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No. 57810-3-I

IN THE SUPREME COURT
FOR THE STATE OF WASHINGTON

LITTLE MOUNTAIN ESTATES TENANTS
ASSOCIATION, et al.,
Respondents,

v.

LITTLE MOUNTAIN ESTATES MHC LLC, et al.,
Petitioners.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SKAGIT COUNTY
#02-2-01295-0

RESPONDENTS' ANSWER TO
PETITION FOR REVIEW

BURI FUNSTON MUMFORD, PLLC

By PHILIP J. BURI
WSBA #17637
1601 F Street
Bellingham, WA 98225
(360) 752-1500

ORIGINAL

TABLE OF CONTENTS

INTRODUCTION 1

I. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW 3

II. STATEMENT OF FACTS. 4

 A. The 25-Year Lease 5

 B. Tenants Received Leases After They Bought A Home, Invested Money In the Lot, and Moved In 6

 C. The Written Lease Did Not Match The Tenants' Understanding 7

 D. The Lower Courts' Ruling 10

ARGUMENT 12

III. STANDARD OF REVIEW 12

IV. THE PARK OWNER'S PETITION DOES NOT RAISE AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST. 12

 A. Assignment Includes The Remaining Lease Term 13

 B. The Assignment Forfeiture Clause In the Lease Is Unenforceable. 16

V. THE TENANTS ARE ENTITLED TO FEES. 19

CONCLUSION 19

TABLE OF AUTHORITIES

Washington State Court of Appeals

Gillette v. Zakarison, 68 Wn. App. 838, 846 P.2d 574
(1993)..... 19

Holiday Resort Community Ass'n v. Echo Lake Associates, LLC,
134 Wn. App. 210, 135 P.3d 499, (2006)..... 3, 12, 17, 18

Other Authorities

17 Washington Practice § 6.63 (2nd Ed.) 13

Article I § 16 of the Washington Constitution..... 18

Codes, Rules, and Regulations

RAP 2.5 18

RAP 13.2 3

RAP 13.4 12

RAP 18.1 19

RCW 59.20 1

RCW 59.20.020 15

RCW 59.20.040 15, 19

RCW 59.20.050 15

RCW 59.20.060 3, 15, 16

RCW 59.20.073 3, 13, 14, 15

INTRODUCTION

This case underscores the right of mobile home tenants to assign their leases under the Mobile Home/ Manufactured Home Landlord Tenant Act, RCW Ch. 59.20. Respondents Little Mountain Estates Tenants Association, Jerry Jewett, Virginia Haldeman, Marie McCutchin, and Wes Walton (“the tenants”) represent the residents of Little Mountain Estates mobile home park in Mount Vernon, Washington. Little Mountain Estates is an adults-only gated community with 120 leased lots.

To persuade the tenants to move to Little Mountain Estates, Respondents Little Mountain Estates, LLC, Peregrine Holdings, and Kevin and Kari Ware (“the Park owners”) “offered 25-year leases...to tenants who would move a new manufactured home into [Little Mountain Estates] or buy an existing model home from Lamplighter Homes (a dealer of manufactured homes).” (Findings of Fact ¶ 3; CP 3100; Appendix A). But this 25-year lease had an undisclosed catch. If tenants assigned their leases for any reason, they forfeited the 25-year term and the lease was good for only one or two years.

As the Park owners conceded in the Court of Appeals, the 25-year lease would maximize profits only if tenants could not use

the full term. Paul Ware testified why the owners wanted to attach the assignment forfeiture clause to the lease.

[T]he reason we did that was because at a point, you know, as the 25-year leases – if they stayed there 25-years, God loves them, we're glad that they lived that long. But if they didn't and they moved out, those leases would convert to a one-year lease, and eventually we would start getting a return for our investments.

(1/10/06 VRP 72). The owners' goal was to fill up the park as soon as possible. The 25-year lease accomplished that purpose. But the Park owners never intended a tenant to use the full 25 years of the lease. It was a 25-year lease in name only.

The Court of Appeals concluded that this scheme violated the Mobile Home Act.

Because there is no dispute that the lease agreement required the tenants to give up their right to assign the remainder of their 25-year lease, the provision is an unenforceable waiver of the tenants' rights under the MHLTA. We conclude that the assignment clause converting the 25-year lease to a one-year or two-year lease is unenforceable because it conflicts with the MHLTA.

(Slip op. at 13; Appendix B). Since the Court of Appeals correctly interpreted the Act, the tenants respectfully request this Court to deny the Park owners' petition for review.

I. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

The Park owners' petition for review presents three issues:

A. Under the Manufactured/Mobile Home Landlord Tenant Act, RCW 59.20.073, "any rental agreement shall be assignable by the tenant to any person to whom he or she sells or transfers title to the mobile home, manufactured home, or park model." The terms of the tenants' leases were 25 years. Did the Court of Appeals rule correctly that "the unambiguous language of RCW 59.20.073(1) supports the conclusion that the tenants had the right to assign the remaining term of the 25-year lease"? (Slip op. at 13; Appendix B).

B. A lease "shall not contain any provision...[b]y which the tenant agrees to waive or forgo rights" under the Act. RCW 59.20.060(2)(d). Any agreement to waive a right under the Act must be in a writing that is separate from the lease. Holiday Resort v. Echo Lake Assn., 134 Wn. App. 210, 225, 135 P.3d 499 (2006). Did the Court of Appeals appropriately strike the assignment forfeiture clause from the body of the lease?

C. Under RAP 13.2(b), this Court will accept review only "if the Petition involves an issue of substantial public interest that should be determined by the Supreme Court." Applying provisions

of the Landlord Tenant Act and established caselaw, the Court of Appeals reversed the summary judgment of the trial court and remanded for retrial. Does the Court of Appeals' ruling raise an issue of substantial public interest?

II. STATEMENT OF FACTS

Little Mountain Estates is an adults-only manufactured home park that caters to elderly tenants. (1/12/06 VRP 57-58). The residents' average age is 70. (1/10/06 VRP 69). Opened in the early 1990s, the Park had trouble attracting tenants. As Kevin Ware, a park owner, explained at trial,

[a]t the time [of the first Gulf War] nobody knew where that was going, whether we were going to get nuked or what. And people get very hesitant to move or sell homes when that kind of feeling is present in the country.

So a lot of older people who needed to sell their homes to move into Little Mountain Estates would have trouble selling their home. And in addition to that, a lot of people were very – even older folks were hesitant to move. So that was one of the reasons, kind of what was going on in the nation at that time...

The second reason was we recall interest rates were not that favorable at the time.

The third reason was that historically, with the over-55 manufactured home parks a lot of older people had been really burned with the park being promoted as something that ultimately was going to look beautiful and the owner is going to stick to the rules all the way

through regardless of how much it slows down absorption, and they have been burned. So people are very cynical.

(1/12/06 VRP 57-58).

A. The 25-Year Lease

To counteract lagging sales, the Park owners joined with Lamplighter Homes, a manufactured home producer, to offer 25-year leases for residents who would buy a Lamplighter home or install their own unit. (1/12/06 VRP 84). The Wares promoted the Park and the 25-year leases heavily, advertising on radio and in local magazines. (Trial Exhibit 168; 1/13/06 VRP 116). And this began attracting customers like Shirley Kristiansen, a 75-year-old resident of the Park.

Q. How did you first learn of Little Mountain Estates?

A. I heard an advertisement on KIXI radio, and when they had their open house – when they were going to have their open house.

(1/10/06 VRP 114). The Wares and Lamplighter also handed out brochures that offered 25-year leases tied to the CPI. They began selling homes and leasing lots to their target customers. Ultimately, some 80 tenants received 25-year leases. (CP 376).

B. Tenants Received Leases After They Bought A Home, Invested Money In the Lot, and Moved In

To qualify for a 25-year lease, a customer had to put a deposit on a lot, buy a manufactured home, install it, and landscape the lot according to the Park owners' "Mandatory Amenities Package." (Trial Exhibit 3; 1/9/06 VRP 31). Resident Jerry Jewitt described the significant investment tenants had to make before getting a 25-year lease.

Q. Did you have to set up your own mobile up?

A. I had to pay for it.

* * * *

Q. How much did your home cost?

A. \$78,529

Q. Okay. How much did the setup cost?

A. \$37,636.

Q. At the time that you entered into that [purchase and sales] agreement had you seen a lease –

A. No.

(1/10/06 VRP 158). Janice Harman, another tenant, testified to spending \$106,000 to buy her home, satisfy the amenity package, and qualify for the 25-year lease. (1/9/06 VRP 28). The trial court confirmed that "each of the 25-Year Residents incurred significant

expense to purchase their manufactured home, prepare their lot, and install their manufactured home at Little Mountain Estates.” (Findings of Fact ¶ 12; CP 3104)

Only after tenants moved in did the Landlord give them a 25-year lease to sign. The trial court found that the Landlord did not obtain a signed copy of the lease before the tenant moved in, violating the Manufactured/Mobile Home Act. (Conclusion of Law ¶ 3; CP 3107).

C. The Written Lease Did Not Match The Tenant's Understanding

The standard form lease referred to two Attachments, A and B. (CP 514-16). Attachment A proposed a complicated formula for calculating rent adjustments. (CP 516). Attachment B limited tenants' ability to sell their homes by requiring them to forfeit the 25-year term on assignment.

This lease shall be assignable by tenant only to the person to whom Tenant sells or transfers title to the manufactured home on said lot subject to the following:

(c) Upon assignment by Tenant of Tenant's leasehold interest in the homesite, this rental agreement shall automatically convert to a one (1) year lease beginning on the effective date of the assignment. The new monthly rent shall be the rent charged by landlord following the most recent rent

increase for the park preceding the effective date of the assignment.

