

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
CIVIL DIVISION**

ADAM T. BLACK and
BRITTANY N. BLACK,

Petitioners,

v.

Case No.: 2024CA001411CAAXWS

STARKEY RANCH MASTER
PROPERTY OWNER'S
ASSOCIATION, INC., a Florida
corporation,

Respondent,

AMENDED PETITION FOR DECLARATORY JUDGMENT

Petitioners, Adam T. Black and Brittany N. Black (collectively "**Petitioner**"), by and through undersigned counsel, hereby file this Amended Petition for Declaratory Relief against Respondent, Starkey Ranch Master Property Owner's Association, Inc., a Florida corporation ("**Respondent**"), and state:

1. **Cause of Action:** Petitioner seeks a determination and declaration by the Court, under and pursuant to the authority granted by Florida Statutes Chapter 86, as to whether the One Thousand Dollar (\$1,000.00) fine imposed upon Petitioner by Respondent (the "**Fine**") was an act of selective enforcement of the provisions of the Declaration of Easements, Covenants and Restrictions for Starkey Ranch (the "**Declaration**"). A copy of the Declaration is attached hereto as Exhibit "A".

2. **Petitioners:** Petitioner owns and holds fee simple title to the property described in Paragraph 4 of this Petition which is subject of this action (the "**Property**").

3. **Respondent:** Respondent is a corporation lawfully existing under the laws of the State of Florida and is the homeowners association for Starkey Ranch, a residential community located in Pasco County, Florida ("**Starkey Ranch**").

4. **Property Description:** That certain real property, and the improvements thereon, located at 2563 Murray Pass, Odessa, Pasco County, Florida, as further described below:

Legal Description: Lot 10, Block 37, STARKEY RANCH VILLAGE 2 PHASE 2A, according to the plat thereof, as recorded in Plat Book 75, Page(s) 126-131, of the Public Records of Pasco County, Florida.

Parcel I.D. No.: 27-26-17-0110-03700-0100

5. **Jurisdiction:** This Honorable Court has proper jurisdiction as to the subject matters of this case by and pursuant to the provisions of Florida Statutes Chapter 86.

6. **Venue:** Pasco County, Florida is the proper venue for this case based upon the facts stated below:

6.1 The Association maintains its principal place of business in Pasco County, Florida.

6.2 The Property which is the subject of this case is located in Pasco County, Florida.

6.3 All events which are subject of this case occurred in Pasco County, Florida.

Material Facts

7. Article 9, Section 9.3 of the Declaration provides that “[n]othing herein shall limit the right of an Owner to finish or alter the interior of that Owners Residential Dwelling Unit as that Owner desires ... provided that no such finishing or alteration ... is visible from the exterior of that Owner’s Residential Dwelling Unit.”

8. Similarly, Florida Statutes, §720.3045, provides that “Regardless of any covenants, restrictions, bylaws, rules, or requirements of an association, and unless prohibited by general law or local ordinance, an association may not restrict parcel owners or their tenants from installing, displaying, or storing any items on a parcel which are not visible from the parcel’s frontage or an adjacent parcel, an adjacent common area, or a community golf course”.

9. Article 2, Section 2.33 of the Declaration defines a Residential Dwelling Unit as any “improved portion of ... a Lot ... intended for use as a single family residence”.

10. Based upon the definition of Residential Dwelling Unit, Petitioner considered the preexisting screen enclosure attached to Petitioner’s home an improvement to the Lot and, therefore, a part of the Residential Dwelling Unit.

11. With that understanding, Petitioner, in October of 2023, caused an awning to be installed within the preexisting screen enclosure on Petitioner’s Property (the “**Modification**”).

12. The Modification, which cannot be seen from the street, was installed with the good faith belief that the same did not require approval by the Architectural Review Board (the “**ARB**”).

