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IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE, ex rel. MATTHEW P. DENN, Attorney General of the State of Delaware, Plaintiff-Below, Appellant, v. HOMETOWN AMERICA COMMUNITIES, INC., a Delaware corporation, Defendant-Below, Appellee.	)	No. 194, 2016

DEFENDANT-BELOW, APPELLEE HOMETOWN AMERICA COMMUNITIES, INC.'S ANSWERING BRIEF

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TABLE OF CONTENTS

PAGE

TABLE OF CITATIONS

PAGE

Cases

Statutes

Rules

INTRODUCTION

The matter now before this Court can be fairly characterized as an unprecedented challenge by the Attorney General of this State (the "State") to the inherent ability of a manufactured home community owner and its residents to amicably resolve disputes over rent increases.[1] The dispute arose as a result of the delivery of the written notices of rent increases, as required by statute, to the homeowners in three distinct separately owned communities located in Kent and Sussex Counties, Delaware.

The Complaint filed by the State recites that three separate rent increase notices were sent to the residents of each of the three separate communities. The Complaint further recounts, in detail, facts and information relevant to the rent increases, and the proposed offers of compromise set forth therein, facts and information which could only have come from each of those rent increase notices. Indeed, a cursory review of the Complaint demonstrates that the State possessed those notices at the time of the drafting of the Complaint, relied on, used, integrated and incorporated the information and disclosures to the homeowner tenants from those rent increase notices into the allegations of its Complaint, and, more importantly, could not have brought this action without incorporating these written

[1] The procedures for rent increases are governed by the Affordable Manufactured Housing Act, 25 *Del. C.* § 7040, *et seq.* (the "Rent Justification Act").

notices of the rent increase into the Complaint, as it is those very notices which form the basis for the alleged illegal acts sought to be rectified by the State.

Yet, those notices were not attached to the Complaint, and in a particularly curious departure from the State's otherwise wholesale reliance on and blanket integration of those notices and the information therein into the Complaint, rather than name as defendants in its Complaint the three entities repeatedly identified in those separate notices as the entities which had authored and sent the notices (and which are, in fact, the only legal owners of the three manufactured housing communities), the State, for some unknown and undisclosed reason, chose to name as the **only** defendant in its action, Hometown America Communities, Inc. ("Hometown").

The issue which divides the parties in this appeal is whether the State pled sufficient and specific non-conclusory facts in its Complaint to haul Hometown into court, and require it to respond to the allegations in that Complaint about the illegality of the notices which it did not author or send, about communities it does not own, and about manufactured housing lot rental activity in which it does not engage.[2]

[2] Neither party to this appeal disputes that under 25 *Del. C.* § 7040 *et seq*. ("the Rent Justification Act"), the only party responsible for fulfilling the obligations under that Act, and the only party that can be held liable for failing to fulfill such responsibilities, is the "community owner." *See* 25 *Del. C.* § 7040 - 7043; *see also* 25 *Del. C.* § 7003(4) (defining community owner).

In support of its decision to seek relief against its chosen defendant, the State alleged in the Complaint, albeit in a rote and conclusory manner, that Hometown "owns three manufactured home communities in Delaware" and "rents manufactured home lots in the three communities to owner of manufactured homes[.]" A008 – A009. Absent from the pleadings accompanying these allegations is any specific fact which would support those conclusory allegations and would allow this Court to accept them as true. The conclusory and unsupported nature of those allegations was dramatically highlighted by the fact that the information disclosed in the very documents referred to, relied on and incorporated into the State's Complaint disclosed information and facts which do not support the assertions made by the State, **and in fact contradict those conclusory factual assertions**.

The State's conclusory and unsupported allegations, in the face of contrary and unambiguous information offered in the documents upon which the State relies and which are incorporated and integrated into the State's Complaint and which the State submitted to the Court, effectively negate the claim against Hometown as a matter of law. Thus, the decision of the trial court, finding that the State had not met its obligation to plead factually supported allegations about Hometown's alleged role as a "community owner," must be affirmed.

NATURE OF PROCEEDINGS

This case was initiated on November 13, 2015, when the State filed its Complaint in the Delaware Superior Court against Hometown alleging that it had violated the Manufactured Home Owners and Community Owners Act, 25 *Del. C.* § 7001 *et seq*. (the "Manufactured Home Act"), including the Rent Justification Act, in connection with the written notices of rent increases it allegedly sent to the homeowner tenants in three separate manufactured housing communities. A002.

On December 29, 2015, Hometown filed a motion to dismiss the Complaint pursuant to Superior Court Civil Rule 12(b)(6). A002. The State filed a response to this motion on January 29, 2016. A003. Oral argument was held on February 5, 2016 before the Honorable E. Scott Bradley, who reserved decision on the motion. A004. On April 14, 2016, the Superior Court issued a letter opinion granting the Motion to Dismiss (the "Opinion" or "Op."). A003.

Rather than seek to amend its Complaint to address the pleading deficiencies noted in the Opinion, or to re-plead to add the three legal entities which own the communities and which authored and delivered the written notices that are the foundation of the alleged wrongful actions taken by them, the State chose to appeal and filed its Notice of Appeal in this Court on April 15, 2016. A003. The State filed its Opening Brief on July 11, 2016, and filed its corrected Opening Brief on July 20, 2016. This is Hometown's Answering Brief.

