

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

RICHARD M. AARON and  
LORNA J. AARON,

Plaintiffs,

vs.

Case No.: 20-CA-001400

Division: D

CLASS REPRESENTATION

BOYETTE SPRINGS HOMEOWNERS  
ASSOCIATION, INC., a Florida not for profit  
corporation, individually, and on behalf of a  
class of persons similarly situated,

Defendant.

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**AMENDED COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiffs, RICHARD M. AARON and LORNA J. AARON (the “Aarons” or “Aaron”), by and through their undersigned counsel hereby file this Amended Complaint and sue Defendant, BOYETTE SPRINGS HOMEOWNERS ASSOCIATION, INC., a Florida not for profit corporation, in its individual corporate capacity, and pursuant to Rule 1.221 of the Florida Rules of Civil Procedure and Section 720.303(1) of the Florida Statutes, or in the alternative Rule 1.220 of the Florida Rules of Civil Procedure, on behalf of a class of persons similarly situated (the “Association”), and allege as follows:

**Parties, Jurisdiction, and Venue**

1. This is an action for Declaratory Relief pursuant to Chapter 86 of the Florida Statutes.
2. This Court has jurisdiction under Chapter 86, Florida Statutes pursuant to its inherent power to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed and within the respective jurisdictional amount.

3. The Plaintiff, RICHARD M. AARON is a 74 year old wheelchair bound male undergoing kidney dialysis. He is a resident of Hillsborough County, Florida, *sui juris*, and is the co-owner as Tenants by the Entirety of certain real property in the Boyette Springs neighborhood, in Hillsborough County, Florida, which is more fully described as:

**Lot 13, Block 5 of BOYETTE SPRINGS SECTION "A" UNIT 3 PHASE I, according to the map or plat thereof as recorded in Plat Book 69, Page 27, of the Public Records of Hillsborough County, Florida.**

and more commonly described as 10429 Crestfield Drive, Riverview FL 33569 (the "Property").

4. The Plaintiff, LORNA J. AARON, is the wife of RICHARD M. AARON and is over the age of 18 years, is a resident of Hillsborough County, Florida, *sui juris*, and the co-owner as Tenants by the Entirety of the Property described in Paragraph 3.

5. The Defendant, BOYETTE SPRINGS HOMEOWNERS ASSOCIATION, INC. is a Florida Not-For-Profit Corporation that has held itself out to the public and the homeowners in Boyette Springs, to be a homeowners association operating under Chapter 720 of the Florida Statutes, and as such has made assessments, filed liens and filed enforcement actions against the Aarons and their Property, as well as others living in the Boyette Springs Community.

6. Venue is proper in Hillsborough County pursuant to Chapter 47, Florida Statutes.

**The Plaintiff has Standing to Bring this Action**

7. On July 13, 1990, Devco Development Corporation, a Florida Corporation (the "Declarant" or "Developer"), was the owner of vacant real property described in that certain Declaration of Restrictions (the "Original Declaration") and recorded by the Declarant, in Hillsborough County Official Records, at Book 6028, Page 1122. A true and correct copy of the Declaration is attached hereto and incorporated herein as **Exhibit "A."** The Property that is subject to the Declaration is hereinafter referred to as the "Boyette Property".

8. Paragraph 25 of the Original Declaration states as follows:

**“If any person shall violate or attempt to violate any of the restrictions herein, it shall be lawful for any other person or persons owning any real property which is subject to this Declaration of Restrictions to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such restrictions to prevent him or them from so doing and/or to recover damages for such violation.”**

9. Because Plaintiffs’ Property is located within the Boyette Property, the Plaintiffs have standing to bring this action.

**The Original Declarant filed a Declaration of Restrictions to Establish Use Restrictions Only**

10. The Original Declarations filed by Devco, the Declarant, provide for certain restrictions on a future Boyette Community owner’s uses of their property.

11. The Declarant, however, *chose not to establish* in the Original Declaration a deed restricted community to be governed by a Chapter 720 Homeowners Association.

12. The Declarant, in fact, did not authorize or establish, any homeowner association in the Original Declarations.

13. The Declarant did not reserve unto itself, or any future, any right to levy any assessments on the future owners.

14. The Declarant did not reserve unto itself, or any future assignee, the right to record a lien on any future owners.

15. The Declarant did not reserve unto itself or any future assignee, the right to compel any future homeowner to pay the declarant, or any of its successors in interest, monies of any kind.

16. Simply put, the Original Declarations are merely “use restrictions” to be enforced by the owners in the community, not by a Chapter 720 Homeowner Association.

