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SUPREME COURT OF FLORIDA

MOONLIT WATERS APARTMENTS, INC.

Petitioner,

vs.

JOSEPH J. CAULEY,

Respondent.

________________________/

Case No. 85,489
District Court of Appeal
4th District - No. 93-3050

REPLY BRIEF OF PETITIONER

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POINTS ON APPEAL

I. FLORIDA STATUTE 719.401(1)(f)1 APPLIES TO THE MOONLIT WATERS LEASE AND THEREFORE THE CERTIFIED QUESTION SHOULD BE ANSWERED IN THE AFFIRMATIVE.

II. FLORIDA STATUTE 719.401(1)(f)1 IS CONSTITUTIONAL BECAUSE THERE IS NO RETROACTIVE IMPAIRMENT OF CONTRACT TO THE DEFENDANT'S SINCE THEY ARE BEING FULLY COMPENSATED FOR THEIR PROPERTY UNDER A VALID EXERCISE OF THE STATE'S EMINENT DOMAIN POWER.

III. THE STATUTE IS A VALID EXERCISE OF THE POLICE POWERS AND EMINENT DOMAIN POWERS OF THE STATE.

IV. ALL PROCEDURAL AND SUBSTANTIVE CONSTITUTIONAL DUE PROCESS REQUIREMENTS OF LAW HAVE BEEN MET

CONSTITUTIONALLY QUESTIONED STATUTE

Florida Statute Section 719.401(1)(f)1

A lease of recreational or other commonly used facilities entered into by the association or unit owners prior to the time the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash, on any anniversary date of the beginning of the lease term after the 10th anniversary, at a price then determined by agreement. If there is no agreement as to the price, then the price shall be determined by arbitration. This paragraph shall be applied to contracts entered into on, before, or after January 1, 1977, regardless of the duration of the lease.

CERTIFIED QUESTION OF GREAT PUBLIC IMPORTANCE

QUESTION CERTIFIED BY THE FOURTH DISTRICT COURT OF APPEALS OF THE STATE OF FLORIDA OPINION FILED MARCH 15, 1995

> **WHETHER SECTION 719.401(1)(f)1 APPLIES TO AN EXISTING LONG TERM GROUND LEASE ENTERED INTO AT ARM'S LENGTH UPON WHICH ALL IMPROVEMENTS OF A COOPERATIVE APARTMENT COMPLEX HAVE BEEN CONSTRUCTED**

PREFACE

The petitioner is the plaintiff. The petitioner will sometimes be referred to as Moonlit Waters or plaintiff.

The respondent is the defendant. The respondent will sometimes be referred to as leaseholder or defendant.

The following symbols will be used:

R - Record on appeal

A - Appendix to Initial Brief of Petitioner filed in the Supreme Court of Florida dated June 9, 1995.

B - Answer Brief of Respondent filed in the Supreme Court of Florida dated July 5, 1995.

T - Transcript of proceedings taken on April 29, 1993.

ARGUMENT

I. FLORIDA STATUTE 719.401(1)(f)1 APPLIES TO THE MOONLIT WATERS LEASE AND THEREFORE THE CERTIFIED QUESTION SHOULD BE ANSWERED IN THE AFFIRMATIVE.

In its Answer Brief, the defendant propounds that the statute does not apply to the defendant's lease because the word "of" appears as the third word of the statute rather than the word "including". This proposition of the defendant is incorrect and should be rejected.

The premise of the defendant's argument is that the statute is unambiguous on its face and only the narrow wording of the statute can be considered by this Court when interpreting the statute. However, the Fourth District Court of Appeal specifically recognized by the certified question that the statute is subject to more than one interpretation. The facts of the present case

are uncontroverted that the lease is for land upon which all improvements of the Moonlit Waters Cooperative have been constructed. It is also uncontroverted that other than the physical cooperative apartments, all of the improvements are comprised of recreational or other commonly used facilities. The certified question asks this Court to determine whether a ground lease encompassing recreational or other commonly used facilities falls within the meaning of the statute. The defendant would have this Court in its analysis look only to the generic meaning of the words and determine that the failure of the statute to have the word "including" rather than the word "of" precludes its application to the defendant's lease. However, if this argument was correct, it would also be correct that the lack of the words "excluding a lease of land encompassing recreational or other commonly used facilities", means that the statute necessarily applies to the defendant's lease. Obviously, a more detailed and reasonable analysis of the statute is required. The appropriate method of analysis is set forth in a case cited by the defendant, Devin v. City of Hollywood, 351 So. 2d 1022 (Fla. 4th Dist. 1976). It should be noted that Devin, *supra*, does not support the defendant's view of the standard of analysis. In fact, Devin, *supra*, provides that the primary guide to statutory interpretation is to determine the purpose of the legislature. (at page 1023). Devin, *supra,* further provides that uncertainty should be resolved by an interpretation that best accords with the public benefit. (at page 1023). The Devin Court cites additional authority which should be used in statutory interpretation.

