

No. SC84347

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IN THE  
SUPREME COURT OF MISSOURI

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CONSECO FINANCE SERVICING CORPORATION  
f/k/a GREEN TREE FINANCIAL SERVICING CORPORATION,  
JOHN C. WREN, JR. AND SHANNON WREN

Respondents,

v.

MISSOURI DEPARTMENT OF REVENUE,

Appellant.

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RESPONDENTS' BRIEF

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POINTS RELIED ON

- I. The trial court correctly declared Sections 700.525 through 700.541 R.S.Mo. unconstitutional because the statutory scheme violates the due process clause of the United States Constitution in that the security interests of lienholders are extinguished with no provision for a meaningful hearing and notice, and it requires rentals be redeemed as a precondition to stopping the issuance of the abandoned title.
- II. The trial court correctly declared Sections 700.525 through 700.541 R.S.Mo. unconstitutional because the issue was ripe and plaintiffs had standing to raise these claims in that they have a personal stake in the dispute.
- III. The trial court correctly declared Sections 700.525 through 700.541 unconstitutional because the statutory scheme violates the due process clause of the Constitution in that homes are taken with no provision for a meaningful hearing and notice, and it requires rentals be redeemed as a precondition to stopping the issuance of the abandoned title.
- IV. The trial court correctly declared Sections 700.525 through 700.541 unconstitutionally vague because they do not give a person fair notice of the confiscation of their property in that the definition of “abandoned,” and the remedies of owners and lienholders are so ambiguous that a person is not able to determine their meaning by common understanding and practices.
- V. The statutory scheme violates the equal protection clause of the United States Constitution in that the poor are unable to obtain the same judicial review as others

because rentals are required to be paid as a precondition to the issuance of an abandoned title.

## JURISDICTIONAL STATEMENT

This Circuit Court held that sections 700.525 through 700.541 R.S.Mo. (2000) are unconstitutional. This Court has exclusive jurisdiction pursuant to Article V, Section 3 of the Missouri Constitution. Mo. Const. Art. V, Sec. 3.

## STATEMENT OF FACTS

Conseco Finance Servicing Corp. f/k/a Green Tree Financial Servicing Corp. is a company which markets and originates loans in the manufactured housing industry. Supp. L.F. 2. In a typical transaction, Conseco will loan an individual money to purchase a manufactured home, and the individual will grant Conseco a security interest in the manufactured home. Supp. L.F. 2. Pursuant to Missouri law, Conseco's lien is noted on the certificate of title, and title is sent to Conseco, which retains the title until the loan is paid in full. Supp. L.F. 2.

John C. Wren, Jr., and Shannon Wren purchased a mobile home, and financed the purchase through Conseco. Supp. L.F. 1-14. The Wrens placed their home on property owned by a real estate investment company, Lakehurst Investments. Supp. L.F. 1-14.

Pursuant to sections 700.525 through 700.541 R.S.Mo., Lakehurst Investments applied with the Missouri Department of Revenue for title to the manufactured home owned by John C. Wren, Jr., and Shannon Wren, upon which Conseco had a lien. Supp. L.F. 1-14.

Upon receipt of the application from Lakehurst Investments, the Missouri Department of Revenue sent the Wrens a notice advising them that a real estate investment company, Lakehurst Investments, had filed the application. Supp. L.F. 11-12. The notice was sent to the address at which the manufactured home was located. Supp. L.F. 11-12. The notice provided as follows:

May 22, 2000

RE: 1984 FAIRMONT, IDENTIFICATION NUMBER S17123

Dear Manufactured Home Owner:

The Motor Vehicle Bureau was notified that on October 30, 1999, the manufactured home listed above was abandoned on property owned by Lakehurst Investments Inc at 4450 Burnau Dr Lot 90 House Springs MO. Accordingly, the Department of Revenue is required to notify the last titled owner and the lienholder(s) of record listed below of the landowner's right to obtain a title on the manufactured home, if the manufactured home is not redeemed as outlined herein.

