

BETWEEN JACQUIE TURNER

Applicant

AND KAZUFUMI IKEDA

Respondent

Hearing Commenced: 11 June 2019 held in Courtroom 5.2
Appearances: T Bowler for the Applicant
 Z Chen and J Leenoh for the Respondent

NOTES OF EVIDENCE TAKEN BEFORE JUDGE G M HARRISON

**MR BOWLER OPENS AND CALLS
JACQUIE TURNER (SWORN)**

MR BOWLER:

- 5 Sir I think, just to clarify, there was – we’re simply dealing with the affidavits as having been read, is that correct?

THE COURT:

I think so, Mr Bowler, they’re relatively straightforward so I think we can proceed with cross-examination, thank you.

MR BOWLER:

There is some documents I've only just been given a copy of which I would seek to have my client refer to and enter in evidence. I've only just received these so I don't have copies but I was going to perhaps suggest we could commence
5 with cross-examination and then –

THE COURT:

Well, this is part of your case.

MR BOWLER:

It will form part of the case, yes.

10 **THE COURT:**

Well shouldn't we have those first. I'm not even sure that they can come in now. What are they, if it's new material?

MR BOWLER:

This is a letter from the applicant in regard to the police matter so I would have
15 her –

THE COURT:

A letter:

MR BOWLER:

Yes, from Ms Turner to the New Zealand Police with some attachments in
20 relation to the police complaint.

THE COURT:

Well, Ms Chen, what do you say to that?

MS CHEN:

Your Honour, first of all we would definitely oppose for any new evidence to
25 come in at this stage for the same reason that an adjournment was going to be sought earlier on an affidavit that was filed last year. We would be opposing any new evidence at this stage, especially considering that it seems to be in

relation to the police incident which I think Your Honour had earlier mentioned doesn't really appear to be relevant to the harassment matter, in any event.

MR BOWLER:

Yes Sir, in my submission –

5 **THE COURT:**

Well I don't see that it is relevant Mr Bowler.

MR BOWLER:

Well I think it is relevant in terms of Mr Ikeda's denial about giving any conviction but I think it is important to, in order to establish this pattern of behaviour, for
10 the Court to see these documents in terms of how these events worked out with, and certainly it is relevant in terms of the wilful damage being carried out to the building for which the applicant is chairperson and is in line with this pattern of behaviour –

THE COURT:

15 As I understand it that incident didn't relate to Ms Turner in any way.

MR BOWLER:

Not directly but indirectly there is a pattern of behaviour there which would suggest –

THE COURT:

20 Well, I mean, what's the date of this letter?

MR BOWLER:

This is 4 February 2019 but my point, Sir, is the respondent has been allowed to put in this new evidence denying these points, denying the criminal matters and effectively this confirms the applicant's position that there was wilful
25 damage and a guilty plea entered by the respondent in relation to the same. So, it does directly affect that issue and also goes to credibility of the parties.

THE COURT:

Well, insofar as it might have some relevance, it can come in. It is relevant to the issue raised in Mr Ikeda's latest affidavit so you can deal with that Ms Chen as you see fit but, very well.

5 MR BOWLER:

Sir, so what I was going to suggest is I'm happy for my learned friend to start with the cross-examination. These papers have just been given to me so during the break I can get copies for the Court and my learned friend.

THE COURT:

10 Well I think Ms Chen needs to see it before she commences her cross-examination.

MR BOWLER:

I'm happy to give her my copy Sir. That's fine, Sir.

MS CHEN:

15 Your Honour, if I may have two minutes to...

THE COURT:

Certainly.

MS CHEN:

Right, Your Honour, I'm ready to proceed.

20 MR BOWLER:

Thank you, Sir, I just want you to know there is one other document also which is an email from Mr Ikeda so I'm happy just to deal with it during his cross-examination but if that's something my learned friend –

THE COURT:

25 Well it's not part of your client's case, I take it.

MR BOWLER:

I would seek to have it put before the Court as it is relevant.

THE COURT:

Well you can put that to Mr Ikeda if he's cross-examined.

5 **MR BOWLER:**

Yes, he has been served with a notice of cross-examination, Sir.

THE COURT:

All right, thank you.

MR BOWLER:

10 As Your Honour pleases.

CROSS-EXAMINATION: MS CHEN

Q. Good morning Ms Turner. I'm going to start off asking you a few questions and after a few questions I'm going to pass you on to my learned junior.

15 A. Okay.

Q. Now my first question is, you agree that Mr Ikeda is an owner of one of the units at the –

A. He's on the title, yes.

Q. And that he was a committee member between the years 2005 to 2016?

20 A. Well, off and on, yeah, I mean I can't remember the dates.

Q. And you are a unit owner at the same premises?

A. I am a unit owner at the same – yeah, yes, I am.

Q. And you've been the chairperson of the Body Corporate from 2006 to date.

A. From the start, yeah, whatever date that was.

25 Q. Would you agree that Mr Ikeda would not need to communicate with you if he was not a unit owner of this building?

A. Say that again. Would he not, would he not to communicate with me?
No, he wouldn't want to, no, why would he?

Q. Would you agree that he wouldn't need to communicate with you if you weren't the chairperson of the Body Corporate?

A. There's actually no need to – for any of the owners to actually directly address the chairperson. Everything should go through the Body Corporate, which is the manager of the building.

5

Q. So there's no need for him to communicate with you, if you weren't the chairperson?

A. Correct.

Q. Would you agree that he has a legal right to communicate with you?

10

A. I don't actually understand what you're getting at, what's the legal right to address, contact anybody?

Q. You've just agreed that Mr Ikeda is a unit owner.

A. Mhm.

Q. And that he's been a committee member on and off?

15

A. Mhm.

Q. And that you're also a unit owner and you've been the chairperson and did you agree that there's a legal right, given those respective positions, for him to communicate with you?

A. No, as I just said before, all the correspondence should go through the Body Corporate who manage the building.

20

Q. So you're saying Mr Ikeda has not legal right to write to you?

A. Well I'm not a lawyer so... you're the lawyer, aren't you, hmm, I don't know where the legality stands.

Q. Ms Turner, the question is, do you agree that Mr Ikeda has a legal right to write to you?

25

A. I don't know, I just said I'm not a lawyer.

Q. I refer to your affidavit, your first affidavit of 2017, so that should be under tab 4 of the bundle in front of you.

WITNESS REFERRED TO TAB 4 OF THE BUNDLE OF DOCUMENTS

30

A. Yeah, mhm.

Q. And you say here, in paragraph 6, that around 2006 the respondent began accusing you of paying money to the committee members and so forth, correct?

A. That's right, mhm.

Q. You haven't filed any corroborating evidence to demonstrate that.

A. No, in fact my husband used to tear everything up because he was so angry about it. It was just, we got bombarded with emails through the building manager, to Body Corporate, to myself and it was all just fantasy so we just tore them up.

5

Q. So you're saying that you've been receiving such an abundance of emails since 2006.

A. From about that date, yes.

Q. But you haven't made an application for a restraining order until December 2017.

10

A. Well, it was just part and parcel of being there so we actually just ignored everything and then it just got too much, we were just bombarded with, you know, accusations of corruption, everyone, everyone, so there's a limit to how much you can stand.

15

Q. It got too much after 11 years.

A. Yeah, well actually it was about the time of my husband passing and then I was ill myself so, you know, yeah, that's right, mhm.

Q. With respect to you Ms Turner, you mentioned that your husband passed away in 2015.

20

A. Mhm.

Q. Yet the application wasn't made until –

A. That's right, well I've just been undergoing four years myself of the same treatment, so, if that's what you need to know.

Q. You're aware of the 40-million litigation claim over the property from around 2012 to 2016?

25

A. Yes, I was actually the instigator of it and it and it was 54 at the beginning, anyway, not 40.

Q. Would you agree that much of the correspondence that Mr Ikeda writes about concerns this matter?

30

A. He actually decided not to be part of the claim so none of the correspondence was actually anything to do with him. He was one of the four who was stupid enough not put in a claim.

Q. My question, Ms Turner, is do you agree that a lot of the correspondence that he sent was on this issue?

A. Well it may have been but, I mean, it was supposed to be going to Body Corporate, not me, to BCA.

Q. Did you say, "It may have been," because you haven't read the correspondence?

5 A. Well I don't have anything in my hands so I don't know, I mean you know there were so many emails going backwards and forwards about anything.

Q. Well I'd like to refer to your affidavit, and that's still under tab 4, where you annex three separate emails in July and August 2017, exhibits A, B and C. Do you see those, do you need a page reference?

10 A. Yeah.

Q. That's on pages 15, 19 and 22.

A. Mhm.

Q. And in your narrative affidavit you have referred to these as accusations of theft, accusations of breaching the District Court rules and accusations of forgery, is that correct?

15

A. I didn't say there was any forgery, did I?

Q. That's in paragraph 15 of your affidavit, it's on page 13.

A. Ah well, to be quite honest, I mean it goes so far back now, we're in 2019, that I'd have to read every line, okay?

20 **MR BOWLER:**

You can take your time and read it if you'd like to read the document.

WITNESS:

What, 15 pages?

MR BOWLER:

25 I think just page 16, is that what you were referring to?

CROSS-EXAMINATION CONTINUES: MS CHEN

Q. If you would like to first read page 13, so that's your original affidavit and just paragraphs 12 through to 15.

A. What am I trying to actually do here? I'm trying to look for something that he's accusing me of, is that right?

30

Q. No, Ms Turner, have you finished reading those paragraphs?

A. Well I don't know which one we're talking about.

Q. That's paragraphs 12 through to 15. Do you want to read paragraph 12 first, I can then ask you some questions just on that?

5 A. Okay, well obviously when we actually put this affidavit together, Mr Bowler, we actually had all the attachments, did we?

MR BOWLER:

Yes, for instance – can I refer her to the attachment? You should find it at page 15, the exhibit A I think is the one my learned friend is referring you to.

10 **CROSS-EXAMINATION CONTINUES: MS CHEN**

A. Mmm, I've got that but I don't see anywhere where he's accusing me of theft or anything on here.

Q. Yes, that's the point I was trying to make Ms Turner. And if we then look at paragraph 14, that talks about a further email accusing – making
15 accusations of breaching District Court orders, the exhibit for that is on page 19.

A. So I'm going to read from here okay, "Again," this is Ikeda to the Body Corporate, "Again I've just found another counterfeit documents, forgery of public documents which you provided to me earlier." This is all
20 addressed to BCA, okay? The Body Corporate.

Q. Yes –

A. You know you – basically he was accusing me of counterfeiting documents, is that right?

Q. Well actually this exhibit has been filed in support of your application –

25 A. Yes I know, I know, mhm.

Q. – saying that there has been a harassment against you –

A. Mmm, that's right.

Q. – but really this is just addressed towards the Body Corporate isn't it?

A. Well, addressed to the Body Corporate but to me, in the first instance,
30 yeah.

Q. Do you agree that there was a Tribunal order made on the 1st of November 2016 for the provision of documents?

A. Look, I don't know because everything is addressed to Body Corporate, not to myself. I'm just the chairperson, I don't actually involve myself in the day-to-day part of this.

Q. So really there should be no reason why you should be feeling harassed.

5 A. Harassed? Look, if you had been through what I've been through in 19 years, or 17 years or whatever it was, you would feel harassed. Every second email I got from Mr Ikeda is accusing me of corruption or something similar.

