it to Mr Buckman and he forwarded it to Mr MacKinven and we know from the emails that it was looked at.
- A. Yes.
- Q. But, again, from Mr Lewis' email it would appear that it was more a
25 problem at the connection between 738 and 736.
- A. Um, we never actually were privy at the time –
- Q. To any more than the emails.
- A. That's right, we never received a response.
- Q. So did you know that it had been fixed up?
- 30 A. Unfortunately not no.
- Q. Well did you follow it up or not?

- A. I didn't at the time. I would have expected they would come back to me and advise me if there were any issues. Unfortunately we did have a lot going on at the time.
- 5 Q. I understand that, but so all you knew was that the Colombo Street parapet had come adrift from the walls on either side and needed re-fixing to the adjacent buildings to be secured.
- A. Yes.
- 10 Q. Do you recall thinking about following that up to make sure that it had been done given that you had this basically full property management arrangement?
- A. Well the previous engineers had cleared the building and we were satisfied. We were guided by the green sticker from the Council at the time. I didn't follow it up with loss adjuster because he had passed it onto the engineer and, as I say, I would have assumed they would come
- 15 back to me if there was an urgent issue at hand.
- Q. So you at least knew that Mr Buckman had passed it on to an engineer.
- A. Yes that's correct.
- Q. From being copied into the email.
- A. Yes.
- 20 Q. Then the next thing is the contact about the plans from the Council.
- A. Yes that's right.
- Q. So Mr MacKinven, in order to complete the detailed structural assessment, he thinking it was only on 736 but you thinking it was both
-
- 25 A. Mmm.
- Q. – wanted plans from the Council, correct?
- A. Yes that's right.
- Q. So how did he convey that to you? I don't see any email from him to you in the documents, do you recall?
- 30 A. Unfortunately I can't recall that, no. We may have spoken at the time. Honestly I can't remember I'm sorry.
- Q. All right but it would appear from the email correspondence you've produced that it wasn't by email, or is that not necessarily the case?

- A. I haven't found an email to that effect no.
- Q. And can you remember then what he said to you?
- A. Unfortunately not, no.
- Q. But made it clear that he wanted the plans.
- 5 A. That's right.
- Q. So you then went to the Council.
- A. Yes that's right.
- Q. What, by phone or email?
- A. I phoned them up.
- 10 Q. And requested what?
- A. The first time I requested the property file which took some time to arrive and I went down there myself when I had arrived and copied the plans and I posted those to Hamish.
- Q. And I think you referred in your email to having put them in the post.
- 15 A. Yes that's right.
- Q. So was that plans for both buildings?
- A. I believe it was.
- Q. Can you recall?
- A. I certainly recall organising the property file for both buildings and going
- 20 through both the property files seeing what I could find.
- Q. So you recall going to the Council and looking at both property files because they would have had separate files for each building wouldn't they?
- A. I recall they were yes.
- 25 Q. And copying plans for each one and putting those in the post.
- A. Yes that's right.
- Q. If you'd sent them to him why did you have to, why is there that email saying at paragraph 25, "*complete file for the buildings wasn't available for viewing until 8 February*". Had you only taken parts of the file?
- 30 A. Unfortunately yes.
- Q. What parts that you thought were relevant?
- A. That's right and, unfortunately, I'm not an engineer and I just took out the plans which I thought were most relevant for Hamish at the time and

he came back to me and said can you please organise the property file, I'll have a look at it myself. It was no problem.

Q. Okay, so was there another conversation between you and Hamish MacKinven then or an email?

5 A. We must have had a conversation at the time.

Q. But you can't recall that.

A. Unfortunately not.

Q. All right but in any event it was obvious that he wanted more information.

10 A. That's right.

1033

Q. And hence your email to him saying that the file was available after 8 February?

A. Yes that's right.

15 Q. I just want to show you 0002A.16. This is an email, and you've referred to it, but it's dated 20 December, document 18 in the original. So you'll see it's an email dated 20 December, appears to be from Mr Buckman to you?

A. Yes that's correct.

20 Q. And it's talking about the insurer accepting confirmation of a claim for damage for 736?

A. Yes that's correct.

Q. So no mention there of 738?

A. No there appears not to be.

25 Q. Did you receive any similar confirmation in relation to 738 or not?

A. Not via email, no.

Q. Did you not think that was odd that you would not get confirmation or approval for payment of this detailed inspection for 738?

30 A. Yep. At the time after this is about the time I spoke to Mr Buckman directly and said to him that there's been some confusion, we do need 738 included as well.

Q. So this is around 20 December?

A. I believe so. Again I can't recall the exact date but I do vividly recall the conversation with him.

Q. Okay but again, as we discussed before, you can't explain why he as well seems to have the impression it was only 736?

5 A. No.

Q. And throughout this period from what you've said you had no contact with Mr Liu?

A. We did try and contact Mr Liu in January. Unfortunately he was unable to be reached. We weren't sure if he was in the country or not.

10 Q. Was he often out of the country, or did you not know?

A. At that time I was gathering a picture that he did travel a lot, yeah.

Q. So you didn't need to seek his approval for the obtaining of the detailed inspections and reports?

A. That was really why I met the loss adjuster and lodged a claim. I
15 wanted to get their buy-in to cover the cost of this detailed report.

Q. Well then can you explain then why you would need to get approval before you instructed the engineer when there doesn't appear to be any approval for 738?

A. From who, sorry?

20 Q. From the insurer or the loss adjuster.

A. That was the way it appears it turned out, but I was always under the impression that we were going to arrange for both.

Q. And, what, under the impression that the loss adjuster had approved it?

A. That's right.

25 Q. Albeit verbally?

A. Yes.

Q. Right, and you didn't think it odd that that was verbal but you had written approval for 736?

A. I did find it odd and after this I spoke to Mr Buckman and said to him
30 there's been some confusion and we need to include 738 as well.

Q. And he didn't provide you with an email or written approval for 738 at any stage then?

A. Unfortunately not. This was about the point where he contracted to Lewis Bradford and I wasn't privy to any information between them after that.

5 Q. Right and so, what, you were just waiting expecting that you would get a report for both at some stage?

A. Right, yes.

CROSS-EXAMINATION: MR ELLIOTT

10 Q. Just one further issue. Mr Rees-Thomas, in paragraph 18 of your statement you say that after consultation with you. The loss adjuster Mr Buckman instructed Mr MacKinven to perform a full structural assessment on both 736 and 738. And I think Mr MacKinven had earlier used the words in an email – a full structural seismic assessment – and that is what you understood he was being instructed to do?

A. Yes that's correct.

15 Q. I'll just refer you back to that document Mr Zarifeh has just shown you which is WIT.REE.0002A.16. Can I have the second paragraph enlarged please. So this is an email from Mr Buckman to you dated 20th of December 2010 in which he says, "*We will instruct the engineers to complete their investigations in regard to the damage to enable*
20 *finalisation of the scope of repair.*" Can you just comment upon what appears to be the difference between what the type of inspection you've told the Commission you thought was being obtained and the type of inspection that the loss adjuster appears to be describing to you?

