IN THE SUPREME COURT
STATE OF FLORIDA

LANCA HOMEOWNERS, INC., a/k/a
LANCA HOMEOWNERS ASSOCIATION, INC.,
and the L. C. GRIEVANCE COMMITTEE,
INC., and PATRICK McKERNAN,

Appellants,

CASE NO. 71,767
DCA - 4 NO. 87-0315

vs.

LANTANA CASCADE OF PALM BEACH, LTD.,
and JAMES A. SMITH,

Appellees.

BRIEF OF AMICUS CURIAE,
THE FLORIDA MANUFACTURED HOUSING ASSOCIATION

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STATEMENT OF THE CASE AND OF THE FACTS

The Amicus Curiae accepts the Statement of the Case and of the Facts as presented in the Reply Brief of Appellees and incorporates same by reference herein.

In this Brief, Appellants in this court, who were Appellees in the Fourth District Court of Appeal, will be referred to as "Appellants" or by "LANCA," Appellees in this court, Appellants ion the district court will be referred to as "Appellees," and the Amicus Curiae for the Appellants, The Federation of Mobile Home Owners of Florida, Inc., will be referred to as "Amicus FMO." All references to the Initial Brief of the Appellants will be cited as "Appellants' Brief, p. ____."

JURISDICTION

As a preliminary matter and in response to Appellant's argument that the appellate court did not have the authority to take jurisdiction of this matter, the Amicus replies that Appellees filed both a Notice of Appeal and a Petition for Certiorari in regard to the issues addressed herein to the Fourth District Court of Appeal. The Fourth District Court of Appeal accepted jurisdiction pursuant to Rule 9.130(a)(3)(C)(i), Fla.R.App.P., and cited its earlier decision in Maner Properties, Inc. v. Siksay, 489 So.2d 842 (Fla. 4th DCA 1986). Appellants argue that the court previously held, in Altreco-Florida v. Berliner, 360 So.2d 784 (Fla. 4th DCA 1978), cert. denied, 366 So.2d 879 (Fla. 1978), that "an order certifying a class action was an interlocutory order from which no appeal could be taken." See also, National Lake Developments v. Lake Tippecanoe, 417 So.2d 655 (Fla. 1982). The instant case is distinguishable from National Lake Developments, wherein appellants were not allowed to immediately appeal an order designating the composition of a class. Appellees in this action have appealed a final order certifying the class representative. The representative is not a member of the class, as acknowledged by the trial court in its order of January 3, 1987, and, therefore, Appellees and Amicus have not addressed that issue in this appeal. The issues involved in this appeal relate to the certification of the class representative and the unconstitutionality of the statute under which the trial court certified the class representative.

Should this court reject the decision of the district court that it had jurisdiction pursuant to Rule 9.130(a)(3)(C)(i), Fla.R.App.P., Amicus reminds this court that Appellee also sought the discretionary jurisdiction of the district court through its Petition for Certiorari. Appellants do not argue that the appellate court could not have exercised its discretionary jurisdiction under Rule 9.030(b)(2)(A), Fla.R.App.P., which authorizes district courts of appeal to review "non-final orders of lower tribunals other than as prescribed by Rule 9.130."

The appellate court had jurisdiction to review the order of the trial court in that the order was a clear "departure from the essential requirements of [the] law." Thikardeau v. Santini Bros., 315 So.2d 550, 551 (Fla. 4th DCA 1975). In its order of January 3, 1987, the trial court rejects the position of Appellees that Lanca is not an appropriate class representative because it is not a member of the subject class, as required by Rule 1.220, Fla.R.Civ.P., and states instead: "[t]his position, however, overlooks the substantive grant of authority contained in §723.079(1), Florida Statutes (1985)." This is clearly a departure from the essential requirements of the law, as the trial court judge certifies the class representative not according to Rule 1.220, Fla.R.Civ.P., but according to a statutory provision which the Fourth District Court of Appeal correctly declared to be unconstitutional as applied, in that it usurps the rulemaking authority of the Florida Supreme Court.

Therefore, this Court should determine that the Fourth District Court of Appeal had jurisdiction to address the issues in this action.

