IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS CIVIL DIVISION

STATE OF ARKANSAS, *ex rel*. LESLIE RUTLEDGE, ATTORNEY GENERAL

PLAINTIFF

v.

CASE NO.

DIAMOND K INVESTMENTS, INC. AND BRUCE KEATHLEY

DEFENDANTS

COMPLAINT

The State of Arkansas, *ex rel*. Leslie Rutledge, Attorney General ("the State"), for its Complaint against Diamond K Investments, Inc. ("DKI") and Bruce Keathley ("Keathley"), states:

I. INTRODUCTION

1. This is a consumer protection action brought to redress and restrain violations of the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101 through 115 ("ADTPA").

2. After 171 code violations were filed by the City of Conway against Brookside Village Mobile Community, a 114-home facility operated by Defendants, Bruce Keathley notified the community's residents that he planned to close the facility on June 30, 2019. 3. The Attorney General has received complaints from residents of the mobile home park that they were unable to find alternative housing prior to the June 30, 2019, closure date and that water and electric utilities have been shut off without any court orders.

4. The State seeks an injunction, an order imposing civil penalties, restitution for affected consumers, attorney's fees, and other relief against Defendant.

II. <u>PARTIES</u>

5. Plaintiff is the State of Arkansas, *ex rel*. Leslie Rutledge, Attorney General. Attorney General Rutledge is the chief legal officer of the State. Pursuant to Ark. Code Ann. § 4-88-104 and 4-88-113, the State may seek civil enforcement of the ADTPA.

6. Defendant Diamond K Investments, Inc. is a for-profit corporation registered with the Arkansas Secretary of State with its principal address listed as Post Office Box 1448, Conway, Arkansas.

7. Defendant Bruce Keathley is a corporate officer of DKI and serves as its registered agent for service of process. Defendant Keathley is a controlling person of DKI within the meaning of Ark. Code Ann. § 4-88-113(d). As such, he is personally liable not only for his own personal acts in violation of Arkansas law, but also for the acts of DKI and its employees or agents thereof. 8. Through DKI, Defendant Keathley operates a mobile home park in Conway, Arkansas, known as Brookside Village Mobile Home Park, which is located at 100 Brookside Drive, Conway, Arkansas 72032.

III. JURISDICTION

9. This Court has jurisdiction over this matter pursuant to Ark. Code Ann. § 4-88-104 and the common law of the State of Arkansas.

10. Venue is proper pursuant to Ark. Code Ann. § 4-88-104, 4-88-112 and the common law of the State of Arkansas.

IV. FACTUAL ALLEGATIONS

1. Through DKI, Keathley operates Brookside Village Mobile Home Park in Conway, Arkansas. Upon information and belief, approximately 300 people resided in the community and occupied approximately 114 mobile homes.

2. In March and April, 2019, the City of Conway levied 171 code violations against Defendants for a variety of reasons. *See* Exhibit A, Copies of Code Violations. Instead of remedying these violations, Defendants opted to announce the closure of the mobile home park.

3. On April 15, 2019, the residents of Brookside Village received letters from Defendants informing them that they had to vacate the property by June 30, 2019, citing increases by Conway Corporation as the cause. *See* Exhibit B, Sample Copy of Correspondence from DKI.

4. On April 30, 2019, Senior Assistant Attorney General Shawn Johnson and Investigator Shamikah Johnson spoke with Defendants' counsel Mark Riable concerning Defendants' plan to close the mobile home park. Specifically, the Attorney General's Office expressed a concern that the residents may need more time in which to find alternative homes, and Riable expressed that Defendants were amenable to the possibility of granting more time.

5. Owing to the additional legal concerns associated with the mobile home park's ownership rights in various mobile homes, on May 21, 2019, the Attorney General issued a Civil Investigative Demand upon Defendants' attorney, Mark Riable. *See* Exhibit C, Copy of Civil Investigative Demand. On June 21, 2019, Defendants provided responses to the Civil Investigative Demand.

On June 7, 2019, Defendants threatened the mobile home park tenants
 with water shutoff if they did not pay their June rent. *See* Exhibit D, Copy of June
 7, 2019, Notice from Defendant Bruce Keathley.

