

STATE OF MISSOURI)
) SS.
COUNTY OF JEFFERSON)

IN THE CIRCUIT COURT OF THE COUNTY OF JEFFERSON
STATE OF MISSOURI

RAINTREE PLANTATION PROPERTY)
OWNERS ASSOCIATION, INC.)
)
Plaintiff,)
) Case No. 15JE-CC00809
Vs.)
)
DAVID TUCKER, JEFFERSON)
COUNTY RAIN TREE COUNTRY CLUB)
LLC, and DKAAT PROPERTIES, INC.)
)
Defendants.)

DEFENDANTS’ MOTION FOR AWARD OF ATTORNEY FEES

Comes now the Defendants and for their Motion for Award of Attorney Fees states to the Court as follows:

1. Plaintiff sued the Defendants in an effort to prevent an election which had been validly requested by members of the Plaintiff Raintree Plantation Property Owners Association (POA).
2. Defendants Jefferson County Raintree Country Club (RCC) and DKAAT Properties (DKAAT), who are the operator and owner respectively of the Country Club, had no role in requesting this election and their naming in Plaintiff’s lawsuit to deny this election was inappropriate.
3. David Tucker is a member and officer of DKAAT and RCC and also a member of the POA and signed the Petition which was presented to the POA along with 286

other signatures requesting the election. Tucker was singled out and was sued, even though none of the other signors of the Petition were sued.

4. After an extensive hearing and presentation of evidence, Judge Page ruled that the election had been validly requested and that the election should go forward.

5. The Defendants have incurred attorney's fees in defending against the Property Owners Association's inappropriate and undemocratic attempt to prevent a validly called election by its members.

6. But for the actions of the Property Owners Association in attempting to prevent a vote of the will of the people, these attorney's fees would not have been necessary.

7. The Property Owners Association also requested excessive deposits prior to the election of \$6000.00. In fact the election ended up costing only \$2200.00 which demonstrates the ill will on the part of the Property Owners Association in an effort to prevent its own members from voting on an election which was validly presented to them.

8. That the Plaintiff's Covenants and Restrictions state as follows:

"Relief, Attorney's Fees. If any person subject to the Governing Documents fails to comply with any provision thereof, the POA or any Owner of class of Owners adversely affected by such failure has a claim for appropriate relief, including but not limited to claims at law for damages and claims for equitable relief, including injunction. Punitive damages may be awarded in the case of a willful, wanton and malicious failure to comply with any provisions of the Governing Documents.

The prevailing party shall in addition to any other amounts, be entitled to recover its reasonable attorney's fees, costs and expenses incurred in enforcing or defending the Governing Documents, whether by judicial or administrative proceeding, or by alternative dispute resolution procedures."

That the provisions of the Covenants and Restrictions which allow for an election to be called by its members also provide for the award of attorney's fees to a prevailing party and Defendants were clearly the prevailing party since the POA had no basis to stop its own members from voting on this election issue.

WHEREFORE, The Defendants pray that the Court hold a hearing and award attorney's fees and costs to the Defendants as Defendants were clearly the prevailing party on that issue and for such other and further relief as the Court deems just and proper in the premises.

ROBERTS, WOOTEN AND ZIMMER, L.L.C.
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By: 

KEVIN C. ROBERTS #31578

PROOF OF SERVICE

The undersigned certifies that a complete copy of this instrument was e-mailed through the Court's electronic e-filing system to Stanley Schnaare, P.O. Box 440, Hillsboro, Missouri 63050, on this 25 day of October, 2016.


