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IN THE SUPREME COURT FOR THE STATE OF ALASKA

MR. DANA KOPANUK,)	
)	SUpreme Court No. S-6432
Petitioner.		
	1	
VS.		
	;	
AVCP REGIONAL HOUSING		
AUTHORITY,	1	
)	
Respondent.)	
)	

Superior Court No. 4 BE 92 288 Civ.

Review Of The Decisions Of The District And Superior Court,
Fourth Judicial District At Bethel. The Honorable Dale O. Curda.
(Sittina As District Court Judae) And The Honorable Niesje J.
Steinkruaer, As Superior Court Judue

PETITIONER'S REPLY BRIEF

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Filed February , 1995 in
the Supreme Court for the State of Alaska

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INTRODUCTION

Mr. Kopanuk's MHOA is predominantly a purchase -- and not a rental -- agreement, as he pointed out in his opening brief. Substantively, that is the nature of the agreement, regardless of whether it is characterized as an installment sale contract or as a lease/option. The reasons are numerous. The MHOA required him to make a non-refundable down payment of land or labor: it placed responsibility for all repairs and maintenance, no matter how large or small, on him: he accumulates equity as the purchase price is reduced and amortized over the life of the transaction: and he will become the owner of the home at the conclusion of the agreement at no additional cost. The agreement itself characterizes the transaction as a purchase agreement, albeit by means of a complicated 40-page document structured as a long-term lease culminating in the transfer of legal title. In short, the agreement confers virtually every element of home ownership on Mr. Kopanuk except the actual conveyance of title.

AVCP Regional Housing Authority (AVCP RHA) does not deny (as it indeed it cannot) these substantive features of its agreement with Mr. Kopanuk. Instead, it mostly ignores them, presenting its argument as if the only difference between Mr. Kopanuk's MHOA and a conventional lease is the inclusion of an option to purchase. From this artificially narrow view of the transaction, AVCP RHA constructs its argument that Mr. Kopanuk has no equitable ownership interest in his home until he

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completes the final formality -- his request for a formal transfer of title, as he will be entitled to' do without cost at the successful expiration of the agreement's 25-year term.

Accordingly, despite the substantive ownership provisions of the MHOA, including Mr. Kopanuk's investment and the equity he has accumulated, AVCP RHA contends that this Court's precedents obligate it to treat Mr. Kopanuk as nothing more than a conventional tenant with a bare possessory interest -- and that this Court should clear the way for the district court to summarily terminate in an FED proceeding not only Mr. Kopanuk's right of possession, but also all his equitable ownership interests in his home and the expectation of full legal ownership that induced Mr. Kopanuk to commit himself to this arrangement in the first instance.

Mr. Kopanuk's interests in his home required more than a decade, and a large portion of his resources, to accumulate. No authoritative precedent supports summary extinguishment of such interests. This Court should reject the housing authority's effort to do so through an expansion of the district court's FED jurisdiction. A court is available with jurisdiction to hear AVCP RHA's claim in the first instance. That court -- and not the district court -- is where it must be brought.

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ARGUMENT

I. THE GOVERNING LAW AND SUMMARY OF ARGUMENT

The governing law is straightforward. "[T]here shall be no inquiry into the merits of the title," AS 09.45.150, in an FED proceeding. The jurisdictional grant of AS 22.15.050 confirms this allocation of jurisdiction between the district and superior courts.

The jurisdiction of the district courts does not extend to (1) an action in which the title to real property is in dispute.

This jurisdictional limitation is consistent with the narrow scope of an FED, whose purpose is to summarily adjudicate possession in landlord-tenant disputes, but only if possession is the sole issue. Vinson v. Hamilton, 854 P.2d 733, 735 (1993); McCall v. Fickes, 556 P.2d 535, 537 (Alaska 1976).

The issues in this case go well beyond possession. Mr. Kopanuk has asserted valid claims of equitable ownership interests which this Court has held are not within a district court's FED jurisdiction. Miners' & Merchants' Bank v. Brice, 5 Alaska 418, 420-21 (Alaska 1915) (where "defendant claims the equitable title to the property, . . . the title to the property is in dispute," and the "drastic summary remedy of forcible entry and detainer" is not available). See also Modrok v. Marshall, 523 P.2d 172, 174 (Alaska 1974). Rather, in such circumstances, the remedy is by ejection in Superior Court. See Strack v. Miller, 645 P.2d 184, 186-87 (Alaska 1982); City of Valdez v. Valdez Development Co., 523 P.2d 177, 182 (Alaska

1974); Moran v. Holman, 501 P.2d 769, 771 (Alaska 1972); Williams v. DeLay, 395 P.2d 839, 840, 846 (Alaska 1964); Land DeVelODment. Inc. V. Paduett, 369 P.2d 888 (Alaska 1962); Steil v. Dessmore, 3 Alaska 392 (Alaska 1907).

