

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

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

**DEFENDANT’S SUPPLEMENTAL MEMORANDUM AND SUGGESTIONS
IN SUPPORT OF ITS MOTION TO CONSOLIDATE**

COMES NOW Raintree Plantation Property Owners Association, Inc. (“RPOA”), by and through the undersigned counsel, and in support of its Motion to Consolidate this matter with the case styled *Raintree Plantation Property Owners Association, Inc. v. David Tucker, et al.*, as Case No. 15JE-CC00809, states as follows:

1. RPOA filed its Motion to Consolidate this matter with Case No. 15JE-CC00809 (the “Circuit Division Case”) pursuant to Rule 66.01(b) of the Missouri Rules of Civil Procedure on or about November 8, 2018 because there are questions of law and fact at issue in the Circuit Division Case which bear directly on the rights and responsibilities that are at issue between the parties to this suit.

2. The Court has broad discretion to consolidate matters and may order cases consolidated upon motion by a party, as well as its own motion, even over the protest of the parties. *State v. Mayo*, 915 S.W.2d 758, 759 (Mo. banc 1996); see also *Liverpool & London & Globe Ins. Co. of Liverpool, England v. Nebraska Storage Warehouses*, 96 F.2d 30, 32 (8th Cir. 1938).

3. RPOA filed its First Amended Petition in the Circuit Division Case on or about April 19, 2018, following its substitution of counsel, stating various counts and claims for both declaratory relief and damages against Jefferson County Raintree Country Club (“JCRCC”), as well as its president, David Tucker, and DKAAT Properties, LLC (which assigned JCRCC management and operation of Raintree Country Club, together with the rights to collect the mandatory country club dues which are the subject of both lawsuits). A copy of the First Amended Petition is attached hereto as “Exhibit 1” and is fully incorporated herein by reference.

4. RPOA states causes of action for: (1) declaratory relief under Mo. R. Civ. P. § 74.06 setting aside the previous Judgment by the Honorable Stanley Williams in Case No. 13JE-CC00841 because it has become inequitable in its enforcement; (2) declaratory relief as to whether RPOA and subdivision owners can vote on matters which may affect the application of paragraph 4c of the amended covenants; (3) declaratory relief as to whether RPOA is the “governing body” of the country club as defined in paragraph 4c of the amended covenants; (4) declaratory relief as to whether JCRCC, David Tucker and/or DKAAT owe a fiduciary duty to RPOA or to the subdivision owners through the enforcement of mandatory dues; (5) for damages for prima facie tort related to the increase in dues and simultaneous reduction in available country club services; (6) for damages in unjust enrichment through the inequitable retention of a financial benefit at the expense of RPOA and the subdivision owners; and (7) for equitable relief piercing the corporate veil of JCRCC under a theory of corporate alter-ego.

5. In addition, Bryan Pyle has filed an Intervening Petition in the Circuit Division Case as an owner of property affected by the mandatory country club dues. The Intervening Petition states causes of action against JCRCC, David Tucker and DKAAT for: (1) breach of contract related to the improper management of Raintree Country Club; (2) breach of the

covenant of good faith and fair dealing (including a request to enjoin JCRCC and the other defendants from collecting any mandatory dues pending resolution of the Circuit Division Case); (3) declaratory relief to extend the applicability of paragraph 4c of the amended covenants to all owners of property in Raintree; and (4) for an injunction to prevent JCRCC from collecting mandatory dues in excess of its reasonable expenses. A copy of the Intervening Petition is attached hereto as “Exhibit 2” and is fully incorporated herein by reference.

6. Significant among RPOA’s claims for relief as they relate to this case are Counts IV, V, and VI of its First Amended Petition.

7. As to Count IV, if RPOA is successful, which it believes it will be, in establishing that JCRCC, David Tucker and/or DKAAT Properties occupies a special relationship with RPOA and/or the subdivision owners akin to a fiduciary duty, and JCRCC has breached that relationship or duty by unreasonably increasing dues while improperly reducing services at the country club, RPOA and BHLLC would then recover from JCRCC for that breach, and it would negate any amount of dues alleged to be owed in this case above what is deemed “reasonable” in the Circuit Division Case. As to Counts V and VI of the First Amended Petition, RPOA asserts the causes of action for unjust enrichment and prima facie tort that it has submitted as its counterclaim here.

8. One primary objective of consolidation of cases is to prevent separate actions from producing conflicting results. *Labor & Indus. Relations Comm’n v. Division of Employment Sec.*, 856 S.W. 2d 376 (Mo. App. 1993); see also *Wise v. Towse*, 366 S.W.2d 506, 507 (Mo. App. 1963). If BHLLC and RPOA are found liable for unpaid dues in this case, but JCRCC is found to have unreasonably increased those dues in breach of a duty it owes back to them, the results would be inconsistent. In addition, RPOA has stated the same causes of action in two separate

matters. JCRCC cannot complain about any supposed attempt by RPOA to “shoehorn” its unjust enrichment and prima facie tort claims into this matter, as RPOA was brought into this suit in July 2018, while RPOA’s petition against JCRCC has been pending in the Circuit Division Case since April 2018. JCRCC had known of RPOA’s claims for roughly 3 months before amending its petition to bring RPOA in as a Defendant here.

9. In addition, the Intervening Petition seeks to immediately enjoin JCRCC from collecting mandatory dues during the pendency of the Circuit Division Case, and to permanently enjoin JCRCC from collecting any dues “in excess of [JCRCC’s] reasonable expenses for providing the contracted for social membership amenities.” The intervening party was only granted leave to file the Intervening Petition in May of 2018 (a copy of the Order Granting Leave is attached as “Exhibit 3”), and while the request for immediate injunctive relief has yet to be taken up for hearing, the outcome of such a hearing will bear directly on JCRCC’s ability to maintain this action. If the injunction sought by the intervenor is granted, this matter would necessarily be stayed or dismissed altogether.

WHEREFORE for the foregoing reasons, Raintree Plantation Property Owners Association, Inc. respectfully prays that this matter be consolidated with Case No. 15JE-CC00809 for hearing and determination, 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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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 January 2, 2019 to all counsel of record in this matter.

_____/s/Erik C. Zorumski