UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

MOBILE HOMES –construction of agreements -- costs -- application by occupiers to First-tier Tribunal for determination whether certain sewerage charges were payable pursuant to their agreements -- F-tT finding in favour of site owners -- question arising as to whether the agreements on their proper construction entitled site owners to recover from occupiers the costs incurred in relation to the proceedings before F-tT

IN THE MATTER OF AN APPEAL FROM A DECISION OF THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER) (RESIDENTIAL PROPERTY)

BETWEEN:

(1) SILK TREE PROPERTIES LIMITED
(2) SUSSEX MOBILE HOMES LIMITED
(3) WEST SUSSEX MOBILE HOMES LIMITED

Appellants

and

MR & MRS C GRANT & OTHERS **Respondents**

Re: Mobile Homes at The Willows,
Ford House,
Arundel,
West Sussex
BN18 0BU

Decision on Written Representations

The following cases are referred to in this decision:

Canary Riverside Property Limited v Schilling (LRX/65/2005)
Conway v Jam Factory Limited (2013) UKUT 592 (LC)
Iperion Investments v The Broadwalk House Residents Limited (1995) 27 HLR 196
Realreed Limited v Cussens [2013] EWHC 1229 (QB)
Arnold v Britton [2013] EWCA Civ 902

The following additional cases were referred to in the written representations:

Union Pension Trustees Ltd v Slavin [2015] UKUT 103(LC)
Stroud v Weir Associates Ltd [1987] EGLR 190
Telchadder v Wickland (Holdings) Ltd [2014] UKSC 57

DECISION

Introduction

1. This is an appeal from the decision of the First-tier Tribunal Property Chamber (Residential Property) ("the F-tT") dated 31 March 2015 whereby the F-tT decided that the appellants were entitled to recover from the respondents a reasonable sum in respect of the appellants' costs of maintaining the sewerage services at the relevant site and maintaining the common areas of the site. There is no appeal against the foregoing aspects of the F-tT's decision. However the F-tT also decided that, upon the proper construction of the relevant express provisions in the respondents' agreements, the appellants were not entitled as a matter of contract to recover from the respondents their costs (including legal costs) in respect of the proceedings before the F-tT. It is against that aspect of the F-tT's decision that this appeal is brought.

2. The respondents are all occupiers of mobile homes situated on the Willows Mobile Home Park, Ford Road, Arundel. The first respondent owns the pitches upon which most of these mobile homes are situated; the second respondent owns one pitch (No.9); and the third respondent owns four pitches (Nos. 39, 41, 42 and 43). The Willows Mobile Home Park is a protected site within the Mobile Homes Act 1983 as amended. Pursuant to section 4 of the Act the F-tT has jurisdiction to determine any question arising under the Act or any agreement to which it applies and has jurisdiction to entertain any proceedings brought under the Act or any such agreement.

3. In October 2014 the respondents applied to the F-tT for a determination of certain matters including in particular the recoverability of certain sewerage charges and also some other maintenance charges at the site. The issues raised in that application were determined by the F-tT in favour of the appellants and, as already stated above, no issue arises in relation to that aspect of the F-tT's decision in the present appeal.

4. The question regarding the recoverability of costs by the appellants from the respondents arose in relation to the costs of what the F-tT described as "the current application to the Tribunal", see paragraph 34 of its decision.

5. Some of the respondents hold their respective pitches from the relevant appellant pursuant to an earlier form of agreement which was described by the F-tT as the pre-2006 agreement. The remainder of the respondents hold their respective pitches from the relevant appellant pursuant to a later agreement described by the F-tT as the post-2006 agreement.

6. The present appeal depends upon the proper construction of the charging provisions in these two agreements. It is therefore necessary, separately, to set out the

relevant terms relied upon by the appellants as justifying the recovery by them from the respondents of the costs of the application to the F-tT.

