



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

**Case reference** : **CAM/OOKC/PHC/2022/0010**

**Property** : **9 Nook Park, Willow Road, Great Harwood, Bucks, MK170QJ**

**Applicant** : **Andy Waller**

**Representative** : **In person**

**Respondents** : **Joe Burns**

**Representative** : **In Person**

**Type of application** : **Application made pursuant to s.4 of the Mobile Homes Act 1983**

**Tribunal** : **Judge Shepherd  
Mary Hardman FRICS**

**Date of Decision** : **October 2023**

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**Compensation decision**

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1. This decision follows the decision on liability dated 26<sup>th</sup> July 2023. We asked the parties to make submissions in relation to losses sustained by the Claimant as a result of a breach of the written statement. We found that the Applicant's pitch had been encroached upon during the works. Trees and sections of lawn were removed without permission or consultation. Although the pitch may be

the same size as it was originally it has been moved. The original designating points for the boundary of the pitch were the footpaths, these have been removed altogether. The movement of the pitch and incursion represented a clear breach of the written statement. The Respondent did not follow the procedure in the written statement. He did not give the Applicant proper notice of the works starting. He did not make an application to court. Instead he instructed his contractors to start work and they did so, in the process encroaching on the pitch thereby causing damage.

2. The Applicant made submissions in relation to his losses which he summarized as:
  - Hazardous Living Conditions
    - Entrenchment
    - Prolonged Emotional Duress
    - Compounded Vulnerability- the Applicant is visually impaired
    - Flagrant Disregard for Disability.
3. He claimed in excess of £15000
4. The Tribunal has no doubt that all of these factors cited by the Applicant came into play and that the Applicant suffered as a result of the clear breach that took place which had an adverse impact on his home.
5. For his part the Respondent in his submissions through his counsel , Ibrahim Dulmeer made no significant concessions about the losses suffered by the Applicant and said that the damages awarded should be £250 for general damages and £100 for special damages. This is based largely on the conclusion that the only breach was a breach of the covenant of quiet enjoyment. In fact, the breach was more fundamental than that. As a result of the encroachment the Applicant lost what he bargained for – namely a pitch in a particular position as designated by the plan. This was a breach of the written statement itself. It was also a clear breach of the covenant of quiet enjoyment. Other alleged breaches of the covenant were not made out but this one was.
6. In relation to the law on non - pecuniary losses the Tribunal adopts the analysis in Chitty on Contracts which as well as identifying the general rules relied upon by the Respondent looks at the exceptions.

*Non-pecuniary loss in general*

29-158

*Normally, damages for breach of contract relate to financial loss (including loss of expected financial gains), and in contract no damages will be awarded for injury to the claimant's feelings, or for his mental distress, anguish, annoyance, loss of reputation or social discredit caused by the breach of contract; as where an employee is wrongfully dismissed in a humiliating manner. This remains the general principle: even where it is not unlikely that a breach of an ordinary commercial contract may cause foreseeable anguish and vexation to the claimant, no damages are recoverable for that type of loss. However, there is no general rule that only pecuniary losses are recoverable and there are now qualifications even to the principle that damages will not be awarded for disappointment or vexation, so that in quite a number of situations non-pecuniary losses of various kinds may be recovered provided they were within the contemplation of the parties as not unlikely to result from the breach. The qualifications are explained in the paragraphs that follow.*

*Pain and suffering, loss of amenity*

*If the defendant's breach of contract caused physical injury to the claimant himself, or to his property, the claimant may recover damages for that injury, provided the test for remoteness is satisfied, in the same way as in an action in tort. Damages for personal injury caused by breach of contract may include compensation for pain and suffering and loss of amenity, as well as loss of earnings; these are normal heads of damages in the assessment of damages in tort for such injuries. If the remoteness test is satisfied, the claimant's damages for breach of contract may include compensation for loss incurred through the death of a human being, as, e.g. for loss of his wife's services, where the cause of action was independent of the death and the death was merely an item of damage.*

*Inconvenience and discomfort*

29-160

*Where the breach of contract causes the claimant physical inconvenience or discomfort, he may recover damages, as where the claimant suffered physical inconvenience and discomfort as the result of living in a defective house, or of vacating rooms while repairs were carried out. But the quantum of such damages should be "modest"; and the Court of Appeal has held that distress and inconvenience caused by disrepair are not freestanding heads of claim, but are symptomatic of interference with the lessee's enjoyment of the premises. It follows that care should be taken to ensure that any award for distress and inconvenience does not overlap with an award of loss of the market rental value of the property.*

