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**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CIV-2002-404-002102
CP 89-SD02**

UNDER the Defamation Act 1991

BETWEEN RODNEY DAVID HAINES
First Plaintiff

AND HHR (NTH) LIMITED
Second Plaintiff

AND HAINES HOUSE REMOVALS LIMITED
Third Plaintiff

AND MFM CONTRACTING LIMITED
Fourth Plaintiff

AND HAINES HOUSE HAULAGE COMPANY
LIMITED
Fifth Plaintiff

AND HHH (NTH) LIMITED
Sixth Plaintiff

AND TELEVISION NEW ZEALAND
LIMITED
Defendant

Appearances: J G Miles QC/D C E Smith for Plaintiffs
W Akel/JWS Baigent for Respondent/Defendant

Judgment: 12 March 2004

JUDGMENT OF VENNING J

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Introduction

[1] This defamation case arises from a number of items broadcast by the defendant Television New Zealand Limited (TVNZ) principally on the Holmes Show in the period March to April 2000.

[2] The plaintiffs seek orders for determination of preliminary questions relating to:

- Whether imputations relied on by the defendant are reasonably capable of bearing the meanings alleged by the plaintiffs;
- Whether the defence that meanings claimed by the plaintiff were expressions of opinion is sustainable at law; and
- Whether certain identified statements are reasonably capable of being held to be expressions of opinion.

Background

[3] The first plaintiff Mr Haines is a director of the second to sixth plaintiff companies. The companies trade under the group name Haines House Haulage in the Northland and Auckland region.

[4] In November 1998 Haines House Haulage sold a secondhand house to a Mr and Mrs Pearce and relocated it from the Haines House Haulage yard in Whenuapai to the Pearce's property at Kamo, Whangarei. The house and roof had to be cut into sections to enable it to be transported.

[5] The price for the house, its transport and re-erection at Kamo was agreed at \$90,000. The agreement between Haines House Haulage and the Pearces provided at clause 8:

That the contractor undertakes to re-erect the building in a workmanlike manner ... the contractors shall have the right to cut the building into sections for the purpose of transportation but in this event shall rejoin the same by cleating, and furthermore shall re-erect the roof if lowered in a workmanlike manner with the existing roofing materials.

[6] The \$90,000 was to be satisfied by Haines House Haulage purchasing two sections in Mr and Mrs Pearce's subdivision for \$60,000 and \$29,000 by way of cash deposit leaving a balance of \$1,000 owing.

[7] Following the relocation of the house and its re-erection the Pearces found the roof leaked. A dispute arose between Haines House Haulage and the Pearces as to the reasons and responsibility for that. There was also a dispute about the subdivision and the sections that were to be exchanged in part satisfaction of the price. The Pearces refused to pay the balance owing or to release Haines Haulage from the contract. The position deteriorated to the extent that Haines took the view it was entitled to remove the house pursuant to the provisions of a romalpa clause in the agreement.

[8] The matter came to the attention of TVNZ. The story became the subject of Holmes programmes on 14 March 2000, 15 March 2000, 16 March 2000, 20 March 2000 and 3 April 2000. TVNZ also ran a short item about it during its One Network News programme on 18 March 2000.

[9] The plaintiff relies on the individual broadcasts as separate causes of action and alleges in a seventh cause of action that the programmes form part of a continuing defamatory series. Transcripts of the programmes are attached to this judgment.

[10] The plaintiffs allege that some or all of the following meanings apply to each broadcast:

- a) The plaintiffs rip off their customers;
- b) The plaintiffs are dishonest;
- c) The plaintiffs operate in a thuggish or intimidatory manner;

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- d) The plaintiffs are not to be trusted;
 - e) The plaintiffs are unprofessional, incompetent or incapable of performing their work in a workmanlike manner

(the plaintiffs' meanings).

[11] Relevantly for the purposes of this application, TVNZ has raised the affirmative defences of truth and honest opinion. In relation to truth TVNZ submits:

- i) Each broadcast taken either by itself or in conjunction with the previous broadcast was in substance true or not materially different from the truth; and alternatively,
- ii) the imputations contained in the broadcast were true or not materially different from the truth.

[12] The defendant pleads that the imputations in the broadcasts are:

- a) The plaintiffs failed to re-erect the Pearces' home in a proper workmanlike manner;
- b) The plaintiffs acted unprofessionally in their dealings with the Pearces;
- c) The plaintiffs operated in a threatening or intimidating manner towards the Pearces.

(the defendant's meanings)

[13] In its defence of honest opinion the defendant says:

- i) if the broadcast had any of the plaintiff's meanings such meaning or meanings were expressions of opinion; and

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- ii) alternatively certain specific statements were expressions of opinion.

Truth

[14] The essence of the first question is whether the defendant is restricted to pleading to the imputations or meanings alleged by the plaintiffs or whether it can plead its own set of imputations, such meanings having a lesser defamatory sting and to then justify those different meanings.

[15] The competing positions may be summarised as follows. The plaintiff says it is entitled to define the issues for determination by pleading the imputations it alleges arise from the defamatory publication. The plaintiff says the quid pro quo is that it will only succeed if the Court (jury) finds that the publication bears the meanings contended for by it (or substantially similar meanings). Against that, the defendant's case is that the plaintiff ought not to be able to plead meanings or shades of meanings most advantageous to them and deny the defendant from putting before the Court a meaning which it says more accurately represents what the publication was about.

[16] The authority of *Broadcasting Corporation of New Zealand v Crush* [1988] 2 NZLR 234 (CA) would prevent the defendant from setting up its own, lesser imputations in support of the defence of truth. *Crush* would restrict the defendant to the imputations pleaded by the plaintiff. The issue is whether s 8 of the Defamation Act 1992 has amended the former common law position as set out by the Court of Appeal in *Crush*.

[17] In *Crush* the defendant set out its own meanings to the words published and pleaded that the words published were in their natural and ordinary meaning (but not in the meanings alleged by the plaintiff) true in substance and in fact. At first instance Holland J struck out that pleading. On the basis that the plaintiff would be confined at trial to the meanings alleged by him the Court of Appeal agreed that Holland J was right to strike out the defence of justification based on the defendant's alternative meanings.

[18] The Court referred to the earlier decision of *Isbey v New Zealand Broadcasting Corporation* [1975] 1 NZLR 721. In that case Cooke J had adopted a passage from *Halsbury's Laws of England* (3rd ed) vol 24 para 76:

"It is not necessary or permissible for the defendant to justify that of which the plaintiff does not complain".

[19] The position at common law in New Zealand is settled by *Crush*.

[20] However, the position in the U.K. has moved on somewhat from the proposition stated in the passage from Halsbury referred to by Cooke J in *Isbey* in 1975. Four cases in particular provide examples of the different approach now taken in U.K.: *Polly Peck Holdings PLC v Trelford* [1986] QB 1000; *Williams v Reason* [1988] 1 WLR 96; *Lucas Box v News Group Newspapers Ltd* [1986] 1 WLR 147 and *Prager v Times Newspapers* [1988] 1 WLR 77.

[21] The current position in the U.K. is contained in the following judgment from Purchas LJ in the *Prager* case:

... it is still open to a defendant to plead so as to justify any reasonable meaning of the words published which a jury, properly directed, might find to be the real meaning ...

At the heart of this case, of course, is the proposition which asserts that the scope of the defence of justification should not depend upon the way in which the plaintiff pleads his case, but on the meanings which the words published are capable of bearing.

(p 86).

[22] In *Polly Peck* O'Connor LJ put it as follows:

In cases where the plaintiff selects words from a publication, pleads that in their natural and ordinary meaning the words are defamatory of him, and pleads the meanings which he asserts they bear by way of false innuendo, the defendant is entitled to look at the whole publication in order to aver that in their context the words bear a meaning different from that alleged by the plaintiff. The defendant is entitled to plead that in that meaning the words are true and to give particulars of the facts and matters upon which he relies in support of his plea, as he is required to do by R.S.C., Ord. 82.

(p 1032)

[23] In *Williams v Reason* the Court held that a defendant in a defamation trial was entitled to introduce evidence of other facts capable of justifying defamatory words in a wider sense than that pleaded by the plaintiff provided that the words the defendant sought to justify were capable of bearing that wider meaning.

[24] In *Prager* the majority held that a defendant was entitled to plead, by way of justification, any defamatory meaning which the words complained of could reasonably bear.

[25] In *Lucas Box v News Group Newspapers Ltd* [1986] 1 WLR 147, the plaintiff alleged that two articles published by the defendants meant that she knowingly assisted terrorists in that she lived with someone whom she knew to be a terrorist and was reasonably suspected that she had assisted him to commit serious offences. The defendant was allowed to plead and justify a lesser meaning that the plaintiff ought to have known or had reason to suspect that her friend was an Italian terrorist suspect. In the course of the decision the Court of Appeal noted:

Counsel were wholly unable to refer us to any rule of pleading which would prohibit the defendant from stating in his defence what he alleged was the natural and ordinary meaning of the words complained of, although we were told that there was a convention not to do so.

(p 152)

[26] Apart from the English authorities Mr Akel also referred to a number of authorities from Australia including *Gumina v Williams (No. 2)* (1990) 3 WAR 351, *Jackson v ACP Publishing Pty* [2001] WASC 121; *Reynolds v Nationwide News Pty Limited* [2001] WASC 90; *Robinson v Laws & Anor* [2003] 1 QdR 81; *Kennett v Farmer* [1988] VR 991; *David Syme & Co v Hore - Lacey* (2000) 1 VR 667 which he submitted were supportive of such an approach.

