SUPREME COURT OF FLORIDA

CASE NO. 68,626

METROPOLITAN DADE COUNTY
FAIR HOUSING AND EMPLOYMENT
APPEALS BOARD,

Petitioner,

vs.

SUNRISE VILLAGE MOBILE
HOME PARK,

Respondent.
_____/

REPLY BRIEF OF PETITIONER METROPOLITAN DADE COUNTY

ROBERT A. GINSBURG
Dade County Attorney
Metro-Dade Center
Suite 2810
111 N.W. 1st Street
Miami, Florida 33128-1993
(305) 375-5151

By

John McInnis
Assistant County Attorney

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INTRODUCTION

Petitioner, Metropolitan Dade County Fair Housing and Employment 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 County Commission" or "the Commission." The Respondent, Sunrise Village Mobile Home Park, shall be identified as "Respondent" or "Sunrise"; references to Respondent's brief shall be denoted "Sunrise Brief, p. __." The amicus curiae, Florida Manufacturers Housing Association, Inc., shall be referred to as "FMHA"; references to the brief of FMHA shall be indicated by "FMHA Brief, p. __."

ARGUMENT

The question before this Court for consideration is whether Chapter 11A, Section 11A-3, Code of Metropolitan Dade County, is a constitutional exercise of the County Commission's police power. In their briefs to this Court, the Respondent and the Amicus Curiae argued to this Court that the ordinance unconstitutionally interferes with the Respondent's rights as guaranteed by the Florida Constitution. The ordinance, however, simply prohibits age based discrimination in housing. Nothing in the Florida Constitution guarantees to any person the right to discriminate on the basis of age.

The Respondent suggests that Chapter 11A, Section 11A-3 runs afoul of an individual's constitutional right to acquire, possess and protect property. It is well-established, however, that reasonable restrictions on this right in the interest of the public welfare are valid exercises of the Legislature's police power. Sarasota County v. Barq, 302 So.2d 737, 741 (Fla. 1974).

Unquestionably, under its police power, the Board of County Commissioners may enact legislation prohibiting discrimination. Such legislative enactments come clothed in a presumption of validity and reasonableness, and the burden is on the challenging party to show the ordinance is unreasonable. City of Miami v. Kayfetz, 92 So.2d 798, 802 (Fla. 1957). Respondent, however, fails to satisfy that threshold obligation.

The test for determining whether an ordinance enacted pursuant to the police power is reasonable is whether the ordinance has a rational relation to the public health, safety or welfare and is reasonably designed to correct a condition adversely affecting the public good. In enacting Chapter 11A, Section 11A-3, the Board of County Commissioners endeavored to assure equal access to all of available housing to all persons in Dade County. There exists sound policy reasons for upholding such an enactment and clearly a blanket proscription against all age-based housing discrimination against adults, does foster the legitimate public purpose of assuring equal access to all available housing. Reasonable people may differ as to the wisdom of banning all age-based housing discrimination; however, such policy reasons are insufficient to justify striking an otherwise valid legislative enactment. See, VanBibber v. Hartford Accident and Indemnity Insurance Company, 439 So.2d 880, 883 (Fla. 1983). If reasonable argument exists on the question of whether an ordinance is unreasonable, the legislative will must prevail. 92 So.2d at 801, citing State ex rel Skillman v. City of Miami, 101 Fla. 585, 134 So. 541 (1931).

In their briefs to this Court, Respondents have also argued that in enacting Chapter 11A, Section 11A-3, the Board of County Commissioners has impaired the Respondent's contractual obligations in violation of the constitution. This argument is without merit. It has long been established that in order to give rise to the impairment

of contractual obligation, the contract must be in existence prior to the enactment of the legislation in question. Mahood v. Bessemer Properties, Inc., 154 Fla. 710, 18 So.2d 775 (Fla. 1944). In the instant case, there exists no evidence of record to serve as a basis for Respondent's claim that its pre-existing contractual rights have been impaired by enactment of Chapter 11A. There was no written contract in evidence and no testimony concerning any agreement to limit residence in Respondent's mobile home park to retirees. Even if such evidence had been introduced, however, the challenged regulations intended to secure equal access to housing accommodation would supersede contractual obligations contravening such legislation.

