

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

TWIN ACTION PROPERTIES, INC. and RK
DEVELOPMENT OF TALLAHASSEE, INC.,

Plaintiffs,

CASE NO.: 2006-CA-1530

v.

JUDGE: Gary

GOLDEN EAGLE HOMES ASSOCIATION,
INC.,

Defendant.

FILED
CIRCUIT CIVIL DIV.
06 JUN 16 AM 9:06
BOB INZER
CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA

COMPLAINT

The Plaintiffs, TWIN ACTION PROPERTIES, INC. and RK DEVELOPMENT OF
TALLAHASSEE, INC., sue the Defendant, GOLDEN EAGLE HOMES ASSOCIATION, INC.,
and allege:

COPY

GENERAL ALLEGATIONS

1. This is an action within the jurisdictional limits of this Court.
2. The Plaintiff, TWIN ACTION PROPERTIES, INC. (hereinafter "TAP"), is a Florida corporation with its principal place of business in Tallahassee, Leon County, Florida.
3. The Plaintiff, RK DEVELOPMENT OF TALLAHASSEE, INC. (hereinafter "RKD"), is a Florida corporation with its principal place of business in Tallahassee, Leon County, Florida.
4. The Defendant, GOLDEN EAGLE HOMES ASSOCIATION, INC. ("GEHA" or "Association"), is a Florida corporation not for profit with its principal place of business in Tallahassee, Leon County, Florida.

5. In January, 1999, TAP purchased the remaining developed and undeveloped land in the Golden Eagle Subdivision (hereinafter "Golden Eagle") from Capital First Holdings, Inc. (hereinafter "Capital First"). On this date, all of the remaining properties owned by the developer in Golden Eagle, with limited exceptions, were deeded to TAP. A copy of the Warranty Deed from Capital First to TAP is attached hereto as Exhibit "A".

6. At or about the same time, a conveyance of what is now known as the East Gate Guard House and Information Center (hereinafter "EGGH/IC")¹ was separately made by Capital First to RKD. A copy of the Warranty Deed from Capital First to RKD dated January 19, 1999, is attached hereto as Exhibit "B", and Title Policy confirming ownership is attached as Exhibit "C".

7. Prior to the purchase of Golden Eagle by TAP and the conveyance of the EGGH/IC to RKD, Capital First and the Association entered into an Agreement dated April 13, 1998, a copy of which is attached hereto as Exhibit "D". The Agreement contemplated the transfer of the EGGH/IC to the Association at the completion of the Lease Agreement then in effect with a third-party tenant, on or about October 31, 1999. However, Golden Eagle was sold to TAP prior to October 31, 1999, and the EGGH/IC was conveyed to RKD as a part of the overall sale.

8. At all pertinent times hereto, TAP has been and remains the owner of Golden Eagle and by virtue of this ownership is a member of the Association entitled to cast votes in proportion to the number of lots it owns.

¹ The EGGH/IC comprises both the Guard House portion which is an octagonal shaped building with bathroom facilities and the physical entry/exit gates attached; and a separate Information Center comprised of three offices, kitchen and bathroom facilities, and a reception area.

9. At all pertinent times hereto, RKD has been the owner of the EGGH/IC. RKD has paid the property taxes and insurance, and is reflected as the owner of record in the Leon County Property Appraiser's and Tax Collector's offices. See attached Exhibits "E and "F.

10. On or about April 25, 2000, a Settlement Agreement and Release was entered into between the Association and TAP, Twin Action Realty, Inc. ("TAR"), and RKD, a copy of which is attached hereto as Exhibit "G", which resolved a pending suit between Capital First and the Association. The Agreement specifically provided that TAP, TAR, and RKD were released from any obligations that previously attached to Capital First resulting from the April 1998 Agreement between Capital First and the Association attached as Exhibit "D"; recognized RKD's ownership of the EGGH/IC and agreed that RKD would transfer its interest in the EGGH/IC within six months following the date on which at least ninety percent of the property purchased by TAP from Capital First was sold to non-related third-party end-user purchasers and the sales were closed and fully consummated; and granted the Association permission to continue occupancy of the Information Center portion of the EGGH/IC.

11. The terms of the 2000 Settlement Agreement and Release were subsequently approved and ratified by the Association at a Special Board Meeting of the Association on April 24, 2000. See attached Exhibit "H".

12. The lawsuit referenced in paragraph 10 above was dismissed by the Association on or about May 2, 2000.

13. On May 8, 2000, the Association notified all Golden Eagle property owners that the lawsuit between the Association and Capital First had been resolved; that TAP had assumed a limited role as developer and had no responsibility for the terms of the April 1998 Agreement between the Association and Capital First. A copy of the letter is attached hereto as Exhibit "I".

14. To date, TAP has not sold ninety percent of its Golden Eagle inventory to end user purchasers as contemplated by the terms of the 2000 Settlement Agreement and Release, and attached as Exhibit "G". (§2 of Settlement Agreement).

