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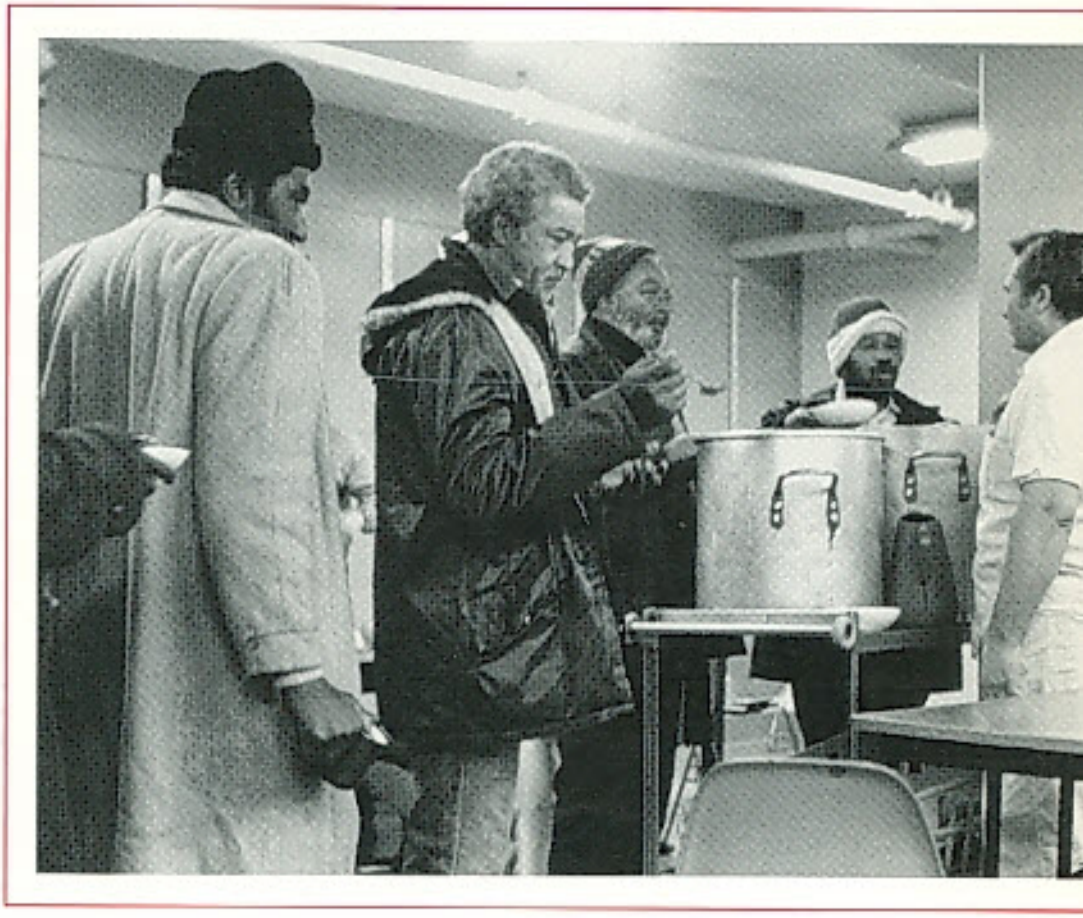

Block Grant Implementation Issues

Buy a Home to Rent a Home Site? Illegal Mobile Home Tie-In Arrangements

By Stephen Norman

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I. Introduction

The economics of mobile home "park" living, in which residents purchase manufactured homes and live in them on rented sites or "lots," results in some unique problems. Unlike apartment dwellers, owner-occupants of mobile homes cannot pack up and move when the lot rent skyrockets or a park's sewer system fails. The homes themselves were never intended to be transported repeatedly, alternative sites are unavailable in most localities, and, even when moving the home is feasible, the costs can be prohibitive. Of course, without a lot to put it on, the mobile home itself is a liability rather than an asset. After purchasing a home in a park, if things go wrong the homeowner may find his or her options limited and unattractive. The market value of the residents' homes in the park may decline as the park acquires a reputation for problems, while the park owner's equity in the park, which is appraised mainly if not solely on the basis of cash flow, may soar. Many states have adopted statutory provisions attempting to address some of these inequities. /1/

