

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Inquiry into the retirement housing sector

Ballarat — 19 October 2016

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Witness

Ms Lesley Menzies.

The CHAIR — I would now like to welcome Ms Lesley Menzies, who in this situation is appearing in her own capacity. Ms Menzies, thank you for being with us today. Before we start I would just caution that all evidence taken in 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 half an hour for our time today. Thanks again for being with us. I would like to invite you to make some opening remarks, and thereafter we will have questions.

Ms MENZIES — Good morning, everyone. Thank you for the opportunity to appear today. My husband and I moved into Bellbrook Gardens retirement village at Bacchus Marsh over six years ago. It was a new CC village — that is, Country Club Villages — with only eight houses built. We asked many questions before making up our minds to move there. One was: ‘How long do we have to wait for the community facilities to be available?’. ‘Twelve to 18 months, during stage 2’, was the reply. ‘Oh’, we thought. ‘That is not too long we have to wait, living in a dusty, dirty building site, with no roads and no street lights. We could cope with that.’

Stage 1 was finished, then we had stage 1.2, then we had stage 1.5 and then we had stage 1.8. We finally reached stage 2 four and a half years later, and we had nearly all of the facilities. We are still waiting for three more, despite being told by head office that we will not be getting them — that is, the putting green, the bocce pitch and the kiosk. We have had 75 units finished in seven years. Sadly, some of our residents have died before they could enjoy the promised facilities.

I would like to point out that prospective residents in retirement villages are given contracts only 21 days before moving in. We had legal advice from a lawyer who told us it was just a standard retirement village contract and charged us an arm and a leg for a piece of rubbish advice, as there is no such thing as a standard contract. Very few lawyers in Victoria are conversant with the Retirement Villages Act. Some contracts are so long that lawyers refuse to look at them as it would cost the client too much for them to do it properly.

I guess our dispute journey began with our back porch blinds. With back windows facing north, the sun glare was a bit much so we told management we were putting up shade blinds. ‘Okay’, they said, ‘not a problem. It is in your backyard’ — until about a month after they were erected. We received a call from management saying that head office did not like the colour and we had to take them down and put up another colour. The blinds cost us over \$1000. We said, ‘No, we will not change them’. Then the phone calls started. ‘They must be changed. Mr Gull doesn’t like the colour.’ This went on for about two weeks, and then came the threat that Mr Gull was coming to see us. ‘Tell him to make an appointment’, we said. He never made the appointment but apparently looked over our back fence, according to management, and then he told them that as we had not been told about the colour selection rule, he would overlook it this time. I pointed out there was no village rule in my contract depicting the colour of the blinds for the back porches. We were told the front garden was common ground and we could not touch it but that we could do what we liked in the back garden.

The other issue was about the other book of village rules, which we were handed after we moved into the village, which had extra rules in it that were not included in our contract. One was that we are not allowed to put any pots or statues on our front porch. I complained to management that it was under our roof line and not common ground and not in the village rules we signed up to. ‘I know that, but Mr Gull does not plants on the front porch’. I replied that all of his other villages had them. ‘That doesn’t matter. This village is different’. So in protest I put a very large metallic blue pot on my front porch with a huge New Zealand flax in it. It was a statement. I was exercising my rights. Well, then it started — all the harassing phone calls but never on paper. Even other residents were telling me that we should do as we are told. We have even been told that management even told residents who they saw speaking to us that they were talking to the wrong people and we were troublemakers.

We finally had a meeting with management and head office staff to discuss my pot. ‘Yes’, they said, ‘you are right’. The manager then went off his head and screamed at me. ‘Why don’t you conform like the rest of the village? You’re not welcome in this village. All the other residents don’t want you here’, he shouted in my face. I was shocked. I really thought he was going to hit me. He was verbally abusing and bullying me in front of his bosses, and nothing was done about it. An agreement was finally reached that I remove my big pot, and they would send a letter to other residents telling them they could have a pot on their porch but only of a specified colour and still no statues were allowed.

This was the beginning of snide remarks to our face and behind our backs from management to other residents, but it never was about the pot. It was about our rights. We have had a few other issues about refusing to sign

agreements contrary to our contract, but the harassment did not stop until we had a lawyer write a letter of complaint to head office.

We have massive cracks in our unit, the kitchen cupboards were dropping and the floor was dropping. It took them three and a half years to fix and many letters of complaint. Most of the houses have cracks and poor workmanship. For five years there were no dispute resolution forms available at our village. We had to ask the manager for one. It never eventuated. I finally got one from a relief manager upon request. He had to have it sent from head office. In the six years that we have had an AGM in our village, we have only had one dispute recorded. By law, complaints must be recorded and presented at the AGM along with any actions taken to resolve them. With regard to complaints, CCV management only considers complaints from residents in writing. We are told they will only be acknowledged if they are in writing. These restrictions placed upon residents clearly contravene sections 38E, F, G and H in the Retirement Villages Act and in my mind is a form of intimidation by creating a deterrent to residents requesting maintenance and making a management complaint.

