State of New Hampshire Supreme Court

NO. 96-141

1997 TERM

JULY SESSION

MARILYN MOSHER

v.

PORTSMOUTH MOBILE HOMES, INC.

RULE 7 APPEAL FROM FINAL DECISION OF DISTRICT COURT

BRIEF OF DEFENDANT/APPELLANT, PORTSMOUTH MOBILE HOMES, INC.

By: Joshua L. Gordon, Esq.
Law Office of Joshua L. Gordon
26 S. Main St., #175
Concord, NH 03301
(603) 226-4225

Philip R. Desfosses
Desfosses & Starbranch
3201 Lafayette Rd.
Portsmouth, NH 03801
(603) 436-8242

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QUESTIONS PRESENTED

1. Did the court exceed its statutory authority by inquiring into whether the entrance fee assessed was reasonable compensation for the services rendered?

2. Did the court exceed its statutory authority by inquiring into whether the tenant requested the services on which the entrance fee was grounded?

3. Did the court abuse its discretion in finding that the maximum charge for a credit check is $50, and in awarding the plaintiff $540 (plus costs) in damages, where there is no evidence in the record to support either ruling?

STATEMENT OF FACTS AND STATEMENT OF THE CASE

Portsmouth Mobile Homes, Inc., operates Hillcrest Estates, a mobile home park in Portsmouth. Ms. Mosher bought a mobile home in the park in 1992, and was assessed an entrance fee of one half of three months rent, or $307.50. On May 6, 1994, Ms. Mosher filed a small claims action in the Portsmouth District Court alleging that the entrance fee was unlawful.

After a hearing, the court (*Taylor*, J) ruled that although the park owner conducted a safety inspection, the fee could not be assessed because it was not reasonably related to the services performed, and because it was not requested by the purchaser. With no evidence on the record to support it rulings, the court found that the maximum charge for a credit check was $50, and awarded the plaintiff damages of $540.

The defendant filed this appeal.

SUMMARY OF ARGUMENT

The defendant first argues that the plain language of RSA 205-A:2, I allows mobile home park owners to charge prospective tenants an entrance fee of up to three months' rent, as long as some service is rendered. The defendant then argues that the legislature in its deliberations expressly rejected the plaintiff's contention that the court may inquire into whether the fee is reasonable compensation for the services.

The defendant next argues that nothing in the statute supports the lower court's ruling that services may not be rendered without a request by the tenant.

Finally, the defendant argues that because the lower court heard no evidence on the charge levied for a credit check, and no evidence with regard to damages, the award must be reversed.

ARGUMENT

I. The Trial Court Unlawfully Determined the Reasonableness of the Mobile Home Park Entrance Fee

The rules of statutory construction are well known. No court can add words to legislation that the legislature did not put there.

> "We may 'neither ignore the plain language of the legislation nor add words which the lawmakers did not see fit to include.' Accordingly, we do not interpret [a] statute to encompass any more than it plainly says."

Gissoni v. State Farm Mut. Auto. Ins. Co., 141 N.H. 518, 520 (1996) (quoting *Appeal of Astro Spectacular*, 138 N.H. 298, 300 (1994)); *State v. Bernard*, 141 N.H. 230 (1996) (legislative intent found not in what legislature might have said, but rather in meaning of what it did say). The Portsmouth District Court in this case added words to the statute which it wished were there.

The statute provides:

> "No person who owns or operates a manufactured housing park shall [r]equire any person as a precondition to renting, leasing or otherwise occupying a space for manufactured housing in a manufactured housing park to pay an entrance or other fee in an amount greater than the equivalent of 3 months' rent for said space provided that in no event shall any fee of any kind be charged unless for services actually rendered."

RSA 205-A:2, I. These words are unambiguous. They say that the park owner can charge an entrance fee of up to three months rent if services are provided. The statute does not say that the fee must be based on the cost of the services, or even that it be reasonable. The statute says only that the fee cannot exceed the maximum. By specifying a maximum, the statute ensures that entrance fees are known, self-regulating, and within the bounds of reason. Thus, the statute avoids the intervention of a judicial inquiry into who-spent-how-much-for-what which the plaintiff urges here.

