

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Inquiry into the retirement housing sector

Ballarat — 19 October 2016

Members

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Ms Nina Springle — Deputy Chair

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Witness

Mr David Bosci.

The CHAIR — Thanks, ladies and gentlemen. We will reconvene. I would now like to welcome Mr David Bosci. Thank you very much, Mr Bosci, for being with us this afternoon. Before I invite you to make some remarks I will just caution, as I have on other occasions, that all evidence taken at this hearing is protected by parliamentary privilege. Therefore you are protected against any action for what you say here today, but if you go outside and repeat the same things, those comments may not be protected by this privilege. We have allowed about 20 minutes or so for our time this afternoon. I invite you to make some opening remarks, and thereafter we will have questions. Thanks for being with us.

Mr BOSCI — I would like to thank the committee for this opportunity to present my experience in the dispute with Country Club Villages, which I will refer to as CCV. This dispute started back in May last year. I was at home as usual and received an unexpected ring on the doorbell. It was my neighbour. She was there to apologise that her TV was too loud, and she was concerned that it might be causing problems. I live in a terrace unit next to hers. I said there were no problems and asked what had changed. We had been neighbours for more than five years, and we were both aware of the poor noise isolation between the units and had taken steps to minimise noise wherever possible. She said she had to turn up the TV so she would be able to hear it above the noise of the air conditioner. Due to the nature of the construction of the units, the split system air conditioner is the only source of heating and cooling. In Ballarat of course heating is required for much of the year.

I went next door with her and, sure enough, the indoor unit of the air conditioner was faulty and was making a loud screeching noise, typical of a failed bearing. I showed her how to reduce the noise by slowing the fan speed of the air conditioner. This particular model of air conditioner was installed in all of the terrace units at Rosebank Village when they were built some 12 years earlier. Most have had the same problem and have had the complete fan assembly replaced. The cost of this repair is approximately \$300. I advised her of the likely repair costs. She said she could not afford this. Very sadly she had recently been advised by her doctors to get her affairs in order, as she had entered the final stages of leukaemia. She had given most of her remaining funds to her children. She was more concerned with her children being looked after than with her own comfort.

Like me, she was advised prior to moving into the village that CCV was responsible for the maintenance of the air conditioner. This situation is unique to the 11 terrace units at Rosebank, as gas heating cannot be installed. I suggested that she approach the village manager. She declined, as she did not want to make a fuss. I approached the manager myself and advised him of the problem with the air conditioner and the history of the other residents. He refused to assist and said that unless the resident wrote the issue in the maintenance book herself he would take no action. He also said that in any case she would be liable for all costs. I requested that he further obtain clarification from head office with respect to my own situation, as I had a very detailed and clear recollection of the circumstances. I was later advised by him that I would also be responsible for any future maintenance costs.

To summarise this part, my neighbour, who to the best of her knowledge had only a limited time to live, was being denied reasonable comfort in the last months, in breach of clear verbal undertakings made to many residents over many years. To say I was appalled is something of an understatement. I could not believe that any company would act in such an unethical and uncaring manner. As the neighbour was in no position to take further action I thought through carefully what I could do. I decided to lodge a dispute notice with CCV to perhaps get them to act in a reasonable and humane way. To my surprise they were never willing to discuss the situation and have never contacted me other than in writing to reject the dispute. My next step was to contact consumer affairs.

Consumer affairs advised me that they were unable to assist as, quote, ‘It was unlikely to be settled using conciliation. They suggested that I lodge a case with VCAT after first obtaining prior legal advice through contacting the Consumer Action Law Centre and Housing Action For The Aged. I first contacted Housing Action For The Aged and had extensive discussions with them. They put me in contact with a lawyer from Consumer Action Law Centre, and they forwarded my documents. I made a booking and had a telephone consultation with a lawyer. The advice I was given was that the written contract was different to the verbal advice I had been given. Maintenance of the air conditioner was the residents’ responsibility in the contract. I discussed this issue at length, that this issue was not an isolated instance but was part of a pattern of deceptive and misleading conduct, whereby CCV representatives made verbal undertakings to prospective residents to induce them to sign a contract. To the best of my knowledge this pattern of behaviour continues today. There are numerous examples I could provide of this behaviour.

