

409526-II

NO. 83729-5

SUPREME COURT  
OF THE STATE OF WASHINGTON

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

Respondents,

vs.

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

Appellants.

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

Appellant,

vs.

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

Respondents.

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BRIEF OF RESPONDENTS

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## I. INTRODUCTION

The Seashore Villa mobile home park landlord tried to get around RCW 59.20.135(2) prohibiting it “from transferring responsibility for the maintenance or care of permanent structures within the mobile home park to the tenants of the park[,]” permanent structures such as carports and sheds. RCW 59.20.135(3). Bootstrapping on the *McGahuey* case,<sup>1</sup> the landlord wrote a letter to each of the 110 tenants in the park, stating that the tenants owned the carports and sheds (without advising the tenants of when or how the transfer occurred) and if the tenants did not so agree, then the landlord was going to remove the carports and sheds from the tenants’ lots, unless the tenants (1) signed a letter waiving their rights under RCW 59.20.135 and (2) agreed to maintain the carports and sheds.

A number of tenants, faced with the imminent threat of losing the valuable rights to (1) park their cars and enter their homes out of the weather and (2) store their lawnmowers out of their kitchens, signed the waiver and agreement to maintain their carports and sheds. The Seashore Villa Association, composed of the tenants in the park, filed the present lawsuit to obtain an injunction against the park’s removing the carports and sheds on the

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<sup>1</sup>*McGahuey v. Hwang*, 104 Wn. App. 176, 15 P.3d 672 (2001).

tenants' lots and to declare the agreements signed by the tenants under duress to be null and "void" under RCW 59.20.135(2). The tenants contended that the landlord's threatening letter to the tenants was a violation of the express legislative intent and the clear language of RCW 59.20.135 itself.

The tenants prevailed at summary judgment and at trial. At trial, the park owner then raised constitutional issues for the first time, i.e., the argument that the enactment and enforcement of RCW 59.20.135 constituted a taking in violation of Art. I, Sec. 16 of the state constitution. This claim is based on the contention that the trial court's interpretation of the owner's duties means that the tenant leases are "frozen in time" and are extended "in perpetuity," so that park owners can never remove any park amenities once built. Similar arguments were advanced and rejected in this Court and elsewhere. The tenants contend that the statutory enactment embodied in RCW 59.20.135 is remedial legislation reflecting a reasonable legislative compromise, takes nothing from the park owner, and in any event is well within the police power of the state, a doctrine widely applied in the landlord-tenant context.

## **II. COUNTERSTATEMENT OF ISSUES**

1. Where a state statute, specifically RCW 59.20.135, provides that

mobile home park owners are prohibited from transferring the maintenance responsibility for permanent improvements, including carports and sheds, to the tenants in the park, does a park owner violate the statute by sending a letter to all tenants in the mobile home park threatening to remove the carports and sheds, unless the tenants sign a letter agreeing to maintain the carports and sheds, and agreeing to waive their rights under the Mobile Home Landlord-Tenant Act (“MHLTA”)?

2. Where a mobile home park owner built carports and sheds on tenants’ lots, considered them permanent improvements, insured them, replaced them when destroyed or damaged, and considered them the owner’s property, advertised them as park amenities, charged rent for them to early tenants in the park, and failed to produce any documents or other evidence at trial showing that the ownership of the carports and sheds had been transferred to the tenants, and failed to provide any evidence as to when or how any such transfer occurred, was the trial court correct in finding that the course of dealing between park owner and tenants resulted in an implied in fact agreement that the park owner would maintain the carports and sheds?

3. Where the legislature enacts a statute, RCW 59.20.135, requiring mobile home park owners, in a manner similar to that of residential landlords,

to maintain certain mobile home park permanent improvements, such as carports and sheds, in the interest of public safety and public health and welfare, and mobile home park owners are free to close their parks, evict their tenants and remove their carports and sheds at any time after proper notice as set forth in the MHLTA, does such a statute, based on the exercise of the state's police power, respect all of the "bundle of sticks" comprising the mobile home park owners' property rights, and not give any of those "sticks" to the tenants, so that as a result there is no taking as interpreted in the case of *Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347, 13 P.3d 183 (2000)?

4. Did the trial court properly award attorney's fees to the tenants as prevailing parties under the MHLTA, and should this Court award attorney's fees to the tenants on appeal?

### **III. RESTATEMENT OF THE CASE**

The essential facts in this case are not in dispute. The parties stipulated to many of the facts at trial (CP 294-303).

The trial court in this bench trial determined that Seashore Villa Mobile Home Park (referred to as the "park," the "landlord" or "park owner") was developed over a period of time beginning in about 1970 by the

Hagglund Family and completed by William Reynolds in the late 1980's (FOF 3).<sup>2</sup> In 1992, both entities jointly owned and leased out the operation of the park to Emerald Properties LLC under a long-term lease (*id.*).

The plaintiff tenants in #05-2-02079-0 (hereafter referred to as “the tenants”) are owners of mobile homes in Seashore Villa Mobile Home Park (hereafter referred to as “the park”), and they rent lot spaces from the defendant park owner (FOF 1).

The construction of the park included the installation of individual lots, utilities, roads, and common areas. The park also advertised carports and sheds as amenities to be provided to residents by the park (FOF 5; Tr. Ex. 202).

The park constructed carports and sheds on many lots in the park before 1992. The park installed two storage sheds on some lots. These carports and sheds were intended to be permanently attached to the ground and were not intended to be removed. The carports and sheds installed by the park were permanent structures (FOF 6). Mr. Reynolds, a former owner of the park between 1979 and 1990, testified that he had built the carports and sheds, believed he owned them, would not have permitted the tenants to

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<sup>2</sup>The Findings of Fact are contained in CP 552 - 555.

remove them, had considered them permanent improvements, had insured them and had replaced them when damaged (RP 86-90).

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

The carports and sheds were erected by the landlord or its predecessor to induce tenants to locate mobile homes in the park and reside in the park (FOF 8). The tenants reasonably relied on the landlord's advertisements and representations regarding carports and sheds and entered into lease agreements with the landlord or its predecessor (FOF 9).

Either express or implied in the lease agreement and the accompanying rules and regulations entered into by the landlord and tenants was a commitment on the part of the landlord to maintain the structures (FOF 10; RP 155-56, 167).

Some tenants have at their own expense improved the carports and sheds, e.g., by adding walls, electrical power and windows (FOF 11). The park was aware of these improvements when made, approved them and at least did not object to them when they came to the park's attention (FOF 12;

RP 50-51; 124, 159-61, 236-37). The trial court determined that no credible evidence was presented at trial to the effect that the landlord had transferred ownership of any carports or storage sheds to tenants before 1995, or even after 1995 (FOF 13; RP 242-243).

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

The park requested tenants to sign new rental agreements each year. Beginning in the early 1990's and continuing until the present time, rental agreements contained no specific language regarding the ownership, maintenance or upkeep of carports and storage sheds (FOF 15). Current tenants in the park signed new leases in 2007 and 2008 (RP 243-44).

Beginning in the summer of 2005, the park manager sent residents a letter informing them that it would be necessary for tenants to sign an agreement taking responsibility for the carports and sheds, or management would be removing these amenities (FOF 16).

Several months later, follow up letters were sent to those tenants not signing the agreement. An example was admitted as Exhibit 207. These letters again threatened removal of the carports and sheds if the tenants did

not agree to hold the landlord harmless from “any and all liabilities, claims or actions for loss, and damages from any and all liability whatsoever that may arise from the Tenant’s use, ownership, and maintenance of the Storage Shed and Carport, including without limitation any alleged violation of RCW 59.20.135” (FOF 17).

The tenants filed case #05-2-02079-0 in Thurston County Superior Court in October, 2005, seeking declaratory relief that the landlord’s actions violated RCW 59.20.135 and requesting a temporary and permanent injunction barring the landlord from removing the tenants’ carports and sheds if the tenants did not sign such an agreement (FOF 18).