[27] The decisions of *Lucas Box*, *Polly Peck* and *Prager* were referred to and considered by the Court of Appeal in *Crush*. Nevertheless the Court concluded that:

If the plaintiff has nailed his colours to the mast as to the meaning of which he complains, it does not seem rational to suppose that the jury can legitimately give a verdict for him on finding some different and less serious meaning. If the recent English cases hold otherwise, we would have to respectfully disagree, but it is not clear that they do.

(p 239)

[28] During the course of the decision in *Crush* the Court also referred to the decision of the Privy Council in *Truth (New Zealand) Limited v Holloway* [1961] NZLR 22, 23-24 where the Privy Council set out the reason for the rule adopted by the Court:

The reason is this: If the plaintiff had by his innuendo said the words only imputed *suspicion*, it would be open to the defendant to plead justification if it had sufficient evidence at its disposal to warrant suspicion: but as the plaintiff says that the words impute *guilt*, the defendant cannot justify that meaning unless it has sufficient evidence to prove guilt, which is, of course, a higher burden than proving suspicion. So as matter of pleading, in order not to put the defendant to any disadvantage, the plaintiff is pinned to his innuendo.

[29] Mr Miles referred to the strong *obiter dicta* of two of the five Judges in the High Court of Australia decision of *Chakravarti v Advertiser Newspapers Limited* (1998) 193 CLR 519, which support the plaintiffs' case that a defendant can not set up a different or lesser defamatory meaning. After referring to the passages in *Polly Peck* Brennan CJ and McHugh J said:

A defence which alleges a meaning different from that of the plaintiff is in the old pleading terminology an argumentative plea of not guilty. Under the principles of pleading at common law, it could tender no issue and would be struck out as embarrassing. Under the modern system, articulating an alternative meaning could conceivably make explicit the ground for denying a pleaded imputation. But it would be only in such a case that a defendant's plea of a new defamatory meaning might be supportable as a plea which prevents the plaintiff being taken by surprise. A plea of justification, fair comment or qualified privilege in respect of an imputation not pleaded by the plaintiff does not plead a good defence. It is immaterial that the defendant can justify or otherwise defend the meaning which it attributes to the publication. In our view, the *Polly Peck* defence or practice contravenes the fundamental principles of common law pleadings.

(p 527-528)

[30] Against that introduction, s 8 of the Defamation Act 1992 falls to be considered. Section 8 deals with the defence of truth. It reads:

(1) In proceedings for defamation, the defence known before the commencement of this Act as the defence of justification shall, after the commencement of this Act, be known as the defence of truth.

(2) In proceedings for defamation based on only some of the matter contained in a publication, the defendant may allege and prove any facts contained in the whole of the publication.

(3) In proceedings for defamation, a defence of truth shall succeed if—

(a) The defendant proves that the imputations contained in the matter that is the subject of the proceedings were true, or not materially different from the truth; or

(b) Where the proceedings are based on all or any of the matter contained in a publication, the defendant proves that the publication taken as a whole was in substance true, or was in substance not materially different from the truth.

[31] Section 8 has been considered by the Courts on a limited number of occasions. In *Manning v TV3 Network Services Limited* [2003] NZAR 328 a full Court of this Court considered s 8 (3). William Young J in delivering the principal decision of the Court stated at para 41:

What (*sic*) this is perhaps not quite so clear, I incline to the view that *Crush* would also now be decided differently. I say this because I think that it is now open to a defendant in a shades of meaning case to allege that some or all of the facts asserted in the publication complained of are true (under s 8 (2)) and, depending on how successful it is in respect of that contention, to invoke s 8 (3) (b).

William Young J's cautious opinion then, was that s 8 may have affected the common law so that *Crush* would no longer apply.

[32] Section 8 was also considered in *Julian & Anor v Television New Zealand Limited*, (25 February 2003, HC Auckland, CP367/01, Salmon J). In that case Salmon J stated:

[24] I am inclined to share the view of William Young J as to the interpretation of s.8(3)(a). The "imputations" are, the plaintiff's accusation or charge. ... If the imputations alleged reasonably arise out of the material said to be defamatory, then in my view s.3(a) requires a defendant pleading a defence of truth to establish that those imputations were true or not materially different from the truth.

[33] And later:

[27] The defendant then must address the imputations alleged. It may not redefine them and then plead truth in relation to its redefinition of those imputations.

[34] Salmon J then, apparently did not accept that s 8 had brought about a change to the law as stated in *Crush*.

[35] Section 8 was also referred to by the Court of Appeal in *Television New Zealand Limited v Ah Koy* [2002] 2 NZLR 616. However, the Court was not required to consider it in any detail. It concluded:

We do not find it necessary to embark upon any review of Crush because we are satisfied, ... that in the present case the pleadings do not genuinely raise the point. The so-called lesser defamatory meanings asserted by TVNZ are in reality meanings which are not materially different from the meanings asserted by Mr Ah Koy.

(para 7)

[36] Having reviewed the authorities referred to by counsel, the Act and considered counsels' submissions, in my view the effect of s 8 of the Defamation Act is as follows:

- Section 8 (1) renames the defence of justification as the defence of truth.
- Section 8 (2) now expressly permits a defendant to plead and prove the truth of any facts contained in the publication even where the plaintiff has not sued on those allegations. Section 8 (2) is in response to the decision of *Templeton v Jones* [1984] 1 NZLR 448. In *Templeton v Jones* the defendant had distributed a speech stating that the plaintiff was a man who despised "bureaucrats, civil servants, politicians, women, Jews and professionals". The plaintiff brought defamation proceedings claiming the allegation that he despised Jews was false, malicious and defamatory. The Court of Appeal held that the defendant's particulars of justification must be limited to those matters of which the plaintiff had complained. The defendant was not able to plead and justify that the plaintiff despised bureaucrats, civil servants, politicians, women and professionals. Section 8 (2) would now permit such pleading. It is a direct response to the "pick and choose" defamation claim as in *Templeton v Jones* (and which was also one aspect of *Polly Peck*). Section 8 (2) is an answer to the plaintiff picking and choosing parts of a publication to sue on and thereby restricting the defendant from referring to the whole of the publication. It establishes and provides for the defence that was ruled out by *Templeton v Jones*.

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- Section 8 (3) sets out two bases upon which the defence of truth will succeed. Section 8 (3)(a) provides it will succeed if the imputations contained in the matter that is the subject of the proceedings were true, or not materially different from the truth; while s 8 (3)(b) provides the defence will succeed where the defendant proves the publication taken as a whole was in substance true, or was in substance not materially different from the truth.

[37] The focus in s 8 (3)(b) is upon the truth of the substance of the publication. It provides the defence of truth will succeed and defeat the plaintiffs' claim if the substance of the publication is true, or not materially different to the truth as in *Templeton v Jones*. This was the view taken by the Court in *Manning*, although the Court seemed to consider s 8 (3)(a) could also apply. William Young J held:

[40] *Templeton v Jones* would now be decided differently. If that case fell to be decided now, s 8 (2) would permit the defendant to plead the truth of defamatory meanings he had made against the plaintiff but which were not the subject of the defamation proceedings, ... either the "imputations" in the publication were not materially different from the truth and/or the publication taken as a whole was in substance true or was in substance not materially different from the truth (with the result that s 8 (3)(a) and/or (b) would apply).

[38] For my part, I consider s 8 (3)(b) rather than s 8 (3)(a) is directly applicable to the *Templeton v Jones* situation, but for present purposes nothing turns on that, as the focus in this case is on s 8 (3)(a), not s 8 (3)(b). Section 8 (3)(b) does not assist the defendant in the present case where the defendant attempts to set up a lesser defamatory meaning. Section 8 (3) (b) does not refer to imputations, rather its focus is on the ability of the defendant to refer to the whole of the publication. Section 8 (3)(a) is the only provision that expressly deals with the imputations in the publication.

[39] Mr Akel relied on William Young J's obiter observation in *Manning* that he inclined to the view that *Crush* would also now be decided differently. However, with respect to the Court in that case, that observation was made by reference to the application of s 8 (3)(b), which for the above reasons does not apply to the situation of a defendant pleading lesser defamatory meanings, as in *Crush*.

[40] In *Manning* William Young J considered s 8 (3)(a) and the meaning of the phrase “the matter that is the subject of the proceedings” in the following passage:

There is room for debate as to what is meant by the words “imputations contained in the matter that is the subject of the proceedings” which appear in s 8 (2) (*sic*) [8 (3) (a)]. In their ordinary meaning they refer to what is actually imputed by the publication in issue as opposed to the meanings pleaded by the plaintiff. On the other hand, when s 8 (3)(a) is read with s 8 (3)(b) the scheme of the subsection makes rather more sense if the words are taken to refer to the meanings as pleaded by the plaintiff.

(para 45)

[41] It was unnecessary for the Court to reach a concluded view on that matter. Salmon J in *Julian* (*supra*) accepted the analysis. Mr Miles submitted it was the correct approach.

[42] The phrase “the matter that is the subject of the proceeding” occurs in over 20 other places in the Act, apart from s 8 (3)(a). It would appear to be a phrase deliberately chosen by the draughtsperson and employed throughout the Act. In all the other parts of the Act where the phrase appears it refers to that part of the publication that gave rise to the defamation action. For example s 19 (1) provides:

In any proceedings for defamation, a defence of qualified privilege shall fail if the plaintiff proves that, in publishing the matter that is the subject of the proceedings, the defendant was predominantly motivated by ill will towards the plaintiff, or otherwise took improper advantage of the occasion of publication.

[43] The phrase “the matter that is the subject of the proceedings” as it is used throughout the balance of the Act refers to the publication or at least that part of the publication complained of. That is the meaning that it ought to hold in s 8 (3)(a) also. The matter that is the subject of the proceedings means the publication, rather than the meanings pleaded by the plaintiff.

