SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. Henley Graves
Resident Judge

SUSSEX COUNTY COURTHOUSE
THE CIRCLE
P.O. BOX 746
GEORGETOWN, DE 19947
(302) 856-5257

John W. Paradee, Esquire
Prickett, Hones & Elliott, P.A.
11 North State Street
Dover, Delaware 19901

Ralph K. Durstein, III, Esquire
Department of Justice
820 N. French Street, 5th Floor
Wilmington, Delaware 19801

Date Submitted: August 12, 2003
Date Decided: August 29, 2003

RE: *MHC Financing v. Brady, et al.*
C.A. No. 02C-08-029

Dear Counsel:

This is the Court's decision regarding the parties' outstanding motions in this case. All pending claims are disposed of, except one.

Factual and Procedural Background

MHC Financing Limited Partnership Two ("MHC Financing") is the owner and operator of the Aspen Meadows, Camelot Meadows, McNicol Place, and Sweetbriar manufactured home communities located in Sussex County, Delaware (sometimes referred to collectively as the "Sussex County Communities"). MHC Operating Limited Partnership ("MHC Operating") is the owner and operator of the Waterford manufactured home community located in New Castle, Delaware ("Waterford"). The two companies are subsidiaries or affiliates of Manufactured Home Communities, Inc. ("MHC, Inc."). MHC Financing, MHC Operating, and MHC, Inc. (collectively, "MHC") own and operate numerous manufactured home communities throughout Delaware.

During the fall of 2001, MHC Financing sent notice to its tenants in the Sussex County Communities that it would be raising the monthly lot rent. This notice also requested the tenants to initial and sign each page of the attachment, which included a "lease" section (the "Disputed Rental Agreement") and a "rules and regulations" section. In addition to the rent increase, the Disputed Rental Agreement also contained several additions or modifications of the existing lease. MHC has admitted that the "proposed new rental agreement" was "intended to replace the tenants' existing rental agreements." *Am. Compl.* at ¶ 12. MHC Operating had previously implemented the Disputed Rental Agreement at Waterford.

The State subsequently sent a letter that cited numerous alleged violations of the Delaware Mobile Home Lot and Leases Act ("the Act"), 25 *Del. C.* § 7001 *et seq.*, to MHC. After negotiations, the parties entered into a Stipulation and Consent Order to Cease and Desist ("Consent Order") on or about April 30, 2002. The Consent Order enumerated several provisions of the Disputed Rental Agreement that the State considered violative of the Act. Pursuant to the Consent Order, MHC agreed not to enforce these lease terms in the aforementioned communities but retained the right to seek declaratory relief regarding the legality of future lease terms in Superior Court.[1] After the Consent Order was signed by the parties and the Court, communication continued between MHC and the State regarding MHC's requirement to produce a new lease acceptable to the State.

[1] The Consent Order did not resolve a dispute involving whether a rent increase formula could be modified or abandoned.

When the parties failed to reach an agreement, MHC Operating and MHC Financing filed a complaint seeking declaratory relief. The Court subsequently ordered MHC, Inc. to be joined as a necessary party. The State filed an answer and presented counterclaims, requesting civil enforcement and contempt orders.

The State filed a Motion for Summary Judgment as to both MHC's complaint and most of the State's counterclaims. MHC responded to the motion and now seeks to dismiss the State's counterclaims. Meanwhile, new legislation has been signed and these revisions to the Act went into effect on August 25, 2003.[2]

The Court requested oral argument in order to clarify the issues before the Court in light of the new legislation. The parties submit that the record is sufficiently developed to allow the Court to resolve the pending claims.

Issues Presented for Review

The State argues that the lease terms MHC seeks to apply to its renewal leases and new leases violate Delaware law. The State also complains that, because MHC has violated the Act in attempting to insert these provisions into its renewal leases, MHC has violated consumer protection and fair trade laws. The State seeks summary judgment on the claim that MHC remains in violation of the Consent Order for its continued failure to draft a revised lease and submit it to the State for approval. Finally, the State seeks summary judgment on its complaint that MHC has violated the Consent Order by the filing of the declaratory action.

