IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2018-404-002565
[2019] NZHC 1285

BETWEEN	CHRISTOPHER SCOTT MEEHAN First Plaintiff
	MICHAELA WARD MEEHAN Second Plaintiff
	NORTHLAKE INVESTMENTS LIMITED Third Plaintiff
AND	FOURTH ESTATE HOLDINGS (2012) LIMITED First Defendant
	RICHARD JOHN HUBBARD, JOAN MARY KEENAN, DAVID GIBSON, KATHERINE SCHUITMAKER, RALPH HANAN and SIMON TELFER, as trustees of SOUTHERN COMMUNITY MEDIA TRUST Second Defendants

Hearing:	8 May 2019
Appearances:	J G Miles QC and A L Ringwood for Plaintiffs N Farrands for First Defendant P A McKnight and A J Romanos for Second Defendants
Judgment:	11 June 2019

JUDGMENT OF ASSOCIATE JUDGE P J ANDREW

This judgment was delivered by Associate Judge Andrew
on 11 June 2019 at 2.30 pm
pursuant to r 11.5 of the High Court Rules

Registrar / Deputy Registrar

Date……

Introduction

[1] This case is a defamation proceeding relating to publications by the National Business Review (NBR) (the first defendant) and Crux, an on-line news site (the second defendants),[1] about a property development known as Northlake in Wanaka. Northlake Investments Ltd (the third plaintiff) is the property development company and Christopher and Michaela Meehan (the first and second plaintiffs), its directors.

[2] The plaintiffs claim the articles at issue, published in November 2018, falsely state that the plaintiffs, as developers, failed to honour promises to local residents, are unethical, take an unethical approach to new housing and are "gouging" the market.

[3] The plaintiffs have also issued a defamation proceeding in the Dunedin Registry of this Court (CIV-2018-412-105) in relation to allegedly defamatory newspaper articles published by the Otago Daily Times (ODT) about the same property development, namely Northlake in Wanaka.

[4] The defendants seek orders dismissing or staying this proceeding pursuant to s 47 of the Defamation Act 1992.[2] That section requires a plaintiff to give notice of multiple actions "commenced by the same person in respect of the publication of the same or substantially the same matter". The defendants say that the Dunedin proceeding and the present Auckland proceeding involve the publication of the same or substantially the same matter, and the plaintiffs have not informed the second defendants of the existence of the Dunedin proceeding.

[5] The critical issues I must determine are:

(a) Whether the allegedly defamatory publications by the defendant, Allied Press Ltd, in the Dunedin proceeding and the defendants in this proceeding are "of the same or substantially the same matter"; and

(b) If so, whether the Court should dismiss or stay this proceeding.

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1 The second defendants are the trustees of Southern Community Media Trust.

2 The first defendant did not file written submissions or address the Court, but it supports the second defendants' position.

Relevant legal principles

[6] Sections 46–48 of the Defamation Act 1992 deal with multiple defamation proceedings.

[7] Section 46 requires all proceedings in respect of "the same or substantially the same matter" to be commenced within 28 working days of the first proceeding.

[8] Section 47 reads:

> **Notice of multiple actions**
>
> (1) Where 2 or more proceedings for defamation have been commenced by the same person in respect of the publication of the same or substantially the same matter, the plaintiff shall as soon as practicable give to every defendant in each of the proceedings such notice of the existence of the other proceedings as is reasonably sufficient to enable each defendant to apply for the consolidation of the proceedings under section 48.
>
> (2) Where the plaintiff fails to give the notice required by subsection (1) to any defendant, that defendant may apply to the court to dismiss or stay the proceedings, and the court may dismiss or stay the proceedings accordingly.
>
> (3) In this section **publication** has the same meaning as in section 46.

[9] It is apparent from the express wording of s 47 that the purpose of the notice requirement is "to enable each defendant to apply for the consolidation of the proceedings under section 48".

[10] There is a threefold inquiry as to whether s 48 applies.[3] First, the application must be made by the defendants in two proceedings for defamation. Secondly, the proceedings must be commenced by the same person (that is, the plaintiff must be the same in the two proceedings). Thirdly, the proceedings must be in respect of publications "of the same or substantially the same matter".

[11] The learned authors of *Todd on Torts* note that:[4]

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3 *Carden v Independent News Auckland Ltd* HC Auckland CP117/96, 28 February 1997.

4 Stephen Todd (ed) *Todd on Torts* (8th ed, Thomson Reuters, Wellington, 2019) at [16.5.03], n 308.

> Whether two newspaper articles are "substantially the same" involves comparing their words, considering the meaning put on them by the plaintiff, and considering the articles as a whole: *Kirkland v Manawatu Standard Ltd* CA138/77, 11 July 1979; *Carden v Independent News Auckland* HC Auckland CP116/96, CP117/97, 28 February 1997.

[12] In *Kirkland v Manawatu Standard Ltd*, the Court of Appeal considered the application of s 11(1) of the Defamation Act 1954, which is equivalent to s 48 of the present 1992 Act.[5] Section 11 provided for the consolidation of defamation proceedings "in respect of the publication of the same or substantially the same defamatory matter". The principal issue in *Kirkland* was whether the two articles could be described as substantially the same. The Court noted that what was required was "an evaluation of the two articles in a common-sense way to discover whether they can be properly described as substantially the same".[6]

[13] The Court of Appeal approved the approach taken by Richardson J in the lower court to whether the matters were "substantially the same". The Court of Appeal held:[7]

> The approach taken by the learned Judge was this. First he compared the very words of each article. He appended to his judgment … copies of the two reports each having underlined certain words identified on behalf of the plaintiff as not being common to both reports. Next the learned Judge considered the meanings put upon the articles by the plaintiff in his statements of claim. He did not in doing that suggest that such meanings were themselves the defamatory matter but as an aid in discovering the existence or absence of substantially the same defamatory matter. Thirdly the Judge considered each article in each case as a whole. He reached his conclusion upon the impact these matters together made upon him. The learned Judge's approach was in our view correct.