7. As regards the pre-2006 agreement there is a specimen such agreement before me dated 21 September 1993. The relevant words relied upon by the appellants are contained within clause 3 of the agreement which states that the relevant respondent (referred to as the Occupier) undertakes with the relevant appellant (referred to as the Owner) to comply with various obligations including, in paragraph (b) the following:

> "(b) To pay to the Owner an 'equal amount' of the cost's (costs divided by number of homes on the park) of:-
>
> (i) the charges for the supply of water, sewage, electricity, gas and telephone and other services to the mobile home and pitch, inc maintenance and repair.
>
> (ii) all sums reasonable expended by the owner in respect of keeping the park in good repair and condition and making capital improvements to the Park including management charges and compliance with such legislation as may be applicable to the operation of the park including insurance.
>
> (iii) any monies not received within 7 days of invoice will be charged interest at 3% per month or part thereof. This applies to all clauses in this agreement."

It is upon sub-paragraph (b)(ii) that the appellants rely.

8. As regards the post-2006 agreements there is before me a copy of an agreement dated 30 September 2006 (under which Mr and Mrs Grant are the occupiers) which refers to the site owner as "Us/We" and to the occupier as "You". The words relied upon by the appellants as justifying the recovery of the costs of the proceedings before the F-tT are contained within clause 4 which is introduced by the words "You undertake with Us as follows…." And paragraph (d) of which is in the following terms:

> "(d) To pay all reasonable costs charges and expenses (including legal costs and surveyors' fees) incurred by Us in relation to:
>
> - Any process or proceedings in respect of termination of this agreement (including our disconnection charge);
>
> - The assignment of the agreement (including our administration fee);
>
> - in respect of giving effect to or requiring the performance of any of the provisions of this agreement (including legal proceedings); and
>
> - Every application made by You for a consent or licence required by the provision of this agreement, whether it is granted, refused or offered subject to any lawful qualification or condition, or the application is withdrawn.

This obligation is subject to your rights under CPR Rule 48.3."

9. The F-tT decided that in respect of both the pre-2006 agreement and the post-2006 agreement the appellants did not have the right to recover the costs of the proceedings before the F-tT from the respondents. F-tT's reasons for its conclusions on this point are contained in paragraph 34 of its decision in the following terms:

> "34. With regard to whether the site owner is entitled under the express terms of the agreement to recover, as a matter of contract, the costs of the current application to the Tribunal, the Tribunal finds in favour of the Applicants. The pre-2006 agreement has no provision for the recovery of site owner's costs of proceedings. With regard to the post-2006 agreement the Tribunal finds that the Respondent's costs of responding to an application under section 4 of the Act for the determination of a question or questions such as those posed by the Applicants in this case do not come within clause 4(d). The Tribunal construes "To pay all reasonable cost charges and expenses (including legal costs and surveyors' fees) incurred by us in relation to any process or proceedings in respect of termination of the agreement as meaning positive steps taken by the site owner towards terminating the agreement. Here, the site owner has simply been required to respond to a request for clarification of the home owners' liabilities and to the home owners' challenge as to the reasonableness of the sewerage charges. The Tribunal does not consider that there is a sufficient nexus between that situation and the site owner taking proceedings to terminate the agreement to bring these proceedings within the ambit of clause 4(d). The County Court proceedings which have apparently been commenced against two home owners for termination of their agreements is another matter. Any costs incurred in those proceedings will be directly in connection with action brought by the site owner to terminate the agreement. If the site owner is unsuccessful in those proceedings there may be arguments that it is unable to recover its costs under the contractual terms but that is not a matter for the Tribunal to decide under this application. In respect of the obligation to pay the site owner's costs "in respect of giving effect to or requiring the performance of any of the provisions of this agreement (including legal proceedings)" against the Tribunal construes this as intending to cover a situation where the site owner is pro-active in enforcing the agreement and not when responding to an application such as this to the Tribunal which, in the absence of unreasonable conduct, is intended to be a "no-costs" jurisdiction. It would be unfortunate if mobile home owners were deterred from seeking clarification of their obligations under an agreement or from obtaining a ruling as to how much they owed under an agreement simply because of the fear that they would have to bear the site owner's costs."

10. Permission to appeal was refused by the F-tT but granted by the Upper Tribunal. In due course it became clear that both the appellants and the respondents were content for the matter to be decided by the Upper Tribunal upon the written representation procedure. The Upper Tribunal ordered that it should be decided upon that procedure.

