QCAT

Queensland Civil and Administrative Tribunal

CITATION:	Phillips v Sunforth Pty Ltd t/a Riverside Residential Resort [2010] QCAT 100
PARTIES	Mr Bob Phillips and the residents of Riverside Residential Resort as listed in the application lodged 26 June 2009 v Sunforth Pty Ltd t/a Riverside Residential Resort
APPLICATION NUMBER:	MH022-09
MATTER TYPE:	Other civil disputes
HEARING DATE:	04 January 2010
HEARD AT:	Brisbane
DECISION OF:	Julie Ford
DELIVERED ON:	04 January 2010
DELIVERED AT:	Brisbane
ORDERS MADE:	04 January 2010
CATCHWORDS:	Manufactured Homes – site rent increase – *Manufactured Homes (Residential Parks) Act 2003* s. 69, s. 71.

APPEARANCES AND REPRESENTATION (if any):

This matter was heard on the papers by agreement between the parties.

REASONS FOR DECISION

[1] On 1 June 2009 all owners of homes in the Riverside Residential Resort in Upper Coomera, run by Lifestyle Resorts Australia Pty Ltd, were informed that in accordance with Clause 10 of their residential site lease agreement, all rental fees would increase by the approved market review process as from 1 July 2009.The weekly site rental for all residents would be increased to $140 per week. This increase was effective from 1 July 2009, but would only apply from the payment made on the 9 July 2009 onwards.

[2] On 26 June 2009 Mr Bob Phillips and a number of residents of Riverside Residential Resort (Ms Lorraine Launer, Mr Mal and Mrs Rhonda McDonald, Mr Ian and Mrs Helen Morgan, Mr Bob and Mrs Dianne Phillips, Mr Bill Ramsay and Mr Don and Mrs Helen Robertson) applied to the Commercial and Consumer Tribunal for a review of this decision. In the application, the residents indicated that they had attempted to resolve the dispute by negotiation, however, had not engaged an independent mediator to assist them with dealing with their dispute.

[3] The respondent, Sunforth Pty Ltd t/a Riverside Residential Resort filed its defence on 16 July 2009.

[4] On 27 July 2009 a directions hearing ordered that further material be filed, including copies of each of the site agreements of the applicants. A further directions hearing was held on 9 October 2009 and it was noted that the applicants relied on the filed statements. The respondent did not require any of the applicants for cross examination and relied on its filed

statement. By consent, the application was to be determined by the tribunal on the papers.

[5] On 1 December 2009 the Commercial and Consumer Tribunal ceased to exist and this matter came under the jurisdiction of the Queensland Civil and Administrative Tribunal (see sections 245, 256 and 271 of the Queensland Civil and Administrative Tribunal Act 2009).

Legislation relevant to the application

[6] The provisions of the Manufactured Homes (Residential Parks) Act 2003 relevant to this appliction are sections 69 (notice of increase in site rent) and 71 (notice of proposed increase in site rent).

The applicants' position

[7] The applicants are all resident owners. The method of rent calculation is shown in all site agreements at section 10 as "CPI + 3 yearly market review", except for applicant Mr Phillips where only "CPI" is written. No dates are shown for the start date for the market review or intended review date. The resident owners relied on the start date for the market review to be the commencement date on their respective site agreement. The commencement dates were as follows: Ms Launer 19 March 2008, Mr and Mrs Mc Donald 01 November 2007, Ms Hawthorne 14 June 2007, Mr and Mrs Morgan 5 October 2007, Mr and Mrs Phillips 26 June 2008, Mr Ramsay 3 October 2007 and Mr and Mrs Robertson 27 September 2007.

[8] The applicants accept the imposition of the annual CPI increase. The applicants do not accept the respondent's contention that "the main purpose of the market review of site rents is to ensure parity of site rents

across the resorts", stating that neither these words nor this concept exist within the Act.