One common practice is for mobile home park owners to require prospective tenants to purchase a mobile home from the park owner, or a dealer with whom the park owner has an exclusive arrangement, in order to gain admission as a tenant in the park. This practice can actually double the purchase price of a mobile home. Due to the demand for low-cost housing and the comparative costs of purchasing a traditional, site-built, detached single-family home, manufactured homes that could otherwise be purchased on dealers' lots for $20,000 to $30,000 may cost $50,000 or more from a park owner in some markets simply because this is the only way to rent a lot on which to place the home. The practice of conditioning the lease for a lot upon the purchase of a mobile home is known as an "illegal tie-in."

Of course, where market conditions support such prices, the park owner (seller) claims that the purchaser accumulates "equity" commensurate with the purchase price, that is, that the lot tenant can turn around and sell the mobile home, on its lot, for as much as or more than the tenant paid for it. However, that is not always the case. Sometimes, the park owner secures control of the lot through an eviction, or by purchasing the home from a foreclosing financial institution, or by refusing to "approve" an existing tenant's prospective homebuyers as new park tenants. /2/ Once

the park owner regains control over the lot, the scam can be worked again. And, even when individual homeowners are able to recover their investments through a sale, mobile home tie-ins stifle the potential for affordable housing in the community and divert more of individual tenants' available income to interest costs instead of necessities such as food or utilities.

Luckily for advocates of low-income housing, not only is this practice illegal, but also it has been condemned time and again under federal and state antitrust and consumer protection laws that afford the powerful leverage of treble damages and attorney fees liability. The pernicious consequences of tying arrangements on the economic system have long been apparent to Congress and the courts.

II. Antitrust Law Applicable to Mobile Home Tie-Ins

Why are tying arrangements illegal? In the textbook example, a company that had a patent on a uniquely efficient process for adding salt to canned food offered the process for sale, but only upon an agreement that the purchasers would buy all their salt from the seller of the process. /3/ This attempt to corner the commercial canning market for salt through the control of a patented product was condemned under the Sherman Antitrust Act. /4/ While it is lawful to sell (or lease) a patented product for whatever price the market will bear, it is unlawful to use the "market power" conferred by the patent to restrain competition in a separate market, such as the market for salt.

Antitrust remedies can be powerful tools in diverse situations where economic duress is applied against poor people. In Johnson v. Soundview Apartments Housing Development Fund, the district court held that a nursing home operator's mandatory meal plan, which required senior citizens to purchase meals from the operator in order to rent Section 8 subsidized apartments, was not protected from the scrutiny of antitrust laws by the doctrine of implied immunity. /5/ In Paradis v. Menut & Parks, Inc., consumers challenged two Vermont propane dealers' refusal to sell gas, even for cash, to customers who owed the competing dealer a balance on a credit account. /6/ Both of these cases, in fact, resulted in the promulgation of regulations specifically prohibiting the practices at issue in the litigation. /7/

In the mobile home park context, the market power derives from the scarcity of rental lots. Although state consumer legislation prohibiting "unfair" trade practices or the common-law doctrine of unconscionability should in theory prevail, it may be easier to establish a winning case on the basis of antitrust precedent.

III. Case Law

Since the 1970s, mobile home park tie-in cases, brought by public advocates as well as both commercial and consumer private litigants, have been regularly reported and uniformly successful. Potential litigation resources include state attorneys general, consumer protection advocates, and, at least theoretically, the Justice Department and the Federal Trade Commission. /8/ Independent mobile home dealers, who cannot compete for sales without a relatively free market in leasable

lots, also have standing to bring an enforcement action either on their own or as coplaintiffs with mobile home park tenants or prospective tenants.

