

RENT INCREASES ON ASSIGNMENT OF TENANCY SUBJECT TO LONG TERM LEASES

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Synopsis

Rent increases on assignment of tenancy subject to long term leases has been upheld by the Los Angeles appellate Court after reconsideration of **VANCE v. VILLA PARK MOBILEHOME ESTATES, No. B074103 on July 10, 1995**. The Court has ruled that rent increases on mobilehome "turnover," when provided for in the terms of the leases, is legally permissible under the Mobilehome Residency Law.

Facts

The tenants alleged that their leases specifying formulas for future rent increases are in reality prohibited "fees" under the Mobilehome Residency Law and are also "unconscionable."

The Civil Code only allows charges for rent, utilities and reasonable fees for actual services rendered. Civil Code section 798.31. The tenants argued that the pass-throughs (the amounts added to rent under the lease formula) were prohibited fees. The Court disagreed.

The defense of "unconscionability" was also raised. That is a doctrine asserted as a defense to the operation of a contract, based on inherent unfairness of the terms used. Unconscionability has both a "procedural" and a "substantive" element. The procedural element focuses on two factors, (1) oppression, arising from inequality of bargaining power and the absence of real negotiation or a meaningful choice, and (2) surprise, resulting from hiding the disputed term in a prolix document. The substantive element focuses on the disputed term being overly harsh or one-sided, with no justification for it at the time of the agreement.

"PASS-THROUGHS" were also permitted, including government mandated services. Upon sale or transfer of a mobilehome, the transferee must accept an assignment of the lease.

Paragraph 8.3 states,

"Upon the sale/transfer of your mobilehome to someone other than your spouse, children or parents, the rent for your Space will be increased an additional 10% at the time of the sale/transfer and will remain subject to the CPI adjustments, pass-throughs and other terms of this Lease. This rent increase provision may only be applied a maximum of 2 times during the initial 60 month term of this Lease and 2 times during the extended term ... of this Lease." The other form of lease carried a legally synonymous provision. The Court upheld the leases against all attacks.

Analysis

Appellants alleged in the first cause of action of their first amended complaint that the pass-throughs are "not rent" within the meaning of Civil Code sec. 798.31. The Court was not persuaded. Said the Court:

"As explicitly described in form B's paragraph 3.2, "pass-through" here was used as a convenient label to describe increased operating costs. In the absence of rent control,

the parties may agree on future rent increases based on increased operating expenses. In the leases, the pass-throughs operate as rent, not as fees. . . nothing in the Mobilehome Residency Law prohibits the parties from agreeing that rent be increased to reflect increased expenses for the designated services, traditionally recoverable as a component of rent."

The Court also held that increases on turnover were permissible.

"Appellants' contention that the rent increase upon transfer is a fee . . . lacks merit. . . "rent" has a settled legal meaning. . . . No provision of the Mobilehome Residency Law precludes a homeowner and a park operator from agreeing to a rental rate that escalates incrementally over the term of the lease. . . ***The fact that the increase in rent is triggered by the sale or transfer of the mobilehome does not change the result.*** If the parties may permissibly agree that the rent will increase upon certain dates, or in order to pass through certain increased operating costs, they may also permissibly agree that the rent will increase upon transfer and assignment of the lease. . . . The fact that the increase is triggered by the sale of the mobilehome and assignment of the lease is of no consequence. Appellants were free to negotiate the rental rate for the term of the lease according to any formula acceptable to them and the respondents. "

Unconscionability

The tenants also claimed that the pass-through rent increases for government mandated services and operating expenses are *"unconscionable, illegal and unenforceable, in that there was unequal bargaining power,"* and because the passthroughs produced revenue *"... grossly disproportionate to the defendants' costs in operating the Park, . . . which the owner has the legal duty to pay for."* The Court found that the existing tenants had the options specified by the Mobilehome Residency Law and therefore had realistic choice. This fact defeats the unconscionability challenge.

". . . [tenants] had the right to reject the five-year lease with its future automatic increases and pass-throughs, and instead choose a twelve-month lease or a month-to-month tenancy. The leases contain express acknowledgments that appellants were offered these options. . . the mere allegation that price exceeds cost or fair value is not sufficient to establish substantive unconscionability."

Conclusion

The right to use rent escalators based on sale, government mandated pass-throughs, operating expenses and capital expenses is also vindicated.

The case also emphasizes the importance of offering tenants a choice of rental agreements as provided under Civil Code section 798.18 (a 12 month, less than 12 month and month-to-month agreement) and the usage of acknowledgments to ascertain the intent of the parties.

Please feel free to contact Terry R. Dowdall for further information.