IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CIV-2012-409-1630
[2013] NZHC 230

IN THE MATTER OF	the Declaratory Judgments Act 1908
BETWEEN	SUNNY ALISON JUNE MORLEY AND NEW ZEALAND TRUSTEE SERVICES LIMITED First Plaintiffs
AND	MT VISION LIMITED Second Plaintiff
AND	EARTHQUAKE COMMISSION Defendant

CIV-2012-409-1899

AND IN THE MATTER OF the Declaratory Judgments Act 1908

BETWEEN	JOHN GRAHAM HARRIS First Applicant
AND	ELIZABETH LAUREN HARRIS Second Applicant
AND	JOHN GRAHAM HARRIS, ELIZABETH LAUREN HARRIS AND MICHAEL PALMER WOLFE Third Applicants
AND	EARTHQUAKE COMMISSION Respondent

Hearing: 24 September 2012

Appearances: G M Brodie for SAJ Morley and related plaintiffs/applicants
T C Weston QC and A R Tosh for E L Harris and related plaintiffs/applicants
J A Knight and A Neris for Earthquake Commission (defendant)
C R Johnstone and S E Waggot for Southern Response Earthquake Services Limited (interested party)

Judgment: 18 February 2013

RESERVED JUDGMENT OF PRIESTLEY J

This judgment was delivered by me on 18 February 2013 at 3.00 pm pursuant to Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Date:……

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Introduction

[1] The plaintiffs (the Morley interests and the Harris interests) seek declarations pursuant to the Declaratory Judgments Act 1908.

[2] Both sets of plaintiffs owned boarding houses in central Christchurch. All the properties[1] were seriously damaged by the Christchurch earthquakes, particularly the February 2011 calamity.

[3] All the boarding houses were subject to fire insurance contracts. In terms of s 18(1) of the Earthquake Commission Act 1993[2] (the Act) residential buildings were deemed to be insured under the statute against natural disaster by the Earthquake Commission (EQC).

[4] EQC has taken the stance that s 18 insurance does not apply to the boarding houses owned by the Morley and Harris interests. It contends that the boarding houses cannot properly be regarded as residential buildings or dwellings and must fall outside the ambit of natural disaster insurance cover which Parliament contemplated when it enacted the legislation. These proceedings quite properly seek this Court's guidance on what is essentially a matter of statutory interpretation.

[5] Mr Knight, at the outset of EQC's submissions, informed the Court that the two proceedings were in the nature of a test case and that approximately 30 boarding house owners in the Canterbury region were in a similar position to the plaintiffs.

Brief factual background

[6] Affidavits were filed dealing with the history and management of the boarding houses. There were no disputed facts.

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1 Greater relevant detail about the properties appears in [7] – [14].

2 See infra [19].

[7] The Morley interests owned three contiguous properties at 300, 302, and 304 Gloucester Street, Christchurch.[3] Ms Morley purchased 302 Gloucester Street in the mid-1990s as a house for herself and her two young children. The property had a large garden with mature trees and was an ideal family home. The property was a two storey building with three upstairs bedrooms and a double bedroom downstairs. From the outset Ms Morley used two bedrooms to house flatmates. Most of her flatmates were young overseas language students (frequently from Japan) who were studying in Christchurch and staying with Ms Morley on a home-stay arrangement. Ms Morley subsequently acquired the two neighbouring properties at 300 and 304 Gloucester Street.

[8] At the time of the September 2010 and February 2011 earthquakes Ms Morley's daughter was one of the occupants of 302 Gloucester Street. Ms Morley herself had not lived in any of the properties since her return to New Zealand in June 2010 from an extended overseas trip.

[9] When the February 2011 earthquake struck there were approximately 11 people (including Ms Morley's daughter) living in Ms Morley's three properties. Management of the three boarding houses was entrusted to Ms Morley's niece (Micah Dawson) from 2008 when Ms Morley left for her trip.

[10] Occupants of the buildings (certainly before the earthquakes) would sign a single page document headed "Accommodation Agreement". The boarder was described as a "guest". Two weeks' rental and one week's bond were paid in advance. The document specifically refers to a tenancy which could be extended beyond the stipulated departure date. Each boarder had a designated room. A minimum of three months' commitment to the tenancy was sought. Each tenant had a key to the room. The three buildings each had a single kitchen, two bathrooms, and a laundry, all of which were shared by the buildings' occupants. The rental covered (unsurprisingly) electricity charges, toll-barred telephone rental, limited

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[3] The name of this well-known Christchurch street, named after a diocese and county in the west of England is for some reason spelled "Gloucestor" in the relevant originating application. The pleading also refers to "the Earthquake Commission Act 1908". Such errors should not appear in High Court pleadings.

internet access, and the cost of a bi-weekly cleaner. The buildings attracted a "predominance of Asian students" who frequently socialised and shared meals together. The socialisation often extending to occupants of more than one of the three boarding houses concerned.

