McGLINCHEY STAFFORD

McGlinchey Stafford is pleased to bring you the Manufactured Housing Law Update, prepared by the firm's nationally-recognized consumer financial services team. For decades, McGlinchey Stafford has been a leader in the manufactured housing and mortgage lending industries, representing clients in the areas of federal and state law compliance, preemption analysis and advice, nationwide document preparation, licensing support, due diligence, federal and state examination and enforcement action defense, individual and class action litigation defense, and white collar criminal defense.

WELCOME!

Legislators and regulators alike appeared to take a well needed (and appreciated) rest this August. Perhaps they were enthralled by the nonstop Olympic coverage, but all was "relatively" quiet on the manufactured housing front. A few Bankruptcy courts grappled with valuation of manufactured homes, and the Ninth Circuit issued a smack down to Nevada's HOA Super Liens. Whether Super Lien foes will "stick the landing" to get rid of those pesky HOA lien strippers remains to be seen.

Oklahoma made permanent a few of its emergency rules regarding manufactured housing licensing. Illinois amended its Mobile Home Landlord and Tenant Rights Act. Maryland amended its wet venting rules. Yes, wet venting affects manufactured housing, but the editors of the *Update* recommend not thinking about the issue too much, because, well, it is gross.

IN THIS ISSUE

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Mississippi regulators apparently did not get the memo about taking August off. They significantly amended their installation rules, as well as licensing provisions. Readers, fortunately, have until October 1 to digest the amendments.

COMMUNITIES

CASE LAW

Sale of home – Conversion

CASE NAME: *Cetani v. Goldman*
DATE: *07/28/2016*
CITATION: *United States District Court, M.D. Pennsylvania. Slip Copy. 2016 WL 4036827*

Plaintiffs sold their manufactured home, located within Defendant Cresson Point Properties, LLC's trailer park, to Defendants Helaine and Scott Goldman, with plaintiffs providing financing for the sale themselves. Plaintiffs brought the instant suit after the Goldmans defaulted on the loan and conveyed the home to Cresson Point Properties or its owners, Defendants Cole and Amber Peffer.

Plaintiffs alleged six state law causes of action: Count I alleged breach of contract; Count II alleged fraud; Count III alleged fraudulent conversion; Count IV alleged unjust enrichment; Count V alleged unconscionability; and Count VI alleged unfair and deceptive trade practices under the FDCPA, the Pennsylvania Unfair Trade Practices and Consumer Protection Law, and the Manufactured Home Community Rights Act.

Plaintiffs alleged that the Peffer Defendants compelled plaintiffs to sell the home to the Goldmans, knowing that the Goldmans would not be able to make the payments, then in some manner took possession of the home from the Goldmans when they defaulted.

The Peffers filed a motion to dismiss.

The Court refused to dismiss Counts I and V, as they arose from a contract between plaintiffs and the Goldman Defendants and the Peffer Defendants were not parties to this contract.

The Court found that the complaint set forth the factual allegation that the Peffer Defendants agreed with the Goldman Defendants to deceive the plaintiffs to obtain plaintiff's home. Not only did this satisfy the pleading requirements for a claim of fraud (Count II), it also stated the claim in the language of civil conspiracy.

The Court also found that plaintiffs successfully pled that the defendants willfully interfered with plaintiffs' chattel, without legal justification, depriving plaintiffs of their use and possession of their mobile home. Further, these pleadings stated a claim for conversion (Count III) under two theories: (a) acquiring possession of the goods, with an intent to assert a right to them which is in fact adverse to that of the owner, and (b) transferring the goods in a manner which deprives the owner of control.

However, the Court dismissed the unjust enrichment claim in Count IV, finding the lessor/lessee relationship between plaintiffs and the Peffer Defendants existed because of an express, written contract. Plaintiffs specifically pled that it was this relationship that defendants allegedly exploited to defraud the plaintiffs. The contract between the parties constituted the gravamen of this action, and thus, no claim for unjust enrichment may lie.

Finally, the Court found that plaintiffs failed to cite any statutory provision substantiating actionable claims under the FDCPA, the UTPCPL, or the MHCRA.

Defendants' motion granted in part and denied in part.

CASE LAW

Management – Illegal activities

CASE NAME: *Zeigler v. State*
DATE: *08/11/2016*
CITATION: *District Court of Appeal of Florida, First District. --- So.3d ----. 2016 WL 4239816*

This case is an appeal by a person convicted because meth was manufactured in the mobile home complex

over which he had control. Defendant, Bobby Lee Zeigler, raised issues regarding his convictions on multiple counts, including the charge that he violated Fla. Stat. § 893.1351(2).

Zeigler's trial counsel did not object to the jury instruction, which stated:

To prove the crime of possession of Place for Trafficking in or Manufacturing of Controlled Substance, the State must prove the following three elements:

1. Bobby Zeigler possessed a place, structure, or part thereof, trailer or other conveyance;

2. Bobby Zeigler had the knowledge that the place, structure, or part thereof, trailer or other conveyance was used for the purpose of trafficking in a controlled substance or manufacture of a controlled substance.

3. That substance was intended for sale or distribution to another.

The phrase “was used” differs from the statutory language, which says that Zeigler was required to know that the mobile home complex over which he had control “will be used” for the specified illegal purposes. Zeigler claimed fundamental error because the jury instruction allowed the jury to conclude that he was guilty simply because he knew the mobile home complex had been used for such illegal purposes in the past (i.e., “was used”), when the statute seemingly requires that he must have foreseen that it “will be used” for such purposes in the future.

The Court could not conclude that this oversight met the standard for fundamental error.

The record reflected no discussion about what Zeigler may have known about the prior uses of the mobile home complex, only that he was proven to have possession of it at the time when there were substantial indicia of activities of which he was aware that support the jury's conclusion that “trafficking in a controlled substance or manufacture of a controlled substance” was ongoing. In other words, the semantic argument that the instruction could have been improved upon (and should be in future prosecutions under the statute) was a valid one, but the context of this case did not lend itself to the conclusion that the guilty verdict could not have been obtained without the assistance of the alleged error. The jury could have concluded that Zeigler knew that the mobile home complex would continue to be used for the illegal purposes, notwithstanding some evidence that supported that some illegal activities at the site had been curtailed or ceased, all or portions of which the jury could have rejected.

