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**40952-6-II**

NO. 83729-5

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SUPREME COURT  
OF THE STATE OF WASHINGTON

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SEASHORE VILLA ASSOCIATION, a Washington non-profit corporation; PATRICIA CRANE, an individual; SALLY STEWART, an individual; LOUIS MILLER, an individual; LAUREL JENSEN, an individual; DOROTHY HEDRICK, an individual; SANDEE McBRIDE, an individual; WOLFGANG PRIEBE, an individual; MARK BRAZAS, an individual; STANLEY KOOI, an individual; MARY HANNON, an individual; DEBORAH DODGE, an individual; MARIE SUNDENE, an individual; DORIS REINHARD, an individual; TOM DARLING, an individual; JOHN TWELVES, an individual; W.F. McCORD, an individual; and JULANNE V. LARSEN, an individual,

Respondents,

vs.

HAGGLUND FAMILY LIMITED PARTNERSHIP, a Washington limited partnership; THE SALVATION ARMY, a California corporation, as trustee for the Hagglund Charitable Remainder Unitrust dated 6/19/79; and PCF MANAGEMENT SERVICES, INC., a Washington corporation, as agent,

Appellants

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EMERALD PROPERTIES LLC, a Washington limited liability company, d/b/a SEASHORE VILLA MOBILE HOME PARK,

Appellant,

vs.

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JOHN DOE DODGE and JANE DOE DODGE; LEE HASTIG and JOHN  
DOE HASTIG; RUTH JORDAN and JOHN DOE JORDAN; MARY  
ELLEN HANNON and JOHN DOE HANNON; LOUIS MILLER and  
JANE DOE MILLER; JULIE LARSON and JOHN DOE LARSON;  
JOHN TWELVES and MARJ TWELVES; JERRY CROWDER and  
DOROTHY CROWDER; PAT CRANE and JANE DOE CRANE;  
MARIE SUNDENE and JOHN DOE SUNDENE; STANLEY KOOI and  
JANE DOE KOOI; FLORENCE BRAZAS and JOHN DOE BRAZAS;  
LAUREL JENSEN and JOHN DOE JENSEN; MARCIA HAMILTON  
and JOHN DOE HAMILTON; WALTER PRIEBE and GERDA PRIEBE;  
WILLIAM MCCORD and JANE DOE MCCORD; DORIS REINHARD  
and JOHN DOE REINHARD; THOMAS DARLING and JANE DOE  
DARLING; SAN DEE MCBRIDE and JOHN DOE MCBRIDE,

Respondents.

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BRIEF OF APPELLANTS

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Philip A. Talmadge  
WSBA #6973  
Talmadge/Fitzpatrick  
18010 Southcenter Parkway  
Tukwila, WA 98188-4630  
(206) 574-6661

Walter H. Olsen, Jr.  
WSBA #24462  
Troy R. Nehring  
WSBA #32565  
Olsen Law Firm PLLC  
604 W. Meeker Street, Suite 101  
Kent, WA 98032  
(253) 813-8111  
Attorneys for Appellants

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A. INTRODUCTION

This case involves an issue of first impression – the interpretation of RCW 59.20.135 enacted by the Legislature in 1994. That statute forbids a mobile home park owner from transferring responsibility for the maintenance or care of “permanent structures,” to park tenants.

In this case, the mobile home park owner denied any ownership interest in carports and storage sheds in the park. If it was correct in that assertion, the statutory ban did not apply. RCW 59.20.135(3).

The park owner sent correspondence to tenants stating that they must take responsibility for the maintenance of the carports and sheds or, if those structures were the park’s, they would be removed.

The trial court here held that such correspondence violated RCW 59.20.135 and permanently enjoined the park owner from removing the carports and sheds in the park on the basis of what it ruled sua sponte was a contract implied in fact between the park and the tenants at the outset of the tenancy.

The trial court’s misinterpretation of RCW 59.20.135 and misapplication of equitable principles results in a taking of the park owner’s property under article I, § 16 of the Washington Constitution.

B. ASSIGNMENTS OF ERROR<sup>1</sup>

(1) Assignments of Error

1. The trial court erred in entering its order granting partial summary judgment and preliminary injunction in the Seashore Villa action on June 8, 2007.

2. The trial court erred in denying Emerald Properties motion for summary judgment by its order entered on June 8, 2007.

3. The trial court erred in entering its order denying motion for reconsideration on October 2, 2009.

4. The trial court erred in entering finding of fact number 5.

5. The trial court erred in entering finding of fact number 6.

6. The trial court erred in entering finding of fact number 7.

7. The trial court erred in entering finding of fact number 8.

8. The trial court erred in entering finding of fact number 9.

9. The trial court erred in entering finding of fact number 10.

10. The trial court erred in entering finding of fact number 11.

11. The trial court erred in entering finding of fact number 12.

12. The trial court erred in entering finding of fact number 13.

13. The trial court erred in entering finding of fact number 14.

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<sup>1</sup> Although several of the trial court's findings of fact are not supported by substantial evidence, many of the findings are challenged on the basis that they are actually conclusions of law.

14. The trial court erred in entering finding of fact number 15.
15. The trial court erred in entering finding of fact number 16.
16. The trial court erred in entering finding of fact number 22.
17. The trial court erred in entering finding of fact number 23.
18. The trial court erred in entering finding of fact number 24.
19. The trial court erred in entering finding of fact number 25.
20. The trial court erred in entering finding of fact number 26.
21. The trial court erred in entering finding of fact number 27.
22. The trial court erred in making conclusion of law number 3.
23. The trial court erred in making conclusion of law number 4.
24. The trial court erred in making conclusion of law number 5.
25. The trial court erred in making conclusion of law number 6.
26. The trial court erred in making conclusion of law number 7.
27. The trial court erred in making conclusion of law number 8.
28. The trial court erred in making conclusion of law number 9.
29. The trial court erred in making conclusion of law number
- 10.
30. The trial court erred in making conclusion of law number
- 11.
31. The trial court erred in making conclusion of law number
- 12.

32. The trial court erred in making conclusion of law number  
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33. The trial court erred in making conclusion of law number  
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37. The trial court erred in making conclusion of law number  
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38. The trial court erred in making conclusion of law number  
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39. The trial court erred in making conclusion of law number  
23.
40. The trial court erred in making conclusion of law number  
24.
41. The trial court erred in making conclusion of law number  
25.

42. The trial court erred in making conclusion of law number 26.

43. The trial court erred in entering the judgment on October 2, 2009.

44. The trial court erred in entering the permanent injunction on October 2, 2009.

(2) Issues Pertaining to Assignments of Error

1. Where a mobile home park owner sends letters to tenants indicating its intent to demolish certain carports and sheds on park premises but offers the tenants the opportunity to take ownership and maintenance responsibilities for such carports and sheds in lieu of their demolition, does such a letter violate RCW 59.20.135 relating to transfer of responsibility for the maintenance or care of permanent structures within a mobile home park? (Assignments of Error Numbers 1-9, 11-17, 22-25, 27-31, 33-34, 42-44)

2. Where a mobile home park owner and tenants have entered into written lease agreements consistent with the Mobile Home Landlord Tenant Act, RCW 59.20 (“MHLTA”), may a court impose additional requirements upon the park owner by finding that a contract implied in fact existed whereby the park owner agreed to provide park amenities in perpetuity? (Assignments of Error Numbers 10, 25, 26, 31, 42-44)

3. Where the trial court interprets RCW 59.20.135 and creates a contract implied in fact to require a park owner to provide structures on its property to tenants in perpetuity against its will, does such a requirement constitute a taking under article I, § 16 of the Washington Constitution as interpreted by this Court in *Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347, 13 P.3d 183 (2000)? (Assignments of Error Numbers 31, 32, 42-44)

4. Did the trial court err in awarding fees to the tenants and are the park owners entitled to an award of attorney fees at trial and on appeal? (Assignments of Error Numbers 18-21, 35-43)

C. STATEMENT OF THE CASE

Seashore Villa Mobile Home Park is a mobile home park located at 4805 Cushman Road NE, Olympia, Thurston County, Washington. CP 295. It is a park for residents 55 years old and above. CP 171. The land on which the park is located is owned by the Hagglund Family Limited Partnership. CP 295. The Salvation Army acts as the trustee for the Hagglund Charitable Remainder Unitrust, one of the limited partners in the limited partnership. *Id.* In 1992, Emerald Properties LLC (“Emerald”) acquired a long term lease from the Hagglund Family Limited Partnership and began operating Seashore Villa. *Id.*

Seashore Villa Association (“SVA”) is a nonprofit corporation acting for various individual tenants who are also named parties in this action. CP 6-7. There are 110 mobile home lots in Seashore Villa in which each tenant rents a lot on which to place the tenant’s mobile home. CP 295.

Initially, Seashore Villa provided a number of amenities to the tenants as part of the lease – a community clubhouse, a workshop, a swimming pool, a nature trail, and a waterfront beach and cabana. CP 222.<sup>2</sup> Emerald did not list carports and sheds among the amenities it provided to tenants in the lease agreement. CP 75, 221; Exs. 1, 7, 24, 25, 28, 32.

Each tenant’s space contained a carport and/or a storage shed, CP 295, which were conveyed to the tenants “as is” and were the responsibility of the tenants to maintain. *Id.* Emerald advised tenants in 2000 that they, not the park owners, owned the sheds and carports. CP 136-69; Ex. 205. In fact, the present rules and regulations for Seashore Villa confirm that the tenants were responsible for the maintenance of their carports and storage sheds located on individual lots, stating:

Mobile home, Carports and storage sheds are to be kept clean and free of moss, etc.

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<sup>2</sup> Sample leases are found in the record at CP 74-133.

CP 173.<sup>3</sup> The provision was in the section of the rules relating to the *tenant's* maintenance obligations. *Id.*

In 1994, the Legislature enacted RCW 59.20.135, which prohibits a mobile home park owner “from transferring responsibility for the maintenance or care of permanent structures within the mobile home park to the tenants of the park.” CP 296. That statute was not made retroactive by the Legislature. Any obligation to maintain the carports/sheds was transferred by the park owner to the tenants *before* Emerald obtained the lease of Seashore Villa in 1992 and the 1994 enactment of RCW 59.20.135.

On or about June 28, 2005, Emerald sent each tenant a rent increase/notice of change of rental, effective October 2005. CP 43, 136-69; Ex. 206. The notice made clear that Emerald did not believe it owned the carport and shed on the tenant's lot, but if it did, it was removing them unless the tenant signed a storage shed/carport agreement. *Id.* Emerald also provided the tenants with an agreement, notifying tenants of the intent to remove the carports and sheds at Seashore Villa, but allowing the tenant to request the opportunity to assume ownership of such facilities. CP 44.

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<sup>3</sup> Each of the tenants of the park signed a written rental agreement as well as rules and regulations upon commencing a tenancy at the park. *See, e.g.*, CP 76, 176-77.

After receiving such notices, but before the removal of any carports or sheds, SVA contended the notice violated MHLTA and it commenced an action against Emerald in the Thurston County Superior Court on October 18, 2005. CP 6-13. Virtually simultaneously, Emerald commenced a declaratory judgment action in the same court asking the court to declare that the notice was valid and that it could remove the unowned carports and storage sheds from the tenants' spaces. CP 597-600. In addition to pleading that its notice was consistent with RCW 59.20.135, Emerald contended that the statute was unconstitutional. CP 413. The cases were initially assigned to the Honorable Richard A. Strophy. Emerald and the SVA both moved for summary judgment in the spring of 2007. CP 22-35, 56, 66. Judge Strophy granted the SVA's motion, and denied Emerald's. CP 242-44. In specific, the court held that the notice to the tenants violated RCW 59.20.135 and that such notices were contracts of adhesion. *Id.* The court further ordered injunctive relief to SVA:

a preliminary injunction is issued enjoining defendants and their agents from removing the carports or sheds it constructed on tenants' lots in Seashore Villa Mobile Home Park without the uncoerced written consent of the respective tenants.

CP 243.<sup>4</sup>

The case was reassigned for trial to the Honorable Chris Wickham who heard testimony in November, 2008. The court initially held that Judge Strophy's order was correct and permanently enjoined Emerald from removing the carports and sheds. CP 304-07. The court requested further briefing from the parties on attorney fees. CP 307.

Emerald and SVA moved for reconsideration. CP 317-25. In a letter ruling dated June 2, 2009, Judge Wickham determined that reconsideration was appropriate, modifying Judge Strophy's injunction to allow Emerald to remove the carports and sheds at the end of the term of the tenants' leases. CP 459-60. The court adhered to its earlier ruling that the Emerald letter to the tenants dated June 28, 2005 violated RCW 59.20.135, CP 459, but the court requested further briefing on the constitutional issues. CP 460.

