



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

<b>Case reference</b>	<b>:</b>	<b>CAM/12UD/PHC/2024/0002</b>
<b>Site</b>	<b>:</b>	<b>Fenland Village Osborne Road Wisbech Cambridgeshire PE13 3JR</b>
<b>Park Home address</b>	<b>:</b>	<b>3 Fenland Village</b>
<b>Applicant</b>	<b>:</b>	<b>Tingdene Parks Limited</b>
<b>Representative</b>	<b>:</b>	<b>IBB Law LLP</b>
<b>Respondent</b>	<b>:</b>	<b>Kevin Wilson Denise Hockley</b>
<b>Type of application</b>	<b>:</b>	<b>Application under the Mobile Homes Act 1983 (the “Act”) Section 4 – to determine any question arising under the Act or an agreement to which it applies</b>
<b>Tribunal members</b>	<b>:</b>	<b>Mrs M Hardman FRICS - Chair Roland Thomas MRICS</b>
<b>Date of decision</b>	<b>:</b>	<b>17 February 2025</b>

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**DECISION**

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**Description of hearing**

This was a hearing by video. The documents we were referred to are those described in paragraph 2 below. We have noted the contents.

**Procedural history**

1. The Applicant owners of Fenland Village Osborne Road, Wisbech, Cambridgeshire PE13 3JR (the site owner) applied to the tribunal under section 4 of the Mobile Homes Act 1983 (the “**Act**”) to determine that there has been no lawful assignment to the respondents or that the respondents

must pay the balance of the sale commission of £10,700 said to be payable under the terms implied into the pitch agreement by “the person to whom the Mobile Home is sold”.

2. On 19 September 2024, the judge gave case management directions. These provided for the Applicant to produce a bundle of case documents in support of the application. The Applicant produced a witness statement from Charles Liebscher and a Statement of case on 4 November 2024 and referenced the application they had submitted. The directions then required the Respondents to produce their bundle, with copies of the original application documents and any further case documents. Nothing was received from the Respondents. The Applicant subsequently submitted a skeleton argument on 3 January 2025 together with a copy of the authorities to which they referred.
3. The hearing took place by video on 7 January 2025. It was attended by Mr Clements and Mr Liebscher for the Applicant. The Respondents, Mr Wilson and Ms Hockley attended as litigants in person.

## **Background**

4. The Applicant is the owner of Fenland Village, Osborne Road, Wisbech, Cambridgeshire PE13 3JR a protected site within the meaning of the Mobile Homes Act 1983 (‘the Act’).
5. The Respondents are the owners of the park home, 3 Fenland Village (the Mobile Home) at the above site.
6. Until 16 January 2023 the Mobile Home was owned and occupied by Mr Paul Sidney Johnson. Mr Johnson occupied it as his residence under the terms of an agreement (the Agreement) under the Act dated 13 June 2003. This Agreement was originally made between Mr and Mrs Atherfold and the Applicant site owner. It was passed to Mr Johnson on 27 April 2021 following his purchase of the Mobile Home from Mr and Mrs Atherfold and assignment of the Agreement to him.
7. Mr Johnson died on 16 January 2023 and his rights and responsibilities under the Agreement passed to his widow Mrs Susan Johnson. On 14 November 2023 Mrs Johnson sold the Mobile Home to the Respondents.

## **Law**

8. Primarily, the law is contained within the Mobile Homes Act 1983, as amended.

### **Section 4**

(1) 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)

9. The powers of the tribunal are enhanced by provisions introduced into the Housing Act 2004 by the Transfer of Tribunal Functions (Mobile Homes Act 2013 and Miscellaneous Amendments) Order 2014. So far as is relevant section 231A of the Housing Act 2004 states:

Section 231A: Additional powers of the First-tier Tribunal and Upper Tribunal

(1) The First-tier Tribunal and Upper Tribunal exercising 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 this Act has, in addition to any specific powers exercisable by them in exercising that jurisdiction, the general power mentioned in subsection (2).

