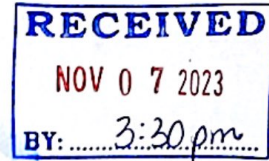


THE STATE OF TEXAS

CITATION BY PERSONAL SERVICE

CV23-0576-392

To: **MELISSA KLINGMAN**  
**22223 SPORTSMAN'S DRIVE**  
**CHANDLER, TX 75758**



**GREETING:**

You are hereby commanded to appear by filing a written answer to the **ORIGINAL PETITION** at or before 10 o'clock a.m. of the Monday next after the expiration of twenty days after the date of service hereof, Before the Honorable 173<sup>RD</sup> District Court of Henderson County, Texas, at the 173<sup>RD</sup> District Court in Athens, Texas. Said **ORIGINAL PETITION** was filed on 10/30/2023. The file number of said suit being **CV23-0576-392**, the style of the case is: RAUL DELAGARZA, TRACY DELAGARZA, TONY TUCKER, AND KANDAS TUCKER vs SPORTMAN'S PARADISE PROPERTY OWNERS ASSOCIATION, INC., JAI MAKINSON, MELISSA KLINGMAN, JIM SPEIER, AND SHANNON ARMSTRONG.

The name and address of the attorney for the Plaintiff:

**GLEN PATRICK**  
**P O BOX 938**  
**LINDALE, TX 75771**

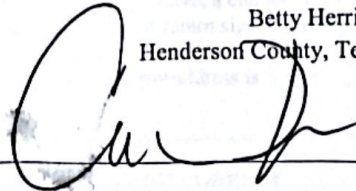
The nature of the Plaintiff's demand is set out and shown by a true and correct copy of the **ORIGINAL PETITION** accompanying this citation, and made a part hereof.

The Officer executing this writ shall promptly serve the same according to requirements of law, and the mandates hereof, and make due return as the law directs.

**NOTICE TO DEFENDANT:** You have been sued. You may employ an attorney. If you or your attorney does not file a written answer with the Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. **In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org.**

Issued and given under my hand and the seal of said Court at Athens, Texas on this the 7<sup>TH</sup> day of November, 2023.

Address of Clerk:  
100 E. Tyler Street  
Room 202  
Athens, Texas 75751

ATTEST:  
Betty Herriage  
Henderson County, Texas  
By:  Deputy

## RETURN OF SERVICE

0576-392

JUL DELAGARZA, TRACY DELAGARZA, TONY TUCKER, AND KANDAS TUCKER vs SPORTSMAN'S PARADISE  
PROPERTY OWNER'S ASSOCIATION, INC., JAI MAKINSON, MELISSA KLINGMAN, JIM SPEIER, AND SHANNON  
ARMSTRONG

Executed when copy is delivered:

This is a true copy of the original citation, was delivered to defendant \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, Officer

\_\_\_\_\_, County, Texas

By: \_\_\_\_\_, Deputy

**ADDRESS FOR SERVICE:**  
22223 SPORTSMAN'S DRIVE  
CHANDLER, TX 75758

### OFFICER'S RETURN

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, o'clock \_\_\_\_\_ m., and executed in \_\_\_\_\_ County, Texas by delivering to each of the within named defendants in person, a true copy of this Citation with the date of delivery endorsed thereon, together with the accompanying copy of the Petition at the following times and places, to-wit:

| Name  | Date/Time | Place, Course and Distance from Courthouse |
|-------|-----------|--------------------------------------------|
| _____ | _____     | _____                                      |

And not executed as to the defendant(s), \_\_\_\_\_

The diligence used in finding said defendant(s) being:

\_\_\_\_\_ and the cause or failure to execute this process is:

\_\_\_\_\_ and the information received as to the whereabouts of said defendant(s) being:

#### FEES:

Serving Petition and Copy \$ 85.00

Total \$ \_\_\_\_\_

\_\_\_\_\_, Officer

\_\_\_\_\_, County, Texas

By: \_\_\_\_\_, Deputy

\_\_\_\_\_  
Affiant

### COMPLETE IF YOU ARE A PERSON OTHER THAN A SHERIFF, CONSTABLE, OR CLERK OF THE COURT.

In accordance with Rule 107: The officer or authorized person who serves, or attempts to serve, a citation shall sign the return. The return must either be verified or be signed under penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

" My name is \_\_\_\_\_, my date of birth is \_\_\_\_\_, and my address is \_\_\_\_\_  
(First, Middle, Last)

\_\_\_\_\_  
(Street, City, Zip)

I DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS TRUE AND CORRECT.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Declarant/Authorized Process Server

\_\_\_\_\_  
(Id # & expiration of certification)

Scanned with  
 CamScanner™

4. Plaintiffs Tony Tucker and Kandas Tucker ("Plaintiffs Tucker") are individuals. Their address is 20976 State Hwy 110 N. Troup, TX, 75789.

5. Sportman's Paradise Property Owners Association, Inc. (the "Corporation") is a Texas nonprofit corporation. Defendant's charter, certificate or registration was forfeited by the Secretary of State on March 10, 2023 and has not been reinstated.<sup>1</sup> The mailing address for Defendant's principal office is PO Box 854, Chandler, TX 75758-0854. Dale Goodwill is the registered agent. The address for the registered agent is 22006 Sportsmans Drive, Chandler, TX 75758.

6. Jai Makinson is an individual and can be served at his residence located at 22044 Bass Run, Chandler, TX 75758. Jai Makinson is or was a director and president of the Corporation at all times material to these proceedings.

7. Melissa Klingman is an individual and can be served at her residence located at 22223 Sportsman's Drive, Chandler, TX 75758. Melissa Klingman was a director and treasurer of the Corporation at all times material to these proceedings.

8. Jim Speier is an individual and can be served at his residence located at 4423 Holly Ln, Flint, TX 75762. Jim Speier is or was a director and secretary of the Corporation at all times material to these proceedings.

9. Shannon Armstrong is a individual and can be served at his residence located at 10192 Paradise Circle, Chandler TX 75758. Shannon Armstrong is or was a director of the Corporation

---

<sup>1</sup> If corporate privileges of a corporation are forfeited for the failure to file a report or pay a tax or penalty, each director or officer of the corporation is liable for each debt of the corporation that is created or incurred in this state after the date on which the report, tax, or penalty is due and before the corporate privileges are revived. The liability of a director or officer is in the same manner and to the same extent as if the director or officer were a partner and the corporation were a partnership. *Section 171.255, Texas Tax Code*

at all times material to these proceedings.

**Facts:**

10. The Sportman's Paradise Subdivision is a real estate subdivision on Lake Palestine in Henderson County, Texas. Plaintiffs Delagarza are the owners of the following real property in the Sportman's Paradise Subdivision:

"Tract One": Section 2, Block H, one-half of Lot 26, and lots 27, 28, 29 and

30, in the Sportsman's Paradise Subdivision, Abstract 136, Santiago

Calderon Survey, Henderson County, Texas; and

"Tract Two": Section 2, Block H, lots 2, 3, 4 and 5 in the Sportsman's Paradise Subdivision, Abstract 136, Santiago Calderon Survey, Henderson County, Texas; (the "Delagarza Property").

11. Plaintiffs Tucker are the owners of the following real property in the Sportman's Paradise Subdivision: Section 2, Block A, lots 4 and 5, in the Sportsman's Paradise Subdivision, Abstract 136, Santiago Calderon Survey, Henderson County, Texas; (the "Tucker Property").

