

STATE OF MISSOURI)
)
) SS.
COUNTY OF JEFFERSON)

IN THE CIRCUIT COURT OF THE TWENTY-THIRD JUDICIAL CIRCUIT OF
JEFFERSON COUNTY, MISSOURI
DIVISION NO.

RAINTREE PLANTATION PROPERTY)
OWNER'S ASSOCIATION, INC., On)
Behalf of Itself and All Others Similarly)
Situated)
Plaintiffs,)

vs.) Cause No. 15JE-CC _____

DAVID TUCKER,)
JEFFERSON COUNTY RAIN TREE)
COUNTRY CLUB, LLC, and)
DKAAT Properties, LLC)
Defendants.)

**PETITION FOR PRELIMINARY AND PERMANENT INJUNCTION,
CLASS ACTION PETITION FOR DECLARATORY JUDGMENT, and REQUEST FOR
ATTORNEY'S FEES**

COMES NOW Plaintiff, Raintree Plantation Property Owner's Association, Inc., by and through its undersigned counsel, and for its Petition for Preliminary and Permanent Injunction, Class Action Petition for Declaratory Judgment, and Request for Attorney's Fees against Defendants, David Tucker, Jefferson County Raintree Country Club, LLC and DKAAT Properties, LLC, hereby states and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff, Raintree Plantation Property Owners' Association, Inc. ("RPOA"), is, and at all times relevant hereto was, a Missouri corporation organized under the Missouri "General Not For Profit Corporation Act" as a property owners association for the governance and enforcement of the Covenants and Restrictions of the Raintree Plantation Subdivision,

consisting of Sections 1 through 25 and Raintree Forest. RPOA owns a lot in Raintree Plantation and is bound by its covenants and restrictions.

2. Plaintiff seeks to pursue this action for itself and on behalf of a class composed of certain individuals who own real estate in Jefferson County, Missouri, within the Raintree Plantation subdivision as shown by plat on file with the Recorder's Office of Jefferson County, Missouri.
3. The class is so numerous that joinder of all its members is not practicable.
4. There are questions of law and fact common to the class.
5. The claims of the Plaintiff as representative party are typical of the claims of the members of the class.
6. The Plaintiff, as representative of the class, has no interests adverse or antagonistic to members of the class and will fairly and adequately protect members of the class.
7. The issues of fact and law which are common to all members of the class are clearly predominant, in materiality and significance, over those issues that may affect only individual class members.
8. The class action is superior to any other available method of resolving this controversy.
9. The prerequisite required by Supreme Court Rule 52.08(b)(2) of the Missouri Rules of Civil Procedure exists and is sufficient to justify a class action.
10. Defendant, David Tucker (TUCKER), is a property owner in Raintree Plantation subdivision and is bound by the covenants and restrictions filed of record in the Jefferson County Recorder's Office. Further, David Tucker is the sole owner of Jefferson County Raintree Country Club, LLC, and DKAAT Properties, LLC.
11. Defendant, Jefferson County Raintree Country Club, LLC ("RCC"), is a limited liability

company organized and existing under the laws of the State of Missouri, with its principal place of business located in Jefferson County, Missouri. RCC was organized on or about May 29, 2012.

12. Defendant, DKAAT Properties, LLC (“DKAAT”), is, and at all times relevant hereto was, a limited liability company organized and existing under the laws of the State of Missouri, with its principal place of business located in Jefferson County, Missouri. DKAAT was organized on or about July 22, 2002.
13. This Court has jurisdiction over RPOA’s Petition pursuant to Missouri Rules of Civil Procedure 52.08 and 92.02, and Missouri Revised Statute 527.010.

GENERAL ALLEGATIONS

14. In 2011, the Court entered a judgment in Anderson v. Kremer Restaurant Enterprises, 08JE-CC01575, finding that the owners of lots in Sections 20-25 are deemed “social members” of the country club and are therefore required to pay mandatory assessments charged under Paragraph 4c. Further, the Court found that lot owners of Sections 20-25 have no right to modify or terminate such membership or the obligation to pay the assessments as required by Paragraph 4c of the Amended Covenants and Restrictions.
15. Defendants DKAAT and RCC interpreted the 2011 Judgment to mean that all lot owners of Raintree Plantation had to pay mandatory assessments to the country club, and sometime between the 2011 Judgment and September 15, 2013, Defendants DKAAT and RCC began charging country club assessments to lot owners of Sections 1-19 and Raintree Forest.
16. The RPOA held an annual election on September 15, 2013 in which its entire membership of Sections 1-25 and Raintree Forest voted to eliminate Paragraph 4c of the

