



**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **CHI/19UE/PHC/2016/0014**

**Property** : **3, Ashley Wood Park Homes,  
Tarrant Keyneston,  
Blandford Forum, Dorset DT11 9JJ**

**Applicant** : **Robert and Ann Owen and  
Peter and Helen Owen**

**Representative** : **Helen Owen**

**Respondent** : **Mr and Mrs Betuschi**

**Representative** :

**Type of Application** : **Any question arising under Mobile Homes  
Act 1983 or agreement to which it relates**

**Tribunal Members** : **Judge D. Agnew**

**Date and venue of  
Paper Hearing** :

**Date of Decision** : **10th November 2016**

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**DETERMINATION**

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## **Background**

1. This is an application under section 4 of the Mobile Homes Act 1983 (as amended) (hereinafter referred to as “the Act”).
2. The Applicants are the site owner of the Ashley Wood Park Homes mobile homes site at Tarrant Keynston, Blandford Forum, Dorset DT11 9JJ. The Respondents are currently named as the joint occupiers of a pitch, numbered 3 Ashley Wood Park Homes on which a mobile home is situated.
3. The Respondents have recently divorced and Mrs Betuschi, who alone remains resident in the mobile home wishes to have her former husband’s name removed from the Mobile Homes Act agreement. However, as Mrs Betuschi has given Mr Betuschi a sum of money in settlement of all claims each has against the other in the divorce proceedings, the Applicants consider that Mr Betuschi has “sold” his interest in the home and they are refusing to remove Mr Betuschi’s name from the said agreement without her going through the procedure laid down in the Act for a sale. The statutory requirements will be set out in more detail later, but in short they require the completion of a notice of intention to sell giving the site owner an opportunity of objecting to the sale and, on completion of the sale, the payment of 10% of the sale price to the site owner. Mrs Betuschi has refused to give the notice or pay the 10% commission on the basis that the sale regulations, she says, are not meant to cover her situation. The Applicants have applied to the Tribunal for a determination of the matter.
4. Directions were issued on 7<sup>th</sup> September 2016 which have been complied with. Those directions included a provision that the Tribunal proposed to determine the application on the basis of written representations and without an oral hearing unless any party objected within 28 days. No objections were received. The matter therefore comes before the Tribunal for determination on the basis of the Applicants’ case which was set out fully in the application form and the Respondent, Mrs Betuschi’s statement of case which is undated but sent to the Tribunal and the Applicant’s representative under cover of a letter dated 4<sup>th</sup> October 2016.

### **The applicable statute law**

5. Section 4(1) of the Act provides as follows:-  
“In relation to a protected site in England or in Wales a tribunal has jurisdiction  
(a) to determine any question arising under this Act or any agreement to which it applies.....”
6. Under paragraph 7B(1) of Schedule 1 Chapter 2 Part 1 to the Act:-  
“Where the agreement is not a new agreement, the occupier is entitled to sell the home and assign the agreement without the approval of the owner if –

(a) the occupier serves on the owner a notice (a “proposed notice of 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.”

7. By sub-paragraph (2), the “first condition” is stated to be “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 the tribunal for an order preventing the occupier from selling the mobile home, and assigning the agreement, to the proposed occupier (a “refusal order”).”
8. By sub-paragraph (3) the second condition is stated to be 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.
9. By sub-paragraph (5) it is stated that “a notice of proposed sale must include such information as may be prescribed in regulations made by the Secretary of State.”
10. By sub-paragraph (7) “an application for a refusal order may be made only on one or more of the grounds prescribed in regulations made by the Secretary of State.....”
11. By sub-paragraph (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 Secretary of state.”
12. By paragraph 7A(3) “new agreement” means an agreement which was either made before the commencement of the Act or one which was made before then but which has been assigned after that date. The Act came into force on 26<sup>th</sup> May 2013. The agreement in this case, having been made in 2003 is therefore not a new agreement.
13. The Mobile Homes (Selling and Gifting)(England) Regulations 2013 SI 2013 No 981 (“the 2013 Regulations”) which came into force on 26<sup>th</sup> May 2013 are detailed and extensive. Where relevant to this case they will be referred to and quoted in the decision below.