> **In 1 Sutherland, Statutory Construction, § 1931, that authority said: "Since an amendment changes an existing statute, the general rule of statutory interpretation that the surrounding circumstances are to be considered is particularly applicable to the interpretation of amendatory acts." Our Supreme Court has said, in Ideal Farms Drainage Dis. v. Certain Lands, 154 Fla. 554, 19 So. 2d 234, that in construing a statute, courts are required to look to the history, objective and purpose of the legislature in examining into**

their intent. We feel that this can best be done by looking into the preamble and by reading all parts of the statute together. Any uncertainty as to the legislative intent should be resolved by an interpretation that best accords with the public benefits.

Sunshine State New Company v. State of Florida, 121 So. 2d 705 (Fla. 3rd Dist. 1960), (at page 708). Looking at the preamble of this statute and by reading all parts of the statute together with it in order to arrive at the interpretation that best accords with the public benefit, the inescapable conclusion is that the statute does apply to the defendant's lease. The preamble to the statute makes no distinction between the benefits it intends to confer on condominium and cooperative dwellers. The preamble to the statute makes no distinction between the adverse consequences engendered by leases of recreational or other common facilities or land which contain escalation clauses tied to a nationally recognized consumer price index. The preamble finds such leases to be inflationary, to lessen the quality of life of all members of the state of Florida and be particularly invidious in its impact on the elderly and others on fixed incomes. In the preamble, the legislature further stated that there is a pressing public necessity for the state to do whatever it can to curb inflation and keep the cost of living at a level where it is possible and manageable to provide citizens a decent and helpful standard of life. (A-3). It is clear from the preamble to the statute that the public benefit the legislature intended to confer by the passage of the statute was to unburden both condominium and cooperative dwellers from any lease with an escalation clause tied to a consumer price index which encompass improvements which are used for common or recreational purposes. The Moonlit Waters lease is of common and recreational improvements in addition to the underlying land. The argument made by the defendant that the

"evil" sought to be corrected by the legislature is only for recreation leases and not land leases is incorrect and directly controverted by the preamble to the statute.

The court should also take note that the defendant in its statement of the facts and pages nine and fourteen of its Answer Brief has improperly referred to various calculations of alleged value of the units versus the rental payments as a justification for the perceived equity of land leases. The lower court correctly recognized that this argument was totally irrelevant, based upon hearsay, and further unsupported by requisite expert testimony when it twice sustained Moonlit Waters' objection to the introduction of this evidence and argument upon same. (T-16, Line 14, and T-31, Line 23). The record cite of the defendant on this point consists entirely of the self-serving affidavit filed by the defendant (R-64-72). The filing of this affidavit was not authorized by the lower court or any rule of civil procedure. Additionally, the author of the affidavit was not subject to cross examination. This document is not properly within the record on appeal and all references to it by the defendant should be disregarded.

The Fourth District Court of Appeal in a note appearing at the end of its opinion stated that a lease to a condominium or cooperative association of land specifically set aside or designated for the construction of recreational or other commonly used facilities intended to serve members of the association should fall within the ambit of the statute. If this proposition is correct, a reasonable interpretation of this statute requires that any leased land containing recreational or other commonly used facilities falls within the ambit of the statute, irrespective of whether the lease specifically or generally sets aside a portion of the land for such facilities. The petitioner therefore requests that this court determine that when all improvements of a cooperative apartment complex, which include recreational or other commonly used facilities,

have been constructed on leased land, the lease falls within the ambit of the statute and the certified question should be answered in the affirmative.

II. FLORIDA STATUTE §719.401(1)(f)1 IS CONSTITUTIONAL BECAUSE THERE IS NO RETROACTIVE IMPAIRMENT OF CONTRACT TO THE RESPONDENT'S SINCE THEY ARE BEING FULLY COMPENSATED FOR THEIR PROPERTY UNDER A VALID EXERCISE OF THE STATE'S EMINENT DOMAIN POWER.

