IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

MARY LOU WATSON, ET AL.,	)	
	)	
Appellants,	)	
	)	
v.	)	Case No.: ED109793
	)	
RAINTREE PLANTATION PROPERTY OWNERS' ASSOCIAITON, INC., ET AL.,	)	
	)	
Respondents.	)	

APPEAL FROM THE JEFFERSON COUNTY
CIRCUIT COURT, STATE OF MISSOURI
THE HONERABLE MICHAEL FAGRAS
ST. CHARLES COUNTY SPECIAL CIRCUIT COURT JUDGE

BREIF OF RESPONDENT
RAINTREE PLANTATION PROPERTY OWNERS' ASSOCIATION, INC.

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JURISDICTIONAL STATEMENT

Respondent objects to Appellants' jurisdiction statement and states that this Court does not have jurisdiction to hear Appellants' Appeal because Appellants do not have standing. Respondent incorporates by reference its Motion to Dismiss filed concurrently with this brief as its official Jurisdictional Statement.

STATEMENT OF FACTS

Raintree Plantation Property Owners Association, Inc. ("RPOA") is the governing body of Raintree Plantation Subdivision (the "Subdivision") in Jefferson County, Missouri. The Subdivision is essentially divided into three distinct sections; Sections 1 – 19, Sections 20 – 25 and Raintree Forest. Each lot owner in the Subdivision is a voting member of RPOA with equal rights and obligations under the Subdivision's Covenants and Restrictions. (see L.F. Doc. No. 2).

This matter arises out of longstanding disputes involving Paragraph 4c of the Subdivision's Amended Covenants and Restrictions. In relevant part, Paragraph 4c states:

> **"All lot owners have a non-transferrable right to, and shall be deemed social members of any country club or golf course constructed on property heretofore owned by RAINTREE PLANTATION, INC., subject to their payment of dues and user charges. Such membership can be modified or terminated by the owner or governing body of the Club or Golf Course No dues schedule termination or modification shall be reviewable by any Court or Government Agency. Annual dues as established solely by such Club or Golf Course may be collected by Grantor and turned over to the Club or Course. If any lot owner fails or refuses to pay said dues, all lots owned by that individual will lose all rights to be a member. In addition, all unpaid and delinquent dues presently set at $120.00 shall be treated as unpaid assessments and shall become a lien on said lot and enforceable the same as unpaid assessments with any penalties provided herein**." (see L.F. Doc. No. 3).

In 2008, a class of owners in Sections 20 – 25 brought suit in the Jefferson County Circuit Court in Cause no. 08JE-CC01575, styled *Anderson v. Kremer Restaurant Enterprises*. The plaintiff class sought to terminate their membership status under Paragraph 4c. In 2011, the Honorable Gary Kramer entered a judgment (the "Kramer Judgment"), holding that the owners of lots in Sections 20 – 25 are deemed "social members" of the country club, have no right to modify or terminate the terms of such membership, and must pay mandatory assessments charged under Paragraph 4c.

In September 2013, following the entry of the Kramer Judgment, RPOA held a vote in which the entire membership of the Subdivision voted to eliminate Paragraph 4c. This vote resulted in litigation brought against RPOA in Case No. 13JE-CC00841 by the owners of the Raintree Country Club and Golf Course for injunctive relief and tortious interference. (L.F. Doc. No. 37). In October 2014, the Honorable Stanley Williams of the Franklin County Circuit Court (under special appointment) entered judgment against RPOA (the "Williams Judgment") declaring that (1) the Subdivision's 2013 vote to eliminate Paragraph 4c was null and void as to Sections 20 – 25; (2) the 2013 vote was valid and in full force and effect as to Sections 1 – 19 and Raintree Forest; and (3) RPOA is prohibited from amending, deleting or modifying the language of Paragraph 4c (as it relates to Sections 20 – 25) in any way. (L.F. Doc. No. 38).

