NO. 43514-4-II

COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON

NORMA TISON,

Appellant,

v.

WESTERN PLAZA, LLC,

Respondent.

BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR AND ISSUES

A. Assignments of Error

1. The trial court erred in ruling that the mobile home park landlord could unilaterally alter any of the terms of Ms. Tison's written rental agreement on the annual automatic renewal of the agreement.

2. The trial court erred in denying Ms. Tison's motion for summary judgment and in granting the landlord's motion for a writ of restitution.

3. The trial court erred in granting attorney's fees in favor of the landlord.

B. Issues Pertaining to Assignments of Error

1. In the absence of any prohibition in the MHLTA, do a mobile home park landlord and tenant have the freedom to bargain for and mutually agree to an enforceable clause in a written rental agreement limiting future rent increases by the landlord upon automatic renewal of the rental agreement under RCW 59.20.090(1) and as provided in the rental agreement itself? (Assignments 1 and 2.)

2. Did the trial court misconstrue the Mobile Home Landlord-Tenant Act ("MHLTA") and the *McGahuey* decision in ruling essentially that a mobile home park landlord may unilaterally change any term in the written rental agreement upon proper notice to the tenant, even if

the change is inequitable? (Assignments 1 and 2.)

3. May a mobile home park landlord waive the authority under RCW 59.20.090(2) to increase rent upon proper notice by agreeing to a rent limitation provision in the written rental agreement between the landlord and the tenant? (Assignments 1 and 2.)

4. Did the landlord fail to act in good faith by unilaterally changing a rent limitation provision in the written rental agreement between the parties, which provision (a) was specifically bargained for, (b) protected the legitimate and reasonable expectations of the tenant and (c) denied the full benefit to the tenant of the landlord's performance of the rental agreement? (Assignments 1 and 2.)

5. Is the mobile home park landlord estopped from challenging a rent limitation provision, specifically bargained for in the written rental agreement, which provision had been followed by the parties for some eight years? (Assignment 1 and 2.)

II. STATEMENT OF THE CASE

Ms. Tison resides in space #48 of Western Plaza Mobile Home Park located in Tumwater, Washington (CP 19). Ms. Tison purchased the mobile home in which lives, and rents lot space from the owner of the park on which her mobile home rests (CP 19).

When Ms. Tison purchased the mobile home in 2001, Ms. Tison entered into a Manufactured Home Lot One-Year Rental Agreement with the owner of the park at that time (CP 19; App. C). Ms. Tison was concerned about the rent being increased following her imminent retirement to a level that she could not afford to pay, since she was going to be living on a "very fixed" income (CP 19). Joel Erlitz, one of the owners of the park at that time, assured Ms. Tison through the park manager that there would not be large rent increases, and that he would not increase the rent more than $10 per month every other year (CP 19-20). Ms. Tison asked that such a provision be written down in the rental agreement (CP 19).

The park manager telephoned the park owner in Ms. Tison's presence (CP 19) and asked him if it was permissible to add such a limitation in the rental agreement (CP 19-20). Mr. Erlitz agreed to do so (CP 20). The park manager then wrote in her own handwriting two footnotes which were added to the rental agreement (CP 20).

The initial rent was set forth in the rental agreement as $345 per month, and the first footnote stated that "Landlord, Erlitz, agrees to have land rent remain at $345.00 for two years" (CP 20, 23). The second footnote indicated that "every other year, rent will be raised no more than $10.00 for remaining tenancy" (CP 20, 23). These footnotes reflected the conversations Ms. Tison had with the park manager, who spoke with Joel Erlitz (CP 19-20). Ms. Tison signed the agreement as modified (CP 20).

Ms. Tison understood these provisions to mean that her rent would remain at $345.00 for two years, i.e., until October, 2003 (CP 20). Then her rent could be increased no more than $10.00 per month every other year (CP 20). So the rent could be increased to $355.00 in October, 2003; to $365.00 in October, 2005; to $375.00 in October, 2007; to $385.00 in October 2009; and to $395.00 in October, 2011 (CP 20).

Western Plaza, LLC purchased the park in February, 2008 (CP 25). The park tried to increase Ms. Tison's rent to $405.00 in 2008 (CP 20). Ms. Tison called the new owner and explained her situation, and the new owner agreed to honor the rental agreement with the previous owner (CP 20).

Ms. Tison received a notice of rent increase effective October 1,

2011, to pay $495.00 per month (CP 20, 26). Ms. Tison continued to tender the proper amount of rent as specified in her rental agreement–the $395.00 per month–but the new owner refused to accept the rent and sent it back to Ms. Tison (CP 20). The new owner then filed an unlawful detainer action against Ms. Tison, claiming that Ms. Tison should be paying $495.00 per month instead of the $395.00 specified in Ms. Tison's written rental agreement (CP 20-21). The new owner has never given Ms. Tison a reason why her 2001 rental agreement is invalid, or why it can ignore the limitations on increases specified in the rental agreement (CP 20).

The landlord's unlawful detainer action was filed on December 2, 2011 (CP 7). The complaint alleged that the rent was $495.00 per month (CP 7), that Ms. Tison failed to pay the rent within five days of service of a five-day notice to pay or vacate, and that therefore Ms. Tison was unlawfully detaining the premises pursuant to RCW 59.20.080(1)(b) (CP 8). Ms. Tison believed her rent to be $395.00 per month under the terms of her rental agreement, and therefore had paid the park $395.00 per month instead of $495.00 (CP 20). The park owner had refused the payments and returned them to Ms. Tison (CP 20-21).

The park owner took no action on the unlawful detainer lawsuit

for the next three months, filing instead a small claims court action in March, 2012, against Ms. Tison for the $100 per month additional rent the park owner claimed was due, and set the hearing for May 4, 2012 (CP 26).

Ms. Tison filed a motion for summary judgment in the superior court unlawful detainer action and set the hearing for the morning of the same day (CP 16, CP 11). She asked the court to rule that her rental agreement was valid and that she was paying the correct amount of rent, and that the court should dismiss the park's unlawful detainer action against her (CP 21). The park then obtained an order to show cause (CP 60-61) and filed a civil notice of issue noting a show cause hearing for the morning of May 4, 2012 in the superior court unlawful detainer action (CP 47).

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).[1]

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[1]The case referred to is *McGahuey v. Hwang*, 104 Wn. App. 176, 15 P.3d 672, *review denied*, 144 Wn.2d 1004 (2001).

The trial court ruled in favor of the park owner (CP 94), apparently agreeing with the park's position, the court stating as follows:

> . . . [A]ll I believe that I need to consider is the fact that this was a one-year lease. It was not a longer lease period than that. * * *
>
> My understanding of the law is that at the end of one year, the lease would be renewed under the same terms unless there was a proper and timely objection to the renewing of the lease. That did not occur for a number of years. However, the plaintiff has moved to amend the terms of the lease as it's renewed. That['s] why we're here today.
>
> I am going to rule in favor of the plaintiff. I do not believe that Ms. Tison has the right to require that the terms of that one-year lease continue once there has been an objection to those terms.

VRP 5/4/12 at 15.[2]

The court entered findings of fact/conclusions of law and an order for unlawful detainer on May 4, 2012 (CP 92-95). The trial court determined as a conclusion of law that the "landlord may amend the lease upon proper notice when the lease automatically renews" (CP 94).

On May 18, 2012, the trial court entered a judgment in the amount of $11,777 against Ms. Tison, which included $4,200 in rent Ms. Tison had tendered, but the park had refused, $577 in costs, and

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[2]"VRP" refers to the verbatim report of proceedings, with the date of the hearing following.

$7,000 in attorney's fees (CP 164). The judgment also provided that if Ms. Tison paid $11,777 into the court registry on or before May 23, 2012, her "tenancy shall be reinstated." (CP 166).[3]

Ms. Tison timely deposited $11,777 into the court registry (CP 172). She also timely filed a motion for reconsideration (CP 120-125). The trial court denied the motion (CP 171). She then timely filed a notice of appeal to this Court (CP 174-182), which was duly served upon respondent (CP 183).

Several months later, the park owner filed a motion to reissue the writ of restitution on the grounds that Ms. Tison's tenancy was only reinstated until the anniversary date (October 12th), and the park owner could "fail to renew" her tenancy under RCW 59.20.080(1)(b) for her previous failure to pay rent within five days of a notice to pay or vacate (CP ____). Ms. Tison opposed the motion on the grounds that once Ms. Tison's tenancy was reinstated, it was reinstated for all purposes, including the right to have automatic renewals under RCW

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[3]RCW 59.18.380 provides in relevant part that when an unlawful detainer proceeding arises from a default in payment of rent, and the lease has not expired, "execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant . . . may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant restored to his or her tenancy . . ." RCW 59.18.380 is made applicable to proceedings under the MHLTA by the terms of RCW 59.20.040.

59.20.090(1) (CP ____). The trial court denied the motion, stating that it was unwilling to make a ruling before this Court decided the instant appeal (CP ____).

III. SUMMARY OF ARGUMENT

Mobile home park owners and tenants are generally free to bargain for any provision in the rental agreement that does not violate a statute or public policy. *Little Mountain Estates Tenants Association v. Little Mountain Estates MHC LLC*, 169 Wn.2d 265, 273 fn 3, 236 P.3d 193 (2010). Ms. Tison was concerned about the decline in her future income following her upcoming retirement, so prudently negotiated a provision in her rental agreement limiting future rent increases to $10 per month every two years. There is no rent control limiting mobile home park space rents in the State of Washington, and RCW 59.20.090(2) permits the park owner to raise rent (without any limitation) upon three months' prior notice, so the limitation in the rental agreement was the only protection Ms. Tison had against being priced out of her home.

The park owner's remarkable claim that it can change any term in the rental agreement upon three months' notice is an unwarranted extrapolation from RCW 59.20.090(2). Its argument that it can ignore the express written rent limitation in the signed rental

agreement is without foundation in either the MHLTA, the case law construing it or equitable principles.

Analysis of the MHLTA yields no support for the park owner's position.