For its part, MHC argues that the State's claims should be dismissed because: first, there has been no violation of the Consent Order; second, there has been no violation of the Act; and third, because the State has failed to allege with the requisite specificity violations of consumer protection, fair trade and protection of the elderly laws.

---

[2] The new law contains many substantive changes and no longer has the same title. For consistency, it will still be referred to as "the Act." Unless otherwise noted, all citations are to the new legislation.

Discussion

A. Standard of Review

This Court will grant summary judgment only when no material issues of fact exist, and the moving party bears the burden of establishing the nonexistence of material issues of fact. *Moore v.. Sizemore,* 405 A.2d 679, 680 (Del. 1979). Once the moving party meets its burden, the burden shifts to the nonmoving party to establish the existence of material issues of fact. *Id.* at 681. Where the moving party produces an affidavit or other evidence sufficient under Superior Court Civil Rule 56 in support of its motion and the burden shifts, the nonmoving party may not rest on its own pleadings, but must provide evidence showing a genuine issue of material fact for trial. Super. Ct. Civ. R. 56(e); *Celotex Corp. v. Catrett,* 477 U.S. 317, 322- 323 (1986). If, after discovery, the nonmoving party cannot make a sufficient showing of the existence of an essential element of his or her case, summary judgment must be granted. *Burkhart v. Davies,* 602 A.2d 56, 59 (Del. 1991), *cert. denied,* 504 U.S. 912 (1992); *Celotex Corp.*, *supra.* If, however, material issues of fact exist or if the Court determines that it does not have sufficient facts to enable it to apply the law to the facts before it, summary judgment is inappropriate. *Ebersole v. Lowengrub,* 180 A.2d 467, 470 (Del. 1962).

I note that both parties have informed the Court that there are no factual issues which would be problematic for summary judgment. Both parties are desirous of obtaining a decision from the Court as promptly as possible, especially in view of the new legislation's effective date, August 25, 2003.

B. State's Motion for Summary Judgment

1. Applicability of the Consent Order

The Consent Order signed by the parties provides the backdrop for this litigation and the parties argue over the extent of its applicability. The language of the Consent Order is alternatively general and specific. It broadly declares the right of MHC to seek declaratory relief as to the "legality or enforceability of any provisions which [it] may wish to incorporate in future leases." On the other hand, the Consent Order appears to strictly prohibit MHC from receiving relief that would enable MHC to enforce any of the provisions detailed in the Consent Order. It is clear from the record that the parties continued to engage in communications regarding the legality of MHC's desire to eliminate its rent cap from renewal leases after agreeing to the terms of the Consent Order.

The Consent Order required MHC to pay $10,000.00 to defray the State's expenses as to the investigation of the Disputed Rental Agreement. It also bars the State from seeking any additional remedy outside of the Consent Order. *Consent Order* at V(F). However, the State now seeks penalties under consumer fraud and unfair trade laws for violations alleged in the Consent Order.

In the Consent Order MHC admits that it distributed leases that contain the disputed terms. However, per the Consent Order, MHC states, without admitting any culpability, that it has no intention of enforcing these provisions. MHC agrees that the terms of the Consent Order apply to the leases containing the disputed terms at the Sussex County Communities and the Waterford Community. MHC further admits that the terms of the Consent Order will continue to apply to those leases in the future. MHC seeks only the right to include the disputed terms in *future* leases as it owns other Delaware properties. MHC also defends its position that the Disputed Rental Agreement provisions were not illegal. In light of the circumstances, then, the Court finds that the parties intended to allow the Consent Order to resolve all complaints and allegations involving the Disputed Rental Agreement except the rent formula or rent cap. Because MHC has other properties, the parties are desirous that the Court review the contested provisions of the Disputed Rental Agreement. All rulings contained herein apply to leases

and lease modifications negotiated in the future.

