

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

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**SUBMISSIONS OF THE APPLICANT KAZUFUMI IKEDA**

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Date: 8 June 2018

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LAW

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## **SUBMISSIONS OF THE APPLICANT KAZUFUMI IKEDA**

May it please the Tribunal:

### **Introduction**

1. Mr Ikeda seeks orders that the actions of certain members of the body corporate management, and of the Body Corporate Committee (the **Committee**), were in breach of the Unit Titles Act (the **Act**) and/or the Unit Titles Regulations (the **Regulations**) at the 17 August 2017 Annual General Meeting (**AGM**).
2. Mr Ikeda seeks orders that he be elected as the seventh committee member, or that there be an Extraordinary General Meeting (**EGM**) election to choose either the seventh member of the Committee or the entire Committee. Mr Ikeda seeks orders that there were breaches of the Act and Regulations, and he requests directions and/or restrictions for the next AGM in August 2018. Time has passed, and it is now close to the AGM for the following year.

### **Background**

3. On 27 March 2018 there was a hearing.
4. On 28 March 2018 the Tribunal issued an order requiring amongst other things, the disclosure of documents and a meeting between counsel.
5. On 27 April 2018 Counsel had a meeting at Mr Baker's offices. Settlement discussions occurred but an agreement was not achieved.
6. We applied on Mr Ikeda's behalf seeking further discovery of documents.
7. On 22 May 2018 the Tribunal issued an order requiring further discovery.
8. On 23 May, 28 May, 30 May, 1 and 7 June 2018 further documents were made available by the Body Corporate and/or Body Corporate Administration Ltd (**BCA**). These documents can be provided if requested.

9. In accordance with the Tribunal Member's order dated 22 May 2018 Mr Ikeda files these further submissions which focus on further documents made available and are in addition to his earlier submissions.

**Power to rectify**

10. Section 171 of the UTA gives the Tribunal powers to:
- (a) order any party to do anything necessary to remedy a breach by that party of an obligation arising under this Act, the body corporate operational rules, or any agreement that is binding on the party and relevant to the unit title dispute...
  - (c) make any supplementary orders of a consequential or ancillary nature necessary to exercise or perfect the exercise of any of its jurisdiction.
11. It is submitted that the Tribunal has the power to make orders:
- (a) That Mr Ikeda is the seventh elected Committee member.
  - (b) That an EGM occur to elect the entire committee or the seventh member.
  - (c) identifying breaches of the Act and the Regulations; and
  - (d) putting in place directions and/or restrictions for the future.
12. Such orders are sought as there has been numerous breaches of the Act and Regulations including:
- (a) Owners whose votes were not counted due to non payment of levies but who had paid.
  - (b) Schedule A – owners whose votes were counted whose levies were outstanding.
  - (c) Schedule B – owners who were supplied already completed proxy forms with Graeme McDonald's name and who gave Mr McDonald their proxy.

- (d) Schedule C - owners who gave Mr McDonald their proxy by an email.
- (e) Owners who gave BCA their proxy by email.
- (f) Schedule D – Proxy forms that were not signed by all the owners of the unit.
- (g) Schedule E – Voting forms that were not signed by the owners.
- (h) Schedule F – Voting forms that were not signed by all the directors of the company owner of the unit.

**Owners whose votes were not counted due to non payment of levies**

- 13. Copies of levies, debtor analysis, proxies and the voting and postal voting forms have been made available.
- 14. A retrospective produced table drafted after the AGM lists six owners whose votes were not counted due to levies being owed. The levy Statement & GST Tax Invoices for the owners listed as having outstanding levies in the retrospective produced table were produced. They show variation in form:
  - (a) The invoices for Hin S S & Y S, Qiming Pan and H L Gan were not dated. The other invoices for Li Chuan Wang Lin, Song Qing Ou and D H Zang were dated.
  - (b) The invoices for Li Chuan Wang Lin and D H Zang were dated 26 April 2018 so are not the originals that were sent out due on 28 February 2018 and 18 July 2017 respectively.
  - (c) The invoices have difference recording of the unit such as UNIT: 135V06P and 9thFloor-M indicating they may not be the originals.
  - (d) Mr Pan owed approximately \$53.51 dollars as an unpaid discount due on 28 February 2017. The core expense having been paid. This appears harsh.