25 A. I believe they were to be the same thing. I believe they were, I mean not being an engineer myself I expected that they would check the buildings over in full and then give us a list of the damage and how it was to be repaired.

CROSS-EXAMINATION: MR LAING – NIL

RE-EXAMINATION: MR SMEDLEY – NIL

30

COMMISSIONER CARTER – NIL**JUSTICE COOPER**

- 5 Q. Mr Rees-Thomas, just in regard to paragraph 18 you say the insurance loss adjuster, Phil Buckman, instructed Mr MacKinven to perform a full structural assessment on both 736 and 738 Colombo Street?
- A. Yes.
- Q. That consultation that you refer to would have occurred sometime in December would it, mid December?
- 10 A. My first meeting with the loss adjuster, my only meeting with the loss adjuster, was around about the middle of November.
- Q. Yes but just going with the chronology you referred in paragraph 16 to receiving the report about 736 on the 6th of December?
- A. Yes.
- 15 Q. And then you had a discussion with Mr MacKinven at some time after that?
- A. Yes.
- Q. So do you want to reflect on the answer you gave previously?
- A. Can I please ask you to refresh the question for me, sorry.
- 20 Q. My question was whether the consultation to which you're referring in paragraph 18 with Mr Buckman would have been some time on or about the 6th of December or in the days following that?
- A. I believe I spoke to Mr Buckman and I advised him again that reports were required for both.
- 25 Q. My question is about the timing of it?
- A. Unfortunately –
- Q. – You can't recall?
- A. I can't recall I'm sorry.
- Q. Well you say there that Mr Buckman instructed Mr MacKinven to perform a full structural assessment on both 736 and 738?
- 30 A. Yes that's correct.
- Q. Why do you say that?
- A. That was my belief that he was going to be arranging those two reports.

Q. I'm really wanting to know what the basis of your belief was insofar as it related to 738?

A. It related to my conversation with Mr Buckman in that both reports needed to be done.

5 Q. Well what did Mr Buckman say to you which you rely on for the observation, for the evidence you give there, that he instructed that to happen in relation to 738?

A. I've relied on his words to me saying that yes we will need to get both done as part of the overall claim and –

10 Q. – When you're having the discussion it relates to something that was to occur in the future, something he was going to do. Am I right?

A. I spoke to Mr –

Q. – Am I right?

A. I can't answer that unfortunately.

15 104300

Q. Well then why are you giving evidence that Mr Buckman instructed that to occur? That he in fact gave that instruction which is what you're intending to convey in this paragraph isn't it?

20 A. Yes he instructed the engineer to complete a full report after receiving the original report.

Q. So why do you say that?

A. Why do I say that?

Q. Yes.

A. Because of the email that was received to me.

25 Q. Which email are you referring to?

A. The one that was raised on the screen before.

Q. Can you remember what its date was?

A. Yes that one there. Between the time of –

Q. Well that doesn't refer to 738 does it?

30 A. No, no it doesn't, but as I say there was no confirmation in writing from the loss adjustor to me that 738 was to be arranged.

Q. Well was there an oral confirmation that it had been done?

A. Not an oral confirmation. He advised me in our conversation that he was going to do that.

Q. All right. Thank you.

A. Thank you.

5

JUSTICE COOPER:

Is there anything arising from that Mr Smedley?

MR SMEDLEY:

10 No Sir.

COMMISSIONER CARTER:

Q. Just one question. Was it quite clear that an insurance claim was going to be made for both buildings. I'm interested because so much of the description has been of damage to 736 –

15

A. Mmm.

Q. – and little damage to 738.

A. That's right.

Q. In the light of the questions you've just been asked it occurs to me that it's possible that Mr Buckman did not know that the claim was also coming for 738 and perhaps you can tell us why you believed he knew that?

20

A. As I say we did focus on 736. That was where the bulk of the damage was. I've no debate about that. We all focussed on that building. However, I always expected the claim, one policy for the both buildings would cover overall and that would be in the interests of the loss adjustor.

25

Q. The curious thing seems to be that in some cases the buildings were being regarded as separate items, separate tenants, separate damage reports and in other cases they were being looked at as being one, one commercial circumstance in which there would be one insurance claim and it is confusing as to what the parties were thinking in that regard.

30

A. Yes perhaps that's where the confusion has come in.

Q. Thank you.

A. May I say one more thing if that's possible? I'd like to address the family and just pass on my sincerest condolences. This must be a really hard time for you and we understand that. Thank you.

5 WITNESS EXCUSED

MR ZARIFEH CALLS**CRAIG BRIAN LEWIS (SWORN)**

Q. Mr Lewis can you give the Commission your full name please?

A. Craig Brian Lewis.

5 Q. And you're a director of Lewis Bradford Structural Engineers?

A. That's correct.

Q. And in fact you gave evidence a few weeks ago in relation to 753 Colombo Street?

A. That's correct.

10 Q. Now you've been sitting in Court and you've heard the evidence of Mr Bell and Mr Rees-Thomas that's just been given?

A. Yes.

Q. And this issue of the follow-up if you like of the Powell Fenwick report from September for 738 and a more detailed report on 738, we've heard
15 reference to Mr MacKinven and he was obviously the structural engineer that completed the report on 736 following the September earthquake?

A. Correct.

Q. Did you have any direct involvement as in discussions with Mr Bell or
20 Mr Rees-Thomas over the obtaining of reports through the 736 or 738?

A. I don't believe I have any correspondence. I believe it was directly between Hamish and Mr Bell and Mr Rees-Thomas.

Q. You have replied by email on behalf I suppose of yourself, of Lewis Bradford, in relation to the two statements, briefs of evidence from
25 Mr Bell and Mr Rees-Thomas?

A. Correct for two reasons. One was that Hamish left our employment last October and the other was that he had a number of commitments this morning that he was doing his best to get out of but he wasn't sure about his timing for getting to the Commission.

30 Q. And he's hoping that he'll be here shortly.

A. I believe so, yes.

Q. But I just wonder if you can, in your email you refer to a number of documents that we've had reference to this morning, to some of them anyway. The, those documents appear to refer only to 736. Is that fair?

5 A. That's correct. Whereas Hamish was the senior engineer completing all that work. Those documents were reviewed and in the case of the short form agreement prepared by me. So I'm well aware of the history of the project and the full correspondence which is, is that much.

Q. And is that in relation to which building?

A. 736 solely.

10 Q. Right. So Lewis Bradford were obviously instructed following the September earthquake in relation to 736?

A. That's correct.

Q. And not 738?

15 A. No as Mr Bell said I don't think there's any confusion there. It was solely 736.

Q. All right.

A. We were aware the level 2 inspection notice was really visible on the front window of OK Gift Shop that that had been separately inspected. A level 2 inspection carried out by another firm.

20 Q. Right. So you knew about the Powell Fenwick inspection?

A. We did.

Q. Did you know about the Powell Fenwick inspection on Boxing Day or after Boxing Day?

A. We did as well. I was –

25 Q. How did you know about that?

30 A. I was called by the, by the Christchurch City Council – I was in town on the night of Boxing Day inspecting a couple of buildings that I was involved with, the police station being one building and then I assisted the Christchurch City Council on the 27th of December with inspections around the Square and as a result of that I assisted a building inspector inspecting the new Winnie Bagoes shop up there. So on the 27th of December we, I walked past the Post Shop. I had a visual inspection of it, I hadn't been called and because I was pressed for time there I didn't

carry out an inspection of the post shop building but on the way past I believe the Powell Fenwick level 2 inspection notice from the 26th was already displayed in the window of OK Gift Shop. So it really just caught my eye.

