

UPPER TRIBUNAL (LANDS CHAMBER)



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**Royal Courts of Justice, Strand,
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1 December 2022

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

PARK HOMES – PROCEDURE – whether First-tier Tribunal may require site owner to provide statement of account to occupier of pitch – s.4, Mobile Homes Act 1983 – appeal allowed

**AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL
(PROPERTY CHAMBER)**

BETWEEN:

WYLDECREST PARK (MANAGEMENT) LTD

Appellant

-and-

TONY TURNER

Respondent

(Number 2)

**Re: 49a St Dominic Park,
Harrowbarrow,
Callington,
Cornwall PL17 8BN**

Martin Rodger KC, Deputy Chamber President

Hearing: 29 November 2022

Mr David Sunderland, company director, for the appellant
The respondent in person

The following cases are referred to in this decision:

Amey Birmingham Highways Ltd v Birmingham City Council [2018] EWCA Civ 264

Attorney General of Belize v Belize Telecom Ltd [2009] 1 WLR 1988

Bates v Post Office Ltd [2019] EWHC 606 (QB)

BP Refinery (Westernport) Pty Ltd v President, Councillors and Ratepayers of the Shire of Hastings (1977) 52 ALJR 20

Geys v Société Générale [2013] 1 AC 523

Marks and Spencer plc (Appellant) v BNP Paribas Securities Services Trust Company (Jersey) Ltd [2015] UKSC 72

Wyldecrest Parks (Management) Ltd v Santer [2018] UKUT 30 (LC)

Wyldecrest Parks (Management) Ltd v Turner (No.1) [2020] UKUT 40 (LC)

Yam Seng Ptd Ltd v International Trade Corporation Ltd [2013] EWHC 111 (QB)

Introduction

1. The respondent, Mr Anthony Turner, describes himself as “an active campaigner for park home residents’ rights”. The appellant, Wyldecrest Parks (Management) Ltd, is the largest owner and operator in the UK of residential park homes sites, owning 98 sites which accommodate about 10,000 residents on approximately 6,100 pitches.
2. It is perhaps not surprising that Mr Turner and Wyldecrest do not always see eye to eye, nor that their disagreements sometimes have to be resolved by tribunals (for a recent example, see *Wyldecrest Parks (Management) Ltd v Turner* [2020] UKUT 40 (LC)).
3. The issue in this appeal is whether Wyldecrest is obliged to supply Mr Turner with a statement of account, showing all of the sums due from him since 1 January 2019 and all the payments he has made, and including the payment date and the name of the account to which each payment was credited.
4. By a decision issued on 21 June 2022 the First-tier Tribunal, Property Chamber (the FTT) directed Wyldecrest to provide such a statement (although without details of the accounts to which the payments were credited) within 28 days. Wyldecrest now appeals against that decision, with the permission of the FTT. Wyldecrest maintains that it is under no obligation to provide a statement of account and that the FTT has no power to require it to do so.
5. The FTT’s decision was made following an application by Mr Turner under section 4, Mobile Homes Act 1983 (the 1983 Act). The only relief Mr Turner sought in that application was a direction for the provision of a statement of account. Within days of him making the application Wyldecrest confirmed to Mr Turner that, as far as it was concerned, his account was up to date.
6. Neither party was professionally represented at the hearing of the appeal. Mr David Sunderland, Wyldecrest’s Estates Director, presented the appeal on its behalf, and Mr Turner responded. I am grateful to them both for their submissions.

The relevant background

7. The 1983 Act applies to any agreement under which a person is entitled to station a mobile home on land forming part of a protected site, and to occupy the mobile home as their only or main residence (section 1(1)). Mr Turner, lives in a mobile home at St Dominic Park at Harrowbarrow in Cornwall. The Park is a protected site under the terms of the 1983 Act and Mr Turner has the benefit of an agreement which he and his partner made with the former owner of the Park in 2006. The agreement entitles them to station a mobile home on the Park and is therefore one to which the 1983 Act applies.
8. The terms of an agreement to which the 1983 Act applies are largely regulated by the Act itself. Part 1 of Schedule 1 to the Act sets out terms which are implied into all such agreements, and which have effect notwithstanding any express term of the agreement (section 2(1)).