- (e) Mr Pan's statement indicates BCA has been transferring funds from the Operational account to the Remedial account with \$983.25 being taken out on 24 August 2016. No authority for such as transfer was indicated.
- 15. Mr Ikeda received correspondence from the owners of unit 4P Song Xing Ou and Deqiang Lao saying that they were not aware that their vote was not counted due to outstanding levies and that it was an incorrect outstanding levy (annexure **A**). The correspondence was recently received by Mr Ikeda and was not part of Mr Ikeda's original evidence.

### **Levies of other owners**

- 16. The other 197 owners' statements were not originally provided. These were sought to check the veracity of the outstanding levies analysis by BCA who may have been allowing 'friendly' unit owners to vote despite non or late levy payment.
- 17. On 28 May 2018 debtor analysis with a statement of activity for 92 unit owners was provided.
- 18. On 31 May we sought further documents including the debtor analysis for all 203 unit owners, rather than just the 92 supplied.
- 19. On 1 June 2018 a debtor analysis for 202 unit owners was supplied, and later the 203<sup>rd</sup> owner.

### **Schedule A – owners whose votes were counted whose levies were outstanding.**

- 20. 11 unit owners who still had levies outstanding had votes that were counted. These are listed in Schedule A. Some voted for Mr Ikeda, and others did not. All unit owners listed in Schedule A, except 12E who owes more, owed the most recent levy that was due on 18 July 2017 for 25 May to 25 September 2017.
- 21. On 18 July 2017 Justine Girgin paid instalment 1 operational levies for both her units 4B (\$419.41) and 8B (\$451.67) prior to the 17 August 2017 AGM. However, BCA has credited \$451.67 (paid for 8B) to 4B to make 4B have a \$451.67 credit balance, and 8B a \$451.67

outstanding balance (annexure **B**). Therefore Ms Girgin had paid her levies.

22. For unit 12A the debtor analysis supplied on 28 May 2018 (92 unit owners supplied) shows a credit balance of \$63.46 however the debtor analysis supplied on 1 June 2018 for unit 12A shows a balance owed of \$467.80 (202 unit owners supplied) (annexure **C**). This calls into question the reliability of BCA's accounting records.
23. The debtor analysis also shows that BCA has the ability to transfer funds between the operational account and the remedial account. This will also effect the credit/debit status of the unit owner and could be misused. There was no evidence of instructions and often no explanation of why such transfers occurred. Unit owners with transfers between the operational account and the remedial account (and vice versa) include 1A, 3K, 3P, 7M, 7P, 8A, 8F, 8J, 8M, 9B, 9G, 9K, 10M, 11F, 12E, 12L, 13A, 13B, 13K and 13P.

**Non-compliant proxies:**

*Schedule B: owners who were supplied already completed proxy forms with Graeme McDonald's name and who gave Mr McDonald their proxy.*

24. 16 owners were supplied already completed proxy forms with Graeme McDonald's name and gave Mr McDonald their proxy. The owners are listed in Schedule B.
25. The cover email from Mr McDonald of Aruba Management Victoria says "...we require your signature on the proxy form in order to act on your behalf this year...".
26. These votes should not have been counted.

*Schedule C - owners who gave Mr McDonald their proxy by an email.*

27. There were 8 owners did not complete a proxy form but instead wrote a short email to the effect that their proxy was to go to Mr McDonald. The owners are listed in Schedule C. Some of these were short email 'proxies' and it is likely that these owners were sent the already completed proxy forms as for some you can see it is a reply to the same cover email from Mr McDonald.

28. Of these 8 unit owners Dorothy Wu's email is unusual as she responds using Mr McDonald's own email address administrator@victopiaapartments.rentals-mail.com and replies to info@victopia.co.nz.
29. The proxy form supplied by BCA or Mr McDonald was titled Proxy Appointment Form s102(3) Unit Titles Act 2010. The proxy reads:<sup>1</sup>  
  
We/I\* (full name/names)...  
...appoint (full name)  
As my/our\* proxy for the purposes of the general meeting of the body corporate to be held on:
30. It appears to be a copy from form 11 of the Unit Titles Regulations 2011 which is the Proxy appointment form under section 102(3), Unit Titles Act 2010.
31. Despite the failure to follow the process and complete the proxy form supplied, 8 email 'proxies' to Mr McDonald were allowed.
32. Under s102(3) Unit Titles Act 2010 a proxy must be appointed by notice in writing signed by the eligible voter.
33. There was no signature, therefore these proxies and the votes that followed at the AGM were all invalid. These proxy votes should not have been counted.