5 Q. And we've seen or you can see the emails that Mr Rees-Thomas has referred to?

A. Yes.

Q. And the emails back from Hamish MacKinven. It would seem from the email correspondence from Mr MacKinven and from Mr Buckman that they at all times appear to have been referring only to 736.

10 A. I believe so. At the same time having heard Mr Rees-Thomas' evidence and the confusion throughout the file with the addresses I think everywhere from 734 to 744 in correspondence we've had and drawings on the Council property file is referred to for those two properties, though I have no reason to doubt that Mr Rees-Thomas was thinking that he had asked or something but I believe it's clear from our records and our correspondence and also the correspondence we had with Mr Buckman and also my conversations earlier this week with Mr Buckman that we were looking solely at 736.

20 1053

Q. And you heard the questioning a moment ago about the instruction from the loss adjuster from Mr Buckman to Lewis Bradford. Was that via email or how?

A. Email, yes.

25 Q. So there's instruction in relation to 736, correct?

A. Yes, two separate instructions – one in –

Q. – One in November?

A. November and one in January I believe, received in early January.

Q. So that's in effect approval is it that the insurer will pay for the Lewis Bradford work?

30 A. Correct.

Q. And presumably Lewis Bradford wouldn't want to do that work unless it was getting properly instructed so that it was going to get paid?

A. Ah, no, no, it's really, um, as a firm we don't get too hung up on that. If we had had a verbal approval from Mr Buckman or the insurer directly that we were to get underway with that, that would have been adequate for us to commence the process rather than getting a written instruction which may take a day or two to reach us in the mail. This one was emailed.

Q. Would a verbal from the property manager be sufficient?

A. Yes.

Q. So you heard Mr Rees-Thomas a moment ago say that really after he got the 30th of November report from Mr MacKinven that he then recalls discussing it with Mr MacKinven and Mr Buckman and that he left it to Mr Buckman to instruct Lewis Bradford, Mr MacKinven. I take it then there's no record of any instruction in relation to 738?

A. No I don't believe so.

Q. So Lewis Bradford has had no involvement with 738 in terms of inspecting and reporting on it?

A. None whatsoever. 738 both Jeff Wilson, our senior draftsman, assisted Hamish with the inspections of 736. He's a reasonably competent photographer and he carried out a lot of our cataloguing of damage since September 4th on a large number of buildings. Access for the first suspended level of Post Shop was through the Gift Shop building up the northern stairwell and through that building. It was a shared sort of storage area I believe so on a number of occasions and there is correspondence notifying Julie I think it was at the OK Gift Shop just advising that we would be needing access through there. I checked with our office this morning after preparing last night for this and the inspection of the 26th of November, there was a total of 216 photographs taken of 736. There was a lot of damage. At that stage it was cosmetic largely. 216 photographs and we don't believe, um, sort of just adds to the confusion about who was expecting what. There wasn't a single one of those photos to do with the OK Gift Shop.

Q. And hence you're saying that Lewis Bradford hadn't inspected 738 at any stage?

A. No.

Q. Your email you said that it didn't make sense for Lewis Bradford to be involved with 738 because Powell Fenwick had done two level twos?

5 A. Two level twos, and the notice which I think was good from a retail point of view displaying that promptly for peace of mind for the post Boxing Day public wanting to access that shop. I think it was a good clear notice as to what had been carried out. I think both notices, the post
10 September and the post Boxing Day notices clearly stated that they were level 2 inspections and there was a box that ticked internal and external. So that highlighted to me that it wasn't a, neither of those occasions was a brief Council type level 1 inspection. That some time had been taken with those and it just further reinforced to me, and it's been something I've been aware of since September 4th is the avoiding doubling up of engineering resource. This city has little enough
15 engineering. It's strapped enough for engineering resource without two or more engineering firms looking at the same building so it was also behind my logic really with, you know, if a firm had been involved already they should complete the process for that particular building.

Q. I understand that, but did you convey that at any stage to Knight Frank?

20 A. I don't believe so because personally 738 was never discussed with me and you'll have to ask Hamish. I see he's just arrived, Mr Zarifeh.

Q. In your email you say in fact, "*We were clear with all parties before and after 22 February that made no sense for us to be involved with this building.*" That's not something that you made clear?

25 A. Post February 22nd I did, but I can't categorically remember whether I had that discussion with either Mr Rees-Thomas or Mr Bell before February 22nd. I had that conversation with Mr Buckman and I believe Mr Rees-Thomas and also to Danny someone from the OK Gift Shop in Auckland. After February 22nd they were looking for access to that
30 building to retrieve passports and other valuables and the same logic. I said, "We know nothing about that particular building. Powell Fenwick are the people you should be talking to."

Q. Now the other issue I wanted to ask you about was the correspondence with the Council that Mr Rees-Thomas had and obtained the plans. Have you got on the Lewis Bradford file the plans or documentation that would have been received from Knight Frank?

5 A. I have. There was two sets of documents. I think Luke Rees-Thomas was able to get a copy of some architectural plans on the 26th of January which I do have on file. I believe that they are the plans that Hamish says, "Oh thanks but this isn't really what we're after". They were architectural sketches of a 1996 fit out but they didn't include any
10 structural information so I believe that's when Hamish went back to Luke, got the full property file and there were some very patchy and old structural drawings but of more use which we obtained on the 8th of February I believe.

Q. All right, so what I wanted to ask you though was the information from
15 the Council that you received from Knight Frank, what building did it relate to?

A. Both, both were documented on the same drawings, both the 1996 architectural sketches and also the 8th of February 1950s I think structural drawings. They had plans which encompassed the two
20 properties.

Q. Okay so the Council information, the same information had plans for both buildings?

A. Correct.

Q. Okay, all right now does that cover your understanding of the situation?

25 A. It does. Mr Zarifeh there's just a couple of ambiguities. If I may clear them up it may be of some benefit to the family just wanting to piece together this. We talked about in our previous hearing about the more cautious approach that our company and other companies in town had taken with their inspections post Boxing Day and especially in the weeks
30 after Boxing Day when the information was being disseminated around town. I'm not sure where it came from but I don't believe we actually discussed that approach with Knight Frank. It may have been discussed in passing walking around a particular building with a

particular Knight Frank project manager but I've just come across earlier in this session today is being something that we conveyed to Knight Frank. I don't believe they're together. That was our internal office.

5 Q. That might have been my misunderstanding but my recollection was that I don't think it was you. It might have been Mr MacKinven, talked about that approach, that change, and I think in answer to a question Mr Elliott had mentioned the name of someone at Knight Frank that he'd spoken to but it wasn't either of the two witnesses that we've heard from today?