## **The Applicant's case**

14. The Applicants' case may be stated simply and briefly. They say that by Mrs Betuschi having paid money to Mr Betuschi for his interest in the mobile home this constituted a sale requiring the provisions of the Act and the Regulations made thereunder to be complied with, including the giving of a notice of intended sale and, more particularly, the payment of commission by Mrs Betuschi to the Applicants. By paragraph 8 of the Regulations the maximum rate of commission payable on the sale of a mobile home is stated to be ten per cent of the purchase price. The Applicants say in their application form that "the commission forms an extremely important part of the income for the investment in the park" and they are "concerned to make sure this matter is dealt with in accordance with the legal framework because we cannot afford to undermine future commission payments on the park".

## **The Respondent's case**

15. Although both Mr and Mrs Betuschi are named as Respondents to these proceedings they only really affect Mrs Betuschi and Mr Betuschi has played no part in the proceedings whatsoever.
16. The facts in this case are not contentious. Mrs Betuschi's evidence is that she first moved onto the Park in 2001 when she bought a different mobile home at No. 8. In 2003 she sold No. 8 and bought No.3. She bought the mobile home in her sole name which, at the time, was Mrs C Mears.
17. Later that year Mr Igor Betuschi paid Mrs Mears (as she then was) £20,000 "towards the cost of the home". Over the years Mr Betuschi contributed also towards the cost of improvements to the home.
18. In 2004 Mrs Mears asked the then site owner, Mrs Owen to add Mr Betuschi's name to the Mobile Homes Act agreement and this was effected by Mrs Owen providing a new frontsheet to the agreement showing the occupiers to be Mrs C Mears and Mr I.D.Betsuchi.
19. In the determination bundle there is a letter from Mrs Owen confirming that she added Mr Betuschi's name to the agreement. She was not told that any money had changed hands and, as she points out, at that time it was not necessary to fill out any forms on a sale of a mobile home. However, evidently, no commission was sought or paid at that time.
20. Mr and Mrs Betuschi married in 2006. Unfortunately, that marriage subsequently broke down and they were divorced in May 2016. Mrs Betuschi gave her former husband £38,000 for, as she says "his contribution towards the cost of the home and the improvements and because I did not want any further trouble from him". This payment was subsequently included in the financial settlement between the parties in the divorce proceedings. A copy of the application for a consent order was included in the determination bundle. It is signed by both Mr and Mrs Betuschi and Mrs Betuschi's solicitors. Although this document is the

application for a consent order and is not strictly a sealed court order Mrs Betuschi says that this was the order that was made in full and final settlement of all financial claims that either party had against the other.

21. The document at paragraph 4 states that the agreed terms are in full and final satisfaction of:
  - all claims for income
  - all claims for capital (i.e. lumps sums, transfers of property and variations of settlement)
  - all claims in respect of each other's pensions
  - all claims in respect of legal costs
  - all claims against each other's estate on death
  - all other claims of any nature whatsoever
22. Paragraph 5 of the application for consent order states as follows:-

