IN THE SUPREME COURT OF FLORIDA

DONALD HARPSTER, et al.,

Petitioners,

vs.

J.T.A., INC.,

Respondent.
_____/

Case No. 73,002

BRIEF ON THE MERITS OF AMICUS CURIAE
FEDERATION OF MOBILE HOME OWNERS OF FLORIDA, INC.,
ON BEHALF OF PETITIONERS

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STATEMENT OF THE CASE

Petitioners in this case, who were plaintiffs in the Circuit Court of Orange County, are certified members of the class of mobile home owners in Wheel Estates Mobile Home Park, and were appellees in the Fifth District Court of Appeal of Florida, will be referred to as the "petitioners." The respondent, mobile home park owner, J.T.A., Inc., who was an appellant in the District Court, will be referred to as the "respondent" or "J.T.A., Inc." Amicus Curiae, the Federation of Mobile Home Owners of Florida, Inc., will be referred to as the "Federation." The following symbols will be used: R - Record-On-Appeal; TR - Transcript of Record; AP - Appendix of Petitioners.

This court has granted discretionary jurisdiction by order dated November 16, 1988.[1] This appeal arises from a two count class action complaint filed on July 5, 1984, by residents in the Wheel Estates Mobile Home Park. For purposes of this appeal and Amicus' participation in this appeal, only Count I for unconscionable rent is in issue. Count I of the residents' complaint alleged that a $50.00 rental increase effective June 1. 1984, was unconscionable under Section 83.754, Fla.Stat. (1983).[2]

The respondent park owner answered the complaint on July 31, 1984, essentially denying the material allegations of the unconscionable rent claim.[3]

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1. Decision is squarely supported by conflict jurisdiction case of Allen v. Florida Power Corporation, 253 So.2d 401 (Fla. 1971).
2. (R 986)
3. (R 994)

On September 7, 1984, the petitioners filed a Motion for Determination of the existence of a class under Rule 1.220, Fla.R.Civ.P.[4] After hearing, the Court entered an order on March 15, 1985, determining and approving the petitioners' class action.[5] A certificate showing the members of the class represented was filed on March 29, 1985.[6]

A non-jury trial was held on July 28, 29, 30, and 31, and August 1, 4, and 5, 1986.[7] On the last day of trial, August 5, 1986, the lower court entered final judgment in favor of the petitioners mobile home residents against the respondent park owner.[8]

On September 18, 1986, a hearing was held on defendant's Motion for New Trial and an order was entered denying said motion.[9] The defendant's Notice of Appeal to the District Court was timely filed on October 17, 1986.[10]

STATEMENT OF THE FACTS

Wheel Estates is an adult mobile home park located on South Orange Blossom Trail in Orlando, Florida.[11] It is located between a nightclub[12] and the Orange County Halfway House, a home

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4. (R 1001)
5. (R 1006-1011)
6. (R 1022-1026)
7. (R 1-985)
8. (R 1337-1338)
9. (R 1344)
10. (R 1577)
11. (TR Vol. II, p. 93)
12. (TR Vol. II, p. 93)

for delinquent children.[13] The park has 52 lots which are all occupied by houses owned by the petitioner class members.[14] There are two types of lots in the mobile home park, "seawall" lots which are adjacent to Lake Bumby, and "non-seawall" lots which are in the interior of the park.[15]

The amenities in the park include a clubhouse, a laundry facility, a shuffleboard court, and a boat ramp. The clubhouse, which is approximately the size of a double garage,[16] has no air conditioning for summer use or heating for winter use.[17] There are no toilet facilities of any kind in the clubhouse.[18]

The laundry area consists of two rusty washing machines and one rusty dryer located outside next to the manager's apartment.[19]

The shuffleboard court is not lighted and can only be used in the daylight hours and the boat ramp is overgrown with weeds and trees so that it can not be used.[20] The roads in the mobile home park are also deteriorating badly and not in good shape.[21]

The residents in the mobile home park are mostly retired.[22] According to a survey conducted by one of the residents, the average age of the residents is approximately 64 years old.[23]

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13. (TR Vol. I, p. 125)
14. (TR Vol. I, p. 84)
15. (TR Vol. I, p. 116)
16. (TR Vol. II, p. 76)
17. (TR Vol. II, p. 113)
18. (TR Vol. II, p. 114)
19. (TR Vol. II, p. 76)
20. (TR Vol. II, p. 77)
21. (TR Vol. II, p. 79)
22. (TR Vol. I, p. 119)
23. (TR Vol. II, p. 46)

The average resident has resided in Wheel Estates for approximately nine years,[24] and the average age of the mobile homes in the park is 14 years old.[25]

The respondent corporation purchased the park on April 30, 1984, from Larry Barnes.[26] On May 11, 1984, the respondent notified the residents of a $50.00 per month rental increase effective June 1, 1984.[27] This increased rents in the mobile home park from $98.00 to $148.00 for non-seawall lots and from $103.00 to $153.00 for seawall lots.[28]

The respondent, J.T.A., Inc., is a Sub-Chapter S corporation formed for the purpose of purchasing Wheel Estates Mobile Home Park.[29] The President of J.T.A., Inc., John Williamson, testified that the corporation paid $550,000.00 for the mobile home park.[30] He and the other two shareholders, who are the other officers and directors, made a $200,000.00 downpayment[31] and executed a $350,000.00 Promissory Note and Wraparound Mortgage for the balance.[32] The $50.00 rental increase, according to Williamson, was designed to recoup the downpayment made on the park by the three owners.[33] The corporation did not

