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Court of Appeal

*Murphy *v* Wyatt

[2011] EWCA Civ 408

2011 March 15; April 12

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Lord Neuberger of Abbotsbury MR, Arden, Longmore LJJ

Mobile homes — Agreement — Tenancy — Tenancy of nearly two acres of land — Tenant subsequently stationing caravan on land and later occupying it as main residence — Caravan replaced by mobile home without landowner's consent — Whether mobile homes legislation applying to tenancy — Mobile Homes Act 1983 (c 34), s 1(1) (as amended by Housing Act 2004 (c 34), s 206)

C

Practice — Judgment — Basis of decision — Judge deciding case on basis of point not argued or in way more favourable to party than argument advanced in court — Proper approach

In 1975 the claimant's predecessor in title granted a weekly tenancy of some 1·7 acres of land to the tenant. Four years later the tenant moved a caravan onto the land and began to sleep in it from time to time, eventually occupying the caravan as his only home, and in 1989 the defendant moved in to live with him as his partner. In

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2002 the local planning authority granted a certificate of lawful use of the caravan. After the tenant's death the following month the defendant took over occupation of the caravan and the payment of the rent, with the claimant's consent. In 2007 the defendant replaced the caravan with a mobile home on the same pitch, without the claimant's consent. The claimant brought a claim for possession of the land and, some eight months later, issued a notice to quit. The judge dismissed the claim on the basis that it had been issued before the termination of the tenancy which, so he found,

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had not occurred until the expiry of the notice to quit. The judge held further that the Mobile Homes Act 1983[1] did not apply to the tenancy since (i) there had been no grant of planning permission nor certificate of lawful use for keeping a caravan on the land when the tenancy was granted in 1975 and (ii) the extent of the land comprising the tenancy was much greater than the site of the mobile home itself.

On the defendant's appeal against the judge's conclusions on the 1983 Act—

Held, dismissing the appeal, that section 1(1) of the Mobile Homes Act 1983

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applied to the position at the inception of an agreement between an owner of a site and an occupier of a mobile home, rather than from time to time; that, therefore, an occupier of a mobile home would only have the benefit of the 1983 Act if the agreement pursuant to which he occupied the mobile home had come within section 1(1) at its inception; that since there had been no planning permission for the stationing of a caravan on the land when the tenancy had been granted in 1975, the site had not been a protected site for the purposes of the predecessor to the 1983 Act

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and the tenancy had therefore not come within the Act at that time; that, further, the 1983 Act only applied to an agreement whose exclusive, or substantially exclusive, purpose was the grant of a right to station a mobile home on a pitch and occupy it as a residence; that a tenancy of land consisting of a pitch and other land could not fall within the 1983 Act, since the Act could neither apply to the whole of the land comprised in the agreement nor to the pitch alone; and that, accordingly, the defendant's tenancy did not fall within the 1983 Act (post, paras 32–36, 47, 50, 53,

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58, 62, 64, 66, 67, 81).

Per curiam. As a matter of principle a judge is entitled to decide a case on the basis of a point which was not argued, or in a way or to an extent which is more favourable to a party than the case which that party advanced in court, although such

[1] Mobile Homes Act 1983, s 1(1): see post, para 24.

a course may not be open to the judge in a particular case, for instance if it is not open on the pleadings or evidence, or is precluded by virtue of a concession. Save perhaps in very exceptional circumstances the judge must ensure that the parties are given a fair opportunity to deal with the point: if the point occurs to the judge before or during the hearing he should raise it in court in clear terms with the parties, ideally ensuring that it is reduced to writing; if the point occurs to the judge after the hearing it is normally sufficient if he writes to the parties or their representatives, giving them the opportunity of dealing with the point in written submissions (post, paras 13–18, 67, 81).

The following cases are referred to in the judgments:

Adams v Watkins (1989) 22 HLR 107, CA
Balthasar v Mullane (1985) 51 P & CR 107, CA
Barton v Care (1992) 24 HLR 684, CA
Manchester City Council v Pinnock (Secretary of State for Communities and Local Government intervening) [2010] UKSC 45; [2010] 3 WLR 1441; [2011] PTSR 61; [2011] 1 All ER 285, SC(E)
Tan v Sitkowski [2007] EWCA Civ 30; [2007] 1 WLR 1628, CA

The following additional case was cited in argument:

R v Axbridge Rural District Council, Ex p Wormald [1964] 1 WLR 442; [1964] 1 All ER 571, CA

APPEAL from Judge Wakefield sitting in Central London County Court

By proceedings issued in the Bromley County Court on 3 September 2008 the claimant, Diane Murphy, claimed against the defendant, Carol Wyatt, possession of land at Holmhurst, Berry's Green, Bromley owned by the claimant on which the defendant's partner, Norman Barrett, having been granted in 1975 a weekly tenancy of 1·7 acres of pasture, had stationed a caravan. By the early 1980s he was using it as his home, and the defendant, who had moved in to live with him in 1989, occupied it following his death in 2002, subsequently replacing it with a larger mobile home in 2007 without the claimant's consent. The claimant served on the defendant a notice to quit on 19 May 2009, to take effect five weeks later. The proceedings were transferred to the Central London County Court. By order dated 3 September 2010 Judge Wakefield held that the weekly tenancy granted in 1975 continued subject to agreed variations in the payment of rent from time to time and changes in the identity of the owner/landlord until expiry of the notice to quit, but he dismissed the claim for possession since the notice to quit took effect after issue of the possession proceedings. The judge held further that the Mobile Homes Act 1983 did not apply to the tenancy because there was no planning permission in existence or certificate of lawful use when the tenancy was granted in 1975, and because the extent of the land included in the tenancy was far greater than the actual site of the defendant's mobile home.