*Nervous shock*

29-161

*Damages may also be awarded for nervous shock or an anxiety state (an actual breakdown in health) suffered by the claimant, if that was, at the time the contract was made,<sup>906</sup> within the contemplation of the parties as a not unlikely consequence of the breach of contract.*

#### *Mental distress and disappointment*

29-162

*As stated above, damages are not as a general rule recoverable for distress or disappointment caused by a breach of contract, even if such consequences were within the contemplation of the parties. However, an exception applies in the enjoyment or “holiday” cases: in the case of a failure, in breach of contract, to provide a holiday of the advertised standard or some other form of entertainment or enjoyment, damages may be awarded for the disappointment and mental distress caused by the breach of contract. The “loss of amenity” recognised by the House of Lords may also be viewed as an extension of the “loss of enjoyment” category. A further exception arises where the purpose of the contract was to protect the claimant from annoyance or distress, e.g. where a woman employed solicitors to protect her from being molested by a former friend, who was causing her mental distress; the damages for the solicitors’ failure to obtain protection for her included a sum for the foreseeable annoyance and mental distress which she continued to suffer as a result of their breach of contract.<sup>912</sup> Damages for breach of contract may be awarded to a mother for the mental distress caused by the loss of the company of her child.*

#### *Loss of amenity*

29-163

*In Ruxley Electronics and Construction Ltd v Forsyth the House of Lords accepted that damages may be awarded for the “loss of amenity” suffered by the claimant where the purpose of the contract was to give him a subjective, even idiosyncratic pleasure or amenity. The defendant, in breach of contract, built a swimming pool whose depth was only six feet in the diving area, instead of the specified seven feet six inches. Despite evidence that a depth of six feet was perfectly safe for diving, and that the market value of the property was not adversely affected by the breach, the Court of Appeal had allowed the full cost of re-building the pool. Their Lordships reversed this decision<sup>916</sup> and appeared to support the trial judge’s award (not appealed) of £2,500 as substantial damages for “loss of amenity” because the purpose of the contract was “the provision of a pleasurable amenity”. Two Lords agreed with Lord Mustill, who upheld the award as representing the loss of the “consumer surplus”, the personal, subjective gain which the claimant expected to receive from full performance—an advantage not measured by any increase in the market value of his property.*

29-164

*The House of Lords again used the “loss of amenity” concept to award damages in Farley v Skinner where the potential purchaser specifically asked his surveyor whether the property would be seriously affected by aircraft noise. A paragraph in the survey report said it was unlikely that the property would suffer greatly from such noise. In fact, it was close to a navigation beacon around which aircraft could be “stacked” on a spiral course at busy times at the nearby airport. The House of Lords held that it was sufficient for the award of damages that an important object of the contract was to give pleasure, relaxation or peace of mind—it need not be the sole or principal purpose of the contract to justify the award of damages for “loss of amenity” when the surveyor had failed to exercise reasonable care in making the report on noise. An award of £10,000 damages was upheld, even though the market value of the property, after taking account of the noise, was not less than the price paid by the purchaser. It should be noted that the defendant make a specific statement about the amenity in response to a specific inquiry by the claimant.*

7. The present case is an unusual one. It concerns the provision of a mobile home in a pleasant rural environment. It is close to being a holiday case but not close enough to come within that exception. A number of the other exceptions do apply here however. The Applicant suffered a loss of amenity as his home was interfered with in a robust and uncaring fashion. He suffered (and still suffers) from significant inconvenience and distress as a result of the interference. He undoubtedly will have suffered disappointment as a result of the Respondent’s poor conduct. Finally, there has been a loss of amenity.
8. The Applicant’s claim is excessive however as already indicated the Tribunal accepts most of his heads of claim. The Respondent’s concession to damages of only £250 is derisory. There is no body of previous park home damages decisions we can refer to. The one decision referred to by the Respondent differs on the facts, it is not a case of serious breaches of the pitch agreement like the one before us and in any event it is not binding on us.
9. Doing the best it can to reflect our perception of the Applicant’s losses the Tribunal considers that a general damages award of £5000 is appropriate. The Tribunal accepts the Respondent’s arguments in relation to special damages and awards £100 – the conceded sum.
10. The damages reflect losses to date. If the Respondent fails to cooperate properly in the reinstatement order further losses may accrue.
11. The Tribunal accepts that the *Guppys* case was wrongly categorised as a breach of covenant case in the liability decision but the similarities between that case

and the present one , in particular the very poor conduct of the landlord are clear.

## **Summary**

12. The Respondent shall pay the Applicant £5100 within 28 days.

## **RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the

First-Tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.