Moreover, the legislative history belies any claim that the statute requires any inquiry beyond whether the fee exceeded three months' rent.

Senate Bill 28, which was the basis for RSA 205-A, was passed in 1973. The original Senate version of the bill called for precisely the type of inquiry into the reasonableness of fees which the District Court employed here. It read:

> "No person who owns or operates a mobile home park shall [r]equire any person as a precondition to renting, leasing, or otherwise occupying a space for a mobile home in a mobile home park to pay an 'entrance,' 'brokerage' or other fee, <u>except insofar as such fee is a reasonable compensation</u> for services actually rendered."

Senate Bill 28, Original Bill, held in N.H. Records & Archives vault (reader must lift flaps of cut-and-pasted document) (emphasis added).

The House version of the bill was quite different. When presented with the Senate version, the House instead adopted an amendment allowing the park owner to charge up to one-year's rent with no requirement that any services be provided:

> "No person who owns or operates a mobile home park shall [r]equire any person as a precondition to renting, leasing or otherwise occupying a space for a mobile home in a mobile home park to pay an 'entrance' or other fee in an amount greater than the equivalent of one year's rent for said space [paid in installments]."

1973 N.H. H.JOUR. 1478.

The Senate and House then convened a Committee of Conference to reconcile the two versions. 1973 N.H. S.JOUR. 1614, 1666; 1973 N.H. H.JOUR. 1557-58. The Committee reached a compromise, which was adopted by both houses. 1973 N.H. S.JOUR. 1763-64; 1973 N.H. H.JOUR. 1755-56. Senator Bradley, who was a member of the Conference Committee, reported that:

> "[I]n the Senate version of the bill it said there could be no entrance fee. In the

> House version it said there could be an entrance fee of up to 12 or less rent as spread over a 12 month period. The compromise proposed by this conference committee report is that we allow an entrance fee of up to three months provided, however, that the entrance fee cannot be anything except for services actually rendered. So, under this bill there is a limit, but it also has to be tied to services rendered."

1973 N.H. S.JOUR. 1763.

Thus, the legislature expressly rejected language in the original Senate version which would have given courts authority to look into whether an entrance fee was a reasonable compensation for services. Rather, in the face of an apparently unwilling House, the Senate backed down and approved the version of the bill finally adopted, which, with minor changes, is identical to the current RSA 205-A:2, I.

In this case, the Portsmouth District Court wrote:

> "Defendant argues that it is entitled to recover the so-called 'entrance fee' so long as it does not exceed three months rent. . . . Defendant relies on RSA 205-A:2, I, as standing for the proposition that such an entrance fee may be charged if the fee does not exceed the equivalent of three months' rent. . . . Defendant argues that the Court may not determine the reasonableness of the fee charged, *i.e.*, in effect, the reasonableness of the service and the fee charged[,] if the fee does not exceed the statutory maximum. This court disagrees. To adopt defendant's position would allow the Park owner to charge three months rent in all cases. Clearly, the legislature, by prohibiting charges for other than services rendered, intended otherwise."

Appendix at 15-16.

Thus, the Portsmouth District Court now proposes to do precisely what the legislature rejected. The Portsmouth District Court seeks to add words to the statute which the legislature expressly refused to put there. Accordingly, the District Court's finding that it may determine the necessity of services, their cost, or whether the fee is reasonable compensation for them, is beyond its statutory authority.

II. Services Need Not Be Requested by a Mobile Home Purchaser for the Payment of an Entrance Fee

The District Court in this case also found that an entrance fee may not be collected by the Park owner if the mobile home purchaser did not request services:

> "The court . . . finds that the so-called 'house inspection' is not a service requested by the purchaser and cannot be mandated by the defendant."

Appendix at 16.

The Defendant simply cannot find authority anywhere in the statute for this finding, or even for the court's authority to inquire into whether Ms. Mosher made a request.

