

**UNDER
IN THE MATTER**

The Retirement Villages Act 2003
of a Dispute

BETWEEN

KEVIN FREE
Applicant

AND

**SUMMERSET VILLAGES
(WARKWORTH) LIMITED**
Village Operator/Respondent

DECISION OF DISPUTES PANEL

Presented for filing by:

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DECISION OF DISPUTES PANEL

Date of Dispute Notice:	22 May 2018
Date of Submissions Applicant:	29 June 2018
Date of Submissions Respondent:	6 July 2018
Date of Submissions in Reply Applicant:	12 July 2018
Date of Decision:	13 July 2018

THE BACKGROUND

1. This decision under the **Retirement Villages Act 2003** (the RVA), is in respect to a Dispute Notice issued by **MR FREE** on 22 May 2018 against **SUMMERSET VILLAGES (WARKWORTH) LIMITED (SUMMERSET VILLAGES)**.
2. I am appointed as the Disputes Panel (the Panel) under s 60 of the RVA.
3. At a teleconference on 22 June 2018, a preliminary legal issue was raised as to whether the dispute for which **MR FREE** has given a Dispute Notice on 22 May 2018, was one which was within the jurisdiction of the Panel to decide.
4. Because it was a preliminary legal argument, it was agreed that the Panel would determine that issue, “on the papers”, rather than a formal hearing. s.65 applies.

65 Hearing must be held

- (1) In the course of conducting a dispute resolution, the disputes panel must hold a hearing unless—
 - (a)
 - (b) the applicant and respondent agree not to have a hearing; or
 - (c)
- (2)
- (3)
 - (a)
 - (b)
- (4)
 - (a)
 - (b)

UNDISPUTED FACTS

5. **MR FREE** is a resident at Warkworth **SUMMERSET VILLAGES**. He and others at the **SUMMERSET VILLAGES** are hearing impaired.

6. The Notice of Dispute is about hearing loops which are a variety of sound systems to reduce hearing impairment.
7. The Parties agree that there are some hearing loops which are installed in public areas of the Warkworth **SUMMERSET VILLAGES**.

THE ISSUES FOR THE PARTIES

8. For **MR FREE** the issue is the number of hearing loops, which he contends should be installed in various public areas of **SUMMERSET VILLAGES**.
9. For **SUMMERSET VILLAGES**, the issue is whether, in law, this is a dispute the Panel can hear.
10. The issue raised by **SUMMERSET VILLAGES**, as to whether this is a dispute the Panel can hear under the RVA, must necessarily be addressed, before the issue of the hearing loops can be addressed.
11. No matter how important the issue to the Applicant, the Panel can only determine those issues which are specifically set out in the RVA for a Panel to determine.

MR FREE'S SUBMISSION

First Ground

12. **MR FREE**'s first submission is that based on G5.3.5 of the Building Regulations 1992, which he accepts does not apply to Retirement Villages, **SUMMERSET VILLAGES** should install more hearing loops.

Second Ground

13. **MR FREE** submits G5.3.5 requires provision of hearing loops for meeting spaces for over 250 people.

Third Ground

14. **MR FREE** submits by not having sufficient hearing loops installed, his right to be treated with respect, and not be exploited is being violated.

Fourth Ground

15. **MR FREE** submits a statement from the CEO of **SUMMERSET VILLAGES**, in 2015, that the CEO strives to provide a service that really makes a difference in people's lives, is violated if the CEO does not provide the additional hearing loops.

Fifth Ground

16. The non-provision of the additional hearing loops is a violation of UN rights for the hearing impaired.

SUMMERSET'S SUBMISSION

17. The **SUMMERSET VILLAGE** Submission is that;

- The Panel does not have jurisdiction to determine the dispute under s 53 of the RVA, as none of the available grounds apply;
- Section 66 may apply;
- The remedies available under s 69 do not include provision of additional hearing loops.

18. In respect to **MR FREE**'s Submission **SUMMERSET VILLAGES** responds;

- First ground-

SUMMERSET VILLAGES has complied with the Building Code and has a Code Compliance Certificate, and Warrant of Fitness under the Building Act 1991.

- Second ground-

G5.3.5 does not apply to the dispute, as the communal areas are not available to the general public.

- Third ground –

Alleging exploitation when all codes have been complied with is vexatious under s 66.

- Fourth ground-

Submission about the CEO is an abuse of process.

- Fifth ground-

Relating to UN requirements is an abuse of process.

19. There are no remedies available to the Panel for any of the submissions by **MR FREE**.

THE DECISION

20. For the Panel to be able to determine a dispute, the Panel must firstly consider preliminary requirements under the RVA, as to form and time limits in respect to the Dispute Notice itself.

The form of the Dispute Notice

21. The first issue is whether the Disputes Notice is in the form required under s 56 of the Act. No dispute is taken by **SUMMERSET VILLAGES** on this issue.

FINDING

22. Pursuant to s 56(2) of the RVA, the Panel finds the Dispute Notice of 22 May 2018 substantially complies with the requirements of s 56 of the RVA.

