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IN THE SUPREME COURT OF THE STATE OF DELAWARE

BON AYRE LAND, LLC, a Delaware Limited Liability Co.,	:	
Appellant, Appellee Below,	:	
v.	:	No. 25, 2016
BON AYRE COMMUNITY ASSOCIATION, INC.,	:	Appeal from the Superior Court C.A. No. K15A-05-002-WLW
Appellee, Appellant Below.	:	

AMICUS FIRST STATE MANUFACTURED HOUSING ASSOCIATION OPENING BRIEF

JEFFREY M. WEINER, ESQUIRE #403
1332 King Street
Wilmington, DE 19801
(302) 652-0505
Counsel for First State Manufactured Housing Association

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STATEMENT OF INTEREST

Proposed *Amicus Curiae*, First State Manufactured Housing Association ("FSMHA"), submits this brief in support of Appellant Bon Ayre Land, LLC, to urge reversal of the Superior Court decision. The issue presented is whether 25 *Del. C.* §7042 of the Rent Justification Act (hereinafter, the "Act") requires that a rent increase based on market rent be directly related to "operating, improving, or maintaining the manufactured house community."

FSMHA is greatly interested in the issue presented by this appeal because FSMHA has been the legislative, regulatory and educational voice of the factory-built housing industry for over 20 years. Its mission is to maintain and enhance the climate for sound growth of the manufactured housing market in Delaware, thereby assuring that its citizens have the opportunity to participate in and enjoy the privilege of home ownership. FSMHA also serves as a primary resource for current and future business issues facing the industry. Improved levels of professionalism, progress and prosperity for members will also be targeted through the exchange of information, education and promotion of quality-of-life issues. The end result should be a better served and satisfied consumer, and a strengthening of the industry as a whole.

FSMHA urges reversal of the Superior Court's decision because its interpretation of 25 *Del. C.* §7042 is contrary to the letter and legislative intent of

the Act. The Superior Court's interpretation does not achieve the Act's stated purpose of protecting the landlord's desire to realize the value of his/her land. In effect, the Superior Court's interpretation will only compound the affordable housing problem, as manufactured housing owners, unable to achieve a reasonable return on the value of their property, will convert their property to other uses, thus leading to an even greater shortage of affordable housing. This result is contrary to the legislative intent of the statute which is to increase the availability of affordable housing by protecting tenants against unreasonable space rental increases while simultaneous protecting the landowner's right to receive a just, reasonable and fair return on their property.

ARGUMENT

II. THE MARKET RENT FACTOR DOES NOT REQUIRE THE INCREASE BE RELATED TO OPERATING EXPENSES

QUESTION PRESENTED

Whether the market rent factor requires that the increase be related to operating expenses? (Preserved in the Notice of Appeal from the Superior Court).

SCOPE OF REVIEW

The issue presented in this appeal is one of law, which is subject to plenary or *de novo* review by this Court, ***Connell v. Baker*, 488 A.2d 1303 (Del. 1985); *Public Water Supply Company v. DiPasquale, et al.*, 735 A.2d 378 (Del. 1999).**

MERITS OF ARGUMENT

At issue in this appeal is whether 25 *Del. C.* §7042 requires that an increase in rent in excess of the CPI-U must be directly related to operating, maintaining, or improving the manufactured home community. In other words, is it consistent with the letter and intent of the Act to require that a landowner prove that a market rent increase above CPI-U be spent on operation, maintenance or improvement of the community? The Arbitrator in this case rejected the contention that a rent increase based on market rent must be related to operating expenses (i.e. operating, improving, or maintaining the manufactured house community) however, the Superior Court reversed, holding that "[w]hen one reads section 7042(a) and section 7042(c) as a harmonious whole, it becomes apparent that any one of the

factors in section 7042(c) will justify an increase in rent greater than the CPI-U only if the 'proposed rent increase is directly related to operating, maintaining, or improving' the community."[1]

As stated in 25 *Del. C.* §7040, in enacting the Rent Justification Act, the Delaware General Assembly:

