



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

Case Reference : **CHI/19UG/PHC/2023/0011**

Property : **31 Oaklands Park, Warmwell, Dorset
DT2 8JQ**

Applicant : **R S Hill & Sons Limited**

Representative : **IBB Law LLP**

Respondent : **Alexandra Wilson-Jones**

Representative : **N/A**

Type of Application : **Application for a determination of a
question arising under the Mobile
Homes Act 1983**

Tribunal Member : **Judge R Cooper**

Date of Determination : **12/03/2024**

DECISION

In summary, the Applicant's application (a) for a determination that Ms Wilson-Jones is in breach of the terms of her Mobile Homes Act agreement and (b) for an Order that she must pay to the Applicant the sum of £2,763.89 (plus additional arrears up to today's date) within 14 days is refused.

In this decision references to the page number of the documents are referred to in this way [].

Background

1. On 24/08/2023 the Tribunal received an application from RS Hill & Sons Ltd ('the Applicant'). In its statement of case attached to the application, the Applicant seeks the following [11]:
 - (a) a determination from the Tribunal that Ms Wilson-Jones ('the Respondent') is in breach of the terms of her agreement under the Mobile Homes Act 1983, as amended ('the 1983 Act') by failing to pay her pitch fees and water charges, and
 - (b) an Order that the Respondent pay the Applicant the arrears of pitch fees and water charges in the sum of £2,763.89 (and any further arrears accruing to the date of determination) within 14 days.
2. On 4/01/2024 the Tribunal gave comprehensive directions to the parties setting out the timetable for the provision of documents required for the determination [30] to [34]. The Applicant failed to comply with the requirement to serve the bundle of documents by 22/02/2024 as directed, and the application was struck out on 26/02/2024. Following an application and provision of the bundle, the case was reinstated on 28/02/2024.
3. In the order of 4/01/2024 the Tribunal also gave directions for the Application to be decided on the papers without an oral hearing unless a party objected within 28 days. No objections were received from the parties. The Applicant expressly confirmed its agreement to a paper determination in the application [5].
4. There was no application for an inspection of the property. The Tribunal was satisfied given the nature of the application that none was necessary.

The law

5. Under section 4 of the 1983 Act, a Tribunal has jurisdiction to determine any question arising under the Act or any agreement to which it applies.
6. Section 4(1) of the 1983 Act provides that in relation to a protected site in England, a tribunal has jurisdiction-
 - (a) to determine any question arising under this Act or any agreement to which it applies; and
 - (b) to entertain any proceedings brought under this Act or any such agreement, subject to subsections (2) to (6).
7. Section 231A of the Housing Act 2004 provides additional powers to the First-tier and Upper-tier Tribunals. They may exercise 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 the Housing Act 2004.

8. In addition to any specific powers exercisable by the Tribunal in exercising that jurisdiction, there is a general power in subsection (2) for a tribunal *‘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’*. Subsection 4 provides that 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...;
 - (b) directions regarding pitch fees;
 - (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 regarding works;
 - (d) directions regarding services or amenities.
9. In Elleray v Bourne [2018] UKUT0003(LC), the Upper Tribunal advised:

‘Despite the apparent breadth of section 4, a power to determine questions or entertain proceedings is not the same as a power to grant specific remedies. The FTT has no inherent jurisdiction and may only make such orders or grant such remedies as Parliament has given it specific powers to make or grant. Although it is rather strangely described as part of a “general power” to “give directions”, in section 231A(4)(a) of the Housing Act 2004 Parliament has given the FTT a specific power to require the payment of money by one party to the proceedings to another. Such “directions” may be given where the FTT considers it necessary or desirable for securing “the just, expeditious and economical disposal of the proceeding.” The use of the word “directions” in this context might give the impression that section 231A(2) is concerned only with procedural matters. It is clear from section 231A(4), however, that the power to give directions is a power to make substantive orders, including for the payment of money, the carrying out of works, and the provision of services.’
10. The Mobile Homes Act 1983 (as amended) (the 1983 Act) provides in section 2(1) that terms are implied into every agreement for the renting of a pitch on a protected site, being the terms as set out in Part 1 of Schedule 1 of that Act (“the Implied Terms”).
11. A ‘protected site’ is a site that falls within the definition contained in Part I of the Caravan Sites Act 1968. That is a site requiring a licence under the Caravan Sites and Control of Development Act 1960 and which is not land in respect of which the planning permission or site licence is expressed to be granted for holiday use or otherwise so expressed or subject to such conditions that there are times of the year when no caravan may be so stationed on the land for human habitation.

12. Under paragraph 21 of Schedule 1 to the 1983 Act the following implied terms relating to occupier's obligations apply to every agreement for the renting of property on a protected site. These include the following:

The occupier shall

(a) pay the pitch fee to the owner;

(b) pay to the owner all sums due under the agreement in respect of gas, electricity, water, sewerage or other services supplied by the owner;...