7. During June 2019, the Attorney General's Office learned from residents of the mobile home park that approximately 30 families were likely to need more time to move from the park beyond the July 1, 2019, deadline.

8. On July 1, 2019, the Attorney General's Office spoke with Defendants' counsel Danny Crabtree and learned that Defendants were willing to extend the mobile home park's residents' tenancies through July 15, 2019, so long as Conway Corporation—the local water utility—continued to supply water at a reduced rate.

9. On or about July 15, 2019, Defendants shut off the water to all remaining residents of the mobile home park. The number of remaining resident

households is estimated at 21. *See* Exhibit E, Affidavit of Phil Fletcher dated July 19, 2019.

10. At this time, approximately six families are living on the premises with no electricity or water even though the summer temperatures are in excess of 90 degrees Fahrenheit. See Exhibit E at ¶ 12.

11. By Order dated July 15, 2019, the Circuit Court entered a Temporary Restraining Order in favor of one Brookside Village resident named Maria Elena Cueto Garcia. *Garcia v. Diamond K Invest., Inc.*, No. 23CV-19-795 (Faulkner Co. Cir. Ct., July 15, 2019). Among other things, this Order required that water and electric utilities be restored to the plaintiff in that cause. *See* Exhibit F, Circuit Judge Weaver's July 15, 2019, Temporary Restraining Order.

V. VIOLATIONS OF LAW

12. The Arkansas Deceptive Trade Practices Act ("ADTPA") sets forth the State's statutory program prohibiting deceptive and unconscionable trade practices.¹

13. The business practices of Defendants constitute the sale of "goods" or "services."² The same business practices constitute business, commerce, or trade.³

14. It is a violation of the ADTPA to engage in unconscionable, false, or deceptive acts or practices in business, commerce, or trade.⁴ An "unconscionable

¹ Ark. Code Ann. §§ 4-88-101, et seq.

² Ark. Code Ann. § 4-88-102(4) and (7).

³ Ark. Code Ann. § 4-88-107.

⁴ Ark. Code Ann. § 4-88-107(a)(10).

act" is one that "affronts the sense of justice, decency, or reasonableness, including acts that violate public policy or a statute." *Pfizer, Inc.,* 534 F.Supp.2d at 886 (E.D.Ark.2008) (citing *Baptist Health v. Murphy*, 365 Ark. 115, 226 S.W.3d 800, 811 (2006)).

15. Moreover, it is unlawful for a landlord to evict a tenant in lieu of bringing an unlawful detainer action in a court of law. Such evictions are otherwise known as "self-help evictions" and are prohibited by law. *Gorman v. Ratliff*, 289 Ark. 332, 337, 712 S.W.2d 888, 890 (1986). Self-help evictions include those in which a landlord opts to shut off utilities such as water and electricity in lieu of physically forcing the tenant from the premises. Ark. Op. Att'y Gen. No. 2006-223 (Jan. 23, 2007).

16. Defendants have engaged in prohibited conduct by:

- a. Shutting off electric and water utilities to the approximate 21 families remaining in the Brookside Mobile Home Park from July 15, 2019, to present; and
- b. Failing to pursue legal remedies for unlawful detainer prior to discontinuing water and electric service.

PRAYER FOR RELIEF

17. The Attorney General may bring a civil action to seek to prevent persons from engaging in the use or employment of prohibited practices.⁵

⁵ Ark. Code Ann. § 4-88-113(a)(1).

18. Likewise, the Attorney General may bring a civil action to seek to restore to any purchaser who has suffered any ascertainable loss by reason of the use or employment of the prohibited practices any moneys or real or personal property which may have been acquired by means of any practices declared to be unlawful, together with other damages sustained.⁶

19. The Attorney General may seek an injunction prohibiting any person from engaging in any deceptive or unlawful practice.⁷

20. Any person who violates the provisions of the ADTPA may be assessed a civil penalty of up to \$10,000 per violation.⁸

21. In addition, any person who violates the provisions of the Arkansas Deceptive Trade Practices Act shall be liable to the Office of the Attorney General for all costs and fees, including but not limited to, expert witness fees and attorney's fees, incurred by the Office of the Attorney General in the prosecution of such actions.⁹

22. A "person" is an individual, organization, group, association, partnership, corporation, or any combination thereof.¹⁰

23. The State will exercise its right to a trial by jury.

⁶ Ark. Code Ann. § 4-88-113(a)(2)(A).