Affirmed.

LEGISLATION

Illinois

Rules breach - Fines

2015 IL H 6285. Enacted 8/5/2016. Effective 1/1/2017.

This bill amends the Mobile Home Landlord and Tenant Rights Act.

The bill amends 765 Ill. Comp. Stat. 745/22 by adding that if the tenant breaches any provision of the lease or rules and regulations of the mobile home park, the park owner shall give the tenant written notice specifying in writing the reason for any fine that may be imposed on the tenant. As used in this Section, "fine" does not include fees that are imposed on a tenant for services or products provided by the park owner to the tenant. If a fine is imposed on a tenant, the following applies for 45 days after written notice of the fine is delivered to the tenant:

(1) non-payment of a fine shall not be grounds for refusal to accept a rent payment; and

(2) the fine shall not be deducted from a rent payment.

Acceptance of a rent payment shall not be construed as a waiver of an unpaid fine.

LEGISLATION

Illinois

Order of Possession

2015 IL S 3166. Enacted 8/5/2016. Effective 1/1/2017.

This bill amends 735 Ill. Comp. Stat. 5/9-117 of the Forcible Entry and Detainer Article of the Code of Civil Procedure, relating to evictions, by changing a statutory notice of motion to the defendant for the extension of an order of possession more than 120 days after judgment is entered by replacing references to a landlord with references to a plaintiff.

PROPOSED RULE

Maryland

Plumbing requirements

This proposed rule amends Md. Code Regs. 18.4.2, Limitations on Wet Venting, under Mobile Home and Travel Trailer Park Plumbing Requirements, to provide that wet vented drain piping shall only serve trailer sites. Drainage from any buildings or other facilities on the site shall not be connected to drain piping from trailer sites that is wet vented.

The rule amends Md. Code Regs. 18.4.9, to change the section heading, "Wet Vented Branch Drain Lines" to "Wet Venting."

The rule also adds that the drainage system of a utility or other building may not discharge into a wet-vented line. A house sewer may not discharge into a wet-vented line.

A house sewer or part of a house sewer may not function as a wet-vent.

REGULATORY SETTLEMENT

Pennsylvania

Propane gas

The Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement filed a complaint against Continental Communities LLC and Hickory Hills Mobile Home Park LLC after a propane gas explosion in the park.

The resulting explosion and fire completely destroyed one residence and caused severe damage to surrounding properties. One resident was killed.

In the weeks leading up to the incident, the defendants received several complaints from residents smelling propane gas, but the maintenance workers were unable to find any leaks.

The Office of Administrative Law Judge and the Commission found Continental Communities and Hickory Hills in violation of state and federal statutes and regulations and assessed a civil penalty in the amount of $200,000 for each of the 39 violations ($7,800,000) up to the maximum civil penalty that may be imposed of $2,000,000 allowable under 66 Pa.C.S. § 3301(c).

On 8/11/2016, an order of settlement was issued whereby the defendants agreed to pay $1,000,000 to resolve the complaint.

PROPOSED RULE

Tennessee

Taxes - Multiple-use subclassification

This rule adds Tenn. Comp. R. & Regs. 0600-12-.1 thru .9, Multiple-Use Subclassification.

The rule includes mobile home parks with on-site privately owned mobile homes as examples of when multiple-use subclassification is appropriate.

"Multiple-use subclassification" means the apportionment of different assessment percentages among subclasses when a parcel of real property is used for more than one purpose which would result in different subclassifications.

The rule provides that multiple-use subclassification requires that each use of the property be distinct and ongoing. Where a parcel is used predominantly for one purpose and another use is sporadic and generates insignificant annual income, the parcel should be assessed in accordance with the predominant use. Where a parcel is used predominantly for one purpose and another use is sporadic but generates regular annual income that is not insignificant, the parcel should be assessed using multiple-parcel subclassification.

Where the uses of a property include two (2) or more subclasses, the assessor shall determine the share of the market value of the property attributable to each subclass and value the property according to the proportion each share constitutes of the total market value.

The rule provides examples of apportioning among subclasses, including EXAMPLE E:

A mobile home park owner owns the land and multiple homes located on the land within the mobile home park, and he leases out the mobile homes to tenants. All of the property (land, improvements, and mobile homes) should be subclassified as "industrial and commercial property". On the other hand, if a mobile home park owner owns the land within the mobile home park but leases the land out to multiple tenants who own their own mobile homes situated on the land, then the land and any improvements rented with the land should be subclassified as "industrial and commercial property" but each mobile home that is used for residential purposes by the mobile home owner or owner's lessee should be subclassified as "residential property" unless it is part of multiple rental units under common ownership.

The rule provides that, after this chapter takes effect, these rules shall apply to the tax period beginning January 1, 2017 and all subsequent tax periods.

DEFAULT SERVICING

CASE LAW

Bankruptcy – Value of collateral

CASE NAME: *In re Dixon*
DATE: *07/26/2016*
CITATION: *United States Bankruptcy Court, S.D. West Virginia, At Charleston. Slip Copy. 2016 WL 4054940*

The Debtor was indebted to Vanderbilt Mortgage and Finance, Inc. pursuant to a Manufactured Home Promissory Note, Security Agreement and Disclosure Statement, secured by a lien on the Certificate of Title of a 2006 Fleetwood Mobile Home. The original principal amount of the indebtedness was $75,397.29.

Dixon defaulted on the Loan and his outstanding indebtedness was $79,887.14. Dixon filed a Chapter 13 petition on November 23, 2015. Vanderbilt filed a Proof of Claim, listing the secured indebtedness as $77,968.12 and arrearages of $4,119.31.

The Debtor valued the Collateral at $30,000, and provided for payment of $34,216.47 to Vanderbilt over the life of the plan. Vanderbilt objected to the Plan.

The parties stipulated to a $26,700 valuation of the mobile home, however Vanderbilt's Appraisal listed the value of the five acres of land upon which the mobile home was situated at $27,000. The debtor valued the land at $10,000.

Vanderbilt was the only party to put forth an appraisal. The appraiser based his work on the Comparative Sales Approach, the appraiser, however, neither walked the property, nor properly took into account that a swamp was situated on the property. Moreover, none of the

comparable sales harbored a swamp. While Dixon did not offer any conventional expert appraisal testimony, he testified without persuasive contradiction that the swampland was one-third to one-fourth of a mile long, and about one hundred feet wide. He did not believe $27,000 was a fair valuation.

