SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
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May 26, 2015

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RE: *Pot-Nets Coveside Homeowners Association, et al. v. Tunnell Companies, L.P.*
C.A. No. S15A-02-005 THG
CORRECTED

Dear Counsel:

This is the second installment[1] of what is likely to be an ongoing saga between Tunnell Companies, L.P. ("Tunnell") and the homeowners of the Pot-Nets communities which Tunnell manages. Currently before the Court is Tunnell's Motion to Dismiss the Pot-Nets Coveside Homeowners Associations', et al. ("Appellants") appeal from the Delaware Manufactured Home Relocation Authority's ("Authority")

[1] *Tunnell Co., L.P. v. Greenawalt*, 2014 WL 5173037 (Del. Super. Aug. 26, 2014).

decision pursuant to Superior Court Civil Rule 72 (i). The two issues presented by the parties are matters of first impression regarding the newly created Manufactured Home Owners and Community Owners Act ("Act").[2] The Court, however, finds one issue to be dispositive.

This Court has had the opportunity to review and construe the Act in the past,[3] specifically regarding the disclosure duties of the community owner under 25 *Del. C.* § 7043 when seeking to increase homeowner rent above a statutorily prescribed threshold, the CPI-U. Appellants now ask the Court to construe different provisions of the same section, by making a decision as to what constitutes a timely filing for arbitration. The relief Appellants seek is a reversal of the arbitrator's dismissal, and a remand of their case. Conversely, Tunnell seeks to dismiss Appellants' appeal, asserting that the Court does not have jurisdiction to address the arbitrator's dismissal due to the General Assembly's clear jurisdictional mandate laid out in 25 *Del. C.* § 7044.

It is a fact of life that not every wrong has a right. Though practically it may make sense for this Court to review all decisions of the arbitrator with regard to the Act, that may not have been the General Assembly's intent in crafting this legislation.

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[2] 25 *Del. C.* § 7040, *et seq.*

[3] *See Bon Ayre Land LLC v. Bon Ayre Cmty. Ass'n*, 2015 WL 893256 (Del. Super. Feb. 26, 2015); *Greenawalt*, 2014 WL 5173037.

This Court, under 25 *Del. C.* §7044, only has review powers "as to whether the record created in the arbitration is sufficient justification under the Code for the community owner's proposed rental increase in excess of the CPI-U."[4] Though the Court finds both parties' arguments compelling with regard to section 7043 (c)'s arbitration filing requirement, it is unable to review the issue and render an opinion due to jurisdictional limitations. The Court is unable to grant redress by the means Appellants are currently attempting to utilize. For the reasons that follow, Tunnell's Motion to Dismiss is **GRANTED**.

FACTS

Tunnell manages six (6) separately owned, private manufactured communities known as the "Pot-Nets Communities," which include the four (4) homeowners associations ("HOA") making up Appellants. These four (4) HOAs, all of which are separate and independent from one-another as they each are affiliated with a separate and distinct community, represent the homeowners of Pot-Nets Coveside, Pot-Nets Bayside, Pot-Nets Lakeside, and Pot-Nets Creekside.

25 *Del. C.* § 7043 (b) directs a community owner on what it must do prior to increasing rent above the CPI-U. These steps are as follows:

> First, the community owner must give written notice to each affected home owner, the community's HOA, and the Authority at least 90 days

[4] 25 *Del. C.* § 7044.

> prior to any increase in rent. Second, if the proposed increase is over the CPI-U, there must also be a meeting between the community owner and the other parties. At the meeting, the community owner must provide written disclosures, in good faith, of all material factors resulting in its decision to increase rent. These material factors include "financial and other pertinent documents and information." Finally, if the parties cannot reach a resolution at the meeting, any affected homeowner, or the HOA on behalf of one or more of the affected homeowners, may petition the Authority for non-binding arbitration.[5]

In addition to these steps, an aggrieved party, if seeking arbitration, must file for it with the Authority within thirty (30) days of "the final meeting."[6]

