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IN THE

Supreme Court of the State of Delaware

STATE OF DELAWARE, *ex rel.* MATTHEW P. DENN,
Attorney General of the State of Delaware
Plaintiff-Below, Appellant,

v.

HOMETOWN AMERICA COMMUNITIES, INC.,
a Delaware Corporation,
Defendant-Below, Appellee,

NO. 194, 2016

APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF DELAWARE, C.A. NO. S15C-11-015-ESB

OPENING BRIEF (CORRECTED) OF PLAINTIFF-BELOW, APPELLANT STATE OF DELAWARE EX REL. MATTHEW P. DENN, ATTORNEY GENERAL OF THE STATE OF DELAWARE

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July 11, 2016

TABLE OF CONTENTS

TABLE OF CITATIONS

Page

Cases

Statutes

Rules

INTRODUCTION

This appeal presents a basic question of civil procedure: when a statute defines the permissible defendants broadly to include any of several types of entities (*e.g.*, Types A, B, C, and D), and the defendant moves to dismiss solely on the basis that it is not a proper defendant because it is not Type A, but fails to allege, let alone prove, that it is also not Types B, C, or D, has the defendant met its burden under Rule 12(b)(6) to demonstrate "with reasonable certainty that a plaintiff would not be entitled to the relief sought under any set of facts which could be proven to support the action"? The answer, under Delaware law, should be "no," but the Superior Court ruled otherwise in its decision below and dismissed the State's complaint. That erroneous ruling forms the core of the State's appeal here.

On November 13, 2015, the State filed a complaint ("Complaint") against Hometown America Communities, Inc. ("Hometown America"), alleging violations of Delaware's Manufactured Home Owners and Community Owners Act[1] and Affordable Manufactured Housing Act,[2] relating to the ownership and operation of three manufactured housing communities in Kent and Sussex counties ("Communities"). In the Complaint, the State alleged that Hometown America was the "owner" of the Communities, and did so because Hometown America's counsel in this action had, just weeks before, represented to the State in a letter that the Communities were "owned by Hometown

[1] 25 *Del. C.* ch. 70, subch. I (§§ 7001-7027).

[2] 25 *Del. C.* ch. 70, subch. III (§§ 7040-7046) (referred to herein by its colloquial name, the "Rent Justification Act").

America Communities, Inc.," and because Hometown America also appeared to be holding itself out as an owner of the Communities in other ways.

The Manufactured Home Owners and Community Owners Act defines an "owner" of a manufactured housing community in broad fashion, to include parties beyond whoever is listed as the owner in county property records or enters into a direct landlord/tenant relationship with a resident:

> "Community owner" or "landlord" means the owner of 2 or more manufactured home lots offered for rent. It includes a lessor, sublessor, park owner or receiver of 2 or more manufactured home lots offered for rent, as well as any person, other than a lender not in possession, who directly or indirectly receives rents for 2 or more manufactured home lots offered for rent and who has no obligation to deliver such rents to another person.[3]

In the words of the example in the first paragraph, Delaware law defines a "community owner" to include any one of "Types A, B, C, or D."

Despite this broad definition of "community owner," when Hometown America filed its motion to dismiss the Complaint pursuant to Superior Court Civil Rule 12(b)(6) ("Motion to Dismiss"), the *only* argument it made was that it is not the proper defendant because (i) the only proper defendant is the actual owner of record of the property, and (ii) it is not identified as the record owner of the Communities in the property records of Kent and Sussex Counties. Returning again to the example in the opening paragraph, Hometown America argued *only* that it is not a proper defendant because it is not "Type A."

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[3] 25 *Del. C.* § 7003(4).

As a result of this stark mismatch between what Hometown America needed to show in order to establish that it is not a "community owner" within the meaning of 25 *Del. C.* § 7003(4) (*i.e.*, "not Types A, B, C, or D"), and what Hometown America actually argued (*i.e.*, "not Type A"), the State advanced two arguments for why the Superior Court was required to deny Hometown America's Motion to Dismiss.

First, the State argued that dismissal was inappropriate because Hometown America failed to carry its burden under Rule 12(b)(6) to show that the State cannot recover "under any reasonably conceivable set of circumstances susceptible of proof." Hometown America was required to do more than allege (or prove) only that it is not the record owner of the Communities in Kent County and Sussex County property records, because the definition of "community owner" in Delaware's manufactured housing law defines "community owner" much more broadly, and it failed to do so.

Second, the State argued that the Superior Court could also deny the motion because Hometown America introduced information outside the four corners of the Complaint in support of its motion—county property records—which is not permitted on a motion to dismiss. Alternatively, the State argued that consideration of the Motion to Dismiss should be deferred, because if the Superior Court was going to consider information outside the four corners of the Complaint, the Motion to Dismiss would be converted into a motion for summary judgment under Rule 56 and would entitle the State to take discovery relating to Hometown America's ownership of and its legal and financial

relationships with the Communities. The State also submitted to the Superior Court an affidavit identifying evidence—including a letter from Hometown America's counsel representing that the Communities were "owned by Hometown America Communities, Inc."—to illustrate for the Superior Court the kind of additional evidence that would be seen at the summary judgment stage regarding whether Hometown America is an "owner" of the Communities within the meaning of 25 *Del. C.* § 7003(4).

The Superior Court granted the Motion to Dismiss. According to the Superior Court, the State "failed to adequately plead any facts supporting its allegation that Hometown [America] is the owner and operator" of the Communities. In doing so, the Superior Court criticized the State for failing to attach evidence to the Complaint, such as "the deeds showing who actually owns the [Communities]," "[even] a single lease showing that Hometown [America] had a landlord-tenant relationship with a single one of the tenants in the three communities," or "[even] one of the rent increase notices showing that Hometown [America] sent them to the tenants in the three communities."