10 Q. We're specifically referring to this email and my question whether or not there was an order on the 1st November –

A. I don't know.

Q. – 2016. So you don't know whether or not there was an order for the Body Corporate to supply information –

A. No, that would have been addressed to the Body Corporate, not to myself.

15 Q. So then you also don't know about the subsequent emails that Mr Ikeda followed up on?

A. What date were they?

Q. So those are in throughout July and August 2017, following up on the information that hasn't been received?

20 A. No, I actually asked Body Corporate to actually delete me from all the correspondence because I was just getting harassed and I was not well and they actually opened a portal for Mr Ikeda to actually – a special portal through BCA to go through which I don't think he ever did. But I actually did not actually accept any emails from him. I had to repair my body.

25 Q. So if you didn't receive any emails from him, can you explain why you're relying on the same emails to say that you've been harassed?

A. Because I received them from Body Corporate afterwards at our meetings. These were the final ones, basically, these were the ones that turned – that was the end of it as far as I was concerned.

30 Q. But you seem to be telling the Court now that you don't really even understand the contents of them.

A. Well I understand the contents of them but I'm not going to sit here and read line after line, you know, when we've been through it a hundred times.

Q. This is your application –

A. I should be here with the Body Corporate as well, not just by myself. They were the ones who were actually involved in all this.

Q. Have you taken any steps to include evidence from them?

5 A. Well I came back from a holiday last week and was told I had to be in Court today so no, I haven't actually.

Q. But you filed your application since December 2017.

A. Yeah 2017. Trent, can you actually help me here?

MR BOWLER:

Yes, I believe that's – yes.

10 **CROSS-EXAMINATION CONTINUES: MS CHEN**

Q. Is there – have you got any evidence to suggest that Mr Ikeda was aware of your husband's conditions in 2015?

A. The whole building, well everyone who was on the committee or knew me, yes, they did know he was very ill, mhm.

15 Q. So you haven't filed anything to demonstrate that?

A. Well I don't file anything about your husband dying, do you? He died two days after the AGM, it was not a very happy time.

Q. And you refer to hiring a bodyguard for a month.

A. Mmm.

20 Q. This was in August 2015?

A. Yeah.

Q. That would have resulted in a cost, wouldn't it?

A. Um, yes, which I think, yeah, we did, mhm.

Q. But there's been no corroborating evidence filed to indicate that?

25 A. Well it wasn't so much, it was a bodyguard, it wasn't someone who was with me all the time, it was someone who actually protected me.

Q. And yet no application for a restraining order was made at the time.

A. No, that's right.

30 Q. And you say that in 2016 Mr Ikeda had a camera situated on his windowsill directed towards one of your apartments.

A. I don't think it was in 2016, it was actually earlier than that. Okay, so that's wrong, sorry, it is wrong – it was previous to that because I own the

apartment next to his and he actually used to – my tenants had to leave because he had a camera –

Q. How early was that?

5 A. That was most probably, um, I actually can't remember now, it's previous building managers, it was some years ago.

Q. So there's no – again no corroborating evidence of that?

A. Not in here but I could get it if you needed it, mmm.

Q. But you've had since December 2017 to put the evidence together.

A. Well I didn't think I needed to do that.

10 Q. Well actually, in Mr Ikeda's response affidavit, he denies this camera being present so you could have responded with evidence to that.

A. Well he told us at the time he was actually looking at the rising sun but as I said at the time you can't actually see the rising sun through the building so... And the tenants were adamant that he was spying on them.

15 Q. My question, Ms Turner, was that you had the opportunity to respond to Mr Ikeda's denial of the existence of a camera but you haven't actually put any evidence –

A. Well I didn't think I needed to.

20 Q. Do you agree that Mr Ikeda wrote via his legal counsel requesting for information from the Body Corporate?

A. Numerous times.

Q. Would you agree that that was for a legitimate cause?

25 A. Well I mean you know without looking at them all bound together, half of them would have been just asking the same question time and time again I think.

Q. And so had responses been provided, would Mr Ikeda have to have kept asking?

A. Well I don't know, as I said, it's not my responsibility to answer his emails, it was Body Corporate's. I had nothing to do with it.

30 Q. That resulted in Mr Ikeda's application for the information through a Tenancy Tribunal, didn't it?

A. That was all through the lawyers, nothing to do with me again.

Q. So are you aware that there was this order?

A. Yeah, there was a couple of orders but on different occasions there's been so many orders I lose track, to be honest.

Q. So you'd agree that Mr Ikeda has been successful in his Tenancy Tribunal applications?

5 A. I don't actually know because I don't – I'm not the lawyer involved so I think he's had a couple of hearings that they're still fighting about or still appealing against, as I understand it.

Q. You're the chairperson of the Body Corporate Committee –

A. Mhm.

10 Q. – Ms Turner –

A. Mhm.

Q. – and you're saying you're not aware of –

A. I don't have to involve myself in every aspect of it. I actually have a full-time job. My chairperson role is actually to oversee committee meetings and budgets and things like that, not to do all the appeals and that, that's why Body Corporate are the building manager.

15 Q. Would you agree that the majority, if not all of the emails that you have attached, are not actually addressed to you as an individual?

A. Well, they're addressed to me as part of the millions of people that he actually addresses them to.

20 Q. Do you agree they're actually addressed to millions of people?

A. Well, like he's cut down a lot but you know he used to actually email half the – half of the building.

Q. Well if we look at page 15 for instance we can see on the two – in the Cc bar that there's quite a number of people that he sent the emails to.

25 A. That's apart from the blind copies that he was sending out.

Q. And same with, on page 19, they were also sent to a number of different people.

A. Yes, but what I'm also saying to you is that he was bombarding the other residents because I know quite a few of them and they would come to me and say, "Mr Ikeda is bombarding us again."

30 Q. And so have these other applicants – these other parties, to the best of your knowledge, made an application for a restraining order?

A. No, well they just ignore them, like they should.

Q. And so, objectively speaking, not everyone would be stressed from receiving these emails?

A. Well they don't even know what half of them are about to be honest.

Q. Ms Turner, I'm just going to hand you over to my junior –

5 A. Mmm, well just excuse me, I need to go to the bathroom.

MR BOWLER:

Sorry, this is to do with the medical issues my client is suffering – she does need to go to the bathroom at this stage, with Your Honour's leave.

THE COURT:

10 Very well.

MR BOWLER:

That is part of the surgery that she had been undergoing recently which had been mentioned in one of the memorandum. It may be that she relatively frequently needs to have a break of this nature.

15 **THE COURT:**

Well, if it's a medical condition I'm sure we can accommodate that.

MR BOWLER:

As Your Honour pleases.

CROSS-EXAMINATION CONTINUES: MS LEENOH

20 Q. Ms Turner, I'm just going to continue on asking you some questions about the documents that have been filed.

A. Yeah, sure.

Q. So my learned senior had asked you some questions about some orders that the Tenancy Tribunal had given to Mr Ikeda, the access to documents of the Body Corporate, so I would like you to flick to page 120 of the documents in front of you. Do you have that in front of you, Ms Turner?

25

A. Mhm, yeah.

Q. So am I correct to say that the document itself is headed up, "Order of the Tenancy Tribunal," at the very top of the page?

A. Yeah.

5 Q. And at the bottom of the page it says it's dated at Auckland on Tuesday the 1st of November 2016?

A. Yeah.

Q. And if we see there, about half-way down the page, it's got, "Order of the Tribunal," and it's got the words, "The Tribunal orders," can you see that?

A. Mhm.

10 Q. If you wouldn't mind, could you please read out paragraphs 1 and 2 for me?

A. Order of the Court 22nd November 2016, Body Corporate 346799, through its agent, Body Corporate Administration Limited, will provide to Mr Ikeda Body Corporate Committee Meeting Minutes from 2011 to 2016. On or
15 before 22nd November '16, Body Corporate 346799 will provide Mr Ikeda all available legal and consultant invoices from Grimshaw & Co, Maynard Marks Property Consultants Limited, Babbage Consultants Limited, Acon Limited and other experts engaged by the Body Corporate in the litigation and for the section 74 scheme proposals and
20 Buddle Findlay.

Q. Thank you, Ms Turner, so as my learned senior was talking about, this was the order where the Tenancy Tribunal ordered the Body Corporate to provide Mr Ikeda with some documents. Now, my understanding and Mr Ikeda's position is that these requests were made for these documents
25 and, although they were ordered to be provided by the 22nd, that they were not provided by the Body Corporate. Now, would it be correct, Ms Turner, to say that the Body Corporate breached these orders by failing to provide these documents to Mr Ikeda?

A. I don't actually know whether they provided them or not but I think, from
30 memory, he was provided with them because he picked up on the same thing that I did, he must have been given these invoices because we picked up the fact that – I'd already picked up the fact that Maynard Marks had overcharged us by about 40,000 or something so he has been given them.

Q. I see, but they might not have been provided to him before the 22nd of November.

A. Well I don't know because this is like a Body Corporate thing, not me, mmm.

5 Q. And the documents weren't provided in full.

A. I don't know, I'm not the provider of the documents. You know all the files are kept at the Body Corporate offices, not me, I don't have anything.

10 Q. But, Ms Turner, you refer to an email in your affidavit, dated the 14th of November, that includes an email from Mr Ikeda which relates to the District Court orders but you have deposed in your affidavit that you feel threatened and you fear for your safety because Mr Ikeda is threatening you and accusing you of breaching the District Court orders, so would it be –

15 A. Well he was accusing me of everything, breaching everything, you know, apart from harassing me, you know, it was just continual harassment of, you know, corruption, not doing this, not doing that. I don't have anything to do with supplying these numbers or these figures or the paperwork. I don't keep the paperwork.

20 Q. But would it be fair to say, if Mr Ikeda had received some Tenancy Tribunal orders but these orders have not been complied with, he did not receive that information that it would be fair for him to raise these concerns with you as the chairperson?

A. No, not with me, no, he knows very well that he just has to go to Body Corporate to –

25 Q. Now the emails that were sent, although you were copied in to those, that they were sent to the Body Corporate, is that correct?

A. They were, mhm.

30 Q. Yes, but those weren't responded to so would it be fair for Mr Ikeda to be concerned and raise further concerns and continue to write emails to be heard on these issues?

A. No, he should have just gone down to the offices and just asked for them or asked for a meeting or something. Emails are fine, you know, they just harass people. You have to actually be in front of someone to ask them for something.

- Q. Ms Turner, Mr Ikeda also, through his counsel, given the relationship that he had with the Body Corporate, through his counsel requested upon numerous occasions, provision of these documents but they have not personally write emails to the Body Corporate to request this information to be provided to him?
- 5
- A. But you've just asked the same question twice. I just said he needed to go down to the Body Corporate, talk to either Paula or Glen who he knew and just deal with it. I mean harassing me by emails continuously was not getting anywhere, obviously, if they did not provide them by the due date, which I very much doubt.
- 10
- Q. Now moving on, I understand Ms Turner that you've mentioned that Mr Ikeda has told you to watch out at an Annual General Meeting, is that correct?
- 15
- A. No, it was not at the Annual General Meeting, it was actually the Committee Meeting that he thought he was on the committee and he wasn't.
- Q. And what year would that have been?
- A. Sorry, what year?
- 20
- Q. What year – is that the 2017 Annual General Meeting?
- A. Um, was it last year or the year before? It would have been 2017, yeah.
- Q. Yes, and are you aware, Ms Turner, that Mr Ikeda received a Tenancy Tribunal order advising that he was indeed a member of the committee during that period of time?
- 25
- A. That was the prior year.
- Q. Yes.
- A. Prior year.
- Q. Yes, Ms Turner, but you are aware that the Tenancy Tribunal –
- A. Yes, I do –
- 30
- Q. – would have –
- A. – yes, I do recall that but by the time he actually got the order, I think the AGM had happened and we had moved on.

Q. So would it be fair to say that you have deposed in your affidavit that Mr Ikeda told you to watch out but you haven't provided any corroborating evidence supporting that, have you?

