IN THE REALESTATE AGENTS DISCIPLANARY TRIBUNAL HELD AT AUCKLAND

READT no: 058/11

IN THE MATTER	**An Appeal under section 111of the Real Estate Agents ACT 2008**
BETWEEN	**WARREN ARTHUR WILSON**
	Appellant
AND	**THE COMPLAINTS ASSESSMENT COMMITTEE 10011**
	First Respondent
AND	**DONALD MCPHERSON, PHILLIP NOTTINGHAM, DERMOT NOTTINGHAM, & EARLE MCKINNEY**
	Second Respondents

SUBMISSIONS OF SECOND RESPONDENT IN SUPPORT OF AN APPLICATION TO STRIKE OUT DATED 21st JUNE 2012

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May it please the Tribunal,

A. JURISDICTION TO STRIKE OUT (SUBSTANTIAL ARGUMENT)

R Lucas & Son (Nelson Mail) Ltd v O'Brien 2 NZLR [1978] 289 at 50

The Court must exercise its inherent jurisdiction to strike out pleadings sparingly and with great care to ensure that a plaintiff was not improperly deprived of the opportunity for the trial of his case. However that did not mean that the jurisdiction was reserved for the plain and obvious case; it could be exercised even when extensive argument was necessary to demonstrate that the plaintiffs case was clearly untenable that it could not possibly succeed

1. The Real Estate Agents Tribunal is empowered under the Real Estate Agents Act 2008. The relevant provisions of the Act as to the jurisdiction of The Real Estate Agents Tribunal are found at sections 72 and 73 of the Act which materially provides;

Section 72. Unsatisfactory conduct
For the purposes of this Act, a licensee is guilty of unsatisfactory conduct if the licensee carries out real estate agency work that—

(a) falls short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensee; or
(b) contravenes a provision of this Act or of any regulations or rules made under this Act; or
(c) is incompetent or negligent; or
(d) would reasonably be regarded by agents of good standing as being unacceptable.

Section 73. Misconduct
For the purposes of this Act, a licensee is guilty of misconduct if the licensee's conduct—

(a) would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful; or
b) constitutes seriously incompetent or seriously negligent real estate agency work; or
(c) consists of a willful or reckless contravention of—
    (i) this Act; or
    (ii) other Acts that apply to the conduct of licensees; or
    (iii) regulations or rules made under this Act; or
(d) constitutes an offence for which the licensee has been convicted, being an offence that reflects adversely on the licensee's fitness to be a licensee.

2. The Tribunal has jurisdiction to discipline licensees who's behavior falls within the Section's 72 and 73 of the Act. Section 72 of the Act relates wholly to real estate work defined at paragraph 4 which materially provide;

Section4. real estate agency work or **agency work**—
(a) means any work done or services provided, in trade, on behalf of another person for the purpose of bringing about a transaction; and
(b) includes any work done by a branch manager or salesperson under the direction of, or on behalf of an agent to enable the agent to do the work or provide the services described in paragraph (a); but

3. It is submitted that the allegations as against the second respondent arise out of matters having nothing to do with real estate work as defined by s4 of the Act. The appellant relying on that fact that the second respondents are real estate agents as the basis of his complaint.

4. The Appellant failed to file any cogent or intelligible, points on appeal, setting out the grounds in fact and law on which he relies. The Appellants conduct so woeful that it resulted in the Minute of **Ms Davenport** dated 14th March 2012. The day before the hearing which materially provides;

"The tribunal has read the brief of evidence that Mr Wilson filed. The tribunal only have power to discipline real estate agents ***if their conduct is within the definition of real estate agents work (s.4) or disgraceful conduct.***

The appellants statement of evidence does not make it sufficiently clear as to the exact nature of the conduct complained of on each day, the agent it is said committed this conduct; and ***whether the appellant says that this conduct is real estate work or not, or whether he alleges it is disgraceful conduct"***

5. The appellant has to this date failed to clarify the position at law or comply with the directions of Judge Hobbs as to briefs or particularity.

B. NO REAL ESTATE AGENCY WORK REMAX ADVANTAGE

6. It is not in dispute that the Second Respondents have never meet, or had any real estate business related contact with the Appellant. Phillip Nottingham in cross examination seeks to establish there is no agreements or arrangement between the parties that could found jurisdiction under s4 of the act and gets that concession at page 49 line 18 the concession at page 50 line 24. It is submitted that this is totally consistent with the Committees finding at page 8 para 4.8

"where they comment. Given the nature of the issues between the parties, it is not clear that that conduct could be related to any real estate agency work."

For concessions see page 50 line 24

NOTTINGHAM
That with regards to agency work Mr Wilson did you have any agreement with Remax Advantage. Were you engaged in any agreement.

WILSON
Well no No Yeah Yeah what I mean , what what my permission was is they had no standing

NOTTINGHAM
No you said you had no dealings
WILSON
Sorry

NOTTINGHAM
You said you had no dealings

MS DAVENPORT
Perhaps you could refer him to the e-mail

NOTTINGHAM
Yes I'm just going to get

WILSON
But if I can add is I've also said I think um like just endlessly is that to me it was always a state of perpetual confusion as to who you're dealing with depending on which hat you're wearing. I mean **from what I can remember you were always completely upfront and that you always represented yourself to be like Remax Advantage** whereas it was Dermot Nottingham who seemed to like vacillate between one and the other. But even from those emails pointed out to previously is, which hat is he wearing at which stage and you know, is this, is this what Parliament envisaged when it came to tidying up the reputation of the real estate industry. It just seems to me it shouldn't, it shouldn't be so easy

NOTTINGHAM
Page eight, paragraph five of the bundle .

WILSON
Page eight.

NOTTINGHAM
Paragraph five of your email .

WILSON
Comments in response to. **That's correct I've never met or had any dealings and it's true I've never, ever met any of you people.**

NOTTINGHAM

You've had no dealings .

WILSON
No but this is, this is, this is prior. Like, like what this is like, this is, this, this is that, this is prior to all of these. I mean obviously I'd had some dealings with you after you started making.

NOTTINGHAM
You had no .

WILSON
Listen, listen to me. After you'd started making telephone contact. Is that what I'm saying there. **Is correct that I've never met or had any dealings with the Remax parties.** I'm surprised by the commentaries and attention. The very personal and abusive nature of their allegations um seems indicative of deep seated personal issues. So what I'm saying is that.

NOTTINGHAM
I'll make it simple for you Mr Wilson. **Did you have a contract or any agency agreement or do, have any agreement to do real estate agency work with Remax .**

WILSON
As a liquidator I had no formal um, arrangement with Remax whatsoever and I had no dealings. Other than the previous incident with my wife I had, I didn't really know Remax from a bar of soap until I started receiving all the phone calls and texts from you and emails.

See also letter Don McPherson to appellant dated 21 June 2010, Page 139 of the bundle. Para 4

" I personally have no interest in your position ***as you have no dealings with this firm****, other than to make false assertions of fact…."*

And at Para 7

" I repeat that this firm has no current real estate dealings with you in person, or with Sage Corp, *and we understand that all other parties involved simply do not recognize you in any way, other than as a nuisance. I have asked you to refrain from contacting me and contact Advantage Advocacy Limited directly. I have copied this to the REAA to keep them abreast of your strange behavior. I have annexed a photograph of you I received from Advantage Advocacy so that the REAA can see that you are not only a nuisance, but frankly a significant threat to persons. I understand that a complaint of your dangerous behavior has been made to the Police*

C. ADVANTAGE ADVOCACY LIMITED (NOT A REAL ESTATE AGENCY)

7. There is no evidence submitted by the appellant that Remax or any of the second respondents were involved in Real Estate business or anything that could be described as giving the Tribunal jurisdiction to hear the appeal under s 4 of the Act. In initial cross examination by Mr Hodge for the first respondent it is clear that the correspondence between the

parties is conducted my Dermot Nottingham as chief advocate for Advantage Advocacy Limited. A company that Mr Wilson had researched on the internet and included in his complaint. Advantage Advocacy Ltd was incorporated on the 31st July 2003.

8. Mr Hodge helpfully draws the Appellants attention to various correspondence between the Mr Wilson, Mr Wilsons ex wife, Mr Denholm and others all the correspondence is addressed Dermot Nottingham chief advocate, Advantage Advocacy or Advantage Advocacy limited

9. The e-mail at page 124 of the bundle attaches a letter to Mr Wilson from Dermot Nottingham clearly signed off Dermot Nottingham chief Advocate, Advantage Advocacy Limited from Advantage Advocacy's e-mail address AA1@ihug.co.nz

10. Mr Wilson is referred to the notice of proof of debt page 121 of the bundle which clearly identifies Dermot Nottingham as acting for **Advantage Advocacy Limited**. At Page 122 of the bundle is the authority to Act executed by **Advantage Advocacy Limited** dated 9/6/2010. Mr Hodge takes Mr Wilson through all the correspondence between the parties confirming that the only correspondence between Dermot Nottingham and anyone else regarding the matter is as chief advocate for **Advantage Advocacy Limited**.

MR HODGE
I'm just trying to clarify what dealings you did have **because obviously part of the, part of the defence is that there were very few dealings indeed** and I just want to clarify that. But please just pause wait for my next question. Turn please to page 120 of the bundle .

WILSON
Yes.

HODGE
And we've already looked at this e-mail. The tribunals effectively already taken us to it. But this is 10 June and in fact earlier in the afternoon of that same day. So in fact this e-mail came before the ones you have just been talking about

WILSON
Yes

HODGE
Here it's from Dermot Nottingham to you addressing himself in his title there saying as Senior Advocate. Can you just confirm that.

WILSON
Well it says Senior Advocate but what he's also saying here is that what he's confirming. I mean if he's saying senior advocate of. Well it doesn't mention. Well I know

HODGE
Ok just rounding this out and we'll quickly go through them if you please. Paragraph, page 126 Friday the 11th of June and this is seemingly part of an ongoing series of exchanges between you and Dermot Nottingham. Theres that e-mail from him to you

WILSON
Yes

HODGE
At the top of the page. Again he just addresses himself as Dermot but if we go forward then

WILSON
Hang on Page 126. No what it says there is complaint Remax Advantage

HODGE
Yes Yes Well the tribunal can read it and what does it say there. **This company is not controlled by the REAA**

WILSON
Look I don't. Again what does that mean. Is that, what they seem to be saying is that Remax advantage is not subject

Page 46 line 4

HODGE
I just want you to confirm this series of e-mails

WILSON
Yeah Ok. Well what I'm confirming is that's. Is the subject of that complaint Remax Advantage and its from Dermot Nottingham and it seems to be saying that they're not under the control of the REAA

HODGE
No, no. Are you looking at page 131 of the bundle ... Oh hang on. 131. Oh yeah what the drunk, drunken photos. I mean look (inaudible).
And that's fine and you can make your submissions but I'm just wanting you to confirm that here we have Dermot Nottingham referring to himself as **senior advocate** and this time it does specifically record **Advantage Advocacy** ...

WILSON
Senior Advocate um Advantage Advocacy.

HODGE
All right I just wanted you to confirm that .

HODGE
And we're now just finishing with Mr Dermot Nottingham. Page 132 please. Just confirm

WILSON
Yeah 132.

HODGE
Further email Dermot Nottingham senior advocate, Advantage Advocacy to you. Just confirm that and I want you once you've confirmed that please to move forward to page 153

WILSON
153.

HODGE
Page 153 and this is actually an email you sent to the Authority but below at the bottom of page 153 you have mentioned this but there's an email Dermot Nottingham to Julia JH. Is that your wife. Is that what you're saying

WILSON
Yeah yeah, so you can see here. This is actually a copy of like hi.

11. The appellant failed to comply with Judge Hobbs direction, in fact just cut and pasted his allegations from the original complaint that contained an enormous amount of false allegations that had to be addressed by the second respondents in the hearing. Failure to do so exposing the second respondents to a potential adverse finding by the tribunal. There is a number of irrefutable facts before the Tribunal concerning the appointment of Mr Wilson and who in fact he represents;

D. ABUSE OF PROCESS, THE CONDUCT OF MR WILSON, THE EXPANDED PROCEEDINGS

12. The appellant was appointed liquidator of Sage Corp by Malcolm Mayer on the 6th May 2010. His appointment was notified to the Companies office on the 20th May 2010.

