

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

STATE OF MAINE,)	
)	
Plaintiff)	
)	
v.)	VERIFIED COMPLAINT
)	(Temporary Restraining Order
)	and Preliminary and Permanent
GERARD BEGIN,)	Injunctions and Civil
d/b/a BEGIN'S MOBILE HOME)	Penalties Requested)
PARK,)	
)	
Defendant)	

INTRODUCTION

1. This action is brought by the State of Maine under the Unfair Trade Practices Act, 5 M.R.S.A. §§ 205-A -214 (1989 & Supp. 1990) and the Manufactured Housing Act, 10 M.R.S.A. c. 951 (1980 & Supp. 1990), to enjoin the Defendant from engaging in unfair and deceptive practices in the operation of a mobile home park and to obtain civil penalties.

PARTIES

2. Plaintiff, State of Maine, is a sovereign state and brings this action by and through its Attorney General, pursuant to 5 M.R.S.A. §§ 205-A -214 (1989 & Supp. 1990), the Maine Unfair Trade Practices Act, to protect the public by restraining the Defendant from engaging in unfair and deceptive trade practices and violations of mobile home park laws.

3. Defendant Gerard Begin is the owner and operator of Begin's Mobile Home Park located on Webster Corner Road, Sabattus, Maine. Pursuant to 10 M.R.S.A. § 9082 the Defendant is licensed to operate this mobile home park by the State Manufactured Housing Board.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 5 M.R.S.A. § 209 (Supp. 1990), 4 M.R.S.A. § 105 (Supp. 1990), and 10 M.R.S.A. § 9011(2).

STATUTORY BACKGROUND

5. Pursuant to 5 M.R.S.A. § 207 (1989) it is a violation of the Unfair Trade Practices Act to engage in unfair or deceptive acts or practices in the conduct of any trade or commerce in the State of Maine.

6. Pursuant to 5 M.R.S.A. § 209 (1989 & Supp. 1990) the Attorney General may seek an injunction and restitution for a violation of the Unfair Trade Practices Act. Also pursuant to § 209 the Attorney General is authorized to recover a civil penalty of up to \$10,000 for each intentional violation of the Unfair Trade Practices Act.

7. Pursuant to 10 M.R.S.A. § 9100 any violation of the statute regulating landlord and tenant mobile home park relationships is a per se violation of the Maine Unfair Trade Practices Act.

FIRST CAUSE OF ACTION
(Illegal Discrimination Against Children)

8. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 7 of this Complaint.

9. The Defendant has adopted rules and practices which have the effect of discriminating against tenants with children and prospective tenants with children, with the result that park tenants have been financially and emotionally injured. Among these practices are the following:

Because his name wasn't on original lease

a total of \$212; he complained to ME Human Rights Commission and

A. Charging a park tenant who recently had given birth to a new child to pay an additional \$30 per month rent because a child was deemed to be a "visitor" under park rules;

Charged Morgan \$120 a month "visitor" fee

B. Illegally prohibiting tenants leaving the park from selling their mobile homes to prospective park tenants with children;

Morgan Fournier: OK to sell it to couple 55 or older - Coleman

C. Adopting a \$10,000 park entrance fee for new tenants moving a mobile home into the due to the belief that no family with children could afford such an expensive entrance fee;

1990, OK semi-retired couple;

D. Turning down prospective tenants who wish to buy a mobile home in the park because they had children;

Morgan, Oct 1990

E. Attempting to prohibit any children from a particular part of the park; and

March 1990

F. Adopting a park rule that states that due to the park's waste discharge system the park must limit residents to no more than two persons in a mobile home at any given time, even though the Defendant is currently developing new park lots and attempting to attract additional park tenants.

55 or older, with children

10. For example, because of the Defendant's discrimination

5 M.R.S.A. § 4581 (1): number of occupants

against children, tenant Denise Fournier and her family have been unable to sell their mobile home. The Fourniers moved into a new home outside the park in July, 1990 and since then have been unsuccessfully attempting to sell their mobile home, which has remained in the Defendant's park. Since the Fourniers have moved out of their mobile home they have paid the Defendant \$1,400 in rent for their empty home.

can be limited if caused by "reasonable local, state or federal" restrictions

11. At least three park tenants have formally complained to State or federal agencies concerning the Defendant's discrimination against children.

