

TABLE OF CONTENTS

TABLE OF CONTENTS i-iii

TABLE OF AUTHORITIES iv-viii

STATUTES PRINCIPALLY RELIED UPON ix-x

STATEMENT OF JURISDICTION 1

ISSUES PRESENTED 1

INTRODUCTION# 1

STATEMENT OF THE CASE 3

 I. THE MUTUAL HELP HOMEOWNERSHIP
 OPPORTUNITY PROGRAM 3

 II. MR. KOPANUK'S PARTICIPATION AS A HOMEBUYER
 IN THE AVCP RHA'S MHO PROGRAM 4

 III. THE HISTORY OF THIS LITIGATION 5

STANDARD OF REVIEW 9

SUMMARY OF ARGUMENT 9

ARGUMENT 10

 I. THE GOVERNING LAW 10

 A. THE DISTRICT COURT LACKS JURISDICTION TO
 ADJUDICATE EQUITABLE OWNERSHIP INTERESTS 10

 B. THERE MAY BE EQUITABLE OWNERSHIP INTERESTS
 IN AN AGREEMENT THAT IS STRUCTURED AS A
 LEASE-OPTION 12

 II. MR. KOPANUK HAS AN EQUITABLE OWNERSHIP
 INTEREST IN HIS HOME 15

 A. THE LANGUAGE AND TERMS OF THE MHOA CONFIRM
 MR. KOPANUK'S CLAIM TO AN EQUITABLE
 OWNERSHIP INTEREST IN HIS HOME 16

 1. The MHOA Repeatedly Describes Itself
 As An Agreement For Purchase And Not
 For Rental 16

2.	Under The MHOA, Mr. Kopanuk Made A Substantial Non-Refundable Down Payment.....	16
3.	Under The MHOA, Mr. Kopanuk Is Obligated To Perform All Repairs And Maintenance To His Home, Unlike A Landlord-Tenant Relationship.....	18
4.	Mr. Kopanuk Builds "Equity" In His Home Under The MHOA.....	19
5.	Mr. Kopanuk Will Not Have To Pay Anything To Exercise the MHOA's "Purchase Option" At The End Of His Term.....	20
6.	Mr. Kopanuk Can Prepay His Debt And Purchase His Home Outright.....	21
7.	The MHOA Requires Mr. Kopanuk To Purchase His Home Under Certain Circumstances.....	21
B.	THE PARTIES TO THE MHOA UNDERSTOOD THAT IT WAS A CONTRACT FOR THE PURCHASE OF A HOME.....	22
C.	AS AN ADHESION CONTRACT, ANY AMBIGUITIES IN THE MHOA MUST BE CONSTRUED AGAINST THE AVCP RHA.....	23
III.	PREVIOUS JUDICIAL DECISIONS ON THIS ISSUE SUPPORT MR. KOPANUK'S ARGUMENT.....	25
A.	ALASKA'S COURTS REFUSED TO ALLOW FEDs TO BE USED AGAINST MHO HOMEBUYERS PRIOR TO THE PROMULGATION OF HUD'S RECENT REGULATIONS....	25
B.	THE ONE OTHER REPORTED DECISION OUTSIDE OF ALASKA THAT CONSIDERED THE LEGAL NATURE OF THE WHOA FOUND THAT EVICTION PROCEEDINGS WERE INAPPROPRIATE.....	28
IV.	HUD'S 1990 REGULATORY CHARACTERIZATION OF MR. KOPANUK'S CONTRACT WITH AVCP RHA NEITHER CHANGED ITS SUBSTANCE NOR RETROACTIVELY EXTINGUISHED HIS PROPERTY INTEREST.....	30
A.	HUD COULD NOT UNILATERALLY ALTER THE MHOA SO AS TO REVOKE MR. KOPANUK'S EQUITABLE INTERESTS IN HIS HOME.....	31
B.	THE MHO PROGRAM OPERATES WITHIN ALASKA'S FED STATUTES.....	33

1. It Is Well-Settled That State Landlord/
Tenant Laws Apply To Federal Housing
Programs 33

2. State Property Law Is An Area Specially
Reserved For The States 36

C. THE JURISDICTION OF ALASKA'S STATE COURTS
IS GOVERNED BY STATE LAW, EVEN AS TO THE
FEDERAL GOVERNMENT 38

V. TO INTERPRET HUD'S REGULATION AS REQUIRING THE
COURTS OF ALASKA TO ALTER THEIR JURISDICTIONAL
RULES RUM AFOUL OF THE TENTH AMENDMENT 39

Co#cLusIo# 40

TABLE OF AUTHORITIES

.....

A 61 G Con&. Co., Inc. v. Reid Brother
Loaina Co.. Inc., 547 P.2d 1207 (Alasia 1976)2 5

Acuchak v. Montaomerv Ward Co . . Inc.,
520 P.2d 1352 (Alaska 1974) 9, 23

Alaska Public Emol vees' Ass'n. v. State,
831 P.2d 1245 (Alaska 1992) 31

Balchen v. Bachen, 566 P.2d 1324 (Alaska 1977).....11

Burrouhs v. Hills, 741 F.2d 1525 (7th Cir. 1984).....3 3

City of Valdez v. Valdez Develonment Comnanv,
523 P.2d 177 (Alaska 1974) 14

Con' e v. Secretary of H usinu and Urban Dev'!
840 F.2d 105 (1st Cir. 19i8) 34, 35

Cook Inlet Hous. Auth. v. iera, 3 AN 82-8734 CI
(3rd District July 18, 198:)25. 26, 27

Coon r River Basin Regio al Housinu Authority v.
B e n, 3 GL-93-19 Civn, (3rd Dist. March 29, 1994,
Judge Anderson ruling from the bench).....2 8

County of San Dieuo v. Mxlller!
532 P.2d 139 (Cal. 1975) 12

Craig Taylor Fwment , Pettibone Corp.,
659 P.2d 594 (Alaska 19z3) 24

Cuvahocra Metro. Housinu Auth. v. Watkins,
491 N.E.2d 701, 23 Ohio App. 3d 20
(Ohio App. 1984) 28, 29, 30

Day . . 6 G Const. C . . Inc.
528 ..2d 440 (Alaska y974) 25

Doyle v. Southern Guar. Corp.,
795 F.2d 907 (11th Cir. 1986) 31

E-Z Livin' Mobile Sales, Inc. v. Van Zanen,
548 P.20 1175 (Ariz. App. 1976) 30

Fink v. O'Neil, 106 U.S. 272 (1882).....3 8

Gresgnt v. Ashcroft, 501 U.S. 452 (1991).....3 8

G u l f
453 U.S. 473 (1911) 38, 39

Haskins v. Stanton, 621 F. Supp. 622
(N.D. Ind. 1985) 35

Hodel v. Virginia Surface Mining and Reclamation
Ass'n, . . . , 452 U.S. 264 (1981) 40

Howlett by and through Howlett v. Rose,
496 U.S. 356 (1990) 39

Kargman v. Sullivan, 552 F.2d 2 (1st Cir. 1977) 3 3

Eennecom Aorta v. First Nat'l Bank,
685 P.2d 1232 (Alaska 1984) 9

Klinger v. Peterson, 486 P.2d 373 (Alaska 1971) 11

Knox Hill Tenant Council v. Washinton
448 F.2d 1045 (D.C. Cir. 1971) 33-3 4

Land Development v. Paduett
369 P.2d 888 (Alaska 1962) 14

Le'g, RuDee, 495 P.2d 955 (1972) 13. 27, 29

Lew v. Borchardt-We&, (Dist. Ct. March 20, 1991)
3 AN-91-1752 CI 27

wouez v. Cave, 5 P.2d at 1082 (Kansas 1931) 2 6

M a s s a c h u s e t t s v. Share,
700 F.2d 749 (1st Cir. 1983) 35

M Galliard v. Liberty Le inu Co. of Alaska, Inc.,
5;4 P.2d 528 (Alaska 1977) 15

Merrill Tenant Council v. U.S. Dept. of Housing,
638 F.2d 1086 (7th Cir. 1981) 33

