

UPPER TRIBUNAL (LANDS CHAMBER)



UT Neutral citation number: [2020] UKUT 114 (LC)  
UTLC Case Number: LRX/113/2019

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

*PARK HOMES – SUCCESSION – Mobile Homes Act 1983, section 3 – Variation of will of deceased occupier – Effect on succession to mobile home and pitch agreement by deceased's son who was not himself occupying mobile home*

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST TIER  
TRIBUNAL (PROPERTY CHAMBER)

BETWEEN:

**BARRS RESIDENTIAL & LEISURE  
LIMITED**

**Appellant**

**And**

**PLEASS THOMSON & CO  
(EXECUTORS OF THE ESTATE OF THE  
LATE COLIN HEARNE)**

**Respondent**

**Re: Mobile Home and Pitch,  
Bristol Hill Park,  
Shotley Gate,  
Ipswich,  
Suffolk, IP9 1PY**

**His Honour Judge Stuart Bridge  
27 February 2020  
Royal Courts of Justice**

*Guy Adams*, of counsel, instructed by Apps Legal Limited, for the appellant  
The respondents did not oppose the appeal and were not represented

The following case is referred to in this decision:

*Elleray v Bourne* [2018] UKUT 3 (LC); [2018] EGLR 11

## **Introduction**

1. This is an appeal by the owner (the “site owner”) of a mobile home park. Such sites accommodate mobile homes which are owned and occupied by individuals (“occupiers”) and which are stationed on a pitch on the site under the terms of a contract (a “pitch agreement”). The pitch agreement is not a tenancy. In this case, when the occupier of a mobile home died, he left a will. That will was later varied with the intention that the occupier’s son, who had not previously been living in the mobile home, would succeed to the home with the benefit of the pitch agreement. The question in this appeal is whether in these circumstances the intention that the son succeed had been realised.
2. The FTT found that neither the mobile home nor the benefit of the pitch agreement had passed to the son and that accordingly they both remained part of the deceased’s estate. The site owner has appealed this decision, contending that the mobile home was now the property of the occupier’s son but that the son could not enjoy the benefit of the pitch agreement.
3. The appeal is not opposed. A hearing took place on 27 February 2020 which was attended by counsel for the appellant. When permission to appeal was granted by the Tribunal on 31 October 2019, it was directed that if the executrix of the estate wished to participate in the appeal as a respondent she must file a respondent’s notice and grounds of opposition with the Tribunal by 28 November 2019. No communication has been received. It follows that the estate has ceased to be a respondent: see Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, rule 25(2). It remains necessary, if this appeal is to succeed, for the Tribunal to be satisfied by the appellant that the appeal should be allowed.
4. The salient facts of this appeal, which is by way of review, and involves construction of the mobile home legislation, notably the Mobile Homes Act 1983 as amended, are not in dispute. This decision begins by explaining the statutory context.

## **The statutory context**

5. The broad purpose of the mobile homes legislation is to provide regulation of the relationship between mobile home occupiers and those who own the sites on which the home is stationed. In doing so, it gives effect to the recognition by Parliament of the relative vulnerability of many mobile home occupiers and the imbalance in the bargaining positions of occupiers and site-owners. Mobile home occupiers are given a degree of protection, and a security of tenure, which goes beyond that which would be afforded by the terms of the contract negotiated with the site-owners, this being achieved by the statutory imposition of terms into those contracts.
6. It must be said that the legislation, in part because of the number of amendments that have been made over the years, is far from straight-forward to follow: indeed, it must be virtually impenetrable to those owning and occupying mobile homes, as well as the site owners, who seek ready access to the legislative provisions setting out their respective rights and obligations. As with much legislation in the general area of property law it is

essential that those using it are aware of the dates of the relevant agreements they are seeking to interpret.

### *The scope of the legislation*

7. The Mobile Homes Act 1983, as amended, provides by section 1 that the 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. This is the pitch agreement to which I have already referred.
8. A mobile home is defined as “any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer).” It includes “any motor vehicle so designed or adapted”, but neither railway rolling stock (which is for the time being on rails as part of a railway system) nor a tent. This definition is to be found in section 29(1) of the Caravan Sites and Control of Development Act 1960 where it was the definition for the term “caravan”.
9. The term “protected site” is one of some complexity: in brief, it is a site which requires a site licence (excluding licences granted for holiday use only or licences permitting homes to be stationed for only part of a year). It is not however an issue which requires any analysis in this case, as it has always been accepted that the site, owned by the appellant, where the mobile home is stationed is a protected site.
10. Prior to entering into a pitch agreement (at least 28 days’ notice being required) the site owner must give to the intending occupier a written statement containing the express terms to be included in the agreement and the terms to be implied by statute, as well as the names and addresses of the parties and the particulars of the land: 1983 Act, section 1(2). There are sanctions for failure to comply with these provisions: express terms not set out in the written statement will be unenforceable unless dispensation is granted by the FTT. These are measures intended to promote transparency, to protect the mobile home occupier and to ensure that he or she enters into the agreement fully aware of its legal consequences.