[14] In the lower court, Richardson J held:[8]

> I consider that, in arriving at a conclusion as to whether the publications are of substantially the same matter, it is proper to have regard to the particulars of the defamatory meaning attributed to the respective publications by the plaintiff. After all, it is the plaintiff who alleges the matter is defamatory. It is he who is asserting in what respects the publications are defamatory.

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5 *Kirkland v Manawatu Standard Ltd* CA138/77, 11 July 1979.
6 At [3].
7 At [3].
8 *Kirkland v Manawatu Standard Ltd* SC Palmerston North A98/76, 17 October 1977 at 3.

The articles at issue

[15] The articles at issue in the Dunedin proceeding and the present proceeding are appended to this judgment:

(a) Attached marked A is a copy of the NBR article entitled "Pyne Gould goes out with a whimper" (dated 1 November 2018);

(b) Attached marked B is a copy of the Crux article entitled "Q'town richlister takes controversial $45 million business offshore" (dated 10 November 2018);

(c) Attached marked C is a copy of the ODT article entitled "Northlake plan change opposed" (dated 20 March 2018); and

(d) Attached marked D is a copy of the ODT article entitled "North Lake lacking proposed amenities" (dated 1 August 2018).

The competing submissions of the parties

[16] In support of his contention that the publications in both proceedings are "substantially the same", Mr McKnight, for the second defendants, submitted that the Court should focus on the "sting" of the libel. He relies on the English Court of Appeal decision of *Simpson v Mirror Group Newspapers Ltd*.[9]

[17] In *Simpson v MGN*, Mr Simpson sued the Daily Mirror for the publication stating that he had been unfaithful to his long-term partner. The Daily Mirror pleaded truth (justification). The Judge at first instance, after hearing argument on the meaning of the words at issue, struck out the defence of truth on the basis that the particulars did not address the meaning which he held applied. The Daily Mirror appealed and the Court of Appeal granted the appeal. The Court concluded that it was important for it to look not only at the pleaded meaning(s) but also what the "sting" of the libel is (that is, the essential core of the plaintiff's complaint).

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9 *Simpson v Mirror Group Newspapers Ltd* [2016] EWCA Civ 772.

[18] Mr McKnight contended that both publications here involved the same subject matter, namely the role of the plaintiffs in the Northlake development in Wanaka, and that the overall sting the plaintiffs have put at issue is that the plaintiffs have "ripped people off". The plaintiffs' core complaint in both proceedings, according to Mr McKnight, is that they have been accused of unethical, dishonest and bullying behaviour in relation to the Northlake development. He says that while aspects of the articles clearly differ (that is not disputed), the chosen complaints about them do not.

[19] In a schedule attached to their written submissions, the defendants have undertaken a comparative exercise under the headings "PLEADED MEANINGS SCHEDULE" and "WORDS OF COMPLAINT SCHEDULE". Both schedules analyse the respective proceedings under the headings "Plaintiffs acted unethically", "Plaintiffs were dishonest" and "Plaintiffs were bullies". Mr McKnight submits that the pleaded meanings tend to fit into one of these common stings.

[20] For the plaintiffs, Mr Miles QC submitted that it would be fundamentally wrong to adopt the "sting" approach. In New Zealand the test remains that adopted by Richardson J in *Kirkland*.

[21] The plaintiffs contend that this proceeding includes defamation claims in respect of the following 11 defamatory imputations arising from the NBR and Crux publications that are not raised in the Dunedin proceeding:

(a) That the plaintiffs, as the developers of Northlake, failed to honour a promise to locals that housing at Northlake would be "affordable" (Statement of Claim (dated 16 November 2018) (SOC) at [14](e) and [21](e));

(b) That the first and second plaintiffs are unethical or have questionable ethics (SOC at [21](f));

(c) Alternatively, that there are grounds to suspect that the first and second plaintiffs are unethical or have questionable ethics (SOC at [21](g));

(d) That the first and second plaintiffs take an unethical approach to new housing and/or "sail close to the wind" ethically and financially and/or do not "do the right thing" (SOC at [21](h));

(e) That the plaintiffs are "gouging the market" (SOC at [21](j));

(f) Alternatively, that there are grounds to suspect that the plaintiffs are "gouging the market" (SOC at [21](k));

(g) That (one or more of) the plaintiffs warned real estate agents off selling sections at prices that are lower than Northlake prices (SOC at [21](l));

(h) Alternatively, that there are grounds to suspect that (one or more of) the plaintiffs warned real estate agents off selling sections at prices that are lower than at Northlake prices (SOC at [21](m));

(i) That (one or more of) the plaintiffs warned contractors off working on Mr Lee's Hikuwai development (SOC at [21](n));

(j) Alternatively, that there are grounds to suspect that (one of more of) the plaintiffs warned contractors off working on Mr Lee's Hikuwai development (SOC at [21](o)); and

(k) That the plaintiffs are acting profoundly unfairly to Mr Lee by allowing storm water from Northlake to run over Mr Lee's land at Hikuwai (SOC at [21](p)).

