

**ECONOMICS AND INDUSTRY
STANDING COMMITTEE**

**INQUIRY INTO IRONBRIDGE HOLDINGS PTY LTD AND OTHER
MATTERS REGARDING RESIDENTIAL LAND AND PROPERTY
DEVELOPMENTS**

**TRANSCRIPT OF EVIDENCE
TAKEN AT BUNBURY
THURSDAY, 6 OCTOBER 2011**

SESSION TWO

Members

**Dr M.D. Nahan (Chairman)
Mr W.J. Johnston (Deputy Chairman)
Mr I.C. Blayney
Ms A.R. Mitchell
Mr M.P. Murray**

Hearing commenced at 12.22 pm**RYAN-BARNARD, MS JANE MARGARET, examined:****CAIN, MR PAUL, examined:**

The DEPUTY CHAIRMAN: Thank you everyone for appearing before the committee today. This committee hearing is a proceeding of Parliament and warrants the same respect the 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. Before we commence there are a number of procedural questions I need you to answer. Have you completed the “Details of Witness” form?

The Witnesses: Yes.

The DEPUTY CHAIRMAN: Do you understand the notes at the bottom of the form?

The Witnesses: Yes.

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

The Witnesses: Yes.

The DEPUTY CHAIRMAN: Do you have any questions relating to your appearance before the committee today?

Ms Ryan-Barnard: Not at this stage.

The DEPUTY CHAIRMAN: The committee has received a submission from Mr Cain. Thank you for your contribution. Do you propose any amendments to your submission?

Mr Cain: No, but I have a brief statement I would like to read out today.

The DEPUTY CHAIRMAN: No worries. Do either of you wish to make a statement that addresses the terms of reference and how these apply to your experience with Recreation Drive?

Mr Cain: Thank you. I would like to acknowledge and thank the Economics and Industry Standing Committee for its inquiry into this important public matter. I particularly wish to thank my local member, Mick Murray, MLA, for his efforts in bringing this issue to the attention of state Parliament.

My wife and I purchased a house and land package in Recreation Estate, Eaton in 2009. The construction of the house was completed by May 2010. According to the contract for sale of land with Recreation Drive Pty Ltd, the directors being George Naoum and Peter James, we were to notify subcontractors around the time of the completion of our house for the installation of fences and landscaping. The subcontractors informed us that fencing and landscaping had been temporarily put on hold. One of the directors of Recreation Drive Pty Ltd, Mr Peter James, had sent a note to residents stating he was waiting for the sale of land to enable a flow of cash before continuing with installing fencing and landscaping.

As the months during 2010 passed on, nothing happened. I tried to call Peter James. I left several messages at his office, but he has never returned my calls. I tried writing a letter to Recreation Drive Pty Ltd. I have never had a reply. I sought legal help. My solicitor sent a notice of default to Recreation Drive Pty Ltd. A different corporation, James Corp Investments Pty Ltd, replied. James Corp wrote that Recreation Drive Pty Ltd had been placed in receivership and that the directors of

James Corp Investments felt a moral obligation to complete the commitments made by Recreation Drive and would fulfil these obligations when their financial situation allowed. I have not heard from the directors of James Corp for about a year since receiving their letter. It is my understanding that Peter James, a former director of Recreation Drive Pty Ltd, is also a director of James Corp. My understanding is that James Corp is also a land developer.

I made a minor case claim to the Bunbury Magistrates Court. This was a confusing, complex and costly process. I remain unclear how a complaint about a breach of contract for the sale of land to the Magistrates Court can ever produce a satisfactory result. An order in December 2010 was made for the bailiff to seize and sell saleable interest in property of Recreation Drive Pty Ltd to satisfy the debt. This order has been unsuccessful.

Mr Peter James did visit Recreation Estate in March 2011. My wife attended a meeting with Mr James at which he indicated that we would reimburse costs incurred by residents that had arranged and paid for the construction of fences and landscaping. He also spoke about making arrangements for the construction of fences and landscaping for residents that were still waiting. He led residents to believe that this would happen soon.

In May 2010, I emailed Mr James receipts of costs for installing two boundary fences. Mr James sent me a reply email that he would deposit funds in my account by the end of May. This never happened.

It is eighteen months since we moved into our new home. The matter is still unresolved. The fence and landscaping has never been delivered. Promises, however, have been delivered without fulfilment or honour.