The Court concluded that the comparative sales analysis offered by the appraiser failed to account for the material distinctions between the subject property and those used for comparison purposes, and the valuation should be adjusted to account for the presence of significant swampland. Having done so, the Court concluded that the appraisal should be adjusted downward from $27,000 to $19,000 for the purposes of plan confirmation.

CASE LAW

Bankruptcy – Value of collateral

CASE NAME: *In re Denaro*
DATE: *08/05/2016*
CITATION: *United States Bankruptcy Court, W.D. New York. --- B.R. ----. 2016 WL 4411281*

The Denaros gave 21st Mortgage Corporation a security interest in their manufactured home, but not in the underlying real estate. After defaulting, the Denaros filed Chapter 13 and proposed a plan to pay 21st Mortgage $18,000 as the value of its collateral, plus a distribution of 5% of the unsecured balance of that creditor's claim. 21st Mortgage filed a proof of claim for a secured liability of $28,844.50 and objected to confirmation of any plan paying less than the full amount.

The Court noted that 11 U.S.C. § 1325(a)(5) grants a "cram down" power, by which a debtor in Chapter 13 can reduce a secured claim to the value of pledged collateral. The valuation of personal property is to be based on its "replacement value."

21st Mortgage's appraisal report, prepared by a remarketing manager for that lender, without explanation, stated that the structure had a base value of $30,900, to be reduced by the cost of necessary repairs in the amount of $2,500, but increased by the cost of delivery and setup in the amount of $9,100. Applying these adjustments, the report calculated the replacement value at $37,500.

The debtor's counsel submitted a Residential Broker Price Opinion which considered three comparable sales. After adjusting for the age and size of each comparable, the author calculates an "adjusted sales price" of $18,900 for the first comparable, $22,000 for the second comparable, and $27,000 for the third comparable. Then, without further explanation, the report concluded that the property had a current value of $19,500.

According to the Court, more than half of the difference in value derived from the lender's upward adjustment for the cost of delivery and setup. However, there is a difference between replacement value and replacement cost. Set up and delivery charges may factor into the cost of replacement, but for purposes of plan confirmation, the court must instead determine replacement value.

The Court found that both appraisals had serious deficiencies. The creditor's report provided no explanation for its assertion of a base value. In contrast, the debtor's appraiser presented an acceptable methodology of analyzing comparable sales, but, without explanation, suggested a reduction in value from that amount by more than $3,000. Accordingly, the court instead adopted the average adjusted sales price.

Ordered, that the value of the debtor's mobile home be set at $22,633.

CASE LAW

Bankruptcy – Lien avoidance

CASE NAME: *In re Gracy*
DATE: *08/08/2016*
CITATION: *United States District Court, D. Kansas. --- B.R. ----. 2016 WL 4181384*

Debtor borrowed from Ark Valley Credit Union on home equity lines of credit. To secure the loans, Debtor granted AVCU revolving credit mortgages on his realty. The mortgages did not note the presence of a manufactured home on the property. Debtor believed that both mortgages had granted a lien on the land, the manufactured home, and a detached garage.

Debtor filed a Chapter 7 bankruptcy petition, claiming the realty as his homestead. He did not list the manufactured home as personal property on Schedule B.

This case was the second appeal involving the Trustee's right to avoid AVCU's lien on the manufactured home. In the first appeal, the Trustee challenged the bankruptcy court's determination that AVCU's lien did not attach to the manufactured home because the mortgage's habendum clause did not sufficiently describe the home and therefore, the lien could not be avoided. The district court reversed that determination and remanded the matter to the bankruptcy court to determine whether that home was a fixture under Kansas common law. Here, AVCU appealed the bankruptcy court's determinations on remand that: 1) the manufactured home was a fixture; 2) AVCU's lien attached to the manufactured home but was not properly perfected; and 3) the Trustee could avoid and preserve AVCU's lien for the benefit of the estate pursuant to 11 U.S.C. § 544(b).

The Court found that the law of the case doctrine barred the Kansas Manufactured Home Act exclusivity issue and the mortgage description issue. AVCU essentially urged the Court to reverse itself. The Court declined to do so.

The Court further found that the bankruptcy court did not clearly err in finding that the manufactured home was a common law fixture or improvement to the land.

According to the Court, attachment to the realty is not dispositive of whether the manufactured home became part of the realty. Evidence that the property has been adapted to the land's use and that the annexor intended it to become part of the land are also factors to consider in determining fixture status.

Affirmed.

CASE LAW

HOA fees – Super-priority lien

CASE NAME: *Bourne Valley Court Trust v. Wells Fargo Bank, NA*
DATE: *08/12/2016*
CITATION: *United States Court of Appeals, Ninth Circuit. --- F.3d ----. 2016 WL 4254983*

Purchaser of property that was subject to an HOA foreclosure sale to collect unpaid HOA assessments brought an action seeking to quiet title and a declaration against mortgage lender, as holder of first deed of trust on property. The action was removed to federal court. The district court held that the HOA's foreclosure extinguished Wells Fargo's interest in the Property. Wells Fargo appealed.

The Court of Appeals held that the Statute's (Nev. Rev. Stat. § 116.3116 et seq.) "opt-in" notice scheme, which required a homeowners' association to alert a mortgage lender that it intended to foreclose only if the lender had affirmatively requested notice, facially violated the lender's constitutional due process rights under the Fourteenth Amendment to the Federal Constitution.

Further, the "state action" requirement for purposes of constitutional due process had been met, in that the Nevada legislature's enactment of the statute governing

foreclosure of liens by a homeowners' association constituted "State action."

Vacated and remanded.

CASE LAW

Bankruptcy – Value of collateral

CASE NAME: *In re Sweeney*
DATE: *08/18/2016*
CITATION: *United States Bankruptcy Court, E.D. North Carolina, Fayetteville Division. Slip Copy. 2016 WL 4402220*

Sweeney filed a chapter 13 and listed her Manufactured Home, valued at $11,000, with Ditech as holder of a secured claim on the home. Although its wheels and axles were removed, the home was not permanently affixed. As a result, the home remained personal property. Ditech's Proof of Claim listed the balance at $42,742.76.

