NO. 90179-1

SUPREME COURT
OF THE STATE OF WASHINGTON

WESTERN PLAZA,

Petitioner,

v.

NORMA TISON,

Respondent.

RESPONDENT'S RESPONSE TO BRIEF OF AMICUS CURIAE

Law Offices of Dan R. Young
Attorney for Respondent
1000 Second Avenue
Suite 3200
Seattle, WA 98104
(206) 292-8181

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I. INTRODUCTION

Amicus Curiae Manufactured Housing Communities of Washington ("MHCW") is the primary trade organization for mobile home park owners. It lobbies the legislature to obtain the passage of laws favoring mobile home park owners.[1] It argues that if this Court denies review of this case, then "the problem of perpetual, unchangeable lease provisions will once again plague park owners who must sometimes impose business-related rent or fee increases in order to keep their parks financially viable." Brief of AC at 2. Respondent Norma Tison will show in this brief that such argument is based on a complete misunderstanding of the record and the realities of owning and operating a mobile home park.

II. LEGAL ARGUMENT

1. Ms. Tison's Lease Does Not Provide for Perpetual Rent Limitations.

MHCW in its brief frequently refers to "perpetual, unchangeable lease provisions[,]" leases that are "immutable[,]" a "perpetual" term in a one-year lease, "perpetual leases[,]" a one-year lease provision containing a term applicable "in perpetuity[,]" and "perpetual provisions

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[1]The one-year lease used in this case was on a form supplied to park owners by MHCW. App. Brief, Appendix C. That form states that it is "prepared for use by paid members of MHCW by legal counsel." *Id.*

that bind future leases."[2] This argumentation is irrelevant, because Ms. Tison's lease applied only *during her tenancy*, not in perpetuity. The second footnote added to her lease makes it clear that "every other year, rent will be raised no more than $10.00 for remaining tenancy" (CP 20, 23). The "remaining tenancy" was clearly that of Ms. Tison and reflects the conversations Ms. Tison had with the park manager, who spoke with one of the park owners, Joel Erlitz (CP 19-20). Thus the facts of the present case do not implicate any of MHCW's concerns about a rent limitation extending in perpetuity.[3]

2. Absent a Limitation in the Lease, Park Owners Are Free to Raise Rent Upon Three Months' Notice.

It is recognized that park owners must "sometimes impose business-related rent or fee increases in order to keep their parks financially viable." Brief of AC at 2. Park owners were able to do that before the court of appeals ruled in the present case, and park owners are still able to do that after the court of appeals ruled. It is undisputed that there is no statutory rent limitation on mobile home park rents in

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[2]Brief of AC at 2, 5, 6, 7, 9. The term "perpetual provisions" that bind future leases is a nice alliterative touch, but ignores the provision in the present case that the rent limitation clause applies only during Ms. Tison's tenancy.

[3]It also turns out that Ms. Tison suffered a stroke during the pendency of the appeal in this case and is being taken care of by her son in California. She sold her home and no longer lives in the park.

the State of Washington.[4] The MHLTA allows park owner to raise rents upon three months' notice, *even for non-business-related* reasons. RCW 59.20.090(2). If the park owner's wife needs to buy a new fur coat and the park owner himself wants to buy a new Mercedes, that would be a sufficient reason to raise park rents, as *no reason need be given for increasing rents. Id.* Thus nothing in the opinion of the court of appeals in this case jeopardizes a park owner's ability to raise rents to whatever level the park owner thinks the market will bear.

The unfettered ability of park owners to raise rents to whatever level they desire is exactly what triggered the insertion of the rent limitation clause in Ms. Tison's lease. Absent a contractual limitation on rent increases, Ms. Tison, and other elderly tenants like her, would be subject to potential rent increases they could not afford. Of course, the park owner does not have to agree to such rent limitations. The prospective tenant is then free to find another park owner who is willing to agree to such a limitation or the prospective tenant can explore other housing options.

Amicus Curiae overlooks the fact that the park owner in this case

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[4]The right to receive the rental income from a property is a "traditional" property right left unencumbered by the MHLTA. Brief of AC at 5. Neither Amicus Curiae nor the park owner raises any constitutional argument with respect the decision of the court of appeals in this case.

agreed to the rent limitation clause. Not only did the park owner *agree*, but the park owner put it in writing in the lease.[5] Any reasonable person in Ms. Tison's position would assume that the written rent limitation provision in the lease would be binding during the tenant's tenancy in the park, just as the added clause clearly stated.