**Over the Years, The Voluntary Civic Association Wrongfully changed the Overall Plan of Development to Create the Illusion that it was a Chapter 720 Homeowners Association**

17. On June 30, 1989, a group of Boyette Homeowners filed Articles of Incorporation forming the not for profit Corporation called the Boyette Springs Homeowners Association, Inc.

18. The Association they formed was merely a voluntary civic association as it was not established by the Declarant and imposed by it over all of the Boyette Property.

19. The Articles of Incorporation provide at Article Three, that its purpose is:

- (a) To serve as a liaison to governmental bodies with jurisdiction over the subdivision collectively known as Boyette Springs, as dedicated from time to time by Devco Development Corporation or its successor-in-interest, and recorded in the Public Records of Hillsborough County, Florida (the "Community"), and to protect and promote the interests of the Community;
- (b) To publish and distribute a newsletter to serve the Community;
- (c) To preserve the appearance of the Community;
- (d) To present programs of common interest to the Community, and
- (e) Any other purpose consistent with the general purpose of promoting the common good and general welfare of the Community.

20. Over the years a group of Boyette Homeowners and their various law firms, embarked upon a campaign, knowingly or unknowingly, to hold the Association out to all the Boyette Homeowners as a full-blown Chapter 720 Homeowners Association.

21. Most of the homeowners living in the Boyette Property over the years are hardworking people with modest homes ranging in prices from \$150,000 to \$250,000 in today's prices.

22. On June 15, 2005, the Association prepared and recorded a document entitled "Revised Declaration of Covenants, Conditions, and Restrictions of Boyette Springs" (the "First Revised Declaration") recorded at Book 15126, Page 1642 of the Hillsborough County Official Records. A true and correct copy of the First Revised Declaration is attached hereto and incorporated herein as **Exhibit "B."**

23. The First Revised Declaration defines a “Member” as: **“every person or entity who holds membership in the Association or who has agreed to membership by virtue of signature on the attached Exhibit A”**. However, Exhibit A was not attached or recorded.

24. Article IV, Section 1 of the First Revised Declaration provides:

**“Assessments Established. For each Lot, each Owner covenants, and agrees by the signature attached to this Declaration, to pay to the Association...”** However, signatures of alleged subscribing Boyette Springs homeowners were attached or recorded.

25. Article IV Section 9 states: **“At no time will this Association enter into and enforce a judicial foreclosure.”**

26. Article V Section 5 states: **“This declaration may be amended by an instrument signed by members entitled to cast not less than two-thirds of the votes.”**

27. Consequently, the First Revised Declaration wrongfully expanded the rights of this voluntary civic association without unanimous consent of ALL the homeowners, and without having such power or authority.

28. On July 3, 2013, notwithstanding that there was no legal authority to do so, the Association prepared and recorded a document entitled “Acknowledgment and Affirmation of Board of Directors of Adoption, Amendment, and Restatement of Declarations of Covenants, Restrictions and Assessments of Boyette Springs” (the “Second Revised Declaration”) recorded in the Hillsborough County Official Records at Book 21990, Page 83. A true and correct copy of the Second Revised Declaration is attached hereto and incorporated herein as **Exhibit “C.”**

29. As an example of the vague, arbitrary and capricious nature of these actions by the Association, the First Revised Declaration required a *two-thirds* vote to amend the declaration, the

Second Revised Declaration states that it was passed with “an affirmative vote of a *majority* of the Association members.”

30. Additionally, the Second Revised Declaration defines the Association as the “Boyette Springs Property Owners’ Association”. There is no corporation registered under that name (or alias) with the Florida Department of State, Division of Corporations.

31. The Second Revised Declaration also *established for the first time, mandatory membership of all homeowners and compelled them to pay assessments levied by the Association.*

32. Then, on or about June 10, 2015, in an attempt to renew their usurped powers, Boyette Springs recorded a “Notice of Preservation of Declarations of Covenants, Restrictions, and Assessments for Boyette Springs” in the Official Records of Hillsborough County at Book 23332, Page 488. Said document purports to “preserve[s] the Restrictions [as Revised] from extinguishment by operation of law.” A true and correct copy of the Notice of Preservation is attached hereto and incorporated as **Exhibit “D.”**

**Specific wrongful actions taken by the Association against the Aarons**

33. On March 31, 2015, despite having no authority to do so, the Association had prepared and recorded a Claim of Lien against the Aarons and their Property. This Lien purported to secure assessments imposed by the Association against the Plaintiffs in the amount of five-hundred fifteen and 00/100 (\$515.00) dollars plus attorney fees and costs. A true and correct copy of the Claim of Lien is attached hereto and incorporated as **Exhibit “E.”**

34. On August 22, 2019, the Defendant Association prepared and recorded an Amended Claim of Lien, against the Aarons’ Property. This Amended Lien purported to secure assessments imposed by the Association against the Plaintiffs in the amount of three-thousand two-hundred and seventy-nine and 44/100 dollars (\$3,279.44). The Defendant declares that

enforcement rights exist for the Association pursuant to “Articles [*sic*] IV of the Revised Declaration of Covenants, Conditions, and Restrictions for Boyette Springs...”

