



[4] In early 2013, Mr W filed proceedings in the District Court against EQC and EQR alleging that EQC had breached the duty of good faith owed to him by not correctly identifying the earthquake damage to his property and by failing to undertake due diligence on his insurance claim. He claimed \$35,000 to remediate roof repairs, \$10,000 to remediate other earthquake repairs, \$59,230 to compensate for business interruption and \$47,922.03 as additional interest incurred by him from his loss of income.

[5] In August 2013 Mr W was evicted from the property by his mortgagee which subsequently sold it by exercising its powers under the mortgage. It also took over his EQC claims and eventually settled them with EQC for an undisclosed sum.

[6] Mr W continues to maintain, however, that he had been wronged by EQC which, eventually agreed to pay him a confidential sum in consideration for his discontinuing his District Court proceedings. The District Court's records disclose that Mr W's proceedings were discontinued on 9 February 2016, from which I presume that he was paid the agreed sum by EQC.

[7] Mr W provided the Tribunal with a signed but undated copy of the settlement agreement he signed with EQC and EQR which reveals that Mr W not only agreed to discontinue the District Court proceedings but also agreed not to commence any other proceedings "which in any way arise out of or relate to the EQC claims, the Dispute or the Proceedings, against EQC or any of its officers, employees, agents or contractors, or against any other person."

## **Jurisdiction**

[8] Before an application is accepted, it must meet the following criteria:

- (a) the applicant was the owner of the property at the time it was damaged by the Earthquakes in 2010/2011;<sup>1</sup>
- (b) at that time the property was insured in the name of the applicant;<sup>2</sup>

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<sup>1</sup> Section 8(4) CEITA

<sup>2</sup> Sections 8(1) and (2) *ibid*

- (c) there is a dispute between the applicant and an insurance company or EQC about a claim relating to that damage;<sup>3</sup>
- (d) at that time the building was used as a residence (if the claim is against an insurance company) or 50% of the property was used as either a residence or a rest home (if the claim is against EQC);<sup>4</sup> and
- (e) one of the parties as either EQC or an insurance company.<sup>5</sup>

[9] Moreover, section 17 of the Act prevents the bringing of an application if the applicant:

- (a) has commenced arbitration relating to the same insurance claim; or
- (b) has commenced proceedings in the Disputes Tribunal relating to the same insurance claim and those proceedings are in progress; or
- (c) has commenced proceedings in a court and those proceedings are in progress<sup>6</sup>;  
or
- (d) was a party to proceedings before a court or the Disputes Tribunal relating to the same insurance claim in dispute and those proceedings have been decided by the court or the Disputes Tribunal.

[10] Dealing first with section 17, I am satisfied that there is nothing in that section preventing Mr W from bringing his claim to the Tribunal, as his proceedings in the District Court are not “in progress.” Nor were they “decided by the court.”

[11] As far as the criteria mentioned in [8] above are concerned, I am satisfied that his property at X , Christchurch, was damaged by the Canterbury earthquakes while he was the owner, was insured in Mr W’s name, and was used by him as his residence.

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<sup>3</sup> Sections 8(1) and (2)

<sup>4</sup> Sections 8(5) and (6)

<sup>5</sup> Sections 8(1) and (2) . See also section 11(3)

<sup>6</sup> Although those proceedings may be transferred to the Tribunal under section 16 of the Act.

[12] I am not satisfied, however, that there is a current dispute between Mr W and EQC about a claim relating to that damage. The settlement agreement he signed and his discontinuance of the District Court proceedings clearly establish that his claim against EQC relating to the damage suffered by his property at X, Christchurch, has been resolved. He may believe that there are grounds for setting aside that settlement agreement, but until it has been set aside by a Court of competent jurisdiction he has no claim that he is able to bring to this Tribunal.

[13] The application is hereby rejected.



C P Somerville  
Chair  
Canterbury Earthquakes Insurance Tribunal