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VIA E-MAIL DELIVERY ONLY

Charles Glausier, Esq.
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Re: *Boyette Springs Homeowners Association, Inc. v. Daniel P. Larson and Nicki Larson;* Hillsborough County Circuit Court Case No.: 19-CA-011980
Appleton Reiss File No.: 343.0

Dear Mr. Glausier:

I am pleased that we were able to negotiate a resolution of the above-referenced litigation ("Litigation") that was wrongfully filed against my clients by your predecessor and the former board of directors of Boyette Springs Homeowners' Association, Inc. ("Civic Association"). The dismissal of the Litigation against my clients, with prejudice, has brought them some peace of mind inasmuch as the claims, causes of action and issues raised in the Litigation can never be raised in court again. With that said, my firm's work, as well as the work of other law firms, is only beginning given the terrible acts perpetrated against Mr. and Mrs. Larson and others. Given the grave nature of this matter, and the potential for many additional lawsuits to be filed over issues related to it, I write to memorialize the last several months of activity.

Litigation Background

When Mr. and Mrs. Larson first contacted me in December of 2019 to review whether their "homeowners' association" had legitimate authority to promulgate rules and regulations impacting their home, I learned that the Civic Association was represented by Bush Ross, P.A. ("Bush Ross"). During my investigation, I asked my clients' permission to reach out to the lawyer at Bush Ross who was handling this matter to gain a better understanding of the Civic Association's position. My clients agreed—hoping that my involvement would level the playing field and result in an amicable resolution of the controversy about the adoption of rules and regulations by the Civic Association.

After obtaining my clients' approval, I immediately spoke with Tiffany McElheran of Bush Ross, who handled the Civic Association's legal work at that time. Ms. McElheran advised me that this was just a simple dispute over rules, and that she hoped that we could work out a resolution. She, however, also advised me that the Civic Association had just sued my clients, and that service of the complaint was pending. This was, of course, a major warning to me that something much more serious was afoot.

After learning that my clients had been sued, I promptly obtained a copy of the lawsuit and requested an extension to respond to it due to the holidays. Ms. McElheran agreed to my request, and she asked if we could discuss potential amendments to the proposed rules and regulations after December 25, 2019, in an effort to seek common ground and settle the dispute and Litigation. She noted that we could discuss the resolution of the Association's attempt to collect legal fees and costs from my clients, but only after we resolved the substantive claims raised in the Civic Association's complaint against Mr. and Mrs. Larson. I, of course, agreed to engage in that conversation before answering the complaint in the Litigation, subject to the condition that my clients also wanted me to review the propriety of the Civic Association board's rule making authority, which ultimately was the focus of the Civic Association's lawsuit that was filed by Ms. McElheran and the former board of directors.

After communicating with Ms. McElheran, I went to work to determine if there were any flaws in the Civic Association's governing documents, and to determine whether the proposed rules were proper or not. What I found in this case was indeed one of the more shocking things that I have seen in over twenty (20) years of practicing real estate law in Florida. Specifically, as I outlined in the motion to dismiss that I filed on my clients' behalf in the Litigation, there were multiple fatal defects in the documents that purported to create a "homeowners' association" under Florida law. Despite the representations of the Civic Association's former leaders and lawyer, there is absolutely not a valid "homeowners' association" in the community. While that fact is hard for many people to comprehend, it is true. Throughout many years, thousands of real estate transactions occurred in Boyette Springs, liens were placed on people's homes by the Civic Association, lien foreclosure lawsuits were prosecuted threatening to take people's property, and actions were taken to adopt and enforce rules and regulations restricting people and their homes. All the while, scores of people, including directors with fiduciary duties and lawyers, overlooked these fundamental issues and significant errors in the community's documents.

As you know, in order to establish a "homeowners' association" in Florida, which is an organization that is legally defined by Chapter 720, Florida Statutes, a developer must establish an organization that creates mandatory membership and lien rights against parcel owners within a development. (See Section 720.301, Florida Statutes.) Critically, that Chapter of the Florida Statutes was not even adopted until after the Boyette Springs development was created. Furthermore, in the case of Boyette Springs, the developer did not create a homeowners' association as part of the original scheme of the development. Moreover, critical lien rights required by law to establish a "homeowners' association" and valid covenants were not included in the original documents. As you also know, pursuant to Florida law, those powers of a "homeowners' association" must pre-date the establishment of parcel owner titles, mortgages and homestead rights. None of those things happened here.

It is undisputed that the developer of Boyette Springs did not establish an organization deemed a "homeowners' association" pursuant to Chapter 720, Florida Statutes. Instead, deed restrictions were recorded at different times for different sections or blocks of lots in Boyette Springs, and efforts were made by homeowners, many years later, to create an organization and amend covenants to add a community association-like structure. Those efforts were completely

flawed, though, as the requisite legal consent to do that was not achieved. From what I understand, another homeowner made this assertion through counsel several years ago, and demanded that the Civic Association never contact or bill her for "assessments" again. Apparently, the Civic Association abided by that homeowner's lawyer's demand, but the Civic Association kept that information secret until now. The prior boards of the Civic Association allegedly did not disclose those issues to the other homeowners, and instead they continued to assess and bill homeowners for charges with apparent knowledge that they had no legal right to do so. My firm's investigation of that issue is also ongoing.

