SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. 68,626

METROPOLITAN DADE COUNTY FAIR HOUSING AND EMPLOYMENT APPEALS BOARD,

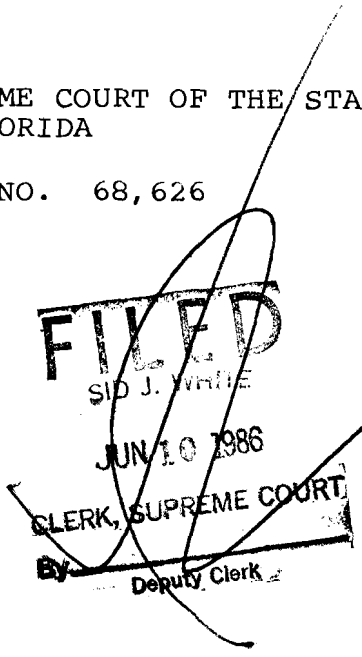
Petitioner,

v.

SUNRISE VILLAGE MOBILE HOME PARK, INC.,

Respondent.

_____/



BRIEF OF AMICUS CURIAE
FLORIDA MANUFACTURERS HOUSING ASSOCIATION, INC.

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TABLE OF CONTENTS

TABLE OF CITATIONS

STATUTORY AUTHORITY:

INTRODUCTION

Petitioner, Metropolitan Dade County Fair Housing and Appeals Board, shall be referred to herein as "Petitioner" or "the Board". The Metropolitan Dade County Board of County Commissioners shall be referred to as "the Commission." Respondent, Sunrise Village Mobile Home Park, Inc., will be referred to as "Respondent". Amicus curiae, Florida Manufactured Housing Association, Inc. shall be referred to as "the FMHA".

STATEMENT OF THE CASE AND FACTS

Amicus curiae, Florida Manufactured Housing Association, Inc., adopts the statement of the case and facts as set forth in the brief of the Respondent, Sunrise Village Mobile Home Park, Inc.

QUESTION ON APPEAL

Under the principles enunciated in White Egret Condominium, Inc. v. Franklin, 379 So.2d 746 (Fla. 1979), is Chapter 11A, Section 11A-3 of the Code of Metropolitan Dade County an unconstitutional exercise of the county commission's police powers insofar as the ordinance prohibits reasonable age discrimination in housing?

SUMMARY OF ARGUMENT

Although due process considerations do not preclude the exercise of the police power by a governmental entity such as Dade County, the exercise of this power is limited to enactments which secure the health, safety morals and general welfare of the public and that do not unreasonably, unnecessarily or unduly impair private, personal or property rights. Griffin v. Sharpe, 65 So.2d 751 (Fla. 1953); Blitch v. City of Ocala, 195 So. 406 (1940); Florida Accountants Association v. Dandelake, 98 So.2d 323 (Fla. 1957). An ordinance with an unduly broad sweep that invades protected freedoms cannot survive constitutional scrutiny under the due process clause. Griswold v. Connecticut, 381 US 479, 85 S.Ct. 1678, 14 L. Ed.2d 510 (1965); Sawyer v. Sandstrom, 615 F.2d 311 (5th Cir. 1980).

Chapter 11A, Section 11A-3, Dade County Code, unconstitutionally impairs the existing contract between the Respondent and his tenants by prohibiting the

continuation and enforcement of the age restrictions contained in their lease and rules and regulations previously agreed to by the parties. These rules are entitled to the same sanctity as any other contract dealing with restrictions upon the use of land such as restrictive covenants and condominium agreements. See Hidden Harbor Estates, Inc. v. Basso, 393 So.2d 637 (Fla. 4th DCA, 1981); Riley v. Stoves, 526 P2d 747 (Ariz. App. 1974); Griffin v. Sharpe, supra.