### *Summary*

34. The 24 owners who gave their proxy to Mr McDonald should not have received a proxy from Mr McDonald, the proxy should have come from BCA. The Proxy should have been blank. These owners have not had a fair choice with their vote. These proxy votes should not have been counted.

### *Owners who gave BCA (Paula Beaton) their proxy by an email.*

35. There were a further 2 owners who did not complete a proxy form but instead wrote a short email to the effect that their proxy was to go to Glenn Kwok or Paula Beaton (the director and former director

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<sup>1</sup> The proxy follows form 11 of the UTR which is a Proxy appointment form.

of BCA respectively) (annexure **D**). These proxy votes were counted. They were:

(a) Graham Smith of the Canterbury Trust unit GL.

(b) Graham Smith of the Canterbury Trust of unit GK.

36. Again, for reasons already discussed these emails do not meet s102(3) of the Act. These proxies and the votes that followed at the AGM were all invalid and should not have been counted.

**Schedule D – Proxy forms that were not signed by all the owners of the unit.**

37. Section 102(4) of the Act reads that if there are 2 or more eligible voters who own 1 principal unit and they are jointly entitled to exercise 1 vote and wish to do so by proxy, that proxy must be jointly appointed by them and may be 1 of them.

38. The notes on form 11 of the Regulations reads:

4 If the unit owner is a body corporate or an unincorporated body, the representative (recorded in the register of unit owners) of the unit owner must sign the form.

5 If the unit is owned by more than 1 person, every owner must sign the form.

6 If the unit is owned by more than 1 person, one of the unit owners may be appointed as proxy.

39. We have received the proprietor list from the Body Corporate which is a list of the owners of all the units (annexure **E**).

40. None of the company (body corporate) owners have a representative recorded beside them in the proprietor list. This is in breach of form 11 (4) as the representative should be listed, and the representative should sign the proxy.

41. The proxies which were only signed by one of the unit owners are listed at Schedule D. There were at least 15. We have not included the companies with only one director which is a breach, but it is likely that the sole director would have been the representative.

42. As there was not signatures from all owners, these proxies and the votes that followed at the AGM should not have been counted.

43. The list in Schedule D is where the incorrect parties have signed the proxy including:
- (a) when there have been multiple owners written on the proxy form.
  - (b) companies with multiple directors but no representative and not all directors signed.
  - (c) names that did not match.
  - (d) a trust's name was listed but all trustees did not sign.
  - (e) when there have been multiple owners on the proprietor list but not all of those owners have signed the proxy.

**Schedule E – Voting forms that were not signed by the owners.**

44. The list in Schedule E is when the voting form has been signed by a person who is not an owner and that person does not hold a proxy. These votes should not have been counted as the voter was not a registered owner and did not meet section 96(1) of the Act.

**Schedule F – Voting forms that were not signed by all the directors of the company owner of the unit.**

45. Section 96(1)(b) of the Act says the nominee of a company the name of which is entered on the register of owners of principal units as the representative of the owner is eligible to vote.
46. We have received the proprietor list from the Body Corporate. None of the company (body corporate) owners have a representative recorded in the proprietor list. This is in breach of s96(1)(b) of the Act as the representative should be listed, and the representative should vote.
47. The list in Schedule F is from when there have been multiple directors of a company, no representative in the proprietor list and only one director has signed the voting form, and that director does not hold a proxy. These votes should not have been counted.

### **Name on Voting Form for Body Corporate**

48. The evidence of Mr Ikeda was that Catherine Morgan withdrew her nomination for the Committee during the AGM. Mr Kwok disagreed saying she had not withdrawn.
49. Ms Morgan is not listed on the Committee voting forms but many people wrote her name in and voted for her. For example Ms Turner, Mr Koper and Ms Lawrence, and Noel and Glenda Miller as proxies, have written Ms Morgan on to the form and voted for her.

### **Jacqueline Turner**

50. Some of Ms Turner's actions raise questions. Ms Turner completed a voting form on behalf of unit 1N as one of her proxies. This was incorrect as the unit 1N owners had not signed the proxy form supplied and also had left blank who their proxy was to go to (annexure **F**). This vote was invalid. It was allegedly not counted in the Post AGM Ballot Vote.
51. Ms Turner voted for unit 1M as one of her proxies and completed a voting form (annexure **G**). This was incorrect as the owner Yang Wang did not supply her, or anyone else, a proxy. This was allegedly counted in the Post AGM Ballot Vote.

