

CAUSE NO. 18-1566

SPRINGLAKE PROPERTY OWNERS’ ASSOCIATION, INC.,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	OF HAYS COUNTY, TEXAS
	§	
JOSEF MARTIN AND LEE RAND FLUITT,	§	
	§	
Defendants.	§	_____ JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY AND PERMANENT INJUNCTIONS

Plaintiff Springlake Property Owners’ Association, Inc. (the “SPOA”) files its Original Petition and Application for Temporary Restraining Order and Temporary and Permanent Injunctions complaining of defendants Josef Martin and Lee Rand Fluit (the “Defendants”) for intentional and ongoing violations of the covenants, conditions, and restrictions by deed (the “Springlake CCRs”) protecting the over two hundred single-family residences located in the Springlake, Dripping Springs, Texas (“Springlake”). In particular, this suit arises from Defendants willful and intentional disregard of the CCRs’ prohibition on moving “mobile, modular, prefabricated or factory built home[s]” into Springlake, which they violated when they – without authorization or even advance notice – dropped two run-down former school portable buildings onto two residential lots in the middle of Springlake. Although immediately confronted by the SPOA about this obvious violation of the Springlake CCRs, Defendants refused to remove the portable buildings before ultimately removing one of them. Consequently, SPOA has been compelled to file suit to enforce the Springlake CCRs and force the removal of the remaining derelict former school portable building and to recoup the SPOA’s attorneys’ fees and costs incurred in enforcing the Springlake CCRs on behalf of Springlake’s residents.

I. DISCOVERY CONTROL PLAN/TEXAS RULE OF CIVIL PROCEDURE 47 STATEMENT

1. The SPOA intends that discovery in this matter to be conducted under Discovery Level 3 under Rule 190.2 of the Texas Rules of Civil Procedure.

2. The SPOA seeks monetary relief of \$100,000 or less and non-monetary relief.

II. PARTIES AND SERVICE

3. SPOA is a non-profit corporation established under the laws of the State of Texas and pursuant to the Springlake CCRs and is located in Hays County, Texas.

4. Defendant Josef Martin is an individual resident of Bastrop County, Texas, and may be served with process at his residence/principal place of business located at 187 N. Cedar Creek Dr., Cedar Creek, Texas 78612, or wherever he may be found.

5. Defendant Lee Rand Fluitt is an individual resident of Hays County, Texas, and may be served with process at his residence located at 888 Pioneer Trail, Dripping Springs, Texas, 78620, or wherever he may be found.

III. JURISDICTION AND VENUE

6. This Court has jurisdiction over this case because the amount in controversy is within the jurisdictional limits of the Court. The Court has jurisdiction over Defendants because they are residents of and/or regularly and continuously do business in Hays County, Texas.

7. Venue is proper in Hays County, Texas, pursuant to Texas Civil Practice and Remedies Code (“TCP RC”) section 15.002(a) because this suit involves wrongful acts involving real property that occurred in Hays County, Texas.

IV. FACTUAL BACKGROUND

A. Springlake and the Springlake CCRs

8. The Springlake subdivision is located on the north side of Dripping Springs, Texas, and was established in March 1982. There are currently over 230 single-family residences in Springlake. All lots are governed by the Springlake CCRs that run with the land and are binding on all property buyers. Pursuant to the Springlake CCRs, neighborhood residents operate the all-volunteer, elected SPOA Board and the Springlake Architectural Control Committee (the “ACC”), as the entities designated to enforce the Springlake CCRs.

9. One the most important land use restrictions imposed by the Springlake CCRs is found in Section A(8), which provides:

No mobile, modular, prefabricated or factory built home shall be situated on the property, permanently or otherwise.

Springlake CCRs, section A(8).¹

10. This restriction is an unambiguous and unequivocal ban on the importation into the neighborhood of pre-built, modular-type buildings. In fact, the Springlake CCRs detail that the buildings cannot be mobile or modular and that they must have been built on a home site, not prefabricated or factory-built. The clear purpose of this prohibition is to protect and maintain the property values in Springlake and prevent the neighborhood from being involuntarily converted into a trailer park.

¹ Even if the Portables were merely “used homes,” which they are clearly not, Defendants decision to move them into the neighborhood without first obtaining ACC approval violated the CCRs. *See* Springlake CCR, section A(12) (“No used houses shall be moved upon the property, without the prior written consent of the Architectural Control Committee.”).