### *The pitch agreement*

11. The central distinction which underpins the legislation is that between the mobile home itself- the moveable structure designed or adapted for human habitation as defined above- and the pitch agreement. It is the pitch agreement which confers rights and obligations on the occupier of the mobile home and which is regulated by the Mobile Homes Act 1983 and the ancillary regulations.
12. The mobile home and the pitch agreement are legally distinct. A mobile home is a chattel, and a pitch agreement is a contract. A person may be the owner of a mobile home but not

have the benefit of (that is, the rights conferred by) or for that matter the burden of (the obligations imposed by) a pitch agreement.

13. Section 2 is central to the legislative regime. It imports into pitch agreements (that is “any agreement to which this Act applies”) a number of terms which will have effect regardless of any express terms contained in the written agreement (s.2(1), the terms being set out in Part I of Schedule 1 to the Act). It confers on the FTT the power, exercisable at its discretion, to order that other terms be implied into the agreement (s.2(2), the matters being set out in Part II of Schedule 1) and to vary or delete any of the express terms (s.2(3)), the FTT being required on application to make such provision as it considers just and equitable in the circumstances: s.2(4).
14. Schedule 1 contains the implied terms, substantial changes being made to these (by way of amendment of the 1983 Act) by the Mobile Homes Act 2013. It is an important part of the Act as it contains the system of security of tenure as well as setting out the circumstances in which occupiers can alienate their mobile homes. It is divided into chapters. Chapter 2 applies in this case as the protected site is not a gypsy and traveller site.

#### *Security of tenure*

15. Paragraphs 1 to 5A concern security of tenure. The Schedule provides that the right to station the mobile home is not affected by the expiry, refusal to issue or renew, or revocation of the site licence (para 1), although the right is not to extend beyond the date of determination of the site owner’s interest in the land or beyond the date of expiry of planning permission for the use of the site for mobile homes (para 2). The occupier is entitled to terminate the agreement by four weeks’ written notice (para 3).
16. However, the site owner may only terminate the agreement by obtaining a determination from “the appropriate judicial body” (in most circumstances that is the FTT) (1) that it is satisfied of one of three grounds and (2) that it considers it reasonable for the agreement to be terminated.
17. Those three grounds are:
  - (1) that the occupier has breached a term of the agreement and has not complied with a notice to remedy the breach within a reasonable time (para 4);
  - (2) that the occupier is not occupying the mobile home as his only or main residence (para 5);
  - (3) that, on an application by the site owner, the tribunal has determined that, having regard to its condition, the mobile home is having a detrimental effect on the amenity of the site (para 5A).

#### *Alienation of pitch agreement (by sale and by gift)*

18. Before the Mobile Homes Act 2013, it was normal for pitch agreements to stipulate that the site owner's consent was required before the agreement could be assigned to a third party. That is no longer the case, as implied terms facilitating alienation have been introduced both in relation to agreements entered into (or assigned) after 26 May 2013- "new agreements"- and in relation to agreements entered into on or before that date- in effect "old agreements". As this appeal concerns an old agreement, paragraph 7B is the relevant provision.
19. Under the regime introduced by the 2013 Act, the occupier is entitled to sell the mobile home and assign the pitch agreement without the site owner's approval. The site owner has however the right to object to the sale, and it is for the tribunal to decide whether that objection is reasonable in all the circumstances.
20. The two conditions set out in paragraph 7B (one of which must be satisfied by the occupier) reflect the two ways in which the issue may arise: where the occupier initiates the process; or where the site owner seeks to prevent sale by making application to a tribunal for an order preventing sale and assignment. The first condition (paragraph 7B(2)) is, therefore, that the occupier has given notice of his or her intentions, serving on the owner a "notice of proposed sale". The second condition (paragraph 7B(3)) is that the occupier does not receive notice within 21 days that the owner has applied to a tribunal for an order preventing sale and assignment; or the owner's notice is received, application is duly made, and the "refusal order" sought by the owner is declined by the tribunal.
21. Where there is a sale of a mobile home, there are further protections for the occupier. The purchaser (the new occupier) may be required to pay a commission to the site owner (para 7B(8)). The level of the commission chargeable is however capped (currently at 10 per cent of the value of the mobile home) and no other payment may be required to be made to the owner or otherwise "in connection with the sale of the mobile home and the assignment of the benefit of the agreement" (para 7B(9)). The new occupier is also protected by the implication of terms whereby the outgoing occupier must provide certain prescribed documents and other information 28 days before completion save where the time is reduced by consent in writing.
22. Paragraph 8B entitles the occupier to give the mobile home and assign the pitch agreement to a member of his or her family without the site owner's approval. Again, conditions must be satisfied: there must be proper notice to the owner, in this case a "notice of proposed gift", and the owner has 21 days to apply to a tribunal for a refusal order. The owner may not require any payment to be made in connection with the gift of the mobile home and the assignment of the agreement (para 8B(8)).
23. These implied terms are supplemented by regulations, the Mobile Homes (Selling and Gifting) (England) Regulations 2013 ("the 2013 Regulations") which include prescribed forms which must be used in connection with the sale or gift of a mobile home, as well as making provision for payment of commission on completion of the assignment. It is not necessary to refer to any of the forms here. That is something of a relief, as they have been aptly described by the Tribunal in *Elleray v Bourne* [2018] UKUT 3 (LC); [2018] EGLR 11 at [16] as "both unclear and contradictory".

