

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

JEFFERSON COUNTY RAINTREE)
COUNTRY CLUB, LLC,)
)
Plaintiff,)
)
v.)
)
BLACK HOLE, LLC, and)
RAINTREE PLANTATION PROPERTY)
OWNERS ASSOCIATION, INC.,)
)
Defendant.)

Case No. 18JE-AC00739

Division 12

**BLACK HOLE, LLC’S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF’S
SECOND AMENDED PETITION AND DEFENDANT’S FIRST AMENDED
COUNTERCLAIM**

COMES NOW Defendant, Black Hole, LLC (“Defendant”), by and through the undersigned counsel, and for its Answer and Affirmative Defenses to the Second Amended Petition by Plaintiff, Jefferson County Raintree Country Club, LLC (“Plaintiff”), and for its Counterclaim in this matter, states as follows:

ANSWER

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Defendant is without sufficient information to admit or deny the allegations of

Paragraph 6 and therefore denies the same.

7. Defendant states that Plaintiff's Exhibit 1 appears to be a contract and that the document speaks for itself in terms of its meaning and effect. Defendant is without sufficient information to admit or deny the remaining allegations of Paragraph 7 and therefore denies the same.

8. Defendant states that Plaintiff's Exhibit 1 speaks for itself in terms of its content, meaning and effect. Defendant is without sufficient information to admit or deny the remaining allegations of Paragraph 8 and therefore denies the same.

9. Defendant states that Plaintiff's Exhibit 2 appears to be a copy of amended subdivision restriction and that the document speaks for itself in terms of its content, meaning and effect. Defendant states that the Amended Covenants and Restrictions Covering Lots in Raintree Plantation Subdivision are recorded in the Jefferson County Records in Book 372 page 1064.

10. Defendant states that Plaintiff's Exhibit 2 speaks for itself in terms of its content, meaning and legal effect. Defendant further states that paragraph 10 is a legal conclusion a response to which is not required. To the extent that a response is required, Defendant denies the same.

11. Defendant states that Plaintiff's Exhibit 3 appears to be an assignment and that the document speaks for itself in terms of its content, meaning and effect. Defendant states that the remaining allegations of Paragraph 11 are legal conclusions a response to which is not required. To the extent that a response is required, Defendant denies the same.

12. Defendant states that Plaintiff's Exhibit 3 speaks for itself in terms of its content, meaning and legal effect.

13. Defendant is without sufficient information to admit or deny the allegations of Paragraph 13 and therefore denies the same.

14. Defendant states that paragraph 14 is a legal conclusion a response to which is not required. To the extent that a response is required, Defendant denies the same.

15. Defendant states that paragraph 15 is a legal conclusion a response to which is not required. To the extent that a response is required, Defendant denies the same.

16. Defendant states that Plaintiff's Exhibit 4 appears to be an assignment and that the document speaks for itself in terms of its content, meaning and effect. Defendant is without sufficient information to admit or deny the remaining allegations of Paragraph 16 and therefore denies the same.

17. Defendant states that Plaintiff's Exhibit 2 speaks for itself in terms of its content, meaning and legal effect.

18. Defendant states that paragraph 18 is a legal conclusion a response to which is not required. To the extent that a response is required, Defendant denies the same.

19. Defendant is without sufficient information to admit or deny the allegations of Paragraph 19 and therefore denies the same.

20. Defendant is without sufficient information to admit or deny the allegations of Paragraph 20 and therefore denies the same.

21. Defendant states that Plaintiff's Exhibit 5 speaks for itself in terms of its content, meaning and legal effect. Defendant is without sufficient information to admit or deny the remaining allegations of Paragraph 21 and therefore denies the same.

22. Defendant is without sufficient information to admit or deny the allegations of Paragraph 22 and therefore denies the same.

23. Defendant states that Plaintiff's Exhibit 6 speaks for itself in terms of its content, meaning and effect. Defendant is without sufficient information to admit or deny the remaining allegations of Paragraph 23 and therefore denies the same.

24. Defendant states that Black Hole LLC is the owner of lots previously owned by the POA. Defendant denies any and all remaining allegations in paragraph 24 not specifically admitted herein.

25. Defendant states that in 2015 it received certain lots from the POA in Sections 1 – 19 and Sections 20 – 25 of Raintree Subdivision. Defendant denies any and all remaining allegations in paragraph 25 not specifically admitted herein.

26. Defendant states that Plaintiff's Exhibit 7 appears to be a deed and that the document speaks for itself in terms of its meaning and effect.

27. Defendant states that Plaintiff's Exhibit 8 appears to be a deed of trust and that the document speaks for itself in terms of its meaning and effect.

28. Defendant states that paragraph 28 is a legal conclusion, a response to which is not required. Defendant states that Plaintiff's Exhibit 9 appears to be an operating agreement and that the document speaks for itself in terms of its meaning and effect.

