IN THE SUPREME COURT
STATE OF FLORIDA

JENNIE HARRIS, ET. AL.,

PETITIONERS,

V.

CASE NO. 75,097

MARTIN REGENCY, LTD., A
Florida Limited Partnership,

RESPONDENT.

BRIEF OF AMICUS CURIAE

FEDERATION OF MOBILE HOME OWNERS OF FLORIDA, INC.

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STATEMENT OF THE CASE AND FACTS

In this brief, appellants, JENNIE HARRIS, et al., will be referred to as the "Appellants" or as the "homeowners". Appellee will be referred to as the "Appellee" or as "Martin Regency, Ltd.", or as the "park owner". Amicus Curiae, Federation of Mobile Home Owners of Florida. Inc. will be referred to as "Amicus Curiae" or as the "Federation". The symbol "R" will be used to refer to the Record On Appeal. Amicus Curiae, Federation of Mobile Home Owners of Florida, Inc. adopts the Statement of the Case and the Statement of the Facts of Appellants, JENNIE HARRIS, et al.

SUMMARY OF THE ARGUMENT

In the trial court, Appellants pleaded and preserved (among others) the affirmative defense of bad faith on the part of the park owner under Section 723.021, Fla Stat., which states:

> Every rental agreement or duty within this Chapter imposes an obligation of good faith and fair dealings in its performance or enforcement.

The obligation of good faith and fair dealings is not meaningless statutory boilerplate. Fair dealing and good faith are such an essential conerstone of contract law

that a covenent to that effect is often implied into every contract absent an express disavowal. Good faith between contracting parties requires that the party vested with contractual discretion must exercise his discretion reasonably and may not do *so* arbitrarily or capriciously. In this context, the defense of bad faith should be read in pari materia with the Chapter **723.003,** Fla. Stat. definition of unreasonable as "arbitrary, capricious, or inconsistent with this chapter."

The law of landlord and tenant has also evolved amid mutual obligations of good faith and fair dealings. Lack of good faith has been found to be a total defense to eviction under numerous statutory tenancies including the Emergency Rent Act for the District of Columbia (1940). the U.S. Housing and Rent Act of 1947, the New York Rent and Eviction Regulation of 1951, and Chapter **83**, Part **111**, Florida Statutes 1981, the predecessor of our present Florida Mobile Home Act.

The defense of good faith requires a finding by the trier of fact as stated in Asco. Equities V. McGoldrick, 137 **N.Y.S.** 2d 446, 450:

> For the landlord to merely assert "I intend this and you cannot prove that **I** do not" is not enough. Law is much too experienced to give such finality to the words of mortal men. It may look to the circumstances and see whether the assertion is credible in the light of those circumstances. It cannot search the subjective mind, but it can require that the assertion made with respect to the subjective mind meets the tests of practical reality, before it is to be believed. The regulation

> does no more than that. It, in effect, requires that the landlord show some basis in economics, or in psychological or social needs, for the actions he proposes. This is not in order to approve or justify that purpose, as sound or proper, but to give credit to the announced purpose or assigned reason.
>
> Any other view of the matter would entail the serious risk that landlords would, on the asserted intention of withdrawal from the market, procure the eviction of tenants for one improper cause or another only to replace the premises on the market a short time thereafter. For this there would be only a doubtful money remedy to the evicted tenant, and no way of restoring the housing accomodations to him.

When, as in Chapter 723, Florida Statutes, there is no special statutory definition of "good faith", the meaning of that term must be drawn from the purpose of the Statute, the mischiefs it was enacted to prevent, and the results it was enacted to accomplish. Without a doubt, the primary mischief the eviction section of the Florida Mobile Home Act was designed to squelch is <u>eviction without cause</u> (emphasis supplied).

The evolving case law of mobile home tenancies, the legislative history of the Florida Mobile Home Act, and the overall statutory framework of Chapter 723 suggest very strongly that eviction for change in land use must not be used as a subterfuge for eviction without cause. Therefore, when a park owner alleges, as here, that he intends to change the use of land comprising a mobile home park to vacant land, or no use at all, he assumes a heavy burden in

proving his intentions and actions are in good faith, and that he is not acting arbitrarily, capriciously, or attempting to evade the provisions of the Florida Mobile Home Act.

