The Berea Municipal Court

MAX F. SCHINDLER, et al.)

)

Plaintiff)

Vs.)

COLUMBIA-BROOK PARK MGMT, LLC)

)

Defendant

Term, A.D. _____

To Wit _____

No. 01CVJ02061, et seq.

JOURNAL ENTRY

INTRODUCTION

This case comes before this Court upon objections filed by counsel for park residents to the findings and recommendation of Magistrate S. Robert E. Lazzaro as a result of the trial of the matter on January 28 through 31st, 2002, and the reply to those objections by the park operator.

Upon the review by this Court of the briefs, transcripts of testimony and the exhibits, some preliminary observations occur. The competence and zeal of all the attorneys is apparent and very much appreciated by the Court. This was a complex and intricate case, and the professionalism and ability of counsel aided greatly in bringing it to conclusion.

The contribution of Congressman Dennis Kucinich must be acknowledged. Through his counsel, Martin Gelfand, the Congressman shed light on this case and added tremendously to the legal information available by his amicus brief. He is a compelling advocate, and usually so in support of people such as the residents here.

The Court also recognizes the hard work and efficiency of Magistrate Lazzaro, bailiff Paul Kortan and Tony Bialowas and volunteer bailiffs, Ed Madias, Randy Burch, Lynn Soltis and Fred Duprow. Without these people and their dedication to this Court, this case may have been unmanageable. These people, as much as anyone, ensured that the park residents "got their day in court". Let us also acknowledge the cooperation of the Donauschauben German-American Hall who

were gracious hosts to this Court during the week of trial, and added comfort and convenience to the hearing.

As to the case itself, clearly the evidence shows that there are park residents who have, and will, suffer as a result of the park operator's actions. The testimony of the residents taken in this case was often heart wrenching and certainly compelling.

The saddest part of all is that so many of these residents are more or less trapped. They have no real option to move. Manufactured home parks are, in that sense, very unique. The problems are compounded when the residents are senior citizens on limited fixed incomes, when $40 to $50 per month is crucial. It may be that the state legislature should be looking at situations such as this and create a statutory scheme that takes these many unique aspects into proper account and protects such residents.

This Court recognizes the impact of this decision on so many lives. I also understand and respect the depth of feelings generated by this case. Let me assure the parties that this decision was not made lightly, nor was it made with a blind eye to the personal toll which may result.

Unfortunately, as much as compassion is on the side of the residents, this Court must view this case without sympathy, bias, or prejudice and must apply the law to the facts. Nor can this Court allow itself to be influenced by perceived political pressure. This Court was not influenced by any of these considerations. The following decision was made strictly on the basis of this Court's interpretation of the law.

REVIEW AND OPINION

The residents counsel's objections speak of judicial temperament, of breathing life into a remedial statute, and then counsel seeks to impose on this Court a social activist burden.

Yes, the legislative intent was to "provide tenants with greater rights thereby to balance the competing interests of landlords and tenants". And the statute is remedial in nature. Yet, the specific statutory mechanism chosen by residents, §3733.12, i.e., deposit of rent in Court, is very limited in scope. Extending its net as broadly as it can reasonably be tossed, that statute provides for four bases upon which the resident can deposit rent, i.e.

1. park operator fails to fulfill his obligations under §3733.10;
2. park operator fails to fulfill his obligation under a rental agreement;

3. conditions of the property are such that resident reasonably believes park operator has failed to fulfill any such obligations;

4. government agency has found the premises not in compliance with building, housing, health or safety codes.

Nowhere in that statute is there anything to do with rent, or rent increases, or conscionability of rent. The goal of this statute is to resolve and protect the resident from health, building, safety, and housing code violations. There is, after the agreement of the parties reached earlier in this case, none of those matters at issue here.

Defendant asserts that the Magistrate was reticent to involve §3733.16 and reluctant to embrace the plain meaning of the statute, and somehow rewrote legislative intent in so doing. This Court, on the other hand, finds that it is the residents' counsel who would rewrite legislative intent. §3733.12 provides a specific remedy, rent deposit, in response to specific failures on the park owner's part, i.e., see 1-4 bases above.

Clearly, Title 3733 was created by the legislature to apply the concepts of landlord-tenant law to manufactured home parks in a way that, we must assume, would take into account the unique nature of such parks.

So, if the legislature, having taken the time and trouble to create a special statute to deal with manufactured home parks, intended to include rent considerations in the failures to be remedied by the rent escrow/withholding section of that special statute, they would have done so. Since they specifically did not, it must be that they did not intend to include disputes as to the amount of rent or the unconscionability of increases, as a failure of the park operator which could be remedied by escrowing rent under §3733.12.

The Court also concurs with the Magistrate that there is no precedent in Ohio to bring this case within §3733.16(A). Therefore, residents counterclaim is not persuasive as to a rent increase dispute.

