

**ECONOMICS AND INDUSTRY
STANDING COMMITTEE**

INQUIRY INTO KARRINYUP LAKES LIFESTYLE VILLAGE

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 7 MAY 2008**

Members

**Mr R.C. Kucera (Chairman)
Mr G.A. Woodhams (Deputy Chairman)
Dr J.M. Edwards
Mr M.P. Murray
Mr A.J. Simpson**

Hearing commenced at 10.49 am**DEMPSEY, MR MALCOLM****Real estate agent, Mal Dempsey Real Estate,
examined:****PHIPPS, MR CECIL VERNON****Retirement village consultant, Residential 55,
examined:**

The CHAIRMAN: Good morning. Mal, please join us at the table. Originally it would be Ces giving evidence, but we thought as your roles crossed over in the initial stages, we may as well deal with both of you at the same time, if you are agreeable to that.

Mr Dempsey: I am quite agreeable, yes.

The CHAIRMAN: I point out that we have Hansard recording and logging everything today for us because it is a formal hearing. As one person speaks, it needs to be only that person speaking so that Hansard can record and it is important that you do not cross over each other when you are speaking. If we can go from one to the other when we are grassing an issue or if there is a question that you want to clarify that the other person has spoken about, make sure that Hansard is in a position to record what you are actually saying individually. They get used to us talking across each other in Parliament and we are terribly impolite but we like witnesses not to act like politicians.

Can I introduce Mick Murray, please—that is Ces Phipps and Mal Dempsey. Mick Murray is the member for Collie-Wellington.

Mr Phipps: I met him in China.

The CHAIRMAN: Grant Woodhams is the member for Greenough and Tony Simpson is the member for Serpentine-Jarrahdale.

Mr Phipps: Greetings Tony.

The CHAIRMAN: Dr Judy Edwards is not with us today. She may come in later on and, for those who do not know, I am Bob Kucera. Our two research officers are Loraine, our principal research officer, and Vanessa.

Just formally if I may before we start, as I said, this is a formal hearing. The committee hearing is a proceeding of Parliament and it warrants the same respect that proceedings in the house itself demand. Even though you are not required to give evidence on oath, any deliberate misleading of the committee may be regarded as a contempt of Parliament. Firstly, I ask you both individually have you completed the “Details of Witness” form?

Mr Dempsey: Yes, I have.

Mr Phipps: Yes, honourable Chair.

The CHAIRMAN: Do you understand the notes at the bottom of the form? Both of you can answer individually.

Mr Dempsey: Yes.

Mr Phipps: Yes.

The CHAIRMAN: Did you receive and read an information for witnesses briefing sheet regarding giving evidence before a parliamentary committee?

The Witnesses: Yes.

The CHAIRMAN: Do you have any questions relating to your appearance before the committee today? I am talking about the formal process of being before the committee.

Mr Dempsey: I have no problem at all.

Mr Phipps: Only to say that we may not intimately understand the protocols but I am sure we will get the swing of it.

The CHAIRMAN: We will advise you on that. I am sure you will do as well as everybody else we have here.

Would you please state the capacity in which you appear before the committee?

Mr Dempsey: I was one of the principals involved in the Karrinyup Lakes resort lifestyle village and I thought if there was any assistance I can give to the older residents there I would be most pleased to do so.

The CHAIRMAN: Thank you. When you say you were a principal, you were a principal in the sales and marketing, I think, in the promotion of it. What was your actual role?

Mr Dempsey: I was part of Residential 55 in my capacity as a real estate agent. We both run our separate operations, but we work-in together in conjunction to make Residential 55.

The CHAIRMAN: So you are a principal of the business that was promoting and marketing the actual lifestyle village, would that be correct?

Mr Dempsey: That is right and the sales staff come from our office.

The CHAIRMAN: Right, thanks for that. Mr Phipps?

Mr Phipps: I am the principal and licensee of Residential 55. You will understand that we were appointed as joint selling agents.

The CHAIRMAN: We are aware of that, yes. We have received your submission; do you wish to put any amendments to that submission? You can do it by way of giving evidence today in any case but have you any amendments you wish to put to your submission today.

Mr Phipps: No, what I might say is that I dealt with the issues of Moss Glades. There is a secondary part to the inquiry and that is dealing with the events surrounding the residents and the Retirement Villages Act—the way that was administered. I did not make submission on that and I thought that might arise this morning.

The CHAIRMAN: I can assure you it probably will. Before we ask any further questions, do you wish to make any statements in addition to your submission? Are there no further statements?

Mr Phipps: Not from me, no.

The CHAIRMAN: And the same with you?

Mr Dempsey: Yes, I am the same.

The CHAIRMAN: You did not actually put a submission in. You are here —

Mr Dempsey: No, I was told by Loraine I did not need come as my daughter was coming and she bosses me around anyhow so I thought I would let her go with that.

The CHAIRMAN: All right. Both as partners to the original agreement, could you please describe; firstly, how you were appointed and, secondly, what do you understand the village to be? We are talking about the Karrinyup Lakes Lifestyle Village. What did you understand the village to be and what facilities at the time that it would provide for the residents?

Mr Phipps: My understanding was that it had the potential to be a boutique village of some 50-odd units and it would offer small but nevertheless reasonably comprehensive community facilities and, of course, that is one of the areas that is causing a problem.

The CHAIRMAN: You were both appointed as partners, I suppose, in the promotion and sales. When you first came in, what was the state of the promotion? Where were they at with the village? Was it right at day one or how did you get to be appointed?