SUMMARY OF ARGUMENT

1. Denied. The trial court properly analyzed the State's Complaint under Rule 12(b)(6), and correctly found that the State failed to "adequately plead any facts supporting its allegation that Hometown is the owner and operator of Angola Beach and Estates, Barclay Farms, and Rehoboth Bay." Op. at p. 7. The State failed in its initial burden, in drafting its Complaint, to set forth specific supporting factual allegations concerning Hometown's status as a "community owner" under the Manufactured Home Act and the Rent Justification Act. The State further failed to allege the correct party which sent out the rent increase notices which serve as the foundation of the causes of action under those two Acts, a fact that is supported by the contrary information in those notices.[3] The pleading deficiency was fatal, and the dismissal of the Complaint was appropriate, and should be affirmed.

2. Denied. The trial court properly considered the three written notices of rent increases, and the information and disclosures included in such notices, which information and disclosures were extensively integrated and incorporated into the State's Complaint. In considering those notices, the trial court did not accept the truth of the statements therein, but rather recognized that the disclosures made

[3] The State refuses to allow the merits of its action to proceed if Hometown cannot, for whatever reason, be included as a party. A106 ("It may well be that we'll decide to amend to include everybody, assuming Hometown America can stay in.").

therein did not support the State's otherwise unsupported and conclusory allegations in the Complaint concerning Hometown, its ownership of the communities, and its role in sending the notices of rent increases which formed the basis of the claims alleged against Hometown. Because the disclosures in those notices were unambiguous, the trial court's reliance on the disclosures therein was permitted under the well-established case-law of this Court concerning the incorporation-by-reference doctrine and as such, the decision should be affirmed.

STATEMENT OF FACTS

This Court has recently considered, and is familiar with, the Rent Justification Act and its application to rent increases sought by owners of manufactured housing communities. *See, e.g., Bon Ayre Land LLC v. Bon Ayre Cmty. Ass'n*, 2016 Del. LEXIS 102 (Del. Feb. 25, 2016) (attached as Exhibit A). From those appeals, this Court is aware of the legislatively crafted process by which a "community owner" may "justify" a rent increase. As provided in the Act, that process begins when the "community owner" gives written notice to each affected homeowner tenant at least 90 days in advance of the effective date of the notice of increase greater than the Consumer Price Index applicable to this area, known as or "CPI-U," and schedules a meeting of all of the affected homeowners within 30 days of sending that notice. 25 *Del. C.* § 7043(a) and (b). It is, therefore, that written notice, sent by the "**community owner**," that sets into motion the justification processes, including "non-binding arbitration," and, if required, judicial consideration of the justification offered, by way of appeal from the results of such non-binding arbitration. 25 *Del. C.* §§ 7043(c) and 7044.

A. The Three Written Notices of Rent Increase.

On September 14, 2015, three separate written notices of rent increases were sent to the resident tenants at Angola Beach & Estates, Barclay Farms and Rehoboth Bay whose leases expired at the end of the 2015 calendar year. A011; A065-A081.

As disclosed in those written notices of rent increase, each homeowner tenant was told the amount of the rent increase, the basis for the rent increase and the total amount of the rent increase above CPI-U. A012-13; A065; A077; A080. As further disclosed in those written notices of rent increases, a compromise was being offered: a lesser increase in rent was offered to the resident tenants in an attempt to reach an agreement with the tenants prior to justifying the full increase amount at arbitration. A013; A065; A077; A080. Finally, and most significantly, those written notices of rent increases disclosed that they were authored by the community owners, the three individual landlords for the homeowner tenants, and the only parties authorized to send such notices under the Rent Justification Act, that those community owners were providing the required written notice of rent increase, that each of the three were making the offers of compromise set forth therein and that they each signed those notices. A065-A081.

Thereafter, at the statutorily required meetings of the affected homeowners in each of the communities, the homeowners were offered an additional opportunity for a meaningful compromise: The homeowner tenants were told that they could pay the full amount of the increase set forth in the written notice of rent increase, and at the beginning of the 2017 year, the capital improvement increase for 2016 would be subtracted from the base rent used for the upcoming 2017 rent increase. Again, such

compromise option was offered in an attempt to reach an agreement with the tenants prior to justifying the full increase amount at arbitration. A014.

B. The Incorporation of the Written Notices into the State's Complaint.

On November 13, 2015, shortly following the conclusion of the meetings of the affected homeowner tenants in each of the three communities and after several of the affected homeowners exercised their statutory rights and filed for arbitration to contest rent increase, the State filed its Complaint against Hometown. A002. In the process approved by Delaware's General Assembly to resolve rent increase disputes between community owners and their residents, the State unilaterally inserted itself in to the process, challenging these statutorily required written notices of rent increases and the disclosures made in each of those notices to the homeowners in the three communities. These notices, therefore, form the entire basis of the claims asserted in the Complaint in this matter. Indeed, the State alleges in the Complaint that Hometown has:

> violated and continues to violate [the Manufactured Home Act] and the Rent Justification Act **by issuing rent increase notices** to its tenants that violate the requirement of both laws. The unlawful **rent increase notices**, as presented to Tenants in each of the three communities, improperly require Tenants to waive their statutory right to arbitrate the proposed rent increase in order to obtain a significant discount in the rent to which Defendant claims it is otherwise entitled.

A006 (emphasis added).

