

CITATION: *GM & JM Holland trading as Cooloola Cabins & Caravan Park v Tribel* [2016] QCAT 59

PARTIES: GM & JM Holland trading as Cooloola Cabins & Caravan Park
(Applicant)
v
Steven Tribel
(Respondent)

APPLICATION NUMBER: OCL047-14

MATTER TYPE: Other civil dispute matters

HEARING DATE: 11 December 2015

HEARD AT: Maroochydore

DECISION OF: **Member Quinlivan**

DELIVERED ON: 5 April 2016

DELIVERED AT: Brisbane

ORDERS MADE: The site agreement between GM & JM Holland trading as Cooloola Cabins & Caravan Park and Steven Tribel is terminated effective from 2 October 2014.

CATCHWORDS: Termination of site agreement, alleged assault,

APPEARANCES and REPRESENTATION (if any):

APPLICANT: Mr Greg Holland represented by Mr Brendan Cuddihy of Jeffrey, Cuddihy and Joyce, Solicitors

RESPONDENT: Mr Steven Tribel supported by Ms Barbara Fitzmaurice

REASONS FOR DECISION

Background

- [1] On 11 June 2014, Gregory and Jennifer Holland, the owners of Cooloola Cabins and Caravan Park commenced proceedings in the Queensland Civil and Administrative Tribunal (QCAT) against Stephen Tribel seeking the termination of his site agreement.
- [2] The applicants made the following allegations:
1. Mr Tribel has a history of being abusive towards other homeowners,
 2. He has a history of attempting to intimidate other home owners.
 3. He has received breach notices for the same breach in the past.
 4. A homeowner complained to the police in the past about Mr Tribel assaulting him in 2010.
 5. There had been a previous application for termination of the site agreement for the same breach in the past.
 6. A homeowner had complained to the police about Mr Tribel seriously assaulting her on 27 May 2014.
 7. Homeowners in the caravan park were in fear of Mr Tribel and this was not fair.
 8. There have been many written and verbal complaints about Mr Tribel and his aggressive behavior
 9. He had been given previous chances to amend his behavior.
- [3] Mr Tribel opposed the application.
- [4] The parties had signed a Site Agreement on 25 October 2007 under the Manufactured Homes (Residential Parks) Act 2003 (the Act). The Site Agreement makes provision for the termination of the agreement in certain situations. In particular, Section 2.3, of the agreement provides that the site agreement may be terminated... "if the home owner assaults a person who is lawfully in the park".
- [5] When the matter first came before the Tribunal, it was decided that the agreement would be terminated with effect from 2 October 2014 and Mr Tribel was required to give vacant position of his site by no later than that date.
- [6] Mr Tribel appealed the decision and on 19 June 2015 the Appeal Tribunal set aside the decision (as amended) made on 2 September 2014. The matter was returned for rehearing by a differently constituted Tribunal with the parties having an opportunity to provide further evidence.
- [7] On 4 August 2015 the applicants were granted leave to amend the date of the alleged assault referred to in item (6) of their application.
- [8] On 10 August 2015 the applicants filed an amended application with the only change being that item 6 now reads "A home owner has complained to the Police about the respondent assaulting her on 25 January 2015".
- [9] Mr Tribel filed a response to the amended application on 4 September 2015 and made the following contentions:
1. There is no evidence supplied by the applicants of proof of abuse towards other homeowners, this is only hearsay.
 2. There is no evidence of the attempt to intimidate other homeowners, this is only hearsay".
 3. The breach notices supplied by the applicants have supplied no evidence. There is a history of the applicants using breach notices to harass, intimidate and threaten homeowners into submitting to the bullying tactics of the applicants.

4. The complaint mentioned re assault in 2010 has been dealt with and a mutual agreement has been made between the parties and cannot be submitted as evidence.
5. The application has also been dealt with and a mutual agreement has been made between the applicants and respondent. That case **did not** refer to assault on another person as alleged by the applicants.
6. The homeowner who complained to the police on 25 January 2013 was notified by the police that a charge could be made against that home owner for trespass and assault. No evidence has been supplied of this alleged assault; the applicants were notified that the home owner had actually assaulted Mr Tribel. Evidence was supplied by Mr Tribel and a witness to the police, that the home owner actually caused the assault with a weapon.
7. No evidence has been supplied to show any home owner is in fear of the respondent. There are numerous statements (a majority of homeowners) in support of Mr Tribel.
8. There is no evidence to show the many written and/or verbal complaints about the respondent's alleged aggressive behavior.
9. There is no evidence to show an alleged behavior to amend.

