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STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

May 18, 1976

SUBJECT: Economic Analysis of Arrangements Tying Mobile Home Sales to Mobile Home Space Rentals (W.O. #2637)

TO: The Honorable Terry Gardiner

FROM: Gregg K. Erickson
Director of Research Services

SUMMARY

You have requested* an economic analysis of the tying arrangements that are alleged to exist between operators of mobile home parks and mobile home dealers under which the availability of a mobile home space is conditioned on purchase of a mobile home. We have reviewed, inter alia, the memorandum of Mr. Jamie Love concerning this alleged abuse, the legislation that purports to remedy it, the testimony of individuals representing the park operators and dealers' statements. In addition, several telephone interviews were conducted with persons associated with the mobile home industry in Alaska.

Our analysis reviews the current situation and briefly summarizes the legal status of tying arrangements of this sort, finding them very probably per se illegal under both the Clayton and Sherman acts. We discuss the several economic incentives that make the practice of tying attractive to dealers and touch briefly on the impact of these incentives on their customers. In conclusion, we evaluate some of the arguments that have been advanced in support of mobile home tying arrangements.

The Current Situation

As we understand it, there is currently "excess demand" for mobile home spaces in the state's major metropolitan markets and also in smaller communities, such as Valdez, impacted by the trans-Alaska pipeline

* In response to a research request substantially the same as yours, this memorandum is being separately addressed to another legislator.

construction. The sources of this shortage differ from area to area, but in general they are associated with the rapid increase in demand for housing of all sorts due to increased economic activity[1] and institutional constraints on the expansion of existing mobile home parks or the creation of new ones.

In our view, these constraints are very important factors in the current problem. They have been identified by persons in the business as:

1) Community resistance, reflected in restrictive zoning regulations, to new or expanded courts, based in the belief that they reduce property values in adjacent residential neighborhoods;

2) A shortage of suitable land for park development;

3) Difficulty in securing financing for the construction of new spaces, apparently related in part to lending institutions' fears that current space shortages may be transitory; and

4) The fact that rent control regulations or the expectation thereof may reduce the expected profitability of investments in the construction of new spaces.

While we are not certain of the relative impact of these factors, it seems clear that taken together they result in a very real constraint on the expansion of supply.

During the past 18 months, and possibly prior to that, a pattern of business relationships has developed, between mobile home dealers on the one hand and owners and operators of mobile home parks on the other, which results in the dealers gaining control of many if not most of the available spaces. We have not seen copies of any formal agreements, but an attorney representing mobile home dealers has stated that they "have typically agreed to rent or pay a fee for the reservation of newly created mobile home park spaces."[2]

The dealers, in their statements to the legislature, have emphasized the relationships between the payments they make to the park operators and the creation of new spaces, which they claim such payments make possible. They do not make it clear as to whether these reservations on newly constructed spaces are for the initial occupancy only, or if they run for fixed or indefinite periods.

In any event, there is substantial evidence that the larger dealers have been reserving spaces as they become vacant in existing parks, and that these reservations are in fact the most important mechanism whereby dealers secure control of the "frictional" stock of rapidly turning over vacant mobile home spaces.[3] Finally, a significant number of spaces are controlled directly by dealers through outright ownership of parks. It is understood that these spaces are usually reserved, as are most other spaces controlled by dealers, for persons purchasing a mobile home from that dealer.

Legal background

Although this memorandum is not directed at providing a legal analysis of these issues, it is appropriate to summarize briefly the law and relevant court decisions as they relate to tying arrangements of the sort discussed above. Under economic and judicial usage, a tying arrangement exists when a seller requires a person purchasing a desired product or service to additionally purchase a second product which the buyer would not normally desire, at least not at the price the seller is asking. Such arrangements are prohibited by the Clayton Act[4] if they have a substantially anti-competitive effect. In addition, certain tying arrangements have also been held to be illegal under Secs. 1 and 2

of the Sherman Act[5], with its more general prohibition of attempts to monopolize or otherwise restrain trade. State law contains language similar to the Sherman Act prohibitions[6], but does not contain any provision parallel to the more specific injunction against tying arrangements found in Sec. 3 of the Clayton Act.

An excellent summary of judicial treatment of these statutes is contained in Carla Hills' recently published Antitrust Advisor:

> The Supreme Court has dealt harshly with the numerous tying arrangements it has reviewed, once describing the species as serving "hardly any purpose beyond the supression of competition." ....From a series of cases has evolved the rule that tying agreements are "unreasonable in and of themselves whenever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product and a not insubstantial amount of interstate commerce is affected."

Illustrative of the way the Supreme Court has treated these arrangements, and perhaps particularly relevant to the type of tying arrangement discussed in this memorandum, is the case of Northern Pacific Railway Company v. the United States.[7] In this case the railway was accused of unlawfully requiring persons leasing land owned by the railway to utilize its transportation services; the court stated unequivocally that tying arrangements are among the practices which because of "their pernicious effect on competition and lack of any redeeming virtue," are illegal per se.[8] The Court went on to say that tying arrangements "are unreasonable in and of themselves whenever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product and a 'not insubstantial' amount of interstate commerce is affected."[9]

Since all the tests of a violation of Sec. 3 of the Clayton Act as

outlined in the Hills' book[10] would seem to be more than met by type of tying arrangements between mobile home vendors and court operators outlined above, the question may arise as to why additional legislation is called for. The answer to this question is naturally a policy matter, but we would point out that Alaska is about as far from the locus of federal antitrust enforcement as one can get, that only a very small proportion of federal antitrust enforcement resources are devoted to dealing with violations that are not on a national scale, and that as far as is known no antitrust enforcement efforts on the federal level are currently under way in Alaska.

Economic Analysis

From an economic viewpoint not all tying arrangements are quite as pernicious as the Supreme Court opinions quoted above would lead one to believe. For example, take the case of a man who has lost by amputation his right leg. When buying footware he is forced to take a product he does not need (the right shoe) in order to obtain the product that he requires (the left shoe). Given the realities of mass production and the extremely limited market for single shoes, it is intuitively clear, and can be rigorously demonstrated by economic analysis, that efficiency and welfare, both of the one-legged customer and society as a whole, is maximized by selling all shoes as pairs.[11]

There are a number of other types of situations where exceptions of one sort or another can be taken to the general rule that tying arrangements result in resource misallocation and failure to maximize welfare. However, most tying arrangement reflect an effort by a producer or seller who possesses some measure of monopoly power over a given product

or service to use that monopoly power to extend the monopoly to other products or services. Perhaps the classic example of this situation occurred in the early days of the U. S. petroleum industry when the Standard Oil trust used its control of crude oil pipelines to gain a monopoly in refining by refusing to transport the crude shipments of others unless they agreed to consign them to Standard's refineries. Predictably, most of Standard's competitors at that time in refining had a short life.

Also typical is the situation where a holder of a governmentally endorsed monopoly such as a patent or copyright uses that monopoly to obtain control over markets different but related to the patented or copyrighted product. Among the most well-known of these is the IBM case in which the firm was described as requiring persons leasing their patented and unique computing equipment to purchase all their data cards from IBM even though identical products were available from a host of other sources, often at lower prices.

We believe that the tying arrangements between court owners and mobile home dealers fall in these general categories rather than any of the special cases discussed in the economic literature or the usually quoted judicial opinions. We have here clearly a case where there are two complementary products--mobile homes and mobile home spaces. One of these products, mobile home spaces, is increasingly controlled by a relatively few firms, and its supply is relatively inelastic due to the institutional factors noted above. These attributes clearly indicate a measure of monopoly power.[12]

Nevertheless, the advantages to the vendors of tying these two complementary products, spaces and mobile homes, is not immediately obvious. It is intuitively appealing to assume that by extending the monopoly to a larger volume of sales, greater profits are earned. Unfortunately, it is probably just as likely that the result of such arrangements would be simply a shift in the point at which the monopoly profits are captured, without any significant increase in those profits. In effect, it may be that the gain realized by the transfer of market power to the tied product (in this case the mobile homes) is equal to--or perhaps even less than--the reduction in the price received for the tying product (the mobile home space) necessary to induce purchase of the tied item.

The microeconomic analysis of this question is relatively complex. It has been shown, however, that in situations where the tied and tying products are complements (as they are in this case), the tying arrangement can result in increased total profits to the seller of the tying product.[13] We believe that the conditions necessary and sufficient to the use of the tying arrangement to increase monopoly profits or obtain related commercial advantage exist here, and that the mechanisms of that use are among those outlined below.

The first of these relates to the extent that theoretical monopoly gains can, in practice, actually be captured in the two different markets, and the fact that tying contracts are an excellent stratagem for avoiding regulations establishing either minimum or maximum prices that may be charged for a product. In some of the communities where the practice of tying space rental to purchase of mobile homes has developed,

mobile home space rentals are subject to price controls. If demand for the spaces at the regulated price exceeds their supply, there will be a tremendous incentive on the part of space owners to find other means of charging a rent sufficiently high to allocate the limited number of spaces among the large number of individuals desiring them. The tying arrangement may provide the stratagem for evading regulations controlling the level of rents.

Of course, in a number of communities where tying arrangements have developed no such regulations exist. Even in these communities, however, it is likely that owners of courts perceive the possibility of such regulations as a threat. Also, only the most insensitive of dealers could fail to be aware of the fact that the community at large is likely to be much more sensitive to scarcity-induced increases in the level of rents than it will be to similarly induced increases in the prices of mobile homes. A precipitous rise in the level of space rents is so obviously not associated with any increase in the quality of product or service received that it is almost certain to stimulate immediate public outcry. An increase, even a rapid one, in the prices of mobile homes, on the other hand, cannot be nearly as easily identified as to cause; if the issue is raised at all, vendors may claim that the rising price of their product simply reflects higher costs to them, or perhaps higher quality. As an example of how the differences in perceptions actually work, compare the outcry that would have certainly resulted had some person in unrelated industry gone around and cornered all the frictionally unoccupied mobile home spaces in Anchorage, paying--as dealers have reportedly done--a $500 reservation fee to court operators for each space coming vacant, if he had turned around and tried to resell those

spaces at a $1,000 premium to prospective renters.

Another possible reason for developing tie-in arrangements in the mobile home business, apart from any direct increase in profits therefrom, is the effect such tie-ins may have on the ability of dealer-competitors to stay in business. Although a tying arrangement may not immediately result in additional profits for the dealer using it, it may do so in the long run if the result is the creation of conditions which make it impossible for competitors to stay in business. The legislative record on the bill barring such practices indicates that this may, in fact, be an element in the motivation here.[14] By cornering the market in spaces, one can make it very difficult for anyone not participating in the monopoly, either by virtue of his initially smaller capitalization or other reasons, to maintain the volume of mobile home sales necessary to stay in business.[15] Once competitors are forced out of the market, then the dealers will be situated to earn monopoly profits on their sales of mobile homes, regardless of what might happen in the future with respect to mobile home spaces. This is, of course, a situation exactly parallel to the use by the Standard Oil trust of crude oil pipelines to secure monopoly power in the refining sector.

Also important, but requiring a more subtle analysis, are two other factors which may be of great importance in inducing dealers to develop tying arrangements. The first of these concerns the ability as a result of tying arrangements to discriminate among customers with differing incomes or needs. In a freely competitive market, all customers will pay the same price for the same good supplied to them under the same conditions. However, these consumers may place widely differing

values on these goods. These levels are the maximum prices that individual consumers would pay for the goods in question, and the difference between those levels and what consumers actually pay is is known in economic terminology as the "consumer surplus". It would be to the advantage of any seller to be able to divide his customers up into discrete individual markets on the basis of the level of these consumer surpluses, and price his product separately in each market so as to capture as much of that surplus for himself as possible. Such a scheme is often known as "meter pricing" since the seller attempts to "meter" each individual consumer's willingness to pay for the product and then set its price to that consumer accordingly.

It is fairly clear that the tying arrangements addressed here would provide the means of accomplishing or at least facilitating this sort of pricing strategy. As a practical matter it would be very difficult to establish rents for mobile home spaces on the basis of the consumer surplus accruing to each individual space renter. It is, on the other hand, relatively easier to establish (and far more difficult to prove the existence of) such a price discrimination system in the mobile home market. Salesmen and producers, of course, attempt to do this all the time by differentiating their products and by attempting to sell an individual the largest and most expensive of the many possible purchase options available to him. Their ability to be successful in these efforts is vastly increased, however, if they have behind them the leverage of exclusive or nearly exclusive control over the market for an absolutely necessary complement (the mobile home space) to the product they are selling.

For example, if an individual approaches a dealer with a proposition to buy a relatively inexpensive unit (and thus obtain with it a mobile home space), the dealer may, if he determines that the prospective purchaser has a substantial income and few other housing options, simply refuse to deal with the prospective purchaser until he agrees to buy a far more expensive mobile home. An individual similarly situated in terms of need, but with a far lower income, could be offered a deal on a less expensive trailer that was not made available to the first, better heeled offerer. Obviously, it would be very difficult to discriminate along these lines in the absence of the dominance in the space market. Without that dominance, the prospective purchaser could simply take his business to another dealer.

In considering another reason why dealers find it advantageous to tie mobile home sales to mobile home court space rentals, it is useful to view the tied transaction from the eyes of the purchaser-renter. From his standpoint, the payments for the mobile home space and the mobile home are both made in the form of periodic, usually monthly, expenditures, a rent and a mortgage payment. If the monopoly power were restricted to the mobile home space rental, the monopoly profits or scarcity rents would be received by the trailer court owner (or the organization controlling the monopoly on spaces) over the period of time that the monopoly power exists. Under the tying arrangements currently in existence, the capitalized value of these "scarcity rents" is paid in a lump sum by the bank on behalf of the mobile home purchaser, and is thus realized immediately by the entities controlling the space market.

This results in a potential net gain for those who hold monopoly power in the space market through several mechanisms. Firstly, their

internal rate of discount is likely to be higher than the interest rate paid by the mobile home purchaser on the amount of his mobile home mortgage in excess of what he would have been willing to pay for the home alone. Furthermore, the risks involved in capitalizing the value of an uncertain stream of income are entirely transferred to the mortgagee. For example, should the demand for mobile home spaces suddenly fall off the opportunity for scarcity rents would, of course, evaporate. In a competitive market rents would fall. This is no consolation to the person whose purchase of the mobile home has been induced by means of the market power over spaces, since he has already paid the capitalized value of the (erroneously) expected stream of scarcity rents.

In this context, it should be noted that the tying arrangements tend to discriminate against transient occupants of spaces, and in favor of those who are more permanent. This comes about since the long-term occupant of a space has at least the chance of obtaining "full value" in terms of a secure place to put his mobile home in return for the excess price he was forced to pay for it. This is not true for the short-term occupant of a space unless, of course, the dealers have discovered a way to discriminate on the basis of expected duration of stay.

One would expect the fact that the capitalized value of the scarcity rents are received as a lump sum to create a clear incentive to evict or otherwise bring about the removal of mobile homes established on existing spaces. There is evidence that this, in fact, is happening, with some operators prohibiting their tenants from selling their mobile homes on the space, forcing persons leaving the community to remove them.[16]

Arguments in Support of the Tying Arrangements

In our review of these practices we have noted the arguments advanced by the dealers utilizing tying arrangements. The most frequently voiced of these is apparently directed at pursuading legislators that the tying arrangements are a necessary pre-condition to the continued flow of investment into the creation of new spaces. In support of this position, a dealer spokesman has asserted that the rental rates, at current levels, are insufficient by themselves to justify the investment without the compensating extra profit on mobile home sales, and that even if this were not the case lending institutions require pre-commitments before they will lend money for any new ventures, be they "office buildings, apartment buildings or mobile home courts."[17]

As we have pointed out, circumstances may indeed be such that dealers are uniquely situated to appropriate the scarcity rents accruing as a result of the shortage of trailer spaces. Thus, it is not unreasonable to expect that in certain circumstances dealers would find it desirable to advance financing for the creation of such spaces at times when others would refuse to do so. It is important to note, however, that the continued profitability of such arrangements depends upon the continued scarcity of mobile home spaces.

Obviously, we are dealing with a situation in which countervailing forces are at work; also, it is pretty clear that this is a case in which the classic equilibrium model of firm behavior under partial monopoly can tell us quite a bit with respect to how the dealers are likely to respond. On the basis of the theory we would predict that 1) the incentive of dealers not already in control of a significant number of spaces to add additional spaces will be increased; 2) dealers

already holding a stock of spaces, either controlled directly or by option to rent, will find that the addition of new spaces--whether controlled by them or others--will reduce their potential monopoly gains and raise the cost of maintaining their market power; and 3) at some relatively low level of concentration of control over spaces the net effect of these two countervailing forces will be a reduction in the rate of growth of new spaces. If, as appears to be the case, the level of market power wielded by the dealers is increasing, then it is almost certain that the latter point has been passed.

We would also predict, on the same basis, that the frictional unoccupancy caused by normal turnover is greater in dealer owned ("closed") courts than in open courts, and that among dealer controlled courts it is directly proportional to the dealer's control over spaces. Naturally, a dealer who is for whatever reason maintaining an inventory of unoccupied spaces greater than his needs isn't going to be particularly anxious to expend additional funds on the construction of new spaces, unless it is to foreclose the opportunity a competitor might have to obtain them.

With respect to the alleged requirement of pre-leasing we must simply say that we were not aware that it is impossible to build an apartment house in Anchorage or other Alaska city without a pre-lease commitment. One lending institution reports that it alone intends to finance--without pre-leasing--500 new apartment units in Anchorage during the current construction season.[18] If these projects are being financed without such pre-lease commitments, then we would wonder why the same shouldn't be possible, given a relatively competitive market, for the financing of mobile home spaces.[19]

It should be noted, of course, that the argument with respect to the financing of new spaces provides no support whatsoever for the practice of tying up existing spaces through the purchase of preemptive options on them as they become vacant, or the maintenance of the restrictive practice after the first renter has moved his mobile home onto the lot. If the arguments presented above by the industry spokesman are accepted, it might be justified to permit a tying arrangement with respect to the initial rental of dealer constructed spaces. On the evidence available now, however, we find no economic justification for such a distinction.

The representative of the industry drew an analogy between the practices of a downtown department store in subsidizing adjacent parking in order to "stimulate sales" and asks rhetorically why such arrangements should not be made illegal if the current practices among mobile home dealers are prohibited.[20] Actually, if a practice analogous to that of the large department store in subsidizing parking was adopted by the mobile home dealers then there would be no tying arrangement, at least not in the "pernicious" sense excoriated by the courts. Instead of developing court spaces at a "loss" or investing in options to lease existing spaces, dealers would simply subsidize (for the same expenditure) prospective purchasers, who would then use those funds, either as a lump sum payment to a trailer court operator or spread over time as increased rental, to obtain a space that would otherwise be unavailable to them. The additional funds made available by the operators for this purpose would bid up the prices for spaces and thus make financing for the expansion of existing spaces available on its own terms.

In fact, the industry spokesman supports this view in his statement that the level of space rentals will rise by $60 per month if the tying

arrangements are ended.[21] In giving us this figure he gives us, perhaps unwittingly, a means of measuring the extra amounts (comprising the scarcity rent and/or monopoly profit plus actual passed-through space costs) paid by a mobile home purchaser over and above the price that would be established in a freely competitive market: The discounted present value of the $60 per month income stream over 5.5 years[22] at 10% annual interest rate is $3,036.

-FOOTNOTES-

1. The pipeline has affected mobile home (and mobile home space) demand both directly, through the increase in population, and indirectly, by bidding up the prices of construction services. These are reflected in the costs of new residential construction and, since the market is expanding, the resale value of the existing housing stock, securing in the process substantial "windfalls" or scarcity rents for homeowners. The upshot is that an increasing proportion of the housing demand is forced out of the market for locally constructed dwellings and into the mobile home market, where prices have been restrained by excess capacity in outside facilities for the construction of mobile homes.

