

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Subcommittee

Inquiry into the retirement housing sector

Melbourne — 29 November 2016

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Mr John Lander, Former Chair, Veronica Gardens Retirement Village.

The CHAIR — Welcome, Mr Lander. I will just caution 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. Thank you very much for your submission to the inquiry, no. 119. I invite you to make some opening remarks, and thereafter we will have questions. Thank you very much for being with us today.

Mr LANDER — Thank you very much for the opportunity to speak to you today. I am here on behalf of about 18 members of the Veronica Gardens retirement village, all of whom have submitted a written submission to this inquiry. I want to address this morning matters which relate to the urgent need for an ombudsman. Firstly, large-scale financial exploitation. Secondly, the contractual arrangements that enable it. Thirdly, examples of Aveo falling short of its promises to residents, and fourthly, if I have time, the question of the complexity of the new loan-licence arrangements.

You have heard, and I have heard, various submissions complaining about the complexity of the legislation and the multiplicity of contracts, so I strongly endorse the call by RRVV and CALC and others for an ombudsman. The complexity of the legislation and the contracts leads to exploitation, and the example I wish to focus on is the Aveo way, as it is called, which is the Aveo corporation's process of converting freehold properties into leasehold. The Aveo representative, in their presentation to you, described it as a process of providing simplicity and certainty to incoming residents. What they did not explain was that it is also a mechanism whereby Aveo can obtain millions of dollars worth of property without paying for it.

Aveo sells the lease over a vendor's freehold property. The purchaser pays the vendor, but Aveo acquires the title and the share in the common property. The Consumer Law and Fair Trade act requires a fair market value to be paid for the property, but Aveo gets it for nothing. Aveo handles the sale on behalf of the vendor and then acquires the property by using two of its own companies. This is a related-party transaction. The Estate Agents Act prohibits transactions between related parties. That is a simple description of the process. I can give you a lot more detail if there is time.

The contractual arrangements that each individual lot owner is subjected to are part of the so-called service agreement, or management contract. The service agreement with each individual lot owner makes the process possible because it enables Aveo to control the process of sale from beginning to end. The restrictive terms of the service agreements make it impossible for an owner of a freehold property to sell except through and to Aveo. The service agreements effectively remove a freehold title owner's property rights. No individual retiree is in a financial position to take this matter to court, and so far as I am aware no appropriate governmental authority, such as the ACCC, is tackling the problem either. It seems to me that an ombudsman would provide one recourse for individual owners.

The third point connected to that is the situation that we are faced with at Veronica Gardens itself with regard to the contractual arrangements. The service agreements are, in our view, not valid, but they are still enforced by Aveo. The reason they are not valid is that the service agreement derives from the appointment of the manager as the manager of the village. The appointment of the manager, according to the Owners Corporations Act, must be in the approved form under the Owners Corporations Act 2006, and having been so appointed, the manager is then enabled to enter into a service agreement with each individual lot owner. So the service agreement derives from the appointment of the manager; the manager's appointment does not derive from the service agreement.

In Veronica Gardens Aveo's claim to management is based entirely on documents pursuant to the old 1988 legislation, all of which have either been superseded or have expired. Veronica Gardens is 20 years old. The first contract of appointment was in 1996 under the Subdivision Act, and it was assigned to Retirement Services Australia in 1999, which shortly thereafter became a component company of the Aveo Group. It is now wholly owned and wholly controlled by Aveo. Since the Owners Corporations Act came into force with its requirement for the contract of appointment of manager to be in the approved form under that act, the owners corporations at Veronica Gardens has never signed a contract with Aveo. The legitimacy of Aveo's control of Veronica Gardens has been under dispute since 2008, which is the date at which the last contract of appointment under the old legislation expired. We believe that an ombudsman could probably have dealt with this problem long ago.

