

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

KIMBERLY (Houle) LAMARRE

AND

ANTHONY LAMARRE

Plaintiffs - Appellees

v.

TOWN OF CHINA

And

NICHOLAS NAMER and

MARIE BOURQUE-NAMER

Defendants - Appellants

ON APPEAL FROM THE KENNEBEC SUPERIOR COURT
Law Court Docket No. Ken-20-134

REPLY BRIEF OF APPELLANT
TOWN OF CHINA

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Table of Contents

ARGUMENT1

I. The Town’s Interpretation Of The Ordinance Does Not Read Any Language Out Of The Ordinance And The Namer RV Can Only Be Characterized As A Recreational Vehicle Under The Ordinance 1

Conclusion5

ARGUMENT

The Lamarres argue that the Town’s interpretation of its Ordinance (i) “dismiss[es] an entire clause of the first sentence” of the definition of “recreational vehicle,” (ii) “allows a structure to be considered a “recreational vehicle even though it is of an entirely different nature than a list of examples included in the definition,” and (iii) is “more aptly defined under the Ordinance as a ‘manufactured home,’” than a recreational vehicle (Lamarres’ Brief at 10, 14-15). The Lamarres’ assertions are without merit.

I. The Town’s Interpretation Of The Ordinance Does Not Read Any Language Out Of The Ordinance And The Namer RV Can Only Be Characterized As A Recreational Vehicle Under The Ordinance

The Ordinance includes in its definition of recreational vehicle any vehicle or attachment to a vehicle that is designed for temporary sleeping or living “which may include” pick-up campers, travel trailers, tent trailers, camp trailers, and motor homes. (App. at 131 (emphasis added).) The Lamarres argue that unless the examples of what may be included in the definition of recreational vehicle are read to exclude anything else from being included in the definition, then those examples would be read out of the ordinance.

In fact, it is only if the examples are read to be merely illustrative, without limiting the definition of “recreational vehicles,” that language is not read out of the Ordinance. Otherwise, the term “may include” is deprived of

any meaning whatsoever. The Lamarres contort themselves to distinguish case law that unambiguously stands for the seemingly non-controversial proposition that the word “may” signifies discretion. The simple fact is that the Lamarres read the term “may include” out of the Ordinance, or seek to turn it into something it is not – a term that compels rather than one that signifies discretion.

The Lamarres’ arguments that the Namer RV is more in the nature of a structure, specifically a manufactured home, than the items listed in the definition of recreational vehicle only further undermines the Lamarres’ position. The Ordinance defines a manufactured home as a transportable structure “built on a permanent chassis” designed for use when connected to required utilities. (App. at 127.) Without going any further, this could apply to any number of recreational vehicles. The Ordinance eliminates any doubt between the distinction between a manufactured home and a “recreational vehicle” in two ways.

First, the Ordinance provides that a vehicle or attachment to a vehicle can only be deemed a recreational vehicle, and not a structure, if it has its tires on the ground, and is registered with the Bureau of Motor Vehicles. (App. at 131.) This provides a clear means of distinguishing between structures and recreational vehicles.

The definition of manufactured home goes a step further. It provides that “park trailers, travel trailers, and other similar vehicles” are to be treated as structures only for “flood plain management purposes” when they are placed on a site for greater than 180 consecutive days. (App. at 127.) This requirement is similar to another requirement in the Ordinance under which recreational vehicles must meet applicable requirements for structures when they are placed on a site for more than 120 days. (App. at 62.)

The Town already has conceded that the record does not reflect the bases of the CEO’s decision with regard to the extent to which applicable requirements for structures were or could be met by the Namer RV, and acknowledges that a remand would be necessary for such findings to be made on those points. The question at hand is whether the Namer RV can be characterized as a “recreational vehicle” in a general sense, or to the extent requirements for structures are not implicated.¹

Taken together, the definitions of “recreational vehicle” and “manufactured home” leave no question that the Namer RV is indeed a recreational vehicle, even if requirements relating to structures may be imposed based on the length of time it is located on a site. It has its tires on the ground

¹ The mobility of the Name RV means that it does not have to be placed on a site for 120 or 180 consecutive days. Indeed, Mr. Namer has indicated he could move it as needed if time restrictions are necessary. (Record of Proceedings filed with Superior Court at 233.)

and is registered with the Bureau of Motor Vehicles. These facts mean that it cannot be considered a “structure” under the plain terms in the definition of “recreational vehicle.” Moreover, it is a park model trailer – the very type of trailer described in the definition of a “manufactured home” as being similar to travel trailers, and “other similar vehicles” that need only be treated as structures for certain purposes. This establishes that the Namer RV is not something considered to be a “manufactured home” in a general sense.

It also dispenses with the Lamarres’ *ejusdem generis* argument. That argument turns on the Lamarres’ contention that the Namer RV is not similar to a “travel trailer.” (Lamarre Brief at 13-14.) The Ordinance itself says otherwise, expressly describing park trailers and travel trailers as being within the same class – a class that is not treated as structures for general purposes.²

² To the extent the Lamarres’ reference to “manufactured homes” is intended to include “manufactured housing,” the latter is even more easily dispensed with. Manufactured housing is defined to include two varieties of structures: (i) mobile homes constructed after 1976 and certified to be in compliance with HUD standards, and (ii) modular homes. (App. at 127 (emphasis added).) Modular homes are defined by the Ordinance as structures that are “transportable in one or more sections, which are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities.” (*Id.*) Plaintiffs have conceded that the Namers’ RV was not built in accordance with HUD standards for mobile homes, (Lamarres’ Rule 80B Brief at 9), and, as outlined in the Town’s initial Brief, the Namers’ RV was built in accordance with standards that exempt it from HUD regulations for manufactured housing. (Town’s Brief on appeal at 8-10.) The Lamarres also have conceded that the Namer RV was built on a permanent chassis and is on wheels, not a foundation. (Lamarres’ Rule 80B Brief at 7-9.)

To the extent *ejusdem generis* should be applied, the definition of manufactured home only underscores that such an application only works in the Town's favor.

Thus, contrary to the Lamarres' arguments, the Town's interpretation of the Ordinance gives full meaning to the definition of "recreational vehicle" and a "manufactured home." It does not attempt, as the Lamarres do, to turn a permissive term in the definition of recreational vehicle into a mandatory one. It is consistent with that definition's distinction between a structure and a recreational vehicle. It is consistent with the fact that the definition of manufactured home makes a distinction between that which must be considered a structure for all purposes, and recreational vehicles that are to be treated as structures only for certain purposes. Finally, it is consistent with the fact that the definition of "manufactured home" recognizes park trailers as similar to travel trailers. This means that the CEO committed no error in determining that the Namer RV is a recreational vehicle, and that determination should be affirmed.

Conclusion

For the reasons set forth above and in the Town's initial Brief on Appeal, the Superior Court's decision should be reversed and Town of China's Code Enforcement Officer's determination that the Namer RV is a recreational vehicle should be affirmed and re-instated.

Dated: October 2, 2020

Respectfully submitted,

/s/ Theodore Small

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CERTIFICATE OF SERVICE

I, Theodore Small, Esq. Attorney for Appellant Town of China, hereby certify that I have made due service of the within Reply Brief of Appellant by mailing two conformed copies of the Reply Brief by regular course of the United States mail, postage prepaid, to counsel for Appellees at the following address:

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