- restrictive covenants of Raintree Plantation.
17. On September 26, 2013, Defendants DKAAT and RCC filed suit in Jefferson County, Missouri Circuit Court against the RPOA for Preliminary and Permanent Injunction, Declaratory Judgment, and Tortious Interference with a Contract in the case Jefferson County Raintree Country Club, LLC and DKAAT Properties, LLC v. Raintree Plantation Property Owners' Association, Inc., 13JE-CC00841.
 18. As part of their Petition, Defendants DKAAT and RCC requested the Court, through a Declaratory Judgment, find that all lot owners of Raintree Plantation had to pay mandatory country club dues to the Defendants and were prohibited from modifying the provisions in the RPOA's Covenants that related to the country club dues. Please see attached Exhibit A.
 19. On October 27, 2014, the Court entered its Final Judgment declaring that the RPOA's 2013 election amending Paragraph 4c in its entirety is declared valid and in full force and effect as to Sections 1 through 19 and Raintree Forest of the Subdivision. Please see attached Exhibit B.
 20. In its Judgment of October 27, 2014 the Court stated that Approving the 2013 election as to Sections 20 through 25 would violate the exact language and underpinnings of the 2011 Judgment, and therefore affirmed that Sections 20-25 must pay mandatory assessments to the country club.
 21. On September 29, 2015, Defendant TUCKER presented to the Board of the RPOA a petition signed by two hundred and sixty-eight (268) lot owners demanding the board of directors conduct a special meeting for the purpose of allowing members to vote on two ballot items. Please see attached Exhibit C.

22. Out of the two hundred and sixty-eight (268) owners who signed the Petition, one hundred and thirty-five (135) of those signatures were owners of lots located in Sections 20-25.
23. The Petition included two ballot items; the first which, among other things, increased the annual assessments for each lot in Raintree Plantation by two hundred and forty dollars (\$240.00) and the second which is a directive for the RPOA to enter into a twenty-year contract with DKAAT and RCC in which each lot owner of Raintree Plantation shall be provided a Social Membership to the golf course which includes unlimited golf, free access to the pool and fitness center, and a 10% discount on regularly priced products offered by RCC. Further, the contract states “the POA agrees to pay \$240.00 per lot to RCC for each lot within Raintree Plantation that has made payment to POA of that lot’s annual assessment.”
24. The Board of the RPOA informed TUCKER that it believed his request for a special election would violate the terms of the Court’s Order of 2014 and that it had voted to deny his application for special election and that it was going to proceed with a Declaratory Action in the Circuit Court of Jefferson County to resolve this issue. Please see attached Exhibit D.
25. TUCKER sent the RPOA a letter on October 20, 2015 requesting the board of the RPOA to reconsider its decision and threatened to hold the RPOA responsible for over one million dollars (\$1,000,000.00) in damages should it not allow the special election. Please see attached Exhibit E.
26. Further, TUCKER, on October 20, 2015, advised counsel for the RPOA that his client was going to proceed with the special election himself pursuant to the bylaws.

27. This special election affects the rights of all property owners of Raintree Plantation.

**COUNT I – APPLICATION FOR PRELIMINARY
AND PERMANENT INJUNCTION**

Comes now Plaintiff, Raintree Plantation Property Owner’s Association, and for Count I of its Petition against Defendants TUCKER, DKAAT and RCC, states as follows:

28. The RPOA incorporates by this reference, as if same were fully stated herein, each and every one of its allegations from Paragraphs One (1) through Twenty-Seven (27).

29. Upon information and belief, Defendant TUCKER, for the benefit of DKAAT and RCC, plans to proceed pursuant to the By-Laws of the RPOA and hold the special election as soon as possible.

30. The actions of Defendants are improper, unlawful, and contrary to the Covenants and Restrictions as filed.

31. The actions of Defendants in forcing the election is an attempt to re-litigate their Petition in Cause No. 13JE-CC00841 and force Sections 1-19 and Raintree Forest to pay mandatory dues to the country club, owned by Defendant TUCKER.

32. The purported actions of Defendants in attempting to hold the election and force the RPOA to enter into a contract with Defendant Tucker’s personal companies violate Missouri Case law as it will create an additional burden upon all the land owners of Raintree Plantation. Being more specific, the contract will increase the burden upon Sections 1-19 and Raintree Forest by imposing upon them a mandatory membership – precisely the opposite of the Court’s previous Judgment and contrary to the popular vote of Raintree’s annual election of 2013.

33. The purported actions of Defendants in attempting to hold the election and force the RPOA to enter into a contract with Defendant Tucker’s personal companies violate

Missouri Case law as it is *Res Judicata*.