⁷ Ark. Code Ann. §§ 4-88-104 and 4-88-113(a)(1).

⁸ Ark. Code Ann. § 4-88-113(a)(3).

⁹ Ark. Code Ann. § 4-88-113(e).

¹⁰ Ark. Code Ann. § 4-88-102(5).

WHEREFORE, the above premises considered, the State of Arkansas, *ex rel*. Leslie Rutledge, Attorney General, respectfully requests that this Court:

- a. Issue such orders, pursuant to Ark. Code Ann. §§ 4-88-104 and 4-88-113(a)(1), as may be necessary to prevent the use or employment by the Defendant of the practices described herein which are violations of the Arkansas Deceptive Trade Practices Act;
- b. Issue an order, pursuant to Ark. Code Ann. § 4-88-113(a)(1), requiring Defendants to restore all water and electrical service to the approximately 21 remaining families and households remaining in the Brookside mobile home park until such time as Defendants have properly sought legal remedies and obtained court orders for the lawful removal of such residents;
- c. Impose civil penalties pursuant to Ark. Code Ann. § 4-88-113(b), to be paid to the State by the Defendants in the amount of \$10,000.00 per each violation of the Arkansas Deceptive Trade Practices Act proved at a trial of this matter, the full amount of which will exceed the amount necessary to establish federal diversity jurisdiction.
- Issue an order, pursuant to Ark. Code Ann. § 4-88-113(e), requiring
 Defendants to pay the State's costs in this investigation and litigation,
 including, but not limited to, attorneys' fees and costs; and
- e. For all other just and proper relief to which the State may be entitled.

Respectfully submitted,

LESLIE RUTLEDGE Attorney General

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Shannon Halijan, Ark. Bar No. 2005136 Assistant Attorney General Arkansas Attorney General's Office 323 Center Street, Suite 200 Little Rock, AR 72201 (501) 683-1509 Shannon.Halijan@ArkansasAG.gov

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Brookside Village Mobile Home

Post Office Box 1448

Conway Arkansas 72033

(501)-329-3244

April 15, 2019

NOTICE TO VACATE

AND

NOTICE OF ABANDONED PROPERTY

RESIDENTS OF BROOKSIDE VILLAGE:

It is with regret that I must inform you that due to Conway Corporation increasing water and sewer rates, Brookside Village are ceasing operations effective June 30, 2019.

Please consider this as notice to vacate by June 30, 2019. You must continue to pay monthly rent until that date or you will have to move out when you stop paying rent.

You will also have to move your mobile home when you vacate. Any mobile homes or other property left on the premises will be considered abandoned when you vacate or stop paying rent and we will dispose of it.

We will be glad to try to assist you in finding you a new place to live or provide you with the name of a mobile home mover. If you are purchasing your mobile home from us, please contact us to discuss.

Deepest regard

Owner/Agent

EXHIBIT B

IN RE:)	
ARKANSAS ATTORNEY GENERAL)	
INVESTIGATION OF)	
)	No. 2019-0046
DIAMOND K INVESTMENTS, LLC	
and BRUCE KEATHLEY	
REGARDING THE OWNERSHIP OF)	
BROOKSIDE VILLAGE MOBILE HOME PARK)	

CIVIL INVESTIGATIVE DEMAND DIRECTED TO DIAMOND K INVESTMENTS, LLC and BRUCE KEATHLEY

The State of Arkansas, by and through Attorney General Leslie Rutledge, issues this Civil Investigative Demand pursuant to Ark. Code Ann. § 4-88-111. Your responses should be made in writing, under oath, and delivered to the Office of the Attorney General within 30 days from your receipt. These materials may be served upon Assistant Attorney General Johnathan R. Carter, Arkansas Attorney General's Office, 323 Center Street, Suite 200, Little Rock, Arkansas 72201, or Johnathan.Carter@ArkansasAG.gov.

