

IN THE CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF MISSOURI
ASSOCIATE DIVISION

JEFFERSON COUNTY RAINTREE)	
COUNTRY CLUB, LLC,)	Case No.:
)	
Plaintiff,)	
)	
v.)	Division:
)	
BLACK HOLE, LLC,)	
)	
And)	
)	
RAINTREE PLANTATION PROPERTY)	
OWNERS ASSOCIATION, INC.)	
)	
Serve: Stanley Schnaare)	
321 2 nd Street)	
Hillsboro, MO 63050)	
)	
Defendants.)	

**FIRST AMENDED PETITION TO SET ASIDE FRAUDULENT
TRANSFER (MO. REV. STAT. 428.005 -428.059) AND FOR THE
COLLECTION OF MANDATORY ANNUAL DUES**

COMES NOW Plaintiff, Jefferson County Raintree Country Club, LLC, by and through the undersigned counsel, and for its cause of action against Defendants states as follows:

FACTS COMMON TO ALL COUNTS

1. Jefferson County Raintree Country Club, LLC (“**JCRCC**”) is a Missouri limited liability corporation registered with the Missouri Secretary of State and in good standing with its principal place of business in Jefferson County, Missouri.

2. Defendant Black Hole, LLC (“**Black Hole**”) is a Missouri limited liability company, registered with the Missouri Secretary of State and in good standing, with its principal place of business in Jefferson County, Missouri.

3. Defendant Raintree Plantation Property Owners Association, Inc. (“**POA**”) is a Missouri corporation, registered with the Missouri Secretary of State and in good standing, with its principal place of business located in Jefferson County, Missouri.

4. Raintree Plantation is a subdivision located in Jefferson County that was developed by Raintree Plantation, Inc. (“**RPI**”) in phases.

5. The POA is the entity that manages the Raintree Plantation Subdivision.

6. In 1987, RPI desired to add sections 20-25 to Raintree Plantation subdivision.

7. Since the Raintree Plantation subdivision already existed, the addition of Sections 20-25 to Raintree Plantation was done by means of a contract between the POA and RPI wherein the parties agreed to add these new sections into the subdivision (“**1987 Contract**”). A true and accurate copy of that Contract is attached hereto and incorporated herein as Plaintiff’s **Exhibit 1**.

8. As part of the 1987 Contract, the POA and RPI agreed that the restrictions that would govern lots in Sections 20-25 would contain a provision requiring lot owners to pay mandatory dues for membership in the golf course and country club. See Plaintiff’s **Exhibit 1**.

9. As a result of the 1987 Contract, the Amended Covenants and Restrictions Covering Lots in Raintree Plantation Subdivision was filed with the

Jefferson County Recorder of Deeds office in Book 372, Page 1064 (“**Amended Restrictions**”). A true and accurate copy of the Amended Restrictions is attached hereto and incorporated herein as Plaintiff’s **Exhibit 2**.

Authority to Collect Dues

10. Pursuant to the terms of the Amended Restrictions, RPI had the authority to collect the annual golf course dues and turn them over to the owner of the golf course. See **Exhibit 2**, ¶4c.

11. In December 2003, after the subdivision was fully built out, RPI conveyed its rights under the terms of the Amended Restrictions related to the collection of the golf course dues, to Raintree Country Club, Inc. or its successors and assigns by means of an Assignment of Rights Between Raintree Plantation, Inc. and Raintree Plantation Property Owners’ Association, Inc. which was filed for record with the Jefferson County Recorder of Deeds office on January 21, 2004 as Document Number 040003832 (“**2003 Assignment**”). A true and accurate copy of the 2003 Assignment is attached hereto and incorporated herein as Plaintiff’s **Exhibit 3**.

12. The 2003 Assignment specifically states “The dues and charges for the country club and golf course, including any delinquent and past due dues, shall be collected by Raintree Country Club, Inc. or its successors or assigns.” See Plaintiff’s **Exhibit 3**, pg. 2.

13. Over the years, the golf course has changed hands several times. From inception it was owned by RPI which subsequently transferred ownership to Raintree Country Club, Inc. (“**RCC**”). Thereafter, RCC sold the golf course to Kremer Restaurant Enterprises, LLC (“**KRE**”). KRE, in turn, transferred

ownership of the golf course to First State Community Bank (“**FSCB**”).

Thereafter, FSCB sold the golf course to DKAAT Properties, LLC (“**DKAAT**”).

