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

FAWN RIDGE MAINTENANCE ASSOCIATION, INC.,

Plaintiff,

v.

JAMES GEIDER,

Defendant.
_____/

Case No. 17-CC-030487

Division J

FINAL JUDGMENT FOR PLAINTIFF
FOR INJUNCTIVE RELIEF AGAINST DEFENDANT

THIS MATTER came before the Court for a bench trial on December 16 and 17, 2021. Upon consideration of the evidence presented, and for the reasons stated below, the Court finds in favor of Plaintiff Fawn Ridge Maintenance Association, Inc. and against Defendant James Geider, enters judgment for Fawn Ridge, and enters a permanent injunction requiring Geider to remove the shed on his property.

I. INTRODUCTION.

Geider lives in Fawn Ridge and agrees he is bound by the Fawn Ridge Declaration of Covenants and Statement of Commitment. Before trial, Geider and Fawn Ridge stipulated that a shed behind Geider's house violates restrictive covenants in the Declaration and Statement.[1] But Geider argues Fawn Ridge is estopped from

[1] *See* Uniform Pretrial Order (Non-Jury Trial) ¶ 4 (Nov. 18, 2021); Declaration of Covenants Art. VI, § 6 (Plaintiff's Exhibit 1); Statement of Commitment Art. VI, §§ 3, 11, 12 (Plaintiff's Exhibit 2).

enforcing the restriction, selectively enforced the restriction, or impliedly waived its right to enforce the restriction. Those defenses were the only issues tried.[2]

II. FINDINGS OF FACT.

A. The Fawn Ridge Declaration prohibits sheds.

The Fawn Ridge Declaration establishes an Architectural Control Committee (also known as the Architectural Review Committee, or ARC), which enforces architectural standards in the community. Section 2 of the Declaration prohibits constructing an "outbuilding" "without the prior written consent" of the ARC. Article VI, § 3 of the Statement of Commitment likewise prohibits structures "of a temporary character," including a "trailer, tent, shack, garage, barn, motor home or mobile home or other outbuilding." And § 12 of the same Article prohibits "accessory buildings, including, but not limited to, detached garages and storage buildings."

To obtain consent, the owner must submit a set of plans to the ARC. Decl. Art. VI § 3. Erecting an outbuilding without the ARC's approval is a violation of the Declaration, and Fawn Ridge may sue to remove the structure. Decl. Art. VI § 6. The Fawn Ridge board has the right to enforce any provision of the Declaration or the Statement of Commitment "at any time and from time to time, cumulatively or otherwise." Decl. Art. IV, § 2(h); Decl. Art. VIII, § 1.

B. Mike Castro and community inspection.

Mike Castro is the manager of Fawn Ridge. Castro started in Fawn Ridge governance in 2008, serving first as secretary of the board, then as president for six

[2] *See* Uniform Pretrial Order (Non-Jury Trial) ¶¶ 1, 3 (Nov. 18, 2021).

years. After his term as president, he stepped into the manager role in 2013 or 2014.

Castro testified that Fawn Ridge has actively enforced restrictions since he joined the board in 2008, and that he and the current board are "very active." He confirmed that Fawn Ridge requires owners to file an application to build a shed, but Fawn Ridge has never approved one. In his time on the board and as manager, the board has never expressly decided to ignore sheds, nor has there been an effort to amend the Declaration or Statement of Commitment to allow sheds or outbuildings. He did testify, however, that he and the board do not enforce the outbuilding restriction against playsets and pergolas.[3] Documentary evidence supports his testimony on these points.

As part of his duties, Castro regularly drives through Fawn Ridge and notes issues and violations. His inspection is done from the street or sidewalk; he cannot enter properties to inspect them. If he sees a shed, Castro takes a picture and notes the violation. He also relies on neighbor reporting, but he can only issue a neighbor-reported violation with "good proof."

