

UNDER the Retirement Villages Act 2003

In the Matter of disputes

**BETWEEN ROWLAND MURRAY DUNBAR and
PATRICIA ANN DUNBAR**

First Applicants

AND ANNE McDONNELL

Second Applicant

AND JOHN and JEAN SPARROW

Third Applicants

**AND CONDELL RETIREMENT VILLAGE
(2011) LIMITED**

Village Operator /Respondent

REASONS FOR DECISION OF DISPUTES PANEL 12 FEBRUARY 2025

Introduction

1. The Applicants are residents at the Condell Retirement Village operated by the Village Operator/Respondent. Following concerns expressed the decision was made that there should be no alcohol consumed by residents in any common area and this was duly communicated. Because of events surrounding a 25 December 2023 function the Village Operator wrote a communication to residents. Objection was taken by the Applicants or one of them to the terms and promulgation of that communication and they sought an apology on stated terms to be disseminated to all the residents of the Village. This has not been agreed by the Village Operator. Following appropriate procedures dispute notices under the Retirement Villages Act 2003 (“**the RV Act**”) have been given and, after appropriate procedures, this is the disputes panel’s decision on those dispute notices.

Dispute notice procedure

2. The disputes panel was appropriately appointed by the Village Operator; a response by the Village Operator to the dispute notices has been provided; and a pre-hearing conference conducted by electronic communication. It was then agreed that the dispute would be resolved on the agreed correspondence without oral hearing; and agreement has been reached on the relevant documents. Objection was taken by the Village Operator to one category of documents to which I shall refer. This decision is based on the content of those documents.

Background

3. The Applicants are residents of the retirement Village at 53 Condell Avenue, Bryndwr, Christchurch, known as Condell Retirement Village operated by the Village Operator. The Village comprises some 37 villas, all occupied by residents pursuant to individual Occupation Rights Agreements (“**ORA**”).
4. In November 2023 certain allegations were made which were investigated by the Village Relationship Manager, Alison McCormick. The reply from the Village Operator to the dispute notices said that that investigation

raised questions of compliance with the Sale and Supply of Alcohol Act 2012.

5. About 30 November 2023 the Village Relationship Manager wrote to all residents a letter concerning various issues and included:

“From now on all Happy Hours in the Community Centre will be alcohol-free. However, I have emailed [two of the residents] with some options of how you may proceed at your own Villas should you wish to continue a Happy Hour with alcohol”.

6. In response to questions raised by another resident (Mr Barry Dent, not one of the Applicants but for the purpose of this dispute a spokesperson on their behalf) Ms McCormick wrote an email on 8 December 2023 to him explaining why that decision had been made. The email included:

“Given [the Retirement Village] is unlicensed and will remain so, the communal areas of [the Village] are now categorised as alcohol-free, which includes storage and consumption. This includes the BBQ area and the Community Centre.”

The Village Operator said it to be understood that Mr Dent had provided the Applicants with that email and that was not disputed. (The dispute notices referred to a failure properly to consult residents about this but I was advised that this was not an issue for me to resolve).

7. It is common ground that there was a gathering of residents in the barbecue area on 25 December 2023. Following that there was, some days later, namely 12 January 2024, an email sent by Ms McCormick to all residents of the Village. That email first extended her apologies to all residents. She then went on to say that it had come to the attention of the Village of that *“a few individuals breached the alcohol-free policy in the BBQ common area [referring to that event]”*. The email further contained:

“As a result of this incident, the Directors can confirm the Village common areas are now permanently alcohol-free. The actions of those involved in this breach do not reflect the values we strive to maintain in our Village. We are taking immediate steps to address the situation with various solutions available to the Directors”.

The dispute notice from the third Applicants, Mr and Mrs Sparrow, refers to a response on 12 January 2024 “*advising we had not been drinking alcohol*” but I appear not to have been supplied with that and further there was no such response from the first or second Applicants.

8. On 2 February 2024 a director of the Village Operator, Mr Paul McCormick, sent a further e-mail to all residents which read:

“We have recently become aware of a very small group of residents who have violated the Village’s zero-alcohol policy and have displayed a boastful attitude while doing so. We would like to remind all residents of the importance adhering to our zero-alcohol policy, which relates to the common areas of the Village.