M'waukee v. Illinois, 451 U.S. 304 (1981) 3 4

Miners' & Merchants' Bank v. Brice
5 Alaska 418 (1915) 11, 12

Modern Construction, Inc. v. Barce, Inc.
556 P.2d 528 (Alaska 1976) 23

Modrok v. Marshall, 523 P.2d 172 (Alaska 1974) 11

Moran v. w, 501 P.2d 769 (Alaska 1972) 14

<u>National Railroad Passenger Corp. v. Atchafalaya</u> <u>Toneka and Santa Fe Railway Co.</u> , 470 U.S. 461 (1985).....	32
<u>New York v. United States</u> , 112 S. Ct. 2408, 116 L.Ed. 2d 765 (1992)	39, 40
<u>Pension Benefit Guaranty Corp. v. Gray 61 Co.</u> , 467 U.S. 717 (1984)	32
<u>Quilley v. Dolan</u> , 53 A.2d 714, 383 N.Y.S. 2d 93: (1976) and sub nom. <u>Quiulev v. Ithaca</u> <u>College</u> , 372 N.E.2: 797 (N.Y. 1977).....	14
<u>Rowe v. Pierce</u> , 622 F. Supp. 1030 (D.C. Cir. 1985)	33
<u>Smith v. Tlingit-Haida Regional Hous. Auth.</u> , 1KE-91-539 CI (1st District May 5, 1992) . . .I.....	28
<u>SDokane School Dist. No. 81 v. Parzvbok</u> , 633 P.2d 1324 (Wash. 1981)	12-13
<u>Standard Oil Co. v. Peru</u> 347 F.2d 379 (9th Cir. 1965;	24
<u>Stein v. Dessimore</u> , 3 Alaska 392 (Alaska 1907).....	12
<u>Stenehjem v. Kyn Jinn Co.</u> 631 P.2d 482 (Alaska 1981).....	23
<u>Stedano v. Homer Elec. Ass'n. Inc.</u> , 814 P.2: 731 (Alaska 1991)	23
<u>Stevens v. McDowell</u> , 98 P.2d 410 (Kansas 1940).....	26
<u>Stordahl v. Government END Ins. Co.</u> , 564 P.2d 63 (Alaska 1977)	24
<u>Strack v. Milley</u> , 645 P.2d 184 (Alaska 1982).....	12
<u>Tlingit-Haida Regional Hous. Auth v. Jackson</u> 1KA-87-18 CI (1st District April 26, 1988)	22, 25, 26
<u>United States v. Cless</u> , 254 F.2d 590 (3rd Cir. 1958)	37
<u>United States v. Devq</u> , 369 F. Supp. 1113 (D.P.R. 1974)	35
<u>United States v. Yazell</u> , 382 U.S. 341 (1966).....	37, 38
<u>W.T. Auonon Estate v. Wichita County</u> , 273 U.S. 113 (19527)	37
<u>Ball's v. Pan American Petroleum Corp.</u> , 384 U.S. 63 (1966)	37

<u>Williams v. De-y</u> , 395 P.2d 839 (Alaska 1964).....	12, 13, 14
<u>Wilson v. Omaha Indian Tribe</u> , 442 U.S. 653, (1979)....	36, 37

ALASKA STATUTES:

AS 09.45.150	10
AS 18.55.995 <u>et sea.</u>	3
AS 22.15.050(1)	10
AS 34.03.100	19
AS 34.03.100(a)(1)	19
AS 34.03.100(a)(2)	19
AS 34.03.100(a)(3)	19
AS 34.03.330(b)(2)	11

STATUTES t

28 U.S.C. S 1652	36
42 U.S.C.g 1437bb	4
42 U.S.C. 5 1437	3
43 U.S.C. II 1601, <u>et sea.</u>	18

ADMINISTRATIVE AND EXECUTIVE MATERIALS:

24 C.F.R. 5 905.135	24
24 C.F.R. f 905.446	7
24 C.F.R. 5 905.446(b)	36
24 C.F.R. f 966.1	16
24 C.F.R. 8 966.4(k)(v)(B)	16
55 Fed. Reg. 24,735 (1990)	31

H.R. Rep. No. 100-604, 100th Cong., 2d Sess., reprinted in 1988 U.S. Code Cong. and Ad. News 791	3
---	---

U.S. CONSTITUTION

U.S. CONST. ART. I, SEC. 10 32
U.S. CONST. ART. I, SEC. 9, CL. 3 32

ALASKA RULES:

Alaska Rules of Civil Procedure, Rule 60(b) 7
Alaska Rules of Civil Procedure, Rule 60(b)(1) 8
Alaska Rules of Civil Procedure, Rule 60(b)(4) 9, 11
Appellate Rule 302 1

DISCUSSIBLE SOURCES

1A Corbin, Contracts 5 272 (1963) 13
3 Williston, CONTRACTS 5 415 (3rd ed. 1960) 13
Nelson C Whitman, Real Estate Finance Law,
2nd Ed. (1985) 21
Tribe, AMERICAN COURTS AND LAW 32

STATUTES PRINCIPALLY RELIED UPON

FORCIBLE ENTRY AND DETAINER

As g 09.45.150. Inquiry into merits of title.

In an action to recover the possession on the land, tenement, or other real property where the entry is forcible or when the possession is unlawfully held by force, there shall be no inquiry into the merits of the title. Three years' quiet possession of the premises immediately preceding the commencement of the action by the party in possession or those under whom the party holds may be pleaded in bar thereof unless the estate of the party in the premises is ended (5 17.10 ch 101 SLA 1962).

EJECTMENT

As Q 09.45.530. Actions for recovery of real property.

A person who has a legal estate in real property and has a present right to the possession of the property may bring an action to recover the possession of the property with damages for withholding it: however, recovery of possession from a tenant shall be made under AS 09.45.060 -- 09.45.160 (5 25.01 ch 101 SLA 1962; am f 3 ch 10 SIA 1974).

DISTRICT COURT JURISDICTION

AS 0 22.15.050. Actions not within civil jurisdiction.

The jurisdiction of the district courts does not extend to

(1) an action in which the title to real property is in question;

(2) an action for false imprisonment, libel, slander, malicious prosecution, actions of an equitable nature (except as otherwise provided by law), or actions in which the state is a defendant. (5 4 ch 184 SLA 1959; am f 6 ch 38 SLA 1971; am f 4 ch 17 SLA 1985).

UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

AS g 34.03.330(a), (b)(i). Application and exclusions.

(a) This chapter applies to and determines rights, obligations and remedies under a rental agreement, wherever made, for a dwelling unit in this state.

(b) Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

. . . .

(2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to the interest of a purchaser: . . .

. . . .

. . . . (f 1 ch 10 SLA 1974).

STATEXRNT OF JURISDICTION

Jurisdiction lies with this Court pursuant to its August 15, 1994, Order granting Mr. Kopanuk's Petition for Hearing filed pursuant to Appellate Rule 302, to review the Superior Court's June 7, 1994 "Decision on Appeal."

ISSUE PRESENTED

Whether the district court has jurisdiction in a Forcible Entry and Detainer action to adjudicate the equitable ownership and property interests of a Homebuyer under the "Mutual Help Homeownership Opportunity Program."

INTRODUCTION

This case addresses the convergence between summary eviction proceedings under Alaska's Forcible Entry and Detainer ("FED") statutes and the rights of Alaskans who have purchased homes under the Mutual Help Homeownership Opportunity Program ("mo") t operated by the AVCP Regional Housing Authority ("AVCP RHA") and funded by the United States Department of Housing and Urban Development ("HUD"). Mr. Kopanuk is a participant in this federally subsidized housing program, which is the primary source of housing in rural Alaska. In 1982, Nr. Kopanuk signed a Wutual Help and Occupancy Agreement" (hereinafter WHOA^{1fi}) with the AVCP RHA. In accord with his MHOA, Mr. Kopanuk and his

family have lived in, paid for, maintained, and repaired their home for the past 12 years. Recently, however, Mr. Kopanuk faced some family difficulties which briefly caused him to fall behind in his monthly payments to the AVCP RHA. This litigation began when the AVCP RHA moved to evict Mr. Kopanuk through an FED action.

At this stage, the central question is not whether Mr. Kopanuk will ultimately succeed in his efforts to protect his ownership interests in his house. Rather, the question is whether the district court had jurisdiction in an FED action to make that determination. Mr. Kopanuk contends that the district court was without jurisdiction over this case because the MHOA, though characterized as a lease-option, is actually an installment sales contract (and outside of a district court's FED jurisdiction). Alternatively, he contends that even if the MHOA is actually a lease-option, he has nevertheless acquired equitable property interests pursuant to its provisions.

The housing authority cannot and does not deny the well-established rule of Alaska law recognizing Mr. Kopanuk's valid claims to equitable ownership interests in his house. Instead, the housing authority argues that a regulation that HUD adopted several years after Mr. Kopanuk entered into his MHOA gives it the authority to summarily terminate Mr. Kopanuk's interests and remove him from his home in an FED action. However, HUD's regulation did not (and probably could not) alter the MHOA in any material fashion -- it merely offered HUD's characterization of

the agreement's legal significance. Such a regulation is not sufficient to change clearly established principles of state property law. It most assuredly does not constitute a federal mandate that Alaska's district courts exercise jurisdiction that is precluded by state law.

STATEMENT OF TEN CASE

I. THE MUTUAL HELP HOMEOWNERSHIP OPPORTUNITY PROGRAM

HUD originally instituted the MHO program pursuant to regulations adopted under the authority of the 1937 Housing Act, as amended. That Act was enacted "to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe and sanitary dwellings for families of lower income." 42 U.S.C. s 1437. In the later Indian Housing Act of 1988, P.L. 100-358, Congress codified HUD's Indian housing program, and in particular "codified the Mutual Help Homeownership Opportunity which is currently operated through regulation by [HUD]." H.R. Rep. No. 100-604, 100th Cong., 2d Sess., reprinted in 1988 U.S. Code Cong. and Ad. News 791. HUD's regulations governing the MHO program are codified at 24 C.F.R. Part 905.

