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NO. A10-167

State of Minnesota
In Court of Appeals

Skyline Village Park Association,

Appellant,

vs.

Skyline Village L.P., Skyline Village LLC,
and Capital First Realty, Inc.

Respondents.

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

Table of Authorities i

Introduction 1

Argument 2

I. Manufactured home park rent increases must be reasonable 2

A. Minn. Stat. Section 327C.02 subd. 2 6

B. Minn. Stat. Section 327C.05 subd. 1 5

II. Determination of rent reasonableness is not limited to market factors 7

Conclusion 7

TABLE OF AUTHORITIES

Statutes:

Minn. Stat. § 327C.01 Subd. 8.....1, 2, 4, 5, 6, 7
Minn. Stat. § 327C.01 Subd. 10.....6
Minn. Stat. § 327C.01 Subd. 11.....1
Minn. Stat. § 327C.02.....2, 4, 6, 7
Minn. Stat. § 327C.02 Subd. 2.....1, 2
Minn. Stat. § 327C.06 2
Minn. Stat. § 327C.05 Subd. 1.....5
Minn. Stat. § 645.16.....3,6
Minn. Stat. § 645.17.....3, 6
Minn. Stat. § 645.19.....4
Minn. Stat. § 645.49.....5

Cases:

Amaral v. Saint Cloud Hospital,
598 N.W.2d 379 (Minn. 1999).....3

Astleford Equipment Co. v. Navistar Intern. Trans. Corp.,
632 N.W.2d 182, 188 (Minn. 2001).....3, 6

Board of Education of City of Minneapolis v. Public School Employees Union Local No. 63
45 N.W.2d 797, 801 (Minn. 1951).....4

Brandt v. Hallwood Management Company,
560 N.W.2d 396, 400 (Minn. App. 1997).....3

County of Morrison v. Litke,
558 N.W.2d 16, 18 (Minn. App. 1997).....4

Green-Glo Turf Farms, Inc. v. State of Minnesota
347 N.W.2d 491 (Minn. 1984).....4

In re dissolution of School District No. 33 v. Anderson,
60 N.W.2d 60, 63 (Minn. 1953).....5

Schaff v. Hometown America, L.L.C.
(unpublished), Addendum 1-13 to 1-18.....6

The Maytag Company v. Commissioner of Taxation,,
17 N.W.2d 37, 40 (Minn. 1944).....3, 4

Underwood Grain Company v. Harthun,
563 N.W.2d 278, 281 (Minn. App. 1997).....3

INTRODUCTION

The central issue in this case is whether a manufactured home park rent increase must be reasonable in order to be enforceable. If the answer is "yes," then a number of other issues are presented by this appeal: is the validity of the rent increase determined solely by reference to market comparisons, or may the Court look to factors set out in the definition of reasonable rules, Minn. Stat. Sections 327C.01 subd. 8, and factors relating to substantial rule changes set out in 327C.01 subd. 11 and 327C.02 subd. 2? Appellant's Initial Brief demonstrated that the statutory language and the legislature's goals in enacting these statutes require that a rent increase be reasonable if it is to be enforced and that other Courts which have considered the issue have agreed. As set out in Section I, below, the Respondents' brief is wholly ineffective in challenging this conclusion.

Appellant's brief also demonstrated that in considering whether a rent increase is reasonable, a court is not limited to review of comparable market rents, but may consider also at least the factors set out in the definition of reasonable rule and those which a Court is authorized to address in determining whether a rule change is substantial. As set out in Section II, below, the Respondents' Brief did not even attempt to justify the District Court's decision, challenged by Appellant, that, if the statute requires that rent increases be reasonable, the court may look only to market conditions in making that determination.

This appeal does not involve discovery issues and respondents' references, at pages 5, 11, and 17 of their Brief, are therefore irrelevant.