10 A. Could well have been some other building around.

Q. So it wasn't a general –

A. – No.

Q. – approach to Knight Frank is what you're saying?

15 A. No, no, I don't think it was, it wasn't, and the confusion around the insurance policy. Apologies in my email I referred to separate policies. My first conversation with Phil Buckman on Monday of this week that was the impression I got after the response from Mr Smedley and talking to Mr Buckman on Tuesday he confirmed that it was one policy but his instructions from the insurer have always been specific to 736

20 1103

and there has only ever been to this – to you know the period after February the 22nd, a claim specific to 736. Just to clarify that, and also the correspondence hopefully, all parties including the family have had a chance to read Hamish's email to Phil Buckman from late January after we'd inspected the parapet because of the concern about the flashing leaking and that sort of thing.

25 Q. Shall we bring that up just so –

A. Yes, I think –

Q. It's –

30 A. Because I'd actually, in going through our file last night I saw some photos out of our – didn't have time to submit them to the Commission, photos from –

Q. No, no that's fine, I was going to raise it with Mr McKinven, but let's deal with it now, so there it is on the screen thank you, if we can get the top part highlighted please. So this is Hamish McKinven's reply to Phil Buckman who raised the query about the parapet –

5 A. That's correct.

Q. – being loose, that had been passed on by the roofer?

A. That's correct. Hamish and Geoff had actually picked up that damage on their visit on the 25th of January before submitting their revised damage assessment report to Mr Buckman at the end of January, and there are some photos that actually pick up that damage quite well. We didn't believe at the time that it was anything to do with the OK Gift Shop façade having been compromised. You can actually see some very badly corroding reinforcing on the junction of that parapet which I think the shaking of Boxing Day was just enough and the rubbing together of the two parapets just spall off the concrete, predominantly caused by the very badly corroded reinforcing at that junction. So I think these photos and the Commission's welcome to them.

10

15

Q. I'll get you to produce that then.

A. I think is a very clear indication that in my opinion from these photos and I'm sure Hamish would have highlighted if there had been an issue in his 20th of January inspection, that the OK Gift Shop parapet certainly hadn't appeared to have been compromised.

20

Q. All right.

A. I'll just reiterate that you know we were looking at the damage at the junction of OK Gift Shop to the Post Shop as our 28th of January report was specific to, but I think it potentially reinforces the thoroughness of Malcolm Freeman's post Boxing Day inspection of that façade and the fact that he didn't pick up any damage to the façade after the Boxing Day event.

25

30 Q. Right, and you're saying that that – your inspection was consistent with that?

A. Yes. From this limited information it doesn't appear that the integrity of that façade had been compromised post Boxing Day.

Q. All right, so what you're saying is that in relation to 738 and the façade issue that Hamish McKinven had inspected it and it wasn't the issue that it might have appeared on the face of the email from the roofer?

5 A. He hadn't inspected the façade of the gift shop as requested by Mr Buckman, he'd inspected the junction of that façade with 736 which was where the roofing contractors had highlighted the damage. It may have appeared like some sort of a structural failure but I think as these three photos confirm it's just very badly corroded reinforcing.

10 Q. Can you just – I know we haven't got it on the system but can you just perhaps hold it up so we can understand which photos you're referring to and just tell us what they show and then we can get it passed up to the Commissioners so that we can all see it.

A. That's an elevation of 736, the Post Shop building from across the street.

15 Q. A four storey.

JUSTICE COOPER TO MR ZARIFEH RE UPLOADING PHOTOS AND EVIDENCE OF MR LEWIS

20 **JUSTICE COOPER:**

Q. Well who took the photos?

A. Hamish and Geoff Wilson from our office for the January report of the Post Shop building.

Q. So why doesn't Mr McKinven (overtalking 11:08:05)?

25

MR ZARIFEH ADDRESSES JUSTICE COOPER

CROSS-EXAMINATION: MR ELLIOTT

Q. Mr Lewis as you heard Mr Rees-Thomas says that an instruction to perform a full structural assessment was given for both 736 and 738.

30 You agree at least that that was the case in relation to 736?

A. That's correct.

Q. I asked Mr Rees-Thomas about the nature of the instructions that were given to you and I hadn't seen a document when I asked that question, but you've produced a document which clarifies the instructions that were given in relation to 736, were in fact two documents, and I'll just ask you to refer to them, BUI.COL738.0033.5, Your Honour and Commissioners, these documents were handed up a short time ago for you.

WITNESS REFERRED TO DOCUMENT

Q. And if we can highlight the scope and nature of the services section. So you were instructed to carry out a structural inspection of 736 for damage that may have occurred after, in the 4 September and subsequent aftershocks and provide a dilapidation report detailing structural damage caused by 4 September and subsequent aftershocks and recommend structural repairs as necessary.

A. That's correct.

Q. And you signed that document on the 25th of November 2010?

A. That's correct.

Q. And Mr Rees-Thomas also signed that document?

A. Yes.

Q. That right, and then BUI.COL738.0033.14.

WITNESS REFERRED TO DOCUMENT

Q. That's another similar document dated, or in fact signed by you on the 19th of January 2011 and Mr Buckman on the 22nd of January?

A. Correct.

Q. And the scope and nature of services if that could be enlarged please goes somewhat further in that you were instructed to carry out a structural inspection of the premises following the 26th December aftershock to update the damage report dated November 2010, and also complete a full structural assessment of the building to determine its current capacity and ability to withstand future seismic events?

A. That's correct.

Q. And that is – as far as you're aware what Mr McKinven was working on in relation to 736?

A. Yes.

Q. But did not complete –

A. No.

Q. – before the 22nd of February 2011?

5 A. No.

A. Given the age of the building the only real way of determining the existing structural integrity of the building is to either work off plans if they're available and that's what we are endeavouring to source from the property file at the Council, or to do a lot of very intrusive investigation work to break out and confirm what levels of reinforcing are in all the primary elements. So yes that's why drawings are so important for that process to accurately determine what the capacity is in comparison to current codes.

10

Q. Mr McKinven identified as far back as the 9th of September the need for a full structural seismic assessment of 736, but we've heard about what needed to take place for that assessment to occur?

15

A. Sure.

Q. Would you agree that this illustrates that the best time to get a seismic assessment of an unreinforced masonry building is before an earthquake?

20

A. Absolutely, but just qualify that the Post Shop building is not an unreinforced masonry building.

Q. Yes.

A. It, from the time we started looking at it after September it represented a slightly different risk profile even given its age than an unreinforced masonry building. It was reinforced concrete frames in both directions in situ concrete flat slab floors, and it had a variety of in situ concrete in full panels at ground level and potentially the first suspended level and then a number of red brick infill panels at the upper levels. So it didn't represent the same level of risk both to the public external to the building, or interior to the building, you know from falling hazard and that sort of thing as some of the other unreinforced masonry buildings have that the Commission's been dealing with.

25

30

1113

Q. Thank you it was really leading on to one further question which is would you agree that every owner throughout the country of an unreinforced masonry building who is genuinely concerned about safety of their building should carry out a detailed structural assessment now?

