IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

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| STATE OF DELAWARE, *ex rel.*, M. JANE BRADY, ATTORNEY GENERAL, STATE OF DELAWARE, | ) | |
| Plaintiff, | ) | |
| v. | ) | C.A. No. 701-S |
| SILVERVIEW FARM, INC., a Delaware Corporation, and JAMES S. TRUITT, JR., GAIL H. TRUITT, and JAMES S. TRUITT, III, | ) | |
| Defendants. | ) | |

***MEMORANDUM OPINION AND ORDER***

**Submitted: June 3, 2005**
**Decided: July 19, 2005**

Olah N. M. Rybakoff, Esquire, Judy Oken Hodas, Esquire, Barbara J. Gadbois, Esquire, DEPARTMENT OF JUSTICE, STATE OF DELAWARE, Fraud and Consumer Protection Division, Wilmington, Delaware, *Attorneys for the Plaintiff*.

John W. Paradee, Esquire, D. Benjamin Snyder, Esquire, PRICKETT, JONES & ELLIOTT, P.A., Dover, Delaware, *Attorneys for the Defendants.*

LAMB, Vice Chancellor.

## I.

In September 2004, the Attorney General filed this action on behalf of the State of Delaware against the owners of a manufactured home community. The complaint alleges a pattern of ongoing behavior by the owners that includes harassing tenants, imposing unreasonable rules, and preventing the tenants from enjoying their homes. The complaint then charges that, through this pattern of conduct, the owners violated the Manufacturing Home Owners and Community Owners Act ("the Act"), the Consumer Fraud Act, the Uniform Deceptive Trade Practices Act, and the Consumer Contracts Act.

The owners moved to dismiss seven of the twelve counts for failure to state a claim upon which relief may be granted.[1] The court dismissed Count XI (Violation of Uniform Deceptive Trade Practices Act) and Count XII (Violation of Deceptive Practices in Consumer Contracts) from the bench at the hearing on the dismissal motion.[2] One week later, the Attorney General stipulated to the dismissal, with prejudice, of Count IX (Failure to Provide an Adequate Recreation Area).

[1] Count I (Retalitory Actions), Count II (Unreasonable Rules and Standards), Count III (Unwritten Rules), Count IV (Imposition of Fines and Unreasonable Fees), and Count X (Violation of the Consumer Fraud Act) were not part of this motion and remain part of the litigation.

[2] Tr. at 61.

For the reasons discussed below, the other four contested counts must also be dismissed because the complaint does not allege any violation of the statutory provisions upon which those counts rely.

## II.[3]

A. The Parties

The plaintiff is the State of Delaware, *ex rel.*, Attorney General M. Jane Brady. It brings this enforcement action through Delaware's Consumer Protection Unit.

The defendants are Silver View Farm, Inc., a manufactured home community in Rehoboth, Delaware with more than 140 tenants, and its owners, James S. Truitt, Jr., Gail H. Truitt, and James S. Truitt, III. At all relevant times, the Truitts were the owners, managers, officers, agents, and employees of Silver View. Each of the Truitts was personally and actively involved in the day-to-day business affairs of Silver View. The Truitts' roles at Silver View have remained the same during this litigation. All defendants are properly classified as landlords under the Act.[4]

B. The Dispute

The complaint alleges that the defendants have violated a laundry list of consumer protection statutes in their operation of the manufactured home

[3] All facts herein are taken from the well-pleaded allegations of the complaint.
[4] 25 *Del. C.* 7003(i).

community. The defendants are alleged to have adopted unreasonable rules, enforced unwritten rules, imposed fines disguised as fees for noncompliance with the rules, interfered with tenants' ability to repair or improve their homes, failed to correct erosion problems, created dangerous conditions on the land, and violated tenants' privacy. Additionally, the complaint alleges that the defendants raised the rent in retaliation for tenant complaints.

The four remaining counts addressed in the motion to dismiss all pertain to 25 *Del. C.* § 7006. Subsection (a) of section 7006 lists fourteen mandatory provisions for rental agreements and subsection (b) identifies twenty-one proscribed provisions for rental agreements. The remaining subsections of 7006 address the remedies for violations of subsections (a) or (b).