9. I was not shown a copy of the agreement under which Mr Turner occupies his pitch at the Park, but it was common ground that it includes all of the statutory implied terms. Neither party suggested that there were any other express terms of the agreement which were relevant to the appeal and I will proceed on that assumption.
10. Under the agreement, the only regular payments which Mr Turner is required to make to the Park owner are the monthly pitch fee payable on the first day of each month, and a charge for the supply of water and for sewerage services. In the past a charge was also levied for the supply of electricity, but Mr Turner now has his own supply.
11. Wyldecrest acquired a leasehold interest in the Park in December 2018, subject to the agreements under which Mr Turner and other residents occupy their pitches.
12. It had not been the practice of Wyldecrest's predecessor to supply statements of account to the occupiers of pitches on the Park and when Wyldecrest took over in 2018 it carried on that approach. On two occasions in 2020, and a further two in 2021, Mr Turner wrote to Wyldecrest asking for a statement of account. Wyldecrest either refused to comply with those requests or did not respond to them.

The FTT's jurisdiction under the 1983 Act

13. Section 4(1) of the 1983 Act confers jurisdiction on the FTT: (a) to determine any question arising under the 1983 Act or any agreement to which it applies; and (b) to entertain any proceedings brought under the 1983 Act or any such agreement. Subject only to limited exceptions contained in sub-sections (2) to (6) concerning the termination of agreements (which is reserved to the court) and arbitration, section 4(1) therefore gives the FTT very broad power to determine "any question" and to entertain "any proceedings" arising under the 1983 Act or under any agreement to which it applies.
14. When dealing with cases under the 1983 Act, the FTT's powers are supplemented by section 231A, Housing Act 2004, sub-section (2) of which confers a general power to give such directions as the FTT considers necessary or desirable for securing the just, expeditious and economical disposal of the proceedings or any issue in or in connection with them. By section 231A(4) those directions may include, where appropriate: (a) directions requiring the payment of money by way of compensation, damages or otherwise; (b) directions concerning the payment or repayment of pitch fees; (c) directions requiring the carrying out of works to a pitch or site; and (d) directions requiring the provision of services.
15. Section 231A, 2004 Act gives the FTT additional procedural tools when exercising its jurisdiction under section 4, 1983 Act, but it does not widen scope of that jurisdiction.
16. Two of the leading cases on the scope of the FTT's jurisdiction under section 4 are decisions of this Tribunal involving Wyldecrest. In *Wyldecrest Parks (Management) Ltd v Santer* [2018] UKUT 30 (LC), at [38], I suggested that:

“The language of section 4 of the 1983 act is very broad, and the powers conferred by section 231A of the 2004 Act are extensive and expressed in general terms. It should therefore be taken that (with the exception of disputes over termination) the proper forum for the resolution of contractual disputes between park home owners and the owners of protected sites in England is the FTT.”

17. The parties’ previous appeal to the Tribunal, *Wyldecrest v Turner (No.1)*, also concerned the scope of the FTT’s jurisdiction. The issue on that occasion was whether Mr Turner was entitled under section 4 to an order that Wyldecrest disclose to him a copy of the lease under which it holds the Park. Reversing the decision of the FTT, the Tribunal (Judge Cooke) determined that Mr Turner had no such right. Agreeing that section 4 does not give the FTT “*carte blanche* in respect of every aspect of the relationship between the site owner and the occupier of the mobile home”, Judge Cooke added, at [22]:

“That is obviously right. Section 4 does not confer any rights on either party. It provides only a forum for the resolution of “any question arising under this Act or any agreement to which it applies”.”

