

**IN THE DISTRICT COURT
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKĀURAU**

**CIV-2017-004-002861
[2019] NZDC 12240**

IN THE MATTER OF THE HARASSMENT ACT 1997

BETWEEN JACQUELINE ANN VERONICA TURNER
Applicant

AND KAZUFIMI IKEDA
Respondent

Hearing: 11 June 2019

Appearances: T Bowler for Applicant
Z Chen and J Leenoh for Respondent

Judgment: 28 June 2019

RESERVED JUDGMENT OF JUDGE G M HARRISON

[1] At the commencement of the hearing on 11 June 2019, Ms Turner sought an adjournment which I declined in my minute of that date. I have identified a typographical error in the first line of paragraph [2] of that decision where the word “descent” should read “dissent.

[2] Ms Turner is the chairperson of Body Corporate 346799 which is a large unit title development situated at 135 Victoria Street West, Auckland. Mr Ikeda is the owner of unit 13H within the complex and Ms Turner owns unit 14E. These units are on separate floors of the building complex.

[3] At the conclusion of the hearing, counsel sought leave to file written submissions. Leave was granted accordingly and counsel were directed to file submissions within ten working days. The applicant filed submissions after the due

date, and after this decision was drafted, but which now take those submissions into account. The respondent's submissions have been filed as directed.

The application

[4] Ms Turner seeks restraining orders against Mr Ikeda across the entire gamut of specified Acts particularised in s 4 of the Act. The orders are sought for an indefinite period until further order of the Court. Such an order is far too wide and it could not be justified on the evidence.

[5] For some years, the body corporate has been involved in complex litigation seeking, as I understand it, remediation of weathertight defects in the building.

[6] Ms Turner said in evidence that she was determined to remain as chairperson of the body corporate to see the litigation and remediation of the building completed.

[7] Ms Turner also said that she wanted Mr Ikeda to cease sending her emails.

[8] It is abundantly clear from the evidence that if Ms Turner had not been chairperson of the body corporate, she would not have received emails from Mr Ikeda. She wanted all emails directed only to Body Corporate Administration Limited being the body corporate secretary. However, as chairperson Ms Turner assumes responsibilities which are generally set out in reg 11 of the Unit Titles Regulations 2011.

[9] It is, of course, Mr Ikeda's right to question the actions of the chairperson and body corporate committee in regards to levies against unit holders, costs and expenses incurred, and so forth.

[10] It is also hard to escape the conclusion that the application has been made for a side purpose, namely to prevent Mr Ikeda from challenging the actions of Ms Turner as chairperson, and the Body Corporate committee.

[11] In June and July 2016 Mr Ikeda requested the release of financial documents from the body corporate manager. Some but not all of the documentation requested

was released which led to Mr Ikeda making an application to the Tenancy Tribunal for release of the remaining documentation. The Tribunal made that order in its decision of 1 November 2016.

[12] In October 2017 Mr Ikeda filed a further application with the Tenancy Tribunal concerning in particular the breach of process in electing the body corporate members for 2017. Mr Ikeda had stood for election as a member of the committee and in its decision of 27 June 2018, the Tribunal held that Mr Ikeda had been properly elected as the seventh member of the body corporate committee at its AGM held on 17 August 2017.

[13] This application was brought on 18 December 2017, after Mr Ikeda had filed his application for the Tenancy Tribunal but before its decision, and quite possibly as a ploy as described in [10].

[14] It is also noteworthy that Mr Ikeda identified an overpayment to a sub-contractor, Maynard Marks, which had not been identified by the body corporate committee nor its secretary. In these three respects therefore Mr Ikeda's qualms have been justified.

Specified acts

[15] Some of the alleged specified acts relied upon by Ms Turner are absurd.

[16] One allegation was that a camera was "situated on his window sill that was directed towards one of my apartments". I cannot see how such an allegation could amount to an act of harassment when Ms Turner's unit is located on level 14 of the building whereas Mr Ikeda's unit is on level 13.

[17] Mr Ikeda acknowledged sending a letter to Ms Turners postbox saying that she is "the cancer of Victoria,," but he denied intending any reference to the death of Ms Turners husband from that disease. According to Ms Turner that letter was written in 2015, but it was not until approximately three years later that this application was

brought, which does not indicate any distress being caused to Ms Turner as a consequence.