This ruling is erroneous because it improperly placed on the State, as the plaintiff, a burden to demonstrate conclusively in the Complaint that Hometown America is an owner of the Communities. On the contrary, Delaware law does not require a plaintiff to plead evidence in its Complaint, and instead placed the burden on Hometown America, as the movant on a Rule 12(b)(6) motion, to do the opposite—to demonstrate that there is no reasonably conceivable set of circumstances susceptible of proof that would support a

finding that Hometown America is a "community owner" within the meaning of 25 *Del. C.* § 7003(4). Hometown America failed to do this.

The ruling is also erroneous for a second reason: the Superior Court considered evidence outside the four corners of the Complaint without affording the State the opportunity to take discovery into whether Hometown America was (for example) a "person . . . who directly or indirectly receives rents for [the Communities] and who has no obligation to deliver such rents to another person," and thus would be an owner of the Communities under Delaware's manufactured housing laws. Moreover, the evidence considered by the Superior Court is, construed in a light most favorable to the State, at best ambiguous on the question of whether Hometown America is an "owner" of the Communities as the term is defined in 25 *Del. C.* § 7003(4), and it was error for the Superior Court to resolve that ambiguity against the State without affording the State an opportunity to present relevant evidence.

As argued herein, the Superior Court should have either (i) denied the Motion to Dismiss outright, because Hometown America failed to carry its burden under Rule 12(b)(6) by failing to allege and prove that it is not any of the multiple parties defined as an "owner" under 25 *Del. C.* § 7003(4), or (ii) denied the motion as premature pending discovery directed to whether Hometown America is an owner of the Communities within the meaning of 25 *Del. C.* § 7003(4). The court's failure to do one of these, and to instead grant the Motion to Dismiss, was reversible error.

NATURE OF PROCEEDINGS

On November 13, 2015, the State filed a complaint ("Complaint") in the Superior Court against Hometown America Communities, Inc., alleging breaches by Hometown America of both the Manufactured Home Owners and Community Owners Act and the Rent Justification Act.[4]

On December 29, 2015, Hometown America filed a motion to dismiss the Complaint pursuant to Superior Court Civil Rule 12(b)(6).[5] The State filed its response to the Motion to Dismiss on January 29, 2016.[6] Oral argument was held before the Honorable E. Scott Bradley on February 5, 2016, who reserved decision on the motion.[7] On April 14, 2016, the Superior Court issued a letter opinion granting the Motion to Dismiss.[8]

On April 15, 2016, the State filed its Notice of Appeal.[9] On June 9, 2016, the Supreme Court Clerk received the record and transcript from the Superior Court Prothonotary, and issued a letter setting July 11, 2016 as the date by which the State's opening brief and appendix were due.[10]

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[4] *State of Delaware ex rel. Denn v. Hometown America Communities, Inc.*, C.A. No. S15C-11-015-ESB, Docket Item No. 1 (Transaction I.D. No. 58164184).

[5] *Id.*, Docket Item No. 3 (Transaction I.D. No. 58352827).

[6] *Id.*, Docket Item No. 4 (Transaction I.D. No. 58494493).

[7] *Id.*, Docket Item No. 10 (Transaction I.D. No. 59086084).

[8] *Id.*, Docket Item No. 6 (Transaction I.D. No. 58864923).

[9] *State of Delaware ex rel. Denn v. Hometown America Communities, Inc.*, No. 194, 2016, Docket Item No. 1 (Transaction I.D. No. 58871896).

[10] *Id.*, Docket Item No. 9 (Transaction I.D. No. 59125526).

SUMMARY OF ARGUMENT

1. The Superior Court erred in granting Hometown America's Motion to Dismiss because Hometown America failed to carry its burden under Rule 12(b)(6) to show that the State cannot recover "under any reasonably conceivable set of circumstances susceptible of proof," and the Superior Court improperly placed the burden of proof on the State. Under Rule 12(b)(6), the trial court must take all well-pleaded allegations as true and all inferences drawn therefrom must be made in favor of the non-movant, and allegations are considered well-pleaded if they put the opposing party on notice of the claim being brought against it. Here, the State alleged in the Complaint that Hometown America is the owner of the Communities, and the statutory definition of "community owner" in 25 *Del. C.* § 7003(4) is broadly defined to include a variety of potential parties. Therefore, the burden was on Hometown America to show it is not an owner of the Communities because it is not any of the parties defined as an owner in 25 *Del. C.* § 7003(4).

Instead of doing this, Hometown America advanced only one argument for why it was not the proper defendant: that it is not the record owner of the Communities in Kent County and Sussex County property records. Because "community owner" is defined in 25 *Del. C.* § 7003(4) to include more entities than just the record owner listed in county property records, Hometown America failed to establish that the State cannot recover "under any reasonably conceivable set of circumstances susceptible of proof," and its Motion to Dismiss should have been denied for that reason alone. Instead, the Superior

Court put the burden on the State to demonstrate otherwise. This was reversible error.

2. The Superior Court also erred in granting Hometown America's Motion to Dismiss on the basis of documents—the Rent Increase Notices—that do not meet this Court's stringent, limited exception to the general rule prohibiting consideration of material outside the four corners of a complaint on a motion to dismiss. Because the Rent Increase Notices were *not* both integral to the State's factual allegation in the Complaint that Hometown America is an owner of the Communities *and* incorporated by reference into the Complaint, and because the Superior Court relied upon the Rent Increase Notices for the truth of their contents, the Superior Court could not consider the Rent Increase Notices without converting the Motion to Dismiss into a motion for summary judgment under Rule 56. The Superior Court compounded its error by relying exclusively on, and making factual determinations regarding, the Rent Increase Notices, documents whose terms, when read in a light most favorable to the State, are at best ambiguous as to the question of whether Hometown America is an owner of the Communities as defined under Delaware law.

