McGlinchey Stafford and the Manufactured Housing Institute (MHI) are pleased to bring you the Manufactured Housing Law Update. With content prepared by McGlinchey Stafford's nationally-recognized consumer financial services team, the Update focuses on legal and regulatory actions in the manufactured housing industry. More about MHI and McGlinchey Stafford can be found at the end of the Update.

WELCOME!

This is the September update, which means school has started, even for those in the Northeast and for those of you that live in a climate with multiple seasons--other than hot and really hot--the leaves may be changing.

Speaking of Northeast locations, if you operate or own communities in Connecticut, there are proposed regulations that may have a substantial impact on the resale of homes by residents of your communities.

On the lending side, there are many bankruptcy decisions from around the country that are worthwhile reading, including some valuation cases. Also, if you are a lender, Montana has a statute addressing altering loan documents and how to correct errors contained therein. It is unclear why the legislation was necessary, but to summarize it, arts and crafts are not permitted.

Speaking of value, a court held a consumer that bought a home and had it setup at her property, where it sat for 16 months before an attempt to revoke acceptance, had to pay for it.

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IN THIS ISSUE

Contents

COMMUNITIES

CASE LAW

City ordinance - Constitutionality

CASE NAME: *Huffman v. City of Maize*
DATE: *09/22/2017*
CITATION: *Court of Appeals of Kansas. --- P.3d ----. 2017 WL 4216400*

Huffman and the Westhoffs—who own communities in Maize—filed suit alleging that an ordinance regulating communities enacted by the City was unconstitutional.

The district court granted summary judgment to the City, finding that the "City of Maize properly enacted the ordinance in question under its police powers and the ordinance is presumed valid and constitutional." In addition, the district court concluded that the "enactment of the ordinance passes the rational basis test" and that "[s]ufficient due process was afforded [Huffman and the Westhoffs] including notice and an opportunity to be heard."

On appeal, Huffman and the Westhoffs contended that the ordinance violated their rights to due process and equal protection. They also contended that the district court's findings of fact and conclusions of law were insufficient.

The appeals court noted that, when determining the constitutionality of an ordinance, it is required to: (1) presume that the ordinance is constitutional; (2) resolve all doubts in favor of validating the ordinance; (3) uphold the ordinance if there is a reasonable way to do so; and (4) strike down the ordinance only if it clearly appears to be unconstitutional. In fact, it must search for ways to uphold the constitutionality of municipal ordinances.

The Court found that the City of Maize had shown that Ordinance No. 892 fell within its broad police powers because it was enacted for the health, safety, and welfare of those living in or visiting communities. Moreover, although there is no legal requirement that a municipality must wait for citizens to complain before it takes action to protect the public health, safety, and welfare, the record contained evidence regarding concerns expressed by citizens about the conditions at communities in Maize.

Further, Huffman and the Westhoffs were given reasonable notice of the proposed ordinance, as well as an adequate opportunity to be heard prior to its enactment.

The Court also noted that the Kansas Supreme Court has upheld ordinances that treat the owners of mobile homes differently from other homeowners in order to protect the public health, safety, and welfare of citizens. Here, the City of Maize had legitimate reasons for enacting Ordinance 892 in order to protect not only community residents but also to protect visitors. As such, the separate classification was not created arbitrarily, discriminatorily, or unreasonably. Moreover, the ordinance bore a rational relationship to the stated goal of protecting the public health, safety, and welfare.

Finally, the Court found that the district court addressed each of the City's factual contentions that Huffman and the Westhoffs had attempted to controvert. The Court concluded that the district court did not err in adopting the City's findings of fact and conclusions of law.

Affirmed.

PROPOSED RULE

Connecticut

Leases - Resale

The proposed revisions and additions to the regulations clarify the responsibilities and set the parameters for park owners and residents, and articulate the requirements for resale, lease renewals and park rules. In addition, it helps to avoid ambiguity among the parks to resale, lease renewals and park rules.

The rule amends Conn. Agencies Regs. § 21-70-2, Required use of disclosure statement, to provide that the text and formatting of the disclosure statement described in Section 21-70(a) of the Connecticut General Statutes provided by owners to each prospective resident before any rental agreement is entered into, and to each current resident at the time of the first renewal of the rental agreement, shall be on a form prescribed by the commissioner.

Formerly, the regulation did not specify that the statement be that prescribed by the commissioner.

