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(Cite as: 453 So.2d 547)

District Court of Appeal of Florida,
 Fourth District.

ARISTEK COMMUNITIES, INC., a Florida corporation, doing business as Lakewood Village and Aristek Properties, Ltd., a foreign corporation doing business as Lakewood Village, Appellants/Cross Appellees,

v.

Lee W. FULLER, et al., Appellees/Cross Appellants.
No. 83-1399.

Aug. 8, 1984.

Tenants at a mobile home park sued the park owners, alleging that certain rent increases were unconscionable. The Circuit Court, Indian River County, D.C. Smith, J. (Retired), entered judgment in favor of tenants, and owners appealed. The District Court of Appeal, Walden, J., held that erroneous submission to the jury of the issue of unconscionability of rent increases for tenants, requiring jury to determine that the increases were unconscionable if it found that the rent was increased beyond the fair market rental value of each lot, constituted harmful error which mandated reversal and remand, since statute governing unconscionable lot rental agreements did not prescribe such criteria, and no evidence was adduced that would have supported finding that rent was increased beyond the fair market rental value of each lot.

Reversed and remanded.

West Headnotes

[1] Appeal and Error 30 ↪1062.1

30 Appeal and Error

30XVI Review

30XVI(J) Harmless Error

30XVI(J)17 Submission of Issues or Questions to Jury

30k1062.1 k. In General. **Most Cited**

Cases

Landlord and Tenant 233 ↪386

233 Landlord and Tenant

233XII Mobile Homes and Mobile Home Parks

233k383 Rent and Other Charges

233k386 k. Proceedings and Relief. **Most**

Cited Cases

Erroneous submission of issue of unconscionability of rent increases for tenants of mobile home park, requiring jury to determine that the increases were unconscionable if it found that the rent was increased beyond the fair market rental value of each lot, constituted harmful error which mandated reversal and remand; statute governing unconscionable lot rental agreements did not prescribe such criteria, and no evidence was adduced that would have supported a finding that the rent was increased beyond the fair market rental value of each lot. **West's F.S.A. § 83.754.**

[2] Appeal and Error 30 ↪1026

30 Appeal and Error

30XVI Review

30XVI(J) Harmless Error

30XVI(J)1 In General

30k1025 Prejudice to Rights of Party as Ground of Review

30k1026 k. In General. **Most Cited**

Cases

Test for harmful error is whether but for such error a different result would have been reached.

[3] Appeal and Error 30 ↪1180(2)

30 Appeal and Error

30XVII Determination and Disposition of Cause

30XVII(D) Reversal

30k1180 Effect of Reversal

30k1180(2) k. Effect on Dependent Judgments or Proceedings. **Most Cited Cases**

Since judgment was reversed on the merits, award of attorney fees was vacated without prejudice for redetermination based on the outcome of the case in chief on remand.

***548** Lawrence A. Barkett of Gould, Cooksey, Fennell, Appleby, Barkett & O'Neil, Vero Beach, for appellants/cross appellees.

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Clifford M. Miller of Miller & Miller, Vero Beach, for appellees/cross appellants.

Jack M. Skelding, Jr., Ronald A. Labasky and Kathryn G.W. Cowdery of Madigan, Parker, Gatlin, Swedmark & Skelding, Tallahassee, for Florida Manufactured Housing.

Jim Smith, Atty. Gen., and Joanna R. Martin, Sp. Asst. Atty. Gen., Tallahassee, for State of Florida.

John T. Allen, Jr., St. Petersburg, for Federation of Mobile Home Owners of Florida.

WALDEN, Judge.

The tenants at a mobile home park sued the park owners saying the rent increases from 1979 to 1983 were unconscionable. The tenants won. Owners appeal. We reverse and remand for further proceedings.

Contrary to the provisions of [Section 83.754, Florida Statutes \(1983\)](#),^{FN1} the trial court did not determine the issue of unconscionability. Instead, and erroneously, the issue was submitted to a jury. It returned a special verdict as follows:

FN1. 83.754 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) So limit the application of any unconscionable provision as to avoid any unconscionable result. (Emphasis added)

Are the rent increases on lots in Lakewood Village made from 1979 to date by the defendants uncon-

scionable *as the rent was increased beyond the fair market rental value of each lot?* [emphasis supplied]

YES X NO .

Thereafter, the trial court conducted a hearing and determined the dollar value of a reasonable rent, the amount of rebates, and then awarded the tenants reasonable attorney fees.

[1] We hold that the submission of the case to the jury, as above outlined, constituted harmful error which mandates reversal and remand.

We are aware that in some cases the wrongful submission of a case to a jury may constitute harmless error. See [Gaulden v. Arkwright-Boston Manufacturers Mutual Ins. Co.](#), 358 So.2d 267 (Fla. 3d DCA 1978).

[2] The test for harmful error is whether but for such error a different result would have been reached. [Anthony v. Douglas](#), 201 So.2d 917 (Fla. 4th DCA 1967).

The basis for our determination that the error was harmful starts with the wording of the verdict. In order for the jury to determine that the increases were unconscionable, it would have to find and base its decision solely on a finding that “the rent was increased beyond the fair market rental value of each lot.”

First, the statute does not prescribe the above criteria. In our opinion, the above *549 criteria would be a powerful force in making a determination of unconscionability. However, there are other bases that may support a finding of unconscionability. See [Kohl v. Bay Colony Club Condominium](#), 398 So.2d 865 (Fla. 4th DCA 1981); [Bennett v. Behring Corp.](#), 466 F.Supp. 689 (S.D.Fla.1979).

Second, most compellingly, there was no evidence adduced that we could find that would support the fact that the rent was increased beyond the fair market rental value of each lot. Indeed, the evidence was to the contrary.

[3] In light of the reversal on the merits, we vacate the award of attorney's fees without prejudice for re-determination based on the outcome of the case in

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chief.

The tenants' cross appeal is without merit.

Reversed and remanded for further proceedings consistent herewith.

LETTS and HERSEY, JJ., concur.
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