Judge Wickham issued a further letter ruling on July 24, 2009 in which he noted that Judge Strophy had not considered the constitutional implications of his preliminary injunction, CP 578, and he therefore rewrote the injunction issued by Judge Strophy to read as follows:

[landlord is permanently] enjoined (1) from transferring to tenants responsibility for maintenance of the carports or

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<sup>4</sup> The effect of Judge Strophy's preliminary injunction was to bar Emerald from removing the carports or sheds even at the time of the annual renewal of leases under the MHLTA.

sheds the park owner constructed on tenants' lots in Seashore Villa Mobile Home Park without the uncoerced written consent of the respective tenants; and (2) from removing carports or sheds the park owner constructed on tenants' lots in Seashore Villa Mobile Home Park without the uncoerced written consent of the respective tenants during such times as tenants are in possession of the lots on which the structure is located.

CP 580. However, Judge Wickham also determined that because the carports and sheds were originally offered by a prior park owner as an inducement to tenants to locate their mobile homes in the park, he held *sua sponte* that a contract implied in fact was created from the parties' conduct which occurred decades ago. CP 580-81. The court enjoined Emerald from changing the "agreement" of the parties regarding the provision and maintenance of the structures. CP 581.<sup>5</sup> Notwithstanding the MHLTA, Judge Wickham's ruling barred Emerald from removing carports or sheds or any other structures until such time as a tenant vacated the premises or until Emerald ceased using Seashore Villa for a mobile home park. *Id.*<sup>6</sup> The court awarded attorney fees to SVA. *Id.*

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<sup>5</sup> Judge Wickham's ruling brought the final decision in the case around full circle to Judge Strophy's initial determination, but on the alternative grounds that Judge Wickham raised *sua sponte*.

<sup>6</sup> In effect, if structures were provided by the park owner at the time the tenants signed a lease agreement, such structures had to be offered *in perpetuity* by the park owner to the tenant, despite the MHLTA and notwithstanding any other changes in circumstances regarding the utilization of the property.

On October 2, 2009, the trial court denied Emerald's motion for reconsideration, CP 549-50, and entered a final judgment and permanent injunction in SVA's favor. CP 559-65. The court entered findings of fact and conclusions of law as well. CP 551-64. The court also awarded substantial attorney fees to SVA. CP 557, 563. This timely appeal followed. CP 566-91.

D. SUMMARY OF ARGUMENT

The trial court misinterpreted RCW 59.20.135 here. To the extent the tenants, not the park owners, owned the carports and the sheds, the tenants had the obligation to maintain those structures. RCW 59.20.135(3-4).

To the extent the park owners owned such carports and sheds, they had the right to remove them at the expiration of the one-year lease afforded tenants under RCW 59.20.090, upon proper notice to the tenants. Should the tenant wish to assume responsibility for such structures, such a "transfer" was permitted by RCW 59.20.135(4).

The trial court misapplied the equitable principle of "contract implied in fact" when it sua sponte determined such a doctrine applied here. The parties' explicit and extensive contract and the overarching principles of the MHLTA controlled over contract terms implied by the trial court to exist.

To the extent that either RCW 59.20.135 or a contract implied in fact forces a park owner to maintain a structure on its property and offer it as part of a leasehold to tenant in perpetuity despite the one-year lease provisions of the MHLTA, the statute or equitable principle effectuated a taking of the park owner's property under article I, 16 of the Washington Constitution, interfering with the park owner's right to use and dispose of its property as it chooses.

SVA is not entitled to attorney fees at trial. Emerald is entitled to its fees at trial and on appeal.

#### E. ARGUMENT

The present case was largely resolved by the trial court on summary judgment. This Court reviews order on summary judgment de novo. *Mains Farm Homeowners Ass'n v. Worthington*, 121 Wn.2d 810, 813, 854 P.2d 1072 (1993). Under CR 56(c), a court grants a motion for summary judgment only if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. With respect to the facts, this Court must consider the facts, and all inferences from them, in a light most favorable to Emerald as the nonmoving party on SVA's summary judgment motion. *Wilson v. Steinback*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).

Ordinarily, findings of fact are reviewed by this Court to determine if they are supported by substantial evidence. *Thorndike v. Hesperian Orchards, Inc.*, 54 Wn.2d 570, 343 P.2d 183 (1959). Substantial evidence is a quantum of evidence sufficient to persuade a fair-minded person of the truth of a proposition. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 819, 828 P.2d 549 (1992). Mixed questions of law and fact are reviewed de novo. *In re Fleming*, 142 Wn.2d 853, 865, 16 P.3d 610 (2001). If a finding is actually a conclusion of law mislabeled as a finding of fact, or a mixed question of law and fact, it is reviewed de novo. *Willener v. Sweeting*, 107 Wn.2d 388, 394, 730 P.2d 45 (1986). Conclusions of law are review de novo by this Court, like other errors of law. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003).

(1) Principles of Statutory Interpretation

This Court reviews statutory interpretation issues de novo. *Dot Foods, Inc. v. Wash. Dep't of Revenue*, 166 Wn.2d 912, 919, 215 P.3d 185 (2009). “The primary goal of statutory construction is to carry out legislative intent.” *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 807, 16 P.3d 583 (2001). In Washington’s traditional process of statutory interpretation, this analysis begins by looking at the words of the statute. “If a statute is plain and unambiguous, its meaning must be primarily

derived from the language itself.” *Id.* The Court looks to the statute as a whole, giving effect to all of its language. *Dot Foods*, 166 Wn.2d at 919. The Court must look to what the Legislature said in the statute and related statutes to determine if the Legislature’s intent is plain. *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). If the language of the statute is plain, that ends the Court’s role. *Cerrillo v. Esparza*, 158 Wn.2d 194, 205-06, 142 P.3d 155 (2006).

If, however, the language of a statute is ambiguous, the Court must then construe the statutory language. A statute is ambiguous if it is subject to two or more reasonable interpretations. *State v. McGee*, 122 Wn.2d 783, 864 P.2d 912 (1993). Merely because two interpretations of a statute are conceivable, does not render a statute ambiguous. *Tesoro Refining & Marketing Co. v. State, Dep’t of Revenue*, 164 Wn.2d 310, 318, 190 P.3d 28 (2008). The object of statutory construction is still best to effectuate the Legislature’s intent. *Dep’t of Ecology*, 146 Wn.2d at 9-10, 11-12; *State ex rel. Royal v. Board of Yakima County Comm’rs*, 123 Wn.2d 451, 459, 869 P.2d 56 (1994). But this Court does not read language into a statute even if it believes the Legislature *might* have intended it. *Kilian v. Atkinson*, 147 Wn.2d 16, 20, 50 P.3d 638 (2002). Statutes must be interpreted and construed so that all the language used is given effective,

with no portion rendered meaningless or superfluous. *Stone v. Chelan County Sheriff's Dep't*, 110 Wn.2d 806, 810, 756 P.2d 736 (1988).

The Court may resort to “principles of statutory construction, legislative history, and relevant case law” to assist it in discerning legislative intent *only* if the Court first determines the statute’s language is ambiguous. *Tesoro*, 164 Wn.2d at 318 n.3; *Cerrillo*, 158 Wn.2d at 202; *Cockle*, 142 Wn.2d at 809.

By its plain terms, RCW 59.20.135 does not bar a mobile home park owner from choosing to dispense with certain park amenities as part of a leasehold. Specifically, the park owner can transfer responsibility for the maintenance or care of permanent structures to groups of tenants or to individual tenants if the tenant group or individual tenant asks to assume such responsibility. RCW 59.20.135(4). Moreover, if the tenant owns the structure, having built or affixed the structure on his or her own, it is not subject to the bar of RCW 59.20.135(1), RCW 59.20.135(3), and the park owner may require the tenant to maintain it. RCW 59.20.135(4).

While this Court need not reach the legislative history of RCW 59.20.135, given the plain meaning of the statutory language, the legislative history of SB 5154 from 1994 supports Emerald’s reading of the statute. The February 18, 1994 memorandum of staff counsel for House Office of Program Research indicated that the rationale for the bill

was that some “park tenants have expressed concern they are unable to obtain insurance on these structures because they do not own them, may be injured while trying to repair the structures, or don’t have the resources to maintain the structures.” *See* Appendix. Implicit in this description is the fact that if the tenants owned the structures, they, not the park owners, would be required to maintain them, notwithstanding the legislation.

Moreover, *nothing* in the legislative history either stated that park owners could *never* transfer permanent structures to the tenants or that the park owners were obligated to offer all permanent structures dating from the outset of the tenancy in perpetuity. RCW 59.20.135 must be read in *pari materia* with the one-year lease feature of RCW 59.20.090. A park owner may choose to dispense with offering amenities to tenants at the end of the one-year lease period.

(2) RCW 59.20.135 Cannot Apply Retroactively

Judge Wickham determined that RCW 59.20.135, enacted in 1994, applied to tenancies first commenced before the effective date of the statute. Emerald assumed managerial responsibility for Seashore Villa in 1992, and confirmed that it was the tenants’ responsibility to maintain the carport and sheds on their lot. Exs. 1, 7, 24, 25, 28. RCW 59.20.135 became effective in March 2004 and the Legislature did not include any retroactivity provision in the legislation enacting it.

As a general proposition, this Court disfavors retroactivity. *Densley v. Department of Retirement Systems*, 162 Wn.2d 210, 223, 173 P.3d 885 (2007). “A statute is presumed to operate prospectively unless the Legislature indicates that it is to operate retroactively.” *Id.* This presumption can only “be overcome if (1) the Legislature explicitly provides for retroactivity; (2) the amendment is ‘curative’; or (3) the statute is ‘remedial.’” *Id.*

Here, the Legislature did not explicitly provide for retroactivity when it passed RCW 59.20.135. To the contrary, the Legislature instead made the statute effectively immediately, and thereby manifested its express legislative intent that RCW 59.20.135 be effective immediately but that it should not be applied retroactively.

RCW 59.20.135 is not curative. A statute or an amendment is curative only if it clarifies or technically corrects another ambiguous statute. *See Wash. State Farm Bureau Fed’n v. Gregoire*, 162 Wn.2d 284, 303, 174 P.3d 1142 (2007); *McGee Guest Home, Inc. v. Dep’t of Soc. & Health Servs. of State of Wash.*, 142 Wn.2d 316, 325, 12 P.3d 144 (2000); *In re F.D. Processing, Inc.*, 119 Wn.2d 452, 461, 832 P.2d 1303 (1992). The statute must be “clearly curative” for it to be retroactively applied. *F.D. Processing*, 119 Wn.2d at 462. Here, the Legislature created a new

substantive right and obligation when it enacted RCW 59.20.135, and did not clarify or correct another ambiguous statute.

RCW 59.20.135 is also not remedial. “A remedial statute is one which relates to practice, procedures and remedies...” *Densley*, 162 Wn.2d at 223. Such a statute will generally be applied retroactively, unless it affects a substantive or vested right. *Id.* However, SVA wants RCW 59.20.135 applied retroactively precisely because it provides SVA with a new *substantive right*: the right to require Emerald to maintain the storage sheds and carports. The 1994 statute is not procedural.

Even if one of these rules of statutory interpretation calls for retroactive application, retroactivity will be granted only if it does not violate constitutional protections relating to due process and the impairment of contracts. *See Gillis v. King County*, 42 Wn.2d 373, 376, 255 P.2d 546 (1953). Where the statute fundamentally alters vested rights or exacts a penalty by being applied retroactively, retroactivity is not permissible. *Godfrey v. State*, 84 Wn.2d 959, 966, 530 P.2d 630 (1975). Such vested rights involve title to property, for example. *Id.* at 963. Here, SVA or their predecessors’ rental agreements incorporated the parties’ prior course of dealing since 1992 which required that the tenants maintain the carports and storage sheds on their lot. Any retroactive application of

RCW 59.20.135 would impair the parties' contracts, and violate constitutional due process protections.

This Court should hold that RCW 59.20.135 is inapplicable to tenancies created prior to the effective date of that statute.

(3) The Trial Court Erred in Issuing an Injunction Forever Barring Emerald from Removing the Carports and Storage Sheds in Its Park

Judge Wickham found that Emerald is in violation of RCW 59.20.135, but he also based ruling upon the alleged contract implied in fact. The court's interpretation of RCW 59.20.135 flies in the face of those decisions regarding the ability of a park owner to alter the terms of a lease agreement with the tenant upon its annual renewal under MHLTA. RCW 59.20.090, for example, authorizes a park owner under the MHLTA to increase rent upon the expiration of the term of the lease agreement. The park owner must give the tenant three months notice prior to any increase in rent.