Mr Turner’s application

18. On 4 January 2022 Mr Turner applied to the FTT under section 4, 1983 Act asking that Wyldecrest be ordered to supply him with a statement of account with effect from 1 January 2019. The statement was to be in conventional accounting format including details of invoices, services, payments received and the names of the accounts to which payments were credited.
19. In a supporting statement made on 3 April 2022 Mr Turner explained his reasons for making the application. In very brief summary they were the following. First, Mr Turner’s own inquiries suggested that occupiers of some of Wyldecrest’s other parks were overcharged for utilities and other services, and he now wished to establish whether he had overpaid at any time. Secondly, Mr Turner considered that in the event of a future dispute he would wish to be able to trace payments made using his own bank records and would therefore need to know the account to which his payments had been credited. Thirdly, he wished to guard against the possibility that after his death or incapacity it might be suggested to his family that arrears existed of which he had not previously been made aware and which would have to be discharged before his home could be sold. Finally, Mr Turner wished to clarify whether the FTT had jurisdiction to make the order he requested.
20. In a response to the application on behalf of Wyldecrest, Mr Sunderland argued that there was no uncertainty over what Mr Turner was obliged to pay since pitch fee reviews were required to commence by notice given in a prescribed form, and because the agreement included an implied term entitling Mr Turner to request documentary evidence of the new pitch fee and all charges for services. He also submitted that the FTT had no jurisdiction to entertain the application, because it did not raise any question under the 1983 Act or under the agreement.

The FTT's decision

21. The FTT referred to this Tribunal's decision in *Wyldecrest v Turner (No.1)* and reminded itself that section 4 provides a mechanism for resolution of disputes, in so far as they arise under the 1983 Act or the occupier's agreement with the site owner. It pointed out that Wyldecrest should have the records required to compile an account. It also noted that Mr Turner could seek an account in the County Court or, conversely, if Wyldecrest sought recovery of sums due under the agreement it could then be required to provide a statement of account to show what sums had been demanded and what payments had been made.
22. The FTT's substantive reasoning for its decision is contained in paragraph 17, as follows:

“I am satisfied the question asked by the application is a matter which arises under the agreement. The agreement requires payments to be made and I am satisfied it is reasonable to expect a statement of account to be provided by [Wyldecrest] from time to time.”
23. The FTT nevertheless limited the statement of account to a record of all sums which Wyldecrest considered to have been due and owing since it acquired its interest in the Park, together with a record of all receipts, by date and amount, and a closing balance. It refused to direct the provision of any more detailed information.

The appeal

24. In support of the appeal Mr Sunderland made three concise submissions. First, section 4 was not engaged because neither the 1983 Act itself nor the agreement between the parties contained any express requirement for Wyldecrest to provide statements of account. Secondly, it was not possible to imply any additional term into the agreement requiring statements of account. And thirdly, there was no dispute between Wyldecrest and Mr Turner which required the provision of a statement of account to assist in resolving it.
25. In response, Mr Turner's overarching submission was that a term should be implied into all agreements governed by the statutory terms requiring that regular statements of account be supplied. Such a term was necessary to give business efficacy to the agreement or should be implied as a matter of law because of the power imbalance between site owners and residents of protected sites, many of whom are elderly or vulnerable and at risk of exploitation. In those circumstances the need for statements of account would have been so obvious to the original parties that it did not require to be spelled out. Mr Turner referred anecdotally to a number of episodes, not involving Wyldecrest, in which significant arrears had been claimed from the families of occupiers after the death or incapacity of the occupier which had not previously been referred to.
26. Mr Turner went on to describe the terms on which pitches on a protected site are occupied as a “relational contract” characterised by features including a long-term relationship between site owner and occupier, substantial investment by the occupier in acquiring their home, and an intention on both sides that each will perform their part of the bargain with integrity. As a result, he submitted, there should be implied into the contract a duty of good

faith on the part of the site owner, one feature of which was a requirement to comply with reasonable requests by the occupier for financial transparency.

