90179-1

No. 43514-4-II

COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON

WESTERN PLAZA, LLC,

Petitioner,

v.

NORMA TISON,

Respondent.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Western Plaza, Inc. ("Western Plaza") asks this Court to accept review of the published Court of Appeals decision terminating review designated in part B.

B. COURT OF APPEALS DECISION

The Court of Appeals decision was filed on January 28, 2014. A copy of the decision is in the Appendix at pages A-1 through A-9. The Court of Appeals granted motions to publish the opinion filed by respondent Tison and Manufactured Housing Communities of Washington ("MHCW"), the statewide organization of park owners, on March 19, 2014. A copy of the Court's order is in the Appendix at page A-10.

C. ISSUES PRESENTED FOR REVIEW

Does a former mobile home park landlord's interlineated perpetual cap on rents undertaken in violation of Washington's Statute of Frauds, RCW 59.04.010, negate the ability of a successor landlord, upon proper notice to the tenant, to increase the rent as permitted by the Mobile Home Landlord Tenant Act ("MHLTA"), RCW 59.20.090, upon the renewal of the lease?

D. STATEMENT OF THE CASE

The Court of Appeals' recitation of the facts in its opinion is largely correct, but certain important points omitted by the Court of Appeals in its opinion or discussed only briefly bear emphasis.

First, the original 2001 lease between Norma Tison and Western Plaza's predecessor contained handwritten footnotes. One footnote agreed to freeze the rent at $345 per month "for two years." CP 20, 23. The other footnote stated: "Every other year rent will be raised no more than $10 for remaining tenancy." *Id.*

Thus, by the terms of these handwritten interlineations to the lease, the period of the lease is one year, yet cannot be performed within a year. The interlineations also constitute terms that do end when that lease ends, but are perpetual and binding as to all future one-year leases with Tison. It is further undisputed that the leases did not comply with Washington's Statute of Frauds, RCW 59.04.010,[1] that applies to leases requiring performance over more than a year.

Second, the Court of Appeals' statement of the facts omits some facts important to the events in the trial court, and the reasoning leading up to that court's decision. Western Plaza filed an unlawful detainer action on December 2, 2011 alleging that Tison failed to pay rent within five

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[1] "Leases ... shall be legal and valid for any term or period not exceeding one year, without acknowledgement, witnesses or seals."

RCW 59.04.010.

days of service of a notice to pay or vacate pursuant to RCW 59.20.080(1)(b). CP 5-8. At the subsequent show cause hearing, the trial court agreed that Tison did not properly have possession and issued a writ of restitution. CP 94. The trial court ruled that Tison had a one-year rental agreement that could be renewed under its same terms each year, unless there was a proper "objection" by either party to renewing the lease under the same terms. RP (5/5/12):15.

The court entered findings of fact and conclusions of law and an order for unlawful detainer against Tison at that hearing. CP 92-95. Later, the court entered judgment for the past due rent, costs and attorney fees. CP 164. Tison deposited the amount of the judgment into the court registry in order to reinstate her current one-year tenancy, as permitted by RCW 59.18.410. CP 172. She also filed a motion for reconsideration, which was denied by the trial court. CP 120-25, 171. Tison then appealed to Division II of the Court of Appeals. CP 174-82.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED[2]

The Court of Appeals' published decision in this case is in fundamental conflict with other decisions of that court and of this Court. The Court of Appeals also fails to appreciate the rental increase regime

[2] This Court is fully familiar with the criteria for review set forth in RAP 13.4(b). This case merits review as the Court of Appeals' opinion is contrary to decisions of this Court and the Court of Appeals, RAP 13.4(b)(1-2), and presents an issue of substantial public importance for this Court to resolve. RAP 13.4(b)(4).

established by the Legislature in the MHLTA, RCW 59.20, and its implications in this case. The Court of Appeals essentially ignores the Washington's Statute of Frauds and its application to the rental caps interlineated by Western Plaza's predecessor.