[11] The Harris interests also owned three properties, situated at 245 Kilmore Street, and 265 and 265A Armagh Street. The Kilmore Street property was a two storey building comprising eight rooms. The kitchen, lounge, vegetable garden, bathroom, and shower facilities were communal. 265 Armagh Street was a single storey building comprising six separate flats. Four of those flats shared a small kitchenette. The other two had their own kitchen. There was a communal verandah, toilet, and shower facilities. The laundry was located in an external structure. 265A Armargh Street comprised six rooms. The kitchen, deck, lounge (with television) and two bathrooms were communal.

[12] Mrs Harris owns a number of rental properties in Christchurch which include a number of "multiple tenant" properties. As with the buildings owned by the Morley interests, the arrangement with the Harris properties was to rent rooms to individuals on a room by room basis. Management of the three properties was the responsibility of Mrs Harris or her daughter. Prospective tenants would be interviewed to make sure that they were "an appropriate fit" for the relevant building. A rental agreement was signed. Usually a minimum stay of four to five weeks was required. The rental agreement included electricity supply, a shared phone line, basic Sky television, and internet access. Of the tenants of 245 Kilmore Street (which had eight rooms), four had been there for some years before the two earthquakes. The occupancy lengths for 265 Armagh Street ranged from May 2008 to March 2010; for 265A Armagh Street from October 2008 to December 2010.

[13] The earthquake damage to all six properties was severe. The Morley interest properties at 300 and 302 Gloucester Street have been demolished. 304 Gloucester Street is uninhabitable. A decision on repairing it is awaited. Two of the Harris interest properties, at 245 Kilmore Street and 265 Armagh Street, have been demolished. 265A Armagh Street sustained some damage during the February 2011 earthquake.

[14] All six properties were insured against fire. The three Morley interest properties were insured with AMI Insurance Limited (each having a separate insurance policy). In April 2012 AMI Insurance Limited changed its name to Southern Response which appeared as an interested party. The Harris interest properties were insured (again three separate policies) with AA Insurance Limited. All six insurance policies were in force at the time of the natural disasters of the two Christchurch earthquakes.

Relevant legislation

[15] The Act (which inter alia creates EQC) contains a Long Title which is stated to be:

> An Act to make provision with respect to the insurance of residential property against damage caused by certain natural disasters.

There is no dispute the Christchurch earthquakes qualify under the s 2 definition of "natural disaster".

[16] As already stated, any residential building in New Zealand is deemed to be insured under the Act against natural disasters where there is a fire insurance contract in force for it. There is no insurance contract between the owner of a qualifying residential building and EQC. The natural disaster insurances in effect are statutory. Insurance companies writing fire insurance policies on residential buildings are responsible for paying the appropriate premium to EQC, which payments must be made on a monthly basis and which form part of the natural disaster fund.[4]

[17] EQC's maximum liability under s 18 is $115,000 ($100,000 plus the GST). Any property owner may insure a residential building at any appropriate figure. But EQC's maximum liability is capped. Obviously when a property owner considers (in the event of damage or loss from natural disaster) that maximum figure to be insufficient, extra cover will be arranged as a term of the relevant policy.

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[4] See generally ss 23-24. This background structure is common ground and has little relevance to these proceedings.

[18] In respect of all six policies (which as stated were in force at the relevant time) the premiums had been paid. The relevant insurers had passed on the appropriate natural disaster premium to EQC.

[19] Section 18 provides:

> **18 Residential buildings**
>
> (1) Subject to any regulations made under this Act and to Schedule 3 to this Act, where a person enters into a contract of fire insurance with an insurance company in respect of any residential building situated in New Zealand, the residential building shall, while that contract is in force, be deemed to be insured under this Act against natural disaster damage for its replacement value to the amount (exclusive of goods and services tax) which is the least of—
>
> > (a) If the contract of fire insurance specifies a replacement sum insured for which the building is insured against fire under that contract, the amount of that sum insured:
> >
> > (b) If the contract of fire insurance does not specify such a replacement sum insured but does specify an amount to which the building is to be insured under this Act, that amount:
> >
> > (c) The amount arrived at by multiplying the number of dwellings in the building (being the number determined in accordance with subsection (3) of this section) by $100,000 or such higher amount as may be fixed from time to time for the purposes of this paragraph by regulations made under this Act.
>
> (2) An amount specified for the purposes of subsection (1)(b) of this section shall not be less than the amount calculated by multiplying a sum of not less than $1,000, or such higher sum as is fixed from time to time for the purposes of this subsection by regulations made under this Act, by the area in square metres of the residential building. Where a contract specifies a lesser amount, the amount specified is deemed to be $1,000 or such higher sum as is fixed from time to time for the purposes of this subsection by regulations made under this Act, by the area in square metres of the residential building.
>
> (3) For the purposes of subsection (1)(c) of this section, a residential building is deemed to comprise one dwelling unless the existence of a higher number of dwellings in the building is disclosed to the insurance company at the time that the contract of fire insurance is entered into.