There does exist a complaint that subsequent to the Consent Order MHC sent the Disputed Rental Agreement to one or more other tenants. This summary judgment decision cannot resolve that issue.

2. History of the Act and Recent Legislative Changes

The parties argue over MHC's attempt to add or modify several terms to renewal leases and new leases. A brief history of the applicable law is instructive.

The Act provides that mobile home lot leases are automatically renewed unless one party gives at least sixty days notice of his intent not to renew. If the landlord is the party who desires not to renew, he must meet the conditions for termination of a rental agreement set for in 25 *Del. C.* § 7010 or 25 *Del. C.* § 7010A. *See Reybold Realty Associates v. Jenich*, Del. Super., C.A. No. 88A-AP-2, Bifferato, J. (March 9, 1989). As this Court has observed:

> This automatic renewal provision is mandated because in enacting the mobile home lease provisions, the Legislature recognized that leases on mobile home lots, while perhaps drafted with the short term in mind, are in reality long-term leases. The automatic renewal provision gives mobile home tenants the peace of mind that their homes will not be uprooted unless they choose to do so or unless the land use of the park changes.

Silver View Farm, Inc. v. Marsh, Del. Super., C.A. No. 94C-02-018, Graves, J. (Dec. 16, 1994). The claims raised must be addressed in light of this history. First, only terms relating to the amount and payment of rent may be changed in a renewal lease. Under *Silver View*, any new or different terms aside from the amount and payment of rent must be negotiated by the parties. MHC originally argued that its presentation of the renewal lease, which contained different terms from the original lease, and a tenant's subsequent signature constituted "negotiation." As additional evidence of negotiation, MHC noted that the Sussex communities refused to sign these leases, in contrast to the Waterford community. "Negotiation" is defined as "[a] consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter." Black's Law Dictionary 1059 (7th Ed. 1999). The presentation of a lease for signature hardly constitutes a "bargaining process" through which

agreement is sought. The lease changes were not even noted in the cover letter that accompanied the new lease. A negotiation must involve a knowing and meaningful discussion between the contracting parties. Because MHC acknowledges that it cannot enforce the leases that have already been distributed, the discussion of negotiation is not determinative in this case but is applicable to future lease renewals.

The Legislature has recently taken the opportunity to revise the Act and specify with particularity some of the protections afforded those with mobile home community lot leases. During oral argument, the parties agreed that the new legislation will apply to renewals of existing leases, modifications of leases, and new leases. MHC has not abandoned its argument that these lease terms did not violate the "old" Act as it does not wish to concede any of its defenses to the State's counterclaims. Of course, in the many instances where the legislation speaks to the enforceability of a disputed term, it will be noted.

3. Rent Cap Modification

In many of MHC's original leases, the landlord agreed to limit the annual rent increase by either five percent or twice the percentage increase by which the cost of living increased the previous year. MHC seeks to eliminate this term in these leases as they come up for renewal. The State complains that the rent cap formula is not a term relating to the amount and payment of rent but is, instead, a protection offered to tenants that must be protected under the holding of *Silver View*. In *Silver View*, the landlord tried to impose a security deposit requirement on an existing lease that was subject to automatic renewal. The landlord argued that imposing such a deposit was analogous to increasing the amount of rent and was therefore allowed under 25 *Del. C.* § 7006(b).[3] The Court disagreed and concluded that a security deposit was more than a rent deposit. The Court held that, absent negotiation, the landlord could not require a security deposit on a renewal lease.