### **Incomplete postal votes**

52. BCA only supplied one postal vote, for Lane Reed Investments of unit 11P (annexure **H**). The document reference number is Ref:agmcall form 20170802jm. This postal vote (which may be missing pages) has:
  - (a) No Chairperson options to vote for.
  - (b) Four Committee member options to vote for including Ms Turner, Mr McDonald, Mr Koper and Ms Young.
  - (c) Resolutions 14, 15, 16, 17 and 18 were not on this postal vote form.

- (d) Mr Ikeda was not able to be voted for as Chairperson or for the Committee.
53. 11P was allegedly not counted in the post AGM ballot table, and they were not supplied the full list of candidates. This meant that 11P lost their right to vote and the missing candidates lost the right to be voted for.
54. On 15 August 2017 Ms Stokes of unit 8A emailed her Postal Voting Form to BCA's Jay Moodley. The cover email and postal vote from May Stokes of 8A was not supplied by BCA and was allegedly not counted (annexure **I**). It was recently received by Mr Ikeda and was not part of Mr Ikeda's original evidence. The document reference number is the same as 11P's but it is a different document. This postal vote has:
- (a) Three Chairperson options to vote for including Ms Turner, Mr Pan and Mr Ikeda.
  - (b) Ten Committee member options to vote for including Ms Turner, Mr McDonald, Mr Koper, Ms Young, Mr Yang, Ms Hay, Ms Lawrence, Mr Ikeda, Ms Huang/Ms Qi and Mr Pan
  - (c) Resolutions 14, 15, 16, 17 and 18.
  - (d) Mr Ikeda was voted for for the Committee by Ms Stokes.
55. It is not clear why Ms Stokes of 8A's vote was not counted.
56. The postal vote from Justine Girgin of 4B and 8B was not supplied by BCA and was not counted (annexure **J**). Ms Girgin sent a person with a proxy to the AGM so this non-counting is not an issue. The postal vote was received by Mr Ikeda from Ms Girgin and was not part of his evidence at the hearing. The document reference number is the same but it is again a different document. This postal vote has:
- (a) One Chairperson option to vote for – Ms Turner.
  - (b) Seven Committee member options to vote for including Ms Turner, Mr McDonald, Mr Koper, Ms Young, Mr Yang, Ms Hay and Ms Lawrence.

- (c) Resolutions 14, 15, 16, 17 and 18 were not on this postal vote form.
  - (d) Mr Ikeda was not able to be voted for for the Committee.
57. The postal vote forms circulated have been amended after Mr Ikeda and Mr Pan's forms nominating each other for Chairperson and the Committee had been received. The format of these three Postal Voting Forms are **all** different. One did not have Mr Ikeda added as an option for the Committee or Chairperson, another had Mr Ikeda added to the Chairperson list, but not the Committee, and the third had Mr Ikeda as an option for the Committee and Chairperson. It appears that different forms were sent to different people, and some people were selected to receive the voting form with an option to vote for Mr Ikeda (possibly Mr Ikeda's supporters), some were selected to receive the voting form with no option to vote for Mr Ikeda.
58. Therefore some unit owners were not able to vote for Mr Ikeda for the Committee by postal vote. This is a breach of clause 24(1) of the Regulations and is not a fair process. Mr Ikeda met the requirements of clause 24 to stand (he was nominated by another unit owner and owned a principal unit) but could not be voted for to be elected to the committee as he was not listed on the postal voting form.
59. Postal voters including 11P and 8A unfairly lost their ability to vote.

**Incorrect failures to count Mr Ikeda's votes**

60. The voting sheet from Mr Ikeda as proxy for unit 1B Jodie Burton was not counted despite it identifying where the votes were to go (annexure **K**). It was noted that the reason this was not counted was that the voting sheet was not signed, dated and the name was not completed.
61. There is a Postal voting form being form 12 in the Regulations which sets out how a vote in accordance with Section 103, Unit Titles Act 2010 should occur.

