Civil and Administrative Tribunal

New South Wales

Case Name:	Bunce v Antegra Management Leppington Pty Ltd
Medium Neutral Citation:	[2022] NSWCATCD 82
Hearing Date(s):	On the papers
Date of Orders:	12 April 2022 [amended 13 April 2022]
Decision Date:	12 April 2022
Jurisdiction:	Consumer and Commercial Division
Before:	D Robertson, Senior Member
	Pursuant to Section 63 of the Civil and Administrative Tribunal Act 2013, orders published on 12 April 2022 are amended on 13 April 2022 to read as follows:
Decision:	(1) The application in each matter is dismissed. (2) There will be no order in relation to costs.
Catchwords:	LEASES AND TENANCIES — Residential (Land Lease) Communities Act 2013 (NSW) — Jurisdiction of Tribunal — Development lots in a community scheme established under the Community Land Development Act 1989 (NSW) do not constitute a community under the Residential (Land Lease) Communities Act even when leased to residents under agreements explicitly described as site agreements under that Act
Legislation Cited:	Civil and Administrative Tribunal Act 2013 (NSW) Community Land Development Act 1989 (NSW) Community Land Development Act 2021 (NSW) Community Land Management Act 2021 (NSW) Residential (Land Lease) Communities Act 2013 (NSW) Residential (Land Lease) Communities Regulation 2015 (NSW) Residential Parks Act 1998 (NSW)

Cases Cited:	Antegra Pty Ltd v Chief Commissioner of State Revenue [2021] NSWSC 107
Category:	Principal judgment
Parties:	RC 22/01526: John Bunce (Applicant) Antegra Management Leppington Pty Ltd (Respondent) RC 22/02046: Gordon Sanson (Applicant) Antegra Management Leppington Pty Ltd (Respondent) RC 22/02047: Bill Douglas (Applicant) Antegra Management Leppington Pty Ltd (Respondent) RC 22/02048: Terrence McBride (Applicant) Antegra Management Leppington Pty Ltd (Respondent) RC 22/02052 Michael Botfield (Applicant) Antegra Management Leppington Pty Ltd (Respondent) RC 22/02056 Warren Hughes (Applicant) Antegra Management Leppington Pty Ltd (Respondent)
Representation:	Solicitors: Dentons (Respondents – all matters)
File Number(s):	RC 22/01526; RC 22/02046; RC 22/02047; RC 22/02048; RC 22/02052; RC 22/02056
Publication Restriction:	NIL

REASONS FOR DECISION

Introduction

1 The applicants in these six related matters occupy lots in a development in Leppington NSW known as the Antegra Estate. I refer at this point to the applicants "occupying" lots as the basis of that occupation is an issue in the proceedings. I will refer to the Estate as "the Site".

2 The applicants have each sought orders pursuant to s 157(1)(j) of the *Residential (Land Lease) Communities Act* 2013 (NSW) (RLLCA) for the resolution of a dispute regarding the provision of storage facilities for caravans and RVs and the fees payable by the applicants for such storage.

3 The respondent submits that the Tribunal has no jurisdiction to make orders to resolve the dispute as the Site is a community scheme under the *Community Land Management Act* 2021 (NSW) (CLMA) and therefore, by virtue of s 8(1)(b) of the RLLCA, the RLLCA does not apply to the Site.

4 On 27 January 2022, the Tribunal directed that the question whether the Tribunal has jurisdiction to hear and determine the applications be separately determined. The Tribunal directed that the question of jurisdiction would be determined on the papers and without a hearing and made an order to that effect with the agreement of the parties.

5 The Tribunal further directed that the six applications be determined together and that evidence and submissions lodged in one application would be evidence and submissions in each application.

6 The Tribunal noted that "For the avoidance of doubt the Tribunal will proceed on the basis that the submissions lodged by or for Mr Bunce cover the position of each applicant unless separate written submissions are provided." No applicant other than Mr Bunce has provided submissions beyond the documents attached to their application.

7 The respondent filed submissions on the question of jurisdiction on 24 February 2022. By letter dated 3 March 2022 the respondent's solicitors corrected an error in the submissions filed on 24 February.

8 The applicants filed a "group submission" on 17 March 2022, to which the applicants attached documents including a lease and annexed site agreement entered into by Mr Bunce.

9 The submissions filed on behalf of the applicants suggested there were differences in the factual situation of some of the applicants, in that Mr Hughes and Mr Sanson entered into their arrangements before 2015, when the *Residential Parks Act* 1998 (NSW) was repealed. However, the evidence before the Tribunal includes only one lease and site agreement, being those executed by Mr Bunce, and I will proceed on the basis that those documents reflect the equivalent documents entered into by each of the applicants.