The rule amends Conn. Agencies Regs. § 21-70-3, Lease renewals and park rules, by adding that a new written lease shall be offered whenever a written or oral lease expires. A resident's failure to enter into a new written lease shall not be a violation of Section 21-80(b) of the Connecticut General Statutes, nor shall it be a breach of the lease or of an owner's rules and regulations. Failure by the resident to enter into a new written lease with the owner shall not be the basis for a summary process action pursuant to Section 21-80b) of the Connecticut General Statutes, except in the circumstance when there is: (i) a disagreement as to the amount of the new rent; or (ii) the new lease requires a rule or regulation change which materially affects the health and safety of park residents and meets the requirements outlined in Section 21-70(d) of the Connecticut General Statutes.

The rule adds Conn. Agencies Regs. §§ 21-78-1, Choice of vendors by residents; 21-79-1, Resident's right to sell; 21-79-2, Resale standards; 21-82-15, Owner's responsibilities; 21-82-16, Resident's responsibilities; and 21-83e-1, Complaint resolution.

New rule 21-78-1 provides that an owner shall not require residents to use a particular vendor for heating fuel or for any other product or service.

New rule 21-79-2 provides that a resident who owns a manufactured home shall have the right to sell the home on site, subject to the requirements of Section 21-79 of the Connecticut General Statutes.

The right to sell the home on site also applies to residents who own their manufactured home but do not reside in it, and executors, administrators or other legally authorized representatives of the estate of a deceased resident.

The filing of a summary process action or the entry of a summary process judgment against a resident does not extinguish the right of a resident to sell the manufactured home on site prior to the entry of a judgment of possession and the expiration of all stays of execution in the summary process action, in accordance with Section 21-80 of the Connecticut General Statutes.

An owner shall not offer a lease agreement that includes a provision requiring the removal of a manufactured home from the park upon resale of the home.

New rule 21-79-2 provides that an owner shall not impose any resale restrictions or standards upon a resident unless such resale standards are permitted by Section 21-79 of the Connecticut General Statutes.

An owner may require a purchaser of a mobile manufactured home to sign a resale agreement between a resident and an owner at the time of sale.

An owner shall not: (1) charge a fee in connection with the approval of a resale; (2) require a resident to pay for an inspection; (3) require a resident to obtain a safety and sanitary certification from a contractor; or (4) condition the approval of a resale upon any ongoing or future improvement to the park.

An owner shall not, as a condition of resale, transfer to a resident any of an owner's responsibilities, pursuant to Section 21-82 of the Connecticut General Statutes, related to the park facilities and appurtenances, and the grounds, areas and facilities under the control of the owner for the use of residents.

An owner shall not object to the resale of a manufactured home if it is to be removed from the park.

New rule 21-82-15 provides that an owner shall not transfer to the residents of the park any responsibilities assigned to such owner pursuant to Section 21-82 of the Connecticut General Statutes.

New rule 21-82-16 provides that each resident shall be responsible for complying with their duties pursuant to chapter 412 of the Connecticut General Statutes, the corresponding Regulations of Connecticut State Agencies, their lease agreements and park rules and regulations.

New rule 21-83e-1 provides that if the Department initiates an enforcement action with an identifiable complainant, the Department shall make reasonable efforts to notify the complainant of the disposition of the complaint.

ADOPTED RULE

Mississippi

Wastewater

Effective 10/22/2017, this rule amends Title 15: Mississippi State Department of Health, Part 18: Division of On-site Wastewater, Subpart 77: On-site Wastewater Regulations.

The rule amends 15-18 Miss. Code R. § 77:3.1.7, Responsibilities, to provide that, if a property is to be subdivided, have a multi-family residence, a commercial establishment, a manufactured home development or recreational vehicle campground, the property owner shall be responsible for the following:

a. Furnishing a legal description and site plan of the entire area to be developed. The site plan shall show lot lines, lot sizes (dimensions and total area), and existing ground contours. Formerly, the ground contours were required to be "on two foot intervals."

The rule amends 15-18 Miss. Code R. § 77:3.1.8, Subdivisions Requiring a Feasibility Study, to make the same change regarding contours. As amended, this section provides:

3. The feasibility study shall be accompanied by the following attachments:

a. A subdivision plat showing:

vi. Topography of the area, with contours to show existing and proposed drainage, existing grades, and finished grades where changes are anticipated.

