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IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

LYLE ADAMS, ARLIS ADKINS,
SANDRA ADKINS, et al

v.

PALMYRA HOMES, INC.

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:
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No. 2011-00531

ORDER OF COURT

AND NOW, this 6th day of September, 2011, after hearing and in consideration of the arguments submitted by all parties, the Order of this Court is as follows:

1. Plaintiffs' Motion to Enjoin Enforcement of Defendant's Proposed Lease Agreement is granted. Consistent with the attached opinion, a written lease for all residents of Northcrest Acres will have to be redrafted to be brought into compliance with the Manufactured Home Community Rights Act. Defendant is to submit a revised lease to Plaintiffs within 60 days from today's date.

PURSUANT TO RULE 236
You are hereby notified
that this order has been
entered in this case.

2. Plaintiffs' request to enjoin enforcement of Defendant's proposed Rule 56 as articulated in a notice admitted as Exhibit 1 at the hearing is granted. Defendant may not implement Rule 56 as planned. However, as outlined in the attached opinion, Defendant may re-promulgate reasonable regulations to effectuate the systematic removal of oil tanks at Northcrest Acres that are owned by Carlos R. Leffler, Inc. and/or Leffler Energy, Inc.

3. In order to effectuate equity between the parties, the plan articulated within the conclusion section of the attached opinion is incorporated by reference into this Order.

BY THE COURT:



BRADFORD H. CHARLES J.

BHC/slh

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v. : No. 2011-00531
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PALMYRA HOMES, INC. :

APPEARANCES:

Edward J. Coyle, Esquire For Plaintiffs
BUZGON DAVIS LAW OFFICES

George E. Christianson, Esquire For Defendant
CHRISTIANSON MEYER

OPINION BY CHARLES, J., September 6, 2011

Mobile home communities are unique. In one respect, residents of a mobile home community are tenants because they lease the real estate where they live. In another respect, those same residents are homeowners because they own their dwelling. Unfortunately, tension sometimes arises when both the landowner and the manufactured dwelling owner assert conflicting “ownership rights”.

In an effort to govern the sometimes conflicting assertion of rights within a mobile home park, Pennsylvania’s General Assembly recently enacted the “Manufactured Home Community Rights Act”. A group of manufactured dwelling owners within the Northcrest Acre development have invoked this Act in an effort to avoid what they characterize as

onerous and unlawful lease provisions sought to be imposed by the owners of Northcrest Acres. We issue this opinion to address the dispute that has percolated at the Northcrest Acres development.

I. DEFINITIONS

For purposes of this opinion, we will for the sake of convenience utilize the following designations:

ANTI-WAIVER PROVISION – A provision of the MHCRA that precludes a written lease from creating a waiver of any MHCRA provision.

COMMUNITY - Refers generically to any mobile home park/manufactured home community

LEFFLER - Carlos R. Leffler, Inc. and/or Leffler Energy Co.

MHCRA - Manufactured Home Community Rights Act (68 P.S. § 398 et seq.)

NORTHCREST ACRES - Refers to the Manufactured Home Community owned by Palmyra Homes, Inc. that is referred to by the public as “Northcrest Acres”

OPERATOR - Refers generically to any owner/operator of any mobile home park/manufactured home community

OWNER - Palmyra Homes, Inc.

PLAINTIFFS - All named Plaintiffs

II. FACTS

At all times pertinent to this dispute, OWNER was the title owner of land on which the NORTHCREST ACRES is located. (Stipulation of the Parties No. 4). Two hundred manufactured homes are located within NORTHCREST ACRES. (Stipulation of the Parties, No. 6).

In or about 1982, LEFFLER acquired and installed underground heating oil tanks for use by all NORTHCREST ACRES residents. (Testimony of Dale Yiengst). All NORTHCREST ACRES residents were given a document entitled "Rules and Regulations and Agreement" when they moved into the development. (Exh. 6). Paragraphs 15 and 50 of that document read:

15. No outside fuel storage tanks will be permitted on the premises, unless set-up by the management for home heating system use...
50. All oil tanks and oil lines are supplied by Carlos Leffler, Inc. These tanks are provided as a service to each tenant at no charge, as long as fuel oil is purchased and an account set up with Lefflers. If oil is purchased from another supplier, a \$10.00 per month oil charge will be added to your rent.

In 1999, LEFFLER removed all underground oil storage tanks and replaced each tank with an above ground tank. (Testimony of Dale Yiengst).

At some point in 2009, LEFFLER no longer wanted to assume liability for the oil tanks. (Testimony of Dale Yiengst). LEFFLER advised OWNER that it believed that the above ground storage tanks installed in

1999 were "becoming an environmental safety issue". LEFFLER therefore requested that OWNER take action to replace each of the oil tanks, preferably with a natural gas or propane system.

In December of 2010, OWNER provided written notice to all NORTHCREST ACRES residents that a new "rule and regulation" would be made effective on February 1, 2011. That new regulation stated:

Rule 56 – Effective February 1, 2011, all heating sources in the park must be converted to propane usage. Existing homes will fall under the Leffler Energy oil tank removal program of 2011. All oil tank removal will be completed by August 2011. When oil tanks are removed, tenant is responsible for conversion process. No oil/kerosene fueled furnaces or fuel oil tanks will be allowed on premises at Northcrest Acres after August 2011.

(Exh. 1).

