# Panel discussion: The Blue Chip Story: Hickman v Turner & Waverley GE Custodians v Bartle

## Speakers:

- Liam Mason, Head of Legal, Financial Markets Authority, Wellington
- John-Paul Rice, Partner, Russell McVeagh, Auckland

#### Panel Chair:

 Lloyd Kavanagh, Partner Minter Ellison Rudd Watts, Auckland

# Blue Chip Business Model

- Blue Chip secured sites for apartment buildings, arranging finance and construction with developers
- Investors purchased apartments "off the plans" – deposits providing initial funding
- Depending on the product:
  - Leases arranged & guaranteed by Blue Chip;
  - Blue Chip arranging a second purchaser to take out the investor before settlement.
- Typically Blue Chip managed the whole relationship for the investor

# Blue Chip's Products

- Mainstream Agreement
- Joint Venture Agreement
- Premium Income Product
- Put and Call Agreement

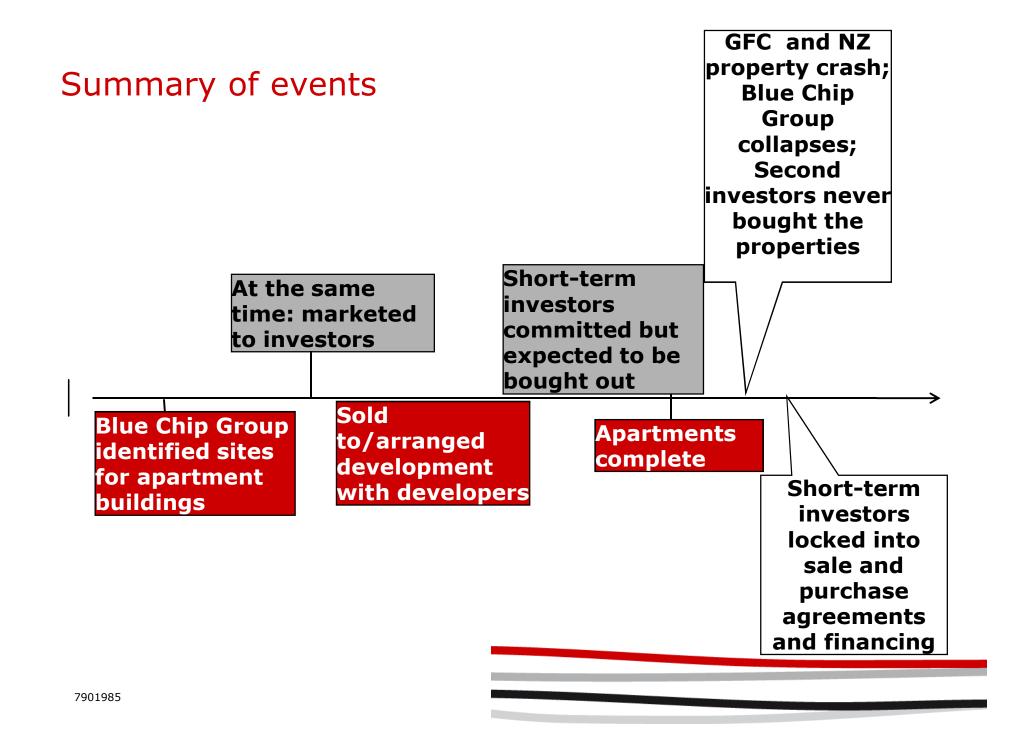
## Blue Chip claimed:

"products deliver positive cash flow on a weekly basis. ... underpinned by long-term fixed leases for clients, supported by annual tax benefits and the potential for attractive capital gains if the property is sold."

#### Premium Income Product Bank **Arrangement of Facility** finance secured by **Blue Chip** first **Arrangement** mortgage to develop over SPA apartments below **Developer Profit & underwrite** agreements SPA & **Nomination** 10% deposit Solicitor's trust account PIP agreement **Investors** with monthly option fee

## Blue Chip: Cashflow Overview

Fee: Blue Chip → **Investors** Developers • Received a fee from Located sites for Blue Chip apartments Would be bought Developed Entered into out by second apartment sites agreements with investor Received a deposit developers from short-term Short-term investors investors Blue Chip Loan Deposit: Investors Bank → Developers



# The Blue Chip Story: Hickman v Turner & Waverley - Main Issues

- Were Blue Chip's investment products (JVA, PIP and PAC)
  securities for the purposes of the Securities Act?
  - If they were, what are the consequences, particularly for the associated SPAs –ie are they securities?
- Were developers "issuers" of those securities?
- Does the s5(1)(b) exemption in relation to land interests apply?

### GE Custodians v Bartle: Main Issues

- Was the loan agreement between the Bartles and GE Custodians "oppressive" under the CCCFA?
- Should the lender have been required to look behind the Bartles' certificates stating they could meet their repayment obligations?

## Result

