



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **CAM/33UE/PHI/2019/0008 & 0010**

**Property** : Watersmeet, Bristol Hill Park, Shotley Gate, Ipswich,  
Suffolk IP9 1PY

**Applicant** : Barrs Residential and Leisure Limited

**Respondent** : Pleass Thomson & Co Solicitors, Executors of the  
Estate of the late Colin Hearne

**Type of Application** : by a park home site owner for determination of any  
question arising under the Mobile Homes Act 1983  
or agreement to which it applies [MHA 1983, s.4]

**Tribunal Members** : G K Sinclair & C Gowman BSc MCIEH MCMI

**Date of determination** : Wednesday 21<sup>st</sup> August 2019

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**DECISION**  
following a determination on the papers

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1. This case concerns the issue of succession to a park home agreement by virtue of a will, the effect of section 3 of the Mobile Homes Act 1983 and of the the Mobile Homes (Selling and Gifting) (England) Regulations 2013 (“the Selling and Gifting Regulations”) made pursuant to the Act. In particular :

- a. In section 3(3)(b) does the phrase “the person entitled to the mobile home by virtue of the deceased’s will or under the law relating to intestacy” include a gift passing under a deed of variation of the will under section 142 of the Inheritance Tax Act 1984?
  - b. If the answer to a. above be Yes, does the application of section 3(4) mean that the agreement shall not in the circumstances of this case enure for the benefit of the donee under the deed of variation?
  - c. Is the Deed of Assignment dated 1<sup>st</sup> November 2018 effective?
  - d. If the answer to c. be No, who has inherited the mobile home under the deceased’s will and the benefit of the agreement under the Act?
2. For the reasons which follow the tribunal determines that :
- a. While section 142 is effective for the purposes of mitigating tax liability, by deeming the varied transaction to have been effected by the deceased, it is not for other purposes an entitlement “by virtue of the deceased’s will” as expressed in section 3(3)(b)
  - b. Even were the above incorrect, section 3(4) would still prevent the benefit of the agreement, and the right to reside on the pitch, from enuring to Mr Steven Hearne under the Deed of Arrangement and section 3(3)(b)
  - c. The Deed of Assignment refers to the incorrect written agreement and so is ineffective at law, and to validate an assignment under section 3(2) the executrix would need to comply with the Selling and Gifting Regulations
  - d. Pending compliance with the Selling and Gifting Regulations the mobile home remains an asset of the deceased’s estate vested in the executrix pending distribution, as does the benefit of the agreement under the Act between the site owner and the deceased.

### **Agreement and Background**

3. By a written agreement dated 25<sup>th</sup> November 2005, made between Punch Taverns (PML) Ltd as site owner and Mr Colin Hearne as occupier the latter was granted a licence under the Mobile Homes Act 1983 to place a mobile home on and occupy as his main or only residence the pitch known as Watersmeet at what has since June 2010 become the applicant’s Bristol Hill Park, a protected residential mobile home site behind the Bristol Arms Public House at Shotley Gate, Ipswich.
4. It has been suggested that the deceased was assignee of an agreement dated 13<sup>th</sup> December 1984 made between Tollemache and Cobbold Breweries Ltd as site owner and William George White and Lillian Irene White as occupier for a term deemed to have commenced on 1<sup>st</sup> May 1979. If so, then it appears to have been superseded by the 2005 agreement directly with Punch Taverns.
5. Very unusually the term expressed in the agreement, which one would normally expect to be 50 or 60 years, is defined as “Four weekly commencing on the start date until determined by either party giving the other at least twenty-eight days notice in writing”
6. On 26<sup>th</sup> January 2018 Mr Colin Hearne died, leaving a last will and testament dated 20<sup>th</sup> March 1996. Ms Jane Pleass as principal of the respondent firm acts as executrix of the deceased’s estate, of which the mobile home in question is the sole substantial asset.

7. The principal beneficiary Barbara Susan Bright having predeceased Mr Hearne, by his will the residue of his estate was divided into three parts and bequeathed to a total of fifteen beneficiaries, including the deceased's son Steven. By a Deed of Variation dated 1<sup>st</sup> November 2018, expressed to be made under section 142 of the Inheritance Tax Act 1984, the above will was varied by adding a clause 4(d) whereby the deceased gave the mobile home to Steven absolutely. This was conditional upon Steven paying the sum of £30 000 to the will trustees for distribution to the residuary beneficiaries in accordance with the will.
8. Also on 1<sup>st</sup> November 2018 Ms Pleass as executrix and trustee executed a Deed of Assignment purporting to assign to Colin Hearne the "tenancy agreement" for the "letting" of the "property" (meaning the land known as Watersmeet) and all rights and interests in the mobile home. Not only is the expression "tenancy agreement" inapt for a written agreement under the 1983 Act granting a licence to occupy the pitch, but the agreement is identified in the First Schedule as an "agreement dated 13 December 1984 made between Tollemache and Cobbold Breweries Ltd (1) and William George White and Lillian Irene White (2) for a term deemed to have commenced on 1<sup>st</sup> May 1979."
9. In the written evidence of Jason Barr, a director of the applicant site owner, and of Ms Jane Pleass there is mention of potential breaches of the pitch agreement by Mr Hearne building unauthorised extensions encroaching into the required separation space between mobile homes, that the applicant has attempted to use this to discourage the sale of the mobile home to anyone but the applicant, and that this amounts to harassment. While they certainly add colour to the history of this matter these are not questions which the tribunal is asked to determine, and it shall therefore ignore them and concentrate on the legal question whether the purported deed of assignment dated 1<sup>st</sup> November 2018 is effective at law or in equity.