SVA relied below on rental agreements signed by its members with Emerald in 1981. CP 39-40. Since 1981, Emerald has entered into numerous new rental agreements and modified its rules and regulations. CP 74-133. Nothing in the MHLTA requires that rental agreements are frozen in time, limited only to the terms of the very first rental agreement between the park owner and the tenant.

RCW 59.20.090 states in pertinent part:

A landlord seeking to increase the rent upon the 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). Nothing in that statute or anything else in the MHLTA mandates that a carport or storage shed must be part of the leasehold. In fact, at the time of the rent increase, a park owner may also alter the rental agreement to offer fewer services or amenities in the park.

In *McGahuey v. Hwang*, 104 Wn. App. 176, 15 P.3d 672, *review denied*, 144 Wn.2d 1004 (2001), the park owner sent a notice to tenants with a change of rental indicating that the park would no longer pay for utilities. The Court of Appeals upheld such a change, *rejecting* the tenants' contention that the original lease agreements were frozen forever in time:

While we recognize that one significant purpose of the MHLTA is to give heightened protection to mobile home tenants, there are two related reasons for rejecting the Tenants' interpretation of the statute. First and most obvious, it nowhere provides that a landlord may not increase or impose fees for services in addition to the rent. Rather, portions of the statute ensure that whatever alterations the landlord seeks must be equitable. For example, the landlord may not charge a utility fee in excess of actual utility costs or increase a tenant's obligations or decrease services in retaliation for a tenant's good faith lawsuit or membership in a homeowners association. And even these provisions, which relate directly to the kinds of services and charges at issue here, do not bar increases or

changes in fees. Second, the only limitation on increases of any kind found in the MHLTA is the requirement discussed above that rental rates not fees be increased only upon lease expiration and three months' notice. Express mention of one thing in a statute implies the exclusion of another. *Thus, we cannot accept the Tenants' argument that the limitation on raising rent prohibits raising or imposing fees. Legally and logically, it does just the opposite.* By omitting any limit on assessing or raising fees or other charges, the statute has imposed no restrictions on them. So long as utility charges do not exceed the actual cost of the service and fees and charges are not retaliatory, the statute permits the landlord to impose them.

This is a practical approach for the Legislature to take. It recognized that mobile homes are difficult and expensive to move and, to protect tenants from the instability inherent in most rental arrangements, it provided for automatic renewal and a long notice period for rent increases. *But it did not require that all original lease terms remain in force through every automatic renewal because renewals could extend for countless years.* By not regulating them, the Legislature did allow changes in the lease terms to permit the landlord to charge for utilities, so long as they were limited to the actual cost. This is nothing more than a practical acknowledgement that costs increase and those using a service may be required to pay for it.

In sum, the MHLTA allows Hwang to require the Tenants to pay for their utilities in addition to base rent.

*Id.* at 182-83. *See also, Duvall Highlands LLC v. Elwell*, 104 Wn. App. 763, 769, 19 P.3d 1051, *review denied*, 144 Wn.2d 1004 (2001) (following *McGahuey* on utilities).

Thus, the trial court's injunctive relief forever barring Emerald from removing carports or storage sheds cannot be supported under RCW

59.20.090. Similarly, RCW 59.20.135 does not assist the Association's position.

SVA argued below that RCW 59.20.135, which prohibits a park owner from transferring maintenance responsibilities for "permanent structures" in a park to tenants, was the basis for injunctive relief. CP 26-27. That statute defines "permanent structure" as "the clubhouse, carports, storage sheds, or other permanent structure." *See* Appendix. However, *nothing* in that statute bars a park owner from removing such permanent structures entirely.

Leased premises and the amenities offered by mobile home parks change. They are not frozen in time to the terms of the very first rental agreement. As note by Emerald below, swimming pools were popular in mobile home parks during the 1970s, but now are not popular with insurance companies for liability reasons, or landlords for financial reasons. CP 62. A rental agreement signed 30 years ago does not require a park owner, for example, to have a swimming pool forever even though that park owner's insurance company might cancel liability insurance unless the pool is removed. Similarly, if a beach cabana or clubhouse deteriorates, nothing prevents a park owner from tearing them down. If Emerald decided its workshop would be better utilized as a cardroom/bingo hall, nothing prevents such a change.

The notice sent by Emerald to SVA members did not forcibly transfer maintenance responsibility for carports and storage sheds to those tenants, as forbidden by RCW 59.20.135. The pertinent part of the notice letter stated:

As you may recall, the management has advised you in prior years that the Park does not own any carport or storage shed that may be situated on your space. To clarify this, another purpose of this notice is to advise you that your new rent on the 1<sup>st</sup> day of October 2005 will not include the amenity of a storage shed or carport at your space. Insofar as you do not believe that you own any storage shed or carport at your space, the Park will arrange for the removal of the carport or shed. If you wish to keep your carport or storage shed at your space, please sign and return the attached Storage Shed/Carport Agreement to the management prior to the 1<sup>st</sup> day of October 2005.

*See, e.g.,* CP 136.

First, there was a long-standing controversy in Seashore Villa as to who actually owned the carports and storage sheds. CP 305. If the tenants owned those amenities, by the plain language of RCW 59.20.135(4), the tenants could be required by Emerald to maintain them.

Second, if Emerald owned the carports and storage sheds, then it indicated its intent to remove them, as it was entitled to do by RCW 59.20.090. If, however, a tenant wanted to keep such amenities, and maintain them, the tenant was offered the opportunity to sign the storage shed/carport agreement, asking Emerald to transfer the responsibility for

the carport and storage shed to the tenant. CP 136-69. Such a provision is plainly authorized by RCW 59.20.135(4) which states:

Nothing in this section shall be construed to prohibit a park owner from transferring responsibility for the maintenance or care of permanent structures within the mobile home park . . . to an individual park tenant when requested by the . . . individual tenant.

In practical terms, the trial court's interpretation of the MHLTA and its decision to create a contract implied in fact means that if a park owner offered any permanent improvement on its premises such as carport, a shed, a swimming pool, a community center, machine shop, or the like at the outset of the tenancy, the park owner could *never* remove or change such permanent improvements in perpetuity.

The trial court here erred in ruling as a matter of law that Emerald violated RCW 59.20.135. It compounded that error in enjoining Emerald from ever removing the carports and sheds, in violation of RCW 59.20.090.

(4) The Trial Court's Sua Sponte Imposition of a Contract Implied in Fact Is Contrary to Law Where the Parties Had an Extensive Written Agreement

This case presents the strange situation of a court determining *sua sponte* that despite the existence of written contracts between the parties, it has the authority to impose additional lease terms based on the equitable doctrine of contract implied in fact.

A contract implied in fact is an agreement whose existence depends on the parties' conduct and arises by implication from circumstances demonstrating a common understanding and mutual intent of the parties to contract with each other. *Young v. Young*, 164 Wn.2d 477, 486, 191 P.3d 1258 (2008); *Bell v. Hegewald*, 95 Wn.2d 686, 690, 628 P.2d 1305 (1981). The parties must have a "meeting of the minds." *McKevitt v. Golden Age Breweries, Inc.*, 14 Wn.2d 50, 52, 126 P.2d 1077 (1942). Without such an *agreement*, the doctrine does not apply. The trial court's decision to imply additional contract terms the parties themselves did not negotiate is inconsistent with the doctrine. *Chandler v. Washington Toll Bridge Authority*, 17 Wn.2d 591, 608, 137 P.2d 97 (1943) ("[w]here the rights of the parties are governed by an express and enforceable contract, the law will not imply another or different contract"). There is no evidence here that the parties *agreed* at the time the tenants first came to Seashore Villa that carports or sheds would be offered by Emerald or its predecessor in perpetuity.<sup>7</sup>

Contracts implied in fact have been rejected by Washington courts in the MHLTA context. *Little Mountain Estates Tenants Ass'n v. Little*

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<sup>7</sup> The typical lease agreement at issue here contained what amounts to an integration clause, (*see* Appendix), the final paragraph of each lease agreement states: "Any additional terms and conditions of the tenancy herein provided shall be reduced to writing, signed by both Owner and Tenant, and attached hereto as an integral part

*Mountain Estates MHC, LLC*, 146 Wn. App. 546, 192 P.3d 378 (2008), *review granted*, 166 Wn.2d 1001 (2009) (rejecting contract implied in fact arising from park advertising).

In *In re the Dependency of Q.L.M.*, 105 Wn. App. 532, 20 P.3d 465 (2001), the Court of Appeals held that where Washington's Sexually Aggressive Youth ("SAY") statute, clearly governed the question of whether materials could be released, the trial court erred in finding an equitable basis to prevent the release of a juvenile's SAY evaluations:

The State relies on the well-settled rule that courts "will not give relief on equitable grounds in contravention of a statutory requirement" to argue that the injunction was contrary to law. We agree that, because there is no statutory or constitutional basis for the order, it cannot be upheld.

*Id.* at 539. See *Longview Fibre Co. v. Cowlitz County*, 114 Wn.2d 691, 699, 790 P.2d 149 (1990) (equitable principles do not provide a basis for equitable relief in derogation of statutory mandates).

The trial court's decision to imply contract terms regarding park amenities from the mere fact the amenities were offered when the tenants first came to Seashore Villa is entirely impractical. Circumstances change. For example, a mobile home park might have initially offered a swimming pool, a putting green, a workshop, or the like, as an amenity.

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hereof." This further reinforcing the notion that the contract terms implied in fact by the trial court were never the subject of any agreement.

Such amenities might no longer be popular at the park or too expensive to maintain. Under the trial court's analysis, such amenities *must* be offered by a park owner in perpetuity, a position previously rejected by Washington courts. *McGahuey, supra* (rejecting tenants' argument that park owner could not require them to pay for utility costs when lease originally provided that landlord would pay for utility costs).

In sum, equity cannot alter or replace a constitutionally valid statute like MHLTA. If that statute offers no relief to SVA here, the trial court erred in creating a remedy in lieu of the MHLTA.

(5) The Trial Court's Injunction, Whether Based on RCW 59.20.135 or a Contract Implied in Fact Effectuates a Taking

To the extent the trial court ruled that Emerald must provide amenities to tenants as part of a leasehold in perpetuity against the will of the park owners, whether on the basis of RCW 59.20.135 or a contract implied fact, such an edict would constitute a taking under article I, § 16 of our Constitution.

Property consists not merely of the ownership and possession of a thing, but in its unrestricted right of use, enjoyment and disposal. The United States Supreme Court has long held property consists of a "group of rights inhering in the citizen's relation to the physical thing, as the right to possess, use and dispose of it." *Id.* (citing *United States v. General*

*Motors Corp.*, 323 U.S. 373, 378, 65 S. Ct. 357 (1945)). The destruction of any of those key aspects of property by government action can constitute a taking.

The Washington Constitution in article I, § 16 provides for broad protection to private property from government intrusion. It bars the taking or damaging of private property for public or private use. In *Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347, 13 P.3d 183 (2000), the trade association, Manufactured Housing Communities of Washington (“MHCW”) challenged Chapter 59.23 RCW, which required mobile home park owners to allow tenants a right of first refusal on any sale of the park to a third party, and to sell to the tenants if they could make an offer equal to the third-party offer. *Id.* at 351-52. The statute also required the owners to provide notice to the tenants and wait 30 days before closing any third party sale. *Id.*

This Court determined the Washington Constitution’s eminent domain provision afforded greater protection to property owners than the takings clause of the Fifth Amendment to the United States Constitution. *Id.* at 356-61. This Court held that article I, § 16 *absolutely prohibits* the State or its subdivisions from exercising powers of eminent domain to take private property from one property owner only to give it to another for private use, except in certain enumerated circumstances. *Id.* at 357. If

private property is taken for private use for a reason not enumerated in article I, § 16, a court does not even reach the question of just compensation under takings jurisprudence. *Id.* at 362. Invalidation of the statute is required because article I, § 16 *absolutely* bars the taking of private property by the government for the private use of another. *Id.*

Even if the taken property is put to a use that arguably has *some* benefit to the public, that taking still violates article I, § 16, if the “statute’s design and its effect provide a beneficial use for private individuals only.” *Id.* at 362. The *Manufactured Housing* court rejected the notion that a mere police power exercise was present where the property right is “not only taken, but it is statutorily transferred to a private party for an alleged public use.” *Id.* at 369.

