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

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 idividual, OAK ASSOCIATES, LLC, RIVERS EDGE, LLC, and JAMES GABRIEL and ALMA K. GABRIEL,	)	
Defendants.	)	

MEMORANDUM OPINION

Submitted: October 1, 2003
Decided: October 8, 2003

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LAMB, Vice Chancellor.

I.

Plaintiffs are a group of tenants who hold 99-year leases on lots in Lynn Lee Village (the "Village"), a small waterside mobile home community in Sussex County, Delaware. There are 87 mobile home lots in the Village, approximately 77 of which are encumbered by 99-year leases. Key Box 5 Operatives, Inc., ("Key Box 5"), the original named defendant, purchased the Village from Lynn Lee Limited Partnership ("LLLP") in September 1988.[1] LLLP had owned the Village since 1985. Key Box 5 entered into an agreement with the tenants of the Village where they paid an average lump sum of $30,000 as full consideration for a 99-year leasehold on their lot.[2]

Pursuant to the lease agreements, tenants do not pay monthly or yearly rent, but they do pay an annual maintenance fee. This maintenance fee has been a subject of long and often bitter litigation between the tenants and Key Box 5. Former Chancellor Allen characterized the provision in the original lease agreement relating to maintenance fees as "problematic" because "[i]t practically guarantees no cooperation in the maintaining of the community, but [rather]

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[1] The original plan by LLLP was to convert the Village into a cooperative. This plan was abandoned within one month of its inception, and the 99-year lease arrangement was designed.

[2] Many of the tenants had already entered into the 99-year lease agreements with LLLP.

discord."[3] The parties have been in nearly constant "discord" since they entered into the 99-year lease agreement.

II.

On or about May 2, 2003, defendants Rivers Edge, L.L.C. and James and Alma K. Gabriel ("Owner Defendants"), as record owners of the Village,[4] sent via certified mail and posted on the front door of each mobile home a written notice that the owners intended to "change the land use of the seasonal mobile home park to a less dense community of single family homes on fee simple lots served by public sewers." The leaseholders were notified that their leases would be terminated on November 14, 2003.

On or about June 4, 2003, the plaintiffs filed an Amended Complaint with 11 separate claims. Many of these claims relate to the operation of the Village

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[3] *Dolby v. Key Box 5*, C.A. No. 12771, 1994 WL 507881, at *3 (Del. Ch. Sept. 7, 1994) ("*Dolby I*") (determining that Key Box 5 had unfairly and without authorization diverted funds from the maintenance fund to itself and providing a remedy by imposing a set of governance rules for the parties to prevent such ongoing abuse). Former Chancellor Allen issued another opinion in this action concerning the accounting for the assessment and collection of maintenance fees after the parties were unable to reach settlement on the issue of the maintenance budget. *See Dolby v. Key Box 5*, C.A. No. 12771, 1996 WL 741883 (Del. Ch. Dec. 17, 1996) ("*Dolby II*"). Former Chancellor Allen later referred to binding arbitration the issue of a boat dock fee and whether default maintenance fees would be awarded. The arbitrator denied both the defendant's request for default maintenance fees and a boat dock charge. *See Dolby v. Key Box 5*, C.A. No. 12771, Final Report and Decision of Arbitrator (Del. Ch. Aug. 1, 1997).

[4] The Owner Defendants were joined in the present action only after the change in land use and premature lease termination notifications had been sent and posted.

and disputes between the tenants and Key Box 5 about maintenance fees and similar issues. These claims are not relevant to the pending motions and will be addressed by the court in a separate proceeding.[5] More pertinently, the Amended Complaint seeks to enjoin the defendants from changing the land use of the Village. Among other things, the plaintiffs argue that the court should impose a resulting or a constructive trust on the Village.[6] Alternatively, they ask the court to

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[5] Specifically, the plaintiffs ask the court to:

