
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!

Happy Holidays to all our readers!

While not covered in this update, but certainly newsworthy, Richard Cordray resigned as director of the Consumer Financial Protection Bureau in November.

There are a few zoning cases summarized in our update that are worth reading and a change to the reassignment of title process in Indiana.

If you repossess manufactured homes, stay safe! This month we report on a case where two repossession agents were held at gun point by a debtor and then sued alleging FDCPA violations.

Well, enjoy the November Update. Happy Holidays and well wishes in 2018!

## IN THIS ISSUE

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## ARBITRATION

### CASE LAW

**Warranty**

*CASE NAME:* *Ross v. Quality Homes Of McComb, Inc.*
*DATE:* *11/16/2017*
*CITATION:* *United States District Court, S.D. Mississippi, Western Division. Slip Copy. 2017 WL 5501499*

Plaintiffs bought a manufactured home, made by Platinum Homes, LLC, from Quality Homes of McComb, Inc. U.S. Bank, N.A. financed the purchase. As a part of the purchase, the Rosses signed a "Platinum Homes, LLC. Limited Warranty" containing a provision requiring the parties to mediate or arbitrate.

Miss-Lou Mobile Home Movers, LLC delivered the home to Quality's lot. The Rosses inspected the home and found it deficient in several respects. Hoping to convince Quality to fix the issues, the Rosses visited Quality several times. Ultimately, Quality refused the Rosses' request to exchange their manufactured home for another and U.S. Bank refused their request to rescind.

The Rosses sued Quality, Miss Lou, Platinum, Harbin, and U.S. Bank. Quality, Platinum, Harbin, and U.S. Bank moved to dismiss. Quality moved, in the alternative, to compel arbitration. Although Platinum and Harbin appeared to support mediation or arbitration under the terms of the Limited Warranty, U.S. Bank took no position on the issue.

The Court noted that the Rosses admitted signing the Limited Warranty containing the arbitration provision but contested the latter's validity on the ground of unconscionability. The Court found that the Rosses did not contend that they did not know what they were signing, or that they signed the Limited Warranty involuntarily, or that they lacked an opportunity to read it. Contrary to their assertions, the terms of the arbitration provision in the Limited Warranty were set forth in a two-page document with text set in an ordinary-sized font and unsophisticated syntax and emphasized with boldface where relevant. The Rosses had a duty to read it before signing. Thus, the Rosses did not meet their burden of showing unconscionability.

The Court also found that the Magnuson-Moss Warranty Act does not prohibit the arbitration of written warranty claims and nothing in the Limited Warranty's arbitration provision impermissibly waived any of the rights afforded purchasers under the National Manufactured Housing and Construction and Safety Standards Act.

According to the Court, the Rosses did not dispute that Quality was a party to the Limited Warranty; instead, they contended that Platinum did not sign the agreement. But the Court found that Platinum assented to the Limited Warranty: the Limited Warranty was prepared by Platinum and Platinum's company logo was displayed on its first page; the nature of the Limited Warranty confirmed that Platinum intended to be bound by it; and the Rosses would not have sued Platinum for breaching the Limited Warranty if they thought Platinum was not bound by it.

However, because the Rosses' claims against the non-signatory-defendants were not based upon the Limited Warranty containing the arbitration provision, and the Rosses did not allege that the non-signatory-defendants and signatory-defendants engaged in "substantially interdependent and concerted misconduct," the Court declined to permit the non-signatory-defendants to compel arbitration.

Finally, the Court found that the Limited Warranty contained a valid delegation provision and deciding whether the dispute fell within the scope of the arbitration provision was for the arbitrator, not the Court. However, a stay should not extend to non-signatories, and proceeding with this litigation as to those defendants would not destroy the signatories' right to a meaningful arbitration.

## COMMUNITIES

### CASE LAW

**Zoning – Constitutional taking**

*CASE NAME:* *Edwards et al. v. City Of Warner Robins et al.*
*DATE:* *10/30/2017*
*CITATION:* *Supreme Court of Georgia. --- S.E.2d ---- 2017 WL 4870994*

In 1973, Charles Edwards acquired 794 Oak Avenue in the City of Warner Robins. This property was subdivided into three lots, each with a mobile home that Edwards and his wife rented out. In June 1997, the Edwardses ("Appellants") bought adjoining properties, which together comprise seven acres with 36 lots. Each lot either had a mobile home on it or was being held out for use by a mobile home. Appellants alleged that they purchased these properties for use as a "manufactured home park." At the time of the 1997 purchase, however, mobile homes were prohibited on the properties by the restrictions of the City's Base Environs Overlay District (BEOD) ordinance, except where permitted as a legal nonconforming use.