There are (for s 18(1) interpretation purposes) no relevant regulations. Nor do the provisions of subs 1(a), (b), and (c) have any bearing.

[20] To assist with the central issue of whether the six boarding houses were "residential buildings" for s 18(1) purposes, the s 2 definition of residential building is relevant. It provides:

> **Residential building means**—
>
> (a) Any building, or part of a building, or other structure (whether or not fixed to land or to another building, part, or structure) in New Zealand which comprises or includes one or more dwellings, if the area of the dwelling or dwellings constitutes 50 percent or more of the total area of the building, part, or structure:
>
> (b) Any building or part of a building (whether or not fixed to land, or to another building, part, or structure) in New Zealand which provides long-term accommodation for the elderly, if the area of the building which provides long-term accommodation for the elderly constitutes 50 percent or more of the total area of the building, part, or structure:
>
> (c) Every building or structure appurtenant to a dwelling referred to in paragraph (a), or a building or part of a building referred to in paragraph (b), of this definition and that is used for the purposes of the household of the occupier of the dwelling or for the purposes of the residents of the building or part:
>
> (d) All water supply, drainage, sewerage, gas, electrical, and telephone services, and structures appurtenant thereto—
>
> > (i) Serving a dwelling referred to in paragraph (a), or a building or part of a building referred to in paragraph (b), of this definition or surrounding land; and
> >
> > (ii) Situated within 60 metres, in a horizontal line, of the dwelling or building or part; and
> >
> > (iii) Owned by the owner of the dwelling or building or part, or by the owner of the land on which the dwelling or building or part is situated:

[21] That definition in turn, because a qualifying residential building must comprise (to 50% or more) "a dwelling or dwellings", brings into play the s 2 definition of dwelling. That is:

> **Dwelling** means, subject to any regulations made under this Act, any self-contained premises which are the home or holiday home, or are capable of being and are intended by the owner of the premises to be the home or holiday home, of one or more persons:

[22] It is through these statutory definitions that the parties' battle lines run. The plaintiffs contend that their six boarding houses are "residential buildings". All

boarding houses were occupied by tenants. All boarding houses were "self-contained" premises which were at the relevant time the home of one or more persons.

[23] EQC contends that the six boarding houses were not residential buildings. Under s 18(3) a residential building is deemed to comprise one dwelling. None of the plaintiffs' tenants could claim to live in self-contained premises. Their individual rooms were not self-contained. They were not living together as a household. Thus the boarding houses could not include one or more dwellings for the purposes of the "residential building" definition. Importantly, the overarching Parliamentary intention was to limit natural disaster cover through EQC to residential properties and not to buildings which were essentially commercial.

Legislative history

[24] The written submissions of both Mr Knight and Mr Brodie helpfully traced the legislative history of the Act. The formulation of policy and legislative drafting spanned five years and two government Administrations.

[25] The start point was the release of a public discussion paper in July 1988. There followed a government White Paper released in May 1989 which incorporated a draft Disaster Insurance Bill.[5] Under that name the Bill was introduced into Parliament on 30 November 1989. It was clear policy to limit somewhat the exposure of the Crown to earthquakes. The relevant Minister in his speech on the Bill's introduction stated:[6]

> The provisions in the Bill will ensure that the funds are there to meet the costs of a major disaster, and that New Zealanders will be guaranteed the replacement of their homes in the case of such a disaster. Through the new Disaster Insurance Commission, assisted by the insurance and reinsurance industries, we will ensure that New Zealanders are provided with that.

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5 *Disaster Insurance Policy: A White Paper* (New Zealand Government, Wellington, 1989).
6 (30 November 1989) 503 NZPD 13924.