- Appoint a receiver for the maintenance of the Village;
- Oust defendants and appoint a new manager of the Village;
- In the alternative, enter a temporary restraining order restraining the defendants from collecting maintenance fees until they disgorge all funds improperly expended in violation of the Orders, such funds to be placed into a constructive trust for the tenants;
- Order that access to the launch be provided to the plaintiffs through the removal of the chain link fence, gate and concrete barriers erected by the defendants;
- Order that funds expended in excess of the budget approved by the Lynn Lee Tenants' Association (the "Association") be disgorged and placed into a fund for the benefit of the tenants;
- Order that all insurance payments, including policies, be provided to the president of the Association, and that the insurance payments be made only for common areas of the Village;
- Order that an accounting be provided for all expenditures for the fiscal year 2002/2003, in accordance with the court's 1994 and 2000 Orders;
- Order that the maintenance budget approved by the Association be strictly adhered to, in accordance with the court's Orders;
- Order that the terms of the Arbitration Award be enforced; and,
- Enter monetary sanctions against the defendants for their violations of the 1994 and 2000 Orders.

[6] Plaintiffs argue that the 99-year lease should be treated as a "disguised cooperative" because the cooperative idea was only abandoned because of lack of time and a desire to avoid the complicated statutory structure mandated by 25 *Del. C.* Ch. 71. Plaintiffs contend that the 99-year lessees, rather than Key Box 5, paid the bulk of the purchase price for the Village and are therefore entitled to a resulting trust in their favor. Plaintiffs carry the "cooperative" argument even further in the ninth statement of claim by arguing that 25 *Del. C.* § 7107 applies to their leaseholds. Chapter 71 applies to the conversion of mobile home parks to cooperatives and condominiums.

declare that the defendants' plan to change the land use of the Village is retaliatory and rely on that as a basis to enjoin the planned eviction.

On or about June 16, 2003, the defendants filed an Answer, Affirmative Defenses, and Counterclaim in response to the plaintiffs' Amended Complaint. In their counterclaim, among other things, they ask the court to:

- Declare that the Village since its establishment is a seasonal, recreational mobile home park pursuant to 10 *Del. C. §* 6501 and determine that the notification of the termination of the leases effective November 14, 2003 was lawful under 25 *Del. C.* Chapter 70 [Count I [A]];
- Order that the tenants remove their mobile home and any tenant-installed improvement from the Village on or before the lease termination date of November 14, 2003 [Count I [B]].

III.

The parties filed cross-motions for partial summary judgment. The court heard argument on those motions on August 19, 2003, and resolved some of the issues raised at that time. In addition, the court concluded that it was necessary to hold a hearing on certain of the other issues raised, including the plaintiffs' claims for the imposition of either a resulting or a constructive trust. That hearing is scheduled to be held on October 14, 2003. The court also concluded that all issues relating to either the value of the 99-year leases or the parties' cross claims for damages resulting from their long history of contention regarding the maintenance of the park would be decided in a later proceeding before the Master. The issue

addressed in this opinion is whether 25 *Del. C.* § 7010 of the Mobile Home Lots and Leases Act applies to the 99-year leases held by the plaintiffs.

Pursuant to Court of Chancery Rule 56, a motion for summary judgment should be granted where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.[7] In deciding a motion for summary judgment, the facts must be viewed in the light most favorable to the non-moving party and the moving party has the burden of demonstrating that there is no material question of fact.[8] Although the parties have cross-moved for summary judgment, that fact "does not [act] *per se* as a concession that there is an absence of factual issues."[9]

IV.

Section 7010(a)(4) of Title 25 of the Delaware Code provides, in relevant part, that: "[t]he landlord may not terminate a rental agreement before it expires without due cause" but defines "due cause" as including, among other things, a "change in use of land."[10] Subsections (g) and (h) of Section 7010 then go on to

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[7] *Haas v. Indian River Volunteer Fire Co.,* C.A. No. 1785, 2000 WL 1336730, at *3, Steele, V.C. (Del. Ch. Aug. 14, 2000), *aff'd*, 768 A.2d. 469 (Del. 2001). *See, e.g., Williams v. Geier*, 671 A.2d 1368, 1375 (Del. 1996).

[8] *Tanzer v. Int'l Gen. Inds., Inc.*, 402 A.2d 382, 385 (Del. Ch. 1979) (citing *Judah v. Delaware Trust Co.,* 378 A.2d 624, 632 (Del. 1977)).

[9] *United Vanguard Fund, Inc. v. Takecare, Inc.*, 693 A.2d 1076, 1079 (Del. 1997).

