



# WOODWARD

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February 24, 2020

**Sent Via E-Mail Only to**  
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**Re:** *Boyette Springs Homeowners Association, Inc. v. Richard M. Aaron, et al.*  
*Case#: 19-CC-05624*  
*Boyette Springs Homeowners Association, Inc. v. Linda Ovando*  
*Case#: 19-CC-056914*  
*Richard Aaron, et al. v Boyette Springs Homeowners Association, Inc.*  
*Case#: 20-CA-001400*  
Our File No.: 2496.031

Dear Mr. Glausier:

As you know I have the privilege of representing Richard M. Aaron, Lorna J. Aaron, and Letha Ovando in the above referenced litigation matters. You represent the Boyette Springs Homeowners Association, Inc. (the "Civic Association"). It has come to my attention that there is a significant amount of misinformation being circulated on social media and otherwise regarding the Civic Association's decision to dismiss with prejudice the claims against Mr. Aaron, Mrs. Aaron, and Mrs. Ovando, and to settle their attorney fee claims in the Lien Foreclosure cases. The purpose of this letter is to chronical how we arrived at this point and where we intend to go from here. It remains our hope we can amicably wind down these disputes so this community can forever have certainty as to the type of "association" and what types of restrictions if any apply to their homes.

### **The Town Hall Meeting**

In November of 2019, I received a call from a Boyette Springs Homeowner that was referred by another longstanding real estate client of mine. This homeowner inquired about my firm representing a certain group of homeowners in the Boyette Springs Community. Specifically, the group believed that the Civic Association was wrongfully overstepping its boundaries by levying assessments and bringing enforcement actions against certain homeowners in the Boyette Springs Community. These homeowners were either unable or unwilling to pay the wrongful assessments. They asked if I would come and speak to members in the community, to which I agreed.

On November 18, 2019, my Associate, my Firm Administrator (my wife), and I attended a “town hall” style meeting at Redeemer Church on Boyette Road. Over sixty concerned homeowners attended the meeting. The attendees were up in arms about how it was possible that the board of directors of a civic association could levy assessments and engage legal counsel to take enforcement actions/foreclosure actions.

Subsequently, the Woodward Law Group (“WLG”) was engaged to conduct factual, public record, and legal research into the scope of the Civic Association’s authority and the very legality of the actions it was taking against owners in the community.

### **Defense of Lien Foreclosure Litigation**

WLG was then engaged by Mr. Richard M. Aaron, Mrs. Lorna J. Aaron, and Mrs. Letha Ovando to defend them in pending lien foreclosure actions (“Lien Foreclosures”).

Mr. Aaron is a 74-year-old man who is a cancer survivor. He is wheelchair bound. He was undergoing kidney dialysis when he was sued by the Civic Association for foreclosure of a lien it had recorded against his home. Bush Ross alleged that Mr. Aaron owed \$3,279.44 for six unpaid assessments that originally totaled \$180.00. Further, Mr. Aaron was on fixed income and was distraught about the possibility of losing his home to a lien he could not afford to pay. He had been subjected to harassment by the Civic Association dating back six years.

Ms. Letha Ovando is also on fixed-income and had approached me at the town hall meeting in literal tears. She was being also being sued by Bush Ross for foreclosure of a wrongful Association Lien recorded against her home. Although the Claim of Lien against Ms. Ovando sought collection of five years of assessments, Bush Ross claimed Ms. Ovando owed \$3,312.81. Additionally, Ms. Ovando’s property lies within a section of Boyette Springs that was omitted from the Notice of Preservation filed in 2013 and 2015. Therefore, there was absolutely no basis (proper or not), to assess liens against Ms. Ovando’s property.

Many others at the town hall meeting were confused, anxious, and upset. Their community was being torn apart, their home values were being negatively impacted, and they were in a catch-22. On the one hand, if they did not bow to the relentless demands of the Bush Ross law firm and pay, then the law firm would sue them and foreclose on their homes. The substantial legal expenses to invoke their rights could be financially devastating to their families. In many cases they were facing lawyer’s fees and late charges that far exceeded the actual assessment amount. On the other hand, if they paid the wrongful assessments and demands, they would be wrongfully compelled to live in a community that was not a self-governed civic association.

Many attendee-homeowners voiced that they could not afford individually to pay the significant legal fees it would take to conduct the investigation and to litigate the Lien Foreclosure actions and were desperately searching for someone to take on their cause.

