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OPINION	:	No. 11-703
of	:	July 23, 2013
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THE HONORABLE DAS WILLIAMS, MEMBER OF THE STATE ASSEMBLY, has requested an opinion on the following question:

If the management of a mobilehome park has enacted rules and regulations generally prohibiting mobilehome owners from renting their mobilehomes, is park management bound by these same rules and regulations?

CONCLUSION

With the possible exception of rentals to park employees under appropriate circumstances that satisfy certain statutory requirements, if the management of a mobilehome park has enacted rules and regulations generally prohibiting mobilehome owners from renting their mobilehomes, then park management is also bound by these same rules and regulations.

ANALYSIS

For purposes of our analysis, we adopt the definitions of key terms as provided in the Mobilehome Residency Law (MRL),[1] a comprehensive statutory scheme enacted in 1978 as the culmination of years of legislative work to address the unique features of mobilehome parks.[2] Under the MRL, a "mobilehome" is "a structure designed for human habitation and for being moved on a street or highway under permit."[3] The term includes transportable manufactured housing.[4] In this context, a "homeowner" is "a person who has a tenancy in a mobilehome park under a rental agreement."[5] A "mobilehome park" is "an area of land where two or more mobilehome sites are rented, or held out for rent, to accommodate mobilehomes used for human habitation."[6] "Management" means "the owner of a mobilehome park or an agent or representative authorized to act on his behalf in connection with matters relating to a tenancy in the park."[7] A "rental agreement" is "an agreement between the management and the homeowner establishing the terms and conditions of a park tenancy."[8] A "tenancy," in turn, is "the right of a homeowner to the use of a site within a mobilehome park on which to locate, maintain, and occupy a mobilehome, site improvements, and accessory structures for human habitation, including the use of the services and facilities of the park."[9]

The MRL provides that park management may adopt rules and regulations governing tenancies and use of the park, subject to limitations imposed by the MRL,[10] and may require homeowners to comply with the terms and conditions of park rules and regulations.[11] On the one hand, the MRL impliedly recognizes that park management

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[1] Civ. Code §§ 798–799.11.

[2] *Schmidt v. Superior Court*, 48 Cal. 3d 370, 377 (1989); *see* 74 Ops.Cal.Atty.Gen. 122 (1991); 73 Ops.Cal.Atty.Gen. 431 (1990); 65 Ops.Cal.Atty.Gen. 559 (1982).

[3] Civ. Code § 798.3(a).

[4] *Id.*; Health & Saf. Code §§ 18007, 18008.

[5] Civ. Code § 798.9.

[6] Civ. Code § 798.4; *see also* Health & Saf. Code § 18210.7 ("Manufactured housing community").

[7] Civ. Code § 798.2.

[8] Civ. Code § 798.8.

[9] Civ. Code § 798.12.

[10] *See e.g.* Civ. Code § 798.25 (requiring notice of intent to amend park rules).

[11] *See* Civ. Code § 798.88 (injunction to restrain violation of park rule or regulation).

may rent out its own mobilehomes, so long as it does not terminate the mobilehome resident's tenancy in order to accommodate the sale or rental of a park-owned mobilehome.[12] On the other, the MRL acknowledges that park rules may preclude homeowners from renting their mobilehomes or subletting the park spaces where the mobilehomes are situated.[13]

We are informed that such no-rental/no-subletting provisions are commonly placed in mobilehome park rental agreements (and are among the park rules and regulations made applicable by such agreements). Park owners who favor such rules have observed that, whereas a "rental agreement" under the MRL is a contract between park management and a homeowner, a homeowner's subsequent rental of his or her mobilehome, and subletting of the space on which the mobilehome is situated, creates a contract only between the homeowner-tenant and the tenant's renter/sublessee. Some park owners maintain that the absence of any contract privity between park management and a park tenant's renter/sublessee[14] makes enforcement of park rules and regulations difficult, to the potential detriment of other park residents, because under such circumstances, management can enforce the rental agreement (and its associated rules and regulations) only against the homeowner/sublessor, who in some or many cases may no longer reside in the park. No-renting/no-subletting rules are also warranted, some park owners say, because permitting homeowners to rent their mobilehomes and sublet their spaces could result in a park composed of multiple absentee landlords or a few landlords who purchase mobilehomes in order to engage in rental as a business enterprise. Such a circumstance, we are told, can lead to degradation of the park's overall physical and social environment.

