

PARK WATCH TM LEGAL DEVELOPMENTS NEWSLETTER

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Enterprise Liability: 40 Tenants Recover \$111,000,000.00 Against Park Owner in San Jose: A New Record

By: Terry R. Dowdall, Esq.

■ Upshot

The following is a re-print of Sunday's article concerning the largest FTM recovery in history, against the owners of California Hawaiian Mobilehome Park in the San Jose area. The underlying message here? Study the reasons for the display of passion and prejudice by a jury; consider the perception of the audience of the park owner in all contexts. React to issues with not just what is "right"; but what is *perceived* by your audience as "right." Being "right" is not enough to avoid costly legal entanglement.

Secondly, arbitration clauses drafted to Federal Arbitration Act standards is one way to deal with FTM cases; a neutral and fair resolution process without a jury. Properly drawn arbitration frames dispute resolution on an *individual* basis; with each tenant and management alone, so that both sides have a fair say. Park owners should pro-actively investigate implementing arbitration to reduce costs of neutral and fair dispute resolution for homeowners and the management.

■ The Article



Jury Awards Record \$111 Million to Trailer Park Residents

By Tracey Kaplan

SAN JOSE -- With a fancy name like "California Hawaiian Mobile Estates," the trailer park on Snell Avenue should have been top-notch.

But residents say that for years it was anything but -- marred by sewage backups, potholes, electrical blackouts and a swimming pool filled with geese feces. Fed up with having their complaints ignored, a small group sued five years ago, risking the possibility that if they lost, they'd be on the hook for the park owner's substantial legal fees.

Last week, a **San Jose civil jury awarded the residents \$111 million**, the largest such award for a failure-to-maintain lawsuit against a mobile



California Hawaiian Mobile Estates residents, Carol Johnson and Gela DePutter are photographed in their neighborhood in San Jose, Calif. on Thursday, April 17, 2014. For years, residents of the mobile home park put up with electrical blackouts, overgrown trees that damaged homes, and a failure by the owner to maintain the park. This week, 61 residents of the park, including Johnson and DePutter, were awarded \$111 million in a class action lawsuit brought against the owner of the mobile home park. (Gary Reyes/Bay Area News Group)

home park in California. Previous awards in other California cases topped out around \$12 million. If the verdict stands, 61 tenants out of 1,500 people who live in the park could reap an average of \$100,000 each in compensatory damages, plus punitive damages of \$1.57 million apiece.

The money would be quite a windfall for the tenants, many of whom live on limited incomes and say they cannot sell their mobile homes because the park has such a bad reputation.

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★ BIGGEST FTM IN HISTORY

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"We always knew it was a David and Goliath thing, going up against a multibillion-dollar corporation," said resident Joan Malone, 66, who helped spearhead the effort. "Now, people are coming up to me with their faces shining. We finally have justice."

The unprecedented verdict has sent shock waves through the industry, even as the park's owner vows to try to get it overturned. Equity Lifestyle Properties, a publicly traded company chaired by billionaire Sam Zell, is the largest mobile home park owner in the nation, with 140,333 home sites in 379 properties in 32 states and Canada. The award represents about 10 percent of its assets.

"We could not disagree more strongly with the jury's verdicts," said Equity Lifestyle CEO Marguerite Nader, referring to the damage awards, which were handed down in two separate phases of trial. "This property is a well-located, 100 percent-occupied, institutional quality asset that received the Manufactured Housing Institute's Community of the Year award in 2012."

California Hawaiian was once a pristine seniors-only park. But conditions began to go downhill in 1997, some longtime tenants said, after ELS took over. It had already been converted to a family park by then.



Joan Malone and Gary Stutzman chat in front of Malone's mobile home at California Hawaiian Mobile Estates in San Jose, Calif. on Thursday, April 17, 2014. For years, residents of the mobile home park put up with electrical blackouts, overgrown trees that damaged homes, and a failure by the owner to maintain the park. This week, 61 residents of the park were awarded \$111 million in a class action lawsuit brought against the owner of the mobile home park. Malone and Stutzman helped lead the efforts to file the lawsuit. (Gary Reyes/Bay Area News Group) (Gary Reyes)

The tenants' suit described a litany of troubles: The once-scenic artificial lakes became slick with slime. Sewers backed up into people's homes. Brownouts and blackouts were common. Street lighting was inadequate, making it dangerous to go out at night. Homeless people camped out under the clubhouse stage and roamed the streets. Once, in 2012, Malone said, the large black iron gate at the front entrance even fell over -- and lay there for about two weeks.