In Ware v. Trailer Mart, plaintiff brought his mobile home with him when he was transferred from Texas to Ohio. Before the move, he contacted approximately 25 mobile home parks in the Cleveland area, including the defendant's, where he was told that spaces were rented only on condition that the tenant purchase a mobile home from the park owner. Plaintiff then rented an apartment in the Cleveland area, stored his mobile home in a nearby county, and took his case to court. In reversing a summary judgment for the defendant, the Sixth Circuit held that plaintiff had standing to sue even though he had never purchased nor intended to purchase a mobile home under the tie-in scheme and that he was entitled to trial on the issue of whether the park owner had sufficient "economic power" to affect the market for mobile home lots. /9/

The following year a district court in Ohio refused to dismiss a Sherman Act claim by residents of a mobile home park who had been subjected to a tie-in. The court denied motions to dismiss both on jurisdictional grounds and for failure to state a claim. /10/

In People v. Mobile Magic Sales, Inc., the California Court of Appeal affirmed a preliminary injunction prohibiting the conditioning of lot leases upon the purchase of a mobile home and requiring the removal of "model homes" that favored dealers had installed in several San Diego area parks. /11/ Prospective tenants, due to their individual preference for locating in one particular mobile home park, had been forced to forgo selective shopping for mobile homes and had been compelled either to purchase a home not of their own choosing, and pay the price demanded, or to live elsewhere.

In Suburban Mobile Homes, Inc. v. AMFAC Communities, Inc., a newly developed California park entered into an arrangement that permitted only four favored dealers to sell mobile homes for siting in the park. A competing dealer, whose products were excluded from the park by this arrangement, brought suit against the park developer and the favored dealers, and a directed verdict was entered for the defendants. Reversing, the California Court of Appeal stated, "We are persuaded that respondents' conduct as reflected by the evidence, clearly amounts to an illegal tying arrangement which, under well established case law, constitutes a per se violation of both the federal antitrust law . . . and the [state antitrust statute] . . . ." /12/

In Virginia v. Winslow, the court assessed civil penalties totaling $100,000 against defendants who required tenants to buy a mobile home in order to lease a lot in either of their two parks. The court found that "the defendants . . . knowingly and willfully conspired to achieve a tying arrangement that resulted in a restraint of trade or commerce" and called the conduct a "flagrant violation" of state antitrust law. /13/ In a subsequent decision, the court entered an injunction

> perpetually enjoin[ing] the defendants from leasing or offering for lease any mobile home lot expressly or impliedly on the condition or with an agreement that a prospective tenant shall purchase a mobile home from any of the defendants or any other specific person . . . . [R]equiring the defendants to affirmatively inform prospective tenants, in writing, that the prospective tenant is under no express or implied obligation to purchase a new or used mobile home from any of the

> defendants in order to lease a mobile home lot. Moreover, the defendants are barred from refusing to lease a mobile home lot, on a first come, first served basis, to any otherwise acceptable mobile home tenant with an otherwise acceptable mobile home . . . . /14/

In proceedings against other defendants, the Virginia attorney general obtained consent decrees against mobile home sellers and park owners charged with operating similar tie-in schemes. /15/

Attorneys general in Minnesota /16/ and Oregon /17/ have obtained consent decrees barring park owners from tying lot leases to home sales and assessing civil penalties.

In Alaska v. Carey Homes, Inc., the state obtained injunctive relief, attorney fees, and penalties on summary judgment. /18/ The court also barred the park owners from acquiring rights to lots in other mobile home parks not owned by them.

Most recently, the Pennsylvania attorney general settled federal claims brought in 1990 against a mobile home dealer and 13 park operators and alleging a conspiracy to force Lancaster County consumers who wanted to occupy mobile home parks to buy their homes from the dealer, who paid the park owners for their cooperation. In announcing the settlement, the attorney general condemned the scheme as having "eliminated competition from other dealers and deprived consumers of the right to shop for the best price. . . . [The dealer] was able to exploit Lancaster County's strong demand for mobile homes and the difficulty in creating new parks in the county caused by the scarcity of appropriately-zoned undeveloped land." /19/

IV. Conclusion

Despite clear litigation results over two decades, mobile home park owners have strong financial incentives to keep testing the enforcement capacities of the system, and they do. Moreover, they succeed due to the lack of consumer protection resources, the lack of legislative and legal sophistication, and the overwhelming economic imbalance between park owners and park tenants. However, the legal tools are in place to attack the mobile home park tie-in practice successfully.