[9] Following legal advice, the applicants assert that “the date for the 3 yearly market review, in the absence of any dates or words in the executed site agreements can only be from the date of the execution of the agreement". Further legal opinion sought by Mr and Mrs Robertson stated that "no contract could be deemed to commence any date earlier than that date that it was entered into and the implication by the use of the words '3 yearly Market Review' would run from the date of entering into the contract".

[10] It was argued by the applicants that a significant majority of the 85 residents at the resort had been owners for in excess of 3 years and thus would not object to the date of the market review. The fact that only 7 of the 85 residents had objected to the site increase did not diminish the applicants' argument.

[11] The applicants pointed out that the site agreements were prepared by the park owners and the individual purchasers, some with the benefit of legal advice, had accepted the agreements as clearly written.

[12] The applicants accepted a common date for the next market review scheduled in 2012 on the basis that all of the applicants would have been residents of the park for over three years.

The respondent's position

[13] The respondent asserted that a market review of site fees had not been done on the resort before and will not be done again until 2012. The legislation was applied in the decision to increase the site rents, most

particularly those elements the tribunal may have regard to in s 70 (3) (a) of the Act.

[14] The respondent asserted that the applicants had not provided any explanation or basis upon which they relied on the assumption that the start date for the 3 yearly market review period would be the same as the start date for their individual site agreements. At no time did any applicant request that a start date of this three yearly period be given or inserted into the agreement, hence its absence from the site agreement. The respondent asserted that "the lack of a start date for this period in the site agreement indicates that the start date of this 3 yearly review could be at any point in time (not date specific) but that the only requirement would be that it is not carried out more than once within a 3 yearly period".

[15] It was argued that the site rent increase conducted by market review has been carried out in accordance with the requirements of the relevant legislation and site agreements in question.

Tribunal Findings

[16] The issue in contention in this matter relates specifically to whether or not a three yearly market review should commence from the date of each individual site agreement contract, in the absence of any set dates in the contract, as asserted by the applicants or whether a 3 yearly market review could be at any point in time (not date specific), with the only requirement being that it would not occur more than once within a 3 year period, as asserted by the respondents.

[17] The tribunal finds that the applicants could reasonably anticipate that the 3 yearly market review would occur three years from the commencement

of their site agreement contract. It is reasonable for them to assume that, in the absence of any dates or words in the executed site agreements, the timing of the three yearly market review would be from the date of the execution of the agreement (contract).

[18] The tribunal does not accept that the onus should have been on the applicants to request that a specific date be registered in the individual site agreements. These agreements were prepared by the park owners and it was therefore their responsibility to ensure that the agreements accurately reflected the terms and conditions required by them. The tribunal finds that the site agreements did not give the right to the respondent to increase the site rental based on a market review concept until three years after the date of execution of the agreements.

[19] The tribunal acknowledges that one of the applicants, Mr Bob Phillips, had only a reference to CPI increases (thus no reference to a 3 yearly market review) in his site agreement affecting any intended variation in rent.

[20] While the tribunal appreciates that the park owners would seek to create parity within the park itself with a standard rental for each individual home owner, the reliance on a three yearly market review should have been date specific in the recent contracts (dated 2007 and 2008) signed by individual residents to affect such parity. If the vast majority of the park residents were tenants for three or more years and no 3 yearly market review had been conducted previously, a date specific clause in the recent site agreements would have ensured all parties were clear on the intention of the park owners.

[21] Lifestyle Resorts Australia Pty Ltd have correctly considered all other legislative requirements including the range of site rents charged in comparable residential parks, the amenities available and intended improvements as well as any increases in the operating costs for the park during the previous site rent period. However, the written site agreement encompasses the whole of the agreement between the parties.

Order

[22] That the respondents repay to each individual resident applicant the market review charges currently deducted from their account, less any CPI adjustments due, since 9 July 2009.

[23] That the respondents do not apply any further market review charges to the resident applicants until 36 months from the commencement dates of their individual site agreements.

[24] That the respondents do not impose any market review charges on Mr Bob Phillips as applicable to his individual site agreement, which states that the method of calculation for any site rent increases will be based on CPI increases only.