IN THE SUPREME COURT OF FLORIDA

REBERT JONES, et al.,

Petitioners,

vs. CASE NO. 72,563

ARTHUR E. THOMAS, et al.,

Respondents.

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BRIEF ON JURISDICTION BY RESPONDENTS,
ARTHUR E. THOMAS, ET AL. TO PETITIONERS' BRIEF

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CITATIONS OF CASE AND AUTHORITIES

Respondents, Arthur E. Thomas, et al., responding to the Brief on the jurisdiction of this Court served by Petitioners state unto the Court as follows:

STATEMENT OF THE CASE

The initial class action complaint filed March 21, 1984, alleged, among other things, the unconscionability of a proposed lot rental increase under Section 83.754, Chapter 83, Part, III, Florida Stat. 1983, known as the "Florida Mobile Home Landlord and Tenant Act." On June 4, 1984, said Act was repealed and in lieu thereof Chapter 723, Florida Statutes (1985), known as "The Florida Mobile Home Act" was adopted by the Legislature.

The latter Law made significant modifications particularly with respect to proposed lot rental increases and the procedures to be followed in the event the mobile home owner feels that the proposal is unreasonable. In that case the dispute is resolved by mediation or arbitration conducted before the Division of Florida Sales, Condominiums, and Mobile Homes of the Department of Business Regulation (Sec. 723.003, 723.037). The issue to be mediated is whether the lot rental increase is "unreasonable". The knotty issue of "unconscionable" has been by Statute deleted from such issues.

Inasmuch as the dispute, under the new law originates with the Division by a committee of mobile home owners or by a home-owners' association (Section 723.037) a class action as such has been dispelled from the law. A decision at this time on the right to bring a class action would, in the circumstances, be an

academic exercise predicated upon hypotheses. The Legislature has acted and the mobile home owner has been provided with an effective and inexpensive remedy.

A conformed copy of the decision of the District Court of Appeal appears in the Appendix to Petitioners' Brief.

ARGUMENT

> The Supreme Court does not have Discretionary Jurisdiction to Review the Decision of the District Court as same does not expressly and directly conflict with a decision of the Supreme Court or of another district court on the same question of law.

The stated issue to be resolved by the District Court was whether a claim of unconscionability could be asserted in a class action by mobile home owners residing in the Friendly Mobile Home Park. The Court decided that a claim of unconscionability cannot be asserted by the mobile home owners against the park owner because, due to the basic differences between people, procedural as distinguished from substantive, unconscionability cannot be established in a class action. The decision was without prejudice to the institution of individual actions.

Petitioners contend that this Court should accept jurisdiction and determine the validity of a decision rendered by the divided District Court. The Court has rejected this contention. In James Reaves v. State of Florida, 485 So. 2d 829 (Fla. 1986), the Court in denying discretionary jurisdiction stated:

> Petitioner is asking that we find conflict with Nowlin. In order to do so, it would be necessary for us either to accept the dissenter's view of the evidence and his conclusion that the statements were involuntary, or to review the record itself in order to resolve the disagreement in favor of the dissenter. Neither course of action is available under the jurisdiction granted by Article V, Section 3(b)(3) of the Florida

> Constitution. Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision. Neither a dissenting opinion nor the record itself can be used to establish jurisdiction. See Jenkins v. State, 385 So. 2d 1356 (Fla. 1980).

See Dept. of Health v. Nat. Adoption Counseling, 498 So. 2d 888 (Fla. 1986).

B.

Petitioners contend that this Court has discretionary jurisdiction to review the District Court's Decision because it expressly and directly conflicts with five decision of other district courts of appeal and two decisions of this Court on the same question of law. Respondents submit that such conflict does not exist.

Petitioners cite, in support of their contention, the following cases:

Stewart v. Green, 300 So. 2d 889 (Fla. 1974).

Palm Beach Mobile Homes, Inc. v. Strong, 300 So. 2d 881 (Fla. 1974).

Steinhardt v. Rudolph, 422 So. 2d 884 (Fla. 3d D.C.A. 1982).

Pearce, et al. v. Doral Mobile Home Villas, Inc., 521 So. 2d 282 (Fla. 2d D.C.A. 1988).

Ashling Enterprises, Inc. v. Browning, 487 So. 2d 56 (Fla. 3d D.C.A. 1986).

Kohl v. Bay Colony Club Condominium, Inc., 398 So. 2d 865 (Fla. 4th D.C.A. 1981).

Lantana Cascade of Palm Beach, Ltd., et al. v. Lanca Home-owners, Inc., 516 So. 2d 1074 (Fla. 4th D.C.A. 1987).

In Stewart the class action issue was not before the Court and no decision was made therein with respect thereto.

In Palm Beach Mobile Homes, Inc. the class action issue was not before the Court and no decision was made with respect thereto.

In Pearce the class action issue was not addressed by the Court and consequently there was no conflicting decision with respect thereto.

In Ashling the Court did not directly address its decision to the issue of class action unconscionable rent cases and, therefore, does not conflict with the District Court's decision.

Kohl was a common law action instituted by a class of condominium unit tenants seeking relief from the terms of a lease of recreational facilities on the ground of unconscionability. The Court expressed the view that substantive unconscionability was "susceptible" to proof in a common law action but proof of procedural unconscionability, though pleaded, could not be proven as a class action at common law.

In Steinhardt the right to bring a class action on behalf of individual condominium unit owners was not an issue in the case and no decision with respect thereto was made by the Court. Absent an express and direct conflict on the same question of law Steinhardt fails to meet the test.

The District Court in Lantana found Section 723.079(1) Fla. Stat. to be unconstitutional and an appeal taken to this Court is pending. Counter plaintiffs, L. C. Grievance Committee, Inc. and Lanca Homeowners, Inc. are not mobile home owners nor are they members of a class of mobile home owners. They purport to appear on their behalf and bind them as alleged in their counter-

complaint. They seek injunctive relief from alleged unconscionable rent increases allegedly charged to the mobile home owners. The Lantana case does not conflict with the District Court's decision.

CONCLUSION

Based upon the foregoing, Respondents respectfully recommend that the Supreme Court decline to exercise discretionary review jurisdiction in this cause.

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, postage prepaid, this 5th day of July, 1988, to John T. Allen, Jr. of John T. Allen, Jr., P. A., 4508 Central Avenue, St. Petersburg, FL 33711 and Christopher P. Jayson of John T. Allen, Jr., P. A. 4508 Central Avenue, St. Petersburg, FL 33711, Attorneys for Federation of Mobile Home Owners of Florida, Inc., Lee Jay Colling, Esq. and Douglas B. Beattie, Esq., 500 NCNB Bank Building, 250 North Orange Avenue, Orlando, Florida 32801.

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