In an effort to avoid both the plain statutory language and this Court's authoritative interpretations of it, Avcp RHA and its amici focus their legal arguments on the MHOA's option to purchase. They argue that adding an option agreement to a conventional lease is insufficient to create equitable ownership interests. At most, they contend, no equitable ownership interest can arise until after the option is exercised.

The housing authority also contends that the district court's assertion of jurisdiction, even if erroneous, is essentially harmless. It argues that even if Mr. Kopanuk has equitable ownership interests in his home, it would be both inequitable and futile to afford Mr. Kopanuk the same opportunity to redeem his interest that is extended to others and that it would in fact be inequitable to sanction any result other than that reached in the district court. Finally, both AVCP and amicus HUD argue that this Court is bound to defer to HUD's regulatory interpretation of both the legal status of the MHOA under State law and the remedies available for its enforcement.

None of these arguments has merit. At this stage, the question is not how the equities should be balanced. The question instead is which court has been vested by the Legislature with the jurisdiction to strike that balance, a

question that depends on whether Mr. Kopanuk has asserted potentially valid claims of equitable ownership interests. As for the controlling legal question, i.e., the nature of Mr. Kopanuk's interest in his home, AVCP PHA's single-minded focus on the MJOA's so-called option to purchase ignores the many provisions of the agreement assuring Mr. Kopanuk of ownership if he successfully provides the initial contribution of land or labor and then fulfills his 25 years of financial, maintenance, and other responsibilities. His compliance with these conditions for the past 10 years gives rise to substantial equity interests in his home -- and a reasonable expectation of ownership.

The MHOA's so-called purchase option is in reality little more than the means by which AVCP FUIA signifies successful completion of the ownership program. Its purpose is merely to ensure that legal title is withheld until all payments and other program requirements have been met, demonstrating that it is in substance a security interest. Finally, HUD's contrary interpretation of State law is entitled to no deference.

II. MR. KOPANUK'S CLAIM OF EQUITABLE OWNERSHIP INTERESTS IS PLAINLY NOT BASED ON A CONVENTIONAL LEASE/OPTION -- THE N.HOA IS MORE AKIN TO AN INSTALLMENT SALE AGREEMENT

By focusing most of its attention on the MHOA's option to purchase, AVCP RH?I ignores how little resemblance this Agreement bears to a routine lease. Notwithstanding the agreement's rental-type provisions, the MHOA is plainly and predominantly an agreement for an installment purchase of the home. The MHOA

based on an objective standard until the debt is fully paid. Like a mortgage with a due-on-sale clause, the housing authority can prohibit assignment of the MHOA and its debt. Like a mortgage, the Homebuyer has a duty to care for the property, and the failure to do so constitutes a default. Like a mortgage escrow, the housing authority pays taxes and insurance from the purchaser's monthly payments. As for counseling and income verification (items 3 and 4, AVCP Br. at 19-20), these provisions are unique neither to rental nor purchase. They prove nothing more than that the program is subsidized. Finally, in view of the fact that many leases permit or even encourage improvements to property, the MHOA's restrictions on improvements to the home during the 25-year purchase period prove little more than HUD's **eXCeSSiVely** paternalistic attitude toward its low-income program participants.'

That leaves a single factor -- the agreement's "detailed provision for [summary] termination." AVCP Br. at 21. But that is circular reasoning that begs the question. The issue is not whether the agreement authorizes summary termination in an FED proceeding, but whether State law permits that result. Thus,

¹ More than anything, this provision helps to explain why the MHO program often fails. HUD contradictorily demands that the Homebuyer fulfill duties of a full-fledged owner, including exhaustive maintenance responsibilities on houses that need all too much maintenance and repair, yet it draws a strict line when a Homebuyer dares to cross into the realm of actually improving the house. The message is unmistakable -- cookie-cutter mediocrity is favored, while initiative and pride in one's home are discouraged.

the provisions AVCP RHA characterizes as lease-type provisions are in a sense the very essence of the present problem. While the MHOA promises ownership and imposes correspondingly substantial obligations, it tries to limit Mr. Kopanuk's rights in the event of default to those of a mere tenant.

