

STATE OF MISSOURI)
) SS.
COUNTY OF JEFFERSON)

IN THE CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF MISSOURI

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

Plaintiffs,)
vs.)

Case No. 15JE-CC00809

Division: 1

DAVID TUCKER, JEFFERSON COUNTY)
RAINTREE COUNTRY CLUB, LLC, and)
DKAAT PROPERTIES, LLC)

Judge: Carl Wesley Yates

Defendants.)

and)

BRYAN PYLE)

Intervenor/Third Party Plaintiff.)

INTERVENING PLAINTIFF’S PETITION FOR BREACH OF CONTRACT, BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING, DECLARATORY JUDGMENT AND MANDATORY INJUNCTION

COMES NOW Intervening Plaintiff Bryan Pyle, by and through his counsel, Martin L. Daesch and The Onder Law Firm, and for his Petition for Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing, Declaratory Judgment and Mandatory Injunction, states as follows:

PARTIES

1. Intervening Plaintiff Bryan Pyle (hereinafter “Intervenor”) is an individual residing in the Raintree Plantation Subdivision (hereinafter “Subdivision”) in Jefferson County, State of Missouri.

2. Plaintiff, Raintree Plantation Property Owners' Association, Inc., (hereinafter "RPOA") is the original Plaintiff in this lawsuit and is a Missouri Not-for-Profit Corporation incorporated as a property owners' association for the governance and enforcement of the Covenants and Restrictions Covering Lots in Raintree Plantation filed of record with the Jefferson County Recorder of Deeds at Book 644, Page 823, as amended (hereinafter the "Indenture").

3. Defendant David Tucker (hereinafter "Tucker") is an original Defendant in this lawsuit and is an owner of a lot in the Raintree Planation Subdivision and is bound by the Indenture.

4. Tucker is also the sole owner and operator of Raintree Country Club, LLC and DKAAT Properties, LLC.

5. Defendant Jefferson County Raintree Country Club, LLC (hereinafter "RCC") is an original Defendant in this lawsuit and is a Limited Liability Company organized in Missouri and doing business in Jefferson County, State of Missouri.

6. Defendant DKAAT Properties, LLC, (hereinafter "DKAAT") is an original Defendant to this lawsuit and is a Missouri Limited Liability Company doing business in Jefferson County.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the parties in this lawsuit pursuant to Missouri Rule of Procedure 92.02, R.S.Mo. 527.010, Article V, Section 14 of the Missouri Constitution and R.S.Mo. 478.070 which grants Missouri Circuit Courts original jurisdiction over all civil cases and matters.

8. Venue is proper in this county pursuant to R.S.Mo. 508.010 because all parties reside, or can be found, in Jefferson County, State of Missouri. Venue is also proper in this Court because all parties have appeared in this lawsuit and have consented to venue in this Court.

FACTS COMMON TO ALL COUNTS

9. Raintree Planation is a subdivision in Jefferson County consisting of approximately 3,168 lots with 719 improved with single family residences.

10. All lot owners in the Subdivision are bound by the Indenture, as amended.

11. The Subdivision was originally developed beginning in 1979. The first sections developed were Plats 1-19 and Raintree Forest (hereinafter "RTF").

12. In 1987, the developer decided to add six more plats to the existing Subdivision, these plats are now known as Plats 20-25.

13. All lots located in Plats 1-25 and RTF are subject to the Indenture, as amended.

14. The Subdivision was designed to be a "resort" community consisting of high-end, single family residences and improved with amenities to include, but not limited to, a golf course, a clubhouse, restaurant and bar, a driving range, lighted tennis courts and a swimming pool.

15. The golf course, clubhouse, restaurant, bar and the related amenities were not to be, and never have been, owned by the Subdivision lot owners or the RPOA; the amenities have always been privately owned and supported, in whole or in part, by dues paid by lot owners of the Subdivision.