Footnotes

/1/ Jonathan Sheldon & Andrea Simpson, Manufactured Housing Park Tenants: Shifting the Balance of Power (1991) (available from the Public Policy Institute, AARP, 601 E St. NW, Washington, DC 20049).

/2/ See, e.g., Evans v. Sagers, No. NOC 11030 (Cal. Super. Ct. Los Angeles County 1994) (Clearinghouse No. 45,651).

/3/ International Salt Co. v. United States, 332 U.S. 392 (1947).

/4/ Sherman Antitrust Act, 15 U.S.C. Sec. 1.

/5/ Johnson v. Soundview Apartments Hous. Dev. Fund Co., Inc., 647 F. Supp. 1410 (S.D.N.Y. 1986) (Clearinghouse No. 31,869).

/6/ Paradis v. Menut & Parks, Inc., (D. Vt. filed Jan. 20, 1984) (Clearinghouse No. 36,007).

/7/ 24 C.F.R. Sec. 278.10(d), pt. 278 generally; Vt. Stat. Ann. tit. 9, Sec. 2461b (enabling legislation), Vt. Code of Reg. CF-111.10

/8/ See, e.g., In re MacLeod Mobile Homes, Inc., 94 F.T.C. 144 (Fed. Trade Comm'n 1979); In re Mobile Homes-Multiplex Corporation, 94 F.T.C. 151 (Fed. Trade Comm'n 1979) (consent orders entered in New York and New Jersey cases, respectively).

/9/ Ware v. Trailer Mart, Inc., 623 F.2d 1150 (6th Cir. 1980) (Clearinghouse No. 29,741).

/10/ Jameson v. Sommer's Mobile Home Sales, Inc., 1001 Antitrust & Trade Reg. Rep. (BNA) A-13 (N.D. Ohio Jan. 14, 1981) (Clearinghouse No. 30,896).

/11/ People v. Mobile Magic Sales, Inc., 157 Cal. Rptr. 749 (Ct. App. 1979).

/12/ Suburban Mobile Homes, Inc., v. AMFAC Communities, Inc., 101 Cal. App. 3d 532 (1980).

/13/ Virginia v. Winslow, 52 Antitrust & Trade Reg. Rep. (BNA) 437, 1987 WL 92059 (Va. Cir. Ct. Prince William County Feb. 20, 1987).

/14/ Virginia v. Winslow, 53 Antitrust & Trade Reg. Rep. (BNA) 720, 1987 WL 119739 (Oct. 15, 1987).

/15/ Virginia v. Faigen, 1988 WL 247964 (Va. Cir. Ct. Fairfax County May 5, 1988); Virginia v. Epps, 55 Antitrust & Trade Reg. Rep. (BNA) 15, 1988 WL 247965 (Va. Cir. Ct. Fairfax County May 26, 1988).

/16/ Minnesota v. North Star Estate Sales, Inc., 42 Antitrust & Trade Reg. Rep. (BNA) 984 (Minn. Dist. Ct. Mar. 17, 1982).

/17/ Oregon v. Harrison, 1000 Antitrust & Trade Reg. Rep. (BNA) D-4 (Or. Cir. Ct. Lane County Jan. 22, 1981).

/18/ Alaska v. Carey Homes, Inc., 958 Antitrust & Trade Reg. Rep. (BNA) D-11 (Alaska Super. Ct. Dec. 6, 1979).

/19/ Pennsylvania v. John's Mobile Home Service Inc., No. 90-4472 (E.D. Pa. proposed settlement filed June 19, 1992).