The defendant concedes on page ten of his brief that the appropriate standard for determination of the constitutionality of the subject statute is the three-pronged test as set forth in the case of Pomponio v. Claridge of Pompano Condominium, Inc., 378 So. 2d 774 (Fla. 1979). The questioned statute in this case passes the three-pronged test without much difficulty:

(a) **Was the law enacted to deal with a broad, generalized economic or social problem?** For the past twenty-five years, the Florida legislature has grappled with the broad, generalized economic and social problems created by land and recreation leases tied to cost of living indexes. The Florida legislature has repeatedly spoken on this issue, and has again reiterated its position clearly in the preamble to the subject statute.

(b) **Does the law operate in an area which was already subject to state regulation at the time the parties' contractual obligations were originally undertaken, or does it invade an area never before subject to regulation by the state?** The right of the state to exercise its police power to take property for a public purpose has been established for hundreds of years. Any person or entity which purchases property, or has an interest in property in the State of Florida is subject to the possible taking of that property interest via eminent domain proceedings. This is not a new area of regulation. The defendant in this case

may not have anticipated the exercise of the state's eminent domain powers in the manner provided for in the subject statute. However, the defendant's lack of foresight does not in any way abrogate the authority of the legislature.

(c) **Does the law effect a temporary alteration of the contractual relationships of those within its coverage, or does it work a severe, permanent, and immediate change in those relationships-irrevocably and retroactively?** The answer to this question is clearly no. Although the defendants argue to the contrary, he must certainly unequivocally agree that the statute requires that he be fully compensated in present value dollars for the full value of the lease and the underlying land. On page fourteen of his brief, defendant claims damage in the form of discontinuance of escalating lease payments, loss of the lease and loss of ownership of real property. As the defendant will receive the present value of these payments, plus the value of the lease and the underlying land, this argument does not constitute legal damage. The defendant further propounds that it would have charged Moonlit Waters additional rent for the benefit of an option and that these lease payments are now lost resulting in a windfall to the petitioner. The defendant totally misses the point on this issue. The statute recognizes the full economic value of the defendant's lease. The defendant is entitled to nothing less or nothing more from an eminent domain taking of any kind. Accordingly, this argument also does not constitute legal damage. The defendant proposes to this court a very narrow and strict interpretation of the three-pronged test. However, the Florida Supreme Court in Pomponio, *supra*, recognized that the world is not black and white and the test must be applied reasonably after consideration of all of the facts and circumstances of the particular contractual relationship in light of the importance of the State's objectives.

To determine how much impairment is tolerable, we must weigh the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy. Obviously, this becomes a balancing process to determine whether the nature and extent of the impairment is constitutionally tolerable in light of the importance of the state's objective, or whether it unreasonably intrudes into the parties' bargain to a degree greater than is necessary to achieve that objective.

(Pomponio v. Claridge, at page 780).

The petitioner submits to this Court that a reasonable application of the three-pronged test to the questioned statute proves the statute to be constitutionally sufficient.

III. THE STATUTE IS VALID EXERCISE OF THE POLICE POWERS AND EMINENT DOMAIN POWERS OF THE STATE.

In the answer brief, the defendant complains that the statute does not constitute an exercise of the state's power of eminent domain because the State of Florida has no involvement in the mechanical transfer of the property. (B-12) As explained in Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 104 S.Ct 2321, 81 L.Ed 2d 186 (1984):

"The mere fact that property taken outright by eminent domain is transferred in the first instance to private beneficiaries does not condemn that taking as having only a private purpose. The Court long ago rejected any literal requirement that condemned property be put into use for the general public. "It is not essential that the entire community, nor even any considerable portion, ... directly enjoy or participate in any improvement in order [for it] to constitute a public use."" (at page 2331) citing *Rindge Co. v. Los Angeles,* 262 U.S., at 707, 43 S.Ct., at 692...

"The Act advances its purposes without the State's taking actual possession of the land. In such cases, government does not itself have to use property to legitimate the taking; it is only the taking's purpose, and not its mechanics, that must pass scrutiny under the Public Use Clause (at page 2331).

The Florida Courts have also previously adopted the view that eminent domain power does not have to be directly exercised by the sovereign:

> **Thus, the power of eminent domain vested in the sovereign may, by the provisions of our Constitution, be delegated to a private corporation to exercise *for a public use.***

Clark v. Gulf Power Company, 198 So. 2d 368 (1st Dist. 1967), (at page 370).