For its causes of action, the State alleges in Count I that Hometown violated 25 *Del. C.* § 7006(b) by requiring the homeowner tenants, as disclosed in those rent increase notices, to purportedly "waive" their rights to arbitration in exchange for the reduced rent (A015-16), and in Count II that Hometown violated 25 *Del. C.* § 7042(c) by allegedly incorporating the savings in fees it would incur in arbitration into the offers of compromise on the rent increase. A017-19. In short, the State's Complaint asserts that the notices sent to the homeowners in each of the three communities, which contained very valuable opportunities to reach a settlement and compromise of the proposed rent increase while simultaneously informing them of the statutorily mandated consequences of accepting such a settlement, somehow violated the homeowner tenants' rights under the Rent Justification Act and the Manufactured Home Act.

In any event, and irrespective of (1) the incongruity between the two causes of action alleged in the Complaint and the Rent Justification Act and its regulations, including the State's wholesale attempt to abrogate the very specific rent increase process set forth in that Action, and sound Delaware law favoring compromises of contested matters,[4] the Complaint itself named the wrong party. The State named

[4] The State's position defies the long standing underpinnings of our legal system that favors the mutual resolution of contested disputes by the parties to those disputes. *Rome v. Archer,* 197 A.2d 49, 53 (Del. 1964) ("The law, of course, favors the voluntary settlement of contested issues."). The State's position also runs contrary to the Rent Justification Act itself, and the authorities under that Act, including the

only Hometown, an entity that neither was mentioned in the written notices of rent increases nor owns or rents any property, manufactured housing lots or otherwise, in the State of Delaware, including the three communities at issue in the litigation.[5] Rather than name as defendants the three owners of the communities that were the

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Superior Court's recognition that the Rent Justification Act dispute resolution procedures are essential, and that the negotiation process was critical, not only for the parties but also to the Court: "by requiring an informal meeting between the community owner and affected homeowners in which all the proverbial cards are on the table prior to seeking arbitration, and ultimately Superior Court review, the legislature believed the parties could **settle their disputes** without involving the courts, saving on judicial economy." *Tunnell Cos., L.P. v. Greenawalt*, 2014 Del. Super. LEXIS 545, at *17 (Del. Super. Ct., Oct. 14, 2014) (emphasis added) (attached as Exhibit B). Consequently, if the State was correct in its claims, such position would rip beneficial negotiated settlement opportunities from the hands of the parties themselves, and would **mandate** that homeowner tenants, who wanted a lower rental rate, could not negotiate and must **always** go through the time consuming and expensive arbitration procedure under the Rent Justification Act, and the inevitable appeal, imposing unjustified burdens upon the Superior Court, and ultimately, this Court.

[5] A quick and simple online search of the Kent County and Sussex County land-use records, a source not subject to reasonable dispute and which are publicly available, **confirms** that (i) Hometown is not the community owner of any of the three Delaware communities that were subject of the rent increase notices, and that (ii) the authors of the three written notices of rent increases are the actual community owners of those three communities. A042 – A044. The Court may take judicial notice of this property ownership information because it "not subject to reasonable dispute" as it is "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *In re GM (Hughes) S'holder Litig.*, 897 A.2d 162, 169 (Del. 2006)(quoting D.R.E. 201(b)(2)); *Sunrise Ventures, LLC v. Rehoboth Canal Ventures, LLC,* 2010 Del. Ch. LEXIS 22, at n. 69 (Del. Ch., Jan. 27, 2010)(holding that the court can take judicial notice of documents filed of record in the County Recorder of Deeds office under D.R.E. 201(b)) (attached as Exhibit C).

subject of rent increase notices and that were disclosed – repeatedly – to anyone who had read such notices, the State filed the above-referenced action against "Hometown America Communities, Inc.," which it alleges "owns three manufactured home communities in Delaware" and "rents manufactured home lots in the three communities to owner of manufactured homes[.]" A008 – A009. Other than these perfunctory and conclusory allegations, no further facts, supporting or otherwise, were alleged that demonstrated that Hometown met the definition of a "community owner" under the Manufactured Home Act or the Rent Justification Act.[6]

Those pleading deficiencies were made all the more evident from the very documents used and relied on by the State to create its claims in the Complaint. Those documents, the written notices of rent increases, not only do not support the conclusory allegations in the Complaint, but actually refute those conclusory statements. Thus, as the notices of rent increases disclose, they were authored and

[6] In that regard, defendant, "Hometown America Communities, Inc.," is **not** mentioned in any of the written notices of rent increases the State relies upon for the bases of its claims in this action. A011. The Complaint does not include any facts, such as disclosures in the ownership records from the Recorder of Deeds, from which it could be reasonably concluded that Hometown did own one or more of the three communities which were the subject of the notices of rent increases. The Complaint is also devoid of any facts, such as allegations that Hometown was the landlord disclosed on a rental agreement for the three communities, facts that would allow a reasonable inference that Hometown was in fact the landlord for lots in these three communities.

sent by Hometown Barclay Farms, LLC (A077, A078), Hometown Angola Beach, LLC (A065, A066) and Hometown Rehoboth Bay, LLC.[7] Thus, the very documents the State relies upon, and indeed, must plead that they exist in order to initiate and prosecute the claims in this action, do not supply one supporting fact that Hometown was the community owner. To the contrary, the essential documents specifically disclose that Hometown was not the party who had sent the notices, was not the party seeking the rent increases and was not the party that offered the alleged inappropriate offer of compromise. Yet despite that, the State alleges only that it was Hometown that sent those notices.