The AVCP RHA was chartered pursuant to Alaska statute to serve as an "Indian Housing Authority" for the purpose of carrying out the MHO program in the Yukon-Kuskokwim Delta area of Alaska. AS 18.55.995 et seq, In contrast to many other HUD-funded programs, the MI40 program is not a rental program. Rather, its purpose is to meet the homeowners' needs of Indian

families." 42 U.S.C. S 1437bb (emphasis added). The program is built on the assumption that when families occupying housing accommodations are purchasing their home rather than renting it from a housing authority, their reaction as well as the community's reaction to public housing might be more positive. This ownership program is also intended to provide long-term solutions to housing shortages that a rental program cannot provide.

Program participants, such as Mr. Kopanuk, are repeatedly identified as "Homebuyers." As the word "Mutual" indicates, not everything is provided by the housing authority. As a condition of participation, the Homebuyers must make a non-refundable contribution consisting of the land for the house. In addition, they must agree to perform all repairs and maintenance on their homes, and they must make regular monthly payments in an amount based upon their financial ability. These monthly payments serve to reduce the balance of the purchase price owed on the house. In return, at the conclusion of the MHOA's 25-year term, the purchase price is deemed paid and the Homebuyers receive title to their homes at no additional cost.

II. MR. KOPANUK'S PARTICIPATION AS A HOMBBUYER IN TEE AVCP RNA'S MNO PROGRAM

Mr. Kopanuk signed his MHOA with the AVCP RHA on June 3, 1982.¹ As required by the terms of the MHOA, Mr. Kopanuk's

¹ A copy of Mr. Kopanuk's MHOA is attached as Exhibit 2 to Mr. Kopanuk's "Petition For Hearing." Ext. 94-113.

Native corporation made an initial contribution of land to the AVCP KHA as a "down payment" on his behalf. See MHOA Article II. Mr. Kopanuk is, and at all relevant times has been, solely responsible for all repairs and maintenance needs for his house, as well as for the payment of all utility expenses. See MHOA 55 5.2 and 5.3.

It is undisputed that from 1982 until 1992, Mr. Kopanuk performed all his obligations under the MHOA, including making all repairs, providing all maintenance, and making regular and continuous monthly payments to the AVCP RHA in anticipation of owning his home. Under these circumstances, Alaska law establishes that this nHomebuyerⁿ acquired an equitable interest in his home that may not be summarily extinguished in an FED proceeding. However, in 1992, Mr. Kopanuk's fiance became seriously ill, requiring treatment at the regional Native hospital in Bethel, Alaska. Ext. 42, para. 6. To care for her, Mr. Kopanuk temporarily left his home in the village and stayed in Bethel while his son housesat. Ext. 42, para. 6.

III. THE HISTORY OF THIS LITIGATION

During his stay in Bethel, Xr. Kopanuk fell behind in making his monthly house payments. The AVCP PHA thereupon filed a summary FED action in district court. Mr. Kopanuk appeared D se* The district court issued the requested order of eviction, but stayed that order with the understanding that Mr. Kopanuk would comply with various of the AVCP RHA's demands, including

"to communicate better," to immediately move back to his village, to bring his account current, and to stop his son from causing disturbances in the village. Ext. 1-3.

After the FED hearing, and in accord with the district court's order, Mr. Kopanuk tendered u of his past due monthly payments to the AVCP RHA. Ext. 34 at para. 4.² He also communicated and cooperated with the AVCP RHA on a regular basis. Ext. 42 at para. 5. He further instructed his son to desist from disturbing any of their neighbors. Ext. 42 at para. 4. Finally, Mr. Kopanuk agreed to return home after his summer fishing job ended. Ext. 43 at para. 8. Moreover, he continued to make all of his required monthly payments. Ext. 41-42 at paras. 3 & 7.³

Nevertheless, in April 1993, the AVCP RHA decided that it was dissatisfied with Mr. Kopanuk's compliance and notified him that he would have to move out of his house and that it was terminating all his interest in his h0use.l Mr. Kopanuk learned of the availability of Alaska Legal Services Corporation (AL%) and sought legal assistance. ALSC immediately filed a motion under Rule 60(b) and a motion to dismiss challenging the

² The AVCP RHA admits that "Mr. Kopanuk . . . made payments to bring himself current." Ext. 34 at para. 6.

³ m 31s~ the superior court's trust account records.

⁴ The AVCP RHA's reason for still pursuing its eviction of Mr. Kopanuk was merely that "he did not move back to Mountain Village to make the AVCP RHA's house his primary residence." Ext. 116, AVCP RHA's Resp. to Def.'s Pet. at p. 3.

jurisdiction of the district court. The gist of Mr. Kopanuk's jurisdictional challenge was that the district court lacked jurisdiction over this action because: a) Mr. Kopanuk has equitable property interests in his home under the MROA which were not properly within a district court's jurisdiction: and, b) the buyer/seller relationship between Mr. Kopanuk and the AVCP RHA was not p w = W the subject of FED proceedings. Accordingly, Mr. Kopanuk submitted that the district court's orders were void.

The AVCP RI-IA opposed the motion, arguing that Mr. Kopanuk has no property rights in his house. The housing authority also argued that regardless of the nature of Mr. Kopanuk's ownership interests, and regardless of any contrary provision of state law, Alaska courts were obligated to acquiesce in the terms of a regulation that BUD adopted in 1990 authorizing the use of summary FED eviction procedures against MHOA homebuyers.⁵ On June 3, 1993, the district court denied both Mr. Kopanuk's Rule 60(b) motion and his motion to dismiss. Ext. 40. The district

⁵ The relevant regulation states:

(a) Termination Upon Breach. (1) In the event the homebuyer fails to comply with any of the obligations under he MHO agreement, the IRA may terminate the MBO agreement by written notice to the hcmebuyer, enforced by eviction procedures applicable to landlord tenant relationships. Foreclosure is an inappropriate method for enforcing termination of the homeownership agreement, which constitutes a lease (with an option to purchase). The homebuyer is a lessee during the term of the agreement and acquires no equitable interest in the home until the option is exercised. 24 C.F.R. 5 905.446 (1990).

court concluded that "[t]he agreement Mr. Kopanuk was operating under is a lease/purchase one (Mr. Kopanuk has never alleged that he even exercised an option to buy) which properly comes under Alaska's FED statute." Ext. 40. On August 18, 1993, the district court granted a stay pending appeal. In the interim, Mr. Kopanuk has regularly paid his monthly house payments into the court's trust account.⁶

Mr. Kopanuk then appealed the district court's decision to the superior court. The bulk of the parties' extensive briefing focused on the nature of the property rights created by the MHOA. However, on June 7, 1994, Judge Steinkruger rendered a decision that focused instead on Mr. Kopanuk's request for relief under Rule 60(b)(1).⁷ Ext. 89-92B. Only one page of Judge Steinkruger's decision discussed the nature of the property rights created by the MHOA and the district court's jurisdiction. Ext. 92B-93. In summary fashion, Judge Steinkruger held that the MHOA was a "lease/option agreement" and that "lease/option agreements" are terminable through FED proceedings. Ext. 93. Judge Steinkruger utterly failed to address either of the key property issues that Mr. Kopanuk had placed before her: 1) Whether the MHOA is an installment sales contract (and outside of a district court's FED jurisdiction): or 2) If the MHOA is in

⁶ m the Superior court's trust account records.

⁷ The only issue before this Court is Mr. Kopanuk's appeal of the jurisdictional issue. He did not seek review of the Superior Court's denial of his motion for relief under Rule 60(b)(1).

fact a nlease/option^a agreement, whether Mr. Kopanuk acquired equitable property interests thereunder so as to place the matter outside of a district court's FED jurisdiction.

As a result, the Superior Court agreed that the District Court had jurisdiction in an FED action to summarily remove Mr. Kopanuk from his home and to terminate his interest in the home with no opportunity for him to redeem his interest. Indeed, because of the nature of the proceeding, Mr. Kopanuk was denied even an opportunity for a court to determine whether his ownership interest existed. On August 5, 1994, this Court granted Mr. Kopanuk's petition for review of Judge Steinkruger's decision.

STAWDARD OF REVIEW

This Court reviews jurisdictional issues de novo. Kennecorn aorta. v. First Nat. Ban%, 685 P.2d 1232, 1236-37 (Alaska 1984) (the reviewing court does not defer to the trial court in reviewing the denial of a motion to set aside a judgment on the ground that the judgment is void); Acuchak v. Montaomerv Ward Co., Inc., 520 P.2d 1352, 1354 (Alaska 1974) ("no question of the lower court's discretion is presented by a Rule 60(b)(4) motion because the validity of a judgment is strictly a question of law").

SUMMARY OF ARGUMENT

Mr. Kopanuk has already made substantial contributions toward the purchase of his home -- through his village

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corporation, he provided the land for his house; he has made required monthly payments for over ten years: and he has fulfilled substantial maintenance obligations. Upon successful performance of the remainder of his contractual obligations when the contract term ends a few years from now, his purchase price will be fully paid, and he will receive full fee title to his home at no additional cost. Pursuant to the MHOA he signed in 1982, Mr. Kopanuk is purchasing, not renting, his home.

