WINTER 2013

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COMMUNITY OWNERS' ADVOCATE

A Newsletter for Manufactured Housing Industry Community Owners & Managers

A Message from the Managing Partner

As we enter the holiday season, we want to thank you for your confidence and loyalty.

We are excited to share some good news with you—the announcement of our new name—Hart King. While our firm name has changed, our strong dedication and commitment to our clients remains the same. That is always a constant at Hart King.

Happy Holidays!

2013 Vedder Vendor Classic

Hart King Managing Partner, Bill Hart and Partner, Boyd Hill

Partners, Bill Hart and Boyd Hill, were pleased to be invited to the Vedder Community Management (VCM) Vendor Classic at Friendly Village La Habra on October 30. VCM provides much needed rent assistance to many residents in their communities throughout the year. During the holiday season, they provide additional financial aid to their most needy residents. We were happy to get out and show our support to VCM for this worthwhile cause. We even took home the 2nd Place trophy!

On November 8, Managing Partner, Bill Hart, moderated a panel of Hart King Manufactured Housing Industry attorneys, John Pentecost, Robert Williamson and Mark Alpert, who discussed issues important to our manufactured housing community and park clients. The team touched upon some of the key laws which will become effective in 2014 as well as effective eviction strategies. It was nice to see so many of you at the briefing!

IP Fundamentals

IP Fundamentals is a webinar series hosted by Intellectual Property Partner, David Baker and co-presented with various Hart King attorneys, designed to provide useful information, on a single topic of interest, in 30 minutes. On October 30, Dave and John Pentecost addressed copyright issues and how they might affect mobilehome communities. The recorded webinar is available on our website should you wish to view it. Contact Barbara Ericson at (714) 432-8700 or bericson@hartkinglaw.com for additional details.

SB 510: It's A Wrap!

By C. William Dahlin

The 2013 legislative year began with a proposal by Senator Hannah Beth Jackson to amend Government Code section 66427.5. The proposed legislation sought to dramatically alter how subdivisions (conversions) of mobilehome parks are reviewed by local municipalities; basically giving a local municipality the absolute discretion to deny a proposed mobilehome park subdivision if a majority of the park's residents are not in support of the proposed change of use. The proposed legislation also had an additional section that stated that the newly enacted legislation would be deemed declaratory of, and a restatement of, existing law.

The Bill passed through the Senate and then on to the Assembly for further oversight. WMA's Catherine Borg met with legislators and argued vehemently against enactment of the proposed change. Members of the mobilehome community, including the author of this article and partner, Mark Alpert, traveled to Sacramento more than once to oppose the proposed legislation.

The legislature voted in favor of the measure and Governor Brown signed the proposed legislation on September 26, 2013.

SB 510 becomes effective January 1, 2014. Now what? The newly enacted provision provides additional new discretion to local governments to deny subdivision applications. In simple terms, this new legislation gives local municipalities the innate power to demand the same types of concessions that are frequently demanded in the context of "normal" land use applications. Thus, the Bill impacts any application for conversion to resident ownership through a sale of lots in the mobilehome park.

The new legislation will also, unfortunately, lead to expensive and time consuming new litigation. This legislation does not define its terms and is inherently contradictory in its descriptions of the persons residing

within a mobilehome park who are lawfully entitled to vote with reference to a survey of resident/homeowner support. The Bill, as enacted, appears to give residents who have no ownership interest in a mobilehome sited in the park, the right to participate in a survey and vote adversely to a subdivision. Strangely, this new legislation also appears to require a majority of not only the people who vote in a survey, but of all residents within a park. Query, what if that standard applied to politicians running for office?

The coming years will illustrate how this "tenant friendly" legislation is ultimately harmful to park residents. The ability of park residents to become owners is, in many circumstances, the only way a mobilehome park remains open and viable. With this new legislation, one can only surmise that mobilehome park closures can and will increase in frequency.

Bill Dahlin is a partner and member of the firm's Manufactured Housing Industry Practice Group. He may be reached at 714-432-8700 or at ***bdahlin@hartkinglaw.com****.*

Would you prefer to receive this newsletter by email? If so, please contact Barbara Ericson at (714) 432-8700 ext. 339 or at bericson@hartkinglaw.com.

A Novel New Challenge To A Permitted Rent Increase

By Boyd Hill

The owner of a mobilehome park located in the City of Thousand Oaks was recently sued on the basis of a rent increase approved by the City's Rent Board more than two years ago. That may seem strange to those who understand that a challenge to a rent increase generally must be brought within 90 days of the public agency approval and must be filed against the public agency.

In this instance, several "pro bono" law firms are representing the tenants, and they attempt to avoid statute of limitations and necessary party issues by asserting that the City approved rent increase was in violation of contractual obligations owed to the tenants by the owner.

The park owner brought a motion to dismiss under the California's anti-SLAPP statute on the basis that the lawsuit was "punishment" for the park exercising its First Amendment right of public participation. The trial court refused to grant the SLAPP motion, concluding that, while there had been First Amendment activity in seeking the rent increase, actually implementing the governmentally approved rent increase was not First Amendment activity.

The park owner has appealed, pointing out that the anti-SLAPP statute covers not only First Amendment activity, but also activity "in furtherance" of First Amendment activity. The park owner also noted that at least a portion of the alleged "contract" claim involved First Amendment activity also, i.e., the filing and pursuit of the rent increase application.

The park's rent increase was significant, nearly $200 per space per month. But the rents at the park were at an average of only $133 per space per month, and had only been raised $14 from the 1977 starting rents of $119 during the 35-year history of the park.

The park owner had been subject to the City's conditional use permit condition that limited rent increases to a percentage of gross income, and the City had applied that use permit condition in a manner that did not allow for catch up rent increases. However, the use permit condition expired as a matter of law after 30 years. It is also of note the rent increase granted by the City was still within that gross income percentage condition. To emphasize that the conditional use permit condition had expired, the City took the unusual step of re-approving the rent increase by means of a City ordinance.

The park's tenants first sued the City to stop the rent increase. But, they failed to timely sue the City within 90 days after approval of the rent increase, and so the causes of action which pertained to allegations of City "abuse of discretion" in approving the rent increase were dismissed.

These twin cases will be closely watched by Hart King to ascertain if the Ventura County court will expand traditional writ challenges to allow new disputes about rent increase decisions in rent control cities.

Boyd Hill is a partner and member of the firm's Manufactured Housing Industry Practice Group. His focus is primarily in the areas of land use and real property. He may be reached at (714) 432-8700 or at ***bhill@hartkinglaw.com***

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MHI 2013 Annual Meeting

Hart King Managing Partner, Bill Hart with Jenny Hodge, Vice President, NCC/MHI.

Photo courtesy of MHProNews

WMA 2013 Annual Convention & Expo

Partners, John Pentecost and Bill Dahlin spoke on a panel, along with Margaret Nanda, on the topic of *Community Closures: Where? When? Why? and How?*

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