

UPPER TRIBUNAL (LANDS CHAMBER)



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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

PARK HOMES – PROCEDURE – dispute resolution - section 4 of the Mobile Homes Act 1983 - is a resident entitled to see a copy of the site owner’s lease?

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST TIER
TRIBUNAL (PROPERTY CHAMBER)

BETWEEN:

**WYLDECREST PARKS
(MANAGEMENT) LTD**

Appellant

and

ANTHONY TURNER

Respondent

**Re: 49A St Dominic Park,
Harrowbarrow,
Callington,
Cornwall, PL17 8BN**

Upper Tribunal Judge Elizabeth Cooke

Determination on written representations

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Introduction

1. Is a resident in a mobile home, on a site protected by the Mobile Homes Act 1983, entitled to see a copy of the lease under which the site owner holds the site?
2. That is the question posed by this appeal. The respondent, Mr Turner, lives in a mobile home with Mr Dexter at St Dominic Park, Harrowbarrow, Cornwall (“the site”). They are entitled to station it there by virtue of an agreement made between them and the freeholder of the site dated 9 October 2006 (“the 2006 agreement”). On 21 December 2018 the appellant, Wyldecrest Parks (Management) Limited, took a lease of the site, and Cornwall Council agreed to transfer the site licence to the appellant. So the appellant now manages the site. In March 2019 the respondent asked the appellant for a copy of its lease, and in April 2019 he applied to the First-tier Tribunal (“the FTT”) under section 4 of the Mobile Homes Act 1983 (“the 1983 Act”) for an order that the appellant supply him with a copy of its lease. By its decision of 19 July 2019 the FTT ordered the appellant to do so, but gave it leave to apply to redact any commercially sensitive parts of the lease.
3. This is an appeal from that decision. It has been determined under the Tribunal’s written representations procedure, and I am grateful to LSL Solicitors and to the respondent for their written submissions.
4. It will be helpful to start with the law and its application to the 2006 agreement

The law and the 2006 agreement

5. Typically a resident on a park homes site owns their mobile home but does not have any freehold or leasehold interest in the pitch on which it stands; they have only a contractual right to be there, as have the appellant and Mr Dexter. That makes them vulnerable because they do not have the rights and protections afforded to tenants, and the 1983 Act seeks to remedy that vulnerability by providing appropriate protection.
6. Section 1 provides as follows:

“(1) This Act applies to any agreement under which a person (“the occupier”) is entitled—

(a) to station a mobile home on land forming part of a protected site; and

(b) to occupy the mobile home as his only or main residence.

(2) Before making an agreement to which this Act applies, the owner of the protected site (“the owner”) shall give to the proposed occupier under the agreement a written statement which—

(a) specifies the names and addresses of the parties;

(b) includes particulars of the land on which the proposed occupier is to be entitled to station the mobile home that are sufficient to identify that land;

(c) sets out the express terms to be contained in the agreement;

(d) sets out the terms to be implied by section 2(1) below; and

(e) complies with such other requirements as may be prescribed by regulations made by the appropriate national authority.

7. Section 5 defines the “owner” of a protected site as:

“the person who, by virtue of an estate or interest held by him, is entitled to possession of the site or would be so entitled but for the rights of any person to station mobile homes on land forming part of the site.”

8. St Dominic Park is a protected site, and the appellant is currently the “owner” as defined. The provisions of section 1 will have applied to the arrangements made between the respondent, Mr Dexter and the freeholder in 2006 but of course have no application between the appellant and the respondent because the appellant was not the owner of the site at that time and did not make the agreement with the respondent.

9. Section 3 provides:

“(1) An agreement to which this Act applies shall be binding on and enure for the benefit of any successor in title of the owner and any person claiming through or under the owner or any such successor.”

10. This is a crucial protection for the occupier of a mobile home. It means that the agreement continues in operation even when the site changes hands.

11. The 2006 agreement states that the site owner’s interest in the site continues “in perpetuity”, and states at paragraph 1 of Part 3 that the right to station the mobile home on the pitch will subsist until the agreement is determined in accordance with sections 3, 4, 5 or 6 of the 1983 Act. Those provisions give the occupier – but not the site owner - the right to terminate the agreement by notice; they also allow the termination of the agreement for breach of its terms, or where the occupier is no longer living there, or where the condition of the mobile home is detrimental to the amenity of the site.

