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PARK WATCH ™ LEGAL DEVELOPMENTS NEWSLETTER

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Enterprise Liability: *New* Attack on *Big* Owners of *Multiple* Communities

– Is Your Portfolio Vulnerable?

By: Terry R. Dowdall, Esq.

Upshot

2014 begins with the resurgence of the *class action* phenomenon in mobilehome parks. Not just any park owners, but owners controlling *multiple parks*. This ensures the largest possible class for recovery purposes. This iteration of mass-claim suit is based on *business practices*; specifically, technical violations of law (some remarkably picayune and sloppy *), multiplied by thousands of class members.

This *business practices class action* ("**BPCA**") was filed last month in San Diego Superior Court. This form of challenge of park management practices has not been widely observed since the late 1970's (claims for damages for unfair treatment, violations of consumer protection statutes and MRL issues) compared to the FTM. The BPCA is alive and well in other business contexts, and appears to be a real risk for park owners now.

The question is whether owners will pro-actively manage resident relations, update and correct outdated business procedures, policies and practices, or, do nothing and assume the tsunami will overwhelm someone else.

* A typical claim is that the rules and regulations were not "attached" to the rental agreement. Technically, rules and regulations are included in the rental agreement by reference, not attached. Only the Mobilehome Residency Law ("MRL") itself must be attached. Civ. Code §798.15 (c)("...this chapter shall be attached ...").

Creative Solutions, Efficient, Practical Representation, Profitable Parks

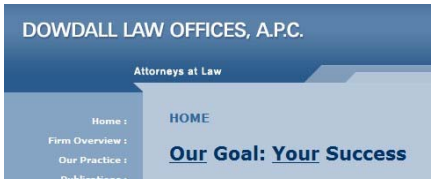
Dowdall Law Offices A.P.C.

In this Issue:

Coming Events:
Save the Date:
We are There, So Bring Questions!
WMA MCM April 24, Burbank
WMA MCM May 20, Ontario

Proudly Representing Mobilehome Park Owners since 1978

We recommend:
FEDERAL ARBITRATION CLAUSES;
MANDATORY MEDIATION;
BROAD 'FACILITIES RELEASES'



ATTENTION
Riverside. County Owners:

*Did you know that **each** space in your park may be **exempt** from rent control if you have **any** written rental agreement?*

Check the ordinance !

This "*Ordinance **does not apply** to any ... space for the rental of which the mobile home park owner and the tenants have mutually agreed to enter into a **lease** which conforms to the provisions of California Civil Code Section **798.15** et seq.*"

[See Sec. 5. D.]

The **BPCA** is a "class action." It is also a *sledgehammer*. Class actions award each class member equally, based on the damages allowed for the class representative. Each class member has a right to the same damages as the class representative. ***It's simple***: 10 class members means **"10x"** the damages awarded to the plaintiff in the action. Owners with multiple holdings are thus, the most attractive targets because multiple parks enlarge the potential tenant class.

For example, if just one park has **1,000** tenants (and hence possible class members), a small recovery of just **$1,000** per class member means a total judgment of *$1,000,000* (1,000 tenants *[x]* $1,000 = $1,000,000). *Now,* imagine you have 10 parks, and the claim of common wrongdoing has allegedly victimized every class member in every park.

> The question is whether owners will pro-actively manage resident relations first and update / correct outdated business procedures, policies and practices, or relax and assume the oncoming tsunami will miss.

The types of claims the **BPCA** covers commonly include statutory violations and "unfairness" (a codified term of art) and deception as defined in the Business and Professions Code. Damages may be limited to restitution (giving back ill-gotten gains, disgorging profits), statutory fines and injunctive relief. Attorney's fees are also awarded. With class treatment (assuming class certification), the end result can be shocking.

It gets worse. CGL Insurance policies may not cover the **BPCA** (because it scrutinizes discretionary business decisions, not necessarily based on "occurrences" of defined injury or damage). Backed up with class representatives' anecdotal evidence of colorful mismanagement, code violations or reprehensible "unfairness" or "deception," the **BPCA** may be viewed as significantly more dangerous than the "Failure to Maintain." ("FTM").