This Court ultimately determined that RCW 59.23’s restrictions on sale constituted a private, not public, use of private property. *Id.* at 362. Although the Court acknowledged that there might be some public *benefit* to depriving property owners of the unfettered right to sell their property, public benefit does not equate with public use. *Id.* As such, it was irrelevant whether the park owners were properly compensated for the taking. *Id.*

The Court concluded that because the right of first refusal implicates a fundamental property right – the right to dispose of property –

it “remains indivisible from the ‘bundle of sticks’ representing the valuable incidents of ownership along with the right to possess, use, and exclude others.” *Id.* at 366. The Court held that a 30-day waiting period and a requirement to sell to the tenants on equal terms to a third-party offer was a taking of private property for private use and invalidated RCW 59.23. *Id.* at 374-75. “The instant case falls within the rule that would generally find a taking where a regulation deprives the owner of a fundamental right of property ownership.” *Id.* at 369.

The *Manufactured Housing* court determined that the right of first refusal was a property interest because such interests are *broadly defined*. Citing *Guimont v. Clarke*, 121 Wn.2d 586, 595, 854 P.2d 1 (1993), the Court noted that “the right to possess, to exclude others, or to dispose of property’ are ‘fundamental attribute[s] of property ownership.” 142 Wn.2d at 364. In particular, the right to dispose of property in a manner the owner pleases is key. *Id.*

RCW 59.20.135 infringes upon property rights much more aggressively than RCW 59.23 did, and presents an even clearer case of an unconstitutional taking for private use under *Manufactured Housing*. *Manufactured Housing* recognized “that the right to possess, to exclude others, or to dispose of property are fundamental attributes of property ownership.” *See* 142 Wn.2d at 364. Under RCW 59.20.135, as

interpreted by the trial court here, leases are frozen in time, and a park owner may never vary the terms of the leasehold once offered to a tenant. By prohibiting owners from changing the terms of leases, the statute at issue here requires mobile home park owners to offer leases in perpetuity. In effect, control over the use of the park property is transferred by RCW 59.20.135 to the tenants who can insist on the permanent maintenance of amenities against the park owner's will.

Park owners are deprived of the dual fundamental property rights to the use of their property. As this Court opined, "The substantial value of property lies in its use. If the right of use be denied, the value of the property is annihilated and ownership is rendered a barren right." *Manufactured Housing*, 142 Wn.2d at 364.

Both RCW 59.20.050/.090 and the trial court's permanent injunction here amounts to an unconstitutional taking under article I, § 16 and *MHCW* because they restrict the park owners' right of use, enjoyment and disposal of their mobile home park property. Washington courts have interpreted RCW 59.20.050/.090 to require a mobile home park owner to automatically renew a tenant's one-year lease unless good cause is stated for the tenant's ouster from the tenancy. *Holiday Resorts Community Ass'n v. Echo Lakes Assoc., LLC*, 134 Wn. App. 210, 135 P.3d 499 (2006), *review denied*, 160 Wn.2d 1019 (2007) (recognizing one year

tenancies under MHLTA are automatically renewable). In effect, the trial court's ruling makes any amenities *ever* offered by a park owner perpetually part of the lease by the park owner to the tenant, and interferes with the nature of the tenancy the park owner may offer.

The trial court's ruling permanently enjoins a mobile home park owner from making any changes in the physical configuration of the park at any time until the owner no longer chooses to use the property as a park. By forbidding a park owner from *ever* changing the tenancy, the trial court's decision restricts a park owner's rights of use, enjoyment and disposal of such permanent structures as carports and sheds because it mandates that the park owner's use of its own property is limited to the sole purpose of allowing tenants the right to have and retain such permanent improvements as carports and sheds.

(6) SVA Is Not Entitled to Fees, but Emerald Is Entitled to Its Attorney Fees at Trial and on Appeal

The trial court here apparently awarded attorney fees to SVA on the basis of RCW 59.20.110, as that was the sole basis for SVA's argument that it was entitled to fees. CP 514. This was error. If this Court reverses the trial court's decision on RCW 59.20.135 or a contract implied in fact, SVA would not qualify for a fee award.

Emerald is entitled to its attorney fees at trial and on appeal pursuant to the MHLTA and the common law exception to the American Rule on attorney fees in civil cases for the dissolution of a wrongfully issued injunction.

RCW 59.20.110 authorizes the recovery of attorney fees in “any action arising out of [the MHLTA].” Generally, park owners may recover fees. *McGahuey*, 104 Wn. App. at 185; *Hartson P’ship v. Martinez*, 123 Wn. App. 36, 196 P.3d 449, *review denied*, 154 Wn.2d 1010 (2004). This case arises out of Emerald’s insistence upon its rights under the MHLTA.

Emerald has been compelled to litigate with SVA, asserting its rights under the MHLTA. Under RCW 59.20.110, they should be entitled to recover its attorney fees at trial on remand. Emerald should recover its attorney fees on appeal as well. RAP 18.1.

Additionally, Emerald is entitled to fees because it will have successfully dissolved a wrongfully issued injunction. *Alderwood Assocs. v. Washington Envtl. Council*, 96 Wn.2d 230, 635 P.2d 108 (1981). In *Alderwood*, a shopping mall obtained a temporary restraining order preventing the Washington Environmental Council and others from soliciting signatures for an initiative or demonstrating at the mall. This Court reversed the trial court’s temporary restraining order because it

violated the defendants' state constitutional right to free speech. *Id.* at 246.

In *Cecil v. Dominy*, 69 Wn.2d 289, 418 P.2d 233 (1966), the Court discussed the rationale for awarding attorney fees to parties who prevail in dissolving a wrongful injunction. Because the trial on the merits had for its sole purpose a determination of whether the injunction should stand or fall, and was the only procedure then available to the party enjoined to bring about dissolution of the temporary injunction, the case comes within the rule that a reasonable attorney's fee reasonably incurred in procuring the dissolution of an injunction wrongfully issued represents damages suffered from the injunction. *Id.* at 291-92. *See also, City of Seattle v. McCready*, 131 Wn.2d 266, 931 P.2d 156 (1997) (fees for dissolving temporary injunction).

Here, Emerald has been compelled to litigate to secure the dissolution of the injunction issued by Judge Strophy and affirmed by Judge Wickham. It is entitled to its fees at trial and on appeal.

#### F. CONCLUSION

The trial court did not properly interpret RCW 59.20.090 and misinterpreted RCW 59.20.135. Nothing in the MHLTA mandates that a carport or storage shed is intrinsically part of a mobile home leasehold or, once such amenities are offered, they cannot be removed by the park

owner. The trial court compounded its error by finding additional lease terms based on a contract implied in fact.

If RCW 59.20.135 or a contract implied in fact mandate that amenities, once offered by a park owner to tenants, are part of the leasehold in perpetuity, Emerald's property has been taken here.

This Court should reverse the trial court's judgment, and dissolve the trial court's injunction against the removal of carports and storage sheds at Seashore Villa. Costs on appeal, including reasonable attorney fees, should be awarded to Emerald.

DATED this 28th day of January, 2010.

Respectfully submitted,



Philip A. Talmadge, WSBA #6973  
Talmadge/Fitzpatrick  
18010 Southcenter Parkway  
Tukwila, WA 98188-4630  
(206) 574-6661

Walter H. Olsen, Jr., WSBA #24462  
Troy R. Nehring, WSBA #32565  
Olsen Law Firm PLLC  
604 W. Meeker Street, Suite 101  
Kent, WA 98032  
(253) 813-8111  
Attorneys for Appellants

# APPENDIX

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Wash. Const. art. I, § 16:

Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner, and no right-of-way shall be appropriated to the use of any corporation other than municipal until full compensation therefore be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases I courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public: *Provided*, That the taking of private property by the state for land reclamation and settlement purposes is hereby declared to be for public use.

RCW 59.20.135:

(1) The Legislature finds that some mobile home park owners transfer the responsibility for the upkeep of permanent structures within the mobile home park to the park tenants. This transfer sometimes occurs after the permanent structures have been allowed to deteriorate. Many mobile home parks consist entirely of senior citizens who do not have the financial resources or physical capability to make the necessary repairs to these structures once they have fallen into disrepair. The inability of the tenants to maintain permanent structures can lead to significant safety hazards to the tenants as well as to visitors to the mobile home park. The legislature therefore finds and declares that it is in the public interest and necessary for the public health and safety to prohibit mobile home park owners from transferring the duty to maintain permanent structures in mobile home parks to the tenants.

(2) A mobile home park owner is prohibited from transferring responsibility for the maintenance or care of permanent structures within the mobile home park to the tenants of the park. A provision within a rental agreement or other document transferring responsibility for the

maintenance or care of permanent structures within the mobile home park to the park tenants is void.

(3) A "permanent structure" for purposes of this section includes the clubhouse, carports, storage sheds, or other permanent structure. A permanent structure does not include structures built or affixed by a tenant. A permanent structure includes only those structures that were provided as amenities to the park tenants.

(4) Nothing in this section shall be construed to prohibit a park owner from requiring a tenant to maintain his or her mobile home, manufactured home, or park model or yard. Nothing in this section shall be construed or prohibit a park owner from transferring responsibility for the maintenance or care of permanent structures within the mobile home park to an organization of park tenants or to an individual park tenant when requested by the tenant organization or individual tenant.



**Office of Program Research**

House of Representatives

House Office Bldg.  
Second Floor, AS-33  
Olympia, WA 98504  
Tel 1206/ 786-7100

February 18, 1994

**MEMORANDUM**

**TO:** Members, Committee on Trade, Economic Development & Housing

**FROM:** Bill Lynch, Staff Counsel (786-7092) *AK*

**RE:** ESB 5154 - Concerning the maintenance in mobile home parks.

**Background:**

Some mobile home park owners have transferred the responsibility for the maintenance and care of permanent structures in the mobile home park to the park tenants. Some park tenants have expressed concern they are unable to obtain insurance on these structures because they do not own them, may be injured while trying to repair the structures, or don't have the resources to maintain the structures.

**Summary:**

A mobile home park owner is prohibited from transferring the responsibility for the maintenance or care of permanent structures in the park to park tenants. A park owner may transfer such responsibility to a tenant or tenant association when requested by the tenant or tenant association.

"Permanent structures" include the clubhouse, carports, storage sheds, or any other permanent structures provided as amenities to the park tenants. Structures built or affixed by the park tenants are not considered permanent structures.

Any provision in a rental agreement or other document transferring responsibility for the maintenance or care of permanent structures in the park to the park tenants is void.

**Appropriation:** None.

**Revenue:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

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7 IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
8 COUNTY OF THURSTON  
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10 SEASHORE VILLA ASSOCIATION, a )  
Washington non-profit corporation; PATRICIA )  
11 CRANE, an individual; SALLY STEWART, an )  
individual; LOUIS MILLER, an individual; )  
12 LAUREL JENSEN, an individual; DOROTHY )  
HEDRICK, an individual; SANDEE McBRIDE, )  
13 an individual; WOLFGANG PRIEBE, an )  
individual; MARK BRAZAS, an individual; )  
14 STANLEY KOOL, an individual; MARY )  
HANNON, an individual; DEBORAH DODGE, )  
15 an individual; MARIE SUNDENE, an individual; )  
DORIS REINHARD, an individual; TOM )  
16 DARLING, an individual; JOHN TWELVES, )  
an individual; W.F. McCORD, an individual; and )  
17 JULANNE V. LARSEN, an individual, )

18 Plaintiffs,

19 v.

