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Commonwealth of Massachusetts

Bristol SS.
Plymouth

HOUSING COURT DEPARTMENT
SOUTHEASTERN DIVISION

DOCKET NUMBER 92 CV 0 00 96
(CIVIL ACTION)

Commonwealth of Massachusetts, Plaintiff(s)

vs.

George A. Bumila, Sr., et al Defendants

J U D G M E N T

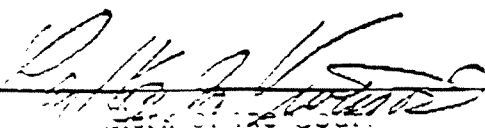
This action came on for trial/hearing before the Court, Kyriakakis J., presiding and the issue having been duly tried, heard and findings having been duly rendered. It is ORDERED and ADJUDGED:

- (1) Commonwealth's Motion for Partial Summary Judgment, ALLOWED, as to Defendant, Pine Hill Estates, Inc., subject to the terms of said Judgment as to damages and restitution.
- (2) Commonwealth's Motion for Partial Summary Judgment, DENIED, as to Defendant, George A. Bumila, Sr.
- (3) Defendant, Pine Hill Estates, Inc., and George A. Bumila, Sr.'s cross-motions for Summary Judgment are DENIED.

Dated at Taunton Massachusetts, this 27th

day of March 19 96.

cc: _____



State of the Court

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BRISTOL, ss.
PLYMOUTH, ss.

HOUSING COURT DEPARTMENT
SOUTHEASTERN DIVISION
Docket No. 92 CV 00096

Commonwealth of Massachusetts *
PLAINTIFF *

v. *

George A. Bumila, Sr., et al *
DEFENDANTS *

RULINGS ON PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGEMENT
AND
DEFENDANTS' MOTION FOR PARTIAL
SUMMARY JUDGEMENT

The Commonwealth has moved for partial summary judgement in its favor against George A. Bumila, Sr., and Pine Hill Estates, Inc., on those allegations contained in Counts 1 and 2 of the amended complaint.

Each of the defendants, George A. Bumila, Sr., and Pine Hill Estates, Inc., has moved for partial summary judgement on those allegations contained in Counts 1 and 2 of the Commonwealth's amended complaint; George A. Bumila, Sr. seeking dismissal of any and all allegations of personal liability contained therein and Pine Hill Estates asking dismissal of said Counts.

The allegations in Counts 1 and 2 of the Commonwealth's amended complaint pertain to the defendants' practice of directly selling propane gas to park residents.

1. Massachusetts General Laws, Chapter 140, Section 32 L (3), provides in pertinent part, that "A Mobile home park licensee, directly or indirectly engaged in the business of selling mobile homes, who has sold a number of mobile homes equal to the number of spaces in a mobile home park, shall not then impose any conditions of rental or occupancy which restricts the mobile home owner in his choice of mobile home dealer nor shall a mobile home park licensee impose any conditions of rental or occupancy which restrict the mobile home owner in his choice of a seller fuel, furnishings, goods, services, or accessories connected with the rental or occupancy of a mobile home lot, unless such conditions are necessary to protect the health, safety, or welfare of mobile home residents in the park." The Court rules that the above-quoted provision applies to mobile park licensees whether or not as many homes as there are spaces in the park have been sold; the qualifier in the first sentence limiting applicability to Mobile Park licensees who have sold as many homes as there are spaces in the park ("Closed" Parks) not applying to the rest of the section.

2. The Court rules that the practice of requiring residents of Pine Hill Estates Mobile Home Park to purchase propane directly from Defendant Corporation at prices greater than the latter originally paid for the same fuel, was a violation of Chpt. 140 § 32 L (3).

3. The "health and safety" exception in M.G.L. Chpt. 140, Sec. 32 L (3), has no application to this ruling since said ruling is based on the practice of prohibiting residents from dealing directly with the sole supplier (W.H. Riley & Sons, Inc.) and it is only if residents could deal directly with said sole supplier that the "health and safety" exception becomes applicable.

4. Since defendants admit that there are no central fuel and gas meter systems in the park, the Court rules that "the average prevailing price" exception of M.G.L. Chpt. 140, Sec. 32 L (3) has no application to this case for purposes of ruling on these partial summary judgement motions.

5. The imposition of unlawful conditions on residents purchase of propane in violation of M.G.L. Chpt. 140, Sec. 32 L (3) is an automatic violation of Chapter 93A in accordance with the provisions of M.G.L. Chpt. 140, Sec. 32 L (7)

6. The Court rules that there is a genuine issue of fact as to whether or not George A. Bumila, Sr., acted solely in his corporate capacity in regard to the sale of propane gas to park residents and more specifically as to whether he should be held personally liable for unlawful acts in regard to the sale of propane gas.

For the foregoing reasons, the Commonwealth's motion for partial summary judgement as against Pine Hill Estates, Inc. is granted but is denied as against George A. Bumila, Sr. The defendants' motions for partial summary judgements are denied.

Pursuant to these rulings the Court orders that judgement shall enter for the Commonwealth as against defendant, Pine Hill Estates, Inc., on the allegations in Counts 1 and 2 of the amended complaint for violating M.G.L. Chpt. 140, Sec. 32 L (3) and M.G.L. Chpt. 93A Sec. 2.

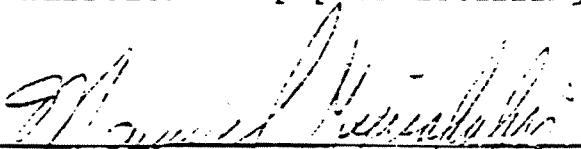
Defendant, Pine Hill Estates, Inc., shall pay to the Commonwealth for redistribution to the residents of Pine Hill Estates Mobile Home Park, the amount paid by the said residents of the Pine Hill Estates Mobile Home Park for propane in excess of the average

prevailing price for the fuel for the period commencing August 13, 1988 through and including November 15, 1994, plus any interest accrued thereon, or alternatively, the amount of profit obtained during that same period by defendant, Pine Hill Estates, Inc. from unlawfully retailing propane to the park residents plus any accrued interest thereon, if the amount of such profit is greater than the measure of restitution.

For purposes of determining said restitution the parties shall submit supplemental memoranda specifying the amount of such restitution and such profits and, if necessary, the parties may engage in additional limited discovery sufficient to determine the measure of such restitution and the amount of such profits.

Pursuant to M.G.L. Chpt. 93A, Sec. 4, the defendant, Pine Hill Estates, Inc., shall pay civil penalties to the Commonwealth in the amount of \$245,000.00 (Two Hundred Forty-five Thousand Dollars), which amount represents the 245 statutory violations in this case assessed at \$1,000.00 (One Thousand Dollars) per violation.

Pursuant to M.G.L. Chpt. 93A, Sec. 4, the defendant, Pine Hill Estates, Inc. shall pay to the Commonwealth its reasonable attorney's fees and costs in connection with the investigation and litigation of its motion for partial summary judgement dated September 13, 1995, in an amount to be determined by the Court following the Commonwealth's submission of papers detailing such fees and costs.



Manuel Kyriakakis
First Justice

Dated: March 27, 1996