First, RCW 59.20.090(1) provides that unless otherwise agreed, "rental agreements shall be for a term of one year. Any rental agreement of whatever duration shall be automatically renewed for the term of the original rental agreement, unless a different specified term is agreed to." RCW 59.20.090(1). Automatic renewal suggests renewal without manual intervention, without anyone's taking any action. A renewal which occurs "automatically" does not give the park owner an opportunity to change the terms of the rental agreement.

Second, the purpose of this statute is to "promote long term and stable mobile home lot tenancies." *Holiday Resort Community Association v. Echo Lake Associates, LLC*, 134 Wn. App. 210, 224, 135 P.3d 499 (2006), *review denied*, 160 Wn.2d 1019 (2007). The park owner's interpretation of this provision, which does not expressly authorize the park owner to change any term in the rental agreement upon automatic renewal, does not promote long term and stable mobile home tenancies. The park owner's interpretation would abrogate an elderly tenant's ability, through mutual express

agreement, to protect herself from unaffordable rent increases. The Legislature has determined that "mobile home parks provide a source of low-cost housing to the low income, elderly, poor and infirmed [sic], without which they could not afford private housing . . ." RCW 59.22.010. The park owner's interpretation is inconsistent with the purposes and objectives of the MHLTA.

Third, the MHLTA contains a number of provisions illustrating the importance of a written rental agreement in the mobile home context. For example, all mobile home tenancies must be based on a signed written rental agreement. RCW 59.20.060(1). No landlord shall allow a mobile home to be moved into a mobile home park until a written rental agreement has been signed by the parties. RCW 59.20.050(1). A landlord must offer at the minimum a written one-year rental agreement. *Id.*

Numerous provisions govern the required contents of the written rental agreement, including the park rules and regulations. RCW 59.20.060(1)(a) through (l). The MHLTA also prohibits the rental agreement from containing various clauses. RCW 59.20.060(2)(a) through (h). If the park owner could change any term in the rental agreement upon three months' notice, the above detailed provisions requiring a rental agreement, requiring certain

matters to be contained in the rental agreement, and prohibiting certain clauses, would be rendered meaningless upon the first renewal of the rental agreement. The park owner could simply change any provision it did not like, including terms favorable to the tenant which may well have induced a tenant relying on the rental agreement to move into the park, as in the case at bar.

Fourth, the park owner's interpretation of the MHLTA ignores key amendments to RCW 59.20.090 since the inception of the Act. The original version of the statute contained an express provision whereby the park owner could change any term in the rental agreement upon renewal. That version was amended, deleting such power in the park owner, and the current version gives the park owner no such express power. The park owner's interpretation would ignore these later legislative amendments and would construe the statute as though it had never been amended.

The park owner argues that the case of *McGahuey v. Hwang. supra*, 104 Wn. App. 176, allows the park owner to change <u>any</u> term of the rental agreement upon three months' notice. While that case did allow a change in the rental agreement to allow charges for utilities, *McGahuey* also stated that the tenant had to be protected by any change, and "whatever alterations [to the lease] the landlord seeks

must be equitable." 104 Wn App. at 182. The park owner failed to address in the trial court the equitableness of the change it sought in Ms. Tison's rental agreement.

The equities favor Ms. Tison. She specifically negotiated the provision in question, and the park owner at the time agreed to it. She wanted to protect herself from buying a home which she later could not afford due to her impending retirement and living on a limited income.

The new park owner, on the other hand, bought the park subject to the existing tenant leases. It therefore could have or should have negotiated a lower purchase price for the park, if it thought that Ms. Tison's rental agreement had a negative impact on the value of the park. To the extent that the current park owner did so, allowing the park owner to essentially abrogate the rent limitation clause Ms. Tison specifically negotiated would give an undeserved windfall to the park owner. The balance of the equities therefore favors Ms. Tison.

Even if RCW 59.20.090(2) can be construed in the abstract to permit the park owner to amend any term in the rental agreement upon annual renewal, the park owner here waived any such right by voluntarily signing a rental agreement containing a clause whose effect was to limit the application of RCW 59.20.090(2) (the park owner's

ability to raise rent by sending a three-months' notice) and which the park owner had abided by for many years. *Lande v. South Kitsap School District,* 2 Wn. App. 468, 473-4, 469 P.2d 982 (1970).

By attempting to abrogate a specifically negotiated clause in the rental agreement, the park owner is also attempting to avoid the implied duty of good faith, which requires the parties to "perform in good faith the obligations imposed by their agreement." *Badgett v. Security State Bank,* 116 Wn.2d 563, 569, 807 P.2d 356 (1991). The park owner is precluded from avoiding his implied obligation of good faith to see that Ms. Tison got the benefit of rental increases limited to $10 per month every two years.

Moreover, the MHLTA imposes an obligation of good faith in the performance or enforcement of any right or remedy under the MHLTA. RCW 59.20.020. Under the test specified in the *Restatement,* intentionally charging a higher rent than specified in the contract constitutes evasion of the spirit of the bargain, willful rendering of imperfect performance or abuse of power to specify terms so as to constitute bad faith. *Restatement (Second) of Contracts,* § 205 cmt. d. The park owner is therefore precluded by RCW 59.20.020 from exercising the remedy of unlawful detainer.

Because there is no disputed issue of material fact regarding

Ms. Tison's right to have enforced the specifically-negotiated rent limitation clause in her rental agreement, the trial court should have granted summary judgment in her favor and awarded her costs and attorney's fees.

IV. LEGAL ARGUMENT

A. This Court Reviews the Trial Court's Judgment and Conclusions of Law De Novo.

Issues of law are reviewed on appeal de novo. *Wingert v. Yellow Freight Systems, Inc*, 146 Wn.2d 841, 847, 50 P.3d 256 (2002). Issues of statutory interpretation are also reviewed de novo. *Hartson Partnership v. Goodwin*, 99 Wn. App. 227, 231, 991 P.2d 1211 (2000).

B. The Trial Court Erred in Granting Judgment in Favor of the Landlord and Should Have Granted Summary Judgment in Favor of Ms. Tison.

1. Summary Judgment Is Proper If There Is No Dispute as to Any Material Fact.

The standard of review on summary judgment is well settled. Review is de novo; the appellate court engages in the same inquiry as the trial court. *Benjamin v. Washington State Bar Association*, 138 Wn.2d 506, 515, 980 P.2d 742 (1999); *Trimble v. Washington State University*, 140 Wn.2d 88, 92, 993 P.2d 259 (2000). Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law

Clements v. Travelers Indemnity Co., 121 Wn.2d 243, 249, 850 P.2d 1298 (1993); CR 56(c). All facts submitted and all reasonable inferences from them are to be considered in the light most favorable to the nonmoving party. *Clements*, 121 Wn.2d at 249. "The motion should be granted only if, from all the evidence, reasonable persons could reach but one conclusion." *Clements*, 121 Wn.2d at 249 (citing *Wilson v. Steinbach*, 98 Wn.2d 434, 656 P.2d 1030 (1982). Ms. Tison has met that standard here.

2. There Is No Dispute about Any Material Fact.

The lot rental agreement that Ms. Tison signed provides that the initial rent was $345 per month, with a footnote that "Landlord, Erlitz, agrees to have land rent remain at $345.00 for two years" (CP 23). Another footnote indicated that "every other year, rent will be raised no more than $10.00 for remaining tenancy" (CP 23). *Id.* These footnotes reflected the conversations Ms. Tison had with Joel Erlitz through the park manager (CP 20).

Ms. Tison understood these provisions to mean that her rent would remain at $345.00 for two years, i.e., until October, 2003 (CP 20). Then her rent could be increased no more than $10.00 per month every other year. *Id.* So the rent could be increased to $355.00 in October, 2003; to $365.00 in October, 2005; to $375.00 in

October, 2007; to $385.00 in October 2009; and to $395.00 in October, 2011 (CP 20).

It follows from these calculations that Ms. Tison was required to pay no more than the $395.00 she tendered to the park owner in October, 2011. The park owner's claim that somehow $495.00 per month is owed, is incorrect. The park owner's unlawful detainer action, based on the faulty premise that the rent is $495.00 per month as of October, 2011, should have been dismissed by the trial court.

3. A Mobile Home Park Landlord and Tenant Have the Freedom to Bargain for and Mutually Agree to an Enforceable Clause in a Written Rental Agreement Limiting Future Rent Increases.

The Washington Supreme Court has noted that "the common law preserves citizens' freedom to contract." *Little Mountain Estates Tenants Association v. Little Mountain Estates MHC LLC*, 169 Wn.2d 265, 273 fn 3, 236 P.3d 193 (2010) (citing *Clements v. Olsen*, 46 Wn.2d 445, 448, 282 P.2d 266 (1955) ("Courts do not have the power, under the guise of interpretation, to rewrite contracts which the parties have deliberately made for themselves.") and *Torgerson v. One Lincoln Tower, LLC*, 166 Wn.2d 510, 517, 210 P.3d 318 (2009) ("It is black letter law of contracts that the parties to a contract shall be bound by its terms" (quoting *Adler v. Fred Lind Manor*, 153 Wn.2d 331, 344, 103 P.3d 773 (2004))). Thus, absent some specific statutory

prohibition, a mobile home park landlord and Ms. Tison as a prospective tenant are able to negotiate and reach a mutual agreement about the amount of her initial rent and the amount of any future rent increases.

The supreme court in *Little Mountain Estates* held that the MHLTA expressly permits a landlord and tenant to negotiate the term of their rental agreement, citing RCW 59.20.090(1). 169 Wn.2d at 268. The supreme court further held that nothing in the MHLTA precluded the term of the rental agreement from being determined by a formula. 169 Wn.2d at 268. The court cited *Vance v. Villa Park Mobilehome Estates*, 36 Cal. App. 4th 698, 708, 42 Cal. Rptr. 2d 723 (1995) and characterized the holding in the California case as follows: "The California Court of Appeals held, because the Mobilehome Residency Law allowed the landlord and tenant to determine the rental rate, *the parties were permitted to determine the rent by any formula to which they agreed*, ... [italics added]." 169 Wn.2d at 269.