ARGUMENT

WHETHER THE CONVERSION OF LAND COMPRISING A MOBILE HOME PARK FROM USE AS A MOBILE HOME PARK TO VACANT LAND, OR TO NO USE, IS A GOOD FAITH "CHANGE IN USE" WITHIN THE CONTEMPLATION OF SECTION 723.061(d) FLORIDA STATUTES (1985) IS A QUESTION OF FACT TO BE DETERMINED AT TRIAL BY THE TRIER OF FACT.

In the trial court, Appellants presented seven affirmative defenses and two counterclaims in their answers to plaintiff's complaint. (R 51-140) Four of the affirmative defenses and one of the counterclaims contained. factual allegations directed at a breach of appellee's statutory obligation of good faith and fair dealing towards Appellants. No affidavits, transcripts of depositions, request for admissions, or answers to request for admissions, or pleadings were presented by Appellee which would contradict the facts alleged in Appellants' affirmative defenses and counterclaims.

Appellee did, however, file Answers to Defendant's Counterclaims (R 156-170) for each eviction case which largely denied the allegations contained in Appellants' Second Counterclaim relating to bad faith and in Appellee's First Defense, Appellee asserted that it had acted at all times in good faith. Appellee also filed plaintiff's Motion

to Strike Defendant's First, Second, Third, Fourth, Fifth, Sixth and Seventh Affirmative Defenses (R 206-215) for each eviction case. The Record-On-Appeal is devoid of any notice setting this motion for hearing and is also devoid of any order signed by the judge disposing of this motion. Thus, Appellee by denying most of the allegations in Appellants' Second Counterclaim, by its bald assertion of good faith unsupported by any factual allegations and by its failure to set the Motion to Strike the Affirmative Defenses of Appellants has set at issue the allegations of the second counterclaim and the affirmative defenses. The affidavits filed by Appellants (R 331-337) on an order of the court (R 386) further set at issue the park owner's bad faith since they tend to show that the park owner only purchased the park to evict the homeowners and resell the park without offering the home owners their right of first refusal under the Mobile Home Act.

These evictions were brought under the Florida Mobile Home Act (Chapter 723, Fla.Stat.). The affirmative Defenses adduced by the Appellants relating to a breach of appellee's statutory obligation of good faith and fair dealings are valid affirmative defenses under the Florida Mobile Home Act. Appellants raised factual issues relating to Appellee's state of mind and intent in their allegations contained in their affirmative defenses (R 51-140) and in the three affidavits which were filed by Appellants. (R 331-337) These factual issues relating to the intent of Appellee must

be tried by jury and cannot be decided on the pleadings and affidavits with no testimony being taken.

A. THE PARK OWNER'S LACK OF GOOD FAITH IS A COMPLETE DEFENSE TO EVICTION UNDER THE FLORIDA MOBILE HOME ACT

Four of the homeowners' affirmative defenses and one of their counterclaims involve allegations that the park owner breached its statutory obligation of good faith and fair dealings. It is the position of Amicus Curiae, the Federation of Mobile Home Owners of Flirda, Inc., that a violation of Section 723.021, Fla. Stat., constitutes a complete defense to an eviction under the Florida Mobile Home Act.

Fair dealing and good faith are such an essential cornerstone of contract law that a covenant to that effect is often implied into every contract absent an express disavowal. Foster Enterprises v. Germania Federal Sav., 421 N.E. 2d 1375, 1380 (ILL. App. 1981). Good faith between contracting parties requires that a party vested with contractual discretion must exercise his discretion reasonably and may not do so arbitrarily or capriciously. Foster at 1381; Pacific Far East Line, Inc. v. United States, 394 F.2d 990 (Ct. CL. 1968).

The law of landlord and tenant has recognized lack of good faith to be a complete defense to an action for eviction. In Staves v. Johnson, 44 A.2d 870 (D.C. App. 1945), an eviction action brought under the District of

Columbia Emergency Rent Act, the landlord was the owner of an eight unit apartment building and he sued to evict a tenant alleging that he sought the unit in good faith for his immediate and personal occupancy as a dwelling, one of the statutory gounds for eviction.

The tenant in this case challenged the landlord's good faith. She offers evidence that she was the only tenant in the building with small children, that the landlord had made numerous complaints about the children. that the landlord's agent had taken down a clothesline used for drying the children's clothes and forbidden her to put up a new line or to put any children's playthings in the back yard, and the agent had told her the building was for working people without children. The trial court found a lack of good faith in the eviction and entered judgment for the tenant.

