No. 90179-1

SUPREME COURT
OF THE STATE OF WASHINGTON

WESTERN PLAZA, LLC,

Petitioner,

v.

NORMA TISON,

Respondent.

AMICUS CURIAE BRIEF OF MANUFACTURED HOUSING COMMUNITIES OF WASHINTON

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Table of Contents

A. IDENTITY AND INTEREST OF AMICI. 1

B. STATEMENT OF THE CASE. 1

C. SUMMARY OF ARGUMENT. 1

D. ARGUMENT. 2

1. This Court Should Accept Review to Restore the Practical Balance of Interests Washington Courts Have Established Between Park owners and Tenants Under MHLTA. 2

2. The Court of Appeals' Decision Should Be Reviewed Because It Rejects Washington's Balanced Treatment of Rights Under the MHLTA, Ignores Well-Established Statutes, and Violates the Common Law. 6

E. CONCLUSION. 10

TABLE OF AUTHORITIES

CASES

Little Mountain, 169 Wn.2d at 267 8
Id. at 545 5
Little Mountain 4, 8, 10
Little Mountain Estates Tenants Ass'n. v. Little Mountain Estates MHC, LLC, 169 Wn.2d 265, 236 P.3d 193 (2010) 3
Little Mountain, 169 Wn.2d at 269 ..... 4, 5
McGahuey 3, 7, 10
McGahuey v. Hwang, 104 Wn. App. 176, 15 P.3d 672, *review denied*, 144 Wn.2d 1004 (2001) 3
McGahuey, 104 Wn. App at 183 ..... 3, 5, 7
Oak Bay Properties, Ltd. v. Silverdale Sportsman's Center, Inc., 32 Wn. App. 516, 519, 648 P.2d 465, 467 (1982) 7
Seashore Villa 4, 10
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) 3
Seashore Villa, 163 Wn. App. at 545 7
Seashore Villa, 163 Wn. App. at 546 ..... 4, 5

STATUTES

RCW § 59.04.030 7
RCW 59.20 1
RCW 59.20.073, .090 6

OTHER AUTHORITIES

Id. ..... *passim*
SB 2268 Judiciary Committee Report, March 25, 1977 2
Washington State Bar Association, Washington Real Property Deskbook 15.3 (3d ed. 1997) 2

RULES

RAP 13.4(b) 10

A. IDENTITY AND INTEREST OF AMICI.

Manufactured Housing Communities of Washington ("MHCW") is the preeminent Washington organization for mobile home parks. It has lobbied on issues pertaining to the Manufactured/Mobile Home Landlord Tenant Act, RCW 59.20, ("MHLTA") in Olympia and participated in litigation pertaining to the Act. Its members have an abiding and intense interest in the construction of that Act.

Recognizing that such an issue of construction exists in the present case, MHCW joined in the motion to publish the opinion brought below by Norma Tison ("Tison").

B. STATEMENT OF THE CASE.

The facts in this case are articulated in the Court of Appeals' opinion and in the Petitions for Review of the respective parties, and are incorporated by reference.

C. SUMMARY OF ARGUMENT.

There is no question that MHLTA was enacted, in part, out of concern for those who live in manufactured or mobile homes who may be vulnerable and in need of stability and security in their housing. However, Washington courts have interpreted MHTLA not just to meet that goal, but also in accordance with another important legislative intent: to ensure that

manufactured housing communities can continue to thrive and be financially stable businesses.

The Court of Appeals' decision here contradicts prior authority in this area, and threatens the balance between these two goals. If this Court denies review, the problem of perpetual, unchangeable lease provisions will once again plague park owners who must sometimes impose business-related rent or fee increases in order to keep their parks financially viable.

D. ARGUMENT.

1. This Court Should Accept Review to Restore the Practical Balance of Interests Washington Courts Have Established Between Park owners and Tenants Under MHLTA.

One purpose of MHLTA is to give low-income seniors and citizens stable, affordable housing. Washington State Bar Association, Washington Real Property Deskbook 15.3 (3d ed. 1997). When first enacted in 1977, the law sought primarily to prevent unfair retaliatory evictions, which could be very costly for tenants. SB 2268 Judiciary Committee Report, March 25, 1977. The Legislature recognized the unique factual circumstances of the manufactured/mobile home landlord-tenant relationship: the tenant owns a manufactured home as personal property, but rents the land upon which it sits from the owner of the real property. *Id.* Over the years, both the Legislature and the Courts

of Appeal have sought to achieve a practical balance between the needs of tenants and owners of manufactured home communities.