Time limits for issuing Disputes Notice

23. The second issue is whether the Dispute Notice was given within the time restrictions under S 57(1) of the RVA. According to the Submissions of **SUMMERSET VILLAGES**, **MR FREE** lodged a Formal Complaint on 17 April 2018, **SUMMERSET VILLAGES** responded on 11 May 2018. **MR FREE** then lodged his Dispute Notice on 22 May 2018. **SUMMERSET VILLAGES** makes no issue with the time limitations in s 57 of the RVA.

FINDING

24. The Panel finds the Dispute Notice of 22 May 2018 complies with the time requirements of s 57 of the RVA.

Whether the Dispute comes within s53 of the RVA

25. The next issue for the Panel is whether the issues raised by **MR FREE** in the Dispute Notice of 22 May 2018, come within one of the factors the Panel may consider under S 53 of the RVA.

53 Types of dispute for which resident may give dispute notice

- (1) A resident may give a dispute notice for the resolution of a dispute concerning any of the operator's decisions—
- (a) affecting the resident's occupation right or right to access services or facilities; or
 - (b)
 - (c)
 - (d) relating to an alleged breach of a right referred to in the code of residents' rights or of the code of practice.
- (2)
- (3)
- (4)
- (a)
 - (b)

26. This is a major issue of contention in respect to jurisdiction, and the Panel will address the Submissions on the issue.

27. **MR FREE** does not make a Submission in respect to whether his dispute is within s 53 of the RVA. It is noted **MR FREE**'s Submission concentrates on the actual issue he is concerned about, namely the installation of additional hearing loops, in the public areas of **SUMMERSET VILLAGES**.

28. **SUMMERSET VILLAGES**'s Submission is that none of the types of dispute referred to in s53 apply to this dispute, and therefore the Panel has no ability to hear the dispute set out in **MR FREE**'s Dispute Notice.

FINDING

29. For the Panel to deal with a dispute, the type of dispute must come within s 53 of the RVA. The Panel has no legal authority to hear a dispute which is not set out in s53. This applies regardless of how meritorious the person filing the Dispute Notice may consider the dispute.
30. In this dispute the only possibly relevant parts of s53, to provision of additional hearing loops in the **SUMMERSET VILLAGES** are set out in s 53(1) (a) or (d).

S.53(a)

31. S53(a) enables the Panel to hear a dispute about the operator's decisions which affects the resident's occupation rights, or right to access services or facilities.
32. Occupation rights refer to the right to occupy a residential unit at a Retirement Village. The interpretation section 5 of the RVA, refers to occupation rights agreements which
- “(a) confers on any person the right to occupy a residential unit at a retirement village”.*
33. **MR FREE** is not contending hearing loops should be installed in residential units at the **SUMMERSET VILLAGES**. The resident's occupation rights are therefore not relevant to this dispute.
34. S 53(a) also applies to the right to access services or facilities.
35. The s 5 interpretation section of the RVA defines facilities as;
- “facilities of a shared or communal kind provided in the retirement village for the benefit of residents of the retirement village, and includes recreational facilities and amenities”*
36. This may include the facilities **MR FREE** seeks to have the additional hearing loops installed into.
37. Services are also defined in s5 of the RVA as:
- “**services** means services provided at a retirement village of 1 or more of the following kinds:
- (a) gardening, repair, or maintenance services:
 - (b) nursing or medical services:
 - (c) the provision of meals:
 - (d) shops and other services for the provision of goods:
 - (e) laundry services (not being the provision of facilities for residents to carry out their own laundry):

- (f) services (for example, hairdressing services) for the personal care of residents:
 - (g) transport services:
 - (h) services for recreation or entertainment:
 - (i) security services:
 - (j) other services for the care or benefit of residents.”
38. None of the defined services are relevant to the provision of additional hearing loops except perhaps
- “(j) *other services for the care or benefit of residents.*”
39. However additional words in s53 (a) qualify the clause about other services, they being “*right to access*”. Rights to access are defined in the Oxford Dictionary as “*the ability, right or permission to approach, enter or use*”. The words provide a right to access to such services and facilities as already exist, but do not provide any right to ownership, or control of the facility, as would be required to enable **MR FREE** to determine that more hearing loops must be installed in the facilities, within the **SUMMERSET VILLAGES** property, and by **SUMMERSET VILLAGES**.

S.53 (d)

40. For s53 (d) of the RVA to apply, there must be a breach of the Code of Resident’s Rights, or the Code of Practice.
41. The Code of Residents Rights is in Schedule 4 of the RVA. The residents rights include:
- (a) Provision of services and benefits promised in the ORA;
 - (b) Right to information;
 - (c) Right to consultation;
 - (d) Right to complain;
 - (e) Access to dispute resolution;
 - (f) Use of a representative;
 - (g) Right to courtesy and respect;
 - (h) Right not to be exploited.
42. **MR FREE** submits he is not being treated with respect, and is being exploited if the additional hearing loops are not provided.
43. The Cambridge English Dictionary defines respect as;
- “*To show admiration for someone for their good qualities*”

44. The Cambridge English Dictionary defines exploited as;

“To use someone or something unfairly for your own advantage”

Declining to provide beyond the legally required number of hearing loops does not fulfil the definition of exploitation.