16. RCC and DKAAT are the current owners of the clubhouse and amenities.

17. As a benefit to purchasing property in the Subdivision, the developer included a provision in the Indenture that granted lot owners in Plats 1-19 and RTF (20-25 were not yet platted) social membership, requiring social membership annual dues as follows:

IVc. All lot owners have a non-transferable right to, and shall be deemed social members of any country club or any golf course construction 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 of Golf Course. No termination or modification shall be reviewable by any Court or Government Agency. Annual dues as established solely by such Club or Golf Course may, unless the lot owner objects, be collected by Grantor and turned over to the Club or Course. If any lot owner fails or refuses to pay said dues for any two (2) consecutive years, or fails to promptly pay any user fees and charges, all lots owned by that individual will lose all rights to be a member.

18. Paragraph IVc of the Indenture established a single class of social membership for payment of annual dues that are a burden on all lot owners, running with the land.

19. The annual dues required by paragraph IVc were never intended to support the owner of the amenities, they were designed to be a reasonable fee for a social membership to the club.

20. All lot owners located in Plats 1-25 and RTF were deemed social members of the club and had the option to upgrade memberships to include social membership privileges plus unlimited free greens fees.

21. In 1987, the developer decided to add Plats 20-25 to the Subdivision and entered into a "contract" with the then existing RPOA that added Plats 20-25 to the Indenture in exchange for certain improvements to be made to the clubhouse and related amenities.

22. To facilitate raising revenues sufficient to fund the improvements to be made to the clubhouse and related amenities, the Indentures were updated and recorded by at the Jefferson County Recorder of Deeds at Book 372, Page 1064, to amend paragraph IVc by adding the following language to the existing version of paragraph IVc:

In addition, all unpaid and delinquent [social membership] dues presently set at \$120.00 shall be treated as unpaid assessments and shall become a

lien on said lot and enforceable the same as unpaid assessments with any penalties as provided herein.

23. Pursuant to the 1987 “contract” the developer platted and developed Plats 20-25 and by 2003 had completed the improvements to the amenities.

24. In 2003 and for several years thereafter, the lot owners had access to social membership amenities including a restaurant, bar, and a swimming pool for a nominal annual fee not exceeding \$200.

25. The clubhouse and related amenities are privately owned, but open to the public.

26. In 2012 Defendants RCC and DKAAT assumed ownership of the clubhouse and amenities.

27. Since assuming ownership of the clubhouse and amenities RCC and DKAAT have eliminated amenities including the restaurant and bar.

28. The annual IVc annual social membership dues have increased over the past years as follows:

<u>Year</u>	<u>Annual Dues</u>
2012	\$195.00
2013	\$225.00
2014	\$225.00
2015	\$525.00
2016	\$831.00

29. In 2008, a lot owner from Plat 20-25 filed a class action lawsuit in Jefferson County alleging that the owners of lots in Plats 20-25 had no obligation to pay IVc dues and the lot owners in Plats 20-25 reserve the right to alter, amend or delete paragraph IVc.

30. In 2011, the Jefferson County Circuit Court entered its Judgment declaring that lot owners in Plats 20-25 were social members, had a legal obligation to pay IVc assessments and the owner of the clubhouse and amenities was the only party that could modify or terminate IVc.

31. The 2011 Judgment was upheld on appeal.
32. In 2013, the RPOA (consisting of lot owners in Plats 1-25 and RTF) voted to eliminate IVc.
33. Immediately following the RPOA vote to eliminate IVc, DKAAT and RCC filed suit in Jefferson County seeking a declaration to set aside the vote and require all lot owners in Plats 1-25 and RTF, to pay IVc dues.
34. The parties in the 2013 lawsuit are the same as the original parties to this lawsuit, to wit, RCC, DKAAT, Tucker and RPOA.
35. The Jefferson County Circuit Court entered its Judgment in the 2013 lawsuit finding that the owners in Plats 1-19 and RTF could vote to terminate their obligation to pay IVc dues, but lot owners in Plats 20-25 could not.
36. The 2013 lawsuit was not a class action.
37. The 2013 Judgment was not appealed.
38. Since the court's ruling in the 2013 lawsuit, the obligation to pay IVc dues has been mandatory for lot owners in Plats 20-25 but not for lot owners in Plats 1-19 and RTF.
39. Lot owners in Plats 1-19 and RTF who elect to pay IVc dues are charged a lesser fee by RCC and DKAAT than the fee charged to lot owners in Plats 20-25.
40. Members of the general public who elect to pay annual dues are charged a lesser fee by RCC and DKAAT than the fee charged to lot owners in Plats 20-25.
41. Defendants have failed to provide contracted for amenities since January 2015.
42. Defendants have failed to clarify, amend or abrogate the terms of its contract with RPOA members.

