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Keeping Your Promises: A Modern Day Tale

BY Bill Dahlin

The foundation in the United States for commercial business, between consumers and retail sellers, as well as between business owners, is the sacrosanct idea that a promise in a contract is to be performed. The underlying expectation is the basis for all of our economic successes (and sometimes failures). This expectation is both an unwritten moral code as well as firmly embraced in our laws. For example, the United States Constitution even contains prohibitions on Congress, though hard to enforce, against laws that would excessively impair with an existing and ongoing contract. (Article 1, Section 10)

A recent published opinion in California demonstrates the propriety and necessity for keeping a promise. While reading that opinion it occurred to me that there might also be an interest to the manufactured housing community as to the outcome of this matter.

Here is the factual background:

A developer in California built a large condominium project in downtown Los Angeles adjacent to the Staples Center (where the Lakers and Clippers basketball teams play, as well as the LA Kings Hockey Team). The project contains 267 residential condominium units and retail space on the ground floor. Immediately adjacent to the condominium project is a large parking garage. In mid-2006, the developers of the condominium project entered into an agreement with the developers of the parking structure. (This writer assumes the two developers are interrelated.) The two developers created a license agreement for use of the parking structure. The parking license agreement specifically stated that the parking structure would grant the condominium project (for the benefit of the residential homeowners association (the HOA) to be formed in connection with the sale of residential condominium units in the Market Lofts Project and the owners and occupants of the residential units) . . . a license to use the Market Lofts Parking Spaces, which shall be appurtenant to the Market Lofts Property."

The Agreement went on to state that the license to use the parking structure was granted in perpetuity and that there "shall be no cost" to the HOA, or its residents, except for the obligation to pay for the proportionate share of common area maintenance. Finally, the Agreement went on to provide that when the first residential unit was sold, the developer "shall assign or sub-license its rights and obligations under this Agreement to the HOA. . . . The terms and conditions of this Agreement shall be covenants that run with the land."

The HOA was formally created in January of 2007 and the first condominium sale occurred later that same year. Also in January 2007, the newly created HOA and the condominium developers entered into a Sub-License Agreement for use of the parking structure. Rather than mirror the provisions of the original License Agreement, the Sub-Licensing Agreement provided that the HOA would pay the developer a monthly fee of $75 for each parking space, with that fee to be increased by five percent annually, and adjusted every ten years to the prevailing market rate for similar garage parking. That Sub-License also provided, rather than being in perpetuity, that it would last until the condominium project's CC&R were either terminated or 49 years, whichever was sooner. The Sub-License Agreement contained numerous other provisions that were in conflict with the original license agreement between the two developers.

In January 2011, enough of the condominium units had been sold so that the residents became the controlling member for the Board of Directors of the HOA. By that time, the HOA and its members had paid well in excess of one million dollars in parking fees to the developers. At that point, the residents also found out about the original License Agreement and filed suit.

The Appellate Court ruled, not surprisingly, that the HOA and its constituent members (condominium owners) were lawfully able to sue the appropriate developers and seek reimbursement of the expended monies and to have a declaration that the Sub-License could not impose obligations that were in conflict with the master License Agreement. For those readers with a technical mindset, the trial court had granted judgment in favor of the developers on the theory that the HOA did not have standing to file suit. The Court of Appeal made short work of that argument and concluded, very strongly, that of course the HOA had standing to sue not only on behalf of its constituent members, but because it was an actual party to the Sub-License Agreement.

So—What does all this mean?

What it means is that mobile home parks are, by definition, an enterprise that are based on and succeed by virtue of the sanctity of contract. Each and every space that is rented in a manufactured housing community is subject to a contract. The resident agrees to pay rent and comply with reasonable park rules. The park agrees to provide the space, any park provided amenities, and allow the resident to have quiet enjoyment of their site. Where this arrangement goes awry, and that happens, unfortunately, every day, one party or another is in breach of contract. Residents breach and do not pay rent. They are then evicted. Park owners sometimes breach by failing to provide appropriate amenities and get sued for breach of their agreement as well. This writer has represented manufactured housing community owners for over two and a half decades. That experience leads to this: one can, in almost every occasion, predict who will win a dispute as soon as the essential facts are known. People who don't pay their rent get evicted. Parks that fail to maintain the common areas get sued. The facts from the lawsuit described above, disclosed self-dealing by the developers. That led to their losing the subject lawsuit. That should not have been a surprise to either of the developers. Keeping these simple precepts in mind will assist park owners everywhere maintain consistency in park operations.

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