SUMMARY OF ARGUMENT

This court should affirm the decision of the Fourth District Court of Appeal which struck down §723.079(1), Fla. Stat. (1985) as an impermissible encroachment by the legislature on the rulemaking authority of the Florida Supreme Court. The Florida Constitution authorizes the legislative branch of government to enact the substantive laws and policies of this state, but reserves to the Florida Supreme Court the authority to determine the rules and procedure for the courts of Florida. For this reason, §723.079(1), Fla. Stat. (1985), which authorizes a mobile home owners' association to represent its members in judicial proceedings, even though the association may not meet the requirements of Rule 1.220, Fla.R.Civ.P., must be struck down in accordance with this court's previous holding in Avila South Condominium Association vs. Kappa Corporation, 347 So.2d 599 (Fla. 1976).

Contrary to the argument of Appellants, there is no compelling reason for this Court to turn an unconstitutional statutory provision into a new rule of procedure. The public policies and considerations that led to this court's adoption of Rule 1.221, Fla.R.Civ.P., do not exist in this action. For this court to rewrite the rules of procedure merely because the Appellants are unable to meet the requirements of Rule 1.220,

Fla.R.Civ.P., would send an invitation to all homeowners' associations and other hybrid associations, opening the flood gates to requests for preferential treatment for all classes unable to comply with Rule 1.220, Fla.R.Civ.P.

In addition, this court should affirm the holding of the Fourth District Court of Appeal that Lanca is not a member of the class it seeks to represent and, therefore, Lanca cannot be an appropriate class representative. Lanca is unable to meet the requirements of Rule 1.220, Fla.R.Civ.P., and should not be allowed to bypass the rule under §723.079(1), Fla. Stat. (1985), which was correctly found to be unconstitutional by the Fourth District Court of Appeal.

This Court should affirm the decision of the Fourth District Court of Appeal, and, in addition, should deny Appellants' request for a new rule of procedure.

ISSUE I

THE DISTRICT COURT OF APPEAL CORRECTLY DECLARED §723.079(1), FLA. STAT. (1985), TO BE UNCONSTITUTIONAL IN THAT IT USURPS THE RULEMAKING AUTHORITY OF THE FLORIDA SUPREME COURT.

In determining that Lanca was not an appropriate representative of the class it sought to represent, the appellate court held that:

> Section 723.079(1), Florida Statutes (1985) cannot be used as authority to find that Lanca is a proper class representative. The language used in §723.079(1) which purports to give Lanca the authority to act as a class representative has been struck down as unconstitutional in that it usurps the Florida Supreme Court's rulemaking authority. Avila South Condominium Association v. Kappa Corp., 347 So.2d 599 (Fla. 1976). Therefore, on the authority of Avila, we hold §723.079(1), Florida Statutes (1985), except for the first two sentences, unconstitutional.

The appellate court correctly found §723.079(1) to be unconstitutional in that it usurps the rulemaking authority of the Florida Supreme Court. The authority of the Florida Supreme Court to promulgate rules of practice and procedure for the Florida courts is constitutionally established in Article V, Section 2, of the Florida Constitution. It is also well established case law that the powers constitutionally bestowed upon the judiciary may not be exercised by the legislature; matters of practice and procedure in the state courts are the sole province of the Supreme Court. Military Park Fire Control Tax District No. 4 v. DeMarois, 407 So.2d 1020 (Fla. 4th DCA 1981); Graham v. Murrell, 462 So.2d 34 (Fla. 1st DCA 1984);

Petition of Stoll, 309 So.2d 190 (Fla. 1st DCA 1975); Johnson v. State, 308 So.2d 127 (Fla. 1st DCA 1975), affirmed, 346 So.2d 66 (Fla. 1977).

