

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.

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**RESPONDENT'S MOTION TO DISMISS WITH PREJUDICE**

**COMES NOW**, the Respondent, Starkey Ranch Master Property Owner's Association, Inc., a Florida corporation, by and through its undersigned counsel, and respectfully moves this Honorable Court to dismiss the Amended Petition for Declaratory Judgment with Prejudice, and as grounds therefor would allege:

1. Petitioners have filed a one-count Amended Petition for Declaratory Judgment. Count One, in Paragraph 1, identifies the singular issue to be whether the \$1,000 fine imposed upon Petitioner by Respondent was an act of selective enforcement of the provisions of the Declaration of Easements, Covenants and Restrictions for Starkey Ranch ("Declaration").

2. Paragraph 7 of the Amended Complaint states that Article 9, Section 9.3 of the Declaration regarding interior modifications which are not visible from the exterior of that Owner's Residential Dwelling Unit are not subject to architectural control by the Association.

3. Paragraph 8 of the Amended Complaint cites Section 720.3045 of the Florida Statutes, (which was not in effect at the time of the filing of the Declaration and therefore cannot be applicable to the Declaration pursuant to the Florida Constitution), for the proposition that 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 parcels' frontage or an adjacent parcel, an adjacent common area, or a community golf course.

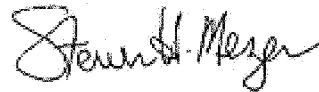
4. Paragraphs 10, 11 and 12 of the Amended Complaint assert that Petitioner, in October of 2023, caused an awning to be installed within the pre-existing screen enclosure on Petitioner's Property, within the screen enclosure as part of the Residential Dwelling Unit, which cannot be seen from the street, believing that the same did not require approval by the Architectural Review Board.

5. The standard cited by the Petitioner that the Modification cannot be seen from the street is a standard not stated in the Declaration or in Section 720.3045 of the Florida Statutes (which is not applicable to this Declaration in any event). Article X, Section 9, Florida Constitution. Therefore, the allegations in the Amended Petition conflict with the exhibits.

6. Paragraph 14 of the Amended Complaint alleges that Petitioners received a first notice of the violation on November 9, 2023, which confirms that the Modification was visible from the exterior of Petitioner's Residential Dwelling Unit. Petitioners have not alleged that the Modification is not visible from the exterior of Petitioners' Residential Dwelling Unit as set forth in Article 9, Section 9.3 of the Declaration, therefore the Amended Complaint fails to state a cause of action and cannot be amended to state a cause of action, therefore it should be dismissed with prejudice.

7. Petitioners have attempted to assert the issue of selective enforcement in Paragraph 1. However, the facts stated in Paragraph 11 as the basis for the claim of selective enforcement is Petitioners' "understanding" that because the pre-existing screen enclosure was a part of the Residential Dwelling Unit, that Petitioners had a "good faith belief that the same did not require approval by the Architectural Review Board." A good faith belief based on Petitioners' understanding of the facts and the document in question, is not a legal basis for claim of selective enforcement. The Amended Complaint fails to state a cause of action and cannot be amended to state a cause of action as a matter of law. Therefore, the Amended Complaint should be dismissed with prejudice. Under Florida law, selective enforcement is an estoppel defense, which, when successfully raised, estops a homeowners' association from applying a given regulation in its declaration. *White Egret Condominium, Inc. v. Franklin*, 379 So. 2d 346, 352 (Fla. 1979). However, in order for the defense to apply, the challenging party must show it changed its position in justified reliance on the community's previous nonenforcement. *Chattel Shipping & Inv., Inc. v. Brickell Place Condominium Association, Inc.*, 481 So. 2d 29, 30-31 (Fla. 3d DCA 1985). Separately, and standing independently, in order for there to be selective enforcement, the owner must be able to cite other examples of comparable conduct where the association failed to enforce the association's restrictions. *See Schmidt v. Sherrill*, 442 So. 2d 963 (Fla. 4th DCA 1983). And, even if there were other examples, the owner must show the instance of other examples sufficient enough to estop the association from enforcing its declaration to cure the owner's violation. *See id.* at 966.

WHEREFORE, the Respondent, Starkey Ranch Master Property Owner's Association, Inc., respectfully moves this Honorable Court to dismiss the Amended Petition for Declaratory Judgment With Prejudice, taxing Respondent's attorney's fees and costs against Petitioners and grant such other and further relief as this Court deems just and proper.

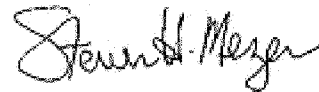


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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that pursuant to Fla. R. Gen. Prac. & Jud. Admin 2.516(b)(1), 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 2<sup>nd</sup> day of October 2024, which sends a copy via email to all counsel of record in the above-captioned matter, including: Christopher S. Furlong, Esq., BACON, BACON & FURLONG, P.A., *Attorneys for Petitioners*, 2959 First Avenue North, St. Petersburg, FL 33713, [chris@baconandbacon.com](mailto:chris@baconandbacon.com).



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