IN THE MATTER of a dispute under the Retirement Villages Act 2003

BETWEEN [redacted] and [redacted]

Applicants

AND [redacted]

Respondent

Counsel for Applicants: Mr [redacted], Barrister

Counsel for Respondent: Ms [redacted], Solicitor

Disputes Panel: Dr [redacted] R[redacted]
Ms [redacted] L[redacted]

DECISION OF THE DISPUTES PANEL

Background

1. The Respondent Operator owns and manages a retirement village in the Auckland region. The Applicants, a married couple, began living in the village in January 2016 when the parties concluded an Occupation Right Agreement (ORA) that confers on the Applicants a right to occupy a unit in the village for an indeterminate period of time.

2. The unit occupied by the Applicants was, in 2016, 5 years old and had been refurbished immediately before they moved in. They were unhappy with a number of its features: the oven, the shower, carpets, some drawers, and a leak from the deck of the unit above theirs that caused water to flow down the outside of their unit.

3. They complained to the Operator about these and other issues. The Applicant husband, a civil engineer, was particularly exercised by the leak from above. It has yet to be remedied but it has resulted in claims to the Disputes Tribunal, the District Court, the Retirement Villages Dispute Panel and complaints to the architects and builders licensing and regulatory bodies.

4. The Applicants subsequently involved themselves in fire compliance issues that ultimately resulted in the removal of storage units used by other residents, at least one of whom blamed the Applicants for what he considered to be a loss of amenity. In turn this resulted in some

cross words followed by complaints to the Operator by each of the protagonists, and some Police involvement.

5. A neighbour of the Applicants lodged a complaint about their breach of the Village rule that laundry should not be hung or dried on balconies, patios and decks. The Village Manager declined to name the complainant so the Applicants concluded that they were singled out for the breach of a rule that they believe is otherwise tolerated.

6. The Operator's evacuation plans, and the Applicants' determination to obtain copies of those plans (in the face of advice that new plans were about to be introduced), saw the Applicant husband initiate a fracas in the Village Manager's office when he sought to remove file papers from the Manager's filing cabinet. Minor injuries were sustained by each, the police were involved, the husband received a police warning, and the Operator notified the Applicants of its desire to terminate the ORA.

7. When it became clear that the Applicants did not wish to move, the Operator obtained undertakings from them about the manner in which they would engage with staff and residents of the village. The undertaking included an acknowledgement that, should any further breaches of their obligations occur, the Applicants would voluntarily terminate the ORA.

8. Following the undertaking the open garage door of the unit above the Applicants became the subject of Applicant complaint. They argued it would attract intruders and that this affected their sense of security, because it was possible for outsiders to access nearby units by going through the garage, through the unit above them and into common areas from which other units could be entered if they were unlocked.

9. The Operator was reluctant to intervene: the overhead occupant was a 90 year old man who was dying. He was attended by a number of different carers, not all of whom were Village staff, and the open garage door was their only way of accessing his unit when he was unable to physically admit them. This was explained to the Applicants. They retained their view that their security was in issue, causing the old man's daughter to complain to the Operator about the Applicants' ongoing determination to have the garage door closed.

10. When the Applicant wife noticed the garage door open early one morning in March 2021 she telephoned the duty nurse demanding that the nurse close the door. The nurse, taken aback by the way the demand was made, assured the wife she had checked on the occupant and that her instructions were to leave the garage door open. She was met by a raised voice insisting she close the door. The interaction was noted in writing. It became the basis for the Operator serving a second Notice to Terminate the ORA.

11. This triggered a claim by the Applicants that they were being harassed by the Operator. There are thus two major claims that require determination: the Applicants' claims of harassment and the Respondent Operator's claim to terminate the ORA.

Harassment / Intimidation / Obstruction / Breaches of the Code of Residents Rights / Breaches of Contract Claims.

12. This claim is the subject of the Notice of Formal Dispute raised by the Applicants. It was initially filed on 21 September 2020, and amended on 7 April 2021. The claim alleges: Harassment / Intimidation / Obstruction / Breaches of the Code of Residents Rights / Breaches of Contract.

13. Each of the 22 claims are considered in the order that they were filed, but before we begin we wish to note the following:

a. for this part of the hearing (days 2 and 3) the Applicants were self-represented. The Respondents continued to be represented by counsel.

b. the role of the Applicants is to prove their case on a balance of probabilities. It is not for the Respondent to prove or disprove any matter: its role is to establish the credibility of its witnesses and their evidence. The Applicants have the burden of proof.

c. the decision is based on the evidence presented and a fair and just interpretation of the relevant documentation and the law.

d. on this harassment claim we deal only with the matters raised by the Applicants and the response of the Respondent. We have therefore excluded from consideration Respondent suggestions that the Applicants were offensive, or should apologise.

e. the disputes panel "may conduct the dispute resolution in any manner it thinks fit…"

f. the Applicants raised section 57(1) RVA in relation to the 'time barring' of matters. As the only claims being heard in this section are those of the Applicants against the Respondent, we are not sure why they have raised this.

g. the thousands of documents put before us and 11 hours of oral evidence are summarised as we have read and heard it.

h. we have confined our consideration to the claims of the Notice of Dispute .