Appellants argue in their Brief that the exclusive authority of the Florida Supreme Court to promulgate rules of practice and procedure for the courts of Florida "is in conflict with the democratic principle underlying the Florida Constitution's assignment of the primary role in the determination of public policy to the legislative branch of Florida government." (Appellant's Brief, pp. 8, 9). Appellants produce no support for this stirring hypothesis nor do they show that the legislative and judicial branches are engaging in "undemocratic" activities which are contrary to the principle behind the Florida Constitution. Instead, Appellants conveniently omit from their Brief the language of Article V, Section 2(a), Florida Constitution, which provides:

> The supreme court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review, the administrative supervison of all courts, the transfer to the court having jurisdiction of any proceeding when the jurisdiction of another court has been improvidently invoked, and a requirement that no cause shall be dismissed because an improper remedy has been sought. These rules may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature. (emphasis supplied)

Thus, the Supreme Court shall promulgate the rules and procedure for the courts in this state; and, while the Legislature is not constitutionally empowered to promulgate rules

of practice and procedure for the courts, it is constitutionally empowered to repeal those rules, according to Article V, Section 2(a). See also, In Re: Clarification of Florida Rules of Practice and Procedure, 281 So.2d 204 (Fla. 1973).

In addition, Appellants' argument that policy issues are inherent in the promulgation of rules of practice and procedure, and therefore beyond the scope of this court, if accepted, would divest this court of authority to promulgate such rules and thereby invest in the legislative branch powers not constitutionally granted to it. In substance, this is the same argument advanced, and rejected, in Markert v. Johnson, 367 So.2d 1003 (Fla. 1978):

> A recurring argument advanced by proponents of the statute is that the issue of joinder of insurers is simply a matter of public policy, the declaration of which is primarily a legislative function. It is asserted that only in the absence of a constitutional or statutory declaration may public policy be determined by the courts. The fallacy in that reasoning, of course, is that, as a matter of constitutional imperative, only the Supreme Court has the power to adopt rules of practice and procedure for Florida courts. The fact that our rules may reflect the prevailing public policy-whether by design or coincidence-obviously does not enable the legislature to encroach on our rule-making authority. The separation of powers doctrine precludes that result. Art. II, §3, Fla. Const.
> 367 so.2d at 1005, n.8. (emphasis supplied).

The essence of Appellants' argument in asking this court to reverse the decision of the Fourth District Court of Appeal regarding the constitutionality of §723.079(1), Florida Statutes (1985), is that the decision in Avila, supra, is not dispositive

in the case sub judice. In fact, that decision, relied upon by the District Court, is indeed clearly dispositive in this instance.

In Avila, supra, this court struck down as unconstitutional, a statute nearly identical to the statute in question in this action. The statute at issue in Avila reads as follows:

> ...For these purposes, the powers of the association shall include, but not be limited to, the maintenance, management, and operation of the condominium property. When the board of administration is not controlled by the developer, the association shall have authority and the power to maintain a class action and to settle a cause of action on behalf of unit owners of a condominium with reference to matters of common interest, including, but not limited to, the common elements, the roof and structural components of a building or plumbing elements serving an improvement or a building, as distinguished form mechanical elements serving only a unit. In any case in which the association has the authority and the power to maintain a class action, the association may be joined in an action as representatives of that same class with reference to litigation and disputes involving the matters for which the association could bring a class action... Nothing herein shall limit any statutory or common law right of any individual unit owner or class of unit owners to bring any action which may otherwise be available in any court.
> §711.12(2), Fla. Stat. (1975)

In relevant part the statute at issue in this case reads:

> ...For these purposes, the powers of the association include, but are not limited to, the maintenance, management, and operation of the park property. The association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all home owners concerning matters of common interest, including, but not limited to: the common property; structural components of a

> building or other improvements; mechanical, electrical, and plumbing elements serving the park property; and protests of ad valorem taxes on commonly used facilities. If the association has the authority to maintain a class action, the association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action. Nothing herein limits any statutory or common-law right of any individual home owner or class of homeowners to bring any action which may otherwise be available.
> §723.079(1), Fla. Stat. (1985)

Aside from minor grammatical exceptions, the above statutes are indistinguishable in their impermissible incursion into the rulemaking authority of this court.