On December 9, 2019, I filed Notices of Appearances in the Lien Foreclosures. My firm continued its in-depth factual and legal research. Upon review of my team's work product, I was shocked to learn that it was true. The Civic Association had been masquerading as a Chapter 720 “Homeowners Association” for many years, perpetrating the hoax that each homeowner was obligated “by law” to be a member and to pay the demanded assessments. Certain members in the community

spearheaded efforts to compel compliance using aggressive tactics and legal maneuvers. Board meetings were held, votes were taken, Amendments were recorded, and the illusion of legitimacy was facilitated despite fatal defects in the community's governing documents.

On January 17, 2020, I filed a Motion to Dismiss in both Lien Foreclosures. As you know it is settled law in Florida that homeowner associations do not have standing to sue to enforce restrictive covenants unless it is *an assignee* of the developer's right to enforce the restrictive covenants, or it is the *direct successor* of the developer's interest." Nieto v. Mobile Gardens Ass'n of Englewood, Inc., 130 So. 3d 236, 238 (Fla. 2d DCA 2013); citing Palm Point Prop. Owners' Ass'n of Charlotte Cnty., Inc. v. Pisarski, 626 So. 2d 195, 196 (Fla. 1993); Holiday Pines Prop. Owners Ass'n v. Rowen, 679 So.2d 824, 825 (Fla. 4th DCA 1996). Since the Civic Association was never an assignee or direct successor to the developer's interest, it lacked any authority to take the actions it had been taken for many years. It truly is and always has been a voluntary Civic Association that does not now have, nor has it ever had, the authority to: a) levy assessments; b) record liens on their homes; c) take enforcement action for a homeowner's noncompliance with any use restrictions; d) adopt or enforce against Boyette Springs homeowners, any modifications, amendments, or restatements of any of the provisions of the Original Declaration; e) enforce the Original Declaration's use restrictions; or, f) mandate that all Boyette Springs homeowners be members. In fact, it has no rights under Chapter 720 of the Florida Statutes whatsoever.

On January 21, 2020, I reached out to Tiffany McElheran, the attorney that was handling the Lien Foreclosures for the Bush Ross firm. Mrs. McElheran is a nine-year lawyer and shareholder of Bush Ross. Her bio on the firm's website lists "Homeowners' and Condominium Association" representation as one of the areas she focuses on in her practice. I asked her the legal and factual basis for the Civic Associations actions. I passionately tried to persuade her to promptly dismiss the Lien Foreclosure actions given that our investigation conclusively revealed that the Civic Association had no legal authority to take the actions it had been taking. Tiffany McElheran could produce no persuasive authority for the Civic Associations position. Instead, she directed me to case law that was obviously inapplicable and distinguishable from the facts and circumstances facing this community and my clients. Her only legal theory was that the homeowners in the community had no choice but to endure the collection actions of the *pseudo* Chapter 720 Homeowner Association because they had waited too long to file a lawsuit contesting the wrongful actions. I tried to explain to her this was an absurd position to take. I tried to convince her that the passage of time cannot validate conduct that is initially void as a matter of law.

In addition, WLG's investigation uncovered that several years ago another homeowner had engaged legal counsel to investigate these identical legal issues and to push back on efforts to compel compliance and payment. When the Civic Association was advised *in writing* that they had no authority to act, they backed off their threats. It appears no judicial foreclosure action was filed against that homeowner. However, the board and its legal counsel at the time were on actual notice of the alleged defects in the governing documents. Instead of seeking a declaratory relief action or seeking a legal opinion on this issue and sharing it with the community, they remained silent. This way, the collection and enforcement actions could continue against others in the community who were not fortunate enough to be able to engage legal counsel to defend themselves. This also served as a profit center for legal work from the Civic Association.

The groundswell in the anti-assessment and enforcement part of the community began to grow. Fortunately, the Board of Directors were voted out of office in January 2020 and your firm was engaged by the new board of directors to represent the Civic Association's interests. Your firm came to the same conclusion as mine.<sup>1</sup>

I understand that after the most recent election, the new board voted to promptly dismiss the Lien Foreclosure Litigation against my clients and to take steps to release and satisfy of record all the alleged liens recorded against the homes of others in the community. I further understand that the board suspended further assessments and settled the attorney fee claims relating to my clients. As we discussed, the board determined it was in the best interest of the Civic Association to mitigate (cut off or at least minimize) its ongoing exposure for liability and damages.

