

IN THE SUPREME COURT
STATE OF FLORIDA

FILED

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CLERK, SUPREME COURT

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LANCA HOMEOWNERS, INC., a/k/a
LANCA HOMEOWNERS ASSOCIATION, INC.,
and the L. C. GRIEVANCE COMMITTEE,
INC., and PATRIC MCKERNAN,

Appellants/Cross-Appellees

CASE NO. 71,767

DCA - 4 NO. 87-0315

vs.

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

Appellees/Cross-Appellants.

BRIEF OF AMICUS CURIAE,
THE FEDERATION OF MOBILE HOME OWNERS OF FLORIDA, INC.

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STATEMENT OF THE CASE AND OF THE FACTS

The Amicus Curiae accepts the Appellant's Statement of the Case and Nature of the Case and the Statement of Facts and incorporates the same by reference herein.

In this brief, the Appellant/Cross-Appellee will be referred to as the "Appellant" or by name and the Appellee/Cross-Appellant as the "Appellee" or by name.

The following symbols are adopted for use in this brief:

"Tr" for the transcript of the proceedings before the trial court, followed by the appropriate volume and page number.

SUMMARY OF ARGUMENT

This Court should adopt a rule of procedure establishing that a mobile homeowners' association, as a matter of law, may represent the class of mobile home owners concerning matters of common interest. When presented with an appeal involving similar issues in Avila South Condominium Association v. Kappa Corporation, 347 So.2d 599 (Fla. 1977), this Court held that the challenged sections of the condominium statute were unconstitutional, but concurrently adopted a rule of procedure containing the substance of the invalidated sections.

The Amicus asserts that the peculiar features of mobile home ownership and living and the unique relationship that exists between the mobile home owner and the park owner requires that a procedural vehicle be established for settlement of disputes affecting matters of common interest. In fact, the policies and considerations which led to this Court's adoption of Fla. R. Civ. P. 1.221, formerly Fla. R. Civ. P. 1.220(b), are even more compelling when considering mobile home owners.

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

The Federation of Mobile Home Owners of Florida, Inc., hereinafter referred to as "FMO," is a state-wide non-profit organization representing over 250,000 mobile home owners throughout the State of Florida. FMO, founded in 1962, is recognized as the leading representative of mobile home owners throughout the State and has had substantial and vast experience with all phases and aspects of mobile home living and the legal issues connected therewith and the relationship between the mobile home owners and the park owners. FMO has participated in numerous landmark mobile home appellate decisions, including without limitation Ashling Enterprises, Inc. v. Browning, 487 So.2d 56 (Fla. 3d D.C.A. 1986); Appel v. Scott, 479 So.2d 800 (Fla. 2d D.C.A. 1985); Aristek Communities, Inc. v. Fuller, 453 So.2d 547 (Fla. 4th D.C.A. 1984); Lemon v. Aspen Emerald Lake Associates, Ltd., 446 So.2d 177 (Fla. 5th D.C.A. 1984), and in numerous lower court cases, including without limitation Fredericks v. Hofmann, 45 Fla. Supp. 44 (12th Cir. Ct. Sarasota Cty. 1976); Offner v. Keller Park Investors, 19 Fla. Supp. 2d 140 (Fla. 6th Cir. Ct. Pasco Cty. 1986); and Jones v. Thomas, 16 Fla. Supp. 2d 30 (Fla. 9th Cir. Ct. Osceola Cty. 1986).

ARGUMENT

A rule of procedure must be adopted establishing that, as a matter of law, a mobile homeowners association may act as the representative of the class of mobile home owners concerning matters of common interest.

FMO files this brief as Amicus Curiae in support of the Appellants/Cross-Appellees. In their Initial Brief, the Appellants have presented persuasive arguments on why Section 723.079(1), Fla. Stat., is constitutional and why the association is an appropriate class representative. The Amicus will not discuss either Issue I or III in the Appellants' Initial Brief as substantively, little can be added to what has been presented; rather, FMO will speak to the issue of concurrent adoption of a rule of procedure so that incorporated mobile homeowner associations, as a matter of law, can represent the class of mobile home owners concerning matters of common interest. The peculiar features of mobile home ownership and living and the unique relationship that exists between the mobile home owner and the park owner requires that a procedural vehicle be established for settlement of disputes affecting matters of common interest.