It could be said in the CC village also that the DMF is often regarded as the term deposit by the owner. If a resident has the temerity to leave before the DMF has matured, they will hold on to the sale of the house until it does mature. This has happened four times in our village group that I know of, and these are all new villages with waiting lists. One house in one of our sister villages took 18 months to sell in a new village, and the home was close to all the facilities. The loss to these residents amounts to many thousands of dollars. This financial abuse can be stopped if Victoria adopts the same law as Queensland that the DMF stops upon exit from the village. Then houses in retirement villages would sell much quicker.

It has been reported to this committee in previous meetings by the property council that residents have the right to sell their own homes as of 2006. That is right, but they forgot to mention that real estate agents refuse to handle retirement village housing because of management interference. I phoned up the real estate institute and inquired about this problem only to be told, 'Retirement village homes are trouble, and we advise our agents not to even think about handling them'.

Our village budget is a very interesting read. We pay almost \$2000 a year for payroll tax, yet we only pay wages for three people in our village. Each of the eight CC villages pays the same mysterious payroll tax. I thought payroll tax was payable after the wages amounted to over \$550 000. Our wage bill is just over \$100 000, so that does not add up.

CCV also insists on having management and head office staff attend all residents committees. When some committee members objected, as is their right, it was implied that complaints and issues may be resolved in a more sympathetic manner and committees that cooperated with CCV would receive a far better response. This is intimidation. Residents committees should always represent and work in the best interests of residents and not management.

With regard to rates, not only do we pay in our small villas the same rates as a house outside our village — and we get no garbage pick-up and no recycling — the residents also have to pay the rates for all the community facilities as well as the rest of the empty 30-acre block and a monthly maintenance fee. Residents should have the right to examine the accounts of the village. They are paying a maintenance bill which they have no right by law to verify. There is no financial transparency at all.

A common complaint to me is that people feel disenfranchised when they enter a retirement village, and I can relate to that. You have to fight for every little right you took for granted before you entered the village. An ombudsman could make so much difference to the residents of retirement villages. They could help to restore to them the rights that they left at the village gates.

The CHAIR — Thank you, Ms Menzies, for your submission. Let me put the same question I put to the previous witness. You are advocating for an ombudsman. What about the submissions we have received about an independent person rather than an ombudsman, something that is more locally focused, something that is easier to access?

Ms MENZIES — In South Australia they have introduced an advocate. That advocate works in South Australia. They have CAV. CAV in Victoria does not have the rights, and they are only conciliatories. They do

mediation, but mediation only works if the other side turns up, and after mediation, if the other side agrees to it and does not follow through with their agreement, that mediation is useless. Then you have to go to VCAT.

Okay, you take them to VCAT. I will tell you what happens when they go to VCAT and why you have got no record at VCAT: it is because they all settle before you go in. They settle, you get what you want and you have to sign a confidentiality clause. That is why you do not hear the records in VCAT. This is old people. Elderly people have to go through this process. It is very timely. Older people, we do not have the time and we do not have the money. Your time is limited once you get into a retirement village. This is why having to wait for facilities for four and a half years — those four and a half years are very precious to people when they have retired, and you guys will find that out too.

So I do not think an advocate would work in Victoria, because when you phone up CAV they will not even look at contracts. They say, 'Take straight away to VCAT'. They will not even look at many, many problems. They have not got the strength. An ombudsman would give quick, fair access to having all their problems sorted out. I really feel an ombudsman would help to clear up this industry.

It is an industry that must go ahead. Aged people are looking to retirement villages to move into. You have got the baby boomers coming up. They are going to be looking to go in. They are going to be not quite so easy to please, but it is going to be an industry that has to move forward with our ageing population. So to have that, you have got to give people protection. They have got to go hand in hand, and the best way of giving them protection is the ombudsman. It is quick, it is fair and it is cheap.

Ms SPRINGLE — Thank you for your presentation today. You mentioned not being able to get a disputes resolution form for a substantial period of time.

Ms MENZIES — Five years.

Ms SPRINGLE — Five years. We have heard from other witnesses from the other side — from the developers side — and from the people who run these retirement villages that there are very few disputes. How common do you think it is that people do not have access to a disputes resolution process?

Ms MENZIES — I visit many villages. I am not talking personally myself — I am talking the RRVV at the moment — and we visit many villages. To find a dispute resolution paper you have to look for it. Ours was not available to us at all. You have to look. It is usually hidden on the noticeboard, pinned behind other stuff. They do not encourage you to have access to these papers at all.

Ms SPRINGLE — There is a difference between not encouraging access and actually inhibiting access though, so how common do you think your experience is of not being able to get a form for five years?

Ms MENZIES — I think that management in our village leaves much to be desired. I do not know. I did make the point about these disputes being reported at the AGM. We have only ever had one, and it was not my dispute, despite the fact that I have written many, many letters to the head office about problems that we have encountered. I do not know in particular. Usually we advise people to go through the dispute process, which is to get a dispute paper and try to sort it out with management first. If you cannot sort it out with management, take it to head office. If you cannot sort it out with head office, then you go to CAV. Then if you cannot sort it out at CAV, you have to go to VCAT.