The three mobile homes on the 794 Oak Avenue lots had been permitted since 1994 as nonconforming uses. In July 1997, Appellants asked the City for rezoning of their other lots, and the City Council rezoned the properties from R-3 to R-MH.

In 2008, after notice, the City held a hearing on a proposed amendment to the BEOD ordinance. The amendment was discussed, no one expressed opposition, and the commission voted to recommend passage. Ordinance 27-08 provided that "mobile home parks or courts" and "related structures" were prohibited.

Appellants appealed to the City planning and zoning commission. The commission denied the appeal. Appellants then appealed to the board of zoning appeals, which denied their appeal. Appellants sought judicial review of this denial in the superior court, which granted the City's motion for summary judgment.

On further appeal, Appellants argued that the term "mobile home court or park" was unconstitutionally vague, and that it was unclear if the ordinance precluded them from placing additional mobile homes on their properties.

According to the Court, Appellants were seeking to add several mobile homes on their four adjoining properties, which already had at least 15 other mobile homes. Persons of common intelligence would understand that the term "mobile home park or court" encompasses this kind of aggregation of commonly owned mobile homes. Indeed, in their amended complaint and in their brief to the Court, Appellants explained that they wanted to develop a "manufactured home park" or a "mobile home park" on their properties. Accordingly, the ordinance was not vague as applied to Appellants' situation. The Court held that it did not need to decide whether the ordinance might be confusing for the owner of a single mobile home because Appellants were not in that situation.

Appellants also contended that they should be allowed to expand their nonconforming use by replacing one of the mobile homes with an upgraded unit. However, the City's zoning ordinances prohibit expansion of nonconforming uses, including through the erection of new nonconforming structures. The Court found that this restriction was not unreasonable. Further, when the City granted Appellants' petition to rezone the properties to R-MH, that rezoning changed only the underlying zoning classification; it did not change the BEOD ordinance, which had always prohibited mobile home parks.

Finally, Appellants offered evidence only that it would be more expensive to build something other than mobile homes on their vacant lots and that the lots were surrounded by mobile homes (although it appears that these surrounding mobile homes were nonconforming

uses). This was insufficient to prove a regulatory taking under the Fifth Amendment.

Affirmed.

## CASE LAW

**Sale of park – Notice**

*CASE NAME:* *Mac's Homeowners Association v. Gebo*
*DATE:* *11/9/2017*
*CITATION:* *Appeals Court of Massachusetts. --- N.E.3d ----. 2017 WL 5181622*

Mac's Park was a manufactured housing community, owned by Matthew Lowe. The park consisted of twenty-two numbered lots. As of the time the complaint was filed, twenty of the units were occupied. Lowe owned ten of the twenty occupied units, and the other ten occupied units were owned by third parties who leased the lots from Lowe. Plaintiff Newbury Cooperative Corporation (NCC) was a cooperative housing corporation; all of its members were owners of mobile homes located at Mac's Park. Plaintiff Mac's Homeowners Association (MHA), in turn, was an association consisting of owners who actually resided in their mobile homes at Mac's Park. Members of both MHA and NCC represented a majority of the mobile home owners resident in Mac's Park. Lowe did not reside at the park.

The plaintiffs initiated this action claiming that developers committed unfair or deceptive acts or practices when they appeared unannounced and declared that they were purchasing Mac's Park and that the homeowners would have to move or vacate. The developers' actions were alleged to have been premature, given that the owner of Mac's Park failed to provide the homeowners with the statutorily mandated notice of sale and opportunity to exercise a right of first refusal, and unlawful, in that, by law, the homeowners' tenancies could only be terminated for certain specific reasons, none of which were applicable. As a result, the plaintiffs alleged that the homeowners put their lives "on hold," were unable to sell or lease their mobile homes, and suffered extreme emotional distress.

Following issuance of an injunction enjoining the sale to the developers, a Housing Court judge held that the plaintiffs failed to state a claim upon which relief could be granted. Plaintiffs appealed.