Elsewhere in its opinion the court in *Vance* stated that "[n]o provision of the [California] Mobilehome Residency Law precludes a homeowner and a park operator from agreeing to a rental rate that escalates incrementally over the term of the lease." 36 Cal. App.4th at

708. The court further stated that "[the mobile home park residents] were free to negotiate the rental rate for the term of the lease according to any formula acceptable to them and the [park owner]." 36 Cal. App.4th at 708. This may be contrasted with a specific statutory provision which precludes the parties' making such an agreement, e.g., RCW 62A.4A-202 (6) (the "... rights and obligations arising under this section . . . *may not be varied by agreement*") [italics added].

Accordingly, the park owner and Ms. Tison here agreed to a rent formula: the rental rate would not exceed an increase of $10 per month every two years. Under the common law and the reasoning in *Little Mountain Estates* and *Vance, supra*, the park owner and Ms. Tison had the freedom "to determine the rent by any formula to which they agreed." 169 Wn.2d at 269

A landlord's ability to set forth increases in rent in the rental agreement is equivalent to setting forth limitations in rent increases. The limitations are the amount of the rent increases. It would be anomalous–and quite unfair–for the landlord to be able to specify rent increases, but the tenant is somehow barred from specifying lower (limitations on) rent increases. Under the landlord's reasoning in this case, if the rental agreement provided for annual rent increases based

on a formula tied to the Consumer Price Index, for example, or a percentage increase, the landlord would be free to abrogate the agreement at any time, by giving three months' notice before the tenant's anniversary date. The parties freedom to contract should not be constrained in such an arbitrary and one-sided fashion.

The park owner's argument also makes no sense, as it would effectively allow the park owner unfettered freedom to always alter the written rental agreement to its own benefit, and the tenant could never protect herself, as the park owner could always later unilaterally amend any protection the tenant managed to negotiate into the original rental agreement to a term more favorable to the park owner. The written rental agreement would become a "heads I win, tails you lose" proposition for the landlord.

Accordingly, given the parties' common-law freedom to negotiate initial rental terms upon which they reach agreement, this Court should enforce the parties' agreement as written. Leases are contracts as well as conveyances, and the rules of construction which apply to contracts also apply to leases. *Seattle-First National Bank v. Westlake Park Associates*, 42 Wn. App. 269, 272, 711 P.2d 361 (1985), *review denied,* 105 Wash.2d 1015 (1986). In construing a contract, "[i]t is the duty of the court to declare the meaning of what is written,

and not what was intended to be written." *Berg v. Hudesman,* 115 Wash.2d 657, 669, 801 P.2d 222 (1990) (quoting *J.W. Seavey Hop Corp. v. Pollock,* 20 Wash.2d 337, 348-49, 147 P.2d 310 (1944)). Where the terms of a contract are clear and unambiguous, the terms of the contract must be enforced by courts, even if the result is harsh. See *Republic National Life Insurance Co. v. Lorraine Realty Corp.*, 279 N.W.2d 349, 353, 357 (Minn. 1979).

4. The MHLTA Contains No Language Permitting a Park Owner to Modify Any Term in the Rental Agreement Upon Three Months' Notice.

The landlord makes the bold claim that the landlord of any mobile home tenancy "may change any term of any lease . . . upon expiration of any term, after three months' written notice prior to the effective date of the increase" (CP 55). The statute and case law cited do not support that sweeping assertion.

First, the statute cited, RCW 59.20.090(2), provides merely that the landlord may increase rent upon three months' notice.[4] Absent a limitation in the rental agreement, the landlord can raise rent to any level it wants. That is undisputed. But it does not follow that the landlord may, upon three months' notice, change every other term of the written rental agreement, including a specifically bargained for

[4]Of course, the rental agreement itself may modify or limit the timing or amount of rent increases. The MHLTA does not prohibit such provisions.

provision relied upon by the tenant before she purchased the home, which provision provided her protection from unaffordable rent increases in her retirement. After all, increasing rent is not equivalent to the elimination of parking or reducing a tenant's lot size, both of which subjects may be contained in the rental agreement.

The landlord also overlooks the detailed and specific requirements and importance attached to a signed rental agreement and the contents of a rental agreement in the MHLTA. For example, "[n]o landlord may offer a mobile home lot for rent to anyone without offering a written rental agreement for a term of one year or more." RCW 59.20.050(1). "No landlord shall allow a mobile home . . . to be moved into a mobile home park in this state until a written rental agreement has been signed by and is in the possession of the parties." *Id.* "Any mobile home space tenancy regardless of the term shall be based upon a written rental agreement, signed by the parties . . . " RCW 59.20.060(1).

In addition, among the many terms of the rental agreement the park owner claims it can change are the following terms specifically required by the MHLTA to be contained in the rental agreement: "the terms for the payment of rent, including time and place, and any additional charges to be paid by the tenant . . ."; "[r]easonable rules for

guest parking which shall be clearly stated"; "[t]he rules and regulations of the park"; "[t]he name and address of the person who is the landlord . . ."; the name and address of any party who has a security interest in the mobile home; a forwarding address for the tenant; a covenant by the landlord that except for acts or events beyond the control of the landlord, the park will not be converted to a land use that will prevent the tenant's space from being used for mobile home tenancy for a period of three years after the beginning of the term of the rental agreement; the terms and conditions under which any deposit may be withheld by the landlord upon the termination of the rental agreement; a listing of the utilities, services and facilities which will be available to the tenant during the tenancy and the nature of the fees, if any, to be charged; a description of the boundaries of the mobile home lot; a statement of the current zoning of the land on which the park is located; and a statement of the expiration date of any conditional or temporary use that is necessary for the continued use of the land as a mobile home park. RCW 59.20.060(1)(a) through (l).[5] The park owner does not explain why the Legislature would require the above detailed provisions in the rental agreement if the park owner could change any of them on three

[5]The MHLTA also sets forth eight provisions which the rental agreement may not contain. RCW 59.20.060(2)(a) through (h).

months' notice.

Moreover, the landlord cannot even change park rules to anything it wants. Park rules must be reasonably related to the purpose for which they were adopted. RCW 59.20.045(2). Their purpose must also be to "promote the convenience, health, safety, or welfare of the residents, protect and preserve the premises from abusive use, or make a fair distribution of services and facilities made available for the tenants generally[.]" RCW 59.20.045(1). The rules must also "apply to all tenants in a fair manner[.]" RCW 59.20.045(3). Thus there are significant limitations on the enforceability of rules which a mobile home park landlord may adopt. Yet under the landlord's theory, the landlord may adopt any new rental agreement provision, merely upon three months' notice. The new rental agreement provision does not have to be reasonable, fair, agreed to by the tenant or even consistent with the purposes of the MHLTA. Under the landlord's interpretation of the MHLTA, the MHLTA allows the landlord the unfettered right to adopt any rental agreement change simply upon three months' notice. Based on the absence of any such authorizing language in the MHLTA, it is inconceivable that the Legislature intended to restrict the enforceability of park rules, but intended to permit the park owner to unilaterally amend any provision

in the rental agreement.

As additional protection for the park tenants, a landlord may terminate or fail to renew a tenant's tenancy only for cause, of which thirteen are specified in the statute. RCW 59.20.080(1)(a) through (m).

Given the tenant protections in the MHLTA regarding having a signed rental agreement, requiring the rental agreement to contain certain terms and not others, limiting the enforceability of park rules and restricting the landlord's right to terminate a tenant's tenancy, all as described above, it cannot be inferred that the landlord may unilaterally change any rental agreement term, particularly where the MHLTA does not specifically or by implication give the landlord that right, as many rental agreement changes would clearly undermine the tenant protections the drafters of the MHLTA carefully included in the text of the statute.

Accordingly, the park owner makes no showing that it would be "equitable" for the landlord to change any and all of these provisions a rental agreement is required to contain, unilaterally upon three months' notice.[6] The landlord therefore cannot use that alleged

[6]Nowhere does the MHLTA provide that all or any rental agreement term may be changed on *three months' notice*. The only place where three months' notice is mentioned is in RCW 59.20.090(2) regarding a change in rental. It cannot be assumed that the park owner may change everything else

unfettered right as a basis to change the effect of footnotes one and two in Ms. Tison's rental agreement. The provisions of those two footnotes were specifically negotiated and agreed to, and are not prohibited by the MHLTA. Accordingly, the provisions of those two footnotes are valid and enforceable.

This is in accord with the purpose of the MHLTA. RCW 59.20.090(1) provides that unless otherwise agreed, "rental agreements shall be for a term of one year. Any rental agreement of whatever duration shall be automatically renewed for the term of the original rental agreement, unless a different specified term is agreed to." RCW 59.20.090(1). The purpose of this statute is to "promote long term and stable mobile home lot tenancies." *Holiday Resort Community Association v. Echo Lake Associates, LLC, supra*, 134 Wn. App. 210, 224.

In addition, mobile home tenancies are typically long term in nature, because mobile homes are not readily movable. As noted in *Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347, 392-93, 13 P.3d 183 (2000) (Talmadge, J, dissenting):

> Mobile homes are not mobile. The term is a vestige of earlier times when mobile homes were more like today's recreational vehicles. Today mobile homes are 'designed to be placed permanently on a pad and maintained there for

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in the rental agreement upon the same amount of notice.

> life.' Once 'planted' and 'plugged in,' they are not easily relocated. Moreover,
>
> > In most instances a mobile home owner in a park is required to remove the wheels and anchor the home to the ground in order to facilitate connections with electricity, water and sewerage. Thus it is only at substantial expense that a mobile home can be removed from a park with no ready place to go.
>
> *Malvern Courts, Inc. v. Stephens,* 275 Pa.Super. 518, 419 A.2d 21, 23 (1980). Physically moving a double- or triple-wide mobile home involves 'unsealing; unroofing the roofed-over seams; mechanically separating the sections; disconnecting plumbing and other utilities; removing carports, porches, and similar fixtures; and lifting the home off its foundation or supports.' Costs of relocation, assuming relocation is even possible for older units, can range as high as $10,000. It is the immobility of mobile homes that 'accounts for most of the problems and abuses endured by mobile home tenants'" [most citations omitted].