13. Mr Mayer faces 62 charges of serious criminal offending in the District Court relating to forgery and fraud.

14. Mr Wilson was appointed as liquidator of Sage Corp at the same time as Bill Ritchie. See page 69 and 70 of the Bundle for Wilsons Appointment dated 20th May 2010. See company office documents attached to the second respondents memoranda dated 30th May 2012 for William Ritchies appointment dated 17th May 2010. Mr Wilson alleges in those

documents that he was appointed on the 6th of May 2010 and Mr Ritchie the 4th of May 2010.

15. Mr Clode was the manager of Sage Corps two floors at 82 Symonds Street. See page 285 paragraph 3 of the bundle. See also e-mail from Rob Russell dated 25th of February 2010 which states:

> Subject: **Do you know a Brent Clode**
> **Clode is now acting for Mayer on floors F and G Symonds** Street and sending Vodafone threatening letters. I am now dealing with this through Rice Craig Gilbertson-we have a caveat on 43-45 and he is threatening High court action if we don't remove the caveat.

16. Mr Gilbertson paid the Property law Act notice on 82 Symonds Street on the 19th of March 2010. See e-mail from Rob Russell to Phillip Nottingham dated Monday 22nd March 2010. Attached to the memorandum of the second respondent dated 30th May 2012. Mr Russell states;

> Subject :82 Symonds Street
> Eden Holdings 2010 ltd **(Gilbertson)** paid the PLA on Friday for 82 Symonds Street.
> Gilbertson is taking us to court to have the Caveat on 43 to 45 Mt Eden Road lifted.
> The second PLA expires on the 14th April

17. Clode and Gilbertson had a contract with Mr Mayer paid for by Champion Apartments to manage the sell down of the Mayer properties. The Tribunal is referred to the decision of the High Court in *Trustee Executors v Eden Holdings limited* and detailed in the Court of Appeals decision dated 20.12.2010 exhibit "D" to the Affidavit of Phillip Nottingham dated 13th of February 2012. O'Regan J recites at paragraph 9 of the courts decision;

> *Mr Gilbertson said that LJK Investments had provided* ***services to Mr Mayer and his companies by way of restructuring companies, refinancing and redeeming mortgages, and selling properties to avoid mortgagee sales.*** *LJK Investments issued an invoice on 1 December 2009 charging Champion $ 350,000 plus GST for consulting services. The heading of this invoice was;*
>
> ***Consulting Services to "Mayer Group" of properties in Auckland***
> ***Re: Lance Gilbertson and Brent Clode*** (emphasis added by writer)

18. The invoice is very clear on its reading, which is for Mr Clode and Gilbertson to deal in the management and sell down of Mr Mayers Auckland distressed property's. The second respondents have provided

evidence of Mr Clodes and Gilbertsons involvement in 82 Symonds Street, paying PLA notices and managing the two floors and writing letters to Vodaphone. The invoice is for future management services as found by Associate Judge Bell at para [38] of his judgment of 12th August 2010.

> *"b) The payment of $350,000 for consultancy services by LJK Investments Ltd* **is extremely questionable**. *The price is high; evidence that any work of any real value was provided is scant;* **the credit was given when the consultancy had not been completed.** *The consultancy services were said to be generally for Mr Mayer and his companies. There is no explanation why Champion Apartments Ltd should be charged for this work. There is no evidence of any work done for Champion Apartments.*
> *c) The true value of any consideration passing under the transaction appears considerably less than nominal value….*
> *d) The sale is not an arms length transaction.*

19. It is submitted that the consultancy resulted in the appointment of the two liquidators, Mr Ritchie to *Champion* to effect the inimical agreement to effect the removal of the assets from creditors. See paragraph [38] of the High Courts decision wherein Judge Bell comments

> *" **There is some evidence that Mr Mayer is trying to put assets out of the reach of his creditors.** The sale of 43-45 Mount Eden Road property may be such a transaction. Mr Nottinghams affidavit describes an offer of $ 800,000 for the property made by a third party. Mr Nottingham says Mr Mayer turned the offer down. On the other hand the sale to Mr Gilbertsons companies has irregular features:*
>
> ***a) The nominal price is less than the offer from an outsider***

20. Mr Wilson was appointed to Sage Corp to frustrate the sell down and effect an on sell to an associate of Mr Mayers to obtain a premium for the two top floors. That scheme was to ensure that the premium was not an asset of Sagecorp and accordingly **NOT** recoverable by Westpac bank through the short fall of the mortgages on 12a and 10a Peace Tower. The evidence of this is the promotion of the Noland contract for a lessor nominal value than the Gaze contract. This is an exact mirror of the actions of Clode, Gilbertson and Ritchie in the Champion Apartments scheme as recounted by Judge Bell. See decision of High Court in *Trustee Executors Ltd v Eden Holdings Ltd*[1] attached to affidavit of Phillip Nottingham dated 13th February 2012.

[1] Trustee Executors Ltd v Eden Holdings [2010] Ltd CA 526/2010,[2010] NCA 626

21. Mr Wilsons denials of involvement with Messrs Clode and Gilbertson commences at page 11 of the notes of evidence. Mr Wilson emphatically denies any contact with what he calls any of these "**heinous criminals"** but comes unstuck during cross examination when he lets slip that he has had discussions with the liquidator of Champion Apartments Ltd. For the initial denial see page 11 line 12 of the notes of evidence.

If one reads through the various affidavits is that I'm pointed as some co-conspirator **with all these various heinous criminals** which I can tell you I don't know any of these people. **I have never had any contact** with any of these people.

22. Under cross examination Mr Wilson recants his earlier statement and admitted to contact with Bill Ritchie, liquidator of Champion Apartments Ltd see Page 85 line 16

From what I can remember is that he either phoned me or I phoned him. I can't remember exactly. **As we had a brief conversation that seemed to centre entirely on are you receiving the same grief from these Remax bullies and that's all that related to.** *I can't even tell you that persons name. If you are able to suggest to this tribunal that I am somehow, that somehow or other approved some sort of conspiracy theory is that again it's just a false allegation*

23. The insurmountable problem Mr Wilson has for this supposition and his further attack on **"these Remax Bullies"** is that the properties owned by Champion Apartments Ltd had all been sold prior to the appointment of Mr Bill Ritchie. The property at 28 Roberts Road was managed by Mr Mayers cousin Charmaine and Crockers Realty as recievers of rent. It was sold in March 2010 with the deposit paid on the 7th April 2010. See the face page of the agreement for sale and purchase annexed to the memorandum of the second respondent dated 30th May 2012. The only inference for the discussions between the two "Liquidators" was the on going conspiracies involving the "shambolic securities". See decision of Associate Judge Bell in *Trustee Executors v Eden Holdings(2010) ltd* at paragraph 29

Mr Mayer is a difficult person to serve and that he continues to obstruct his mortgagees by **lodging spurious caveats against mortgaged properties**. (emphasis added by writer)

24. It is submitted that Mr Wilson and Mr Ritchie were appointed for the very reason acknowledged by the courts above to frustrate the mortgagees and promote false securities. Mr Wilson's contact with Mr Bill Ritchie and Mr Denholm was in furtherance of the conspiracy launched by Mr Mayer to secure payment from the new purchasers of the Sage Corp properties in Peace Tower under threat that Mr Gould would destroy the properties. Mr Mayer knew Mr Gaze wanted to buy the whole building as detailed in Phillip Nottingham,s letter to Mr Mayer of 23 November 2009 at paragraph 2:

"He initially offered 2.8 million for the whole building. We have put him on paper at 3.05 million"

25. Mr Wilsons promotion of the Noland contract was to attempt to secure an "on sale" to Mr David Gaze in the amount of 1.3 Million. Mr Noland had a meeting with Mr Gaze for that exact purpose. Any funds secured between the lower Noland contract would not be for the benefit of creditors or mortgagees but would be for the benefit of Mr Mayer or his associates. See affidavit of Phillip Nottingham dated 14th September 2011 at paragraph 10. wherein Mr Nottingham deposes;

10.I was subsequently advised that Mr Mayer had placed caveats over the top two levels of the building and had arranged a sale with Gary Noland to prevent the sale of the property. I had discussions with Mr Gaze and the counsel acting for Rice Craig. Mr Noland met with Mr Gaze and offered to on sell the top two floors to Mr Gaze for 1.3 million. This was turned down.

26. What is of even more concern for Mr Wilson is his admission to his involvement in promoting the Noland contract over the Gaze contract. This promotion could only have resulted in Sage Corp getting a smaller return from the sale. This is clear evidence of acting against the interest's of the company and its creditors and in collusion with the other Mayer interests. See admissions of Mr Wilson at page 121

NOTTINGHAM
Where you aware. You said you were aware of the Noland contract on the top two floors

WILSON
Um that's right and, and, and, getting on to the subject of that you also included the Noland and Taharangi as being conspirators and fraudsters as well which I know. I actually had a lot of discussions with Gary Noland. Again this was the same thing. You accused them.

NOTTINGHAM
Did Gary Noland, did Gary Noland….

WILSON
You accused them of pretty much the same sort of things as me. As being a liar a cheat involved in some sort of conspiracy with all these people. You've said exactly the same thing

NOTTINGHAM
Did you see the contract. Did you see the contract

WILSON
Of course I had a copy of the Noland contract and to me

NOTTINGHAM
How much was it for

WILSON
$760 or something like that which is why I absolutely rejected it in that what. It's a matter of record that I negotiated with Noland to try and get them to put the price up. But what ended up is. He ended up stopping I think at something like about 780. I mean there wasn't much between it. There was sort of like

NOTTINGHAM
The Gaze contract was for more wasn't it Mr Wilson..

WILSON
810 or something like that

NOTTINGHAM
Yes the Gaze contract was for more. But you tried to promote the Noland contract

WILSON
No. absolutely . No Look

27. Mr Wilson then launched in to a diatribe of abuse alleging Mr Nottingham was going to allege a conspiracy between Wilson, Mayer and Noland. These diatribes occur throughout the cross examination. It is submitted Mr Wilson clearly knew that that was the only inference available.

28. Mr Goulds name had contemporaneously been used to place a caveat over the Champion Apartments property at 43 to 45 Mount Eden Road, ostensibly to secure a further advance. That caveat remained in place only removed to enable the conspirators to sell the property to Eden Holdings 2010 ltd. See affidavit of Phillip Nottingham dated 17th February 2012 filed in the High Court proceedings *Trustee Executors v Steve G Limited CIV 2011-404-5411.*[2] That affidavit is annexed as exhibit 'A' to the affidavit of Phillip Nottingham filed in support of the application to strike out this proceeding sworn 13th March 2012. Phillip Nottingham deposes at paragraph 11.

I have also been referred to the caveat that Mr Gould personally registered over the title to the 43 to 45 Mount Eden Road property. I am aware that this caveat was removed from the title on 24 December 2009, thus

2 *Trustee Executors v Steve G Limited* CIV 2011-404-541

enabling the transfer of the property from Champion to Eden to occur. I have also read the explanation contained in the Rice Craig letter of 2 February 2011

Mr Gould advises that Mr Mayer approached Mr Gould for a loan offering him as security a mortgage supported by caveat over 43-45 Mt Eden Road. The parties were in Huntly at that time, and as Mr Mayer wanted to expedite the matter urgently, they called into a solicitors office in Huntly and Mr Gould signed the caveat… **Mr Gould advises that the loan never proceeded and a short time later- 10 days or so-the caveat was withdrawn**.

29. At Paragraph 16 and 17 of his affidavit Phillip Nottingham outlines the conduct of the Appellant, Mr Wilson, that was not in keeping with an independent professional liquidator going about his lawful duties, He states

15. I have read the affidavit of Mr Gould in this proceeding and do not believe for one moment that any competent businessman would seriously consider advancing further funds secured by way of caveat when Mr Mayer and his associated company Sage Corp has defaulted on a $730,000-00 advance secured against used ceramic floor tiles, toilets and hollow core doors. That advance remains unsatisfied as detailed in Mr Wilsons final report.

