

Cause No. 2022-77073

VILLAGE PLACE COMMUNITY
ASSOCIATION, INC.
Plaintiff,

v.

ROBERT STRANGE and LANA STRANGE
Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

133RD JUDICIAL DISTRICT

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

VILLAGE PLACE COMMUNITY ASSOCIATION, INC. (Association), plaintiff in this cause, asks the Court to grant a summary judgment on its cause of action against the defendant Walter Paul Guzman.

A. Introduction

This suit was filed by the plaintiff to seek an injunction related to certain deed restriction violation and an award of attorney's fees and costs related to the enforcement action. Accordingly, plaintiff seeks an injunction prohibiting defendants' continued violation of the deed restrictions. Additionally, plaintiff seeks an award of attorney's fees and costs related to this action.

Plaintiff's Original Petition and Requests for Disclosure was filed on or about August 21, 2023.

Defendants ROBERT STRANGE and LANA STRANGE filed an Answer.

Plaintiff filed this motion for summary judgment based on the fact that: (1) defendants are the owners of the Premises; (2) the Premises is encumbered by Restrictions; and, (3) the defendants failed to clean the siding on the left side of his home prior to suit being filed.

The plaintiff filed and served this motion on the defendant at least twenty-one days before the motion was set on the Court's oral hearing/submission docket.

B. Incorporation of Exhibits

All exhibits attached to this *Motion for Summary Judgment* are fully incorporated by reference herein for all purposes.

C. Argument and Authorities

When a plaintiff moves for summary judgment on its cause of action, the plaintiff must conclusively prove all essential elements of its claim. *MMP, Ltd. v. Jones*, 710 S.W.2d 59, 60 (Tex. 1986). The plaintiff must show that there are no genuine issues of material fact regarding each element of the plaintiff's claim, and that the plaintiff is entitled to judgment as a matter of law. *Id.*; *Wesson v. Jefferson S. & L. Ass'n*, 641 S.W.2d 903, 904-05 (Tex. 1982).

The plaintiff is entitled to summary judgment as a matter of law because of the following:

- a. The defendant is the owner of the Premises (Exhibit A);
- b. The Premises is subject to Restrictions properly recorded and filed in the *Official Public Records of Real Property of Harris County, Texas*, as amended, if any, a true and correct copy of which is attached as Exhibit B;
- c. The defendant is charged with notice of the Restrictions. An instrument that is properly recorded in the proper county is notice to all persons of the existence of the instrument. TEX. PROP. CODE. ANN. §13.002 (Vernon 1984);
- d. Paragraph 14 of the Restrictions provides that the owner of each lot is responsible for maintaining the residence (Exhibit B);
- e. Prior to filing the petition in this matter, defendant failed and/or refused to repair and maintain the trim on the dwelling (Exhibit C);
- f. For all times relevant to this lawsuit, the defendant was and continues to be the owner of the Premises (Exhibits A & C);
- g. The defendant was provided with written notice of the defendant's failure to repair and maintain the trim on the dwelling of the home and was given the opportunity to request a hearing (Exhibit C);

- h. The Association has performed all conditions precedent necessary before filing the above-styled lawsuit, and all conditions precedent have occurred for recovery (Exhibit C); and,
- i. As a result of the defendant's failure to remove the mildew from the left side of his home, the Association was forced to employ the law firm of Gregg & Gregg, P.C. to pursue this lawsuit and has incurred attorney's fees (Exhibit C).

There are no fact issues in this case. The court may decide this case on the summary judgment evidence included in the exhibits to this motion.

D. Attorney's Fees

The plaintiff is entitled to recover its reasonable attorney fees pursuant to the Restrictions. In addition, the plaintiff is entitled to reasonable attorney's fees and costs that were incurred in the prosecution of this suit pursuant to §5.006 of the *Texas Property Code*. The plaintiff has incurred reasonable attorney's fees in the amount of \$6,000.00 in the prosecution of this suit (Exhibit D). The plaintiff anticipates it will incur additional reasonable attorney's fees in the amount of \$875.00 to collect the judgment. (Exhibit D) Should the defendant file a *Motion for New Trial* that is subsequently denied or overruled, the plaintiff will incur additional reasonable attorney's fees in the amount of \$800.00 (Exhibit D). Should the final judgment in this case be unsuccessfully appealed to a State of Texas Court of Appeals, the plaintiff will incur additional reasonable attorney's fees in the amount of \$6,125.00 (Exhibit D). Should the final judgment of the State of Texas Court of Appeals be unsuccessfully appealed to the Texas Supreme Court, the plaintiff will incur additional reasonable attorney's fees in the amount of \$6,125.00 (Exhibit D).

