

BEFORE THE WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE ATTORNEY GENERAL'S OFFICE

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In the Matter of:

Rosemarie Gee,

Complainant,

v.

Kingsbury West MHP,

Respondent.

Docket No. 2010-AGO-0003

CONSUMER PROTECTION DIVISION
SEATTLE

ORDER ON MOTIONS FOR
SUMMARY JUDGMENT

(MANUFACTURED/MOBILE HOME
DISPUTE RESOLUTION PROGRAM)

A hearing was held on January 31, 2011 in Seattle, Washington by Leslie A. Wagner, Administrative Law Judge (ALJ) of the Office of Administrative Hearings (OAH) to consider the motions of both parties for summary judgment. The Respondent, Kingsbury West Mobile Home Park (Kingsbury West), appeared and was represented by Walter H. Olsen, Jr., Attorney at Law. Pedro Bernal IV, Assistant Attorney General (AAG) represented the Office of the Attorney General of Washington (AGO). Jeffrey Palmer, manager of Kingsbury West, attended the hearing as did Mary Harper from the AGO's. The Complainant, Rosemarie Gee, did not attend the hearing.

MOTIONS FILED

Kingsbury West filed a Motion for Summary Judgment on November 19, 2010. The Motion plus attachments were considered and admitted into the record including: Declaration of Walter H. Olsen, Jr. with Exhibits 1 and 2; Declaration of Jeffrey Palmer In Support of Motion for Summary Judgment plus Exhibits A through E.

The AGO submitted a Motion for Summary Judgment on November 19, 2010. The Motion plus attachments were considered and admitted into the record including: Declaration of Amanda Philips dated November 18, 2010 with attached Exhibits A through F; Declaration of Renee Shadel with attached Exhibits A through X; and the AGO Notice of Violation for Complaint Number 352504 dated June 23, 2010.

On December 3, 2010, the AGO filed a Response to Kingsbury West's Motion for Summary Judgment. The Response plus attachments were considered and admitted into the record including:

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Declaration of Amanda Philips dated December 3, 2010 with attached Exhibits A through C; and another copy of the AGO Notice of Violation dated June 23, 2010.

On December 6, 2010, Kingsbury West submitted a Response to Attorney General's Motion for Summary Judgment. The Response plus attachments were considered and admitted into the record including: Declaration of Jeffrey Palmer in Response to Motion for Summary Judgment dated December 2, 2010 plus attached utility map.

On December 17, 2010, the AGO filed a Reply to Kingsbury West's Response to Motion for Summary Judgment. The Reply plus attachments were considered and admitted into the record including the Declaration of Rosemarie Gee dated December 10, 2010. The Declaration of Ms. Gee references the attached Exhibit A, a letter to Jeffrey Palmer from Ms. Gee dated July 25, 2009. The letter was not included as Exhibit A but purports to be a communication asserting tree roots were cracking Ms. Gee's driveway. This document is not considered pivotal to the decision made herein.

On December 17, 2010, Kingsbury West submitted by fax and on December 20, 2010 submitted an original copy of its reply to Attorney General's Response to Motion for Summary Judgment. The Response was considered and admitted into the record.

ISSUE

Does Kingsbury West violate RCW 50.20.135?

FINDINGS OF FACT

1. Kingsbury West is a mobile home park built in 1971; it is located in Lynnwood, Washington. An annex to the park was added in approximately 1977. Kingsbury West is a Senior Citizen mobile home park, meaning the majority of the residents are required to be age 55 or older.
2. Rosemarie Gee is a senior citizen and resides at Lot 8 of Kingsbury West, part of the original (not annexed portion) of the park. She owns her mobile home and pays rent to reside in the park. She moved into Kingsbury West in approximately 1997 and in 1998, she signed a lease and purchase agreement with the former owner of the mobile home. Ms. Gee was not an original tenant to Kingsbury West. All original tenants purchased their mobile homes from third parties (not Kingsbury West) and hired contractor(s) to install their homes, driveways, carports and landscaping.

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3. Ms. Gee and Kingsbury West signed a Mobile Home Lot month to month rental agreement on August 27, 1997. Exhibit B to Declaration of Amanda Philips of AGO's Motion. Incorporated by reference into the agreement signed by Ms. Gee on or about August 27, 1997 were Park Rules and Regulations. Exhibit C to Declaration of Amanda Philips attached to AGO's Motion. The rules state in part:

Mobile Home and Space Appearance. Mobile homes must be kept clean (washed), lawns mowed, trimmed and watered. Spaces must be kept free of weeds. Any lawn or space not maintained by the tenant will be cared for by the management and a reasonable charge will be made for doing the same.