35. At the time of the filing of the Amended Lien, the operative Declarations (found at Book 21990, Page 87, et. seq. of the Official Records of Hillsborough County), did not contain an Article IV. Therefore, the Plaintiffs remain uncertain as to the legal and factual basis for the action taken. If the Association was attempting to rely on the First Revised Declaration, such was amended and no longer controlling.

36. Further, if the Defendant Association was relying on the First Revised Declaration, the action filed to enforce the lien is in complete contravention of Article IV, Section 9.

37. The Association had no authority to demand that the Aarons pay the Association, any assessments, nor did it have the right to file a Lien and subsequent Foreclosure action against them and their Property.<sup>1</sup>

#### **Class Representation Allegations**

38. The claims raised in this suit concern matters of common interest to the Members of the Association. The “Members” of the Association are defined as those record owners of legal title to parcels allegedly encumbered by that Revised Declaration of Covenants, Conditions, and Restrictions of Boyette Springs recorded at Book 15126, Page 1642, et seq., of the public records

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<sup>1</sup> The frustration of those members in the community who saw the unauthorized actions of the Board and Association over the years resulted in the entire board being voted out of office in January 2020. The meeting was attended by an hundreds of homeowners which was unprecedented. Upon information and belief, the new Board of Directors has since voted to release all recorded liens (over 80) and have filed a Notice of Dismissal of all of the lien foreclosure cases pending, including Boyette Springs Homeowners Association, Inc. v. Martin, No. 19-CC-057617 (Hillsborough County, filed Nov. 11, 2019); Boyette Springs Homeowners Association, Inc. v. Ovando, No. 19-CC-056914 (Hillsborough County, filed Oct. 29, 2019); Boyette Springs Homeowners Association, Inc. v. Aaron, No. 19-CC-056924 (Hillsborough County, filed Oct. 29, 2019); and Boyette Springs Homeowners Association, Inc. v. Martinez, No. 19-CC-056926 (Hillsborough County, filed Oct. 29, 2019).

of Hillsborough County, Florida, or that Restated and Amended Declaration of Covenants, Restrictions and Assessments of Boyette Springs recorded at Book 21990, Page 87, et seq., of the public records of Hillsborough County, Florida.

39. This class action satisfies Rule 1.220(a)(1) of the Florida Rules of Civil Procedure in that the class members are so numerous that separate joinder of each member is impracticable. Specifically, there are hundreds of parcels allegedly encumbered as set forth in paragraph 39 above.

40. This class action satisfies Rule 1.220(a)(2) of the Florida Rules of Civil Procedure in that there are numerous common questions of law and fact that are common to the claims that Plaintiffs and class members make against the Association, and these questions of law or fact common to the members of the class predominate over any questions affecting only individual members. Such questions include:

- a. whether the Association is a mandatory homeowners association;
- b. whether the Association has the power to enforce use restrictions;
- c. whether the Association has the power to assess owners;
- d. whether the Association has the power to lien for unpaid assessments;
- e. whether the Association had the power to impose, modify, amend, or restate any use restrictions against any owners.

41. This class action satisfies Rule 1.220(a)(3) of the Florida Rules of Civil Procedure in that the claim of the representative party is typical of the claim of each member of the putative class. Plaintiffs' claims asserted are typical of each of the class members' legal claims and the Plaintiffs have the same legal interests as the other class members. The factual basis of the



Association's authority to enforce, assess, lien, impose or modify restrictions are the same or similar for all class members.

42. This class action satisfies Rule 1.220(a)(4) of the Florida Rules of Civil Procedure in that the representative party can fairly and adequately protect and represent the interests of each member of the class. The Plaintiffs will vigorously pursue the claims alleged herein on behalf of themselves individually and all other similarly situated persons. Plaintiffs have no adverse interests to the class members, as he seeks the same relief as the class members as if each were to bring a similar action individually. Plaintiffs will adequately protect and represent the interests of each member of the class.

#### **Action for Declaratory Relief**

43. The Plaintiff realleges and incorporates herein the allegations of paragraphs 1 through 42, as set forth above.

44. The Defendant Association radically changed the overall plan of development in the community as established in the Original Declarations and has wrongfully empowered itself with lien, assessment, and enforcement rights not provided for within the Original Declaration or by Florida Law.

