



**STATE CORONER'S COURT
OF NEW SOUTH WALES**

Inquest:	Inquiry into fires located at: 10 Railway St Lidcombe 20 Bennelong Crescent Bellevue Hill 38-42 Seville Street Fairfield East
Hearing dates:	30 October 2014 8-10 December 2014 15 June 2015
Date of findings:	18 January 2016
Place of findings:	NSW State Coroners Court – Glebe
Findings of:	Magistrate Michael Barnes, State Coroner
Catchwords:	CORONIAL LAW – fire inquiry; general inquiry; multiple fires; similarity of mechanism; motive.
File number:	20 Bennelong Crescent Bellevue Hill - 2013/235238 38-42 Seville St Fairfield East - 2013/226295 38-42 Seville St Fairfield East - 2013/227530 10 Railway St Lidcombe - 2010/433733
Representation:	The State Coroner - Counsel Assisting Mr Ian Bourke SC instructed by Naomi Malhotra Crown Solicitor Mark Merhi – Mr Graham Turnbull SC instructed by Clamenz Lawyers CFMEU – Taylor and Scott Lawyers

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The Coroners Act in s81 (2) requires that when a fire inquiry is held, the coroner must record in writing his or her findings as to various aspects of the fire. These are the findings of the inquiries into four suspicious fires which occurred in diverse locations around Sydney between February 2006 and May 2010.

Introduction

On 25 February 2006, commercial premises occupied by ISCAR Australia Pty Ltd at 38 – 42 Seville Street, Fairfield were deliberately set on fire. On 5 March 2009, another fire was deliberately lit in the same premises.

On 20 May 2009 a fire occurred in a partially completed residential development at Bennelong Crescent, Bellevue Hill.

On 13 May 2010 commercial premises at 10-12 Railway St, Lidcombe, occupied by the Construction Forestry Mining and Energy Union (CFMEU), were deliberately set on fire.

Because it seemed likely that all of the fires had been deliberately lit using a similar method and because one or both of two brothers or the employees of one of their companies had been involved in acrimonious disputes with the occupants of each of the burnt premises prior to the fires, the coronial inquiries into the four fires were held concurrently.

This report summarises the results of those inquiries.

The inquiry

The purpose of the inquiry is to examine the cause and origin and all of the circumstances of each fire, in accordance with s.81(2) of the *Coroners Act 2009*.

In accordance with s32(4) of the Act I directed that a “general inquiry” be held into each of the fires. A general inquiry extends to the examination of “all of the circumstances” concerning the fire (including, but not limited to, an examination of its cause and origin - s30(3)).

I am satisfied that when holding a general inquiry a Coroner is entitled to consider, not just all of the circumstances of each individual fire, but also, any similarities or apparent links among or between each of the fires under consideration.

For reasons that were never explained, the three earlier fires were not reported to a coroner until after the fourth had occurred. The investigation of those earlier fires was not of a high standard. In view of the time that had transpired by when I assumed responsibility for the matters in 2014, I did not seek to establish why these unsatisfactory responses to the fires had been allowed to occur. From a forensic perspective, the situation was irretrievable. The inescapable conclusion is that those responsible for very serious crimes have gone unpunished, although it must be acknowledged that may have been the outcome whatever the quality of the investigation.

The evidence

The circumstances of each of the fires will be examined in turn.

Fire of 25 February 2006 (ISCAR premises, Fairfield)

ISCAR Australia Pty Ltd (ISCAR) is an Israeli based company which imports and distributes industrial cutting tools used in the automotive and aerospace industries. ISCAR has been operating in Australia since 1990.¹ Since 1994, the company had been operating from a warehouse and office building at 38-42 Seville Street, Fairfield. ISCAR employed 12 staff at those premises, and operated between about 7am and 5.30pm, Monday to Friday.

At the relevant time, Southern Cross Rigging & Construction Pty Ltd (Southern Cross Rigging), operated from premises located at 65-67 Mandarin Street, which abutted the rear boundary of the premises from which ISCAR operated. The two premises were separated by a Cyclone mesh fence². At the Mandarin Street premises, Southern Cross Rigging carried out works which included spray painting and sand blasting.