14. As a result, DKAAT is a successor to both RPI and RCC.

15. As a successor to RCC, DKAAT is entitled to collect the annual golf course dues owed under §4c of the Amended Restrictions

16. Plaintiff is the operator of the golf course and country club and was assigned the right to collect the mandatory annual dues, referenced in §4c of the Amended Restrictions, by DKAAT in an Assignment executed on May 30, 2012 (“**2012 Assignment**”). A true and accurate copy of the 2012 Assignment is attached hereto and incorporated herein as Plaintiff’s **Exhibit 4**.

17. The Amended Restrictions state “Deeds to all lots in said subdivisions shall be subject to the following covenants and restrictions which **shall run with the land and bind all subsequent owners.**” See **Exhibit 2** (emphasis added).

18. In addition to its rights as a successor to RPI and RCC, DKAAT also has the right to enforce a covenant that runs with the land as the current owner of the property. “In a covenant that runs with the land, the right to sue upon the nonperformance of the duties therein enumerated passes to the current owner of the land.” Hemsath v. City of O’Fallon, 261 S.W. 2d 1, 4 (Mo. App. E.D. 2008).

Fraudulent Transfer Scheme

19. On or about December 4 2013, FSCB, as the owner of the golf course and country club, sued the POA for annual dues owed as a result of the POA owning six lots in Sections 20-25 of Raintree Plantation in cause number 13JE-AC05451 (“**FSCB Lawsuit**”). Those lots were:

- Section 20: Lots 76 and 91;
- Section 24: Lot 67; and
- Section 25: Lots 24, 88 and 89 (collectively “**POA Lots**”).

20. On December 9, 2014, the POA had a closed board meeting in which the FSCB Lawsuit was discussed and the board voted to settle the FSCB Lawsuit.

21. Based on the meeting minutes, immediately thereafter the Board had a discussion “on future liability of lots owned in sections 20-25. Motion made to create ‘holding’ company LLC and transfer title into the ownership of this new LLC. Motion passed.” See copy of POA Closed Board Meeting Minutes dated December 9, 2014 attached hereto and incorporated herein as Plaintiff’s **Exhibit 5**.

22. Shortly thereafter, FSCB and the POA entered into a settlement agreement wherein they settled the FSCB Lawsuit (“**Settlement Agreement**”).

23. The Settlement Agreement required the POA to pay FSCB the sum of \$17,000.00 as a result of its ownership of the POA Lots. A true and accurate copy of the Settlement Agreement is attached hereto and incorporated herein as Plaintiff’s **Exhibit 6**.

24. Subsequently, the POA created Black Hole as a “holding company” to hold the POA Lots as well as other lots that the POA owned in Raintree Plantation subdivision.

25. On or about June 18, 2015, prior to the next annual assessment of mandatory dues, the POA transferred all the lots it still owned in Raintree Plantation to Black Hole including:

- Section 20: Lot 76;
- Section 24: Lot 67;
- Section 25: Lot 24, 88 and 89 (listed lots are collectively referred to herein as the “**Fraudulently Transferred Lots**”).

26. The transfer occurred by means of a Special Warranty Deed executed on June 18, 2015 and filed with the Jefferson County Recorder of Deeds office on July 10, 2015 as Document Number 2015R-021912 (“**Transfer Deed**”). A true and accurate copy of the Transfer Deed is attached hereto and incorporated herein as Plaintiff’s **Exhibit 7**.

27. As part of the transaction, Black Hole executed a Deed of Trust in favor of the POA (“**Deed of Trust**”) in the amount of \$14,500.00. A true and accurate copy of the Deed of Trust is attached hereto and incorporation herein as Plaintiff’s **Exhibit 8**.

Black Hole is a Shell Corporation

28. The sole Member of Black Hole is the POA. See Operating Agreement of Black Hole attached hereto and incorporated herein as Plaintiff’s **Exhibit 9**.

29. The Managers of Black Hole are the President of the POA and the members of the POA Finance Committee. See Plaintiff’s **Exhibit 9**.

30. As a result, the POA dominates and exercises complete and exclusive control over Black Hole.

31. Black Hole currently has no assets other than the Fraudulently Transferred Lots and has never had any assets other than the Fraudulently

Transferred Lots. See Deposition of James McClung, pg. 13, attached hereto and incorporated herein as Plaintiff's **Exhibit 10**.

32. At its creation, the POA never intended for Black Hole to have any assets other than the Raintree lots. See **Exhibit 10**, pg. 17.

33. At the time the POA created Black Hole, the POA never intended for Black Hole to pay the real estate taxes on the Raintree lots or the golf course dues that it would owe on the lots. See **Exhibit 10**, pgs. 9-11, 20.

