

## **Submission to Senate Economics References Committee Inquiry into Insolvency in the Construction Industry**

### **Michael Hogan**

In the following submission, I hope to give the Committee and some insight into the manner in which subcontractors in construction can be made insolvent through the actions of a company with a track record of phoenixing. I also hope that my story will demonstrate that there is a relationship between these phoenixing operations and organised crime and that there are almost no protections for small operators in construction.

I have taken the time to outline the sequence of my financial dealings with Maxstra. I hope the sequence will give the Committee a clear idea of the power imbalance between a major builder and a small sub-contractor. I also believe it's important for the Committee to understand how financially vulnerable sub-contractors are and how reliant sub-contractors are on good-faith commitments and prompt payments of invoices. Finally, it is important for the Committee to understand that my experiences of threats, violence, and intimidation are not isolated incidents.

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In 2012 I was running a company called Ocean View Windows, based in Wanthaggi.

In November 2012 I signed a contract to work on the *Elizabeth St Apartments* with a company called Maxstra which is run by Frank Nadinic. Works on the *Elizabeth St Apartments* were to commence in February 2013.

At the time my company, Ocean View Windows had four employees.

In February 2013 Maxstra offered Ocean View Windows another project to work on the Toomah Community Centre for Packham Council with work to commence in April 2013. I was soon also offered work on another Maxstra project around the same time. This other job was on the Duncan McKinnon Pavillion, for the Glen Eria City Council.

As a result, I put on another two employees to meet the extra work demands. Due to the amount of work being offered, we also approached our suppliers to increase our credit. This was agreed in the form of a director's guarantee.

In April 2013 we lodged our first invoice with Maxstra for works in progress on the *Elizabeth St Apartments*. It was paid 21 days late. By that time we had submitted a second invoice. This invoice first was returned at a reduced rate as a result of the assessment of Maxstra's Quantity Surveyor (QS).

At the same time, Ocean View Windows had also commenced work on the Toomah Community Centre. The first invoice for that project was paid 14 days late.

There was therefore two outstanding invoices from two separate projects at the outset of our financial dealings with Maxstra. Both of these invoices (payment schedules) were returned at reduced rates – by more than 50% as a result of the assessments of the QS.

We later found out that the QS was directly employed by Maxstra.

As a result of. a) the delays in payment and, b) the reduced payments from assessments of the QS, I began to struggle to pay suppliers.

Works completed to this date included four levels on the *Elizabeth St Apartments* and around 40% of the Toomah job.

It was at this point that I started to question the process and why invoices were being returned at reduced rates on the back of the QS assessments. I also asked for the QS assessment. In response the financial pressures I was under and increasing concerns about what was actually happening with Maxstra, I got the Ocean View Windows team to reduce work on both projects to the bare minimum.

I approached the CFMEU for assistance and they organised a meeting with Maxstra. A formal meeting both Frank and Andrew Nadinic was organised. I requested that the invoices be brought up-to-date and told them that when that was done, we would be in a position to re-commence a full work schedule.

At this meeting Frank and Andrew Nadinic claimed that they had cash flow issues but I was assured that these cash-flow issues were being resolved and payment was imminent.

Approximately a week later the Nadinic's requested a meeting with just me. At this meeting they informed me that cash flow issues remained and that they would be paying me on a "drip-feed". They offered \$10,000 one week and \$20,000 the next and payments would continue in this manner.

I said that this was not acceptable because my suppliers were rightly demanding payment. They then came back to me and said that they would pay the suppliers directly. I believed this was a good-faith offer. I provided billing details and they committed to providing receipts and that those payments would be deducted from the previous short-falls on their invoices. This was agreed and they adhered to it for a couple of months.

Around August 2013, I began the process of importing the required materials for the Duncan McKinnon Pavilion. The supplier issued an invoice for 50% of the materials (around \$65,000). It's important to understand that these materials were to be imported from the US and strict timeframes needed to be adhered to.

We had another meeting with Maxstra and I indicated that, a) Ocean View Windows didn't have the required capital to cover the invoice from the supplier, and b) that as a result of recent failures by Maxstra to pay invoices on time, we were not comfortable outlaying that amount without some assurances.

Frank Nadinic committed to pay up-front and directly to me on the grounds that I signed a personal indemnity form guaranteeing the money he paid to me, would be paid to the supplier. The money was then deposited over the course of two months.

However, the QS continued to return dramatically reduces progress claims and what money that was coming through, was coming through on a drip-feed.

Then, in about mid-September, the money just stopped.

As a result I withdrew all labour from Maxstra sites. During that time, Maxstra began to have contractual progress issues with the Glen Eria Council. For example, the building had to be at a certain point of construction before the council would provide progress claim payments.

