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IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

LOURDES MCINTOSH, on behalf of Herself and all others similarly situated,

Plaintiff,

v.

MISSILE VIEW MHP, LLC,

Defendant.
_______________________________________/

Case No.: 05-2022-CA-056512

CLASS REPRESENTATION

FINAL JUDGMENT FOR PLAINTIFFS
LOURDES MCINTOSH AND THE CERTIFIED CLASS

THIS CAUSE came before the Court on February 4, 2025, for consideration of Plaintiff Lourdes McIntosh's Motion for Partial Summary Judgment on Defendant's liability as to Counts I and II of the First Amended Complaint, and Defendant Missile View MHP, LLC's Motion for Summary Judgment on all counts. Plaintiff was represented by George Gingo, Esq. and James Orth, Esq. Defendant was represented by Alyssa Nohren, Esq. and Tyson Pulsifer, Esq. Upon due consideration of the pleadings, motions, supporting documentation, arguments of counsel, and the record in this certified class action, the Court hereby makes the following **FINDINGS**:

I. Mobile Home Park Regulatory Framework and Tenant-Landlord Relationship

1. Mobile home parks in Florida are regulated under Florida Statutes §723, et seq., which was enacted to provide stability and transparency in mobile home park operations. This statute governs the relationship between park owners and tenants.

2. A prospectus is required in a Florida mobile home park to ensure fairness and predictability in the landlord-tenant relationship. By mandating the clear disclosure of rental terms, fees, and services upfront, the law seeks to prevent abrupt changes that could leave mobile home owners without viable housing options. This requirement is reinforced by Florida Statutes § 723.031(4), which mandates a minimum one-year lease term for mobile home lots. Unlike apartment tenants, who may rent on a month-to-month basis and face eviction with minimal notice, mobile home park residents benefit from greater stability. This statutory safeguard prevents park owners from arbitrarily evicting tenants or making sudden lease changes that could result in displacement.

3. The necessity of these protections stems from the unique challenges mobile home owners face when forced to relocate. Unlike traditional renters, mobile home park tenants typically own their homes while leasing the land beneath them. However, moving a mobile home is often impractical or even impossible due to stringent safety regulations, road compliance issues, and the difficulty of finding a new park willing to accept relocated units. Recognizing these challenges, Florida Statutes § 723.004 states:

> "The Legislature finds that there are factors unique to the relationship between a mobile home owner and a mobile home park owner. Once occupancy has commenced, unique factors can affect the bargaining position of the parties and can affect the operation of market forces. Because of those unique factors, there exist inherently real and substantial differences in the relationship which distinguish it from other landlord-tenant relationships. *The Legislature recognizes that mobile home owners have basic property and other rights which must be protected.* The Legislature further recognizes that the mobile home park owner has a legitimate business interest in the operation of the mobile home park as part of the housing market and has basic property and other rights which must be protected. This chapter is created for the purpose of regulating the factors unique to the relationship between mobile home owners and mobile home park owners in the circumstances described herein."

(Emphasis added)

4. Florida law establishes a two-step, ordered process for amending a Prospectus before a mobile home park owner can increase lot rental amounts or decrease services. A reduction in services, such as eliminating the inclusion of 5,000 gallons of water in the base lot rent, is treated similarly to a rent increase under Florida law and must follow the same statutory process to ensure fairness and transparency.

5. First, the park owner must obtain approval of an amended Prospectus from the Florida Division of Condominiums, Timeshares, and Mobile Homes. According to Florida Statutes § 723.031(7), "*No park owner may increase the lot rental amount until an approved prospectus has been delivered if one is required.*" (Emphasis added) Additionally, Florida Administrative Code Rule 61B-31.001(12) states, "*The park owner shall deliver the prospectus to existing home owners prior to the renewal of their rental agreements, or prior to entering into a new rental agreement, or prior to increasing the lot rental amount or decreasing services.*" (Emphasis added)

6. Second, once an amended Prospectus is approved, the park owner must properly deliver it to all affected tenants before any changes can take effect. Florida Statutes § 723.037(1) states, "*A park owner shall give written notice to each affected mobile home owner and the board of directors of the homeowners 'association, if one exists, at least 90 days before any increase in lot rental amount or reduction in services or utilities provided by the park owner or any change in rules and regulations.*" (Emphasis added)

7. These requirements ensure that tenants receive advance notice and an opportunity to adjust to changes in rental costs or available services, preventing arbitrary or unexpected financial burdens on mobile home park residents.

8. Furthermore, Florida law treats the Prospectus and Lot Rental Agreement as a single, binding contractual document. Florida Statutes § 723.031(10) affirms this by stating, "*The rules and regulations and the prospectus shall be deemed to be incorporated into the rental agreement.*" (Emphasis added) This means that rent increases and service reductions must adhere to the procedures outlined in the governing Prospectus and Florida law before they become effective.

9. The Florida courts have further clarified this relationship in Tara Woods SPE, LLC v. Cashin, 116 So. 3d 492, 498–99 (Fla. 2d DCA 2013). In that case, the court held that "The Act makes the prospectus part of the contract between the mobile home park owner and the mobile home owner, ..." The court emphasized that while the Prospectus governs park operations, it must be interpreted in conjunction with statutory provisions and lease agreements, ensuring that any modifications adhere strictly to Florida law and regulatory guidelines. This ruling reinforces the principle that park owners cannot unilaterally alter rental terms without following the statutory amendment process for Prospectuses and rental agreements.