[10] In summary, Mr Tribel said that evidence can be provided to show that this application by the Applicants was a premeditated attempt to force the respondent out of the park by terminating his site agreement.

[11] He claimed that evidence could also be provided by an actual witness to the assault by the other home owner on 25 January 2013. An attempt by Mr Tribel to have mediation with the other home owner to resolve any issues was ignored.

[12] Mr Tribel submitted that the enforcement warrant obtained by the applicants caused the Queensland police to remove him from his site and denied him his right to appeal against the warrant. The respondent was forced to remove his primary place of residence at 5 Cooloola Cabins and Caravan Park at a financial cost and a relapse in his mental health condition. He wants damages for his losses.

[13] Mr Tribel seeks that the applicants and Mrs. Mason be made accountable for their actions according to the Justice System of Common Law and the Manufactured Homes (Residential Parks) Act 2003.

What is the issue to be determined?

[14] The Applicants are seeking an order from the Tribunal, terminating the site agreement between them and Mr Tribel on the ground that he, as a homeowner, assaulted a person who was lawfully in the residential park. As set out above Mr Tribel again opposes the application.

[15] The alleged incident took place on 25 January 2013. The victim of the alleged assault was Ms Irene Mason who resides at the Cooloola Cabins and Caravan Park. She provided a statement dated 4 September 2015. Ms Mason says that on the evening of 25 January 2015 she went to the respondent's residence to ask him to turn down his music as it was very loud and could be heard throughout the park.

[16] She states that she knocked at the respondent's door and he answered. He had to turn the music down to be able to hear her speak. She says that she asked him to lower the volume. He told her that he had until 8.00pm and until then he could make as much noise as possible.

- [17] She claims that he closed the door on her and went back inside to turn up the music. He then came back out and told her to get off his property. She alleges that he pushed her causing her to fall down onto the concrete carport floor.
- [18] Ms Mason claims that she got up and tried to hit him with her umbrella (in self-defence) but she missed. She says that the respondent pushed her again causing her to fall over a second time. As she tried to leave his premises, he kept pushing at her until she reached of the roadway.
- [19] She claims that she did not get a chance to leave the respondent's premises of her own free will as he started pushing her so hard that she fell down.
- [20] She says that as a result of the respondent's assault on her she suffered cuts and abrasions. She claims that the ambulance was called to treat her injuries and she provided photographs of the injury to her arm.
- [21] Ms Mason claims that she reported the incident to the Police but that no action was taken because Mr Tribel made allegations that she assaulted him. She says that she only attempted to hit him after he had pushed her to the ground.
- [22] Mr Tribel says that on 4 February 2013 he made a complaint to the applicants regarding the incident on 25 January 2013. In that report he says that he was sitting with a friend listening to music at approximately 7:25pm when he was startled by a loud bashing at his front door. He claimed that upon opening his front door, he found Ms Mason yelling abusively at him to turn his music down.
- [23] He said that he asked her to go away and that she put herself in his doorway as he tried to close it. He said "opening the door again she assaulted me with the umbrella she was carrying, as I was defending myself I pushed her and she slipped on the tiles that were wet from the heavy rain. I then escorted her off my property while she was still hitting with the umbrella".
- [24] He claimed that at 8.00pm the police interviewed his witness and himself and advised him that he could have her charged with trespassing and assault.
- [25] The witness Mr. Alan Alway said that on 25 January 2013 he was at Mr Tribel's place listening to country music and having a couple of beers. He said that the music was a little louder than normal as he was wearing his hearing aids. He said it was nearly 7:30pm when he heard this bashing at the door.
- [26] He said that Steve got up to find Irene Mason standing at the door. He said the respondent opened the door and as far as he knew Steve told her to go away and as he went to close the door she tried to push herself in. He said Steve moved her out of the doorway and she slipped and fell on the tiles. He said she got up and started hitting Steve with her umbrella - hitting him, a couple of times.
- [27] Steve then asked her to leave and she said "no". He escorted her out of his property with his hand on her left shoulder. He said he thinks she hit him again and she then tripped over. He said the police came out and he gave a statement to them. He claimed the police said to him and the respondent that he could have her charged for assault and trespassing. He claimed the police said she would only be cautioned to due to her age.
- [28] Mr Tribel provided photos which he says show the injuries he sustained and the broken handle of the umbrella that got stuck in his front screen door.
- [29] He referred the Tribunal to exhibit B of his statement of evidence which addresses aspects of the transcript of the previous proceedings and in particular the incident involving Ms Mason.
- [30] He says that he was not requested by Ms Mason to turn the music down, he was told to turn it down. He alleged Ms Mason stood in his doorway trying to enter his home to turn the music down. He insists he did not push her down, but he did try