In 2005 and 2006, disputes arose between employees of ISCAR and the operators of Southern Cross Rigging in relation to spray paint particles being blown from the Southern Cross Rigging premises causing damage to some of the cars owned by ISCAR employees. This led to complaints being made by ISCAR to Fairfield City Council.

These complaints resulted in the Council issuing an Infringement Notice to Southern Cross Rigging under the *Environmental Planning and Assessment Act 1979*.

The complaints to Council also led to a number of telephone conversations between Mr Corra (Store Manager for ISCAR) and a person who Mr Corra understood to be a manager or owner of Southern Cross Rigging.³

On Friday 24 February 2006, a man who described himself as a manager or owner of Southern Cross Rigging approached staff at ISCAR and spoke to them about the problem. This led to a verbal exchange which Mr Corra of ISCAR described as “very heated”.⁴ Although Mr Corra did not recall the name of the man, he described him as being in his 40s, about 5’ 8” in height, middle eastern appearance, muscular build, with black hair and unshaven.⁵

The next day, a fire occurred at the ISCAR premises, shortly before midnight. At 11.50pm, Mr Corra received a call from Roden Security, advising that fire alarms had been triggered. Fire fighters and Police attended and the fire was eventually extinguished.

¹ Insurance report 3/3/06 by Crawford & Co (Ex 1 tab 30 p185)

² Jason Allen T 8/12/14 p27, line 40; See also Ex 5 (Map marked by Mr Corra)

³ Paul Corra T 8/12/14 p34, line 38

⁴ Ex 1 tab 36 par 13

⁵ Paul Corra Ex 1 tab 38 par 6

The fire had been deliberately lit. A stolen Toyota Camry sedan was driven through a fence, and then through the front door reception area of the ISCAR premises. The car had been loaded with drums of accelerant - paint thinners, and petrol, as well as rubber car tyres. It is reasonable to conclude this was done with the intention of increasing the destructive effects of the fire. The damage exceeded \$2 million.⁶ An investigation conducted by Fire Investigators Crawford & Company (Australia) Pty Ltd found that there was no evidence to suggest that the fire was a result of any illegal act by employees of the insured (ISCAR).⁷

Fire of 5 March 2009 (ISCAR premises, Fairfield)

Just over three years after the first fire at ISCAR premises, on the evening of Thursday 5 March 2009, a second fire occurred at the same premises.

Shortly before midnight, a stolen Toyota Hilux dual cab utility was driven through the metal fence of the premises, and then through glass doors at the rear of the building. The vehicle had been loaded with drums of accelerant (petrol and thinners) as well as a car tyre, and was set alight, causing significant damage to the building.

Footage obtained from CCTV cameras showed that there were two offenders. However, this footage was of poor quality, and it was not possible to identify them.⁸

At the time there was still an ongoing dispute involving Southern Cross Rigging and ISCAR in relation to the release of paint spray and paint fumes.

On 5 November 2007, a member of ISCAR staff had lodged adverse comments with the Fairfield Council in relation to an application by Southern Cross Rigging to use a sand blasting chamber and spray booth at the Fairfield premises. The comments to Council noted that while there had been a significant improvement, there were still occasions when paint fumes and spray paint were being emitted from the premises.⁹ In addition, on 10 July 2008, Council had issued a "Direction to take preventative action" requiring Southern Cross Rigging to cease spray painting and sandblasting at the premises, unless it had obtained development approval.¹⁰

On 14 November 2008, Fairfield Council received comments from ISCAR, which raised objections to Southern Cross Rigging being permitted to use its premises for spray painting and sand blasting, due to the problem with spray paint "mist" being emitted on several occasions, over a period of more than four years.¹¹

The dispute had also been the subject of a meeting at the Marconi Club, which was attended by officers of Council, ISCAR, and the man from Southern Cross Rigging with whom

⁶ Ex 1 tab 1; Ex 1 tab 13

⁷ Ex 4 tab 30 par 5.3 (p187)

⁸ Det Insp Puffett Ex 4 tab 2 par 62 (p18); Jason Allen T 8/12/94 p30, line 10

⁹ Ex 1 tab 53 (p317)

¹⁰ Ex 1 tab 51 (p305)

¹¹ Ex 1 tab 48 (p298)