INSTRUCTIONS

1. Unless otherwise specified, these requests cover the time period from January 1, 2017, to present.

2. When asked to identify a person, state the person's (a) full name, (b) business and residence address, (c) employer's name and address, (d) position or occupation, and (e) if a corporation, the state of incorporation and location and address of its principal headquarters.

3. When a request or response refers to business records, or any designated documents, writing, charts, or other data compilations from which information can be obtained, the State hereby requests that respondent identify such documents.

4. If the respondent does not know the answer to any request, identify the person(s) who know(s) or would be expected to know the answer to such request.

5. In responding to each request for documents, every source of documents to which respondent has access should be consulted, regardless of whether the source is within respondent's immediate possession or control.

6. When asked to identify a document, state: (a) its title, (b) its subject matter, (c) its date, (d) the author or addressor, (e) the addressee, if any, (f) the recipients of all copies, (g) the form control number, (h) the custodian, (i) the document's current location, and (j) where the original copy of the document was located before it was placed in its current location.

7. For each document produced, indicate on the document or in some reasonable manner the number of the Request for Information or Request for Documents to which the document corresponds.

8. If the document was, but is no longer, in the possession of respondent, or subject to its control, or is no longer in existence, state whether it is: (a) missing or lost, (b) destroyed, (c) transmitted or transferred, voluntarily or involuntarily to others, identifying such others, or (d) otherwise disposed of. In each such instance, explain the circumstances surrounding an authorization for such disposition and state the date or approximate date thereof.

9. If there is any requested document which is not identified because of any claim, privilege, or other reason, please identify each document in a manner sufficient to enable the analysis of the applicability of the privilege, stating, (a) the author or preparer of the document, (b) the date of the document, (c) the current location of the document, (d) at whose request the document was prepared, (e) the identity of all person or entities to whom the document has been disclosed, (f) the general subject matter of the document, and (g) the nature of the privilege(s) or other reasons asserted for not identifying the document.

10. If anything is deleted from a produced document because of any claim or privilege or for any other reason, then for each such deletion, state: (a) the reason for the deletion, (b) the subject matter of the deleted information, (c) the privilege or other reason asserted for the deletion, and (d) the factual basis giving rise to the privilege or other reason asserted.

DEFINITIONS

1. "AND" as well as "OR" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Civil Investigative Demand any information which would otherwise be construed to be outside their scope. 2. "DESCRIBE" means a complete report of all facts known to you about the incident, event, physical object, or other subject, together with any expert opinions about the subject matter and the basis for those opinions.

3. "DOCUMENT" means the complete original unless otherwise stated, and each non-identical copy, whether different from the original because of notes made on the copy or otherwise. This includes each writing of every kind and description, together with all work, back-up documents, and other relevant materials, whether inscribed by hand or mechanical, electronic microfilm, photographic, or other means, including but not limited to, recording, tape, computer, or other medium from which information may be obtained. If an original document is unavailable, a complete copy must be provided. When documents are in electronic form, please provide copies of these documents in their native, original format.

4. "EMPLOYEE" means any person or persons who receive compensation of any sort in exchange for services rendered or work done pertaining to the operation of the respondent, including, but not limited to, independent contractors and trainees.

5. "PERSON" means an individual, organization, group, association, partnership, corporation, or any combination of them.

6. "RESPONDENT" means Diamond K Investments, LLC or any alternative business name of the entity known as Diamond K Investments, LLC.

7. "STATE OF ARKANSAS," "THE STATE," and "ATTORNEY GENERAL" shall include the Office of the Attorney General and the State of Arkansas, including its agencies, departments, and instrumentalities.

8. "YOU" and "YOUR" refers to the party to whom this Civil Investigative Demand is directed and each of its managing agents, subsidiaries, affiliates, directors, officers, agents, employees, representatives, attorneys, predecessors in interest, and any other person(s) acting on behalf of such party.

REQUESTS FOR INFORMATION

Request for Information No. 1: How many mobile home lots does the corporation Diamond K Investments, LLC own at Brookside Village, located in Conway, Arkansas?

Request for Information No. 2: Of the lots owned, how many are currently under a lease contract?