The Superior Court was required either to exclude all evidence outside the four corners of the Complaint, or defer the Motion to Dismiss to allow the parties to take discovery directed to Hometown America's ownership of and its legal and financial relationships with the Communities. The Superior Court did neither, and did so despite the State submitting an affidavit identifying the ways in which Hometown America appeared to be holding itself out as the owner of

the Communities (including a letter from Hometown America's counsel representing to the State that the Communities were "owned by Hometown America Communities, Inc."), to show the kind of evidence the Superior Court would see on a motion for summary judgment. Because the Superior Court relied on ambiguous evidence outside the four corners of the Complaint when it considered the Motion to Dismiss, the Superior Court should have denied or deferred the motion pending completion of limited discovery, and its failure to do so was reversible error.

STATEMENT OF FACTS

1. Delaware's Rent Justification Act Serves an Important Purpose

The lawsuit precipitating this appeal involves rent increase notices sent to tenants in the Angola Beach Estates, Barclay Farms, and Rehoboth Bay manufactured housing communities for the 2016 calendar year. In Delaware, rents for lots in manufactured housing communities are subject to a form of rent control, pursuant to the terms of Delaware's Rent Justification Act.

The Rent Justification Act became effective on June 30, 2013 when Governor Markell signed into law Senate Substitute No. 1 for Senate Bill No. 33, as amended by Senate Amendment No. 1 and House Amendment No. 2, creating a new subchapter in Delaware's manufactured housing law (Chapter 70, Title 25 of the Delaware Code). (Compl. ¶ 10 at A009 (citing 79 *Del. Laws* ch. 63.) The purpose for the Rent Justification Act is to "accommodate the conflicting interests of protecting manufactured home owners, residents and tenants from unreasonable and burdensome space rent increases while simultaneously providing for the need of manufactured home community owners to receive a just, reasonable and fair return on their property." (Compl. ¶ 11 at A009 (discussing 25 *Del. C.* § 7040).)

The Rent Justification Act accomplishes this by allowing community owners to raise the rents charged to tenants by the average annual increase in the Consumer Price Index for All Urban Consumers in the Philadelphia-Wilmington-Atlantic City Area ("CPI-U") for the preceding 36-month period,

but requiring community owners to go through a rent justification process if they want to increase the rent above the CPI-U. (Compl. ¶ 12 at A009-A010 (discussing 25 *Del. C.* § 7042).)[11]

The Rent Justification Act, in relevant part, requires: (i) at least 90 days' written notice to affected home owners and other necessary parties regarding the proposed rent increase; (ii) a face-to-face meeting between affected parties and the manufactured community's owner; and (iii) nonbinding arbitration between the affected tenants and the community owner if requested by either party. (Compl. ¶ 13 at A010 (discussing 25 *Del. C.* § 7043).) There is a right of appeal to the Superior Court from the arbitrator's decision. (*Id.* (discussing 25 *Del. C.* § 7044).)

In order for the rent justification process to be meaningful, the Rent Justification Act requires community owners to provide financial information to tenants to justify any rent increase above the CPI-U, and allows tenants to petition for arbitration if they do not agree with the justification provided by the community owner. (Compl. ¶ 14 at A010.) Prior to the Rent Justification Act, Delaware law placed no restrictions upon community owners regarding annual rent increases. (*Id.*) The rights granted by the Rent Justification Act to tenants provide significant protections for tenants who were previously subjected to

[11] The CPI-U is provided by the Delaware State Housing Authority to the Delaware Manufactured Home Relocation Authority. The current CPI-U is posted on the Delaware Manufactured Home Relocation Authority website and the figure is updated every other month.

unpredictable and significant annual increases, as the General Assembly intended. (Compl. ¶ 14 at A010-A011.)

Consistent with its purpose, the Rent Justification Act also prohibits community owners under any circumstances from imposing "any civil penalty, criminal fine or litigation-related costs for rent related proceedings into rent charged under any circumstance." (Compl. ¶ 15 at A011 (discussing 25 *Del. C.* § 7042(c)).)

2. Hometown America's Three Manufactured Housing Communities in Delaware

Angola Beach Estates is located in Lewes, Delaware and consists of approximately 589 lots. (Compl. ¶ 8 at A008-A009.) Rehoboth Bay is located in Rehoboth Beach, Delaware and consists of approximately 589 lots. (Compl. ¶ 8 at A009.) Barclay Farms is located in Camden, Delaware and consists of approximately 292 lots. (*Id.*) Collectively, Hometown America services over 1,400 residential manufactured home lots in Delaware. (*Id.*) Hometown America rents manufactured home lots in the three communities to owners of manufactured homes ("Tenants") who place their homes on designated lots under the terms of a land lease issued by Hometown America. (Compl. ¶ 9 at A009.)

3. Residents of the Communities Receive Substantial Rent Increase Notices for 2016

On September 14, 2015, rent increase notices ("Rent Increase Notices") were issued to all Tenants at Angola Beach Estates, Barclay Farms, and Rehoboth Bay whose leases expired at the end of the 2015 calendar year.

(Compl. ¶ 16 at A011.) The applicable CPI-U as of the date of the Rent Increase Notices was 1.1%. Under the Rent Justification Act, Hometown America is permitted to raise rents by this amount ("CPI-U Increase"). (Compl. ¶ 17 at A011.)

