Neutral Citation Number: [2024] UKUT 11 (LC)

Case No: LC-2023-337

IN THE UPPER TRIBUNAL (LANDS CHAMBER)
ON APPEAL FROM THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)
FTT Refs: CH1/29UH/PH1/2023/0003,
CHI/29UH/PHI/2023/0001

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

PARK HOMES – PITCH FEE REVIEW – PROCEDURE – application struck out by the FTT – whether the appellants were entitled to reside in their mobile homes as their only or main residence – FTT relying on content of written agreement without regard to the dealings between the parties - respondent seeking to broaden the appeal to include the question whether the site is a protected site, on which the FTT had heard no evidence and made no decision – appeal allowed

BETWEEN:

MR PHILLIP ROBLING (1)
MR M SPRIGG (2)

Appellants

-and-

MAURICE FRED DOE

Respondent

16 Meadow View,
Pilgrims Retreat,
Hogbam Lane,
Harrietsham,
ME17 1GL

Upper Tribunal Judge Elizabeth Cooke
Determination on written representations

Decision date: 8 January 2024

Mr Michael Mullin for the respondent, instructed by Apps Legal Limited

Introduction

1. This is the Tribunal's decision in two appeals against orders made by the First-tier Tribunal ("the FTT") striking out applications for the determination of a pitch fee pursuant to Schedule 1 to the Mobile Homes Act 1983 in relation to two pitches at Pilgrim's Retreat, a mobile home site at Harrietsham near Maidstone owned by the respondent Mr Doe.

2. The two appeals have been determined under the Tribunal's written representations procedure; Mr Robling has represented himself and Mr Spriggs, and written representations on behalf of the respondent have been prepared by Mr Michael Mullin of counsel.

The factual and legal background

Mr Robling's appeal

3. The first appellant, Mr Robling, has his mobile home stationed at 16 Meadow View, Pilgrim's Retreat. He received a notice of the review of his pitch fee, dated 23 November 2022, said to be given by and signed by the respondent Mr Doe and Mrs E Sines. The notice was in the form prescribed by the Mobile Homes (Pitch Fees) (Prescribed Forms) (England) Regulations 2013, notifying him that his pitch fee was going to increase on 1 January 2023, from £361,48 per month to £412.81 per month.

4. The use of such a form is required for the review of the pitch fee under agreements regulated by the Mobile Homes Act 1983, of which section 1(1) states 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."

5. In accordance with the provisions of the 1983 Act, section 5 of the notice of review of the pitch fee stated (in printed type) that if the recipient did not agree to the proposed pitch fee they are not obliged to pay it but may apply to a tribunal to determine the new pitch fee. That is because paragraph 16 in Part 2 of Schedule 1 to the 1983 Act provides:

> " 16. The pitch fee can only be changed in accordance with paragraph 17, either—
> (a) with the agreement of the occupier, or
> (b) if the [appropriate judicial body, on the application of the owner or the occupier, considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.

6. Paragraph 17 then provides that the pitch fee is to be reviewed annually at the review date, with a notice in the correct form served on the occupier at least 28 days before the review date. It goes on to say:

> (3) If the occupier agrees to the proposed new pitch fee, it shall be payable as from the review date.
> (4) If the occupier does not agree to the proposed new pitch fee—

(a) the owner [or (in the case of a protected site in England) the occupier]2 may apply to the [the FTT] for an order under paragraph 16(b) determining the amount of the new pitch fee;
(b) the occupier shall continue to pay the current pitch fee to the owner until such time as the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the [FTT] under paragraph 16(b).”

7. On 3 December 2022 Mr Robling applied to the FTT in accordance with paragraph 17(4). He supplied with his application an incomplete copy of an unsigned “Licence Agreement for a Leisure Home”, which begins as follows:

> “This agreement permits you to station a Leisure Home on the park and to occupy it for leisure and recreational purposes.”