5

A. Yes.

Q. And can you extend that to any other buildings other than unreinforced masonry as a recommendation?

A. I think with what we've learned out of this earthquake sequence, certainly all buildings pre 1976, i.e the much discussed quantum shift in our design code and philosophies with the 1976 code revisions. There are still unfortunately going to be exceptions to that rule but unreinforced masonry buildings certainly pose the by far the greatest risk but there are still plenty of other subsets of pre 1976 buildings just because of the detailing of the era.

10

15

CROSS-EXAMINATION: MR SMEDLEY

Q. Mr Lewis, I understood you to acknowledge to Mr Zarifeh earlier that after hearing Mr Rees-Thomas's evidence and seeing the correspondence that he referred to that you can understand why he might have thought that Lewis Bradford had been instructed to conduct structural reports on 738? Is that correct?

20

A. That's correct and what I said I had no reason to doubt that that wasn't Luke's intention. As to how clearly that was conveyed I think that's the issue that everyone's discussing this morning. I think from the subsequent documentation it's apparent that either it wasn't conveyed very clearly to us or we certainly hadn't interpreted those discussions and instructions in the same way that Luke had.

25

Q. Just take you to document WIT.REE.0028.67 if we could have the upper portion of that page highlighted please? This is an email that Mr Rees-Thomas referred to of 24 November 2010 and it's from him to Hamish, correct?

30

A. Correct.

Q. And that first line he reads, he wrote *"I trust all has been well of late. Would it be possible for us to arrange a full structural engineer's report on the buildings for 736 to 740 Colombo Street?"* Now wouldn't it be reasonable to interpret that sentence to mean that Mr Rees-Thomas was asking for a structural report on more than one building?

A. With the benefit of hindsight, yes I acknowledge that.

Q. And that one of them was probably 738?

A. Yes, quite possibly.

Q. And are you aware from your reading of the file whether Mr McKinven went back to Mr Rees-Thomas and asked him to clarify that at all?

A. Not by my reading of the file. With respect Mr Smedley the correspondence that came after that email and I've also said previously this morning that in the file there is a reference to a whole range of addresses throughout the correspondence, on insurance policies, on council files, on emails between all the various parties which refer to different addresses and I think the Knight Frank personnel have highlighted the confusion over it and I think in other hearings including the previous hearing that we had across the road in 753 Colombo Street. Some of the older buildings over multiple titles. There is confusion there so I'm not saying, it's a pity in the subsequent correspondence after this 24th of November email that our interpretation of this email wasn't clarified.

Q. Because it does talk about buildings plural doesn't it?

A. I acknowledge that.

Q. And if we just go to document 0002A.62 and highlight the upper portion of that page. And this is the email that Mr Rees-Thomas referred to again written to Mr McKinven and in this particular one the subject says 736 to 738 Colombo Street and again he's talking about access, he says the building and he describes two buildings 736 and 738. You accept that that email is providing Mr McKinven with details as to how to access two buildings?

A. No I think that can be, that further highlights the confusion. It talks to building in the singular but as I said before on the two or three

occasions when we accessed the first suspended level of the Post Shop it had to be 738 to the Gift Shop so we've, there's also further emails in our correspondence from organising that 26th of November site visit where we copied in on correspondence between Knight Frank and the tenants of the Post Shop building saying that we would be inspecting that building from 9.00 am then an email to Julie at the OK Gift Shop was correspondence between Luke and Julie which we weren't copied into. So again I think it highlights the confusion and the fact that we always for our thorough inspections had to access part of the Post Shop through 738.

5 Q. But you'd accept that it was reasonable for Mr Rees-Thomas to be believe that he was providing Mr McKinven with details for access to two separate buildings?

A. I do think that's reasonable yes.

15 Q. And if I could take you to document 0002A.13 and if you could highlight the bottom portion of that page please? Again this is another email that Mr Rees-Thomas referred to earlier again to Hamish McKinven. He's referring to 736 to 738 Colombo Street correct?

A. Correct.

20 Q. And he's referring to the copies of the plans that are in the post today and you've acknowledged earlier that the plans were received of both buildings?

A. That's correct. And I also emphasise that our engagement by McLarens Young loss adjusters on behalf of the insurers on two separate occasions where the two facets of our work were specific to 25 736.

Q. But Mr Rees-Thomas was not a signatory to those documents he referred to was he?

A. Not for those documents but by all accounts in the discussions with the loss adjuster and just what was that as previously discussed as to exactly what was discussed and agreed. 30

Q. So you accept that the instructions for this part of your brief really was coming from Mr Buckman?

A. Correct.

Q. And I also understood you to acknowledge today that in preparing for this hearing you rang Mr Buckman and talked to him on the phone?

A. Correct.

5 Q. You had a meeting with Mr McKinven?

A. Correct.

Q. Based on what they told you you wrote your email to Mr Zarifeh?

A. Correct.

10 Q. And that what Mr Buckman told you about the insurance policy being separate for each building was incorrect wasn't it?

A. Yes I believe I interpreted what he was telling me on the Monday incorrectly. I called him back on the Tuesday to clarify what he had in fact meant.

RE-EXAMINATION: MR ZARIFEH – NIL

15

COMMISSIONER CARTER:

Q. Just one final point regarding your ongoing work that could not be completed because of the 22nd of February earthquake. Were you by that time working on both buildings or were you still focused on 736?

20 A. We believe we were still solely focused on 736 as per the signed short form engagement that we had in January with the insurer through the loss adjuster and then after February 22nd we were approached by a number of parties to assist with 738 and as I discussed before believe that the prior engineers were more appropriate to address those access
25 issues and assessment issues.

QUESTIONS FROM JUSTICE COOPER – NIL

WITNESS EXCUSED

30 **COMMISSION ADJOURNS: 11.26 AM**

COMMISSION RESUMES: 11.45 AM

MR ZARIFEH CALLS

HAMISH DAVID MACKINVEN (AFFIRMED)

- 5 Q. Mr MacKinven could you give the Commission your full name please?
A. My name is Hamish David MacKinven.
Q. You live here in Christchurch?
A. That's correct.
Q. And you're a structural engineer.
- 10 A. That is correct.
Q. And I think you are employed by GDH?
A. GHD.
Q. GHD sorry. Prior to that were you employed by Lewis Bradford?
A. That is correct.
- 15 Q. Now I think you've heard the tail end of Mr Lewis' evidence but you've had the opportunity to read the briefs of Mr Bell and Mr Rees-Thomas?
A. Correct.
Q. So you know that, what the issue is that we're concerned with in this case, particular issue?
- 20 A. That's correct.
Q. Firstly, can I ask you after the September earthquake did you receive instructions to carry out an inspection of 736 Colombo Street?
A. That's correct.
Q. And you carried that out in the days following the earthquake?
- 25 A. Correct.
Q. What type of inspection was that?
A. That was both an external and internal inspection, going through all the levels and onto the roof and in, you had to access level 2 of 736 Colombo Street from 738 to inspect the front part of that.
- 30 Q. Right and you reported by email of 9 September to Mr Bell?
A. Correct.
Q. And that was in effect a summary of what your findings were?
A. Yes, that's correct.