The Court rejected the argument that the plaintiffs' allegations of acts or practices that were unfair or deceptive were legally deficient. The developers argued that they, as mere prospective purchasers of Mac's Park, could not be held liable for any alleged failures to comply with the applicable "manufactured housing community" statute and regulations, because the statute and regulations only restrict the actions of the "operators" of such communities. The Court held the statute and the accompanying regulations encompassed the conduct of the developers in this case based on the following considerations: (1) the existence of a purchase and sale agreement signed by the developers and Lowe; (2) that the developers appeared before municipal boards and agencies seeking approvals for their project; and (3) that the developers made representations to the homeowners that the sale of the park was a *fait accompli*.

Finally, the Court found that the complaint alleged more than simply subjective measures of harm. For example, the complaint alleged that as a result of the developers' misrepresentation that the homeowners would be required to move or vacate, they were forced to put their lives on hold, were unable to sell or lease their units, and suffered extreme emotional distress. Accordingly, the plaintiffs satisfactorily alleged not only causation, but also that the homeowners suffered "injury" in an objective sense. Judgment reversed.

## DECISION NOT TO PROCEED

**California**

**Harassment – Service animals**

In the January 2017 McGlinchey Stafford Manufactured Housing Law Update, we reported on a proposed rule in California that would have added Cal. Code Regs. tit. 2, §§ 11098.1 thru 11098.6, and 11098.23 thru 11098.30, Housing Regulations Regarding Harassment; Liability for Harassment; Retaliation; and Select Disability Sections, Including Assistive Animals.

The Fair Employment and Housing Council of the Department of Fair Employment and Housing has given notice that it has decided not to proceed with this rulemaking action.

## LEGISLATION

**Connecticut**

**Utilities/rent refunds**

**2017 CT S 1503 a**. Enacted 11/21/2017. Effective immediately.

This bill amends Conn. Gen. Stat. § 12-170d to provide that any renter of real property, or of a mobile manufactured home, as defined in Conn. Gen. Stat. § 12-63a, which such renter occupies as his or her home, who meets the qualifications, shall be entitled to receive in the following year in the form of direct payment from the state (formerly, the municipality in which such real property or mobile manufactured home is located), a grant in refund of utility and rent bills actually paid by or for such renter on such real property or mobile manufactured home to the extent set forth in § 12-170e. Such grant by the state (formerly, the municipality) shall be made upon receipt by the state of a certificate of grant with a copy of the application therefor attached, as provided in § 12-170f, provided such application shall be made within one year from the close of the calendar year for which the grant is requested.

## LEGISLATION

**New York**

**Certificates of occupancy**

**2017 NY S 6636**. Enacted 11/29/2017. Effective immediately.

This bill adds N.Y. Real Prop. Law § 235-bb to provide that prior to executing a residential lease or rental agreement with a tenant, the owner of real property consisting of three or fewer rental units shall provide conspicuous notice in bold face type as to whether a certificate of occupancy, if such certificate is required by law, is currently valid for the dwelling unit subject to the lease or rental agreement. Owners who provide the tenant with an actual copy of the valid certificate of occupancy shall be deemed to have complied with the requirements of this subdivision.

Any agreement by a lessee or tenant of premises for dwelling purposes waiving or modifying his or her rights as set forth in this section shall be void as contrary to public policy.

## PROPOSED RULE

**Texas**

**Sub-metering**

This rule would amend 16 Tex. Admin. Code § 24.121, regarding Water Utility Sub-metering And Allocation, to provide that the provisions of the subchapter do not limit the authority of an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility to charge, bill for, or collect rent, an assessment, an administrative fee, a fee relating to upkeep or management of chilled water, boiler, heating, ventilation, air conditioning, or other

building system, or any other amount that is unrelated to water and sewer utility service costs.

The rule adds the definition of "overcharge" as the amount, if any, a tenant is charged for sub-metered or nonsub-metered master metered utility service to the tenant's dwelling unit after a violation occurred relating to the assessment of a portion of utility costs in excess of the amount the tenant would have been charged under the subchapter. Overcharge and Overbilling have the same meaning.

The rule amends the definition of "owner" to provide that it means the legal titleholder of an apartment house, a manufactured home rental community, or a multiple use facility; and any individual, firm, or corporation expressly identified in the lease agreement as (formerly, that purports to be) the landlord of tenants in the apartment house, manufactured home rental community, or multiple use facility.