24. The remainder of Chapter 2 imports further implied terms into pitch agreements. It is not necessary to set these out in detail here. In brief, the occupier is entitled to quiet enjoyment of the mobile home and its pitch. The site owner has limited rights of entry to the pitch (but not the home itself) and may re-site the home on another pitch within the site on certain conditions being satisfied. The occupier is obliged to pay the pitch fee together with service charges and the extent to which the owner may change the sums charged is regulated. The occupier is obliged to keep the mobile home in repair and maintain the pitch in a clean and tidy condition, the remainder of the site extraneous to occupiers' pitches being the responsibility of the site owner.

*Successors in title*

25. Section 3 is headed "Successors in title" and it is central to the determination of the issues in this appeal.

26. Section 3(1), which applies to the owner of the protected site, states:

"(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."

27. Section 3(2) applies to the occupier. It states:

"(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."

28. Both the above provisions appear to apply to life-time transfers of the benefit or burden of the pitch agreement. They operate on a lawful assignment of the site, or the mobile home, so that the purchaser (of the site or the home as the case may be) can enforce, and be bound by, the obligations contained within that agreement.

29. Sections 3(3) and 3(4) are relevant on the death of an occupier. They provide as follows:

"(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 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, 8A, 8B or 9 of Chapter 2... of Part I of Schedule 1 to this Act.”

30. The meaning of section 3(3) is tolerably clear. However, the meaning of section 3(4), and its consequential effect upon section 3(3), is more elusive. It is necessary to interpret these provisions in the context of the general law of succession, and once that is done, it becomes possible to understand their combined effect. In my judgment, that effect is 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. Nor may he give 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 beneficiary is entitled to do is to sell the mobile home, and to assign 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.
32. The underlying policy which these provisions advance is to allow the deceased’s partner (whether widow, widower or civil partner) or members of the deceased’s family who have been living with the deceased in the mobile home to continue to live in the home and to enjoy the benefit of the pitch agreement. But at the same time, the legislation respects the deceased’s testamentary freedom, and so if the deceased leaves a will the effect of which is that the person living with him (say his widow) does not obtain the mobile home the statute will not allow the widow to continue in occupation. This is because the widow will not be “entitled to the mobile home” as required by section 3(3).
33. By way of balancing competing interests of occupier and site owner, the legislation acknowledges the investment of the latter. The significance of the successor (who is neither a member of the deceased occupier’s family nor has been residing with the deceased in the mobile home) being permitted to sell, but being prohibited from occupying the home or giving it away, is that the site owner may reasonably withhold its approval, and in the event of sale taking place is able (subject to the terms of the pitch agreement) to obtain a commission. The level of commission is itself capped at 10 per cent of the sale price of the mobile home: regulation 8 of the 2013 Regulations. No such opportunity arises where the mobile home is given away, or where the beneficiary himself goes into occupation in accordance with section 3(3)(a).



34. Were the beneficiary simply able to take up occupation, and then continue in occupation with the statutory security of tenure conferred on mobile home occupiers by the 1983 Act, the site owner would be denied the opportunity to object or to obtain commission. The same would apply in the event of an *inter vivos* gift being made of the mobile home. In either case the site owner may have to wait a long time- quite possibly the length of the life of the beneficiary or donee- before it could realise its investment in the pitch being occupied by the mobile home.

### *Jurisdiction*

35. Section 4(1) confers jurisdiction on the FTT:

- (1) to determine any question arising under the 1983 Act or any agreement to which it applies; and
- (2) to entertain any proceedings brought under the 1983 Act or any such agreement.

