

IN THE TENANCY TRIBUNAL
AUCKLAND REGISTRY

No: 9004521

Under the Unit Titles Act 2010

IN THE MATTER OF

of the election of committee members

BETWEEN

KAZUFUMI IKEDA
Applicant

AND

BODY CORPORATE 346799
Respondent

AFFIDAVIT OF KAZUFUMI IKEDA

Next event date: Hearing on 27 March 2018
Registrar: Kate Bishop

McLEAN
LAW

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AFFIDAVIT OF KAZUFUMI IKEDA

I, Kazufumi Ikeda consultant of Auckland, swear:

1. My name is Kazufumi Ikeda, and I own and live in suite H, Level 13, 135 Victoria Street West, CBD, Auckland 1010, New Zealand known as Victopia Apartments (the **Property**). The certificate of title for my Property is attached and marked **A**. I purchased the Property in 2005.
2. I am the director and sole shareholder of Cambridge Consulting (N.Z.) Limited. I was a full license immigration adviser for the Ministry of Business, Innovation and Employment from 2010 to 2015, now I am a business and education consultant. I have some Chinese employees based overseas.
3. I have been living in New Zealand since 1995, however I moved back to Japan in 2010 to look after my elderly father who was sick. I stayed in Japan after my father passed away until about May 2015 when I returned to New Zealand. I was on the Body Corporate 346799 Committee (the **Committee**) 8 times: from 2005 to 2009, 2012 and from 2015 to 2017. However, I was not invited by the Committee or the Committee managers, Body Corporate Administration Ltd, to any Committee meetings for almost 2 years from the August 2015 AGM to June 2017.

Non plaintiff owners

4. There was a leaky building litigation claim by Body Corporate 346799 (the **Body Corporate**) against the Auckland Council. In this litigation the Body Corporate was represented by the lawyers Grimshaw & Co. This litigation claim went from approximately \$3 million in 2012 to approximately \$40 million in 2016.
5. There were four owners who were not plaintiffs in the litigation between the Body Corporate and the Auckland Council. These four non-plaintiff owners were:
 - a) Me as the owner of 13H.
 - b) Weiqun Huang who is the owner of 8M.
 - c) Qiming Pan who is the owner of 10M.
 - d) KNZ International Co. Limited (In Liquidation) who was the owner of GD.
6. Weiqun Huang's property 8M is managed by her daughter Wang Qi who also goes by the name Caspar Chi which is in her email address. Wang Qi lives in Mt Eden and also manages another property for her mother on Upper Queen Street

7. Mr Pan has a property manager called Sisy Huang. She is kind of like the New Zealand mother of Mr Pan, who is a student at Unitec.

Prior to 2017 AGM

8. I have had difficulties with the Body Corporate Chairwoman Jacqueline Anne Turner, with the Body Corporate managers Body Corporate Administration Ltd (**BCA**) Director Glenn Harry Kwok and General Manager Paula Kelly Beaton, with their supporter Committee members and the Building Managers, overcharging levies and not providing documents when they were requested even though I was on the Committee.
9. In August 2017 I paid \$223,814 for the remedial repair work costs to my Property and have spent since 2015 over \$30,000 in legal costs against the Body Corporate. I do not contribute toward costs of the litigation such as expert and legal fees as I am not a plaintiff.
10. The levies that have been sent to all owners have been very high. This is because they include costs for the rebuilding of the units. I carefully check the breakdown of the levies to ensure that I am not contributing to the litigation costs. I wrote to the Body Corporate managers and committee seeking a range of documents to assist. My correspondence was ignored.
11. There were previous Tenancy Tribunal claims between the body corporate and I, as BCA/the Committee refused to provide me with invoices and a breakdown so I could check what I was being charged for.
12. I was sued incorrectly named as Heejoo Lee for \$14,186.99. This application is attached and marked **B**. I sought a refund for the overcharging of levies that should not have been sought from me.
13. On 1 November 2016 Adjudicator Mr. S Benson of the Tenancy Tribunal ordered in claim 9000247 that a range of documents be made available so that I could review them. The order of the Tribunal is attached and marked **C**. On 27 June 2017 the Tenancy Tribunal awarded me costs for 9000247. The order of the Tribunal is attached and marked **D**.
14. On 9 May 2017 there was a confidential between the parties Tenancy Tribunal Order for claim 9001243 by the Mediator Ms. Julie Follas.