By an appellant's notice filed on 25 September 2010 and pursuant to permission granted by the Court of Appeal (Mummery LJ) on 18 November 2010 the defendant appealed on the following grounds. (1) The judge had erred in that there was no proper basis for his holding that an agreement could not qualify under the 1983 Act (i) if the subject land did not form part of a "protected site" at the start of the agreement, or (ii) if the demised premises were significantly outside the pitch and the tenant had the right to use those premises for a purpose having no necessary connection with the

A use of the pitch as residential accommodation. (2) No support could be derived for either proposition in (1) above from the ordinary meaning of the words used in the 1983 Act, and there was no proper justification for a purposive interpretation of the relevant provisions so as to justify the judge's conclusions.

The facts are stated in the judgment of Lord Neuberger of Abbotsbury MR.

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Jamie Burton (instructed by *Cray Valley Solicitors, Bromley*) for the defendant.

John de Waal and *Andy Creer* (instructed by *Pritchard Joyce & Hinds, Beckenham*) for the claimant.

C The court took time for consideration.

12 April 2011. The following judgments were handed down.

LORD NEUBERGER OF ABBOTSBURY MR

1 This appeal raises two points concerning the interpretation of the Mobile Homes Act 1983, which affords a measure of security of tenure and other protection to many occupiers of mobile homes. The issues arise out D of a claim for possession of land at Holmhurst, Berry's Green, Bromley, which was begun in the Bromley County Court on 3 September 2008. The proceedings were then transferred to the Central London County Court where they were heard over a period of three days.

The factual background

E **2** The relevant facts for the purposes of this appeal, as agreed between the parties or as found by the trial judge, Judge Wakefield, are as follows.

3 The land amounts to some 1·7 acres (or about 0·7 hectares) in extent, and was described by the judge as consisting of mainly rough pasture, although some of it may be wooded. In April 1975 the freehold title to the land was acquired by George Murphy, who immediately granted an oral F weekly tenancy of the land to Norman Barrett. As anticipated by the parties Mr Barrett used the land for a horse stabling and livery business. He also used the land intermittently for grazing and for other business purposes, but nothing hangs on that. In 1980 Mr Murphy died and the land passed to his wife ("Mrs Murphy"); Mr Barrett's tenancy continued with occasional consensual rent increases.

4 In 1979 Mr Barrett had moved a caravan onto the land, and he started G to sleep in it overnight from time to time. By the early 1980s he was occupying the caravan as his home, and this continued for the rest of his life. In the mid-1980s he began a close relationship with Carol Wyatt, the present defendant, and she moved in to live with him in the caravan in 1989. In about 1996 Mr Barrett ceased using the land for his stabling and livery business.

5 In 1998 Mrs Murphy transferred the land to her daughter, Diane Murphy the present claimant, and the tenancy continued, again with H periodic consensual increases in rent. In 2001 Mr Barrett applied for housing benefit; the housing department of Bromley London Borough Council indicated that, unless it could be shown that the caravan was lawfully present on the land, no housing benefit could be granted. Mr Barrett accordingly applied for planning permission, but Bromley

planning department decided that as the caravan had been in situ for more than ten years, it should be the subject of a certificate of lawful use, and such a certificate was granted on 3 January 2002. The certificate retrospectively took effect from 13 September 2001.

6 Mr Barrett died in February 2002 after a long illness throughout which the defendant looked after him. He left all his property to her in his will, in which he omitted to name any executors; accordingly, the defendant took out letters of administration in respect of his estate. She also had discussions with the claimant, who indicated that she could remain on the land which she did, living in the caravan and paying the rent.

7 In 2007 the defendant disposed of the caravan, which had become fairly dilapidated. She replaced it with a new mobile home which, as the judge found, while she did discuss with the claimant a possible planning application for the work involved she installed without the claimant's consent. This new mobile home was sited in precisely the same location as the caravan, save that it had a significantly larger footprint. The mobile home was also (possibly unnecessarily) the subject of a certificate of lawful use, granted by the council on 6 August 2007. On 19 May 2009 the claimant served a notice to quit on the defendant, which took effect five weeks later.

8 The judge held that the weekly tenancy granted to Mr Barrett in 1975 continued, subject to agreed variations in the rent from time to time, with changes in the identity of the landlord (initially Mr Murphy, then Mrs Murphy on his death, and then the claimant in 1998) and the tenant (initially Mr Barrett, and then following his death the defendant), until the notice to quit expired. As that notice took effect after the possession proceedings were issued, the judge decided that the claimant's claim for possession of the land must, on any view, be dismissed. There is no challenge to these findings.

9 The two more contentious issues which the judge addressed were (i) the extent to which the 1983 Act applied to the tenancy, and (ii) whether, as the claimant alleged, grounds for possession existed if the 1983 Act did apply. On this second issue the defendant's evidence and arguments were accepted, and the judge's conclusion that he should not make an order for possession if the 1983 Act applied is not challenged.

10 It is the first of the two issues referred to in the previous paragraph which is under scrutiny in this court. In argument before the judge the defendant contended that the 1983 Act applied to the tenancy in its entirety, whereas the claimant said that it only applied to the site of the mobile home.

The judge's decision

11 In a reserved judgment the judge held that the 1983 Act did not apply to the tenancy at all; in other words he took a view of the application of the statute which was more favourable to the claimant than that which was being contended for on her behalf. He gave two grounds for his conclusion. The first was the absence of any planning permission (or certificate of lawful use) for keeping a caravan on the land as at the date the tenancy was granted, namely in 1975; the second ground was based on the fact that the extent of the land included in the tenancy was far greater than the site of the mobile home, in that it comprised nearly two acres.

12 Pursuant to permission granted by Mummery LJ the defendant challenges these two grounds for holding that the 1983 Act did not apply to

her tenancy, and effectively seeks a declaration that she is entitled to the protection of that Act. I shall set out the relevant statutory provisions and then turn to consider the two points decided by the judge.

