IN THE SUPREME COURT OF THE STATE OF MISSOURI

No. SC84347

CONSECO FINANCE SERVICING CORPORATION
f/k/a GREEN TREE FINANCIAL SERVICING CORPORATION,

Respondent,

v.

MISSOURI DEPARTMENT OF REVENUE,

Appellant.

Appeal from the Circuit Court of St. Louis County
Honorable Kenneth M. Romines
Circuit Judge

BRIEF OF AMICUS CURIAE
JEFFERSON COUNTY MANUFACTURED HOUSING ASSOCIATION

JAMES P. GAMBLE, L.L.C.
James P. Gamble #24594
8909 Ladue Road
St. Louis, Missouri 63124
314/991-4999
314/991-2413 (facsimile)

Attorney for Amicus Curiae

TABLE OF CONTENTS

SUMMARY OF AMICUS CURIAE 2

POINT RELIED ON

THE CIRCUIT COURT ERRED IN HOLDING §§ 700.525 TO 700.541 UNONSTITUTIONAL, BECAUSE THE STATUTE DOES NOT OFFEND DUE PROCESS, IN THAT THE STATUTE PROVIDES FOR ADEQUATE NOTICE AND OPPORTUNITY TO BE HEARD AND IS AN EFFECTIVE MEANS TO PREVENT LENDERS FROM LEAVING ABANDONED MANUFACTURED HOMES IN COMMUNITIES WITHOUT PAYMENT OF RENT. 2

ARGUMENT 3

CONCLUSION 8

CERTIFICATES 8

Jefferson County Manufactured Housing Association (Amicus Curiae) submits this brief as amicus curiae in support of Appellant in this matter.

SUMMARY OF AMICUS CURIAE

Amicus Curiae is an unincorporated association of 26 owners and operators of manufactured home communities located in Jefferson County, Missouri.[1] The statute at issue, §§ 700.525 to 700.541,[2] provides a means to clear title to manufactured homes that their owners have abandoned. Owners and operators of manufactured home communities have an interest in the statute because abandoned manufactured homes create a burden on their communities, and the statute provides a means to alleviate that burden.

POINT RELIED ON

THE CIRCUIT COURT ERRED IN HOLDING §§ 700.525 TO 700.541 UNONSTITUTIONAL, BECAUSE THE STATUTE DOES NOT OFFEND DUE PROCESS, IN THAT THE STATUTE PROVIDES FOR ADEQUATE NOTICE AND OPPORTUNITY TO BE HEARD AND IS AN EFFECTIVE MEANS TO PREVENT LENDERS FROM LEAVING ABANDONED MANUFACTURED HOMES IN COMMUNITIES WITHOUT PAYMENT OF RENT.

§§ 700.350 *et seq*.

§§ 700.525 to 700.541

---

[1]A membership roster is attached to this Brief as Appendix 1.

[2]Unless otherwise indicated, statutory citations are to the Revised Statutes of Missouri currently in force.

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950)

Smith v. Coffey, 37 S.W.3d 797 (Mo. banc 2001)

Wollard v. City of Kansas City, 831 S.W.2d 200 (Mo. banc 1992)

Elder v. Delcour, 269 S.W.2d 17 (Mo. banc 1954)

Varble v. Whitecotton, 190 S.W.2d 244 (Mo. banc 1945)

Green Tree Financial Servicing Corp. v. Young, 515 S.E.2d 223 (N.C. App. 1999)

ARGUMENT

The members of Amicus, and others similarly situated throughout the state, provide land for housing to a significant number of Missouri residents. According to U.S. Census data, manufactured homes account for an estimated 192,415 housing units in the state, or 7.9 percent of the total—second only to detached single-family homes. 2000 Census, Profile of Selected Housing Characteristics: 2000, Missouri, Table QT-04, U.S. Department of Commerce, Bureau of the Census; *Varble v. Whitecotton*, 190 S.W.2d 244, 246 (Mo. banc 1945) (Supreme Court will take judicial notice of the official records of the census). Many of those homes are located in manufactured home communities.

None of Amicus' members, nor anyone else similarly situated, was a party to the proceedings in the Circuit Court. The Circuit Court, without holding an evidentiary hearing on Respondent's factual allegations, found that §§ 700.525 to 700.541 violated the due process clause of the U.S. Constitution and were impermissibly vague, and the Court enjoined their further administration. In so holding, the Circuit Court erred, to the detriment of the owners and operators of manufactured home communities.