Lienholder(s): Green Tree Financial Corp

THE OWNER OR LIENHOLDER MUST REDEEM THE MANUFACTURED HOME WITHIN 30 DAYS OF THIS NOTICE TO PROTECT THEIR INTEREST.

The owner may redeem the manufactured home by presenting proof of ownership and paying all rent owed to the landowner.

The lienholder may redeem the manufactured home, if titled in Missouri, by presenting a valid security agreement to the landowner and paying all rent owed to the landowner.

The owner or lienholder must notify this department within 30 days of this notice that the manufactured home was redeemed and submit a receipt issued by the landowner showing that all rent was paid.

Failure to redeem the manufactured home and notify this department will cause the Director to issue title in the name of the landowner.

If you have any questions concerning this matter, please contact (573) 751-4809.

The past-due rentals were not redeemed by either the Wrens or Conseco, and the Missouri Department of Revenue issued a title to Lakehurst Investments free and clear of any liens. Supp. L.F. 13.

Thereafter, Conseco and the Wrens filed suit against the Missouri Department of Revenue seeking injunctive and declaratory relief relating to the statutory scheme which allows for titles on abandoned manufactured homes to be issued to landowners. Supp. L.F. 1-14. Plaintiffs contend the statutory scheme is unconstitutional in that it does not contain adequate provision for notice and hearing, and is vague and ambiguous. Supp. L.F. 1-14. The Circuit Court of St. Louis County, Missouri held the statutes are unconstitutional because they take property with due process of law and the court granted a permanent injunction prohibiting the issuance of further titles pursuant to this statutory scheme. L.F. 50

## ARGUMENT

- I. **The trial court correctly declared Sections 700.525 through 700.541 R.S.Mo. unconstitutional because the statutory scheme violates the due process clause of the United States Constitution in that the security interests of lienholders are extinguished**

**with no provision for a meaningful hearing and notice, and it requires rentals be redeemed as a precondition to stopping the issuance of the abandoned title.**

A. The security interests of lienholders are extinguished

In its brief, Appellant erroneously asserts the statutory scheme preserves the security interests of lienholders. Appellant contends that “even if the lienholder elects to waive his claim to the home itself by taking no action, any new title is still subject to the lienholder’s security interest as specified in section 700.527 and as required by section 400.9-315 (Supp. 2001).” Section 700.527 of the statute provides that a real property owner takes possession and title to an abandoned mobile home “subject to the interest of any party with a security interest in the manufactured home.”

Factually, this is not accurate. The Missouri Department of Revenue has been issuing titles which are not subject to any security interest. One example of this is set forth in Plaintiff’s Second Amended Petition, which addresses Consecos security interest in a manufactured home owned by John C. Wren, Jr., and Shannon Wren.

Conseco had financed the purchase of a mobile home purchased by the Wrens, who located the mobile home on property owned by Lakehurst Investments. Lakehurst Investments applied for title, contending the mobile home was “abandoned.” The Department of Revenue issued a certificate of title to Lakehurst Investments and no lienholder was reflected on this certificate of title. Supp. L.F. 13.

Even if the Department was issuing titles to the landowner subject to the security interest of the lienholder, the security interest would be ineffective because it would not be perfected. In Missouri, evidence of ownership of a manufactured home is a certificate of

title issued by the Missouri Department of Revenue. See R.S.Mo. 700.320. An owner of a new or used manufactured home makes application to the Missouri Director of Revenue for a certificate of title in the same manner as a motor vehicle. See R.S.Mo. 700.320.

A lien or encumbrance on a manufactured home is perfected by noting on the application for certificate of title or ownership the name and address of the lienholder and the date of his security agreement. See R.S.Mo. 700.350. A certificate of title to a manufactured home issued by the Director of Revenue is to be mailed or otherwise delivered to the first lienholder named in such certificate, or if no lienholder is named, to the owner named therein. See R.S.Mo. 700.355. As evidenced by the certificate of title issued to Lakehurst Investments, Conseco is not listed as a lienholder and therefore Lakehurst Investments is free to convey and sell the Wrens' home free and clear of any liens.