(CP 516).

Most tenants did not discover this provision until they, or their neighbors, attempted to sell their manufactured homes. As Virginia Haldeman testified,

Q. Can you tell me whether or not you were informed what type of lease you would receive at Little Mountain?

A. Yes. A 25-year lease. And I asked what would happen in the event of a sale before the 25 years was completed, and I was assured that the new owner would get the balance of that 25 years.

Q. Was that important to you?

A. Yes. It was very important to me.

Q. Tell us why.

A. Because that lease was tied to the Consumer Price Index for rent raises. And also because any time you buy a home you're concerned about resale value, and that would be a tremendous incentive for someone to purchase that home if they could have the remainder of that 25-year lease.

(1/13/06 VRP 122). Ms. Haldeman sold her unit, but only with a one-year term.

Little Mountain's owners did not tell potential tenants about the assignment forfeiture clause because it would contradict their sales pitch. A 25-year lease term, which the 70-year-old tenant alone could use, was meaningless. The owners took a calculated risk when they offered 25-year leases to elderly residents. They assumed that tenants would live in the park only for about five years. Paul Ware, one of Little Mountain's developers, testified that the owners offered 25-year leases to make the park profitable.

Q. ...[I]n order to stem the loss of money, the 25-year lease was created as an inducement?

A. Yes.

Q. And at the time that you created the inducement you knew that the average age of the people coming in was roughly 70?

A. Yes.

Q. And you knew that their average length of stay was about five years?

A. Yes.

Q. And you knew that they would have to spend anywhere from \$15,000 to \$18,000 to set up their home?

A. Yes.

(1/10/06 VRP 70).

Paul's brother, Kevin Ware, confirmed that the owners studied the average age of tenants, the length of their stay, and their average investment into landscaping and amenities at the Park.

Q. ...[Y]ou were present when your brother testified, correct?

A. Yes.

Q. And do you recall his testimony that at the time that you went to the 25-year leases he had calculated that the average age of the tenant was 70 and the average length of stay would be five years?

A. Yes. I heard him say that.

Q. Did you also hear him say that that correlated with the study that you had done?

A. Yes.

Q. And was he accurate?

* * * *

A. The number I remember [for length of stay] was closer to five to seven, not exactly five.

(1/12/06 VRP 42).

D. The Lower Courts' Rulings

Ninety-two of the Park's tenants sued the Park owners in Skagit County Superior Court. After extensive pretrial discovery and briefing, Superior Court Kenneth Cowsert presided over a ten-

day bench trial. Judge Cowser ruled for Little Mountain Estates, concluding that the lease attachments were valid and enforceable. Although he found that the owners violated the Manufactured/Mobile Home Act by not providing tenants with a copy of the lease before they moved in, Judge Cowser faulted the tenants for not reading the leases before signing them. (Findings of Fact ¶ 14; CP 3102) (“Each of the 25-Year Residents was provided the opportunity to review the lease prior to signing it”). The court awarded the Park owners their fees and costs totaling \$402,519.89. (CP 3293-3318).

On appeal, the Court of Appeals Division I reversed.

An assignee of a contract “steps into the shoes of the assignor” and has all the rights of the assignor, including all applicable statutory rights. Puget Sound Nat'l Bank v. State Dep't of Revenue, 123 Wn.2d 284, 292, 868 P.2d 127 (1994) quoting, Estate of Jordan v. Hartford Accident & Indem. Co., 120 Wn.2d 490, 495, 844 P.2d 403 (1993). Because RCW 59.20.073(1) states that “any rental agreement shall be assignable,” and the rental agreements here were for 25-year leases, we conclude that the unambiguous language of RCW 59.20.073(1) supports the conclusion that the tenants had the right to assign the remaining term of the 25-year lease.

(Slip op. at 12). Dissatisfied with this ruling, the Park petitioned this Court for review.

ARGUMENT

III. STANDARD OF REVIEW

This Court reviews the lower courts' construction of the Manufactured/Mobile Home Act *de novo*.

Statutory interpretation is a question of law, which this court reviews *de novo*. "The primary goal of statutory construction is to carry out legislative intent." Cockle v. Department of Labor & Indus., 142 Wn.2d 801, 807, 16 P.3d 583 (2001). Legislative intent is determined primarily from the statutory language, viewed "in the context of the overall legislative scheme." Collection Servs. v. McConnachie, 106 Wn. App. 738, 741, 24 P.3d 1112 (2001). Each statutory provision should be read together with others "to achieve a harmonious and unified statutory scheme." State v. Chapman, 140 Wn.2d 436, 448, 998 P.2d 282, cert. denied, 531 U.S. 984, 121 S.Ct. 438, 148 L.Ed.2d 444, (2000).

Holiday Resort Community Ass'n v. Echo Lake Associates, LLC, 134 Wn. App. 210, 222, 135 P.3d 499, 505 (2006).

IV. THE PARK OWNER'S PETITION DOES NOT RAISE AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST

The Park owners seek review under RAP 13.4(b)(4): "the petition involves an issue of substantial public interest that should be determined by the Supreme Court." They argue that the Court of Appeals decided an issue of first impression. But a new issue alone does not justify Supreme Court review. Here the Court of

Appeals read the Mobile Home Act accurately under established caselaw.

The Court of Appeals' decision rests on two legal premises: (1) "assignment" under the Act means assignment of the remaining lease term; and (2) waiving this assignment right requires a separate agreement, not in the lease. Both of these premises are correct, and neither requires further explanation from this Court.

A. Assignment Includes The Remaining Lease Term

Under RCW 59.20.073(1), mobile home park tenants have the statutory right to assign the full remaining term of their leases to buyers.

Any rental agreement shall be assignable by the tenant to any person to whom he or she sells or transfers title to the mobile home, manufactured home, or park model.

RCW 59.20.073(1). Assignment means transfer of the entire remaining term of the lease.

In American law generally and in Washington law, an assignment is the tenant's transfer of the full remaining balance of his leasehold in all or part of his land, and a subletting is his transfer of the leasehold in all or part of the land for a time shorter than the remaining balance.

17 Washington Practice § 6.63 (2nd Ed.). The purpose behind the right of assignment is to protect tenants' investments in their homes

and leased lots. Without the ability to assign their lease, tenants can only transfer title to their mobile home – with the uncertainty of whether it can remain in the Park.

Applying established contract principles, the Court of Appeals concluded that the right to assignment included the time remaining on the 25-year leases. (Slip op. at 12) (“unambiguous language of RCW 59.20.073(1) supports the conclusion that the tenants had the right to assign the remaining term of the 25-year lease”).

The Park owners do not dispute this definition of assignment. Instead, they contend that the tenants were free to modify their assignment right in the lease. (Petition for Review at 11). As described in the next section, the Manufacturing/Mobile Home Act protects tenants from leases that waive statutory protections. But a point merits highlighting here. A lease between a mobile home tenant and a park owner is not a simple contract, limited only by what the market will bear.

The Legislature adopted the Manufactured/Mobile Home Landlord-Tenant Act to prevent bargaining tactics like those in this case. It substantially revised the common law rules of contract to protect vulnerable tenants.

This chapter shall *regulate and determine legal rights, remedies, and obligations arising from any rental agreement* between a landlord and a tenant regarding a mobile home lot and including specified amenities within the mobile home park, mobile home park cooperative, or mobile home park subdivision, where the tenant has no ownership interest in the property or in the association which owns the property, whose uses are referred to as a part of the rent structure paid by the tenant.

RCW 59.20.040 (emphasis added). All leases between landlord and tenant have an obligation to act in good faith. RCW 59.20.020. Leases are not arms-length transactions, limited only by the parties' bargaining power.

Little Mountain's owners violated three provisions of the Manufactured/Mobile Home Act. First, they had tenants choose lots, pay deposits, install mobile homes and landscape lots *before* signing a lease. RCW 59.20.050. Second, they barred the full assignability of the 25-year lease, limiting the lease term to one year after assignment. RCW 59.20.73(1). Third, they required tenants in the leases to waive their rights to assign their 25-year terms. RCW 59.20.60(d).

The Act provides a clear remedy for these statutory violations – the assignment forfeiture clause is unenforceable. RCW 59.20.040. The Little Mountain tenants appropriately had a

25-year lease term that they could assign with their manufactured home.

B. The Assignment Forfeiture Clause In The Lease Is Unenforceable

The Court of Appeals' second premise is that landlords cannot require tenants to waive statutory rights in the lease.

Washington courts review waiver clauses strictly and enforce them only if their language is sufficiently clear. Chauvlier v. Booth Creek Ski Holdings, Inc., 109 Wn. App. 334, 339-40, 35 P.3d 383 (2001). And any agreement to waive a right under the MHLTA must be in a writing that is separate from the lease agreement. Holiday Resort Cmty. Ass'n v. Echo Lake Assoc., LLC, 134 Wn. App. 210, 225, 135 P.3d 499 (2006) rev. denied, 160 Wash.2d 1019, 163 P.3d 793 (2007).

(Slip op. at 13).

Under RCW 59.20.060(2)(d), Little Mountain's lease cannot require tenants "to waive or forego rights or remedies under this chapter." Yet the assignment forfeiture clause required tenants to waive their right to assign the remainder of their 25-year term. The owners provide no argument to the contrary. Instead, they contend the common law rules of contract apply. (Petition for Review at 11).

The Act requires more from Little Mountain's owners to alter the term of the 25-year lease. Tenants must expressly agree in a separate writing to waive their right to assign the full term. As the

Court of Appeals recently explained in the context of month-to-month tenancies,

The MHLTA requires a mobile home park landlord to provide a written agreement for a one-year rental term to the tenant at the beginning of the tenancy. If, instead, the tenant wants a month-to-month tenancy, the tenant must explicitly waive the right to a one-year rental term in writing.