34. The POA never capitalized Black Hole. See **Exhibit 10**, pg. 20.

35. While the Deed of Trust references a Promissory Note dated June 19, 2015 executed by Black Hole in favor of the POA in the principal sum of \$14,500.00 ("**Alleged Consideration**"), upon information and belief, Black Hole did not execute any Promissory Note in favor of the POA as part of the transfer of lots to Black Hole.

36. While there is no written agreement between the POA and Black Hole with respect to when and how payments of the Alleged Consideration are to be made, according to the President of the POA, Black Hole would only be required to pay the POA any money that Black Hole received from the sale of the Raintree Lots. See **Exhibit 10**, pgs. 19-20.

37. Since the POA knew that Black Hole was not going to pay the real estate taxes, however, the POA knew that it might never receive any payment on the Alleged Consideration as the lots could be sold at a tax sale before Black Hole could sell the lots. See **Exhibit 10**, pg. 20.

38. Further, Black Hole was not required to sell the lots for any minimum price. As a result, at the time of the transfer of the lots, the POA knew

that it likely would never be paid the full amount of the Alleged Consideration. See **Exhibit 10**, pg. 28.

39. The POA controls Black Hole as it is the sole member of Black Hole and the Managers of Black Hole are the President of the POA and the members of the POA Finance Committee.

40. Black Hole is the alter ego of the POA.

41. Black Hole has not paid any of the real estate taxes for the Fraudulently Transferred Lots since it acquired them. See **Exhibit 10**, pgs. 10, 13.

42. Black Hole has not been able to pay its bills as they come due. See **Exhibit 10**, pgs. 13-14, 26.

43. Black Hole does not insure any of the Fraudulently Transferred Lots. See **Exhibit 10**, pgs. 16-17.

44. Black Hole has no source of income other than from the sale of the Fraudulently Transferred Lots. See **Exhibit 10**, pgs. 13, 17.

45. To date, Black Hole has not sold any of the Fraudulently Transferred Lots. See **Exhibit 10**, pg. 28.

46. The POA devised a scheme to transfer the lots it owned in Sections 20-25, which had a mandatory obligation to pay annual dues to the country club, to a separate entity controlled by the POA with the actual intent to hinder, delay or defraud Plaintiff. See **Exhibit 10**, pgs. 14, 22-24.

**COUNT I – TO SET ASIDE FRAUDULENT TRANSFER
AND FOR DAMAGES**

COMES NOW Plaintiff, by and through the undersigned counsel and for Count I of its claim against Defendants Black Hole and POA states as follows:

45. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 -44 of Plaintiff's Petition as if more fully set forth herein.

46. On or about June 18, 2015, the POA transferred all the lots it owned in Raintree Plantation to Black Hole, an Insider, as that term is defined in MO. REV. STAT. §428.009.

47. The POA retained possession and control of the Fraudulently Transferred Lots as it controlled Black Hole because it is the sole member of Black Hole.

48. Prior to the transfer, the POA was sued by FSCB for annual dues for lots the POA owned in sections 20 – 25 and the POA ended up paying the sum of \$17,000.00 to settle the FSCB Lawsuit.

49. At the time a settlement of the FSCB Lawsuit was being discussed, the POA also discussed transferring all the lots it owned in Sections 20-25 to a "holding" company. See **Exhibit 5**.

50. Shortly after the settlement of the FSCB Lawsuit and prior to the new dues being charged, the POA conveyed the Fraudulently Transferred Lots to Black Hole.

51. The only "consideration" that the POA received at the time of the transfer, was the Deed of Trust.

52. To date, the only payments that the POA has received from Black Hole have been for lots that Black Hole sold in sections 1-19. See **Exhibit 10**, pg. 28.

53. There is no written agreement which requires Black Hole to pay the \$14,500.00 value for the lots to the POA in any particular timeframe. See **Exhibit 10**, pgs. 19-20.

54. According to the POA President, Black Hole is only required to pay the POA any money Black Hole receives for selling any of the Fraudulently Transferred Lots. See **Exhibit 10**, pgs. 19-20.

55. Black Hole is not required to sell the lots it acquired from the POA for the value that was assigned to the lots by the POA. See **Exhibit 10**, pg. 28.

56. Since the POA knew that Black Hole was not capitalized and would not pay any real estate taxes on the transferred lots, the POA understood that it would likely never be paid the consideration recited in the Deed of Trust as the lots would likely be sold at a tax sale. See **Exhibit 10**, pgs. 17, 20.

