

**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,

**PETITIONERS' RESPONSE IN OPPOSITION TO
RESPONDENT'S MOTION TO DISMISS**

Petitioners, Adam T. Black and Brittany N. Black (collectively "**Petitioners**"), by and through undersigned counsel, hereby file this response in opposition to the Motion to Dismiss filed by Respondent, Starkey Ranch Master Property Owner's Association, Inc. ("**Respondent**"), and state as follows:

1. On May 22, 2024, Petitioners filed a Petition for Declaratory Judgment requesting that this Honorable Court enter a declaratory judgment by which the Court determine and declare that Respondent's imposition of a fine against Petitioner was an act of selective enforcement and, therefore, unlawful.
2. On June 6, 2024, Respondent filed the subject Motion to Dismiss (the "Motion"), arguing that Petitioner: (i) failed to plead a factual or legal basis for a claim of selective enforcement; and (ii) failed to include indispensable parties.

APPLICABLE LAW

A motion to dismiss under rule 1.140(b) tests whether the plaintiff has stated a cause of action, not whether the plaintiff will prevail at trial. Though a court is bound by the four corners of the complaint and attachments, all ambiguities and inferences drawn from "the recitals in the complaint, together with the exhibits attached," must be construed in the light most favorable to the plaintiff. *See Vienneau v. Metro. Life Ins. Co.*, 548 So. 2d 856, 858 (Fla. 4th DCA 1989).

Though an association may enact reasonable restrictions concerning use, occupancy, and transfer of units that are necessary for the operation and protection of owners, an association cannot arbitrarily, unreasonably, and selectively enforce those restrictions. *See McAllister v. Breakers Seville Ass'n, Inc.*, 981 So. 2d 566 (Fla. 4th DCA 2008).

An indispensable party is one who not only has an interest in the controversy but also an interest of such a nature that a final decree cannot be made without either affecting that interest or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience. *See Haire v. Overseas Holdings Ltd. Partnership*, 908 So. 2d 580 (Fla. 2d DCA 2005).

ARGUMENT

Petitioner has pled a prima facie case of selective enforcement and Plaintiff has not failed to include any indispensable parties.

A. Plaintiff has pled a prima facie case of selective enforcement.

As further detailed in the Petition, Petitioner has alleged that Respondent has arbitrarily, unreasonably and selectively enforced its restrictive covenant pertaining to Petitioner's exterior modification which is subject of the case (the "**Modification**"). In a summary fashion, Petitioner has asserted that:

- (i) Respondent's Architectural Review Board (the "**ARB**") denied Petitioner's application for the Modification, affirmatively representing that "ability to approve or deny applications is limited by the Declaration and Design Guidelines of Starkey Ranch" (the "**Design Guidelines**") (*See Paragraphs 20 and 22 of the Petition*); and
- (ii) The denial is a matter of selective enforcement as there exist at least seven (7) other similar exterior modifications within the Starkey Ranch Community that exceed the allowances imposed by Respondent's governing documents, yet there is no record of violations pertaining to the same. (*See Paragraph 23 of the Petition.*)

Based upon the same, Petitioner has requested that the Court determine and declare that Respondent's imposition of a fine was an act of selective enforcement and, therefore, unlawful.

Though this Court is bound by the four corners of the petition and attachments, all ambiguities and inferences drawn therefrom must be construed in the light most favorable to Petitioner. Accordingly, it must be found that Petitioner has stated a cause of action for declaratory relief as related to claims of selective enforcement.

B. Plaintiff has not failed to include any indispensable parties.

It is Respondent, not its members, that has the right to enforce its restrictions. It is Respondent, not its members, that have the right to impose fines upon those in violation of the restrictions. Petitioner

is before the Court seeking the equitable relief of a determination as to whether Respondent's imposition of a fine against Petitioner was an act of selective enforcement and, therefore, unlawful. No parties other than Petitioner and Respondent have an interest in the controversy that is of such a nature that a final decree cannot be made without either affecting that interest or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience. As such, Petitioner has not failed to include any indispensable parties.

CONCLUSION

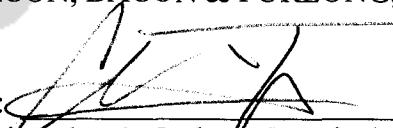
Motions to Dismiss are looked on with disfavor and should only be granted sparingly. Here, Petitioner, despite Respondent's assertions, has pled a prima facie case of selective enforcement and has not failed to include any indispensable parties.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court deny Respondent's Motion to Dismiss and require Respondent to file an Answer within ten (10) days from the date of the Order to allow these proceedings to proceed to trial without undue delay.

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 9th day of July 2024, which send 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).

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