Appellants' attempt to distinguish the specific language stricken in Avila, supra, and the specific language comprising §723.079(1), Fla. Stat. (1985), is incorrect and of no consequence to the issue in this case. This court did not declare former §711.12(2), Fla. State. (1975) to be unconstitutional because of any specific word, nor did the Fourth District Court of Appeal strike down §723.079(1), Fla. Stat. (1985), because of one specific word. Both statutes were read as a whole, as required by this court in State v. Rodriguez, 358 So.2d 157 (Fla. 1978); Shuman v. State, 358 so.2d 1333 (Fla. 1978); Florida Jai Alai, Inc. v. Howell Water & Reclamation District, 274 So.2d 522 (Fla. 1973). Both statutes were found to be an impermissible encroachment into the rulemaking authority of the Florida Supreme Court and were therefore declared unconstitutional.

Contrary to the argument of Appellants, the test of constitutionality of §723.079(1), Fla. Stat. (1985), is not whether former §711.12(2), Fla. Stat. (1975), was a grant of absolute standing to a condominium association, as in Avila, supra, and/or that §723.079(1), Fla. Stat. (1985), is not. The test of constitutionality is whether the statute is substantive or procedural.

Decisions from the courts of this state have provided guidance as to the substantive or procedural nature of statutes. This court has stated:

> Practice and procedure encompass the course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion. "Practice and procedure" may be described as the machinery of the judicial process as opposed to the product thereof.
>
> Examination of many authorities leads me to conclude that substantive law includes those rules and principles which fix and declare the primary rights of individuals as respects their persons and their property. As to the term "procedure," I conceive it to include the administration of the remedies available in cases of invasion of primary rights of individuals. The term "rules of practice and procedure" includes all rules governing the parties, their counsel and the Court throughout the progress of the case from the time of its initiation until final judgment and execution. See Kellman v. Stoltz, 1 F.R.D. 726 (N.D. Iowa, 1941).
>
> In re Florida Rules of Criminal Procedure, 272 So.2d 65, 66 (Fla. 1972)

The standards set forth in this case have been followed by this court and by the district courts of appeal in deciding

issues properly before the courts on matters of substantive and procedural law. In Benyard v. Wainwright, 322 So.2d 473 (Fla. 1975), this court recognized a direct conflict between a rule of criminal procedure and a statute which directed whether sentences imposed by a court were concurrent or consecutive. Because the subject addressed in Benyard (the prescribed punishment for a criminal offense) was of a substantive nature, this court held that the statute must prevail over the rule as "the responsibility to make substantive law is in the legislature." 322 So.2d at 475.

Later, in State v. In the Interest of J. A., Jr., et al., 367 So.2d 702 (Fla. 2d DCA 1979), the appellate court determined that the conflict between a rule of procedure and a statutory provision must be decided in favor of the rule in that the subject matter addressed was procedural, i.e., the computation of a time period in which to file a delinquency petition with the court. The court held:

> Substantive law prescribes duties and rights under our system of government, and the legislature is responsible for enacting such law. Procedural law concerns the means and methods to apply and enforce those duties and rights, and the supreme court determines procedural law through the promulgation of rules. 367 So.2d at 703.

Clearly then, the decision of this Court in Avila, supra, was predicated upon the finding that the statute at issue, taken as a whole, constituted procedural law and as such was an impermissible incursion by the legislature into the exclusive authority of this court to adopt rules for practice and procedure

in the courts of this state.

Section 723.079(1), Fla. Stat. (1985), which was struck down as unconstitutional by the Fourth District Court of Appeal, constitutes the exact same type of incursion into the judicial prerogative which is constitutionally impermissible under Article II, Section 3, Florida Constitution.

It is obvious that §723.079(1), Fla. Stat. (1985), deals with matters of procedure rather than substantive rights. As was done by this court in Avila, supra, it is apparent that the Fourth District Court of Appeal in this action utilized the test set forth by Justice Adkins in In Re Florida Rules of Criminal Procedure, supra, which states that a statutory provision which seeks to define the proper parties in suits litigating substantive rights is clearly a procedural law as the subject matter addresses "the machinery of the judicial process as opposed to the product thereof." 272 So.2d at 66.

This court should therefore find that the statute at issue here, §723.079(1), Fla. Stat. (1985), impermissibly seeks to define the proper parties in suits litigating substantive rights and as such the statute is an impermissible encroachment into the exclusive authority of this court to adopt the rules of procedure for the courts in this state.

