



FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER (RESIDENTIAL  
PROPERTY)

**Case reference** : **BIR/00CT/PHC/2023/0004**

**Property** : **1 Willow Court, Heathcote Park,  
Harbury Lane, Warwick, CV34 6SH**

**Applicant** : **Susan Beesley**

**Representative** : **n/a**

**Respondent** : **(1) Nic Allen - Avon Estates and (2)  
John Allen LLP**

**Representative** : **n/a**

**Type of application** : **An application under section 4(1)(a) of  
the Mobile Homes Act 1983 (as  
amended) for the Tribunal to  
determine any question arising under  
the Act or any agreement to which it  
applies.**

**Tribunal members** : **Tribunal Judge C Kelly**

**Venue** : **Paper determination**

**Date of decision** : **17 May 2024**

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**DECISION**

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## **This Application**

1. This is the determination of the Applicant's Application made pursuant to section 4(1)(a) of the Mobile Homes Act 1983 (as amended) ("the Act"), in which the Applicant seeks a determination of the following question:

*"The question arises in connection with term 7A (5) was the payment required by the site owner and paid by me of 10% of the valuation of the home I inherited from my mother ie £14,000 taken legally as this is only payable when the home is sold. If it was not taken legally, can I have my money returned to me? All I wanted was to live in my deceased mother's Park Home upon her death. I was the sole benefactor in her will of her estate. I did not reside with her nor did she gift it."*

("the Application")

## **Relevant Procedural History**

2. On 11 October 2023, the Tribunal issued directions for a determination of the Application. In those directions, the Tribunal recorded the question to be determined and provided that the Respondent must prepare a reply and bundle of documents setting out its position.
3. On 3 January 2023, John Allen LLP was added as the Second Respondent pursuant to Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chambers) Rules 2013 ("the Rules"). Nic Allen is a director of the company, John Allen LLP, and appears to be the correct respondent to these proceedings. It does not appear that there was any legal basis to join in Mr Allen personally as Respondent.
4. The Application was given permission to prepare a statement in response to the Second Respondent's position by 16 February 2024.
5. The parties agreed that this application could be dealt with on paper based the submissions made by them in writing.

## **Key background**

6. The Applicant inherited a mobile home sited on Pitch 1, Willow Court, Harbury Lane, Warwick, following the death of her mother. The residential park home estate is known as "Heathcote Park".
7. The Applicant had the original contract in respect of the mobile home with the Second Respondent. The document relied upon in the proceedings is an agreement dated 3 November 1997, which is expressed as being between "Jana Estates" and "Mr and Mrs R Lons" ("the Site Agreement"). Mrs Lons was the deceased's mother. It would seem that the interest of Jana Estates has passed to the Second

Respondent and there is no dispute that the Second Respondent is the owner of the site.

8. The Act implies a number of terms into any site agreement of this kind. The Site Agreement provides, insofar as relevant:

*“Sale of Mobile Home*

*8.(1) The occupier shall be entitled to sell the mobile home and to assign the agreement to a person approved of by the owner, whose approval shall not be unreasonably withheld.*

*(2) Where the occupier sells the mobile home, and assigns the agreement, as mentioned in sub-paragraph (1) above, the owner shall be entitled to receive a commission on the sale of at a rate not exceeding such rate as may be specified by an order made by the Secretary of State.*

*The maximum rate is presently fixed at 10% by the Mobile Homes (Commissions) Order 1983 (S.I 1983/748)*

*Gift of Mobile Home*

*9. The occupier shall be entitled to give the mobile home, and to assign the agreement to a member of his family approved by the owner whose approval shall not be unreasonably withheld.”*

