

WILLIAM BRAVERMAN, et al.

*Plaintiff*

v.

STATE OF MARYLAND

*Defendant*

\* IN THE

\* CIRCUIT COURT

\* FOR

\* ANNE ARUNDEL COUNTY

\* CASE NO.: 02-C-07-126810

\* \* \* \* \*

MEMORANDUM OPINION AND ORDER

This matter came before the Court on December 14, 2011 on the Plaintiffs' and Defendant's cross-motions for summary judgment. The Court heard the arguments of counsel at that time. The Court held the matter *sub curia*.

**BACKGROUND**

The issues in this case stem from a series of articles published by the Baltimore Sun in 2006. The articles discussed some issues facing Baltimore City residents who were subject to ground leases or rents.<sup>1</sup> In response to the perceived problem, the Maryland General Assembly took action and enacted a series of reforms to the ground lease system. The particular law at issue in this case concerns Chapter 286 of the 2007 Laws of Session. 2007 Md. Laws ch. 286. This particular provision attempted to substitute one remedy of ground rent holders, ejectment and re-entry, for another, lien creation and foreclosure.

This case, through the plaintiffs' complaint, asked the following question: whether Chapter 286 constitutes an unconstitutional taking, by eliminating all of the property's economic value and substantially diminishing the property's value, and abrogated vested

<sup>1</sup> The history of the ground rent system was discussed and examined extensively by the Maryland Court of Appeals in Muskin v. State Department of Assessments and Taxation, 30 A.3d 962, 2011 Md. LEXIS 644, 3-5 (Md. Oct. 25, 2011).

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rights under the Maryland Constitution? When this case was filed, there was no Maryland case on point directly answering this question. That changed after the Court of Appeals of Maryland decided a similar case dealing with Chapter 290 of the 2007 Laws of Session. See Muskin, 30 A.3d 962, 2011 Md. LEXIS 644 (Md. Oct. 25, 2011). In light of Muskin, both parties have moved this Court for summary judgment.<sup>2</sup>

#### DISCUSSION

The Maryland Constitution, echoing the United States Constitution, prohibits the legislature from enacting any "[l]aw authorizing private property to be taken for public use without just compensation, as agreed upon between the parties, or awarded by a jury, being first paid or tendered to the party entitled to such compensation." MD. CONST. art. III, § 40. Maryland grants further protection to property owners. Under the Maryland Declaration of Rights, "no man ought to be...in any manner, destroyed, or deprived of his life, liberty or property, but by...the Law of the land." MD. DECL. OF RIGHTS, art. 24. Both the Maryland Constitution and Declaration of Rights expound a fundamental notion underlying any free society; government must uphold and protect the inalienable right to own property. As John Adams stated succinctly, "property is surely a right of mankind as real as liberty."

In seeking to answer the ultimate question in this case, the Court must first answer a threshold question: does a ground lease holders' action for ejectment and re-entry upon the property subject to the ground lease constitute a vested right or a mere remedy? The Plaintiffs argue that ejectment and re-entry are vested rights indivisible from the unique and historical anomaly of ground leases and as such cannot be abrogated. The State, on the other hand, argues ejectment and re-entry are mere remedies that can be altered at the legislature's whim.

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<sup>2</sup> The Plaintiffs request that the Court grant partial summary judgment in their favor as to counts five (5) and six (6) of the Third Amended Complaint. The Defendant has moved for summary judgment in their favor on all counts.

While the parties disagree about whether ejectment and re-entry are rights or remedies, both parties agree that the answer lies in Muskin, 30 A.3d 962, 2011 Md. LEXIS 644 (Md. Oct. 25, 2011).

The Plaintiffs argue that the Court of Appeals spoke beyond the facts of Muskin and directed this Court's opinion in this case. The court's language indicating that "the right to re-enter the property or eject the leaseholder secure[s] the ground rent owner's future enjoyment of ground rental income" should be sufficiently dispositive. Muskin, 30 A.3d 962, 2011 Md. LEXIS at 22. "There can be no reasonable doubt that the reversionary interest to real property and the contractual right to receive ground rent are vested rights under Maryland law." Muskin, 30 A.3d 962, 2011 Md. LEXIS at 22 (citing to Heritage Realty, Inc. v. Mayor & City Council of Balt., 252 Md. 1, 11, 248 A.2d 898, 904 (1969)). The Plaintiffs also argue that footnote nine (9) in the Muskin opinion is dispositive and bolsters their position. 30 A.3d 962, 2011 Md. LEXIS at 20, n.9. Footnote nine (9) states:

The SDAT acknowledges that the contractual right under the ground rent lease may be considered a vested property right, but argues strenuously that the reversionary interest is not vested. *We conclude that the two rights are so intertwined that they should not be analyzed separately. Even if they were analyzed separately, to determine one right is vested is to find Chapter 290's extinguishment scheme flawed fatally.* (emphasis added)

The State disagrees and argues this footnote only pertains to the limited discussion of vested rights involved in Chapter 290. Chapter 290 dealt with both the contractual and property rights of ground lease holders. Under Chapter 290, the two rights could not be separated because the contractual rights of the ground lease holder, to collect rent, and the property rights of the ground lease holder, to own a ground lease, were both unconstitutionally taken by the State if a ground lease holder failed to register their ground

lease. Muskin, 30 A.3d 962, 2011 Md. LEXIS at 30 ("the General Assembly does not have the power to fix even an assertedly broken system, or eliminate it altogether, by transferring a ground rent owner's reversionary interest to a leaseholder without just compensation. Real property and contractual rights form the basis for economic stability..."). Unlike Chapter 290, Chapter 286 merely substitutes one remedy, ejectment and re-entry, for another, creation of a lien and foreclosure. Therefore, for purposes of analyzing the contractual and property rights involved in Chapter 286 the same indivisibility does not apply.

The State's argument parses out the contractual right of ground lease holders to collect rent and, in the event of default, eject and re-enter the property, from the property right to own a ground lease. If these rights can be pried apart, the State stands on solid ground. The Court of Appeals indicated in Muskin that "the Legislature has the power to alter rules of evidence and remedies, which in turn allows statutes of limitations and evidentiary statutes to affect vested property rights." Muskin, 30 A.3d 962, 2011 Md. LEXIS at 23. This power is an exception to the general prohibition against retrospective abrogation of vested rights.

The problem, for the State, is that the Court of Appeals did not limit their discussion of a ground lease holder's vested rights to a footnote or find that the legislature's exceptional power concerning rules of evidence or remedies applied. In fact, the Court of Appeals did the opposite. Muskin, 30 A.3d 962, 2011 Md. LEXIS at 23 ("the vested rights in the present case are distinguishable from the remedies and evidence rules in these cases."). If there was any ambiguity as to which vested rights the Court of Appeals was referring to with that statement, the Court made it clear. The bundle includes:

[A] contractual right to receive ground rent payments and the reversionary interest to re-enter the property in the event of a default or if the leaseholder fails to renew. These two rights cannot be separated one from the other; together they are the

essence of this unique property interest, and as such, vested rights analysis must consider them together.

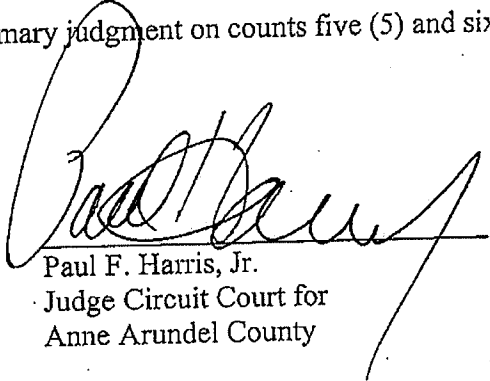
Muskin, 30 A.3d 962, 2011 Md. LEXIS at 20.

Based on the Court of Appeals decision in Muskin, the Court can reach only one logical conclusion; the bundle of vested rights involved in ground leases includes the vested rights of ejectment and re-entry upon default of a ground lease. These vested rights include "that which is regarded as a property right under Maryland property law." Dua v. Comcast Cable of Md., 370 Md. 604, 631, 805 A.2d 1061, 1077 (2002). As Maryland property law regards ground leases as property rights, the Maryland Constitution and Declaration of Rights protect these rights from a governmental taking absent just compensation. Muskin, 30 A.3d 962, 2011 Md. LEXIS at 21-22; See MD. CONST. art. III, § 40; MD. DECL. OF RIGHTS, art. 24. Chapter 286 makes no provision for just compensation to ground lease owners for the State's taking of their vested property rights. Therefore, Chapter 286 of the 2007 Laws of Session is unconstitutional, as it effects an unconstitutional taking of ground lease holder's property.

#### CONCLUSION

For the foregoing reasons and review of the file, it is this 20 day of December, 2011, by the authority of the Circuit Court for Anne Arundel County, State of Maryland, hereby

**ORDERED**, that the Plaintiffs' Motion for Partial Summary Judgment is hereby **GRANTED** and the Plaintiffs are entitled to summary judgment on counts five (5) and six (6) of the Third Amended Complaint.

  
Paul F. Harris, Jr.  
Judge Circuit Court for  
Anne Arundel County