

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.

_____ /

RESPONDENT'S MOTION TO DISMISS

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

1. On May 22, 2024, Petitioners filed their Petition for Declaratory Judgment against Respondent, Starkey Ranch Master Property Owner's Association, Inc.

2. Paragraph 31 of the Petition for Declaratory Judgment indicates:

Petitioner is in need of a determination and declaration by this Honorable Court as to whether the One Thousand Dollar (\$1,000.00) fine imposed upon Petitioner by Respondent was an act of selective enforcement of the provisions of the Declaration. 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.

3. Although Petitioners, in their Petition for Declaratory Judgment, have identified the factual basis for the fine which is the subject of the Petition, Petitioners have not pled a factual or legal basis for a claim of selective enforcement. Instead, Petitioners' Petition for Declaratory

Judgment seeks an advisory opinion from the Court as to the validity of the fine levied by Respondent, in violation of Chapter 86 of the Florida Statutes. Therefore, the Petition should be dismissed for failure to state a cause of action as a matter of law. *See Shields v. Andros Isle Property Owners Association, Inc.*, 872 So. 2d 1003 (Fla. 4th DCA 2004), *Foonberg v. Thornhill Homeowners Association, Inc.*, 975 So. 2d 601 (Fla. 4th DCA 2008), and *Miami Lakes Civic Association, Inc. v. Encinosa*, 699 So. 2d 271 (Fla. 3d DCA 1997).

4. Petitioners have not pled compliance with Chapter 86 of the Florida Statutes in that Petitioners have failed to join the necessary and indispensable parties, to wit: all of the other owners of property within Starkey Ranch subdivision impacted by a judicial determination of selective enforcement under the facts alleged within the Petition. Therefore, the Petition should be dismissed for failure to join necessary and indispensable parties.

5. Petitioners have attached to the Petition a copy of the Declaration of Easements, Covenants and Restrictions for Starkey Ranch as Exhibit “A.” According to Paragraph 20 of the Petition for Declaratory Judgment, “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.’” Section 9.5 of the Declaration provides:

Any approval or disapproval given in writing by the ARB shall be final. An Owner cannot appeal any decision of the ARB to the Board. Each Owner, by accepting any interest in any portion of the Property, acknowledges, understands and agrees that determinations and/or decisions of the ARB are purely subjective, and opinions may vary as to the desirability and/or attractiveness of particular construction, Improvements, alterations, modifications, landscaping, repairs, replacements and/or additions.

6. Paragraph 23 of the Petition for Declaratory Relief asserts 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.” Section 9.12 of the Declaration, attached to the Petition, states:

The approval of any Plans by the ARB or the approval of or consent to any other matter requiring the review, approval or consent of the ARB, shall not be deemed to constitute a waiver of the right to withhold approval and/or consent to any similar Plans or matters subsequently and/or additionally submitted to the ARB for its review, approval and/or consent.

7. Therefore, the allegations in Paragraphs 20 and 23 of the Petition conflict with Exhibit “A,” and therefore fails to state a cause of action and should be dismissed.

WHEREFORE, the Respondent, Starkey Ranch Master Property Owner’s Association, Inc., respectfully moves this Honorable Court to dismiss the Petitioner for Declaratory Judgment filed herein and grant the Respondent such other and further relief as this Court deems just and proper.

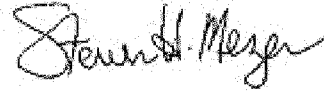


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CERTIFICATE OF SERVICE

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 6th day of June 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,
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