Holiday Resort Community Ass'n v. Echo Lake Associates, LLC, 134 Wn. App. 210, 223, 135 P.3d 499 (2006). The assignment forfeiture clause here suffers from the same defect as that in Holiday Resort – tenants waive an important protection without knowing their statutory rights. A written waiver prevents this.

The fact that tenants signed the lease with the forfeiture clause is no longer relevant. The Court rejected a similar argument in Holiday Resort.

To properly interpret a statute, courts must read statutory provisions together, not in isolation. The language in RCW 59.20.090 must be interpreted together with the requirements of RCW 59.20.050(1) and RCW 59.20.060(2)(d). RCW 59.20.050(1) requires a tenant to waive the right to the one-year rental term in writing. RCW 59.20.060(2)(d) does not allow a tenant to waive rights under the MHLTA in a rental agreement. Reading the requirements of RCW 59.20.050(1) and RCW 59.20.060(2)(d) together with RCW 59.20.090(1), we conclude that any agreement under RCW 59.20.090(1) to a rental term other than one year or any agreement to waive the right to renew

must also be in writing separate from the rental agreement.

Holiday Resort Community Ass'n, 134 Wn. App. at 224-225. If waiver of full assignability is possible under the Act, it requires a written waiver separate from the rental agreement. Signing a lease with an implied waiver is insufficient.

Little Mountain's owners offered tenants a lease that violated statutory provisions against waiving important rights. The owners also had the tenants sign the lease after they moved in, not before. Although the owners minimize their significance, these violations justified the Court of Appeals excising the assignment forfeiture clause from the lease. It is not properly there; and the tenants' failure to read it before signing does not excuse the landlords' violations.

The Park owners offer a final argument for review, alleging that the Mobile Home Act violates Article I § 16 of the Washington Constitution. (Petition for Review at 18). This is a new argument on appeal, and under RAP 2.5(a), the tenants ask this Court to refuse to review it.

V. THE TENANTS ARE ENTITLED TO FEES

Under RAP 18.1, the tenants renew their request for an award of attorneys' fees for responding to this petition. The Mobile Home Act provides that "in any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs." This allows for fees on appeal as well. Gillette v. Zakarison 68 Wn. App. 838, 843, 846 P.2d 574 (1993) ("prevailing party under the Act...is entitled to reasonable attorney fees on appeal").

CONCLUSION

The Court of Appeals appropriately held the assignment forfeiture clause unenforceable under RCW 59.20.040. The tenants respectfully request this Court to deny the petition for review and award reasonable attorneys' fees for this response.

DATED this 14th day of November, 2008.

BURI FUNSTON MUMFORD, PLLC

By 

Philip J. Buri, WSBA #17637
1601 F. Street
Bellingham, WA 98225
360/752-1500

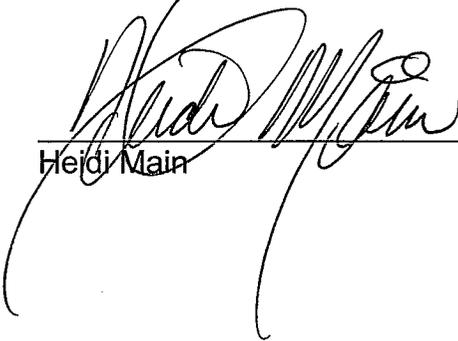
DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on the date stated below, I mailed or caused delivery of the Respondents' Answer to Petition for Review to:

Troy Robert Nehring
Olsen Law Firm PLLC
604 W Meeker Street, Suite 101
Kent, WA 98032-5701

Sidney Tribe
Talmadge Law Group PLLC
18010 Southcenter Parkway
Tukwila, WA 98188-4630

DATED this 14th day of November, 2008.



Heidi Main

APPENDIX A

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT

LITTLE MOUNTAIN ESTATES
TENANTS ASSOCIATION, a
Washington non-profit corporation, as
assignee, JERRY JEWETT, VIRGINIA
HALDEMAN, MARIE McCUTCHIN,
and WES WALTON, on behalf of
themselves and classes of similarly
situated persons,

Plaintiffs,

v.

LITTLE MOUNTAIN ESTATES MHC,
LLC., a Washington limited liability
company; PEREGRINE HOLDINGS
LLC, a Washington limited liability
company; and KEVIN A. WARE and
KARI M. WARE, husband and wife,

Defendants.

v.

THIRD PARTY PLAINTIFFS AS
IDENTIFIED IN EXHIBITS A AND B,

Third Party Plaintiffs.

No. 02-2-01295-0

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Clerk's Action Required

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

-2

OLSEN LAW FIRM PLLC

604 W. Meeker Street, Suite 101
Kent, Washington 98032
PH: 253.813.8111
FAX: 253.813.8133

1011

1 THIS MATTER having come on regularly for trial from January 6, 2006
2 to January 20, 2006, and the court, having bifurcated this action by Order dated
3 December 23, 2005, having considered the testimony and evidence, having
4 accepted the parties' stipulations regarding the facts of this case, and having
5 made various findings of fact and conclusions of law in its oral rulings dated
6 January 17, 2006, January 18, 2006, and January 20, 2006, each of which are
7 attached hereto, and incorporated herein, now makes the following written
8 findings and conclusions:

9 **FINDINGS OF FACT**

10 1. This action was filed on August 26, 2002.

11 2. Little Mountain Estates ("LME") is a high quality manufactured
12 home community which was constructed in the early 1990s, and is intended for
13 and operated as housing for older persons. LME rents individual lots to its
14 residents to place their manufactured home in which the resident lives.

15 3. From 1990 to 1997, the landlord offered 25-year leases (the
16 "Lease") to tenants who would move a new manufactured home into LME or buy
17 an existing model home from Lamplighter Homes (a dealer of manufactured
18 homes). The landlord and Lamplighter had an agreement which allowed
19 Lamplighter to install model homes in the park to sell to persons who agreed to
20 purchase the home from Lamplighter and rent the lot which the home occupied
21 from the landlord.

22 4. Prior to August 28, 1996, LME advertised the term of the Lease as
23 "25-years tied to the CPI" pursuant to the terms contained in the Lease. The lease
24 presented to the tenants included an un-advertised clause that converts the
25 balance of the 25-year term to a one or two year term upon sale of the home.
26

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 3

OLSEN LAW FIRM PLLC

604 W. Meeker Street, Suite 101
Kent, Washington 98032
PH: 253.813.8111
FAX: 253.813.8133

1 5. The tenants purchased homes at prices between \$60 - \$80,000 for
2 the homes and incurred the additional expense to prepare the resident's lot for
3 placement of the mobile home.

4 6. Each Plaintiff and Third Party Plaintiff identified in Exhibit C who
5 signed a Lease ("25-Year Residents"), made the necessary arrangements to hold a
6 manufactured home lot at LME for a deposit, purchase an existing model home,
7 or purchase and move a new manufactured home to LME.

8 7. The court finds that initially there was an equality of bargaining
9 position between the landlord who wanted to lease lot spaces in LME and
10 prospective residents who could choose or not choose to move into LME.

11 8. The court finds that the bargaining position of the parties began to
12 change in favor of LME when the 25-Year Residents undertook to purchase new
13 homes and arrange to have them set up on the lot that they had reserved without
14 first confirming their contractual and legal obligations with the landlord.

15 9. The court finds that the bargaining position of the parties shifted in
16 favor of LME after the 25-Year Residents changed their position by purchasing
17 their homes and installing their homes at LME without first confirming their
18 contractual and legal obligations would be under the lease. *o e*

19 10. The court finds that at the time of lease signing the 25-Year
20 Residents were in a difficult position to withdraw from the landlord-tenant
21 relationship with LME.

22 11. Each of the 25-Year Residents had the opportunity to request to
23 review the Lease prior to incurring the expense to either place a new home in
24 LME, or purchase an existing home at LME. (One prospective tenant had
25 casually reviewed a current tenant's lease during a social visit, and another had
26 asked for the lease and been told she didn't need it).

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 4

OLSEN LAW FIRM PLLC

604 W. Meeker Street, Suite 101
Kent, Washington 98032
PH: 253.813.8111
FAX: 253.813.8133

1
2 12. Each of the 25-Year Residents incurred significant expense to
3 purchase their manufactured home, prepare their lot, and install their
4 manufactured home at LME. Insofar as the 25-Year Residents did so without
5 reviewing or requesting the Lease, their bargaining position decreased.

6 13. Many of the 25-Year Residents either installed their manufactured
7 home at LME without reviewing or requesting the Lease, or moved into their
8 manufactured home at LME without reviewing or requesting the Lease, and then
9 the parties subsequently agreed to the terms contained in the written Lease.

10 14. Each of the 25-Year Residents were provided the opportunity to
11 review the Lease prior to signing it.

12 15. Each of the 25-Year Residents voluntarily entered into the Lease
13 on or about the date identified in their Lease, and intended that they would
14 receive a 25-year guarantee that they would be able to reside in this mobile home
15 park. Each of the 25-Year Residents received what was intended.

16 16. None of the 25-Year Residents objected to the Lease at the time
17 that they signed their lease, nor did they commence an action against defendants
18 until this action was filed on August 26, 2002.

19 17. The language contained in the Lease is straightforward and easy to
20 read. There is nothing hidden in a maze of fine print or that is written in a way
21 that is not understandable by a reasonable person.

22 18. Either at or after the time of signing their respective Lease, the 25-
23 Year Residents learned that in the event of an assignment, their Lease converted
24 to a one or two year term.

25 19. Each of the 25-Year Residents has paid rent as provided by their
26 Lease since it was signed, and the parties have performed their respective

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 5

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1 obligations contained in the Lease at all times after each Lease was signed.