29. Defendant states that Plaintiff's Exhibit 9 speaks for itself in terms of its content, meaning and legal effect.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

39. Defendant states that paragraph 39 is a legal conclusion a response to which is not required. To the extent that a response is required, Defendant states that Black Hole LLC's sole member is the POA and that it is managed by the POA's president and corporate officers.

Defendant denies all remaining allegations of paragraph 39 not expressly admitted herein.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

COUNT I – TO SET ASIDE FRAUDULENT TRANSFER AND FOR DAMAGES

47. Defendant incorporates by reference the responses to paragraphs 1 – 46 as if fully restated herein.

48. Denied.

49. Denied.

50. Denied.

51. Defendant states that Plaintiff's Exhibit 5 speaks for itself in terms of its content, meaning and legal effect. Defendant denies all remaining allegations of paragraph 51.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Defendant states that paragraph 62 is a legal conclusion, a response to which is not required. To the extent that a response is required, Defendant denies the same.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

WHEREFORE Defendant respectfully prays that the Court dismiss Plaintiff's Count I with prejudice, for Defendant's recovery of its costs in this matter, including its reasonable attorney's fees, and for any such other and further relief as the Court may deem just and proper.

COUNT II - COLLECTION OF DUES (BLACK HOLE)

71. Defendant incorporates by reference the responses to paragraphs 1 – 70 as if fully restated herein.

72. Defendant states that Plaintiff's Exhibit 2 speaks for itself in terms of its content, meaning and legal effect.

73. Admitted.

74. Admitted.

75. Defendant states that paragraph 75 is a legal conclusion a response to which is not required. To the extent that a response is required, Defendant denies the same.

76. Defendant states that Plaintiff's Exhibit 2 speaks for itself in terms of its content, meaning and legal effect.

77. Defendant states that paragraph 77 is impermissibly compound, is a mix of factual allegations and legal conclusions and on this basis denies each and every allegation of Plaintiff's paragraph 77.

78. Defendant states that paragraph 78 is impermissibly compound, is a mix of factual allegations and legal conclusions and on this basis denies each and every allegation of Plaintiff's paragraph 78.

79. Defendant is without sufficient information to admit or deny the allegations of Paragraph 79 and therefore denies the same.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Denied.

85. Denied.

WHEREFORE Defendant respectfully prays that the Court dismiss Plaintiff's First Amended Petition with prejudice, that Defendant recover its costs in this matter, including its reasonable attorney's fees, and for any such other and further relief as the Court may deem just and proper.

ADDITIONAL PLEADING AND AFFIRMATIVE DEFENSES

By way of additional pleading, Defendant denies each and every allegation of Plaintiff's First Amended Petition, including the "Wherefore" paragraphs, not expressly admitted herein.

AFFIRMATIVE DEFENSE 1

Plaintiff's Count I fails to state a cause of action under the Missouri Uniform Fraudulent Transfers Act for which relief can be granted. Raintree POA did not transfer lots to Black Hole LLC with any intent to hinder, delay or defraud Plaintiff. The transfer was not concealed, but was made through publicly recorded documents. Black Hole LLC is an entity legally separate and distinct from Raintree POA and Raintree POA does not exercise control over the lots other than through Black Hole. Black Hole LLC does not exercise control over Raintree POA and is thus not an "insider" under the Act. Raintree POA did not become insolvent as a result of the transfer of lots to Black Hole LLC, nor did Raintree POA transfer substantially all its assets to Black Hole. The transfer of lots was for reasonably equivalent value and any alleged failure of consideration is due to Plaintiff's own actions in devaluing lots in Sections 20 – 25 of Raintree Plantation through unreasonable increases in annual dues to lot owners. Finally, Raintree POA had not incurred any debt to Plaintiff at the time of the transfer. Plaintiff cannot meet its burden of proof to support a claim that the lots were transferred fraudulently in violation of the Act.

AFFIRMATIVE DEFENSE 2

Plaintiff's claims for relief alleged against Black Hole LLC are barred by the equitable doctrine of unclean hands. The property Raintree POA transferred to Black Hole LLC are unimproved lots of ground. Plaintiff unreasonably increased the mandatory annual dues from \$225.00 in 2014 to \$892.00 in 2018. This unreasonable increase caused the lots to devalue. Plaintiff's Petition is an attempt to benefit from Plaintiff's own wrongdoing.

AFFIRMATIVE DEFENSE 3

Plaintiff's request for punitive damages and request for attorney's fees as an exception to the American Rule are barred because Plaintiff failed to plead facts demonstrating any entitlement to such recovery.

AFFIRMATIVE DEFENSE 4

Plaintiff's request for attorney's fees pursuant to the 2005 Amendment to the Covenants and Restrictions Covering Lots in Raintree Plantation Subdivision (Plaintiff's Exhibit 11) is barred because Plaintiff lacks standing to enforce this provision. The 2005 amendment to paragraph 3f removed the words "Property Owners Association or Grantor" and replaced this language with "Raintree Plantation Property Owner's Association, Inc." Plaintiff derives its purported authority to collect mandatory dues from Raintree Plantation, Inc., "Grantor" under the Amended Covenants and Restrictions (Plaintiff's Exhibit 2). Because Plaintiff is not part of Raintree Plantation Property Owners Association, Inc., Plaintiff has no authority to enforce the provisions of paragraph 3f of the Amended Covenants and Restrictions.

