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

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| THE 99-YEAR LEASE TENANTS OF LYNN LEE VILLAGE AND OTHER TENANTS LISTED ON EXHIBIT A, | ) | |
| Plaintiffs, | ) | |
| v. | ) | C.A. No. 12771 |
| KEY BOX "5" OPERATIVES, INC., a Delaware Corporation, and CANDICE A. CASEY, an individual, KATHLEEN MCCORMICK, an individual, WILLIAM G. LLOYD, an individual, OAK ASSOCIATES, LLC, RIVERS EDGE, LLC, and JAMES GABRIEL and ALMA K. GABRIEL, | ) | |
| Defendants. | ) | |

***MEMORANDUM OPINION***

Submitted: July 22, 2005
Decided: August 4, 2005
Revised: August 10, 2005

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LAMB, Vice Chancellor.

## I.

This action was initiated by certain tenants who hold 99-year leases on lots in Lynn Lee Village (the "Village"), a small waterside mobile home community in Sussex County, Delaware.[1] The defendants are Key Box 5 Operatives, Inc. ("Key Box 5"), Candice A. Casey, Kathaleen McCormick, William G. Lloyd, Oak Associates, LLC, Rivers Edge, LLC, and James Gabriel and Alma K. Gabriel.[2] Key Box 5 purchased the Village from Lynn Lee Limited Partnership in September of 1988, in a transaction that was largely financed by the sale of the 99-year leases. As part of that transaction, the plaintiffs paid in advance for their leasehold interests and, accordingly, pay no annual rent, but are responsible for an annual maintenance fee.

Key Box 5 contracted to sell the Village to a third party, Caldera Properties, L.P., that planned to develop the property as a single-family residential community.[3] By letter dated May 2, 2003, purporting to act in reliance on a section of the Manufactured Home Owners and Community Owners Act,

[1]The Lynn Lee Village Membership Association, a voluntary association of tenants at the Village, is also a named plaintiff.

[2]Defendants Casey and McCormick are sisters and defendant Lloyd is their father. Casey and McCormick are agents of Key Box 5 and Lloyd, who is also a tenant of the Village, conducts regular maintenance at the Village. Oak Associates, LLC and Rivers Edge, LLC, formed by McCormick and Casey, respectively, are title owners of two-thirds of the Village. The Gabriels are title owners of the remainder portion of the Village. All current holders of legal title will be referred to as Key Box 5, except where the context otherwise requires.

[3]Caldera has intervened as a party to this case. In addition, as discussed more fully *infra*, Caldera subsequently decided to develop the Village as a condominium complex.

25 *Del. C.* § 7001, *et seq*. (the "Act"), Key Box 5 notified the tenants of its intention to terminate the 99-year leases on November 14, 2003, due to the change in land use associated with the proposed sale.

The leases have been the source of numerous lawsuits in this court, spanning well over a decade. Initially, former Chancellor Allen decided several cases relating to the annual maintenance fee, and the matter was eventually arbitrated.[4] Furthermore, in the fall of 2003, the court issued two opinions relating to the elimination of the 99-year leases. In *Lynn Lee Village I*, addressing a challenge by the tenants to the May 2, 2003 notice, the court held that Section 7010 of the Act ("Termination of Rental Agreement by Landlord") applied to the 99-year leases and, therefore, Key Box 5 could terminate those leases for change in land use.[5] At the conclusion of that opinion, in view of the failure of the statute to address the means of reimbursing tenants who have prepaid long-term leases, the court stated that it would "fashion a suitable compensation mechanic, by reference to appropriate valuation methodologies and traditional means for securing performance of the payment obligation."

[4]*See Dolby v. Key Box "5" Operatives*, 1994 Del. Ch. LEXIS 167 (Del. Ch. Sept. 7, 1994); *Dolby v. Key Box "5" Operatives,* 1996 Del. Ch. LEXIS 151 (Del. Ch. Dec. 17, 1996); *Dolby v. Key Box 5*, C.A. No. 12771, Final Report and Decision of Arbitrator (Del. Ch. Aug. 1, 1997).
[5]*99-year Lease Tenants of Lynn Lee Vill. v. Key Box "5" Operatives, Inc.*, 2003 Del. Ch. LEXIS 120, at *15 (Del. Ch. Oct. 8, 2003) ("*Lynn Lee Village I*").

