

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

RAINTREE PLANTATION PROPERTY)	
OWNERS ASSOCIATION, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 15JE-CC00809
)	
DAVID TUCKER,)	
)	
JEFFERSON COUNTY RAIN TREE)	Division 1
COUNTRY CLUB, LLC, and)	
)	
DKAAT PROPERTIES, LLC,)	
)	
Defendants.)	

PLAINTIFF’S FIRST AMENDED PETITION

COMES NOW Plaintiff, Raintree Plantation Property Owner’s Association, Inc. (“Plaintiff”), by and through the undersigned counsel, and for its First Amended Petition, states:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a Missouri non-profit corporation organized as a property owners’ association for the governance and enforcement of the Covenants and Restrictions of the Raintree Plantation Subdivision (the “Subdivision”) in Jefferson County, Missouri.
2. Defendant, David Tucker (“Tucker”), is an individual with his principal residence in Jefferson County, Missouri. Upon information and belief, Tucker is sole owner of Jefferson County Raintree Country Club, LLC and DKAAT Properties, LLC.
3. Defendant, Jefferson County Raintree Country Club, LLC (“JCRCC”), is a limited liability company organized under the laws of the State of Missouri with its principal place of business in Jefferson County, Missouri.

4. Defendant, DKAAT Properties, LLC (“DKAAT”), is a limited liability company organized under the laws of the State of Missouri with its principal place of business in Jefferson County, Missouri.

5. This Court has subject matter jurisdiction over this cause of action.

6. Venue is proper in this Court pursuant to Section 508.010 RSMo (2017).

ALLEGATIONS COMMON TO ALL COUNTS

7. Plaintiff reaffirms and incorporates by reference the allegations contained in paragraphs 1 through 6 as if fully restated herein.

8. This matter involves certain controversies that have arisen within the Subdivision concerning the operation of the Jefferson County Raintree Country Club (the “Country Club”) in light of previous court decisions interpreting Paragraph 4(c) of the Subdivision’s Covenants and Restrictions.

9. As is relevant to the matters in this litigation, Paragraph 4(c), provides the following:

“All lot owners have a non-transferrable right to, and shall be deemed social members of any country club or golf course constructed on property heretofore owned by RAINTREE PLANTATION, INC., subject to their payment of dues and user charges. Such membership can be modified or terminated by the owner or governing body of the Club or Golf Course No dues schedule termination or modification shall be reviewable by any Court or Government Agency. Annual dues as established solely by such Club or Golf Course may be collected by Grantor and turned over to the Club or Course. . .”

10. The Subdivision, of which the Country Club is an integral part, is essentially divided into three distinct sections; Sections 1 – 19, Sections 20 – 25 and Raintree Forest. Each lot owner in the Subdivision is a voting member of the Plaintiff property owners’ association with equal rights and obligations under the Subdivision’s by-laws and restrictive covenants.

11. In 2011, the Jefferson County Circuit Court entered a judgment in cause no. 08JE-CC01575, styled *Anderson V. Kremer Restaurant Enterprises*, 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. A copy of the 2011 judgment is attached hereto as “Exhibit A” and is fully incorporated herein by reference.

12. Following this decision, Defendants, DKAAT and JCRCC began charging country club assessments to lot owners of Sections 1-19 and Raintree Forest in addition to lot owners in Sections 20 – 25, arguing that the judgment required all owners in the Subdivision to pay mandatory assessments.

13. Plaintiff 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.

14. In 2013, DKAAT and JCRCC filed suit in cause no. 13JE-CC00841 seeking a declaratory judgment 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 Subdivision’s restrictive covenants concerning the Country Club assessments.

15. By Judgment entered October 27, 2014, the Court declared (1) that the Subdivision’s 2013 vote to eliminate Paragraph 4c was null and void as to Sections 20 – 25, (2) that the 2013 vote was valid and in full force and effect as to Sections 1 – 19 and Raintree Forest, and (3) that Plaintiff is prohibited from amending, deleting or modifying the language of Paragraph 4c in any way. A copy of the 2014 judgment is attached hereto as “Exhibit B” and is fully incorporated herein by reference.