The rule adds the definition of "undercharge" as the amount, if any, a tenant is charged for sub-metered or nonsub-metered master metered utility service to the tenant's dwelling unit less than the amount the tenant would have been charged under this subchapter. Undercharge and underbilling have the same meaning.

The rule also adds that "utility costs" are any amount charged to the owner by a retail public utility for water or wastewater service. Utility Costs and utility service costs have the same meaning.

The rule adds 16 Tex. Admin. Code § 24.126, Complaint Jurisdiction, to provide that the Public Utility Commission has exclusive jurisdiction for violations under the subchapter.

The rule also provides that, if an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner violates a commission rule regarding utility costs, the person claiming the violation may file a complaint with the commission and may appear remotely for a hearing.

**PRESS RELEASE**
**Washington**
**Health and safety violations**

Issued 10/27/2017.

Attorney General Bob Ferguson announced that the owner of a Mattawa mobile home park will pay $100,000, to be used for restitution, and make needed repairs to all homes, after forcing tenants to sign sham "purchase" agreements so he could avoid city health and safety inspections. The cost of the repairs is estimated at approximately $400,000.

If Gary Chavers, the owner of the Sun & Sand Mobile Home Park, fails to fulfill the terms of the agreement, he will also face more than $200,000 in civil penalties.

Many of the mobile homes at the 53-unit park were in very poor condition when Ferguson filed a lawsuit against Chavers in 2015. Residents complained of warped and malfunctioning doors that failed to keep out the cold and moisture, or that would blow open with the wind if not secured internally by string and nails. Many homes had old or worn flooring, some with holes in the floor or staples poking out of the carpet. Some homes were infested with cockroaches, and residents, including children, were being bitten by bed bugs.

In late 2009, the City of Mattawa passed an ordinance creating new health and safety requirements for rental units following a tragic fire earlier the same year. The fire, in a mobile home rental property that was converted into a duplex, claimed the lives of a mother and two children.

Shortly after the City apprised him of the ordinance, Chavers devised a scheme to force tenants — most of whom are Latino farm workers who speak little to no

English — to sign sham "purchase" contracts. Chavers only provided the contracts in English, and tenants were not allowed time to review or get help translating the documents before signing.

The scheme allowed Chavers to avoid inspections and compliance with the new health and safety requirements.

In addition to correcting all electrical and plumbing hazards, Chavers has agreed to correct all subpar conditions inside and outside the homes. The repairs will correct problems like the leaky windows and malfunctioning doors, damaged walls and flooring, leaky roofs and moisture damage, and rotted and unstable entry stairs. Old and worn carpets will also be replaced, and damaged kitchen and bathroom cabinetry will be repaired or replaced.

The agreement also places a $100,000 lien against the property to secure payment of the money the state will return to the affected residents as restitution.

All Sun & Sand tenants who were forced to sign purchase agreements, or move out, will be able to rescind the sales contracts and revert to being tenants under a traditional lease. For those who live in duplex mobile homes and are "buying" half of the home with strangers, their purchase contracts will be rescinded, with their consent. Residents who moved into Sun & Sand after Chavers implemented the sham sales contracts will be given the choice to continue buying under replacement contracts that comply with the Retail Installment Sales Act, or to convert to tenants under a traditional lease. All lease and sales contracts will be provided in both English and Spanish.

Other requirements of the agreement include:

•Chavers is prohibited from raising rents for four years;

•Chavers must provide interim housing to tenants if repairs require them to be temporarily displaced from their unit; and

•Chavers must provide quarterly reports to the state documenting his progress in fixing the units.

The state has the right to inspect all repairs. If the repairs are not made according to acceptable industry standards, Chavers will be required to fix them or face further court action.

## DEFAULT SERVICING

### CASE LAW

**Debt buyers – FDCPA**

*CASE NAME:* *McAdory v. M.N.S. & Associates, LLC*
*DATE:* *11/03/2017*
*CITATION:* *United States District Court, D. Oregon, Portland Division. Slip Copy. 2017 WL 5071263*

Plaintiff incurred a consumer debt with Kay Jewelers, a non-party, which Kay Jewelers subsequently sold to DNF.