Furthermore, a security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, but only if the debtor has rights in the collateral. R.S.Mo. 400.9-203 (2001). No security agreement exists between the landowner and the lienholder to allow the attachment of the security interest. In addition, the debtor no longer has any rights in the collateral or the power to transfer rights in the collateral to a secured party. Accordingly, Appellant's entire premise that the security interest is not affected is flawed.

B. The statutory scheme has no provision for a meaningful hearing

The Due Process Clause of the Fourteenth Amendment of the United States Constitution guarantees that "[n]o person shall ... be deprived of life, liberty, or property,

without due process of law.”<sup>1</sup> The general rule is that individuals must receive notice and an opportunity to be heard before the Government deprives them of property. United States v. James Daniel Good Real Property, 510 U.S. 43, 48 (1993).

The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decisionmaking when it acts to deprive a person of his possessions. Fuentes v. Shevin, 407 U.S. 67, 80-81 (1972). The purpose of this requirement is not only to ensure abstract fair play to the individual. Id. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment – to minimize substantively unfair or mistaken deprivations of property, a danger that is especially great when the State seizes goods simply upon the application of and for the benefit of a private party. Id. So viewed, the prohibition against the deprivation of property without due process of law reflects the high value, embedded in our constitutional and political history, that we place on a person’s right to enjoy what is his, free of governmental interference. Id.

The United States Supreme Court has consistently held that some kind of hearing is required at some time before a person is finally deprived of his property interests. Memphis Light, Gas and Water Division v. Craft, 436 U.S. 1, 19 (1978). A hearing, in its very essence, demands that he who is entitled to it shall have the right to support his allegations by argument, however brief, and, if need be, by proof, however informal. Id. at 18.

If the right to notice and a hearing is to serve its full purpose, then it is clear that it must be granted at a time when the deprivation can still be prevented. Fuentes v. Shevin, 407 U.S.

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<sup>1</sup> Similarly, Article I, Section 4, of the Missouri Constitution provides “[t]hat no person shall be deprived of life, liberty, or property without due process of law.”

67, 81-82 (1972). At a later hearing, an individual's possessions can be returned to him if they were unfairly or mistakenly taken in the first place. Id. Damages may even be awarded to him for the wrongful deprivation. Id. But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has occurred. Id. The United States Supreme Court has not embraced the general proposition that a wrong may be done if it can be undone. Id.

Although the United States Supreme Court has held that due process tolerates variances in the form of a hearing "appropriate to the nature of the case" and "depending upon the importance of the interests involved and the nature of the subsequent proceedings (if any)," the Supreme Court has traditionally insisted that, whatever its form, opportunity for hearing must be provided before the deprivation at issue takes effect. Id. That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing before he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event. Id.

In Graff v. Nicholl, 370 F.Supp. 974 (D.C. Ill 1974), the court addressed these hearing requirements relating to "abandoned" motor vehicles. In that case, an action was brought to challenge the validity of certain Illinois statutory provisions and related ordinances authorizing law enforcement agencies to seize and dispose of "abandoned" motor vehicles. In declaring the statute unconstitutional, the court noted:

State and local governments have valid interests in the economic and expeditious resolution of questions involving the disposition of apparently abandoned motor

vehicles. Nevertheless, where official action seriously interferes with property rights and the validity and reasonableness of that action may be open to question, and there is no need for immediate action, due process requires a prior hearing at which the vehicle owner may contest the planned action. The Supreme Court has emphatically rejected the argument that the cost, in time, effort, and expense, of holding a prior hearing constitutes a legitimate justification for ignoring this aspect of Fourteenth Amendment protections. See, e.g., Fuentes v. Shevin, supra, 407 U.S. at 90-91 n. 22, 92 S.Ct. 1983, 32 L.Ed.2d 556. Bell v. Burson, supra, 402 U.S. at 540-541, 91 S.Ct. 1586, 29 L.Ed.2d 90; Goldberg v. Kelly, supra, 397 U.S. at 261, 90 S.Ct. 1011.

Graff at 984-85.