2. William F. Brattain III. Written Testimony before the Senate Commerce Committee, Alaska State Legislature, dated 6 April 1976, p. 7 (Xeroxed).

3. "For the past year all available spaces in open parks have been purchased by the dealer/owner corporat[ions]...", David C. Bornschein, letter dated 12 April 1976 to the chairman, House Commerce Committee, Alaska State Legislature. Mr. Bornschein is president of Buckhorn Homes Inc., an Anchorage mobile home dealer. This assertion is supported by the statements of at least two other small dealers and a number of tenants. See also Pam Millsap, "Dealers Gobble Trailer Lots", Anchorage Daily News (Xeroxed copy, no date).

4. 15 USC 14.

5. 15 USC 1, 2.

6. AS 45.52.010, 020. Colorado and Oregon have statutes specifically prohibiting tying arrangements with respect to mobile homes and mobile home spaces. (Col. Stat. 38-12-210, 212; Ore. Laws 1975, Chap. 353).

7. 356 US 1, 11 (1958).

8. Quoted in Hills, Antitrust Advisor (1971), p. 83.

9. Ibid.

10. Ibid, p. 83. The tests are summarized as follows: (1) If an insubstantial amount of interstate commerce is affected, the tie-in will not fall within the prohibitions of the Sherman or Clayton acts. However, $61,000 worth of business has been held "not insubstantial." (2) There can be no tie-in if there is only one product. (3) Assuming that there are two products and a not insubstantial amount of commerce is affected, a tie-in may be justified if the seller is a small company trying to break into a market or is only trying to protect goodwill. (4) If none of the above applies, the tie-in is unreasonable "whenever a party has

sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product...". Absent a patent or copyright the existence of the tying arrangement is itself evidence of sufficient economic power.

11. Actually, the example here would probably be permissible under the "single product test". Also see Pegram, D. F., Public Regulation of Business (1959), pp. 268, 377 ff.

12. In the discussion that follows we will use the term "monopoly power" to mean any situation where a seller faces a downward sloping demand function and/or can increase total profits by restricting output. Technically, and in the economic literature, "monopoly" usually has a more restricted usage.

13. The only microeconomic analysis of tying arrangements found in our literature search is contained in Markouit's, "Tie-Ins, Reciprocity and the Leverage Theory," 79 Yale Law Journal 1397, and 80 Yale Law Journal 196. These articles are exhaustive (to a fault). The theory underlying the conclusions summarized here could, with considerable effort and time, be massaged into a form comprehensible to a non-economist and, if needed by the legislature, will be.

14. Supra, Note 3.

15. An important empirical test of this hypothesis would be possible through a review of the number of dealer controlled (closed) and non-dealer owned (open) spaces, with attention to the trend with respect to concentration of control over "closed" spaces. Reliable data is lacking now but may be available later.

16. Michael Clevenger and William Zellman, Written Statements (undated), provided to the Research Division by the staff, House State Affairs Committee, Alaska State Legislature.

17. Bernard L. Marsh (Executive Secretary, Alaska Mobile Home Association and Alaska Trailer Court Association), Written Testimony before the Senate Commerce Committee, Alaska State Legislature, dated 14 April 1976.

18. David Martin (Vice President, Commercial Mortgages, Alaska Mutual Savings Bank), Personal Communication, 18 May 1976 (reported by Jamie Love).

19. Commercial space such as offices can and has also been built without pre-leasing. However, the relatively greater volitility of demand for office space and the relatively greater responsiveness of short term rental rates to variations in that demand (higher price elasticity of

demand) make pre-lease commitments a common practice in the office space market.

20. Marsh, supra, Note 17.

21. Ibid. The current median rent is reported to be $105 per month. The dealers estimate that the free market figure will be $165 per month.

22. Estimated average term of a mobile home mortgage financed by the Juneau Branch, National Bank of Alaska (personal communication, 18 May 1976).

file on trailer bill

Penco Inc.
907 • 277-2522 BOX 4-B
ANCHORAGE, ALASKA 99509

April 21, 1976

The Honorable Terry Gardiner
Alaska State House of Representatives
Pouch V, State Capitol Building
Juneau, Alaska 99811

Dear Mr. Gardiner:

Last week five or six mobile home dealers, from Anchorage and Fairbanks, and myself were in Juneau where we testified before the Senate Commerce Committee reference HB 829 and HB 684. We talked to quite a few Senators, including President Chancy Croft, plus Speaker of the House Mike Bradner. Our intent was to visit you, as sponsor of the bill, but as Alaska Airlines left promptly at 5 P.M., we did not get a chance to see you. We apologize for this, as we would like to have discussed the bill with you; we are sure we could have clarified some points about it.

Conceptionally-wise, I certainly find sympathy in the logic for the bill. Having been in this business since 1956, and having been the "small dealer" for much of that time, I am very much aware of the complexities and problems in trying to sell mobile homes within the state of Alaska, particularly when you are some 2,500 miles away from the factories. Based on this experience, it is the writer's opinion that the effect of the bill, as written, will slow down or stop the development of any major mobile home park spaces in Anchorage and Fairbanks.

We believe the attached statistics will point out that in the last three years in Fairbanks and Anchorage, most all of the park development was done by or in financial cooperation with mobile home dealers. We can assure you we did not build a park because we wanted to; we built it as we needed an inventory of spaces for our customers. In 20 years of business we have never sold a person a mobile home that did not have a place to park it - and we never will.

Mr. Gardiner, there is only one problem, and that is a shortage of spaces. There has never been a shortage in our state such as existed last year and will exist for at least the first part of this summer. That shortage is, quite bluntly, truly from "pipeline impact". The shortage is basically caused by two problems. First is the lack of long term financing for mobile home parks - not for financing of the mobile homes themselves, but for the financing of the park development. A secondary item is the lack of suitable or adequate ground within the urban areas that can be used for mobile home parks. A park cannot be built in the Anchorage area as a right, but only as an exception in any zoning division. The planning and engineering process to construct a park requires one year's time.

Rather than having negative bills which will adversely affect consumers presently living in mobile homes, we would suggest that a positive approach be made. And that is that the State take some action toward helping cure the problem - help provide financing for mobile home parks. The State buys millions of dollars of single family dwelling mortgages per year. To the best of our knowledge, the State has bought only one mobile home park mortgage. If someone wants to do something of a positive nature to cure the problem, then they should consider a bill somewhat like that attached. One of the most important things about such a bill is that the State could then set standards such as F.H.A. construction specifications; paved streets, paved driveways, landscaped lawns, etc. One of the requirements could be that all parks that the State financed would be open parks, not for the use of any specific sales entity. This would be positive legislation that would help each and every community in which the State funded these loans. If legislation like we suggest could be passed, then good, sensible, attractive mobile home parks could be developed within our state's communities.

In summation, I apologize again for not having the opportunity to see you, and would like to leave you with this closing thought. I believe our company has developed or been involved in the development of more mobile home spaces than has any other entity within the state of Alaska. If 'others' would construct the parks that our communities so badly need, we can assure you we would never plan to build another mobile home space. We have only done so because others have not.

Sincerely,

RENCO INC.

Robert C. Penney
President

RCP/ec

Enclosure

SENATE COMMERCE COMMITTEE

April 14, 1976

rep. over 3650 Mobile Home spaces in Anchorage

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM GORDON JENKINS, PRESIDENT OF ALASKA TRAILER COURT ASSOCIATION. OUR ASSOCIATION HAS CONSIDERED THIS BILL, AND HAS SOME RECOMMENDATIONS TO OFFER.

OUR FIRST RECOMMENDATION IS THAT THIS BILL BE REFERRED TO THE SENATE JUDICIARY COMMITTEE FOR STUDY, SINCE IT IS AN AMENDMENT TO THE LANDLORD-TENANT ACT OF 1974. THAT LANDMARK LEGISLATION WAS THE PRODUCT OF MANY HOURS OF WORK BY THE SENATE JUDICIARY COMMITTEE, AND WE BELIEVE THAT SUBSTANTIVE CHANGES TO IT SHOULD ALSO BE CONSIDERED BY THAT COMMITTEE.

THE ALASKA TRAILER COURT ASSOCIATION FEELS THAT THE MOTIVES BEHIND HB 829 ARE GOOD, AND THE BILL FOR THE MOST PART MANDATES PRACTICES THAT SHOULD BE FOLLOWED BY ANY ETHICAL MOBILE HOME COURT OPERATORS. WE DON'T OBJECT TO THESE. HOWEVER, THERE ARE TWO SECTIONS THAT WOULD SERIOUSLY INFRINGE PROPERTY OWNER RIGHTS AND THE ABILITY OF A PRUDENT COURT OWNER TO JUDICIOUSLY OPERATE HIS BUSINESS. WE WISH TO RECOMMEND SOME AMENDMENTS, WHICH, IF APPROVED, WOULD MAKE HB 829 ACCEPTABLE TO US.

IN SEC. 2 (c) (1), PAGE 1, LINE 22, WE RECOMMEND "14 DAYS" BE CHANGED TO "30 DAYS", TO MAKE THIS BILL CONSISTENT WITH THE REST OF THE LANDLORD-TENANT ACT.

IN THE SAME SECTION, PAGE 1, LINE 26, WE ASK THAT THE WORD "ONLY" BE DELETED.

WE RECOMMEND THAT A SUBPARAGRAPH (D) BE ADDED TO SEC. 2 (C) (1), ON PAGE 2, AFTER LINE 2, AS FOLLOWS:

(D) THE MOBILE HOME DOES NOT MEET THE STANDARDS OF THE MOBILE HOME PARK OPERATOR OR IS OLDER THAN THE MOBILE HOME PARK OPERATOR ALLOWS.

ON LINE 5, PAGE 2, PLEASE ADD THE WORDS "EXCEPT FOR LANDSCAPING" TO THE END OF THE SENTENCE.

ON LINE 13, PAGE 2, DELETE THE WORDS "AND AGREED TO IN WRITING BY THE TENANT".

ON LINE 18, PAGE 2, DELETE THE WORDS "AND AGREED TO IN WRITING BY THE TENANT"

ON LINE 4, PAGE 3, PLEASE STRIKE THE WORD "ONLY". IF THIS CANNOT BE DONE, THEN THE ASSOCIATIONS BOTH UNANIMOUSLY OBJECT TO SEC. 5 IN ITS ENTIRETY. IT CREATES A POSSESSORY INTEREST IN THE OWNER'S PROPERTY IN FAVOR OF THE TENANT THAT GOES FAR BEYOND THE NORMAL RIGHTS OF POSSESSION GRANTED THROUGH LEASE.

WE ASK THAT SEC. 5 (3), BEGINNING ON LINE 12, PAGE 3, BE AMENDED BY DELETING THE WORDS "SUBSTANTIALLY" (LINE 12), "REASONABLE" (LINE 13), AND ADD THE WORDS AT THE END OF THE SUBSECTION "THAT HAS BEEN PREVIOUSLY Agreed BY BOTH PARTIES". WE BELIEVE THE QUALIFYING WORDS IN THE SUBSECTION MAKE THE LANGUAGE VIRTUALLY MEANINGLESS.

SEC. 6 SHOULD BE STRUCK IN ITS ENTIRETY. IT IS AN AMENDMENT TO A STATUTE THAT IS INAPPROPRIATE. CHAPTER 30 REFERS ONLY TO STANDARDS OF CONSTRUCTION AND IS THE STATUTE ENFORCED BY THE DIVISION OF WEIGHTS & MEASURES. IN ANY CASE THE SECTION IS UNNECESSARY BECAUSE IT PROHIBITS A PRACTICE THAT CANNOT AND HAS NEVER HAPPENED ANYWAY. THERE IS NO WAY A VENDOR CAN LIMIT A PURCHASER'S RIGHT TO DO ANYTHING HE WISHES WITH A PRODUCT HE BUYS.

IF THESE CHANGES WERE MADE TO HB 829, THE ALASKA TRAILER COURT ASSOCIATION WOULD HAVE NO FURTHER OBJECTION TO THIS MEASURE. HOWEVER, IT SHOULD BE REFERRED TO SENATE JUDICIARY IN ANY CASE.

Original sponsors: Gardiner, McKinnon, Bradley and Miller

Offered: 2/18/76
Referred: Rules

IN THE HOUSE BY THE COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 684

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to designating certain mobile home sales and space rental practices as unfair trade practices."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 45.50.471(b) is amended by adding a new subsection to read:

(23) renting, leasing, subleasing, or offering to rent, lease, sublease a parcel of real property, or otherwise conveying an interest in the property, to a person for the purpose of that person locating a mobile home on it, contingent on the person purchasing or having purchased a mobile home from a mobile home sales business owned, operated by or affiliated with the rentor, lessor, sublessor, or conveyancer, or from any particular mobile home sales business, or from any one of a particular group of mobile home sales businesses, to the exclusion of or in preference to, a person who has not so purchased a mobile home from that rentor, lessor, sublessor, or conveyancer or any particular mobile home sales business;

Our recommendation for HB 684 is "DO NOT PASS!"... because it will prevent financing for new mobile home parks!

SENATE COMMERCE COMMITTEE

April 14, 1976

Mr. Chairman, Members of the Committee, I am Bernard L. Marsh, Executive Secretary of Alaska Mobile Home Association and Alaska Trailer Court Association. Our Associations have considered this bill, and are opposed to it.

We have been told that HB 684 is a consumer protection bill, that it is aimed at ending alleged abuses that occur because of the housing shortages in Anchorage, Fairbanks and Valdez. The abuse alleged is that there have been tie-in arrangements made between court owners and mobile home vendors for the purpose of preventing other vendors from making sales, or to stifle competition and overcharge the mobile home purchaser.

We find that vendors have pre-leased spaces, but there is no evidence that this was done to stifle competition, or indeed that that result actually occurred. Vendors who pre-leased in many cases released their contracted spaces to others who did not. The main purpose in contracting for spaces was to insure an outlet for units being shipped to the firm.

There are three major problems with this bill. The first is that it tries to cure a situation that may not exist. The bill is unnecessary. The second is that the bill, while intended to prohibit contract arrangements, also prohibits the ownership of a mobile home park by a mobile home vendor; a prohibition that is an unjustified restriction on free enterprise, and a selective attack on a particular type of business man and not imposed on other businesses. The third problem is that it is entirely the wrong approach, and will be counter productive in dealing with the real problem.

The real problem is that there is a shortage of mobile home spaces. This bill does absolutely nothing to increase the number of available spaces; in fact, it eliminates the only source of new spaces that now exists. The bill can have only two consequences - shutting down all new space development, and/or driving up the monthly rental rate.

Present space rents in Anchorage range from $90 to $120, with a median of $105 per month. I testified to the House Commerce Committee that HB 684 would drive space rent up to $150 per month according to my calculations. I have since been informed that it is the concensus of the Anchorage dealers that the figure will be $165.

If you prohibit mobile home vendors from developing spaces, by forcing them to make those spaces available to their competitors, then the likelihood is that no more spaces will be developed. Why? Because economics prohibit the development of land into mobile home courts in the urban areas of Alaska, when the space rental at present levels is expected to justify the investment. There have been none so built in Anchorage in the last three years, at least. Only vendors are developing spaces, and they do it at a loss, solely to stimulate sales. The principle is precisely the same as when Penney's Store builds a parking garage that can't pay for itself. The reason why this situation exists is two fold; the increasing cost of land, and progressively more restrictive government regulation.

In Anchorage, mobile home courts are allowed only in R-2, R-3, R-4, R-5, and U zones. The least costly usable land is unsubdivided R-2 land at about $24,000 per acre. The raw land is usually marginal, and may cost another $10,000 per acre to fill or grade. Current regulations limit spaces to 6 to 6 1/2 per gross acre. If we use 6.2 spaces per acre as a working figure, $34,000 for acre as land cost (price plus improvement), and $7,000 per space for utilities, streets, fencing, landscaping, etc., then we arrive at a per space figure of $12,484. To realize a 15% return on this investment, space rent would have to be $156 per month. By the time such construction comes on line, the $165 figure will be more likely, because there is a lead time of two years between land purchase and completed space.

A more constructive approach by the State would be legislation that would encourage more space development, such as making money available to purchase mobile home court commercial loan paper. Even this would not work unless a way can be found to make the venture economically feasible. The bank won't approve a loan that isn't, regardless of the availability of money on the secondary market. Some form of subsidy would be required. I don't know the answer, but the problem clearly requires more study. It will not be solved by punitive measures against the industry.

The mobile home industry provides a significant amount of all Alaskan housing. In Anchorage, the Urban Observatory Report on Housing for 1975 shows a total of 53,707 housing units, of which 6,246 (or11.6%) were mobile homes. Of the 29,507 single family dwellings in this total, mobile homes constitute 21.2%. Further, 81% of all mobile homes are owner-occupied, as compared to 65% owner-occupancy for all housing units in the Report's sample population.

Most significantly, the proportion of new housing coming on line provided by mobile homes is growing rapidly. In 1975 the Division of Weights and Measures reports 2200 mobile homes entered the State. Our own Motor Report tabulation shows 939 of these went to Anchorage and 127 went to Fairbanks. Since these are only those units with motor vehicle registration, we estimate the number of units in Anchorage at 1200. The Urban Observatory Report shows an average growth rate in the total housing stock in Anchorage as 3380 units per year since 1970. Thus we can estimate the proportion of the new units added last year provided by mobile homes to be 35.5% (1200 of 3380).

HB 684 will be damaging to the mobile home industry, and to the mobile home buyer; both because it will reduce the availability of units, and because it will drive up the cost of space rental.

A last observation that may have a bearing on the appropriatness of this bill can be suggested from the following facts:

1. New ventures cannot get bank financing unless agreements are shown for pre-leasing, whether they be office buildings, apartment buildings, or mobile home courts.

2. Alyeska Pipeline Service Company completely pre-rented several apartment buildings in 1974, because of a shortage of apartments and their need for housing of their employees.

3. The State of Alaska owns mobile home parks in Glennallen and Valdez. Occupancy is limited to state employees.

4. The State owns a parking lot adjacent to the Court Building in Anchorage. Occupancy is limited to employees in the Court Building.

5. Penney's Department Store owns a parking garage, in which preferential rates are given to Penney customers.

Both the Alaska Mobile Home Association and Alaska Trailer Court Association believe HB 684 is bad legislation. We urge you to kill it.

Respectfully Submitted,

Ben Marsh

Bernard L. Marsh, Executive Secretary
Alaska Mobile Home Association and
Alaska Trailer Court Association

BLM/ap

NEW MOBILE HOME PARK SPACES - ANCHORAGE

1974

GLENCAREN	95	DEALER
MALASPINA	138	DEALER
MANOOG'S ISLE	30	DEALER
FOREST PARK	30	NO DEALER
PENLAND PARK (available)	88	DEALER
DIMOND ESTATES (addition)	125	NO DEALER
TOTAL	506	

1975

GLENCAREN	125	DEALER
MANOOG'S ISLE	30	DEALER
PENLAND PARK	168	DEALER
MONTAGUE MANOR	70	DEALER
TOTAL	393	
SPACES IN INVENTORY 1/1/75	170	

EST 1976

GLENCAREN	125	DEALER
MONTAGUE MANOR	240	DEALER
VAN HAWKINS	105	DEALER
TOTAL	470	

The Greater Anchorage Area Borough Permits and Inspections office advises us that 1,426 single family housing permits were issued in 1975. Approximatley 80% were completed. Note. The figures below include mobile homes sold by dealers in Anchorage, Vadez, Kenai, and adjacent areas. Approximately 65% were placed in the Anchorage area only.