9. On 7 January 2023, Mrs Lons passed away. Nobody was living with her at that time in the home. On 17 January 2023, the Applicant contacted Ms Sarah Vance, on behalf of the Second Respondent, to inform it that she was the beneficiary of the home.
10. On or about 20 January 2023, there was a conversation between the Applicant and Mr Allen, the essence of which, was that Mr Allen’s view was relayed that simply because the interest in the home passes via the will, does not mean the right to occupy it passes also. During the call, there was a discussion about securing a valuation of the home, and that payment of 10% of that sum would secure the Applicant the right to occupy.
11. A new agreement was reached, in writing, between the Applicant and the Second Respondent on or around 5 March 2023. The new site agreement provided for a pitch fee of £163.15 per month, and permitted the Applicant to occupy the home with effect from 1 March 2023 (“the New Site Agreement”).
12. On 21 June 2023, the Applicant emailed the Ms Sarah Vance, of Avon Estates, seeking clarification of the position concerning the £14,000 she paid upon reaching the March 2023 agreement, as she now wished to sell the home on, and she was told by the Second Respondent that the buyer would need to pay a further 10% of

the home's value. The Applicant believed the home would sell for £180,000, and thus, this was a further sum of £18,000 to be paid to the Second Respondent by reason of such sale. The Applicant suggested that only a further £4,000 should be payable, because £14,000 has been paid only a few months beforehand when she acquired the New Site Agreement.

13. The Second Respondent notes that the Applicant then sold her interest under the New Site Agreement to a third party.
14. On 28 June 2023, Mr Allen set out his position to the Applicant on behalf of the Respondent. He set out the position as he understood it, namely, that that:
  - 14.1. there was no legal entitlement for the Applicant to move into the mobile home upon her mother's death; and
  - 14.2. that as the Applicant wished to move in, agreement was reached to pay 10% of the market value, agreed at £14,000.
15. The Applicant then made this application to the Tribunal.

### **The parties' positions**

16. From the documents it is apparent that the important points agreed between the parties is that:
  - 16.1. the Applicant inherited the mobile home under the terms of her mother's will;
  - 16.2. the Applicant's mother was residing in the mobile home as her sole or principal home at the time of her death;
  - 16.3. the Applicant did not reside with her mother at the time of her death;
  - 16.4. an agreement was reached in March 2023, by which the Applicant agreed to pay, and did pay, the sum of £14,000 to the Respondent, in return for which she had was told she could occupy the home.
17. The Applicant relies upon the content of her application notice and the correspondence lodged with it before the Tribunal and a statement provided of the relevant background. She says that:
  - 17.1. she had confirmation from Mr Allen's secretary that it would be okay for to reside in the home, but that forms would be sent out for her to sign;

- 17.2. that Mr Allen contacted her a few days after speaking to his secretary, in which he said the only way for her to reside in the home was to pay 10% of the home's value;
  - 17.3. that alternatively, if the 10% premium was not paid, then the alternative would be to sell up; and
  - 17.4. that she believed she acted in accordance with the Act's requirements and that she was entitled to reside in the home as she was 67 years old.
18. The Respondent has made detailed submissions, in a document dated 2 February 2024, which is accompanied by a number of supporting documents. In essence, the Respondent's position is that:
- 18.1. the Applicant does not have standing to make the present application because, at the time of making it, she was not an occupier of the home under the Act;
  - 18.2. the issue before the Tribunal is about the arrangement between the Applicant and Second Respondent which falls outside of the ambit of the Act because the dispute does not relate to any issue under an agreement caught by the Act;
  - 18.3. section 3 of the Act is relevant, and in particular, sections 3(2)(b) and (4);
  - 18.4. the effect of section 3(4) of the Act means that the Site Agreement continued for her benefit, but did not permit her to take up occupation of the mobile home;
  - 18.5. that the Site Agreement excluded the right to gift the mobile home to a family member;
  - 18.6. the Applicant's legal entitlement was to sell the mobile home and to assign the Site Agreement, or to give notice to end it;
  - 18.7. that the Applicant was told she has no right to move into the mobile home;
  - 18.8. the Applicant agreed to obtain a market valuation of the mobile home and that if she paid 10% of that value, she would be permitted to reside in it (she did pay that sum and she did reside in it); and
  - 18.9. there is no liability to reimburse the sum of £14,000 to the Applicant.
19. In short the Applicant is concerned that the monies paid to the Respondent, representing 10% of the valuation of her mobile home and being £14,000, may not

have been lawfully demanded of her by the Respondent. She says she made that payment on 18 February 2023 and she says that the money was paid into the personal bank account of Nic Allen, who is a member of the John Allen LLP.