The court further stated:

The statute and ordinance also run afoul of the Constitution in their requirement that towing and storage charges be paid as a precondition to the release of an abandoned title, regardless of whether the owner had been charged with the misdemeanor of abandonment, or charged but acquitted. As demonstrated by this case, fees ... may have to be paid without an opportunity, either judicial or administrative, to challenge the validity of the abandonment presumption. Such a scheme breaches fundamental fairness and further deprives vehicle owners of their property without due process of law.

Graff at 985.

Similarly, in Nolt v. Isadore, 590 F.Supp 518 (Alaska 1984), a vessel owner brought action against a city and others, including the harbor master that was owed moorage fees, relating to the city's seizure and impoundment of a vessel that allegedly had been abandoned. The court held that the impoundment statute challenged was constitutionally defective because there was "no provision for a meaningful hearing even after seizure." Nolt at 522. The court noted that the ordinance provided no procedure to assure reliability that the determination that impoundment was justified. Id. The only procedure to recover the vessel was to "redeem the boat by cash payment of all charges." Id. The court held that this remedy was insufficient as the government interest at stake simply appeared "to avoid the inconvenience and expense of a prompt hearing to establish probable cause for the impoundment of the vehicle." Id.

In this case, the statutory scheme has no provision for a hearing to determine the most fundamental of issues, such as whether the manufactured home was abandoned, whether rentals are owed, etc. Section 700.525 R.S.Mo. of the statutory scheme defines "abandoned" as:

a physical absence from the property, and either:

- (a) Failure by a renter of real property to pay any required rent for fifteen consecutive days, along with the discontinuation of utility service to the rented property for such period; or
- (b) Indication of or notice of abandonment of real property rented from landlord.

Under the current scheme, a landowner may be owed \$10 in disputed rent, consider the manufactured home "abandoned," and file an application for abandoned title. The Department of Revenue then sends out a notice to the owner of the home, requiring:

THE OWNER OR LIENHOLDER MUST REDEEM THE MANUFACTURED HOME WITHIN THIRTY DAYS OF THIS NOTICE TO PROTECT THEIR INTEREST

....

The lienholder may redeem the manufactured home, if titled in Missouri, by presenting a valid security agreement to the landowner and paying all rent owed to the landowner.

The owner or lienholder must notify this department within 30 days of this notice that the manufactured home was redeemed and submit a receipt issued by the landowner showing all rent was paid. Failure to redeem the manufactured home and notify this department will cause the Director to issue title.

The notice does not allow for nor provide for any hearing to dispute such rudimentary issues as to whether the home has been “abandoned,” whether the rent is even owed, etc. Instead, the Department of Revenue requires the rentals be paid within thirty days of the notice. If the homeowner or lienholder fails to pay the rentals, the owner of the manufactured home loses his residence and remains liable on loan payments for the purchase of the manufactured home. The lienholder also loses its collateral securing the loan. Clearly, this is inequitable and an unconstitutional taking of property.

C. This statutory scheme does not provide for adequate notice

In addition to the lack of a hearing, the statutory provisions as to notice are clearly inadequate and do not comport with due process requirements of the Fourteenth Amendment. Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy

that right they must be notified. Fuentes v. Shevin, 407 U.S. at 80. The right to a hearing is meaningless without notice. Walker v. Hutchinson, 352 U.S. 112, 115 (1956). Notice is required before property interests are disturbed, before assessments are made, and before penalties are assessed. Id. Notice is required in a myriad of situations where a penalty or forfeiture might be suffered for mere failure to act. Lambert v. California, 355 U.S. 225, 228 (1957), mod. and rehearing denied, 355 U.S. 937 (1958).

The prevailing standard regarding the constitutional adequacy of notice was stated in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950):

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information and it must afford a reasonable time for interested to make their appearance. But if with regard for the practicalities and peculiarities of the case these conditions are reasonably met the constitutional requirements are satisfied. The criterion is not the possibility of conceivable injury, but the just and reasonable character of the requirements, having reference to the subject with which the statute deals.