II. Relationship between Missile View Mobile Home Park and its Tenants

A. 2014 Prospectus and Incorporated Lot Rental Agreement

10. Missile View Mobile Home Park (MVMHP) is a 115-unit mobile home park located in Brevard County, Florida, designated as a housing community for residents aged 55 and older. The park is governed by a Prospectus, which sets forth the rights and obligations of both the park owner and the tenants. For purposes of this action, the original governing document for the community is the 2014 Prospectus, which, along with its incorporated Lot Rental Agreement, was approved by the Florida Division of Condominiums, Timeshares, and Mobile Homes. This document was publicly posted in the community recreation room and made available to all tenants at the time of their tenancy. The 2014 Prospectus serves as the controlling agreement between the tenants and the park owner, establishing the terms under which lot rentals are provided and outlining the services included within the base lot rent. Among its key provisions, the 2014 Prospectus explicitly states that the base lot rent includes up to 5,000 gallons of water per month per unit, with any excess usage billed separately at cost. Specifically, Sections 7.01 and 8.03 of the 2014 Prospectus state in relevant part, respectively (at pages 7-8 and 17 of the 2014 Prospectus):

> **7.01 Water**
> *The cost of water and sewage up through 5,000 gallons of water consumption per lot per month is included in the base rent. Sewer is billed with the water and the cost is based upon a percentage of water consumption. Consumption of water and sewage in excess of 5,000 gallons per month per lot is billed separately to that lot at the actual cost to the Park.* (2014 Prospectus, p. 7-8)

> **8.03 Base Lot Rent, Special Use Fees, Pass-Through Charges**

And Ad Valorem Tax and Utility Charges

...

The services presently included in base lot rent are:

...

(e) Water and sewer (up through 5,000 gallons of water and sewer charge based thereon per month). (2014 Prospectus, p. 17)

11. Plaintiff Lourdes McIntosh has been a resident of Missile View Mobile Home Park (MVMHP) since 2016, during which time the park was owned and operated by an entity other than the Defendant. She owns her mobile home but leases the lot on which it sits. As an elderly individual on a fixed income, she depends on the stability and predictability of her rental terms. Like other residents, she was provided a copy of the 2014 Prospectus upon moving into the park, which established the governing terms of her tenancy. However, it was the park's policy not to require tenants to execute the incorporated Lot Rental Agreement, and as a result, neither she nor other tenants signed it.

12. On June 24, 2020, Defendant Missile View MHP, LLC ("Defendant") acquired ownership and operational control of MVMHP. The Defendant continued its predecessor's long-standing practice of not requiring signed leases, instead operating under the 2014 Prospectus and its incorporated Lot Rental Agreement as the governing documents for all tenants. The Defendant expressly acknowledged that the 2014 Prospectus and Lot Rental Agreement governed the tenancy and further confirmed that copies of these documents remained publicly posted in the community recreation room for tenant access.

13. Despite the absence of signed leases, both the tenants and the park owner consistently adhered to the terms set forth in the 2014 Prospectus for years, operating under the mutual understanding that the 2014 Prospectus and its incorporated Lot Rental Agreement governed their tenancy. The tenants relied on these established terms when making their monthly payments, with the reasonable expectation that the park owner would not impose additional charges beyond those disclosed in the 2014 Prospectus. The park owner continuously honored these terms by accepting rent payments without separately billing for water usage below 5,000 gallons per month. The prior park owner's long-standing compliance with these terms, combined with the Defendant's continued recognition of the 2014 Prospectus as controlling, further reinforces that the 2014 Prospectus governed the contractual relationship between the parties. This uninterrupted reliance and mutual performance by both the tenants and successive park owners underscores the binding nature of the 2014 Prospectus, establishing it as the operative agreement dictating the financial and operational obligations between the parties.

14. The Defendant bills tenants for water and sewer usage mid-month, covering water consumed during the last half of the prior month and the first half of the current month. The Defendant acknowledged and admitted that it posts these monthly bills on tenants' doors.

B. The 90-day Notice of Change in Rent and Services and its effects

15. On September 30, 2020, Defendant issued a "90-Day Notice of Lot Rental Amount Increase and Reduction of Services or Utilities" to Plaintiff and other residents. The notice

informed tenants that, effective January 1, 2021, water and sewer charges for usage below 5,000 gallons per month would no longer be included in the base rent and would instead be billed separately based on monthly water meter readings.

16. However, because Defendant's billing practice spans two months, even if a 90-day notice could legally modify the lease terms, the earliest permissible charge under the new policy would have been on or after February 1, 2021—when Defendant could have first issued a bill reflecting water usage solely from January 2021 onward.

17. On December 15, 2020, Defendant issued a bill to all tenants for water used from November 17, 2020, through December 15, 2020. This bill, which is central to Count 1 of the First Amended Complaint, unlawfully charged tenants for water usage below the 5,000-gallon threshold, which was explicitly included in the 2014 Prospectus. Plaintiff received a bill for $28.73, reflecting a usage of only 463 gallons.