(1) The Court of Appeals Decision Conflicts with Case Law on the Renewal of Leases under the MHLTA

The Court of Appeals was correct in initially noting that the MHLTA establishes a regime for the rental of mobile homes in which leases are automatically renewed annually.[3] Op. at 5; RCW 59.20.090(1). In *Holiday Resort Community Association v. Echo Lake Association LLC*, 134 Wn. App. 210, 135 P.3d 499 (2006), *review denied,* 160 Wn.2d 1019 (2007), the Court of Appeals recognized that a tenant is entitled to an automatic one year renewal of the lease under RCW 59.20.090(1):

> 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.

Id. at 224. In effect, a tenant is entitled to the renewal of his or her tenancy annually for as long as the park is open and the tenant wishes to remain there.

[3] The park owners and tenant may agree to a lease duration exceeding one year, RCW 59.20.050, but one year is the customary duration in park leases, and Western Plaza's lease with Tison is consistent with that customary lease duration. CP 25.

But that is not the end of the analysis. While the lease is extended automatically for a year, *nothing* in the MHLTA precludes a mobile home park owner from increasing the tenant's rent at the time of the annual renewal. Indeed, the MHLTA contemplates that rents may be increased at that time upon proper notice to a tenant:

> 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.

RCW 59.20.090(2).

Moreover, this Court and the Court of Appeals have specifically recognized this ability of a park owner not only to raise rents but also to alter other provisions of the lease. *Little Mountain Estates Tenants Ass'n v. Little Mountain Estates MHC LLC*, 169 Wn.2d 265, 236 P.3d 193, 195 (2010); *Seashore Villa Ass'n v. Hagglund Family Ltd. P'ship*, 163 Wn. App. 531, 260 P.3d 906 (2011), *review denied,* 173 Wn.2d 1036 (2012); *McGahuey v. Hwang*, 104 Wn. App. 176, 15 P.3d 672, *review denied*, 144 Wn.2d 1004 (2001).

In *Little Mountain*, this Court upheld a provision in a 25-year lease that eliminated rent limitations in a lease upon its assignment by the tenant as an appropriate expression of the parties' power to contract left

unaffected by the MHLTA. This Court understood that mobile home park leases were subject to modification as to their duration and terms.

More pointedly, in *McGahuey*, the park owner sent a notice to tenants at the time of the annual renewal of the lease indicating that the park would no longer pay for utilities. The Court of Appeals upheld such a change, *rejecting* the contention that the original lease agreement was frozen forever in time, stating:

> Citing RCW 59.20.090(1), which provides that leases automatically renew at the end of their term, the Tenants claim the MHLTA prohibits a landlord from requiring a tenant to pay for utilities once any lease requiring the landlord to do so is signed. According to the Tenants, the landlord is not permitted to increase or add any fee or charge except to increase the rent when the lease agreement expires as provided in RCW 59.20. This reading of the statute is untenable.

Id. at 181-82. But the reading of RCW 59.20.090 rejected by Division I in *McGahuey* is precisely the analysis adopted by Division II below.

In addition, Division II's analysis of RCW 59.20.090 here is not consistent with its own prior precedent. In *Seashore Villa*, at the time of annual renewal, the park owner advised tenants of its intent to eliminate carports and storage sheds on the rental premises unless the tenants chose to assume responsibility for those facilities themselves. Division II ruled such an approach violated RCW 59.20.135, which prohibited a park owner from transferring responsibility for a park's permanent structures to its

tenants. But Division II also determined that there was no contract implied in fact that the park owner would retain the carports and sheds in perpetuity. Thus, at the time of the lease's annual renewal, a park owner could decide to remove such permanent structures, 163 Wn. App. at 541-42; the court also rejected the tenants' argument that a contract implied in fact compelled the park owner to retain the sheds and carports on the lots in perpetuity. *Id.* at 544-46.