Contrary to AVCP RHA's assertion, the question is not whether the housing authority is engaged in "sharp vendor dealings." AVCP Br. at 41. Nor is the question how AVCP FU~A or HUD characterize the agreement. The question is instead "the essential relationship of the parties and the substance of the transaction." McGalliard v. Liberty Leasing co. of Alaska, Inc., 534 P.2d 528, 529 (Alaska 1975). AS AVCP RHA acknowledges with respect to that inquiry, when a buyer has made substantial performance on an agreement to purchase real estate, the courts require that the cases be taken "out of FED" and that "termination [must be] pursued as an 'equitable foreclosure.'" AVCP Br. at 42.²

² Although Mr. Kopanuk believes his MHOA is clearly and unambiguously an installment Sale agreement, he also argued in his opening brief (at 23-24) that because the MHOA is an adhesion contract, any ambiguities should be construed against AVCP RHA. Although AVCP PHA does not deny that the MHOA is an adhesion contract, it contends that this principle does not apply to the present case because the MHOA contains no ambiguities that would contradict its interpretation. AVCP Br. at 35-37. However, its acknowledgment that numerous other courts in similar circumstances have agreed with Mr. Kopanuk's interpretation indicates, at the very least, that there are ambiguities that can reasonably be construed to support Mr. Kopanuk's interpretation. And under adhesion contract principles, they must be construed in his favor.

The Kansas case cited with approval by AVCP RHA (Letzia v. Rupert, 495 P.2d 955 (Kan. 1972), quoted in AVCP Br. at 41-42) accurately sets forth the general rule. In that case, the Court addressed a form agreement that called itself an option. The agreement provided that if the option was exercised, the monthly payments were credited to the purchase price, but if there was a default or if the option was not exercised, the monthly payments were simply called rent. Immediately following the portion of the decision that AVCP RHA quotes at length (at 41 of its brief), the Kansas Court also explained:

But if the monthly payments have been made with reasonable promptness and have been made for such a length of time that their aggregate amount constitutes the equivalent of a substantial payment on the purchase price, or where substantial improvements have been made by the tenant-vendee, then equity may not permit the interest of the tenant-vendee to be summarily extinguished in forcible detainer, but will deal with the situation according to equitable principles, and may require proceedings as in equitable foreclosure before the interest of the latter can be extinguished.

Letzia v. Ruoert, 495 P.2d at 958.

Accordingly, and contrary to AVCP RHA's central argument, the rule enunciated in this case is squarely applicable to the MHOA. Most notably, Mr. Kopanuk has regularly made his payments for over ten years, a period that undoubtedly constitutes tlsuch a length of time that their aggregate amount constitutes the equivalent of a substantial payment on the purchase price." & Although AVCP RHA asserts that Mr. Kopanuk's monthly payments are not explicitly part of the purchase price due to his modest income, the fact is that every monthly payment serves to reduce

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his purchase price. AVCP HHA concedes the point -- his purchase price shrinks as a function of time." AVCP Br. at 26-27. Just as with a conventional mortgage transaction, as Mr. Kopanuk makes his monthly payments, the amount of his debt is reduced throughout the term of the MHOA, based upon an amortization schedule. He can at any time pay off his debt and obtain title to his house, based upon the amortized price. Of course the MHOA is a subsidized housing arrangement, but for purposes of paying off his debt for the purchase price and obtaining title to the house, he is deemed to have made the full amount of each monthly payment, thereby reducing the amount of his remaining indebtedness, just as if there had been a mortgage. This is the case, even though his income may only permit him to pay the minimum monthly payment. Thus, the reduction in his debt is not, as AVCP RHA contends (AVCP Br. at 26-27), a function of time alone. His debt shrinks only if he fulfills the condition of his MHO agreement that he make his monthly payments.

By any measure, with every reduction in Mr. Kopanuk's indebtedness for the purchase price of his home, he acquires a corresponding increase in equity. Mr. Kopanuk acquires equity in his home in other ways as well. He accrues equity through an "equity account,"^{1t} MHOA 9 6.2, and through a "maintenance account." Id. 5 5.2. He also began the agreement with a substantial amount of equity by providing a non-refundable down payment consisting of the land for his home.