The rule amends 15-18 Miss. Code R. § 77:3.1.11, On-site Systems Serving Commercial Establishments, Multi-Family Residences, Manufactured Home Developments and Recreational Vehicle Campgrounds, to provide:

3. The planned sewage flow for each lot in a manufactured home development shall be 390 (formerly, 450) gallons per day.

DEFAULT SERVICING

CASE LAW

Bankruptcy – Trustee payments

CASE NAME: *In re Banks*
DATE: *07/28/2017*
CITATION: *United States Bankruptcy Court, W.D. Louisiana. Slip Copy. 2017 WL 3251408*

The Debtor filed Chapter 13 for the primary purpose of curing a prepetition arrearage on her home loan with JPMorgan Chase Bank, N.A. She confirmed a plan that amortized the arrearage over the 60-month term of the plan and provided for the Trustee to act as the conduit for making the payments to Chase. The confirmed Plan required Banks to make monthly payments to the Trustee, and directed the Trustee to make three separate payments to Chase.

Banks consistently made her plan payments in the two years that her case had been pending. Nevertheless, a

post-petition arrearage in excess of $11,500 had accrued on her mortgage with Chase. Banks had no knowledge of this until being served with Chase's Motion for Relief from the Automatic Stay.

The Court found that Banks remained entitled to the protection of the automatic stay because she fulfilled her obligations under the terms of the confirmed conduit plan. The delinquency was caused solely by the manner in which the Trustee calculated and made disbursements in conduit cases, and not due to any fault of her own. Therefore, Chase's Motion was denied.

CASE LAW

Bankruptcy – 1099-C

CASE NAME: *In re Lukaszka*
DATE: *08/04/2017*
CITATION: *United States Bankruptcy Court, N.D. Iowa. Slip Copy. 2017 WL 3381815*

Debtors defaulted on their $62,000 second mortgage loan with First Federal secured by their home. First Federal was unable to collect on the debt and could not foreclose because there was insufficient equity in the property to pay off the senior mortgage.

In 2013, First Federal decided to stop collection activity and issued a 1099–C form to Debtors and the Internal Revenue Service showing that First Federal canceled $59,667.34 of debt. When Debtors filed a subsequent tax return, they included the $59,667.34 of canceled debt from First Federal as income and paid taxes on it.

Debtors filed Chapter 13 and asked the Court to confirm a plan that stated that First Federal's debt was canceled in 2013 and to order First Federal to release its lien on Debtors' property. Debtors argued that First Federal's mortgage was bound to the underlying note and that First Federal had a $0 mortgage lien clouding their title. Debtors' plan requested an order that First Federal release its lien on their home.

First Federal argued that the 1099–C form alone was not sufficient to prove that it canceled the debt, but that, even if it canceled the debt, that cancelation was only effective with respect to Debtors' personal obligation—not the mortgage. First Federal concluded that it had a $59,667.34 claim secured by Debtors' primary residence that Debtors' Chapter 13 plan could not alter.

The Court found that the debt was canceled and that it would be inequitable to require that the Debtors report the discharge of debt as income on their federal tax return or face the potential tax consequences and hold that First Federal could continue to hold them liable on the debt.

Because the Court determined that the underlying debt was canceled, under Iowa law First Federal no longer had a mortgage on the Debtors' home.

CASE LAW

Bankruptcy – Junior lien

CASE NAME: *In re Hatch*
DATE: *08/30/2017*
CITATION: *United States Bankruptcy Court, E.D. California. Slip Copy. 2017 WL 3738241*

In connection with their chapter 13 plan, the Debtors filed a motion to value their manufactured home. The property was encumbered by two deeds of trust. The senior lien, held by U.S. Bank, secured a claim of approximately $188,179.84. The junior lien, also held by U.S. Bank, secured a claim of approximately $45,541.

The Debtors claimed the home had a value of $160,000, meaning that U.S. Bank's junior lien could be "stripped off" and treated as an unsecured claim.

U.S. Bank contended that the home had a value of $220,000, meaning there would be equity in the property after deducting the amount owed to the senior lien. In this circumstance, the Debtors could not utilize section 506(a) to eliminate or reduce U.S. Bank's junior secured

claim by virtue of the anti-modification provision of 11 U.S.C. § 1325(b)(2).

The $220,000 value was based on the expert opinion of an appraiser, Neal E. Proctor. However, U.S. Bank failed to produce Proctor at the evidentiary hearing. Therefore, the only evidence concerning value entertained by the court was the testimony of the Debtors. According to the Court, as the owners of the home, the Debtors were competent to offer a lay opinion as to its value. Because only an expert qualified under Fed. R. Evid. 702 may rely on and testify as to facts of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the lay opinion of value by a Debtor is based only on the ownership of the property.