The proposed rent increase for Tenants at Angola Beach Estates for the 2016 calendar year was $19.70 per site per month above the CPI-U Increase. (Compl. ¶ 18 at A011.) For an Angola Beach Estates Tenant whose 2015 monthly rent was $500.00, the Tenant's 2016 rent would increase by $24.75 per month to $524.75, a 4.9% increase. (Compl. ¶ 18 at A012.)

The proposed rent increase for Tenants at Barclay Farms for the 2016 calendar year is $14.48 per site per month above the CPI-U Increase. (Compl. ¶ 19 at A012.) For a Barclay Farms Tenant whose 2015 monthly rent was $500.00, the Tenant's 2016 rent would increase by $19.98 per month to $519.98, a 4.0% increase. (*Id.*)

The proposed rent increase for Tenants at Rehoboth Bay for the 2016 calendar year was $13.23 per site per month above the CPI-U Increase. (Compl. ¶ 20, App. 12.) For a Rehoboth Bay Tenant whose 2015 monthly rent was $500.00, the Tenant's 2016 rent would increase by $18.73 per month to $518.73, a 3.7% increase. (Compl. ¶ 20 at A013.)

Hometown America's annual rent increases for its Delaware properties have, over time, averaged less than 2.5% per year; the proposed 2016 rent increases are higher than this historical average by 50% (Rehoboth Bay), 60% (Barclay Farms), and 100% (Angola Beach Estates). (Compl. ¶ 21 at A013.)

Hometown America's Rent Increase Notices did not, however, stop with these steep increases and put Tenants to the decision of whether to seek arbitration after the required meeting, as the Rent Justification Act contemplates. (Compl. ¶ 22 at A013.) Instead, the Rent Increase Notices offered Tenants a second, significantly-reduced proposed rent increase—just 2.5%—but with a huge catch: in order to obtain this reduced rent increase, Tenants had to agree to waive their statutory right to arbitrate a rent increase that exceeds the CPI-U. (Compl. ¶ 23 at A013-A014.)

Included as part of the Rent Increase Notices were two rental summaries, one for the "Full Increase" and one for the "Limited Increase," along with an Acknowledgment of Receipt that included the arbitration waiver. (Compl. ¶ 24 at A014.) All of these documents are part of the rental agreement summary and lease under Delaware law. (*Id.*) According to the Rent Increase Notices, the *only* basis upon which Hometown America is offering the reduced rent increase is as an alternative to filing for arbitration for rent justification for 2016 rent. (Compl. ¶ 25 at A014.)

At the community meetings held to discuss the reasons for the rent increase above the CPI-U, Hometown America presented an additional alternative option to Tenants. (Compl. ¶ 26 at A014.) Tenants could pay the full amount of the increase for the 2016 year and at the beginning of the 2017 year, the capital improvement increase for 2016 would be subtracted from the base rent used for the upcoming 2017 rent increase. (*Id.*) Tenants were again required to waive their right to arbitration to accept this alternative option. (*Id.*)

Hometown America advised Tenants at this meeting that Tenants must elect either rent reduction alternative within 21 days. (Compl. ¶ 27 at A015.) After 21 days, the reduction offer would expire and Hometown America would seek the full amount of the rent increase *even if* Tenants did not file a petition for arbitration. (*Id.*)

Tenants had thirty days from the conclusion of the community meetings to file petitions for arbitration. (Compl. ¶ 28 at A015 (citing 25 *Del. C.* § 7043(c)).) Those Tenants who did not sign the waiver or petition for arbitration would be required to pay the full amount of the unreasonable and burdensome rent increase for the remainder of their tenancy. (Compl. ¶ 29 at A015.)

4. The State Files Suit Against Hometown America

In response to tenant complaints regarding the rent increase notices and the resulting community meetings, the Delaware Department of Justice's Consumer Protection Unit initiated litigation against Hometown America alleging breaches of the Manufactured Home Owners and Community Owners Act and the Rent Justification Act.[12] Motion practice followed, leading to this appeal.[13]

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[12] *State of Delaware ex rel. Denn v. Hometown America Communities, Inc.*, C.A. No. S15C-11-015-ESB, Docket Item No. 1 (Transaction I.D. No. 58164184).

[13] *See* Nature of Proceedings, *supra*.

ARGUMENT

I. DISMISSAL OF THE COMPLAINT WAS ERROR BECAUSE HOMETOWN AMERICA FAILED TO MEET ITS BURDEN TO SHOW THAT THE STATE CANNOT ESTABLISH "UNDER ANY REASONABLY CONCEIVABLE SET OF CIRCUMSTANCES SUSCEPTIBLE OF PROOF" THAT HOMETOWN AMERICA IS AN "OWNER" OF THE COMMUNITIES AS DEFINED UNDER DELAWARE LAW

A. Question Presented

When a defendant responds to a complaint by moving to dismiss on one, but not all, of the possible bases upon which a statute may be applicable to the defendant, must the motion to dismiss be denied because the defendant has failed to meet its burden under Rule 12(b)(6) to demonstrate with reasonable certainty that the plaintiff is not entitled to the relief sought under any set of facts which could be proven to support the action? (A049-A050; A102-A106; A127-A128.)