It may be time to sit down with your attorney of choice and ***audit your park operations, business practices and procedures, documents and, the emotional temperature of your residents***.

The BPCA

The **BPCA** is all about money. It saps revenue which could be used for betterment of a park or rental assistance. The **BPCA** redistributes finite resources based on technical defects in the regulatory maze of byzantine requirements for business. Does it matter that rules and regulations are not "attached"—but actually *received*? Of course not. Yet this is representative of the nonsense-claims of the **BPCA**. Masquerading as a crusade for social justice for vulnerable tenants, the **BPCA** no more than extracts a windfall for a few which other tenants will reimburse (enabled by the failings of a quixotic legislature).

Superficially, the **BPCA** seeks to remedy wrongs practiced on consumers, for statutory violations, or for deceptive, or simply "unfair" practices. Attorneys are incentivized to bring class claims by the lure of attorney's fees multiplied by the success of the results obtained ("lodestar" approach). Yes, the "sting" of a successful class action is rewarded.

- *Violations of code* are grounds for suit. This includes any violation of law which occurs during the ongoing business operations of the defendant. The violations may result from treatment of others, verbal communications and demands, writings, such as notices, contracts, leases and advertising. Under the MRL, willful violations carry the statutory penalty of up to $2,000.

- *Deception, misleading practices,* or other fraudulent practices are covered.

- *Unfairness*. Recovery may be had for demonstrable unfairness, even if not a specific violation of law. Unfair-ness is a term of art in the law, which defies any bright line form of definition. Once a claim is made, it is up to the trier of fact to determine if it is unfair and if so what restitution must be awarded. "Unfairness" is decided by the jury, absent rights per a

Federal Arbitration Act ("FAA") arbitration clause. It is highly unlikely that even weak claims of unfairness can be disposed of by procedural tactic or summary judgment. Assessment of the jury's likely perception of the case is the best indication of **BPCA** outcome. Allowable recovery is not based on damages, it is restitution and injunctive relief; disgorgement of profits.[1] Other claims joined into the suit will, however, include damages recovery, such as emotional distress, claims of constructive eviction, etc.

*Are **BPCA** claims covered by insurance*? Since "unfairness" is a claim in recognized in California law (not an "occurrence" of injury or damage defined in insurance policies), the answer lies with the judge deciding the coverage battle over the particular lawsuit allegations. Business judgments (unaccompanied by claims of bodily injury, property damage or improper evictions) are questionable in this regard. A **BPCA** is therefore possible "bait" for a coverage battle for which there is no coverage.

> If management does not pro-actively resolve and avoid resentment, the tenants may seek help elsewhere. Tenants' lawyers are more than happy to help.

*Examples of **BPCA** claims* against park owners arose with district attorney prosecutions against park owners. The California Supreme Court validated the right of the local D.A. to bring such claims in *People v. McKale*. The case stands for the proposition that park owners are a business and as with any business, any unlawful, deceptive, unenforceable or unfair conduct violates the *Business and Professions Code*, allowing claims for restitution, disgorgement of monies and profits, injunctive relief, attorney's fees and costs.

Vernon McKale was successfully prosecuted for (among other things) having an unlawful *guest rule*–even though he *never* enforced it. Ever since that opinion was handed down, knowledgeable attorneys have advised that the old-fashioned "bluff" is no longer a prudent or allowable practice. We also know that no terms of tenancy can be *inconsistent* with tenant rights under the MRL (or the MPA, Title 25, or other applicable law or regulation). Owners are rightly and constantly admonished that only lawful, enforceable language may be contained in residency documents. Business practices, in all aspects of resident dealings and treatment, must conform to the MRL. And it makes no difference if an offending clause was actually ever enforced. The mere inclusion of a clause is sufficient to legally presume that *when read* by the public, the clause *would be enforced*.