AVCP FUG4 tries to downplay the significance of the contribution Mr. Kopanuk's Native corporation made on his behalf

since the conveyance was directly from the corporation rather than Mr. Kopanuk. AVCP RHA contends the contribution was not made on Mr. Kopanuk's behalf. That contention, however, is belied by AVCP RHA's concession that Mr. Kopanuk successfully commenced the MHOA which, among other things, "obligat[es]^{t1} him to make or obtain this land contribution. MHOA at p. 2 & Art. II. AVCP RHA also contends that his land contribution is not lqsizable⁸⁸ because it is only valued at \$1,500. AVCP Br. at 29, 31. However, since HUD's regulations provide that \$1,500 is the maximum value AVCP RHA can attribute to the land, regardless of its actual value, 24 C.F.R. S 905.419(a)(1) & (3), that contention does little more than add insult to injury. On the other hand, this fact confirms the loss facing Mr. Kopanuk if his equitable interest is summarily extinguished. Not only is his land contribution undervalued, but it is placed in a nonrefundable reserve, 24 C.F.R. 9 905.437(a)(2), which means he loses all his interest in the land without even the opportunity for a cash refund of this equity if his participation in the program is terminated.³

AVCP RHA fares no better in its attempt to downplay other ownership features. It implicitly acknowledges that the MHOA's exhaustive repair obligations are inconsistent with a true

³ Obviously, leases and rental agreements do not typically (or even atypically) require nonrefundable down payments. In fact, nonrefundable down payments or deposits are illegal under Alaska's landlord-tenant law. AS 34.03.070(b) (landlord may not retain a tenant's deposit unless the tenant has damaged the unit, owes back rent, or leaves the place in an unclean state).

rental agreement when it concedes that such provisions may violate the requirement of the URLTA prohibiting a true landlord from shifting all repair obligations to the tenant. AVCP Br. at 29. See Kopanuk Br. at 18-19 61 n.14. However, AVCP RHA misunderstands the significance of this violation when it argues only that this violation does not convert an FED into an ejectment. AVCP Br. at 5 n.5 and 29. Mr. Kopanuk does not argue that a landlord's violation of URLTA makes termination through an FED unavailable. Rather, he argues that AVCP RHA's delegation to him of all maintenance and repair duties is but another circumstance demonstrating that the MHOA is a purchase agreement and not a simple lease.

But perhaps the most significant feature demonstrating that this is an ownership, rather than a rental, program is that Mr. Kopanuk will automatically own his home when he completes his payment schedule and other obligations in the 25th year. As AVCP RHA concedes, "in the 25th year, the cost of exercising the purchase price is zero." AVCP Br. at 22. Since AVCP RHA agrees that the transaction involves a purchase (though subsidized) and that the purchase price has already been paid when the option is exercised, it is obvious that the purchase price had to be paid sometime previously. And at those previous times when the purchase price was paid in full or in substantial part, Mr. Kopanuk possessed equitable interests in his home. While AVCP RI-IA continues to hold legal title until the 25th year, the interest that AVCP RHA retains is, in any equitable reckoning, a security interest.

There can be little doubt that if the MHOA affected either personal property or fixtures, it would be defined as a security interest," regardless of how HUD characterized it, and regardless of the fact that AVCP RHA retains technical fee title. Pursuant to AS 45.01.201(38) (emphasis added), a "security interest" is defined as follows:

an interest in personal property or fixtures that secures payment or performance of an obligation; the retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (AS 45.02.401) is limited in effect to a reservation of a "security interest"; . . . whether a transaction creates a lease or security interest is determined by the facts of each case.

Although the mere inclusion of "an option . . . to become the owner of the goods" does not create a security interest:

a transaction creates a security interest if [inter alia] . . . the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement

(emphasis added). Under this Court's equitable jurisprudence, the result is the same with respect to Mr. Kopanuk's installment sale contract that is nominally structured as a long term lease/option.⁴

⁴ In view of the differential status often afforded to the house and the land on which it sits (the housing authority holds legal title to the house, but often has only a long-term lease in the land, 24 C.F.R. 5 905.235), and the minimal post and pad foundations that so easily permit a house to be moved, these houses are arguably more of a fixture to the land than part of the realty.