The Lease

10 The lease executed by Mr Bunce was expressed to be between John and Christine Bunce as joint lessees and Antegra Pty Ltd, Domenico Capitani and Josephine Capitani as lessors. The property the subject of the lease was described as "Folio Identifier **/270685", that is, lot ** in community plan 270685. (I have not included the specific lot number as it is not necessary for comprehension of these reasons). The document was executed on 15 February 2016 but the lease commencement date was 9 August 2016. The term of the lease was "94 years, 4 months and 23 days", expiring on 31 December 2110. I note that other documents suggest that all leases over lots on the Site expire on the same date, regardless of commencement date.

11 The rent payable under the lease was stated to be "the site fee set out in Annexure A".

12 Annexure A to the lease was a document headed:

> "Standard Form Residential Site Agreement
>
> *Residential (Land Lease) Communities Regulation 2015"*

13 The parties to the site agreement were the respondent, as operator, and John and Christine Bunce, as home owners. The site agreement was in the standard form required by Regulation 6 and Schedule 1 of the Residential (Land Lease) Communities Regulation 2015 (NSW). The term of the site agreement reflected the term of the lease.

14 Clauses 40 and 41 of the site agreement provided:

> **Community Scheme**
>
> 40 Antegra Leppington has been subdivided under the *Community Land Development Act* 1989 in order to provide home-owners with additional long term security of tenure.
>
> **Community Management Statement [CMS]**
>
> 41 You acknowledge that the Community Management Statement, as may be amended from time to time, in accordance with the *Community Land Management Act* 1989, is binding on you and any lessee or occupier, mortgagee or covenant chargee in possession of the residential site.

15 The background and history of the development of the Site was set out by the respondent in its written submissions as follows:

4. The Respondent manages and administers property located at 1 Antegra Drive, Leppington NSW (Land), also known as the 'Antegra Estate'. The 'Antegra Estate' is a community of 'over 50's' manufactured homes.

5. The Association was created by reason of an approved community plan subdivision of the Land to create 225 community development lots and one community property lot under the Community Land Development Act 1989 (NSW).

6. The Land is owned by Antegra Pty Ltd A.C.N 080 385 011. Domenico Capitani and Josephine Capitani (Proprietors).

7. On or about 12 December 2011, the Land was entered on the residential parks register under the then *Residential Parks Act* 1998 (NSW) (this Act is since repealed with the commencement of the RLLC Act).

8. Each of the Applicants purchased manufactured homes on the community development lots on the Land, and entered into leases with the Proprietors (Leases).

9. The Leases were purportedly site agreements under the *Residential (Land Lease) Communities Act* 2013 (RLLC Act) (we say 'purportedly because of the judgment discussed below).

10. At various times after entering into the Leases, each of the Applicants also entered into recreational vehicle parking licences with the Respondent permitting them to park their respective recreational vehicles (Caravans), at the parking bays situated on the Land for a licence fee (Caravan Licence).

11. The Caravan Licence contains the following terms:

(a) It was to be for a term of one (1) year commencing on 1 January 2018 and ending on 31 December 2018 (Term) (item 1);

(b) It was for an amount of $20.00 / week (item 5); and

(c) It was granted as a non-exclusive right to the Tenant to use for the Term (clause 2(a)).

16 I note that paragraph 6 of those submissions may not be strictly correct in that, upon registration of the community plan, the community property lot would have vested in the community association pursuant to s 31 of the *Community Land Development Act* 1989 (NSW) (CLDA 1989)[1]. Hence the entirety of the Site, or the "Land" as the respondent has defined it, is not owned by "the Proprietors".

17 The judgment referred to in paragraph 9 of the submissions was the decision of Payne JA in *Antegra Pty Ltd v Chief Commissioner of State Revenue* [2021] NSWSC 107 (the Judgment). Apart from the matter mentioned in the previous paragraph, the facts set out in paragraphs 4 to 11 of the respondent's submissions are otherwise consistent with facts found by Payne JA.

[1] The CLDA 1989 has been repealed and replaced by the Community Land Development Act 2021 (NSW).

18 Each of the applicants was given a disclosure statement purportedly under the RLLCA prior to entering into the lease and site agreement. That document disclosed that the services and facilities available in the community included "storage area for boats/caravans". The disclosure statement also stated "RV/Caravan parking is currently available at a cost of $10 per week per site".

19 The Caravan Licence entered into by each of the applicants was headed "Recreational Vehicle Parking Licence". The parties to the agreements were: Community Association Deposited Plan 270685, as land owner; the respondent, as "operator"; and each of the applicants (individually), as "resident".