15. With RKD's permission and consent, the Association has been allowed to utilize space in the Information Center to administer to Association business since August 30, 2001. This arrangement was pursuant to a verbal agreement; there is no written lease.

COUNT I
(Declaratory Judgment - EGGH/IC)

16. Plaintiff RKD brings this action for declaratory and injunctive relief to confirm ownership of certain property and to evict the Association from real property located in Leon County, Florida.

17. RKD realleges paragraphs 1 through 15, as if specifically set forth herein.

18. On February 1, 1999, the Warranty Deed attached as Exhibit "B" was recorded in OR Book R2213, Page 01966 of the Public Records of Leon County, Florida.

19. RKD has been in continued possession of the property attached as Exhibit B, and its possession has been open, exclusive, and notorious.

20. RKD has utilized the subject property attached as Exhibit B for its ordinary use or that of its affiliated companies, and has allowed the Association to occupy portions of the Information Center with its permission and consent.

21. Although RKD has legal title to the EGGH/IC, it also has title by adverse possession pursuant to the provisions of §95.16, Florida Statutes.

22. On May 23, 2006, Plaintiff served the Association's Registered Agent with a 15 day notice to vacate the premises, a copy of which is attached hereto as Exhibit "J".

23. The Association has refused to vacate the Information Center and instead asserts that it is the owner of the EGGH/IC. A copy of the letter from the Association is attached hereto as Exhibit "K".

24. RKD is in doubt about its rights under the Warranty Deeds, Agreements and related documents referenced above which appear to vest title in RKD but which is disputed by the Association, and seeks declaratory and injunctive relief confirming RKD's sole ownership interest in the subject property.

25. RKD requests a speedy hearing of this declaratory judgment action and requests that it be advanced on the calendar pursuant to the provisions of §86.111, Florida Statutes.

26. RKD seeks attorneys fees and costs pursuant to §83.231, Florida Statutes.

WHEREFORE, the Plaintiff, RK DEVELOPMENT OF TALLAHASSEE, INC. demands judgment declaring it the owner of the subject property entitled to sole possession; entering a judgment for eviction against the Defendant, GOLDEN EAGLE HOMES ASSOCIATION, INC.; together with attorneys fees, costs, and such further relief as this Court deems just and proper.

COUNT II

(Declaratory Judgment – Amendment of Covenants)

27. Plaintiff TAP brings this action for declaratory and injunctive relief.

28. TAP realleges paragraphs 1 through 15, as if specifically set forth herein.

29. TAP is an owner of lots in Golden Eagle and is a member of the Association.

30. Killlearn Properties, Inc. (hereinafter "KPI"), the initial Developer of Golden Eagle, desired to establish and did establish a deed restricted, master planned community subject to various restrictive covenants, and thus created the Association. In so doing, the Developer recorded the Articles of Incorporation (hereinafter "Articles") and By-laws of the Association,

which are attached as Exhibits "L" and "M". In pertinent part, these documents provided that any owner of a lot subject to the Restrictive Covenants affecting Golden Eagle and subject to assessment by the Association is a member of the Association. These documents create only one voting class of membership. (Articles V, VI).

31. Because of the vast size of the overall Golden Eagle development project, Golden Eagle has continually been developed over a long period of time. As a result of this ongoing development, different Units and Phases were and are being created. As each new Unit or Phase came into existence, a set of Restrictive Covenants was recorded which governed that Unit or Phase and which related back to the original Restrictive Covenants for the Golden Eagle Unit No. 1. A copy of the Declaration of Covenants and Restrictions for Golden Eagle, Unit 1 (hereinafter "Declaration" or "Restrictive Covenants"), dated August 20, 1985, and recorded on August 27, 1985, in the Public Records of Leon County, Florida, in Official Records Book 1173, at Page 1876, is attached hereto as Exhibit "N". All Restrictive Covenants governing Golden Eagle, regardless of Unit or Phase, contained a provision for membership status in the Association, and consistently provided for a one vote per lot owned mechanism by which all lot owners cast votes regarding Association business, including the amendment of the Restrictive Covenants of Golden Eagle.

32. Article IV of the Articles defines the purposes of the Association as providing for the maintenance, preservation and architectural control of the residential lots and common areas within the designated tract of property, *and additions thereto* as may hereafter be brought within the jurisdiction of the Association, thus contemplating an ongoing and uniform scheme of development for Golden Eagle.

33. Likewise, the By-Laws define "Lot" as those parcels of land within the Properties designated for residential development, and "Properties" as the tract of property described in the Declaration and *such additions thereto* as may be brought within the jurisdiction of the Association (Article II, §§5, 8).