Clearly, the current system of contract for sale of land is inadequate protection for the purchaser. The whole process has been difficult for myself and my family. It has become a financial burden requiring us to sacrifice hard-earned savings. We have, in essence, paid for our fences twice—once through the sale of land, and twice due to default of the land developer. It is difficult for me to accept that the directors of Recreation Drive Pty Ltd can behave in such a way and not be held accountable or be required to meet their contract obligations. It appears to me that promises made to my wife and me from May 2010 were designed to hold residents at arms-length while Recreation Drive Pty Ltd sought to deregister the corporation; and that the current legal pathway to enforce the contract for sale of land is entirely inadequate.

The matter is now before this parliamentary committee. My hope is that whatever power this committee has will be directed towards three things: justice for myself and other residents requiring commitments made by corporations and their directors being fulfilled; regulation for a new system which provides safeguards for purchasers of house and land packages so other families do not experience such behaviour from land developers; and regulation for a new system through the Magistrates Court that is simple and can resolve breaches of contracts quickly.

I am particularly concerned that the former directors of Recreation Drive, Mr George Naoum and Mr Peter James, are able to continue to operate in the real estate business and derive a profit, when residents such as myself are still waiting for the simple dignity of a fence and landscaping that we paid for when we signed the contract and paid the price. It seems to me that we are not applying the same community standard of responsibility to land developers that we regularly apply to individuals. For example, if an individual receives an overpayment of the commonwealth family tax benefit, Centrelink recovers this overpayment by deducting amounts from future payments. If Mr Naoum and Mr James are permitted to conduct real estate business in this state, why is it they are not required to deduct part of what they earn to meet their underpayment of fences and landscaping to which they signed up to deliver?

While I accept these company directors should have the opportunity to benefit from this booming state economy, what I do find difficult to accept is why this is not contingent upon honouring

Western Australian contracts with its citizens. I do hope this parliamentary committee will find a way to ensure that such contractual obligations are indeed met.

I thank the committee for its invitation to speak to you today.

Ms Ryan-Barnard: We have been fighting for our fences for quite some time and I sent an email to you, Mick. I actually did get my fence in then. I do not think the contractor has been paid for this fence but I was very noisy. I emailed and emailed and I was very, very annoying to Peter James, so the three houses then got their fences and that was it. From then on, he has gone silent and not continued with the fences. I notice a few of the other people are putting up their own fences and having to send him receipts and things, which, clearly, no-one is getting their money for. We are still waiting on landscaping, obviously. It is very unpleasant with the weeds but we have to keep them there to keep the sand down. Children are playing in that. It is dangerous without fences for people with kids, pets and that sort of thing. The dogs get picked up by the pounds; they have no way to keep them in. It is very, very frustrating and everyone has had enough and he is not coming forward with everything he has promised.

The DEPUTY CHAIRMAN: You named two gentleman, but is there anyone else you have dealt with from Recreation Drive?

Mr Cain: To be specific and technical, I spoke to people on the end of a phone—I cannot remember the names—who would take calls on their behalf and tell me they would get back to me, but apart from them, I could not think of anyone.

Ms Ryan-Barnard: That was the office people mainly and they were told to fob us off: “We’ll get back to you.” Peter James is the one—and I think Mr Naoum has stepped back and said he was just an investor. I am not quite sure where he comes into it. Peter James is the one.

Mr M.P. MURRAY: Regarding the comments about Peter James’s trading, has he moved his trading name and started another company or is he working for someone else?

Mr Cain: I do not know the specifics. If you can bear in mind I am not an expert in corporate dealings. It is miles away from my expertise. From the simple searches I have done in ASIC, I know he is a director of James Corp. Greg Naoum is listed as a director of Recreation Drive Pty Ltd, so there is only two—Peter James and George Naoum. That is the extent of my knowledge. I think this is part of the complexity I discovered. I am very naive when it comes to business. I work in the non-government sector. I was just amazed at the sheer complexity of trying to find out simple information about who is responsible, who can we speak to, where is the pathway of complaint, how this can be resolved. How can we have a conversation with someone who is responsible? It is incredibly complex and I am surprised at how complex something can be that goes on every day. This kind of selling and buying of real estate is big business that occurs every day, but it is incredibly complex. I cannot see how the little guy can get his head around it with an incident like this.

The DEPUTY CHAIRMAN: Mr Cain, did you see Consumer Protection here in Bunbury when you had these troubles?