[44] That, however, rather begs what in my view is the essential question which is the meaning to be given to “the imputations contained” in that part of the publication. On a literal reading I accept that the reference could be to any imputations that could properly be taken from the publication. However in my view the “imputations” referred to in s 8 (3)(a) are the imputations or the sting pleaded by

the plaintiff and do not include or permit the defendant to plead its own imputations. To that extent, I agree with the Court in *Manning* that when regard is had to the imputations, then the scheme of the subsections s 8 (3)(a) and s 8 (3)(b) make more sense if the imputations referred to are the meanings pleaded by the plaintiff.

[45] I have come to the view for a number of reasons. First, the context of the defence and s 8 itself. Section 8 provides a defence to the plaintiffs' claim. By definition the defence relates to the plaintiffs' claim. The imputations are the fundamental basis to the plaintiffs' claim. The defence should relate to and answer the plaintiffs' imputations.

[46] Next, s 8 (2) addressed *Templeton v Jones*. It overruled that decision by setting out the building block for the defence in s 8 (2) and providing in s 8 (3)(b) what the defendant would have to establish to succeed with such a defence. Although Parliament would have been aware of the effect of *Crush*, it did not adopt a similar process to overrule the effect of the *Crush* decision.

[47] Further, s 8 (3)(a) has a purpose as it stands. It is directed at providing a defence where the defendant is able to prove that the imputation or sting alleged by the plaintiff is true or not materially different from the truth. It provides the defendant may still plead and prove truth even if the publication contained errors, provided they are not material. It is a statutory confirmation of the principle of *Sutherland v Stokes* [1925] AC 47. In that case Lord Shaw stated:

... there may be mistakes here and there in what has been said which would make no substantial difference to the quality of the alleged libel or in the justification pleaded for it. If I write that the defendant on March 6 took a saddle from my stable and sold it the next day and pocketed the money all without notice to me and that in my opinion he stole the saddle, and if the facts truly are found to be that the defendant did not take the saddle from the stable but from the harness room and that he did not sell it the next day but a week afterwards but nevertheless he did, without my knowledge or consent, sell my saddle so taken and pocketed the proceeds, then the whole sting of the libel may be justifiably affirmed by a jury notwithstanding these errors in detail.

[48] In summary, I prefer the approach of Brennan CJ and McHugh J in *Chakravarti* to the reasoning of the Divisional Court of Ontario in *Pizza Pizza Limited v Toronto Star* (1998) 167 DLR (4th) 748, relied on by Mr Akel.

[49] If I am wrong in that view, then at the least s 8 and s 8 (3)(a) in particular are ambiguous. It is permissible to refer to background material including the earlier committee report and the explanatory note to the bill: *Frucor Beverages Ltd v Rio Beverages Ltd* [2001] 2 NZLR 604. The explanatory note presented at the time of the Bill was before the House notes the Bill was in part based on recommendations in the report of the Committee on defamation. The reference to cl 8 in the explanatory note notes that subc (2) is necessary for the establishment of the defence provided by subc 3 (b). This is a clear reference to the *Templeton v Jones* issue.

[50] In relation to subc 3 (a) the explanatory note states:

Subclause 3 (a) provides that in proceedings for defamation the defence of truth shall succeed if the defendant proves that the facts contained in the matter that is the subject of the proceedings were true or not materially different from the truth. This means that a defendant has a good defence if he or she establishes the substance or sting of the matter alleged to be defamatory. It is not necessary for the defendant to prove that the matter is literally true (see paras 112 to 115 of the Committee's report).

[51] Paragraph 112 of the Committee's report states:

It is generally believed that for the defence of truth (justification) to succeed it is not necessary for the defendant to prove the literal truth of the words, but sufficient that he establishes the "substance" or "sting" ... Gatley, however, cites a number of cases decided in the 19th century which appear to contradict this principle. Gatley goes on to give a hypothetical example of a statement which incorrectly alleges the theft of a clock instead of a watch. ...

At para 113 the report notes that the law on the matter is confused. Paragraph 114 recommends a redraft to address the issue and para 115 notes that:

Under the amendment the defence would succeed if the defendant could prove that the words complained of were true or substantially true.

[52] In context, the committee report and the explanatory notes to the bill support the interpretation of s 8 (3)(a) set out above.

[53] As part of his argument Mr Akel submitted that s 8 must be interpreted consistent with s 14 of the New Zealand Bill of Rights Act 1990 pursuant to s 6 of that Act. As observed by Tipping J in *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9:

Under s 14 of the Bill of Rights, everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.

(para 15)

And later:

... relevant provisions of the Bill of Rights must be given full weight in the construction of the Act, and in any classification made thereunder. Indeed s 6 of the Bill of Rights requires that where an enactment can be given a meaning that is consistent with the rights and freedoms contained in the Bill of Rights, that meaning shall be preferred to any other. Thus if there are two tenable meanings, the one which is most in harmony with the Bill of Rights must be adopted.

(para 16)

[54] Mr Akel raised the same argument before Salmon J in *Julian*. In his decision in that case Salmon J noted that the Defamation Act is clearly intended to provide limits upon the right of freedom of expression. Salmon J did not consider that s 14 required an interpretation of s 8 different to that that he had reached. I agree. Section 8 of the Act provides for the defence of truth to a claim in defamation. The defence exists and is provided for by statute. It is not a question of limiting the rights or freedoms under the Bill of Rights, but rather interpreting the application of the defence. The Bill of Rights argument does not assist Mr Akel.

[55] Mr Akel also emphasised that the meanings the defendant wished to plead or the imputations the defendant wished to rely on were less than those pleaded by the plaintiffs and arose directly from matters in the broadcast.

[56] However, in my judgment that in itself creates an additional difficulty for the defendant in this case. In the *Ah Koy* decision Tipping J noted that:

If a properly directed jury could not reasonably take the view that there was a material difference, the case should not be allowed to go to the jury on that basis. To allow it to be pleaded in that way and then to go to the jury in

counsel's addresses would simply be a recipe for confusion and embarrassment, if, in the end, the Judge would be obliged to direct the jury that in law there was no material difference. ... On the assumption, upon which we do not express a view either way, that in New Zealand the defendant may, contrary to *Crush*, plead and seek to justify a lesser defamatory meaning, that should only be permitted if the alternative meaning asserted by the defendant is one which is reasonably capable of material distinction from that asserted by the plaintiff.

[57] In the present case the difficulty for the defendant is that the lesser defamatory meanings alleged by the defendant are not materially distinct from the meanings asserted by the plaintiff. At most the distinction is in the level of generality of the imputation. The defendant's imputation that the plaintiffs failed to re-erect the Pearce's home in a proper workmanlike manner challenges the plaintiffs' workmanship. That imputation is contained within the imputation pleaded by the plaintiffs that the sting of the items is that they are unprofessional, incompetent or incapable of performing their work in a workmanlike manner. Again the defendant's next imputation that the plaintiffs acted unprofessionally in their dealings with the Pearces is not materially different from the plaintiffs' imputation. The last imputation alleged by the defendant, that the plaintiffs operated in a threatening or intimidating manner towards the Pearces, is once again contained within the imputation pleaded by the plaintiffs that the publications implied the plaintiffs operated in a thuggish or intimidatory manner. There is no material difference between threatening and thuggish behaviour.

[58] The only difference between the allegations is that the plaintiffs pitch the allegations at a level of generality whilst the defendant pitches its imputations specifically in relation to the Pearces. However, on my reading of the transcripts, no reasonable viewer could take the items as having that restricted meaning. The following passages can be referred to:

Niki Pearce

I don't believe that a lot of other New Zealanders believe that businessmen can act like he has or um would do what he has done and treated people the way he's treated them.

Chris Ellis

It's not all contractors out there that are doing bad work and we don't want to see the rest of us tarnished with the same brush, so we were quite

saddened by the whole thing. There's people's lives at stake and it's quite sad.

Niki Pearce

... it would have come from somebody else who had gone through, if not the same ...

(emphasis added)

The items were general in nature even if based on the Pearce's case.

[59] The answer to the defendant's complaint, that the plaintiffs' allegations are general, is that by the plaintiff pleading at that level of generality the defendant is permitted to justify the more general meaning as in *Maisell v Financial Times* (1915) 31 TLR 193. Further, s 30 of the Defamation Act permits a defendant to prove, in mitigation of damages, specific instances of misconduct to establish the plaintiffs' reputation is bad in the aspect to which the proceedings relate.

[60] The answer to the first question is no.

Honest opinion

[61] The contest between the parties on honest opinion is whether the defendant can plead honest opinion to the meanings alleged by the plaintiff or whether the defendant is restricted to applying the defence to the actual words broadcast. It raises the issue of whether the pleaded meaning as opposed to the actual words used in the publication can be opinion or comment for the purposes of the defence of honest opinion.

[62] As an example, at para 77 of the statement of defence to the second amended statement of claim the defendant pleads:

If the broadcast had any of the meanings alleged at para 13 of the second amended statement of claim (which is denied) such meaning or meanings were expressions of opinion.

[63] Paragraph 13 pleads the imputations that the plaintiff alleges are to be taken from the item. The defence as pleaded is directed at establishing the

imputations/meanings were expression of opinion. The plaintiff says that is not permissible and the focus must be on the actual words of the publication.

[64] This issue was considered in detail by the Supreme Court of New South Wales in *Radio 2UE Sydney PL v Parker* (1992) 29 NSWLR 448. In the course of his judgment in that decision Clarke JA expressed his conclusion in the following passage:

To sum-up, the defence of comment will arise for consideration by the jury only when it has found that the imputations for which the plaintiff contends (or ones substantially similar) were conveyed by the material published and that those imputations were defamatory. Once the defence of comment is raised the jury is required to consider whether the imputation it has found to arise was made by the defendant as an allegation of fact or as an expression of opinion, on facts stated, or sufficiently indicated, in the published matter. For that purpose it is not to the point that the plaintiff has pleaded his imputation as a statement of fact. The question is to be determined upon a consideration of the published material.

