

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF MISSOURI**

JEFFERSON COUNTY RAINTREE)
COUNTRY CLUB, LLC,)
)
Plaintiff,)
)
v.)
)
BLACK HOLE, LLC, and)
RAINTREE PLANTATION PROPERTY)
OWNERS ASSOCIATION, INC.,)
)
Defendant.)

Case No. 18JE-AC00739

Division 12

**RAINTREE PLANTATION PROPERTY OWNERS ASSOCIATION’S ANSWER AND
AFFIRMATIVE DEFENSES TO PLAINTIFF’S SECOND AMENDED PETITION AND
COUNTERCLAIM**

COMES NOW Defendant, Raintree Plantation Property Owners Association, Inc.
 (“Defendant”), by and through the undersigned counsel, and fir its Answer and Affirmative
Defenses to the Second Amended Petition by Plaintiff, Jefferson County Raintree Country Club,
LLC (“Plaintiff”), and for its Counterclaim in this matter, states as follows:

ANSWER

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Defendant is without sufficient information to admit or deny the allegations of

Paragraph 6.

7. Defendant states that Plaintiff's Exhibit 1 appears to be a contract and that the document speaks for itself in terms of its meaning and effect. Defendant states that the remaining allegations of Paragraph 7 are legal conclusions a response to which is not required. To the extent that a response is required, Defendant denies the same.

8. Defendant states that Plaintiff's Exhibit 1 speaks for itself in terms of its content, meaning and effect. Defendant states that the remaining allegations of Paragraph 8 are legal conclusions a response to which is not required. To the extent that a response is required, Defendant denies the same.

9. Defendant states that Plaintiff's Exhibit 2 appears to be a copy of amended subdivision restriction and that the document speaks for itself in terms of its content, meaning and effect. Defendant states that the Amended Covenants and Restrictions Covering Lots in Raintree Plantation Subdivision are recorded in the Jefferson County Records in Book 372 page 1064.

10. Defendant states that Plaintiff's Exhibit 2 speaks for itself in terms of its content, meaning and legal effect. Defendant further states that paragraph 10 is a legal conclusion a response to which is not required. To the extent that a response is required, Defendant denies the same.

11. Defendant states that Plaintiff's Exhibit 3 appears to be an assignment and that the document speaks for itself in terms of its content, meaning and effect. Defendant states that the remaining allegations of Paragraph 11 are legal conclusions a response to which is not required. To the extent that a response is required, Defendant denies the same.

12. Defendant states that Plaintiff's Exhibit 3 speaks for itself in terms of its content, meaning and legal effect.

13. Defendant is without sufficient information to admit or deny the allegations of Paragraph 13 and therefore denies the same.

14. Defendant states that paragraph 14 is a legal conclusion a response to which is not required. To the extent that a response is required, Defendant denies the same.

15. Defendant states that paragraph 15 is a legal conclusion a response to which is not required. To the extent that a response is required, Defendant denies the same.

16. Defendant states that Plaintiff's Exhibit 4 appears to be an assignment and that the document speaks for itself in terms of its content, meaning and effect. Defendant states that the remaining allegations of Paragraph 16 are legal conclusions, a response to which is not required. To the extent that a response is required, Defendant denies the same.

17. Defendant states that Plaintiff's Exhibit 2 speaks for itself in terms of its content, meaning and legal effect.

18. Defendant states that paragraph 18 is a legal conclusion a response to which is not required. To the extent that a response is required, Defendant denies the same.

19. Defendant states that it was party to Cause No. 13JE-AC05451 in the Associate Division of the Jefferson County Circuit Court, and that the issues therein are a matter of record with the Court, and as such, further response to Plaintiff's paragraph 19 is not required. To the extent that a response is required, Defendant denies the allegations of paragraph 19 not admitted herein.

20. Admitted.

21. Defendant states that Plaintiff's Exhibit 5 speaks for itself in terms of its content, meaning and legal effect. However, Defendant denies any allegation or inference that it was concerned with or contemplated any "liability" to Plaintiff in creating a real estate holding

company. Defendant further expressly denies any allegation or inference with respect to any fraudulent or other improper intent or motive on Defendant's part.