Plaintiff first learned of DNF in a letter sent to her by a non-party company called First Choice Assets, LLC. The letter stated that Plaintiff "owed a debt to DNF that originated with Kay Jewelers." Because Plaintiff had never heard of DNF, she ignored the letter. Plaintiff subsequently received a voice message that did not identify the caller and did not reference any debt, instead stating the call was in regards to "asset verification." The message scared Plaintiff into returning the call, during which Plaintiff spoke with someone who identified himself as M.N.S. agent Michael Shaw. Shaw implied he was a lawyer and indicated that Plaintiff was about to be sued for unpaid debt.

Plaintiff agreed to pay the debt. Then Plaintiff filed this action, alleging that M.N.S. had violated multiple provisions of the FDCPA. Plaintiff also alleged that DNF was itself a debt collector and was vicariously liable for M.N.S.'s violations of the statute. DNF moved to dismiss.

The Court found that debt purchasing companies like DNF who have no interactions with debtors and merely contract with third parties to collect on the debts they have purchased do not have the principal purpose of collecting debts. Therefore these companies must fall outside the purview of the FDCPA. The fact that a business benefits from the collection of debt by an entirely separate third party does not necessarily make the principal purpose of that business the collection of those debts.

Furthermore, one of the stated purposes of the FDCPA is "to eliminate abusive debt collection practices by debt collectors." 15 U.S.C. § 1692(e)). When looking at the various activities punished under the FDCPA, it becomes clear that what Congress was concerned with, and intended to regulate, was the interaction between a debt collector and a consumer.

Given this, there was little to suggest that a company which only purchases debt and then contracts with a third party for all actual collection activity was considered by Congress when it was drafting the FDCPA.

DNF's motion to dismiss granted.

## CASE LAW

**Bankruptcy – Reaffirmation**

*CASE NAME:* *In Re: Anthony Cruz Marquez, and Victoria Ann Marquez, Debtors*
*DATE:* *11/13/2017*
*CITATION:* *United States Bankruptcy Court, W.D. Texas, Waco Division. Slip Copy. 2017 WL 5438306*

Debtors filed a chapter 7. The Statement of Intention instructed the Debtors to list their secured creditors and select whether they would surrender, redeem, or reaffirm the property. A fourth checkbox was also listed which Debtors selected for all of the listed secured creditors, including 21st Mortgage, which held a lien on the Debtors' mobile home, purchased by Debtors in 1999. The fourth box stated, "Retain the property and [explain]:" which was followed by the Debtors' manual entry of "Debtor will continue making payments to creditor without reaffirming." 21st Mortgage delivered a reaffirmation agreement to Debtors' counsel but it was ignored. 21st Mortgage then moved to compel Debtors to comply with their duties under § 521(a)(2) and to delay entry of discharge until Debtors had done so.

According to the Court, under § 521(a)(2), a debtor who chooses to retain the property must specify whether "the debtor intends to redeem such property, or that debtor intends to reaffirm debts secured by such property" within thirty days of filing or before the first meeting of creditors, whichever is earlier.

The Court noted that, prior to the enactment of BAPCPA, a circuit split had developed regarding the availability of ride-through to chapter 7 debtors. Since BAPCPA, some courts have found that there is still a backdoor to ride-through that applies in very limited circumstances. In those cases, the debtors had at least attempted to comply with their statutory duties under §§ 521(a)(2) and (6). Here, Debtors had not "substantially complied" with § 521(a)(2), making that option unavailable. The Court found that Debtors were required to select between the three options enumerated in § 521(a)(2): surrender, redeem, or reaffirm.

The Court further found that Debtors intentionally did not select one of the three options available to them. Debtors' attorney acknowledged that Debtors were required to make a selection between the three options, but argued that their failure to do so could only result in the stay being lifted, and once the stay was lifted, 21st Mortgage could then pursue any available state law remedies, such as foreclosure. In this unique situation, however, foreclosure would not be immediately available (if ever) to 21st Mortgage because Debtors were current and the contract (entered into in 1999) did not contain an ipso facto clause. In effect, Debtors believed they found a loophole that would allow them to ride-through

this bankruptcy without reaffirming or redeeming the property.

Allowing Debtors to ride-through without 21st Mortgage's consent would amount to forcing 21st Mortgage into an involuntary reaffirmation agreement while also discharging Debtors' personal liability on the debt.

The Court did not believe Debtors could circumvent the Bankruptcy Code and Fifth Circuit precedent simply because 21st Mortgage did not include a clause in the contract that would have been considered unenforceable at the time the contract was executed.