C. The April 20, 2016 notice of violation to Geider.

On April 20, 2016, Fawn Ridge sent Geider a notice of violation asking him to remove the shed on his property.[4] The notice contains a picture of the shed, visible

[3] In any event, playsets and pergolas are not "outbuildings" because they are not enclosed.

[4] Plaintiff's Exhibit 18.

from street level. About six weeks later, Fawn Ridge sent a second notice.[5] On February 28, 2017, Fawn Ridge assessed a $25.00 fine and threatened a lawsuit unless Geider removed the shed.[6] Geider did not comply, so counsel for Fawn Ridge sent Geider an initial letter concerning this lawsuit on May 23, 2017.[7]

On June 6, 2017, Castro sent Geider a letter about the shed and Fawn Ridge's enforcement efforts.[8] The letter acknowledges, "[t]here have been some unfortunate instances in the distant past whereby some structures were not noted or formally cited by previous management companies/Board of Directors." But it also professes the board and current management "have done all that they can to seek compliance, even to the extent of instituting civil actions against non-compliant owners." And the letter identifies "two non-compliant cases involving sheds in [the] past two years that were taken to that point."

D. Geider identifies other outbuildings.

Instead of removing his shed, Geider sent Fawn Ridge pictures of 30 other properties, identifying what he believed to be restricted outbuildings, including sheds.[9] The board responded that the sheds "are neither visible from the street nor have they been reported by neighboring lot owners."[10] But the board also acknowledges that any visible sheds "are in direct violation of the deed restrictions of the

[5] Plaintiff's Exhibit 19.

[6] Plaintiff's Exhibit 23.

[7] Plaintiff's Exhibit 24.

[8] Plaintiff's Exhibit 26.

[9] Plaintiff's Exhibit 30.

[10] Plaintiff's Exhibit 28. This statement is consistent with Castro's testimony.

subdivision," asking Geider to provide more information so that the board could investigate.

Fawn Ridge took enforcement action against most of them. Castro testified that he investigated all of the properties and sent letters to most of the owners.[11] He did not send a letter if the outbuilding was a playset or pergola, nor did he seek enforcement if the shed could not be seen from street level while driving or walking by—both consistent with his ongoing method of investigating outbuildings.

E. Fawn Ridge enforces the restriction against others.

Fawn Ridge introduced into evidence a violation log showing all shed or outbuilding violations issued to homeowners.[12] Many of the violations post-date Geider's, but not all of them. Fawn Ridge issued a violation to 8905 Beeler Drive on April 11, 2014; and 13525 Ironton Drive received one on April 15, 2015. Fawn Ridge also issued a shed violation to 8754 Exposition Drive on the same day it issued one to Geider. Five more shed violations were issued in 2017[13]; eighteen in 2018[14]; three

[11] Plaintiff's Exhibit 31.

[12] Plaintiff's Exhibit 32.

[13] 9321 Pontiac Dr. (Apr. 27, 2017); 8836 Hampden Dr. (July 18, 2017); 13416 Roslyn Pl. (Aug. 1, 2017); 8949 Eastman Dr. (Oct. 4, 2017); 8723 Hampden Dr. (July 18, 2017).

[14] 8766 Hampden Dr. (Apr. 26, 2018); 8714 Exposition Dr. (Jan. 29, 2018); 8740 Exposition Dr. (Jan. 29, 2018); 8762 Hampden Dr. (Jan. 29, 2018); 8764 Hampden Dr. (Jan. 29, 2018); 8766 Hampden Dr. (Jan. 29, 2018); 8768 Hampden Dr. (Jan. 29, 2018); 8915 Exposition Dr. (Jan. 29, 2018); 8917 Eastman Dr. (Jan. 29, 2018); 8923 Exposition Dr. (Jan. 29, 2018); 8931 Eastman Dr. (Jan. 29, 2018); 13316 Krameria Way (Jan. 29, 2018); 13424 Eudora Pl. (Jan. 29, 2018); 8915 Eastman Dr. (Feb. 8, 2018); 8722 Exposition Dr. (Apr. 2, 2018); 8957 Eastman Dr. (Apr. 26, 2018); 8951 Eastman Dr. (Apr. 26, 2018); 8756 Hampden Dr. (Apr. 26, 2018); 8748 Hampden Dr. (Apr. 26, 2018).