Root Causes of the BPCA

The **BPCA** is driven, make no mistake, by a *breakdown in resident relations*.

When Did You Lose Control Over the Ability to Resolve a Dispute Intenrally?
If relations with tenants deteriorate, a dispute may arise. The dispute may be resolved or disregarded. It may be resolved internally by private ameliorative effort. If disregarded or not resolved, the dispute may increasingly fester. If resentment is also engendered, the resident may seek help elsewhere. Tenants' lawyers are more than happy to help.

Thus, *once a tenant contacts counsel, you have lost control of the ability to resolve the dispute.* This result is driven by *complaints* from residents based on managerial *behavior*; or *business practices*. The *interpretation* of the tenant's version of the facts by the lawyers leads to the allegations in a lawsuit —the outcome of a dispute either disregarded or unsuccessfully resolved. The inability to resolve a dispute internally–without going outside the park– is the seed of a lawsuit. If you allow enough seeds to be planted you invite the probability of conduct-based lawsuits.

[1] Damages are not available. The only nonpunitive monetary relief available under the Unfair Business Practices Act is the disgorgement of money that has been wrongfully obtained or, in the language of the statute, an order 'restor[ing] ... money ... which may have been acquired by means of ... unfair competition.' (§ 17203; cf. §§ 17206, 17207 [penalties].)

The Sledgehammer Effect of a BPCA

Sledgehammers: The **BPCA** alleges claims dealing with codes, regulations and unfairness. While there may be little real damage, the statute may set up a recovery to eliminate the difficulties of proof for the resident. Even technical violations, if willful, are fully remedied. In a class context, the BPCA 's "multiplier effect" is a sledgehammer. An example of one such claim is *Civ. Code* §798.86, allowing for $2,000 per willful violation of the Mobilehome Residency Law. The **BPCA** Plaintiffs will seek to certify a *breathtakingly large class.* And the fight over class certification is invariably fierce. *"Class Certification"* is a *critical* moment. Class recovery requires that the court "approve" or certify the class (including subclasses if identified in the pleadings). The discovery and certification battle is likely to run low six figures in a large BPCA. But *major* effort is required, right at inception, to attack the validity of a class proceeding and prevent certification. To have a class certified is often to lose, even if 90 percent of the substantive allegations are stricken.

> . . . It may be time to sit down and preventively audit your park operations, documents, procedures, policies and business practices.

An additional penalty, which may be *trebled,* applies to actions brought by, on behalf of, or for the benefit of senior citizens or disabled persons to redress acts of unfair competition perpetrated against them. [2]

Moreover, many of the claims being made will likely require retaining insurance defense counsel to wrangle over coverage, and equally important, the duty to provide a defense if declined. You probably thought you were purchasing insurance to protect you against such a potential liability.

Other Cases We Can Learn From

This claim is *new,* but the *roots* of this theory of recovery trace back several years, starting with claims which have tried and failed to impose liability based on common law and statutory theories of damage.

Examples of BPCA claims against park owners arose with district attorney prosecutions against park owners. The California Supreme Court validated the right of the local D.A. to bring such claims in *People v. McKale*.[3] Vernon McKale was successfully prosecuted for (among other things) having an unlawful guest rule–even though he never enforced it. Ever since that opinion was handed down, knowledgeable attorneys have advised that the old-fashioned "bluff" is no longer a prudent or allowable practice. We also know that no rule can be inconsistent with tenant rights under the MRL (or MPA, Title 25, or other applicable law or regulation). Owners are constantly admonished that only lawful, enforceable language may be contained in residency documents. Resident relations, in all aspects of tenancy, must conform to the rights granted under the Mobilehome Residency Law and Mobilehome Parks Act. And it makes no difference if an offending clause was actually ever enforced. The mere inclusion of a clause is sufficient to presume that when read by the public, the clause would be enforced.