But regardless of whether the MHOA is characterized as an installment sales contract (as demonstrated by its substantive content) or as a lease-option agreement (which is the label BUD has assigned to it), Mr. Kopanuk contends that he has an equitable ownership interest in his MHO house. The agreement itself confirms that his contention is meritorious. Accordingly, the district court lacks jurisdiction to extinguish his interest in his home through the summary procedure afforded by Alaska's FED statute.

ARGUMENT

I. THE OOVERRIR~ LAW

A. THE DIBTRICT COURT LACKS JURISDICTION TO ADJUDICATE BQUITABLB OWNERSHIP INTERESTS

The district court is an inferior court of limited jurisdiction without power to adjudicate equitable interests in real property. AS 22.15.050(1). The sole purpose of an FED action is to determine the right of immediate possession to

property. As a result, it is well-established under Alaska law that where title to the property is in dispute, the "drastic summary remedy of forcible entry and detainer," Miners' & Merchants' Bank v. Brice, 5 Alaska 418, 420 (1915), is not available. The FED statute specifically excludes such issues from the scope of its jurisdiction -- "there shall be no inquiry into the merits of the title." AS 09.45.150. In such cases, the plaintiff must instead establish his paramount title in an action for ejectment. Hodrok v. Marsh & J., 523 P.2d 172, 174 (Alaska 1974). See also Klinaer v. Peterson, 486 P.2d 373, 378 (Alaska 1971); mlchen v. Balcheq, 566 P.2d 1324, 1326 (Alaska 1977) ("A judgment rendered without jurisdiction is void and is thus vulnerable to attack pursuant to a Rule 60(b)(4) motion¹@).⁸

Where the "defendant claims the equitable title to the property, . . . the court is bound to conclude that the title to the property is in dispute," RinPrs' & Merchants' Bank v. Brice, 5 Alaska at 421 (emphasis added), and to dismiss the FED proceeding. This result does not deprive the plaintiff of either a forum or a remedy.

⁸ The district court's jurisdiction over this case is also limited by AS 34.03.330(b)(2). That provision of the Uniform Residential Landlord and Tenant Act provides, in pertinent part:

(a) This chapter applies to and determines rights, obligations and remedies under a rental agreement . . . in this state.

(b) the following arrangements are not governeh by this chapter

(2) occupancy under a contract of sale

There are provisions for the trial of real estate actions, some one of which will cover this case, and in which the court would have the jurisdiction and right to hear and determine all the questions of difference between these parties. Why should not plaintiff in error proceed with such an action, instead of resorting to an action in which the rights of the parties cannot be determined?

Id. at 420 (cites omitted). See also Steil v. Dessmore, 3 Alaska 392 (Alaska 1907) (the legislature did not intend for FED statutes to substitute for ejectment). In short, dismissal of the FED would be "without prejudice . . . to an action of ejectment, or a suit in foreclosure, or a suit by the defendant to clear his title." Miners' & Merchants' Bank v. Brice, 5 Alaska at 421.

B. THERE WAY BE EQUITABLE OWNERSHIP INTERESTS IN AN AGREEMENT THAT IS BSTRUCTURED AS A LEABE-OPTION

Eguitable ownership interests can arise, whether an agreement is characterized as an installment contract for sale or as a lease/option agreement. It is well-settled that when an option carries with it a right to possess the land and the option holder has maintained the land for a long period of time, and has invested substantial amounts of labor or money in the maintenance and improvement of the property, that person acquires substantial and compensable equitable interests. Williams v. DeLav, 395 P.2d 839, 940 (Alaska 1964); wack v. Miller, 645 P.2d 184, 186-87 (Alaska 1982) (trial court abused discretion by not permitting period of redemption for optionee who partially performed by making improvements to land, who was in possession, and who made substantial payments). See also County of San Dieao v. Miller, 532 P.2d 139 (Cal. 1975); Snokane School Dist. No. 81 v.

Parzybok, 633 P.2d 1324, 1325 (Wash. 1981) (owner of unexercised option to purchase land possesses a compensable property right): Letziu v. Runert, 495 P.2d 955, 959 (Kansas 1972) (optionee has equitable interest in property); 3 WILLISTOW, COUR--CRS 5 415 at 72 (3rd ed. 1960) ("it may well be admitted that no interest in land is given by an option and yet asserted that a contract right exists which may be as valuable as an interest in land and which should partake of an ordinary incident of property") (emphasis added): 1A CORBIY, CONRRUCRS 8 272 at 579-80 (1963) (whether the option holder's legal relations to the option giver and to third persons should be described as an "interest" in the land is a mere matter of the use of language: but what those legal relations themselves are depends upon what the courts think that justice and sound policy require).

This Court's decision in Williams v. DeLay, *supra*, 395 P.2d at 840, is instructive. The contract in that case provided that the lessor/seller could evict the lessees/buyers with a 30-day notice and declare a forfeiture of all of the lessees/buyers' interest in the property. The lessees/buyers had retained long-term possession and maintenance responsibilities and had paid for the property over a substantial period of time. The trial court refused to enforce the contract's explicit forfeiture provision, and this Court affirmed:

[I]n Alaska we are committed to the rule announced in our decision in the case of and De lonm nt Paduett, [(369 P.2d 888 (Alaska 1962)] t1% thB' trizi court may refuse to enforce literally the forfeiture provisions of a real estate contract, for this is a matter of discretion which is directly related to the equities of the situation.

Williams, 635 P.2d at 846 (citations omitted). See also City of Valdez v. Valdez Develonment Compu, 523 P.2d 177, 182 (Alaska 1974) ("in determining whether or not to enforce a forfeiture clause, the superior court correctly considered equitable principles"); Moran v. Holman, 501 P.2d 769, 771 (Alaska 1972).

Similarly, in Quiale v. Capolongo, 53 A.2d 714, 383 N.Y.S.2d 935 (1976), pff'd sub nom. Quiulev v. Ithaca Colleue, 372 N.E.2d 797 (N.Y. 1977), New York's Appellate Division evaluated an agreement denominated as a lease/option agreement which required a "nonrefundable [down] payment of [a] sizable sw1" as the price of the option to purchase, accompanied by annual "rent" that was "clearly a nominal sum." LgL, 383 N.Y.S.2d at 937. Recognizing that "it is inconceivable'@ that the holder of the option ^awould pay such a large sum in relation to the total purchase price if the parties did not contemplate from the outset that a purchase would be consummated," id., the New York court concluded that "[i]n this respect the arrangement was n0 different in practical consequence from a conditional sales agreement." Lg,

The agreement is cast in the form, style and language of a lease, but we must look to the rights it confers and the obligations it imposes to determine whether it has the essential attributes of a contract of conditional sale or of an installment sale

& (citations omitted).

The circumstances of the present case are no different. To allow the interests that Mr. Kopanuk has acquired in his home over the past ten years to be forfeited in a summary proceeding -- with no opportunity to consider the equities of the situation -- would exalt the form of the transaction over its substance, contrary to this Court's longstanding precedents. &8 e.u.. McGalliard v. Liberty Leasing Co. of Alaska, Inc., 534 P.2d 528, 529 (Alaska 1975) (A court "must look to the essential relationship of the parties and the substance of the transaction, rather than to one isolated aspect of the transaction").

II. MR. KOPANUK HAS AN EQUITABLE OWNERSHIP INTEREST IN HIS HOME

The MHOA is more akin to an installment sales contract than to a lease-option agreement. But the issue is not the label that either the housing authority or HUD chooses to assign to the MHOA and its provisions, but the substance of the contract. The substance of the MHOA confers virtually every element of home ownership except for the mere act of conveying legal title (e.u., repair responsibilities, maintenance responsibilities, equity accounts, non-refundable downpayments, prepayment rights) and places the MHOA far outside of a district court's FED jurisdiction.

A. THE LANGUAGE ABID TERMS OF THE MHOA CONFIRM MR. KOPIWUK'S CLAIM TO AN EQUITABLE OWNERSHIP INTEREST IN HIS HOME

1. The HHOA Repeatedly Describes Itself As An Agreement For Purchase And Not For Rental

Although this case hinges upon whether this Court characterizes, the transaction as a pure rental agreement, the word "rent" is nowhere mentioned in the 10-page contract that the housing authority required Mr. Kopanuk to sign. To the contrary, the 40-page MHOA not only informs Mr. Kopanuk that he is a Homebuyer, it refers to Mr. Kopanuk as a '@Homebuyer@' 220 times. Other words associated with purchase, such as 'equity, 'amortize,'^a and 'purchase,'^{vv} repeatedly appear throughout the contract.⁹

2. Under The MHOA, Mr. Kopanuk Made A Substantial Non-Refundable Down Payment

Under Ss 2.1 and 2.2 of the MHOA, Mr. Kopanuk was required to make a substantial downpayment (through his Native corporation) towards the purchase of his home prior to

⁹ The MHOA provision dealing with termination of the agreement (Article IX) fails to state -- anywhere -- that Mr. Kopanuk can be evicted. Indeed, no provision in the MHOA permits Mr. Kopanuk's right to his home to be summarily extinguished. This omission is particularly glaring since other HUD¹ 'authorized'⁸ leases must set forth the applicable eviction procedures in each resident's contract. See, e.g., 24 C.F.R. 8 966.4(k)(v)(B). This CFR section expressly excludes coverage of IHA Homeownership Opportunity Programs. 24 C.F.R. 5 966.1. Ironically, this means that a renter must be told that she is subject to eviction, but a homeowner need not be so informed.

occupancy.^{1°} This downpayment is non-refundable, MHOA QS 2.5, 2.6, and again shows that the MHOA is more like a typical home mortgage than a terminable lease.

