



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

Case Reference : **A- CAM/22UE/PHC/2020/0002**

Property : **R37 Kings Park,
Canvey Island,
SS8 8 HE**

Applicant : **Terry Phillips**
**Represented by litigation friend
Tony Crumplin**

Respondent : **Kings Park Village**
Unrepresented and did not attend

Date of Application : **24th February 2020**

Type of Application : **To determine a question arising under the
Mobile Homes Act 1983 (“the 1983 Act”) or
the agreement to which it applies**

Tribunal : **Judge J. Oxlade**

Date of hearing : **8th July 2020**

DECISION

For the following reasons,

(1)the Respondent having been so warned in the Directions made by this Tribunal on 24th February 2020 that a failure to comply with those directions may lead the Tribunal to so doing, in accordance with rules 9(7)(a) and 9(8) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013 (“the 2013 Rules”), the Tribunal:

**(a)bars the Respondent from taking any further part in these proceedings,
and**

(b)concludes that the Applicant has a right of occupation of the property, on the implied terms contained within Chapter 2 of the 1983 Act, pursuant to section 3(3)(a) of the 1983 Act;

(2) the Tribunal finds that it has no jurisdiction to determine any question relating to whether or not the Applicant is the owner of the chattel comprising the mobile home itself (as distinct from the right of occupation) not being a question falling within section 4(1) of the 1983 Act, and so strikes out that part of the application under rule 9(2)(a) of the Rules.

REASONS

This has been a remote hearing which has been consented to/not objected to by the parties. The form of remote hearing was by audio hearing by BT Meet me, which hearing was recorded by the Tribunal. A face-to-face hearing was not held because it was not practicable, no one requested it, and all issues could be determined in a remote hearing.

Background

1. On 24th February 2020 the Applicant issued an application pursuant to the 1983 Act.
2. The application relates to a mobile home (“the home”), bought by the Applicant’s mother in 1988, and thereafter occupied by her until her death in 2000. When she bought it, it was already pitched on R37 Kings Park Village (“the pitch”), and has been there ever since. She died intestate.
3. In 1999 the Applicant moved into the home to care for his mother - in what turned out to be the last year of her life – and he has lived there since.
4. In early 2020 the Respondent bought the site.
5. In the application, having set out the background, the Applicant asked the Tribunal to make two orders: firstly, for an order transferring into his name the written statement agreement, and to determine his right to live in there; secondly, to grant Kings Park the authority to assign ownership of the mobile home into his name.
6. In order to progress the application, Directions were made for the filing of evidence, and which contained a warning that **“If the respondent fails to comply with these directions the tribunal may bar it from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9(7) and (8) of the 2013 Rules”**.
7. The directions set out the background, as follows:

“Background

(1) The Applicant is the occupant of the mobile home sited on pitch R37 (“the pitch”), and it is his case that his (now) late mother, Mrs. E.I Phillips bought the mobile home in 1988, sited it on the pitch shortly thereafter, and lived there as her own home until her death in 2000. In 1999 the Applicant moved into the mobile home to care for his mother, and has occupied it as his only home since then, has discharging all bills, rent, and maintained the mobile home, and complied with the Regulations. If that is correct, then it appears that he arguably has a right of occupation provided by section 3(3)(a)(ii) of the 1983 Act. This would be either on written terms contained in a pitch agreement, or if there is not one, on the implied terms provided by Chapter 2 of the 1983 Act.

(2) The Applicant also says that his late mother expressed a view to the site owners by letter, that the mobile home should be divided two ways; between himself and his brother, Victor, as joint tenants. It is not clear if his late mother did or did not make a will, nor what is the status of that expression of wishes to the site owners. Since the death of his brother in 2001 – who had not occupied the mobile home – the Applicant has had ongoing problems caused by his niece’s desire to take an interest in the premises. He considers that in addition to the right of occupation he is entitled to ownership of the mobile home itself (as the chattel), and should have assigned to him his mother’s interest in the pitch agreement (or implied terms), and that the rights accrue under section 3(3)(b) of the 1983 Act.

(3)The Tribunal is mindful that in seeking to determine the rights raised in paragraph (1) above, the Applicant’s niece, Donna, is not an interested party and so would not be made a Respondent in this application. However, the position is different in relation to the rights claimed in paragraph (2), as the background is highly suggestive of a dispute over the rights of inheritance. It is for the Applicant and his litigation friend to reflect and decide which rights they wish to pursue in this application, bearing in mind that – depending on the position of the site owners – the determination of the rights in (1) may not prove to be controversial, and could be resolved swiftly, though this is not likely to be the case in respect of (2).