The decisions of the Florida Supreme Court and the district courts of appeal have remained steadfast in their distinctions between the constitutional authority of the Florida Supreme Court to adopt procedural rules for the judiciary and the

constitutional authority of the Florida Legislature to adopt substantive law. Avila South Condominium Association v. Kappa Corp., 347 So.2d 599 (Fla. 1976); Military Park Fire Control Tax District No. 4 v. De Marois, 407 So.2d 1020 (Fla. 4th DCA 1981); Graham v. Murrell, 462 So.2d 34 (Fla. 1st DCA 1984); Markert v. Johnson, 367 So.2d 1003 (Fla. 1978); Benyard v. Wainwright, 322 So.2d 473 (Fla. 1975); State v. In the Interest of J. A., Jr., et al., 367 So.2d 702 (Fla. 2nd DCA 1979).

In summary, there is no true distinction between §723.079(1), Fla. Stat. (1985), and former §711.12(2), Fla. Stat. (1975), which was struck down in Avila, supra. Both unconstitutionally usurp the rulemaking authority of the Florida Supreme Court. Therefore, the decision of the District Court that §723.079(1), Florida Statutes (1985), is unconstitutional must be affirmed.

In addition, Appellants' argument that the statute is remedial in nature and therefore constitutional is not persuasive. The cases cited by Appellants for this proposition, Adams v. Wright, 403 So.2d 391 (Fla. 1981) and Florida Wildlife Federation v. State Department of Environmental Regulation, 390 So.2d 64 (Fla. 1980), clearly illustrate that even a statute characterized as remedial in nature must still pass constitutional muster in not invading the Florida Supreme Court's exclusive rulemaking authority. That is, the initial question is whether the statute is substantive law or simply a procedural mechanism. One is constitutional, the other, if enacted by the

legislature, is not.

Simply put, §723.079(1) is procedural and thereby unconstitutional, and this Court should affirm the decision of the Fourth District Court of Appeal.

ISSUE II

THE COURT SHOULD NOT ADOPT THE SUBSTANCE OF §723.079(1), FLORIDA STATUTES (1985), AS A RULE OF PROCEDURE.

Appellants suggest that if this court determines that the District Court was correct in declaring §723.079(1), Fla. Stat. (1985), unconstitutional it should, in the alternative, amend Rules 1.220 or 1.221, Fla.R.Civ.P., to provide mobile homeowners with a procedural mechanism identical to that of condominium owners. (Appellants' Brief, p. 17). This position overlooks the rationale utilized by this court in enacting Rule 1.220(b), the predecessor of Rule 1.221, Fla.R.Civ.P.:

> Respondent's position essentially is that the elements traditionally required to establish the efficacy of a class are inherent in a condominium association relationship making pleading and proof of such elements unnecessary and burdensome. This position is reinforced by the argument that individual association members are protected from capricious or arbitrary class actions by the governing authority through provisions of Chapter 718, Florida Statutes (Supp. 1976), as well as decisions which impose a fiduciary duty upon the governing body of such associations to afford due process and equal protection to its members. See McCune v. Wilson, 237 So.2d 169 (Fla. 1970), and Franklin v. White Egret Condominium, Inc. Case No. 76-1535, opinion filed Aug. 9, 1977 (Fla. 4th DCA 1977).
>
> We concur with the Respondent.
>
> The Florida Bar. In re Rule 1.220(b), Florida Rules of Civil Procedure (Petition to Modify), 353 So.2d 95, 97 (Fla. 1977).

Although Appellants would have this Court believe there are no differences between a condominium association and a mobile

home owners' association, in reality, the two associations are quite distinctive. A mobile home owners' association is not statutorily mandated, as distinguished from a condominium association. A mobile home owners' association is a voluntary association which must be created by an affirmative vote of two-thirds of the residents of the mobile home park, according to §723.075(1), Fla. Stat. (1985). Furthermore, an association must be formed in compliance with §§723.075, 723.077, 723.078 and 723.079, Florida Statutes, in order to exercise its limited rights under the statute, §723.075, Florida Statutes (1985).

