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| DISTRICT COURT, EL PASO COUNTY, STATE OF COLORADO<br><br>Address: 270 S. Tejon St<br>Colorado Springs, CO 80903 | |
| **Craig Pryor**<br>*Plaintiff*<br><br>v.<br><br>**Red Rock Ranch Homeowners Association**<br>*Defendant* | **Δ COURT USE ONLY Δ**<br>Case No.: 2025CV030651<br><br>Division/Ctrm.: 14 |
| *Attorney for Defendant*<br>MOELLER GRAF, P.C.<br>Britton D. Weimer, #58943 – bweimer@moellergraf.com<br>Address: 9557 South Kingston Court<br>Englewood, Colorado 80112<br>Phone Number: (720) 279-2568 | |
| **DEFENDANT'S SUMMARY JUDGMENT MOTION** | |

Defendant Red Rock Ranch Homeowners Association ("Association"), through its counsel Moeller Graf P.C., submits this motion for summary judgment against Plaintiff Craig Pryor.

## STATEMENT OF CONFERENCE

The parties through their counsel have conferred in good faith about this summary judgment motion and Plaintiff's cross motion for summary judgment motion, seeking to narrow the scope of the issues. We respectfully oppose each other's motions.

## UNDISPUTED FACTS

Defendant Red Rock Ranch Homeowners Association is a nonprofit corporation homeowners association in Monument, Colorado. (Lonnquist Declaration Par. 1)

Defendant's 2002 Restrictive Covenants ("Covenants") provided in material part that "These covenants and restriction shall be a part of all contracts of conveyance for any lots and property in the subdivisions and shall be binding on all parties and persons claiming them until January 1, 2010, at which time said covenants and restrictions shall terminate; provided, however, they may be extended for additional periods up to twenty years by agreement of a majority of the lot owners in the subdivision." At all material times, Defendant had its Covenants filed with El Paso County. (Lonnquist Declaration Par. 2 and Exhibit A)

Due to a good-faith administrative omission and oversight by Defendant's Board, the 2002 Covenants were not formally renewed on January 1, 2010. (Lonnquist Declaration Par. 3) Defendant's Board promptly acted when it realized the oversight and began the process of extending the Covenants in early 2010. (Id.) Because 2002 Covenants did not specify when an extension had to be initiated, the Board, acting in good faith and with no malicious intent, concluded the wording above allowed them to extend the covenants as a valid remedy for the "expired" covenants. (Id.) So, without any material changes to the wording from the previous version of the covenants, the Board obtained a majority approval of the lot owners to extend the covenants with a new expiration date of January 1, 2020, and recorded them with the County Clerk on May 24, 2010. (Id., Exhibit B)

In 2017, the Board updated the Covenants, extending their term through January 1, 2030. (Lonnquist Declaration Par. 4)

On or about January 4, 2016, Plaintiff bought his home in Red Rock Ranch. (Lonnquist Declaration Par. 5) The May 24, 2010 Covenants were in place over 5 years before Plaintiff bought his home. (Id.)

In August of 2016, Plaintiff submitted an Architectural Control request to extend his garage, which was approved by the Board. (Lonnquist Declaration Par. 6 and Exhibit C)

In August of 2019, Plaintiff submitted another Architecture Control request and paid the

Architecture Control fee to add a second storage unit and extend a deck, which were approved by the Board. (Lonnquist Declaration Par. 7 and Exhibit D)

Defendant's Board has regularly filed required documents on behalf of the Association with the Internal Revenue Service, the Colorado Business Registry, and the Department of Regulatory Agencies. (Lonnquist Declaration Par. 8)

Defendant's donations are $75/year per Member and are voluntary. (Lonnquist Declaration Par. 9) Defendant's financial records go back to 2016, and those records indicate Plaintiff has never paid his annual voluntary donations, apart from one time in 2016. (Id.)

