

**HM COURTS AND TRIBUNALS SERVICE
RESIDENTIAL PROPERTY TRIBUNAL**

Case No: CHI/43UM/PHI/2011/0001

Between:

The Willow Hills Residents Association

(Applicant)

and

Wyldcrest Properties Limited

(Respondent)

**In the Matter of Paragraph 28(1)(h) of Chapter 2, Part 1 of Schedule 1 to
the Mobile Homes Act 1983 ("the Act")**

**Premises: The Willows Park, Surrey Hills Park and The Oaks, Guildford
Road, Normandy, Guildford GU3 2AZ ("the Premises")**

Date of Hearing : 29th April 2012

Tribunal: Mr D. Agnew BA LLB LLM Chairman
Mr B. Simms FRICS MCI Arb
Mr T. Sennett MA FCIEH

DETERMINATION AND REASONS

Determination

As stated at the hearing, the Tribunal determines that the site owner, which it finds for the purpose of this application to be Wyldcrest Parks (Management) Limited (Company no. 07705173), has acknowledged in writing to the Secretary of the Applicant Resident's Association that the said Association is a qualifying residents' association under the Act. Consequently, the Tribunal has no jurisdiction to consider the application for recognition any further. The Applicant is ordered to pay to Wyldcrest Parks (Management) Limited a contribution towards its costs of £1,000.

Reasons

Background

1. On 19th September 2011 the Secretary of the Applicant Residents' Association applied to the Tribunal for an order that the said Association be a qualifying residents' association under the Act.

2. By a letter to the Tribunal dated 7th October 2011 Mr David Sunderland signing himself as the Estates Director of Wyldecrest Parks (Management) Limited, stated that the site owner was Wyldecrest Parks (Management) Limited. He also stated in that letter that the site owners had already recognised the Willow Hills Residents Association as a qualifying association and quoted from a letter which had previously been sent to the Secretary of the Applicant.

3. For various reasons this acknowledgment was not accepted by the Applicant. Mr Sunderland was asked to show evidence that Wyldecrest Parks (Management) Limited was the site owner. This prompted the freeholder, Shelfside (Holdings) Limited, to write to the Tribunal with a copy to the Secretary of the Applicant confirming that the site owner is Wyldecrest Parks (Management) Limited and enclosing a copy of a lease of the site dated 1st August 2011 between Shelfside (Holdings) Limited and Wyldecrest Parks (Management) Limited. The lease is for a period of 6 years from 1st August 2011. For the avoidance of any doubt, and although it stated that it did not take part in the operational running of the Parks, it said that Shelfside (Holdings) Limited "in conjunction with our leaseholders (and Park Owners by virtue of the lease) also recognise Willow Hills Residents' Association as a qualifying residents' association while they comply with the terms laid down in paragraph 28 of the 1983 Mobile Homes Act."

4. By a letter to the Tribunal (copied to the Secretary of the Applicant association) dated 7th November 2011 Mr Sunderland writing on behalf of Wyldecrest Parks (Management) Limited stated that "For the avoidance of doubt, we confirm that we recognise Willow Hills Residents' Association as a qualifying association."

5. The Applicant was not satisfied by these statements and required a hearing to establish which entity was the true site owner for the purpose of recognising the residents' association.

6. The matter came before the Tribunal for hearing at Guildford Magistrates Court on 29th April 2012. Mr Witham, Chairman of the Applicant Association spoke on behalf of the Applicant. Also present was Mr R. McKenzie, the Secretary of the Association and Ms A. Colquhoun, an Environmental Health Officer with Guildford Borough Council who was a witness for the Applicant. Mr Sunderland appeared for Wyldecrest Parks (Management) Limited and he was accompanied by a witness, Mr P. Scott, who is an in-house solicitor for Wyldecrest Parks (Management) Limited. Several park home residents attended the hearing as observers.

7. The Tribunal inspected the site prior to the hearing on 29th April 2012 in the presence of Mr Witham and Mr Sunderland, in order that they could familiarise themselves with the site.