One of the worst problems was that the water for the entire park of 420 households would frequently be turned off -- without notice -- for up to 20 hours at a time, they said.

Russ Montalbo shows the vandalism his fishing boat sustained while in the unsecured storage area at California Hawaiian Mobile Estates in San Jose, Calif.

The residents, who own their own trailers but pay space rents of at least \$800 a month plus utilities, property taxes and mortgage payments, complained -- to a series of short-term managers -- but said it was to no avail.

Residents formed a homeowners association in 2007 and sued in 2009. Gela DePutter, 59, a semiretired former Hitachi analyst, remembers getting "threatening" letters from management after the suit was filed. About half the tenants who originally joined the suit bailed out, leaving a core group of determined people.

Russ Montalbo shows the vandalism his fishing boat sustained while in the unsecured storage area at California Hawaiian Mobile Estates in San Jose, Calif. on Thursday, April 17, 2014. Montalbo pays \$40 per month to keep it there since he is not allowed to store it on his driveway. For years, residents of the mobile home park put up with electrical blackouts, overgrown trees that damaged homes, and a failure by the owner to maintain the park. This week, 61 residents of the park were awarded \$111 million in a class action lawsuit brought against the owner of the mobile home park. (Gary Reyes/Bay Area News Group) (Gary Reyes)

"I had to follow through with this," DePutter said. "I knew we were going to win but I'm floored at how much."

Gary Stutzman said when the owners did make repairs, the work was shoddy. After he complained for years about the lakewater lapping right up against his house, one corner of the house crumpled and the driveway wound up being laced with



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cracks. A crew came and chopped up the driveway, he said in an interview, but instead of hauling the pieces away, they dumped them at the edge of the lake, leaving a still-unsightly mess. Lawyers for the tenants said the jury was aghast at the "deplorable conditions," finding after a nearly three-month-long trial that even though ELS had made some significant improvements after the lawsuit was filed, the company was negligent, in breach of contract and had created a public nuisance by failing to maintain the park and provide sufficient security. Some serious problems remain to be fixed, including the substandard electrical system.

The case highlights what the tenants' lawyers contend is a common problem statewide -- the failure by some owners to maintain their mobile home parks, which can be cash cows.

For instance, ELS was spending between \$101,000 and \$273,000 on upkeep annually at California Hawaiian and taking in more than \$4.5 million, according to the San Diego lawyers who represented the residents, James C. Allen and David Semelsberger. The lawyers will reap 40 percent of the award.

Others said the case could set a dangerous precedent. "If verdicts like these are held up," said Phil Woog, an Orange County lawyer who defends park owners, "there won't be a mobile home park industry."

Allen said the jury was won over in part because of the testimony of the residents, including Heather and Dion Berry, a clean-cut young couple in their early 30s with three young children. Among other problems, they described how difficult it was for the family to safely shower, go to the bathroom or use the tap water because of the sewer backups. Now, they're excited about the possibility of netting more than \$2 million, after attorneys' fees. They have their first move already planned.

Said Heather Berry, "To get out of here, into a safe home."

* * *

■ Conclusion

To quote from the advice I provided last month:

. . . [B]est 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.

Look at the title of the foregoing piece. The world still sees this industry as a "trailer park." The perception we all have of each other is not shared by everyone in the external world. The sense of trust and faith we have in our residents, the City Council, the State legislature, is always subject to an abrupt and shocking re-adjustment whenever it suits their purposes. Park owners must be prepared for the surprise attack from potential adversaries. Starting with a strategy to implement arbitration clauses: in leases, rules and regulations, even on a population of month-to-month tenants in rent control. All park owners should have been doing this since mid-2011. Short of it is, that had Cal Hawaiian implemented mandatory arbitration agreements, the result may have been completely different. While this verdict has little chance of standing, the message is no less clear.

It would be a wonderful world were we all friends, but Polyanna, like Slim, left town a long time ago.

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