In prohibiting the enforcement of the agreed upon age restrictions, the subject ordinance impairs the contract of the parties far beyond the minimal degree tolerated under Florida law by serving to change the substantive rights of the parties. Pomponia v. Claridge of Pompano Condominium Inc., 783 So.2d 774 (Fla. 1979); Dewberry v. Auto-Owners Insurance Co., 363 So.2d 1072 (Fla. 1978). Absent the need to safeguard some vital public interest, legislation impairing contracts cannot stand, especially where the legislation is not reasonable and appropriate to the public purpose asserted. Home Building and Loan Assoc. v. Blaisdel, 290 US 398, 54 S.Ct. 231 (1934); United States Trust Co. v. New Jersey, 431 US 1, 97 S.Ct. 1505 (1977). The subject ordinance fails in all respects under this analysis and under the principles set forth by this Court in White Egret Condominium Inc. v. Franklin, 379 So.2d 346 (Fla. 1979).

Similarly, Chapter 11A, Section 11A-3, infringes upon the rights of the Respondent and his tenants to use their property as they desire: to live together in a community limited to adults over the age of forty years without the problems and distractions that arise with the presence of children or younger adults. These property right are subject to impairment or limitation under the police power only where that limitation is reasonably necessary to secure the general welfare of the public. Coca-Cola Co. v. Department of Citrus, 406 So.2d 1079 (Fla. 1981), App. dis. 456 US 1002 (1982). The subject ordinance bears no such reasonable relationship to any public purpose or to the public welfare and is contrary to the express recognition by this Court that age restrictions such as the one in question serve a legitimate purpose and thereby benefit the public welfare. White Egret Condominium Inc. v. Franklin, supra.

Finally, the subject ordinance unduly infringes upon rights of association by prohibiting persons wishing to live together in a retirement community free from the problems and distractions that inevitably arise with children or younger adults. The ordinance unjustifiably interferes with these person's rights to form and preserve certain forms of personal relationships and realize the emotional enrichment derived therefrom or to simply be let alone. Roberts v. United States Jaycees, 468 US ____, 82 L. Ed.2d 462, 104 S.Ct. ____ (1984); City of Pompano Beach

v. Capalbo, 455 So.2d 468 (Fla. 4th DCA 1984), cert. den. 461 So.2d 113 (Fla. 1985).

The courts below have properly applied the decision of this Court in White Egret Condominium Inc. v. Franklin, supra, to the facts of this case. Although the facts of the two cases are not identical in that White Egret did not involve a legislative prohibition against age discrimination in housing, the principles set forth in this Court's opinion mandate the result reached by the courts below.

In White Egret this Court recognized that agreed upon age restrictions in housing arrangements implicate constitutional protections involving contracts, property, freedom of choice and association. This Court further recognized the reasonableness of such restrictions and found them to be rationally related to a permissible objective without infringing upon any fundamental rights. In light of these considerations, it cannot be said that an ordinance prohibiting the exercise of constitutionally protected activity that serves the public welfare has any rational basis or is reasonably related to a legitimate public purpose.

ARGUMENT

I.

CHAPTER 11A, SECTION 11A-3, CODE OF METROPOLITAN DADE COUNTY, CONSTITUTES AN UNCONSTITUTIONAL EXERCISE OF THE COUNTY'S POLICE POWER.

A. Chapter 11A, Section 11A-3, Code of Metropolitan Dade County Violates the Due Process Protections of the Federal and State Constitutions.

The Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 9 of the Florida Constitution prohibit the deprivation of a person's life, liberty or property without due process of law.[1] Although the due process clauses of the Federal and State Constitutions do not preclude the exercise by the state of its police power to secure the health, safety, morals and general welfare, the due process limitations of the state and federal constitutions constitute a limitation upon that police power. Griffin v. Sharpe, 65 So.2d 751 (Fla. 1953); Blitch v. City of Ocala, 195 So. 406,142 Fla. 612 (1940). Thus, an exercise of the police power which is unreasonable, unnecessary or which unduly impairs private, personal or property rights violates due

[1]The identical standards are applied to due process analyses under both state and federal constitutions and due process considerations under both constitutions will be discussed together. See, Florida Canners Association v. State Department of Citrus, 371 So.2d 503 (Fla. 2d DCA 1979).

process of law. Florida Accountants' Association v. Dandelake, 98 So.2d 323 (Fla. 1957).