2 20. The Lease provided that the 25-Year term would convert to a one
3 or two-year term upon the 25-Year Residents' sale of their home, and assignment
4 of the lease.

5 21. The Lease provided that a certain rent would be charged for the
6 first year of the Lease, and that periodic annual adjustments to the rent would be
7 made as provided by the Lease's "Attachment A".

8 22. "Attachment A" of the Lease provided for an annual adjustment to
9 rent based on any increase or decrease in the Consumer Price Index and any
10 increase or decrease of certain costs to operate and maintain LME.

11 23. The Consumer Price Index formula calculation of rent contained in
12 Attachment A of the Lease does not make sense.

13 24. The Consumer Price Index formula calculation of rent contained in
14 Attachment A of the Lease is ambiguous.

15 25. Both LME and the 25-Year Residents, either prior to or at the time
16 of signing the lease, understood that the rent would be tied to the CPI, in that they
17 expected the rent to go up the same as the Consumer Price Index went up.

18 26. The 25-Year Residents either knew or should have known that the
19 25-Year Lease contained provisions which converted the 25-Year term upon sale,
20 and provided for an annual adjustment to rent based on any increase or decrease
21 in the Consumer Price Index and an adjustment of certain costs to
22 operate/maintain LME.

23 27. When the 25-Year Residents learned that the lease contained the
24 conversion provision, they could have requested a return of their deposit and seek
25 a termination of any agreement they had with Little Mountain, although it would
26 have cost them substantial sums of money since they had already purchased and

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 6

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1 installed fully or partially their manufactured homes at LME.

2 28. The other choice the 25-Year Residents had was to demand what
3 they believed they were entitled to, or negotiate something else, or try to.

4 29. Another choice the 25-Year Residents had was to hire an attorney,
5 and sue LME because they did not believe they received what they thought they
6 should have.

7 31. Although the court does not endorse the conduct of either LME or
8 the 25-Year Residents, neither does the court find that either of the parties were at
9 fault with regard to the way in which the 25-year residents made arrangements to
10 hold a manufactured home lot at LME for a deposit, moved in, and then, or later,
11 signed their lease. *d*

12 32. The security gate at LME became inoperable and LME tried to fix
13 it.

14 33. Pursuant to "Attachment A" of the 25-Year Lease Agreement,
15 LME adjusted rents to collect a pro rata share, ^{*real*} estate taxes, water service,
16 television cable, maintenance of common areas, ^{*of*} and costs of operating the
17 community building.

18 34. LME did not adjust rents to collect a pro rata share of ~~and~~ ^{*ANY*}
19 improvements as allowed by "Attachment A" of the 25-Year Lease Agreement.

20 35. LME correctly adjusted rent for each 25-Year Resident at all times
21 after each 25-Year Resident signed their 25-Year Lease Agreement.

22 36. Some of the 25-Year Residents sold their manufactured homes
23 prior to trial. Upon sale, these 25-Year Residents assigned their tenancies and
24 rental agreements to their purchasers as provided by the 25-Year Lease
25 Agreement.

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

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 7

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CONCLUSIONS OF LAW

1. LME and Lamplighter had an agreement where Lamplighter installed model homes in the park to sell to persons who agreed to first hold a manufactured home lot at LME for a deposit, and then later rent that lot from LME.

2. LME allowed manufactured homes and park models to be moved into the manufactured home park without written rental agreements signed by and in the possession of the parties.

3. LME, by allowing tenants to purchase models or to move their manufactured homes into the park without written rental agreements signed by and in the possession of the parties, violated RCW 59.20.050.

4. Because the parties failed to sign a rental agreement before the 25-Year Residents moved into their home at LME, the 25-Year Residents are deemed to have a one-year tenancy pursuant to RCW 59.20.050. The parties subsequently agreed to a 25-Year tenancy pursuant to the terms contained in the 25-Year Lease Agreement.

5. The 25-Year Residents are bound by the leases which they voluntarily signed even though LME violated RCW 59.20.050.

6. The 25-Year Lease Agreement presented to tenants by LME for signature included a provision which converted the 25-Year term of the Lease to a one or two-year term upon assignment of the Lease.

7. The provision contained in the 25-Year Lease Agreement which converted the 25-Year term of the Lease (to a one or two-year term upon assignment of the Lease) does not violate RCW 59.20.073, or any other provision of Chapter 59.20 RCW.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 8

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2 8. The 25-Year Residents' reservation of a lot with the payment of a
3 lot reservation fee and commencement of installing a newly purchased
4 manufactured home on the lot with the cooperation of LME or Lamp Lighter,
5 together with lot improvements, including grading, landscaping, and sidewalks,
6 or tenants' purchase of model homes that were already installed with lot
7 improvements and landscaping, did not constitute facts of an agreement to rent a
8 lot.

9 9. "Attachment A" of the Lease, which contains the conversion of the
10 balance of the 25-year lease upon assignment, is not a material alteration of any
11 prior agreement between LME and the 25-Year Residents because there was no
12 prior agreement, and the Lease is the only agreement.

13 10. The Consumer Price Index formula contained in "Attachment A"
14 of the 25-Year Lease is ambiguous.

15 11. The parties understood, and intended that the rent would be
16 adjusted by any increase or decrease in the Consumer Price Index (e.g. if the CPI
17 increased by 3% from one year to the next, the rent would likewise increase by
18 3%).

19 12. As provided below, the court strikes the last seven words of the
20 Consumer Price Index formula contained in Attachment A to reflect the parties'
21 understanding and intention, and consequent agreement, when they signed the
22 Lease:

23 "Rent Adjustment Formula"

24 The Consumer Price Index All Urban Consumers - Seattle -
25 Tacoma (1982-84 Base = 100) for the month nearest the first
26 month of the lease is the base for computing the annual rent
adjustment. If the Index published nearest the annual adjustment
date has changed over the BASE Index the new monthly rent shall
be set by multiplying the first months rent by a fraction the

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

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1 numerator of which is the new Consumer Price Index divided by
2 the BASE and the denominator is the BASE Index. This formula
3 will be repeated for the second and subsequent adjustments to the
4 rent level.

5 13. The remaining provisions of "Attachment A" to the Lease provides
6 as follows:

7 ATTACHMENT "A"

8 * * *

9 Additional adjustments may be made for:

- 10 . real estate taxes *
- 11 . water service *
- 12 . television cable *
- 13 . maintenance of common areas
- 14 . costs of operating the community building
- 15 . improvements made to the park

16 * (Note: Consistent with RCW 59.20.060(2)(c), these
17 adjustments may be either positive or negative.)

18 Increases in these costs may be passed on at the annual rental
19 adjustment date. If the landlord chooses to pass on the cost
20 increases, the tenant will be presented with this information 3
21 months in advance, consistent with RCW 59.20.090(2). The costs
22 will then be equally divided between the Little Mountain Estates
23 Tenants, prorated to each lot at 1/120.

24 All rent figures will be rounded to the nearest dollar.

25 14. The Consumer Price Index formula contained in "Attachment A"
26 of the Lease was not intended to cover increases in the other costs which are
specified in Attachment A, including real estate taxes, water service, television
cable, maintenance of common areas, costs of operating the community building,
and improvements made to the park.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 10

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2 15. Under RCW 59.20.060, the Lease can provide that the 25-Year
3 Residents will pay a prorated share of increases in the mobile home park's real
4 property taxes, utility assessments, and utility charges.

5 16. The Court concludes that "Attachment A" of the Lease is
6 substantively unconscionable insofar as it allows LME to adjust rent to recover
7 any improvements to the park.

8 17. Except as it provides for a rental adjustment for improvements to
9 the park, the Lease does not violate the ~~Mobile Home Landlord-Tenant Act,~~
10 Mobile Home Landlord Tenant Act, Chapter 59.20 RCW, or any other federal,
11 state or local statute, code, or ordinance, or common law or equitable doctrine.

12 18. Defendants are entitled to a declaratory judgment pursuant to
13 RCW 7.24 against the 25-Year Residents that the 25-Year Lease Agreement and
14 its Attachments do not violate the Mobile Home/Manufactured Home Landlord
15 Tenant Act (RCW 59.20 *et. seq.*) or the Consumer Protection Act (RCW 19.86 *et.*
16 *seq.*).

17 19. Except as it provides for a rental adjustment for improvements to
18 the park, the lease is not substantively or procedurally unconscionable.

19 20. LME's adjustments to rents to collect charges for repairs,
20 administrative expenses, wages, salaries, allowances, pre-printed legal forms,
21 marketing expenses, and telephone service represent the cost of operating the
22 community building in the manner it was operated at the commencement of each
23 Residents' tenancy.

24 21. LME charged for security gate repair, which was proper because it
25 represented the cost of maintaining the common areas in the manner it was
26 operated at the commencement of each 25-Year Residents' tenancy.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 11

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1
2 22. LME did not breach its obligation to provide a security gate even
3 though the gate was inoperable for periods of time.

4 23. Defendants are entitled to a declaratory judgment against the 25-
5 Year Residents that any remaining rental adjustment to rent paid by the 25-Year
6 Residents at any time prior to prior to January 20, 2006 was legal, valid and
7 enforceable.

8 25. Defendants are entitled to a declaratory judgment against the 25-
9 Year Residents that any assignment of any 25-Year Lease Agreement by the 25-
10 Year Residents at any time prior to January 20, 2006 was legal, valid, and
11 enforceable.

12 26. Defendants are entitled to a declaratory judgment against the 25-
13 Year Residents that defendants have not violated the Mobile Home/Manufactured
14 Home Landlord Tenant Act (RCW 59.20 *et. seq.*) or the Consumer Protection Act
15 (RCW 19.86 *et. seq.*), or any other law at any time prior to January 20, 2006.