The State did not explain the fatal discrepancies in its Complaint. Indeed, it did not even acknowledge that there were discrepancies. The State did not even offer non-conclusory facts in its Complaint, as it should have, concerning why and how it contended that Hometown, and not the parties disclosed on the written notices, were the community owners liable under the Rent Justification Act. The Complaint contains no allegations from which it could be concluded, other than

[7] A080, A081. Although the State alleges further in its Complaint that the "Defendant" made presentations at the meetings that are required to be held under the Rent Justification Act (A014), the notices of rent increases told all homeowners that representatives of the community owners, **not Hometown or its representatives**, would be making such presentations. A065-A081. No additional non-conclusory facts, such as the name, title and role of Hometown's representatives who were alleged to have made the presentations, were included in the Complaint that would support the State's unsupported allegations.

through conclusory allegations that were contradicted given the very documents the State was relying upon for claims it was asserting against Hometown, that Hometown had anything to do with the matters in the Complaint.[8]

In a very deceptive way, therefore, the State cherry picked specific facts about only what it wanted the Court to know from those written notices of rent increases, the State asserted conclusory allegations unsupported by specific facts about what it wanted to contend about its favored defendant, irrespective of the contrary information contained in those notices. The State affirmatively hid from the trier of fact, by not appending to the Complaint the documents that typically are included as exhibits to the Complaint, the very information which undermined the actual allegations the State made against Hometown and which demonstrated that no claim was or could be stated against Hometown based on the conclusory facts that the State did allege.

[8] The Complaint does not, for example assert that Hometown (i) authorized, approved and directed the sending of the written notices of rent increases, (ii) was the parent corporation of any of the three entities, (iii) controlled or had the ability to control any of those entities or (iv) benefitted, directly or indirectly, from the rental activities of any one of the three entities disclosed in the written notices of rent increases. In fact, the Complaint is missing the typical legal conclusion complaint allegation, where an action is predicated upon a statute, that Hometown was a "community owner" within the meaning of 25 *Del. C.* § 7003(4) and the Rent Justification Act.

C. The Opinion.

Having had no role in authoring, authorizing or sending out any one of the written notices of rent increases to any homeowner tenant and not being a community owner or a landlord with respect to any manufactured housing lots or communities in Delaware, including those communities which were the focus of the notices, Hometown moved to dismiss this Complaint.

The trial court, following submissions by the parties, heard oral argument of the parties, and during that argument, and while confirming the significance of the "community owner" language in the Manufactured Home Act and the Rent Justification Act with respect to stating a claim under those Acts, remarked that: "The only thing that matters to me is whether [the State] adequately alleged that [Hometown] is the owner of these communities within the statutory language." A130.

Thereafter, on April 15, 2015, the trial court issued its Opinion finding that Hometown was correct in its position that the State had failed to offer in its Complaint "any reasonable set of circumstances under which it could hope to hold Hometown responsible for alleged violations of the Manufactured Homeowners and Communities Act and the Rent Justification Act, which alleged violations appear to have been committed by other parties if they were committed at all." Op. at p. 8. The trial court specifically found that:

> The State did not plead any facts in its complaint supporting its allegation (1) that Hometown is the owner and operator of the three communities, (2) that Hometown rents lots in the three communities to owners of manufactured homes who place their houses on the lots, and (3) that Hometown on September 14, 2015 issued a rent increase notice to each tenant in the three communities.

Op. at p. 4.

Relying on the fact that the rent increase notices could be appropriately considered within the confines of the motion to dismiss because those notices "formed the basis of the State's allegations against Hometown[,]" (*id*.) and recognizing that each of the written notices specifically and repeatedly disclosed separate authors, and that those notices confirmed on their face that Hometown "did not, as alleged by the State, send the notices[,]" (*id*. at 6) the Court concluded that the State "has failed to adequately plead any facts supporting its allegation that Hometown is the owner and operator of Angola Beach and Estates, Barclay Farms, and Rehoboth Bay." Op. at p. 7.

Despite the clear direction offered in the Opinion that would have allowed the State to meet its pleading obligation to assert a claim against Hometown, or its clear path to substituting in its Complaint the three entities which authored and sent out the rent increase notices as the appropriate "community owner" parties under the Rent Justification Act, the State chose to appeal to this Court.

ARGUMENT

I. THE TRIAL COURT CORRECTLY DISMISSED THE CLAIMS AGAINST HOMETOWN PURSUANT TO SUPERIOR COURT CIVIL RULE 12(b)(6) AND ITS DECISION SHOULD BE AFFIRMED.

A. Question Presented.

Whether the Superior Court committed reversible error by dismissing the Complaint under Superior Court Rule 12(b)(6) when the State failed to allege any non-conclusory allegations to support its claims.

B. Scope of Review.

This Court reviews decisions on motions to dismiss *de novo*. *In re GM (Hughes) S'holder Litig.*, 897 A.2d at 167. This Court's review of State's Complaint on a motion to dismiss under Rule 12(b)(6) entails a consideration of whether the well-pleaded factual allegations of the complaint would entitle the State to relief under any "reasonably conceivable set of circumstances." *Central Mortgage Co. v. Morgan Stanley Mortgage Capital Holdings LLC*, 27 A.3d 531, 535 (Del. 2011). Although this Court is required to accept all well-pleaded allegations as true, it is not "required to accept as true conclusory allegations 'without specific supporting factual allegations.'" *In re GM (Hughes) S'holder Litig.*, 897 A.2d at 168 (*quoting In re Santa Fe Pac. Corp. S'holder Litig.*, 669 A.2d 59, 65-66 (Del. 1995)). Nor is it required to "draw unreasonable inferences in favor of the non-moving party." *Price v. E I DuPont de Nemours & Co., Inc.*, 26 A.3d 162, 166 (Del. 2011). Because

the State has failed to state any legal or factual basis for its claims against Hometown, there is no reasonably conceivable basis by which the State's Complaint can withstand this Motion to Dismiss and the trial court's Opinion must be affirmed.

