5 November 2014

PRESS SUMMARY

Telchadder (FC) (Appellant) v Wickland Holdings Limited (Respondent) [2014] UKSC 57
On appeal from [2012] EWCA Civ 635

JUSTICES: Lady Hale (Deputy President), Lord Wilson, Lord Reed, Lord Carnwath, Lord Toulson

BACKGROUND TO THE APPEALS

The Appellant owns and occupies a mobile home that sits on a plot at Meadowview Park, a mobile homes site belonging to the Respondent. He pays an annual pitch fee to the Respondent for licence to use the plot. Under the terms of his agreement with the Respondent ('the agreement'), he is not permitted to act in such a way as to annoy or disturb other occupiers of Meadowview Park ('the anti-social behaviour covenant') **[5]**.

Under the Mobile Homes Act 1983 ("the 1983 Act"), a site owner can only terminate an occupier's licence in certain limited circumstances **[1]**. This appeal concerns Paragraph 4 of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act ('para 4'), which provides:

> "*The owner shall be entitled to terminate the agreement forthwith if, on the application of the owner, the appropriate judicial body –*
> *(a) is satisfied that the occupier has breached a term of the agreement and, after service of a notice to remedy the breach, has not complied with the notice within a reasonable time; and*
> *(b) considers it reasonable for the agreement to be terminated.*"

Previously, Section 3(g) of the Mobile Homes Act 1975 ('the 1975 Act') provided for "*the right of the owner to determine the agreement for breach of an undertaking, subject to the requirement,* ***in the case of a breach which is capable of being remedied****, that he has served written notice of the breach upon the occupier and has given the occupier a reasonable opportunity of remedying it*" (emphasis added). However, in the 1983 Act any such clarification that the notice and reasonable time requirements only apply to remediable breaches was omitted **[20]**.

The Appellant suffers some mental ill-health, has a mild learning difficulty and exhibits autistic traits **[6]**. On 31 July 2006 he startled another resident of Meadowview Park, Miss Puncher, by jumping out at her from behind a tree wearing camouflage clothing **[7]**. In doing so he breached the anti-social behaviour covenant. On 15 August 2006 the Respondent wrote to the Appellant warning that he must not make unsolicited approaches to other residents, or the Respondent would apply to court to have the agreement terminated and his mobile home removed. This letter amounted to notice to the Appellant to remedy his breach of the anti-social behaviour covenant for the purposes of para 4 **[8]**. The Appellant did not commit any further breach until 15 July 2009, when he told another resident, Mr Carter, that two women had reported him for jumping out on them in the woods and he was going to kill them. The Appellant then made threats to kill Mr Carter **[10]**. The Respondent applied to court for termination of the agreement **[11]**.

On 17 August 2011 HHJ Moloney QC found that the requirements of para 4 were satisfied, granted the Respondent's application and ordered that the Appellant's licence to station his mobile home at Meadowview Park be terminated. The Appellant appealed to the Court of Appeal and his appeal was dismissed on 16 May 2012 **[3]**.

JUDGMENT

The Supreme Court unanimously allows the Appellant's appeal against the order to terminate his licence to station his mobile home at Meadowview Park. Lord Wilson gives the main judgment. Lady Hale and Lord Toulson give concurring judgments. Lord Carnwath (with whom Lord Reed agrees) gives a concurring judgment allowing the appeal for different reasons.

REASONS FOR THE JUDGMENT

The panel reached the following conclusions as to the correct application of para 4:

Whether para 4 applies to an irremediable breach
Lord Wilson (with whom Lady Hale **[44]** and Lord Toulson **[62]** agree) holds that the notice requirement in para 4 applies only to a breach that is remediable **[22]**; it would be nonsensical to require service of a notice to remedy a breach which is incapable of remedy **[20]**. Lord Carnwath (with whom Lord Reed agrees) considers that a notice to remedy is required in all cases because the omission of limiting words in para 4 (such as the words in the 1975 Act, namely "*in the case of a breach which is capable of being remedied*") must be regarded as deliberate **[81]**. The views of the court on this question are *obiter dicta* as the panel unanimously holds that the Appellant's breach of 31 July 2006 was remediable **[47]** (see below).

Whether a breach of an anti-social behaviour covenant can be remedied
It is the unanimous view of the court that an occupier can in principle 'remedy' a breach of an anti-social behaviour covenant. To decide if a breach is remediable requires a practical enquiry as to whether, and if so how, the mischief resulting from the breach can be redressed **[31]** **[52]**. Some breaches are so serious as to be irremediable **[37]** **[53]**.

What constitutes compliance with a notice to remedy a breach of an anti-social behaviour covenant
Lord Wilson **[37]**, Lady Hale **[48]** and Lord Toulson **[63-64]** hold that the occupier 'complies' with a notice to remedy by not committing any further anti-social behaviour for a reasonable time. Lord Wilson explains that in cases involving breach of a negative obligation, the words "*within a reasonable time*" in para 4 must be read as meaning "*for a reasonable time*" **[32]**. Lady Hale characterises 'reasonable time' as such time as is sufficient for the fears and anxiety caused by the anti-social behaviour to calm down **[48]**. Lord Carnwath (with whom Lord Reed agrees) takes the minority view that that in the case of a negative user condition, compliance with a notice to remedy must continue indefinitely **[90]**.

Whether the requirements of para 4 were satisfied in this case
The mischief resulting from the Appellant's breach of 31 July 2006, namely the alarm caused to Miss Puncher, was capable of being redressed **[32]**. In the view of the majority (Lord Wilson **[36]**, Lady Hale **[49]** and Lord Toulson **[65]**) the period of almost three years during which the Appellant complied with the 15 August 2006 notice did amount to 'reasonable time'. Therefore, following the Appellant's further breach on 15 July 2009, the Respondent ought to have served a fresh notice to remedy, or to have raised an allegation that this later breach was irremediable **[36]**. As it failed to do so, the agreement could not be terminated pursuant to para 4.

Lord Carnwath (and Lord Reed) would allow the appeal on the alternative basis that there needs to be a causal or temporal link between the notice to remedy and the subsequent breach **[91]** which was absent in this case **[95]**.

References in square brackets are to paragraphs in the judgment