Finally, Respondents contend that this Court's holding in White Egret Condominium, Inc., v. Franklin, 379 So.2d 346 (Fla. 1979) requires a finding that Chapter 11A, Section 11A-3 is unconstitutional. In White Egret, supra, this Court held that age-based housing restrictions are reasonable means of accomplishing the lawful purpose of providing appropriate facilities for various age groups. Id. at 351. Although White Egret clearly establishes that age-based housing restrictions are constitutionally permissible, it does not hold that such restrictions enjoy the benefit of constitutional protection nor did this Court recognize a constitutional right to discriminate on the basis of age. In the absence of such constitutional principle, the legislature may regulate such restrictions in the interest of the public welfare. It is axiomatic that

the legislature is free to act in any area not barred to it by the Constitution. 10 Fla.Jur. 2d, Constitutional Law, §56, and in the absence of such a constitutionally protected right, the Board of County Commissioners has declared all age-based housing discrimination against persons over the age of 18 to be unlawful.

In its ban on all age-based housing discrimination against persons over the age of 18, Chapter 11A, Section 11A-3 is a valid exercise of the County's police power to enact legislation in furtherance of the general welfare. Contrary to the assertions of the Respondent and the Amicus Curiae, the ordinance interferes with no recognized constitutional right. Further, the ordinance comes clothed in a presumption of validity which the Respondent has failed to rebut. Similarly, the Respondent has failed to show that enactment of Chapter 11A, Section 11A-3 interferes with any of its pre-existing contractual obligations. Accordingly, Chapter 11A, Section 11A-3 must be upheld as a valid exercise of the authority granted the Metropolitan Dade County Board of County Commissioners in Article VII, Section 6(f) of the Florida Constitution and Section 166.021(3), Fla. Stat.

ARGUMENT

I

CHAPTER 11A, §11A-3, CODE OF METROPOLITAN DADE IS A VALID EXERCISE OF THE COUNTY COMMISSION'S POLICE POWER AND INFRINGES ON NO CONSTITUTIONALLY PROTECTED RIGHT.

The question before this Court for consideration is whether Chapter 11A, Section 11A-3, Code of Metropolitan Dade County, is a constitutional exercise of the County Commission's police power. In their briefs to this Court, the Respondent, Sunrise Village Mobile Home Park, and the Amicus Curiae, the Florida Manufacturers Housing Association, Inc., have argued that the ordinance is unconstitutional because it impermissibly interferes with an individual's rights as guaranteed by the Florida Constitution. The Petitioner asserts, however, that the individual rights guaranteed by the Constitution do not include the right to discriminate on the basis of age.

Although Article I, Section 2 of the State Constitution grants to all persons the right to acquire, possess, and protect property, it is well-established that reasonable restrictions on this right in the interest of the public welfare are valid exercises of the legislature's police power. Sarasota County v. Barq, 302 So.2d 737, 741 (Fla. 1974). Cf., Neisel v. Moran, 80 Fla. 98, 85 So. 346 (1919). In the instant case, the Board of County Commissioners, seeking to "assure equal opportunity to all persons to live in decent housing facilities" enacted legislation prohibiting housing discrimination on the basis of age and several other specific grounds. Sections 11A-1 to 11A-3, Code of Metropolitan Dade County.

There can be no question that Metropolitan Dade County, under its police power, is empowered to enact legislation prohibiting discrimination

in housing.[1] Indeed, neither the Respondent nor FMHA questions the Commission's underlying authority in that regard. Respondents contend, however, that §11A-3 is an unreasonable means of effecting and enforcing that policy determination. Sunrise Brief, pp. 10, 12-13.

Legislative enactments come clothed in a presumption of validity and reasonableness. City of Miami v. Kayfetz, 92 So.2d 798, 801 (Fla. 1957) citing State ex rel Ellis v. Tampa Water Works Co., 56 Fla. 858, 47 So. 358 (1908). When the validity of an enactment made under the police power is challenged, the burden is on the challenging party to show the ordinance is unreasonable. 92 So.2d at 802. Petitioner asserts that the Respondent has failed to satisfy that threshold obligation.

In considering whether an ordinance enacted pursuant to the police power is reasonable, the test is whether it has a rational relation to the public health, safety or welfare and is reasonably designed to correct a condition adversely affecting the public good. Id.

In the instant case, the Board of County Commissioners in 1969 determined that there existed a crisis in housing in Dade County. In response the Commission enacted the predecessor to Chapter 11A banning housing discrimination on several specific grounds including age. Appendix 1.

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[1] The Commission's authority is derived from the Florida Constitutional, Article VIII, §6(F) which provides:

> Article VIII, §6(F), Florida Constitution, provides that "the Metropolitan Government of Dade County may exercise all the powers conferred now or hereafter by general law upon municipalities."

and §166.021(3), Fla. Stat., which grants to municipalities the power to make enactments in any area open to the state legislature.