The Law

8. Paragraph 28(1) of Schedule 1 Part 1 of Chapter 2 to the Act states: "A residents' association is a qualifying residents' association in relation to a site if-

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(h) the owner has acknowledged in writing to the secretary of the association that the association is a qualifying residents' association, or, in default of this the court has so ordered." "Owner" is defined in section 5 of the Act as "the person who, by virtue of an estate or interest held by him, is entitled to possession of the site or would be so entitled but for the right of any persons to station mobile homes on land forming part of the site." The Tribunal was given jurisdiction to make such an order by The Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals (England) Order 2011.

The Applicant's case

9. Mr Witham explained that the application to the Tribunal had been made because in a letter to all residents of the three parks dated 9th June 2011 Mr Sunderland on behalf of Wyldecrest Properties Limited had stated that the Residents' Association had "broken the law", did not comply with the terms of the 1983 Mobile Homes Act and was no longer recognised as a qualifying residents' association. He said that despite numerous requests Mr Sunderland had failed to explain how the Association had broken the law or why recognition was being withdrawn. A letter of complaint to one of the Directors of the company, Mr Alfred Best, had gone substantially unanswered. An attempt by Mr Sunderland to give automatic recognition upon the association confirming to the site manager that the provisions of the Act with regard to qualifying residents' associations still applied to The Willow Hills Residents' Association was not acceptable to the Association because this did not specifically reverse the withdrawal of recognition effected by the Company and it was stated to last for a period of six months only, whereas recognition under the Act is not time limited.

10. Since the application had been made, the Applicant had acquired serious doubts as to which entity was the true site owner: was it Wyldecrest Parks (Management) Limited or was it Shelfside (Holdings) Limited? Mr Witham considered that it was the latter but Mr Sunderland maintained that it was the former. It was important for the Residents' Association to know who it would be dealing with and which company was properly able to grant or withdraw recognition to the Association as a qualifying residents' association under the Act.

11. The first ground upon which Mr Witham contended that it was Shelfside (Holdings) Limited which was the site owner was that it was that company that was the registered freeholder of the site. The lease to Wyldecrest Parks (Management) Limited of 1st August 2011 was a nullity because Mr

Sunderland, who had signed the lease as a Director of the latter company had not in fact been appointed as a Director of the company, according to Companies House records, until 1st November 2011, three months after the lease was said to have been executed. Consequently, he argued, it was Shelfside (Holdings) Limited that had the right to possession of the site and thus complied with the definition of "owner" under the Act. Mr Witham accepted that if Wyldecrest Parks (Management) Limited was found by the Tribunal to be the site owner then the letter from Mr Sunderland on behalf of that company dated 7th November 2011 a copy of which was sent to the Applicant's Secretary, constituted an acknowledgment that the Willow Hills Residents' Association was a qualifying residents' association under the Act. If, however, the Tribunal found, as he contended, that Shelfside (Holdings) Limited was the site "owner" as defined by the Act then he did not accept that the letter signed by M Morris on behalf of Shelfside (Holdings) Limited dated 21st November 2011 constituted a sufficient acknowledgement. First, it was not signed by a Director of the company and secondly the statement of recognition was stated to be made "in conjunction with our leaseholders" and would only be valid if Shelfside Holdings Limited and Wyldecrest Parks (Management) Limited were jointly required to give recognition.

11. Secondly, Mr Witham sought to make the serious allegation that the lease of 1st August 2011 had been produced at a later stage simply in order to satisfy the Tribunal's enquiries as to the identity of the site owner, that it was not a genuine document and that Wyldecrest Parks (Management) Limited was a sham company to conceal the fact that the true owner of the site was Shelfside (Holdings) Limited.

