

Under the Retirement Villages Act 2003

In the Matter of a Dispute Between

[REDACTED] D [REDACTED] by [REDACTED] N [REDACTED]
[REDACTED],
R [REDACTED] [REDACTED],
APPLICANT

R [REDACTED] [REDACTED] [REDACTED]
OPERATING AS R [REDACTED] [REDACTED] (THE OPERATOR)

RESPONDENT

DECISION OF THE PANEL

Retirement Villages Act 2003.

INTRODUCTION

1. This is a dispute between Mr [REDACTED] D [REDACTED] (Mr D [REDACTED]) and R [REDACTED] [REDACTED] Village (R [REDACTED] [REDACTED]).
2. Mr D [REDACTED] is a resident of R [REDACTED] [REDACTED] Village. He signed an Occupation Rights Agreement(ORA) dated 03 June 2015 in respect to [REDACTED]
3. Mr D [REDACTED] filed a Notice of Dispute dated 18 August 2022. The Notice of Dispute complies with the required form. Mr D [REDACTED] is represented by his daughter [REDACTED] N [REDACTED] in this matter.
4. It was agreed this matter would be heard in 2 parts;
 - i) An Interim Decision as to whether the claim is vexatious and should be struck out. That decision is dated 24 May 2023
 - ii) The Interim Decision dealt with preliminary issues of
 - a) Whether the claim is frivolous and vexatious or an abuse of process under s66(1)(a) and should be struck out; and
 - b) Are the complaints in Mr D [REDACTED] Dispute Notice outside the jurisdiction of the Panel.
 - c) Who the parties are in the dispute
 - d) Whether Mr Y [REDACTED] is conflicted and should not participate in the hearing;
 - e) The balance of the issues arising were reserved for the second hearing. .

BACKGROUND

5. By way of background when Mr D [REDACTED] applied to occupy a unit at R [REDACTED] [REDACTED] he signed an ORA.
6. Mr D [REDACTED] was one of the first residents of the Village and continues to reside there.

THE ISSUES FOR HEARING

7. The balance of issues for hearing after the Interim Decision were;
 1. Has there been negligence in management of the services and performance of the Village by management?

2. Is the Operator in breach of ss12,13,14,15,16,and 32 of the Code of Practice and ss 1,2,3,4,5,and 7 of the code of Rights?
3. Has the Village Management Company failed to address services and performance of Village Manager [REDACTED] C [REDACTED] including emotional abuse of Mr D [REDACTED] and fraudulent use of time?
4. What remedies are available for either party?
5. Should costs be ordered?

The Agreement

6. The parties have reached a full agreement on all issues.
7. The agreements reached are;

Management Contract

- i) The management contract is to be amended to include a provision that K [REDACTED]/A [REDACTED] is subject to an annual election process similar to the election process in place for the resident members of the committee and the board. Vote each year prior to the AGM as to whether K [REDACTED] will continue with the management contract, separate vote as to whether A [REDACTED] is re-elected to the board and if so whether that is in the capacity as Chairman, with a reassurance that A [REDACTED] will seek to abstain from discussing/voting on matters where there is a conflict of interest between the Operator and K [REDACTED].
- ii) Amendment to the management contract to include a detailed schedule of management services to be provided by K [REDACTED].

Resident Meetings

- i) Open residents' meetings will be held once a quarter run by the Chair of the Residents' Committee (or another agreed resident nominee) with village management on hand(but not necessarily in the same room),to answer any questions if necessary. All residents to have a right to participate in the meeting. Meetings to be conducted with courtesy and respect for all involved. Relaxed tone to the meeting, tea/coffee etc. Minutes to be taken and fed into the following Residents' Committee meeting. The purpose of the quarterly open residents' meeting is to provide an additional communication channel for residents to raise village issues. The meetings are not intended to have any decision-making jurisdiction. Issues raised will be referred back to the Residents' Committee/BOD for consideration and resolution

Customer Satisfaction Surveys

- i) An annual survey will be done prior to the AGM each year, results to be communicated and summarised in K■■■■ annual AGM report to be presented at the AGM. The survey will have emphasis on management performance and will include a section for open feedback, negative or positive. Results of the survey could feed into the following quarterly residents' meetings, committee meetings, and staff appraisals as may be appropriate.