In 2015, RPOA filed the action now before this Court in light of the conflicting obligations and abuses that resulted from the Williams Judgment. (L.F. Doc. No. 36). In its original Petition, RPOA sought *inter alia* an injunction against the holding of a special election and declaratory relief to determine the parties' rights and obligations under the

Amended Covenants and restrictions, as well as for an award of attorney's fees. (L.F. Doc. No. 36). In April 2018, RPOA filed its First Amended Petition alleging, *inter alia* an independent cause of action pursuant to Mo. R. Civ. P. §§ 74.06(b)(5) and 74.06(d) to have the Williams Judgment set aside as inequitable to enforce. (L.F. Doc. No. 2).

By motion filed on January 13, 2020, Dottie Schwantner moved for class certification under Rule 52.10 of "a class consisting of all property owners of record in the Raintree Subdivision in Jefferson County, Missouri plats 1 – 25 and Ranintree Forest" (the "Intervenors"). (L.F. Doc. No. 43). On January 29, 2020, and the trial court granted the motion for class certification for the Intervenors. (L.F. Doc. No. 44).

There were no objections at this time, nor did any party move for alternative class certification. However, on March 6, 2020, Susan Rauls separately moved to intervene in the action, stating that the certified class of Intervenors did not adequately represent her interests as a "noncontributing member." (L.F. Doc No. 03/06/2020). In essence, Rauls contended that the interests of owners in Sections 1 – 19 of Raintree who are not subject to mandatory golf club assessments are adverse to the interests of owners in Sections 20 – 25 who are subject to mandatory assessments. *Id*.

On April 24, 2020, the trial court denied Rauls' motion to intervene. (L.F. Doc No. 04/24/2020). The trial court found that Rauls' Motion was motion was untimely, particularly because she was a longtime resident of Raintree Subdivision, her husband was a member of the RPOA Board, and that she had access to four different sources of public notice that described the circumstances of the litigation. *Id.* The trial court concluded that Rauls had been aware of the circumstances of the litigation since 2017 and

that it was "disingenuous" of her to argue she had timely filed her motion in March 2020. *Id.* In addition, the trial court held that Rauls' motion was prejudicial to the parties, particularly because her motion was filed at the time when the named parties were attempting to present their settlement to the court. *Id.* No appeal of the trial court's denial followed.

On June 2, 2020, Respondents filed a preliminary settlement agreement with the trial court. (L.F. Doc No. 4). The following day, the trial court entered an Order preliminarily approving the class settlement and authorizing notice to the class. (L.F. Doc. No. 9).

On July 7, 2020, Appellant, Mary Lou Watson filed a Notice of Objection to the proposed settlement. (L.F. Doc. No. 45). Appellant's objection was filed along with numerous other owners in Sections 1 – 19 and/or Raintree Forest, the vast majority of which were made on a pre-printed form. (L.F. Doc. No. 1; see also L.F. Doc. No. 11 at p. 6). The trial court specifically noted that of the 299 objections filed, out of 2,281 lot owners, only 167 were made timely. (L.F. Doc. No. 11 at p. 6). Following the objections, the "designated objectors" filed a separate motion to decertify the class. (L.F. Doc. No.10).

On January 13, 2021, the trial court took up the Final Fairness Hearing, Final Approval of Class Settlement, and motions to dismiss and to decertify the class. (See L.F. Doc. No. 11 at p. 1). The trial court entered its Findings of Fact, Conclusions of Law and Judgment on March 31, 2021 overruling the objections, denying the motions to dismiss

and to decertify the class, and, finally, approving the class settlement. This appeal followed.