It may be helpful if this Parliamentary Committee could possibly recall Aveo and require them to table the signed contract of appointment — if they have one — pertaining to the period between 2008 and the present. All of the correspondence that the owners corporation committee engaged in with Aveo's lawyers has resulted

in their own law firm insisting that their management control devolves from the contract of 1996, which they argue continues in force. They argue that that contract also delegated to Aveo all of the powers of the owners corporation and its executive officers so that the owners corporation effectively has no power in the management of the village.

They have moreover argued that the owners corporation committee, by continuing to deal on a monthly basis with the Aveo so-called 'village manager', has simply reaffirmed their right to continue in management. It was for this reason that recently the owners corporation committee, of which I was the chair, decided to resign, because continuation would simply mean that we were reinforcing Aveo's argument that by dealing with them we were affirming their right to control the village, which is the last thing that we wish to do. Those are the main points that I wanted to draw to your attention this morning.

That brings me to examples of Aveo falling short of its promises to residents. There are a number of residents at Veronica Gardens who have asked me to speak on these points. This wonderful, extremely enticing publicity material, which is very extensive, states that it is as a result of Aveo's complete commitment to take care of every aspect of each resident's health and wellbeing that they have achieved this wonderful standard in their retirement villages.

Examples of where that falls short. The late chairman of our owners corporation in 2015 had a heart attack on the doorstep of his unit. The friend who was with him was obliged to call the ambulance. No-one from Aveo came from the office to assist. No-one in our village in the Aveo staff has any training in assisting in the case of a heart attack — there is no defibrillator on-site and there is no training in the use of one anyway — so he died before the ambulance arrived.

Another elderly gentleman had an acute attack of cellulitis. He fell on the floor. He was able to press his emergency call button. The sole staff member who was on duty at night simply rang his son and said, 'You should come in. Your father's in trouble'. His son had to come from far away. It took more than half an hour to get there. He then discovered what was wrong with his father. He then called the ambulance. It then took time for the ambulance to come. When he was finally taken away to hospital, it was well over an hour before he received any emergency first aid or medical attention.

Another elderly resident who is in her 90s and suffers from a metabolic disorder — which means that if she does not get food at appropriate intervals throughout the day, she will go into a hypoglycaemic coma and die — made the effort to order and pay for her evening meal in the dining room then spent a very difficult day having medical tests throughout the whole day. The taxi got her back 15 minutes after the appointed starting time of dinner in the dining room. She walked in — with the assistance of the taxi driver, because she was feeling faint — and was confronted with, 'You're late. We've stopped serving. Go away'. The taxi driver then had to take her to her unit, help her inside, get her seated and find some food for her before he was able to go off on another call.

Another resident, who was confined to a motorised wheelchair, in the early hours of the Sunday night/Monday morning just recently got up to go to the toilet, fell on the floor, did not have an emergency call button on the time because he had just got out of bed and lay there undiscovered — no-one from Aveo came to provide the personalised attention and care that they promise — until the council cleaner that he personally paid for turned up on Thursday morning to discover him lying on the floor. He had lain there from the early hours of Monday morning until 10.00 a.m. on Thursday, with no attention provided by Aveo at all.

Another lady very recently was suffering from vertigo. She managed to call the office and ask for assistance. She got none, so she called her neighbour. The neighbour came in to discover what was wrong and that neighbour then called the office for assistance. Another neighbour came to check up on what was happening some time later, and that next neighbour rang the office to request assistance. Twenty minutes after the third call for assistance someone came from the office to see what the problem was.

These are just a few of the examples of the way in which Aveo — in this situation of what we regard as unlawfully imposed management — fall short of the promises that they make in their glossy, enticing and I think quite misinforming publicity.