1975 NEW SALES (APPROXIMATE) ANCHORAGE

PENCO	254	
ANCHORAGE TRAILER SALES	268	
CAREY HOMES	250	
OTHERS	175	
TOTAL	1,012	SOLD BY DEALERS

1975 USED SALES (APPROXIMATE) ANCHORAGE

PENCO	134	
MELODY SALES	181	
ANCHORAGE TRAILER SALES	140	
DISCOUNT SALES	60	
A-1	50	
OTHERS	150	
TOTAL	685	USED SOLD BY DEALERS

ESTIMATED TOTAL NEW AND USED SALES BY ANCHORAGE AND FAIRBANKS DEALERS IN 1975 - 2,587 HOMES

NEW MOBILE HOME PARK SPACES - FAIRBANKS

1974

COLLEGIATE PARK		75 DEALER
LAKEVIEW TERRACE		40 DEALER
	TOTAL	115

1975

LAKEVIEW TERRACE		80 DEALER
RIVERVIEW		20 DFALER
THE VILLAGE		20 DEALER
TOWN & COUNTRY		40 DEALER
GOLD RUSH ESTATES		89 DEALER
RAINBOW		45 DEALER
	TOTAL	294

EST. 1976

COLUMBIA	(TOTAL OF 515 SPACES)	250 DEALER
GOLD RUSH ESTATES		70 DEALER
THE VILLAGE		80 DEALER
	TOTAL	400

APPROXIMATE 1975 USED SALES - FAIRBANKS 405

532 permits for new single family dwellings were issued in Fairbanks in 1975. Approximately 70 percent were completed, or 374 houses. Approximately 485 new mobile homes were sold and placed in parks or on private property. There were considerably more new mobile homes sold than single family dwellings.

NEW MOBILE HOME PARK SPACES - VALDEZ

1975

PENLAND/CALISTA		126 DEALER
BERING STRAITS		160 DEALER
	TOTAL	286

Proposed ~~Title~~

MOBILE HOME PARK BILL

PROBLEM: Shortage of mobile home spaces in pipeline impacted cities within the state — Anchorage and Fairbanks.

SOLUTION: Availability of adequate, well-planned, landscaped and developed mobile home spaces — Anchorage, Fairbanks and other areas.

HOW TO ACCOMPLISH SOLUTION: The main problem is lack of long-term financing for the development of mobile home spaces with a second problem lack of availability of suitable land .

POINTS TO CONSIDER:

A. Shortage of spaces cuased by impact from the pipeline and severe acceleration costs of conventional housing.

B. The State of Alaska has purchased tens of millions of dollars worth of single and miltiple family mortgages over the last several years; presently purchasing mortgages on the basis of $30 million per year. Mobile home park mortgages have been minimal, if not non-existant.

C. Long term mobile home park mortgages have been very difficult at the least to obtain through secondary mortgage markets in the South 48.

D. It has been very difficult for anyone to obtain spaces in the last three years.

E. It is to the benefit of most of the communities within the state to have will planned mobile home parks developed within their area.

F. Mobile homes are better suited to meet high impact and temporary demands for immediate housing than any other source of housing.

G. The State of Alaska has various departments interested in providing housing for its citizens. Mobile homes constitute a large percentage of the housing within the state of Alaska.

H. The City of Valdez, at the present time, has a surplus of open spaces. One year ago they had the most critical shortage within the state. The City of Valdez took the initiative and provided sizeable tracts of ground at low prices per acre to encourage private development. Approximately 300 mobile home spaces will be available in Valdez the season of 1976.

RECOMMENDATIONS: Immediate consideration and passage of a bill authorizing the State of Alaska to purchase long term mobile home park mortgages, as contained in _____ bill. Consideration be given to approximately $10,000 mortgage value per space. Approximately 1,500 spaces needed in 1976 and approximately an additional 1,000 spaces needed in 1977. Direct the State of Alaska to acquire up to $15 million worth of mortgages in 1976, and approximately $10 million in 1977.

CONCLUSIONS: Adequate mobile home park spaces will be provided in the major impact areas at the earliest possible time. Adequately planned and engineered parks through H.U.D., with M. P. S. need to be provided to each community this act relates to.

2. The State of Alaska will have in its portfolio good earning mortgages whose funding will have benefited many residents of the state of Alaska that are in dire need of this type of housing.

vertising form of the amount of state money deposited in each named bank or other financial institution. A copy of the semi-annual report on bank deposits shall also be sent to the Legislative Affairs Agency for distribution of copies to the members of the legislature. The terms of the deposit may be obtained upon a written request. (§ 12-2-1 ACLA 1949; am § 8 art III ch 82 SIA 1955; am § 5 ch 186 SLA 1957; am § 1 ch 115 SLA 1968)

Revisor's note. — Section 12-2-1 ACLA 1949 was repealed by § 48 ch 133 SLA 1951. Section 1 ch 24 SLA 1953 repealed ch 133 SLA 1951 and § 2 ch 24 SLA 1953 re-enacted § 12-2-1 ACLA 1949 as it appeared in ACLA 1949.

The reference to § 8 art III ch 82 SLA 1955 in the source refers to the second of two sections which are both numbered § 8. The amendment by § 5 ch 186 SLA 1957 corrects the error.

Cross reference. — As to deposit of state funds, see AS 37.10.075.

Effect of amendment.—The 1968 amendment added subsection (c).

Quoted in Empire Printing Co. v. Roden, 17 Alas. 209, 247 F.2d 8 (9th Cir. 1957).

Am. Jur. and C.J.S. references. — 42 Am. Jur., Public Funds, §§ 5 to 41.

26 C.J.S. Depositories §§ 7 to 14; 81 C.J.S. States § 155.

Sec. 37.10.060. Department of Revenue to deposit money to state treasury. All fees and receipts received by the Department of Revenue from any source shall be deposited in the state treasury at least once each month, and credited by the department to the proper fund. (§ 12-2-2 ACLA 1949)

Article 3. Investment and Deposit of State Funds.

Sec. 37.10.070. Investment of surplus funds. (a) When the commissioner of revenue determines that there is in the state treasury a surplus above an amount sufficient to meet current demands, the surplus shall be invested in any of the following:

(1) direct obligations of the United States;

(2) obligations of agencies and instrumentalities of the United States;

(3) notes issued by Farmer's Home Administration;

(4) bank certificates of deposit which are secured as to the payment of principal and interest in accordance with Alaska law;

(5) corporate obligations of prime or equivalent quality, as rated by a nationally recognized rating organization;

(6) other securities, including corporate securities;

(7) Federal Housing Administration mortgages;

(8) Federal Veterans Administration mortgages;

(9) loans made under the provisions of AS 03.10 and AS 26.15;

(10) conventional residential mortgages if the originating financial institution retains at least 25 per cent of the mortgage;

(11) other secured loans, if the originating financial institution retains at least 33⅓ per cent of the mortgage.

(b) To qualify as a mortgage or loan which may be purchased by the state under (a) of this section, it must

(1) be secured by real estate in the state or other collateral allowed under (a) (11) of this section;

(2) have as a mortgagor an Alaska resident or a corporation in which at least 51 per cent of the stock is owned by Alaska residents;

(3) be certified by the originating financial institution that the loan being sold has been made in compliance with law and that liens supporting the loan have been perfected;

(4) have no initial closing fees or service fees which exceed one-half of one per cent, excluding closing costs.

(c) When the aggregate of all loans purchased from a financial institution becomes more than one-half per cent 60 days delinquent, the state shall discontinue purchasing loans from that financial institution until the delinquency is reduced to less than one-half per cent.

(d) The state may purchase loans provided for in (a) (10)—(11) of this section only from financial institutions which are operating under the national banking laws, federal savings and loan laws, or under the provisions of AS 06.05, 06.15, 06.25 and 06.30.

(e) The state may purchase from federal savings and loan associations 100 per cent of the mortgages provided for under (a) (10) and (11) of this section if 20 per cent of the loan is insured by a firm approved by the commissioner of revenue and the loan is for not more than 80 per cent of the appraised value of the property securing the loan. No loans may be purchased under this subsection after June 1, 1971.

(f) Investment policy shall be formulated by the commissioner of revenue who shall be advised by a committee appointed by the governor which shall contain representation from the legislature. In formulating investment policy they shall consider maximum income and safety as governed by the prudent-man rule and the benefit to the private and public sectors of the economy in terms of increased housing and commercial credit, stimulated business activity, increased employment, support of the market for state and local bonds, increased public revenue together with the possible inflationary effect of the investment, and (h) and (i) of this section.

(g) The commissioner of revenue, with the consent of the committee, may enter into contracts for services providing investment advice, custody of securities, and execution of transactions, in or out of Alaska.

add (12)

(h) An investment preference shall be given to (a) (3), (7), (8), (9), (10) and (11) of this section.

(i) The commissioner shall purchase notes and mortgages under (a) of this section at a rate conducive to develop and benefit Alaska and Alaska residents and this rate may be less than the market rate.

(j) In this section

(1) "closing costs" means appraisal costs, legal costs, title insurance, and any other out-of-pocket expenses approved by the commissioner of revenue;

(2) "mortgage" means a pledge or security of particular property for the payment of a debt or the performance of some other obligation, whatever form the transaction may take;

(3) "resident" means a person domiciled in the state;

(4) "securities" means bonds, notes, debentures and all other forms of indebtedness; common stock, preferred stock, and all other forms of equity capital; investments in stocks and equity capital may not exceed 33⅓ per cent of the unappropriated surplus as of the end of the previous fiscal year. (§ 7-1-11 ACLA 1949; am § 1 ch 140 SLA 1953; am § 1 ch 206 SLA 1970)

Revisor's note (1970). — In ch. 206, SLA 1970, AS 37.10.070(9) referred to AS 26.10. Since AS 26.10 does not deal with loans and AS 26.15 does, and since the old version of the section referred to AS 26.15, the latter citation has been substituted for the former.

Effect of amendment. — The 1970 amendment rewrote this section.

Am. Jur. and C.J.S. references. — 42 Am. Jur., Public Funds, §§ 5 to 10; 49 Am. Jur., States, Territories and Dependencies, § 64.

81 C.J.S. States §§ 154 to 159.

Sec. 37.10.075. Deposit of state funds. (a) When the commissioner of revenue determines that there are funds in the state treasury which are not being used for the purposes provided for in § 70 of this chapter, they may be deposited in financial institutions. Collateral may be required by the commissioner to secure state deposits provided for under this section.

(b) The banks in which state funds are deposited under a time deposit agreement shall pay at least a minimum interest rate to be fixed by the Department of Revenue, and this interest when paid shall be deposited in the general fund or in the other funds which are established by law.

(c) Nothing in this section prohibits the Department of Revenue from depositing the funds which it considers necessary for the proper conduct of the office in solvent banks outside the state under the terms and conditions provided in this section.

(d) The Department of Revenue may deposit funds in banks inside or outside the state in active accounts or on demand deposits without requiring those banks in which the accounts are deposited to pay interest on the deposits. It is the intention of the legislature that the department shall keep active deposits in any bank it con-

file with trailer bill

Two hundred years ago the fathers of this country fought for freedom and certain inalienable rights. Over one hundred years ago, one of our greatest presidents and legislators fought and won for the citizens of this country additional rights and privileges.

In America today, particularly in the State of Alaska, a group of citizens are being denied their rights and are treated as "second class" citizens. This, Ladies and Gentlemen, is totally unfair and unconstitutional. The group of citizens referred to are Mobile Home Owners.

We are a group of citizens unique unto ourselves. We have been given some of the rights given stationary home owners and some of the rights given rental dwellers. We now stand as a group and ask, no Ladies and Gentlemen of this great legislative body, we demand our rights and liberties as mobile home owners by the passage of House Bill 829.

We, the Mobile Home Owners, have unique problems that demand unique laws. There are too many loopholes in the Landlord-Tenant Act. One of these loopholes leave the mobile home owner at the mercy of the mobile home park owner. With proper and complete legislation, such as House Bill 829, not only will we, as mobile home owners be protected and recognized as "first class" citizens, but the mobile home park owner will also be recognized and protected by law.

We ask you to step in our shoes: You are "John Q. Public," the average man. You have a job, a family to support, and taxes to pay. In short, you are one group of citizens that make this great country tick. Further, you are a mobile home owner. You have purchased your mobile home and have rented a space on which to place it. <u>This is your home</u>.

Would you like your privacy invaded? Would you like no legal rights or laws unique to your status? You are now being denied first class citizenship. We don't like it either. We may not be wealthy, but "John Q. Public" seldom is. Big money interests may not want us to have these laws because if we have them, we can't be "ripped off" and we will have some recourse and most certainly a legal stand we can take. Without House Bill 829 we are not much better than the slave before being freed by Lincoln with the Emancipation Proclamation. Ladies and Gentlemen, all the mobile home owner asks for is their Emancipation Proclamation.

Ask yourselves: Can I do less for my constituents than Washington, Jefferson, and Lincoln did? If your answer is "No," we as mobile home owners ask you to make House Bill 829, standing before you, a vital part of the laws of the state of Alaska, and help your constituents, the common man.

Thank you,

Judy Hilton

Phyllis Evans

Paul H. Rogers

Mobile Home Owners

MEMORANDUM

TO: JAY KERTTULA

FROM: JAMIE LOVE

RE: MOBILE HOME LEGISLATION (HB 684 & HB 829)

DATE: APRIL 3, 1976

The above-mentioned bills are designed to correct serious abuses in the mobile home industry. My interest in mobile home problems dates back to last Spring. At that time, I received a call from a woman who was living in a mobile home court that had been sold. The new owner was converting the court into another land use, and each of the 20 tenants in the court was given a 30-day eviction notice. This woman owned the trailer she lived in. Neither she nor any of the other tenants were able to locate space in another court. When I talked to the woman, she was extremely distraught. She had to move her trailer within a few weeks and could not find a space to move to.

During this period of time, she and the other tenants in the park were approached by an individual who represented a mobile home sales outlet. The sales company was able to use the trailers even though there were no mobile home spaces available for rent in the marketplace. The reason for this was that in the Winter of 1975 the overall vacancy rate for mobile home spaces dipped as the Anchorage area was experiencing a housing shortage. At that time, several of the larger mobile home dealers began quietly buying up the remainder of the vacant spaces including those in independant courts. As an added incentive to the mobile home court operators, the dealers offered a commission, or fee, of approximately $400 to $500 for each mobile home which was placed in their court.

In this particular case, almost every tenant of that court sold their mobile homes, at a fraction of their value, to the single mobile home sales dealership. The dealer then resold the mobile homes at their market value, placing them in spaces they had previously tied up.

I discussed the situation with a reporter from the Anchorage Daily News, Pam Milsap. Milsap interviewed this lady and others who were having problems at the time. Her account of the mobile home situation is attached to this memo.

Shortly after the Daily News story, the Alaska Public Interest Research Group asked the State Attorney General's Office for an investigation into the apparent abuses. After being pressed by the local Consumer Protection Office for more facts, a staff person from AkPIRG approached 26 of the largest mobile home courts in Anchorage posing as an individual interested in finding a rental space for a used trailer. The results of that investigation are detailed in a letter, attached to this memo, which was sent to Attorney General Avrum Gross on July 8, 1975.

Attorney General Gross initiated an investigation to determine if the alleged practices were in violation of the State Anti-Trust Act. The investigation into the matter has been slow, hampered apparently by the shortage of staff for the State's Consumer Protection Office. Only in the last two months have industry officials been subpoened, and, as of my most recent discussion with the attorneys involved, many important issues have not yet been analyzed.

Since July, other methods of dealing with the problem have been explored. The result is he bill before your committee, HB 684, which makes the tie-in arrangement between mobile home courts and mobile home dealers a violation of the State's Unfair Trade Practices Act. Support for a legislative solution resulted from a sympathy for the situation of the offending mobile home dealers. Even though the tie-in practice is, in my opinion, an unfair and harmful business practice, many of the mobile home dealers were forced into participating when they found out that other mobile home dealers were involved. Being left out of the picture in the rush for tying up spaces meant risking going out of business. Some of us reasoned that since they obviously couldn't trust each other, the State would perform a service by stepping in and forcing everyone to end the practice. Anti-trust litigation is extremely complex, time-consuming, and expensive. The enactment of legislation would relieve the dealers from the burden of paying for legal counsel in an anti-trust action.

It is my understanding that the practice of tying space rentals to sales takes place in Anchorage, Fairbanks, Valdez, Juneau, and Ketchikan, as well as other communities across the state. I am most familiar with the situation in Anchorage. As of last Summer, there were four or five large dealers who had cornered the market of available spaces. I assume the situation has not changed dramatically, although I have heard that the larger dealers are letting the smaller outfits make a few sales from time to time. This is due to a growing concern by the larger dealers over the pending legislation and the Attorney General's investigation.

The smaller dealers have a good deal at stake in a rapid resolution to the problem, but the obvious matter which your committee should address itself to is the effect which this practice has on mobile home consumers. In Anchorage, for example, instead of having dozens of sales outlets competing against each other for sales, there are a few large dealerships which have all the spaces. The price that mobile homes are sold for, now, probably has more to do with the competitive price of conventional home ownership or rentals, than competition among dealers.

This is of particular concern, since the state is experiencing such a crisis in all other areas of housing. The costs of home ownership have skyrocketed beyond the reach of many Alaskans. Rents have also risen dramatically as a result of the housing shortages which plague many areas of the state.

Mobile homes should be an important factor in moderating the effects of the current housing market. Instead, through limited competition, mobile homes have become increasingly more expensive. To illustrate just how expensive mobile homes have become, I am attaching a summary, prepared by AkPIRG, of Anchorage mobile home sales in the month of October 1975 as listed in the trade publication, Alaska Motor Report. The average selling price was $35,000, with many sales over $45,000. (Sales are for the trailer without land).

When space rentals are tied in with the purchase of new sales, consumers cannot shop for used homes from private sellers, purchase the homes from Seattle and pay the shipping, or negotiate a selling price from the wide range of dealers. All the best features of the free enterprise system have been compromised and the protection of a free marketplace has been eliminated. There is no doubt that if tie-ins were made illegal, the result would be substantial price savings to consumers on mobile home purchases.

Not surprisingly, the large mobile home dealers and court operators which have been prospering under the present system are mounting an attack against the proposed legislation. The industry lobbyist, Mr. Ben Marsh, has presented their position before the House Commerce Committee. Anticipating a less than sympathetic response to allegations of anti-competitive practices, Mr. Marsh has tried to present their case in its best light.

This was in the form of an argument that restrictions on mobile home tie-ins would eliminate the development of new mobile home courts. The heart of this argument is the questionable assertion that it is uneconomical to develop new mobile home courts, and that courts are developed by dealers at an economic loss to provide a market for their sales. According to Marsh, dealers are the only ones developing new courts and if they are not allowed to tie in sales to their space rental, they will abandon the court development business.

When this argument was first raised by the industry, my instinct was to accept it at face value, and to think of ways we could compromise on the tie-in question. The more analysis I gave the matter, however, the more illogical it seemed. Demand for mobile home spaces was at the root of the problem. The tie-in situation was a reponse to low vacancy rates and high consumer demand for mobile home sales. People are going crazy in Anchorage and other communities, trying to find spaces for their mobile homes. It is, in fact, almost impossible to rent a mobile home space without purchasing a new mobile home. Why then, couldn't a new mobile home court operator simply charge a higher rent to pay for the increased development costs? As long as it was cheaper to pay the court rental and the mobile home mortgage than to buy a conventional house or rent an apartment, people would continue to buy mobile homes and rent the spaces.

Why was it necessary for Marsh and others to link the survival of the mobile home court industry to the tie-in practice? In my opinion, it was simply the only justification which could be used to defend a practice which flies in the face of fair trade and healthy competition.