OWNER's notice to residents stated: "It will be each individual tenant's responsibility to contact Leffler Energy to initiate one of the options provided below, or make other outside arrangements with a vendor of your choice to supply equipment as stated in options below." (Exh. 1). Fairly summarized, the options afforded by OWNER were as follows:

- (1) Install a new LP gas furnace system at a cost of \$2,500.00.
- (2) Install a new LP gas conversion system to an existing furnace at a cost of \$1,785.00.

- (3) Obtain a written exception for continuing use of an oil furnace provided that a 275 gallon double-walled Roth fuel tank is installed at a cost of \$2,282.00.

Although the preamble to OWNER's notice did reference the possibility of an "outside vendor", the third option proffered by OWNER was accompanied by the following statement:

Under a written special exemption form, to become part of your lease agreement, installation of a 275 gallon Roth tank may be installed for use with your existing oil furnace. This tank is a double-walled fuel oil safety tank. This tank will be installed by Leffler Energy along with a tank cover, fuel gauge, suction assembly, vent alarm and protective fuel lines at a cost of \$2,282.00. This is the only approved tank system. This conversion can be coordinated with your existing tank removal by Leffler Energy.

(Exh. 1; emphasis supplied).

As incentives, OWNER offered several deferred payment options. In addition OWNER stated that the 100 gallon propane tanks to be installed under options one and two above would be "loaned to the customer as long as the fuel is purchased from Patriot Propane..." The incentives offered by OWNER were not nearly enough to placate NORTHCREST ACRES residents, most of whom balked at the unanticipated cost of converting their heating system.

In early 2011, OWNER provided a written lease agreement to all tenants and demanded that each sign it or face potential eviction. (Stipulation of the Parties, No. 22; Exh. 2). Paragraph 14 of the new lease incorporated the former "Northcrest Acres Rules and Regulations

and Agreement" document. (Stipulation of the Parties, No. 40). Paragraph 13 of the lease entitled "Termination of Lease" contained the following language:

In accordance with the Landlord and Tenant Act, Article V, Section 501(e) Community Management (Lessor) and Resident (Lessee) agree that Resident (Lessee) waives the requirement of notice to quit which provides for a notice when a resident is legally evicted as provided under Section 3 of the Mobile Home Community Rights Act.

In addition, Paragraph 9 of the lease contained the following additional language:

At the end of the initial term and all subsequent terms, this lease shall be automatically renewed for an additional term of one month...unless either party shall notify the other in writing a minimum of one month prior to the expiration of the rental agreement that the party does not intend to renew.

On March 11, 2011, a Complaint in Equity was filed by what we assume is a majority of NORTHCREST ACRES residents.¹ That Complaint sought the following relief:

- (1) A request to enjoin enforcement of proposed Rule 56 (related to new dwelling heating requirements).
- (2) A request to enjoin enforcement of the notice to quit waiver contained in the Paragraph 13 lease agreement.
- (3) A request to enjoin enforcement of the termination clause found in Paragraph 9 of the lease agreement.

¹ We say "assume" because we are not sure how many households are represented by the 124 Plaintiffs listed in the Complaint.

- (4) A request to enjoin enforcement of the rules and regulations incorporated into the lease agreement.

We conducted a factual hearing on July 11, 2011. At this hearing, ten residents of NORTHCREST ACRES testified in support of the equity complaint. These residents stated that they signed the proposed lease agreement "under protest" because they did not wish to be evicted. PLAINTIFFS' attorney indicated that all of the named PLAINTIFFS similarly signed the proposed lease agreement without prejudice to their right to challenge the legality of those provisions in court.

With respect to the heating system dispute, both PLAINTIFFS and OWNER presented conflicting testimony about the safety of oil heat and propane heat. Reggie Cummings of R. W. Cummings HVAC summarized the safety concerns regarding each type of heating system by stating: "Oil is an environmental issue. Propane is an explosive issue." The experts from both sides testified that the above ground oil tanks installed by LEFFLER in 1999 were beginning to reach the end of their life expectancy. OWNER's expert Dale Bischoff testified that the above ground tanks were "out of their normal lifetime use" ten years after installation. Mr. Cummings and HVAC Technician Lou Bickel testified that a properly maintained above ground tank can last for twenty years. However, both Mr. Bickel and Mr. Cummings acknowledged that poorly maintained tanks could fail within ten years and even properly maintained tanks can begin to rust from the inside after ten years.

In addition to expert testimony regarding the NORTHCREST ACRES heating system, some residents presented additional specific concerns, including the following:

- Robert Barr testified that he spent considerable money to rebuild his oil-fired furnace three to four years ago.
- Phillip Ditzler testified that he installed a brand new oil fired furnace on October 20, 2010.
- Lorraine Brisco testified that she purchased a new oil tank from LEFFLER for \$200.00 on April 16, 2010.
- Frances Rohr testified that she installed a kerosene furnace with an attached kerosene tank five years ago and OWNER did not object.
- Richard Rhode testified that a new above ground oil tank was installed by LEFFLER in October of 2010 because his old tank had leaked.

Following the factual hearing that occurred on July 11, we solicited briefs from both sides and we kept the record open for additional documentation at the request of PLAINTIFFS. We advised everyone of our desire to render a final decision by the beginning of October. In the meantime, we issued a temporary order maintaining the status quo for all concerned pending a final decision. Today, we issue this written opinion to render and explain our decision.