III. MR. KOPANUK'S EQUITABLE INTERESTS DO NOT DEPEND ON WHETHER HE HAS EXERCISED HIS OPTION TO PURCHASE

In an extension of the same argument, AVCP RHA contends that a single factor determines whether Mr. Kopanuk has an equitable interest in his home that would preclude summary termination in an FED. That controlling factor, according to AVCP RHA, is whether he is "unconditionally bound to purchase his home, an obligation-which does not arise until his "purchase option is exercised." AVCP Br. at 9. AVCP RHA argues that the reason for this limitation is that until the option is exercised, Mr. Kopanuk is only a "tenant,"^{1v} id., who has no "\vest[ed] . . . interest . . . in the lands." Id. at 8 (citation omitted). Of course, such an interpretation would effectively preclude almost any MHO Homebuyer from ever acquiring equitable interests -- even in the 24th year of the 25-year term when only a nominal sum is owed to complete the purchase -- since most Homebuyers take title only after they have fulfilled u their obligations, leaving the so-called option exercise as a mere formality of transferring legal title and confirming the purchase that has already occurred.

More importantly, AVCP RHA's argument has no legal basis. The issue is not whether Mr. Kopanuk is compelled by law to complete the purchase of his home, but whether he has sufficient interests in his home (based upon such factors as his investment in the home and his reasonable expectations of ownership) to warrant equitable protection from forfeiture or summary

extinguishment, notwithstanding the absence of legal title to the property.

The only Alaska case AVCP FUA cites to directly support its argument is Currinaton v. Johnson, 685 P.2d 73 (Alaska 1984), cited in AVCP Br. at 8, where this Court held that the lessees in a lease/option who had exercised the option were "equitable owners of the property." Id. at 79. Contrary to AVCP FUIA's assertion, the converse is not necessarily true. As with the cited cases from other jurisdictions, this Court did not hold that exercising an option was the only way a person could acquire an equitable interest sufficient to avoid summary termination.

In fact, AVCP N-LA's argument flies in the face of cases such as Williams v. DeLay, 395 P.2d 839 (Alaska 1964). As this court recognized in that case, the critical inquiry was not whether the buyer was obligated to complete the purchase, but that the buyer made investments in the property by such means as making a down payment, making regular monthly payments, and making improvements to the property. & at 846.⁵

⁵ See also Strack v. Miller, 645 P.2d 184, 186-87 (Alaska 1982); City of Valdez v. Valdez Develooment Co., 523 P.2d 177, 182-83 (Alaska 1974); Moran v. Holman, 501 P.2d 769, 770-72 (Alaska 1972); Land Develooment. Inc. v. Padgett, 369 P.2d 888, 889-90 (Alaska 1962). Interestingly, under AVCP RHA's theory -- that the controlling inquiry is whether the buyer is obligated to purchase -- a party to a transaction clearly denominated an installment sale agreement, such as in Williams v. DeLay, would have an equitable ownership interest from the moment the contract was signed, regardless of whether any money were paid or improvements made to the property. Mr. Kopanuk does not advocate such an interpretation, which also contradicts the

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The leading commentators on contract law, as well as the leading case law, also disagree with AVCP RHA's claim that no equitable interests can arise until an option is exercised. For example, both Corbin and Williston explicitly recognize that an option holder, through long-term performance or otherwise, can develop equitable interests in the property at issue before the option has been exercised.

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.

1A Corbin, Contracts 5 272 at 579-80 (1963). Similarly, Williston explains:

[I]t 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.

3 Williston, Contracts S 415 at 72 (3rd ed. 1960). As the Court explained in Schnee v. Elston, 149 A. 108, 109, 299 Pa. 100, 104 (Penn. 1930), "[i]t is unimportant what name we apply to the relation of the parties. Whether technically vendor and vendee, mortgagor and mortgagee, or lessor and lessee, is immaterial.¹¹ The inquiry must instead focus on [t]he nature of the relationship." *Id.*

holding in Letzia v. Rupert, 495 P.2d 955, 958 (Kan. 1972), relied upon by both Mr. Kopanuk and AVCP RHA, that the court may strictly enforce a contract pursuant to its terms if the buyer's contribution has been negligible.