A. I had a whole room of people, including Mr Cowen.

5 Q. But you haven't filed any evidence to support that, have you?

A. Well why would I?

Q. You are aware that Mr Ikeda has filed evidence from other members of the Body – well the unit owners and also a translator, confirming that he has never made those statements to you, are you aware of that
10 Ms Turner?

A. No, I'm not aware of that but we were actually in the meeting room at Body Corporate Administration, there was the whole committee, there was Doug Cowen, Mr Ikeda and about seven of us. So, yes, I could get evidence at any moment if I needed to.

15 Q. But you haven't filed that evidence –

A. Well no one asked me to.

Q. – in Court, have you, Ms Turner?

A. No, no one asked me to.

Q. Now, in terms of the Tenancy Tribunal application that you have
20 mentioned that you are aware of, now we've attached that to –

A. Which one was that?

Q. That's the recent Tenancy Tribunal application that was granted last year in June in relation to Mr Ikeda's exclusion of the committee. I can refer you to the page, there should be a document in front of you – not part of
25 the bundle, Ms Turner, but a separate document that has a staple on the left top corner that's named the "Third Affidavit of Kazufumi Ikeda," if I could refer you to that document, Ms Turner.

WITNESS REFERRED TO THIRD AFFIDAVIT OF KAZUFUMI IKEDA

A. Where am I looking now, it's not part of this bundle? Not part of this?

30 Q. Do you have two other documents in front of you, Ms Turner?

MR BOWLER:

Sorry, which affidavit is it?

MS LEENOH:

The third affidavit.

CROSS-EXAMINATION CONTINUES: MS LEENOH

A. What am I looking at now?

5 Q. Do you have the document that's titled, "Third Affidavit of Kazufumi Ikeda" in front of you, Ms Turner?

A. Mhm.

Q. So if I could get you to flick through to exhibit IKE3, so it's about half-way through the document, unfortunately it's not paginated.

10 A. What is it, Ikeda?

Q. I-K-E 3.

A. Three? Okay, yeah, mhm.

Q. So, again with the previous order that we've mentioned, so it's titled, "Order of the Tenancy Tribunal," and it's dated the 27th of June 2018.

15 Now if I could get you to flick to paragraph 102 of the decision, so this is effectively the last page of the document that you have in front of you. If I could just get – do you have the page in front of you?

A. Yeah, mhm.

20 Q. If you wouldn't mind reading the first sentence of paragraph 103 for me please?

A. 103?

Q. Yes please.

25 A. "I reached the view that some of the actions by BCA leading up to the AGM in terms of the actual vote-counting created an unfair and potentially undemocratic environment. These actions include allowing three completed proxy votes for the building manager, running to ensure that all nominees are listed on postal vote forms. Committee non-compliant proxies to be counted. Failing to correct categories of voters in a consistent manner and failing to properly check the eligibility of voters at an AGM."

30

Q. Thank you, Ms Turner, so you did previously mention that you were aware of this order being made in the Tenancy Tribunal, is that correct?

A. Yes, mhm.

- Q. And given that Mr Ikeda received a determination from the Tenancy Tribunal saying that the Body Corporate acted in an unfair and potentially undemocratic – and had created an undemocratic environment, it would be fair for Mr Ikeda to raise those concerns with you as the chairperson of the Body Corporate.
- 5
- A. No, not with me.
- Q. As the chairperson of the Body Corporate, Ms Turner, do you have obligations and responsibilities towards the unit owners?
- A. I do, but not when the legal fraternity is involved. You know like I just hand this sort of thing – I just say to Price Baker who are the representatives in this case to deal with it.
- 10
- Q. Ms Turner, are you aware that – although I do understand that you might not be familiar with the particular provision, but are you aware that there is a legal right for all unit owners to have access to the Body Corporate documents?
- 15
- A. I'm sure they are allowed to, yes.
- Q. But that is a legal right that unit owners are given, is that correct?
- A. Is it, mhm, okay. Well I'm sure it is.
- Q. And Mr Ikeda, as a unit owner, has a legal right to seek access to this information, would that be fair?
- 20
- A. What sort of documents are we talking about now?
- Q. The Body Corporate documents, Ms Turner, so that would include accounts, meeting minutes –
- A. He can have anything except the what is part of the remedial account because he's actually not one of the plaintiffs, so he can have everything else.
- 25
- Q. But in terms of everything – referring you back to that order that I asked you to read out dated the 1st of November, Ms Turner, where the Tenancy Tribunal ordered the Body Corporate to provide Mr Ikeda with those documents in relation to the proceedings I understand, isn't Maynard Marks, weren't they the contractor and engineer involved in the leaky building –
- 30
- A. They were the original –
- Q. – renovations?

A. – they were the original investigators for want of a better word, mmm.

Q. Yes, thank you Ms Turner.

A. So I don't quite know when they were supplied to Mr Ikeda but they were supplied, I know.

5 Q. They were ordered to be supplied to Mr Ikeda.

A. Yeah and he did get them, I know he did get them.

Q. And following this Tenancy Tribunal application which was dated the 27th of June, Ms Turner, I understand following this decision that you filed your application for a restraining order, is that correct?

10 A. Now what date was that?

Q. If you just bear with me, Ms Turner. So once Mr Ikeda filed his Tenancy Tribunal application for the order that I referred to that was in 2017, after finding out that Mr Ikeda had filed a Tenancy Tribunal application against the Body Corporate, is it correct to say that you filed for a restraining order application sooner after?

15

A. No, I don't think it was. What were the dates involved? It was nothing to do with him going to the Tenancy Tribunal, it was nothing to do with that. Just my patience had run out, I think.

Q. Looking at the dates, Ms Turner, it looks like Mr Ikeda filed his application for a Tenancy Tribunal order in October 2017 and you would have received a copy of that application, I understand, as the chairperson of the Body Corporate, then soon after in December 2017 you filed your restraining order application, is that correct?

20

A. Yes, but it most probably took some weeks to do. I'd actually had another major operation in September 2017 so I most probably was not quite up to speed at the time of...

25

OBJECTION: MR BOWLER (12:56:50)

MR BOWLER:

30 The applicant wasn't a party to these Tenancy Tribunal proceedings. I don't accept that she would have even been aware of them at the time. It's simply

the Body Corporate named as a party. The applicant was not a party to the Tenancy Tribunal –

THE COURT:

She was still chairperson, I take it, of the Body Corporate at the time?

5 **MR BOWLER:**

Indeed, but I don't think there's anything before the Court to show she was served with a copy of the Tenancy Tribunal proceedings.

THE COURT:

Well it's rather hard to accept that, as chairperson of the Body Corporate,
10 Ms Turner wasn't aware of what was going on.

MR BOWLER:

I think the line of questioning is that she received – was served with this and then subsequently brought an application but –

THE COURT:

15 No, I think the question was, "Was this application brought after Mr Ikeda applied to the Tribunal for the orders that were subsequently made."

MR BOWLER:

If the questions simply are limited to timing then I think it can go ahead but the issue I have is trying to establish a causal aspect. I don't think there can be
20 that implication from timing of the – both of the respective proceedings.

THE COURT:

Well, it's implicit in the question that this application was brought after Mr Ikeda had applied to the Tribunal; this being a tactic, I dare say, to get him to withdraw his application or for some other purpose to the Tenancy Tribunal.

25 **WITNESS:**

No, no, no, I'm sorry. It was never done for that, it was just to actually give me a bit of peace. It was nothing to do with –

THE COURT:

Q. Well could you have got that peace by not seeking re-election as chairperson?

5 A. I did actually offer, last year, to stand down and when it came to the AGM I think I got 101 votes and Mr Ikeda got 17, from memory.

Q. So you still wished to carry on as chairperson?

10 A. Well the whole matter is that, you know, I've actually driven the whole of the remediation since 2012 because without me we would never have got any money from the Council and I am basically the only one who really knows much about it because I've actually always been involved in rebuild. So we've just started, we've just started now in April for the two-year rebuild.

Q. Yes, but the point is you elected to stay on as chairperson.

A. I did, yeah, I did.

15 Q. Yes, all right, thank you.

CROSS-EXAMINATION CONTINUES: MS LEENOH

20 Q. Now Ms Turner, although you received emails that you've attached to your affidavit that are dated July and August 2017, quite early on, that you state harasses you and causes you to fear for your safety, you did not file your restraining order application until December 2017 which was after – post the fact that Mr Ikeda filed a Tenancy Tribunal application against the Body Corporate –

A. Mmm, that's correct. I just explained to you that I had a major operation in the end of September and I was out of action for about eight weeks.

25 Q. You would have been able to explain that in your affidavit, couldn't you, Ms Turner?

A. I didn't think it was actually necessary.

Q. But it wasn't filed in any evidence of any sort in this proceeding.

30 A. Well, I didn't really think the timing was actually of any interest. It's like, you know, when you've had enough, you've had enough.

Q. Now you've raised that you've, I guess, managed and kind of put the remediation project –

A. I'm sorry?

Q. You've mentioned that you've managed the remediation project at the Victopia Apartments, is that correct, Ms Turner?

A. Yes, well I've been the instigator from day one, yes, mhm.

5 Q. Yes, and my understanding, Ms Turner, is that Mr Ikeda has some issues with how the Body Corporate funds were managed in relation to the remedial process, are you aware of that, Ms Turner?

A. Which funds were they?

10 Q. So in relation to the operational accounts and Mr Ikeda being charged with levies that were not supposed to be raised against his unit, are you aware of these concerns that Mr Ikeda raised?

A. There was – no, the only issue that I know that he's got a – well, I don't know the ins and outs of it because I don't do the daily figures; we only know that he keeps claiming an amount of a credit which was part of the remedial settlement against what he actually had to pay out for his remedial levy but that's all I know; I don't know of anything else that he's –

15 Q. So you've mentioned, Ms Turner, that Mr Ikeda is a non-plaintiff in these proceedings –

A. Correct, mhm, yeah.

20 Q. So would it be fair to say that Mr Ikeda would not be required to pay litigation costs for the remediation hearing?

A. You need to go back to Body Corporate with this because the Grimshaw account, when we all paid a whole of levies in, and then when we went to Council there was an agreement which was totally private to those who were involved and some of the levies were refunded to the levy payers, the non-plaintiffs. I don't know how theirs was calculated.

25 Q. But, as a non-plaintiff, it would be fair to assume that he would not be required to pay litigation costs when you're not a party to the proceedings?

30 A. Which he was refunded, as far as I know. Yeah, I don't know which way – where it goes – one of the consultancy, which was like the Maynard Marks, that was in one hole and then the Grimshaws were in another hole but I don't know which he got back.

Q. But Mr Ikeda was mischarged, well mistakenly charged for those invoices even though they weren't supposed to be raised, is that correct?

A. Well no, before we actually went to Council and did the settlement, everyone was in a big, you know, altogether; so we were all putting money in to fund it, to fund the litigation –

5

Q. But Mr Ikeda did receive a refund in the end because there was a mistaken charge.

A. Yes, yeah, well he wasn't mistakenly charged; we were all charged the same on a, you know, unit entitlement spaces –

10

Q. But that would give him grounds to –

A. – I don't know what figure he's talking about.

Q. But that would give him grounds to raise some concerns as to being charged with levies that he wasn't –

A. Yes, but then he decided not to join the claim so therefore –

15

Q. But he continued to be charged for levies –

A. No, not after, no.

Q. But you've just deposed, Ms Turner –

A. Well I don't know what figures you're talking about, you know, these are just pie in the sky.

20

Q. – that he's been given refunds.

A. What figures is he talking about?

THE COURT:

Is this helping on the issue, I mean aren't we considering whether or not there have been acts of harassment from Mr Ikeda?