Under the due process restraints, statutes regulating private, personal or property rights must bear a rational relationship to a legitimate state interest which serves to protect the public and be reasonably designed to correct a condition adversely affecting the public good. Dade County Consumer Advocate's Office v. Department of Insurance, 457 So.2d 495 (Fla. 1st DCA, 1984), affd. 11 FLW 240 (Fla. 1986). When judged against this standard Section 11A-3 must fail. There is no rational relation to protecting the public welfare and unreasonably and unnecessarily impairs constitutionally protected rights of contract, property, association and privacy.

Additionally, constitutional due process protections are implicated by the overbroad sweep of the subject ordinance. Under this analysis, even if a statute or ordinance can be said to meet a legitimate legislative objective, it may unduly and unnecessarily infringe upon constitutionally protected activities and thereby violate due process protections.

United States Supreme Court recognized the limitations imposed upon the ordinances which invade constitutionally protected areas in Griswold v. Connecticut, 381 U.S. 479, 85 S Ct. 1678, 14 L.Ed.2d 510 (1965) stating:

> Such a law cannot stand in light of the familiar principle, so often applied by this

> Court, that a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.

Thus, even where the ultimate purpose of an ordinance may be acceptable or laudatory, an overly broad sweep may be unjustified by any compelling state interest and render the subject ordinance unconstitutional. Sawyer v. Sandstrom, 615 F.2d 311 (5th Cir. 1980), (declaring Dade County's loitering ordinance unconstitutional). Also see Record Revolution No. 6, Inc. v. City of Parmer, 638 F.2d 916 (6th Cir. 1980); Dyke v. School Board of Orange County, Florida, 650 F.2d 783 (5th Cir. 1981).

These identical principles have been applied to a case involving housing ordinances restricting the class of members and family permitted to reside in a dwelling with the resulting conclusion that such an ordinance is unconstitutional as violative of due process by infringing upon constitutionally protected interests such as familial association.

B. Chapter 11A, Section 11A-3, Code of Metropolitan Dade County Impairs the Constitutionally Protected Right to Contract.

In Florida, the right to contract is a most valuable right entitled to a high degree of protection, State exrel Fulton v. Ives, 167 So. 394 (Fla. 1936), and virtually no degree of contract impairment is tolerated. Pomponio v. Claridge of Pompano Condominium, Inc., 378 So.2d 774 (Fla. 1979); Yamaha Parts Distributors, Inc. v.

Ehrman, 316 So.2d 557 (Fla. 1975). Thus, legislation which serves to rewrite a contract or change the substantive rights of the parties to an existing contract or which in any way detracts from the value of the contract cannot survive scrutiny under due process considerations of Article I, Section 10 of the Florida Constitution or Article I, Section 10 of the United States Constitution. Dewberry v. Ardo-Owners Insurance Company, 363 So.2d 1077 (Fla. 1978); Manning v. Travelers Insurance Company, 250 So.2d 872 (Fla. 1971). It has been stated that:

> When a lawful contract is in existence regulating property rights and property rights have been acquired and vested by authority of law, subsequent legislation cannot divest the rights. Mahood v. Bessemer Properties, 18 So.2d 775, 779 (Fla. 1944).

Thus, an intrusion into existing contracts through legislation can only survive if that legislation is reasonable and appropriate to the end of safeguarding the vital interests of the public regardless of whether the intrusion into the contract is incidental, direct, or indirect. Home Building and Loan Assoc. v. Blaisdell, 290 US 398, 54 S. Ct. 231 (1934). Even then, the existence of an important public interest may not be sufficient to overcome the limitations of the contract clause where the legislation is not "upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption. United States Trust Co. v. New Jersey, 431 US 1, 21-22, 97 S.Ct. 1505, 1517-18 (1977) (cited to with

approval in Pompanio v. Claridge of Pompano Condominium, Inc., supra.

In the instant case, the Respondent has contracted with its tenants, via leases and through the rules and regulations of the park, to provide the retirement setting they desire. Establishing this retirement setting necessarily requires age limitations such as being challenged. Thus, there exists between the Respondent and his tenants a contractual obligation regarding the operation of the mobile home park that is no less binding than express provisions in a lease, in a declaration of condominium or bylaws, or in restrictive covenants contained in a deed. Under Florida law, the Respondent in this case may well be subject to a suit in specific performance or for injunctive relief should he fail to enforce the rules in this park pertaining to age. Petitioner, however, seeks to change the substantive rights of the parties to this contract by requiring the Respondent to accept persons under the age of 40 into its mobile home park.