It is crucial to understand that there are actions available to the directors in handling such violations which may have financial implications for you. We kindly request your cooperation in avoiding a situation where we are compelled to act against a resident who blatantly ignores the policy.

Furthermore, we urge those involved to cease any form of bullying directed at residents who have complied with the Village policy and are accepting of our decision. Let us strive to maintain a respectful and harmonious living environment for all.

Thank you for your understanding and co-operation.”

9. The third Applicants, Mr and Mrs Sparrow, replied to the director on 5 February 2024 seeking clarification of the “*group*” referred to, and advising that they had not consumed alcohol, that there had been no bullying, and that there had been no boasting. One of the first Applicants, Mr Dunbar, also wrote that day stating that no alcohol had been drunk and completely refuting the allegations; and he referred to the threat of financial implications as a form of “*elder abuse*” tantamount to bullying innocent people. Mr McCormick replied to Mrs Sparrow by email that day stating that the intention was to address general concerns raised and not single out individuals and that “[*n*]*aming and shaming those people individually ... is not the way we want to manage the situation*”.
10. The dispute notices also referred to oral communications made on 7 February 2024. There was no direct evidence of those statements in the material provided which the parties had agreed was all that they relied on.
11. On 9 February 2024 Ms McCormick wrote to all residents expressing apologies “*for not individually addressing the concerns raised regarding the*

other allegations of alcohol consumption...". She referred to other things including the proposed distribution of a Policy Information Pack on which feedback would be sought.

12. On 10 February 2024 the Applicants (along with one other resident) wrote to Ms Cormick in reply. This said that the letter failed to inform all residents that the accusations made in the 2 February 2024 email were "*based on unverified information*" and that the letter should have been signed by Mr McCormick. They suggested that "*a full apology being addressed to us (as you agreed at our meeting in Villa 6 on Wednesday 7 February) and be circulated to all residents...*". Again there is no direct evidence of what was discussed at the 7 February meeting.
13. On 27 March 2024 Mr McCormick wrote to the third Applicants outlining the background and apologising that the wording used in his 2 February 2024 letter "*could have been a little softer*". He explained that the alcohol ban was temporary and that he was looking at ways to allow BYO events to take place. He acknowledged the level of frustration that his decision had created and apologised for "*the distress that this [had] caused*".
14. There have been other developments and communications but these facts essentially form the basis for the dispute notices.

Objection to Documents

15. The Village Operator objected to certain documents sought to be produced by the Applicants. These related to communications to and from the Statutory Supervisor concerning the disputes. The objection was that these are irrelevant. The Applicants have in reply submissions accepted the objection to those documents. That deals with those documents, although I comment that the acceptance of that objection appears correct for two reasons: first because the documents were submitted as evidence that proper procedure had been followed by the applicants and this has never been in issue; and secondly because the opinions expressed as to a "*way forward*" by the Statutory Supervisor could be said to be prejudicial to the parties in that an opinion is expressed on something on which I need to make a decision.

16. Accordingly I uphold the objection and reject the documents in question.

The Applicants' Claims

17. The Applicants claim in the dispute notices that the Village Operator's letters of 12 January 2024 and 2 February 2024 were "*particularly hurtful*". They referred to the accusations made "*that a group we socialise with in the Village*" breached and continue to violate the alcohol-free policy in the barbecue area which is not true. They say the letter of 12 January 2024 "*blames us*" for the now permanent ban and claim that they are threatened by a statement in that letter. They claim that the letter of 2 February 2024 has humiliated them by the untrue statement about "*[having] displayed a boastful attitude*". They say that they are threatened by the reference to "*options available ... which may have financial implications*" and an allegation of bullying. They say that the two letters are "*elder abuse*" and resent "*the childlike treatment of residents*"; with all the actions "*affecting [their] quality of life*".
18. The only articulation of the ground of the dispute is that "*The [Village] operator has failed to comply with their ORA in a number of areas*".
19. The relief sought by them in their respective dispute notices is that they "*require an apology published by the Director/s of Condell Retirement Village to them personally and to the residents of the Village by normal communication methods stating:*
- *it is accepted the accusations made in the two letters of 12 January and 02 February 2024 were based on non-verified information.*
 - *it has accepted that those who socialised in the BBQ area on and from 25 December 2023 did not breach/violate the alcohol-ban unilaterally announced on 28 November 2023.*
 - *that the date of 26 December was incorrect.*
 - *that the December incident could not have affected the Director's decision to confirm the Village common areas are now permanently alcohol-free.*
 - *there is no need to further address the situation with regard to various solutions available to the Directors.*