Within a few days, the park owner filed case #05-2-02110-9, seeking declaratory relief that the landlord’s actions in sending the letters did not violate RCW 59.20.135 (FOF 19). The two cases were not consolidated, but were tried jointly, and the two cases were considered together (FOF 20). The park’s complaint raised no constitutional issues (CP 597-600).<sup>3</sup>

Both the tenants and landlord filed motions for summary judgment.

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<sup>3</sup>The park owner implies that it initially pleaded the unconstitutionality of RCW 59.20.135 in its answer. App. Br. 9, citing CP 413. CP 413 is part of the park owner’s answer to the tenants’ first amended complaint (CP 411-414), which answer was filed on April 24, 2009, long after the trial, which took place on November 7 and 10-12, 2008 (RP 3, 181).

Again, the park raised no constitutional issues in either its motion for summary judgment (CP 652-660) or in its reply to the tenants' motion for summary judgment (CP 55-64). On June 8, 2007, Judge Strophy entered an order granting partial summary judgment to the tenants on the basis that the park owner's letters to tenants "as a matter of law violate RCW 59.20.135 for carports or sheds the park owns," in that "such letters attempt to circumvent the clear policy and language of RCW 59.20.135 by stating that the park owner does not own the carports and sheds it constructed, and threatening removal of the carports and sheds constructed by the park owner" if the tenants did not sign a written addendum agreeing to (a) accept transfer of the ownership and responsibility for maintenance of the carports and sheds and (b) waive any violation of RCW 59.20.135 (CP 243). Judge Strophy also ruled that the letters and addenda "constitute contracts of adhesion and are further void on that ground" (CP 243). The court also entered an order preliminarily enjoining the park owner from removing the carports or sheds (FOF 21).

Remaining for trial were the issues of attorney's fees (CP 243) and which carports and sheds the park owned, or as stated by the park owner in its trial brief, the court should "review the facts and circumstances of each

carport and shed for each of the Tenants, and confirm as a matter of law that RCW 59.20.090 allows the Landlord to amend the Tenants' rental terms to not include the amenity of a carport or shed . . ." (CP 268).

At trial the park owner raised for the first time a constitutional issue: that RCW 59.20.135, or its retroactive application, would violate Article I, § 16 of the Washington Constitution (CP 274-276). The parties stipulated that eight tenants had original carports and storage sheds (CP 297), that eight tenants had new carports and storage sheds which were constructed by either the current or prior resident of each lot (*id.*), that two tenants had a garage built around an original carport (CP 297-98), that two tenants had a new storage shed which was constructed by either the current or prior residents (CP 298), that 49 tenants had original carports and storage sheds which had been altered to some degree by either the current or prior residents (CP 298-301), and that 18 tenants had either two storage sheds on their lots or one double-sized storage shed (CP 301-302).<sup>4</sup>

Based on the evidence presented at trial and the above stipulations, the trial court found that the carports and storage sheds constructed by the

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<sup>4</sup>Presumably, evidence could be presented at trial regarding the ownership of the carports and sheds on the lots of the remaining 23 tenants in the park (110 less 87 = 23).

park were owned by the park and were permanent structures within the meaning of RCW 59.20.135(3), as first enacted in 1994 (COL 3).<sup>5</sup> The trial court further determined that evidence of insurance coverage of carports and sheds by tenants and in some cases insurance replacement of carports was not sufficient to outweigh the evidence of construction by management, advertising by management, and provisions in the leases, rules and regulations on the issue of ownership of the carports and sheds (COL 4).

The trial court also reiterated that RCW 59.20.135 precluded the landlord from transferring the maintenance responsibility of carports and sheds it constructed on tenants' lots to the tenants of those lots, and that the letters sent by the landlord attempting to do so violated RCW 59.20.135 as a matter of law (COL 5, 8).

At trial the park owner argued that a course of dealings between the park owner and tenants supported a ruling that "the parties have impliedly agreed that it is the Tenants' obligation to maintain the carports and sheds" (CP 277). A similar argument is made on appeal (the tenants' "rental agreements incorporated the parties' prior course of dealing since 1992 . . . ." (App. Br. 19). The trial court concluded, however, that there was an

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<sup>5</sup>The conclusions of law are set forth in CP 555 to 558.

express or implied agreement between the landlord and tenants that the landlord would maintain the carports and sheds, other than routine maintenance, and a contract implied in fact grew out of the parties' intent and meeting of the minds (COL 6 and 7). The landlord's removal of the carports and sheds during the tenancy of tenants would be a breach of the lease agreement (COL 10).

The trial court also ruled that the park owner's letters and addenda sent to tenants constitute contracts of adhesion and are further void on that ground (COL 9). The agreements in trial exhibit 221 signed by tenants waiving their rights and agreeing to maintain the carports and sheds in their lots were also void as violating RCW 59.20.135 (COL 11).

The court issued a permanent injunction enjoining the landlord and its agents (1) from transferring to tenants responsibility for maintenance of the carports or sheds the park owner constructed on tenants' lots in Seashore Villa Mobile Home park without the uncoerced written consent of the respective tenants; and (2) from removing carports or sheds the park owner constructed on tenants' lots in Seashore Villa Mobile Home Park without the uncoerced written consent of the respective tenants during such times as Tenants are in possession of the lot on which the structure is located (COL

12, CP 559-561).<sup>6</sup>

The trial court also ruled that the landlord failed to meet its burden to show that RCW 59.20.135 violates any state or federal constitutional provision (COL 15) and that the tenants were the prevailing parties in this litigation and were entitled to a judgment for attorney's fees and costs under RCW 59.20.110 and the attorney's fees clause in the leases between the tenants and landlord (COL 19, 20, 24 - 26).

#### **IV. SUMMARY OF ARGUMENT**

The major purpose of the MHLTA (RCW Ch. 59.20 *et seq.*) is to protect vulnerable tenants in mobile home parks. Concerned about the public health and safety implications of landlords not maintaining carports, sheds and other permanent improvements in mobile home parks, and their trying to shift such maintenance responsibility to tenants who were unable, due to age, infirmity or lack of funds, to carry out those responsibilities, the legislature enacted RCW 59.20.135 as remedial legislation to specifically prohibit

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<sup>6</sup>Certain tenants were excluded from the injunction, e.g., those who constructed their own carports and storage sheds (tenants in lots #4, #11, #31, #63, #115, #144, #146, and #164) and the tenants who built the storage sheds in spaces #47 and #49 (COL 13). The trial court also determined that the landlord was not responsible for major repairs to, or replacement of, improvements tenants made to carports and sheds, e.g., walls added, electrical power, windows added (COL 14).

mobile home park landlords from transferring the maintenance responsibility for carports and sheds to the park tenants. The landlord's letter to all park tenants threatening to remove the carports and sheds unless, in effect, the tenants agreed to maintain them and waive their rights under the law, violated not only the unambiguous language of RCW 59.20.135, but also the landlord's obligation of good faith under RCW 59.20.020.

The park owner has no legally permissible way to remove the carports and sheds on tenants' lots, in any event, as no right of entry for removal is reserved in the lease, and the MHLTA gives tenants a right to privacy, allowing the park owner only limited access to a tenant's lot, and not for removal of permanent improvements. RCW 59.20.130(7).

RCW 59.20.135 is not constitutionally infirm as a taking, because, unlike in *Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347, 13 P.3d 183 (2000), no fundamental rights are taken away from the park owner, and no fundamental rights are given to anyone else. The park owner on one year's notice can close the mobile home park and dispose of the carports and sheds it owns in any manner it deems proper. RCW 59.20.180(1)(e); *Guimont v. Clarke*, 121 Wn.2d 586, 607, 854 P.2d 1 (1993); *Guimont v. City of Seattle*, 77 Wn. App. 74, 89, 896 P.2d 70 (1995); *Yee v.*

*City of Escondido, Cal.*, 503 U.S. 519, 527-28, 118 L.Ed.2d 153, 112 S.Ct. 1522 (1992). Thus RCW 59.20.135 does not intrude upon a fundamental attribute of property ownership or affect the ultimate right of disposition of the carports and sheds.