13 However, before doing so I should say something about the proper approach for a judge to adopt when he is proposing to decide a case on the basis of a point which was not argued, or in a way or to an extent which is more favourable to a party than the case which that party advanced in court.

14 The first point to make is that, at least as a matter of principle, a judge is entitled to take such a course. After all, a judge must decide a case according to the facts and the law as he believes them to be. Accordingly, subject to any particular reason to the contrary in the particular case, there is no reason for objecting in principle to a judge taking such a course.

15 Secondly, however, there may be particular reasons why such a course is not open to the judge in a particular case. For instance, the course he wishes to take may not be open on the pleadings, or it may be precluded by virtue of a concession which has not been, or cannot be, withdrawn. Equally, a finding of primary fact, or even a finding of secondary fact or an assessment of a witness or expert evidence, may simply not on analysis be open to the judge on the evidence before him.

16 Thirdly, whether or not the point turns out to be open to the judge, it is clear that, save perhaps in very exceptional circumstances (which I find it very hard to envisage), he must ensure that the parties are given a fair opportunity to deal with the point. If the point is on analysis a bad one, it is fairer to the parties and less embarrassing for the judge that this is established before the judgment is available, rather than the parties either having a hearing at which the judge has to withdraw or amend the judgment or suffering the delay and expense of an appeal.

17 But there is an even more important reason for the requirement that the parties are given a proper opportunity to deal with the judge's point, namely procedural fairness. It is simply unfair on a party if she loses a case because of a point thought up by the judge, which she or her representatives have not properly been able to address. In this case a major factor which (if I may say so, correctly) influenced Mummery LJ when giving the defendant permission to appeal was that her representatives stated that they had not been given a proper opportunity of dealing with the two reasons advanced by the judge for holding that the 1983 Act did not apply.

18 How a judge ensures that parties have an opportunity to deal with a point which he has thought of must depend on the circumstances. If the point occurs to him before or during the hearing, he should obviously raise it in court in clear terms with the parties, ideally ensuring that it is reduced to writing, and give the parties a fair opportunity to deal with it. Sometimes it can be fully disposed of at the hearing; on other occasions it may be only fair to give the parties time, and subsequent written submissions may be the appropriate course. If the point occurs to the judge after the hearing, it would, I think, normally be sufficient if he writes to the parties or their representatives, giving them the opportunity of dealing with the point in written submissions (sometimes with the opportunity for counter-submissions). Occasionally, a further hearing may be appropriate, but it would normally be disproportionate.

19 Where (as here) the judge's point is crucial in the sense that without it the decision would be different, it is obviously of particular importance

that the parties are given a full opportunity to deal with it. Where the point represents a further reason to those which have been advanced and accepted by the judge as reasons for finding for the successful party, it would still normally be fair and sensible to give the parties an opportunity to deal with it, but in such a case a relatively short procedure may be justifiable.

20 It is only right to record that in this case there is disagreement between the parties as to the extent to which Judge Wakefield raised at the hearing the two grounds upon which he found for the claimant. Counsel for the claimant said that he did so, and I certainly intend no criticism of the judge who, it should be added, produced a very clear and full judgment. However, this case represents a useful opportunity to deal with what seems to me to be an important procedural issue. It is also right to add that I have little doubt that permission to appeal would and should have been given in this case, even if the defendant had not suggested that she had not been afforded an opportunity to deal with the judge's reasons.

The statutory background

21 Caravan sites were the subject of specific legislation for the first time in 1960 in the Caravan Sites and Control of Development Act 1960. Section 1 of that Act provides:

> "(1) Subject to the provisions of this Part of this Act, no occupier of land shall after the commencement of this Act cause or permit any part of the land to be used as a caravan site unless he is the holder of a site licence . . . for the time being in force as respects the land so used.
>
> "(2) If the occupier of any land contravenes subsection (1) of this section he shall be guilty of an offence . . ."
>
> "(4) In this Part of this Act the expression 'caravan site' means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed."

Section 3 of the 1960 Act deals with the circumstances in which a site licence can and should be granted by local authorities, and section 4 is concerned with the duration of such a licence.

22 In 1968 protection, albeit of a very limited nature, was for the first time afforded to residential occupiers of caravans through the Caravan Sites Act 1968. Section 1(1) of that Act extends the protection to any residential occupier of a caravan on a "protected site" which is defined in section 1(2) in these terms:

> "a protected site is any land in respect of which a site licence is required under [the 1960 Act] . . . not being land in respect of which the relevant planning permission or site licence— (a) is expressed to be granted for holiday use only; or (b) is otherwise so expressed or subject to such conditions that there are times of the year when no caravan may be stationed on the land for human habitation."

23 The Mobile Homes Act 1975 imposed duties on "the owner of a protected site" to offer written agreements to occupiers of mobile homes on the site, and gave such occupiers a degree of security of tenure. It has now been replaced by the 1983 Act, and it has not featured in the argument.

A **24** Section 1(1) of the 1983 Act provides:

> "This Act applies to any agreement under which a person ('the occupier') is entitled— (a) to station a mobile home on land forming part of a protected site; and (b) to occupy the mobile home as his only or main residence."

B **25** Section 5(1) of the 1983 Act explains that "mobile home" has the same meaning as "caravan" in the 1960 Act, and that "protected site" has the same meaning as in the 1968 Act. Section 3 of the 1983 Act provides that, on the death of an occupier, a member of his family can succeed to the agreement.

26 Subsections (2) to (5) of section 1 of the 1983 Act, as originally enacted, were in these terms:

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> "(2) Within three months of the making of an agreement to which this Act applies, the owner of the protected site ('the owner') shall give to the occupier a written statement which— (a) specifies the names and addresses of the parties and the date of commencement of the agreement; (b) includes particulars of the land on which the occupier is entitled to station the mobile home sufficient to identify it; (c) sets out the express
D terms of the agreement; (d) sets out the terms implied by section 2(1) below; and (e) complies with such other requirements as may be prescribed by regulations made by the Secretary of State.
>
> "(3) If the agreement was made before the day on which this Act comes into force, the written statement shall be given within six months of that day.
>
> "(4) Any reference . . . above to the making of an agreement to which
E this Act applies includes a reference to any variation of an agreement by virtue of which the agreement becomes one to which this Act applies.
>
> "(5) If the owner fails to comply with this section, the occupier may apply to the court for an order requiring the owner so to comply."