Claim (i) - Untrue claims of swearing and Village CEO and Owner being shattered

14. This claim arises from a meeting which took place in the Applicants unit in September 2016 during which the Applicant agrees that he used the words "bullshit and crap" in response to statements made by either the Village CEO or the Village owner. Following that meeting the Village CEO described himself to a colleague as feeling "shattered".

15. The Applicants gave evidence that they did not consider that "bullshit and crap" were swear words, particularly when used to describe a situation under discussion with which they disagreed: they described them as *expressions of disbelief*. During cross-examination they did concede that in the context of village life these words did not constitute common parlance.

16. The Applicants also used the words “prick and arsehole” in subsequent interactions with particular members of the Village management staff – again this was not denied by the Applicants in evidence.

17. The decision for the panel is whether these are swear words. If the answer is ‘yes’, then were Respondent personnel untruthful to claim that the Applicants had sworn in their presence?

18. The Applicants have acknowledged that these words were used at least once out of frustration, and in the presence of the Village personnel. Of themselves, the words “bullshit and crap” are not significantly worse than words such as “damn, bugger or crickey” – all of which are in relatively common usage amongst New Zealanders, however they are words that undermine the obligation of civility and respect required by the ORA.

19. We find that the words “prick and arsehole” are swear words and when they are directed at another person, they are offensive and inappropriate.

20. The Applicants do not accept the truth of the allegation that the Village CEO was ‘shattered’ following the September 2016 meeting with the Applicants. Given this is a subjective description of how he felt at the time, we think they can have no idea how the CEO was feeling.

21. It is not for the Applicants to say the Village CEO was or wasn’t feeling ‘shattered’, though it would be fair enough for them to say that they **did not believe** that their behaviour was the cause of how he felt. They appear however to have taken exception to him describing himself as “shattered”, and are claiming that such a statement is a form of harassment or intimidation towards them.

22. If the first part of this claim is that the Respondent made untrue claims that the Applicants swore, then by the Applicant’s own admission and evidence this is clearly not made out, and must fail as a claim.

23. In the matter of the second part – whether the CEO and/or the owner felt shattered following the meeting, we find that they were entitled to feel this way, and that to suggest that this was an untrue statement is a claim which must also fail.

24. Claim dismissed

Claim (ii) - Untrue statements on existence of warranty

25. The issue of the existence of a warranty concerns the failure of the water-proofing of the deck above the Applicants unit, and is a matter that has been repeatedly raised by the Applicants since their arrival in 2016. It has been the cause of considerable on-going conflict between the parties in respect of the existence of a written warranty, how the repairs were to be conducted, and whether or not a building consent was required from the local Council prior to undertaking the repairs. This matter is currently before the District Court.

26. The Applicants allege the Respondent made misleading and deceptive statements about the existence of a written warranty. They claim a right to a copy of the warranty pursuant to the Respondent’s Code of Residents Rights and the terms of the RVA, sch 4, asserting that they have a ‘right to information relating to any matters affecting, or likely to affect, the terms or conditions of your residency’.

27. The Applicants claim is frustrated by the fact that there appears to be no specific written warranty in existence. The explanation from the CEO is that there is an enforceable warranty from the builders ███ (albeit oral).

28. Their concern is that they may have purchased a right to occupy in a building which may not be code compliant.

29. The Respondent does not accept there is a need to engage with the Applicants on the matter of a warranty, or in relation to their plans for repair, except to advise occupants when the work will be carried out, and to offer them alternative accommodation throughout the repair period so that they are not inconvenienced by noise or dust during the process.

30. The Respondent acknowledges the Applicants 'passion' for this matter, but maintains that they have no rights or entitlements of ownership of the building, so this 'passion', being 'none of their business', is misdirected.

31. The question for the panel is whether building information concerning another unit's deck affects the terms or conditions of the Applicants right to occupy. If the answer to this question is 'yes', then, did the Respondent make untrue (or misleading) statements about the existence of a written warranty?

32. We find that the answer to the first question is 'no' – the manner of the repair of the deck above their unit does not affect the terms or conditions of the Applicants residency. What does affect them is the delays that have occurred and the continuation of the leaking/dripping allegedly the result of the failure of the waterproof membrane.

33. The overwhelming evidence is that many of the delays have been caused by the actions of the Applicants so they lack the right to make a claim for the delays which have occurred.

34. In the absence of a right to the information sought and in the absence of evidence that the Respondent claimed the existence of a written warranty we find this claim unproved.

35. Claim dismissed.

Claim (iii) – Rude Conduct and Lies relating to the "Rubbish" Incident

36. This incident arose from a visit to the Applicants unit in March 2018 by a specialist building surveyor (as instructed by the Disputes Tribunal) who was accompanied by the Village CEO, one of the Village owners, and the then Village manager. The Applicants were not happy that all 4 men had arrived unexpectedly at their front door, and asked that only the specialist building surveyor be permitted into their home – advising that the others could go around the building, and meet them on the other side.