> [S]seeks to protect the substantial investment made by manufactured home owners, and enable the State to benefit from the availability of affordable housing for lower-income citizens, without the need for additional state funding. The General Assembly also recognizes the property and other rights of manufactured home community owners, and seeks to provide manufactured home community owners with a fair return on their investment. Therefore, the purpose of this subchapter is to accommodate the conflicting interests of protecting manufactured home owners, residents and tenants from unreasonable and burdensome space rental increases while simultaneously providing for the need of manufactured home community owners to receive a just, reasonable and fair return on their property. 25 *Del. C.* §7040. (emphasis added)

FSMHA argues that the Superior Court's interpretation is contrary to the letter and legislative intent of the Act, and should be reversed. The Superior Court's interpretation does not achieve the Act's stated purpose of balancing the landlord's desire to realize the value of the land with the homeowner's desire to be free from unreasonable rent increases. In fact, by requiring that market rent increases be related to operating expenses, manufactured housing community owners will be prevented from realizing the actual value of the land, and will thus

[1] *Bon Ayre Community Association, Inc. v. Bon Ayre Land, LLC*, 2016 WL 241864, at *6 (FSMHA - E6) (Del. Super. 2016) (Exhibit A) (FSMHA – E1 to 14).

seek to convert their land to other uses, such as for apartments or condos, etc. In effect, the Superior Court's interpretation of the Act will only compound the affordable housing problem, as manufactured housing owners will convert the land to other uses, thus leading to a greater shortage of affordable housing. This result is contrary to the legislative intent of the statute which is to increase the availability of affordable housing.

According to the Delaware State Housing Authority, "[c]ommunity closure is perhaps the greatest risk to homeowners on leased land, and it is a looming threat for many in Delaware. High land values provide strong incentives for community owners to consider selling or converting the use of their land...[t]here are relatively few open lots in manufactured housing communities, and very few, if any, new communities are opening in Delaware."[2] The Superior Court's interpretation of the Act is contrary to the Legislature's express intent and will only compound the affordable housing problem by increasing incentives for manufactured housing community landlords to convert the use of their land to more profitable uses.

The AARP Public Policy Institute has echoed the concern regarding the lack of new manufactured housing communities entering the market and the pressure to

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[2] *Manufactured Housing in Delaware: A Summary of Information and Issues* (December 2008), pg. 20 (FSMHA – E34). *Available at*: http://www.destatehousing.com/FormsAndInformation/Publications/manu_homes_info.pdf

covert manufactured housing communities to other uses in order to realize the true value of the land:

> Anecdotal evidence suggests that relatively few new manufactured housing communities are being developed, and the empirical evidence seems to support this conclusion. In 1994, 27 percent of new manufactured housing units were placed in a manufactured housing community. By 2001, this number had fallen to 23 percent. As a consequence, the median age of manufactured home units in communities is around 21 years, compared with 16 years for manufactured homes placed elsewhere. Further, many existing community operators face economic incentives (and sometimes pressure from local governments) to convert their properties to some other use, especially in expanding suburban markets with rapidly increasing land values. Overall, it is becoming more difficult for new manufactured home owners (and existing owners who must relocate) to find space in a manufactured housing community."[3]

As of 2009, the Delaware Association of Realtors ("DAR") disfavors the use of rent control in the manufactured housing community:

> DAR POLICY: DAR strongly supports housing choice and allowing opportunity for buyers to purchase the housing that reflects their interests, needs and desires. Manufactured housing is a viable option for the state of Delaware and should be allowed to compete in the marketplace. While DAR has not taken an official position on local zoning ordinances that restrict the placement of these homes, DAR does believe that equity should be achieved between all housing products. Additionally, DAR does believe that when these homes are placed in private rental communities, the law of contracts and private property rights should prevail in maintaining this as a competitive housing option in Delaware. Finally, as is discussed more fully in our policy on rent control, DAR does believe that community owners shall have the discretion to establish their rent schedule.[4]

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[3] *Manufactured Housing Community Tenants: Shifting the Balance of Power: AARP Public Policy Institute*, pg. 3 (FSMHA – 64). *Available at*: http://assets.aarp.org/rgcenter/consume/d18138_housing.pdf (Exhibit C) (FSMHA - E59 to 209)