27 Section 1 of the 1983 Act has been fairly comprehensively amended
F by section 206, Chapter 3 of the Housing Act 2004. Subsection (2) now requires the written statement to be provided before the agreement is entered into, and that obligation is expanded by new subsections (3) and (4). There is a new section 1(5) which provides that if an express term is included in an agreement to which the Act applies, but "was not set out in a written statement given to the proposed occupier in accordance with subsections (2) to (4)", then the term is unenforceable by the site owner. What was
G originally subsection (4) has been re-enacted in fairly similar, but not identical, terms as subsection (8). And subsection (5) has been re-enacted in somewhat different terms as subsection (6) which provides that, if an owner fails to give the occupier a written statement in accordance with the new subsections (2) to (4), the occupier "may, at any time after the making of the agreement" apply to the court for an order requiring the owner to do so.

H **28** Section 2 of the 1983 Act is concerned with the terms of agreements to which the Act applies. Section 2(1) provides that the terms set out in Part I of Schedule 1 are to be implied into every such agreement. In very summary terms the effect of paragraphs 2 to 6 of that Schedule is that the owner can only evict the occupier if (i) planning permission for the use of the site as a protected site expires (paragraph 2(2)), (ii) the occupier is not occupying the

mobile home as his only or main residence, and it is reasonable to evict him (paragraph 5), (iii) the occupier is in breach of obligation and it is reasonable to evict him (paragraph 4), (iv) the occupier has given four weeks notice to determine (paragraph 3), or (v) the occupier's occupation is adversely affecting the amenity of the site and it is reasonable to evict him (paragraph 6). As originally enacted paragraph 6 of Schedule 1 to the 1983 Act could only be raised by the owner at every fifth anniversary of "the commencement of the agreement", but that fetter has now been removed.

29 Paragraph 8 of Part I of Schedule 1 entitles an occupier to sell his mobile home and assign his tenancy, subject to the owner's consent, not to be unreasonably withheld. Paragraph 10, as substituted by the Mobile Homes Act 1983 (Amendment of Schedule 1) (England) Order 2006 (SI 2006/1755), entitles the owner, subject to conditions, to require the occupier to relocate his mobile home on "another pitch forming part of the protected site".

30 Paragraph 17, as so inserted, provides for an annual review of "the pitch fee", which is defined in paragraph 29, as inserted, as the amount payable "for the right to station the mobile home on the pitch and for use of the common areas of the protected site". Paragraph 20, as inserted, states that there is a presumption that the pitch fee is to be adjusted in line with the annual change in the retail price index. Paragraph 21, as inserted, imposes an obligation on the occupier to keep in repair the mobile home and the pitch, which is defined in paragraph 29 as "the land . . . including any garden area, on which the occupier is entitled to station the mobile home". Paragraph 22, as inserted, requires the owner, if requested by the occupier, to "provide accurate written details of . . . the size of the pitch and the base on which the mobile home is stationed".

31 Section 2(2) of the 1983 Act empowers the court, on the application of either party, to imply into the agreement any of the terms set out in Part II of Schedule 1. Section 2(3) similarly empowers the court (a) to "vary or delete any express term of the agreement", and, following an amendment by section 206(2) of the Housing Act 2004, (b) to provide that any "express term to which section 1(6) . . . applies" should have "full effect" or "such effect subject to any variation specified in the order". As originally enacted the Act stipulated that an application under those two subsections could only be made within six months of the statement being given "under section 1(2)". Pursuant to a new section 2(3A), added by section 206(2) of the Housing Act 2004, the period is now six months from the date of the making of the agreement, or "where a written statement . . . is given", within six months of that date.

Does the 1983 Act only apply if the pitch was on a protected site from the inception?

32 The first reason why, according to the judge, the defendant could not rely on the 1983 Act, was that the siting of the caravan on the land was not authorised in planning terms at the beginning of the tenancy in 1975. He held that "The structure of the 1983 Act makes clear that the agreement must qualify, if at all, from its inception"; in other words that, if an occupier under an agreement is to have the benefit of the 1983 Act, the agreement must be within section 1(1) of that Act at its inception.

33 If that analysis is correct, then the conclusion that the tenancy in this case is not within the 1983 Act would be right. In *Balthasar v Mullane*

A (1985) 51 P & CR 107 this court considered the definition of "protected site" in section 1(2) of the 1968 Act, and incorporated into the 1983 Act. At p 116, it was said that the definition "involves the site being one in respect of which planning permission has been granted for the stationing of one or more caravans" so that "If planning permission has not been granted, then the site is not a protected site within the meaning of [the 1968 Act], or . . . the 1983 Act".

B **34** As section 1(1) of the 1983 Act only applies to an agreement "to station a mobile home on land forming part of a protected site", the present tenancy was not within the 1983 Act when it was granted, and it could only have become so in 2002 when the certificate of lawful use (accepted to be the equivalent of planning permission for present purpose) took effect. However, the judge concluded that the fact that the location of the caravan became a C protected site subsequent to the date of the grant of the tenancy will not do.

35 There is a powerful case to support the judge's conclusion on this point. The natural reading of section 1(1) is, as I see it, that it is intended to apply to the position at the inception of the agreement between the owner of the site and the occupier, rather than from time to time. Further, the notion of an agreement which can start off outside the 1983 Act and then come within it seems a little unsatisfactory (see by analogy the discussion in *Tan v* D *Sitkowski* [2007] 1 WLR 1628, paras 69–70), as does the converse.