In the February 2020 Board meeting, Plaintiff first raised a question about the validity of the extension of the Covenants. (Lonnquist Declaration Par. 10) The Board responded to him in a March 3, 2020 letter explaining its legal representation in drafting the 2017 renewal Covenants. (Id., Exhibit E)

Plaintiff ran for election to the Board in 2022 and 2023. (Lonnquist Declaration Par. 11) When running in 2022, his candidate letter to Defendant's homeowners stated that one of his goals was "…to eliminate uncertainty in our covenants… As a result, the Board will spend less money on needless legal expenses…" (Id., Exhibits F and G) Plaintiff was not elected as a director in either 2022 or 2023. (Id.)

Plaintiff ran again for election to the Board in 2024. (Lonnquist Declaration Par. 12) His candidacy letter to members had 3 priorities including "...clear, reasonable, and understandable covenants. Some of our covenants could use a little work. With the help and input of homeowners, appropriate updates can be made easily, and at little expense. The goal would be clarity, as I am a homeowner advocate and I'm not in favor of more restrictions." (Id., Exhibit H) Plaintiff's letter did not state that the Covenants were expired or terminated. (Id.) He withdrew his candidacy just before the election. (Id.)

Plaintiff has not made the Board aware of any financial damages to him related to the Covenants. (Lonnquist Declaration Par. 13)

Defendant has 210 Members. (Lonnquist Declaration Par. 14) Since its inception, Defendant's Board of Directors has sought to responsibly and fairly administer the Covenants to maintain the Members' property values, approve architecture requests, ensure financial stability, maintain common areas, and provide beneficial services to members including Firewise and spring cleanup. (Id.)

In 2017/2018, Defendant became a designated Firewise Community, with fuel reduction for disabled Lot Owners, with help from community organizations and the Colorado State Forest Service. (Lonnquist Declaration Par. 15) This allowed Defendant to set up a method to reach multiple homes to reduce fuels and do home assessments to help residents harden their homes. (Id.) This also saves money on some homeowner's home insurance. (Id.) Defendant's Firewise committee has reduced fuels annually for 45 to 65 homes annually. (Id.)

In 2019, Defendant was one of 7 neighborhoods, nationally, picked by National Fire Protection Association to find methods to successfully implement fire mitigation to reduce fuels on private property. (Lonnquist Declaration Par. 16)

Between 2018 and 2020, Defendant received over $9000 in grants. (Lonnquist Declaration Par. 17) Defendant's model spread widely nationally and even internationally through education by the Tri lakes Methodist Church Emergency Preparedness group and statewide thru Fire Adapted Colorado. (Id.)

Since becoming a member of the Association in 2015, Plaintiff has submitted more than 80 pieces of correspondence to Defendant's Board. (Lonnquist Declaration Par. 18) In each case, while often not agreeing with Plaintiff's positions, the Board nevertheless carefully considered his issue/concern in developing the Board's response. (Id.) For perspective, most of Defendant's 210 Members have never submitted correspondence to the Board, with the exception of architecture change requests. (Id.) Many of those Members have lived there far longer than Plaintiff. (Id.)

## PLEADINGS

Plaintiff's Complaint against Defendant alleges two counts: (1) breach of contract – breach of good faith and fair dealing and (2) declaratory judgment. Defendant's Counterclaim against Plaintiff alleges tortious interference with contracts.

## CRCP 56 STANDARD

Under Rule 56, summary judgment is granted when the pleadings and other documents establish there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Civil Serv. Comm'n v. Pinder*, 812 P.2d 645, 649 (Colo. 1991).

"Whenever summary judgment is sought, the moving party bears the initial responsibility of informing the court of the basis for his motion and identifying those portions of the record and of the affidavits, if any, which he believes demonstrate the absence of a genuine issue of material fact." *Continental v. Keenan*, 731 P.2d 708, 712 (Colo. 1987), citing *Celotex Corp. v. Catrett*, 106 S.Ct. 2548, 2553 (1986).

"If the nonmoving party cannot muster sufficient evidence to make out a triable issue of fact on his claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law." *Continental*, 731 P.2d at 713, citing *Anderson v. Liberty Lobby, Inc.,* 106 S.Ct. 2505 (1986).