37. Whilst at the front door, an altercation arose where both the Applicant husband and the Village owner used the word "rubbish" and there was some unfortunate pointing and slanging off at one another – allegedly one offensive and one defensive. The subject of this claim states: 'lies relating to the rubbish incident'. We have also listened to the Applicants tape recording. Apart from the question of the exact distance of the Applicant husband's forefinger from the owner's face, the parties are in accord about what happened, and gave almost identical evidence. Clearly both were offended by this exchange. As for who first used the word "rubbish" – this is not particularly important in our view – both did.

38. The Applicants claim they were offended by the CEO saying "Bless You" as he departed. For someone who does not subscribe to a relevant faith, such a blessing can seem inappropriate and patronising, but it comes into the same category of farewell as 'take care', 'thank you', 'ngā mihi', and the like.

39. The Applicants have continued to seek an apology from the CEO for this 'blessing' on the basis that it was offensive and discourteous, but have not, we understand, received one. What we do observe however is that the CEO is not accused of repeating the "blessing".

40. We do not consider the 'blessing' to be rude or discourteous. In this incident we find that the Village staff were notably less rude, and less offensive in their language than the Applicants.

41. Claim dismissed.

Claim (iv) – Example of intimidation

42. This claim concerns the letter of 27 August 2018 from the Respondent Board Chair to the Applicants which they assert was intimidating and threatening. In essence the letter suggested that if the Applicants were to withdraw the two disputes which were currently before the District Court in relation to the deck and other issues, the Respondent could (and would) then proceed with the repairs of the deck above their unit. It is reasonable to assume that they cannot proceed while the matter is before the District Court.

43. The Applicants were offended and felt blackmailed and intimidated by this message. Further they state that although the Chair's letter focused on the deck issue, this is only one of a number of issues they have placed before the District Court, and therefore to withdraw these in their entirety is to lose the right to have the other matters considered and decided by the Court.

44. We have considered this letter in the context of the relationship between the parties at the time it was sent. That context includes the multiple disruptions and complaints raised by the Applicants, the Disputes Tribunal and District Court claims, the complaints about a number of professionals engaged by the Respondent who were subjected to outside investigations and hearings, involvement of the [redacted] City Council and the time commitment required of Village personnel and their solicitors in resolving complaints.

45. We regard the letter as an offer of negotiation to progress the relationship. It is in the nature of – 'if you do this, we will do that' – a suggestion of a possible way forward. We do not accept it is intimidating as it at no stage makes a threat to the Applicants, it simply makes an offer of a solution.

46. We furthermore do not accept that the Chair's request for a written undertaking (as a means of seeking a commitment from the Applicants from which they could not resile) meets the legal requirements of blackmail.

47. Claim dismissed

Claim (v) – Refusal to Provide documentation we are entitled to

48. The Applicants claim that the Respondent has refused to provide documents they consider they are entitled to under the Village Code of Residents Rights, item 6, and the RVA Code of Resident's Rights schedule 4. This has included:

- information relating to the warranty for the deck above their patio
- sales information relating to units within the village
- details of Village expenditure
- a full copy of the [redacted] Consultants report (a summary report has been received)
- a copy of the Building Consent issued for the leaky deck repairs
- a copy of the now replaced evacuation plan requested in August 2020
- records of the fire safety and evacuation drill for [redacted] block since January 2016
- copies of any reviews carried out in accordance with Schedule G of the ORA.
- Copies of the Village Safety and Security process, procedures and systems

52. The Applicants claim is based on the RVA s 34(1), the RVA Code of Resident's Rights sch 4(2), the Village Code of Residents Rights, cls 1,4,6, 9, 13, and the ORA Sch G together with the Respondent's Complaints Policy which states: *We will not treat you differently from any other resident on the basis of you having made a complaint".*

53. The details of these claims are well known to the parties as are the contents of the various documents noted above so we do not intend to re-canvas each in turn. The Applicants claim that they are entitled to each of the documents requested, in a timely manner, and that refusal to provide them over an extended period is harassment and a breach of their rights.

54. The Respondent's position is that these requests are numerous, vexatious and unreasonable and extend beyond the Applicants entitlements. The Respondent has complied wherever it is possible and appropriate and has provided all documentation the Applicants are entitled to as was explained in in writing on 12 October 2020.

55. We find that those documents to which the Applicants are entitled have been made available to them, (eg. the updated and **current** evacuation plan). The Applicants are not entitled to documents that are commercially sensitive or are about the Village buildings (eg the full [redacted] report, and sales records).

56. Claim dismissed

Claim (vi) – Obstruction and Refusal to Agree to a Reasonable Request

57. The Applicants asked, in January 2019, to carry out invasive testing of their lounge ceiling to check whether leaking had or was occurring internally due to a suspicion of water ingress into the ceiling cavity of their unit. Their request stated that they would 'make good' – presumably complete the repair of the ceiling and repaint appropriately.