Manufactured Housing Communities of Washington v. State, 142 Wn.2d at 392-93. See also, *Holiday Resort Community Ass'n v. Echo Lake Associates, LLC*, 134 Wn. App. 210, 224 ("To promote long term and stable mobile home lot tenancies, the Legislature established an unqualified right at the beginning of the tenancy to a one-year term, automatic renewal at the end of the one-year rental term, and the right to a one-year term at any anniversary date of the tenancy").

In addition, as noted by the court in *Little Mountain Estates, supra,* the "MHLTA does not prevent landlords from offering special terms to tenants who first move into a new mobile home or

manufactured home park (footnote omitted)." 169 Wn.2d at 271. Here, Ms. Tison was offered special terms–a rent limitation clause–to induce her to move into the park. It is not plausible that a park owner could thereafter unilaterally nullify the special terms once the tenant moved into the park.

Also, as noted by the supreme court, one of the purposes of the MHLTA is to maintain low-cost housing to benefit the elderly. RCW 59.22.010(2). *Little Mountain Estates, supra*, 169 Wn.2d at 270. Here, the landlord's agreement to limit future rent increases to an amount that was acceptable to the landlord, but yet protected a tenant on a fixed income from being priced out of her home, obviously provides low-cost housing and financial stability to elderly retirees–like Ms. Tison-- living in the park.

Other purposes of the MHLTA are "to obtain a high level of private financing for mobile home park conversions" and "to help establish acceptance for resident-owned mobile home parks in the private market." *Id.* As noted by the supreme court, "[p]ermitting a park owner to offer contractual terms that provide attractive yet profitable features to prospective residents encourages additional private financing and market growth." *Little Mountain Estates, supra*, 169 Wn.2d at 270.

Additionally, the two footnotes in Ms. Tison's rental agreement reflect Ms. Tison's concern that following her impending retirement, her rent could be raised to levels she could not afford, since she was going to be living on a very fixed income (CP 19). Under the MHLTA, a landlord can raise rent at the expiration of the rental term on three month's notice to Ms. Tison. RCW 59.20.090(2). There is no statutory limit on the extent to which the landlord can raise the rent under this provision, so absent some protection in the rental agreement, a retired tenant might face annual monthly rent increases of $50, $100, $200 or even higher amounts, which Ms. Tison could not afford on her fixed income. Ms. Tison would soon be forced to either sell her home or abandon it.

The MHLTA permits an escalation clause, so that a landlord may increase rent pro rata based on an increase in real property taxes or utility assessments, provided that the rental agreement contains a corresponding pro rata reduction for any decrease in these charges. RCW 59.20.060(2)(c). This suggests that the drafters of the MHLTA were concerned about the even-handedness of escalation clauses and their counterpart, reduction and limitation clauses.

The MHLTA is not unique in providing long-term tenancies for low income residents. Leases in public housing are also "automatically

renewed" on an annual basis, except for noncompliance with certain community service requirements. 42 U.S.C. § 1437d(l)(1); *Sager v. Housing Commission of Anne Arundel County*, ____ F.Supp.2d ____, 2012 WL 1233016 (D.Md. 2012). Appellant's counsel has found no case where a public housing agency argued, or a court decided, that the housing agency could unilaterally alter or amend its leases which "automatically renewed."

Lastly, the park owner's argument ignores the history of amendments to the MHLTA. Originally the MHLTA permitted the park owner to change any term of the rental agreement upon renewal. The Legislature deleted this provision when it later provided for unlimited automatic renewal of rental agreements.

As originally enacted in 1977, the MHLTA provided only for limited renewal of the tenancy as follows:

> Unless otherwise agreed rental agreements shall be for a term of one year. Any rental agreement for a term of one year and any rental agreement renewed for a six-month term shall be automatically renewed for an additional six-month term unless:
>
> (a) Otherwise specified in the original written rental agreement; or
>
> (b) The landlord notifies the tenant in writing three months prior to the expiration of the rental agreement that it will not be renewed *or will be renewed only with the changes contained in such notice.*
>
> A tenant shall notify the landlord in writing one month prior to the expiration of a rental

agreement of an intention not to renew.

Laws 1977 1st Ex. Sess., Ch. 279, § 9 (1) [italics added]. This provision in the originally enacted form of the MHLTA is essentially what the landlord argues the statute means today. Under the original statute, a mobile home park landlord could specify certain changes to the "original written rental agreement" and specify that the rental agreement would be renewed *only with the changes contained in [the] notice. Id.* Thus, the attorney general construed the original statute to mean that "a landlord is not required to offer a one-year renewal at the end of an initial one-year rental term. Rather, the landlord has the option of terminating the rental agreement or proposing new conditions." AGLO 1979 No. 12.

The MHLTA was amended two years later deleting the language permitting the landlord to renew *only with the changes contained in [the] notice*, but permitting the renewal only for six months or one year, and adding a proviso that the landlord could provide a notice of termination without cause:

> (1) Unless otherwise agreed rental agreements shall be for a term of one year. Any rental agreement of whatever duration shall be automatically renewed for an additional six-month term or for the term of the original rental agreement, whichever is shorter unless:

> (a) A different specified term is agreed upon; or
>
> (b) the landlord serves notice of termination without cause upon the tenant prior to the expiration of the rental agreement: PROVIDED, That under such circumstances, at the expiration of the prior rental agreement the tenant shall be considered a month-to-month tenant *upon the same terms as in the prior rental agreement until the tenancy is terminated.*

Laws 1979 1st Ex. Sess. Ch. 186 § 7 (1) (italics added).[7] Thus under this amendment, the tenant could not be guaranteed of a renewal term of longer than six months, and the park owner could terminate the tenancy on twelve-months' notice without cause (if the rental agreement was for one year). *Id.*

RCW 59.20.090 took its present form with the amendment of the MHLTA in 1998 as follows:

> (1) Unless otherwise agreed rental agreements shall be for a term of one year. Any rental agreement of whatever duration shall be automatically renewed for the term of the original rental agreement, unless a different specified term is agreed upon.
>
> (2) A landlord seeking to increase the rent upon expiration of the term of a rental agreement of any duration shall notify the tenant in writing three months prior to the effective date of any increase in rent.

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[7]The legislature enacted at the same time a provision allowing a landlord to "terminate any tenancy without cause." Laws 1979 1st Ex. Sess. Ch. 279, § 6 (e) (2). This provision was deleted 14 years later. Laws 1993 Ch. 66, § 19 (2). Currently, a mobile home park landlord may terminate a tenancy only for cause, as specified in the MHLTA. RCW 59.20.080.

Laws 1998 Ch. 118, § 3.

One sees in these progressive MHLTA amendments relating to renewal of rental agreements a deliberate effort to permit mobile home park tenants a long-term tenancy and eliminate ways the landlord could arbitrarily shorten the tenancy. The MHLTA has been so construed. *Holiday Resort Community Ass'n v. Echo Lake Associates, LLC, supra*, 134 Wn. App. 210, 224 ("To promote long term and stable mobile home lot tenancies, the Legislature established an unqualified right at the beginning of the tenancy to a one-year term, automatic renewal at the end of the one-year rental term, and the right to a one-year term at any anniversary date of the tenancy").

The mobile home park owner here would ignore the repeal of the original enactment regarding the landlord's ability to impose conditions on the renewal of rental agreements, would ignore the statutory amendments regarding such renewals, would ignore the policies underlying the enactment of the MHLTA, would ignore the current statutory language, and would argue, in essence, that the current statute should be construed as the MHLTA was when it was first enacted in 1977. This argument is not persuasive. There is no language in the MHLTA which remotely comes close to allowing the landlord to unilaterally alter any term of a written rental agreement

whenever it chooses to do so.

Accordingly, the rental agreement should be interpreted as written and the limitation of rent increases to $10 every two years should be enforced as written.

5. *McGahuey* Limits Changes in Rental Agreement Terms to Those Which Protect the Tenant and Which Are Equitable.

The park owner cites *McGahuey v. Hwang, supra*, 104 Wn. App. 176, for the startling proposition that it can change any rental agreement term upon three months' notice prior to the end of the term, before the automatic renewal of the rental agreement (CP 55). *McGahuey* actually stands for a much more limited principle. In that case the court of appeals permitted a change in rental agreement terms under very narrow circumstances: where the change involved a monetary amount (a charge for utilities) that could have been accomplished through a rent increase, and where the tenant was protected, i.e., the charge to the tenant for utilities could not exceed the actual cost. 104 Wn. App. at 182-82, citing RCW 59.20.070(6). The court stated that the MHLTA "did not require that all original lease terms remain in force through every automatic renewal because renewals could extend for countless years." 104 Wn. App. at 183.

The court of appeals in *McGahuey* also specifically stated that

"portions of the statute ensure that whatever alterations [to the lease] the landlord seeks must be equitable." 104 Wn. App. at 182. Thus *McGahuey* limited changes to the lease to matters where the tenant was protected and where the changes were "equitable."

The park owner ignores these important limitations in the *McGahuey* opinion and argues that the landlord may unilaterally change any lease term. This argument is flawed.

The underlying illogic in the park owner's argument stems from the fact that just because not all lease terms remain in force through every automatic renewal, it does not mean that any lease term can be changed. *McGahuey* supplied some standards for deciding what terms could be changed: the changes had to have protections for the tenants, and they had to be "equitable." The park owner here does not even remotely address how deleting a specifically negotiated provision in a lease to limit rent increases to an affordable level for a retiree on a fixed income is "equitable" or protects Ms. Tison. Ms. Tison's rent was raised $100 per month more than it should have been under the limitation she negotiated with the park owner, and to which the park owner agreed. Equity does not favor putting retirees on limited incomes out on the street, so mobile home park owners can increase their bottom line in derogation of written provisions in a rental

agreement that to any reasonable person would appear enforceable on their face.

Of course, if the park owner could change any lease term upon automatic renewal, the park could significantly alter the nature of the tenancy. The park owner could, for example, reduce the size of the tenant's lot; require the tenant to move from one lot to another; eliminate automobile parking from the tenant's lot or from the park; require tenants with no carport to construct a carport within thirty days of "automatic renewal" of the rental agreement; double or triple the security deposit required of each present tenant; require removal of sheds, decks, porches and other auxiliary structures, etc. The park owner could change fundamental terms of the tenancy without any recourse by the tenant. As shown in Section B 4 of this brief, the Mobile Home Landlord-Tenant Act does not contemplate such changes.

