

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

JEFFERSON COUNTY RAINTREE	)	
COUNTRY CLUB, LLC,	)	
	)	
Plaintiff/Counterclaim Defendant,	)	
	)	Case No. 18JE-AC00739
v.	)	
	)	Division 12
BLACK HOLE, LLC, and	)	
RAINTREE PLANTATION PROPERTY	)	
OWNERS ASSOCIATION, INC.,	)	
	)	
Defendant/Counterclaimants.	)	

**MOTION TO CONSOLIDATE CASES**

COMES NOW Defendant/Counterclaimant, Raintree Plantation Property Owners Association, Inc. (“RPOA”), by and through the undersigned counsel, and respectfully moves pursuant to Rule 66.01(b) of the Missouri Rules of Civil Procedure to consolidate the above captioned action with the action pending in this Court styled *Raintree Plantation Property Owners Association, Inc. v. David Tucker, Jefferson County Raintree Country Club, LLC and DKAAT Properties, LLC*, as Case No. 15JE-CC00809. In support, RPOA states:

1. Rule 66.01(b) provides that “[w]hen civil actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the civil actions; it may order all the civil actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.” Mo. R. Civ. P. § 66.01(b). Where the requirements of Rule 66.01(b) are met, the Court may, through the exercise of its sound discretion, order the matters consolidated. *Hammons v. Eisert*, 745 S.W.2d 253, 258 (Mo. App. 1988).

2. The actions now pending in this case and in Case No. 15JE-CC00809 involve common parties and common questions of law and fact regarding Paragraph 4c of the Amended Covenants and Restrictions of Raintree Subdivision, the enforcement and collection of mandatory golf club dues by Jefferson County Raintree Country Club, LLC (“JCRCC”), the increases in the amount of such mandatory dues, and the manner in which Jefferson County Raintree Country Club is operated.

3. The above case was brought by JCRCC as a collections action for the enforcement of unpaid golf course dues and penalties against Black Hole, LLC, a company which holds title to lots previously owned by RPOA. JCRCC has twice amended its petition and has named RPOA as an additional defendant, asserting a claim under the Missouri Uniform Fraudulent Transfers Act through allegations that RPOA transferred the lots to Black Hole LLC in fraud of JCRCC as a future creditor. RPOA and Black Hole have each submitted counterclaims for unjust enrichment and prima facie tort related to the unfair increase in mandatory golf club assessments by JCRCC and the reduction in amenities and services offered by the golf club.

4. Case No. 15JE-CC00809 was brought by RPOA against JCRCC, as well as David Tucker and DKAAT Properties as the owners of the golf club and also contains RPOA’s claims for unjust enrichment and prima facie tort related to the unfair increase in mandatory golf club assessments by JCRCC and the reduction in amenities and services offered by the golf club.

5. In addition, both RPOA and Black Hole LLC have asserted affirmative defenses to the collections suit that JCRCC is barred from enforcing certain provisions of amended Paragraph 4c because the amendment to 4c, as an affirmative covenant, imposed a new burden on lot owners and was not unanimously consented to by the entire subdivision. See *Webb v.*

*Mullikin*, 142 S.W.3d 822 (Mo. App. 2004). This necessarily involves inquiry into not only the applicability of Paragraph 4c as it is presently being enforced, but also into the continuing effect of the Williams Judgment as it relates to 4c, and into whether there is a duty owed by JCRCC and the golf course owners to RPOA and the lot owners. These are all issues central to Case No. 15JE-CC00809.

6. It is clear that the actions pending in this Court satisfy the requirements of Rule 66.01(b). Litigating these issues in two separate, but necessarily intertwined cases causes undue burden on RPOA and involves the risk of producing conflicting results. Consolidation of these matters would alleviate these concerns, preserves judicial economy, and is the best avenue toward ensuring consistent adjudication of these matters.

WHEREFORE, for the reasons stated above, RPOA respectfully prays that this Court enter its Order that the matters pending in Case No. 18JE-AC00739 and 15JE-CC00809 be consolidated into a single action, and for any such other and further relief as the Court may deem just and proper.

Respectfully Submitted

TdD ATTORNEYS AT LAW LLC

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/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