“The Respondent agrees that he has no legal or equitable interest in the matrimonial home which is owned by the Petitioner following receipt on 26<sup>th</sup> February 2015 from the Petitioner by way of a full and final settlement.”
23. Paragraph 6 of the application states that “The Petitioner and Respondent agree that neither of them has any legal or equitable interest in the property or assets owned by the other and neither of them has any liability for the debts of the other except as provided for in this order.”
24. Mrs Betuschi says that she was advised to contact the site owner and complete a “gift form” and this was duly done. She says she was surprised and upset by the reply she received which was to the effect that the matter was to be considered as a sale and that commission was payable. There ensued correspondence between Mrs Betuschi and solicitors for the site owner culminating in this application.
25. Mrs Betuschi's legal arguments are that the sale requirements of the Act and the 2013 Regulations do not apply in the circumstances of her case. She says that her situation, where one of two joint occupiers moves away from the home is analogous to the situation where a mobile home owner dies. That situation is specifically covered by section 3 the Act: the survivor continues to have the benefit of the agreement, no paperwork is required and no commission is payable.
26. Further, she argues that Implied Term 7A(2) states that the occupier is entitled to sell the mobile home and to assign the agreement to the person to whom the mobile home is sold. Therefore, she says, a “sale” is more than just a sale of a chattel (the mobile home) but a sale of the home and the right to occupy the pitch. It involves a change of occupation of the pitch. In her case, there is no change of occupation of the pitch. She says that the Notice of Intended Sale document supplied by the Applicants' solicitors reveals the absurdity of their position as both the assignor and assignee are stated to be Carol Ann Betuschi.

### **The Tribunal's determination**

27. I am satisfied for the reasons set out below that in the circumstances of this case there has been no “sale” of the mobile home in the sense intended by the legislation and so paragraph 7B of Schedule 1 to Chapter 2 of the Act and the 2013 Regulations do not apply here. Consequently there was no requirement to submit to the site owner a Notice of Intended Sale form or to pay any commission. I construe the aforesaid statute and statutory instrument to apply only to sales to third parties. I accept that in a strictly legal sense the transfer of an interest in property for a consideration may properly be described as a sale. It is certainly not a gift as was suggested by some advisor or advisors to Mrs Betuschi at one stage. I am of the view, however, that the legislation was intended by Parliament to refer to a transfer for a consideration of the mobile home and the agreement to allow the home to be sited on the pitch only to a third party (that is to someone not already a party to the agreement).
28. The reasons for this construction of the statutory provisions are as follows.
29. First, paragraph 7A of the Schedule seems to me to be instructive. This paragraph deals with new agreements (i.e. those made after 26<sup>th</sup> May 2015) whereas Mrs Betuschi’s agreement is not a new agreement. However, I can see no reason why the word “sell” should be construed differently in the two provisions. Paragraph 7A is worded as follows:-  
“Where the agreement is a new agreement, the occupier is entitled to sell the mobile home to the person to whom the mobile home is sold (referred to in this paragraph as the “new occupier”) without the approval of the owner. Here it is expressly stated that the person to whom the mobile home is sold is a “new occupier”.
- The wording of paragraph 7B is slightly different as follows:-  
“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....” There then follow some conditions. Thus, in paragraph 7B there is no reference to the person to whom the mobile home is sold is a new occupier but, as already stated, there is no logical reason as to why the same words of elucidation (i.e. to a new occupier) should not equally apply to paragraph 7B. It would be odd if the expression “new occupier” were to be construed as referring equally to an existing occupier. An existing occupier would not, in the ordinary sense of the words, be the same as a new occupier.
30. Secondly, both paragraphs 7A and 7B are concerned not only with the sale of the chattel but also the assignment of the Mobile Homes Act agreement. There can be no restriction on the sale of the mobile home itself, a chattel. So, for instance, if the mobile home were to be removed from the site the owners could sell it without any encumbrance. It is the fact that the right to site the home on the pitch has to be assigned to a buyer if it is to remain in situ that gives rise to the restrictions imposed by paragraphs 7A and 7B of Schedule 1. These provide a degree of protection to the site owner where someone new is to come in to occupy the pitch. In Mrs Betuschi’s case, however, there is no new occupier. She has been a

resident in this mobile home since 2003 and she will be entitled to remain in her home on this pitch whether or not Mr Betuschi's name is removed from the Mobile Homes Act agreement. I construe all the provisions of paragraph 7B of Schedule 1 (including the requirement to serve a Notice of Proposed Sale and payment of commission) to refer to the situation where there is to be a new occupier of the pitch and not one who already has the benefit of the said agreement. Throughout the 2013 Regulations reference is made to "proposed occupier". This is defined in paragraph 2 of the said Regulations as "a person to whom the occupier proposes to sell or give the mobile home and assign the agreement which relates to the mobile home". Both elements, the sale of the home and assignment of the agreement are linked. In my judgment both elements are required before the statutory provisions with regard to sale are engaged. Mrs Betuschi has no need to take an assignment of the Mobile Homes Act agreement as she is already a party to the agreement.