Subject to certain exceptions, not relevant to the current appeal, contained in sub-sections (2) to (6) inclusive of section 4, this provision gives the FTT a very broad power to determine "any question" or entertain "any proceedings" under the 1983 Act or an agreement to which it applies.

### **The facts**

36. The deceased, Mr Colin Hearne, was the owner of a mobile home known as "Watersmeet". Mr Hearne (hereafter "the deceased") died on 26 January 2018. At the time of his death he was occupying the mobile home which was stationed on a mobile home park, known as Bristol Hill Park, Shotley Gate, Ipswich, Suffolk IP9 1PY. The park is a protected site within the Mobile Homes Acts.
37. There has been from time to time confusion as to what agreement licensed the deceased's occupation of the site, although it has never been suggested by the site owner that he or his mobile home had no right to be there. Reference has been made (in the Deed of Assignment as will appear below) to an agreement dated 1984 made between Tollemache & Cobbold Breweries Limited on the one part and William and Lilian White on the other. It is however accepted by the appellant site owner that the agreement pursuant to which the deceased was occupying at the time of his death was that dated 25 November 2005 between Punch Taverns (PML) Limited and Mr Hearne himself. A copy of that agreement ("the 2005 agreement") is to be found in the bundle of documents which were agreed before the FTT.

### *The 2005 agreement*

38. The Site is described in the 2005 agreement as the mobile home park behind Bristol Arms Public House Shotley Gate Suffolk and it is shown edged red on a plan annexed. The Plot is described as "all that land with a mobile home erected thereon and known as

Watersmeet Bristol Hill Park Shotley Gate Suffolk IP9 1PY and shown edged blue on the [same] plan annexed hereto”. The Mobile Home is named as Watersmeet, the number of berths, approximate dimensions and manufacturer and model not being stated. The Rent is stated to £28.50 per week subject to review, and the Term “Four weekly commencing on the Start Date until determined by either party giving the other at least twenty-eight days’ notice in writing.” The Start Date is given as 25 November 2005.

39. The agreement recites that “the Occupier is permitted to station the Mobile Home on the Plot being part of the Site and to occupy the Mobile Home as his only or main residence for the Term upon the terms and subject to the conditions hereinafter contained.”
40. There are 14 covenants on the part of the Occupier. For the most part, they replicate terms which would be implied into the agreement by operation of Schedule 1 to the Mobile Homes Act 1983 and it is not necessary for the purposes of this appeal to set them out. The Owner agrees on his part that on paying the charges agreed to be paid, and observing the covenants, the Occupier shall quietly enjoy the rights given during the term of the agreement; that he (the Owner) will use his reasonable endeavours to provide and maintain the facilities; and that he will not by himself his servants or agents do anything whereby the site licence is revoked.
41. There are express provisions dealing with assignment and sale. By clause 5 (headed “Assignment”):

“5.1 The Occupier shall have the right to assign this Agreement on giving at least Twenty-eight days’ prior written notice to the Owner and obtaining the Owner’s written consent thereto such consent not to be unreasonably withheld PROVIDED ALWAYS that

“5.2 The Occupier shall at the time of giving the notice have complied with his obligations and covenants under this Agreement;

“5.3 The proposed assignee shall be a respectable and responsible person who proposes to occupy the Mobile Home on the Site as his only or main residence and shall provide such references as the Owner shall require. However because it is the policy of the Owner to arrange that the Site be occupied by elderly retired people in accordance with the express wishes of the majority of occupiers the Owner reserves the right to refuse consent to an assignment on the grounds of the age of the proposed assignee or of those who will live with the assignee;

“5.4 The proposed assignee shall enter into direct covenants with the Owner to observe the covenants of the Occupier under this Agreement in all respects as if he were the Occupier named herein;

“5.5 If the proposed assignee intends to station on the Plot a mobile home different from the Mobile Home the proposed assignee’s mobile home shall be approved by the Owner and shall be of a size appropriate to the Site and in a condition which accords reasonably with the standard required by the Owner in

respect of the other mobile homes on the Site and the Occupier shall remove the Mobile Home from the Site and leave the Plot in a clean and tidy condition in all respects suitable for the placing of the proposed assignee's mobile home thereon;

"5.6 The Occupier shall pay the Owner's reasonable costs (including the costs of professional advisors) of considering the Occupier's application for consent under Clause 5.1;

"5.7 To comply with any other reasonable requirements of the Owner."

42. By clause 6 ("Selling the Mobile Home"):

"6.1 The Occupier shall have the right to sell the Mobile Home on the Plot to an assignee approved in accordance with Clause 5 by the Owner PROVIDED THAT the terms of this Agreement as to repair and maintenance have been complied with and all sums due to the Owner have been paid."