(p 469)

[65] Earlier Clarke JA rejected a submission by counsel for the appellants that in considering the defence of comment the Court was concerned solely to determine whether that part of the published material which was said to be defamatory of the plaintiff, rather than the imputation which it had decided was conveyed by that material, was a comment or a statement of fact. In doing so he confirmed that:

In my opinion a defendant who raises a defence of comment is obliged to establish that the imputation which the jury has found that the published matter conveyed was conveyed by the writer or speaker as a comment. In this respect, as I have sought to point out, the actual form of the pleaded imputation is not a relevant consideration. What the jury is required to consider is the published material in order to determine whether the writer or speaker conveyed the defamatory statement which, according to its finding, the published matter conveyed as an expression of opinion or conclusion on the one hand or a statement of fact on the other.

[66] The defence of honest opinion only arises for consideration if the jury finds that the publication contained the imputations the plaintiff contends for. If they do, then the jury must consider whether the statements published were statements of fact or opinion. That requires consideration of the wording used in the publication itself. As Clarke JA observed the resolution of that question (i.e. fact or opinion):

could not depend upon the form of the imputation which, obviously enough, would not be seen by the recipients of the published matter.

(p 437)

[67] Such an approach is also consistent with the approach by the Court of Appeal in *Mitchell v Sprott* [2002] 1 NZLR 766. The following passages from Blanchard J's judgment in that case confirm that when the issue of honest opinion is considered it must be considered in the context of the words of the publication:

Thus the defendant must first show that the words complained of, or the part of them said to be an opinion, were an expression of opinion, not an imputation of fact. ...

(emphasis added)

Then at para 19:

... The ultimate question, says Gatley at para 12.8, is how the words would strike the ordinary, reasonable reader.

Then significantly at paras 27 and 28 of the judgment Blanchard J recorded that the arguments raised before me were raised before the Court in *Mitchell*. Blanchard J then noted that neither counsel addressed the point in oral argument before observing:

... although Mr Allan took the position in his written submissions that the words complained of were a statement of fact, he appeared to accept during argument that the Court would be bound to regard both the words themselves and any of their alleged meanings as an expression of opinion. Mr Allan correctly appraised the position. The words appeared in a lengthy article about Dr Sprott's role in the cot death debate containing many factual statements about actions which Dr Sprott has taken and things which he has said, according to the author. In that context a reasonable reader would undoubtedly conclude that the words "and his tactics are aimed at preventing that debate" were an expression of Dr Mitchell's opinion concerning the narrated actions and utterances of Dr Sprott. The words, as they stand and in all their alleged meanings, are an expression of a conclusion reached or observation made by Dr Mitchell based upon the facts appearing in the article.

[68] I do not read that passage of Blanchard J's judgment, particularly the last sentence, as suggesting that the jury ought to be directed to consider the imputations alleged by the plaintiff when considering the defence of honest opinion but rather I see it as an observation by the Judge that in that particular case the actual words and

the meanings could be regarded as an expression of the conclusion. Relevantly Blanchard J tied the observation to a reference to the facts appearing in the article. On my reading of that decision it is consistent with the approach I have set out above.

[69] Mr Akel also referred to the decision of *Julian* (supra). In *Julian v TVNZ* (supra) Salmon J was not required to consider the matter in detail merely noting that he concluded that:

... the defence of honest opinion can apply both to the meanings alleged and to the statements in the broadcast.

[70] If Salmon J is to be taken as concluding that it is necessary to consider whether the imputations alleged are made out and then in order to determine the defence of honest opinion regard must be had to the actual words of the article to determine whether those imputations are conveyed by the words used in the article then I would agree but if the Judge is suggesting that it is appropriate to consider both the words published and the meanings and the imputations alleged to assess whether the words are to be construed as an opinion then I would, with respect, disagree.

[71] In my view the matter could be addressed by an amendment to the paragraphs in the statement of defence to the second amended statement of claim. Using para 77 as an example the pleading could be amended as follows:

If the broadcast had any of the meanings alleged at para 13 of the second amended statement of claim (which is denied) the statements in the broadcast relating to those meanings were expressions of opinion.

If the pleading was amended in that way, and was combined with a direction to the jury to the effect that if they find the items contained the imputations alleged by the plaintiff then they are required to consider the broadcasts in order to determine whether they conveyed the defamatory statement as an expression of opinion or conclusion on the one hand, or a statement of fact on the other then the point would be satisfactorily addressed.

[72] The formal answer to the second question is no, but the defence may be repleaded.

Third question – specific examples

[73] The last question the parties seek an answer to is whether certain identified statements in the statement of defence are reasonably capable of being held to be expressions of opinion. The question is posed because counsel accept that whether the words complained of are capable of being fact or opinion is in the first instance for the Judge to decide. It is for a Judge to determine whether the words are capable of amounting to expressions of opinion. If they are so capable then the determination must be left to the jury: *Mitchell v Sprott* [2002] 1 NZLR 766, 772.

[74] Mr Miles referred to a number of general principles extracted from the texts *Gatley on Libel and Slander* (9th ed); *The Law of Defamation in Australia and New Zealand* and *Duncan and Neil on Defamation*. Those principles can be stated as:

- The test to be applied is objective.
- The statement must be a pure expression of opinion not intertwined with and impliedly make any factual assertion.
- The language used and the context in which it appears must be examined.
- The way that a statement is presented may be indicative of whether it is statement of fact or opinion.
- A statement of fact made without reference to any other facts on which it is based cannot be defended as opinion or comment. A passage that intermingles fact and comment runs the risk that it will be treated as fact.
- Comment can consist of an inference or deduction from fact.

-
- A statement in the nature of a newspaper headline will seldom be treated as comment.

Specific examples from the pleading

78

- (b) Their roof leaks so badly the other rooms are uninhabitable.

This is a statement of fact. It is not saved by the phrase “so badly”.

- (c) A building inspector says it’s shocking.

Statement of the building inspector’s opinion. A report of the building inspector’s opinion.

- (d) The Pearce family blames Haines House Haulage.

In context this is a statement of opinion of the judgment of the Pearce family. In context, not in the nature of a headline.

- (e) Everything was going fine until the roof was put back on.

Matter of opinion.

- (f) You certainly can see things, that um, don’t fit with what I’ve seen in other houses.

Statement of fact comparing the house in question with what the speaker had seen in other houses, rather than opinion.

- (g) But we did expect to be treated fairly.

Statement of opinion. The subjective expression of the family’s expectation. Would be taken as a comment rather than statement of fact.

- (h) But Te Awa says things turned sour.

In context this statement records Te Awa’s opinion that things had turned sour. It is comment based on the facts that follow in the next sentence.

- (i) The Pearce’s say they felt intimidated.

This is a statement of fact, not opinion. It is a clear expression of how they felt.

- (j) Giving us the message which was very clear that we can take your house.

This is a statement of opinion, being Niki's opinion as to what she considered the position to be.

- (k) How would you rate this part of the job? ...Oh shocking ... I mean it's not durable, a building's got to get a building consent it must be durable for 50 years ... that's not even five minutes.

Statement of opinion. Opinion of the expert instructed by the defendant, the dominant feature of the statement is his opinion that the job was shocking.

- (l) We can't guarantee that that bit of goo they've poured in there is satisfactory, it's not done in a tradesman like manner.

Statement of opinion. The focus of the statement is the opinion that the work (involving the goo) is not done in a tradesmanlike manner.

- (m) What looks like a glow-worm cave.

Statement of fact. While expressed as a comment, in context it explains the facts that daylight can be seen through the roof, rather than states an opinion about that fact.

- (n) I think I could do a better job with half a dozen school boys from Whangarei Boys High School

Statement of opinion.

- (o) There are some things that you just draw a line to.

Statement of fact as to the position the Pearces found themselves in, rather than a statement of opinion.

- (p) Don't you think Haines House Haulage have a moral obligation to come and fix your roof.

In context a statement of the reporter's opinion that Haines House Haulage had a moral obligation to come and fix the roof.

-
- (q) We wouldn't accept it because it would have come from somebody else who had gone through, if not the same, something, similar and if you're talking about morals then or integrity then we'll stand by ours and would not accept anything.

Mixed statement of fact and opinion. However, the thrust of the statement is her opinion that the company will have treated others in the same manner, based on the way the Pearces have been treated.

NOTE: 78 (a) You protect what you feel is rightfully yours. It's the roof over your family's head whether it leaks or not – not referred to in the first item.

In the transcripts made attached to the pleadings this appears in the 15th March broadcast, not the 14th March broadcast. Statement of her opinion.

86

- (a) ...their home which is almost uninhabitable.

Statement of fact.

- (b) The roof's a shocker. Leaks like a sieve and structurally unsound.

The roof's a shocker is a statement of opinion based on the facts that follow.

- (c) There have been some developments today ... both good and bad.

The phrase may have expressive connotations but it is a statement of fact, that there have been developments.

- (d) Now I don't like overstatement but I think it's fair to say that the state of that roof shocked us all.

The reporter's opinion as to reaction of those viewers who saw the previous programme.

- (e) It leaked so bad, Niki, Te Awa and their two boys have been forced to sleep in one room for the past eight months.

Statement of fact, use of the phrase "so bad" does not convert it into an opinion.

-
- (f) The building inspector says the roof is structurally unsound – it will have to be replaced.

A statement of opinion expressed by the building inspector.

- (g) It took bravery to tell their story, the type of bravery that saw Niki Pearce stand in front of a Haines Haulage truck to prevent them from taking away their house.

The emphasis is on the statement of opinion that Niki's actions were "brave".
Opinion.

- (h) You protect what you feel is rightfully yours. It's the roof over your family's head whether it leaks or not.