Id at page 1. Kingsbury West asserts that per this language Ms. Gee is responsible for the costs of maintenance of her driveway including maintenance necessary due to any erosion or disrepair that occurs due to tree roots. The ALJ does not find that this language specifically addresses driveway maintenance. The month to month rental agreement also states at paragraph 31:

31. **WAIVER OF ONE YEAR AGREEMENT.** The undersigned certifies that I (we) have been offered a rental agreement of one (1) year or more and have rejected the offer and elect to enter into a month-to-month rental agreement.

Id at page 2.

4. Ms. Gee's driveway is cracking as a result of tree roots growing underneath. The tree or trees causing damage to the driveway have been located on the Ms. Gee's lot and/or mobile home park since prior to Ms. Gee's tenancy.

5. On November 3, 2009, a complaint was made by Rosemarie Gee to the AGO asserting Kingsbury West was attempting to transfer responsibility for maintenance to her. Prior to filing the complaint, she had attempted to resolve the matter directly with Kingsbury West, to no avail. She asserts park tree roots were causing damage to her driveway. The complaint requests that Kingsbury West remove the tree roots and repair the driveway. Exhibit A to Declaration of Amanda Philips attached to the AGO's Motion.

6. The AGO contacted Kingsbury West regarding Ms. Gee's complaint. Attempts to resolve the dispute through the informal resolution process failed prior to investigation.

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7. The AGO conducted an investigation and on June 23, 2010, issued a Notice of Violation (Notice) to Kingsbury West citing a violation of the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA), RCW 59.20, and ordering Kingsbury West to take corrective action to remedy the alleged violations. The AGO's investigator, Ms. Shadel, determined that three trees on Ms. Gee's lot are causing the buckling to her driveway and that a fourth tree on a common area has roots that are growing toward and under Ms. Gee's home. Declaration of Renee Shadel at page 2. The corrective action requested in the Notice is:

- (1) Repair or replace the entirety of the damaged portion of the driveway located at the Complainant's place of residence, by resurfacing or repaving any cracked or damaged portions of the driveway.
- (2) Remove any trees or tree roots that are damaging or have damaged the driveway located on the Complainant's place of residence rented lot.
- (3) Provide photographic or documentary proof of completion of the above repairs, including an invoice from a contractor or an itemized receipt of materials purchased, and a signed affidavit indicating that repairs have been completed.

Attached Exhibit to the AGO's Motion.

8. Kingsbury West responded to the Notice that maintenance of the driveway is Ms. Gee's responsibility, adding that she is also responsible for maintenance of the trees on the property she rents.

9. The issue for both summary judgment motions is whether or not Kingsbury West violated RCW 50.20.135.

10. The AGO argues in essence as follows: a) a driveway is a permanent structure under RCW 59.20.135; b) mobile home park landlords are prohibited from transferring maintenance of permanent structures to tenants; c) a driveway is an amenity; d) Kingsbury West required Ms. Gee's predecessor in interest to construct and pay for the driveway, Ms. Gee does not own the driveway and because the prior tenant was required to purchase and install the driveway, the driveway does not fall within the "built or affixed by a tenant" clause of the RCW 59.20.135(3); d) mobile home landlords should not be allowed to circumvent the spirit and intent

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of the MHLTA by requiring tenants to erect or finance structures they will likely leave behind when they move (such as a driveway); to allow landlords to do so would permit landlords to take advantage of the very people the Act intends to protect.

11. Kingsbury West argues in essence as follows: a) Kingsbury West is not responsible to maintain the driveway or trees on Ms. Gee's property; b) Kingsbury West's duty to maintain is limited to common areas not in the possession of tenants and the driveway and trees at issue are not on common areas; c) the permanent structure statute does not apply to Ms. Gee's duty to maintain her driveway which was constructed by a tenant over 40 years ago; d) there is no duty set forth in the MHLTA that requires landlords to maintain tree on tenants' properties; e) RCW 59.20.135 does not apply to transfers that occurred before March 1994 or, alternatively, that any claim of violation that accrued when Ms. Gee moved in 1997 would be barred by the statute of limitations; f) if any transfer of responsibility for maintenance of permanent structures did occur, it occurred two decades before RCW 59.20.135 became effective; g) Ms. Gee purchased her mobile home and its appurtenances, which include the driveway and trees on the lot; h) the driveway is not a permanent structure provided by Kingsbury West as an amenity to park residents; i) the tree causing harm to Ms. Gee's driveway is on her lot and she is responsible to repair any damage on her property caused by a tree on her property; j) ownership of the driveway cannot be determined in an administrative proceeding; k) a "park package" is not something a landlord provides or requires but something tenants purchase from someone other than the landlord; l) Ms. Gee has two driveways, one paved and one graveled and Ms. Gee and her predecessor maintained the paved driveway, paying for repaving over the years.