Residents' Committee Meetings

- i) Rearrangements of tables so that they face the residents to assist in showing respect and courtesy. Also, helps with residents hearing the discussions. Ensuring the speaker speaks slowly and has good pronunciation is important, and proper use of the microphone. N■■■■ will arrange for an audiologist to speak at the village. Carpeting in the Pavilion which would improve the acoustics will be discussed at the next review of the long-term maintenance plan.

Availability of Information for Residents

- i) Reaffirming to residents that information (like a copy of the management agreement and job description for staff) is available should they want to have a copy.

Management processes

- i) Place on the agenda for the AGM (2023) the option for the village to become a member of the Retirement Villages association (RVA); there would be a cost to the village of around \$2500 plus GST, and every third year additional costs of around \$3500 plus GST for the audit. The RVA carries out an independent assessment of K■■■■ practices and policies.

Staff management processes to be reaffirmed/Implemented

- i) the up to date and relevant role description (based on residents needs and industry standards)
- ii) Clear, measurable deliverable/outcomes included as part of the job description.
- iii) Key performance indicators included as part of the job description.
- iv) An amended time recording system for new Village Manager based on H■■■■ excel format. This will be used as an interim measure whilst K■■■■ are building a relationship with the new Village Manager so that they can ascertain and identify where time is being spent in the role. Time-recording sheets will not be available for residents to view.
- v) A suitable and effective performance review process (ideally including 360 degree feed-back). K■■■■ does have a thorough performance review process in place already which considers feed back from other staff members, information received from residents. Going forward the performance review would also formally include the results from the

residents satisfaction surveys, and any relevant information from the quarterly residents' meetings as proposed above.

- vi) Effective disciplinary processes. These processes are already in place under K [REDACTED] individual employment contracts and staff policies.

Contact Points for when the RC Chairperson is away

- i) When the current RC Chairperson is away, the deputy chairperson [REDACTED] J [REDACTED] can be contacted in their absence, the Village Manager (where one is in situ) and/or K [REDACTED].

8. I congratulate the parties on the work they have undertaken to resolve all issues.

The Law

9. The dispute is one which is encompassed in s53 of the Retirement Villages Act 2003.

10. S 53 of the Retirement Villages Act 2003 (the Act) says;

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) relating to changes to charges for outgoings or access to services or facilities imposed or payable under the resident's occupation right agreement; or

(c) relating to the charges or deductions imposed as a result of the resident's occupation right coming to an end for any reason or relating to money due to the resident under the resident's occupation right agreement following termination or avoidance under section 31 of the resident's occupation right agreement; or

(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) A resident may give a dispute notice for resolution of a dispute concerning the operator's breach of the resident's occupation right agreement or code of practice in disposing of a residential unit in a retirement village formerly occupied by the resident.

(4)

11. The Dispute is one which can be heard.

12. The powers of the Disputes Panel are set out in s 69 below.


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) *in the case of a dispute with the operator concerning the liability for, or payment of, any monetary amount, order the operator or, as the case may be, the resident to pay or refund all or part of the amount in dispute; or*
 - (d) *.....*
 - (e) *not impose any other obligation other than in relation to the payment of costs on any party.*
- (2) *For the avoidance of doubt, a disputes panel may amend an occupation right agreement to comply with a provision of the code of practice from which the operator of the retirement village is exempted from complying, but the disputes panel must make the amendment subject to that exemption while it is in force.*

13. The Panel has power to make the decisions it is about to make.

The Decision

14. I am asked by both parties to record the agreements they have reached as an Order which I have set out in paragraph 9 above. I so Order.
15. I am asked to vacate the hearing set for 24 July 2023 which I also so order. All issues are now resolved. A hearing is no longer required.
16. There is agreement from the parties that there be no order for costs. In the circumstances I so order.
17. I wish the parties well in their continued relationship and implementation of these Orders.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

PANEL MEMBER

Date: 20 July 2023.