- Q. And I'll get a document brought up. It's 0002A.67, WIT.REE. If we look at the bottom half that's your email of 9 September.
- A. Yes that's correct.
- Q. To Andy Bell.
- 5 A. That's correct.
- Q. And is that a copy to the tenant is it?
- A. That's correct.
- Q. And it refers in the subject to 736 Colombo Street Post Shop building?
- A. Correct.
- 10 Q. And refers to your brief structural inspection of that building?
- A. Correct.
- Q. And at the end of the first paragraph recommends a full structural seismic assessment to be completed on the building by an engineer.
- A. That's correct.
- 15 Q. Now what's the next thing that you heard about that building or next involvement?
- A. There were, I don't know the exact timeframe, there were, I did go and carry out re-inspections on the building, mainly I believe at the request of the tenant, and they would have come through Mr Rees-Thomas and
- 20 then obviously we were engaged at the end of November to carry out a damage assessment on the building.
- Q. If we go back to the original document and look at the top half, if we can have that highlighted, that is an email from Mr Rees-Thomas to yourself, 24 November?
- 25 A. Correct.
- Q. And it has in the subject heading, '736 Colombo Street Post Shop building' which appears to be the same subject heading that you had on your email that we just looked at?
- A. That's correct.
- 30 Q. Mr Rees-Thomas said that he'd been copied into your email by Mr Bell and that that's why that subject heading was the same. That's the evidence he gave this morning.
- A. Okay.

Q. But you got that email and in that email he says in the first paragraph, "*Would it be possible for us to arrange a full structural engineer's report on the building 736 to 740 Colombo Street?*" Okay?

A. Correct.

5 Q. When you received that email, what did you understand was required of you, was being asked of you?

A. I believed that it was for a full structural report on 736 Colombo Street as that was the only building that we were dealing with there.

Q. It says in that first paragraph "buildings" plural doesn't it?

10 A. Yes, correct.

Q. And it says also 736–740 which would appear to encompass the addresses for both buildings?

A. Correct.

Q. So do you recall giving that any thought?

15 A. No I don't believe so.

Q. And when, do you remember when you received that email whether you had any doubt in your mind as to what was being asked of you?

A. No I don't believe I had any doubt in my mind and then obviously the following day a short-form agreement was provided through, to Mr Rees-Thomas, specifically for 736 Colombo Street.

20 Q. And I'll just get that brought up. That's the agreement that he referred to, or had referred to him in his evidence. I'll just find my reference sorry. It's, I'm not sure of the prefix but it's point 5 of those new documents, the Lewis Bradford documents.

25

JUSTICE COOPER:

It seems to be 0033.

MR ZARIFEH:

30 Yes Sir. Thank you.

EXAMINATION CONTINUES: MR ZARIFEH

Q. Is that what you're referring to, dated 25 November?

A. That's correct.

Q. And that relates to 736 Colombo.

A. Correct.

5 Q. Mr Lewis was asked about that and he said that there was no short agreement, form agreement, for 738.

A. No there wasn't.

Q. So you get that email from Mr Rees-Thomas, your understanding is it's to do with a detailed inspection and report on 736 as you'd recommended.

10 A. Correct.

Q. And you get that short form agreement signed, or Mr Lewis signs it with Mr Rees-Thomas the next day, and we heard from Mr Rees-Thomas that he had arranged to meet you at 736.

A. That's correct.

15 Q. On the 26th?

A. Correct.

Q. And that you were with another gentleman. Was that Mr Geoff Thomas was it?

A. Mr Geoff Wilson.

20 Q. Geoff Wilson sorry. The photographer?

A. That's correct.

Q. So can you remember that day the 26th?

A. I can remember that we were standing in the back of 736 Colombo Street discussing what we were going to do. I cannot remember the
25 exact details of that conversation.

Q. Well how had the arrangement been made, by email or phone with Mr Rees-Thomas.

A. It must have been by phone.

Q. And you met at 736?

30 A. Correct.

Q. Did you know how to gain access to 736?

A. The manager of the Post Shop there was actually my next door neighbour, by coincidence.

Q. Right.

A. So I could, so when I'd carried out previous inspections on the building at sort of, I guess request from the tenants through the property manager I went to the front counter and talked to my next door neighbour.

5

Q. Well Mr Thomas referred us, Rees-Thomas referred us to a document, I'll get it brought up, WIT.REE.0002A.62, which you'll see in a moment is an email from him to you of the 25th of November. So that's the day that the short form agreement was signed following that previous email, and that's an email to you and the subject, it says 736 to 738 Colombo Street correct?

10

A. Correct.

1155

Q. And the attachment says, "15 broken windows". What's that?

15

A. There was a number of broken windows in 736 Colombo Street and the building after 4th of September had been cordoned off until those windows had been repaired. I do not know what exactly that photo is of.

Q. And he tells you the owners of the above property are Natural Blessings Limited. Notes re access to the building are as follows, and then there appear to be two addresses – 736 Colombo which is the Post Shop, talks about ground floor shop and internal access to levels 2, rear half 3 all, 4 all and roof?

20

A. Correct.

Q. And then it says, "738 Colombo Street, OK Gift Shop, ground floor shop Colombo Street stair access to level 2, front half and storeroom." What I wanted to ask you to clarify is that access to firstly 736 and then 738 or what?

25

A. Well firstly it's obviously talking of access to 736 and then obviously it's talking of 738 and using the stair access to level 2 to access the front of 736.

30

Q. Right, so where it says under 738 – "Ground floor shop Colombo Street, stair access to level 2" – that's level 2 that was shared between the two of them was it?

- A. That's correct.
- Q. Because they weren't interconnected at level 2?
- A. Yes, correct.
- Q. And then it says, "Front half", front half of which building?
- 5 A. That's front half of 736 Colombo Street.
- Q. And the storeroom was which building?
- A. Well the storeroom was both buildings, the front half of 736 was used for storage as well as part of level 2 of 738.
- Q. Okay, but could you get to all areas of 736 via the ground floor shop of
- 10 736?
- A. No you couldn't.
- Q. Which areas did you have to go through 738 then?
- A. Was to get to the front half of level 2.
- Q. So when you got that email what did you understand that was telling
- 15 you?
- A. I still have obviously taken this that it is for access to 736 and how you got access to the front half of 736 at level 2.
- Q. Did you know that before you got the email?
- A. Ah, yes I did.
- 20 Q. And on the day that you met, the 26th, the next day, you said you met at 736. Mr Rees-Thomas said that he stayed for a short time and then left?
- A. Correct.
- Q. And he said his understanding was that you would go on to look at 738
- 25 after you'd looked at 736 and what you said you didn't understand that?
- A. I guess our actions after that conversation were to do detailed damage assessment of 736 only as Mr Lewis has previously said in his evidence there was over 200 photos taken of 736. None of those relate to 738.
- Q. Can you remember any mention of a full inspection of 738 in that
- 30 conversation?
- A. As I say, I can't remember the details of that conversation.
- Q. But when he left, Mr Rees-Thomas left, you presumably carried on finishing your inspection of 736?