"Unconscionable Rent Increases": For example, claims are sometimes made that a rent increase is *so large* as to be "*unconscionable.*" Such a claim was defeated in the early 1980's by Swanson and Dowdall when suit was brought for a doubling of the rents in a park in Newport Beach. And as late as 2007, such claims have been observed and squelched. These claims generally *fail as a rule*, because the adjustments are based on the *need* for adjustments as a matter of fact. But as (then) Judge Goldstein told me (it "grates" on the conscience for such rent increases to be imposed). In a mobilehome park context, the defense is (also) that the claim is brought to the wrong forum. A claim of excessive rent adjustments is for a city council, not the

[2] Bus. & Prof. Code § 17206.1; Civ. Code § 3345.
[3] People v. McKale (1979) 25 Cal 3d 626.

courts. Which of course is why rent control is prevalent throughout the state wherever there are mobilehome parks. Local politicians have lacked the understanding of rent controls in the mobilehome park context, which enrich selling incumbent tenants, but leave the market (total housing cost) at full bore value by resulting home price inflation.[4]

FTM cases can naturally be expected where there is no rent control, if rent levels become the bone of contention. This form of business practices class action is also a natural manifestation for accumulated anger caused by rent adjustments; by unregulated rent levels and the perception that increases are too high (whether high or not—it is the perception). Increases are sometimes judged by the relative frequency and velocity of market attainment. Since an attack on rent levels is not a horse with blinders, there are other joined claims such as business practices.

Unenforceable Terms of Tenancy?

In *People v. McKale*. the Supreme Court teaches many lessons. I have said, for *decades*, that documentation must be current and enforceable. Terms of tenancy must be lawful. Terms of residency cannot impinge on the right to be free of waivers of any MRL rights. This advice continues today. To do less is to hold out to the tenant, the prospective purchaser, dealers and the general public, that your business practices do not square with law. In California, that is illegal.

Essentially, the important holdings of *McKale*, which apply to you now, include the following:

- The term "unfair competition" as it is used in Business and Professions Code §17200, includes any business practice that is forbidden by law.

- A cause of action alleging a pattern of discriminative conduct on the part of defendants toward particular applicants and tenants, varying from instances of abusive language by managers to discriminative sales and leasing policies, adequately stated a cause of action for unfair competition.

- A landlord's institution of unlawful detainer actions on the basis of tenant overcrowding was an unlawful business practice, where the landlord had accepted the rentals knowing that overcrowding would occur.

- Maintaining substandard, dangerous, and overcrowded conditions in the rental property is an unfair business practice.

If a "reliance on counsel" defense is proffered for purposes of squelching *punitive damages*—that advice is *no longer privileged*. "Reliance on counsel" waives the privilege. Your lawyer should be expected to tell the truth (as in the Orange County Class Action). What will counsel say?

- Landlords who violated a rent control ordinance by requiring prospective tenants to sign long-term leases as a condition of tenancy were liable

- An unlawful business activity includes anything that can properly be called a business practice and that at the same time is forbidden by law.

- A mobilehome park rule providing that the owner could close the recreation hall at any time and exclude any resident therefrom.

Complaints About Leasing Offers in Southern California?

In the 2000's, an Orange County park owner and management staff was singled out in a class action involving lease offers and tactics to obtain full coverage under rent control exempt long term leases. It reached the appellate court in 2006, after a

[4] *Proof?* Even New York prohibits vacancy controls. Where there is no rent control, rent adjustments, *per se*, may spur on the disgruntled to pursue alternate ways and means of attacking park owners.

decision awarding about $200,000.00 (not including attorney's fees). Let's call it the *Orange County Class Action*. Management defendants were claimed to have a policy of requiring "every resident" to sign the lease. They were also alleged to have threatened residents who objected to signing leases that there would be a series of $50 rent increases if they didn't. Plaintiff class members also alleged that the offered leases were invalid and not enforceable. The Court held that a general course of conduct included specifically proffering a lease with "manifold violations" of the Mobilehome Law.