### **The Declaratory Relief Action**

Even though the Civic Association dismissed the Foreclosure Action against Mr. and Mrs. Aaron, and paid their lawyer's fees, they were concerned that their family may be forced to relive this nightmare in the future without a judicial ruling. He and his family had been battling this financial and emotional disease for many years and could not survive another round of wrongful assessments and enforcement actions by a future board and their respective law firm. As a result, he engaged WLG to file a Declaratory Relief Action against the Civic Association in the case styled: Aaron v. Boyette Springs Homeowners Association, Inc.; Case No. 2020-CA-001400. You were sent a copy of this lawsuit on or about February 19, 2020 and we asked if you would accept service of it. We have not received a response as of yet. We are confident that the court will rule that the Civic Association does not now have, nor has it ever had, the authority to: a) levy assessments against homeowners; b) record liens on their homes; c) take enforcement action for a homeowner's noncompliance with any use restrictions; d) adopt or enforce against Boyette Springs homeowners, any modifications, amendments, or restatements of any of the provisions of the Original Declaration; e) enforce the Original Declaration's use restrictions; or, f) mandate that all Boyette Springs homeowners be members.

Chapter 720 of the Florida Statutes defines a "Homeowners' Association." To qualify, a developer of a new deed restricted community must establish an entity that compels mandatory membership and lien rights for all present and future homeowners in the development. Here, Devco Development Corporation and/or Suarez Housing Corporation, the original developer(s), did not create a homeowners' association as part of its scheme of development. Moreover, the developer here did not establish covenants to be enforced by the homeowner association in the original declarations recorded against the parcels. These vital steps must be taken *in advance of* any transfers to homeowners. The rationale is obvious. If you are going to restrict a homeowner's use of his or her property, they must be on notice (recordation in the public records) of the nature of the restrictions and enforcement actions that can be taken in the face of noncompliance *before* the homeowner decides to invest and live in the community. Further, title

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<sup>1</sup> At least three prior law firms that were representing the Civic Association over the years, appear to have neglected to reveal these legal truths to the community at large, or if they did so, their warnings were ignored by the presiding board members and officers. In fact, complete sections of real estate that were once subject to the deed restrictions in Boyette Springs were erroneously omitted from the covenant preservation process several years ago. As a result, entire portions of land in Boyette Springs are no longer deed restricted at all, including Ms. Ovando's property.

agencies, title companies, mortgage lenders must also be fully apprised of these restrictions through searching the public records *before* making decisions on whether to close a real estate transaction, issue title policies or make a mortgage loan.

In light of this overwhelming evidence and the Civic Association's ongoing exposure for attorneys' fees and costs in the Declaratory Relief Action, I suggest it is in everyone's best interest for your firm to diligently research and promptly file its defenses, if any, to the Declaratory Relief Action. I will then file a Motion for Summary Judgment or set it for final hearing. Once the court grants the Motion or enters judgment, the community can obtain some much needed and well-deserved long-term stability and predictability, not only in the use and enjoyment of their homesteads and in the valuation of their homes, but in their lives as well.

### **The Larson Litigation**

Sometime after the original town hall meeting, I was asked by a homeowner, Danny Larson, to contact his attorney to share the results of our legal research. Mr. Larson was a town hall participant that was vocal about the wrongful actions taken by the Civic Association. We did so, and his attorney corroborated our findings, and filed a Motion to Dismiss the litigation brought by the Bush Ross firm against Mr. Larson (the "Larson Litigation"). I understand the Civic Association dismissed this action and settled the attorney's fees and costs of his counsel.

### **Conclusion**

At this point, I would like to discuss this matter with you to try and reach some amicable resolution of the pending Declaratory Relief action. Every lawyer that has looked at the merits of the Civic Associations' actions has concluded the same thing. The Civic Association needs to develop a plan to formally and completely disengage from its wrongful actions. I look forward to hearing from you by Wednesday on our request that your firm accepts service of the summons and complaint so this action can commence and promptly get an adjudication once and for all as to the scope and nature of this Civic Association.

Sincerely,



Anthony G. Woodward,  
Founding Shareholder WLG

Richard Aaron (via E-Mail and Certified Mail)  
Lorna Aaron (via E-Mail and Certified Mail)  
Letha Ovando (via E-Mail)  
Eric Appleton, Esquire (Via E-Mail)

Encl. Complaint