25

MS LEENOH:

Yes Sir, this goes more towards the respondent's submission for a lawful purpose but I can focus on the specified acts referred to in the first instance, Sir.

CROSS-EXAMINATION CONTINUES: MS LEENOH

30

Q. Now, Ms Turner, I understand that although the restraining order application was brought in December 2017, that this hearing was originally scheduled for the 18th of July last year, is that correct?

A. I'd have to ask Mr Bowler. Was it, was it? It was. And what happened?

THE COURT:

Q. Well you can't actually ask Mr Bowler what answers you should give to the questions, Ms Turner.

5 A. No, I can't remember, well you know I don't know –

MR BOWLER:

You haven't been asked what's happened, so you can't answer the question.

CROSS-EXAMINATION CONTINUES: MS LEENOH

A. I don't quite know, what was the question again?

10 Q. So this matter had been scheduled for a hearing on the 18th of July of last year. It didn't go ahead in the end so would you agree that it didn't actually go ahead, Ms Turner?

A. Well it mustn't have gone ahead.

15 Q. Well, there was another hearing scheduled for March of this year which was, again, asked to be adjourned by you, Ms Turner, so would it be fair to say that you've asked for two adjournments in relation to this hearing?

A. March this year, yes, unfortunately I was actually having another operation so I couldn't actually attend in March.

20 Q. And last year the hearing wasn't able to go ahead because there was some talk about a settlement but that was later withdrawn.

A. Mmm, most probably, mmm, yeah.

Q. And today, you did attempt to adjourn the hearing, is that correct, Ms Turner?

25 A. Well I'd only just come back into the country and I had meetings all set up in my business so I had to cancel those at the last minute.

Q. Ms Turner, you've deposed in your affidavits that Mr Ikeda has harassed you, that you're in fear of your safety, you've got serious concerns –

A. And this was years ago.

30 Q. – and you fear for your safety, Ms Turner, would it be consistent to say that you do fear your safety when you have delayed these proceedings and continuously adjourned these proceedings?

A. Well on a number of occasions I've been in hospital, I've had medical procedures, so I can't actually come to these meetings?

Q. And have you filed any evidence in relation to that, Ms Turner?

A. Would you like my doctor's reports?

5 Q. But you haven't filed any documents in these proceedings have you?

A. I didn't realise I had to.

MR BOWLER:

I don't think there's any requirement for that. If she is being questioned about that, then I would seek leave to file those documents, Your Honour.

10 **THE COURT:**

Well, I don't see the necessity for that.

MS LEENOH:

No Sir, that would conclude the respondent's questioning, Sir.

THE COURT:

15 Q. We'll take the adjournment until 2.15 but, of course, Ms Turner because you've been cross-examined you mustn't discuss the case with Mr Bowler 'cos he's still to re-examine you.

A. Right, okay.

Q. If you understand that – so thank you, we'll adjourn until 2.15.

20 **COURT ADJOURNS: 1.08 PM**

COURT RESUMES: 2.18 PM

MR BOWLER:

Thank you, Sir, just before we start with Ms Turner there were a couple of housekeeping matters I just wanted to discuss and which my learned friend
5 may need to get instructions on. The first of those is the building manager, Mr McDonald, can now make himself available this afternoon to give evidence and that will simply be on that issue in relation to the line of sight and the layout of the building as to whether Mr Ikeda could have viewed Ms Turner from his property. So that will be what he will address the Court on. In my submission,
10 that's possibly helpful for all the parties and, of course, then he'll be cross-examined by my learned friend.

THE COURT:

All right, we'll come to that then in due course.

MR BOWLER:

15 The other point is just in relation to Ms Turner's evidence, there was some reference to exhibit A in her affidavit. Just reviewing that, it does appear that there was a double-up of exhibits and exhibit A was in fact omitted. That is quite a critical document so I would suggest that that document, which refers to the allegations of Ms Turner being a thief and so forth, I was going to suggest I
20 can provide a copy to my learned friend and it may well be they want to conduct some further cross-examination of Ms Turner on –

THE COURT:

Exhibit A to the affidavit of the 14th of November?

MR BOWLER:

25 Yes Sir, and it's clear from the document that is the document that was – should have been annexed.

THE COURT:

Was the wrong document annexed?

MR BOWLER:

Yes, it appears there was a double-up of, I think it was exhibit B. The document I have is dated 14 August and has the various references at paragraph 12 contained in the document. In my submission there's no prejudice, the author of the document is Mr Ikeda so he's aware of the document. It's clear on the face of it, it's an email he sent to Ms Turner. But I'm happy for my learned friend to take some instructions.

THE COURT:

Well those two documents appear to me to be quite different.

10 **MR BOWLER:**

Well the document that – this document is what's referred to at exhibit A.

THE COURT:

I mean I know they both have the same date on the top of them but that's obviously been sent to you by someone at the Body Corporate.

15 **MR BOWLER:**

So just referring to exhibit A, you'll see it's in fact, it's meant to be dated 14 August – is what paragraph 12 refers to but it's actually a document dated 17 July, exhibit A so the email I have is the email dated 14 August which is the exhibit A just referred to in paragraph 12.

20 **THE COURT:**

I see, yes, all right.

MR BOWLER:

So what I suggest, Sir, is I can provide a copy to my learned friend. They might want to take some time to get instructions from the client in regard to the document.

THE COURT:

It seems extraordinary that it's coming in now but... Have you seen this document before Ms Chen?

MS CHEN:

5 Sir, are we referring to the email dated 14 August 2017?

THE COURT:

I believe so.

MR BOWLER:

Yes, I've got a copy here I can provide to you.

10 **MS CHEN:**

If you don't mind, Sir, I'll just have a quick look.

THE COURT:

Yes.

MR BOWLER:

15 As I said, Sir, the author is Mr Ikeda and I would submit he's also been given a fairly significant indulgence in terms of –

MS CHEN:

Yes Sir, this same email is actually annexed in Ms Turner's recent – well her second affidavit of 18th July, so it's actually already produced as an exhibit in
20 her affidavit.

MR BOWLER:

Therefore there isn't any prejudice at all. I simply picked up it was the – exhibit A was the wrong exhibit but there was a line of questioning that revolved around that so I'm happy to just deal with that in the course of my
25 re-examination.

THE COURT:

Well, it's already in then?

MR BOWLER:

Yes, it sounds like it is. I have made copies so I will hand those copies out just
5 for ease of reference anyway.

THE COURT:

What exhibit number is it, Ms Chen?

MS CHEN:

Exhibit F. It's the last exhibit in the affidavit, Sir.

10 **MR BOWLER:**

Yes Sir, so I'm just happy to deal with it in re-examination. And did we want to
deal with Mr McDonald, in terms of him giving his evidence now?

THE COURT:

No, we'll deal with Ms Turner's re-examination.

15

MR BOWLER RE-CALLS**JACQUIE TURNER (ON FORMER OATH)****RE-EXAMINATION: MR BOWLER**

5 Q. Thank you, Ms Turner, I'll just ask you some further questions following on from the cross-examination from my learned friend. Just to begin with I'll refer you to the affidavit that's in front of you, exhibit A. It should be open to that page I think, there's a reference to exhibit A.

A. Mhm.

10 Q. My learned friend questioned you in terms of this exhibit in reference to you being a thief and so forth, do you recall?

A. Yes.

Q. I'll just hand you up an email which is also attached to your updating affidavit.

WITNESS REFERRED TO EMAIL ATTACHED TO AFFIDAVIT

15 Q. Could you just confirm to the Court whether or not – have a read of the email and then you can let the Court know if that was the exhibit you were referring.

A. Yes, this would have been it, mhm.

20 Q. So just referring back to your affidavit, can you – after reading the email do you want to just highlight to the Court the aspects you've referred to in your affidavit?

A. In what context?

Q. I'm happy to take you through it. To start with can I just get you to tell the Court who's this email addressed to?

25 A. To Stone Warehouse.

Q. Who's Stone Warehouse?

A. I am, I'm the sole owner and director.

Q. And are there any other parties it's addressed to?

A. No, not on this one.

30 **MR BOWLER:**

Your Honour, have you got a copy of this email?

THE COURT:

Yes.

RE-EXAMINATION CONTINUES: MR BOWLER

5 Q. If you refer to the first paragraph, can you just explain your understanding of the reference there in regards to payments made to private businesses, what's your understanding of that?

A. I think Mr Ikeda was referring to – there's a – back in 2005 or 6 when we first opened, I bought a common area board which I refunded myself for, or you know I got my money back from BCA and although he's been making allegations for years and years, the only other payment we've made was to refund me, or refund my tenants for 14G because we had to pull the walls out for one week so that we could do the remediation inspection and, apart from that, I get a small amount for some stationery every year, that's about it.

15 Q. And then you'll see in the following paragraph there's reference to Mr Ikeda couriering your full corruption evidences to recipients before the High Court, can you explain to the Court what your understanding is there?

A. I have got no idea what he sent.

20 Q. Just following that there's a reference to stalking on me, have you got any understanding of that?

A. That was Mr Toulson, he's actually a private investigator and he was hired, not by me, so he's included the audio recording. I think you'd need to go back to the private investigators about stalking because they ended up going to Wellington to be investigated for this and they were found not guilty.

25 Q. And just the end of that same paragraph –

THE COURT:

Q. Sorry, just on that, you say that Mr Toulson wasn't hired by you?

30 A. He was hired by the Body Corporate.

Q. Why?

A. Um, I actually can't remember to be honest. It's like two years ago so it was one of those times in my life, it was a bad time, mmm.

RE-EXAMINATION CONTINUES: MR BOWLER

5 Q. Then just towards the end of the paragraph there's reference to fake proxies, fake majority votes, forged documents, illegal funds transfer, shame on you; do you have any idea what that reference is to?

A. I've got no idea. We don't do fake proxies, we don't do majority votes, we don't forge documents and illegal funds transfers; well it's all done through the Body Corporate bank account. It's all audited.

10 Q. Then in the following paragraph there's an allegation directed towards you of a recent fraud of \$40 million and owner's \$4 million expenses, do you have any idea what the recent fraud of \$40 million is a reference to?

15 A. No, I don't. You know I actually fought the council, got \$30 million for the people who actually decided to join the claim so I don't know where the \$40 million comes into it and where the fraud occurred.

THE COURT:

Mr Bowler, Ms Turner wasn't cross-examined on this document.

MR BOWLER:

Well, she was cross-examined on the exhibit A.

20 **THE COURT:**

On exhibit A, not this document.

MR BOWLER:

Yes, moving on, she was cross-examined on the reference to her being a thief at the end of this –

25 **THE COURT:**

But not on this document.

MR BOWLER:

But she was asked –

THE COURT:

5 It's just been introduced. Now you're leading evidence from her on it. This isn't
reply examination.

MR BOWLER:

But I thought we had established it was already part of the documents but there
was –

THE COURT:

10 I don't mind you correcting it when you say that there was an incorrect exhibit
attached to the first affidavit and clarifying that but it just escapes me at the
moment why you're now leading evidence on this.

MR BOWLER:

15 Well she was asked about where the reference to being a thief was so I would
like to just get her to clarify that point, where it appears in this email.

THE COURT:

Well I suppose we can read it for ourselves.

MR BOWLER:

I'm fine with that, Sir.

20 **RE-EXAMINATION CONTINUES: MR BOWLER**

Q. I'll just conclude that line of re-examination with just having Ms Turner
confirm that that is the email you are referring to in exhibit A.

A. Mhm.

Q. We discussed being accused as being a thief and so forth, is that right?

25 A. Mmm. Well the fact that, you know, I was told to go to jail and hell, it's
actually not really what one would expect.

Q. Ms Turner, you responded to a question in regard to , after your husband dying, four years of treatment; can you just elaborate what you meant by that?