In this case, the notice requirements required under the Fourteenth Amendment clearly are not met. The notice being sent to the owner and lienholder is clearly defective for a number of reasons, including the following:

1. The notice does not notify either the owner or lienholder of an administrative procedure to contest the allegations in the notice. The failure to provide notice reasonably calculated to apprise a party of the availability of an administrative procedure to consider their complaint, and the failure to afford the party an opportunity to present a complaint to a designated person empowered to review such disputes deprives the parties of an interest in property without due process of law. See Memphis Light, Gas and Water Division v. Craft, 436 U.S. 1, 21 (1978); see also Fell v. Armour, 355 F. Supp. 1319, 1329 (M.D. Tenn 1972) (as to forfeiture “the notice must afford the owner seeking recovery of his vehicle an opportunity to present his objections to the forfeiture, the notice must necessarily state the reasons for the seizure and the procedure by which he may seek recovery of his vehicle, including the time period in which he must present his claim for recovery, and the penalty for failure to file within the time period.”)

2. The statute and notice also run afoul of the Constitution in their requirement that rental charges be redeemed as a precondition to stopping the issuance of the abandoned title. Neither the owner or lienholder is allowed to contest the most fundamental of issues, e.g., whether the manufactured home is in fact “abandoned” before making these payments. Such a scheme breaches fundamental fairness and further deprives vehicle owners of their property without due process of law.

3. The notices sent by the Department of Revenue do not even state the amount of the rentals required to redeem the manufactured home. It simply requires “paying all rent owed to the landowner.”

4. The notices are also defective in that the Department of Revenue is sending the notice to the address of the manufactured home owner that has been allegedly abandoned, knowing that the owner of the manufactured home will not receive the notice. When the state knows that notice by mail will be ineffective, more extensive forms of notice may be required. See, e.g., Robinson v. Hanrahan, 409 U.S. 38 (1972) (notice of forfeiture procedure was defective because mailed to an address known by the state to be inaccurate as appellant was in county jail); Covey v. Town of Somers, 351 U.S. 141 (1956) (mailed notice to a taxpayer known to be incompetent and incapable of understanding such notices was insufficient to afford her notice of a foreclosure sale.)

Thus, the statutory scheme and the actions of the Department of Revenue clearly are unconstitutional because the notice provisions are inadequate.

**II. The trial court correctly declared Sections 700.525 through 700.541 R.S.Mo. unconstitutional because the issue was ripe and plaintiffs had standing to raise these claims in that they have a personal stake in the dispute.**

Appellant improperly asserts that no issues regarding homeowners were properly before the court, and Conseco does not have standing to raise this issue before the court. This argument has no basis in fact or law as the Wrens are party-plaintiffs in this case, and both the Wrens and Conseco have a significant stake in this matter.

Reduced to its essence, standing roughly means that the parties seeking relief must have some personal interest at stake in the dispute, even if that interest is attenuated, slight or remote. Ste. Genevieve School District R-II, et al v. Board of Aldermen of the City of Ste. Genevieve, 66 S.W.3d 6 (Mo. 2002). In the context of an action for declaratory judgment,

Missouri courts require that the plaintiff have a legally protectable interest at stake in the outcome of the litigation. Id. A legally protectable interest exists if the plaintiff is directly and adversely affected by the action in question or the plaintiff's interest is conferred by statute. Id.

John C. Wren, Jr. and Shannon Wren are party plaintiffs in this case and were owners of a manufactured home referenced in Plaintiffs' Second Amended Petition. Accordingly, Appellant's argument that no issues regarding homeowners were properly before the trial court is without merit.

Appellant further asserts that there was absolutely no evidence to support the trial court's judgment that the statutes deny manufactured homeowners due process. This matter was submitted to the trial court on briefs, and this issue was briefed by both parties.

Finally, Conseco had standing to bring this action as it is a lienholder. By losing its collateral, its interests clearly are at stake. Accordingly, this argument is also without merit.

