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**COURT OF APPEALS
OF THE STATE OF WASHINGTON,
DIVISION ONE**

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STATE OF WASHINGTON
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LITTLE MOUNTAIN ESTATES TENANTS
ASSOCIATION, et al., Appellants,

v.

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

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

REPLY BRIEF OF APPELLANTS

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ORIGINAL

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INTRODUCTION

Little Mountain's owners inserted a non-negotiated, not discussed assignment conversion clause into their written leases after tenants moved in to their mobile home park. Because this violated the Manufactured/Mobile Home Landlord-Tenant Act, this Court may rule the conversion clause "unenforceable to the extent of any conflict with any provision of this chapter." RCW 59.20.040.

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 what the market will bear.

Respondents Little Mountain Estates MHC LLC, Peregrine Holdings, LLC, and Kevin and Kari Ware defend the trial court's decision to enforce the clause with the doctrine *caveat emptor*: "each tenant had the opportunity to review and understand the lease terms before and after moving a home into the park." (Response Brief at 10). But the Legislature required more from park owners than giving tenants the opportunity to review the lease at some time. "No landlord shall allow a mobile home, manufactured home, or park model to be moved into a mobile home park in this state until a written rental agreement has been signed by and is in the possession of the parties..." RCW 59.20.050.

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 conversion 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.

I. ENFORCING THE 25-YEAR LEASE TERM IS FAIR

Claiming the 25-year lease was a “loss leader,” Little Mountain’s owners state it would be unfair to allow full assignment of the lease. “Little Mountain could not afford to offer this lease in perpetuity, so they drafted it to convert to a one-year term upon assignment.” (Brief of Respondents at 4). But Little Mountain’s owners did not publicize or even mention this assignment conversion clause. Instead, they quietly put it in an attachment to the lease, which was sometimes with the lease at signing, sometimes not.

Enforcing the 25-year lease term is fair for four reasons: (1) Little Mountain’s owners marketed the lease deceptively – calling it a 25-year lease while knowing that it would be valid only for the lifetime of the elderly tenant; (2) the owners did not discuss the assignment conversion clause with tenants or explain its consequences; (3) the tenants lost the full value of their

improvements on assignment; (4) the assignment conversion clause violated the Manufactured/Mobile Home Act and is therefore unenforceable. Little Mountain's tenants should receive the lease term they reasonably believed they were getting – a full 25-years.

A. The Owners Marketed 25-Year Terms Never Intending Tenants to Use Them

Little Mountain's owners did not tell potential tenants about the assignment conversion 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 tenants. 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).

As the owners concede in their brief, 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 conversion 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 owners never intended a tenant to use the full 25 years of the lease. It was a 25-year lease in name only.

B. The Park Owners Made No Mention Of the Assignment Conversion Clause

Nowhere in their response brief do the owners show that they *told* potential tenants about the assignment conversion clause or explained its operation. Instead, they fault tenants for not raising the issue. (Response Brief at 8) ("Many tenants testified that they did not discuss with Little Mountain whether the 25-year lease was assignable). This is a classic example of *caveat emptor* – the

tenants had to be on guard to catch the conversion clause and recognize its effect on the 25-year term.

Telling tenants about the conversion clause would conflict with the owners' sales pitch. They told elderly residents that they were set for life.

We were selling the fact that we were offering a 25-year lease. No one else is doing this. *This is an opportunity for you to come in here and live for 25 years without worrying about what is going to happen.* We were offering them something, and we were going to take a hit to do that on a certain amount of them. But we had to get the place filled up.

(1/10/06 VRP 72-73) (emphasis added). It would be a much different sales pitch if they told tenants that they could not pass the 25-year lease on to their children, or sell their home with the remainder of the 25-year term. Once the tenant died or moved away, the 25-year term – along with the tenant's investment in the lot – was gone.

C. Tenants Lost The Value Of Their Improvements On Assignment

Before they signed leases, tenants invested \$15,000 to \$18,000 to landscape the lot and prepare it for the mobile home. (1/10/06 VRP 70) (Findings of Fact ¶ 5; CP 3101) ("the tenants purchased homes at prices between \$60,000-\$80,000 for the

homes and incurred the additional expense to prepare the resident's lot for placement of the mobile home"). Tenants lost the value of these improvements when they sold or transferred their homes. The landscaping and the land under the mobile home were the owners'.