22. Defendant states that it entered into an agreement with FSCB which, in part, entailed settlement of Cause No. 13JE-AC05451. Defendant denies any remaining allegations of paragraph 22 not expressly admitted herein.

23. Defendant states that Plaintiff's Exhibit 6 speaks for itself in terms of its content, meaning and legal effect. Defendant further states that the agreement reached with FSCB entailed payment of \$17,000.00. Defendant denies any remaining allegations of paragraph 23 not expressly admitted herein.

24. Defendant states that it caused the limited liability company, Black Hole LLC, to be organized in the State of Missouri and subsequently transferred its real estate holdings in Raintree Subdivision to the company. Defendant denies each and every allegation in Plaintiff's paragraph 24 not expressly admitted herein.

25. Denied.

26. Defendant states that Plaintiff's Exhibit 7 appears to be a deed and that the document speaks for itself in terms of its content, meaning and legal effect.

27. Defendant states that Plaintiff's Exhibit 8 appears to be a deed of trust and that the document speaks for itself in terms of its content, meaning and legal effect.

28. Defendant states that paragraph 28 is a legal conclusion, a response to which is not required. Defendant further states that Plaintiff's Exhibit 9 appears to be an operating agreement and that the document speaks for itself in terms of its content, meaning and legal effect.

29. Defendant states that Plaintiff's Exhibit 9 speaks for itself in terms of its content, meaning and legal effect.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

39. Defendant states that paragraph 39 is a legal conclusion a response to which is not required. To the extent that a response is required, Defendant states that Black Hole LLC's sole member is the POA and that it is managed by the POA's president and corporate officers.

Defendant denies all remaining allegations of paragraph 39 not expressly admitted herein.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

COUNT I – TO SET ASIDE FRAUDULENT TRANSFER AND FOR DAMAGES

47. Defendant incorporates by reference its answers to paragraphs 1 – 46 as if fully restated herein.

48. Denied.

49. Denied.

50. Denied.

51. Defendant states that Plaintiff's Exhibit 5 speaks for itself in terms of its content, meaning and legal effect. Defendant denies all remaining allegations of paragraph 51.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Defendant states that paragraph 62 is a legal conclusion, a response to which is not required. To the extent that a response is required, Defendant denies the same.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

WHEREFORE Defendant respectfully prays that the Court dismiss Plaintiff's Count I with prejudice, for Defendant's recovery of its costs in this matter, including its reasonable attorney's fees, and for any such other and further relief as the Court may deem just and proper.

COUNT II – COLLECITON OF DUES (BLACK HOLE)

71 – 85. Defendant states that Plaintiff's Count II contains no allegations directed to Defendant, Raintree POA. To the extent that Defendant is required to respond to any of Plaintiff's allegations in paragraphs 71 - 85, Defendant denies the same.

WHEREFORE Defendant respectfully prays that the Court dismiss Plaintiff's Count II with prejudice, for Defendant's recovery of its costs in this matter, including its reasonable attorney's fees, and for any such other and further relief as the Court may deem just and proper.

ADDITIONAL PLEADING AND AFFIRMATIVE DEFENSES

By way of additional pleading, Defendant denies each and every allegation contained in Plaintiff's Petition, including the "Wherefore" paragraphs not expressly admitted herein.

AFFIRMATIVE DEFENSE 1

Plaintiff's Count I fails to state a cause of action under the Missouri Uniform Fraudulent Transfers Act for which relief can be granted. Raintree POA did not transfer lots to Black Hole LLC with any intent to hinder, delay or defraud Plaintiff. The transfer was not concealed, but was made through publicly recorded documents. Black Hole LLC is an entity legally separate

and distinct from Raintree POA and Raintree POA does not exercise control over the lots other than through Black Hole. Black Hole LLC does not exercise control over Raintree POA and is thus not an “insider” under the Act. Raintree POA did not become insolvent as a result of the transfer of lots to Black Hole LLC, nor did Raintree POA transfer substantially all its assets to Black Hole. The transfer of lots was for reasonably equivalent value and any alleged failure of consideration is due to Plaintiff’s own actions in devaluing lots in Sections 20 – 25 of Raintree Plantation through unreasonable increases in annual dues to lot owners. Finally, Raintree POA had not incurred any debt to Plaintiff at the time of the transfer. Plaintiff cannot meet its burden of proof to support a claim that the lots were transferred fraudulently in violation of the Act.

