

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Lewis & Anor v Palm Lake Resort* [2021] QCAT 259

PARTIES: **RON LEWIS**

CATHERINE LEWIS
(applicants)

v

PALM LAKE RESORT
(respondent)

APPLICATION NO/S: OCL063-20

MATTER TYPE: Other civil dispute matters

DELIVERED ON: 16 July 2021

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Paratz AM

ORDERS:

- 1. No order is made to appoint an independent valuer pursuant to s 70A of the *Manufactured Homes (Residential Parks) Act 2003 (Qld)*.**
- 2. The application filed by Ron Lewis and Catherine Lewis on 9 July 2020 is otherwise dismissed.**

CATCHWORDS: ENVIRONMENT AND PLANNING – ENVIRONMENTAL PLANNING – DEVELOPMENT CONTROL – CONTROL OF PARTICULAR MATTERS – RESIDENTIAL – CARAVAN PARKS AND MOVEABLE DWELLINGS – whether the Tribunal should appoint an independent valuer – whether existing valuation does not reflect a reasonable market review of site rent

Manufactured Homes (Residential Parks) Act 2003 (Qld)
s 70A

Wain & Anor v Walter Elliott Holdings Pty Ltd trading as Palm Lakes Resort Pty Ltd [2020] QCAT 175

APPEARANCES &
REPRESENTATION:

Applicants: Self – represented

Respondent: Self - represented

This matter was heard and determined on the papers

pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld)

REASONS FOR DECISION

- [1] Ron Lewis and Catherine Lewis reside at the Palm Lake Resort at Bethania in Queensland ('the residents'). They filed an application on 9 July 2020 seeking an order for the appointment of an independent valuer, amongst other orders, in relation to the site rental they pay for their manufactured home.
- [2] The owner of the property, Palm Lake Resort Pty Ltd ('the park owner'), requested Knight Frank Valuations Queensland and Knight Frank Health and Aged Care Queensland ('Knight Frank') on 5 September 2019 to undertake a market site rental assessment in relation to the resort, and a written assessment dated 12 September 2019 was produced.
- [3] The Knight Frank market rental assessment was \$175 per site per week.
- [4] The residents contend that the Knight Frank market rental assessment was unfair and too high, and has consequent effects:¹
 - 9. The consequences of an unfair rent review go well beyond the simple fortnightly cash flow implications for the mainly elderly residents. The resultant higher than market rental levels have a flow on effect when the time comes for a unit to be sold. These higher than market rentals have a significant impact on both the saleability and sale price of units. In some cases the units are virtually unsaleable and the purchaser of last resort (Palm Lake Resort) then purchase the unit at a considerable discount for refurbishment and re-sale.
- [5] The orders sought by the residents are as follows:
 - 1. Appoint an independent valuer to undertake another market review of the site rent at Palm Lake Resort Bethania, taking into account the varying three stages of infrastructure in the resort.
 - 2. Order no further market reviews be undertaken until the infrastructure of Cocas Crt and Cedar Crt is brought up to the reasonable standard of the upgraded areas of the resort.
 - 3. Place a dollar value on the removal of facilities (namely 3 hole golf course & indoor bowling green) and the inability to take advantage of Caravan Servicing because of the inadequate infrastructure provided.
 - 4. Issue a court order to guarantee our continued use of the rear garage access which is under threat of being removed because we are making this application.
 - 5. Award legal costs of \$927.50 to date.
- [6] The power for the Tribunal to appoint an independent valuer for market review of site rent is found in s.70A of the *Manufactured Homes (Residential Parks) Act 2003* (Qld) ('the Act') which provides as follows:

70A Tribunal may appoint independent valuer for market review of site rent

¹ Statement of Ron Lewis and Catherine Lewis filed 21 September 2020, [9].