I brought a copy, in case you have not received a copy, the loan-licence agreements to which people have referred. If I want to sell my unit, I have to sell through the manager. The manager appoints a related company

to market the property. That related company, Aveo Real Estate Pty Ltd, then markets a lease over the property. The incoming resident pays for this loan-licence agreement, and part of that payment goes to me and part of it goes to Aveo in payment of my so-called exit liabilities. The loan-licence agreement is described in their publicity as 'the clearest and most simple property contract in the retirement market'. The contract, the disclosure statement and other documents attached as schedules to the contract amount to a total of 100 pages. The language, particularly in the actual contract under the heading 'Matters to be required to be addressed', is extremely complicated. They are very, very difficult to understand.

The formula that is used for calculating the exit liability of the holder of this loan-licence is very complex and there is 'if this, then that', 'if this, then that'. One of the most unconscionable provisions I believe in this loan-licence agreement is, firstly, the incoming resident is required to pay the equivalent of the capital value of the property as their ingoing contribution. They then pay \$550 a month in service charges, and when it is time for them to leave Aveo will then market a new loan-licence agreement to the new person and the exiting person has to pay 35 per cent of whatever it was that they paid when they came in. Furthermore, there are clauses in here which guarantee that Aveo can relocate the person who has moved into the unit at its own discretion at any time, depending on whether it decides to develop or redevelop the unit or the village. So the loan-licence agreement provides absolutely no security of tenure for that individual in that unit.

As I said, that is there. I have made a number of copies of the summary of my presentation that I delivered earlier. I have also provided an additional copy of the written submission that the 18 members did provide to you before, with one small amendment. That referred to Aveo's claim to control the common property through a lease, which this statement originally said expired in 2008. In fact there never was a lease, so I have amended that. What expired in 2008 was the contract of appointment of the manager, but there was never a lease. I reiterate that there has never been a contract of appointment in the approved form under the Owners Corporations Act 2006, and it is our contention that therefore Aveo is not lawfully appointed as manager of our village. But we are unable to budge them.

The CHAIR — Thank you, Mr Lander, for that comprehensive presentation. The committee will give consideration to your suggestion that we seek further information from Aveo about that post-2008 contractual arrangement and the validity or otherwise of that. Mr Lander, you have identified a number of issues from your perspective and a number of failings from your perspective. You have suggested the ombudsman is one solution to addressing some of those. Do you have other suggestions? Do you think the ombudsman can be the catch-all, for want of a better term, for addressing these problems?

Mr LANDER — Well, as RRVV pointed out, the advantage of the ombudsman process is that it is not costly for an individual to appeal to an ombudsman. Under the present situation, which I think one of the other presenters said was an adversarial system, it is almost impossible for an individual to pursue the matter through the present system. The initial application by an individual to VCAT is, admittedly, not a high fee. But in order to have any success at VCAT, the appellant needs legal representation because the operator, the defendant, is heavily represented by extremely expensive legal teams — very high-powered legal teams.

The cost to an individual appellant to VCAT is not in the cost payable for the hearing, it is in the cost payable to the legal representatives that they would have to engage if they are to have any success. It is also an extremely slow process, and most rulings by VCAT are then subject to appeal. I inquired of a legal representative who is well across these issues, 'Could I or any other individual members of Veronica Gardens go to VCAT to seek a declaration that Aveo is not currently lawfully appointed as manager?'. He said, 'Yes, you could, but it would probably cost you up to about \$20 000 for your legal representation at VCAT. If the ruling were in your favour, then the operator would instantly lodge an appeal to the Victorian Supreme Court and it then would cost you, as individual litigants, anything between \$150 000 and \$500 000 to fight back through the Supreme Court'.

That means that I and any of my neighbours, or anybody else in any other village who has a similar problem, simply is stymied. They cannot go the next step. At least one individual in our village some years ago attempted to take some of these matters to VCAT and the whole case fell apart because the actual designated manager for Aveo at Veronica Gardens is called Retirement Services Australia, which is wholly owned by Aveo. She couched her case in terms of a case against Aveo. VCAT threw it out because she had not nominated RSA as the party against whom she was appealing. That cost her quite a bit but she got absolutely nowhere, on a legal technicality. It is a great deterrent to any form of legal action — the present system.