Moreover, in considering whether changing the limitation on rent increases is equitable from the park owner's perspective, one should conclude that, from an equitable perspective, the current landlord here has not been disadvantaged by the limitation. The current landlord, as grantee in 2008 of the seller of the park, took title subject to the tenants' possessory rights as contained in their rental

agreements. See *Superior Portland Cement, Inc. v. Pacific Coast Cement Co.*, 33 Wn.2d 169, 201, 205 P.2d 597 (1949) ("generally speaking, a conveyance of property, which the grantor has leased, is subject to the rights of the lessee under a lease in good standing"); *Roderick v. Swanson*, 6 Wash. 222, 225, 33 Pac. 349 (1893); *Muscatel v. Story*, 56 Wn.2d 635, 639, 354 P.2d 931 (1960). Any buyer looking at the mobile home park would see that there are tenants occupying the houses. The law requires that a written rental agreement be signed before a home is moved into the park. RCW 59.20.050. If no rental agreement is signed, the tenant is deemed to have a one-year tenancy. *Id.* "[I]t is presumed that people know the law." *Nguyen v. Glendale Construction Co.*, 56 Wn. App. 196, 203, 782 P.2d 1110 (1989), *review denied*, 114 Wn.2d 1021 (1990); *Davidson v. State,* 116 Wn.2d 13, 26, 802 P.2d 1374 (1991) (quoting *Martin v. City of Seattle*, 111 Wn.2d 727, 735, 765 P.2d 257 (1988)).

So the defendant park owner, when it purchased the park in 2008, either knew or was deemed to have known that the tenants had written rental agreements which might affect the park owner's income stream. Examination of Ms. Tison's rental agreement clearly shows the limitation on rental increases of $10 per month every two years (CP 23). Any buyer of the park could calculate the economic effect of

such a limitation. That limitation clearly reduced the income stream from the operation of the park relative to an absence of such limitation, and any prospective buyer of the park should have and would have factored any lower income stream into the purchase price of the park, i.e., the buyer would have negotiated a lower purchase price.[8] If that had been done here, the current landlord would have already been compensated by a lower purchase price for any perceived detriment caused by the rent limitations in Ms. Tison's rental agreement. The ability to disregard the rent limitation, and increase the monthly rent by $100 or more, would thus amount to a pure windfall to the current park owner.

On the other hand, if the current landlord did not make such an adjustment in the purchase price of the park, then it was either satisfied with Ms. Tison's rental agreement at the time of purchase, or it can only blame itself for its own failure to conduct due diligence. As noted by a recent California decision, "Of course, parties are free to

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[8]Commercial properties are frequently evaluated or appraised on the basis of capitalizing the net income stream. See, Reynolds, *The Appraisal of Real Estate* (8th ed. 1983) 333 ("An investor who purchases income-producing real estate is essentially trading a sum of present dollars for the right to receive future dollars. The income capitalization approach to value consists of methods, techniques and mathematical procedures that an appraiser uses when analyzing a property's capacity to generate monetary benefits and when converting the benefits into an indication of present value.")

make bargains that are ill-advised and they will be bound by the contracts they negotiate and enter." *Ginsberg v. Gamson*, 205 Cal. App.4th 873, 891, 141 Cal. Rptr.3d 62 (2012).

Accordingly, from an equitable standpoint, the owner of the park when Ms. Tison bought her home in the park, did not have to agree to a rent limitation. The current park owner could well have made an allowance in the purchase price for such a limitation, if the limitation were deemed to reduce the rental income from the park. Ms. Tison had no other way to protect herself from rent increases she could not afford, except to purchase a home somewhere else. So the equities definitely favor Ms. Tison and not the park owner. Thus the rationale of *McGahuey* does not support the park owner under the facts of this case.

In *Seashore Villa Association v. Hagglund*, 163 Wn. App. 531, 260 P.3d 906 (2011), the mobile home park landlord made a similar argument. It claimed that it could validly send a letter to the tenants purporting to amend the terms of the tenants' rental agreements so as to shift the responsibility to the tenants for the maintenance of their carports and sheds, in spite of the fact that RCW 59.20.135 prohibits the transfer to the tenants of the maintenance responsibility of carports and sheds. The landlord cited and principally relied upon

McGahuey, supra, in support of that argument.

This Court rejected the park owner's argument, holding that *McGahuey* was factually distinguishable, because unlike in *McGahuey,* the MHLTA contained language prohibiting the landlord from transferring the duty to care for the permanent structures, such as carports and sheds, to the park's tenants. 163 Wn. App. at 542; RCW 59.20.135. Thus *Seashore Villa* unequivocally stands for the proposition that the landlord may not change any term it chooses in the rental agreement, that there are limitations to changes in the terms of the rental agreement.

The landlord here also cited *Little Mountain Estates Tenants Ass'n v. Little Mountain Estates MHC LLC, supra,* 169 Wn.2d 265, 269 (CP 52), but that case did not involve the landlord's unilateral change to a rental agreement. There the tenants had 25-year leases which provided that the term changed to a one-year lease if the tenant assigned the rental agreement to a buyer of the home. The issue was whether such a provision violated the assignability provisions of the MHLTA, the majority holding that it did not, that the tenants did not really have 25-year leases, but only leases that went on until the lease was assigned, when the lease converted to a one-year lease. The language and rationale of *Little Mountain Estates,* as noted earlier,

support Ms. Tison's position here, as the court there enforced the mobile home park lease as literally written on the basis that the parties were free to contract for any terms that were mutually agreeable. This Court should do the same here.

In addition, Ms. Tison's rental agreement itself precludes the landlord's argument. The rental agreement provides in paragraph 1 in bold type that "**Tenant agrees that upon expiration of the original term, the [Rental] Agreement shall automatically renew for a period of one month and shall thereafter be a tenancy from month-to-month, unless Tenant requests an additional one-year term prior to the end of the original term**" (CP 22, ¶ 1). The landlord reserved no ability in the rental agreement to alter the terms of the rental agreement upon annual renewals. Instead, under the terms of the rental agreement, it "shall automatically renew" at the end of each period, with no mechanism set forth in the rental agreement for the park owner to alter, add or change any terms of the rental agreement.[9]

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[9]For example, there is no specified notice period which the tenant should be given, no specified period of time in which Ms. Tison could accept or reject a change of terms, and no procedure whereby the park owner could avoid the "automatic" renewal of the rental agreement. The absence of these provisions suggests that the automatic renewal provision in the rental agreement was not subject to changes in the terms of the rental agreement by the park owner.

It should also be noted that the provision in a mobile home park rental agreement whereby a one-year term is automatically renewed on a month-to-month basis following the first year of the tenancy, as in Ms. Tison's rental agreement, has been held to violate the MHLTA, in that such provision is inconsistent with RCW 59.20.090(1) and RCW 59.20.050(1). *Holiday Resort Community Ass'n v. Echo Lake Associates, LLC*, 134 Wn. App. 210, 224-26. Thus the month-to-month automatic renewal as set forth in Ms. Tison's rental agreement is unenforceable, and would be construed as an annual renewal. *Id.*

For the above reasons, *McGahuey* does not support the expansive interpretation the park owner gives it, and does not support abrogating a freely-negotiated provision in a rental agreement limiting future rent increases for an incipient retiree on a fixed income to induce her to buy a home in the park.

6. The Park Owner, by Expressly Agreeing in the Rental Agreement to a Limitation in Future Rent Increases, Waived Any Right to Rely on the Unlimited Increase Provision of RCW 59.20.090(2).

"A waiver is the intentional and voluntary relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right. It may result from an express agreement or be inferred from circumstances indicating an intent to waive."

Lande v. South Kitsap School District, 2 Wn.App. 468, 473-4, 469 P.2d 982 (1970); *Bowman v. Webster*, 44 Wn.2d 667, 669, 269 P.2d 960 (1964); *Estate of Lindsay*, 91 Wn.App. 944, 950-51, 957 P.2d 818 (1998); *Frizzell v. Murray*, ____ Wn.App. ____, 2012 Wn.App Lexis 2039, #42265-4-II filed 8/28/12). "It is a voluntary act which implies a choice, by the party, to dispense with something of value or to forego some advantage." *Estate of Lindsay, supra*, quoting *Peste v. Peste*, 1 Wn.App. 19, 24, 459 P.2d 70 (1969).

Here, by voluntarily signing a rent limitation provision in the rental agreement, the park owner waived any right to alter the terms of the rental agreement to increase rent beyond the limitation expressed in the rental agreement, even assuming the park owner would otherwise have had the right to raise rent in an unlimited amount. The landlord offers no persuasive authority for its position that the landlord can change any term in the written rental agreement when the rental agreement is "automatically renewed" under RCW 59.20.090(1), or that the landlord's ability to raise rent under the provisions of RCW 59.20.090(2) overrides specifically negotiated provisions to the contrary in the written rental agreement. There is no authority to suggest that the landlord cannot waive any right in the MHLTA, if indeed the landlord had the right to change the specifically

negotiated rental provisions in the rental agreement in this case. The landlord here waived any such right as may have existed by signing the rental agreement.

7. The Park Owner's Lack of Good Faith Breached the Rental Agreement and Bars the Remedy of Unlawful Detainer.

Every contract includes an implied duty of good faith and fair dealing. *Metropolitan Park District v. Griffith*, 106 Wn.2d 425, 437, 723 P.2d 1093 (1986); *Miller v. Othello Packers, Inc.*, 67 Wn.2d 842, 844, 410 P.2d 33 (1966). The implied duty requires "that the parties perform in good faith the obligations imposed by their agreement." *Badgett v. Security State Bank*, 116 Wn.2d 563, 569, 807 P.2d 356 (1991).

In *Holman v. Coie*, 11 Wn.App. 195, 210, 522 P.2d 515, *review denied*, 84 Wn.2d 104 (1974), the court discussed the implied covenant of good faith, quoting the definition of "good faith" from *Black's Law Dictionary* as follows: "An honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with an absence of all information, notice or benefit or belief of facts which render transaction unconscientious."

