

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

**COPPER RIDGE/BRANDON
HOMEOWNERS' ASSOCIATION, INC.**

Plaintiff,

v.

**TELISHA CATCHINGS and
CARMEN GAY, and
KEVIN JEFFRIES**

Defendants.

CASE NO.:

DIVISION:

COMPLAINT

COMES NOW, Plaintiff, COPPER RIDGE/BRANDON HOMEOWNERS' ASSOCIATION, INC., by and through the undersigned counsel, and hereby sues Defendants TELISHA CATCHINGS, and states as follows:

JURISDICTION, VENUE, and PARTIES

1. This is an action for equitable relief for which this Honorable Court has concurrent jurisdiction.
2. Plaintiff, Copper Ridge/Brandon Homeowners' Association, Inc., is a Florida not-for-profit corporation and homeowners' association organized pursuant to Fla. Stat. 617.01011, *et. seq.*, and Fla. Stat. 720.301, *et. seq.* (herein "**Copper Ridge**").
3. Defendant Telisha Catchings is a natural person who resides within Hillsborough County, Florida. Ms. Catchings is a member of the Copper Ridge Board of Directors as of the date of this writing (herein "**Catchings**" or part of "**Defendants**" when referred to collectively with Co-Defendants).

4. Defendant Carmen Gay is a natural person and a member of Copper Ridge who resides within Hillsborough County, Florida. (herein “**Gay**” or part of “**Defendants**” when referred to collectively with Co-Defendants).

5. Defendant Kevin Jeffries is a is a natural person and a member of Copper Ridge who resides within Hillsborough County, Florida. (herein “Jeffries” or part of “Defendants” when referred to collectively with Co-Defendants).

6. All acts or omissions complained of herein occurred within Hillsborough County, thus venue is proper in this Honorable Court.

FACTS

7. Plaintiff reasserts and re-alleges the allegations set forth in paragraphs 1 through 6 above as if same was fully set forth herein, and additionally states as follows.

Background.

As to Ms. Catchings’ and Ms. Gay’s Participation in the Drafting, Approval and Recordation of an Amendment to the Association’s By-Laws, Approved on January 18, 2022, Recorded on March 22, 2022.

8. Ms. Catchings has been a member of the Board since at least a year prior to the filing of the instant Complaint. Upon information and belief, Ms. Gay is a former board member.

9. During that time, Ms. Catchings participated in board meetings, conferred with Association counsel when appropriate, and otherwise kept herself informed along with the other directors in her management of the Association.

10. Pertinent to this case, is the January 18, 2022, noticed open meeting of the Board of Directors, when the Copper Ridge Board of Directors, including at that time Telisha Catchings, reviewed and unanimously approved amendments to the Copper Ridge Bylaws, which included revisions to the election processes, to wit:

- 10.1 The establishment of staggered three (3) year board terms.
- 10.2 The establishment of a Candidate Filing Period during which eligible members can nominate themselves or others for office and candidates can participate in Town Hall Meetings prior to the election.
- 10.3 Utilization of secret written ballots to process votes, with a requirement that twenty (20%) percent of eligible votes to be cast in order to have a valid election.
- 10.4 The provision of sixty (60) days' notice to membership prior to any annual meeting where an election will take place.

11. The January 18, 2022 meeting was the culmination of debate and consideration by the Board of Directors as to potential changes to the Association's Bylaws. The initial Bylaws set quorum at 10%, discussion was had as to the benefits or draw backs of increasing the quorum threshold to 30%, as set forth in the default provision of Fla. Stat. s. 720.306(1), as well as other issues concerning the efficient conduct of the Association annual meetings and elections.

12. Ultimately after considerable discussion and debate the Board of Directors, and membership *including* Defendants Gay and Cummings; the Board unanimously approved the amendment was recorded was recorded in Hillsborough County Official Records at Instrument #2022148207, on March 21, 2022. Exhibit 1 ("**the Amendment**"). The initial Bylaws are attached hereto as Exhibit 2, (Initial Bylaws).

As to the Effectiveness of the Amendment.