Mr Phipps: I expressed in here that I had had contact with Eion Martin through the board of the Meath home in Trigg. I was attending meetings of that in my capacity as a consultant for perhaps the best part of 12 months. He had been a long time member of that board. I saw him in action there and although he tended to be rather forthright often in his views, he nevertheless was playing his part as a valuable member of that committee. Somewhere in that time frame he was—he may have already been, I just cannot remember—a Stirling city councillor. I took him to be a trustworthy fellow. He asked us—asked me—if we would look at assisting him in the marketing of Karrynup Lakes. He explained that he had had another agent there operating for some 12 months and they had not sold anything.

Mr A.J. SIMPSON: Through the Chair, who was that agent?

Mr Phipps: Don Allen.

The CHAIRMAN: When you say he asked you to assist, what were you showing? What was the nature of the plans that were there? Was everything completed? Was it started? Was it finished? Did you have a complete view of what the facilities were going to be and was there a time frame for completion given to you or a time frame for the sales and development of the village?

Mr Phipps: There was a house very near completion which was to be the display home. We were given the material, which I have enclosed at the back of here, this Karrynup Lakes —

[Witness held up a document.]

The CHAIRMAN: That is this style of —

Mr Phipps: That is it, yes. We were given those and that formed the basis of our understanding of what we were offering and that, of course, included this depiction of the village clubhouse. There were some discussions later down the track, probably some best part of 12 months later, about the prospect of making that two-storey but, of course, the process there as he needed to take the residents in and get their approval, in effect, to do that. There was nothing conclusive sorted on that at the time we left, so really that is the form of the club facilities which was being offered.

The CHAIRMAN: Was this brochure the only information you were given about the village itself?

Mr Phipps: No, the disclosure documentation of which I do not now have a copy —

The CHAIRMAN: I think you supplied some of that with —

Mr Phipps: Yes, I supplied as much as we had but it is not comprehensive. We do not have a copy of the lease, for instance. I did not realise for quite a long time that that was effectively being withheld from us. We had to sign the documents, of course, with the residents, but they disappeared into their administration and a copy never came back to us.

Mr A.J. SIMPSON: What time did you part company in terms of being the signed agent?

[11.00 am]

Mr Phipps: That was 2004, so we had been involved for some two or 2.5 years.

Mr Dempsey: Yes.

The CHAIRMAN: You mentioned that you felt the leases were being withheld. Why was that do you think? Did you have a reason to think that?

Mr Phipps: We were not necessarily entitled to a copy. That is the first issue. They were not out of order in withholding them from us, but we normally do have copies of the documentation, which we keep on our file.

The CHAIRMAN: Can you quickly take us through this next point? I understand that you have been involved in the sale or marketing of other villages.

Mr Phipps: Yes.

The CHAIRMAN: In fact, on a personal level, I think I met you both at the opening of the Masonic Village.

Mr Phipps: Yes, that is right.

The CHAIRMAN: What would be the normal course that you, as an agent, would take in selling such a village? What would you expect to happen?

Mr Phipps: Let me first say that the process they were working on was to grant prospective residents a reservation of a unit, let us say, without requiring any financial commitment from them. The process we have used elsewhere has been to require people to pay not a contractual sum but a bonded sum, if you like, of \$1 000, in exchange for which we will remove the unit of interest to them from the market for two weeks. The two weeks are important in that the act requires that residents have their documentation—their disclosure stuff—for five working days before we can commit to contract. It is our own feeling and experience that five working days is not an adequate time in which family members who get involved in this process can gain an understanding of it, so our process extends that to two weeks. At the end of the two weeks, we then expect them to either seek an extension or commit to contract, which then requires them to pay the balance of another \$9 000 into the trust and to sign the lease documentation, notwithstanding that that may be conditional on the sale of their home or whatever. The other alternative is that they say, “Here are your documents back. We’re not interested in proceeding further.” A reasonable percentage of people do that. We immediately then refund their \$1 000. That is the process that we have normally used and that is the process that we invoked here.

The CHAIRMAN: Did they follow that process?

Mr Phipps: During the time we were involved, yes.

The CHAIRMAN: Okay. I will just take you back a step. I am sorry; did you have a question on that?

Mr A.J. SIMPSON: Taking a step back, did Residential 55 have an exclusive authority to sell the units? Were you the only real estate company that could sell in that lifestyle village?

Mr Phipps: Yes, we had exclusive authority to sell the first 20 units.

The CHAIRMAN: I will just go back and paint a slightly bigger picture. If an organisation asked you to market a village like this, would you assume when they first came to you that it had all been approved and that this would be the plan that would be taken forward and pursued?

Mr Phipps: That is right.

The CHAIRMAN: I presume that you would then assume that all of the necessary planning approvals had been gained and the building licence had been accepted etc, so you would be selling to residents, in good faith, something that had already been cleared as part of the normal planning process.

Mr Phipps: Yes.

The CHAIRMAN: Would that have been your presumption here?

Mr Phipps: Yes, that is true. I provided a copy of our authority to sell with the documentation. Part of the reason I did that was that there was one part of it I felt sensitive towards, which was ensuring

that a memorial was lodged with the titles office for the site. It did not occur to me, because he is a man of the building industry, a city councillor —

The CHAIRMAN: Are you talking about Martin?

Mr Phipps: Yes, Martin.

The CHAIRMAN: The other partner you dealt with would have been Mr Whyman.

Mr Phipps: Yes, that is right.

The CHAIRMAN: But we are talking exclusively here about Martin.

Mr Phipps: Yes. I will tend to do that, I guess, because he was the spokesman, really, for the organisation. I therefore did not think to require in the authority to sell a notice that they had all those building licences and other approvals. I took for granted that a man of his standing would do that.

The CHAIRMAN: Looking at the brochures and documentation that you have here, it is very much in the present tense, which leads one to think that all of this kind of thing has been done.

Mr Phipps: Yes, exactly.

The CHAIRMAN: You have said that the exclusive warranty to sell warrants that required memorials have been lodged. What did you understand the required memorial to be in this instance?