- A. That's correct.
- Q. And didn't go anywhere near 738 in terms of inspecting it?
- A. No, only for access to the front half.
- Q. You then completed your report?
- 5 A. Correct.
- Q. And it was dated 30 November?
- A. Ah, that's correct.
- Q. And it was sent to Mr Rees-Thomas by email?
- A. Ah, I believe it was actually sent as a paper copy. Hence he received it
10 on the 6th of December and then he requested a PDF version to be
emailed to Mr Buckman.
- Q. And I referred him to the emails that refer to that PDF from the photos
and he replied to you with comments like, "*Thanks for the thorough
report, Cheers. Thanks for that.*" Did you receive any correspondence
15 or communication from Mr Rees-Thomas once you sent the report to
him querying why you hadn't done 738?
- A. Ah, not to my knowledge.
- Q. And Mr Rees-Thomas said that, paragraph 17 of his brief, he said that
following receipt of that report he recalls a conversation with you in
20 which he discussed the full report or report on 738. You don't recall
that?
- A. I don't recall that conversation.
- Q. He also says that he spoke with Mr Buckman and that he understood
that Mr Buckman was going to instruct, officially I suppose via the
25 insurer, on behalf of the insurer, instruct you to do a report on 738 as
well. Did you ever receive any instructions from Mr Buckman to do that?
- A. No, we only ever received instructions for 736 Colombo Street.
- Q. All right now there was then an email from a roofer highlighting a
problem with the parapet to 738?
- 30 A. Yes.
- Q. And we heard that that was forwarded by Mr Rees-Thomas to
Mr Buckman who then forwarded it to you via an email?
- A. Correct.

Q. And you dealt with that by going and inspecting the building?

A. Inspecting 736 and there was some damage to the parapet at the junction between 736 and 738.

5 Q. All right and if I get a document brought up please, the point three three series, it's .15, 033.15. That's your email to Mr Buckman?

A. That's correct.

Q. And it refers to the 738 Colombo Street parapet. You're replying to Mr Buckman's email?

A. Correct.

10 Q. And you say in the paragraph, well you first say in the first paragraph, *"Please find attached our up-date for the damage reports for 736 Colombo Street"*.

A. Correct.

15 Q. Then in the second paragraph you say, *"As requested I have inspected the parapet of the adjacent building at 738. The damage to this parapet was noted in our previous inspection and is captured in our report. It has been caused by the lack of the seismic gap between the two buildings and movement occurring between them."*

A. Correct.

20 Q. Now I just wonder if we can get brought up the photograph that Mr Lewis referred to. I just want you to explain by reference to those photographs what you were talking about, what damage you'd assessed. Have you got the photograph there?

A. Yes I've got the photograph there. So the first photo is –

25 Q. – the top left.

A. – top left. It's labelled "E4" on the sheet.

Q. We're looking at 00034.1.

30 A. Is an elevation of the Post Shop building which is 736 Colombo Street. Obviously you can just see the "OP" from the Okay Gift Shop at 738 Colombo Street. You can just see just up in there some damage to the parapet of 738 Colombo Street. That actually occurred on the 4th of September and was present at the 4th of September and we can see then a close-up photo of that same damage, then photo E6 shows the

1205

back or the rear side of that parapet and basically adjacent to 736 Colombo Street.

Q. So where's 736 on that that photo?

5 A. So 736 is this grey area here on the left.

Q. Right.

A. And you can see in the photo there's actually some, what's termed concrete cancer or is corrosion of reinforcement and what happens is that actually swells and causes the concrete to crack and so some of this damage is possibly due to just the shaking causing that cracked concrete to fall off.

10

Q. Right, what does E7 show?

A. E7 just shows some previously repaired cracks at the rear of the building.

15 Q. At the rear of which building?

A. 736.

Q. So in terms of the observed damage, parapet damage that the roofer had mentioned, what was your conclusion about that in the parapet?

A. My conclusion was that these basically 736 has actually been built before 738 and that the parapet has just been poured up to 736, and basically there's no seismic gap between them but they are not actually structurally connected in any way so I did not believe that that damage that I'd seen was of concern.

20

Q. Thank you, now if we can just go back to the email that - 0033.15 that was up a moment ago.

25

WITNESS REFERRED TO EMAIL

Q. In the paragraph below the one that's asterisked, you will see – you said *“Luke Rees-Thomas has requested the property file from Council, when it is ready I will be going down to see what drawings are contained in it.”*

30 A. That's right.

Q. What was that a reference to, to which building?

A. I believe that was a reference to 736 which we were engaged to carry out a detailed evaluation of.

- Q. All right, and in the first paragraph you've referred to an attached update for the damage for 736, so were you providing something in advance to the insurer?
- 5 A. We were asked by Mr Buckman, or engaged by Mr Buckman after 24th of December, sorry 26th December to provide an update to our 30th of November damage assessment report and I believe there's a contractor request from Mr Buckman and a signed short form agreement to that.
- Q. In relation to 736?
- 10 A. Correct.
- Q. But nothing in relation to 738?
- A. No nothing.
- Q. And just on the issue of the plans, do you recall how you were advised by Mr Rees-Thomas about the plans being ready?
- 15 A. I believe –
- Q. Was it an email that's he's referred to saying that they will be available for viewing after the 8th of February but prior to that there was obviously some correspondence between the two of you?
- A. I can't recall, but there may well have been.
- 20 Q. We heard from Mr Lewis, you might have been in Court, that the plans that were forwarded contained plans for both buildings because they were on the same documents, do you recall that?
- A. That's correct.
- Q. But again when you received that documentation did you – what did you understand you were looking at it for?
- 25 A. I was still looking at 736 Colombo Street, that detailed assessment.
- Q. And as I said a moment ago there's an email referring to plans being available for viewing after 8 February. Did you go and view those plans?
- 30 A. I believe I viewed them on the 9th of February.
- Q. And plans for which building did you look at?
- A. Plans for 736 but as Mr Lewis also said, there were – it did contain plans for both and that's sometimes not uncommon with the Council,

there are occasions when you're actually told to search properties either side because of changes in numbering over time.

Q. Had you had the chance to complete your detailed report for 736 before the 22 February earthquake occurred?

5 A. No I hadn't.

CROSS-EXAMINATION: MR ELLIOTT

Q. Mr McKinven, firstly thank you for re-arranging all of your professional obligations at very short notice and coming along voluntarily to assist the Commission today. One further issue which has already been
10 touched upon to some extent, Desley Thomson's family just want to know a little more about the issue of the parapet and the damage and the inspection that you've referred to already. Can I just ask for the photograph to be produced again? Now the roofer reported in his email that the Colombo Street parapet has come adrift from the walls either
15 side and would need refixing to the adjacent buildings to re-secure. Was it your observation that that is what had happened?

A. Well no, as I've just said that this parapet was not structurally connected to the adjacent building.

Q. So it had never been structurally connected to the adjacent building?

20 A. No it hadn't.

Q. And the damage that you're referring to was just to the plaster which exposed the concrete rather than indicating a separation between parapet and adjoining building?

A. Well this, if you look at photo E6 is actually showing that some of what's
25 called the cover concrete has fallen off and that (inaudible 12:11:35) indicator was most likely as a (inaudible 12:11:39) that the concrete was previously cracked due to the corrosion to that reinforcement and the shaking has loosened that and made it fall off. But it hasn't – but I don't believe, or it has not weakened that parapet in any way.