13. The Modification was constructed using insulated aluminum roof panels (the “**Roof Panels**”).

14. On November 9, 2023, approximately two weeks after the Modification was complete, Petitioner received a “1st NOTICE” from Respondent which alleged that, during a recent inspection, Respondent found that Petitioner needed to correct an “Exterior Modification installed with a denied

application for insulated roof that extends beyond 6 ft.” (the “**First Notice**”). A copy of the First Notice is attached hereto as Exhibit “B”.

15. On November 15, 2023, Petitioner objected to the First Notice, noting that: (i) as no application was submitted, there could not be a denial; and (ii) because the Modification was limited to the interior of Owners’ Residential Dwelling Unit and could not be seen from the street, no application was required.

16. Thereafter, Respondent directed Petitioner to attend the December 8, 2023, ARB meeting, where the First Notice could be discussed with the ARB.

17. Owners attended the ARB meeting as directed and had a very cordial conversation with the ARB.

18. Owners and the ARB discussed the First Notice and the Modification at length.

19. At the conclusion of the discussion, the ARB requested that Owners submit an ARC Application for Modifications, leading Owners to believe that the same was a formality and the ARC Application would be approved.

20. As requested, Owners submitted an ARC Application for Modification (the “**Application**”).

21. On December 18, 2023, Owners received notice that the ARB had denied the Application, noting that “[c]omposite roofs are restricted to the width of the lanai opening and can only extend six foot from the structure.”

22. On December 22, 2023, Petitioner, confused by the ARB’s denial, attended the ARB meeting so as to discuss the denial with the ARB.

23. At that meeting, the ARB confirmed to Owners that their ability to approve or deny applications is limited by the Declaration and Design Guidelines of Starkey Ranch (the “**Design Guidelines**”) and, as Petitioner’s Roof Panels exceeded the Design Guidelines, the ARB could not approve Owners’ Application. A copy of the Design Guidelines is attached hereto as Exhibit “C”.

24. On February 14, 2024, Petitioner served a response to the First Notice, whereby Petitioner questioned the sincerity of ARB’s basis for denial, noting that there exist at least seven (7) other roof panel modifications within the Starkey Ranch community that exceed the allowances imposed by the Design Guidelines, yet there is no record of violations pertaining to the same.

24.1 Upon information and believe, those seven (7) other roof panel modifications were made without the review, approval or consent of the ARB.

25. Petitioner’s response to the First Notice also noted that: (i) the design and final build of the Modification are compatible in scale, massing, character, materials and color with Owners’ house;

(ii) the Modification does not impair the view of neighbors, nor can it be seen from the street; (iii) the Modification has minimal, if any, adverse impact on the community; (iv) those that would be most affected by the Modification, Petitioner's immediate neighbors, have all confirmed they have no issue with the Modification; and (v) in all material respects, the Modification and Petitioner's actions comport with the purpose and intent of the Declaration and Design Guidelines.

26. On that same day, Respondent served Petitioner with a "2nd & FINAL NOTICE", whereby Respondent provided notice that, if "the deed restriction deficiency not be remedied", a fine may be levied against you" (the "**Second Notice**"). A copy of the Second Notice is attached hereto as Exhibit "D".

27. On April 1, 2024, the Starkey Ranch Fining Committee (the "**Fining Committee**") served Petitioner notice that the Fining Committee imposed a \$1,000.00 fine (the "**Fine**") against Petitioner (the "**Notice of Fine**"). A copy of the Notice of Fine is attached hereto as Exhibit "E".

28. On April 12, 2024, Petitioner served a response to the Notice of Fine confirming that: (i) when Petitioner was first made aware of the alleged violation, Petitioner took all reasonable steps to address the matter with the Respondent by and through Respondent's Board of Directors (the "**Board**"), Architectural Review Board (the "**ARB**"), and Fining Committee; (ii) Petitioner has repeatedly requested that the Board and/or ARB provide guidance on addressing the issue via compromise, so as to avoid the economic waste associated with the complete removal of the structure; and (iii) given that the Board and ARB have failed to provide the requested guidance, Petitioner requested, pursuant to Article 12, Section 12.6(nm) of the Declaration, that Respondent grant to Petitioner a variance from the restrictions on lots and residential dwelling units and from the Association's Rules and Regulations, thereby mooting the alleged violation.

