

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
MOBILE HOMES (WALES) ACT 2013

Application for a refusal order

Reference: RPT/0003/05/15

Property: 14, Hilton Park, Station Road, Talacre, Flintshire, CH8 9RD

Applicant: Britaniacrest Limited

Respondents: Mr Kenneth Herbert Brown and Mrs Doreen Brown.

Chairman: Richard Payne LLB MPhil
Andrew Morris LLB

DECISION

1. The application for the refusal order is granted.

REASONS FOR THE TRIBUNAL'S DECISION.

2. The Respondents are the residents of a mobile home (a "Stately-Albion Chatsworth Gold" caravan) which occupies a pitch at 14, Hilton Park, Talacre, Flintshire. They wish to gift their mobile home to their son Alan Brown and purported to do so by means of a letter dated 18th April 2015 addressed to "Hill Brothers" and accompanied by a "Notice of Proposed gift form" under the Mobile Homes (Selling and Gifting) (England) Regulations 2013. By an application form dated 28th April 2015, the Applicant seeks a refusal order to prevent the Respondents from giving their mobile home and assigning their agreement to their son Mr Alan Brown.

3. The Applicant objected to the gift on the basis that the company name used by the Respondents was incorrect, that no proof had been submitted that Mr Alan Brown was their son, that the proposed gift form itself had not been signed or completed and that the legal ownership of the home was unclear as it was asserted that the Respondents had signed a sales form part exchanging the Hilton Park Home for a home on another one of the parks owned by the Applicant.

4. By letter of the 14th May 2015 the tribunal asked the Respondents if they wished to oppose the application for a refusal order and if they required an oral hearing or would like the tribunal to deal with matters on the papers. The tribunal received further

representations in a letter dated 22nd May 2015 from the Respondents' daughter Mrs Christine Sola who explained that she was authorised to deal with all of the paperwork on behalf of the Respondents and provided further information including that her parents' park home was currently for sale but had not yet been sold. She also added that she hoped that this clarified matters so that a tribunal hearing was not necessary in the circumstances.

5. Mrs Sola also sent the tribunal a second letter dated the 22nd May 2015 which included a further "Notice of Proposed Gift form" under the Mobile Homes (Selling and Gifting)(England) Regulations 2013 ("the English Regulations"), this time completed and signed on the 21st May 2015 by the Respondents. It also included an uncertified photocopy of a copy of Alan Brown's birth certificate. This copy was dated 15th June 1973 and Alan Brown was born in 1952 according to the document. The gift form also included the handwritten annotation in relation to the birth certificate which said "forwarded on 30/4/15 with this doc to Hill Brothers." This second letter stated that the birth certificate "was omitted originally". It appears that the Hill Brothers are the Directors of the Applicant company. (The e mail address supplied on the application form was adele@hill-brothers.co.uk).

6. The application form indicated that the Applicant was content to deal with this matter without an oral hearing and the tribunal wrote to both parties on 29th May 2015 informing them that it was proposed to deal with the application without an oral hearing in accordance with rule 21 of the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012, on 19th June 2015. The parties were reminded of their right to request an oral hearing and invited to submit any further representations by 12th June 2015. It is noted that the tribunal's letter of the 29th May to the Respondents was addressed to Mrs Christine Solva and not Sola, but it was correctly sent to the Respondents' address. There were no further representations on behalf of the Respondents. The Applicant did, by letter of 12th June, (received by the tribunal on the 15th June 2015), submit a further letter and a statement from Mr Richard Hill dated 12th June 2015. This was said to have been copied to the Respondents.

7. Mr Hill's statement asserted that the Respondents entered into an agreement to purchase a "Tredegar Contemporary" caravan, valued at £134,950 on another of the Applicant's sites at the Links View Holiday Park, Park Lane, Meols, Wirral, CH47 8XT. According to Mr Hill, there was no exchange of money since the value of the "Tredegar Contemporary" was exchanged for the "Stately-Albion Chatsworth Gold" caravan that the Respondents occupied at Hilton Park. Mr Hill says that this straight swap was agreed by the Respondents and he had earlier submitted the document that recorded this arrangement dated 24th February 2014.

8. Mr Hill submits that legal title in the Hilton Park mobile home passed to the Applicant and that the Respondents accordingly do not have the authority or title to gift this, although they do now own the “Tredegar Contemporary” at Links View. Mr Hill also repeated in his statement, the points that had been made about defects in the form used by the Respondents. Mr Hill’s statement was one working day late but the tribunal does allow it in as it will help the tribunal to deal with the matter in accordance with the overriding objective of dealing fairly and justly with applications that it has to determine.

The law

9. The Mobile Homes (Wales) Act 2013 (“the Act”) Schedule 2 Chapter 2, paragraph 13 (1) allows an occupier, (where the agreement is not a new agreement) to give the mobile home, and to assign the agreement, to a member of the occupier’s family without the approval of the site owner dependent on certain contingencies. The occupier must serve a “notice of proposed gift” on the owner. Then one of two conditions must be satisfied.¹ The first of these is that, within the period of 21 days beginning with the date on which the owner received the notice of proposed gift, the occupier does not receive a notice from the owner that the owner has applied to a tribunal for a refusal order.² That does not apply in this case since the owner did apply for a refusal order. The second condition is that the owner applies to the tribunal for a refusal order and the tribunal rejects the application.³ We have not rejected the application.

10. Of central importance to the process is Schedule 2, Chapter 2, paragraph 13 (5) which says;

*“A notice of proposed gift **must** include-*

(a) The relevant evidence under paragraph 12(2), and

(b) Such other information as may be prescribed in regulations made by the Welsh Ministers.” (Our emphasis).