11. Written submissions on behalf of the appellants have been prepared by Mr Justin Bates of counsel and have been submitted together with a bundle of documents. Written

submissions on behalf of the respondents have been prepared by Mr Brian Doick of the National Association of Park Home Residents and submitted also with a bundle of documents.

Appellant's submissions

12. Mr Bates drew attention to the fact that there is no special rule of construction to be applied when considering charging clauses of this nature. The task of the court/tribunal is to examine the wording in its context and against all the admissible background and in the light of the apparent commercial purpose of the clause and then to decide what the provision means and how it operates. He referred to the decision of the Upper Tribunal in *Assethold Limited v Watts* [2014] UKUT 0537 (LC) at paragraphs 32-41 reviewing various recent Court of Appeal authorities.

13. As regards the pre-2006 agreements Mr Bates drew attention to the following words (the emphasis being as added by him), namely the obligation that the occupier must pay:

> "… **all sums** expended by the owner in respect of keeping the park in good repair and condition and making capital improvements to the Park **including management charges** and compliance with such legislation as may be applicable to the operation of the park including insurance."

He submitted that the crucial words are "all sums expended by the owner… including management charges …." and that this is a very broad clause especially having regard to the words "all sums". This wording was sufficiently broad to cover litigation costs.

14. Mr Bates referred to the Lands Tribunal decision in *Canary Riverside Property Limited v Schilling* (LRX/65/2005) and also to the Upper Tribunal decision in *Conway v Jam Factory Limited* (2013) UKUT 592 (LC) which cited the decision in *Schilling* with apparent approval. Mr Bates contended that these decisions show that the costs of responding to an application which an occupier/leaseholder/tenant may bring against a landlord is capable of amounting to a management cost. Mr Bates recognised that those two cases were concerned with attempts to resist the appointment of a manager (under section 24 of the Landlord and Tenant Act 1987), but he submitted that the decisions are authority for a broader point, namely that resisting litigation is capable of being a cost of management. He submitted that this is further confirmed by the Court of Appeal decision in *Iperion Investments v The Broadwalk House Residents Limited* (1995) 27 HLR 196.

15. As regards these pre-2006 agreements Mr Bates submitted that the costs of the litigation (i.e. these proceedings before the F-tT) were inexorably linked to the management of the site. The present case included a challenge by the respondents to the recoverability of costs associated with a sewerage system and the question of whether residents had been pouring inappropriate material into the system. Dealing with this question regarding the sewerage system in the proceedings before the F-tT took a considerable amount of time and effort on the part of the appellants and included the

commissioning of external expert advice which was deployed at trial. He submitted in consequence that the proper determination was that under the pre-2006 agreements the costs of resisting the respondents' application regarding the recoverability of the sewerage charges were in principle contractually recoverable though the agreement.

16. As regards the post-2006 agreements Mr Bates submitted that there were two clauses each of which separately conferred upon the appellants a contractual right to recover from the respondents the costs of the legal proceedings before the F-tT.

17. Clause 4(d) provides that the occupier will pay "… all reasonable costs charges expenses (including legal costs and surveyor's fees) incurred by Us in relation to …". There then follow two separate categories of expenditure, both of which Mr Bates relied upon.

18. First there are the following words:

> "any process or proceedings in respect of termination of this agreement (including Our disconnection charge)".

As regards this provision Mr Bates pointed out that under the Mobile Homes Act 1983 persons who occupy pursuant to an agreement to which the Act applies have a form of security of tenure. Regardless of any contractual provisions to the contrary, there is implied into all agreements to which the Act applies a provision in the following terms:

> "4. The owner shall be entitled to terminate the agreement forthwith if, on the application of the owner, the appropriate judicial body:
>
> (a) is satisfied that the occupier has breached a term of the agreement and, after service of a notice to remedy the breach, has not complied with the notice within a reasonable time; and
>
> (b) considers it reasonable for the agreement to be terminated."

Accordingly before any agreement can be terminated (and before any possession order can be obtained) the court has to be satisfied that the occupier has breached a term of the agreement and also that a notice requiring the breach to be remedied has been served and also that this notice has not been complied with within a reasonable period and also that it is reasonable to terminate the agreement.