[4] Manufactured Housing: Issue Brief: *Available at*: *http://www.delawarerealtor.com/ibmanufactured.html* (Exhibit D) (E260)

A. THE SUPERIOR COURT'S INTERPRETATION OF THE RENT JUSTIFICATION ACT IS CONTRARY TO THE LETTER AND INTENT OF THE STATUTE

A proper reading of 25 *Del C.* §7042 protects both stated goals of the act. The Superior Court's interpretation of Section 7042 (a)-(c), which requires that an increase of rent to market level must be directly related to operating, maintaining, or improving the community, is contrary to the intent of the Legislature and the expressed purpose of the Act, as it does not accommodate the interest of the landowner. The stated purpose of the Act is "to accommodate the conflicting interests of protecting manufactured home owners, residents and tenants from unreasonable and burdensome space rental increases while simultaneously providing for the need of manufactured home community owners to receive a just, reasonable and fair return on their property." 25 *Del. C.* §7040. The legislature "seeks to protect the substantial investment made by manufactured home owners, and enable the State to benefit from the availability of affordable housing for lower-income citizens, without the need for additional state funding." 25 *Del. C.* §7040.

"When deciding questions of statutory construction, this Court must ascertain and give effect to the intent of the legislature. Because a statute passed by the General Assembly must be considered as a whole and not in parts, each section should be read in light of all others in the enactment. The golden rule of

statutory interpretation...is that unreasonableness of the result produced by one among possible interpretations...is reason for rejecting that interpretation in favor of another which would produce a reasonable result. Finally, this Court must reject any reading of a statute that is inconsistent with the intent of the General Assembly."[5]

A proper reading of Section 7042 protects both landowner and tenant. By requiring that increases in rent be justified by the current market value of the land, the homeowner is protected from dramatic increases in rent. The landlord's right to receive a "just, reasonable and fair return on their property" is protected by requiring that the landlord prove that an increase in rent is justified by the current rental market. This interpretation fulfills the legislative goals of protecting "the substantial investment made by manufactured home owners, and enable[s] the State to benefit from the availability of affordable housing for lower-income citizens, without the need for additional state funding." 25 *Del. C.* §7040. The Superior Court's interpretation of the statute effectively removes profit from the equation and thwarts the landowner's right to realize the value of his/her property. Under the Superior Court's reading of the statute, any profit above CPI-U must be spent on the operation, maintenance or improvement of the community. This is an unreasonable result and is contrary to the legislative intent of the Act.

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[5] *Dambro v. Meyer*, 974 A.2d 121, 129-30 (Del. 2009)(internal citations and quotations omitted).

B. THE SUPERIOR COURT'S INTERPRETATION OF THE ACT RENDERS THE MARKET RENT SECTION MEANINGLESS AND LEADS TO AN ABSURD RESULT

The Superior Court's interpretation of 25 *Del. C.* §7042, which requires that a rent increase based on market rent must be directly related to "operating, improving or maintaining the manufactured house community" renders 25 *Del.C.* §7042(c)(7) meaningless if the increase has to be directly related to operating expenses. The increase under 25 *Del. C.* §7042(c)(7) is, *ipso facto*, in response to market conditions, not operating expenses, and seeks to align rent in the subject community with comparable manufactured house communities. The entire market rent section would be rendered mere surplusage if one now must also prove that the expenses are related to operating expenses.

As stated by retired Judge Richard S. Gebelein in a recent arbitration decision, "[t]o hold that the statute requires the Community Owner to prove that all of the rent justified by a 'market rent' study must be used solely for the 'operating, maintain or improving' the community would render this proof redundant and frustrate the goals of the statute to balance the interest of the parties. It would in effect eliminate profit on investment as an acceptable part of the equation. I do not limit the community owner to require proof that all of the increase must be shown

to have been spent on operation, maintenance or improvement of the community."[6]