Sweeney testified as to the condition of the home, including extensive water damage. Photos corroborated her testimony. In addition, other interior features of the home were in disrepair. Sweeney relied upon the county tax valuation in concluding the home was worth $11,000.

Ditech's appraiser, Cordoni, began with a base value taken from the National Appraisal System Guide Book, adjusted upwards based on the market for manufactured homes in eastern North Carolina, for a starting point of $22,600. Cordoni rated the home as being in "fair" condition and applied a discount reduction of 82%. Cordoni made deductions for the cost of replacing the wheels and axles and the estimated cost of itemized "necessary repairs," and added the value of listed additional accessories and components, for a final estimated value for of $19,600.

The Court found that Ditech's security interest stated that it attached to the range, refrigerator, washer and dryer, and skirting. However, no UCC financing statement was recorded on these items. As a result, the notation on the Certificate of Title was insufficient to perfect a security interest in them.

The Court found Sweeney's testimony detailing the current condition of the home was relevant, useful, and credible. However, her testimony as to the value of the Manufactured Home was not relevant.

According to the Court, Cordoni refused to consider the possibility that he may have underestimated the extent of the damage, nearly to the point of reflexive hostility, and did nothing to support a condition adjustment of 82%. Cordoni showed a lack of independence and based his testimony primarily from the secured creditor's point of view.

The Court found that the home's condition was closer to "poor" than "fair," and that the "condition adjustment" was 65% of the base value.

Further, Cordoni's floor repair estimate was insufficient. Additionally, the collective value of the four identified non-accession appliances included in the Appraisal, along with damage to the home's skirting, problems associated with the front porch had to be included in the deduction total. Adding the value of the remaining accessories and components resulted in a replacement value of $14,700 for the home and accession items serving as collateral for Ditech.

INSTALLATION

ADOPTED RULE

Mississippi

Standards – Inspections - Certification

Effective 10/1/2016, these rules amend 19-7 Miss. Code R. Chapters 4 and 5.

The definition of "Pier Cap" is amended to include a pressure treated wood plate, as well as a concrete plate placed on top of the highest open cell block of the pier.

The rule defines "Proprietary Pan - Type Foundation System "Proprietary Pan - Type Foundation Stabilizing System" (formerly, "Proprietary Pan - Type Foundation System") bot does not amend the definition.

In the definition of "Vehicle Decal," the rule provides that the truck decal is to be placed in a clearly visible location on each the passenger and driver door of the vehicle, instead of near the DOT number.

The rule amends Rule 5.01.4: Manufacturer's Installation Instruction Unavailable, to add that any Factory-Built Home that is to be transported within or into the six (6) coastal counties of the State (Pearl River, Stone, George, Hancock, Harrison, and Jackson County) for installation, the retailer, the developer and/or installer transporter will be required to obtain a photocopy or a clear photograph of the data plate for the home. The photograph or copy of the data plate must be attached to the Property Locator/Certificate of Installation and submitted to the Factory-Built Home Division.

The rule also amends Rule 5.02.1-17: Property Locator/Certificate of Installation Submitted by the Retailer/Developer (formerly, Retailer/Developer Certificate of Inspection Form) to require each retailer and developer to submit the Property Locator/Certificate of Installation (formerly, Retailer/Developer Certificate of Inspection, the Installer Certificate of Inspection and the Property Locator/Inspection Report form) to the Factory-Built Home Division of the State Fire Marshal's Office for every Factory-Built home that has been sold and installed.

The rule adds that the form must be signed by both the retailer/developer and the installer/transporter and also adds that it must include:

Any exclusion of the home for use as a hunting/fishing camp, storage or other use, if applicable;

Determination of party responsible for the site preparation;

Designation of type of pan foundation system, if installed on the home;

Class of anchor used for home installation or soil test probe readings for class of anchor installed;

Signatures of the retailer/developer and installer/transporter;

Rule 5.02.1-18: Installer Certificate of Inspection Form is amended to now be titled: Property Locator/Certificate of Installation Submitted by the Installer/Transporter, and to provide that:

A. It shall be the responsibility of each installer/transporter that transports or installs a home at a secondary location to submit, for every Factory-Built home, the Property Locator/Certificate of Installation (formerly, Installer Certificate of Inspection and the Property Locator/Inspection Report form) to the Factory-Built Home Division of the State Fire Marshal's Office (SFMO). The form must be signed and dated by the installer/transporter and must indicate on the form that this is a secondary installation and include:

Any exclusion of the home for use as a hunting/fishing camp, storage or other use, if applicable;

Determination of party responsible for the site preparation;

Designation of type of pan foundation system, if installed on the home;

Class of anchor used for home installation or soil test probe readings for class of anchor installed; and

Signature of the installer/transporter.

The rule amends Rule 5.02.3-1: Scheduling of the Inspection, to provide that, for all new or used residential Factory-Built homes involving a retailer, the retailer is

required within three (3) business days of the completion of the installation, minus skirting, to submit by e-mail, facsimile, or priority mail, a properly completed and signed Property Locator/Certificate of Installation (formerly, Retailer/Developer Certificate of Inspection, Installer/Transporter Certificate of Inspection and the Property Locator/Inspection Report) to the Factory-Built Home Division of the State Fire Marshal's Office. This will provide information on the exact location where the home has been installed.

For secondary sitings not involving a retailer, the installer/transporter is required to submit within three (3) business days of the completion of the installation, minus skirting, by e- mail, facsimile, or priority mail, the properly completed and signed Installer/Transporter Certificate of Inspection and the Property Locator/Inspection Report Property Locator/Certificate of Installation (formerly, Installer/Transporter Certificate of Inspection and the Property Locator/Inspection Report) to the Factory-Built Home Division of the State Fire Marshal's Office, for all Factory-Built homes. This will provide information on the exact location of the home and when the home has been installed.

Rule 5.02.3-2: Inspection Fees, has been amended to change the reference to the Installer Certificate of Inspection Form to the Property Locator/Certificate of Installation.

The amendments deletes Rule 5.02.3-5: Inspection Checklist.

The new rule amends Rule 5.02.4-2: Procedures for Re-inspection Upon Failure to Pass, to provide that, upon failure to pass the re-inspection of the installation, the manufacturer, developer, and/or retailer will be notified that the installer/transporter has failed to correct the defects.