Mr Corra and another ISCAR employee had had a heated argument just before the first fire in 2006.¹²

This fire, like the first fire, had obviously been deliberately lit, using materials aimed at maximizing damage to the building. This second fire caused damage in excess of \$2 million¹³. An investigation report by Greg Kelly & Associates Pty Ltd, commissioned by the insurer of the building and contents (Zurich) noted that police held no suspicions that the insured (ISCAR) was involved in starting the fire.¹⁴

Fire of 20 May 2009 at Bellevue Hill

Premises at 20 Benelong Crescent, Bellevue Hill were owned by Desmond Lee. During 2008 and into 2009, building work was being carried out to complete a residential development, involving the creation of five residential apartments at the site. Mr Lee had engaged Southern Cross Builders Pty Ltd (Southern Cross Builders) to carry out the majority of the building works. The Director of Southern Cross Builders was Mark Merhi.¹⁵

These building works were supposed to have been completed by about June 2008. When this did not occur, the owner invoked a liquidated damages clause in the contract, causing a daily penalty of \$700 to become payable to the owner for each day of over-run. By late December 2008, there were significant problems between Mr Lee, his site supervisor, Mr Buden, and Southern Cross Builders. Among the problems at this time were that a number of sub-contractors had not been paid. Meetings had taken place between the owner and his site supervisor, and Mark Merhi, as well as a man who Mr Lee and Mr Buden understood to be "Kamil" Merhi who was the brother of Mark Merhi. It is apparent that the "Kamil" is a reference to Khalil Merhi.

According to the site manager, Mr Buden, the builder (which changed its name from Southern Cross Builders to Merhi's Constructions) had in January 2009 "illegally closed" the site to the owner and his site supervisor. Around the end of February 2009, Mr Lee terminated the building contract, appointed a new builder, and engaged security guards to take possession of the site.

When he gave evidence in the inquiry, Mr Buden said that although he had previously been a friend of Mr Lee, there had been a falling out between them. He claimed that Mr Lee had been responsible for much of the failures to pay sub-contractors, and suggested that Mr Lee might have had a motive to delay the works.¹⁶ Mr Buden confirmed in his evidence that in about January 2009, the builder had "taken over" the site, and that this had arisen because of a dispute between Mr Lee and Mark Merhi.¹⁷

The fire at Benelong Crescent started at around 9.45pm on 20 May 2009. Two stolen cars had been driven into the lower level garage at the premises and set alight. Each car was

¹² Corra T 8/12/14 p36, line 15

¹³ Ex 2 tab 2; Ex 2 tab 13

¹⁴ Ex 2 tab 34 (p237A, 237B)

¹⁵ Det Graff Ex 3 tab 2 par 4 (p3); D Lee Ex 3 tab 19 par 4 (p79)

¹⁶ Buden T9/12/14 p6ff

¹⁷ Buden T9/12/14 p8 line 48

loaded with accelerant, including a gas bottle, and car tyres. The Mazda also contained the remains of a plastic drum which smelt of petrol.¹⁸

This fire was obviously deliberately lit. About \$250,000 to \$300,000 damage was caused by the fire. The premises were not insured at the time.¹⁹

Fire of 13 May 2010 at CFMEU building – Lidcombe

In May 2010, a commercial building at 10 – 12 Railway Street, Lidcombe was the Head Office of the Construction, Forestry, Mining and Energy Union (CFMEU).

Prior to a fire destroying the building on 13 May 2010, CFMEU officers had been involved in a number of disputes with Mark and/or Khalil Merhi in relation to the activities of companies with which they were associated (including Southern Cross Rigging, and Southern Cross Builders). These disputes had occurred mainly at construction sites, and according to CFMEU staff, had involved a number of heated arguments. These contentious interactions between the CFMEU and Mark and/or Khalil Merhi included the following:-