B. Defendants Purchase Two Residential Lots in Springlake that They Know Are Governed by the Springlake CCRs

11. In late 2017, defendant Lee Rand Fluitt took title to the abutting residential lots located at 320 and 340 Little Barton Drive, Dripping Springs, Texas (collectively, the “Property”).² The Property can be legally described as Springlake, Lots 18 and 19 (Ref. IDs R43105 and R43106).

12. Also, in November 6, 2017, Martin visited the SPOA to introduce himself and request a hardcopy of the Springlake CCRs. He was provided with a copy of the CCRs and instructed to submit any construction application to the ACC prior to commencing any work to improve the Property. Martin acknowledged that he was familiar with the Springlake CCRs and the procedure for obtaining authorization from the ACC (and, if necessary, the SPOA Board), because he had previously performed construction services on a different residence in Springlake. He left confirming that he would submit a construction application and proceed consistent with the CCRs and established protocol. There was no further communication with Defendants until the following year.

C. Without Warning or Authorization, Defendants Deliver Two Run-Down Portable Buildings to the Property

13. On the afternoon of Thursday, January 4, 2018, Martin delivered partial plans for the improvement of the Property; he stated that more information would be forthcoming. In Defendants’ application, the proposed construction on both lots was described only as “Move wood frame (1536SF) house on to lot and finishout.” The packet included a rough floorplan and

² According to Defendants, defendant Josef Martin, a contractor, has some ownership interest in the Property by virtue of their joint real estate venture. However, Defendants have not disclosed the terms of their arrangement.

a school portable-looking building, but the caption on the picture read “Example Elevation.” There was no indication given that Defendants intended to move two dilapidated former school portable buildings into the neighborhood.

14. A mere four days later and without authorization, Defendants had two former school portables (the “Portables”) delivered to the Property by two flat-bed tractor trailer trucks. In the process of doing so, Defendants went through Springlake in advance and marked and then cut certain limbs on trees (many located on private property) to clear the path for the large trucks. Despite knowing full well that the trucks were en route, Defendants failed to notify the SPOA about the delivery of the Portables. Had they done so, Defendants would have been told to turn the trucks around because Defendants had yet to even begin the application review process. Not surprisingly, the slow progression of the trucks through the neighborhood caused extensive traffic problems interfering with residents’ ability to enter and exit the neighborhood. Also, throughout the day, multiple Springlake residents confronted the drivers demanding to know who was behind the obvious violation of the Springlake CCRs. Ultimately, the unsightly Portables were deposited on the Property sitting on the trailers used to transport them.





15. Later in the day, Martin dropped off additional information to supplement Defendants' application.

D. Defendants' Application Is Considered and Rejected Unanimously

16. The next SPOA Board meeting was scheduled for the same evening. Because Defendants had only dropped off the partial application package of information days earlier, the Defendants' application could not be added to the meeting's agenda. However, Martin was alerted to the meeting and offered an opportunity to address the SPOA Board and the large and growing number of irate Springlake residents. Martin addressed an overflow audience of Springlake residents and put forward a number of arguments in an attempt to portray the Portables as falling outside the broad definition of prohibited buildings, but his arguments were entirely unavailing. He was informed that the ACC wished to meet with him at the Property to inspect the Portables and that his application would be considered carefully, but expeditiously.

17. On January 12, 2018, Defendants submitted an artist's rendition of what the Portables were to look like if Defendants were authorized to move forward with construction. Additional architectural renderings were submitted on January 24, 2018, depicting the planned modifications and improvements to the Portable.

18. On the evening of January 29, 2018, the three members of the ACC met with Martin at the Property. During that meeting, Martin explained the history of the two Portables; namely, that they were in fact former high school "portables" that he had purchased. He was clear that neither building had previously been used as a residence. Martin stated that he was unsure whether the Portables were "factory-built" but he also acknowledged that school portable buildings were typically purchased fully constructed and merely placed on blocks at their final destination (a school yard). Importantly, Martin acknowledged that Defendants were in violation of the CCRs for having failed to follow the prescribed construction review protocol by having the Portables delivered without prior authorization. He gave conflicting explanations for why Defendants disregarded the CCR-mandated process, but he could also not provide any rational argument for how the Portables were not prohibited buildings under the CCRs.

19. Following the meeting with Martin, the ACC voted unanimously to reject Defendants' application as entirely inconsistent with the CCRs. A written rejection was provided.