(4) In light of the Applicant’s age and frailties, the Tribunal would wish to move the matter forward to a conclusion as quickly as possible, which will depend on the Applicant’s decision as to what rights he wishes to pursue – either paragraph 1 or 2, or both.

(5) In seeking to achieve the above objectives, the Tribunal proposes the following, mindful that the directions are being made on the papers, and without either party being present.

(6) The Respondent shall by no later than **4pm on 22nd June 2020** (A) notify the Tribunal, whether there is any dispute (and if so, identify what it is) that (i) the facts recited in paragraph (1) above are accurate, and (ii) the pitch R 37 is on a “protected site”, and so falls within the 1983 Act, (B) provide to the Tribunal (i) a copy of any written pitch agreement between the Applicant’s mother and it (or its predecessors), any written variation to it, any written statement issued before entering into it, any site rules and regulations, and (ii) if there is any limitation to the length of the pitch

agreement by reference to the site owner's own length of tenure, or planning permission, then the Respondent shall say what it is, and provide documents substantiating it, otherwise the Tribunal will operate on the basis that there is no time limitation on it.

(7) The Applicant shall by no later than **4pm on 22nd June 2020** provide to the Tribunal a copy of (A) the documents filed in the litigation between Donna and the Applicant and which concluded in 2019, together with a copy of the Order made by Judge Callaghan, and a note of the judgement issued by him, and (B) a copy of the will made by Mrs. E. I. Phillips, and document expressing her wishes to the site owners as to division of the mobile home/assignment of the pitch agreement.

(8) On **8th July 2020 at 12 noon** the Tribunal will conduct a telephone hearing, which is designed to establish what claims the Applicant wishes to pursue - in light of the Tribunal's observation at paragraph 3 above - what measure of agreement can be achieved between the parties and where the disputes arise. It seems likely that the Applicant will be represented by his litigation friend, and so it would be helpful to all if Mr. Crumplin is aware of all relevant facts - as far as possible - and clear instructions as to the way forward (from the Applicant's perspective) particularly in light of the points made in paragraph 3 above.

(9) The parties must contact the Tribunal by **4pm on 6th July 2020** to state which telephone number can be used for holding the hearing on 8th July 2020, and to await instructions on how that will be held".

8. Subsequent to those directions the Applicant filed a bundle of documents, consisting of a signed witness statement of the Applicant dated 2nd June 2020, a copy of the transfer of ownership relating to the home issued to the Applicant's mother dated 11th July 1988, a certified copy of the will of the Applicant's brother (Victor George Phillips), a grant of probate to Pauline Wendy Phillips (wife of Victor) in respect of her husband's will, a copy of the death certificate of Victor's wife together with a codicil (but not the will). Further, there was included an Order of the Southend County Court dated 27th September 2019 striking out the claim as disclosing no reasonable cause of action, which claim form was included and amounted to a claim made against the Applicant for unpaid rent (demanded but not paid) which asserted that the Applicant's niece (daughter of Victor and Pauline) shared 50% ownership of the home.

9. On 11th May 2020 the Respondent was served with a copy of the Application and Directions, but failed to comply with the Directions; indeed, the Respondent has failed to acknowledge or participate in the proceedings at all. On 30th June 2020 the Respondent was served with notice of the hearing (which was set in the Directions) and advised that the Tribunal could proceed in absence of a party, if satisfied that the party had been served.

Case Management Hearing

10. On 8th July 2020 a hearing by telephone was conducted with Mr Cramplin, acting as litigation friend to the Applicant.

11. At that hearing, having been satisfied that the Respondent had been served with notice of hearing proceedings and hearing, and the Respondent having been advised that I could proceed in absence, I made an order barring the Respondent's participation, and proceeded to make orders against the Respondent.

12. I explored with Mr. Cramplin the accuracy of my summary of the application contained within paragraph 1 of the Directions; no issue was taken with it, save clarification that the Applicant's mother had died intestate. He added that Mr. Prideaux (the former site owner, and who had given evidence for the Applicant in the County Court proceedings) said that there was no written statement or statement of terms which had been provided to the Applicant's mother, and so by default, the Applicant's rights of occupation would be on the implied terms set out in Chapter 2 of the 1983 Act.