16.That following the appointment of Mr Wilson as liquidator of Sage Corp, Mr Wilson set about unlawfully removing Remax's signage from the building ,insulting tenants, issuing trespass notices to the purchaser David Gaze, tampering with lift mechanisms and locks. Such conduct not in keeping with the role of a liquidator. I received a complaint from the tenants and purchasers of 82 Symonds Street that included two photographs of a rather disheveled Mr Wilson tampering with the lift circuits. Those pictures are annexed hereto as exhibits PRN5

17.As a result of this conduct I txted Mr Wilson with the following caution to attempt to dissuade him from his conduct and promotion of the "Gould fraud". It is fairly obvious that I did not believe for one moment that Mr Wilson had the audit trail to establish the security or that he was acting in any genuine capacity as a liquidator. They Guys I was referring to in the txt were Messrs Clode, Gilbertson, Gould and Mayer…

18. That I do not for one moment think the caveat lodged on 43-45 Mount Eden Road by Gould was for the purposes of finance but merely in keeping with Mr Mayers usual conduct to obstruct the sale of the property. Hence Mr Goulds withdrawl as there could never be an audit trail if the matter was fully investigated. I believe the caveat was placed on the property as protection until the scheme with Messrs Clode, Gilbertson and Wilson was hatched. Mr Mayer once again using Goulds name.

30. The appellant further admits during cross examination to contact with Denholm. He seeks to purport to be confused as to the author of the letter to Denholm the appellant is clearly aware that the letter is **not from Remax** but from **Advantage Advocacy Limited** to Denholm. For the letter see page 87 of the Bundle. Mr Wilson concedes following an enquiry from Mr Gaukrodger for the Tribunal that he has legal training see page 17, line 2 of the notes;

MR GAULRODGER
Given these various disputes that were taking place as liquidator did you seek any legal training.

WILSON
Look. If I can make my claim is that **I do have legal training**

Again at page 65 line 14 to 18 in response to cross examination by Mr Nottingham;

Is that look I'm am one of the units **I've studied in law is intellectual property** I'm fully aware the property rights which relate to photographs

31. It is submitted that Mr Denholm, who is a legal practitioner and Mr Wilson who has legal training would both be aware of the difference in law between **Advantage Advocacy Limited** and **Property Bank Realtor Ltd (Remax Advantage).** Mr Wilson did not receive a letter from Remax at all. The letter sent by Mr Dermot Nottingham is headed **Advantage Advocacy Limited** It is another false statement. The only inference available is that Mr Wilson's allegations as to the comments and experiences of Mr Denholm are more pure invention. See allegations at page 89 line 19

All I can remember is that when he received a copy ,a copy of that letter from Remax. It was also copied to me and what I can remember is having one conversation with ah Mr Denholm after that and that was the last dealings or conversation **I ever had with him and what I can remember is that he made a simple two word comment in respect of that letter and what he referred to them as effing idiots.** *That's all he had to say about his dealings with Remax….. and he was of the same opinion with me. As he'd also suffered a lot of abuse, bullying and you know bully boy tactics from Remax.*

32. It is submitted that the Appellant's evidence that the Gould security was not promoted to him and no proof of debt was filed is damning based on Mr Denholm's position as a senior barrister and solicitor. It is the same position promoted over 43-45 Mount Eden Road where a caveat was put in place in Mr Goulds name but no funds were advanced

33. It is submitted that the Appellant turned up to support the maintenance of the Noland/Mayer Caveats months after the sale and purchase agreement with Mr Gaze had been signed. The sale and purchase agreement for the top two floors is page 95 of the bundle. It is dated the 28th of May 2010. Remax is not mentioned anywhere on that document. The only things preventing the sale of the property were the sham caveats of Mr Mayer and the sham caveats of Mr Noland. He seeks to excuse his conduct by alleging some concern over "substituted service" having gone awry. It is

submitted that substituted service can't go awry, it's the very point of substituted service.

34. The only benefit of the Appellants presence was to Mr Mayer if the court accepted the failure to serve Mr Mayer as grounds to adjourn the hearing removing the caveats. Of course the learned Judge was onto Mr Wilson and upon inquiry Mr Wilson was surprisingly able to contact Mr Mayer but only on Sage Corp business. The learned Judge commented at Paragraph [11] of his judgment

> [11] Mr Wilson explained that he is in regular contact with Mr Mayer and he is able to contact Mr Mayer about any legal proceedings that need to be given to Mr Mayer. So for the assistance of all those who need to take proceedings against Mr Mayer, I advise that Mr Wilson has given his contact details. He says his address is at 72 Upper Queen Street, Auckland. His telephone number is 3792094, and his e-mail is waw@ihug. Mr Wilson also advised Mr Mayer was out of town at present but is expected to return shortly. I am sure their will be many process servers who will be keen to contact Mr Wilson so that he can advise them of the whereabouts of Mr Mayer for service of proceedings.
>
> [12] Mr Wilson has intervened to say that he is only able to contact Mr Mayer only in connection with Matters to do with Sagecorp. Although he can contact Mr Mayer about Sagecorp matters **he somehow does not seem to be able to contact Mr Mayer about other matters**
>
> [13] Mr Wilson has intervened again. **He says that I misrepresented his position**. He says that he is able to contact Mr Mayer in connection Sagecorp matters **but he is unwilling to contact Mr Mayer in connection with other Mayer companies where Mr Wilson has been appointed liquidator.**

35. The Appellant is reluctant to admit that he had no legitimate reason to be representing Mr Mayer and no standing to do so. See notes of evidence at page 92 line 23

> **WILSON**
> "but look I clearly had standing there. I mean otherwise the Judge wouldn't have heard me
>
> **NOTTINGHAM**
> He actually said you had no standing
>
> **WILSON**
> and you're suggesting
>
> **NOTTINGHAM**
> No he said you had no standing. The Judge said you had no standing

36. The learned Judge Bell commented on the appellants unexpected appearance at para [9]of his decision in *Rice Craig Solicitors Nominee Co*

Ltd v Malcolm Dunbar Mayer and Taurangi Finance Ltd CIV-2020-404-004099[3]

> Strictly, Sagecorp Ltd , the mortgagor, is not a party to this proceeding and does not have to be a party to this proceeding….. **If Sagecorp wants to take issue with that, it is for Sagecorp to take its own proceedings.**

37. He commented on the farcical machinations before him at para[10] of his decision. Wherein he comments;

> **Obviously this proceeding has come to Mr Mayers notice because he knew to file an affidavit** saying that he had not been served with the proceeding. **His affidavit leaves curious questions**……..**It is curious that in filing his affidavit,** Mr Mayer does not give any information as to how he can be located so that his creditors can bring documents to him directly. He remains an elusive person out of reach of his creditors

38. The appellant was also involved as liquidator in assisting shifting Mr Mayer out of the property at 82 Symonds Street. Allegedly because Mr Mayers presence in the building was causing problems. It is submitted that the appellants assistance was more to do with Mr Mayers address coming to the attention of process servers. Evidence of the appellants personal friendship with Mr Mayer is found directly following the statement as Mr Wilson submits that helping Malcolm shift should be seen as evidence that he was not acting in his interests. Mr Wilsons generous assistance in helping Malcolm shift is in fact evidence of the opposite, that Mr Wilson was acting in Malcolm Mayers interests. This fact was evident to the second respondent .See page 126 line 3 of the notes of evidence.

> **WILSON**
> It was actually me that gave him his marching orders to get out of the building because he was causing to many ruptions. So Malcolm and also **like being a decent fellow is that I actually gave him a hand to move out so that there could be no excuses whatsoever**. So everyone should be delighted by the fact that I actually I was eventually got Malcolm to vacate the building and after that he wasn't happy about that at all. You know. **So to be suggesting that I'm some mate of Malcolms.** I mean the fact that I've had no contact with him for almost two years would indicate that.
>
> **NOTTINGHAM**
> **So you say. So you say Mr Wilson**

39. The Tribunal is referred to the Memorandum of Gary Bradford exhibit DGN5 annexed to the Affidavit of Dermot Nottingham exhibit "B" to the

[3] *Rice Craig Solicitors Nominee Co Ltd v Malcolm Dunbar Mayer and Taurangi Finance Ltd* CIV-2020-404 004099

affidavit of Phillip Nottingham dated 13th of March 2012. Mr Bradford comments on at page 2 of his memorandum

"it is apparent that this is what happened when one considers the scrap going **on between the Nottinghams and Warren Wilson Liquidator,** their realestate licence, etc this is exactly what TEL contrived.

40. The details of the dispute between Mr Wilson and the Nottingham's is not publically available. Mr Bradford and Mr Mayer could not know about it other than from Mr Wilson. The revelations that Mr Bradford has documents from a court hearing involving Mr Goulds attempts to remove caveats shows a direct instant conduit from Messrs Mayer, Wilson and Gould. It is submitted that Mr Bradford further exposes the conduit between Wilson and Mayer at page 2 para's d) and f) of his internal defence memorandum. Mr Bradford comments on **the Mayer camp** scrapping with the Nottinghams. The only scrap Mr Bradford alludes to is the **"Wilson complaint".** For the avoidance of any doubt, there is no other scrap between the Mayer camp and the Nottinghams.

" d)There is no utility fighting with the Nottingham , it is simply a distraction from the real issues with TEL"

"f) assuming there is no utility scrapping with the Nottinghams we should get them alongside us to advance Mr Mayers defence. I suggest a meeting with both the Nottinghams to put the position to them that **there is no utility fighting with the Myer camp** but rather direct mutual attention to TEL"

41. The appellant had subsequent to his notification to the companies office that he had been appointed liquidator of sage Corp Limited verbally sexually and racially abused the legitimate tenant Dr Grobler resulting in a complaint to the Human Rights Commission. He also removed the buildings front door lock. See page 330 of the bundle. A complaint to the police was also made by Mr Gaze. See Page 71 of the bundle. E-mail David Gaze dated 25th June 2010 which states;

As you are aware we are having interesting times with **Mr Wilson who appears to be acting for Mr Mayer**

Questions

1) Do you see any hassles in obtaining clear titles for us by Wednesday 30th for settlement?
2) I presume you are giving us vacant floors and in theory demolition can commence on the 1st of July.
3) In other words have you communicated with **Mr Mayer and Mr Wilson** and they agree?
4) Have you actioned via the courts to change Mr Mayers residential address (that has been given to the courts as 82 Symonds Street or are you expecting trouble with this?
5) **Police have dropped our wilful damage claim via the police and state it is a civil matter.** I look to you to resolve this matter before settlement.
6) It appears **Mr Wilson has now locked the lift on the top floor**, barricading himself in so I must admit I see trouble looming.

42. The appellant admits to a confrontation with the tenants over the parking at the front of the building and removed the signage of Dr Grobler and Remax, also threatened to have customers cars towed. Page 331 of the bundle:

My Clinic has two designated car parking spaces for patients to use. **He removed our parking signs** which we found two days later in the shrubbery behind the building. He told me if any patients parked there he would have them towed.

E. THE BODY CORPORATE

43. The Body Corporate on the Building was historically run by Marilou Domingo the owner of the bottom five floors who had left the country in 2009. The Body corporate was not functional. The appellant was aware that the body corp was non functional. See statement of appellant to Ross Gouverneur dated 8 November 2010 page 326 of the Bundle.

The building body corporate existed as an entity but didn't have a person acting for ***it so in reality was not functional***

44. The appellant fully aware of the fact the body corporate was non functional and fully aware that the money to the lift maintenance company was owed threatened the lift maintenance company with the criminal provisions of the company's Act. There was never an allegation that the company was not owed the amounts invoiced. The lift company was eventually paid see notes of evidence at page 112 line 11

NOTTINGHAM
No one got paid did they Mr Wilson. In fact no one got paid did they

WILSON
My understanding is that's wrong . **Is they were actually paid** on settlement through the body corporate. **My understanding is they actually did get paid.**

45. The appellants conduct with a legitimate creditor, clearly owed and eventually paid has no logic to it, other than just being blatant bellicose intimidation and bullying. His evidence with regards the Gould security is that he didn't have to enquire of Mr Gould. There were no threats as against Mr Gould, Mr Mayer or Mr Denholm of a criminal complaint despite evidence that the Gould security alleged was fraudulent. This fact and the only inference is damning of Mr Wilson. See E-mail from Robyn Wilkinson to Phillip Nottingham dated 10/6/2010 at page 35 of the bundle wherein she states:

"I don't need this. All we want to do was get paid for the servicing that we have done on the lift at 82 Symonds Street *and we are more than happy to work with the new owner when he takes over the building. We are not prepared to get caught in the middle of a feud."*

46. The liquidator admits that the top two floors were operating as an accommodation hostel after the company was placed into liquidation. There has been no accounting by him for the income and expenses of this operation. For the evidence of his knowledge see page 326 of the bundle

"The top floor (unit G) was let by Mr Mayer to about 6 overseas students. The floor had a number of offices set up as bedrooms with beds and a wardrobe in each. It had a communal bathroom and kitchen"

47. Further more the company was continuing to incur debts to the lift maintenance company and body corporate as it, or some other person was operating the hostel on the top floors incurring debts in electricity, lift maintenance charges and water charges. The Appellant has not accounted for the income or expenses incurred on the top floors, Units F and G following the Appellants appointment as liquidator. See liquidators final report **exhibit "F"** to the affidavit of Phillip Nottinghams dated 13th February 2012. The conduct of Mr Clode operating the hostel is

contemporaneously noted by Phillip Nottingham in his e-mail to Ross Gouverneur at page 285 of the bundle.