12. In order to seek to substantiate these suspicions Mr Witham first called Ms Colquhoun to give evidence. She has been the site licensing officer at Guildford Borough Council and has been dealing with the Parks at Normandy since 2004. She told the Tribunal that there have been two different companies called Wyldecrest Properties Limited: the first (company no. 4128194) was issued with a site licence for Surrey Hills in 2004 and for The Willows in 2005. The second (company no. 6914944) was incorporated in May 2009 and on the same day the first company changed its name to Shelfside (Holdings) Limited. Ms Colquhoun contended that since 2004 there has been a lack of clarity as to who "occupies" the land under the terms of the Caravan Sites and Control of Development Act 1960. She catalogued a number of confusing and contradictory statements from the various Wyldecrest companies since 2004. The most germane for the Tribunal's purposes was that in June 2010 in support of an application by Wyldecrest Properties Limited for a site licence for The Oaks Mr Sunderland sent to the Council a copy of a lease said to have been made between Shelfside (Holdings) Limited and Wyldecrest Properties Limited (company number 4128194) dated 1st January 2010 for six years. The signature page of this document was blank but attached to the document as a last page appearing after the Schedule to the document was a signature page which, Mr Witham alleged, was the same as the signature page of another copy lease, again between Shelfside (Holdings) Limited and Wyldecrest Properties Limited dated 1st August 2010, for six years. This latter lease was in respect of all

three Parks whereas the former document was in respect of The Oaks only. The latter document had been produced by Mr Sunderland in response to a request for information under section 16 of the local Government (Miscellaneous Provisions) Act 1976. On 1st December 2011 Mr Sunderland wrote to the Council advising them that he had discovered an error in the information previously supplied, that the occupier of all three Parks was Wyldecrest Parks (Management) Limited. On the same date he applied for a site licence for all three Parks in the name of Wyldecrest Parks (Management) Limited supplying a copy of a lease dated 1st August 2011 between Shelfside (Holdings) Limited and Wyldecrest Parks (Management) Limited of all three Parks for six years. That application has not yet been dealt with and so the only site licences currently in existence are for The Willows and Surrey Hills and they are in the name of Shelfside (Holdings) Limited.

13. Mr Witham asked the Tribunal to consider the time line and to conclude that Mr Sunderland has produced "manufactured" documentation to try to satisfy enquiries from the Council and from the Tribunal as they have arisen.

14. Mr Witham then endeavoured to show that Wyldecrest Parks (Management) Company was not an autonomous business independent of Shelfside (Holdings) Limited, fulfilling the obligations of site owner. He claimed that this was done to evade their responsibilities to the licensing authorities, their customers, suppliers and residents. He claimed that Wyldecrest Properties Limited had built up over £132,000 in unsatisfied County Court judgments and has twice been under threat of being struck off the register of companies. In support of his argument he referred to the fact that Mr Sunderland had confirmed that Public Liability insurance is held in the name of Shelfside (Holdings) Limited. He also produced evidence to show that payments from customers and residents, by way of cheque, debit card or direct debit are paid directly into Shelfside (Holdings) Limited's bank account. He also produced evidence that following a County Court action against Shelfside (Holdings) Limited Mr Witham received an apology on behalf of that company from Mr Sunderland and a cheque from that Company in settlement of the judgment. This showed, according to Mr Witham, that Shelfside (Holdings) Limited were taking a true operational part in the management of the Park.

The Response to the Applicant's case

15. Mr Sunderland's response to the Applicant's case was that the site owner as defined in the Act is Wyldecrest Parks (Management) Limited by virtue of the lease of 1st August 2011 whereby Shelfside (Holdings) Limited gave the right to possession of the site (subject only to the right to station mobile homes on part of the site) to that company. The Company was formed in July 2010 to take over the management and operation from Wyldecrest Properties Limited of the Parks throughout the country which were ultimately owned by Shelfside (Holdings) Limited. Mr Sunderland is responsible for over thirty sites.