- *those who socialise at the BBQ area have not displayed a boastful attitude while doing so.*
- *the threat of handling the situations having financial implications on [them] is withdrawn.*
- *there has been no bullying in any form directed at other residents of the Village by those who socialise at the BBQ area.*
- *the directors are sorry for any pain and hurt that any resident has suffered as a result of the accusations made in the letters of 12 January and 2 February 2024, given they have no basis of fact.”*

In subsequent exchanges during preparation for this decision, the Applicants changed what they were seeking to have provided or ordered by way of apology. That was in an open email which I took to be expressly waiving any privilege that may have attached to it. I have disregarded it in the context that the dispute notices as presented remained unchanged.

20. In submissions on behalf of the Applicants, Mr Barry Dent first submitted:

- The unilateral decision of the Village Operator to ban alcohol from all communal areas first at happy hour and subsequently permanently, affects the Applicants' occupation right and the right to access services, being a right the Applicants always had since moving into the Village
- Which decision also relates to changes to their access to services that were previously freely available
- The Village Operator then addressed communications relating to the alcohol-free policy to all residents by making unverified allegations against the Applicants in breach of the Code of Residents' Rights because other residents in the Village who were not present at the BBQ events, could and have in fact inferred that those residents attending the BBQ were deliberately flouting the new alcohol policy
- Exposed the Applicants to subsequent ill-treatment and distrust by some of those other residents causing undue stress to the Applicants, and
- The Respondent attempted to apologise subsequently, after conceding that its attempt was being less than satisfactory, but that attempted apology was not circulated to all residents in the Village and therefore failed to rectify the negative inferences drawn by those residents who were not present during the mentioned BBQ events.

21. Mr Dent said that the Applicants relied on Clause 7 of the Code of Residents Rights which reads

- 7 *You have the right to be treated with courtesy and have your rights respected by the operator, the people who work at the Village, and the people who provide services at the Village.*

and clause 5.13 of their respective ORAs which Mr Dent said read:

"That the Operator, the people who work at the Village and the people who provide services at the Village, shall treat the Residents with courtesy and shall respect the rights of Residents." (and no issue was taken by the Village Operator that that was the wording).

22. As to the orders that the disputes panel should make, Mr Dent said on behalf of the Applicants that there should be ordered:

"a reissue of an apology in a softer manner by correcting the record and thereby ensuring that all residents take note that the original allegations were not properly verified and caused harm to the Applicants".

The Village Operator/Respondent's position

23. The Response from the village operator elaborated extensively on factual matters concerning the functions in question, especially 25 December 2023, and the exchanges with certain residents. No direct evidence was given to me about those factual matters and, as I have said, the parties agreed that my decision would be based on the documents agreed. Reference was made to the fact that the village operator did not name any of the residents in its 2 February 2024 letter.
24. The response does acknowledge that the 2 February 2024 letter should have stated that the financial implications were the potential fines for breach of the Sale and Supply of Liquor Act 2012 and that such fines did not have direct financial implications for the residents although they would for the village operator. It does not accept that conceding that the apology could have been made in a *"better and softer manner"* meant that the earlier apology was inadequate. The apologies already provided were, it was said, perfectly adequate and no further action was required.
25. The written submissions for the Village Operator first said:
- The supply of alcohol has never been included anywhere in an Occupation Right Agreement (ORA) for the Village. Any supply of alcohol at Happy Hour has always been a goodwill gesture offered at the discretion of the Village Operator. It was not an entitlement or a

guaranteed service under the terms of any ORA. Consequently, the decision to cease supplying any alcohol at Happy Hour does not affect residents' occupation rights or access to services as outlined in their ORA. The ORA governs specific rights and obligations, and the provision of alcohol as part of a goodwill gesture is not stipulated as a service or right under its terms. This decision by the Village Operator was made to ensure fairness and consistency, while taking into account the wellbeing of all residents and the operational considerations of the Village.