Thus, it is unambiguous from these cases that the MHLTA recognizes the right of a park owner to impose changes in the lease terms and rent increases, upon proper notice to the tenant. Nevertheless, the Court of Appeals' opinion here treats the interlineated rental cap provisions as *perpetual* in nature, unalterable at the time of the automatic renewal of the lease pursuant to the MHLTA. Such an interpretation essentially interprets the MHLTA in the very way the *McGahuey* and *Seashore Villa* courts *rejected.*

Lease terms under the MHLTA are effective only until the next annual renewal of the lease. Even if the interlineated rent caps provisions in the lease were enforceable, *nothing* in the MHLTA or the applicable case law prevented Western Plaza from deleting them at the time of one of Tison's annual renewals. By holding otherwise, the Court of Appeals' decision contradicts *Little Mountain, McGahuey*, and *Seashore Villa.*

Review is appropriate to reconcile the Court of Appeals' analysis of the MHLTA, in particular RCW 59.20.090(1), and the cases referenced above. RAP 13.4(b)(1-2).

(2) The Court of Appeals Decision Conflicts with the Case Law on the Statute of Frauds

Additionally, in its opinion, the Court of Appeals asserts that a prior park owner may, as a matter of contract law, choose to limit future rent increases for successor park owners in perpetuity. Op. at 5-8. Even if true (and Western Plaza believes it is not under the provisions of RCW 59.20.090(1) and the case law on automatic renewal of leases under the MHLTA), it is critical to note that any such agreement must comply with other applicable provisions of law, and the interlineated agreements here did not do so.

First, the Court of Appeals does not even address the Statute of Frauds, RCW 59.04.010, a statute applicable to lease agreements under the MHLTA.[4] As the trial court correctly ruled, an agreement requiring performance longer than one year is enforceable, but that agreement must comply with Washington's Statute of Frauds. RCW 59.04.010; RP (5/4/12):14. Tison's lease agreement with Western Plaza's predecessor does not satisfy RCW 59.04.010 because it is not acknowledged and does

[4] Western Plaza raised the statute of frauds argument in its briefing below. Br. of Resp't at 30.

not include a legal description or satisfy the common law prerequisites for any contractual obligation to "run with the land." *Lake Limerick Country Club v. Hunt Mfg. Homes, Inc.*, 120 Wn. App. 246, 254-55, 84 P.3d 295, 299-300 (2004).

Presumably, the Court of Appeals did not reach the Statute of Frauds issue, because it concluded that the agreements at issue did not require performance for more than a year. Op. at 8. But, if that is so, the Court of Appeals' analysis is counterintuitive. By its terms, one of the provisions *covered two years*. CP 20, 23. Also, the rent provisions purport to be enforceable beyond the one-year term of the lease, and as long as Tison chooses to remain a tenant. Moreover, to the extent that the interlineated rental caps became an unalterable part of Tison's lease, as the Court of Appeals envisioned, such caps by their terms, become enforceable over a period exceeding one year.

Because they failed to comply with RCW 59.04.010, the interlineated rental caps were not enforceable for a period beyond a year. In *Labor Hall Association v. Danielsen*, 24 Wn.2d 75, 163 P.2d 167 (1945), a lease was valid for a term of a year with an option for another year. This Court held that because the lease failed to comply with the Statute of Frauds, it created only a month-to-month tenancy. *Id.* at 94.

See also, Stevenson v. Parker, 25 Wn. App. 639, 643, 608 P.2d 1263 (1980).

The addition of features to the lease that made it impossible to perform within a year, without complying with RCW 59.04.010's formalities, rendered the lease a month-to-month tenancy. Review is appropriate here where the Court of Appeals failed to address the Statute of Frauds and decisions of this Court and the Court of Appeals pertaining to it. RAP 13.4(b)(1-2).