- On 31 March 2010, the CFMEU commenced proceedings in the Federal Magistrates Court against Merhi's Constructions Pty Ltd, seeking the imposition of pecuniary penalties under the *Workplace Relations Act 1996* (Cth). It was alleged in those proceedings that Khalil Merhi, the company's Construction Manager, had obstructed the entry of CFMEU officers to construction sites for the purpose of exercising rights of investigation of suspected breaches of occupational and safety legislation. At the time of the fire, these proceedings had not yet been heard. When they were, in September 2010, an agreed statement of facts was provided to the Court, which stated that on 5 June 2009, Khalil Merhi had repeatedly shouted at officers of the CFMEU words to the effect of – "*Get the fuck off my site*". In these proceedings, Merhi's Constructions Pty Ltd admitted that it was liable for the conduct of Khalil Merhi, and that there had been a refusal of the right of entry of the Union's officials.²⁰
- On about 5 April 2010, CFMEU President Peter McClelland spoke with Mark Merhi by telephone. Mr McClelland told Mark Merhi in this phone call that the union was experiencing problems with his "lunatic brother" Khalil Merhi - and asked Mark to intervene to control Khalil. Mr McClelland claimed in a statement that Mark Merhi was aggressive in this phone call.²¹
- On 14 April 2010, CFMEU staff attended a work site at Saltash Street, Yagoona, in relation to alleged safety issues. Shortly afterwards, Khalil Merhi arrived, and (according to Union Organiser Brian Miller) started swearing and telling the two Union officials to get off the site. It is also alleged that Mr Merhi assaulted the two men, by pushing them.²² Police were called to the incident.

¹⁸ Det Graff Ex 3 tab 2 par 26-27 (p13)

¹⁹ Det Graff Ex 3 tab 2 par 62-63 (p25); Statement of Todd Blunt Ex 3 tab 27 par 5 (p116)

²⁰ Ex 4 tab 37

²¹ Ex 4 tab 30 par 6 (p317)

²² Ex 4 tab 19; Ex 4 tab 22

- On 20 April 2010, an application was filed on behalf of Kahlil Merhi in Bankstown Local Court, seeking Apprehended Personal Violence Orders against various CFMEU staff.²³
- On 22 April 2010, CFMEU staff again attended the work site at Saltash Street, Yagoona. This led to another confrontation with Khalil Merhi, in which (according to CFMEU staff) he told the Union representatives to “get off the site”.²⁴
- On a Thursday (which may have been Thursday 6 May 2010), about one week before the fire, a receptionist at the CFMEU building noticed a man (who she described as a tall African man, apparently known as Adam) who seemed to be “measuring” the size of the entry doors at the CFMEU building.²⁵
- On Wednesday 12 May 2010 (the day before the fire) a meeting occurred at the CFMEU building, which was attended by Mark Merhi and others. In that meeting (which CFMEU President Mr McClelland described as “tense”) there was discussion of rights of entry to building sites, and alleged breaches of employment and taxation laws. According to Mr McClelland, Mark Merhi rejected the Union’s position, and was apparently very annoyed and agitated (although not aggressive).²⁶ The meeting ended with Mark Merhi walking out.²⁷
- On that same day, CFMEU Union Organiser Mohammad Morgani claims to have engaged in telephone conversations with Khalil Merhi. According to Mr Morgani, Khalil said, in the course of these conversations, that he would “*take the Union down*”.²⁸

The fire on Thursday 13 May 2010 started shortly after 10pm, when a stolen Mazda 626 sedan was crashed through the gates and then through the front doors of the building. The car was set alight. Drums of accelerant including paint thinners and two car tyres were inside the car, in an obvious attempt to increase the destructive effects of the fire. A black glove was found at the scene, which was contaminated with petrol²⁹, and which contained DNA linked with two persons - Emad Alameddine (aka Mohamed Katieh – aka Adam Obeid) and his brother Jalal Alameddine.³⁰ Damage to the building exceeded \$1 million.³¹

²³ Ex 4 tab 35

²⁴ Ex 4 tab 31; McClelland T 9/12/14 p20ff

²⁵ The doors through which a stolen car was driven on 13 May 2010, when the fire was started. However, there is no evidence of a link between the African man and Mark or Khalil Merhi.

²⁶ McClelland T9/12/14 p22

²⁷ Ex 4 tab 30 par 9 (p318)

²⁸ Ex 4 tab 24, tab 23.