Mr. Marsh provided the House Commerce Committee with figures which gave $11,800 as the per space development cost of new mobile home courts in Anchorage. Marsh told the Committee that a monthly rent of $147.50 would be necessary to give the court owner a 15% return on her investment. Mr. Marsh also quoted $105 as a current average monthly rental in Anchorage courts.

To arrive at his figure of $11,800 as the per space cost of new mobile home court development, Marsh used $8,000 as the per space development cost, and $24,000 per acre as the cost of raw, unsubdivided marginal land zoned R-2. Under cross examination from Rep. Tim Wallis of the House Commerce Committee, Marsh admited that some of his figures were inflated. The clearest discrepancy was in his estimated cost of land. Planning officials of the Anchorage Municipality place the cost of raw, unsubdivided R-2 land at around $9,000 per acre. Using $10,000 as the per acre cost of land, and accepting the rest of his figures for court density, development costs and reasonable profit, a new court would require $120 a month in rent. A $27.50 a month difference. There are many indications that the estimated $8,000 development costs are overstated as well. If $6,000 was used as the per space development cost, the court would be economical with a $95 monthly rent.

Although many of the older mobile home courts in Anchorage are renting for around $105 a month, most of the newer developments are getting more. For example, a partially developed Anchorage court, Montegue Manor, is currently charging $110 in monthly rents. The court manager told AkPIRG that rents would be raised to $140 to $130 a month as soon as the court was completed and the f i n a l amenities provided.

It should be noted that Montegue Manor (developed in two parts), is the most recent new court development in Anchorage, and that it is being developed by an operator who is not a vendor. Montegue is the court used by Marsh for the 6.2 spaces per acre density example. Montegue is not the only court which is being developed in Anchorage by independent court operators. The same is true in Fairbanks, where courts operated by non-vendors are currently under development.

If mobile home vendors really feel that it is necessary to subsidize the court rental business in order to stimulate sales, they could just give the mobile home purchaser a cash sum equal to the commissions they are paying the court operators to reserve spaces. The customer could then give the subsidy to the court operator of her choice. This is, after all, what the vendors are saying they do. Taking your money through higher prices for the homes, and subsidizing the court rental business. To better understand why the vendors are so anxious to retain the existing system, one must analyze the benefits that accrue to those who are able to maintain a cartel.

A good illustration is the summary of October 1975 mobile home sales obtained from the Alaska Motor Report. Sales which were made in Anchorage included 59 transactions. Of those 59, the average selling price for a mobile home was $35,000. The largest dealer in that report, Anchorage Trailer Sales, was listed as the vendor for 28 of the 59 sales. Of those 28 sales, 18 were for more than $40,000. In comparison, Globe Western, one of the smaller vendors, made three sales at an average selling price of $15,805.

The tie-in between spaces and sales has given the large vendors the opportunity to toally control the market. Not only are prices grossly inflated, but the dealers have been able to control the type of mobile home which is sold. Consumers may prefer the cheaper lower-priced trailers, which have fewer amenities; but the sales companies, which control the availability of court spaces, can make bigger profits on the sale of double wides, and luxury trailers, loaded with the extras that bring the biggest mark ups. This domination of the market by the highest priced units is among the most abusive features of the tie-in practice, and perhaps the biggest incentive to the vendors to retain it.

As a final note, the Committee should take into consideration other factors which have an effect on the supply of spaces. Planning restrictions and community pressures often discourage the development of mobile home courts. It is no secret that a mobile home park is not the most welcome addition to a residential neighbhorhood. In Anchorage, mobile home courts may only be built by special zoning exemption. Bias against mobile home courts, regardless of their merits, have an important effect on the supply side of the marketplace.

Administration officials from the Department of Commerce and the Department of Law should be able to provide further information on these points. I strongly urge passage of HB 684 and any other measure designed to deal with the tie-in situation.

Many other problems associated with mobile home court rentals are addressed in HB 829. Probably the most important and most controversial feature of the proposed legislation is the section which limits the court owner's right to evict residents of the court. Sec. 34.03.225 sets out four standards for evictions from courts. Currently, it is the practice of almost every mobile home court in Alaska to rent on a month-to-month basis. Mobile homes are treated like other tenants in the State's Landlord-Tenant law. A resident in a court may be evicted, without cause, on 30 days' notice.

It is not untypical for a mobile home owner to have 20 to 30 thousand dollars tied up in the home they are living in. The cost of moving a mobile home, if you can find a place to move to, runs from $1,000 to $2,000 on the average; or, approximately one to two years' rent in the average court. There is, obviously, very little security for the mobile home owner under the current situation. If I was living in a court, I would think

twice about hassling my court manager about deferred maintenance or any other problem if I thought I could risk an eviction. If I was evicted and couldn't find a place to move the trailer to, I would be out a good deal of money. These aren't hypothetical situations, but every-day problems for the dwellers in mobile home courts.

HB 829 recognizes the unique situation of mobile home dwellers. The proposed legislation is a recognition that it is a bit more complex than throwing your clothes in a suitcase and into the back of a VW if you get evicted from a mobile home court.

By giving a home owner rights against no-cause eviction, another important problem is addressed. The main problem in the financing of mobile homes is the short amortization period of the loans. If mobile home owners have better security for their investment, banks would have better security for their loans. This added security could result in longer loan terms and lower monthly payments.

The other features of HB 829 are important, fair, and largely unopposed. Passage of both HB 829 and HB 684 would go a long way to correct long-standing problems in the mobile home industry.

ATTACHMENTS

Article in Anchorage Daily News
Pam Milsap - "Dealers Gobble Trailer Lots"

Anchorage Area Mobile Home Sales
Alaska Motor Report, October 1975

July 8, 1975 Letter to Attorney General

Letter by J. Harold Michal, 11-10-75
Complaint Against Tie-In

California Court Decision
Sherman vs. Mertz Enterprises - 1974 Commerce Clearing House

Mr. Ben Marsh's Testimony Before
House Commerce Committee

Daily News

No room at the inn?

Daily News photos by Neal Menschel

Dealers gobble trailer lots

By PAM MILLSAP
Daily News Staff Writer

Lee Stillman has been looking for a mobile home space for a month. Cathy Edwards has been looking for about two weeks. Stuart Jensen has simply given up.

There are vacant spaces in mobile home courts all around Anchorage, but few, if any, are available for private individuals. In anticipation of this summer's population impact, several dealers apparently have cornered the market. Some reportedly are paying $40 a month or more per space to hold lots for future buyers.

"OUR FIRST CONTACT from a dealer was five to six weeks ago," says one mobile home court manager who asked not to be identified. "They have rented all of our vacant spaces, including some new ones that have never been occupied. When people call all we can tell them is that the spaces are all taken."

According to Cathy Edwards, a housewife who lives in a court that is being closed, "that's not all the court managers are telling persons looking for spaces. "We called on one ad for a space and were told it was available —

(Continued on Page 2)

• Dealers grab empty mobile home lots

(Continued from Page 1)

if we would buy a new trailer. When I said we couldn't afford one, they weren't interested."

Lee Stillman, a hotel employe who has lived in Anchorage 10 years, rented a house in August but received notice last week that the owner wanted to move back in. "We can't afford to pay the $600 a month or more they want for a house now, and we noticed all the empty trailer spaces around town so we bought a trailer a friend had for sale," she said. "It never entered our heads we wouldn't be able to find a place to put it."

AFTER HEARING TIME and time again that the spaces were available only for new trailers, she finally asked one manager for a list of the dealers holding spaces in the court. "We called one of them and he offered to take our used trailer, which we bought a month ago, as a trade-in on a new one." The dealer valued the trailer at $900 less than the bank appraiser did last month, but Stillman decided to accept the offer in order to get a trailer space.

"The dealer called back the next day and said the appraisal had been way out of line; that they would not be able to take our trailer as a down payment," said Stillman. "However, they offered to find a space for it and sell it for me without charging a commission. All I had to do was borrow $3,100 as a down payment on a new trailer. I don't make enough to make two trailer payments a month."

Fortunately for Stillman, a sympathetic salesman for the dealer called back a couple of days later and said he had located a space in a small court in Spenard.

STUART JENSEN, a bachelor, wasn't so lucky. On April 1 he was given 30 days' notice to move out of the trailer space he has rented since January 1974. After a fruitless search for spaces elsewhere in town he arranged to sell his trailer in place. No deal, said the court management. The space had already been rented to a dealer, as had other vacant spaces in the court, Jensen said he was told.

Stan Howitt, assistant attorney general for consumer protection in Anchorage, acknowledged Tuesday he is getting complaints about the trailer space shortage from individuals.

ALASKA PUBLIC INTEREST RESEARCH GROUP

P. O. BOX 1083
ANCHORAGE, ALASKA 99510

PHONE 274-6765

July 8, 1975

Mr. Avrum Gross
Attorney General
Office of the Governor
Pouch A
Juneau, Alaska 99811

Dear Av:

As discussed earlier, I am forwarding an outline of abuses in the marketing of mobile homes which we believe are in violation of the recently enacted State Anti-trust Act.

Earlier this month, one of our staff persons contacted 26 out of the 29 mobile home courts listed in the Anchorage Telephone yellow pages. She explained to the court owners or managers that she was considering the purchase of a used mobile home from a private party, and wanted to reserve a space in their courts. She was turned down in each of the 26 courts.

Approximately half of the courts surveyed refused to place her on a waiting list. When she entered into discussions with court managers, she was told she would have better luck if she purchased a new mobile home from one of the larger dealers. On several occasions, the court manager gave her the name of court dealers that had reserved spaces in their courts.

Confidential conversations with three court owners/managers indicate that the dealers have entered into agreements with the courts to rent all empty spaces (including new or newly vacated spaces) at the going rental rate with the understanding that when the dealer sells a home and places it in the court, the court owner receives a cash kickback on the sale. One court owner receives $400 per trailer, and we have reason to believe that some court owners are getting more. It is our understanding that the cost of both the month rent on empty spaces and the kickback on the sale are passed on to the consumer as additional costs in each transaction.

Only a handful of mobile home dealers have tied up large amounts of space, and some dealers are completely frozen out of the market. Private individuals trying to sell a mobile home, due to evictions, leaving the state, purchasing new homes, or other reasons, are forced to sell to mobile home dealers who have spaces tied

up, usually for a fraction of the home's value. Consumers are forced to purchase homes from a few large dealers, with practically no competition from private parties or independent or small dealers.

We have become aware of trailer courts evicting mobile home owners for frivolous reasons; changes in ownership, changes in court rules, or enforcement of rules that had been ignored for years. We suspect that some of these evictions are motivated by the desire to make profits from the placement of new trailers in empty spaces. Mobile home owners we have contacted panic when they attempt to relocate mobile homes, or market them to private individuals. One trailer court owner received one hundred calls in one day for a single space he had advertised in the evening paper.

In conclusion, we believe that the problem has adverse effects on mobile home consumers, elimates independent and small dealers from the mobile home market, and creates severe hardships on mobile home owners, faced with evictions or attempting to sell their trailers. We have reason to believe that this problem exists for other parts of the State, particularly in Fairbanks. We feel that mobile home dealers or court owners should not tie the purchase of mobile homes to the rental of a lot. We recommend an anti-trust action that would bar dealers and court owners from engaging in the current practices. As a final note, we urge your office to act immediately on this matter. It is clear that "immediate and irreparable harm" is indeed taking place. If your office decides on pursuing the anti-trust litigation, we strongly urge an immediate, intensive investigation by your staff, so that a preliminary injunction against the dealers and court owners can be granted this summer.

Thank you.

Sincerely,

James Love

pm

OCTOBER 1975

ANCHORAGE AREA MOBILE HOME SALES

ANCHORAGE TRAILER SALES, 3745 Mountain View Dr.

	PURCHASER	MAKE	FINANCER	DEL PRICE	BALANCE	SER. NUMBER
1	Richard Swartz 9004 Hartson Dr. Anchorage 99507	Schult	ASB	48,478.80	43,078.80	136447
2	Ralph Eslinger 1200 W. Dimond Blvd Anchorage 99502	Kit	ASB	82,383.36	63,876.36	s4792
3	Terry Hamilton 1504 E. Bluff Anchorage 99504	Kit	ASB	43,488.48	39,510.48	x4735
4	Johnnie Hammer 365 Dowling Rd #11 Anchorage 99503	Vandyke	ASB	36,082.53	32,582.52	12549
5	Timothy Brown 1200 W. Dimond Blvd #539 Anchorage 99502	Schult	ASB	38,674.80	35,774.80	136483
6	Bonnie Schwenke 4108 Reka Anchorage 99504	Hacienda	ASB	38,250.00	34,350.00	12589
7	Sylvester Dimonde SRA Rt 146-p Anchorage 99562	Kentwood	ASB	33,993.48	30,618.48	kw3406
8	David Meye 7800 DeBarr #75 Anchorage 99504	Schult	ASB	54,022.00	48,450.00	136457
9	John Hutler 1105 W 33rd Ave Anchorage 99503	Schult	ASB	43,967.60	38,967.60	13658[illegible]
10	Gordon White 7220 E. 32nd Anchorage 99504	Schult	ASB	42,896.00	39,916.00	136609
11	David Schnell 7628 Arctic Blvd Anchorage 99503	Vandyke	AUSAFCU	29,924.96	27,924.96	12731
12	Percy Plummer 3835 Randolph St Anchorage 99504	Vandyke	ASB	36,896.60	33,234.60	12979
13	Fred Blumer, Jr. Box 1856 Anchorage 99510	Schult	ASB	43,373.60	38,094.60	136326

This list obtained from Alaska Motor Report, Motor Statistical Div. for Oct. 1975

ANCHORAGE AREA
OCTOBER 1975 MOBILE HOME SALES (CONTINUED)

ANCHORAGE TRAILER SALES Continued

	PURCHASER	MAKE	FINANCER	DEL PRICE	BALANCE	SER. NO.
14	John Damazio 2403 Eureka #10 Anchorage 99504	Kit	ASB	46,041.80	40,477.80	S4748
15	Earl Cuzzort 3701 Eureka Sp. 80A Anchorage 99503	Schult	ASB	48,464.02	41,990.30	136455
16	Greg/Jayne LaFramboise 1545 S. Hoyt #58 Anchorage, AK 99504	Kit	ASB	39,294.00	33,294.00	S4741
17	Allan Patterson 7800 DeBarr #126 Anchorage 99504	Schult	ASB	43,710.61	37,218.20	136610
18	Douglas Daniels 533A Dyea Ft. Richardson 99505	Schult	ASB	44,081.40	39,911.40	136608
19	Dick's Trucking Inc. 429 Industrial Way Anchorage 99501	Kit	ANB	31,118.00	24,480.00	S4596
20	Eugine Weldon 3007 Arctic #4 Anchorage 99503	Schult	ASB	43,373.00	38,073.00	136490
21	Donald MacDonald 3706 Wilson Ct Anchorage 99509	Kentwood	ASB	35,289.84	31,914.84	KW3408
22	Nancy Kelley 7800 DeBarr #330 Anchorage 99504	Kit	ASB	41,358.80	34,258.80	S4742
23	Youel Smith 5180 Taku Dr #6 Anchorage 99504	Schult	ASB	44,720.00	41,820.00	136576
24	Kent Ramsay 5901 E 6th Sp 170 Anchorage 99504	Kit	ASB	42,583.40	37,403.40	S4738
25	Stephen Wilcox 731 B St. #401 Anchorage 99501	Kentwood	ASB	34,731.00	28,731.00	KW3520
26	Harvey Weldon 1400 Muldoon Rd #265 Anchorage 99504	Schult	ASB	45,146.01	40,932.01	136605

ANCHORAGE AREA
OCTOBER 1975 MOBILE HOME SALES (CONTINUED)

ANCHORAGE TRAILER SALES continued

	PURCHASER	MAKE	FINANCER	DEL. PRICE	BALANCE	SER. NO.
27	Lance Whaley Rm. 33 Bldg. 10-520 EAFB 99506	Kit	ASB	44,914.20	39,624.20	S4756
28	Scott Stringfellow Box 4-2806 Anchorage 99510	Schult	ASB	42,058.07	37,361.28	136338

OCTOBER 1975

ANCHORAGE AREA MOBILE HOME SALES

PENNEY MOBILE HOMES, 801 Airport Heights Dr.

	PURCHASER	MAKE	FINANCER	DEL. PRICE	BALANCE	SER. NO.
1	Alan Williamson 801 Airport Heights Sp 281 Anchorage 99504	Lamplight	AUSAFCU	30,237.56	25,732.56	15810
2	Lionel Hartzog 801 Airport Heights Anchorage 99504	Lamplight	ARRFCU	35,691.60	32,373.60	15325
3	Emma Brown Box 293 Anchorage 99510	Brookwood	AUSAFCU	51,917.04	43,013.04	24iges1496
4	Ed Naumann 801 Airport Hgts Dr Sp 318 Anchorage 99504	Gilbraltar	ASEFCU	34,834.96	31,048.80	9-1635
5	Tilman Grigs[illegible] Lazy Mt Trl Sp 42 Eagle River 99577	Gilbraltar	NBA	33,029.60	26,325.60	9-1876
6	John Bingham 801 Airport Hgts Sp 313 Anchorage 99504	Lamplight	NBA	37,730.48	33,009.48	15843
7	Michael Gordon 1545 S Hoyt Anchorage	Lamplight	ACFCU	30,972.00	25,116.00	15895

OCTOBER 1975

ANCHORAGE AREA MOBILE HOME SALES

BUDDY'S MOBILE HOME CORRAL, 2423 E. 5th Ave.

	PURCHASER	MAKE	FINANCER	DEL. PRICE	BALANCE	SER. NO.
1	Calvin Blackmon Gen Del Eagle River 99577	4 seasons	USARAL	31,976.80	27,976.80	4840

GLOBE WESTERN, 322 Concrete

	PURCHASER	MAKE	FINANCER	DEL. PRICE	BALANCE	SER. NO.
1.	Larry Foster Box 611 Chatanika Loop Eagle River 99577	Jamboree	AUSAFCU	16,405.20	16,405.20	G2114
2	Leslie Horn 2110 Stanford Dr. Anchorage 99501	Jamboree	AUSAFCU	16,156.80	13,117.80	A2154
3	Fred Ash 1151 Laland Pl Anchorage 99504	Jamboree	AUSAFCU	14,854.00	10,374.00	G2112

OCTOBER 1975

ANCHORAGE AREA MOBILE HOME SALES

BUCKHORN HOMES, INC., 4217 Mountain View Dr.

	PURCHASER	MAKE	FINANCER	DEL. PRICE	BALANCE	SER. NO.
1	Michael Simile 21-44 A Citrus EAFB 99506	Flamingo	AUSAFCU	28,937.48	16,900.00	s 7126
2	Edwin Alexander 1307 Hollywood Bldg 44 #2213 Anchorage 99501	Ponderosa	AUSAFCU	29,053.84	25,053.84	S6549
3	Kenneth Lowe 106 E. 11th, Apt. 4 Anchorage 99501	Flamingo	AUSAFCU	28,672.76	23,972.76	s7114
4	Robt Hawk 705 Muldoon Rd Sp 122 Anchorage 99504	Flamingo	NBA	25,552.56	20,902.56	S 7213
5	Larry Bass PSC #2 Box 4518 EAFB 99506	Brookdale	AUSAFCU	33,887.12	28,680.12	S6525
6	Dennis Taylor 1737 Norene St Anchorage 99504	Ponderosa	AUSAFCU	33,207.88	26,507.88	S6451
7	Doyle Stogner Box 758 Eagle River 99577	4 Seasons	NBA	20,598.48	16,598.48	4982

OCTOBER 1975

ANCHORAGE AREA MOBILE HOME SALES

MELODY SALES, INC., 3115 Mountain View Dr.