Mr Phipps: We were concerned that the memorial was lodged to cover stage 1, or phase 1 as they refer to it here, which included 21 units, I think, on the original plan. It was my understanding that the memorial could not be lodged on the balance of the land for some obscure reason. The bank seemed to be involved with that. However, that was not my concern. As long as it was lodged on stage 1 —

The CHAIRMAN: The 20 units you were involved in selling?

Mr Phipps: Yes, and then it would follow that they would lodge a memorial on the balance of the site when that came into focus.

The CHAIRMAN: That basically answers my next question. It was not over the entire site, it was just over the parcel of land that you were dealing with for the 20 units.

Mr Phipps: That is right.

The CHAIRMAN: Was that also your understanding, Mr Dempsey?

Mr Dempsey: Yes, it was. I had met Eion Martin before down at our bowling club as the local councillor. We were fully aware that he was an architect by profession. I thought the whole show was going to be tickety-boo, you know? In fact, we had quite a few people from our bowling club—friends of mine—who wanted to buy there. In fact, it was the only retirement village that I have dealt with that I thought I could go and live in, because some of the units had access to the street, it was well located close to the beach, it was near a golf course and shops—all that sort of stuff. I was quite taken with it when we first started. I was quickly disillusioned, though.

The CHAIRMAN: You said that you were quite taken with it. Were you shown full, schematic plans?

Mr Dempsey: Yes, we were shown plans. They were not full, schematic plans, just Mr Martin's sketches, I think.

The CHAIRMAN: You were shown various sketches?

Mr Dempsey: Yes.

The CHAIRMAN: Were you ever shown a plan that was actually approved by the then minister?

Mr Dempsey: I would not be aware whether what we were looking at was approved or otherwise. There were some detailed drawings of individual homes. There was no building licence stamped on them or anything of that nature, but that is not unusual.

The CHAIRMAN: Just to talk about plans being stamped, what was your understanding of the situation in relation to the Western Australian Planning Commission approval that was required for leases to be sold?

Mr Dempsey: Adrian Pagget, the solicitor who put all the documentation together, is well known to us and to the industry. In fact, he was part of the consultative committee that worked to bring the act together. That would be Adrian's area of expertise rather than ours.

[11.10 am]

The CHAIRMAN: That sort of leads on then to the next question: were you providing the information to prospective residents on the leases or was that something that was done by Moss Glades itself?

Mr Phipps: I believe that we would normally assist residents' understanding of the lease document. That is part of the process we go through when we give them the lease. Schedule 1, which is normally up the front but not necessarily so, those 44 questions are paramount really because as you will understand under the act, the answers that are given in there override anything that follows in the lease itself. I think at times there has been a bit of a lack of understanding of that in the industry in the preparation of documentation, so developers can shoot themselves in the foot with their answers to those 44 questions.

The CHAIRMAN: Is that the schedule 1 document that is required under the act to be handed to the proposed residents —

Mr Phipps: Yes, that is right.

The CHAIRMAN: — or a person who is showing an interest?

Mr Phipps: So, we start off by explaining how important that is. I mean, we cannot be laborious about it, of course, but we talk about the importance of the memorial, how the act then following from that creates a first charge on the title of the residents' interests etc.

The CHAIRMAN: You actually saw copies of the leases? Were all the leases the same or did they vary depending on —

Mr Phipps: I believed they were the same.

Mr Dempsey: Yes, I did not see any difference. My daughter and son-in-law and niece did all the selling. Normally we sit down and write the contract but we were doing three villages at once. We were out at, say, Madeley, my daughter and son-in-law were down at Karrinyup Lakes, and Ces and his wife were over at Maddington, so we were spread wide and far. However, we did have numerous information evenings and we had some fairly big ones—I think we had one at the bowling club —

Mr Phipps: Yes.

Mr Dempsey: — down at the North Beach Bowling Club with some slide presentations, and on paper it looked quite good.

The CHAIRMAN: So as far as you were concerned, you were comfortable with what was being said in the leases and you were comfortable with the amount of information that was being given to the potential residents?

Mr Phipps: Absolutely.

The CHAIRMAN: I suppose I can ask you for an opinion because you were involved in those other villages. Your view you seem to be expressing is that they contained the kinds of compliance that is required under the retirement villages code of fair practice.

Mr Phipps: That is right.

The CHAIRMAN: I noticed you did make comment earlier on that you were concerned about what you saw as perhaps a withholding of leases. Evidence presented to the committee by a number of residents has suggested some initial confusion around the titles and whether the residents would receive an individual title for each of their homes. Did you have any recollection of that?

Mr Phipps: I do not, but I can understand it. It is not unusual. I guess in the excitement of making their decisions etc, quite often they do not hear the detail of what you are saying. However, I think the majority would be quite clear on it.

The CHAIRMAN: What were you initially given to understand about the development in relation to titles? What was your understanding if somebody came in and said, “Yes, I want that house. I’m going to purchase that house”, what would the paperwork show at the end of the transaction? What would the title represent to those people?

Mr Phipps: The title they would actually get would be a copy of the lease-for-life; that is their title, really.

The CHAIRMAN: They are not purchasing the premises; they are purchasing the right to occupy it for life, essentially.

Mr Phipps: Yes, that is right.

Mr Dempsey: Mr Chairman, this was very well spelled out at all the meetings. We have done hundreds and hundreds of these and it is a big problem with all the family—they are all worried about what they will lose out of their estate.

Mr A.J. SIMPSON: Their inheritance, yes.

Mr Dempsey: They are not worried about mum and dad and their good lifestyle; what is left for me, you know? You have had to go through with a tooth comb and let them know. I used to say the Retirement Villages Act is your buffer—someone has to stand between you and the developer because some developers are not as nice as others; some are kind and charitable, some are a little bit more ruthless. I felt that the Retirement Villages Act would act with a big iron fist if something went wrong. That is what I assumed.