POINTS RELIED ON

I. **APPELLANTS' POINT I SHOULD BE REJECTED BECAUSE RES JUDICATA HAS NO BEARING ON THIS CASE IN THAT BECAUSE CLAIMS BROUGHT PURSUANT TO RULE 74.06 ARE INDEPENDENT ACTIONS IN EQUITY.**

II. **THIS COURT SHOULD REJECT APPELLANTS' POINTS II, III AND IV BECAUSE APPELLANTS' OBJECTIONS ARE WAIVED AS UNTIMELY AND BELATED IN THAT APPELLANTS WAITED AT LEAST THREE YEARS TO BRING THE OBJECTIONS ON THE EVE OF SETTLEMENT.**

III. **THE TRIAL COURT DID NOT ERR IN APPROVING THE SETTLEMENT AGREEMENT BECAUSE DETERMINING THE SETTLEMENT TO BE FAIR, REASONABLE AND ADEQUATE WAS NOT AN ABUSE OF THE TRIAL COURT'S DISCRETION IN THAT THE COURT EXPRESSLY FOUND THAT THE SETTLEMETN WAS ENTERED INTO IN GOOD FAITH AND GAVE DUE CONSIDERATION TO THE OBJECTIONS.**

IV. **APPELLANTS' POINT VI SHOULD BE REJECTED BY THIS COURT BECAUSE IT MISCONSTRUES THE LAWS OF THIS STATE IN THAT RULE 74.06 DOES NOT REQUIRE A PLAINTIFF TO PLEAD THE ELEMENTS OF FRAUD OR MISTAKE AND MISCONSTRUES THE JUDGMENT OF THE TRIAL COURT IN THAT THE TRIAL COURT DID NOT AMEND THE COVENANTS AND RESTRICTIONS OF RAINTREE WITH ITS JUDGMENT.**

RPOA maintains its objection that Appellants do not have standing to bring this appeal and therefore this Court lacks jurisdiction. Subject to and not waiving this objection, RPOA submits the following arguments to this Court.

ARGUMENT

Appellants' attempts to overturn the trial court's in approval of the Settlement should be rejected for four reasons. First, Appellants Point I should be rejected because *res judicata* cannot be applied to bar RPOA's claims brought pursuant to Rule 74.06 to set aside the Williams judgment because it is an independent action in equity in which *res judicata* does not bar.

Second, Appellants' Points II, III and IV should be deemed waived as untimely and belated objections because Appellants were aware of all the issues they are bringing before this Court 3-5 years prior to making their objections on the eve of settlement approval.

Third, Appellants' Point V should be rejected because approval of the settlement was not an abuse of the trial court's discretion. The trial afforded Appellants ample time to present their objections (over the course of and eight hour hearing) and gave due consideration to the arguments raised. Upon a full hearing, the trial court determined that the settlement agreement was fair and reasonable, that notice was given in an appropriate manner, taking all circumstances into account, and fully weighed the concerns of the relatively small number of objectors against the need for a resolution in this matter.

Finally, Appellants Point VI should be rejected as it contradicts Missouri law because Rule 74.06 does not require a plaintiff plead the elements of fraud or mistake and it misconstrues the judgment of the trial court in that the trial court never amended the Covenants and Restrictions of Raintree Subdivision in its Judgment.

I. APPELLANTS' POINT I SHOULD BE REJECTED BECAUSE RES JUDICATA HAS NO BEARING ON THIS CASE IN THAT CLAIMS BROUGHT PURSUANT TO RULE 74.06 ARE INDEPENDENT ACTIONS IN EQUITY THAT CANNOT BE BARRED BY THE DOCTRINE OF RES JUDICIATA.

Standard of Review

Contrary to Appellants' assertion, the proper standard of review under a Rule 74.06 action is abuse of discretion. Trial courts are afforded "broad discretion" when Rule 74.06 is invoked, and appellate courts should not interfere with the trial court's decision unless the record "convincingly shows an abuse of discretion. *County of Boone v. Reynolds*, 573 S.W.3d 696, 702-03 (Mo. App. 2019); *Laser Vision Centers, Inc. v. Laser Vision Centers Intern., SpA*, 930 S.W.2d 29, 31 (Mo. App. E.D. 1996). Such abuse of discretion is found if the ruling is "clearly against the logic of the circumstances then before the court and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration. *Vang v. Barney*, 480 S.W.3d 473, 476 (Mo. App. 2016).