**III. The trial court correctly declared Sections 700.525 through 700.541 unconstitutional because the statutory scheme violates the due process clause of the Constitution in that homes are taken with no provision for a meaningful hearing and notice, and it requires rentals be redeemed as a precondition to stopping the issuance of the abandoned title.**

As with lienholders, the statutory scheme violates the due process clause because homes are taken with no provision for a meaningful hearing. Instead, upon receipt of an application from the landowner, the Department of Revenue sends out a notice to the owner of a home, requiring:

THE OWNER OR LIENHOLDER MUST REDEEM THE MANUFACTURED HOME  
WITHIN THIRTY DAYS OF THIS NOTICE TO PROTECT THEIR INTEREST

The owner may redeem the manufactured home, if titled in Missouri, by presenting a valid security agreement to the landowner and paying all rent owed to the landowner.

....

The owner or lienholder must notify this department within 30 days of this notice that the manufactured home was redeemed and submit a receipt issued by the landowner showing all rent was paid.

Failure to redeem the manufactured home and notify this department will cause the Director to issue title.

Under the current statutory scheme, an owner of a manufactured home that owes \$10 in back rent could take a three-week vacation, and lose a residence worth \$50,000. The current scheme provides that a manufactured home is “abandoned” if there is “a physical absence from the property” and “[i]ndication of or notice of abandonment or real property rented from a landlord.” See R.S.Mo. Section 700.525 (2000). Thus, a three-week vacation would meet this definition of “abandoned” under the statute.

As with lienholders, the statutory scheme has no provision for a hearing to determine the most fundamental of issues, such as whether the manufactured home was abandoned, whether rentals are owed, etc. Clearly, this is inequitable and an unconstitutional taking of property.

**IV. The trial court correctly declared Sections 700.525 through 700.541 unconstitutionally vague because they do not give a person fair notice of the confiscation of their property in that the definition of “abandoned,” and the remedies of owners and lienholders are so ambiguous that a person is not able to determine their meaning by common understanding and practices.**

It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Cocktail Fortune, Inc. v. Supervisor of Liquor Control, 994 SW2d 955, 957 (Mo. en banc). The void for vagueness doctrine ensures that laws give fair and adequate notice of proscribed conduct and protects against arbitrary and discriminatory enforcement. Id. The test in enforcing the doctrine is whether the language conveys to a person of ordinary intelligence a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. Id. However, neither absolute certainty nor impossible standards of specificity are required in determining whether terms are impermissibly vague. Id. Moreover, it is well established that “if the law is susceptible of any reasonable and practical construction which will support it, it will be held valid, and ... the courts must endeavor, by every rule of construction, to give it effect.” Id. Finally, courts employ greater tolerance of enactments with civil rather than criminal penalties because of the consequences of imprecision are qualitatively less severe. Id.

In this case, the statutory scheme is ambiguous because, among other things, it does not adequately define “abandoned” and has conflicting provisions relating to the treatment of lienholders.

Section 700.525 R.S.Mo. (2000) of the statute defines “abandoned” as:

a physical absence from the property, and either:

- (a) Failure by a renter of real property to pay any required rent for fifteen consecutive days, along with the discontinuation of utility service to the rented property for such period; or
- (b) Indication of or notice of abandonment of real property rented from a landlord.

Arguably, if an owner of a manufactured home leaves on a three-week vacation, this may constitute an abandonment under the statute. Clearly, this definition is so ambiguous that a person is not able to determine the proscribed conduct when measured by common understanding and practices.

Similarly, the statutory scheme is vague in its application to lienholders. Section 700.527, which is the core of the statutory scheme, provides:

1. If a person abandons a manufactured home on any real property owned by another who is renting such real property to the owner of the manufactured home, and such abandonment is without the consent of the owner of the real property, the owner of the real property may seek possession of and title to the manufactured home in accordance with the provisions of sections 700.525 to 700.541.

The phrase “subject to the interest of any party with a security interest in the manufactured home” was added to the statutory scheme in 1995. Other parts of the statute confirm that the interests of a secured party are not affected. For example, Section 700.530 provides:

The provisions of sections 700.525 to 700.539 shall not affect the right of a secured party to take possession of, and title to, a manufactured home pursuant to section 400.9-503 R.S.Mo., section 700.386 or otherwise as allowed by contract or law.

Other provisions of the statutory scheme, however, conflict with 700.527 and 700.530.