Mr A.J. SIMPSON: Yes. Since you were there for two and a half years, did you ever see any documents—a financial return for the residents who were there? It seems to be unclear on that sort of document—you were always promised it and never saw it or what was your understanding of it?

Mr Phipps: I do not recall seeing the financial statements that are required under the act or more particularly, the code. However, bearing in mind the more specific nature of those requirements has come in more recent amendments to the code, the code has become more forceful on those issues and very appropriately, too. Even so, it is obvious that they did not keep up to speed with the requirements there.

The CHAIRMAN: Even though before the amendments to the code, I think in 2004, there was a series of requirements that developers —

Mr Phipps: Yes.

The CHAIRMAN: Now, if I can take the opposite tack with you, you are saying at the meetings that you made it very clear to the residents on what the power of the code was and what the portents of the code were in supporting them. Was Mr Martin or Mr Whyman at those meetings?

Mr Dempsey: Down at the bowling club he was.

Mr Phipps: Yes, there was a major meeting called when resident dissatisfaction was first starting to become quite forceful.

The CHAIRMAN: When did that first arise, by the way?

Mr Phipps: How many residents were there in—there was quite a few in the village at that stage, so there were probably —

Mr Dempsey: About 30 people in the garage and I know —

Mr Phipps: Yes, it would probably be about 18 months down the track I would think.

Mr Dempsey: Yes, I would suggest —

The CHAIRMAN: From the sale of the first premises?

Mr Phipps: Yes.

The CHAIRMAN: Can I just take you back to that other question? The reason I am asking you that is that if the residents—it was made quite clear to them—if Mr Martin and Mr Whyman were at the meetings, in addition to their knowledge as developers, it would not have been difficult for them to pick up the same information as the residents, so they would have known—I put it to you—what their requirements were under the codes?

Mr Phipps: Absolutely, yes. Mr Martin would have known from his other involvements with Meath. Meath is not only a residential care facility, but it has quite a substantial resident funding component.

The CHAIRMAN: Yes, I was on the board of Swan cottages for a number of years and Meath is very similar to their set up. Could you just let Hansard know what Meath actually is?

Mr Phipps: Yes, I have an official title which —

The CHAIRMAN: Essentially, it is a retirement village or a lifestyle village, which also has, as I understand it, both care and high care.

Mr Phipps: Yes. They had at the time, I think, 65 hostel places, which they were looking to rebuild and at the same time to build the resident-funded component of that village. Now, Meath itself is an Anglican entity but it is a bit of a strange one because it does not fit under Anglican Homes; it has an ancient direct licence from Canterbury.

The CHAIRMAN: However, its operations would be similar to this particular setup, the only difference being that this is essentially a profit-driven basis; they are a not-for-profit organisation but the code applies in exactly the same way.

Mr Phipps: Exactly.

Mr A.J. SIMPSON: From your submission, it says that in September 2004 you felt that Mr Martin wanted to take over the selling of the leases himself and that he was anxious to terminate your services. Could you please explain what you meant by that?

[11.20 am]

Mr Phipps: Yes. My view of it was that he originally did not know how to start. He had learnt over time what to do and now he could despatch us, of course. One reason he gave was that Glenda was, I think, siding with the residents too much. On two or three occasions, he suggested that we should remove her from selling. I would not contemplate that, although I did not get into an argument with him about it, because Glenda is a very capable lady who can stand against him. If we were to put a submissive person in there, he or she would have been lost.

Mr A.J. SIMPSON: Under your original agreement you signed up to sell only the first 20.

Mr Phipps: Twenty, yes.

Mr A.J. SIMPSON: Had you done that by September 2004?

Mr Phipps: I seem to remember that we had sold 19.

The CHAIRMAN: Can I just take you back a little? You said that Glenda was standing between them. I understand that an initial meeting was held at the bowling club with prospective tenants.

Mr Dempsey: That is right, yes.

The CHAIRMAN: The next meeting was held in the double garage of the display home.

Mr Dempsey: No, we had quite a few Wednesday night briefings. People would come down on a Sunday when Glenda had it open and had a lot of questions, so I said that instead of trying to answer one at a time, why not have a meeting for an hour—seven o'clock to eight o'clock—to have a cup of tea and answer any questions. Cec would do the act part and we would run through that part.

The CHAIRMAN: But they were essentially selling and marketing meetings.

Mr Dempsey: That is it.

The CHAIRMAN: I understand there was a meeting that you may even have chaired, Mr Dempsey, on the setting up of the management arrangements etc for those residents who had come into the village.

Mr Dempsey: No. There was one big protest one.

The CHAIRMAN: I see.

Mr A.J. SIMPSON: That is where we are getting confused.

Mr Dempsey: There was a big protest meeting, because Cec outlined to Eion Martin quite strongly that there was a lot of dissent in the village. Glenda was on one side asking me when the clubhouse and the facilities would come. We outlined in the weekly meetings we had with Eion and Len that they had better do something about it. He promised the world. I said that I would chair the meeting. Cec was there—we were all there. We tried to allay some of the fears by saying that they were going to happen because we were assured that they were going to happen.

The CHAIRMAN: So from day one, as well as developing the complex, Mr Whyman and Mr Martin were also, in essence, managing the complex and the day-to-day running of the village. Would that be correct?

Mr Phipps: That is correct. Our understanding was that the management would come to an external body. We were a prospect for that. Later on, Eion Martin indicated that he was going to manage the village.

The CHAIRMAN: Was your view based on the experience that the other ones you have been involved with normally have a board of management with one person heading the board? Was that the model you envisaged, or was it to have an individual managing it?

