

**UNDER** the Weathertight Homes Resolution Services Act 2006

**IN THE MATTER** of a reconsideration of the Chief Executive's decision under section 49

**CLAIM NO.      6496 DIMON STERN &  
HELEN STERN AS  
TRUSTEES OF THE  
GROWTH TRUST: - 17A  
LAGUNA AVE, BROWNS  
BAY**

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**ELIGIBILITY DECISION OF THE CHAIR OF THE  
WEATHERTIGHT HOMES TRIBUNAL**

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**The Claim**

[1] Dimon and Helen Stern are the owners of a leaky home. On 17 November 2010 they filed a claim with the Department of Building and Housing. The chief executive of that Department has concluded that the claim is not an eligible claim because the house was built more than ten years before the claim was filed. Mr and Mrs Stern have applied for reconsideration of the chief executive's decision under section 49 of the Weathertight Homes Resolution Services Act 2006 (the Act).

**Background**

[2] Section 49 of the Act provides that a claimant may apply to the chair of the Weathertight Homes Tribunal seeking a review of a decision that their claim does not comply with the eligibility criteria within 20 working days of receiving notice of the decision. On receiving such an application I must decide whether or not the claim meets the eligibility criteria.

[3] I have considered the following documents in conducting my review:

- the application for review;
- the Memorandum in support of the application filed by Grimshaw and Co;
- the affidavit of Phillip Wynne Grigg;
- the letter from Laura Tait of the Department of Building and Housing to the claimants dated 10 January 2011 advising that the Chief Executive had decided that the claim did not meet the eligibility criteria under the Act;
- the letter from Dimon and Helen Stern to the Department of Building and Housing dated 23 December 2010; and
- the assessor's report dated 10 December 2010.

### **Chief Executive's Decision**

[4] The assessor concluded that the claim did not meet the eligibility criteria as in his opinion the build date for the dwelling was 22 September 2000 being the date Code Compliance Certificate (CCC) N483 was issued. Section 48 of the Act provides that the chief executive must evaluate every assessor's report and decide whether the claim to which it relates meets the eligibility criteria. In evaluating the assessor's report the chief executive also concluded that the claim was not eligible. She considered that the building consent was issued for two dwellings and that 17A Langana Avenue was completed to the standard required under the appropriate building consent by 22 September 2000.

### **Claimants' Case**

[5] The claimants submit that the assessor and the chief executive's decision was based on consideration of the wrong building consent and CCC. They submit building consent E14175 and CCCN483 issued on 22 September 2000 relates to 15B and not 17A Langana Avenue. The building consent for 17A is E14178 and the job number and CCC was N484. The job sheet for N484 records a final inspection on 20 December 2000 and the CCC issued on 22 February 2001. They further submit that when they settled the purchase of

the property on 17 November 2000 the house was neither completed nor liveable.

## **The Issues**

[6] The key issues to be determined in this claim are:

- Which building consent and CCC relates to 17A Langana Avenue?
- Was the dwelling at 17A Langana Avenue built after 17 November 2000?

## **Discussion**

[7] The Act provides that in order for a claim to be eligible the dwelling house to which the claim relates must be:

- built within the period of 10 years (or alterations giving rise to the claim being made within 10 years) immediately before the day on which the claim was filed;
- a leaky building, i.e. water must have penetrated it; and
- damaged as a result of the penetration of water.

[8] There is no dispute that the claim meets the second and third criteria bullet pointed above. What is disputed is whether the dwelling was built within the ten year period before the claim was filed. Based on the information before me it appears the wrong building consent and inspection documentation have been taken into account by the assessor and the chief executive when they decided the built by date was 22 September 2000.

[9] CCC N483 refers to 15B Langana Avenue not 17A. In addition the Lot and Deposited plan number referred to in CC N483 are not those that relate to 17A. 17A Langana Avenue is built on Lot 7, DP 2033038, a subdivision of Lot 120, DP 193736. CC N483 however refers to Lot 19 on DP 193736. CCC N484 however refers not only to the correct address but also the correct lot and DP number. Mr Grigg in his affidavit also states that CC N483 is not included in the property file for 17A Langana Ave.

[10] There is nothing on the face of the consents and job sheets to suggest this is a situation where two building consents were issued for different stages of construction for the same properties, i.e. one for the construction of the building and the other for the internal fit or finishing work. I therefore accept N484 issued on 22 February 2001 is the CCC for 17A Langana Avenue. It contains all the correct information for the dwelling, including the correct address, building consent number and lot and DP numbers. I accordingly conclude that the date CCC N483 issued is not relevant for determining whether 17A Langana Avenue was built within the 10 years before the claim was filed.

[11] “Built” is not defined in the Act nor does the Act define the point at which a house is regarded to have been built for the purposes of s14. In *Auckland City Council & Ors v Attorney-General & Ors (Garlick)*<sup>1</sup> Lang J concluded that the word “built” needs to be given its natural and ordinary meaning which he took to be the point at which the house was physically constructed.

[12] He accepted that in cases where a house passes its final inspection at the first attempt the date upon which the owner sought the final inspection may be regarded as the date the house was “built”. The record shows that the final inspection for this property was approved on 20 December 2000. It is likely that it was applied for shortly before this date which would suggest a “built” date sometime in early to mid December 2000. The claimants information supports this conclusion as they say the house was neither completed nor liveable as at 17 November 2000. As the claim was filed on 17 November 2010 I accordingly conclude the dwelling was built within ten years of the claim being filed.

## **Conclusion**

[13] I have reconsidered the chief executive’s decision pursuant to section 49 of the Act and, for the reasons set out above, conclude that the house was built within the ten years prior to the claim being filed under the Act. I

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<sup>1</sup> HC Auckland, CIV-2009-404-1701, 19 November 2009, Lang J.

accordingly conclude that claim 6496 does meet the eligibility criteria as set out in the Weathertight Homes Resolution Services Act 2006.

**DATED** this 25<sup>th</sup> day of February 2011

**P A McConnell**  
Chair