In this case, the residents could take the action of depositing their rent in court only by authority of §3733.12. The park operator then applied for release of those rents under §3733.12.2. In reviewing that application and considering the arguments and law proffered by all parties, the Court affirms the Magistrate's decision and finds that residents of Columbia Park were able to show no violation of any obligation imposed upon the park operator by §3733.10 of the Revised Code or by the

rental agreement, or by any building, housing, health or safety code. §3733.16 does not change the finding of this Court.

Therefore, the Magistrate's decision is affirmed and adopted and thus the Clerk is ordered to release rent on deposit with this Court to the park operator, less costs. Costs shall include 1% poundage, the costs incurred by this Court to conduct the hearing of this case at the Donauschauban German-American Hall", and all other regular costs.

The Court further finds that the park residents did not intentionally act in bad faith in proceeding under §3733.12 of the Revised Code and therefore §3733.122(D) does not, and cannot, apply in this case.

This is a decision based upon interpretation of specific statutes and their applicability in this case. The question of unconscionability could not be reached because the statutes in question here do not include such considerations.

IT IS SO ORDERED.

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Judge Mark A. Comstock

Received for filing _____

The Berea Municipal Court

COLUMBIA-BROOK PARK MGMT, LLC)
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Plaintiff)
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Vs.)
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MAX AND MARY SCHINDLER, et seq.)
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Term, A.D. _____

To Wit _____

No. 01CVJ02061.et seq.

JUDGE MARK A COMSTOCK
MAGISTRATE S. ROBERT E. LAZZARO

MAGISTRATE'S DECISION
FINAL

This matter comes before this Court in a non-jury trial and was heard and submitted.

This Court, upon review of the stipulations, the evidence, the briefs of both parties and the law, makes the following findings of fact, conclusions of law and ruling thereon in the form of this decision.

The Defendants in this case are tenants of the Plaintiff, who reside in a manufactured mobile home park known as Columbia Park located in Olmsted Township, Ohio. Columbia Park is made up of residents who are of the age of fifty-five (55) and older.

The park was purchased by the Plaintiff on June 26, 2001. On July 18, 2001 the Plaintiff notified, in writing, all of Columbia Park tenants that it was changing certain rental terms. Among the changes was notification of a rent increase to all month-to-month tenants.

Subsequently, numerous tenants delivered "Notice to Correct pursuant to Ohio Revised Code 3733.12" forms to the Plaintiff alleging certain conditions at Columbia Park which needed to be repaired and/or rental policies that needed to be changed. Since the initial delivery of the noted notices, additional Defendants have joined the procedure and some tenants are no longer taking part. See, Court Exhibit #3 for a list of active Defendants. See, Court Exhibit #2 for Defendants which are not involved or to be included in this case. See, Court order of January 29, 2002 regarding tenants Boker, Lamison and Zindroski.

Between September 9, 2001 and this date, the Defendant tenants have deposited their rent with the Berea Municipal Court under the provisions of Ohio Revised Code Section 3733.12. It should be noted that between September 9, 2001 and this date, the parties have stipulated to the release of some of the deposited money to the Plaintiff.

On September 19, 2001, the Plaintiff filed an "Application for Release of Rent Pursuant to O.R.C. Section 3733.122 (C) and a Complaint for Damages, Costs, and Attorney Fees Pursuant to O.R.C. Section 3733.122 (D)," in regards to each Defendant tenant.

Thereafter, the Defendant tenants each filed an Answer and Counterclaim.

By Stipulation and/or Agreed Entry, the parties stipulated and agreed that:

1) Defendants dismiss with prejudice Item nos. 1,2,3,4,5,6,7,8,10 and 11 listed on their respective "Notice to Correct ..." forms.

2) Plaintiff dismiss with prejudice its Complaint for Damages, Costs, and Attorney Fees in its "Application for Release of Rent ..."

3) Defendants dismiss with prejudice all of their claims (counterclaims) except with regards to Item 9 of the previous noted "Notice to Correct ..." the subject of which is an alleged unconscionable rent increase

4) All parties waive any claim for attorney fees arising out of the disposition of this trial.

5) The issues to be tried by this Court involve the alleged unconscionability of the rent increases and;

a) If said rent increases are violations of the Ohio Consumer Protection Act.

b) Whether or not the rent increases are unconscionable as a matter of law and if they are, may the Court invoke Ohio Revised Code Section 3733.16 in regards to the said provisions of the 'rental agreements'

c) If said rental increases are found to be unconscionable, how do these rent increases relate to the Ohio law permitting the depositing of rent in to this Municipal Court by the residents of a Manufactured Mobile Home Park (O.R.C. § 3733.12) and the Manufactured Home Parks Operator's duties (O.R.C. § 3733.10)

6) The parties further stipulated and agreed that all the individual cases should be heard in one trial, to wit: en masse.