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Despite the clarity of the above authorities and the limited scope of an FED proceeding,⁶ AVCP PBA then devises an alternative argument based on this Court's recent decision in Vinson v. Hamilton, 854 F.2d 733 (Alaska 1993). It contends that as a result of the decision in Vinson that the relief available in an FED proceeding is "equitable in nature," id. at 738, this Court opened the way for the district court in an FED proceeding to adjudicate virtually any equitable issue, including a defendant's equitable ownership interests. Specifically, AVCP RHA contends that "under Vinson it is now evident that AS 22.15.050(2) does not limit the FED powers of the District Court.^{tl} AVCP Br. at 5. AVCP PHA's attempt to expand Vinson is misplaced for a number of reasons.

The first and most obvious flaw is that AVCP RHA's interpretation of Vinson cannot be reconciled with the statute. There is no indication that this Court intended to judicially repeal the jurisdictional limitation of AS 22.15.050 in Vinson, but that is the only way to reconcile the statute's unmistakable provision that "[t]he jurisdiction of the district courts does not extend to" the matters described therein, with AVCP RHA's

⁶ Because the FED statute severely constricts a litigant's rights and is in derogation of the common law, this Court has held that the statute must be strictly construed. Miners' & Merchants' Bank v. Brice, 5 Alaska 418 (Alaska 1915). FED actions are not intended to substitute for ejection actions, Steil v. Dessmore, 3 Alaska 392 (Alaska 1907), and are inappropriate when title is at issue. Modrok v. Marshall, 523 P.2d 172, 174 (Alaska 1974).

case equity supports a decree of forfeiture. AVCP RHA supports its position by complaining that Mr. Kopanuk fell behind in his payments in 1991, he was away from his home for too long, loud partying occurred while he was away, and he failed to force his son to move out of the house. AVCP Br. at 1-3.⁷ Despite the housing authority's obvious frustration with Mr. Kopanuk, its complaints ignore a key point about the alleged severity of his offense -- it is not seeking to evict Mr. Kopanuk because he is behind on his monthly payments (he is not, see Kopanuk Br. at 6 nn.2-4 and sources cited therein), nor is it seeking to evict him because he violated any material term of the MHOA. Rather, AVCP RHA's sole reason for seeking to evict Mr. Kopanuk is that he "did not move back to Mountain Village to make the AVCP RHA's house his primary residence." AVCP RHA's Response to Petition for Hearing, Ext. 116.

The problem with AVCP RHA's position is not just that it ignores the realities of Village life in which cash-strapped residents living in areas with little or no employment opportunities must routinely travel far and wide to find seasonal (usually fishing or construction-related) employment. Nor is the problem limited to the harshness of a rule that for 25 years exacts as the price of home ownership severe limitations on one's ability to be away from the Village to

⁷ In view of AVCP RHA's insistence that Mr. Kopanuk's family members be removed from the home during Mr. Kopanuk's absences, it is, to say the least, ironic that the housing authority should now complain that he left the house "empty and padlocked," AVCP Br. at 13, during his absence.

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attend to personal and family needs and prohibits other family members from occupying the home during such absences. The problem is that AVCP IMA's request that this Court adjudicate disputed facts and strike the proper balance of equities for the first time on appeal begs the question. The question is not whether the equities have somehow been adequately balanced, so far -- the question is which court has the jurisdiction in the first instance to strike that balance.

In an effort to avoid that question, AVCP RHA attempts to persuade this Court that the district court adequately balanced the equities. In effect then, this is essentially a "harmless error" analysis -- in AVCP PHA's **View**, Mr. Kopanuk got as good a deal from the district court as he could expect from a Superior Court. See AVCP Br. at 13-15. In fact, AVCP RHA insinuates that these jurisdictional rules are U'Xanachronism[s], since a district court judge must be licensed to practice law in Alaska.^{fl} AVCP Br. at 7, quotina Stephens v. Hammerslev, 550 P.2d 1268, 1270 (Alaska 1976). However, AVCP RHA's argument ignores that the district court did not attempt to adjudicate Mr. Kopanuk's equitable interests. The court decided nothing more than what a district court routinely decides in an FED -- that the housing authority was entitled to possession. The additional provisions of the order allowing Mr. Kopanuk to remedy his default were not the result of equitable decision-making by the Court. They were nothing more than arrangements to which the Court found that "[p]laintiff and defendant have agreed." Order for Possession (Sept. 24, 1992), Ext. 1.