30 Q. Did you carry out an inspection of the full parapet?

A. No I didn't.

Q. Did you see whether there was any securing in place?

A. I did not see any securing.

Q. And the way that you reached your decision that no further action was required was because you were applying the much discussed damage based test where if there was no damage or significant damage arising from September and the aftershocks the building would remain occupiable?

5

A. That's correct.

Q. But weren't you aware of the particular dangers posed by parapets on unreinforced masonry buildings?

10

A. As Mr Lewis has previously said, that this has reinforced concrete elements and within the building. I'm not entirely certain what the actual construction of the building was, but seeing this indicates, or seeing it while I was there indicates it was of reinforced concrete construction.

Q. Is it right that it's only point of connection would have been along the roof line?

15

A. That's correct.

Q. So did you consider the possibility that perhaps some securing to the adjoining building or some other form of securing may have been advisable especially given ongoing aftershocks?

20

A. I guess you'd want to avoid actually securing it to the edge adjacent building. You can actually probably cause more damage if you get some inept movement between those two buildings. I guess you know hindsight's a wonderful thing, but in hindsight maybe yes obviously securing may have helped, but given the level of shaking who knows.

25

Q. So in hindsight what about the possibility of a yellow placard so that some more enquiries could be made about the nature of the construction of the parapet, and also recommending a cordon?

A. Well I guess at that point we're not responsible for putting up yellow placards, that's part of the Civil Defence emergency, in that I was applying the damage based test. Had the capacity of that parapet been diminished and from what I'd seen I believed it hadn't been and therefore the building was allowed to be occupied.

30

CROSS-EXAMINATION: MR LAING - NIL**CROSS-EXAMINATION: MR SMEDLEY**

Q. If we could pull up document WIT.0002A.67 please?

WITNESS REFERRED TO DOCUMENT

5 Q. And if you could highlight the upper portion of that page. Mr McKinven this is an email that Mr Zarifeh has just taken you through and I just want to refer you to the first sentence. It means what it says doesn't it,
1215

10 that Luke Thomas, Luke Rees-Thomas has asked you to arrange for a full structural engineer's report on more than one building?

A. If you read that sentence, yes, you can interpret that.

Q. And the reason you didn't interpret it is because of a previous engagement just in respect of 736?

A. And the fact that the actual subject heading says 736 Colombo Street.

15 Q. But that sentence on its own is quite clear.

A. Yes the sentence on its own is.

Q. If we go now to WIT.REE.00028.62. If you could highlight the upper portion please. Again this is an email that Mr Zarifeh took you through and this is the email that Mr Rees-Thomas says he sent you so that you had information about how to access both 736 and 738 and you'd accept that the email does that.
20

A. I'll accept that.

Q. And at the bottom of the email he finishes off by saying, "*Will explain tomorrow. Thanks.*"

25 A. That's correct.

Q. And Mr Zarifeh spoke to you about a conversation that you had with Mr Rees-Thomas at the premises the following day, and as I understand it you agreed that you had a conversation with Mr Rees-Thomas?

A. That's correct.

30 Q. But you could not recall what you spoke about?

A. No I can't but I believe my actions after that conversation show what was discussed at it.

Q. But is it possible that you could have been asked?

A. It's a possibility but the fact that I didn't carry out the inspection of 738 leads me to believe that that wasn't discussed.

5 Q. In, if I just refer you now to paragraph 17 of Mr Rees-Thomas' brief and again this is one that Mr Zarifeh spoke to you about, and I'll read it out. Mr Rees-Thomas is saying, "*I recall a conversation with Mr MacKinven in which we discussed that a structural assessment would be required on 738,*" and again your response to his question as to what you talked about was, "*I don't recall.*" Correct?

10 A. No given that's 15/16 months ago I do not recall that conversation. But the fact that a short form agreement wasn't produced for that particular inspection of 738 leads me to believe that it possibly didn't happen.

Q. But it is a possibility isn't it that Mr Rees-Thomas did discuss that a structural assessment would be required on 738?

15 A. There's a possibility but I don't recall that conversation.

Q. If I now take you to WIT.REE.0002A.13 and this is the exchange of emails between you and Luke Rees-Thomas when he tells you that the property plans are in the post. Now the subject line for that is 736 to 738 Colombo Street isn't it?

20 A. Correct but at that time we were only engaged to look at 736 Colombo Street.

Q. But you didn't think to reply to Mr Rees-Thomas and ask him why he'd referred to 738?

25 A. No I didn't and as has been I think discussed earlier is there is some confusion about numbering and even I believe Mr Bell or Mr Thomas may have actually raised that as well.

30 Q. So I guess in some – and I'm picking up on something that Mr Lewis said earlier was that he considered after hearing Mr Rees-Thomas, his evidence, that it was reasonable for Mr Rees-Thomas to have thought that he had instructed Lewis Bradford to perform structural assessments on 738. Do you accept that?

A. Well I haven't heard Mr Rees-Thomas' evidence so. But he may well have been thinking that he was talking of both buildings.

Q. What I'm asking you Mr MacKinven is that I've taken you through some of the correspondence that was exchanged between you and Mr Rees Thomas. What I'm asking you is do you think that it is reasonable for Mr Rees-Thomas to have thought that he instructed Lewis Bradford to inspect 738?

5

A. There's the possibility.

Q. But you accept the interpretation of the instructions or the emails that he sent to you include that he was asking for a report on 738?

A. There's a possibility. Obviously I've taken it to have been only 736 and I've provided documents accordingly.

10

Q. The next document I want to take you to is BUI.COL738.0033.15 and I don't have the document number but I'd actually like to look at page 3 of that string, and if you could highlight the sentence that has the red asterisks on either side of it please. This is the email that the roofer sent to Mr Rees-Thomas about the parapet which was then passed onto you and in there the roofer says that the parapet has come adrift from the walls on either side. As I understand your evidence you only inspected the parapet on the side that adjoined 736. Is that correct?

15

A. That's correct.

20

Q. And you accept that when Mr Buckman in fact forwarded Mr Rees-Thomas. email to you the subject line referred to 738?

A. Correct.

CROSS-EXAMINATION: MR JONES - NIL

RE-EXAMINATION: MR ZARIFEH – NIL

25

QUESTIONS FROM THE COMMISSIONERS: – NIL

JUSTICE COOPER:

Thank you very much Mr MacKinven and may I echo what Mr Elliott said. I thank you very much for being so flexible about when you had to be here.

WITNESS EXCUSED**JUSTICE COOPER ADDRESSES MR ZARIFEH:**

Q. This now concludes our enquiry I think doesn't it Mr Zarifeh?

5 A. Yes Sir it does. Mr Liu has been present. I don't have any questions.

Q. I don't think anything arises for Mr Liu –

A. No I don't think so.

Q. – as a consequence of what we've heard this morning.

A. No Sir I just wanted to cover that but that's the evidence.

10

JUSTICE COOPER:

Thank you. So our conclusions on what we have heard in relation to this matter will be set out in our final report when it is issued later this year. Thank you.

15 **COMMISSION ADJOURNS: 12.25 PM**