62. There is no procedural requirement specified for how a proxy must vote at a meeting. Therefore BCA had no ability to not count Mr Ikeda's 1B proxy vote.
63. Furthermore the attendance list and the proxy form show that it was Mr Ikeda who had completed the voting form. BCA knew it was his proxy vote and therefore who had filed the form out and knew whose proxy vote it was not counting. BCA could have also had Mr Ikeda sign the vote or written his name in.
64. Although numerous non-compliant proxies were allowed and the votes counted, on the other side of the ledger Mr Ikeda's proxy vote which was compliant with the regulations was not counted.
65. Mr Ikeda's proxy vote for Jodie Burton for unit 9A was not counted. This is recorded in the retrospective table from Price Baker Berridge as not having been handed in and being unsigned (annexure **L**).
66. The proxy vote for Qiming Pan was not counted. In a produced table drafted after the AGM it says that Mr Pan owed \$53.51 dollars as an unpaid discount due on 28 February 2017 (annexure **M**).
67. The standard vote (not a proxy) from Wai Leon and Noeline Lo of unit 10E was not counted and the handwritten note provided with this vote reads that it was handed in late. Where, when, why, by who and how, is not specified. Unit 10E's owners voted for Mr Ikeda for the Committee and for the Chairperson (annexure **N**).
68. Voters and proxies that would have or likely would have voted for Mr Ikeda were not recorded for various proffered reasons were:
  - a) Mr Ikeda as the proxy for Ms Burton of unit 1B (not signed) who voted for Mr Ikeda and Ms Huang.
  - b) Deqing Lao Song and Song Quing Ou of 4P (allegedly did not pay a levy of \$48.47).
  - c) May Stokes missing postal vote for 8A who voted for Mr Ikeda and Ms Huang.
  - d) Ms Burton of unit 9A (missing).

- e) Mr Pan of unit 10M (did not pay the discount).
  - f) Mr Leon and Mrs Lo of unit 10E (allegedly a late vote) who voted for Mr Ikeda and Ms Huang.
  - g) Lane Reed Investments Ltd of 11P who did not have Mr Ikeda or 13H to vote for on its postal vote.
69. Although we do not have voting forms recording exactly who some of these unit owners would have voted for (4P, 9A, 10M, 11P etc), they are Mr Ikeda's supporters so likely would have voted for him. It is submitted that Mr Ikeda has been short counted in the election. This further supports that he should have been the seventh elected member to the Committee.

**BCA's Counting**

70. The photographed vote tally from the AGM is recorded below in the top line. The vote tally from the retrospective table drafted by Price Baker Berridge is recorded below it:

7E Yang	11E McDonald	4A, 13J, 14E, 14G Turner	13P Koper	6C Lawrence	13G Hay	2D Young	13H Ikeda	8M Huang	10M Pan	GC Morgan
52	26	50	50	37	52	44	31	31	17	22
86	58	84	83	69	85	78	31	31	17	26

71. BCA's vote count at the AGM is worlds apart from the alleged tally table supplied by Price Baker Berridge. This in itself shows that BCA likely got the counting wrong.
72. BCA appears to now say it did not count Mr McDonald's proxies (possibly by mistake or because they did not have them). With four resolutions (resolution 1 Chairperson, 2 Duties of the Chairperson, 5 the Committee, and 6 Delegation) during the 2017 AGM, this means that Mr McDonald signed  $32 \times 4 = 128$  Voting Forms. This would have been difficult and it is possible Mr McDonald did not complete his forms at the AGM.

## Our recounting

73. The votes have been recounted by removing all of the votes from owners that we submit did not meet the requirements of the Act and the Regulations (the votes listed in Schedules A to F). The vote tally is (annexure **O**):

7E Yang	11E McDonald	4A, 13J, 14E, 14G Turner	13P Koper	6C Lawrence	13G Hay	2D Young	13H Ikeda	8M Huang	10M Pan	GC Morgan
33	15	32	31	22	32	25	21	20	10	11

74. If the votes of company unit owners where only one director has voted at the AGM are added back in, then the tally is:

7E Yang	11E McDonald	4A, 13J, 14E, 14G Turner	13P Koper	6C Lawrence	13G Hay	2D Young	13H Ikeda	8M Huang	10M Pan	GC Morgan
40	21	39	38	28	39	32	23	21	11	12

75. Mr Ikeda came in seventh place and should have been elected to the Committee.

## Likely conflicts of interest

76. Mr McDonald appears conflicted. He is the property manager, he is the letting agent, and he was on the Committee that would have made key decisions in how the administration of the apartments is run and who gets the associated work.
77. BCA is also likely conflicted. BCA had a staff member Paula Beaton who is the former director of BCA from 1988 to 2005 and a former shareholder of BCA attend and chair the meeting which is a role usually undertaken by the committee chairperson (annexure **P**). Ms Beaton then voted as an 'email' proxy holder (x2) in the election of the committee holding the proxies for GL and GK.
78. The Committee decides who gets awarded the work to work as a property manager. Ms Beaton voted for the Committee that awards

the work to BCA the company she used to be a director and shareholder of and works for.