"When a statute is interpreted, [u]ndefined words...must be given their ordinary, common meaning. Those words should not be construed as surplusage if there is a reasonable construction which will give them meaning. Courts must ascribe a purpose to the use of statutory language, if reasonably possible. Where the statutory language is clear on its face and is fairly susceptible to only one reading, the unambiguous text will be construed accordingly, unless the result is so absurd that it cannot be reasonably attributed to the legislature. Where, however, the statutory text is ambiguous, the court will resort to other sources, including relevant public policy, for guidance [as] to [the statute's] apparent purpose. And, in carrying out its interpretive task, this Court will read each section [of the statute] in light of all the others to produce a harmonious whole."[7]

The Superior Court's interpretation requires that any increase in profits above the CPI-U be reinvested into the community (and not as profit) and therefore leads to an absurd result. For example, suppose that property owner A charges $75 rent and property owner B charges $100. The properties are in the same competitive area and offer similar facilities, services, amenities and management. Property owner A now wishes to raise rent to $100 (an increase greater than the

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[6] *Bon Ayre Community Assoc. v. Bon Ayre Land, LLC*, Arbitration Decision Docket Nos. 03, 04, & 05 (FSMHA – 220) (*Gebelein*, Aug. 24, 2015) (Exhibit E) (FSMHA – 211 to 219).

[7] *Progressive Northern Ins. Co. v. Mohr*, 47 A.3d 492 (Del. 2002)(internal citations and quotations omitted).

increase in CPI-U in the preceding 36 month period) to realize the true value of his/her land. Under the Superior Court's decision, property owner A must prove: (1) that $100 is the market rent (i.e. "rent which would result from market forces absent an unequal bargaining position between the community owner and the home owners") and (2) that the "proposed rent increase is directly related to operating, maintaining or improving" the community. However, according to the Superior Court, Property Owner A is now in effect required to reinvest that money back into the manufactured house community under 25 *Del. C.* §7042(a)(2). This leads to an absurd result[8]: now the market rent of Property A would ostensibly be *greater* than $100 in light of this new investment.

As expressed by the Arbitrator, the only way to "logically interpret 25 *Del. C.* §7042 is that if the rent increase is not being sought for capital improvements, ordinary wear and tear or changes in operating and maintenance expenses then it

[8] "Delaware Courts have long recognized the absurd result principle. In 1934, for example, the Superior Court stated that the letter of the law is to be strictly construed, but not 'where adherence to the letter would result in absurdity or injustice.' " This principle became an important part of statutory construction and remains operative in Delaware statutory construction to this day." *Reddy, M.D. v. The PMA Ins. Co.*, 20 A.3d 1281, 1288 (Del. 2011)(citations omitted). *See Chase Alexa, LLC v. Kent County Levy Court*, 991 A.2d 1148, 1152 (Del. 2010) ("Statutes must be construed as a whole, in a way that gives effect to all of their provisions and avoids absurd results."); *Director of Revenue v. CNA Holdings, Inc.*, 818 A.2d 953, 957 (Del. 2003) ("Ambiguity may also be found if a literal reading of the statute would lead to an unreasonable or absurd result not contemplated by the Legislature."); *State v. Cooper*, 575 A.2d 1074, 1076 (Del. 1990) ("Literal or perceived interpretations, which yield illogical or absurd results, should be avoided in favor of interpretations consistent with the intent of the Legislature."); *Spielberg v. State*, 558 A.2d 291, 293 (Del. 1989) ("The statute must viewed as a whole, and literal or perceived interpretations which yield mischievous or absurd results are to be avoided.").

must be justified by market rent." The Superior Court's decision leads to an absurd result, not contemplated by the legislature, therefore one must look to the legislative purpose of the Act and public policy considerations for guidance. After doing so, it is clear that the Legislature could not have intended that all increases of market rent above the CPI-U for the preceding 36 months must be spent on operation, maintenance or improvement of the community.

CONCLUSION

Based upon the reasons and authorities discussed herein, the decision of the Superior Court should be reversed.

Respectfully submitted,

/s/ JEFFREY M. WEINER, ESQUIRE #403
JEFFREY M. WEINER, ESQUIRE #403
1332 King Street
Wilmington, DE 19801
(302) 652-0505
Counsel for First State Manufactured Housing Association

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