in 2019[15]; and more in 2020 and 2021. The board pursued these violations.[16] In addition to these formal violations, the board informed a resident on February 26, 2013, that "appurtenant structures" were prohibited.[17] Through its association newsletter, Fawn Ridge consistently apprised its residents of their obligation to seek approval for any exterior modification, including outbuildings. On cross-examination, Castro testified that 2014 was the first time the board took action to enforce the restriction against sheds since he had joined governance and management. And he conceded that many of the violations were issued only after Geider provided the pictures and other information.

F. Craig DeJonge.

Geider presented two witnesses. The first was Craig DeJonge, a Fawn Ridge resident from 2009 to 2019. DeJonge testified about five sheds visible during his time living in Fawn Ridge, some of which remained when he moved out in 2019. That testimony was supported by five Google Street View images showing the tops of sheds in backyards.[18] He testified that it was common for residents to have sheds in their backyards, visible from the street. It was, in his words, "commonplace" to see sheds and other outbuildings during his daily commute and walks with his dog.

---

[15] 13416 Eudora Pl. (July 5, 2019); 8901 Hannigan Ct. (Mar. 28, 2019); 8762 Hampden Dr. (Apr. 29, 2019).

[16] *See* Plaintiff's Exhibits 32, 34.

[17] Plaintiff's Exhibit 35 at 316.

[18] Defendant's Exhibits 1, 2, 3, 4, and 5. The images were admitted into evidence over Fawn Ridge's objection for the reasons stated on the record. Both parties had the opportunity to brief the images' admissibility, and the Court heard lengthy argument on it.

In DeJonge's experience, Fawn Ridge never demanded that the structures be removed. He did not believe they were prohibited.

On cross-examination, DeJonge conceded that he was unaware whether the sheds he identified still exist, and that he had no knowledge of the association's enforcement activities. He also conceded that he could identify only five sheds out of about 700 properties within Fawn Ridge.

G. Karen Fioritta.

Geider also called Karen Fioritta, a long-time resident of Fawn Ridge. She regularly drives around Fawn Ridge in her capacity as an insurance agent, soliciting business from neighbors. Fioritta testified about sheds at eight properties, and she claimed sheds are "prevalent." She was not aware of Fawn Ridge forcing anyone to remove a shed before 2015, and the violations came only after the association hired new management. Through Fioritta, Geider introduced nine more pictures of sheds in existence at various times before Geider's notice of violation. But Fioritta admitted on cross-examination that things have changed over the last seven years.

Fioritta testified that she erected a shed in 2015 because she thought they were allowed. But this testimony actually cuts in favor of Fawn Ridge, because Fioritta admitted that Fawn Ridge forced her to remove it because it was visible from the street. Fioritta also testified that she believed Fawn Ridge should "do nothing" about sheds in the neighborhood. She was aware of the requirement to submit modification requests to the ARC, and that she could not recall a board member ever waiving any restrictions.

Fioritta's testimony was at times inconsistent, and often exaggerated. For example, Fioritta testified that she has seen 100 sheds during her time in the neighborhood, but she knows of at least 190. She later testified that she was aware of 70 to 75 sheds; that number became 35 even later in her examination. On re-direct, the number of sheds climbed to 125. The timeline for her visits lacked particularity, as did her descriptions of the properties and the sheds. Because of the inconsistencies and exaggerations, I find Fioritta's testimony unpersuasive and generally not credible.