Further, Debtors could not claim, after refusing to make any effort to reach an agreement with 21st Mortgage, that they "were not able to reach an agreement."

The Court found that due to the unique facts of this case, it was appropriate to compel Debtors to amend their SOI to comply with § 521(a)(2) within thirty days of the entry of an Order. Once Debtors amended their SOI, Debtors would have forty-five days to perform their stated intention pursuant to § 521(a)(6).

Debtors' discharge was suspended until the Debtors amend their SOI and perform their stated intention.

## CASE LAW

**Repossession – FDCPA**

*CASE NAME:* *Cooper v. Fulton Bank, N.A.*
*DATE:* *11/15/2017*
*CITATION:* *United States District Court, D. Maryland. Slip Copy. 2017 WL 5478318*

Cooper defaulted on an installment contract with Fulton Bank for the purchase of a camper. Two R&A representatives attempted to repossess the camper, without warning Cooper. Fearing a home invasion, Cooper retrieved his gun to detain the men. The R&A men identified themselves as repossessors from the Pennsylvania Department of Banking, but Cooper suspected that the men were lying. The police, did not. Cooper was arrested, and subsequently tried and acquitted.

Cooper filed a complaint, arguing that the defendants violated the Fair Debt Collection Practices Act, the Maryland Consumer Debt Collection Act, and committed several state law violations.

The Court found that attempting to repossess the camper is not debt collection under § 1692e of the FDCPA, nor did it show that Fulton Bank's principal purpose was the collection of debts.

In addition, R&A's role in the debt collection process was limited to the enforcement of a security interest. Therefore, Cooper's FDCPA claim against R&A was subject to dismissal because it was not brought under § 1692f(6). Even if Cooper did assert a claim under § 1692f(6), he would still fail. Under that subsection, liability only attaches if the defendants did not have a current right to possess the camper at the time of repossession.

Also, by its terms, the MCDCA only applies to efforts to collect on consumer transaction debt: enforcing security interests does not qualify as debt collection under the Act. Nor does the Act have a specific provision to govern the enforcement of security interests.

The Court noted that Cooper did not dispute that the defendants had a right to enter his land to repossess his camper, but claimed instead that the defendants breached the peace during the repossession by rapidly approaching his home; making eye contact with him; running towards his home; failing to provide notice of the repossession; and failing to retreat after Cooper objected to the repossession. These allegations are either true of the typical repossession or unsupported by the factual allegations in the complaint.

Further, there was no indication that Cooper ever asked the men to leave. In fact, Cooper detained the men at gun point until the police arrived. It was at this moment, that the men first flashed their badges, indicating that, fake or not, the badges were not used to convince Cooper to let them take his camper but to deescalate the situation.

The Court also found that Cooper did not dispute that the contract with Fulton Bank gave Fulton Bank the right to repossess his camper if he defaulted and that he did default.

Finally, to bring a successful claim under the Maryland Consumer Protection Act a plaintiff must allege: "(1) an unfair or deceptive practice or misrepresentation that is (2) relied upon, and (3) causes [him] actual injury." The Court found that Cooper never relied on the defendants' alleged unfair and deceptive practices.

Dismissed.

## INSTALLATION

**ADOPTED RULE**
**Washington**
**Infractions**

Effective 1/1/2018, this rule amends Wash. Admin. Code §§ 296-150I-0210, -3000 to adopt rules for infractions of manufactured home installations as a result of HB 1329 (chapter 10, Laws of 2017). The bill replaces the mandatory penalty of $1,000 for each infraction of manufactured home installation requirements with discretionary authority to issue warnings, and a monetary penalty of no more than $250 for a first infraction and no more than $1,000 for a second or subsequent infraction. The bill became effective on July 23, 2017. The adopted rule establishes a penalty schedule for infractions for manufactured home installations as required by the bill and modifies the issuance of notices of infractions to comply with the new statutory requirements.

**LEGISLATION**
**Wisconsin**
**Uniform Dwelling Code**

**2017 WI S 430**. Enacted 11/30/2017. Effective 12/2/2017.

This bill creates Wis. Stat. § 101.652 to provide that if a requirement of the Uniform Dwelling Code adopted by the Department of Safety and Professional Services applies to a manufactured home or to an attachment to a manufactured home, the manufactured home owner shall comply with that requirement. If the manufactured home is located in a manufactured home community, the manufactured home community operator is not responsible for compliance with that requirement unless the manufactured home community operator is the manufactured home owner.