12. The Defendant's actions are in violation of 10 M.R.S.A. § 9097(10), which prohibits mobile home park landlords from discriminating against children.

13. The Defendant's actions are also in violation of 10 M.R.S.A. § 9097(4), which prohibits park rules which are "unreasonable, unfair or unconscionable."

14. The Defendant's actions are also in violation of the Maine Human Rights Act, 5 M.R.S.A. § 4582, which prohibits discrimination based on "familial status".

15. The Defendant's violations of the Mobile Home Park statute, 10 M.R.S.A. § 9091-9100, are intentional.

16. The Defendant's conduct as described in this Cause of Action constitutes an unfair and deceptive act or practice in violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

SECOND CAUSE OF ACTION
(Illegal Eviction)

17. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 16 of this Complaint.

18. The Defendant denied tenant Gary Mongeau permission to have his fiancée and ^{her} minor child become permanent residents in his mobile home.

19. Instead, the Defendant has required Mr. Mongeau to pay each month a \$120 "visitors" fee from December, 1990, the date Mr. Mongeau's fiancée and son moved in.

20. The Defendant informed Mr. Mongeau more than once that if he complained to the Maine Human Rights Commission that the Defendant was discriminating against children that he would evict Mr. Mongeau.

21. On March 8, 1991 Mr. Mongeau formally complained to the Maine Human Rights Commission that the Defendant was discriminating against children.

22. On or about May, 1991 the Defendant served Mr. Mongeau with an eviction notice. The stated reason for this eviction was that Mr. Mongeau's fiancée and son had been park "visitors" for more than 90 days. However, the Defendant had not promulgated the park rule setting forth the 90 day limit on visitors until April 1, 1991.

23. The Defendant's eviction of Mr. Mongeau is in retaliation for Mr. Mongeau's complaint to the Maine Human Rights Commission and is prohibited by 10 M.R.S.A. § 9097(1-A), which prohibits a retaliatory eviction because the tenant has asserted a right granted by 10 M.R.S.A. § 9091-9100. *See Former affendant. she thought her son with was also retaliated right not to discriminate against children*

24. The Defendant's eviction of Mr. Mongeau is an intentional violation of 10 M.R.S.A. § 9097(10), which establishes a park tenant's right to be free from discrimination against children.

25. The Defendant's eviction of Mr. Mongeau as described in this Cause of Action constitutes an unfair and deceptive trade practice in violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

THIRD CAUSE OF ACTION
(Unsafe and Defective Mobile Home Park Lots)

26. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 25 of this Complaint.

27. The Defendant has constructed at least two park lots in so poor a manner that they are not suitable for the placement of a mobile home.

28. The Defendant rents these lots to tenants Gary Mongeau and Timothy Coleman, respectively.

29. The Mongeau lot does not meet the standards of the Building Code of the Town of Sabattus which requires, at a minimum, that a lot be constructed on a base of 18" of compacted gravel (see Appendix A).

30. As a result of the Defendant's faulty lot construction Mr. Mongeau's mobile home is regularly in need of re-leveling, at considerable cost to Mr. Mongeau. For example, in the spring of 1989, at the insistence of the Defendant, Mr. Mongeau hired the Defendant to re-level his mobile home. However, due to the improperly constructed park lot the mobile home is again sinking.

31. As a result of this poor lot construction Mr. Mongeau's mobile home is suffering from harmful wracking and stress so that it is reduced in value.

32. Tenant Coleman's lot is also poorly constructed. As a result his home is also regularly in need of re-leveling.

33. On May 20, 1991 the Defendant formally notified Mr. Coleman that because his home was not level he was in violation of park rules and that this could result in his eviction. As a result Mr. Coleman felt compelled to have his home re-leveled and on May 31, 1991 paid \$45 to a contractor for this service.

34. The Defendant's conduct as described in this Cause of Action constitutes an unfair and deceptive act or practice in violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

FOURTH CAUSE OF ACTION

(Breach of Warranty of Fitness for Human Habitation)

35. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 34 of this Complaint.