The Court added that even if the written appraisal attached to Proctor's declaration could be considered by the court, it did not persuade the Court that the home had a value of $220,000.

First, his methodology was suspect. It was based in part on "comparable listings," not just comparable sales. In the court's experience, a seller frequently is willing to accept less than the asking price.

Second, the appraisal report admitted that the local market for manufactured homes had been adversely affected by many foreclosures of such properties. One of the three comparable sales was a "short sale" and all of the comparable listings were for "REO" properties (a fact that cast further doubt on the use of these listings to predict the value of the subject property).

Third, the appraisal report overstated the condition of the property as average. The Debtors' declarations suggested that the 21-year-old manufactured home may have been in less-than-average condition. When the case was filed, one of the two bathrooms was not operable, its siding was showing signs of rot, it was not on a permanent foundation, windows in two rooms were broken, a sliding door was inoperable, there was a crack in the ceiling, and there was a spill of raw sewage under the home. None of these conditions were noted in the appraisal.

Therefore, the court found that the fair market value of the Debtor's residence was $160,000. As a result, U.S. Bank's second claim, secured by a junior deed of trust, was completely under-collateralized. No portion of this claim was allowed as a secured claim.

CASE LAW

Bankruptcy – Value of collateral

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CASE NAME: *In re Weikle*
DATE: *09/13/2017*
CITATION: *United States Bankruptcy Court, S.D. West Virginia, At Charleston. Slip Copy. 2017 WL 4127994*

In 2010, the Weikles took out a loan from FNB, secured by a vehicle title lien on their manufactured home and a Deed of Trust on their land. The Deed of Trust, however, contained a provision granting FNB a security interest in the land "together with all existing or subsequently attached or affixed buildings, improvements and fixtures...." The Deed of Trust defined improvements as "all existing and future improvements, buildings, structures, mobile homes affixed on the real property, facilities, additions, replacements and other construction on the real property." The loan was refinanced in 2012 with the same collateral.

The Weikles filed Chapter 13, contending that the amount of FNB's secured claim was $18,611.28—the combined value of the manufactured home, worth $13,411.28, and the land, worth $5,200—with the remainder of the debt being unsecured. FNB argued that the manufactured home was part of the real property, and the debt could not be bifurcated. FNB claimed that the value of the land and the manufactured home together was $63,000, and thus the entirety of its debt, $42,923.58, was secured by the real property. The Weikles responded that the manufactured home was

personal property, and the anti-modification provision did not apply.

The Court found that, inasmuch as the manufactured home was both attached to the Weikles' land and reasonably necessary for the Weikles to live upon their land, the law presumed they intended to adjoin it to their real estate. The home had always been taxed as real property, leading to a reasonable inference the Weikles viewed the manufactured home as a part of their real property. The Court found that the land and the home could not be valued separately.

Robert J. Linkous, an expert in manufactured home valuation and sale, testified that the value of the manufactured home, standing alone, was $13,411.28. Linkous used the NADA Guide, taking into account the age and condition of the home.

George Yost, FNB's appraiser, testified that the value of the home and the land taken together was $63,000. Yost arrived at this figure by analyzing putatively comparable sales. Yost additionally testified that the value of the land alone was $10,000 and the home alone was $42,036. Yost reached his valuation of the manufactured home using the Marshall and Swift Cost Manual. Yost's appraisal indicated that the value of this property increased by 21.07% when the manufactured home and the land were valued together.

The Weikles concurred with Linkous that the value of the manufactured home was $13,411.28 and opined that the value of the land was $5,200, based on the fact that it was a "highly undesirable" location on the top of a mountain and accessible only by dirt road. Additionally, the septic system did not work properly, and there was no water well.

The Court found the Weikles' and Linkous' valuation of the manufactured home, separate from the land, to be persuasive. Yost did not enter the Weikles' property. His appraisal of the property included his incorrect determination that there was a well on the property. Having not entered the property, Yost was unable to consider the poor condition of the manufactured home in his valuation.

The Court additionally found the Weikles' valuation of the land to be persuasive. A septic system and a water source are generally considered to be necessities for a residential property. The fact that the Weikles' parcel lacked these necessities significantly depressed its value.

Accordingly, the Court treated the valuation of the property as a whole as the combined separate values of the land and the manufactured home, which was $18,611.28, and overruled FNB's objection to the confirmation the plan.