Request for Information No. 3: How many lots, if any, have been sold to residents in the last three years?

Request for Information No. 4: Does Diamond K Investments, LLC or its owner, Bruce Keathley own any mobile homes located at Brookside Village?

Request for Information No. 5: If the response to Request for Information No. 4 is in the affirmative, how many mobile homes does Diamond K Investments, LLC or Bruce Keathley own at Brookside Village? In your response, please identify on which lot the mobile home is located. **Request for Information No. 6**: Does Diamond K Investments, LLC or its owner, Bruce Keathley rent or lease any mobile homes to Brookside Village residents? If so, how many mobile homes are rented or leased to residents?

Request for Information No. 7: Has either Diamond K Investments, LLC or its owner, Bruce Keathley entered into rent-to-own/installment sale types of contracts or agreements for the purchase of a mobile home that is located at Brookside Village with residents since January 1, 2016? If so, how many?

Request for Information No. 8: For the properties referenced in Request for Information #5, how many completed sales or lease contracts have there been for the time period identified?

Request for Information No. 9: Please identify the person responsible for negotiating lease/sale contracts with residents of Brookside Village on behalf of Diamond K Investments, LLC and Bruce Keathley.

Request for Information No. 10: Are any lease contracts between residents of Brookside Village and Diamond K Investments, LLC or Bruce Keathley provided in Spanish?

Request for Information No. 11: When in the course of leasing or selling a lot/mobile home to a Brookside Village resident, is the person who represents either Diamond K Investments, LLC or Bruce Keathley fluent in Spanish?

Request for Information No. 12: When in the course of leasing or selling a lot/mobile home to a Brookside Village resident, is the person representing

Diamond K Investments, LLC or Bruce Keathley aware that the potential tenants are not fluent in English?

Request for Information No. 13: Has Diamond K Investments, LLC or its owner, Bruce Keathley ever failed to deliver the title of a mobile home in Brookside Village to the new purchaser?

Request for Information No. 14: When did Diamond K Investments, LLC or its owner, Bruce Keathley become aware of building code violations imposed by the City of Conway?

Request for Information No. 15: What building code violations did the City of Conway cite when visiting Brookside Village and when were those violations disclosed?

Request for Information No. 16: Please describe how Diamond K Investments, LLC or the owner, Bruce Keathley advertises leasing or purchasing opportunities at Brookside Village.

Request for Information No. 17: Has Diamond K Investments, LLC, Bruce Keathley, or any agent authorized to enter into a lease agreement on behalf of Diamond K Investments, LLC or Bruce Keathley entered into any verbal contracts with Brookside Village tenants to lease property in the last three years? If yes, how many such verbal contracts have been made?

Request for Information No. 18: Has Diamond K Investments, LLC, Bruce Keathley, or any agent authorized to enter into a lease agreement on behalf of Diamond K Investments, LLC or Bruce Keathley with Brookside Village residents ever knowingly entered into a lease of property with knowledge that the property being leased had building code citations?

REQUEST FOR DOCUMENTS

Request for Documents No. 1: Please provide a list of the properties identified in Request for Information No. 1.

Request for Documents No. 2: Please provide a list of the properties identified in Request for Information No. 2.

Request for Documents No. 3: Please provide a list of Brookside Village tenants and properties being rented as of the date of your response to this Civil Investigative Demand.

Request for Documents No. 4: Please provide copies of all written contracts used for the leasing of property located at Brookside Village in leasing properties to tenants.

Request for Documents No. 5: Please provide copies of any notice of code violations for properties located at Brookside Village received from the City of Conway Code Enforcement.

Request for Documents No. 6: Please provide copies of any written request for repair or complaint lodged by a Brookside Village tenant against Diamond K Investments, LLC or its owner Bruce Keathley.

Request for Documents No. 7: Please provide copies of any document(s) relied upon to respond to any Request for Information.