Reductions in monies allegedly owed

15. My alleged debts were reduced/refunded by the Body Corporate by \$23,453.19 as shown below:
- a) Five Additional (Remedial) levies no. 12 to 16: \$11,074.50. These are attached and marked **E**.
 - b) Interest: \$929.25.



- c) Four operational levies: \$6,760.71. These are attached and marked **F**.
- d) Cash payment: \$2,469.71.
- e) Grimshaw debt collection fees: \$1,369.65. These are attached and marked **G**.
- f) Application fee: \$850.

Concerns of other owners and proxies

- 16. The body corporate can be unfair to me and other owners including those who are not part of the litigation. There is a dominant block of owners on the Committee that is headed by Jacquie Turner who is the current chairperson, and has been for thirteen years. The apartments are divided into three different cladding types and not all cladding types have the same issues. Jacquie Turners and the owners that support her want to do as much work to the properties as possible and have incurred considerable expenses. I provide a voice for those owners who question whether all the work is necessary, and whether there might be cheaper options available.
- 17. I had 4 proxies from 3 Australian owners. I also had another proxy from a Korean owner who does not speak English. Often owners give me their proxies as they are worried about high costs and high levies.
- 18. I have received many complaints from other owners regarding the Building Manager Graeme John McDonald and ongoing problems to Asian, female, overseas and not contracted owners (the owners who are not using the Building Manager Graeme McDonald's Aruba Management (victopia) Limited) including harassment, entering their properties without permission, disconnecting water, electricity and internet, and charging unknown fees. owners have also complained about the Chairwoman. BCA has not provided a clear explanation in response to their complaints.

Levy for construction work

- 19. The first levy for the remedial work was issued on 25 July 2017 less than four weeks before our 17 August 2017 AGM. If an owner did not pay the first levy before the AGM, then they would have had no voting power.

Notice of intention

- 20. On an unknown date around 20 July 2017 only four weeks before the AGM a notice of intention to hold an AGM was received with a Nomination and Proposed Resolution Form and a letter from Paul Beaton of BCA. Attached and marked **H** are copies of these documents. The letter said "It is proposed that the Committee will be made up of up to 8 unit title owners...".

Nominations

21. Nomination and resolution forms dated 25 July 2017 were submitted by Weiquan Huang of 8M, Qiming Pan of 10M and myself. The forms were written by me and signed by Mr Pan and Weiqun Huang. These are attached and marked I., J and K. I emailed these nomination and resolution forms to Glen Kwok of BCA well before the due date. I nominated Qiming Pan of 10M as a chairperson and also myself, Weiqun Huang and Qiming Pan as committee members.

Resolutions

22. The resolutions in the nomination and resolution forms included two put forward by me:

Agenda 1 (Resolution 14 on the AGM minutes)

Chairwoman Jacquie Turner and the committees: BM Graeme McDonald, Darius Koper, Catherine Morgan, Aaron Young and Ina Lawrence with BCA Ltd spent our \$3.5 million for the \$40 million Litigation Claim. But the settlement payout was \$28 million, and now all owners must pay own Mortgage, relocation, accommodation and storage without rental income. Current Chairwoman, the Committees and BCA Ltd must resign by taking full responsibility to all owners.

Agenda 2 (Resolution 15 on the AGM minutes)

Our \$15,000 was paid to the Chairwoman's private business (Stonewarehouse, Amsham Investments) and BM's private business (Aruba Management) as their expenses for attendance. Jacquie Turner is on voluntary and Graeme McDonald's expenses are already paid. All owners demand these two Committees to pay back our \$15 000.00.

23. One resolution was put forward by Weiqun Huang:

Agenda 1 (Resolution 16 on the AGM minutes)

Several Unit owners already obtained individual on-site investigation reports by independent building surveyors. The reports show no water leak and defects. As Deck repair is not included in the First Levy for \$26.5 million repair work, the only decks with defects should be fixed at each owner's expense.