The rule amends Rule 5.02.4-5: Inspection Decal, to provide that each decal will have spaces for the inspector to write in the homeowner's name, date of inspection (formerly the date of installation) and the installer/transporter license number.

Rule 5.02.4-8: Site Preparation by Homeowner, has been amended to provide that the manufacturer, retailer, developer, or installer/transporter may agree in writing to allow the consumer to conduct the site preparation for the Factory-Built home installation (adding, developer).

The amendments add Rule 5.02.7-3: Retail Sales with In-house Transport and Installation Staff, to provide that a retailer that employs their own Factory-Built home transport and installation staff is authorized, under their retail license, to transport and install homes that are for sale at their retail location. Any transportation and installation of homes for sale by another licensed retailer/developer or for persons contracting for hire the transportation and installation of their personal home shall be considered as an installer/transporter, as defined in Rule 5.01.2 (U), and requires the retailer to apply for and obtain a separate installer/transporter license.

Rule 5.02.7-5 (formerly, Rule 5.02.7-4 with subsequent rules renumbered accordingly): Vehicle Decals, is amended to provide that with the submittal of the annual renewal application, current vehicle decals will be issued by the State Fire Marshal's Office/Factory-Built Home Division, based upon the number requested by the licensee at time of license renewal. The request must also include the vehicle VIN numbers and the vehicle license numbers for each of the transport trucks to which the decals will be attached. The color of the decals shall denote the current licensing period.

Rule 5.02.7-6 : Retail Lot Display and Temporary Storage, provides that for all used homes at a retail location, door and window openings greater than 48 inches shall have a pier installed at each side of the opening. Formerly, the rule provided that any exterior door opening, regardless of the width of the home, shall have a pier at each side of the opening. All patio doors and windows greater than

48 inches shall have a pier installed at each side of the opening.

Rule 5.02.8-2: Developer Sales with In-house Transport and Installation Staff, is added to provide that a developer that employs their own Factory-Built home transport and installation staff is authorized, under their developer license, to transport and install homes that are for sale at their development location. Any transportation and installation of homes for sale by another licensed retailer/developer or for persons contracting for hire the transportation and installation of their personal home shall be considered as an installer/transporter, as defined in Rule 5.01.2 (U), and requires the developer to apply for and obtain a separate installer/transporter license.

Rule 5.02.8-4: Vehicle Decals, has been amended to provide that with annual renewal application, current vehicle decals will be issued by the State Fire Marshal's Office/Factory-Built Home Division, based upon the number requested by the licensee at time of license renewal. The request must also include the vehicle VIN numbers and the vehicle license numbers for each of the transport trucks to which the decals will be attached. The color of the decals shall denote the current licensing period.

Rule 5.02.9-6: Monthly Installation Report, has been deleted.

Rule 5.02.9-6: Recordkeeping, has been amended to require that the installer/transporter must retain a copy of the installer/transporter's certification of installation Property Locator/Certificate of Installation (instead of the installer/transporter's certification of installation).

The rule amends Rule 5.03.3-3: Skirting of Factory-Built Homes, to provide that an inspection of the home is usually scheduled to occur within three (3) to five (5) business days following the receipt of the Certificate of Inspection Form Property Locator/Certificate of Installation (formerly, the Certificate of Inspection Form) from the retailer, the developer and/or the installer/transporter.

Also amended is Rule 5.04.3: Windstorm Protection and Wind Zone Designation, to provide that, prior to the sales and installation of all new and used Factory-Built homes, the retailer, the developer and/or the installer/transporter shall determine whether the house is constructed to the properly rated Wind/Hurricane zone for its intended use and installation by referring to the HUD data plate. Any Factory-Built Home that is to be transported within or into the six (6) coastal counties of the State (Pearl River, Stone, George, Hancock, Harrison, and Jackson County) for installation, the retailer, the developer and/or installer transporter will be required to obtain a photocopy or a clear photograph of the data plate for the home. The photograph or copy of the data plate must be attached to the Property Locator/Certificate of Installation and submitted to the Factory-Built Home Division. If no accessible or readable data plate is available in the home to verify the Wind/Hurricane zone designation, a copy of the HUD data plate and compliance certificate must be obtained from either the manufacturer of the home or from the Institute for Building Technology and Safety (IBTS).

Rule 5.04.4-3: Missing HUD Label and Data Plate, provides that no Factory-Built home constructed on or after June 15, 1976, may be installed within the State of Mississippi unless it contains the HUD label and a data plate (see paragraphs 5.04.4-1 and 5.04.4-2 above) or unless verification certificates of the HUD label or HUD data plate compliance certificates for the home have been obtained from The Institute for Building and Technology Safety (IBTS)) or the manufacturer of the home (adding the manufacturer of the home).

The rule amends Rule 5.04.4-4: Factory-Built Homes That Shall Not Be Transported, to include: 6. Any Factory-Built home taken as a "trade-in" by a retailer that meets any of the above listed conditions.

Rule 5.06.1-4: Raised Soil Pad, is amended to provide that, if the installation site is flat or is in a low area, the soil must be brought to the site to create the proper grading under the home. The fill material for the pad of soil must be placed on each home installation site such that the dimensions of the pad will extend a minimum distance of (formerly, up to) 10 ft beyond each side of the home. The soil pad fill material must be compacted to 90 percent of maximum relative density to provide the proper load bearing capacity for the support pier footings. Loose sands, gravel or other non-compactable materials are not to be used as the fill material for the pad. The soil under the home shall be compacted and adequately crowned and sloped from the centerline of the home and provide a minimum slope of ½ inch per foot out and away a minimum distance of 10 feet (adding, a minimum distance of 10 feet) from each side of the home (see Figure 3), adding "except where property lines, walls, slopes or other physical conditions prohibit maintaining the minimum distance from the sides of the home."

Rule 5.06.1-7: Site Preparation by Homeowner (formerly, Site Preparation by Landowner and/or Homeowner) has been amended to delete references to the landowner and to delete the provision that any fee charged by the State Fire Marshal's Office due to mediation will be paid by the landowner and/or homeowner.