*The death of the occupier and the actions of the executor*

43. The deceased was in occupation of the mobile home until his death on 26 January 2018. He left a will dated 20 March 1996 which appointed Pleass Thomson as his executors. By that will, the deceased gave all his real and personal estate to Barbara Susan Bright, but as she predeceased him this gift lapsed. After making specific legacies (of his vehicles and building tools), the residue was to be divided into shares amongst a total of 15 named beneficiaries, including the deceased's son, Steven Hearne who was himself entitled beneficially to one of three equal shares in 47 per cent of the residuary estate. Steven Hearne (hereafter "Steven") was not occupying his father's mobile home at the time of his father's death.
44. The estate was not substantial, the principal asset being the mobile home. Probate was never taken out, but the executors proceeded to administer the estate. On 1 November 2018, two deeds were executed by Steven and the executors of his father's estate.
45. By a Deed of Variation, described as supplemental to the will dated 20 March 1996 of Colin Patrick Hearne, it was recited that the Executors had "agreed to vary the terms of the Will in the beneficiaries [*sic*] interest as set out in this deed". The Deed was "intended to be irrevocable" and "intended to operate pursuant to section 142(1) of the Inheritance Tax Act 1984 and section 62(6) of the Taxation of Chargeable Gains Act 1992".
46. The operative provisions of the Deed of Variation, which was properly executed by the parties thereto, were two-fold. The first inserted a new specific legacy at Clause 4(d) as follows:

"(d) I GIVE my mobile home situate and known as Waters Meet Bristol Hill Park Shotley Gate Ipswich Suffolk IP9 1PY to my said son STEVEN HEARNE absolutely."

47. The second inserted a new Clause 14:

“THE GIFT at Clause 4(d) is conditional upon the said STEVEN HEARNE paying the sum of THIRTY THOUSAND POUNDS (£30,000) to my Trustees to distribute to my Residuary Beneficiaries in accordance with this my Will.”

48. On the same day Jane Pleass (on behalf of Pleass Thomson & Co) and Steven entered into a Deed of Assignment. The operative provision was short:

“3.1 IT IS AGREED that the Executrix assigns all rights and interests in the Mobile Home to Steven by way of inheritance.”

49. Clause 1 of the Deed defined the various terms employed:

“The Mobile Home” was defined as “the mobile home known as “Watersmeet” situated on the Property.”

“The Property” was in turn defined as “the land more particularly described in the Tenancy Agreement and briefly described in the Second Schedule”.

“The Tenancy Agreement” was defined as “the agreement for the letting of the Property particulars of which are set out in the First Schedule.”

50. The First Schedule carried the sub-heading “The Tenancy Agreement” which it stated was “Agreement dated 13 December 1984 made between Tollemache and Cobbold Breweries Limited (1) and William George White and Lilian Irene White (2) for a term deemed to have commenced on 1<sup>st</sup> May 1979”.

51. The Second Schedule was briefer still: “The Property” being “Watersmeet Bristol Hill Park Shotley Gate Ipswich Suffolk IP9 1PY.”

52. If these two deeds were effective, and the estate had assigned “all rights and interests in the Mobile Home” to Steven, it would seem that Steven would now be the owner of the mobile home and would be entitled to occupy it on its current pitch at the Bristol Hill Park.

53. It is important to note that the site owner was not a party to either of these deeds, and it does not accept that the deeds have the effect claimed by those representing the deceased’s estate. The site owner contends that while Steven may now be the owner of the mobile home as a result of the variation of his father’s will to which he was a party it does not follow that he is entitled to occupy the mobile home on its current pitch, or indeed on the owners’ protected site at all.