The mere fact that Mr. Kopanuk's downpayment of land in Mountain Village was contributed by his Native corporation does not change the fact that the contribution is Mr. Kopanuk's. The land that the Native corporation of Mountain Village conveyed to the AVCP HHA under these MHOA agreements (for Mr. Kopanuk and other Mountain Village homebuyers) was land in which Mr. Kopanuk had a substantial personal interest because it was land owned by him and the other Native people of Mountain Village,

^{1°} Sections 2.1 and 2.2 of the MHOA provide, respectively:

2.1 Land Contributions.

(a) Certain land as identified in Exhibit A of this Agreement has been leased or conveyed to the IHA, or will be leased or conveyed before execution of the Construction Contract, as a contributed site for the Home. This land is valued at \$_____ which amount shall be pooled with values attributed to other contributed homesites in the Project.

2.2 MH Work Contribution.

(a) Amount. The Homebuyer shall provide work of a total value of \$_____ as a contribution to the development of the project.

* * *

(d) Failure To Provide MH Work.

(1) The IHA may terminate this Agreement if the Homebuyer is unable or unwilling to provide, or for any other reason fails to provide, the MH work obligation.

Indeed, it would be illegal for a landlord to impose these duties on a tenant, under AS 34.03.100.1⁴ The fact that the AVCP RHA delegated these non-delegable duties to Mr. Kopanuk confirms Mr. Kopanuk's central point: the MHOA is not purely a landlord-tenant type lease (subject to an FED), but is a purchase agreement under which the buyer has all the duties of a homeowner and acquires the corresponding legal rights as a result of his equitable interest.

4. Mr. Kopanuk Builds @'Equity@t In His Home Under The MEOA

Under the terms of the MHOA, a homebuyer's regular monthly payments bring him closer to the eventual outright ownership of his house. In other words, with every monthly payment a homebuyer makes, the purchase price is further reduced, increasing the homebuyer's equity. MHOA f5 7.1 and 7.2.

Moreover, Section 6.2 of the MHOA is titled "Equity Accounts^a and lists various methods by which homebuyers can build equity in their houses. Any and all payments that a homebuyer, like Mr. Kopanuk, makes to the AVCP RHA -- over and .above the "administration fee" -- go into that equity account. Moreover, under 5 5.2(c) of the MHOA, a homebuyer earns additional equity

⁴ While AS 34.03.100 allows a landlord to delegate some duties to a tenant, it does not allow a landlord to obligate a tenant to assume responsibility for maintaining his home in a habitable condition, AS 34.03.100(a)(1); keeping common areas safe and clean, AS 34.03.100(a)(2); or "maintainring] electrical, plumbing, sanitary, heating, ventilating, air-conditioning, kitchen, and other facilities and appliances including elevators, supplied or required to be supplied by the landlord." AS 34.03.100(a) (3).

cancellation of the mortgage or other security instrument. By contrast, in a true option agreement, the purchase price is not paid until after the option is exercised. Thus, Mr. Kopanuk, who has been paying for his house for the past 12 years (i.e., 45% of his MHOA's term) is almost half-way to his goal of outright home ownership.

6. Mr. Kopanuk Can Prepay His Debt And Purchase His Home Outright

The MHOA also provides that Mr. Kopanuk can prepay his obligations and immediately receive fee simple title. See MHOA 5s 7.1, 7.5.17 These provisions conform to the standard home mancino notes used by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Corporation for residential home purchases, Nelson & Whitman, Real Estate Finance & y, 2nd Ed. (1985) at 433, and again show that the MHOA is more akin to a home purchase agreement than to a terminable rental agreement.

7. The MHOA Requires Mr. Kopanuk To Purchase His Home Under Certain Circumstances

Sections 7.1 and 7.5 of the MHOA require that after certain conditions are met, Mr. Kopanuk must purchase his home from the AVCP RHA. Section 7.1 of the MHOA states in pertinent part:

¹⁷ The AVCP RHA concurs with this conclusion. "Under the MHOA, lessees:

(3) receive an option to purchase the home, which may be exercised by paying .a pre-set amount which declines over time accordma to a m nthly mrcbase P_____s che u . m AVCP 'RHA)s Resp. to Def."s Pet. at 5, Eke: 118 (emphasis added).

When the Home May Be Purchased and When the Home MUST
89 purchased-

The Homebuyer may at his option purchase his home on or after the Date of Occupancy, but only if the Homebuyer has met all of his obligations under this Agreement. Bower, when the Homebuyer's income, Reserves and Accounts balances are sufficient to enable the [Housing Authority] to make the determination provided in Section 7.5(a), he Homebuyer must DURChase the Home. (emphasis added).⁸ x

B. THE PARTIES TO THE MHOA UNDERSTOOD THAT IT WAS A CONTRACT FOR THE PURCHASE OF A HOME

The only parties whose intentions are relevant to the interpretation of this MHOA are the AVCP RHA and Mr. Kopanuk.¹⁹ Mr. Kopanuk submitted an affidavit addressing his understanding and intent vis B vis the MHOA:

I always thought that since I had been living in my house so long, and since I had been paying so long, it would be my house forever. I didn't think I was like a rental tenant that could be thrown out so easy. I also thought, since I thought I was like a homeowner, that I could let my family members stay in the house when I had to [go] to a different village for work or family reasons.

The AVCP RHA did not submit any evidence of its intent to the district court.²¹ In light of the MHOA itself, pertinent case

¹⁸ Section 7.5 of the RHOA. is captioned @'Obligation to Purchase" and lists the conditions under which a "homebuyer" will be forced to buy his or her house.

¹⁹ HUD is not a party to the MHOA. The AVCP RHA is neither a political subdivision of the state nor a state agency. June 8, 1982, Op. Att'y Gen.

²⁰ Bffidavit of Mr. K o ~ a m, para. 4 (May 25, 1993) (Ext. 39).

²¹ ware Tlinait-Haida Regional HOUS. Auth. V. Jackson, IKA-87-18 CI (1st District April 26, 1988) (The IHA submitted an affidavit in support of its interpretation of the homebuyer

law, and relevant extrinsic evidence, Mr. Kopanuk's belief that he was buying a home is not only reasonable - it is undisputed.

This Court's precedents teach that Mr. Kopanuk's understanding of the MHOA is an important factor in ascertaining its meaning. See, e.g., ~~Stepanov v. Homer Elec. Ass'n., Inc.~~, 814 P.2d 731, 734 (Alaska 1991) (when interpreting a contract a court should look at the contract itself "and also at extrinsic evidence regarding the parties' intent") (citations omitted): Modern Construction, Inc. v. Barce, Inc., 556 P.2d 528, 529 (Alaska 1976); ~~Stenehiem v. Kvn Jin Cho~~, 631 P.2d 482, 484-85 (Alaska 1981) (primary underlying purpose of the law of contracts is to realize the reasonable expectations that have been induced by the making of a promise). This principle is especially important when considering contracts aimed at rural Alaskans who are often unfamiliar with complex legal terminology and who, in executing the MHOA, would have understood its plain language to mean just what it says without regard to subtle and contradictory legal nuances. See, e.g., ~~Acuchak v. Montomery Ward Co., Inc.~~, CUDGEL, 1352, 1354 (Alaska 1974). That plain language clearly points to something more than a typical landlord-tenant relationship.

c. As AN ADEzSIO# CONTRACT, ANY ANRIGUITIES IN THE WHOA MUST BE CONSTRUND AGAINST TNN AVCP RNA

The MHOA signed by Mr. Kopanuk is a 44 page, form contract which the AVCP RHA used for all of its hundreds of homebuyers in

agreement) (m. at 7) (attached as Exhibit 3 to Mr. Kopanuk's Petition for Hearing).

the 1980s. No modifications to the MROA were permitted. 24 C.F.R. S 905.135. As such, the WHOA was offered on a "take it or leave it" basis to Native homebuyers. It is the archetypal "adhesion" contract, about which this Court has had the following to say:

"Adhesion contract" is a handy shorthand description of standard form printed contracts prepared by one party and submitted to the other on a "take it or leave it" basis. The law has recognized there is often no true equality of bargaining power in such contracts and has accommodated that reality in construing them.

Stordahl v. Government Emu. Ins. Co., 564 P.2d 63, 65 n.4 (Alaska 1977) (interpreting uninsured motorist insurance contract), quoting Standard Oil Co. v. Perkins, 347 F.2d 379, 384 n.5 (9th Cir. 1965)(citations omitted).