(2) A tribunal's general power is a power 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.

(3) [directions under the Housing Act 2004]

(4) 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 by one party to the proceedings to another by way of compensation, damages or otherwise.

(b) [directions regarding pitch fees];

(c) (directions requiring cleaning, repairs etc)

(d) [directions regarding services or amenities].

### **The Applicant's case.**

10. The Applicant says that on 15 November 2023 they were informed by the Respondents that they had bought the Mobile Home on 14 November 2023 for £107,000. On 16 November 2023 they sent a Schedule 5 Notice of Assignment to the Respondents which they were asked to complete and return and an invoice for £10,700 representing the 10% statutory commission payable on sale of the Mobile Home and assignment of the Agreement to the Respondents.
11. The Respondents returned the form on 29 November 2023. However, the notice did not specify the correct date of assignment, which is in breach of Regulation 9(3)(d) or the correct purchase price for the Mobile Home, stating it to be £96,300.
12. The Respondents paid the Applicant £2,265.02 on 27 November 2023. The Applicants assumed this represented payment of the pitch fee for December 2023 of £265.02 and £2,000 towards the commission.
13. On 20 December 2023 the Applicant wrote to the Respondents stating that the full commission was due immediately and giving them until 9 January 2024 to pay the outstanding balance. However, the Respondents have failed to pay any further sum in respect of commission.

14. The Applicant is relying on terms implied into the Agreement by statute under Schedule 1, Part of the Act as amended. In particular they rely on

*Paragraph 7B(8) The person to whom the Mobile Home is sold (“the new occupier”) is required to pay the owner a commission on the sale of the Mobile Home at a rate not exceeding such rate as may be prescribed by regulations made by the Secretary of State*

*Paragraph 7B(9) Except to the extent mentioned in subparagraph (8), the owner may not require any payment to be made (whether to the owner or otherwise) in connection with the sale of the Mobile Home and the assignment of the agreement*

*Paragraph 7B(10) The Secretary of State may by regulations prescribe procedural requirements to be complied with by the owner, the occupier, a proposed occupier or the new occupier in connection with (a) the sale of the Mobile Home and assignment of the agreement; (b) the payment of commission by virtue of sub-paragraph (8) .*

15. They pointed the Tribunal to the regulations set out in paragraph 7B (10) Mobile Homes (Selling and Gifting) (England) Regulations 2013 (“the Regulations”). The relevant paragraphs of the Regulations for the purpose of this application are:

*The rate prescribed for the purposes of paragraphs 7A(5) and 7B(8) of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act is ten per cent of the purchase price of the mobile home*

*Regulation 9(2) Within seven days of the assignment, the assignee must serve on the owner a notice of the assignment which complies with the requirements of paragraphs (3) to (8) below (a “notice of assignment”).*

*Regulation 9(3) In every case, the notice of assignment must specify... (d) the date of assignment of the agreement.*

*Regulation 9(4) In the case of a sale of a mobile home, the notice of assignment must also (a) specify the purchase price of the mobile home and the amount of commission which the assignee is required to pay to the owner under paragraph 7A(5) or 7B(8) of Chapter*

2 of Part 1 of Schedule 1 to the 1983 Act (as the case may be); and (b) contain an explanation of the requirements prescribed by regulation 10 (payment of commission).