36. The Defendant has rented to tenant Gary Mongeau a park lot that is so poorly constructed that it is not suitable for placement of a mobile home.

37. The Defendant has so poorly constructed the Gary Mongeau park lot that the Mongeau mobile home is sinking into the ground and the mobile home is being structurally damaged.

38. As a result of this damage the Mongeau mobile home is unfit for human habitation.

39. The Defendant's failure to properly construct the Mongeau pad is a violation of the Mobile Home Park Warranty of Habitability, 10 M.R.S.A. § 9099(1).

40. The Defendant's conduct as described in this Cause of Action constitutes an unfair and deceptive act or practice in violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

FIFTH CAUSE OF ACTION

(Illegal Forced Removal of Homes From Park)

41. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 40 of this Complaint.

In Oct 1990 when Morgan told him he wanted to sell his

42. In at least five instances the Defendant has informed park tenants that upon sale of their mobile home the mobile home must be removed from the park.

home, Began's response: not to remove 55 or older

43. Pursuant to 10 M.R.S.A. § 9094(2), no mobile home park owner or operator may require a mobile home to be removed from the park except pursuant to a fair and reasonable rule setting forth standards for the condition of the mobile home.

no chancel of children

44. None of the mobile homes being forced to relocate upon sale violate any fair or reasonable park rule related to condition of the home.

if defects in Morgan's home - caused by leveling

45. The Defendant's conduct as described in this Cause of Action constitutes an unfair and deceptive act or practice in violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

lost 3 from Morgan's chance to sell

aesthetic appearance and

SIXTH CAUSE OF ACTION (Unreasonable, Unfair and Unconscionable Rules)

46. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 45 of this Complaint.

47. The Defendant's negligent construction of his lot pads has in at least two instances resulted in substantive damage to the mobile homes placed on those lots.

48. Park Rental Agreement 14 requires tenants to agree to defend (including payment of attorney's fees and court costs), indemnify and hold the Defendant harmless for any injury resulting from the tenant's use of the park premises, without regard as to whether injury was caused by the Defendant's negligence.

49. Park Rule XX states that the Defendant assumes no responsibility for the care and/or damage to resident's property, without regard to whether the damage was caused by the Defendant's own negligence.

50. Park Rental Agreement 14 and Park Rule XX are "unreasonable, unfair and unconscionable" and in violation of 10 M.R.S.A. § 9097(4). (See Appendix B.)

51. These park rules and rental agreements also have the effect of requiring tenants to waive the statutory rights granted mobile home park residents and therefore are in violation of 10 M.R.S.A. § 9097(7), which prohibits such waivers.

52. These park rules and rental agreements are also in violation of 10 M.R.S.A. § 9097(4), which subjects such rules and agreements to a general fairness standard, which states in part:

4. Rules. A mobile home park owner may adopt reasonable rules governing the conduct of tenants, if the rules are reasonably related to preserving the order and peace of other tenants in the mobile home park. No park rule may be unreasonable, unfair or unconscionable....

53. The Defendant's rules and regulations as described in this Cause of Action constitute unfair and deceptive trade practices in violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

SEVENTH CAUSE OF ACTION
(Selling Mobile Homes Without a License)

54. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 53 of this Complaint.

55. The Defendant, since February, 1988 has sold at least 13 new mobile homes to park tenants.

56. The Defendant has now set up two new mobile homes on park lots and placed signes indicating to the public these homes are for sale.

57. The Defendant advertises that he sells new mobile homes in the local daily newspapers.

58. The Defendant is not licensed by the State to sell new mobile homes, as required by 10 M.R.S.A. § 9021, Licenses, the Manufactured Housing Act.

59. The Defendant's attempts to sell new mobile homes without a license are in violation of 10 M.R.S.A. § 9008, Prohibited Practices.

60. The Defendant's conduct as described in this Cause of Action constitutes an unfair and deceptive practice in violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

RELIEF REQUESTED

WHEREFORE, Plaintiff State of Maine respectfully requests that this Court:

1. General Injunctive Relief

A. Declare that the Defendant's practices as set forth in Causes of Action One through Eight are violations of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

B. Issue a preliminary and permanent injunction pursuant to 5 M.R.S.A. § 209, the Maine Unfair Trade Practices Act, enjoining the Defendant, his agents, employees, assignees, independent contractors, or other persons acting for the Defendant or under his control from violating 10 M.R.S.A. c. 951, Manufactured Housing Act, 10 M.R.S.A. c. 953, Mobile Home Parks - Landlord and Tenant, and 5 M.R.S.A. § 207, the Maine Unfair Trade Practices Act.