Mr Phipps: Not really. I am of course on the board of Freemasons Homes, as you would understand. The board that operates the home, although it has a corporate structure that does the hands-on management, is a board of members of freemasonry and not of residents. The structure for the residents is through a residents committee, which works with the administering authority to take input from residents. Management is not bound to take resident input, but there is always the threat, if the act is working properly, that if management does not accept the reasonable proposition of residents, it will go through the process to the tribunal, which will rule on it. It appears to me that that is not happening satisfactorily under the administration of the act.

The CHAIRMAN: Can I take you back to the protest meeting? Was that the meeting that was held in the garage of the display home?

Mr Dempsey: Yes.

The CHAIRMAN: That had come about because there was a growing—what?

Mr Dempsey: Discontent.

The CHAIRMAN: Discontent between the management—essentially Mr Martin—and the residents?

Mr Dempsey: They had been promised so much. Some of them were in their 80s when they came there. If you are in your 40s and there is a two or three-year delay, it does not mean much, but when you are 80, that might be all you have left—it could be 100 per cent of your time. It gets very crucial. These people had given up lovely homes to come to this place and the things they were promised were not happening.

The CHAIRMAN: What kind of things are we talking about?

Mr Dempsey: Facilities. People had sold homes with swimming pools. They were going to have a little pool and a clubhouse in which to socialise. All that sort of stuff.

The CHAIRMAN: My understanding from previous submissions, and I think also from your submission, is that those facilities would be completed around the same time as the completion of your stage —

Mr Phipps: Stage 1.

The CHAIRMAN: Stage 1, which was the 20 units. Was none of that done?

Mr Dempsey: No. Not even a start.

The CHAIRMAN: Out of that meeting, I understand that you assisted in setting up a residents committee, Mr Dempsey.

Mr Dempsey: Yes. I think Mr Phipps also helped get the committee off the ground.

Mr Phipps: Yes.

The CHAIRMAN: What was your reason for doing that?

Mr Phipps: It is not a requirement of the act but the act certainly leans on that as part of the checks and balances in the operation of the industry. It appeared to me to be important that the residents have such a committee to speak for them.

The CHAIRMAN: What was Mr Martin's attitude towards the committee being set up?

Mr Phipps: He would not recognise it.

Mr G. WOODHAMS: He would not recognise it being set up or he would not recognise the committee?

Mr Phipps: He would not recognise the committee when it was set up.

Mr G. WOODHAMS: He was at that meeting though?

Mr Phipps: Yes, he was.

Mr G. WOODHAMS: He was aware that the committee was going to be set up?

Mr Phipps: Yes.

Mr G. WOODHAMS: Would he have perceived that you were going to drive that committee?

Mr Phipps: I guess it would be incorrect to say that I was going to drive it. I was there as a resource for the residents really.

The CHAIRMAN: I get the impression, which I think Mr Woodhams is picking up on, that you were concerned, even at that stage, about the relationship between management and the residents.

Mr Phipps: Yes. I could recognise that what had the potential to be a very pleasant and happy village was deteriorating to where it was going to be a bunfight all the way, and that is not what these villages are about.

Mr A.J. SIMPSON: Was it your perception that Mr Martin was just plain greedy and just did not want to do it and did not having the backing? I know that is not the right word to use, but I am at a bit of a loss. You have a great village there that looks fantastic, but you are fighting all the way to the clubhouse facility. The money was coming in but he did not seem to want to —

The CHAIRMAN: By the way, this committee is privileged, so we are more than happy for you to state your views.

Mr Dempsey: I think he is the meanest man I have ever met. He and Len are regular churchgoers. I believe they would go there with \$20 to put in the collection and take \$25 out. That is my opinion. I firmly believe that. You asked earlier why we were terminated after 19 sales. He was paying us a commission of 2.5 per cent on, say, a \$300 000 sale, or \$7 000. He quickly thought, “Hang on; this is going out of my pocket.” He wanted us out of the way. People would come and deal with his office girl, who was on a minimum wage, whatever she was paid. She would do the sales. He watched us or Glenda in operation and he thought, “This is a piece of cake. I can do this.”

Mr A.J. SIMPSON: But he never wanted to put any money back in it to keep the whole thing rolling along.

Mr Dempsey: No, he would not spend a cent anywhere.

The CHAIRMAN: Can I just take you back to the comments you made about the operation of the act and the code? Is there a weakness in the act when a circumstance like this starts to appear?

Mr Phipps: I believe the act is not strong enough in some areas, not just on the basis of this instance, but also some of the bigger players—you would be aware of one or two—have finished up distressing some of their residents on just an isolated issue.

[11.30 am]

The CHAIRMAN: I have seen one where they serve eviction notices on widows. Sorry, that is another matter.

Mr Phipps: The act is not strong enough in some areas. I think there is more potential in the act than is exercised under its administration. The way I view it is the administration of the act is reactive. That is a major problem. We are dealing with people the same way as we are in the real estate industry—people and their livelihoods, their equities and whatever they have got. On the one hand, in the real estate industry we have the REIWA board, which is a proactive administrator of that legislation. Here we have a reactive thing which is happening after the event and things have to be proved. I will give you an instance of my own experience of a few weeks ago. You would be aware that in Saturday’s *The West Australian* there is an editorial section for retirement villages. A few weeks ago an article about one of the National Lifestyle Villages appeared. The heading was about this retirement village. It came up through the text of the article all the time that this was a retirement village. It concerned me that people who were looking at that kind of accommodation, which is park homes under that legislation, could presume that they have the protections of the Retirement Villages Act. I rang someone on the staff at National Lifestyle Villages and said, “Have you got a memorial on that site?” They said no. I said, “You are not a retirement village. The act is specific.” That person said, “That will be the *West* that has run amok with that.” That may well be true. I rang consumer affairs on Monday. I asked to speak to someone who was dealing with the legalities of retirement issues. I started explaining the situation to a woman and told her of my concern. Her reaction was, “You’ll have to put that complaint in writing.” I said, “Hang on, your commissioner is vested with the authority to administer the act. I am just drawing attention to a default under the act. I believe it is over to you, not me.” The following Saturday a little retraction appeared in the *West*. It got through to somebody.