Mr Cain: I think I wrote to them. I cannot remember exactly. I think someone mentioned it to me when I think I wrote to the Premier and it was suggested I approach them. I cannot remember whether I wrote or called them but I did have some conversation with them.

The DEPUTY CHAIRMAN: Did you find them helpful?

Mr Cain: No. They gave me the impression—my memory is a bit vague—they felt there was not anything they could really do and they encouraged me to proceed through the legal pathway.

Ms Ryan-Barnard: In the first instance I sent an email to Nola Marino, the local federal member of Parliament. She said she would look into it and I did not hear much. Then I went to Mick. I was told

to go to Mick who would get onto it for us. He came back and I corresponded quite a bit with his office. Then I was just noisy. I was told to be noisy and I harassed Peter James, pretty much.

The DEPUTY CHAIRMAN: You did not take legal action or do anything else?

Ms Ryan-Barnard: I did not take any legal action.

Mr M.P. MURRAY: I was organising a meeting between myself and Peter James and he did not turn up. I had to leave earlier. I think he said another hour and another hour. Was he available to talk to; was he rude or fobbing off all the time?

Ms Ryan-Barnard: He was there. It was later in the day obviously. He said he did not see you because he could not wait for you. He was very personable, very nice, so we gave him that opportunity. We said, "This is what you are promising. You have given us a time frame; let's see how you go." People did tell him what they thought and he took it on board, so we thought. He was trying to be very smooth. He was very smooth.

The DEPUTY CHAIRMAN: Did either of you know of any questions regarding the ability for Recreation Drive to deliver these arrangements?

Ms Ryan-Barnard: He had basically told us, I think, that everything was going bust and he would try to work it out himself however he could. He had deals going and he was waiting on the money for that and this sort of thing. This is what we were told.

The DEPUTY CHAIRMAN: At the time you purchased, did you have any idea that Recreation Drive was —

Ms Ryan-Barnard: No.

Mr Cain: I think there is a theme that comes through all the deals with Peter James: "I'm sorry, I'm in a difficult situation. I'm trying to figure it out. I've got something on the boil here. It's going to happen. Money will be available and I'll do the right thing." The other part of that theme, we feel, is that nothing does happen. It is hard to know whether you can give value to any word someone like that says. It is repetitive behaviour, and I am sure there is a psychological term for it—or there could be something rude to say about it. That is the reality I think this committee has to deal with. We have tested the moral obligation numerous times and that has come up with nothing.

[12.40 pm]

The DEPUTY CHAIRMAN: Was there a clause in your land purchase agreement that said when the fencing and landscaping would be completed?

Mr Cain: Yes. I will not go to the specific section but if you want me to, I can. It sets out a time line of fencing and waterwise landscaping bonus packages. For the fencing package only the buyer contacts the seller's nominated fencing contractor three weeks prior to the completion of the dwelling on the property. We did do that. I think there is a similar thing about the landscaping as well and that you have to complete the construction of the dwelling within 24 months from the settling date. There are frameworks of time line and what to do. Me being very green I would go through this and say, "Okay, we are at this time we now need to contact." Get on the phone with the fencing contractor. They had sent out the form. We were very excited. This is the new home. The same with the landscaper, we would diligently do that and then nothing. How do we resolve this?

Ms A.R. MITCHELL: You said that three weeks prior, you would contact the fencing contractor. Was there a statement that said they had to have a fence up within a certain time after you contacted them?

Mr Cain: They then had their own form indicating those sorts of requirements. I cannot remember exactly what they were, but not in the actual contract.

The DEPUTY CHAIRMAN: Mr Cain, can we have a copy of that contract?

Mr Cain: Sure.

The DEPUTY CHAIRMAN: If you like you can give it to our staff now to take a copy.

Mr M.P. MURRAY: Can we have a copy of the contract to give us an idea of the process? The company's part of having to sign to get the fence done is outside the original contract. When you apply and have to fill out that form, it is not part of the original contract. So I would like to look at what you are signing off on when you ask for your fence?

Ms Ryan-Barnard: When I was going to be moving into my home, I went through the same process but I was told I had to be living in my house before it would happen. You had to be living there. They would not put up a fence unless you were living there.

Mr M.P. MURRAY: I think it might have been called "stretch".

Ms Ryan-Barnard: Things just started to change to work for him, sort of thing. It got more and more frustrating.

The DEPUTY CHAIRMAN: Mr Cain, if you do not mind, if we could get an undertaking to get a copy of that contract. We will undertake to copy it and return it with the transcript, which would be easy for us, if you do not mind.