III. SUMMARY OF MANUFACTURED HOME COMMUNITY RIGHTS ACT

The MHCRA became effective on March 18, 2011. It replaced the former Mobile Home Park Rights Act ("OLD LAW"). The clear purpose of both the OLD LAW and the MHCRA is to acknowledge the special relationship that exists between owners of mobile home parks and those who reside therein. Stated differently, laws such as the Mobile Home Park Rights Act are designed to "give special protection" to manufactured dwelling owners who reside in mobile home parks. See *Malverne Courts, Inc. v. Stephens*, 419 A.2d 21 (Pa. Super. 1980).

The MHCRA contains a provision not found in the OLD LAW that requires that the operator of a mobile home community enter into written leases with each residence. 58 P.S. § 398.4.1. The MHCRA states:

For each lease period over sixty days prior to the expiration of the term of a manufactured home community lease, the manufactured home community owner shall offer the lessee a renewal lease for the same term and with the same provisions as the original agreement, unless the manufactured home community owner notifies the lessee in writing of any changes, at least sixty days prior to the expiration of the lease.

68 P.S. § 398.4.1(c).

The MHCRA specifies when and how a resident can be evicted. Section 398.3 of the Act permits eviction "only" for one of the following reasons:

- (1) Non-payment of rent.

- (2) A second or subsequent violation of the rules of the community within a six month period.
- (3) A change in use of the community.
- (4) Termination of the manufactured home community.

68 P.S. § 398.3(a). The eviction provisions of the MHCRA also contain specific procedures that must be followed before a manufactured home community resident can be evicted.

Also contained in the MHCRA is a provision dealing with "community rules and regulations". This provision states:

A manufactured home community owner may at any time establish fair and reasonable rules and regulations reasonably related to the health, safety and upkeep of the community, provided the rules and regulations are not arbitrary or capricious and are included in any written lease and delivered to existing lessees...

68 P.S. § 398.4(a). Interestingly, the Act requires that a notice be posted that includes the following language: "You are entitled to purchase goods or services from a seller of your choice and the community owner shall not restrict your right to do so." 68 P.S. § 398.4.

Within a section entitled "Disclosure of Fees", the MHCRA provides as follows with respect to community rules and regulations:

The manufactured home community owner may require that the prospective lessee or current lessee sign a receipt indicating receipt of a copy of the required disclosure and the manufactured home community rules and regulations so long as these documents are clearly identified in the receipt itself. The receipt shall indicate nothing more than that the documents identified in the receipt have been received by the lessee.

68 P.S. § 398.6(b).

Perhaps anticipating a flanking attack on its provisions by mobile home park OPERATORS, the MHCRA contains a specific prohibition against the practice of including a waiver of rights within a lease agreement. Section 12 of the MHCRA states:

Waiver of Rights

The rights and duties of manufactured home community owners and operators and the manufactured home lessees may not be waived by any provisions of a written or oral agreement. Any such agreement attempting to limit these rights shall be void and unenforceable in the Courts of the Commonwealth.

68 P.S. § 398.12 (hereafter "ANTI-WAIVER PROVISION"). Effectively, Pennsylvania's General Assembly has declared that the provisions of the MHCRA trump any contrary clauses found within a written lease agreement.

In addition to the above, the MHCRA affords COMMUNITY residents with a degree of freedom to maintain their own dwelling that is similar to the freedom enjoyed by a real estate home owner. Section 5 of the MHCRA authorizes an OPERATOR to approve "the type of material or manner" by which exterior alterations of a manufactured home can be effectuated. However, Section 5 also states: "Under no circumstances may a resident be required to purchase [exterior alterations] from a supplier designated by the community owner or operator." 68 P.S. § 398.5. In addition, Section 7 of the MHCRA states:

No manufactured home community owner or operator may restrict the making of any interior improvements in a manufactured home...nor may he restrict the installation, service of maintenance of an electric or gas appliance in the manufactured home or charge any fee for such installation unless the fee reflects the actual cost to the manufactured home community owner....

68 P.S. § 398.7. Essentially, the MHCRA precludes the practice commonly known as "exclusive vendors".

IV. DISCUSSION

Keeping in mind the context of the MHCRA outlined above, we will address PLAINTIFFS' arguments. In doing so, we will collectively address PLAINTIFFS' challenges to the language of the lease agreement. Thereafter, we will separately discuss the more difficult issue of whether or to what extent OWNER can mandate the type of home heating system to be employed by NORTHCREST ACRES residents.

A. Lease Language

As noted in the previous section of this opinion, the anti-waiver provision of the MHCRA effectively prohibits a manufactured home lease arrangement that is inconsistent with the provisions of the MHCRA. See 68 P.S. § 398.12. Accordingly, our sole task in evaluating OWNER's proposed lease is to determine whether it violates the MHCRA. If it does, Pennsylvania law requires us to strike down the offending provision as void.

In this case, PLAINTIFFS challenge three separate clauses found within the lease agreement. PLAINTIFFS argue that Paragraph 13 of the lease is in conflict with the ANTI-WAIVER PROVISION of the MHCRA. PLAINTIFFS allege that Paragraph 9 of the lease is in conflict with the eviction clause of the MHCRA. Finally, PLAINTIFFS argue that Paragraph 44 is inconsistent with Section 6(b) of the MHCRA. Our analysis with respect to each of these arguments is as follows:

(1) Waiver of Notice to Quit (Paragraph 13)

Paragraph 13 of OWNER's release states that "Community Management (Lessor) and Resident (Lessee) agree that Resident (Lessee) waives the requirement of notice to quit which provides for notice when a resident is legally evicted as provided under Section 3 of the Manufactured Home Community Rights Act." PLAINTIFFS claim that this section creates a waiver that is specifically prohibited by the MHCRA's ANTI-WAIVER PROVISION. In response, OWNER argues that this clause does not attempt to modify the MHCRA, but is rather designed to effectuate "a waiver of the notice to quit requirement of the Landlord-Tenant Act, 68 P.S. § 250.501..."