As stated in the Petitioner's Initial Brief, there exist sound policy reasons in support of the Commission's decision to prohibit all age-based housing discrimination against adults. Such justifications include but are not limited to assuring equal access to all available housing and preventing the creation of impenetrable and inescapable enclaves of one or more age groups. Chapter 11A, §11A-3 is not clearly unreasonable on its face. The reasonableness of the ordinance is, therefore, presumed. 92 So.2d at 801. This presumption the Respondent is obliged to rebut. Id. at 802.

In arguing that Chapter 11A, §11A-3 is unreasonable, the Respondents and the courts below cite strong policy reasons for holding §11A-3 invalid. Policy reasons alone, however, are insufficient to justify nullifying an otherwise valid enactment of the duly elected legislative body. It is true that in the absence of a legislative pronouncement courts may appropriately determine public policy; however, such a policy determination must yield in the face of a valid, contrary legislative pronouncement. Van Bibber v. Hartford Accident and Indemnity Insurance Co., 439 So.2d 880, 883 (Fla. 1983).

The Respondents have failed to meet their burden of showing that Chapter 11A, §11A-3 is an unreasonable exercise of the Commission's police power. To rebut the presumption of reasonableness the Respondent offers several policy reasons for permitting the existence of age restrictions such as the one it seeks to enforce. Respondent's expressions of policy are debatable at best. If reasonable argument exists on the question of whether an ordinance is arbitrary or unreasonable, the legislative will must prevail. 92 So.2d at 801, citing State ex rel Skillman v. City of Miami, 101 Fla. 585, 134 So. 541 (1931). See also, Lester v. City of St. Petersburg, 183 So.2d 589, 591 (Fla. 2d DCA 1966).

Respondents and the courts below have suggested that Article I, §2 of the Constitution implies the right to use age as the basis for excluding certain adults from residing in retirement communities. An examination of the Constitution, however, finds nothing in that section or elsewhere to support such a contention. Nor has there been a previous decision by any court of this state recognizing such a right. In the absence of a constitutional provision, express or implied, creating such a right, Chapter 11A, §11A-3 may not be held unconstitutional. See, e.g., State v. Dade County, 142 So.2d 79, 85 (Fla. 1962).

II

CHAPTER 11A, §11A-3 DOES NOT IMPERMISSIBLY IMPAIR THE OBLIGATIONS EXISTING UNDER RESPONDENT'S CONTRACTS WITH ITS TENANTS-LESSEES.

Courts in Florida have long recognized that in order to give rise to a claim of impairment of contractual obligation, the contract must be in existence prior to the legislation alleged to abridge the obligation. In Mahood v. Bessemer Properties, Inc., 154 Fla. 710, 18 So.2d 775 (Fla. 1944), this Court stated:

> The contract rights protected by the cited provisions of the Federal Constitution relate to property rights. [citation omitted.] It must be made to appear that a lawful contract is in existence which is the subject of impairment. See Hudson County Water Co. v. McCarter, 209 U.S. 349, 28 S.Ct. 529, 53 L.Ed. 828, 14 Ann. Cas. 560.

18 So.2d at 779.

It is a fundamental principle of contract law that any contract entered in violation of existing law is void. Bond v. Koscot Interplanetary, Inc., 276 So.2d 198 (Fla. 4th DCA 1971); see also Weschler v. Novak, 157 Fla. 703 (1946). Indeed, any remedial law in effect at the

time the contract is made becomes a part of the agreement. Palm Beach Mobile Home, Inc. v. Strong, 300 So.2d 881, 887 (Fla. 1974).

The chronology of pertinent events in the case at bar reveals that Respondent has no legitimate claim that its then-existing obligations were impaired by the passage of the challenged legislation. The unlawful practices in housing section of the Dade County Code became law on June 18, 1975 by operation of Ordinance No. 75-46. See editor's note, Section 11A-3, Code of Metropolitan Dade County, Florida. Appendix A.

In the proceeding below, Sunrise failed to adduce any evidence to support its assertion that enactment of Chapter 11A impaired its then-existing contractual obligations to its tenants. The admonition in the Park Rules and Regulations that "this is an Adult Park. You may have children as guests, as per guest rules" does not speak of a retirement park and has not been shown to be a contractual term. Even assuming, however, that the rules represent terms of a contract between Sunrise and its tenants, such agreement was plainly not entered into until approximately early 1980 (Appendix B-8), some four and a half years after enactment of §11A-3.

