



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

Case Reference : CAM/42UE/PHC/2017/0003

Property : Blueleighs Park, Chalk Hill Lane,
Great Blakenham, Ipswich IP6 8SA

Applicant : Wyldecrest Parks (Management) Ltd

Respondent : Ms Wendy Haywood

Date of Application : 3rd March 2017

Type of Application : For determination of a question arising
under the Mobile Homes Act 1983 or an
agreement to which it applies – section 4
of the Mobile Homes Act 1983 as
amended (“the Act”)

Tribunal Members : David S Brown FRICS (Chair)
Bruce M Edgington (Judge)

Date of Decision : 18th April 2017

DECISION

The application is struck out under Rule 9(3)(d) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, as it is an abuse of process.

STATEMENT OF REASONS

1. Wyldecrest Parks (Management) Ltd (“Wyldecrest”) has submitted an application under section 4 of the Mobile Homes Act 1983, requesting determination on the following issues:-

That Wyldecrest is the “owner” of Blueleighs Park as defined in section 5(1) of the Mobile Homes Act 1983 (as amended) and has been the owner of the Park since 1st August 2011.

That as the “owner” of the Park, Wyldecrest is the party with the responsibility of ensuring that the obligations placed on the owner within the Mobile Homes Act 1983 are complied with and in particular

that those under Chapter 2 Part 1 of Schedule 1 to the Act (the Implied Terms) are complied with including the obligation set out in Implied Term 22(c) to be responsible for repairing the base on which the mobile home is stationed.

The Tribunal is requested to make an order to clarify that Wyldecrest, which is the “owner” by virtue of a leasehold title to the Park, is the “owner” of the Park in accordance with section 5(1) of the Act.

Wyldecrest is the holder of the leaseholder title for Blueleighs Park.

2. There is a degree of repetition in these requests. In essence, Wyldecrest is seeking a determination that it is the owner of the Park as defined in section 5(1) of the Act, with the responsibilities that that entails, and has been since 1st August 2011.

The Law

3. Section 4 of the Act provides that –
In relation to a protected site in England or Wales 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) .
Subsections (2)-(6) set out various restrictions which do not apply in this case.

The Application and Background

4. In a letter accompanying the application, Mr Sunderland of Wyldecrest stated:
“It is drawn to the attention of the Tribunal that the Respondent has issued proceedings in the High Court of Justice Queen’s Bench Division Technology and Construction Court naming three separate Defendants, including the Applicant, as parties responsible for complying with the obligations placed upon the “owner” under the terms of the agreement.

This application is solely to determine the identity of the “owner” of Blueleighs Park, Great Blakenham, Ipswich IP68SA and thereby the identity of the parties to the Respondent’s agreement. This application is in isolation to the above mentioned civil proceedings and in no way seeks to oust the jurisdiction of the High Court of Justice to deal with the matters raised in those proceedings.”
5. The Tribunal Chair caused a letter to be written to Mr Sunderland stating that as proceedings had been issued in the High Court to determine the identity of the “owner”, which is the same question as in this application, the application appears to be an abuse of process.
6. In response, Mr Sunderland explained,

“The application in the High Court by the Respondent relates to obligations under the Implied Terms of the Mobile Homes Act 22(c) for the Owner to repair the base on which the mobile home is stationed. Where the covering letter states “This application is solely to determine who the correct party to the Respondent’s agreement”, what is meant by “This application” is the application to the Tribunal not the application to the High Court. Apologies if the covering letter appeared ambiguous in any way.....

..... The Applicant is not abusing process but is simply asking the Tribunal to answer a question arising under the Mobile Homes Act or an agreement to which it applies as detailed on the application form, that question in essence being a determination as to whom is the “owner” as defined in Section 5(1) of the Act.”

7. The Chair responded –

“The Chair cannot see how your application to the Tribunal does not encroach onto the jurisdiction of the High Court in that case.

Presumably Wyldecrest Parks (Management) Limited has asserted or will assert in the High Court proceedings that it is the site owner and each of the other two respondents in that case will presumably put forward a defence that it is not the site owner and the High Court will have to determine who is the owner. Irrespective of its jurisdiction under section 4, the Tribunal cannot consider the question of the ownership while it is a live issue in High Court proceedings because it would be an abuse of process.

If you still maintain that there is no abuse of process and wish to make further representations, please do so within the next fourteen days and include a copy of the claim in the High Court. This correspondence is being copied to Ms Haywood who will also be given an opportunity to make representations.....

On or after 14th April, a decision will be made whether or not to strike out the application under Rule 9 of The Tribunal Procedures (First-tier Tribunal) (Property Chamber) Rules 2013, as an abuse of process.”

