IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

LUCILLE WILLIAMS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. SS08C-03-009 RFS
	)	
BAY CITY, INC., a Delaware corporation,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

Decision on Bench Trial.

Date Submitted: November 20, 2009
Date Decided: December 23, 2009

Paul Enterline, Esquire, Georgetown, Delaware, attorney for Plaintiff.

Karl Haller, Esquire, Haller and Hudson, Georgetown, Delaware, attorney for Defendant.

STOKES, J.

This case pertains to the operation of a rental agreement, or lease, for a lot in a manufactured home community owned by Defendant Bay City, Inc. Plaintiff Lucille Williams, who has held the lease for many years, was interested in transferring title of her manufactured home to her adult children and adding their names to the rental agreement. The landlord rejected the request essentially because Plaintiff did not have a HUD sticker, which was listed in the lease as a requirement for a transfer or sale. After the parties deadlocked, Plaintiff filed a motion for a declaratory judgment that Defendant's refusal to permit Plaintiff to transfer the home violated the lease and Delaware law. This action followed. On August 3, 2009, the Court held a one-day bench trial, and the parties submitted post-trial briefs. In October 2009, the Court asked for a stipulation of fact regarding the unsigned lease. As explained more fully below, the Court finds that Plaintiff is entitled to the relief she seeks.

Standard of review. Typically, in a post-trial opinion, the Court evaluates the parties' claims using a preponderance of the evidence standard.[1] This standard applies to claims for damages, injunctive or declaratory relief.[2] The Court must assess the credibility of each witness and determine the weight given to the testimony.[3]

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[1] *Estate of Osborn v. Kemp*, 2009 WL 2586783 (Del. Ch.).

[2] *Id.*

[3] *Andrews Miller & Assoc., Inc. v. Forest Grove, Inc.,* 1994 WL 380996 (Del. Super.).

The evidence. Three witnesses testified at trial: Mary Beccone, Plaintiff's daughter; Lucille Williams, Plaintiff; and Janet Olivia, Defendant Bay City's manager. All three witnesses were called by Plaintiff's attorney. The defense did not call any witnesses.

Mary Beccone, Plaintiff's daughter, testified that her family acquired the mobile home and placed it in Bay City when she was ten years old. After her father's death, Ms. Beccone or her brother wanted to be added to the lease or take it over altogether. Ms. Beccone stated that Bay City repeatedly denied her requests for any change in the lease because the mobile home did not have a HUD[4] seal, which is routinely put on a mobile home immediately after its construction. The HUD seal attests to the home's fitness and adherence to applicable standards for residential use.

Ms. Beccone contacted HUD to get a seal or to set up an appointment for a HUD inspection, but her efforts were unsuccessful. She contacted a Sussex County office and a private inspection agent but remained unsuccessful.

Ms. Beccone recalled that one addition was built on each side of the mobile home. The remaining portion was lengthened and widened from 8 to 14 feet, leaving nothing of the original mobile home to be seen.

Plaintiff Lucille Williams testified that she is the owner of the mobile home, which is housed on lot number 148, Cedar Street, Bay City Mobile Park, Millsboro, Sussex

[4]Of course, HUD refers to the U S. Department of Housing and Urban Development.

County, Delaware. She and her husband bought the mobile home in 1971, which, in its original condition, measured 8 feet by 40 feet. Plaintiff hopes either to transfer the 1960 mobile home to her children as a gift or to obtain assurances that she will be able to do so in the future. Another option is to sell the home while it remains on the lot.

Plaintiff recalled constructing an addition in 1974, and two other additions a few years later. Plaintiff testified that the changes were designed to maintain its appearance as a mobile home in keeping with Bay City's requirements. Plaintiff stated that she and her husband believed they were within the landlord's size restrictions in making the mobile home 14-feet across. Bay City's owner at the time, Mr. Hitchens, was aware of the additions and obtained the building permits from the County, and the Willams' complied with County requirements. Plaintiff had not signed a lease since 1984. She paid the fees, and let it go at that.

Plaintiff's final witness was Janet Oliva, who has been manager of Bay City for 30 years. She testified that beginning in 1976 HUD seals were required in factory-built homes before public sale. The HUD seal indicated compliance with government regulations regarding fire, wind, energy and other residential standards. Over the years, Ms. Oliva stated that she had several discussions with Plaintiff or her adult children about transfer of the mobile home. She always told them a sticker was required.