Black's Law Dictionary defines "notice to quit" as "a landlord's written notice demanding that a tenant surrender and vacate a leased premises, thereby terminating the tenancy". Black's Law Dictionary, 9th Ed. at pg. 1167. At common law, a notice to quit is necessary to terminate periodic tenancies such as those that extend from year-to-year

or month-to-month. See, e.g. 8 Summary of Pennsylvania Jurisprudence 2nd Property § 26:310. A notice to quit is considered to be a statutory prerequisite to eviction under the Landlord and Tenant Act. See 68 P.S. § 250 et seq.

Because manufactured home communities create legal rights that are different from a traditional landlord-tenant relationship, the MHCRA has created a separate paradigm for eviction. Eviction in a manufactured home community is governed by § 3 of the MHCRA. That section creates a notification process that is similar but distinct from the common law "notice to quit" requirement. See 68 P.S. § 398.3(b). Lest any confusion exists about the eviction process in a manufactured home community, the Landlord-Tenant Act specifically exempts "mobile home space" from the "notice to quit" requirement that normally governs traditional landlord-tenant arrangements. 68 P.S. § 250.501(a).

The notice requirement found in the eviction provision of the MHCRA is non-waiveable. To the extent that Paragraph 13 of OWNER's lease purports to create a waiver of any notice requirement, it is inconsistent with the MHCRA. To the extent that Paragraph 13 of the lease agreement was in fact intended to simply disavow applicability of the common law "notice to quit" requirement, it is surplusage because the landlord-tenant law already disavows the "notice to quit" requirement within a manufactured home community. See 68 P.S. § 250.501. Either way, the language contained in the proposed lease that addresses "notice

to quit" does not add or subtract anything from the rights and/or duties of the signators to the lease agreement. To eliminate any potential argument to the contrary, we will grant PLAINTIFFS' Motion to Enjoin Enforcement of Paragraph 13 of the proposed lease. Eviction at NORTHCREST ACRES will be governed exclusively by the provisions of MHCRA Section 3.

(2) Lease Termination Clause (Paragraph 9)

Paragraph 9 of the lease provides for automatic renewal on a month-to-month basis "unless either party shall notify the other in writing a minimum of one month prior to the expiration of the rental agreement that the party does not intend to renew". In stark contrast, Section 4.1 of the MHCRA states:

For each lease period over sixty days prior to the expiration of the term of a manufactured home community lease, the manufactured home community owner shall offer the lessee a renewal lease for the same term and with the same provisions at the original agreement, unless the manufactured home community owner notifies the lessee in writing of any changes at least sixty days prior to the expiration of the lease.

68 P.S. § 398.4.1(c). Essentially, Paragraph 9 of the lease attempts to create a thirty day termination notice window that constricts the sixty day termination notice required by Section 4 of the MHCRA. As such, Paragraph 9 of the lease violates the MHCRA and must therefore be stricken. Accordingly, PLAINTIFFS' Motion to Enjoin Enforcement of Paragraph 9 of the Lease will be granted.

(3) Rules and Regulations (Paragraph 14)

The MHCRA authorizes the promulgation and implementation of rules governing manufactured home communities. The MHCRA states: "The manufactured home community owner may require that the prospective lessee or current lessee sign a receipt indicating receipt of ... community rules and regulations..." 68 P.S. § 398.6(b). PLAINTIFFS argue that this language precludes OWNER from incorporating the "rules and regulations" into a lease agreement. We disagree.

Nothing contained in the MHCRA prevents a manufactured home community operator from incorporating its rules and regulations into a lease agreement. To be sure, the eviction provision of the MHCRA provides that one violation of those rules within a six month period cannot trigger an eviction. To the extent that Paragraph 13 of the proposed lease or any other provision of the lease purports to alter the eviction process or the requirement of a second violation within six months, we would strike such a provision down as inconsistent with the MHCRA. In fact, we have already declared Paragraph 13 of the lease to be unenforceable to the extent that it conflicts with Section 3 of the MHCRA. However, we see nothing wrong with Paragraph 14 of the lease as drafted by OWNER. That paragraph does not expand or contract the rights of the parties as provided by the MHCRA. Therefore, we will deny PLAINTIFFS' Motion to Enjoin Enforcement of Lease Paragraph 14.

B. Home Heating Mandate

The question of whether OWNER can mandate a specified home heating system is complicated by the following factors:

- With only one known exception, the oil tanks that PLAINTIFFS wish to retain are not owned by PLAINTIFFS; they are owned by LEFFLER.
- The land on which the oil tanks rest is likewise not owned by PLAINTIFFS; that land is owned by OWNER.
- The oil tanks are affixed to and are part of home heating systems for dwellings owned by PLAINTIFFS. They cannot be unilaterally removed without jeopardizing each resident's ability to heat his/her home.
- The current above-ground oil tanks were installed in 1999 as a result of a mandate promulgated by OWNER within its rules and regulations.
- Relying upon the oil tank mandate created by OWNER, several residents of NORTHCREST ACRES have spent money to upgrade/repair/replace heating systems, oil tanks and other components.

The competing concerns generated by the above facts implicate both statutory and common law principles. We will discuss some of those principles.