24. Two resolutions were put forward by Qiming Pan:

Agenda 1 (Resolution 17 on the AGM minutes)

As the First Levy for \$26.5 million repair only covers Cladding Podium and Fire repairs, all owners may receive a Second Levy for the deck repair. The BC committees already illegally used \$300 000 from our Operational Funds. As the Remedial work requires huge Contingency Fund should be utilized for the Repair work.

Agenda 2 (Resolution 18 on the AGM minutes)

During the 2 years vacation period, our annual levy should be one half of the normal year budget, especially to the BCA Ltd's administration fee and the 11E Tenant's Building Manager's fee

25. For all five agenda items it was put forward that a resolution of 85%/173 units in votes against the agenda item was needed for a majority of votes.

The AGM Agenda

26. An AGM agenda was issued. Attached and marked **L** is a copy of the AGM agenda. The resolutions from Weiqun Huang, Qiming Pan and I were not listed on the Agenda. The nominations of Mr Pan and I for the chairperson were also missing as was the nominations of Weiqun Huang, Mr Pan and I for the Committee. I raised this with my solicitor Doug Cowan Barristers and Solicitors.
27. The number of people on the Committee had been reduced from 8 to 7. The supporters of me who want more fiscal responsibility and accountability are not a large group. This reduction in the Committee size reduced my chances of being elected as I was always going to be on the edge of getting enough votes to be elected. Item 5 on the agenda is the Formation of the Committee, Item 5.2 is Resolution 4 – Constitution of Committee which reads:

It is proposed that the Body Corporate resolve, by ordinary resolution that up to 7 unit title owners be appointed to hold offices as committee members and together shall constitute the Body Corporate Committee... and that the quorum for meetings of Committee shall be at least 4 committee members.

28. On 4 August 2017 my solicitors wrote a letter and made a formal complaint to Glen Kwok at Body Corporate Administration Limited. Attached and marked **M** is a copy of the letter. My solicitor said that the notice of intention was sent four weeks prior to the AGM not 6 weeks as required. The notice of AGM did not include Qiming Pan or my nomination for Body Corporate Chairperson, or the agenda items given by Weiquan Huang, Qiming Pan and myself.
29. Glenn Kwok issued a second agenda that included the matters that had been suggested. Attached and marked **N** is a copy of the second amended AGM agenda. It had had added the resolutions and the following Chairperson and Committee nominations:

2.2 RESOLUTION 1 - APPOINTMENT OF CHAIRPERSON

The following persons have been appropriately nominated to hold office as Chairperson, and have consented to that nomination...

Qiming Pan, nominated by Kas Ikeda of Unit 13H



Kas Ikeda, nominated by Weiqun Huang & Wang Qi of Unit 8M & Qiming Pan of Unit 10M...

RESOLUTION 5 – APPOINTMENT OF COMMITTEE MEMBERS...

6.3 The following persons have been nominated to be a member of the Committee, and have consented to that nomination...

Kas Ikeda, owner of Unit 13H

Weiqun Huang & Wang Qi, owner of Unit 8M

Qiming Pan, owner of Unit 10M

30. The Resolutions from Weiqun Huang, Mr Pan and I had been added at resolutions 14 to 18 or 15.6 to 15.10 of the AGM agenda.

Proxies

31. I was given proxies by five owners. They included:
- a) Jodie Burton of 1B. Attached and marked **O** is a copy of the proxy.
 - b) Jodie Burton of 9A. Attached and marked **P** is a copy of the proxy.
 - c) Myung Hoe Kim of 5A. Attached and marked **Q** is a copy of the proxy.
 - d) Justine Girgin of 4B.
 - e) Justine Girgin of 8B.
32. I explained to Weiqun Huang of unit 8M that her proxy would go to Doug Cowan who was to attend the AGM with me as I already knew both she and Ms Qi would be overseas at the time of our AGM. My computer has since crashed. I fear it may have been hacked to stop my questions that I ask of the Body Corporate and Management. I filled out the proxy for Weiqun Huang and sent it to Ms Huang. She signed it and emailed it back to me. I printed it and when I met Doug Cowan at the AGM I gave him Weiqun Huang's proxy. I do not have access to these records. Mr Cowan submitted the proxy to BCA staff before the commencement of the AGM.
33. I filled out Mr Pan of unit 10M's proxy form for him and he signed it. Anna Fisher was at the AGM as an interpreter. I again asked Mr Pan to sign his proxy for Anna, and she had the proxy for 10M.