The CHAIRMAN: On page 157.

Mr Phipps: The point of that little story is that the reaction of consumer affairs to that concern distressed me.

The CHAIRMAN: Since the establishment of this particular lifestyle village we have established the State Administrative Tribunal, which I know at the end of the day can take care of issues of mediation and specific issues that have arisen over legalities, leases and this kind of thing. We would expect in this instance that it would eventually take care of some of these things. You are saying that there should be much more clout in the interim stages to make sure that management of these issues is working properly. Is that a fair comment?

Mr Phipps: Yes, I think that is a fair comment.

The CHAIRMAN: Do you feel that the consumer affairs people have handled this particular thing well?

Mr Phipps: I would not want to hang them on it, but I believe their reactive processes were far too slow. They were not picking up the vibes adequately. They wanted to drive it to mediation, which is a part of the process, as you would understand. I understand the residents had a strong objection to going to mediation because of the strength of Eion Martin. Under the privilege of this meeting, in my view Martin is an absolute exhibition of Jekyll and Hyde. He is an intelligent man. He can present an argument very strongly. If you do not see the other side of him, you would not believe that.

Mr A.J. SIMPSON: I just want to clarify that issue. Regarding the whole site of 36 Gribble Road, it is our understanding that Mr Martin and his wife own that site. Is that your understanding?

Mr Phipps: That was my understanding. However, I believe that Mr Whyman was more substantially the owner, certainly in terms of the original site. I gathered that impression progressively. I do not know whether Mal got that. Yes, he did too. Martin was driving Whyman. That is my view.

The CHAIRMAN: A number of submissions have indicated that there was a real problem with the validity of the leases. Were you still involved at that stage?

Mr Phipps: We must have been involved in the lack of validity. That related to lack of approvals, particularly through the Western Australian Planning Commission.

The CHAIRMAN: Did that arise during your time?

Mr Phipps: No, that came out afterwards. That was a major concern to us also.

The CHAIRMAN: What was your understanding up until you actually heard that about the approvals and the leases?

Mr Phipps: My understanding was that the administration of the leases would be handled by Adrian Padgett. If you looked at those 44 questions, something like \$880 had been charged for the administration of the leases. That would substantially be an Adrian Padgett charge. He would traffic those leases in the normal process through the state planning commission. I have not spoken to Adrian about it.

The CHAIRMAN: Your presumption when you sold those leases —

Mr Phipps: Normal process, and the comfort of Adrian Padgett sitting in the background. Adrian Padgett may very well have withdrawn himself earlier because of conflict with Eion Martin.

The CHAIRMAN: Is Padgett still involved as far as you know?

Mr Phipps: I cannot say. Padgett is still strongly involved in the industry.

The CHAIRMAN: I am mindful of the time because Parliament sits at 12.00 so I will run through a couple of quick issues with you. Can you both describe your experiences in dealing with Moss Glades? What is your view of dealing with Moss Glades? Are they valued clients?

Mr Phipps: No, they are not. We considered ourselves to be very fortunate to escape from the commitment of the arrangement with them. Both of us have people that we have known well in the past that we encouraged to move into this village because it was potentially exactly what they wanted. We carry on our conscience that they are stuck there.

The CHAIRMAN: Are they still there?

Mr Phipps: An old associate of mine is still there. One has since died.

The CHAIRMAN: What is your understanding of the relationship between them and management now?

Mr Phipps: I have not had recent contact. I chose not to contact them within the time frame of this inquiry. I understand that they are still under stress.

The CHAIRMAN: When you were originally engaged was mention ever made of how the management structure would be set up? Was there any mention of who would manage the premises? Did you have any understanding of that?

Mr Phipps: Certainly somewhere I have read latterly that there was an indication that Moss Glades would manage it. In our discussions with them at the time that we were setting up the agency etc, the indication was that it would be an external party and that we would be in the running to take on that management.

The CHAIRMAN: When did you understand that the clubhouse would be built?

Mr Phipps: We understood it would be built in the time frame of the first 20 units.

The CHAIRMAN: What it would contain is what was depicted by you in the brochure?

Mr Phipps: That is right; that is what we were selling.

Mr Dempsey: I think there was an alteration. I am pretty sure that my son-in-law, Glenda's husband, did all the plans, redrafted them and did a lot of the stuff. I think he made it better. They altered it to make it better than what they were going to get.

The CHAIRMAN: Whilst we are on that subject, there has been some talk by various residents about the change from single storey to double storey. It was explained to us the other day that the reason for that was that there was an understanding that a caretaker would be put on site eventually and that that caretaker would occupy a site on the village. It was put forward by Mr Martin that instead of occupying a site, they would build two storeys, which seemed to me an eminent solution. We understood that there was no discussion with the residents about that.

Mr A.J. SIMPSON: It was also a cost thing. It was recommended that a full-time caretaker be on board and the cost would be covered —

[11.40 am]

Mr Phipps: Yes, the discussion I remember on that two-storey bit was that Eion Martin had declared that he would manage the village and there would be a unit built on top of the clubhouse and he would be the resident manager there.

Mr A.J. SIMPSON: And everyone else would pay for it?

Mr Phipps: Yes, that is exactly right.

The CHAIRMAN: We had a number of questions on the legislation, but I think they have been pretty well picked up in your answers. If I need to come back to you on those, I will.

Finally, Ces, I understand that you were involved in the development of the retirement villages legislation.