13. Once recorded, the amendment is effective as a matter of law. *Winkelman v. Toll*, 661 So. 2d 102 (Fla. 4th DCA 1995).

14. Governing documents, such as the Amendment are presumed valid and are subject to enforcement unless they are arbitrary, capricious, unreasonable, or contain discriminatory provisions. *Id.*

15. In order to successfully challenge an amendment or other provision of a declaration in a court of law the challenger “must show that the declaration's provisions are wholly arbitrary in their application, in violation of public policy, or that they abrogate some fundamental constitutional right.” *Grove Isle Ass'n, Inc. v. Grove Isle Assocs., LLLP*, 137 So. 3d 1081 (Fla. 4th DCA 2014).

16. Therefore, unless and until the Amendment was challenged and deemed by a Court of law arbitrary, violative of public policy, or compromising of some fundamental constitutional right, it was enforceable as of recordation.

17. Even if there is an error in the process, this does not invalidate an otherwise properly adopted amendment. *Fla. Stat. s. 720.306(1)(f)* (“An immaterial error or omission in the amendment process does not invalidate an otherwise properly adopted amendment.”).

As to the June 7, 2022 Annual Meeting.

18. On June 7, 2022, Copper Ridge’s annual meeting was held wherein two seats were up for election by the membership.

19. Per the Bylaws as reflected in the Official Records at the time of the election, and consistent with the unanimously approved amendment the election was conducted via secret written ballot, and a threshold of twenty (20%) percent of the voting interests of the membership was required to be met prior to opening the ballots.

20. At the annual meeting, only one-hundred and one (101) out of nine-hundred and three (903), or eleven (11%) percent of Copper Ridge's membership voted. As such, the terms of those in office rolled over to the next term.

21. Defendants, apparently unhappy with the result provided the Association a document titled **Advanced Written Notice of Specific Nature of Election Dispute** based solely upon defendants' own self-serving accusations regarding the result of the election that they did not like. Unfortunately, Defendants are refusing to follow the recorded governing documents and amendments, are defaming other board members, vendors, managers, and association officers. This appears to be in an effort to perpetuate a narrative that a valid enforceable amendment is somehow invalid and ineffective without asserting a proper challenge with the proper basis in the proper forum, presuit mediation and/or a Court of competent jurisdiction.

22. As a result, in an effort to protect the Association's corporate form, to stop the personal attacks and harassment, and to put an end to the defamation of board members, vendors, and officers of the association, the Association is forced to proceed with the instant action to protect its interests and ensure the rights and obligations provided to it, its directors and members are properly enforced.

As to Defendant's "Advanced Written Notice of Specific Nature of Election Dispute.

23. On June 26, 2022, Copper Ridge received a document entitled "*Advanced Written Notice of Specific Nature of Election Dispute*" which is attached hereto as Exhibit 3 ("**Defendants' Notice**").

24. Defendant's Notice concedes that the "Amendment to the bylaws was recorded on March 22, 2022."

25. Defendant's Notice takes issue with manner in which the Amendment (that they voted on) was noticed to the community, stating:

According to Copperridge/Brandon bylaws and CCR's bylaws cannot be amended, altered or rescinded without proper notice. The Copperridge CCR's state the following: "The Board of Directors of this corporation shall provide such Bylaws for the conduct of its business and carrying out its purposes as they may deem necessary from time to time. Upon proper notice, By-Laws may be amended, altered or rescinded by a majority vote of those members of the Board of Directors present at any regular meeting, or any special meeting called for that purpose. "

Exhibit 1.

26. The Demand for Relief, is that the Association ignore the properly voted upon and adopted amendment; and rely on a By-Law provision that is no longer the state of the Public Record or law as it governs the Association:

The demand for relief is for the election to be held at the minimum requirement of 10% and for the election monitor to return and hold the election with the unopened stamped ballots. The homeowners also demand the Election Monitor demonstrate the ballots have not been altered, are all present, and then count the ballots before the members to ensure the election was proper.

Exhibit 2.

