

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Subcommittee

Inquiry into the retirement housing sector

Melbourne — 29 November 2016

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Witnesses

Mr David Duckworth, and

Ms Carmel Perkins.

The CHAIR — Our next witnesses are Mr David Duckworth and Ms Carmel Perkins. Thank you both for being with us today.

Before I invite you to make some opening remarks, 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 those same things, those comments may not be protected by this privilege. We have allowed about half an hour or so for our time today. I would like to welcome you here today. Thank you for being here, and I look forward to your presentation.

Mr DUCKWORTH — I would like to thank you for the opportunity to address this inquiry into retirement housing. My name is David Duckworth. My wife, Barbara, and I purchased a newly constructed dwelling at Palm Lake Resorts, Willow Lodge, in February 2013. I have been elected president of the residents association for the last two years. Willow Lodge is one of 27 facilities owned and operated by Walter Elliott Holdings, Palm Lake Resorts. At Willow Lodge there are 409 sites set on 45 acres, and it is home to approximately 600 primarily elderly pensioner residents. They comprise about 200 couples as well as approximately 200 mainly elderly single women.

Willow Lodge is a caravan park. It was the first park purchased by Walter Elliott some 40 years ago. It is still the largest facility by site numbers in the Palm Lake Resorts group. Efforts have been made to upgrade the types of homes within Willow Lodge to try and transition it from a caravan park to something like a residential village. Over time old caravan dwellings have been removed and 139 new dwellings added and constructed. The remaining 270 dwellings, approximately 65 per cent of the park sites, are caravans or prefabricated caravan material dwellings. There are four distinct types of dwellings, as you can see from the photos I gave you. There are the caravans and prefab caravan material dwellings, and there are the HardiePlank dwellings and Hebel stone-clad dwellings. They are the four types.

My wife and I wanted to downsize, and we had a cash buyer come along within 7 days wanting a 60-day settlement. We tried to buy a unit nearby, but we were unsuccessful. We were getting concerned as Christmas was approaching and we had to find somewhere to live. We had friends who lived at Willow Lodge, and they convinced us to come and have a look. We paid a deposit on 19 December 2012 to purchase a newly built home which was in the final stages of construction.

Our home is of Hebel stone construction, and it consists of a main bedroom, walk-in robe and ensuite; there is a second bedroom with walk-through access to a bathroom; and there is a lounge, dining room, kitchen, laundry, study, rear deck and double garage with automatic doors. With the extras that we requested, we paid \$248 000. We have since spent close to \$20 000 on solar panels, ceiling insulation, paving, a garden shed, a fernery and a side gate. This brought our total home outlay to \$268 000.

The deferred management fee at Willow Lodge is applied at 4 per cent per year over the first five years, and it is capped at 20 per cent of the sale price. Management were making a good profit on the new dwelling we purchased, and we considered it was double dipping for it to impose a massive fee on the exit sale as well. In our case, on our outlay of \$268 000, this would amount to a massive \$53 600 after five years, if the sale recouped what our original outlay was.

I am of the firm belief that there should be no deferred management fees with retirement living facilities. If money is needed for improvements in the park, it should come from management profits, not from the pockets of those who can least afford it. Given the amount of money the deferred management fee takes from the sale price, I cannot believe there is not a law or regulation to ensure that the level of any DMF is fair, and if applied at all, it should definitely only be applied on the initial purchase price. If a resident wishes to relocate, the deferred management fee locks them into the village where they are. After losing so much from the sale price, they generally do not realise enough money from the sale to relocate elsewhere.

My wife and I decided to join with a group of 12 other Willow Lodge residents in a court action to attempt to have the deferred management fee removed, as we considered it an unnecessary impost on already disadvantaged pensioner residents. We have recently concluded that three-year court case in which time the stress on our small group of 14 was at times almost unbearable. Members of our group had no financial resources to take legal action and relied on assistance from the Consumer Action Law Centre. We were informed that if the case went to a federal court, it was possible that we could each be liable for many thousands of dollars in legal fees and possibly receive an adverse judgement — a terrifying ordeal for pensioners whose

only asset is their home. We often wavered in the face of a large, financially strong opposition in management. The whole time some members of our group were battling serious illnesses. This did not help. Once an agreement was reached, which was satisfactory to the group, our feelings of relief were immense. This meant that some could afford to move from the village and have enough money left from the sale to purchase a home elsewhere and not be left short many thousands of dollars.

We 14 residents now had a fairer deferred management fee. All other Willow Lodge residents who had deferred management fee clauses and who were not part of this court action have not had any change at all and we have been of no benefit to them. I would say that is probably at least another 140 residents that have still got a full 20 per cent DMF.

Since beginning my involvement with the Willow Lodge Residents Association I have become aware of the great power imbalance that exists in our village. Many residents feel that it is pointless to complain, often with the comment, 'Management will do nothing, as usual'. On several occasions correspondence from the residents association has not even been acknowledged or replied to. This failure to observe standard business practices by acknowledgement of receipt and timely responses to queries when dealing with the correspondence from the residents association suggests that those in charge of the village need to be properly and formally trained in management protocols and procedures. Residents do not appear to be treated with the courtesy and respect that they deserve.