**Applicable law**

10. Section 142 of the Inheritance Tax Act 1984 makes provision for the alteration of dispositions on death, whether by will or the laws applicable on intestacy. The material parts read as follows :
  - (1) Where within the period of two years after a person's death—
    - (a) any of the dispositions (whether effected by will, under the law relating to intestacy or otherwise) of the property comprised in his estate immediately before his death are varied, or
    - (b) the benefit conferred by any of those dispositions is disclaimed, by an instrument in writing made by the persons or any of the persons who benefit or would benefit under the dispositions, this Act shall apply as if the variation had been effected by the deceased or, as the case may be, the disclaimed benefit had never been conferred.
  - (2) Subsection (1) above shall not apply to a variation unless the instrument contains a statement, made by all the relevant persons, to the effect that they intend the subsection to apply to the variation.
  - (2A) For the purposes of subsection (2) above the relevant persons are—
    - (a) the person or persons making the instrument, and
    - (b) where the variation results in additional tax being payable, the personal representatives.Personal representatives may decline to make a statement under

subsection (2) above only if no, or no sufficient, assets are held by them in that capacity for discharging the additional tax.

- (3) Subsection (1) above shall not apply to a variation or disclaimer made for any consideration in money or money's worth other than consideration consisting of the making, in respect of another of the dispositions, of a variation or disclaimer to which that subsection applies.
- (3A) *[irrelevant]*
- (3B) *[irrelevant]*
- (4) Where a variation to which subsection (1) above applies results in property being held in trust for a person for a period which ends not more than two years after the death, this Act shall apply as if the disposition of the property that takes effect at the end of the period had had effect from the beginning of the period; but this subsection shall not affect the application of this Act in relation to any distribution or application of property occurring before that disposition takes effect.
- (5) *[irrelevant]*
- (6) Subsection (1) above applies whether or not the administration of the estate is complete or the property concerned has been distributed in accordance with the original dispositions.
- (7) *[irrelevant – Scotland only]*

11. Section 3 of the Mobile Homes Act 1983 (as amended) concerns successors in title and 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.
- (2) Where an agreement to which this Act applies is lawfully assigned to any person, the agreement shall enure for the benefit of and be binding on that person.
- (3) Where a person entitled to the benefit of and bound by an agreement to which this Act applies dies at a time when he is occupying the mobile home as his only or main residence, the agreement shall enure for the benefit of and be binding on—
  - (a) any person residing with that person (“the deceased”) at that time being—
    - (i) the widow, widower or surviving civil partner of the deceased; or
    - (ii) in default of a widow, widower or surviving civil partner so residing, any member of the deceased's family; or
  - (b) in default of any such person so residing, the person entitled to the mobile home by virtue of the deceased's will or under the law relating to intestacy but subject to subsection (4) below.
- (4) An agreement to which this Act applies shall not enure for the benefit of or be binding on a person by virtue of subsection (3)(b) above in so far as—
  - (a) it would, but for this subsection, enable or require that person to occupy the mobile home; or
  - (b) it includes terms implied by virtue of paragraph 5 or 8A, 8B or 9 of Chapter 2, or paragraph 5 of Chapter 4, of Part I of Schedule 1 to this Act.

12. As this is not a county council or local authority gypsy and traveller site Chapter 2 applies in this case. Paragraph 5 concerns termination by the court if the appropriate judicial body is satisfied that the mobile home is not being used by the occupier as his main residence and considers it reasonable for the agreement to be terminated, 8A and 8B to the gifting to a member of the occupier's family of mobile homes occupied under new and existing agreements respectively in England, and 9 (until repeal by Welsh legislation in 2014) made slightly different provisions for sites in Wales.
  