1. Count V – Interference With And Limitation Of Tenants' Freedom To Purchase Goods And Services

The complaint alleges that the defendants have violated and continue to violate 25 *Del. C.* § 7006(b)(13) by preventing the tenants from improving or making repairs to their homes. Section 7006(b)(13) states that:

> (b) A rental agreement for a lot in a manufactured home community may not contain . . . (13) A provision which unreasonably limits freedom of choice in the tenant's purchase of goods and services, provided however, that . . . (a) The landlord is not required to allow service vehicles to have access to the manufactured home community in such numbers or with such frequency that a danger is created or that damage beyond ordinary wear and tear is likely to occur to the infrastructure of the community; (b) The landlord may restrict trash collection to a single provider; and (c) The landlord may select shared utilities.

The complaint does not allege that the rental agreements themselves violate this provision. Instead, the complaint cites two examples of conduct by the defendants that is said to violate section 7006(b)(13). First, it alleges that the defendants purposefully interfered with tenant William Dannaker's repair of his porch roof by intimidating the contractor. Second, it alleges that the defendants prevented tenant Susan Hehman from installing new siding on her home because they required the contractor to provide a scaled drawing and a list of building materials, which the contractor refused to do.

2. Count VI – Failure To Prevent And Correct Water Problems And Erosion

The complaint similarly alleges that the defendants violated 25 *Del. C.* § 7006(a)(13)(a) by failing to correct water and erosion problems. Section 7006(a)(13)(a) states that:

> (a) A rental agreement for a lot in a manufactured home community must contain: . . . (13) Provisions requiring the landlord to:
> (a) Maintain 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.

The rental agreements, evidently, contain such provisions. Nevertheless, the complaint cites two examples of the defendants' actions which are said to violate this part of the Act. First, it alleges that the defendants refuse to grade the edge of Dannaker's driveway, which collects water after it rains. The defendants installed

a new driveway for Dannaker and the plaintiff alleges that the new driveway has a three to four inch dropoff to the ground, allowing water to collect. Second, the complaint alleges that the defendants refuse to fix an erosion problem on Hehman's property.

3. Count VII – Dangerous Conditions Created By Defendants

The complaint alleges that the defendants violated 25 *Del. C.* § 7006(a)(13)(b) by creating dangerous conditions. Section 7006(a)(13)(b) states that:

> (a) A rental agreement for a lot in a manufactured home community must contain: . . . (13) Provisions requiring the landlord to: . . .
> (b) Maintain the manufactured home community in such a manner as will protect the health and safety of residents, visitors and guests.

The complaint alleges that the defendants violated this provision of the statute by creating a dangerous condition when they installed new driveways with a three to four inch drop-off to the ground. The plaintiff further alleges that various visitors, including Dannaker's 88-year old mother, have twisted their ankles due to the drop-offs.[5] Like the first two alleged violations of section 7006, Count VII makes no claim that the rental agreement violates the Act.

[5] Compl. Ex. 4.

4. Count VIII – Violation Of Tenants' Privacy And Right To Quiet Enjoyment

Finally, the complaint alleges that the defendants violated 25 *Del. C.* § 7006(a)(13)(h) by intruding into the tenants' privacy. Section 7006(a)(13)(h) states that:

> (a) A rental agreement for a lot in a manufactured home community must contain: . . . (13) Provisions requiring the landlord to: . . . (h) Respect the privacy of residents and agree not to enter into, under or on the manufactured home without the permission of the tenant or an adult resident unless emergency circumstances exist and entry is required to prevent injury to person or damage to property. However, the landlord may, with 72 hours' notice, inspect any utility connections owned by the landlord or for which the landlord is responsible.

The complaint alleges that the defendants threaten and harass tenants who join the Tenants' Association or make complaints;[6] photograph and videotape tenants and their guests; use the license plate numbers of tenant vehicles to obtain information about tenants' guests;[7] and intimidate female tenants by calling them names, staring at them, and shining car headlights into their homes.