The Legislature, by its enactment of Chapter 723, Fla. Stat., and its predecessor statute, Chapter 83, Part III, Fla. Stat., acknowledged that a "hybrid" type of property relationship existed between the mobile home owner and the park owner and that the relationship was not simply one of landlord and tenant. This unique relationship, in large part, stems from the grossly unequal bargaining position of a mobile home owner once he "cements" his mobile home into a mobile home park. In fact, once a mobile home is placed in a park it has a permanence of location. Its wheels and hitch are removed, it is placed on a concrete base, tied down in accordance with state laws and joined with the available electrical and water connections. Generally, once a mobile home

is located in a park permanent attachments are added such as a cabana, garage, porch, shed or additional rooms. These permanent structures often are lost if the mobile home is moved. In addition, it is both expensive and difficult to move a mobile home. This situation is further aggravated 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 the older mobile home into the park. The mobile home owners are generally older people in the lower income brackets. The reality, therefore, is that it is not economically feasible for mobile home owners to move their mobile homes since if they are forced to do so, they will lose virtually their entire investment.

The foregoing facts and observations are neither the conclusions or argument of counsel nor are they from the transcript or record on appeal in the instant case; rather, they represent the specific findings of this Supreme Court. In the landmark case of Stewart v. Green, 300 So.2d 889 (Fla. 1974), this Court upheld the statute limiting grounds for evictions in mobile home parks, and stated:

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 abuse 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 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 relation with park owners and the latter's overriding economic advantage over tenants.

Regulatory laws that apply 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 landowner 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. (Emphasis supplied) Id. at 892, 893.

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

It is clear that once the mobile home is "cemented" in place, the mobile home owner is at the mercy of the park owner. This grossly unequal bargaining power and the recognition that the threat of requiring a mobile home owner to move is so economically onerous that the Legislature's enactment of the Florida Mobile Home Act, now Chapter 723, Fla. Stat., was described by the Fifth District Court of Appeal as the mobile home owners "Bill of Rights." See Lemon v. Aspen Emerald Lakes Associates, Ltd., 446 So.2d 177, 180, f.n. 2 (Fla. 5th D.C.A. 1984).

Under these adverse conditions and in recognition of their unequal position, the Legislature has sought to protect the mobile home owner in such areas as restriction of grounds for eviction (Section 723.061, Fla. Stat.), protection of a mobile home owner's right to sell his mobile home in the park (Section 723.031, Fla. Stat.), protection from undisclosed assessments and costs (Section 723.041(1)(b), Fla. Stat.), protection from unconscionable rents (Section 723.033, Fla. Stat.), and protection from lot rental increases, reduction in services and changes in rules and regulations (Section 723.037, Fla. Stat.). Despite these protections now afforded the mobile home owners, the abuses

by the park owners and the oppressive treatment of the mobile home owners continue. The only recourse for the economically enslaved mobile home owner faced with abuses by the park owner is to move his mobile home out of the park, attempt to sell it or challenge the park owner's actions in a lawsuit.

As discussed previously, most mobile home owners are elderly and live on limited income and cannot afford the expense to relocate their mobile homes. However, even if they could afford to relocate, there is no place to go since most parks are "closed parks" which refuse to admit used or pre-owned mobile homes. Similarly, the option of selling their mobile homes is neither attractive nor acceptable because they stand to lose all or a substantial amount of the investment in their mobile homes. This is so because the most frequent abuse by park owners is in charging unreasonable and unconscionable rent and it has been established in Florida that as the rents increase in a mobile home park, the value of the individual mobile home decreases. See e.g., Fredericks v. Hofmann, 45 Fla. Supp. 44 (12th Cir. Ct. Sarasota Cty. 1976); Offner v. Keller Park Investors, 19 Fla. Supp. 2d 140 (Fla. 6th Cir. Ct. Pasco Cty. 1986); and Jones v. Thomas, 16 Fla. Supp. 2d 30 (Fla. 9th Cir. Ct. Osceola Cty. 1986). Thus, the only viable alternative for the mobile home owner is to challenge the actions of the park owner in a lawsuit such as the instant unconscionable rent action. The most difficult question presented is how can the individual mobile home owner afford the expenses and costs of litigating his claims against the park owner.

A "class" action provides the procedural vehicle for the individual mobile home owner to economically resolve his disputes with the park owner and in addition, saves a multiplicity of suits, reduces the expense of litigation and makes the legal process more effective and expeditious. As Mr. Justice Douglas opined in Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 186, 94 S. Ct. 2140 (1974):

The class action is one of the few legal remedies the small claimant has against those who command the status quo. I would strengthen his hand with the view of creating a system of law that dispenses justice to the lowly as well as to those liberally endowed with power and wealth.

That philosophy is at the very heart of the instant issue.