*Regulation 10(1) As soon as practicable after receipt of the notice of assignment, the owner must provide details of the bank account into which the owner wishes the assignee to pay the commission which the assignee is required to pay to the owner under paragraph 7A(5) or 7B(8) of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act (as the case may be).*

*Regulation 10(2) Within seven days of receipt of those details, the assignee must pay the commission into the bank account.*

*Finally, section 3(2) of the Act 1983 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.*

16. They drew the tribunals attention to a number of authorities which they said supported their argument of the effect of failure to comply with the requirements for a legal assignment.
17. In *Barrow v Isaacs & Son [1891] 1 QB 417* the Court of Appeal found that, in forfeiture proceeding relating to a lease, failure by the lessee to seek permission to sublet part of the premises was in breach of the terms of the lease. In consequence the purported subletting was of no legal effect and the lessor was entitled to possession
18. In *Eastern Telegraph Co. Ltd v Dent and Others (1899) 1 QB 835* the Court of Appeal found that failure to seek consent meant the lessors had a legal right under the contract which they could enforce by coming to the Court. Similarly in *Wilson v Fynn & Others [1948] 2 All ER40* the C of A held that the proviso that consent was not to be unreasonably withheld to underletting did not do away with the need to ask for consent nor that the lessor should have granted retrospective consent.
19. In *Ron Grundy (Melbourne) Ltd v Boneheyo (1993) 1 All ER*, in upholding a decision that there had been a lawful assignment of an agreement to which

the Mobile Homes Act applied, part of the Courts reasoning was that the owner's approval had been sought and unreasonably withheld before the assignment was executed and that consequently the prescribed process had been followed.

20. The same principle was upheld in another case involving the purported assignment of an agreement regulated by the Mobile Homes Act 1983, *Michael Wenman Limited -v- Forsyth & 1 other* ([2003] Watford County Court, unreported), in which the court held that there had been no lawful assignment of the agreement where the parties had failed to follow the prescribed contractual and statutory process for assigning a Mobile Homes Act agreement, including failing to pay the correct commission to the site owner.
21. The Applicant argued that the clear principle which emerged from these decisions was that where a contractual – or in this case a statutory implied term - prescribes that particular procedure must be followed in order to effect a lawful assignment of an agreement, there can be no lawful assignment of the agreement unless that procedure is followed.
22. The result of the Respondents not paying the full 10% commission to the Applicant was that there had been no lawful assignment of the Agreement. The Agreement remained with the estate of Mr Johnson and the Respondents were trespassers.
23. In the alternative, if the tribunal held that the assignment of the Agreement was lawful then they sought a determination that the Respondents pay the balance of the commission, £8,700 within the next 7 days.
24. The tribunal asked the Applicant if they had accepted the payment of the pitch fee from the Respondents. They said that they had accepted it as damages for the use and occupation of the pitch, although the Respondents had missed two months' payments and had not paid for use of water.

#### **The Respondent's case.**

25. The tribunal did not receive any written submissions from the Respondent's but allowed them to make oral submissions at the hearing.

26. Mr Wilson agreed that they had paid £107,000 for the home and knew that they had to pay £10,700 to the Applicant site owner as part of that purchase price.
27. Mr Wilson said that they had paid £2,000 of the commission fee but that a member of the family had stolen £8,000 from their account and they could not pay the remainder. The Applicant had proposed that they pay £725 per month which they could not pay.
28. They had informed the Applicant of their circumstances and asked to pay £500 per month on 4 January 2024 which was refused. They felt that if that had been accepted, they could have paid the sum off by now. They relied on Universal Credit as Mr Wilson worked in the building trade and the work was seasonal.
29. They had sought advice from Citizens Advice, but they were unable to assist.
30. In short, they did not have the £8,700 to pay the Applicant.