The Hawaii Housing case, *supra*, explicitly relied upon by the Florida Legislature in the passage of the statute, completely rebuts the defendant's propositions on pages twenty-one through twenty-three of his brief that this is a private transfer of property not constituting a valid exercise of the state's eminent domain powers.

The defendant has taken a self-serving and unique view of the term "public purpose." The defendant's view is not supported by applicable case precedent. The defendant seems to be hung up on the fact that every Florida resident may not benefit from the subject legislation, and that only Moonlit Waters, and similarly situated residents will benefit. The defendant has determined that this is, in his view, an insufficient number of residents worthy of protection by the Florida legislature. However, as clearly explained in the Hawaii Housing case, there is no specific number of people that have to benefit. For example, there are many municipalities with less than 1,000 residents in the State of Florida. In the defendant's view, this would mean that the municipal governments in these small locales would have no eminent domain authority. Obviously, this is not the case. If a school district in a small city condemns a piece of property to build a school, it is not relevant that the number of students that will attend that particular school will be less than the number of students who will attend a similar school in a larger city. Although, theoretically, anyone could move into the school district and have their children attend

that school, the building of the school itself will benefit only the residents in that particular community. None of these facts void the legality of the taking of the property for the building of the school. Similarly, in the present case, although the subject legislation may affect directly 60,000 residents in the State of Florida, it also affects and benefits all of the residents of the State. Just as someone may move into the small school district in the example cited above, someone not presently residing in one of the affected condominium units may decide in the future to move there. The case of Yellow Cab Company of Dade County v. Dade County, 412 So. 2d 395 (Fla. 3rd Dist. 1982), also proves the defendant's logic wrong. In Yellow Cab, *supra,* a County ordinance was found to be constitutional even though it retroactively altered a previously existing private contract between certain taxicab companies and private hotels. The contracts gave exclusive taxicab service rights to one taxicab company. Dade County subsequently enacted two emergency ordinances which prohibited retroactively exclusive taxicab service. Using the defendant's logic, the emergency ordinances should have been held unconstitutional because they would have benefitted "special interests," to wit the competing taxicab companies which were deprived the right to pick up passengers at certain hotels. The Third District Court of Appeal rejected the type of narrow logic propounded by the defendant when deciding the Yellow Cab case because it understood that there were going to be other benefits flowing to the public at large from the enforcement of the emergency ordinances. The Yellow Cab court propounds a much more liberal and reasonable view than the one which the defendant proposes.

The contract clause of neither the United States Constitution nor the Florida Constitution prohibits a state from enacting legislation with retroactive effect. Laws which impair the obligations of private contracts may be constitutional

if they are reasonable and necessary to serve an important public purpose.

Yellow Cab v. Dade County, (at page 397). It is important to note that in the Yellow Cab case, no compensation whatsoever was provided to the parties who held the exclusive taxicab service contracts. In the present case, the defendant will be receiving full compensation for his contract rights. He nonetheless seeks to have this Court impose a standard equal to or greater than imposed upon statutes which do not have such compensation provisions.

On pages twenty-two through twenty-five of his brief, defendant appears to argue that the judiciary and the defendant should substitute their judgment for that of the legislature regarding the public purpose issue. The case of Department of Transportation v. Fortune Federal Savings & Loan Association, 532 So. 2d 1267, 1269 (Fla. 1988), controverts the defendant's argument.

> **Nonetheless, the role of the judiciary in determining whether the power of eminent domain is exercised in furtherance of a public purpose is narrow... With this limited standard of review in mind, we must examine the statute, as well as the enunciated public purpose, to determine whether each fulfills the requirements of the Florida Constitution. (at page 1269)**
>
> **The determination by the legislature of a public purpose, "while not conclusive, is presumed valid and should be upheld unless it is arbitrary or unfounded - unless it is so clearly erroneous as to be beyond the power of the legislature."**

(at page 1269), citing State v. Miami Beach Redevelopment Agency, 392 So.2d 875, 886 (Fla.1980). In the present case, as in Fortune Federal, the legislature has enunciated a clear statement of public purpose. Judicial deference should therefore be granted to the legislature in the constitutional construction of the subject statute. The defendant appears to argue throughout his answer brief that land leases are not a heinous evil which should addressed by the