	PURCHASER	MAKE	FINANCER	DEL. PRICE	BALANCE	SER. NO.
1	Charles Quier 1114 Tonga Anchorage 99507	Frontier	PB&T	38,915.40	33,320.40	6228
2	Bobby Rasar 1200 W. Dimond Blvd #1448 Anchorage 99502	Portroyal	PB&T	38,249.60	32,049.60	6222A
3	LeAnn Kucera SRA Box 332 S Anchorage 99507	Safeway	ASEFCU	28,941.00	14,826.00	6109
4	Floyd Brooks 5607 Fiji Anchorage 99507	Portroyal	PB&T	38,418.00	32,418.00	6191
5	Delores Thrope 1150 Tonga Anchorage 99507	Shelby	UCAFCU	36,220.80	32,710.80	6264

OCTOBER 1975

ANCHORAGE AREA MOBILE HOME SALES

KATHY O ESTATES, 3602 Arctic Blvd.

	PURCHASER	MAKE	FINANCER	DEL. PRICE	BALANCE	SER. NO.
1	Charles Meddings 909 Chugach #30 Anchorage 99503	Vantage	None	13,700.00	-	6457
2	Norman Seewald Box 8355 Anchorage 99504	LaGrande	AUSAFCU	23,450.00	23,450.00	5662
3	James Summers Box 1844 Anchorage 99510	Ridge	AUSAFCU	20,500.00	20,500.00	LoS1154

MCBRIDE TRAVEL HOMES

1	Walter Compton 4502 Lake Otis Pky Anchorage 99507	Coachman	IBEW	25,154.56	18,977.28	1131094028

A-1 MOBILE HOMES, INC. , 2525 Spenard Rd.

OCTOBER 1975

ANCHORAGE AREA MOBILE HOME SALES

CAREY HOMES, INC. 3317 Mountain View Dr.

	PURCHASER	MAKE	FINANCER	DEL. PRICE	BALANCE	SER. NO.
1	Robt Ramey Box 484-I Eagle River 99577	Marlette	FNB	23,636.00	23,636.00	50218
2	Michael Pierson 2221 Muldoon Rd #502 Anchorage 99504	Kit	FNBA	24,718.00	24,718.00	S4591
3	Lamar Steen Box 264B Anchorage 99507	Fleetwood	PB&T	23,400.00	23,400.00	s1864
4	Ronald Yoppe 2221 Muldoon Rd #561 Anchorage 99504	New Moon	AUSAFCU	27,265.00	27,265.00	s7050

11-10-75

AKPIRG
630 W. 4th Ave
Anchorage, Alaska

Gentlemen:

There is a situation in the Anchorage Area that should be called to the attention of the powers that be for remedial action.

If an unsuspecting purchaser buys a mobile home he soon finds there is not place he can park or space he can rent.

There are numerous vacancies in many of the mobile home parks but much to the chagrin of the buyer he finds that the retail sales companies of the mobile homes have rented all these spaces for the benefit of their customers. If these companies want reserved spaces let them build their own parks (one has) and not monopolize the market. This not only is unfair to the purchasing public but to the seller as well. He can't sell if the purchaser is unable to find parking space. Investigation has found for example, one park with four vacancies for over three months and yet a private purchaser from a private seller is unable to utilize even one of these spaces.

Isn't there some sort of consumer protection in this respect? With the housing shortage so acute and honest citizens being denied space rent it seems to me there could be some anti-trust or monopoly law invoked to put a damper on this unfair practice.

Sincerely,

J. Harold Michael

P.S. - Anchorage Times.

[¶ 75,403] Robert Sherman, et al. v. Mertz Enterprises, et al.

California Court of Appeal, Second District, Division One. Civil No. 43048. Filed October 16, 1974.

Cartwright Act

Tying Arrangements—State Law—Mobile Home Park Space—Set-up Fees.—Charges that the owner of a mobile home park and mobile home sellers unlawfully agreed to exclude other sellers by granting the defendant sellers the exclusive right to sell homes at the park and by charging other sellers a $2,500 set-up fee for placing one of their homes in the park, while charging their own customers only $250, should not have been summarily dismissed. Triable issues were raised, which, if resolved in plaintiffs' favor, could establish an unlawful tying arrangement or a combination in restraint of trade. See ¶ 3090, 3095.

For plaintiffs and appellants: Ante[illegible] Dumhart. For defendants and respondents: [illegible] Ruffo, Ferrari & McNeil and Thomas P. [illegible] onnell for Mertz Enterprises; Frank Heller and Richard S. Weiner, for Moore's Mobile Home Mart, Les Spurlock and Sunrise County Mobile Homes.

Opinion

The Case

HANSON, J.: Plaintiff Robert Sherman, doing business as Howard's Trailer Sales and Bob's Trailer Sales, along with one Doug Jobson (hereinafter referred to as plaintiffs) sought an injunction and damages for unfair competition and restraint of trade against Mertz Enterprises, doing business as San Rafael Mobile Home Estates, Moore's Mobile Home Mart (hereinafter sometimes referred to as defendants), and other mobile home sale companies.

Plaintiffs filed their complaint in the Los Angeles superior court on February 21, 1973, and the application for order to show cause and preliminary injunction came on for hearing and was denied on March 6, 1973.

On March 22, 1973, defendants filed a demurrer to the complaint with supporting points and authorities, along with a motion to strike or, in the alternative, a motion for summary judgment. After consolidating all the defendants' motions, the court below, on April 6, 1973, granted their motions for summary judgment and sustained the demurrers without leave to amend.

Plaintiffs appeal from the granting of the motions for summary judgment and the demurrers.

The Facts

Defendant and respondent Mertz Enterprises is the owner and developer of a mobile home [illegible]k. On or about January 15, 1973, it entered into a written agreement with co-defendants Moore's Mobile Home Mart (Moore's), Sunrise County Mobile Homes (Sunrise) and S. W. Mobile Home Sales (S. W. Mobile), who are all retail dealers of mobile homes. The purpose of the agreement was to provide a location at which Sunrise, Moore's and S. W. Mobile could conduct their sales activities and provide lot accommodations for their customers.

In accordance with the agreement, Mertz Enterprises then notified plaintiffs and other mobile home dealers that the San Rafael Mobile Home Estates park was leased full as of January 25, 1973.

On or about January 25, 1973, Moore's, by letter, advised other various mobile home dealers that although they had completely rented San Rafael Mobile Home Estates, they would be willing to provide spaces for customers of other mobile home dealers for a set-up fee of approximately $2,500 if plaintiffs and others desired to place a mobile home on defendant's park.

The mobile home dealer defendants state that the set-up fee was necessary because they had received more than 40 complaints, out of 195 mobile homes in the park, which had been submitted to the Contractors License Board, and that in the future to insure high service standards, a set-up charge would be made to service and guarantee a coach for one year.

Contentions

Plaintiffs contend that defendants have conspired to restrain trade and commerce with the malicious and oppressive intent to deprive plaintiffs and prospective mobile home purchasers of the right to free and unrestricted competition for the general mobile home sales business.

Plaintiffs' first legal contention is that the contracts and arrangements entered into between the defendants have been declared

unlawful per se. This contention on plaintiffs' interpretation of wright Act (Bus. & Prof. Cod et seq., which is patterned on th Anti-Trust Act).

Plaintiffs' second legal content the motions for summary judgm have been denied on plaintiffs' ge tions that defendants conspired t the purpose of restraining competi the absence of a finding that the constituted a "per se illegal tying ar

Discussion

A summarization of the rules summary judgment procedure (Proc., § 437c) was set out in t *Corwin v. Los Angeles Newspap Bureau, Inc.* [1971 TRADE CASES Cal. 3d 842 [94 Cal. Rptr. 765, 953], where the court stated 851-852: ". . . 'The matter to mined by the trial court in consi a motion is whether the defend plaintiff) has presented any f give rise to a triable issue. The not pass upon the issue itself. judgment is proper only if the a support of the moving party sufficient to sustain a judgment and his opponent does not b show such facts as may be dee judge hearing the motion suffici sent a triable issue. The aim cedure is to discover, through th affidavits, whether the parties dence requiring the weighing of a trial. In examining the su affidavits filed in connection wi tion, the affidavits of the movi strictly construed and those of liberally construed, and doubt propriety of granting the m be resolved in favor of the par the motion. Such summary drastic and should be used wit that it does not become a su the open trial method of deter (*Stationers Corp. v. Dun & Br*

[1] The summary judgment in this tered prior to the effective date Summary Judgment Act—January review of the judgment is consid light of the pre-1974 summary j (See *D'Amico v. Board of Medic* 11 Cal. 3d 1, 20, fn. 15 [112 Cal. P. 2d 10].)

[2] Section 16720 provides in part a combination of capital, skill or or more persons for any of the p poses: [1] (a) To create or carry tions in trade or commerce

unlawful per se. This contention is based on plaintiffs' interpretation of the Cartwright Act (Bus. & Prof. Code, § 16700 *et seq.*, which is patterned on the Sherman Anti-Trust Act).

Plaintiffs' second legal contention is that the motions for summary judgment should have been denied on plaintiffs' general allegations that defendants conspired together for the purpose of restraining competition, even in the absence of a finding that the agreement constituted a "per se illegal tying arrangement."

Discussion

A summarization of the rules governing summary judgment procedure (Code Civ. Proc., § 437c) was set out in the case of *Corwin v. Los Angeles Newspaper Service Bureau, Inc.* [1971 TRADE CASES ¶ 73,582], 4 Cal. 3d 842 [94 Cal. Rptr. 795, 484 P. 2d 953], where the court stated at pages 851-852: ". . . 'The matter to be determined by the trial court in considering such a motion is whether the defendant (or the plaintiff) has presented any facts which give rise to a triable issue. The court may not pass upon the issue itself. Summary judgment is proper only if the affidavits in support of the moving party would be sufficient to sustain a judgment in his favor and his opponent does not by affidavit show such facts as may be deemed by the judge hearing the motion sufficient to present a triable issue. The aim of the procedure is to discover, through the media of affidavits, whether the parties possess evidence requiring the weighing procedures of a trial. In examining the sufficiency of affidavits filed in connection with the motion, the affidavits of the moving party are strictly construed and those of his opponent liberally construed, and doubts as to the propriety of granting the motion should be resolved in favor of the party opposing the motion. Such summary procedure is drastic and should be used with caution so that it does not become a substitute for the open trial method of determining facts.' (*Lipman Corp. v. Dun & Bradstreet, Inc.* (1965) 62 Cal. 2d 412, 417 [42 Cal. Rptr. 449, 398 P. 2d 785]; see *Joslin v. Marin Mun. Water Dist.* (1967) 67 Cal. 2d 132, 146-148 [60 Cal. Rptr. 377, 429 P. 2d 889].)"[4] (See also *D'Amico v. Board of Medical Examiners*, 11 Cal. 3d 1, 20 [112 Cal. Rptr. 786, 520 P. 2d 10].)

Summary judgment, by its nature, should be sparingly granted in cases alleging antitrust activities by defendant. The plaintiff in such a case finds himself outside a door of information that can be opened only by obtaining the key from the defendants. Unless plaintiff is allowed to probe into the secrecy of defendants, he would forever be foreclosed from finding facts to support his contention. "Trial by affidavit is no substitute for trial by jury which so long has been the hallmark of 'even handed justice.'" (*Corwin v. Los Angeles Newspaper Service Bureau, Inc., supra*, 4 Cal. 3d at p. 852, citing *Poller v. Columbia Broadcasting* (1962) [1962 TRADE CASES ¶ 70,228] 368 U. S. 464, 473 [7 L. Ed. 2d 458, 464, 82 S. Ct. 486]; as quoted with approval in *Fortner Enterprises v. U. S. Steel* (1969) [1969 TRADE CASES ¶ 72,737] 394 U. S. 495, 500 [22 L. Ed. 2d 495, 503, 89 S. Ct. 1252].)

". . . On the other hand this rule of caution should not be allowed to sap the summary judgment procedure of its effectiveness in cases wherein the party against whom the procedure is directed seeks to screen the lack of triable factual issues behind adept pleading. 'The question therefore is not whether defendant states a good defense in his answer but whether he can show that the answer is not an attempt "to use formal pleading as means to delay the recovery of just demands." (*Fidelity & Deposit Co. v. United States*, 187 U. S. 315, 320 . . .)' (*Coyne v. Krempels* (1950) 36 Cal. 2d 257, 262 [223 P. 2d 243].)" (*D'Amico v. Board of Medical Examiners, supra*, 11 Cal. 3d at p. 21.)

Plaintiffs brought their complaint against defendants for restraint of trade under Business and Professions Code sections 16720 to 16726 (the Cartwright Act).[5]

[4] The summary judgment in Corwin was entered prior to the effective date of the 1968 Summary Judgment Act—January 1, 1971. The review of the judgment is considered only in light of the pre-1971 summary judgment law. (See *D'Amico v. Board of Medical Examiners*, 11 Cal. 3d 1, 20, fn. 15 [112 Cal. Rptr. 786, 520 P. 2d 10].)

[5] Section 16720 provides in part: "A trust is a combination of capital, skill or acts by two or more persons for any of the following purposes: [¶] (a) To create or carry out restrictions in trade or commerce . . . (c) To [illegible] . . . whereby its price to the . . . [illegible] shall be in any manner controlled or established. . . . (e) To make or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they do all or any or any combination of any of the following: [¶] . . . (4) Agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or

"Sections 16720 and 16726 of the Cartwright Act were patterned after the Sherman Act (15 U. S. C. § 1 et seq.) and decisions under the latter act are applicable to the former. (*Chicago Title Ins. Co. v. Great Western Financial Corp.* [1968 TRADE CASES ¶ 72,557] (1968) 69 Cal. 2d 305, 315 [70 Cal. Rptr. 849, 444 P. 2d 481].) Both acts codify the general common law prohibition against restraints of trade. Section 16727 goes beyond the common law to interdict certain practices which have a tendency to lessen competition or promote monopolization. This section, enacted in 1961 (Stats. 1961, ch. 733), is based on section 3 of the Clayton Act (15 U. S. C. § 14). Hence, federal decisions interpreting section 3 are applicable to section 16727. (69 Cal. 2d 305, 315.)

"Although the Sherman Act and the Cartwright Act by their express terms forbid all restraints on trade, each has been interpreted to permit by implication those restraints found to be reasonable. (*Standard Oil Co. v. United States* (1911) 221 U. S. 1, 60 [55 L. Ed. 619, 645, 31 S. Ct. 502]; *People v. Building Maintenance etc. Assn.* (1953) [1953 TRADE CASES ¶ 67,654] 41 Cal. 2d 719, 727 [264 P. 2d 31].) 'However, there are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use. . . . Among the practices which the courts have heretofore deemed to be unlawful in and of themselves are price fixing [citation]; division of markets [citation]; group boycotts [citation]; and tying arrangements [citation].' (*Northern Pac. R. Co. v. United States* (1958) [1958 TRADE CASES ¶ 68,961] 356 U. S. 1, 5 [2 L. Ed. 2d 545, 549, 78 S. Ct. 514].)"[7] (*Corwin v. Los Angeles Newspaper Service Bureau, Inc.*, *supra*, 4 Cal. 3d at pp. 852-853.)

Plaintiffs' first claim is that the agreement between Moore's, Sunrise, S. W. Mobile and Mertz Enterprises constituted an illegal restraint of trade. To prevail in this contention, "it must appear from the record not only that the agreements 'create or carry out restrictions in trade' (§ 16720, subd. (a)) but also that such restrictions are unreasonable." (*Corwin, supra*, 4 Cal. 3d at p. 853.)

Plaintiffs base this contention on two items, a letter sent by Mertz Enterprises to plaintiffs telling them that as of January 22, 1973, the mobile home park would be leased in full,[8] and the contract/agreement between Mertz Enterprises and the other defendants for the leasing of part of the mobile home park.[9]

On January 15, 1973, Mertz Enterprises and the codefendants entered into an agreement for the rental of mobile home spaces. There is no mention of what the rent is in terms of dollars and cents in the agreement, but simply a statement that Mertz Enterprises will rent specific spaces to the codefendants for a period of one year; that the codedefendants would be the only parties allowed to sell mobile homes in the mobile home park; and that they would be permitted to maintain a model compound and sales office on the park premises. The rent paid by the codefendants to Mertz Enterprises would be the percentage each codefendant has of the entire area covered by the agreement. The rental paid by the codefendants would be reduced by the amount of rental paid to Mertz Enterprises by the occupants of the respective spaces, but only to an offset for rent actually paid by such occupants.

The agreement's "Lot [illegible] . . . Improvement Charge" could be construed to support plaintiffs' claim that the agreement between Mertz Enterprises and the codefendants is more than a normal lease [illegible] . . . [illegible]

[illegible] . . . [illegible] be affected."

[illegible] Section 16726 of the Business and Professions Code states: "Except as provided in this chapter, every trust is unlawful, against public policy and void."

[illegible] Section 16727 of the Business and Professions Code states in part: "It shall be unlawful for any person to lease or make a sale or contract for the sale of goods, merchandise, . . . commodities for use within the State, or to fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, merchandise, . . . supplies, commodities, or services of a competitor or competitors [illegible] . . . agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of trade or commerce in any section of the State."

[7] See also *Chicago Title Ins. Co. v. Great Western Financial Corp.* [1968 TRADE CASES ¶ 72,557], 69 Cal. 2d 305, 325-326 [70 Cal. Rptr. 849, 444 P. 2d 481], dissent by J. Mosk.

[8] Plaintiffs' Exhibit 4 to their complaint.

[9] This agreement was not part of plaintiffs' complaint, but came to light as part of defendants' papers in response to plaintiffs' request for an injunction. The agreement was filed with the court before the summary judgment was filed.

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that all potential occupants procured by the codefendants must have new double coaches which must be approved by Mertz Enterprises and which must obey all park rules. Furthermore, "[c]oncurrently with any rental arrangement by Mertz with a potential resident of any of the spaces procured by Retailers [codefendants], Mertz will charge such resident the sum of Two Hundred Fifty Dollars ($250.00) payable concurrently on or prior to occupancy. . . . The total lot improvement charge shall be paid by Mertz to Retailers [codefendants] within 10 days after receipt of payment from resident. In the event that a loss results from any claim made against Mertz as the result of the payment of said lot improvement charge to Mertz and thereafter to Retailers [codefendants], then each of the Retailers [codefendants] herein agrees to reimburse Mertz a pro rata share of said loss not to exceed twenty-five percent (25%) of the total monies received by said Retailers [codefendants]."

Clause 4 of the agreement, entitled "*Model Complex and Sales Facility*," provides in relevant part that: "Retailers [codefendants] may install signs and other advertising and promotion as it may deem advisable after having first obtained the written consent of Mertz. Mertz agrees that such consent shall not be unreasonably withheld. Retailers [codefendants] shall have the right to use the name of San Rafael Mobile Home Estates in its advertising and promotion, but such advertising and promotion shall not in any way indicate any agency, joint venture, partnership or other relationship between Retailers [codefendants] and San Rafael Mobile Home Estates. The mobile home park manager of Mertz and their employees shall cooperate with Retailers [codefendants] in connection with its sales and promotion for the mutual benefit of all parties hereto in renting mobile home spaces as well as promoting the sale of mobile homes by Retailers [codefendants]. The cooperation by Retailers and Mertz, as well as their respective employees, shall be reasonable and in their best interests."

The agreement between Mertz Enterprises and its codefendants gives an exclusive right of sale to the codefendants on the leased/rented property; allows for reimbursement of payments; and provides for aid, assistance and cooperation for the sale of codefendants' mobile homes at the inferred exclusion of other individuals' sale of mobile homes to be placed on this property.

The above agreement between Mertz Enterprises and its codefendants cannot be considered in a vacuum, but must be considered in light of all the arrangements between the defendants and how these agreements would eventually affect the public and competitors.