Tunnell, seeking to increase rent above the CPI-U, followed the above procedural requirements, and held the mandated meetings with the affected homeowners and HOAs, after giving proper notice. The meetings were held as follows: "on September 30, 2014 for Pot-Nets Bayside; October 1, 2014 . . . for Pot-Nets Lakeside; October 1, 2014 . . . for Pot-Nets Coveside; and on October 2, 2014 for Pot-Nets Creekside."[7] Tunnell alleges it repeatedly informed Appellants of the need to file any petition, including one for arbitration, on a timely basis. Appellants acknowledge that Tunnell informed them that the 30 day clock started following these meeting dates. However, the Appellants did not file their petitions for arbitration

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[5] *Greenawalt*, 2014 WL 5173037 at 2 (citations omitted).

[6] 25 *Del. C.* § 7043 (c).

[7] Appellee's Brief in Support of Motion to Dismiss, pg. 2.

until either November 12, 2014, or November 14, 2014. These dates are, of course, thirty (30) days past the initial meeting dates stated above.

With that said, Appellants assert they were each "invited by Tunnell to continue settlement discussions in meetings that continued, with the final meeting[s] taking place on November 3, 2014, [with the exception of] the Bayside Home Owners Association[,] [which] last met with Tunnell on October 24, 2014."[8] According to Appellants, several meetings occurred after the initial meeting dates cited above. The Appellants received final settlement offers from Tunnell at either the October 24, 2014, or November 3, 2014 meetings. Appellants argue that Tunnell's willingness to discuss settlements after the initial meeting dates resulted in an implicit agreement to extend the meeting(s). After those final settlement offers, all four (4) of the affected HOAs filed for arbitration.

PROCEDURAL POSTURE

Appellants filed for arbitration with the Authority on November 12, 2014, and November 14, 2014. The Authority then appointed an arbitrator to hear the dispute, who consolidated the four (4) cases. On December 31, 2014, Tunnell filed a consolidated Motion to Dismiss all four (4) petitions, alleging the arbitrator lacked jurisdiction due to Appellants' failure to file for arbitration within thirty (30) days of

[8] Appellant's Answer to Motion to Dismiss, pg.1–2.

the initial, and in Tunnell's view, final, meetings mandated by 25 *Del. C.* § 7043 (c). On January 30, 2015, the arbitrator granted Tunnell's motions, finding, under his interpretation of 25 *Del. C.* § 7043 (c), Appellants had not timely filed for arbitration. Appellants, subsequently, filed an appeal in this Court.

DISCUSSION

In order to best address the issues before the Court, the jurisdiction of Superior Court and its relationship to the Delaware General Assembly must be explained. Likewise, the Court believes it would be helpful to address how courts construe and interpret statutes in this state.

Jurisdiction

According to the Delaware Constitution, "[t]he legislative power of this State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives."[9] The judicial power of Delaware is "vested in a Supreme Court, a Superior Court, a Court of Chancery, a Family Court, a Court of Common Pleas, a Register's Court, Justices of the Peace, and such other courts the General Assembly" wishes to establish by law.[10] Delaware has traditionally had two primary trial courts. As explained in *Monroe Park v. Metropolitan Life Insurance Co.*:

> [I]n Delaware there remains an historic and constitutional separation of

[9] Del. Const. Art. 2 § 1.

[10] Del. Const. Art. 4 § 1.

> law and equity. Indeed, under article IV, section 7 of the Delaware Constitution, the Superior Court's jurisdiction relates to all civil causes at "common law" while article IV, section 10 and 10 *Del. C.* § 341, make clear the Court of Chancery's jurisdiction to hear and determine all matters and causes in equity.[11]

Despite this tradition, the General Assembly has the power to expand and contract the jurisdictions of the courts via statute or constitutional amendment.[12] Superior Court is the court of general jurisdiction, but, like the other Delaware Courts, the General Assembly is capable of altering its jurisdiction.[13] Possibly the most prominent example lies in the Court of Chancery's jurisdiction over the Delaware General Corporation Law,[14] which, though encountering several potential equity-based issues, is statutory in nature, and therefore would ordinarily fall within the court of law's jurisdiction. "By stating that a particular Delaware court has exclusive jurisdiction over a particular statute, the General Assembly makes clear which of Delaware's trial courts will handle the identified matters."[15] "When a Delaware state statute assigns exclusive jurisdiction to a particular Delaware court, the statute is allocating

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[11] *Monroe Park v. Metro. Life Ins. Co.*, 457 A.2d 734, 738 (Del. 1983).