On becoming president of the residents association, I continued the work of the outgoing president by pushing for secure boundary fences around the village and the repair or replacement of site boundary fences. This village is over 40 years old and many fences have become rotten and unsafe. Management's attitude is to tell people to pay to fix fences themselves. We rent the site and the management owns the fences and should maintain them. Not so, according to management. They will remove decrepit fences, but not replace them, even though all newly erected dwellings have Colorbond metal fences erected to define the site boundaries.

Several residents who put complaint forms in to management asking for fences to be repaired were visited and given orders to repair, paint and tidy their sites within 30 days — urgent action ordered. This seemed like intimidation to those concerned, most of whom were unwilling to go on to VCAT to have their fences repaired or replaced.

One resident verbally complained over several months to management about a large tree in his backyard that appeared rotten and a danger to his dwelling. His requests to local management were fobbed off and ignored until the residents association assisted him to write a letter and attach photos, pointing out that any mishap or damage would be management's responsibility. An arborist was brought in and the tree deemed unsafe and removed within three weeks after that.

Most residents of Willow Lodge are elderly pensioners with few resources. Many are single women who are often intimidated when dealing with management. Residents look forward to a quiet time in the twilight of their years and often do not have the mental stamina or will to fight against a perceived more powerful opponent in the guise of management and their constant stonewalling of issues.

Residents in all residential settings need an unbiased, powerful, Big Brother defender who specialises in retirement housing issues to assist and address all matters to do with their security of tenure and enjoyment of life. There is a need for a retirement housing ombudsman for these elderly people in retirement residential settings. They need someone who is focused on older people's retirement residential issues, which would alleviate the problems associated with the VCAT process.

Just to encapsulate my submission, I believe there should be no deferred management fee. I believe there should be formal management training courses. I believe management should be more transparent and responsive to residents' concerns and requests, and I believe there is a definite need for a retirement housing ombudsman.

The CHAIR — Ms Perkins, is there anything you wish to add?

Ms PERKINS — Yes. Thank you for the privilege to present my comments today. My name is Carmel Perkins, and I also reside at Willow Lodge Village in Bangholme, for just over three years. For two of those years I have been the elected volunteer secretary of the residents association.

The reason I found it necessary to investigate retirement living was a broken marriage. I visited various villages in close proximity to my children and friends, but was unable to find anything within my price range. The emotional stress and the uncertainty of affordability for my future increased. Finally I discovered Willow Lodge and made several visits to speak with the salesperson and inspected a number of available preloved units. The new builds were priced in the range of external real estate, but preloved units were more affordable.

After using my share of the family home finance and withdrawing my superannuation, I was able to purchase my current home. During discussions and while completing paperwork with the salesperson, I was still feeling nervous, apprehensive and emotional. Whilst I thought I understood the information provided at that time, both verbal and written, since residing in the village it has become very apparent that many of the statements given were either half explained or had double meaning.

I will give you a few examples. Firstly, I was verbally told that a new facility was to be built comprising an indoor heated pool, cinema, gym and restaurant. In August 2013 the Dandenong council planning application was approved, but it expired after two years and nothing has been done since. I have since learnt that many other residents were also told this. However, when management are now asked they cannot confirm that it will be built, and certainly not when.

Secondly, the DMF was not mentioned until the day of signing the contract. When I asked what DMF was, the salesperson said, 'It is to cover things you don't pay for in your lease payment. That's just something everyone pays when they leave'. Whilst the percentage amounts are listed within the contract, no dollar amounts were given as examples. I am not a maths person who can look at a percentage and work out how much that percentage would be in dollars. The DMF should be transparent in advertising and fully explained with dollar amounts as examples, because this could be a major concern to prospective buyers.

I purchased a 20-year-old dwelling for \$180 000. However, if I sold for \$170 000 after five years, I would be out of pocket by \$40 000 after paying the DMF commission and an admin fee, leaving only \$130 000, which is insufficient to buy in another location or to go into care. I have since learnt that not everyone pays the DMF; contracts prior to 2010 do not include the DMF clause. At Willow Lodge the DMF amount payable on exit is determined as prescribed percentages as set out in the resident's contract. I quote from my contract:

Part of a year is calculated as a whole year excepting the first month of a new year which will not be counted in the calculation of the amount of DMF to be paid on settlement ...

In my opinion, calculation of DMF should be pro rata, and in the case of deceased estates the DMF should cease on the date of death, not the date of sale. Relatives are burdened with paying site fee rental until a dwelling is sold, which on average can be at least 12 months. Effort by management appears to be on new builds rather than preloved. If an estate agent is employed to sell a dwelling in lieu of management, ill feeling exists and head office can reject the sale for whatever reason — we have not been informed. To me it seems quite unfair that the New South Wales and Queensland parliaments do not allow DMF in their states for relocatable accommodation but Victoria does. Willow Lodge has only relocatable accommodation.

