Neutral Citation No. [2012] NICh 27 | *Ref:* **McCL8598**

Judgment: approved by the Court for handing down | *Delivered:* **27/09/12**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISON

BETWEEN:

STEVEN STEWART WALLACE

Plaintiff:

and

SANDYCOVE HOLIDAY HOMES LIMITED

Defendant:

McCLOSKEY J

I INTRODUCTION

[1] The Plaintiff is the owner of a static caravan currently situated on a pitch at Sandend Caravan Park, Ballywalter, County Down (hereinafter "*the caravan*", "*the pitch*" and "*the Defendant's park*" respectively). The Defendant is a registered company which owns this park and others. The lawful and consensual occupation of the pitch by the Plaintiff's caravan from August 1998 until the end of the 2009 season, mid-November 2009, is not in dispute. The Plaintiff's case, in a nutshell, is that in August 1998 he struck an agreement with the Defendant whereby he, the Plaintiff, acquired a right to occupy the pitch with his caravan indefinitely, subject to the observance of certain conditions (*infra*). This is contested by the Defendant.

[2] The protagonists in this dispute are:

(a) Steven Wallace, the Plaintiff.

(b) James Kennedy, managing director of the Defendant company.

(c) Rodney McVicker, a salesman employed by the Defendant.

Formulation of the Plaintiff's Case

[3] It is clear (and I so find) that the Plaintiff's act of engaging a solicitor was precipitated, ultimately, by a letter dated 22nd October 2009 from the Defendant. I shall return to the events of 2008/2010 *infra*. In the initial letter written on his client's behalf, dated 9th November 2009, the Plaintiff's solicitor contended:

> "*…I am entirely satisfied that any purported termination of your contractual arrangement/agreement with my clients would be unlawful and without legal validity*".

The Defendant retorted, by letter dated 11th November 2009:

> "*Mr. Wallace only had an annual contract. On that basis we are legally entitled to serve him notice in line with the terms of our agreement.*"

The Plaintiff's solicitor rejoined, by letter dated 19th November 2009:

> "*… The contractual agreement is for a large part verbal and comprises the content of discussions which took place when my clients made their initial purchase in 1998 …*
>
> *My clients were not requested or required to sign any written Licence Agreement. The custom and practice was then that my clients subsequently paid a pitch fee annually (around October time) for the following season.*
>
> *My clients did not sign the Licence Agreement which was furnished to them in November 2008, primarily as it seemed to run for one year only to 15th November 2009 and, in any event, my clients had already tendered payment of the pitch fee for that period, which had been accepted by you*".

Continuing, this letter refers to a meeting between the parties on 25th May 2009, during which the following representation is attributed to Mr. Kennedy:

> "*Mr. Kennedy … assured my clients unequivocally that there was absolutely no intention that the written Licence Agreement would limit pitch occupancy to one year only (or, indeed, would force caravan owners to change their caravans). In these circumstances, my clients indicated that they were reassured that there was no ulterior motive and*

> *further indicated that they saw no reason why they wouldn't sign the Licence Agreement when presented again for the following season (i.e. 2010) …Mr. Kennedy stated that he hoped that my clients would be … customers for years to come*".

[4] Sequentially, the next formulation of the Plaintiff's case is contained in the Statement of Claim served on 27th April 2010, which avers (*inter alia*):

> "*Mr. McVicker of the Defendant informed the Plaintiff that the pitch fee was payable annually in advance (usually in or about October) and the agreement between the parties was accordingly that, having paid a premium for the caravan the Plaintiff was entitled to use it indefinitely thereafter…*
>
> *It was generally understood by the Plaintiff that as a condition of this agreement he was required to (a) observe the Park rules and (b) pay the pitch fees.*"

As these proceedings advanced the Plaintiff applied for an interim injunction which was basically designed to preserve the *status quo*. This application was grounded on an affidavit sworn by him containing the following material averments:

> "*In agreeing the purchase and sighting of the caravan, I dealt at the outset with Mr. Paul McVicker, the Defendant's salesman …*
>
> *Mr. McVicker told me that the pitch fee was payable annually in advance (usually in or about October). Thus it was my understanding that our agreement was that, having paid a premium for the caravan, I was permitted to use it indefinitely provided that I (a) observed the Park rules and (b) paid the pitch fees.*"

[5] The next formulation of the Plaintiff's case came in his sworn evidence to the court. The centrepiece of this evidence was his assertion that in August 1998 he struck an agreement with Mr. McVicker whereby the caravan could occupy the pitch for an initial eight-year period, to be followed thereafter by an automatic annual renewal at the end of each season, provided that (a) the caravan was kept in good condition, (b) the Plaintiff and his family abided by the site rules and (c) they paid the annual pitch fee. He testified that Mr. McVicker "*gave us complete comfort and assurance*" to this effect. He reiterated, in cross-examination:

> "*We were left with the absolute assurance that we would decide if/when we wanted to leave the caravan park, as long as we abided by the rules, kept the caravan in good condition*

and paid the annual pitch fee. We relied on what Mr. McVicker said."