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24. (TR Vol. II, p. 46)
25. (TR Vol. II, p. 47)
26. (TR Vol. I, p. 11)
27. (R 1423)
28. (TR Vol. III, p. 82)
29. (TR Vol. I, p. 7)
30. (TR Vol. I, p. 12)
31. (TR Vol. I, p. 12)
32. (TR Vol. I, p. 13)
33. (TR Vol. I, p. 19)

make a survey of rents in similar parks with similar amenities prior to increasing the rents.[34] Mr. Williamson testified that he was a paving contractor by trade[35] and that he lived in Houston, Texas.[36]

Alexander Gregg, Treasurer of J.T.A., Inc.,[37] and also a Director and stockholder,[38] testified that he was a home improvement contractor[39] living in Hackensack, New Jersey.[40] Mr. Gregg testified that although he was Treasurer of the corporation, he was not the individual primarily responsible for the books and records of J.T.A., Inc.[41] According to Mr. Gregg, the corporation gave a notice of rental increase 11 days after its purchase of Wheel Estates because the park wasn't making any money.[42] Mr. Gregg testified that although the prospectus given J.T.A., Inc. by the prior owner showed that the park was making money,[43] they did not trust the figures in the prospectus.[44]

The former park owner, Larry Barnes, testified that the Prospectus he prepared was accurate.[45] In his opinion, the $50.00 increase was "outrageous"[46] and "unreasonable."[47] He

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34. (TR Vol. I, p. 24)
35. (TR Vol. I, p. 26)
36. (TR Vol. I, p. 5)
37. (TR Vol. I, p. 55)
38. (TR Vol. I, p. 55)
39. (TR Vol. I, p. 77)
40. (TR Vol. I, p. 55)
41. (TR Vol. I, p. 55)
42. (TR Vol. I, p. 56)
43. (TR Vol. I, p. 58)
44. (TR Vol. I, p. 59)
45. (TR Vol. I, p. 84)
46. (TR Vol. I, p. 138)
47. (TR Vol. I, p. 147)

testified that most of the residents were on social security and could not afford a $50.00 rental increase and that he "would not do that" to the tenants in the park.[48] The former park owner also testified that he believed J.T.A., Inc. paid too much for the mobile home park.[49]

At trial, Louis Heck, the former accountant for J.T.A., Inc.,[50] testified by deposition. He was retained by respondent to do the initial setup of their books and accounting records.[51]

Respondent's former accountant testified that he knew from the beginning that the park would not be able to make a profit initially and that the owners would have to be able to withstand some losses in the beginning.[52] In the accountant's opinion, the $550,000.00 purchase price was too high a price to pay for Wheel Estates Mobile Home Park.[53]

Heck testified that with a rental rate of $148.00 per lot, the park owners would recoup their principal investment in five years and that the park would operate at a profit.[54] At the time of J.T.A., Inc.'s purchase, he told the park owners that increasing the rent $50.00 per month was unreasonable.[55] Mr. Heck stated:

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48. (TR Vol. I, p. 138)
49. (TR Vol. I, p. 140)
50. (TR Vol. I, p. 150)
51. (TR Vol. I, p. 150)
52. (TR Vol. I, p. 157)
53. (TR Vol. I, p. 171)
54. (TR Vol. I, p. 169)
55. (TR Vol. I, p. 172)

> It's just too unreasonable to expect people -- it would be nice to have, you know, everybody pay your tab automatically, but that is not the way the real world works. (Vol. 1, p. 176)

Shortly after informing J.T.A., Inc. that the $50.00 rental increase was unreasonable, Mr. Heck was fired by J.T.A., Inc.[56]

Each party also presented expert testimony with regard to the fair market rental value of lots in Wheel Estates Mobile Home Park. Petitioners' expert, Dr. Tom Curtis, is a Professor of Economics at the University of South Florida in Tampa, Florida.[57] Dr. Curtis has approximately 10 years experience in studying mobile home park finances and unconscionable rent situations.[58]

Dr. Curtis testified that based on his comparison of Wheel Estates Mobile Home Park with four comparable parks in the area offering comparable or like amenities, the increased rental amount of $148.00 per month at Wheel Estates was "greatly out of line" with the comparable parks.[59] Dr. Curtis also analyzed the financial data introduced as evidence comparing the park income and operating expenses and determined that there was no legitimate reason for raising rents on the basis of increased operating expenses.[60]

In Dr. Curtis' opinion, a reasonable lot rental for Wheel Estates Mobile Home Park as of the date of the $50.00 rental increase would be in the range of $95.00 to $100.00 for interior lots and $100.00 to $105.00 for seawall lots.[61] In his opinion,

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56. (TR Vol. I, p. 173)
57. (TR Vol. III, p. 9)
58. (TR Vol. III, p. 13)
59. (TR Vol. IV, p. 118)
60. (TR Vol. IV, p. 117)
61. (TR Vol. IV, p. 119

the $50.00 rental increase effective June 1, 1984, was unconscionable.[62]