20 HAGGLUND FAMILY LIMITED )  
PARTNERSHIP, a Washington limited )  
21 partnership; THE SALVATION ARMY, a )  
California corporation, as trustee for the )  
22 Hagglund Charitable Remainder Unitrust dated )  
6/19/79; and PCF MANAGEMENT SERVICES, )  
23 INC., a Washington corporation, as agent, )

24 Defendants.  
25

NO. 05-2-02079-0

NO. 05-2-02110-9

ORDER GRANTING PARTIAL  
SUMMARY JUDGMENT AND  
PRELIMINARY INJUNCTION

26 THIS MATTER coming before the undersigned on the motion of plaintiff tenants for  
27 summary judgment in cause # 05-2-02079-0 ("Seashore Villa case"), and the motion of plaintiff park  
28 owner for summary judgment in cause #05-2-02110-9 ("Emerald Properties case"), the court

ORDER GRANTING PARTIAL SUMMARY  
JUDGMENT AND PRELIMINARY  
INJUNCTION--1

LAW OFFICES OF DAN R. YOUNG  
ATTORNEY AT LAW  
1000 SECOND AVENUE, SUITE 3310  
SEATTLE, WASHINGTON 98104-1046  
(206) 292-8181

ORIGINAL

1 considering the records and files in this action, the records and files in the companion case of  
2 *Emerald Properties LLC v. Dodge et al.*, Thurston County Superior Court cause # 05-2-02110-9;  
3 the Declaration of Wolfgang Priebe; Declaration of Julie Larsen; Declaration of Dan R. Young;  
4 Declaration of Rachelle Woodcook; and the Declaration of Troy Nehring, and the court finding that  
5 there is no material issue of disputed fact with respect to certain relief to which plaintiffs are entitled,  
6 and finding further that RCW 59.20.135 precludes the mobile home park owners' shifting the  
7 maintenance responsibility of carports and sheds it constructed on tenants' lots to the tenants of those  
8 lots, it is hereby

9 ORDERED, ADJUDGED and DECREED that the letters and addenda sent by PCF  
10 Management Services, Inc. dated June 28, 2005, and other dates, to defendants and to other tenants  
11 as a matter of law violate RCW 59.20.135, <sup>for carports or sheds, the park owns,</sup> in that such letters attempt to circumvent the clear policy  
12 and language of RCW 59.20.135 by stating that the park owner does not own the carports and sheds  
13 it constructed, and threatening removal of the carports and sheds constructed by the park owner if  
14 the tenants do not sign a written addendum entitled "Storage Shed/Carport Agreement," under the  
15 terms of which the tenants would be required (a) to accept transfer of the ownership and  
16 responsibility for maintenance of the carports and sheds on their lots and (b) waive any violation of  
17 RCW 59.20.135, and it is further

18 ORDERED, ADJUDGED and DECREED that such letters and addenda constitute contracts  
19 of adhesion and are further void on that ground, and it is further

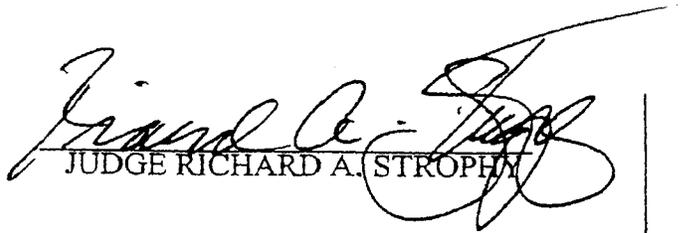
20 ORDERED, ADJUDGED and DECREED that a preliminary injunction is issued enjoining  
21 defendants and their agents from removing the carports or sheds it constructed on tenants' lots in  
22 Seashore Villa Mobile Home Park without the uncoerced written consent of the respective tenants,  
23 and it is further

24 ORDERED, ADJUDGED and DECREED that this order shall be filed in the case of  
25 *Emerald Properties LLC v. Dodge et al.*, Thurston County Superior Court cause # 05-2-02110-9 and  
26 have the same effect in that case, and it is further

27 ORDERED, ADJUDGED and DECREED that the issue of attorney's fees shall be reserved,  
28 *and that this matter shall be set for trial.*  
DONE IN OPEN COURT this 8<sup>th</sup> day of June, 2007.

*For*  
*DMY*  
*WB*

*DI*  
*WB*  
*For*

  
JUDGE RICHARD A. STROPH

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Presented by:

Law Offices of Dan R. Young

By Dan R. Young  
Dan R. Young, WSBA #12020  
Attorney for Plaintiffs

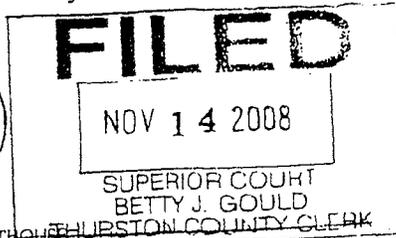
Copy Received; Notice of Presentation Waived

Olsen Law Firm, PLLC

By Walter Olsen  
Walter Olsen, Jr., WSBA #24462  
Attorney for Defendants

Superior Court of the State of Washington  
For Thurston County

Paula Casey, Judge  
Department No. 1  
Richard A. Struphy, Judge  
Department No. 2  
Wm. Thomas McPhee, Judge  
Department No. 3  
Richard D. Hicks, Judge  
Department No. 4  
Christine A. Pomeroy, Judge  
Department No. 5  
Gary R. Tabor, Judge  
Department No. 6  
Chris Wickham, Judge  
Department No. 7  
Anne Hirsch, Judge  
Department No. 8



BUILDING NO. 2, COURTHOUSE  
2000 LAKERIDGE DRIVE, S.W. • OLYMPIA, WA 98502  
TELEPHONE (360) 786-5560 • FAX (360) 754-4060

Christine Schaller  
Court Commissioner  
709-3201  
Indu Thomas  
Court Commissioner  
709-3201

Murti Maxwell  
Superior Court Administrator  
Gary Curlye  
Assistant Superior  
Court Administrator  
Ellen Goodman  
Drug Court Program  
Administrator  
357-2482

November 13, 2008

Mr. Walter H. Olsen Jr.  
Attorney at Law  
604 W Meeker St Ste 101  
Kent WA 98032-5701

Mr. Dan R. Young  
Attorney at Law  
1000 2<sup>nd</sup> Ave Ste 3310  
Seattle WA 98104-1019

Re: *Seashore Villa Assoc et al v Hagglund Family Partnership, et al* Thurston  
County Superior Court No. 05-2-02079-0  
*Emerald Properties LLC et al v John Doe Dodge et a*  
Thurston County Superior Court No. 05-2-02110-9

Dear Counsel:

Trial in the two cases referenced above was held November 10 and 12, 2008. The decision of the Court follows.

These two cases involve the rights and responsibilities of residents and the landlord of a mobile home park near Gull Harbor in Thurston County, Washington. The cases have been heard together because they cover in many cases identical legal and factual issues, but they have not been consolidated. There is an overlap but not complete identity of parties between the two cases.

The park in this case was developed over a period of time beginning in about 1970. Originally, mobile homes were sold by the lessor of the spaces to be installed in the park. Later, the on-site sales were discontinued and residents were permitted to install their own mobile homes purchased from third parties. There is a long-term lease held by the managers of the park which has been transferred

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NOV 17 2008

Olsen Law Firm PLLC



several times since 1970, such that the underlying land and the operation and control of the park are held separately.

When the park was originally developed, carports and storage sheds were advertised as amenities of the park to be provided to residents. Early leases and rules and regulations of the park made it clear that these improvements belonged to the lessor, but the residents were responsible for regular maintenance and upkeep (cleaning of gutters, removal of moss and mildew, and cleaning of exterior surfaces). As the ownership and management of the park was transferred, management elected at some point to eliminate its responsibility for major repairs or replacement of carports and storage sheds. In June, 2005 the manager sent residents a letter informing them that it would be necessary for residents to sign an agreement taking responsibility for the carports and sheds or management would be removing those improvements.

That letter was the basis for a suit filed by residents (*Seashore Villa v Hagglund Family Limited Partnership*) and then a suit by management (*Emerald Properties v John Doe Dodge*).

In 2006, Judge Strophy heard and decided a motion for summary judgment and preliminary injunction in both cases. The order from that hearing, entered on June 8, 2007, provides that “the letters and addenda sent by PCF Management Services, Inc. dated June 28, 2005, and other dates, to defendants and to other tenants as a matter of law violate RCW 59.20.135, for carports and sheds the park owns...” The order further granted a preliminary injunction “enjoining defendants and their agents from removing the carports or sheds it constructed on tenants’ lots in Seashore Villa Mobile Home Park without the uncoerced written consent of the respective tenants...” All other issues were reserved for trial.

Preliminarily, the parties have raised questions in their briefs regarding the constitutionality of RCW 59.20.135. This Court assumes those issues were considered by Judge Strophy and will not redecide them.

Although Judge Strophy’s order was couched in part as a preliminary injunction, because it was also an order on summary judgment this Court will grant plaintiffs Seashore Villa Association et al a permanent injunction consistent with Judge Strophy’s order of June 8, 2007.

A question reserved for this Court is the particular spaces covered by the injunction. Implicit in Judge Strophy’s order and consistent with the evidence presented at trial is a finding that the park has owned the carports and sheds in the

park since the inception of the park. Evidence of insurance coverage of carports and sheds and in some cases insurance replacement of carports is not sufficient to outweigh the evidence of construction by management, advertising by management, and provisions in the leases, rules and regulations on the issue of ownership.

Some tenants have at their own expense improved the carports and sheds. Whether these improvements belong to the resident or the management is not an issue before the Court, but the act of providing improvements alone is not sufficient to change the ownership of the underlying structures. From the beginning, management and residents have agreed that the residents were responsible for day-to-day upkeep of the carports and sheds. Management would be responsible for major repairs of the basic carports and sheds. This Court is not persuaded that management is legally responsible for major repairs or replacement of improvements to the carports and sheds (walls added, electrical power, and windows would be the responsibility of the resident; the management would still be responsible for replacement of roofs where the resident had previously improved the roof). Fortunately for all parties, the construction of the carports and sheds was simple and the materials appear to be durable such that major repairs and replacement of these structures has been rare to the present date.

Defendant PCF Management and Plaintiff Emerald Properties LLC have moved for dismissal of Seashore Villa Association. The evidence showed that the association was incorporated under the Washington non-profit corporations statute, that it included as members the residents of the park, that its Board of Directors authorized it to participate in these cases, but that not all residents had voted to participate and in fact some residents did not agree with its participation. The Court will find that participation in these cases is within the corporate purpose of Seashore Villa and consistent with the interests of its members, that the Board of Directors was authorized to make the election to participate, and that it is a proper party. The motion to dismiss is denied.

Although defendants have raised the issue of whether the injunction in this case can affect non-parties, the relief sought in this case was in part for a declaratory judgment on the validity of the agreements executed by one or more residents (see Ex. 9), Judge Strophy's ruling would be binding on any such agreements executed by park management and so would apply to residents whether or not they are parties. His ruling follows the statute, however, and so an agreement based on the "uncoerced written consent of the respective tenants" would not be covered. Those residents who constructed their own storage sheds are also not covered as to those particular sheds.

Three residents had submitted repair estimates (Ex. 222, 223, and 224) for work to sheds and carports. None of the work has been performed to date. Ex. 222 is an estimate for repairs to a shed. It is unclear if the "bottom plate" was added by a resident or is part of the original carport. If it is the original carport, it would be the responsibility of the management. The estimate also speaks of sealing gutters and seams, a repair that would be the responsibility of management, assuming the problem was not created by an improvement by a resident. The downspout from the roof of the mobile home would seem to be the responsibility of the resident as the home is the property of the resident. Ex. 223 discusses realignment of the carport to direct water to the downspout. Assuming an original carport, this would be the responsibility of management. Ex. 224 is an estimate for sealing the bottom of a storage shed to keep out water and for removal of moss from the roof. The evidence presented indicated that these sheds were not intended to have dry floors (there was no seal to keep water from flowing under the walls) and so this alteration to the original design would be the responsibility of the resident. The cleaning of moss, as previously explained, has always been understood to be the responsibility of the resident.

Management will be given 30 days from entry of a judgment in this case to make repairs consistent with the decision in this case. If the resident is not satisfied with the result, a resident may bring an appropriate action in small claims court for reimbursement for expenses incurred.

Plaintiff residents and association have requested attorneys fees. Defendant leasehold owners and manager have asked to be heard specially on that issue. The Court sets a hearing for presentation of an order consistent with the ruling in this case for Friday, December 5, 2008 at 9:00 a.m. on the Court's civil motion calendar. The Court will also hear argument on attorneys fees at that time and will expect to enter an appropriate order on that issue on that date as well. If counsel are unavailable on that date, please work with my judicial assistant for continuance to a mutually agreeable date on a different civil motion calendar.

