

IN THE MATTER OF

CANTERBURY EARTHQUAKES INSURANCE  
TRIBUNAL ACT 2019

BETWEEN

L T L and N J M

Applicants

AND

EQC

Respondent

Date: 28 November, 5 December 2019

Appearances: L T L and N J M, the applicants, with T Y  
J A and H C for the Respondent

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DECISION OF P R COGSWELL

15 April 2020

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**Introduction**

[1] This decision determines whether the Applicant is entitled to recover the sum of \$18,697.02 from the Respondent (EQC) said to be due to her for emergency repair works carried out to a number of properties owned by her or whether she fully and finally settled those claims with EQC and is, therefore, not entitled to recover that amount.

[2] For the reasons that follow, I find that the Applicant is bound by the settlement agreement she entered into with EQC, the result of which is that the Applicant is ordered to pay the sum of \$2,494.53 to EQC forthwith.

## Background

[3] The background can be relatively shortly stated. The Applicant is the owner of a number of properties in Christchurch. This claim relates to four of those properties.

[4] There are four separate claims filed by the Applicant and they were all, by agreement, managed and heard together. The claims and related properties (properties) are:

- (a) Claim 00XX-2019 – XXXXXXX, Christchurch;
- (b) Claim 00XX-2019 – XXXXXXX, Christchurch;
- (c) Claim 00XX-2019 – XXXXXXX, Christchurch; and
- (d) Claim 00XX-2019 - XXXXXXX, Christchurch.

[5] All of the properties are solely owned by Ms L, except for XXXXXXX, Christchurch, which is jointly owned with Mr M. Mr M appeared and participated in the hearing.

[6] For convenience in this Decision, I refer to the Applicants in the singular, as all dealings and correspondence relating to the emergency repair works were carried out solely by and involved only Ms L. Nonetheless, this decision binds Mr M in his capacity as the joint owner of XXXXXXX, Christchurch as well.

[7] Following the Canterbury Earthquake Sequence, the properties were allegedly damaged by the earthquakes and were allegedly in need of emergency repair works. The Applicant states that she carried out those emergency repair works.

[8] The Applicant made the claims set out above to EQC for recovery of the costs of those emergency repairs. EQC met those claims and made payment to the Applicant.

[9] The claims paid by EQC and the subject of this part of the claims were:

<b>EQC Invoice</b>	<b>EQC Claim Number</b>	<b>Amount</b>
CRT XXX	2011/XXXX	\$1,319.17
CRT XXX	2011/XXXX	5,156.03
	2011/XXXX	741.27
	2011/XXXX	144.90
CRT XXX	2011/XXXX	7,268.00
	2011/XXXX	4,067.65
<b>Total</b>		<b>18,697.02</b>

[10] Following the receipt of and payment for those claims, EQC became concerned about the validity of the claims. A lengthy period of investigation ensued. The Applicant was formally interviewed by EQC.

[11] EQC had a number of concerns about the validity of the claims. Among them were:

- (a) Whether the invoices submitted by the claimants to EQC for emergency repair works properly relate to required emergency work at all;
- (b) Whether the work charged for was actually carried out;
- (c) Whether the work charged in the invoices submitted was correctly quantified;
- (d) Concerns that the Applicant had sought to charge delivery and administration fees for the repairs, allegedly due to a company related to her that managed the properties;
- (e) Concerns about work done by contractors who could not be found to confirm the charges or work undertaken and if that work was indeed emergency repair

work, or in some instances, cases where the contractors were found and they contradicted the basis of the work and the charges claimed in the invoices submitted by the Applicant; and

- (f) Concerns that some of the charges were in favour of Mr M, for work that he allegedly carried out. No evidence was provided that Mr M invoiced or received payment for those invoices.

[12] EQC's investigation found that it was not satisfied that the charges set out in the claims for emergency repair works were valid.

[13] In three letters all dated 26 September 2013, EQC notified the Applicant that all of the claims contained in EQC invoices CRT XXX, CRT XXX & CRT XXX were declined and that it sought to recover those payments from the Applicant. It also advised the Applicant that EQC retained the right to deduct or set-off any amounts owed from any future settlement amount due from EQC to the Applicant.

[14] At this point, the Applicant retained lawyers. Although at the hearing the Applicant sought to distance herself from the steps taken by her lawyers, I find that the steps taken were taken with her authority and that she is bound by them. The Applicant's own discovery and evidence provided to the Tribunal make it clear that she was fully apprised of the steps to be taken on her behalf and that she approved them. EQC was entitled to rely on the authority held by the Applicant's lawyers to negotiate on her behalf.

[15] On 10 June 2015 in the context of this ongoing investigation by EQC, the Applicant's lawyers wrote to EQC offering to repay to it the sum of \$18,697.02, which amount had already been paid by EQC to the Applicant. The proposal was to fully repay EQC invoices CRT XXX, CRT XXX & CRT XXX.

[16] The offer also recorded that the Applicant, whilst wishing to fully repay the sums sought, denied any "wrongdoing or culpability" arising from her actions. A repayment program was proposed.

[17] That proposal was formally accepted by EQC by letter on 12 June 2015.

[18] As it transpired, the Applicant made no payments in satisfaction of the repayment arrangement entered into.

[19] Rather, as noted in the declinature letters of 26 September 2013 and recorded in a further letter from EQC on 8 August 2016, it exercised a right of set-off against other amounts payable to the Applicant.

[20] Those amounts were:

- (a) Claim 2010/XXXX – XXXXXX - \$6,483.21;
- (b) Claim 2012/XXXX – XXXXXX - \$3,466.18; and
- (c) Claim 2011/XXXX – XXXXXX - \$6,253.10.

[21] The total of these amounts (the last being an unrepresented cheque agreed not be presented for payment) was \$16,202.49.

[22] The balance outstanding between the original challenged payments of \$18,697.02 and these later amounts is \$2,494.53. It is this sum that EQC seeks payment of.

[23] Having reviewed the terms of the settlement offer made by the Applicant's lawyers dated 10 June 2015 and EQC's acceptance letter of 12 June 2015, I find that, in relation to the claims set out in paragraph [9] above, the Applicant entered into a binding settlement agreement with EQC that settled EQC's demand for repayment of the abovementioned claims. She is, therefore, obliged to pay to EQC the outstanding balance of the claims of \$2,494.53.

## **Result**

[24] The Applicant's claims for payment of the amounts set out in EQC's invoices CRT XXX, CRT XXX & CRT XXX in a total amount of \$18,697.02 is dismissed.

[25] The Applicant is to pay to EQC the sum of \$2,494.53 within 5 working days.

## **Further Orders**

[26] The Applicant in closing made reference to other claims she alleges arise from substantive damage to some or all of the abovementioned properties. These claims were neither raised by the Applicant in opening submissions, nor was any evidence led by her in support of those claims.

[27] This decision determines the issue of the challenged emergency repair works payments alone.

[28] If the Applicant wishes to advance those other claims, she is to contact the case manager to request a further case management conference before the Tribunal to discuss what further orders are required.



P R Cogswell  
Member  
Canterbury Earthquakes Insurance Tribunal