58. The CEO replied with a number of conditions which included the presence of one of the owners or his representative. The Applicants deemed this to be an unreasonable request.

59. The questions for the panel are:

- Was the request from the Applicants on 19 January 2019 reasonable?
- Were the conditions suggested by the Village CEO in his email of 21 January 2019 reasonable or unreasonable?
- Did the suggested conditions amount to refusal and obstruction?

60. We find that the Applicants request was reasonable and that the CEO's conditions were equally reasonable. An occupying resident has a right to make a request, but the greater right belongs with the owners of the property to ensure both that the work is carried out to a satisfactory standard, and that the results of the inspection are readily available to assist them in further protecting their property.

61. We do not consider that the suggested conditions amounted to refusal and/or obstruction.

62. The Applicants advise that they carried out the investigation themselves without using their expert and without the presence of the building owner or his representative.

63. Claim dismissed.

Claim (vii) Arrogance and Lack of Acknowledgement of the Rules

64. This claim follows from the previous one and arises from the Applicants refusal to allow the owner and/or his son (a Licensed Building Practitioner) into their unit unless an apology for past behaviour was given. The claim is that the CEO's response to the request for an apology was arrogant and breached the Codes of Practice and Residents Rights.

65. We do not consider the response with conditions was arrogant (see claim (vi) above).

66. In terms of an absence of acknowledgement of the Rules, our impression of the CEO, Board Chair and Village Manager was that they are all well aware of the applicable rules and regulations. We accept, however, that the Respondent and the Applicants interpret them differently, but neither party is ignorant of the presence or impact of the rules.

67. Claim dismissed.

Claim (viii) Delays, Threats and Part Responses re Communications Contrary to [redacted] Procedures

68. This claim consists of 6 sections described as (a – f) and can be summarised as concerning a lack of appropriate, complete and timely response from Respondent personnel and lawyers.

69. The Applicants claim that they know of no other resident who has been asked to correspond with, or forward complaints to the Board Chair or lawyers. Further they consider that a number of the responses they have received amount to threats.

70. They claim that the refusal to correspond, providing part responses, not understanding the issue, yet providing an irrelevant response, and using threats in correspondence is offensive, humiliating, disrespectful and an insidious form of harassment.

71. The Respondent's position is that the relationship between the parties has become '*like a ball of string'* with so many issues that the correspondence and complaints have become '*unduly stressful and complicated for those directly involved'*. The aggressive and inflammatory tone of the Applicants correspondence has monopolised the time of the Village management team. Requests and instructions to direct correspondence to the CEO, the Board or to the relevant lawyers have been in an effort to protect staff from the difficulties they are facing in attending to the multiple complaints of the Applicants.

72. During the course of this proceeding the Applicants demonstrated for the panel the behaviours described by the Respondent. We find, therefore, that the problems associated with their complaints are of their own making.

73. Claim dismissed.

Claim (ix) – Lack of Communication in Accordance with Cl 17.7 of our ORA

74. This claim was withdrawn.

Claim (x) Invasion of Privacy

75. The Village Manager was asked by the Chair of the Resident's Association to collect the August 2020 minutes from a shelf in an area used primarily by residents. When he did so he also uplifted a printed email which had been sent by the Applicants to the Resident's Association Committee and was with the minutes.

76. The email was then passed to the CEO, and then to the Respondent's lawyer prompting a response from the lawyer. The Applicants sought the return of the printed email, but it was not returned.

77. The return-request is odd, given that the email was available to the Applicants in electronic form and had already been circulated to the Residents Association Committee without bearing the stamp of 'confidential'. It is also odd that the Respondent chose not to return the original.

78. The fact that this has apparently led to a complaint from the Applicants to the Law Society broadens the circulation of what the Applicants regard as private correspondence, and undermines the strength of their claim.

79. We are also puzzled that the Applicants appear to believe that staff should not enter the snooker room/chess area (clearly staff enter to clean, equip and monitor the facility) and have pointed out to us that there is a sign reading: "Documents are not to be removed".

80. We find that the Chair of the Resident's Association has a right to manage what happens to Association documents and had requested the Village Manager to remove them.

81. Claim dismissed

Claim (xi) Faulty BWoF and Fire Safety Compliance Breaches

82. This claim arose when the Applicants became concerned about possible deficiencies in the Building Warrant of Fitness certificates, in particular in relation to smoke seals to pipe penetrations in ██ Block. (The Applicants live in ██ Block). The Applicants raised the matter directly with the BWoF consultants, and when they did not get an answer that satisfied them, raised the matter with the Village Manager and the Chair of the Residents Association. Subsequently the Applicants reported it to the City Council and to the Statutory Supervisor.

83. The Respondent requested the Applicants to desist from contacting the Respondent's contractors directly, advising that the matter would be investigated and advised on "*in due course*".

84. The Applicants claim that this is a breach of the complaints process, and further that the faults identified by the Fire Service are significant and serious, and ought to be urgently remedied.

