# *Why Injunctions for Rule Violations May Be a Better Approach than a Termination of Tenancy.*

▲ ***Synopsis:*** *Rule violations are perhaps the most difficult basis on which to seek a termination of tenancy and eviction. Why? A judge or jury may not perceive a rule violation with the same importance or seriousness as management. Thus, a resident may prevail against management even when the evidence of the rule violation is very clear. Evicting for a rule violation based on conduct is even more difficult. Why? The precedent 7 day notice for a conduct violation (for example a disturbance), is cured the very instant the resident ceases the disturbance. The stakes are high in either case: the tenant will argue that loss of the home, moving expense, lack of alternate parks willing to accept the home, etc., is too great a forfeiture to based on a minor rule violation. This argument sometimes evokes compelling sympathy. These and other factors mitigating against eviction make this form of eviction often difficult.*

*Yet, recent cases have held that the management has an affirmative duty to act to avoid a breach of quiet enjoyment of all residents, even when the disturbance is caused by a neighborly feud. For these reasons, management should consider the injunction approach to stopping offensive conduct and rule violations. The advantages compared to eviction? No waiting periods (no 60 day notice), no jury, no loss of home or equity. Just an order to comply, or be held in contempt of court (and fined or jailed). These orders may be effective to quell the disturbance and cease the rule violation, obtain, attorney's fees and costs awards, and not put the "high stakes" burden of forfeiture of the home on the judge or jury. That is, the penalty imposed as the loss of the mobilehome is removed from the equation. Especially in the currently heightened atmosphere of awareness of management duties to resolve neighbor v. neighbor disputes, the injunction may sometimes be a more viable remedy than termination of tenancy for dealing with resident disturbances and rule violations.*

An earlier legal precedent held that the management owes a duty to intercede in many "tenant v. tenant" *(or "Hatfield v. McCoys")* disputes. "Hatfield" alleged injury caused by McCoy and claimed management should have done something to stop it from recurring. The court said the park owner could be held liable to the tenant claiming to have been victimized where management could have taken action to stop a foreseeably continuing breach of quiet enjoyment. That action can be a warning, or a suit for injunction to stop the feuding if sufficiently serious, or in even more serious cases, an eviction for substantial annoyance. In the worst case of violent confrontation or criminal conduct, a call to the authorities to stop criminal activity between the tenants might be expected.

So eviction for rule violations, offending the management or another resident is possible. But oh, the issues to firstly decide. Do you evict "Hatfield" or "McCoy" or both? This should be unnecessary because elimination of one tenant might solve the problem. If both tenants are sued, the park owner probably loses one case once the "chicken and egg" causation issue is adjudicated by the jury as an issue of fact ---with resultant attorney's fees and costs awards from the resident who gets to stay. Worse yet, management must deal in the future with a tenant feeling empowered and invulnerable to rule enforcement measures - the sense that the rules and regulations are for other residents. Management typically needs the cooperation of the "victimized" resident to bolster its case. Evicting

Hatfield and McCoy all but negates that possibility, because they are both adversaries. If management sues both tenants for eviction, neither will cooperate. That is a “roller coaster ride” no judicious attorney wishes to take.

For these reasons, park owners should more often consider injunctions as a way to separate the feuding parties. The advantages are patently clear: no jury; no pressure on the part of the judge as to the "loss of the home" issue; rather, all management would be seeking is an "Oh Do Behave!" order (quoting *Austin Powers*); there is little or no time for discovery; and, the law allows for the recovery of attorney's fees and costs. No waiting for a 60 day notice to expire; no title checks, no worry about 7 day notices; no additional concerns about the difficulties in a rule eviction.

Injunctive relief is often the fastest, most economical and low risk remedy available to the park owner to solve a rule violation and avoid liability from other residents for the claims of injury or damage caused by other residents. And indeed, once an award of attorney’s fees and costs is granted, the tenant sometimes decides to move on and sell.

The concept of injunctive relief is also useful in dealing with rule violations management seeks to cure. A space resembling a junkyard has no place in a senior “five-star” community, for example. Can management evict for such a rule violation? Certainly. The typical rule against the accumulation of debris is obviously reasonable, as the resulting eyesore affects other residents, home values, and health and safety. However, a judge or jury may see the situation as remediable; merely scold the tenant, and reinstate his tenancy even where management proves a clear rule violation case. Or, the tenant may clean the space by the time of trial and seek the mercy of the Court. This is a sometimes risky business—that of evicting for rule violations.

In the recent *Hillsboro* case, management chose instead to file suit for an injunction against resident Martin's continuing violations of the rules and regulations. Martin was in violation of the rules requiring him to keep the exterior of his mobile home, as well as all appurtenant structures, well maintained and painted, and prohibiting (1) the storage of non-patio furniture or debris on his deck; and (2) the presence of vehicles which are inoperable or unsightly, in his assigned space. The suit alleged Martin had been given numerous warnings but failed to correct them. A seven-day notice was also served demanding compliance with requests to: (1) "wash house"; (2) "remove all debris"; (3) "remove old furniture from deck"; (4) 'trim all shrubs (evergreens, etc.); and (5) "remove any vehicle from driveway which cannot be parked without protruding into street." A further seven day notice was served as well. This notice requested that he: "1. Remove old furniture from deck, including but not limited to daybed, miscellaneous shelves and racks, rotten rattan plant stand, empty black metal plant stand, white rocking chair, gold lounge chair, old table and chairs, blue bike, wood chest, three old (empty) plant stands. 'Only patio furnishings, barbecue equipment and decorative plants are allowed on the decks or patios.' 2. Remove derelict yellow Buick . . . and gold Mustang . . . from driveway. 3. Paint house. Be sure to bring us paint samples first so color can be approved per rules and regulations. 4. Replace rotting deck, stairs and handrails." Martin failed to take further action to rectify the problems outlined in that notice.

After numerous court hearings because of Martin’s refusals to comply with the injunction and evasions of the court orders, management was awarded the amount of $12,396.39.

The Court found that: *“[t]he record is replete with evidence both the Park, and the court, did*

*everything that could be reasonably expected to cajole, coax and induce Martin to fulfill his obligations pursuant to the court's order. Despite the court's warnings, he simply failed to take the matter seriously, and appeared to believe that no serious consequences would be inflicted on a nice man with no lawyer. He was wrong, and his intransigence caused the expense of this proceeding to spiral. Under these circumstances, we certainly cannot conclude the trial court erred in determining the Park was entitled to recover all the fees it incurred and requested."*

This case is an excellent example of why an injunction action, heard by a court and not a jury, may provide the management with the relief requested, at full reimbursement of cost, and with compliance with the rules and regulations.

Would an eviction have succeeded? Due to Martin's eventual compliance, a previously served 60 day termination notice was cancelled, and the court lauded the management for making every effort to seek compliance and not terminate tenancy: *"[W]e note the Park's attorney assured this court at oral argument that the Park had no present intent to evict Martin . . . We commend the Park for its attitude, especially in the face of Martin's repeated accusations that it is acting in bad faith . . ."*

The result? Full compliance with the rules and full reimbursement of attorney's fee and costs. In many close cases, the prudent approach to handle such a dispute in my judgment, is to pursue an injunction against the rule violation. That remedy addresses the risk of damage or injury posed by the acts and conduct of the resident, the reasonable complaints from the resident community, and the interests of the management: all with less risk than posed by the delays, uncertainties and risks of the rule eviction.