A few weeks later, in *Lynn Lee Village II,* the court denied the tenants' request for imposition of a resulting or constructive trust on the Village.[6] Again addressing the question of appropriate compensation, the court held that merely reimbursing the "prepaid rents" in proportion to the remaining term of the leases–as suggested by the defendants– would be inadequate to compensate the tenants for the value of their leaseholds.[7] "Many reasons suggest that this is so, most importantly the trial testimony of Casey that the sale price for the park is nearly $7 million, or more than triple the 1988 purchase price. From this the court infers that the value of an 84- or 85-year lease on a portion of the land may also substantially exceed the amounts paid to buy the 99-year leases in 1988."[8]

The effective result of the court's two decisions was to allow the termination of the 99-year leases, but to require Key Box 5 to compensate the tenants adequately for the leasehold interests to be terminated. Thus, the remaining issue was the amount of proper compensation. The court referred that issue to Master Glasscock for determination. In keeping with the court's instructions, Master Glasscock promptly commissioned a detailed appraisal of the leaseholds by Laurence P. Moynihan, a neutral appraiser agreed upon by the parties. On

[6] *99-year Lease Tenants of Lynn Lee Vill. v. Key Box "5" Operatives, Inc.*, 2003 Del. Ch. LEXIS 123, at *5 (Del. Ch. Nov. 17, 2003) ("*Lynn Lee Village II*").
[7] *Id.* at *18-*19.
[8] *Id.* at *18-*19.

December 13, 2004, after reviewing the appraisal, and the parties' objections thereto, Master Glasscock submitted a Draft Report.[9] In the Draft Report, Master Glasscock concludes that the value of the lagoon-front lots is $145,000.[10] Four of the lots have frontage on a creek rather than on the lagoon.[11] Master Glasscock concluded that the value of the four creek-front lots is $195,000.[12]

The parties duly filed several objections to the Draft Report before it became final. However, before the court ruled on those objections, the parties came to a settlement (the "Settlement"). In negotiating the Settlement, the plaintiffs were able to achieve terms that are even more favorable to the leaseholders than those found in the Master's report. Specifically, the Settlement, as reflected in a stipulated order entered by the court on June 6, 2005 (the "Stipulated Order"), provides $160,000 for the lagoon-front lots and $210,000 for the four creek-front lots. Under the Settlement, the leaseholders will receive a $10,000 deposit upon termination of this case,[13] and the leaseholders will receive an additional sum of $5,000 upon the earlier of (i) the date Caldera receives preliminary approval of its development plan or (ii) September 5, 2005. The leaseholders will receive the

[9]*99-year Lease Tenants of Lynn Lee Vill. v. Key Box "5" Operatives, Inc.*, C.A. No. 12771, Glasscock, M. (Del. Ch. Dec. 13, 2004) (the "Draft Report").
[10]Draft Report at 15.
[11]*Id.* at 2.
[12]*Id.* at 15.
[13]Termination means: (i) the issuance of an order by this court determining that the terms of the Stipulated Order are binding upon all leaseholders or (ii) the dismissal or resolution of the suit to the satisfaction of Caldera.

balance of their compensation on the closing date. The closing date will occur within 30 days of the expiration of all appeal periods (without appeal having been taken) and Caldera receiving all government approvals for its development plan, with an outside date of June 1, 2006.

However, the Settlement being binding on the parties is dependent upon all leaseholders agreeing to it, or being bound to it by court order. Not all of the leaseholders have agreed. Certain plaintiffs, who were formerly represented in this case, broke with their former counsel and objected to the entry of the Stipulated Order on several grounds (the "Objecting Plaintiffs").[14] First, the Objecting Plaintiffs filed a "Motion for Relief from Order" pursuant to Court of Chancery Rule 60(b), seeking to abrogate the order entered implementing the court's decision in *Lynn Lee Village I*. Second, the Objecting Plaintiffs make certain objections to the Master's Draft Report and the appraisal upon which it is based.

On July 21, 2005, the court held a hearing on a Rule to Show Cause why the Objecting Plaintiffs should not be bound by the Settlement. At that hearing, the court heard argument on the Objecting Plaintiffs' contentions. This is the court's disposition of the Objecting Plaintiffs' motions and the Stipulated Order.