Moreover, the mobile home owners' association has only two statutorily established rights pursuant to Chapter 723: (1) it has the right to represent the residents of the mobile home park in the mediation or arbitration of disputes in the park pursuant to §723.037 and 723.038, Fla. Stat. (1985); and (2) it has a limited right of first refusal to purchase the mobile home park if the park owner offers to sell the park to the general public, purusant to §723.071(2), Fla. Stat. (1985). In this context, it must be noted that the "right" of representation to arbitrate or mediate has been limited by the legislature in the 1986 amendments to §723.037. Pursuant to these amendments a majority of "affected" residents must now agree in writing to representation by the association before the association has standing in arbitration or mediation, §723.037(2), Fla. Stat. (Supp. 1986). A mobile home owners' association simply does not share "the peculiar features of condominium development,

ownership, and operation" which indicated the wisdom of providing a procedural vehicle for settlement of disputes affecting condominium owners. Avila, supra at 608.

Were this court to amend the well-established rules regarding the institution and maintenance of class actions pursuant to Rule 1.220, Fla.R.Civ.P., for mobile home owners' associations, it would be besieged by requests from every other association of home owners, tenants, cooperative owners, real estate time share plan owners, nursing home residents, merchant associations, etc., to be relieved of the requirements of Rule 1.220, Fla.R.Civ.P. Appellants have failed to show any compelling reason for this court to amend Rule 1.220, Fla.R.Civ.P., and thereby open the floodgates for all other existing homeowners' associations to request special treatment by the judiciary.

Although the Federation of Mobile Home Owners of Florida, Inc. (FMO), Amicus for Appellants, argues in its Brief of Amicus Curiae that the legislative intent is clearly and precisely stated as affording the mobile home owners' association a special status in judicial proceedings, Amicus FMO has clearly and precisely misinterpreted §723.075(1), Fla. Stat. (1985), from which it quotes:

> [U]pon incorporation and service of the notice described in §723.076, the association shall become the representative of the mobile homeowners in all matters relating to this chapter." (Brief of Amicus Curiae, Federation of Mobile Home Owners, page 13).

Contrary to Amicus FMO's argument, the above underscored language

does not prove any legislative mandate that a mobile home owners' association represent mobile homeowners in each and every administrative and/or judicial proceeding that could possibly arise under Chapter 723. As this court is aware and as this Amicus previously discussed under Issue I herein, the Legislature is not constitutionally empowered with the authority to define proper parties in suits litigating substantive rights as such action constitutes "an impermissible incursion by the legislature into the exclusive prerogative of this Court to adopt rules for 'practice and procedure in all courts.' Article V, Section 2(a), Florida Constitution." Avila, 347 So.2d at 608.

Amicus contends that to interpret the statutory provision as requested by Amicus FMO would require this court to dismiss any suit relating to Chapter 723 if it is initiated by a private homeowner rather than the association, which was clearly not the intent of the Florida Legislature. Thus, the Legislature, at best, could only have intended §723.075(1), Fla. Stat. (1985), to apply to the administrative proceedings discussed in Chapter 723, (see e.g. §§723.037, 723.038, Fla. Stat.) and Amicus FMO's attempt to broaden the statutory provision to include proceedings outside the authority of the legislative branch must fail.

Although a mobile home owners' association is statutorily authorized to represent its members in dispute settlement proceedings regulated by mediators and arbitrators employed by the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business Regulation, the homeowners'

association is not authorized to represent its members in judicial proceedings unless the association meets the requirements of Rule 1.220, Fla.R.Civ.P. Because Lanca was unable to meet the requirements of Rule 1.220, Fla.R.Civ.P., it now requests that this Court either amend its rules of procedure or create a new rule under which Lanca can qualify as a class representative.

Appellants have not asserted that the tenants of Lantana Park have no other legal recourse than through representation by Lanca. Appellants have not shown that they will suffer any undue hardship if they are forced to comply with the requirements of Rule 1.220, Fla.R.Civ,.P., and, Appellants have shown no compelling reason for this court to amend its rules of procedure and thereby open the floodgates for similar requests by other associations. Therefore, this court should reject Appellants' argument that because condominium associations are exempt from the requirements of Rule 1.220, Fla.R.Civ.P., so too should be mobile home owners' associations and any other association that cannot comply with the rule.