AFFIRMATIVE DEFENSE 5

The original Paragraph 4c of the Covenants and Restrictions Covering Lots in Raintree Plantation, recorded November 5, 1979 in Book 644 page 823 of the Jefferson County Records, contained no provisions allowing unpaid golf club dues to become liens on subdivision lots, and contained no authority for the collection of unpaid dues or for the imposition of any penalties for unpaid dues in the same manner as delinquent assessments. The 1987 Amendment to Paragraph 4c (Plaintiff's Exhibit 2) imposed a new burden on owners in Raintree Subdivision in providing for the enforcement of unpaid dues and the imposition of penalties in the same manner as delinquent assessments. Paragraph 4c is an affirmative covenant and the imposition of a new burden above the original covenant requires unanimous approval of all owners. See *Webb v. Mullikin*, 142 S.W.3d 822 (Mo. App. 2004); see also *Arbors at Sugar Creek v. Jefferson Bank*, 464 S.W.3d 177, 186 (Mo. 2015). The 1987 Amendment to Paragraph 4c did not receive unanimous approval of the lot owners in Raintree subdivision. As such, Plaintiff's cause of action to enforce collection of dues and penalties is barred.

AFFIRMATIVE DEFENSE 6

Defendant reserves the right to amend these affirmative defenses and to assert any such additional affirmative defenses as may be learned through discovery or otherwise.

WHEREFORE, having fully answered, Defendant respectfully prays that the Court dismiss Plaintiff's Second Amended Petition with prejudice, that Defendant recover its costs in this matter, including its reasonable attorney's fees, and for any such other and further relief as the Court may deem just and proper.

FIRST AMENDED COUNTERCLAIM

COMES NOW Counterclaimant, Black Hole LLC (“BHLLC”), by and through the undersigned counsel, and for this Counterclaim directed to Jefferson County Raintree Country Club, LLC (“JCRCC”), states as follows:

1. BHLLC is a Missouri limited liability company with its principal place of business in Jefferson County, Missouri.
2. JCRCC is a Missouri limited liability company with its principal place of business in Jefferson County, Missouri.
3. This Court has subject matter jurisdiction over this cause of action.
4. Venue is proper in this Court pursuant to RSMo § 508.010.

COUNT I – UNJUST ENRICHMENT

5. BHLLC reaffirms and incorporates by reference the allegations contained in paragraphs 1 through 4 as if fully restated herein.
6. Through its assertion of a financial interest in lots owned by BHLLC in Raintree Plantation Subdivision, a benefit has been conferred upon JCRCC.
7. JCRCC has appreciated the fact of this benefit.
8. JCRCC has accepted and retained this benefit.
9. JCRCC’s retention of this benefit is inequitable given that the services and amenities at Raintree Country Club have been reduced to the point that the Country Club has ceased to be a benefit to lot owners and has instead become a substantial burden.
10. JCRCC’s retention of this benefit is further inequitable given that the increase in dues has caused the lots owned by BHLLC to lose value.

WHEREFORE Counterclaimant respectfully prays for the Judgment of this Court in its favor and against Counterclaim Defendant in an amount that is fair and reasonable, but not less than \$25,000.00, for post-judgment interest at the maximum rate permitted by law, for its costs in this matter, including reasonable attorney's fees, and for any such other and further relief as the Court may deem just and proper under the circumstances.

COUNT II – PRIMA FACIE TORT

11. BHLLC reaffirms and incorporates by reference the allegations contained in paragraphs 1 through 10 as if fully restated herein.

12. JCRCC has intentionally increased the amounts of mandatory dues charged to BHLLC for each lot BHLLC owns in Sections 20 – 25 four-fold since 2015; from the rate of \$225.00 to \$892.00.

13. The increase in mandatory dues has caused the lots BHLLC owns in Sections 20 - 25 to lose value to the point that the lots are essentially worthless, while JCRCC continues to demand and to sue for collection of these dues.

14. Upon information and belief, JCRCC's actions were intentional and were done to cause injury to BHLLC by improperly and unfairly profiting from mandatory golf club assessments with the knowledge that the lots BHLLC owns cannot be sold.

15. JCRCC has no justification for its actions.

WHEREFORE Counterclaimant respectfully prays for the Judgment of this Court in its favor and against Counterclaim Defendant in an amount that is fair and reasonable, but not less than \$25,000.00, for post-judgment interest at the maximum rate permitted by law, for its costs in this matter, including reasonable attorney's fees, and for any such other and further relief as the Court may deem just and proper under the circumstances.

Respectfully Submitted

TdD ATTORNEYS AT LAW LLC

/s/Erik C. Zorumski

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was sent via the Court's electronic filing system on November 8, 2018 to all counsel of record in this matter.

/s/Erik C. Zorumski