If it is not an ombudsman, it needs to be some form of system that provides a binding resolution, which binds the operator to the decision, that does not cost the individual appellant a fortune in order to get, because nearly all of the residents at Veronica Gardens, and I believe in many other retirement villages, are pensioners. They have difficulty meeting their monthly service fees and owners corporation's charges, let alone stumping up a fortune to take legal action.

The CHAIR — Like litigation, yes.

Ms HARTLAND — I have just googled your village, and one of the things in their advertising talks about the emergency call system. What you described to me does not sound like the emergency call system is working very well. Also, is there a button system as well, or is it just that you ring the office?

Mr LANDER — There is a button system. It is a pendant. They do say, 'Keep it around your neck if you feel that you might happen to have an emergency'. At one point over the last couple of years that did not work because the electronic relay system for the pendants broke down and it took months and months and months for that to be repaired.

It does not work anyway because after 5 o'clock in the evening there is one staff member who is on duty to take emergency calls. That one staff member is under strict instruction to under no circumstances leave their post. So when an emergency call button lights up the only thing that person can do is call a family member or some other person to come and provide assistance to the person who has pressed the emergency call button. They will not leave the office to find out the nature of the emergency, even if the emergency is that the elderly resident has tripped and started a fire on their open gas-fired stove and the unit is alight. They do not investigate. They only call a next of kin to say, 'The emergency call button has been pressed. You'd better come and see what the problem is'. At night, if someone sets their apartment alight, it would be a long time before there was any actual meaningful response.

Ms HARTLAND — On the issue of defibrillators, most public buildings now have defibrillators — local gyms, YMCAs, all kinds of buildings. I am a bit surprised that in a retirement village there is no defibrillator. Also, you were saying about the training of staff. Are they required to have level 4 first aid?

Mr LANDER — I have no idea. All I know is that in the course of this year at every monthly meeting of the owners corporation committee with the village manager — so-called — the question of the emergency system and the question of a defibrillator and training in the use of a defibrillator came up. The committee made clear as a decision that this should be done.

As with all of the decisions taken by the owners corporation committee, none of them, even if they were couched in the form of an instruction to the manager from the committee, were implemented by the so-called village manager unless it suited Aveo — and it was in their own good time that they would implement it. In response to our complaints that they are not observing and abiding by decisions of the committee, their answer is that the committee has no powers because all of the owners corporation's powers were delegated to the manager back in 1996, which again, and I reiterate, completely ignores the fact that that was superseded by a contract in 2007, which explicitly expired in 2008 and there has been no contract since. But that is the reality of the situation.

Ms HARTLAND — So one more question. How many people live in your village?

Mr LANDER — We have 57 independent living units in our plan of subdivision. There is a separate plan of subdivision for the serviced apartments. At the moment I am not sure how many of those are occupied. That is a separate plan of subdivision. It is also a strata title building which is also gradually being converted into leasehold. Aveo manages or controls — I do not like to use the word 'management' — both of those plans of subdivision as a single village under its name.

Ms HARTLAND — What is the average age of people in the village? Is there an entry age?

Mr LANDER — The current entry age specified in the service contracts is 65 years of age, which of course is contrary to the Retirement Villages Act, which specifies 55. I do not know of anybody who, and perhaps one of the other people present can tell me what is the average age — —

Ms HARTLAND — But it is somewhere between 65 and 85?

Mr LANDER — It is well over 65. I know we have three people over 90. I am 72 years old. We have a number of 80-year-olds. I do not think we have anybody even at the age of 65, except possibly one of the new leaseholders, who is, I think, just over 65.

The CHAIR — Thank you, Mr Lander, for your evidence today and for the extra material you provided to the committee and those suggestions, which we will follow up.

Mr LANDER — Thank you very much.

Witness withdrew.