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Washington State Supreme Court

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Ronald R. Carpenter
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No. 90179-1

SUPREME COURT
OF THE STATE OF WASHINGTON

WESTERN PLAZA, LLC,

Petitioner,

v.

NORMA TISON,

Respondent.

AMICUS CURIAE BRIEF OF MANUFACTURED HOUSING
COMMUNITIES OF WASHINGTON

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Washington State Supreme Court
DEC 19 2014 *bjh*
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A. IDENTITY AND INTEREST OF AMICI

Manufactured Housing Communities of Washington (“MHCW”) is the preeminent Washington organization for mobile home parks. Its interest in this case is set forth in detail in its motion for leave to file this amicus brief.

B. STATEMENT OF THE CASE

The facts in this case are articulated in the Court of Appeals’ opinion and in the parties’ supplemental briefs, and are incorporated by reference.

C. ARGUMENT

MHCW offers this brief to address two key points:

- Under the annual renewal provision of RCW 59.20.090, at the time of annual renewal, landlords and tenants may add or delete terms of their lease not forbidden by RCW 59.20, the Manufactured Home Landlord-Tenant Act (“MHLTA”), and consistent with the common law and statutory law of contracts;
- The Court of Appeals’ interpretation of RCW 59.20 implicates state and federal takings concerns.

(1) The Court of Appeals Misreads the MHLTA

The Court of Appeals’ opinion misstates the effect of RCW 59.20.090, implying that the *identical terms* of the original lease agreement, including rent provisions between a mobile home park and a tenant renew each year unless both parties agree to new terms. Op. at 8.

This is wrong. By its terms, RCW 59.20.090 *nowhere* so states.¹ Quite to the contrary, the statute *explicitly* contemplates that rent terms may change. RCW 59.20.090(2).

In *numerous* cases, Washington courts have recognized that the lease terms are subject to change by the parkowner upon the lease's annual renewal, maintaining an appropriate balance between tenant and park owner rights. *E.g.*, *McGahuey v. Hwang*, 104 Wn. App. 176, 15 P.3d 672, *review denied*, 144 Wn.2d 1004 (2001); *Seashore Villa Ass'n v. Hagglund Family Ltd. P'ship*, 163 Wn. App. 531, 260 P.3d 906 (2011), *review denied*, 173 Wn.2d 1036 (2012); and *Little Mountain Estates Tenants Ass'n v. Little Mountain Estates MHC, LLC*, 169 Wn.2d 265, 236 P.3d 193 (2010).

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

¹ The MHLTA has several passages that encourage the implementation of a one-year rental agreement, as the Legislature has believed there is more security in a longer term for a tenant who owns his/her manufactured home and rents the land where it is placed. Shorter rental terms may have more risk for tenants in having to relocate a manufactured home despite other safeguards in the law. When there is no written rental agreement, the law steps in to give the tenant the benefit of having a one-year term. For a tenant to agree to a month-to-month rental agreement, for example, a separate waiver of the right to a one-year term is required. RCW 59.20.050; *Holiday Resort Community Assn. v. Echo Lake Assocs.*, 134 Wn. App. 210, 223, 135 P.3d 499 (2006), *review denied*, 160 Wn.2d 1019 (2007). But the MHLTA *nowhere* indicates that the terms of the original lease remain in place without revision upon each renewal.

a vehicle fee. 104 Wn. App. at 182. The Court of Appeals rejected this interpretation of the MHTLA, and noted that the Legislature’s approach to the landlord-tenant relationship was more “practical” and “balanced” than the position the tenants advocated. *Id.*

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

In *Seashore Villa*, tenants argued it was unfair for a park owner to tear down existing carports and a storage shed when they were no longer affordable to maintain. 163 Wn. App. at 546. The tenants said that because the structures were in place when they signed their leases, the park owner was obligated to maintain them forever under MHLTA because of the automatic renewal provisions. *Id.* at 545. The Court of Appeals concluded that one-year leases were just that – one year in length – and that a park owner was not obligated to offer the exact same terms upon renewal. *Id.* The Court noted that any subsequent lease provision must be based upon a “meeting of the minds,” and that there could be no

evidence such meeting of the minds occurred when the management of the park had changed hands without renegotiation of the leases. *Id.*

The Court of Appeals' assertion that "...under the MHLTA, the agreement thereafter automatically renewed each year for another year, meaning that all its terms also automatically renewed unless the parties agreed to change the terms" is contrary to the statutory language of RCW 59.20.090, its legislative history, and the numerous Washington cases that provide for annual renewals of leases, with park owner flexibility, subject to statutory and common law principles, to alter their terms. The Court of Appeals' interpretation destroys any balance between tenant and park owner rights and simply deprives the park owner of the ability to lease her/his park to persons of her/his choosing on lawful terms of her/his choosing including lease duration. Moreover, as will be noted *infra*, such an interpretation raises severe constitutional concerns.

The balance that Washington courts have struck between park owners and tenants under MHLTA in interpreting the effect of RCW 59.20.090 is jeopardized by the Court of Appeals' ruling here. In its opinion, the Court of Appeals enforced the interlineated promise of a former mobile home park owner regarding tenant rents that extended beyond the one-year term of the lease against the park owner's successor, op. at 8, concluding that at the end of the one-year term of the lease, a

subsequent park owner could not modify the former park owner's interlineated rental provision upon appropriate notice to the tenant.

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

This Court should reject the Court of Appeals' extreme reading of RCW 59.20.090.