The documents

13. Although provided late, the Applicant produced a bundle of 34 pages which included the application form (22/08/2023), the Applicant's statement of case (dated 22/08/2023), the Tribunal's directions of 4/01/2024, a Written Statement under the 1983 Act (pitch agreement in respect of 31 Warmwell Holiday Village), and a statement of arrears.
14. No documents have been provided by the Respondent in respect of this application.

Consideration of the issues

15. In this application, the Applicant seeks a determination confirming that Ms Wilson-Jones (the Respondent) is in breach of the terms of the agreement governing her right of occupation of a pitch at 31 Oaklands Park, Warmwell, Dorset DT2 8JQ and for an Order that the sum of £2,763.89 be paid to the Applicant within 14 days together with any additional arrears of pitch fees and water charges up to and including the date of the Tribunal's determination.
16. If a determination is made by the Tribunal that an occupier of a park home is in breach of their agreement or the implied terms in Chapter 2 of Schedule 1 to the 1983 Act, the Applicant may then apply to the County Court for the termination of the Respondent's pitch agreement. This is, therefore, an application which potentially has significant consequences including the loss of a person's home.
17. In breach of the directions that were given on 4/01/2024, the bundle of papers provided by the Applicant does not include a copy of the site licence [33]. In the absence of a copy of the site licence, the Tribunal is unable to determine whether Oaklands Park is a 'protected site' in accordance with the 1983 Act, as stated by the Applicant.
18. Whilst the Applicant has produced a copy of a Written Statement under the 1983 Act this agreement is between Mr and Mrs Dodington (as park owners) and Mrs P.D. Hopkins and was made on 1/06/1989 ('the Agreement'). It relates to 31 Warmwell Holiday Village. In paragraph 2 of its statement of case IBB Law LLP, solicitors for the applicant, say that the respective rights and responsibilities of the original parties have passed to the Applicant and Respondent by operation of law on (a) the

Applicant acquiring the Park from the previous owners and (b) the death of Mrs Hopkins. However, no evidence has been produced to the Tribunal showing this to be the case. A bare assertion that the Applicant is obliged to comply with the terms of this Agreement, without more, is insufficient. Nor has any evidence been produced to demonstrate that 31 Warmwell Holiday Village is one and the same as 31 Oaklands Park.

19. The Tribunal accepts that there is an express term at paragraph 3(a) of Part IV of the Agreement that the occupier must pay the owner an annual pitch fee in monthly instalments. However, the Applicant has not demonstrated on the balance of probabilities that Ms Wilson-Jones, the Respondent to this application, is bound by that term.
20. The Tribunal also accepts that there is an express term at paragraph 3(b) of Part IV of the Agreement that the occupier must *'pay and discharge all....water rates which may from time to time be assessed charged or payable in respect of the home or the pitch (and/or a proportionate part thereof where the same are assessed in respect of the residential part of the park)...'* However, for the reasons set out above the Applicant has not demonstrated on the balance of probabilities that Ms Wilson-Jones is bound by that term either.
21. In relation to the implied terms contained in paragraph 21(a) and 21(b) of Schedule 1 of the 1983 Act relied on by the Applicant, in the absence of evidence that Oaklands Park is a protected site the Tribunal can give no weight to this aspect of the claim.
22. In its statement of case (paragraph 8) the Applicant says that on 13/10/2022 and 28/10/2022 the Applicant served notices on the Respondent requiring her to remedy her failure to pay the pitch fees or water charges due under the terms of the Agreement since February 2022. Neither of those notices, or evidence of service have been provided to the Tribunal.
23. Although it is said that the Respondent confirmed on 10/01/2023 that she would arrange to pay them once she had arranged a bank loan (indicating that the Respondent accepts liability for these charges), that communication has also not been produced in evidence to the Tribunal.
24. Given that in paragraph 9 it is said the Respondent has not been occupying the park home since 1/06/2021, the Tribunal is satisfied that evidence should have been produced both demonstrating that demands for payment and notices requiring the breach to be remedied have actually been properly served on the Respondent.
25. Whilst the Applicant has produced a statement of alleged arrears, no evidence has been produced demonstrating that the sums in that statement were lawfully due. No copies of recent pitch fee reviews have been produced nor any evidence regarding the water charges.

26. In all the circumstances and in the light of the lack of supporting documentary evidence to support the application, the Tribunal is not satisfied that it would be just to make the determination and Order sought by the Applicant.

Decision in respect of the application

27. The Tribunal refuses to make the determination sought that Ms Wilson-Jones is in breach of the terms of her Mobile Homes Act agreement by failing to pay her pitch fees and water charges.
28. The Tribunal refuses to make an Order that the Respondent must pay to the Applicant £2,763.89 (plus additional arrears up to today's date) within 14 days or at all.

Fees

29. The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party (which has not been remitted) pursuant to rule 13(2) of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013. Despite the directions of 4/01/2024, no application has been made for fees to be reimbursed.
30. In any event, as the application has been unsuccessful the Tribunal would have refused to make an order for the Respondent to reimburse the Applicant with the Tribunal application fee of £20.

Signed: R Cooper
12/03/2024

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. Any such application must be sent by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.