[10] 25 *Del. C.* § 7010(a)(4).

specify the steps that the landlord must take to notify the tenants of the intended land use change:

> (g) If a change is intended in the use of land on which a mobile home park or a portion a mobile home park is located and the landlord intends to terminate a rental agreement or to evict a mobile home tenant due to the land use change, the landlord shall notify all tenants in the park that:
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> (1) The land use change may subsequently result in the termination of a rental agreement;
>
> (2) The tenant being terminated due to the land use change will receive written notice no less than 180 days before the actual termination of the rental agreement.
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> (h) The landlord shall provide 180 days notice before the actual termination of a rental agreement due to a change in land use.

It is clear that the parties understood that Chapter 70 would, in general, apply to the 99-year leases.[11] This understanding is readily gleaned from the

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[11] The tenants argue that the landowners' reliance on Section 7010(a)(4) is premature since the Sussex County Department of Planning and Zoning has yet to approve the intended new land use. This argument is unpersuasive, however, because the statute nowhere says that a landlord must have prior approval of an intended change in the use of the land as a condition precedent to its application. On the contrary, the statute clearly permits the landlord to "provide notice concerning the landlord's intent to terminate a rental agreement due to an intended land use change …." *Rende v. Delaware State Fair, Inc.* 1998 WL 449560, at *4 (Del. Super. 1998) (upholding the termination of mobile home leases due to intended change in use of land even though notice to the tenants preceded any implementation of the noticed change).

Chapter 70 does, of course, provide for the fair and equitable treatment of tenants who are forced out of their lease agreements. Notably, the statute as affected by an amendment effective August 25, 2003 (some three months after notice was given in this case), expressly obligates the landlord to provide a relocation plan for the ousted tenants. 25 *Del. C.* § 7010 (as amended by 74 Del. Laws, c. 35 (2003)) (The plan must be detailed and submitted for approval by the Delaware Manufactured Home Relocation Authority). *See* 25 *Del. C.* § 7010(a)(4) (as amended). The amendment, although not applicable here, also extends the previous notice requirement from 180 days to a full year. These changes reflect the legislative intent of protecting the affected tenants in their forced move. The statute, however, even as amended to be more protective of tenants, does not impose the condition plaintiffs argue for here.

record. First of all, the Agreement of Lease itself references Chapter 70 in defining the obligations of the "Lessor" and the "Tenant."[12] The lease further states that Chapter 70 is incorporated into the lease by reference and that a copy of the statute is to be submitted with a copy of the lease.[13] Plaintiffs concede in their response to Defendants' Request for Admission No. 3 that "[a] copy of the statute in question was recorded along with most of the leases." Second, in 1988 the parties submitted the proposed 99-year lease agreement for review by the Delaware Attorney General, who recited in a letter signed by his Deputy, that the proposed lease agreement would be "considered an extension of the terms and conditions of the current leases and subject to all of the requirements of the Delaware Mobile Home Code, 25 *Del. C.* Ch. 70."[14] Finally, and directly to the point, the record contains a letter from the Secretary of the Association to the tenants of the Village, stating that any 99-year lease would be treated the same as a 5-year lease regarding

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[12] The Agreement of Lease, at Paragraph 8(i), requires the lessor to "[u]ndertake all responsibility of the Lessor or Landlord imposed by 25 *Del. C.* Chapter 70"; and, at Paragraph 9(f) requires the tenant to "[d]ischarge all obligations of a Tenant under 25 *Del. C.* Chapter 70."

[13] Article 10 of the Lease Agreement reads:

> Both the Lessee and Lessor agree that the provisions of paragraphs 8 and 9 are paraphrased or quoted provisions of the Delaware Mobile Home Code and that in addition to the excerpted provisions of the Delaware Mobile Home Code, 25 *Del. C.* Chapter 70, as amended, the Lessor and Lessee agree that all other provisions of such Code are incorporated in this lease by reference; a copy of the Delaware Mobile Home Code … is attached hereto … and the Lessee, by signing this lease, acknowledges receipt of a copy of same.