Thus, according to the Plaintiff, there would be no restrictions on indefinite occupation by his family of the pitch outwith his control. His dealings at the time of making the agreement viz in August 1998, he testified, were with Mr. McVicker exclusively. He at no time met Mr. Kennedy. I interpose here that, in his sworn evidence, Mr. Kennedy agreed with this.

The August 1998 Transaction

[6] There was no dispute between the parties that the sale/purchase/licence arrangement struck between them in August 1998 was evidenced by the following documents:

(i) A receipt dated 7th August 1998, recording the Plaintiff's initial payment of £1,000.

(ii) An invoice of the same date recording a retail price of £11,620 for the caravan being purchased and a further payment of £380 in respect of transport; electric; water and sewage; concrete base, anchors and chains; pitch fee; insurance; a six-month warranty; and two "extras" (access steps and a new refrigerator).

(iii) A further receipt, dated 22nd August 1998, recording a second payment of £1,500 by the Plaintiff to the Defendant.

It was common case that between 7th and 22nd August 1998 a finance company paid, on behalf of the Plaintiff, the balance monies of £9,500.

[7] The evidence adduced includes a three-page written agreement, dated 14th August 1998. The parties are agreed that the signatures thereto are those of the Plaintiff and James Kennedy on behalf of the Defendant. This specifies an "*inception date*" of 14th August 1998 and a "*termination date*" of 15th November 2006. It identifies the park owner, the caravan owner and particulars of the caravan and its insurance. It records that the caravan was first purchased on 1st January 1996. Within this document there are references to the "Code of Practice for Selling and Siting Holiday Caravans", which emanates from certain approved organisations (hereinafter "*the Code*"). Clause 2.7 of this document provides:

"***Initial Fixed Term***

By virtue of paragraphs 6, 7 and 8 of the Code, the initial term of five years or (if appropriate) the unexpired portion of five years will expire on 01/01/2001 …

[**Clause 2.8**]

Renewal of Agreement

The Caravan Owner shall give the Park Owner not less than one month's notice in writing to expire not later than 15 November in any year of his desire to renew this Agreement for the following year and on receiving such notice the Park Owner shall grant or refuse the request according to the terms of the Code and this Agreement".

This written agreement contains references to a Code of Practice ("*the* Code"). As a matter of law, the former clearly incorporates the latter. The effect of clause 6 of the Code is to entitle the caravan owner to occupy the pitch for an initial fixed term of five years or, where the caravan is already on site, the unexpired portion thereof. This is described as the "*initial fixed term*" and it is provided that this term is –

"*…thereby renewable annually for the next five years subject to the caravan being in good condition and the terms of the agreement being complied with by the caravan owner*".

It is appropriate to comment at this juncture that the written August 1998 agreement is harmonious with the relevant provisions of the Code. For the purposes of this litigation, the critical provision in these instruments is clause 2.8 of the written agreement (*supra*). The written agreement also specified a pitch fee of £715 per annum. By clauses 3.4 and 3.5, the Caravan Owner undertook to comply with the Park Rules and to maintain the caravan in good repair.

[8] The Plaintiff does not dispute that his signature appears on the third page of this document. His case is that he does not recall signing it, he did not retain a copy and he was at no time given a copy. He asserts that he first saw this document during the course of these proceedings. There was no evidence to the contrary and, moreover, the contrary was not suggested. Furthermore, there was no evidence from either party on the issue of whether the Plaintiff allegedly received a copy of the Code in August 1998 or at any time thereafter. Moreover, the "Park Rules" did not feature in the evidence. It was, however, common case that there had been no infringement thereof by the Plaintiff or his family. While I find the Plaintiff's evidence recorded immediately above believable, it will become apparent presently that the court's identification and determination of the dispute between the parties does not turn on any of these issues.

[9] The sworn evidence of Mr. Kennedy was that he was the other signatory of the August 1998 written agreement. He testified that, in accordance with the established practice, the sequence was:

(i) The document was partially completed initially by the sales agent who, by his interaction with the purchaser, procured the purchaser's signature.