(3) This Case Involves a Significant Issue under the MHLTA

This case presents a significant issue of public importance, as reflected in the fact that respondent Tison and MHCW, the state-wide park owners' association, both sought its publication by the Court of Appeals under RAP 12.3(e).[5] There are over 1500 mobile home parks in Washington, with thousands of tenants who reside in them. Trial courts and counsel struggle with understanding and applying the MHLTA, particularly when doing so in combination with common law contract principles. Likewise, when court decisions conflict, the Attorney General's Manufactured Housing Dispute Resolution Program

[5] The criteria for publication in RAP 12.3(e) boil down to the core requirement that the Court of Appeals decision is precedential, i.e. "whether the decision is of general public interest or importance. RAP 12.3(e)(4).

("MHDRP") is left without clear guidance to serve both park owners and tenants as directed by the Legislature in 2009 under RCW 59.30.

Both park owners and tenants, as well as the MHDRP will benefit from this Court's guidance regarding the unique MHLTA scheme of leases that are ostensibly "one year," but which "automatically renew" under that law.[6] Simply stated, the MHLTA and its automatically renewing tenancies do not fit well with a trial court's prior legal interpretations of Chapter 59 RCW in other landlord/tenant contexts, or the prior century of common law interpreting the Statute of Frauds. This adversely affects courts and litigants because cases with similar facts can nonetheless result in inconsistent rulings by the Court of Appeals, as compared to actions arising under RCW 59.12 and 59.18.

The Court of Appeals' decision upset the balance that the Legislature has struck between the right of tenants to stable, renewable lease agreements and the rights of park owners to reasonably modify the terms of those agreements as they must to sustain their businesses. Before 1998, the MHLTA provided that a one-year rental agreement automatically renewed for an additional six months, but afforded the landlord a legal right to provide written notice of nonrenewal without

[6] The Legislature described the MHLTA regime as unique in RCW 59.30.010. It also conferred dispute resolution authority there on the Attorney General, the State's chief legal officer, to administer a public dispute resolution process for park owner/tenant conflicts. This is an unusual public involvement in what are private lease matters.

cause. 1999 c 359 § 4. Then, the Legislature removed nonrenewal without cause; however, the park owner's right to change rental terms remained. *Id.* Thus, the automatic renewal provisions reflect a balance between the park owner's property rights with the tenants' right to receive sufficient notice of the park owner's intentions. This quid pro quo is consistent with the Court of Appeals' decisions in *McGahuey* and *Seashore Villa.*

The MHLTA regime for handling property issues is an unusual one, severely restrictive of park owners' customary property rights. The Court of Appeals' opinion implies that a rent provision in a lease between the parties, once it is present, may *never* be changed by the park owner at the time of the annual renewal under RCW 59.20.090(1). This Court should grant review here to resolve the question of what must be a part of any lease under the MHLTA that is automatically renewed under the provisions of RCW 59.20.090(1).

(4) Western Plaza Is Entitled to an Award of Fees under RCW 59.20.110

Park owners may recover fees that they incur in litigation with tenants under the MHLTA. RCW 59.20.110; *McGahuey*, 104 Wn. App. at 185 (prevailing party under RCW 59.20.110 may include park owner). The trial court awarded fees to Western Plaza below. CP 164.

Western Plaza is entitled to an award of fees if this Court grants review and concurs in the trial court's analysis of the MHLTA and RCW 59.04.010. RAP 18.1(a).

F. CONCLUSION

This Court should grant review. RAP 13.4(b). The Court of Appeals' opinion here condones a violation of the Statute of Frauds, RCW 59.04.010, and seemingly implies that the MHLTA permits this. The trial court, not the Court of Appeals, correctly construed the Statute of Frauds and the MHLTA here.

This Court should reverse the Court of Appeals and reinstate the trial court's judgment. Costs on appeal, including attorney fees, should be awarded to Western Plaza.

DATED this 17th day of April, 2014.