ARGUMENT

I. Manufactured home park rent increases must be reasonable.

A. Minn. Stat. Section 327C.02 Subd. 2.

Minn. Stat. 327C.02 subd. 2 sets out the general principle that once a resident has entered into a rental agreement with a park owner, a rule change may be enforced only if reasonable and not a substantial modification of the original agreement. That principle is then clarified with five provisos and exceptions. The exception at issue here is that:

> A reasonable rent increase made in compliance with section 327C.06 is not a substantial modification of the rental agreement and is not considered to be a rule for purposes of Section 327C.01, Subdivision 8.

The Respondents set out what they assert this sentence to mean at page 15 of their brief. Their interpretation simply wishes away the word "reasonable" from the statutory provision and violates at least three canons of statutory construction. Contrary to Respondents' assertions, these same principles of statutory interpretation support Appellant's position that the statute unambiguously means that rent increases must be reasonable and those which are not are subject to limitations in Sections 327C.01 subdivision 8 and 327C.02.

First, the Respondents may not simply wish away the word "reasonable." The legislature intends the entire statute to be effective and every statute is to be construed, whenever possible, to give effect to all its provisions. Minn. Stat. §§ 645.16 and 645.17; *Astleford Equipment Co. v. Navistar Intern. Trans. Corp.*, 632 N.W.2d 182, 188 (Minn. 2001). Thus "no word, phrase, or sentence should be deemed superfluous, void, or insignificant." *Astleford* at 188, citing *Amaral v. Saint Could Hospital*, 598 N.W.2d 379, 384 (Minn. 1999). At issue in *Astleford*, was the meaning of the term "substantially change" in a statute requiring good cause to "terminate, cancel, fail to renew, or substantially change" an agreement. The Court held that the term couldn't have the same meaning as "terminate" as that would render the term superfluous. *Astleford* at 189. Similarly here, by construing "reasonable rent increase" to mean the same thing as "rent increase," the Respondents seek to render the term "reasonable" superfluous, contrary to the provisions of Minn. Stat. §§ 645.16 and 645.17.

Second, it is a general principle of statutory construction that where a statute enumerates the things to be affected by its provisions, there is an implied exclusion of others.[1] *The Maytag Company v. Commissioner of Taxation*, 17 N.W.2d 37, 40 (Minn. 1944); *Underwood Grain Company v. Harthun*, 563 N.W.2d 278, 281 (Minn. App. 1997); *Brandt v. Hallwood Management Company*, 560 N.W.2d 396,

[1] "Expressio unius est exclusio alterius." See *Underwood Grain Company* at 281.

400 (Minn. App. 1997); *County of Morrison v. Litke*, 558 N.W.2d 16, 18 (Minn. App. 1997). Thus, by providing that "reasonable rent increases" are excluded from provisions prohibiting substantial amendments and requiring compliance with Section 327C.01 subd. 8, the legislature has provided that any other sort of rent increase is not so excluded.

Finally, related to the principle above, "exceptions expressed in a law shall be construed to exclude all others." Minn. Stat. § 645.19, *Green-Glo Turf Farms, Inc. v. State of Minnesota,* 347 N.W.2d 491 (Minn. 1984); *Board of Education of City of Minneapolis v. Public School Employees Union Local No. 63*, 45 N.W.2d 797, 801 (Minn. 1951); *The Maytag Company*, 17 N.W.2d at 40. Here, the general rule os Section 327C.02 is that amendments must be reasonable and may not be substantial. The exception is that a reasonable rent increase may also be substantial. The implication of Minn. Stat. Section 645.19 is that this exception applies only to reasonable rent increases and any other rent increase is subject to the limitation that it may not be substantial.

The respondents also appear to argue that Section 327C.02 can't restrict rent increases because three other statutory provisions address rent. This argument is fruitless as Section 327C.02 on its face addresses rent increases.

B. Minn. Stat. Section 327C.05 Subd.1.

Appellant's Brief also demonstrated that Minn. Stat. Section 327C.05 subd. 1, providing that no park owner may engage in a course of conduct unreasonable in light of the factors set out in Section 327C.01 subd. 8, means that the series of rent increases imposed on park residents by Respondents must meet the standards of reasonableness of Section 327C.01 subd. 8.