AFFIRMATIVE DEFENSE 2

Plaintiff’s claims for relief alleged against Raintree POA are barred by the equitable doctrine of unclean hands. The property Raintree POA transferred to Black Hole LLC are unimproved lots of ground. Plaintiff unreasonably increased the mandatory annual dues from \$225.00 in 2014 to \$892.00 in 2018. This unreasonable increase caused the lots to devalue. Plaintiff’s Petition is an attempt to benefit from Plaintiff’s own wrongdoing.

AFFIRMATIVE DEFENSE 3

Plaintiff’s request for punitive damages and request for attorney’s fees as an exception to the American Rule are barred because Plaintiff failed to plead facts demonstrating any entitlement to such recovery.

AFFIRMATIVE DEFENSE 4

Plaintiff’s request for attorney’s fees pursuant to the 2005 Amendment to the Covenants and Restrictions Covering Lots in Raintree Plantation Subdivision (Plaintiff’s Exhibit 11) is barred because Plaintiff lacks standing to enforce this provision. The 2005 amendment to

paragraph 3f removed the words “Property Owners Association or Grantor” and replaced this language with “Raintree Plantation Property Owner’s Association, Inc.” Plaintiff derives its purported authority to collect mandatory dues from Raintree Plantation, Inc., “Grantor” under the Amended Covenants and Restrictions (Plaintiff’s Exhibit 2). Because Plaintiff is not part of Raintree Plantation Property Owners Association, Inc., Plaintiff has no authority to enforce the provisions of paragraph 3f of the Amended Covenants and Restrictions.

AFFIRMATIVE DEFENSE 5

The original Paragraph 4c of the Covenants and Restrictions Covering Lots in Raintree Plantation, recorded November 5, 1979 in Book 644 page 823 of the Jefferson County Records, contained no provisions allowing unpaid golf club dues to become liens on subdivision lots, and contained no authority for the collection of unpaid dues or for the imposition of any penalties for unpaid dues in the same manner as delinquent assessments. The 1987 Amendment to Paragraph 4c (Plaintiff’s Exhibit 2) imposed a new burden on owners in Raintree Subdivision in providing for the enforcement of unpaid dues and the imposition of penalties in the same manner as delinquent assessments. Paragraph 4c is an affirmative covenant and the imposition of a new burden above the original covenant requires unanimous approval of all owners. See *Webb v. Mullikin*, 142 S.W.3d 822 (Mo. App. 2004); see also *Arbors at Sugar Creek v. Jefferson Bank*, 464 S.W.3d 177, 186 (Mo. 2015). The 1987 Amendment to Paragraph 4c did not receive unanimous approval of the lot owners in Raintree subdivision. As such, Plaintiff’s cause of action to enforce collection of dues and penalties is barred.

AFFIRMATIVE DEFENSE 6

Defendant reserves the right to amend these affirmative defenses and to assert any such additional affirmative defenses as may be learned through discovery or otherwise.

WHEREFORE, having fully answered, Defendant respectfully prays that the Court dismiss Plaintiff's Second Amended Petition with prejudice, that Defendant recover its costs in this matter, including its reasonable attorney's fees, and for any such other and further relief as the Court may deem just and proper.