B. Standard of Review

This Court's review of the decision on a motion to dismiss under Delaware Superior Court Civil Rule 12(b)(6) is *de novo*.[14]

In order for a court to be able to grant a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), "it must appear with reasonable certainty that a plaintiff would not be entitled to the relief sought under any set of facts which could be proven to support the action."[15] Any facts alleged by a

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[14] *Furman v. Delaware Dep't of Transp.*, 30 A.3d 771, 773 (Del. 2011) (quoting *Ramirez v. Murdick*, 948 A.2d 395, 399 (Del. 2008)); *see also In re Santa Fe Pac. Corp. S'holder Litig.*, 669 A.2d 59, 70 (Del. 1995) (interpreting Chancery Rule 12(b)(6)).

[15] *Rabkin v. Hunt*, 498 A.2d 1099, 1104 (Del. 1985).

plaintiff in its complaint must be taken as true and be "liberally construed,"[16] and all reasonable inferences drawn therefrom must be viewed "in the light most favorable to the plaintiff."[17] If it is feasible that a plaintiff can recover under any "reasonably conceivable set of circumstances susceptible of proof," the motion to dismiss must be denied.[18] And in order for allegations to be "well-pleaded," they need only to put the opposing party on notice of the claims being brought against it, and it does not matter if the allegations are "vague or lacking in detail."[19] Importantly, "under Delaware's judicial system of notice pleading, a plaintiff need not plead evidence."[20] So long as the defendant has fair notice of the claims, the complaint "shifts to the defendant the burden to determine the details of the cause of action by way of discovery for the purpose of raising legal defenses."[21]

C. Merits of the Argument

Delaware's Manufactured Home Owners and Community Owners Act was intended to accomplish several goals: (i) clarify and establish the law

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[16] *VLIW Tech., LLC v. Hewlett-Packard Co.,* 840 A.2d 606, 611 (Del. 2003).

[17] *McMullin v. Beran*, 765 A.2d 910, 916 (Del. 2000). As this Court has noted, on a Rule 12(b)(6) motion, what a trier of fact might ultimately find is completely irrelevant. *Ramunno v. Cawley*, 705 A.2d 1029, 1036 (Del. 1996) ("Indeed, on a summary judgment record or at trial, the defendants may be successful in portraying this dispute as silly. But in dismissing the complaint on this ground, the Superior Court strayed from the time-honored rules governing motions to dismiss under Rule 12(b)(6) by failing to draw every reasonable factual inference in favor of the complainant.").

[18] *VLIW Tech.*, 840 A.2d at 611 (citing *Precision Air, Inc. v. Standard Chlorine of Del., Inc.,* 654 A.2d 403, 406 (Del. 1995)).

[19] *Id.* (citing *Savor, Inc. v. FMR Corp.,*812 A.2d 894 (Del. 2002) and *Precision Air,* 654 A.2d at 406).

[20] *Id.*

[21] *Id.* (quoting *Klein v. Sunbeam Corp.,*94 A.2d 1200, 1203-04 (Del. 1988)).

governing the rental of lots for manufactured homes; (ii) clarify and establish the law governing the rights and obligations of community owners, home owners, and residents of manufactured home communities; and (iii) encourage manufactured home community owners and manufactured home owners and residents to maintain and improve the quality of life in manufactured home communities.[22] To accomplish these goals, the Manufactured Home Owners and Community Owners Act "must be liberally construed and applied to promote its underlying purposes and policies."[23]

To that end, the statute imposes a variety of obligations upon those whom the statute deems to be owners of manufactured housing communities, which it defines broadly:

> "Community owner" or "landlord" means the owner of 2 or more manufactured home lots offered for rent. It includes a lessor, sublessor, park owner or receiver of 2 or more manufactured home lots offered for rent, as well as any person, other than a lender not in possession, who directly or indirectly receives rents for 2 or more manufactured home lots offered for rent and who has no obligation to deliver such rents to another person.[24]

Consistent with this expansive definition of "owner," the statute also contains a broad "consent to jurisdiction" provision:

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[22] 25 *Del. C.* § 7001(a)(1), (2).

[23] 25 *Del. C.* § 7001(a).

[24] 25 *Del. C.* § 7003(4). For reasons that are unclear, the definition is repeated a second time, but with the term "landlord" appearing before "community owner." *See* 25 *Del. C.* § 7003(9). The definitions contained in the Manufactured Home Owners and Community Owners Act are expressly incorporated into the Rent Justification Act. 25 *Del. C.* § 7041.

> Any person, whether or not a citizen or resident of this State, who owns, holds an ownership or beneficial interest in, uses, manages or possesses real estate situated in this State submits to the jurisdiction of the courts of this State as to any action or proceeding for the enforcement of an obligation or right arising under this subchapter.[25]

Taken together, the definition of "community owner" and the statute's expansive consent to jurisdiction language evidence a clear intent by the General Assembly to cast a wide net in determining who qualifies as a "community owner" for purposes of Delaware's manufactured housing laws, essentially extending its reach to anyone who exercises direct or indirect control (including financial) over the lives of the tenants and residents of manufactured housing communities. In other words, its reach extends well beyond whatever entity may be identified as the record owner in county property records or on the deed to the property on which a manufactured housing community sits.[26]

When the State filed the Complaint, it specifically, albeit generally, alleged that Hometown America "owns three manufactured home communities in Delaware," and identified the communities by name. (A008-A009.) In doing so, the State provided notice to Hometown America of the State's

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[25] 25 *Del. C.* § 7002(a).

[26] At oral argument, Hometown America for the first time raised the contents of the property deeds for the land on which the Communities sit to support its Motion to Dismiss. (A131.) The Superior Court allowed Hometown America to submit the deeds into evidence, but stated in the Opinion that it did not consider the deeds in resolving the Motion to Dismiss. Opinion at 7 n.14. The first time the State even saw the actual deeds was after the Superior Court had taken the motion to dismiss under consideration. (A134; A148.)

contention that Hometown America is a "community owner" as defined in 25 *Del. C.* § 7003(4). Consistent with Delaware's liberal pleading rules, the State did not, and was not required to,[27] plead specific evidence establishing how Hometown America meets the broad statutory definition.