The respondent park owner's expert, Herbert Jourdan, Jr., is a real estate appraiser from an Orlando real estate appraising and consulting firm.[63] He has done 18 mobile home park appraisals in the central Florida area,[64] including three rent studies such as the report prepared for submission as evidence in the case below, entitled "Manufactured Rental Mobile Home Park Sales Analyses."[65]

The respondent park owner's expert testified that the term "manufactured home" was more accurate than the term "mobile home" because the homes are not mobile in the sense that it is easy to move them.[66] He noted that the homes often have large porches or amenities that are tailored to the size of the particular home attached to them and that many times the wheels and tongue are removed from the home.[67] Additionally, the respondent's expert noted that there was "practically no vacancy" in the local mobile home park market.[68]

The respondent's expert analyzed twelve comparable parks for purposes of his analysis.[69] In six of the twelve parks analyzed,

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62. (TR Vol. IV, p. 118)
63. (TR Vol. V, p. 90-91)
64. (TR Vol. V, p. 98)
65. (TR Vol. V, p. 178)
66. (TR Vol. VI, p. 7-8)
67. (TR Vol. VI, p. 8)
68. (TR Vol. VI, p. 73)
69. (TR Vol. V, p. 101)

there was no rental increase for the year in question and compared with the Wheel Estates' $50.00 rental increase.[70] The largest rental increase in the parks he studied was $35.00 per month.[71]

Based upon his analysis of comparable parks in the vicinity of Wheel Estates Mobile Home Park, the respondent park owner's expert real estate appraiser testified that, in his opinion, the fair market rental value of lots in Wheel Estates Mobile Home Park at the time the respondent park owner increased his rents to $153.00 and $148.00 respectively, was $125.00 for lakefront lots and $120.00 for interior lots.[72] In the respondent's expert's opinion, the $50.00 rental increase was "incredible."[73]

Based upon the evidence presented at trial, the Court concluded that a reasonable rental in Wheel Estates as of June 1, 1984, was $108.00 for non-seawall lots and $113.00 per month for seawall lots. The Court found the $50.00 rental increase effective June 1, 1984, to be unconscionable and not enforceable.[74]

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70. (TR Vol. V, p. 163)
71. (TR Vol. V, p. 162)
72. (TR Vol. V, p. 173)
73. (TR Vol. VI, p. 77)
74. (R 1337-1338)

INTRODUCTION TO AMICUS CURIAE, FEDERATION OF MOBILE HOME OWNERS OF FLORIDA, INC.

The Federation of Mobile Home Owners of Florida, Inc., is a statewide non-profit organization representing over 200,000 mobile home owners or tenants throughout the state of Florida. The Federation, founded in 1962, has participated in numerous landmark unconscionable rent cases in Florida including: Ashling Enterprises, Inc. v. Browning, 487 So.2d 56 (Fla. 3d DCA 1986); Appel v. Scott, 479 So.2d 800 (Fla. 2d DCA 1985); Aristek Communities, Inc. v. Fuller, 453 So.2d 547 (Fla. 4th DCA 1984); Fredricks v. Hofmann, 45 Fla.Supp. 44 (Fla. 12th Cir. Ct. Sar. Co. 1976), aff'd., Hofmann v. Fredricks, 354 So.2d 992 (Fla. 2d DCA 1978); Offner v. Keller Park Investors, 19 Fla.Supp.2d 140 (Fla. 6th Cir. Ct. Pasco Co. 1986); and Jones v. Thomas, 16 Fla.Supp.2d 30 (Fla. 9th Cir. Ct. Osceola Co. 1986).

The Federation and its counsel, John T. Allen, Jr., P.A., have also appeared in numerous other landmark mobile home appellate decisions, including: Lemon v. Aspen Emerald Lake Associates, Limited, 446 So.2d 177 (Fla. 5th DCA 1984); Piereth v. Old Bridge Corp., 473 So.2d 288 (Fla. 2d DCA 1985); Sheehan v. Marshall, 453 So.2d 481 (Fla. 2d DCA 1984); Artino v. Cutler, 439 So.2d 304 (Fla. 2d DCA 1983); Peterson v. Crown Diversified Industries Corp., 429 So.2d 713 (Fla. 4th DCA 1983); and Japanese Gardens Lot Renters Protective Association of Clearwater, Inc. v. Japanese Gardens Mobile Home Estates, Inc., 345 So.2d 409 (Fla. 2d DCA 1979).

SUMMARY OF THE ARGUMENT

Amicus has attempted to show through the Statement of the Case and Facts that there is more than competent substantial evidence in the record upon which the lower court should have been affirmed. In fact, it is believed that the Fifth District was of the same opinion when it initially approved the lower court's judgment without opinion. Paramount to this finding is not only the opinion of petitioners' expert that the $50.00 rental increase was unconscionable[75] but also the testimony of the park's own expert that the $50.00 rent increase was "incredible"[76] and that in his opinion the reasonable rental of the mobile home lots was $125.00 for lakefront lots and $120.00 for interior lots.[77] Therefore, there is no question but that there was competent substantial evidence in the record to support the lower court's decision. Ashling Enterprises, Inc. v. Browning, 487 So.2d 56 (Fla. 3d DCA 1986).