The complaint also claims that the defendants violated section 7006(a)(13)(h) by maintaining a set of unreasonable rules that interfere with the

[6] Affidavits of Michael and Brenda Baker, Susan Hehman, William Dannaker, Theresa Dolan, and John Crystle.

[7] Affidavit of John Crystle.

tenants' quiet enjoyment.[8] An abbreviated list of the allegedly unreasonable rules is as follows:[9] prohibiting the parking of motorcycles in driveways, requiring pole lights to remain lit year round,[10] restricting the number of unrelated tenants residing in a home to two persons, prohibiting satellite dishes installed without the defendants' approval, forcing tenants to purchase comprehensive insurance on their homes, requiring written approval for repairs, forcing tenants to rake their lots on specific weekends, requiring tenants to turn off the water supply to their home if they will be away for more than one day, requiring written approval and a related inspection fee before tenants can sell their home, and banning group activities not confined to the designated recreation area.

None of the allegations of Count VIII suggest that the rental agreements at issue failed to incorporate the provisions required by section 7006(a)(13)(b).

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[8] Quiet enjoyment is defined in a related statute to "include[] the peaceful possession of the premises in a manufactured home community without unwarranted disturbance." 25 *Del. C.* § 7003(15).

[9] These rules are listed under Count II, Unreasonable Rules and Standards, of the complaint, but are incorporated by reference under Count VIII. Moreover, Count VIII alleges that the defendants "arbitrarily and unreasonably enforce their rules to harass and annoy Tenants." Compl. ¶ 57.

[10] Apparently the pole light issue was litigated 16 years ago, a fact that the plaintiff failed to bring to the court's attention. *See Silver View Farm Tenant Assoc. v. Silver View Farm, Inc.*, 1989 Del. Super. LEXIS 27, at *14 (Del. Super. Ct. 1989) ("[T]his Court . . . declares that the tenants must keep their pole lights lit year-round and, accordingly, provide the electricity to these pole lights.").

## III.

When ruling on a Court of Chancery Rule 12(b)(6) motion to dismiss, a court "must determine whether it appears with reasonable certainty that, under any set of facts that could be proven to support the claims asserted, the plaintiffs would not be entitled to relief."[11] When making this determination, a court must accept as true all well-pleaded factual allegations in the complaint and all reasonable inferences to be drawn from those facts.[12] However, a court need not "blindly accept as true all allegations, nor must it draw all inferences from them in plaintiffs' favor unless they are reasonable inferences."[13]

## IV.

A. Statutory Interpretation Of 25 *Del. C.* § 7006

The question presented on this motion is simple: does the Act confer upon the Attorney General the power to sue landlords for conduct that is alleged to violate provisions of a rental agreement required or proscribed by that section? "[U]nder settled rules of construction," this court is obliged "to read the Statute as a whole and to harmonize the parts thereof."[14] "If there is no reasonable doubt as to the meaning of the words used, the statute is unambiguous and the Court's role

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[11] *VLIW Tech., L.L.C. v. Hewlett-Packard Co.*, 840 A.2d 606, 611 (Del. 2003) (quotations omitted).

[12] *Grobow v. Perot*, 539 A.2d 180, 187 n.6 (Del. 1988).

[13] *Id.* at 187.

[14] *Murphy v. Bd. of Pension Trustees*, 442 A.2d 950, 951 (Del. 1982) (citing *E. I. Du Pont de Nemours & Co. v. Clark*, 88 A.2d 436, 438 (Del. 1952)).

is limited to an application of the literal meaning of the words."[15] "In performing this analysis, the words in the statute are given their common, ordinary meaning."[16]

The Attorney General's power to enforce the Act is found in section 7025, providing that "[a] violation of a provision of this subchapter by a landlord is within the scope of the enforcement duties and powers of the Consumer Protection Unit, or its successor, of the Attorney General's Office." The defendants contend that, properly construing the enforcement power granted in section 7025, Counts V, VI, VII, and VIII must be dismissed because the complaint does not allege any violation of section 7006. The defendants argue that section 7006 applies only to the formation of rental agreements and does not regulate the post-contractual conduct of landlords. In contrast, the Attorney General argues that section 7006 requires landlords both to conform rental agreements to the statute and then to comply with the rental agreements. According to the Attorney General, her broad powers under section 7025 extend to the enforcement of the terms of rental agreements themselves.