16 27. Defendants are entitled to a declaratory judgment against the 25-
17 Year Residents that any rental agreement signed by the 25-Year Residents at any
18 time prior to January 20, 2006 was or is legal, valid and enforceable, except that
19 defendants may not adjust rent for any improvements made to the common areas
20 of Little Mountain Estates because the Court finds this would be an
21 unconscionable term of the 25-Year Lease Agreement. The Court concludes that
22 defendants did not adjust rent for any improvement made to the common area at
23 any time prior to January 20, 2006.

24 28. Defendants are entitled to a declaratory judgment against the 25-
25 Year Residents that defendants have not breached any rental agreement signed by
26 the 25-Year Residents.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 12

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1 29. Pursuant to Attachment A of the 25-Year Lease, defendants are
2 allowed to pass through certain increased costs (except improvement to the park)
3 to 25-Year Residents and have done so in a manner consistent with the language
4 of "Attachment A" and consistent with the intent of the parties.

5 30. Pursuant to "Attachment A" of the 25-Year Lease, defendants are
6 allowed to pass through to the 25-Year Residents the cost of maintenance and
7 repair of common areas and the cost of operating the community building.
8 Defendants have passed on these costs to 25-Year Residents in a manner
9 consistent with "Attachment A" and consistent with the intent of the parties.

10 31. The 25-Year Residents have not provided sufficient evidence to
11 demonstrate that the defendants have breached any legal obligation to repair the
12 security gate. Further, had the Court found a breach, the 25-Year Residents have
13 failed to provide a sufficient basis for damages to be assessed.

14 32. The 25-Year Residents' remaining causes of actions 1 through 25
15 are dismissed with prejudice.

16 33. Defendants are the prevailing party.

17 DONE IN OPEN COURT

18 June 19, 2006

19 

20 Honorable Kenneth Cowsert

21 Presented by:

22 OLSEN LAW FIRM PLLC

23 BY

24 Walter H. Olsen, Jr. - WSBA #24462
25 B. Tony Branson - WSBA #30553
26 Attorneys for Defendants

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 13

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604 W. Meeker Street, Suite 101
Kent, Washington 98032
PH: 253.813.8111
FAX: 253.813.8133

C. Thomas Moser - WSBA #7287
Attorney for Defendants Ware

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FINDINGS OF FACT AND
CONCLUSIONS OF LAW
- 14

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Approved as to Form; Copy Received:

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T. Reinhard Wolff - WSBA # 4146
Attorney for Plaintiffs

Thomas P. Sughrua - WSBA # 14117
Attorney for Plaintiffs

EXHIBIT A
 DEFENDANT LITTLE MOUNTAIN ESTATES MHC LLC ASSERTS CLAIMS
 AGAINST THE FOLLOWING THIRD PARTY PLAINTIFFS:

LAST NAME	FIRST NAME	LOT #
Abel	Gene & Mairilynn	28
Andersen	Ronald & Barbara	74
Archambault	Doris	7
Bailey	Joyce	93
Ballard	Nancy	14
Barton	John & Patricia	102
Berg	Donald & Donna	10
Bielinski	Jack & Leona	67
Bluemke	Chet & Janice	101
Bowman	Dorothy	19
Brown	Vern & Janet	47
Butner	Gordon & Marie	99
Cammeraat	John	49
Carlson	Pauline	106
Colwell	Harry & Hulder	83
Cross	Sterling & Dottie	97
Custer	Corky	34
Davis	Barbara	42
Dickerson	Harold & Ruth	98
Dykstra	Don & Lori	36
Epley	Doris	63

FINDINGS OF FACT AND
 CONCLUSIONS OF LAW
 - 16

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Erdmann	Nancy	21
Esselbach	Clyde & Clara	95
Exelby	Eileen	81
Flanary	Cliff & Lois	15
Fleming	Bob & Jeanne	75
Gaston	Margaret	20
Grace	Joyce	94
Gregory	Beverly	56
Guertin	Geneva	68
Gullick	Rentz & Jean	119
Hademan	Arthur	57
Hall	Gerald & Nancy	59
Hamers	John M. and Laverne E. Barnett	118
Hammann	Jerry & Sharon	72
Harman	Jan	55
Hastin	E. Dale	92
Heidema	Tjaakje & Sophia Kellis	118
Helland	Ordeen	16
Hickman	Larry & Lynn	32
Holcomb	Dale & Lorraine	23
Hoskins	Gary & Eve	114
Jennings	Dorcie	24
Johnson	Charles	30
Johnson	Ralph & Nola	84
Karlson	Melvin & Shirley	116
Keillor	Janet	46
Kjos	Gordon & Linda	66
Kristiansen	Dick & Shirley	111
Landvatter	Doris	26

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
- 17

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1	LeBeau	Robert	2
2	Lindstrom	Wayne & Birgit	18
3	Lovelace	Art R. and Donna Campbell	74
4	Martin	Wayne & Lynn	89
5	McFadden	Janet	112
6	McMullen	Bob & Marilynn	29
7	Miller	David & Lydia	35
8	Nelson	Virgil	62
9	Northern	Louise	120
9	O'Bryan	Mary Willet and Margaret	54
10	O'Connell	Laurie	11
11	Olson	Marcelylene	60
12	Petersen	Jacqueline	33
13	Peterson	Maxine	109
14	Pettelle	Joe & Pat	51
15	Phillips	John & Karen	44
15	Pollock	Jess & Marge	107
16	Powell	Eva	64
17	Proffitt	Mary	27
18	Reinert	Betty	79
19	Robideau	Carroll & Loraine	65
20	Schafer	Gladys	76
21	Schneider	Donna	17
22	Schuppenauer	Harry & Pat	37
22	Scott	Harrison & Grace	115
23	Shapman-Artz	Linda	82
24	Simmonds	Jeanne	25
25	Smith	Robert & Donna	105
26	Svensson	Karl & Herdis	103

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
- 18

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1	Swanland	Jean	52
2	Taylor	Gordon and Carolyn	117
3	Tellefson	Glen & Mary	48
4	Terwilliger	Richard & Barbara	43
5	Thompson	Kenneth & Pearl	53
6	Topham	Nancy	61
7	Traylor	Gordon & Carolyn	117
8	Turner	Margaret & Earl Myers	70
9	Tyree	Vi	96
10	Vaux	Helen	104
11	Walde	Elanor	13
12	Walley	Randy & Sandra	78
13	Willet	Mary	54
14	Williams	Joan	41
15	Wohlman	Marvin & Bonnie	85
16	Wolpert	Betty	40
17	Woodmansee	Jack & Peggy	58
18	Wright	Henry	31

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
- 19

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THIRD PARTY PLAINTIFFS ADDED BY NOTICES OF APPEARANCE FROM
PLAINTIFFS' COUNSEL DATED DECEMBER 12 AND 13, 2005:

25-Year Tenants:

LAST NAME	FIRST NAME	LOT #
Bielinski	Jack and Leona	Prior Lot #67
Crane	Sheryl	Prior Lot #3
Dubisch	Roy	Prior Lot #20
Jennings	Dorcie and Barbara	24
Kilian	Evelyn	Prior Lot #96
Landvatter	Doris	26
Maddson	Stan	Prior Lot #3
May	Dorothea L.	Prior Lot #100
McKee	Jack and Gert	Prior Lot #80
Miller	David and Lydia	35
Randall	Frank c/o Dorothy	Prior Lot #66
Skeers	Richard and Mary	9
Tingley	Claud W.	Prior Lot #70
Wahl	Marilyn	Prior Lot #44
Wallace	Jim	8
Wiganosky	Roger	Prior Lot #23

One-Year Tenants:

LAST NAME	FIRST NAME	LOT #
Andersen	Dr. Ronald and Barbara	Prior Lot #74
Bieda	Robert and Sharon	Prior Lot #88
Conger	William and Shirley	Prior Lot #6
Davis	Jerry and Janet	114
Gullick	Jean	Prior Lot #119
Hamme	Everette and Joanne	54
Hickman	Larry and Lynn	32

1	Holcomb	Lorraine and Dale	23
2	Niven	Stephen and Edna	Prior Lot #24
3	Rentz	Jr.	Prior Lot #119
4	Simmonds	Jean	25
5	Vaux	John and Helen	104
6	Williams	Joan	41
6	Wood	Reg and Becky	20

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FINDINGS OF FACT AND
CONCLUSIONS OF LAW
- 21

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FAX: 253.813.8133

EXHIBIT B
 DEFENDANT PEREGRINE HOLDINGS LLC AND KEVIN AND KARI WARE
 ASSERT CLAIMS AGAINST THE FOLLOWING THIRD PARTY PLAINTIFFS:

LAST NAME	FIRST NAME	LOT #
Abel	Gene & Marilynn	28
Andersen	Ronald & Barbara	74
Archambault	Doris	7
Bailey	Joyce	93
Ballard	Nancy	14
Barton	John & Patricia	102
Batchelder	Robert & Marjorie	4
Berg	Donald & Donna	10
Bielinski	Jack & Leona	67
Bluemke	Chet & Janice	101
Bowman	Dorothy	19
Brown	Vern & Janet	47
Butner	Gordon & Marie	99
Cammeraat	John	49
Carlson	Pauline	106
Coggins	Eileen	86
Colwell	Harry & Hulder	83
Conger	William & Shirley	6
Crane	Carol & Stan Madsen	3
Cross	Sterling & Dottie	97
Custer	Corky	34
Davis	Barbara	42
De Freese	Gary & Eleaine	50
Dickerson	Harold & Ruth	98
Dykstra	Don & Lori	36
Ebert	Lorraine	39
Epley	Doris	63