Analysis

Rule 74.06(b) provides parties subject to a judgment or order a cause of action to have it set aside for "(1) mistake, inadvertence, surprise or excusable neglect; (2) fraud …, misrepresentation, or other misconduct of an adverse party; . . . ; or (5) . . . it is no longer equitable that the judgment remain in force. Mo. R. Civ. P. 74.06(b). Further, 74.06(d) specifically provides the court to entertain an independent action to relieve a party from a judgment or to set aside that judgment. Mo. R. Civ. P 74.06(d).

This has been interpreted to consider Rule 74.06 independent actions in equity. *Harvey v. Village of Hillside*, 893 S.W.2d 395, 397 (Mo. App. E.D. 1995); *Reding v. Reding*, 836 S.W.2d 37, 43 (Mo. App. 1992). In fact, Rule 74.06 "mandates that courts" entertain the action. *Sanders v. Insurance Co. of North America*, 904 S.W.2d 397, 401 (Mo. App. 1995). Considering this mandate, r*es judicata* cannot be used to preserve a judgment "but for equity, would not be subject to reconsideration." *Id.*; *See also Olofson v. Olofson*, 625 S.W.3d 419, 428 (Mo. banc 2021). Consequently, Appellants use of *res judicata* principals ignores the fact that this is a specific cause of action that allows a previous judgment to be scrutinized and set aside by the trial court.

As a result, RPOA's invocation of 74.06 mandated the trial court to consider whether to set aside the Williams Judgment as inequitable. RPOA alleges that 1) enforcement of the Williams Judgment was inequitable; 2) the Williams Court was mistaken about the effect of the Kraemer Judgment, and 3) that the mistake was the result of extrinsic fraud. (L.F. Doc No. 2, ¶ 23, 24). Thus, RPOA's petition sufficiently invoked 74.06(b)(1), (2) and (5). The effect RPOA's request for a relief was that the trial court had a "mandate" to entertain the action rather than dismiss it for *res judicata*.

Indeed, this conclusion is harmonized with this Court's conclusion in which considered and rejected an argument like Appellants'. *Sanders*, 904 S.W.2d at 401. There, *Sanders* concluded that *res judicata* had "no application" to the 74.06 challenge because the Rule's purpose is designed to set aside the otherwise final judgment which, but for equity, would not be subject to reconsideration. *Sanders*, 904 S.W.2d at 401. Thus, applying *Sanders* here leads to a similar conclusion as Appellants' *res judicata*

arguments have no application to determining whether the Williams Judgment was inequitable in its enforcement as equity mandated the trial court determine if its results had an inequitable effect on the Raintree Subdivision. Therefore, as was the case in *Sanders*, Appellants' Point I should be rejected.

Consequently, this mandate allowed the trial court to correctly conclude that the Wiliams Judgment was inequitable. The trial court identified many of Williams' inequitable effects in its judgment, including how the decision left 25% of all lot owners paying dues under Paragraph 4(c) for an amenity that benefited all members of the Subdivision. (L.F. Doc. No. 11). Further, that the other 75% were exempt based upon an erroneous application of law and fact employed by the Williams Judgment. *Id.* Next, the trial court noted these erroneously conclusions of law and fact lead to chaos in Raintree Subdivision as the 25%, paying 100% of dues under Paragraph 4(c), saw dues increase from $225.00 to $841.00. *Id.* This oppressive result led to the arbitrary distinctions before this Court today as a single subdivision divided itself into classes of 25% and 75% or paying members and non-paying members. Based on this the trial court recognized the Williams judgment led this Subdivision to face more uncertainty, more anger, more divisions and more litigation. *Id.* These real-world consequences included failures to work these issues out in votes, and additional lawsuits regarding the elections of Board members. *Id.* These arbitrary labels, anger, further litigation and oppression lead the trial court to conclude that Williams was inequitable, a conclusion well within its mandate.