Unless the requirement for a HUD seal was met, a mobile home in Bay City cannot be sold or otherwise transferred or permitted to remain on a lot. In 2005, Ms. Oliva wrote

a letter to Ms. Beccone rejecting her application to be added to Plaintiff's lease and explaining that the square footages were inadequate and a HUD seal was lacking. Ms. Oliva testified that Plaintiff could get a HUD certificate, which is different from a seal, and which would meet Bay Side's requirements. She does not know how or where Plaintiff could obtain such a certificate and this suggested alternative is not part of the lease. Ms. Oliva maintained that the reason she could not allow Plaintiff to add her daughter to the lease is that she would be treating them differently than she treats other tenants who do not meet the requirements. On the other hand, homes which have a HUD sticker alone are freely transferred by sale or gift without more.

Issues. Plaintiff makes the following arguments. First, the 2007 lease does not prohibit Plaintiff from gifting the home to her children. Second, the rules regarding the sale or transfer of homes violate the Manufactured Homes and Manufactured Home Communities Act [5] ("the Act") because they constitute an improper age restriction. Defendant argues that its HUD requirements and other specifications are permissible under the Act.

Discussion. Issues relating to mobile home communities are governed by the Act, which applies to all rental agreements for manufactured home lots.[6] The Act makes provisions for the rights of both landlords and tenants.

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[5] Title 25 *Del. C.* § 7001– § 7035.

[6] Section 7001(b).

Landlords are authorized to issue rules for their communities, but their discretion is not unlimited.[7] They may adopt standards that pertain to health, safety and appearance of individual tenants and the community at large.[8] Under certain conditions, they may require compliance with building codes.[9] They may raise a tenant's rent every year.[10] However, landlords may not issue restrictions on the sale of a home based primarily on age: "A landlord may not issue standards in which the age of a manufactured home is the exclusive or dominant criterion prohibiting the home from being sold and retained in the community after the sale is consummated."[11] No rules or standards may be arbitriciously or capriciously enforced.[12]

In a letter dated September 15, 2005, the Landlord rejected Ms. Beccome's application to be added to her mother's lease. The first reason she gave was that the width of the mobile home was less than the 14 feet required by Bay City. The second reason was that the home did not have a HUD seal or meet HUD requirements. Having

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[7]*See, e.g.* § 7010(a), which provides that a landlord may terminate a rental agreement but only for "due cause."

[8]Section 7019.

[9]Section 7020(c).

[10]Section 7021. From 1971, when Plaintiff moved to Bay City, until 2009, the annual lot rent has risen from $275 to $5500.

[11]Section 7020(c).

[12]Section 7019(a) provides in part that a "landlord may not arbitrarily or capriciously enforce a rule." Section 7020(d) provides in part that a landlord's standards for a manufactured home "may not be arbitrarily or capriciously enforced."

put forth these as the reasons for rejecting the application, the Landlord is estopped from putting forth any other grounds for preventing Ms. Beccone from being a named party to the lease and the reasons are deemed to be exclusive.[13]

In regard to the Landlord's requirement of a 14-foot width, Ms. Oliva acknowledged at trial that this is an aesthetic consideration only. The Act does not authorize a landlord to use aesthetic rules or regulations as the *sine qua non* to approve a transfer or not. In *Andrews v. Brown*,[14] the Rhode Island Supreme Court held that a regulation requiring mobile home park owners to set standards for the protection of the health, safety and welfare of park residents did not authorize owners to promulgate a 14-foot minimum roof width, because the Court found this to be of aesthetic concern only. In Delaware, landlords may promulgate rules to promote the health, safety and welfare of tenants; promote the residents' quiet enjoyment; preserve property values; and promote the orderly operation of the community.[15] In any event, Ms. Oliva testified that Plaintiff's home was "neat and attractive." Her testimony that the house had little market value is not persuasive because she is not a qualified appraiser, has not been in the home and the restriction itself reduces the value. Further, she related that additions are not included in Defendant's calculations of the 14-foot width requirement because most additions in Bay

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[13]*Frick v. Southern Ins. Co.,* 1996 WL 86306 (Del. Super.).