The State's argument is unpersuasive. The rent cap formula in this case is clearly a term relating to the amount and payment of rent. The fact that tenants may have chosen to contract with MHC

[3] This section has been renumbered and is now located at 25 *Del. C.* § 7007.

because of the rent "cap" does not mean that their reliance is protected by law. The State concedes that, absent a contractual agreement to limit a rent increase, a landlord's decision to double or even triple a tenant's rent would not be prohibited by law. The Court finds that the formula used in this situation is no different. MHC may eliminate the rent cap formula from its existing leases, but only as they come up for renewal. Again, it is important for everyone to understand that the legislature has included many "protections" in the code that benefit the tenants but specific performance of lapsed rent formulas is not one.[4]

MHC also argues that it has a constitutional right to eliminate this rent cap but it is unnecessary to address the merits of that argument.

[4] But for the land use of the park changing, *see* 25 *Del. C.* § 7010, the leases could theoretically be perpetual. While the landlord cannot unilaterally make changes to the lease under *Silver View*, the landlord is free to revisit the amount of rent paid.

4. New Lease Terms

a. Automatic Direct Withdrawal

MHC seeks to require its tenants to pay rent via automatic direct withdrawal from their bank accounts. This action is impermissible. The Act now prohibits a landlord from requiring direct withdrawal. 25 *Del. C.* § 7006(b)(19). The Court notes, however, that the Act does not appear to prohibit the landlord from providing an incentive to tenants who do remit payment by way of direct withdrawal, at their election.

b. Mandatory Arbitration

MHC asks the Court to approve a term that would require that all disputes arising from the landlord's alleged breaches of the lease agreement and violations of the Act be submitted to arbitration.

The new legislation retains the original language of the Act. That language prohibits the inclusion of a lease provision whereby the tenant waives his right to a jury trial. 25 *Del. C.* § 7006(b)(3). MHC argues that the proper interpretation of this language is that the landlord cannot curtail the tenant's right to a jury trial when the tenant's actions are at issue. MHC posits, however, that the language does allow MHC to subject a tenant's complaints about his landlord to arbitration. The Court does not see a distinction. The statute does not distinguish between the use of the jury trial as a sword or as a shield. The arbitration provision violates the Act and may not be included in either renewal or new leases.

c. Liquidated Damages Clause

The State contests the legality of a lease term that would permit either party to terminate the lease "provided that the other party is adequately compensated for any expenses or other

'damages' resulting from such termination." *Disputed Rental Agreement* at ¶ 20. Adequate compensation is set at five thousand dollars.

MHC acknowledges that this lease term provides both parties with the option of a "non-statutory termination." The State argues that this method of termination thwarts the intent behind the Act to limit the conditions under which a landlord may terminate a lease.

Accordingly, to permit enforcement of the provision would deprive the tenant of the protections afforded him by the automatic lease renewal scheme.

The new legislation addresses liquidated damages provisions. The relevant statute prohibits the inclusion of a lease term "which limits to a liquidated sum the recovery to which the tenant otherwise would be entitled in an action to recover damages for a breach by the landlord in the performance of the landlord's obligations under the rental agreement." 25 *Del. C.* § 7006(b)(21). MHC attempts to draw a distinction between the scenario contemplated by the legislation and its so-called "buy-out provision." This argument is meritless. MHC seeks to provide itself with an additional, and extremely broad, means for terminating a lease. Under the Act, a landlord must renew a lease unless certain terms are met. Those terms are enumerated in the statute. 25 *Del. C.* §§ 7010, 7010A. To allow a landlord to terminate a lease based on other grounds would deprive his tenants of the protection of a long term lease and undermine the purpose of the Act. Pursuant to the language of the Act, a tenant would be entitled to recover damages for the landlord's breach of his lease if the landlord terminated the lease for reasons other than those cited in the statute. Inclusion of a liquidated damages provision is thus prohibited by law.[5]

d. Right of First Offer

---

[5] Regarding the monetary figure, MHC's assertion that five thousand dollars would be sufficient to reimburse the tenant for his expenses for moving as well as finding and securing another home site is questionable. Also, in light of the tenant's right to terminate upon expiration of a lease term and the relatively low cost of a lot lease, the theory that a tenant would rather pay five thousand dollars than wait out the rest of the lease term and terminate as permitted by statute is tenuous at best.