Some mobilehome owners, on the other hand, complain that no-renting/no subletting rules often unreasonably hamstring homeowners, whose homes have been recognized as difficult and expensive to relocate.[15] When the option of renting a

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[12] Civ. Code § 798.58.

[13] *See* Civ. Code § 798.70 (advertising the offering of a mobilehome for sale or rent "if [such sales or rentals are] not prohibited"); *but see* Civ. Code § 798.23.5 (requiring park owners to permit homeowner rentals or space subleasing in medically exigent circumstances under specified conditions).

[14] *See* 12 Witkin, Summ. of Cal. Law (10th ed.) ch 17, § 542, 626 (2005) ("The sublessee is normally neither in privity of contract nor privity of estate with the lessor . . . .").

[15] *See e.g.* Civ. Code § 798.55(a) ("The Legislature finds and declares that, because of the high cost of moving mobilehomes, the potential for damage resulting therefrom, the requirements relating to the installation of mobilehomes, and the cost of landscaping or

mobilehome is not available because park rules prohibit such rentals and/or subletting the mobilehome space, a mobilehome owner who wants or needs to leave his or her mobilehome-residence at a park where such rules are imposed must either sell or abandon the mobilehome.[16]

But putting aside the competing merits or drawbacks of imposing a no-rental/no-subletting policy, we come to the question presented for our resolution: Is a park owner who forbids the rental of mobilehomes by other park tenants nevertheless permitted to rent out his or her own—i.e., *park management-owned*—mobilehomes to other persons. We find the answer to this inquiry in Civil Code section 798.23(a), which states: "The owner of the park, and any person employed by the park, shall be subject to, and comply with, all park rules and regulations, to the same extent as residents and their guests." Subdivision (b) of the statute then states:

> (b) Subdivision (a) of this section does not apply to either of the following:
>
> (1) Any rule or regulation that governs the age of any resident or guest.
>
> (2) Acts of a park owner or park employee which are undertaken to fulfill a park owner's maintenance, management, and business operation responsibilities.

The goal of statutory construction is to ascertain and effectuate the intent of the Legislature.[17] In approaching this task, we first look at the words of the statute "'because they generally provide the most reliable indicator of legislative intent.' . . . . If the statutory language is clear and unambiguous, our inquiry ends. 'If there is no ambiguity

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lot preparation, it is necessary that the owners of mobilehomes occupied within mobilehome parks be provided with the unique protection from actual or constructive eviction afforded by the provisions of this chapter.")

[16] Addressing a particular example of the dilemma facing homeowners, the Legislature in 2002 amended the MRL to require that, notwithstanding any no-renting rule to contrary, homeowners must be permitted to rent their mobilehomes or sublet their spaces in a medical exigency, subject to specified restrictions. *See* Civ. Code § 793.23.5(a)(1). The MRL permits a park owner to purchase an abandoned mobilehome. Civ. Code § 798.61(f).

[17] *City of Alhambra v. County of Los Angeles*, 55 Cal. 4th 707, 718-719 (2013).

in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs.'"[18]

In this case, the plain language of Civil Code section 798.23 explicitly requires that park owners "shall"[19] comply with "all" park rules and regulations—which would presumably include and encompass any no-rental/no-subletting rule or regulation—that are imposed on homeowners leasing spaces in the park. In turn, the Legislature has provided two explicit exceptions to this general rule of reciprocal obligations: (1) "[a]ny rule or regulation that governs the age of any resident or guest";[20] and (2) "[a]cts of a park owner or park employee which are undertaken to fulfill a park owner's maintenance, management, and business operation responsibilities."[21] Where such specific exceptions are stated, we must conclude that the Legislature intended to include no other unstated or implied ones.[22]

But despite the plain language of section 798.23, some commenters draw our attention to what is *not* in the statute—or more precisely, to what is *no longer* in the statute. They argue that the Legislature's decision to delete former subdivision (c) from section 798.23 in 2002[23] shows its intent to exclude no-renting/no-subletting rules from the general mandate of reciprocal application. We cannot agree.