In attempting to define the "good faith" defense, the appellate court stated at page 871:

> Applied to a situation like the one at hand it (good faith) means generally that the landlord honestly intends to actually occupy the premises, that occupancy for this own use is his primary motive, and that he is not guided by an ulterior motive, the object of which is to evade or defeat the purpose of the statute....(emphasis supplied)
>
> In the present case there was evidence tending to show an animosity toward the tenant and her children and a desire that they leave the property. From the record this evidence does not appear overly strong, but it is not within our province to weigh the evidence. That is a matter for the trial court. When there is substantial evidence challanging the good faith of the landlord, a question of fact is raised for

determination by the jury or trial court.

In accord with Staves v. Johnson is the case of Ceislinski v. Clark, 223 S.W. 2d 139 (Mo. App. 1949) a case brought for eviction under the similar U.S. Housing and Rent Act of 1947. At the trial level the defense of lack of good faith was found for the tenant. In defending the submission of the good faith issue to the jury, the appellate court stated at page 142:

> Appellants further allege error in that the trial court refused to sustain plaintiffs' motion for a directed verdict. A directed verdict for a plaintiff cannot be given where there is an issuable fact in the case. In this case the very question at issue and to be resolved by the jury was whether plaintiffs were in good faith in seeking the Clark apartment for their own use or for the use of an immediate member of their family. That depended upon oral testimony, and the jury were the sole judges of the credibility of the witnesses and the weight and value to be attached to their testimony.
>
> The burden was on the plaintiffs to prove their good faith. It was for the jury to determine whether plaintiffs did meet this burden of proof.

This same approach to the issue of good faith was followed in Asco. Equities v. McGoldrick, 137 N.Y.S. 2d 446 (N.Y. App. 1955). That case was an action for eviction under the New York Rent and Eviction Regulations of 1951 under the statutory ground of withdrawing the housing unit from the rental market. At pages 449 and 450 of that opinion. the appellate court very clearly delineates that

the issue of good faith requires inquiry beyond the bare assertion of a statutory ground for eviction on the landlord's behalf:

> Obviously the rent commission has the burden and the responsibility of determining the good faith of the intention expressed by the landlord. It would be senseless to hold that the rent commission is bound by the landlord's bare assertion. That would be an illusory control indeed. Consequently, the rent commission must be satisfied, on objective grounds, that a landlord intends as he says. The good faith of that expressed intention is easily established by showing immediate and compelling necessity, economic or other hardship, or other extraordinary circumstances which, in a rational Cramework, justify or explain or make understandable the landlord's conduct in withdrawing his property from the rental market. While it may be that a landlord has a constitutional or statutory right to be economically perverse, the rent commission has the right to assume that that is not the general state of affairs with landlords. Hence, the rent commission has the power to use objective standards of intention, so long as those standards are comprehensive and accord with economic and social experience in the real estate field. In exercise of that power, it has the right to promulgate the regulation, like Regulation **59**, which articulates these objective standards, so that all may know the bases upon which the rent commission will determine the absence or presence of good faith....
>
> For the landlord to merely assert "I intend this and you cannot prove that I do not" is not enough. Law is much too experienced to give such finality to the words of mortal men. It may look to the circumstances and see whether the assertion is credible in the light of those circumstances. It cannot search the subjective mind, but it can require that the assertion made with respect to the subjective mind meets the tests of

> practical reality before it is to be believed. The regulation does no more than that. It, in effect, requires that the landlord show some basis in economics, or in psychological or social needs, for the action he proposes. This is not in order to approve or justify that purpose, as sound or proper, but to give credit to the announced purpose or assigned reason.
>
> Any other view of the matter would entail the serious risk that landlords would, on the asserted intention of withdrawal from the market, procure the eviction of tenants for one improper cause or another, only to replace the premises on the market a short time thereafter. For this there would be only a doubtful money remedy to the evicted tenant, and, no way of restoring housing accommodation to him.

Finally, in Crown Diversified Industries, Inc. V. Watt, 415 So.2d 803 (Fla. 4th DCA 1982) the court found that the park owner had the right under the Mobile Home Act to evict tenants in order to construct permanent improvements on the lot they were occupying. In its recitation of the facts, the court found that no claim had been made by the tenants that the park owner was evicting them in bad faith. Although this court found against the tenants in Crown Diversified Industries, Inc. V. Watt, the court made the following pronouncement:

> We are in agreement with appellees that the legislature intended to grant broad rights to mobile home park occupants to be free from unreasonable evictions. Indeed, we attach much significance to the fact that no allegations of fraud or bad faith have been lodged by appellees against appellant. In our view, Proof of bad faith on the part of the park owner would constitute a valid defense to any attempt to remove tenants from existing mobile home lots... (Emphasis supplied) Id. at 806

This language addresses precisely the point discussed in this portion of the brief and the case at bar is factually

and procedurally the case which the court contemplated in the cited language.