[26] The Minister further noted that Part 2 of the Bill[7] represented "a substantial change" from cover provided under the predecessor statute, the Earthquake and War Damage Act 1944. The insurance cover involved was to be replacement value rather than the previous indemnity value.[8]

[27] The original Bill was not reported back until December 1992.[9] The 1990 election had seen a change in government. The new government's emphasis on the underlying policy of providing cover against natural disasters was somewhat different. A Ministerial paper indicated that commercial and other non-residential property insured against fire would no longer be automatically covered under their new scheme. Residential property, however, would continue to be automatically insured under the new scheme provided it was insured against fire. There would be no compulsion to insure residential properties against fire.[10]

[28] The Paper suggested the government's prime concern in the aftermath of a major natural disaster should be humanitarian, with particular emphasis on the provision of adequate houses and other amenities rather than meeting "extensive obligations to better-off house owners and toward industry".[11] The proposed policy contemplated insurance for dwellings up to a maximum insurable value, such cap to cover the full indemnity value of approximately two-thirds of all residential premises throughout New Zealand. That figure (this being 1991) was suggested as $72,000.[12] This was a shift away from the previous proposal in the Bill of replacement cover. The top third (by value) of residential property owners would, if disaster cover was required, have to obtain that insurance privately.[13]

[29] Clearly there was to be a demarcation between residential and non-residential properties. The paper canvassed that distinction as follows:

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7 This was the predecessor to Part 2 of the current statute, the heading for which is "Insurance of Residential Property against natural disaster" and which contains three subheadings being "Insurance", "Premiums", and "Conditions of Insurance".

8 (30 November 1989) 503 NZPD 13922.

9 (15 December 1992) 532 NZPD 13186.

10 See generally July 1991 discussion paper *The Government's Role in Responsibilities in Disaster Insurance* (New Zealand Government, Wellington, 1991).

11 Ibid at 1.

12 Ibid at [27].

13 Ibid at [29].

> 33 Given that residential and non-residential property are to be treated differently under these proposals, legislation will need to define which buildings are to be subject to which regime. We propose to utilise the definition of "home" developed by the study group into disaster insurance set up by the last Government (see Annex [1]). Under this, all buildings where usage as a principal place of residence constitutes 50% or more of the total area of the building would be subject to the continuing levy requirement. Others would be exempted but the phased withdrawal of the EQC discussed in paragraph 20 above would apply.
>
> 34. With commercial and domestic properties treated differently, there is a theoretical danger that owners of domestic premises may declare them to be commercial in order to evade the levy or that owners of commercial premises may declare them to be residential so as to gain cover by the EQC. However, property owners will have to persuade their insurance company or broker of this, and the insurer has every interest in accurately knowing the nature of the risk being undertaken. Furthermore, a person mis-declaring their property to their insurer runs the risk of invalidating their whole insurance. Thus, in practice, the incentives are to declare accurately the nature of the premises.

[30] It is noteworthy that the focus of the proposed legislation (to differentiate between qualifying residential property and excluded non-residential property) must be a "home". The Annex of the discussion paper effectively gave a definition of "home" for the purposes of the proposed legislation under the head of "Definition of a residential property to be covered by the EQC's levy requirements". That definition was:

> Any building situated in New Zealand that is being used as the principal place of residence of any person, and includes any building that is used both as a principal place of residence of any person and for any other purpose if the part of the building used as the principal place of residence constitutes 50% or more of the total area of the building.

[31] I consider it is important not to lose sight of the centrality to the Act's policy of the concept of a home. New Zealand has a long history of being a property owning democracy. Since the dawn of civilised communities, human beings have chosen to live in structures which provide them with shelter from the elements and a place to eat and sleep.[14] New Zealanders must live somewhere. That place is home. The 1991 discussion paper's definition of home as including "a principal place of residence" is instructive. Although there is a large overlap between a home and a residence, it is difficult to dance around the distinction that a "residence" is a

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[14] I do not, for the purposes of this judgment, need to explore contemporary issues of homelessness and vagrancy.

description of a structure where people reside whereas a "home" has the more subjective element of being a place where a person, family or household choose to live.

[32] It is trite to observe that a natural disaster such as an earthquake, which can destroy or severely damage structures in which people live, presents citizens and their governments with immediate problems. Destroyed or uninhabitable residences or homes result in citizens being displaced. Replacement structures have to be built. I see this as being core to the purpose and policy of the Act.

[33] Returning to the narrative of legislative history, the residential/commercial dichotomy was introduced by regulation before the final enactment of the current legislation.[15] The effective regulatory amendment was to add commercial property to the type of property not covered by the 1944 Act.

