

IN THE MATTER OF

CANTERBURY EARTHQUAKES INSURANCE  
TRIBUNAL ACT 2019

BETWEEN

L T L

Applicant

AND

EARTHQUAKE COMMISSION

Respondent

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DECISION OF E J FLASZYNSKI

Dated: 16 February 2022

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## Introduction

[1] Ms L has four claims before the Tribunal which have been the subject of several decisions.<sup>1</sup> This decision deals with the claims made for earthquake damage to the properties at XXXX XXXX, XXXX (XXXX) and XXXX, XXX, XXXX (XXXX) from 2010-2011.

[2] The Tribunal has been asked to determine what liability, if any, EQC has remaining in respect of the claims made by Ms L and whether EQC is entitled to rely on clause 3 of schedule 3 of the Earthquake Commission Act 1993 (EQC Act) to decline the claims due to fraud.

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<sup>1</sup> *L and M v Earthquake Commission* [2019] CEIT 0036 (5 April 2020); *L v EQC* [2021] CEIT 2019-0036 (27 August 2021) and; *L v EQC* [2021] CEIT 2019-0036 (30 November 2021).

## The Claims

[3] The following detail summarises the status of the claims made by Ms L to EQC:

### A. XXXX

(a) *CLM/2010/XXXXXX – earthquake event of 4 September 2010*

EQC assessed the value of repairs at \$5,554.25. Ms L has accepted this assessment. This amount was paid to her on 3 February 2011. EQC says it has no further liability for this claim. This claim is at an end.

(b) *CLM/2011/XXXXXX – earthquake event of 22 February 2011*

While this claim was not referred to by Ms L in her submissions it was included in the initial application. EQC says it does not have any details of the alleged damage caused by this earthquake, but it declined this claim under cl 3, sch 3 of the EQC Act on the basis of fraud. The reasons for EQC's decision were set out in its letter of 26 September 2013 (the Declination Letter). EQC says it has no further liability for this claim.

(c) *CLM/2011/XXXXXX – earthquake event of 13 June 2011*

EQC assessed damage at \$34,953.67. Ms L accepts this assessment. While there is earthquake damage that requires repair, the claim was declined by EQC in the Declination Letter. Ms L seeks payment of this amount. EQC says it has no liability to pay this claim.

(d) *CLM/2011/XXXXXX – earthquake event of 23 December 2011*

Ms L does not refer to this event in her application but does so in her submissions where she accepts EQC's assessment of damage at \$1,502.82. In its submissions, EQC accepts liability to pay this amount on this claim.

- (e) In her submissions Ms L makes a further claim for loss of rent of \$13,790.00 being \$985.00 x 14 weeks. EQC says there is no obligation under the EQC Act for it to pay for loss of rent.

*B. XXXX*

- (f) *CLM/2010/XXXXXX – earthquake event of 4 September 2010*

EQC assessed damage at \$8,737.23. Ms L accepts this assessment. This claim has not been declined. Nothing has been paid by EQC to Ms L for the damage claimed in this event. EQC accepts liability to pay this amount on this claim.

- (g) *CLM/2011/XXXXXX – earthquake event of 22 February 2011*

EQC assessed damage at \$12,011.51. Ms L accepts this assessment. This claim was declined by EQC in the Declination Letter. EQC says it has no further liability. Ms L seeks payment of this amount.

- (h) *CLM/2012/XXXXXX – earthquake event of 23 December 2011*

EQC assessed damage at \$3,466.19. Ms L accepts this assessment. EQC says nothing further is owing on this claim as this amount was set off by the amount Ms L agreed to repay EQC in the agreement reached in 2015. This agreement was held to be enforceable by this Tribunal in its decision of April 2020.<sup>2</sup> Accordingly, I find that this claim is at an end, and nothing further is owing.

- (i) Ms L claims loss of rent of \$5,460.00 being \$390 x 14 weeks. EQC says it is not obliged to pay for loss of rent.

[4] Of the claims summarised EQC accepts liability for the sums of \$1,502.82 and \$8,737.23 as detailed above. Ms L seeks payment. Accordingly, I direct that these payments be made within 10 working days of the date of this decision.

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<sup>2</sup> Above, n 1.

[5] Ms L seeks payment of EQC's assessed damage for the claims declined. EQC says it is entitled to rely on cl 3 of sch 3 of the EQC Act to decline claims in their entirety because of the fraudulent claim for emergency repairs.

[6] Cl 3 of sch 3 of the EQC Act relevantly states:

The Commission may decline (or meet part only of) a claim made under any insurance of any property under this Act where-

f) The claim is in any respect fraudulent

[7] The EQC Act expressly provides EQC with a discretion to decline a "claim" where any part of it is found to be fraudulent. A "claim" in the insurance context generally encapsulates all damage from each damage causing event.<sup>3</sup> Ms L made claims for damage as set out above. Each claim for each event must be addressed individually therefore each claim made by Ms L must be considered in isolation.

## **Background**

[8] While the background events have been set out in the other decisions it is relevant to record that Ms L stated to EQC that she carried out emergency work to repair damage caused to the houses at XXXX, by the earthquakes of 22 February and 13 June 2011 and XXXX by the earthquake of 22 February 2011.

[9] Ms L submitted 12 invoices purporting to relate to emergency work she said was carried out at XXXX and 2 invoices for XXXX.

[10] On receiving these invoices EQC inspected the properties and interviewed Ms L seeking an explanation of events.