34. This Court has already interpreted the meaning of the Covenants and Restrictions in the case of Anderson v. Kremer Restaurant Enterprises, 08JE-CC01575. In that case, Judge Kramer specifically held that lot owners of Sections 20-25 had no right to modify or terminate their membership or their obligation to pay the assessments.
35. In the case of Jefferson County Raintree Country Club, LLC and DKAAT Properties, LLC v. Raintree Plantation Property Owners' Association, Inc., 13JE-CC00841, Special Judge Stanley D. Williams held that it was lawful for Sections 1-19 and the Forest of Raintree Plantation to delete Paragraph 4c of the covenants and restrictions of Raintree Plantation and that these Sections did not have to pay mandatory dues to the country club.
36. Pending resolution of the civil claims herein asserted, Plaintiff has no adequate remedy at law to protect its rights as provided for in the restrictions.
37. The effect of this special election and the purported addition of the twenty-year binding contract would cripple the financial viability of the RPOA as it would impose additional expenses on the RPOA that it cannot afford and would cause irreparable harm to the RPOA and each individual lot owner of Raintree Plantation.
38. The effect of this special election and the purported addition of the twenty-year binding contract would cripple the financial viability of the RPOA as it does not have the money to manage the finances of the Defendants private businesses and golf course and would cause irreparable harm to the RPOA and each individual lot owner of Raintree Plantation.
39. The effect of this special election and the purported addition of the twenty-year binding contract would create acrimony among the various lot owners and would cause irreparable harm to the RPOA and each individual lot owner of Raintree Plantation.

40. The effect of this special election and the purported addition of the twenty-year binding contract would force the RPOA to violate the Orders of this Court and would cause irreparable harm to the RPOA and each individual lot owner of Raintree Plantation.
41. The effect of this special election and the purported addition of the twenty-year binding contract would reverse the course of the plan of the development and would cause irreparable harm to the RPOA and each individual lot owner of Raintree Plantation.
42. Plaintiff will be irreparably harmed if this Court does not enter an injunction prohibiting Defendants from conducting the special election until such time as this Court has ruled upon Plaintiff's Petition for Declaratory Judgment.

WHEREFORE, Plaintiff requests that this honorable Court enter an Order granting the preliminary and permanent injunction prohibiting Defendants from engaging in any acts in furtherance of conducting the special election and/or trying to bind Plaintiff into entering into a twenty-year contract with Defendants. Plaintiff also requests such other and further relief as this Court may deem just and proper.

COUNT II – PETITION FOR DECLARATORY JUDGMENT

Comes now Plaintiff, Raintree Plantation Property Owner's Association, and for Count II of its Petition against Defendants TUCKER, DKAAT and RCC, states as follows:

43. The RPOA incorporates by this reference, as if same were fully stated herein, each and every one of its allegations from Paragraphs One (1) through Forty-Two (42).
44. Sections 20-25 ability to amend the covenants and restrictions as it pertains to Paragraph 4c has been decided by this Court previously in Anderson v. Kremer Restaurant Enterprises, 08JE-CC01575 and Jefferson County Raintree Country Club, LLC and DKAAT Properties, LLC v. Raintree Plantation Property Owners' Association, Inc.,

- 13JE-CC00841.
45. Plaintiffs position is that lot owners in Sections 20-25 cannot vote to amend, delete, or modify any covenant or restriction that relates to Paragraph 4c, the mandatory membership to the country club, or the mandatory dues to be paid to the country club.
 46. Plaintiffs do not believe that lot owners in Sections 20-25 can sign Defendant TUCKER's Petition to request the special election. Therefore, Defendant does not have the requisite number of petition signers to proceed with the special election pursuant to the RPOA's By-Laws.
 47. Sections 1-19 and the Forest of Raintree Plantation ability to delete the restrictions requiring mandatory membership and payment of dues to the country club and Defendants was decided by this Court in Jefferson County Raintree Country Club, LLC and DKAAT Properties, LLC v. Raintree Plantation Property Owners' Association, Inc., 13JE-CC00841. Therefore, Defendants should be collaterally estopped from proceeding with the special election as this is an identical issue that was decided in the above referenced case.
 48. Defendant TUCKER is requesting a special election to force the RPOA to enter into a twenty-year Contract with DKAAT and RCC to force the lot owners of Sections 1-19 and Raintree Forest to pay mandatory country club dues to the Defendants.
 49. Defendant TUCKER has structured his special election to modify Paragraph 3f of Raintree's covenants (to increase the dues all lot owners pay by \$240.00) and then make a directive that the board of the RPOA enter into the twenty-year contract with the Defendants to pay the \$240.00 to the private companies of the Defendant TUCKER.
 50. Plaintiff believes that the ability to charge country club dues to Sections 1-19 and