18. On January 14, 2021, Defendant issued another bill to all tenants for water used from December 16, 2020, through December 31, 2020. This bill, which is central to Count 2, again unlawfully imposed charges on tenants for water usage below the 5,000-gallon threshold in direct violation of the 2014 Prospectus. Plaintiff received a bill for $26.19, reflecting a usage of only 236 gallons.

19. Upon receiving these improper bills, Plaintiff and other tenants immediately objected, citing the 2014 Prospectus, which explicitly included 5,000 gallons of water in base rent. Rather than addressing the tenants 'valid concerns, Defendant's former park manager, Debbie Lyon, threatened tenants with eviction if they refused to pay the unlawful charges. This threat, made on behalf of Defendant and its management company, Leaseco Management, left tenants—particularly elderly and fixed-income residents—feeling coerced into making payments under duress.

20. Along with Plaintiff Lourdes McIntosh, ninety-six other tenants were improperly charged for water usage below 5,000 gallons per month in the December 15, 2020 bill (Count 1) and the January 14, 2021 bill (Count 2). These charges were in direct violation of the 2014 Prospectus and Lot Rental Agreement, both of which explicitly included up to 5,000 gallons of water in base rent.

C. Approval of the 2021 Amended Prospectus

21. On August 30, 2021, Defendant obtained approval from the Florida Division of Condominiums, Timeshares, and Mobile Homes for an amended Prospectus that purported to eliminate the provision including 5,000 gallons of water in the base lot rent. However, despite securing approval for this amendment, the Defendant failed to ensure internal consistency within the 2021 Amended Prospectus. Specifically, while the amendment sought to remove the provision covering 5,000 gallons of water in base rent, the final approved document still retained language explicitly stating that such water usage remained included in the base rent. This contradiction, appearing on pages 19-20 of the 2021 Amended Prospectus, states:

"The services presently included in base lot rent are:

...

(e) Water and sewer (up through 5,000 gallons of water and sewer charge based thereon per month)."

22. The 2021 Amended Prospectus was drafted by the Defendant, and any ambiguities contained within it must be construed against the Defendant as the drafter. Under Seifert v. U.S. Home Corp., 750 So. 2d 633, 641 (Fla. 1999), the Florida Supreme Court held:

> "Under a well-established rule of construction, we are constrained to construe the provisions of the U.S. Home contract against its drafter, U.S. Home."

This principle of construing ambiguous contract provisions against the drafter, is further reinforced by CTC Dev. Corp., 720 So. 2d at 1076, and Prudential Prop. & Cas. Ins. Co. v. Swindal, 622 So. 2d 467, 470 (Fla. 1993).

23. The continued inclusion of the 5,000-gallon water provision in the 2021 Amended Prospectus, despite Defendant's claim that it had been removed, creates a clear ambiguity that must be resolved in favor of the tenants. Florida law mandates that a contract must be interpreted as a whole, giving effect to all provisions in a manner that is consistent and reasonable. Since the 2021 Amended Prospectus still contains explicit language stating that 5,000 gallons of water remain included in base rent (pages 19-20), this provision must govern the tenancy and override Defendant's unilateral claims to the contrary.

24. The presence of this conflicting language further demonstrates that even after receiving regulatory approval for the amendment, Defendant continued to maintain a legal obligation to provide the first 5,000 gallons of water at no additional cost. Defendant's failure to fully implement its proposed changes in a legally effective manner invalidates its unilateral imposition of separate water charges on tenants.

D. The litigation

25. On December 14, 2022, Plaintiff, on behalf of herself and all similarly situated tenants, initiated this class action lawsuit to challenge Defendant's unlawful billing practices. Subsequently, on January 24, 2023, Plaintiff filed the First Amended Complaint, asserting fourteen distinct causes of action. Counts 1 through 13 allege violations of the Florida Consumer Collection Practices Act (FCCPA), each corresponding to a separate monthly billing statement issued to tenants between December 2020 and December 2021. These claims contend that Defendant knowingly and unlawfully charged tenants for water usage below the 5,000-gallon threshold that was explicitly included in base lot rent under the 2014 Prospectus.

26. Count 14 asserts that Defendant's actions violated the statutory duty of good faith and fair dealing under Florida Statutes § 723.021. Specifically, Plaintiff alleges that Defendant's premature and unauthorized imposition of water charges—before obtaining an approved and properly implemented amended Prospectus—was conducted in bad faith and with disregard for both the governing contract and the statutory protections afforded to mobile home park residents.

Further, the Defendant's coercive tactics, including threats of eviction against tenants who objected to the unlawful charges, underscore its failure to act in good faith. As a result, Plaintiff seeks redress for herself and similarly situated tenants who were improperly charged and subjected to undue financial hardship due to Defendant's unlawful billing practices.

27. On November 6, 2023, the Court certified the class, defining it as:

> All tenants of Defendant Missile View MHP LLC, who used less than 5,000 gallons of water during each monthly billing period from December 15, 2020, through December 1, 2021, and who actually paid Defendant Missile View MHP, LLC for water use and sewage during those specified months.

