Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0027/11/19

In the Matter of 19, Castleton Park, Castleton Road, St. Athan, Barry, CF62 4LG

And in the Matter of the Mobile Homes (Wales) Act 2013 and an application under Schedule 2, Chapter 2 paragraph 10(3) for a refusal order.

Applicants: Matthew Forrest and William Forrest

Respondent: Mr Gareth Hipperson

Tribunal: Richard Payne -Tribunal Judge
Roger Baynham - Surveyor Member
Juliet Playfair - Lay Member

ORDER

Upon hearing the application by cloud video platform at a digital hearing on 4th May 2020, and upon hearing Mrs Diane Forrest for the Applicants and the Respondent in person,

IT IS ORDERED THAT;

1. The application for a refusal order is itself refused. The tribunal does not make a refusal order as there are no grounds under paragraph 7 of the Mobile Homes (Selling and Gifting) Wales Regulations 2014 under which an order can be made.
2. The application does not accord with the requirements of Paragraph 10 of Chapter 2, Schedule 2 to the Mobile Homes (Wales) Act 2013 and is dismissed upon that basis.
3. The tribunal order the Applicants to pay the Respondent's costs in connection with these proceedings assessed in the sum of £850 plus vat of £170, namely £1020, within 21 days of the date of this decision.

REASONS.

Background.

1. The Applicants are the owners of Castleton Caravan Park, a development located just outside St. Athan. It is licensed by the Vale of Glamorgan and complies with conditions imposed by the 2008 model standards for Permanent Residential Caravan Sites in Wales. The licence, which runs for a 5-year period was renewed in April 2020 and restricts the number of mobile homes to be stationed on the site to a maximum of 50 units. In addition, the Castleton Site Rules stipulate that all new residents must be over 50 years of age. The initial site manager and licensee was Mathew Forrest.

2. The Park is situated approximately half a mile to the east of the town of St. Athan and is reached by a relatively narrow road. The development consists of a mixture of older type homes together with more recent properties. The Park does not have an on-site shop, but local facilities are available in St. Athan and all other amenities are available in Barry, Llantwit Major or Cowbridge which are all within 6 miles while Cardiff is approximately 15 miles distant.

3. Number 19 Castleton Park ("the property") is an older type home constructed about eighteen years ago which is located on an average size plot and has the benefit of overlooking open countryside to the rear. It is approached by a gated drive which can provide car parking. To one side there is a grass and paved area with steps leading to the front door and to a balcony. To the other side there are two large Upvc storage cupboards and an area which is covered in gravel which could provide a further parking area.

4. Number 19 was owned by the Respondent's late parents. His mother, Elizabeth Patricia Hipperson died on 21 March 2019 and a grant of Letters of Administration in relation to her estate was made to Mr Hipperson on the 21st of June 2019.

5. Mr Hipperson subsequently marketed the mobile home at number 19 for sale through an estate agent Brighter Moves. A Mr Ashcroft was going to purchase the property in August 2019 but withdrew and the Respondent subsequently found another buyer Mr Tim Butcher. A Notice of Proposed Sale to Mr Butcher dated 8th October 2019 was sent to Mr Matthew Forrest and the tribunal subsequently received on 21st October 2019 an application for a refusal order completed by Mr William Forrest dated 17 October 2019.The application form said that notice had been given to the occupier of the application to the tribunal by being posted on 15th October 2019. This notification was in the form of a letter to the Respondent's solicitors Messrs Kruzins.

The hearing and evidence.

The Applicants' case.

6. In a letter to the tribunal dated 17 October 2019 and accompanying the application, the Applicant's indicated that they were applying for a refusal order upon the grounds of Mr Butcher owning and wishing to park his campervan at Castleton Park which was not permitted within the rules. In a further letter to the tribunal dated 15 of December 2019 and copied to Kruzins, the Applicants said that after receiving the notice of proposed sale to Mr Butcher

> "*We then received a telephone call (from a private number) from Mr Butcher requesting information about our Park, he had not received any paperwork including a set of rules. He asked about parking his campervan on the park when we pointed out Park rule 21. No commercial vehicles, touring caravans or camper vehicles are permitted to the park or to be stored on the park. Mr Butcher became aggressive making the point of if owning the caravan he could park whatever he liked when he liked he didn't respect the point of the park having rules."*

7. In a further undated statement received by the tribunal on 2nd January 2020 Mr William Forrest again repeated that Mr Butcher had rung him on a private number asking about parking his campervan. In the course of these proceedings there have been various allegations and counter allegations made by the parties, which included that Mr Butcher had visited the site and that Mr Forrest parked his car in the road and proceeded to walk to Mr Butcher's car trying to intimidate Mr Butcher and his partner. Mr Forrest's statement received on 2 January 2020 strongly denied having had any contact with Mr Butcher, his partner or any members of his family.