36 Other provisions of sections 1 and 2 of the 1983 Act support this conclusion. Section 1(2) specifically envisages the owner having to offer a written statement to the occupier before an agreement to which the Act applies is made: it is difficult to see how that can be achieved if the Act can apply to an agreement for the first time after it is made. I would E unhesitatingly reject the suggestion that the obligation can be treated as having retrospectively arisen before the agreement was made in the case of an agreement initially outside the 1983 Act, but which some time later satisfies the requirements of section 1(1) because of some change. Such an interpretation would be wholly penal on the owner, especially in the light of the present section 1(5), and it would be inconsistent with the effect of F section 1(4), now section 1(8).

37 The notion that section 1(2) simply would not apply in such a case is rather less problematical. It may be not too troubling to an occupier, whose agreement falls within the ambit of the 1983 Act some time after it began for a reason other than a variation to the agreement, if he cannot invoke section 1(2). However, it would mean that such an occupier could never obtain a written statement as a matter of right, which seems unlikely to have G been intended, as it appears to have been envisaged by the Act that all occupiers who were within the 1983 Act were intended to enjoy such a right. Thus the present section 1(5) seems to underline the importance which Parliament attributes to the provision of a written statement.

38 Further, as the judge pointed out, the present section 1(6) entitles an occupier who has not been provided with a written statement by the owner to apply to the court "at any time after the making of the agreement", which H strongly suggests that Parliament when amending the 1983 Act envisaged an occupier having the right to a written statement, and therefore being within the scope of the 1983 Act, throughout the subsistence of the agreement.

39 If an agreement could come within the ambit of the 1983 Act due to a subsequent event such as the grant of planning permission, it would also

produce odd results under section 2. The effect of section 2(1) would be that the terms of the agreement could change overnight, between the day before planning permission took effect and the day it took effect. Obviously that is not impossible, but it is a little surprising although the surprise is lessened by the fact that the 1983 Act was plainly intended to apply to agreements which had been entered into before it came into force: see section 1(3).

40 More significant would be the effect of subsections (2) and (3) of section 2. In their original form they could only be invoked within six months of the owner giving a written statement under section 1(2). But if the owner is under no duty to provide such a statement, this would either mean that neither party could invoke either subsection, or it would mean that there was no time limit for an application being made under either subsection—unless the owner voluntarily chose to provide a written statement, in which case it appears that the six months would start running: see *Barton v Care* (1992) 24 HLR 684.

41 If an agreement, not originally within the 1983 Act because of the absence of planning permission, could then come within the ambit of the Act because of the grant of such permission, subsections (2) and (3) of section 2 could only be invoked if the owner chose to serve a written statement, which would be a little odd given that he could not be obliged to do so. If section 1 (1) applied, as the defendant contends, from time to time, then it seems to me that paragraph 2(2) of Schedule 1 (referred to in para 28 above) would be unnecessary: the agreement would no longer be within the 1983 Act if planning permission lapsed, as section 1(1)(a) would no longer be satisfied. Further, under the 1983 Act as originally enacted, the quinquennial right of the owner to invoke paragraph 6 of Schedule 1 for evicting the occupier (see para 28 above) would work in a rather capricious manner, if an agreement could fall within the Act after it had been made by virtue of a non-consensual change of circumstances.

42 While these points all support the judge's conclusion, it is fair to say that as a matter of language section 1(1) of the 1983 Act is capable of being read as applying to an agreement at any time when the requirements of paragraphs (a) and (b) of the subsection are satisfied, so that an agreement which does not initially fall within the Act could do so at a later date.

43 Such a reading is said by the defendant to derive support from section 1(4), now section 1(8), of the 1983 Act. This subsection clearly envisages an agreement coming within the 1983 Act as a result of a variation, in a case where it was not within the Act from the inception. So where the owner's consent to a mobile home being brought onto a site constitutes a variation of the existing agreement with the occupier, that would bring the agreement within the 1983 Act, if it was not within the Act before. In his doughty submissions on behalf of the defendant, Mr Burton contended that it would be rather odd if in the present case the tenancy remained outside the 1983 Act after the claimant had agreed to the mobile home being brought onto the land in 2007, simply because it was not a variation of the tenancy, as it was not precluded by the tenancy agreement (which appears to have had no express terms apart from payment of rent). He therefore suggested that the concept of "variation" in section 1(4), now section 1(8), should be very widely interpreted.

44 That point may well fail on the facts, as the judge found that the claimant did not consent to the new mobile home being brought onto the

land. However, it may be that one could spell out some sort of consent by acquiescence between 2007 and 2009. Even assuming that is so, I would reject the argument. It appears to me that it would require a very strong policy or practical argument indeed to give the expression "variation of an agreement" any meaning other than that which it naturally bears, namely, an arrangement between the parties which has the effect of altering the terms on which they have contracted. Anyway, it seems to me that Parliament could quite reasonably have concluded that a variation to an existing agreement could fairly be regarded as the making of a new agreement, whereas an acceptance by the owner that the occupier could do something permitted to him under the agreement should not. On any view, I cannot see how the grant of planning permission could be a "variation of an agreement".

45 I was initially attracted by another point, namely that it might be said to be inherent in section 1(4), now section 1(8), of the 1983 Act, that an agreement can come within the ambit of the Act after it has been entered into, even though it was not initially within the ambit of the Act. In other words the argument is that section 1(4), now section 1(8), proceeds on that assumption, and then provides that, if an agreement having initially not been within the ambit of the 1983 Act comes within its ambit because of a variation (i e because of a consensual arrangement between the parties), then that variation should be treated as the making of a fresh agreement, and section 1(2) applies.

46 I have concluded that that point does not justify departing from the judge's conclusion. If, as stated in section 1(4), now section 1(8), a variation of an agreement is treated in effect as the making of a fresh agreement, then, on the judge's reading of the Act, the question whether the 1983 Act applies must be assessed on whether section 1(1) is satisfied as at the date of the variation. However, that does not mean that a change in circumstances which does not amount to a variation of the agreement should be treated in the same way.