"The purpose of summary judgment is to permit the parties to pierce the formal allegations of the pleadings and save the time and expense connected with trial when, as a matter of law, one party could not prevail." *Peterson v. Halsted,* 829 P.2d 373, 375 (Colo. 1992). Summary judgment is not "a disfavored shortcut," but is an "integral part" of the rules of civil procedure, which are designed to secure the "just, speedy and inexpensive determination of every action." *Celotex*, 106 S.Ct. at 2555.

"Factual disputes will not defeat an entry of summary judgment if the disputed facts are not material to the outcome of the case." *Svanidze v. Kirkendall,* 169 P.3d 262, 264 (Colo. App. 2007). "In the context of summary judgment, a genuine issue of material fact is one which, if resolved, will affect the outcome of the case." *City of Aurora v. ACJ Partnership*, 209 P.3d 1076, 1082 (Colo. 2009). "Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson*, 106 S.Ct. at 2510.

## LEGAL FRAMEWORK

The "governing documents" of a homeowners association are: "The declaration, bylaws, articles of incorporation, if the association is incorporated, and rules and regulations adopted by the association, or any of these instruments." C.R.S. § 38-33.3-103(13). "Covenants" are normally synonymous with "declarations." See *Hiwan Homeowners Ass'n v. Knotts,* 215 P.3d 1271, 1272-73 (Colo. App. 2009) (using the terms interchangeably).

Declarations legally "create" the common-interest community. *Evergreen Highlands Ass'n v. West*, 73 P.3d 1, 9 (Colo. 2003). An association's declaration is construed to avoid "absurd" results. *Id.* at 6. "[T]he continuation of the economic prosperity of Colorado is dependent upon the strengthening of homeowner associations." *Id.* at 8.

## ARGUMENT

Six independent legal bases establish that Plaintiff's case is without merit:

**First**, the statutes of limitation have long passed on any errors occurring back in 2010.

Governing documents are a contract between the owner and the Association. *Briargate Ass'n v. Nelson*, 494 P.3d 1149, 1157 (Colo. App. 2021). The statute of limitations for breach of written contracts is three years. C.R.S. § 13-80-101(1)(a). So that limitation period applies to count one of Plaintiff's Complaint for breach of contract.

Since there is no specific statute of limitations applicable to declaratory judgment actions, the two-year catch-all statute of limitations applies to that count. *Harrison v. Pinnacol Assur*., 107 P.3d 969, 972 (Colo. App. 2004) (citing C.R.S. § 13-80-102(1)(i), which is applicable to actions for which no other period of limitation is provided). See also *Lake Shore Ests. Homeowne Ass'n v. Chritton,* 2025 Colo. Dist. LEXIS 270 (Colo. App. 2025) ("The Court concludes the two-year statute of limitations for declaratory judgment actions applies. The parties have not identified a specific statute of limitations for a declaratory judgment regarding the invalidity of a declaration in a pre-CCIOA community").

Recording instruments such as declarations give constructive notice to all parties. "When a party properly records his interest in property with the appropriate clerk and recorder, he constructively notifies 'all the world' as to his claim." *Franklin Bank, N.A. v. Bowling*, 74 P.3d 308, 313 (Colo. 2003).

Here then, when purchasing his property in January of 2016, Plaintiff had constructive notice of the Declaration and any potential flaws. His statutes of limitation began to run at that time, and they expired in January of 2018 (declaratory judgment) and January of 2019 (contract).

**Second**, Plaintiff is barred by laches from now challenging the declaration. The doctrine of laches bars stale claims where there has been unreasonable delay and resulting prejudice. "The essential element of laches is unconscionable delay in enforcing a right under the circumstances, usually involving a prejudice to the one against whom the claim is asserted." *Hickerson v. Vessels*, 316 P.3d 620, 623 (Colo. 2014).

Here, Plaintiff lived under the declaration and other governing documents for years, paid assessments, and otherwise behaved as though the documents were valid. He waited fifteen years to challenge the 2010 documents — long after the community, Association, and property owners relied on them to govern daily affairs, levy assessments, enforce restrictions, and convey properties. The combination of accepting the documents for years, and the Association and the members all relying on their enforceability, with budgets, assessments, enforcement, and property sales all proceeded under them, would create significant prejudice if they were undone now. (See Lonnquist Declaration Par. 19-21)

**Third**, the lawsuit is invalid because Plaintiff failed to join indispensable parties. Specifically, he had to join all the members who might be affected by his requested relief — which means **all** the Association members.