Plaintiffs allege in their complaint that Moore's, Sunrise and S. W. Mobile conspired together, along with Mertz Enterprises to divert and take away a substantial portion of the business of plaintiffs. Plaintiffs support this contention by relying on a letter sent by Moore's, Sunrise and S. W. Mobile to plaintiffs and other dealers on January 25, 1973. The letter, addressed "Dear Fellow Dealer," informed plaintiffs and others that if they wished "to place a coach in San Rafael, we will deliver, set-up and service—and this service will be guaranteed for one (1) full year—your coach for a total cost of $2500. This will insure high service standards." An asterisk at the bottom of the letter indicates a note stating: "Since each dealer above is an individual company and sets its own prices, the $2500 costs is approximate."

The effect of the agreement and the letter to the ultimate consumer is as follows: If the purchaser buys from Moore's, Sunrise or S. W. Mobile, the purchaser will pay $250.00 to Mertz Enterprises as a set-up charge—which charge will be returned to the codefendant who sold the coach. If the purchaser buys a coach from plaintiffs, the set-up fee will be $2,500—a cost that undoubtedly would be passed on to the ultimate consumer who therefore has to pay more to buy from plaintiffs if he wishes his coach put on the Mertz Enterprises lot.

Section 16727 of the Business and Professions Code is concerned with the effects on competition, and the type of arrangement described above could be construed to seriously impair competition between parties not in privity with the arrangements between the defendants.

In examining the agreements between the parties and the statutes involved, the effects on competition, not just the competitors, must be considered. The substantially probable rather than actual effects are all that is required by the Cartwright Act as it has been interpreted by federal cases. (See *Standard Motor Products, Inc. v. F. T. C.* (2d Cir. 1959) [1959 TRADE

CASES ¶ 69,338] 265 F. 2d 674, 676, regarding interpretation of Robinson-Patman Price Discrimination Act, 15 U. S. C. A. § 13a.)

If the agreements between Mertz Enterprises and the other defendants are construed to constitute a restraint upon trade, "they violate the Cartwright Act unless they are shown to be reasonable. To determine whether the restrictions are reasonable, 'the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be obtained, are all relevant facts.' (*Chicago Board of Trade v. United States* (1918) 246 U. S. 231, 238 [62 L. Ed. 683, 687, 38 S. Ct. 242].) The court should consider 'the percentage of business controlled, the strength of the remaining competition [and] whether the action springs from business requirements or purpose to monopolize . . .' (*United States v. Columbia Steel Co.* (1948) [1948-1949 TRADE CASES ¶ 62,200] 334 U. S. 495, 527 [92 L. Ed. 1533, 1554, 68 S. Ct. 1107]; quoted with approval in *Times-Picayune v. United States* (1953) [1953 TRADE CASES ¶ 67,494] 345 U. S. 594, 615 [97 L. Ed. 1277, 1293, 73 S. Ct. 872].) Whether a restraint of trade is reasonable is a question of fact to be determined at trial. (*Times-Picayune v. United States, supra; Chicago Board of Trade v. United States, supra; Wirtz Ave. Warehouse, Inc. v. Winchester Tobacco Ware. Co.* (6th Cir. 1954) [1954 TRADE CASES ¶ 71,314] 339 F. 2d 277, 280; *Rogers v. Douglas Tobacco Board of Trade, Inc.* (5th Cir. 1951) [1950 TRADE CASES ¶ 62,359] 366 F. 2d 636, 643, cert. den. (1959) 361 U. S. 833 [4 L. Ed. 2d 75, 80 S. Ct. 85].)" (*Corwin, supra*, 4 Cal. 3d at pp. 856-857.)

Another contention of plaintiffs is that the agreements, considered jointly and severally constitute an illegal tying arrangement.

"For one product to be [illegally] tied to another it must be found . . . that a seller is willing to sell one product but only on the condition that the buyer also purchases a different (or tied) product, or at least agrees that he will not purchase that product from any other supplier. Where such conditions are successfully exacted competition on the merits with respect to the tied product is inevitably curbed. Indeed "tying agreements serve hardly any purpose beyond the suppression of competition." [Citation.] They deny competitors free access to the market for the tied product, not because the party imposing the tying requirements has a better product or a lower price but because of his power of leverage in another market. At the same time buyers are forced to forego their free choice between competing products. For these reasons "tying agreements fare harshly under the laws forbidding restraints of trade." [Citation.]' (Fns. omitted.) (*Northern Pac. R. Co. v. United States, supra*, 356 U. S. 1, 5-6 [2 L. Ed. 2d 545, 550].) Tying arrangements are illegal per se 'whenever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product' (*Northern Pac. R. Co. v. United States, supra*, 356 U. S. at p. 6 [2 L. Ed. 2d at p. 550]; *Fortner Enterprises v. U. S. Steel, supra*, 394 U. S. 495, 499, 503 [22 L. Ed. 2d 495, 502, 505]) and when 'a total amount of business substantial enough in terms of dollar-volume so as not to be merely *de minimis*, is foreclosed to competitors by the tie. . . .' (*Fortner Enterprises v. U. S. Steel, supra*, 394 U. S. at p. 501 [22 L. Ed. 2d at p. 504].)" (*Corwin, supra*, 4 Cal. 3d at pp. 856-857.)

We conclude that triable issues have been raised which, if resolved in plaintiffs' favor, could establish the type of arrangement condemned by the above referred to decisions. We do not hold as a matter of law that the arrangements between defendants amount to an illegal tying agreement, but rather that it is an issue to be resolved at trial.

Accordingly, we hold that plaintiffs are entitled to a trial on their second theory of a conspiracy and combination in restraint of trade and also upon their claim of an illegal tying arrangement. We therefore hold that plaintiffs have pleaded [illegible]

[illegible] Cal. App. 3d 53 [110 Cal. Rptr. 135].)

Judgment reversed.

LILLIE, Acting P. J., and THOMPSON, J., concurred.

[¶ 75,404] Science F

U. S. District Court,
Dated November 19, 197

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Mr. Chairman, members of the Commerce Committee, I am Bernard L. Marsh, Executive Secretary of the Alaska Mobile Home Association and also the Alaska Trailer Court Association. HB 829 has not been available long enough for our membership to know about it, but I have shown it to the officers of the two associations, and have been asked to comment on the bill to this Committee.

HB 829 seems to have been written by consumer or tenants action groups with the intent of protecting consumers or tenants from abuses and from unfair expenses. In fact, the effect will likely be just the opposite. The cost to the consumer will be greater. A more serious consequence of this bill will be the creation of a new property right for tenants, which is probably unconstitutional, and which in any case will reduce the value of property and further damage the tight economic situation in the mobile home field. Let me explain:

1. Economics prohibit the production of mobile home spaces in any urban area of Alaska by independent court operators; that is, where the space rental is to provide a rate of return that will justify the investment. There have been no such spaces built in Anchorage in the last five years, and there will be none in the future under present conditions. Spaces have been, and are built by mobile home vendors, simply because you can't sell a mobile home unless there is some place to locate it. Spaces are provided by vendors simply to create sales. The spaces themselves are an economic loss to the vendor. The principle is exactly the same as that of J. C. Penney department store building a parking garage that loses money on parking, just to stimulate store sales. The reason for this situation is two fold; The increasing cost of land, and the progressively more restrictive government regulation.

In Anchorage, mobile home courts are allowed only in R-2, R-3, R-4, R-5, and "U" zones. The least costly usable land is unsubdivided R-2 land at about $24,000 per acre. The raw land is usually marginal, and may cost another $20,000 per acre to fill or grade. Reduced to cost per space and including utility cost, space development runs from $7,500 to $10,000 per space to develop. Current regulations limit spaces to 6 to 6 1/2 per gross acre (Glen Carin Court got 6.5 spaces per acre, and Montegue got 6.2). Using $8,000 per space as development cost, $24,000 per acre land cost, and 6.2 spaces per acre, we arrive at $11,800 per space as the final cost. To support any investment you must have a minimum of 15% return per year, or in this case $1,770 per space, or $147.50 per month. The current average space rent in Anchorage is $105 per month.

The effect of this legislation will be to prohibit the development of mobile home spaces by mobile home vendors, which will either bring space development and therefore new sales to a stop, or in the alternative drive all space rental to $150 per month. By the time the shortage becomes acute enough to drive up the price and tempt developers to build new spaces, the price will be much higher than that. It takes two years from initial planning to completion, to produce a trailer space.

2. The second bad thing this bill would do is create a possessory interest in the owner's property on the part of the tenant. In Sec 2 (C) (1) and in Sec 5, the owner of land is prohibiting tenancy, except for certain specific acts by the tenant. This literally converts a simple month-to-month tenancy into a perpetual lease, and actually creates a leasehold interest for one person in another parson's property without due process and without compensation. Under all principles of property ownership in this country, a property owner can recover his property from a tenant at the end of any lease or

forever, even through a change of ownership. It is incredible to me that this legislature would even consider such a proposal.

There are several sections of the bill to which we have no objection, and agree with. We agree with Sec 2 (C) (2), which would prohibit an owner from requiring a tenant to provide permanent improvements to his property. We also agree with (4) of the same section, prohibiting vendor or transfer fees as a condition of tenancy. We have no objection to all of Sec. 3. We also agree with Sec. 45.30.070 (a), beginning on line 16, page 3 of the bill. But we disagree with subsect. (b) of this section, which prohibits a perfectly legal and prudent practice on the part of a mobile home vendor. Any vendor who shipped mobile homes to Alaska at $4700 each, and had no spaces to locate them on, would be pretty foolish. Also, it would seem that creating a class of persons (mobile home vendors) who are prohibited from leasing spaces is highly discriminatory and in violation of the state Human Rights Act.

Ketchikan Daily News Mon, March 22 1976

Others agree with bill:

One court owner attacks house bill

By JANE HANCHETT
Daily News Staff Writer

Ketchikan trailer court owners, with one exception, today indicated they generally felt no threat from a bill that elsewhere in the state is feared will cripple the mobile home industry.

The bill, HB 684, passed 23-15 Wednesday by the house, prohibits court owners from forcing prospective tenants to buy homes from a particular dealer, either the court owners themselves or another dealer with whom the court owners have an agreement.

Sale-stipulated rentals already are illegal under anti-trust law, but the house bill puts all state anti-trust violations under unfair trade practice law. Under the latter, it would be easier to enforce, according to Rep. Terry Gardiner, D-Ketchikan, chief sponsor of the bill.

Bob Crowder, owner of Ridgewood Mobile Home Sales and Court, objects strongly to the bill which he says is likely to force him to raise space rental.

When he has space available, Crowder rents to trailer owners whose homes meet local and state standards, but develops new spaces in his court only for homes he has sold. He says his sales have subsidized his court operation so that rental rates did not have to be raised. Local space rentals average $100-$125, he says.

The bill takes away from the court owner the ability to control his own court, Crowder believes. Control of space rental in one's own court, he says, "can only lead to the upgrading of the court and protection of conditions, environment and investment of existing home owners in the courts.

"And who might I ask is more entitled to that right than the person who owns the court?" Crowder states.

"The past three years have seen our sales drop considerably . . . Additional lost sales revenue will result in additional rent increases or closure. This is fact," he states in a letter to the editor in today's Daily News. Crowder's court is at Mile 4½ N. Tongass Hwy.

Like Crowder, other local court owners and trailer sales owners do not stipulate rental of an "existing" space with a mobile home sale. But unlike him others indicated approval or no comment to the bill.

Mrs. Del Shull, who with her husband owns Beach Crest Mobile Home Park and a trailer sales and service business, says she thinks that sale-stipulated rental practices "morally stinks." The Shulls' park is at Mile 12, N. Tongass Hwy.

"We've never practiced this," she says.

Jay Coon, who with his wife owns Mountain View Trailer Court and Sales, a large court within the city, responded "no comment" when asked for his reaction to the bill.

Jean Gain, owner of the Homestead, a combination of permanent structure rentals and a trailer court, said she did not believe in the practice the bill will help prevent. Mrs. Gain's Homestead is at Mile 4½, S. Tongass Hwy.

Curly Canoles, of Canoles Trailer Sales, says sale-stipulated rental "cuts out competition" and views the bill as a "very good bill."

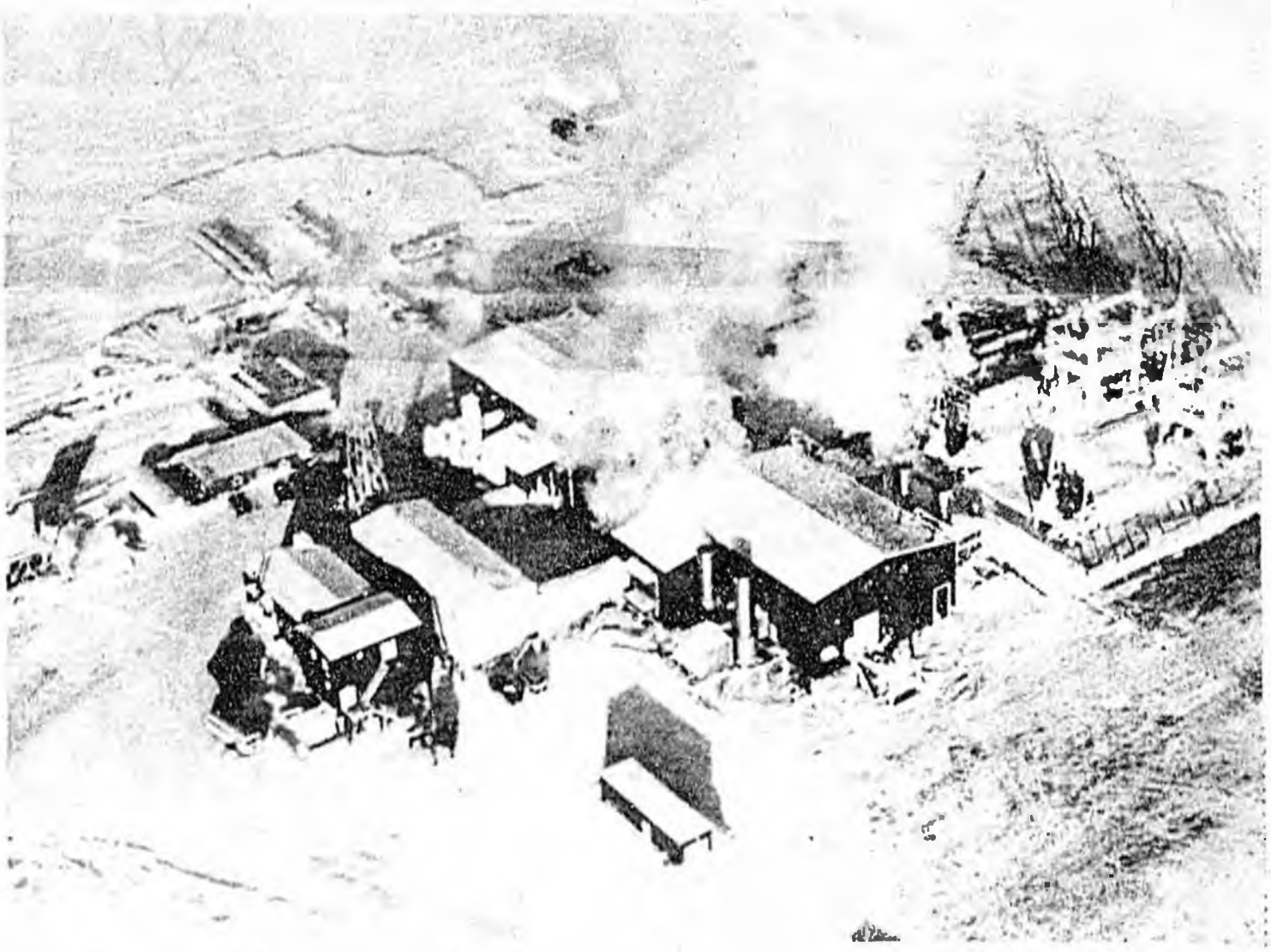
In light of Ketchikan's still lagging economy and resultant availability of housing, Stephen Reeve, borough planning department director, said he did not think the bill will have any effect here.

About 260 mobile homes now are situated in local courts with a population of about 750 court dwellers, Reeve says.

Local court owners generally agreed that the bill's greatest effect would be on fast-developing courts in pipeline impacted areas of Fairbanks and Anchorage. The house also has sent to the senate a ban against trailer home sellers forcing their customers to settle in a particular housing development as a condition of sale, a practice now occuring in both northern cities.

Those objecting to the bill say soaring land and space development costs "force" court owners to have dealerships.

Crowder classifies the bill as legislation "that places additional costs of doing business on the businessman" and therefore can result only "in additional costs to the consumer." Curtailments of business "lends to a socialistic trend with more government involvement," he adds.



Power on the way

The output of 84 megawatts is now being provided by BP Alaska's Central Power Station at Prudhoe Bay, Alaska. When fully complete, the station is projected to provide some 134 megawatts. The station has been put together after last summer's sea lift, the barges from which were stranded in the ice outside Prudhoe Bay. A causeway was built this winter to get the modules to the station site. AP wirephoto.

Patty faces up to 25 years

SAN FRANCISCO (AP) — Patricia Hearst, convicted of bank robbery by a jury convinced of her guilt by her words and actions as the revolutionary "Tania," faces up to 25 years in prison and another trial on more serious charges.

Evidence presented by the government to show that the kidnaped newspaper heiress willingly embraced the terrorism of her captors outweighed her testimony that she cooperated with them to save her life, jurors said.

"I don't think it was any particular thing at all that led to our finding her guilty," said Marilyn Wentz, a member of the panel that found Miss Hearst guilty of armed bank robbery Saturday after 12 hours of deliberation. "I think it was a combination of all the evidence."

Mrs. Wentz, 36, a dental assistant and mother of four from Hayward, Calif., said in an interview Sunday night, "I know I went over it, and over it — everything — before deciding."

She said she thought that both the prosecutor, U.S. Atty. James L. Browning Jr., and chief defense attorney F. Lee Bailey "did a very good job in presenting the case."

Another juror said the ordeal of deliberations was so intense that some members of the panel wept and others became sick to their stomachs.

Today, the 22-year-old Miss Hearst waited behind bars for the unfolding of a fate now in the hands of her judge, attorneys and prosecutors.

Sentencing by U.S. District Court Judge Oliver J. Carter is scheduled for April 19. He said Sunday that the maximum penalty he would consider would be 25 years in prison and a $10,000 fine for armed bank robbery.

Miss Hearst also was convicted of using a weapon in a felony, which carries a maximum 10-year sentence.

The minimum sentence would be probation.

[¶ 75,403] Robert Sherman, et al. v. Mertz Enterprises, et al.

California Court of Appeal, Second District, Division One. Civil No. 43043. Filed October 16, 1974.

Cartwright Act

Tying Arrangements—State Law—Mobile Home Park Space—Set-up Fees.—Charges that the owner of a mobile home park and mobile home sellers unlawfully agreed to exclude other sellers by granting the defendant sellers the exclusive right to sell homes at the park and by charging other sellers a $2,500 set-up fee for placing one of their homes in the park, while charging their own customers only $250, should not have been summarily dismissed. Triable issues were raised, which, if resolved in plaintiffs' favor, could establish an unlawful tying arrangement or a combination in restraint of trade. See ¶ 3090, 3095.

For plaintiffs and appellants: Anton Dumhart. For defendants and respondents: Ruffo, Ferrari & McNeil and Thomas P. O'Donnell for Mertz Enterprises; Frank Heller and Richard S. Weiner, for Moore's Mobile Home Mart, Les Spurlock and Sunrise County Mobile Homes.