8. At the hearing, Mrs Diane Forrest for the Applicants, described receiving a phone call but she said that the Applicants were not sure who it was from. She repeated and was clear that the Applicants did not know who it was, although the anonymous caller asked if he could have a camper van on site. Mrs Forrest accepted that there was no reference to a campervan on the Notice of proposed sale and said it was only after the phone call was received that made them question it.

Respondent's case

9. Mr Hipperson had provided a statement dated 28th of November 2019 in which he describes his dealings with the Applicants and said that he had spoken to Mr Butcher upon a number of occasions and that Mr Butcher had sent him emails, that he appended to his statement, stating that he had never owned a campervan and had not had a conversation with the Applicants about this.

10. Mr Hipperson called Mr Butcher to give evidence. Mr Butcher indeed confirmed that he does not have a campervan, he has never owned a campervan and that he had not made a telephone call to the Applicants and not had a discussion with them about this. Mr Butcher mentioned that he has a partner who is currently 49 years of age, but she has her own accommodation which she occupies as her principal residence and will continue to do so.

11. Mr Hipperson said that the Applicants had mentioned, on three separate occasions, receiving the telephone call. He submitted that Mr Butcher has never had a campervan and the question of Mr Butcher's partner is not an issue. He said that the campervan should never have been an issue and this matter could well have been dealt with much earlier.

Decision.

12. The tribunal drew the parties attention to the case of Wyldecrest Parks (Management) Limited [2014] UKUT 0351 (LC) in which the Deputy President of the Upper Tribunal (Lands Chamber) Mr Martin Rodger Q.C held that a notice from a site owner that it had applied for a refusal order would only be effective where the notice post-dated the application to the tribunal. The case concerned provisions of the Mobile Homes Act 1983 in England whereby on 11 October 2013 the Appellant had completed the First tier Tribunal's application for a Refusal Order and said that it had given notice of the

application to the occupier by first class post and email to the occupier's solicitors on 10 October 2013.

13. The equivalent and identical provisions in the Mobile Homes (Wales) Act can be found at Schedule 2, Chapter 2 Paragraph 10 which deals with the sale of the mobile home and is set out in full below (we have highlighted in bold the most relevant parts);

"10

(1) Where the agreement is not a new agreement, the occupier is entitled to sell the mobile home and assign the agreement without the approval of the owner if--

(a) the occupier serves on the owner a notice (a "notice of proposed sale") that the occupier proposes to sell the mobile home, and assign the agreement, to the person named in the notice (the "proposed occupier"), and

(b) the first or second condition is satisfied.

(2) The first condition is that, within the period of 21 days beginning with the date on which the owner received the notice of proposed sale ("the 21-day period"), the occupier does not receive a notice from the owner ***that the owner has applied to a tribunal*** *for an order preventing the occupier from selling the mobile home, and assigning the agreement, to the proposed occupier (a "refusal order").*

(3) The second condition is that--

(a) within the 21-day period--

(i) the owner applies to a tribunal for a refusal order, and

(ii) the occupier receives a notice of the application from the owner, and

(b) the tribunal rejects the application.

(4) If the owner applies to a tribunal for a refusal order within the 21-day period but the occupier does not receive notice of the application from the owner within that period--

(a) the application is to be treated as not having been made, and

(b) the first condition is accordingly to be treated as satisfied.

(5) A notice of proposed sale must include such information as may be prescribed in regulations made by the Welsh Ministers.

(6) A notice of proposed sale or notice of an application for a refusal order--

(a) must be in writing, and

(b) may be served by post.

(7) An application for a refusal order may be made only on one or more of the grounds prescribed in regulations made by the Welsh Ministers; and a notice of an

application for a refusal order must specify the ground or grounds on which the application is made.

(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 Welsh Ministers.

(9) Except to the extent mentioned in sub-paragraph (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.