"There were no tenants in levels E,F,G. **G was illegally operated as a residential accommodation by Brent Clode** *(Brent Clode is part of the Clode, Cooper, Gilbertson Group of individuals who are involved as liquidators or receivers of each others property companies….."*

48. The appellant removed the locking mechanism to the front doors in the foyer controlled by the body corporate being part of the communal property of all the floor owners. No permission was sought or obtained as the body corporate was not operative. Such conduct effecting the security of the building for the only lawful tenant. **The Doctors sugery.**

49. The removal of the front door locks by the appellant was to enable the all day access to the newly created illegal hostel on the top floor. The appellant aware that the door looks was a matter for the body corporate alleges that he had 2/7th rights to the common area. See page 60 of the notes of evidence

NOTTINGHAM
Did you have any authority over level one 82 Symonds Street

WILSON
Absolutely no authority over level one whatsoever. But um but was a two. What would it be. A 2/7th owner of the body corp. So in short 2/7th rights to what was common area in the building yes.

F. THE ILLEGAL HOSTEL

50. Evidence of the operation of the hostel can be seen at page 60 line 14 of the notes. The Appellant alleges he had meet the Doctor tenant four weeks earlier and that the doctor had issues with the use of the commercial floor as an illegal hostel. See pages 332 to 351 of the bundle for pictures of the abandoned hostel.

In fact what they actually complained, in fact they'd actually complained to me about the lift and what they'd also complained about and what they seemed really upset is at that stage the upstairs was occupied by **what seemed to be a bunch of sort of backpacker type um.** Some of them were students etc. Is that they'd complained to me about the tenants on,on,on, um the top floors. Yeah so to say that

50.1 The pictures of the abandoned hostel disclose floors littered with debris and lift control mechanisms hanging against the wall (page 343 and 344 of the bundle.)

50.2 The appellant alleges Trustee Executors were scurrilous landlords. When it is Mr Mayer and the appellant who are running the illegal hostel not TEL .Page 69 line 12

WILSON
And also why are Remax in cahoots with obviously ***such scurrilous landlords*** *that*

50.3 At the same time that the appellant is alleging TEL are scurrilous landlords, He falsley claims that the second respondents where paid to get ride of tenants living in non consented commercial buildings see page 84 line 10

WILSON

" Where apparently that remax went in and threatened all of the tenants of that building ***that if they don't get out that they will be reported to the Police etc"***

50.4 For evidence of allegation of illegal hostel see page 134 of the bundle, letter from David Gaze dated 21st June 2010 at paragraph 9 where he states;

*"9) The above building has no legal tenants other than the Doctors on the ground floor****(residential accommodation is not allowed in a commercial building)"***

G. MAYER CAVEATS 82 SYMONDS STREET

51. On the 9 December Phillip Nottingham writes to David Gaze advising the caveats have been placed on the upper floors alleging a lease. The lease was for the illegal backpacker hostel on level G. The date of this e-mail coincides with the invoice for Messrs Clode and Gilbertson's appointment of 1st December 2009 see paragraph [13] of the judgment of Judge Bell in *Trustee Executors v Eden Holdings Ltd .* The e-mail from Phillip Nottingham to Mr Gaze is found at page 38 of the bundle and materially provides

Update. Rob Russell from TEL has advised this morning that **Mr Mayer has caveated this property alleging a lease of some sort.** *He is a desperate little fellow…he's alleging leases* **and all sorts of encumbrances to frustrate the sell down**

53. The appellants role in the building tries to tie Remax to every allegation by suggesting that third parties mentioned the name Remax. This is not

supported by any evidence at all in fact the suggestion is clearly refuted by the third party witnesses. The evidence of the Locks is a prime example. The only evidence before the Tribunal is that David Gaze instructed Wally Reid to replace the locks on the floors subject to his contract to purchase

I find someone trying to lock me out of the building out of the premises under the name of Gaze/ Remax

54. The locksmith was not instructed by Remax and was not instructed to change the locks on the 7 or 8 floors the Sage Corp floors. See letter from Wally Reid dated **19.8.10**. Where he states:

"I was never instructed to change the locks on the 7th or 8th floors until until 16.8. 10 by Mr Gaze"

55. More importantly this allegation that Remax and Gaze alleged they owned the building has never been made before. It is pure fabrication an invention made in the stand. Mr Gaze clearly had two unconditional contracts to purchase the entire property which came to pass

Page 17 line 13

Is did Remax and Gaze have any legal advice in respect of what their positions were I mean they were telling me ***they owned the building when they clearly didn't***

56. Again this is the first time that the appellant alleges that Remax alleged that it owned the building there is no reference once again in the complaints or any documentation to this allegation prior to his evidence in chief. This again is a pure fabrication to somehow tack Remax's name onto any statement to imply the second respondents were involved. The second respondent had no knowledge of who was involved in the lock changes and makes enquiries as to who may be responsible. Enquires were made of various people including Shanon Aitkin of Crockers real estate, receivers of rent for Trustee Executors Limited. It is important to note that the complaint of the damage to the door lock is made by the tenants to Crockers , not Remax. Mr Aitkins reply is at **page 23** of the bundle where he advises that he engaged ADT to replace the front door

lock with the existing lock system following a complaint that the front door lock had been tampered with and the ADT tradesman was Colin on 0272755137

" My only dealings with anything to do with the locks at 82 Symonds street building were when the ***medical centre informed me that the front door lock was not working*** *should you need to contact someone at* ***ADT the tradesmans name was Colin 0272755137"***

57. Clearly there was no attempt to do what the appellant has alleged by anyone of the locksmiths. It was only during cross examination that it was identified that it was the appellant who had tampered with the front door lock without permission, It is submitted without permission because the front door lifts and locks are common property and The appellant had no right to disable locks securing the building. Locks, lifts, etc are all matters for the non functional body corporate not for the appellant. See evidence at page 66 line 9

Nottingham
Do you know who tampered with the front door lock

Wilson
Sorry

Nottingham
Do you know who removed the front door lock to the building

Wilson
I did

Nottingham
You did

Wilson
Yeah yeah yeah. **You know theres no***. I mean exactly because they'd attempted* **um you know, whoever it was** *it was either Remax or TEL had attempted to lock me out of the building. And so all I was doing was actually gaining. I mean they had no right to lock the common area whatsoever and also the. When I first arrived at the building is because I mean upstairs were*

58. The independent third party evidence is that the only lawful tenant, Dr Grobler records in his statement to REAA Investigator Ross Gouverneur that the front door locks securing the building had been removed by an unknown person. Nothing to do with Mr Gaze or Remax. Importantly the tenant Dr Grobler contacts the managers of the property Crockers

Realty's Mr Atkin confirms this at page 23 of the Bundle para 3.3 of Phillip Nottingham's initial response to the REAA inquiry. Mr Atkin states;

My only dealings with anything to do with the locks at 82 Symonds Street building were when the **medical centre informed me that the front door lock was not working**. **We asked ADT Security to repair the front door lock** *(this was done with no change to anyones ability to to access the building), they also had a look at the system that sky city had installed for security on their floors. We requested that they lock off the Sky city floors so no one could access them without swipes. This should not be confused with blocking off the system to the upper floors as the sky city system only covered their floors.*

The tenants in the bottom floor had mentioned to me that they had seen Malcolm remove the panel on the elevator on the ground floor and do something with it, *but I have no idea what he was doing and it didn't effect my access to the floors which we were appointed to look after by TEL. You may want to talk to a person called Okta (I think that is his name).*

Should you need to contact someone at ADT the tradesmans name was Colin 0272755137"

59. What is important in this statement is that Mr Atkin advises that the Doctors advice was that they thought it was Malcolm Mayer who was tampering with the lift Mechanism. This would support the statement of Dr Grobler that the abusive man who he had photographed had not identified himself. The Doctors advising Mr Atkin that it was "Malcolm Mayer" . Dr Groblers statement specifically states:

*"***He was extremely rude to me when I asked who he was**. *He didn't identify himself other than to say he was the 'Liquidator'.* **He would not give me his name and the language he used was very bad.** *The person I photographed was in his 50's, of solid build and wearing a black T-shirt with CCP on it, black jeans, brown shoes.*

He wouldn't tell me his name and **when I asked for identification he said he didn't need to show me anything.**

The second time I saw him that day he said to me and my practice manager- I am from south Africa,"You foreigners you should go back where you come from **you're gay are'nt you? That explains your behavior"**
I'm just a tenant. I wanted to make sure my premises were safe as there are prescription drugs kept here. **His actions and attitude and words were most unnecessary, offensive and uncalled for"**

60. The actions of the appellant as alleged by Dr Grobler are totally consistent with his conduct with all the witnesses and before the tribunal wherein he is aggressive, abusive and makes totally unfounded allegations of fact and personally offensive and abusive allegations. It is also worth noting

that Remax's name is not mentioned by anyone to do with the building. The tenants first response is to approach the receiver's of rent Crockers, appointed by TEL to rectify the locks.

H. THE PHONE CALLS. NO EVIDENCE

61. The allegations by the appellant at pages 16 and 17 that he recognized the voices of Phillip and Dermot Nottingham who he had never meet are an impossibility. He starts by alleging it was someone, he believed, he thought. I'm pretty sure, he was using a silly voice. see page 17 line 21

*"Call from **someone** talking to like this"*

page 16 line 26

*I received a call from a Remax agent **who I believe** was Dermot Nottingham*

With reference to Phillip Nottingham see Page 14 line 2

***Someone** had said. Yeah there was **someone** from Remax. **I think** it was Mr Nottingham that phoned*

Page 14 line 4

*This Mr Nottingham here. **I'm pretty sure it was***

Page 14 line 9

*Look I don't know. At that stage is that I was just, I'd received a lot of telephone enquiries in respect of people phoning up their position. But all I can recall is that it was, **I'm pretty sure** it was Mr Nottingham*

62. In support of his absurd allegations he alleges the locksmith had a black van and so do the Nottingham's so it must have been them. The appellant alleges he was contacted by a Remax agent pretending to be a locksmith, it doesn't identify or particularize the agent even in the brief of evidence filed just prior to the hearing. Its axiomatic that someone pretending to be someone else doesn't identify themselves. page 21 of the bundle:

*"**Contacted by Remax agent pretending to be locksmith**"*

"Apparently they have a black van" page 17 line 23

63. The appellant was in the building for months everyday but never meet a Remax agent. The only inference is that Remax agents weren't at the building, it was sold prior to the appellants appointment and there was no reason for them to be there;

Page 14 line 23

So then what happened. So that was on the 1st of June.. and then the next day . Let me see I was in the building . **I mean I used to go to the building every day** *because there were bits of documents lying around. I mean the place was a bit of a shambles trying to tidied it all up and sort out.* **There was still some tenants upstairs** *etc. So I was down there most days like trying to sort through*

64. Appellant alleges he was contacted by Phillip Nottingham and was subjected to abuse, threats and insults when asked by Ms Davenport to elaborate what he alleges amounts to a statement of facts that did eventuate. Mr Phillip Nottingham's account is rather different but consistent with Mr McKinneys' that it was the appellant that did most of the talking and it was he who was abusive. For the alleged threats see page 18 line 16 of the notes of evidence

MS DAVENPORT
What were the threats?

WILSON
Like oh it was sort of like you know you've been reported to the Police. You've been reported to the SFO and you know, we'll be taking criminal prosecutions against you and you know you're just a fraudster and that you are not lawfully appointed and we don't have to take any notice of you etc.

65. The appellant further alleges that the Texts by Phillip Nottingham amounted to insults about all the parties were crooks and fraudsters. The reality of the texts are totally different however. See page 19 line 31 to page 32

WILSON
yeah references to the report, SFO. So it was mainly this stuff. All these insults, all the parties were all crocks and fraudsters etc.

MS DAVENPORT
So these are e-mails to you from Mr Nottingham

WILSON
No. These were txts.