C. Merits of Argument.

As recognized by the trial court, under the Rent Justification Act, the only party responsible for fulfilling the obligations under that Act, and the only party that can be held liable for failing to fulfill such responsibilities, is the "community owner."[9] Yet, rather than name as defendants the three distinct owners of the communities that authored and sent the notices of rent increases, the State filed its action against "Hometown America Communities, Inc.", a completely independent legal entity. In support thereof, the State alleged that Hometown "owns three manufactured home communities in Delaware" and "rents manufactured home lots in the three communities to owner of manufactured homes. . . ." A008; A009.

[9] *See* 25 *Del. C.* § 7040 *et seq*. ("A community owner may raise a home owner's rent. . .;" "A community owner shall give written notice to each affected home owner. . . ."). "Community owner" or "landlord" is defined to mean:

> The owner of 2 or more manufactured home lots offered for rent. It includes a lessor, sublessor, park owner or receiver of 2 or more manufactured home lots offered for rent, as well as any person, other than a lender not in possession, who directly or indirectly receives rents for 2 or more manufactured home lots offered for rent and who has no obligation to deliver such rents to another person.

25 *Del. C.* § 7003(4).

Those conclusory allegations, without supporting facts, are not enough to state a claim against Hometown under Rule 12(b)(6).

Missing from the State's Complaint are facts which would have supported those bald assertions. The trial court correctly focused on the fact that sufficient factual support was missing from the Complaint. Specifically, the Court noted that:

> The State did not attach the deeds showing who actually owns the three communities. The State did not attach a single lease showing that Hometown had a landlord-tenant relationship with a single one of the tenants in the three communities. The State did not attach a single one of the rent increase notices showing that Hometown sent them to the tenants in the three communities.

Op. at p. 4. None of that information was supplied, and no facts which would have supported the conclusory allegations of Hometown's ownership and rental of manufactured home lots were included in the Complaint.[10] There is simply no specific supporting factual allegations, or attached supporting documents, which would require this Court to accept as true the wholly conclusory allegations set forth in the Complaint. *See In re GM (Hughes) S'holder Litig.*, 897 A.2d at 168; *In re Santa Fe Pac. Corp. S'holder Litig.*, 669 A.2d at 65-66.

[10] The reason these allegations were not made is that they could not be factually supported. As discussed *supra*, the Court can take judicial notice that the publicly available land records confirm that the owners are the same parties who authored and sent the written notices of rent increases. *Compare* A041-A043 *with* A065-A081.

Compounding that fatal pleading deficiency was the fact that the conclusory allegations that were made in the Complaint were not supported, and, indeed, were contradicted by the detailed disclosures made in the written notices of rent increases. Those notices disclose in three separate places that they were authored and sent by three separate entities, Hometown Angola Beach, LLC, Hometown Rehoboth Bay, LLC and Hometown Barclay Farm, LLC, entities that are not Hometown. Those notices further disclosed that those three entities were the parties – the "community owners" – initiating the rent increases that were the subject of the notices and offering the rent increase compromises that the State finds objectionable and attacks in its Complaint. A065-A081.

Moreover, and most damning for the State's Complaint, nowhere in the rent increase notices do they mention Hometown, let alone make any disclosure to the homeowner tenants that Hometown is the community owner or had anything to do with the notices of rent increases. *Id*. As the trial court recognized:

> [The] rent increase notices do not support the State's allegation (1) that Hometown is the owner and operator of the three communities, (2) that Hometown rents lots in the three communities to owners of manufactured homes, and (3) that Hometown on September 14, 2015 issued a rent increase notice in violation of the Rent Justification Act to each tenant at Angola Beach and Estates, Barclay Farms, and Rehoboth Bay. Indeed, the rent increase notices support the conclusion (1) that each of the communities is owned by a separate limited liability company, (2) that each of the limited liability companies leases lots in its community to owners of manufactured homes, and (3) that each separate limited liability company sent out rent increase notices only to the tenants in their own communities.

Op. at pp. 7-8.

Where, as here, the documents relied upon to form the basis of the claims asserted in the Complaint "effectively negate the claim as a matter of law," this Court may dismiss the claim under Rule 12(b)(6). *In re GM (Hughes) S'holder Litig.*, 897 A.2d at 169; *Malpiede v. Townson*, 780 A.2d 1075, 1083 (Del. 2001). Similarly, because the unambiguous written notices of rent increase, used and relied upon by the State in drafting the Complaint, "contradict the complaint's allegations," this Court may dismiss the claim against Hometown. *Amalgamated Bank v. Yahoo! Inc.*, 132 A.3d 752 (Del. Ch. 2016); *I/M X Info Mgmt. Solutions v. Multiplan, Inc.*, 2013 Del. Ch. LEXIS 160, at *12 (Del. Ch. June 28, 2013) (attached as Exhibit D).