Annual General Meeting (AGM)

34. When I entered the AGM I wrote my name on the attendee list.
35. Paula Beaton of BCA chaired the AGM. At the start I handed my proxies to BCA staff. These staff delivered the voting forms. Paula Beaton of BCA as usual chaired the AGM on behalf of the Chairwoman Jacquie Turner, without obtaining the approval from the owners present at the beginning of our AGM. I had a number of votes to fill in. I had 6 in total made up of myself and the 5 proxy votes.
36. Qiming Pan and his property manager Ms Sisy Huang attended the AGM, arriving late.
37. My resolutions were important, and I said that we should discuss them first. This was denied as usual by Jacquie Turner and her supporters including Paula Beaton, Glenn Kwok and former Building Managers' Noel and Glenda Miller. The resolutions were to be discussed at the end of the AGM.
38. The vote to appoint the chair person was first. This Chairperson vote always comes first as it is the first priority of Jacquie Turner and her supporters.
39. Qiming Pan did not want to be the chairperson. Paula Beaton said words to the effect that that that was ok, he was not aware he was nominated as chairperson so he could not be nominated as a chairperson.
40. There was a written vote for either Jacquie Turner or myself for the chairperson. The BCA staff counted the votes as usual in the next room not in front of the owners.
41. Then the BCA said that Jacquie Turner had gotten a majority. They did not say the number of votes she got, or the votes that I received. They did not say what the majority was.
42. Then there was the vote for the Committee. Paula Beaton asked all the people standing for the Committee to introduce themselves before voting occurred.
43. I am not sure why Paula Beaton of BCA required an introduction. This did not favour Mr Pan as his English is not good. On 8 September 2017 the BCA staff member Jayshree Moodley had already sought my bio for my



Chairperson nomination (she did not say my Committee nomination). This email is attached and marked **R**. I had emailed my bio to the BCA prior to the AGM for circulation. I am quite sure that 10M's Qiming Pan was never asked for his bio for either the Chairperson or the Committee. All candidates' bios must be distributed to all owners in advance of our AGM for election, including postal votes. My bio was not distributed. This was very strange. I am not sure why they called for bios when they were not used.

44. Sissy Huang spoke as Qiming Pan did not say anything in English. Sisy Huang spoke on his behalf. She said Qiming Pan did not want to speak. Sisy Huang withdrew his Committee nomination. There were no objections.
45. Paula Beaton wanted Catherine Morgan to be a committee member. She has been on the Committee before but was reluctant. Usually she would not attend Committee meetings in person, but would attend on the phone. The minutes read at 6:

Before the resolution was put, the secretary advised that Catherine Morgan (Unit GC) had been properly nominated but was omitted from the list of the 10 other owners. This name was to be inserted onto the ballot papers for consideration.
46. Catherine Morgan stood up and said she won't run for committee member. This was accepted by Paula Beaton chairing the meeting.
47. There was a written vote for the Committee. The BCA staff counted the votes in the next room. The first six places were ahead of me. I was in a tie for seventh with Weiqun Huang of 8M. Mr Cowan took a photo of the count for the voting. I received and examined the photo, but it is not clear and I cannot read the total number of votes. BCA's Glenn Kwok could not explain the exact number of each Committee nominees' votes to Mr Cowan.
48. Similarly, in our 2007 AGM when I was on the Committee BCA could not explain the number of votes received. BCA's Glenn Kwok had an argument during the AGM with a Korean owner Mr Choi who demanded to know the actual number of votes I received. I had received about 50 proxies from the Korean owners. BCA never say how many votes I actually got. Glenn Kwok refused to supply the original proxies. Mr Choi tried to put his signature on the proxies in front of everyone to count them because BCA never count in front of the owners present. BCA always count in the next room so we cannot see. Mr Choi sold his units when I was in Japan.
49. Doug withdrew Weiqun Huang of 8M's Committee nomination.
50. Jacquie Turner supported by her team of Darius Koper, Yana Hay, Ina Lawrence, Vilingi Young and former building manager Noel and Glenda Miller voiced disapproval. BCA's Paula Beaton and Glenn Kwok also