29. Respondent has failed to respond to the request for variance.

30. On August 7, 2024, Respondent sent Petitioner a "Notice of Late Assessment" threatening to proceed with "collection action against your property ... unless you pay" the Fine. A copy of the Notice of Late Assessment is attached hereto as Exhibit "F".

31. The Fine is an encumbrance upon Petitioner's Property as Petitioner has a duty to disclose the same to potential buyers and the Association, by and through its governing documents, has a right to proceed with collection efforts, including but not limited to a lien against the Property.

Parties' Claims

32. **Petitioner's Claim:** Petitioner claims that the Fine imposed upon Petitioner by Respondent, which is an encumbrance upon the Property, was an act of selective enforcement of the provisions of the Declaration for the reasons stated below:

32.1 The Modification was installed with the good faith belief that the same did not require approval by the ARB;

32.2 The design and final build of the Modification are compatible in scale, massing, character, materials and color with Owners' house;

32.3 The Modification does not impair the view of neighbors, nor can it be seen from the street;

32.4 The Modification has minimal, if any, adverse impact on the community;

32.5 Those that would be most affected by the Modification, Petitioner's immediate neighbors, have all confirmed they have no issue with the Modification;

32.6 In all material respects, the Modification and Petitioner's actions comport with the purpose and intent of the Declaration and Design Guidelines;

32.7 Similar modifications exist in Starkey Ranch, yet Respondent has taken no action to enforce the restrictions of the Declaration upon those property owners with the similar modifications;

32.8 Despite request, Respondent, without provision of any reasonable basis, has failed to exercise its discretion and grant Petitioner a variance for the Modification under and pursuant to Article 12, Section 12.6(nn) of the Declaration;

32.9 Respondent's enforcement of the restriction on the Modification is arbitrary, unreasonable, and/or selective enforcement by Respondent; and

32.10 Respondent's imposition of the Fine is an encumbrance upon the Property.

33. **Respondent Claim:** The Association asserts that it has the lawful right to assert and impose the Fine for the reasons stated below:

33.1 Petitioner's Modification is in violation of Article 9, Section 9.3 of the Declaration as the Roof Panels extend more than six feet (6') from the back of the home;

33.2 Petitioner did not timely cure the alleged violation.

34. **Need for Relief:** Petitioner is in need of a determination and declaration by this Honorable Court as to whether the Fine imposed upon Petitioner by Respondent was an act of selective enforcement of the provisions of the Declaration.

35. As the Fine is an encumbrance upon the Property, there is a present justiciable question concerning the existence or non-existence of a right or status, or some fact on which such right or status may depend.

36. Petitioner is in doubt as to Petitioner's right or status.

37. Petitioner has a bona-fide, actual, present and practical need for the declaration.

38. Petitioner does not have any other remedy reasonably available to Petitioner as a matter of law to resolve the issues presented to the Court in this case.

39. **Conditions Precedent:** All conditions precedent to the bringing of this action have been satisfied, waived or otherwise complied with.

40. **Legal Counsel:** Petitioner has retained the undersigned legal counsel to represent Petitioner's interest in this case and is obligated to pay reasonably attorney's fees for the professional services rendered and to be rendered by such legal counsel.

WHEREFORE, Petitioner prays that this Honorable Court will: (i) enter its declaratory judgment by which the Court will determine and declare that Respondent's imposition of the fine against Petitioner was an act of selective enforcement and, therefore, unlawful; (ii) award to Petitioner their court costs and reasonable attorney's fees; and (iii) such further and additional relief as the Court may deem just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of Court via the Florida Courts E-Filing Portal on this 11th day of September 2024, which sends a copy via email to all counsel of record in the above captioned matter, including Steven H. Mezer, Esq., Becker & Poliakoff, P.A., attorney for Respondent, 1511 N. Westshore Blvd., Suite 1000, Tampa, FL 33607 (smezer@beckerlawyers.com).

BACON, BACON & FURLONG, P.A.

By: 

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