Over the past decade and a half, Washington courts have issued a number of rulings identifying another important goal of MHLTA: the encouragement of quality, privately owned and sustainable parks that can provide tenants the stability they need. *See, McGahuey v. Hwang*, 104 Wn. App. 176, 15 P.3d 672, *review denied*, 144 Wn.2d 1004 (2001), *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), and *Little Mountain Estates Tenants Ass'n. v. Little Mountain Estates MHC, LLC*, 169 Wn.2d 265, 236 P.3d 193 (2010).

These prior rulings strike an important balance between the rights of park owners and tenants under MHTLA. Courts interpreting the statute must strive not only to protect manufactured housing community residents, whom all parties agree should be protected. They must also practically balance the competing interests of the tenants of a manufactured home community, and the owner of the manufactured home community. *See e.g., McGahuey,* 104 Wn. App at 183.

In *McGahuey,* tenants argued that it was unfair, despite proper advance notice from the park owner, to include in their leases new provisions requiring the tenants to pay separately for utilities, and

imposing a vehicle fee. *Id.* at 182. The Court of Appeals rejected this interpretation of the MHTLA, and noted that the Legislature's approach to the landlord-tenant relationship was more "practical" and "balanced" than the position the tenants advocated. *Id.*

In *Little Mountain,* tenants argued that it was unfair to include in their 25-year leases a provision that shortened the term to one year if the tenants assigned their leases. *Little Mountain,* 169 Wn.2d at 269. This Court held that the provision was enforceable, noting that the Legislature intended to encourage the private development of manufactured housing communities, and that that goal is furthered by balancing fair lease terms with profitability:

> The legislature also sought "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." Permitting a park owner to offer contractual terms that provide attractive yet profitable features to prospective residents encourages additional private financing and market growth.

Id. (citations omitted).

In *Seashore Villa,* tenants argued it was unfair for a park owner to tear down existing carports and a storage shed when they were no longer affordable to maintain. *Seashore Villa*, 163 Wn. App. at 546. The tenants said that because the structures were in place when they signed their leases, the park owner was obligated to maintain them forever under

MHLTA because of the automatic renewal provisions. *Id.* at 545. The Court of Appeals concluded that one-year leases were just that – one year in length – and that a park owner was not obligated to offer the exact same terms upon renewal. *Id.* The Court noted that any subsequent lease provision must be based upon a "meeting of the minds," and that there could be no evidence such meeting of the minds occurred when the management of the park had changed hands without renegotiation of the leases. *Id.*

The unifying theme of these decisions is balance, and an acknowledgement that although MHLTA leases must be stable and fair, it is financially unsustainable to make them immutable. When a lease expires, and a park owner has a good business reason for increasing rent or fees, such an action is not prohibited under MHLTA. In other words, park owners must retain some of their traditional property rights in order to maintain and grow their businesses.

Another common theme in these decisions is the adoption of a holistic approach when examining MHLTA leases. Washington courts have never applied *only* MHLTA to determine the validity of such agreements. They have also applied statutory law, common law, and common sense. *McGahuey,* 104 Wn. App at 183; *Seashore Villa*, 163 Wn. App. at 546; *Little Mountain,* 169 Wn.2d at 269.

2. The Court of Appeals' Decision Should Be Reviewed Because It Rejects Washington's Balanced Treatment of Rights Under the MHLTA, Ignores Well-Established Statutes, and Violates the Common Law.

The balance that Washington courts have struck between park owners and tenants under MHLTA is jeopardized by the Court of Appeals' ruling here. In its opinion, the Court of Appeals enforced the interlineated promise of a former mobile home park owner regarding tenant rents that extended beyond the one-year term of the lease against the park owner's successor. Slip op., Appendix A at p. 8. The Court of Appeals concluded that at the end of the one-year term of the lease, a subsequent park owner could not modify the former park owner's interlineated rental provision upon appropriate notice to the tenant.

Now, any "prospective" provision in a one-year lease can bind future one-year leases and become, in essence, an unalterable provision of those futures lease in perpetuity. This is because MHLTA's provisions regarding automatic renewal, transfer, and termination, restrict a MHLTA park owner's discretion regarding leasing of property. RCW 59.20.073, .090. Thus, under the Court of Appeals' ruling, a term contained in a one-year lease may nonetheless be perpetual.