E. Conclusion

Plaintiff's summary judgment evidence establishes that: (1) defendant is the owner of the Premises; (2) there are Restrictions encumbering the Premises that are in full force and effect; and, (3) the defendant, in violation of the Restrictions, failed to remove the mildew on the left

side of his home.

As there are no genuine issues of material fact regarding the plaintiff's claim, the plaintiff is entitled to summary judgment as a matter of law.

Prayer

For these reasons, the plaintiff asks the Court to grant this motion and sign a *Final*

Summary Judgment that includes the following:

1. Defendants ROBERT STRANGE and LANA STRANGE shall repair and maintain the trim and of their home within thirty (30) days of the date of this judgment;
2. Defendants ROBERT STRANGE and LANA STRANGE shall pay to the plaintiff, VILLAGE PLACE COMMUNITY ASSOCIATION INC., its reasonable attorney's fees in the amount of six thousand and 00/100 dollars (\$6,000.00);
3. Defendants ROBERT STRANGE and LANA STRANGE shall pay to the plaintiff, VILLAGE PLACE COMMUNITY ASSOCIATION INC., additional attorney's fees in the amount of eight hundred seventy-five and 00/100 dollars (\$875.00) to collect the judgment.
4. Defendants ROBERT STRANGE and LANA STRANGE shall pay to the plaintiff, VILLAGE PLACE COMMUNITY ASSOCIATION INC., additional attorney's fees in the amount of seven hundred and 00/100 dollars (\$700.00) should the defendant file a *Motion for New Trial* that is subsequently denied or overruled;
5. Defendants ROBERT STRANGE and LANA STRANGE shall pay to the plaintiff, VILLAGE PLACE COMMUNITY ASSOCIATION INC., additional attorney's fees in the amount of six thousand one hundred twenty-five and 00/100 dollars (\$6,125.00) should the final judgment in this case be unsuccessfully appealed to a State of Texas Appeals Court;
6. Defendants ROBERT STRANGE and LANA STRANGE shall pay to the plaintiff, VILLAGE PLACE COMMUNITY ASSOCIATION INC., additional attorney's fees in the amount of six thousand one hundred twenty-five and 00/100 dollars (\$6,125.00) should the final judgment in this case be unsuccessfully appealed to the Texas Supreme Court; and,
7. Defendants ROBERT STRANGE and LANA STRANGE shall pay to the plaintiff, VILLAGE PLACE COMMUNITY ASSOCIATION INC., all

costs of court and post-judgment interest at the rate of five percent (5%) per annum on the total judgment, including attorney's fees awarded herein, from the date this judgment is signed until fully paid.

8. All such other relief as the Court may deem just.

Respectfully submitted,

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BY: _____

Jake R. Leggett
State Bar No. 24117219
Attorney for Plaintiff

Unofficial Copy Office of Marilyn Bussell District Clerk

CERTIFICATE OF COMPLIANCE

This is to certify that a true and correct photocopy of *Plaintiff's Motion for Summary Judgment* and *Final Summary Judgment* have been served upon all attorney(s) of record and/or *pro se* parties by depositing same with the United States Postal Service by first class mail, correctly addressed and postage prepaid, or in the manner indicated, on this the 24th day of June, 2024 to such attorney(s) and/or parties;

CMRRR 9589 0710 5270 2061 9238 44
and regular mail

Robert Strange and Lana Strange
1502 Augusta, Suite 360
Houston Texas 77057

and the original was filed with the District Clerk of Harris County, Texas, pursuant to Rules 21 and 21a of the *Texas Rules of Civil Procedure*.

/s/ Jake R. Leggett
Jake R. Leggett

Unofficial Copy Office of Marilyn Burgess District Clerk