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[18] *Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal. 4th 1094, 1103 (2007) (citations omitted).

[19] It is well established that the word "shall" ordinarily connotes a mandatory duty, rather than a merely permissive option. *Common Cause v. Bd. of Supervisors*, 49 Cal. 3d 432, 443 (1989); *see People v. Heisler*, 192 Cal. App. 3d 504, 506-507 (1987); *Hogya v. Super. Ct.*, 75 Cal. App. 3d 122, 133 n. 8 (1977); *Cannizzo v. Guarantee Ins. Co.*, 245 Cal. App. 2d 70, 73 (1966); 92 Ops.Cal.Atty.Gen. 30, 32 (2009); *see also Webster's New International Unabridged Dictionary* 2085 (3d ed., Merriam-Webster 2002) (the word "shall" is "used in laws, regulations, or directives to express what is mandatory").

[20] Civ. Code § 798.23(b)(1).

[21] Civ. Code § 798.23(b)(2).

[22] *Parmett v. Superior Court*, 212 Cal. App. 3d 1261, 1266 (1989) ("[T]he existence of specific exceptions does not imply that others exist. The proper rule of statutory construction is that the statement of limited exceptions excludes others, and therefore the judiciary has no power to add additional exceptions; the enumeration of specific exceptions precludes implying others.").

[23] 2002 Stat. ch. 672 (Assembly 1410).

Former subdivision (c), added in 1993 by Assembly Bill 217, read: "This section shall not affect in any way, either to validate or invalidate, nor does this section express a legislative policy judgment in favor of or against, the enforcement of a park rule or regulation which prohibits or restricts the subletting of a mobilehome park space by a tenant."[24] Former subdivision (c) appears to have been added during the legislative process in order to assuage opponents' concerns that the reciprocal rule application prescribed by new section 798.23(a) would, in practice, render the legislation a "mandatory subleasing bill in disguise."[25]

In 2002, former subdivision (c) was deleted from section 798.23 in the same legislation that added new section 798.23.5,[26] which provides that the rental of mobilehomes must be permitted in specified circumstances where "a medical emergency or medical treatment requires the homeowner to be absent from his or her home . . . ."[27] Given this context, the deletion of a provision that expressed *no* legislative policy preference regarding no-renting/no-subletting rules appears consistent with the enactment of legislation expressly requiring park management to permit mobilehome rentals where certain conditions exist. But we need not dwell on this point for long, because whatever the import or purpose behind the deletion of former subdivision (c) of section 798.23, that deletion certainly cannot be interpreted as having added, by implication, a new and unstated exception to subdivision (a)—i.e., above and beyond those expressly provided in subdivisions (b)(1) and (b)(2).[28] In other words, the 2002 deletion of former subdivision (c) from section 798.23 does not undermine our reading of the plain language of subdivisions (a), (b)(1), and (b)(2).

Next, we are encouraged to disregard the plain language of section 798.23 based on the distinctions between a park *owner's* rental of his or her own mobilehome and a park *tenant's* rental of his or her mobilehome. Because a park owner in this situation owns both the mobilehome and the space upon which the mobilehome is located, the park owner's rental of his or her mobilehome will include or coincide with his or her rental of the mobilehome space, and therefore there will be a direct contractual relationship between the park owner and his or her mobilehome/space tenant. On the other hand, because a homeowner-park tenant owns only the mobilehome, but not the space on which

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[24] 1993 Stat. ch. 520 (Assembly 217), § 1.

[25] *See* Sen. Comm. on Judiciary, Analysis of Assembly 217 (as amended May 17, 1993), 1993-1994 Reg. Sess. 2 (Aug. 17, 1993).

[26] 2002 Stat. ch. 672 (Assembly 1410), §§ 1-2.

[27] Civ. Code § 798.23.5(a)(2).

[28] *Parmett*, 212 Cal. App. 3d at 1266.

the mobilehome rests,[29] the lack of a direct contractual relationship between the park owner and the person renting the homeowner-tenant's mobilehome (and subleasing the particular mobilehome space) may impede the park owner's ability to enforce park rules and regulations against such renter/sublessees.