Respectfully submitted,

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APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

WESTERN PLAZA, LLC, Respondent, v. NORMA TISON, Appellant.	No. 43514-4-II UNPUBLISHED OPINION

JOHANSON, J. — Norma Tison appeals the trial court's order granting Western Plaza, LLC's motion for judgment on unlawful detainer and attorney fees and costs, and the order denying her motion for reconsideration. Tison primarily argues that her mobile home land rent may be increased only to the extent provided in the rental agreement. We agree.[1] Because nothing in the "Manufactured/Mobile Home Landlord-Tenant Act" (MHLTA)[2] prohibits a landlord and tenant from agreeing to the amount of future rent increases, we reverse the trial court and remand for entry of summary judgment in Tison's favor, including costs and attorney fees.

[1] Because we agree with Tison that the rent increase limitation is enforceable, we do not reach her other arguments.

[2] Ch. 59.20 RCW.

FACTS

In 2001, Tison purchased a mobile home and entered into a "Manufactured Home Lot One-Year Rental Agreement" (Agreement) for a lot at the Western Plaza Mobile Home Park with the park's owner, Joel Erlitz. The Agreement specifically provided for a one-year term beginning October 12, 2001, and that upon expiration of the original term, the Agreement would automatically renew for a period of one month and thereafter be a tenancy from month-to-month. The Agreement set monthly rent at $345. The Agreement used a standard form with several provisions preprinted but also included three handwritten provisions on the bottom of its second page: (1) "Landlord, Erlitz, agrees to have land rent remain at $345.00 for two years"; (2) "Every other year, rent will be raised no more than $10.00 for remaining tenancy"; and (3) "December 2001 land rent of $345.00 to be waived." Clerk's Papers (CP) at 23.

Erlitz increased Tison's rent to $355 in October 2003, to $365 in October 2005, and to $375 in October 2007. Then in 2008, Western Plaza bought the park from Erlitz. In March 2009, Western Plaza sent Tison written notice of its intent to increase her rent to $405 effective July 1, 2009. Tison complained that the increase was improper under the Agreement. Then, in June 2011, Western Plaza sent Tison notice that it was increasing rent to $495 effective October 1, 2011.

Tison ignored the rent increase notices and in October 2011, she began sending $395 per month, which she thought was appropriate under the Agreement's provision that rent increases would be limited to $10 per month every two years. Western Plaza refused to accept the $395 payment and sent it back to Tison. In mid-October, Western Plaza sent Tison a five-day notice to vacate and pay rent due of $495. Tison did not comply. The next month, Western Plaza served Tison with an eviction summons and a complaint for unlawful detainer.

In April 2012, Tison moved the superior court for summary judgment dismissal of Western Plaza's unlawful detainer action. Western Plaza filed a cross motion for unlawful detainer judgment in its favor. Both parties acknowledged that no material facts were in dispute and that summary judgment was appropriate. The superior court entered findings of fact and conclusions of law for unlawful detainer in Western Plaza's favor. The superior court concluded that there was no substantial issue of material fact and that "[t]he landlord may amend the lease upon proper notice when the lease automatically renews." CP at 94. It entered judgment for Western Plaza for the rent owing and attorney fees and costs and directed the clerk to issue a writ of restitution. Tison moved for reconsideration which the court denied. Tison appeals.

ANALYSIS

Tison argues that the rent increase limitation is enforceable because it was bargained and negotiated for between herself and the park's former owner, Erlitz; courts should not limit parties' freedom to contract; and the rent increase limitation was enforceable against any landlord for as long as she lived at the park.[3] Western Plaza responds that the Agreement specifically provided for a one-year term, that after the first year it could raise rent in accordance with the MHLTA, and that the rent increase limitation provision was unenforceable after the first year. We agree with Tison and hold that the rent increase limit provision specifically bargained for here does not violate the MHLTA and the MHLTA does not render it unenforceable.

[3] Tison also argues that the doctrines of waiver, bad faith, and promissory and equitable estoppel prevent Western Plaza from raising her monthly rent more than $10 every two years. Western Plaza responds that these doctrines do not apply here. Because we reverse on Tison's primary argument, we do not address her alternative arguments.