26. In reply to that point Mr Dent referred to a Disclosure Statement. I have not been provided with that document and it was never proposed to be part of the agreed bundle. Had the Applicants wished to rely on it they should have raised it earlier. One issue from that has been the status of that document in the contractual obligations under the respective ORAs of the Applicants. I was not supplied with the ORA for any Applicant but it is not unusual for there to be an exclusion clause in such a document –I am not going to speculate on that. I merely comment to further note that it is strange that this right that the Applicants are said to have was not raised in the dispute notices, nor in any conference, nor in primary submissions on their behalf.
27. The next submission raised on behalf of the Village Operator in reply was
- The Village Operator's actions were taken to uphold the broader rights and interests of all residents in the Village community. Section 53(1)(d) permits the Village Operator to act in a manner that promotes a safe and harmonious living environment. Addressing the policy breach in a general communication was both appropriate and necessary to fulfil this obligation. In doing so, it ensured residents that Condell took their concerns seriously about the disruption caused by this group within the Village and their anti-management behaviour was being addressed. After investigating the allegations the operator was satisfied the allegations were verified.
 Clause 5.13 of the ORA obligates the operator, staff, and service providers to treat residents with courtesy and respect, a standard which has been met through the Village Operators multiple attempts to apologise and reconcile the matter.
28. In reply submissions Mr Dent on behalf of the Applicants challenged the applicability of section 53(1)(d) of the RV Act as giving the permission submitted on behalf of the Village Operator. I entirely except that challenge. Section 53(1)(d) effectively provides:

53 (1) A resident may give a dispute notice for the resolution of a dispute concerning any of the operator's decisions—

...

(d) relating to an alleged breach of a right referred to in the code of residents' rights or of the code of practice.

29. That section does not give the Village Operator the permission to which the submissions refer “ ... *to act in a manner that promotes a safe and harmonious living environment*”. I can certainly understand that a Village Operator must act in a way that promotes such an environment and I do not perceive the Applicants to submit otherwise. Their submissions go on to say that it is irresponsible for the Village Operator not to contact the Applicants during their investigation of allegations; but that is not something that I need to deal with, not having been raised in the dispute notices.
30. The submissions for the Village Operator then said:
- The steps taken by the Village Operator were both measured and necessary to uphold the Village community standards and to address concerns raised by other residents.
31. That was then followed by reference to a document which purported to identify those involved in the incident including some of the Applicants. There was reference to behaviour said to “*bait the manager*” and be intentionally provocative and distressing to other residents which, the submissions said created unnecessary tension within the community.
32. Objection was taken to all that by the Applicants on the grounds that they disputed it and that document was not produced. I accept that submission. The parties had all opportunity to provide the documents which they sought to rely on and there was no reference to this document by the Village Operator at that time. As I note below, identification of individuals involved is a significant issue in these disputes. Also may have been relevant the behaviour of individuals which had some relevance to consumption of alcohol in common areas. But there was none of this raised in any of the accepted documents nor did the Applicants or the Village Respondent seek to have any evidence provided in a proper manner about these matters. If

either party wished to have evidence provided on those subjects that should have been done by either verified written statements or accepted documents.

Panel assessment

33. It is to be regretted that a resolution of these disputes has taken as long as it has. These events occurred in December 2023 and this final determination is some 14 months later. A solution may have been able to be found well before the parties became as polarised as they have. The task for the disputes panel is to decide the dispute as presented and on the basis of the evidence presented in accordance with the law.
34. The only facts provided have been based on documents exchanged. Even the truth of what is said in those documents has not been verified in any way.
35. There was no request from either party to hear or take into account any oral evidence, such as statements from people who were involved in the events who might have clarified things.
36. Particularly and critically, there was no evidence which identified persons to whom the letters in question on 12 January 2024 and 2 February 2024 referred. Those letters were in themselves neutral and did not identify any individuals. In the absence of any other evidence from other persons, that those letters applied to any of the Applicants has only been taken by the Applicants themselves. In fact the initial response was to ask for identification of the “*group*” to which Mr McCormick provided a neutral response. The Applicants have taken umbrage from those letters assuming that they applied to them. There may have been other things which led them to that conclusion, but that was not subject of any evidence to me.
37. Also of importance is that there has been no evidence at all of any consequences for any of the Applicants from the matters to which the dispute notices refer. No one has been called to provide any evidence that