13. I understood from the submissions made by Mr. Cramplin that the Applicant is 78 years of age, and in poor health; the litigation in the County Court which ended last year took its toll on his health. It was imperative to bring matters to a close; he wished to do so by securing an decision as to rights of occupation and rights of ownership of the chattel (as per paragraph 5 of this decision). I indicated that in light of what is set out above, that I was satisfied that the Applicant had rights of occupation in accordance with section 3(3)(a) of the 1983 Act, for the following reasons: the person entitled to the benefit of the pitch agreement (on implied terms set out in Chapter 2) was the Applicant's mother; she was an occupant at the time of her death; that at the time of her death the Applicant was also an occupant, and a member of her family. It follows that I find that the Applicant has rights of occupation on the implied terms in Chapter 2.

14. Further, that I appreciated from the judgement in the case of Barrs Residential & Leisure Limited v Pleass Thomson [2020] UKUT 0114 (particularly paragraphs 11 and 12, 88 and 89) that in such cases there were a collection of rights often at stake and that they were separate and distinct rights: the right to the ownership of the home itself (as a chattel) which would (in a case of death) follow the will or follow the laws of intestacy; occupiers rights, for those in occupation in defined circumstances, either on the terms of the written statement/pitch agreement (or in default, on the implied terms); finally, the agreement in the form of the pitch agreement itself. The case of Barrs emphasised that the rights (being separate and distinct) could be owned/enjoyed by different people at the same time; it did not therefore follow that rights of occupation would be enjoyed by the owner of the chattel, or the ownership of the chattel enjoyed by the pitch owner.

15. However, I was not sure that the Tribunal had jurisdiction to make orders in respect of chattel ownership, or (save where necessary to make orders under the Act) even to make findings about it. Having been satisfied that the Applicant has had rights of occupation by virtue of section 3(3)(a)(ii) on the facts as they were known, it was not necessary to separately determine the ownership of the chattel, nor was it a finding which it was necessary to make to arrive at the conclusion that 3(3)(a)(ii) was satisfied. Mr. Cramplin appreciated that this may be the case, and I indicated that I would reserve the question and make a judgement on the point.

16. I also understood from what Mr. Cramplin told me (he having been present at the hearing) that the District Judge Callaghan had struck out the claim made by the niece, but in doing so had not made any findings as to the rights of ownership of the home itself (the chattel). His understanding was that any rights that the niece had to the

chattel (though her father, to his wife, to her and her brother) were asserted very late, and that the Limitation Act would apply to prevent her asserting those rights. There was, however, no judgement to that effect. He appreciated that issuing any proceedings against the niece, could give rise to tensions – as before – but it was important to clarify ownership of the chattel, not least because the Applicant’s partner lived with him there, and he had left her estate to her – so, at some point in the future, there was the spectre of a dispute as to ownership of the chattel.

Jurisdiction

17. On the face of it section 4(1)(a) of the Act appears to give the Tribunal very wide powers; it provides that the Tribunal has jurisdiction to “determine *any question* under this Act or any agreement to which it applies”. In the case of Barrs, the Tribunal considered whether or not the chattel remained within the estate of the deceased, and proceeded to interpret the will; that decision might act as encouragement to believe that I would have jurisdiction to do that which the Applicant wished to make findings on the ownership of the chattel itself. However, paragraph 88 of the decision points out that the legislation does not regulate the transfer of the chattel itself.

18. Further, I have considered the recent case of Wyldecrest Paris v Turner [2020] UKUT 40, which allowed an appeal against the FTT order for disclosure of a lease of the pitch, which lease was immaterial to resolution of the issues between the parties. It referred to the subsidiary powers under section 231A of the Housing Act 2004, but which (it held) could only be invoked when the Tribunal is exercising its jurisdiction conferred *under* the 1983 Act.

19. In this case, having already determined the rights of occupation in accordance with section 3(3)(a)(ii) I have not needed to determine the issue of succession of the chattel, and so the Applicant’s request for an order in respect of the chattel, is a question of rights under the laws of intestacy of his mother’s will (and then perhaps under the subsequent wills of his brother and brother’s wife) but it is not a finding or decision *under* the 1983 Act.

20. I therefore find that I do not have jurisdiction to do so under the 1983 Act, and so cannot otherwise do so.

21. Accordingly, in respect of the second part of the Applicant’s application not only would I not have jurisdiction to make an order for a transfer of the chattel under the 1983 Act, but the site owners would not have power to transfer ownership of the chattel. Having found that I no jurisdiction to do so, in accordance with rule 9(2)(a) I strike out that part of the proceedings that relates to the second question set out in paragraph 5 above.

22. It follows that I find that the Applicant has rights of occupation of the chattel on the implied terms set out in Chapter 2 of the 1983 Act.

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Judge J. Oxlade

16th July 2020