MHC also seeks to include a "right of first offer" provision. The Act now explicitly bars such an inclusion. 25 *Del. C.* § 7006(b)(20).

e. Entry Provisions

MHC asks the Court to find its right of entry provisions to be in compliance with the Act. MHC's proposed lease terms read as follows:

> MANAGEMENT reserves the right and easement to enter upon the home site at any time for the purpose of installing, inspecting, maintaining or replacing pipes, drainage systems and facilities, sewage systems and facilities, electric lines and telephone lines, and inspecting the home site to determine whether RESIDENT is in compliance with Rules and Regulations and the terms of this Agreement.

Disputed Rental Agreement at ¶ 4.

> No representative of MANAGEMENT may enter the manufactured home except if invited, unless entry is necessary to respond to an emergency or prevent damage to the COMMUNITY. Representatives of MANAGEMENT may come onto the home site, at reasonable times, to contact RESIDENT, inspect the home site, make necessary or agreed upon repairs or improvements, supply necessary or agreed upon goods or services, or show the home site to prospective or actual buyers, residents, workers, contractors or mortgagees.

Disputed Rental Agreement at ¶ 12.

The State asserts that these provisions violate the Act. The new legislation has made some modifications to the former language, which required that a landlord "[r]espect the privacy of tenants" and enter the home only with permission, absent emergency circumstances. Today, under the Act, a lease for a mobile home lot must contain a provision requiring the landlord to:

> 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.

25 *Del. C.* § 7006(a)(13)(h). MHC argues that its provision applies to the "home site" and not the manufactured home, itself, and therefore, the Act does not apply.

The Court concurs with the State. The language used by MHC is want for vagueness, particularly the phrases "home site" and "danger to the community." The Act now defines with specificity the entry restrictions placed upon a landlord. Emergency circumstances are exempted, as are

situations where a danger is posed to either people or property. Permission from a tenant cannot be so difficult to obtain that it warrants a general entry provision. The Court cannot conceive of a reason for which a landlord would need to gain access to the home site without securing the home owner's permission that has not been covered by the Act.

f. Eminent Domain Procedure

MHC also desires to carve out an exception to the notice requirements for a change in land use for eminent domain proceedings. MHC seeks to terminate its tenants leasehold rights at the time of the taking or sale. *Disputed Rental Agreement* at ¶ 29. This new eminent domain procedure would override any statutorily required notice to the tenants.

Under the Act, a landlord may terminate his leases upon a change in land use. 25 *Del. C.* § 7010. The previous Act required the landlord to provide 180 days notice before the actual termination of a rental agreement due to land use. The legislation now imposes a one year notice requirement on landlords.

MHC requests inclusion of this provision in order to clearly terminate any right to payment for his property interest a resident might have. However, to permit MHC to enforce this provision would subvert the notice requirements provided by law. The substance of this proposed lease term cannot be reconciled with the purpose of the Act.[6]

g. "Additional Rent" Charges

MHC categorizes several costs as "additional rent" and argues that it may assess these expenses against tenants. The charges include:

1. The tenant's pro rata share of real estate taxes, assessments, and utility services provided to the community;
2. The tenant's pro rata share of the cost of capital improvements made to the property; and
3. "[T]hose charges imposed by MANAGEMENT from time to time for services actually

[6] As a practical matter, the time involved in the mechanics of a taking through eminent domain would allow the landlord to comply with the notice provision of the statute.

performed by MANAGEMENT. . . ." *Disputed Rental Agreement* ¶ 3.

MHC's argues alternatively that these charges are "rent" and that they are "fees." Neither may be imposed under the circumstances.

Previously, the Act was silent on the issue of fees. However, the new legislation has defined a "fee" as "a monetary obligation, other than lot rent, designated in a fee schedule . . . and assessed by a landlord to a tenant for a service furnished to the tenant, or for an expense incurred as a direct result of the tenant's use of the premises or of the tenant's acts or omissions." 25 *Del. C.* § 7008(a). The referenced fee schedule must be attached to the rental agreement and "clearly disclose all fees." 25 *Del. C.* § 7008(b).