16. Since the Court's decision in 2014, lot owners in Sections 1 – 19 and Raintree Forest have not paid, and have been under no obligation to pay, dues or assessments of any kind related to the Country Club. Conversely, lot owners in Sections 20 – 25 have been continuously charged mandatory assessments by DKAAT and/or JCRCC.

17. During this same time, the amounts charged as mandatory assessments to owners in Sections 20 – 25 have quadrupled, while the services and amenities offered by the Country Club have been substantially reduced and significant portions of the Country Club have fallen into disrepair.

18. The circumstances regarding the assessments and operations of DKAAT and/or JCRCC with respect to the Country Club have caused acrimony and division among owners in the respective Sections and has created conflict within the Subdivision.

19. There presently exist a number of substantial judicable controversies ripe for judicial resolution involving Plaintiff's rights and obligations related to the Country Club and its relation to both the Subdivision lot owners and the Defendants.

COUNT I – REQUEST FOR EQUITABLE RELIEF
Setting Aside the Court's Judgment of October 27, 2014
Pursuant to Missouri Supreme Court Rule 74.06

20. Plaintiff reaffirms and incorporates by reference the allegations contained in paragraphs 1 through 19 as if fully restated herein.

21. Missouri Supreme Court Rule 74.06(b)(5) permits the Court to set aside a judgment on equitable grounds more than one year following its entry. Rule 74.06(d) further permits an independent action seeking such relief.

22. The Missouri Rules thus provide the Court with equitable authority to provide relief from a judgment to address those situations in which subsequent circumstances have made

enforcement of the judgment inequitable. See *Juenger v. Brookdale Farms*, 871 S.W.2d 629 (Mo. App. 1994).

23. Here, the judgment entered in October of 2014 in Case No. 13JE-CC00841 is inequitable in its enforcement. Further, Plaintiff was misled as to the consequences of its consent to the finality of such judgment, whereby Plaintiff is (1) forever barred from amending or modifying the language of Paragraph 4c and (2) is presently incapable of performing its responsibilities and upholding the duties it owes to all its members. This has, in-turn, worked an extrinsic fraud on the Court.

24. In addition, the Court was misled as to the effect of the 2011 Judgment, in that the judgment dealt only with lot owners in Sections 20 – 25 acting as a class independent from Plaintiff or the Subdivision as a whole. The 2011 Judgment did not touch the issue of whether the Subdivision in its entirety could modify Paragraph 4c. This, in-turn operates as an extrinsic fraud upon the Court's 2014 Judgment.

25. The lot owners in all of Sections 1 – 25 and in Raintree Forest voted to eliminate Paragraph 4c from the Subdivision's restrictive covenants.

26. Through the Court's judgment, that vote was effective for lot owners in Sections 1 – 19 and in Raintree Forest. Such owners no longer need to pay mandatory assessments for the Country Club.

27. However, through the same judgment, the lot owners in Sections 20 – 25 are required to pay mandatory assessments, which have been increased four-fold since 2014, with no avenue towards redress and no means by which to alter the terms of their assessments.

28. The judgment has had disparate effects on the various lot owners, has fostered discord and acrimony within the Subdivision, and has rendered it impossible for Plaintiff to adequately perform its responsibilities and uphold the duties it owes to its members.

29. In addition, the judgment vests the authority to change the language in Paragraph 4c exclusively with JCRCC, DKAAT and/or Tucker, as Plaintiff has been forever barred from amending, modifying, deleting or altering this substantial provision within its own restrictive covenants in any way.

30. As a result, those parties which exclusively benefit financially from Paragraph 4c have been granted unchecked authority to not only mandatorily assess the property owners in Sections 20 – 25, but to unilaterally alter the terms of such assessment, and at the same time have substantially failed to provide a benefit to Plaintiff and its member owners.

