First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/00MF/PHC/2013/0011**
Park Home address	:	**46 California Country Park, Nine Mile Ride, Finchampstead, Wokingham RG40 4HT**
Applicant	:	**Ronald James Turner**
Respondent	:	**J J Cooper**
Date of Application	:	**7th August 2013**
Type of application	:	**to determine a question arising under the Mobile Homes Act 1983 ("the 1983 Act") or an agreement to which it relates**
The Tribunal	:	**Bruce Edgington (lawyer chair)** **David Brown FRICS**

DECISION
Pursuant to Rule 51 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the rules")

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1. For reasons which appear below, the second paragraph of the decision of this Tribunal dated 4th October 2013 ("the original decision") is hereby set aside.

2. The Tribunal re-makes its decision which is that it is the site owner's responsibility to undertake the removal of a tree situated within the boundaries of the pitch which is covered by the agreement between the home owner and the site owner.

Reasons

Introduction

3. As was said in the original decision, the background facts in this case are quite straightforward. The Applicant owns a park home which is situated on the pitch at 46 California Country Park as stated above. On the 12th March 2013, a branch fell off a Scots Pine tree in the Applicant's garden. When this was being investigated, another branch fell off. A gutter on the Applicant's park home was broken.

4. As this tree is covered by a tree preservation order, the Applicant reported the matter to Wokingham Borough Council and, after investigation, that council granted written permission for the Scots Pine in question to be felled. A copy of the permission dated 14th March 2013 is within the papers submitted to the Tribunal. It is noted that within the permission it says "*Past applications have shown that the tree has a history of shedding live limbs*" and "*there is insufficient space at the property for replacement tree planting*". The simple dispute between the parties is 'who should pay for the removal of the tree?'

5. The Applicant filed a bundle of documents as he was directed to do by the Tribunal. He has written to the site owner asking him to remove the tree and the site owner has replied saying, in effect, that it is the Applicant who "*is responsible for the maintenance of all within that boundary*" i.e. the boundary of the pitch. Significantly, the Respondent site owner does not oppose the removal of the tree which this Tribunal deems to be a consent, if such consent would be necessary. The Applicant's case is that he did not plant the tree and therefore it is not his responsibility. In his application he says "*as I pay ground rent I believe the owner of the site is responsible for the trees on my plot/pitch*". The Applicant clearly accepts that the tree in question is within his pitch.

6. The Tribunal issued a directions order on the 28th August 2013 timetabling the filing of evidence etc. It was stating that the Tribunal would be content to determine the issues in this case on the basis of the written representations of the parties on or after 3rd October 2013 provided that an agreed bundle of documents was delivered to the Tribunal office by the Applicant before the determination. It was pointed out that if either party wanted a hearing, one would be arranged. No such request was made. A bundle was delivered by the Applicant on the 20th September 2013 with a statement saying that a copy had been delivered to the Respondent.

7. The problem which gives rise to the re-determination is that the members of the Tribunal were unaware, when making the previous decision, that several documents, including a statement of evidence from Linda Henderson, on behalf of the Respondent, letters from both parties and copies of park rules had arrived in the Tribunal office on or before the 3rd October. The reason why the members of the Tribunal were not aware of these documents is perhaps a little irrelevant but it seems that the Applicant had not obtained the prior agreement of the Respondent to the content of the bundle. After the bundles arrived, the case worker sent them to the members of the Tribunal and then went on pre-arranged leave. Because he reasonably assumed that the bundle received was the agreed bundle (as directed), he did not leave any instructions to colleagues on this file to forward any subsequently received documents to the members of the Tribunal.

8. The procedural rules which apply to this Tribunal are now **The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013** and, in particular Rule 51 which says that a Tribunal "*may*

set aside a decision which disposes of proceedings, or part of such a decision, and re-make the decision or the relevant part of it if the Tribunal considers that it is in the interests of justice to do so and...a document relating to the proceedings was not sent to or was not received by the Tribunal at an appropriate time".

9. Therefore, although the additional documents had arrived in the Tribunal office they had not been seen by the members of the Tribunal itself when they made their original decision. Such documents have now been carefully considered and the Tribunal is of the view that it is in the interests of justice to set aside the operative part of its original decision and to re-make it following due consideration of all documents now available. It is necessary to repeat the relevant parts of the reasons for the original decision so that this document stands on its own.

The Occupation Agreement

10. A copy of Part IV of the agreement has been produced and at paragraph 3 (f) the occupier i.e. the Applicant in this case, undertakes to "*keep the pitch and all fences sheds outbuildings and gardens thereon in a neat and tidy condition*". The site owner only agrees to keep those parts of the site not the responsibility of occupiers in a good state of repair and condition. Thus, on the face of it, it would appear to be the occupier's responsibility to maintain the garden included within the pitch, although it is not at all clear that this would include the removal of a tree. After all, the pitch could be perfectly "*neat and tidy*" even with the tree in its present state.

11. The additional documents now include park rules. There is a copy of the rules which are said to have applied when the Applicant entered into the agreement. Paragraph 16 says that no trees shall be planted without the permission of the site owner and none shall be removed at all. There is no provision to cover a dangerous tree. Paragraph 24 says that no specific garden area is allotted to any pitch but all grass '*around pitches and on plots*" must be mown.

12. The Respondent has attached a copy of what are put forward as site rules on the back of the Applicant's payment card to a letter dated 2nd October 2013 and this says that "*no wilful damage to trees will be tolerated*". It refers to a full copy of the park rules in the park office.