²⁹ Ex 4 tab 53 (p461)

³⁰ Ex 4 tab 54, tab 54A

³¹ Ex 4 tab 2, par 3 (p3)

Who was responsible for the fires

If possible, I am obliged to make findings as to the circumstances of the fires including their cause and origin s81(2). In my view that requires me to find who lit them if the evidence allows. Further, if I am of the opinion that the evidence is capable of and likely to cause a jury to convict a person or persons of committing indictable offences in connection with the fires, I am obliged to forward that evidence to the Director of Public Prosecutions to allow him to determine whether charges should be preferred – s78(4).

It is obvious that each of these fires was a deliberate act of arson.

The similar modus operandi employed in each case suggests they were linked: all of the fires involved motor vehicles that were stolen from around the same area of Sydney; in each case a car tyre/s and petrol and/or thinners had been placed inside the vehicles before they were crashed into the incident premises.

There is no direct evidence as to who was responsible for lighting any of them in that no one has admitted doing so and no witnesses have been located who witnessed the events. There is however some circumstantial evidence connecting various persons with the fires. I will now analyse that evidence.

Emad Alemaddine³² and Jalal Alemaddine

It is convenient to consider these two men together, because there is a degree of commonality between the evidence relating to them. The two men are brothers.³³ The petrol-contaminated glove found at the CFMEU fire contained DNA which was matched to both of them.³⁴

Both men gave evidence at this inquiry and denied any knowledge of, or involvement in the CFMEU fire, or any of the fires.

Emad Alameddine told the inquiry that in 2010 he was living at his mother's house in Punchbowl, as was his brother Jalal. He agreed that he had previously been convicted of car theft, and damaging property, but claimed to have had nothing to do with the CFMEU fire, and said he did not know either of the Merhi brothers or their companies. He said he did not know where he was on the night of the CFMEU fire. He said that he did not recognise the black glove, but claimed that he had used gloves of a similar kind (as did his brother Jalal) when carrying out tree lopping work.³⁵

Jalal Alameddine gave evidence by video-link from the South Coast Correctional Centre, where he was serving a sentence for "break and enter". He did not know where he was on the night of the CFMEU fire, but said "*I wasn't burning down things either*". He said that while he had worn gloves at some stage in his life, he had no knowledge of the glove that was found at the CFMEU fire, and no explanation as to how his or his brother's DNA had

³² (aka Adam Obeid; aka Mohammed Katieh)

³³ Det Puffett T8/12/14 p20, line 5; Emad Alemaddine T9/12/14 p52, line 45

³⁴ Tab 54, tab 54A

³⁵ T9/12/14 p54ff

come to be inside it. Mr Alameddine said that he had been dealt with by a court in 2014 for an offence of steal motor vehicle, and had also committed other offences of dishonesty in the past.³⁶ He also said that at some time in the past he had done work for his uncle, who had a “tree service” business.³⁷

Each of the vehicles used in the four fires was stolen from the vicinity of Punchbowl.

The evidence therefore seems to establish the following:-

- The DNA of both men was found in a petrol contaminated glove that was left near the scene of the CFMEU fire;
- Both men have committed offences of car stealing; and
- The vehicles used in each of the fires were stolen from an area close to where the two men lived in (at least) 2010.

Conversely, the DNA evidence does not permit a conclusion as to who was wearing the glove on the night of the CFMEU fire or when the DNA was deposited on the glove. Both men said that they had worn gloves in the past, and may have worn them when carrying out tree lopping. It is not possible to exclude that the DNA was deposited in the glove at some earlier time. Furthermore, as there is evidence that DNA from other persons may have been present on the “inner cuff” of the glove, it is not possible to exclude others from having used the glove on the night of the fire.

There is no obvious motive for either of these men to have set the fires. There is no evidence linking them to anyone who may have had a motive to do so.

Adam Elwali

Adam Elwali (not to be confused with Adam Obeid aka Emad Alameddine³⁸) is the man who was seen by CFMEU Receptionist Susan Sotelo, about a week before the CFMEU fire, apparently “measuring” the front door of the CFMEU building³⁹. Apart from this suspicious behaviour, and the timing of it (shortly before the fire), there is no evidence to implicate Mr Elwali in this or any of the other fires.

The Merhi brothers

No property was stolen from any of the premises that were the subject of arson attack and in none of the cases was there any evidence that the fires had been lit to benefit from an insurance policy. As detailed earlier, in each case, the property targeted was owned or occupied by a person or organisation which had been involved in confrontations or disagreements with Khalil Merhi and/or Mark Merhi.