STANDARD OF REVIEW AND RULES OF LAW

When reviewing an order for summary judgment, we engage in the same inquiry as the trial court. *Mountain Park Homeowners Ass'n v. Tydings*, 125 Wn.2d 337, 341, 883 P.2d 1383 (1994). We will affirm summary judgment if no genuine issue of any material fact exists and the moving party is entitled to judgment as a matter of law. CR 56(c). All facts and reasonable inferences are considered in the light most favorable to the nonmoving party, and all questions of law are reviewed de novo. *Mountain Park*, 125 Wn.2d at 341.

We review all questions of statutory interpretation de novo. *State v. Gonzalez*, 168 Wn.2d 256, 263, 226 P.3d 131, *cert. denied*, 131 S. Ct. 318 (2010). First, we look at the statute's plain language. *City of Seattle v. Holifield*, 170 Wn.2d 230, 237, 240 P.3d 1162 (2010). "If the plain language is subject to one interpretation only, our inquiry ends because plain language does not require construction." *Holifield*, 170 Wn.2d at 237.

Further, the common law preserves citizens' freedom to contract. *Little Mountain Estates Tenants Ass'n v. Little Mountain Estates MHC, LLC*, 169 Wn.2d 265, 270 n.3, 236 P.3d 193 (2010) ("'Courts do not have the power, under the guise of interpretation, to rewrite contracts which the parties have deliberately made for themselves.'") (quoting *Clements v. Olsen*, 46 Wn.2d 445, 448, 282 P.2d 266 (1955)). "'It is black letter law of contracts that the parties to a contract shall be bound by its terms.'" *Torgerson v. One Lincoln Tower, LLC*, 166 Wn.2d 510, 517, 210 P.3d 318 (2009) (quoting *Adler v. Fred Lind Manor*, 153 Wn.2d 331, 344, 103 P.3d 773 (2004)). In construing a contract, we give the parties' intent as expressed in the instrument's plain language controlling weight, and we give words in a contract their ordinary meaning. *Cambridge Townhomes, LLC v. Pac. Star Roofing, Inc.*, 166 Wn.2d 475, 487, 209 P.3d 863 (2009). We may discover parties' intent from "'viewing the contract as a whole, the subject

matter and objective of the contract, all the circumstances surrounding the making of the contract, the subsequent acts and conduct of the parties to the contract, and the reasonableness of respective interpretations advocated by the parties.'" *In re Marriage of Litowitz*, 146 Wn.2d 514, 528, 48 P.3d 261, 53 P.3d 516 (2002) (internal quotation marks omitted) (quoting *Scott Galvanizing, Inc. v. Nw. EnviroServices, Inc.*, 120 Wn.2d 573, 580-81, 844 P.2d 428 (1993)), *cert. denied*, 537 U.S. 1191 (2003).

DISCUSSION

"Enacted in 1977, the MHLTA regulates and determines the legal rights, remedies, and obligations arising from a rental agreement between a mobile home lot tenant and a mobile home park landlord." *Holiday Resort Cmty. Ass'n v. Echo Lake Assocs., LLC*, 134 Wn. App. 210, 222, 135 P.3d 499 (2006), *review denied*, 160 Wn.2d 1019 (2007). The MHLTA requires landlords to provide a written agreement to a tenant at the beginning of the tenancy and that rental terms are one year unless otherwise specified. *Holiday Resort*, 134 Wn. App. at 223. It also provides that an agreement of any duration will be automatically renewed for the term of the original agreement, unless the parties agree to a different specified term, and that a landlord may terminate a rental agreement for cause. Former RCW 59.20.080 (2003); RCW 59.20.090(1).

1. THE RENT INCREASE LIMITATION IS ENFORCEABLE BECAUSE THE MHLTA DOES NOT PROHIBIT IT

The MHLTA requires rental agreements to contain certain provisions and prohibits others. Former RCW 59.20.060 (2006). Any term in a rental agreement that conflicts with the MHLTA is unenforceable. Former RCW 59.20.060. Further, a landlord who seeks to *increase* rent can do so "upon expiration of the term of a rental agreement of any duration" by notifying the tenant in writing three months prior to the effective date of any rent increase. RCW

59.20.090(2); *McGahuey v. Hwang*, 104 Wn. App. 176, 182, 15 P.3d 672, *review denied*, 144 Wn.2d 1004 (2001). But nothing in the MHLTA prohibits a landlord from including in a rental agreement a limit on future rent increases. *See* former RCW 59.20.060.