[14] Lynn Lee Village Mobile Home Park, Op. Deputy Att'y Gen, at 3 (Aug. 30, 1988).

the landlord's ability to terminate the leasehold pursuant to 25 *Del. C. §* 7010(a)(4).[15]

The issue of the application of Section 7010(a)(4) to the 99-years leases, however, is somewhat more complicated than it appears because, although the 99-year leases are expressly made subject to Chapter 70, that statute fails to address the question of compensating the tenants for the remaining value of the amount they *prepaid* on their leases. Even the defendants recognize that they will have to compensate the tenants for the premature termination of these prepaid long-term leases.[16] And they recognize that the procedure for determining the amount of compensation due is not described in the statute. The question, however, is whether the absence of such a compensation scheme should lead the court to conclude that Section 7010(a)(4) is simply inapplicable to these particular leases.

On balance, the court is persuaded that the General Assembly did not mean to exclude from the operation of Section 7010(a)(4) any mobile home lot lease for which the tenant had prepaid rent beyond the notice period provided for in

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[15] "Now those of you who are concerned with being thrown off your lots should read Chapter 70 … Pay particular attention to 7010(a)(4), (g)(1), (g)(2). Notice that there is no distinction made between 5 yr or 99 yr leases." Letter from Sy Heberlig, Secretary, Lynn Lee Tenants Association, to Tenants of Lynn Lee Village (Aug. 8, 1988).

[16] "[I]t is the present intention of Rivers Edge, L.L.C., to reimburse to you, upon the satisfactory and timely removal of your mobile home and tenant improvements, the proportionate amount of prepaid rent assigned to periods after November 14, 2003." Certified Letter Notification to Park Lessees from Candice A. Casey, Managing Member, Rivers Edge, L.L.C., to Tenants of Lynn Lee Village (May 2, 2003).

subsection (h) of that section. Nor, more specifically, did the General Assembly evince any intent to exclude these 99-year leases from the operation of subsection (a)(4). Rather, it is more reasonable to conclude that the General Assembly understood that any rents prepaid beyond the termination date of the lease as determined by operation of subsection (a)(4) would be refunded to the tenant. This result is also consistent with the approach taken by the common law of landlord tenant relations in the case of tenancies prematurely terminated for other reasons.[17] To fill the gap in the statute, this court will fashion a suitable compensation mechanic, by reference to appropriate valuation methodologies and traditional means for securing performance of the payment obligation.

The court also notes that the 99-year leases could have been written to prevent the application of Section 7010(a)(4) if the parties had intended that result. Instead, although the possibility that the landlord could terminate the leases prematurely was raised by the Secretary of the Association in a letter he sent to the tenants, no change was made in the lease. In the circumstances, the court is unable to conclude that the landlord cannot decide to abandon the use of the land as a mobile home community and put the land to some other use.

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[17] *See generally State ex rel. Com'r, Dept. of Transp. v. Teasley*, 913 S.W. 2d 175, 177 (holding that a tenant would be entitled to compensation for value of leasehold when leased property is acquired by eminent domain); and, *Charalambous v. Jean Lafitte Corp.,* 652 S.W.2d

V.

With the history of the animosity between the parties to this litigation clearly in mind, this matter will be referred to the Master for a prompt hearing on the issue of compensation and all the related claims for money damages. The court is informed that there is a pending contract for the sale of the land to developers. In order to secure the defendants' obligation to pay the amount ultimately determined by the Master, the court will require that the proceeds of any sale be set aside, either in a commercial escrow account subject to court order or in an interest bearing account maintained by the Register in Chancery. Moreover, an order will be entered directing that a notice of *lis pendens* be filed in the Office of the Recorder of Deeds in Sussex County, in order that all persons interested in purchasing the property should have due notice that the property is the subject matter of this litigation.

VI.

For all of the foregoing reasons, the defendants' motion for partial summary judgment as to the applicability of 25 *Del. C.* § 7010(a)(4) to the 99-year leases covering property in the Village is granted, subject to the conditions imposed in

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521 (Tex.App.-El Paso May 4, 1983) (granting tenants reimbursement of prepaid rent on a commercial lease when they were forcibly evicted by the landlord).

this opinion. The defendants' counsel is directed to submit a form of order within one week, with agreement as to form, if possible.