Multiple Rent Increases. Several rent adjustments were put into effect as a means to incentivize the residents to sign leases. *Here are good examples of what not to do:*

- On June 17, 1997, a number of rent increase notices were going out on the Park's standard form, effective of course October 1, 1997.
- These rent increase notices were followed, a day later, by yet another lease notice memo to "All residents" which said that "your rent may be increased every month, upon 90 days notice."
- Further rent increases were imposed on July 23, 1997, for $50.
- Another lease notice was sent to all residents on July 26, with the same "your rent may be increased" language.
- A larger round of rent increase notices for $50, went out on August 11 and August 18, effective December.
- A further round of $50 rent increases went out December 23, 1997.
- And yet another round of rent increases went out in Spring 1998. These notices weren't dated, but gave July 1, 1998 (i.e., given the 90 day notice period) as their effective date.
- Also, a memo from park management dated February 14, 1998 said that "your next rent increase is set for April first." However, that increase could be waived if "if we get a lease signed before March 10."

Idle Chit-Chat? Advice to update [documentation and procedure] is a *message* that existing requirements have changed, ... that existing procedure, practice ... documentation ... needs to be ... discontinued. Remember: Unenforceable documents *are* an unfair business practice and hence illegal.

Manager disappears: In the *Orange County Class Action*, Matters were not helped by the disappearance of the resident manager before the trial. He was never seen nor heard of again.[5]

On a variety of legal theories, damages were awarded to each class member for $1800 or about $195,000.00 exclusive of attorney's fees.

Reliance on Counsel a Defense? Not If You Don't Follow It! The park owner and management sought to defend on the grounds that they relied on their attorney's advice. However, the evidence reflected there was no advice given and/or that the advice given was not followed. The attorney called to testify may disclose advice that was not followed or as in this case, certain matters were **not discussed at all**. *Thus the lesson learned: Unless you intend to comply with the advice of your attorney, reliance on defense of counsel may make matters much worse (by disclosing what was advised and how you chose to ignore or disregard the advice).* The Court opinion criticizes the defendants for refusing to listen. Get this:

> "Specifically, ... (management) didn't actually rely on the lease's supposed compliance with...Law. The attorney testified that he never discussed with [owner] or [property manager] whether the lease complied with ... Law. Moreover, ... (property manager)... got all huffy in a letter to the attorney... ' Several objections make vague references to Civil Code sections ...but nothing... makes specific allegations of illegalities. Having been misled, I will not have the lease reviewed by another attorney . . .' . . . (Property manager) in short, decided to play attorney ... rather than rely on an independent review by an attorney."

Another Example: From time to time, a publication, magazine, journal or comment, including communications from an attorney, may advise that residency documents be updated due to changes in the law invalidating current practice. If this advice

[5] A key witness in such a case is the resident manager. Unskilled, inarticulate, unprofessional managers pose risk. An aggressive management style calls for a well-qualified manager who can effectively testify. Again, aggressive management style means disputes and confrontations: an articulate manager is a prudent way to manage defense of claims of unfair treatment at the street level.

comes from your lawyer, it is not *idle chit-chat* or, necessarily, a tactic to separate owners from their money (–well, assuming your lawyer is busy–get a second opinion if you are in doubt).

Advice to update documentation and procedure is a message that existing requirements, rights or privileges have changed; that the law has morphed to something new or different and existing procedure, practice ... documentation ... needs to be altered and discontinued. *Remember: Unenforceable documents are an unfair business practice and hence illegal. Even without articulated notification of changes, all landlords documents needs to be reviewed bi-annually as a general rule.*

Why Update? Outdated documents *become unfair business practices by definition*–the outdated clauses *if no longer enforceable, or per se illegal*. And the landlord-tenant and mobilehome park law and regulations are constantly changing. New cases, new law, new regulations, new strategies.[6] Many owners decide not to undertake such updating. Hence, their forms are out of date. While leases are vested, month-to-month agreements *are not:* and must be changed when relevant new law or decisional law calls for it. When an update is advised, the document he or she prepared no longer bears the endorsement of the attorney that drafted them. Hence, claiming a document was drafted by an experience attorney, say 10 years ago (or longer) is just to merely say, that the defendant has not kept pace with the rights applicable to his or her business—a glaring admission of conduct below best practices in the mobilehome park industry.