45. The Code of Practice 2008 sets out minimum standards that operators must meet or ensure are met. The Code includes:
- (a) general requirements;
 - (b) minimum standards;
 - (c) meeting requirements;
 - (d) Accounts;
 - (e) upgrades and maintenance;
 - (f) termination of ORA’s and
 - (g) communication with residents.

FINDING

46. S 53(d) of the RVA does not have any application to **MR FREE**’s Dispute Notice for provision of more hearing loops by **SUMMERSET VILLAGES**. It is too long a bow to submit, the requirement to be treated with respect, and not be exploited equates with a requirement that all demands will be met.

S.66 (1)

47. **SUMMERSET VILLAGES** submits that a further ground on which the Panel should decline to hear **MR FREE**’s dispute, is that the Panel may refuse to hear, or continue to hear a dispute (after consulting with the parties) on certain grounds.

66 Panel may refuse to hear dispute

- (1) A disputes panel may refuse to hear, or continue to hear, a dispute if the panel considers, after consulting with the parties,—
- (a) that the dispute is frivolous or vexatious or an abuse of process; or
 - (b)
 - (c)
- (2) When the panel consults the parties on a proposal to exercise any of its powers under subsection (1), the panel must advise the parties of the effect and implications of the proposal.
- (3)
- (4)

- (a)
- (b)
- (5)
- (6)
- (7)

48. **SUMMERSET VILLAGES** submit that **MR FREE**'s claims are vexatious, being without foundation, and/or an abuse of process.

FINDING

49. The Panel is unable to make a finding under s66, as the parties have not been consulted with, or advised of the implications of use of the section, as is required under s66(2), before s66 can be implemented.

S.69 (1)

50. **SUMMERSET VILLAGES** submit that s.69 (1) is relevant in deciding if the additional hearing loop issue, is one the Panel can decide upon. Its Submission notes that there are limits as to the remedies the Panel can apply.

69 Powers of disputes panel

- (1) A disputes panel may—
 - (a) amend an occupation right agreement so that it complies with any applicable code of practice or [section 27\(1\)](#); or
 - (b) order any party to comply with its obligations under an occupation right agreement or the code of practice, or to give effect to a right referred to in the code of residents' rights; or
 - (c)
 - (d)
 - (i)
 - (ii)
 - (e)
- (2)

FINDING

51. Remedies available to the Panel pursuant to s69 include:

- (a) Amending the ORA to comply with any applicable code;
- (b) Order compliance with the ORA.

52. None of the powers or remedies available to the Panel, include a power through either mechanism, to order more hearing loops be provided.

The Fourth Ground

53. The First, Second and Third Grounds submitted by **MR FREE** have been dealt with earlier in this decision. The Fourth Ground is that a statement made by the CEO of **SUMMERSET VILLAGES** in 2015, on agreeing to sponsor an author, should somehow bind him to provide additional hearing loops.

FINDING

54. The statement reportedly made by the CEO that;

“ Our focus is providing service that really makes a difference in people’s lives, finding exactly what that is and delivering it well is not always easy, but it is certainly what we will strive to do over time ”

may be seen as a statement of intent, but cannot bind the CEO, contractually or otherwise to provide additional hearing loops.

The Fifth Ground

55. The Fifth Ground submitted by **MR FREE** was that Summerset’s attitude seemed to violate UN human rights for the hearing impaired to which NZ is a signatory.

FINDING

56. NZ is a signatory to the UN Convention of the Rights of Persons with Disabilities. It is a broad based Convention which is incorporated in NZ law.
57. NZ Law incorporates aspects to assist the hearing impaired such as making sign language an official language, and participation in society.
58. The Convention does not enable **MR FREE** to require **SUMMERSET VILLAGES** to provide additional hearing loops beyond what is required under the Building Act and Regulations.

DECISION

59. The Panel finds the form of Dispute Notice is sufficient, and time limits for submitting the dispute have been complied with.
60. The Panel considers, that the dispute is essentially a request by **MR FREE** to require **SUMMERSET VILLAGES** to install further hearing loops in the community areas, on the basis of G5.2.1(c) of the Building Regulations 1992, which does not apply to a Retirement Village. It is also beyond what is required by the Code of Compliance Certificate, and Warrant of Fitness, under the Building Act 1991.
61. Section 53 of the RVA prescribes the types of disputes the Panel can determine. The Panel finds none of the types of dispute which can be determined, encompass what **MR FREE** is seeking.
62. This view is reinforced by the remedies available to the Panel pursuant to s 69 of the RVA.
63. The submissions by **MR FREE** in respect to the Fourth and Fifth Grounds, do not override the specifics of the RVA as decided above.

64. The Panel finds that there is no jurisdiction for the Panel to determine this dispute.



Claudia Elliott
Panel Member
Date: 13 July 2018