12. The subdivision was developed in two phases. Phase one was developed subject to a restrictive covenant agreement filed in 1976. Phase two was developed subject to a restrictive covenant agreement filed in 1977. The Delagarza Property and the Tucker Property is located in phase two. The restrictive covenants were binding for thirty five years and expired according to their express terms in 2011 and 2012 respectively. In 2020 an election was held on the "Sportman's Paradise Amended Restrictive Covenant Agreement." The 2020 amendment was billed as an amendment of the original restrictions, notwithstanding that the original restrictions had already expired. According to the Association's records, the vote on the 2020 amendment was 212 "for" and

148.5 “against.” Only 58.81% of the votes cast were “for” the 2020 amendment. The 2020 amendment did not receive the required number of votes for approval and failed as a matter of law..

The 13. Defendant Corporation’s charter, certificate, or registration was forfeited on March 10, 2023 by the Secretary of State. Defendant Corporation did not revive its forfeited privileges within 120 days after the privileges were forfeited. Defendant Corporation’s charter, certificate or registration has not been reinstated.

#### CLAIMS OF DELAGARZA *orally threatened to assess and assessed lines against Plaintiff's Tract*

for 14. On or about March 1, 2023, Defendant Melissa Klingman, in her capacity as Treasurer of the Corporation, executed an Affidavit Claiming Lien for Unpaid Assessments, claiming a lien against the Delagarza Property. The 2023 Affidavit claimed a lien against the Delagarza Property including Tract One, for unpaid assessments, late fees, interest and other charges, notwithstanding that the Affidavit acknowledged that there was no balance owed on Tract One. The 1977 restrictive covenant agreement provided for an assessment on a “per lot” basis and for an “assessment lien on said lots.” It did not allow for a lien to be claimed on other lots for which no assessment was owed. The assessment claimed on Tract Two includes amounts dating back to 1995 for dues, late fees, interest and other charges, not authorized by the Corporation’s governing documents and barred by limitations. Furthermore, Plaintiffs Delagarza have paid all assessments at the rates established in the 1977 restrictive covenant agreement, which are not barred by limitations.

15. Other lien claims were filed by the Defendant Corporation against Tract 2 of the Delagarza property in 2002 and 2004. The amounts claimed in the 2002 Notice of Lien and 2004 Notice of Lien are barred by limitations. On June 15 and again on July 31, 2023, Plaintiffs Delagarza made written demand on the Directors of the Defendant Corporation, to remove its lien claims against their

property.

16. Defendant Corporation and its directors have failed and refuse to remove the lien claims. The liens claimed are unlawful encumbrances on the Delagarza Property, preventing Plaintiffs Delagarza from selling their property. Plaintiffs Delagarza have suffered actual damages as a result of Defendant's unlawful actions.

#### CLAIMS OF TUCKER

17. Defendants have repeatedly threatened to assess and assessed fines against Plaintiffs Tucker for alleged violations of the restrictive covenants. As late as June 1, 2023, Defendants sent Plaintiffs Tucker a Notice of Violations and Fines. The Notice accused Plaintiffs Tucker of violating the following paragraphs of the 2020 amendment, even though the 2020 Amendment was not approved:

- A. Paragraph 3, a "coop not approved and too close to property line;"
- B. Paragraphs 9 and 11, a "fence not approved;" and
- C. Paragraphs 10 and 12, "no permanent residence of livestock or fowl."

The Notice threatened a recurring monthly fine for each violation, if not abated within 30 days.

18. Plaintiffs Tucker plead in the alternative that if the restrictions somehow apply to Plaintiff Tuckers' Property, the alleged violations are not enforceable. The restrictions violate State law, are prohibited by State law, do not apply to Plaintiffs Tucker, or are so vague and ambiguous as to be unenforceable.

- A. Paragraph 3 would require submission of plans to the Architectural Control Committee (the "ACC") before any structure is constructed or placed on a lot. However the 2020 amendment and the Association's Rules and Regulations require the Board of Directors to approve the plans, in violation of Sec. 209.00505 of the Property Code. No authority is given

by the Association to the ACC to approve plans as required by the Property Code.

