

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

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

**PLAINTIFF’S MOTION TO DISMISS DEFENDANT, BLACK HOLE LLC’S  
FIRST AMENDED COUNTERCLAIM**

COMES NOW Plaintiff, by and through the undersigned counsel, and for its Motion to Dismiss Defendant, Black Hole, LLC’s First Amended Counterclaim (“**Counterclaim**”), states as follows:

1. Black Hole has filed its Counterclaim based on theories of unjust enrichment and prima facie tort with regard to Plaintiff’s alleged assertion of a financial interest in lots owned by Black Hole in Raintree Plantation Subdivision. [See Counterclaim, ¶5].

2. It should be noted that Defendant fails to cite to any allegation contained in Plaintiff’s pleading where it bases any claim on an alleged “financial interest” in lots owned by Defendant.

**Count I – Unjust Enrichment**

3. The Count for unjust enrichment fails as a matter of law as Black Hole has not, and cannot, plead facts necessary to support a claim for unjust enrichment.

4. In order to state a claim for unjust enrichment, a party must prove that: “(1) he conferred a benefit on the defendant; (2) the defendant appreciated the benefit;

and (3) the defendant accepted and retained the benefit under inequitable and/or unjust circumstances.” Howard v. Turnbull, 316 S.W.3d 431, 436 (Mo. App. W.D. 2010).

5. In this case, Defendant claims that the benefit conferred was an alleged “financial interest in lots owned by BHLLC in Raintree Plantation Subdivision.” See Counterclaim, ¶6.

6. While it is not clear what this alleged financial interest is, Plaintiff presumes it is the fact that the annual dues become an automatic lien on the real estate when assessed pursuant to the terms of the Amended Restrictions governing lots in Sections 20-25 of Raintree Plantation.

7. Defendant cannot state a claim for unjust enrichment as a result of any alleged financial interest that Plaintiff may have in lots owned by Defendant.

8. First, Plaintiff has not received any benefit from Defendant in that Defendant did not provide Plaintiff with the right to a lien on all lots in Raintree Plantation, but rather, the Amended Restrictions provided that benefit. As such, Defendant cannot state facts to meet the first element of a claim for unjust enrichment.

9. Second, since Defendant has not conferred any benefit on Plaintiff, Plaintiff has not “acknowledged or recognized that a benefit was conferred” and therefore Defendant cannot meet the second required element either.

10. Third, since a benefit was neither conferred by Defendant, nor received by Plaintiff, Plaintiff has not received or retained any benefit under inequitable or unjust circumstances. As a result, Defendant cannot meet the third element of a claim for unjust enrichment.

## **Count II – Prima Facie Tort**

11. In order to state a claim for prima facie tort, Defendant is required to prove “(1) an intentional lawful act, (2) plaintiff’s intent to injure defendant, (3) actual injury to defendant, and (4) an absence of justification for the injury.” Wallace v. St. Francis Medical Center, 415 S.W.3d 705, 708 (Mo. App. E.D. 2013).

12. Defendant must also demonstrate that it has substantial evidence on each of the four elements in order to make a submissible claim. LPP Mortgage, Ltd. v. Marcin, Inc., 224 S.W.2d 50, 55 (Mo. App. W.D. 2007).

13. Furthermore, to establish the second element, defendant “must show a specific, clear-cut, express malicious intent to injure; mere intent to do the act which results in injury is not sufficient.” Woolsey v. Bank of Versailles, 951 S.W.2d 662, 669 (Mo. App. W.D. 1997).

14. In other words, “an intent to injure is the test, not an intent to act which results in some injury.” Kiphart v. Community Federal Savings & Loan Assoc., 729 S.W.2d 510, 517 (Mo. App. E.D. 1987).

15. Defendant **has failed to allege any facts** to show that Plaintiff had a specific, clear-cut, express malicious intent to injure Defendant. Instead, Defendant has simply pled a legal conclusion without any factual basis. This is not sufficient and Defendant has failed to plead the facts necessary to meet the second element.

16. In addition, Defendant has failed to allege any facts to indicate that there was an absence of justification for raising the annual dues. Instead, Defendant simply asserts a bare legal conclusion without any factual support.

17. As a result, Defendant cannot meet the fourth element required for a claim of prima facie tort.

18. Alternatively, Defendant's claim for prima facie tort also fails because it is barred by the economic loss doctrine.

19. "Missouri decisions have held that recovery in tort for pure economic damages are only limited to cases where there is personal injury, damage to property other than that sold, or destruction of the property sold due to some violent occurrence." Captiva Lake Investments, LLC v. Ameristrucre, Inc., 436 S.W.3d 619, 628 (Mo. App. E.D. 2014).

20. In this case, Defendant is seeking the recovery of purely economic damages in tort and there is no personal injury, no damage to property other than that sold and no destruction of the property sold due to some violent occurrence.

21. As a result, Defendant's claim for prima facie tort is barred by the economic loss doctrine.

22. For these reasons, Defendant's claim for prima facie tort fails as a matter of law.

WHEREFORE, Plaintiff prays this Court to dismiss Defendant's First Amended Counterclaim with prejudice and to issue such other and further orders as this Court may deem just and proper under the circumstances.

Hockensmith McKinnis Hamill, P.C.

/s/ Paul C. Hamill  
PAUL C. HAMILL #48450  
12801 Flushing Meadows Drive, Suite 101  
Saint Louis, Missouri 63131  
(314) 965-2255  
FAX: (314) 965-6653  
Email: [Hamill@hnhpc.com](mailto:Hamill@hnhpc.com)  
Attorney for Plaintiff

**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 13<sup>th</sup> day of November, 2018 to all counsel of record.

*/s/ Audrey G. McElyea* \_\_\_\_\_