C. Provide any park tenants injured by the Defendant's unfair trade practices equitable relief as authorized by 5 M.R.S.A. § 209, the Maine Unfair Trade Practices Act and 10 M.R.S.A. c. 953, Mobile Home Parks - Landlord and Tenant.

2. Illegal Discrimination Against Children (First and Second Causes of Action)

A. Order the Defendant to cease all discrimination against children, to cease rejecting prospective tenants due to the fact that they have children living with them, and to repeal Park Rule VII, which limits park tenants to no more than 2 persons to a mobile home.

B. Order the Defendant to cease eviction proceedings against Mr. Mongeau and to cease threatening to evict the Coleman family and the Fournier mobile home.

C. Order the Defendant to pay restitution to tenants Mongeau, the Colemans and the Fourniers for any rental or visitor fees paid to the Defendant as a result of illegal discrimination against children.

3. Relief For Unsafe and Defective Lots (Third and Fourth Causes Of Action)

A. Order the Defendant pursuant to 10 M.R.S.A. § 9097(1)(G) to relocate and install the Mongeau and Coleman mobile homes, at no expense to these tenants, on Begin Mobile Home Park lots that meet the requirements of the Manufactured Housing Board's Rule and the Sabattus mobile home park building code ordinance.

B. Declare that in the case of tenant Mongeau that the Defendant's failure to provide a suitable lot foundation is a breach of Warranty of Habitability in violation of 10 M.R.S.A. § 9099(1) and provide tenant Mongeau suitable equitable relief, including restitution.

4. Relief For Illegal Forced Removals of Homes From The Park (Fifth Cause of Action)

A. Order the Defendant to cease his current efforts to force mobile homes out of the park upon their sale to prospective park tenants.

5. Unreasonable, Unfair and Unconscionable Rules (Seventh Cause of Action)

A. Declare the agreements and rules listed in the Seventh Cause of Action of this Complaint to be unreasonable, unfair and unconscionable and in violation of 10 M.R.S.A. § 9097(4).

6. Selling Mobile Homes Without A License (Seventh Cause of Action)

A. Order the Defendant to cease selling mobile homes until he has been granted a license to do so, pursuant to 10 M.R.S.A. § 9021.

7. Civil Penalties

A. Order the Defendant, pursuant to 5 M.R.S.A. § 209, to pay civil penalties for intentional unfair trade practice violations.

B. Order the Defendant, pursuant to 10 M.R.S.A. § 9011, to pay civil penalties for violations of the Manufactured Housing Act, 10 M.R.S.A. c. 951. ✓

8. Suit Costs and Additional Equitable Relief

A. Order the Defendant to pay the costs of this suit and the investigation of the Defendant by the Attorney General. ✓

B. Grant such other relief as the Court deems just and equitable.

Dated: June 29, 1991

MICHAEL E. CARPENTER
Attorney General

STEPHEN L. WESSLER
Deputy Attorney General

James McKenna

JAMES A. MCKENNA
Assistant Attorney General
Consumer & Antitrust Division
State House Station 6
Augusta, Maine 04333
(207) 289-3661

VERIFICATION

Personally appeared the above-named James A. McKenna and subscribed and swore that the facts set forth in the foregoing Complaint are true and correct based on his own knowledge, information and belief, and to the extent they are based on information and belief, he believes them to be true and correct.

Dated: June 28, 1991

Before me,



~~Notary Public~~/Attorney at Law

STATE OF MAINE
KENNEBEC, SS.

REC'D & FILED
NANCY A. DESJARDIN

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. (CV-91-315)

DEC 19 1991

STATE OF MAINE,
Plaintiff

)
CLERK OF COURTS
KENNEBEC COUNTY

v.

