



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : **CHI/21UH/PHC/2020/0009**

Park Home address : **13 Manor Park Home Estate,
New Road,
Hellingly,
Hailsham,
East Sussex BN27 4NE**

Applicant : **Mr. Geoffrey & Mrs. Celia Rolfe**

**Respondent
Represented by** : **Mr. Libby Saunders
Fowler de Pledge, solicitors**

Date of Application : **25th September 2020**

Type of application : **to determine a question arising
under the Mobile Homes Act 1983
("the 1983 Act") or the agreement to
which it applies**

The Tribunal : **Judge Bruce Edgington**

Date of Decision : **28th April 2021**

DECISION

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1. In respect of the questions raised by the Applicants, the Tribunal determines:-

(i) Question
"Are we paying the correct site fee?"

Determination

It is inferred that this is intended to refer to the pitch fee. This is set by the Occupation Agreement subject to an annual review. From the evidence it seems clear to the Tribunal that the pitch fee was £119.90 per calendar month and this is therefore the correct contractual fee subject to the reviews in 2020 and 2021.

(ii) Question
"Do we have a legal assignment?"

Determination

The evidence shows that apart from an incorrect pitch fee being set out therein, the assignment itself is legal and binding.

Reasons

Introduction

2. The Applicants own a park home which is situated on the park home address pitch. They bought it from Mrs. Donna French and received an assignment of the pitch occupation agreement. There is no statement from Mrs. French but it seems to be agreed by the parties that Mrs. French was the daughter of the late Mrs. Linda Spencer and the Respondent accepts that Mrs. French obtained ownership of the park home and the benefit of the occupation agreement when her mother sadly died.
3. The Applicants say that they were told by the selling agent, Fox & Co., that the pitch fee was £152.54 per month excluding water rates. The assignment document which was completed by Mrs. French and the Applicants records a pitch fee of £154.54 without mentioning water rates. They say that they have now discovered that the pitch fee was £119.90 per month prior to Mrs. Spencer's death and that has now increased to £122.42 per month following the contractual review. They ask this Tribunal for a determination as to the correct pitch fee and that they have a legal assignment.
4. The Tribunal issued a directions order on the 5th November 2020 timetabling the filing of evidence etc. The order says that this matter will be determined (a) on the papers without an oral hearing and (b) without a formal inspection of the park home or the site unless anyone objects. Neither party has objected.

The Occupation Agreement

5. A full copy of the agreement has been produced and there is no dispute about its terms. It is dated 22nd February 2010 and is made between Mrs. Margaret Powell (1) and L & K Saunders. The pitch fee is then said to be £94 every 4 weeks in advance. The only additional charge specifically mentioned is for 'sewerage' although the amount is not stated. The agreement sets out the express terms and those implied by the **Mobile Homes Act 1983** as amended ("the 1983 Act").
6. There is then a notice that such agreement was assigned by Mrs. Powell to Linda Spencer on the 15th August 2013. The total sale price was £87,500 of which £8,750 was paid to the Respondent.
7. The next document of note is a Notice from Mrs. French to the Respondent dated 26th October 2019 informing him that she was proposing to sell the park home to the Applicants. There is then a notice that the pitch agreement was assigned to the Applicants by Mrs. French on the same date. It is said that the total sale price is £117,000 and that the Applicants agree to pay commission of £11,700 to the Respondent. The assignment says that "*The current pitch fee is £154.54 per week/month/quarter/year (delete as appropriate)*". Nothing is deleted but the parties seem to agree that it is supposed to

be a monthly figure rather than the 4 weekly figure in the occupation agreement itself.

The Law

8. Section 4 of the 1983 Act gives this Tribunal the power “*to determine any question arising under the Act or any agreement to which it applies*”. Enforcement is a matter for the County Court.
9. One of the documents supplied to the Tribunal is headed ‘Respondent’s Submissions’. The name Fowler de Pledge appears at the end and they describe themselves as ‘Applicant’s Solicitors’. I have assumed that this is a mistake and that they represent the Respondent.
10. It is said in this submission that “*It is for the Applicants to make out (prove) their case on the evidence they have provided to the Tribunal*”. In fact, that is not quite the case in view of the wording of Section 4. The Tribunal’s duty is to determine a question or questions on the evidence presented to it. I do accept, however, that if the questions raised by the Applicants are serious disputed matters, as they are in this case, the correct standard of proof to apply will be the civil standard i.e. the balance of probabilities.

Discussion

11. As to the first question raised, the problem is that the evidence provided by the Applicants shows that the pitch fee being paid in the year of the assignment to them was £119.90 per month. Mr. and Mrs. Hartup from pitch 14 say that on behalf of Mrs. Spencer, they paid 3 months’ pitch fees to the site manager in 2019 in respect of pitch 13. He refused to issue them with a receipt, saying that the Respondent did not supply a receipt book. They say that they paid £359.70 in cash i.e. £119.90 per month. They also say that this was their pitch fee – or ‘ground rent’ as they put it – and that following the 2020 review that went up to £122.42 per month.
12. The Respondent has filed a statement with a statement of truth. He does not challenge Mr. and Mrs. Hartup’s evidence in any way. All he says as to the amount of the pitch fee is that in 2019, he told the selling agent that the pitch fee was £154.54. He also confirms that the amount payable as the pitch fee includes water charges but not sewerage charges.
13. Mr. Saunders also says that this park home site is ‘neat and well run’ and that the pitch fees are a ‘competitive rate and compare favourably with....those on similar sites in the area’. He may well be right but unfortunately, that is irrelevant. Pitch fees are not regulated in the same way as fair rents or market rents in cases where a tenancy exists.
14. In this case, there is an occupation agreement dating back to 2010. The benefit of that agreement was assigned in 2013 to Mrs. Spencer. She then died and in 2019 her beneficiary assigned that agreement to the Applicants. That assignment was accepted by the Respondent. In his statement, he says that he is ‘one of the owners’ but he clearly has the authority to bind them.

15. The end result of this is that the site owner is contractually bound to all the owners of this park home since 2010, and that includes the amount of the pitch fee subject, of course, to the annual reviews.
16. The alternative was that on the death of Mrs. Spencer, the site owners could have argued that the death terminated the agreement in which case, they would have had to come to some agreement with Mrs. French which could have involved her moving the park home to another site or creating a new occupation agreement. Depending on the terms of such agreement, they may not have been entitled to any commission but they could have set a higher pitch fee.

Conclusions

17. For the reasons set out above the Tribunal determines the questions as set out in the decision.



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Judge Bruce Edgington
28th April 2021

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.