The courts of this state and others have repeatedly recognized the rights of parties to set restrictions by contract between themselves pertaining to the use of property. As recognized by the Court in Hidden Harbor Estates, Inc. v. Basso, 393 So.2d 637 (Fla. 4th DCA 1981):

> Such restrictions are very much in the nature of covenants running with the land and they will not be invalidated absent a showing that they are wholly arbitrary in their application

in violation of public policy or that they abrogate some fundamental constitutional right.

These same principles have been applied to use restrictions contained in condominium agreements pertaining to age, White Egret Condominium, Inc. v. Franklin, 379 So.2d 346 (Fla. 1979); Starlake North Commodore Association, Inc. v. Parker, 423 So.2d 503 (Fla. 3d DCA 1982); Pacheo v. Lincoln Palace Condominium, 410 So.2d 573 (Fla. 3d DCA 1982); Coquina Club v. Mantz, 342 So.2d 112 (Fla. 2d DCA 1977), and restrictive covenants in deeds applying the same restrictions. Riley v. Stoves, 526 P.2d 747 (Ariz. App. 1974). There is no reason why the same principles should not be applied to mobile home parks where the parties achieve the same use restriction via a lease or rules and regulations. In all of these situations the use restrictions achieve the sanctity of contracts that cannot be abrogated by legislative act without violating constitutional provisions relating to obligation of contracts and due process of law. Griffin v. Sharpe, supra.[2]

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[2]The legislature has explicitly recognized the rights of park owners and home owners to adopt reasonable rules and regulations governing the operation of the park, including the rules related to the qualifications of prospective tenants. Cite to Sections 723.022, 723.023, 723.031, 723.035 and 723.059, F.S. This Court in White Egret Condominium, Inc. v. Franklin, supra, gave considerable weight to similar statutory guarantees contained in §718.112(3), F.S. in upholding identical age restrictions in the condominium setting. The preemptive effect of such statutory guarantees demand consideration as well. Campbell v. Monroe Co., 426 So.2d 1158 (Fla. 3d DCA 1983).

C. Chapter 11A, Section 11A-3, Code of Metropolitan Dade County is Violative of The Constitutionally Protected Rights of Persons to Determine the Use of Property.

Just as the Florida and United States Constitutions recognize the sanctity of contracts, also recognized is the right of an individual to determine the use of his or her real property. Palm Beach Mobile Homes, Inc. v. Strong, 300 So.2d 881 (Fla. 1974). These property rights are subject only to the fair exercise of the police power to establish regulations that are reasonably necessary to secure the general welfare of this state. 10 Fla.Jur.2d, Constitutional Law, §220, page 407 (1979). Thus, the Petitioner may interfere with this and other constitutionally protected rights under the police power doctrine only if the interference bears a reasonable relationship to the public safety, health, morals and general welfare. Coca Cola Company v. Department of Citrus, 406 So.2d 1079 (Fla. 1981), appeal dismissed 456 U.S. 1002 (1982).

In the instant case, Respondent wishes to use its property in order to operate a mobile home park restricted to retired adults over the age of forty. Individual tenants have likewise chosen to exercise the property rights they possess in their homes and in the lots they rent from the Respondent by locating in this adult-only park and by relying upon the restrictions imposed by the Respondent. However, the exercise of these property rights as described can only be infringed upon by the

county if the restriction is necessary for the general welfare. Petitioner does not assert and there does not appear to be any reasonable basis to allege or establish that this regulation is harmful to the general welfare or otherwise repugnant to constitutional principles. To the contrary, this Court has approved age restrictions in housing and has found them to be rationally related to a permissive state objective and in furtherance of the public welfare. White Egret Condominium, Inc. v. Franklin, supra.

Also contrary to Petitioner's concept of the general welfare, it is apparent that there exists a considerable demand for housing containing age restrictions in light of the large number of housing arrangements that include such restrictions, such as mobile home parks, condominiums and apartments, both in Dade County and statewide.