In November the council made the contract with Maxstra of nil monetary value contract and suspended all works.

This in turn effected our ability to measure-up the job and order the required products from the supplier within the tight timelines required.

At this point, Frank Nadinic asked that the money for the imported materials be returned. In response, I said that we would off-set unpaid invoicing with the deposited monies for the materials that were to be imported.

I was now \$116,000 out of pocket. We suspended all works on both projects.

This is when Frank's behavior turned nasty.

By now I was concerned to ensure that all communication with Frank was recorded and as such only corresponded with him via email. In return, he called me repeatedly at all times. He then visited my home in Leongatha on two occasions and on one of these occasions had a confrontation with my wife, Lisa, in which she was left feeling scared and intimidated. He also got my wife's personal phone number from the site office emergency contact details and called her around ten times demanding to know where I was and demanding to speak to me.

On 27 Dec 2013 our home burned down and we lost everything.

While applying for insurance, we became aware that Maxstra had put a caveat on our home. There was not correspondence or communication about this other than a letter from the titles office that we saw in the insurance papers.

I had now contacted a solicitor in an attempt to recoup outstanding money and I informed him of the caveat. Soon after this, they issued legal action against me personally. The legal action was based on the indemnity form I had signed to guarantee the deposit on the materials that were to be imported.

As a result of the fire, I relocated the infrastructure of the company from Wanthaggi to Leongatha. I did not change any details/contact details, I only moved goods and materials so I could work on rebuilding my family home. Leongatha was also where my factory was based.

This is when the threatening visits and intimidation began.

In the first instance, I had a visit at my factory from what I believe to be members of a bkie gang. They demanded payment, saying "You owe \$65,000. It's going to get worse every visit. You owe Frank Nadinic. We're here to collect a debt." I stood my ground, but it got to the point where this was a weekly occurrence. I would ensure that my team always travelled and worked in pairs because I was scared for my safety and theirs.

Insurance put us up in a house approximately ten minutes away from my home. The only people who knew about this address was our close family and friends. Yet one morning at around 6:30am, as I pulled out of the driveway to go to work, one of the man who had visited me at the factory jumped into the

passenger seat. I was scared. I didn't want to dive back up the driveway of the house because my wife and kid were there.

He told me to drive to Foster (Vic). The other guy (who I didn't see and therefore don't recognise), followed us in a black Mercedes or BMW. I contacted the workers at the factory via text: "In the car with Maxstra." They understood the troubles I'd had and contacted my wife who contacted the police.

During that time the police were trying to contact me. I wasn't being beaten up, but they made it clear that they meant business. In the back roads near Foster we got out of the car and they roughed me up and told me that they were taking my car. I tried to stop them, but they were big powerful men and they took the car. They left me there and drove off. I called my wife and the police and began walking.

They then returned and I hid in the bush. They called to me telling me to come and speak to them and telling me not to be scared. I continued to walk, staying away from the road because I could see that they were looking for me. In the end I got lost. That's when the police called again looking for me. They couldn't find where I was because I didn't know. The local police called and helped me figure out where I was and in the end, the police helicopter was sent to collect me (approximately near Yanakie, Vic).

I reported the incident with the local police. My car was found, though with about \$15,000 worth of damage.

Court proceedings continued over the next 16 months.

My company was destroyed by a builder with a track record of ripping off subbies, of threats and intimidation. Companies owned by the likes of Frank Nadinic understand legal threats and intimidation are usually enough to get away with ripping off the little guys. But they also know that sometimes this isn't enough to get their way and they often work with outlaw motorcycle gangs.

I was very happy to participate in a recent investigation launched by A Current Affair regarding the actions of Maxstra because I believe it's important to let others know how these people operate. However, once Frank Nadinic found out, I had another visit from his "associates" on site. This incident and those threats have been reported to the Victorian Police.

I believe the ACA story did a lot to let the industry and the public know how Mr Nadinic operates. If the Committee members have not seen that story, I will happily provide a copy.

Maxstra is the third company that has been run by Frank Nadinic. As of 25 May 2015, Mr Nadinic has re-branded Maxstra under the new company name, HICOM CONSTRUCTIONS.

My complaints of stand-over tactics are being investigated by the Echo Taskforce. But as of this day, I have not been paid what I am owed by Maxstra; I still owe wages to employees who worked for Ocean View Windows, and I have a caveat on my home.

This whole experience brought me close to breaking point. It has been very difficult for me and my family. But I know I'm not alone. I know that there are many small operators out there getting ripped off and driven to insolvency and bankruptcy by phoenixing operations run by men like Frank Nadinic and his stand-over men.