To take further action they suggested I would have to prove this pattern of deceptive and misleading conduct. This would obviously require many witnesses. So what I would have to do is, one, pay to lodge a case with VCAT; two, subpoena multiple witnesses and pay their transportation costs up-front; three, cover my own costs; and four, get multiple quotes from suppliers for the replacement cost of the air conditioner. My best estimate was that this would cost me around \$500 up-front. Further, the lawyer advised that it would be treated as a low-priority case by VCAT, as the losses were future losses rather than actual losses already incurred by myself and that there was also a six-year statute of limitations. As the verbal undertakings were made to me over five years previously there was only a limited window remaining in which I could apply. I have been living on a disability pension for six years. My sister and I have a rare genetic disorder called Ehlers-Danlos Syndrome, which means I am in chronic pain 24/7. That is why we moved into a retirement village at a relatively young age. It is clear that pursuing VCAT would have been impractical in the circumstances; however, I did not give up pursuing this matter. I joined the residents committee as secretary at the first opportunity with the aim of better understanding why and how CCV operates in this manner. It has been a pretty steep learning curve over the last 15 months. It will take much longer than I have here to detail what I have found, but the key learning is that this is not an isolated instance. Many residents have similar stories.

Getting back to my case, the good news is that the neighbour was selected for an experimental drug trial and the leukaemia is now in remission. The bad news is that the air conditioner is still faulty. Therefore my recommendations to the committee are: a repeal of clause 38(3) of the act, which acts as a get-out-of-jail-free card for the village owners; an industry ombudsman, as everyone else has said; an annual report from the ombudsman detailing complaints by village and by village owner so that prospective residents can choose good from bad villages; standardised contracts; and a specific provision in the legislation that verbal commitments to residents do not expire when the village is sold to a new owner.

My family has a long history in Ballarat. My great-great-grandfather Pieter Krieger migrated in 1851 from Antwerp to Sebastopol, where Rosebank is located. He was married in Sebastopol in 1865. His son, Alexander, is a bit of a notorious historical figure. He was mentioned twice in dispatches from the Boer War and according to some historians was the first Australian ever nominated for a Victoria Cross. His daughter Ruby was my grandmother. She raised my sister and myself for several years after my mother died when I was very young. Ballarat, as is obvious, has pretty much a unique place in Australian history in supporting the rights of the individual, and bluntly, I am ashamed at the way the retirement village industry treats aged citizens. I would like to think my ancestors would share the same view. Retirement village residents are really treated as just an ongoing source of revenue. Residents are individuals worthy of being treated with due care and respect in sometimes trying circumstances. I would ask the committee that when advising on legislation they consider the dignity of residents. We deserve a peaceful and enjoyable retirement, not the stress of a never-ending series of legal disputes. I am open to questions.

The CHAIR — Thank you very much, Mr Bosci, for your presentation and your evidence and for your submission. I am interested to learn more about your experience with Consumer Affairs Victoria, because obviously their role is relevant to whether we recommend other reforms or the like. Can you perhaps give a bit more detail about your interaction with them?

Mr BOSCI — I submitted an online form, if I remember correctly. Basically I got back a letter in writing saying, ‘Can’t help’ — end of story. They simply said — and I actually have the correspondence here somewhere — ‘Unlikely to be settled using conciliation’. In other words, not within their remit is effectively what they said.

The CHAIR — So they said it is unlikely to be successful?

Mr BOSCI — ‘Unlikely to be settled using conciliation’. Now, you can interpret that in many ways. For example, I would interpret it as meaning they would go to the power of the parties before consumer affairs. The village operator has far more resources and leverage and simply would have no reason to agree to conciliation.

Ms SPRINGLE — Do you have any ideas about how that could be improved?

Mr BOSCI — As previous people have said, you would have to alter the power of Consumer Affairs Victoria. This is why everyone is pushing for an ombudsman. It is probably the only practical means of having a practical means of addressing issues. As it is at the moment, as I have detailed at some length, it is an impossible situation for the average person to go through.

Ms SPRINGLE — So do you think the establishment of an ombudsman would clean up the industry, like other people have suggested? Is that the answer?

Mr BOSCI — Well, it is better than nothing, which is the situation. At the moment you have got no recourse, no way of finding out about villages before you move in. You cannot find out if they have history of disputes. Is the owner responsive? None of that is currently available, and the whole idea of having an ombudsman is that someone, like myself, who is computer literate can go and find out about the history of behaviour or history of the village. Are there disputes? Are there regular disputes? Are they dealt with? I have been at Rosebank for six and half years. I have never seen a customer satisfaction survey ever.

Ms SPRINGLE — You mentioned the idea of a rating system.

Mr BOSCI — At least data which shows how many disputes by village or by village operator. Both types of information are relevant.