(10) The Welsh Ministers 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, and

(b) the payment of commission by virtue of sub-paragraph (8).”

14. The Upper Tribunal’s decision was a detailed and technical one but in essence found that, despite the contents of the First tier Tribunal’s application form and Practice Direction, that the law means that the site owner must make an application to the tribunal for a refusal order first and must then provide notification to the occupier that such an application has been made.

15. In this particular case, as stated above, Mr W Forrest posted a letter to Mr Hipperson on 15 October 2019 and subsequently made his application to the tribunal two days later dated 17th October 2019. This tribunal accepts that, similarly to the situation in the Wyldecrest Parks decision, the existing RPT application form MH-11 is misleading since it asks, “Have you given notice to the occupier of your application to the tribunal?” and provides a tick box to give a ‘yes’ or ‘no’ answer and further details if the answer is ‘yes.’ The RPT for Wales is bound by decisions of the Upper Tribunal and therefore the application for a refusal order fails because in order to comply with the relevant law, as made clear in the Wyldecrest case, the application should have been made to the tribunal first, and having made the application, notification should then have been given to Mr Hipperson that the application had been made. Whilst the RPT for Wales will take steps to change the application form, this does not alter the legal position.

16. However, the tribunal fully considered all the written and oral evidence and submissions made by the parties, at the hearing on 4th May 2020. It was clear that the sole reason for applying for the refusal order was based upon the allegation that Mr Butcher had a campervan contrary to the rules. The tribunal heard from Mrs Forrest, Mr Hipperson and Mr Butcher himself and is entirely satisfied that Mr Butcher does not own a campervan, nor has he ever owned such a vehicle.

17. What was the reason for the Applicants considering that Mr Butcher owned a campervan? Mr W Forrest in his letter to the tribunal dated 15 December 2019 said that he received a telephone call from a private number from Mr Butcher requesting information and asking about parking his campervan on the park. This was repeated in the Applicants’ statement in January 2020. However as noted above, Mrs Forrest

accepted at the hearing that the telephone call was anonymous and that they did not know the identity of the caller. Indeed, Mrs Forrest at the hearing, having heard Mr Butcher's evidence, specifically commented that "I accept what he said". Mr Butcher was adamant and clear that he had never made such a phone call to the Applicants. The tribunal is satisfied, upon the balance of probabilities, that Mr Butcher gave truthful evidence and did not make any such phone call to the Applicants as alleged – there was absolutely no reason for him to have done so in any event as he does not own a campervan.

18. Therefore, there would not in any event be any grounds for this tribunal to make a refusal order, even if the application had not failed for the technical reasons above.

Costs.

19. Regulation 34 of the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2016 ("the regulations") relates to the tribunal's power to make a determination on costs under paragraph 12 of Schedule 13 to the Housing Act 2004, but the tribunal must first give a party an opportunity of making representations on costs. The tribunal's order of 4th May 2020 allowed the parties to make any representations on costs by 15th May 2020.

20. Paragraph 12 of schedule 13 states;

"12(1) a tribunal may determine that a party to proceedings before it is to pay the costs incurred by another party in connection with the proceedings in any circumstances falling within subparagraph (2).

(2) the circumstances are where –

(a)he has failed to comply with an order made by the tribunal;

(b) ..... the tribunal dismisses, or allows, the whole or part of an application or appeal by reason of his failure to comply with a requirement imposed by regulations made by virtue of paragraph 5;

(c)..... the tribunal dismisses the whole or part of an application or appeal made by him to the tribunal; or,

(d) he has, in the opinion of the tribunal, acted frivolously, vexatiously, abusively, destructively or *otherwise unreasonably in connection with the proceedings.*

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph must not exceed –

(a) £500 or

(b)such other amount as may be specified in procedure regulations."

21. Rule 34 (3) of the regulations says;

> *"In respect of an application to the tribunal under the 2013 Act or the Site Rules Regulations, the amount which a party to proceedings may be ordered to pay in the proceedings by a determination made under paragraph 12 of Schedule 13 to the 2004 Act* ***must not exceed £10,000."***

22. On 15th May 2020 representations were received from the Respondent's solicitors Kruzins which included a bill dated 5 May 2020 and amounted to £2136 plus VAT a total of £2563.20, calculated on an hourly rate of £185 plus vat. The bill related to Mr Hipperson's instructions to sell his late mother's mobile home. The bill referred to a fire risk assessment and corresponding with Castleton Park as well as dealing with a previous application to the tribunal for a refusal order in relation to an earlier proposed purchaser. There was a further schedule of costs which totalled £4769.03 which in addition to the solicitor's costs also included matters such as pitch fees from May 2019 until May 2020, council tax and insurance.