20. She asks whether the payment made can be returned to her if the payment was demanded unlawfully.

### **The Law and the Tribunals conclusions**

21. Neither party had the benefit of professional legal representation. I have sought to identify the relevant issues of law on behalf of the parties, taking account of the matters raised by them in their written submissions.

#### *(a) Jurisdiction*

22. I start with considering the jurisdictional issues raised by the Respondent. The jurisdiction of the Tribunal is conferred by section 4(1) of the Act. It is a broad jurisdiction and is stated in the following terms:

#### *“4 Jurisdiction of a tribunal of court*

##### *(1) In relation to a protected site ..., 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).*

*...”*

23. None of the subsections (2) to (6) are relevant in this case. The jurisdiction relates to *“any question arising under this Act or any agreement to which it applies”*.
24. Both parties proceed on the premise that the site is a protected site to which the Act would apply and so I do likewise. However, the Respondent’s argument is twofold: that the dispute is about a separate agreement entered into between the Applicant and the Respondent, under which, the Respondent permitted the Applicant to reside in the mobile home and (b) that the Applicant was not an occupier at the time of the application.
25. Dealing with the latter argument first, about occupancy, I find no merit in it. Firstly, nothing in section 4 restricts applications to occupiers. The jurisdiction is broader than that, and it is to deal with any question arising under the Act or any agreement to which it applies. Further, and in any event, the Application was made to the Tribunal in August 2023, at a time after which on the Respondent’s case, she has assigned her agreement to occupy the home that was reached in March 2023.

As such, the Respondent's position clearly recognises that the Applicant is disputing an issue which arises under the Act or any agreement to which it applies and there is no dispute that the Act's provisions applied to the agreements that existed between the parties.

26. Similarly, as to the second strand to the jurisdictional challenge, that the agreement disputed is not an agreement to which the Act applies, this is equally without foundation. The parties own documents clearly recognise that the Act applied and I have no doubt that it did so.

27. Section 1 of the Act states:

*"1(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."*

28. There is no disagreement about the fact that the purpose of the agreement reached in March 2023 was to permit the Applicant the right to occupy the mobile home as her only or main residence. I find it somewhat disingenuous on the part of the Respondent to make this assertion, given that its position throughout has been that the Act applies, and that its provisions entitle the Respondent to charge 10% of the value of the home to the Applicant on her seeking to move into the same.

29. There could no such occupation in the home without the right to station the mobile home on the site, and it follows in my judgment, that the New Site Agreement was a new agreement under the Act, which permitted the right to station the home on the site and to occupy it, and which itself was capable of being assignment for the benefit of the Applicant directly.

30. The Tribunal does therefore have jurisdiction to entertain the Application.

*(b) The right to occupy the home and demand payment of £14,000*

31. The Respondent's position is that section 3 of the Act is relevant, in particular, sections 3(3)(b) and (4). I set them out as follows:

*" 3.— Successors in title.*

*(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 is 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.”*

32. The Respondent's position is that section 3(4) means that *“the Site Agreement which continued for the Applicant's benefit did not allow her to take up occupation of the mobile home. That Agreement excluded the entitlement to gift the mobile home to a family member as well”*.

33. In *Barrs Residential & Leisure Limited v Pleass Thomson & Co (Executors of the Estate of the Late Colin Hearne)* [2020] UKUT 114 (LC), HHJ Bridge considered a succession in circumstances where a home was left to a beneficiary by reason of a variation to a will, which the FTT found did not pass, nor did the pitch agreement, by reason of the will itself by rather by reason of a subsequent deed of variation. In that appeal, which was uncontested, the appellant did not challenge the FTT's conclusion that section 3(4) did not apply, the point being, that because the home was said not to be left pursuant to the will, the agreement would not ensure for the benefit of the owner.