CASE LAW

Repossession – Cure

CASE NAME: *Green Tree Servicing LLC. v. Dalke*
DATE: *09/26/2017*
CITATION: *Supreme Court of Oklahoma. --- P.3d ----. 2017 WL 4249206*

In 1999, Dalke financed a mobile home with Green Tree. Dalke neglected payments from December 2014 to June 2015, resulting in arrearages of $3,346.00. Dalke's loan agreement allowed for an opportunity to cure the defect during the default period in which the borrower could cure failed payments to get back on schedule. The loan agreement also gave the creditor the option to repossess the mobile home and/or accelerate the loan by demanding the remaining balance while still accruing interest until the whole balance was paid.

On June 22, 2015, Green Tree filed a lawsuit against Dalke, alleging that Dalke owed $49,900.34, not including attorney fees and other costs which they also sought. Dalke alleged that before Green Tree initiated the lawsuit, the Choctaw Nation sent Green Tree a check for $1,454.00 to cover a portion of his default. The check was cashed on June 2, 2015, and cleared the Bank on June 9, 2015. However, Green Tree denied ever receiving

it and told Dalke that his payment had to be made with a single check. While Dalke waited for the cleared check to be returned, Green Tree filed its lawsuit.

The funds were still not returned to the Choctaw Nation by July 2015. Dalke claimed he was told by two different employees that they still had the check; that the note needed a payment of $478.00; and the rest would be deferred. Dalke allegedly had another check sent for $480.00 to cover the required amount, but it was never cashed.

The trial court granted Green Tree's motion for summary judgment and granting repossession. The trial court found that "there was no enforceable agreement reached between the parties to modify the underlying contract as to when payments were due."

The Court of Civil Appeals affirmed and Dalke appealed to the Oklahoma Supreme Court.

The Court found that there was no evidentiary showing of how the balance of $49,900.34 that Green Tree alleged was calculated. There was no amortization schedule, nor calculations showing Dalke's balance after his last payment in November of 2014, nor how the $3,346.00 arrearage was calculated, nor any of the credit given for the Choctaw Nation payment.

Further, the evidentiary materials showed plausible arguments that Green Tree obstructed Dalke's ability to become timely with his payments to avoid foreclosure.

According to the Court, it was possible that the "Consumer Protection Act" may have been violated and that Green Tree may have acted in bad faith by actively attempting to prevent the opportunity to cure the default.

Reversed.

LEGISLATION
California
Repossession

2017 CA A 290. Enacted 9/25/2017. Effective 1/1/2018.

Existing law, the Collateral Recovery Act, Cal. Bus. & Prof. Code §§ 7500 et seq., provides for the licensure and regulation of repossession agencies by the Bureau of Security and Investigative Services, which is under the supervision and control of the Director of Consumer Affairs, and, until January 1, 2018, defines repossession agency as not including certain persons and entities, such as a person organized, chartered, or holding a license or authorization certificate to make loans pursuant to the laws of California or the United States who is subject to supervision by any official or agency of the state or the United States.

This bill extends the above definition of repossession agency indefinitely.

LEGISLATION
Delaware
Mortgagee change of address

2017 DE S 32. Enacted 8/30/2017. Effective immediately.

This bill adds Del. Code Ann. tit. 25, § 2124, Recordation of mortgagee's change of address, to provide that any mortgagee or any assignee of a mortgage that changes its notice address from the address stated in any mortgage or assignment of mortgage must file in the recorder of deeds office in the county in which the mortgage or any assignment has been recorded a Statement of Mortgagee Address Change. The filing of a Statement of Mortgagee Address Change is public notice to all parties interested in such mortgage or assignment of mortgage, or the property upon which it is a lien, of

the address where the legal holder of such mortgage or assignment of mortgage must receive any notice. Until such time as a Statement of Mortgagee Address Change has been filed, any party having an interest in such mortgage or assignment of mortgage, or the property upon which it is a lien, is fully protected by sending all notices to the legal holder of such mortgage or assignment of mortgage at the notice address provided in the mortgage or the last assignment of record.

The new section provides a form of Statement of Mortgagee Address Change deemed to be sufficient.

The bill amends Del. Code Ann. tit. 25, § 2111, Satisfaction of mortgages; penalty; enforcement in Superior Court, to provide that if the recorder creates a separate index for Statements of Mortgagee Change of Address, it may be called the Statement of Mortgagee Change of Address Index, which must reference the mortgagor, mortgagee, record book, and page of the mortgage for which the mortgagee has changed its address, and the mortgagee's notice address as provided in the Statement of Mortgagee Change of Address.