57. The transfer of lots to Black Hole was done to avoid liability for the lots. See **Exhibit 10**, pg. 9-11.

58. The only known liabilities that existed for the Fraudulently Transferred Lots at the time of the transfer were the real estate taxes and the mandatory annual dues owed to the country club. See **Exhibit 10**, pg. 10.

59. The transfer of the lots was done with an actual intent to hinder, delay or defraud Plaintiff in collecting the dues owed to it.

60. As a result, pursuant to MO. REV. STAT. §428.039.1, Plaintiff seeks an order from this Court setting aside the transfer of lots in sections 20-25 of Raintree Plantation from the POA to Black Hole.

60. In addition, Plaintiff is entitled to damages from the POA for the annual dues for the periods from June 15, 2016 to June 14, 2017 and from June 15, 2017 to June 14, 2018. Pursuant to the terms of the Amended Restrictions, Plaintiff set the mandatory annual dues for the golf course and country club for each of the Black Hole Lots as follows:

- A. June 15, 2016 to June 14, 2017 = \$892.00
- B. June 15, 2017 to June 14, 2018 = \$892.00

61. As a result, Plaintiff is entitled to recover from Defendant Black Hole the following amounts:

- A. Annual Dues: \$19,942.32
- B. Sales Tax: \$1,465.68

62. Pursuant to the terms of the Amended Restrictions, Plaintiff is also entitled to interest at the rate of 1% per month, compounded annually, on all outstanding dues. See **Exhibit 2**, §4c.

63. Since the golf course and country club is considered an entertainment venue, Plaintiff is required by Missouri Law to charge sales tax at the rate of 7.35% on the mandatory dues. These sales taxes are collected by Plaintiff and remitted to the State of Missouri.

64. Plaintiff is also entitled to the recovery of punitive damages in an amount that is fair and reasonable and will serve to deter such conduct in the future since Defendants completed the transfer with the actual intent to hinder,

delay and defraud Plaintiff. See Volk Construction Co. v. Wilmescherr Drush Roofing Co., 58 S.W.3d 897, 901 (Mo. App. E.D. 2001).

65. Plaintiff is also entitled to recover its attorney's fees from Defendants under the special circumstances exception to the American Rule since Defendants engaged in intentional misconduct. Id.

66. Plaintiff is also entitled to attorney's fees pursuant to the terms of section 3(a)(2) of the 2011 Amendments to Covenants and Restrictions Covering All Lots in Raintree Plantation Subdivision ("**2011 Amendments**"). A true and accurate copy of the 2011 Amendments is attached hereto and incorporated herein as Plaintiff's **Exhibit 11**.

67. The 2011 Amendments provide that:

"If any person subject to the Governing Documents fails to comply with any provision thereof, the POA, or any Owner or class of Owners adversely affected by such failure has a claim for appropriate relief, including but not limited to claims at law for damages and claims for equitable relief, including injunction. Punitive damages may be awarded in the case of a willful, wanton and malicious failure to comply with any provision of the Governing Documents.

The prevailing party shall in addition to any other amounts, be entitled to recover its reasonable attorney's fees, costs and expenses incurred in enforcing or defending the Governing Documents, whether by judicial or administrative proceeding, or by alternative dispute resolution." See **Exhibit 11**, §3(a)(2).

WHEREFORE, Plaintiff prays this Court for an order: (a) setting aside the transfer of lots in sections 20-25 of Raintree Plantation from the POA to Black Hole; and (b) an award of actual damages in favor of Plaintiff and against the POA in the amount of \$19,942.32 for annual dues; \$1,465.68 for sales tax due on such dues; for pre-judgment interest at the rate of 1% per month, compounded annually, up to the date of the Judgment, plus post-judgment interest at the same rate until paid in full; for an award of punitive damages in an amount that is fair

and reasonable in order to deter such conduct in the future; for its attorney's fees and costs; for the costs of this action; and for such other amounts as the Court may deem just and appropriate under the circumstances.

COUNT II – COLLECTION OF DUES (BLACK HOLE)

COMES NOW Plaintiff, by and through the undersigned counsel, and (pleading alternatively) for Count II of its cause of action against Defendant Black Hole states:

68. Plaintiff incorporates by reference the allegations contained in Paragraphs 1-67 as if more fully set forth herein.

69. Paragraph 4c of the Amended Restrictions provides for the payment by lot owners to the golf course and country club of mandatory annual dues. See Plaintiffs' Exhibit 2, ¶4c.