[12] *See* Del. Const. Art. 4 § 17; *Clark v. Teeven Holding Co.*, 625 A.2d 869, 880 (Del. Ch. 1992) (citing *Beals v. Wash. Int'l, Inc.*, 386 A.2d 1156, 1157–60 (Del. Ch. 1978)).

[13] *See DuPont v. DuPont*, 216 A.2d 674, 679 (Del. 1966).

[14] *See* 8 *Del. C.* § 111 (b).

[15] *IMO Daniel Kloiber Dynasty Trust*, 98 A.3d 924, 938 (Del. Ch. 2014).

jurisdiction among the Delaware courts."[16]

The point is this, the General Assembly may expand and contract Superior Court's jurisdiction over cases. Absent a statute to the contrary, and provided that said statute does not conflict with the jurisdictional scope laid out in the Delaware Constitution, it is presumed Superior Court has jurisdiction to hear any dispute at law.[17] However, if the General Assembly expressly assigns Superior Court jurisdiction over a particular case or controversy, but is silent as to others arising from the very same statute, it would appear, based on the maxim of *expressio unis est exclusio alterius*, the General Assembly "was aware of the omission and intended it."[18] It follows, then, that Superior Court does not have jurisdiction over matters not expressed in a legislative act when such act specifically states what issues the Court may address.

Statutory Construction

"Statutory interpretation is ultimately the responsibility of the courts."[19] "The purpose of all canons of construction or interpretation is to discover the true intent

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[16] *Id.* at 938.

[17] *See DuPont*, 216 A.2d at 679.

[18] *See Murtha v. Cont'l Opticians, Inc.*, 729 A.2d 312, 318 (Del. Super. 1997) (quoting *General Motors Corp. v. Burgess*, 545 A.2d 1186 at 1191 (Del. 1988)); *Norman v. Goldman*, 173 A.2d 607, 610 (Del. Super. 1961) (quoting *Sutherland, Statutory Constr.*, 3rd Ed., § 4915).

[19] *Hirneisen v. Champlain Cable Corp.*, 892 A.2d 1056, 1059 (Del. 2006) (quoting *Penn Water Supply Co. v. DiPasquale*, 735 A.2d 378, 382–83 (Del. 1999)).

of the law."[20] The rules and maxims of construction are applied to that end, and are only useful in cases where there is doubt as to what the statute means.[21] As such, they are only deployed in an effort to remove doubt from, not inject it into, the statute's meaning.[22]

To determine whether a statute needs to be construed in order to decipher the General Assembly's intent or purpose for creating the specific law, "a court must determine whether the provision in question is ambiguous."[23] A statute is ambiguous only when it is reasonably susceptible to multiple conclusions or interpretations.[24] "When a statute is unambiguous, and there is no reasonable doubt as to its meaning, [the courts are] bound by the statutory text."[25] If that is the case, there is no reason for the reviewing court to construe the text of the statute.[26] Thus, if the statute in

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[20] *Hartford Accident & Indem. Co. v. W. S. Dickey Clay MFG. Co.*, 24 A.2d 315, 320 (Del. 1942).

[21] *See Hartford Accident*, 24 A.2d at 320; *Potter v. Potter*, 2 A.2d 93, 95 (Del. 1938).

[22] *Potter*, 2 A.2d at 95.

[23] *Doroshow, Pasquale, Krawitz & Bhaya v. Nanticoke Mem'l Hosp., Inc.*, 36 A.3d 336, 343 (Del. 2012)

[24] *See Doroshow*, 36 A.3d at 342 (citations omitted); *Cede & Co. v. Technicolor, Inc.*, 758 A.2d 485, 494 (Del. 2000) (citing *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1246 (Del. 1985)).