Because the MHOA is an adhesion contract, this Court must construe any ambiguities in the MROA ~~dnst~~ the AVCP FUIA. Craig Taylor E4Dment v. Pettibone Corp., 659 P.2d 594., 597 (Alaska 1983) (interpreting standard distributor contract provision governing payment of commissions). Accordingly, if there is any ambiguity about whether Mr. Kopanuk is a purchaser with equitable interests in his home or simply a renter subject to FED proceedings, the above authorities confirm that this ambiguity must be construed against the AVCP RHA.²²

²² Of course, as already noted, Mr. Kopanuk contends that the MHOA is not ambiguous and that its language unmistakably establishes his claim to equitable ownership interests in his house, so as to preclude jurisdiction in an FED proceeding. Well-settled law dictates that an agreement is to be "interpreted according to the sense in which the party using the words should

III. PREVIOUS JUDICIAL DECISIONS ON THIS ISSUE SUPPORT MR. KOPANUK'S ARGUMENT

A. ALASKA'S COURTS REFUSED TO ALLOW FEDS TO BE USED AGAINST NEIGHBORHOOD HOMEBUYERS PRIOR TO THE PROMULGATION OF HUD'S REGULATIONS

Prior to the promulgation of HUD's 1990 regulation authorizing the use of summary FED eviction procedures, there had been two written opinions issued by Alaska's courts on the issue of whether an MHOA (or its counterpart under the Turnkey program, the "Turnkey III Agreement") was terminable through FED proceedings. Tlinait-Halda Regional Hous. Auth. v. Jackson, 1KA-87-18 CI (1st District April 26, 1988), and Cook Inlet Hous. Auth. v. Via, 3 AN 82-8734 CI (3rd District July 18, 1983).²³ In each case, the court concluded that it lacked jurisdiction. Though these two decisions are unpublished, the analysis employed by both courts is relevant here.

In Jackson, the court considered a Turnkey III Agreement:

[D]espite the [IHA's] claim that the agreement is simply an option contract, because of this financing mechanism [whereby the homebuyer has an equity account and is, under certain conditions, obligated to buy the home] the agreement does bear the indicia

reasonably have apprehended that they would be understood by the other party, and the meaning which the recipient of the communication might reasonably have given to it." fi C G Const. Co., Inc. v. Reid Brothers Jouu-u Co., Inc., 547 P.2d 1207, 1213 (Alaska 1976); Siv v. A h G Const. Co., Inc., 528 P.2d 440, 445 (Alaska 1974). There is simply no way the AVCP RHA can reasonably explain away its extensive use of such language as "homebuyer" (over two hundred times) and other terms which indicate that the WHOA is a contract whereby an individual, like Mr. Kopanuk, is purchasing a house.

²³ Copies of both of these opinions are attached to Mr. Kopanuk's Petition for Hearing as Exhibits 3 & 4.

of an installment sales contract. Construing the contract as such would be consonant with the purpose of the contract as stated by the parties.

Clearly the contract is not a simple option. . . . It is true that it is headed "Option Agreement," and contains many words and phrases suitable or common in pure option agreements but these do not destroy the obvious purpose and nature of the contract. The contract should have been drawn fairly to represent the transaction in which the parties were engaged. To mingle into it terms and expressions with respect to an option, foreign to the real purpose of the parties, tends only to confusion.

Xii. at 12, *Marquez*, 5 P.2d at 1082 (Kansas 1931) (emphasis added).

The Jackson court found that under installment contracts a buyer may acquire equity interests in the property. As the court stated, "[w]here payments have been made regularly and amount to a substantial payment of the purchase price or where substantial improvements have been made by the tenant-vendee, 'then equity may not permit the interests of the tenant-vendee to be summarily extinguished in forcible detainer, but will deal with the situation according to equitable principles.'" *Id.* at 21, Stevens v. McDowell, 98 P.2d 410, 413 (Kansas 1940). These equitable issues raised serious problems insofar as the Jackson court's jurisdiction was concerned:

Unfortunately, this court cannot proceed in the manner suggested by the Kansas Court [considering the equitable interests involved] because this court lacks jurisdiction in cases of an equitable nature.

Jackson, Supra at 21 (emphasis added).

The court in Yiera (considering an MHOA) reached an almost identical result:

While the complaint and testimony implied that there was a relationship of landlord and tenant and that

Mr. Viera paid rent, it is clear from the documents and testimony that the Vieras were not tenants. They had entered into a Federally assisted and authorized agreement with plaintiff for the purpose of purchasing a home. Throughout all of the agreements they are referred to as homebuyers rather than tenants and the payments they were to make are nowhere characterized as rent, nor does the agreement of 39 pages refer to summary disposition.

While strictly speaking they were not buyers under a contract of sale where forfeiture is abhorred by the courts, neither are the appellants mere tenants.

Viera at 3. (emphasis added). The Viera court concluded that the MHOA:

was equivalent to a purchase agreement and that the appellants have an equitable interest in the subject property . . . [and resultingly] the District Court lacked jurisdiction²⁴

As already demonstrated, the decisions in Viera and Jackson are sound.²⁵ Other Alaska courts, in considering other types of installment contracts, have reached parallel conclusions. For example, in New v. Borchardt-Weir, (Dist. Ct. March 20, 1991), 3 AN-91-1752 c1,²⁶ the plaintiff filed an FED action in district court seeking to evict a "tenant" who had agreed to pay plaintiff certain installments over a period of time for a mobile home. The

24 XL, "Findings of Fact."

25 The AVCP RHA has attempted to discount the Jackson and Viera decisions by arguing that they relied on Kansas cases rendered during the nDepression.^w Exe: 78-79. That distinction is legally irrelevant. In fact, the legal analysis employed by the Kansas courts is still good law in Kansas. Later cases, like the earlier ones, have refused to countenance evictions of ¹⁸lesseesⁿ who accrued equitable interests in their property. See. e.u., Leig R uert, 495 P.2d 955, 959 (Kansas 1972).

26 Ext. 134, filed with the district court as Exhibit A to Mr. Kopanuk's "Motion for Reconsideration."^w

court summarily issued an Order of Eviction and a Writ of Assistance. Immediately thereafter defendant obtained counsel and brought to the court's attention that FED actions were inappropriate to enforce "installment leases." The district court agreed and set aside its prior orders because "the District Court lacks jurisdiction to resolve equitable ownership claims or questions of title in a summary FED proceeding." Ext. 134.²⁷

- B. THE ONLY REPORTED DECISION OUTSIDE OF ALASKA TO HAVE CONSIDERED THE LEGAL NATURE OF THE MEOA FOUND THAT EVICTION PROCEEDINGS WERE INAPPROPRIATE

Mr. Kopanuk is aware of one other reported case outside of Alaska where a court considered the nature of the MHOA and the appropriateness of eviction proceedings. In Cuvahoua Metro. Housing Auth. v. Watking, 491 N.E.2d 701, 23 Ohio App. 3d 20 (Ohio App. 1984), the court concluded that summary evictions were an impermissible method of enforcing such agreements. In that case the housing authority filed a forcible entry and detainer action against a homebuyer who had executed a "Homebuyers

²⁷ Following the promulgation of HUD's 1990 regulations, two of Alaska's courts reached a contrary result. Aith v. Tlinuit-Haida Reuioa Hous. Auth., 1KE-91-539 CI (1st District May 5, 1992) (attached to Mr. Kopanuk's Petition for Hearing as Exhibit 5); Couoer River Basin Regional Housing Authority v. Ben John, 3 GL-93-19 Civ. (3rd. Dist. March 29, 1994, Judge Anderson ruling from the bench) (appeal pending) (attached to the AVCP RHA's Resp. to Def.'s Pet. as Exhibit A, Ext. 114-133). To the extent these courts found HUD's recent regulation to be controlling on the issue of jurisdiction, they are erroneous. As discussed below, this regulation did not change the substance of the contract. Moreover, HUD did not, and could not, create jurisdiction in this State's courts where it otherwise would not exist.

Ownership Opportunity Agreement" ("HOOA"). That agreement was roughly identical to Mr. Kopanuk's MHOA. Like Mr. Kopanuk's MHOA, the HOOA provided that:

[T]he Homebuyer may achieve ownership of the home by making the required monthly payments and providing maintenance and repairs to build up a credit [in his equity account]. While the homebuyer is performing his obligations, the purchase price will be reduced in accordance with the Purchase Price Schedule, so that, while this purchase price is being reduced, the Homebuyer is increasing the amount of his [equity].

119. at 703-704. The HOOA, like the WHOA, allowed a homebuyer to "prepay"ⁿ for her home (and take immediate title) and the agreement ran for a lengthy period of time (30 years). Significantly, unlike the MHOA, the HOOA expressly provided that a homebuyer would have the status of a "lessee" until she took title to her house. u. at 705.