The Legislature substantially rewrote the law governing mobile home leases because the value of the tenant's sole asset – the home itself – relies on a long-term lease. As Justice Talmadge described,

[m]obile 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." Roger Colton & Michael Sheehan, The Problem of Mass Evictions in Mobile Home Parks Subject to Conversion, 8-SPRING, J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 231, 232 (1999). "Once 'planted' and 'plugged in,' they are not easily relocated." Miller v. Valley Forge Vill., 43 N.Y.2d 626, 403 N.Y.S.2d 207, 374 N.E.2d 118, 120 (1978). 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." Colton & Sheehan, supra, 232. Costs of relocation, assuming relocation is even possible for older units, can range as high as \$10,000. Id. It is the immobility of mobile homes that "accounts for most of the problems and abuses endured by mobile home tenants." Luther Zeigler, Statutory Protections for Mobile Home Park Tenants--The New York Model, 14 REAL ESTATE L.J. 77, 78 (1985).

Manufactured Housing Communities of Washington v. State, 142 Wn.2d 347, 393, 13 P.3d 183 (2000) (Talmadge, J., dissenting). A mobile home has little worth separate from its permanent placement in a quality park.

The 25-year lease term added substantial value to the tenants' investment in Little Mountain's infrastructure and development. Under the assignment conversion clause, the tenants forfeited that investment to Little Mountain's owners when they sold or transferred their home.

D. The Assignment Conversion Clause Violates The Act And Is Unenforceable

1. Striking the Assignment Conversion Clause is an Appropriate Remedy for Violating RCW 59.20.050(1)

Little Mountain's owners do not deny they violated RCW 59.20.050(1) by failing to have tenants sign complete leases before they moved in. They minimize the violation as "technical". (Response Brief at 19) ("despite the technical violation of the MHLTA,...the written leases should be enforceable"). The violation was not technical – it creates the abuses the Legislature intended to prevent. As the Legislature found in former RCW 59.23.005,

The legislature finds that mobile home parks provide a significant source of homeownership for many Washington residents, but increasing rents and low vacancy rates, as well as the pressure to convert mobile home parks to other uses, increasingly make mobile home park living insecure for mobile home owners. The legislature also finds 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.

West's RCWA 59.23.005 (emphasis added); See *Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347, 13 P.3d 183 (2000) (ruling the right of first refusal unconstitutional).

Under the Manufactured/Mobile Home Act, this Court may appropriately strike the assignment conversion clause from the

lease because the owners did not publicize it or discuss it with tenants before they invested in the Park.

The trial court recognized that tenants had much less bargaining power after moving in to contest the assignment conversion clause.

The court finds that initially there was an equality of bargaining position between the landlord who wanted to lease lot spaces in LME [Little Mountain Estates] and prospective residents who could choose or not choose to move into LME.

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

The court finds the bargaining position of the parties shifted in favor of LME after the 25-Year Residents changed their position by purchasing their homes and installing their homes at LME without first confirming their contractual and legal obligation would be under the lease.

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

(Findings of Fact ¶¶ 7-10; CP 3101). Little Mountain's owners argue this shift is of no legal consequence for two reasons: (1) *caveat emptor* – the tenants should have obtained a copy of the

lease and read it before moving in; and (2) the only remedy is a default one-year term.

Neither argument renders the assignment conversion clause enforceable. First, the Legislature gave landlords, not tenants, the responsibility for obtaining a signed, written lease before move in. Little Mountain's *caveat emptor* claim undermines the statutory protection of RCW 59.20.050(1). By adopting the Manufactured/Mobile Home Act, the Legislature intended to protect tenants from the unfair outcomes arising from traditional contract law. The trial court improperly reintroduced these common law rules when it concluded that the tenants' failure to read the lease excused the landlord's statutory violation. To prevent tenants from signing leases "in a difficult position to withdraw from the landlord-tenant relationship", the Legislature mandated that landlords *must have* signed leases before tenants move in.