[22] The plaintiffs further contend the Dunedin proceeding includes claims in respect of the following 10 defamatory imputations arising from the ODT publications that are not raised in the present Auckland proceeding:

(a) That the plaintiffs' objective is to make as much money as they can, without consideration for the community as a whole (SOC at [12](a));

(b) That the plaintiffs are only interested in profit (SOC at [12](b));

(c) That the plaintiffs do not care about the residents of Northlake or Wanaka (SOC at [12](c));

(d) That the plaintiffs, as the developers of Northlake, built houses on green spaces that was set aside for recreational reserves (SOC at [19](d));

(e) That the plaintiffs, as the developers of Northlake, are removing amenities at Northlake, to the detriment of residents of Northlake, in order to advantage themselves (SOC at [19](e));

(f) That the plaintiffs, as the developers of Northlake, breached the Fair Trading Act 1986 (SOC at [19](h));

(g) Alternatively, there are grounds to believe the plaintiffs, as developers of Northlake, breached the Fair Trading Act 1986 (SOC at [19](i));

(h) That the first and second plaintiffs are bullies (SOC at [22](a));

(i) That the first and second plaintiffs are the sort of people who would bully residents of the residential development at Northlake (SOC at [22](b)); and

(j) That the first and second plaintiffs are the sort of people who would threaten legal action against residents of the residential development at Northlake (SOC at [22](c)).

[23] Mr Miles QC argued that the second defendants' "PLEADED MEANINGS SCHEDULE" adopts a misleading approach to the similarity of defamatory meanings by grouping pleaded meanings under more general headings (namely, "Plaintiffs acted unethically", "Plaintiffs were dishonest" and "Plaintiffs were bullies") as if those headings were the relevant pleaded meanings.

[24] Attached to the plaintiffs' submissions are copies of the relevant articles which have been highlighted by the plaintiffs to demonstrate (so they say) the parts of the ODT articles that are not common to the NBR and Crux articles and those parts of the

NBR and Crux articles that are not common to the ODT articles. This is said to "graphically demonstrate" that the articles in issue in the two proceedings are almost entirely different. It is said the articles only have a few scattered words in common.

Analysis and decision

[25] There may be some merit in the "sting" approach that Mr McKnight contended for, at least insofar as it assists in addressing the third step of the approach adopted by Richardson J in *Kirkland* (namely, when considering each article in each case as a whole). However, I intend to analyse the issue of "substantially the same" by applying the whole three-step test of Richardson J (as approved by the Court of Appeal) which first involves a comparison of the very words of each article. There is no basis for me to re-visit that approach.

[26] In adopting the *Kirkland* approach, and in addressing the second and third steps in particular, I am of the view that the Court should not approach the issue in an unduly technical or narrow way that might undermine the statutory objective of avoiding the risk of inconsistent findings as between two sets of proceedings. In adopting the *Kirkland* approach, I also acknowledge, as both parties submitted, that the current section, namely s 48, differs slightly from its predecessor, s 11 of the 1954 Act (the section applied by Richardson J). In s 47, the word "defamatory" has been removed; the focus is now on substantially the same "matter" (previously it was "defamatory matter"). I accept Mr Miles QC's submission that this slight amendment has widened the section, although whether that was intended to bring about a change to the approach of Richardson J in *Kirkland* is not entirely clear. It may be, as Mr Miles QC submitted, that the amended wording better reflects, and is consistent with, the approach of Richardson J in *Kirkland*.

Step 1: Comparing the very words of each article

[27] The highlighting of the articles attached to the plaintiffs' submissions is helpful in addressing the first step, a technical step, of comparing the very words of the respective publications. The comparison demonstrates and supports the plaintiffs' contentions that the focus of the articles is different and they only have a few scattered words in common. I also acknowledge that the respective newspapers have different

readerships and that the articles were not published at the same time. By contrast, the publications at issue in *Kirkland* were published on the same day and many of the words used in both articles were identical.

[28] The clear differences between the words used in the articles in the two proceedings are also apparent from the second schedule attached to the second defendant's submissions entitled "WORDS OF COMPLAINT SCHEDULE".

[29] The plaintiffs contend that the NBR and Crux articles at issue in the Auckland proceeding are examples of publications that are substantially the same. It is for that reason that the claims against both defendants have been pleaded together in the one proceeding. The similarities between the two articles at issue in the Auckland proceeding are in marked contrast to the very different words used in the publications in the Dunedin proceeding.

[30] It is not surprising that the words used in the articles in the Dunedin proceeding are quite different. The focus of the publications in the Auckland proceeding and in the Dunedin proceeding is quite different. This is apparent from the articles' headlines:

(a) The ODT article is entitled "Northlake plan change opposed" (dated 20 March 2018);

(b) The ODT article is entitled "Northlake lacking proposed amenities" (dated 1 August 2018);

(c) The NBR article is entitled "Pyne Gould goes out with a whimper" (dated 1 November 2018); and

(d) The Crux article is entitled "Q'Town richlister takes controversial $45 million business offshore" (dated 10 November 2018).

Step 2: The meaning put upon the articles by the plaintiff in the statement of claim

[31] I now turn to address the second step of the *Kirkland* test.

[32] Defamatory meanings in defamation proceedings are, of course, very precisely pleaded. The approach adopted by the second defendants in grouping the pleaded meanings under general headings in the "PLEADED MEANINGS SCHEDULE" is flawed. The general headings are not the relevant pleaded meanings and to list the actual pleaded meanings under those more general headings does not demonstrate that they are equivalent. To take an example from that schedule, to say that "the plaintiffs' objective is to make as much money as they can, without consideration for the community as a whole" is not the same as saying that "the first, second and third plaintiff are unethical or have questionable ethics". Yet, those are both grouped under the general heading "Plaintiffs acted unethically" in an attempt to demonstrate that the meanings of the two articles are substantially the same. In my view, such an exercise does not demonstrate the point the second defendants seek to make.

[33] The plaintiffs' comparison of the different defamatory imputations arising in the two proceedings, which I referred to above at [21]–[22], demonstrate that there are significant differences in the defamatory meanings pleaded in each proceeding.