The homebuyer in Cuyahoua Metro. moved to dismiss the housing authority's eviction action and argued that the HOOA was more akin to a land installment sales contract and was therefore outside the scope of the forcible entry and detainer statutes. The trial court agreed and dismissed the housing authority's eviction action. The Ohio Court of Appeals affirmed and stated:

Upon comparison of the provisions of the [HOOA] with a "lease" and an "option contract" as defined in the [state codes] it becomes apparent that the [homebuyer's] interest is greater than the mere use of a residential premise with the privilege of purchasing it. Furthermore, the statutory definition of a land installment contract expressly excludes option contracts for the purchase of real property. On the other hand, however, such comparisons of the [HOOA] with the definition of a land installment contract discloses that it includes substantially the essential elements for such a contract. Moreover the title of the agreement, nHomebuyers Ownership

Opportunity Agreement," is ambiguous on its face. In view of the fact that the lease was prepared by the [housing authority], the maxim "ambiguitas contra stipulatorem est" applies, and the ambiguity or doubt in meaning or intent must be resolved against the [housing authority]."

& at 705. The Ohio Court of Appeals decision, like the decisions in Viera and Jackson, recognizes that eviction proceedings are inappropriate in circumstances like those at issue here. The Arizona Court of Appeals reached a similar conclusion in E-Z Livin' Mobile Sales, Inc.. v. Van Zanen, 548 P.2d 1175 (Ariz. App. 1976).

Viewing the terms of the document and the testimony adduced it is clear that the "lease option" was in reality a contract for the sale of land. . . . [T]he case was not one of a landlord tenant relationship but rather a vendor-vendee relationship, and as such, a forcible entry and detainer will not lie.

& at 1176-77 (citations omitted).

IV. RUD'S 1990 REGULATORY CHARACTERIZATION OF MR. KOPANUK'S CONTRACT WITH AVCP RRA NEITHER CHANGED ITS SUBSTANCE NOR RETROACTIVELY BYTINGUISRED HIS PROPERTY INTEREST

The housing authority's claim that it can use FED proceedings against Mr. Kopanuk, based solely on a regulation enacted by HUD many years after Mr. Kopanuk entered into his contract, is plainly wrong. First, HUD is not a party to the contract, and the AVCP RBA has not cited any legal authority suggesting that a non-party to a contract may modify that contract years after its execution. Second, HUD did not change the contract terms -- it merely gave its post hoc opinion of the

legal consequences of the MHOA.²⁸ Third, and most importantly, if the MHOA affords equitable ownership interests to Mr. Kopanuk, HUD cannot unilaterally eliminate those interests by merely stating that they do not exist.

A. HUD COULD NOT UNILATERALLY ALTER THE MHOA SO AS TO REVOKE MR. KOPANUK'S EQUITABLE INTERESTS IN HIS HOME

Mr. Kopanuk executed his MHOA with the AVCP RHA in 1982. Eight years later, in 1990, HUD passed a regulation that expressed HUD's interpretation of the MHOA. However, the housing authority did not change a single term of Mr. Kopanuk's contract. HUD's "interpretation" of the contract between Kopanuk and AVCP RHA is legally irrelevant.²⁹ And, were its interpretation

²⁸ HUD stated that "The rule has been revised to clarify that the [MHOA] is a lease and that the appropriate procedure to be followed for terminating the agreement is by written notification to the homebuyer, enforced if necessary, by eviction -- not foreclosure."ⁿ 55 Fed. Reg. 24,735 (1990).

²⁹ No deference is owed to an administrative interpretation of a contract. See, e.g., Alaska Public Emulovees^f Ass'n. v. State, 831 P.2d 1245 (Alaska.1992). Suppose the MHOA expressly said the Homebuyer had a reasonable expectation of ownership. Could HUD then enact a regulation providing that the owner had no reasonable expectation of ownership? Again, the point is that the substance of the agreement governs, and not HUD's characterization of the substance of the agreement. HUD may have the right to determine the rights and obligations of the parties by imposing contract terms, but it is the task of the courts to evaluate the legal significance of those rights and obligations. Inasmuch as HUD's regulation exceeds the scope of federal authority in this area, it is neither binding nor entitled to deference. See Doyle v. Southern Guar. Coru., 795 F.2d 907, 909 (11th Cir. 1986) (a controlling question of state law should be certified to courts of the state).

relevant and purportedly binding on Mr. Kopanuk, it could not be applied retroactively.

The reason is straightforward -- laws cannot impair contractual obligations, nor can they be applied retroactively to alter the reasonable interpretations of the parties at the time a contract was executed. U.S. CanSr. ANT. I, SEC. 10; U.S. Cow. ART. I, SEC. 9, CL. 3. See Pension Benefit Guaranty Coru. v. Gray & Co., 467 U.S. 717, (1984); National Railroad Passenuer Coru. v. Atchison, ToDeka and Santa Fe Railway Co., 470 U.S. 451 (1985) (Due process clause limits the federal government's ability to retroactively change contracts. See also Tribe, AMERICAN Co-sr-rum~~~ J-iy at 613-15; 629-41.

In arguing that Mr. Kopanuk is a "tenant," the AVCP RHA is in essence proposing a bit of "revisionist history" of the MHO program, completely ignoring the aforementioned contract principles that would militate against its view. Through the MHOA itself, the AVCP RHA successfully convinced Alaska Native participants that they were entering a program to purchase, not rent, their houses, and that they resided in the houses under purchase contracts, not leases. Such an understanding was entirely consistent with the considerable responsibilities the homebuyers agreed to undertake in terms of maintaining and repairing their homes and contributing to the original cost of their homes.

HUD cannot retroactively dictate the rights of the parties to an WHO agreement years after the agreement was entered into and certainly not in a manner that runs counter to the long-term

and reasonable expectations of the MHO participant. HUD's regulations attempt to accomplish by an invalid regulatory fiat what Alaska law prohibits housing authorities from doing. To countenance this effort by HUD would be to adopt the anomalous view that the drafter of a contract may unilaterally determine -- and alter -- the meaning of a contract. Justice and fairness demand a contrary result.

8. THW NWO PROGMN OPERATES WITWIN ALASKA'S FED STATUTES

1. It Is Well-Settled That State Landlord/Tenant Laws Apply To Federal Housing Program

The mere fact that the MHOA is a federally subsidized housing program does not negate the existence or import of state law. As a general matter, federally subsidized landlords and housing authorities are fully subject to state law requirements for evictions as well as any additional requirements imposed by state law. As the First Circuit explained, "[t]he federal legislation creating the network of subsidized housing laws is superimposed upon and consciously interdependent with the substructure of local law relating to housing." Jaraman v. Sullivan, 552 F.2d 2, 11 (1st Cir. 1977) (footnote omitted). ~ls~ powe v. Pierce, 622 F. Supp. 1030 (D.C. Cir. 1985) (HUD regulations do not preempt local law precluding eviction of tenants for refusal to sign written lease); Burrouhs v. Hills, 741 F. 2d 1525, 1528 (7th Cir. 1984) (HUD properties are not "enclaves exempt from local law"); Herrill Tenant Council v. U.S. Dept. of Housing, 638 F.2d 1086 (7th Cir. 1981) (state law governing security deposits enforceable against HUD); mox Hill

Tenant Council v. Washinuton, 448 F.2d 1045 (D.C. Cir. 1971) (local housing regulations requiring maintenance and repair apply to dwellings owned and operated by federal government).

That State landlord/tenant laws control this issue is further confirmed in Conille v. Secretary of Housinu and Urban pev., 840 F.2d 105, 114 (1st Cir. 1988). In that case, a public housing tenant brought suit against HUD for failing to maintain her apartment in a habitable condition. While recognizing that federal law must apply to a determination of the rights and obligations of the United States under a lease, the court held that there was no need to fashion federal law if "there is no 'significant conflict between some federal policy or interest and the use of state law.'" Id. at 110, citing Milwaukee v. uinoi,&, 451 U.S. 304, 313-14 (1981). The Conu court held that a state's landlord-tenant laws could be applied to a contractual dispute with HUD and stated:

By enacting these provisions, Congress did not purport, in any way, to regulate contractual relations between the Secretary, as landlord, and his tenants under HUD leases. While there are specific limitations placed upon the Secretary's maintenance obligations in managing and disposing of HUD-owned housing, rudimentary matters underlying landlord-tenant relations such as obligations to pay rent, subleasing, and evictions are not addressed in this or any other provision of the NHA [National Housing Act]. The NHA might loosely be described as governing "housing" matters, leaving untouched the area of landlord-tenant law that typically has been the province of state courts and legislatures While Congress has made public policy regarding public housing, generally, it has not sought to legislate in the area of mutual obligations between parties to modern tenancy agreements. . . . Thus, Conille's case, focusing specifically on a landlord's obligation to its tenant, does not present a

situation where Congress has comprehensively occupied a field

ls3,L at 111-112 (citations omitted)(emphasis added).

Whether Alaska's summary FED procedures are available to local housing authorities for evicting MHO homebuyers is a question of state, not federal, law.³⁰ Whether Mr. Kopanuk is merely a "tenant" or is vested instead with an equitable interest in his MHO home is a question for Alaska's courts, not HUD.