Despite the fatal flaws in the documents of the Civic Association, which were apparently known to its former board members and counsel, the Civic Association incredulously argued in the Litigation that, merely due to the passage of time, Mr. and Mrs. Larson (and presumably their neighbors, who were all fortunate enough not to be sued by the former board of directors) could not challenge such a flawed set of documents. They were just supposed to live with them and be quiet, according to the former leaders of the Civic Association. That is, of course, not consistent with Florida law at all. As I explained to Ms. McElheran several times, and as I advised the court in my clients' motion to dismiss, one cannot make an act that is initially void as a matter of law valid simply due to the passage of time. I remain at a total loss why the Civic Association's former leaders and legal counsel boldly asserted such an absurd legal argument, especially after I provided them with the case law opposing their misguided and misinformed position.

In addition to the fatal flaws in the documents that are described above, many other problems with the Association's position and complaint in the Litigation existed, including but not limited to, major errors in the community's efforts to preserve covenants that could expire under Florida law. For instance, complete sections of real estate that were once subject to the deed restrictions in Boyette Springs were omitted from the covenant preservation process that was completed by the Civic Association's counsel several years ago. Those errors caused the deed restrictions relative to some lots in the community to permanently lapse pursuant to Chapter 712, Florida Statutes. Stated another way, it appears that segments of Boyette Springs are no longer deed restricted at all due to prior counsel's errors in the preservation process.

As the Civic Association's claims against my clients were so outrageous, I actually served Ms. McElheran with a motion for sanctions in the Litigation, pursuant to Section 57.105, Florida Statutes. For context, I cannot recall the last time I sent another lawyer such a motion, but it has been many years. I was ethically compelled to do that in this case where the former board of directors and their counsel refused to dismiss the Litigation after I brought all of this information to their attention early last month. They also rejected multiple efforts on our behalf to settle the Litigation before the Civic Association's annual meeting, including an offer for everyone to merely bear their own legal fees and costs. Unfortunately for the community, the former board of directors of the Civic Association were too invested in inflicting financial harm on my clients to exercise reasonable judgment. They were summarily removed from office by the community, and now they are all exposed to claims against them personally, which we maintain are not subject to the Civic Association's insurance coverage.

Fortunately for the Civic Association and its former counsel, the Larson's motion for sanctions was never heard by the Court in the Litigation, as your firm was engaged by the Civic Association's new board, and you quickly and easily recognized what several other law firms and I have recognized—that there is absolutely no mandatory homeowners' association in Boyette Springs that has lien rights against all of the parcel owners. As a result, there is no "homeowners' association" in Boyette Springs despite years of pretending by others that one exists. There is only a Civic Association that is voluntary in nature.

Although the resolution of the Litigation released the Civic Association from liability for such claims, the individual directors who formerly served on the Civic Association's board, and others, such as the social media page administrators for the community who claimed to act independently from the Civic Association (and will not benefit from the Civic Association's insurance coverage, as a result), were specifically excluded from the scope of that release. As you know, we were not prepared to settle the Litigation without being permitted the absolute and unrestricted right to pursue Mr. and Mrs. Larson's significant claims against those wrongdoers, who breached their duties and caused my clients to suffer harm. Those persons must be held accountable for their actionable misconduct and terrible abuses of legal process, among other things. We are, therefore, actively exploring the pursuit of claims for defamation, slander, libel, abuse of process and malicious prosecution due to the Litigation and other actions that were taken by those individuals against Mr. and Mrs. Larson.

As my clients are now contemplating which of those claims to pursue and when, I want to ensure that their rights to do so are completely protected, despite the misconduct of the prior board of directors and others. While I know that you, your law firm, and the new board of directors of the Civic Association have taken swift action to actually review the relevant title work and assess it in an objective and informed manner consistent with Florida law, I understand that the former board members allegedly destroyed electronic records of the Civic Association, including but not limited to data on Civic Association iPhones and iPads. As you know, I previously placed the Civic Association's former attorneys on notice to preserve such evidence, but the Civic Association's former directors subsequently destroyed such evidence according to information we received since the 2020 annual meeting of the Civic Association. Efforts to accelerate discovery to preserve such evidence were also rejected by attorney Web Melton of Bush Ross, and it is not known if he and his office consulted with the former directors or current directors about these issues at any time. Obviously, such actions may result in various claims and actions related to spoliation of evidence, among other things, and we are actively investigating them. To the extent that you, your law firm, or the new board of directors of the Civic Association locate missing evidence of any kind or gain information about the destruction or failure to preserve evidence by former Civic Association leaders and others, we request that you promptly report to us what you learn.

While the statute of limitations for the claims that my clients may bring vary depending upon the legal theory that is asserted, we will endeavor to gather all of the facts before proceeding with lawsuits or other claims. We do indeed have time now to properly and thoroughly investigate

every aspect of this matter, which is what we will do. I am very confident that a judge and jury will hold those accountable for what was done to my clients and others, and justice will prevail.

Sincerely,

Eric N. Appleton

ENA/nrj
Daniel P. Larson and Nicki Larson
Anthony G. Woodward, Esq.