The land on which such communities are located is typically improved with streets, concrete pads for homes, parking pads, and water pipes, sewer lines, and electrical wiring to each home site. Community owners furnish and maintain those improvements. Owners of manufactured homes pay rent to place their homes on the concrete pads. The economic viability of these communities depends on the homeowners' continuous payment of rent, without which community owners can not maintain desirable communities and earn reasonable returns on their investments. The judgment of the Circuit Court, if allowed to stand, threatens that economic viability, because the judgment deprives community owners of an effective means to collect rent from lenders, such as Respondent (Legal File [L.F.] at 14), whose borrowers have defaulted and abandoned their homes. If rents do not produce a reasonable return on investment, people will not improve and maintain real estate for manufactured home communities.

Financing the purchase of a manufactured home differs from financing the purchase of all other housing, because a manufactured home is not fixed to real estate and therefore is personalty. The lender takes a lien on the home to secure the purchaser's debt, §§ 700.350 *et seq*., but has no interest in the land on which the home is placed. For homes located in manufactured home communities, the community owner enters into a contract with the homeowner, providing for the payment of rent in return for the use of the land on which the home is placed. In the event of a homeowner's default on his or her obligation to the lender, the lender has no contractual duty to the community owner, and is free to leave the abandoned home in place. In that event, the community owner is burdened with the abandoned home, which is subject to burglary or vandalism and

therefore is potentially an attractive nuisance for area children and an eyesore. Abandoned homes generally degrade the community.

Abandoned homes are in the lender's control, whether or not foreclosure has occurred. If the lender does not remove an abandoned home from the community and does not pay rent to the community owner, then the lender is imposing the burden of that home on the community owner without compensation. The statute at issue provides a means for community owners to seek relief in such situations. The Circuit Court has taken away that means without hearing from the persons most affected.

Sections 700.525 to 700.541 provide a procedure for a community owner to take possession of and title to an abandoned home. The owner must file an application and affidavit with the Director of Revenue. § 700.527.2. The Director must give notice to the homeowner and the lender(s). § 700.531. The homeowner or the lender(s) may defeat the community owner's request for possession and title by proving ownership and paying the reasonable rent due. § 700.533. Otherwise, if the owner has requested a title and has complied with the statute, the Director shall issue a new certificate of title to the owner. § 700.530. A title issued to the owner is subject to the lender's security interest, if the lender has paid the reasonable rent due. §§ 700.527.1, 700.530, 700.533. If the lender has affirmatively relinquished its rights or failed to respond to the Director's notice, the title

issued to the owner is free from the lender's security interest. § 700.535.[3] Fundamentally, this statutory scheme forces a lender to fish or cut bait—either to pay the community owner's reasonable rent if the lender wishes to leave the home in place and preserve its lien or to allow the community owner to take over control of the home that was abandoned on his or her property.

The general assembly did not authorize the retitling of abandoned manufactured homes in a vacuum. It acted to prevent the appropriation, without compensation, of the use of community owners' property. Without a mechanism for retitling, community owners will unfairly bear a financial burden when lenders' underwriting decisions (which community owners do not influence) turn out to have been unwise.

This is not a trivial problem for community owners. This Court may take judicial notice of the fact that bankruptcy filings are markedly increasing. *Elder v. Delcour*, 269 S.W.2d 17, 19 (Mo. banc 1954) (Courts may take judicial notice of matters of common knowledge). Inevitably, some of those filers are manufactured home owners. And clearly, large numbers of consumers outside of bankruptcy are unable to meet their obligations as they come due. To the extent that Respondent is leaving abandoned homes in

[3]Respondent ignores this provision (L.F. at 13-25), contrary to the well established principle of statutory construction that all provisions of a statute must be given effect. *E.g.*, *Wollard v. City of Kansas City*, 831 S.W.2d 200, 203 (Mo. banc 1992).

communities without payment of rent,[4] Respondent is simply appropriating the use of those communities for itself. The fact that Respondent is maintaining this action indicates that Respondent is doing exactly that, since payment of reasonable rents due is the only burden the statute places on Respondent if Respondent wishes to maintain control of an abandoned home.

Respondent's position is that the statute in question—§§ 700.525 to 700.541—confiscates Respondent's property without due process. Respondent is telling the story backwards. The statute is the only effective tool to prevent Respondent and similarly situated lenders from confiscating the use of community owners' property without compensation. The Circuit Court erred in finding that notice under the statute is inadequate, particularly in light of the fact that Respondent does not allege that it has not received the Director of Revenue's notices. To the contrary, Respondent clearly has received those notices. Due process requires only that notice be reasonably calculated in the circumstances to inform interested parties and give them an opportunity to present their objections. *Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306, 314 (1950). Sections 700.525 to 700.541 meet that standard.