85. The Respondent claims that there is a full complement of BWoFs, and that the Village is in compliance on Fire Safety issues, whilst also acknowledging that further investigations have been commissioned as a result of the Applicants raising the issue.

86. We find that the Applicants had the right to raise concerns but that this right is restricted to notification. It does not include a right to determine how the issue raised should be dealt with.

87. Claim dismissed.

Claim (xii) Misleading Report from ████ Provided to the Residents Association Committee Members and the Applicant

88. This claim concerns the Applicants' reaction to a summary report about the state of the Village buildings from consultants engaged by the Respondent. In particular the Applicant husband disagreed with the definition of a leaky building contained in the report. His reaction to this disagreement was to contact the consultant (to demand its withdrawal), the Board, Management, the Residents Committee and the Village lawyers to express his concerns.

89. The Respondent is entitled to rely on its consultants and to take what advice it deems appropriate. The Applicants' alarm about the report entitled them to voice their opinion as to its efficacy and content, but not to take the matter further than that.

90. If the Respondent had wished for the Applicant husband's further input into the details of the report he could have been co-opted onto the Board, or asked for his opinion. The Respondent did neither. His background knowledge as a Civil Engineer does not give him a right to interfere with the business of the Village, except specifically as it concerns his right to occupy. He does not, and has never had, any right of ownership of any building within the Village – his is simply a right of occupancy.

91. The essence of this claim appears to be that the husband wished the consultant to alter its report to comply with his views and interpretation of the matter. When the consultant did make some alterations, the Applicants claimed it to be a breach of rules that they were not personally notified of the alteration and had to 'discover it' themselves.

92. The husband's views may well be correct, (we have no view on this) but his role and opportunity was simply to raise the issue and then back off. He was not entitled to insist that his views should be adopted.

93. Claim dismissed.

Claim (xiii) Lack of Consultation on Parking Charges

94. In May 2020 the Village Manager announced that the arrangements for parking outside the Village main administration building (3 vehicle spaces) were to change. The Applicants and other residents provided feedback to this advice and the Manager altered the plan to take their concerns into account.

95. The claim appears to suggest that the Manager should not have suggested ANY alteration without consultation. But he suggested a change, and then following consultation/feedback he altered the proposed change to take those views into account.

96. From time to time a Manager (or CEO) must make effective practical decisions – that is their role. In this instance, following a period of consultation, the plan was altered and notified to Village residents.

97. Claim dismissed.

Claim (xiv) Efforts to Discredit the Applicants

98. The Applicants claim harassment based on the way that the Village Manager handled the issue which arose as a result of FENZ and the Fire Service inspections of the Village: changes needed to be made to the use of Village buildings, meaning some loss of storage space for residents.

99. The issue is whether the Village Manager sought to discredit the Applicants by writing to other residents, the Residents Association, and in the Village newsletter about the Fire Service investigations and conclusions (and the consequent loss of storage space).

100. We do not accept that these actions were for the purpose of discrediting the Applicants. The Manager had a clear obligation to inform residents of the Village about changes that affected them.

101. The problem that did arise, however, was that the residents inconvenienced by the Fire Service changes (those who were using the storage lockers that had to be cleared) asked the Village Manager if the Applicants were responsible for alerting the Fire Service to the need for an investigation. The Manager confirmed the guess. He apologised in writing to the Applicants for this disclosure, and in his oral evidence repeated that he was sorry.

102. We think that the Village Manager acted injudiciously, and may have breached the Applicant's privacy, by confirming the guess made by other residents. But he apologised. More than once. It is furthermore clear that other residents by then knew sufficient about the Applicants to guess at their involvement in a matter that inconvenienced them.

103. Claim dismissed.

Claim (xv) [redacted] requiring the Police to provide a warrant to obtain CCTV Footage.

104. The Applicants sought CCTV footage of their altercation with a neighbour that resulted in Police involvement. The Village refused the request on the basis that the Police would be granted access to the footage on presentation of a warrant.

105. We do not have the power to adjudicate on privacy issues. We do not, however, accept that the decision to refuse access to the footage amounted to harassment of the Applicants, given the heightened tensions between the protagonists, and the Village's duty to protect other residents and to ameliorate those tensions.

106. Claim dismissed.

Claim (xvi) [redacted] Harassment Through their Solicitor

107. The claim of harassment from the Respondent's Solicitor appears to principally relate to her repeated enquiries:

- "What would it take for [redacted] to buy you out?"
- "Why do you want to keep living at [redacted] when you are so unhappy?"

The Applicants consider that when these comments are set alongside other incidents and responses that "*the situation has taken a sinister turn*".

109. We do not find these enquiries either sinister or harassing. This is a normal part of negotiation in resolving apparently insoluble disputes. The best alternative to a negotiated agreement, or settlement can often be found in putting the issues alongside a dollar value. The Applicants have followed this same approach in seeking pecuniary compensation for the ills they believe have been perpetrated against them.