(ii) The sales agent then forwarded the document to the Defendant's sales office.

(iii) It was then "countersigned" by the Defendant and retained on a company file.

Implicit in the Defendant's evidence was a suggestion that, in theory, a copy of the agreement *would* then have been provided (in some unspecified way) to the Plaintiff. The Defendant further testified that other parts of the document were completed by a member of administrative staff: these included, in particular, the "*inception date*" and "*termination date*" provisions. With the exception of the implicit assertion regarding provision of a copy of the agreement to the Defendant, I accept the Defendant's evidence about these matters and find accordingly. I also repeat my observation at the conclusion of paragraph [8] above.

1998/2010

[10] It is common case that throughout this ten-year period the Plaintiff and his family occupied the caravan during substantial parts of the March – November season; they complied with the site rules; every autumn they received a renewal instruction requiring payment of the specified pitch fee for the forthcoming season; the Plaintiff duly reacted, by conveying the direct debut instruction to his bank; and renewal/enduring occupation continued thereafter. The pitch fee increased progressively. Whereas it was £715 per annum in August 1998, this had increased to around £1,400 by 2010.

[11] The genesis of the dispute between the parties and this ensuring litigation can be traced initially to the autumn of 2008, when the Plaintiff (together with, apparently, other caravan owners) was given the option of either accepting a new Licence Agreement, to govern forthcoming occupation of the site **or** termination of occupation thereof. The parties agreed that the Plaintiff did not execute this new agreement. Rather, he simply arranged for the direct debit payment of the new pitch fee, as he had done during the previous ten years. Nor did any disagreement between the parties erupt at this stage. The parties were further agreed that they had a meeting in May 2009, stimulated by an unpleasant incident on the Defendant's Park. They were also agreed that, towards the end of this meeting, **Mrs. Kennedy** raised the issue of the unexecuted new 2009 Licence Agreement. Mr. Kennedy readily agreed in his evidence that this had not been the reason for the meeting and that this was "*irrelevant*" to the issues ventilated. The Plaintiff's response was essentially one of indifference and went unchallenged. I find that these were the material facts bearing on this event.

[12] A hiatus ensued some five months later, upon receipt of the Defendant's letter dated 22nd October 2009 requiring the Plaintiff to vacate the pitch, removing his caravan by 30th November 2009. The **sole** reason proffered for this action was the Plaintiff's non-execution of the 2008/09 new Licence Agreement. This was the impetus for the solicitor's letters mentioned in paragraph [3] above. In his evidence, Mr. Kennedy agreed with the Plaintiff's assertion that, by a telephone call, the Plaintiff protested upon receipt of the Defendant's letter dated 22nd October 2009. Mr. Kennedy's brusque response was that the Plaintiff had not signed the 2008/09 new Licence Agreement and the Defendant would not be renewing the licence for the forthcoming year. Why not? The Defendant's explanation, under oath, was that this had been stimulated by the May 2009 incident. It follows that the reason proffered for non-renewal in the Defendant's letter of 22nd October 2009 was not the true one.

The New 2009 Licence Agreement

[13] By the terms of this document, the annual pitch fee was stated to be £1,488, payable on 16th November in respect of a "*pitch fee year*" from 16th November 2009 to 1st October 2010, with a pitch fee review to occur on 1st October annually. The annual rates were also specified. The agreement period was described as 16th November 2009 to 15th November 2010 and the usage period was confined to 17th March to 15th November. It is common case that, ultimately, the Plaintiff signed this agreement, on 16th April 2010. His evidence, highlighting a related solicitor's letter (dated 1st April 2010) was that he took this step in the context of said letter, under considerable protest and with a view to appeasing the anxiety of his daughters to have the benefit of the caravan during the forthcoming season. It is clear from the related solicitor's letter that one of the factors in these events was the Defendant's act of disconnecting the electricity supply to the caravan (which coincided approximately with the issue of proceedings on 29th March 2010) and an ensuing threat by the Plaintiff's solicitor to seek injunctive relief from the court.

[14] At a later stage (as noted above) in March 2011, the Plaintiff did apply for an interim injunction. It is clear from the ensuing order made, dated 14th April 2011, that the application was adjourned (and, subsequently, adjourned successively) on receipt of the Defendant's undertakings to the court that, pending the trial of the action, the Plaintiff would continue to use and enjoy his caravan on the site and services thereto would be maintained. This remains the *status quo*.