Opinion

The Case

HANSON, J.: Plaintiff Robert Sherman, doing business as Howard's Trailer Sales and Bob's Trailer Sales, along with one Doug Jobson (hereinafter referred to as plaintiffs) sought an injunction and damages for unfair competition and restraint of trade against Mertz Enterprises, doing business as San Rafael Mobile Home Estates, Moore's Mobile Home Mart (hereinafter sometimes referred to as defendants), and other mobile home sale companies.

Plaintiffs filed their complaint in the Los Angeles superior court on February 21, 1973, and the application for order to show cause and preliminary injunction came on for hearing and was denied on March 6, 1973.

On March 22, 1973, defendants filed a demurrer to the complaint with supporting points and authorities, along with a motion to strike or, in the alternative, a motion for summary judgment. After consolidating all the defendants' motions, the court below, on April 6, 1973, granted their motions for summary judgment and sustained the demurrers without leave to amend.

Plaintiffs appeal from the granting of the motions for summary judgment and the demurrers.

The Facts

Defendant and respondent Mertz Enterprises is the owner and developer of a mobile home park. On or about January 15, 1973, it entered into a written agreement with co-defendants Moore's Mobile Home Mart (Moore's), Sunrise County Mobile Homes (Sunrise) and S. W. Mobile Home Sales (S. W. Mobile), who are all retail dealers of mobile homes. The purpose of the agreement was to provide a location at which Sunrise, Moore's and S. W. Mobile could conduct their sales activities and provide lot accommodations for their customers.

In accordance with the agreement, Mertz Enterprises then notified plaintiffs and other mobile home dealers that the San Rafael Mobile Home Estates park was leased full as of January 25, 1973.

On or about January 25, 1973, Moore's, by letter, advised other various mobile home dealers that although they had completely rented San Rafael Mobile Home Estates, they would be willing to provide spaces for customers of other mobile home dealers for a set-up fee of approximately $2,500 if plaintiffs and others desired to place a mobile home on defendant's park.

The mobile home dealer defendants state that the set-up fee was necessary because they had received more than 40 complaints, out of 195 mobile homes in the park, which had been submitted to the Contractors License Board, and that in the future to insure high service standards, a set-up charge would be made to service and guarantee a coach for one year.

Contentions

Plaintiffs contend that defendants have conspired to restrain trade and commerce with the malicious and oppressive intent to deprive plaintiffs and prospective mobile home purchasers of the right to free and unrestricted competition for the general mobile home sales business.

Plaintiffs' first legal contention is that the contracts and arrangements entered into between the defendants have been declared unlawful per se. This contentic on plaintiffs' interpretation of wright Act (Bus. & Prof. Co et seq., which is patterned on tl Anti-Trust Act).

Plaintiffs' second legal conten the motions for summary judgm have been denied on plaintiffs' ge tions that defendants conspired the purpose of restraining compet the absence of a finding that the constituted a "per se illegal tying ar

Discussion

A summarization of the rules summary judgment procedure Proc., § 437c) was set out in *Corwin v. Los Angeles Newspa Bureau, Inc.* [1971 TRADE CASES Cal. 3d 842 [94 Cal. Rptr. 785, 953], where the court stated 851-852: ". . . 'The matter t mined by the trial court in cons a motion is whether the defend plaintiff) has presented any f give rise to a triable issue. The not pass upon the issue itself. judgment is proper only if the support of the moving party sufficient to sustain a judgment and his opponent does not show such facts as may be dee judge hearing the motion suffic sent a triable issue. The aim cedure is to discover, through t affidavits, whether the parties dence requiring the weighing of a trial. In examining the s affidavits filed in connection wi tion, the affidavits of the movi strictly construed and those of liberally construed, and doubt propriety of granting the m be resolved in favor of the pa the motion. Such summary drastic and should be used wit that it does not become a su the open trial method of deter (*Stationers Corp. v. Dun & Br*

[1] The summary judgment in thi tered prior to the effective date Summary Judgment Act—January review of the judgment is consi light of the pre-1971 summary j (See *D'Arrigo v. Board of Medic* 11 Cal. 3d 1, 20, fn. 15 [112 Cal. P. 2d 101].)

[2] Section 16720 provides in part a combination of capital, skill or or more persons for any of the p poses: [1] (a) To create or carry tions in trade or commerce .

unlawful per se. This contention is based on plaintiffs' interpretation of the Cartwright Act (Bus. & Prof. Code, § 16700 et seq., which is patterned on the Sherman Anti-Trust Act).

Plaintiffs' second legal contention is that the motions for summary judgment should have been denied on plaintiffs' general allegations that defendants conspired together for the purpose of restraining competition, even in the absence of a finding that the agreement constituted a "per se illegal tying arrangement."

Discussion

A summarization of the rules governing summary judgment procedure (Code Civ. Proc., § 437c) was set out in the case of *Corwin v. Los Angeles Newspaper Service Bureau, Inc.* [1971 TRADE CASES ¶ 73,582], 4 Cal. 3d 842 [94 Cal. Rptr. 795, 484 P. 2d 953], where the court stated at pages 851-852: ". . . 'The matter to be determined by the trial court in considering such a motion is whether the defendant (or the plaintiff) has presented any facts which give rise to a triable issue. The court may not pass upon the issue itself. Summary judgment is proper only if the affidavits in support of the moving party would be sufficient to sustain a judgment in his favor and his opponent does not by affidavit show such facts as may be deemed by the judge hearing the motion sufficient to present a triable issue. The aim of the procedure is to discover, through the media of affidavits, whether the parties possess evidence requiring the weighing procedures of a trial. In examining the sufficiency of affidavits filed in connection with the motion, the affidavits of the moving party are strictly construed and those of his opponent liberally construed, and doubts as to the propriety of granting the motion should be resolved in favor of the party opposing the motion. Such summary procedure is drastic and should be used with caution so that it does not become a substitute for the open trial method of determining facts' (*Lipman v. Dow & Rendtorff, Inc.* (1965) 62 Cal. 2d 412, 417 [42 Cal. Rptr. 449, 398 P. 2d 785]; see *Joslin v. Marin Mun. Water Dist.* (1967) 67 Cal. 2d 132, 140-143 [60 Cal. Rptr. 377, 429 P. 2d 889].)"[1] (See also *D'Amico v. Board of Medical Examiners*, 11 Cal. 3d 1, 20 [112 Cal. Rptr. 786, 520 P. 2d 10].)

Summary judgment, by its nature, should be sparingly granted in cases alleging antitrust activities by defendant. The plaintiff in such a case finds himself outside a door of information that can be opened only by obtaining the key from the defendants. Unless plaintiff is allowed to probe into the secrecy of defendants, he would forever be foreclosed from finding facts to support his contention. "Trial by affidavit is no substitute for trial by jury which so long has been the hallmark of 'even handed justice.'" (*Corwin v. Los Angeles Newspaper Service Bureau, Inc., supra*, 4 Cal. 3d at p. 852, citing *Poller v. Columbia Broadcasting* (1962) [1962 TRADE CASES ¶ 70,228] 368 U. S. 464, 473 [7 L. Ed. 2d 458, 464, 82 S. Ct. 486]; as quoted with approval in *Fortner Enterprises v. U. S. Steel* (1969) [1969 TRADE CASES ¶ 72,757] 394 U. S. 495, 500 [22 L. Ed. 2d 495, 503, 89 S. Ct. 1252].)

". . . On the other hand this rule of caution should not be allowed to sap the summary judgment procedure of its effectiveness in cases wherein the party against whom the procedure is directed seeks to screen the lack of triable factual issues behind adept pleading. 'The question therefore is not whether defendant states a good defense in his answer but whether he can show that the answer is not an attempt "to use formal pleading as means to delay the recovery of just demands." (*Fidelity & Deposit Co. v. United States*, 187 U. S. 315, 320 . . . .)' (*Coyne v. Krempels* (1950) 36 Cal. 2d 257, 262 [223 P. 2d 21].)" (*D'Amico v. Board of Medical Examiners, supra*, 11 Cal. 3d at p. 20.)

Plaintiffs brought their complaint against defendants for restraint of trade under Business and Professions Code sections 16720 to 16726 (the Cartwright Act).[2]

[1] The summary judgment in this case was entered prior to the effective date of the 1971 Summary Judgment Act—January 1, 1971. The review of the judgment is considered only in light of the pre-1971 summary judgment law. (See *D'Amico v. Board of Medical Examiners*, 11 Cal. 3d 1, 20, fn. 15 [112 Cal. Rptr. 786, 520 P. 2d 10].)

[2] Section 16720 provides in part: "A trust is a combination of capital, skill or acts by two or more persons for any of the following purposes: [3] (a) To create or carry out restrictions in trade or commerce . . . (c) To [illegible] rights, whereby it refers to the [illegible] shall be in any manner controlled or established, . . . (d) To make or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they do all or any or any combination of any of the following: [4] . . . (4) Agree to pay, credit or allow, directly or indirectly, rebate, any interests that they may have connected with the sale or transportation of any such article or

"Sections 16720 and 16726 of the Cartwright Act were patterned after the Sherman Act (15 U. S. C. § 1 et seq.) and decisions under the latter act are applicable to the former. (*Chicago Title Ins. Co. v. Great Western Financial Corp.* [1968 TRADE CASES ¶ 72,557] (1968) 69 Cal. 2d 305, 315 [70 Cal. Rptr. 849, 444 P. 2d 481].) Both acts codify the general common law prohibition against restraints of trade. Section 16727 goes beyond the common law to interdict certain practices which have a tendency to lessen competition or promote monopolization. This section, enacted in 1961 (Stats. 1961, ch. 733), is based on section 3 of the Clayton Act (15 U. S. C. § 14). Hence, federal decisions interpreting section 3 are applicable to section 16727. (69 Cal. 2d 305, 315.)

"Although the Sherman Act and the Cartwright Act by their express terms forbid all restraints on trade, each has been interpreted to permit by implication those restraints found to be reasonable. (*Standard Oil Co. v. United States* (1911) 221 U. S. 1, 60 [55 L. Ed. 619, 645, 31 S. Ct. 502]; *People v. Building Maintenance etc. Assn.* (1953) [1953 TRADE CASES ¶ 67,454] 41 Cal. 2d 719, 727 [264 P. 2d 31].) 'However, there are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use. . . . Among the practices which the courts have heretofore deemed to be unlawful in and of themselves are price fixing [citation]; division of markets [citation]; group boycotts [citation]; and tying arrangements [citation].' (*Northern Pac. R. Co. v. United States* (1958) [1958 TRADE CASES ¶ 68,961] 356 U. S. 1, 5 [2 L. Ed. 2d 545, 549, 78 S. Ct. 514].)"[3] (*Corwin v. Los Angeles Newspaper Service Bureau, Inc., supra,* 4 Cal. 3d at pp. 852-853.)

Plaintiffs' first claim is that the agreement between Moore's, Sunrise, S. W. Mobile and Mertz Enterprises constituted an illegal restraint of trade. To prevail in this contention, "it must appear from the record not only that the agreements 'create or carry out restrictions in trade' (§ 16720, subd. (a)) but also that such restrictions are unreasonable." (*Corwin, supra,* 4 Cal. 3d at p. 853.)

Plaintiffs base this contention on two items, a letter sent by Mertz Enterprises to plaintiffs telling them that as of January 22, 1973, the mobile home park would be leased in full,[4] and the contract/agreement between Mertz Enterprises and the other defendants for the leasing of part of the mobile home park.[5]

On January 15, 1973, Mertz Enterprises and the codefendants entered into an agreement for the rental of mobile home spaces. There is no mention of what the rent is in terms of dollars and cents in the agreement, but simply a statement that Mertz Enterprises will rent specific spaces to the codefendants for a period of one year; that the codefendants would be the only parties allowed to sell mobile homes in the mobile home park; and that they would be permitted to maintain a model compound and sales office on the park premises. The rent paid by the codefendants to Mertz Enterprises would be the percentage each codefendant has of the entire area covered by the agreement. The rental paid by the codefendants would be reduced by the amount of rental paid to Mertz Enterprises for the occupants of the respective spaces, but only to an offset for rent actually paid by such occupants.

The [illegible] *Investment* [illegible] could be construed [illegible] support plaintiffs' claim that the agreement between Mertz Enterprises and the codefendants is more than a rental lease [illegible]. [illegible]

[illegible] been found."

[1] Section 16726 of the Business and Professions Code states: "Except as provided in this chapter, every trust is unlawful, against public policy and void."

[2] Section 16727 of the Business and Professions Code states in part: "It shall be unlawful for any person to lease or make a sale or contract for the sale of goods, merchandise, . . . commodities for use within the State, or to fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, merchandise, . . . supplies, commodities, or services of a competitor or competitors

[illegible] of the [illegible] where the effect of such lease, . . . agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of trade or commerce in any section of the State."

[3] See also *Chicago Title Ins. Co. v. Great Western Financial Corp.* [1968 TRADE CASES ¶ 72,557], 69 Cal. 2d 305, [illegible] [70 Cal. Rptr. 849, 444 P. 2d 481], [illegible] by J. Mosk.

[4] Plaintiffs' Exhibit 4 to their complaint.

[5] This agreement was not part of plaintiffs' complaint, but came to light as part of defendants' papers in response to plaintiffs' request for an injunction. The agreement was filed with the court before the summary judgment was filed.

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total monies received [illegible]
[codefendants]."

Clause 4 of the agree[illegible]
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that all potential occupants procured by the codefendants must have new double coaches which must be approved by Mertz Enterprises and which must obey all park rules. Furthermore, "[c]oncurrently with any rental arrangement by Mertz with a potential resident of any of the spaces procured by Retailers [codefendants], Mertz will charge such resident the sum of Two Hundred Fifty Dollars ($250.00) payable concurrently on or prior to occupancy. . . . The total lot improvement charge shall be paid by Mertz to Retailers [codefendants] within 10 days after receipt of payment from resident. In the event that a loss results from any claim made against Mertz as the result of the payment of said lot improvement charge to Mertz and thereafter to Retailers [codefendants], then each of the Retailers [codefendants] herein agrees to reimburse Mertz a pro rata share of said loss not to exceed twenty-five percent (25%) of the total monies received by said Retailers [codefendants]."

Clause 4 of the agreement, entitled "*Model Complex and Sales Facility*," provides in relevant part that: "Retailers [codefendants] may install signs and other advertising and promotion as it may deem advisable after having first obtained the written consent of Mertz. Mertz agrees that such consent shall not be unreasonably withheld. Retailers [codefendants] shall have the right to use the name of San Rafael Mobile Home Estates in its advertising and promotion, but such advertising and promotion shall not in any way indicate any agency, joint venture, partnership or other relationship between Retailers [codefendants] and San Rafael Mobile Home Estates. The mobile home park manager of Mertz and their employees shall cooperate with Retailers [codefendants] in connection with its sales and promotion for the mutual benefit of all parties hereto in renting mobile home spaces as well as promoting the sale of mobile homes by Retailers [codefendants]. The cooperation by Retailers and Mertz, as well as their respective employees, shall be reasonable and in their best interests."

The agreement between Mertz Enterprises and its codefendants gives an exclusive right of sale to the codefendants on the leased/rented property; allows for reimbursement of payments; and provides for aid, assistance and cooperation for the sale of codefendants' mobile homes at the inferred exclusion of other individuals' sale of mobile homes to be placed on this property.

The above agreement between Mertz Enterprises and its codefendants cannot be considered in a vacuum, but must be considered in light of all the agreements between the defendants and how those agreements would eventually affect the public and competitors.

Plaintiffs allege in their complaint that Moore's, Sunrise and S. W. Mobile conspired together, along with Mertz Enterprises to divert and take away a substantial portion of the business of plaintiffs. Plaintiffs support this contention by relying on a letter sent by Moore's, Sunrise and S. W. Mobile to plaintiffs and other dealers on January 25, 1973. The letter, addressed "Dear Fellow Dealer," informed plaintiffs and others that if they wished "to place a coach in San Rafael, we will deliver, set-up and service—and this service will be guaranteed for one (1) full year—your coach for a total cost of $2500. This will insure high service standards." An asterisk at the bottom of the letter indicates a note stating: "Since each dealer above is an individual company and sets its own prices, the $2500 costs is approximate."

The effect of the agreement and the letter to the ultimate consumer is as follows: If the purchaser buys from Moore's, Sunrise or S. W. Mobile, the purchaser will pay $250.00 to Mertz Enterprises as a set-up charge—which charge will be returned to the codefendant who sold the coach. If the purchaser buys a coach from plaintiffs, the set-up fee will be $2,500—a cost that undoubtedly would be passed on to the ultimate consumer who therefore has to pay more to buy from plaintiffs if he wishes his coach put on the Mertz Enterprises lot.

Section 16727 of the Business and Professions Code is concerned with the effects on competition, and the type of arrangement described above could be construed to seriously impair competition between parties not in privity with the arrangements between the defendants.

In examining the agreements between the parties and the statutes involved, the effects on competition, not just the competitors, must be considered. The substantially probable rather than actual effects are all that is required by the Cartwright Act as it has been interpreted by federal cases. (See *Standard Motor Products, Inc. v. F. T. C.* (2d Cir. 1959) [1959 TRADE

CASES ¶ 69,333] 265 F. 2d 674, 676, regarding interpretation of Robinson-Patman Price Discrimination Act, 15 U. S. C. A. § 13a.)

If the agreements between Mertz Enterprises and the other defendants are construed to constitute a restraint upon trade, they violate the Cartwright Act unless they are shown to be reasonable. To determine whether the restrictions are reasonable, 'the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be obtained, are all relevant facts.' (*Chicago Board of Trade v. United States* (1918) 246 U. S. 231, 238 [62 L. Ed. 683, 687, 38 S. Ct. 242].) The court should consider 'the percentage of business controlled, the strength of the remaining competition [and] whether the action springs from business requirements or purpose to monopolize. . . .' (*United States v. Columbia Steel Co.* (1948) [1948-1949 TRADE CASES ¶ 62,260] 334 U. S. 495, 527 [92 L. Ed. 1533, 1554, 68 S. Ct. 1107]; quoted with approval in *Times-Picayune v. United States* (1953) [1953 TRADE CASES ¶ 67,404] 345 U. S. 594, 615 [97 L. Ed. 1277, 1293, 73 S. Ct. 872].) Whether a restraint of trade is reasonable is a question of fact to be determined at trial. (*Times-Picayune v. United States, supra; Chicago Board of Trade v. United States, supra; Wirtz dba. Warehouse, Inc. v. Winchester Tobacco Ware. Co.* (6th Cir. 1954) [1954 TRADE CASES ¶ 71,314] 339 F. 2d 277, 280; *Rogers v. Douglas Tobacco Board of Trade, Inc.* (5th Cir. 1959) [1959 TRADE CASES ¶ 69,350] 266 F. 2d 625, 643, cert. den. (1959) 361 U. S. 833 [4 L. Ed. 2d 75, 80 S. Ct. 85].)" (Corwin, *supra*, 4 Cal. 3d at pp. 856-857.)

Another contention of plaintiffs is that the agreements, considered jointly and severally constitute an illegal tying arrangement.