12. So absent fault on their part, the appellant and Mr Dexter have the right to stay on the pitch for ever. The effect of section 3 of the 1983 Act is that that right is unaffected by a change in the ownership of the site. It is unaffected however long or short is the appellant’s lease.

13. Paragraph 2 of Chapter 2 of Schedule 1 to the 1983 Act says this:

“If the site owner’s estate or interest is insufficient to enable him to grant the right for an indefinite period, the period for which the right subsists shall not extend beyond the date when the owner’s estate or interest determines.”

14. That provision has no effect upon the respondent because the 2006 agreement was granted by a freeholder and therefore continues indefinitely unless terminated in accordance with the 1983 Act. The appellant of course has a leasehold interest, and if it makes any new agreements those agreements will only continue for so long as its lease continues; they will not bind the freeholder under section 3 because a freeholder is not a successor in title to its lessee. But that, again, is of no relevance to the respondent because the 2006 agreement, as discussed, is unaffected by the existence of the appellant’s lease.

15. Section 4 says this:

“The court shall have jurisdiction to determine any question arising under this Act or any agreement to which it applies, and to entertain any proceedings brought under this Act or any such agreement.”

16. That jurisdiction is exercised by the FTT pursuant to the Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (England) Order 2011.

17. Section 231A of the Housing Act 2004 elaborates upon the FTT’s powers as follows:

“(1) The First-tier Tribunal and Upper Tribunal exercising any jurisdiction conferred by or under the Caravan Sites and Control of Development Act 1960, the Mobile Homes Act 1983, the Housing Act 1985 or this Act has, in addition to any specific powers exercisable by them in exercising that jurisdiction, the general power mentioned in subsection (2).

(2) The tribunal’s general power is a power to give such directions as the tribunal considers necessary or desirable for securing the just, expeditious and economical disposal of the proceedings or any issue in or in connection with them.

...

(4) When exercising jurisdiction under the Mobile Homes Act 1983, the directions which may be given by the tribunal under its general power include (where appropriate)—

(a) directions requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise;

(b) directions requiring the arrears of pitch fees or the recovery of overpayments of pitch fees to be paid in such manner and by such date as may be specified in the directions;

(c) directions requiring cleaning, repairs, restoration, re-positioning or other works to be carried out in connection with a mobile home, pitch or protected site in such manner as may be specified in the directions;

(d) directions requiring the establishment, provision or maintenance of any service or amenity in connection with a mobile home, pitch or protected site in such manner as may be specified in the directions.

The FTT's decision

18. The FTT considered the correspondence between the parties and the respondent's reasons for wanting a copy of the lease. In summary it said that the respondent was concerned about the appellant's ability to meet its obligations under the terms of the occupiers' agreements, and also about whether the terms of the lease have any impact on the occupiers' security of tenure.

19. The FTT considered the extent of its jurisdiction under section 4 of the 1983 Act. It referred to the Tribunal's comments in *Wyldecrest Parks (Management) Limited v Santer* [2018] UKUT 0030, at paragraph 38:

"The language of section 4 of the 1983 act is very broad, and the powers conferred by section 231A of the 2004 Act are extensive and expressed in general terms. T should therefore be taken that (with the exception of disputes over termination) the proper forum for the resolution of contractual disputes between park home owners and the owners of protected sites in England is the FTT."

20. That decision related to the FTT's jurisdiction to determine a dispute about the charges imposed for the water supply on a park homes site. The occupiers' agreements with the site owner included an obligation to pay the site owner for the supply of water, and accordingly the dispute about water charges was one that arose under the agreement (paragraph 33 of the *Santer* decision).

21. Reverting to the decision under appeal: the FTT went on to say at paragraph 17:

"Although the general discretion given to the Tribunal under section 4 of the 1983 Act is wide, this Tribunal considers that the question to be determined must relate to either a provision under the 1983 Act or a term of the agreement between the site owner and the occupier of the mobile home. Section 4, in the Tribunal's view, does not give it carte blanche in respect of every aspect of the relationship between the site owner and the occupier of the mobile home."