8. Paragraph 7 of the agreement states that the pitch fee can be reviewed annually with one month’s notice, and that the proposed new pitch fee will become payable with effect from the Review Date.

9. On receipt of the application the FTT (not a judge but a legal officer) sent a notice under rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 stating that the FTT was minded to strike out the application because the Tribunal did not appear to have jurisdiction. The notice said:

> “2. The Tribunal reviewed the application and accompanying documentation and noted that a ‘Licence Agreement for a Leisure Home’ had been included.
>
> 3. Section 1(1) of the Mobile Home Act 1983 states:
>
> “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.”
>
> In view of the documents before it, the Tribunal questions whether the Mobile Homes Act 1983 applied to the agreement. On the face of it, the park home is not being occupied as the Applicant’s only or main residence, but that of a leisure/holiday home.
> 4. In order to proceed the Tribunal would need to be satisfied that it had the jurisdiction to deal with the application under the Mobile Homes Act 1983. It would also need to be satisfied that the site in question is a ‘protected site’.”

10. Mr Robling was invited to make representations in response to the notice, and did not make any. The site owner was directed to provide a copy of the site licence, and did so. On16 March 2023 an order was made striking the application out. The order recorded what was said in the notice, stated that representations had been made by the respondent and that a copy of the site licence had been supplied, and concluded:

> "The Tribunal notes that the representations received do not alter the fact that the Licence Agreement granted for property in question is not covered under the Mobile Homes Act 1983.
> It therefore strikes out the application in accordance with Rule 9(2)(a) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on the grounds that it does not have jurisdiction in relation to the proceedings or case or that part of them."

11. Mr Robling sought permission to appeal, which the FTT granted on the following ground:

> "I am satisfied that the question of whether or not the Mobile Homes Act 1983 and the provisions relating to the determination of a pitch fee are on the facts of this case a matter for which I should grant leave to appeal being a matter which has a realistic prospect of success. It is therefore right for them to be considered afresh by an appellate body."

Mr Spriggs' appeal

12. Mr Robling's Notice of Appeal gave only his own name and was signed only by him, and the documents he enclosed related only to his own appeal. However in his covering letter to the Tribunal he stated that Mr Sprigg of 17 Meadow View was "the other appellant". Following further correspondence it became clear that the second appellant, Mr Spriggs, has his caravan at 17, Meadow View, Pilgrim's retreat; that he received the same pitch fee review notice as Mr Robling and likewise made an application to the FTT for a determination; and that he received a rule 9 notice and a decision dated 16 March 2022 striking out his application in the same words as those addressed to Mr Robling. The FTT then granted him permission to appeal in exactly the same terms as those on which it granted permission to Mr Robling.

13. Accordingly Mr Sprigg was added by the Tribunal as second appellant and has been represented by Mr Robling, and the appeal proceeded as an appeal from the two identical decisions. The two appeals raise exactly the same issue.

The legal framework of the appeal: jurisdiction under the Mobile Homes Act 1983

14. The 1983 Act applies to any agreement under which the occupier is entitled to station a mobile home on a protected site and to occupy it as his or her only or main residence. So in order to invoke any of the provisions of the 1983 Act a person must have an agreement by which he is entitled to live in a mobile home on a protected site. There are two ingredients there: (1) entitlement to station a mobile home and to occupy it as an only or main residence, and (2) the protected site.

15. As to the second ingredient, section 1 of the Caravan Sites and Control of Development Act 1960 prohibits the use of land as a caravan site without a licence granted by the local authority, and section 5A(5) of the 1960 Act defines a "protected site" as:

> " land in respect of which a site licence is required under this Part, other than land in respect of which the relevant planning permission under Part 3 of the Town and Country Planning Act 1990 or the site licence is, subject to subsection (6)—
> (a) expressed to be granted for holiday use only, or

(b) otherwise so expressed or subject to such conditions that there are times of the year when no caravan may be stationed on the land for human habitation."