There exists no evidence of record to serve as a basis for Respondent's claim that its pre-existing contractual rights had been impaired by enactment of the portions of Chapter 11A which it is found to have violated no written contract was offered in evidence, and no testimony elicited concerning any agreement to limit the mobile home park to retirees -- much less a contract entered into prior to the enactment of section 11A-3 of the Dade County Code -- which might have impaired pre-existing contracts between Sunrise and its tenants.

Moreover, in Palm Beach Mobile Homes, Inc. v. Strong, 300 So.2d 881 (Fla. 1974), the Supreme Court approved, over the mobile home park owners'

claim of impairment of existing contracts, the enactment of a statute providing grounds for eviction from mobile home parks. The Court decided that the statute constituted a reasonable and necessary regulation of the mobile home park owners' right to use property as they saw fit, subject only to the restraint necessary to secure the public welfare. 300 So.2d 881, 885.

Where, as here, no contractual obligations are in evidence which antedate the challenged regulation, no claim of impairment can be made to appear. Implied in every contract is the fact that it is to be interpreted and enforced in accordance with the law. Department of Insurance, State of Florida v. Teachers Insurance Co., 404 So.2d 735 (Fla. 1981); Bedell v. Lassiter, 143 Fla. 43, 196 So. 699 (1940); DeSlatopolsky v. Balmoral Condominium Association, Inc., 427 So.2d 781 (Fla. 3d DCA 1983).

Furthermore, Section 11A-3, Code of Metropolitan Dade County, would supersede even validly executed pre-existing contracts. As the Supreme Court of Florida has said:

> Liberty of contract and the right to use one's property as he wills are fundamental constitutional guaranties, but the degree of such guaranties must be determined in the light of social and economic conditions that prevail at the time the guaranty is proposed to be exercised rather than at the time the Constitution was approved securing it; otherwise the power of the legislature becomes static and helpless to regulate the extend them to new conditions that constantly arise.

Palm Beach Mobile Homes, Inc. v. Strong, 300 So.2d 881, 884 (Fla. 1974), quoting with approval Robinson v. Florida Dry Cleaning & Laundry Board, 141 Fla. 899, 194 So. 269 (1940), quoting with emphasis its prior decision in Miami Laundry Co. v. Florida Dry Cleaning and Laundry Board, 134 Fla. 1, 183 So. 759 (1938), 119 A.L.R. 956. See also West Coast Hotel v. Parrish, 300 U.S. 379, 391, 57 S.Ct. 578, 581, 81 L.Ed. 703 (1937), where the Court sustained a regulation over a contract clause challenge as a "reasonable"

regulation "adopted in the interests of the community." In accord is City of El Paso v. Simmons, 379 U.S. 497, 85 S.Ct. 577, 13 L.Ed.2d 446 (1965).

The record below contains no evidence that any then-existing contractual obligation of Sunrise was impaired by the passage of Dade County's fair housing ordinance on June 18, 1975. Even if such evidence had been adduced, however, the challenged regulations intended to secure equal access to housing accommodations would, as a matter of law, supersede contractual obligations contravening such legislation. Appellant's argument of impairment of contract is therefore without merit.

III

THE DECISION IN WHITE EGRET CONDOMINIUM v. FRANKLIN DOES NOT DICTATE THE RESULT REACHED IN THE INSTANT CASE BY THE COURTS BELOW.

Respondents contend that the holding of this Court in White Egret Condominium, Inc. v. Franklin, 379 So.2d 346 (Fla. 1979) requires a finding that Chapter 11A, §11A-3 is unconstitutional. This contention, however, is without merit.

Respondents and the courts below rely on White Egret, supra, for the proposition that age restrictions are a constitutionally-permissible means of satisfying the differing housing needs and desires of various age groups. 379 So.2d at 351. From this holding, however, the Respondents and the courts below inexplicably and unjustifiably extend White Egret to conclude that because such restrictions are not constitutionally forbidden, the County Commission is powerless to ban such discrimination.

In White Egret, supra, this Court held that age-based housing restrictions are a reasonable means of accomplishing the "lawful purpose" of providing appropriate facilities for various age groups. Id. at 351.

In analyzing the instant case in light of White Egret, the courts below and the Respondents have chosen to ignore the express intent of the County Commission declaring all age-based discrimination against persons over the age of eighteen to be unlawful. Chapter 11A, §§11A-1, 11A-2(14) and 11A-3(1), Code of Metropolitan Dade County.