[25] *Cede & Co.*, 758 A.2d at 494.

[26] *Doroshow*, 36 A.3d at 342–43; *Bd. of Adjustments of Sussex Cty. v. Verleysen*, 36 A.3d 326, 331 (Del. 2012); *Rowe v. Kim*, 824 A.2d 19, 23 (Del. Super. 2003) (citations omitted);

question is unambiguous, "courts must apply the words as written, unless the result of the literal application could not have been intended by the legislature,"[27] or the literal interpretation would "yield mischievous or absurd results . . . ."[28]

When interpreting a statute, "[t]he most important consideration for a court . . . is the words the General Assembly used in writing it."[29] In fact, "the General Assembly 'is presumed to have inserted every provision into a legislative enactment for some useful purpose and construction.'"[30] The Court will not leave any part of the statute superfluous;[31] "every word chosen by the legislature . . . must have meaning."[32] Courts do not have authority to vary or ignore the terms of a statute with clear meaning,[33] and will "not exercise . . . imagination in an effort to discover some

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Potter, 2 A.2d at 95

[27] *Verleysen*, 36 A.3d at 331 (quoting *Leatherbury v. Greenspun*, 939 A.2d 1284, 1289 (Del. 2007)).

[28] *One-Pie Inv., LLC v. Jackson*, 43 A.3d 911, 914 (Del. 2012).

[29] *Official Comm. of Unsecured Creditors of Motors Liquidation Co. v. JP Morgan Chase Bank, N.A.*, 103 A.3d 1010, 1014 (Del. 2014) (quoting *Boilermakers Local 154 Ret. Fund v. Chevron Corp.*, 73 A.3d 934, 950 (Del. Ch. 2013)).

[30] *Doroshow*, 36 A.3d at 344 (quoting *Colonial Ins. Co. of Wis. v. Ayers*, 772 A.2d 177, 181 (Del. 2001)).

[31] *Id.* (quoting *Keeler v. Hartford Mut. Ins. Co.*, 672 A.2d 1012, 1016 (Del. 1996)).

[32] *Id.*

[33] *Verleysen*, 36 A.3d at 331 (quoting *Leatherbury*, 939 A.2d at1292).

obscure, uncertain or merely possible meaning."[34]

Application

The section of the Act Appellants wish this Court to construe, 25 *Del. C.* §7043(c), is the epitome of ambiguous, especially when read in light of the entire Act. Sections (b) and (c) of 25 *Del. C.* § 7043 read:

> (b) [T]he Authority shall schedule *a meeting* between the parties . . . to discuss the reasons for the increase.
> At *the meeting* the community owner shall, in good faith, disclose in writing all the material factors resulting in the decision to increase rent. The parties *may* agree to extend or continue *any meetings* required by this section.
>
> (c) After the *informal meeting*, any affected home owner who has not already accepted the proposed increase, or home owners' association . . . may, within 30 days from the conclusion of the *final meeting*, petition the authority to appoint a qualified arbitrator."

Several questions arise from a reading of 25 *Del. C.* § 7043 (b) and (c), but the two at issue here are: (1) what constitutes the final meeting; and (2) what constitutes an agreement to extend the meeting required by section 7043 (b). Appellants argue that because Tunnell and the HOAs continued to meet and discuss settlements, the timeline for filing for arbitration did not start until the last meetings, occurring on October 24 and November 3 of 2014. Tunnell argues, conversely, the final meeting occurred on the initial meeting dates since there was no agreement to continue the

[34] *Hartford Accident*, 24 A.2d at 320.

meeting required under section 7043 (b), and that any subsequent meetings between Tunnell and the HOAs did not push out the arbitration filing deadline.

Based on the above, it is evident section 7043 (c), when considering the Act in its entirety, has created certain problems. However, this Court does not have jurisdiction to construe this section of the Act and determine which interpretation is correct because 25 *Del. C.* § 7044, which bestows appellate jurisdiction on this Court, is clear. The Court is thus bound by its plain language.