"The use of economic power to compel a buyer to purchase one product in order to be able to buy another is known as a tying arrangement. Ordinarily a seller may refuse to sell one product but only on the condition that the buyer also purchases a different (or tied) product, or at least agrees that he will not purchase that product from any other supplier. Where such conditions are successfully exacted competition on the merits with respect to the tied product is inevitably curbed. Indeed 'tying agreements serve hardly any purpose beyond the suppression of competition.' [Citation.] They deny competitors free access to the market for the tied product, not because the party imposing the tying requirements has a better product or a lower price but because of his power of leverage in another market. At the same time buyers are forced to forego their free choice between competing products. For these reasons 'tying agreements fare harshly under the laws forbidding restraints of trade.' [Citation.]' (Fns. omitted.) (*Northern Pac. R. Co. v. United States, supra*, 356 U. S. 1, 5-6 [2 L. Ed. 2d 545, 550].) Tying arrangements are illegal per se 'whenever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product' (*Northern Pac. R. Co. v. United States, supra*, 356 U. S. at p. 6 [2 L. Ed. 2d at p. 550]; *Fortner Enterprises v. U. S. Steel, supra*, 394 U. S. 495, 499, 503 [22 L. Ed. 2d 495, 502, 505]) and when 'a total amount of business substantial enough in terms of dollar-volume so as not to be merely *de minimis*, is foreclosed to competitors by the tie. . . .' (*Fortner Enterprises v. U. S. Steel, supra*, 394 U. S. at p. 501 [22 L. Ed. 2d at p. 504].)" (*Corwin, supra*, 4 Cal. 3d at pp. 856-857.)

We conclude that triable issues have been raised which, if resolved in plaintiffs' favor, could establish the type of arrangement condemned by the above referred to decisions. We do not hold as a matter of law that the arrangements between defendants amount to an illegal tying agreement, but rather that it is an issue to be resolved at trial.

We [illegible] that plaintiffs are [illegible] their general theory of a conspiracy and combination in restraint of trade and also upon their claim of an illegal tying arrangement. We [illegible] that plaintiffs have proved [illegible]

(3d Civ. 34 53 [110 Cal. Rptr. 125].)

Judgment reversed.

LILLIE, Acting P. J., and THOMPSON, J., concurred.

[¶ 75,404] Science

U. S. District Court
Dated November 19, 19

Basic Rules—Monop
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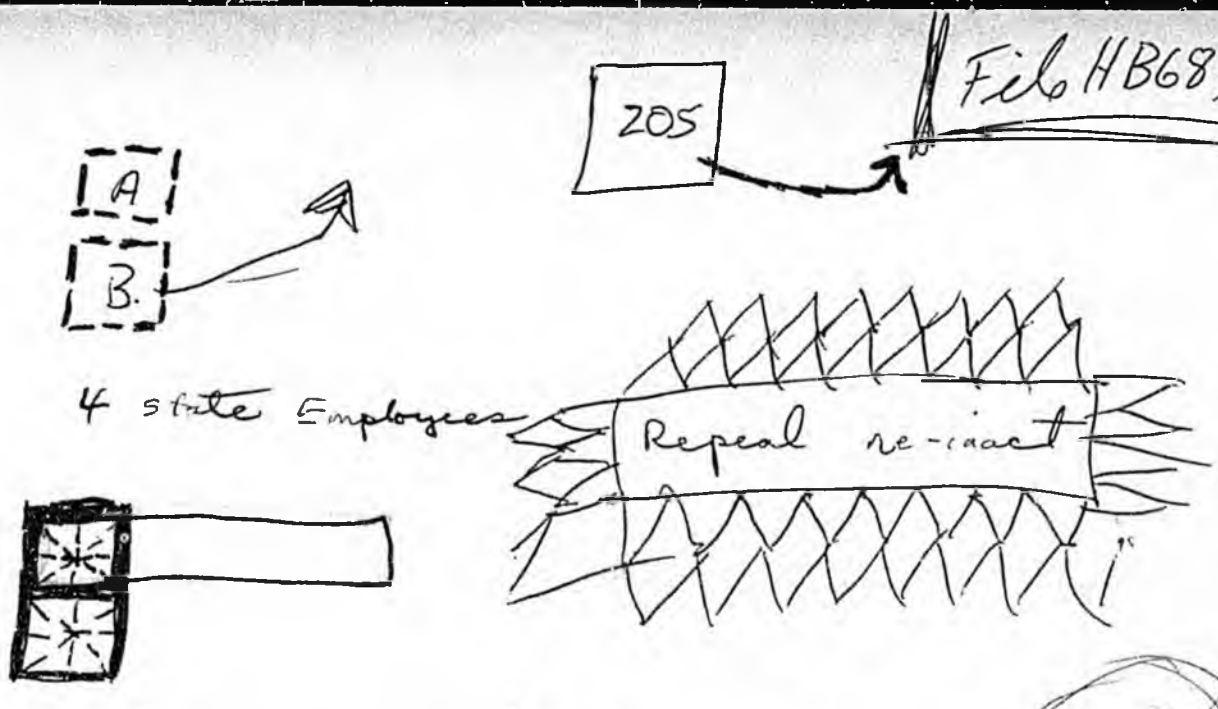
Mr. Chairman, members of the Commerce Committee, I am Bernard L. Marsh, Executive Secretary of the Alaska Mobile Home Association and also the Alaska Trailer Court Association. HB 829 has not been available long enough for our membership to know about it, but I have shown it to the officers of the two associations, and have been asked to comment on the bill to this Committee.

HB 829 seems to have been written by consumer or tenants action groups with the intent of protecting consumers or tenants from abuses and from unfair expenses. In fact, the effect will likely be just the opposite. The cost to the consumer will be greater. A more serious consequence of this bill will be the creation of a new property right for tenants, which is probably unconstitutional, and which in any case will reduce the value of property and further damage the tight economic situation in the mobile home field. Let me explain:

1. Economics prohibit the production of mobile home spaces in any urban area of Alaska by independent court operators; that is, where the space rental is to provide a rate of return that will justify the investment. There have been no such spaces built in Anchorage in the last five years, and there will be none in the future under present conditions. Spaces have been, and are built by mobile home vendors, simply because you can't sell a mobile home unless there is some place to locate it. Spaces are provided by vendors simply to create sales. The spaces themselves are an economic loss to the vendor. The principle is exactly the same as that of J. C. Penney department store building a parking garage that loses money on parking, just to stimulate store sales. The reason for this situation is two fold; The increasing cost of land, and the progressively more restrictive government regulation.

forever, even through a change of ownership. It is incredible to me that this legislature would even consider such a proposal.

There are several sections of the bill to which we have no objection, and agree with. We agree with Sec 2 (C) (2), which would prohibit an owner from requiring a tenant to provide permanent improvements to his property. We also agree with (4) of the same section, prohibiting vendor or transfer fees as a condition of tenancy. We have no objection to all of Sec. 3. We also agree with Sec. 45.30.070 (a), beginning on line 16, page 3 of the bill. But we disagree with subsect. (b) of this section, which prohibits a perfectly legal and prudent practice on the part of a mobile home vendor. Any vendor who shipped mobile homes to Alaska at $4700 each, and had no spaces to locate them on, would be pretty foolish. Also, it would seem that creating a class of persons (mobile home vendors) who are prohibited from leasing spaces is highly discriminatory and in violation of the state Human Rights Act.



5,600 spaces ~~to~~ last year

Trailor Park court owners 100

12 dealers

3-5 dealers own courts

Renting & leasing spaces on other courts

Prevent large trailor sales from pre-leasing - exclude small businessmen

Causes increase of tractors & trailor park spaces

clarification of existing anti-trust law

No economic test though

Consent Judgement in Minnesota 3 years

If dealer/owner has mixed clientele hard to prove violation

Have 2 products prices of both must be determined by the free market

Tractor lots low - Trailor prices high

Encourage competition at both levels

File with my trailer bill

3/15/76

RIDGEWOOD MOBILE HOME
Sales & Court
Rt. 1 Box 523A
KETCHIKAN, ALASKA 99901

Representative Terry Gardiner
Pouch V
Juneau, Alaska 99811

Dear Terry:

I am in receipt of your letter of March 8, 1976 and thank you for your reply even though I am somewhat disturbed by the content, therefore feel it obligitory that I respond.

First I feel insulted that you did not communicate with any of the court owners, in this area regarding this bill.

Secondly I would like to point out to you, as first named sponsor of this bill, some of the falacies of the bill.

The ability to be able to control the rental of spaces in a court can only lead to the upgrading of the court and protection of conditions, environment and investment of existing home owners in the courts. And who might I ask is more entitled to that right than the person who owns the court?

This bill for all intents puts a local dealersout of the sales business. Local dealers in the past have been in competition with stateside dealers who are volume dealers. After we have projected a sale on a proposal sheet they go south and show the proposed unit figures to the stateside dealer who can then undercut our prices. We don't get a second chance.

Speaking for myself, our sales in the past have subsidized our court operation in attempting to hold our rental rates at there present level.

The past 3 years have seen our sales drop considerably. This loss of sales revenue has resulted in a higher rental rate of court spaces. Additional lost sales revenue will result in additional rent increases or closure. This is fact.

You continuously use the word "force" in your letter. This is intolorably disgusting to me.

If you were to say that this bill would "force" Alaska dealers out of the sales business, or "force" court owners out of business, or "force" court owners to accept an undesirable rentor, or "force" a court owner to accept a mobile home in a degredated condition then you would be properly using the word "force".

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It is evident that you have not researched the difficulty of local financing of mobile homes or the difficulty of placing a mobile home on private property in the Gateway Borough. If you had, you would readily understand the difference between buying locally or buying in the states.

You say " the bill is an effort to promote the capitalistic theory of the open market place".

It has been evident that your support of limited entry certainly violates this theory and indicates a double tongued philosophy. You have certainly protected your interest and investment.

You also state in your letter "as long as a trailer park owner "allows" other people who buy trailers from other sales or who already own trailers to rent their trailer spaces, there should be no violation of law". Couldn't you more aptly have said, that if a trailer park owner is "forced" to rent their spaces to anyone who buys or owns their trailers there should be no violation of law? This would fit your way of thinking more appropriately.

It is apparent that you fail to accept the simple fact that legislation that places additional costs of doing business on the businessman only results in additional costs to the consumer and that curtailments of business lends to a socialistic trend with more government involvement.

In conclusion Mr. Gardiner, I can only project that in the event HB684 becomes law you will have raised mobile home space rentals to the existing and future home owners in the Ketchikan Gateway Borough.

I would hope you would appriss yourself of this fact and determine who you are affecting and to what extent.

Bob Crowder

Bob Crowder
Ridgewood Mobile Home Sales & Court

cc: Senator Robert Zeigler
Speaker of the House Mike Bradner
President of the Senate Chancy Croft
Editor Ketchikan Daily News Lew Williams
Ketchikan Chamber of Commerce,
Legislative Review Committee

Phone 225-4813

MEMORANDUM

TO: JAY KERTTULA

FROM: JAMIE LOVE

RE: MOBILE HOME LEGISLATION (HB 684 & HB 829)

DATE: APRIL 3, 1976

The above-mentioned bills are designed to correct serious abuses in the mobile home industry. My interest in mobile home problems dates back to last Spring. At that time, I received a call from a woman who was living in a mobile home court that had been sold. The new owner was converting the court into another land use, and each of the 20 tenants in the court was given a 30-day eviction notice. This woman owned the trailer she lived in. Neither she nor any of the other tenants were able to locate space in another court. When I talked to the woman, she was extremely distraught. She had to move her trailer within a few weeks and could not find a space to move to.

During this period of time, she and the other tenants in the park were approached by an individual who represented a mobile home sales outlet. The sales company was able to use the trailers even though there were no mobile home spaces available for rent in the marketplace. The reason for this was that in the Winter of 1975 the overall vacancy rate for mobile home spaces dipped as the Anchorage area was experiencing a housing shortage. At that time, several of the larger mobile home dealers began quietly buying up the remainder of the vacant spaces including those in independent courts. As an added incentive to the mobile home court operators, the dealers offered a commission, or fee, of approximately $400 to $500 for each mobile home which was placed in their court.

In this particular case, almost every tenant of that court sold their mobile homes, at a fraction of their value, to the single mobile home sales dealership. The dealer then resold the mobile homes at their market value, placing them in spaces they had previously tied up.

I discussed the situation with a reporter from the Anchorage Daily News, Pam Milsap. Milsap interviewed this lady and others who were having problems at the time. Her account of the mobile home situation is attached to this memo.

Shortly after the Daily News story, the Alaska Public Interest Research Group asked the State Attorney General's Office for an investigation into the apparent abuses. After being pressed by the local Consumer Protection Office for more facts, a staff person from AkPIRG approached 26 of the largest mobile home courts in Anchorage posing as an individual interested in finding a rental space for a used trailer. The results of that investigation are detailed in a letter, attached to this memo, which was sent to Attorney General Avrum Gross on July 8, 1975.

Attorney General Gross initiated an investigation to determine if the alleged practices were in violation of the State Anti-Trust Act. The investigation into the matter has been slow, hampered apparently by the shortage of staff for the State's Consumer Protection Office. Only in the last two months have industry officials been subpoened, and, as of my most recent discussion with the attorneys involved, many important issues have not yet been analyzed.

Since July, other methods of dealing with the problem have been explored. The result is the bill before your committee, HB 684, which makes the tie-in arrangement between mobile home courts and mobile home dealers a violation of the State's Unfair Trade Practices Act. Support for a legislative solution resulted from a sympathy for the situation of the offending mobile home dealers. Even though the tie-in practice is, in my opinion, an unfair and harmful business practice, many of the mobile home dealers were forced into participating when they found out that other mobile home dealers were involved. Being left out of the picture in the rush for tying up spaces meant risking going out of business. Some of us reasoned that since they obviously couldn't trust each other, the State would perform a service by stepping in and forcing everyone to end the practice. Anti-trust litigation is extremely complex, time-consuming, and expensive. The enactment of legislation would relieve the dealers from the burden of paying for legal counsel in an anti-trust action.

It is my understanding that the practice of tying space rentals to sales takes place in Anchorage, Fairbanks, Valdez, Juneau, and Ketchikan, as well as other communities across the state. I am most familiar with the situation in Anchorage. As of last Summer, there were four or five large dealers who had cornered the market of available spaces. I assume the situation has not changed dramatically, although I have heard that the larger dealers are letting the smaller outfits make a few sales from time to time. This is due to a growing concern by the larger dealers over the pending legislation and the Attorney General's investigation.

The smaller dealers have a good deal at stake in a rapid resolution to the problem, but the obvious matter which your committee should address itself to is the effect which this practice has on mobile home consumers. In Anchorage, for example, instead of having dozens of sales outlets competing against each other for sales, there are a few large dealerships which have all the spaces. The price that mobile homes are sold for, now, probably has more to do with the competitive price of conventional home ownership or rentals, than competition among dealers.

This is of particular concern, since the state is experiencing such a crisis in all other areas of housing. The costs of home ownership have skyrocketed beyond the reach of many Alaskans. Rents have also risen dramatically as a result of the housing shortages which plague many areas of the state.

Mobile homes should be an important factor in moderating the effects of the current housing market. Instead, through limited competition, mobile homes have become increasingly more expensive. To illustrate just how expensive mobile homes have become, I am attaching a summary, prepared by AkPIRG, of Anchorage mobile home sales in the month of October 1975 as listed in the trade publication, Alaska Motor Report. The average selling price was $35,000, with many sales over $45,000. (Sales are for the trailer without land).

When space rentals are tied in with the purchase of new sales, consumers cannot shop for used homes from private sellers, purchase the homes from Seattle and pay the shipping, or negotiate a selling price from the wide range of dealers. All the best features of the free enterprise system have been compromised and the protection of a free marketplace has been eliminated. There is no doubt that if tie-ins were made illegal, the result would be substantial price savings to consumers on mobile home purchases.

Not surprisingly, the large mobile home dealers and court operators which have been prospering under the present system are mounting an attack against the proposed legislation. The industry lobbyist, Mr. Ben Marsh, has presented their position before the House Commerce Committee. Anticipating a less than sympathetic response to allegations of anti-competitive practices, Mr. Marsh has tried to present their case in its best light.

This was in the form of an argument that restrictions on mobile home tie-ins would eliminate the development of new mobile home courts. The heart of this argument is the questionable assertion that it is uneconomical to develop new mobile home courts, and that courts are developed by dealers at an economic loss to provide a market for their sales. According to Marsh, dealers are the only ones developing new courts and if they are not allowed to tie in sales to their space rental, they will abandon the court development business.

When this argument was first raised by the industry, my instinct was to accept it at face value, and to think of ways we could compromise on the tie-in question. The more analysis I gave the matter, however, the more illogical it seemed. Demand for mobile home spaces was at the root of the problem. The tie-in situation was a reponse to low vacancy rates and high consumer demand for mobile home sales. People are going crazy in Anchorage and other communities, trying to find spaces for their mobile homes. It is, in fact, almost impossible to rent a mobile home space without purchasing a new mobile home. Why then, couldn't a new mobile home court operator simply charge a higher rent to pay for the increased development costs? As long as it was cheaper to pay the court rental and the mobile home mortgage than to buy a conventional house or rent an apartment, people would continue to buy mobile homes and rent the spaces.

Why was it necessary for Marsh and others to link the survival of the mobile home court industry to the tie-in practice? In my opinion, it was simply the only justification which could be used to defend a practice which flies in the face of fair trade and healthy competition.

According to Marsh's theory, vendors are propping up the court owners by giving them a subsidy, since the court rental business no longer supports itself. I can only assume that the subsidy is paid by the mobile home consumer through increased prices for mobile homes.

Marsh went on to tell the committee that if new courts were forced to pass on the real cost of court development, the rents in all the other spaces would be raised. In other words, it was better to hide the costs in increased mobile home prices than in space rents so the court owners would not be tempted to raise rents in old courts. The fact is that space rents have gone up dramatically in the last two years (from 30% to 50% in many courts). Marsh isn't kidding anyone. No one but no one is subsidizing the mobile home consumers.

The factors which have contributed to an overall shortage of mobile home spaces are many. Planning restrictions and community pressures have discouraged the development of mobile home courts. It's no secret that a mobile home park is not the most welcome addition to a residential neighborhood. These biases against courts, regardless of their merits, have an important effect on the supply factor of spaces.

Administration officials from the Department of Commerce and the Department of Law should be able to provide further information on these points. I strongly urge passage of HB 684 and any other measure designed to deal with the tie-in situation.

Many other problems associated with mobile home court rentals are addressed in HB 829. Probably the most important and most controversial feature of the proposed legislation is the section which limits the court owner's right to evict residents of the court. Sec. 34.03.225 sets out four standards for evictions from courts. Currently, it is the practice of almost every mobile home court in Alaska to rent on a month-to-month basis. Mobile homes are treated like other tenants in the State's Landlord-Tenant law. A resident in a court may be evicted, without cause, on 30 days' notice.

It is not untypical for a mobile home owner to have 20 to 30 thousand dollars tied up in the home they are living in. The cost of moving a mobile home, if you can find a place to move to, runs from $1,000 to $2,000 on the average; or, approximately one to two years' rent in the average court. There is, obviously, very little security for the mobile home owner under the current situation. If I was living in a court, I would think twice about hassling my court manager about deferred maintenance or any other problem if I thought I could risk an eviction. If I was evicted and couldn't find a place to move the trailer to, I would be out a good deal of money. These aren't hypothetical situations, but everyday problems for the dwellers in mobile home courts.

HB 829 recognizes the unique situation of mobile home dwellers. The proposed legislation is a recognition that it is a bit more complex than throwing your clothes in a suitcase and into the back of a VW if you get evicted from a mobile home court.

By giving a home owner rights against no-cause eviction, another important problem is addressed. The main problem in the financing of mobile homes is the short amortization period of the loans. If mobile homeowners have better security for their investment, banks would have better security for their loans. This added security could result in longer loan terms and lower monthly payments.

The other features of HB 829 are important, fair, and largely unopposed. Passage of both HB 829 and HB 684 would go a long way to correct long-standing problems in the mobile home industry.

ATTACHMENTS

Article in Anchorage Daily News
Pam Milsap - "Dealers Gobble Trailer Lots"

Anchorage Area Mobile Home Sales
Alaska Motor Report October 1975

July 8, 1975 Letter to Attorney General

Letter by J. Harold Michal
11-10-75 Complaint against tie-in