Ultimately, Appellants' argument be rejected considering *Sanders* mandates courts to hear 74.06 actions despite *res judicata*. Furthermore, that the trial court found myriad

facts to conclude that Williams was inequitable was well within its mandate and demonstrates no abuse of discretion. As such, Point I should be rejected, and the trial court's decision should be affirmed.

II. THIS COURT SHOULD REJECT APPELLANTS' POINTS II, III AND IV BECAUSE APPELLANTS OBJECTIONS ARE WAIVED IN THAT THEY ARE UNTIMELY AND BELATED AS A RESULT OF APPELLANTS WAITING YEARS TO BRING THE OBJECTIONS ON THE EVE OF SETTLEMENT.

Standard of Review

Appellate Courts should give the benefit of the doubt to a trial court's decision to approve a class. *Dale v. DailmerChrysler Corp.,* 204 S.W.3d 151, 164 (Mo. App. 2006). As such, these determinations rest within the sound discretion of the trial court. *State ex rel. Union Planters Bank, N.A. v. Kendrick*, 142 S.W.3d 729, 735 (Mo. banc 2004). Therefore, an order granting or denying class action certification is reviewed "solely" for abuse of discretion. *Craft v. Phillip Morris Companies, Inc.,* 190 S.W.3d 368, 376 (Mo. App. E.D. 2005).[1]

Additionally, determinations of the adequacy of representation are within the sound discretion of the trial court and are also reviewed on an abuse of discretion standard. *Doyle v. Fluor Corp.,* 400 S.W.3d 316, 321 (Mo. App. E.D. 2013); *Plubell v. Merck & Co., Inc.,* 289 S.W.3d 707, 711 (Mo. App. 2009). These decisions will only be reversed if the ruling is "so arbitrary and unreasonable as to shock one's sense of justice and indicate a lack of careful consideration. *Id*.

[1] Appellants' contention that *de novo* review should be employed for questions of class certification is inappropriate.

Here, Appellants Points II, III and IV are all reviewed under an abuse of discretion standard. Furthermore, these Points II, III and IV all revolve around the same legal and factual considerations of class adequacy and are equally affected by the procedural history of this case. As such, Appellants Points II, III and IV are addressed here.

Analysis

Bleated objections to the adequacy of class representation are deemed waived and a party cannot assert those objections and arguments on appeal. *Doyle*, 400 S.W.3d at 321. Considering that the issues raised in Points II, III and IV were all known or should have been known by Appellants 3 – 5 years prior to their objections, the issues they now raise are untimely.

In *Doyle*, this Court deemed the objections to certification and adequacy of class representation are waived when they are made for the first time on the eve of settlement. There, on the eve of settlement approval the appellants moved to intervene and object that class representation inadequately protected their interests. *Id.* at 320. Prior to these objections appellants had all received notice of the action and were aware of the surrounding circumstances but had not attempted to intervene or challenge class adequacy until the eve of settlement approval. *Id.* at 321. Considering these circumstances, this Court rejected the appeal on the grounds that these objections were waived for untimeliness. *Id.* In doing so, this Court cited precedent from other jurisdictions which held that belated objections to class certification and adequacy of representation are waived and that challenges to adequacy of representation it should

occur at the time of certification rather than the settlement phase[2]. *Id.* This Court concluded that because the appellants waited years to make such objections their "unjustified" "tardiness" caused the issue to be waived on appeal. *Id.*

Here, that Appellants were aware of the circumstances they are challenging in Points II, III and IV for years prior to their objections, the Points should be waived. First while Appellants assert that several motions were filed against class certification and adequacy in this case, they omitted the procedural context. Appellants Brief, p. 30. Schwantner's predecessor, Pyle, first intervened in this litigation on May 26, 2017. (L.F. Doc No. 57). The trial court notes that Pyle's intervention requested that all lot owners of Raintree Subdivision be responsible for payment of dues under 4(c). (L.F. Doc No. 11). There were no objections or attempts to intervene by any of Appellants at that time. For the next three years, until 2020, all Appellants in this case had actual knowledge or constructive knowledge of the facts and circumstances surrounding this litigation because of the various public meeting, notices and online platforms which kept Raintree members updated to the circumstances of this action. (L.F. Doc. No 80). There was never any objection or attempt to intervene by Appellants.