Step 3: Considering each article in each case as a whole

[34] I now turn to address the third and final step of the *Kirkland* test which involves an assessment of the articles as a whole.

[35] The plaintiffs properly accept that there is a degree of overlap between the publications in the two proceedings. Each proceeding pleads defamatory imputations concerning residents allegedly being misled about certain proposed amenities (such as tennis courts and swimming pools) at the Northlake development. However, the test is not one of overlap but whether the proceedings are "of the same or substantially the same matter". The flaw in the defendants' broad grouping approach (the sting) is that it may demonstrate overlap and some degree of commonality, but it does not establish the threshold of "*substantially* the same".

[36] I have already noted above that the focus of the NBR and Crux articles in this proceeding is different from those in the ODT in the Dunedin proceeding. This is apparent not just from the different headlines (as noted above at [30]) but also from the content of the articles themselves. The first ODT article (dated 20 March 2018) is

concerned with a plan change request by Northlake Investments Ltd in respect of the Northlake subdivision. The second ODT article (dated 1 August 2018) concerns an alleged lack of amenities at that development. On the other hand, the NBR and Crux articles in this proceeding focus on Pyne Gould Corp's decision to move its business operations offshore; the Northlake subdivision is a subsidiary element of the articles.

[37] Even if I am wrong in finding that the sting approach has some relevance to this third step (to the extent that it provides a framework for making a comparison), I find that the differences between the articles in the respective proceedings are such that the "substantially the same" threshold has not been satisfied. This case is fundamentally different to *Kirkland*, where the publications at issue were published on the same day, many of the words used in both articles were identical and five of the six pleaded meanings were also identical (the last one was a technical difference only).

[38] The defendants have not yet filed statements of defence.[10] Likewise, there is no evidence before me as to whether the witnesses in both proceedings will be the same (for example, local residents of Northlake). There is scant material before me to assess the defendants' contention of whether there really is any risk of inconsistent findings or issue estoppel (which is the policy rationale for ss 46–48 of the 1992 Act). In any event, the differences in the defamatory imputations (which I have referred to above at [21] and [22]) tend to demonstrate that the risk of inconsistent findings would not be that great. For example, even if a defence of truth were to succeed in the Dunedin proceeding in relation to the pleaded defamatory meaning that "the plaintiffs' objective is to make as much money as they can without consideration for the community as a whole", that does not necessarily mean that it is also true that "the first and second plaintiffs are unethical or have questionable ethics".

[39] For all these reasons, I conclude that the publications at issue in the Auckland proceeding and in the Dunedin proceeding are not "of the same or substantially the same matter".

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[10] Mr McKnight indicated from the bar that the defendants would plead conventional defamation defences including truth (justification).

[40] Consequently, it is not necessary for me to address the question of the exercise of my discretion. However, for completeness, I briefly address the discretion issue.

Exercise of discretion

[41] If I am wrong, and the matters in the two proceedings are "substantially the same", the next issue is whether the Court should dismiss or stay the proceeding.

[42] It is not disputed that s 47 confers a discretion on the Court. It is equally clear that the purpose of the s 47(1) notice requirement is to enable a defendant to apply for a consolidation of proceedings under s 48(1).

[43] The defendants may be correct in their contention that defamation proceedings are subject to unique civil procedures, including strict deadlines and additional requirements on plaintiffs. However, in my view, that provides no justification in this case for either striking out or staying the proceeding.

[44] I find there is no legitimate basis for exercising my discretion to either strike out or stay the proceeding. The defendants have not been prejudiced in any real way by the plaintiffs' (alleged) failure to give notice in accordance with s 47. The defendants were served with this proceeding on 28 November 2018. They have been aware of the existence of the Dunedin proceeding since shortly after that, namely since 12 December 2018. They did not need the plaintiffs to notify them of the existence of the Dunedin proceeding; on their own evidence they already knew about it.

[45] The defendants could have applied to consolidate the Auckland and Dunedin proceeding as early as December 2018 and are still free to do so.

[46] The defendants submit that the third plaintiff, as a corporate plaintiff, will need to establish loss in the substantive proceeding (s 6 of the Defamation Act 1992) and that an issue will arise as to whether loss was caused by one publication rather than another. However, as the plaintiffs have noted, this issue would equally arise even if the two proceedings were consolidated. While that issue may be a factor favouring consolidation it does not, in my view, support the making of the orders sought by the defendants. In any event, I would be reluctant to grant any stay of this proceeding,

which might then make the Dunedin proceeding a test case of the interrelated issues, without hearing from the different defendant parties in the Dunedin proceeding.

[47] For all these reasons, I would in any event have rejected the defendants' application.

Result

[48] I dismiss the defendants' application to either strike out or stay the proceeding.

[49] My preliminary view is that, having succeeded, the plaintiffs are entitled to costs on a 2B basis. If the parties cannot agree costs, then memoranda are to be filed within 14 days.

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Associate Judge P J Andrew

Pyne Gould goes out with a whimper

Peter Newport
Thu, 01 Nov 2018

The Wanaka subdivision part-owned by PGC's Torchlight fund.

