

**IN THE ELEVENTH JUDICIAL CIRCUIT, STATE OF MISSOURI
ST. CHARLES COUNTY, MISSOURI
CIRCUIT JUDGE DIVISION**

RAINTREE PLANTATION)
PROPERTY OWNERS)
ASSOCIATION, INC.,)
)
Plaintiff(s),)
)
vs.)
)
DAVID TUCKER, et al.,)
)
Defendant(s).)
)
vs.)
)
DOTTIE SCHWANTNER,)
)
Intervenor.)

FILED

MAR 31 2021

**MICHAEL E. REUTER
CIRCUIT CLERK**

Case No.: 15JE-CC00809

Div. 4

Special Judge Michael J. Fagras
Div. 4, St. Charles Co. Circuit Ct.
State of Missouri

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This matter came before this Court on January 13, 2021, at the Parties' Request for a Final Fairness Hearing, Final Approval of the Class Action Settlement and Motions for Dismissal for Lack of Jurisdiction and to Decertify the Class made by the objectors. The Parties appeared by their respective counsel, Martin L. Daesch for Intervenor, Dottie Schwantner, Sherrie Hall for all but two of the Objectors, Ted Disabato for Plaintiff Raintree Plantation Property Owners Association, (hereinafter "RPOA") and Kevin Roberts for Defendants David Tucker, et al.

At the Final Fairness hearing all objectors who had requested to voice their objections were present and testified. All but two of the objectors were represented by counsel Ms. Sherrie Hall. Two objectors, not represented by counsel, were also allowed to take the stand and, on the record, voice their objections as well. The Court had anticipated a three-hour hearing for the objector's testimony. Counsel Hall believed that

the objections raised and to be addressed at the Final Fairness Hearing were not duplicative so as to prevent repetition or complication in their presentation as required pursuant to Missouri Rules of Civil Procedure 52.08 (d)(1). However, the Court found nearly every objection voiced by the individual objectors were duplicative, with the exception of two objections, and such redundancy created an eight-hour hearing instead of the anticipated three-hour hearing. At the close of the hearing counsel Hall made an oral motion for this Court to prepare Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The Raintree Subdivision was developed in 1979 by Raintree Plantation, Inc. Originally there were sections 1-19 comprising 2265 lots. Included in the plans were future construction of lakes, a country club, a golf course, clubhouse, a restaurant, swimming pool, and tennis courts. The developers of Raintree included in their "Covenants and Restrictions" Paragraph 4(c), which required all lot owners to pay annual dues to the Country Club, and the amount of the individual dues were set by the Club owner. The "Raintree Covenants and Restrictions, as recorded in Book 644, Pg. 823-831 of the Jefferson County Recorder of Deeds. Specifically, Paragraph 4(c) states on Page 830-31 of the Raintree "Covenants and Restrictions recorded in Book 644:

"All lot owners have a non-transferable right to, and shall be deemed Social members of any country club or golf course constructed on property heretofore owned by RAINTREE PLANTATION, INC....Annual dues as established solely by such Club or Golf Course..."

It is apparent to this Court that Paragraph 4(c) mandates that *All lot owners shall* (emphasis added) be deemed as members of the Club and that the annual dues *are established solely by the Club* (emphasis added). Paragraph 4(c) and the Covenants and Restriction were recorded on November 1, 1979 prior to the construction of the club house, golf course, restaurant and other amenities but foreseen as future requirements and responsibilities, as well as benefits, of *All lot owners* (emphasis added). *See Jefferson*

County Recorder of Deeds, Book 644 Raintree Covenants and Restrictions, Paragraph 4(c) pg. 830-31 (November 1, 1979).

Thereafter, in or around the mid-1980's, the additional plats were added to the subdivision, namely plats 20-25 and Raintree Forest. Lot owners of plat 1-19 had, by this time, established a Property Owners Association (hereinafter "POA") which collected dues and maintained the common grounds.

In 1987 the developer filed an Amendment to the November 1, 1979 Covenants and Restrictions which were recorded as Book 372, Page 1664 of the Jefferson County Recorder of Deeds. The 1987 Amendment included the original Paragraph 4(c) of the 1979 Covenants and Restrictions with the exception that it required dues of \$120 per lot and any unpaid dues would place a lien on the lot. *See Jefferson County Recorder of Deeds, Book 372 Raintree Covenants and Restrictions, Paragraph 4(c) pg. 1664, (July 30, 1987).*

Litigation began in 2008 with a class action in which that Court affirmed that all lot owners of plats 20-25 were Country Club members and required to pay dues pursuant to Paragraph 4(c). It is noted that the 1987 Amendment, which incorporated the original 1979 Paragraph 4(c), still stated "All Lot Owners..." *See The Honorable Judge Kramer Judgment, 08JE-CC01575).*