Respectfully submitted,

LESLIE RUTLEDGE Attorney General

Schwalthan R. Carter

By:

Johnathan R. Carter, Ark. Bar No. 2007105 Assistant Attorney General Arkansas Attorney General's Office 323 Center Street, Suite 200 Little Rock, Arkansas 72201 Telephone: (501) 682-8063 Fax: (501) 682-8118 Johnathan.Carter@ArkansasAG.gov

Certified Mail No.: 7007 1490 0002 5725 0553 Diamond K Investment

Po Box 1448

Conway AR 72033

501-329-3244

June 7, 2019

This notice is a reminder that we still have a <u>water and sewer bill due this month.</u> In order not to effect water service, if you have <u>not paid</u> this month please make arrangeements

to do so.

Thank you 1110 Bruce A. Keathley

AFFIDAVIT OF PHIL FLETCHER

I, Phil Fletcher, being first duly sworn, do state:

- 1. I am over 18 years old and have personal knowledge of the matters contained in this Affidavit.
- I am employed by City of Hope Outreach ("CoHO") as the Director. I oversee all of CoHO's operations in support of our mission.
- 3. CoHO established a presence in 2012 at the Brookside Village Mobile Home Park at the invitation of Bruce Keathley, the owner of Brookside Village.
- 4. Until very recently, CoHO had a mobile home with staff on the premises.
- CoHO received a notice from Mr. Keathley to vacate the property at the same time as the other 350 residents. We received the notice around April 15.
- 6. The notice stated, "Residents of Brookside Village: It is with regret that I must inform you that due to Conway Corporation increasing water and sewer rates, Brookside Village are ceasing operations effective June 30, 2019. Please consider this as notice to vacate by June 30, 2019. You must continue to pay monthly rent until that date or you will have to move out when you stop paying rent. You will also have to move your mobile home when you vacate. Any mobile home or other property left on the premises will be considered abandoned when you vacate or stop paying rent and we will dispose of it. We will be glad to try to assist you in finding you a new place to live or provide you with the name of a mobile home mover. If you are purchasing your mobile home from us, please contact us to discuss." The notice was signed by Bruce A. Keathley as Owner/Agent.
- 7. After the notice to vacate was distributed to the residents of Brookside Village, CoHO's work at Brookside Village changed. We started communicating with the residents about their options for relocation and helping them understand whether they were leasing their mobile home or were renting-to-own it. We also helped with moving household goods and transferring utilities. The residents were very overwhelmed at that time and this was an opportunity to be encouraging to them.
- 8. One of the biggest concerns is that the residents have not had enough time to find new housing. The cost of moving a trailer is significant. CoHO found two moving companies who were willing to assist the residents at a discounted rate of \$1500 to \$1800 (other companies were charging \$2300 or more). However, one of trucks was out of commission for about two weeks for a repair, and that caused major delays in the schedule. The rain we have had in the last few months also caused a delay for the movers.
- 9. On June 26, 2019, CoHO requested Mr. Keathley move the deadline from June 30 to July 15. Mr. Keathley approved that request, so CoHO continued to help the residents find housing and move. Additional rain created more delays, though.
- 10. Many families were able to move in advance of the July 15 deadline, but there are 22 families remaining at Brookside Village. Many of those families are on the moving companies' schedule to have their trailer relocated, but because of the delays, have not been able to vacate yet.
- 11. On July 15, 2019, the electricity at Brookside Village was turned off to most of the mobile homes at the park. The water and sewer were turned off at all the mobile homes.
- 12. Of the twenty-one (21) families remaining at Brookside Village, fifteen (15) have found a temporary place to stay.
- 13. Six (6) families refuse to leave their homes and are living without water, sewer, or electricity. There is at least one (1) elderly man living in the park without utilities, and I am concerned about his health given the heat advisories that have been issued in Faulkner County.

The above is true and correct to the best of my knowledge. Further, this affiant sayeth naught.

Phil Fletcher

Date

7-19-19

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COUNTY OF Faulkner

On this the <u>19</u> day of <u>Tuly</u>, 2019, before me, the undersigned notary, personally appeared Phil Fletcher satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.</u>

In witness whereof I hereunto set my hand and official seal.

heares ignature of Notary Public

Signature of room y - and

My Commission expires: <u>3-10-202</u> ([Seal of Office]



ELECTRONICALLY FILED Faulkner County Circuit Court Crystal Taylor, Circuit Clerk 2019-Jul-15 15:04:02 23CV-19-795 C20D01 : 7 Pages

IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS

MARIA ELENA CUETO GARCIA

PLAINTIFF

vs.