ISSUE III

THE FLORIDA SUPREME COURT SHOULD AFFIRM THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL THAT LANCA WAS NOT AN APPROPRIATE CLASS REPRESENTATIVE FOR THE MOBILE HOME RESIDENTS OF LANTANA PARK AS LANCA WAS NOT A MEMBER OF THE CLASS AND DID NOT MEET THE REQUIREMENTS OF RULE 1.220(1), FLA.R.CIV.P.

In the case sub judice, the Fourth District Court of Appeal correctly found that Lanca was not an appropriate class representative for the mobile home residents. In its order of December 16, 1987, the appellate court held: "Lanca is not a member of the class, and therefore, does not meet the requirements of Florida Rule of Civil Procedure 1.220(a)."

By citing Kohl v. Bay Colony Club Condominiums, Inc., 398 So.2d 865 (Fla. 4th DCA 1981) in its Brief (Appellants' Brief, p. 18), Appellants would have this court believe that Lanca must be afforded the same status as a condominium association, thereby avoiding the requirements of Rule 1.220, Fla. R. Civ. P., a rule with which Lanca cannot comply. However, the Fourth District Court of Appeal, in Eberwie v. Coral Pine Condominium One, 431 So.2d 616 (Fla. 4th DCA 1983), held:

> As to the Rules of Procedure it appears Rule 1.220 applies to litigants other than condominium associations and that Rule 1.221 applies only to such associations. (emphasis supplied).

This court exercised its constitutional authority and adopted Rule 1.220, Fla.R.Civ.P., which governs the institution of a class action by any party (including Lanca) other than a

condominium association which is governed instead by Rule 1.221, Fla.R.Civ.P.

In addition, this court, in Harrell v. Hess Oil and Chemical Corp., 287 So.2d 291 (Fla. 1973), and again in Frankel v. City of Miami Beach, 340 So.2d 463 (Fla. 1976), set forth a seven-prong test which a Plaintiff must meet in its Complaint to bring a class action suit under Rule 1.220, Fla.R.Civ.P.:

> (1) show the necessity for bringing the action as a class suit;
> (2) show plaintiff's right to represent the class;
> (3) allege that plaintiff brought suit on behalf of himself and all others similarly situated;
> (4) allege the existence of a class, described with some degree of certainty;
> (5) allege that the members of the class were so numerous as to make it impracticable to bring them all before the court;
> (6) make it clear that plaintiff adequately represents the class; and
> (7) show that the interests of the were co-extensive (common interest-community interest) with the interests of other members of the class.
> Harrell, supra, at 293-94. (Explanation and emphasis added); Frankel, supra, at 465.

Lanca has not and cannot meet these requirements. As Lanca is not a member of the class it seeks to represent, it has not and cannot demonstrate that it is "similarly situated" with the members of the class it seeks to represent, i.e., the tenants of Lantana Park, a mobile home park. Stabinski v. Pirelli Tire Co., 371 So.2d 679 (Fla. 3d DCA 1979). Appellants failed to assert in their Complaint or subsequent pleadings that Lanca has any ownership or leasehold interest in common with the park owner.

In addition, Lanca has not and cannot show interests that are co-extensive with the members of the class it seeks to represent. In Maner Properties, Inc. v. Siksay, 489 So.2d 842 (Fla. 4th DCA 1986), the court discussed in detail this requirement and the rationale underlying it:

> It is well established that for an action to qualify as one appropriate for class treatment, it must be shown that the claims, issues and defenses are common to all the members of the class. The interests of the plaintiff must be co-extensive with the interests of the other members of the class with a common right of recovery based on the same essential facts. Such determinations are indispensable to the maintenance of a class action because the various class members are all made parties to the litigation involuntarily and will be bound by whatever results may follow, regardless of their separate or individual desires. Indeed, the resulting judgment is res judicata upon the rights of the entire class despite their lack of participation in, or perhaps even knowledge of, the proceedings. (citations omitted) 489 So.2d at 845. (emphasis supplied).