70. Defendant Black Hole is the owner of the following lots:

- A. Section 20: Lots 71, 76 and 95; and
- B. Section 22: Lots 46 & 56; and
- C. Section 23: Lot 87; and
- D. Section 24: Lots 4, 67 & 82; and
- E. Section 25: Lots 24, 27 & 88/89 in Raintree Plantation Subdivision as shown by plats of record in the Office of the Recorder of Deeds of Jefferson County, Missouri (“**Black Hole Lots**”).

71. Defendant Black Hole acquired the Black Hole Lots from the POA by means of the Transfer Deed. See **Exhibit 7**.

72. As such, the Black Hole Lots are subject to the Amended Restrictions referenced above.

73. The Amended Restrictions provide that the annual dues for the golf course and country club shall be established by the owner of the golf course and country club. See **Exhibit 2, ¶4c**.

74. Defendant Black Hole, as a successor owner of lots in Sections 20-25, is bound by that certain class action litigation wherein a class of Plaintiffs owning Lots in Sections 20 – 25 of Raintree Plantation Subdivision filed suit in the Circuit Court of Jefferson County, Missouri challenging the enforceability of the mandatory dues now being sought to be collected by Plaintiff. On July 7, 2011 the Honorable Gary P. Kramer, Circuit Judge, entered judgment in favor of Plaintiffs' predecessor in interest, **holding that the obligation to pay the dues sought to be collected is mandatory**, as well as other orders as provided in the Judgment of the Court ("**Trial Court Judgment**"). A true and accurate copy of the Trial Court Judgment is attached hereto and incorporated herein as Plaintiff's **Exhibit 12**.

75. The class of Plaintiffs appealed such Judgment, and such Judgment entered by the Trial Court was affirmed by the Missouri Court of Appeals, Eastern District, by order entered on March 27, 2012. Defendant Black Hole is bound by the Judgment entered in the Trial Court action and affirmed by the Missouri Court of Appeals, Eastern District.

76. Pursuant to the terms of the Amended Restrictions, Plaintiff set the mandatory annual dues for the golf course and country club as follows:

- A. June 15, 2016 to June 14, 2017 = \$892.00
- B. June 15, 2017 to June 14, 2018 = \$892.00

77. Since the golf course and country club is considered an entertainment venue, Plaintiff is required by Missouri Law to charge sales tax at the rate of 7.35% on the mandatory dues. These sales taxes are collected by Plaintiff and remitted to the State of Missouri.

78. The Black Hole Lots are also subject to the terms of the 2011 Amendments.

79. Pursuant to the terms of the 2011 Amendments, Plaintiff is entitled to recover its attorney's fees incurred in collecting these delinquent mandatory dues. See **Exhibit 11**, ¶3(a)(2).

80. In addition, pursuant to the terms of the Amended Restrictions, Plaintiff is also entitled to recover interest at the rate of 1% per month, compounded annually, on all outstanding dues. See **Exhibit 2**, ¶4c and **Exhibit 11**, ¶3f.

81. Although Plaintiff has made demand for payment of the mandatory annual dues, interest and sales tax, Defendant Black Hole has failed and refused to pay the same for the years shown on the Invoice. A true and accurate copy of the Invoice is attached hereto and incorporated herein as Plaintiff's **Exhibit 13**.

82. The Invoice accurately reflects the amounts owed by Defendant to Plaintiff for the annual dues and sales tax for Defendant's Lots.

83. As a direct and proximate result of Defendant Black Hole's failure and refusal to pay the amounts owed for the Black Hole Lots, Plaintiff has been damaged in the principal sum of \$19,942.32.

WHEREFORE, Plaintiff prays this Court to enter Judgment in favor of Plaintiff and against Defendant Black Hole in the amount of \$19,942.32 for

membership dues; \$1,465.68 for sales tax due on such dues; for pre-judgment interest at the rate of 1% per month, compounded annually, up to the date of the Judgment, plus post-judgment interest at the same rate until paid in full; for its attorney's fees and costs; for the costs of this action; and for such other amounts as the Court may deem just and appropriate under the circumstances.

HOCKENSMITH MCKINNIS HAMILL, P.C.

/s/ Paul C. Hamill
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CERTIFICATION UNDER RULE 55.03(a)

Pursuant to Rule 55.03(a), Paul C. Hamill certifies that he signed an original of this pleading and that an original of this pleading shall be maintained by him for a period of not less than the maximum allowable time to complete the appellate process.

/s/ Paul C. Hamill