Despite the under-supported conclusory allegations and the directly contradictory allegations in documents the State relied upon in creating and asserting the claims in the Complaint, the State asserts on this appeal that it was not required to "plead specific evidence establishing how [Hometown] meets the broad statutory definition" and that Hometown's "burden" on this motion was to "allege and establish that it was not any of the entities defined by Delaware law as a community owner." OB at pp. 20-21. According to the State, **Hometown** had a burden to refute in its motion to dismiss each and every possible definition of "community owner" as might be applied to it, irrespective of whether the State asserted any facts supporting any one of the definitions which might apply to Hometown.

The State's creative, but hopelessly desperate argument turns this Court's well-established pleading burdens on their head, and if accepted, would overturn countless decisions of this Court about what must be shown in order to overcome a Rule 12(b)(6) motion to dismiss based upon a failure to state a claim. Neither Hometown nor the trial court imposed upon the State an obligation to plead specific "evidence." Rather, as the case law requires, it was the State's initial burden, in drafting the Complaint, if it wanted to have this Court accept its allegations as true in connection with considering any Rule 12(b)(6) motion, to set forth in its Complaint specific supporting factual allegations which support its conclusory allegations. *In re GM (Hughes) S'holder Litig.*, *supra* at 168. Therefore, on a motion to dismiss, it is the actual factual allegations of the Complaint which serve as the touch stone in considering whether the State can survive such a motion. As discussed above, in considering what the State actually alleged, and the actual disclosures in the documents on which it relied, the State failed in that obligation not because it had an obligation to plead specific "evidence," but rather it failed to allege specific facts, in light of the contrary facts in the written notices of rent increases, which would have lead a trier of fact to conclude that the State had alleged a "reasonably conceivable set of circumstances" which would entitle it to relief against Hometown.

Under the State's imaginative and newly concocted pleading theory – a theory for which it cites not legal authority – it contends that it can simply say that Hometown is a "community owner," and thus play a game of hide and seek behind one or any one of the multiple definitions in the Act, irrespective of whether it pled anything in the Complaint concerning any aspect of the applicable statutory definition. Hometown had no burden, disregarding what facts were actually pled in the Complaint, to set up and knockdown each and every potential way it could have been a 'community owner' under the Rent Justification Act. Rather, it was the State's burden to establish from its Complaint that it alleged sufficient non-conclusory facts by which it could hold Hometown responsible under the Rent Justification Act and the Manufactured Home Act. *In re GM (Hughes) S'holder Litig.*, *supra* at 168. As the trial court found, the State failed to meet that minimal burden under the standards required by this Court, and the Complaint was properly dismissed for failing to state any cause of action against Hometown.

In the end, the State's argument falls of its own weight. The State concedes that it only "generally" alleged that Hometown "owns" the three named communities, but that such general allegation provided "notice" of the State's contention that Hometown is a "community owner" under 25 *Del. C.* § 7003(4). OB at p. 19-20. Yet, that general allegation cannot be read so broadly, given the absence of supporting facts and given the existence of contradictory facts in the documents

used, relied upon and integrated into its Complaint. A simple assertion of ownership of a manufactured housing community does not give fair notice that each and every definition under the Manufactured Home Act was being asserted. The State neither alleged that Hometown was a "community owner, as that term is defined under 25 *Del. C.* § 7003(4)," nor identified Hometown as a "community owner." Either might have given reference to the Rent Justification Act and to the Manufactured Home Act definitions therein, and either might have given the trial court, and Hometown, notice of what the State now alleges it intended to assert. In short, the State simply cannot now expand its claim to include something it did not allege, specifically or generally.

Moreover, and just as fatal to the State's argument, is the fact that there are **no** specific facts supplied in the Complaint from which the trial court could have concluded that all of the statutory definitions were applicable or were intended to be applicable to Hometown.[11] There is, therefore, no obligation for Hometown to have

[11] The dearth of any particular supporting factual allegations in the Complaint about what definition under 25 *Del. C.* § 7003(4) the State was pursuing Hometown was brought to the fore when the State, pressed at the oral argument about exactly what it was claiming with respect to Hometown, conceded that its view was that "Hometown was the 'ultimate parent in the relationship' and that it directly or indirectly profited from the three communities in question." Op. at p. 6. **Nowhere** in the Complaint will this Court find any such allegation, or facts supporting such allegation, as confirmed by the Court below. *Id*. at p. 7. Moreover, even if such allegations and facts were alleged, the Court below found, there were no factual or other allegations in the Complaint that would have "explained how such a

undertaken to refute, definition by definition, that which was not fairly noticed and pled.

In any event, even if this Court imposed the newly created burden suggested by the State on a party challenging whether the claims were adequately plead against it, Hometown asserted below (A027), and again asserts here, that the State failed to plead specific non-conclusory facts that would it allow it to pursue Hometown as a "community owner." As discussed above, the owner and landlord allegations are refuted by the very documents upon which the State relies. A review of the other allegations in the Complaint and the facts which the State recites in support of those allegations, demonstrates that the State has failed to allege any other facts or legal theories which would cause Defendant to be liable for any of the alleged wrongs to the homeowner tenants, wrongs that if they could ever be violations of the law, took place in and for Delaware manufactured housing communities which Defendant does not own, and for which it is not a lessor of lots in such communities.

Based on the facts as alleged in the State's Complaint, there is, therefore, no reasonably conceivable basis that would allow this Court to find that the State has stated a cause of action against Hometown. Thus, the trial court's decision should be affirmed.

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relationship would make Hometown the 'community owner' or 'landlord' of the three communities under the two statutes in question." *Id*.