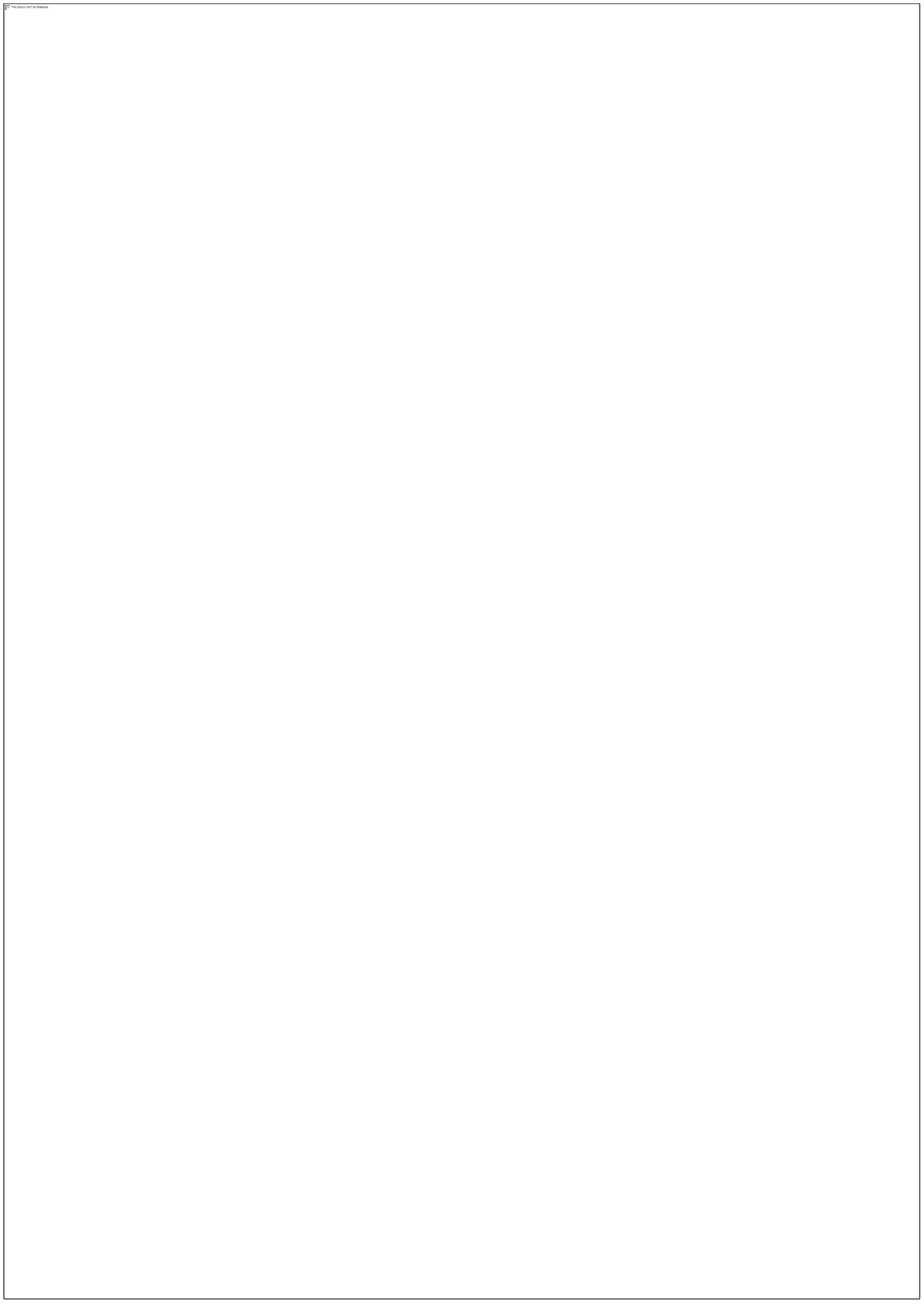
It was not the happiest shareholders meeting in the world.

Only three Pyne Gould Corporation shareholders turned up to Queenstown's Crowne Plaza Hotel in Queenstown in the forlorn hope that there would be some good news about their holdings.

They were outnumbered by PGC people keen to contain any difficult conversations about the company's planned departure from the NZX to the International Stock Exchange (TISE) in Guernsey.

There was never much chance the few could make a difference to the plan but they turned up anyway, keen to register their disappointment in the way PGC's share price was heading – south.

PGC director Russell Naylor did his best to set a positive tone for the meeting, supported by fellow director Noel Kirkwood and an adviser to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Director Russell Naylor addresses the meeting

Mr Walker was there to be a rousing cheerleader for all things PGC, in spite of the tiny audience.

He praised George Kerr's "vision" in handling the Marac and GFC situations and told shareholders "history will show that Mr Kerr and PGC did what they said they were going to do."

Shareholders were meanwhile interested in how the PGC share price was so low when PGC and the Torchlight fund had so many interests in Queenstown and Wanaka real estate, a booming market.

Wanaka subdivision

In relation to the Northlake subdivision in Wanaka, where PGC's Torchlight fund has interests in 100 sections in a project by developers Chris and Michaela Meehan, the meeting was told the sections would "eventually" be sold.

For all its apparent financial success Northlake has had some negative publicity. Amenities such as tennis courts and swimming pools have dropped off the Northlake menu causing complaints from people who bought land believed these things were part of the deal. Many of the houses,

small dwellings on tiny sections, are priced at more than $800,000, attracting further criticism from locals who were promised "affordable" housing.

Mr Adams from Christchurch got in the final word. Addressing the assembled PGC team, he said: "We'll stick with you but, please, just don't let us down."

In a statement posted to the NZX after the meeting concluded PGC said 17,455,621 votes were cast in favour of the resolution to delist from the NZX, or 77.2% of votes cast.