Looking at the plain language of the statute, the court finds that section 7006 unambiguously regulates only the content or formation of rental agreements. Subsection (a) of section 7006 includes a list of mandatory provision for every contract, while subsection (b) lists proscribed provisions. Missing from the Act's

[15] *Hudson Farms v. McGrellis*, 620 A.2d 215, 217 (Del. 1993).
[16] *Id.*

language is any provision transforming the contract terms required or proscribed by section 7006 into statutorily enforceable duties on the part of the landlord. By stating that "[a] rental agreement for a lot in a manufactured home community must contain,"[17] the plain language of the statute indicates that the Act governs the contents of rental agreements—not the enforcement of those agreements. Similarly, the Act provides that "[a] provision of a rental agreement which conflicts with a provision of this subchapter and is not expressly authorized herein is unenforceable."[18] Thus, the Legislature chose to prohibit enforcement of the rental agreement as a remedy for non-compliance. It did not, by contrast, prescribe any remedy for a failure to abide by a statutorily compliant contract. Since the legislation only provides a remedy for non-compliant leases, it can be reasonably inferred that the subject matter of section 7006 is limited to the content of the rental agreements.

If the Legislature intended section 7006 to be a broad-based enforcement statute of manufactured homes contacts, it could easily have included an explicit duty to comply with the terms of the rental agreement along with suggested remedies for breaches of that duty. As drafted, subsections (a) and (b) of section 7006 legislate the content of rental agreements, but they do not grant anyone authority to sue a landlord for contractual violations of a rental agreement.

[17] 25 *Del. C.* § 7006(a).
[18] 25 *Del. C.* § 7001(b).

Accordingly, the enforcement powers of the Attorney General in relation to sections 7006(a) and 7006(b) are confined to ensuring that the rental agreement complies with the statute.

Although the Attorney General argues that "[t]he purpose and policy of the law are not satisfied by mere inclusion of landlords' obligations in the lease,"[19] she fails to show where in the Act the Legislature granted authority to sue for violations of statutorily conforming rental agreements. Instead, section 7006 confers valuable rights on the tenants. By forcing the landlord to offer leases that include the enumerated provisions within every contract and excludes those prohibited, section 7006 affords tenants the ability to sue landlords on the lease to enforce compliance. It is not necessary to the fulfillment of the statute's mandate that the Attorney General also have power to enforce the terms of the same rental agreements.

The counts remaining in the litigation do allege that the owners breached duties created by the Act.[20] Count I alleges that the defendants retaliated against tenants for registering complaints with the Consumer Protection Unit in violation of section 7023, prohibiting landlords from engaging in retaliatory acts. Count II

[19] Pl. Answering Br. at 37.

[20] Count X alleges violations of the Consumer Fraud Act. 6 *Del. C.* § 2513, in pertinent part, prohibits misrepresentation or concealment of any material fact in connection with any lease.

alleges that the defendants violated section 7019 by promulgating rules that do not further any of the enumerated purposes listed in that section of the Act. Count III alleges that the defendants violated section 7005, which requires that a landlord deliver a copy of the rental agreement, rules, standards, and fee schedules of the rental home community before renting the property. The complaint alleges that the owners enforced rules that were not provided to the tenants. The Count IV alleges a violation of section 7008 by the defendants because they have imposed unreasonable fees on tenants. Section 7008 specifically limits when and how a landlord may assess fees on the tenants. These identified counts properly allege violations of the Act because they allege activities by the defendants that are prohibited by the Act.

**V.**

Since Counts V, VI, VII, and VIII do not allege that the defendants have violated section 7006 by using a non-conforming rental agreement, those counts must be dismissed. The motion to dismiss is GRANTED. IT IS SO ORDERED.