20 The recitals to the Caravan Licences stated:

> A The Operator manages and administers the Licence on behalf of the Land Owner, being the Licensor, and the Resident is the licensee under the Licence.
>
> B The Operator has agreed to allow the Resident to use the Parking Area for RV parking, pursuant to the conditions contained in this document.

21 It is apparent that the parties proceeded after the repeal of the *Residential Parks Act* on the basis that the Site became a community under the RLLCA and it was registered as such.

22 It appears that that registration has now been terminated (following publication of the Judgment).

23 The Judgment was published on 19 February 2021. The issue in the proceedings was whether the owners of each of the community development lots on the Site (that is the lessors under the leases, Antegra Pty Ltd and the Capitanis) were subject to land tax on those lots. One question relevant to the resolution of that issue was whether the community development lots were a "community" or "residential community" within the meaning of the RLLCA. Payne JA held that they were not, by reason of s 8(1)(b) of the RLLCA, as they were each "wholly subject to … a community scheme", that is a scheme within the meaning of the CLMA.

24 Section 8 of the RLLCA relevantly provides:

> **8 Places to which this Act does not apply**

(1) This Act does not apply to the following places—

…

(b) a place that is wholly subject to a strata scheme or community scheme,

…

(2) In this section—

community scheme means a scheme (other than a strata scheme) within the meaning of the *Community Land Management Act* 2021.

25 His Honour held:

64 The *RLLC Act* is concerned with land that is occupied or made available for occupation under an agreement or arrangement in the nature of a tenancy. It regulates a relationship which has a number of features of a landlord and tenant relationship between, relevantly, manufactured homeowners and operators of residential communities. Among other things, it sets out their respective rights and obligations and establishes procedures for resolving disputes. The homeowners do not own the land on which the community is located.

65 The *Community Land Management Act* deals with the management of community, precinct and neighbourhood schemes. Those schemes are created when a community plan, precinct plan or neighbourhood plan is registered pursuant to the *Community Land Development Act*. As I have found, the plaintiffs' land was subject to a *Community Land Development Act* subdivision and each of the lots comprising the plaintiffs' land is subject to a *Community Land Management Act* community management statement.

66 The object of the Community Land Development Bill 1989 (NSW) was to extend the concept of common property to schemes involving conventional subdivisions. A "community scheme" is created by registration of a "community plan" comprising two or more "community development lots" and one other lot which is "community property" for the use of participants in the community scheme. When a community plan is registered as a deposited plan, a corporation is constituted under the *Community Land Development Act* (a "community association") and the community property vests in that corporation.

67 The Explanatory Note to the cognate Community Land Management Bill 1989 (NSW) provided:

> "The registration of a community plan would initiate a community scheme in which the participants would be the proprietors of neighbourhood lots and strata lots comprised in subdivisions of the development lots. They would have the benefit of the community property in the community plan."

68 The apparent assumption underlying the Bill was that "the proprietors of neighbourhood lots and strata lots" would become the registered proprietors of the lots comprised in subdivisions of the development lots. It was common ground on this application that the plaintiffs' land that was subdivided pursuant to the *Community Land Development Act* where approval had been granted by the relevant consent authority would, however, be captured by the definition of "community scheme" in the *Community Land Management Act* even if legal

> title to the land did not pass to each owner of a manufactured home occupying the lot under a lease.
>
> …
>
> 71 As I will explain in greater detail, one of the most important issues in this case arises by reason of the fact that each lot of the plaintiffs' land is land that was subdivided pursuant to the *Community Land Development Act* and which is wholly subject to a community scheme. Before 2015, the *Residential Parks Act* applied to the plaintiffs' land and created overlapping rights and obligations. Following the repeal of the *Residential Parks Act* and the commencement of the *RLLC Act*, however, land wholly subject to the *Community Land Management Act* was carved out of the *RLLC Act* by reason of s 8 of that Act.
>
> …
>
> 152 It is not to the point that, by reason of the transitional provisions, "Antegra Leppington" is taken to be registered under the *RLLC Act*. … The transitional provision in cl 4 of Sch 2 to the *RLLC Act* has the effect that if it was registered under the *Residential Parks Act*, it is taken to be on the register for the *RLLC Act*.
>
> 153 Whilst "Antegra Leppington" is registered under the *RLLC Act*, the plaintiffs' land is not a community to which the *RLLC Act* applies. Each parcel of the plaintiffs' land is a "place" to which the *RLLC Act* does not apply by reason of s 8 of the *RLLC Act* itself.

26 The respondent relied upon that decision as authority, binding upon the Tribunal, that the Site is not subject to the RLLCA and that it does not constitute a "community" or "residential community" for the purposes of that Act.