On January 13, 2020, Schwantner (continuing Pyle's request that all members pay dues) motioned for class certifications, without any objections, and on January 29, 2020, class certification was granted. (L.F. Doc No. 43;44). No objection or intervention followed. Appellants allowed two months to go by until Rauls a non-paying member and

[2] *Joel A. v. Guiliani,* 218 F.3d 132 (2nd Cir.2000); *In re Cendant Corp. Litigation*, 264 F.3d 201 (3rd Cir.2001).

designated objector, motioned to intervene on March 6, 2020. (L.F. Doc. No. 63;64). Like *Doyle*, the trial court found the non-paying members attempt to intervene "untimely", "prejudicial" and "disingenuous" because Rauls had interment knowledge of the circumstances of the litigation. (L.F. Doc No. 80). Moreover, the trial court noted that other purported non-paying members knew or should have known of the circumstances and issues of the litigation through the various public meetings, announcements, newsletters and online webpages which the RPOA maintained to keep the neighborhood updated on the litigation and content of the settlement agreement. *See Id*. This denial was not appeal.

The proposed settlement was filed with the trial court on June 3, 2020. (L.F. Doc No. 93). Only after the settlement was filed with the trial court did all the objections and motions Appellants identify filed. *See generally* (L.F. Doc No. 1; L.F. Doc No. 10). Like *Doyle*, these objections and motions all occurred after class certification, on the eve of settlement approval, with actual or constructive knowledge on the part of the objectors. (L.F. Doc No. 11). Further, of the belated objections, only 167 objections were considered timely per the trial court's scheduling. (L.F. Doc. No. 11). Moreover, the "vast majority" of all objections were prewritten form letters rather than individual objections. *Id.* Finally, of these objections "none of the objectors alleged that the settlement was unfair." *Id*. (emphasis supplied).

Doyle should guide this decision in determining that Appellants' disingenuous eleventh-hour objections should be waived. All the Appellants did or should have known of the issues they are now raising since at least 2017 yet sat in silent acquiescence until

the parties were finally about to settle after five years of litigation. Consequently, this Court should follow *Doyle* and reject these untimely points. As such, the decisions of the trial court should stand.

III. THE TRIAL COURT DID NOT ERR IN APPROVING THE SETTLEMENT AGREEMENT BECAUSE DETERMINING THE SETTLEMENT TO BE FAIR, REASONABLE AND ADEQUATE WAS NOT AN ABUSE OF THE TRIAL COURT'S DISCRETION IN THAT THE COURT EXPRESSLY FOUND THAT THE SETTLEMETN WAS ENTERED INTO IN GOOD FAITH AND GAVE DUE CONSIDERATION TO THE OBJECTIONS.

Standard of Review

Fairness of class action settlements are determination within the sound discretion of the trial court. *Doyle*, 400 S.W.3d at 320. In reviewing the trial court's determination that the settlement is fair, reasonable and adequate, courts employ an abuse of discretion standard. *Bachman v. A.G. Edwards, Inc.,* 344 S.W.3d 260 (Mo. App. E.D. 2011).

Analysis

A. Appellants Rely on Distribution of Monetary Funds in Employment Discrimination Cases.

Appellants rely on unbinding federal precedent regarding the distribution of monetary funds from a class action settlements of employment discrimination to impeach the trial court. In *Kincade v. General Tire and Rubber*[3], and *Franks v. Kroger Co.*[4], delt with how money should be properly allocated from the settlement agreements. The issues in this case do not relate to employment discrimination nor did the Settlement Agreement

[3] 635 F.2d 501, 503 (5th Cir. 1981)
[4] 649 F.2d 1216, 1218 (6th Cir. 1981).

create any monetary fund for distribution among the class members. Rather, this appeal relates to RPOA's petition to set aside the Williams Judgment as inequitable and the adequacy of the Settlement Approval thereon. Consequently, these unbinding and ungermane cases do not assist in determining whether the settlement at issue in this case is fair, adequate and reasonable.