(1) Statutory Concerns

From a statutory perspective, the MHCRA authorizes the promulgation of "reasonable rules and regulations reasonably related to the health, safety and upkeep of the community" which are "not arbitrary or capricious". 68 P.S. § 398.4(a). At the factual hearing of July 11, 2011, expert testimony was presented from both parties that the heating system proposed by the other would be dangerous. The essence of each party's argument was aptly summarized by expert Reg Cummings, who stated: "Oil is an environmental issue. Propane is an explosive issue."

To us, it is intuitively obvious that some degree of risk accompanies both propane heat and oil heat. On the other hand, we cannot declare either type of heating system to be inherently unsafe. The safety of any type of home heating system presupposes that its component parts function as designed. Proper functioning can be insured only when a component part is within its life expectancy and is properly maintained. Given the above, regulations promulgated by an OPERATOR that are designed to promote maintenance of existing tanks and replacement of aging tanks can certainly be said to impact the "health, safety and upkeep of the COMMUNITY".

In this case, every expert who testified acknowledged that home heating oil tanks have a life expectancy of no more than twenty years. In addition, the experts agree that improperly maintained tanks can fail within ten years after installation. The tanks that PLAINTIFFS wish to

retain were installed by LEFFLER in 1999. They are roughly twelve years old. As such, they fall within a proverbial "grey" area. In other words, a regulation prohibiting use of LEFFLER's oil tanks may impact the health and safety of the community in some instances, but may be totally unnecessary to the health and safety of the community in other instances.

(2) An Owner's Right To Control Use Of His/Her Property

It is axiomatic that an owner enjoys the right to possess and control his/her own property. **Lauthum Products, Corp. v. National Underwear, Inc.**, 325 Pa. 383 (1937). In this case, LEFFLER asserts rights as an owner to retake possession of the oil tanks installed in 1999. Essentially, LEFFLER says: "The oil tanks belong to us. They are nearing the end of their useful life. We want them back before they leak and create liability problems for us." We must and will give significant weight to LEFFLER's desire to exercise control over its own property.

(3) Relationship Between OWNER and LEFFLER

At trial, Dale Bischoff of LEFFLER took the position that his company owned the oil tanks and could remove them from NORTHCREST ACRES at any time. Viewed in a vacuum, LEFFLER's position appears to make logical sense. After all, LEFFLER owns the tanks. Why shouldn't LEFFLER simply be able to retrieve what it owns? Unfortunately for LEFFLER, the nature of its relationship with OWNER causes us to proclaim: "Not so fast".

According to testimony at trial, a business relationship of some sort existed between OWNER and LEFFLER since 1982. Although no specific testimony was offered regarding the details of this business relationship, it is clear that OWNER intended to designate LEFFLER as an exclusive vendor of oil and heating systems for NORTHCREST ACRES. OWNER permitted LEFFLER to enter its property and install oil tanks at all of the manufactured home resident sites located at NORTHCREST ACRES. To cement LEFFLER's status as exclusive vendor, OWNER then included language in the COMMUNITY rules and regulations requiring that oil tanks and oil lines should be supplied by LEFFLER. The rules and regulations further provided: "these [oil] tanks are provided as a service to each tenant at no charge, as long as fuel oil is purchased and an account is set up with Lefflers. If oil is purchased from another supplier, a \$10.00 per month oil charge will be added to your rent." (§ 50 of Rules and Regulations).

It is obvious from the above that both OWNER and LEFFLER intended to derive pecuniary benefit from their mutual relationship at NORTHCREST ACRES. OWNER was able to obtain oil tanks for each resident at no charge, thus enhancing the marketability of NORTHCREST ACRES to prospective residents. In return, LEFFLER granted access to a large pool of customers at NORTHCREST ACRES, each of whom had a financial incentive to purchase fuel oil from LEFFLER.

Without question, a mutually beneficial and legally recognized relationship existed between OWNER and LEFFLER as it relates to NORTHCREST ACRES. Some might argue that this relationship was a partnership for a specific purpose.² Others might argue that it was a joint venture.³ Still others might classify OWNER as an agent of LEFFLER for the purpose of home heating oil distribution.⁴ It is not necessary today for us to formally classify the nature of the relationship between OWNER and LEFFLER. Regardless of whether one classifies the relationship as a partnership, a joint venture, or one of principle and agent, it is clear to us that the rights and obligations of LEFFLER cannot be examined in a vacuum; they are at least to some extent dependent upon and limited by the actions and conduct of OWNER. As a result, we reject the notion that LEFFLER retains the legal right to simply "take back" its oil tanks from the resident sites at NORTHCREST ACRES irrespective of the outcome of this litigation.

² Under Pennsylvania law, a partnership need not be evidenced by a written agreement. *DeMarchis v. D'Amico*, 637 A.2d 1029 (Pa. Super. 1994). In fact, the existence of a partnership can be inferred from surrounding circumstances. *Holt v. Butler*, 108 A.2d 740 (Pa. 1954). When determining whether or not a partnership exists, the intent of the parties is critical. *DeMarchis*, supra.

³ A joint venture is created when two entities combine efforts to effectuate a common purpose. *McRoberts v. Phelps*, 138 A.2d 439 (Pa. 1958). From a general perspective, each party to a joint venture is considered both an agent for and a principal of the joint venture. *Wilkens v. Heebner*, 480 A.2d 1141 (Pa. Super. 1984); *Golden Company v. Northeast Theater Corp.*, 421 A.2d 1151 (Pa. Super. 1980). Existence or non-existence of a joint venture must be determined based upon the unique facts and circumstances of each particular case. *McRoberts*, supra.