[34] With a change of name, the Earthquake Commission Bill was introduced into Parliament in December 1992 by the Honourable Maurice McTigue. The Minister, in his introductory speech, clearly stated there would be two regimes, one for residential property and the other for "other kinds of property".[16] The Bill did not embrace in so many words the definition of home which had been proposed in the 1991 paper.[17] Instead in cl 2(1) it contained a definition of "residential property" such expression being included and indeed retained in the Long Title. That definition was as follows:

> "Residential property" means any building in New Zealand which is occupied solely as 1 or more household units; and includes –
>
> (a) Any building occupied both as a household unit and for any other purpose if the part of the building used as a household unit constitutes 50 percent or more of the total area of the building;
>
> (b) Any building which provides long-term accommodation for the elderly or which is a boardinghouse or a lodginghouse; and
>
> (c) Every building, structure and improvement appurtenant to the household unit used for the purposes of the household of the

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15 The Earthquake and War Damage Regulations 1984, amendment No. 3 (SR 1992/194) reg 3(2).
16 (15 December 1992) 532 NZPD 13186 at 13187.
17 Supra [30].

> occupier of the household unit or the purposes of the residents of any building to which paragraph (b) of this definition applies –
>
> and also includes the following property situated within the land holding on which any such building is situated: …

[35] The features of the "residential property" definition are significant:

(a) The property was a building occupied solely as one or more household units.

(b) It included any building providing long term accommodation for the elderly or which was a boarding house or lodging house.

[36] Were the definition references to boarding houses and lodging houses to have been retained in the Act, then these proceedings would never have occurred. It would have been unquestionable that the six boarding houses had natural disaster insurance. However, as is apparent in subsequent paragraphs in this judgment, the references were not retained. Their exclusion from the Act, submits Mr Knight, points to a clear Parliamentary intention that boarding houses were not to be captured by the relevant s 2 definition. To the contrary, Mr Weston QC submits the new definition of "dwelling" covered boarding houses and there was thus no need to make express provision for them.

[37] The Bill was duly referred to Parliament's Finance and Expenditure Committee. The Select Committee reported back on 20 July 1993. The Committee struck out the definition of "residential property" and replaced it with two separate definitions of "residential building" and "residential land" and imported a further definition of "dwelling". These definition changes were inserted into the Bill which passed through all subsequent Parliamentary stages unchanged.

[38] The reporting speech of Mr Gresham MP, who reported back from the Select Committee, refers to submissions which the Committee had received to the effect that it was advisable to split the definition of "residential property" into two areas of residential building and residential land. Neither counsel nor I have been able to discover anything in the Select Committee report or the ensuing Parliamentary

debate which sets any further light on the interpretation issues thrown up by these proceedings.

[39] It is, however, instructive to set out, side by side, as Mr Knight did in his submissions, the "residential property" definition as it appeared in the Bill and the "residential building" definition as it appears in the Act. The bolded words designate deletions or additions as the case may be.

"Residential property" means any building in New Zealand which is occupied solely as 1 or more household units; and includes –	"Residential building" means –
(a) Any building occupied both **as a household unit** and used for any other purpose if the part of the building used as a household unit constitutes 50 percent or more of the total area of the building; and	(a) Any building, or part of a building, or other structure (whether or not fixed to land or to another building, part, or structure) in New Zealand which comprises or includes one or more **dwellings**, if the area of the **dwelling** or **dwellings** constitutes 50 percent or more of the total area of the building, part, or structure:
(b) Any building which provides long-term accommodation for the elderly or which is a **boardinghouse or lodging house**; and	(b) Any building or part of a building (whether or not fixed to land, or to another building, part, or structure) in New Zealand which provides long-term accommodation for the elderly, if the area of the building which provides long-term accommodation for the elderly constitutes 50 percent or more of the total area of the building, part, or structure:
(c) Every building, structure, and improvement appurtenant to the household unit used for the purposes of the household of the occupier of the household unit or the purposes of the residents of any building to which paragraph (b) of this definition applies –	(c) Every building or structure appurtenant to a dwelling referred to in paragraph (a), or a building or part of a building referred to in paragraph (b), of this definition and that is used **for the purposes of the household of the occupier of the dwelling** or for the purposes of the residents of the building or part:

[40] Highly relevant to the interpretation argument is not only the removal of the words "boarding house or lodging house" but also the introduction of the words "dwelling or dwellings". I set out again the s 2(1) definition of dwelling:

> **Dwelling** means, subject to any regulations made under this Act, any self-contained premises which are the home or holiday home, or are capable of being and are intended by the owner of the premises to be the home or holiday home, of one or more persons:

[41] Interestingly, and indeed importantly for interpretation purposes, the definition of dwelling has at its centre the word "home".