16. As to the first ingredient, the FTT concluded from the terms of the copy Licence Agreements supplied (the one supplied by Mr Robling being unsigned) that the two appellants were not entitled to live on the site in their mobile homes as their only or main residence.

17. The FTT's two rule 9 notices, and its two decisions striking out the applications, rest on that latter point and on the terms of the Licence Agreements. There is a mention of the fact that the FTT would also have needed to be satisfied that the site was a protected site, but no finding was made about that by the FTT. The respondent sent a copy of the site licence to the FTT in response to its direction, and in view of the definition of a protected site set out above the terms of the site licence are relevant to whether this is a protected site, but the FTT said nothing about it in its eventual order. In his statement of case in the appeal, Mr Doe argued that the two appellants' mobile homes are stationed on land that is not a protected site and relied upon the wording of the FTT's permission to appeal to argue that both elements in section 1(1) of the 1983 Act are in issue in the appeal.

18. In my judgment the FTT in giving its rule 9 notices gave no consideration to whether the appellants' mobile homes are stationed on a protected site; and in striking out the two applications the FTT said nothing about the site licence nor about whether the land in question is a protected site. The FTT has heard no evidence on the point and it is not open to this Tribunal on an appeal to make a decision on a point that has not been decided by the FTT. Accordingly, the issue in the appeals is whether the FTT was right to strike out the applications on the basis that the two appellants are not entitled to live in their mobile homes as their only or main residence.

The appeal: are the appellants entitled to live on the site as their home?

19. Mr Robling has explained, to the FTT and to the Tribunal in written representations, that he has lived in his caravan on this pitch for some years and pays council tax. It is his home. Mr Sprigg is in the same position. The respondent has not disputed that the two appellants live in their caravans but they say that they are not entitled to do so because their written licence is for holiday use only.

20. I can deal with this point very simply. In determining whether or not a person is entitled to live in a mobile home as their only or main residence, the written licence agreement may not tell the whole story. Someone who has made their home in their caravan for many years without protest from the owner is, on the balance of probabilities, doing so with the permission of the site owner, whether expressed in words or by conduct. That was the position of the resident in *Tingdene Marinas* where the Tribunal said at paragraph 15:

> "Ms Jaffe has a licence agreement with the appellant, which does not say in terms that she can live on the houseboat. But the FTT at paragraph 124 of its decision said that it was agreed that Ms Jaffe was not a trespasser and that she had permission to station her houseboat where it floats and to use it as her sole residence. So her agreement with the appellant goes beyond the terms of her written licence; the FTT at its paragraph 147 found that she had an agreement

that gave her permission to station a mobile home on the site and to live in it as her sole residence, and there is no appeal from that finding."

21. It is well-established that when considering whether to strike out a party's case a court or tribunal should assume that that party's account of the facts is true. Mr Robling and Mr Spriggs say they each live, and been allowed by the respondent to live, in their caravan as their home. If the respondent wants to argue that it has not in fact permitted them to live there, that was a matter for a finding of fact at a hearing. The FTT could not assume that the applicants would fail on that point.

22. There was no basis on which it could be said, on receipt of their application, that the applicants had no prospect of success in showing that they were entitled, on the basis of permission from the respondent, to live in their mobile homes as their only or main residence. The FTT jumped to a conclusion on the basis of the licence agreement alone (which in Mr Robling's case was not even signed), and that was an error of law. The order striking out the two applications is set aside for that reason.

23. That concludes what I have to decide in the appeal. It should be noted that I have not made a decision that the two applicants are in fact entitled to live in their mobile homes as their only or main residence because evidence has not been tested and in this review of the FTT's decision I cannot make findings of fact. If the point remains in issue before the FTT then it will have to be decided at a hearing. Nor have I (and nor has the FTT) made any decision as to whether the two appellants' mobile homes are stationed on a protected site.

Conclusion

24. The appeal succeeds; the two applications to the FTT are restored and either party make ask the FTT for directions.

Upper Tribunal Judge Elizabeth Cooke

8 January 2024

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.