- they have thought any worse of any of the Applicants because of what had been said by the two letters in question.
38. I am not able on what has been provided to me to have any definitive understanding of what occurred at the barbecue area on 25 December 2023, who was present there, whether or not there was any alcohol consumed, or what was exchanged between the residents who were present.
39. Dealing next with the claimed unilateral decision of the village operator to ban alcohol from all communal areas as a breach of the applicants' rights, I accept entirely the submissions for the village operator that there was no right for any of the applicants under their ORAs to have alcohol in communal areas. Nor could the consumption of alcohol in a communal area in any way be said to be a "service" to which the respective applicants had any right of access. Communal areas are by their very nature to be enjoyed by all of the community in a retirement village; and management of how these areas are used and any function run there must be under the control of the village operator.
40. As to communications from the village operator to all residents, the apology of 12 January 2024 from Ms McCormick was expressed in significantly neutral terms, starting with an apology (although not expressly stating what for), referring to a breach of the alcohol-free policy of the Village and to this not reflecting the values sought to be maintained in Village. There were responses to that communication
41. The 2 February 2024 communication from Mr McCormick was in stronger terms, referring to a breach of the Village's alcohol-free policy and the showing of "*boastful attitude*" in doing so; advising options available which might have "*financial implications*"; and seeking co-operation in order to avoid a situation where the Village was compelled to act. He expressly urged those involved to cease any form of bullying and for all to "*strive to maintain a respectful and home harmonious living environment for all...*" There was no identification of individuals.
42. If the Applicants or any of them consider that either of those letters refer in any way to them or that they have been slighted by personal implications in

- those allegations, then that is their understanding. There is no evidence before me of that, at least so far as any other resident in the Village is concerned. The allegations they make concerning themselves personally referred to in paragraph 17 above are simply not supported by the only evidence I have been asked to take into account, namely correspondence.
43. The 27 March 2024 letter from Mr McCormick contained an apology in its own terms as mentioned above.
44. In summary, I do not see anything objectionable to the wording of any of the letters written by Ms. McCormick or Mr McCormick insofar as implications for the Applicants are concerned. If they consider they are directly referred to in those letters, that is for them - there is no evidence of that. If they consider that they have been harmed by those letters, then they can themselves correct the situation by clarifying any matters with other residents.
45. I do not regard any of what has been said in those letters, which is the only thing on which the Applicants rely, as not treating them with courtesy or disrespecting their rights or in breach of either clause 7 of the Code of Residents Rights or clause 5.13 of the respective ORAs of the residents.
46. Accordingly I do not order the relief that is sought.

Costs

47. Neither party sought costs but in the normal way, that may be an issue arising from the outcome and, given the broad nature of the jurisdiction to order costs under section 74 of the RV Act, I reserve costs. I do, however, make these comments.
48. This whole event has been unsatisfactory for all. First it has taken significantly longer than might have been ideal for reasons outside my control. Secondly, the personality issues between residents and with management is something that should be able to be contained by better communication. Thirdly, although this has cost the Village for my time spent on it and, it seems, on legal fees, that may all have been avoided had some different approach been taken such as mediation.

49. If any party wishes to make an application for costs this must be made in writing with full details **within 10 working days of the date of this decision**. Any response to that application must be made in writing with full details **within 5 working days thereafter**. If there is any reply to that response, that is to be made **within 5 working days** but must be strictly in reply.

Result

50. I decline to order the relief sought in the dispute notices and I reserve the question of costs.
51. This order will be final if no application for costs is made in accordance with the timetabling above, or, if there is an application, when that is finally disposed of.

Dated at Auckland this 12th day of February 2025



David M Carden
Disputes Panellist