RCW 59.20.135 is no different in kind, substance and effect from the numerous other laws which regulate the landlord-tenant relationship, such as those requiring an owner of residential real property to maintain premises, e.g., foundations and walls under the Residential Landlord-Tenant Act (RCW 59.18.060), or streets and utilities under the MHLTA (RCW 59.20.130(6) and (9)). The mobile home park owner in effect charges the tenants for complying with these duties, as the associated costs come either from the park owner's capital reserves set aside for such purposes out of tenant rents, or directly from the rents paid by the tenants, which rents may be increased, with no stated limit, upon three months' notice. RCW 59.20.090(2).

RCW 59.20.135 is remedial legislation, so could be applied retroactively. But it is not applied retroactively where the triggering event, i.e., the signing of the lease, occurs after the enactment of the statute in 1994. All the current leases in the park were signed in 2007 and 2008 (RP 243-44).

While the park owner, relying upon *McGahuey v. Hwang*, 104 Wn.

App. 10, 15 P.3d 672 (2001), places much weight on its argument that it can remove its carports and sheds at the end of a one-year lease term (App. Br. 12) or eliminate park amenities at that time (App. Br. 17, 21), the park owner also seems to acknowledge that tenant leases are “automatically renewed” under RCW 59.20.090(1) (App. Br. 32-33), so continue indefinitely. In any event, *McGahuey* stands not for the broad proposition urged by the park owner here that park owners can change *any* lease term upon three months’ notice to tenants, but for the much narrower principle that a park owner may charge tenants for utilities, despite a contrary provision in the lease, because the MHLTA does not restrict a park owner in that regard, and there are protections for tenants in the MHLTA, e.g., a limitation that a park owner can charge no more for utilities than what it pays for them.

While the trial court properly found a contract implied in fact based on the course of dealings between the parties, such finding is not crucial to the application of RCW 59.20.135 and the relief the tenants obtained here. If the decision of the trial court can soundly rest on any ground, it must be sustained. *Rosenthal v. Tacoma*, 31 Wn.2d 32, 36, 195 P.2d 102 (1948).

Finally, this Court should not consider the park owner’s citation of error to specific findings of fact, as the park owner provided no argument

about why any finding is erroneous, made no showing of what evidence in the record supports a contrary finding, nor cited relevant legal authority on the issue. *Estate of Lint*, 135 Wn.2d 518, 531-32, 957 P.2d 755 (1998). All the trial court's factual findings should therefore be considered verities.

## V. LEGAL ARGUMENT

### 1. The Standard of Review Is Substantial Evidence.

A trial court's findings of fact are reviewed for substantial evidence. *Hegwine v. Longview Fibre Co.*, 162 Wn.2d 340, 352, 172 P.3d 688 (2007); *In re Estate of Jones*, 152 Wn.2d 1, 8, 93 P.3d 147 (2004). Questions of law and conclusions of law are reviewed de novo. *Sunnyside Valley Irrigation District v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003).

It has long been the rule in cases triable de novo that "if the decision of the trial court can soundly rest on any ground, it must be sustained." *Rosenthal v. Tacoma*, 31 Wn.2d 32, 36, 195 P.2d 102 (1948). Even though a theory was not raised at trial, an appellate court may affirm the trial court on any theory which is established by the pleadings and supported by the proof. *Weiss v. Glemp*, 127 Wn.2d 726, 730, 903 P.2d 455 (1995); *LaMon v. Butler*, 112 Wn.2d 193, 200-01, 770 P.2d 1027, *cert. denied*, 493 U.S. 814, 107 L.Ed.2d 29, 110 S.Ct. 61 (1989). In addition, if the trial court's ruling

is correct, it will not be reversed on appeal merely because it was based upon an incorrect or insufficient reason. *State v. S.S.*, 67 Wn.App. 800, 812, 840 P.2d 891 (1992); *Dorr v. Big Creek Wood Products*, 84 Wn.App. 420, 426, 927 P.2d 1148 (1996).

**2. The Park Owner's Objections to the Findings of Fact Are Insufficient.**

The park owner cites as error the entry of findings of fact #5 through #16, and #22 through #27. App. Br. 2-3. However, there is no argument about why any of these findings are erroneous, no showing of what evidence in the record supports a contrary finding, nor any citation of relevant legal authority on the issue.

*In Estate of Lint*, 135 Wn.2d 518, 531-32, 957 P.2d 755 (1998) the Supreme Court held as follows:

It is incumbent on counsel to present the court with argument as to why specific findings of the trial court are not supported by the evidence and to cite to the record to support that argument. See RAP 10.3.

*Estate of Lint*, 135 Wn.2d at 531-32. This Court need not review challenged findings of fact without citation to the record showing why the findings are not supported by the record. *In re Discipline of Haskell*, 136 Wn.3d 300, 310-11, 962 P.2d 813 (1998). As stated in *Keever & Associates v. Randall*,

129 Wn. App. 733, 741, 119 P.3d 926 (2005), “When an issue is not argued, briefed, or supported by citation to the record or authority, it is generally waived.” See RAP 10.3(a)(5); *State v. Lee*, 147 Wn. App. 912, 915, 199 P.3d 445 (2008). If no argument is made supporting challenges to the trial court’s findings of fact, the findings are treated as verities. *Burien v. Growth Management Hearings Board*, 113 Wn. App. 375, 383, 53 P.3d 1028 (2002).

In the present case, since the park owner provided no argument and no citation to the record as to why the challenged findings of fact were erroneous, this Court should treat all such findings of fact as verities.

Treating such findings as verities, this Court should reject the park owner’s arguments based on unsupported suggestions that the tenants own the carports and sheds (App. Br. 8, 12, 17-18). The trial court found that the carports and storage sheds constructed by the park, were intended to be permanently attached and were not intended to be removed (FOF 6). The trial court further found that there was no credible evidence to the effect that the landlord had transferred ownership of any carports or storage sheds to tenants either before or after 1995 (FOF 13). The carports and sheds existed on the lots when many tenants moved their homes into the park (RP 14, 24, 31, 38, 49, 60, 70, 79, 126, 145, 153).

The park owner tries to suggest that there was some controversy regarding who owned the carports and sheds (citing CP 305) (App. Br. 24)<sup>7</sup>; that the carports were conveyed to the tenants (citing CP 295) (App. Br. 17-18); and that the tenants did own the carports and sheds. However, the trial court clearly accepted the testimony of Mr. Reynolds, owner of the park between 1979 (RP 88) and 1990 (RP 123), that he built the carports and sheds on concrete slabs, that he believed they were owned by the park, that they were intended to remain permanently there, that he insured them, and that he replaced some when damaged due to storms or other events (RP 86-90, 101). Mr. Bair, the manager of the park who had lived in the park since 1984 (RP 192), testified that he was not aware of any document which actually transferred the ownership of any carports and sheds from the park owner to the tenants (RP 243). The carports and sheds are therefore clearly owned by the park owner.<sup>8</sup>

The park owner also does not appear to contest the factual findings

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<sup>7</sup>CP 305 refers to Judge Wickham's letter ruling dated November 13, 2008. The letter refers to no controversy regarding ownership of the carports and sheds.

<sup>8</sup>Furthermore, park tenants testified at trial that either they believed they did not own the carports and sheds, or that they had never been advised that they owned the carports and sheds (RP 15, 49, 71, 79-80, 126-27, 145, 154, 156).

forming the basis for the trial court's conclusion that an implied contract existed. App. Brf. 25-28. Rather, the challenge is to the legal sufficiency of what the trial court determined in its conclusions of law. *Id.* That legal challenge is insufficient.