[14]*Andrews v. Brown* 603 A.2d 335 (RI 1992).

[15]Section 7019(a).

City are outdoor living space such as screened-in porches, open decks and sun rooms. In this case, the additions are actual living space and not out-of door space.

In regard to the lease, the parties have agreed by way of post-trial stipulation that the most recent operative lease covered the period from April 1, 2009 through 2010. The parties also agree that its terms and conditions are the same as those contained in the 2007-2008 lease, which was admitted into evidence at trial. That lease provides that "[n]o home that does not have a HUD seal or was built under HUD requirements can be resold on its lot."[16] It also provides that "[n]o pre HUD homes can be sold to remain on the lot."[17]

Th Court finds that these provisions are arbitrary and capricious. They constitute a flat rejection of all pre-HUD homes without offering the owner any opportunity to show that the home is safe and sound, as found by an unrebutted real estate report.[18] As another court has stated in construing a similar provision, a blanket provision such as this "lacks discretion and, thus, is the essence of arbitrariness."[19] On the other hand, a homeowner who has a HUD sticker would pass inspection without anything further to determine fitness of the home. In construing a mobile park owner's rule, the Maryland Court of

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[16]Defendant's Ex. 2, Rental Agreement, ¶ 34

[17]*Id.* at Ex. J.

[18]Plaintiff's Ex. I. The inspector found certain minor deficiencies but concluded that "[i]n my professional opinion, this dwelling is safe and sound."

[19]*Lemay v. Seckler*, 2005 WL 1414449 (Ohio App.).

Appeals held that the Mobile Homes Park Act was violated by the park owner's rule that mobile homes to be placed in the park or retained after resale be either new or current year models and have an approval sticker from the National Mobile Construction and Safety Standards Act.[20] The Court found that the park owner's rule violated the Maryland Act's provision that provided that a park owner may not prevent a resident from selling his mobile home in the park or require a resident to remove a mobile home because of the sale of the mobile home.

Most important to this case, it is not feasible to require a person who owns a 1960 mobile home to have or to obtain a HUD sticker verifying that the home had been built according to 1976 standards. While HUD's safety and construction requirements can be applied to mobile homes built since June 15, 1976,[21] using HUD as a way of preventing a sale is inconsistent with both the letter and the spirit of § 7020(c), not to mention the HUD regulations themselves. The provisions in Plaintiff's lease that no pre-HUD homes can be sold to remain on the lot is predominantly a veiled age restriction and will not be upheld by the Court.

Section 7003(11)(c) acknowledges that HUD standards do not apply to

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[20]*Cider Barrel Mobile Home Court v. Eader*, 414 A.2d 1246 (Md. 1980). In 1985, the Maryland Mobile Homes Park Act was amended to include a section which gives certain qualified tenants the right to a continual renewal of their lease. *See Marmion v. M.O.M., Inc.*, 541 A.2d 659 (Md.Ct. Spec. App. 1998). This change does not diminish the relevance of the *Cider Barrel* holding to the outcome of the case *sub judice.*

[21]Section 7003(11)(c).

manufactured homes built prior to the issuance of HUD's standards:

> "Manufactured home" means a factory-built, single-family dwelling. . . [and] ***if*** manufactured since June 15, 1976, built in accordance with manufactured home construction requirements promulgated by the federal Department of Housing and Urban Development (HUD) or by other applicable codes. (Emphasis added.)

This statutory definition of a manufactured home confirms the Court's finding that the HUD restrictions in Plaintiff's 2007 lease are not enforceable against a mobile home such as Plaintiff's that was manufactured in 1960. The Court concludes that Plaintiff has proved her case by a preponderance of the evidence. She is entitled to a declaratory judgment that the use of HUD provisions to prevent the sale, transfer or gift of her pre-HUD manufactured home is not in conformance with the Act.

Considering the foregoing, the Court declares that the HUD-related restrictions in Plaintiff's rental agreement do not comport with Delaware law in regard to a pre-HUD manufactured home and are not enforceable against Plaintiff.

IT IS SO ORDERED.

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Richard F. Stokes, Judge

Original to Prothonotary