19. One of the conditions precedent to termination of an agreement is proof that the occupier has breached a term of the agreement. There is no requirement that this proof must be obtained in any particular form, for instance upon an application by the site owner to either the F-tT or the Court. The only requirement is that the appropriate judicial body is satisfied that the breach has occurred. The appropriate judicial body would, in a case concerning termination of an agreement, be the court, see section 4(3) of the 1983 Act. Mr Bates submitted that the present decision of the F-tT has established that the respondents were in breach of their agreements because they had not paid the sums which had been demanded of them. The substance of the F-tT's decision was that

the respondents were wrong and the appellants were right in their respective arguments about whether the appellants were entitled to require payment of certain sums by way of sewerage charges. In summary the F-tT's decision is proof of the breach of agreement by the respondents. The appellants would be entitled to rely on this decision to satisfy a court of the same point in due course in any possession proceedings (or the appellants could rely upon this finding as a basis for serving a notice requiring remedy of the breach).

20. On the foregoing basis the costs incurred by the appellants in defending the respondents' application to the F-tT were costs of "any process or proceedings in respect of termination of this agreement." The proceedings before the F-tT established matters which were a necessary ingredient in respect of any eventual termination of the agreement on the basis of breach by the respondents.

21. Mr Bates submitted there was a helpful analogy with section 168 of the Commonhold and Leasehold Reform Act 2002 which provides that a landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 in respect of a breach by a tenant of a covenant or a condition in the lease unless certain matters are satisfied, one of which is that a court in any proceedings (or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement) has finally determined that the breach has occurred. Accordingly it is necessary for a landlord to be able to prove a breach of covenant before forfeiture proceedings can commence. This proof of the breach of covenant is not required to be obtained in any particular way, such as upon an application by a landlord. It has been held in *Realreed Limited v Cussens* [2013] EWHC 1229 (QB) that it can be satisfied by a finding of fact even in a claim made by a tenant against a landlord.

22. Therefore the successful resisting by the appellants in the proceedings before the F-tT of the respondents' application and the obtaining by the appellants of a finding that the respondents were indeed liable to make payments for sewerage charges and that they had not made these payments amounted to the appellants being involved in a process or in proceedings "in respect of termination of this agreement". It was therefore within the relevant charging provision in the post-2006 agreement.

23. Separately from the foregoing Mr Bates also referred to the following category of expenditure in clause 4(d). I set out the provision including the introductory words at the beginning of the clause:

> "To pay all reasonable costs charges and expenses (including legal costs and surveyor's fees) incurred by Us in relation to:
>
> > in respect of giving effect to or requiring the performance of any of the provisions of this agreement (including legal proceedings)".

He submitted that this clause also entitles the appellants to recover their costs. The effect of the F-tT's decision is to require the performance by the respondents of obligations (i.e. obligations as imposed by provisions in the agreement) to make payments in respect of sewerage charges.

Respondents' submissions

24. Mr Doick submitted that the F-tT was correct in its conclusions for the reasons it gave. He invited the Upper Tribunal to endorse the F-tT's decision.

25. Mr Doick pointed out that originally, under the Mobile Homes Act 1983, it was the County Court upon whom was conferred jurisdiction to determine any question arising under the Act or under an agreement to which the Act applied. Under the County Court procedures there was power to award costs against an unsuccessful party. However this has now been changed. In April 2011, by statutory instrument, jurisdiction was transferred from the County Court to the Residential Property Tribunal Service. This was devised by the Government to enable residents of mobile homes to be in line with the rented housing sector and to be able to obtain a fair and reasonable outcome to any dispute which might arise under the 1983 Act as amended without having to face the heavy costs that can arise in the County Court. In short under the County Court procedures costs could be awarded against a losing party. Under the procedure which now applies an adverse costs order would only be made by a tribunal against an occupier of a mobile home on a protected site, in relation to proceedings brought before that tribunal under the 1983 Act as amended, in limited circumstances such as if the occupier had behaved frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

26. Occupiers on a protected site have a legal right to challenge any charge being made by the park owner if they believe it to be unjustified. If the appellants' appeal is allowed this will mean that this right of challenge will be substantially removed from occupiers because they will face the prospect that the site owner's costs will be charged to them. This will create an unfair burden upon occupiers.