⁴ Even if a mutual venture between two entities does not rise to the level of a partnership or joint venture, it can nevertheless create an agent and servant relationship based upon the doctrine of apparent authority. See, e.g. *Myszkowski v. Penn Straud Hotel, Inc.*, 634 A.2d 622 (Pa. Super. 1993). Under Pennsylvania law, any agent can legally bind his/her principal. *Darlington v. County of Chester*, 607 A.2d 315 (Pa. Cmwlth. 1992).

(4) Prohibition Against Self-Help

The oil tanks are affixed to dwellings owned by PLAINTIFFS located on land owned by OWNER. LEFFLER cannot simply show up at NORTHCREST ACRES and take possession of the tanks. This type of "self-help" is frowned upon by the law. In *Priester v. Milleman*, 55 A.2d 540 (Pa. Super. 1947), our Superior Court quoted famous Justice Oliver Wendell Holmes, who stated while Chief Justice of Massachusetts: "If he cannot replevee, he cannot take with his own hand." See *Chapin v. Freeland*, 142 Mass. 383, 384, 8 N.E. 128, 129 (1886). As opposed to self-help, Pennsylvania law requires that an action of replevin be filed seeking return of one's property. See, e.g. *Wilson v. Highway Service Marineland*, 418 A.2d 462 (Pa. Super. 1980); Pa.R.C.P. 1071 et seq. The need to employ proper legal procedures such as replevin is especially critical when self-help could deprive someone of the ability to heat his/her own home.

As a practical matter, LEFFLER will require permission from PLAINTIFFS, OWNER and/or this Court before it can physically remove the oil tanks. As a large and pragmatic company, we suspect that LEFFLER recognizes this practical reality. We therefore conclude that LEFFLER will not undertake unilateral action independent of the outcome of this litigation.

(5) Oil Tanks and Fixtures

When an item of property is considered "personalty", the owner's right to move and control use of that property is nearly absolute. On the other hand, when an item is considered to be a "fixture upon real estate", the owner's right to control use of that property becomes more murky. For example, lessees of manufacturing buildings can remove machinery and equipment at the end of a lease term in some instances but not others. See, e.g. *Redevelopment Authority of Allegheny County v. Dachar Chemical Products Co.*, 298 A.2d 668 (Pa. Cmwlth. 1972); *Cattie v. Joseph P. Cattie and Brothers, Inc.*, 168 A.2 313 (Pa. 1961); *Berry v. Heinel Motors*, 56 A.2d 374 (Pa. Super. 1948).

Under Pennsylvania law, two considerations determine whether an item of property is considered "personalty" or a "fixture":

- (1) The intention of the parties with respect to the item; and
- (2) Whether the item can be removed from the premises without causing significant damage either to itself or to the premises.

McCarthy v. Bank, 423 A.2d 1280 (Pa. Super. 1980).

In this case, LEFFLER's oil tanks are physically affixed to PLAINTIFFS' dwellings. However, they are relatively easily removable without a risk of destruction to the building itself. In addition, it is clear to us that all parties consider the heating oil tanks to be owned by LEFFLER. OWNER has communicated to residents that the tanks would be owned by LEFFLER. LEFFLER considers itself to be the owner of the tanks, as

evidenced by its willingness to pay for the removal of all tanks in order to avoid future liability. Moreover, no resident except Lorraine Brisco has asserted an ownership interest in the tanks.

Because all parties intend that LEFFLER remain an owner, and because the oil tanks can be removed without causing significant damage to the adjacent manufactured home, we will not declare these tanks to be "fixtures". Hence, PLAINTIFFS do not enjoy any sort of legally enforceable right of "ownership" to LEFFLER's oil tanks.

(6) Estoppel

Estoppel is an equitable doctrine that precludes one party from acting contrary to the manner that his words and deeds have led others to expect. *Prime Medica Associates v. Valley Forge Insurance Company*, 970 A.2d 1149 (Pa. Super. 2009). In other words: "The doctrine of equitable estoppel protects the reasonable expectations of one who relies on another's course of conduct; it prevents a party from taking a position that is inconsistent with a position previously taken which is disadvantageous to the other." *Doppler v. Doppler*, 574 A.2d 1101, 1105 (Pa. Super. 1990). The doctrine of estoppel is one of fundamental fairness and its application is triggered on a case-by-case basis. *Stonehedge Square Ltd. Partnership v. Movie Merchants, Inc.*, 685 A.2d 1019 (Pa. Super. 1996).

From a very general perspective, there are two types of estoppels. Equitable estoppel is generally employed as an affirmative defense.

March v. Paradise Mutual Insurance Company, 646 A.2d 1254 (Pa. Super. 1994). On the other hand, promissory estoppel creates an independent cause of action that can be invoked by a Plaintiff. Moreover, “a plaintiff who attempts to recover upon a promise on the basis of estoppel need not attach any particular label to this claim”.⁵ *Paul v. Lankenau Hospital*, 543 A.2d 1148, 1153 (Pa. Super. 1988). In order to create a valid promissory estoppel, three requirements must be met:

- (1) There must be a promise that the promisor should reasonably expect to induce action or forbearance on the part of the promisee.
- (2) The promise must actually produce such action or forbearance.
- (3) There must exist no other way to avoid injustice but to enforce the promise.

Staup v. Times Herald, 423 A.2d 713 (Pa. Super. 1980); Restatement (2nd) of Contracts, Section 90.