B. Paragraph 9 would prohibit Plaintiff Tuckers' perimeter fence. However, a covenant that prohibits a perimeter fence is not enforceable pursuant to Section 202.023 of the Property Code. Although Section 202.023 of the Property Code allows an association to regulate the type of fencing that a property owner may install, no such regulation or restriction existed when the fence was constructed. Paragraph 11 does not regulate fences, but allows "any approved structure." And yet, the Defendant Corporation provides no legal procedure for plans to be approved.

C. Paragraph 10 does not apply to Plaintiff Tuckers' property or to animals. The Association threatens to fine Plaintiffs Tucker for violating a provision that by its express terms does not apply. Paragraph 12 would prohibit animals other than "two normal pets." However, the Associations' Rules and Regulations would permit up to 6 chickens. Furthermore, the alleged violation is impermissibly vague.

19. On June 1, 2023, Defendants also notified Plaintiffs Tucker that they had been fined \$150.00 for violations of the 2020 Amendment. The notice of the fine did not comply with Section 209.006 of the Property Code. The Notice did not provide a reasonable time to cure the alleged violations, inform the Plaintiffs Tucker that they could request a hearing before the fine was imposed, or specify a date by which the Plaintiffs Tucker could cure the alleged violation to avoid any fine. Plaintiffs Tucker have suffered actual damages as a result of the Defendants actions.

#### CLAIMS OF DELAGARZA AND TUCKER

20. In 2023 the Defendant Corporation failed to comply with state law in the election of its Board of Directors. In particular, the Defendant Corporation was authorized to exercise all powers and

perform all duties and obligations of a property owners' association. The property owners' association is composed of more than 100 lots. Pursuant to Section 209.00593 of the Property Code, at least 10 days before absentee ballots were disseminated, the association was required to provide notice to the association members soliciting candidates interested in running for a position on the board. The notice was required to contain instructions for an eligible candidate to notify the association of the candidate's request to be placed on the ballot and the deadline to submit the candidate's request. Defendant Corporation failed to send the required notice soliciting candidates. Instead the Defendant Corporation prepared and disseminated absentee ballots containing two names, one for each open position on the Board. No opportunity was provided for eligible candidates interested in running for a position on the board to notify the association of the candidate's request to be placed on the absentee ballot.

21. Plaintiffs Delagarza challenged the Defendant Corporation on its failure to comply with the State law on soliciting candidates and requested that the election be postponed so that the required notice could be provided and absentee ballots could be properly prepared and disseminated. Raul Delagarza declared his interest in being placed on the absentee ballot. The Defendant Corporation refused to comply with the State election law and instead instructed the Plaintiffs Delagarza that they "still had the option to be added to the absentee ballot as there are blank spaces for write in candidates." Raul Delagarza was deprived on his right to be placed on the absentee ballot.

22. The restrictive covenant agreement filed in 1976 and the restrictive covenant agreement filed in 1977 expired in 2011 and 2012 respectively. The 2020 amendment was not approved and could not reinstate or amend the expired restrictive covenant agreements. The Defendants have nonetheless repeatedly demonstrated their commitment to enforce the expired and ineffectual

covenants against the Plaintiffs Delagarza, the Delagarza Property, the Plaintiffs Tucker, and the Tucker Property. The Defendants actions are prejudicial to the Plaintiffs Delagarza and the Plaintiffs Tucker and their property. Unless Defendants are enjoined from enforcing the expired and ineffectual covenants, Defendants will undoubtedly continue to violate the rights of the Plaintiffs Delagarza and the Plaintiffs Tucker and render any judgment against the Defendants ineffectual. Plaintiffs Delagarza and Plaintiffs Tucker are entitled to a writ of injunction under principles of equity and the State law. Irreparable injury to the Delagarza Property and the Tucker Property is threatened, irrespective of any remedy at law. An injunction prohibiting Defendants from acting to enforce the 1976 covenant agreement, the 1977 covenant agreement and the 2020 Amendment is warranted under Section 65.011 of the Civil Practice and Remedies Code.