When the plaintiff, as in the case at bar, moves for summary judgment, the plaintiff must conclusively disprove the defendant's affirmative defenses or establish the legal insufficiency of the affirmative defenses. O'Neal v. Brady, 476 So.2d 294 (Fla. 3d DCA 1985); SAC Construction Co. v. Eagle National Bank, 449 So.2d 301 (Fla. 3d DCA 1984). Since this court in Crown Diversified Industries, Inc., v. Watt, 415 So.2d 803 (Fla. 4th DCA 1982) specifically found bad faith to constitute a valid legal defense to an eviction action under the Mobile Home Act, Appellee has failed to conclusively disprove Appellants' affirmative defenses which are based on lack of good faith.

Although Chapter 723 does not supply a definition of "good faith", it is the position of the Amicus Curiae that the previously cited landlord-tenant cases on "good faith" provide this court with a wealth of guidance in this area.

It has also been held in R.L. Witters Associates, Inc. v. Ebsary Gypsum Co., 93 F.2d 746 (U.S. 5th Cir. App. 1938) that in the absence of a statutory definition of good faith, its meaning should be drawn from the words themselves, the context in which they are used, the purpose back of the statute, the mischiefs it was enacted to prevent, and the results it was enacted to accomplish.

B. THE EVICTION SECTIONS OF THE FLORIDA MOBILE HOME ACT MUST BE STRICTLY CONSTRUED WITHIN THE CONTEXT OF THE BROAD REMEDIAL PURPOSES OF THE ACT

Eviction without cause from mobile home parks was dealt the final death blow by the enactment of the Florida Mobile Home Act in 1984. In 1983, Chapter 83, Part 111, Florida Statutes, provided as follows in its eviction provision:

> 83.759 Mobile home parks; eviction, grounds proceedings.
> (1) A mobile home park owner or operator may not evict a mobile home or a mobile home dweller other than for the following reasons:...
> (d) Change in use of land comprising the mobile home park or a portion thereof on which a mobile home to be evicted is located from mobile home lot rentals to some other use, provided all tenants affected are given at least 6 months' notice, or longer if provided for in a valid lease, of the projected change of use and of their need to secure other accommodations.
> (e) Upon 12 months' notice without cause, provided that, upon the service of such notice, the mobile home park owner notifies the mobile home owner of his election to evict either the mobile home or the mobile home owner, or both....

By contrast the 1984 eviction provision provided the following:

> 723.061 Eviction; grounds, proceedings.
> (1) A mobile home park owner may evict a mobile home owner or a mobile home only on one or more of the grounds provided in this section.....
> (d) Change in use of land comprising the

mobile home park, or the portion thereof from which mobile homes are to be evicted, from mobile home lot rentals to some other use, provided all tenants affected are given at least 6 months' notice, or longer if provided for in a valid rental agreement, of the projected change of use and of their need to secure other accommodations.

(e) Failure of the purchaser of a mobile home situated in the mobile home park to be qualified as, and to obtain approval to become, a tenant, if such approval is required by a properly promulgated rule.

723.031 Mobile home lot rental agreements.

(8) No rental agreement shall provide for the eviction of a mobile home owner on a ground other than one contained in s. 723.061.

723.032 Prohibited or unenforceable provisions in mobile home lot rental agreements.

(1) A mobile home lot rental agreement may provide a specific duration with regard to the amount of rental payments and other conditions of the tenancy, but the rental agreement shall neither provide for, nor be construed to provide for, the termination of any rental agreement except as provided in s. 723.061.

No clearer statement of legislative intent could be made with regard to the specific repeal of eviction without cause than is demonstrated by a simple reading of these sections, Eviction without cause is clearly deleted from Florida Mobile Home Law in 1984, and it has not reappeared since. Eviction at the whim of the park owner, even if compensation in some form was afforded to the homeowner, was clearly one of the mischiefs that Chapter 723, Florida Statutes, was enacted to prevent.