66. The texts contain no allegations of people being crooks and fraudsters or in fact insults. It is submitted that the literal interpretation of the first text is innocuous enough. The appellants knowledge and position did put him in a prime position to assist the SFO investigate any attempt to defeat creditors, especially the Gould security, which he had detailed in his liquidators report.

Thanks for returning my call. Hope u sorted it out with our management. We are cognizant of your role as Malcolms a pointed liquidator. Of course your relationship with Mal over the years and Julija will put u in a prime position to assist the SFO investigating any attempts to defeat creditors. My regards to Mal and the Guys

67. The second text seen in light of his behavior in the building that day in breaking the lock mechanism and verbally abusing and insulting Dr Grobler and threatening to tow legitimate patients cars is restrained moderate and to the point. There is no abuse or threats the request for appellant to have a shave is based on his presentation in the photographs, disheveled an ill kept. His presentation in the pictures would certainly have been better if he was shaven. The reference to TV was to dissuade him from damaging locks, removing signs and further tampering with the lift. CCTV is a common security tool in most properties and streets today. It is not illegal and it is designed to dissuade people from certain conduct.

PS for the record it was I who found all the docs on level 5 peace tower and supplied them to the SFO. Mal was crazy if he thought we believed the Gould sham…. Make sure you behave yourself warren….u never know who's watching filming or recording….. Mal didn't silly boy…Oh and have a shave it makes better TV

68. The last text is again not abusive or threatening in anyway. It fairly informs Mr Wilson that the Gould security would need an audit trail and he should have one if he proposed to promote it as he had in his liquidators report.

Warren have you got the audit trail for Gould security and advances over chattels….of course you have..

69. The fact that Mr Wilson did not have an audit trail for the Gould security, did not request a proof of debt from Mr Gould or his legal counsel Mr

Denholm and did not refer the matter to the authorities must draw the negative inference.

I APPELLANTS CONSESSIONS

70. The appellants concedes that it was not the second respondents who made the allegation that he was not lawfully appointed. See page 55 line 8

NOTTINGHAM
There was some argument between you and TEL over your appointment wasn't there?

WILSON
No absolutely not. Is that I'm not sure where it initially came from. I thought that it came from Remax but um I now I now

NOTTINGHAM
Well you made a complaint

WILSON
Please let me answer. I I I understand now it may have come from TEL and that you were sort of Misled in respect of that

71. The appellant concedes it was Mr Grobler who took photos not Remax page 62 line 7

I became aware that, that this Mr Grobler was in fact the author of the Photographs.

72. The appellant falsely accuses Remax and TEL of kicking Dr Grobler out of building and was in an affidavit but on examination can't take the tribunal to it. Page 63 line 12

NOTTINGHAM
I want you to go into detail for the tribunal how you allege he was kicked out by Remax. **That's just an invention isn't it Mr**

WILSON
No no no That actually appears in the latest well well. If this is the . No that actually appears in the latest affidavit. You know the long rambling account by by Mr Bradford

NOTTINGHAM
If you could take us to the section of that?

MR WILSON
NO no look I can't to be perfectly honest I just skimed through that because you know I just thought

73. The appellant concedes it was in fact him who removed the locks to the front door of the building page 66 line 10

NOTTINGHAM
Do you know who removed the front door lock to the building?

WILSON
I did

74. The appellant attempts to excuse his conduct by making another false allegation against TEL and Remax at page 66 line 12

WILSON
It was **either** Remax or TEL had attempted to lock me out of the building

NOTTINGHAM
The truth is you didn't know who instructed. Who locked the building. Theres no evidence for you to say that.

WILSON
Where that came from was the locksmith first of all the 0800 locksmith admitted their association with Remax. But it was the locksmith himself had actually advised that he was **taking instructions from Gaze and Remax**

75. The appellant admits he threatened to tow Dr Groblers patients cars Page 66 line 26

NOTTINGHAM
Did you advise Dr Grobler you would tow his tenants cars

WILSON
I probably did

76. The appellant admits to knowledge of a complaint by Dr Grobler and Mr Gaze to the Police and the Human Rights Commissioner about him.

See Page 67 line 9

I did I actually read that when these um

77. The appellant is forced to concede that his allegation that Remax was responsible for cutting off the water at page 68 line 1

NOTTINGHAM
Now one of the allegations you have made against remax is that we cut off the water. Is that correct

WILSON
Um in the intial stage. But as I've said to you subsequently is that once I read this I realized that it was, that trustees had actually acknowledged that they, that they were responsible.

78. The Appellant concedes he didn't become aware who cut the water off until he'd received a copy of the file notes from the CAC. He concedes he didn't become aware of a lot of things Page 69 line 22

WILSON
I didn't become. But again I didn't become aware of that until I'd received a copy of this file note which from my memory was um. I think it was early 2011. So I didn't know that. **I mean theres actually a lot of things that I didn't know until.**

79. The appellant admits to being given a copy of the sale and purchase agreement between Gaze and Trustee Executors confirming the purchase of the bottom five floors from TEL. He concedes if TEL gave Mr Gaze access and possession that it was none of his business.

NOTTINGHAM
So if TEL gave you Mr Gaze authority to be there you would'nt know would you

WILSON
No I had absolutely no knowledge of that

80. The appellant refused to answer questions at page 76 line 8 of the notes of evidence when examined on his allegation that Remax had acted as **heavies and repossession agents** he attempts to divert the questioning away asking questions of the second respondent. Providing no evidence or even occasions which supported his allegation.

81. The appellant continues to refuse to answer questions seeking evidence in relation to the Appellants allegations but again refuses to answer page 78 line 7. Ignoring the question and attempt to take the Tribunal elsewhere.

NOTTINGHAM
The conduct of Remax Advantage Onehunga Property Bank Realtor limited. This is in page four. Has been one of misrepresentation, coercion

WILSON
Yes

NOTTINGHAM
OK Please we've been asking for months to

WILSON

Well look, look, look again. Is that I believe that the txt suggesting I' m being covertly recorded and been given a warning about all that. To me intimidation. To me standard issue and intimidation

NOTTINGHAM
Damage to property

WILSON
Intimidation type tactics and also

NOTTINGHAM
What damage to property

WILSON
If you look to the various e-mails sent to me by Dermot Nottingham

NOTTINGHAM
Here we go again Ma'am

82. The second respondent again attempts to address the false allegations made by the appellant and gets and extra ordinary reply when alleging that Mr Wilson had no evidence. The appellant doesn't even bother attempt to invent more allegations just states on the balance of probabilities that Remax committed an act of break and entry and burglary. See the exchange page 79 line 4

NOTTINGHAM
OK Damage to property. What property did we damage

WILSON
The upstairs property, the upstairs tenancies were broken into and I believe again from comments made subsequently is that Remax was involved.

NOTTINGHAM
OK So you have no evidence of that …You have no evidence of that?

WILSON
I believe on the balance of probabilities it was Remax that broke into the upstairs tenancies.

83. The second respondent asks the appellant concerning causing damage to plant and equipment and the appellant alleges the lift company alleged the second respondents had cut off the lift to the top two floors.

84. When asked about his allegation that Remax had cut off the power the appellant was speechless resulting in the second respondent stating he didn't know. At which point he states well it wasn't him. Page 79 line 16

NOTTINGHAM
Cutting off the water. Well we know that doesn't exist. Cutting off the power. Who cut off the power

WILSON
UM

NOTTINGHAM
You don't know do you Mr Wilson. Its just another

WILSON
Well it wasn't me

85. Confronted with the reality that the appellant had no evidence what so ever for his false allegations against the Remax agents. The appellant deliberately refuses to acknowledge that Remax wasn't involved in the changing locks. Relying on the spurious allegation that it was Remax's reputation and that the second respondents name was somehow mentioned.

NOTTINGHAM
Theres an e-mail in the bundle from Mr Gaze concerning, identifying that it was him alone that arranged the locks to be changed…

WILSON
I mean all I can say really is why does your name keep recurring in respect of all these things

NOTTINGHAM
I'm sure the tribunal would like to know45

86. The allegation of attempting to divert income is addressed at page 80 line 20. The appellant alleges TEL and Remax were trying to divert income from the car parks in the basement. The appellant provides no evidence just alleges there were people downstairs who had private arrangements. He tops off this allegation with the fact that he never bothered to go down stairs. The property had 42 car parks approximately 7 per floor. Trustee Executors were mortgagees in possession of 35 car parks . The property was empty bar the ground floor doctors rooms. The property

was managed by Shannon Atkin of Crockers Realty as receivers of rental. The allegation is prima facie impossible, scurrilous and alleges theft and misappropriation of funds. When confronted with the reality of his conduct in making an enormous amount of false accusations the appellant suggests it's somehow the second respondents fault because of a condition he describes as **Give a dog a bad name syndrome.** Then the real reason for the false allegations is inadvertently disclosed For the exchange see page 82 of the notes of evidence.

NOTTINGHAM
And who did you get that from

WILSON
And also underneath there were people downstairs that that had private arrangements and my understanding is that that money was also being diverted to TEL and um and Remax. I mean look to be perfectly honest is that I didn't even bother to do downstairs. It really didn't worry me who was down there.

NOTTINGHAM
You've made a very serious accusation in fact you've enormous amount of serious accusations but you have absolutely no evidence Mr Wilson.

WILSON
No I think that um You know, you know again it's it's it's it's part of the give a dog a bad name Syndrome. Is that **if you'd never bothered to threatened, coerce and put yourself in a position that you were somehow or other involved in the whole thing in the first instance is that none of this would have occurred.**

87. The allegation of attempting to coerce, lock out a lawful tenant is addressed at page 82 line 20. The second respondent repeats that the appellant has no evidence and the appellant reverts to alleging the second respondents had a reputations as thugs and Bully boys and further alleged that the tenants back packers on the top floor were bullied by a pair of thugs. He engages in a diatribe of personal abuse at page 83 line 1 to 17 of the notes of evidence.

88. The allegation by the appellant that he had been advised by other parties that Remax Advantage had engaged in similar type conduct with other properties resulted in the unexpected admission by the Appellant that this allegation had been made by the Liquidator of Champion Apartments.

It is submitted that the appellant involved Mr Ritchie in his false allegation because they were associates and in fact conspirators in the inimical agreement hatched by Clode and Mayer the subject of the fraudulent invoice for $350,000. What he didn't bargain on was that the second respondent was aware who and the liquidator of Champion was. It was a major error in judgment by the appellant.

89. The allegation that Remax had done the same thing to other properties is made at page 86 of the notes of evidence. The appellant alleging that Remax intimidate and scared away other agents to get the deal. Page 86 line 21. The second respondent asks for the evidence on three occasions in a row. See lines 22, 23 and 24 of the notes of evidence.

NOTTINGHAM
Wheres the evidence Mr Wilson

WILSON
And so well

NOTTINGHAM
Wheres the evidence

WILSON
And what it was all about really was um like a silver lining in all this was Remax is that

NOTTINGHAM
Wheres the evidence

90. The appellant fails to provide evidence but repeats his earlier allegations about Remax. The appellant is asked which parties and asked to identify them in the bundle of evidence. The appellant again could not identify any other people and knew before attempting to address any evidence that there was none. For exact exchange see page 87 line 1

NOTTINGHAM
Which various parties. Go to that Mr Wilson……No NO I don't want to know about 20 people. I don't want to know abouit all these spurious accusations. I actually want some evidence.

WILSON
I don't even know all the people that you sent this to. But from me. From what I can work out.

NOTTINGHAM
OK so you don't know anything of who we sent it to.

WILSON
No……

NOTTINGHAM
Show us the documents you allege. Show us the documents you allege in the bundle. Where are they?

WILSON
Well, Well, **I would say they're not in here.** But I mean if you look at the various

NOTTINGHAM
Have you got them with you

91. The second respondent registers his concern as to the conduct of the appellant and his hearsay allegations, his answering questions with questions at page 87 line 23

NOTTINGHAM
Ma'am I'm trying to cross examine this man and everytime I ask him a question we get taken down the path of hearsay evidence.

NOTTINGHAM
Well I can't get to the question because he goes on and on

92. The Appellant alleges Crown Solicitor Ross Burns involved in filing criminally fraudulent invoices.

J. ALLEGATIONS BY WILSON THAT REMAX DISTRUBUTED HIS PHOTO ARE FALSE

93. In his evidence in chief the appellant purports not to know who took the photographs but falsely alleges that it was Remax Advantage Real estate agents who distributed them see page 33 line 24:

Wilson
These photographs that were recorded by. I 'm not sure who recorded them. But were clearly published by Remax real estate agents to all and sundry.