Sincerely yours,

Chris Wickham  
Superior Court Judge

c: Clerk, for filing

Superior Court of the State of Washington  
For Thurston County  
Family and Juvenile Court

Paula Casey, Judge  
Department No. 1  
Thomas McPhee, Judge  
Department No. 2  
Richard D. Hicks, Judge  
Department No. 3  
Christine A. Pomeroy, Judge  
Department No. 4  
Gary R. Tabor, Judge  
Department No. 5  
Chris Wickham, Judge  
Department No. 6  
Anne Hirsch, Judge  
Department No. 7  
Carol Murphy, Judge  
Department No. 8



2801 32<sup>nd</sup> Avenue SW, Tumwater, WA 98512  
Mailing Address: 2000 Lakeridge Drive SW, Olympia, WA 98502  
Telephone: (360) 709-3201 Fax: (360) 709-3256

Christine Schaller,  
Court Commissioner  
Indu Thomas,  
Court Commissioner

Marti Maxwell,  
Court Administrator  
(360) 786-5560  
Gary Carlyle, Assistant  
Court Administrator  
(360) 709-3140

June 2, 2009

Walter H. Olsen, Jr.  
Attorney at Law  
604 W. Meeker Street, Suite 101  
Kent, WA 98032-5701

*Sent Via Electronic & US Mail*

Dan R. Young  
Attorney at Law  
1000 2<sup>nd</sup> Avenue, Suite 3310  
Seattle, WA 98104-1019

RE: *Seashore Villa, et al. v. Hagglund Family Partnership, et al.*  
Thurston County Superior Court Cause No. 05-2-02079-0

*Emerald Properties v. John Doe Dodge, et al.*  
Thurston County Superior Court Cause No. 05-2-02110-9

Dear Counsel:

A Motion for Reconsideration was filed in these cases asking the Court to address for the first time the constitutional issues presented in them. This Court had previously assumed that Judge Strophy had considered this issue but is now persuaded that the matter was not fully considered. Accordingly, the Court has considered the pleadings submitted by both sides on this issue.

RCW 59.20.135 prohibits the landlord in a mobile home park from transferring the responsibility for maintenance of permanent structures within the mobile home park to tenants. This court has found that the carports and sheds described in the letter opinion dated November 13, 2008 are such permanent structures.

The preliminary injunction entered by Judge Strophy enjoined the landlord from removing these carports and sheds. This court believes that injunction may go too far.

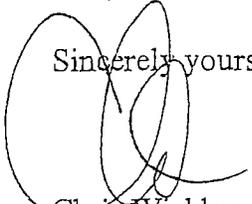
To prevent the removal of the structures at the end of a lease term denies the landlord the right to determine the property rights that it wishes to lease to the tenants. It interferes with the landlord's right to determine amenities it wishes to include in its rental agreement. Although the statute speaks of public interest, public health and safety, there can be no such basis in preventing the removal of the structures at the end of each term. Preventing the landlord from removing the structures at the end of the term would be bestowing on the tenant a private benefit, which is impermissible. *Manufactured Housing Communities of Washington v State*, 142 Wn. 2d 347 (2000). Accordingly, this Court is considering modifying Judge Strophy's decision to allow the removal of carports and sheds owned by the landlord at the end of the term of the respective leases.

The letter circulated by the landlord to the tenants threatening removal of the carports and sheds if the tenants did not agree to waive their rights under RCW 59.20.135 would seem to be an improper method of asserting the landlord's right to remove the structure at the end of the lease term in that it would require the tenant to assume responsibility for the maintenance during the term of the lease in violation of RCW 59.20.135.

The landlord's permissible choice, then, under the statute, appears to be to either remove the structures at the end of the term or adjust the rent to compensate it for the cost of maintenance. Alternatively, the landlord could effect the kind of transfer contemplated by Section (4) of the statute.

Because this is a result argued for by neither side and may present difficulties not contemplated by the Court, Counsel may present a memorandum of authorities on the issues raised in this letter no later than Friday, June 12. In addition, either side may note this matter for argument so long as the hearing is not later than June 16. Following that date, the Court intends to issue a final decision.

Sincerely yours,



Chris Wickham  
Superior Court Judge

cc: Court File

Superior Court of the State of Washington  
For Thurston County

Family and Juvenile Court

Paula Casey, Judge  
Department No. 1  
Thomas McPhee, Judge  
Department No. 2  
Richard D. Hicks, Judge  
Department No. 3  
Christine A. Pomeroy, Judge  
Department No. 4  
Gary R. Tabor, Judge  
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Inde Thomas,  
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Marti Maxwell,  
Court Administrator  
(360) 786-5560  
Gary Carlyle, Assistant  
Court Administrator  
(360) 709-3140

July 24, 2009

Walter H. Olsen, Jr.  
Attorney at Law  
604 W. Meeker Street, Suite 101  
Kent, WA 98032

Dan R. Young  
Attorney at Law  
2000 2<sup>nd</sup> Avenue, Suite 3310  
Seattle, WA 98104-1046

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JUL 28 2009

Olsen Law Firm PLLC

**Letter Opinion**

RE: *Seashore Villa Association, et al. v. Hagglund Family Partnership, et al.*  
Thurston County Cause No. 05-2-02079-0

*Emerald Properties, LLC, et al. v. John Doe Dodge, et al.*  
Thurston County Cause No. 05-2-02110-9

Dear Counsel:

The background of this case has been summarized in my letter decisions dated November 13, 2008 and June 2, 2009. The delay in ultimate resolution of this matter was necessitated by full consideration of a constitutional issue described in the letter of June 2. The decision of the Court follows.

Judge Strophy, in partially granting Tenants' Motion for Summary Judgment, entered an Order Granting Partial Summary Judgment and Preliminary Injunction on June 8, 2007. This Court has found nothing in the record to indicate that Judge Strophy considered the constitutional implications of his order. The order he entered included the following:

ORDERED, ADJUDGED, and DECREED that a preliminary injunction is issued enjoining defendants and their agents from removing the carports or sheds it constructed on tenants' lots in Seashore Villa Mobile Home Park without the uncoerced written consent of the respective tenants....

Subsequently a trial was held by this Court on issues not resolved by Judge Strophy's order. The question now presented to this Court is whether or not Judge Strophy's injunction is too broad for a permanent injunction to survive a constitutional challenge.

The seminal case on this issue is *Manufactured Housing Communities of Washington v. State*, 142 Wn. 2d 247 (2000). In that case the Court struck down a statute that gave tenants a right of first refusal in the sale of the underlying property. The Park Owners in the case had argued that, "the Act's mere existence destroys the right to (1) freely dispose of their property, (2) exclude others, and (3) immediately close the sale of a mobile home park." 142 Wn. 2d 347, 353 (2000). The Court summarized the law regarding regulatory takings:

Under existing Washington and federal law, a police power measure can violate amended article I, section 16 of the Washington State Constitution or the Fifth Amendment of the United States Constitution and thus be subject to a categorical "facial" taking challenge when: (1) a regulation effects a total taking of all economically viable use of one's property, [citations]; or (2) the regulation has resulted in an actual physical invasion upon one's property, [citations]; or (3) a regulation destroys one or more of the fundamental attributes of ownership (the right to possess, exclude others and to dispose of property [citations]); or (4) the regulations were employed to enhance the value of publicly held property [citations]. 142 Wn. 2d 347, 355 (2000)

In *Manufactured Housing*, the Court went on to find that the granting of right of first refusal to the tenants was a taking of the Park Owners' right to sell to a buyer of its choice. The taking was for a private, not a public benefit and was therefore prohibited under article I, section 16.

This Court has found that the structures at issue (carports and sheds) are owned by the Landlord. The statute prohibits the Landlord from transferring responsibility for maintenance to the Tenants. Insofar as the injunction prohibits transfer of maintenance responsibility during the lease term, it can be considered a regulation of respective rights of the parties similar to other restrictions. (See, for example, RCW 59.20.130 and the Landlord's responsibility to maintain common areas, utilities, and roads).

The injunction as entered, however, is broader than the lease term and would prohibit a Landlord from ever removing the structures without tenant approval, even if the Landlord were closing the park and intended to use it for another purpose or sell it. This possible

application of the injunction would be invalid under *Manufactured Housing* as it “destroys one or more of the fundamental attributes of ownership (the right to possess, exclude others and to dispose of property ...)” 142 Wn. 2d 347, 355 (2000).

Accordingly, this Court will revise the preliminary injunction adopted by Judge Strophy to prevent an application that would be overly broad and therefore subject to constitutional challenge. The revised language would read as follows:

[Landlord is permanently] enjoined (1) from transferring to tenants responsibility for maintenance of the carports or sheds the park owner constructed on tenants’ lots in Seashore Villa Mobile Home Park without the uncoerced written consent of the respective tenants; and (2) from removing carports or sheds the park owner constructed on tenants’ lots in Seashore Villa Mobile Home Park without the uncoerced written consent of the respective tenants during such times as Tenants are in possession of the lot on which the structure is located.

The original notices in this case threatened removal of the structures unless the Tenants agreed to assume responsibility for maintenance. Such a notice is clearly a violation of RCW 59.20.130.

Evidence was presented at trial regarding the history of the park and the existence of the structures when the park was marketed and when the Tenants agreed to locate their mobile homes at the park. Advertising included carports and storage sheds as amenities to be provided by the park. The removal of these structures is not prohibited by RCW 59.20.130. Rather, it is prohibited by contract law.

This Court finds that (1) the structures in question were erected by the Landlord or its predecessor to induce Tenants to locate mobile homes in the park and reside in the park; (2) Tenants reasonably relied on those representations and entered into lease agreements with Landlord or its predecessor; (3) either express or implied in the agreement and the accompanying rules and regulations entered into by Landlord and Tenants was a commitment on the part of Landlord to maintain the structures; (4) transfer of that responsibility to Tenants violates RCW 59.20.130; (5) Landlord’s removal of the structures during the Tenant’s occupancy of the lot would be a breach of the lease agreement. The lease agreement is silent on maintenance of the particular structures. The original rules and regulations provided that Landlord will provide them for the benefit of the Tenants, who will be responsible for ordinary maintenance. There was, therefore, an express or implied agreement that Landlord would maintain the structures, other than routine maintenance.

A contract implied in fact is an agreement of the parties arrived at from their conduct rather than their expressions of assent. Like an express contract, “*it grows out of the intentions of the parties to the transaction, and there must be a meeting of minds.*”

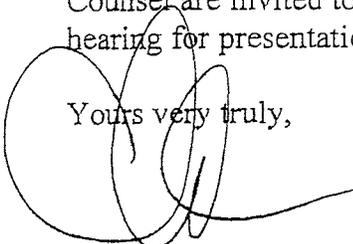
[emphasis in original] *Heaton v. Imus*, 93 Wn. 2d 249 (1980). It is clear to this Court from the evidence presented that there was such a meeting of the minds at the time of entry into the agreements and that it continued thereafter.

This Court also finds that it was reasonable that Landlord or its predecessor should have reasonably expected and in fact did expect Tenants to change their position by moving in to the park, that Tenants did change their positions by moving into the park in reliance on the assurances of provided sheds and carports and were justified in doing so, and that injustice can only be avoided if the promise is enforced. See WPI 301A.01. Landlord is therefore estopped from changing the agreement of the parties regarding provision and maintenance of the structures

Nothing in this decision will prevent Landlord from removing particular structures at such time as the Tenant vacates the premises or if and when the Landlord wishes to terminate the use of the premises for a mobile home park.

Having adjusted the orders appropriately, this Court still finds Tenants to be the prevailing party and will afford attorneys fees in the amounts set forth in the orders. Counsel are invited to redraft final orders consistent with this decision and schedule a hearing for presentation.

Yours very truly,

A handwritten signature in black ink, appearing to read "Chris Wickham", written over the closing "Yours very truly,".

Chris Wickham  
Superior Court Judge

cc: Court File

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
COUNTY OF THURSTON

SEASHORE VILLA ASSOCIATION, a  
Washington non-profit corporation; PATRICIA  
CRANE, an individual; SALLY STEWART, an  
individual; LOUIS MILLER, an individual;  
LAUREL JENSEN, an individual; DOROTHY  
HEDRICK, an individual; SANDEE McBRIDE,  
an individual; WOLFGANG PRIEBE, an  
individual; MARK BRAZAS, an individual;  
STANLEY KOOL, an individual; MARY  
HANNON, an individual; DEBORAH DODGE,  
an individual; MARIE SUNDENE, an individual;  
DORIS REINHARD, an individual; TOM  
DARLING, an individual; JOHN TWELVES,  
an individual; W.F. McCORD, an individual; and  
JULANNE V. LARSEN, an individual,

Plaintiffs,

v.

HAGGLUND FAMILY LIMITED  
PARTNERSHIP, a Washington limited  
partnership; THE SALVATION ARMY, a  
California corporation, as trustee for the  
Hagglund Charitable Remainder Unitrust dated  
6/19/79; and PCF MANAGEMENT SERVICES,  
INC., a Washington corporation, as agent,

Defendants.