Although White Egret clearly establishes that age-based housing restrictions are constitutionally permissible, it does not hold that such restrictions enjoy the benefits of constitutional protection, nor did this Court recognize a constitutional right to discriminate on the basis of age. 379 So.2d at 351. Because White Egret establishes no such constitutional principle, the legislature may regulate such restrictions in the interest of the public welfare. It is axiomatic that the legislature is free to act in any area not barred by the Constitution. 10 Fla. Jur.2d, Constitutional Law §56.

As a preliminary matter, Petitioner reiterates that the ordinance enacted by the Commission comes clothed in a presumption of validity. Unlike the ordinance, however, the age restriction Respondent seeks to impose enjoys no presumption of validity. As the party challenging the ordinance, the Respondent has the burden of rebutting the presumption. In the instant case, the Respondent and FMHA have failed to show the ordinance is unreasonable or otherwise invalid. The necessary result of that failure is that the ordinance must be deemed valid. Respondent's age restriction, therefore, furthers a purpose which is unlawful rather than lawful and is outside the protections of White Egret, supra.

FMHA also contends that it would be incongruous for this Court to hold that age-based housing restrictions are permissible, and to then allow a local government to enact an ordinance forbidding such restrictions. FMHA Brief, p. 19. What the Amicus Curiae fails to realize, though, is that

White Egret and the age-based housing restrictions at issue there and in the instant case relate to a subject matter on which there is, as yet, no statewide standard or uniform public policy. In the absence of such a statewide standard, however, the government of Metropolitan Dade County is free to enact ordinances on any matter subject to legislation by the State Legislature. Article VIII, §6(f), Fla. Const.; Section 166.021(3), Fla. Stat. On that basis alone, Chapter 11A, §11A-3 should be upheld.

CONCLUSION

Petitioner, Sunrise Village Mobile Home Park, Inc., and the Amicus Curiae, the Florida Manufacturers Housing Association, Inc., have argued that Chapter 11A, §11A-3 is an unconstitutional exercise of the County Commission's exercise of the County Commission's police power insofar as it prohibits all age-based housing discrimination. Respondents assert that the ordinance is unconstitutional because it impermissibly interferes with the property owners constitutional right to acquire, possess and protect property. Nothing in the Florida Constitution, however, expand an individual's property rights to encompass the right to discriminate on the basis of age. In overturning the ordinance, the circuit court below held that since the Supreme Court in White Egret found age-based restrictions to be reasonable, Chapter 11A, which allows no age-based restrictions must, by implication, be unreasonable and unconstitutional. The circuit court, though, departs from the fundamental principles of constitutional law in that it seeks to improperly declare unconstitutional an ordinance which it views as unreasonable. It is well established, however, that in order to overturn an otherwise valid exercise of the police power, the enactment in question must be shown to be unreasonable. Where rational people may differ as to whether the method by which the Legislature chooses to enforce

its will, it is insufficient as a matter of law for the courts to substitute policy determinations which they deemed to be more reasonable. In analyzing the instant case in light of this Court's holding in White Egret Condominium v. Franklin, supra, the circuit court erred in concluding that since the Florida Constitution does not proscribe age-based housing restrictions, legislations are necessarily prevented from doing so. That is not correct. Before an enactment is declared unconstitutional it must be shown to be in direct conflict with some provision of organic law. Chapter 11A, though, conflicts with neither the Constitution, the Constitution of the United States, nor any existing state statute.

From the foregoing, it is clear that the circuit court erred in holding Chapter 11A, §11A-3 unconstitutional. The enactment is valid, even in light of appropriate interpretations of the White Egret case. The Respondent enjoys no constitutionally protected right to discriminate on the basis of age; therefore, the age restriction Respondent seeks to impose must fail under Chapter 11A and the ordinance must be upheld.

Accordingly, Petitioner respectfully urges this Court to reverse the decision of the courts below and affirm the decision of the Metropolitan Dade County Free Housing and Employment Appeals Board.

Respectfully submitted,

ROBERT A. GINSBURG
Dade County Attorney
Metro-Dade Center
Suite 2810
111 N.W. 1st Street
Miami, Florida 33128-1993
(305) 375-5151

By: _____
John McInnis
Assistant County Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 25th day of June, 1986, to: ELLIOT H. LUCAS, ESQ., 590 English Avenue, Homestead, Florida 33030 and to KEITH C. FISCHLER, ESQ., Haben, Parker, Skelding, Costigan, McVoy, Labasky, 318 North Monroe Street, Tallahassee, Florida 32301.

Assistant County Attorney