III. Summary Judgment Standard:

28. Under Florida law, summary judgment is governed by the directed verdict standard, meaning the moving party must demonstrate that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." (*In re Amendments to Florida Rule of Civil Procedure 1.510*, 317 So. 3d 72 (Fla. 2021)). The burden at summary judgment lies with the party that has the burden of proof at trial. If the nonmoving party must prove a fact to prevail at trial, the moving party can either produce evidence disproving that fact or point out that the nonmoving party lacks the evidence necessary to prove it (Celotex Corp. v. Catrett, 477 U.S. 317 (1986)). Additionally, courts are permitted to weigh the evidence as a reasonable jury would in assessing the plausibility of inferences relied upon by the non-moving party (Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)).

IV. Counts 1 & 2

29. In Read v. MFP, Inc., 85 So. 3d 1151, 1154 (Fla. 2d DCA 2012), the court stated:

> "To show a violation of section 559.72(9), 'it must be shown that a legal right that did not exist was asserted and that the person had actual knowledge that the right did not exist."

A. A legal right that did not exist was asserted

30. For purposes of Plaintiff's Motion for Partial Summary Judgment as to liability on Counts 1 and 2, the Court finds that, despite the absence of individually signed lease agreements between the tenants and Defendant, the controlling lease terms are those set forth in the 2014 Prospectus and its incorporated Lot Rental Agreement. Florida law requires that mobile home park tenancies be governed by an approved prospectus, which must incorporate a minimum one-year lease agreement. This statutory requirement further reinforces that the 2014 Prospectus and Lot Rental Agreement constitute the binding lease terms for tenants. This conclusion is also supported by Defendant's long-standing acknowledgment of the 2014 Prospectus as the operative document governing tenant obligations, its continued posting of the document in the community recreation room for public access, and the consistent practice of tenants paying rent in accordance with its provisions—including the expectation that up to 5,000 gallons of water usage

per month would be included in base rent. Furthermore, Defendant accepted rental payments under these terms without objection, reinforcing the mutual understanding between the parties that the 2014 Prospectus and its incorporated Lot Rental Agreement governed the tenancy.

31. The Court further finds that Defendant unlawfully asserted a non-existent legal right to charge tenants for water usage below 5,000 gallons per month for the billing periods of November 17, 2020, through December 15, 2020 (Count 1), and December 16, 2020, through December 31, 2021 (Count 2). At all relevant times, Defendant was bound by the express terms of the 2014 Prospectus, which unequivocally stated:

> "The cost of water and sewage up through 5,000 gallons of water consumption per lot per month is included in the base rent."

32. Despite this binding contractual provision, Defendant improperly billed tenants, including Plaintiff and other class members, for water usage below this threshold before obtaining a legally effective amendment to the governing Prospectus. The Court therefore finds that Defendant's actions violated the tenants 'contractual rights under the 2014 Prospectus and constituted an unlawful assertion of a non-existent legal right in violation of the FCCPA.

B. Defendant had actual knowledge that the right did not exist.

33. The Court finds that Defendant had actual knowledge that it lacked legal authority to impose separate water charges on tenants for usage below 5,000 gallons per month in both the December 15, 2020 bill, which invoiced tenants for water used from November 17, 2020, through December 15, 2020 (Count 1), and the January 14, 2021 bill, which invoiced tenants for water used from December 16, 2020, through December 31, 2020 (Count 2). Multiple facts confirm Defendant's awareness of this legal limitation:

a. Defendant had followed this same rental structure for at least five years (2016-2020) without separately billing for water usage below 5,000 gallons. The sudden change, without first amending the prospectus, confirms Defendant's awareness that its actions were improper.

b. Defendant began issuing separate water charges in December 2020, nearly a year before the 2021 Amended Prospectus was approved (August 30, 2021) and delivered to tenants (December 2, 2021). Because § 723.031(7), Florida Statutes, prohibits increasing rent until an amended prospectus is approved and delivered, Defendant knew it was implementing an unenforceable billing change.

c. Furthermore, § 723.037, Florida Statutes, requires park owners to provide at least 90 days 'written notice before increasing rent or reducing services. Even under Defendant's September 30, 2020, notice, separate water charges were not set to begin until January 1, 2021. Since Defendant's billing cycle spans two months, the earliest lawful bill reflecting this change should have been February 1, 2021, yet Defendant improperly began billing for water in December 2020, before the notice period expired.

d. Beyond improper billing, Defendant coerced tenants into paying by threatening eviction for non-payment. In December 2020, when tenants, including Plaintiff, objected, Defendant's property manager, Debbie Lyon, threatened eviction if they did not pay. These payments were made under duress, demonstrating Defendant's intent to enforce an unlawful charge through intimidation rather than a legitimate contractual right.

V. Defendants Motion for Summary Judgment

A. Counts 1 and 2 – No Material Factual Disputes

34. As to Counts 1 and 2, the Court finds no genuine issue of material fact precluding summary judgment. The 2014 Prospectus, including its incorporated Lot Rental Agreement, remains the controlling and enforceable contract between the parties.