31. It is inequitable for the 2014 judgment to remain in place and such judgment should be set aside so as to permit Plaintiff to amend the restrictive covenants in accordance with the interests of all owners in the Subdivision.

32. Plaintiff has no adequate remedy at law absent the relief sought herein.

WHEREFORE Plaintiff respectfully prays for the Judgment of this Court pursuant to Rule 74.06 of the Missouri Supreme Court Rules setting aside the judgment entered October 27, 2014 in Case No. 13JE-CC00841 on the grounds that the judgment is inequitable in its enforcement, for an Order awarding Plaintiff all reasonable costs and attorneys' fees be paid by Defendants Tucker, DKAAT and/or JCRCC, and for any such other and further relief as the Court may deem just and proper under the circumstances.

COUNT II – REQUEST FOR DECLARATORY RELIEF
As to whether Plaintiff can permit members to vote on matters
which would affect the application of Paragraph 4c

33. Plaintiff reaffirms and incorporates by reference the allegations contained in paragraphs 1 through 32 as if fully restated herein.

34. Defendant Tucker, as both a member of Plaintiff's association and as owner of DKAAT and JCRCC, has put forth a proposal that Plaintiff enter into a contract with DKAAT and JCRCC through which all lot owners in the Subdivision would be provided with a "social membership" to the Country Club, including unrestricted access to the golf course, pool and fitness center, in exchange for payment by Plaintiff of \$240.00 per lot to JCRCC for each lot within the Subdivision that has made payment of its annual assessment.

35. A special election was held in December of 2015 at which this proposal failed to pass by a vote of Plaintiff's members. However, given the circumstances in this case, particularly with respect to the climate of acrimony and division within the Subdivision, the likelihood of the same or similar proposals being presented for a vote of lot owners is high enough as to create a ripe and justiciable controversy.

36. There is presently no provision in the Subdivision's restrictive covenants which would allow for a vote of Plaintiff's association members to cause Plaintiff's board of directors to enter into such an agreement.

37. In addition, Plaintiff's board of directors owes a fiduciary responsibility to its members to protect the equal rights and obligations of the property owners, including but not limited to voting rights.

38. But for the previous Court decisions regarding Paragraph 4c, Plaintiff would unquestioningly be permitted to resolve these issues by vote of the entirety of the lot owners.

However, at present it is unclear whether permitting a vote which would materially alter the effect of Paragraph 4c, both as to Sections 1 – 19 and as to Sections 20 – 25, violates the 2014 judgment. It is further unclear whether it is permissible, if such a vote were to occur, for the owners in Sections 1 – 19 and Raintree Forest to participate therein because Paragraph 4c does not apply and has been removed as to those owners.

39. Plaintiff has no adequate remedy at law absent the relief sought herein.

WHEREFORE, pleading in the alternative, Plaintiff respectfully requests that the Court enter an Order of Declaratory Judgment affirming as follows: (1) The Plaintiff's board of directors owes a duty to uphold, provide for modification and enforce all matters included in the Covenants and Restrictions, including Paragraph 4c, as well as to protect members' property interests from undue and unreasonable burden, a duty to treat all its members fairly, including the authority to enable all members to vote on articles within the governing Covenant and Restrictions and the a duty to act within the scope of its authority as regulated by Missouri "General Not for Profit Corporation Act" and the decisions of the Court; (2) that all lot owners in Sections 1-25 and Raintree Forest have the right to vote on all matters included in the Covenants and Restrictions; (3) that Plaintiff shall not be forced by a vote of the community to enter into any contract with a specified third-party as it would preclude the board of directors from exercising its fiduciary duty; (4) for an Order awarding Plaintiff all reasonable costs and attorneys' fees be paid by Defendants Tucker, DKAAT and/or JCRCC; and (5) for any such other and further relief as this Court may deem just and proper under the circumstances.