This Court finds from the evidence that the Plaintiff purchased Columbia Park and other assets for the sum of Twenty-nine million Dollars ($29,000,000.00) and that Columbia Park comprised of ninety-two percent (92%) of said purchase. The Court further finds through the testimony of Plaintiff's expert witness, John Chase, that eighty percent (80%) of the purchase price was financed, and that said percentage was standard in the industry.

The Court further finds that at the time of the subject purchase, Columbia Park was not charging market rate rent and in fact was charging far below the market rate. The Court further finds that at the time of the subject purchase, Columbia Park was an exceptionally run manufactured mobile home park.

The Court further finds that upon change in ownership, the Plaintiff did, in fact, raise the rent of the tenants/defendants in a range of approximately eighteen percent (18%) to twenty-five percent (25%). The Court does note that this was the first rent increase at Columbia Park in over two (2) years and that recent prior rental increases were minimal. The Court also finds that although there has been a change in management procedures, that Columbia Park is still an exceptionally run manufactured mobile home park.

The Court further finds that even with the Plaintiff's rental increase, that Columbia Park is still charging below the average net market rent in the area for Manufactured Mobile Home Parks. This conclusion is based on the testimony of various witnesses including the testimony of Plaintiff's expert witness, George Allen. Although Mr. Allen appears to have miscalculated the average 'net rent' figure in Columbia Park due to his inclusion of water and sewer in the base rent, it is still clear to this Court that Columbia Park charges below the average net market rate in the area. It is also noted by this Court that the Plaintiff has voluntarily created a hardship provision in each of the Plaintiff's new leases, but that only five (5) or six (6) tenants completed applications for same and of that number, three (3) were approved for a reduced rental rate. Although this Court understands why more Defendant tenants have not applied for this "Hardship" program, it questions the wisdom of such conduct.

The Court also finds that the Plaintiff's rental increase, in combination with other factors, [1] has created a hardship on many of the Defendants, both financially and psychologically. This finding is based on the testimony of the Defendants fact witnesses as well as their Expert witnesses, Debbie (Deborah) Arntz, Bruce Melville and Doris Battley. It should be noted that no specific individual or group study was done by any of said Expert witnesses, regarding Columbia Park. It is clear to this Court that something should be done, through proper avenues, to assist the Defendant-tenants and other individuals in similar circumstances.

After a thorough review of the facts and applying those facts to the current Ohio Law, it is clear as to what this Court must do. As stated by the Honorable Patricia A. Blackman, Chief Justice of the Eighth District Court of Appeals in the case, Raceway Video and Bookshop, et al v. Cleveland Board of Zoning Appeals (1997) 118 Ohio App. 3rd 265, 692 N.E. 2nd 256, "Our task is to follow the law, and that we shall do."

It is therefore the decision of this Court that:

There has not been a violation by the Plaintiff under the Ohio Consumer Sales Protection Act by virtue of the Plaintiff's increase in rent to the Defendant-tenants of the subject Mobile Home Park. The Ohio Consumer Sales Practices Act, Chapter 1345 of the Ohio Code, does not apply to mobile home park residential leases. The Ohio Legislature has provided that specific statutory remedies be used for resolving landlord-tenant disputes regarding Manufactured Mobile Home Parks, to wit: Ohio Revised Code Chapter 3733, and thus said statutes control this area of the law and will be used in deciding this case. See, Heritage Hills, Ltd. v. Deacon (1990) 49 Ohio State 3d 80, 551 N.E. 2d 125.

It is the further decision of this Court that:

The current rent at Columbia Park, which is still below average market rent rate, and the subject increase in said rent to its current rate, are not unconscionable as a matter of law. See, O.R.C. § 3733.16 (A). The Court further notes that even if it were to find that the current rent/rental increase were unconscionable as a matter of law, that it is very questionable whether or not this Court could use the provisions of O.R.C. § 3733.16 to assist the Court in deciding this case since there is no Ohio precedent indicating that a rental provision/rental increase could be construed as an unconscionable rental clause.

It is also the decision of this Court that:

The Plaintiff has not failed to fulfill any obligation imposed on it by Section 3733.10 of the Ohio Revised Code or by any rental agreement. Also, a governmental agency has not found that Columbia Park is not in compliance with any housing, health or safety codes. Therefore, this Court orders the release to the Park Operators of the rent currently on deposit with the Clerk, less costs, (O.R.C. § 3733.12 (C), since this Court finds that the Defendant-tenants did not act in bad faith.

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[1] Other factors include: Increased health care costs, increased utility costs, increased gasoline costs, increased food costs and lack on comparable adjustments in income.

IT IS THEREFORE RECOMMENDED that the Plaintiff's Applications for Release of Rents be GRANTED and that a judgment be rendered in favor of the Plaintiff and against the Defendants on the Defendant-tenants Counterclaims, at the Plaintiff's costs.

/sjp

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S. Robert E. Lazzaro, Magistrate