LEGISLATION

Delaware

REOs – Property maintenance

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2017 DE H 188. Enacted 9/7/2017. Effective immediately.

This bill amends Del. Code Ann. tit. 9, § 2907 and Del. Code Ann. tit. 25, § 2901 to clarify that costs associated with enforcement of local laws and ordinances relating to the condition of real property and abatement of violations of certain laws and ordinances shall be a lien against the property subject to the enforcement action.

LEGISLATION

Illinois

Cancellation of insurance

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2017 IL H 1954. Enacted 9/8/2017. Effective 1/1/2018.

This bill amends 215 Ill. Comp. Stat. 5/143.14, 5/143.15 and 5/143.16 to remove the requirement that, to be effective, a notice of cancellation of an insurance policy be sent to the mortgage or lien holder. The amendment does, however, provide for notification to be sent to the mortgage or lien holder.

The bill amends 215 Ill. Comp. Stat. 5/143.17 to remove the requirement that, to be effective, a notice of intention not to renew be sent to the mortgage or lien holder. The amendment does, however, provide for notification to be sent to the last known mortgage or lien holder. For purposes of this Section, the mortgagee or lien holder, insured's broker, or the agent of record may opt to accept notification electronically.

INSTALLATION

CASE LAW

Insurance – Continuation of damage

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CASE NAME: *Lightning Rod Mutual Insurance Company v. Southworth*
DATE: *09/05/2017*
CITATION: *Supreme Court of Ohio. --- N.E.3d ----. 2017 WL 3947476*

This case is an appeal from Lightening Rod Mut. Ins. Co. v. Southworth, Court of Appeals of Ohio, Fourth District, Scioto County. June 16, 2016 Slip Copy 2016 WL 3364964.

That case was about an insurer's duty to defend a case involving a suit brought by owners of manufactured home for damages based on negligent manufacture, delivery, and installation of the home.

The retailer, CMH Homes, Inc. d.b.a. Luv Homes, filed a third-party complaint against the installer, Robert Southworth d.b.a. Bob's Home Service, LLC, alleging that it failed to install the home in a manner that met manufacturer specifications and that it had a duty to indemnify CMH. Bob's requested that Lightning Rod Mutual Insurance Co. provide Bob's with a defense in the litigation pursuant to a commercial general liability insurance policy.

The trial court concluded that Bob's was not entitled to coverage pursuant to the policy because Southworth was the only named insured, the policy excluded coverage for Bob's or Southworth doing business as a limited liability company, "the occurrences happened prior to the policy period," and "defects were discovered within 12 months of the work and were known to Robert Southworth before the issuance" of the policy. The Court found that a continuation or resumption of the same damages was not sufficient to bring the claims within Policy coverage.

CMH appealed, presenting the following proposition of law.

A general liability insurance policy that applies to "property damage" that occurs during the policy period is "triggered" by damage during the policy period regardless of whether that damage is the continuation or resumption of damage that first appeared before the policy period as long as that damage was not known to the insured or those persons specifically listed in the policy prior to the inception of the policy.

The majority dismissed CMH's appeal as having been improvidently accepted.

LENDING

ADOPTED RULE

Montana

"Alter"

Effective 9/9/2017, this rule adopts Mont. Admin. R. 2.59.1755, pertaining to definition of "alter" for mortgage licensees.

NEW RULE I DEFINITION OF "ALTER" FOR MORTGAGE LICENSEES.

(1) The word "alter" as used in Mont. Code Ann. § 32-9-124(1)(l), means that loan documents may not be revised by:

(a) using correction fluid, correction tape, or any other means of changing or covering over a date or signature not on the original;

(b) inserting a signature or date not on the original; or

(c) making any other change to a document.

(2) To correct an error in a loan document, the licensee shall either:

(a) reprint the document, have it re-signed, and retain the original document noting in the file why the document was reprinted and re-signed; or

(b) strike out the error, put the correct text beside it, and initial and date the change.

LICENSING

PROPOSED RULE

Illinois

Dealers – Place of business

This rule would add Ill. Admin. Code tit. 92, § 1020.12, Dealers Established Place of Business for Manufactured

Homes, to establish place of business administrative rules for manufactured home dealers and community-based manufactured home dealers.

The rule includes minimum lot requirements, hours of operation, and record keeping requirements, as well as requirements for supplemental lots, trade-shows exhibitions, display exhibitions, and off-site sales.