35. Defendant relies on its September 30, 2020, 90-day notice as the operative document modifying the contractual relationship. However, by its own terms, the notice did not take effect until January 1, 2021. Since Counts 1 and 2 involve billing that occurred before January 1, 2021, Defendant's reliance on the notice is legally misplaced. Accordingly, summary judgment in Plaintiff's favor is appropriate unless the affirmative defenses preclude judgment.

B. Counts 3 through 14 – Factual Disputes Remain for Trial

36. Plaintiff has not moved for summary judgment on Counts 3 through 14. These counts are predicated on whether the Defendant successfully modified the prior lease terms to eliminate the inclusion of 5,000 gallons of water in base rent.

37. A factual dispute remains as to whether the contract still entitles tenants to 5,000 gallons of water in base rent, given that pages 19-20 of the 2021 Amended Prospectus state:

> "The services presently included in base lot rent are:
>
> . . .
>
> (e) Water and sewer (up through 5,000 gallons of water and sewer charge based thereon per month)."

38. Because this ambiguity exists within the governing contract, the issue must be resolved at trial to determine whether Defendants actions with regard to its 90-day notice and the amendment of its 2021 Prospectus validly removed the water allowance or whether the original provision remains binding such that the tenants are still entitled to receive 5,000 gallons of water in base lot rent.

C. Defendant's Evidence Fails to Meet Summary Judgment Standard

39. Defendant's evidence does not rise to the level that a reasonable jury would conclude judgment should be granted in its favor. The conflicting contract terms, coupled with Defendant's failure to establish that the amendment lawfully eliminated the 5,000-gallon water

allowance, prevent the Court from granting summary judgment for Defendant. Accordingly, the only remaining issue for the Court to determine at this stage is whether Defendant's affirmative defenses preclude summary judgment in favor of Plaintiff on Counts 1 and 2.

D. Affirmative Defenses

First Affirmative Defense – Failure to State a Cause of Action Under the FCCPA.

40. Defendant contends that the Florida Consumer Collection Practices Act (FCCPA) does not apply because it had a legal right to bill for water usage below 5,000 gallons per month after providing a 90-day notice in accordance with Florida Statutes § 723.037. However, this defense is both factually and legally deficient for multiple reasons. Under Read v. MFP, Inc., 85 So. 3d 1151 (Fla. 2d DCA 2012), a violation of the FCCPA is established when:

1. A party asserts a legal right that does not exist; and
2. The party has actual knowledge that the right does not exist.

Here, both elements are met because Defendant prematurely billed tenants for water usage before the 90-day notice could take effect, rendering the charges unauthorized, and failed to comply with the mandatory two-step statutory process required to modify lease terms under Florida law, making its assertion of a right to impose separate water charges legally invalid.

41. First, even assuming, arguendo, that Defendant's 90-day notice effectively modified the terms of the 2014 Prospectus and its incorporated Lot Rental Agreement, the earliest possible date Defendant could have lawfully imposed separate water charges was February 1, 2021. This is due to Defendant's own billing cycle, which spans two months. As a result, the January 14, 2021 bill included water usage charges from December 2020, making it impossible for the 90-day notice to justify the charges at issue in Counts 1 and 2, both of which arise from Defendant's premature billing for water used in 2020.

42. Second, Defendant's reliance on the 90-day notice alone is legally inadequate for multiple reasons:

1. Its earliest possible effective date would have been February 1, 2021, but Defendant altered the billing structure prior to that date, meaning it did so without the authority of an effective 90-day notice.

2. Florida law mandates a two-step process before a mobile home park owner can increase rent or reduce services. Under Florida Statutes §§ 723.031(7) and 723.037, a park owner must:

    a. Obtain approval of an amended Prospectus from the Florida Division of Condominiums, Timeshares, and Mobile Homes; and
    b. Deliver the approved Prospectus to all affected tenants before implementing any changes.

43. Because Defendant failed to satisfy these statutory prerequisites, its unilateral billing of tenants in December 2020 was unlawful, thereby satisfying both elements of an FCCPA violation.

44. Defendant knowingly asserted a non-existent legal right by billing for water without a legally enforceable amendment to the 2014 Prospectus, making this affirmative defense untenable as a matter of law.

Second Affirmative Defense – Failure to State a Cause of Action Under § 723.021

45. Defendant contends that Plaintiff's claim under Florida Statutes § 723.021 (obligation of good faith and fair dealing) fails because no statutory duty was breached. This defense is misplaced and fails for multiple reasons.

46. First, Plaintiff's Motion for Partial Summary Judgment does not seek judgment on Count 14, which alleges a violation of § 723.021. Defendant's argument that Plaintiff has failed to state a cause of action under this statute is irrelevant to the present motion, as the Court is not being asked to rule on this claim at this stage. Instead, the issue of Defendant's breach of its duty of good faith and fair dealing remains a question of fact for trial.

47. Second, even assuming this argument were relevant, Defendant's failure to comply with the statutory requirements of Florida Statutes § 723.031(7) and § 723.037 constitutes a breach of the duty of good faith and fair dealing. Specifically, these statutes require:

1. Prior approval of an amended Prospectus by the Florida Division of Condominiums, Timeshares, and Mobile Homes before reducing services or increasing lot rental amounts; and
2. Delivery of the amended Prospectus to tenants before any changes take effect.