(as above)

- (i) Reason for the stand-off? Workmanship, described by a building expert as 'shocking'. Inside a roof structure described as 'dangerous'.

Contains statements of opinion by the building inspector, but a statement of fact as made by the reporter, giving reasons for the stand off.

- (j) Today the Whangarei District Council's building certifiers told Holmes: 'It is our opinion if left in its present state, (the house) is not only unsanitary to the occupants but also in cyclonic conditions the roof structure may be dangerous.'

Statement of opinion.

- (k) We've had a lot of people amazed I think at what we've been through and the fact that this has been able to happen. Um and yeah just amazement I think.

In context a response to a question. A statement of fact as to people's reactions rather than a statement of opinion.

- (l) It's yeah a bit of a shock but um.

A factual statement of their reaction to the Council requirement that the roof be fixed within 20 days.

- (m) Is it kinda scary?

Yeah it is, yeah.

Marginally opinion about the situation that the Pearces found themselves in.

- (n): I guess it restores your faith in um people. Um so yeah I think there is a lot of support out there and my husband ...

Opinion.

- (o) I just felt that there has been a lot of support. I think people can understand now what we've been through and the difficulties that we've been able to I guess get through.

Opinion.

- (p): Um well we had intended to when we purchased it to have it as a family home and be there for a few years. It's at the moment got a bit of a sour taste, left us with a sour taste in our mouths. Um yeah.

Statement of fact as to the Pearce's intention in response to the direct question whether they wanted to stay in the house. Not a statement of opinion.

- (q) Um I don't think it would matter what I said to him. Um it's just a shame that I keep hearing that well we heard when the house was being removed that he's a businessman um but I don't believe and I don't believe there's that a lot of other New Zealanders believe that businessman um act like he has or um would do what he has done and treated people the way he's treated them.

Statement of opinion as to the way Mr Haines had acted in an unbusinesslike way based on the treatment of the Pearces.

95

- (a): ... continuing house horrors.

Statement in the nature of a headline. Not opinion.

- (b) ... to fix their dangerous and leaky roof.

Again statement in the nature of headline.

Both the above statements feature in the introduction to the programme, as headlines to the programme.

- (c) ... their Whangarei home with the shonky roof.

Statement of opinion.

- (d) It leaks like a sieve. Building inspectors say it's structurally unsound and it's dangerous.

Statement of fact. The reporter declares it leaked like a sieve then reports the inspector's views.

- (e) In the meantime ... Haines fellow haulers are worried the Pearce story might hurt other house moving businesses.

States a fact that others are worried. States opinion that the story may affect other house haulers. It is that opinion that is the dominant feature of the statement. In context can be taken as opinion.

- (f) The Heavy Haulage Association (because believe it or not there is one) says it's worried.

Statement of fact as reported.

- (g) Not worried enough to front up on this programme, mind you.

Statement of opinion by the journalist based on the facts referred to in the item.

- (h) Well we're quite sad by it. It is not all contractors out there that are doing bad work and we didn't want the rest of us be tarnished by the same brush. So we were quite saddened by the whole thing. There's peoples' lives at stake and it's quite sad.

Mainly a statement of opinion by the speaker as to the standard of the workmanship referred to immediately prior by the reporter.

- (i) If I actually hire a house hauler what can I expect to get for my money?

Well you should be getting the best service there is available. There are a lot of people out there like ourselves offering great service. For a good product. I mean we are selling good houses to nice people and we expect to be giving them the best value we can give them.

Overall a statement of that house hauler's opinion as to the level of service expected.

- (j) It is quite pleasing. Now do you reckon this might have hurt some of your businesses?

I don't think it has hurt too many but it's not nice to see it happen. A lot of us out there have good names and there is a lot of good people in the industry. It is sad to see this sort of thing tarnish the industry because it's not needed and it's a big thing out there. People enjoy moving houses. It's a good way of doing things and it's a way of economics today.

Taken as a whole seen as a comment or opinion.

- (k) What do you think of him [Rod Haines]?

Ah he surprises me ah for the person he is for the business he's got. It surprises me he hasn't talked to you yet.

Well and we may yet flush him out. It's just a matter of time ...

The statement by the house hauler's representative is a statement of his opinion that he is surprised by Haines' lack of response.

- (l) We believe this is a great opportunity for us to demonstrate our leading edge roofing technology this is a great application for our lightweight Harvey Roofing Systems ...

Statement of opinion as to great opportunity and a great application.

- (m) What did you see?

Well I'd rather not comment on the existing situation what I'd prefer to say from a positive point of view is that we believe we can rectify the situation ...

Statement of opinion.

- (n) I'm sure Mrs Pearce would be very happy.

Statement of opinion.

- (o) You think you can do it within the twenty days?

We certainly can.

Statement of fact that the job can be done within 20 days.

(p) How does that make you feel?

Overwhelmed really.

That is a statement of fact as to her feeling. Not an opinion.

104

(a) a company accused of a shonky house moving job.

Although referred to in pleadings, this exact reference does not feature in the 18 March transcript.

(b) Haines Haulage, a company at the centre of a Holmes investigation over a shonky housemoving job.

Mixed statement of fact (the centre of the investigation) and opinion of a shonky house moving job). On balance and in context it amounts to a statement of fact.

(c) [Niki and Te Awa Pearce] claim the house was uninhabitable after the company moved the home to Whangarei.

Statement of fact.

(d) It [the bedroom] leaks so badly it has now turned into a garage.

Statement of fact. Not saved by reference to "so badly".

112

(a) ... [the roof] is dangerous and will have to be replaced.

Part of the headline to the programme. Not opinion.

120

(a) The final chapter in the saga of the shonky roof ...

In the nature of a headline, not opinion.

(b) look at that beautiful new roof ...

Statement of opinion.

- (c) The house move gone wrong ...

Statement of fact.

- (d) A family forced to live in one room because of a shonky roof, I mean you saw that incredible, those incredible pictures of the roof leaking.

Statement of fact. Reference to shonky does not save in context.

- (e) ... so that's a lovely sort of roof.

Statement of opinion.

Well that's what it looks like now. You should have seen it before ... a shonky leaky roof after its move from Auckland ...

Statement of fact.

- (f) ... Niki and Te Awa who were at the end of their tether with a crowd called Haines Haulage ...

Statement of fact.

- (g) The roof leaks so badly for the past 8 months the Pearce family has been forced to live in one room.

Statement of fact.

- (h) How would you rate this part of the job? Oh shocking ... its not durable, a building's got to get a building consent it must be durable for 50 years ... that's not even 5 minutes.

Opinion.

- (i) What looks like a glow worm cave.

Statement of fact as above.

- (j) I think I could do a better job with half a dozen school boys from Whangarei Boys High School.

Opinion.

(k) It's the roof over your family's head whether it leaks or not.

As above – opinion in context.

(l) So um that was the distress really which the family had been experiencing the Pearces had been experiencing for a year ...

Statement of fact.

(m) Lovely new roof ... Big celebrations in front of the beautifully lit house ... It looks fantastic doesn't it Paul? Yes.

Opinion.

(n) That [the roof was safe] was the most important thing for the Peace family.

Opinion.

(o) Um this door was really difficult to open.

Fact.

(p) Looks much tidier doesn't it? Absolutely.

Opinion.

(q) Oh it's amazing the change looks like a different house. It does, it looks like South Fort you know on Dallas.

Opinion.

(r) They have done an amazing job I think there was a lot of hard work ... they've worked great as a team. Amazing guys.

Opinion.

(s) Did you feel much safer generally all around once they started working? Yes definitely ...

Opinion.

(t) [the weather] looks pretty good at the moment.

Opinion.

-
- (u) Yeah, we do have a comment um at the end of the day um we can stand up and like I said right from the beginning and stand by our integrity um and at the end of the day we bought a house which had a leaking roof which he failed to fix.

Mixed comment and fact. Prevailing emphasis is on the fact the roof leaked and the plaintiff failed to fix it.

- (v) ...we fulfilled all those things and I think that's really important to understand and also we've we didn't really want anything out of this but to let other people know we felt it wasn't right and that hopefully we are hoping that this whole programme will help lots of people um in all different situations.

Mixed comment. The thrust is that the Pearces had fulfilled their obligations which is a fact. The opinion is that part of the statement that the plaintiffs' actions were not right.

Result

[75] The questions posed for the Court in the schedule to the application are answered as follows:

Question one. No.

Question two. No.

Question three. As above.

Costs

[76] The plaintiff is to have costs on the application on a 3B basis.

Timetable

[77] The defendant is to file an amended statement of defence to reflect the above rulings by 8 April. The Registrar is to arrange a telephone conference for further direction after 19 April.

Signed at 11.10am this 12th day of March 2004



G J Venning J

ANNEXURE

14 MARCH BROADCAST

Linda Clark:

Good evening. This year was going to be a big year for the Pearce family. Te Awa and Niki Pearce and their two boys planned to move into their new five bedroom house. To spread out a bit. To spend the weekends doing a bit of DIY. Instead, they've spent the last eight months crammed into a single room. Their roof leaks so badly the other rooms are un-inhabitable. A building inspector says "It's shocking". The Pearce family blames Haines House Haulage because, you see, it was Haines who moved the house from Auckland, to the section in Whangarei, and that's when all the problems began. Mike McRoberts has the story.

(a), (b),
(d), (e)

Mike McRoberts:

This is the home the Pearce family bought from a company called Haines House Haulage. It's a big house, and needed to be cut in half, the roof cut off, to transport it from Auckland. Everything was going fine until the roof was put back on.

(a), (b),
(d), (e)

Te Awa:

I'm no builder, but you certainly can see things that, um, don't fit with what I've seen in other houses.