Thirdly, regarding rent increases, it was explained that every third year rent would increase, calculated on market value, and having a DMF contract, the other two years between would be CPI only. I therefore understood that my rent increase in the third year would be added to the amount of rent I paid for the first year plus two years of CPI — not so. In the third year my increase included the market value of those previous two years, two years' CPI and the market increase for the third year — what a shock to have an increase of \$32.39 per fortnight. So I ask: comparing residents without the DMF clause and those with the DMF clause, where are the deferred costs which, I was told, covered things not paid for in lease payments? I have since calculated that over that three-year period from 2013 to 2016 the deferred or saved amount for those with a DMF clause was only \$689. However, should I have sold for, say, \$170 000, with the DMF over three years less the deferred \$689, I would have had to pay \$19 711 for the same facilities and way of life compared with those with no DMF clause. This equates to an additional amount of \$6837 per year over those three years.

As an aside regarding rental increases, a very high percentage of the 600 residents at Willow Lodge are aged pensioners, of which a third are singles. They continue to be financially disadvantaged, and as from 1 January 2017 those pensioners will have exceeded the Centrelink rental assistance threshold even further to an amount of \$24 per fortnight.

Being involved with the residents association has uncovered many aspects of village life. Some of the main concerns and frustrations for residents not already mentioned by David include security of tenure. If conflict exists between a resident and management, management can issue a 365, which is a notice to vacate within 365 days. Dispute resolutions have to be carried out with local managers and/or head office. With the fear of a 365, residents more often than not do not wish to rock the boat.

Also, lack of respect shown to residents by management. Park managers have no formal business or personal training. Training should be accredited. Lack of maintenance of communal grounds and facilities, lack of consultation regarding the suitability of facilities and furniture et cetera for the elderly in common areas. Management are constantly looking to improve the village by erecting new dwellings; however, this is proving a disadvantage to residents, as management are offering minimal amounts to purchase these homes in order to redevelop the site instead of the resident being allowed to onsell. Also, management's changing policy regarding a deceased estate is a very grey area. Where a relative or carer has been residing with the deceased for years and is left the building in the dwelling owner's will, surely they should be allowed to remain living in what has been their home should they wish. They should be allowed to have the lease assigned to them.

It is my opinion that an ombudsman would be the best solution as Consumer Affairs Victoria can only make recommendations; VCAT can make an order, but it is difficult and stressful for the aged to endure, and the magistrates at VCAT are not specialised in this industry to enable a ruling based on complete knowledge and understanding. Thank you.

The CHAIR — Thank you, Mr Duckworth and Ms Perkins, for your evidence today. I note the extensive litigation process you referred to, Mr Duckworth, which can be very challenging indeed. I have noted recommendation suggestions you have. I do not have any specific questions, but I appreciate what you have had to say.

Ms HARTLAND — If you did not have the Consumer Action Law Centre to assist you in the VCAT case, would you have been able to do that yourselves?

Ms PERKINS — Certainly not, absolutely not.

Mr DUCKWORTH — No way.

Ms HARTLAND — Was it just the finances, or was it also the technicality of it?

Mr DUCKWORTH — The finance side of it would have been a big deterrent. All of the people who participated in the legal action only did so because they could get legal assistance and did not think it would be any financial burden to them, as long as it stayed within the Victorian jurisdiction.

Ms PERKINS — The other thing is that people, once they hear they have got to stand up and say something, become very intimidated and, as the previous gentleman said, when you go off to VCAT the owners can afford very good solicitors, but we cannot. And also magistrates do not really understand all the technicalities of this retirement living.

Ms HARTLAND — So would the idea of having a very specific ombudsperson who deals with just this area actually alleviate a lot of the problems that you have encountered?

Ms PERKINS — It would.

Mr DUCKWORTH — It would take a lot of pressure off people.

Ms PERKINS — We had a lot of people who were speaking to us and writing to us about the lack of fencing. We would give them a form to fill out and direct to management, and they said, 'Oh, no. I can't do that; I'll get into trouble', or, 'They won't like me', or whatever the reason. About six months ago we had a woman in her 70s ring the police because there was some foreign person running around outside in her backyard. The police turned up and said that they could not prosecute because there was no definition of what was her property because there was no boundary. We gave that to management and they said, 'Well, too bad. Build a fence'.

The CHAIR — Thank you both. Is there anything further you want to add before we close?

Mr DUCKWORTH — No.

Ms PERKINS — I do not think so. We have given you copies of our contracts, which might be helpful, and David gave you photos of the accommodation, the tree and a few other bits and pieces.

The CHAIR — Yes.

Ms HARTLAND — Yes, that was very helpful.

The CHAIR — Thank you, Mr Duckworth and Ms Perkins.

Witnesses withdrew.