[18] Ms Turner also complained of various emails sent by Mr Ikeda to her and but for one such email, all of them were copied to the body corporate secretary, members of the committee and the unit owners.

[19] I do not accept that these emails amounted to acts of harassment. It is clear that Ms Turner regarded them as irksome and indeed she said she did not read some of them but they did not distress her to the point that she feared for her safety. Some of them suggested illegal or fraudulent activity by Ms Turner and/or the committee, but in the context of the litigation in which the Body Corporate was involved and the remediation work being undertaken they were not intended to harass to the point of causing distress.

[20] Other alleged specified acts related to a comment allegedly made by Mr Ikeda at a body corporate meeting when he is alleged to have uttered the words “watch out”. If such a comment was made, Ms Turner accepted that it could have been directed at the entire body corporate and could have meant that she, as chairperson and/or the committee, would be exposed for improper or inaccurate administration. In that regard, Mr Ikeda was concerned that Ms Turner, as chairperson, had undertaken work for the body corporate through her company, Stone Warehouse Limited, which on the face of it indicated a potential conflict of interest.

[21] I do not find that there was an actual conflict but it was surely open to Mr Ikeda to challenge that arrangement.

[22] It was also alleged that Mr Ikeda was stalking and/or spying on Ms Turner when he observed her entering another unit holders unit using a master key, through a viewing lens in his unit door.

[23] In explanation, particularly from the building manager Mr MacDonald, Ms Turner entered the unit because its owner had died and of course, various steps had

to be taken to resolve that situation. I do not regard that allegation as establishing an act of harassment.

[24] Last, Mr Ikeda was charged by the police with wilful damage of property where it was alleged that he had poured superglue into the locks of a rubbish room door and the door to Mr MacDonald's unit. No conviction was entered against Mr Ikeda and he was dealt with by way of diversion. Notably, the actions in question were not directed at Ms Turner.

Conclusion

[25] In a helpful and recent decision of the High Court of Cooke J in *C v L* [2019] NZHC 485, the criteria for making an order under the Act were set out. At [19], the Judge said:

In addressing the requirements of s 16, Toogood J set out an approach in *Munro v Collection House (NZ) Limited* in the following terms:

- First, to determine whether the respondent has harassed, or is harassing, the applicant;
- Second, to find whether the behaviour in respect of which the application is made causes the applicant distress, or threatens to do so;
- Third, to make the mixed objective/subjective assessment of whether that behaviour would cause, or threaten to cause, distress to a reasonable person in the applicant's particular circumstances;
- Fourth, to decide whether, in all the circumstances, the degree of distress caused or threatened by that behaviour justifies the making of an order; and
- Fifth, to decide whether the making of an order is necessary to protect the applicant from further harassment.

[26] For the reasons given, I am not satisfied that any of the alleged acts of harassment amounted to acts that achieve the necessary standard, of causing distress.

[27] Ms Turner did not claim to fear for her safety as a consequence of any of the alleged acts. That has to be assessed not only by Ms Turner's reaction to the alleged acts but also what a reasonable person in her situation might experience, and as

chairperson of the Body Corporate, and determined to remain so, she must be prepared to deal with criticism from members.

[28] As a consequence, the application must be dismissed.

[29] Furthermore, however, s 17 of the Act provides that a specified act cannot be relied on to establish harassment for the purposes of s 16(1)(a) if the respondent proves that the specified act was done for a lawful purpose.

[30] I am completely satisfied that Mr Ikeda's actions, and his emails in particular, were lawfully justified by reason of his ownership of a unit within the body corporate.

[31] While his emails might be irksome, they appear to have been justified in a number of respects. It is really over to Ms Turner to establish a procedure with the body corporate secretary for dealing with Mr Ikeda's concerns. Ms Turner is determined to remain in the role of chairperson, and it is likely that Mr Ikeda's communications will continue, but that is his right and procedures must be introduced or maintained to deal with them.

[32] The application is accordingly dismissed.

[33] The question of costs is reserved. In their submissions, counsel for Mr Ikeda seek increased or indemnity costs in the event that the application is dismissed. The submissions filed on behalf of Ms Turner do not address that issue. I direct that any application for costs by Mr Ikeda is to be filed within ten days of the delivery of this judgment with any response on behalf of Ms Turner to be filed within a further ten days.

A handwritten signature in black ink, appearing to read 'G M Harrison', with a stylized flourish at the end.

G M Harrison
District Court Judge