Mr Phipps: I was on the consultative committee, yes, for the five years.

The CHAIRMAN: The intention behind the legislation was to protect the rights of the various parties involved in retirement villages, both the residents and the owners.

Mr Phipps: Yes.

The CHAIRMAN: Having worked in them I know that there are times when the residents' demands can be, perhaps, not in keeping with what it is they expect.

Mr Phipps: Absolutely.

The CHAIRMAN: There is always that balance.

Mr Phipps: It is probably worth saying that right back at the beginning, when we were looking at that legislation, we were looking at it off the Sydney and Victoria models. What is quite obvious is that you have to get the private sector to do it for the good of society, so you have got to include the profit motive. If, for instance, you just go down the strata course—there was a lot of negative publicity coming out of stratas in New South Wales at that time—what happens is that the residents take over the management. For example, they will want to save money, so they will not paint the fence, and down goes the maintenance. So we needed to avoid that position. Hence, we had to create the situation where the developer was responsible for administering during the life of the village the retirement village scheme.

The act is a bit loose, I think, on what we are talking about when we talk about a retirement village scheme. It refers to it and it gives a very loose definition, but it does not say things like we say; that is, that the scheme is a document which deals with management, services, facilities, tenure arrangements and financial arrangements of the scheme for the operation of the village. That does not come out in the act. It is not essential, of course, with some villages that all of those components are included, but they are, in my view, the main things that constitute a retirement village scheme. If management is not to changes the scheme —

The CHAIRMAN: Or not comply

Mr Phipps: — without the authority of 75 per cent of the residents at an official meeting—all those things that are in the act—then what is it that they can or cannot change? What I am finding out now, and it is common not only in the for-profit sector, but also the not-for-profit sector—I have two recent examples in the not-for-profit sector is that the term of the lease that follow the current lease is being changed and that can be to the disadvantage of residents. The commercial sector, of course, is grabbing more clawbacks and those sorts of things. I put it to a solicitor who works with us in a number of these things: is that not changing the scheme? That is a grey area. There should not be these grey areas in the act.

The CHAIRMAN: Are you aware that there is a current review of the legislation?

Mr Phipps: Yes, I am.

The CHAIRMAN: Have you put a submission to it in relation to that?

Mr Phipps: As you would know, Mr Chair, my wife and I have been residents for the past three years, so I put a submission through the residents of that village that picked up some of these issues.

The CHAIRMAN: If you had a magic wand and we went back to day one, how would we fix it? What is the solution to these people's problems? I do not mind if you are blunt.

Mr Dempsey: I would have voluntary euthanasia. Quite frankly, I have been involved in a lot of sales over a lot of years and this is the unhappiest period in my selling career. It really distressed my family, especially my daughter and her husband and my niece. You make friends with these people and to see them not get what they were promised is very hurtful. Also, what I could not understand when the whole thing was finished is how it ever got through council. The planning is a disgrace. Two cars cannot even pass on a road. That is an insult. A road should be six metres. You are supposed to be able to pass a vehicle on a road in a retirement village and there is no room. They

should never have got those plans through council and those people should never be involved with the public; they should be locked up in a room somewhere.

The CHAIRMAN: Is there something that you would suggest. The powers of this committee are relatively limited in that essentially we report to Parliament. We report on legislation and the kinds of protection that legislation can give to both developers and the residents. If either of you could think of how we could build in greater protection for these residents and, as I say, in some instances the developers, we would be very happy to hear from you.

Mr Phipps: To rectify the current position is a difficult one, because we have to work under the legislation we have. It seems to me that there needs to be a specific mind in consumer affairs who has an overall understanding of the industry and the legislation to be able to use that legislation effectively, because these guys have got away with, firstly, selling without approvals. I do not know what the fine for that is—\$20 000 or something. It is not enough in the circumstances. There is legislation in place that says, “Thou shalt not”. There is another provision in the act that says two years after the event has occurred, then it has expired and you cannot take it any further.

The CHAIRMAN: The statute of limitations.

Mr Phipps: Why that is there I have no idea. I mean, statute of limitations, fine, but not that—two years.

The CHAIRMAN: Particularly if it is a continuing situation. Should there be a provision whereby, perhaps, there could be intervention between management and residents by putting somebody in?

Mr Dempsey: I think so.

Mr Phipps: I think there should be. If the tribunal has the power to make orders, as you know it does, and if those orders are not complied with then in the next round it becomes much heavier and more forceful. I believe, although I am not a legal mind, that it can result in monetary penalty and that sort of thing. Along with that, I do not see a lot of limits on the power of the tribunal and that might very well include putting someone else in to operate the village.

The CHAIRMAN: I am getting the impression from you that there should be the capacity for consumer affairs to step in long before it actually gets to this irreconcilable breakdown.

Mr Phipps: Yes. If you had proactive administration as with REBA, someone who is aggrieved would be able to go to REBA and get a hearing. Not only that, we know that the REBA board acts as an agent. Their employees are supervising us all the time.

The CHAIRMAN: Their continued employment is attached to them actually getting solutions.

Mr Phipps: Yes, it is.

[11.50 am]

Mr M.P. MURRAY: A previous committee I was on here was on a strata title inquiry, and then we changed the act in some degree there. Do you see anything we could learn off that strata title inquiry? Were you aware of that —

Mr Phipps: I am not aware of the strata title inquiry, Mr Murray, but —

Mr M.P. MURRAY: In some ways there was some looseness in that, that was tightened up. I just wonder whether we could learn from that a bit as well.

Mr Phipps: I think we may very well. Actually, I have a difficulty that we cannot use the Strata Titles Act —

Mr M.P. MURRAY: Yes, same here.