Case No. 23CV-19-795

DIAMOND K INVESTMENT, INC. d/b/a DIAMOND K INVESTMENTS CO. and BRUCE A. KEATHLEY, individually and f/d/b/a MID SOUTH HOME SALES

DEFENDANTS

TEMPORARY RESTRAINING ORDER

Now before the Court is the application of Plaintiff Maria Elena Cueto Garcia to obtain an *ex parte* Temporary Restraining Order enjoining Defendants from taking any actions to evict her or constructively evict her from the mobile homes at issue in this action pending the hearing set on Plaintiff's request for a preliminary injunction contained within her Verified Complaint, which request is presently set for hearing on August 14, 2019.

For the reasons stated below, the Motion for Temporary Restraining Order should be, and hereby is, **GRANTED**. As required by Rule 65 of the Arkansas Rules of Civil Procedure, the Court sets out below the reasons for granting said relief and the particular actions of Defendants by this order.

Applicable Facts, As Alleged

Based on the Verified Complaint and the Motion for Ex Parte Temporary Restraining Order, the following are among the relevant facts which have been alleged: 1. On September 1, 2010, Plaintiff and Separate Defendant Bruce Keathley entered into a "rent to own" contract concerning a 1994 Destiny #040948 Mobile Home located on Lot #14 of the Brookside Mobile Home Park. Plaintiff resides in this mobile home.

2. Under the terms of the contract, Plaintiff was required to pay the total sum of \$25,000.00 for the mobile home, and upon payment of the sum, Mr. Keathley was required to convey ownership of the mobile home to her.

3. Plaintiff thereafter entered into possession of her mobile home and over the years has made improvements to her mobile home.

4. Upon completing the payments required under the terms of the parties' contract, in October 2018 Plaintiff requested that Mr. Keathley and/or Separate Defendant Diamond K Investment, Inc. ("Diamond K"), an entity owned and controlled by Mr. Keathley through whom he, on occasion, has operated the Brookside Mobile Home Park, consummate the transaction and formally convey her mobile home to her.

5. In response, Defendants refused to convey the mobile home and instead threatened to evict Plaintiff from the mobile home park, even though Plaintiff had paid all monies required of her.

6. Since October 2018, Defendants have attempted to constructively evict Plaintiff by, among other things:

• Shutting off the water to the mobile home at issue on three separate occasions;

• Attempting to tow away the mobile home at issue;

• Attempting to change the locks on a second mobile home located on Lot #87, which mobile home is owned outright by Plaintiff and titled in her name (with Plaintiff renting the lot on which the mobile home is located from Mr. Keathley); and,

• Attempting to block Plaintiff from removing the Lot 87 mobile home from the mobile home park by parking trucks in front of the mobile home, even though Defendants have no right to this mobile home.

6. Out of fear of losing the equity in her home on Lot 14, Plaintiff has continued to make payments to Defendants until Mr. Keathley refused to continue to accept her payments in May 2018 and stated that he just wanted her gone.

7. In April 2019, Mr. Keathley announced that he was closing down the Brookside Mobile Home Park effective June 30, 2019.

8. When again requested by Plaintiff to convey the mobile home on Lot 14 to her and to permit her to remove it to another property, Mr. Keathley again refused.

9. On June 26, 2019, Plaintiff filed the instant action seeking, among other things, specific performance of the parties' contract. In her Verified Complaint, Plaintiff additionally requested the entry of a preliminary injunction maintaining the *status quo* until Plaintiff's Complaint can be heard.

10. Defendants were each served with the lawsuit on June 27, 2019.

11. On July 2, 2019, Plaintiff's attorney contacted the Court to set a hearing as soon as possible on Plaintiff's request for a preliminary injunction, and the Court set such hearing for August 14, 2019.

12. Even though the Defendants had been served with Plaintiff's lawsuit and had knowledge of Plaintiff's pending preliminary injunction request before this Court seeking to maintain the *status quo* until Plaintiff's Complaint can be heard, on July 3, 2019 the Defendants again announced their intention to "self-help" evict all remaining residents from the Brookside

Mobile Home Park, including Plaintiff, on July 15, 2019 by, among other things, shutting the water off to the property and otherwise barring access.