Mr Cain: That is fine.

The DEPUTY CHAIRMAN: We will undertake to remove any personal identification from it so that when it is included in the material after the end of the inquiry there will not be any way of people identifying you out of that contract.

Mr Cain: That is acceptable. That is fine.

The DEPUTY CHAIRMAN: Apart from the meeting Mr James attended and said "I am broke", prior to that at any time did Recreation Drive explain why there was a delay in the fencing arrangements and landscaping?

Mr Cain: Yes, they did. They sent out a letter that got put in my letterbox by someone after I had just moved in and they explained along the lines—7 May 2010. "Dear residents", and they referred to the fencing and landscaping packages. He points out the downturn in the economy and how St George Bank will not release any funds because so many lots have failed to settle et cetera. He offers his apologies and says that as soon as the cash flow situation changes, everything will be fine. He thanks the contractors for their support, which I find amusing and says, "Thank you for your understanding and patience". When I first read this, I thought it was great because somewhere in here he talks about July, August. His letter states —

The positive is that I have a significant settlement that will be going through at the end of May—early June and this will enable us to receive additional funds available to complete our obligation to all residents.

I thought I could bear sand and weed for a couple of months. I felt I was just being reasonable. Yes, there had been a downturn in the economy. That made sense. To answer your question, they did do something.

Ms Ryan-Barnard: After May none of the residents saw that letter. I did not see anything until we all started going, "What is happening?" We did not see that. I did not get any reasons until we started the email process and ringing and that sort of thing, which is exactly the same information—"I've got money coming in next July." It sort of went, tomorrow, next week, and it is still doing that.

The DEPUTY CHAIRMAN: Your impression from that letter, Mr Cain, is that, despite the fact that you paid for your block, Recreation Drive could not deliver what it had undertaken to deliver?

Mr Cain: You have to remember that I am still very naive when it comes to business matters, but at that point I took that on face value. Okay, fine, I can wait a couple of months. It is not unusual for time lines to be blown out in government and no different in private enterprise so I was just thinking “Okay”. As Jane pointed out, this is a pattern. It became very much a pattern. When time started to stretch and I started to make inquiries and started to get nothing, that started ringing alarm bells that said maybe I have been taken for a fool and I have not played hardball. I do not know how to play hardball when it comes to business and maybe I should.

The DEPUTY CHAIRMAN: I do not know whether you have any idea of the number of affected residents and properties in Recreation Drive.

Mr Cain: Only vaguely. I have spoken to probably up to half a dozen myself.

Ms Ryan-Barnard: That is just the people making noise. There are the people waiting for us to fix it for them. That is normal. I would say probably 50-odd households, in some way. I do not imagine they have been paid for their fences. A lot have put up their own fences and done their own landscaping.

Mr Cain: When I was putting up the high fence my neighbour across from my driveway came over to see me very excited, “Oh, has Peter James come through?” I said, “No”. My heart goes out to someone like that. They are probably in a financially worse position than me. They are totally reliant on this solution being found. That to me is just awful to see. I think that person has been there for 18 months, as I have, and had no landscaping or fencing and that is unacceptable, do you not think?

Mr M.P. MURRAY: Has the streetscaping and landscaping that is outside your property been completed and have you had any contact with the shire along the way?

Ms Ryan-Barnard: I have not had any contact with the shire, but I back on to the little park area with the lake. The shire looks after that, obviously, because it is shire land, but other than that everyone has to look after it; it is just dirt and sand.

[12.50 pm]

Mr Cain: They have been very silent. I have not approached them. There has been no approach from them. I do not know what their view is or even their responsibilities are at the moment. It is a good question. I just do not know.

Mr M.P. MURRAY: My understanding from other areas is that there should have been a handover date. Has that handover date for the other people around the area been done? We will have to check on that.

Ms Ryan-Barnard: The only place is the little park that has been looked after. There is nothing else to look after.

The DEPUTY CHAIRMAN: How big is the estate?

Ms Ryan-Barnard: It is not huge—four or five streets.

Mr Cain: It is not a large estate by any means.

Ms Ryan-Barnard: Probably 50 houses. I do not know how many lots there are.

Mr Cain: There is a map. You can you copy this. There is a map. It is 153 lots.

Ms Ryan-Barnard: A lot more than 50.

Mr Cain: If your eyes are better than mine, you will be able to read the dimensions and everything like that. If you put that in your copying, you will get the size.