16. With regard to the lease of 1st August 2010, Mr Sunderland said that it was always the intention from the outset that he would be a Director of Wyldecrest Parks (Management) Limited. The Accountants formed the company and dealt with the information for Companies House. Whatever the situation with regard to his formal appointment as Director he was acting as such from the outset of the company's formation and he signed the lease as *de facto* Director. He produced witness statements as to the drafting and signing of that lease and Mr Scott was present to confirm his statement. The lease was genuinely entered into on 1st August 2010 as it appears on the document. He accepted that after taking over from Wyldecrest Properties Limited it was necessary to do an audit of the company's site licence arrangements and the error in the supply of information to Guildford Borough Council came to light, which he immediately corrected. He denied that Wyldecrest Parks (Management) Limited was a sham company. He confirmed that as site owner under the Act Wyldecrest Parks (Management) Limited had acknowledged to the secretary of the Applicant Residents' Association that it was a qualifying residents' association under the Act and he could not understand why Mr Witham and Mr McKenzie could not accept that and save all the trouble and expense of having to attend the hearing, unless they were acting vexatiously.

The Tribunal's decision

17. The Tribunal retired to consider whether the site owner had given an acknowledgement in writing to the Residents' Association's secretary that it was a qualifying residents' association under the Act. It decided that it had, that the site owner was Wyldecrest Parks (Management) Limited and that such an acknowledgement had been given in Mr Sunderland's letter of 7th November 2011. This meant that the Tribunal had no further jurisdiction to hear the application because under the Act the Tribunal may order that a residents' association be a qualifying residents' association in default of an acknowledgement by the "owner."

18. On the face of it, the lease of 1st August 2010 conferred on Wyldecrest Parks (Management) Limited the right to possession of the site and therefore that company was the "owner" as defined by section 5(1) of the Act. There would have to be compelling evidence to controvert the evidence of the lease itself. The Tribunal did not find that Mr Witham had produced such evidence. It is accepted law that a person may act *de facto* as a Director of a company without necessarily having been formally appointed. This lease was entered into very shortly after the company was formed and three months later Mr Sunderland's position as Director was formalised. The Tribunal did not find, therefore, that his formal appointment after the date of the lease nullified it. Further, under the Act, it is the "owner" who may acknowledge that the residents' association is a "qualifying residents' association" and not necessarily the entity with a site licence. It is immaterial, in the Tribunal's view, therefore, that the site licences are still in the names of Shelfside (Holdings) Limited pending an application to transfer.

19. Undoubtedly the use of different companies with similar names can cause confusion and it would appear that this has even confused Mr Sunderland himself at times as he has admitted errors in information supplied to the Council and the current pending application for a transfer of the site licence seems to have been consented to by the wrong entity. However, whether this is a deliberate ploy as Mr Witham has suggested or not, is not a matter for the Tribunal.

20 The Tribunal did consider whether the lease of the three Parks to Wyldecrest Properties Limited of 1st January 2010 precluded the subsequent lease of 1st August 2010 from taking effect otherwise than a lease of the reversion and therefore not give Wyldecrest Parks (Management) Limited the right to possession of the land. However, on a balance of probabilities the Tribunal considered that it was likely that the first lease was brought to an end by operation of the break clause which only required one month's notice at any time after 1st June 2010 or alternatively that there had been a surrender of the first lease.

21. With regard to the signature page that had been appended to the copy of the document purporting to be a lease of The Oaks and dated 1st January 2010, again on a balance of probabilities the Tribunal considered that the most likely explanation of this document is that it was a draft produced at the same time as the executed lease of the same date but that this document was never executed and that somehow a copy of the signature page of the other lease of the same date had become attached to the copy document that was sent by Mr Sunderland to the Council some time later.

22. With regard to Mr Witham's endeavours to show that Wyldecrest Parks (Management) Limited is a sham and that the true "owner" is Shelfside (Holdings) Limited, the Tribunal did not consider that this was a matter for the Tribunal. It considered that it was not the Tribunal's function for the purpose of this application to look behind the company which had been established as a proper legal entity.