Florida legislature. The courts have long ago determined that it is not for individual plaintiffs or the judiciary to second guess the legislature in dealing with socio-economic problems. The defendant has an extended argument in the answer brief reviewing the facts of the social problems addressed by the Hawaii legislature in the Hawaii Housing Authority v. Midkiff case, *supra.* The defendant reasons that because the particular social ills addressed by the Florida legislature are not identical to the public social problems addressed by the Florida legislature in the Florida statute, the Florida legislature did not have the ability to rely on the Hawaii Housing precedent in the passage of the Florida legislation. The defendant further reasons that in the defendant's perception the social ills were more heinous in the Hawaii situation than the social ills addressed by the Florida legislation. The standard the defendant seeks this Court to have impose upon the Florida legislature relative to interpretation of the applicability of the Hawaii Housing case to the Florida legislation is devoid of legal merit. No two socio-economic problems facing various legislatures are going to be identical. The Florida Legislature specifically relied on the United States Supreme Court precedent of Hawaii Housing, *supra.* If Hawaii Housing stands for anything, it stands for the proposition that the legislature can effect a taking of private property for a public purpose in the manner the Florida legislature has addressed in the subject law, and it is not for the courts to debate the wisdom of the taking.

> **"When the legislature's purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of takings - no less than debates over the wisdom of other kinds of socioeconomic legislation - are not to be carried out in the federal courts."**

Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 104 S.Ct 2321,

81 L.Ed 2d 186 (1984), (at page 2330). The defendant's argument that it is entitled to a judicial determination that the taking was for a public purpose has also been directly rejected by the Florida Courts.

> **The right to appropriate private property for public use lies dormant in the State until legislative action is had pointing out the occasion, modes, conditions and agencies for its appropriation. Private property can be taken only pursuant to law; but a legislative act declaring the necessity, being the customary mode in which the fact is determined, must be held to be for this purposes "the law of the land", and no other finding or adjudication can be essential, unless the Constitution of the State has expressly required it.**

Marvin v. Housing Authority of Jacksonville, 183 So. 145 (1938), (at page 152). The defendant complains that the statute does not provide for payment of the defendant's expenses and fees of arbitration. The defendant is incorrect. The amount of defendants' expenses and fees of arbitration would be relevant evidence to present to the arbitrator for the arbitrator's computation of the total amount of compensation to be paid to the defendants upon the taking.

IV. ALL PROCEDURAL AND SUBSTANTIVE CONSTITUTIONAL DUE PROCESS REQUIREMENTS OF LAW HAVE BEEN MET

Right to jury trial not absolute in eminent domain proceedings.

The defendant complains of the lack of a right to trial by jury. The Federal and Florida constitutions do not guarantee a jury trial for causes of action or remedies created by statute before or after the time the constitutions became effective. In those cases, the legislature may confer or eliminate a jury trial, Trawick's Florida Practice and Procedure, §23-2, 1994 edition, Henry P. Trawick, Jr., (The Harrison Company Publishers, 1994). Eminent domain proceedings fall into the category of legal proceedings in which a constitutional right is not guaranteed.

"The plaintiffs argue that chapter 89-91 unconstitutionally deprives them of a jury trial. Article I, section 22, of the Florida Constitution, provides in pertinent part that "[t]he right of trial by jury shall be secure to all and remain inviolate." This Court in *re Forfeiture of 1978 Chevrolet Van,* 493 So.2d 433, 435 (Fla. 1986), determined that the proper inquiry to be made under this state constitutional provision was "whether under English and American practice at the time Florida's first constitution became effective in 1845, there existed a right to a jury trial" in a given type of proceeding. No right to a jury trial in condemnation proceedings existed at common law. *Carter v. State Rd. Dep't.*, 189 So.2d 793, 795 (Fla.1966). Therefore, the right to have a jury determine just compensation in Florida is statutory, section 73.071, Florida Statutes (1987), and is not required by the Florida Constitution."

Department of Agriculture and Consumer Services v. Robert H. Bonanno, 568 So.2d, 24 (Fla. 1990), (at page 28).