94. The photographs were taken by Dr Grobler distributed by him to David Gaze who distributed them to ThyssenKrupp and others. See letter from David Gaze to David Gardner of ThyssenKrupp regarding the conduct of Warren Wilson, dated Monday 21 June 2010, page 134 of the bundle. Mr Gaze clearly attaches the photograph not Remax and not Advantage

Advocacy Ltd or Dermot Nottingham, It should also be noted that the e-mail from Mr Gaze attaching the photographs is copied to:

94.1 Scott Hunter (Rice Craig mortgagee in possession floors F & G)

94.2 Rob Russell (Trustee Executors, Levels A to E)

94.3 Oktay@ reliable.co.nz (Dr Grobler)

94.4 Perry (Prestige building services, Building WOF)

94.5 Phillip Nottingham, (Remax Advantage)

94.6 See e-mail from David Gaze confirming he sent photographs, Page 134 of the bundle.

*"***Your client is photographed** *altering your work this Saturday as per attached! "*

See letter from ThyssenKrup Elevator NZ Ltd to David Gaze dated 21 June 2010 page 133 of Bundle. Addressed in error as Dear Warren,

"We understand that Warren Wilson in order to ensure that lift access to the top floors did not remain open was to progress replacing the key barrels for the top floors **and as such assume photo provided is in regard to this"**

95. Clearly Mr Gardner would not have represented to the appellant that it was Remax Advantage who sent the photograph of him. Mr Gardner knew it was Mr Gaze. The appellants conduct when giving evidence on oath is to deliberately **mislead the tribunal**. The appellant could have called Mr Gardner as a witness but did not because the documentary evidence would not support his allegation.

96. The second respondent attempts to elicit particulars of who the appellant alleges Remax Advantage sent photo's to. Not surprisingly the appellant wrongly alleges his ex-wife. The correspondence to Julija Wilson is **NOT** from **Remax Advantage** but from **Advantage Advocacy limited** and seeks clarification of the person's identity. The appellant acknowledges that the pictures accompanied an enquiry as to who they were of. See at page 65 line 24

Nottingham
I can, I can tell you now Dr Grobler did not forward the pictures to us ...

Wilson
Well. How did the pictures get to Remax then. I mean you, you, you, you.

Nottingham
I'll give you that in my evidence ...

Wilson
You acknowledge that Remax are the one that recycled them to about.

Nottingham
I acknowledge nothing. Let's just go back to the document ...

Wilson
Yeah ok. Well we're looking at the photographs here and what I'm saying is yes that's me and so if that's the case I'm wondering why Remax sent emails. Say for instance to my, to my wife saying oh, **is this Warren.**

97. The appellant admits to have never meet any of Remax's agents or Dermot Nottingham so there was no way of identifying the individual in the photographs. The evidence of Dr Grobler is that it was the appellant who had removed the locks securing the building and was tampering with the lift refused to identify himself. The pictures of an aggressive, rude, disheveled, abusive, disorientated individual does not fit well with a professional liquidator. It is totally appropriate that enquiries were made of his ex wife for confirmation of his identification.

98. The appellant alleges that Thysenkrupp were sent photographs alleging he was drunk. See notes of evidence at page 47 line 2 of the notes of evidence. If the allegation that Mr Wilson appeared drunk was made to Thysenkrupp as alleged by the appellant then it was as a result of Mr Gaze's contact.

WILSON
Also a copy of this e-mail was sent to my wife, it was sent to Bayleys, it was sent to Mr Gaze, it was sent to the police, it was sent to the lift service people. It was sent to TEL. TEL's lawyer. These, this drunk. With the heading drunken photo. You know drunken photos was actually sent from memory was sent to Thrice and Cruft.

This, this ,this, this e-mail was sent by Dermot Nottingham and these pictures to about 20 different people

99. In cross examination the appellant is asked to show the tribunal the evidence in support of his allegation. There is **NO EVIDENCE**. So the whole allegation that Remax sent the photo's to anyone let alone 20 individuals, alleging he was drunk, is once again false. Of equal importance the documents establishing that fact are contained in the bundle of documents. See evidence of Mr Wilson at page 87 line 1 to page 8

Nottingham
Which various parties. Go to that Mr Wilson

Wilson
Sorry.

Nottingham

And tell us which page. Show us the parties

Wilson
Well. For instance you sent, you sent emails to my wife for instance. You sent. I mean copies of those pictures you sent with derogatory comments to about 20 different people. What I'm saying is.

Nottingham
No, no. I don't want to know about, about 20 people. I don't want to know about all these spurious accusations. I actually want some evidence

Wilson
I don't even know all the people that you sent this to. But from my. From what I can work out.

Nottingham
Ok so you don't know anything of who we sent it to

Wilson
No. What I'm saying is that from what I can see um looking back on it is there were about 20 different people. **I mean what I know for instance is that Thrice and Cruft** who were my lift service engineers, every, every person that I had had any involvement in respect of 82, is that Remax Advantage sent a copy of those pictures headed drunk. What is it. **Wilson drunk in charge or something and a filthy, derogatory emai**l to every person that I've been involved in and also making a completely.

Nottingham
Ok ...

Wilson
Untrue allegation that I wasn't a lawfully appointed.

Nottingham
Show us the documents you allege. Show us the documents you allege in the bundle. Where are they

Wilson
Well, well. I would say that they're not in here. But I mean if you look at the various.

Nottingham
Have you got them with you .

Wilson
Ok. But look perhaps I could ask you is that who else did you send these various emails to. **I mean I know that Thrice and Cruft were sent them.** I mean perhaps you could explain. Why did Remax send a copy to my lift engineers.

100. The evidence before the Tribunal is that the pictures of the appellant were taken by Doctor Grobler apparently with Mr Wilsons stated approval. See page 330 of the bundle

'I took photo's of him to protect my clinic…Before I took the photo's I told him I would do this and he said go for it take as many as you like"

See also E-mail David Gaze dated 17th August page 50 of the bundle "To whom it may concern" (the REAA) offering photographs of Mr Wilson. Bottom paragraph;

"Should you require we have photo's of Mr Wilson (liquidator of the top two floors only) removing wiring from the lift panels Stopping any access via the lift, but also breaking all existing WOF."

101. The fresh allegation made at trial that Remax Advantage and Trustee Executors were responsible for throwing Dr Grobler out of the medical Centre is made at page 62 line 26

Wilson
"and given the way he was subsequently treated by TEL and Remax I would imagine that he would um.

Nottingham
Sorry treated by….

Wilson
well eventually he was kicked out of the building

Nottingham
We'll just deal with what you just alleged. He was kicked out by Remax

Wilson
And and and and and TEL. I mean I know at the end he was actually treated quite

Nottingham
I want you to go into detail for the Tribunal how you alleged he was kicked out by Remax.
That's just and invention *isn't it Mr*

Wilson
No ,No, no. That actually appears in the latest. No. well, well, well. If this is the . No that actually appears in the latest affidavit. **You know that long rambling account by Mr Bradford.**

Nottingham
If you could take us to the section of that

Wilson
No No look I can't. *To be perfectly honest I just skimmed through that because*

102. There was absolutely no evidence for this fresh allegation. Enquiries were made of David Gaze who replied by e-mail dated 6th June 2012 annexed to the affidavit of Phillip Nottingham filed in support of this application. Mr Gaze comments with regard to Dr Grobler and the fresh allegation by the appellant;

"No they continued to pay rent. We did a scheme to accommodate them on two floors, but they decided to shift across the Road onto one floor."

103. It is submitted that Mr Wilson now acknowledges that it was Dr Grobler who distributed the pictures not Remax. See page 65 line 20

Nottingham
What are you alleging against Dr Grobler. What did he do?

Wilson
Well what I'm saying is that his conduct was disgraceful and taking these photo's without any permission, **lying about it and then forwarding those photographs to third parties** *um particularly Remax whom I think he must have known would be used for improper purpose.*

Nottingham
I can tell you now Dr Grobler did not forward the pictures to us.

Wilson
Well how did the pictures get to Remax then. I mean you, you, you, you

K. THE ALLEGATION BY ADVANTAGE ADVOCACY LIMITED THAT WILSON WAS POSSIBLY DRUNK

104. It is submitted that the allegation by **Advantage Advocacy Limited** that the appellant **"Wilson"** was possibly drunk was a reasonable one to make given the conduct and appearance of the appellant and his failed memory. The appellant appears in the photographs as;

104.1 ill kept and unshaven, wearing a black T-shirt and black jeans.

104.2 The appellant is seen squatting next to the lift tampering with the lift mechanism, the mechanism hanging removed from it's mountings against the wall.

104.3 The appellant appears to be disorientated and stumbling in the second photograph.

104.4 The appellant had refused to give his name.

104.5 The appellant has engaged in an unprovoked and sexually and racially abusive exchange with a legitimate tenant for no apparent reason.

104.5 The appellants attitude was offensive and uncalled for.

104.6 The appellant had removed the locking mechanism to the front door without authority to operate an illegal hostel

104.7 The appellant had threatened to tow patient's cars

104.8 The appellant had removed tenants signage

104.9 The photographs are taken of the appellant at point blank range, full frontal any camera would have been patently obvious to the appellant.

104.10 The appellant was warned that the Dr Grobler was going to take the photos and agreed.

104.11 The appellant apparently had no memory of the photographs being taken at all, see notes of evidence at page. 65 line 1

> ***Nottingham***
> **Well how could you not know who took the pictures**. *If you knew Dr Gobler before that occasion how could you say that you didn't know who.*
> **They've taken the pictures straight of you. Straight at you**
>
> ***Wilson***
> *... Sorry.* **What I'm saying is that I did not**. *I mean for me these, these, these could have been taken by CC, CCTV.* **Look I don't know**. *I did not know until I received a copy of those file notes and, and Mr Grobler's thing. Well ...* **I mean that was the first time it was actually confirmed to me who had taken, who had taken the pictures.**

105. It is submitted that the either appellant was lying as to his lack of memory or in the alternate that he was so impaired that he couldn't remember Dr Grobler taking the pictures point blank, the Doctor allegedly asking permission to take the pictures. The Doctor alleges the appellant abusive and insulting. The appellant concedes he could have been short with the Doctor.

106. The allegations by the appellant as against the witness Dr Grobler are not contemporaneous with the appellants complaint to the REAA but occur only as a result of the presentation of the Doctors evidence during cross examination at trial. The statement of Dr Grobler was released to the appellant in September 2010.

L. ADVANTAGE ADVOCACY'S E-MAILS

10th June 2010 page 117 of the bundle

107. The e-mail from Advantage Advocacy Limited (Dermot Nottingham) is dated 10th of June advising that he is aware of false defamatory allegations that the appellant has been making to Robyn from the lift maintenance company. It annexes a correspondence to the SFO concerning the fraudulent activities of Mr Mayer and Gould. Those activities have been supported by the High Court in *Trustees Executors v Eden Holdings.* Mr Mayer faces 62 charges of fraud and forgery laid ostensibly as a result of a confession made to Mr Dermot Nottingham. Trustee Executors Ltd have made a criminal complaint concerning the conduct of Mr Gilbertson to the New Zealand Police. See copy annexed to affidavit of Phillip Nottingham dated 13th March 2012 exhibit "C"

"*E-mail from Simon Tepaki recording complaint no 111223/1066"*

108. A complaint and evidence has been supplied to the authorities over the conduct of Mr Chevin assisted by Ms Wilson. It is fair comment that Ms Wilson be described as dim witted when caught knowingly introducing a

bankrupt and banned director as a prospective purchaser in a real estate transaction.

109. The promotion of allegations of false securities is a criminal offence under various provisions of the Crimes Act 1961. It is fair comment to warn Mr Wilson of that fact. It is fair comment to allege Mr Chevin is a looser in being bankrupt and a banned director and in the circumstances of his unlawful attempt to purchase a building whilst prohibited by statute

E-mail of 10th June 2010, Page 120

110. The building was under contract for sale and did subsequently sell pursuant to that contract. The contract from Rice Craig selling to Gaze is dated 28th May 2012 page 295 of the bundle. The appellant was appointed by Mr Mayer and has acted in his interests. It is fair comment to allege he is a puppet and subject to the agreement detailed by the High Court in *Trustee Executors v Eden Holdings.* For third party witnesses view of conduct of the appellant, see e-mail David Gaze to David Perry dated 15th June 2010 . See Mr Gaze at page 74 States

"We are having interesting times with Mr Wilson who appears to be acting for Mr Mayer"

108.1 Allegation is also made by associate Judge Bell wherein he gives the appellants contact details in his oral judgment specifically so creditors can contact Mr Mayer.