COUNT I - BREACH OF CONTRACT
(RCC and DKAAT)

43. Intervenor repeats and realleges all previous paragraphs as more fully set forth herein.

44. Tucker has indicated his belief that he is free to charge whatever he desires for the mandatory IVc assessment.

45. Tucker has indicated his belief that he can change IVc dues at any level he chooses regardless of the existence or non-existence of any or all of the amenities.

46. Tucker has indicated his belief that even if his company goes out of business and the clubhouse and amenities are “taken over by the bank,” the lot owners in Plats 20-25 would still be obligated to pay IVc dues without regard to whether or not the amenities exist or services are provided.

47. RCC and DKAAT have refused to reopen the bar and restaurant in spite of multiple vendors who have expressed an interest in doing so.

48. RCC and DKAAT have breached their obligations under the Indenture by failing to provide contracted for amenities.

WHEREFORE, Intervenor requests this Court to:

- A. Enjoin Defendants from collecting annual dues pending resolution of this matter;
- B. Enter judgment to disgorge any and all annual dues collected by Defendants from 2012 through the date of the filing of this Petition;
- C. Award Intervenor’s costs and attorney’s fees in maintaining this action;
- D. Any other relief as requested in this Petition and any and all other relief as the Court may deem just and proper under the circumstances.

**COUNT II - BREACH OF THE COVENANT OF
GOOD FAITH AND FAIR DEALING
(RCC and DKAAT)**

49. Intervenor repeats and realleges all previous paragraphs as more fully set forth herein.

50. RCC and DKAAT have acted in bad faith by:

- 1) failing to clarify, amend or abrogate the indentures, thereby intentionally misleading existing and prospective RPOA lot owners;
- 2) failing to provide the contracted for amenities;
- 3) charging lot owners of Plats 1-19 and RTF lesser IVc dues than lot owners in Plats 20-25;
- 4) eliminating amenities without lowering the IVc dues;
- 5) raising the IVc annual dues on lot owners in Plats 20-25 from \$195.00 in 2012 to \$831.00 in 2016.

51. RCC's and DKAAT's actions in eliminating amenities yet raising annual IVc dues from \$195.00 to \$831.00 within the past five years is opportunistic in exploiting specific terms of paragraph IVc to ensure gains in excess of those reasonably expected.

WHEREFORE, Intervenor requests this Court to:

- A. Enjoin Defendants from collecting mandatory dues pending resolution of this matter;
- B. Enter judgment to disgorge any and all mandatory dues collected by RCC and DKAAT from 2012 through the date of the filing of this Petition;
- C. Declare the contract between RCC and DKAAT and its successors and assigns with RPOA members is voidable because it withheld material facts and

included misrepresentations as to the parties subject to the agreement (“all lot owners”) and misleading terms (“social”);

- D. Declare the contract between RCC and DKAAT and its successors and assigns with RPOA members is voidable because essential terms of the contract have not been met (elimination of amenities);
- E. Declare the contract between RCC and DKAAT and its successors and assigns with RPOA members is voidable because it has been made available on different terms to Plats 1-19 and RTF as compared to Plats 20-25;
- F. Declare the contract between RCC and DKAAT and its successors and assigns with RPOA members is unconscionable and unenforceable;
- G. Award Intervenor’s costs and attorney’s fees in maintaining this action;
- H. Any other relief as requested in this Petition and any and all other relief as the Court may deem just and proper under the circumstances.