The park owner should not be permitted to argue in its reply brief issues which were not raised in its opening brief. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); *Sacco v. Sacco*, 114 Wn.2d 1, 5, 784 P.2d 1266 (1990). Such conduct would be manifestly unfair to the respondent tenants, who would have no ability to respond.

### **3. The Primary Purpose of the MHLTA Is To Protect Tenants.**

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. *Little Mountain Estates Tenants Association v. Little Mountain Estates MHC*, 146 Wn.App. 546, 558, 192 P.3d 378 (2008), *review granted*, 166 Wn.2d 1001 (2009); *Holiday Resort Community Association v. Echo*

*Lake Associates, LLC*, 134 Wn App. 210, 224, 135 P.3d 499 (2006), *review denied*, 160 Wn.2d 1019 (2007). 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).

The practical reality of mobile home life is well known. As noted in *Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347, 392-93, 13 P.3d 183 (2000) (Talmadge, J, dissenting):

Mobile homes are not mobile. The term is a vestige of earlier times when mobile homes were more like today's recreational vehicles. Today mobile homes are ‘designed to be placed permanently on a pad and maintained there for life.’ Once ‘planted’ and ‘plugged in,’ they are not easily relocated. Moreover,

In most instances a mobile home owner in a park is required to remove the wheels and anchor the home to the ground in order to facilitate connections with electricity, water and sewerage. Thus it is

only at substantial expense that a mobile home can be removed from a park with no ready place to go.

*Malvern Courts, Inc. v. Stephens*, 275 Pa.Super. 518, 419 A.2d 21, 23 (1980). Physically moving a double- or triple-wide mobile home involves ‘unsealing; unroofing the roofed-over seams; mechanically separating the sections; disconnecting plumbing and other utilities; removing carports, porches, and similar fixtures; and lifting the home off its foundation or supports.’ Costs of relocation, assuming relocation is even possible for older units, can range as high as \$10,000. It is the immobility of mobile homes that ‘accounts for most of the problems and abuses endured by mobile home tenants’” [most citations omitted].

Accordingly, the MHLTA was enacted to provide some protections to tenants faced with a substantial investment in a home that for all practical purposes could not be moved.

#### **4. The More Specific Purpose of RCW 59.20.135 Is To Protect Public Health and Safety.**

The rationale for the enactment of RCW 59.20.135, added to the MHLTA in 1994, Laws 1994, Ch. 30, § 1, is clearly<sup>9</sup> set forth in the first

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<sup>9</sup>The park owner points to no ambiguities in RCW 59.20.135. There is therefore no need to resort to the legislative history as a guide to interpretation of the statute. *Tesoro Refining & Marketing Co. v. State Department of Revenue*, 164 Wn.2d 310, 318 n. 3, 190 P.3d 28 (2008). In any event, a portion of the legislative history quoted by the park owner (“park tenants have expressed concern that they . . . may be injured while trying to repair the structures, or don’t have the resources to maintain the structures”) supports the tenants’ position that the legislature was merely exercising the

paragraph of the statute:

The inability of the tenants to maintain permanent structures can lead to significant safety hazards to the tenants as well as to visitors to the mobile home park. The legislature therefore finds and declares that it is in the public interest and necessary for the public health and safety to prohibit mobile home park owners from transferring the duty to maintain permanent structures in mobile home parks to the tenants.

RCW 59.20.135(1). *See*, Appendix I.

Seashore Villa is a senior park (CP 171). Clearly the legislature's concern about the ability of older tenants in mobile home parks to maintain the permanent structures, such as carports and sheds, is legitimate. On its face, this would appear to be a valid exercise of the police power to protect the public health and safety. *See* § 5 below.

**5. The Enactment of RCW 59.20.135 Is a Legitimate Exercise of the State's Police Power.**

States have historically enacted statutes in the interest of public health and safety under the police power. The Washington Supreme Court said in *State v. Lawrence*, 165 Wash. 508, 517, 6 P.2d 363 (1931), "All property is held subject to such restraints and regulations as the state may constitutionally make in the exercise of its police power." The police power is inherent in the state by virtue of its granted sovereignty. *Shea v. Olson*, 185

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state's police power to ensure the public health and safety. App. Br. 16-17.

Wash. 143, 153, 53 P.2d 615 (1936). "It exists without express declaration, and the only limitation upon it is that it must reasonably tend to correct some evil or promote some interest of the state, and not violate any direct or positive mandate of the constitution." *Shea*, 185 Wash. at 153. Thus, the police power is plenary, limited only by constitutional provisions. *See, e.g., Rhod-A-Zalea & 35th, Inc. v. Snohomish County*, 136 Wash.2d 1, 16 n. 1, 959 P.2d 1024 (1998). *See generally* Philip A. Talmadge, *The Myth of Property Absolutism and Modern Government: The Interaction of Police Power and Property Rights*, 75 Wash. L. Rev. 857 (2000).

"Protection of the safety of persons is one of the traditional uses of the police power of the States." *Queenside Hills Realty, Inc. v. Saxl*, 328 U.S. 80, 82, 66 S.Ct. 850, 90 L.Ed. 1096 (1946) (law requiring automatic fire sprinkling systems to be added to apartment buildings previously complying with all laws upheld against constitutional challenge). The U.S. Supreme Court has expressly acknowledged the body of case law giving states broad power to regulate housing conditions and landlord-tenant relationships where those cases do not involve any physical invasion of property. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 440, 102 S.Ct. 3164, 3178-79, 73 L.Ed.2d 868 (1982). *Loretto* was cited with approval in

*Guimont v. City of Seattle*, 77 Wn.App. 74, 83, n 8, 896 P.2d 70, review denied, 127 Wn.2d 1023, 904 P.2d 1157 (1995).

In *Guimont*, the court held that a city prohibition on RV's in mobile home parks was not unduly oppressive because it was consistent with current residential use and did not require the park owner to remain in the mobile home park business against his will. It was "a regulation on the use of land and thus a legitimate exercise of state police power regarding property use[.]" citing *Robinson v. Seattle*, 119 Wash.2d 34, 56, 830 P.2d 318, cert. denied, 506 U.S. 1028, 113 S.Ct. 676, 121 L.Ed.2d 598 (1992). *Guimont v. City of Seattle*, 77 Wn.App. 74, 89.<sup>10</sup>

In *Yee v. City of Escondido*, supra, 503 U.S. at 528-29, the court noted that "[o]n their face, the state and local laws at issue here merely regulate petitioners' use of their land by regulating the relationship between landlord and tenant." The court emphasized:

This Court has consistently affirmed that States have broad power to regulate housing conditions in general, and the landlord-tenant relationship in particular, without paying

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<sup>10</sup>This Court recently remarked that "[b]uilding standards serve the important interests of protecting the public safety, protecting property values, and preventing declining neighborhoods. And we recognize that municipal governments have a strong interest in the efficient administration and enforcement of their building codes." *Post v. City of Tacoma*, 167 Wn.2d 300, 314, 217 P.3d 1179 (2009).

compensation for all economic injuries that such regulation entails.

The court in *Yee* cited *Loretto, supra*, 458 U.S. at 440. *See also Federal Communications Commission v. Florida Power Corp.*, 480 U.S. 245, 252 (1987) ("statutes regulating the economic relations of landlords and tenants are not, *per se*, takings").

