

IN THE COUNTY COURT OF THE 18TH JUDICIAL CIRCUIT  
IN AND FOR BREVARD COUNTY, FLORIDA

KATHRYN DOE, ) Case #:  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 TENNIS VILLAGE HOMEOWNERS )  
 ASSOCIATION, INC., )  
 )  
 Defendant, )  
 \_\_\_\_\_ )

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**SMALL CLAIMS COMPLAINT**

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Plaintiff, Kathryn DOE, sues Defendant, Tennis Village Homeowners Association, Inc., and for the complaint alleges:

**Parties**

1. Plaintiff, Kathryn DOE (herein "Plaintiff") is a *sui juris* citizen of Brevard County, Florida. Plaintiff is an owner of a parcel of real property located at ABC STREET, Titusville, Florida 32780 (herein "Subject Property"). Plaintiff is a member of Tennis Village Homeowners Association, Inc. because she owns the Subject Property which is subject to the Declaration of Tennis Village Homeowners Association, Inc.

2. Defendant, Tennis Village Homeowners Association, Inc. (herein "Defendant"), is a Florida Not For Profit corporation having its primary place of business at 3880 South Washington Avenue, Suite 232, Titusville, FL 32780. Defendants registered agent is Collins

Realty Group, Inc., and Dennis G. Collins, 3880 South Washington Avenue, Suite 232, Titusville, FL 32780.

### **Jurisdiction and Venue**

3. The Court has jurisdiction to grant relief pursuant to Fla. Stat. § 34.01(c), in that this is an action for money damages wherein the matter in controversy does not exceed \$8,000.00 exclusive of interest, costs, and attorney's fees.

4. Venue is proper in Brevard County, Florida, pursuant to Fla. Stat. § 47.051, in that the cause of action accrued in Brevard County, Florida.

### **FACTS**

5. Plaintiff owns the Subject Property. (Exhibit "A").

6. The Subject Property is subject to a Declaration of Restrictions on Real Estate which was re-recorded as a Notice of Reservation of Use Restrictions Under Marketable Record Title Act, recorded in the Official Records of Brevard County, Florida, CFN 20100XXXX, OR Book #61XX, Pages 1XXX - 1XXX.

7. Defendant is a homeowner's association subject to Florida Statutes 720, et seq.

8. Defendant's agents for purposes of record act requests is Dennis Collins and Collins Realty Group, Inc.

9. It is the policy, practice and procedure of the Defendant to make audio recordings of all Board of Director's Meetings.

10. On August 12, 2021, Plaintiff delivered a records request to Dennis Collins. (Exhibit “B”). The records request sought an audio recording of the Defendant’s Board of Directors meeting held on August 9, 2021.

11. On August 27, 2021, Karen from Collins Realty Group, Inc., sent an email to Plaintiff stating that “another flash drive with the audio of the August 9, 2021 Board of Director’s meeting” is available for pick up. (Exhibit “C”). Plaintiff picked up the flash thumb drive and found that it contained audio of the August 9, 2021 Board of Director’s meeting. The audio was in the MP3 format.

12. On October 11, 2021, the Defendant’s Board of Directors held another meeting which was recorded by electronic means. The electronic recording device created an electronically stored file by writing data to an electronically stored medium. That data is a “writing” for purposes of this action.

13. On October 28, 2021, Plaintiff sent Dennis Collins and Collins Realty Group, Inc. a written demand for the audio record of the October 11, 2021 Board of Directors Meeting (Exhibit “D”).

14. On November 8, 2021, Defendant, by and through its agent, Dennis Collins and Collins Realty Group, Inc., denied Plaintiff’s request for a copy of the audio from the October 11, 2021 Board meeting claiming that Defendant’s obligation was only to provide “written records” to Defendant, and that audio recordings are not official records. (Exhibit “E”)

15. On November 15, 2021, an unofficial ‘draft’ of the October 11, 2021 minutes was provided to Plaintiff. (Exhibit “F”). The term ‘draft’ is used because that term is emblazoned across the face of the document. Audio records were not provided to Plaintiff.