³⁶ T8/12/14 p54ff

³⁷ T8/12/14 p62, line 8

³⁸ Det Puffett T8/12/14 p18, line 24

³⁹ Ex 4 tab 27 Q36 (p278)

Mark Merhi and the Merhi companies had been involved in disputes with employees of the CFMEU in the period prior to that fire. There is also evidence that Mark and Khalil Merhi had been involved in sometimes heated disputes with Desmond Lee, in relation to building work at Benelong Crescent, and with staff at ISCAR in relation to damage caused by drifting spray paint.

Both of the Merhi brothers refused to be interviewed by police or to provide a statement detailing their knowledge of these matters. When the inquiries came before the court, Khalil Merhi had been out of the country for some time and it was not known when he would return. Through his lawyers, Mark Merhi indicated he would object to giving evidence. As I accepted he would have a valid basis for doing so, he was not called.

These factors in combination naturally cause suspicion to fall upon them.

Conclusions as to circumstances of the fires

The manner in which the fires were started raises a suspicion that they were all set by the same person or persons. However, I accept that the mechanism used in each case was not so strikingly similar, sophisticated or unique to prove this to be the case.

The cars used to set fire to the buildings were all stolen from near the residence of the Alemaddine brothers, but obviously anyone intent on stealing a car could access that area.

DNA of Emad Alemaddine and Jalal Alemaddine was on a glove found at the scene of one of the fires. There is no way of knowing when that material was deposited on the glove and there is no evidence either man was wearing it when it was dropped at the scene.

They deny being involved and there is no evidence connecting them to the other persons of interest, the Merhi brothers. Accordingly, I conclude that it cannot be proven that Alemaddine brothers were involved in starting any of the fires.

There is no evidence the arsons were motivated by theft or insurance fraud. This prompts inquiry to other possible motives.

There is evidence that either or both of the Merhi brothers and/or employees of their various companies had been involved in significant disputation with the owners or the occupiers of each of the burnt premises prior to the fires being set. The submission that the disputes were being constructively negotiated and that only Khalil Merhi was prone to violent responses to conflict is rejected. While this animosity may have provided a motive for either or both of the brothers to arrange the fires to be set, there is no direct evidence that they did so.

Each of the victims conducted business in a volatile milieu. The possibility of there being other, unidentified persons not connected with the Merhis and not connected to each other who wished to cause property damage to each of the three victims cannot be excluded.

The conduct of the Merhi brothers towards those with whom they were in dispute whose property was burnt creates a suspicion that they were responsible for the fires. However, in

the absence of direct evidence, there is insufficient circumstantial evidence on which I could exclude the possibility of a coincidence.

In the circumstances I am unable to find the identity of the person or persons who caused any of the fires.

Findings required by s81

Section 81(2), requires the coroner to record findings as to the date, place, and the circumstances of each fire.

Fire on 25 February 2006

The fire occurred on 25 February 2006, at 38 – 42 Seville Street, Fairfield. The origin of the fire was in the front reception area of the premises. The fire was caused by the actions of an unknown person or persons who drove a vehicle through the front doors of the premises, and set the fire, using accelerants.

Fire on 5 March 2009

The fire occurred on 5 March 2009, at 38 – 42 Seville Street, Fairfield. The origin of the fire was in the rear entry area of the premises. The fire was caused by the actions of an unknown person or persons who drove a vehicle through the rear doors of the premises, and set the fire, using accelerants.

Fire on 20 May 2009

The fire occurred on 20 May 2009, at 20 Benelong Crescent, Bellevue Hill. The origin of the fire was in the ground floor garage of the building. The fire was caused by the actions of an unknown person or persons who drove two vehicles into the garage of the premises, and set the fire, using accelerants.

Fire on 13 May 2010

The fire occurred on 13 May 2010, at 10 – 12 Railway Street, Lidcombe. The origin of the fire was in the front reception area of the building. The fire was caused by the actions of an unknown person or persons who drove a vehicle through the front doors of the premises, and set the fire, using accelerants.

I close these inquiries.

Michael Barnes
NSW State Coroner
Glebe
18 January 2016