This is the path that they are advising people to take; it is a long process. Sometimes they do not answer letters. They are supposed to within 72 hours, but of course they do not bother about answering letters of dispute sometimes. I am not talking about our village. At our village it was the case that the papers were not even available for people. Most people in my village would not even know that there is a dispute resolution paper there for them to use.

Ms SPRINGLE — You talked about lawyers and lawyers not having really an understanding of the nuance of contracts in this area. Do you think having specialist lawyers for this area would be beneficial?

Ms MENZIES — We have a list of lawyers on our website — 12. I have personally interviewed every one of them to make sure that they knew what they did, otherwise it is just a waste of money. It depends on the size of the contract — for example, if you have got an 80-page contract, how much is that going to cost a lawyer to go through that properly? It is going to cost them a lot of money.

Standardised contracts, a standard contract, would be good. They say they have got standard contracts now, but how can you have a standard contract when some are 20 pages and some are 80 pages? There is something wrong with the standardisation issue there, I think, anyway.

Ms PATTEN — Thank you, Ms McKenzie. Were you suggesting at the beginning of your statement that some retirement villages may defer the sale of a unit?

Ms MENZIES — Yes, until that DMF has matured. For our DMF we pay 36 per cent over six years. I do know of three houses in our village where it has been held up until the DMF ticks over. Now the DMF ticks over, you say, ‘Oh, that’s six years’, but it is actually five years and one day. You have got to pay that whole six years.

In Queensland when you exit that village you stop paying the DMF, and that is fair enough, because your DMF is supposed to be payment for the facilities that you are enjoying. When you leave that village you are not enjoying those facilities any more, so why the heck should you be paying for them?

Ms PATTEN — No, that is completely correct. I totally agree with you. Going on those facilities, the issue of the ongoing and prolonged development of your village, did you receive reductions in your monthly payments because you did not have the services?

Ms MENZIES — Yes. We were asked to pay it at first, but we said, ‘No, we’re not paying for it until we get our facilities’. We stood our ground there. So we started paying for our facilities when the concrete was poured for the base of the community centre. We started part-paying then, and then once it was all finished then we had it. I do know for a fact that in the village being built down at Geelong they are paying for almost all of their facilities now, and they have only got half of their facilities.

Ms PATTEN — You also mentioned about the council rates that you pay. So the rates are allotted to the village as a whole, and then you are all asked to pay a percentage of those rates or are you given individual — —

Ms MENZIES — No, I pay my rates personally, but in our maintenance bills we all have to pay the rates for the manager’s house and the community facilities. A new addition this year was for the rest of the 30-acre block — huge rates for that.

Ms PATTEN — Right. So the village bought more land to develop, and now you get to pay the rates on it?

Ms MENZIES — No, it is not developed. There are only 75 houses that have been built and there should be 220.

Ms PATTEN — And you are paying the rates for that land?

Ms MENZIES — Yes.

Ms SPRINGLE — You talked a lot about how the manager was conducting himself in your village. I am curious to know about training standards for managers and how you think that that could improve the situation with problems like what you have had.

Ms MENZIES — Look, management at the village is not an easy job, and it should be a fully trained job. At the moment the property council has a little course that it is going through to train managers.

Ms SPRINGLE — When you say little, what does that mean?

Ms MENZIES — The property council, the owners.

Ms SPRINGLE — Can you explain what the course entails?

Ms MENZIES — I do not know. We have not been told. We have not been involved in it. We are not invited. But the thing is that you have got the owners training the managers. It is like putting Dracula in charge of the blood bank. You should have a standard training system like for people in aged care. They have got to go through training. You are dealing with all ages and all different situations. It is not easy for them, and I can

understand how they lose their tempers. This manager lost control because I demanded my rights, and he was very angry.

Ms SPRINGLE — So there is no accredited course for managers of retirement villages other than what the owners put together themselves?

Ms MENZIES — Yes, a friend of a friend — ‘Oh, you need a job? Go in there’. None at all.

Ms SPRINGLE — So nothing accredited?

Ms MENZIES — Nothing at all. No requirements. They have to know financial, all sorts — —

Ms SPRINGLE — So in your view what would be an appropriate level of qualification for someone that was managing a retirement village?

Ms MENZIES — I have said, ‘Take them from the hospitality industry’. The hospitality industry is training people for resorts. They want to provide resort accommodation. These people are trained to look after people, not perhaps aged care, but we are talking about people who are entering at all ages. If you look at the hospitality industry, for example, they are trained in financial, they are trained in how to look after people and how to look after the facilities. They are fully trained people. You could just take them from that area, give them a short course in retirement villages and bang, it is already done.

Ms SPRINGLE — So it could theoretically be like a TAFE-level course.

Ms MENZIES — Yes, definitely.

The CHAIR — Ms Menzies, thank you very much for your evidence today. We look forward to seeing you in your other capacity with RRVV in due course.

Ms MENZIES — Thank you very much.

Witness withdrew.