More Examples: All residency documents not comprehensively updated since at least April 2011 need to be brought up to date. In light of the **BPCA**, it is advised that documentation be brought up to date promptly, and that equally important, the business practices, policies, and procedures be examined and cleared: ■ Do you have a fair housing policy in each park? ■ Where is it? ■ What does it say? ■ Are your postings up to date? ■ Did you circulate all required documents before February 1? ■ Do your lease offers include required options including rejection of short term alternatives? ■ Do you include FAA arbitration clauses? ■ Do your warehouse lien clauses allow for collection of all past rents and charges? ■ Is your description of physical improvements correct? ■ Are there any easements in your Schedule B title policy exhibit not reflected on the mandatory prospective purchaser disclosure? ■ Is your zoning description current? The pitfalls abound and need to be reviewed periodically to comply with law.

■ *What are the Claims Made in the New BPCA? A Checklist for You.*

A review of the allegations of the new *class action* suit suggest, *per se*, issues to study for avoidance purposes. This can be a convenient checklist for the audit which this issue of ParkWatch suggests.

Compare the "failure to maintain" claim. It is largely based on the park conditions and complaints of deficient services, facilities, utilities or amenities. Each tenant has a personal claim: the issues are not suited for class treatment due to *factual dissimilarities* and other factors. T*his case* is centered on *business practices, together with management decision-making, claimed to be common and applicable to many tenants.*

> *Do I Care? Why should I? Some will seek to vindicate their practices. Other owners may, desire to adjust their practices, already valid and proper, to dull the gloss of an attractive target.*

These claims must be investigated because the allegations may not be true as we proved in U.S. v. Plaza Mobile Estates. Let's see what is alleged and what you can do to avoid having to prove you are right.

Do I Care? Why should I? The decision to stand and fight or to resolve a potential dispute in a preventive fashion is

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[6] Advice to periodically update documents is common and frequent. Given the pace of change in the mobilehome residency context, documentation should be thoroughly overhauled and brought up to date frequently.

For example, updating was advised in 2005 after the *Grafton Partners* case (waiver of jury trials forbidden); again, in 2011 after the *Concepcion* case (which opened to door to enforceable arbitration clauses); again, due to the *Lewis Operating* case (allowing releases for negligence). Older documents, unintentionally, may still contain shortened statutes of limitation; improper resident duties, absence of new park owner rights and privileges, such as disclosure of agents for service of process and payment of rents, warehouse lien clarifications, cutting off attorney's fees absent prior mediation per California Association of Realtors forms and case law, etc.

More examples: Updating easement disclosures in the *Rental Agreement Disclosure Form* (which just about no one gets correct). Account may need to be taken for changes in law that disallow rights of first refusal, automatic renewal in some circumstances, and disclosure of sex offender information; changes in physical improvements which must be described in the rental agreement. Even basic compliance with the requirements of Civ. Code §798.15 often escape the park owner and management. Best practice calls for frequent checks to determine if changes need to be made.

personal.

■ *Some will seek to vindicate their practices*. Other owners may, with advance notice herein given, desire to adjust their practices, already valid and proper, to dull the gloss of an attractive target. Plus the cost of the fight, when considering the likely inability to recover attorney's fees and costs from your resident, is not an attractive proposition. There is no profit motive in a successful legal slugfest with a resident, ever.

■ Some say, *better to avoid being conspicuous and a needless fight and pyrrhic victory*.