As noted in *Margola Associates v. Seattle*, 121 Wn.2d 625, 653, 854 P.2d 23 (1993), "if the regulation merely safeguards the public health, safety, and welfare, then no taking occurs . . . "

The rationale for RCW 59.20.135 is safeguarding the public health, safety and welfare, and its subject matter is well within the ambit of the above types of regulations enacted for public safety and the public benefit. Mobile home park landlords have a number of similar duties with respect to their tenants, e.g., to maintain the common premises (RCW 59.20.130(2)); to maintain and protect all utilities (RCW 59.20.130(6)); and to maintain the roads in the park in good condition (RCW 59.20.130(9)).<sup>11</sup> This Court should

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<sup>11</sup>Landlords of residential housing also have a duty to maintain "the roofs, floors, walls, chimneys, fireplaces, foundations, and all other structural components in reasonably good repair" (RCW 59.18.060(2)); maintain all electrical, plumbing, heating, and other facilities and appliances supplied by the landlord in reasonably good working order (RCW 59.18.060(7)); and maintain the dwelling in reasonably weathertight condition (RCW 59.18.060(8)). In *Resident Action Council v. Seattle Housing Authority*, 162

not try to second guess the legislature's determination that the statute in question promotes the public policy of providing safe housing to vulnerable tenants.

**6. The Park Owner's Letter to the Tenants Was Not a Voluntary Transfer Permitted by RCW 59.20.135(4).**

The park owner claims that the letter it sent to all tenants threatening to remove the carports and sheds on the tenants' lots did not "forcibly" transfer maintenance responsibility to the tenants, as forbidden by RCW 59.20.135. App. Br. 24. While the letter was not accompanied by armed thugs, the effect was the same. The tenants faced the prospect of either storing their lawnmowers and garden fertilizer in their kitchens, or agreeing to maintain their carports and sheds. There is clearly no evidence that the tenants voluntarily asked the park owner to be able to maintain their carports and sheds.

The park owner's tactic in this situation clearly violates the landlord's

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Wn.2d 773, 174 P.3d 84 (2008) the court noted that the landlord "has a duty to maintain that is a function of statutory responsibilities." In *Foisy v. Wyman*, 83 Wn.2d 22, 26, 515 P.2d 160 (1973) this Court, casting aside "[l]egal fictions and artificial exceptions to wooden rules of property law," concluded that the doctrine of an implied warranty of habitability and fitness for the use intended in the rental of residential housing was "impelled by the nature of the transaction and contemporary housing realities." Those same realities are present in mobile home parks.

obligation of good faith expressed in RCW 59.20.020: “Every duty under this chapter . . . imposes an obligation of good faith in its performance or enforcement.” The standard of good faith is objective and involves acting “with an honest belief, without malice and without a design to defraud or to seek an unconscionable advantage.” *Sattler v. N.W. Tissue Center*, 110 Wn.App. 689, 691, 42 P.3d 440 (2002) (interpreting the Washington Uniform Anatomical Gift Act’s immunity to persons who facilitate organ and tissue donations in good faith). *See also, Deschamps v. Mason County Sheriff’s Office*, 123 Wn. App. 551, 559, 96 P.3d 413 (2004) ( good faith is a “state of mind indicating honesty and lawfulness of purpose”). The park owner’s actions here do not meet that standard.

Here the trial court determined that the agreements entered into under the threatening circumstances of the letter were contracts of adhesion (COL 9; RP 58-59, RP 140), thus violating public policy. *See, Wagenblast v. Odessa Sch. Dist.*, 110 Wash.2d 845, 851, 758 P.2d 968, 85 A.L.R.4th 331 (1988) (discussing criteria for considering public policy). The tenants clearly lacked any meaningful choice. The park owner does not challenge in its briefing that conclusion.<sup>12</sup> This Court should therefore not review it. *Satomi*

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<sup>12</sup>Appellant’s opening brief does not even mention the term “contract of adhesion,” much less argue it.

*Owners Assn. v. Satomi, LLC*, 167 Wn.2d 781, 807-08, \_\_\_ P.3d \_\_\_ (2009)  
(court declined to reach issue when not argued in brief).

**7. The Park Owner's Course of Dealing and the Multiple Changes in the Leases Over Time Establish the Park Owner's Maintenance/Repair Responsibility.**

Contrary to the park owner's argument that the tenants' leases operate "in perpetuity" and are "frozen in time" under the trial court's interpretation of the statute (App. Br. 5, 17, 20,23, 28, 31), evidence admitted at trial shows that the park owner changed the leases multiple times over the years. For example, in the 1979 lease, the park owner charged tenants \$3.50 per month to rent a carport and \$5.00 per month to rent a shed (RP 56; Tr. Ex. 212, ¶ 8; RP 137-38, Tr. Ex. 24, ¶ 8). In 1981 the leases no longer had language charging separately for the carports and sheds, but stated that the carports and storage sheds were services provided by the park (RP 139, Tr. Ex.214, ¶ 4; RP 154, Tr. Ex. 203). In 1984 such language regarding carports and sheds disappeared from the leases, but appeared in park rules and stated that the carports and sheds were provided by the park for use by the tenants (RP 31, Tr. Ex. 209, ¶ 1). In 1989 the language in the rules was altered to state that the carports and sheds were provided "as is" for use by the tenants (RP 52, Tr. Ex. 211, ¶ 1). In 1990 another sentence was added to paragraph 1 of the

park rules, and the added sentence provided: “The maintenance is the responsibility of the resident/tenant” (RP 62, Tr. Ex. 25; RP 141, Tr. Ex. 216). In 1991, there were no references to carports or sheds in the leases of that year (RP 55, Tr. Ex. 24). In 1994, and every year thereafter, there is no mention of carports and sheds in the leases (Tr. Ex. 217). The tenants signed new leases every year (RP 243). All of the current tenants in the park have leases that are dated 2007 or 2008 (RP 243-44).

This Court has discussed implied contracts as follows:

A true implied contract, or contract implied in fact, is an agreement which depends for its existence on some act or conduct of the party sought to be charged, and arises by inference or implication from circumstances which, according to the ordinary course of dealing and the common understanding of men, show a mutual intention on the part of the parties to contract with each other.

*Ross v. Raymer*, 32 Wn.2d 128, 137, 201 P.2d 129, 54 A.L.R. 548 (1948), cited in *Young v. Young*, 164 Wn.2d 477, 486, 191 P.3d 1258 (2008). The court in *Ross* specifically stated that “no express agreement is necessary,” citing *Ammerman v. Old National Bank*, 28 Wn.2d 239, 250, 182 P.2d 75 (1947). *Ross, supra*, 32 Wn.2d at 139. Rather it is the “existence of a mutual intention” which is the essential factor. *Id.* And the parties’ course of dealing may evince the parties’ meeting of the minds on an essential term of

a contract. *Geonerco v. Grand Ridge Properties IV*, 146 Wn. App. 459, 467, 191 P.3d 76 (2008).

Moreover, “[t]rade usage and course of dealing are relevant to interpreting a contract and determining the contract’s terms.” *Puget Sound Fin. v. Unisearch*, 146 Wn.2d 428, 34, 47 P.3d 540 (2002). “Course of dealing may become part of an agreement either by explicit provision or by tacit recognition, or it may guide the court in supplying an omitted term.” *Id.*, 146 Wn.2d at 436, citing § 223 comment b of the *Restatement (Second) of Contracts* (1981).

Nor does the existence of a written contract between the parties negate the existence of an implied contract as to terms not contained within the written agreement. *Douglas Northwest v. O’Brien & Sons*, 64 Wn. App. 661, 685, 828 P.2d 565 (1992) (quantum meruit relief granted where not inconsistent with written contract).

Here the parties’ course of dealing and other factors led the trial court to conclude that a contract implied in fact existed as to maintenance of the carports and sheds. While the park owner argued at trial that an implied contract arose requiring the tenants to maintain the carports and sheds (CP 277), the trial court rejected that argument. The park owner does not show

why there is not substantial evidence in support of the trial court's ruling as to the existence of an implied contract in this case.