Here the obligation imposed upon the park owner by the

written rental agreement was not to raise rent more than $10 per month every two years (CP 23). By sending Ms. Tison a rent increase notice increasing the rent by $100 per month, the park owner clearly breached its duty to perform, in good faith, its obligation not to increase rent by more than $10 per month every two years. The park owner's direct and callous disregard of such a fundamental and material term in the rental agreement constitutes, as a matter of law, the lack of good faith as required by its implied duty of good faith. By breaching this obligation of good faith, the park owner has breached the rental agreement. The trial court should have granted summary judgment in favor of Ms. Tison.

In addition to this implied obligation of good faith arising from the rental agreement between the landlord and tenant, the MHLTA contains a specific obligation on the parties to act in good faith:

> Every duty under this chapter [RCW ch. 59.20] and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

RCW 59.20.020. This statute goes beyond the duty of good faith implied in the rental agreement, because it includes compliance with statutory obligations and the exercise of remedies, which are not explicit provisions in the rental agreement (CP 22-23).

Good faith "excludes a variety of types of conduct characterized as involving 'bad faith' because they violate community standards of decency, fairness or reasonableness." *Restatement (Second) of Contracts*, § 205 cmt. a (1979). Bad faith includes, "evasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance." *Restatement, supra* § 205 cmt. d.

Certainly, intentionally charging a higher rent than specified in the contract constitutes "evasion of the spirit of the bargain, . . . willful rendering of imperfect performance, [and] abuse of a power to specify terms . . .." *Id.* The park owner's lack of good faith therefore under RCW 59.20.020 precludes it from exercising the remedy of unlawful detainer under the circumstances of this case.

8. The Park Owner Is Estopped from Altering the Rent Limitation Provision in the 2001 Rental Agreement.

The prerequisites for promissory estoppel are (1) A promise which (2) the promisor should reasonably expect to cause the promisee to change his position and (3) which does cause the promisee to change his position (4) justifiably relying upon the promise, in such a manner that (5) injustice can be avoided only by enforcement of the promise. *Central Heat, Inc. v. Daily Olympian*, 74

Wn.2d 126, 132, 443 P.2d 544 (1968); *State ex Rel. D.R.M. v. Wood*, 109 Wn.App. 182, 196, 34 P.3d 887 (2001).

These requirements are all satisfied here. The park owner made a promise to Ms. Tison not to increase rent more than $10 per month every two years. The park owner should reasonably expect a tenant considering the purchase of a home in the park to change her position in reliance on such promise. The tenant did change her position, i.e., purchased the mobile home. The tenant justifiably relied upon the promise. Injustice can be avoided only by enforcement of the promise. The five elements are satisfied, and this Court should enforce the landlord's promise as contained in the rental agreement.

The park owner is also equitably estopped from increasing the rent beyond the level provided for in the rental agreement. The elements of equitable estoppel are (1) an admission, statement, or act inconsistent with the claim afterwards asserted, (2) action by the other party on the faith of such admission, statement, or act, and (3) injury to such other party resulting from allowing the first party to contradict or repudiate such admission, statement, or act. *Sauders v. Lloyds of London*, 113 Wn.2d 330, 340, 779 P.2d 249 (1989); *Levy v. State*, 91 Wn.App. 934, 939, 957 P.2d 1272 (1998). The park owner cited the case of *Berschauer Phillips Constr. Co. v. Seattle School Dist. I*, 124 Wn.2d

816, 831, 881 P.2d 986 (1994) for a similar proposition in its brief to the trial court (CP 55 fn 2).

Here the park owner made a statement and committed an act through signing a rental agreement containing a provision limiting rent increases to $10 per month every two years (CP 23). Ms. Tison bought the mobile home and moved into the park relying upon such statement (CP 19-20). Ms. Tison would clearly suffer injury in the form of an extra $100 per month in rent (likely to be raised even higher in the future) plus the inability to afford making these payments. (After retirement, she was going to be on "a very fixed income" (CP 19, ¶ 3)). She may well have to move from the home and live elsewhere, if the park owner can validly increase rent beyond the limitation set forth in the rental agreement she signed.

Based on the twin doctrines of both promissory and equitable estoppel, this Court should therefore reverse the judgment entered by the trial court.

9. Ms. Tison Is Entitled to Attorney's Fees.

Paragraph 27 of the rental agreement provides that the prevailing party "[i]n any actions [sic] arising out of this Agreement, including eviction" shall be entitled to reasonable attorney's fees and costs (CP 23). Where attorney's fees are provided in a contract to be

awarded to the prevailing party, reasonable fees must be awarded. *Singleton v. Frost*, 108 Wn.2d 723, 733, 742 P.2d 1224 (1987). The prevailing party is one in whose favor the judgment is entered. *Kysar v. Lambert*, 76 Wn.App. 470, 493, 887 P.2d 431 (1995); *Silverdale Hotel v. Lomas & Nettleton*, 36 Wn.App. 762, 773, 677 P.2d 773 (1984); *Moritzky v. Heberlein*, 40 Wn.App. 181, 183, 697 P.2d 1023 (1985). Where a landlord's claims are dismissed in an unlawful detainer action, the tenant is the prevailing party. *Soper v. Clibborn*, 31 Wn.App. 767, 769-70, 644 P.2d 738 (1982).

In addition, RCW 59.20.110 provides that in any action arising out of the MHLTA, "the prevailing party shall be entitled to reasonable attorney's fees and costs." RCW 59.20.110. Under any measure, where a landlord's claims are dismissed in an unlawful detainer action on summary judgment, the tenant is the prevailing party and is entitled to attorney's fees. See, *Soper, supra.*

Where a statute authorizes fees to the prevailing party, they are available on appeal as well as in the trial court. *Eagle Point Condominium Owners Association v. Coy*, 102 Wn. App. 697, 716, 9 P.3d 898 (2000).

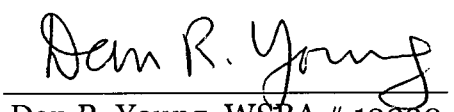
This court should therefore order that Ms. Tison is entitled to attorney's fees at the trial court level and on appeal.

V. CONCLUSION

For the reasons set forth above, this Court should reverse the trial court's judgment, dismiss the park owner's complaint in this action, order that summary judgment be granted in favor of Ms. Tison, and award attorney's fees and costs to Ms. Tison at the trial level and on appeal.

RESPECTFULLY SUBMITTED this 7th day of September, 2012.

Law Offices of Dan R. Young

By 

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☐ No hearing set
☒ Hearing is set

Date: 5.4.2012
Time: 10:00 AM
Judge/Calendar:
Unlawful Detainer Cal.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

WESTERN PLAZA LLC, Plaintiff, vs. NORMA TISON, Defendant.	NO. 11-2-02564-8 FINDINGS OF FACT/CONCLUSIONS OF LAW, ~~AND JUDGMENT~~ FOR UNLAWFUL DETAINER ORDER *Clerk's Action Required*

~~JUDGMENT SUMMARY~~

Judgment Creditor:	Western Plaza LLC
Judgment Debtor:	Norma Tison
Principal Judgment Amount: Plus Daily Rent of $16.50 after 5/4/12 until possession is restored to plaintiff	~~$1,000.00~~ to be awarded/reserved WO
Interest on Said Judgment:	12%
Attorney Fees: WO	$ to be awarded/reserved PM
Costs: WO	$ to be awarded/reserved PM
Attorneys for Judgment Creditor:	Walter H. Olsen Jr. Olsen Law Firm PLLC

Judgment Shall Bear Interest at 12% Per Annum.

ORIGINAL

APPENDIX A

OLSEN LAW FIRM PLLC
205 S. Meridian
Puyallup, Washington 98371
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FAX: 253.200.2289

THIS MATTER having come on regularly for hearing before the court on May 4, 2012, defendant having previously been ordered to appear and show cause on this same date why a Writ of Restitution should not be issued restoring to plaintiff possession of the property described in the Complaint, plaintiff appearing through its attorney Walter H. Olsen, Jr., and the defendant appearing through her attorney Dan R. Young, and the Court having examined the parties and their declarations as provided by RCW 59.18.380, considered the evidence, and being fully advised in the premises, now makes the following:

FINDINGS OF UNDISPUTED FACT

I

Plaintiff has and still does rent to defendant the premises described in the Complaint.

II

Defendant took possession of the described premises immediately after tenancy commenced and possession has continued since that time.

III

The parties' written rental agreement provides that rent is due in advance by the first day of each month, and late charges apply if rent is not postmarked by the 5th date of the month.

IV

Defendant has not paid the full amount of rent due for any month since July 2010. In October 2011, the defendant was served with a Five-Day Notice to Pay the rent or vacate the premises. Defendant failed to comply with the October 2011 Notice.

V

Defendant has failed to pay the full amount of rent due by the due date three or more times in a 12-month period after service of a Five-Day Notice to Pay Rent and Other Charges or

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Vacate.

From the foregoing Findings of Undisputed Fact, the court makes the following:

CONCLUSIONS OF LAW

I

Judgment should be entered in favor of plaintiff and against defendant for unpaid rent, costs and attorney fees, and issuance of a Writ of Restitution. Defendant's DMW motion for summary judgment is DENIED. WD ~~JUDGMENT~~

The Court having made and entered its Findings of Fact and Conclusions of Law, now, therefore, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I

The Clerk of the Court is directed to issue a Writ of Restitution upon entry of judgment DMW ~~immediately forthwith~~, returnable ten (10) days after its date of issuance, restoring to plaintiff possession of the property located at **1841 Trosper Road SW, Sp. 48, Tumwater,** Thurston County, Washington, provided that if return is not possible within 10 days, the return on this writ shall be automatically extended for a second 10 day period.

II

The Thurston County Sheriff is hereby authorized to break and enter the premises as necessary to execute the Writ of Restitution.

III

There is no substantial issue of material fact of the right of plaintiff to be granted relief as prayed for in the complaint and provided for by statute. The landlord may amend the lease upon proper notice when the lease automatically renews. DMW WD

IV

Defendant is guilty of unlawful detainer and the tenancy of the defendant in the premises

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is hereby terminated.