31. Thirdly, in Mrs Betuschi's particular case, the true nature of the agreement with her former husband was not a sale of the mobile home. It was a divorce settlement in which a bundle of rights were compromised by agreement. Mr Betuschi acknowledged as part of an overall settlement in which he had received £38,000 that he had no continuing interest in the mobile home which had been the matrimonial home. This settlement included, for instance, Mrs Betuschi giving up any rights she might have had existing then or at any time in the future in respect of maintenance or a share in any pension Mr Betuschi may have. This is not the scenario that, in my judgment, Parliament intended to be included in its provisions with regard to a "sale" of the mobile home.
32. Mrs Betuschi makes an analogy between the statutory provisions with regard to sale of the mobile home and the situation on death of the mobile home owner. She says that the latter is specifically provided for in section 3 to the Act. No forms are required for certain categories of person to take over a mobile home following the death of the mobile home owner nor is any commission payable. That is correct but I do not consider that the analogy is a true one or particularly helpful to her. In the case of the home owner's death specific provision is necessary as the Mobile Homes Act agreement there is in the name of the deceased and has to be transferred into the name of the successor. In Mrs Betuschi's case there is no need for any special provision as she already has the benefit of the Mobile Homes Act agreement. Also, no money is being paid by the successor so no commission would be payable.
33. This decision is unlikely to "undermine future commission payments on the park" as the Applicants suggest in their application form. Such cases, where one spouse excludes the other from any interest in the mobile home by the payment of a sum of money are not likely to occur all that often. Commission will still be payable in the usual case where a mobile home is sold to a third party, not currently a party to the Mobile Homes Act agreement.

34. Finally, in the application form, the Applicants raised the allegation that Mrs Betuschi was under 50 years old (contrary to the site rules) when she moved onto the Park. However, this was not something the Applicants asked the Tribunal to determine. The Applicant's representative stated: "The question that I would like the Tribunal to determine is if commission is payable when a payment is made to purchase half of a home and what forms must be completed in this situation." Although Mrs Betuschi has responded to the allegation as to her age when she moved onto the park the Tribunal has not concerned itself with that matter as it was not something upon which the Applicants sought a determination.

### **Conclusion**

35. The Tribunal finds that in Mrs Betuschi's case it was not necessary for her to have supplied a Notice of Proposed Sale to the site owner or to pay commission to the site owner when she paid a sum of money to her former husband in the course of divorce proceedings in which he acknowledged that he no longer had an interest in the mobile home which had been their matrimonial home and in respect of which he had been a joint occupier under a Mobile Homes Act agreement.
36. The Tribunal is satisfied that it has received evidence in the form of the application for consent order duly signed by both Mr and Mrs Betuschi and Mrs Betuschi's solicitors that Mr Betuschi has relinquished any interest he may have had in the mobile home and the Mobile Homes Act agreement. The Tribunal is prepared to exercise its powers under section 231A(2) of the Housing Act 2004 to direct that the Applicants do remove Mr Betuschi's name from the Mobile Homes Act agreement for No.3 Ashley Wood Park Homes and does so direct. That section provides that "The Tribunal's general power is a power to give such directions as the tribunal considers necessary or desirable for securing the just, expeditious and economical disposal of the proceedings or any issue in or in connection with them".

Dated the 10<sup>th</sup> day of November 2016

Judge D. Agnew.



## Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.