## LICENSING

**TEMPORARY RULE**
**Oregon**
**Debt buyers**

Effective: 10/27/2017 through 04/24/2018.

These rules adopt Or. Admin. R. 441-820-0010, 441-820-0020, 441-820-0030, 441-820-0040, 441-820-0050, 441-820-0060, 441-820-0070, 441-820-0080, 441-820-0090, 441-820-0100, 441-820-0110, 441-820-0120, 441-820-0130, 441-820-0140, 441-820-0150, 441-820-0160, 441-820-0170, 441-820-0180.

These proposed rules implement House Bill 2356 (2017). HB 2356 requires specific persons regularly engaged in purchasing charged-off debt for the purposes of

collection to obtain a license from the Department of Consumer and Business Services. HB 2356 established specific criteria for obtaining a license including the development and maintenance of particular policies regarding lawful collection practices. HB 2356 also required that debt buyers regulated by the department obtain errors and omissions insurance. The bill makes licensing mandatory for the collection of bought debt as of January 1, 2018. The bill allows the Director to utilize the Nationwide Multistate Licensing System and Registry (NMLS) for licensing. The bill provided that the Director of the Department of Consumer and Business Services may take actions as necessary to enable the bill's licensing authority on the operative date. In order to ensure debt buyers have adequate time to apply for and obtain a license, prior to January 1, 2018, the department is adopting these temporary rules concurrent with the permanent rulemaking process. Additionally, these temporary rules will allow application through the NMLS, which will reduce costs for debt buyers licensed in multiple states or which already have a collection agency registration. Failure to adopt these rules could lead to higher costs for debt buyers and also inadvertently cause them to violate HB 2356.

## SALES AND WARRANTIES

**CASE LAW**

**Agency**

*CASE NAME:* *Campbell v. Dutton*
*DATE:* *11/01/2017*
*CITATION:* *Court of Appeals of South Carolina. --- S.E.2d ----. 2017 WL 4942848*

Appellants/Respondents, Kathleen Lollis and Linda Campbell, and Respondents/Appellants, Lisa Dutton, Dennis Dutton, and Kelsey Dutton (collectively, the Duttons), filed cross-appeals from the circuit court's order in this declaratory judgment action. Appellants/Respondents argued the circuit court erred by concluding (1) Kathleen Lollis (Mother), through her late son, Frank Lollis (Frank), entered into binding contracts with Lisa Dutton and Dennis Dutton to sell two tracts of land and the manufactured homes on the properties, and (2) Lisa Dutton (Lisa) overpaid Appellants/Respondents by $850.96.

Mother and Linda Campbell ("Sister") argued the circuit court erred by concluding Mother entered into contracts with Dennis and Lisa for the sale of the tracts and ordering specific performance of the contracts because Frank was not an agent for Mother.

The Court found that an agency relationship may be, and frequently is, implied or inferred from the words and conduct of the parties and the circumstances of the particular case. Agency may be proved circumstantially by the conduct of the purported agent exhibiting a pretense of authority with the knowledge of the alleged principal. Further, the doctrine of apparent authority provides that the principal is bound by the acts of his agent when he has placed the agent in such a position that persons of ordinary prudence, reasonably knowledgeable with business usages and customs, are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption.

Here, Mother's knowledge that Frank was buying and selling property in her name and her tacit acceptance of this practice placed Frank "in such a position that" Lisa and Dennis were "led to believe" Frank had the authority to act on Mother's behalf and they in turn dealt with Frank based on that assumption. The preponderance of the evidence showed an agency relationship between Mother and Frank as well as his apparent authority to sell property to Dennis and Lisa. Therefore, Frank's actions were binding on Mother.

## TITLING AND PERFECTION

**ADOPTED RULE**

**Indiana**

**Dealer title – Repossession title**

Effective 11/4/2017, this rule amends 140 Ind. Admin. Code r. 1-4.5-10 thru 9-4-6 (nonseq.).

The rule amends 140 Ind. Admin. Code r. 6-1-14, Dealer's title; assignment and reassignment, to provide that a dealer may reassign a certificate of title without first applying for the title. If the dealer reassigns the vehicle to another dealer, then that dealer may also reassign the title by using the applicable bureau designated form.

A dealer may reassign an out-of-state title on a bureau designated form.