COUNTERCLAIM

COMES NOW Counterclaimant, Raintree Plantation Property Owners Association, Inc. ("RPOA"), by and through the undersigned counsel, and for this Counterclaim directed to Jefferson County Raintree Country Club, LLC ("JCRCC"), states as follows:

ALLEGATIONS COMMON TO ALL COUNTS

1. RPOA, is a non-profit corporation organized as a property owners' association for the governance and enforcement of the restrictive covenants and indenture of the Raintree Plantation Subdivision (the "Subdivision") in Jefferson County, Missouri.
2. JCRCC is a Missouri limited liability company with its principal place of business in Jefferson County, Missouri, and collects annual dues from the Subdivision's lot owners on behalf of the owners of the Jefferson County Raintree Country Club.
3. This Court has subject matter jurisdiction over this cause of action.
4. Venue is proper in this Court pursuant to RSMo § 508.010.
5. By Judgment entered October 27, 2014 in Case No. 13JE-CC00841, the Honorable Stanley Williams upheld a 2013 vote by all lot owners in the Subdivision to eliminate Paragraph 4c of the Amended Covenants and Restrictions Covering Lots in Raintree Plantation Subdivision (the "Indenture") for owners in Sections 1 – 19 of the Subdivision and Raintree Forest. However, the judgment states that the same vote is null and void as to owners in Sections 20 – 25 of the Subdivision.

6. Following the entry of this judgment, lot owners in Sections 1 – 19 and Raintree Forest have not paid, and have been under no obligation to pay, dues or assessments of any kind related to the Country Club. Conversely, lot owners in Sections 20 – 25 have been continuously charged mandatory dues by JCRCC.

7. During this same time, the amounts charged as mandatory assessments to owners in Sections 20 – 25 have increased fourfold, from \$225.00 in 2014 to \$892.00 in 2018, while the services and amenities offered by the Country Club have been substantially reduced and significant portions of the Country Club have fallen into disrepair.

COUNT I – UNJUST ENRICHMENT

8. RPOA reaffirms and incorporates by reference the allegations contained in paragraphs 1 through 7 as if fully restated herein.

9. In collecting increasing mandatory dues from owners in Sections 20 – 25 of the Subdivision, a financial benefit has been conferred upon JCRCC.

10. JCRCC has appreciated the fact of this benefit.

11. JCRCC has accepted and retained this benefit.

12. JCRCC's retention of this benefit is inequitable given that the services and amenities at the Country Club have been reduced to the point that the Country Club has ceased to be a benefit to lot owners and has instead become a substantial burden.

13. JCRCC's retention of this benefit is further inequitable given that the increase in dues has caused the lots in Sections 20 – 25 to lose value.

WHEREFORE Counterclaimant respectfully prays for the Judgment of this Court in its favor and against Counterclaim Defendant in an amount that is fair and reasonable, but not less than \$25,000.00, for post-judgment interest at the maximum rate permitted by law, for its costs in this

matter, including reasonable attorney's fees, and for any such other and further relief as the Court may deem just and proper under the circumstances.

COUNT II – PRIMA FACIE TORT

14. RPOA reaffirms and incorporates by reference the allegations contained in paragraphs 1 through 13 as if fully restated herein.

15. JCRCC has intentionally increased the amounts of mandatory dues charged to owners in Sections 20 – 25 of the Subdivision from the rate of \$225.00 to \$892.00.

16. The increase in mandatory dues has caused the lots in Sections 20 - 25 to lose value to the point that the lots are essentially worthless, while JCRCC continues to demand and to sue for collection of these dues.

17. JCRCC and/or its related entities simultaneously and intentionally reduced the amount of amenities provided by the Country Club significantly and permitted portions of the Country Club to fall into disrepair.

18. Upon information and belief, JCRCC's actions were intentional and were done to cause injury to RPOA and/or its member owners in Sections 20 – 25 by improperly and unfairly profiting from mandatory Country Club assessments with the knowledge that Plaintiff has been barred from altering or governing the terms of such assessments and with the knowledge that the lots have been devalued and are not salable.

19. JCRCC has no justification for its actions.

WHEREFORE Counterclaimant respectfully prays for the Judgment of this Court in its favor and against Counterclaim Defendant in an amount that is fair and reasonable, but not less than \$25,000.00, for post-judgment interest at the maximum rate permitted by law, for its costs