27 The applicants submitted that, although the land cannot be said to constitute a community under the RLLCA, the leases entered into by each of the applicants (and all other residents on the Site) were regulated by the RLLCA. As I understand the submission, it is that the leasehold arrangements between the owners, the respondent and the lot owners constitute a residential community for the purposes of the RLLCA.

28 I note that Payne JA did not determine that the fact that no lots within the Site had been sold was not inconsistent with the scheme being a "community scheme" for the purposes of the CLMA. As his Honour recorded at [68], it was common ground that the land would be a community scheme even if the lots were not sold to the home owners who constructed (or installed) their homes on the lots.

29 Although I am not therefore bound to hold that the Site is a community scheme, I am not persuaded that the proposition which was common ground before Payne JA was incorrect. The formation of a community scheme occurs at the point of registration of a plan of subdivision containing two or more community development lots and one lot that is community property (s 8 *Community Land Development Act* 2021 (NSW)[2]). The existence of the community scheme does not depend upon the subsequent sale of the community development lots.

30 Section 6 of the RLLCA provides:

> 6 Application of Act to site agreements
>
> (1) This Act applies to all site agreements, whether existing immediately before or coming into existence after the commencement of this section, unless a provision of or under this Act provides otherwise.
>
> (2) Where this Act applies to a site agreement, it so applies despite the terms of the agreement or any other contract, agreement or arrangement, whether made before or after the commencement of this section.
>
> (3) This Act applies to a site agreement until it is terminated in accordance with this Act.

31 It might be argued that this warrants a broad application of the Act to the site agreements entered into by the applicants in this case, in particular those who may have entered into site agreements before the repeal of the *Residential Parks Act*.

32 However, "site agreement" is defined in s 4 of the RLLCA as "an agreement under which the operator of a community grants to another person for value a right of occupation of a residential site in the community".

33 Hence, the agreements between the applicants and the respondent will not be "site agreements" for the purposes of the RLLCA unless the respondent is "the operator of a community" and the applicants' lots are "residential sites in the community". That could only be the case if the Site is a "community" for the purposes of the RLLCA, which Payne JA has determined it is not.

34 I do not consider it is possible to interpret the RLLCA so that it could apply to the leasehold interests of the applicants.

---

[2] The equivalent provision in the CLDA 1989 was s 5, in conjunction with the definition of "community scheme" in s 3.

35 Accordingly, I find that the Tribunal does not have the jurisdiction to make orders pursuant to the RLLCA at the suit of the applicants.

36 The respondent submitted that the applications should be dismissed. The applicants have not specifically relied upon any alternative basis of jurisdiction which may permit the Tribunal to make the orders which they seek. However, if there were an alternative basis of jurisdiction which it might reasonably be argued was applicable, I would not regard it as appropriate to dismiss the applications without giving the parties the opportunity to address that alternative basis of jurisdiction.

37 The Tribunal has jurisdiction under s 193 of the CLMA to make orders to resolve disputes arising under that Act. Arguably, the applicants, as persons having an estate or interest in the development lots which they respectively lease would, pursuant to s187 of the CLMA, be "interested persons" with standing to bring proceedings in the Tribunal. However, the applicants have not identified any dispute arising under the CLMA and, in any event, the proper respondent for any such claim would be the community association, not the respondent. There is no other alternative basis of jurisdiction which it might reasonably be argued is applicable to the dispute between the applicants and the respondent.

38 Accordingly, the applications must be dismissed.

39 The respondent sought an order that the applicants pay its costs of the applications. Pursuant to s 60 of the *Civil and Administrative Tribunal Act* 2013 (NSW) I must find there are special circumstances before making an order for costs.

40 The respondent submitted that the fact that applicants brought the applications despite having been on notice of the Judgment since at least November 2021 constituted special circumstances. The respondent submitted that, being aware of the Judgment, the applicants "knew (or ought to have known), that the RLLC Act did not, and could not, apply."

41 I do not consider that there are special circumstances in this case. The Judgment is complex and lengthy. As I have noted, at [28] above, the

Judgment proceeded on the basis of a common assumption which, if falsified, would have left the Site subject to the RLLCA. There was no res judicata or issue estoppel between the applicants and the respondent arising from the Judgment. I do not consider that the applications were brought without a tenable basis in fact and law. Nor do I consider that the applications were misconceived or lacking in substance. I also take into account that the applicants entered into the leases and site agreements in the belief and expectation, induced by the respondent and the lessors, that the Site was, and would be, governed by the RLLCA.

42 My orders are:

(1) The application in each matter is dismissed.

(2) There will be no order in relation to costs.

****

I hereby certify that this is a true and accurate record of the reasons for decision of the New South Wales Civil and Administrative Tribunal.

Registrar

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.
Registrar