A total of three (3) dealer reassignments may occur. After three (3) reassignments, the last named purchaser must apply for a certificate of title.

In making an assignment or reassignment, the dealer must place its dealer number on the certificate of title and applicable form.

The person who signs the certificate of title and applicable form on the dealer's behalf must place information about the person's position with the dealer on the title or form next to the person's signature.

The rule also amends 140 Ind. Admin. Code r. 6-1-15.5, Repossession title; resale, to provide that to obtain a certificate of title under Ind. Code § 9-17-5-2, a lienholder who repossessed a vehicle must comply with the following requirements: submit an application using the bureau's designated form and comply with the requirements of Ind. Code § 9-17-2 to obtain a title.

If there are multiple lienholders recorded on the title: the first lienholder can repossess the vehicle without proof of lien release from a subsequent lienholder or lienholders; and a subsequent lienholder or lienholders must have proof of lien release from the prior lienholder or lienholders in order to repossess the vehicle.

## ZONING

**SETTLEMENT**

**Arkansas**

**Value of home**

As reported in the Arkansas Democrat Gazette, the town of McCrory, AR has settled a federal class action lawsuit brought by the Washington, D.C., based group, Equal Justice Under the Law, challenging the town's ordinance forbidding any mobile home worth less than $7,500 to remain within the city limits, levying fines of up to $500 per day.

The suit was filed on behalf of residents David Watlington and Lindsey Hollaway, an engaged couple who had recently moved to the town in their mobile home, which was worth an estimated $1,500. The suit alleged that the plaintiffs, who had an annual income of $13,000 -- below the poverty level, had been ordered to leave McCrory only because they could not afford a more expensive home and McCrory's ordinance was, therefore, a wealth-based banishment scheme.

The suit continued after a new ordinance removed the ban.

The settlement totaled a little over $20,000, according to Stephanie Storey, communications officer for Equal Justice Under the Law. She said that includes a "monetary settlement" and the payment of the couple's attorneys' fees, and it requires the city to eliminate all fines it had assessed against Watlington.

**MARC LIFSET is a member in the firm's business law section, where he advises banks and financial institutions regarding consumer financial services issues, licensing, regulatory compliance and legislative matters. Marc has carved a place for himself in the manufactured housing lending arena as the primary drafter and proponent of New York's Manufactured Housing Certificate of Title Act. Marc is chairperson of the Manufactured Housing Institute ("MHI") Finance Lawyers Committee and serves on the Board of Governors of the MHI Financial Services Division. He is the primary draft person of manufactured home titling and perfection legislation in Alaska, Louisiana, Maryland, Missouri, Nebraska, New York, North Dakota and Tennessee. Marc represents manufactured home lenders, community operators and retailers throughout the country and is a frequent lecturer at industry conventions.**

**Find out more about Marc here:**
**https://www.mcglinchey.com/Marc-J-Lifset**

**LAURA GRECO is a member in the consumer financial services, business law, and commercial litigation groups of the firm's Albany office. Laura represents manufactured housing lenders, banks, mortgage companies and other financial institutions in lawsuits involving all areas of consumer finance. Laura has experience dealing with claims that include federally regulated areas such as the Truth in Lending Act, Real Estate Settlement Procedures Act, Fair Credit Reporting Act, Fair Debt Collection Practices Act, and others, as well as representing clients in state and federal actions concerning the foreclosure and servicing procedures of mortgage servicers and lenders.**

**Find out more about Laura here:**
**https://www.mcglinchey.com/Laura-Greco**

**JEFFREY BARRINGER is a member in the firm's consumer financial services practice, where he regularly advises financial institutions, mortgage companies, sales finance companies and other providers of consumer financial services on compliance with state and federal law, including usury restrictions, preemption, licensing and other regulatory compliance matters. Jeff's experience includes assisting manufactured housing finance companies, retailers, and communities navigate the state and federal regulatory environment to establish and maintain effective finance programs. Jeff is also a frequent lecturer on legal issues facing the industry.**

**Find out more about Jeff here:**
**https://www.mcglinchey.com/Jeffrey-Barringer**

## ABOUT MHI:

**The Manufactured Housing Institute (MHI) is the only national trade organization representing all segments of the factory-built housing industry. MHI members include home builders, lenders, home retailers, community owners and managers, suppliers and 50-affiliated state organizations.**

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