47 If section 1(4), now section 1(8), implies that an agreement not originally within the scope of the 1983 Act can come within its scope due to a change of circumstances, other than a variation of the agreement, then the difficulties identified in paras 35–41 above still arise. In the end it seems to me that section 1(4), now section 1(8), can and should be read as extending the concept of making an agreement to a variation of an agreement, if but only if the agreement as made did not fall within the scope of the 1983 Act, and the effect of the variation is to bring it within that scope.

48 Mr Burton made the point that, if that is right, site owners could easily avoid the 1983 Act by entering into agreements with occupiers before obtaining planning permission. There is no evidence of such a practice being undertaken or threatened, and I am sceptical about the possibility. It is clear from the wording of the 1983 Act that it is mostly directed to sites which cater for a number, often a large number, of mobile homes, which are typically already owned or, as part of the agreement with the owner, are purchased by the prospective occupiers. I would have thought that at least many prospective occupiers would have wanted to be satisfied that they could legally occupy the site before entering into any agreement.

49 Further, the "legislative policy" of the 1983 Act has been said to be one under "which the interests of the individual occupier are subordinate to those of the community at large in maintaining a proper control over the

development of caravan sites": *Adams v Watkins* (1989) 22 HLR 107, 111. It seems to me that the conclusion that an occupier who enters an agreement which entitles him to station and occupy a mobile home on a site before planning permission has been granted for that purpose should not be able to claim the benefit of the 1983 Act is, to put it at its lowest, not inconsistent with that policy.

50 I consider that this conclusion is also supported if one looks at the facts of this case. When the tenancy was granted, neither party to the arrangement envisaged that this was to be an agreement which entitled Mr Barrett to station a caravan on the land, let alone to live in it. It is therefore scarcely surprising that no planning permission was sought or obtained for that purpose. It would be a little surprising if the 1983 Act protected an occupier who, after entering an agreement, brought a caravan onto the premises and lived in it simply because there was nothing in the agreement which precluded him from doing this, unless there had always been planning permission for such a use (in which case the possibility would have been contemplated).

Does the 1983 Act apply to an agreement given that it extends to 1·7 acres?

51 The tenancy in the present case applied to 1·7 acres of land, and there is no doubt but that, whether judged at the inception of the tenancy or thereafter, it was not intended that the land was somehow to be an adjunct to, or simply enjoyed with, the caravan or the mobile home. It is true that from 1996 the land has not been used for any business, and that thereafter Mr Barrett (until he died in 2002) and the defendant will have regarded their primary use and benefit of the land as being for the purpose of their home. However, it is not as if the 1·7 acres can even now be seen to be simply the defendant's garden or amenity land enjoyed with her mobile home.

52 The judge concluded that the provisions of section 2 of and Schedule 1 to the 1983 Act made it clear that it was not intended to apply to an agreement other than one whose main purpose (presumably to be judged at the date of the agreement) was the siting of a mobile home on a pitch.

53 In order to justify the view that the 1983 Act applies in this case, or in any case where the agreement does not principally relate to the siting of a mobile home on a pitch, the defendant is faced with an unpalatable choice (which reflects the respective positions taken by the parties below). Either she must contend that the 1983 Act applies to the whole of the land comprised in the agreement, or she must argue that it applies only to the pitch. Neither of those two alternatives, it seems to me, can withstand scrutiny, either in the light of the provisions of the 1983 Act or in terms of the practical consequences.

54 I find it impossible to accept that the 1983 Act can apply to more land than the land on which the mobile home is to be sited and any amenity land enjoyed with the mobile home, such as a garden—ie more land than the pitch as defined in paragraph 29 of Schedule 1 to the Act.

55 It is hard to justify the notion that Parliament can have intended the provisions of section 2 to apply to land other than the pitch as defined in paragraph 29 of Schedule 1 in a case where an agreement includes other land. It is not merely that section 2, and the provisions of Schedule 1, represent significant restrictions on the rights of the owner of a site. It is even

more that they seem to be solely directed to the rights and obligations of the parties in relation to the mobile home and its pitch.

56 The notion that an agreement should continue until one of the events envisaged in paragraphs 2–6 of Schedule 1, as described in para 28 above, is also sensibly consistent only with the Act applying only to the pitch, as therein defined. So is the entitlement of the occupier to "sell the mobile home and to assign the agreement" in paragraph 8 of Schedule 1: it cannot have been intended to apply to all the land held under a tenancy of say 50 hectares, which happens to include the right to station and live in a caravan on one part of the land. The provisions for the review of the pitch fee also clearly indicate that the Act is not intended to apply to land other than the pitch. Similarly, the occupier's maintenance obligations in paragraph 21 of Schedule 1, as inserted, which extend only to the mobile home and the pitch, strongly indicate that the Act was not intended to apply to any other land.

57 Further, if the 1983 Act applied to land included in any agreement other than the pitch, it would often run into serious conflicts with the legislation protecting business and agricultural tenants, which would often apply in cases where land over and above the pitch is included in the agreement. Indeed, at least until 1996 it seems to me that the provisions of Part II of the Landlord and Tenant Act 1954 or of the Agricultural Holdings Act 1986 would have applied to the tenancy in this case. It is noteworthy that there are express statutory provisions ensuring that there is no overlap between those two Acts, and indeed the Rent Act 1977 and Housing Acts. The clear implication is that Parliament did not envisage any risk of overlap or conflict with the 1983 Act because it could only apply to a pitch.

58 Sensibly in these circumstances Mr Burton concentrated his argument on contending that in a case such as this the 1983 Act only applies to the pitch, as defined in paragraph 29 of Schedule 1, as inserted, but even that seems to me to be untenable.