- Raintree Forest is *Res Judicata*, and therefore it cannot hold a special election to enforce same.
51. Plaintiff believes that if the special election is affirmed and both ballot items pass, this will create an additional burden upon the land and all lot owners of Raintree Plantation in violation of the long standing case of Van Deusen, et al. v. Ruth, et al., 125 S.W.2d 1 (Mo. 1938).
 52. In addition to creating an additional burden upon all lot owners, the passing of the ballot items will also reduce the burden upon Sections 20-25 which is in direct violation of the Court's previous Orders and Judgments.
 53. Plaintiff's board members have a fiduciary duty to its members and must protect their property interests from duplicative litigation and the undue and unreasonable burden the proposed contract would place on the RPOA.
 54. There is no provision of RPOA's covenants that allow for an amendment to force the board of directors to enter into a contract with an outside third party.
 55. If the ballot items pass, the additional burden of collections and payment of partial assessments to the Defendants will substantially cripple the RPOA's ability to provide services to its members as it will take additional money from its budget that isn't there. Raintree Plantation's roads, lakes, and dams will suffer as the RPOA will not have the sufficient funds to maintain these amenities.
 56. By proceeding with the special election, the RPOA would be violating the rights of Sections 1-19 and Raintree Forest in favor of the rights of Sections 20-25 and the Defendants private companies.
 57. Therefore, Plaintiff has denied TUCKER the ability to hold the special election pursuant

to its By-Laws.

58. Defendant TUCKER has stated to Plaintiff that he will be unilaterally proceeding with the special election pursuant to RPOA's By-Laws; therefore, these issues are ripe for determination by this Court.
59. A justiciable controversy exists in this case because TUCKER, RCC, DKAAT and the RPOA have adverse positions as to the meaning of Raintree Plantation's Covenants and the enforceability of the Court's previous Judgments in 08JE-CC01575 and 13JE-CC00841.
60. The RPOA has a legally protectable interest at stake in that it (i) owns real estate within Raintree Plantation Subdivision, (ii) enforces the covenants and restrictions of the Raintree Plantation Subdivision, a majority of said Subdivision owners in Sections 1 through 19 and Raintree Forest having voted at the September 2013 election in favor of removing and abrogating Paragraph 4c from the Covenants and Restrictions as amended through 2011; and (iii) is the assignee of the Grantor, Raintree Plantation, Inc.
61. This controversy is ripe for judicial determination in that a conflict presently exists between the parties and their dispute is developed sufficiently to allow this Court to make an accurate determination as to RPOA's rights under the Covenants and Restrictions as amended through 2011. Moreover, this Court is able to conclusively establish the rights of RPOA under the Covenants and Restrictions as amended through 2011.
62. The Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff RPOA requests that this honorable Court enter an Order of Declaratory Judgment affirming the following: 1) Lot owners in Sections 20-25 cannot vote in TUCKER's special election; 2) Lot owners in Sections 20-25 cannot be counted towards the

minimum 250 petition signers of TUCKER's Petition; 3) That the special election is invalid and cannot proceed as the matters requested to be voted on are *Res Judicata*; 4) It would be against Missouri case law and an increased undue burden upon the land for the ballot items to be passed, therefore the Defendants cannot proceed with the election; 5) The Contract proposed by Defendants is unenforceable as there are no provisions of the covenants that state a vote of the members can bind the Plaintiff into entering into a contract; 6) Plaintiff shall not enter into such contract as it would substantially cripple Raintree Plantation and would be a violation of the board of director's fiduciary duty; 7) Awarding Raintree POA all reasonable costs and attorneys' fees; and 8) Granting all other and further relief as this Court deems just and proper under the circumstances.

COUNT III- REQUEST FOR ATTORNEY'S FEES

Comes now Plaintiff, Raintree Plantation Property Owner's Association, and for Count III of its Petition against Defendants TUCKER, DKAAT and RCC, states as follows:

63. The RPOA incorporates by this reference, as if same were fully stated herein, each and every one of its allegations from Paragraphs One (1) through Sixty-Two (62).

64. RPOA'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 or 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 provision 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."

65. Defendants' actions have necessitated the RPOA to file this suit against Defendants.

66. The RPOA is expending money on attorney's fees to defend its position against

Defendants and enforce the Governing Documents.

67. Thus, the RPOA is being damaged by Defendants in the amount of attorney's fees, costs, and expenses it is expending.
68. The Covenants and Restrictions allow for the prevailing party to recover its reasonable attorney's fees, costs, and expenses.

Wherefore, Plaintiff RPOA prays for this Court to award it a Judgment against Defendants for its reasonable attorney's fees, costs, and expenses, and for any other relief this Court may deem just and proper in the circumstances.

Respectfully Submitted:

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