to move her out of his doorway. He said she slipped on the wet tiles which are flush with his front door. He claimed that as she was getting up Ms Mason tried to hit him with her umbrella she missed and the handle of her umbrella broke off and got stuck in the front screen door.

- [31] He says while telling Ms Mason to remove herself from his property he was guiding her along the path to the front gate. He says that unfortunately while Ms Mason was hitting him with her umbrella, she unbalanced and fell again this time on the cement floor. He asserts that at no time did he push her down.
- [32] He further contends that for Ms Mason to fall on the carport cement floor was impossible as it is more than 2m from his front door.
- [33] He submits that there is no ongoing case with this assault, the Police advised him that that he could have Ms Mason charged with trespass and assault and that she would only receive a warning. He says that on reflection he decided instead to contact Wide Bay mediation but Ms Mason did not reply.
- [34] He says that he sent a breach notice to the applicants to terminate Ms Mason's site agreement under section 38 (1)(b)(M) of the Act but of course this has been completely ignored.

What is the outcome?

- [35] At the hearing on 11 December 2015 the Tribunal had the benefit of hearing from Mr Alway, Ms Ailsa White, Mr Mark Tribel and Mr David Morris. Other witnesses included Ms Christine Corbidge, Ms Julie Lawlor, Mr Charles Cozens, Mr Darrell Gilbert, Mr Larry Schilling and Mr Robert Watson. There was also a large number of personal references attesting to the respondent's good character.
- [36] In particular, the Tribunal had the benefit of hearing directly from Ms Mason, Mr Tribel and Mr Alway. Ms Mason presented as a small feisty woman who was very clear about the circumstances of what had occurred. The Tribunal formed the view that she would not hesitate to challenge a situation that she disagreed with.
- [37] Mr Alway expressed the view that he didn't think the music that was excessively loud. He admitted having half a dozen mid-strength studies. He said that he heard the respondent say "go away" and he admitted that he did not know how much force was used by the respondent.
- [38] Mr Tribel presented as an intimidating aggressive man who found it difficult to contain his emotions. He was assisted and supported throughout the hearing by Ms Barbara Fitzmaurice. The Tribunal formed the view that he was only able to remain focused on the hearing with her support.
- [39] Although she had been listed as a witness Ms Fitzmaurice decided to support Mr Tribel instead. It was apparent to the Tribunal that Mr Tribel was extremely anxious and on a number of occasions it was necessary for Ms Fitzmaurice to intervene and calm him down. The Tribunal was impressed by Mr Tribel's attempts to contain his emotions. However, during final submissions, he had to leave the hearing room.
- [40] The issue for determination in this case is whether the respondent Stephen Tribel, a homeowner, assaulted Irene Mason, a person who was lawfully in the residential park on 25 January 2013
- [41] Schedule 1 of the Queensland the Criminal Code defines 'an assault' in the following terms:

*A person who strikes, touches, or moves, or otherwise applies force of any kind to, the person of another, either directly or indirectly, without the other person's consent, or with the other person's consent if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without the other person's consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect the person's purpose, is said to assault that other person, and the act is called an **assault**.*