Section 7044 states:

> The community owner, the home owners' association, or any affected home owner may appeal the decision of the arbitrator within 30 days of the date of issuance of the arbitrators's decision. The appeal shall be to the Superior Court in the county of the affected community. The appeal shall be on the record and the Court shall address written and/or oral arguments of the parties *as to whether the record created in the arbitration is sufficient justification under the Code for the community owner's proposed rental increase* in excess of the CPI-U (emphasis added).[35]

What is of significance here is the phrase "as to whether." Websters Dictionary defines "as to" as "about," which can likewise be defined as "fundamentally concerned with."[36] "Whether" is typically used as a function word, demonstrating an

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[35] 25 *Del. C.* § 7044.

[36] Merriam-Webseter's Collegate Dictionary 3 (10th ed. 1998); *See also Edelstein v. Brown*, 100 S.W.2d 129 (Tex. 1907) ("The phrase 'as to' is defined thus: 'So far as it concerns; as regards; as respects; in regard to; in respect to.").

option between two alternatives.[37] As explained by a California court in *Lawson v. Superior Court In and For Los Angeles County*: "[o]ne of the meanings of the word 'whether' is 'if it be true.'"[38] Thus, "as to whether" prompts the Court to decide whether or not the specific item, condition, or circumstance following the phrase is present or met.

This section states exactly what the Court can evaluate and decide on appeal. It lists only one issue the Court has jurisdiction over after it deploys the phrase "as to whether." The section is devoid of any and all catch-all language that would expand the Court's jurisdiction to hear and decide other issues ancillary to the matter of whether a rent increase is justified. Therefore, based on the plain meaning of 25 *Del. C.* § 7044, this Court does not have jurisdiction to decide the question Appellants present.

Appellants argue that the word "address" expands the Court's jurisdiction to hear other issues ancillary to the arbitrator's decision as to whether a rent increase is justified. They assert that the written decision of the Court may deal with other related matters as long as it touches on the issue of rent justification. In presenting this argument, Appellants ask the Court to use its "imagination in an effort to

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[37] Merriam-Webster's at 1346.

[38] *Lawson v. Superior Court In and For L.A. Cty.*, 318 P.2d 812, 814 (Cal. Dist. Ct. App. 1957).

discover some obscure, uncertain or merely possible meaning," and inject doubt into 25 *Del. C.* § 7044. This argument is strained, looking for ambiguity that is simply not present.

Tunnell's jurisdiction argument, i.e. that section 7044 only grants the Court jurisdiction as to whether a rent increase is justified by the record, is bolstered by the fact that there is no record for the Court to review. Section 7044 states "the appeal shall be on the record." Because there was no arbitration, there is no record; no testimony was taken and no evidence was admitted or considered. Appellants claim the briefs submitted to the arbitrator, his decision, and the briefs submitted to the Court constitute the record. The Court disagrees. Because no arbitration was ever held on this matter, 25 *Del. C.* § 7044 does not provide the Appellants an avenue for an appeal.[39] The Court, without a record, is unable to render a decision as to whether Tunnell's proposed rent increases were justified.

CONCLUSION

Ambiguity exists within the Act. However, the Court is required to presume that the General Assembly's specific use of "the record created in the arbitration is sufficient justification under the Code for the community owner's proposed rental

[39] *See DeSantis v. Shahan*, 1995 WL 339175, *2 (Del. Super. May 31, 1995) (holding that Superior Court did not have jurisdiction to entertain an appeal of a revocation of a driver's license because no record was created from a Division of Motor Vehicles hearing since appellant failed to timely request one).

increase in excess of the CPI-U[,]" and exclusion of any other issue or topic following "as to whether," was purposeful. The General Assembly had the opportunity to list other subjects for the Court to consider and review regarding this Act and declined to do so. It is clear, the Court, based on the plain, literal language of 25 *Del. C.* § 7044, does not have jurisdiction to hear disputes concerning anything other than whether a community owner's proposed rent increase above the CPI-U is justified. As such, Tunnell's Motion to Dismiss is **GRANTED**.

IT IS SO ORDERED.

Very truly yours,

/s/ T. Henley Graves

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T. Henley Graves