Access to the courts is not legally impaired by the statute

The defendant complains that he is deprived by the statute of the access to courts provision of the Florida Constitution. The defendant raises this issue for the first time before this court as the defendant did not raise this issue before the trial court or the Fourth District Court of Appeal. That notwithstanding, the defendant concedes on page fifteen of its brief that the legislature may provide reasonable alternative remedies for dispute resolution. In this case, the statute provides the time and fairness tested method of arbitration. Florida Statutes Chapter 682 promulgates practices and procedures for arbitration which fully satisfy all constitutional due process requirements for dispute resolution and even provide for judicial appeal of an arbitration judgment or decree. Florida Statutes Section 682.20 (1994). All of the cases cited by the defendant recognize the right of the legislature to limit access to the courts when a reasonable method of dispute resolution is provided. For instance, Kluger v. White, 281 So. 2d 1 (Fla. 1973), speaks about workmen's compensation abolishing the right to sue one's employer in tort

for a job-related injury, but in lieu thereof provided adequate, sufficient, and even preferable safeguards for an employee who is injured on the job. The case of University of Miami v. Echarte, 618 So. 2d 189 (Fla. 1993), discusses the benefits of arbitration as a reasonable method of alternate dispute resolution. It should be noted that these cases require only that a reasonable method of alternative dispute resolution be afforded, not a perfect one. In fact, dispute resolution through the trial forum in the courts has been much criticized in recent years and considered by many to be a inferior form of dispute resolution to that of arbitration. This is so because arbitration often affords a quicker and less expensive method of dispute resolution than the trial forum in the courts without sacrificing due process protections. It should also be noted that in the Kluger case, *supra,* and some of the other cases cited by the defendant on this issue, the legislature had totally abolished a right of redress without providing an alternative means of dispute resolution. For instance, in the Kluger case, *supra,* the ability of a person to sue in tort for property damage arising from an automobile accident if that person had chosen not to purchase property damage insurance or suffered property damage in excess of $550.00 was abolished. The legislature provided no other means for such an individual to address his claim for such damages. It is important to note that is not the circumstance present in this case. No rights of redress have been completely abolished by the statute. All that has occurred is that the legislature has determined a reasonable alternative method for dispute resolution. The defendant complains that because arbitration is compulsory under the statute, its contractual rights have been unconstitutionally impaired. G & N Construction Company v. Sergl V. Kirpatovsky, 181 So. 2d 664 (Fla. 1966). The defendant's view is without merit. This case does not involve a contractual dispute between the petitioner and the defendant relative to interpretation of

contractual provisions of the lease. The issue in this case remains the amount of compensation that is to be paid to the defendant by the petitioner for the complete taking of the defendant's property under the provisions of a statute created via valid exercise of the police powers of the legislature of the state of Florida. Under such circumstances, the legislature by virtue of the authorities cited above establish the means of dispute resolution of just compensation issues for eminent domain takings.

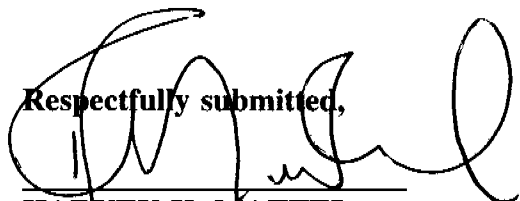
CONCLUSION

This statute clearly applies to existing long terms ground leases upon which all improvements of a cooperative apartment complex have been constructed. The Moonlit Waters lease therefore falls within the ambit of the statute. The certified question should be answered in the affirmative.

The legislature has not unconstitutionally impaired the contract rights of the lessor but has established, under its police power of eminent domain, a reasonable procedure under which a rationally perceived social and economic evil is avoided.

As this statute is constitutionally sufficient, the opinion appealed from should be reversed and remanded with instructions for the trial court to reinstate these proceedings for the appointment of an arbitrator and final determination of the issues set forth in the petitioner's petition to compel arbitration.

Respectfully submitted,



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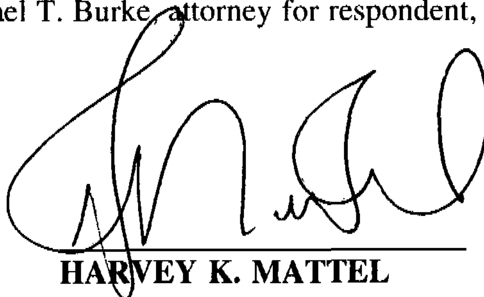
CERTIFICATION OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing reply brief of petitioner was mailed this 24th day of August, 1995, to Michael T. Burke, attorney for respondent, P.O. Box 02-0330, Fort Lauderdale, FL 33303-0220.



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