The Legislature, in enacting Section 723.079(1), Fla. Stat., declared mobile home owners to be a class insofar as their common interests are concerned and provided the homeowners association with the capacity to sue on behalf of the class. The cooperative nature of mobile home living, to-wit: each mobile home owner rents his lot from the park owner, and is governed by the park owner's rules and regulations, the close proximity of the homes in the park, and the use of common roads, a clubhouse, recreational facilities, laundry facilities, etc., dictates that the mobile home owners' interests are coextensive with regard to the common elements. Thus, in response to illegal or improper actions of the park owner concerning these common interests, the mobile home owners' goals in obtaining relief are identical. The wisdom of establishing the right of an incorporated homeowners association, as a matter of law, to represent the class of mobile

home owners concerning matters of common interest is clear.

In the instant case, the Fourth District Court of Appeal relied solely on this Court's decision in Avila South Condominium Association v. Kappa Corporation, 347 So.2d 599 (Fla. 1977), in finding Section 723.079(1), Fla. Stat., unconstitutional as an impermissible incursion into this Court's exclusive rule making authority. In Avila, this Court determined that the condominium statute [Section 711.12(2), Fla. Stat. (1975), and its successor, Section 718.111(2), Fla. Stat. (1976 Supp.)], which contained language almost identical to Section 723.079(1), Fla. Stat., sought to define the proper parties in suits litigating substantive rights and therefore, was procedural rather than substantive law and was unconstitutional. Id. at 607-608. Although finding the aforementioned sections of the condominium statute unconstitutional in Avila, this Court recognized both the need for providing a procedural vehicle for settlement of disputes affecting condominium unit owners concerning matters of common interest and the virtue of the policy sought to be asserted by the Legislature in the invalidated sections. Id. at 608; see also, The Florida Bar, 353 So.2d 95, 97 (Fla. 1977).

As the result, this Court concurrently adopted the substance of the invalidated sections of the condominium statute as Fla. R. Civ. P. 1.220(b). 347 So.2d at 608. The Amicus asserts that the public policies and considerations which led to this Court's adoption of Fla. R. Civ. P. 1.221, formerly Fla. R. Civ. P. 1.220(b), are even more compelling when considering the peculiar features of mobile home ownership and living and the

unequal bargaining positions that exist between the mobile home owners and park owners. See Stewart v. Green, 300 So.2d 889 (Fla. 1974); Palm Beach Mobile Homes, Inc. v. Strong, 300 So.2d 881 (Fla. 1974). This Court must adopt, concurrently with its opinion in this case, a rule of procedure granting authority to an incorporated mobile homeowners association to represent the class composed of mobile home owners in matters of common interest as a matter of law.

The adoption of a rule of procedure, similar to Fla. R. Civ. P. 1.221 for condominium associations, also is supported by the fact that the elements required to establish the efficacy of a "class" under Fla. R. Civ. P. 1.220 are inherent in a mobile homeowners association relationship making pleading and proof of such elements unnecessary and unduly burdensome. Further, the Legislature, in Chapter 723, Fla. Stat., has validly created the capacity of a mobile homeowners association to maintain suits and otherwise represent the class of mobile home owners concerning matters of common interest. See e.g., Section 723.037(1), Fla. Stat. ("A park owner shall give written notice to each affected mobile home owner and the board of directors of the homeowners' association, if one has been formed, The homeowners' association shall have no standing to challenge the increase in lot rental amount, reduction in services or utilities, or change of rules and regulations unless a majority of the affected home owners agree, in writing, to such representation."); Section 723.037(3), Fla. Stat.; ("A committee, not to exceed five in number, designated by a majority of the affected mobile home

owners or by the board of directors of the homeowners' association . . . "); Section 723.054, Fla. Stat.; Section 723.055, Fla. Stat.; Section 723.071, Fla. Stat.; Section 723.073, Fla. Stat.; Section 723.074, Fla. Stat.; Section 723.075, Fla. Stat. ("Upon incorporation and service of the notice described in s. 723.076, the association shall become the representative of the mobile home owners in all matters relating to this chapter."); Section 723.076, Fla. Stat.; Section 723.077, Fla. Stat.; Section 723.078, Fla. Stat.; Section 723.079, Fla. Stat.; and Section 723.081, Fla. Stat. (Emphasis supplied). Regardless of this Court's decision as to the validity of the challenged statute, the integrity and merit of the policy asserted by the Legislature in Chapter 723, Fla. Stat., can neither be denied nor abandoned by this Court. Just as in Avila South Condominium Association v. Kappa Corporation, 347 So.2d 599 (Fla. 1977), a rule of procedure must be adopted providing the procedural vehicle for settlement of disputes affecting mobile home owners concerning matters of common interest.