Instead, the burden was (and is) on Hometown America to establish "with reasonable certainty that [the State] would not be entitled to the relief sought under any set of facts which could be proven to support the action."[28] However, Hometown America advanced only one argument for why it was not the proper defendant: that it is not the record owner of the Communities in Kent County and Sussex County property records. (Motion ¶¶ 4, 6, 7 at A025-A027.) According to Hometown America, the only party who constitutes a "community owner" under the Manufactured Home Owners and Community Owners Act or the Rent Justification Act is whoever is named in the "record title" for the property. (*Id.*)

Nowhere in the motion did Hometown America quote, let alone discuss, the actual language defining "community owner" in 25 *Del. C.* § 7003(4). And with good reason, because, as the plain language of 25 *Del. C.* § 7003(4) shows, Hometown America's claim is false—the statute identifies not just the record title owner of the property, but also a lessor, a sublessor, or a receiver of a manufactured housing community, "as well as any person, other than a lender not in possession, who directly or indirectly receives rents for 2 or more

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[27] *VLIW Tech.*, 840 A.2d at 611.

[28] *Rabkin*, 498 A.2d at 1104.

manufactured home lots offered for rent and who has no obligation to deliver such rents to another person."

Thus, in order to meet its obligation to establish with reasonable certainty that the State would not be entitled to the relief sought under any set of facts which could be proven to support the action, Hometown America needed to do more than establish that it is not listed as the record owner in Kent County or Sussex County property records: *it needed to allege and establish that it was not any of the entities defined by Delaware law as a community owner*. This was Hometown America's burden, and it made no attempt to satisfy it. Instead, Hometown America argued, in its motion and at oral argument, for a stunted, truncated definition of "community owner" that bears no resemblance to the words actually used in 25 *Del. C.* § 7003(4).

To repeat the point, Delaware law is clear that a plaintiff need only put the defendant on general notice of the claims being brought, even if the allegations lack detail, or are even vague.[29] The State met that minimal threshold by alleging that Hometown America owns the Communities. (A008-A009.) Delaware law does not require the State to go into detail in the Complaint as to how Hometown America qualifies as a "community owner," nor does Delaware law require the State to plead actual evidence in the Complaint in the form of property deeds, contracts, or other documentary proof,[30] so the State did neither.[31] Because "community owner" is defined in

[29] *VLIW Tech.*, 840 A.2d at 611.

[30] *Id.*

25 *Del. C.* § 7003(4) to include more entities than just the record owner listed in County property computer records or deeds, Hometown America failed to demonstrate that the State cannot recover "under any reasonably conceivable set of circumstances susceptible of proof," and the Superior Court was required to deny the Motion to Dismiss for that reason alone. Instead, the Superior Court put the burden on the State to demonstrate otherwise, even going so far as to fault the State for not attaching to the Complaint documents substantiating the State's allegations.[32] This was reversible error.[33]

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[31] Delaware courts, of course, routinely deal with complaints which allege a party's status in general terms that lack detail—such as marital status, parentage, or state of incorporation—without requiring the Complaint to allege specific facts as to that status. There is no basis under Delaware law for treating a general allegation of an entity's status as a "community owner" in a complaint any differently under Rule 12(b)(6). *Cf. Anderson v. Airco, Inc.*, 2004 WL 1874688, at *2 (Del. Super. Aug. 13, 2004) (upholding denial of motion to dismiss where the plaintiff had alleged generally that the movant "controlled the operations, including the safety protocols," of the plant in which the plaintiff worked, that was owned by another entity: "The Court cannot, and need not in deciding a motion to dismiss, divine how Georgia-Pacific exercised control over Georgia Gulf. Taking the Andersons' allegations in Count Three as true, they have, for the purposes of notice pleading, stated a claim cognizable in theory under Delaware law. At this stage of the litigation, they need not do more.").

[32] *See* Opinion at 4, 7.

[33] Even had Hometown America raised a legitimate argument regarding the meaning of the *entire* definition of "community owner"—instead of ignoring of it—the outcome would be the same, because ambiguity in the definition mandates denial of the Motion to Dismiss. *See, e.g., VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d at 612 (reversing dismissal of complaint on the ground that because the operative contractual term was ambiguous, "all reasonable inferences as to their meaning should have been construed in favor of VLIW for purposes of deciding defendants' 12(b)(6) motion to dismiss.").

II. DISMISSAL OF THE COMPLAINT WAS ERROR BECAUSE THE SUPERIOR COURT CONSIDERED AMBIGUOUS EVIDENCE OUTSIDE THE FOUR CORNERS OF THE COMPLAINT TO DECIDE THE MOTION TO DISMISS AND WAS REQUIRED TO GIVE THE STATE AN OPPORTUNITY TO TAKE DISCOVERY ON THE ISSUE BEFORE DECIDING THE MOTION

A. Question Presented

Did the Superior Court commit reversible error when it relied upon the Rent Increase Notices to decide the Motion to Dismiss, without giving the State an opportunity to take discovery on the question of whether Hometown America falls within the broad definition of "community owner" in 25 *Del. C.* § 7003(4), even though the Rent Increase Notices are not integral to the claim that is subject to the Motion to Dismiss, were not incorporated by reference into the Complaint, and are ambiguous on the question of whether Hometown America is an owner of the Communities as defined in 25 *Del. C.* § 7003(4)? (A050-A051; A105.)