Pursuant to the Act, a lease must also contain a stipulation of the total amount of annual rent for the lot. 25 *Del. C.* § 7006(a)(2).

The Court interprets the statutory definition of "fee" to require that the landlord specify the service that he will provide to his tenants (i.e., lawn maintenance) and the fact that a fee will be assessed against the tenants for the delivery of this service. Here, MHC vaguely proclaims that "services" will be provided "from time to time." Thus, these charges are not properly

characterized as fees. In the second instance, these costs may not be considered rent as the total amount of annual rent must be stipulated in the lease agreement.

The Court notes that, in its efforts to charge its tenants for the costs of real estate taxes and capital improvements, MHC seeks to pass along the costs typically associated with running a manufactured home community. As a New York court has observed:

> The operating expenses of a park owner, including real property taxes, are properly recoupled through the rent charged. Real property taxes pay for those services usually provided by the municipality such as fire and police protection, water, sewer and education. None of these services are provided by the lot owner. The lot owner has at his disposal the means, by way of rent, to allocate and recover those increased taxes.

New York v. Leier, 564 N.Y.S.2d 539, 541 (N.Y. App. Div. 1990). MHC may consider real estate property taxes and other costs of doing business when it contemplates the proper amount of a lot's annual rent.

MHC may not pass along these expenses labeled as "additional rent" to its tenants either by way of adding an unidentifiable amount of rent or assessing ambiguous fees. The services that MHC provides to the community may be assessed against tenants, provided the services and their respective fees are attached to a rental agreement.

5. Cessation of Water Service and Assessing of Fees

MHC's existing leases provide that the landlord will supply water to the mobile home community. However, the rental agreement also states, "If a public water supply becomes available, Landlord may discontinue supplying water, and Tenant shall pay his charges either to Landlord or to the public utility in accordance with whichever arrangement is mandated or required between such utility and the Landlord and Tenant." *Effective Lease* at ¶ 5.

MHC has ceased providing water to one of its communities and the utility (Tidewater) now charges the tenants for their water. The State argues that to do so deprives the tenants of their right to water services under the lease and therefore the rent should be reduced.

The Act, after its recent amendment, now provides, "If a utility, facility, or service previously

provided pursuant to the rental agreement is discontinued, the landlord shall adjust the tenant's rent, charge, or fee payment by deducting the landlord's direct operating costs of providing the discontinued utility, facility, or service." 25 *Del. C.* § 7008(l). Therefore, the Act addresses the problem prospectively.

The facts, as to what has already occurred, present a unique situation. In its initial lease negotiations, MHC contemplated the possible cessation of landlord-supplied water service. Indeed, in light of the language used, it appears that MHC did not wish to supply water but was merely doing so until another water supplier became available.

The tenants were aware that if a utility became involved in providing water that the utility would be charging for water. This is akin to the tenant being aware that a fee may be charged for a service. The lease is silent as to any adjustments in rent and I shall not impose one. As to the future, the new Act requires an adjustment.

During these proceedings, the issue of water quality has been raised. The Court finds that this claim is not ripe for consideration. If and when there is a complaint about a landlord's maintenance and upkeep of the water supply lines, the complainant may follow appropriate procedure to have his claim addressed.

Lastly, the State also accuses MHC of illegally requiring its tenants to pay its gross receipts tax. This argument is moot. As discussed previously, the fees that MHC attempts to impose against its tenants qualify as neither rent nor fees. All amounts must be clearly disclosed in the rental agreement.

C. MHC's Motion to Dismiss

The State filed a number of counterclaims in this case. They focus on MHC's alleged violations of the Act, the Consent Order, and Delaware's consumers' protection and fair trade laws. The Court concludes that all of these claims may be disposed of, save one.