II. IN FINDING THE COMPLAINT FAILED TO STATE A CAUSE OF ACTION AGAINST HOMETOWN, THE SUPERIOR COURT APPROPRIATELY CONSIDERED DOCUMENTS THAT WERE INTEGRAL TO THE CAUSES OF ACTION ALLEGED AND THAT WERE INCORPORATED INTO THE COMPLAINT.

A. Question Presented.

Whether in connection with the consideration of a motion to dismiss under Rule 12(b)(6), the trial court committed reversible error when it considered and relied on documents which were integral to the causes of action alleged in the Complaint and which were integrated and incorporated into the Complaint.

B. Scope of Review.

This Court reviews decisions on motions to dismiss *de novo*. *In re GM (Hughes) S'holder Litig.*, 897 A.2d at 167. For purposes of this particular appeal, this Court has held that a claim may be dismissed if allegations in the complaint or in exhibits incorporated into the complaint "effectively negate the claim as a matter of law." *Malpiede v. Townson*, 780 A.2d at 1083. Similarly, a "complaint may, despite allegations to the contrary, be dismissed where the unambiguous language of documents upon which the claims are based contradict the complaint's allegations." *Amalgamated Bank*, 132 A.3d at 797 (citations omitted).

C. Merits of Argument.

In considering the Motion to Dismiss, the trial court considered and relied upon the three written notices of rent increases. Op. at p. 4. Relying on this Court's

precedent,[12] the Court did so because it believed it was appropriate "since the notice formed the basis of the State's allegations against Hometown." Op. at pp. 4-5.

Notwithstanding the finding of the court below, the State first contends on this appeal that it was an error for the Court to have considered the notices of rent increase because they were neither integral to the claims nor were they incorporated into its Complaint. OB at p. 26. The State's argument is easily dispatched.

The State's Complaint is premised upon the three notices of rent increase as the basis for its causes of action and the relief which it is seeking. Specifically, that Complaint states:

> This action arises out of an investigation by the Consumer Protection Unit that revealed Defendant, owner and operator of three Delaware manufactured housing communities, has violated and continues to violate the [Manufactured Home Act] and the Rent Justification Act **by issuing rent increase notices to its tenants** that violate the requirements of both laws. **The unlawful rent increase notices**, as presented to Tenants in each of the three communities, improperly require Tenants to waive their statutory right to arbitrate the proposed rent increase in order to obtain a significant discount in the rent to which Defendant claims it is otherwise entitled.

A006 (emphasis added).

Likewise, the three notices of rent increases form the basis of the relief sought by the State, with the Complaint seeking the relief as follows:

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[12] *Vanderbilt Income & Growth Assocs., L.L.C. v. Arvida/JMB Manager*, 691 A.2d 609, 613 (Del. 1996)(recognizing the exception to the general Rule 12(b)(6) prohibition against considering documents outside the pleadings where the document in integral to a plaintiff's claim and incorporated into the complaint).

> [T]o (i) declare that the **rent increase notices issued by Defendant** are invalid because they are inconsistent with and include provisions prohibited by the Manufactured Housing Owners and Community Owners Act and the Rent Justification Act, (ii) require **Defendant to issue new rent increase notices** in compliance with the Manufactured Housing Owners and Community Owners Act and the Rent Justification Act, (iii) require Defendant to reimburse affected Tenants for rent improperly collected by Defendant pursuant to the **defective and unlawful rent increase notices**[.]

A006 (emphasis added).

The written notices of rent increase therefore are inextricably bound up with the State's claims. Just how integral those rent increase notices are to the State's cause of action is demonstrated by the language of the Complaint which outlines in specific detail the facts and information relevant to the rent increases, and the proposed offer of compromise, all of which came from those three separate rent increase notices sent out to the three separate communities. Paragraphs 16 through 29 of the Complaint, beginning under the heading "**Defendant's Unlawful Rent Increase Notices for 2016**," include information upon which the State's claims lie and which could have come from only one place: The rent increase notices themselves.[13]

[13] *Compare* A011-A015 *with* A065-A081. The trial court determined and concluded that the "State certainly had to review this information in order to prepare its complaint and these types of documents are often attached to complaints of this nature." Op. at p. 4.

Furthermore, by the very nature of the claims themselves, in Count I and II, it is clear by the plain language of the Complaint that the State's claims rest entirely on the rent increase notices, which each included the offers to compromise which the State alleges were illegal. If such rent increase notices were never sent, and were never referenced or referred to in the Complaint, the State's case would not exist. The trial court also concluded as much.[14]

In short, those rent increase notices were used, relied upon and incorporated and integrated into the Complaint by the State, and because of the nature and type of the claims being brought here, the State's action can only be based upon the written notices of rent increases that were sent out to the homeowner tenants. Because the written notices of rent increase were essential and integral to the claims being pursued in the State's Complaint, and that the information and facts set forth in the notices were incorporated by the State into its Complaint, it was appropriate for the trial court to have considered in connection with the motion to dismiss under Rule 12(b)(6) those written notices of rent increases under such circumstances. *Vanderbilt Income & Growth Assocs., L.L.C.*, 691 A.2d at 613; *In re Santa Fe Pac. Corp. S'holder Litig.*, 669 A.2d at 69-70.

[14] Op. at p. 4-5 ("I did review a rent increase notice for each of the communities, which I thought was appropriate to do since the notice formed the basis of the State's allegations against Hometown.").