27. Mr Sunderland is clearly correct when he points out that there is nothing in the 1983 Act or in the express terms of the agreement which requires an owner of a protected site to supply statements of account to an occupier. Mr Turner did not dispute that proposition and based his argument on the implication of an appropriate term. Nevertheless, before considering whether an additional unwritten term can be implied, it is relevant to consider the terms of the agreement so far as they are documented.
28. For the most part, the terms of agreements to which the 1983 Act applies are in the standard form implied by operation of law and found in Chapter 2 of Schedule 1 to the 1983 Act. I will refer to these as the statutory implied terms, to distinguish them from terms which might be implied as a matter of interpretation of the agreement. The statutory implied terms are part of every agreement to which the 1983 Act applies.
29. The statutory implied terms cover a wide range of subject matter, including the duration of the agreement, termination, the sale or gift of the occupier's mobile home, the occupier's right of quiet enjoyment, the owner's right of entry to the pitch, the pitch fee, the obligations of the occupier and the owner, the provision by the owner of its name and address, and provisions relating to residents' associations. None of the terms require the provision of statements of account.
30. The statutory implied terms do include some provisions which might be said to promote financial transparency.
31. Paragraphs 16 to 20 prescribe a scheme for the annual review of pitch fees. The pitch fee can only be changed by following the procedure in paragraph 17, either with the agreement of the occupier or by an order of the FTT (paragraph 16). A review is initiated by a notice proposing an increase served by the owner on the occupier which must be accompanied by prescribed information. If the occupier agrees to the proposed increase it takes effect from the review date, which is a date specified in the written statement which the owner is required to give to the occupier before the agreement is made; if the written statement does not identify the review date, paragraph 29 provides that it is to be the anniversary of the commencement of the agreement. If the occupier does not agree to the proposed increase either party may apply to the FTT for it to determine the amount of the new pitch fee, which will then take effect from the review date. There is also provision for a late review, which results in the new pitch fee becoming payable from a later date which is specified in the late review notice. The effect of these provisions is that an informal or unilateral attempt to change the pitch fee will have no legal effect; as a result, the room for uncertainty about the amount which is payable is limited.
32. Paragraph 22(b) places an obligation on the owner to provide certain information on request and free of charge. That information comprises "documentary evidence in support of and explanation of – (i) any new pitch fee; (ii) any charges for gas, electricity, water, sewerage or other services payable by the occupier to the owner under the agreement; and (iii) any other charges, costs or expenses payable by the occupier to the owner under the agreement."