H. James Geider.

Geider decided to build the shed on Christmas Day 2015, inspired by several neighbors with sheds, and one across the street with a "barn" in place since the mid-90s. He testified that sheds were "readily visible" "throughout" Fawn Ridge from 2000 until 2015. "A lot" of the 50 houses on Eastman Drive have structures on them, some of which have been there since the late 90s and early 2000s. Geider identified 96 home addresses with "structures" on them, and he presented 30 of them to the board at the July 17, 2016 meeting. Pictures of those properties were admitted into evidence and considered.[19] Some appear to show sheds; some are difficult to see; and some show playsets, pergolas, and other unenclosed structures.

On cross-examination, Geider testified that he knew as early as 2004 that he had to submit an application to the ARC to repaint his house, and that the ARC form had a space for requesting permission to build a structure. He was also aware

[19] Plaintiff's Exhibit 30.

that he had to submit an application for exterior modifications to his house. Indeed, on several occasions before constructing the shed, Geider applied to the ARC for permission to make exterior modifications to his house.[20] When he applied to re-paint his house in 2013, Geider knew that the "association was active in enforcing deed restrictions in the community." And he acknowledged that as early as 2014, the association was enforcing the restriction against sheds. He also admitted that some of the 30 pictures presented to the board in 2016 were taken while standing in the bed of a pickup truck, not from street level.

III. ANALYSIS.

Geider asserts three affirmative defenses: estoppel, selective enforcement, and waiver. The parties generally agree on the applicable law,[21] which is reviewed as each defense is addressed. As the party challenging enforcement of an otherwise valid restriction, Geider has the burden to prove any defensive matter that would preclude enforcement. *Killearn Acres Homeowners Ass'n v. Keever*, 595 So. 2d 1019, 1021 (Fla. 1st DCA 1992). *See Emerald Estates Cmty. Ass'n, Inc. v. Gorodetzer*, 819 So. 2d 190, 193 (Fla. 4th DCA 2002); *Miami Lakes Civic Ass'n, Inc. v. Encinosa*, 699 So. 2d 271, 272 (Fla. 3d DCA 1997).

[20] Plaintiff's Exhibits 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, and 18 reflect several applications by Geider to make modifications to his property, consistent with the requirements of the Declaration. Some were approved; some were not.

[21] *See* Defendant's Trial Memo. at 1 (Dec. 15, 2021) ("Geider agrees with the case law cited in the Association's Trial Memorandum as the cases cited by the Association are directly on point regarding the law on those specific legal issues.").

A. Estoppel.

"A party asserting estoppel must show that: (1) the party to be estopped made a representation of material fact and later took a position contrary to that representation; (2) the party claiming estoppel relied upon this representation; and (3) that party suffered a detrimental change in position as a result of this reliance." *Killearn Acres*, 595 So. 2d at 1022 (citing *Enegren v. Marathon Country Club Condo. W. Ass'n, Inc.*, 525 So. 2d 488, 489 (Fla. 3d DCA 1988); *Quality Shell Homes & Supply Co., Inc. v. Roley*, 186 So. 2d 837, 841 (Fla. 1st DCA 1966)). Estoppel is distinguished from waiver in that it includes "a reliance on the words of conduct of a party which causes a detrimental change in position for the party so relying." *Taylor v. Kenco Chem. & Mfg. Corp.*, 465 So. 2d 581, 587 (Fla. 1st DCA 1985).