There is a strong presumption that statutes are constitutional. Courts will not invalidate a statute "unless it *clearly and undoubtedly* contravenes the constitution and *plainly and palpably* affronts fundamental law embodied in the constitution." *Smith v.*

---

[4]This appears to be Respondent's practice. *See, Green Tree Financial Servicing Corp. v. Young*, 515 S.E.2d 223 (N.C. App. 1999).

Coffey, 37 S.W.3d 797, 800 (Mo. banc 2001) (emphasis added; quotation marks and citations omitted). Respondent did not meet that burden in the Circuit Court.

CONCLUSION

The Circuit Court erred in finding §§ 700.525 to 700.541 contrary to the U.S. Constitution and enjoining further administration of the statute. For the foregoing reasons, in addition to those advanced by Appellant, this Court should reverse the judgment of the Circuit Court and order the Court to enter judgment upholding the statute.

Respectfully submitted,

JAMES P. GAMBLE, L.L.C.

_____

James P. Gamble #24594
Attorney for Amicus Curiae
8909 Ladue Road
St. Louis, Missouri 63124
314/991-4999
314/991-2413 (facsimile)

CERTIFICATES

The undersigned certifies that:

1. One complete copy of the foregoing Brief of Amicus Curiae and one floppy disk as required by Mo. Rule 84.06(g) were served on each of Douglas E. Nelson, Chief of Staff, and Charles W. Hatfield, Assistant Attorney General, Attorneys for Appellant, Broadway State Office Building, 221 West High Street, 8th Floor, P.O. Box 899, Jefferson City, Missouri 65102 and David G. Wasinger, Randall T. Oettle, and Rebecca A. Nickelson, Murphy Wasinger, L.C., Magna Place, Suite 550, 1401 South Brentwood Boulevard, St. Louis, Missouri 63144, by first-class mail, postage prepaid, this 27th day of June, 2002.

2. The foregoing Brief of Amicus Curiae complies with the limitations contained in Mo. Rule 84.06(b).

3. In reliance on the word count of Microsoft Word 97, the word-processing system used to prepare the brief, the number of words in the foregoing Brief of Amicus Curiae—excluding the cover, these certificates, signature blocks, and appendix—is 1,620.

4. The undersigned has scanned the floppy disk filed with the foregoing Brief of Amicus Curiae for viruses, using McAfee VirusScan w/ SP (v4.5.0534, virus definition 4.0.4203), and in reliance on that scan, that disk is virus-free.

_____

James P. Gamble #24594
Attorney for Amicus Curiae
8909 Ladue Road
St. Louis, Missouri 63124
314/991-4999
314/991-2413 (facsimile)

.111

Appendix 1

Brief of Amicus Curiae Jefferson County Manufactured Housing Association

Conseco Finance Servicing Corporation, Respondent

v.

Missouri Department of Revenue, Appellant

Case No. SC84347

Membership of Amicus Curiae

Dale Atchely, High Ridge, Missouri

Robert and Judy Bellestri, Fenton, Missouri

Marie Belleville, Fenton, Missouri

Howard and Lois Brewer, Arnold, Missouri

Tom and Joyce Cook, Cape Girardeau, Missouri

Cort Dietz, Imperial, Missouri

Richard and Dianna Fine, Roger and Fran Koch, St. Louis, Missouri

Robert Govreau, Festus, Missouri

Dick King, Fenton, Missouri

Roger and Dorless Lehman, Fenton, Missouri

Leroy and Patricia Luck, High Ridge, Missouri

Paul MacArthur, Arnold, Missouri

Paul McClure, Arnold, Missouri

John Parham, Arnold, Missouri

Neal and Marlene Ratliff, Fenton, Missouri

Robert Rosenfeld, St. Louis, Missouri

SMC Enterprises, Inc., Arnold, Missouri

Helen Schloss, High Ridge, Missouri

Steve and Rita Spurlock, Fenton, Missouri

Ed Steinback, St. Louis, Missouri

Tony and Bridie Stieren, High Ridge, Missouri

Paul and Ann Taylor, Hillsboro, Missouri

Gene and Carol Tosie, Fenton, Missouri

Vintage Real Estate, Inc., Fort Wayne, Indiana

Thomas Walters, Dittmer, Missouri

Leon and Patsy Williams, High Ridge, Missouri