Mr. McVicker's Evidence

[15] The evidence of this witness was taken in commission and, in consequence, was presented to the court in the form of a transcript of sworn evidence compiled by the duly appointed Examiner and duly signed on behalf of both parties. Notably, Mr. McVicker was examined and cross-examined *as a witness on behalf of the Plaintiff*. As appears from the ensuing transcript, Mr. McVicker was questioned about a written statement, which formed part of the evidence before the court. There was no

dispute that this statement was compiled by the Plaintiff's solicitor in Mr. McVicker's presence and signed by Mr. McVicker, on 9th September 2011. It contains the following passage:

> "*I would explain to the customers about the agreement and their security of tenure in the agreement. I then explained that the only reason an agreement would not be renewed would be if the agreement had been broken or the Park Rules had been broken …*
>
> *The agreement would be renewed unless the Park Rules were broken or the caravan was deemed to be in an unsafe condition. I can't ever remember the Agreement being used to ask someone to leave the Park …*
>
> *It would give the customer security of tenure on his new pitch. I explained after the ten year period you would be offered an agreement on a year to year basis provided the Rules had been complied with and the caravan was not unsafe or in a bad state of repair. I would have explained all of this at the time to* [the Plaintiff]."

The act of procuring Mr. McVicker's evidence by the mechanism of commission unfolded one year later, in September 2012.

[16] Mr. McVicker's evidence, generated in this manner, has the following salient features:

- He sold a caravan to the Plaintiff, on behalf of the Defendant **and** he was "*involved in the arrangements*" for placement of the caravan on the Sandend Park.

- His handwriting appears in various in the 1998 Licence Agreement. Other handwriting therein is not his.

- He "*would have*" spoken to Mr. Wallace before the latter signed the agreement and "*… would have offered him a basic explanation of the agreement …* [and] *… would have told him basic things about the way the agreement operated … the annual pitch fee, the amount of his annual pitch fee and all that sort of stuff …*".

- "*I would also have said to him that it would have, depending on the year of his caravan it would guarantee him security of tenure on its pitch …*

  If it was a new caravan it would be on for ten years …

  And after that he would be offered a year to year agreement".

- Following expiry of the "basic" period of tenure, he informed the Plaintiff that "*it would be offered on a year to year basis*".

- "*I said you will be offered an agreement on a year to year basis*".

This would not be offered "*… if his caravan was in a bad state of repair …*

It was down to the state of repair of the caravan and the safety of the caravan for the customer to stay in …".

- [In terms] annual renewal would also be dependent upon observance of the Park rules.

"*… I would assume that* [renewal] *… would have been fairly automatic …*".

- He confirmed the accuracy of a passage in an earlier written statement made by him to the effect that the Plaintiff "*… would be offered an agreement on a year to year basis provided the rules have been complied with, that the caravan wasn't unsafe or in a bad state of repair and I would have explained all of this at the time to* [the Plaintiff]".

- The written 1998 Licence Agreement was "*more than likely*" executed on the date borne by the invoice [7th August 1998].

- Upon completion of each caravan sale it was "*job done*" for him.

In cross-examination, Mr. McVicker stated:

- A representation by him to a new purchaser of perpetual Park usage would be "*outside his authority*". Thus he would not have represented that the Plaintiff could keep his caravan at the Park "*forever*".

- In practice, new purchasers would sign completed agreements only.

During an employment period of some ten years' duration the witness had nothing to do with pitch renewals.

Firstly, it was also put to Mr. McVicker by counsel on behalf of the Defendant:

> "*…I suggest to you that the execution, the signatures of the caravan* [sic] *would have occurred in the presence of Mr. Kennedy or somebody else who is responsible in Sandy Cove for the management of the caravan site*".

Mr. McVicker did not demur. He then testified that he had no recollection of whether the Plaintiff had signed the 1998 agreement in his presence. With reference to his ten-year period of employment, it was then put to him:

> "*… You would in those ten years never have said to any customer that they would be entitled to remain indefinitely on the site*".

The witness concurred with this suggestion. In re-examination, he reaffirmed his answer-in-chief that he "*would have told all the customers* [with whom he dealt … that] *the agreement would be offered thereafter on a year to year basis*".

Conclusion

[17] I remind myself that the onus rests on the Plaintiff to establish his case according to the civil standard of the balance of probabilities. In my résumé of the salient features of the evidence above, I have, in places, recorded certain findings of fact, which I need not rehearse.