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More **importantly**, the issue is not whether district court judges are Competent to decide such matters, but that an FED proceeding is too drastic and abbreviated to permit adequate consideration by any judge of these rather complex issues. Two competing and contradictory policies are at stake -- the FED process is by design too abbreviated to permit adequate adjudication of equitable ownership interests. Accordingly, expanding the scope of an FED to permit such issues to be addressed would thwart the Legislature's overriding objective of making an FED a simple summary proceeding. Finally, it bears repeating that the statutes and this Court's precedents define the jurisdictional boundaries of the respective courts and proceedings, and those boundaries must be scrupulously observed.

Finally, AVCP RHA exaggerates the threat posed by accommodating Mr. Kopanuk's legitimate equitable interests and ignores the risk to Mr. Kopanuk if such interests are ignored:

To quote an applicable statement from Land Develonment. Inc. v. Padsett, enforcement of the forfeiture l*would cause a loss to the buyers all out of proportion to any injury that might be sustained by the seller."

Williams v. DeLav, 395 P.2d at 846, uotins Land Development, Inc. v. Padaett, 369 P.2d at 889. Thus, in Padsett, the trial court correctly refused to literally enforce a forfeiture provision where the buyer had been in possession only three years, 369 P.2d at 889, a substantially shorter period than Mr. Kopanuk's ten years.

AVCP RHA complains, however, that the harm facing Mr. Kopanuk from refusing to recognize equitable interests are

offset by the harm it will face because it is a non-profit and well-intentioned dispensary of government-funded housing that wants to avoid delays in making his house available to others. AVCP Br. at 13, 49. However, the fact that AVCP RHA's overall program objectives are admirable does not eliminate the need for this Court to apply established equitable principles to protect the legitimate interests of individual participants. The purpose of the MHO program, as all agree, is to facilitate homeownership for people in rural areas of Alaska who would not otherwise be able to do so. The financial means of these participants may be modest, but within their means they have made. large **investments** of time, money, effort, and commitment, all for the singular purpose of realizing their expectation of home ownership -- an expectation not merely created, but carefully fostered, by AVCP EXHA and HUD.

The fact that AVCP RHA's overall objectives are admirable does not justify resort to strict technical forfeiture provisions that would be unavailable to other sellers of housing. In attempting to do so, it is giving far too little consideration to the legitimate interests and expectations of one individual, contrary to this Court's precedents. AVCP RHA may feel that by getting rid of Mr. Kopanuk it can find someone else who will have an easier time completing the program, thereby enabling the housing authority to more easily chalk up another success. But this case is not about overall program statistics. It is about an individual who has reasonable expectations and who for over ten years has devoted a large

Neither does it CONstrUE any substantive provisions of the MHOA.' Rather, it broadly characterizes the agreement as a lease/option, and makes various conclusions about the agreement's legal significance. Based upon these characterizations, it then concludes that Mr. Kopanuk's interests do not constitute equitable ownership and that FED is appropriate. As Mr. Kopanuk explained in his opening brief, questions involving judicial procedures, the jurisdiction of State courts, and laws regarding real estate interests, are questions of State, not federal, law.

AVCP RHA and HUD do not deny that these are matters of State law, nor do they deny that the regulation itself requires terminations of MHOAs to "comply with State . . . law.11 24 c.F.R. 5 905.446(b). Nevertheless, they contend that this Court is bound to defer to HUD'S regulatory interpretation of State law. This argument confuses HUD's role. It may be assumed for purposes of this appeal that HUD's interpretation of the Federal Housing Act would be entitled to deference. However, a different issue arises altogether when HUD proffers its interpretation of State law or of the application of State law to an agreement whose terms are not in dispute. Just as the

Cisneros, 35 F.3d 947, 950 (4th Cir. 1994). Accord, 2225 New York Avenue Ltd. v. Cisneros, 38 F.3d 210 (5th Cir. 1994); Terrace Housing Associates. Ltd. v. Cisneros, 32 F.3d 461 (10th Cir. 1994).

9 The Copper River Basin Regional Housing Authority acknowledges in its amicus brief (at 11) that "[t]he existing terms and definitions of the MHOA were completely unaffected" by the regulation.

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federal courts are not bound to defer to a State agency's interpretation of federal law, Kenaitze Indian Tribe v. Alaska, 860 F.2d 312, 315-16 (9th Cir. 1988), cert. denied, 491 U.S. 905 (1989), so this Court is not bound to defer to a federal agency's interpretation of State law.