79. Furthermore, BCA either set up or allowed a system where they do not send out proxy forms to some unit owners. Rather a property manager Mr McDonald sent out already filled in proxies. Justine Girgin's email handed up at the hearing explained that BCA do not send another copy of the proxy. Mr McDonald sends an email with the pre filled proxy attached and there are many examples (annexure **Q**).
80. BCA allows Mr McDonald to:
  - (a) Send out proxies.
  - (b) Send out already filled out proxy forms.
  - (c) Stand for the Committee.
  - (d) Have a huge influence in the pick of the Chairperson and Committee.
81. Mr McDonald's proxies included those:
  - (a) where all the unit owners had not signed.
  - (b) which were a short email with no signature.
  - (c) where one owner sent an email on behalf of two units and a different unit owner of their unit.
82. Mr McDonald can elect members to the committee outright, as he has so many proxies. He has considerable voting power.
83. Mr McDonald's proxies help pick a Committee, and that Committee then decides who is awarded the property management contract. All of Mr McDonald's identical proxy vote forms voted the first seven options for the Committee. Therefore 32 votes were made for Mr Yang, Mr McDonald, Ms Turner, Mr Koper, Ms Lawrence, Ms Hay and Ms Young.
84. At the AGM Mr Ikeda and Ms Huang tied on seventh equal with 31 votes in BCA's count of the original ballot.

85. Therefore Mr McDonald completely alone has the power though his 32 proxy votes to pick his selected seven members and to pick the Committee irrespective of how anyone else votes.
86. It is submitted that AGMs should proceed on the basis that Mr McDonald cannot stand for Chairperson, for the Committee, hold proxies, vote in any other way other than a postal vote for his one unit or even attend the AGM. The AGM should also proceed on the basis that BCA be removed as property manager, or that one of the agenda items is the appointment of a new property manager that is not BCA.

### **Summary**

87. There are numerous examples that suggest considerable conflicts of interest between certain interests that are present in the Committee, Mr McDonald or his company and the BCA.
88. There is evidence that there was an organised effort by certain members of the Committee, Mr McDonald and/or BCA to influence the result, this election was not fair, did not follow due process and was not democratic. Mr Ikeda seeks natural justice.
89. It is submitted that the entire Committee vote needs to occur afresh through an AGM to elect a new committee. It is submitted that this should proceed on the basis that Mr McDonald cannot stand for that committee. BCA should be removed or the EGM/AGM should proceed on the basis that one of the agenda items is the appointment of a new property manager that is not BCA.
90. It is submitted that Mr Ikeda should be appointed to the seventh position on the Committee, or that an EGM should occur for the seventh position.
91. It is requested that the Tribunal put in place restrictions and guidelines on AGM and EGMs as suggested in schedule G.
92. It was the decision of the Body Corporate to provide no documents and lead no evidence at the hearing that meant the hearing resulted

in an order for discovery. Any suggestion that further hearings are required is opposed. It would likely push the hearing and decision beyond the AGM in August and Mr Ikeda would not get justice. This matter has been going on for a considerable period of time at great cost to Mr Ikeda.

93. If orders are granted, Mr Ikeda requests that he be able to be heard by a later memorandum on costs. He will submit that costs should come, at least in part, from BCA.

Dated this 8th day of June 2018.



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Callum McLean  
Solicitor for the Applicant

**Schedule A – owners whose votes were counted whose levies were outstanding.**

- (a) Unit 1J owners who owed \$612.98.
- (b) Unit 1M owners who owed \$483.93.
- (c) Unit 2F owners who owed \$951.73.
- (d) Unit 6J owners who owed \$645.24.
- (e) Unit 8B owner who owed \$451.67. This has been explained in the submissions.
- (f) Unit 8H owners who owed \$1,322.80.
- (g) Unit 8M owners who owed \$516.19.
- (h) Unit 10B owners who owed \$467.80.
- (i) Unit 12E owners who owed \$5,493.65.
- (j) Unit 13H owner who owed \$1,451.80. This is not agreed. Mr Ikeda informs that on 9 May 2017 the Tribunal ordered the Body Corporate to wipe his outstanding and/or suspended Remedial and Operational levies, plus make him a further \$3,000 payment. BCA issued his instalments 1 and 2 as due on 30 October 2017.
- (k) Unit 14C owners who owed \$2,532.55.