## **The application**

54. Following correspondence between the executors and the site owner, on 25 March 2019 the latter made an application to the FTT. The respondent was stated to be Pleass Thomson & Co Solicitors as Administrators of the Estate of the late Mr Colin Hearne. The agreement referred to in the application was that between Tollemache and Cobbold Breweries Limited (1) and William George White and Lilian Irene White (2), dated 1 May 1979, and the “date of any statement received or given” was stated to be “on or around 13 December 1984.”
55. The deceased’s will had not been disclosed at that stage, and the application sought an order for its disclosure (and the disclosure of any subsequent grant). The application stated “If the Will says that Steven Hearne has inherited the mobile home, there is no question that the home and the agreement under the Act has passed to him, the Deed of Assignment being an unnecessary and invalid instrument to achieve what the Act provides for anyway.”
56. While reserving its position pending disclosure of the deceased’s will, the applicant sought a declaration that the second deed dated 1 November 2018 was of no effect, and “a declaration as to who has inherited the mobile home under the deceased’s will and in whose favour the agreement under the Act continues to benefit.”
57. A response was received dated 1 May 2019. It was in the form of a signed statement by Jane Christine Pleass, solicitor, and managing director of Pleass Thomson & Company Solicitors. She confirmed the dates of the death and the will of the deceased, and stated that she had ascertained that his estate comprised the mobile home known as Watersmeet, Bristol Hill Park, Shotley Gate, Ipswich, Suffolk IP9 1PY and had obtained valuations accordingly. Probate was not required in view of the size of the estate.
58. Ms Pleass stated that the deceased had “a rather special relationship” with the previous site owners as he cut grass and carried out maintenance to the site free of charge. She continued, “He had been given an agreement by the owners Punch Tavern dated 25 November 2005 whereby there is no agreement to pay 10% commission or to replace the Mobile Home when it is older than 10 years.”
59. Ms Pleass stated that following Mr Hearne’s death she had made contact with the site owner who made allegations of breaches of site licence rules and told her that he wanted the home removed. She made complaint about the conduct of the site owner who was “very keen to purchase the Home”, who had made a “final offer” of £27,000 (£30,000 less fees), making it clear that if the offer was not accepted he would “go to tribunal”.
60. The applicant site owner (now the appellant) responded in turn on 14 May 2019 by way of a statement of case drafted by counsel. The response contended that no person was entitled to the mobile home by virtue of the deceased’s will. By application of the statutory provisions, it followed that the agreement to station the home on the applicant’s site terminated on the deceased’s death and did not enure for the benefit of any other person. While it may be that the mobile home itself appeared to be owned by Steven Hearne, that did not mean that he had the benefit of any agreement to station it on the applicant’s site nor that he could sell the home with the benefit of any such agreement.

61. The applicant's case was supported by a statement of Jason Barr, a director of the applicant company, dated 15 May 2019. He explained various concerns that the site owner had in relation to the deceased's mobile home: extensions had been added to the mobile home one of which protruded such as to reduce the separation distance from the neighbouring home; wooden sheds were present on the pitch; and the possibility that the home was no longer moveable as a result of the extensions. He exhibited correspondence with the Private Sector Housing Officer at the local council, Liz Keeble: a letter dated 2 November 2016 making site owners aware of a general problem (not specific to the applicant or the deceased) that sheds of wooden or other combustible construction had been erected within the separation distance between plots on protected sites; and a letter dated 15 March 2018, shortly after Mr Hearne's death, specific to Mr Hearne's pitch, in which the Officer makes reference to the extensions to his home which meant it did not conform with the definition of a caravan as well as the sheds.
62. Mr Barr agreed that he had made an offer for the deceased's home of £30,000 less payment of commission of £3,000, although he denied saying that if the offer were not accepted he would be going to the tribunal. He accepted that he would have said to Ms Pleass (and probably Steven) that the extensions would need to be removed, but not that the home would need to go.
63. The FTT dealt with the allegations of breaches of the pitch agreement on the part of the deceased succinctly: that while they added colour to the history, they were not questions which the tribunal was asked to determine. Accordingly, the FTT decided to ignore them and concentrate on the legal question whether the purported deed of assignment of 1 November 2018 was "effective at law or in equity."

### **The FTT decision**

64. The determination of the FTT is summarised at the very outset of its decision in [2]:
  - a. While section 142 [sc. of the Inheritance Tax Act 1984] is effective for the purposes of mitigating tax liability, by deeming the varied transaction to have been effected by the deceased, it is not for other purposes an entitlement "by virtue of the deceased's will" as expressed in section 3(3)(b) [Mobile Homes Act 1983]
  - b. Even were the above incorrect, section 3(4) [Mobile Homes Act 1983] would still prevent the benefit of the agreement, and the right to reside on the pitch, from enuring to Mr Steven Hearne under the Deed of Arrangement [*sic*] and section 3(3)(b)
  - c. The Deed of Assignment refers to the incorrect written agreement and so is ineffective in law, and to validate an assignment under section 3(2) [Mobile Homes Act 1983] the executrix would need to comply with the Selling and Gifting Regulations