13. It is unlawful in the State of Arkansas for a party to attempt a self-help eviction. *Gorman v. Ratliff*, 289 Ark. 332, 337, 712 S.W.2d 888, 890 (1986). Shutting off the utilities to a property is one such method of illegal self-help eviction. Ark. Op. Att'y Gen. No. 2006-223 (Jan. 23, 2007).

14. Immediate and irreparable harm will result to Plaintiff if the Defendants are permitted to engage in their threatened course of conduct of shutting off the utilities to the property on July 15, 2019 and in otherwise evicting Plaintiff and her family from the property and her mobile homes.

15. Plaintiff has a valuable property right in her mobile homes—the right to peaceably possess them—and the Defendants' stated intention to engage in an unlawful constructive eviction as of July 15, 2019 by shutting off the water to Plaintiff's mobile homes will deprive her of that property right as well as deprive her and her family of a place to live.

16. The Plaintiff has demonstrated a likelihood of success on the merits.

17. This Order is issued without notice to Defendants as there is insufficient time given the short deadline the Defendants have imposed and their stated intention to proceed with evicting or constructively evicting Plaintiff notwithstanding their knowledge of this pending action.

18. Defendants were made fully aware of Plaintiff's request for issuance of a preliminary injunction maintaining the *status quo* pending the resolution of Plaintiff's Complaint on June 27, 2019 when they were each served with this action. However, rather than rescind their previous threat to evict Plaintiff, Defendants instead chose to proceed with their unlawful self-help eviction efforts.

19. Plaintiff shall not be required to post any bond, as no monetary injury will result to Defendants by enjoining them from taking any further steps to unlawfully constructively evict Plaintiff from the Brookside Mobile Home Park pending the hearing on Plaintiff's injunction request which has previously been set for August 14, 2019.

Relief Ordered

For the reasons set out above, **IT IS HEREBY ORDERED** that pending the hearing on Plaintiff's preliminary injunction request:

A. Defendants shall not take action whatsoever to attempt to evict or constructively evict Plaintiff or her family from the mobile homes located on Lot 14 and Lot 87 in which she and her relatives reside;

B. Defendants shall not shut off or disconnect any utilities or other services to the mobile homes located on Lots 14 or 87;

C. Defendants shall not attempt to block or otherwise prevent Plaintiff from removing the mobile home located on Lot 87 from the Brookside Mobile Home Park, which home is owned by Plaintiff and titled in her name;

D. Defendants shall not harass Plaintiff in any way; and,

E. Defendants shall otherwise maintain the *status quo* vis-à-vis Plaintiff and the mobile homes on Lots 14 and 87 (with the exception that Plaintiff may remove the mobile home titled in her name).

That failure of the Defendants to comply with the terms and conditions of this Order shall be grounds for contempt of this Court and shall subject Defendants to fines and/or imprisonment as this Court deems appropriate. That Plaintiffs shall promptly report to this Court via an appropriate Motion for Contempt of Defendants' non-compliance with this Order. This Order was issued as of the date and time indicated by the Clerk's file stamp and will expire 14 days after its entry pursuant to Ark. R. Civ. P. 65; provided, however, that Plaintiff may petition the Court for extension of this Order as provided by Ark. R. Civ. P. 65.

IT IS SO ORDERED.

CIRCUIT COURT JUDGE

DATE

PREPARED BY:

/s/ Matthew K. Brown Matthew K. Brown (2007-135) MILLAR JILES, LLP 904 Front Street Conway, AR 72032 (501) 329-1133 (501) 329-1166 (facsimile) mbrown@millarjileslaw.com

Attorney for Plaintiff



Arkansas Judiciary

Case Title:MARIA GARCIA V DIAMOND K INVESTMENT INC,
ET ALCase Number:23CV-19-795

Type:ORDER EX PARTE

So Ordered

JUDGE SUSAN K. WEAVER

Electronically signed by SKWEAVER on 2019-07-15 15:04:07 page 7 of 7