Lanca does not have any interests co-extensive with those of the class it seeks to represent; Appellants admit that Lanca is not a member of the class it purports to represent (Appellants' Brief, p. 18); and, Appellants have not and cannot demonstrate that they are similarly situated with the class they seek to represent, i.e., the tenants of Lantana Park, a mobile home park. It is therefore sufficient to state that the Fourth District Court of Appeal was correct in its finding that Lanca "does not meet the requirements of Florida Rule of Civil Procedure 1.220(a)."

The Amicus is also compelled to respond to Appellants' argument that "[I]t is particularly ironic that the appellees in this action, who have recognized the appellant, Lanca Homeowners, Inc., in the mediation proceedings leading up to this litigation, now challenge Lanca as to its ability to represent the tenants within the park pertaining to the lot rentals and services in this litigation." (Appellants' Brief, p. 21).

The Amicus does not dispute that §723.037, Fla. Stat. (1985), authorizes a homeowners' association to represent its members in mediation and arbitration proceedings held pursuant to §723.038, Fla. Stat. (1985). However, as Appellants are aware, those are administrative rather than judicial proceedings conducted by mediators and arbitrators employed by the Division of Florida Land Sales, Condominiums and Mobile Homes of the Department of Business Regulation, an agency of the executive rather than judicial branch of government.

In addition, Amicus does not dispute that Appellants are not required to meet the requirements of Rule 1.220, Fla.R.Civ.P., for the above referenced administrative proceedings. As stated in §723.038(1), Fla. Stat. (1985), "The division shall promulgate rules of procedure to govern such proceedings." The statute also provides that the "mediation or arbitration as provided herein is not binding unless the parties agree otherwise in writing," 732.038(2), Fla. Stat. (1985), and that "no resolution arising from a dispute settlement proceeding as provided for in §723.037, or this section shall be deemed final agency action."

Therefore, Appellant cannot now analogize the more relaxed requirements of an administrative dispute settlement proceeding which is not deemed final agency action and which operates under its own rules of procedure to this judicial proceeding which requires all parties to abide by the Florida Rules of Civil Procedure and from which a binding final judgment will be issued. This Court held in Gator Freightways, Inc. v. Mayo, 328 So.2d 444 (Fla. 1976), that procedures within administrative agencies are subject to statutory regulation, while procedure in all Florida Courts are governed by the rules of procedure that have been adopted by the Supreme Court. Appellants cannot, therefore, argue that the status Lanca was afforded in an administrative proceeding must be automatically transferred to the courtroom, contrary to both the Florida Constitution and the decisions of the Florida Supreme Court.

In the instant case, Appellants must meet the requirements of Rule 1.220, Fla.R.Civ.P. Because they have not and cannot comply with Rule 1.220, Fla.R.Civ.P., this court should affirm the decision of the Fourth District Court of Appeal that Lanca was not an appropriate class representative for the mobile home residents of Lantana Park, as Lanca was not a member of the class and did not meet the requirements of Rule 1.220(a), Fla.R.Civ.P.

CONCLUSION

Amicus urges that this court hold that the Fourth District Court of Appeal properly accepted jurisdiction of this action and correctly held that §723.079(1), Fla. Stat. (1985) was unconstitutional in that it usurps the rulemaking authority of the Florida Supreme Court, and that Lanca was not an appropriate representative of the class it seeks to represent as it is not a member of the class and cannot meet the requirements of Rule 1.220, Fla.R.Civ.P.

In addition, Amicus argues that this court should not rewrite its rules of procedure merely because Lanca is unable to comply with the requirements of the current rules. By turning an unconstitutional statute into a new rule of procedure, this court would be opening the floodgates to requests from other homeowners' associations, tenants' assocations, merchants' associations, etc. which are also unable to meet the requirements of Rule 1.220, Fla.R.Civ.P., and, which would seek similar preferential treatment by the courts.

This court should affirm the decision of the Fourth District Court of Appeal and should deny Appellants' request for a new rule of procedure merely because Appellants are unable to comply with the current rules.