Under the common law, perpetual leases are disfavored and leases are interpreted to avoid this result wherever possible. *Oak Bay Properties, Ltd. v. Silverdale Sportsman's Center, Inc.*, 32 Wn. App. 516, 519, 648 P.2d 465, 467 (1982). By statute, the provisions of a lease and a tenancy expire at the end of the lease term. RCW § 59.04.030 ("In all cases where premises are rented for a specified time, by express or implied contract, the tenancy shall be deemed terminated at the end of such specified time").

Although a tenant has a right to renew a lease under the MHTLA, that right does not include the right to have the new lease provisions be identical to the prior lease. *Seashore Villa*, 163 Wn. App. at 545.

The notion of a perpetual lease term that binds all future leases was rejected in *McGahuey,* when the Court of Appeals ruled that a subsequent park owner was not required to provide carports in perpetuity. *McGahuey,* 104 Wn. App at 183.

In an attempt to align the Court of Appeals' decision here with *McGahuey,* Tison in her answer to the Petition for Review focuses on an irrelevant portion of *McGahuey* where the Court of Appeals held that the park owner could not require the tenants to take over maintenance of the structures. Tison answer at 7. Tison also mischaracterizes that case by stating that the Court of Appeals ruled that the "park owner could not alter

the provisions of a rental agreement in violation of a statute." *Id.* *McGahuey* held that a park owner was not required to offer the same lease terms in perpetuity, a holding that directly contradicts the Court of Appeals' ruling here.

Here, the lease as interlineated defies the holdings of these cases, as well as statutory and common law. Rather than negotiating and properly acknowledging a *multi-year lease* with the desired rent control provision, the park owner simply interlineated a provision in a one-year lease that applied to *future* one-year leases. This is simply illogical if the provisions of a lease terminate at the end of its stated term.

The facts of this case may seem unusual, and this Court may feel that its review is not necessary. However, rent control provisions in MHLTA leases are not unusual in Washington. *See e.g., Little Mountain*, 169 Wn.2d at 267. Properly executed rent-controlled leases are set for a longer term than one year. *Id.* In *Little Mountain,* the term of the leases was 25 years, which allowed the tenant and park owner to set the terms of the rent control over a longer time period. Thus, the control over rent increases comes from having a long-term lease, not from attempting to bind future one-year leases in a present lease agreement. Tison in her answer to the Petition for Review relies on *Little Mountain* but fails to

note the critical distinction between the 25-year leases there, and the one-year lease at issue here. Tison answer at 4-5.

However unusual it may seem to include in a one-year lease a provision that extends beyond that year, park owners are not lawyers. Such well-intended attempts at tenant accommodation are more likely among MHCW's members who – in good faith – attempt to fulfill the MHLTA's goals of ensuring stable, affordable housing to those living in sometimes vulnerable circumstances.

However, one park owner's good faith attempt at tenant accommodation has morphed into a judicial pronouncement about all future ad hoc lease provisions that any park owner may conceive. The Court of Appeals' opinion constitutes a potentially disastrous misreading of MHLTA, the statute of frauds, and the common law. It invites chaos by concluding that a one-year lease provision can contain a term that is applicable in perpetuity.

Neither the express language, public policy, common law, nor prior Washington case law on MHTLA support the Court of Appeals' conclusion here. The ruling that a one-year lease can contain perpetual provisions that bind future leases – and subsequent park owners – is a risk to the healthy balance that Washington courts have struck between

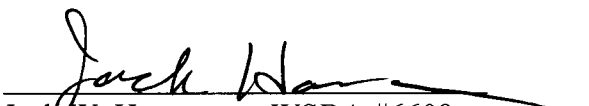
MHLTA tenants and park owners. Review is merited under RAP 13.4(b)(1), (2), or (4).

E. CONCLUSION.

This Court should accept review. RAP 13.4(b). Both parties and MHCW agree the case at bar presents a significant issue under MHLTA. The common sense balance that Washington courts have maintained between MHTLA park owners and tenants is threatened by the Court of Appeals' decision. This Court should harmonize the holding of this case with those of *McGahuey*, *Little Mountain*, and *Seashore Villa*.

DATED this 13 day of June, 2014.

Respectfully submitted,



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DECLARATION OF SERVICE

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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 this 13th day of June, 2014.

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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 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

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.