45. As a result of these actions, the Plaintiff is in doubt as to whether the Defendant: a) now has or has ever had a duly formed not for profit homeowners association pursuant to Chapter 720 of the Florida Statutes; b) now has, or has ever had, the authority to enforce the Original Declaration's use restrictions; c) whether it now has or has ever had the authority to assess homeowners any amount of money, d) whether it now has or has ever had the authority to record liens for nonpayment of assessments on their home, e) whether it now has or has ever had the right to take enforcement action for a homeowner's noncompliance with any use restrictions, and f)

whether it now has or has ever had the authority to adopt and enforce against Boyette Springs homeowners, any modifications, amendments, or restatements of any of the provisions of the Original Declaration including without limitation the First and Second Revised Declarations.

46. The Plaintiff maintains that the answers to these questions are no and that the Association has been falsely wielding this power for years.

47. There is a *bona fide*, actual, present, and practical need for a declaration of rights between the parties.

48. The declaration of rights and obligations will deal with a present, ascertained, or ascertainable set of facts, or present controversy as to the stated facts herein.

49. The declaratory relief that the Plaintiffs herein request are dependent upon the facts and/or the law applicable to the facts.

50. There are some power, privilege or right which is dependent upon facts or law applicable to the facts.

51. There is an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

52. The declaratory relief sought is not merely the giving of legal advice or the answer to questions propounded for curiosity.

53. The antagonistic and adverse interests are all before the Court.

54. The Plaintiffs have retained the Woodward Law Group to represent them in the matters herein and are obligated to pay Woodward Law Group a reasonable fee for its services.

55. All conditions precedent to the filing of this action have been performed or waived by the parties.

WHEREFORE, the Plaintiffs RICHARD M. AARON and LORNA J. AARON, respectfully request this Honorable Court to enter a declaratory judgment determining that:

a) the BOYETTE SPRINGS HOMEOWNERS ASSOCIATION, INC. is not now, nor has it ever been a duly formed and operated homeowner's association pursuant to Chapter 720 of the Florida Statutes.

b) the BOYETTE SPRINGS HOMEOWNERS ASSOCIATION, INC. does not now have, nor has it ever had, the authority to enforce the Original Declaration's use restrictions.

c) the BOYETTE SPRINGS HOMEOWNERS ASSOCIATION, INC. does not now have, nor has it ever had, the authority to assess homeowners.

d) the BOYETTE SPRINGS HOMEOWNERS ASSOCIATION, INC. does not now have, nor has it ever had, the authority to record liens on their homes.

e) the BOYETTE SPRINGS HOMEOWNERS ASSOCIATION, INC. does not now have, nor has it ever had, the authority to take enforcement action for a homeowner's noncompliance with any use restrictions.

f) the BOYETTE SPRINGS HOMEOWNERS ASSOCIATION, INC. did not have the authority to adopt and enforce against Boyette Springs homeowners, any modifications, amendments, or restatements of any of the provisions of the Original Declaration including without limitation the First and Second Revised Declarations.

e) the BOYETTE SPRINGS HOMEOWNERS ASSOCIATION, INC is obligated to pay the Plaintiffs their reasonable attorney's fees and costs incurred in the bringing of this action and for such other and further relief as this Court deems just and proper.

Dated this June 16, 2020.

**WOODWARD LAW GROUP**



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Facsimile: (813)909-7439  
Counsel for Plaintiffs

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing was electronically filed with the Clerk of Court using the Florida E-Portal system, which will send a notice of electronic filing to all parties of record: **GLAUSIER KNIGHT JONES**, Charles Evans Glausier ([cglausier@glausierknight.com](mailto:cglausier@glausierknight.com)), this 16th of June 2020.

**WOODWARD LAW GROUP**



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Counsel for Plaintiffs

EXHIBIT "A"

O.R. BOOK 6028 PAGE 1122

DECLARATION OF RESTRICTIONS

Declaration of covenants and restrictions made this 7th day of July, 1990 by DEVCO DEVELOPMENT CORPORATION, a Florida Corporation ("Developer"), the owner of all the right title, and interest, both legal and equitable, in and to the property situated in Hillsborough County, Florida described in Exhibit "A" attached hereto and herein incorporated by reference, and

WITNESSETH: RICHARD AKE  
CLERK OF CIRCUIT COURT  
HILLSBOROUGH COUNTY

WHEREAS, the undersigned party, as owner of the property described in Exhibit "A," in order to protect the health and welfare of the public, to protect the property values and maintain the attractiveness of the community, desire to impose certain covenants and restrictions on the use of said property.