The amended Rule 5.06.1-11: Ventilation of Under-floor Areas and Moisture Barrier Recommendation (adding, Recommendation), provides that, for all used Factory-Built homes, if the space under the home is to be enclosed with skirting or other materials, the skirting shall be vented and it is recommended that a 6 mil polyethylene sheeting or equivalent be placed on the ground area in the crawlspace below the home. When installed, the moisture barrier should cover the entire area under the home and overlap at least 12 inches at all joints. All decayable material, such as grass, roots, twigs, and wood scraps shall be removed from beneath the home.

Rule 5.06.6: Required Piers and Anchorages, is amended to provide that when a used Factory-Built home is relocated (secondary siting) all of the original diagonal and vertical tie downs for the wind zone designation of the home must be reinstalled (adding the reference to the wind zone designation of the home).

The amendment also replaces "frame" with I-beam, and provides that if the Factory-Built home installation instructions are not available for a used home, piers for single section homes are to be placed under each longitudinal I-beam not to exceed 8 ft. on center spacing for homes that are 14 ft. wide or less and 6 ft. on center for homes that are over 14 ft. wide, in the minimum soil bearing capacity of 2,000 psf (Formerly, the piers shall not be further apart than six (6) feet on center when using a minimum pier foundation of a 16"x16"x4" concrete pad or equivalent in the minimum soil bearing capacity of 2000 psf).

The new rule amends Rule 5.06.7-1: Single Stacked Piers, to add that perimeter piers shall be single tiered and placed parallel to the sidewall under the rim joist.

Rule 5.06.7-2: Pier Caps, has been amended to provide that all piers must have a full size cap covering the top of the pier. A solid concrete 2"x8"x16" or 4"x8"x16" block or a 2"x8"x16" pressure treated wood plate shall be placed on top of the pier to serve as a cap. All caps must be the same length and width as the piers on which they rest. When split caps are used on double stack piers, the caps must be installed with the long dimension across the joint in the blocks below.

Formerly, the rule was that all single stacked piers must have a full size cap covering the top of the pier. A 2"x8"x16" or a 4"x8"x16" concrete cap or a combination of both may be used. A full size pressure treated wood or hardwood spacer shall be placed on top of the cap. A 2"x 8"x16" treated or hardwood plate or a 1"x8"x16" treated or hardwood plate or a combination of both shall be placed on top of the pier cap.

The rule also provides that additional full size pressure treated or hardwood plates (adding, pressure treated or hardwood) not less than 1”x8”x16” may be used but the plates shall not exceed 4 inches in total height.

The rule amends Rule 5.06.7-6: Corner Piers, to provide that two 8”x16”x4” concrete cap blocks or two 2”x8”x16” pressure treated wood plates may be used on a double tiered pier provided that the joint between the blocks or plates (adding, or plates) is perpendicular to the joint between the open cell concrete blocks and is also perpendicular to the main frame I-beam. formerly, the rule provided that two 8”x16”x4” cap blocks may be used on a double tiered pier provided that the joint between the blocks

Rule 5.06.7-7: Double Tiered Pier Heights, as amended, provides that piers 36 inches to 67 inches high shall be double-tiered units at least 16”x16” consisting of interlocking masonry units and shall be fully capped with a 2 inch or 4 inch thick solid masonry unit or a 2"x8"x16" pressure treated wood plate (formerly, or equivalent).

Rule 5.06.7-9: Pier Footings, has been amended to provide that all I-beam support piers and marriage line support piers shall be constructed on footings of solid concrete not less than 16”x16” that consist of a 4 inch thick concrete pad (adding, 4 inch thick), precast, ABS, or poured in place concrete slab, unless other footing types and sizes are allowed.

Also, perimeter pier footings are required to be a 4"x 8"x16" (formerly, 8"x16"x4") concrete pad or equivalent. The rule deletes the provision that perimeter piers shall be single tiered and placed parallel to the sidewall under the rim joist.

Poured-in-place concrete pads, slabs, or runners used as footings for a Factory-Built home shall be a minimum 4 – inches (formerly, 6) thick with a least a 28 day compressive strength of 3,000 pounds per square inch (psi) and shall be required to contain proper reinforcing steel.

Rule 5.06.7-10: Marriage Wall Piers, will be amended to provide that marriage line piers, less than 54 (formerly, 36) inches in height, shall be single tiered, on footings and placed perpendicular to the line of the mated sections of the home.

The rule amends Rule 5.06.8: Pier Spacing and Placement, to provide that to assure proper pier spacing and placement for all Factory-Built homes, the piers shall be located in accordance with the Factory-Built home installation instructions. If the Factory-Built home installation instructions are not available for a used home, piers for single section homes are to be placed under each longitudinal I-beam not to exceed 8 ft. on center spacing for homes that are 14 ft. wide or less and 6 ft. on center for homes that are over 14 ft. wide, in the minimum soil bearing capacity of 2,000 psf (adding, in the minimum soil bearing capacity of 2000 psf).

The rule amends Rule 5.06.8-1: Placement of Door and Window Support Piers, to provide that all doors and windows (adding, doors) over 48 inches wide shall be properly blocked under each side of the opening (footings for these support piers may be 8"x16"x4" concrete pads or equivalent). In the event that an obstruction (electrical, mechanical, plumbing or other device) (formerly, outrigger support, electrical, mechanical equipment or other devices) is directly under one side of the opening, the blocks on that side may be offset up to maximum of 6 inches in either direction of the supported member. The amendment adds: Factory installed outriggers and cross members may replace support piers if they are positioned directly below exterior door or window openings less than 48 inches, provided the floor rim joist has not been compromised or damaged and deletes the provision that if the placement of the piers cannot be achieved according to this regulation, the installer/transporter must document on the Property Locator Form Checklist the reasons for the deviation from the regulation.

Rule 5.06.8-3: Placement of Piers Under Concentrated Loads, has been amended to add that the data plate of the Factory-Built home must be reviewed by the installer/transporter to determine if additional perimeter pier installations are required.

The changes to Rule 5.06.8-4: Placement of Perimeter Support Piers, provide that perimeter piers shall be placed under the intersection of a floor rim (formerly, perimeter) joist and a transverse joist or shall be under a 4"x4" brace that supports at least two floor joists.

Rule 5.06.10-3: Pan-Type Foundation Stabilizing Systems, has been amended to provide that the name of the manufacturer of the pan-type foundation stabilizing system shall be indicated on the Property Locator/Certificate of Installation form. Formerly, the rule provided that the manufacturer name and model number of the pan- type foundation stabilizing system shall be included in the comments section of the Property Locator/ Inspection Report form Property Locator/Certificate of Installation provided to the State Fire Marshal's office.