In light of this fact, it is difficult to perceive how Petitioner can rationally argue that the ordinance in question furthers public safety, public welfare, public morals or public health. One must certainly question whether the residents of the communities effected by this ordinance would consider their general welfare to be served by allowing single persons, unmarried couples or others within interests completely divergent from those existing in the community to enter the community and disrupt the existing use of the property.

D. Chapter 11A, Section 11A-3, Code of Metropolitan Dade County Violates Constitutionally Protected Rights of Association.

Also infringed upon by the ordinance in question are the rights of association which necessarily follow when citizens come together to live in a community.

Most recently the Court has given recognition to the rights of persons to associate together for purposes that are not otherwise constitutionally repugnant. In Roberts v. United States Jaycees, 468 U.S. ____, 82 L. Ed.2d 462, 104 Sup. Ct. ____ (1984), the Supreme Court recognized that:

> . . .because the Bill of Rights is designed to secure individual liberty, it must afford the formation and preservation of certain kinds of highly personal relationships a substantial measure of sanctity from unjustified interference by the state. . .Moreover the constitutional shelter afforded such relationships reflects the realization that individuals draw much of their emotional enrichment from close ties with others. Protecting these relationships from unwarranted state interference therefore safeguards the ability independently to define one's identify that is essential to any concept of liberty.
>
> 82 L. Ed.2d at 471-472.

Although it cannot be asserted that the right to associate is absolute, the imposition of restrictions upon the rights of association may be limited to instances where the discrimination involves a protected class such as race or sex or where there exists "the importance, both to the individual and to society, of removing the barriers to economic advancement and political and social

integration that have historically plagued certain disadvantaged groups, including women." 82 L. Ed.2d at 476.

In the instant case, however, a suspect class is not involved and there exists no compelling interests such as the removal of barriers to economic advancement to mitigate against the protection of these rights of association. Instead, the ordinance in question, as applied to the circumstances of the instant case and to the large number of retirement communities located in Dade County, serves to deprive individuals seeking to reside in retirement communities of the right to associate together in the manner in which they choose and realize the emotional enrichment that will inevitably result from close ties with others sharing similar status and interest. The ordinance in question unduly infringes upon these rights and this infringement is totally without any rational basis.

Florida courts have recognized and relied upon the previously discussed principles set forth in Griswold and recognizing the individual's rights, stating:

> Absent a showing of a compelling subordinating societal interest, the City may not thus invade the right of persons, as against the government. . .to be let alone--the most comprehensive of rights and the right most valued by civilized man. Griswold v. Connecticut, 381 U.S. 479, 494, 85 Sup. Ct. 1678, 1687, 14 L. Ed.2d 510, 521 (1985), Goldberg, J., concurring (citing Olmstead v. United States, 277 U.S. 438, 478, 48 Sup. Ct. 564, 572, 72 L. Ed. 944, 956 (1928), Brandeis, J., dissenting).

City of Pompano Beach v. Capalbo, 455 So.2d 468 (Fla. 4th DCA 1984), dealing with the city's sleep in a vehicle ordinance.

As the foregoing discussion illustrates, the ordinance in question constitutes a substantial infringement upon numerous constitutionally protected rights. Additionally, Petitioner has not proposed a sufficient rational basis for this ordinance, has not sufficiently established its benefit to the public welfare, safety, health or morals or put forth any other basis for its extreme intrusion into the constitutional rights of the individuals. Under these circumstances, this legislation is not entitled to the legislative deference often accorded such enactments nor can it be said that this ordinance is not violative of any constitutional provision as asserted by Petitioners. Although there may not exist a constitutional right to discriminate as is correctly asserted by Petitioner, the constitution does provide protections against intrusions into the citizens' rights of association, to contract and to use property, all of which demand consideration in the instant case and all of which are intruded upon by the ordinance in question. Under these circumstances, Chapter 11A, Section 11A-3 of the Dade County Code must be stricken as unconstitutional.

II.