59 It seems scarcely likely that Parliament envisaged that a tenancy of land consisting of a pitch and other land was to be severed by the operation of the 1983 Act. In practical terms it would seem very improbable that, for instance, an owner who let 50 hectares of agricultural land, and permitted the occupier to live in a caravan on the land, could find that he could not get possession of the caravan or the site of the caravan, when he was entitled to possession of the rest of the land, or indeed that the occupier would have to vacate the pitch under the 1983 Act, while being entitled to retain the rest of the land.

60 Additionally, if such an apportionment is envisaged, it would be necessary for the parties to agree on rights of way and other easements if the agreement, in so far as it related to the mobile home and pitch, was to continue under the 1983 Act, but the remainder of the land was to revert to the owner. There is nothing in the Act which deals with that problem (compare the leasehold enfranchisement legislation). Furthermore, such an outcome would mean that the 1983 Act somehow derogated from the agricultural holdings legislation, despite the absence of any statutory stipulation to that effect or any statutory machinery to deal with it. Similar problems would arise in relation to Part II of the 1954 Act if the occupier was a tenant occupying the remainder of the land for non-agricultural business purposes.

61 Further, the provisions in paragraphs 17–20 of Schedule 1, as inserted, with regard to the review of the pitch fee would not work if the Act applied only in respect of the pitch, in the case of an agreement such as the tenancy in the present case. Mr Burton suggested that it would be quite possible for a surveyor to effect an apportionment of the current rent between the pitch and the remainder of the land, and so it would. But that is scarcely the point: the absence of any statutory machinery speaks for itself.

62 In my judgment, the whole thrust of the 1983 Act seems to be clearly directed to agreements whose purpose is, and is substantially limited to, what is described in paragraphs (a) and (b) of section 1(1). As already mentioned, the paradigm case is that of a mobile home being pitched on a site which has a number, often running into many tens, of mobile home pitches. Caravan sites are a familiar sight to anyone who drives in the English and Welsh countryside. Hence the reference to the pitch "forming part of a protected site", and the reference in the new section 1(3)(a) to the written statement having to be given before "the sale of the mobile home to the proposed occupier". The point is supported by paragraph 28 of Schedule 1, as inserted, which deals with the rights of a "qualifying residents' association" described as "representing the occupiers of mobile homes on [the] site".

63 It is common ground that the 1983 Act applies to a case where the "protected site" has only a single pitch for a single mobile home, and I am prepared to assume that that is right, despite the reference to the pitch forming "part of a protected site" in section 1(1)(a). So I should emphasise that my point is not that the 1983 Act can only apply to caravan sites, in the familiar commercial sense. My point is that, as that is what the 1983 Act is primarily concerned with, it is scarcely surprising if the Act only applies to agreements which are exclusively, or at any rate mainly, limited to granting rights falling within section 1 of the Act.

Conclusion

64 The two issues raised on this appeal interrelate to some extent. It appears to me that the answer on the second issue is tolerably clear for the reasons given above, whereas the resolution of the first issue, at least considered on its own, is more difficult. However, once one resolves the second issue by deciding that an agreement can only fall within the scope of the 1983 Act if it is limited to an arrangement whose exclusive, or substantially exclusive, purpose is the grant of a right to station a mobile home on a pitch and occupy it as a residence, the answer on the first issue becomes clearer.

65 The answer to the second issue means that the 1983 Act will in practice almost always (if not always) only apply to an arrangement which is limited to permitting an owner to station a mobile home on a pitch. In those circumstances, particularly given decisions such as *Balthasar v Mullane* 51 P & CR 107 and *Adams v Watkins* 22 HLR 107, it is scarcely surprising if the Act only applies to such arrangements if they are lawful from the inception. The variation provisions in section 1(4), now section 1(8), would apply, for instance, where the agreement originally precluded occupation as the occupier's only or main residence (e g limitation to holiday use) and was then varied (expressly or impliedly) to permit occupation as an only or main residence, or (less likely) where significantly more land than the pitch was

A included in the original agreement, and the land other than the pitch was given back to the owner.

66 For these reasons, and those in the judgment of Arden LJ which I have seen in draft, I am of the view that Judge Wakefield rightly concluded that the 1983 Act did not apply to the defendant's tenancy of 1·7 acres of land, although she lawfully occupied a mobile home on that land until the B expiry of the notice to quit. I would therefore dismiss this appeal.

ARDEN LJ

67 I agree with the comprehensive and illuminating judgment of Lord Neuberger of Abbotsbury MR on both issues. My short judgment will focus principally on interpretation of section 1(1) of the Mobile Homes Act 1983 in view of its importance for private landlords and tenants of caravan sites. As C Lord Neuberger MR states in the penultimate paragraph of his judgment, the two issues on this appeal are, with respect to interpretation of section 1(1) of the 1983 Act, interrelated.

68 In the course of the hearing of this appeal I raised with counsel the possibility that section 1(1) (as now amended) might apply more generally, that is, that the Act might apply to an agreement if and so long as the agreement met the qualifying conditions in section 1(1). This subsection D provides:

> "This Act applies to any agreement under which a person ('the occupier') is entitled— (a) to station a mobile home on land forming part of a protected site; and (b) to occupy the mobile home as his only or main residence."

E **69** I suggested that section 1(1) might be read as extending to any agreement under which the occupier was for "the time being" entitled to station his mobile home on land forming part of the protected site and occupy the mobile home as his only or main residence. The requirements of subsection (2), however, would apply only to an agreement that fulfilled these requirements on its formation or variation.

70 Mr Jamie Burton enthusiastically took up this possibility in his F submissions. Mr Burton is undoubtedly right in saying that an occupier of a mobile home as his sole or main residence needs security of tenure if the site becomes a protected site at any time after consensual occupation started just as much as if it had been a protected site at the outset. It is also the case that in reality those seeking a home are likely to be in a weaker bargaining position than landlords.