A. Would you like to know what I've had done?

5 Q. Just if you can generally –

THE COURT:

Do we need to know that, is it relevant?

MR BOWLER:

Well I just wanted to – just the nature of the treatment, asking her what –
10 whether it was –

THE COURT:

Well Ms Turner might not want to tell people about that.

MR BOWLER:

No, Sir, all I'm trying to clarify that it was medical treatment she was –

15 **WITNESS:**

It was a major, a major treatment – I mean I was in 14 days in intensive care, mmm.

MR BOWLER:

That's all I was wishing to clarify.

20 **RE-EXAMINATION CONTINUES: MR BOWLER**

Q. You were asked about the camera that was pointed towards your apartment, can you just –

A. One of my apartments, mmm, 13J, mhm.

Q. Can you just confirm for the Court or clarify why you felt this – how you
25 felt about the camera being directed towards one of your apartments?

A. Well it was at the time when we had a previous building manager and it was just more that there was like – Mr Ikeda knew that I owned the apartment and he just harassed the tenants until they got out.

5 Q. Ms Turner, you were questioned about an email that appears at page 15 of the bundle in front of you? So it appears at the top of – if you turn over to page 16.

A. Mhm.

10 Q. The paragraph states you were questioned about documents not being released to Mr Ikeda and there's a reference there to Jacquie Turner, BCA refusing to release. Can you just tell the Court whether or not you were a party to this order here relating to the release of documents?

15 A. No, I wasn't because I think what happened was when BCA – did they go to Court with somebody – and under, you know, it's a Privacy Act, you can't give everyone's details to one member. I mean I don't even have the owner's list.

Q. I'll just get you to turn to page 120 of the same bundle which was – you were also questioned in regard to –

A. Page what number?

Q. Page 120.

20 A. 120. Yep, got it.

Q. This is one of the orders you were questioned about. So can you just confirm for the Court whether or not you're a party to that order?

A. Well no, because it was between the Body Corporate and Mr Ikeda, not me.

25 Q. Ms Turner, His Honour also asked you about your position relating to stepping down from chairperson, can you just explain to the Court your current status, your views on that?

30 A. Well the fact that I've actually led to the charge to actually obtain the \$30 million, which is private, from the Council, and I've been instrumental in actually obtaining every discounted amount we can get. We've done the teak construction contract, which I signed, and therefore I intend to stay there until the building is finished which is in March 2021 so, no, I won't be standing down.

Q. Ms Turner, can you just tell the Court, as a mechanism of resolving matters, would you be prepared to change your stance in terms of standing down?

5 A. No. Mr Ikeda was given the opportunity to actually contact Body Corporate through a separate portal made out especially for him and he never took advantage of it, never once.

MR BOWLER:

10 Sir, there is just the one other document I originally addressed you in regard to – which I was going to refer to Ms Turner, and that was given to my learned friend prior to her cross-examination. So I would refer Ms Turner to this and have a copy for the Court also and this is relating to some of the new issues Mr Ikeda had addressed the Court in regard to – and Your Honour did give leave for me to refer this to the applicant at the beginning of the hearing.

THE COURT:

15 What is that document again?

MR BOWLER:

This is dealing with the police matter and the diversion.

THE COURT:

Yes, very well then.

20 **MR BOWLER:**

Thank you, Sir. I have a copy for Your Honour and my learned friend has a copy.

WITNESS REFERRED TO EMAIL

25 **RE-EXAMINATION CONTINUES: MR BOWLER**

Q. Can you just take your time to familiarise yourself with the document? Do you recall this email, Ms Turner?

A. Yes, yes, mhm, yeah.

Q. Can you just explain to the Court the purpose of – what the purpose of this email was?

5 A. Okay, well as we're all aware Mr Ikeda was actually taken to – he was actually arrested and taken away by the police after he was caught on the CCTV camera damaging some common property in the area, which he denied of course, and he was taken away in handcuffs. So then – I don't know what month that was, but anyway in the interim he'd obviously – I think May, I think it was May 2018, I understand later on, that he actually appeared in Court and actually – to get diversion, they pled guilty to the
10 offence and then he was given about 10 different things to do – part of them was community work and everything but, in the interim, he'd actually stood for the Body Corporate, okay? So we've never received – all we've received is this unsigned letter from Mr Ikeda – I mean who typed it, I don't know – we never received the money, it was just all pie in the sky
15 so when I spoke to the diversion officer he said the case was closed and there's nothing we can do about it.

Q. Thank you and, just finally, can you just explain in terms of your role as chairperson how you've been questioned about that, how you became to be chairperson of the Body Corporate?

20 A. How can I – how –

Q. How you became to be chairperson?

A. Since day 1 or just the last time?

Q. Initially and the most recent occasion.

25 A. Um, well initially it was just like Mr Ikeda was on the committee and you know I was chair. There was quite a few different nationalities but they needed someone who actually –

MS CHEN:

Your Honour, it's unclear to counsel the relevance of this to our cross-examination of the witness.

30 **THE COURT:**

Well I agree, Ms Chen.

MR BOWLER:

Sir, I'm happy to address it in submissions in terms of I can deal with the roles of the chairperson, Sir, I don't need to carry on that line of questioning.

WITNESS:

5 Which line of questioning is this?

MR BOWLER:

Just in relation to the chairperson.

WITNESS:

Okay.

10 RE-EXAMINATION CONTINUES: MR BOWLER

Q. You were also questioned about being told to watch out by Mr Ikeda. Please explain to the Court what your understanding of that statement –

A. Well he was actually being taken out of the room at the Body Corporate, with Mr Cowen, because he was not on the committee – he just couldn't
15 accept that fact and he's going back through the door, "You watch out, you watch out," in full view of everybody. It was disgusting.

Q. And do you know, was there a record of that made in the Committee Minutes?

A. Yes, there was.

20 Q. Sir, I don't believe those Committee Minutes are before the Court but I would seek to produce them, they do seem quite –

THE COURT:

No, I'm not having it, Mr Bowler. We're not reconstructing the case in the course of the hearing. If they're not here, they should be here.

25 MR BOWLER:

Sir, I would – in terms of the gravity of those minutes they are, you know, an independent record –

THE COURT:

Well why aren't they already before the Court?

MR BOWLER:

I was – I don't think we were aware that there was a formal record of the
 5 Committee Minutes. Committees aren't obliged to keep minutes. Under the
 Act there's no formal obligation for the committee to take minutes of the
 committee meeting.

THE COURT:

Q. And how many people were present at this meeting?

10 A. There would have been, there are seven committee, two Body Corporate,
 Mr Cowen and Mr Ikeda.

Q. So did you regard that as a personal slight upon yourself or was this
 comment directed at all people who were present?

A. No, it was me.

15 Q. How do you know that?

A. Because I had told him to leave the room twice. And Mr Cowen said,
 "Mr Ikeda we need to go."

Q. All right. And they went?

A. They did eventually, yes.

20 Q. Right.

MR BOWLER:

Sir, I submit there's significant weight to those – the record of those minutes.
 It's helpful to both parties and to the Court for them to be considered.

THE COURT:

25 All right. I don't find it helpful at all, Mr Bowler, and they've been available,
 they're not before the Court and I just decline leave for them to be produced.

MR BOWLER:

Well Sir, my client is simply the chairperson so it's the Body Corporate that has
 those records so –

THE COURT:

Well then she could have applied to the Body Corporate to get hold of the record of the meeting at which this alleged statement was made.

MR BOWLER:

- 5 Sir, I have to submit that given the weight that will be in those minutes, they should be something that's considered by the Court.

THE COURT:

I've already said, Mr Bowler, I decline leave for them to be produced.

MR BOWLER:

- 10 As Your Honour pleases.

QUESTIONS FROM THE COURT:

- Q. When do you see Mr Ikeda, Ms Turner?
 A. When do I?
 Q. Yes.
 15 A. Never.
 Q. You never see him?
 A. No well I actually – I leave quite early each morning for work. I work seven days so he doesn't get up until about midnight or whatever it is so there's no reason for me to see him.
 20 Q. So you don't see him and there's no reason to?
 A. No.
 Q. Do you see him at Body Corporate meetings?
 A. At the AGM, mhm.
 Q. He's entitled to attend that as a unit owner, isn't he?
 25 A. Yes, mhm, mhm.
 Q. So what orders are you seeking from this Court?
 A. Well, I just wanted him to stop harassing me with emails.
 Q. So you don't want emails from him?
 A. That's correct.
 30 Q. Although you are the chairperson and continue to be the chairperson?

A. Mhm. But he can route them through the special portal at BCA 'cos Stone Warehouse is my business, you know, it's a business email so I don't want to be annoyed during the day with –

Q. And is that all you're seeking?

5 A. I just don't, you know, I don't want to be hassled by him, I don't want to be accused anymore of theft, corruption; that's been going on for 14 years which is all rubbish.

Q. So –

A. He is no proof, you know, it's just pie in the sky.

10 Q. All right, but is that all that you're seeking?

A. Yes, that's all I'm seeking, mhm.

QUESTIONS ARISING – NIL

WITNESS STOOD DOWN

15

MR BOWLER:

Ms Turner's free to go, Sir, she doesn't need to wait any –

THE COURT:

Yes, very well.

5 **MR BOWLER:**

Yes, Sir, I would seek to call the building manager, Mr McDonald who, I understand is available or can make himself available and that would, to a certain extent, alleviate any prejudice in relation to the additional evidence that Mr Ikeda was entitled to call.

10 **THE COURT:**

Well this is very untidy, Ms Chen, but it does arise out of the late affidavit of Mr Ikeda. Now I know you say, "Well, we didn't know about the affidavit he was replying to before then," but in the normal course response could have been made available in the proper way so it seems to me that it's appropriate to hear
15 from this further witness in relation only to that point.

MS CHEN:

Your Honour, I would just like to make the submission that, considering Mr Ikeda's affidavit was provided last Thursday and there was only an indication this morning of the applicant wanting to call this witness, and the fact that this
20 witness made it clear this morning that he wasn't going to be available and the applicant hence wanted to rely on that to seek an adjournment, the applicant herself not even being available despite being called and in spending the first hour or so waiting for her to arrive and for Mr McDonald to now suddenly be available; I would just like to add caution in terms of any evidence that he is
25 able to give. Especially considering the fact that it seems like my friend is trying to place weight on the fact of Mr McDonald's independence when, really, if Mr McDonald's independent evidence had been filed on an earlier date Mr Ikeda could have also called independent witnesses from the building to respond in that manner. So, if Your Honour –

THE COURT:

Well it seems to me, at the moment Ms Chen, that all of this is entirely irrelevant.

MS CHEN:

Yes, Sir, I would totally agree.

5 **THE COURT:**

None of that was directed at Ms Turner, she's the applicant, she says all she wants is for the emails to stop. As I understand it, this evidence now relates in some way to what can be seen through a viewing spot on the door. The relevance of it entirely escapes me.

10 **MS CHEN:**

Yes, Your Honour, I would actually make a submission that the entire series of – well evidence on this front is irrelevant in which case –

THE COURT:

Well, that's a submission for later but –

15 **MS CHEN:**

Yes, Sir, so if Your Honour's minded just to recall –

THE COURT:

It's only because this affidavit's come in only a few days ago and on that basis we better hear what this man has to say.

20 **MS CHEN:**

Yes Sir.

MR BOWLER CALLS**GRAEME JOHN McDONALD (SWORN)**

Q. Thank you, Mr McDonald, can you just explain your role in terms of Victopia Apartments to the Court?

5 A. I'm the Victopia building manager, I have been for approximately seven, seven and a half years. I run the whole operation on behalf of the owners.