The doctrine of promissory estoppel is relevant in this case for two reasons. First, it prevents OWNER from effectively outlawing oil heating systems that OWNER had previously mandated via its Rules and Regulations. Second, it prevents OWNER from removing oil tanks from residents who had expended funds to repair or replace those tanks.

Prior to February of 2011, the NORTHCREST ACRES Rules and Regulations prohibited “outside fuel storage tanks...unless set-up by the

⁵ In this case, PLAINTIFFS have not specifically pled the concept of promissory estoppel. However, their complaint, their presentation of evidence and their arguments are all infused with the concept of estoppel. As a court of equity, we consider estoppel to be a doctrine that is important for us to be able to effectuate justice between OWNER and residents of NORTHCREST ACRES. Therefore, we will not ignore it as an analytical template.

management..." (Paragraph 15 of Rules and Regulations). In addition, Paragraph 50 of the Rules stated: "All oil tanks and oil lines are supplied by Carlos Leffler, Inc." The "Rules and Regulations" document containing this language was given to all residents and remained in place until February 1, 2011. We find that the "Rules and Regulations" promulgated by OWNER for NORTHCREST ACRES constitutes a "promise" by OWNER that (1) an oil heating system would be appropriate; and (2) the oil tanks supplied by LEFFLER could and should be used.

Practically every resident of NORTHCREST ACRES now employs an oil burning furnace. This is the type of furnace that was mandated by OWNER via its Rules and Regulations until February 1, 2011. We believe the doctrine of promissory estoppel prevents OWNER from requiring an overnight heating system u-turn for all NORTHCREST ACRES residents.

In addition to the above, some residents of NORTHCREST ACRES expended funds to upgrade or repair their oil tanks because they believed that their oil-based heating systems would continue to be permitted at NORTHCREST ACRES. For example, Lorraine Brisco purchased an oil tank in April of 2010 to replace her old one believing that the newly purchased oil tank would continue to be acceptable in accordance with the rules and regulations that were in effect. For the same reason, Richard Rhode purchased a new oil tank in October of 2010.⁶ If we were to require strict enforcement of Rule 56 as it relates to Brisco and Rhode, the money they expended on their new oil tank would have been wasted.

⁶ Interestingly, LEFFLER provided new oil tanks to both Brisco and Rhode.

(7) Exclusive Vendor

Section 4 of the MHCRA requires that an OPERATOR provide a notice to all residents. Among the language contained in that notice is the following: "You are entitled to purchase goods or services from a seller of your choice and the community owner shall not restrict your right to do so." Section 5 of the MHCRA authorizes an OPERATOR to designate "the type of material or manner of installation for...additions and alterations to the exterior of the manufactured home" but specifically precludes an OPERATOR from designating a vendor for these exterior alterations. Section 5 states: "Under no circumstances may a resident be required to purchase [exterior alterations] from a supplier designated by the community owner or operator." 68 P.S. § 398.5. Further, Section 7 of the MHCRA states:

No manufactured home community owner or operator may restrict the making of any interior improvements in a manufactured home...nor may he restrict the installation, service or maintenance of an electric or gas appliance in the manufactured home or charge any fee for such installation unless the fee reflects the actual cost to the manufactured home community owner..."

68 P.S. § 398.7 (emphasis added).

By virtue of the above provisions, Pennsylvania's General Assembly has clearly communicated that it does not want OPERATORS to control or restrict the ability of COMMUNITY residents to contract with vendors of their choice. Essentially, the General Assembly has declared that

manufactured homeowners should retain the same right as real estate homeowners with respect to interior and exterior improvements "so long as such improvements are in compliance with applicable building code" (Section 7) and so long as they comply with reasonable rules and regulations that are designed to promote the "health, safety and upkeep" of the community. (Section 3).

(8) Arbitrary and Capricious Conditions

Although OWNER can create regulations under the MHCRA, Section 3 of that Act requires that those rules not be "arbitrary or capricious". 68 P.S. § 398.3. Requiring every resident to immediately change the nature of their home heating system without regard to the safety or utility of the existing home heating system strikes us as falling within the definition of "arbitrary". While we do not quarrel with an OPERATOR's ability to regulate storage of potentially dangerous home heating fuel, any regulation that requires alteration of a dwelling at great expense should be implemented over time. No owner of a COMMUNITY should be permitted to suddenly and unexpectedly require all of its residents to expend thousands of dollars. Absent proof of an immediate risk to neighbors or the COMMUNITY itself, implementation of rules governing fuel storage should only be implemented over a reasonable period of time. Otherwise, we would classify those rules as "arbitrary".

Sifting through the eight legal principles summarized above and the factual context of this dispute, we reach the following conclusions:

- (1) LEFFLER cannot simply do as it pleases with its oil tanks. LEFFLER cannot employ "self-help" to retake possession of the tanks and any civil action of replevin will encounter a significant hurdle created by OWNER's conduct and the imputation of that conduct to LEFFLER by virtue of the LEFFLER-OWNER business relationship. As a practical matter, LEFFLER will be limited in its control of the oil tanks by what we decide today.
- (2) As home heating oil tanks age, the necessity and circumstances of replacement becomes an issue that is reasonably related to the "health, safety and upkeep" of the manufactured home community. Thus, OWNER has the legal right under the MHCRA to promulgate rules and regulations pertaining to storage of fuel for home heating systems. Stated differently, OWNER has the ability to demand that aging oil tanks be replaced in order to preserve the environmental safety of the entire NORTHCREST ACRES community.
- (3) The NORTHCREST ACRES rules and regulations requires that all fuel storage containers be approved by OWNER and that "all oil tanks and oil lines are supplied by Carlos Leffler, Inc." These provisions, combined with the installation of oil storage tanks at the behest of OWNER, create an actionable "promise" for purposes of invoking the doctrine of promissory estoppel. For all NORTHCREST

ACRES residents, OWNER's authorization/mandate that residents employ oil-based heating has induced practically every resident of NORTHCREST ACRES to utilize such a heating system. The doctrine of promissory estoppel prevents OWNER from requiring an overnight change of the oil-based heating systems that have been used for years by NORTHCREST ACRES residents.