- d. Pending compliance with the Selling and Gifting Regulations the mobile home remains an asset of the deceased's estate vested in the executrix pending distribution, as does the benefit of the agreement under the Act between the site owner and the deceased.
65. The effect of the decision is therefore to declare that the mobile home remains vested in the executrix, as does the benefit of the pitch agreement. According to the FTT, the two deeds executed in November 2018 transmitted neither the mobile home nor the benefit of the pitch agreement to Steven Hearne despite that being their apparent intention.
66. The reasoning which the FTT employed in order to arrive at this decision is as follows.
67. Although at [2] the FTT concluded that such entitlement as Steven had to the mobile home was not "by virtue of the deceased's will" pursuant to section 3(3)(b) of the 1983 Act, it did not explain further how it reached this conclusion. It should be said that the appellant does not dissent from this conclusion.
68. The FTT stated, at [16], that the fact that the pitch agreement did not pass to Steven by section 3(3)(b) was "of extremely limited value". Even if the pitch agreement had passed to Steven:
- ... "section 4 [*sic*; the FTT must have meant section 3(4)] makes clear that it will not enure for his benefit if the agreement would enable him to occupy the mobile home. That is rather the point of an agreement under the 1983 Act. Further, the agreement has implied into it by statute the very terms referred to in section 4(b) [*sic*: again, the FTT must have meant section 3(4)(b)] so it can't enure for his benefit under section 3(3)(b) on this ground as well."
69. The FTT continued at [17]:
- "What is ignored is the fact that by section 3(2), where an agreement is lawfully assigned, the agreement will enure for the benefit of and be binding on that person. An agreement may be lawfully assigned by the occupier to a member of his family under paragraph 8A or, in the case of an existing agreement like this, paragraph 8B. An executor or administrator of the deceased occupier stands in his shoes and, provided the provisions of paragraph 8B and the relevant parts of the Selling and Gifting Regulations are complied with, can lawfully assign the mobile home and benefit of the agreement to a family member of the deceased."
70. The FTT concluded as follows:
- "[20] Had the mobile home and benefit of the 2005 agreement been validly assigned then Steven Hearne could have occupied Watersmeet as his main residence or alternatively sold on the mobile home with the benefit of the agreement under Schedule 1, Part 1, Chapter 2, paragraph 7B.

“[21] However, as it has not, the position in law is (whatever it may be in equity as between Steven and his father’s estate) that the estate has not validly divested itself of and assigned the mobile home and the benefit of the agreement to him. It therefore, for the time being, remains an asset of the estate in the possession of the executrix unless or until it is validly sold or assigned by way of gift to a family member. The consequences of selling as opposed to gifting differ.

“[22] The answers to the two questions posed in the application form are thus:

- (i) The Deed of Assignment, being incorrect both in substance and in form, is of no lawful effect
- (ii) The mobile home and the benefit of the 2005 agreement remain an asset of the deceased’s estate yet to be disposed of by the executrix.”

**The issues: discussion**

- 71. In order to resolve this appeal, it is necessary to examine carefully the statutory succession provisions contained in section 3 of the 1983 Act, in the light of the legislation as a whole, and apply them to the facts.
- 72. I have already emphasised, at [11] and [12] above, the importance of the distinction to be drawn between the mobile home and the pitch agreement and it is that distinction which is central to the disposition of this appeal.
- 73. The mobile home, the moveable structure, belonged to the deceased. It was itself a chattel, and it was alienable by Mr Colin Hearne during his life-time (with or without the benefit of the pitch agreement) and likewise on his death. However, any disposition of the mobile home with the benefit of the pitch agreement would be effective only if it complied with the mobile homes legislation applicable at the relevant time.
- 74. The 1983 Act applied to the pitch agreement between the deceased and the site owner. The agreement which, it was accepted in the FTT by both parties, was entered into between the deceased and Punch Taverns in 2005, is an agreement conferring on the deceased the right to station his mobile home on land forming part of a protected site, as well as the right to occupy that home as his only or main residence: see 1983 Act, section 1(1). The terms of the agreement are to be found in the agreement itself as modified by Schedule 1 to the 1983 Act: see 1983 Act, section 2(1). The relevant statutory provisions affecting the pitch agreement, the site not being a local authority or county council gypsy and traveller site, are those in Chapter 2 of Schedule 1.
- 75. Although the appellant was not itself party to the 2005 agreement, it has always accepted that it is bound by that agreement. This is because it is a successor in title of the then owner of the site, and so when the appellant purchased the site, the benefit and burden of the 2005 pitch agreement passed from Punch Taverns to the appellant: see 1983 Act, section 3(1).