The Circuit Court found that plaintiffs in a mobile home tenant class action were being charged unconscionable rent. The District Court initially affirmed the decision without opinion but on rehearing en banc, in a three to two decision, held that procedural unconscionability was so personal and individual that each tenant had to testify as to the "effect" and their reaction to the rent increase and, therefore, a class action could not be

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75. (TR Vol. IV, p. 118)
76. (TR Vol. VI, p. 77)
77. (TR Vol. V, p. 173)

maintained. The District Court reversed the Circuit Court's judgment. In rendering its decision, the District Court ruled that a finding of procedural and substantive unconscionability was mandatory. The majority rejected the minority's view that plaintiffs as mobile home tenants as a class were faced with "outrageous" demands for increased rents and had no meaningful choice. The minority reasoned that mobile homes were not "mobile" and plaintiffs were forced to pay unconscionable rent to avoid the enormous expense and disruption of moving.

This court in Lanca Homeowners, Inc. v. Lantana Cascade of Palm Beach, Ltd., 13 FLW 568 (Fla. Sept. 22, 1988), specifically had the very question before it of whether or not procedural unconscionability could be established in a class action for unconscionable rent by mobile home tenants. This court, in Lanca, said that it noted that the unique features of mobile home residency call for an effective procedural format for resolving disputes between park owners and residents concerning matters of shared interest. The court noted the direct and irreconcilable conflict of the majority opinion in the case at bar with the cases of Avila South Condominium Association v. Kappa Corp., 347 So.2d 599 (Fla. 1977), Steinhardt v. Rudolph, 422 So.2d 884 (Fla. 3d DCA 1982), review denied, 434 So.2d 889 (Fla. 1983), Kohl v. Bay Colony Club Condominium, Inc., 398 So.2d 865 (Fla. 4th DCA 1981), review denied, 408 So.2d 1094 (Fla. 1981).

The court found that the absence of a meaningful choice for the residents who have their rent increased after their mobile homes have been affixed to the land, serves to meet the class action requirements of "procedural unconscionability" citing the minority decision in the case at bar as well as Steinhardt and Kohl. The court reasoned that the relationship between park owner and residents "clearly outweighs any other factor in determining the effect of the increase on individual residents." THEREFORE, THIS COURT HAS APPROVED THE MINORITY OPINION IN THE CASE SUB JUDICE AND REJECTED THE MAJORITY OPINION IN THE CASE BEFORE THE COURT.

In 1974, this court held that mobile home tenants constitute a sufficient distinct class which permitted the Florida Legislature to protect such tenants by enactment of special laws. Stewart v. Green, 300 So.2d 889 (Fla. 1974); Palm Beach Mobile Homes, Inc. v. Strong, 300 So.2d 881 (Fla. 1974). These are the two cases which should be the "legal root" of this court's decision in quashing the majority opinion under review. In Stewart and Palm Beach, this court ruled that because mobile home owners are tied down as required by law and cemented into place, they were not "mobile" and could not be moved because of the uniform existence of "closed parks" which prohibited a used mobile home from being moved into another park. Because of these factors and the tremendous cost of moving, and the fact that most tenants were elderly and retired and on fixed incomes, the court reasoned that the Legislature properly addressed such tenants as

a class since there were well over 700,000 tenants in mobile home parks in Florida at the time. The Supreme Court in taking all of these factors into consideration specifically held that "a form of economic servitude ensues rendering tenants subject to oppressive treatment in their relations with park owners and the latter's overriding economic advantage over tenants." Stewart at 892. This court squarely held that such tenants were by their very nature subject to unequal bargaining power and lack of meaningful choice. There is now over one and one-half million mobile home tenants in Florida. The Fifth District's decision at bar squarely conflicts with this court's landmark decisions in Green and Strong as well as its recent decision of Lanca Homeowners, Inc. The practical effect of the decision of the Fifth District is to erroneously increase litigative costs and clog up the Florida Circuit Court system by requiring each tenant to testify that he is in an unequal bargaining position and that the rent increase has had a substantial "effect" on him and his "reaction" is that he doesn't like the rent increase one bit. This is exactly what the majority decision has established as the controlling law of Florida. Neither the legislative policy established by Chapter 723, Fla.Stat., nor this court's decisions in Green, Strong, and Lanca are in accord with the majority's rationale in the case at bar. The fact that the absence of meaningful choice for mobile home residents exists far overrides and outweighs any other factor in requiring them to individually testify in order to establish procedural unconscionability.

Therefore, the court's Amicus, the Federation of Mobile Home Owners of Florida, Inc., recommends to the Supreme Court that it quash the majority opinion in the case sub judice and establish the majority opinion as the controlling law of the state of Florida.

ARGUMENT

POINT I

THE SUPREME COURT SHOULD QUASH THE MAJORITY OPINION IN THIS CASE AND ESTABLISH THE MINORITY OPINION AS THE LAW OF THE STATE OF FLORIDA.

A - INTRODUCTION TO MOBILE HOME LAW

Before any unconscionable rent case is reviewed by an appellate court, it is imperative that the Court obtain an overview of mobile home law as codified in the various reported decisions in Florida.

The Federation submits that full consideration must be given to the body of law which prompted the Legislature to enact the Florida Mobile Home Act, Chapter 723, Fla.Stat., and Section 723.033, Fla.Stat., which provides mobile home owners in Florida a remedy for the charging of unconscionable rents.

