

IN THE COURT OF COMMON PLEAS
OF CENTRE COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA
BY ATTORNEY GENERAL
KATHLEEN G. KANE,

PLAINTIFF,

v.

KENNETH F. MAYES, II, and
SHARON L. MAYES, t/d/b/a
HILLTOP MOBILE HOME PARK,

DEFENDANTS.

Case No. 2013-1259

CIVIL ACTION

DEBRA C. IMMEL
PROTHONOTARY
CENTRE COUNTY

2013 APR 8 AM 9 45

FILED FOR RECORD

**PLAINTIFF COMMONWEALTH'S BRIEF IN SUPPORT OF ITS
EMERGENCY MOTION FOR SPECIAL AND PRELIMINARY
INJUNCTION**

I. STATEMENT OF FACTS

On April 8, 2013, the Plaintiff in this action, the Commonwealth of Pennsylvania ("Commonwealth"), by its Attorney General, Kathleen G. Kane, through the Bureau of Consumer Protection, initiated the instant action by filing a Complaint in Equity against the Defendants, Kenneth F. Mayes, II and Sharon L. Mayes, trading and doing business as Hilltop Mobile Home Park.

The Commonwealth is exercising its power under the Manufactured Home Community Rights Act, 68 P.S. § 398.1, *et seq.* ("MHCRA") and the Unfair Trade

Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq.* (hereinafter, the “Consumer Protection Law”), which permit the Commonwealth to seek to restrain unfair or deceptive acts or practices. In its Complaint, the Commonwealth alleges that Defendants are using acts or practices declared unlawful and/or deceptive by § 201-3 of the Consumer Protection Law and acts or practices declared prohibited by the MHCRA.

Before this Court is the Commonwealth’s Emergency Motion for Special and Preliminary Injunction. The Commonwealth is asking this Court to order the Defendants: 1) to be enjoined from transferring, selling, encumbering, dissipating or adversely affecting their assets including, but not limited to, the proceeds from the sale of the Hilltop property until further Order of this Court; 2) to be enjoined from requiring that any owner remove a remaining manufactured home from Hilltop; 3) to be enjoined from billing, charging, assessing, recovering or collecting the costs of removal and/or disposal from any manufactured home resident of Hilltop for any such removal and/or disposal occurring on or after December 24, 2012; and 4) to be directed to obtain appraisals, provided by a certified residential real estate appraiser with substantial experience in appraising manufactured homes who is mutually agreed to by the Defendants and the owners of the remaining manufactured homes at Hilltop, for each remaining manufactured home at Hilltop.

II. LAW AND DISCUSSION

Generally in Pennsylvania, a special and preliminary injunction will be granted if the moving party satisfies all of the following four prongs: 1) the special and preliminary injunction is necessary to prevent immediate and irreparable harm; 2) greater injury would result by refusing the special and preliminary injunction than by allowing it; 3) the special and preliminary injunction properly restores the parties to their status as it existed immediately prior to the alleged wrongful conduct; and 4) the activity sought to be restrained is actionable. *Albee Homes, Inc. v. Caddie Homes, Inc.*, 417 Pa. 177, 181 A.2d 768 (1965).

Since 1947 with the case of *Pennsylvania Public Utility Commission v. Israel*, the Pennsylvania Supreme Court has held that the requirement of proving irreparable harm is met by a demonstration that the non-moving party has violated an applicable statute. 356 Pa. 400, 52 A.2d 317 (1947). In other words, a statutory violation is sufficiently injurious to constitute irreparable harm which *per se* justifies the issuance of a preliminary injunction. *See also, Hempfield School District v. Election Board of Lancaster County*, 133 Pa. Commw. 85, 574 A.2d 1190 (1990).

The Commonwealth's Complaint and Emergency Motion for Special and Preliminary Injunction set forth violations of the MHCRA and Consumer Protection Law by the Defendants. The following is a list of the alleged violations:

1. terminating or refusing to renew a lease prior to the termination of the community, 68 P.S. § 398.3(a);
2. entering into oral, month-to-month leases following the premature termination of the written leases, 68 P.S. § 398.4.1;
3. failing to pay relocation expenses, on or after December 24, 2012, to the owner of any manufactured home in a manufactured home community that is closing in an amount equivalent to the cost of relocation, not to exceed the amount of \$4,000 for a single section manufactured home and \$6,000 for a multisection manufactured home, 68 P.S. § 398.11.2(c);
4. failing to pay a minimum of \$2,500 or the appraised value of any manufactured home, whichever is greater, on or after December 24, 2012, to the resident of the manufactured home upon the closure of the community if the resident is unable or unwilling to find a reasonably suitable replacement site, 68 P.S. § 398.11.2(d);
5. requiring a resident, on or after December 24, 2012, to remove the manufactured home from the land when a manufactured home community closes and imposing liability on the resident for the costs of removing and disposing of the manufactured home, 68 P.S. § 398.11.2(g);

6. a violation of the MHCRA constitutes a *per se* violation of the Consumer Protection Law, 68 P.S. § 398.16.1; and
7. inducing residents to believe the protections of the MHCRA did not apply to them, suppressing the valuations of manufactured homes as provided under the MHCRA and inducing residents to sell their homes at depressed prices at a loss, 73 P.S. §§ 201-2(4) (ii), (v) and (xxi).