CONCLUSIONS OF LAW

1. There is jurisdiction to hear this matter pursuant to the Revised Code of Washington (RCW) 59.30.040.

2. The AGO is authorized to administer a Manufactured/Mobile Home Dispute Resolution Program (MHDRP) to assist mobile home community tenants and landlords with a process to resolve disputes regarding violations of the Manufactured/Mobile Home Landlord Tenant Act (MHLTA). RCW 59.30.030

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3. Kingsbury West, as a party aggrieved by the Notice of Violation issued by the AGO, is entitled to request an administrative hearing to contest the alleged violation. The ALJ is required to determine if the evidence supports the findings of the AGO by a preponderance of the evidence. RCW 59.30.040(10)(b).

4. Despite the fact that Kingsbury West argues that the MHLTA does not apply to the case at hand, the undersigned does not conclude this assertion to be correct. RCW 59.20.090 provides that rental agreements are for terms of one year and are renewable thereafter unless another term is agreed upon. Ms. Gee's and Kingsbury West's agreement was for a month to month rental term and Ms. Gee and Kingsbury West signed the agreement with the specific clause stating they waived a one year rental agreement and elected month to month. . Therefore, any agreement entered into between Ms. Gee and Kingsbury West that predated the effective date of the MHLTA is no longer an agreement that is the agreement for consideration before this tribunal, as the agreement was for month to month and renewed each month. Rental agreements between Ms. Gee and Kingsbury West would have been renewed numerous times since the effective date of the MHLTA. Per RCW 59.20.040, rental agreements are unenforceable to the extent they conflict with the MHLTA.

5. RCW 59.20.135 (1) declares the purpose of the MHLTA, effective date March 21, 1994, and provides:

Maintenance of permanent structures — Findings and declarations — Definition.

(1) The legislature finds that some mobile home park owners transfer the responsibility for the upkeep of permanent structures within the mobile home park to the park tenants. This transfer sometimes occurs after the permanent structures have been allowed to deteriorate. Many mobile home parks consist entirely of senior citizens who do not have the financial resources or physical capability to make the necessary repairs to these structures once they have fallen into disrepair. The inability of the tenants to maintain permanent structures can lead to significant safety hazards to the tenants as well as to visitors to the mobile home park. The legislature therefore finds and declares that it is in the public interest and necessary for the public health and safety to prohibit mobile home park owners from transferring the duty to maintain permanent structures in mobile home parks to the tenants.

6. A mobile home park owner is not allowed to transfer responsibility for maintenance of permanent structures within the mobile home park. RCW 59.20.135 (2) provides:

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(2) A mobile home park owner is prohibited from transferring responsibility for the maintenance or care of permanent structures within the mobile home park to the tenants of the park. A provision within a rental agreement or other document transferring responsibility for the maintenance or care of permanent structures within the mobile home park to the park tenants is void.

7. A "permanent structure" is defined in RCW 59.20.135(3) as follows:

(3) A "permanent structure" for purposes of this section includes the clubhouse, carports, storage sheds, or other permanent structure. A permanent structure does not include structures built or affixed by a tenant. A permanent structure includes only those structures that were provided as amenities to the park tenants.

(Emphasis added by underlining.)

8. RCW 59.20.100 provides:

Improvements.

Improvements, except a natural lawn, purchased and installed by a tenant on a mobile home lot shall remain the property of the tenant even though affixed to or in the ground and may be removed or disposed of by the tenant prior to the termination of the tenancy. PROVIDED, That a tenant shall leave the mobile home lot in substantially the same or better condition than upon taking possession.

(Emphasis added by underlining.)

9. RCW 59.20.130 sets forth the duties of a mobile home park landlord and provides:

Duties of landlord.

It shall be the duty of the landlord to:

(1) Comply with codes, statutes, ordinances, and administrative rules applicable to the mobile home park;

(2) Maintain the common premises and prevent the accumulation of stagnant water and to prevent the detrimental effects of moving water when such condition is not the fault of the tenant;

(3) Keep any shared or common premises reasonably clean, sanitary, and safe from defects to reduce the hazards of fire or accident;

(4) Keep all common premises of the mobile home park, and vacant mobile home lots, not in the possession of tenants, free of weeds or plant growth noxious and detrimental to the health of the tenants and free from potentially injurious or unsightly objects and condition;

(5) Exterminate or make a reasonable effort to exterminate rodents, vermin, or other pests dangerous to the health and safety of the tenant whenever infestation exists on the common

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premises or whenever infestation occurs in the interior of a mobile home, manufactured home, or park model as a result of infestation existing on the common premises;

(6) Maintain and protect all utilities provided to the mobile home, manufactured home, or park model in good working condition. Maintenance responsibility shall be determined at that point where the normal mobile home, manufactured home, or park model utilities "hook-ups" connect to those provided by the landlord or utility company;