NO. 05-2-02079-0

NO. 05-2-02110-9

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

THIS MATTER having come before the undersigned on the presentation of a judgment and motion for attorney's fees brought by plaintiff tenants, the court having heard the testimony of witnesses at trial on November 10 and 12, 2008; having considered the exhibits introduced therein

1 and the records and files in both actions; having considered the order dated June 8, 2007, entered  
2 in both actions granting partial summary judgment and preliminary injunction; having considered  
3 the stipulated facts entered on November 12, 2008, in both actions; having written a letter ruling  
4 dated November 13, 2008, in both matters; having written additional letter rulings on June 2, 2009,  
5 and July 24, 2009, and having considered the arguments of counsel, the Court hereby enters the  
6 following

### 7 FINDINGS OF FACT

8 1. The plaintiffs in case #05-2-02079-0 (hereafter referred to as "the tenants") are owners  
9 of mobile homes in Seashore Villa Mobile Home Park (hereafter referred to as "the park"), and they  
10 rent lot spaces from the defendant park owners.

11 2. Seashore Villa Association is incorporated as a Washington non-profit corporation;  
12 includes as members residents of the park; has a board of directors which authorized the Association  
13 to participate in the present litigation; and represents the tenants in the park, even though some  
14 residents did not agree with its participation.

15 3. The park was developed over a period of time beginning in about 1970 by the Hagglund  
16 Family and completed by William Reynolds in the 1980's. The Hagglund Family donated a portion  
17 of the ownership of the park to the Salvation Army. In 1992, both entities jointly owned and leased  
18 out the operation of the park to Emerald Properties LLC under a long-term lease. PCF Management  
19 Services Inc. ("PCF") is the property manager for Emerald Properties LLC. The defendant park  
20 owners and Emerald Properties, LLC will hereafter be collectively referred to as the "landlord".

21 4. The park was constructed in two sections: (1) the western and original section located at  
22 4805 Cushman Road NE, Olympia, Thurston County, Washington, and containing spaces numbered  
23 1 through 67, and (2) the later eastern section located across the road at 4806 Cushman Road NE,  
24 and containing spaces numbered 101 through 163.

25 5. The construction of the park included the installation of individual lots, utilities, roads,  
26 and common areas. The park also advertised carports and sheds as amenities to be provided to  
27 residents by the park.

28 6. The park constructed carports and sheds on many lots in the park before 1992. The park

1 installed two storage sheds on some lots. These carports and sheds were intended to be permanently  
2 attached to the ground and were not intended to be removed. The carports and sheds installed by the  
3 park were permanent structures.

4 7. Early leases and rules and regulations of the park made it clear that these improvements  
5 belonged to the lessor, but the residents were responsible for regular maintenance and upkeep  
6 (cleaning of gutters, removal of moss and mildew, and cleaning of exterior surfaces).

7 8. The carports and sheds were erected by the landlord or its predecessor to induce tenants  
8 to locate mobile homes in the park and reside in the park.

9 9. The tenants reasonably relied on the landlord's advertisements and representations  
10 regarding carports and sheds and entered into lease agreements with the landlord or its predecessor.

11 10. Either express or implied in the lease agreement and the accompanying rules and  
12 regulations entered into by the landlord and tenants was a commitment on the part of the landlord  
13 to maintain the structures.

14 11. Some tenants have at their own expense improved the carports and sheds, e.g., by adding  
15 walls, electrical power and windows. The act of providing improvements alone is not sufficient to  
16 change the ownership of the underlying structures.

17 12. The park was aware of these improvements when made, approved them <sup>or</sup> and at least did  
18 not object to them when they came to the park's attention. *aw*

19 13. No credible evidence was presented at trial to the effect that the landlord had transferred  
20 ownership of any carports or storage sheds to tenants before 1995, or even after 1995.

21 14. As the ownership and management of the park was transferred, management elected at  
22 some point to attempt to eliminate its responsibility for major repairs or replacement of carports and  
23 storage sheds.

24 15. The park requested tenants to sign new rental agreements each year. Beginning in the  
25 early 1990's and continuing until the present time, rental agreements contained no specific language  
26 regarding the ownership, maintenance or upkeep of carports and storage sheds.

27 16. Beginning in the summer of 2005, the park manager sent residents a letter informing  
28 them that it would be necessary for tenants to sign an agreement taking responsibility for the carports

1 and sheds, or management would be removing these amenities.

2 17. Several months later, follow up letters were sent to those tenants not signing the  
3 agreement. An example was admitted as Exhibit 207. These letters again threatened removal of the  
4 carports and sheds if the tenants did not agree to hold the landlord harmless from "any and all  
5 liabilities, claims or actions for loss, and damages from any and all liability whatsoever that may  
6 arise from the Tenant's use, ownership, and maintenance of the Storage Shed and Carport, including  
7 without limitation any alleged violation of RCW 59.20.135."

8 18. The tenants filed case #05-2-02079-0 in October, 2005, seeking declaratory relief that  
9 the landlord's actions violated RCW 59.20.135 and requesting a temporary and permanent injunction  
10 barring the landlord from removing the tenants' carports and sheds if the tenants did not sign such  
11 an agreement.

12 19. Within a few days, Emerald Properties filed case #05-2-02110-9, seeking declaratory  
13 relief that the landlord's actions in sending the letters did not violate RCW 59.20.135.

14 20. Some of the plaintiffs in the lawsuit filed by the tenants are not defendants in the case  
15 filed by the landlord. Some of the defendants in the case filed by the landlord are not plaintiffs in  
16 the lawsuit filed by the tenants. The two cases were not consolidated, but were tried jointly, and the  
17 two cases were considered together.

18 21. Both the tenants and landlord filed motions for summary judgment. On June 8, 2007,  
19 Judge Strophy entered an order granting partial summary judgment to the tenants and temporarily  
20 enjoining the landlord from removing the carports and storage sheds owned by the park.

21 22. The tenant in space #55 submitted a repair estimate (trial exhibit 222) for work to be  
22 done on her shed. If the "bottom plate" is part of the original shed, it is the responsibility of the  
23 landlord to repair. Sealing gutter and seams would also be the responsibility of the landlord to  
24 repair. The downspout from the roof of the mobile home is the responsibility of the tenant to repair.

25 23. The tenant in space # 105 submitted a repair estimate (trial exhibit 223) for realignment  
26 of the carport to direct water to the downspout. This would be the responsibility of the landlord to  
27 repair.

28 24. The tenant in space #147 submitted a repair estimate (trial exhibit 224) for sealing the

1 bottom of a storage shed to keep out water and for removal of moss from the roof. These are the  
2 responsibility of the tenant.

3 25. Defendants' counsel reasonably spent 155.9 hours in connection with this litigation.

4 26. Defendants' counsel's billing rates of \$205 per hour, \$250 per hour and \$350 per hour  
5 during the course of this litigation are reasonable.

6 27. The lodestar fee of \$46,424.00 is reasonable, given the expertise of the tenants' counsel,  
7 the quality of the work performed and the results obtained.

8 From the foregoing Findings of Fact, the Court hereby enters the following

9 **CONCLUSIONS OF LAW**

10 1. The Court has jurisdiction over the parties and the subject matter of the litigation.

11 2. The participation of Seashore Villa Association in this litigation is within the corporate  
12 purposes of the Association, is consistent with the interest of its members, the board of directors of  
13 the Association was authorized by its bylaws to make the election to participate, and the Association  
14 is a proper party in this litigation.

15 3. The carports and storage sheds constructed by the park are owned by the park and are  
16 permanent structures within the meaning of RCW 59.20.135(3), as first enacted in 1994.

17 4. Evidence of insurance coverage of carports and sheds by tenants and in some cases  
18 insurance replacement of carports is not sufficient to outweigh the evidence of construction by  
19 management, advertising by management, and provisions in the leases, rules and regulations on the  
20 issue of ownership of the carports and sheds.

21 5. RCW 59.20.135 precludes the landlord from transferring the maintenance responsibility  
22 of carports and sheds it constructed on tenants' lots to the tenants of those lots.

23 6. There was an express or implied agreement between the landlord and tenants that the  
24 landlord would maintain the carports and sheds, other than routine maintenance.

25 7. A contract implied in fact grew out of the intentions of the landlord and tenants, and there  
26 was a meeting of the minds at the time of entry into the lease agreements, and such meeting of the  
27 minds continued thereafter.

28 8. The letters and addenda sent by PCF Management Services, Inc. dated June 28, 2005, and

1 other dates to tenants as a matter of law violate RCW 59.20.135, in that such letters attempt to  
2 circumvent the clear policy and language of RCW 59.20.135 by stating that the park owner does not  
3 own the carports and sheds it constructed, and threatening removal of the carports and sheds  
4 constructed by the park owner if the tenants do not sign a written addendum entitled "Storage  
5 Shed/Carport Agreement," under the terms of which the tenants would be required (a) to accept  
6 transfer of the ownership and responsibility for maintenance of the carports and sheds on their lots  
7 and (b) waive any violation of RCW 59.20.135.

8 9. Such letters and addenda constitute contracts of adhesion and are further void on that  
9 ground.

10 10. The landlord's removal of the carports and sheds during the tenancy of tenants would  
11 be a breach of the lease agreement.

12 11. The agreements in trial exhibit 221 signed by tenants are void as violating RCW  
13 59.20.135.

14 12. A permanent injunction is issued enjoining the landlord and its agents (1) from  
15 transferring to tenants responsibility for maintenance of the carports or sheds the park owner  
16 constructed on tenants' lots in Seashore Villa Mobile Home park without the uncoerced written  
17 consent of the respective tenants; and (2) from removing carports or sheds the park owner  
18 constructed on tenants' lots in Seashore Villa Mobile Home Park without the uncoerced written  
19 consent of the respective tenants during such times as Tenants are in possession of the lot on which  
20 the structure is located.

21 13. Tenants who constructed their own carports and storage sheds are not covered by this  
22 injunction. These tenants are in lots #4, #11, #31, #63, #115, #144, #146, and #164. The tenants  
23 also built the storage sheds in spaces #47 and #49, and thus have the obligation to maintain and  
24 repair those storage sheds as necessary.

25 14. The landlord is not responsible for major repairs to, or replacement of, improvements  
26 tenants made to carports and sheds, e.g., walls added, electrical power, windows added).

27 15. The landlord has failed to meet its burden to show that RCW 59.20.135 violates any state  
28 or federal constitutional provision.

1 16. The landlord shall be given thirty days from the entry of judgment to make the repairs  
2 indicated in finding of fact #22 and #23.

3 17. If the affected tenant is not satisfied with the repair, the tenant may bring an appropriate  
4 action in small claims court for reimbursement of expenses incurred in making a reasonable repair.

5 18. This order shall be filed in the case of *Emerald Properties LLC v. Dodge et al.*, Thurston  
6 County Superior Court cause # 05-2-02110-9 and have the same effect in that case.

7 19. Plaintiff tenants are the prevailing parties in this litigation.

8 20. Plaintiff tenants are entitled to attorney's fees under RCW 59.20.110 and the attorney's  
9 fees clause in the leases between the tenants and landlord.

10 21. Plaintiffs' counsel reasonably expended 155.9 hours in connection with this litigation.

11 22. Plaintiffs' counsel's historic billing rates of \$205 per hour through October, 2006; \$250  
12 per hour beginning November, 2006; and \$350 per hour effective January 1, 2008, are reasonable,  
13 considering his general billing rates, his experience and his expertise in these matters.

14 23. Plaintiffs' counsel reasonably spent 33.8 hours at \$205 per hour; 13.15 hours at \$250 per  
15 hour; and 103.45 hours at \$350 per hour. These amounts total \$6,929 + \$3,287.50 + \$36,207.50  
16 = \$46,424.00.

17 24. The amount of \$46,424.00 is a reasonable lodestar fee to be awarded to plaintiffs'  
18 counsel, based on the quality of work, results obtained, his experience, reputation and ability, and  
19 general billing rates.

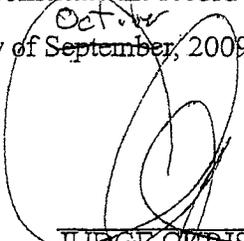
20 25. The tenants incurred taxable costs in the amount of \$309.05, and these should be  
21 awarded to tenants.

22 26. A judgment in favor of plaintiff tenants and against defendants should be entered for the  
23 above amounts.

24 27. The present case #05-2-02079-0 and the companion case of Emerald Properties LLC  
25 v. Dodge, Thurston County case #05-2-02110-9, should be consolidated for purposes of any appeal,  
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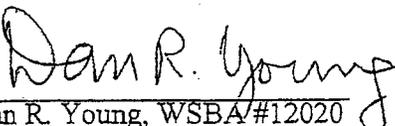
1 and the clerk's papers for the two cases would constitute the record on any appeal.