23. By their letter of 15th May, Kruzins sought to claim the total amount of expenses of £4769.03 which they say had been incurred by their client, and that he had been put to unnecessary expense and stress owing to the behaviour of the Applicants. Kruzins alleged that the Applicants' behaviour was vexatious and unreasonable and that they had attempted to block not only the sale to Mr Butcher but a previous sale which Mr Hipperson had negotiated. It was also alleged that the Applicants' behaviour delayed the sale of the property and increased the expense accordingly.

24. The tribunal received an email from Applicant Mr William Forrest and Mrs Diane Forrest on 15th May 2020 indicating that they had seen the Respondent's claims for costs which they disputed. The Applicants' assert that they were within their rights to apply to the tribunal for a decision and denied that there was any vexatious behaviour upon Mr Forrest's part and that they had been open to discussion at all times. They argued that council tax and insurance are costs that everyone must pay and that since the Respondent did not have an interested party until October 2019 then it was wrong to claim all the costs from May 2019 until April 2020. They also suggest that they had been open to discussion at all times and that *"if Mr Hipperson and Mr Butcher had been upfront and not underhand in their dealings with us this could have been avoided."*

Decision on costs.

25. There are only limited grounds upon which a tribunal can make a costs order as set out above. The tribunal is usually a no costs jurisdiction. In other words, just because one party has succeeded at the tribunal does not mean that the other losing party should pay the successful party's costs. The only relevant provision for the tribunal to consider is whether the Applicants have acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

26. The central plank of the Applicants' case was that Mr Butcher possessed a campervan. This was not detailed on the Notice of proposed sale and the only evidence in support of this from the Applicants was the supposed phone call from Mr Butcher. The

Applicants' case upon this was inconsistent. Mrs Forrest said that the phone caller did not identify himself. This is simply irreconcilable with the statements provided by Mr William Forrest in which he says that Mr Butcher telephoned and identified himself and referred to a campervan. Mr Butcher denied having made any such telephone call and, having heard his evidence Mrs Forrest did not challenge it, but accepted it.

27. The tribunal is therefore driven to the conclusion upon the evidence and upon the balance of probabilities that no such telephone call was ever made to Mr Forrest by Mr Butcher who does not in any event own a campervan. Since this was the sole ground for applying to the tribunal and refusing the sale, then in the tribunal's view, the Applicants have behaved unreasonably in connection with the proceedings and a costs order is appropriate. The tribunal does not consider that Mr Hipperson or Mr Butcher have behaved in an underhand way at all. It was always open to the Applicants to discuss the sale with Mr Hipperson, but they did not do so, and they presented an account to the tribunal about a non-existent campervan that has been rejected.

28. The tribunal accepts that expenses such as pitch fees, insurance and council tax are not costs incurred in connection with the proceedings and nor are costs in relation to dealing with the Respondent's mothers estate or the first abortive sale. However, Kruzins solicitors advised the Respondent in relation to these proceedings about the proposed sale to Mr Butcher and prepared a witness statement and dealt with all other correspondence in relation to this matter. The total solicitors' costs net of VAT was £2136. Given the hourly rate is £185 plus vat which is reasonable in the light of approved rates in the County Court, but that the bill contained work undertaken on other matters and the earlier case we consider that it is appropriate to deduct 50% of the charges. Since there was also likely to have been some duplication of work with the first and second applications and work related to matters other than this case, we deduct a further 10%. This leaves a figure of £854.40 plus vat. If we round down to £850 this comprises approximately 4.6 hours work on this second application at £185 per hour. The tribunal consider that, since Mr Hipperson represented himself, that the sum of £850 plus vat is therefore the appropriate sum to award in costs given that the solicitors prepared the statement and advised Mr Hipperson and corresponded with the tribunal and the applicants on his behalf.

29. **The tribunal therefore make a costs order against the Applicants in this matter and order them to pay the Respondent the sum of £850 plus vat of £170, namely £1020, within 21 days of the date of this decision.**

DATED this 10th day of June 2020.

R. Payne

TRIBUNAL JUDGE