A. DEFENDANTS' CONSUMER PROTECTION LAW AND MHCRA VIOLATIONS CONSTITUTE IRREPARABLE HARM

Defendants' violations of § 201-3 of the Consumer Protection Law by engaging in the acts and/or practices defined by §§ 201-2(4) (ii), (v) and (xxi) of the Consumer Protection Law demonstrate *per se* irreparable harm. Similarly, Defendants' violations of §§ 398.3(a), 398.4.1, 398.11.2(c), 398.11.2(d) and 398.11.2(g) of the MHCRA demonstrate *per se* irreparable harm.

Upon information and belief, Defendants have entered into a conditional sales agreement with Trinitas Ventures LLC for an undisclosed amount that is said to be in the millions. However, the sale proceeds may not be as much. The Defendants' have refused the Commonwealth's request for a copy of the agreement. Questions as to the amount of the sale proceeds and what steps Defendants might take with their assets, including the Hilltop sale proceeds, to judgment-proof themselves, raise a caution flag. Unless the Court issues an

injunction, the Commonwealth is concerned that consumers will not be able to recover money lost as a result of the violations by the Defendants; thus, resulting in irreparable harm. It is appropriate for a trial court “to prevent the ‘unfair, wholesale dissolution of [the defendants’] assets in anticipation of civil liability.’” *Ambrogi v. Reber*, 932 A.2d 969, 975 (Pa.Super.Ct., 2007).

B. GREATER INJURY WILL RESULT BY REFUSING THE SPECIAL AND PRELIMINARY INJUNCTION THAN BY ALLOWING IT

Greater injury will result if this Court does not grant the special and preliminary injunction. While this Court may balance the equities in determining whether the Commonwealth has satisfied this requirement, the Commonwealth submits the scales clearly tip in its favor. In addition, without a special and preliminary injunction, Defendants may continue to violate the MHCRA and the Consumer Protection Law and will have judgment-proofed themselves.

C. THE SPECIAL AND PRELIMINARY INJUNCTION RESTORES THE PARTIES TO THEIR STATUS AS IT EXISTED BEFORE THE WRONGFUL CONDUCT

Clearly, a special and preliminary injunction properly restores the parties to their status as it was immediately prior to the alleged wrongful conduct. The Defendants have violated the MHCRA and the Consumer Protection Law. The injunctive relief requested will prevent the Defendants from harming more consumers. In effect, it will force the Defendants to comply with the MHCRA and the Consumer Protection Law and to accomplish this, in part, by taking steps to

bring their business practices into compliance with the MHCRA and the Consumer Protection Law.

Moreover, the status quo is maintained by enjoining Defendants from dissipating their assets including, but not limited to, the proceeds from the sale of Hilltop. This ensures that consumers, on whose behalf the Commonwealth has brought the complaint, will be able to recover money lost as a result of a violation by the Defendants.

D. DEFENDANTS' WRONGFUL CONDUCT IS ACTIONABLE AND SHOULD BE RESTRAINED

This motion for a special and preliminary injunction is actionable in that § 201-4 of the Consumer Protection Law specifically vests the Commonwealth of Pennsylvania, Office of Attorney General, with the authority to seek temporary injunctions when it has reason to believe § 201-3 of the Consumer Protection Law is being violated. The statute states in relevant part:

Whenever the Attorney General or a District Attorney has reason to believe that any person is using or is about to use any method, act or practice declared by section 3 of this act [§ 201-3] to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the Commonwealth against such person to restrain by temporary or permanent injunction the use of such method, act or practice.

73 P.S. § 201-4 (emphasis added). The Commonwealth has reason to believe that the Consumer Protection Law has been violated and has recited the evidence of

these violations. Thus, this request for a Special and Preliminary Injunction is actionable.

Similarly, this motion for a special and preliminary injunction is actionable in that § 398.14 of the MHCRA specifically vests the Commonwealth of Pennsylvania, Office of Attorney General, with the authority to seek temporary injunctions when it has reason to believe that the MHCRA is being violated. The statute states in relevant part:

Whenever the Attorney General or a District Attorney has reason to believe that any person is using or is about to use any method, act or practice declared by this act to be prohibited, and that proceedings would be in the public interest, he may bring an action in the name of the Commonwealth against such person to restrain by temporary or permanent injunction the use of such method, act or practice.

68 P.S. § 398.14 (emphasis added). Likewise, the Commonwealth has reason to believe that the MHCRA has been violated and has recited the evidence of these violations. Thus, this request for a Special and Preliminary Injunction is actionable.

III. CONCLUSION

Therefore, the Commonwealth respectfully requests that this Honorable Court issue a special and preliminary injunction against the Defendants to enjoin


them from dissipating their assets in anticipation of civil liability and from violating the MHCRA and Consumer Protection Law.

Respectfully submitted,
COMMONWEALTH OF
PENNSYLVANIA

KATHLEEN G. KANE
Attorney General

Date: April 8, 2013

By:



Joseph S. Betsko
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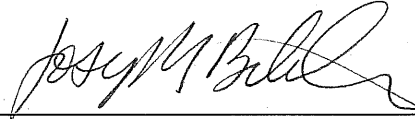
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CERTIFICATE OF SERVICE

I, Joseph S. Betsko, do certify that on April 8, 2013, served Plaintiff Commonwealth's Emergency Motion for Special and Preliminary Injunction and Brief in Support thereof by hand delivery to the following:

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