2 DONE IN OPEN COURT this <sup>2nd</sup> ~~22nd~~ day of <sup>October</sup> ~~September~~, 2009.

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5   
6 JUDGE CHRIS WICKHAM  
7

8 Presented by:

9 Law Offices of Dan R. Young

10  
11 By   
12 Dan R. Young, WSBA #12020  
Attorney for Plaintiffs

13 Copy Received; Notice of Presentation Waived

14 Olsen Law Firm PLLC

15  
16 By Walter H. Olsen, Jr., WSBA #24462  
17 Attorneys for Landlord, Emerald Properties,  
18 Hagglund, et al.

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
COUNTY OF THURSTON

SEASHORE VILLA ASSOCIATION, a )  
Washington non-profit corporation; PATRICIA )  
CRANE, an individual; SALLY STEWART, an )  
individual; LOUIS MILLER, an individual; )  
LAUREL JENSEN, an individual; DOROTHY )  
HEDRICK, an individual; SANDEE McBRIDE, )  
an individual; WOLFGANG PRIEBE, an )  
individual; MARK BRAZAS, an individual; )  
STANLEY KOOL, an individual; MARY )  
HANNON, an individual; DEBORAH DODGE, )  
an individual; MARIE SUNDENE, an individual; )  
DORIS REINHARD, an individual; TOM )  
DARLING, an individual; JOHN TWELVES, )  
an individual; W.F. McCORD, an individual; and )  
JULANNE V. LARSEN, an individual, )

Plaintiffs,

v.

HAGGLUND FAMILY LIMITED )  
PARTNERSHIP, a Washington limited )  
partnership; THE SALVATION ARMY, a )  
California corporation, as trustee for the )  
Hagglund Charitable Remainder Unitrust dated )  
6/19/79; and PCF MANAGEMENT SERVICES, )  
INC., a Washington corporation, as agent, )

Defendants.

NO. 05-2-02079-0

NO. 05-2-02110-9

JUDGMENT

(Clerk's Action Required)

JUDGMENT SUMMARY

1. Judgment Creditors: Seashore Villa Association, Patricia Crane, Sally Stewart, Louis Miller, Laurel Jensen, Dorothy Hedrick, Sandee McBride, Wolfgang Priebe, Mark Brazas, Stanley Kooi, Mary Hannon, Deborah Dodge,

LAW OFFICES OF DAN R. YOUNG  
ATTORNEY AT LAW  
1000 SECOND AVENUE, SUITE 3310  
SEATTLE, WASHINGTON 98104-1046  
(206) 292-8181

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Marie Sundene, Doris Reinhard, Tom Darling, John Twelves, W.F. McCord, Julanne V. Larsen, Lee Hastig, Ruth Jordan, Jerry Crowder and Marcia Hamilton

- 2. Judgment Debtors: Hagglund Family Limited Partnership, the Salvation Army, as Trustee under the Hagglund Charitable Remainder Unitrust Dated 6/19/79, and Emerald Properties LLC
- 3. Principal Judgment Amount: \$46,424.00
- 4. Interest to Date of Judgment: 0
- 5. Costs: \$309.05
- 6. Attorney's Fees, Costs and other Recovery Amounts shall bear Interest at 12% per annum
- 7. Attorney for Judgment Creditor: Dan R. Young

The bench trial in this matter having been held on November 10 and 12, 2008, and the Court having entered Findings of Fact and Conclusions of Law this date, and the Court finding it appropriate to enter judgment, it is hereby

ORDERED, ADJUDGED and DECREED that judgment be and hereby is entered in favor of plaintiffs Seashore Villa Association, Patricia Crane, Sally Stewart, Louis Miller, Laurel Jensen, Dorothy Hedrick, Sandee McBride, Wolfgang Priebe, Mark Brazas, Stanley Kooi, Mary Hannon, Deborah Dodge, Marie Sundene, Doris Reinhard, Tom Darling, John Twelves, W.F. McCord, Julanne V. Larsen, Lee Hastig, Ruth Jordan, Jerry Crowder and Marcia Hamilton, and against defendants Hagglund Family Limited Partnership, the Salvation Army, as Trustee under the Hagglund Charitable Remainder Unitrust Dated 6/19/79, and Emerald Properties LLC, in the amount of \$46,424.00, plus costs in the amount of \$309.05, for a total judgment of \$46,733.05, plus interest from this date on the judgment at the rate of 12% per annum, and it is further

ORDERED, ADJUDGED and DECREED that Hagglund Family Limited Partnership, the Salvation Army, as Trustee under the Hagglund Charitable Remainder Unitrust Dated 6/19/79, PCF Management Services, Inc., as Agent, and Emerald Properties LLC and their agents (collectively, the "Landlord") are permanently enjoined as set forth in the accompanying permanent injunction of

1 even date herewith, and it is further

2 ORDERED, ADJUDGED and DECREED that the Landlord shall make the repairs indicated  
3 within thirty days from the entry of this judgment for:

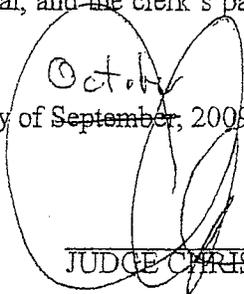
4 (A) The tenant in space # 55 according to the repair estimate (trial exhibit 222) for work to  
5 be done on her shed. If the "bottom plate" is part of the original shed, it is the responsibility of the  
6 landlord to repair. Sealing gutter and seams is the responsibility of the landlord to repair. The  
7 downspout from the roof of the mobile home is the responsibility of the tenant to repair; and

8 (B) The tenant in space # 105 according to the repair estimate (trial exhibit 223) for  
9 realignment of the carport to direct water to the downspout. This is the responsibility of the landlord  
10 to repair. If the affected tenant is not satisfied with the repair, the tenant may bring an appropriate  
11 action in small claims court for reimbursement of expenses incurred in making a reasonable repair,  
12 and it is further

13 ORDERED, ADJUDGED and DECREED that a copy of this judgment shall be filed in the  
14 case of *Emerald Properties LLC v. Dodge et al.*, Thurston County Superior Court cause # 05-2-  
15 02110-9, but such judgment and this judgment shall constitute one and the same money judgment,  
16 and it is further

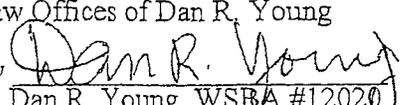
17 ORDERED, ADJUDGED and DECREED that this case (cause # 05-2-02079-0) and the case  
18 of *Emerald Properties LLC v. Dodge et al.*, Thurston County Superior Court cause # 05-2-02110-9,  
19 shall be consolidated for purposes of any appeal, and the clerk's papers for the two matters shall  
20 constitute the record on any appeal.

21 DONE IN OPEN COURT this <sup>2nd</sup> ~~22nd~~ day of <sup>October</sup> ~~September~~, 2009.

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\_\_\_\_\_  
JUDGE CHRIS WICKHAM

25 Presented by:

26 Law Offices of Dan R. Young

27 By   
28 Dan R. Young, WSBA #12020  
Attorney for Seashore Villa Assn.

1 Copy Received; Notice of Presentation Waived

2 Olsen Law Firm PLLC

3

4 By

Walter H. Olsen, Jr., WSBA #24462  
Attorneys for Landlord, Emerald Properties,  
Hagglund, et al.

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
COUNTY OF THURSTON

SEASHORE VILLA ASSOCIATION, a )  
Washington non-profit corporation; PATRICIA )  
CRANE, an individual; SALLY STEWART, an )  
individual; LOUIS MILLER, an individual; )  
LAUREL JENSEN, an individual; DOROTHY )  
HEDRICK, an individual; SANDEE McBRIDE, )  
an individual; WOLFGANG PRIEBE, an )  
individual; MARK BRAZAS, an individual; )  
STANLEY KOOL, an individual; MARY )  
HANNON, an individual; DEBORAH DODGE, )  
an individual; MARIE SUNDENE, an individual; )  
DORIS REINHARD, an individual; TOM )  
DARLING, an individual; JOHN TWELVES, )  
an individual; W.F. McCORD, an individual; and )  
JULANNE V. LARSEN, an individual, )

Plaintiffs,

v.

HAGGLUND FAMILY LIMITED )  
PARTNERSHIP, a Washington limited )  
partnership; THE SALVATION ARMY, a )  
California corporation, as trustee for the )  
Hagglund Charitable Remainder Unitrust dated )  
6/19/79; and PCF MANAGEMENT SERVICES, )  
INC., a Washington corporation, as agent, )

Defendants.

NO. 05-2-02079-0

NO. 05-2-02110-9

PERMANENT INJUNCTION

The bench trial in this matter having been held on November 10 and 12, 2008, and the Court having entered a letter ruling on July 24, 2009, and Findings of Fact and Conclusions of Law and a Judgment contemporaneously with this permanent injunction, and the Court finding it appropriate

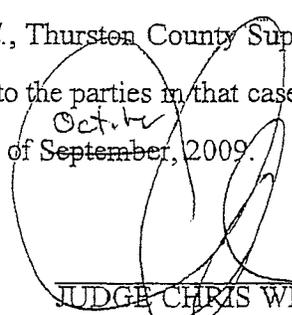
1 to enter a permanent injunction modifying the injunction entered earlier in this case, it is hereby  
2 ORDERED, ADJUDGED and DECREED that HAGGLUND FAMILY LIMITED  
3 PARTNERSHIP, a Washington limited partnership; THE SALVATION ARMY, a California  
4 corporation, as trustee for the Hagglund Charitable Remainder Unitrust dated 6/19/79; and PCF  
5 MANAGEMENT SERVICES, INC., a Washington corporation, as agent are permanently enjoined  
6 from (1) transferring to tenants responsibility for maintenance of the carports or sheds the park owner  
7 constructed on tenants' lots in Seashore Villa Mobile Home park, without the uncoerced written  
8 consent of the respective tenants; and (2) removing carports or sheds the park owner constructed on  
9 tenants' lots in Seashore Villa Mobile Home Park without the uncoerced written consent of the  
10 respective tenants during such times as Tenants are in possession of the lot on which the structure  
11 is located, and it is further

12 ORDERED, ADJUDGED and DECREED that tenants who constructed their own carports  
13 and storage sheds (lots #4, #11, #31, #63, #115, #144, #146, and #164) are not covered by this  
14 injunction, and the tenants who built the storage sheds in spaces #47 and #49 have the obligation to  
15 maintain and repair those storage sheds as necessary.

16 Seashore Villa Mobile Home Park is located at 4805 Cushman Road NE, Olympia, Thurston  
17 County, Washington, (containing spaces numbered 1 through 67) and at 4806 Cushman Road NE,  
18 Olympia, Thurston County, Washington (containing spaces numbered 101 through 163).

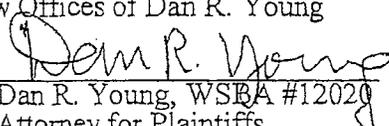
19 ORDERED, ADJUDGED and DECREED that a copy of this injunction shall be filed in the  
20 case of *Emerald Properties LLC v. Dodge et al.*, Thurston County Superior Court cause # 05-2-  
21 02110-9, and have the same effect with respect to the parties in that case.

22 DONE IN OPEN COURT this <sup>2nd</sup> day of <sup>October</sup> September, 2009.

23  
24   
25 JUDGE CHRIS WICKHAM

26 Presented by:

27 Law Offices of Dan R. Young

28 By   
Dan R. Young, WSBA #12020  
Attorney for Plaintiffs

1 | Copy Received; Notice of Presentation Waived

2 | Olsen Law Firm PLLC

3 |

4 | By

4 | Walter H. Olsen, Jr., WSBA #24462  
5 | Attorneys for Landlord, Emerald Properties,  
5 | Hagglund, et al.

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DECLARATION OF SERVICE

On this day said forth below, I deposited in the U.S. Mail a true and accurate copy of: Brief of Appellants in Cause No. 83729-5 to the following parties:

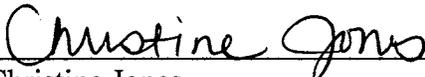
Dan R. Young  
Law Offices of Dan R. Young  
1000 2<sup>nd</sup> Avenue, Suite 3310  
Seattle, WA 98104-1046

Walt Olsen  
Olsen Law Firm PLLC  
604 W. Meeker Street, Suite 101  
Kent, WA 98032

Original filed with:  
Washington Supreme Court  
Clerk's Office  
415 12<sup>th</sup> Street W  
Olympia, WA 98504

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: January 29, 2010, at Tukwila, Washington.

  
\_\_\_\_\_  
Christine Jones  
Talmadge/Fitzpatrick

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
10 FEB - 1 PM 3: 18  
BY RONALD R. CARPENTER  
CLERK