B. Standard of Review

This Court's review of the decision on a motion to dismiss under Delaware Superior Court Rule 12(b)(6) is *de novo*.[34] "This Court, like the trial court, must determine whether it appears with reasonable certainty that, under any set of facts which could be proven to support the claim, the plaintiffs would not be entitled to relief."[35] "That determination, by this Court and the trial

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[34] *Furman v. Delaware Dep't of Transp.*, 30 A.3d 771, 773 (Del. 2011) (quoting *Ramirez v. Murdick,* 948 A.2d 395, 399 (Del. 2008)); *In re Santa Fe Pac. Corp. S'holder Litig.*, 669 A.2d 59, 70 (Del. 1995) (interpreting Chancery Rule 12(b)(6)).

[35] *In re Tri-Star Pictures, Inc. Litig.*, 634 A.2d 319, 326 (Del. 1993).

court, is generally limited to the facts contained in the complaint."[36] "On appeal, those facts must be taken as true and all inferences therefrom are viewed in a light most favorable to the plaintiff."[37]

When considering a motion to dismiss for failure to state a claim under Rule 12(b)(6), if the court considers matters outside the pleadings, the motion ordinarily will be treated as a motion for summary judgment under Rule 56:

> If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleadings to state a claim upon which relief can be granted, matters outside the pleadings are presented to and not excluded by the Court, the motion ***shall be treated*** as one for summary judgment and disposed of as provided in Rule 56, and all parties ***shall be given*** reasonable opportunity to present all material made pertinent to such a motion by Rule 56.[38]

This general rule is not inviolate: "in particular instances, and for carefully limited purposes, it may be appropriate for the [court below] to consider documents other than the complaint when ruling on a Rule 12(b)(6) motion to dismiss without converting the proceeding into a Rule 56 motion for summary judgment."[39] But there are only two exceptions: (i) when the document is both integral to a plaintiff's claim *and* incorporated into the complaint; or (ii) when

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[36] *Vanderbilt Income & Growth Assocs., LLC v. Arvida/JMB Managers, Inc.*, 691 A.2d 609, 612 (Del. 1996) (citing *In re Santa Fe Pac. Corp.* and *In re Tri-Star Pictures*).

[37] *Vanderbilt Income & Growth Assocs.*, 691 A.2d at 612.

[38] Superior Court Civil Rule 12(b) (emphasis added).

[39] *Furman v. Delaware Dept. of Transp.*, 30 A.3d 771, 774 (Del. 2011) (citing *Vanderbilt Income & Growth Assocs.*, 691 A.2d at 613).

the document is not being relied upon to prove the truth of its contents.[40] Even when a court may properly consider a document under one of these exceptions to resolve a Rule 12(b)(6) motion, it may do so only if the document is unambiguous: "a trial court cannot choose between two differing reasonable interpretations of ambiguous documents. . . . Dismissal is proper only if the defendants' interpretation is the *only* reasonable construction as a matter of law."[41]

C. Merits of the Argument

In this case, the Superior Court considered and relied upon the Rent Increase Notices in granting Hometown America's Motion to Dismiss without affording the State an opportunity to take discovery.[42] This was error for at least two reasons.

First, the Superior Court erred because the Rent Increase Notices do not meet this Court's stringent, limited exception to the general rule prohibiting consideration of material outside the four corners of a complaint on a motion to dismiss. As this Court made clear in *In re Santa Fe Pacific Corp.*, the limited exception exists to address situations where the documents proposed to be

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[40] *In re Santa Fe Pac. Corp.*, 669 A.2d at 69-70 ("The exception has been used in cases in which the document is integral to a plaintiff's claim *and* incorporated in the complaint, such as a securities claim.") (emphasis added); *see also Vanderbilt Income & Growth Assocs.*, 691 A.2d at 613 (discussing *In re Santa Fe Corp.*); *Highland Capital Mgmt., LP v. T.C. Group, LLC,* 2006 WL 212867, at *3 (Del. Super. July 27, 2006) (ruling that documents submitted by defendants in support of their Rule 12(b)(6) motion to dismiss were outside the four corners of the complaint and did not qualify for the limited exception because they were being offered for the truth of their contents).

[41] *Vanderbilt Income & Growth Assocs.*, 691 A.2d at 613 (emphasis in original).

[42] Opinion at 7.

considered on a motion to dismiss "are the very documents that are alleged to contain the various misrepresentations or omissions and are relevant not to prove the truth of their contents but only to determine what the documents state"[43] and that situation does not exist here. To be properly considered on a Rule 12(b)(6) motion, the extrinsic material must be integral to the claim that is subject to the motion to dismiss, and the Rent Increase Notices were not relied upon in the Complaint for the purpose of identifying Hometown America as an owner of the Communities under 25 *Del. C.* § 7003(4).[44] Moreover, the Superior Court clearly relied upon the Rent Increase Notices for the truth of their contents (insofar as they say anything about whether Hometown America is a "community owner" under 25 *Del. C.* § 7003(4)), and not simply to determine what the Rent Increase Notices said, as might be the case with a disclosure claim based on a proxy statement.[45] The Superior Court thus could not consider the Rent Increase Notices without converting the Motion to Dismiss into a motion for summary judgment under Rule 56.

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[43] *In re Santa Fe Corp.*, 669 A.2d at 69-70.

[44] *See Sandys v. Pincus*, 2016 WL 769999, at *9 (Del. Ch. Feb. 29, 2016) ("Although the Complaint mentions for different purposes the filings from which plaintiff retrieved this information (the Prospectus and the April 2013 definitive proxy), those filings were not incorporated by reference into or attached to the Complaint. Thus, these new factual allegations are not properly before the Court.")