Discussion

[42] The central issue is clearly one of statutory interpretation. Do the six boarding houses fall inside the definitions of "residential building" and "dwelling", thus being insured under the Act (under s 18(1)) against natural disaster?

[43] Looking at the statutory words which determine the outcome I must of course be mindful of s 5(1) of the Interpretation Act 1999 which provides:

> The meaning of an enactment must be ascertained from its text and in the light of its purpose.

[44] The purpose of the Act is tolerably clear from the legislative history which I have outlined in this judgment's previous section. So too is its purpose clear from the Long Title "… to make provision with respect to the insurance of residential property against damage caused by certain natural disasters". Although Mr Knight, in his submissions, described the retention of the words "residential property" in the Long Title as curious, I decline to read down those words or to dilute the Long Title's clear purpose.

[45] New Zealanders, along with the inhabitants of other highly developed countries, live in homes. Ownership of the structures in which they reside, and the type of people residing with them, vary enormously. A person may live with a spouse or partner, with other family members who are older or younger, or alone. A person may live in a property which he or she owns; the property may be rented; the home may be shared with other people (such as the house being used to flat). A home may be occupied by people who have a familial connection or by people who know one another well. A home may be occupied by people who were initially strangers. The inhabitants of a home may come and go, for instance when adult

children leave the nest and subsequently flop back into it. Some people may rent a home for a short term, waiting out the time between selling one home and buying another or orienting themselves in a new city or town until they find a home of greater permanence which they want to buy or rent. A new flatmate arrives to replace a departing one. Affluent people may own more than one home. Many people own holiday homes or rent them. Some people, instead of living in a house which they own, or renting an apartment, or being an occupant of a shared rented flat, live in boarding houses.

[46] These examples are not necessarily exhaustive but they illustrate the diversity of residential situations and homes which are commonplace. There is force in Mr Weston's submission that there is a continuum of possible residential arrangements. At one end of the continuum, submitted counsel, is a house in which a nuclear family reside. At the other end, possibly, is a prison. Residential arrangements such as students' flats, hostels, boarding houses and hotels fall in the middle.

[47] In Mr Weston's submission the definition of the statutory term "dwelling" should not, as a matter of policy, be read restrictively. A sojourn by a person in a prison or a hospital could not possibly, on any relevant facts, turn the prison or hospital into a "residential building" or "dwelling" for the purposes of the Act. In bygone days, particularly in Britain and the United States, some people chose to live permanently in hotels or club-houses. It is doubtful whether that phenomenon would convert club-houses and hotels into residential buildings or dwellings, such not being their prime purpose. Given the factual diversity of residences or structures which people regard as their home, it is unsurprising that the Act does not contain any definition of "home". To try to define the central concept of a home exhaustively would cause immense problems. Far better to use the "dwelling" definition with "home" at its core, leaving it to EQC and, if necessary, courts to interpret in a specific factual context.

[48] Certainly definitional problems might arise (which do not have to be resolved in these proceedings) with structures such as university hostels, workers' hostels, or school boarding houses, where students or workers reside for the duration of their

working hours, or university or school terms. Ultimately the relevant facts will determine the outcome.

[49] It is common ground between counsel that the traditional "student flat" in a university city, where students will rent residential accommodation, each with his or her own bedroom and otherwise sharing facilities, would have s 18(1) cover. Nor was there any dispute that rented accommodation, despite the landlord's clear commercial interest, constituted a residential building for ss 2(1) and 18(1) purposes.

[50] The conclusion I have reached, given the clear policy of the Act, is the six boarding houses were being used for "residential building" purposes. They were buildings which comprised one or more dwellings. Each building was self-contained. The occupants would live, sleep, cook, wash, launder and relax there. Each occupant had his or her individual room. For the purposes of s 2(1) definition of "dwelling" the premises were self-contained and were, for so long as each occupant lived there, the home of one or more persons. Each boarding house was an entire self-contained building and as such was self-contained premises being shared as a home by a number of individuals.

[51] Particularly important in reaching this conclusion is the s5(1) Interpretation Act consideration and the purpose of the Act. That purpose is essentially to provide those properties which were covered by fire insurance and used for residential purposes, a capped $115,000 (GST inclusive) insurance component against a natural disaster such as earthquake. The stark reality was that the Christchurch earthquakes resulted in the destruction or severe damage of all six boarding houses, thus depriving their occupants at the time of the natural disaster of their homes.