Further litigation followed in 2013 wherein that Court determines that plats 1-19 lot owners, as well as Raintree Forrest lot owners, were allowed to delete Paragraph 4(c) of the Covenants and Restrictions thus exempting them from paying dues to the Country Club. *See the Honorable Stanley Williams Judgment, 13JE-CC00841).* This, in effect, left lot owners of plats 20-25 as the only residents required to pay the Country Club dues. Judge Williams found that Judge Kramer's decision determined that Paragraph 4(c) was adopted in response to a specific Contract between the POA and the developer *when*

Sections 20-25 were added to the Subdivision. (emphasis added). This Court is unable to reconcile Judge Williams's decision as it fails to recognize that Paragraph 4(c) was incorporated in the original 1979 Covenants and Restrictions and adopted in the 1987 Amendment as noted above. Judge Williams Decision is not binding on the Court in light of the precedence established in Case No. 08JE-CC01575 (the "Kramer Decision"), which was affirmed by the Missouri Court of Appeals, Eastern District. In any case, the Williams Decision did not follow the Kramer Decision, is inequitable, and to the extent it's considered a proper Judgment (it's not) the classes relieved of its effect (if any) under Missouri Supreme Court Rule 74.06(b)(5). This Court believes that the 1987 Amendment, in adopting Paragraph 4(c), was for the purpose of lien enforcement and no bearing on the issue of the obligation to pay dues.

Thereinafter the Club, in 2015, sought to resolve the conflict between Judge Kramer and Judge Williams decisions by initiating a petition to require a Subdivision vote to increase the current assessment and require Paragraph 4(c) dues at \$240 for every lot in the Raintree Plantation Subdivision. After obtaining signatures of 250 lot owners the Club petitioned the POA to present the petition to a vote. The POA refused to place both initiatives on a ballot wherein the Club filed suit.

The POA filed a preliminary injunction to prevent this vote and said preliminary injunction was denied by the Honorable Lisa Page. A vote was held but ultimately failed due to the fact that 75% of the vote belonged to Sections 1-19. Lot owners in Sections 1-19 were unwilling to shoulder the responsibility of paying dues pursuant to Paragraph 4(c).

In 2015, the Club initiated a petition to require the RPOA to hold a vote to increase assessments by \$240; with proceeds to be passed on to the Club in exchange for use of the Club amenities. *See Covenants and Restrictions, Ballot Item 1.*

Thereafter, The RPOA sought a preliminary injunction to prevent the vote. Judge Lisa Page denied the injunction. A vote was held but there were insufficient votes for the measure to pass.

Lot owners of section 20-25, who represented approximately 25% of the subdivision, were the only lot owners required to pay their membership dues at that time. In the two following years, following the Williams decision, the cost to lot owners of section 20-25 saw an approximate increase from \$225 to \$841.

On May 26, 2017, Bryan Pyle, a resident of Section 20-25, filed a Motion to Intervene in the litigation. The substance of Mr. Pyle's petition was a request by the Court to declare all lot owners of Raintree Plantation responsible for payment of the Paragraph 4(c) dues to include Sections 1-19, 20-25 and Raintree Forest.

This case was certified as Rule 52.10 class action on January 29, 2020.

After substantial pecuniary investment by the parties to this action, to include lengthy discussions, mediation and the involvement of this Court, a settlement was to be presented to this Court for preliminary approval.

On June 3, 2020 this Court entered an order Preliminarily Approving Settlement of the Class Action Settle and Authorizing Notice to the Class. The Settlement was to initially set the Social Membership dues at \$255 per year, per lot owner. This fee would include sales tax and would be assessed against all lot owners in the subdivision; Sections 1-25 and Rain Tree Forest. The maximum annual increase in the Social Membership dues is capped and would not exceed the cost of living increase for the CPI index of the St. Louis, Missouri metropolitan area; not to exceed 2%.

June 13, 2020 an Affidavit of Publication was filed with the Jefferson County Countian paper as notice to the class.

Objectors had 30 days after notice of the proposed settlement to submit their objection, if any. Of the 299 objections filed (out of 2,281 lot owners) only 167 were timely. The vast majority of the objections filed were in the manner of a form letter prepared and sent to the lot owners by Mr. David Staloch who requested them to join him in opposing the settlement agreement.

Not one of the six (6) objectors who had purchased their lots prior to the Williams Decision made any claim or referenced that they were exempt from the due's requirements prior to Williams decision. Five of the six individuals testified that they had been billed dues assessments, with some of them receiving late payment penalties or had been required to pay delinquent dues prior to selling their lots. *See RPOA Correspondence*, dated September 1, 1998, reference delinquent dues payments.

None of the objectors alleged that the settlement agreement was unfair. The objectors alleged that they were not required to pay pursuant to paragraph 4(c) of the Covenants and Restrictions.