22. That is obviously right. Section 4 does not confer any rights on either party. It provides only a forum for the resolution of "any question arising under this Act or any agreement to which it applies".

23. However, the FTT went on to explore the respondent's reasons for wanting a copy of the lease and said this:

“28. ... The intention of the 1983 Act was to confer on occupiers indefinite security of tenure. The Act, however, permitted an exception to that principle by its enactment of the implied term, in paragraph 2 of chapter [2] to schedule 1 which states that

‘If the owner’s estate or interest is estate or interest is insufficient to enable him to grant the right for an indefinite period, the period for which the right subsists shall not extend beyond the date when the owner’s estate or interest determines.’

29. As far back as 1986 the author of *Mobile Homes and the Law* London Sweet & Maxwell observed that

‘The restriction of security of tenure which this implied term can import could also give rise to a means of circumvention of the intention of the Act, which is to confer indefinite security of tenure. It would appear that if the freeholder of the protected site grants a short lease to a nominee of his, the owner for the purposes of the 1983 Act would be the short leaseholder and the security of tenure of the occupiers of the mobile homes on the site would end when the lease expires.’

30. The Tribunal considers that Mr Turner has raised a legitimate issue about the nature of Wyldecrest’s ownership of the site. Is it a nominee of the freeholder of the site which is suggested by the facts known so far, or is it an independent third party with a long leasehold interest? The Tribunal is satisfied that resolution of the issue is necessary to assess whether the ownership arrangements at St Dominic Park are consistent with the intention of the 1983 Act and whether Wyldecrest is able to meet its obligations under the individual agreements. The Tribunal considers that Mr Turner is entitled to know the answers to those questions. The Tribunal decides that the issues engages the provisions of section 4 of the 1983 Act.

31 The Tribunal finds that disclosure of the lease held by Wyldecrest is essential to resolve this issue...

32 The Tribunal observes that Wyldecrest would be obliged to reveal the length of the lease as part of the express terms if it was granting a new agreement on the site.

33The Tribunal considers that it has power to direct disclosure of the lease under section 231A of the 2004 Act if it considers necessary for securing the just, expeditious and economical disposal of the proceedings. The Tribunal is satisfied that disclosure would meet the requirements of section 231A.”

24. Accordingly the FTT made the order that the respondent applied for, subject to the possibility of the appellant applying for permission to redact.

The appeal

The appellant's submissions

25. The appellant argues the FTT erred in law in making that order, because neither the 1983 Act nor the 2006 agreement confer on the respondent any right to see the lease, and that there was no basis on which this confidential and commercially sensitive document could be subject to an order for disclosure to the respondent. It says that the FTT misunderstood paragraph 2 of chapter 2 of schedule 1, and the passage quoted from *Mobile Homes and the Law*; and that it took into account an irrelevant consideration in its observation that the appellant would have to disclose the length of its term if it made a new agreement.
26. The appellant also points out that neither the respondent's security of occupation, nor that of any other current residents of the site who have agreements "in perpetuity", can be affected by the length of the appellant's term, because of the provisions of section 3 of the 1983 Act. Any agreement to be granted by the appellant in the future is irrelevant, because what was before the FTT was "the current agreement and not what might happen." There is no contractual issue to be resolved between the parties, and therefore there was no need to order disclosure in order to secure a "just, economical and expeditious disposal of the proceedings" (section 231A of the 2004 Act).
27. As to the ability of the appellant to meet its obligations, that would have been a matter for the local authority in considering whether to transfer the site licence to the appellant, and it would appear that the local authority had been satisfied in that regard.
28. The appellant regards its lease as confidential, and is concerned that disclosure to the respondent would lead to its publication on social media. It says the respondent's application is frivolous and vexatious, and should have been dismissed.