Ms SPRINGLE — Like a transparent process that people can easily access.

Mr BOSCI — Yes. Not necessarily detailing the dispute but at least listing how many disputes, are disputes regular, are they being dealt with. That is at least some improvement over the current situation, of which there is no information available prior to moving into a village.

Another point perhaps I would make is that there has been a lot of talk here about contracts. I remember a discussion with my lawyer, and it comes down to a very simple bottom line: you either sign the contract and move into the village, or you do not sign the contract and do not move into the village. There is no negotiation on the contract. I am not aware of any village owner that negotiates the contract, so what is the point of all this emphasis on the contract if you cannot negotiate it? That is why a standardised contract is, I believe, necessary.

Ms SPRINGLE — In our discussions, I suppose based on the evidence that we have seen and the submissions and what have you, it does appear that there are a lot of varieties of different model of retirement housing, so in terms of a standardised contract it is not a straightforward kind of route to being able to find something that could be standardised.

Mr BOSCI — But you can have a standard core contract with addendums specific to the specific village type. If there are standard contracts for real estate transactions, why can there not be for a retirement village?

Ms PATTEN — Thank you, Mr Bosci. Well done on your battle there! I am sorry to hear the air conditioner is still broken, though.

Mr BOSCI — It sort of makes a screaming sound.

Ms PATTEN — Right. Just to clarify for me, they made a verbal commitment that I think it was your gas, your hot-water system and your air conditioning system, being external appliances, were covered.

Mr BOSCI — Yes, and therefore included. We discussed this at length, my sister and myself. What is perhaps unusual is our background. I am technical by background; my sister is financial — she cannot be here today for health reasons. We discussed with the village manager, Alan, on two occasions at two separate meetings, and we were extremely clear, ‘Is that included? Is that not included?’. Part of the reason in my case is for health, because I have no proper temperature control — it is very stuffy here today — and therefore I have to have an air conditioner. Therefore it is an absolutely critical factor for me in deciding where I am going to live. Therefore I have such clear recollection of quite detailed conversations, where they occurred, when they occurred on multiple occasions. It was black and white clarification, and every other resident in the terrace units before me has the same recollections. We were told, black and white, air conditioners were covered.

Ms PATTEN — So, just to be clear, they have given you that verbal — —

Mr BOSCI — And they refuse to honour it.

Ms PATTEN — But in the contract that you signed — —

Mr BOSCI — The contract is contrary.

Ms PATTEN — Is contrary to the verbal assurances?

Mr BOSCI — Yes, but it is contrary through an interpretation of the contract not through direct wording of the contract. You have got to go back and forward in the contract between chattels — backward and forward. It is not obvious for a layperson to understand what is and is not included in maintenance.

Ms PATTEN — I see. I understand. You are on the residents committee now?

Mr BOSCI — That is correct.

Ms PATTEN — How are you finding that? The notion of a residents committee seems like a very bloody good idea, but the reality of it is possibly not — —

Mr BOSCI — The reality is that Rosebank's residents committee is called a residents advisory committee. It has no power, no budget, no authority. It has a useful function in dealing with some of the minor day-to-day operational issues of the village, but it is certainly not useful in the way that I interpret the legislation — as being a meaningful part of the management of the village. It does not have that function at all. You are dealing with the managers, who are isolated from the head office of the organisation and who are generally not themselves empowered to make any decisions beyond the basic day-to-day decisions, so you are dealing with people through the management committee who are not empowered to act on what you are saying. Everything you request has to go to another level further up for decision and policy, such as the maintenance of an air conditioner. They are not empowered to do anything.

It gets back to the point that I am increasingly wondering: what is the point of a residents committee if it is not empowered to represent the residents and the managers are not empowered to take action?

Ms PATTEN — Going back to your recommendation about the misleading and deceptive approaches, I think you were recommending that we legislate for that and make it a crime?

Mr BOSCI — At the moment, the way I read 38(3) is you cannot take civil action against the managers for breach of contract. That is what section 38(3) says. In other words, you cannot sue if they decline to provide a service. Now, because of the way village budgets are structured, all services are provided for out of the monthly levy — all the day-to-day services — so if there is not, according to the manager, money to pay for a service, they can simply decline to provide it and you cannot take legal action against them. That is the way I interpret the current legislation.

Ms PATTEN — Thank you. That is really good feedback.

The CHAIR — Mr Bosci, thank you very much for your evidence today and your preparedness to answer our questions. A proof of the transcript will be with you in the next week or so.

Witness withdrew.