[45] *In re Santa Fe Corp.*, 669 A.2d at 69-70. As this Court made clear in *Santa Fe*, even if a document is appropriate to consider for some purpose on a motion to dismiss, that does not make the document fair game for all purposes on a Rule 12(b)(6) motion: "using the Joint Proxy to consider *all* of the claims reaches well beyond the justification for the exception and leads to anomalous results." *Id.* at 70 (emphasis in original). As the Court went on to explain "When a proxy statement is merely appended to the complaint and relied upon for the disclosure claims, but is not put forth by plaintiffs as an admission of the truth of the facts referred to therein, the defendants may not use it at the pleading stage for purposes other than disclosure issues or perhaps to establish formal uncontested matters." *Id.*

Second, it was also improper for the Superior Court to consider the Rent Increase Notices because, under Delaware law, an ambiguous document cannot be relied upon by a trial court as the basis for a Rule 12(b)(6) dismissal,[46] and the Rent Increase Notices, when interpreted in a light most favorable to the State, are ambiguous on the question of whether Hometown America is an owner of the Communities as defined in 25 *Del. C.* § 7003(4). The Rent Increase Notices, while signed by entities which appear to be related to Hometown America (each has "Hometown" in their name), are sent on Hometown America letterhead with Hometown America's trademarked logo. (A065; A077; A080.) The relationship between the signing entities and Hometown America is unclear, and certainly not resolved by the Rent Increase Notices alone. And yet, despite this ambiguity, the Superior Court construed and interpreted the contents of the Rent Increase Notices, rejecting the State's argument that the use of Hometown America letterhead and logo was relevant to the question of whether Hometown America is a "community owner"—"I viewed this as nothing more than marketing."[47] This was impermissible fact-finding at the dismissal stage.

Because neither of the limited exceptions to Rule 12(b) applies here, and because the Superior Court addressed and resolved disputed questions of fact as to the meaning of ambiguous documents, the Superior Court should have

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[46] *See, e.g.*, *Vanderbilt Income & Growth Assocs.*, 691 A.2d at 613 (trial court is not allowed to "choose between two differing reasonable interpretations of ambiguous documents. . . . Dismissal is proper only if the defendants' interpretation is the *only* reasonable construction as a matter of law.") (emphasis in original).

[47] Opinion at 6.

treated Hometown America's Rule 12(b)(6) motion to dismiss as a Rule 56 motion for summary judgment, and should have granted the State the opportunity to take discovery to resolve the question of whether Hometown America is a "community owner" as the term is defined in 25 *Del. C.* § 7003(4). Its failure to do so was reversible error.

Indeed, the Superior Court's reliance upon the ambiguous Rent Increase Notices in its decision to grant Hometown America's Motion to Dismiss, without affording the State an opportunity to take discovery on the ownership issue, is also erroneous because, as the State demonstrated in its papers below, evidence that would be presented in connection with a Rule 56 inquiry suggests there is a genuine issue of material fact as to whether Hometown America is a "community owner" as defined in 25 *Del. C.* § 7003(4), based on information from Hometown America and its agents, including:

- *Hometown America's Counsel*: On October 6, 2015, just five weeks before the Complaint was filed, counsel for Hometown America in this action represented to the State in a letter that the Communities are "owned by Hometown America Communities, Inc." (A054; A057-A063.)

- *Hometown America's Front Office*: Hometown America issued a press release "to announce the addition of Barclay Farms to their portfolio of properties." Hometown America's Vice President was quoted as saying "Barclay Farms first very well within Hometown's investment strategy of acquiring extremely high quality, age-restricted communities and is another great example of properties we will continue to acquire in the coming years." (A054; A082-A084.)

- *Hometown America's Website*: Hometown America lists the Communities as Hometown America properties on the main page of Hometown America's website, maintains separate webpages for each of the Communities, and maintains a webpage where residents of the Communities can pay their rent online. (A054-A055; A085-A099.)

- *Hometown America's Logo*: The Rent Increase Notices sent to residents of the Communities use what appears to be Hometown America letterhead, with Hometown America's trademarked logo, and contain a footer referring readers to Hometown America's website. (A054; A064-A081.)

As this information demonstrates, a factual question exists as to whether Hometown America is an "owner" of the Communities as that term is defined in 25 *Del. C.* § 7003(4), and if the Superior Court was going to consider *any* information outside the four corners of the Complaint to decide the Motion to Dismiss, it should have allowed *all* pertinent information to be developed and considered, and its failure to allow the fact discovery necessary to obtain that information was reversible error.

Finally, even assuming, for argument's sake, that the Rent Increase Notices were unambiguous on the question of record ownership of the Communities and could be properly considered on a Rule 12(b)(6) motion, they would still not support dismissal of the Complaint, because the Rent Increase Notices do not prove conclusively that Hometown America is not a "community owner" as that term is broadly defined in 25 *Del. C.* § 7003(4). The Rent Increase Notices are silent as to status as a lessor, a sublessor, a receiver, or a "person, other than a lender not in possession, who directly or indirectly receives rents for 2 or more manufactured home lots offered for rent

and who has no obligation to deliver such rents to another person"—each a status that defines someone as a "community owner"—and because of that silence the Rent Increase Notices cannot conclusively resolve the question of whether Hometown America is a "community owner," and it was error for the Superior Court to conclude otherwise.

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CONCLUSION

For the reasons set forth in this brief, this Court should reverse the judgment of the Superior Court.

Respectfully submitted,

DELAWARE DEPARTMENT OF JUSTICE
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