FINDINGS OF FACT AND
 CONCLUSIONS OF LAW
 - 22

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1	Erdmann	Nancy	21
2	Esselbach	Clyde & Clara	95
3	Exelby	Eileen	81
4	Fisher	Gordon & Gladys	22
5	Flanary	Cliff & Lois	15
6	Fleming	Bob & Jeanne	75
7	Fridlund	Mary	45
8	Gaston	Margaret	20
9	Grace	Joyce	94
10	Gregory	Beverly	56
11	Guertin	Geneva	68
12	Gullick	Rentz & Jean	119
13	Hademan	Arthur	57
14	Hall	Gerald & Nancy	59
15	Hamers	John M. and Laverne E. Barnett	118
16	Hammann	Jerry & Sharon	72
17	Harman	Jan	55
18	Hastin	E. Dale	92
19	Heidema	Tjaakje & Sophia Kellis	118
20	Helland	Ordeen	16
21	Hickman	Larry & Lynn	32
22	Holcomb	Dale & Lorraine	23
23	Hoskins	Gary & Eve	114
24	Hults	David & Betty	5
25	Hundahl	Victor & Delores	87
26	Jennings	Dorcie	24
	Johnson	Charles	30
	Johnson	Ralph & Nola	84
	Karlson	Melvin & Shirley	116

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 23

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1	Karnil	Melvin & Shirley	1
2	Keillor	Janet	46
3	Kjos	Gordon & Linda	66
4	Koth	Wilma	91
5	Kristiansen	Dick & Shirley	111
6	Landvatter	Doris	26
7	LeBeau	Robert	2
8	Lewis	Victor & Barbara	90
9	Lindstrom	Wayne & Birgit	18
10	Lovelace	Art R. and Donna Campbell	74
11	Martin	Wayne & Lynn	89
12	McFadden	Janet	112
13	McGlenn	Mary	88
14	McKee	Jack & Gertrude	80
15	McMullen	Bob & Marrison	29
16	Miller	David & Lydia	35
17	Minahan	Fred & Shirley	73
18	Nelson	Virgil	62
19	Northern	Louise	120
20	O'Bryan	Mary Willet and Margaret	54
21	O'Connell	Laurie	11
22	Olmos	Raul & Connie	12
23	Olson	Marcelyene	60
24	Petersen	Jacqueline	33
25	Peterson	Maxine	109
26	Pettelle	Joe & Pat	51
	Phillips	John & Karen	44
	Pollock	Jess & Marge	107
	Powell	Eva	64

1	Proffitt	Mary	27
2	Reinert	Betty	79
3	Robideau	Carroll & Loraine	65
4	Root	Merle & Beulah	69
5	Schafer	Gladys	76
6	Schneider	Donna	17
7	Schuppenauer	Harry & Pat	37
8	Scott	Harrison & Grace	115
9	Seaward	Marlene	77
10	Shapman-Artz	Linda	82
11	Simmonds	Jeanne	25
12	Skeers	Richard & Mary	9
13	Smith	Robert & Donna	105
14	Smith	Robert & Betty	100
15	Svensson	Karl & Herdis	103
16	Swanland	Jean	52
17	Taylor	Gordon and Carolyn	117
18	Tellefson	Glen & Mary	48
19	Terwilliger	Richard & Barbara	43
20	Thompson	Kenneth & Pearl	53
21	Tingley	Isabel & Paul Woche	108
22	Topham	Nancy	61
23	Traylor	Gordon & Carolyn	117
24	Turner	Margaret & Earl Myers	7
25	Tyree	Vi	96
26	Vaux	Helen	104
	Walde	Elanor	13
	Wallace	James	8
	Walley	Randy & Sandra	78
	Wellington	William & Judith	113

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 25

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604 W. Meeker Street, Suite 101
Kent, Washington 98032
PH: 253.813.8111
FAX: 253.813.8133

1	Willet	Mary	54
2	Williams	Joan	41
3	Wohlman	Marvin & Bonnie	85
4	Wolpert	Betty	40
5	Woodmansee	Jack & Peggy	58
6	Wright	Henry	31

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THIRD PARTY PLAINTIFFS ADDED BY NOTICES OF APPEARANCE FROM
PLAINTIFFS' COUNSEL DATED DECEMBER 12 AND 13, 2005:

25-Year Tenants:

LAST NAME	FIRST NAME	LOT #
Bielinski	Jack and Leona	Prior Lot #67
Crane	Sheryl	Prior Lot #3
Dubisch	Roy	Prior Lot #20
Jennings	Dorcie and Barbara	24
Kilian	Evelyn	Prior Lot #96
Landvatter	Doris	26
Maddson	Stan	Prior Lot #3
May	Dorothea L.	Prior Lot #100
McKee	Jack and Gert	Prior Lot #80
Miller	David and Lydia	35
Randall	Frank c/o Dorothy	Prior Lot #66
Skeers	Richard and Mary	9
Tingley	Claud W.	Prior Lot #70
Wahl	Marilyn	Prior Lot #44
Wallace	Jim	8
Wiganosky	Roger	Prior Lot #23

One-Year Tenants:

LAST NAME	FIRST NAME	LOT #
Andersen	Dr. Ronald and Barbara	Prior Lot #74
Bieda	Robert and Sharon	Prior Lot #88
Conger	William and Shirley	Prior Lot #6
Davis	Jerry and Janet	114
Gullick	Jean	Prior Lot #119
Hamme	Everette and Joanne	54
Hickman	Larry and Lynn	32

Holcomb	Lorraine and Dale	23
Niven	Stephen and Edna	Prior Lot #24
Rentz	Jr.	Prior Lot #119
Simmonds	Jean	25
Vaux	John and Helen	104
Williams	Joan	41
Wood	Reg and Becky	20

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FINDINGS OF FACT AND
CONCLUSIONS OF LAW
- 28

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604 W. Meecker Street, Suite 101
Kent, Washington 98032
PH: 253.813.8111
FAX: 253.813.8133

APPENDIX B

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BURI FUNSTON
MUMFORD, PLLC

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

LITTLE MOUNTAIN ESTATES TENANTS)
ASSOCIATION, a Washington Non-profit)
corporation, as assignee, JERRY JEWETT)
VIRGINIA HADLEMAN, MARIE)
McCUTCHIN, and WES WALTON, on)
behalf of themselves and classes of)
similarly situated persons)

No. 57810-3-I

Appellants,)

UNPUBLISHED OPINION

v.)

LITTLE MOUNTAIN ESTATES MHC LLC,)
a Limited Liability Company, PEREGRINE)
HOLDINGS, LLC, KEVIN A. WARE and)
KARI M. WARE, husband and wife and the)
marital community composed thereof,)

Respondents.)

FILED: July 21, 2008

SCHINDLER, C.J.—The Manufactured/Mobile Home Landlord Tenant Act (MHLTA), chapter 59.20 RCW, governs the legal rights and obligations between mobile home park landlords and tenants. Under the MHLTA, a tenant has the right to assign a rental agreement. A rental agreement cannot contain any provision that waives a tenant’s rights under the MHLTA, and if a provision in the rental agreement conflicts with the MHLTA, it is unenforceable. The “Little Mountain Estates 25 Year Lease Agreement,” contains a rent adjustment formula tied to the Consumer Price Index (CPI) and a provision stating that when a tenant assigns a lease to a new owner,

the remainder of the tenant's 25-year term is automatically converted to a one-year or a two-year term. We reject the tenants' argument that the court erred in enforcing the rent adjustment formula in the lease agreement. However, because the tenants had the right to assign their leases under the MHLTA and could not waive that right in the lease agreement, we reverse the trial court's determination that as a matter of law the conversion clause in the 25-year lease agreement did not violate the MHLTA. We also remand to address the tenants' Consumer Protection Act (CPA), chapter 19.86 RCW, claim.

FACTS

In August 2002, the Little Mountain Estates Tenants Association and tenants Jerry Jewett, Virginia Haldeman, Marie McCutchin, and Wes Walton (collectively "the tenants") sued Little Mountain Estates Manufactured Home Community, LLC (LME).

LME was built in the early 1990s as an upscale, gated, 120-lot manufactured housing community for older adults. LME struggled to find tenants because of the economic and political instability in the early 1990s. In an effort to attract tenants, LME entered into a marketing agreement with a manufactured homes dealer, Lamplighter Homes (Lamplighter). From 1990 to 1997, LME offered a 25-year lease with a maximum annual rent increase tied to the Consumer Price Index (CPI) to tenants who either purchased a model home from Lamplighter or purchased and moved a new manufactured home to LME. LME and Lamplighter advertised the 25-year lease through radio, brochures and other written advertisements. Some of the written

advertisements state that the details of the rental agreement would be "specified in the lease."¹

The new manufactured homes purchased by the tenants cost between \$60,000 and \$80,000. To "[i]nsure quality and overall community appearance" of LME, the tenants also had to comply with the requirements of the "Little Mountain Estates Park Amenity Package" prior to moving in. The mandatory amenity package included requirements to install concrete slabs, a concrete sidewalk to the street or a driveway, "pit set"² the manufactured home on the lot, install sewer, water, and electrical connections, and complete landscaping according to the LME specifications. The cost of the improvements required by the mandatory amenity package ranged from \$15,000 to \$18,000.

It is undisputed that the tenants did not sign written lease agreements before moving in. It is also undisputed that after moving in, each of the tenants and LME entered into the "Little Mountain Estates 25 Year Lease Agreement." The lease unequivocally provides a tenancy of 25 years for a designated space at LME. The lease also sets forth the amount of rent due each month for the first year. Thereafter, the amount "shall be subject to an annual formula per Attachment A." For example, the lease signed by Jerry and Betty Jewett provides:

1. DESCRIPTION OF PREMISES: Landlord hereby leases to Tenant that certain space in the County of Skagit, State of Washington described as space number 38, Little Mountain Estates, Skagit County, Washington.