(c)

Niki:

We knew it was a second-hand house - it wasn't a new house. Um. It didn't have a new roof, and we could see that from the beginning. But we did expect to be treated fairly. We didn't expect a new roof - we did expect one that wouldn't leak.

Mike McRoberts:

The Pearce family had one bargaining tool. They hadn't paid Haines House Haulage the final settlement of \$60,000.00. They withheld payment in the hope Haines would fix their house. But Te Awa says things turned sour. They arrived home one day to find a Haines House Haulage trailer on their front yard. The Pearces say they felt intimidated.

(a), (b),
(c), (d)

(c)

Niki:

...giving us a message which was very clear that we can take your house.

(c)

Te Awa:

We gave an offer to come half way - that we'd pay half as well as they paying the other half. And we got a fax back to say "no".

Mike McRoberts:

Two weeks ago, Niki was alone at home, when she was confronted by twenty Haines Haulage workers with sledge hammers. They started knocking off the base boards off the house in preparation to move it.

(c)

Niki:

They meant what they were here for - they were going to take the house. I was inside - would they take it with me in it?

Mike McRoberts:

A neighbour caught some of the confrontation on video.

Niki:

And then another truck arrived, a house removing truck, and I stood in front of that, and I was standing in front of a truck, a big huge truck, about that far away.

(c)

Mike McRoberts:

Haines House Haulage had every right to come on to the property and reclaim the house - it was written into the original agreement should the Pearce family default on payment. But also in this original agreement is an undertaking by Haines House Haulage to re-erect the house in a workmanlike manner. Holmes sought professional advice on the workmanship.

(a),(b),
(d), (e)

Mike McRoberts:

How would you rate this part of the job.

Alan Bigwood:

Oh, shocking, you know. It's not durable, you know. A building's got to get a Building Consent must be durable for 50 years - its not even five minutes.

(e)

Mike McRoberts

Alan Bigwood is a professional building consultant who's family's been in the building game for 80 years. Among his concerns were the number of different types of tiles used, that don't fit together properly. Tile edging not finished. And the overuse of silicone sealant. Is this going to work?

(e)

Alan Bigwood:

No. No. Because the water's pouring in and we can't guarantee that the bit of goo that they've poured in there is satisfactory. It's not done in a tradesman like manner.

(e)

Mike McRoberts:

But worse is the roof structure- What looks like a sagging roof from the outside is better explained inside.

(e)

Alan Bigwood:

All they've got is a 4 x 2, or 100 x 50, on its flat, and strutted down here straight on to the ceiling joists. That's the ceiling there so in other words, the weight of this roof here is going down on to that ceiling, and another one beside it there. This one here, the ridge on this side, that's got a big split in it too, see.

(e)

Mike McRoberts:

And as for the tiling work – take a look when we turn off the camera lights. What looks like a glow-worm cave is daylight coming in through the Pearce's roof.

(e)

Alan Bigwood:

I think I could do a better job with half a dozen school boys from Whangarei Boys High School.

(a), (b),
(d), (e)

Mike McRoberts:

The local council won't give Building Consent for the roof. It'll have to be taken down and redone - at a cost of around \$40,000. But rather than be faced with Haines Haulage trying to take their house again, the Pearce family - seen here with their lawyer – settled, and paid Haines Haulage \$60,000.

(a), (b),
(c), (d),
(e)

Te Awa:

There's some things that you just draw a line to and we felt that okay we're going to be left with a roof that we need to fix up and its going to cost a bit, but.

(a), (b),
(d), (e)

Mike McRoberts:

The Pearce family continue to live in one room. Now desperate to try and repair their roof, before winter. Don't you think Haines House Haulage have a moral obligation to come and fix your roof.

(a), (b),
(c), (d),
(e)

Niki:

We wouldn't accept his money now. Um. We wouldn't accept it because it would have come from somebody else who had gone through, if not the same, something similar, and if you're talking about morals, then -or integrity - then we'll stand by ours and will not accept anything.

Linda Clark:

Of course, Holmes called Haines House Haulage today. Rod Haines, Director of the Company, said he didn't want to know about this story. He didn't want to be part of it, and he hung up. So, we rang back a little later, and again invited Mr Haines on the programme. He again hung up.

Linda Clark:

Then Holmes got this fax from Nikki's sister, Melanie. Melanie says - and I think she's writing to all of us, really, that "As a family, we appreciate the lengths you have gone to in order to investigate Nikki and Te Awa's story, and protect their wellbeing. This is a scary time for them. We sincerely hope this evening's broadcast will help them to resume a safe family life. We love our sister, brother, and nephews very much, and we hope and pray the tide will change and things will start to get better for them". And so do we. Well, coming up next on Holmes

Linda Clark:

...Now just before you go.... An update on the Te Awa and Niki's roof problems in Whangarei. (e)
One man's come forward... says he'll pay for it to be reclad in zinc or steel. Another call from a painter-decorator... he'd be glad to help in any way he can.
However the big problem is with the structure of the roof.
We'll keep you posted.
That's Holmes tonight.

15 MARCH BROADCAST

Linda Clark:

Also tonight.... an update on Niki and Te Awa Pearce and their home which is almost uninhabitable. Some good news and bad news for them today. We'll join them live from Whangarei . . .

(a), (b),
(d), (e)

Linda Clark:

Next we go to Whangarei and Niki and Te Awa Pearce. You saw their house last night... the roof's a shocker. Leaks like a sieve and structurally unsound. There have been some developments today....both good and bad. Niki and Te Awa join us after the break . . .

(a), (b),
(d), (e)

Linda Clark:

Now, I don't like overstatement, but I think it's fair to say that the state of that roof shocked us all. I'm talking about the roof at Nikki and Te Awa Pearce's house in Whangarei. We showed it to you last night, remember. It leaked so bad, Nikki, Te Awa, and their two boys have been forced to sleep in one room for the past eight months. The Building Inspector says the roof is structurally unsound – it will have to be replaced. That's likely to cost up to \$40,000.00 - money they simply don't have. The problems began when Haines House Haulage moved the home from Auckland to Whangarei. Mike McRoberts with this:

(a), (b), (d),
(e)

Niki:

And then another truck arrived, a house removing truck and I stood in front of that and um, when you're standing in front of a truck, a big huge truck, and you're that far away...

(c)

Mike McRoberts:

It took bravery to tell their story. The type of bravery that saw Niki Pearce stand in front of a Haines Haulage truck to prevent them from taking away their house.

(c)

Niki:

Well you have to. You protect what you feel is rightfully yours, and, um, yeah, it's a roof over, it's a roof over your family's head, whether it leaks or not.

Mike McRoberts:

The reason for the standoff? Workmanship described by a building expert as "shocking". Inside, a roof structure described as "dangerous". (e)

Alan B:

All they've got is a 4 x 2, or 100 x 50, on its flat and strutted down here straight on to the ceiling joist. (e)

Mike McRoberts:

Today the Whangarei District Council's building certifiers told Holmes "Its our opinion, if left in its present state, the house is not only insanitary to the occupants, but also in cyclonic conditions the roof structure may be dangerous." A notice to rectify to bring the roof up to standard is expected to be issued to the Pearces at the end of the week, giving them 20 working days to do the job. Interestingly, the notice to fix the roof will not only go to the Pearce family but also to Haines House Haulage. (e)

Now Wayne Sapwell, the man who will issue the order, told Holmes today that he'd been contacted by Rod Haines, of Haines House Haulage. Mr Haines denied his company had done the work on the roof - said it had been done by MFM Contracting Ltd. Now when asked who owned MFM Contracting Ltd, Mr Haines said he did. (a), (b), (d)

This is Rod Haines of Haines House Haulage, the company which transported the Pearce's house from Auckland to Whangarei. We were told he was at an "Invitation only" Big Game fishing competition in the Bay of Islands. We tried several times to contact him this evening, without any luck.

(Answerphone message - Rod Haines' voice)

"I'm not available right now, but if you leave a message I'll come straight back to you. Thank you, bye."

Linda Clark:

Well Niki and Te Awa are with us they join us from Whangarei. G'day.

Niki:

Hi.

Linda Clark:

And for those of you watching at home, only Niki has the earpiece, so we are going to be doing most of our talking to you. You will be the family spokesperson today. Tell us how um you are coping today I mean it it's been a big day, it always is if you appear on the Holmes show.

Niki:

Yeah, um it's been a big day definitely. Following last night's footage.

Linda Clark:

Are you getting lots of support?

Nini:

Um we've had a lot of people amazed I think at what we've been through and the fact that this has been able to happen. Um and yeah just amazement I think.

Linda Clark:

What about this order this Council order that um the roof has got to be fixed in 20 days? What what do you make of that?

Niki:

Um well we only just found out about it recently in the last couple of hours so it's yeah a bit of a shock but um

Linda Clark:

Is it kinda scary?

Niki:

Yeah it is, yeah.

Linda Clark:

I mean Mike's report last night, I think quoted that it would cost about forty thousand dollars to fix that roof

and um do you think you can fix it?

Niki:

Um I'm not a builder and I don't have forty thousand dollars right at the moment um but I guess that is something that my husband and I have to work out.

Linda Clark:

I know we had a fantastic response from people who saw your story last night on the show and and really their hearts went out to you but so did their pockets in some cases. I mean we've talked to . . . we've heard from people who are talking about offering colour steel and others that might be able to offer you some building support or structural support. Have you heard from any of these people today?

Niki:

Um I've heard from different people suggesting different things um to help and I guess it restores your faith in in um people. Um so yeah I think there is a lot of support out there and my husband and I, speaking on behalf of us both, appreciate um the help and support that's been offered.

Linda Clark:

You might want to let him have a say. Tell him what we have been talking about and he can pitch in.

Niki:

Sure . . . um dear they've asked us about how our day's been and what sort of support we've received, I think your story today is appropriate.