COUNT III – REQUEST FOR DECLARATORY RELIEF
As to whether Plaintiff is the “governing body” of the Country Club

40. Plaintiff reaffirms and incorporates by reference the allegations contained in paragraphs 1 through 39 as if fully restated herein.

41. Paragraph 4c of the Subdivision’s restrictive covenants provides that Country Club membership may be “modified or terminated by the owner *or governing body* of the Club or Golf Course.”

42. Owners in Sections 20 – 25 are deemed members of the Country Club and are thus required to pay mandatory assessments.

43. Owners in Sections 20 – 25 are also governed by the Subdivision’s restrictive covenants, which such covenants are in-turn governed by Plaintiff.

44. In addition, the Country Club is an integral part of the Subdivision, over which Plaintiff is the governing body.

45. A controversy exists with respect to the disparate effect of Paragraph 4c on owners of Sections 20 – 25 and the relationship between Plaintiff, its member owners and the Defendants.

46. Because Plaintiff is the governing body of the Subdivision, Plaintiff requires this Court’s declaration that it is also the “governing body” of the Country Club within the meaning of Paragraph 4c with the authority to modify or terminate membership.

47. Plaintiff has no adequate remedy at law absent the relief sought herein.

WHEREFORE, pleading in the alternative, Plaintiff respectfully prays for the Judgment of this Court declaring that the “governing body” referenced in Paragraph 4c of the Subdivision’s restrictive covenants is the Raintree Plantation Property Owner’s Association, Inc., for an Order awarding Plaintiff all reasonable costs and attorneys’ fees be paid by Defendants Tucker,

DKAAT and/or JCRCC, and for any such other and further relief as the Court may deem just and proper under the circumstances.

COUNT IV – REQUEST FOR DECLARATORY RELIEF
As to whether JCRCC, DKAAT and/or Tucker owe a fiduciary duty
to Plaintiff and/or the Subdivision lot owners

48. Plaintiff reaffirms and incorporates by reference the allegations contained in paragraphs 1 through 47 as if fully restated herein.

49. By operation of the 2014 judgment, Defendants JCRCC, DKAAT and/or Tucker were granted exclusive authority to assess lot owners in Sections 20 – 25 with mandatory dues.

50. At the same time, neither the lot owners, nor Plaintiff, have any authority whatsoever to modify the terms of membership in the Country Club, to regulate the amount of assessments charged, or to direct anything with respect to the Country Club's operations.

51. The amounts of the mandatory assessments to owners in Sections 20 – 25 have quadrupled since the 2014 judgment, while at the same time the amenities and services provided by the Country Club have been substantially reduced by Defendants.

52. Defendants owe a duty of loyalty to Plaintiff and to the social members of the Country Club (i.e. those owners in Sections 20 – 25) to provide such services and amenities that are beneficial to the Subdivision owners, and to make assessments which are reasonable and limited to what is necessary for providing such services and amenities.

53. Plaintiff has no adequate remedy at law absent the relief sought herein.

WHEREFORE, pleading in the alternative, Plaintiff respectfully prays for the Judgment of this Court declaring (1) that Defendants, JCRCC, DKAAT and Tucker owe a duty of loyalty to Plaintiff and to the lot owners in Sections 20 – 25 in providing services and amenities at the Country Club of a standard that is beneficial to the members and not less than what is reasonable

and generally acceptable among similarly situated country clubs, (2) that Defendants further owe a duty of loyalty in charging a reasonable amount for any mandatory assessments to owners in Sections 20 – 25 limited to what is necessary for providing such services and amenities, (3) for an Order awarding Plaintiff all reasonable costs and attorneys' fees be paid by Defendants Tucker, DKAAT and/or JCRCC and (4) for any such other and further relief as the Court may deem just and proper under the circumstances.

COUNT V – PRIMA FACIA TORT
As to Defendants JCRCC, DKAAT and Tucker

54. Plaintiff reaffirms and incorporates by reference the allegations contained in paragraphs 1 through 53 as if fully restated herein.