20. The following week, the ACC and SPOA board held separate meetings. Defendants' application was not on either agenda; however, Martin attended and, again, made his pitch for why the ACC or the SPOA Board should disregard the CCRs, or "grant a variance," and allow Defendants' to proceed with construction. Defendants' requests made at the ACC and SPOA Board meetings were rejected. Defendants were afforded 10 days to remove the Portables

from Springlake.

E. Defendants' Refuse to Comply with the Order to Comply with the Springlake CCRs and Remove the Portables

21. On February 8, 2018, Martin wrote to the ACC in response to the instruction to remove the violative Portables. Instead of complying, Martin made a number of false claims that Springlake had a history of allowing such prohibited buildings and that he was somehow absolved from responsibility to comply with the CCRs based on his November 6 meeting and request for a copy of the CCRs. He then "offered" to partially comply with the CCRs by removing one Portable but only if he was allowed to proceed with construction on the remaining Portable. Martin then threatened to take legal action if the SPOA did not bend to his demands. When Fluit was contacted directly, he merely feigned ignorance of what was transpiring and stated that Martin was the party responsible for any improper actions.

F. The Rejection of Defendants' Application Is Confirmed by Unanimous Votes of the ACC and the SPOA Board

22. On Monday, February 15, 2018, the ACC held a monthly meeting and considered the Defendants' application. After due consideration, the application (and to the extent necessary, Defendants' demand to be excused from compliance with the CCRs) was rejected unanimously. Allowing Defendants to proceed would violate the CCRs that the ACC is required to uphold and diminish the property values of the other homes in Springlake. Defendants were informed of and acknowledged the ACC's decision.

23. The Defendants' application was further considered at the March monthly meetings of the ACC and the SPOA Board. Both entities unanimously confirmed that Defendants' construction application was rejected and that any attempt by the Defendants to move forward with their Portables plan would constitute a violation of the Springlake CCRs. Again,

Defendants acknowledged the decision; however, they refused to comply.

G. SPOA Is Forced to File Suit

24. Subsequently, Defendants removed one of the Portables from the Property, but the other remains there today. The remaining Portable is an eye sore to residents, detrimental to neighborhood property values, and is evidence of Defendants' flagrant disregard of the Springlake CCRs and disrespect for their neighbors.



25. Because Defendants refuse to remove the remaining Portable from the Property or acknowledge that they have no right to return the second to the Property, it has become necessary to file suit to force Defendants to abide by the Springlake CCRs and protect the property rights of their neighbors.

V. CAUSES OF ACTION

Count I Enforcement of Springlake CCRs

26. Springlake CCRs run with the land and all property purchasers in the Springlake are subject to the limitations and restrictions contained therein.

27. Like all the other hundreds of residential property owners in Springlake, the Defendants took title to the Property subject to the Springlake CCRs.

28. Pursuant to the Texas Property Code, the SPOA has authority to enforce the Springlake CCRs via litigation against property owners subject to the Springlake CCRs.

29. The Springlake CCRs prohibit property owners from situating any “mobile, modular, prefabricated or factory built home . . . , permanently or otherwise,” on any property in Springlake.

30. On January 8, 2018, Defendants relocated two used former high school portable – prohibited buildings – to the Property.

31. Consequently, Defendants intentionally and knowingly violated section A(8) of the Springlake CCRs.

32. Defendants’ misconduct has and will continue to harm the residents of Springlake.

Count II Request for Declaratory Relief

33. There currently exists an actual, justiciable controversy between the SPOA and Defendants concerning their respective rights and obligations under the Springlake CCRs.

34. The SPOA seeks a declaration of the Court to settle and afford relief from

uncertainty with respect to Defendants' flagrant violations of the Springlake CCRs.

35. In particular, the SPOA seeks a judicial declaration that (i) Springlake CCRs run with the land and all property purchasers in the Springlake are subject to the limitations and restrictions contained therein, (ii) the Defendants took title to the Property subject to the Springlake CCRs, (iii) the SPOA has authority to enforce the Springlake CCRs via litigation against property owners subject to the Springlake CCRs, (iv) the Springlake CCRs prohibit property owners from situating any "mobile, modular, prefabricated or factory built home . . . , permanently or otherwise," on any property in Springlake, and (v) Defendants' relocation of two used former high school portables into Springlake, violates the Springlake CCRs.

Count III

Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction

36. By this application, the SPOA seeks to have the Court issue a temporary restraining order, temporary injunction, and permanent injunction ordering Defendants to cease and desist from (i) all construction activity on the Property, (ii) the transport of any prohibited building through Springlake, or (iii) any destruction of trees or private property in Springlake.