Mr Phipps: — because it would give people title to their property. There is not any problem with that, other than the management issue. You cannot allow the management to be in the hands of the residents because that is a —

The CHAIRMAN: Neither can you have it in the hands of a management that is totally dominating —

Mr Phipps: No, absolutely. There have to be checks and balances.

The CHAIRMAN: I think that is the greatest concern we have here.

Mr Dempsey: You asked us if we had a magic wand; I do not believe there is any chance whatsoever of reconciliation while Mr Martin is in control of that village. He has to be taken out—not literally —

Mr A.J. SIMPSON: I know that is your wish list, but —

Mr Dempsey: We are not allowed to; there is a law against it.

Mr A.J. SIMPSON: There is, yes.

Mr Dempsey: But he has to be removed. If one partner has to take the other out, I do believe you could negotiate with Len. He has been bullied by the other man. He is so weak, he is just—but I believe that he would put decent management in; i.e. he might allow Residential 55 to run the show and get it back on the road and do it properly. That is the only chance you have got. If you leave that man there—he is an animal to old people. He will not stand up to you fellas, or us, but he stands up to people he perceives as weaker than him. They are weaker; they are older, they are vulnerable.

Mr Phipps: We have got evidence in some of the reservations, and when people, through their questioning and coming back to him, have shown a strength, he has got rid of them very quickly.

Mr Dempsey: Yes.

The CHAIRMAN: I am going to ask you one final question, because we do have to go to Parliament. Your daughter, I think, Glenda, said to us that there were a number of occasions when she had interested parties, they got to the stage of signing leases, and then he would not agree to those leases.

Mr A.J. SIMPSON: Or put the price up.

The CHAIRMAN: Or he would put the price up or do something to ensure—is that the kind of situation you are talking about?

Mr Dempsey: Absolutely. He wanted the money. He would not let the leases go through, the sale go through, and then he would phone them up afterwards and tell them they could not buy one, once he got Glenda out of the way. We sold actually 19 for him and we only got paid for 14, so there are five there; \$35 000.

The CHAIRMAN: That is one facet. The other facet she talked about was if there was somebody that was fairly forceful who came in and asked the wrong questions —

The Witnesses: Absolutely.

Mr A.J. SIMPSON: He would turn them off.

The CHAIRMAN: He would turn them off or put the price up immediately to stop that from happening.

Mr Phipps: I put that David Watson saga in there so that you could understand what that guy went through, trying to get some sense out of it. However, there are better ones in terms of a quicker turnaround. I cannot remember her name, but there was a lady who wanted some small amendment in the plan which others had, and because she was strong and forceful, he sent her \$1 000 back with a letter which stated, effectively, “If I cannot agree with you, then here’s your money back.” His final sentence, I remember, was, “I believe you’ll find somewhere else satisfactory for your needs.”

Mr A.J. SIMPSON: That was quite lucky for her, was it not?

Mr Phipps: It was a sort of a snide comment at the end.

The CHAIRMAN: Can I ask you for one comment, because one thing this committee can do is report on government departments. What has been your view, in the time you have been involved in this, of the attitude of the various government departments? I am not talking about SAT now, because they came in at a later stage. What has been your view, for instance, on organisations like consumer affairs, DOCEP, these kinds of groups that the residents have gone to? Have you any view on them —

Mr Phipps: Yes. I have not been able to understand why consumer affairs has been so slow to react, and has needed so much pushing from the residents. Is it an indication that they are understaffed in this area? I do not know. The residents tell me that on a couple of occasions consumer affairs had effectively closed the file, and their complaint was still valid as far as they were concerned. I am not close enough to be a good one to ask, but I have just got a sense that it was not well at all down there. I think consumer affairs would really need to carry some of the responsibility for the dragging on of this saga.

The CHAIRMAN: You feel that with the number of these villages that have opened up now—and obviously they do not know whether they are going open up in the future —

Mr Phipps: There is going to be a swelter of them coming through now.

The CHAIRMAN: Your view is that it should be similar to the REIWA, in that there should be a specialist or a unit or a group within consumer affairs that should be dealing wholly and solely with this issue?

Mr Phipps: An active body which is effectively, not policing, but administrating.

The CHAIRMAN: Doing inspections and —

Mr Phipps: Yes, that is right. I have even toyed with the idea that managers of these places should be licensed, as are real estate groups. Licence them, and rip the licence off them if they are doing an Eion Martin; that sort of thing.

The CHAIRMAN: That is a good suggestion. Thank you very much. I am sorry I have had to cut it short. Firstly, thank you for your evidence before the committee today. A transcript of the hearing will be forwarded to you for correction of minor errors. Please make the corrections and return the transcript within 10 days of receipt. If the transcript is not returned within this period, it will be deemed to be correct.

On that question of legislation and what could have been done and what can be done; if there are any other suggestions that either of you may have, I would be delighted if you would contact Loraine or Vanessa to make sure that your views are put. Any views you put to the committee are privileged, and we take great heart from the fact that you are prepared to come and see us and talk about this. It is an unfortunate situation and I think it has gone on for far too long. I think it is only through the good grace of people like yourselves that it has come to our notice. Let us see if we can do something about it. I thank both of you very much for your attendance today.

Mr Dempsey: It will be a real godsend if you can do that, Bob.

Mr Phipps: Can I just say that what is happening with the act and the administration of the review by consumer affairs tends to concern me also, because this is the same body that has not shown capacity to handle this issue well. In its review paper I was concerned that it was dealing with all the little peripheral issues, but let us get down to the main core problems —

The CHAIRMAN: The relationship between management and residents.

Mr Phipps: Yes. In that sense, I would be more than happy if Loraine or Vanessa have the time to have a cup of coffee and canvass some of the these ideas —

The CHAIRMAN: You can rest assured that they will.

Mr Dempsey: The bells might be ringing.

The CHAIRMAN: Thank you for your time.

Hearing concluded at 11.58 am