The park owner has a duty to both existing and new tenants to ensure that mobile homes in the park are safe and meet its aesthetic rules, and therefore must conduct an inspection regardless of whether a purchaser requests one. RSA 205-A:13-c (park owner liable for implied warrant of habitability); RSA 48-A:1 (defining park owner as landlord for implied warrant); RSA 48-A:14 (establishing standards of habitability); RSA 205-A:2, III (duty to ensure home should not be removed); RSA 205-A:15 (mobile home owner's right to sue for injunction for unsafe conditions); RSA 205-A:19 (other remedies available); *LaFavor v. Ford*, 135 N.H. 311 (1992) (landlord negligent for failure to maintain porches, stairs and railings). *See also* Annotation, *Liability of Owner or Operator of Park for Mobile Homes or Trailers for Injuries Caused by Appliances or Other Instruments on Premises*, 41 A.L.R. 3d 324, and cases collected therein; Annotation, *Liability of Owner or Operator of Trailer Camp or Park for Injury or Death From Condition of Premises*, 41 A.L.R. 3d 546, and cases collected therein

Accordingly, the District Court's finding that no fee may be collected unless it is compensation for services requested by the purchaser is also beyond its statutory authority.

III. The Trial Court Had No Basis on Which to Determine the Charge for a Credit Check nor for its Award of Damages

The District Court in this case found that a reasonable charge for a credit check is $50. *Appendix* at 16. Even if the District Court had authority to determine whether charges are reasonable, there was no factual basis for its finding. "Although the findings of the trial court are generally to be accorded great deference, the discretion of the trial court is not absolute and may be set aside where it lacks a sound and substantial basis in the record." *Webb v. Knudson*, 133 N.H. 665, 672 (1990). When there is no basis for its finding, the lower court's judgement must be reversed. *Riverwood Commercial Prop's v. Cole*, 134 N.H. 487, 490 (1991) (reversing because "the trial court could not properly have made any finding"due to a lack of direct evidence); *Eaton v. Rivard*, 131 N.H. 85, 88 (1988) ("There being no proof [to support the decision], the judgment must be reversed.").

The record in this case is spare. At no time did the court hear evidence relating to the cost of a credit check, the amount of time expended on it, or whether these were reasonable. Accordingly, this Court must reverse the finding of the District Court.

The District Court awarded the plaintiff $540 damages. *Appendix* at 16. A trial court cannot award damages without a record to support the award. *Great Lakes Aircraft Co., Inc. v. City of Claremont*, 135 N.H. 270 (1992); *Bower v. Davis & Symonds Lumber Co.*, 119 N.H. 605, 609 (1979); *F.A. Larson Realty Co. v. Hayes*, 114 N.H. 501, 504 (1974). As above, the Court had no evidence before it on which to make such a finding. At most, the Court heard evidence as to the amount of the entrance fee, which was $307.50. *Transcript* at 3. Even if one adds $50 for the credit check, $25 the court allowed for a signature fee, *Appendix* at 16, and $25 for the small

claims court fees, *Appendix* at 6, (none of which are conceded by the defendant), the total expended by the plaintiff was $407.50. How the Court derived $540 from the record is a mystery to the defendant. Accordingly, the damage award must be reversed.

CONCLUSION

Based on the forgoing, the defendant requests that this court reverse the holding of the Portsmouth District Court.

Respectfully submitted,

Portsmouth Mobile Homes, Inc.
By its Attorney,

Law Office of Joshua L. Gordon

Dated: December 27, 2000

Joshua L. Gordon, Esq.
26 S. Main St., #175
Concord, NH 03301
(603) 226-4225

REQUEST FOR ORAL ARGUMENT AND CERTIFICATION

Counsel for Portsmouth Mobile Homes, Inc. requests that Attorney Philip R. Desfosses be allowed 15 minutes for oral argument.

I hereby certify that on December 27, 2000, a copy of the foregoing will be forwarded to Thomas Bunnell, N.H. Legal Assistance.

Dated: December 27, 2000

Joshua L. Gordon, Esq.
Law Office of Joshua L. Gordon
26 S. Main St., #175
Concord, NH 03301
(603) 226-4225