IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

STEPHEN WEYL and,	)	
PATRICIA WEYL,	)	C.A. No. 04-09-104
Appellants/Plaintiffs,	)	
	)	
vs.	)	
	)	
BAY CITY INC. and,	)	
BAY CITY LIMITED,	)	
PARTNERSHIP,	)	
Appellees/Defendants.	)	

Submitted October 15, 2007
Decided November 5, 2007

Paul G. Enterline., Esquire, Attorney for Plaintiffs
Karl Haller, Esquire, Attorney for Defendants

DECISION AFTER TRIAL

This is an action by mobile home lot tenants seeking monetary damages and other relief from the landlord arising from water that allegedly flows onto, and accumulates on, the tenants' lot. After consideration of the evidence offered at trial and the post-trial submissions, the Court finds for the defendants, for the reasons set forth below.

PROCEDURAL HISTORY

This is an appeal *de novo* from the Justice of the Peace Court. The matter was fully litigated and tried below, and judgment was entered in favor of plaintiffs the Weyls, ordering the defendants to "remedy the run-off of the adjoining lots onto the plaintiffs' lot" and granting plaintiffs "rent abatement" of 25% until remedied. Plaintiffs timely appealed to this Court.

The Complaint on Appeal alleges that defendants have breached certain terms of the rental agreement mandated to be included in the rental agreement by Delaware law. Plaintiffs' Complaint on Appeal seeks both monetary damages for breach of the rental agreement, and petitions for the appointment of a receiver to remedy the alleged drainage problem on plaintiffs' lot.

FACTS

In 1999 plaintiffs purchased the existing mobile home improvements on a lot in defendants' mobile home park, Bay City, and entered into a lease with defendants for that lot. Plaintiffs, whose primary residence is in Bear, Delaware, purchased this vacation home, a late – 1980's single wide mobile home, for $16,000.00. Some of the adjoining lots at that time were unimproved.

Bay City is a waterfront mobile home park adjacent to the Indian River Bay. Plaintiffs' lot is located near a lagoon. As a result the property is subject to the effects of tides and storms, including a tide-dependent high water table and flooding from the Bay. To meet FEMA flood insurance requirements, in the years since plaintiffs' purchase and rental of their lot, some of the nearby lots have been bulkheaded, and filled in to raise the ground level of the those lots. Some of these lots were raised by individual tenants, and some by Defendants.

It is clear from the evidence that, notwithstanding the natural periodic flooding and other water-related problems concomitant with the choice to knowingly reside on waterfront property at or barely above sea level, as a result of the raising of the adjoining lots, increased rain and stormwater runoff have been flowing onto plaintiffs' lot from the adjoining lots. As a result, "ponding" or standing water sometimes occurs on plaintiffs' lot after rains. Although plaintiffs' lot had experienced flooding or other

water-related problems prior to the raising of the adjoining lots, the raised lots have exacerbated the problem.

The plaintiffs have suffered the results of this increased runoff from the nearby lots since at least July, 2003. When it occurs, portions of their lot sometimes remain under water for up to 48 hours. When the water subsides, it sometimes leaves mud and destroyed grass. Defendants in July, 2003 attempted to alleviate the problem by installing a drain pipe to drain water off of plaintiffs' lot, but it has not fully remedied the situation, and the occasional conditions still occur.

Defendants retained Ian Kaufman, an environmental consultant and soil scientist expert in storm and wastewater management, to investigate and report on plaintiffs' claims. He testified that Bay City lies in a one-hundred year flood plain comprised of sandy soils that drain poorly and have "limitations" due to the high water table and periodic flooding from one-hundred year flood issues. He said, however, that the problem on plaintiffs' lot is due **in part** to stormwater runoff from both the adjacent raised lots and other impervious areas of the community. He said the raised lots were raised to comply with FEMA flood insurance requirements for construction, not to fix grading problems. Mr. Kaufman further testified that raising the plaintiffs' lot would not address the stormwater management issues causing the occasional water flow onto the lot and temporary ponding. He said that the stormwater runoff in the area needs to be better managed. In Kaufman's expert opinion, the runoff problem can be solved by re-grading the *street*, constructing guttering and swales down the road, and installing a storm drain emptying into the lagoon. All of these items would be modifications and improvements to areas of the park outside of the plaintiffs' lot.

Bob Davidson, a house mover, testified for plaintiffs. His testimony was offered only to establish the cost of raising the level of plaintiffs' entire property, and was not

admitted as opinion evidence on the causes of plaintiffs' problem, or the proper remedy for the problem. He testified that the cost of removing plaintiffs' improvements from the lot, adding fill dirt to raise the entire lot level 24 inches, installing piers for the manufactured home and re-installing and skirting the home and improvements would be approximately $15,787.