(2) The Court of Appeals' Decision Implicates a Taking of Mobile Home Park Owners' Property

If the Court of Appeals analysis of RCW 59.20.090's lease renewal provision holds, the statute then exacts a taking of park owners' property rights. This issue did not arise previously under the MHLTA where a park owner had a statutory right of "no cause" eviction of a tenant.²

² When RCW 59.20.090(1) was first enacted, it clearly did not give perpetual renewal rights to the tenant. RCW 59.20.090 in 1977 stated:

(1) Unless otherwise agreed rental agreements shall be for a term of one

This Court in *Manufactured Housing Communities of Wash. v. State*, 142 Wn.2d 347, 13 P.3d 183 (2000) made it clear that legislation purporting to intrude on any of the vital attributes of property ownership constituted a taking. The Court held that the right to alienate property to a person of the owner's choosing was exactly one of those rights. *Id.* at 363-64. A property right includes "the unrestricted right of use, enjoyment, and disposal." (emphasis added.) *Id.* at 364. This Court held that the State took a park owner's property when the Legislature enacted legislation conferring a statutory right of first refusal to buy a park upon its tenants when the park owner decided to sell his or her park. *Id.* at 364-

year. Any rental agreement for a term of one year and any rental agreements renewed for a six-month term shall be automatically renewed for an additional six-month term unless:

- (a) Otherwise specified in the original written rental agreement; or
- (b) The landlord notifies the tenant in writing three months prior to the expiration of the rental agreement that it will not be renewed or will be renewed only with the changes contained in such notice.

A tenant shall notify the landlord in writing one month prior to the expiration of a rental agreement of an intention not to renew.

Laws of 1977, ex. sess., ch. 279, § 9.

From 1977 until 1993, the park owner had a right to terminate the rental agreement without cause under RCW 59.20.080. No cause eviction effectively avoided making any lease, or in its terms, despite its renewability annually under .090, perpetual in duration. Such no cause evictions were removed by the Legislature in 1993 in amending .080. Laws of 1993, ch. 66, § 19.

Read in *pari materia* with the former version of RCW 59.20.80 allowing no cause evictions, RCW 59.20.090 did not make a rental of a manufactured housing community space perpetual or bar a landlord from adopting any changes to the original rental agreement's terms. The problem of the duration of the lease's renewal, and under what terms, is now front and center with the elimination of no cause evictions.

68. It is *no different* when the State in the MHLTA, as interpreted by the Court of Appeals here, tells the park owner not only to whom she/he must lease her/his property, but makes the duration of the original lease essentially perpetual by legislative fiat, depriving the owner of the right to determine the terms for the rental of his/her property.

Similarly, a Federal taking under the Fifth and Fourteenth Amendments is implicated by such a legislative intrusion into the property owner's rights. As noted in *Laurel Park Community LLC v. City of Tumwater*, 698 F.3d 1180 (9th Cir. 2012), an overly zealous government intrusion into the core rights of property owners can constitute a regulatory taking:

...regulations that go “too far” constitute a taking. Determining whether a regulation goes too far requires a court to engage in “essentially ad hoc, factual inquiries.” *Penn Cent.*, 438 U.S. at 124, 98 S. Ct. 2646. “[R]egulatory takings challenges are governed by the standards set forth in [*Penn Central*].” *Lingle*, 544 U.S. at 538, 125 S. Ct. 2074. “Primary among [the relevant] factors are [1] the economic impact of the regulation on the claimant and, particularly, [2] the extent to which the regulation has interfered with distinct investment backed expectations. In addition, [3] the character of the government action...may be relevant in discerning whether a taking has occurred.” *Id.* at 538-39, 125 S. Ct. 2074 (citation, internal quotation marks, and brackets omitted). “[T]hese three inquiries share a common touchstone. Each aims to identify regulatory actions that are functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owner from his domain.” *Id.* at 539, 125 S. Ct. 2074.

Id. at 188.

Here, the park owners' rights would be affected under the federal regulatory takings analysis if leases are perpetual. The economic impact on the park owners would be profound, forestalling any ability to adjust lease terms as economic circumstances dictate. Such an effect was clearly not contemplated when the park owners invested in the parks, given the existence of "no cause" evictions and later court interpretations of RCW 59.20.090. Finally, the government action directly impinges on park owners' core right to lease their property on terms, and for a duration, of their choosing.

Neither the express language of RCW 59.20.090, public policy, common law, nor prior Washington case law on MHTLA support the Court of Appeals' conclusion here. The ruling that once the initial one-year lease contains a provision, it is swept into the renewal provision of RCW 59.20.090 and binds future leases, and subsequent park owners, in perpetuity is a risk to the healthy balance that Washington courts have struck between MHTLA tenants and park owners, and implicates a constitutional taking.

D. CONCLUSION

The Court of Appeals misinterprets the thrust of RCW 59.20.090, treating it as requiring the renewal of the lease on its original terms annually ad infinitum. This is a misreading of the statute that, if sustained,

implicates a taking of a park owner's property rights under the Fifth and Fourteenth Amendments to the United States Constitution and article I, § 16 of Washington's. This Court should re-affirm the interpretation of RCW 59.20.090 that allows for a tenant's right to renew the lease, but a landlord's right to assert new terms for that lease not forbidden specifically by the MHLTA or common law and statutes pertaining to contracts.

DATED this 8 day of December, 2014.

Respectfully submitted,



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