27. As regards the pre-2006 agreements Mr Doick contended that the management costs, to which the respondents were required to contribute through the relevant clause in the agreement, were to be distinguished from litigation costs. Management costs did not include such litigation costs.

28. As regards the post-2006 agreements Mr Doick drew attention to the fact that in the present case what had happened was that the respondents had made an application to the F-tT to resolve a dispute between them and the appellants. The proceedings were not in any way directed towards the termination of the respondents' agreement. All that happened was that the respondents used the procedures provided by the 1983 Act to get an authoritative ruling on a point of contention with the intention of then abiding by whatever that decision might be. Mr Doick submitted that the analogy drawn by Mr Bates with section 168 of the Commonhold and Leasehold Reform Act 2002 did not assist the appellants.

29. Mr Doick also made observations about the appellants' conduct in relation to the proceedings and an alleged failure of communication on their part. I can observe at this stage that this point might become relevant if in principle the costs of the proceedings are

recoverable and the question of quantum arises in some future dispute. However this point cannot assist me on the proper interpretation of the contractual provisions in the agreements, which is the point raised in the present appeal.

Discussion

30. The costs with which this appeal is concerned are the costs (including legal costs and expert witness costs) of the proceedings before the F-tT in relation to the respondents' application to the F-tT which led to the hearing before it. This application was principally for a determination by the F-tT of a dispute regarding the sewerage service and whether certain costs which the appellants were seeking to charge the respondents were properly payable in accordance with the terms of the agreements and the provisions of the Mobile Homes Act 1983 as amended and the implied terms provided for thereunder. This appeal is not concerned with any other categories of cost which were referred to in passing in the F-tT's decision regarding possible separate proceedings against a few of the respondents for the termination of their agreements.

31. I respectfully refer to and adopt the analysis of the Deputy President in *Assethold Limited v Watts* as to the proper approach to construction of service charge covenants, where consideration was given to various recent decisions from the Court of Appeal. In particular I note that in *Arnold v Britton* [2013] EWCA Civ 902 Davis LJ at paragraph 37 expressed agreement with the analysis of Morgan J at first instance where he had stated:

> "I do not see why a service charge clause in a lease should be subject to a special principle …. I consider that what is required is that the court must examine the wording of the charging provision, in its context and against all the admissible background and in the light of the apparent commercial purpose of the clause, and then decide what the provision means and how it operates."

32. I consider first the pre-2006 agreement. Such an agreement was entered into in circumstances where, if a dispute arose under the 1983 Act or an agreement to which that Act applied, such a dispute was to be determined by the County Court. The County Court would have had jurisdiction to make any appropriate order for costs of such proceedings. It was against that background that the pre-2006 agreement was executed.

33. Mr Bates on behalf of the appellants submits that the crucial words are:

> "all sums expended by the owner …. including management charges …".

He says that this is a very broad clause and that it is sufficiently broad to cover litigation costs. I however do not agree that these are the crucial words. I consider the crucial words to be the whole of clause 3(b)(ii) and not merely the extracted passage which Mr Bates contends is crucial. The whole of the provision is set out in paragraph 7 above. It will there be seen that the words "including management charges" follow after other words. The relevant words therefore are:

> "all sums reasonable (sic) expended by the owner in respect of keeping the park in good repair and condition and making capital improvements to the Park including management charges…".

34. I accept that the expression "management charges" may, depending upon the context in which it is used, be capable of including litigation costs incurred by a landlord in the managing of a property. What will be of central importance in any particular case is the full wording of the relevant provision in the tenancy or agreement which is relied upon.

35. In the present case the appellants rely upon clause 3(b)(ii) for the purpose of seeking to recover the relevant costs under the terms of the pre-2006 agreement. The appellants do not place any reliance upon certain wording within clause 3(b)(ii) namely "… and compliance with such legislation as may be applicable to the operation of the park including insurance". Nor is it suggested that there has been any relevant "capital improvements" made to the park.