- (4) Some residents of NORTHCREST ACRES expended money to repair and/or upgrade their oil tanks. They did so believing that the oil-fired heating system would remain available for use. For those residents who expended money in reliance upon the continued viability and use of oil-based heating systems, the doctrine of promissory estoppel precludes OWNER from requiring replacement of their "new" tanks. For those individuals, OWNER will be at liberty to create a regulation requiring periodic inspection of those tanks. Once the tanks arrive at the end of their life expectancy, then OWNER can require the resident to remove them and install a new fuel oil storage system.
- (5) OWNER's prior arrangement with LEFFLER clearly violates the existing MHCRA that affords residents with the freedom of choice with respect to vendors supplying goods and services. In addition, OWNER's present scheme predicated on Rule 56 also violates the MHCRA. Under OWNER's present plan, the only option available for residents who wish to retain oil-fired heat is Option 3. That option

requires a 275 gallon Roth tank. It requires that the tank "will be installed by Leffler Energy". It emphasizes "this is the only approved tank system". (See Exh. 1). Clearly, OWNER's proposed plan classifies LEFFLER as an exclusive vendor for all residents who wish to retain use of their oil-fired furnace. As such, it violates the MHCRA.

V. CONCLUSION

What does all of the above mean for OWNER, LEFFLER and the residents of NORTHCREST ACRES? First and foremost, it means that no one is going to walk away from this dispute with everything that he/she/it wants. To the extent that OWNER seeks to implement the new lease agreement and Rule 56 as they were drafted, the Order we will be entering today will prevent OWNER from doing so. To the extent that LEFFLER seeks to immediately re-enter NORTHCREST ACRES in order to remove all of its oil tanks, the Order we enter today will effectively prevent LEFFLER from doing so. To the extent that PLAINTIFFS seek the "right" to indefinitely utilize LEFFLER's above ground oil tanks, our Order today will also prevent that from occurring.

As should be obvious to any reader of this opinion, it has been difficult for us to meld together all of the competing legal principles to arrive at a decision that effectuates equity for all concerned without

violating any of the applicable legal constraints. Still, we believe we have arrived at a plan that will accomplish these goals. That plan is as follows:

- (1) The lease agreement as currently proposed by OWNER is inconsistent with the MHCRA in various respects. Therefore, OWNER will be required to redraft the lease agreement so that it will be consistent with the MHCRA going forward. The Rules and Regulations for NORTHCREST ACRES can be incorporated by reference into a new lease agreement. However, the Rules and Regulations will have to be modified. At a minimum, Paragraphs 15 and 50 relating to LEFFLER will have to be modified.
- (2) OWNER's current scheme to require propane heating or a LEFFLER-installed Roth storage tank via proposed Rule 56 is inconsistent as written with the MHCRA. Therefore, PLAINTIFFS' will not be able to employ Rule 56 as written.
- (3) OWNER does have the right to promulgate a rule that prohibits use of an oil tank nearing the end of its life expectancy. Such a rule would reasonably relate to the health, safety and upkeep of NORTHCREST ACRES. Ultimately, PLAINTIFFS must realize that none of them will be able to indefinitely retain possession of LEFFLER's aging oil tanks. Unless the principles set forth in Paragraph 5 apply, OWNER will have the ability to create a systematic plan to effectuate removal of LEFFLER's oil tanks within the relatively near future. To avoid being deemed "arbitrary" under

Section 3 of the MHCRA, OWNER's plan must, at a minimum, include the following:

- (a) Unless an inspection deems an oil tank to be leaking or at risk to imminently leak, OWNER cannot require an immediate removal of the oil tanks.
 - (b) To provide residents with time to investigate suitable replacement options and save money necessary to implement the chosen option, OWNER must afford each resident with at least one year advance notice before requiring replacement of an oil tank.
 - (c) Although the tanks themselves must be retrieved by LEFFLER, actual removal of the tanks from each resident's home heating system may be effectuated by any qualified vendor selected by the resident.
- (4) OWNER can reasonably promulgate a rule that imposes general safety requirements upon home heating fuel storage. Examples of permissible requirements would include code-compliance or prohibiting underground storage. OWNER cannot require any resident to use LEFFLER as a vendor, nor can OWNER mandate what specific brand of storage tanks or heating systems should be purchased.
- (4) Given that OWNER induced the use of oil heat by virtue of its pre-Rule 56 Rules and Regulations, OWNER cannot prohibit any

resident from using oil heat. Any new rule must therefore contain a method by which NORTHCREST ACRES residents can continue to use their oil-fired heating systems.

- (5) For those NORTHCREST ACRES residents who relied upon the OWNER's pre-Rule 56 Rules and Regulations by expending funds to repair and/or replace oil tanks, the doctrine of promissory estoppel precludes OWNER from creating a rule that requires the immediate removal of oil tanks used by the residents who expended repair and/or replacement monies. For these residents, an inspection process can be created and once an inspection is "failed", removal of the tank can be mandated.

An Order to effectuate the above decisions will be entered this date.