116. Claim dismissed.

Claim (xvii) The Sorry Storage Saga:

117. The Applicants claim that the Village Manager incited the abuse of one of them by their neighbour through his correspondence to residents and the Resident's Committee. He continued to harass the Applicants by allowing publications in the Weekly [redacted] which were inappropriate, and which following his disclosure to another member of the Village, made it common knowledge that it was the Applicants he was referring to.

118. The Applicants consider that the Village CEO was unable to impartially investigate their allegations against the Village Manager and consider that he should have passed it immediately to the Statutory Supervisor.

119. The Village CEO had the power and the obligation to make the decision in the first instance and he carried out this obligation. When the Applicants did not agree with his decision, they took the matter to the Statutory Supervisor who appears to have endorsed the decision of the CEO. The Applicants continue to consider this as an unresolved issue.

120. We find that the CEO followed protocol in investigating the incident as he did.

121. Further we note that the Village Manager has apologised and refer to our decision in claim (xiv) above.

122. Claim dismissed.

Claim (XVIII) – Continuation of Termination Process

123. The Applicants claim to be harassed by the Respondent's repeated attempts to terminate the ORA. The issue of a previous notice to terminate brought by the Respondent was the matter of a separate dispute resolved in the Applicants favour, although they sought to dispute some observations about their behaviour that formed part of the decision.

124. The Respondent has a lawful right to seek termination of an ORA where it considers breaches by the relevant residents justify such action. Equally those subject to this step have the right to resist it. Pursuit of lawful rights in this instance and in the circumstances already described does not amount to harassment.

125. Claim dismissed.

Claim (xix) Continuing Harassment Relating to Airing Laundry

126. The Applicants claim that enforcement of the Village rule (that laundry not be dried or aired on decks or balconies) constituted harassment was based on two grounds - the first being that their laundry was on their patio and the rule did not refer to patios. The panel confirmed during the hearing that it considered their patio to come within the definition of deck or balcony.

127. A complicating factor concerns the Village rule that there is *nothing taller than railing height,* and there is clearly no railing for a ground level patio/deck. We consider that the meaning of the rule is clear – no washing outside where it could be visible to any other person.

129. The second and more significant reason for the claim is whether the Village Manager was singling the Applicants out (and therefore harassing them) by writing them an email requesting that they cease to dry their laundry on their patio/deck, rather than approaching them personally.

130. The Manager was acting on a complaint from a neighbour. The email message was reasonable. His stated intention to follow this up with a general reminder in the Village newsletter to all residents was a timely and essentially fair way to deal with the matter.

131. We note that this dispute has been investigated, and the Village CEO's investigation report to the Applicants was sent to them on 28 April 2021. In reaching our determination we have not considered his findings, but have heard and determined this matter on the evidence before us. We note that the Applicants have not indicated that they disagree (or agree) with the CEO's decision. After such a delay it is reasonable to assume they accept the contents of the investigation. This application to the panel was filed prior to the issue of the CEO's report.

132. Claim dismissed

Claim (XX) – Failure of on-site Village Manager to act on Serious Security issue

133. The Applicants telephoned the Village Manager when he was off duty and out with friends requesting that he return to the Village to close a neighbour's garage door. His refusal to do so is the subject of this claim.

134. There was nothing improper or impolite in the manner in which the Village Manager responded to the Applicants. Indeed, it was the Applicant's approach which we found to be discourteous and improper.

135. As the Village Manager had already advised the Applicants that he would enquire of other residents what their thoughts were on a possible requirement to close garage doors, and that there was no current requirement that residents do so, and he further had communicated the particular reason why this door was to be left open, the whole conversation was needless.

136. The Applicants may have concerns about their own security, (as does a neighbour who had also raised the issue with the Manager) but they have the means to ensure that their own front door and garage door are firmly locked to avoid compromising their security. We find they were acting unreasonably during this incident.

137. Claim dismissed.

Claim (xxi) Failure to Respond to Complaints

138. The complaints referred to in this issue are as below:

- A formal complaint with respect to the fire stop door to the Applicants unit made 2/10/2020 has not been investigated or resolved;
- A formal complaint made 12/10/2020 relating to fire stop door to level 2 of █ Block has not been resolved;
- A formal dispute relating to Fire Safety Issues as described under item (xi) above whereby the next step in the complaints process is to have the Statutory Supervisor

involved and this has not been progressed since the request by the Applicants to involve the Statutory Supervisor was made in March 2021.

139. The issues raised above are referred to in a letter from the Village Solicitor dated 13 April 2021, and a letter from the Village CEO dated 26 April 2021 – seeking to settle all outstanding matters between the parties.

140. We do not find that this amounts to obstruction or failure to respond. We accept the complaints specified were dealt with in a general and not specific way. The lack of specific responses may be explained by the sheer volume of issues raised by the Applicants that the Respondent was required address.

141. Claim dismissed.

Claim (xxii) Being Manhandled by the on-site Village Manager and the Maintenance Man

142. This matter was dealt with by the Panel member of the previous dispute hearing of 2 February 2021.

143. Our role is to decide if these events were part of an ongoing campaign of harassment by the Respondent. The document sought by the Applicant husband immediately prior to the fracas was later provided. The manhandling resulted from the husbands' unauthorised occupation of the Manager's office. We do not accept it amounted or contributed to harassment by the Respondent.