COUNT III – DECLARATORY JUDGMENT
(RCC and DKAAT)

52. Intervenor repeats and realleges all previous paragraphs as more fully set forth herein.

53. Intervenor requests declaratory relief pursuant to R.S.Mo. 527.010 et. seq.

54. A justiciable controversy exists which presents a real, substantial, presently-existing controversy as to which specific relief is sought in that the Defendants are not billing all lot owners in Plats 1-25 and RTF IVc annual dues and/or are billing lot owners in Plats 1-19 and RTF an annual assessment less than the assessment charged to lot owners in Plats 20-25.

55. The lot owners in the Subdivision have a legally protected interest consisting of a pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief.

56. The issues presented herein are ripe.

57. Intervenor has no other adequate remedy of law.

WHEREFORE, Intervenor requests this Court to:

- A. Enter judgment consistent with their prayer for relief in all other counts;
- B. Declare, consistent with the 2011 Judgment, that all lot owners in Plats 1-25 and RTF have the obligation to pay an equal amount of IVc dues to RCC and DKAAT, their successors and assigns;
- C. Declare the 2013 Judgment binding only on RPOA, DKAAT and RCC;
- D. Declare that RCC and DKAAT have breached the obligations to provide amenities to the lot owners of Plats 1-25 and RTF;
- E. Declare that the contract between RCC and DKAAT and its successors and assigns with RPOA members is voidable as a result of Defendants' actions;
- F. Declare the contract between RCC and DKAAT and its successors and assigns with RPOA members is voidable because Defendants withheld material facts and included misrepresentations as to the parties subject to the agreement ("all lot owners") and intentionally misleading terms ("social");
- G. Declare the contract between RCC and DKAAT and its successors and assigns with RPOA members is voidable because essential terms of the contract have not been met by the Defendants;
- H. Declare the contract between RCC and DKAAT and its successors and assigns with RPOA members is voidable because it was not made available on the same terms to all members;
- I. Declare the contract between RCC and DKAAT and its successors and assigns with RPOA members is unconscionable and unenforceable;
- J. Award Intervenor's costs and attorney's fees in maintaining this action; and
- K. Order such other and further relief as the Court deems just and proper.

COUNT IV – MANDATORY INJUNCTION
(RCC and DKAAT)

58. Intervenor repeats and realleges all previous paragraphs as more fully set forth herein.

59. Upon information and belief, RCC and DKAAT collect annual IVc dues from lot owners in Plats 1-25 and RTF that exceed the reasonable costs to provide the limited social amenities currently offered to lot owners.

60. Intervenor has no other adequate remedy at law to protect him against immediate and irreparable injury, loss and damage if Defendants are allowed to continue charging IVc dues in excess of its reasonable expenses to provide the contracted for social membership amenities.

WHEREFORE, Intervenor prays this Court for its order and judgment to:

- A. Enjoin Defendants from collecting annual dues from the lot owners of Plats 1-25 and RTF in excess of Defendants' reasonable expenses for providing the contracted for social membership amenities;
- B. Require Defendants to account for all receipts and expenses associated with operating the clubhouse and provided amenities and to provide an annual accounting of all income, receipts and expenses to the lot owners of Plats 1-25 and RTF;
- C. Require Defendants to apply all mandatory dues received from the lot owners in Plats 1-25 and RTF that exceed Defendants' reasonable expenses to provide the contracted for social membership amenities, to the following years operations and reduce IVc dues accordingly;
- D. Award Intervenor his attorney's fees and costs occurred herein;
- E. Order such other and further relief as the Court deems just and proper.

ONDER, SHELTON, O'LEARY &
PETERSON, LLC

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CERTIFICATE OF SERVICE

I certify on May 26, 2017, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system and served via U.S. Mail upon all attorneys of record below:

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