CONCLUSIONS OF LAW

This Court concludes the 1987 Amendment, with the adoption of paragraph 4(c), was for the purpose of the collection of dues from *all lot owners* (emphasis added) to include lot owners of sections 1-25 and Rain Tree Forrest. This is consistent with Judge Kramer's Decision which this Court finds as binding on *all lot owners* (emphasis added). Judge Kramer determined the obligation to pay 4(c) dues as mandatory and only amended by the Country Club with the annual dues to be established solely by the Club. The inclusion of 4(c) in the original Covenants and Restrictions, as recorded on November 1, 1979, occurred prior to the construction of the club house, golf course, restaurant and other amenities.

Those class members objecting claim that the language “subject to their payment of dues and user charges”, as contained in 4(c) meant that the full 4(c) were voluntary. However, Judge Kramer’s Decision dispelled that belief finding that it had nothing to do with whether 4(c) dues were voluntary or involuntary.

This Court does not agree that 4(c) was added in response to the 1987 contract between the RPOA and the Developer when Sections 20-25 were added. The 1987 Amendment to the indenture incorporated the original paragraph 4(c) still stating “all lot owners.” This Court is unable to reconcile the Williams Decision as that decision fails to recognize that paragraph 4(c) was present in the original 1979 Covenants and Restrictions and *adopted in the 1987 Amendment* (emphasis added).

ORDER AND JUDGMENT

This Court maintains jurisdiction over the parties and subject matter to include RPOA, Inc., the Defendants David Tucker, et al., Intervenor Dottie Schwantner as well as each of the party’s counsel, the members of the Class and the claims that are asserted in this lawsuit.

The settlement of this action, pursuant to Missouri Supreme Court Rule 52.08(e) and 52.10 and embodied in the terms of the settlement Agreement and filed with this Court on June 2, 2020 and preliminarily approved on June 3, 2020 is hereby finally approved as a fair, reasonable and adequate settlement of this case in the best interest of the Class in light of all factual, legal, practical and procedural considerations raised by this case.

This Court further finds that the Parties’ Class Action Settlement Agreement sets the Country Club dues, pursuant to paragraph 4(c) at \$255.00 per year per lot and future increases are limited as set forth in § III K of the Settlement Agreement. That paragraph

4(c) payment of dues is applicable to all lots in the subdivision; currently enumerated as sections 1-25 and Raintree Forest.

The Court finds that the Parties' Class Action Settlement Agreement and Release were entered in good faith. The Court further finds that the notice given to the Class in this action was proper and the most practicable under the circumstances and satisfies all due process requirements.

This Court conducted an eight (8) hour hearing on the objections, to include the testimony of two objectors who were not previously listed. The objections, as received, were given due consideration of this Court. All objectors present at the hearing testified were allowed and such testimony is part of the record. The majority of all objections filed were in the manner of an identical preprinted form, were duplicative in nature, a misapplication of the law, some based on hearsay as well as conjecture and hereby overruled.

After due consideration this Court finds that the settlement is fair and reasonable given consideration of the uncertainty of the Class' success on the merits of their claims; the complexity, expense and duration of the litigation; the range of possible relief that could be awarded to the parties, written submissions and subsequent arguments of counsel; and the fact that a small minority, approximately 15%, of the lot owners objected to the settlement. Therefore, this Class Action Settlement Agreement and Release is approved and shall govern all issues regarding the settlement and all rights of the Parties, including the Class. Each Class member (including any person or entity claiming by or through him, her, or their successors or assigns) shall be bound by the Class Action Settlement Agreement and Release.

The Court adopts and incorporates all of the terms of the Class Action Settlement Agreement and Release by reference herein. This Final Approval Order and Judgment,

including the incorporated Class Action Settlement Agreement and Release, shall constitute a proper authorized amendment to paragraph 4(c) of the Indenture pursuant to Article IX of the Class Action Settlement Agreement and Release. The Parties shall carry out their respective obligations as agreed upon in the Class Action Settlement Agreement and Release.

If (a) the Class Action Settlement Agreement and Release or Final Approval Order and Judgment do not for any reason become effective or (b) the Settlement Agreement and Release or the Final Approval Order and Judgment are reversed, vacated, or modified in any material or substantive respect, then any and all orders entered pursuant to the Class Action Settlement Agreement and Release shall be deemed vacated. If the settlement does not become final in accordance with the terms of the Class Action Settlement Agreement and Release, this Final Approval Order and Judgment shall be void and shall be deemed vacated.

This Court shall retain continuing jurisdiction over this action and to enforce the Final Approval Order and Judgment.

This Court orders, adjudges and decrees that the judgment hearing shall be deemed FINAL for purposes of appeal, and pursuant to Missouri Supreme Court Rule 74.01(b) expressly determines "there is no just reason for delay." The Court therefore orders that this judgment shall be entered by the Circuit Court of Jefferson County, Missouri, shall be filed with the Jefferson County Recorder of Deeds, and shall take immediate effect as of the date of this order.

SO ORDERD:

ENTER:

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FAGRAS

3-31-21

Michael Fagras, Presiding Circuit Judge

Division 4

St. Charles County, Missouri

Copy sent to each counsel of record by the Electronic Notification System