The Florida Manufactured Housing Association, the Amicus Curiae in support of the Appellees in this cause, has argued previously that Section 723.079(1), Fla. Stat., was not intended by the Legislature to be an absolute grant of substantive rights to the mobile homeowners' association to represent the defined class of home owners. Rather, it argues that the statutory history of Section 723.079(1), Fla. Stat., and the interpretation of the similarly worded condominium statute, establish that the section is merely a statement of the requirements of the articles of

incorporation of the association so that after (and only after) the association purchases the mobile home park it can institute, maintain, settle or appeal actions on behalf of all home owners. It is agreed that the language of Section 723.079(1), Fla. Stat., is similar to the language of the condominium statute, Section 718.111, Fla. Stat. However, the intent of the Legislature in the "Mobile Home Act" is clearly and precisely stated in Section 723.075(1), Fla. Stat., to-wit: "[U]pon incorporation and service of the notice described in s. 723.076, the association shall become the representative of the mobile home owners in all matters relating to this chapter." (Emphasis supplied) and further, it is clear from a review of Chapter 723, Fla. Stat., in its entirety. FMO urges this Court to continue the persuasive policies underlying its landmark decisions in Stewart v. Green, supra, and Palm Beach Mobile Homes, Inc. v. Strong, supra, and those policies and considerations recognized by the Legislature in the enactment of Chapter 723, Fla. Stat., and its predecessor statute, Chapter 83, Part III, Fla. Stat., by adopting a rule of procedure establishing that a mobile homeowners' association, as a matter of law, may represent all home owners concerning matters of common interest.

For the foregoing reasons, FMO suggests that the rule of procedure should provide:

MOBILE HOMEOWNERS' ASSOCIATIONS

The association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all home owners concerning matters of common interest. If the association has the authority to

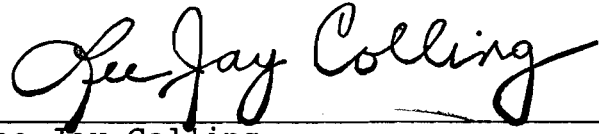
maintain a class action, the association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action. Nothing herein limits any statutory or common-law right of any individual home owner or class of home owners to bring any action which may otherwise be available. An action under this rule shall not be subject to the requirements of Rule 1.220.

CONCLUSION

The mobile home owners in Florida vitally need a procedural vehicle for the settlement of disputes concerning matters of common interest. In landmark decisions, this Court has recognized the unique relationship that exists between mobile home owners and park owners and the vastly inferior bargaining position of the mobile home owner. The Legislature, by enacting Chapter 723, Fla. Stat., and its predecessor statute, Chapter 83, Part III, Fla. Stat., sought to protect the mobile home owners and provide for their representation in matters of common interest by an incorporated association.

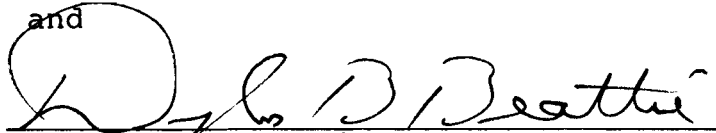
The peculiar features of mobile home ownership and living and the aforementioned unequal bargaining position of the mobile home owner dictate that a rule of procedure must be adopted. Also, all of the elements traditionally required to establish a "class" are inherent in a mobile homeowners association relationship. The "class" action, with representation by the association, is perhaps the only vehicle by which the individual mobile home owner can challenge the park owner and protect the interests and rights which he has in common with the other home owners in the park. FMO urges this Court to adopt a rule of procedure establishing that, as a matter of law, a mobile homeowners' association may act as the representative of the class of mobile home owners concerning matters of common interest. The rule of procedure should be adopted concurrently with this Court's decision in this cause.

Respectfully submitted this 29th day of February, 1988.



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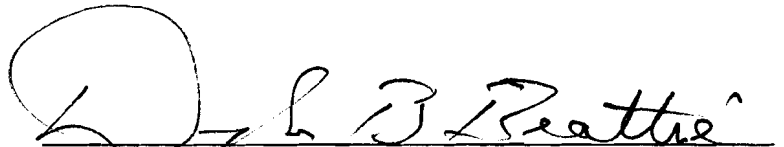


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Owners of Florida, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail delivery to Michael B. Small, Esquire, Paramount Center, 139 North County Road, Palm Beach, Florida 33480, Edward Marod, Esquire, Gunster, Yoakley, Criser & Stewart, P. A., P. O. Box 4587, West Palm Beach, Florida 33402, and Jack M. Skelding, Jr., Esquire and David D. Eastman, Esquire, P. O. Box 669, Tallahassee, Florida 32302, Attorneys for FMHA this 29th day of February, 1988.



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