Because the MHLTA does not prohibit limits on future rent increases, such a limitation is enforceable. *Little Mountain* is helpful here. 169 Wn.2d 265. There, the owner of a manufactured home community intended for the elderly offered a 25-year lease to entice new residents with rent increases tied to the Consumer Price Index. *Little Mountain*, 169 Wn.2d at 267. The lease provided that the 25-year term was available for only the original tenant and that if the original tenant assigned its lease to another party, the assigned lease would be for one or two years. *Little Mountain*, 169 Wn.2d at 267. Later, tenants who assigned their leases claimed that the assignment provision violated the MHLTA. *Little Mountain*, 169 Wn.2d at 268. The Supreme Court disagreed and held that the assignment provision was enforceable because it did not violate the MHLTA; the court also explained that the MHLTA did not prohibit landlords and tenants from agreeing to rental terms that would be determined by a formula or be linked to a tenant's future decision to assign the lease.[4] *Little Mountain*, 169 Wn.2d at 268, 271.

Similarly here, Tison's Agreement specifically provided that her rent would be determined by a formula: no more than a $10 monthly rent increase every two years. This provision is enforceable because it does not violate the MHLTA. When a lease provision does not violate the MHLTA, we must enforce the parties' agreement as written and as the parties intended. *Cambridge Townhomes*, 166 Wn.2d at 487; *Torgerson*, 166 Wn.2d at 517. The parties

[4] Tenants also argued that the assignment clause also violated the Consumer Protection Act (CPA), ch. 19.86 RCW. Division One of this court remanded the CPA claim for further factual findings to determine whether the tenants could prove a CPA violation so the CPA claim was not before the Supreme Court. *Little Mountain*, 169 Wn.2d at 271.

here clearly intended for Tison's monthly rent to not increase more than $10 every two years as their Agreement's plain language provides.

In addition to *Little Mountain*, Western Plaza cites *McGahuey*, 104 Wn. App. 176, and *Seashore Villa Ass'n v. Hagglund Family Ltd. Partnership*, 163 Wn. App. 531, 260 P.3d 906 (2011), *review denied*, 173 Wn.2d 1036 (2012). But *Seashore Villa* is distinguishable and does not help Western Plaza. There the landlord sought to transfer the duty to care for permanent structures in the mobile home park to the tenants by agreement, but the MHLTA specifically prohibited the landlord from transferring the duty of care for those structures. *Seashore Villa*, 163 Wn. App. at 535-36, 542. So we held that the parties could not contract around a specific MHLTA provision and that the landlord violated the MHLTA by asking the tenants to do so. *Seashore Villa*, 163 Wn. App. at 542. But here, because the MHLTA does not specifically prohibit parties from agreeing to a rent increase limitation, *Seashore Villa* does not help Western Plaza's argument and we cannot ignore the limitation that the parties explicitly agreed to.

McGahuey is also distinguishable. There, we agreed that the landlord could properly require tenants to begin paying for utilities in addition to base rent because the MHLTA did not prohibit landlords from asking the tenants to do so, so long as the tenants paid only their actual utility cost and because nothing in their rental agreements prohibited it either.[5] *McGahuey*, 104 Wn. App. at 180-84.