Moreover, in this case there is no explicit statute or regulation that overrides or is inconsistent with state law. The Housing Act makes no mention of state law, and HUD's regulation specifically professes adherence to state law -- as directed by the applicable regulation, the procedures that an Indian Housing Authority uses for termination of an MHOA "shall incorporate all

³⁰ There is no inconsistency between state restrictions on the availability of FED procedures and the objectives of the MHO program. Summary eviction procedures give homebuyers such as Mr. Kopanuk as little as forty-eight hours to prepare to protect homes they may have resided in and built equity towards for many years. Contrary to the AVCP RHA's argument, no significant federal interest is served by authorizing speedy evictions from an Indian housing program designed to promote homeownership. The federal interest at stake -- providing needed housing to Indian communities -- is arguably far better served by ensuring that evictions occur only when absolutely necessary under procedures that afford maximum safeguards to homebuyers. While it may be more convenient for housing authorities, such as the AVCP FUIA, to utilize speedy remedies, "administrative convenience" has never been a sufficient basis to sustain agency action that is otherwise hostile to the interests of those its programs are intended to serve. See, 8.u., Haskins v. Stanton, 621 F. Supp. 622 (N.D. Ind. 1985); Massachu et s Ass'n of Older Americans v. m, 700 F.2d 749, 752 (1st'Ci:. 1983). It is inconceivable that allowing more time and greater protection in a non-summary judicial process would thwart the intent of Congress to provide Indian communities with meaningful homeownership opportunities.

the steps and provisions needed to comply with State, local, or Tribal law." 24 C.F.R. 5 905.446(b). Under these circumstances, state law plainly governs. 28 U.S.C. 0 1652 ("The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply").

2. State Property Law In An Area Specially Reserved
?or The States

Even though the legal issue may be a matter of federal law, the general rule is that "federal law should incorporate the applicable state property law to resolve the dispute." Wilson v. Omaha Indian Tribe, 442 U.S. 653, 678, (1979). The Supreme Court has applied a three-part test to determine when the courts should make an exception to this rule and to override State law with a conflicting federal standard:

whether there is a need for a nationally uniform body of law to apply in situations comparable to this, whether application of state law would frustrate federal policy or functions, and the impact a federal rule might have on existing relationships under state law.

& at 672-73. The u Court found no need for a uniform federal rule of property -- "we see little reason why federal interests should not be treated under the same rules of property that apply to private persons." *Id.* at 673. Although state rules often vary from state to state, as long as a particular state's standard is applied evenhandedly there is no need to develop a body of federal common law. "We should not accept 'generalized pleas for uniformity as substitutes for concrete

evidence that adopting state law would adversely affect [federal interests].'" Id.

This [property law dispute] is also an area in which the States have substantial interest in having their own law resolve controversies such as these. Private landowners rely on state real property law when purchasing real property

J& at 674. Wallis v. Pam American Petroleum Core., 384 U.S. 63, 68-70 (1966) (State law controls in determining enforceability of agreement to assign oil and gas lease acquired from the federal government).

"Rules of property ownership fall under the realm of state law to which the federal courts must normally defer." United States v. Deva, 369 F. Supp. 1113, 1115 (D.P.R. 1974).

"In the absence of express Congressional action to the contrary, we think it is not asking too much from a federal agency . . . simply to be governed by the same local law which controls the rights of private citizens in a similar endeavor. And the government could not have been taken by surprise by local law established for one hundred years and more. In this situation, notice adequate to others is adequate to the United States."

Id. at 1116, quoting United States v. Cless, 254 F.2d 590, 594 (3rd Cir. 1958).³¹

The federal courts have shown an especial preference for following state law in determining property interests.

Roth theory and the precedents of [the Supreme] Court teach us solicitude for state interests, particularly in the field of family and family-property arrangements. They should be overridden by the

³¹ See also W.T. Wassoner Estate v. Wichita County, 273 U.S. 113, 117 (1927) ("Whether [property is] realty or personalty is a question of local law upon which the local decisions and statutes control.@@).

federal courts only where clear and substantial interests of the National Government, which cannot be served consistently with respect for such state interests, will suffer major damage if the state law is applied.

United States v. Yazela, 382 U.S. 341, 352 (1966). "[I]n the type of case most closely resembling the present problem, state law has invariably been observed." u. at 354-55 (emphasis added). As support for that proposition, the Court relied on "the leading case" of u v. O'Neil, 106 U.S. 272 (1882), which held that the ability of the United States to levy execution against the property of a judgment debtor was limited by the homestead exemption and other protections afforded by state law. Yazell, 382 U.S. at 355.

c. THE JURISDICTION OF ALASKA'S STATE COURTS IS GOVERNED BY STATE LAW, BUT AS TO THE FEDERAL GOVERNMENT

Because the issue in this case involves the allocation of jurisdiction in Alaska's state courts, the decision is uniquely a matter of state law. Although "[f]ederal law confers rights binding on state courts, the subject-matter jurisdiction of [the state courts] is governed in the first instance by state laws." Gulf Offshore Co. v. Mobil Oil Corp. 453 U.S. 473, 47-78 (1981) (footnote omitted). The United States Supreme Court has recently emphasized the autonomy that states enjoy in determining the jurisdiction of their courts.

When a state court refuses jurisdiction because of a neutral state rule regarding the administration of the courts, we must act with utmost caution before deciding that it is obligated to entertain the claim.

The requirement that a state court of competent jurisdiction treat federal law as the law of the land does not necessarily include within it a requirement that the State create a court competent

to hear the case in which the claim is presented. The general rule "bottomed deeply in belief in the importance of state control of state judicial procedure, is that federal law takes the state courts as it finds them." . . . The States thus have great latitude to establish the structure and jurisdiction of their own courts.

BOWlett by and through Hewlett v. Rose, 496 U.S. 356, 370 (1990)
(citations omitted).

Of course, in the present case, Mr. Kopanuk does not contend that consideration of the claims at issue is completely barred in the state courts. Although he contends that the claim has been brought in the wrong state court, he recognizes that there is a state court that does have the jurisdiction to hear and decide the claim. He simply asks that this Court confirm the principle that although "federal law confers rights binding on state courts, the subject-matter is governed in the first instance by state laws." ^N Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473, 477-78 (1981).

v. TO INTERPRET EUD'S REGULATION AS REQUIRING TEE COURTS OF ALABM TO ALTER TRBIR JURISDICTIONAL RULE8 RUNS AFOUL OF TEB TENTH AMBNDNBNT

Under the Tenth Amendment to the United States Constitution, the power of Congress to compel States to act in accordance with its wishes is limited, and actions that exceed Congress's enumerated powers will be found to unduly infringe on State sovereignty. New York v. United States, 112 S. Ct. 2408, 2428-29 (1992).

No matter how powerful the federal interest involved, the Constitution simply does not give Congress the authority to require the States to regulate. The Constitution instead gives Congress the authority to

regulate matters directly and to pre-empt contrary state regulation. Where a federal interest is sufficiently strong to cause Congress to legislate, it must do so directly: it may not conscript state governments as its agents.

Lg, at 2429'(emphasis added). See also Gregorv v. Ashcroft, 501 U.S. 452, 462 (1991).

It is a basic premise of federal constitutional law that Congress may not simply n8commandee[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program.'^w flew York v. U.S., sunra at 2420, quoting Rodel v. Virainia Surface Minina and Reclamation Assn.. Inc., 452 U.S. 264, 288 (1981).

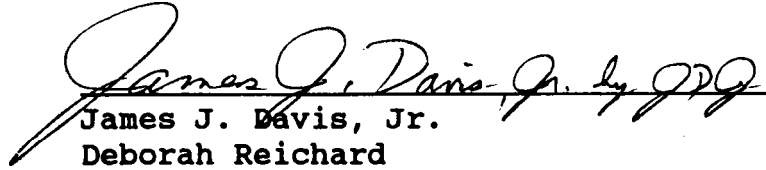
To the extent that HUD's 1992 regulations purport to require that MHO evictions occur in state summary eviction proceedings, it invalidly conscripts the state judiciary as its agent in enforcing laws that it has itself declined to enforce. Under Tenth Amendment principles, HUD may not compel this State's courts to assume jurisdiction and to summarily evict MHO homebuyers in proceedings for which this State's laws preclude jurisdiction.

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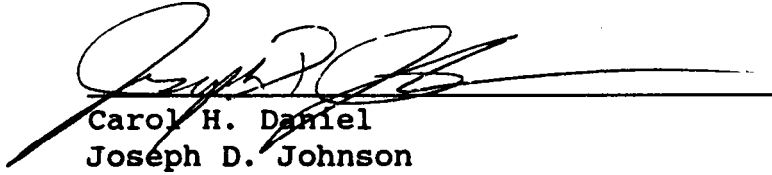
The MHOA is either an installment sales contract, or a lease contract under which Mr. Kopanuk acquired equitable property interests. Under either option, the district court was without jurisdiction **over** this case and improperly applied FED proceedings to evict Mr. Kopanuk from his home. This Court should reverse and order this action dismissed.

Respectfully submitted this 7th day of October, 1994.

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