### **Discussion and Determination**

31. The basic facts of this case are agreed between the parties. The Respondents purchased a mobile home – 3 Fenland Village – from Mrs Johnson in November 2023 for £107,000.
32. The Applicant claims that they are entitled to a commission payment of £10,700 as part of that sum. The Respondents were aware of this and do not disagree.
33. The Respondents have paid the Applicant £2,000. £8,700 in respect of the balance of the commission is still outstanding. Again, this is agreed.
34. It is also agreed that the consent of the site owner was not required in advance of any sale and assignment, this being a ‘new agreement’ – one which started or was assigned after 26 May 2013.
35. The tribunal is being asked by the Applicant to find that the result of the Respondents not paying the full 10% commission to the Applicant is that there had been no lawful assignment of the Agreement. The Agreement remains with the estate of Mr Johnson and the Respondents are trespassers.
36. The Applicant cites a number of authorities in respect of its case. The first three of these are *Barrow v Isaacs & Son [1891]*, *Eastern Telegraph Co.Ltd v Dent and Others (1899)* and *Wilson v Fynn & Others [1948]*. These are all in respect of leases and the legal implications of failure to inform the lessor of a subletting. In each the lease required that the lessor was informed and that they could not withhold their consent unreasonably or arbitrarily. This is not the issue here. There was no requirement for the Respondents to give advance notice of their intention to buy the Mobile Home nor to take an assignment of the Agreement. The tribunal appreciates that the Applicant is not suggesting that this is the case, merely

that they illustrate that failure to follow a prescribed procedure means there is no lawful assignment. The tribunal is not persuaded that these assist in any way in the current case, being too remote from the circumstances of the case.

37. They further cite *Ron Grundy (Melbourne) Ltd v Boneheyo (1993)*, a case under the Mobile Homes Act 1983. However, this is a very different situation from the matter under consideration and relates to whether sufficient notice of assignment was given, notice which by its nature was a precursor to the transaction.
38. In the final case *Michael Wenman Limited -v- Forsyth & 1 other* ([2003] , the Tribunal's reading of that case is that there was a shortfall in the payment of the commission due to the purchase price being understated. However, the issue in dispute appears to be whether, at the date the deal between the outgoing and incoming mobile home owners was concluded, the required consent had been sought from the owner. The Judge found that it had not, or if it had, it had not been unreasonably withheld. There was no finding on the payment of commission other than to state that '*to suggest that consent could be conditional on the payment of the balance of any commission is in my view meaningless in the context of a non landlord and tenant case for where there is not the sanction of forfeiture in the event that conditions attached to the consent are not complied with*'
39. The Tribunal finds that the assignment of the Agreement is a contract between the outgoing and incoming mobile home owners – in this case Mrs Johnson and Mr Wilson and Ms Hockley. Schedule 1, Part 1 , 7(2) refers – '*where the agreement is a new agreement the occupier is entitled to sell the mobile home and to assign the agreement to the person to whom the mobile home is sold referred to in this paragraph as the new occupier without the approval of the owner*'.
40. It is only several paragraphs later that the Act states Schedule 1, Part 1 , 7(5) '*the new occupier is required to pay the owner a commission on the sale of the mobile home at a rate not exceeding such rate as may be prescribed by regulations made by the Secretary of State.*'
41. The Tribunal is not persuaded by the arguments of the Applicant and finds that the assignment takes place, and consequent on the assignment is the payment of the commission. The validity of the assignment is not subject to the payment of the commission. The commission is payable because there has been an assignment.
42. The Tribunal has considered whether the errors on the Schedule 5 Notice of Assignment Form render the assignment unlawful. The Applicant asserts that the purchase price is incorrect, and the date of assignment is incorrect.



43. The purchase price and commission shown in Section 2 total the £107,000 paid for the home. The commission is correct and the date of agreement is omitted but the Respondents had already informed the Respondents of the date of purchase.
44. The Tribunal finds that these errors do not render the assignment of the Agreement unlawful – it is a form to be completed by the assignee and sent to the site owner within 7 days of the assignment of the agreement taking place and not an intrinsic part of the assignment.
45. The Tribunal does find on the Applicant's argument in the alternative. The Respondents must pay the balance of the commission of £8,700 to the Applicant. The Tribunal enquired of the Applicant as to their view on payment in instalments and they, not unreasonably, said that they had offered an instalment plan, but some 14 months had now passed since that offer. On that basis the Tribunal directs that the Respondents pay the £8,700 to the Applicant within 28 days of receiving this decision.

**Name:** Mary Hardman FRICS      **Date:** 17 February 2024

#### Annex 1

#### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).