Moreover, the park's attorney conceded at oral argument in the court of appeals that the park owner Erlitz was bound by the rent limitation provision and conceded that the purchaser of the park from Erlitz was subject to all the leases in effect at the time of the purchase. *Slp. Opn.* at 7-8. It follows that the new park owner was also bound by the rent limitation provision.

3. Whether the Lease in Question Should Have Been a 25-Year Lease or Is a One-Year Lease is Irrelevant.

MHCW suggests that if the lease in question in this case had been a 25-year lease, rather than a one-year lease, then the rent limitation

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[5]Respondent's counsel has experienced numerous situations where tenants, before buying a home in a park, have been told by park managers that the park either does not raise rents, infrequently raises rent, raises rent every 3 or 4 years, or does not increase rent more than a certain amount every few years. These verbal managerial promises may induce tenants to buy a home in the park and live there, but are infrequently–if ever–enforced by the courts, because the park manager, if he is still the manager a few years later, will invariably deny that he made any such promise and the rent limitation is not in the signed lease. Given this situation, Ms. Tison's sagacity in asking that the managerial promise be put in writing should not be lightly ignored.

clause would have been enforceable. Brief of AC at 8-9. This distinction exalts form over substance. A one-year lease is "automatically renewed" for the term of the original rental agreement, unless a different specified term is agreed upon. RCW 59.20.090(1). MHCW fails to state what difference it makes in this case if the tenant signs up for a 25-year lease, or if the tenant signs up for a one-year lease which is "automatically renewed" year after year for twenty five years. The end result is the same. Park owners cannot claim that they are not aware that a one-year lease automatically renews each year, as the governing statute specifically so provides. RCW 59.20.090(1). No one has argued in this case that such statute is ineffective or violates anyone's constitutional rights.

The fact that in *Little Mountain Estates Tenants Association v. Little Mountain Estates MHC LLC*, 169 Wn.2d 265, 236 P.3d 193 (2010) the leases happened to be for a 25-year period was not a significant factor in the court's decision. More important was that the parties had freedom to contract, and the court would enforce whatever agreement they reached, as long as it was not inconsistent with the MHLTA.[6]

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[6]MHCW does not argue, for example, that if the leases in *Little Mountain* had been for a 2-year period or a 5-year period, the result should have been any different.

In addition, MHCW seems to assume that park tenants with one-year leases move out more frequently than tenants with 25-year leases. Given the expense of moving manufactured homes, which are really not mobile, most tenants simply sell their homes in place, regardless of the length of the lease. Also, given the level of sophistication of many park tenants, it cannot be assumed that prospective park tenants would realize that they should negotiate a multi-year lease instead of a one-year lease which automatically renews. As noted earlier, the overwhelmingly common perception would be that if the park owner wrote a rent limitation clause in the lease, of whatever duration, to induce a prospective tenant to buy a home in the park, the clause would be enforceable. MHCW's arguments would allow a park owner to promise anything in a one-year lease, then a year later abrogate everything promised on the technicality that the lease was only a one-year lease, not a multi-year lease. Although such an outcome would be highly favorable to the park owners who are members of MHCW, it would not fulfill this Court's duty to promote justice.[7]

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[7]MHCW argues that "park owners are not lawyers[,]" but it is also clear that tenants are not lawyers either. Park owners undoubtedly have more access to legal advice than park tenants, as MHCW has prepared lease forms, such as the one used in this case, for park owners. No one has claimed that park tenants have organizations preparing lease forms on their behalf.

4. MHCW's Brief Does Not Address the Real Issue.

The real issue not addressed by MHCW and the park in this case is that a lease which is "automatically renewed" under RCW 59.20.090(1) does not, under the decision in *McGahuey v. Hwang*, 104 Wn. App. 176, 15 P.3d 672, *review denied*, 144 Wn.2d 1004 (2001), have all the terms automatically renewed. The only guidance the court in *McGahuey* gave as to which terms were "automatically renewed" and which ones were not was that any changes had to protect the tenant and had to be equitable. Respondent can live with that test. It is hard to argue that a lease change which is inequitable should be upheld. Yet MHCW does not address the equities of this particular case.

If the park is free to alter *any* lease term on three months' notice, as the park has consistently argued throughout these proceedings, then of course the park could promise anything to a prospective tenant, and even put it into the written lease, and one year later change what might have been the motivating factor for the tenant to purchase the home in the park. MHCW makes no argument as to why such a practice would be equitable or that such a practice was envisioned by the legislature in enacting these features of the MHLTA.