Section 723.033, Fla.Stat., in essence provides that if the Court shall find a provision of a rental agreement to be unconscionable, including the rental amount, then the Court may refuse to enforce the rental agreement, enforce the remainder of the rental agreement without the unconscionable provision, or so limit the application of any unconscionable provision as to avoid

any unconscionable result. (Formerly Section 83.754, Fla.Stat. 1983).

The statute further provides that when it is claimed that rents are unconscionable, "[T]he parties shall be afforded a reasonable opportunity to present evidence as to meaning, relationship of the parties, purpose, and other relevant factors to aid the Court in making the determination." Therefore, it is clear that the legislature intended to permit substantive inquiry into the charging of unconscionable rent. Such inquiry has spawned such decisions as Ashling Enterprises, Inc. v. Browning, 487 So.2d 56 (Fla. 3d DCA 1986); Appel v. Scott, 479 So.2d 800 (Fla. 2d DCA 1985); Garrett v. Janiewski, 480 So.2d 1324 (Fla. 4th DCA 1986); Aristek Communities, Inc. v. Fuller, 453 So.2d 547 (Fla. 4th DCA 1984); State of Florida v. DeAnza Corp., 416 So.2d 1173 (Fla. 5th DCA 1982); Fredricks v. Hofmann, 45 Fla.Supp. 44 (Cir. Ct. Sarasota Co. 1976), aff'd., 354 So.2d 992 (Fla. 2d DCA 1978).

The problem of unconscionable rent stems from the grossly unequal bargaining position of a mobile home tenant once he "cements" his mobile home into a mobile home park. After the mobile home is in place, the tenant is at the mercy of the mobile home park owner. The threat of requiring the tenant to move is so economically onerous that the Legislature in 1972 passed what is known as the Mobile Home Owners Bill of Rights, now Chapter 723, Fla.Stat. Lemon v. Aspen Emerald Lakes Associates, Ltd., 446 So.2d 177, 180, n. 2 (Fla. 5th DCA 1984). This unequal

bargaining power and economic servitude is enhanced by the fact that most mobile homes have permanent attachments to them, such as cabanas, porches and even rooms. These permanent structures are often lost if the mobile home is moved. Further, when a mobile home is moved, it often is reduced to scrap and sold as a "woods trailer" on the second-hand market. In sum, if a mobile home tenant has to move his mobile home, he will virtually lose his entire investment. This situation is compounded by the existence of "closed parks" which refuse to allow older mobile homes into their park and require the prospective tenant to purchase a new one or exact a high entrance fee for the privilege of bringing into the park an older model.

These facts are not unsupported comments by counsel for Amicus but constitute specific findings of our Supreme Court in the landmark case of Stewart v. Green, 300 So.2d 889 (Fla. 1974). In upholding the statute limiting grounds for evictions in mobile home parks, the Court held:

> The object of the statute is to ameliorate and correct as far as possible by exercise of the police power what the Legislature has found to be evils inimical to the public welfare in the subject considered. Protection of mobile home owners from grievous abuses by their landlords, or mobile home park owners, was found by the Legislature to be essential.
>
> As documented by the 1970 report of Professor Cubberly for the State Department of Community Affairs, and reaffirmed by the Governor's 1974 Mobile Home Task Force, we note that most people who live in mobile homes usually spend several thousands of dollars to purchase a home, usually from a mobile home park owner or an associated dealer. Most mobile home owners find they must also rent the lot on which their mobile home is to be placed from their mobile

home dealer or his associate. In most instances, they become month-to-month tenants, subject to being evicted on fifteen days' notice, although their 'home,' with its wheels and hitch removed, appears to have permanence of location, being tied down on the lot as state law requires and being undergirded with a poured cement base. A great catch in the eviction removal process, as the Governor's Task Force noted, is that often under modern conditions there is no ready place for an evicted mobile home owner to go due to a shortage of mobile home spaces in many areas of the state.

There has developed because of space shortage what is known as the 'closed park,' from whose owners a prospective tenant must either buy a new mobile home in order to get in, although he may already own his 'used' or 'removed' home from a park from which he had to move; or the park owner may accept the 'used' or 'removed' home in his park only upon payment of a high entrance fee.

A mobile home is a prefabricated structure built to specifications established by state law. It has all of the conveniences of a modern apartment, and often has more room.

A 'mobile' home is not actually mobile, and even an owner who does not encounter 'closed park' problems often finds it is quite expensive to remove a home and relocate it because of the incidental costs of labor and materials and towing once the home has been 'cemented' onto a lot.

If mobile home park owners are allowed unregulated and uncontrolled power to evict mobile home tenants, a form of economic servitude ensues rendering tenants subject to oppressive treatment in their relations with park owners and the latters' overriding economic advantage over tenants.