We appreciate these observations, but they do not appear to be material to our analysis. Certainly, the stated distinctions between the circumstances of a park owner and those of a park tenant may explain why some park owners would want to restrict or prohibit non-owner occupancy of mobilehomes in their parks, but they do not dictate the legal conclusion that a park owner may not be bound by a no-renting rule to the same extent as other homeowners in the park.[30] And, while we accept the point that reciprocal application of a no-renting rule to park owners may not serve the same prophylactic purposes that justify the imposition of a no-renting rule to other mobilehome owners in the park—i.e., preventing the circumstance of multiple absentee landlords and the attendant risk of park degradation[31]—arguments of this sort are more appropriately addressed to the Legislature, which up to this time has chosen to create only two exceptions to the general rule of reciprocal application. As discussed, no-renting rules are not included among these two exceptions, and we do not evaluate the wisdom of the Legislature's policy choices in crafting legislation.[32]

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[29] A tenancy encompasses only the lot or space on which a mobilehome is located; the mobilehome itself is owned by the homeowner. Civ. Code § 798.12; *see Adamson Companies v. City of Malibu*, 854 F.Supp. 1476, 1481 (C.D. Cal. 1994) ("[I]f the tenant decides to live elsewhere, he does not move the coach, but rather sells it 'in place.' The buyer, then, becomes the new tenant.")

[30] To be sure, a "no-subleasing" rule would not apply to the park owner's rental of his or her own mobilehome to another because the park owner owns both the mobilehome and the space upon which it sits, so the park owner (unlike a park tenant) would have no occasion to *sub*lease the mobilehome space. But the inapplicability of a no-*subleasing* rule to a park owner does not perforce make inapplicable a no-*renting* rule.

[31] Indeed, the argument goes, permitting park owners to rent their own mobilehomes can provide needed low-cost housing to others without also threatening to compromise the park's character in the way that "multiple-landlordism" could.

[32] *Green v. Ralee Engineering Co*., 19 Cal.4th 66, 71 (1998) ("[T]he Legislature, and not the courts, is vested with the responsibility to declare the public policy of the state"); *Superior Court v. County of Mendocino*, 13 Cal. 4th 45, 53 (1996) ("The judiciary, in reviewing statutes enacted by the Legislature, may not undertake to evaluate the wisdom of the policies embodied in such legislation; absent a constitutional prohibition, the choice among competing policy considerations in enacting laws is a legislative function.")

In closing, we acknowledge the view that, as a practical and economic matter, park owners must be able to rent their mobilehomes to *park employees*. Indeed, some have urged that the need is so great that if these types of rentals are not exempted from the general mandate of section 798.23(a), then park owners will simply decline to enforce their no-rental rules, and "subleasing will occur by default in all parks throughout the state."[33] We have not been presented with sufficient facts to decide the issue, but—subject to the proscription of section 798.58[34]—a genuine and demonstrated need for park management to rent its own mobilehomes to park employees may come within the exception provided in section 798.23(b)(2) for "[a]cts of a park owner or park employee which are undertaken to fulfill a park owner's maintenance, management, and business operation responsibilities."

Accordingly we conclude that, with the possible exception of rentals to park employees under appropriate circumstances that satisfy the requirements of Civil Code section 798.23(b), if the management of a mobilehome park has enacted rules and regulations generally prohibiting mobilehome owners from renting their mobilehomes, then park management is also bound by these same rules and regulations.

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[33] See Assembly Comm. on Housing & Comm. Dev., Analysis of Senate 1905 (Sher) (as amended June 21, 2000), 1999-2000 Reg. Sess. 2 (June 28, 2000). Among other things, Senate Bill 1905 would have explicitly precluded park management rentals of its own mobilehomes if park rules forbade other park mobilehome owners from renting theirs. The bill died in the Assembly.

[34] "[A] tenancy may not be terminated for the purpose of making a homeowner's site available for a person who . . . rents or proposes to rent, a mobilehome from the owner of the park or the owner's agent."