37. Furthermore, the SPOA requests a mandatory injunction ordering Defendants to permanently remove the portable building currently located on the Property with notice to SPOA to give adequate notice to reside and assist in coordinating neighborhood traffic during removal of the Portable.

38. *Probable right to relief on final trial.* There is no reasonable possibility that the SPOA will not prevail after a trial on the merits because it is beyond dispute that the Defendants' Portables are prohibited buildings under the Springlake CCRs in that they are subject to the ban

on “mobile, modular, prefabricated or factory built home[s]. Defendants’ arguments to the contrary are simply nonsensical. Furthermore, Defendants have already admitted in private and in public that they violated the Springlake CCRs by introducing the Portables to Springlake without prior authorization.

39. *Imminent harm.* Given the nature of the dispute at issue, the Defendants’ ongoing violation of the Springlake CCRs constitutes an imminent harm to the residents of Springlake as, at least in part, a direct threat to the values of their neighboring homes. The continued presence of a prohibited building in the neighborhood also creates the potential for other outside real estate investors to believe that they can violate the Springlake CCRs for their own pecuniary gain without any consequences. Consequently, it is of paramount importance that Defendants be immediately enjoined.

40. *No adequate remedy at law.* Given the nature of the dispute at issue, Defendants’ ongoing misconduct is causing the residents of Springlake irreparable injury. Put simply, Defendants’ misconduct is fundamentally jeopardizing Springlake residents’ property values and the peaceful enjoyment of their homes.

VI. ATTORNEYS’ FEES

41. Because of Defendants’ misconduct, it has been necessary for SPOA to retain counsel to prosecute its claims. Pursuant to Texas Property Code section 5.006, Texas Property Code, Chapter 209.008, and Texas Civil Practice and Remedies Code section 37.009, SPOA is entitled to recover costs of Court and reasonable, equitable, and just attorneys’ fees incurred in enforcing the Springlake CCRs, including, but not limited to, fees incurred through all stages of the Texas courts, both trial and appellate courts, in order to obtain a final judgment.

VII. CONDITIONAL PRECEDENT

42. Each condition precedent to SPOA's recover herein has been performed or has occurred.

VIII. CONSOLIDATED ALLEGATIONS

43. Each of SPOA's allegations is expressly incorporated into each of the allegations set forth herein.

X. REQUEST FOR DISCLOSURE

44. Pursuant to Texas Rule of Civil Procedure 194.3(a), Defendants are requested to disclose the information or materials described in Rule 194(a)-(1).

XI. CONCLUSION

For the reasons stated above, SPOA requests that Defendants be cited to appear and answer and that on final trial, SPOA be awarded judgment for the following:

- (a) A declaration that (i) Springlake CCRs run with the land and all property purchasers in the Springlake are subject to the limitations and restrictions contained therein, (ii) the Defendants took title to the Property subject to the Springlake CCRs, (iii) the SPOA has authority to enforce the Springlake CCRs via litigation against property owners subject to the Springlake CCRs, (iv) the Springlake CCRs prohibit property owners from situating any "mobile, modular, prefabricated or factory built home . . . , permanently or otherwise," on any property in Springlake, and (v) Defendants' relocation of two used former high school portable into Springlake, violates the Springlake CCRs.
- (b) A temporary restraining order, temporary injunction, and permanent injunction ordering Defendants to cease and desist from (i) all construction activity on the Property, (ii) the transport of any prohibited building through Springlake, or (iii) any destruction of trees or private property in Springlake.
- (c) A temporary restraining order, temporary injunction, and permanent injunction ordering Defendants to permanently remove the portable building currently located on the Property with notice to SPOA to give adequate notice to reside and assist in coordinating neighborhood traffic during removal of the Portables.

- (d) Reasonable, equitable, and just attorneys' fees and Court costs; and
- (e) All other relief, whether general or special, at law or in equity to which SPOA is entitled.

Dated this 9th day of July 2018.

Respectfully submitted,

KING LAW GROUP PLLC

/s/ Richard C. King Jr.

Richard C. King Jr.

Texas Bar No. 24007491

J. Brandon Barnes

Texas Bar No. 24097341

1326 West Highway 290, Suite A

Dripping Springs, Texas 78620

Tel: 512.263.8212

Fax: 512.900.2918

rking@kinglitigationgroup.com

bbarnes@kinglitigationgroup.com

*Attorneys for Plaintiff Springlake Property Owners'
Association, Inc.*