Q. And Mr McDonald are you aware of some allegations by the applicant in terms of her being stalked and/or followed by Mr Ikeda?

A. Yes.

10 Q. Please explain to the Court your knowledge of those?

A. What was the question, I didn't hear you?

Q. The allegations by the applicant of she being followed or stalked by Mr Ikeda –

A. Yes, I can.

15 Q. – can you explain to the Court your understanding of those?

A. Yes, Ikeda, he threatened Jacquie at the last AGM that he was, "Gonna get her."

THE COURT:

Q. Were you there?

20 A. Yes, I was. Yeah, I've gotta be there as part of the body manager and I've got to present a report to the AGM to all owners, and I heard that distinctly, "I'm gonna get you." And he constantly comes down to the office threatening my staff, what he's going to do but constantly over the years this nutcase, which he is, he's threatened my staff, he's threatened
25 a lot of people around the place.

Q. We can just focus on –

MS CHEN:

Your Honour –

THE COURT:

30 We've lost control of this I think Mr Bowler.

MR BOWLER:

Pardon me, Sir? Yes, I was about to say, he just needs to focus on Ms Turner today.

EXAMINATION CONTINUES: MR BOWLER

5 A. Yeah, well okay, he – we did some alterations to the rubbish room, like
the rubbish room doors, we split the rubbish room into two; one organic
room and one is the rubbish room. The following night, on the night after,
we got him on camera as actually filling up the locks with superglue. He
filled up the lock of my apartment, which is 11E, and he filled up the locks
10 in the two rubbish room locks. It was dangerous that he actually did that
to my apartment 'cos people maybe couldn't have got out –

Q. I'll just bring you back to the question. There's a question in relation to,
or a query which we'd like to clarify for the Court about Ms Turner's
complain is that she was seen entering another apartment by Mr Ikeda,
15 are you aware of that event?

A. Well, it was apartment 13C, it was HI-39, I've discovered that the guy was
dead in the apartment, I found a body and so what Jacquie was doing,
she was going into – first of all we wanted to find out how long he'd been
dead, secondly she was just cleaning up and trying to find, for one; trying
20 to find a key. Each of these apartments have an entry key and a fob to
get into the building and to get up to the levels. She was trying to find
that, she was trying to find any detail to do with the chap, the dead man,
and she was going in and out of there just cleaning it up. It was a terrible
mess, the smell, you couldn't even be in the apartment, the odour was
25 that bad.

Q. So that was just in her role as a chairperson –

A. Yes, it was, she took over the role as the chairperson, she had the
contract and all that sort of thing.

Q. And are you aware, is that something just in the normal course of the day,
30 that's something Mr Ikeda would have been able to witness from his own
apartment or?

A. Well, you've got to be pretty strange – a person, to actually be standing
at the door looking through a keyhole at something. Pretty strange.

THE COURT:

Q. Well, you weren't asked that Mr McDonald. You were asked if someone could see what was happening.

A. Yes.

5 Q. He could have been able to see it?

A. Yeah.

CROSS-EXAMINATION: MS CHEN

Q. Good afternoon Mr McDonald.

A. Good afternoon.

10 Q. Sir, a few very quick questions for you.

A. Mmm.

Q. The first is that you said that you are the building manager of this complex –

A. Yeah.

15 Q. – and you've been so for about seven or seven and a half years.

A. Around about –

Q. So you've known Ms Turner for quite a number of years –

A. Known who?

Q. You've known Ms Turner for quite a number of years?

20 A. Ah yes, yeah.

Q. And you've been aware of these proceedings?

A. Pardon?

Q. You've been aware of these proceedings.

A. Been aware of which, please?

25 Q. Of these proceedings?

A. Which, you mean to do with Ikeda?

Q. Well today's proceedings, yes.

A. Ah sure, and I was aware he came to Court a few months ago as well.

THE COURT:

30 Q. No, you weren't asked that, Mr McDonald. Please –

A. Well he's never paid the fees he's supposed to pay –

Q. – please just listen to the questions, will you?

A. Yes, okay.

CROSS-EXAMINATION CONTINUES: MS CHEN

Q. And originally you wanted to join as a party to these proceedings.

A. Originally, what was that?

5 Q. Originally you wanted to join as a party to these proceedings, to also be an applicant?

A. Yes.

Q. But you chose not to do so.

A. Well he's, he's, he's been harassing me and my staff for many, many
10 years as well.

Q. The question was, but you haven't –

A. No.

Q. – made an application? And you have said that he's made lots of threats to you and your staff?

15 A. Mmm.

Q. Neither you nor your staff are Ms Turner, are you?

A. Myself and the staff, what about Ms Turner?

Q. Well you're not Ms Turner, are you?

A. No, Jacquie, Jacquie Turner, she's our –

20 Q. And Ms Turner's not part of your staff, is she?

A. No, as I said she's the chairperson, I'm accountable to her.

Q. You're accountable to her?

A. Yeah, like everyone pretty much in the building.

Q. And you just explained earlier the reasons for Ms Turner being in the
25 deceased's property; so you accept that she was there?

A. Sorry, I'm finding it hard to exactly understand what you're saying. Say it again?

Q. You said earlier that, while you were explaining why Ms Turner was in the deceased's apartment.

30 A. Correct, yes.

Q. So, you're acknowledging that she was in there?

A. Absolutely, yeah.

Q. And you also accepted earlier that from Mr Ikeda's keyhole he would be able to see her.

A. Yeah, I can't see why he was doing that, anyway, yes correct.

RE-EXAMINATION: MR BOWLER

5 Q. Just in relation to that last question, do you know the timing of when it's alleged Mr Ikeda was watching from his own apartment from the keyhole?

MS CHEN:

Your Honour, I don't see how that's relevant to the cross-examination?

THE COURT:

10 That doesn't arise out of cross-examination, does it?

MR BOWLER:

That's fine, Sir, I'm happy not to pursue that question.

WITNESS:

15 Can I just reply to that, that's her role as the chairperson because, you know, Judge, that's her role. I mean we've never found a dead person ever before in the apartment so she probably much had to take over.

QUESTIONS FROM THE COURT:

Q. What about the Body Corporate personnel, shouldn't they have been the ones involved to sort that out?

20 A. Not really.

Q. Why's that?

A. Ah well, really, she's the person on site because I rung the police straight away but she's the overall chairperson.

Q. So, she's the overall boss, correct?

25 A. Yes.

Q. And so she should know everything that's going on in the Body Corporate?

A. Very much Sir, yeah.

Q. And a disgruntled unit holder would be entitled to keep her informed of their concern about the operation of the Body Corporate, in your view?

A. You're talking about Mr Ikeda –

Q. No, I'm talking generally –

5 A. – no doubt? Well he complains about everything.

Q. – about any unit holder.

A. Yeah, well he complains about everything.

Q. No, no, any unit holder.

A. Well no one else complains, really, she's doing such a good job.

10 Q. Well you still haven't quite answered the question. If any unit holder, in this Body Corporate, wished to raise an issue, do you say that as the person in overall control, it would be appropriate to refer it to her?

A. Well, yes –

Q. Thank you.

15 A. – but extraordinary circumstances Judge. This is extraordinary circumstances.

QUESTIONS ARISING – NIL

WITNESS EXCUSED

20 **APPLICANT CASE CONCLUDES**

MR BOWLER:

Sir, did you want me to, in terms of submissions or first we could deal with Mr Ikeda's cross-examination?

THE COURT:

5 Well I'd like to know the basis of your case, Mr Bowler, because to be quite frank with you, I'm struggling to see how the Harassment Act can apply to it.

MR BOWLER:

10 Well Sir, I think we just saw there were various allegations put towards Ms Turner of her being guilty of criminal conduct, of being a thief, of carrying out corruption.

THE COURT:

Well those are all matters that other proceedings can be taken in respect of, if indeed –

MR BOWLER:

15 Well the Harassment Act does include correspondence and communications to parties. We've also heard there was a verbal threat made to her in the context of –

THE COURT:

20 Well I asked Ms Turner what she wanted and she didn't mention anything about the threat so-called. She said, "I just want the emails to stop," so when we look at the statute, which part of section 4 do you say that sending emails to the chairperson of a Body Corporate amounts to a specified Act?

MR BOWLER:

25 Sir, I would also want to – the order she's seeking is for no further harassment and although she may not have – she was focussed on the emails because that's what she received on a daily basis. I don't think it's correct to say her remedy that she's seeking is limited to that.

THE COURT:

Well, that's what she said she wanted.

MR BOWLER:

5 But when there's also been a verbal threat, her evidence is that she's been made to feel unsafe by the respondent simply because in the line of questioning she didn't verbalise, she's also seeking that kind of protection from the Act, I don't think we can say the remedy she's seeking is limited. She's a layperson, as we've heard, she's –

THE COURT:

10 Well I'm sorry Mr Bowler, but Ms Turner said I never see Mr Ikeda, I have nothing to do with him.

MR BOWLER:

Mmm, but yet she's been –

THE COURT:

15 She said, "The only time I would see him is at a meeting," and she agreed that as a unit holder he's entitled as a matter of law to be there.

MR BOWLER:

Yes Sir, but she's also entitled not to be you know threatened in such meetings.

THE COURT:

20 Well it's a difficult one because we've already got a finding from the Tenancy Tribunal that Mr Ikeda was treated very poorly by the Body Corporate which was put to Ms Turner in cross-examination. And he may be tiresome and tedious in his constant demands but I'm not sure that that amounts to harassment. I mean he might be a confounded nuisance but does that justify
25 the making of a restraining order?

MR BOWLER:

Sir, I think we need to focus also on if we do go back to that email I had referred you to, which is the 14 August, the threats there are fairly serious in terms of forgery, faking documents and finally that she would go to hell, jail and hell. It's a pretty serious threat made in writing.

5 **THE COURT:**

Well that's what I say; there are remedies for that elsewhere. The point is, is Mr Ikeda entitled to send an email to the chairman of the Body Corporate of which he is a member?

MR BOWLER:

10 We also need to take into consideration the other events that have been complained of. One, was a camera being focussed on an apartment? Just because that has ceased –

THE COURT:

15 Well I don't know that the evidence on that is anywhere near as accurate as it should have been. I mean, what camera?

MR BOWLER:

20 Certainly, it shows a pattern of behaviour and then a verbal threat in a meeting and I think, even if Ms Turner didn't suggest that she wants protection from those kinds of threats, it's inherent in terms of the application she's made that she is seeking that kind of protection from the Court and she's an elderly woman who's unwell and undergoing surgery and all she wants is not to be threatened in meetings and threatened in emails and even if that's correct, that they only come across each other during these meetings, that's not acceptable for one party to threaten –

25 **THE COURT:**

Well I can't stop Mr Ikeda from going to the meeting.

MR BOWLER:

No, no, but there is a remedy available to stop her feeling threatened and she

–

THE COURT:

5 Well how, what remedy?

MR BOWLER:

Well a threat such as that under the Act is, even if I look at the restraining order application, 2.1 refers to “Not to threaten.”

THE COURT:

10 Well I accept that that’s the case if it is unprovoked and directed particularly to threaten someone to make them fear for their safety. Now here we’ve got a man attending a meeting lawfully of the Body Corporate. He’s not happy about the way it’s being run. He’s entitled to challenge the chairperson and the Body Corporate as to what’s going on. I want to understand, justify what you’ve
15 done? Happens in Body Corporates all over the country.

MR BOWLER:

Indeed, but I don’t think it can be acceptable to subsequently threaten a chairperson, which is a voluntary role, and also to send threatening emails and I will point out that in 2.4, and if we do come back to this email, the 14 August
20 one is different because it is simply addressed to Ms Turner and is accusing her of corruption and various crimes and threatening her that she’s going to go to jail and hell. This is subsequent to her having threats of being the cancer of the Body Corporate. I think the combination of all these events, particularly given the nature of the person, the applicant we’re dealing with, means she is
25 entitled to protection from the Court.