I propose the latter is a superior strategy, while you are blessed with the time and opportunity to review and adjust your practices as and if needed. The defendant did not get that luxury. I suggest you take advantage of it. *Now.*

■ *Discussion*

> *Really? Is a class action case really needed to get a park owner to attach rules and regulations to the rental agreement?*

The current allegations of the new **BPCA** are next discussed. The facts of the complaint first charge the existence of a legally discernable class which has been victimized in a common fashion by the park owner, warranting damages for all members without proving specific harm. *This is the essence of the class action–the ability to exact an award of damage based on the strength of just the class representatives*. Whatever the damage to *that* representative, will then be given to *each class member*.

Hence, the size of the class is the best gauge of the extent of damages to be paid. Simply multiply the damage to the class representative by the number of members in the class.

The complaint is a class action brought on behalf of current and former residents of eighteen mobilehome parks. Plaintiff claims that as many as one million Californians live in nearly 5,000 mobilehome parks in the state of California, which has created opportunities for the unscrupulous wealthy to take advantage of unsuspecting residents. The unique vulnerability of mobilehome park residents is also recognized in California *Health and Safety Code* §18250 (" . . . residents of mobilehome parks are entitled to live in conditions which assure their health, safety, general welfare, and a decent living environment, and which protect the investment of their manufactured homes and mobilehomes").

★ **The Claims Are the Following (All Code Sections Refer to the *Civil Code*):**★

- Owners charge excessive rent, pursued arbitrary evictions, and implemented unreasonable policies, the leases are one-sided.
- Lease fails to attach rules and regulations (§798.15);
- Lease fails to include notice of rights (§798.15);
- Lease fails to provide members of the Non-English Speaking Sub-Class a copy of proposed lease in language other than English;
- Lease fails to describe physical improvements (§798.15);
- Lease fails to list services supplied during tenancy (§798.15);
- Lease contains rent terms that become unconscionably high over time because:
  (1) rent ultimately far exceeds fair market rent;
  (2) rent not reasonably related to actual cost increases incurred;
  (3) excessive rents result in constructive eviction; and
  (4) rent prevents Class members from selling their mobilehomes in place (§798.73);
- Lease impermissibly shifts Defendants' legal responsibility onto Class members;
- Lease imposes unreasonable penalty for late payment of rent (Civ. Code §798.56);
- Lease Agreement permits additional charges for assessments to be imposed without notice (§798.32);
- Lease Agreement imposes unreasonable rent increases in addition to CPI, operating costs, capital expenditures, separate charges, and

arbitrary "30th month" increase (§798.56);