144. Claim dismissed

Claim Summary and Requested Outcome

145. The Applicants claim that all the disputes that have occurred between the parties are the result of the Respondent's failure to attend to their initial complaint about the leaking deck above their apartment.

146. They further claim that they have "*pushed the bounds of courtesy towards management due to the frustrations we have had to endure*" and that as a result are entitled to financial compensation, a written apology approved by the Panel, a published apology in the Weekly , and that the panel amend their ORA to reduce their annual fixed fee for the next 5 years.

147. If either party is to be held responsible for breaching their obligations under the Retirement Villages Act, the Occupation Rights Agreement, the Code of Resident's Rights, the Retirement Village (General) Regulations, the Complaints Policy, the Lawyers and Conveyancers Act Rules, the Retirement Villages Code of Practice and the Privacy Act, it is the Applicants.

148. All claims for Harassment, Intimidation, Obstruction, Breaches of the Code of Residents Rights and Breaches of Contract by the Retirement Village to the Applicants are dismissed.

Termination

149. The Respondent relies on two grounds to terminate the ORA: the breach of the undertaking of October 2020 by the interaction with the duty nurse in March 2021; alternatively, that the Residents have caused injury and distress to the Operator, staff and other residents in breach of cl 10.1.9 ORA and cl 48(7)(b) Retirement Village Code of Practice.

Breach of Undertaking

150. The undertaking signed by the Applicants bound them to treat everyone at the Village with courtesy and respect, and that they would refrain from using raised voices and insults towards anyone who visits, works or lives at the Village

We agree to terminate our ORA with █████, on 30 days notice, in the event of breach of these undertakings.[1]

151. The first part is based on the mutual respect clause of the Code of Residents Rights.[2] Entitled *Your obligations to others* it is based on the premise that communities such as retirement villages depend on mutual respect between residents, staff and owners as the foundation for trust and civility that is required for the community to succeed. Trust and civility are undermined when mutual respect falters.

152. Evidence of the interaction of 22 March 2021 came from the duty nurse, the Applicant wife and the Respondent's Head Nurse. The duty nurse works as a nurse for a number of employers. She has lived in NZ for 2 years and English is not her first language, although she is sufficiently proficient that she is easily understood. She writes clearly. She was not as familiar with the Applicants as others of the Respondent's employees. This had the effect of strengthening her credibility, as did her notes of the interaction with the wife and her description of its effect on her. It was unpleasant, unexpected and unsettling for her. This explains why she discussed it with the Head Nurse and recorded the incident in writing. We prefer her evidence to that of the Applicant wife. We therefore accept that her (raised voice) demand that the duty nurse close the garage door was neither courteous nor respectful.

153. If this was the first instance of conduct that offends the obligation of courtesy and respect it could not form the basis of a notice to terminate. It is one of the more recent of a long list of incidents and interactions (that have upset others) in which the Applicants have engaged since they arrived at the Village in 2016. Frequently (during the course of this hearing) asserting their rights to complain, the Applicants appear reluctant to acknowledge their corresponding obligations of civility when they became members of the Village community. They are prey to obsessions about issues that require others to unwillingly devote considerable time and energy to these obsessions. They are difficult to placate and keen to continue with, rather than resolve, the conflicts that they are seen by others as creating. Their apparent lack of

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[1] Undertaking between █████ and the Residents dated 19 October 2020

[2] Retirement Villages Act 2003, Sch 4, cl 7

concern about the effect of these attributes on others, notwithstanding the direct way these consequences are communicated to them, ensures repetition of conduct regarded as troublesome.

154. The final paragraph of the undertaking alerted the Applicants to the seriousness with which the Respondent treated the regulatory obligation of mutual respect. They were on notice. The incident of 22 March 2021followed the undertaking of October 2020. It breached that obligation. The undertaking is therefore breached.

155. We have also considered the alternative reason for the notice to terminate.

Breach of ORA and Code of Practice

156. The Respondent relied on the Retirement Village Code of Practice, cl 48(7)(b) and the parties' ORA, cl 10.1.9 to establish an alternative ground of termination.

157. Clause 48(7) of the Code provides:

> *The operator may have grounds for termination of a resident's occupation right agreement if the resident, intentionally or recklessly, has caused or allowed or is highly likely to cause or allow:*
> *(a) serious damage to the residential unit or facilities, or damage which has become serious because it continues*
> *(b) serious injury, harm, or distress to the operator or another resident, or to an employee or guest of the operator or the resident Code of Residents' Rights*

158. The relevant parts of Clause 10.1.9 ORA provide:

Your right to live in your Dwelling shall come to an end if this Agreement is terminated as set out below:…