76. When Colin Hearne died on 26 January 2018, he was occupying the mobile home as his only or main residence. There was however no one residing with him at that time: no wife, no civil partner and no other member of his family, and so the pitch agreement could not be transmitted under section 3(3)(a) of the 1983 Act.
77. The principal asset of the deceased's estate was the mobile home. The benefit of the pitch agreement was not, as such, an asset of the estate, but the value of the mobile home would be greater with the pitch agreement than without it. It was therefore important, in order to maximise the value of the estate, and the mobile home itself, that the pitch agreement was retained, and its benefit transmitted to the person becoming owner of the mobile home.
78. The FTT held, and it is accepted by the appellant, that section 3(3)(b) was not applicable. That provision would only apply to pass the benefit and burden of the pitch agreement to Steven Hearne if he was "the person entitled to the mobile home by virtue of the deceased's will".
79. The deceased's will did not make a specific legacy of the mobile home, that asset falling into residue. Steven was one of a large number of residuary beneficiaries. Although he did become entitled to the mobile home, that was only because he entered into an agreement with the executrix of his father's estate whereby he would purchase the mobile home for £30,000. To give effect to that agreement, the Deed of Variation was executed, the will varied, and the sum of £30,000 paid over to the estate.
80. The FTT held, therefore, that Steven did not become entitled to the mobile home "by virtue of the deceased's will". The appellant concedes that that must be correct.
81. Section 142(1) of the Inheritance Tax Act 1984 provides:

“(1) Where within the period of two years after a person's death—

(a) any of the dispositions (whether effected by will, under the law relating to intestacy or otherwise) of the property comprised in his estate immediately before his death are varied, or

(b) the benefit conferred by any of those dispositions is disclaimed, by an instrument in writing made by the persons or any of the persons who benefit or would benefit under the dispositions, this Act shall apply as if the variation had been effected by the deceased or, as the case may be, the disclaimed benefit had never been conferred.”

82. The appellant's argument (accepted by the FTT) is as follows. Section 142(1) is a provision which is limited in its application to the purposes of the taxation statute in which it appears: it states specifically "this Act shall apply as if the variation had been effected by the deceased", and it cannot and should not be inferred that the post-death variation has any greater effect than that stipulated. It was not therefore "by virtue of the will" that Steven became entitled to the mobile home, but by virtue of the deed of variation. It follows, as the FTT decided, that section 3(3)(b) did not apply to the facts of the case.

83. I have not had the benefit of hearing competing arguments on this particular issue, nor have I been referred to any decided authorities on the effect of section 142. That said, I see the force of the argument accepted by the FTT, and I am content to proceed on the basis that the FTT was correct.
84. It is then necessary to turn, as the FTT did, to the Deed of Assignment. Had the deed, as the FTT found, no lawful effect whatsoever, so that the executrix wholly failed to divest herself of the mobile home and the benefit of the agreement? Or was it, as the appellant contends, effective to transfer the mobile home itself (although not the benefit of the pitch agreement) to Steven Hearne?
85. At [20], the FTT says that the effect of a valid assignment of the mobile home and the benefit of the 2005 agreement to Steven would be that he could have occupied Watersmeet (as his only or main residence) or sold it on, with the benefit of the pitch agreement. On the assumption that appropriate steps were taken to assign both the mobile home and the benefit of the pitch agreement, this statement of the FTT cannot be criticised.
86. But when, at [21], the FTT concludes that as there has been no valid assignment (of both home and pitch agreement) it must be that both home and pitch agreement remain assets of the estate, it makes an incorrect assumption that the two must remain (and stand or fall) together. The FTT appears to elide the mobile home and the pitch agreement and does not consider the possibility that the mobile home and the pitch agreement may be treated separately.
87. The FTT's reasoning does not, in my judgment, give sufficient weight to the terms of the Deed of Assignment executed on 1 November 2018. By that Deed, and by agreement with Steven, the Executrix assigned "all rights and interests in the Mobile Home to Steven by way of inheritance." The Deed was executed contemporaneously with the Deed of Variation considered above, the effect of which was to give the Mobile Home to Steven in consideration of his paying £30,000, a sum which the executrix later acknowledged Steven had paid.
88. On all the evidence, the transfer of the chattel comprising the mobile home to Steven was effective. The consequence was that Steven became its owner. The mobile homes legislation does not regulate the transfer of the mobile home as a chattel itself, and there is nothing in the 1983 Act, or any of the other legislation, which imposes any specific requirements or restrictions on the transfer of the mobile home.
89. There was no contemporaneous assignment of the benefit of the pitch agreement. But there is nothing in the legislation which provides that a failure to assign the pitch agreement has any effect on the transfer of the mobile home itself. It follows that although Steven became the owner of the mobile home as a result of the Deed of Assignment, he could not go into occupation, nor could he alienate (sell or give) the mobile home with the benefit of the pitch agreement.
90. The FTT was wrong to declare that neither the mobile home nor the benefit of the pitch agreement had been transferred or assigned, and that both therefore remained vested in the

estate of the deceased. The mobile home had been transferred to Steven. This appeal must therefore be allowed.

A handwritten signature in cursive script, appearing to read "Stuart Bridge".

**HH Judge Stuart Bridge 29 April 2020**