For example, Section 700.533 provides:

The owner of such manufactured home or the holder of a valid security interest therein which is in default may claim title to it from the landlord seeking possession of the manufactured home upon proof of ownership or valid security interest which is in default and payment of all reasonable rents due and owing to the landlord.

Section 700.535 further provides:

If the manufactured home is titled in Missouri, the valid owner of the manufactured home or the holder of a valid security interest therein may voluntarily relinquish any claim to the manufactured home by affirmatively declaring such relinquishment or by failing to respond to the notice required by section 700.531 within thirty days of the mailing or delivery of such notice by the director of revenue.

Yet, Section 700.537 addresses the rights of a lienholder in a different fashion, as it provides:

The lienholder of an abandoned manufactured home may repossess an abandoned manufactured home by notifying by registered mail, postage prepaid, the owner

if known, and any lienholders or record, at their last know addresses, that application for a certificate of title will be made unless the owner or lienholder of record makes satisfactory arrangements with the owner of real property upon which such abandoned manufactured home is situated within thirty days of the mailing of the notice. This notice shall be supplied by the use of a form designed and provided by the director of revenue.

Under the statutory scheme, a lienholder is unable to determine its rights and duties under the statute. Accordingly, the statutory scheme is impermissibly vague.

**V. The statutory scheme violates the equal protection clause of the United States Constitution in that the poor are unable to obtain the same judicial review as others because rentals are required to be paid as a precondition to the issuance of an abandoned title.**

The Fourteenth Amendment to the United States Constitution prohibits a state from denying “any person within its jurisdiction the equal protection of the laws.”<sup>2</sup>

Equal protection of the law does not exist if the kind of appeal a man enjoys depends on the amount of money he has. See, e.g. Douglas v. California, 372 U.S. 353 (1963). On numerous occasions, the United States Supreme Court has struck down financial limitations on the ability to obtain judicial review. Williams v. Shaffer, 385 U.S. 1037, 1039 (1967). The Supreme Court has recognized that the promise of equal justice for all would be an empty phrase for the poor, if the ability to obtain judicial relief were made to turn on the length of

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<sup>2</sup> Similarly, Article I, Section 2, of the Missouri Constitution provides “that all persons are created equal and are entitled to equal rights and opportunities under the law.”

a person's purse. Id. The Equal Protection Clause of the Fourteenth Amendment is not limited to criminal prosecutions. Id. Its protections extend as well to civil matters. Id.

In this case, the statute requires that all persons pay the rentals owed as a precondition to stopping the issuance of an abandoned title. More affluent persons may be able to pay the charges, and regain their residences, but indigents may be deprived permanently of their property. This is a particularly large concern in this setting because manufactured homes typically are purchased by less affluent people. Accordingly, the statute also violates the Equal Protection Clause of the United States Constitution.

### **CONCLUSION**

The statutory scheme has no provision for a meaningful hearing and notice for obtaining titles to "abandoned" manufactured homes, and it is so ambiguous that a person is not able to determine its meaning by common understanding and practices. In addition, it improperly requires rentals be redeemed as a precondition to the issuance of the abandoned title, which does not allow for the poor to obtain the same judicial review as others. Thus, the trial court correctly held the statutes are unconstitutional, and the judgment of the trial court should be affirmed.

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CERTIFICATE OF SERVICE

I hereby certify that two copy and a diskette of the foregoing was sent via U.S. Mail, postage prepaid, this \_\_\_\_\_ day of August, 2002 to:

Charles W. Hatfield, Assistant Attorney General  
Supreme Court Building  
P.O. Box 899  
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I hereby certify that a copy of the foregoing was sent via U.S. Mail, postage prepaid, this \_\_\_\_\_ day of August, 2002 to:

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Respondents' Brief:

- \* complies with the type-volume limitation;
- \* contains 6392 words and 686 lines of proportional-spaced type;
- \* the word processing software used to prepare the Brief was WordPerfect 10.0; and
- \* the 3" computer diskette of the Respondents' Brief being filed herewith has been scanned for viruses and is virus-free.

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