Te Awa:

We've had lots of support I guess being . . . I'm a school teacher and today I wrote up on the board a starter for a story and I think it typifies what we've been going through and the support that we are getting, and a little boy that doesn't um write a lot the start of the story was if I could change the world what would I do and he said if I could change the world um I'd build Mr Pearce ah my teacher a new house, get him a new roof, and later on he came back to me and he said um that we could do some fund raising for you, so um even though it's got that humorous side to it um I just felt that there has been a lot of support. I think people can understand now what we've been through and the difficulties that we've been able to I guess get through.

Linda Clark:

Niki do you guys actually want to stay in the house?

Niki:

Um well we had intended to when we purchased it to have it as a family home and be there for a few years its at the moment got a bit of a sour taste, left us with a sour taste in our mouths um yeah.

Linda Clark:

I think everyone's got their fingers crossed for you. Just one last thing. Rod Haines. You saw, or you will have heard, Mike McRoberts there tried all day to get hold of Mr Haines. We have heard not a word from him. If he's watching, and he might be, what would you like to say to him.

Niki:

Um. I don't think it would matter what I said to him. Um. It's just a shame that, um, I keep hearing that - or we heard when the house was being removed that he's a businessman, um, but I don't believe, and I don't believe that a lot of other New Zealanders believe that businessmen um act like he has or um would do what he has done and treated people the way he's treated them. (a), (b), (c), (d), (e)

Linda Clark:

Niki and Te Awa, thank you very much for coming out -- I know we've held you up from dinner. Thanks for joining the Holmes team again tonight, and Mr Haines, if you are watching, we are ready and able to put your side of the story any time you like. Well, coming up next

16 MARCH BROADCAST

Linda Clark:

Tonight on Holmes. Niki and Te Awa's continuing house horrors. Given just twenty days to fix their dangerous and leaky roof will they find the forty thousand dollars to do the job? We have developments.

(a), (b), (d),
(e)

Linda Clark:

First up tonight, more on the saga of Niki of Te Awa Pearce with their Whangarei home with the shonky roof. It leaks like a sieve.... Building Inspectors say it's structurally unsound and it's dangerous. Again today we made contact with Haines House Haulage, the company of which moved the Pearce home from Auckland to Whangarei... and that's when the Pearce's problems began. We spoke to Grant Moffatt, Sales Manager for Haines House Haulage. A pleasant enough chap. He assured us his boss, Rod Haines will come on and explain his side of the story.... but not till Monday night. Apparently he is in a fishing competition in the Bay of Islands, and he didn't want to cut that short. Well I will still be here on Monday night so the invitation remains open. We have a chair just waiting for you.

(a), (b), (d),
(e)

Linda Clark:

In the meantime . . . Rod Haines fellow haulers are worried the Pearce story might hurt other house moving businesses.

The Heavy Haulage Association (because believe it or not there is one) says it's worried.

Not worried enough to front up on this programme . . mind you. Though one of their members would.

He's Chris Ellis . . . he runs a house removal business in Wellington.

He's in our Beehive studio.

Thank goodness you've arrived and welcome to the show.

Linda Clark:

What do you make of all of this, when you saw those pictures the other night of Niki and Te Awa's house?

Chris E:

(Alpha Specialised Movers) Well, we're quite sad by it. It's not all contractors out there that are doing bad work, and we don't want to see the rest of us be tarnished with the same brush, so we were quite saddened by the whole thing. There's people's lives at stake and it's quite sad.

(a), (b), (d),
(e)

Linda Clark:

I guess - let's get some sort of consumer information out there. If I actually hire a house hauler, what can I expect to get for my money.

Chris E:

Well, you should be getting the best service there is available. There are a lot of people out there, like ourselves, offering great service for a good product, and I mean, we're selling good houses to nice people, and we expect to be giving them the best value we can give them.

Linda Clark:

Now, talk about nice people, I think that you might have some news for the Pearce's, have you not?

Chris E:

We have. Quite a few people today rallied round within the industry, we've tried to put as much money together as we can, and we're asking fellow people out there in the industry, who we haven't talked to yet, to please contribute, to try and put some money on the table to get this roof rectified, so these people can go on with a normal life.

Linda Clark:

So how much have you tallied up so far?

Chris E:

I think to date we've got about \$6,000 to contribute towards it, which is quite pleasing.

Linda Clark:

It is quite pleasing. Now, do you reckon this might have hurt some of your businesses?

Chris E:

I don't think it's hurt too many, but it's not nice to see it happen. A lot of us out there have got good names, and there is a lot of good people in the industry. Its sad to see this sort of thing tarnish the industry, because it's not needed, and it's a big thing out there, people enjoy moving houses, it's a good way of doing things, and it's a way of economics today.

(a), (b), (c),
(d), (e)

Linda Clark:
Do you know Rod Haines?

Chris E:
I have met the chap, yes.

Linda Clark:
And what do you think of him?

Chris E:
He surprises me. For the person he is, and the business he's got, it surprises me he hasn't talked to you yet.

Linda Clark:
Well, and we may yet flush him out, it's just a matter of time, but thank you very much for the \$6,000, thank you for the appeal to the other movers, and thank you for coming on the programme.

Chris E:
Thank you.

Linda Clark
Clearly a demonstration of good faith there.

And now we go because that's our theme, to Glen Innes in Auckland's eastern suburbs.

It's the yard at AHI Roofing . . . general manager Peter Stichbury is there.

And I understand you have some news for the Pearce family tonight.

Peter:
Well we certainly have Linda because in addition to the funding that you have already mentioned on your programme our company is prepared to underwrite the remaining cost of the roof. Obviously the cost of the roof is not the forty thousand dollars that includes rectification to the framing, but the cost is a lot less to us as a manufacturer of roofing systems, but we believe this is a great opportunity for us to demonstrate our leading edge roofing technology - this is a great application for our light weight Harvey Roofing systems to be installed on an existing house and so we are happy to do this.

Linda Clark:
Your company has done an assessment on the Pearce's roof today is that right?

Peter:
That's correct.

Linda Clark:
And we you or when your guys went up there I mean what did you see?

Peter:
Well I'd rather not comment on the existing situation what I'd prefer to say from a positive point of view is that we believe that we can rectify the situation in a manner I've mentioned we have a network of contractors throughout the country and we understand that the Council has given the owners twenty days in which to put a roof on. We can certainly provide a new roof within that time frame that I'm sure Mrs Pearce would be very happy with.

Linda Clark:
A great offer indeed so yes you think you can do it within the twenty days?

Peter:
We certainly can.

Linda Clark:
Alright well I guess there's one person or two people we need to hear from who need to get the last word in all of this and that is Nikki and Te Awa Pearce. They are I understand there they are standing by in Whangarei. Did you hear all that?

Niki:
Um part of it yes.

Linda Clark:
Well let's recap so you've got all of the facts. Firstly you are going to get a new roof AHI have given a
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~~guarantee that they will underwrite it and some other house movers have put together and they've got six thousand dollars already for you. How does that make you feel?~~

Niki:

Um overwhelmed really. Um don't know really what to say because um.

Te Awa:

Just a big thank you I guess for the overwhelming support and for um giving us this support this is something we didn't sort of want to go out and try and get but um simply our purpose was to let people know what the situation I think that has been made clear but yeah we ah we just hope that um now we can sort of get back to our family life which is the most important to us and um are grateful for their willingness to help.

Linda Clark:

I think Mike McRoberts and he brought us the story a couple of nights ago and said in his original piece that you guys had bought the house planned to spread out little bit it is a five bedroom house and I guess finally you'll get your opportunity.

Niki and Te Awa:

Mmmm yes.

Linda:

Well good luck to both of you and we're very pleased that we could be of assistance.

Niki and Te Awa

Thank you very much.

Linda:

Have a lovely evening. Go out and celebrate.

Te Awa:

Thank you.

Linda Clark:

Now the Heavy Haulage Association, of which Mr Haines is an executive member, has been watching this story unfold.

But as we said earlier, they wouldn't come to the programme.

However in a fax to Holmes president of the Heavy Haulage Association . . . Mr W Martyn says the Association is not responsible for the actions of individual members, and has no authority to intervene in disputes of his nature.

He says as a responsible body, the New Zealand Heavy Haulage Association is committed to promoting excellence and professionalism so that they are able to provide complete customer satisfaction.

So there you go.

18 MARCH BROADCAST
Kate Hawksby:

In other news, the haulage company featured in a special Holmes investigation this week is back in the spot light tonight. Fire has ripped through one of the Haines Haulage storage yards destroying 5 homes and Karen Rutherford reports.... Police believe it's the work of an arsonist.

Karen Rutherford:

All that's left of the houses soon to become homes to 5 families. When fire began eating away at a corner of this West Auckland yard just before 6.00 this morning, emergency services arrived within minutes.

Police Officer:

They believe they saw a figure or a shadow running from the scene... we called the dogs they lost the track.

Karen Rutherford:

The homes are owned by Haines Haulage, a company at the centre of a Holmes investigation over a shonky house moving job. Niki and Te Awa Pearce bought their house from Haines. They claim the house was uninhabitable after the company moved the home to Whangarei.

(a), (b), (d),
(e)

Niki Pearce:

This was meant to be our bedroom but it leaks so badly its now turned into a garage.

(e)

Karen Rutherford:

Now just days after Building Inspectors and Industry colleagues questioned the company's workmanship... this. One News spoke to the owner of the company today. Rod Haines was unable to appear on camera. What he did tell us was its been an unfortunate week.

While the Police are keeping an open mind on the case Haines Haulage is offering what it calls a substantial reward for information leading to a conviction. Meanwhile... Niki and Te Awa Pearce will have a new roof built within 3 weeks courtesy of other building hauling firms.