attempted to support Jacquie Turner's Team in objecting to Mr Cowan's withdrawal of 8M Committee nomination.

51. One Kiwi owner sitting in the front row, maybe Aaron Young but I am not certain who it was, insisted on a re-vote by a show of hands.
52. There was a re-vote for either me or Weiqun Huang. A show of hands occurred. I said I had 5 proxies. Not all owners raised their hands. Glenn Kwok counted, then he said Kas has 14 hands, 8M has the majority.

Resolutions

53. The last part of the AGM was discussing the resolutions.
54. Paula Beaton did not discuss resolutions 14 to 18 properly because she said that they were not ordinary or special resolutions, and that the proposals were unusual resolutions. They were each briefly discussed but not in detail.
55. For resolution 15 Anna Fisher said that \$16,000 had been paid to Jacquie Turner. Jacquie Turner did not say anything or failed to explain the payment. This is different from the AGM minutes which said "The allegation was denied". There was no denial.
56. When Paula Beaton raised resolution 17 I raised my hand in front of her. However, she attempted to ignore me by pretending as though she could not see or hear me, which she often does. I said shut up, do not disturb me, do not interrupt me to Paula Beaton as she attempted to stop me speaking at every opportunity. Paula Beaton shouted excuse me, then the former Building Manager Glenda Miller complained to me.

The Committee meeting

57. Doug Cowan said that Glenn Kwok of the BCA invited us to the Committee meeting on 25 August 2017 for my reinstatement to the Committee.
58. Mr Cowan said that Glenn Kwok had asked for a formal resignation from Weiqun Huang in writing. I normally communicate with Weiqun Huang through her daughter Wang Qi. I had sought and received a signed resignation from Weiqun Huang dated 24 August 2017 and Mr Cowan also provided a letter dated 25 August 2017. The withdrawals are attached and marked **S** and **T**.
59. On 25 August 2017 when I arrived at the Committee meeting Glenn Kwok said I should wait outside because I was not allowed at the committee meeting.



60. Mr Cowan arrived late. Mr Cowan submitted Weiqun Huang's resignation letter to Mr Kwok. Mr Cowan said I should be confirmed into the Committee. That was why I understood that they needed the Committee meeting.
61. Mr Kwok suddenly changed his attitude under the pressure of Chairwoman Jacquie Turner. He referred to the regulations. He said that there was no law that they can't reduce from 7 to 6 members.
62. Darius Koper of 13P said what is wrong with 6 after 8M's resignation, can we go with only 6 committee members?
63. Glenn Kwok and Paula Beaton checked the Unit Titles Act 2010 and regulations, then Glenn Kwok said nothing was wrong with 6 Committee members.
64. I said why not call another AGM or EGM to elect the 7th member. Mr Kwok said they had spent heaps on litigation which had cost too much. He refused to call an AGM or EGM. They strongly refused my attendance at the committee meeting. Mr Cowan and I were excluded.
65. They refused me as the 7th Committee member.
66. Mr Cowan mentioned another Tenancy Tribunal application against the Committee, then Jacquie Turner said, it was a waste of time and money. There was discussion about another claim and the cost involved.
67. We were rudely excluded from the rest of the meeting.