E-mail of 11th June 2010, Page 125

111. E-mail to Don McPherson explaining events. No abuse but importantly confirms that all correspondence from Dermot Nottingham was from Advantage Advocacy Ltd. This correspondence records the appellants historical conduct and demeanor at paragraph 5

"You may remember Mr Wilson from a couple of years ago when he threatened staff over the phone and would not give out his name, and kept ringing and screaming and swearing down the phone."

E-Mail of 11th June 2010, Page 126

112. This e-mail simply requests the appellant supply the evidence of the contract in support of the security and warns him against inventing a security. It also fairly informs the appellant that Advantage Advocacy is not controlled by the REAA.

E-mail of 21st June 2010,Page 131

113. Advantage Advocacy Limited letter to Mr Wilson of 21st June 2010 is in its entirety factually correct. The photo's were sent by an informant and a complaint was subsequently made to the police by David Gaze. The e-mail materially provides;

An informant sent me this photo of what he thought to be a drunken vagrant vandalizing the lift at 82 Symonds Street.....I understand a criminal complaint has been made to the Police.

E-mail of 21st June 2010, Page154

114. Advantage Advocacy Limited sent this e-mail to Julija Wilson the appellants ex-wife to confirm once and for all that the person in the photograph supplied by Mr Gaze and Doctor Grobler was in fact the appellant. The comments as to an air pistol where from a reliable source involved in the underworld. It is interesting to say they are not strictly denied. The criminal complaint was not made by Remax Advantage or Advantage Advocacy Limited but made by Doctor Grobler and Mr Gaze follows on from the outrageous false allegations of the appellant.

115. It is useful to note that the appellantin his reply alleges that certain people in Remax have mental health issues. He further makes allegations as to people wanting to complain and fails to identify them on the grounds that they are to scared to. It is submitted this is just another

allegation without evidence designed to effect the minds of the REAA. See comments Page 153 of the bundle;

"Many would like to complain but for obvious reasons are afraid to do so"

M. LAW ON JURISDICTION TO STAY OR DISMISS FOR ABUSE OF PROCESS

116. It is submitted that every court of law or Tribunal has an inherent jurisdiction to control it's own processes so as not to bring into disrepute the administration of justice or to have it's processes used for oppressive, frivolous, vexatious or improper motives. The Real estate Agents Act 2008 however has a specific jurisdiction to regulate its own processes under Section 105 (1) subject only to section (2). The Act materially provides;

105 Proceeding before Tribunal
(1) The Tribunal may regulate its procedures as it thinks fit.
(2) Subsection (1) is subject to the rules of natural justice and to this Act and any regulations made under this Act.

117. It is submitted that normally the tribunal would follow the rules applied by the superior jurisdictions excepting where there was a statutory exemption or where to do so would effect the clear intention of parliament as detailed in the long title of the Act.

118. It is further submitted the tribunal has an inherent jurisdiction and **duty** to prevent abuse of the process of the Tribunal where;

118. 1 that to dismiss, strike out or stay a proceeding to prevent the abuse of its processes where the tribunal is being used oppressively to punish a litigant. See *Commerce Commision v Giltrap City*[4], CA114/97[1997] 11 PRNZ 573 see 579

[4] *Commerce Commision v Giltrap City*[4], CA114/97[1997] 11 PRNZ 573

"The court may dismiss a proceeding if it is an abuse of process of the court. Primarily an abuse of process, as spoke in the rule, occurs when a litigant uses the processes of the court for an ulterior and improper purpose."

118.2 Where any proceeding is so fatally flawed that it has no chance of success. See *R Lucas and Son v (Nelson Mail) Ltd v O'Brien*[5] [1978] 2 NZLR 289.

118.3 Where a proceeding contains scandalous, prejudicial, non probative and irrelevant allegations or pleadings. See *Van der Kapp v AG*, 10 PRNZ [1996] 162[6]. See also Stephens v Cribb 4 PRNZ [7],377 at 338

"He found that the allegations made by the defendant on which the plaintiff sued had been made by the defendant ***"wantonly and without justification,*** *without any true background of fact to back them up"*

118.4 The allegations prejudicial and not probative and scandalous such allegations prejudicing the tribunal this conduct is helpfully identified by Justice Gray in Strange v Hybinett [1988] VR 418[8]. Justice Gray quotes from Lord McMilliams book **Law and Other Things**, at pp191-192

"Written pleadings are frequently sent to counsel for revisal containing serious allegations of fraud, dishonesty, or misconduct. The consequence of lodging such pleadings in Court may cause irreparable injury to the person thus publicly accused. For an advocate to allow such charges to be launched with his name attached to them without the fullest investigation would be an abuse the absolute protection against actions for slander which the law affords counsel. Counsel is not worthy of that protection unless he justifies it by the most scrupulous care in his written or oral attacks on character. He must insist on being supplied with all information which is thought by his client to justify such and attack. And then he must decide for himself whether the charges made are such as can be justifiably made. In exercising his judgment is such a manner the advocate is fulfilling one of the most delicate duties to society which his profession casts upon him. It is no small responsibility which the state throws upon the lawyer in thus confiding to his discretion the reputation of the citizen. No enthusiasm for his clients case, no specious assurance from his client that the insertion of some strong allegations will coerce a settlement, no desire to fortify the relevance of his clients case, entitles the advocate to trespass, in matters involving reputation, a hairs breath beyond what the facts as laid before him and duly vouched and tested will justify. I

[5] *R Lucas and Son v (Nelson Mail) Ltd v O'Brien*[5] [1978] 2 NZLR 289.

[6] *Van der Kapp v AG*, 10 PRNZ [1996] 162

[7] Stephens v Cribb 4 PRNZ 377

[8] Strange v Hybinett [1988] VR 418

do not say lightly that the court will decide the matter. It is for counsel to see that no mans good name is wantonly attacked. Most of this passage was cited by Jordon CJ, speaking to the Full Court of New South Wales, in Oldfield v Keogh (1941) 41 .R. (NSW) 206, at p2

118.5 Where a partys conduct in a proceeding has been so prejudicial as to warrant striking out. See; *Reid v New Zealand Trotting Conference*[9] [1984] 1 NZLR 8 see also Van der Kaap v AG, 10 PRNZ,162[10]

I add here, for whatever assistance it may provide Mr Van der Kaap, that the function of a statement of claim is to clarify and define the issues for the Court as well as to inform the opposing party: Thompson v Westpac Banking Corp (No2) (1986) 2 PRNZ 505. Rule 186 of the High Court Rules provides that the Court may strike out proceedings where a pleading is likely to cause prejudice, or delay or is otherwise and abuse of process. The words "prejudice", "embarrassment" and "delay" are to be given a liberal meaning and include proceedings which are both scandalous and irrelevant"

'The court has a general jurisdiction to expunge scandalous matter in any proceedings"

118.6 Where a proceeding is frivolous and vexatious and as such an abuse of process. E Runanga o Ngai Tahu Ltd v Durie [1998] 2 NZLR 103[11]

118.7 A struck out application is not limited to plain and obvious case. Substantial argument may be required *R Lucas & Son (Nelson Mail) Ltd v O'Brien* 2 NZLR [1978] 289 at 50

"The Court must exercise its inherent jurisdiction to strike out pleadings sparingly and with great care to ensure that a plaintiff was not improperly deprived of the opportunity for the trial of his case. However that did not mean that the jurisdiction was reserved for the plain and obvious case; it could be exercised even when extensive argument was necessary to demonstrate that the plaintiffs case was clearly untenable that it could not possibly succeed"

119. Any court of justice or tribunal has an inherent jurisdiction to control it's own processes. The circumstances where abuse of process can arise are very varied. Once established the Tribunal has a duty, not a discretion to exercise this salutary power. See Reid v New Zealand Trotting Conference at page 9 line 25 wherein the learned Richardson J comments;

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[9] *Reid v New Zealand Trotting Conference*[9] [1984] 1 NZLR 8

[10] Van der Kaap v AG, 10 PRNZ,162

[11] E Runanga o Ngai Tahu Ltd v Durie [1998] 2 NZLR 103

The abuse of process principle

Misuse of the judicial process tends to produce unfairness and to undermine confidence in the administration of justice. In a number of cases in recent years this Court has had occasion to consider the inherent jurisdiction of the High Court, and on appeal this court, to take such steps as are considered necessary in a particular case to protect the processes of the Court from abuse. (See particularly Moevao v department of Labour [1980] 1 NZLR 464 and Taylor v Attorney [1975] 2 NZLR 675.) In exercising that jurisdiction the Court is protecting its ability to function as a Court of law in the future as in the case before it. The public interest in the due administration of justice necessarily extends to ensuring that the Court's processes are fairly used and that they do not lend themselves to oppression and injustice. The justification for the extreme step of staying a prosecution or striking out a statement of claim is that a Court is obliged to do so in order to prevent the abuse of it's processes. In Hunter v Chief Constable of the West Midlands Police [1982] AC 529 Lord Diplock began his judgment, which was concurred in by the other members of the House, with these words:

> " My Lords, this is a case about the abuse of the abuse of the process of the High Court. It concerns the inherent power which any court of justice must process to prevent misuse of it's procedure in a way which, although not inconsistent with the literal application of it's procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right thinking people. The circumstances in which abuse of process can arise are very varied; those which give rise to the instant appeal must be unique. It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kind of circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power"

Such fundamental importance of the doctrine to the fair and proper administration of justice that Lord Diplock characterised the exercise of this power in appropriate cases as a duty rather than a discretion.

120. The appellant failed to file briefs of evidence in accord with the instructions of Judge Hobbs which limited the allegations. Instead the appellant filed on the court file a brief of evidence, being just a cut and past of allegations before the CAC.

121. Judge Hobbs was of a mind to strike out the appellants appeal at the first directions conference but after discussions with Ms Davenport issued a minute dated 5th September 2011. That minute materially provided;

"Appellant is to file briefs of evidence and submissions directed to the allegation contained in paragraph 6 of his memorandum dated 30th August 2011 by 21 January 2012"

122. The appellants brief did not file any new brief but cut and pasted from his original complaint to the REAA. The document repeated unsubstantiated, scandalous, outrageous, prejudicial, non probative allegations without any evidence in support. The second respondent filed an application to the strike out (first strike out) for abuse which materially provided;

UPON THE GROUNDS

A) That the appellant has verily failed to comply with the directions order detailed in the tribunals minute dated 5th September 2011 at paragraph 2, limiting his allegations to paragraph 6 of this memorandum dated 30th August 2011.

B) That the appellant has failed to supply any evidence or particularity in support of the allegations detailed in his document headed "Brief of evidence" purportedly dated 23rd of September 2012.

C) That the appellant has continued to promote allegations of fact knowing those allegations to be false.

D) That the allegations of the Appellant have been made for ulterior and improper motives and are frivolous and vexatious and as such amount to an abuse of process of the Tribunal.

E) That the tribunal is in want of jurisdiction to adjudicate on allegations not contained in within the parameters described in section 3 and 4 of the REAA 2008, which limit jurisdiction to matters that relate to real estate, as defined in section 4(a) of the Act.

F) On the grounds detailed in the affidavits filed in support of this application and in opposition to the Appellants appeal.

123. The law on a lack of particularity forming part of the conduct in proceedings where abuse of process is alleged and strike out is warranted is well settled. Failure to provide particulars leads inherently to substantial delays, ambush at trial and delay's in the trial of proceedings and the associated costs to the court and litigants. The learned Court of appeal commenting at page 14 (3) of *Reid v New Zealand Trotting Conference;*

" The deficiencies in the pleadings
We have already adverted to some of the deficiencies in the pleadings. They include the lack of essential particulars as to when particular statements were published and where to whom, the want of required specificity of particulars of the serious charge of conspiracy, the generalized allegations of malice and the incompleteness of the fourth cause of action as pleaded. The amended statement of claim filed in response to the application to strike out dealt only, and in unsatisfactory broad terms, with the calculation of damages. It seems that the plaintiff was not able to remedy other defects in his pleadings. In these circumstances there is no particular reason for assuming that if he were granted the indulgence of amendment after al this time he would now be able to amend or reconstitute his pleadings so as to give those particulars to which the respondents would be reasonably entitled"

124. The result of the appellants conduct was that the second respondents were unprepared as indeed was the Tribunal for the spectacular lack of evidence as to any of the allegations and the inordinate delay and prejudice the second respondents and the tribunal have been put to. The witnesses as to the alleged conduct in the building can not be located as the are back packers and no record has been kept by the appellant of the names and details. Contemporaneous witness statements were not taken by the REAA investigators or the appellant and memories of events have dimmed. See *Reid v New Zealand trotting Conference* at page 14 line 40

" the absence of particulars of the defamatory statements must have made it extremely difficult for the defendants to proceed with the preparation of their defences. How could they carry out any useful check on allegations of statements said to have been made to unspecified persons at unspecified dates over a period of more than seven years which had expired six years previously? Clearly they had been seriously prejudiced by the manner in which the plaintiff has pleaded and prosecuted his case….In these circumstances we are driven to the conclusion that justice could not assuredly be done to the parties and others whose reputations might be affected by the proceedings if they are allowed to continue. From the viewpoint of fairness to the defendants there is the further consideration that if the action were to proceed the defendants would be heavily out of pocket for their costs.."