16. On November 16, 2021, Plaintiff, via email, requested Defendant provide a written copy of the approved minutes of the October 11, 2021 Board meeting. (Exhibit "G")

17. Defendant, by and through its agent, Collins Realty Group, Inc., via email, responded to Plaintiff's November 16, 2021 request, stating that the minutes from the October 11, 2021 meeting have not been approved. (Exhibit "G")

18. On November 18, 2021, via email, Plaintiff notified Defendant's agent that the October 11, 2021 Board of Directors Meeting Minutes states "Draft" across its face. Plaintiff asked for clarification as to whether those minutes would be approved on February 1, 2022. (Exhibit "G")

19. On November 18, 2021, Defendant's agent confirmed that the draft minutes were not yet approved and that they were expected to be approved on February 1, 2022, which was nearly four months after the October 11, 2021. (Exhibit "G")

20. Plaintiff requests the Court take Judicial Notice of the complaint and the return of service of the complaint in Brevard County case number 05-2021-SC-0XXXX. This request is pursuant to Florida Rules of Evidence section 90.202(6) and 90.203. Specifically, paragraph 19 of said complaint states "Plaintiff demands that Defendant preserve the electronically stored data." That complaint was personally served upon Defendant's agent, Dennis Collins, on November 24, 2021. (See docket #4, case number 05-2021-SC-0XXXX)

21. Defendant has caused spoliation of evidence. On November 24, 2021, Defendant was personally served a request to preserve the audio recording. Defendant has advised the Plaintiff that the audio recording was purposefully destroyed after it was transcribed into printed form on or about February 1, 2022.

22. On February 15, 2022, Plaintiff's expert witness, Matthew Flavell, examined the flash thumb drive which was provided to Plaintiff by Karen from Collins Realty Group, Inc. Mr. Flavell opined that the data on the file is in the MP3 format, that the MP3 format is a known written language, and that the thumb drive should be viewed as containing a recorded language. (Exhibit "H")

23. On April 11, 2021, Defendant's attorney, Ryan Poliakoff, wrote an article for Florida Today, wherein Mr. Poliakoff stated:

The legal debate here concerns whether a video or audio recording is a "written" record. It is true that digital data is effectively "written" to a hard drive or other permanent storage method, and you could not, for example, argue that digital copies of records are not inspectable because they are not written. And, clearly, the Division of Condominiums, Timeshares and Mobile Homes has taken the position the recordings are "written records". Still, the Division does not govern HOAs, and so this issue will remain a bit of a gray area until or unless a court chimes in.

(Exhibit "I")

24. The Florida Administrative Code, at 61B-23.002, relating to Condominiums, Timeshares and Mobile Homes, provides that audio and video recordings are the official records of the association. This is evidence for the modification or extension of existing law to require homeowner's associations to maintain audio records of board meetings as written, official records. In particular, 61B-23.002 provides in relevant part:

Operation of the Association.

[...]

3. Audio and video recordings made by the board or committee or at their direction. Except, however, recordings of board of directors, unit owner, or committee meetings shall be maintained as official records at least until the minutes of the meeting which was the subject of a recording are approved by the body authorized to approve said minutes. After said approval, the recording may be discarded; however, if the body authorized to approve said minutes elects to preserve the recording, it shall maintain its status as an official record under this provision. It is not the intent of this rule to require that such recordings be made but to require that if they are made that they be maintained at least until minutes of the meeting which was recorded are approved. This accommodates

associations which record meetings only as an aid for preparing minutes of the meeting. Thereafter, recordings purposely preserved shall be official records.

25. The parties met in pre-suit mediation to discuss resolution of the issue of the records request. That mediation resulted in an impasse. (Exhibit “J”).