34. This case is different, because in my judgment, the Applicant did indeed become entitled to the home by reason of her mother's will. There is no concession in this case that section 3(4) does not apply and indeed, it is the Respondent's case that it does. In my judgment, it does apply. Fundamentally, the source of the Applicant's interest in the home is by reason of the will itself, the Applicant is the sole beneficiary under the will and whilst there was no specific legacy, identifying the home as being left to the Applicant, there was no need to do so in circumstances where she was the sole beneficiary.

35. The *Barrs Residential* decision is helpful to an FTT Judge determining an application of this kind on paper, without detailed submissions on relevant legal principles. In that case, the Upper Tribunal concluded that the combined effects of sections 3(3) and 3(4) of the Act was as follows:

*"31. The beneficiary under the deceased's will (or on the deceased's intestacy) may succeed to the mobile home itself. But if the beneficiary has not hitherto been occupying the mobile home, he may not then go into occupation of the mobile home pursuant to its pitch agreement. Not may have given the mobile home, with the benefit of that agreement, to members of his family as an occupier is generally entitled to do (subject to the occupier serving notice on the site owner and thereby permitting the site owner to apply for an order- a 'refusal order'-preventing the gift going ahead). What the beneficial is entitled to do is to sell the mobile home, and to assist with it the benefit of the pitch agreement. This is permitted by the terms contained in paras 7A and 7B of Schedule 1: which paragraph applies depends on the date the pitch agreement was entered into."*

36. There is no express term in the Site Agreement that conferred a right to occupy upon the death of the original occupier without such person being in occupation at the same time.

37. Therefore, in my judgment, the Applicant, having acquired title the home by reason of her mother's will, but not being in occupation at the time of her death, was not entitled as a matter of legal right to occupy the home.

38. There is then the question of whether some other agreement or principle gives rise to the right to occupy. To the extent that the Applicant relies upon the agreement reached with Mr Allen's secretary, the details of that agreement are not entirely clear, and indeed, the Applicant's position is that documents would need to be sent out for her to sign. There is no suggestion that these documents were ever signed, or indeed, that there was any form of consideration given in respect of the any agreement, if it can properly be called that, to occupy, that might be said to have arisen through Mr Allen's secretary.

39. The Applicant has not satisfied me that there was a legally binding agreement entered into with the Second Respondent by Mr Allen's secretary.

40. What is apparent, however, is that there was an agreement, and there seems no real dispute about his, in March 2003, the essence of which was to permit the Applicant to reside in the home. I am satisfied that there was such an agreement and indeed, that its effect was to permit the Applicant to reside in the home. There was a price to pay, however, for entering into the New Site Agreement, and it was the sum of £14,000, being 10% of the value of the home. I find that the Second Respondent was entitled to demand the payment of £14,000 as consideration for that agreement in the absence of the Applicant having any right to occupy the home on the site.
41. The other ground of resistance, that the right to gift the home was prevented by the Site Agreement, is not something that technically needs be to decided, albeit, it would seem that there is nothing in the Site Agreement that expressly forbids gifts, and indeed, there is an statutory implied term, at para 9 which states “9. *The occupier shall be entitled to give the mobile home, and to assign the agreement to a member of his family approved by the owner whose approval shall not be unreasonably withheld*”. This term, however, is a term which applies during the lifetime of the original contracting party and has no relevance where the home is inherited by a beneficiary through a will or upon intestacy.
42. Accordingly, for the reasons set out, the application is dismissed.

### **APPEALS**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission to appeal must be made to the First-tier Tribunal at the Regional Office which has been dealing with this 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 reasons for not complying with the 28-day time limit; the Tribunal will then look at such reasons and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. Any application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. provide the date, the property and case number) and set out the grounds of appeal and state the result the party making the application is seeking.

**TRIBUNAL JUDGE KELLY**