[11] On 26 September 2013 EQC wrote to Ms L declining the claims for damage at both properties. The letters set out the reasons why. They explained that EQC found that some of the work invoiced did not relate to earthquake damage, and that materials claimed on some invoices were not in fact used in the repairs. EQC had also identified charges that were not

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<sup>3</sup> *L v EQC* (27 August 2021), at [31].

actually incurred. These included administration and delivery fees itemised on each invoice. EQC concluded that the invoices rendered by Ms L contained false information and charges for goods and services which had not been supplied. This, EQC said, meant that the invoices were false documents which in turn meant that the claim in respect of which the invoices had been submitted, was fraudulent.

[12] EQC concluded that as Ms L has submitted fraudulent invoices for emergency repair work to XXXX and XXXX, the discretion afforded by cl 3, empowered it to decline the claim in its entirety.

[13] The Declination Letters advised Ms L that should she not agree with the decision, that she could supply further information in support of her claims, and that EQC would reconsider its decision on receipt of such information. EQC requested that the amounts already paid out to Ms L for the emergency work claimed, be repaid to it.

[14] The matter came to a head again two years later in 2015. In a letter to EQC dated 10 June 2015 Ms L offered to repay the amounts sought by EQC. This letter noted that Ms L did “not admit to any wrongdoing or culpability.”

[15] EQC responded on 12 June 2015 accepting the commitment made by Ms L to repay the amounts. It did not agree to Ms L’s denial of wrongdoing or culpability on her part.

[16] Despite Ms L’s offer and EQC’s acceptance as set out in the correspondence, Ms L failed to make the repayments within the agreed period. In its decision of 15 April 2020 this Tribunal reviewed the correspondence and determined that the parties had entered a binding settlement.<sup>4</sup> Ms L was directed to make the payments owed which she has since done.

### **Can EQC decline a claim that is “in any respect fraudulent”?**

[17] The words of EQC Act are clear. Clause 3(f) creates a discretion that allows EQC to decline a claim, that encapsulates all damage from an event, where it finds the claim to be “in any respect fraudulent”.

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<sup>4</sup> *L and M v Earthquake Commission* [2019] CEIT 0036 (5 April 2020) at [23].

[18] EQC made the decision that Ms L's claims were fraudulent because the invoices were believed to be fraudulent. It declined the claims in September 2013.

[19] It is clear from the words of the EQC Act that EQC had the power to make this decision.

[20] At no time since September 2013 has Ms L challenged the decision to decline the claims. She had the benefit of legal advice in 2015 and did not do so at that time or after receiving that advice.

[21] This claim has been before the Tribunal since September 2019 and to date she has not challenged EQC's decision or the grounds on which EQC made its decision to decline her claims.

**Does the later denial of wrongdoing have any effect on EQC's earlier decision to decline the Claim?**

[22] As already noted, when an agreement was reached between Ms L and EQC regarding the repayment of the amount paid by EQC, Ms L's lawyer recorded in correspondence that she did "not admit to any wrongdoing or culpability".

[23] EQC says that this later denial does not have any effect on EQC's earlier decision to decline the claim based on fraud. It points to the fact that:

- (a) EQC declined the claim in September 2013 almost 2 years before Ms L wrote to EQC;
- (b) Ms L agreed to repay the amount previously paid to her for emergency work;
- (c) the agreement between the parties of the 12 June 2015 only related to the repayment by Ms L of the relevant amount and did not include agreement to Ms L's denial of wrongdoing; and
- (d) Ms L did not substantially challenge EQC's decision to decline the claim for fraud.

I agree.

[24] In summary, the EQC Act provides the discretion. EQC investigated, then decided to exercise its discretion to decline the claims. Ms L has not challenged this decision. The discretion exercised by EQC in September 2013 to decline the claims because of fraud was not affected by the denial of wrongdoing later set out in her lawyer's letter in 2015.

[25] It should be noted that the Tribunal has conducted a hearing in respect of other claims made by Ms L for earthquake damage. The decision of this Tribunal in *L and M v EQC* concluded that Ms L and her husband Mr M intentionally provided false information about emergency repairs to EQC and as a result received payment they were not entitled to.<sup>5</sup> In this case I am not being asked to determine whether there was fraud, but rather to consider if EQC is entitled to decline these claims in their entirety because of fraud. I consider that it could, and did, and that the claims declined by EQC are at an end.

[26] Accordingly, nothing further is owed by EQC to Ms L in respect of CLM 2011/XXXXX and CLM/2011/XXXXX for XXXX , or CLM/2011/XXXX ( XXXX ).

### **Claims for loss of rent**

[27] Ms L now claims that she should be paid \$13,790.00 and \$5,460.00 for loss in rent for XXXX and XXXX respectively. There is no provision under the EQC Act that obligates EQC to pay a claimant for loss of rent. Claims for loss of rent are subject to the terms of the insurance policy and should (if the policy and facts support the claim) be sought from the insurer.

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<sup>5</sup> *L v EQC* (27 August 2021) at [6].

## The Result

[28] In summary, the claims are resolved as follows:

- (a) EQC is to pay to Ms L the sums of \$8,737.23 and \$1,502.82 to resolve claims CLM 2010/XXXXXX and CLM 2011/XXXXXX within 10 working days of the date of this decision.
- (b) The decision taken by EQC to decline claims CLM 2011/XXXXXX, CLM/2011/XXXXXX and CLM/2011/XXXXXX stands. No further liability exists.
- (c) No order for compensation for loss of rent can be made against EQC.



E J Flaszynski  
Member  
Canterbury Earthquakes Insurance Tribunal