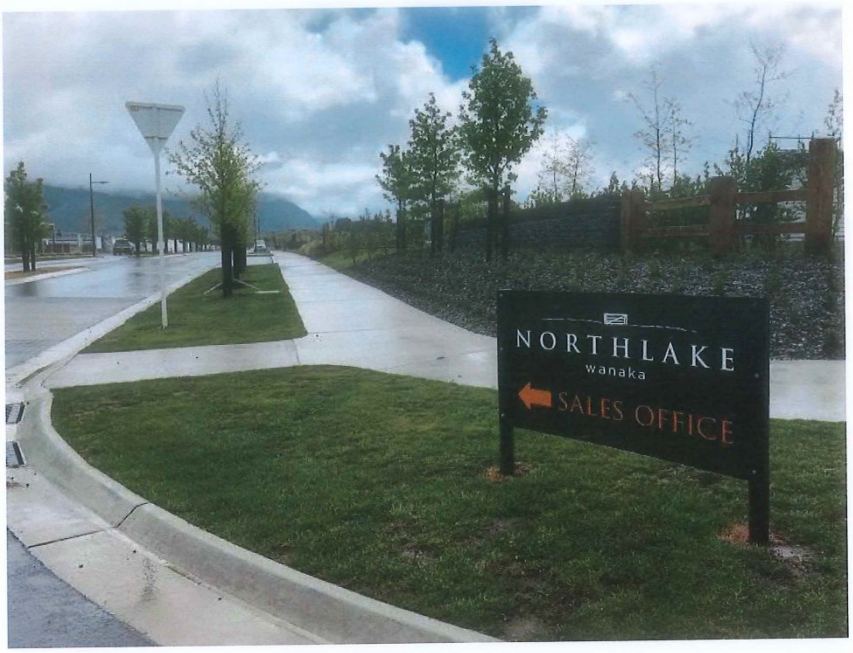
With Mr Kerr not eligible to vote his stake the number of votes cast represented 55% of the votes available.

In the statement Mr Kerr said it was pleasing to have the move "strongly endorsed" by shareholders.

"A shift of listing has been signalled by the board for many years, and is consistent with our strategy to deliver value to shareholders over the long term. It will also deliver short-term benefits, with a significant reduction in costs for the company, which resulted from the duplication of auditors to meet NZX rules.
"PGC shares have been very thinly traded for the past few years. Trading volumes are minuscule in both outright numbers and dollar value. Delisting and listing on TISE is not expected to have any detrimental impact on the tradability of PGC shares."

PGC shares closed down 2% at 24c, valuing the company at $49 million. They are due to cease trading on the NZX at the close of business on Friday, November 16.

'B'



Q'town rich lister takes controversial $45 million business offshore

- by **Peter Newport** :
- Nov 10,2018

THE NATIONAL BUSINESS REVIEW

George Kerr, a major investor in the Northlake and Hanley's Farm developments, has got shareholder approval to take his Pyne Gould Corporation off the NZ stock exchange to relist in the UK Channel Islands. In this story, published via the Crux partnership with the National Business Review, Peter Newport looks at the sad end to what was once a star performer on the NZ Stock Exchange. Mr Kerr's company has been the focus of some extremely controversial legal battles. He owns a large house on the shores of Lake Hayes but now lives in the UK.

It was not the happiest shareholders meeting in the world. Only three shareholders turned up to Queenstown's Crowne Plaza Hotel in Queenstown, in the forlorn hope that there would be some good news about their stake in the Pyne Gould Corporation.

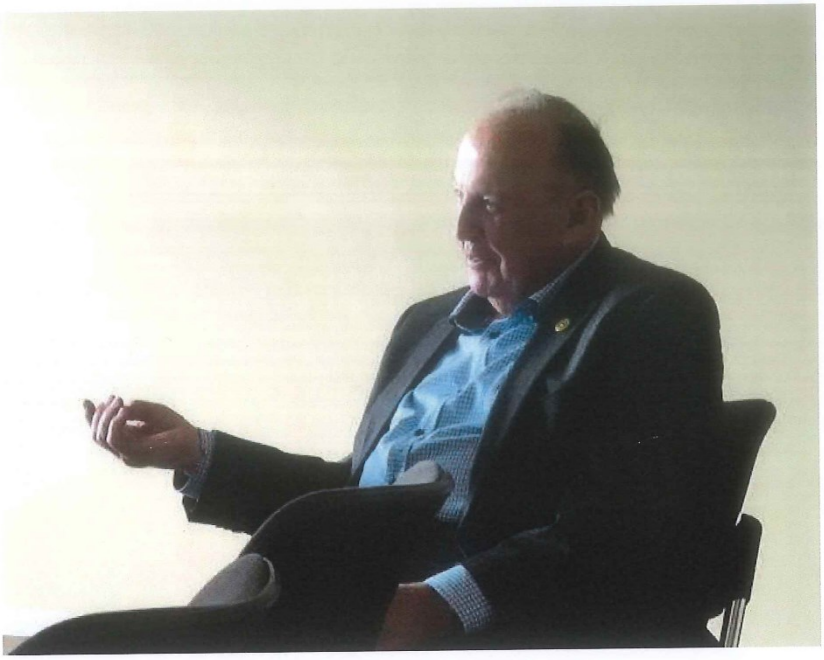
In fact the shareholders were outnumbered by PGC people, keen to contain any difficult conversations about the company's planned departure from the NZX to the International Stock Exchange (TISE) in Guernsey.

There was never any real chance that the minority shareholders could make a difference to the plan but they turned up anyway, keen to register their disappointment in the way PGC's share price was heading – south.

PGC Director Russell Naylor did a brave job setting a positive tone for the meeting, supported by fellow director Noel Kirkwood and the big- hitting advisor to George Kerr, Stephen Walker. Walker is also believed to be the third biggest shareholder in PGC.

PGC's Russell Naylor did his best to keep the tiny band of shareholders reassured at the Queenstown meeting.

But there was no avoiding the disappointment in the room as the TSS Earnslaw steamed backwards and forwards on the lake outside the hotel window. The old steamer was showing a lot more reliability than PGC's share price.