27. There is no dispute in Defendants' Notice that as of the date of the election the Amendment was of public record and required twenty (20%) percent ballots to be submitted prior to opening same, as stated above. The Defendants' Notice concedes that "[t]his amendment to the bylaws was recorded on March 22, 2022."

As to the Statutory Treatment of Election Disputes Versus Amendment Disputes.

28. The applicable statute, 720.301, et. seq., treats different types of homeowner association disputes in very different manners, so that the nature of the "dispute" is critical.

29. The statute provides for differing rights and obligations between the parties to different types of disputes; as well as differing procedural requirements and differing remedies; all depending on what the “dispute” is pertaining to.

As to the procedural requirements for election disputes pursuant to Fla. Stat. 720.311.

30. Pursuant to 720.311(1) election disputes, i.e., disputes regarding whether or not the ballots were properly cast and counted, are not eligible for presuit mediation, and can be arbitrated by the Department of Business and Professional Regulation, via binding arbitration, *or* can be filed in a court of competent jurisdiction, to wit:

[T]he department shall conduct binding arbitration of election disputes between a member and an association in accordance with s. 718.1255 and rules adopted by the division. Election disputes and recall disputes are not eligible for presuit mediation; these disputes must be arbitrated by the department or filed in a court of competent jurisdiction. (Emphasis added).

31. If a party desires to initiate binding arbitration, then they must provide advance written notice of: (i) the specific nature of the dispute; (ii) A demand for relief, and a reasonable opportunity to comply or to provide the relief; and (iii) Notice of the intention to file an arbitration petition or other legal action in the absence of a resolution of the dispute. *Fla. Stat. s. 718.1255(4)(b).*

As to the procedural requirements for disputes regarding amendments to the association documents, per Fla. Stat. 720.311(2).

32. With disputes regarding amendments to association documents, *Fla. Stat. 720.311(2)* provides that they shall be subject to pre-suit mediation before they may be filed in court, to wit:

Disputes between an association and a parcel owner regarding... amendments to the association documents... shall be the subject

of a demand for presuit mediation served by an aggrieved party before the dispute is filed in court. *Fla. Stat. 720.311(2)(a)*.

33. As stated above, per Fla. Stat. 720.311(1), “election disputes are not subject to per-suit mediation.”

As to the Relief Sought in the Instant Case.

34. As set forth further below, a Declaration from this Honorable Court is needed to confirm the state of and enforceability of the Amendment as of the date of the June 7, 2022 meeting.

35. Defendants are attempting to end-run around their obligations by shoe-horning and conflating their issues with the Amendment into binding arbitration.

36. In the event the Court determines that the Defendant’s Notice does not articulate an election dispute, and that the Association followed an effective enforceable governing document, then Defendants should be enjoined from filing a Petition for Binding Arbitration with the Department of Business and Professional Regulation.

37. Alternatively; in the event the Court determines that the Defendant’s Notice does articulate an election dispute, then Plaintiff, Copper Ridge, is entitled to exercise its right to have the dispute adjudicated by this Honorable Court. *Fla. Stat. 720.311(1)*(“ ***Election disputes*** and recall disputes are not eligible for presuit mediation; these disputes must be arbitrated by the department ***or filed in a court of competent jurisdiction.***”).

COUNT I
DECLARATORY ACTION AGAINST ALL DEFENDANTS
REGARDING THE EFFECTIVENESS AND ENFORCEABILITY OF THE
AMENDMENT AS OF THE JUNE 7, 2022 ANNUAL MEETING

38. Plaintiff re-asserts and reincorporates the allegations set forth in paragraphs 1 through 33, as if same were fully set forth herein:

39. There is a bona fide, actual, present practical need for a declaration as to the parties' rights and obligations the dispute set forth in Defendants' Notice.

40. Should Defendants have an issue with an Amendment or other governing document; they are required to submit to presuit mediation and should mediation not result in a resolution they have the burden to prove that the amendment was wholly arbitrary in its application, is in violation of public policy, or that it abrogates some fundamental constitutional right.

41. Defendants are attempting to litigate their issue with an amendment through an improper mechanism that violates the Association's due process rights as well as the rights granted to it specifically in the statute.