However, even if the park owner could show some legal defect in the trial court's ruling on the existence of an implied contract, it would not change the result, as RCW 59.20.135 provides a sufficient basis for concluding that the park owner should maintain its carports and sheds. If the trial court's ruling is correct, it should not be reversed on appeal merely because it was based upon an incorrect or insufficient reason. *Dorr v. Big Creek Wood Products*, 84 Wn.App. 420, 426, 927 P.2d 1148 (1996).

**8. There Are Insurmountable Difficulties in the Park Owner's Claimed Ability to Remove Carports and Sheds at the End of a One-Year Lease Term.**

**A. The Tenants' Leases Do Not Terminate After One Year.**

The tenants' leases do not terminate after one year, as argued by the park owner. App. Br. 12. 17, 21. Nothing in the MHLTA provides that leases terminate after their initial term. Rather, a rental agreement, "of whatever duration shall be automatically renewed for the term of the original rental agreement, unless a different specified term is agreed upon." RCW 59.20.090(1); *Holiday Resort, supra*, 134 Wn. App. at 224; App Br. 32.<sup>13</sup>

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<sup>13</sup>The park owner's trial counsel argued in final argument that "the statute, itself automatically renews any lease for a one-year term and in effect

Mobile home park tenants would be completely vulnerable if at the end of a one-year term they could be forced to agree to new one-sided lease terms unilaterally imposed by the park owner, or face eviction. The thirteen grounds for a landlord's termination of a tenancy or failing to renew a tenancy are specifically set forth in RCW 59.20.080(1)(a) through (m). Not one ground refers to anything close to a tenant's failure to sign a new lease at the request of a park owner.

Moreover, an eviction can be based on a violation of park rules, but only rules "as established by the landlord at the inception of the tenancy or as assumed subsequently with the consent of the tenant . . ." RCW 59.20.080(1)(a).

In addition, the legislature's reference to carports and sheds as "permanent structures" in RCW 59.20.135 would seem to undermine the park owner's ability to remove them at the end of the lease term. It appears oxymoronic to suggest that permanent structures would be subject to removal.

**B. The Park Owner Has No Legal Right to Enter Tenants' Lots to Remove Carports and Sheds.**

Significantly, the tenants' leases fail to mention removing carports and sheds, and fail to give the park owner the rights asserted by the park

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provides for a tenancy in perpetuity" (RP 290).

owner in this Court, e.g., the right to come upon the tenants' lots and physically remove permanent structures. The park owner should at least have reserved a right of entry upon the tenants' lots for such purposes, if it were contemplated that the carports and sheds would be removed at some point in the future.

In addition, there is no basis in the MHLTA for the park owner to come onto the tenants' spaces to remove the carports and sheds. Under RCW 59.20.130(7), a landlord

shall have a right of entry upon the land upon which a mobile home . . . is situated for maintenance of utilities, to insure compliance with applicable codes, statutes, ordinances, administrative rules, and the rental agreement and the rules of the park, and protection of the mobile home park at any reasonable time or in an emergency, but not in a manner or at a time which would interfere with the occupant's quiet enjoyment.

RCW 59.20.130(7).

The reference to quiet enjoyment in RCW 59.20.130(7) is merely a codification of an equivalent common law right. "In all tenancies there is an implied covenant of quiet enjoyment of the leased premises." *Washington Chocolate Co. v. Kent*, 28 Wn.2d 448, 452, 183 P.2d 514 (1947).<sup>14</sup> If the

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<sup>14</sup>Even "[i]nterference with light" may be a breach of the covenant of quiet enjoyment." *Pappas v. Zerwoodis*, 21 Wn.2d 725, 734, 153 P.2d 170 (1944).

landlord enters upon the tenant's premises, except as may be permitted in the lease or by statute, the tenant has a cause of action against the landlord for breach of the covenant of quiet enjoyment. Stoebuck and Weaver, 17 *Washington Practice: Real Estate Property Law*, § 6.30 (2<sup>nd</sup> ed. 2004). Clearly the park owner's entry upon tenants' lots for unauthorized purposes, such as removing permanent improvements, removing tenants' possessions from their storage sheds, causing cars to be moved out from under carports, etc., would severely disturb the tenants' quiet enjoyment of the premises.

The park owner also fails to address the practical problems involved if a tenant did not remove his personal property from his storage shed. Would the park owner physically remove it and store it? For how long, where and at whose expense? There might also be a risk, depending upon the manner in which any of this was carried out, of a breach of the peace.

Further, since some of the carports are attached to homes (RP 19, 47, 82-83, 120, 150-51), the park owner would have to physically remove the carport from the home. The storage sheds and carports are the functional equivalent of garages for the tenants, and the claimed right of the park owner here is like a residential landlord claiming that he could remove a tenant's garage during the lease term.

The park owner refers to the need on occasion to remove swimming pools due to lack of insurability, the need to change clubhouse uses, and the desirability of modifying park amenities from time to time. App. Br. 23, 25. These hypothetical situations are distinguishable from the present case because they all involve park amenities located in park common areas, to which the park owner has the right of access. The storage sheds and carports are located on the tenants' own lots, and the landlord's right of access to those lots is restricted by the MHLTA. It is also unnecessary for this Court to decide whether and under what circumstances a park owner could remove a swimming pool from a mobile home park, as the tenants in the instant case made no claim about the park swimming pool.

**C. The *McGahuey* Case Is Not Authority for the Park Owner's Actions.**

The park owner claims or suggests that the court of appeals' ruling in *McGahuey v. Hwang*, 104 Wn. App. 176, 15 P.3d 672 (2001) authorizes the park owner to change any lease term of a mobile home tenancy upon proper notice. App. Br. 21-22, 28. *McGahuey*, however, stands for a much more limited proposition.

The court in *McGahuey* did permit park owners to charge for utilities, when such charges were not originally included in the lease, because there

was no specific provision in the MHLTA addressing the issue. This is a rather narrow holding, as the court said that the “Legislature did allow changes in the lease terms to permit the landlord to charge for utilities, so long as they were limited to the actual cost.” *McGahuey*, 104 Wn. App. at 183. Nowhere did the court state that the landlord could make *any change* in the lease terms. The court also noted the protection that tenants had when a landlord started charging for utilities, as the landlord could not charge a utility fee in excess of actual utility costs. RCW 59.20.070(6). The case did not, and cannot, override a specific statutory enactment in RCW 59.20.135. If the Landlord’s argument were valid, then RCW 59.20.135 would have no meaning and no effect, as park owners would simply give a three-month notice under RCW 59.20.090 that carports and sheds were no longer park amenities, unless the tenants maintained them. The legislature could not have so intended in enacting RCW 59.20.135.

Accordingly, the park owner’s argument that the MHLTA allows landlords to change any lease term upon three months’ notice, in spite of and disregarding specific tenant protections in the MHLTA, including RCW 59.20.135, is completely without merit.

**9. RCW 59.20.135 Was Not Applied Retroactively.**

The park owner argues that it acquired the mobile home park in 1992, and RCW 59.20.135, effective March 21, 1994, was applied retroactively to leases existing before that time, in violation of applicable legal principles. This argument has no merit.

First, as noted by the park owner, remedial statutes may be applied retroactively. RCW 59.20.135 is a remedial statute.<sup>15</sup> A remedial statute relates to "practice, procedure, or remedies and does not affect a substantive or vested right." *F.D. Processing*, 119 Wn.2d 452, 462-63, 832 P.2d 1303 (1992).

RCW 59.20.135 provides tenants a remedy where park owners attempt to transfer the responsibility for maintenance of permanent improvements to park tenants: any such agreement is void. RCW 59.20.135(2). It creates no "right" to perpetual use of the improvements, as the park owner can close the park and terminate all park rental agreements on twelve months' notice by simply converting the park to a different use. RCW

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<sup>15</sup>The park owner cites *Densley, v. Department of Retirement Systems*, 162 Wn.2d 210, 224, 173 P.3d 885 (2007). The court in that case held that the statute in question there was not remedial. But that case is distinguishable, because there the claimant sought additional compensation for certain federal service before enactment of the statute, and here the tenants are not claiming any substantive right conferred to them by the statute.