[52] The retention in (b) of the s 2 "residential building" definition of buildings providing long-term accommodation for the elderly is instructive. Rest homes and geriatric facilities may well be regarded as their home by some occupants, but not always. Rest homes frequently contain hospitals for those requiring on-going care, dementia wings for those who need to be secured, facilities for day to day care and for respite care. These hybrid purposes for buildings providing accommodation for the elderly clearly justified the retention of such accommodation when the Bill was

reported back from the Select Committee.[18] The destruction of a rest home, albeit a commercial enterprise, would lead to a need to replace the facility. The position of boarding houses, in my view, is much clearer.

[53] There remains but to deal, albeit briefly, with the submissions of Mr Knight to the contrary.[19] The position adopted by counsel is totally consistent with an EQC June 2007 publication *An Insurers' Guide to EQCover*.[20]

[54] Since the Christchurch earthquakes, subsequent publications by EQC have re-emphasised the point. The *Guide*, under the heading "boarding houses, serviced apartments and time-shares", states that such structures are not covered unless they are the manager's flat, or the owner/manager's part of the accommodation exceeds 50%. The same document observes that in some areas, serviced apartments and time-shares revert to "long-term permanent rentals" at the end of the summer season. In that case, if the apartment is rented for more than 30 days consecutively (EQC's criterion for "long-term rental"), then cover applies. The same document states that cover applies to bed and breakfast accommodation "where the owner still lives in the house but rents out a couple of bedrooms" and where the owner's usable space exceeds 50 percent of the property.

[55] It was common ground between counsel that this and subsequent EQC documents, although accurately setting out EQC's perception of the legislation, could not be determinative of the Act's interpretation.

[56] Mr Knight's submissions rested on what he saw as the correct interpretation of the critical "residential building" and "dwelling" s 2(1) definitions. He submitted boarding houses were not residential buildings because they did not comprise self-contained premises. The buildings themselves were not occupied by a single household. Furthermore the individual rooms inside the buildings which tenants occupied did not contain all the necessary facilities to be self-contained such as kitchens, bathrooms and lounge areas.

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18 Supra [37].

19 Mr Knight's submissions were comprehensive, well organised, and extremely helpful. Counsel is to be complimented for the thought and preparation which went into them.

20 This publication was referred to by counsel and was annexed to the affidavit of EQC's Chief Executive Mr Ian Simpson.

[57] In counsel's submission dwellings were self-contained premises which were the home of one or more persons. A home was a place where a family or other household group live permanently. "Household" should be given a broad meaning extending to a group of people who share a dwelling provided there was a relationship of domesticity between the group. There was no such relationship between the individual boarders in the six properties. To be self-contained, premises must contain "all necessary living facilities [and be] occupied by a household which does not share the premises with another household with a set of occupants". Whether or not a group of people constituted a household depended on considerations such as the degree of permanence between the residents and whether they were connected by elements other than simple proximity and cohabitation.

[58] The nub of Mr Knight's submission was essentially that the term "self-contained premises" used in the "dwelling" definition qualified a dwelling as a home only if the dwelling was self-contained. Because the individual rooms of boarding house tenants were not self-contained they did not fall under the umbrella of being the tenant's home.

[59] The flaw, with respect, which I see in this submission is that it incorporates into the statutory definition of "dwelling" an element which is quite simply not there. As stated earlier in this judgment[21] the Bill, when reported back from the Select Committee, effectively abandoned the concept of "household" replacing it with "dwelling". Central to the definition of "dwelling" is the concept of self-contained premises of one or more people. A premises may well be the home of a particular household. But it does not follow that premises are not the home of the resident who has no familial or other domestic relationship with the premises' other occupants. Had Parliament intended such a division it would have used clearer words. There is, given the purpose of the Act, no justification for giving the definition of "dwelling" a restrictive meaning.

[60] Certainly the word "household" is used in (c) of the "residential building" definition. But it is used there as an alternative. The sub-definition refers to buildings and structures which are "appurtenant" to earlier definitions of a

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[21] Supra [37].

"dwelling" and which are used *either* for the purposes of the household of the occupier *or* for the purposes of the residents of the building. The definition (limited in its application in any event), contemplates both the household of the occupier and (as a separate category) residents of the building.

[61] The second major flaw I see in counsel's submission is the suggestion that because the occupant of a boarding house is entitled to exclusive use of an individual room, the premises cannot be self-contained because the individual rooms do not contain all necessary living facilities. I reject that approach. Each of the six boarding houses was clearly, on the evidence, a self-contained premises. Inside each structure the residents could sleep, eat, cook, ablute, launder, and relax. Because an occupant had exclusive use of a bedroom does not alter the fact that the residence in which they lived was self-contained. Having exclusive use of a room, locked or unlocked, is common in many New Zealand flats. Nor does the position change because various boarding houses impose certain rules on their tenants. Such rules as restricting access by visitors or guests of boarders do not detract from the fact that the occupants of the boarding houses were living in self-contained premises. In a shared flatting situation there may well be rules restricting one occupant from visiting, uninvited, the designated bedroom of other occupants. Many households impose rules on various members. An occupant of a flat will have no warrant to use the food or liquor of another occupant.