[18] It is an agreed fact that the Plaintiff signed the Licence Agreement dated 14th August 1998. I have rehearsed its salient provisions above. In the event, there was **no** initial fixed term of five years, expiring on 1st January 2001 (as stated in the agreement). Rather, the Defendant proactively made the case that the agreement made between the parties in August 1998 conferred on the Plaintiff, as a minimum, a virtually guaranteed term of occupation of eight years' duration – both parties being agreed that this was subject to observing the Rules, paying the annual renewal fee and maintaining the Plaintiff's caravan in good condition. Even then, the "eight year guarantee" or "eight year term" did not bite, the Defendant's evidence, in substance, being that the Plaintiff enjoyed a *de facto* ten year "guarantee" (subject to the three qualifications mentioned). On the Defendant's own case, the signed written agreement of August 1998 plainly did **not** reflect the terms of the bargain struck between the parties. The court finds accordingly.

[19] Weighing all the evidence, I construe the Plaintiff's case to resolve to an assertion that he was made, and duly accepted, a contractually binding promise that following the expiration of an initial period of eight years (in the autumn of 2006) renewal of his occupation of the site would be automatic, subject to the threefold proviso of observing the site Rules, paying the annual site fee (as revised from time to time) and keeping his caravan in good condition. I find that the Plaintiff was a truthful witness and I accept the essential core of the case made by him under oath. Having considered carefully the terms in which the Plaintiff's case has been formulated from time to time – see paragraph [3] – [5] supra – I find no material inconsistency. The essence of his case has been readily ascertainable during the period under scrutiny and has not varied to any material extent. I further find that the use of the word "*premium*" does not undermine the Plaintiff's case. I have

subjected the Plaintiff's case to critical analysis in this judgment, scrutinising in particular its various formulations from time to time. This analysis does not yield a finding of perfect consistency. However, I find no vitiating or contaminating factor. Moreover, I find the specific and concrete evidence of the Plaintiff clearly preferable to the vague, indefinite and rather abstract evidence of the Defendant. Mr. McVicker's evidence, analysed fully and fairly, corroborates that of the Plaintiff to an extent sufficient for the purposes of a civil action. I find a sufficient thread of consistency linking the various formulations of the Plaintiff's case, the Plaintiff's evidence under oath, Mr. McVicker's witness statement and Mr. McVicker's evidence on commission. I further find that the essence of Mr. McVicker's evidence did not waver to any significant extent at any stage of its evolution.

[20] There was no dispute between the parties that a contractual licence of the kind under scrutiny in these proceedings can be partly oral and partly written. There is an interesting, if brief, discussion of the historical development of the law in this sphere in Wylie, Irish Land Law (4th Edition), paragraph 20.05. The effect of the court's findings above is that the parties made an agreement in August 1998, partly oral and partly written, which governed their relationship subsequently. Insofar as and to the extent that the written dimension of this agreement viz. the August 1998 Licence Agreement conflicts with the salient oral representations made on behalf of the Defendant and taking into account my earlier finding that the Plaintiff was not provided with a copy of this agreement, I find that the latter prevail.

[21] I specifically reject the Defendant's argument that, taking the Plaintiff's case at its zenith, the oral representations attributed to Mr. McVicker did not provide the Plaintiff with anything stronger than or superior to the 1998 written agreement. This contention is confounded by the terms of the latter, the clear import whereof was that following expiry of (a) the initial period and (b) the ensuing five year period, any further renewal was to be a matter of whimsical discretion on the part of the Defendant. The oral representations attributed to Mr. McVicker and duly accepted by the court gave rise to a significantly different agreement whereby the Plaintiff, and not the Defendant, controlled further annual renewals. I further reject the Defendant's further argument that, in any event, the Plaintiff's case is defeated by his execution of the 2010 Licence Agreement and, in particular, the "agreement period" provisions thereof. This argument founders on account of the heavy qualifications contained in and other terms of the Plaintiff's solicitor's letter of 19th November 2009 which clearly merged with the other document, altering and modifying its terms. While this gave rise to a discrete, separate contract between the parties, the terms of this agreement, considered in its totality, confound this freestanding argument.

Remedy

[22] I find for the Plaintiff accordingly. The main relief sought is declaratory in nature and a draft declaration should now be prepared to reflect the findings and conclusions of the court. I would highlight that there is an obvious disconnect

between the declaratory relief sought in the Writ and Statement of Claim (on the one hand) and the central core of the case made by the Plaintiff and duly accepted by the court (on the other). I consider that this will have to be rectified by a suitable amendment of the pleadings. Finally, I record that the Defendant's Counterclaim was not actively pursued.

[23] If the Defendant wishes to argue that costs should not follow the event, there will be an opportunity to do so.