Finally, Rule 5.06.11-2: Determining the Soil Class of Anchors, is amended to replace the reference to the Property Locator/Inspection Report form with the Property Locator/Certificate of Installation to confirm the determined soil class for anchor selection.

LICENSING

ADOPTED RULE

Iowa

Supervision

Effective 9/7/2016, amends Iowa Admin. Code r. 181-1.1, .4, .5, .6, .8.

This rule amends Iowa Admin. Code r. 181-1.4(1) Banking Division, to add that the banking division regulates and supervises mortgage bankers, mortgage brokers, real estate closing agents, debt management companies, money services companies, and delayed deposit service businesses and performs other duties assigned to it by law.

Formerly, the regulation limited the banking division regulation and supervision to state banks, regulated loan companies, industrial loan companies.

ADOPTED RULE

Mississippi

Installer/Transporter – Retailer/Developer

Effective 10/1/2016, these rules amend 19-7 Miss. Code R. Chapters 4 and 5.

Rule 4.05: Bonding and Insurance Requirements, is amended to provide that the general liability policy for an Installer/Transporter is to be a minimum of $100,000 coverage (formerly, "in the amount of $500,000"). The rule also deletes the provision that the general liability policy is also required to have a cargo policy addition in the amount of $100,000.00 in coverage for the transport of manufactured homes and adds that the general commercial liability policy must indicate that a cargo policy has been obtained by the licensee for the transport of Factory-Built homes.

The rule amends the definition of "Developer" in Rule 5.01.2:,Definitions, to exclude:

a) Factory-built home parks and park owners having Factory-Built homes, on individual lots in the park, owned by the park or park owners and available for rent or lease;

b) An individual selling his personal Factory-Built home residence (one that the individual is currently living in or has previously lived in) and the real estate upon which the home is permanently installed and fixed, or has retained a real estate broker or real estate salesperson to

sell the Factory-Built home and the real estate as a "package deal;"

c) An individual owning a single plot or multiple plots of real estate having a Factory-Built Home installed on said real estate and offering the same for lease to the general public provided the lease is not a lease-purchase under a "package deal."

Rule 5.02.1-3: Retailer/Developer License Application, has been amended to apply to any retailer or developer (formerly, any retailer/developer) and to anyone who buys, relocates, re-builds and sells Factory Built Homes (formerly, anyone who re-builds, sells and/or leases Factory-Built Homes) or anyone who buys and sells but does not move or relocate repossessed or used Factory-Built homes.

The rule amends Rule 5.02.1-12: Licensee Bonding and Insurance Requirements, to provide that an Installer/Transporter must provide proof of a general commercial liability policy for a minimum $100,000.00 (formerly, in the amount of $500,000.00) in coverage. Deletes the provision that The general liability policy is also required to have a and provide proof of a cargo policy addition in the amount of $100,000.00 in with coverage for the transport of Factory-Built homes and adds that the general commercial liability policy or automobile liability policy must indicate that a cargo policy has been obtained by the licensee for the transport of Factory-Built homes.

ADOPTED RULE
Oklahoma
Dealers

Effective 9/11/2016, this rule amends Okla. Admin. Code § 765:35-3-6 to address the time period and expiration of the manufactured home dealer license. The permanent rule is identical to the existing emergency rule.

The amended rule provides that licenses expire on the 31st day of December of the odd numbered year, following the date of issue (adding, “of the odd numbered year”).

ADOPTED RULE
Oklahoma
Manufacturers

Effective 9/11/2016, this rule amends Okla. Admin. Code § 765:36-3-6 to address the time period and expiration of the manufactured home manufacturer license. The permanent rule is identical to the existing emergency rule.

The amended rule provides that licenses expire on the 31st day of December of the odd numbered year, following the date of issue (adding, “of the odd numbered year”).

ADOPTED RULE
Oklahoma
Installers

Effective 9/11/2016, this rule amends Okla. Admin. Code § 765:37-3-6 to address the time period and expiration of the manufactured home installer license. The permanent rule is identical to the existing emergency rule.

The amended rule provides that licenses expire on the 31st day of December of the odd numbered year, following the date of issue (adding, “of the odd numbered year”).

ADOPTED RULE
Oklahoma
Salespersons

Effective 9/11/2016, this rule amends Okla. Admin. Code § 765:38-1-5 to address the time period and expiration of

the manufactured home salesperson license. The permanent rule is identical to the existing emergency rule.

The amended rule provides that licenses expire on the 31st day of December of the odd numbered year, following the date of issue (adding, "of the odd numbered year").

SALES AND WARRANTIES

CASE LAW

Manufacturer liability – Venue

CASE NAME: *Ritz-Craft Corporation of Pennsylvania, Inc. v. The Price Home Group, LLC*
DATE: *07/13/2016*
CITATION: *United States District Court, M.D. Pennsylvania. Slip Copy. 2016 WL 3742875*

Ritz-Craft, a Pennsylvania corporation with its principal place of business in Pennsylvania, entered into a contract with Price, a limited liability New Jersey company with its principal place of business in New Jersey. Price was designated as "distributor" and "dealer" of Ritz-Craft manufactured homes to customers exclusively within New Jersey. These homes were advertised as homes specifically designed for areas affected by Hurricane Sandy.

On November 6, 2015, Price's counsel forwarded to Ritz-Craft a letter seeking clarification as to Ritz-Craft's decision to terminate the relationship and delineating a list of "defective products that were provided by" Ritz-Craft to Price's customers.

On November 19, 2015, Gwin, a Price customer who had purchased a Ritz-Craft home filed an action in New Jersey Superior Court against Price. Price indicated that it would implead Ritz-Craft into the Gwin Action. On December 10, 2015, counsel for Price sent Ritz-Craft a second letter indicating that the firm had been retained by Price to pursue certain claims it had against Ritz-Craft as outlined in the November 6 letter.

Four days later, Ritz-Craft filed this suit in United States District Court, M.D. Pennsylvania seeking a declaratory judgment that Price materially breached the parties' contract and that Ritz-Craft's termination of the contract was proper.