23. Plaintiffs Delagarza and Plaintiffs Tucker seek a declaratory judgment pursuant to Sections 37.003 and 37.004, Civil Practice & Remedies Code that:

A. the restrictive covenant agreement filed in 1976 and the restrictive covenant agreement filed in 1977 expired in 2011 and 2012 respectively, are no longer valid or enforceable, and do not encumber the Delagarza Property or the Tucker Property;

B. the Plaintiffs Delagarza and the Plaintiffs Tucker are not subject to assessments or liens against their property for nonpayment of assessments under the 1976 or 1977 restrictive covenant agreements after 2011 and 2012 respectively;

C. the 2020 amendment was not approved and did not reinstate or amend the 1976 or 1977 restrictive covenant agreements;

D. the 2020 amendment is not valid or enforceable and does not encumber the Delagarza Property or the Tucker Property;

E. the Plaintiffs Delagarza and the Plaintiffs Tucker are not subject to assessments or liens against their property for nonpayment of assessments under the 2020 amendment or otherwise;

F. the Notice of Lien filed by the Defendant Corporation against Tract 2 of the Delagarza Property in 2002 and 2004 for unpaid assessments is barred by limitations and/or void;

G. the Notice of Lien filed by Defendant Corporation against the Delagarza Property in 2023 (based on the 2020 amendment) is void;

H. Plaintiff Tuckers' alleged violations of the restrictive covenants under the 2020 Amendment or otherwise, are without merit, in that: (1) the 1976 and 1977 restrictive covenant agreements had expired; (2) the 2020 Amendment was not approved; (3) the fence on the Tucker Property is a perimeter fence and any covenant that would prohibit a perimeter fence is unenforceable; and (4) Defendant failed to provide a legal method for plans to be approved by an architectural control committee:

I. Fines assessed against Plaintiffs Tucker for alleged violations of the restrictive covenants under the 2020 amendment are void and not enforceable; and

J. Defendant failed to comply with State law in the election of its Board of Directors in 2023 and the election is therefore invalid.

24. Plaintiffs Delagarza and Plaintiffs Tucker seek an injunction pursuant to Section 65.011 of the Civil Practice and Remedies Code, prohibiting Defendants from engaging in any action to enforce the 1976 covenant agreement, the 1977 covenant agreement and the 2020 Amendment against the Plaintiffs Delagarza, the Delagarza Property, the Plaintiffs Tucker and the Tucker Property.

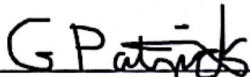
Wherefore, Plaintiffs Delagraza and Plaintiffs Tucker pray that the Court:

- A. enter an order compelling Defendants to file a release of each Notice of Lien filed by Defendant Corporation against the Delagarza Property;
- B. grant judgment in favor of Plaintiffs Delagarza and against the Defendants for actual damages suffered by the Plaintiffs Delagarza as a result of the assessments and Notice of Lien filed against the Delagarza Property;
- C. grant judgment in favor of Plaintiffs Tucker and against the Defendants for actual damages suffered by the Plaintiffs Tucker as a result of the fines threatened and imposed against them;
- D. grant declaratory relief and injunctive relief as set forth above;
- E. grant judgment for costs and attorneys fees under Section 37.009, Civil Practice & Remedies Code;
- F. grant judgment for pre-judgment and post-judgment interest as allowed by law; and
- G. grant Plaintiffs Delagraza and Plaintiffs Tucker such other relief as is just.

Respectfully Submitted,

PATRICK LAW OFFICES

By: \_\_\_\_\_



Glen Patrick  
State Bar I.D. #15579500  
ATTORNEYS FOR PLAINTIFFS  
PO Box 938  
Lindale, TX 75771  
Telephone: 903-882-6173