The DEPUTY CHAIRMAN: Are other new developments near this? Eaton has been there a while.

Ms Ryan-Barnard: Bethany.

The DEPUTY CHAIRMAN: Do you know the developer?

Ms Ryan-Barnard: Either Tallwood or Gallagher. I know Tallwood has a lot to do with it. They do it beautifully. What should happen, I think, if the fences are included, the fences should be done. The minute the houses are done hold the money there even as a bond. It is not his money. That money is not his any more. It is included in the package so it should be sitting somewhere to make sure all of that is completed. Make it so that he never touches it so he does not get to spend it.

The DEPUTY CHAIRMAN: Do you think that would be the best solution?

Mr Cain: I think an up-front solution would be the best and something that holds part of the sale price to cover that. I think it is there for multiple reasons. It would prevent creditors claiming the lot but give an assurance to purchasers that it is there and for whatever reason it could not be touched, whether it be a creditor or—I do not know. I cannot think of the extent to which that could happen, but if it was held, it would be something you paid and something you had in your contract, so it would be ideal for it to be held similar to a bond in a rent situation would be perfect. If that could not be done, there would have to be something at the back end, some sort of safeguard or process because the frightening thing we have been through is we have had multiple strategies and speculation about what does and does not work. It should not be that way. It should be incredibly simple.

Mr M.P. MURRAY: The complaints starting from your area have not been huge. I am wondering how many. I do not expect you to know that. How many did and how many did not get their landscaping and fencing? That is one I hope to look up. But in the general area do you think there has been any devaluation of your properties because this work has not been done?

Ms Ryan-Barnard: It certainly has not gone up because you cannot do anything. If someone wants a pool, they cannot put a pool in. I think it is stagnating if anything. If you wanted to sell now, you would probably take a loss, I imagine.

Mr Cain: I do not think it would help. I do not know the numbers, but certainly in an estate that has fences missing and landscaping not finished it is surely not going to add value.

The DEPUTY CHAIRMAN: Is there any non-economic impact on you in terms of sand coming into the house?

Ms Ryan-Barnard: Absolutely. I have said this to Peter James: “Are you going to pay for runners on my doors and windows and clean my windows?” There is sand everywhere, especially with kids and pets in and out. Sand is everywhere. It wrecks the floors.

Mr Cain: There is also the impact of erosion without fences and without landscaping because the ground is not covered. When huge winds go through you see masses of soil ripping out of the place. That is a huge impact plus the massive inconvenience of sand going into houses and into the runners.

Ms Ryan-Barnard: It sandblasts your paint work.

Mr Cain: It is traced into your house. It is an incredible inconvenience. You cannot get on with doing all the things you would like to do with a home, like the gardens. You can to a certain extent but not in the way you would expect a family to normally do.

The DEPUTY CHAIRMAN: When we visit the estate this afternoon is there anywhere in particular you suggest we have a look at?

Ms Ryan-Barnard: Just wander. Some people have done things to their homes and some have not. Just have a wander around.

Mr Cain: I think it is great that you are going to go out and have a look. I think in some ways it will not be as clear as what it could have been because a lot of people have gone on and done things and put their fences up, but you will see bits and pieces.

The DEPUTY CHAIRMAN: How many people went to the meeting with Mr James that you referred to?

Ms Ryan-Barnard: He went around to different houses. I got my neighbours and said he is going to be here because we have a few who are not great with English. They stood with us while we chatted to him. There were four of us and then he went around to every house.

Mr M.P. MURRAY: He was reluctant to have a general meeting as such.

Ms Ryan-Barnard: Yes. He thought he might get bombarded. Instead he went to every single house and got slammed by each person so by the end of it he was sweating and red faced.

The DEPUTY CHAIRMAN: Do you have any closing remarks that you think we should bear in mind or are you happy you have been able to get your story over to us?

Mr Cain: I am very happy with the opportunity. I think I said everything I wanted to say, so thank you very much.

The DEPUTY CHAIRMAN: Thank you for your evidence before the committee. A transcript of the hearing will be forwarded to you for correction of minor errors. Please make these corrections and return the transcript within 10 working days. If the transcript is not returned in this period, it will be deemed correct.

We will return your contract at the same time, Mr Cain.

New material cannot be introduced via these corrections and the sense of your evidence cannot be changed. Should you wish to provide additional information or elaborate on particular points, please include a supplementary submission for the committee's consideration when you return your corrected transcript.

Hearing concluded at 12.59 pm