The rule also provides that, in lieu of criminal complaints, the Illinois Secretary of State Department of Police may issue administrative citations for violations of the administrative rules or the Illinois Vehicle Code.

MANUFACTURING

FINAL RULE

EPA

Formaldehyde

Stay of Compliance Date. 82 Fed. Reg. 44,533 (September 25,2017).

EPA is extending the compliance dates for the formaldehyde emission standards for composite wood products final rule issued pursuant to the Toxic Substances Control Act (TSCA) Title VI, and published in the Federal Register on December 12, 2016. EPA is extending the December 12, 2017, manufactured-by date for emission standards, recordkeeping, and labeling provisions until December 12, 2018; extending the December 12, 2018 compliance date for import certification provisions until March 22, 2019; and extending the December 12, 2023, compliance date for provisions applicable to producers of laminated products until March 22, 2024. Additionally, this final rule will extend the transitional period during which the California Air Resources Board (CARB) Third Party Certifiers (TPC) may certify composite wood products under TSCA Title VI without an accreditation issued by an EPA TSCA Title VI Accreditation Body, so long as the TPC remains approved by CARB, is recognized by EPA, and complies with all aspects of the December 12, 2016 final rule until March 22, 2019. EPA believes that extension of these compliance dates and the transitional period for CARB TPCs adds needed regulatory flexibility for regulated entities, reduces compliance burdens, and helps to prevent disruptions to supply chains while still ensuring that compliant composite wood products enter the supply chain in a timely manner.

This final rule is effective on October 25, 2017.

SALES AND WARRANTIES

CASE LAW

Revocation of acceptance

CASE NAME: *Majestic Homes, Inc. v. Hurt*
DATE: *08/16/2017*
CITATION: *United States District Court, D. Montana. Slip Copy. 2017 WL 3821915*

Hurt contracted to purchase a home from Majestic. At the time of contracting, Hurt was required to pay Majestic a $12,000.00 down payment. Choice Financial Bank sent Majestic a letter indicating the bank would finance the balance of the purchase price. Under the Purchase Agreement, Hurt was responsible for preparing the foundation, including the basement and marriage wall.

Following delivery of the home, Majestic performed a routine inspection which revealed minor defects, and the company offered to conduct the repairs under the manufacturer's warranty once the home was paid for. Hurt disputed that the defects were minor, and stated Majestic refused to inspect the damages or fix the problems with the home following delivery. Hurt asserted that she did not accept the home due to the defects that were discovered.

Choice subsequently informed Majestic the bank was unable to pay Majestic because Hurt “fired” the bank. Hurt did not make any other payment toward the

remaining balance since delivery of the home, which remained on Hurt's property.

Majestic sued for (1) breach of contract; (2) account stated; and (3) unjust enrichment/quantum merit.

Hurt filed an Answer and Counterclaim, asserting: (1) breach of contract; (2) negligence; (3) breach of warranty; (4) revocation of acceptance; (5) rejection; (6) unconscionability; and (7) violation of the Montana Consumer Protection Act/unfair trade practices.

Majestic moved for partial summary judgment on Count One of its Complaint, and on all of Hurt's Counterclaims.

As an initial matter, the Court found that the Uniform Commercial Code applied to Majestic's breach of contract claim. The UCC governs contracts for the sale of "goods."

"Goods" are defined as "all things (including specifically manufactured goods) which are movable at the time of identification to the contract for sale." Mont. Code Ann. § 30–2–105(1).

The Court found that the parties executed a Purchase Agreement, that Majestic delivered the home to Hurt's property, and that Hurt failed to pay the outstanding balance due. The primary issue bearing on Majestic's claim for breach of contract was whether Hurt accepted the home.

According to the Court, Hurt did not communicate revocation or rejection until she asserted her counterclaims in this action. Hurt's opposition brief did not allege that she had previously rejected or revoked acceptance of the home; rather, Hurt stated she "hereby revokes her acceptance of the manufactured home" and "invokes all rights to reject delivery of the manufactured home, and the contract." Hurt's attempt to reject or revoke sixteen months after delivery of the home, and only upon being sued, was not timely.

The Court rejected Hurt's argument that the fact that she cancelled her loan with Choice was sufficient to establish she rejected the home. Hurt never informed Majestic about cancelling the loan. The buyer must notify the seller of its rejection in order for the rejection to be effective. Mere complaints of poor quality do not constitute rejection. Nor did Hurt produce or cite any documentary evidence whatsoever, such as photographs or repair estimates, to establish the home was nonconforming.