It is particularly appropriate for the trial court to have considered the written notices of rent increases because the policy reasons for the incorporation-by-reference doctrine, to not mislead the trier of fact through misleading or partial disclosures, is relevant given the fact that the written notices of rent increases provided no factual support for the assertions made by the State with respect to Hometown. The incorporation-by-reference doctrine permits a court to review the actual document to ensure that the plaintiff has not misrepresented its contents and that any inference the plaintiff seeks to have drawn is a reasonable one. *In re GM (Hughes) S'holder Litig.*, 897 A.2d at 169-70. As this Court has recognized, the doctrine also enables a court to dispose of meritless complaints at the pleading stage. *Id*. (citing *In re Santa Fe Pac. Corp. S'holder Litig.*, 669 A.2d at 70)("Without the ability to consider the document at issue in its entirety 'complaints that quoted only selected and misleading portions of such documents could not be dismissed under Rule 12(b)(6) even though they would be doomed to failure.'"). "When a complaint partially quotes or characterizes what a [] document says, a defendant is entitled to show the trial court the actual language or the complete context in which it was used." *Id*. at 169. If the Court were not able to consider the entire document, then claims that would ultimately fail would survive a motion to dismiss simply by referring to only misleading portions of the document.

In the instant matter, being able to review and consider the entire document upon which the State relies demonstrates the State's action is "doomed to failure." Such a review demonstrates that the critical information, the authoring and sending of the documents upon which they rely, was not done by Hometown as they allege, but instead by others not named in the Complaint. Application of the incorporation-by-reference doctrine here upholds the salutary public policy principles of keeping litigants honest in what they allege concerning documents upon they rely and which they integrate and incorporate into their Complaint. It is essential for the trier of fact to possess the critical ability to consider documents at the heart of the claims in the Complaint in their entirety in order to obviate any material omissions or misstatements. It was not reversible error for the trial court to have considered the notices of rent increases.

The State, however, makes two additional arguments as to why it believes it was error for the trial court to have considered the rent increase notices: (i) that the trial court went beyond considering the disclosures therein but actually considered the matters for the "truth of their contents" (OB at p. 26), and (ii) that such rent increase notices themselves are "ambiguous." *Id.* at p. 27. Those arguments are meritless.

That the trial court allegedly accepted the notices of rent increases for the truthfulness of the matters asserted therein is belied by the trial court's Opinion. In

fact, the State misinterprets what the trial court did. The court did not accept or reject the truthfulness of the statements made in the notices, it just noted that what was written therein did not support the State's own contrary conclusory allegations.[15] Indeed, it specifically did not state that it believed what was written was the truth, only that what was stated in those documents, documents upon which the State relied for the merits of its claims, did not support the conclusory allegations the State was making. Thus, the State was required, in light of what the notices of rent increases stated and its own conclusory allegations, to provide additional non-conclusory allegations of specific facts that would allow the Court to accept as true such allegations. That, according to the trial court, the State failed to do. Op. at p. 7 (The State "has failed to adequately plead any facts supporting its allegation that Hometown is the owner and operator of Angola Beach and Estates, Barclay Farms, and Rehoboth Bay."). Thus, the State's argument is baseless.

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[15] According to the trial court:

> rent increase notices do not support the State's allegation (1) that Hometown is the owner and operator of the three communities, (2) that Hometown rents lots in the three communities to owners of manufactured homes, and (3) that Hometown on September 14, 2015 issued a rent increase notice in violation of the Rent Justification Act to each tenant at Angola Beach and Estates, Barclay Farms, and Rehoboth Bay.

Op. at p. 7.

Likewise, the State's assertion that the three notices were "ambiguous" is demonstrably wrong. The three written notices could not be clearer. As discussed in detail above, each was authored and sent by parties disclosed therein. Indeed, those authors made it obvious that they were the landlords, they were seeking the rent increase and that they, rather than any other party, were proposing the compromises set forth in those notices. A065-A081. Most significantly, each of those notices was signed, not by Hometown, but rather by the party which had the obligation under the Rent Justification Act, the owners of the communities. *Id*. Finally, it is further without dispute that Hometown is not referenced, referred or discussed anywhere in those documents. *See* A107.

A clearer and more straightforward recitation of who was responsible for the authoring and the sending of the notices could not be created or expected, and claims of ambiguity in such notices, given the specificity of the State's recitation of and reliance upon **every other salient fact** from such notices in its Complaint, are nothing more than after-the-fact counsel created excuse for failing to include specific facts to underpin their conclusory and unsupported facts alleged in the Complaint. There is no basis to conclude that the three written notices were ambiguous such that the trial court's conclusions concerning motion to dismiss must be overturned.

Lastly, in a throw away argument, the State suggests that, based on information and allegations nowhere found in the State's Complaint, there is a

genuine issue of material fact as to whether Hometown is a community owner and thus it was improper for the Court to have dismissed the Complaint. OB at pp. 28-29. Had the State included in its Complaint any or all of such information it alleges in its brief that it believes creates disputed issues of material facts, then maybe there would be a disputed record sufficient to have denied the Rule 12(b)(6) motion. Unfortunately for the State, it did not bother to have included such allegations in its Complaint, and cannot now supplement its deficient pleadings through its briefing to create circumstances which allows it to assert such alleged disputed issues of fact.

CONCLUSION

For the reasons set forth in this brief, Defendant-Below/Appellee Hometown America Communities, Inc. respectfully asks that this Court affirm the judgment of the court below.

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