

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

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|---------------------------|---|-------------------------|
| JEFFERSON COUNTY RAINTREE |) | |
| COUNTRY CLUB, LLC. |) | |
| |) | |
| Plaintiff, |) | |
| |) | Cause No.: 18JE-AC00739 |
| v. |) | |
| |) | |
| BLACK HOLE, LLC, et al. |) | Division: 12 |
| |) | |
| Defendants. |) | |

**PLAINTIFF’S RESPONSE TO DEFENDANTS’
MOTION TO CONSOLIDATE**

COMES NOW Plaintiff, by and through the undersigned counsel, and for its Response to Defendants’ Motion to Consolidate, states as follows:

1. Plaintiff filed this lawsuit on February 21, 2018 seeking to collect certain mandatory annual dues owed by Defendants for lots they either owned or fraudulently transferred in sections 20-25 of Raintree Plantation Subdivision (“**Collection Lawsuit**”).
2. As such, the claim pending before the Court is a collection action which Defendants have vigorously defended by raising counterclaims and affirmative defenses.
3. Defendants now seek to consolidate this Collection Lawsuit with a case pending in the Circuit Court **which has absolutely no bearing on this collection action.**
4. The case pending in the Circuit Court, styled as Raintree Plantation Property Owners Association, Inc. v. David Tucker, et al., bearing cause number 15JE-CC00809, is a declaratory judgment action filed by Raintree Plantation Property Owners Association (“**POA**”) on November 2, 2015 against David Tucker, Jefferson County Raintree Country Club, LLC (“**JCRCC**”), DKAAT Properties, LLC (“**DKAAT**”) seeking: (1) to set aside the Consent Judgment entered into by the parties in 2014 (Count

I); (2) declaratory relief on whether the POA can permit members to vote on matters which would impact Paragraph 4c of the Amended Restrictions (Count II); (3) declaratory relief on who is the “governing body” of the Country Club (Count III); (4) declaratory relief as to whether various parties owe a fiduciary duty to the POA and or subdivision lot owners (Count IV); (5) relief under a theory of prima facie tort (Count V); (6) relief under a theory of unjust enrichment; and (7) to pierce the corporate veil (Count VI) (“**Circuit Court Case**”).

5. Consolidation is governed by Rule 66.01. It states, in relevant part, as follows:

“When 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.” Rule 66.01(b).

6. There are no common questions of law as the claims asserted in the Circuit Court Case have nothing to do with the claims asserted by Plaintiff in the Collection Lawsuit. While Defendants in the Collection Lawsuit have filed counterclaims based on unjust enrichment and prima facie tort those claims are without merit and Plaintiff has already filed motions to dismiss those claims.

7. In addition, the parties in the two cases are substantially different and there would be no benefit to judicial economy to consolidate the cases. Defendant Black Hole is not a party to the Circuit Court Case and there are numerous parties in the Circuit Court Case that are not parties in the Collection Lawsuit.

8. As the claims asserted in the Collection Lawsuit and the Circuit Court Case are not similar, there will be no common factual issues that will arise in the two cases.

9. A joinder of the Collection Lawsuit to the Circuit Court Case would not serve the interests of Plaintiff and would prevent it from the benefits provided by the associate circuit court, namely a prompt resolution.

10. None of the factors required for consolidation as set out in Rule 66.01(b) are present in this case.

11. For all these reasons, the Court should deny Defendant's Motion to Consolidate.

WHEREFORE, Plaintiff prays this Court to deny Defendants' Motion to Consolidate and to issue such other and further relief as this Court may deem just and proper 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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was sent via the court's electronic filing system this 19th day of November, 2018 to all counsel of record.

/s/ Audrey G. McElyea