DISCUSSION

The Delaware Manufactured Homes and Manufactured Home Communities Act[1] (the "Act") "regulates and determines the legal rights, remedies and obligations of all parties to a rental agreement . . . for a lot for a manufactured home in a manufactured home community"[2] in Delaware. Section 7006 of that Act lists various terms that must be included in a rental agreement. These include a provision requiring the manufactured home community landlord to "[m]aintain and re-grade the lot area where necessary and in good faith to prevent the accumulation of stagnant water thereon and to prevent the detrimental effects of moving water," and to "maintain the manufactured home community in such a manner as will protect the health and safety of residents, visitors and guests."[3]

Section 7031 of the Act provides that a tenant "may petition for the establishment of a receivership in a Justice of the Peace Court upon the grounds that there has existed for 5 days or more after notice to the landlord" either a lack of heat, water, light or electricity if the landlord is obligated to provide such, or "any other conditions imminently dangerous to the life, health or safety of the tenant."[4]

The primary gravamen of plaintiffs' claim is that, under the statutorily mandated provisions of the rental agreement, defendants are contractually obligated to raise the

[1] 25 *Del. C.* Ch. 70.
[2] 25 *Del. C.* § 7001 (b).
[3] 25 *Del. C.* § 7006 (a) (13) (a), (b).
[4] 25 *Del. C.* §7031 (2).

surface height of plaintiffs' entire lot by approximately two feet, and to pay for the costs of removing and then re-placing plaintiffs' manufactured home and all the improvements on the lot, due to a change in conditions external to plaintiffs' lot that have contributed to an increased flow of stormwater onto plaintiffs' lot. This claimed obligation, however, clearly surpasses the obligation the legislature intended to place upon manufactured home community landlords, as evidenced by the plain language of the applicable statutes, even when "liberally construed" as required by the Code.[5]

The Code's requirement that the landlord agree to maintain and re-grade the lot clearly intends to obligate the landlord to make grading **repairs** to the lot to alleviate defects that develop in the lot itself, that cause the accumulation of stagnant water or detrimental moving water. It cannot, and does not intend the landlord to indemnify the tenant when changing external conditions result in increased water flow onto the lot. If it did otherwise, manufactured home community landlords would be required, for example, to raise their entire communities if the construction of a nearby development, or rising water levels from global warming or other environmental conditions, caused increased stormwater runoff.

In any event, the Court finds the plaintiffs have failed to meet their burden of proof by a preponderance of the evidence that the landlord has breached the terms of the rental agreement mandated by section 7006 (a) (13) (a) of the Code by failing to maintain and re-grade the lot, and that such failure is the cause of plaintiffs' claimed damages. No evidence was offered to show that the grading of plaintiffs' lot had diminished or changed, requiring maintenance.

It is clear from the evidence that defendants have failed to take adequate steps for proper stormwater management in their community in general, and that this has

[5] 25 *Del. C.* §7001 (a).

negatively impacted plaintiffs' lot. However, for this failure to amount to a breach of the rental agreement terms imposed by section 7006 (a) (13) (b) of the Code, plaintiffs must prove that such failure of community maintenance is of a degree that harms the "health and safety of residents, visitors, and guests." After consideration of the evidence offered and weighing the credibility thereof, the Court finds that plaintiffs have failed to prove that the runoff and ponding conditions they experience from time to time on their lot are harmful to the health and safety of plaintiffs or their guests. The conditions clearly are at times messy and inconvenient, but do not rise to the level of harming health and safety.

Likewise, since the credible evidence fails to prove the conditions harm plaintiffs' health and safety, it also fails to prove the conditions are "imminently dangerous to the life, health or safety of the tenant," justifying the appointment of a receivership under Section 7031 of the Act.

Paradoxically, plaintiffs in this action insist equitable relief is not appropriate because there is an adequate remedy at law of money damages, and Defendants assert this Court has jurisdiction to grant an equitable remedy to address damages proven by plaintiffs. Plaintiffs, therefore, seek only monetary damages, despite their claim for appointment of a receiver. Even if plaintiffs had proven their claim of breach of the rental agreement, the evidence established that the remedy to plaintiffs' harm is the institution and construction of stormwater management improvements outside of plaintiffs' rented lot. Such relief would require the exercise of equitable powers beyond the jurisdiction of this Court.

CONCLUSION

Plaintiffs' bayside manufactured home rental lot has suffered stormwater runoff problems exacerbated by the filling and raising of nearby lots. However, defendants' failure or refusal to act to alleviate that exacerbation does not amount to a breach of the mandatory terms of the rental agreement between plaintiffs and defendants. Although defendants might be responsible for the raising of some of the raised lots, no related tort claims were made or proven in this action. And although it appears from the evidence that defendants have failed to implement community stormwater management improvements that could minimize plaintiffs' water problems, plaintiffs have failed to prove entitlement to this remedy, even if this Court had equitable jurisdiction to order such.

Accordingly, judgment is entered against the plaintiffs and in favor of the defendants as to both Counts. Costs of suit are awarded to defendants.

IT IS SO ORDERED this _____ day of November, 2007.

_____
Kenneth S. Clark, Judge