The Respondents oppose this conclusion with two arguments. First, they assert that the title of Section 327C.05 is about "rules" rather than rent and that "every subsection is about 'rules'." There are three responses rendering this assertion invalid. First, Minn. Stat. Section 645.49 provides that the title of the sections in Minnesota Statutes "are mere catchwords...and are not part of the statute." See, *In re dissolution of School District No. 33 v. Anderson*, 60 N.W.2d 60, 63 (Minn. 1953)(titles no value as an aid to statutory construction).

Second, the subsections of Section 327C.05 do not discuss only "rules;" the plain language of Subdivision 1 requires any "course of conduct" to meet the criteria of Section 327C.01 subd. 8. Subdivision 3 addresses "rules" which do not meet the standards of Section 327C.01 subd. 8. Respondents' construction of the statute would thus render the subdivision 1 reasonableness requirement for any course of conduct superfluous, in violation of the rule of construction set out in

Minn. Stat. Sections 645.16 and 645.17 and in *Astleford Equipment Co. v. Navistar Intern. Trans. Corp.*, 632 N.W.2d 182, 189 (Minn. 2001).

Third, "rule" is defined as "any rental agreement provision...through which a park owner controls, affects or seeks to control or affect the behavior of residents." Minn. Stat. § 327C.01 subd. 10. Rent requirements are rental agreement provisions through which owners control resident behavior – the making of monthly payments which are timely, in appropriate amounts, and to the appropriate party under the rental agreement. Section 327C.02 provides that a reasonable rent increase is "not to be considered a rule *for purposes of* section 327C.01 subdivision 8." Thus reasonable rent increases are not rules only for purposes of subdivision 8 and, under the principle of *expressio unius est exclusio alterius*, any rent increase that is not reasonable is a rule covered by subdivision 8. The Court of Appeals, in *Schaff v. Hometown America, L.L.C.*, repeatedly characterizes the rent increase at issue in the case as a "rule change" and held that the increase was not unreasonable.[2] Appellant's Addendum, pgs. 1-14, 1-15, and 1-17. Thus, rent provisions in the rental agreement are rules.

Respondents' second argument is that it would be absurd to try to analyze rent increases in light of all four factors set out in Section 327C.01 subd. 8. But it

[2] Contrary to Respondents' assertions, the plaintiffs in *Schaff* did allege that the rent increase violated Minn. Stat. Section 327C.02 (Addendum 1-14) and in the Decision Section, the Court of Appeals held, as a matter of law, the rent increase to be "not unreasonable" (Addendum 1-17).

seems perfectly reasonable to analyze whether the purpose of a rent increase is intended to promote the welfare of park residents or protect and preserve park premises – by paying for needed services and facilities. Similarly it's reasonable to ask whether the magnitude of a rent increase is reasonably related to that purpose and whether it is retaliatory. Finally, that rent increase notices will typically be sufficiently clear hardly renders "absurd" a legislative requirement that they be so.

II. Determination of rent reasonableness is not limited to market factors.

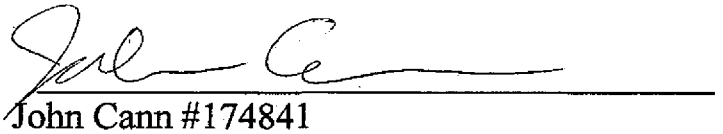
Appellant demonstrated in Sections IV through VI of its initial Brief that determination of whether a rent increase was reasonable and enforceable was not limited to market factors but could include consideration of the factors set out in Section 327C.01, subd. 8. and of the changed circumstances and offsetting benefits factors set out in Section 327C.02. Respondents' Response Brief wholly fails to address any of the arguments advanced by Appellant and doesn't even attempt to provide support for the District Court's declaratory judgments regarding these issues.

CONCLUSION

Respondents have wholly failed to counter or refute the arguments set out in Appellant's initial Brief demonstrating that the District Court's declaratory judgment was in error in all respects. Therefore, the Court of Appeals should

reverse the District Court's declaratory judgment and remand for further proceedings consistent with this decision.

Dated: April 12, 2010



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