¹ Exhibit 16.

² "Pit setting" requires more excavation before setting the home than a "ground set" mobile home and is more expensive.

2. TERM: The term of this tenancy **shall be twenty-five years** commencing on 12-1-94, and continuing through Nov. 30, 2019.
3. RENT: Tenant shall pay to Landlord \$310.00 per month as rent; through Nov. 30, 1995 and thereafter shall be subject to an annual adjustment formula per Attachment A. . . .³

The assignment provision in the LME 25-Year Lease Agreement states that the lease is assignable subject to the limitations in "Attachment B."

ASSIGNMENT; SUBLETTING: This lease is assignable, providing that such assignment conforms with the limitations and language in Attachment 'B'. Subletting the manufactured home, the lot space, or any part thereof is not permitted.

The one-page attachment to the 25-year lease, titled "Little Mountain Estates," includes Attachment A and Attachment B. Attachment A is clearly labeled "RENT ADJUSTMENT FORMULA" and is set forth first. It contains a description of the Consumer Price Index (CPI) and the formula for calculating rent adjustments. Halfway down the page is the heading "Attachment 'B.'" Attachment B does not have a similar label to explain its purpose. Attachment B states that the tenant can assign the lease to a new owner subject to the conditions set forth in five different subsections, subsections (a) to (e).

Subsection (a) of Attachment B requires the tenant to pay all outstanding rent, taxes, and fees prior to transferring the lease. Subsection (b) addresses the requirements for the landlord's approval of the assignment. Subsection (c) states that upon assignment, the lease agreement is automatically converted to a one-year or a two-year lease. Subsection (d) states that the assignment provision applies to all

³ Emphasis added.

transfers and subsection (e) allows LME to assign its interest in the lease to a third party purchaser. Attachment B provides:

This lease shall be assignable by tenant only to a person to whom Tenant sells or transfers title to the manufactured home on said lot subject to the following:

(a) All outstanding taxes, rents and/or fees owed by the tenant must be paid prior to such transfer.

(b) Subject to the approval of Landlord after fifteen (15) days written notice by Tenant of such intended assignment. Landlord shall approve or disapprove of the assignment of this lease on the same basis that Landlord approves or disapproves of any new tenant or manufactured home.

(c) Upon assignment by Tenant of Tenant's leasehold interest in the homesite, this rental agreement shall automatically convert to a one (1) year lease beginning on the effective date of the assignment. The new monthly rent shall be charged by Landlord following the most recent rent increase for the park proceeding the effective date of the assignment.

(d) Assignment as defined in this paragraph shall apply to all voluntary transfers and involuntary transfers of Tenant, including a transfer between married tenants pursuant to a divorce decree, separation agreement, or similar document or order, or a transfer in a bankruptcy or other insolvency proceeding.

(e) Landlord shall assign its interest in this agreement to any third party who purchases the park.

One of the owners of LME, Paul Ware, testified that the 25-year lease was a means to attract tenants, but because the average age of the tenants who moved into LME was 70, LME anticipated that most of the tenants would only actually live at the mobile home park for approximately five years.

Q. [I]n order to stem the loss of money, the 25-year lease was created as an inducement?

A. Yes.

Q. And at the time that you created that inducement you knew that the average age of the people coming in was roughly 70?

A. Yes.

Q. And you knew that their average length of stay was about five years?

A. Yes.

Q. And you knew that they would have to spend anywhere between \$15,000 and \$18,000 to set up their home?

A. Yes.

According to Ware, the reason for the unadvertised assignment conversion clause in Attachment B was to maximize the owners' profits when the tenants sold their homes.

[T]he reason we did that was because at a point, you know, as the 25-year leases – if they stayed there 25-years, God loves them, we're glad that they lived that long. But if they didn't and they moved out, those leases would convert to a one-year lease, and eventually we would start getting a return for our investments.

The tenants' lawsuit against LME asserted that the lease agreement violated the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA), chapter 59.20 RCW, and the Consumer Protection Act (CPA), chapter 19.86 RCW. The lawsuit alleged that many of the tenants were unaware of the assignment conversion clause in Attachment B, the conversion of their 25-year tenancy to a one-year or two-year term reduced their ability to sell their homes, the rent adjustment formula in Attachment A was unenforceable, and LME had arbitrarily increased the rent in violation of the lease agreement. The tenants sought declaratory and injunctive relief, monetary damages, and attorney fees and costs.

After a series of summary judgment motions and a nine-day trial, the court enforced the assignment conversion clause and, with some modifications to the rent adjustment formula, enforced the other terms of the lease. In one of the early summary judgment motions, the court ruled as a matter of law, that the provision in

Attachment B automatically converting the 25-year lease to a one-year or two-year lease upon assignment did not violate the MHLTA or the CPA.

(1) Plaintiffs' claims that paragraph 6 of the 'Little Mountain Estates 25 year Lease agreement' and its 'Exhibit B' violate the mobile home/manufactured landlord tenant act (RCW 59.20 et seq.) or the Consumer Protection Act (RCW 19.86 et seq.) are dismissed with prejudice; and

(2) Paragraph 6 of the "Little Mountain Estates 25 Year Lease Agreement" and its "Exhibit B" are not prohibited by the Mobile Home/Manufactured Home Landlord Tenant Act (RCW 59.20 et seq.).⁴

Following trial, the court entered extensive findings of fact and conclusions of law. The court concluded that even though LME violated the MHLTA by allowing tenants to move in without first signing a lease agreement, the tenants were bound by the terms of the 25-year lease that they voluntarily entered into after moving into LME. But because the court concluded that the CPI rent formula in Attachment A did not make sense and was ambiguous, the court modified the formula. Otherwise, the court ruled that the lease was enforceable. In the conclusions of law, the court reiterated its previous ruling that the assignment conversion clause in Attachment B did not violate the MHLTA or the CPA.⁵ The tenants appeal.

⁴ The court later dismissed park owners Kevin and Kari Ware in part, several of the tenants' causes of action, and the tenants' CPA and retaliation claims.

⁵ "The provision contained in the 25-Year Lease Agreement which converted the 25-[y]ear term of the Lease (to a one or two-year term upon assignment of the Lease) does not violate RCW 59.20.073, or any other provision of [c]hapter 59.20 RCW." Findings of Fact and Conclusions of Law 7.

ANALYSIS

The tenants assert that the trial court erred in ruling on summary judgment that the conversion clause in Attachment B does not violate the MHLTA or the CPA. The tenants also assert that the trial court erred in enforcing the rent adjustment provision in Attachment A because the terms materially altered the terms of the offer LME made to the tenants in its advertisements.⁶

We review summary judgment de novo and engage in the same inquiry as the trial court. Heath v. Uraga, 106 Wn. App. 506, 512, 24 P.3d 413 (2001). Summary judgment is proper if the pleadings, depositions, answers, and admissions, together with the affidavits, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). We view the facts and reasonable inferences in a light most favorable to the nonmoving party. Michak v. Transnation Title Ins. Co., 148 Wn.2d 788, 794, 64 P.3d 22 (2003). Summary judgment is appropriate if, in view of all the evidence, reasonable persons could reach only one conclusion. Hansen v. Friend, 118 Wn.2d 476, 485, 824 P.2d 483 (1992).
Manufactured/Mobile Home Landlord Tenant Act

The tenants contend that the trial court erred in ruling on summary judgment that the provision in Attachment B converting the term of the lease from a 25-year

⁶ Although the tenants also contend that the trial court erred by dismissing park owners, Kevin and Kari Ware, ruling that LME's unacknowledged leases did not violate the statute of fraud, granting partial summary judgment as to a CPA violation regarding the security gate, granting partial summary judgment dismissing retaliation claims, and excluding the tenants' expert witness, they fail to argue these assignments of error in their brief. Because the tenants do not support these assignments of error with argument, consideration is waived on appeal. RAP 10.3(a)(6); Bercier v. Kiga, 127 Wn. App. 809, 824, 103 P.3d 232 (2004). In addition, to the extent the tenants do not make arguments related to the assignments of error to the court's findings and conclusions, those arguments are also waived. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

lease to a one-year or two-year term upon assignment of the lease to a new owner did not violate the MHLTA or the CPA. The tenants assert that because a tenant has the statutory right under the MHLTA to assign the lease, and the lease cannot contain a provision that requires the tenant to waive or forego a statutory right, the conversion clause provision is unenforceable. LME asserts that the lease provision complies with the MHLTA because the tenants have the right to assign the lease, but the MHLTA does not give the tenants the right to assign the remainder of the term of the lease.

Statutory interpretation is a question of law we review de novo. Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). If the statute's meaning is plain on its face, we give effect to that plain meaning. Campbell & Gwinn, 146 Wn.2d at 9-10. We look to the legislative enactment as a whole to determine the meaning. State v. Pac. Health Ctr, Inc., 135 Wn. App. 149, 159, 143 P.3d 618 (2006). To properly interpret a statute, courts must read statutory provisions together, not in isolation. Judd v. Am. Tel. & Tel. Co., 152 Wn.2d 195, 203, 95 P.3d 337 (2004), rev. denied, 162 Wn.2d 1002, 175 P.3d 1092 (2007).

A statute is ambiguous if it has two or more reasonable interpretations, but not "merely because different interpretations are conceivable." Cerrillo v. Esparza, 158 Wn.2d 194, 201, 142 P.3d 155, rev. denied, 156 Wn.2d 1010, 132 P.3d 146 (2006). If a statute is ambiguous, we may resort to legislative history. Campbell & Gwinn, 146 Wn.2d at 12. "Ultimately, in resolving a question of statutory construction, this court will adopt the interpretation which best advances the legislative purpose." Bennett v. Hardy, 113 Wn.2d 912, 928, 784 P.2d 1258 (1990), quoting, In re R., 97 Wn.2d 182, 187, 641 P.2d 704 (1982).