- Lease Agreement permits charges for additional separate charges without notice (§798.32) and without regard to whether they are fees for services actually rendered (§798.31);
- Lease impermissibly shields Defendants from liability from their own negligence or failure to provide adequate services;
- Lease permits charging utilities separately from rent without notice (§798.30);
- Lease impermissibly imposes immediate notice requirements by Class members of maintenance problems far in excess of those required by §798.84;
- Lease limits management's responsibility to provide and keep physical improvements in common facilities in good working order and condition (§798.15; 798.87);
- Lease fails to disclose thirty-day limit to repair sudden or unforeseeable breakdown or deterioration to common areas (§798.15);
- Lease misstates and then requires that utility breakdowns are inevitable and requires them to waive their right to bring an action for Defendants' failure to properly maintain park utilities (§798.87);
- Lease impermissibly shifts Defendants' obligations to maintain driveways and trees on class members' spaces from Defendants to Class members (§798.37.5);
- Lease imposes breach notices far in excess of those required by California Civil Code section 798.84 and impermissibly requires a waiver of damages caused by breaches;
- Lease impermissibly lowers Defendants' standard of care in maintaining the mobilehome park (§798.15; §798.87);
- Lease deprives subsequent mobilehome buyers of the statutory right to review and rescind lease (§798.17(b));
- Lease imposes a transfer charge on sale of mobilehome (§798.31; §798.72);
- Lease attempts to force arbitration (§798.25.5);
- Lease misstates and then has Class members agree that mobilehomes depreciate in value (when in fact they appreciate) and then has Class members impermissibly waive any rights to damages for diminution in value caused by Defendants wrongdoing;
- Lease impermissibly requires Class members to list Defendants as additional insureds of Class members' insurance policies;
- Lease limits mobilehome park's liability and available remedies (§798.19);
- Lease impermissibly requires Class members to waive their rights to relocation benefits if the mobilehome park closes because of condemnation or the threat thereof;
- Lease impermissibly has Class members waive their rights to damages arising from Defendants' failure to enforce the Lease and Park Rules or Regulations (§798. 87);
- Lease imposes breach notices far in excess of those required by California Civil Code section 798.84, and impermissibly requires a waiver of damages caused by breach;
- Lease 's arbitration provisions are void as against public policy because they require Class members to waive their rights to bring an "action" (§798.87) and to demand a jury trial (§798.77; §1953);
- Lease's arbitration provisions are procedurally unconscionable because they do not attach any fee schedule for arbitration; and
- Lease's arbitration provisions are substantively unconscionable because;
  (1) they lack mutuality by requiring class members to arbitrate their claims against Defendants while exempting from arbitration the claims Defendants normally would have against Class members;
  (2) Class members cannot afford the high costs of private arbitration;
  (3) Lease allows Defendants to require arbitration in a forum convenient to Defendants without regard to the burden placed upon Class members; and
  (4) Lease imposes severely shortened statutes of limitation on actions brought by Class members, while paragraphs preserve the standard limitations periods for the types of claims normally brought by Defendants.
- Harassment (until tenant leaves park, owner wants homeowners' homes to sell.
- "First Right of Refusal" forced on homeowners.
- Lease exhibits all the classic signs of procedural and substantive unconscionability (§1670.5(a));
- Attempts to actually or constructively evict tenants , interfering with Plaintiffs right to sell in place in violation of §798.71(b).
- Defendants have been unjustly enriched, improper profits.

- Interfering with Plaintiffs and the other-Class members' ability to sell their mobilehomes in place by raising rents to unreasonable levels and implementing transfer charges.
- Refusing to approve prospective purchasers of their mobilehomes, by raising rents to unreasonable levels, and by implementing transfer charges.
- Interfering with the sale of their mobilehomes. The Defendants and Doe Defendants subjected the Senior Citizen Class members to cruel and unjust hardship in conscious disregard of their rights.
- Lease offered to members of the Non-English Speaking Sub-Class violates the foregoing requirements of §1632.
- Plaintiffs seek to rescind all Lease s which Defendants negotiated with the Non-English Speaking Sub-Class and for restitution sufficient to render these Class members whole.

What Do We Learn

Sit down with your attorney of choice and ***audit your park operations, business practices and procedures, documents and, the emotional temperature of your residents***. If your managers conduct business in a different language (other than English) have all your documentation translated to the tongue of choice in your community (if we expect the same level of comprehension as English-speaking residents, *your residents will not read it anyway*, and you avoid this new attack on foreign language translation).

Stay tuned next month for the ways and means of avoiding the BPCA suit in your parks and the proper means by which to establish documentation in foreign languages.

Conclusion

The ultimate objectives of the litigation are for the reader to decide. However, given closer consideration of the claims (such as the very first--not attaching the rules and regulations to the rental agreement) causes one to question whether the case should be brought at all. In a sense, the ubiquitous quotation to the duties of the management ring hollow when, ultimately, the cost to deal with such claims results in greater costs to the tenant. All without any real need; or advance notice, warning, real effort to resolve a perceived problem. Is a lawsuit needed to make a park owner attach rules and regulations to the rental agreement?

We all know that the ultimate consumer pays the expense of the business enterprise. These tenants will drive up costs and seek to recover from the park owners, which will be paid for by the park owner, but ultimately by the very consumers they purport to want to protect.

Still, best practice is to anticipate disputes and deal with them in advance. Updating documents and installation of arbitration clauses to deal with claims such as this is best practice and at minimum cost can avoid the claims against park owners.

Please Feel Free to Contact Us with Any Questions!