Defendant did not comply with either of these statutory requirements before implementing separate charges for water in December 2020. Instead, Defendant unilaterally imposed these charges before obtaining approval of the 2021 Amended Prospectus on August 30, 2021, and before delivering it to tenants on December 2, 2021.

48. Third, Defendant's conduct went beyond mere procedural missteps; it actively misled tenants into believing these charges were legitimate. Debbie Lyon, Defendant's park manager, threatened eviction for nonpayment, further evidencing bad faith. The Florida Supreme Court has held that where statutory protections exist, failure to adhere to them constitutes evidence of bad faith. Here, Defendant's coercive tactics and premature billing without following required legal procedures amount to an abuse of its position and a clear violation of its obligation of good faith and fair dealing. Accordingly, this affirmative defense lacks merit as a matter of law and does not preclude Plaintiff's claim under § 723.021.

Third Affirmative Defense – Compliance with the Florida Mobile Home Act

49. Defendant's claim that it complied with the Florida Mobile Home Act (Fla. Stat. § 723) is legally and factually flawed. Under Fla. Stat. §§ 723.031(7) and 723.037, rent increases and reductions in services require both (1) prior approval of an amended Prospectus and (2) a 90-day notice after approval. Defendant failed to obtain an amended Prospectus before billing tenants in December 2020, rendering its reliance on a 90-day notice invalid.

50. Defendant's amended Prospectus was not approved until August 30, 2021, nor delivered to tenants until December 2, 2021, yet Defendant billed separately for water as early as December 2020. Because Fla. Stat. § 723.031(7) prohibits rent increases or service reductions without an approved and delivered amended Prospectus, Defendant's actions were unlawful.

51. Even if the September 30, 2020, 90-day notice was valid, the earliest lawful billing date would have been February 1, 2021. However, Defendant's December 2020 and January 2021 bills included water charges from 2020, meaning the notice had no legal effect on these charges. Defendant's own billing cycle contradicts its compliance claim, as it spans two months, proving that the charges in Counts 1 and 2 were premature and unlawful.

52. Despite claiming that water usage below 5,000 gallons was removed from base rent, the 2021 Amended Prospectus explicitly states that 5,000 gallons of water remain included Motion. If Defendant truly intended to eliminate this provision, it would have removed it before seeking approval. The continued inclusion of this language creates ambiguity, which must be construed against Defendant as the drafter (Seifert v. U.S. Home Corp., 750 So. 2d 633, 641 (Fla. 1999)).

53. Defendant argues that tenants failed to form a committee or petition regulators, but this is irrelevant. The law places the burden on the park owner to comply with statutory requirements before modifying rental terms (Tara Woods SPE, LLC v. Cashin, 116 So. 3d 492, 498–99 (Fla. 2d DCA 2013)). Tenant inaction does not cure Defendant's failure to follow the law.

54. In Read v. MFP, Inc., 85 So. 3d 1151 (Fla. 2d DCA 2012), the court held that asserting a non-existent legal right violates the FCCPA. Here, Defendant billed tenants for water in December 2020 before obtaining regulatory approval, making its charges unlawful.

55. Defendant billed separately for water before obtaining approval of an amended Prospectus, violating Fla. Stat. § 723.031(7). The 90-day notice did not authorize charges from December 2020, as its effective date was January 1, 2021. The 2021 Amended Prospectus still includes 5,000 gallons of water in base rent, contradicting Defendant's claim that it was removed. Florida law prohibits asserting non-existent legal rights, making Defendant's billing practices unlawful. Accordingly, Defendant's Third Affirmative Defense fails as a matter of law.

Fourth & Fifth Affirmative Defense – Failure to Exhaust Administrative Remedies

56. Defendant asserts that Plaintiff failed to exhaust administrative remedies under Fla. Stat. § 723.037 by not forming a committee to challenge the billing change or requesting mediation. Defendant argues that Plaintiff was required to follow the statutory dispute resolution procedures before filing suit.

57. Florida's FCCPA does not require administrative exhaustion before a claim can be brought. Defendant conflates the procedural requirements for rent increases under the Mobile Home Act (MHA) with the consumer protection provisions of the FCCPA, which operates independently of Chapter 723. Courts have repeatedly held that where a statutory violation exists, exhaustion of administrative remedies is not a prerequisite to filing suit(Read v. MFP, Inc., 85 So. 3d 1151, 1154 (Fla. 2d DCA 2012)). Counts 1 and 2 are FCCPA claims, and Defendant's attempt to impose an exhaustion requirement is legally misplaced.

58. Even under the MHA, exhaustion is required only when the park owner has complied with statutory prerequisites. Fla. Stat. § 723.037 applies only after an amended Prospectus has been approved and delivered. Here, Defendant's amended Prospectus was not approved until August 30, 2021, yet Defendant billed tenants for water separately starting in December 2020—months before any lawful amendment took effect. A committee challenge under § 723.037(4) would have been futile because the charges imposed in December 2020 and January 2021 were unlawful from the outset, as no valid amendment had been implemented at that time.