42. There is a present, ascertained or ascertainable state of facts or present controversy as to a state of facts. Defendant's Notice and posturing of their dispute as an election dispute demonstrates the parties have a present controversy between them that needs to be resolved by the Court.

43. Some immunity, power, privilege or right of complaining party is dependent upon the facts or law applicable to facts. That is to say, the effectiveness of the Amendment and its application to the June 7, 2022 annual meeting is dependent on the Court's application of the law regarding governing documents placed in the public record and their effectiveness.

44. Some person or persons who have, or reasonably may have an actual present, adverse and antagonistic interest in the subject matter, either in fact or law.

45. Antagonistic and adverse interests are all before the court by proper process or class representation.

46. The relief sought is not merely giving of legal advice by courts or answer to questions propounded from curiosity.

COUNT II
ADDITIONALLY OR IN THE ALTERNATIVE, DECLARATION AS TO VALIDITY
OF JUNE 7, 2022 ELECTION

47. Plaintiff re-asserts and reincorporates the allegations set forth in paragraphs 1 through 33, as if same were fully set forth herein:

48. In the alternative to Count I, above, should the Court determine the dispute set forth in Defendants' Notice does constitute an election dispute, then Copper Ridge hereby submits same to this Honorable Court for adjudication pursuant to Fla. Stat. 720.311(1).

49. There is a bona fide, actual, present practical need for a declaration as to the validity of the election.

50. There is a present, ascertained or ascertainable state of facts or present controversy as to a state of facts.

51. Some immunity, power, privilege or right of complaining party is dependent upon the facts or law applicable to facts.

52. Some person or persons who have, or reasonably may have an actual present, adverse and antagonistic interest in the subject matter, either in fact or law.

53. Antagonistic and adverse interests are all before the court by proper process or class representation.

54. The relief sought is not merely giving of legal advice by courts or answer to questions propounded from curiosity.

COUNT III
INJUNCTION AGAINST ALL DEFENDANTS FROM FILING ARBITRATION
PETITION

55. Plaintiff re-asserts and reincorporates the allegations set forth in paragraphs 1 through 33, as if same were fully set forth herein:

56. Irreparable harm to Copper Ridge will result if a Petition is filed as pursuant to statute and the Constitution of the State of Florida, Copper Ridge's right to access the courts will be eviscerated, no matter the Court's determination as to the nature of the dispute.

57. There is no adequate remedy at law to remedy this harm.

58. There is a substantial likelihood of success on the merits based on the plain language of the statute and Florida Constitution. It is important to note that the option of filing an action in a Court of competent jurisdiction was only recently added to the statute on July of 2021, thus indicative of the legislature's intent at ensuring litigant's have access to courts in election disputes.

59. The entry of the injunction will serve the public interest as it will at the very least preserve Copper Ridge's right to access the courts, and additionally will obviate the incurring of additional legal fees and costs to the parties and the Association membership as a whole.

WHEREFORE, based on the above, COPPER RIDGE/BRANDON HOMEOWNERS' ASSOCIATION, INC., by and through the undersigned respectfully requests the Court grant the following relief:

- I. Declare that the Amendment was valid, effective and enforceable as of the June 7, 2022 annual meeting.
- II. In the alternative, declare that the election that occurred on June 7, 2022 was properly conducted per the Bylaws and that the seats of directors up for election thus rolled over to the next term.

III. Enjoin the Defendants from filing of an arbitration petition based upon the subject matter set forth in the Defendants' Notice.

IV. Award reasonable attorneys' fees costs incurred by Plaintiff in this matter.

Respectfully submitted this 8th day of July, 2022.

/s/Gregory S. Grossman

Nathan A. Frazier, Esq.

FBN: 92385

Gregory S. Grossman, Esq,

FBN: 0044068

FRAZIER & BOWLES, PLLC

202 S. Rome Ave., Suite 125

Tampa, Florida 33606

T: 813-603-8600

E: pleadings@frazierbowles.com

Ggrossman@frazierbowles.com

tres@frazierbowles.com