13. These park rules are presumably those attached to the statement from Ms. Henderson of the 27th September 2013. These seek to impose a much more restrictive regime on the occupiers. Paragraph 35 imposes an obligation on the occupier keep the pitch in a neat, clean and tidy condition and adds that such occupier is responsible for "*the maintenance of trees shrubs and plant life etc.*". It does not confine this obligation to those trees which are actually on the pitch. Thus, even if this were to be suggested as a term of the agreement, it is probably void for uncertainty. Paragraph 39 says that trees cannot be "*cut lopped, pruned or damaged without the prior consent in writing of the park owner*".

19. Both the Statute and the European regulations applying to unfair contract terms apply to tenancies and would therefore, in this Tribunal's opinion apply to occupation agreements.

Conclusions

20. It is clear that the site owner in this case considers that the wording of the written agreement and current park rules are applicable and he relies upon the occupier's responsibility to maintain trees and the garden included within the pitch.

21. However, the terms of the written agreement are over-ridden by the 1983 Act which extends the responsibility of the site owner considerably. It is the task of this Tribunal to interpret the 1983 Act so that the parties will know whose responsibility it is to remove the offending tree.

22. It is this Tribunal's view that one starts by looking at the occupier's responsibilities because once those have been established, any remaining responsibilities are those of the site owner who, after all, owns the tree in question and continues to own it whoever may be in occupation of the pitch. One would certainly not expect each occupier, on a sale of the park home, to be able to remove any trees.

23. The change in the wording is significant because the 1983 Act does <u>not</u> impose any obligation on the occupier to maintain 'the garden' as in the express terms. All the 1983 Act does is impose an obligation on the occupier to keep the pitch 'clean and tidy' to include fences and outbuildings. The crucial question is whether these words extend to removing a tree which needs to be felled because it is dangerous.

24. Using the ordinary meaning of 'neat and tidy' when referring specifically to the pitch itself, the Tribunal's view is that such words would not cover the removal of this Scots Pine tree. The Tribunal is mindful of the fact, as has been said, that there is no suggestion on the part of the site owner that the pitch is not in a clean, neat and tidy condition.

25. On the other hand, the only mention of trees within the statutory implied terms is to impose an obligation on the site owner to keep them in a neat and tidy condition. This has a certain logic to it because, of course, the pitch does not belong to the occupier and he has no tenancy. He merely has the right to place his park home on it. Imposing an obligation to remove a dangerous tree would be unreasonable because, as has been said, the tree actually belongs to the site owner, not the occupier.

The *Contra Proferentem* Rule

26. The site owner could, perhaps, argue that the terms of the agreement, even as imposed by statute, are ambiguous. Does 'neat and tidy' extend to the dangerous condition of a tree which might not be obvious to the naked eye?

27. In order to assist courts (and Tribunals) in these difficult matters of interpretation, the *contra proferentem* rule was devised many years ago. It is not, of course, the only rule of interpretation but it is, perhaps relevant to this problem. It translates from the Latin literally to mean "against (*contra*) the one bringing forth (the *proferens*)".

28. The principle derives from the court's inherent dislike of what may be described as 'take it or leave it' contracts such as pitch agreements which are the product of bargaining between parties in unfair or uneven positions. To mitigate this perceived unfairness, this doctrine was devised to give the benefit of any doubt to the party upon whom the contract was 'foisted'.

29. In the case of **Granada Theatres Ltd v. Freehold Investments (Leytonstone) Ltd** [1958] 1 WLR 845, Mr. Justice Vaisey said, at page 851, that "a lease is normally liable to be construed contra proferentem, that is to say, against the lessor by whom it was granted". The Tribunal believes that the same principle would apply to a pitch agreement.

30. The question for this Tribunal, therefore, is whether an obligation to remove a dangerous tree belonging to the site owner when there is no specific obligation to do so is a matter for the benefit of the site owner. If so, then *contra proferentem* would appear to dictate that a ruling is made in favour of the Applicant occupier.

31. It is the conclusion of the Tribunal that any ambiguity should be resolved in favour of the occupier. Further, the Tribunal recommends that the site owner moves quickly to remove the tree. If it should shed further branches or fall over, damaging this or any other park home, or cause injury, then, as owner of the tree, such site owner could well face a claim. This would have been the case whichever way the Tribunal had decided this dispute. Even the obligation on an occupier to keep a tree neat and tidy would not avoid a claim against the owner of the tree i.e. the site owner, if it should fall over – particularly, as in this case, where the site owner has been put on notice of the problem.

The Park Rules

32. The central point in this redetermination of the case is whether the park rules apply and, if so, which version of them applies. The Respondent does not seek to suggest that there was any consultation and agreement about any change in the park rules.

33. The Tribunal's view is that the terms of the occupation agreement are fixed by the 1983 Act and cannot be changed by a 'back door' method involving the imposition of park rules which are contrary to the Statute. Thus an obligation to maintain trees – even if it were to be restricted to those on the pitch – cannot be imposed because it would change the contractual relationship between the parties contrary to Statute.

34. Even if the Tribunal is wrong in such a proposition, the position is still not changed. If, as the Tribunal accepts, the tree in question was planted by the site owner or a predecessor in title, it would be

iniquitous and certainly contrary to the unfair contract terms legislation to expect an occupier to be responsible for removing the tree when it became dangerous.

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Bruce Edgington
Regional Judge
10th October 2013