59. The doctrine of exhaustion does not apply where tenants are deprived of a meaningful opportunity to challenge unlawful charges. In December 2020, Debbie Lyon, Defendant's park manager, threatened eviction if tenants refused to pay the unlawful charges. These threats coerced payments under duress, effectively stripping tenants of any realistic ability to pursue administrative remedies. Courts recognize that exhaustion is not required when the party asserting it prevents the plaintiff from meaningfully invoking the available remedies through intimidation or coercion.

60. Defendant wrongly assumes that tenants were obligated to challenge the billing changes through a committee process. However, no statutory obligation exists for tenants to initiate administrative challenges when the park owner itself has failed to comply with statutory prerequisites. Exhaustion applies only when the park owner has lawfully enacted a change, which Defendant did not do.

61. FCCPA claims do not require exhaustion, and § 723.037 applies only after a valid amendment has been approved and delivered, which had not occurred when Defendant began unlawfully billing tenants in December 2020. Furthermore, threats of eviction and coercion nullify the availability of administrative remedies, making exhaustion both legally and practically irrelevant. Accordingly, Defendant's Fourth and Fifth Affirmative Defenses fail as a matter of law and should be stricken.

Sixth Affirmative Defense – The 2014 Prospectus is Not a Contract

62. Defendant argues that the 2014 Prospectus is merely a disclosure document and does not create contractual obligations.

63. Florida law explicitly incorporates the prospectus into the rental agreement. Florida Statutes § 723.031(10) states that "[t]he rules and regulations and the prospectus shall be deemed to be incorporated into the rental agreement." This establishes that the prospectus is not merely a disclosure document but a binding contractual instrument governing the landlord-tenant relationship.

64. Defendant misinterprets Tara Woods SPE, LLC v. Cashin, 116 So. 3d 492 (Fla. 2d DCA 2013). The case does not hold that a prospectus lacks contractual force; rather, it confirms that the prospectus must be read alongside statutory provisions and lease agreements. Florida courts, including Federation of Mobile Home Owners of Florida, Inc. v. Florida Manufactured Housing Association, Inc., 683 So. 2d 591, 593 (Fla. 1st DCA 1996), have consistently recognized the prospectus as a key part of the rental agreement.

65. Defendant's own actions further confirm that the 2014 Prospectus governs tenant obligations. Defendant accepted rental payments in accordance with its terms, publicly posted it as the operative agreement, and did not dispute its applicability until after imposing unlawful charges. The 2014 Prospectus explicitly states that 5,000 gallons of water are included in base lot rent, yet Defendant billed separately for water before obtaining an amended prospectus, violating statutory requirements.

66. Because Florida law incorporates the prospectus into rental agreements, Tara Woods does not support Defendant's argument, and Defendant's own conduct confirms the prospectus as binding, this defense fails as a matter of law and should be stricken.

Seventh Affirmative Defense – Voluntary Payment Doctrine

67. Defendant claims that Plaintiff and other tenants voluntarily paid the water charges, thereby waiving any right to contest them.

68. Defendant argues that Plaintiff and other tenants voluntarily paid the unlawful water charges, thereby waiving any right to contest them. This defense is legally invalid because the voluntary payment doctrine does not apply when payments are made without an enforceable obligation or where payment was coerced. Florida Statutes § 725.04 explicitly provides that when a party makes a payment under a contract but was under no enforceable obligation to do so, the defense of voluntary payment cannot be used to bar recovery.

69. Here, tenants were never legally obligated to pay separate water charges. The 2014 Prospectus, which governed their tenancy, expressly included 5,000 gallons of water in base rent. Defendant unilaterally imposed these charges before obtaining an amended prospectus, meaning there was no enforceable obligation requiring payment. Furthermore, Defendant's park manager, Debbie Lyon, explicitly threatened eviction if tenants refused to pay, depriving them of a meaningful choice. Courts have consistently held that payments made under duress or coercion—especially under threat of losing housing—are not voluntary (Hassen v. MediaOne of Greater Florida, Inc., 751 So. 2d 1289 (Fla. 1st DCA 2000)). Because these payments were both legally unrequired and extracted through coercion, Defendant's Seventh Affirmative Defense fails as a matter of law and must be stricken.

Eighth Affirmative Defense – Waiver

70. Defendant asserts that Plaintiff waived her right to challenge the water charges by continuing to pay without formally objecting. This defense is legally and factually incorrect.

71. Waiver requires the intentional and voluntary relinquishment of a known right. Here, Plaintiff and other tenants objected immediately upon receiving their first improper bill in December 2020. Rather than addressing these objections, Defendant's property manager, Debbie Lyon, threatened eviction if tenants refused to pay. Threats of eviction effectively stripped tenants of any real choice, making their payments involuntary. Florida law does not recognize waiver where a party was coerced into compliance. (See Hassen v. MediaOne of Greater Florida, Inc., 751 So. 2d 1289 (Fla. 1st DCA 2000)). Furthermore, waiver cannot be inferred where a party continues to perform under protest or where payments were made under duress. The evidence shows that tenants repeatedly objected, but their financial and housing security were placed at risk, forcing them to comply.