Geider has not proven estoppel. He did not present any evidence that Fawn Ridge or anyone associated with its board made a representation that sheds would be permitted despite the restrictive covenant. Nor did Geider present any evidence that he *relied* on a statement by the board. *See Zurstrassen v. Stonier*, 786 So. 2d 65, 70 (Fla. 4th DCA 2001) ("[O]nly a party who relied on statements made to that party can claim that the speaker is stopped by those statements."). To the contrary, Fawn Ridge regularly communicated the ARC preapproval requirement for property modifications, and Geider was well aware of that requirement. Without that representation or personal reliance, estoppel cannot be proven. *Killearn Acres*, 595 So. 2d

at 1022; *Esplanade Patio Homes Homeowners' Ass'n, Inc. v. Rolle*, 613 So. 2d 531, 532 (Fla. 3d DCA 1993).[22]

B. Selective enforcement.

Selective enforcement occurs when an association enforces a restriction against one owner while allowing others to violate the same rule. *See, e.g.*, *White Egret Condo., Inc. v. Franklin*, 379 So. 2d 346, 352 (Fla. 1979); *Prisco v. Forest Villas Condo. Apartments, Inc.*, 847 So. 2d 1012 (Fla. 4th DCA 2003); *Estates of Ft. Lauderdale Prop. Owners' Ass'n, Inc. v. Kalet*, 492 So. 2d 1340, 1341 (Fla. 4th DCA 1986). Restrictions may not be applied "in an arbitrary or discriminatory manner." *White Egret*, 379 So. 2d at 352. "When selective enforcement is demonstrated, the association is 'estopped' from applying a given regulation." *Shields v. Andros Isle Prop. Owners Ass'n, Inc.*, 872 So. 2d 1003, 1007 (Fla. 4th DCA 2004) (quoting *Chattel Shipping & Inv., Inc. v. Brickell Place Condo Ass'n*, 481 So. 2d 29, 30 (Fla. 3d DCA 1985)).[23]

The board did not selectively enforce the restriction against Geider in a manner that was either arbitrary or discriminatory. Three others received notices before

---

[22] Estoppel may also arise by silence or inaction where the party to be estopped has a duty to speak or act and fails to do so. *United States Life Ins. Co. in the City of New York v. Logus Mfg. Corp.*, 845 F. Supp. 2d 1303, 1318 (S.D. Fla. 2012). This must take the form of a "negligent or culpable omission where the party failing to act was under a duty to do so." *Pasco Cnty. v. Tampa Dev. Corp.*, 364 So. 2d 850, 853 (Fla. 2d DCA 1978). And the proponent must prove his reliance was "intended or reasonably anticipated" by the party to be estopped. *State v. Hadden*, 370 So. 2d 849, 852 (Fla. 3d DCA 1979). Geider did not plead or argue in closing that estoppel by omission or inaction applies in this case. Even if he did, the evidence does not support a finding of estoppel on this basis.

[23] Despite language in various cases suggesting an association is "estopped" from enforcing a restriction in the event of selective enforcement, the traditional elements of estoppel need not be proven to make out a case of selective enforcement. *See generally Kalet*, 492 So. 2d at 1343 (Anstead, J., dissenting on rehearing).

or on the same day, and many more since. The fact that Geider is one of the few taken to court does not prove selective enforcement. *Miami Lakes*, 699 So. 2d at 272. *See also McMillan v. Oaks of Spring Hill Homeowner's Ass'n, Inc.*, 754 So. 2d 160, 162 (Fla. 5th DCA 2000) (homeowner who erected shed in backyard in violation of restrictive covenants did not prove selective enforcement by showing other deed restrictions, including erection of gazebos by others, because association found and attempted to enforce other violations); *Chattel Shipping*, 481 So. 2d at 30 (holding an association's decision to enforce a restriction only prospectively is not "selective and arbitrary").

C. Waiver.

Geider's main argument—and the only one addressed in his trial memorandum—is that Fawn Ridge impliedly waived its right to enforce the restriction against outbuildings.

Waiver is the "intentional or voluntary relinquishment of a known right, or conduct which implies the relinquishment of a known right." *Mizell v. Deal*, 654 So. 2d 659, 663 (Fla. 5th DCA 1995). The "crux" of the doctrine is the *intentional* relinquishment of a *known* right. *Ferry-Morse Seed Co. v. Hitchcock*, 426 So. 2d 958, 962 (Fla. 1983). *See Mizell*, 654 So. 2d at 663; *O'Brien v. O'Brien*, 424 So. 2d 970, 971 (Fla. 3d DCA 1983).