Regulatory laws that applied to the old tin-can tourists and their easily movable trailers and even those applicable nowadays to rental apartments are inadequate for the regulation of mobile homes under conditions prevailing today. The Legislature finally recognized by Section 83.69 that a hybrid type of property relationship exists between the mobile home owner and the park owner and that the relationship is not simply one of landlord and tenant. Each has basic property rights which must reciprocally accommodate and harmonize. Separate and distinct

> mobile home laws are necessary to define the relationships and protect the interests of the persons involved." (300 So.2d at 891-892) (Emphasis Supplied)
>
> * * * * * * * *
>
> Unlike the tenant in an apartment house who, upon eviction, merely has personal possessions to move, the mobile home tenant, renting space in a lot or park, has to incur additional expenses and problems in having the mobile home itself transported to another site upon eviction. Furthermore, the mobile home park owners, in trying to prorate many newer sales of mobile homes without sufficient land area on which to locate them, may resort to eviction of present tenants in order to make future sales. These problems affecting the special interests and necessities of a large segment of the state's citizenry were given legislative attention. Accordingly, since the classification of mobile home park owners, for the reasons outlined, rests upon differences which bear a reasonable and just relationship to the objectives and purposes of Section 83.69 its constitutionality should be upheld.
>
> There are now some 700,000 mobile home dwellers in Florida most of whom absent the benefit of Section 83.69 would be subject to being evicted on 15 days' notice for no reason except the park owner's desire to be rid of them. The state police power under the Constitution permits the Legislature to correct or ameliorate evils of the magnitude explicated which directly affect so large a number of people, provided no constitutional guarantees are abridged. (300 So.2d at 892-893) (Emphasis Supplied)

Because of the tenants' investment in a mobile home park, our Supreme Court has reasoned that the relationship is that of owner and owner with each having reciprocal rights which are not akin to a landlord/tenant relationship. In Stewart v. Green, 300 So.2d at 892, the Supreme Court said:

> The Legislature finally recognized by Section 83.69 that a hybrid type of property relationship exists between the mobile home owner and the park owner and that the relationship is not simply one of landlord and tenant. Each has basic property rights which

must reciprocally accommodate and harmonize. Separate and distinct mobile home laws are necessary to define the relationships and protect the interests of the persons involved.

Under these adverse conditions, the Legislature has sought to protect the mobile home tenant in such areas as restriction of grounds for eviction, (Section 723,061, Fla.Stat.) protection of a mobile home owner's right to sell their mobile home in the mobile home park, (Section 723.071, Fla.Stat.) protection from undisclosed assessments and costs, (Section 723.041(1)(b), Fla.Stat.) and protection from unconscionable rents. (Section 723.033, Fla.Stat.) No longer, as the Park Owner in the case sub judice contend, may mobile home owners merely arbitrarily demand whatever income in the form of rents they desire. Under Section 723.033, Fla.Stat., a tenant has the right to have a Court after trial on the facts decide if the tenant is being charged unconscionable rent under Section 723.033, Fla.Stat., which states:

> 723.033 Unconscionable lot rental agreements.
>
> (1) If the court, as a matter of law, finds a mobile home lot rental agreement, or any provision of the rental agreement to have been unconscionable at the time it was made, the court may:
> (a) Refuse to enforce the rental agreement.
> (b) Enforce the remainder of the rental agreement without the unconscionable provision.
> (c) Limit the application of the unconscionable provision so as to avoid any unconscionable result.
>
> 2. When it is claimed or appears to the court that the rental agreement, or any provision thereof, may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its meaning and purposes, the relationship of the parties, and other relevant factors to id the court in making the determination.

Therefore, it should be clear to the Court that the controlling case in mobile home law is the landmark decision of Stewart v. Green, 300 So.2d 889 (Fla. 1974), and that the Court should consider the case sub judice in light of the Supreme Court's findings and the legislative intent that mobile home owners or tenants in the state of Florida be protected from abuses such as unconscionable rent.

The bottom line is that with the captive nature of mobile home parks and the total lack of bargaining power of a mobile home owner, a park owner can charge anything he wishes. The only protection the mobile home owner has is an unconscionable rent action under and pursuant to Section 723.033, Fla.Stat.

Chapter 723, Fla.Stat., the current Mobile Home Act, as well as the former act under Part III, Chapter 83, Fla.Stat., envision a relationship between the rents charged and the services and amenities provided. This concept is now codified in Section 723.037(1); (3)(b), Fla.Stat., which provides that a park owner has to give written notice of a "reduction in services or utilities" which in effect constitutes an actual increase in rent. Under Section 723.037(3), Fla.Stat., mobile home owners are entitled to a meeting with the park owner and ultimately mediation or arbitration of disputes where the sole issue is "the decrease in services or utilities is not accompanied by a corresponding decrease in rent or is otherwise unreasonable."

The statutory scheme also envisions that if mediation is not effective, then the mobile home owners or tenants may bring an

unconscionable lot rental action under the provisions of Section 723.033, Fla.Stat.

B - WHY SHOULD THE SUPREME COURT EXERCISE ITS POWER OF DISCRETIONARY REVIEW AND QUASH THE DECISION OF THE DISTRICT COURT?

The decision at bar after a Per Curiam decision without opinion has held:

> The issues in this case are controlled by the en banc opinion in Thomas v. Jones, 524 So.2d 693 (Fla. 5th DCA 1988). Accordingly, we reverse the final judgment, including the award of attorney's fees to the appellees, and remand without prejudice to the institution of individual actions.