Further, Western Plaza agreed at oral argument that the original landlord, Erlitz, was bound to the Agreement's rent increase limitation, and it also conceded that Western Plaza bought the mobile home park subject to all the leases that were in place at the time of the

[5] Because the *McGahuey* parties' agreement did not prohibit such a fee increase, we did not address a situation like the one we have here, where Tison's Agreement does restrict future rental increases.

purchase. Wash. Court of Appeals oral argument, *Western Plaza v. Tison*, No. 43514-4-II (October 14, 2013), at 19 min., 30 sec.—20 min., 30 sec. (on file with court). Therefore, Western Plaza took Tison's lease subject to the Agreement's specific provision providing for future rent increase limitations. We cannot ignore that provision, as Western Plaza seeks to do. And because it does not violate the MHLTA, we must enforce it. *See Torgerson*, 166 Wn.2d at 517.

2. THE AGREEMENT'S RENT INCREASE LIMITATION AUTOMATICALLY RENEWED EACH YEAR

Western Plaza argues that the limit on rent increases terminated after one year. We disagree. Although the Agreement's term was for one year, under the MHLTA, the Agreement thereafter automatically renewed each year for another year, meaning that all its terms also automatically renewed unless the parties agreed to change the terms. RCW 59.20.090(1). Western Plaza asserts that at the end of each year it could modify the rent amount by giving Tison proper notice, relying on RCW 59.20.090 and *McGahuey*, 104 Wn. App. at 181-83. Although RCW 59.20.090 allows rent increases, it does not control the result here where the landlord specifically agreed to limit *the amount* of future rent increases. Similarly, *McGahuey* is not helpful because it does not address whether an agreement to limit future rent increases is enforceable. We agree with Tison that Western Plaza may not ignore the rent increase limitation at the end of the first year.

Because the express future rent increase limitation provision is not in conflict with the MHLTA, Western Plaza bought the park subject to Tison's Agreement, and because Tison's Agreement renews each year, we conclude that the rent increase limitation is enforceable against Western Plaza. We reverse the unlawful detainer judgment, including costs and attorney fees,

and instead remand for entry of summary judgment in Tison's favor, including costs and attorney fees.

ATTORNEY FEES ON APPEAL

Tison requests attorney fees on appeal. Under RAP 18.1, the prevailing party is entitled to attorney fees and costs on appeal if requested in the party's opening brief and if "applicable law grants to a party the right to recover." RAP 18.1(a)-(b). The MHLTA grants Tison a right to recover. It provides that "[i]n any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs." RCW 59.20.110. Similarly, the Agreement here includes an attorney fee provision. Therefore, Tison is entitled to her attorney fees and costs upon compliance with RAP 18.1.

We reverse and remand for entry of summary judgment in Tison's favor, including costs and attorney fees.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Johanson, J.
JOHANSON, J.

We concur:

Hunt, J.
HUNT, J.

Worswick, C.J.
WORSWICK, C.J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

WESTERN PLAZA, LLC, Respondent, v. NORMA TISON, Appellant.	No. 43514-4-II ORDER GRANTING MOTION TO PUBLISH

Appellant Norma Tison and third party Manufactured Housing Communities of Washington move this court for publication of the unpublished opinion filed on January 28, 2014. The court having reviewed the record and files here, now, therefore, it is hereby

ORDERED that the final paragraph that reads, "A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered." is deleted. It is further

ORDERED that the opinion will now be published.

DATED this 19TH day of MARCH, 2014.

Johanson, A.C.J.
ACTING CHIEF JUDGE

DECLARATION OF SERVICE

On said day below I emailed a courtesy copy and deposited in the U.S. Mail for service a true and accurate copy of the Petition for Review in the Court of Appeals Cause No. 43514-4-II to the following parties:

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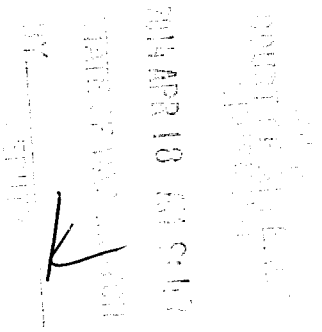

Original and a copy delivered by ABC messenger:

Court of Appeals, Division II
Clerk's Office
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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: April 18th, 2014, at Tukwila, Washington.

Roya Kolahi, Legal Assistant
Talmadge/Fitzpatrick