20 MARCH BROADCAST

Linda Clark:

Well... we promised that tonight we would bring you Mr Rod Haines. He is, of course, you will remember the boss of Haines House Haulage, the company which featured on this program a number of times last week. Haines took a house, of course from Auckland to Whangarei... and the new owners of that house are facing a \$40,000.00 repair bill because the roof leaks, is dangerous and will have to be replaced. Mr Haines said he'd tell us his side of the story tonight. Well we are still talking to Rod Haines.... Today he said he'll be happy to appear on Holmes from Whangarei on Wednesday night. We accept his word and will keep you posted.

(a), (b), (d),
(e)

3 APRIL BROADCAST

Paul H:

But we start tonight with some good news really. Further developments on this story of the roof. The house move gone wrong. The family forced to live in one room because of the shonky roof. I mean you saw that incredible, those incredible pictures of the roof leaking and the house family living in the one room and the two boys and mum and dad. Well now the final chapter . . . and there they are live in Whangarei . . . and you can see Niki and Te Awa Pearces' new roof up behind Mike with Niki and Te Awa there and another representative so that's a lovely sort of a roof. Well that's what it looks like now, you should have seen it before – a shonky, leaky roof after its move from Auckland – and three weeks ago we were telling you about this. Mike McRoberts spoke to Niki and Te Awa who were at the end of their tether with a crowd called Haines Haulage.

(a), (b), (d),
(e)

(a), (b), (d),
(e)

Niki

We prepare ahead of time if it looks cloudy outside we stick a bucket in the laundry to catch the rain.

Mike

The roof leaks so badly for the past 8 months the Pearce family has been forced to live in one room.

(a), (b), (d),
(e)

This is the home the Pearce family bought from a company called Haines House Haulage.

It's a big house and needed to be cut in half and the roof cut off to transport it from Auckland.... Everything was going fine until the roof was put back on.

Mike

How would you rate this part of the job.

Alan Bigwood

Oh shocking... It's not durable, a building's got to get a Building Consent it must be durable for 50 years... That's not even five minutes.

(e)

All they've got is a four by 2 or 100 by 50 on it's flat and strutted down here straight on to the ceiling joist.

(e)

And this ridge on this side that's got a big split in it too....see

(e)

Mike

And as for the tiling work... take a look when we turn off the camera lights.

(e)

.... What looks like a glow worm cave is daylight coming in through the Pearces roof.

(e)

Alan Biswood

I think I could do a better job with half a dozen school boys from Whangarei Boys High School.

(a), (b), (d),
(e)

Niki

It's the roof over your family's head whether it leaks or not

Paul H

So um that was the distress really which the family had been experiencing the Pearces had been experiencing for a year so lets go then to Whangarei to Kamo in Whangarei Mike McRoberts um is with the Pearce family... Lovely new roof Michael... Big celebrations in front of the beautifully lit house right now.

Mike

And a lot of hard work has gone into this not only is it a brand new state of the art roof but it also comes with a fifty year warranty and Peter Stichbury from AHI is going to present that certificate now and also the Code of Compliance with means this roof is safe and that was the most important thing for Pearce family. But a lot of people have been involved in this and a lot of hard work has gone into it and this was how it was done.

Mike

This is how it was done.

Mike

The old concrete tiles of varying description that never fitted together properly were the first thing to go then a new roof structure was built. Inside the changes had immediate effect

(e)

Niki

Um the first thing we instantly noticed was the door um this door was really difficult to open. I used to have to push it open and then lever my body through it and then really strain and push to open it and you as can see there's grooving up there where it used to scrap. But now its just quite yeah it opens freely.

(e)

Well out here in the front entrance the all the panelling was all sagging and um the front was all rotting away because of the water was just running off the roof and onto it.

(e)

Mike

Looks much tidier doesn't it.

(e)

Niki

Absolutely.

Mike

So Niki what does a new roof mean for your plans with the house?

Niki

Well we can now live in the entire house but um its time now to start decorating um redo the ceilings that we lost um put some carpet on the ground.

(e)

Mike

AHI Roofing ran the whole operation. Six thousand dollars came from other house removers. Pinex Timber and Carters Whangarei were the suppliers. United Homes John Duff and Douglas Roofing provided the workmanship BCW gave the roof its Code of Compliance.

Turning the Pearce family home from this to this.

(a), (b), (d),
(e)

Paul H

Very nice indeed. Thank you AHI and the other people who helped and now.... We've got Niki and Te Awa Pearce and their two boys with their signs very nice signs which they made themselves I'm sure. At the barbecue

Paul H

So Niki New Zealanders once again helping other New Zealanders I guess its' been

Niki

Sorry

Paul H

Can you hear me Niki?

Niki

Yeah I can now sorry

Paul H

You must I mean have you been surprised by the amount of support you got?

Niki

We've been overwhelmed by the amount of generosity and um expression of um help in various forms which have come to assist us. Yeah

Paul H

And what are the boys names.

Niki

This is Dalton and this is Ammen.

Paul H

How old is Dalton?

Niki

How old is Dalton he is five.

Paul H

And the other name was A?

Niki

Ammen

Paul H
Ammen

Te Awa
Ammen

Paul H
I see

Paul H
So anyway Te Awa she looks a bit different now?

Te Awa
Oh its just amazing the change it looks like a different house

Paul H
It does it looks like Southfort you know on Dallas. It does a bit now. And so you've spread out through the rest of the house Niki on longer hiding in one room?

Niki
We're about to expand into the different rooms yes.

Paul H
So they've done a very quick job.

Niki
They have they have done an amazing job I think there was a lot of hard work that went underneath the roof and as well as the roof itself and they've worked great as a team. Amazing guys.

Paul H
Did you feel much safer generally all around once they started working?

Niki
Yes definitely, I'm entitled I feel like doing a rain dance tonight.

Paul H
I hope you don't have to do a rain dance. What's the weather like?

Niki
Um it looks pretty good at the moment.

Paul H
And so who have you got at the barbecue?

Niki
Um we've got all the support um the crew that have worked on the roof in various forms from working on the structure to

Te Awa
To organising to yeah everyone. Friends as well that have supported us just by being here and supporting us really.

Paul H
So that's your shout Te Awa

Te Awa
For sure

Paul H
You know I've got to ask you this I'm sorry I've got to be a bit of a downer but I've got to ask you this...Mr Haines has suggested to us that you hurt a family or another family with some kind of property deal yourselves. Have you got a comment on that?

Niki
Yeah we do have a comment um at the end of the day um we can stand up and like I said right from the beginning and stand by our integrity um and at the end of the day we bought a house which had a leaking roof which he failed to fix. And that was all we wanted to share with um anyone who wanted to hear was that um yeah making it known. (a), (b), (d), (e)

Paul H
That the arrangement promise was not fulfilled.

Te Awa

That's right and he actually Mr Haines asked us to fulfil other requirements and we fulfilled all those things and I think that's really important to understand and also we've we didn't really want anything out of this but to let the people know we felt it wasn't right and that hopefully we are hoping that this whole programme will help lots of people um in all different situations.

Paul H

So no more daylight through the roof Te Awa

Te Awa

No... Great I looked up there the other day and it is looking a lot darker

Paul H

And you I think Niki you'd decided against having another baby this year because of the leaky roof, you couldn't have five you couldn't have a new born baby in the um in the one room you were all living in. So have you changed your plans on that now that things seem to be much dryer?

Niki

Absolutely

Paul H

Might get underway after the barbecue Te Awa, Excuse me

Anyway so good-bye boys... Oh the boys can't hear me can they so the boys can wave bye-bye and thank them thank the boys Niki and Te Awa thank them very much for the signs.

Te Awa and Niki

Thank you very much.

Paul H

A pleasure so there you go so that is the end of the story really at the home of Niki and Te Awa Pearce. A barbecue tonight to celebrate the finishing to everyone's satisfaction and with the help of many people of the roof above the hauled house.

Now as you know. And as we've spoken for weeks.

There has been a standing invitation for Rod Haines to appear on this programme.

We wanted Rod Haines in the original story.... He said he didn't want to now about the story, didn't want to be part of it and he hung up.

So when we rang back again he hung up. On March 20 we got a facsimile. That's back on March 20, in the fax Mr Haines said he would love to come on, no he would come on the programme, didn't say he would love to, said he would come on the programme... but with conditions.

Those conditions were this that we provide him with tapes of our stories on the Pearce home.

That the interview was live and not edited.

That for the interview Mr Haines could have alongside him... Mr Win Martyn of New Zealand Heavy Haulage, his lawyer, Kathy Norman from Mr Haines' Wangarei office and a family of clients... whom Mr Haines claims was hurt when a part payment property deal they had with the Pearce family fell through. Mr Haines wanted all of those people on the programme with him.

And Mr Haines final proviso..... proviso was that we identify the person who gave us still photographs of him.

These photographs which we are going to see in a minute, I think aren't we, these photographs I don't know what's happened to those but um there.... there you go Mr Haines, and he wanted to know who gave us these photographs of him that is Mr Rod Haines of Haines Haines Haulage so

We wouldn't tell Mr Haines who gave us these photographs very nice and happy photographs.. but we continued negotiating.

And finally we reached agreement.... but at the last minute you will have been watching that Mr Haines withdrew he demanded final say over the story before it went to air.. we said no. His lawyer told us there was a large element of distrust... that Mr Haines's side of the story would be portrayed negatively.

Paul H

Then tonight just what a couple of hours ago another fax from Mr Haines' lawyer...outlining his client's case and claiming that the "Holmes" programme had defamed him.

All sorts of information which we want Mr Haines to come on this programme and discuss.

Well in the meantime no Mr Haines...

Again.

So that is as far as we go probably is the end of the story of a house that Haines hauled and the wonderful resolution for the Pearce family with their beautiful fifty year guaranteed non leaking, no daylight seeing through it roof and their happy boys.