A similar type of situation occurred in Allen v. Florida Power Corporation, 253 So.2d 401 (Fla. 1971). The District Court affirmed the decision without writing an opinion of the facts basing its decision upon certain cited cases. This court held that the District Court's affirmance based upon improper legal authority granted to the Supreme Court sufficient conflict jurisdiction to not only review the case on the merits but quash the decision of the Second District. Such is the situation in the case at bar. The Fifth District has affirmed the decision based upon the majority opinion in Thomas v. Jones, supra, and directed that individual actions might be filed. No consideration was given to the fact that the statute of limitations obviously had run for each of the individual plaintiffs in the lower court. The point is that the decision of the District Court is, as in Allen, supra, based upon improper legal authority which is contrary to the established law of Lanca certain cited cases. This court held

Homeowners, Inc. v. Lantana Cascade of Palm Beach, Ltd., 13 FLW 568 (Fla. Sept. 22, 1988). Since the decision of the District Court on its face relies upon the improper authority of Thomas v. Jones, and its majority opinion which was overruled by his court in Lanca, this court obviously has discretionary jurisdiction to review this case on the merits. As stated, this is ample authority in Allen, supra, for the exercise of this court's discretionary jurisdictional powers.

Prior to this court's decision in Lanca Homeowners, Inc. v. Lantana Cascade of Palm Beach, Ltd., the last time this court addressed mobile home tenant problems was in 1974 when it held that mobile home tenants constitute a sufficient distinct class which permitted the Florida Legislature to protect such tenants by enactment of special laws. Stewart v. Green, 300 So.2d 889 (Fla. 1974); Palm Beach Mobile Homes, Inc. v. Strong, 300 So.2d 881 (Fla. 1974). This court ruled that because mobile homes are tied down as required by law and cemented into place, they were not "mobile" and could not be moved because of the uniform existence of "closed parks" which prohibited a used mobile home from being moved into another park. The court noted, because of these factors and the tremendous cost of moving, and the fact that most tenants were elderly and retired and on fixed incomes, that the Legislature properly addressed such tenants as a class since there were well over 700,000 tenants in mobile home parks in Florida at that time. The Supreme Court, in taking all these factors into consideration, specifically held that, "a form of

economic servitude ensues rendering tenants subject to oppressive treatment in their relations with park owners and the latter's overriding economic advantage over tenants." Stewart at 892. This court squarely held that such tenants were by their very nature subject to unequal bargaining power and lack of meaningful choice. There is now over one and one-half million mobile home tenants in Florida. The Fifth District's decision at bar squarely conflicts with this court's landmark decisions in Green and Strong and has a total chilling effect upon mobile home tenants exercising their rights of protection by bringing an action for the charging of unconscionable rents. The practical effect of the decision is to enormously increase litigative costs and clog up the Florida Circuit Court system by requiring each tenant to testify that he is in an unequal bargaining position and that the rent increase has had a substantial "effect" on him and his "reaction" is that he doesn't like it one bit. This is exactly what will be required if the majority decision is allowed to become the controlling law of Florida.

The District Court's decision also has direct effect on unconscionable rent actions now pending in Florida in mobile home parks which usually number from 100 to 500 individual tenants since each of the tenants still would have to individually testify in each case in order to meet the procedural unconscionability requirement thereby imposing the same economic impact on the case and causing a total waste of judicial time. Thus, the District Court's decision impacts both actions brought

as class actions and individual actions by tenants in their own names. The decision at bar is oppressive, unworkable, and legally impractical. It turns the "mobile home owner's bill of rights," found in Chapter 723, Fla.Stat., (See, Lemon v. Aspen Emerald Lake Associates, Limited, 446 So.2d 177 (Fla. 5th DCA 1984), footnote 2 at page 180), into an ineffective and expensive legislative remedy. The statutory protection intended by the Legislature to be granted to mobile home tenants is substantially dissipated. Since the decision squarely conflicts with Stewart and Strong, supra, and the other decisions cited in this brief, and obviously constitutes a case of great public interest, this court should exercise its discretionary review powers and take a long hard look into the merits of the announced legal rule on procedural unconscionability and the material surrounding facts in this case. A serious split decision (three to two) should be reviewed by the Supreme Court.

C - THE DISTRICT COURT ERRED IN FINDING THAT PROCEDURAL UNCONSCIONABILITY WAS SO PERSONAL AS IT COULD NOT BE ASSERTED AS A CLASS ACTION.

The District Court's rational sub judice is totally inconsistent with this court's initial landmark decisions of Stewart and Palm Beach Mobile Homes, Inc., supra. The obvious basis of this court's granting of discretionary review jurisdiction is the decision rendered in Lanca Homeowners, Inc. v. Lantana Cascade of Palm Beach, Ltd., 13 FLW 568 (Fla. Sept. 22, 1988). In Lanca, the court had before it the question of

constitutionality of Section 723.079(1), Fla.Stat. (1985). The court also had before it the question of whether or not a class action could be asserted in the homeowners' action and specifically held that, "In the instant matter, we similarly note that the unique features of mobile home residency call for an effective procedural format for resolving disputes between park owners and residents concerning matters of shared interest." (Opinion at page 4) This court went on to recognize and cite with approval the dissenting opinion by Chief Judge Sharp in Thomas v. Jones, 524 So.2d 693 at 695:

> Section 723.033(2), Florida Statutes (1985), which provides a cause of action for unconscionable rental agreements states:
>
> 'When it is claimed or appears to the court that the rental agreement, or any provision thereof, may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its meaning and purpose, the relationship of the parties, and other relevant factors to aid the court in making the determination.'
>
> The key here is 'the relationship of the parties.' Where a rent increase by a park owner is a unilateral act, imposed across the board on all tenants and imposed after the initial rental agreement has been entered into, park residents have little choice but to accept the increase. They must accept it or, in many cases, sell their homes or undertake the considerable expense and burden of uprooting and moving. The 'absence of a meaningful choice' for these residents, who find the rent increased after their mobile homes have become affixed to the land, serves to meet the class action requirement of procedural unconscionability. See Thomas, 524 So.2d at 695 (Sharp, C. J. dissenting); Steinhardt; Kohl. As a rule, the relationship that exists between park owner and resident clearly outweighs any other factor in determining the effect of the increase on individual residents. This circumstance is shared equally by each member of the park. Thus, the alleged unconscionability of such an increase lends

itself to proof in the class action format. (Emphasis Supplied)

This court clearly has recognized the irreconcilable conflict in District Court precedent as to whether a claim of unconscionable rent increase in a mobile home park setting is suitable for allegation and proof in a class action. The court recognized this point in stating:

> The third count presents the following issue: whether a claim of unconscionable rental increase in a mobile home park setting is suitable for allegation and proof in a class action. Some courts have indicated that unconscionability claims are too individualized for class action proceedings. See generally Thomas v. Jones, 524 So.2d 693 (Fla. 5th DCA 1988); Garrett v. Janiewski, 490 So.2d 1324 (Fla. 4th DCA 1985), review denied, 492 So.2d 1333 (Fla. 1986); State v. DeAnza, 416 So.2d 1173 (Fla. 5th DCA), review denied, 424 So.2d 763 (Fla. 1982). Others have indicated that they are not. See generally Avila; Steinhardt v. Rudolph, 422 So.2d 884 (Fla. 3d DCA 1982), review denied, 434 So.2d 889 (Fla. 1983); Kohl v. Bay Colony Club Condominium, Inc., 398 So.2d 865 (Fla. 4th DCA), review denied, 408 So.2d 1094 (Fla. 1981).

Since this court specifically ruled that the absence of a meaningful choice after residents have attached their mobile homes to the land "serves to meet the class action requirements of procedural unconscionability" and "clearly outweighs any other factor in determining the effect of the increase on individual residents," it clearly disapproved the majority opinion in the case sub judice. Therefore, in Lanca, this court has already, in Amicus' view, determined that the majority opinion in the case at bar must be quashed. Thus, there is a direct and unequivocal holding by this court directly in point in Lanca, supra, on the question of the merits before the court.

The rationale of the minority opinion in Thomas is compelling. It is candidly ridiculous to believe that the individual "effect" on each individual resident as to how he "reacts" to an unconscionable rent increase is a sufficient basis in the mobile home context to prevent the bringing of class actions for unconscionable rent in mobile home cases. The parties definitely have a common cause and are similarly situated especially as far as procedural unconscionability is concerned. As a matter of law, the fact that mobile home tenants have "no meaningful choice" as recognized in the dissenting opinion in Thomas, supra, has been established in Stewart v. Green and Palm Beach Mobile Homes, Inc. v. Strong, supra, in 1974.

There is no reason for Amicus to belabor the introduction paragraphs in subparagraphs A and B of this argument as to why, in the mobile home context, the Supreme Court should not rule that there are sufficient existing legally established facts to permit a class action to be brought. In fact, this case is still in litigation and the new rule established by this court in Lanca permitting class actions in mobile home unconscionable rent cases definitely applies retroactively. Therefore, for all of these reasons, it is recommended by your Amicus that the decision of the District Court be QUASHED.

CONCLUSION

In the opinion sought to be reviewed, the District Court has departed from established Florida law and held that procedural unconscionability must individually be proven by a mobile home tenant and, therefore, a class action cannot be maintained. The District Court has reasoned that the proof of procedural and substantive unconscionability is a mandatory rule of law in unconscionability cases. This court's decision in Lanca Homeowners, Inc. v. Lantana Cascade of Palm Beach, Ltd., the dissenting opinion in the case at bar, Avila South Condominium Association v. Kappa Corp., 347 So.2d 599 (Fla. 1977), Steinhardt v. Rudolph, and Kohl v. Bay Colony Club Condominium, Inc., supra, hold to the contrary.

The majority opinion in the case at bar, Garrett v. Janiewski, and State v. DeAnza, are not well reasoned and have been rejected by this court in Lanca upon the basis that the absence of meaningful choice serves to meet the class action requirement of procedural unconscionability. This court has held that the existence of an absence of meaningful choice clearly outweighs other factors in determining the effect of a rent increase on individual residents.

Therefore, it is the recommendation of Amicus Curiae, the Federation of Mobile Home Owners of Florida, Inc., through its counsel, that the majority decision under review by quashed and the minority view established as the law of Florida thereby affirming the lower court's decision in favor of petitioners.

Respectfully Submitted

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail to LEE JAY COLLING, ESQUIRE, and DOUGLAS B. BEATTIE, ESQUIRE, of Colling & Beattie, P.A., Suite 500, NCNB National Bank Building, 250 North Orange Avenue, Orlando, Florida 32801, Attorneys for Petitioners; and JOHNIE A. McLEOD, ESQUIRE, of McLeod, McLeod & McLeod, P.O. Drawer 950, Apopka, Florida 32703, Attorney for Respondent, this 9th day of December, 1988.

JOHN T. ALLEN, JR.