As Kenaitze instructs, *id.*, none of the reasons for according deference are present with respect to HUD's view of the applicability of Alaska's FED proceedings. Deference is based in large part on an agency's expertise in the area, and HUD has no expertise in implementing State landlord-tenant or real property law." Similarly,, HUD is not subject to the continuing supervision of the Alaska Legislature with respect to HUD's implementation of state legislative pronouncements. Moreover, HUD is delegated no authority under the Alaska FED statute or other Alaska legislation. Accordingly, deference is not appropriate, and this Court should independently determine the jurisdictional boundaries of Alaska's district and superior courts.

HUD also contends that its regulation did not "reflect a change in the nature of the program," but merely "clarified its position@ and confirmed its longstanding "require[ment] that IHAS institute eviction [rather than ejection] proceedings."

¹⁰ See Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co., 746 P.2d 896, 903 (Alaska 1987). Even if the question involved a state rather than federal agency's request for deference, none would be owed to its interpretation of a contract's meaning under "general common law principles." Jicarilla Aoache Tribe v. Federal Energy Regulatory Comm'n, 578 F.2d 289, 292-93 (10th Cir. 1978).

HUD Amicus Br. at 7, 8. Contrary to this assertion, evictions are demonstrably not the uniform longstanding practice of Alaska IHAS. Counsel for amicus Copper River Basin Regional Housing Authority has filed numerous actions to enforce MHOAs which, contrary to HUD's representation, were Superior Court ejectments, not FEDs. See. e.s.. Northwest Inupiat Indian Housinu Authority v. Geffe, No. 2KB-85-20 (Alaska Superior Court); Northwest Inupiat Indian .Housina Authority v. Bailey, No. 2KB-85-18 (Alaska Superior Court); Northwest Inupiat Indian Housina Authority v. Smith, No. 2KB-85-17 (Alaska Superior Court); Northwest Inupiat Indian Housina Authority v. Saae, No. 2KB-85-16 (Alaska Superior Court); Cook Inlet Housinu Authority v. Ronald and Freida McCord, No. 3AN-86-4225 Civil (Alaska Superior Court); cook Inlet Housina Authority v. Julia McCord, No. ~A.N-86-2280 Civil (Alaska Superior Court); Cook Inlet Housins Authority v. chickalusion, No. 3AN-86-8410 Civil (Alaska Superior Court) (copies of complaints and summonses included in Supplement to Record)."

11 Other housing authorities agreed. See Bering Straits Regional Housins Authority v. Eutuk, No. 2NO-92-48 CI (Alaska Superior Court); Bering Straits Reaional Housins Authority v. Naulo . 2NO-90-10 CI (Alaska Superior Court); Berinu Straits Regional Housing Authority v. Ansi, No. 2NO-90-11 CI (Alaska Superior Court); Berina Straits Regional Housing Authority v. Katchatag, No. 2NO-90-12 CI (Alaska Superior Court); Bering Straits Regional Housina Authority v. Daniels, No. 2NO-90-13 CI (Alaska Superior Court); ~~Beris Straits Reccrional Housing Authority v. Anauick~~, No. 2NO-89-131 CI (Alaska Superior Court); Bering Straits Regional Housins Authority v. Paul, No. 2NO-90-73 CI (Alaska Superior Court); ~~Ber Straits Resional Housing Authority v. Seqock~~, No. 2NO-90-75 CI (Alaska Superior Court)

Before HUD adopted its regulation, even the housing authorities understood the legal consequences of the MHOA under Alaska law. Plainly, the objective of HUD's regulation was not to confirm existing practices, but to change them to make it easier to remove Homebuyers from their homes. However, HUD lacks the authority to alter or interpret Alaska law and jurisdiction with its regulatory pen, and its request for deference to its re-interpretation of State law should be rejected.

CONCLUSION

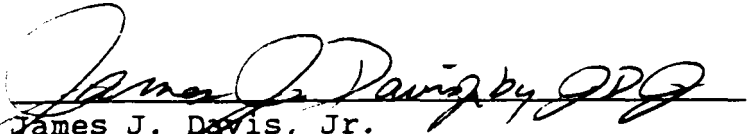
Neither AVCP RHA **nor its amici** have demonstrated any reason this Court should either reject the jurisdictional limitations on FED proceedings established by the Legislature or abandon its own jurisprudence with respect to equitable ownership interests. Accordingly, the Superior Court's decision that the district court had jurisdiction in an FED proceeding to adjudicate Mr. Kopanuk's claims should be reversed.

Respectfully submitted this 13th day of February, 1995.


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