Price filed a complaint against Ritz-Craft in New Jersey Superior Court, Ocean County alleging breach of contract, violations of New Jersey statutory and common law, and seeking indemnity in the event that Price's customers are successful in establishing liability for the allegedly defective homes manufactured by Ritz-Craft.

Price also filed a motion in the Pennsylvania Court to transfer Ritz-Craft's suit to New Jersey.

The Court found that the first-filed rule was inapplicable here because the letter sent to Ritz-Craft by Price's counsel provided notice that Price would be pursuing legal claims against it and Ritz-Craft knew or should have known that Price's action would be filed in New Jersey. Ritz-Craft commenced this action only four days after it was informed of Price's intention to pursue legal claims against it, indicating that Ritz-Craft instituted suit in this forum in anticipation of Price's suit in an arguably less favorable forum to Ritz-Craft's interests.

The Court also found that the action could have properly been brought in the District of New Jersey because Price was a New Jersey limited liability company which alleged that it had never transacted any business or provided any services in Pennsylvania and served New Jersey residents exclusively.

Further, Ritz-Craft entered into a contract with a New Jersey company for the sale of homes exclusively in New Jersey, to New Jersey residents. In fact, the homes were marketed exclusively to Ocean County, New Jersey residents. Many of these homes were purchased with federal and New Jersey state funds. And, the underlying

action arose from an alleged breach of contract stemming from events occurring substantially in New Jersey. While Ritz-Craft argued that a "large part" of the activity occurred in Pennsylvania, the only activity it pointed to was the actual manufacture of the homes.

Finally, litigation concerning the parties and the subject of the parties' contract at issue in this action was pending in New Jersey. There was the potential for additional litigation that would surely be filed in New Jersey.

Price's motion to transfer venue was granted and the action transferred to the District of New Jersey.

CASE LAW

Magnuson-Moss – Motion to remand

☹

CASE NAME: *Todd v. Kellum*
DATE: *08/10/2016*
CITATION: *United States District Court, N.D. Mississippi, Aberdeen Division. Slip Copy. 2016 WL 4261919*

Plaintiff purchased a mobile home for $61,950.00 from Mark Kellum, through Wheel Estate Mobile Homes, Inc., dba The Home Gallery, LLC, but alleged that the mobile home was defective. In addition to state law claims, Plaintiff asserted a cause of action under the Magnuson-Moss Warranty Act. Defendants removed to federal court. Plaintiff filed this motion to remand, based on the fact that the amount in controversy was less than $50,000.

The Court found that, under Mississippi law, the amount-in-controversy for Plaintiff's breach-of-warranty claims equaled the diminished value of the mobile home plus incidental damages.

Interest, attorney's fees, and costs are not to be considered in the MMWA jurisdictional amount-in-controversy analysis; neither are the amounts sought in the state-law claims. Although Plaintiff did not specify the exact amount of her damages, she stated she sought less than the jurisdictional threshold.

Further, Plaintiff's measure of damages on her breach of warranty claims was not the purchase price of the mobile home, but the diminished value of the home plus incidental damages—an amount Plaintiff alleged was less than $50,000.00. Her MMWA claim did not include allegations allowing for punitive damages. Therefore, Plaintiff's MMWA claim did not meet the jurisdictional threshold.

Plaintiff's motion to remand to state court granted.

CASE LAW

Manufacturer – Definition of "seller"

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CASE NAME: *Centrella v. Ritz-Craft Corporation of Pennsylvania, Inc.*
DATE: *08/23/2016*
CITATION: *United States District Court, D. Vermont, Slip Copy. 2016 WL 4444759*

The Centrellas purchased a modular home, manufactured by Ritz-Craft Corporation, to be built/installed by Mountain View Modular Homes.

After moving into the home, the Centrellas notified Mountain View and Ritz-Craft about various defects and repairs.

Plaintiffs subsequently sued Ritz-Craft and Mountain View. A default judgment was entered against Mountain View. The Centrellas alleged the following claims against Ritz-Craft: (1) violations of the Vermont Consumer Protection Act (VCPA), (2) breach of express warranty, and (3) breach of the implied warranty of fitness for a particular purpose.

In order to establish a claim under the VCPA, "a plaintiff must show that the defendant made a misrepresentation or omission likely to mislead consumers; that the plaintiff's interpretation of the misrepresentation or

omission was reasonable; and that the misrepresentation or omission was material in that it affected the plaintiff's purchasing decision."

According to the Court, the evidence suggested that the Centrellas did not have "express knowledge" of the respective responsibilities of and extent of the work to be performed by Mountain View. In particular, the Sales Agreement and deposition testimony suggested Ritz-Craft may have supplied/installed insulation and provided the plans for its installation. The Centrellas also asserted that they "were provided specific assurances from Ritz-Craft's representative during a personal factory tour that any home purchased from Ritz-Craft would meet the Vermont energy code."

Further, the Centrellas may not have selected Mountain View prior to knowing about Ritz-Craft, and Ritz-Craft's omissions concerning its "approved" builders might have affected the Centrellas' decision to contract with Mountain View.

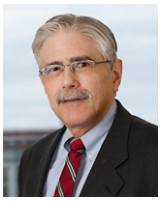
The Court next found that privity is not a prerequisite to bringing a breach-of-express-warranty claim. Also, express warranties can be made through oral representations. The record indicated that oral representations concerning energy efficiency were made during the four-hour factory tour—a visit that was the "deciding factor" for the couple. Thus, the Centrellas met their burden of showing that disputed facts existed regarding whether express warranties concerning energy efficiency existed outside of the one-year and ten-year written warranties provided by Ritz-Craft.

Finally, the Court found that contractual privity is not required to bring a claim for breach of implied warranty of fitness for a particular purpose.

The implied warranty of fitness for a particular purpose exists where the seller has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods.

"Seller" is defined as one "who sells or contracts to sell goods." 9A V.S.A. § 2-103(1)(d). The Centrellas were required to make a payment directly to Ritz-Craft before delivery of the home. Also, the operations manager for Ritz-Craft, testified that "the home purchaser" is a "customer" of Ritz-Craft. Construed in the Centrellas' favor, this evidence created issues of disputed fact regarding Ritz-Craft's status as a "seller."

Ritz-Craft's Motion for Summary Judgment denied.



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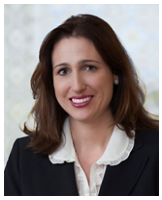

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