72. Defendant's assertion of waiver is also inconsistent with Florida law regarding unilateral contract modifications. Tenants were contractually entitled to 5,000 gallons of water under the 2014 Prospectus. Defendant imposed separate charges without obtaining an amended prospectus, in direct violation of Florida Statutes §§ 723.031(7) and 723.037. A party cannot waive rights that are protected by statute unless there is clear, affirmative consent, which is absent here. Moreover, Defendant's reliance on continued payments ignores the fact that tenants paid under duress, fearing eviction and financial harm. Because waiver must be knowing and voluntary, and Plaintiff and other tenants neither consented to nor accepted the unlawful charges without protest, Defendant's Eighth Affirmative Defense is legally and factually untenable and should be stricken.

Ninth Affirmative Defense – Estoppel

73. Defendant contends that Plaintiff is estopped from challenging the charges because she knew about them and continued to pay.

74. Defendant argues that Plaintiff is estopped from challenging the water charges because she was aware of them and continued to pay. This defense is legally flawed and factually unsupported.

75. Estoppel applies only where a party knowingly induces another to rely on its representations to their detriment. Here, it was Defendant—not Plaintiff—who misrepresented the legality of the charges. Defendant unilaterally imposed water fees despite the 2014 Prospectus explicitly stating that up to 5,000 gallons of water were included in base lot rent. Defendant falsely represented to tenants that it had the legal authority to charge separately for water before obtaining an amended prospectus, in violation of Florida Statutes §§ 723.031(7) and 723.037. Defendant further coerced tenants into paying by threatening eviction, eliminating any meaningful opportunity for them to withhold payment without severe consequences.

76. Moreover, estoppel is inapplicable where a party asserts a legal right that does not exist. Defendant had no lawful right to impose separate water charges prior to an approved and delivered amended prospectus. Instead, Defendant engaged in a pattern of coercion and misrepresentation to enforce an unlawful charge, making it the party that should be estopped from asserting any defense based on these wrongful acts. Accordingly, Defendant's Ninth Affirmative Defense fails as a matter of law and should be stricken.

Tenth Affirmative Defense – Laches

77. Defendant argues that Plaintiff delayed in asserting her claims, causing prejudice to Defendant.

78. Laches is an equitable defense that applies only when a plaintiff unreasonably delays bringing a claim and that delay results in material prejudice to the defendant. Here, Plaintiff filed suit well within the applicable two-year statute of limitations for FCCPA claims under Florida Statutes § 559.77(4). Courts do not apply laches where a claim was timely filed, as statutory limitations periods control.

79. Furthermore, Defendant was on notice of tenants 'objections as early as December 2020, when Plaintiff and others protested the unlawful charges. Rather than address these concerns, Defendant's property manager, Debbie Lyon, threatened eviction if tenants refused to pay. Defendant cannot claim prejudice from a delay when it was aware of the dispute from the outset and continued to demand payment under threat of removal from the park.

80. Because Plaintiff acted within the statutory period, and Defendant was neither misled nor harmed by any alleged delay, the laches defense is inapplicable and should be stricken as a matter of law.

Eleventh Affirmative Defense – Bona Fide Error

81. Defendant asserts that any improper billing was a bona fide error under Florida Statutes § 559.77(3). However, this defense is legally and factually inapplicable.

82. To invoke the bona fide error defense, a defendant must demonstrate that the violation was unintentional and that it maintained procedures reasonably adapted to avoid the error. Florida law requires more than a mere assertion of mistake; Defendant must show that it had safeguards in place to prevent wrongful billing.

83. Here, Defendant has admitted in depositions that it had no formal policies or procedures in place to ensure compliance with Florida Statutes § 723.031(7) and § 723.037 before billing separately for water. Defendant's own admissions establish that it failed to implement any system to verify the legality of its charges before imposing them on tenants. This absence of safeguards precludes a bona fide error defense as a matter of law.

84. Because Defendant lacked the necessary compliance measures to prevent the wrongful billing at issue, its invocation of the bona fide error defense is meritless and should be stricken.

Twelfth Affirmative Defense – Setoff

85. Defendant argues that tenants benefitted from a rent reduction that should offset their damages. However, rent did not decrease—tenants actually paid more overall due to the unlawful water charges. Even if rent had decreased, tenants never agreed to exchange a rent reduction for separate water billing, making setoff inapplicable. Moreover, statutory damages under the FCCPA are independent of actual damages and serve as a penalty for unlawful collection practices. Fla. Stat. § 559.77(2) allows up to $1,000 per violation, which cannot be offset by an alleged rent decrease. Finally, setoff cannot apply where the underlying charges

were unlawfully imposed. Because Defendant's billing practice was unlawful, no setoff is available, and Defendant's Twelfth Affirmative Defense fails as a matter of law.

IT IS THEREFORE ORDERED AND ADJUDGED:

1. The Court GRANTS Plaintiff's Motion for Partial Summary Judgment on Counts 1 and 2 as to liability.
2. The Court DENIES Defendant's Motion for Summary Judgment on all counts.
3. The Court RESERVES jurisdiction over Counts 3 - 14 for trial.

DONE AND ORDERED in Brevard County, Florida, this 31st day of March, 2025.

HONORABLE SAMUEL BOOKHARDT III
JUDGE OF THE CIRCUIT COURT