The respondent's submissions on the appeal

29. The respondent has helpfully provided a lengthy response to the grounds of appeal. His concerns are very much for other occupiers, and future occupiers, of mobile homes on sites owned by the appellant. He says that he publishes information in public forums on matters that he regards as being in the public interest in relation to mobile home sites, and has a national readership.
30. The respondent does not point to any term of the agreement or to any provision of the 1983 Act that entitles him to a copy of the appellant's lease, but he argues that provision of a copy would be in accordance with the intention of Parliament. He relies upon the issue identified by the writer of *Mobile Homes and the Law* in the 1986 edition, that the appellant may be a sham company set up to enable the freeholder to grant agreements that will terminate when the company's lease comes to an end. Had the draftsman of the 1983

Act anticipated that practice, he argues, the statute would have given occupiers the right to see the site owner's lease. He is concerned that future occupiers will be without security, and that current occupiers might be persuaded to give up their current agreements and take on a short term agreement as a result of misrepresentation. In his own words, he has "smelled a possible rat". He is also concerned about the ability of the appellant to meet its obligations.

31. The respondent acknowledges that where a lease is for a term of more than seven years it is of course registrable. This lease is not registered, and of course leases granted for a term of seven years or less are not registrable (section 4 of the Land Registration Act 2002) and therefore not open to inspection; the respondent argues that the occupiers of mobile homes have a legitimate interest in seeing the site owner's lease.

Discussion and conclusions

32. I agree with the FTT's view that section 4 of the 1983 Act does not give it carte blanche in respect of every aspect of the relationship between the site owner and the occupier of the mobile home (paragraph 21 above). Section 4 does not confer any rights; it provides only the forum for the resolution of disputes. And not just any disputes; only those arising under the 1983 Act or the occupier's agreement. Neither the 1983 Act nor the 2006 agreement confer on the respondent any right to inspect the title of a site owner who is the successor to the freeholder who made the agreement.
33. Nor is there any other dispute between the parties to which disclosure of the lease would be relevant. It may be that the FTT misunderstood the effect of paragraph 2 of chapter 2 of schedule 1, and the passage quoted from *Mobile Homes and the Law*. Whatever the length of the appellant's lease, that can have no effect upon the respondent's security of occupation. Accordingly there can be no dispute between the appellant and the respondent about that security.
34. As to the possible effect of the terms of the lease upon the appellant's ability to meet its obligations under the 2006 agreement, again there is no present dispute. The respondent does not, at least in these proceedings, point to any shortcoming in the appellant's compliance with the 2006 agreement or the terms of the Act. In the event that the terms of the lease made it difficult for the appellant to meet its obligations, that would not give rise to a dispute unless those obligations had not in fact been met.
35. Accordingly there is no dispute arising under the 1983 Act or the occupier's agreement and section 4 is not engaged.
36. Section 231A of the 2004 Act does indeed confer wide-ranging case management powers on the FTT. Where there was a dispute about a term of the agreement, as there was in the *Santer* case, the FT would have power to order disclosure of relevant documents (and indeed has that power under its own rules, the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013). But section 231A is not engaged, because section 4 is not engaged.

37. It appears from the respondent's written submissions that he is well aware that his own security of occupation cannot be compromised by a later site owner's tenure; he makes it clear that his concern is for future occupiers, and for current occupiers who might be induced to accept a new agreement in place of their current permanent arrangement. The purpose of disclosure of the lease in this case is not the resolution of a dispute, but – if I have correctly understood the respondent's submissions – the publication of information for the assistance of occupiers and the deterring of would-be occupiers from entering agreements with the appellant. On that basis, the appellant's concerns about the release of confidential information to the respondent are well-founded.
38. However, whether those concerns are well-founded or not, and whether the lease is confidential or not, is not really in issue; the point is that the respondent has no right to see the appellant's lease and the FTT had no power to require the appellant to provide a copy. The fact that the appellant would have to disclose the length of its term if it made a new agreement is irrelevant because that does not entitle the respondent as a current resident to see the lease or to know the length of the term (although I understand that the appellant has disclosed that to the respondent).
39. The FTT's decision was made without any legal basis and is set aside. The Tribunal substitutes its own decision for that of the FTT, which is that the respondent's application for a copy of the lease is refused.

Upper Tribunal Judge Elizabeth Cooke

7 February 2020