23. Having given its decision at the hearing, the Tribunal received an application for costs from Mr Sunderland. He submitted that the Applicant had acted vexatiously in refusing to accept that Wyldecrest Parks (Management) Limited was the "owner" of the park for the purpose of the 1983 Act and that the owner had acknowledged that the Applicant was a qualifying residents' association. His company had been put to a great deal of time and expense in having to resist the application right up to a hearing. He said that all attempts by him to avoid the costs of a hearing had come to nought because of the Applicant's intransigence. Consequently his company should be re-imbursed their costs and that this re-imburement should be borne by the officers of the Applicant and not the other members of the Association. Mr Witham submitted that there should be no order for costs as against either the officers of the Association or the Association itself. The only reason why the application to the Tribunal was made in the first place was because Mr Sunderland had withdrawn recognition and accused the Applicant of having broken the law. Mr Sunderland had still not explained why he had acted in this way or how the

Association had broken the law. Even when purporting to recognise the Association he had attempted to limit the period of recognition to six months and enquiries as to who was the park owner had produced some inconclusive answers at first. He suggested that the Applicant had raised some very telling points to question the veracity of Wyldecrest Park Management Limited as being the owner of the Park and that the Applicant had not acted in any way vexatiously as alleged.

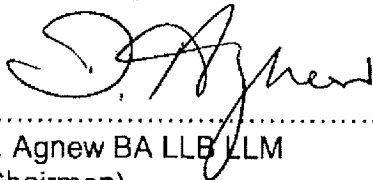
24. The Tribunal invited Mr Sunderland to submit details of his claim for costs whereafter the Tribunal would consider whether there should be an order and, if so, in what amount. Mr Sunderland did submit details of his company's costs in the form of a summary assessment of costs which is used in court proceedings under the Civil Procedure Rules. These costs exceeded the £5,000 limit imposed by Schedule 13 to the Housing Act 2004 by paragraph 4(3)(d) of The Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (England) Order 2011 (2011 No. 1005). Mr Witham wrote to the Tribunal to repeat his oral submissions that no costs order should be made giving his reasons therefor as set out in paragraph 23 above.

25. The Tribunal decided that a costs order was justified but not in the full amount claimed. The Tribunal reminded itself that Schedule 13 to the Housing Act 2004 as amended gives the Tribunal power to make a costs order where it considers that one party to the proceedings has acted "frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. The Tribunal considered that the Applicant had not acted frivolously, vexatiously, abusively or disruptively but had acted unreasonably after unequivocal statements had been made as to the identity of the site owner, evidence provided that Wyldecrest Parks (Management) Limited had been granted a lease of the site and was therefore the owner in accordance with the Act and that Wyldecrest Parks (Management) Limited had unequivocally and unconditionally acknowledged that it recognised the Applicant as a qualifying residents' association as long as it complied with statutory requirements for such an association. This was, however, some time after the application had been made and only after the Tribunal had asked for and obtained clarification of the evidence as to who was the owner of the site. The Tribunal considered, however, that the Applicant was unreasonable in insisting on a hearing in the light of the evidence that had been supplied to it and that the Respondent had thereby been caused some unnecessary expense. Furthermore, the parties had been warned by the Tribunal on several occasions during the course of the application prior to the hearing of its powers to order a party to pay costs if it considered a party had been acting unreasonably. The Tribunal decided that it would be just and equitable in all the circumstances of this case for the Applicant to pay a contribution to the Respondent's costs of £1000 to be paid within 28 days of the date of this decision as stated below. The Tribunal did not consider that it was appropriate for the officers of the Applicant Association to have to bear the costs personally as the evidence was that the Association members had been kept fully informed of developments and approved of the action taken by the Chairman and Secretary.

26. Any party wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must first seek permission of the Residential Property Tribunal. The request seeking permission must be made within twenty-one days of the date specified in the decision notice as the date the decision was given. The request must be made in writing, signed by the appellant or his representative and must:-

- (a) state the name and address of the appellant and any representative of his; and
- (b) identify the decision and the tribunal to which the request for permission to appeal relates; and
- (c) state the grounds on which the appellant intends to rely in the appeal.

This decision was given on 31st May 2012.



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D. Agnew BA LLB LLM
(Chairman)