(7) Respect the privacy of the tenants and shall have no right of entry to a mobile home, manufactured home, or park model without the prior written consent of the occupant, except in case of emergency or when the occupant has abandoned the mobile home, manufactured home, or park model. Such consent may be revoked in writing by the occupant at any time. The ownership or management shall have a right of entry upon the land upon which a mobile home, manufactured home, or park model is situated for maintenance of utilities, to insure compliance with applicable codes, statutes, ordinances, administrative rules, and the rental agreement and the rules of the park, and protection of the mobile home park at any reasonable time or in an emergency, but not in a manner or at a time which would interfere with the occupant's quiet enjoyment. The ownership or management shall make a reasonable effort to notify the tenant of their intention of entry upon the land which a mobile home, manufactured home, or park model is located prior to entry;

(8) Allow tenants freedom of choice in the purchase of goods and services, and not unreasonably restrict access to the mobile home park for such purposes;

(9) Maintain roads within the mobile home park in good condition; and

(10) Notify each tenant within five days after a petition has been filed by the landlord for a change in the zoning of the land where the mobile home park is located and make a description of the change available to the tenant.

A landlord shall not have a duty to repair a defective condition under this section, nor shall any defense or remedy be available to the tenant under this chapter, if the defective condition complained of was caused by the conduct of the tenant, the tenant's family, invitee, or other person acting under the tenant's control, or if a tenant unreasonably fails to allow the landlord access to the property for purposes of repair.

(Emphasis added by underlining.) This statute sets forth specific responsibilities as to common areas and the roads within a mobile home park. It does not specify driveways.

10. Kingsbury West, as a mobile home park owner, is responsible for the maintenance of its permanent structures that it provided as amenities to the tenant. A permanent structure does not include structures built or affixed by a tenant, but only those structures provided as amenities to park tenants. The AGO asserts a driveway is not moveable and is, therefore, a permanent structure (a structure being something that is constructed). Kingsbury West asserts the driveway is not a permanent structure for both the reason that it is not a

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structure as anticipated by the legislature and because it was not provided by Kingsbury West as an amenity to Ms. Gee but, rather, built or affixed by a tenant, Ms. Gee's predecessor in interest.

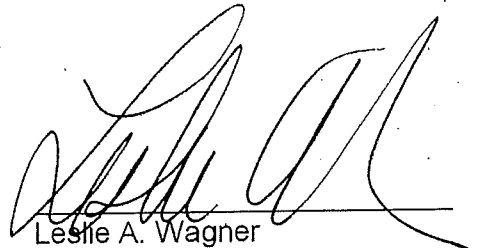
11. Summary judgment may be granted when the material facts are not disputed and the moving party is entitled to judgment as a matter of law. WAC 10-08-135.

12. In the case at hand, considering the material facts not in dispute and the relevant legal authorities, this tribunal concludes the Notice of Violation issued against Kingsbury West should be dismissed. The driveway at issue herein is not concluded to be a permanent structure in that it was not provided as an amenity by Kingsbury West to Ms. Gee's predecessor and was built or affixed by her predecessor. No transfer of obligation to maintain is determined to have occurred as Ms. Gee's predecessor assumed the responsibility for constructing a driveway or driveways. The prior tenant had the option not to build and rent at Kingsbury West. Even if building a driveway was a condition required of Ms. Gee's predecessor in order to reside at the park, the predecessor agreed to assume the responsibility. Whether or not the original owners were required to install paved driveways is a fact in dispute, but not deemed material to the determination made herein. Ms. Gee's predecessor had the option not to rent at a community that would require installation of a driveway. The driveway clearly was not an amenity provided by Kingsbury West. Because this decision determines that Ms. Gee's driveway was built or affixed by a tenant and was not an amenity provided to park tenants, no determination is made whether a driveway is otherwise considered to be a structure under the law.

DECISION

The Notice of Violation dated June 23, 2010 and issued to Kingsbury West is dismissed.

SERVED on the date of mailing.


Leslie A. Wagner
Administrative Law Judge
Office of Administrative Hearings

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A copy was sent to:

Walt Olsen, Respondent Rep
Rosemarie Gee, Complainant
Pedro Bernal, AAG

NOTICE OF APPEAL RIGHTS

This order is the final agency order of the Attorney General Manufactured Housing Dispute Resolution Program and may be appealed to the Superior Court under Chapter 34.05 RCW. See RCW 59.30.040(10)(c). Such petition for judicial review must be filed within thirty (30) days of the mailing date of this order. The petition for review must be served on the agency, the office of the attorney general, and on all parties of record. RCW 34.05.514 and RCW 34.05.542.