AGM Minutes

68. About 2 months after our AGM on 16 October 2017 I received the minutes for the AGM that had occurred on 17 August 2017. The AGM minutes are attached and marked **U**. I carefully examined the AGM minutes. Some of the things that actually occurred during the AGM and what have been recorded by the BCA in the minutes were different.
69. Ms Thuy Vu of unit GA made complaints against the Building manager Graeme McDonald, such as changing the front door lock to her property without her permission and him entering into her property using the master key without her permission. Then, I said to her and all owners present, call the Police next time. This was not recorded in the AGM minutes.
70. Mr Joseph Yang of unit 7E complained about Graeme McDonald's unauthorised parking at the B2 carpark. BCA Glenn Kwok and Paula Beaton



said that they would assist with the matter after the AGM. This was not in the AGM minutes.

71. The minutes record that the owners did not accept Weiqun Huang's withdrawal of the nomination for the Committee. The actual events were that, after the Committee votes calculation was completed 8M and 13H were tied for 7th. Then Doug expressed 8M's withdrawal from the Committee nomination. It was not the owners who said no. It was Jacquie Turner and her team of supporters mostly on the Committee such as the former building manager Noel and Glenda Miller who strongly refused 8M's withdrawal.
72. No one said 8M became the seventh committee member. There was no first or second carry as is recorded in the Committee minutes at part 7 and 25. BCA never clearly announced 8M was the 7th Committee member during the AGM. This has likely been included in the AGM minutes records to justify themselves. This should be completely deleted from the minutes.
73. The owner of units 4B and 8B, Justine Girgin's name (she gave her Proxy to me) was on the AGM attendance list, so I asked her if she attended our AGM, and she confirmed that she did not. She said that she received a AGM Proxy form with Building Manager Graeme McDonald's name already filled out, so she asked the BCA to send a blank Proxy form. Then she wondered how many owners received Graeme name pre-filled Proxy form. The pre filled proxy is attached and marked **V**.
74. On 18 December 2017, I sent an email to the Building Managers and BCA and asked if the Building Manager sent out the Proxy form to me. The Building Manager Graeme McDonald responded twice that same day. He said that the Body Corporate sends out the proxy. This correspondence is attached and marked **W**. Later I was told by Amy Lan of Unit 10K that she also received Graeme McDonald's name in a pre-filled Proxy form. I made a complaint to BCA, but received no explanation.
75. Weiqun Huang was recorded on the AGM attendance list but she was not at the AGM.
76. On 23 December 2017 Weiqun Huang signed a letter confirming that she gave her AGM proxy to Doug Cowan, and that he had her full authority to represent her. This letter is attached and marked **X**.
77. On 2 March 2018 I emailed Wang Qi, and she emailed back that day and confirmed that Weiqun Huang and her gave their full 8M proxy to Doug Cowan to make decisions on her behalf during the AGM. These emails are attached and marked **Y**.

Summary

78. In summary, I think that some people on the Committee or in management want to do anything that they can to ensure that I am silenced. I provide



the voice for many of the owners that have ongoing issues with the Committee's spending, and the voice for the non-plaintiff owners.

79. The steps they have taken include reducing the number of Committee members, sending the notice of intention late, not including me, Weiqun Huang and Qiming Pan on the Agenda and not including our resolutions, collecting as many proxies as possible for Jacquie Turner or Graeme McDonald by fake proxies or pre filled proxies, attempts to silence my voice by BCA's Paula Beaton during our AGM, not letting Weiqun Huang's proxy withdraw her nomination, doing the votes count by BCA staff in the next room where it could not be overseen or critiqued, not recording who voted for whom, re-voting for Weiqun Huang when she had withdrawn her nomination and is an overseas owner, taking two months to produce the misleading and incorrect AGM minutes by Jacquie Turner, Glenn Kwok or Paula Beaton, encouraging a further written withdrawal of Weiqun Huang then refusing to have a seventh Committee member. These are all examples of the current Body Corporate Chairwoman Jacquie Turner, committee members and/or BCA's efforts to silence me from voicing owners' concerns and complaints, and to exclude me from the Committee.
80. I am a unit owner. As an owner I have the right to be heard, to participate in the AGM, to be voted for and to participate on the Committee when elected.

SWORN at Auckland
this 21 day of March 2018
before me:

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Kazufumi Ikeda



A solicitor of the High Court of New Zealand/A Justice of the Peace.

John de Lisle
Lawyer
Auckland

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