59.20.080(1)(e). The park owner points to no source of any vested “right” it had before passage of RCW 59.20.135 to come upon the tenants’ lots and physically remove the carports and sheds used by the tenants.

Second, a statute does not operate retrospectively merely because it is applied in a case arising from conduct antedating the statute's enactment or upsets expectations based on prior law. *State v. T.K.*, 139 Wn.2d 320, 330, 987 P.2d 63 (1999). A statute operates prospectively "when the precipitating event for its application occurs after the effective date of the statute." *T.K.*, 139 Wn.2d at 329-30, 987 P.2d 63 (citing *Aetna Life Ins. Co. v. Wash. Life & Disability Ins. Guar. Ass'n*, 83 Wn.2d 523, 535, 520 P.2d 162 (1974)). *See also, State v. Blank*, 131 Wn.2d 230, 249, 930 P.2d 1213 (1997). Here, the precipitating event for the application of RCW 59.20.135 is the entering into of a lease following enactment of RCW 59.20.135 on March 21, 1994.

Virtually all of the 1994 leases entered into evidence (e.g., the last two pages of Tr. Ex.42; Tr. Ex. 55; Tr. Ex. 58, Tr. Ex. 75) were entered into after March 22, 1994.

All current tenants have leases dating from 2007 and 2008 (RP 243-44). None of the leases executed after 1991 mention carports or sheds. *See*, e.g., Tr. Exs. 49, 61, 72. The Landlord entered into those leases and

subsequent leases knowing of the enactment of RCW 59.20.135. All persons are charged with knowledge of the provisions of statutes and must take notice thereof. *Davidson v. State*, 116 Wn.2d 13, 26, 802 P.2d 1374 (1991). Accordingly, it is not unfair that the park owner be bound by RCW 59.20.135, and the park owner has presented no reason why it should not be bound by a law enacted before it entered into the leases in question in the present case.

Furthermore, application of RCW 59.20.135 does not impair any contractual rights. The prohibition against impairment of contracts "is not an absolute one and is not to be read with literal exactness like a mathematical formula". *Macumber v. Shafer*, 96 Wn.2d 568, 571, 637 P.2d 645 (1981),<sup>16</sup> quoting *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 428, 78 L.Ed. 413, 54 S.Ct. 231, 88 A.L.R. 1481 (1934).

Following this principle, in *Crane Towing, Inc. v. Gorton*, 89 Wn.2d 161, 174, 570 P.2d 428, 97 A.L.R.3d 482 (1977) the Court stated:

[I]t is well established that parties cannot complain of an impairment of their contract rights when this impairment comes

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<sup>16</sup>In *Macumber v. Shafer*, 96 Wn.2d 568, the homestead exemption was increased from \$10,000 to \$20,000, and the court held that the increase applied retroactively, given the important public purpose of the statute, and noting that a statute is applied retroactively if it is remedial in nature and retroactive application would further its remedial purpose.

about through the State acting within its police power for the health, welfare, and good of the general public. It is presumed that parties contract with knowledge that reservation of essential attributes of sovereign power is written into all contracts as a postulate of the legal order.

*Crane Towing* at 174. The enactment of RCW 59.20.135 simply involved police power regulation implicit in the legal order.

Moreover, “. . . a party who enters into a contract regarding an activity already regulated in the particular to which he now objects is deemed to have contracted subject to further legislation upon the same topic” [internal quotation marks omitted]. *Margola Associates v. Seattle*, *supra*, 121 Wn.2d 625, 653, 854 P.2d 23 (1993). Here the Landlord could not possibly believe the MHLTA would remain static or never be amended. The MHLTA was passed in 1977, and before the 1994 amendment in question, the MHLTA was amended ten times.<sup>17</sup> The park owner could reasonably expect the legislature to enact further public interest and remedial legislation, as it did, and the park owner would be required to take that legislation into account in new leases.

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<sup>17</sup>The MHLTA was amended in 1979 (Laws 1979 1<sup>st</sup> Ex. Sess., ch. 186); 1980 (Laws 1980, ch. 152); 1981 (Laws 1981, ch. 304); 1984 (Laws 1984, ch. 58); 1985 (Laws 1985, ch. 78); 1987 (Laws 1987, ch. 253); 1988 (Laws 1988, ch. 150); 1989 (Laws 1989, ch. 201); 1990 (Laws 1990, ch. 169); and 1993 (Laws 1993, ch. 66).

Finally, “. . . of course, a lease made subsequent to the enactment of a statute cannot be impaired by it.” *Edgar A. Levy Leasing Co. v. Siegel*, 258 U.S. 242, 249, 42 S.Ct. 289, 66 L.Ed. 595 (1922). All the current leases involved in this case are dated in 2007 and 2008 (RP 243-44), as tenants signed new leases every year (RP 14). Such subsequent leases therefore were not impaired by RCW 59.20.135, enacted in 1994.

#### **10. The Trial Court Properly Entered an Injunction.**

The park owner claims that the injunction entered by the trial court amounts to the taking of one of the “bundle of sticks” comprising the park owner’s property rights. That “stick” is the right to dispose of his property, i.e., his carports and sheds. The claim is based on the assumption that the tenants have a right to have their carports and sheds “in perpetuity,” thus depriving the park owner of the right to dispose of the carports and sheds as he sees fit. App Br. 5, 11, 17, 20, 23, 28, 32.

But as numerous courts have held, the park owner has control over when it disposes of the carports and sheds: it can close the park upon proper notice and do what it wants with the carports and sheds. *See, Guimont v. City of Seattle, supra*, 77 Wn. App. at 89; *Guimont v. Clarke, infra*, 121 Wn.2d 586, 607; *Yee v. City of Escondido, supra*, 503 U.S. at 527-28. A

park owner has no absolute right to operate a mobile home park. *Des Moines v. Gray Businesses*, 130 Wn. App. 600, 614, 124 P.3d 324 (2005). If it wants to operate a mobile home park, then it must comply with the laws governing the operation of mobile home parks. *Id.* The law forbidding the park owner from transferring maintenance responsibilities to the tenants is just one of such laws.

**11. Neither the Injunction Nor RCW 59.20.135 Constitute a Taking in Violation of Article I, § 16 of the Washington Constitution.**

The Landlord contends that RCW 59.20.135 takes away the park's property rights for private use, in violation of Art. I, § 16 of the Washington Constitution, relying upon *Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347, 13 P.3d 183 (2000). In that case the court held unconstitutional a statute granting a right of first refusal to park tenants to buy the park when the owner decided to sell it, as inherent in the rights of ownership was the right to dispose of the property to whomever the owner chose. The Landlord contends here that it wants to dispose of the carports and sheds, and RCW 59.20.135 impermissibly prevents it from so doing.

The short answer to this contention is that RCW 59.20.135 does not address the disposition of permanent structures in mobile home parks. The statute clearly and unambiguously bars the shifting of the responsibility of

maintenance to the tenants of the park. RCW 59.20.135(2).

Statutes are presumed constitutional, and the party challenging the constitutionality of a statute has a heavy burden to establish that the statute is unconstitutional beyond question. *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 215, 143 P.3d 571 (2006). In order to declare a statute unconstitutional, the conflict between the statute and the constitution must be plain "beyond a reasonable doubt." *Island County v. State*, 135 Wn.2d 141, 146-47, 955 P.2d 377 (1998). The park owner here has not met that heavy burden.