**Schedule B – owners who were supplied already completed proxy forms with Graeme McDonald's name and who gave Mr McDonald their proxy.**

- (a) Name unclear of Unit 2B.
- (b) John Williams of unit 2L.
- (c) Jiabing Wang of unit 3K.
- (d) Law Ho and Yil Hung of unit 4K.
- (e) June Armand of unit 6G.
- (f) Xinshan Li of unit 9F.
- (g) Fady and Jeanvieve Haddad of unit 10D.

- (h) Lili Xu of unit 11G.
- (i) CJP Property Holdings Ltd of unit 11N.
- (j) Kenneth Jones of 12J.
- (k) Ishou Ltd of 13C.
- (l) Joseph and Ramona Haddad of 14B.
- (m) Qu Yaozhang of 14C.
- (n) Sharon Wu of 14D.
- (o) AJF Family Trust of unit 14F.
- (p) AJF Family Trust of unit 14H.
- (q) AJF Family Trust of unit 14J.

**Schedule C - owners who gave Mr McDonald their proxy by an email.**

- (a) Chris Wong of unit 1G.
- (b) Dorothy Wu of unit 2C.
- (c) Press Pancha of unit 2G.
- (d) Anne Hooper of unit 3L.
- (e) Hugh Hoang of unit 5K.
- (f) Jahyung Kwon of unit 5L.
- (g) Manavarere Wilfred and Giana of unit 7C (in the same email as 12L).
- (h) Chaujon Pauline of unit 12L (in the same email as 7C).

**Schedule D – Proxy forms that were not signed by all the owners of the unit.**

- (a) Graham Smith of the Canterbury Trust unit GL and of unit GK. The other trustees (if there are any) are not mentioned in the proxy (an email). The Proprietors List says "The Canterbury

Smith Trustee Company Limited". The two proxies went to Paula Beaton.

- (b) Pretoria Investments Limited's proxy of unit 1G has been signed by one director Christopher Wong but not the other Melvina Wong.
- (c) Paul Chagne and Yannick Chagnes' proxy unit 1L is signed by Yannick only. The proxy went to Jean-Marie Anglesan.
- (d) Thomas and Mary Roas Theresa Guest's proxy unit 1N is signed by Maxine McDermott and the proxy is blank. This proxy says "not allowed" handwritten on it, although it was included in the retrospective post AGM ballot table with votes, and has the colour of Jacque Turner in the retrospective proxy verification table.
- (e) ASAP Investments Limited's proxy (email) of unit 2G has been completed by one director Press Pancha but not the other Sarda Pancha.
- (f) Michael David (John) Williams of 2L's proxy is signed by Dianne. A letter to Graeme McDonald from Dianne is attached asking him to be John's proxy. Dianne is not an owner. This proxy went to Graeme McDonald.
- (g) Jian Fen Ye and Biao Xias' proxy (email) for unit 3N is by Jian only. The proxy went to Ye Xia.
- (h) Units 4A, 13J, 14E and 14G is signed by J Turner for the Jay Tee Family Trust. The Certificate of title for one of these units shows the (likely trustee) owners are Trustee Corporation (Jay100) Limited and Jacqueline Anne Turner (1/2 share) and Trustee Corporation (Jay100) Limited, Jacqueline Anne Turner and David Gould Russell Short (1/2 share) (annexure **R**). The other trustees have not signed. Trustee Corporation (Jay100) Limited has four directors and four shareholders none of whom have signed the proxy and neither has Mr Short. These proxies went to:

