EMPLOYMENT TRIBUNALS

Appellant: **Wyldecrest Parks Management Limited**

Respondent: **Rushcliffe Borough Council**

Record of a Judgment on a Preliminary Hearing by CVP at the Employment Tribunal

Heard at: **Nottingham**

Heard on: **10 September 2024**

Before: **Employment Judge M Butler (sitting alone)**

Appearances:

Appellant: **Mr D Sunderland, Director**

Respondent: **Ms A Walker, Solicitor**

JUDGMENT

The Judgment of the Tribunal is that the Health and Safety Act 1974 does apply to the premises that are the subject of an appeal against an Improvement Notice presented by the Appellant on 2 February 2024.

REASONS

Background

1. At a Preliminary Hearing before Employment Judge Shore on 3 July 2024 this Preliminary Hearing was listed and at clause 6 of the Order that Judge Shore provided:

   The purpose of the Public Preliminary Hearing is to:

6.1 Determine whether the Health and Safety Act 1974 applies to the premises that are subject of appeal against an Improvement Notice presented by the Appellant on 2 February 2024.

2. The Appellant presented its appeal on 2 February 2024. Bearing in mind the sole purpose of this hearing, the relevant grounds of appeal are:

   (i) The Appellant is not an employer, and the Health and Safety at Work Act does not apply.

   (ii) The land is domestic premises and not covered by the Health and Safety at Work Act.

   (iii) The land to be assessed is not in the ownership or control of the Appellant.

3. The Final Hearing of the appeal has been listed on 11 and 12 December 2024.

4. This appeal bears a remarkable resemblance to the appeal heard before Employment Judge Dyal on 25 and 26 November 2019. At that hearing, the previous Improvement Notice was upheld subject to modifications. For the purposes of this hearing, I do not need to consider many of the arguments put forward by the parties at the hearing before Judge Dyal. However, as I understand it, the principal difference between the previous appeal and the current appeal lies in who controls the land along the eastern boundary of the caravan site to which the Improvement Notice relies. At the previous appeal, the land in question formed part of a communal area on the site and, since then, it has been changed into three pitches where three caravans now stand.

5. The Case Management Orders made by Judge Shore had not been properly complied with. The Appellant has failed to set out in any detail other than in a single sentence the basis of the appeal on each ground identified. Accordingly, the Respondent was unable to amend its response to the appeal. The bundle of documents sent to the Tribunal on the day of the hearing runs to 206 pages and included the witness statement of Mr Sunderland and that of Mr Scotney, Principal Officer (Environmental Health Protection and Safety) of the Respondent.

6. The Appellant operates Radcliffe Park, which is a mobile home park in Wharf Lane, Radcliffe on Trent, Nottingham NG12 2AP. This is a residential caravan site. The caravans/mobile homes situated on the site are permanent residential dwellings and the owners pay rent and other charges to maintain the community areas. There is a site office and the Appellant maintains the roads, footpaths, a car parking area and grassed areas on site. The Appellant is also responsible for maintaining the concrete base upon which each caravan is situated.

7. The Appellant is one of about 20 companies within the group of companies which run over 100 caravan parks throughout the UK. The Appellant is a company with Directors but, according to Mr Sunderland, no employees. When maintenance and other works are required at the site these are either carried out by subcontractors or by employees of other group companies. Mr Sunderland was inconsistent in his evidence on this point initially saying the Appellant only employed subcontractors and subsequently saying that employees from other group companies did undertake

works at the site. He claimed that the Appellant was not responsible to subcontractors.

8. Mr Sunderland also claimed that, since the land across the eastern boundary now comprises three plots with caravans on them, any enforcement notice should be directed to the owners of those caravans who are responsible for maintaining the fences around their plots.

9. The Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999 are imposed on employers and the Appellant maintains that it is not an employer. Further, the Health and Safety at Work Act and the aforementioned regulations do not apply to domestic premises and Mr Sunderland submits that the plots and adjoining land on the park are domestic premises to which the legislation does not apply.

Conclusions

10. The discussions and evidence in this Preliminary Hearings covered many aspects of running the site which is the subject of the Enforcement Notice. Not all of those discussions were entirely relevant but I will give my conclusions in respect of all relevant grounds of appeal.

11. Firstly, the Appellant maintains that it is not an employer and so the Health and Safety at Work Act does not apply to it. If this is seriously being maintained, I find it to be a curious ground of appeal. Before Judge Dyal, the point was conceded by the Appellant. I refer to paragraphs 21 and 22 of that Judgment. Paragraph 21 provides:

    "I asked if this meant that the Appellant therefore accepted that it as an employer within the meaning of HSWA/Management of Health and Safety at Work Regulations 1999 and Mr Payne indicated that it did".

    Paragraph 22 provides:

    "Both parties were content for me therefore to proceed upon the basis that the Appellant is an employer and the duties under the said legislation apply to it". In relation to such factual concessions Judge Dyal said that he therefore had *"No duty to investigate or go behind factual matters that are conceded".*

    Accordingly, I find the Appellant is an employer for the purposes of the legislation.

12. Further, I do not accept Mr Sunderland's claim that subcontractors and employees of associated companies do not qualify as employees of the Appellant. Certainly, in the case of subcontractors, they could not simply turn up on site and begin work without being told what they had to do. There is no information before me as to whether these subcontractors are in reality workers or could be found by an Employment Tribunal to be employees. I consider, however, that the fact employees of associated companies are called upon to undertake work on the site is sufficient for the purposes of the Health and Safety at Work Act. To find otherwise would provide an escape clause for site operators which could never have been intended by Parliament.

13. The second ground of appeal is that the land in question is domestic premises and not covered by the legislation. I do not accept this submission. The site is a commercial enterprise and is run by the Appellant for profit. The argument that the legislation cannot apply to the Appellant because it has no ownership or control over the individual sites is artificial. Indeed, it flies in the face of the findings of Judge Dyal in the previous hearing where Judge Dyal found at paragraph 111 that the terms of the agreement between the Appellant and the residents of the plots provides *"The site owner can have access to the pitch for the better management of the park".*

14. The Appellant's ground of appeal in respect of ownership or control is thus artificial, not only for this reason, but because the site is leased by the Appellant from another group company. Ultimately, all of the group of companies are controlled by one holding company and it is an artificial argument to say that the legislation does not apply to the Appellant because it does not own the site. It does not own the site but certainly controls it.

15. As can be seen from my conclusions above, I do not accept any of Mr Sunderland's arguments that the legislation does not apply to the Appellant. It is somewhat inappropriate to run arguments which have already been determined in a previous hearing and it is even more inappropriate to have conceded a point in that previous hearing only to try and resurrect it in a subsequent hearing when circumstances have not changed.

16. I remind myself that this was a Preliminary Hearing only for the purposes of determining whether the legislation applied to the Appellant. The merits of the appeal itself will be determined at the Final Hearing in December.

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Employment Judge M Butler

Date: 11 October 2024

JUDGMENT SENT TO THE PARTIES ON

.....12 November 2024.....

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