THE COURT:

Well what effective order can I make, if you are correct?

MR BOWLER:

Well even in terms of – just coming back to the conditions. This is part of the restraining order. “Application 2.4: Making contact; whether by telephone, correspondence or any other way.” There are alternative means for him to
5 communicate with the Body Corporate and steps have been taken for that to happen. There’s no need for Mr Ikeda to send emails to Jacquie, personally, at her work email address particularly ones threatening her with various crimes and saying she’s going to go to jail. I accept that these emails, a defence can be if it’s done for a lawful purpose but then you also need to look at the content
10 and what’s actually being said and I don’t think an email such as this can be seen to be – should be entitled the defence of lawful purpose when there’s threats that someone will go to jail and hell and threats that there –

THE COURT:

Well aren’t we in a position where Mr Ikeda’s entitled to send an email, it’s just
15 the content of the email that’s of concern?

MR BOWLER:

Certainly, that may well be right.

THE COURT:

How do I control that?

MR BOWLER:

Well I mean if he perhaps, you know, the orders can be made in a way that if it’s legitimate Body Corporate issues they can be sent but, in my submission, they still should go to the actual Body Corporate manager, being Body Corporate Administration. They are appointed under the Act to manage
20 the Body Corporate whereas Jacquie Turner’s elected by fellow owners. There certainly isn’t any reason for the emails to be continually sent to her work email
25 address.

THE COURT:

Well she's the chairperson. I thought Mr McDonald was quite accurate when he said, "She's the boss, she's the one in charge, she has to deal with the Body Corporate administrator."

5 **MR BOWLER:**

She's the chairperson of the committee, that's correct.

THE COURT:

And on that basis it seems to me that it would be entirely appropriate that she's copied in to emails that are related to the business of the Body Corporate.

10 **MR BOWLER:**

But certainly not ones – but not emails which she feels threatened by and the contents of these emails are clearly threatening, to any layperson.

THE COURT:

Well that's why I say that there is probably other remedies available, such as
15 either disorderly behaviour or, alternatively, I think there's an offence under the Police Offences Act or whatever it's called now, using threatening language. There are remedies there.

MR BOWLER:

But again, that doesn't protect her from verbal threats within the context of –
20 even if it is in the context of the Body Corporate meeting. Her evidence is that she was concerned and felt threatened by those threats together with these emails. In my submission, Sir, I think we do need to take into consideration the nature of the applicant, she may feel more threatened than the normal layperson. She simply doesn't want Mr Ikeda to threaten her by way of email
25 or verbally and if the order is needed to be limited to that extent that they didn't contain any threatening allegations, then that might be the way for the orders to be modified. Certainly, my initial submission is they can simply be dealt with by way of dealing with the Body Corporate but, certainly, if the communications are limited to legitimate Body Corporate issues and do not have any threatening

content, that might well be the best way forward because I don't think anyone can say that these kinds of emails with these kinds of threats are acceptable, together with verbal threats which –

THE COURT:

- 5 Well I agree that the content of them should not be threatening. What I want to know is how far I was prepared to make that order? How can I make an effective order?

MR BOWLER:

- 10 It can simply say that communications, provided they do not have any threatening or allegations of criminal conduct towards the applicant. The real issue here is about verbal threats so that can also be covered off in terms of the order. The test, of course, is subjective at 2.6(a) of the draft restraining order. You'll see that they are – if it causes any protected person to fear for his or her safety and it has caused her to fear for her safety. The Court can make
15 special conditions so if that needs to be – and this is part of the restraining order that's attached to the application for a restraining order so if the special conditions need to be that communications relating to legitimate Body Corporate issues are permissible, then that could be the special conditions that the Court makes but aside from that, I do think the applicant is entitled to
20 protection under the Act.

THE COURT:

You see, we've got evidence from Ms Turner that a lot of other people got these emails and just ignored them.

MR BOWLER:

- 25 Certainly, that may be the case they received some of them but, for instance, the one of 14 August, which has the most threatening content, is solely addressed to her. I think it's also quite notable that this was not even copied to the Body Corporate, towards the BCA so it's solely addressed to her with allegations of criminal behaviour and threats or going to jail or hell. I don't want
30 to imply too much into these threats but a threat that someone is going to go to

hell could be quite – certainly quite intimidating for an elderly lady who’s recently lost her husband to cancer.

THE COURT:

Well under section 16, if I’m going to make an order, there are a number of
5 qualifications, the second one which is that the behaviour would cause distress or would threaten to cause distress to a reasonable person in the applicant’s personal circumstances.

MR BOWLER:

Yes, Sir.

10 **THE COURT:**

Now I understand that receiving threats of going to hell and so on, I suppose, I don’t know what would you and I do with it? Just ignore it.

MR BOWLER:

Indeed. But circumstances for a widow who’s recently lost her husband –

15 **THE COURT:**

Yes, well it has to be a reasonable person, although in the applicant’s particular circumstances – now, Ms Turner says, “Well I’m going to stay on as chairperson ‘cos I want to see this thing through,” and that’s fair enough, she’s started off this litigation and it seems to be having some positive outcomes in terms of
20 getting the problem repaired and so on. That’s fine but, as chairperson, that’s a role that she has sought out and seeks to continue with.

MR BOWLER:

Just to clarify that persons need to be nominated so she’s nominated by other owners. I accept she needs to accept the nomination, Sir.

25 **THE COURT:**

Well she can say, “I don’t want to be nominated,” and have no further part of it but she wants to stay on with that.

MR BOWLER:

And she should be entitled to do so without these various threats.

THE COURT:

Well, in the end, it seems to me that that's all it comes down to. I don't think I
5 can stop Mr Ikeda sending emails to the chairman of the Body Corporate. He's
lawfully entitled to do so and it's the content of them that is the concern and I
don't know, at the moment, how to control that.

MR BOWLER:

Well, Sir, in my submission that could be done by way of the special conditions
10 that the Court can make in terms of any order.

THE COURT:

Well I mean I could say that he's entitled to send emails but not to send emails
containing threatening material.

MR BOWLER:

15 Indeed, and I think that –

THE COURT:

But what does that mean?

MR BOWLER:

Well, it's probably quite clear, you know, to most people that the ones that have
20 been sent do have threatening material so it would be I think up to the parties
to just abide by the parties in terms of how they interpret them but certainly I
think Ms Turner is entitled to that protection and there's also the oral threats as
well which we heard of. So, in my submission, that could be done under the
special conditions which the Court can attach to any order. Those are actually
25 set out at page 9 of the bundle, Your Honour, that special conditions can be
made if –

THE COURT:

Well, I understand that, I don't think that's needed. I think if an order was made it could be made under section 4, "Giving offensive material to a person by placing the material in any electronic media where it is likely that it will be seen
5 by or brought to the attention of that person."

MR BOWLER:

Well Sir, that certainly would cover it off, Your Honour.

THE COURT:

That says, "Offensive material," and I dare say offensive is not defined, not in
10 this Act anyway.

MR BOWLER:

I think any object to view threats to go – that you'll go to jail or hell would be considered offensive, in my submission Your Honour.

THE COURT:

15 All right, well –

MR BOWLER:

There was also an allegation of being a thief and that's in an email.

THE COURT:

Yes, well again, it's a question of how that's interpreted or would be interpreted
20 by a reasonable person or whether someone would just ignore it.

MR BOWLER:

A reasonable person, in those particular circumstances. In my submission we need to take into consideration we have heard some evidence about her health, her age is apparent and referred to in her affidavit and she's also, you know,
25 was widowed several years ago so those are particular circumstances that should be considered in my submission.

THE COURT:

Well I think the circumstance that she continues to wish to be the chairperson of the Body Corporate is a special circumstance because it's very clear that if she decided that if she didn't want to continue in that role, she wouldn't get these emails. And they're not personal to her. They're directed to the chairperson of the Body Corporate.

MR BOWLER:

But then one must question why one such as the 14th of August was solely sent to her. I mean no other committee members or –

10 **THE COURT:**

Well, as the chairperson of the Body Corporate.

MR BOWLER:

Yes but, Sir, we do also need to take into consideration the contents. If you look at the converse view as, you know, the applicant shouldn't be bullied into stepping down from that role and that is effectively appears to be what the respondent is trying to achieve here.

THE COURT:

Well, I don't think he's trying to do that all, I think his emails are asking for information and explanations and –

20 **MR BOWLER:**

The various – the one of 14th of August is not at all, it's simply telling her he will vote no confidence and that she needs to step down or go to jail and hell and has threatened – has committed crimes and is a thief so there's no queries in that email at all, Your Honour.

25 **THE COURT:**

Well that seems to me to be the only issue here.

MR BOWLER:

And also verbal threats at a meeting which –

THE COURT:

Well, I'm not sure that the evidence supported that. There were a number of
5 people at that meeting and it seems it got out of hand. Mr Ikeda was directed
to leave, he did so and if such a comment was made it would seem to me it was
made in the context of being ordered out of the meeting when later the
Tenancy Tribunal made specific findings that he'd been treated very badly.

MR BOWLER:

10 Yes, but that again is by the Body Corporate not Ms Turner herself and I think
that's where a lot of the issues here do lie.

THE COURT:

Well I'd like to hear from Ms Chen on that one issue because it seems to me
that's all there is in this case.

15 **MR BOWLER:**

Just a last point of that email was referring to, there is also a personal allegation
of a \$40-million fraud you know against Ms Turner personally so there is some
serious allegations. And forgery of documents is also – once, you know, we've
seen no substance of any of that before the Court today of those actual things
20 having taken place.

THE COURT:

Well isn't that how they're to be regarded, simply as having no substance?

MR BOWLER:

But, at the same time, it's threatening her with jail and other threats, you know,
25 it certainly would be offensive material to any reasonable person in my
submission, Your Honour. I don't see how it can be seen in any other way.

THE COURT:

Well, Ms Chen, what do you say to the issue of the content of these emails.

MS CHEN:

Your Honour, my friend –

5 **THE COURT:**

If only they can be sent if there's a legal right to send them.

MS CHEN:

Yes, Sir.

THE COURT:

10 But I think, equally, they should not contain threatening material.

MS CHEN:

Your Honour, we actually have this day a relevantly recent judgment from High Court on this matter in relation to lawful purpose under section 17 which we thought would be quite helpful. It's a decision from Justice Cooke dated
15 19th of March. I do have a few spare copies with me available. I can either hand it up now or at the conclusion. Would Your Honour prefer a copy of?

THE COURT:

Well, yes, if it's on the point, it could be most helpful.

20 **THE COURT AND COUNSEL REFERRED TO JUDGMENT DATED
19 MARCH**

MS CHEN:

Your Honour, I would like to refer you to section 50 of the judgment where it discusses lawful purpose and so His Honour, Justice Cooke goes into
25 section 17 defence and, first of all, discusses the prior case of *Munro*; that talks about the relevant acts of harassment. In that case it was of a debt collection nature and discusses section 17.

Now on paragraph 52, His Honour goes to say, and I just quote, “If an act complained of involves a legal right to communicate, such a statutory or a contract or entitlement, section 17 potentially applies. In my view, where the person is pursuing a lawful purpose it’s not limited to acts that are expressly
5 authorised as a matter of law by statute or otherwise and they also encompass steps that can be regarded as legitimate to take. It is the purpose of the relevant act and whether that purpose is lawful that is the focus. The reference to that purpose being lawful seems to me to encompass purposes that are legitimate. This involves a consideration of the nature and circumstances of the
10 communications.”