* THE ~~AMOUNT~~ OF RENT, FEES, + COSTS ARE RESERVED. DMY

V

~~Plaintiff is awarded judgment against defendant as set forth in the Judgment Summary above. Said sums shall accrue interest at twelve percent (12%) per annum until paid.~~ DMY

VI

~~Plaintiff is additionally awarded the amount of rent or other charges incurred until defendant has vacated the premises.~~ DMY

VII

~~Plaintiff is granted leave to supplement its judgment to add the additional attorney fees, costs, and all other damages and expenses neeessary to restore to plaintiff possession of the property described herein.~~ DMY

DONE IN OPEN COURT this 1 day of May, 2012.

JUDGE/COURT COMMISSIONER

Presented by:
OLSEN LAW FIRM PLLC

By _____
Walter H. Olsen, Jr., WSBA #24462
B. Tony Branson, WSBA #30553
Deric N. Young, WSBA #17764
Attorneys for Plaintiff

COPY RECEIVED, APPROVED AS TO FORM:

LAW OFFICES OF DAN R. YOUNG

By Dan R. Young
Dan R. Young, WSBA #12020
Attorneys for Defendant

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

WESTERN PLAZA LLC, Plaintiff, vs. NORMA TISON, Defendant.	NO. 11-2-02564-8 ORDER GRANTING PLAINTIFF'S MOTION FOR JUDGMENT FOR UNLAWFUL DETAINER AND ATTORNEY FEES & COSTS

JUDGMENT SUMMARY

Judgment Creditor:	Western Plaza LLC
Judgment Debtor:	Norma Tison
Principal Judgment Amount:	$ 4,200.00
Attorney Fees:	~~$ 8,702.50~~ $7,000.00 WO
Costs:	$ 577.00
TOTAL JUDGMENT AMOUNT:	~~$13,479.50~~ $11,777.00 WO
Attorneys for Judgment Creditor:	Walter H. Olsen, Jr. Olsen Law Firm PLLC

Judgment Shall Bear Interest at 12% Per Annum.

THIS MATTER having come on regularly before the Court on May 18, 2012, after the Court had earlier entered Findings and Conclusions on May 4, 2012, upon plaintiff's motion for attorney fees and costs, and judgment for unlawful detainer, and the Court having reviewed the following:

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ORIGINAL

APPENDIX B

1. Plaintiff's Motion for Judgment for Unlawful Detainer, and Attorney Fees & Costs;

2. Declaration of Walter H. Olsen, Jr. for Attorney Fees & Costs;

3. DEFENDANT'S OBJECTIONS TO MOTION FOR FEES;

4. DECLARATION OF DAN YOUNG; AND

5. PLAINTIFF'S REPLY DECLARATION.

The Court being fully advised in the premises, and finding that plaintiff's motion should be GRANTED, now finds as follows:

1. Plaintiff is the prevailing party in this action.

2. As the prevailing party, plaintiff has a contractual and statutory right to an award of reasonable attorney fees and costs.

3. Plaintiff's counsel expended a reasonable number of hours which were not duplicative or unnecessary in securing a successful result for plaintiff.

4. Plaintiff presented adequate documents that the hourly rates of plaintiff's counsel and paralegals were reasonable at the time they billed plaintiff.

5. Plaintiff presented adequate documentation that the services performed by plaintiff's counsel's paralegals were legal in nature, were supervised by an attorney, were performed by a person who was qualified by virtue of education, training and work experience to perform substantive legal work, were reasonable, and the amount charged reflected reasonable community standards for charges by that category of personnel.

6. The amounts of $8,702.50 for attorney fees and $577.00 for costs are reasonable, based on the time and labor required, the skill required to perform the legal services properly, the fee customarily charged in Thurston County for similar legal services, the results obtained, the nature and length of the professional relationship with the client, and the experience and ability of the lawyer performing the services.

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JUDGMENT

The Court finding that plaintiff may amend the parties' rental agreement upon proper notice when the term of the one-year rental agreement renews, and that judgment for unlawful detainer should be entered in favor of plaintiff and against defendant for the issuance of a Writ of Restitution, rent, and plaintiff's reasonable attorney fees and costs, now, therefore, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

1. Plaintiff is awarded judgment against defendant as set forth in the Judgment Summary above. Said sums shall accrue interest at twelve percent (12%) per annum until paid.

2. The Clerk of the Court is directed to issue a Writ of Restitution immediately forthwith, returnable ten (10) days after its date of issuance, restoring to plaintiff possession of the property located at **1841 Trosper Road SW, Sp. 48, Tumwater,** Thurston County, Washington, provided that if return is not possible within 10 days, the return on this writ shall be automatically extended for a second 10-day period.

3. If defendant pays $11,777.00 ~~$13,479.50~~ into the court registry on or before May 23, 2012, defendant's tenancy shall be reinstated ~~until October 1, 2012, and defendant shall vacate the premises by that date or be subject to a further Writ of Restitution in this action.~~ 91

DONE IN OPEN COURT this 18 day of May, 2012.

Judge Gary Tabor

Presented by:
OLSEN LAW FIRM PLLC

By _____
Walter H. Olsen, Jr., WSBA #24462
Attorneys for Plaintiff

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Life Time Lease

MANUFACTURED HOUSING COMMUNITIES OF WASHINGTON

98-2

PREPARED FOR USE OF PAID MEMBERS OF
MHCW BY LEGAL COUNSEL – 1997

MANUFACTURED HOME LOT
ONE-YEAR RENTAL AGREEMENT

THIS AGREEMENT is entered into between Edita, Melissa & Vandenbroeck, TIC, as Landlord, and Norma Tuson, as Tenant(s), and owner(s) of the manufactured home.

1. **RENT/TERM.** Landlord rents to Tenant and Tenant rents from Landlord, Lot No. 48, (hereinafter the "Lot"), the location of which is described in Addendum "A" hereto, in Westerra Plaza, A Manufactured Housing Community, Lot Space 554 (Cedar), (hereinafter the "Community"), located at 1844 Hoquiam Ave NE, in the City of Renton, County of Thurston, State of Washington, for a term of one year, commencing on the 12th day of October, 2021, and ending on the _____ day of _____, 19_____, at a minimum monthly rental of $345.00 + (See footnote) Dollars ($ 345.00), payable in advance on or before the first day of each month during the tenancy. Tenant agrees that upon expiration of the original term, the Agreement shall automatically renew for a period of one month and shall thereafter be a tenancy from month-to-month, unless Tenant requests an additional one-year term prior to the end of the original term.

2. **ADDITIONAL CHARGES.** In addition to the monthly rental and any other charges or fees specified in this Agreement, Tenant agrees to pay to Landlord the following charges: all utilities + sewer charges

3. **UTILITIES.** Tenant shall, in addition to the monthly rental, pay for all utilities supplied to the Lot, except for ~~Storm Drainage. Upon 90 days written notice Landlord~~ gas, sewer, water, electricity, which shall be paid for by Landlord. N.V.

4. **FACILITIES.** The following facilities shall be available to Tenant during the tenancy: Mailroom + Clubhouse

5. **LATE CHARGES.** Tenant agrees that if full rent, fees, and other charges are not received by the 5th day of each month, Tenant shall pay Twenty-five Dollars ($ 25.00) as a late fee, and an additional fee in the amount of one Dollars ($ 10.00) per day thereafter shall be charged. In addition, any check returned for any reason shall result in an additional fee of Twenty-five Dollars ($ 25.00). Payment of late fees, other charges, and check return fees are in addition to and part of the rent due for the month. Any returned check causing late receipt of rent payment will result in the assessment of both late charges and returned check fees. Two returned checks from Tenant during Tenant's occupancy will result in Tenant's forfeiture of the right to pay by check. All future payments must be made by money order only.

6. **PLACE OF PAYMENT.** Rent and all additional charges and fees shall be paid to the Community Manager at Rent Drop Box, or to such other person or at such other place as Landlord may, from time to time, designate by written notice.

7. **SECURITY/DAMAGE DEPOSIT.** As partial consideration for execution of this Agreement, Tenant shall pay Landlord, prior to occupancy, a deposit in the amount of Two hundred seventy five Dollars ($ 275.00). This sum shall be deposited by Landlord in a trust account at Keybank, whose address is 1005 Tacoma Ave. 47th Floor, Sea. 98104 Washington. This deposit does not limit Landlord's rights or Tenant's obligations. Upon termination of the tenancy, all or a portion of such deposit may be retained by Landlord and may be applied to: (a) Any delinquency in the payment of rent, utilities, fees, or additional charges; (b) Expenses of cleaning, restoring, and repairing the Lot, (wear for ordinary use excepted); or (c) Any monies owing for Tenant's portion of mediation charges resulting from mediation under this Agreement or the Mobile Home Landlord-Tenant Act; (d) Failure of Tenant to give at least thirty (30) days' written notice prior to the expiration this Agreement of an intention not to renew; and/or (e) Other damages caused by Tenant. Refund of any portion of such deposit to Tenant is conditioned as follows: (a) Tenant shall have fully performed all obligations specified in this Agreement and in the Mobile Home Landlord-Tenant Act; (b) Tenant shall have remedied or repaired any damage to the Community or to other tenants' Lots; and (c) Upon termination of the tenancy and/or removal of Tenant's manufactured home from the Lot, Tenant shall have cleaned, restored, and returned the Lot to Landlord in substantially the same or better condition as upon taking possession. Landlord shall have the right to proceed against Tenant to recover sums exceeding the amount of Tenant's deposit for cleaning, restoration, and/or repairs to the Lot or Community, or replacement of lost or missing items for which Tenant is responsible, together with reasonable attorney's fees and costs.