At a very late stage in the proceedings, the Park raised a constitutional argument, that as applied, RCW 59.20.135 was a physical taking and deprived the Park of a fundamental attribute of property ownership, i.e., the ability to dispose of the carports and sheds. It is quite apparent, however, that RCW 59.20.135 has no impact on the disposition of carports and sheds. The statute merely states that a park owner cannot transfer the responsibility for the maintenance of carports and sheds to the tenants; it says nothing about whether a park owner can tear down the carports and sheds.

Furthermore, the park owner is not prevented from closing the park

upon proper notice, as authorized by RCW 59.20.080(1)(e).<sup>18</sup>

Judge Wickham enjoined the Park from tearing down the carports and sheds of the tenants in the context of the Park's threatening to do so if the tenants did not agree to maintain them (CP 559-561). The injunction assumes that the Park is open and renting spaces to tenants. If the park were closed, there would be no tenancies and no tenants from whom to request permission. In finding that a rent control statute did not amount to a physical taking of a mobile home park owner's property, the U.S. Supreme Court in *Yee v. City of Escondido, Cal.*, 503 U.S. 519, 527-28, 118 L.Ed.2d 153, 122 S. Ct. 1522 (1992) stated as follows:

[The park owners] voluntarily rented their land to mobile home owners. At least on the face of the regulatory scheme, neither the City nor the State compels [park owners], once they have rented their property to tenants, to continue doing so. To the contrary, the Mobilehome Residency Law provides that a park owner who wishes to change the use of his land may evict his tenants, albeit with six or twelve months notice. Put bluntly, no government has required any physical invasion of [the

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<sup>18</sup>RCW 59.20.080(1)(e) provides that a landlord may not terminate a tenancy or fail to renew a tenancy except, among other reasons: "Change of land use of the mobile home park including, but not limited to, conversion to a use other than for mobile homes . . . : PROVIDED, That the landlord shall give the tenants twelve months' notice in advance of the effective date of such change . . ."

park owners'] property. [The park owners'] tenants were invited by [the park owners], not forced upon them by the government.

(Citations omitted.) *Yee*, 503 U.S. at 527-28.<sup>19</sup>

*Yee* was cited with approval the following year in *Guimont v. Clarke*, 121 Wn.2d 586, 607, in a case holding that forcing mobile home park landlords to contribute to a tenant relocation fund did not amount to a physical taking, but did violate due process. The park owner here makes no argument regarding due process.

The court in *Guimont* emphasized the voluntariness of the mobile home park owners' actions in renting their spaces to tenants:

Like *Yee*, the park owners' physical takings argument in this case lacks merit. The Act on its face does not force park owners to allow others to occupy their land. Rather, the park owners have voluntarily rented space to the mobile home owners, and the Act itself does not compel the park owners to continue this relationship. Indeed, the Act still allows the park owners to terminate their tenancies, close their parks, and sell their land. Thus, the park owners have failed to show that the Act on its face requires any "physical invasion" of their property. Likewise, for the same reasons, the Act does not unconstitutionally infringe any other fundamental attribute of property ownership, such as the right to possess, exclude others, or dispose of property.

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<sup>19</sup>In *Yee, supra*, the U.S. Supreme Court also held that the mobile home park rent control ordinance involved in that case did not interfere with any of the owners' "sticks" in the bundle of rights in property, e.g., the right to exclude. 503 U.S. at 528.

*Guimont*, 121 Wn.2d at 608.

In *Guimont v. City of Seattle*, 77 Wn. App. 47, 85, 896 P.2d 70 (1995), involving a mobile home park owner's challenge to a city ordinance restricting the placement of RV's in mobile home parks, the court stated:

We conclude that the Ordinance does none of the above because it does not prevent Guimont from possessing or disposing of the property or excluding others. *Guimont I*, 121 Wash.2d at 602, 854 P.2d 1. It is not required to sell or retain the Park, may change its use and may reject tenants on any lawful basis. The Ordinance does restrict what structures Guimont may place on his land should it choose to continue operating a mobile home park, but this restriction does not differ significantly from any legal zoning provision. *Robinson*, 119 Wash.2d at 50, 830 P.2d 318. As such, it does not destroy, derogate or implicate a fundamental attribute of property ownership [footnote omitted].

*Guimont v. City of Seattle*, 77 Wn. App. at 85.

Finally, RCW 59.20.135 does not implicate the same rights as in *Manufactured Housing*. RCW 59.20.135(2) merely prohibits the park owner from transferring responsibility for the maintenance or care of permanent structures within the park to the tenants of the park, not limit the people to whom an owner of property may sell the property to. RCW 59.20.135 does not offend Article I, § 16 of the Washington Constitution.

The same analysis as in *Manufactured Housing* was applied in *Des*

*Moines v. Gray Businesses*, 130 Wn. App. 600, 124 P.3d 324 (2005), review denied, 158 Wn.2d 1024, 149 P.3d 379 (2006), where a mobile home park owner challenged a regulation regarding RV's in mobile home parks as an "as applied" unconstitutional taking. The court in *Gray* distinguished *Manufactured Housing Communities v. State*, 142 Wn.2d 347, 13 P.3d 183 (2000) on the basis that unlike in *Manufactured Housing*, the city regulation in *Gray* "did not confer Gray's private property rights to anyone, and certainly not 'to a private party for an alleged public use.'" *Gray*, 130 Wn. App. at 610.

Moreover, in *Gray* the court noted that

*The right to use and lease property for mobile homes is derived from and limited by state statute and local regulations. An owner must have a business license and comply with applicable regulations before it can be said to have a "right" to lease its property for mobile home use. Because the ability to use or lease property for mobile home use is contingent, it is not a part of the "bundle of sticks" which the owner enjoys as a vested incident of ownership. It is thus not a fundamental attribute of ownership.*

*Gray*, 130 Wn. App. at 614 (italics added and footnotes omitted). The park owner's right to lease out its property, i.e., its carports and sheds, is "limited by state statute and local regulations." *Id.* Those statutes and regulations do not unconstitutionally limit the Park's ability to dispose of its property.

**12. The Respondent Is Entitled To Attorney's Fees on Appeal.**

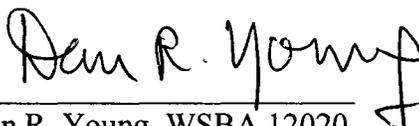
RAP 18.1(c) authorizes an award of attorney's fees if applicable law grants to a party the right to recover a reasonable attorney fee. *Pederson's Fryer Farms, Inc. v. Transamerica Insurance Company*, 83 Wn. App. 432, 455, 922 P.2d 126 (1966). Such applicable law here is RCW 59.20.110, which provides that in any action arising out of the MHLTA, "the prevailing party shall be entitled to reasonable attorney's fees and costs." RCW 59.20.110. The tenants should be awarded attorney's fees on appeal.

**VI. CONCLUSION**

For the reasons set forth above, the court should affirm the trial court's judgment and injunction, and award costs and attorney's fees to the tenants.

RESPECTFULLY SUBMITTED this 24th day of March, 2010.

Law Offices of Dan R. Young

By   
Dan R. Young, WSBA 12020  
Attorney for Respondent  
Seashore Villa et al.

## **APPENDIX I**

### **RCW 59.20.135**

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

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

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

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

## DECLARATION OF SERVICE

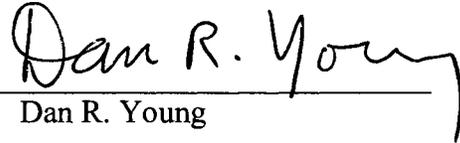
I, Dan R. Young, declare to be true under penalty of perjury under the laws of the State of Washington as follows:

1. I am the attorney representing respondents in this case #83729-5..
2. On March 24, 2010, I deposited through the USPS, postage affixed, a true copy of Brief of Respondent in this case to the following counsel for appellants:

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Dated: March 24, 2010, at Seattle, Washington.

  
\_\_\_\_\_  
Dan R. Young