Waiver may be implied from conduct that leads a party to believe a right has been waived. *Taylor*, 465 So. 2d at 587. The conduct must "put[ ] one off his guard and lead[ ] him to believe that the demanding party has waived the right sought to

be enforced." *Popular Bank of Fla. v. R.C. Asesores Financieros, C.A.*, 797 So. 2d 614, 619 (Fla. 3d DCA 2001). *See Rader v. Prather*, 130 So. 15, 100 Fla. 591, 597 (1930) (same). When waiver is to be implied, "the acts, conduct, or circumstances relied upon to show waiver must make out a *clear case*." *Taylor*, 465 So. 2d at 587 (quoting *Fireman's Fund Ins. Co. v. Vogel*, 195 So. 2d 20, 24 (Fla. 2d DCA 1967)) (emphasis added).

To find implied waiver of an otherwise valid restrictive covenant, even more is required: "[T]here must be a 'long-continued waiver of acquiescence in the violation of a restrictive covenant' *and* 'conscious acquiescence in persistent, obvious and widespread violations for waiver or abandonment to occur.'" *Mizell*, 654 So. 2d at 663 (quoting *Siering v. Bronson*, 564 So. 2d 247, 248 (Fla. 5th DCA 1990)) (emphasis added). Enforcement is waived only when "there is an intent to tolerate the specific use" that violates the covenant. *Siering*, 564 So. 2d at 248.

Finally, "[a] waiving party must possess all of the material facts in order to constitute waiver." *Zurstrassen*, 786 So. 2d at 70. *See Opler v. Wynne*, 402 So. 2d 1309, 1311 (Fla. 3d DCA 1981) ("Absent knowledge, waiver will not arise."); *Vogel*, 195 So. 2d at 24 ("There can be no waiver unless the party against whom the waiver is invoked was in possession of all the material facts."). In other words, a party must "knowingly refrain[ ]" from enforcing its right for waiver to be inferred or implied by conduct. *Popular Bank*, 797 So. 2d at 619.

Aggregating this law, Geider must make out a clear case that Fawn Ridge knowingly refrained from enforcing the restriction against sheds as part of a long-

continued pattern of conscious acquiescence in widespread violations of the restriction. *Popular Bank*, 797 So. 2d at 619; *Mizell*, 654 So. 2d at 663; *Taylor*, 465 So. 2d at 587. He must present evidence that Fawn Ridge "inten[ded] to tolerate" sheds in violation of the restrictive covenant that both parties agree is valid.

The evidence presents a close factual question, but ultimately I cannot conclude that Geider has proven a clear case of implied waiver. In his trial memorandum, Geider argues that "the Association undertook no enforcement action against any other lot owner due to their installation of a shed or other outbuilding in their lot." That is not the case. In 2013, the Board prohibited a resident from building an "appurtenant structure" on his property.[24] And in 2014, 2015, and 2016, the board issued violations for sheds. These efforts to prohibit sheds preclude me from concluding that Fawn Ridge had consciously acquiesced to and "inten[ded] to tolerate" construction of sheds.

Geider argues the two or three enforcement actions between 2014 and 2016 are insufficient to defeat implied waiver. Instead, the preceding "uninterrupted period" of inactivity overcomes the uptick in enforcement beginning in 2014. Both Geider and DeJonge testified about sheds in Fawn Ridge before that uptick. And Geider is correct that there is little to no evidence of Fawn Ridge's enforcement activity before 2014.

[24] An enclosed shed is an "appurtenant structure," though it is not clear from the 2013 board minutes what type of structure the resident sought to construct.