Plaintiff sued the Association as an individual member. Yet he seeks to undermine the Declaration contracts between all members and the Association. And he has failed to join other potentially affected parties, whose contracts with the Association are greatly affected, as required by Rule 19 (necessary parties) and Rule 57 (declaratory judgments). "When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." CRCP 57(j).

For example, in *Clubhouse at Fairway Pines v. Fairway Pines Estates Owners*, 214 P.3d 451, 456 (Colo. App. 2008), the Court of Appeals held that lot owners in a planned unit development were indispensable parties in action against owners association in which operator of temporary golf club facility asserted claims including breach of the declaration and restrictive covenants based on association's failure to collect club dues for operator's benefit. The action was, in substance, one for declaratory judgment requiring interpretation of term “club” in declaration, such that all members having financial interests that would be affected by judgment had to be made parties. Joinder of all homeowners was required where the declaration interpretation would direct the use of their funds, and the declaratory relief affected the collective financial obligations of members required them all to be parties.

Likewise, in *Good v. Bear Canyon Ranch Ass’n, Inc.,* 160 P.3d 251, 256 (Colo. App. 2007), the court required all 53 homeowners affected by plaintiff’s suit against the HOA to be joined as parties, in a suit challenging an HOA amendment that changed use restrictions for guest and caretaker houses. The court cited important factors including injury to the absent party, the danger of inconsistent decisions, avoidance of multiplicity of suits, and the reluctance of a court to render a decision that will not finally settle the controversy before it. *Id.*

Similarly, in *Dunne v. Shenandoah Homeowners Ass'n,* 12 P.3d 340, 344-45 (Colo. App. 2000), the trial court properly required joinder of all owners of tracts within development as indispensable parties in property owner's action against a homeowners’ association to enforce restrictive covenant prohibiting property owners from maintaining sheep on any tracts in the sub-area. All individual owners were affected by the complaint requesting a declaration that covenants controlled maintenance of animals in the sub-area, and individual members of association had potentially conflicting interests with each other and with association itself. "[T]he interests of all the individual landowners were affected."

Here, the dispute is even **more** significant to members than in the cases above. There, the Courts required joinder even when the dispute concerned specific amendments and limited financial obligations. By contrast, this case challenges the validity of the entire Declaration.

Indeed, if Plaintiff were to prevail, he would completely void the Association's Declaration, rendering the HOA non-functional. All the Association's other instruments — its Articles of Incorporation, Bylaws, and Rules and Regulations — exist solely by virtue of the Declaration's grant of authority. The Articles define the Association's members as the Owners of Units as defined in the Declaration, and limit its corporate purposes to the administration and enforcement of that Declaration. If the Declaration were declared invalid, the Association would be left without any legally defined membership or purpose, rendering it a corporate shell with no constituency or lawful authority to act. The same is true of the Bylaws, which are expressly adopted pursuant to the Declaration. If the Declaration falls, the Bylaws fall with it. The Association would lack any enforceable procedures for elections, budgets, or meetings, and all past actions taken under those Bylaws — including approval of budgets, adoption of assessments, and election of directors — would be subject to challenge as ultra vires. (See Lonnquist Declaration Par. 19)

If Defendant's Declaration were to be voided and unenforceable, the HOA would cease to exist as a functioning governance entity. That outcome would *necessarily* alter the legal relationships among *all* owners. (See Lonnquist Declaration Par. 20) In effect, the lawsuit seeks to dissolve and radically redefine a property regime created by all owners collectively, meaning each owner's consent and participation is indispensable. So this is obviously a case on which all members must be included. Thus, the potential effect of our case is universal, structural, and inseparable.