Mr Sunderland replied by providing the documents requested.

8. The Claim Form in the High Court proceedings (Claim No. B40B5118) cites Wyldecrest Parks (Management) Limited as the Third Defendant.
9. The Claimant, Wendy Haywood, seeks an injunction requiring the Defendants to abate the nuisance suffered to her property at 49 Blueleighs Park, caused by the acts/omissions of the Defendants and their servants/agents/employees and seeks injunctive relief with damages in the alternative.
10. In her Amended Particulars of Claim, Ms Haywood acknowledges that the Third Defendant has, since 1st August 2011, held the leasehold title to her

pitch and Blueleighs Mobile Home Park. She refers to changes of ownership, including the grant of the lease to Wyldecrest Parks (Management) Ltd and alleges that the obligations of the First Defendant under her mobile homes agreement are binding on the Second Defendant or alternatively on the Third Defendant pursuant to the lease.

11. Her claim relates to defects in the concrete base on which her home stands and includes the assertion that the Second Defendant or, alternatively, the Third Defendant is in breach of the Mobile Home Agreement by failing to carry out a proper repair of the defective pitch or causing or permitting inadequate repairs to be carried out.
12. Her claim continues –
“By reason of the breach of contract and negligence of the First and Second and Third Defendants the Claimant has sustained loss and damage” and she claims an order for specific performance, damages, interest and costs.
13. An Amended Defence has been filed on behalf of all three Defendants. It admits that since 1st August 2011 the Third Defendant has been the successor in title to the First Defendant, in accordance with section 3 of the Mobile Homes Act 1983 and so is bound by the obligations under the Mobile Homes Agreement. It is denied that the Third Defendant is in breach of the Mobile Home Agreement or that the Claimant has suffered any loss.
14. In an accompanying letter to the Tribunal, Mr Sunderland states that the concrete base has been repaired and so the High Court’s focus in the proceedings will be whether or not Ms Haywood is entitled to the compensation claimed as a result of alleged loss and damage. He denies that such a determination of the current application to the Tribunal encroaches on the jurisdiction of the High Court particularly in circumstances where any such decision will not necessarily be binding on the High Court.
15. Mr Sunderland adds, *“The High Court is not being asked in the civil proceedings to determine the identity of the site owner instead it is being asked to assess whether or not the Respondent is entitled to compensation. To the extent that it is necessary for the Court to consider the identity of the site owner of the park (if the Respondent is successful in the claim) that is secondary to its role of assessing whether or not any compensation is payable to Ms Haywood and the issues and evidence before the two forums will be different.”*
16. Mr Sunderland then argues, *“If the Tribunal was to strike this claim out, any other resident on the park could make an application to determine this same point with the current Applicant as a Respondent or alternatively the Applicant could issue the Application against another resident as Respondent and any such determination could be introduced as evidence in the civil proceedings. The Applicant asserts that that is wholly unsatisfactory and whilst the matter remains undetermined uncertainty abounds on the park.”*

17. Mr Sunderland refers to a case where the Tribunal accepted an application in a case which was also subject to County Court proceedings and to a case determined by another Tribunal in respect of the ownership of a different site, neither of which is relevant to our decision today.
18. He adds, *“The matter in the High Court although related, does not seek to determine the identity of the site owner and it could in fact be argued that the High Court has no jurisdiction to do so as that lays with the Tribunal. In any event a determination by the Tribunal would assist not only the Applicant but the Respondent as well in determining this point in the no costs forum that is the Tribunal rather than the high costs environment of the High Court or even County Court. It would in other words be a proportionate means via which to address this issue. This was the purpose of the powers of the Courts being devolved to the Tribunal – in order to create a low cost less formal environment without the need for legal representation in which matters of dispute could be determined.”*

Discussion and Decision

19. We do not accept the arguments put forward by Mr Sunderland. We certainly do not accept that the High Court does not have jurisdiction to determine the identity of the owner of the site in its proceedings.
20. If there remains no basis for the granting of an injunction by the High Court because the base has been repaired, the Court will still have to determine the question of compensation and if it decides that compensation is payable it will have to decide by whom and that will depend on which Defendant the High Court determines to be the owner.
21. Therefore, the question of the ownership of the site is a live issue in the High Court proceedings. Under these circumstances, it would clearly be an abuse of process for this Tribunal to trespass upon the ongoing proceedings in the High Court by making a determination about the ownership.
22. The facts that section 4 gives this Tribunal jurisdiction to determine a question arising under the Act or an agreement to which it applies and that a decision by this Tribunal would provide a convenient ‘no costs’ determination of the question of ownership do not eradicate that abuse.

D S Brown FRICS (Chair)

ANNEX - 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.