But beyond the specific repeal of eviction without

cause, the following provisions were added to Chapter **723** in 1984 to ensure that eviction for land use change would not become a subterfuge for eviction without cause at any time in the future.

> 723.011 Disclosure prior to rental of a mobile home lot; prospectus, filing, approval.
>
> (l)(a) Every mobile home park owner of a park which contains 26 or more lots shall file a prospectus or offering circular with the division prior to entering into an enforceable rental agreement...
>
> (2) The park owner shall furnish a copy of the prospectus or offering circular together with all of the exhibits thereto to each prospective lessee. Delivery shall be made upon execution of the rental agreement or at the time of occupancy, whichever occurs first. However, the park owner is not required to furnish a copy of the prospectus or offering circular if the tenancy is a renewal of a tenancy and the mobile home owner has previously received the prospectus or offering circular....
>
> 723.012 Prospectus or offering circular. The prospectus or offering circular, which is required to provide by s. **723.011,** must contain the following information:....
>
> (11) A statement describing the existing zoning classification of the park property and permitted uses under such classification.
>
> (12) A statement of the nature and type of zoning under which the mobile home park operates, the name of the zoning authority which has jurisdiction over the land comprising the mobile home park, and, if applicable, a detailed description of any definite future plans which the park owner has for changes in the use of the land comprising the mobile home park.
>
> 723.013 Written notification in the absence of a prospectus. A mobile home park owner who enters into a rental agreement in which a prospectus is not provided shall give written notification to the mobile home owner of the following information prior to occupancy:

(1) The nature and type of zoning under which the mobile home park operates; the name of the zoning authority which has jurisdiction over the land comprising the mobile home park; and a detailed description containing all information available to the mobile home park owner, including the time, manner and nature, of any definite future plans which he has for future changes in the use of the land comprising the mobile home park or a portion thereof.

723.071 Sale of mobile home prks.

(1)(a) If a mobile home park owner offers a mobile home park for sale, he shall notify the officers of the homeowners' association created pursuant to ss. 723.075-723.079 of his offer, stating the price and the terms and conditions of sale.

(b) The mobile home owners, by and through the association defined in s. 723.075, shall have the right to purchase the park, provided the home owners meet the price and terms and conditions of the mobile home park owner by executing a contract with the park owner within 45 days, unless agreed to otherwise, from the date of mailing of the notice and provided they have complied with ss. 723.075-723.079. If a contract between the park owner and the association is not executed within such 45-day period. then, unless the park owner thereafter elects to offer the park at a price lower than the price specified in his notice to the officers of the homeowners' association. he has no further obligations under this subsection, and his only obligation shall be as set forth in subsection (2).

(c) If the park owner thereafter elects to offer the park at a price lower than the price specified in his notice to the home owners, the home owners, by and through the association, will have an additional 10 days to meet the price and terms and conditions of the park owner by executing a contract.

(2) If a mobile home park owner receives a bona fide offer to purchase the park that he intends to consider or make a counteroffer to, his only obligation shall be to notify the officers of the homeowners' association that he has received an offer and disclose the price and material terms and conditions upon which he would consider

selling the park and consider any offer made by the home owners, provided the home owners have complied with ss. 723.075-723.079. The park owner shall be under no obligation to sell to the home owners or to interrupt or delay other negotiations, and he shall be free at any time to execute a contract for the sale of the park to a party or parties other than the home owners or the association.

(3)(a) As used in subsections (1) and (2), the term "notify" means the placing of a notice in the United States mail addressed to the officers of the homeowners' association. Each such notice shall be deemed to have been given upon the deposit of the notice in the United States mail.

(b) As used in subsection (1), the term "offer" means any solicitation by the park owner to the general public.

(4) This section does not apply to:

(a) Any sale or transfer to a person who would be included within the table of descent and distribution if the park owner were to die intestate.

(b) Any transfer by gift, devise, or operation of law.

(c) Any transfer by a corporation to an affiliate. As used herein, the term "affiliate" means any shareholder of the transferring corporation; any corporation or entity owned or controlled, directly or indirectly, by the transferring corporation; or any other corporation or entity owned or controlled, directly or indirectly, by any shareholder of the transferring corporation.

(d) Any transfer by a partnership to any of its partners.

(e) Any conveyance of an interest in a mobile home park incidental to the financing of such mobile home park.

(f) Any conveyance resulting from the foreclosure of a mortgage, deed of trust, or other instrument encumbering a mobile home park or any deed given in lieu of such foreclosure.