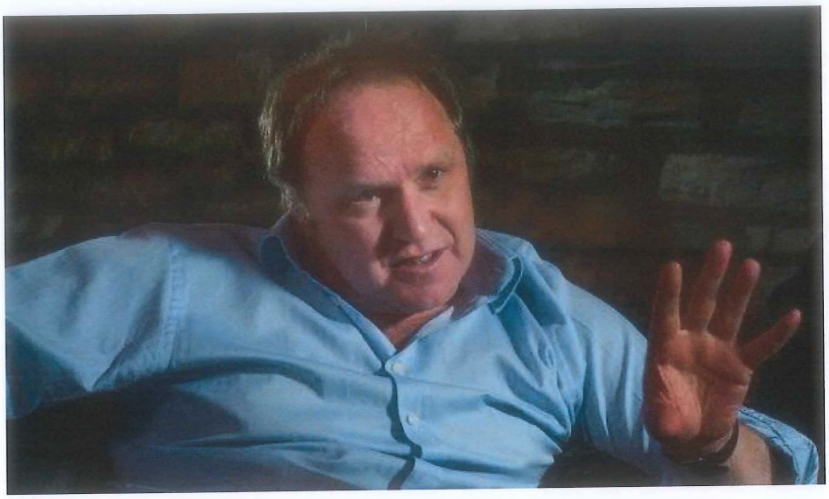
PGC shareholder Gary Adams at the Queenstown meeting - "show us the money."

Gary Adams is a former Southland farmer now living in Christchurch. He'd flown in to Queenstown for the meeting to get some news about his 267,000 PGC shares. "I still believe George Kerr is a decent man" Gary told the PGC team. But he did wonder about how Mr Kerr's reported worth in the NBR Rich list had gone up to $90 million, from $50 million, while the PGC share price "did not reflect that success."

The PGC team dismissed Mr Adams point, suggesting that the NBR Rich List was just "guess work."

Pyne Gould Corporation listed on the NZ Stock Exchange on March 30th, 2004 at the price of $5.30 a share. Now the shares languish at just 22 cents a share. Clearly things have not gone well from a shareholder perspective.

The move from the NZX to TISE was pretty much a done deal anyway with 77% of the votes from shareholders already in favour of the move.



George Kerr - "a razor sharp mind and a background in philosophy" - the words of Mathurin Molgat, director of a movie that Kerr invested in called Song of the Kauri. Image: Song of the Kauri.

But nevertheless, the tiny band of South Island shareholders managed to get some questions in and also made their point. In summary that was "when are we going to see a dividend?" That refrain was stated more than once and the answer was always the same from PGC's Russell Naylor – "we don't know."

The PGC view was that the move offshore would improve liquidity and escape the "mis-reporting" of PGC's affairs in New Zealand. "Whenever shares are put on the market here the share price drops." Mr Naylor denied that the offshore move was to escape uncomfortable scrutiny in New Zealand or force shareholders to sell their stock back to PGC at low prices. "It's all transparent" he told the meeting.

Stephen Walker was there to be a rousing cheerleader for all things PGC, in spite of the tiny audience.

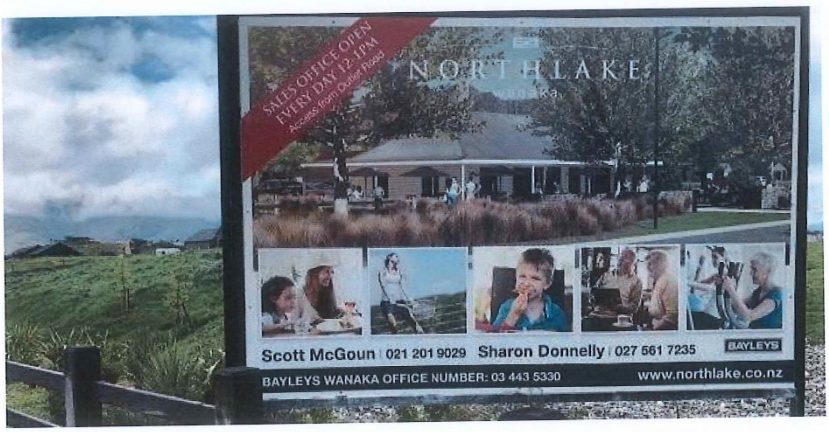
He praised George Kerr's "vision" in handling the Marac and GFC situations and told the brave band of shareholders that "history will show that Mr Kerr and PGC did what they said they were going to do."

The shareholders were also interested in how the PGC share price was so low when PGC and the associated Torchlight fund had so many interests in Queenstown and Wanaka real estate, currently a booming market.

One example is the Northlake subdivision in Wanaka where interests associated with George Kerr and John Darby sold the land to Torchlight in 2012 for $17 million. Developers Chris and Michaela Meehan then bought the land for a modest $3.25 million but leaving Torchlight with title to 100 sections. The Queenstown shareholders meeting was told that these sections would "eventually" be sold.

A row of modest Northlake homes - but lacking the modest pricing to match.

For the time being the Northlake subdivision is extremely successful from a financial point of view but getting some negative publicity for what some people see as a lack of community spirit. Amenities like tennis courts and swimming pools have dropped off the Northlake menu causing complaints from people who purchased land believed these things were part of the deal. Instead, parts of Northlake now look like workers accommodation with tiny houses, sitting on tiny sections but at far-from-tiny prices. Houses are over $800,000 in many cases, attracting further criticism from locals who were promised "affordable" housing.



Northlake in Wanaka - pity about the tennis courts ....

The success of investments like Northlake, and Hanley's Farm near Queenstown, made the shareholders at the Queenstown meeting more than a little uncomfortable in reconciling their underwater investments with this buoyant market.

They are not the only ones feeling uncomfortable. Investors like George Kerr, Torchlight and the Meehans are being accused of sailing close to the wind by other developers who are trying to take an ethical, community approach to new housing.