THE PRINCIPLES ENUNCIATED BY THIS COURT IN WHITE EGRET CONDOMINIUM INC. V. FRANKLIN, 379 SO.2D 346 (FLA. 1979) APPLY IN THIS CASE AND REQUIRE A FINDING THAT CHAPTER 11A, SECTION 11A-3, DADE COUNTY CODE IS UNCONSTITUTIONAL.

In White Egret Condominium Inc. v. Franklin, supra, this Court determined that condominium restrictions or limitations based upon age do not violate any fundamental right and are enforceable if they serve a legitimate purpose and are reasonably applied, 379 So.2d at 350. The significance of White Egret is not the absence of a county ordinance or state statute at issue, but instead the underlying principles and rights recognized by this Court in reaching its decision.

In the White Egret opinion, this Court recognized a number of individual rights possessed by the property owners which worked in favor of upholding the restriction against equal protection challenges. The Court recognized the individual's right to contract, rights to use of his property and freedom of choice in stating:

> In the instant case, the restriction not a zoning ordinance adopted under the police power but rather a mutual agreement entered into by all condominium apartment owners of the complex. With this type of land use restriction, an individual can choose at the time of purchase whether to sign an agreement with these restrictions or limitations. Reasonable restrictions concerning use, occupancy, and transfer of condominium units are necessary for the operation of protection of the owners in the condominium concept. 379 So.2d at 350.

This Court went on to recognize, as well, the rights of association implicated by the parties' voluntary agreement to restrict ownership and occupation to those of a particular age:

> In our view, age restrictions are a reasonable means to identify and categorize the varying desires of our population. The law is now clear that a restriction on individual rights on the basis of age need not pass the "strict scrutiny" test, and therefore age is not a suspect classification. See Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 96 Sup. Ct. 2562, 49 Lawyers Ed.2d 520 (1976).

In connection with the Court's recognition of these rights of contract, free choice, property and association, the Court expressly recognized the reasonableness of such restrictions and found them to be rationally related to a permissible state objective, noting "senior citizen units are limited to one and two bedroom units designed to provide the quiet atmosphere that most of our senior citizens desire." And, quoting from Riley v. Stoves, supra, "the obvious purpose is to create a quiet, peaceful neighborhood by eliminating noise associated with children at play or otherwise." 379 So.2d at 350, 351.

Thus, the White Egret case establishes this Court's recognition of the constitutionally protected rights possessed by property owners and residents in this state allowing them to band together to live in a community which contains reasonable rules and regulations restricting certain types of use and occupancy. It would be incongruous for this Court to hold that on one hand the

restriction in question does not violate any fundamental right, and is reasonable and rationally related to a legitimate objective, and then on the other hand to hold that an ordinance prohibiting these restrictions is also reasonable and rationally related to a legitimate state purpose. When dealing with rights as personal as those of contract, property, free choice and association, the rights of the individual should prevail.

Thus, although White Egret may not be "directly on point" due to its not involving a challenge to a legislative enactment, the principles and reasoning of this Court in that case are directly applicable to the facts of the instant case and requires the affirmance of the decision of the lower courts.

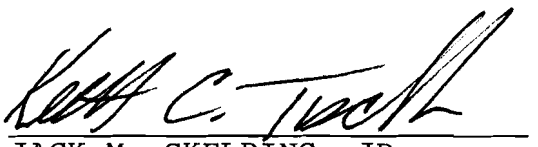
III.

CONCLUSION

As the foregoing discussion illustrates, the subject ordinance, Chapter 11A, Section 11A-3, is constitutionally deficient in a number of respects and violates rights of due process, contract, property and association. Because, as recognized by this Court in White Egret Condominium, Inc. v. Franklin, supra, the age restrictions which this ordinance seeks to prohibit do not violate any fundamental right, serve a legitimate purpose and constitute a valid exercise of constitutionally protected rights of contract, property, choice and association, the ordinance cannot

survive constitutional scrutiny. The decisions of the courts below must be affirmed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U. S. Mail to Elliott H. Lucas, Esquire, 590 English Avenue, Homestead, Florida 33030 and Robert A. Ginsburg, Attn: John McInnis, Dade County Attorney, Metro Dade Center, 111 N.W. First Street, Suite 2810, Miami, Florida 33128 this 16th of June, 1986.

KEITH C. TISCHLER