1. Consent Order Violations

The State contends that MHC has violated the terms of the Consent Order by failing to prepare and provide a new lease to the Waterford community, enforcing provisions covered by the Consent Order, and continuing to implement new leases in their communities that contain one or more provisions expressly prohibited by the Consent Order. Lastly, the State argues that MHC violated the Consent Order by filing the present action requesting declaratory relief.

First, the Consent Order requires that the new lease be given to the State before implementation but it does not specify a time frame within which MHC must prepare the new lease. The State argues that a reasonable interpretation of this requirement is that MHC must draft a new lease within a "reasonable time" and one year is in excess of a reasonable time. MHC emphasizes the pendency of legislative amendments and the reality of on-going discussions between the parties. In summary, MHC posits that it has acted in good faith. There is no evidence of bad faith on the part of MHC and I find Consent Order has not been violated in this regard.

Second, MHC represented to the Court at oral argument that it had not enforced, and does not intend to enforce, any of the provisions challenged by the State in the leases that have been distributed to its communities. MHC admitted that the terms of the Consent Order, namely the bar on enforcement of these provisions, applies now and in the future to those leases. MHC has not violated the Consent Order in this regard, either.

Third, there is an allegation that MHC distributed leases containing the prohibited provisions identified in the Consent Order after it was signed. If MHC has done so, it may constitute a violation of the Consent Order. It is the Court's recollection that MHC admitted to a limited distribution of the

Disputed Rental Agreement; however, further inquiry is necessary.

Lastly, the State argues that MHC is prohibited by the Consent Order from seeking declaratory relief as to the disputed provisions. Therefore, the State argues MHC violated the Consent Order by requesting declaratory relief. Paragraph V(K) has two sentences concerning declaratory relief and enforcement. The section reads,

> Nothing herein contained shall be deemed or constitute an admission of any culpability or liability whatsoever by or on the part of [MHC], or preclude [MHC] from seeking declaratory relief as to the legality or enforcement of any provisions which [it] may wish to incorporate in future leases. However, no such declaratory relief shall relieve [MHC] of [its] agreement not to enforce the provisions of the [Disputed Rental Agreement] to which the State has objected with respect to leases entered into by or delivered to tenants of the Sussex County Communities and the Waterford community, as set forth hereinabove, nor limit the ability of the State to enforce this Consent Order.

To the extent MHC has maintained it has not attempted to enforce and will not attempt to enforce the Disputed Rental Agreement in the named communities, regardless of this litigation, I find no breach by MHC. To the extent the above sentences create an ambiguity in application, MHC is not in contempt for coming to the Court in an effort to resolve the parties' dispute.

2. Violations of the Act

The State argues that MHC's insertion of the disputed lease terms constitutes a violation of the Act because MHC knew or should have known that each provision violated the Act. As noted above the new legislature resolves the majority of the complaints. The remaining complaints are not so blatant that reasonable people could not disagree.

Nevertheless, the language of the Consent Order restricts the State's ability to seek additional remedies in excess of the penalties already paid for MHC's alleged violations of the Act, unless there is a new violation.

3. Violations of Consumer Protection, Fair Trade, and Protection of the Elderly Laws

The Court also rejects the State's claim that MHC has violated consumer protection and fair trade laws. First, the parties have been engaged in ongoing negotiations. Second, MHC has paid

money, in the amount of $10,000.00, to the Consumer Protection Fund at the State's request. The Consent Order limits the State's ability to seek additional remedies for the alleged violations referenced therein. Third, as noted above, the Court finds that the parties had reasonable disagreements regarding the legality of the proposed lease terms.

These claims must also be dismissed.

Conclusion

This order has attempted to address all of the issues. They are numerous and if I missed one please bring it to my attention.

I would like to have an office conference very soon to discuss the issue of a possible violation by MHC by way of using the Disputed Rental Agreement subsequent to the Consent Order.

IT IS SO ORDERED.

Very Truly Yours,

T. Henley Graves

oc: Prothonotary