26. All conditions precedent to the institution of this action have occurred, been waived or excused.

### **CAUSE OF ACTION**

#### **Count 1**

#### **Violation of F.S. 720.303(5) (Records Request)**

27. Plaintiff repeats and realleges the allegations contained in paragraphs 1 - 26 above as if fully set forth herein.

28. Florida Statutes 720.303(4) provides in relevant part:

[ . . . ]

(3) **MINUTES.**—Minutes of all meetings of the members of an association and of the board of directors of an association must be maintained in written form or in another form that can be converted into written form within a reasonable time. A vote or abstention from voting on each matter voted upon for each director present at a board meeting must be recorded in the minutes.

(4) **OFFICIAL RECORDS.**—The association shall maintain each of the following items, when applicable, which constitute the official records of the association:

. . .

(f) The minutes of all meetings of the board of directors and of the members, which minutes must be retained for at least 7 years.

. . .

(j) The financial and accounting records of the association, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least 7 years. The financial and accounting records must include:

...

4. Any other records that identify, measure, record, or communicate financial information.

(n) All other written records of the association not specifically included in this subsection which are related to the operation of the association.

(5) INSPECTION AND COPYING OF RECORDS.—The official records shall be maintained within the state for at least 7 years and shall be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the association is located within 10 business days after receipt by the board or its designee of a written request. This subsection may be complied with by having a copy of the official records available for inspection or copying in the community or, at the option of the association, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.

(a) The failure of an association to provide access to the records within 10 business days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the association willfully failed to comply with this subsection.

(b) A member who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply with this subsection. The minimum damages are to be \$50 per calendar day up to 10 days, the calculation to begin on the 11th business day after receipt of the written request.

29. The claim that a recording not reduced to a document written on paper is warranted by the non-frivolous argument for extending and modifying existing law or for establishing new law. The Florida Condominium Act at F.S. 718.111(12)(b) provides exactly the same language as set forth in F.S. 720.303(4)(n), "All other written records of the association not specifically

included in the foregoing which are related to the operation of the association.” This catch-all provision has been determined by the Department of Business and Professional Regulation Division of Florida Condominiums, Timeshares, and Mobile Homes as including recordings of meetings. Rule 61B-23.002.

30. The Public Policy of Florida requires that audio recordings of Homeowner Association board meetings be deemed a “writing”, and that these writings are an official record subject to inspection at least until reduced to printed form and all digitally / electronically stored copies held by the association are destroyed.

31. Defendant records its board meetings in the MP3 audio format in a digitally stored medium (flash thumb drive). Defendant uses these recordings to refer to when drafting its official records of board meetings. On October 28, 2021, Plaintiff requested a copy of the audio file from an October 11, 2021 board meeting. At that time, Defendant had not drafted official meeting minutes. On November 8, 2021, Defendant denied Plaintiffs request for a copy of the audio recording, contending that it was not a “written” document and that it was not an “official” record of the association. On November 24, 2021, Defendant was personally served a demand to preserve the audio recording. However, nearly four months after the October 11, 2021 Board meeting, on or about February 1, 2022, Defendant destroyed the audio file. That audio recording was the only official record of the meeting until it was allegedly transcribed into written minutes on or about February 1, 2022. Defendant wrongly failed to produce the audio file to Plaintiff in violation of F.S. 720.303(5)(b), and Defendant wrongly destroyed the evidence after it was served a demand to retain the audio recording.

**WHEREFORE**, Plaintiff demands judgment against Defendant for:

1. Declaratory Relief:
  - A. That an audio recording of a Homeowner’s Association Board of Director’s meeting:



- i. is a written record as described in F.S. 720.303(5);
- ii. must be maintained by the association until reduced to print as an official record;
- iii. must be provided to a Member upon request if an official printed record of minutes has not been created; and,
- iv. must not be destroyed when a demand is made to preserve the recording.

B. That Defendant is guilty of spoliation of evidence.

2. Injunctive Relief directing Defendant to comply with Plaintiff's record request for digital data.
3. Actual damages.
4. Statutory damages of \$500.00.
5. Reasonable attorney Fees and Costs pursuant to the declaration and F.S. 720.305.

/s/ George Gingo  
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