- (1) This section applies if—
 - (a) the park owner for a residential park gives a home owner a general increase notice for a proposed increase in the site rent based on a market review of site rent; and
 - (b) the home owner applies to the Tribunal under section 70(3).
- (2) The Tribunal may appoint an appropriately qualified and independent registered valuer to help the Tribunal in relation to the application including, for example, by—
 - (a) giving the Tribunal a written valuation for a market review of site rent; or
 - (b) giving expert evidence in a proceeding for the application.
- (3) The Tribunal may appoint a valuer under subsection (2) if satisfied—
 - (a) at least 1 of the following applies—
 - (i) consultation for preparing a market valuation for the market review of site rent was not carried out as required under section 69D or was not adequate;
 - (ii) the general increase notice was not accompanied by a market valuation for the market review of site rent under section 69E(2);
 - (iii) the general increase notice or market valuation accompanying the notice (the relevant market valuation) does not clearly provide for how the increased site rent has been worked out;
 - (iv) the site rent is proposed to be increased other than in accordance with the relevant market valuation;
 - (v) the relevant market valuation does not reflect a reasonable market review of site rent in the circumstances, including, for example, because the basis or methodology for the review is not reasonable; and
 - (b) for a general increase notice for the same general increase day given to the home owners for at least 5 sites in the residential park (the notified sites)—the home owners for the threshold number of the notified sites have applied to the Tribunal under section 70(3).
- (4) If the Tribunal appoints a valuer under subsection (2), the park owner must pay the valuer's costs of helping the Tribunal, including—
 - (a) the costs of preparing a written valuation, if any, required by the Tribunal; and
 - (b) the fees and allowances for giving evidence, if required, in a proceeding.
- (5) However, subsection (4) applies only if before appointing the valuer, the Tribunal—
 - (a) advises the park owner of the amount the park owner is likely to be required to pay under subsection (4); and

- (b) gives the park owner the opportunity to be heard on the matter of appointing the valuer.
- (6) In this section—
 - threshold number, of the notified sites, means the lesser of the following—
 - (a) the number at least equal to 25% of the number of the notified sites;
 - (b) 20.

Residents' submissions

- [7] The residents submit that the Knight Frank review is made on a wrong premise, as it describes the resort as 'purpose-built' which it is not, as the resort was originally a Caravan Park which was purchased by the owner in approximately 1989, and utilised existing park infrastructure to accommodate a resort.²
- [8] The residents say that the infrastructure of the resort is not sound, and has been 'cobbled together' as evidenced by the siting of a fire hydrant in the middle of a resident's driveway.³
- [9] The residents say that Regal Waters Bethania, which is cited by Knight Frank as a direct comparison, is not comparable as it is purpose-built, fully fenced, and has pristine infrastructure.⁴
- [10] The residents say that it is not possible that the Waterford Palm Lake Resort (which they say has modern three to four-star facilities, regulation hydraulics and infrastructure) is shown in the Knight Frank rent assessment as 'superior to subject' and has a rent of \$184.14 per week, is valued at only less than \$10 per week more than the subject property, which is a 30 year old converted caravan park.
- [11] The residents say that those arguments as to the nature of the resort, and the state of the infrastructure is 'in the main... why we have disputed this review',⁵ and conclude that an independent review is justified:⁶
 - 29. What we have here are consecutive Market Reviews adding \$79.05 to the fortnightly rent of a very inferior resort built on the cheap and passing itself off as a purpose-built resort and we ask this Tribunal to order an independent valuer to undertake another market review of the site in question.

Park owner's submissions

- [12] The park owner submits that the market valuation has been undertaken in an independent and professional manner, and that the basis and methodology of the valuation is clear, and the outcome is clearly in line with market.⁷

² Statement of Ron Lewis and Catherine Lewis dated 21 September 2020, [7].

³ Ibid [16] and [17].

⁴ Ibid [20].

⁵ Ibid [23].

⁶ Ibid [29].

⁷ Respondent's submissions filed 7 October 2020, 1.5 (v).

- [13] It contends that the residents have not provided any evidence that the market valuation does not meet required professional standards, nor do they provide any independent expert information to refute the basis or methodology.⁸
- [14] It submits that it has already paid for the professional services of an independent registered valuer for the purposes of providing a market valuation, and that any requirement for it to pay additional costs in this regard is onerous and defeats the purpose of providing a professional valuation in the first instance.⁹

Discussion

- [15] This matter has strong similarities to the situation in *Wain & Anor v Walter Elliott Holdings Pty Ltd trading as Palm Lake Resort Pty Ltd*.¹⁰ That matter also concerned a valuation by Knight Frank which was challenged by residents at a Palm Lake Resort. The Tribunal was unable to discern anything in the basis or methodology adopted by Knight Frank which was unreasonable in that matter, and declined to appoint an independent valuer.
- [16] The market site rent assessment in this matter was also produced by Knight Frank, is dated September 2019, and is signed by a Certified Practising Valuer who is a registered valuer.
- [17] The assessment does refer to the property as a ‘purpose-built’ manufactured home residential park, and notes that it provides older style manufactured home residential park dwellings which are of a moderate standard and comprise a mixture of one, two and three bedroom accommodation with attached lock-up garage.¹¹
- [18] The assessment describes the property in some detail, includes photographs of it, and concludes that its condition is as follows:

At the date of inspection, the communal facilities appear to have been fairly well maintained and presented in a good manner commensurate with their age, reflecting fair wear and tear, although a few maintenance issues were brought to our attention by the Home Owners Committee.