- [42] The standard of proof to be applied to the evidence in this matter is civil and not criminal. Therefore, I must be satisfied on the balance of probabilities¹.
- [43] In his statement dated 4 February 2013, Mr Tribel outlined his version of the incident that happened at his site on 25 February 2013. He acknowledges the incident but says he was defending himself. He pushed her and she slipped on the tiles that will wet from heavy rain. He then escorted her off my property while she was still hitting me with the umbrella.
- [44] Mr Alway said that as far as he knew Mr Tribel told Ms Mason to go away and that she tried to push herself into his unit.
- [45] Mr Tribel gave oral evidence regarding the incident in which he continued to allege that Ms Mason was the aggressor. He said that he told her to f-off and moved her away from his door way and closed the door. He said she was going off. He said that he opened the door and she started hitting him again with her umbrella so he said that he moved her to the gate with his hand on the back of her shoulder and she slipped again on the pebbles. He agreed that he applied force and that she fell over. He argued that there are different categories of force.
- [46] He argued strongly that how loud the music was, was irrelevant. In relation to 7 previous complaints he claimed that they were all fabricated. He asserted that in this instance he is the victim and that Ms Mason assaulted him. He admitted to getting "a bit stropky", but said that Ms Mason was in a state of rage.
- [47] Ms Mason's version of events is set out in her statement dated 4 September 2015. She admitted attending at Mr Tribel's residence and asking him to lower the volume and he said that he had until 8.00pm and he could make as much noise as possible.
- [48] She alleges that he closed the door on her and went back inside to turn up the music. She said he then came back and told her to get off his property. She says he pushed her causing her to fall down on the concrete carport floor. Mr Tribel claims that this was not possible.
- [49] She said that as she got up, she tried to hit him with her umbrella (in self-defence) but missed. She then alleged that he pushed her again causing her to fall over a second time. She said that as she tried to leave his premises he kept pushing at her until she reached the roadway. She said she did not get a chance to leave Mr Tribel's premises of her own free will as he started pushing her so hard that she fell down.

¹ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361-2

- [50] She says that as a result of the incident she suffered cuts and abrasions. She provided photographic evidence and said that the ambulance was called to treat her injuries.
- [51] Ms Mason appeared to be a credible witness. She denied that she tried to enter Mr Tribel's annex. She was not seriously challenged in cross-examination by Mr Tribel who at one stage stated "I pushed you out of the way."
- [52] Mr. Robert Watson provided a statement in relation to this matter dated 20 November 2015. He said that on the evening of 25 January 2013 he was woken by loud music coming from Mr Tribel's site. In his oral evidence Mr. Watson said that he had a discussion with Mr Tribel the day after the incident with Ms Mason. He referred to the heated conversation with Ms. Mason and Mr Watson claimed that Mr Tribel said to him that he had pushed her. Mr Watson allegedly said to Mr Tribel "that's manslaughter if you kill her". Mr Tribel strongly put to Mr Watson that the conversation did not happen. I have therefore not placed significant weight on this evidence.
- [53] I found Mr Alway to be an honest witness but he seemed to lack critical detail about what had occurred. I found that Mr Tribel was not a credible witness. He attempted to minimise his role and actions for the incident. Where the evidence of Ms Mason and Mr Tribel differs, I prefer the evidence of Ms Mason.
- [54] The issue for the Tribunal to determine in this matter is whether an incident occurred where Mr Tribel being a home owner assaulted Ms Irene Mason, a person who was lawfully in the park. If the Tribunal is satisfied on the balance of probabilities that an assault occurred, Section 38 of the Act allows for the Park owner to terminate the agreement.
- [55] Having considered all of the evidence and having the opportunity to observe the key witnesses, I find that Mr Tribel did "touch and move" Ms Mason by applying force in order to remove her from his site without her consent. I am not satisfied that at the time Ms Mason was trespassing on Mr Tribel's site.
- [56] I am satisfied that Mr Tribel had the present ability to remove Ms Mason from his site in such a way that it constituted an assault. I therefore order that pursuant to Section 30(1)(b) of the Act Mr Tribel has assaulted a person who was lawfully in the residential park.

Order

The site agreement between GM & JM Holland trading as Cooloola Cabins & Caravan Park and Steven Tribel is terminated effective from 2 October 2014.