The Court found summary judgment was proper on Majestic's breach of contract claim.

The Court also found that Hurt's counterclaims suffered the same flaw as noted above with respect to Majestic's breach of contract claim—a dearth of evidence from which the Court could find there were any material, disputed facts.

PROPOSED RULE

Idaho

Sales tax – Trade-ins

The rule would amend Idaho Admin. Code r. 35.01.02.044.04, under the Idaho Sales and Use Tax Administrative Rules, Trade-Ins, Trade-downs And Barter, Disallowed Trade-In Allowances (formerly, Deductions), to provide that trade-in allowances are not allowed on the sale of manufactured homes, new park model recreational vehicles, and modular buildings.

The rule would also amend Idaho Admin. Code r. 35.01.02.048, Manufactured Homes (Mobile Homes), Park Model Recreational Vehicles, And Modular Buildings, to provide that, when a manufactured home is sold at retail for the first time, it is subject to sales tax on fifty-five percent (55%) of the sales (formerly, purchase) price. The sales (formerly, purchase) price of a new manufactured home shall include all component parts. Set up and transportation fees charged by the dealer

shall be included in the sales (purchase) price. No trade-in allowance is permitted.

TITLING AND PERFECTION

CASE LAW

Liens – Priority

CASE NAME: *2DP Blanding, LLC v. Palmer*
DATE: *09/06/2017*
CITATION: *Supreme Court of Utah. --- P.3d ----. 2017 WL 3909824*

JDJ Holdings, Inc. obtained two loans to finance the purchase of two parcels of real estate—one from First National Bank and one from Ray Palmer. Both loans were secured by trust deeds. First National recorded its deed on December 5, 2003, and had first position. Palmer recorded his deed on December 12, 2003, and had second position.

Due to a flaw in the initial loan approval, First National was required to record a new deed after Palmer recorded his deed. Before recording the new deed, First National got an erroneous title report that failed to show the Palmer deed. And despite having knowledge of Palmer's loan at its inception, First National relied on the erroneous title report and simply revoked its original deed and recorded the new deed on March 8, 2004. The bank did not obtain a subordination agreement from Palmer. The new deed accordingly appeared to elevate Palmer's deed to first position.

JDJ defaulted on both loans. Palmer and First National both claimed that their deed was entitled to senior position and initiated legal proceedings. The district court held that the bank was entitled to equitable reinstatement of its original deed and authorized First National to proceed with a foreclosure sale.

Palmer appealed but he did not formally seek or obtain a stay of the order. And he did not file a lis pendens on the property at any point during the litigation.

First National purchased the parcel at issue at the trustee's sale and subsequently conveyed the parcel to Black Oil Company.

The Utah Court of Appeals overturned the district court's order. The court concluded that the district court erred in reinstating First National's first deed. And it remanded for further proceedings in light of Palmer's senior deed.

2DP Blanding, purchased the parcel from Black Oil. The following day, Palmer recorded a Notice of Default and Election to Sell under his original trust deed.

2DP filed suit, seeking to quiet title and to enjoin Palmer's foreclosure sale.

The district court concluded that Black Oil and 2DP were both bona fide purchasers and neither had actual knowledge of Palmer's appeal. Palmer did not obtain a stay of that order or provide notice of his appeal by recording a lis pendens. So Black Oil and 2DP "had no notice to suggest that the order was subject to an appeal" and had no independent duty to inquire and determine whether Palmer had appealed the order. Palmer appealed.

The appeals court found that, when an appeal is taken without supersedeas bond or stay, the judgment or order appealed from is enforceable as though no appeal had been taken. Where there is no stay, an appellant loses all actionable rights to the property that has been lawfully conveyed to a third party. And any cloud his prior rights created on the property's title is thereby extinguished.

Affirmed.

ADOPTED RULE

Oklahoma

Perfection

Effective 9/11/2017, this rule amends Okla. Admin. Code § 710:60-5-111, Perfecting liens, to provide that, to perfect a lien, either an Oklahoma Title, or an Application for Oklahoma Title accompanying a properly assigned Manufacturer's Statement of Origin (adding, properly assigned) or out-of-state ownership document, must be presented, along with a completed Lien Entry Form. The amendment adds that, if the lien is being perfected on behalf of a transferee who has yet to obtain ownership in their name, the title presented must be properly assigned to that transferee before a lien may be perfected.

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A leader in the manufactured housing and mortgage lending industries, McGlinchey Stafford represents 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.