[14]The Objecting Plaintiffs are Linda and Matthew Hanna, Patti and Jim Jeffers, Phyllis and Lewis Musser, and Jeanne and Robert Scott.

## II.

As stated above, the court concluded in *Lynn Lee Village I* that the Act applies to the 99-year leases and, therefore, Key Box 5 can terminate those leases. The Objecting Plaintiffs seek relief from that decision pursuant to Court of Chancery Rule 60(b) on two separate grounds. First, they contend that they have adduced new evidence which entitles them to relief from judgment. Second, they contend that the defendants misrepresented what they were intending to build on the property.

Court of Chancery Rule 60(b) provides in pertinent part:

> On motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (2) newly discovered evidence; [or] (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party . . . .

Although a motion under Rule 60(b) "is a discretionary matter which requires the Trial Judge to weigh the facts and circumstances of each case,"[15] relief based on newly discovered evidence is not favored.[16] This is because Rule 60(b) "implicates two important values: the integrity of the judicial process and the finality of judgments."[17]

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[15]*Bachtle v. Bachtle*, 494 A.2d 1253, 1256 (Del. 1985).
[16]*Norberg v. Sec. Storage Co.*, 2002 Del. Ch. LEXIS 150, at *5-*6 (Del. Ch. Dec. 9, 2002).
[17]*Credit Lyonnais Bank Nederland, N.V. v. Pathe Communs. Corp.*, 1996 Del. Ch. LEXIS 157, at *3 (Del. Ch. Dec. 20, 1996).

A. Newly Discovered Evidence

Court of Chancery Rule 60(b)(2) provides a litigant an opportunity to obtain judicial reconsideration of the merits of his claim on account of "newly discovered evidence." In order to succeed on a motion under Rule 60(b)(2), the moving party must demonstrate that: (1) the newly discovered evidence has come to his knowledge since the trial; (2) that it could not, in the exercise of reasonable diligence, have been discovered for use at the trial; (3) that it is so material and relevant that it will probably change the result if a new trial is granted; (4) that it is not merely cumulative or impeaching in character; and (5) that it is reasonably possible that the evidence will be produced at the trial.[18]

The Objecting Plaintiffs wish to introduce evidence that the "change in use of land," as that term is used in 25 *Del. C.* § 7010, of the Village will be to a condominium community, and *not* a single-family residential community. This is relevant, the Objecting Plaintiffs contend, because Section 7010 of the Act, at the time this court decided *Lynn Lee Village I*, did not allow a landlord to terminate the leases of a mobile home park if the land was to be used to build a condominium complex. Section 7010 was amended effective May 27, 2003, some three weeks after the notice was given, and it is undisputed that, under the revised section,

[18] *In re Mo.-Ken. Pipeline Co.*, 2 A.2d 273, 278 (Del. Ch. 1938) (citations omitted) (cited in *Norberg*, 2002 Del. Ch. LEXIS 150, at *5-*6).

mobile home park leases can be terminated when the change in land use will be a condominium complex.

The Objecting Plaintiffs' request for relief from the court's earlier decision must be denied. This evidence would not have changed the court's analysis in *Lynn Lee Village I*. First, under the former version of 25 *Del. C.* § 7010, Key Box 5 was not required to disclose its intended land use. All that the statute required was that it inform the tenants that Key Box 5 was changing the land use, and the date of termination of the leases.[19] More importantly, that they did happen to disclose their intended land use in the notice did not obligate them to continue with that land use.

Second, it is undisputed that the current version of 25 *Del. C.* § 7010 allows Key Box 5 to terminate the mobile home leases in order to change the land use to condominiums. While the Objecting Plaintiffs ask the court to infer that Key Box 5 intended to build condominiums from the very beginning and lied to the tenants about its intention, there is no evidence of this in the record. The court can just as easily infer that Key Box 5 made a good faith decision to build condominiums after the General Assembly amended the statute.

[19]*See Rende v. Delaware State Fair*, 1998 Del. Super. LEXIS 261, at *15 (Del. Super. Ct. July 17, 1998) ("The notice informed the tenants that the State Fair was changing its land's use and that the tenants' rental agreements were terminated as of March 1, 1998. That notice was sufficient, as a matter of law . . . .").