55. Defendants JCRCC, DKAAT and/or Tucker have intentionally increased the amount of mandatory assessments charged to Subdivision lot owners four-fold since 2014.

56. Defendants have simultaneously and intentionally reduced the amount of amenities provided by the Country Club significantly and have permitted portions of the Country Club to fall into disrepair.

57. Upon information and belief, Defendants' actions were intended to cause injury to Plaintiff and its members by improperly and unfairly profiting from mandatory Country Club assessments with the knowledge that Plaintiff has been barred from altering or governing the terms of such assessments.

58. Defendants have no justification for these actions.

WHEREFORE Plaintiff respectfully prays for the Judgment of this Court in its favor and against Defendants Tucker, DKAAT and JCRCC jointly and severally for damages in an amount in excess of \$25,000.00, for post-judgment interest at the maximum rate permitted by law, for

Plaintiff's costs, 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 VI – UNJUST ENRICHMENT
As to Defendants JCRCC, DKAAT and Tucker**

59. Plaintiff reaffirms and incorporates by reference the allegations contained in paragraphs 1 through 58 as if fully restated herein.

60. In charging lot owners increasing mandatory assessments for the Country Club, a financial benefit has been conferred upon Defendants Tucker, DKAAT and/or JCRCC.

61. Defendants have appreciated the fact of this benefit.

62. Defendants have accepted and retained this benefit.

63. The retention of this benefit is inequitable given that Defendants have reduced the level of services and amenities at the Country Club to the point that the Country Club has ceased to be beneficial to Plaintiff and its members and has instead become a substantial burden.

WHEREFORE Plaintiff respectfully prays for the Judgment of this Court in its favor and against Defendants Tucker, DKAAT and JCRCC jointly and severally for restitution in an amount in excess of \$25,000.00, for post-judgment interest at the maximum rate permitted by law, for Plaintiff's costs, 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 VII – PETITION TO PIERCE THE CORPORATE VEIL

64. Plaintiff reaffirms and incorporates by reference the allegations contained in paragraphs 1 through 63 as if fully restated herein.

65. Upon information and belief, Defendant Tucker is the sole member and sole owner of the limited liability company Jefferson County Raintree Country Club, LLC.

66. Upon information and belief, Defendant Tucker is the sole member and sole owner of the limited liability company DKAAT Properties, LLC.

67. Upon information and belief, Tucker so dominates and controls JCRCC that the company is merely an instrumentality of Tucker to the point that it is indistinguishable from Tucker and is Tucker's corporate alter-ego.

68. Upon information and belief, Tucker so dominates and controls DKAAT that the company is merely an instrumentality of Tucker to the point that it is indistinguishable from Tucker and is Tucker's corporate alter-ego.

69. Upon information and belief, Tucker uses the corporate form of JCRCC as a means of avoiding personal liability, while at the same time operating the company in such a manner that it has caused damage to Plaintiff.

70. Upon information and belief, Tucker uses the corporate form of DKAAT as a means of avoiding personal liability, while at the same time operating the company in such a manner that it has caused damage to Plaintiff.

71. It is equitable that the Court disregard JCRCC's corporate form and impute and attach any and all liability on the part of said limited liability company to Tucker as an individual.

72. It is equitable that the Court disregard DKAAT's corporate form and impute and attach any and all liability on the part of said limited liability company to Tucker as an individual.

73. Plaintiff has no adequate remedy at law absent the relief sought herein.

WHEREFORE Plaintiff respectfully prays for the Judgment of this Court disregarding the corporate form of JCRCC and DKAAT such that if either said company is found to be liable

to Plaintiff for damages, restitution, fees and/or costs, any and all such liability shall be imputed to and shall attach to Defendant Tucker as an individual, jointly and severally with the said company or companies, and for any such other and further relief as the Court may deem just and proper under the circumstances.

Respectfully Submitted

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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 April 17, 2018, to all counsel of record in this matter.

/s/Erik C. Zorumski