But the apparent delay, by itself, is not enough. *See Goodwin v. Blu Murray Ins. Agency, Inc.*, 939 So. 2d 1098, 1104 (Fla. 5th DCA 2006); *Zurstrassen*, 786 So. 2d at 70; *Vogel*, 195 So. 2d at 24. To support implied waiver, the delay must be accompanied by "conduct leading one to believe that a right has been waived." *Zurstrassen*, 786 So. 2d at 70. *See Mizell*, 654 So. 2d at 663; *Siering*, 564 So. 2d at 248. Fawn Ridge has never approved a shed, and the board has been actively enforcing the shed restriction since 2013. And while DeJonge's and Geider's testimony is generally credible, both testified that they have no knowledge about Fawn Ridge's enforcement activity. In other words, there is insufficient evidence that Fawn Ridge intended to tolerate sheds or consciously acquiesced to their construction throughout the neighborhood.

Castro's June 6, 2017 letter acknowledges "some unfortunate instances in the distant past whereby some structures were not noted or formally cited by previous management companies/Board of Directors." But the letter lacks context, and it's unclear whether previous boards actively decided to allow the sheds, or whether they simply weren't aware of them. There is no evidence about earlier boards' positions on the restriction, except for Castro's testimony that the board actively enforced restrictions once he joined in 2008. Mere delay in enforcement—without something else—is not enough to find implied waiver.

Other evidence contradicts Geider's effort to make a "clear case" of wavier. The board became proactive against shed violations at least two years before Geider erected his. Even a board member was forced to remove a shed from her property

once the board discovered it. The association never made a representation or took an action suggesting the restriction could not be enforced. *See Esplanade Patio*, 613 So. 2d at 532. And the lax enforcement by prior boards and management companies does not "clear[ly]" establish a waiver. *Cf. Ladner v. Plaza Del Prado Condo. Ass'n, Inc.*, 423 So. 2d 927, 930 (Fla. 3d DCA 1982).

In consideration of all of the documentary evidence and listening to the testimony of the witnesses, the Court cannot conclude that Geider was "put off guard" by prior conduct in a manner that led him to believe that Fawn Ridge waived its right to enforce the restriction. *Rader*, 100 Fla. at 597; *Popular Bank*, 797 So. 2d at 619. Although he testified that he knew of other sheds in the neighborhood, the Court finds that Geider probably knew the board considered sheds to be violations of the restrictive covenant. At the very least, he was at least aware of the requirement to submit an application to the ARC for external modifications, and that the board enforced that requirement.

In the end, weighing all of the documentary evidence and listening to the testimony of the witnesses, I cannot conclude that Geider proved a "clear case" of implied waiver.

IV. CONCLUSION.

Geider failed to sustain his burden of showing a "clear case" that Fawn Ridge is estopped from enforcing the restriction, selectively enforced the restriction, or impliedly waived its right to issue violations of the restriction. Accordingly,

The Court enters FINAL JUDGMENT in favor of Plaintiff Fawn Ridge Maintenance Association, Inc. and against Defendant James Geider, 8954 Eastman Drive, Tampa, Florida 33626. The Court enters a PERMANENT INJUNCTION in favor of Plaintiff requiring Defendant James Geider to remove the shed erected on his property. The shed must be removed within 60 days of the date of this order. Defendant James Geider is further enjoined from constructing a shed on his property unless approved or allowed in a manner consistent with the Fawn Ridge Maintenance Association Declaration of Covenants and Statement of Commitment. Failure to comply with this injunction may result in a finding of contempt.

The Court retains jurisdiction to award costs and to determine entitlement to and amount of attorney fees. The Court also reserves jurisdiction to amend this final judgment on request of the parties for better or more specific language delineating the requirements of the permanent injunction. *See* Fla. R. Civ. P. 1.610(c).

DATED this 29th day of March, 2022.

Electronically Conformed 3/29/2022
J. Logan Murphy

J. Logan Murphy
Hillsborough County Judge

Copies to Counsel of Record VIA JAWS