B. Misrepresentation

The Objecting Plaintiffs argue that they are entitled to relief under Court of Chancery Rule 60(b)(3) because Key Box 5 misrepresented its intended land use in the notice informing the leaseholders of the termination of the leases. As stated above, Rule 60(b)(3) allows for relief from judgment where the adverse party has engaged in fraud, misrepresentation, or other misconduct.

Again, the Objecting Plaintiffs ask the court to infer bad faith on the part of Key Box 5 in informing the leaseholders of its intended change in the land use. However, there is no reason why Key Box 5 could not change its intended land use, and there is nothing in the record supporting an inference of bad faith. To the contrary, Mr. Franta, counsel for the defendants, represented to the court that the original contract of sale clearly obligated the purchaser to adopt a land use that was consistent with the statutory provision at the time the notice was given. It was much later, long after the statute was amended, that the contract was amended to permit the condominium development. Therefore, coupled with the fact that relief under Rule 60(b) is disfavored, the court must hold that the Objecting Plaintiffs have failed to demonstrate that they are entitled to such relief.

**III.**

The Objecting Plaintiffs also make two objections to the Draft Report. First, they argue that the value is now "stale" and should be updated. Second, they ague

that the current fair market value of the properties is substantially higher than that recommended by the Draft Report.

The Objecting Plaintiffs' arguments are without merit. Appraisals are, by their nature, a snapshot in time. Whenever an appraisal is done, it will, soon thereafter, become dated. The Objecting Plaintiffs complain that this case is different because as much as two years will have passed from the date of the appraisal to the time payment is made. However, counsel for the plaintiffs argued before Master Glasscock for an appraisal date after the date of termination contained in the notice, and Master Glasscock, at their urging, set the "as of" date of the appraisal for the first week of May 2004. His decision to do this gave the leaseholders the benefit of the appreciation in value of the Village for one year from the date of the notice. The court concludes that Master Glasscock made a reasonable decision in balancing the interest of ensuring that the leaseholders are properly compensated with the interest of finality in the appraisal. The court sees no reason to disturb that decision or to order a new appraisal of the property.

Furthermore, the Objecting Plaintiffs seem to be complaining about the longer delay in payment contained in the Settlement, rather than the Draft Report. Under the Settlement, the leaseholders might not receive their final payment until June of 2006. However, the payment in the Settlement is $15,000 more than the appraised value in the Draft Report. Evidently, the majority of leaseholders agreed

that this was sufficient compensation for the delay in receiving their final payment. In any case, this argument does not go to the merits of the Draft Report but, instead, challenges the terms of the Settlement.

Thus, for the above reasons, the court rejects the Objecting Plaintiffs' exceptions to the Draft Report.

## IV.

At this point in the proceeding, the court has already decided that Key Box 5 can terminate the 99-year leases. The only issue remaining is the determination of the proper compensation. There are two main pieces of evidence as to the value of the leaseholds before the court: the Draft Report and the Settlement. In the Draft Report, Master Glasscock concluded that the value of the lagoon-front lots is $145,000 and that the value of the four creek-front lots is $195,000. In contrast, the Settlement, which is supported by the overwhelming majority of the leaseholders, provides $160,000 for the lagoon-front lots and $210,000 for the four creek-front lots.

The court could reasonably conclude that the valuation contained in the Draft Report is the proper valuation of the Village. The Draft Report is thorough and reasonable, and is based on the report of a respected neutral appraiser. Under normal circumstances, the court would not hesitate in adopting the Master's report in its entirety.

However, the circumstances of this case are not normal. Key Box 5 and Caldera, who will pay the majority of the Settlement, have concluded that it is in their best interests to pay a $15,000 premium over the valuations contained in the Draft Report. Moreover, the overwhelming majority of the leaseholders (83 out of 87) have agreed to and support the terms of Settlement. Under these circumstances, the court finds that the Settlement represents the best evidence of the value of the leaseholds. Therefore, the court will enter a final order to that effect.

## V.

For the above reasons, the court will enter an order that the compensation to be paid for the leaseholds is that contained in the Stipulated Order and that the Stipulated Order shall be binding on all owners of the disputed leaseholds. The parties are directed to agree to a final form of order in conformity with this opinion and submit it to the court within 10 days of the date hereof, on notice to the Objecting Plaintiffs.[20]

[20]The court is aware that the parties to the Settlement have agreed to several changes in the proposed form of order that lessen the burdens on the tenants. These changes should be incorporated into the final order.