GERARD BEGIN,
d/b/a BEGIN'S MOBILE HOME
PARK,

) CONSENT DECREE.
)
)
)
)

Defendant

Plaintiff, State of Maine, having filed the Complaint herein on June 28, 1991, and the Court having granted a Temporary Restraining Order against the Defendant on July 18, 1991, and the Plaintiff and Defendant having agreed to the entry of this Decree without trial or adjudication of any issue of fact or law raised by the Complaint and without any admission by Defendant with respect to such issues,

NOW THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law and upon the consent of the parties hereto, it is hereby ORDERED and DECREED as follows:

I. JURISDICTION

This Court has jurisdiction of the subject matter of this action. The Complaint states claims upon which relief may be granted against the Defendant under 5 M.R.S.A. § 207 (1989) and 10 M.R.S.A. C.953, Mobile Home Park, Landlord-Tenant statute.

II. RELIEF

1. The Defendant and all persons in active concert or participation with the Defendant are hereby permanently enjoined from:

A. Discriminating against children in the operation of the Defendant's park, including limiting residents to only two (2) persons per park lot and prohibiting a prospective tenant with children, or capable of having children, from purchasing a home in the park.

B. Evicting, or threatening to evict, park tenants for complaining about discrimination against children.

C. Refusing to offer park tenants an opportunity to have their home relocated elsewhere in the park at their expense if it becomes necessary pursuant to 10 M.R.S.A. § 9097(1)(G).

D. Requiring any park tenant to remove his or her mobile home from the park upon sale of the mobile home unless, pursuant to 10 M.R.S.A. § 9094(2)(A - F-2), the mobile home is in violation of a fair and reasonable park rule.

E. Arbitrarily refusing to accept as park tenants persons purchasing a mobile home already in the park. It is not an arbitrary rejection if the rejection is based on poor personel references or poor credit history.

F. Adopting and enforcing park rules that are unreasonable, unfair and unconscionable.

G. Selling new or used mobile homes without a license granted by the Manufactured Housing Board, pursuant to 10 M.R.S.A. § 9021.

Notwithstanding the above provisions the Defendant is not barred from causing the removal of a mobile home pursuant to 10 M.R.S.A. § 9094(2) (A - F-2), subject to the prohibition against retaliation, 10 M.R.S.A. § 9097 (1-A).

The Defendant is further ORDERED:

1. To keep for the 12 months following the date of this

decree a written record concerning any person who inquires or applies to become a park tenant. This written record shall contain the following information:

- A. The date of any inquiry or application;
- B. The name and address and phone of each person;
- C. If a person applies for tenancy in the park and is denied, the reasons why the application was denied (e.g., poor credit record).

2. Pursuant to 5 M.R.S.A. § 209 the Defendant is further ordered to pay the State's investigative and litigation costs of \$3,150. The Defendant shall pay these amounts to the State by May 1, 1992.

3. The Defendant is further ORDERED to provide restitution to tenant Denise Fournier for rent paid between March, 1990, and November, 1991, totaling \$2,940 and to not unfairly discourage prospective park tenants who wish to purchase the Fournier mobile home. The restitution shall be paid with 60 days from the date of this Decree.

III. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to the Decree to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction and implementation of this Decree, for the modification of or relief from any of the provisions hereof, including relief

necessitated by an inadequate septic system, and for the enforcement of compliance herewith, including punishment for violations of this injunction, pursuant to 5 M.R.S.A. § 209.

CONSENTED TO ON BEHALF OF THE
STATE OF MAINE BY:

Dated: November 19, 1991

James McKenna

JAMES A. MCKENNA
Assistant Attorney General
Consumer & Antitrust Division
State House Station 6
Augusta, Maine 04333
(207) 289-3661

CONSENTED TO BY THE DEFENDANT:

Dated: Dec 9-1991

Gerard Begin
GERARD BEGIN

It is hereby ORDERED and DECREED as set forth above.
Judgment shall enter in accordance with the above terms, which
are incorporated by reference herein.

DATED: 12-19-91

[Signature]
Justice, Superior Court

RELEASE

I, Denise Fournier, hereby withdraw my HUD discrimination complaint concerning Gerard Begin, d/b/a Begin Mobile Home Park.

DATED: November 6, 1991

Denise Fournier
DENISE FOURNIER