33. Parliament clearly gave thought to the need for charges to be clear and to be justified by evidence, yet it did not make provision for statements of account. It could have done so, as it did in when it enacted section 152, Commonhold and Leasehold Reform Act 2002. This provision does not apply to mobile homes and has never been brought into force, but it provides for landlords of dwellings to supply a written statement of account certified by a qualified accountant to each tenant by whom service charges are payable, in relation to each accounting period.
34. The relevant point about the statutory implied terms is not that they eliminate any potential uncertainty over the amount due from an occupier to a site owner, but that they reflect what Parliament considered appropriate as the protection which all occupiers of protected sites should be entitled to.
35. It would, of course, be possible for parties to agree to include express terms requiring the provision of information in a particular form, or at a particular time, but there is no such express agreement in this case.
36. Mr Turner submitted that, in addition to the statutory implied terms which form part of every agreement to which the 1983 Act applies, at least one further term should be implied, namely a term requiring the provision of statements of account by the site owner at the request of the occupier.
37. The law concerning the implication of terms into a contract is very extensive. For quite understandable reasons none of it was cited in any detail by Mr Turner in his submissions. Nor is it necessary to go into great detail in order to address Mr Turner's case. However, it is first necessary to distinguish between two different situations in which terms will be implied. The first is where terms are implied by law into all contracts of a certain type, such as contracts for the sale of goods, or contracts of employment, or contracts for the letting of flats and houses. The second situation is where the court or tribunal is asked to imply a term to fill a gap in a particular contract. (This distinction is very well recognised; for example, by Lord Cross in *Liverpool City Council v Irwin* [1977] AC 239; by Lady Hale in *Geys v Société Générale* [2013] 1 AC 523, at [55]; and by Lord Neuberger, in *Marks and Spencer plc (Appellant) v BNP Paribas Securities Services Trust Company (Jersey) Ltd* [2015] UKSC 72, at [15]).
38. Terms in the former category, which include the statutory implied terms in Schedule 1 to the 1983 Act, are implied, or imposed, because the relationship between the parties is of a type which either Parliament or the common law has decided should be regulated by standard terms which are considered to be reasonable; those terms will apply whenever the contract is of the relevant type.
39. Terms in the latter category are much less common and are found only where the suggested term "would spell out in express words what the instrument, read against the relevant background, would reasonably be understood to mean" (*Attorney General of Belize v Belize Telecom Ltd* [2009] 1 WLR 1988, at [21], *per* Lord Hoffmann). In such cases the question is not whether the suggested term would be reasonable; it must also be necessary to fill a gap in the express terms of the contract which, if not filled, would leave the contract unworkable.

40. In *BP Refinery (Westernport) Pty Ltd v President, Councillors and Ratepayers of the Shire of Hastings* (1977) 52 ALJR 20, 26, Lord Simon (speaking for the majority) summarised the circumstances in which a term can be implied into a particular contract:

“For a term to be implied, the following conditions (which may overlap) must be satisfied: (1) it must be reasonable and equitable; (2) it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; (3) it must be so obvious that ‘it goes without saying’; (4) it must be capable of clear expression; (5) it must not contradict any express term of the contract.”

41. The term which Mr Turner suggests should be implied is not one of the terms which the law implies into every agreement for the occupation of a pitch on a protected site. Parliament has identified those terms in Schedule 1 of the 1983 Act, and it is not possible for the Tribunal to add to them. Nor is there any relevant term which the common law (as opposed to statute) requires to be read into every such agreement.
42. For an appropriate term to be implied it would therefore be necessary for the conditions, or considerations, identified by Lord Simon in *BP v Hastings* to be present. Mr Turner submitted that they were, and that in particular the provision of regular statements of account was necessary to give business efficacy to the agreement and was so obvious that it went without saying. I disagree.
43. Like the FTT, I have no difficulty in accepting that a term along the general lines Mr Turner proposed would be reasonable. Such a term could be expressed clearly in a way which did not contradict any of the other terms of the agreement. But I do not accept that the agreement cannot work effectively without it, or that it is so obvious that it goes without saying. If Mr Turner is correct that the imbalance between site owners and occupiers, the vulnerability of many of them, and the opportunity for abuse which exists in the relationship between owner and occupier, means that a term for the provision of statements of account is essential for the proper working of the agreement, it is surprising that Parliament did not include it as one of the statutory implied terms. No such implied term is found in a residential tenancy agreement (which creates a similar sort of relationship), nor is it invariably, or even usually incorporated by express agreement. The fact that tens of thousands of pitches on protected sites are occupied without the suggested term yet without apparent difficulty makes it impossible to accept that business efficacy requires that it be implied.
44. That brings me to Mr Turner’s suggestion that the agreement by which he is entitled to occupy his pitch is a “relational contract”, and that it therefore includes a term requiring the parties to deal with each other in good faith. One aspect of dealing in good faith, he suggested, is complying with reasonable requests for information, including in the form of a periodic statement of account.
45. This is not the place to discuss the relatively modern concept of the relational contract, which was recognised by the Court of Appeal in *Amey Birmingham Highways Ltd v Birmingham City Council* [2018] EWCA Civ 264. An introduction to the classification of some contracts as relational with the result that the court may be more willing to imply a duty to co-operate

or a duty of good faith can be found in the decision of Fraser J in *Bates v Post Office Ltd* [2019] EWHC 606 (QB) at [705]. Referring to the first use of the term by Leggatt J (as he then was) in *Yam Seng Ptd Ltd v International Trade Corporation Ltd* [2013] EWHC 111 (QB), Fraser J explained:

“Leggatt J had in mind contracts between those whose relationship is characterised as a fiduciary one and those involving a longer-term relationship between parties who make a substantial commitment. The contracts in question involved a high degree of communication, co-operation and predictable performance based on mutual trust and confidence and expectations of loyalty “which are not legislated for in the express terms of the contract but are implicit in the parties’ understanding and necessary to give business efficacy to the arrangements”. He gave as examples franchise agreements and long-term distribution agreements. Even in the case of such agreements, however, the position will depend on the terms of the particular contract.”

46. The contracts under consideration in *Bates v Post Office* were contracts between the Post Office and its sub-postmasters. 550 sub-postmasters claimed that the Post Office’s Horizon software system for sales and accounting was defective and wrongly identified accounting shortfalls for which they were falsely held responsible by the Post Office. They argued this was a breach of a contractual duty of good faith. A number of features were identified by the Judge at [725]-[730] as marking the contracts for the operation of sub-post offices out as relational. Those included: the long-term nature of the contract; that the parties intended that their respective roles would be performed with integrity, and with fidelity to their bargain; that they were committed to collaborating with one another in the performance of the contract; that the spirit and objective of their venture was not capable of being expressed exhaustively in a written contract; that each reposed trust and confidence in the other; that the contract involved a high degree of communication, co-operation and predictable performance based on mutual trust and confidence, and expectations of loyalty; and, that the sub-postmasters each made a substantial financial commitment to the relationship.
47. Mr Turner suggested that similar features were present in agreements governed by the 1983 Act for the occupation of pitches on protected sites. Once again, I do not agree. Such agreements are of indefinite duration and will often be entered into in the expectation that they will last for many years. They will often be associated with a substantial investment by the occupier in purchasing a mobile home to locate on the pitch (although the site owner may, but often may not, be the person from whom the home is purchased). Other than those common features, the characteristics of a relational contract are absent. The parties’ arrangement is an entirely transactional one which does not depend on their having trust and confidence in each other, or require any significant collaboration, or give rise to an expectation of loyalty or fidelity.
48. I therefore reject each of Mr Turner’s arguments for the inclusion in the agreement of an implied term requiring the provision of statements of account on request.

49. That brings me back to the decision of the FTT. The order it made was based on the proposition that Mr Turner’s request for a statement of account “arises under the agreement”. I do not agree. I acknowledge that the obligation to make payments arises under the agreement, but for the reasons I have given I do not accept that the agreement imposes any obligation on Wyldecrest to provide statements of account. In the absence of any such obligation, and in the absence of any dispute between the parties over the state of the account between them, Mr Turner’s application did not raise any question under the Act or the agreement and could not be said to involve proceedings under the Act or the agreement. It was not enough that the FTT thought it would be reasonable to expect a statement of account to be provided. As the Tribunal said in *Wyldecrest v Turner (No.1)*, section 4 is about dispute resolution, and does not give the FTT *carte blanche* to regulate the relationship between owners and occupiers.
50. In my judgment, therefore, the FTT did not have jurisdiction in this case to order Wyldecrest to provide a statement of account and I set aside its decision and dismiss Mr Turner’s application.
51. I would add that nothing in this decision detracts from the powers of the FTT when called upon to resolve a dispute over which it does have jurisdiction to give case management directions under its own rules or under section 231A, 2004 Act, requiring a party to produce documents or information, which in an appropriate case could include a statement of account.

Martin Rodger KC,
Deputy Chamber President

1 December 2022

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.