- (i) 4A to Noel or Glenda Miller.
- (ii) 13J, 14E and 14G to Jacqueline Turner.
- (i) For unit 6G one of the two owners Armand and Simone Vongy Yune, signed the proxy (Armand). This proxy went to Graeme McDonald.
- (j) For Unit 7B owned by Yosy Paula Karjoko the proxy was signed by Anna Ko.
- (k) Unit 9D and 14A is signed by Mike Haddad for the Mike Haddad Family Trust. The Certificate of title (and Proprietor's List) for one of these units shows that the trustees are Mike Haddad and Fadya Haddad as trustees of the Mike Haddad Family Trust (annexure **S**). Fadya has not signed the proxy. These proxies went to Graeme McDonald.
- (l) Unit 12D is owned by Henri, Mitchel, Marie-Joseph and Patricia Chansin Blonding. Only Henri and Patricia Blondin signed the proxy.
- (m) Unit 12L is owned by Afou Tang, Vaiana Tang and Pauline Chaujon. Only Pauline is named in the joint email 'proxy'. The proxy went to Graeme McDonald.
- (n) Ali Akbar and Kaye Marie Feyzabadi own Unit 12N. Only Ali signed the proxy. The proxy went to Jacqueline Turner.
- (o) Laura Safarova, Valeriy Safarov, Valeria Safarova and Yana Valerevna own unit 13G. Only Yana signed the proxy. The proxy went to Andrew Hay.
- (p) Shenghui Xie and Yanfang Ou own unit 14D. The proxy was signed by Sharon Wu. The proxy went to Graeme McDonald.

**Schedule E – Voting forms that were not signed by the owners**

- (a) Pi-Lien Hsu of unit 2H has a voting form completed by Tim Wu.
- (b) Myung Hoe Kim of unit 5A. Wen Jing Huang signed the form.

- (c) Sung Hoon Lee and Soon Jung Kim of unit 6F. Gina Elliott signed the form.
- (d) Louis, Linda-Anne Mu ep Leo, Sabrina Leo and Beatrice Leo of 9G. J M Anglesan signed the form.
- (e) Yao Zhang Qu of 14C. There were two voting forms one complete by Graeme McDonald and the other by Kylie Liu. Graeme had a proxy.
- (f) Young Hee Kim of unit 12E. Josh Kim signed the form.

**Schedule F – Voting forms that were not signed by all the directors of the body corporate owner of the unit.**

- (g) Aaron Robert Young and Vilingi Keitha Young as directors of the Varky Investment Limited of unit 2D. Only Vilingi signed the voting form.
- (h) Daryl James Anderson and Penelope Jane Anderson as directors of Avorow Limited of unit 3G. Only Daryl signed the voting form.
- (i) Anita Grace O'Neale and Lindsay David O'Neale as directors of Anlin Investments Limited of unit 5F. Only Lindsay signed the voting form.
- (j) David Donovan Jennings and Petra Carina Jennings as directors of DJ & PET Holdings of unit 5G. Only David signed the voting form.
- (k) Andrea Elizabeth Kennedy-Moffat and Robin John Kennedy-Moffat as directors of Anro Property Investments Limited unit 8P. Only Robin signed the voting form.
- (l) Kwet Kiun Siman and Sriyanti Siman directors of Saudara Property Investment Limited of 13N. Only Kwet signed the vote.

**Schedule G – Restrictions and guidelines.**

- (a) The body corporate management staff not be able to hold proxies and vote.
- (b) The building managers such as building manager Graeme McDonald not be permitted to send out pre-filled proxy appointment forms.
- (c) That body corporate management should send out the proxy appointment forms (not pre-filled).
- (d) That Mr McDonald not be permitted to stand for the Committee or have some reasonable voting restrictions as he is both a property manager and letting agent.
- (e) That proxies need to be completed by all owners to be accepted.
- (f) That voting forms be signed by unit owners when a proxy has not been appointed, not someone else.
- (g) That the register of unit owners list the body corporate and unincorporated body representatives.
- (h) That the register of unit owners list trustees not the names of trusts.
- (i) That an email is not a 'proxy' that can be accepted.
- (j) That 8 committee members be appointed to the Committee, and 8 committee members be in the Notice of Intention, in accordance with historic practice.
- (k) That postal votes list all owners standing for the Committee and chairperson, not just some of the owners standing.
- (l) That the AGM Agenda list all owners standing for the Committee and chairperson, not just some of the owners.
- (m) A time restriction on the chairperson's term of office.
- (n) Auditing undertaken by a 3rd party, such as an independent, external Auditor.

- (o) That the BCA including Ms Beaton or Mr Kwok not chair any meetings (the chairperson chair the meetings).
  - (p) That the bios submitted are actually circulated prior to the AGM.
  - (q) Public open counting of votes in the meeting.
  - (r) Disclosure of Proxies, Postal voting forms and votes if requested.
  - (s) Circulation of Committee meeting minutes to the unit owners if they ask to receive them.
  - (t) Guidance and requirements so that there is more consultation between the chairperson and the Committee and the owners with decision making.
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