G **71** But the question for the court is whether or not Parliament intended the particular results for which Mr Burton contends. It is possible for Parliament to have had more than one policy objective when it enacted the 1983 Act. For instance, to require there to be planning permission at the inception of the agreement for occupation might have been thought to make it more likely that planning control would be respected. It is therefore necessary to examine the 1983 Act as a whole to find clues as to Parliament's H intention in this respect.

72 On reflection, for all the detailed reasons that Lord Neuberger of Abbotsbury MR gives, I consider that my suggested interpretation cannot be adopted. Among other reasons, as Lord Neuberger MR points out, paragraph 2(2) of Schedule 1 to the Act (which has to be read with

paragraph 1 of that Schedule) makes it clear that Parliament was proceeding on the contrary basis. Paragraphs 1 and 2 of Schedule 1 provide:

> "1. Subject to paragraph 2 below, the right to station the mobile home on land forming part of the protected site shall subsist until the agreement is determined under paragraph 3, 4, 5 or 6 below.
>
> "2(1) If the owner's estate or interest is insufficient to enable him to grant the right for an indefinite period, the period for which the right subsists shall not extend beyond the date when the owner's estate or interest determines.
>
> "(2) If planning permission for the use of the protected site as a site for mobile homes has been granted in terms such that it will expire at the end of a specified period, the period for which the right subsists shall not extend beyond the date when the planning permission expires.
>
> "(3) If before the end of a period determined by this paragraph there is a change in circumstances which allows a longer period, account shall be taken of that change."

73 If the effect of section 1(1) had been that an agreement would only be an agreement to which the Act applied *for so long as* the occupier was entitled to station a mobile home on land forming part of a protected site, it would have been unnecessary to state that the right to occupy the site terminated when the planning permission terminated. Section 2 only implies the statutory terms into an agreement to which the 1983 Act applies, that is, an agreement which satisfies section 1(1).

74 Paragraph 2(2) of Schedule 1 (set out above) is an important part of the statutory scheme because it shows that, if a site ceases to be a protected site because of some time limit on the planning permission, the statutory protection for the occupier of the mobile home will cease but the contractual arrangement between the parties will continue so that both sides can have resort to it for the giving of notice, enforcing repairing obligations and so on. In passing, it is clear that there is another possible loophole in the 1983 Act here since there is no express provision for what is to happen if the mobile home ceases to satisfy any conditions in the permission (which continues but is breached). The existence of this potential loophole is yet another illustration of the fact that the system of protection provided by the 1983 Act is not a comprehensive one, a point to which I return below.

75 Furthermore, while marginal notes to a statute do not have great weight in the interpretation of a statute they have some weight. The marginal note to section 1 reads "Particulars of agreements". That is another indication that section 1, including subsection (1), is concerned with the procedure for making agreements which would confer protection from eviction and not about establishing a general proposition that any agreement qualifying under subsection (1) at a subsequent point in time would be one into which the statutory implied terms would be implied.

76 I further agree with Lord Neuberger MR that the provisions of section 1(8) do not assist. They apply only where there is "any variation of an agreement". They do not apply simply where there is a change in the circumstances affecting the agreement for occupation.

77 The above reasoning might suggest that my approach to the issues on this appeal has simply a narrow textual one. That is far from being the case. I have considered the context of the 1983 Act. It forms part of a series of

A statutes giving security of tenure to residential tenants in circumstances where the common law did not do so. The jurisprudence of the European Court of Human Rights on the right to respect for one's home (article 8) emphasises the value to be attached to such security in modern society. In my judgment, the court is entitled and bound to interpret the 1983 Act, as any other Act, against its context and purpose to give effect to the intention of Parliament so far as that can be deduced from the words of the statute.

B 78 However, in my judgment, it is clear from an examination of the 1983 Act that Parliament's purpose in enacting this statute was to give occupiers of mobile homes as their sole or main residence only a measure of security of tenure, and not all-inclusive and watertight protection. For instance, an occupier may have a contractual entitlement to be the occupier of more than one mobile home in circumstances where only one of those C mobile homes can be said to constitute his sole or main residence. It may seem anomalous but his position would be protected in relation to the one mobile home if he enters into a separate agreement relating to that one alone but not if he enters into one agreement for all three of those homes. Or the occupier may enter into an agreement that also includes a field for say grazing cattle or carrying on the business of a market garden. These examples show how limited the protection in section 1(1) is and the facts of D this case also show that in enacting the 1983 Act it was also part of the purpose of Parliament to enforce planning control and also to protect the landlord of the site.

79 In short, in giving statutory protection to occupiers of mobile homes, Parliament has not as it were put down a neatly fitting piece of a jigsaw to make a comprehensive system of protection for residential tenants. It has E simply added another piece, which does not complete the picture. Indeed, other parts of the picture are also themselves incomplete (see *Tan v Sitkowski* [2007] 1 WLR 1628 cited by Lord Neuberger MR). Had it been clear that Parliament was simply addressing the obvious social mischief of an occupier of a mobile home not having security of tenure for his home, the court might have been able to reach the conclusion that one way of avoiding the illogical distinctions that result from the 1983 Act is that section 1(1) F should be interpreted as applying whenever the occupier is entitled to do the acts specified in that subsection. However, the court cannot do that as that interpretation would go against the grain of what Parliament has actually provided. This is a case where the restrictive drafting of the 1983 Act regrettably produces an obvious hardship for the defendant.

80 In those circumstances the appeal must be dismissed. It does not fall G to this court to consider article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, but the court hearing any further application for possession of the site may have to do so. This would involve considering the point left open by the Supreme Court in *Manchester City Council v Pinnock (Secretary of State for Communities and Local Government intervening)* [2010] 3 WLR 1441, at para 50.

H **LONGMORE LJ**

81 I agree with both judgments.

Appeal dismissed.

ROBERT RAJARATNAM, Barrister