36. In my view, therefore, the proper approach in considering whether the appellants' expenditure upon the costs of the proceedings before the F-tT are recoverable from a respondent under clause 3(b)(ii) is first to ask the following question, namely: was the relevant expenditure in respect of "keeping the park in good repair and condition"? The answer to this question is no. I do not consider that the expenditure made by the appellants in respect of the costs of the proceedings before the F-tT can, on any normal use of the English language, be said to be expenditure made in respect of "keeping the park in good repair and condition". It is to be noted that the appellants (correctly) do not argue that the legal costs constitute expenditure made in respect of "keeping the park in good repair and condition". What the appellants rely upon are the immediately following words namely "including management charges".

37. Having found that the answer to the question posed in paragraph 36 above is no, it is then necessary to ask whether a different answer is justified if one is told that expenditure in respect of keeping the park in good repair and condition is to include management charges. This reference to management charges is not a reference to general management charges in running the park. It is a reference to management charges which can properly be said to be included in the expense of "keeping the park in good repair and condition". Such management charges would include management related to works to the park, being works to keep the park in good repair and condition. For instance if it was necessary to pay an architect or a surveyor to supervise some particular works of repair or to manage a contract under which such works were to be carried out I consider that such expenditure would be within the words "including management charges" in clause 3(b)(ii). But the word "including" which is placed immediately before the expression "management charges" shows that the management charges must relate to work of the type which has been described in the immediately preceding words. The approach adopted by the appellants, through Mr Bates's argument, involves treating clause 3(b) as though there was a separate subparagraph within it dealing with management charges such that the relevant wording was as follows namely:

"(b) To pay to the Owner an "equal amount" of the cost's (costs divided by number of homes on the park) of:-

(..) management charges"

However this is not how the clause has been drafted.

38. The F-tT concluded that the costs of the application to it could not be recovered under the pre-2006 agreement because that agreement "has no provision for the recovery of site owner's costs of proceedings". I agree, for the reasons I have given above, with the conclusion of the F-tT that there is no provision giving the appellants a contractual entitlement to recover the relevant legal costs.

39. I now turn to consider the post-2006 agreement.

40. Mr Bates's first argument is that the costs of the proceedings before the F-tT are recoverable by reason of the following words in clause 4(d):

"To pay all reasonable costs charges and expenses (including legal costs and surveyors' fees) incurred by Us in relation to:

any process or proceedings in respect of termination of this agreement (including Our disconnection charge);"

41. There are, as Mr Bates has pointed out, statutory provisions controlling the manner in which a site owner can seek to terminate an agreement in respect of a mobile home on a protected site, see paragraph 18 above. However the present proceedings before the F-tT were not directed towards any step in that process. The proceedings were not before the County Court. The proceedings did not involve any contention that a notice requiring remedy of a breach had been served or that the notice had not been complied with within a reasonable time. Instead, as contended by Mr Doick, what happened was that there was a disagreement between various occupiers (namely the present respondents) and the site owners (namely the present appellants) as regards the obligations of the respondents in relation to the payment of sewerage charges. The respondents applied to the F-tT to resolve this disagreement. The F-tT did so. Upon the question of whether the above-mentioned wording in clause 4(d) permitted the appellants to recover from the respondents the relevant costs the F-tT concluded that there was not a sufficient nexus between the nature of the application to the F-tT and an appellant (as site owner) taking proceedings to terminate an agreement. I agree.

42. The appellants also rely upon a separate provision in clause 4(d). Again for convenience I set out the opening words of clause 4(d) together with the particular words relied upon in this part of the argument:

"To pay all reasonable costs charges and expenses (including legal costs and surveyors' fees) incurred by Us in relation to:

> in respect of giving effect to or requiring the performance of any of the provisions of this agreement (including legal proceedings);"

Here there is an express reference to legal costs and surveyors' fees and to legal proceedings. Accordingly the nature of the relevant expenditure which the appellants have incurred, namely expenditure upon the proceedings before the F-tT, is potentially capable of being recovered within this provision. The crucial question is therefore whether such expenditure was in relation to (or in respect of) "giving effect to or requiring the performance of any of the provisions of this agreement".