In addition, if the Court were to invalidate the HOA's governing documents, every owner's title, voting rights, maintenance responsibilities, and use of common elements would be harmed. Every property would lose the framework of covenants that defines rights and burdens. The Declaration and its covenants form the legal infrastructure upon which every owner's title, mortgage, insurance, and contractual relationships are built. Owners, lenders, insurers, and municipalities alike have acted in reliance on their validity. (See Lonnquist Declaration Par. 21)

To invalidate the governing documents without the participation of all owners would not merely inconvenience them — it would unsettle titles, impair contracts, and expose owners to financial and legal risks they had no opportunity to protect against. The prejudice would be structural and unavoidable. But these adverse impacts would likely be quite different for each owner. Thus, it was essential that each owner was named a party here.

**Fourth**, Plaintiff lacks standing to challenge the propriety of the 2010 renewal. For a court to have jurisdiction over a dispute, the plaintiff must have standing to bring the case. *Ainscough v. Owens*, 90 P.3d 851, 855 (Colo. 2004). "Standing is a threshold issue that must be satisfied in order to decide a case on the merits." *Id.* Whether a party has standing is a question of law. *Id.* at 857.

In particular, a plaintiff must demonstrate that he or she will suffer an "injury in fact" to a legally protected interest. *Ainscough*, 90 P.3d at 855. Standing is conveyed by neither the "remote possibility of a future injury" nor an injury that is overly "indirect and incidental" to the defendant's action. *Id.* at 856.

Colorado has not adopted "general public interest standing." *Anderson v. Suthers,* 338 P.3d 384, 388 (Colo. App. 2013). Instead, to have standing, the plaintiff must have sustained injuries specific or "special" to himself or herself. *Id.* See also *Olson v. City of Golden*, 53 P.3d 747, 753 (Colo. App. 2002) (no standing where plaintiff attempted to vindicate rights shared by all citizens and taxpayers in Golden); *Greenwood Vill. v. Petitioners for Proposed City of Centennial*, 3 P.3d 427, 439 (Colo. 2000) ("The third-party standing rule prevents a party from asserting the claims of third parties who are not involved in the lawsuit.").

Here, Plaintiff claims no direct injuries specific to himself, and he cannot rely on "general public interest standing." Therefore, Plaintiff lacks standing to bring this case.

**Fifth,** the Association's actions are protected under the business-judgment rule. The Association acted in good faith and upon reasonable belief that its renewal of governing documents in 2010 was proper and lawful. Under the business judgment rule, courts will not substitute their judgment for that of an association acting reasonably and in good faith. See *Bloom v. Nat'l Collegiate Athletic Ass'n*, 93 P.3d 621, 624 (Colo. App. 2004).

Here, there is no evidence of fraud or bad faith by the Association. Accordingly, Plaintiff's claims for damages and declaratory relief are precluded.

**Sixth**, Plaintiff's claims are barred by waiver. Waiver is the intentional relinquishment of a known right, which may be inferred from conduct. *Dep't of Health v. Donahue*, 690 P.2d 243, 247 (Colo. 1984).

Purchasers take property subject to recorded covenants. See *Evergreen Highlands*, 73 P.3d at 1 ("The property owner purchased his property subject to covenants that were sufficient to create a common interest community with the concomitant power to impose assessments or dues against individual lot owners.").

By purchasing his property subject to the recorded Covenants and other governing documents, and acting for years to affirm them — paying assessments, voting in Association matters, and invoking their terms —Plaintiff has waived the right to now claim, years later, that those same documents are invalid.

## CONCLUSION

For these six separate reasons, Plaintiff lacks a legally-viable case against Defendant, and his case should be dismissed. As the prevailing party, Defendant is entitled to its reasonable attorney's fees under C.R.S. §§ 38-33.3-117(1)(g) and 38-33.3-123.

Respectfully submitted November 10, 2025.

MOELLER GRAF, P.C.

/s/ Britton D. Weimer
Britton D. Weimer, #58943
*Attorney for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of November 2025, a true and correct copy of the foregoing **DEFENDANT'S SUMMARY JUDGMENT MOTION** was served via CCEF, and addressed as follows:

Craig Pryor
c/o Cherami Ball Costigan
Robinson & Henry, P.C.

MOELLER GRAF, P.C.

_________________________
Ashley Hudson, Paralegal