> *Subject to the requirement that [redacted] must comply with the Code of Practice at all relevant times, if you have intentionally or recklessly caused or allowed, or are highly likely to cause or allow:*
> *(a) Serious damage to the Dwelling or any other part of the Village, or*
> *(b) Serious injury harm or distress is caused to [redacted] or other residents, or is caused to employees or guests of [redacted] or you*
>
> *[redacted] will notify you of its intention to terminate this Agreement unless the damage, injury, harm or distress…..are remedied in a specified time that [redacted] assesses is reasonable in the circumstances (if such matters are capable of remedy). If you have not within the time period specified in the Termination Notice from [redacted]:*
> *(a) Remedied the situation, and*
> *(b) Provided to [redacted] any reasonable assurances that it may require that such problems will be appropriately managed or not be continued or repeated….:*
>
> *Without limiting the foregoing you acknowledge and agree that distress or harm can be caused to [redacted] or other persons by continuing or escalating behavioural, health or conduct problems;*

159. The Respondent relies on the contractual acknowledgement of serious distress arising from continuing or escalating behavioural or conduct problems. To that end it provided copies of records of interactions between the Respondent and the Applicants from 2016-2021. It is fair to note that by the end of that first year the list of complaints both from and about the Applicants was already long. It included the reactions of maintenance contractors and Village staff to the aggressive and intimidating way the Applicants dealt with them.

160. The Respondent's CEO has been the person most damaged by his interactions with the Applicants. He presented as a pleasant, softly spoken man, anxious to do his best, and currently suffering from ill health. There are reams of email correspondence between him and the Applicants over the past 5 years, sufficient to establish that much of it from the Applicants was derogatory and abusive. They corroborate the oral evidence about in-person interactions that were similarly denigratory. The Applicants were in the habit of recording many of these interactions, some of which were played at the hearing. These too captured this aggression. Problematically for the Applicants, the recordings tended to buttress the evidence of Village staff and undermine that of the Applicants.

161. The Board Chair became sufficiently concerned by the CEO's distress that he asked the Applicants to communicate exclusively with him. They ignored the request.

162. The current Village Manager was assaulted in his office by the Applicant husband in August 2020. His evidence was corroborated by one of the Applicants recordings, so we are satisfied that the Village Manager sought to de-escalate matters. The husband was inappropriately aggressive, had no good reason to enter the Manager's office, nor to attempt to uplift a file, nor to assault the Manager.

163. Other residents have also been affected. A petition from 200 of the 350 residents of the village, handed to the Chair earlier in 2021, asks the Respondent to take action against the Applicants.

164. Perhaps the most egregious examples of the lengths the Applicants were prepared to go to cause harm or distress to others are the complaints to the licensing bodies of an architect and a builder who provided services to the Respondent. Neither complaint was upheld but the two were put through a process that was retaliatory and needless. It seemed to be in the cause of the leak from the upstairs deck, a complaint that has persisted for 5 years, is the subject of Disputes Tribunal and District Court claims, has caused no damage to the interior of the Applicants unit, concerns a building to which they have no ownership rights, and on which they have actively obstructed remedial work.

165. The Respondent is concerned that the August 2020 fracas represented an escalation of aggression. It was the first time that physical violence accompanied a sense of grievance. Since then the Applicants have been fully engaged by the Respondent's attempts to terminate their ORA. We make no finding on whether that assault amounts to escalation, because we are satisfied that there is sufficient additional evidence of the seriousness of the harm and distress that has been caused to a wide range of others associated with the Respondent to warrant termination under the provisions of the Retirement Villages Code and the Occupation Right Agreement.

166. We are furthermore satisfied that the Respondent took the steps necessary to resolve the Applicants complaints as they arose. The relationship between the Respondent and the Applicants has been extensively documented such that a recurring theme of complaint and response is apparent: responses became the means by which complaints could be enlarged, both in scope and the numbers of those required to address them; no matter what solutions were proposed, they were never acceptable, thus ensuring complaints assumed lives of their own.

167. Evidence of previous attempts to resolve the relationship indicate that it is not possible to do so with the active involvement of the Applicants. They are openly contemptuous of the question why they wish to remain in a village about which they have so many complaints, but they have never addressed it, apart from saying they love their home, and would suffer financial loss if forced to leave. We accept that the consequences of termination may result in financial loss, and that the Applicants are also victims of their own behaviour, but it is also clear that they have been on notice now for almost a year about the potential for this outcome.

Orders:

Applicants claims all dismissed

Respondent's claim for termination allowed

Costs:

The Respondents have sought the opportunity to apply for costs. Given the findings above, we give the Respondent the right to submit an application for costs and to file that application on or before **5pm 8 August 2021**. The Applicants shall then have until **5pm 15 August 2021** to file their submission on the costs issue only.

DATED: 30 July 2021

SIGNED BY:

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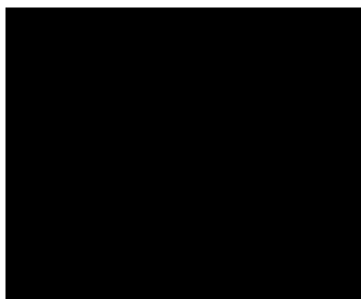

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