NOW, THEREFORE, it is declared that the property described in Exhibit "A" shall be subject to the following covenants and restrictions which are to run with the land and are and shall be binding for a period set forth hereinafter:

1. No lot or parcel shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one single family dwelling not to exceed two stories in height with a private garage and one utility building, or a builder's temporary structure.

Prepared by: Devco Development Corp.  
P.O. Box 271772  
Tampa, FL 33688

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2. No structure of a temporary character, trailer, tent, shack, garage, or other outbuilding shall be used on any lot at any time as a residence, temporarily or permanently. No structure may be erected on any lot for other than residential purposes except a private garage and one utility building, or a builder's temporary structure.

3. The living area of the main structure, exclusive of garages, shall not be less than 1,400 square feet for a one-story dwelling, and not less than 1,600 square feet for a two-story dwelling.

4. No dwelling shall be constructed on a plot having an area of less than 9,500 square feet. Front, rear and side setback requirements, as established by County ordinance in effect at the time of construction, shall be complied with, provided, however, that in no event shall any building be erected closer than 15 feet to the front lot line, or closer than 15 feet to the rear lot line or closer than four feet to any interior side lot line. No building situated on a corner lot shall be erected closer than 12 feet to any street right-of-way.

5. No garage or structure other than a builder's temporary structure shall be erected on any lot prior to the construction of a dwelling. If a garage or utility building is built either simultaneously with or subsequent to the construction of the dwelling, the garage shall be of the same kind of material as the construction of the dwelling. The garage or utility building shall conform architecturally with the dwelling. The garage shall accommodate two cars unless the Developer, at its option

and in its sole discretion, elects to permit the construction of a one car garage.

6. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

7. No structure shall be moved onto any lot or parcel in the area covered by these restrictions, except temporary buildings used by a builder in connection with construction work, and permitted utility buildings.

8. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes. However, no more than four household pets shall be permitted.

9. No sign of any kind shall be displayed to the public view on any lot except for one professionally lettered sign not more than two feet square in size advertising the property for sale or rent, and except for signs used by a builder to advertise the property during the construction and sales period. No pool signs shall be permitted.

10. No lot shall be used as a dumping ground for rubbish. All garbage or trash containers, oil tanks, bottle gas tanks, soft water tanks and similar structures or installations shall be placed under the surface of the ground or walled-in areas or screened with fencing or shrubbery so as to not be visible from the street or objectionable to adjacent residences.

11. No chain link fences shall be permitted. No fence or part thereof may be placed any closer to the street than a dwelling could be placed on the same lot, except as may be required by FHA/VA or other governmental regulation. No fence situated on a corner lot shall be erected closer than 15 feet to any street right-of-way.

12. Gravel-type roofs may not be used except on flat roof surfaces.

13. Simultaneously with the construction of a dwelling on any Lot, a four-foot wide cement sidewalk shall be installed at the expense of the Lot Owner according to the specifications of Hillsborough County, Florida, the line and grade of said sidewalk to be in accordance with site plan approved by Developer.

14. Each lot, whether occupied or unoccupied, shall be maintained reasonably clean and free from refuse, debris, unsightly growth and fire hazard.

15. Easements for drainage and/or for installation and maintenance of utilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may impede the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utilities company is responsible.



16. In connection with the development of any lot for residential purposes, or the construction of improvements thereon, reasonable care shall be used to preserve and retain as many trees as is reasonably possible. No excavation or fill or clear cutting of trees shall be performed in violation of law.

17. No above-ground pools shall be permitted on any lot. No boat, boat trailer, camper, mobile home, travel trailer, commercial vehicle, van or truck with a capacity in excess of one ton, trailer, or other similar motor vehicle shall be permitted to remain on any lot or public street unless inside a garage or otherwise parked, stored or located in such a manner and location on a lot so as not to be visible from the public streets or neighboring lots.

18. Exterior Attachments: No clotheslines, or clothes-hanging devices exterior to a residence, and no exterior radio, television, electronic or like antennas, aerials, or transmission or receiving tower(s) apparatus or devices or other similar or dissimilar exterior attachment shall be installed, permitted, or located on any lot in such a manner or location as to be visible from the public streets or neighboring lots.

19. No stripped, unsightly, offensive, wrecked, junked, or dismantled vehicles or portions thereof, no furniture or appliances designed for normal use or operation within (as distinguished from outside of) dwellings, shall be parked, permitted, stored or located upon any lot in such manner or location as to be visible to any other lot or from the street. No building or improvement which has been partially or totally