So the real questions are the following: If all lease terms are not automatically renewed at the end of the one-year period, which ones are

renewed and which ones are not? Does the park owner get to decide which ones are renewed according to his unilateral, subjective decision, or does the tenant have some say? Are the equities to be considered, and how are they to be weighed? Nothing in the MHLTA suggests that the park owner can unilaterally impose his will on the tenants regarding the provisions of a lease which is "automatically renewed." Why wouldn't the tenants have the right to negotiate with the park about which lease provisions are automatically renewed and which ones were not? No case, other than *McGahuey*, deals directly with which provisions in the lease can be changed and which ones cannot be changed.

This Court is not called upon to decide these issues, which extend far beyond the facts of the case at bar. There is no question but that the park owner in the present case agreed to a rent limitation clause. There is no question but that the subsequent park owner bought the park subject to the existing leases. *Slp. Opn.* at 7-8. There should be little doubt but that the rent limitation clause at issue does not violate the MHLTA, common law or common sense. The rent limitation clause is therefore enforceable.

In its briefing to the trial court, the park argued that the "landlord may change any term of any lease, including perhaps the most

material term of any lease: the amount of the rent or what amenities it includes; because the law provides the landlord with the legal right to change any term of the lease upon expiration of any term, after three months' written notice prior to the effective date of the increase. RCW 59.20.090(2); *McGahuey* at 183" (CP 55).

If any proposed change in the lease must protect the tenant and must be equitable, then the park has failed to meet its burden. MHCW fails to explain how allowing mobile home park owners to change *any* provision of the lease protects tenants or is equitable. More specifically, MHCW fails to articulate why park owners should be allowed to disregard a specifically negotiated provision in the rental agreement, and should be allowed to supplant that provision with a provision more to the liking of the park owner. After all, the requirement that there be a written rental agreement, RCW 59.20.050, and that the written rental agreement contain many required provisions, RCW 59.20.060(1), must mean something.

5. The Express Language, Public Policy, Common Law and Prior Washington Case Law on the MHLTA Do Not Preclude the Decision of the Court of Appeals.

The language of the MHLTA does not expressly address whether a park owner and prospective tenant may agree to a rent limitation

clause in their lease. Public policy would support rent limitation clauses, because such clauses protect elderly, poor and other vulnerable people from purchasing a home for which they later cannot afford to pay the lot rent. Also, in periods of low inflation park owners do not experience calamitous increases in their expenses.

At common law the park owner and a prospective tenant could agree to a rent limitation clause which lasted during the tenancy of an elderly tenant. MHCW cites no case to the contrary.

Finally, MHCW cites no Washington case precluding the enforceability of a rent limitation clause during the tenancy of a prospective tenant. Whatever "healthy balance" exists between park owners and tenants is definitely not threatened by the decision of the court of appeals, unless by "healthy balance" park owners mean that park owners can change *any* term of the lease to their benefit upon annual renewal. Such a definition of "healthy balance" would render meaningless many of the protective provisions of the MHLTA.

III. CONCLUSION

Read properly, the decision of the court of appeals upholds the legitimate expectations of the parties and is not a departure from *McGahuey*, *Little Mountain* or *Seashore Villa*. Thus review by this Court is not warranted under RAP 13.4(b).

RESPECTFULLY SUBMITTED this 10th day of July, 2014.

Law Offices of Dan R. Young

By Dan R. Young
Dan R. Young, WSBA # 12020
Attorney for Respondent
Norma Tison

DECLARATION OF SERVICE

I, Dan R. Young, declare to be true under penalty of perjury under the laws of the State of Washington as follows:

1. I am an attorney representing the respondent Norma Tison in this action.

2. On July 10, 2014, I sent by the USPS, first class mail with pre-paid postage affixed, a copy of the foregoing Respondent's Response to Brief of Amicus Curiae to the following:

Olsen Law Firm PLLC
Walter H. Olsen, Jr., Esq.
205 S. Meridian
Puyallup, WA 98371

Jack W. Hanemann, Esq.
2120 State Ave. NE, Suite 101
Olympia, WA 98506

Phillip Talmadge, Esq.
18010 Southcenter Parkway
Tukwila, WA 98188

Dated: July 10, 2014, at Seattle, Washington.

Dan R. Young

Dan R. Young

OFFICE RECEPTIONIST, CLERK

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Attached is Respondent's Response to Brief of Amicus Curiae in the above matter. Please file it for me.

--Dan Y.
Law Offices of Dan R. Young
1000 Second Avenue, Suite 3200
Seattle, WA 98104
206-292-8181 (office)
206-962-0676 (cell)