The MHLTA determines the legal rights, remedies, and obligations arising from a rental agreement between a mobile home lot tenant and the mobile home park landlord. RCW 59.20.040. The legislative purpose in enacting the MHLTA was to regulate and protect mobile home owners by providing a stable, long-term tenancy for home owners living in a mobile home park. Holiday Resort, 134 Wn. App. at 224.

According to legislative findings,

... [it] is the intent of the legislature, in order to maintain low-cost housing in mobile home parks to benefit the low income, elderly, poor and infirmed, to encourage and facilitate the conversion of mobile home parks to resident ownership, to protect low-income mobile home park residents from both physical and economic displacement, to obtain a high level of private financing for mobile home park conversions, and to help establish acceptance for resident-owned mobile home parks in the private market.

RCW 59.22.010(2). The legislature also found that "many homeowners who reside in mobile home parks are also those residents most in need of reasonable security in the siting of their manufactured homes." Former RCW 59.23.005 (1994).

Here, there is no dispute that, according to the signed lease agreements, the tenants have the right to a 25-year lease. Additionally, it is undisputed that the tenants have the unequivocal right to sell their mobile homes under RCW 59.20.070(1). RCW 59.70.070(1) provides that:

Prohibited acts by landlord. A landlord shall not:

- (1) Deny any tenant the right to sell such tenant's mobile home, manufactured home, or park model within a park or require the removal of the mobile home, manufactured home, or park model from the park because of the sale thereof. Requirements for the transfer of the rental agreement are in RCW 59.20.073.

RCW 59.20.073(1) provides that “[a]ny rental agreement shall be assignable by the tenant to any person to whom he or she sells or transfers title to the mobile home, manufactured home, or park model.” The MHLTA also expressly states that any executed rental agreement between the landlord and tenant “shall not contain any provision . . . [b]y which the tenant agrees to waive or forego rights” under the MHLTA. RCW 59.20.060(2)(d). In addition, RCW 59.20.020 imposes an obligation to act in good faith,⁷ and under RCW 59.20.040 a rental agreement “shall be unenforceable to the extent of any conflict with any provision of this chapter.”

LME argues that as long as the landlord allows the tenant to assign the rental agreement, nothing in the statute prohibits the landlord from then converting the remaining 25-years lease term to a one-year or a two-year term. LME also asserts that because tenants voluntarily signed the lease, the tenants are bound by their agreement under general principles of contract law. But this argument ignores the MHLTA, which is the controlling law in this case.

The trial court also read the statute narrowly to conclude,

the provision contained in the 25-Year Lease Agreement which converted the 25-Year term of the lease (to a one or two-year term upon assignment of the lease) does not violate RCW 59.20.073, or any other provision of Chapter 59.20 RCW.

We reject LME’s narrow interpretation of the MHLTA and RCW 59.20.073(1).

This court’s primary goal in interpreting statutes is “to ascertain and give effect to legislative intent.” Pac. Health Ctr., 135 Wn. App. at 158-59. The plain language of

⁷ “Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.” RCW 59.20.020.

RCW 59.20.073(1) provides that tenants have the right to assign their rental agreements and does not contain any limitation on the right to do so. When the plain language of the statute is subject to more than one reasonable interpretation, we look to the principles of statutory construction, legislative history, and case law. Cockle v. Dep't of Labor & Indus., 142 Wn.2d 801, 808, 16 P.3d 583 (2001). And when enacting a statute, we presume the legislature knows the existing state of the case law. Woodson v. State, 95 Wn.2d 257, 266-62, 623 P.2d 683 (1980).

The MHLTA does not define "assignment." But the general rule under common law with respect to the assignment of contract rights is that such rights may be freely assigned unless prohibited by statute. Federal Fin. Co. v. Gerard, 90 Wn. App. 169, 177, 949 P.2d 412 (1998). An assignee of a contract "steps into the shoes of the assignor" and has all the rights of the assignor, including all applicable statutory rights. Puget Sound Nat'l Bank v. State Dep't of Revenue, 123 Wn.2d 284, 292, 868 P.2d 127 (1994) quoting, Estate of Jordan v. Hartford Accident & Indem. Co., 120 Wn.2d 490, 495, 844 P.2d 403 (1993). Because RCW 59.20.073(1) states that "any rental agreement shall be assignable," and the rental agreements here were for 25-year leases, we conclude that the unambiguous language of RCW 59.20.073(1) supports the conclusion that the tenants had the right to assign the remaining term of the 25-year lease.

Construing RCW 59.20.073(1) to mean the tenants have the right to assign the remaining term of their rental or lease agreement is also consistent with the legislative intent to protect mobile home owners.

In addition, Washington courts review waiver clauses strictly and enforce them only if their language is sufficiently clear. Chauvlier v. Booth Creek Ski Holdings, Inc., 109 Wn. App. 334, 339-40, 35 P.3d 383 (2001). And any agreement to waive a right under the MHLTA must be in a writing that is separate from the lease agreement. Holiday Resort Cmty. Ass'n v. Echo Lake Assoc., LLC, 134 Wn. App. 210, 225, 135 P.3d 499 (2006) rev. denied, 160 Wn.2d 1019, 163 P.3d 793 (2007).

Here, because there is no dispute that the lease agreement required the tenants to give up their right to assign the remainder of their 25-year lease, the provision is an unenforceable waiver of the tenants' rights under the MHLTA. We conclude that the assignment clause converting the 25-year lease to a one-year or two-year lease is unenforceable because it conflicts with the MHLTA.

Rent Adjustment Formula

The tenants also contend the trial court erred by enforcing the rent adjustment formula in Attachment A because it materially altered the terms of the offer LME made to the tenants in its brochures and advertisements. LME asserts that the advertising materials did not constitute an offer and the written agreement controls. We agree with LME.

An implied contract occurs when, through a course of dealing and common understanding, the parties show a mutual intent to enter into a contract. Harberd v. City of Kettle Falls, 120 Wn. App. 498, 516, 84 P.3d 1241 (2004). Generally, an advertisement is not an offer. 25 David K. DeWolf & Keller W. Allen, Washington Practice: Tort Law and Practice, §2:12 (2d ed. 2007). Here, there was no mutual intent to enter into an oral agreement. The record reveals that Little Mountain

intended the lease agreement to control, as demonstrated by the fact that the advertising materials explicitly stated “[t]he details of this are specified in the lease.”

Enforceability of Lease Attachments

The tenants contend that even if the written lease is enforceable, they did not agree to the terms of Attachment A and B which were not attached to the lease when they were executed. We review the trial court's decision in a bench trial to determine whether challenged findings are supported by substantial evidence and whether the findings support the conclusions of law. Dorsey v. King County, 51 Wn. App. 664, 668-69, 754 P.2d 1255 (1988). Findings of fact are considered verities on appeal as long as they are supported by substantial evidence in the record. In re Marriage of Thomas, 63 Wn. App. 658, 660, 821 P.2d 1227 (1991). Substantial evidence is a quantum of evidence sufficient to persuade a rational fair-minded person that the premise is true. Wenatchee Sportsmen Ass'n v. Chelan County, 141 Wn.2d 169, 176, 4 P.3d 123 (2000). The tenants did not assign error to the following findings of fact:

20. The Lease provided that the 25-Year term would convert to a one or two-year term upon the 25-Year Residents' sale of their home, and assignment of the lease.
21. The Lease provided that a certain rent would be charged for the first year of the Lease, and that periodic annual adjustments to the rent would be made as provided by the Lease's 'Attachment A.'

Because these findings specifically provide that the terms in Attachment A and B were part of the lease the tenants signed, we reject the argument that the lease did not include the attachments.

Consumer Protection Act

The tenants also assert that LME's violation of the MHLTA violated the CPA. LME contends that the lease did not violate the CPA because it did not mislead the public.

The purpose of the CPA is to protect citizens from unfair and deceptive trade and commercial practices. Stephens v. Omni Insurance Co., 138 Wn. App. 151, 170, 159 P.3d 10 (2007), rev. granted, 2008 LEXIS 284 (Apr. 1, 2008). To show that there is a violation of the CPA, the tenants must prove five elements: "(1) unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) public interest impact, (4) injury to plaintiff in his or her business or property, (5) causation." Omni Insurance, 138 Wn. App. at 166. The tenants' failure to establish any of the elements is fatal to their CPA claim. Holiday Resort, 134 Wn. App. at 225.

In Holiday Resort, we addressed a similar issue and held that even though the rental agreement violated the MHLTA, whether the violation had the capacity to deceive a substantial portion of the public was a question of fact. Holiday Resort, 134 Wn. App. at 226-27. Here, because the court did not reach the question of whether the tenants could prove a violation of the CPA, we remand.

Attorney Fees

Both parties request an award of attorney fees based on RCW 59.20.110. RCW 59.20.110 provides: "[i]n any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs." The lease agreement between the parties also provides attorney fees to the prevailing party in any action to enforce a provision of the lease. Additionally, under RAP 18.1, the prevailing party is

No. 57810-3-1/16

entitled to attorney fees on appeal. Gillette v. Zakarison, 68 Wn. App. 838, 846 P.2d 574 (1993). As the prevailing party, the tenants are entitled to reasonable attorney fees upon compliance with Rap 18.1.

CONCLUSION

We affirm in part, reverse in part, vacate the trial court's award of attorney fees, and remand.⁸

Schindler, CT

WE CONCUR:

Appelwick, J.

Ajda, J.

⁸ Because we remand, we need not address the tenants' other arguments.