13. In the circumstances of this case, where the 2005 written agreement pre-dates the coming into force in May 2013 of paragraph 7A and thus does not fall within the definition of a "new" agreement, it is appropriate to set out paragraph 8B in full :
  - (1) Where the agreement is not a new agreement (as defined by paragraph 7A(3)), the occupier is entitled to give the mobile home, and assign the agreement, to a member of the occupier's family (referred to in this paragraph as the "proposed occupier" ) without the approval of the owner if—
    - (a) the occupier serves on the owner a notice (a "notice of proposed gift") that the occupier proposes to give the mobile home to the proposed occupier, and
    - (b) the first or second condition is satisfied.
  - (2) The first condition is that, within the period of 21 days beginning with the date on which the owner received the notice of proposed gift ("the 21-day period"), the occupier does not receive a notice from the owner that the owner has applied to a tribunal for an order preventing the occupier from giving the mobile home, and assigning the agreement, to the proposed occupier (a "refusal order").
  - (3) The second condition is that—
    - (a) within the 21-day period—
      - (i) the owner applies to a tribunal for a refusal order, and
      - (ii) the occupier receives a notice of the application from the owner, and
    - (b) the tribunal rejects the application.
  - (4) If the owner applies to a tribunal for a refusal order within the 21-day period but the occupier does not receive notice of the application from the owner within that period—
    - (a) the application is to be treated as not having been made, and
    - (b) the first condition is accordingly to be treated as satisfied.
  - (5) A notice of proposed gift must include—
    - (a) the relevant evidence (as defined by paragraph 8A(3)), and
    - (b) such other information as may be prescribed in regulations made by the Secretary of State.
  - (6) A notice of proposed gift or notice of an application for a refusal order—
    - (a) must be in writing, and
    - (b) may be served by post.
  - (7) An application for a refusal order may be made only on one or more of the grounds prescribed in regulations made by the Secretary of State; and a notice of an application for a refusal order must specify the ground or grounds on which the application is made.
  - (8) The owner may not require any payment to be made (whether to the

owner or otherwise) in connection with the gift of the mobile home, and the assignment of the agreement, as mentioned in subparagraph (1).

- (9) The Secretary of State may by regulations prescribe procedural requirements to be complied with by the owner, the occupier, a proposed occupier or the person to whom the mobile home is given in connection with the gift of the mobile home, and assignment of the agreement, as mentioned in sub-paragraph (1).

14. For completeness, paragraph 8C provides that regulations under paragraphs 8A and 8B must be made by statutory instrument. Currently, these are the Mobile Homes (Selling and Gifting) (England) Regulations 2013.<sup>1</sup>
15. Regulations 5 to 7 and 9 deal with gifting, and prescribe notices that must be served and the form of any assignment : see Schedules 3 to 5.

### **Discussion and findings**

16. Attention has focussed on whether the Deed of Variation of the will, by adding the gift of the mobile home in clause 4(d), has the effect of making Steven Hearne a “person entitled to the mobile home by virtue of the deceased’s will” and thus entitled to the benefit of the written agreement under section 3(3)(b). However, this is of extremely limited value because section 4 makes clear that it will not enure for his benefit if the agreement would enable him to occupy the mobile home. That is rather the point of an agreement under the 1983 Act. Further, the agreement has implied into it by statute the very terms referred to in section 4(b), so it can’t enure to his benefit under section 3(3)(b) on this ground as well.
17. What is ignored is the fact that by section 3(2), where an agreement is lawfully assigned, the agreement will enure for the benefit of and be binding on that person. An agreement may be lawfully assigned by the occupier to a member of his family under paragraph 8A or, in the case of an existing agreement like this, paragraph 8B. An executor or administrator of the deceased occupier stands in his shoes and, provided the provisions of paragraph 8B and the relevant parts of the Selling and Gifting Regulations are complied with, can lawfully assign the mobile home and benefit of the agreement to a family member of the deceased.
18. In this case the executrix, who may know about probate and the administration of estates, does not appear to understand the legislation applicable to residential mobile homes.
19. She has also committed a fatal error, for the efficacy of her intended scheme, by failing :
- a. To comply with the Selling and Gifting Regulations by serving upon the site owner the prescribed notices in Schedules 3 and 5, and by using the assignment form in Schedule 4; and
  - b. To assign the benefit of the correct 2005 written agreement.
20. Had the mobile home and benefit of the 2005 agreement been validly assigned then Steven Hearne could have occupied Watersmeet as his main residence or alternatively sold on the mobile home with the benefit of the agreement under Schedule 1, Part 1, Chapter 2, paragraph 7B.

<sup>1</sup> SI 2013/981 (in force from 26<sup>th</sup> May 2013)

21. However, as it has not, the position in law is (whatever it may be in equity as between Steven and his father's estate) that the estate has not validly divested itself of and assigned the mobile home and the benefit of the agreement to him. It therefore, for the time being, remains an asset of the estate in the possession of the executrix unless or until it is validly sold or assigned by way of gift to a family member. The consequences of selling as opposed to gifting differ.
22. The answers to the two questions posed in the application form are thus :
  - a. The Deed of Assignment, being incorrect both in substance and in form, is of no lawful effect
  - b. The mobile home and the benefit of the 2005 agreement remain an asset of the deceased's estate yet to be disposed of by the executrix.

Dated 21<sup>st</sup> August 2019

Graham Sinclair  
First-tier Tribunal Judge