34. The Restrictive Covenants run for a period of fifty years and are automatically extended for successive periods of ten years unless terminated by an affirmative vote of 3/4 of the lot owners of all the properties annexed by the particular Declaration or similar Covenants. Amendments to the Declaration can be made at any time with the consent and approval of not less than 3/4 of all Lot owners. No Amendment is allowed which discriminates against any Lot owner or group of Lot owners without their express consent. (Article VII, Section 3 of Declaration).

35. When TAP purchased Golden Eagle, numerous Units already existed. Each Unit had applicable and related restrictive covenants, all of which related back to the original Golden Eagle Unit No. 1, which were similar in most respects and constituted a continuing development scheme to preserve the integrity and harmony of the overall Golden Eagle development. Golden Eagle is currently comprised of approximately 18 Units and 4 Phases and has correlating Restrictive Covenants for each and every one. Such continuity between the Restrictive Covenants and the overall Development Plan was contemplated from the beginning of this development, which contains approximately 950 developed lots.

36. The Restrictive Covenants comprise a uniform and agreed upon set of rules by which the members of the Association have agreed to live. They also serve to create a unique and enforceable contractual relationship between the Lot owners and the Association, and between the Lot owners amongst themselves. Because the Restrictive Covenants create these

contractual relationships, duties and obligations upon which all Lot owners throughout Golden Eagle can rely and do rely upon, amendments to the Restrictive Covenants, while possible, are by design difficult to accomplish.

37. All of the Restrictive Covenants for the various Units and Phases within Golden Eagle provide for amendment of the Restrictive Covenants by an affirmative vote of 3/4 of all Lot owners subject to assessment by the Association. All of the various Units and Phases within Golden Eagle are under the jurisdiction of the Association and all Lots within the various Units and Phases are subject to assessment and pay Association dues.

38. The Association has taken the unusual position that the Restrictive Covenants can be amended by a vote of 3/4 (75%) of the individual Lot owners living in a particular Unit or phase of Golden Eagle², rather than 3/4 (75%) of all members of the Association, thus circumventing the uniform methodology and harmony contemplated and set forth by the developer of Golden Eagle, as manifested through the Restrictive Covenants.

39. TAP believes the Restrictive Covenants can be amended only upon an affirmative vote of 3/4 (75%) of the entire membership of the Association, and not the affirmative vote of 3/4 (75%) of the membership of a particular Unit or Phase.

40. On May 17, 2006, the Association executed a Certificate of Amendment to Golden Eagle Unit #6 – Phase I Residential Declaration of Covenants and Restrictions, and to Golden Eagle Residential Declaration of Covenants and Restrictions Eagles Ridge Unit 5B, copies of which are attached as Exhibits “O” and “P”. The Amendments remove a provision from the Restrictive Covenants entitled Resale of Property. As reflected by the Certificates, an

² For instance, Unit 5b contains 10 lots owned by 10 Lot owners, all of whom are members of the Association. In the Association’s view, 8 affirmative votes are sufficient to amend the Restrictive Covenants for Unit 5b.

affirmative vote of greater than 3/4 (75%) of the Lot owners of only Golden Eagle Unit #6 - Phase I³ and Eagles Ridge Unit 5B⁴ was received on the matters, instead of 3/4 (75%) of all members of the Association.

41. The members of the Association, other than those Lot owners in the affected Units and Phases who cast votes, were not solicited to vote and were not allowed to vote on the matters. Contrary to the unambiguous intent of the Restrictive Covenants, the remainder of the members of the Association were voiceless in the amendment process.

42. The attempted Amendment of the Restrictive Covenants referenced in Paragraph 36, above, is invalid and contrary to the controlling documents of the Association, which mandate an affirmative vote of 3/4 of the membership of the Association.

43. TAP is in doubt about its rights under the Restrictive Covenants, Articles, By-Laws, and related documents of Golden Eagle and the Association, and specifically, how the requirement to amend the Restrictive Covenants is to be construed, and seeks declaratory relief in addition to injunctive and supplemental relief.

44. TAP seeks attorneys fees for bringing this action pursuant to the provisions of Chapter 720 Florida Statutes.

45. TAP requests a speedy hearing of this declaratory judgment action and requests that it be advanced on the calendar pursuant to the provisions of §86.111, Florida Statutes.

³ 24 of the 29 Lot owners in Unit 6 Phase I cast an affirmative vote, or approximately 83%.


⁴ 8 of the 10 Lot owners in Unit 5b cast an affirmative vote, or 80%.

WHEREFORE, TAP requests a declaratory judgment against the Association, declaring the Amendment process followed by the Association as it relates to the Golden Eagle Unit #6 and Eagles Ridge Unit 5B to be invalid, declaring that an affirmative vote by the requisite percentage of all members of the Association is required to amend the Restrictive Covenants; invalidating and canceling of record the Certificates of Amendment dated May 17, 2006, and awarding TAP its attorneys fees, costs, and such further relief as this Court deems just and proper.

Dated this 16th day of June, 2006.

Respectfully Submitted

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