This particular case was in relation to taking control over dog owners. There had been a series of alleged harassments and over the page at paragraph 57, His Honour confirms again that, “I agree with the analysis, the requirement to establish a lawful purpose involves consideration of the nature and quality of
15 communication in order to ascertain its purpose.”

So therefore there is an express legal right to communicate and so therefore in a debt collection agency if someone went beyond the legitimate demands for debts, then that communication could have been considered improper whereas, even if communication is not necessarily set in statute to be lawful or not, again
20 you would be looking at the purpose in which it was undertaken and I think that more or less aligns with the point that Your Honour was also making, that really we do need to look at the crux of what is actually going on here and I think we’ve had plenty of evidence today, both in affidavit form and also from Ms Turner, that goes to demonstrate that there has been a history of Mr Ikeda
25 seeking this information, not obtaining the information, having to take further steps at his own cost to obtain Tenancy Tribunal orders to get information; still not obtaining that information and then being ruled off the committee and needing to file a further Tenancy Tribunal application to have that position reinstated and even though findings were made in subsequent
30 Tenancy Tribunal order that he was mistreated and was reinstated to that position, he was still not actually allowed back on the committee and so this is the nature of the circumstances of the communications that we’re actually dealing with here, Your Honour. And I would submit that in terms of what Mr Ikeda has done and what Ms Turner has actually annexed in her affidavits,

the only email that contains what could be perceived as offensive language is, in fact, that one email from the 14th of August 2017. All other communications that have been annexed only refer strictly to Body Corporate matters and that actually falls below the threshold that's required by the Harassment Act, under
5 section 3, definition of harassment, which requires at least two separate occasions within a period of 12 months.

Now, we've heard earlier evidence from Ms Turner today saying that she has been receiving emails since as early as 2006 yet across these 13 years, all she has done is manage to locate one email of this nature which, I would submit,
10 goes to indicate that that was perhaps the build-up of these frustrating circumstances for Mr Ikeda over the years having to, as I have mentioned, go to his own costs of repeatedly obtaining these orders for further information discovery as to what the Body Corporate is doing and, as Your Honour had also mentioned earlier, none of this correspondence is actually directed personally
15 at Ms Turner but only because of her position as the chairperson.

Now I would further submit, Your Honour, that it seems today Ms Turner has interchangeably used her position, either personally or as the Body Corporate, really to advantage depending on which way she wanted to swing and so where it's made more sense for her to say that they shouldn't be addressed to her and
20 that she has got nothing to do with them, she would say she has not knowledge. Yet, we then had Mr McDonald who went on to demonstrate that's not the case at all and, as a chairperson, she did actually overlook everything but, at the same time despite giving evidence at some stages that she and the Body Corporate are separate and all these issues should be raised with the
25 Body Corporate rather than with her, at the same time she's giving evidence about damage to common property that she's using to direct back at herself so really, Your Honour, I would submit that despite the numerous allegations that have been made that perhaps the only meaningful piece of information that would have any resemblance to offensive language, is that one particular email
30 of 14th of August,

Even though it's been repeatedly referred to, these threats of going to hell, it's only contained in that one single email. If that doesn't meet the threshold of section 3 then quite simply it doesn't meet the threshold of the Act and before Your Honour considers making any special conditions, or orders to that effect,

logically we would have to establish that there has been harassment of the nature permissible under section 16 which also, in itself, is actually subject to section 17. And having just gone through the case of *C v L*, I would submit, Your Honour, that everything that has been sent so far by Mr Ikeda has been
5 done for lawful purpose and against that overall background, it's actually surprising that nothing more was sent of that nature. So really, what I would be submitting on that particular issue, Your Honour, would be that what Mr Ikeda has done so far is actually nowhere close to what would be stressful or distressing to a reasonable person, especially given the circumstances of
10 what's been happening over the past years.

So, unless Your Honour wanted to hear further on any other point, or if Your Honour still wanted to hear from Mr Ikeda?

THE COURT:

Well, I really think that is the only issue which I would like to consider further.
15 I've got this decision of Justice Cooke, thank you for that, that I'd like to read and so it seems to me with delays and everything we've had, it's appropriate that I give you a decision in writing, that I reserve it but, I mean I'm conscious of the fact that there's notices been given to cross-examine Mr Ikeda but I see no point in that because of the position that we've reached in the hearing to this
20 point. So, I will reserve my decision, let you have the decision in writing, just as soon as I am able to do so.

MS CHEN:

Yes Sir, would Your Honour want counsel to file closing submissions before your reserved decision or shall we just –

25 **THE COURT:**

Well I think we've had them, have we not on that issue?

MS CHEN:

So, nothing further?

THE COURT:

You say, "Well there was only one instance of there being an email that could possibly contain any threat and that's insufficient to justify the making of an order." I think Mr Bowler's position is, well there were various other things that
5 happened as well that you can take into account but that's not what Ms Turner said.

MS CHEN:

Yes.

THE COURT:

10 And I think the circumstance that she is the chairperson of the Body Corporate is a highly relevant factor because clearly in that role she is going to get emails from disgruntled members of the Body Corporate.

MS CHEN:

Yes Sir, and Justice Cooke's judgment quite helpfully also refers to the analysis
15 of the Harassment Act in consideration of the New Zealand Bill of Rights Act as well so there's that side of it also.

THE COURT:

Yes, all right, well thank you I'll read his decision with some interest.

MR BOWLER:

20 Sir, I just did want to emphasise; first I think I may have checked earlier, there were some earlier submissions filed on behalf of the applicant that they are on the Court file? They do canvass some of the other communications, so I do think we need to be careful not to limit it to that one email.

THE COURT:

25 No, no, I take that point. They have to be considered but –

MR BOWLER:

Yes, for instance, there's a document at page 22 of the bundle that refers to fraud and illegal transfers of monies and so forth, so that's at page 16 and then –

5 **THE COURT:**

Well, that's not threatening bodily harm at all, is it?

MR BOWLER:

But if we go back to paragraph 58, and I agree Your Honour it's probably helpful for all parties and counsel to consider the decision of Justice Cooke. He says at paragraph 58 they include implicit threats and so forth. The reference there is that there were threatening and abusive communications so, in my submission, we need to consider whether these other instances do fall within that definition and I would also urge us to – perhaps it is appropriate simply on the basis of some of the additional evidence we heard today, for the parties to file some limited closing submissions as there was some evidence given by Mr McDonald in regard to a verbal threat which, in my submission, the applicant should also be able to rely on I-

THE COURT:

Yes, but Ms Turner didn't regard that as of any consequence.

20 **MR BOWLER:**

I think it was more so the focus of you asking her what she wanted to happen and she was definitely focussed on the email correspondence but I don't think we can – that's not how the application's been prepared and there is reference to the verbal threats by her and having been felt threatened so I think we need to be careful to – just to limit it to the line of questioning you exchanged with her today, with Ms Turner, where she does want the emails to stop. Clearly, she's also going to want any verbal threats to also cease. So, I would suggest it might be prudent for the parties to file some limited closing submissions focussing on this case and things such as – I would like to refer to Mr McDonald's evidence

in relation to the verbal threat and so forth. I've only just been given a copy of this decision for the first time.

MS CHEN:

But, Your Honour, just for the record because we had originally anticipated that the respondent would still be called and we had wished to bring it up later but then just for the record, now that we're on this topic, there are actually affidavits filed by independent witnesses, at tabs 7, 8 and 9 of the bundle, addressing that verbal incident or supporting the fact that no one heard such an allegation and none of these witnesses have been called for cross-examination today.

10 THE COURT:

Well, for the reasons we've discussed, it didn't seem to concern Ms Turner and, as you say, there is contrary evidence on file anyway so I don't see that any order could be made effectively in respect of statements made at a meeting at which a number of other people were present as well so it's quite unclear whether, if the statement was made, it was directed at only the chairperson or whether it was directed at the committee including the chairperson. So as I indicated I don't think that's of any particular significance.

Mr Bowler has indicated the desire to file closing submissions, do you wish to do that also? I suppose if he does, you'll wish to.

20 MS CHEN:

Well if he's going to then I would be obliged to Your Honour. I think previous submissions have been filed by counsel for both parties dated 17th and 18th of July respectively. I hope they're already on the Court's file. We haven't actually filed additional opening submissions, being mindful of the cost that Mr Ikeda has been put through already to date but if there is a wish to file closing submissions and Your Honour wishes to grant that, then most definitely the respondent would also want to file closing submissions at the same time.

THE COURT:

Well, as I say, I think the issue is fairly narrow and relatively easy to deal with but if Mr Bowler wishes to file closing submissions then I suppose he should

have the opportunity to do so. How long would you need Mr Bowler, seven days?

MR BOWLER:

Perhaps if I could have – I am in Court the rest of this week, Sir, but perhaps if
5 I could have until the end of – where are we at now? Perhaps if we had say
10 working days.

THE COURT:

What about you, Ms Chen? A further 10 working days, would you need that?

MS CHEN:

10 We think, in all fairness, we'll probably just respond at the same time. Plus,
Your Honour –

THE COURT:

Simultaneously, do you mean, within that same –

MS CHEN:

15 Yes, simultaneously within the same timeframe.

THE COURT:

Very well, thank you. All right then, well both parties to file closing submissions
within 10 working days. The decision is reserved, meantime, and we'll await
the filing of submissions.

20 **MS CHEN:**

As Your Honour pleases.

MR BOWLER:

As Your Honour pleases.

COURT ADJOURNS: 3.47 PM

25

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Notes of Evidence Legend

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Indicator	Explanation
Long dash –	<p>Indicates interruption:</p> <p>Q. I think you were – (<i>Interrupted by A.</i>)</p> <p>A. I was – (<i>Interrupted by Q.</i>)</p> <p>Q. – just saying that – (<i>First dash indicates continuation of counsel's question.</i>)</p> <p>A. – about to say (<i>First dash indicates continuation of witness' answer.</i>)</p> <p>This format could also indicate talking over by one or both parties.</p>
Long dash (within text)	<p>Long dash within text indicates a change of direction, either in Q or A:</p> <p>Q. Did you use the same tools – well first, did you see him in the car?</p> <p>A. I saw him through – I went over to the window and noticed him.</p>
Long dash (part spoken word)	<p>Long dash can indicate a part spoken word by witness:</p> <p>A. Yes I definitely saw a blu – red car go past.</p>
Ellipses ... (in evidence)	<p>Indicates speaker has trailed off:</p> <p>A. I suppose I was just... (<i>Generally witness has trailed off during the sentence and does not finish.</i>)</p> <p>Q. Okay well let's go back to the 11th.</p>
Ellipses ... (in reading of briefs)	<p>Indicates the witness has been asked to pause in the reading of the brief:</p> <p>A. "...went back home."</p> <p>The resumption of reading is noted by the next three words, with the ellipses repeated to signify reading continues until the end of the brief when the last three words are noted.</p> <p>A. "At the time...called me over."</p>
Bold text (in evidence)	<p>If an interpreter is present and answering for a witness, text in bold refers on all occasions to the interpreter speaking, with the <i>first</i> instance only of the interpreter speaking headed up with the word "Interpreter":</p> <p>Q. How many were in the car?</p> <p>A. Interpreter: There were six.</p> <p>Q. So six altogether?</p> <p>A. Yes six – no only five – sorry, only five. (<i>Interpreter speaking – witness speaking – interpreter speaking.</i>)</p>
Bold text in square brackets (in evidence)	<p>If an interpreter is present and answering for a witness, to distinguish between the interpreter's translation and the interpreter's "aside" comments, bold text is contained within square brackets:</p> <p>Q. So you say you were having an argument?</p> <p>A. Not argue, I think it is negotiation, ah, re – sorry. Negotiation, bartering. [I think that's what he meant] Yeah not argue.</p>