Second, a "deemed" one year lease under RCW 59.20.050(1) is not the exclusive remedy for Little Mountain's violation. In their response brief, the owners claim "no statute or case provides that failure to get a signed lease in advance voids any subsequent written agreement." (Response at 20). This case presents the issue squarely: does a Landlord's failure to get a

signed lease in advance bar the Landlord from adding new, non-negotiated or discussed clauses? Under RCW 59.20.040, the Court may rule the assignment conversion clause “unenforceable to the extent of any conflict with any provision of this chapter.” Little Mountain’s owners added the conversion clause after tenants moved in, violating the Act. The clause is therefore unenforceable.

The one-year lease term in the statute is a default remedy. It does not, and should not, excuse Little Mountain’s owners’ failure to have tenants sign leases before they move in, when they have a realistic opportunity to negotiate.

2. Assignment Of The Full Term Is A Statutory Right

Under RCW 59.20.073, the Legislature granted tenants the right to assign the remaining term of their leases. “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). Little Mountain’s owners offer a narrow interpretation of this right, claiming that only protects assignability for a one-year term, not the full term of the original lease.

The Legislature has crafted very specific provisions regarding what a mobile home lot lease can and

cannot include. RCW 59.20.060. Yet [the Legislature] has not prohibited assignment clauses such as the one at issue here. As long as the length of the new term is, as here, at least one year, the assignment clause does not violate the MHLTA.

(Response Brief at 13). No court has interpreted the Act as the owners suggest.

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.

Full assignability will not bankrupt owners, even those who offer 25-year leases. Little Mountain's owners used a rent adjustment clause in their leases that "does not make sense." (Findings of Fact ¶ 23; CP 3102). Once landlords and tenants know that assignment means assignment of the full remaining term,

owners will pay more attention to rent adjustment clauses, ensuring that they provide an appropriate rate of return.

3. Waiver of Full Assignability Requires More Than Silent Assent From Tenants

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 conversion 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. "Here, the parties agreed to a reasonable restriction on assignment: conversion of the 25-year term to one year." (Response Brief at 14).

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 this Court 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 conversion 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 conversion clause is no longer relevant. This 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 justify this Court excising the assignment conversion clause from the lease. It is not properly there; and the tenants' failure to read it before signing does not excuse the landlords' violations.

II. THE TRIAL COURT DISMISSED THE OWNERS' "LEVERAGE" ARGUMENT WITH PREJUDICE

Little Mountain's owners improperly raise a claim that the trial court dismissed with prejudice. According to the owners, the tenants allegedly used this lawsuit to force a sale of the park. (Response Brief at 9). The owners brought a counterclaim against the Tenants Association for tortious interference with the sale of the park. On June 14, 2006, the trial judge dismissed this claim with prejudice. (CP 3092). Respondents have not filed a cross-appeal on the ruling, and it is not properly before the Court. The tenants request the Court to strike the argument and give it no consideration.

CONCLUSION

No dispute exists that the owners of Little Mountain Estates violated the Manufactured/Mobile Home Landlord-Tenant Act, RCW 59.20.050 when they had tenants sign leases after they moved in. An appropriate remedy for this violation is to strike those portions of the lease that conflict with the offer that tenants relied on – they would receive a 25-year lease with rent increasing by the CPI. The assignment conversion clause is unenforceable under the Act. Appellants Little Mountain Estates Tenants Association request the Court to vacate the trial court's judgments, enter judgment for Appellants on the Manufactured/Mobile Home Act claims, order retrial of the Consumer Protection Act claims, and award fees and costs at trial and on appeal.

DATED this 15th day of October, 2007.

BURI FUNSTON MUMFORD, PLLC

By



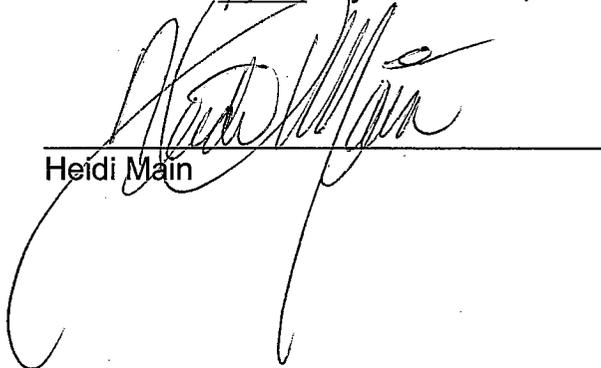
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DECLARATION OF SERVICE

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 Opening Brief of Appellant to:

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DATED this 15th day of October, 2007.



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