Lee Brown is behind the development next door to Northlake in Wanaka – Hikuwai. He's had a few run-ins with Northlake and says that it is tough trying to "do the right thing" when a development like Northlake, in his view, is gouging the market. Lee comes across as very straightforward. He's the grandson of well-known tuxedoed show business personality Joe Brown – labelled by some as the Godfather of 20th century Kiwi show business.

Lee Brown - finding it tough to build affordable community homes right next to the Northlake subdivision

"My grandfather always did the right thing for the community" says Lee. But he's found himself being cold-shouldered by real estate agents who have, according to him, been warned off selling anything at under Northlake prices. He's also found local Northlake contractors being nervous of working on his project as well as local council planning staff who sometimes play things strictly by the book because they know that Lee does not have an army of expensive lawyers backing him.

Lee Brown has also found himself literally on the receiving end of muddy runoff water from the Northlake subdivsion that runs over his land into the Upper Clutha river. In this eco-sensitive town that's put Lee Brown in a difficult position as he has done everything by the book, and more, to manage the runoff. That he has to somehow manage the Northlake runoff as well seems to be him profoundly unfair - and that's an understatement.

‘C’

Northlake plan change opposed

By Sean Nugent

1. Regions > Wanaka

Houses continue to sprout up within the Northlake subdivision but some residents are worried about the lack of traffic management through the residential area to the proposed commercial zone. PHOTO: SEAN NUGENT

A proposed plan change to the Northlake subdivision in Wanaka has received strong opposition from developers and local residents.
In December, Northlake Investments Ltd requested a plan change to the Northlake special zone, to provide space for a supermarket and a retirement village to be built in the future.

The request sought to increase the size of the commercial zone by 4.2ha, increase the total retail space from 1000sqm to 2500sqm, and allow a single retail activity within that area to have a space of 1250sqm, most likely a supermarket.

The Queenstown Lakes District Council put the plan change request out for public notification in mid-January and had received 13 submissions, all but one of which opposed the application.

Stephen Popperwell, a neighbouring resident to Northlake, submitted it was ``quite clear that the developers of this subdivision are intent on pushing the boundaries at every opportunity".

``It is all take by the developers. Their objective is clearly to make as much money as they can, without consideration for the community as a whole," he said.

Some current Northlake residents were concerned by the potential increased traffic from having a larger commercial zone.

Kim Parry submitted she ``would like to see more thought and community discussion put into the traffic management, infrastructure and proposed size of the commercial development".

Mrs Parry believed the roads were too narrow and there were already safety concerns due to the amount of traffic going through the area.

Fellow resident Lindsey Turner agreed.

``The plan change needs to include traffic calming measures for Mount Linton Ave and Northlake Dr, such as speed bumps and narrowed road sides to discourage commercial use of this road which runs through firstly a rural residential area into high density housing."

``Currently it has become a big issue of concern and needs to be addressed urgently to ensure that it is only used as intended and is a safe road for resident in the area which it currently is not," she said.

Three other local developers - Willowridge Developments Ltd, Central Land Holdings Ltd, and Exclusive Developments Ltd - opposed the application for various reasons.

Exclusive Developments, which is developing the neighbouring Hikuwai subdivision, believed the proposed changes would have ``serious detrimental effects" including a significant impact on traffic, several environmental effects such as increased stormwater discharge into the Clutha River, and ``unacceptable effects on the landscape that are not capable of being mitigated."

Willowridge and Central Land Holdings, the developers of the Three Parks and Anderson Heights subdivisions, submitted the application had no need for increased retail space and had not given appropriate consideration to the ``full development potential of Three Parks or the permitted activity status of retail activity at Anderson Heights in the Proposed District Plan".

Further submissions on the application close this Thursday, March 22.

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Northlake lacking proposed amenities

Some Northlake residents are concerned about lack of amenities. Photo: Sean Nugent

Another group of Northlake residents are concerned about the lack of amenities in their neighbourhood and the direction they believe the developers are heading.

They wished to remain anonymous, as they believed they would be threatened by the lawyers of developers Chris and Michaela Ward Meehan if they identified themselves.

The group is to seek legal advice on whether they have a case against the developers for breaching the Fair Trading Act.

Discontent among residents has been rising this year, in light of a plan change request that if granted would replace a proposed leisure centre with a supermarket.

Three weeks ago, the ODT reported a Northlake family was considering selling their house because living in the subdivision had not met their expectations.

The leisure centre was one of many amenities outlined in the Northlake sales brochure. Tennis courts, a swimming pool and a medical centre were also said to ''may'' be part of the Northlake Village Centre.

However, residents said the tennis courts were to be replaced by a series of villas, the swimming pool sat where the supermarket car park would be and there was yet to be any sign of the medical centre.

''We're meant to have two swimming pools, two tennis courts, a little recreation centre, and [instead] we're getting a supermarket . . . who wants a supermarket?'' one resident in the latest group to complain said.

"I have no idea what they're trying to do. It's almost like they're trying to create their own little city inside Wanaka.

"I just think the whole thing sucks and I'm not happy about it. I don't even think I want to live there."

Green spaces set aside for recreation reserves were also now being filled with houses and the subdivision was "starting to look like Coronation St".

While the sales brochure only says such amenities "may" exist, it does say the Northlake Village Centre "will provide the residents of Northlake and the wider community with valuable community facilities within walking distance of home".

Section 14 of the Fair Trading Act states no person selling land can "make a false or misleading representation concerning . . . the existence or availability of facilities associated with the land".

The residents said they would be seeking legal advice on whether they had a case against the developers with regards to breaching the section.

Northlake development manager Marc Bretherton did not respond to a request for comment.

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