- [19] The assessment notes that a capital expenditure program to undertake an extension and refurbishment works to the community centre building in the property was expected to commence on 23 September 2019. That work was understood to cost around \$200,000, excluding GST. The assessment notes that it has been completed on the critical assumption that those works will be undertaken within a timely manner, and that if the advised works are not carried out, then this assessment must be returned for review and further comment.¹²
- [20] No issue appears to have been taken as to noncompletion of the capital works.
- [21] The Knight Frank assessment considered the current site rentals at other similar parks within the local and wider area as follows:¹³

⁸ Ibid 1.5(v).

⁹ Ibid 1.6.

¹⁰ [2020] QCAT 175.

¹¹ Knight Frank Health and Aged Care Queensland – Market Site Rent Assessment - September 2019 p.1.

¹² Ibid p.6.

¹³ Ibid p. 10, 11.

- (a) Regal Waters by Gateway Lifestyle – Bethania;
- (b) Palm Lake Resort Eagleby Heights – Eagleby;
- (c) Palm Lake Resort Waterford – Waterford;
- (d) Palm Lake Resort Mount Warren Park – Mount Warren Park;
- (e) Ruby by Living Gems – Eagleby;
- (f) Sapphire by Living Gems – Eagleby;
- (g) Ingenia Lifestyle Bethania – Bethania.

[22] The Knight Frank assessment notes as follows:¹⁴

Based on information provided, assumptions outlined earlier and current market evidence, we are of the opinion that an appropriate Market Site Rent Assessment for the property as at 12 September 2019, would sit within a range of \$170/week/site to \$180/week/site.

More specifically, as at 12 September 2019, we have adopted a Market Site Rent Valuation of the sites at Palm Lake Resort Bethania MHRP located at 43 Goodooga Drive, Bethania, of \$175/week/site. This is considered to be a competitive market level in the local and wider catchment and recognises the location, age, quality and other characteristics of the Subject.

- [23] Order 1 sought by the residents relates to the appointment of an independent valuer.
- [24] The Act provides in section 70A(3) that the Tribunal may appoint a valuer if it is satisfied of at least one of five considerations. The only consideration that has been put in contention in the submissions is s 70A(3)(a)(v) which applies if the relevant market valuation does not reflect a reasonable market review of site rent in the circumstances. An example of that is given in that subsection of the basis or methodology for the review not being reasonable.
- [25] The residents have criticised the finding of the review as not giving sufficient weight to the state of the infrastructure of the resort, but have not identified how that was not considered in the basis or methodology of the review which considered the condition of the property overall.
- [26] I do not consider that the basis or methodology of the Knight Frank review is not reasonable, and do not consider that the review was not conducted and made within that basis or methodology.
- [27] The residents have pointed specifically to the reference in the review to the property being a ‘purpose built resort’ as being highly significant. The review however clearly canvasses the nature of the property, and recognises that it is an older property with the communal facilities demonstrating fair wear and tear commensurate with their age.
- [28] I do not consider that the use of the expression ‘purpose-built resort’ is significant to the extent that it would invalidate the assessment as being properly considered.

¹⁴ Ibid p. 12.

- [29] I am not satisfied that it has been established that the relevant market valuation does not reflect a reasonable market review of site rent in the circumstances, and do not make an order appointing a valuer under the Act.
- [30] Order 2 sought by the residents requests that an order be made that no further market reviews be undertaken until the infrastructure of two streets in the resort is brought up to the reasonable standard of the upgraded areas of the resort.
- [31] Order 3 sought by the residents requests that a dollar value be placed on the removal of facilities (namely three-hole golf course and indoor bowling green), and the inability to take advantage of Caravan Servicing because of the inadequate infrastructure provided.
- [32] Order 4 sought by the residents seeks an order to guarantee their continued use of the rear garage access.
- [33] The residents have not identified the specific provisions of the Act which give the Tribunal power to make the orders requested as numbers 2, 3 and 4 of their application, and have not made specific submissions with reference to the Act in relation to the requested orders.
- [34] In the absence of any identified relevant provision of the Act, and relevant submissions, I cannot make orders as requested, and dismiss those parts of the application.
- [35] Order 5 sought by the residents seeks an award of legal costs of \$927.50 to them. The usual rule in the Tribunal is set out in section 100 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld), that each party to a proceeding must bear their own costs.
- [36] As the residents have not been successful in their application to any extent, I do not consider that the proviso in section 102 of that Act, which provides that the Tribunal may make an order requiring a party to pay costs if the Tribunal considers the interests of justice require it to make an order, is made out. I accordingly also dismiss that part of the application.
- [37] I do not make an order appointing a valuer under s70A of the Act and dismiss all other parts of the application.