[62] I thus reject the argument that the owner of a boarding house is not entitled to s 18(1) cover unless it can be shown that each occupant of the boarding house had individual self-contained premises. Such an argument also runs counter to s 18(3).[22] A residential building is deemed to comprise one dwelling unless a greater number is disclosed at the time fire insurance is negotiated.

[63] A final difficulty with Mr Knight's submissions on interpretation relates to the normal meaning and understanding of "premises" used in the "dwelling" definition in s 2. The usual conveyancing parlance for premises refers to an entire house, land, or tenement, or to specific leased property. It is doubtful that a single rented room in a boarding house could be regarded as "premises" thus opening up

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[22] Supra [19].

the argument for counsel that premises were not self-contained. The contrary argument is stronger, namely that a tenancy agreement entered into by each boarding house occupant permitted occupancy and use (some shared and some exclusive) of "self-contained" premises.

[64] My conclusion is that the six boarding houses sit comfortably (as a matter of interpretation and policy) inside the s 2(1) definition of dwelling. All six boarding houses were self-contained premises in which a number of people could live. They had their own rooms. Other facilities were shared. Importantly all occupants, for the time being, regarded the boarding house as their home. Indeed some had resided there for considerable periods of time.

[65] The essential function of a boarding house is to provide a home for people who need one. A boarding house is qualitatively different from a hotel. Some boarders may require accommodation for only a few months. Some may wish to live there for indefinite periods of time. Some may wish to live there permanently. Boarding houses indeed are one of the many types of residences available to people in New Zealand seeking a home.

[66] Part 2A of the Residential Tenancies Act 1986 specifically creates a boarding house tenancy being a residential tenancy in a boarding house which is intended to or lasts for 28 days or more and which gives the tenant exclusive rights to occupy particular sleeping quarters and the right to use shared facilities.[23] Section 66B defines a "boarding house" as "residential premises".

[67] Given the clear policy of the Act and in particular its focus on providing a degree of protection to insured residential property I am satisfied there is no sensible reason to exclude these six boarding houses from s 18(1) natural disaster insurance. The plaintiffs are thus entitled to the declaration they seek.

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[23] Residential Tenancies Act 1986, s 66B.

Result

[68] The Morley interests, as owners of 300, 302, and 304 Gloucester Street, Christchurch were, up to and on 22 February 2011,[24] owners of "dwellings" within the meaning of s 2(1) of the Earthquake Commission Act 1993 and as such are insured under s 18(1) of the Act.

[69] There is an identical declaration in respect of the Harris interests as owners of 245 Kilmore Street, 265 and 265A Armagh Street.

Additional matter

[70] Despite reference in Mr Knight's written submissions to a possible issue of the date on which an assessment of whether a building met the definition of a "residential building" should be made for the purpose of the Act, it is common ground between counsel that the facts of these proceedings do not give rise to that issue. I thus decline to say anything on the topic.

[71] However, I do note that there was no dispute between the parties that the relevant date for determining whether each of the buildings was insured as a "residential building" under s 18 of the Act was the date at which the contract of fire insurance in respect of the building was entered into or last renewed before the date of damage.

Costs

[72] The plaintiffs in both proceedings are, in my view, clearly entitled to costs if they seek them. Some issue may possibly arise out of the fact that both proceedings were heard together. I observe, from the standpoint of both successful plaintiffs, no cost saving would have arisen from that.

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[24] The major Christchurch earthquake took place at 12.51 pm on Tuesday 22 February 2011. The Morley interest application wrongly states the date as 21 February 2011.

[73] Although I have not heard any submissions on the topic I doubt whether there can be a strong case for an award of costs in favour of Southern Response. Mr Johnstone's submissions were certainly helpful, but I discern the interested party's appearance was for reasons somewhat wider than the specific insurance policies of the Morley interests.

[74] Counsel are urged to resolve costs between themselves without the need for further judicial intervention. If there is no such resolution by 31 March 2013 then the plaintiffs are to file short submissions, not to exceed three A4 pages, by 8 April 2013 with submissions from the defendant in reply (also three pages) 10 working days thereafter.

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Priestley J