Paragraph 12(2) describes the relevant evidence required, as being evidence of a description prescribed in regulations made by the Welsh Ministers, that the person to whom the occupier proposes to give the mobile home and assign the agreement, is a member of the occupier’s family⁴ or any other satisfactory evidence that the person concerned is a member of the occupier’s family.

11. The Mobile Homes (Selling and Gifting) (Wales) Regulations 2014⁵ are the prescribed regulations referred to which came into force on 1st October 2014 (“the Welsh

¹ Mobile Homes (Wales) Act 2013 Schedule 2 Chapter 2 paragraph 13(1)(b).

² Ibid paragraph 13(2)

³ Ibid paragraph 13(3)(b)

⁴ Ibid paragraph 12(2)(a)

⁵ Statutory Instrument no 1763 2014 (W.178)

Regulations.”) Regulation 5 (2) – (6) contain the information that must be supplied in accordance with Schedule 2, Chapter 2 paragraph 13 (5) of the Act in a notice of proposed gift. Regulation 5(7)(b) says that the information required must be accompanied by the relevant evidence.⁶ Regulation 6 describes that the prescribed evidence is

“the evidence provided by one or more of the following-

- (a) Written information on oath given by the occupier and proposed occupier which explains the relationship of the proposed occupier to the occupier;*
- (b) A birth certificate or certificate of adoption;*
- (c) A certificate of marriage or civil partnership.”*

12. Regulation 7 refers to the grounds on which a site owner may apply for a refusal order. Regulation 7(2) applies to proposed gifts of the mobile home. These include at 7(2) (b) “that the proposed occupier has failed to provide the owner with the relevant evidence.

DECISION

13. The Act and the regulations are not easy to follow with numerous mentions of paragraphs, sub paragraphs, schedules and regulations. We accept that this can be confusing for the lay person. However as set out in paragraph 10 above the notice of proposed gift must contain the relevant evidence. Two issues immediately arise in this case. Firstly, was the notice correct since it was the English one? Secondly did it contain the required evidence?

14. Regulation 5(7) (a) states that the information must be provided in the form prescribed in Schedule 3 to the Welsh Regulations or in a form substantially to the same effect. In this case, the form that was submitted as a notice of gift was the English form that referred to the English regulations. The wording of the form itself is certainly substantially to the same effect as the Welsh form, indeed it is the same wording. However the notes to the English form, and which are a part of the form, are different to the Welsh form because they refer to the Mobile Homes Act 1983 and to English regulations. Whilst it may be that the requirements of those regulations are substantially to the same effect as the Welsh regulations in many respects, the English form refers to existing agreements made on or before the 25th May 2013, whereas the Welsh form refers to the correct position in Wales which is that an existing agreement under the Act is one which was made on or before 30th September 2014. If a form has similar wording but actually refers to the wrong legislation is it a form substantially to the same effect? We find that it is not, because it does not refer to the correct Act or jurisdiction. Further, if an occupier in Wales wished to gift their mobile home but their

⁶ As defined by paragraph 12(2) of Chapter 2 of Part 1 of Schedule 2 of the Act.

existing agreement was for example dated June 2014, and they were relying on the English form and its notes they would be misinformed about their rights and the correct procedure. The separate legislation and timetable in Wales would arguably be undermined if the English forms could be used here even though they refer to different dates and legislation that is not actually in force in Wales.

15. On the second point, there is no doubt that the English form used by the Respondents did not contain the prescribed evidence. It was not fully completed nor was it signed. It did not record the proper name of the Applicant. However the receipt of that form, imperfect as it was, could not be ignored by the Applicant as it purported to trigger the right to gift the mobile home to the Respondents' son. The form also contained no evidence of the relationship of Mr Alan Brown to the Respondents. This was implicitly accepted by Mrs Sola on behalf of the Respondents by her letters of the 22nd May 2015 to the tribunal which corrected the company name of the Applicant on the form and enclosed a photocopy of Mr Brown's birth certificate "which was omitted originally", and enclosed a signed English form dated 21st May 2015.

16. The Respondents first letter to the Applicant with their original notice was dated 18th April 2015. The Applicant was obliged to apply to the tribunal for a refusal order within 21 days beginning with the date that it received the notice of proposed gift⁷. The Respondents did not purport to provide the evidence that should have accompanied the original notice until the 22nd May 2015, which of course is after the 21 day period to which the Applicant must have regard. Therefore the original notice fails in this respect as well.

17. Further the evidence that was then submitted upon the Respondents behalf was inadequate in addition to being late. It merely comprised a poor quality photocopy of a birth certificate. It was not certified as being a true copy of the original by a suitable professional or solicitor. It was not an original document or a certified copy produced by the Registry of Births, Marriages and Deaths. There was no other compliance with the requirements of regulation 6.

18. For these reasons, the application for a refusal order is granted. The proposed occupier has failed to provide the owner with the relevant evidence as required by regulation 7(2)(b) of the Welsh regulations. (It is not necessary for the tribunal to determine the ownership point contended for by the Applicant in order to decide this application, nor would it be possible to do so on the limited documentary evidence before us.)

⁷ Paragraph 13 (3)(a)(i) of Schedule 2 Chapter 2 of the Act.

19. This determination was made on the 19th June 2015 but the written reasons were completed on the date below.

DATED this 15th day of July 2015.

A handwritten signature in black ink, appearing to be 'R Payne', with a stylized flourish at the end.

Richard Payne
CHAIRMAN
Vice-President, RPT for Wales.