(g) Any sale or transfer between or among joint tenants or tenants in common owning a mobile home park.

(h) Any exchange of a mobile home park for other real property, whether or not such exchange also involves the payment of cash or other boot.

(i) The purchase of a mobile home park by a governmental entity under its powers of eminent domain.

723.081 Notice of application for change in zoning. The mobile home park owner shall notify in writing each mobile home owner or, if a homeowners' association has been established, the directors of the association, of any application for a change in zoning of the park within 5 days after the filing for such zoning change with the zoning authority.

723.083 Governmental action affecting removal of mobile home owners. No agency of municipal, local, county, or state government shall approve any application for rezoning, or take any other official action, which would result in the removal or relocation of mobile home owners residing in a mobile home park without first determining that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners.

The homeowners below were not even permitted to raise and argue before a trier of fact the issue that from June 4, **1984** to August **30, 1985,** a period of nearly fifteen months, the park owner was in substantial non-compliance with Chapter 723.011, **723.012,** and **723.013** by his failure to file and serve a prospectus or any other disclosure documents required under the Mobile Home Act. Isn't this in and of itself the antithesis of good faith and fair dealings? **Are** these required disclosures under the Florida Mobile Home Act meaningless shreds of paper?

It is furthermore a basic tenent of statutory construction that statutes providing summary remedies such as the summary eviction procedures available under F.S.

723.061 should be strictly construed Connor v. Alderman, 159 So.2d. 890(Fla. 2nd DCA 1964). Evictions for change in land use must not be construed so broadly that they become a back door method for the return of eviction without cause.

Very clearly the above cited sections of the Mobile Home Act demonstrate a legislative intent to protect the homeowner from arbitrary or capricious actions by a park owner which could lead to the dislocation of homeowners under a change in land use scenario. In the face of this statutory scheme, a park owner who proceeds with an eviction for land use change to vacant land should understandably face a heavy burden of proof, particularly if his intentions:

> "I don't know, maybe a pasture;"
>
> "That's a lawyer question;"
>
> "I have no plans, I just want to resell it at a profit;"
>
> "My attorney says I can do what I want with the property."
>
> "I have no legal or moral obligation to do anything for you."

are as evasive as the record below indicates.

The Federation of Mobile Home Owners of Florida, Inc., does not believe that "vacant land" or "non-use" comports with Chapter 723 disclosure provisions calling for "a detailed description containing all information available to the mobile home park owner, including the time, manner, and nature, of any definite future plans which he has for future changes in the use of the land comprising the mobile

home park." Chapter 723.013(11), Fla. Stat. This is why we believe that a good faith standard will prove to be a heavy burden to this park owner.

To answer the certified question with a categorical yes or no in light of the broad remedial intentions of Chapter 723, Florida Statutes may only compound present judicial error from the Fourth District.

CONCLUSION

The Federation believes that the more fruitful area of inquiry lies in asking the question, Is the change in land use as announced by the park owner in good faith? Or is it in bad faith, arbitrary, capricious, and designed to circumvent the protections of the Mobile Home Act? The answers to these questions necessarily require a factual determination by a trial court. There may be circumstances where the clearing or vacation of a mobile home park with a dwindling population and a crumbling infrastructure may be an act of good faith and entirely reasonable under the circumstances, particularly if the park owner had previously offered the park property for sale to the residents. There may also be circumstances where such an announced intention, either as to the whole park or a portion thereof, is a bad faith subterfuge to avoid particular provisions of the Mobile Home Act or to evict certain tenants or classes of mobile home owners without cause.

This is why we urge the Court to take a middle ground on the certified question and hold that whether the

conversion of land comprising a mobile home park from use as a mobile home park to vacant land, or to no use, is a good faith "change in use" within the contemplation of Section 723.061(d), Florida Statutes (1985) is a question of fact to be determined at trial by the trier or fact.

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 this 25th day of January, 1990, to the below designated addressees at their respective addresses:

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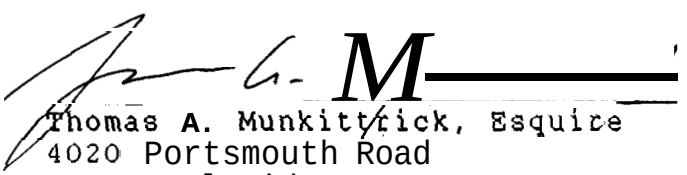

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