43. The application to the F-tT was made by the respondents. As recorded in paragraph 3 of the F-tT's decision the application challenged the appellants' ability to recover from the respondents sewerage charges and charges for general maintenance of the communal areas of the park, which the appellants had levied in addition to the pitch fee. Argument was also raised as to the reasonableness of the sewerage charges (if they were recoverable at all). The F-tT decided that the appellants were entitled to recover from the respondents a reasonable sum in respect of the costs of maintaining the sewerage services in addition to the pitch fee; that they were entitled to recover from the respondents their costs of maintaining the common areas of the site in addition to the pitch fee; and that the reasonable sewerage costs (being the total figures for the park as a whole) should be decided in certain sums for the various years under consideration. In summary the appellants contended that the respondents were contractually obliged to make certain payments pursuant to the terms of their agreements and the provisions of the Mobile Homes Act 1983, whereas the respondents contended that they were not contractually obliged to do so.

44. By resisting the respondents' application and by insisting (correctly as the F-tT found) that the respondents were contractually obliged to make the disputed payments the appellants were, in my judgement, incurring legal costs and conducting legal proceedings for the purpose of requiring the performance by the respondents of their obligations under certain provisions of the agreement. This falls squarely within the words of the clause. Even if that were wrong, I conclude that by conducting legal proceedings before the F-tT for the purpose of establishing the correct interpretation of the relevant agreements the appellants were taking legal proceedings for the purpose of giving effect to the provisions of the agreement. There is nothing in the clause to indicate that it is only costs so incurred in proceedings which are taken proactively by the appellants as site owners which can be recovered. On that point I respectfully disagree with the analysis of the F-tT when it stated that this part of clause 4(d) was intended "to cover a situation where the site owner is pro-active in enforcing the agreement and not when responding to an application such as this…." I do not overlook the following words in paragraph 34 of the F-tT's decision where it refers to the fact that the jurisdiction conferred on the F-tT is intended to be a "no costs" jurisdiction and that it would be unfortunate if mobile home owners were deterred from seeking clarification of their obligations under an agreement or from obtaining a ruling as to how much they owed under an agreement simply because of the fear that they would have to bear the site owner's costs. That consideration cannot change the clear meaning of the words which have been used in clause 4(d) and which do allow the recovery of such costs. It may be observed, however, that the relevant costs must be "reasonable". Also clause 4(d) expressly states that the obligation is subject to the occupier's rights under CPR Rule

48.3, which (as Mr Bates helpfully pointed out) has now migrated to CPR Rule 44.5. There is not before me any argument about the scope or application of this provision, so I make no finding thereon and merely observe that the incorporation of this provision may mean that the costs recoverable are costs which (a) have been reasonably incurred and (b) are reasonable in amount.

45. Therefore, as regards respondents who occupy their site pursuant to a post-2006 agreement, I allow the appellants' appeal. I conclude that in principle the appellants are entitled to recover under clause 4(d) from such respondents properly assessed sums in respect of the costs of the proceedings before the F-tT.

46. I say "in principle" and I say "properly assessed sums" because I am concerned there may be further potential areas of disagreement upon points which are not before me for consideration, including questions of quantification of the relevant costs. I notice that clause 4(d) is separate from the provisions regarding service charge which are dealt with in clause 4(c). I have concluded that the appellants are not entitled to recover the costs of the proceedings before the F-tT from respondents who occupy pursuant to the pre-2006 agreement. Questions may arise as to how much of the costs are recoverable and from whom. I do not know whether it is the intention of the appellants to seek to recover any part of the relevant costs from occupiers who occupy pursuant to a post-2006 agreement but who were not a party to the application to the F-tT. I make no observation as to whether the appellants would be entitled to do so.

Conclusion

47. I dismiss the appellants' appeal in respect of the pre-2006 agreement. I allow the appellants' appeal in respect of the post-2006 agreement, but I do so only to the extent explained in paragraphs 45 and 46 above.

16 December 2015

His Honour Judge Huskinson