8. **OCCUPANTS.** Tenant shall not give accommodation to any roomers or lodgers, or permit the use of the Lot for any purpose other than as a residence and as the location of one manufactured home and its accessory buildings for the exclusive occupation and use of the following named persons:

9. **PETS.** Tenant agrees to have no animals or pets of any kind on the Lot, or in the Community, other than the following: 3 cats - Chirp, Chaos, Maggie

10. **RESPONSIBILITIES.** Tenant Agrees: (a) To keep the Lot in a clean and sanitary condition; (b) To comply with all applicable federal, state, and local laws, regulations, and ordinances pertaining to the Lot and the manufactured home located thereon, and appurtenances, and to save Landlord harmless from all fines, penalties, and costs for violations or noncompliance by Tenant with any laws, requirements, or regulations, and from all liability arising out of any violation or noncompliance; (c) To properly dispose from the manufactured home and Lot all rubbish, garbage, and other organic or flammable waste in a clean and sanitary manner at reasonable and regular intervals, and to assume all costs of extermination and fumigation for infestation caused by Tenant; (d) To immediately notify Landlord of any damage to the Lot or to the Community caused by acts of neglect of Tenant or Tenant's guests, and unless otherwise agreed, Landlord shall repair the damage and charge Tenant for the repair, which Tenant agrees to pay to Landlord by the next monthly rental payment due date, or on terms mutually agreed in writing by Landlord and Tenant; (e) To not intentionally or negligently destroy, deface, damage, impair, or remove any facilities, equipment, furniture, furnishings, fixtures, or appliances provided by Landlord, or permit any member of Tenant's family, invitee, or licensee, or any person under Tenant's control, to do so; (f) To not permit a nuisance or common waste; and (g) To comply with all Community Rules and Regulations.

11. **RULES AND REGULATIONS.** Tenant acknowledges receipt of a copy of the Community Rules and Regulations which Tenant has read and signed as Addendum "B" to this Agreement. Tenant agrees to comply with the terms and conditions of Addendum "B". Tenant further agrees that Landlord may, upon thirty (30) days' written notice, make changes or additions to the Rules and Regulations stated herein.

12. **TERMINATION-EVICTION/WAIVER OF NON-PAYMENT OF RENT.** This Agreement may be terminated by Landlord as provided by this Agreement and under law. Tenant may be evicted in the manner provided by law. If any Tenant is evicted for any reason provided by law, to include non-payment of rent, charges, fees, or any other costs Tenant is liable for under this Agreement or law, such Tenant expressly agrees to pay all rent, additional charges, and other fees, and any other costs due under this Agreement during the pendency of any eviction proceeding and until the Tenant vacates and removes the Tenant's manufactured home and other personal property from the Lot and the Community. Tenant expressly waives any right to not pay rent, additional charges, fees, and other costs during any legal proceeding to evict the Tenant. A Tenant intending not to renew and terminating the Lot tenancy shall notify the Landlord in writing at least thirty (30) days prior to the expiration of this Agreement of an intention not to renew.

13. **HOLDING OVER.** If Tenant continues in possession of the Lot after termination of this Agreement, and it is otherwise not renewed, Tenant agrees to pay to Landlord the monthly rental, computed and prorated on a daily basis, for each day Tenant remains in possession of the Lot, and otherwise agrees to comply with this Agreement.

APPENDIX C

14. **IMPROVEMENTS.** Tenant agrees not to make or permit any construction, alteration, additions, painting, or improvements to the Lot, or to permit placement of a storage shed thereon, without the prior written consent of Landlord.

15. **FEES FOR GUESTS.** Tenant agrees to pay a fee of One Dollars ($ 1.00) per day for each guest who remains within the Community for more than fifteen (15) days in any sixty (60) day period.

16. **GUEST PARKING.** Tenant agrees that guests shall park their vehicles only in Tenant's assigned parking area or in areas designated for guest parking. In no case will Tenant's guests obstruct or violate other tenants' parking or property rights. Any guest's vehicle parked in excess of Seventy two (72) hours must be properly identified by placement of Tenant's name and Lot number where such guest is visiting to prevent impound or towing. Tenant agrees to pay a fee of One Dollars ($ 4.00) per day per vehicle for each violation of the provisions of this Agreement and the Community Rules and Regulations relating to guest parking. Tenant agrees to pay a fee of One Dollars ($ 4.00) per day for each guest's vehicle which remains in the Community for more than 30 days. Guest parking fees shall be payable by Tenant to Landlord on the next monthly rental payment due date. Tenant hereby authorizes Landlord to tow or impound, at Tenant's expense, any vehicle of Tenant's guests which is not parked in accordance with the terms of this Agreement, provided that Landlord must first attempt to notify the owner of the vehicle or the Tenant.

17. **ASSIGNMENT.** This Agreement shall not be assignable by Tenant, except as provided in RCW 59.20.073, on the sale of a manufactured home in the Community.

18. **SUBLETTING.** Tenant shall not sublet or rent out all or any part of Tenant's manufactured home or Tenant's Lot.

19. **LIABILITY AND INDEMNITY.** Tenant agrees that all of Tenant's personal property in the Community shall be at the risk of Tenant. Tenant further agrees that Landlord shall not be liable for, or on account of, any loss or damage sustained by action of any third party, fire, theft, water, or the elements, or for loss of any property from any cause from said Lot, or any other part of the Community; nor shall Landlord be liable for any injury to Tenant, Tenant's family, guests, employees, or any person entering the Community, or the property of which the Community is a part, unless caused by the sole negligence of Landlord. Tenant hereby waives all claims therefor and agrees to indemnify Landlord against any such loss, damage, or liability, or any expense incurred by Landlord in connection therewith.

20. **HAZARDOUS SUBSTANCES.** Any product containing hazardous substances, as defined by RCW 70.105D.020, including, but not limited to, petroleum products, oil, gasolines, paints, solvents, fertilizers, pesticides, and herbicides, shall be stored in closed containers that are in good condition and kept in a manner to prevent leaking. Tenant shall comply with all federal, state, and local laws regarding hazardous substances and shall use products containing hazardous substances only in a non-negligent manner according to the manufacturer's instructions. Tenant shall not allow disposal of any hazardous substance on the Lot or within the Community in any storm drain, septic or sewer system, or water system. Tenant agrees to immediately clean up any spill of any hazardous substance and notify Landlord of the circumstances surrounding the spill and actions taken. Tenant agrees to indemnify and hold Landlord harmless from any and all liability arising out of any release of hazardous substances caused by Tenant or by breach of this Agreement.

21. **CONDEMNATION-EMINENT DOMAIN.** In the event the whole or any part of the Lot shall be taken by any competent authority for public or quasi-public use or purpose, then, and in that event, the term of this Agreement shall cease and terminate from the date when the possession of the part so taken shall be required for such use or purpose. All damages awarded for such taking shall belong to and be the property of Landlord.

22. **ZONING.** The current zoning for the Community is MHP

23. **NOTICE/LANDLORD IDENTIFICATION.** Any notice required to be served by Tenant upon Landlord in accordance with the terms of this Agreement shall be delivered to the Community Manager, whose address is 1944 Jeoper Rd SW #54 Tumwater WA 98512 The Manager is hereby directed to act as agent for the Landlord for the purposes of serving notices and process. The Landlord is Edith Mellem & Vandenbroeck, Inc. The Landlord's address is 4756 U. Hill Blvd #171 Leo WA 98105

24. **FORWARDING ADDRESS.** In the event of an emergency or abandonment of Tenant's manufactured home, Tenant's forwarding address is Son - Ed Ewing. The person who would likely know the whereabouts of Tenant is who resides at

25. **SECURED PARTY.** The name of each lending institution, (or other entity or person), who has a secured interest in Tenant's manufactured home is CIT Group whose address is . The secured party's account number for the subject security agreement is . Tenant shall provide Landlord with a copy of Tenant's ownership title of the manufactured home occupying the Lot, at Landlord's request.

26. **MEDIATION.** In the event Tenant fails to participate in mediation as required by RCW 59.20.080 (2), Landlord shall be entitled to recover from Tenant all fees and costs incurred in the mediation process.

27. **ATTORNEY'S FEES AND COSTS.** In any actions arising out of this Agreement, including eviction, the prevailing party shall be entitled to reasonable attorney's fees and costs.

28. **DEFINITIONS.** As used in this Agreement, "manufactured home" means "mobile home", "Community" means a "mobile home park", "mobile home park cooperative", or "mobile home park subdivision", as defined in RCW 59.20.030 and "Lot" means a "mobile home lot" as defined in RCW 59.20.030(3).

29. **SEVERABILITY.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions set forth herein shall remain in full force and effect.

30. **AMENDMENTS.** Any amendment or other change to this Agreement, to include the Community Rules and Regulations, shall be in writing.

31. **ENFORCEMENT.** Failure of Landlord to insist upon the strict performance of the terms, covenants, agreements, and conditions contained herein shall not constitute or be construed as a waiver or relinquishment of Landlord's rights thereafter to enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect. Landlord's acceptance of any rent after Tenant breaches this Agreement shall not waive Landlord's rights or remedies created by Tenant's breach.

32. **HEIRS AND SUCCESSORS.** The covenants and agreements of this Agreement shall be binding upon the heirs, legal representatives, successors, and assigns of any or all of the parties herein.

33. **ATTACHMENTS.** Attachments made a part of this Agreement are as follows: (a) Addendum "A" - Lot Description; (b) Addendum "B" - Community Rules and Regulations; (c) Amendment for age 55 + older Manufactured Housing Agreement; (d)

* Landlord, Edith, agrees to have land rent remain at $345.00 for two years.

Chapter 59.20 RCW requires the following statement be included in this Agreement:

THIS COMMUNITY MAY BE SOLD OR OTHERWISE TRANSFERRED BY LANDLORD AT ANY TIME WITH THE RESULT THAT SUBSEQUENT OWNERS MAY CLOSE THE MANUFACTURED HOME COMMUNITY, OR THAT THE LANDLORD MAY CLOSE THE COMMUNITY AT ANY TIME AFTER THE REQUIRED NOTICE.

* Every other year, rent will be raised no more than $5.00 for remaining tenant

UNDERSTOOD AND AGREED UPON this 4th day of October 2001.

LANDLORD

By Faya LaFrance/Manager

TENANT (S)

Norma Tison

* December 2001 land rent of $345.00 to be waived.

White: Manager, Yellow: Tenant

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 appellant Norma Tison in this action.

2. On October 11, 2012, I sent by the USPS, first class mail with pre-paid postage affixed, a copy of the foregoing Brief of Appellant to the following:

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

Dated: October 11, 2012, at Seattle, Washington.

Dan R. Young