125. The failure by the appellant to provide points on appeal as requested in the Memoranda of the Respondents filed in the preliminary directions conference have prejudiced the hearing of the matter. The respondents had not been put on notice of the case they had to answer. Specifically whether the Appellant was alleging general rights of appeal or an appeal from a discretionary decision. See Austin Nichols and Co v Stitching Lodestar [2007]NSC 103[12], [2008] 2 NZLR 141 and Kacem v Bashir [2010] NZSC 112[13].

126. It is submitted that the evidence of the appellant does not make out the threshold required to establish that an arguable case exists for a finding of disgraceful conduct under section 73(a) . See *Lucas & Son (Nelson Mail) v O'Brien* at 294;

"The jurisdiction should not be exercised except with great circumspection and unless it perfectly clear that the plea cannot succeed: 1953 Annual Practice,424 and the cases there cited; and also see the judgment of Kennedy J in Boundy v Bennett ([1945] NZLR 460; [1945]GLR 219). **On the other hand, if the action cannot 'by any possibility be maintained', then the court ought to dismiss it**

and at 295 line 1

"on the other hand, I do not think that the exercise of jurisdiction should be reserved for those cases where argument is un-necessary to evoke the futility of the plaintiffs claim. Argument perhaps even of an extensive kind, may be necessary to demonstrate that the case for the plaintiff is so clearly untenable that it can not possibly succeed."

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12 Austin Nichols and Co v Stitching Lodestar [2007]NSC 103[2008] 2 NZLR 141

13 Smith v CAC and Brankin [2010] NZREAD 13

I respectfully adopt the conclusions arrived at by the Chief Justice as entirely applicable to the exercise of inherent jurisdiction in this country"

127. It is well settled law that the conduct has to be established as disgraceful and a suitable nexus between the conduct alleged and the fitness or the propriety of the licensee to carry out real estate work. Smith v CAC and Brankin [2010] NZREAD 13 at [19]

"…the conduct of the licensee can be properly described as 'disgraceful' under s 73(a) of the Act so long as there is sufficient nexus between the alleged fitness or propriety of the licensee to carry out real estate work"

128. The allegations that may have established such a nexus have been dismissed by the tribunal. The texts and e-mails sent to the respondent have to be seen in light of the conduct of the appellant at the time detailed in the bundle of documents. It is helpful for the tribunal that the actions of the appellant have been recited by people who could be described as reasonable members of the public. Dr Grobler and Mr David Gaze the conduct of the appellant has resulted in complaints by both those gentlemen to the police and in the case of Doctor Grobler the Human Rights Commission. The conduct of the licensees therefore has to be considered in light of what a reasonable member of the public would consider a reasonable response to the conduct of the appellant. It is submitted there could be no criticism of the agents conduct.

129. Conduct that could constitute disgraceful conduct is dealt with in *Smith v CAC 10027* [2010] NZREADT 13[14]. In this case the Tribunal found that the licensee bullied and intimidated a subcontractor agent. Such conduct set out at paragraph [3] (ii) to (iv) of their decision which materially provided;

"(ii) The licencee told the appellant she was deceitful , a liar and incompetent and a number of clients had refused to deal with her.
(iii) The licensee referred to the appellant as 'Hindenburg, a fucken looney, a load of shit, fat fucking thing, the elephant and a queer bitch"
(iv) The licensee stated " I'll get stuck into her and when the time is right ill get rid of the fucken load of shit"

[14] *Smith v CAC 10027* [2010] NZREADT 13

130. The actions and commentary alleged could not possibly reach the threshold of conduct under s 73(a) as detailed in the decision of Judge Hobbs in CAC v David Beiszer, *CAC10053 READT 067/10*[15]. The learned Tribunal found that the comments made by the licensee **Beiszer**, concerning a vendor did not reach the threshold under s 73, even though those comments were clearly abusive, and described the vendor in the following manner;

> *" hand on heart yes I did watch!* ***Your vendor seems like a cock smoker*** *proper,he didn't have the decency to thank the folks who gave him their home yet he's somehow grown the cahones to front up now he's looking to make 3 or 4 million- nice publicity stunt.* ***A shame closeup didn't tell Mr Vendor to go fuck himself****"*

131. The learned Judge found at page 3 paragraph [11]

> *"We are however satisfied that the Defendants conduct does not reach the threshold of disgraceful conduct under s 73(a)"*

132. The application of s 73(a) is specifically dealt with in *Brake v Preliminary Proceedings Committee* [1997] 1 NZLR 71[16]. A full court of the High Court considered the term "disgraceful conduct" and said;

> " Obviously, for conduct to be disgraceful, it must be considered significantly more culpable than professional misconduct, that is, conduct that would reasonably be regarded by practitioner's colleagues as constituting unprofessional conduct, or as it was put in Pillai v Messiter (No 2) (1989) 16 NSWLR 197,200[17], a deliberate departure from accepted standards, or such serious negligence as, although not deliberate, to portray indifference and an abuse of the privileges which accompany registration as a medical practitioner"

133. In *CAC v Downtown Apartments Limited and Anor* [2010] NZREADT 06[18] the Tribunal said at paragraph [55] and [56];

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15 CAC v David Beiszer, *CAC10053 READT 067/10*
16 *Brake v Preliminary Proceedings Committee* [1997] 1 NZLR 71
17 Pillai v Messiter (No 2) (1989) 16 NSWLR 197,200
18 *CAC v Downtown Apartments Limited and Anor* [2010] NZREADT 06

"The word disgraceful is in no sense a term of art. In accordance with the usual rules it is to be given it's natural and popular meaning in the ordinary sense of the word. But section 73(a) qualifies the ordinary meaning by reference to the reasonable regard of " agents of good standing" or "reasonable members of the public.

The use of the words by way of qualification to the ordinary meaning of the word disgraceful make it clear the test of disgraceful conduct is objective one for this Tribunal to assess

134. The effect on the reputations of the second respondent and the presence of the scurrilous and false allegations of the tribunal resulting in the refusal of the second respondents to settle with cross apologies. See notes of evidence at page 132 line 22

"My concern Ma'am. I'll put it straight up in the air. Is that I'm a real estate agent and these sorts of accusations may be improperly used in the future. That's my concern"

See also page 133 line 12

NOTTINGHAM
I'm going to tell you what the point is you have the habbit of making the most outrageous allegations against everybody involved in this including the Crown prosecutor…

135. Striking out proceedings where a proceeding has gone stale, off track or it is no longer in the public interest is dealt with in *Te Runanga o Ngai Tahu Ltd v Durie* [1998] 2 NZLR at 103[19]. It is submitted that the allegations as against the second respondents have been rebutted, as there is no factual support for any of them.

136. The Tribunal has already conceded that the allegations as against the second respondents Earle McKinney and Don McPherson are no longer a part of the appeal and should be dismissed. The only allegations that the Tribunal is considering as against the second respondents Dermot Nottingham and Phillip Nottingham related to the texts and e-mails. To do so the Tribunal must make

[19] *Te Runanga o Ngai Tahu Ltd v Durie* [1998] 2 NZLR at 103

a formal ruling on those allegations rejecting them and the reasoning behind such a decision.

137. They must also address the remaining allegations based on the proposition of what an agent of good standing or a reasonable members of the public would consider as disgraceful conduct in the context of the surrounding facts which include the rejected allegations. The appellant has the task of establishing that the CAC's decision at 4.8 of it's decision was wrong in accordance with the narrower grounds of appeal provided in *Kacem v Bashir* [2010] NZSC. It is submitted

"Given the nature of the issues between the parties, it is not clear that that conduct could be related to any real estate agency work. Taking that into account it could only fall to be considered under section 73(a) of the Act relating to misconduct. Whilst the conduct was unprofessional, the Committee concluded that it was not of sufficient gravity in itself to reach the threshold of 'misconduct' in terms of the Act

138. It is submitted that delay, frivolous and vexatious are also well settled grounds for striking out a proceeding for abuse of process. The appellant has confirmed on the notes of evidence at page 134 line 8

WILSON
I mean from my perspective look, look to me it's pretty much over now. **I mean its ancient history, we are talking about years ago**. Is that I think that regardless of what happens it's not really going to effect Mr Nottingham's reputation in the industry at all. **I doubt that anyone is seriously interested in reading the outcome of all this. Is that, that essentially it's become a personality based stouch, between the parties.**

139. That such commentary is evidence of;

139.1 Delay

139.2 Allegations do not meet threshold under s73 (a)

139.3 That the allegations are frivolous and vexatious.

140. It is further submitted that the Tribunals promotion of the "settlement" is such that the further promotion of these proceedings would be an abuse of process and bring the Processes of the tribunal into disrepute. The allegations raised in the brief of evidence and in the proceedings generally are of serious criminal offending. There is no evidence at all to support or justify the making of the allegations the are offensive in the extreme. The tribunal has in effect rejected them. The appellant should not be rewarded or appeased for his conduct. Equally the second respondents are entitled to a judgment from this tribunal rejecting both the allegations and the conduct of the appellant in making them without evidence, promoting them in the REAA and when given notice by the learned Judge Hobbs to restrict his pleadings, continue to wantonly to promote those allegations in his brief of evidence and evidence within the proceedings. See notes of evidence at page 134 line 15

MS DAVENPORT
Well it really rests with you Mr Nottingham and I don't know whether you need to get the consent of Dermot Nottingham who really only seems to be the other person to be involved in this. Is Dermot Nottingham your brother or. Yes. Well it may well be that the we should adjourn today and that you go away and you think about it. You can let the tribunals secretariat know if you are prepared to go down that path and something can them be arranged. We can organize a telephone conference and we can discus it with the two of you if that would be helpful to the parties. All right. Well we will retire and I do urge you to think about it Mr Nottingham. I think it would be a pragmatic response to what's become no doubt a thorn in everyone's side. All right. Tribunal will retire.

141. It is submitted that the tribunal has no jurisdiction to promote such a settlement, if it seriously believed to the requisite threshold that the second respondents were guilty of conduct defined by s73(a). They have a statutory duty to make the finding. It is axiomatic that the REAA was enacted to protect consumers, whether a particular litigant changes his mind after his allegations are tested before the tribunal is an irrelevancy to the tribunals duty to enforce the legislation.

142. Conversely if at the completion of the appellants case he has not proven to the appropriate standard that the CAC has made an error in law or fact to warrant granting the appeal then it must dismiss the appeal. The situation currently before the tribunal is not dissimilarly to an application under section 347 of the Crimes Act. Or an application to stay a prosecution for prosecutorial

abuse. It is submitted that the invitation by the appellant that he wishes to settle the matter with cross apologies is an admission of acceptance that the continuation is an abuse of process. The invitation and support by the Tribunal is an acceptance that the allegations have been rejected and the continuation would be an abuse of process.

143. It is submitted that the continuation of this proceeding will result in it's expansion, the calling of further witnesses to soundly rebut the allegations until the Tribunal is required to make definitive findings against the appellant. Such findings in accordance with the appropriate sanctions detailed in the Act at s153.

N. ORDERS SOUGHT

144. The second respondent seeks an order that the proceeding be struck out for abuse of process on the grounds of;

144.1 Improper motive (ex wife, false allegations)

144.2 Delay

144.4 abuse of process, scandalous allegations

144.5 lack of jurisdiction s4

144.6 Fatally flawed, no cause of action

145. That the file be sealed or the offending allegations removed from the file.

Dated at Auckland this 21st day of June 2012

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Phillip Nottingham