IN THE
SUPREME COURT OF FLORIDA

STORER CABLE T.V. OF FLORIDA, INC.	:	
Appellants,	:	
vs.	:	CASE NO. 65,620
SUMMERWINDS APARTMENTS ASSOCIATES, LTD., a Florida limited partnership,	:	
Appellees.	:	

ON APPEAL FROM THE DISTRICT COURT
OF APPEAL, THIRD DISTRICT

BRIEF OF AMICUS CURIAE FLORIDA APARTMENT ASSOCIATION

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STATEMENT OF THE CASE AND THE FACTS

Amicus, having recently learned of the District Court of Appeal decision which is the subject of this appeal and not participating in the proceedings giving rise to that decision, has not had an opportunity to review the record below. Amicus is principally concerned with the impact of the decision should the opinion of the District Court not be affirmed. We assume that the statements of the case and the facts as presented by the parties herein will fairly and adequately reflect the portions of the record below which may be necessary to disposition of these proceedings.

ARGUMENT

I. BEFORE REACHING THE CONSTITUTIONALITY OF SECTION 83.66, FLA. STAT., THERE MUST BE A REVIEW OF THE LEGISLATIVE HISTORY RELATING TO ITS ADOPTION

A. CHAPTER 82-66, LAWS OF FLORIDA, CONTAINED TWO PROVISIONS RELATING TO CABLE TELEVISION THAT MUST BE CONSTRUED IN PARI MATERIA

In the decision below, there is no discussion or reference to an additional provision relating to cable television that appeared in the law which created the section now under review. This additional section is very important because it provides support for the position taken by both trial court and the Third District Court of Appeal that s. 83.66, Fla. Stat., is unconstitutional.

The present language of s. 83.66, Fla. Stat., was taken from Chapter 82-66, Laws of Florida, which was adopted by the 1982 Legislature as House Bill 1075 (Appendix). Chapter 82-66 contained 26 sections, and dealt with mobile home and residential tenants, and related subjects. Within this Chapter, there were two sections that dealt with cable television.

In Section 14 of Chapter 82-66, the Legislature adopted the following language:

> No tenant of any rental unit shall be denied access to any available franchised or licensed cable television service, nor shall such tenant or cable television service be required to pay anything of value in order to obtain or provide such service except those charges normally paid for like services by residents of, or providers of such services to, single family homes within the same franchised or licensed area, and except for installation charges

as such charges may be agreed to between such tenant and the provider of such service.

The above language appeared as a separate section in House Bill 1075, with no guidance as to where it should be codified in the Florida Statutes. Then, in Section 25 of House Bill 1075, the legislature adopted the language which now appears as s. 83.66, Fla. Stat., and which is the subject of this litigation.

It is settled law in this state that when the legislature adopts a law, they do so advisedly and with purpose, and that every part of the statute must be given effect within the overall framework of the legislature's intent. State v. Gayle Distributors, Inc., 349 So.2d 150 (Fla. 1977); State v. Webb, 398 So.2d 820 (Fla. 1981). When, as is the case here, there are two provisions within a bill that deal with the same subject matter, such provisions are considered in pari materia and it is the duty of the court to make every attempt to harmonize the language. State v. Nourse, 340 So.2d 966 (Fla. 3rd DCA 1976).

A careful reading of the language in s. 14 of ch. 82-66 reveals that it is amazingly similar to paragraph (1) of s. 25. In fact, only the first sentence has been changed. Because of the similarity of the provisions, the sections relating to cable television must be construed together and given effect within the overall framework of the statute. Woodgate Development Corp. v. Hamilton Investment Trust, 351 So.2d 14 (Fla. 1977).

The position adopted by Statutory Revision, which is printed in the Reviser's note following s. 83.66, is that section 25 was published as the "last expression of legislative will in ch. 82-66, pending legislative or judicial clarification of the

independent applicability within ch. 83, F.S., if any, of s. 14..." Obviously Statutory Revision was in a quandry as to the proper interpretation of what the legislature had done. However, because both s. 14 and s. 25 were adopted at the same time and in the same bill, the statement by the Reviser that s. 25 should prevail as the last expression of legislative will is without basis. Whether s. 14 or s. 25 should prevail must be controlled by the legislature's intent, which must be discerned from the bill as a whole. Indeed, if this Court determined that the legislature intended to adopt the position taken in s. 14, then s. 25 must be read in such a way as to conform with that intent. Hall v. State, 23 So. 119 (Fla. 1897). The most reasonable approach, and the method approved by this Court in the past is to read the statute in a manner that gives effect to all sections that have been duly considered and adopted by the legislature. State v. Zimmerman, 370 So.2d 1179 (Fla. 4th DCA 1979).

II

WHEN SECTION 25 IS READ IN CONJUNCTION WITH SECTION 14, AS IT MUST BE, IT IS CLEAR THE LEGISLATURE HAS OVERSTEPPED CONSTITUTIONAL BOUNDS

The fundamental question in this matter is what the legislature intended when it adopted ch. 82-66 and the provisions therein relating to cable television. More specifically, did the legislature intend to confer upon cable television companies the right to invade an apartment owners private property, without his or her consent, for the purpose of making a profit by providing

cable service to tenants. The lower court in this matter determined that this was what the legislature had done, and held the statute unconstitutional as permitting a taking of property without compensation. Storer Cable T.V. of Florida v. Summerwinds Apartments Associates, Ltd., 451 So.2d 1Ø54 (Fla. 3rd DCA 1984). The interpretation of s. 83.66 by the Third District Court of Appeal is further supported when viewed in light of the language contained in s. 14 of ch. 82-66. This language provides insight into what the legislature intended when it passed the provisions contained in s. 25. It is painfully obvious that the legislature has adopted a position that is in clear violation of the law as announced in Loretto v. Teleprompter Manhattan CATV Corp. 458 US 419 (1982).

Statutory Revision has apparently taken the position that because s. 25 appears later in ch. 82-66 than s. 14, then this is the last expression of legislative intent and should control. However, they candidly admit that it is unclear what the legislature intended by including the language in s. 14. This Court cannot simply ignore those portions of ch. 82-66 that were passed by the legislature and evince an overall legislative intent which is not consistent with the law as set forth in Loretto. All of the language relating to cable television must be given meaning. It is without dispute that courts have an obligation to read a statute, if possible, in a manner that will not lead to an unconstitutional interpretation. State v. Beasley, 317 So.2d 75Ø (Fla. 1979). The intent of the legislature must be looked to for guidance in interpreting the

language so as to arrive at a logical and reasonable conclusion. Wakulla County v. Davis, 395 So.2d 540 (Fla. 1981). However, this Court cannot rewrite the language that was used by the legislature when enacting a law.

The language presented in ch. 82-66 relating to cable television access to apartments cannot be given a constitutional interpretation without wholesale changes in the language used by the legislature. This Court should uphold the decision of the Third District Court of Appeal, and the legislature will then be able to go back and clarify its intent and adopt a constitutional statute that comports with the guidelines as set out in Loretto, Id.

CONCLUSION

The decision of the Third District Court of Appeal should be affirmed. Section 83.66, Fla. Stat., is unconstitutional as a taking with compensation, and there is no way this Court can give the statute a constitutional reading without rewriting the language. The statute should be stricken and the legislature permitted to clarify its intent.

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CERTIFICATE OF SERVICE

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