B. The Settlement Agreement Was not the Product of Collusion.

Next, Appellants' second argument relies entirely on the outlandish theories of David Staloch who claims that five years of litigation, mediation and countless attorney hours did not center around Paragraph 4(c), rather, all that litigation was because of the sport golf. Despite this conspiratorial perspective, there is no evidence that thousands of hours of litigation were for the purpose of a grand conspiracy to golf more. Appellants' argument is without a single supporting document, corroborating witness or actual fact. It sole support is the speculation and conjecture of a single individual. Such speculation does not impeach the trial court's discretion and therefore it should be disregarded by this Court.

Second, Appellants ignores the five years of litigation to argue that there was a lack of adversarial proceedings in this case.

Third, Appellants repeat their arguments in their previous points.

IV. APPELLANTS' POINT VI SHOULD BE REJECTED BY THIS COURT BECAUSE IT MISCONSTRUES THE LAWS OF THIS STATE IN THAT RULE 74.06 DOES NOT REQUIRE A PLAINTIFF TO PLEAD THE ELEMENTS OF FRAUD OR MISTAKE AND MISCONSTRUES THE JUDGMENT OF THE TRIAL COURT IN THAT THE TRIAL

COURT DID NOT AMEND THE COVENANTS AND RESTRICTIONS OF RAINTREE WITH ITS JUDGMENT

Standard of Review

Approval of class action settlements are determination within the sound discretion of the trial court. *Doyle*, 400 S.W.3d at 320. In reviewing the trial court's determination that the settlement is fair, reasonable and adequate, courts employ an abuse of discretion standard. *Bachman v. A.G. Edwards, Inc.,* 344 S.W.3 260 (Mo. App. E.D. 2011). Because the trial court did not amend the Covenants and Restrictions with its Judgment, abuse of discretion review is warranted for Appellants' Point VI as it amounts to another objection to the contents of the settlement agreement.

Analysis

A. Rule 74.06 Does Not Require a Recitation of the Elements of Fraud for the Trial Court to Consider the Fraud, Unfairness and Inequities of the Prior Judgment

Appellants argue that because the elements of fraud or mistake were not plead, the trial court could not approve the settlement agreement. However, *Sanders* holds that under Rule 74.06, a plaintiff does not need to plead the elements of fraud or mistake or even specifically invoke the rule. *Sanders*, 904 S.W.2d at 401. Rather, this Court recognizes that actions to set aside judgments for fraud and inequity have existed "long before" codification into Rule 74.06. *Id.* The Rule simply recognizes the existence of the action and provides a "mandate" that Courts consider them. *Id*. Furthermore, even if Appellants' point did have merit, RPOA plead facts and allegations of fraud and mistake in its Petition including:

> "Here the [Williams Judgment] is inequitable in its enforcement. Further [RPOA] was misled as to the consequences of its consent to the finality of such judgment, whereby [RPOA] is (1) forever barred from amending or modifying the language of Paragraph 4(c) and (2) is presently incapable of performing its responsibilities and upholding the duties it owes to all members. This has, in-turn, worked an extrinsic fraud on the Court."

(L.F. Doc No. 2, ¶ 23) (emphasis added); and

> "In addition, the Court was misled as to the effect of the [Kraemer Judgment], in that the judgment delt only with lot owners in Sections 20-25 acting as a class independent from [RPOA] or the Subdivision as a whole. The [Kramer Judgment] did not touch the issue of whether the Subdivision in its entirety could modify Paragraph 4(c). This, in-turn operates as an extrinsic fraud upon the [Williams Judgment]."

Id. at ¶ 24. (emphasis added).

Consequently, Appellants pleading arguments are not supported by precedent or the actual pleadings in the case. Moreover, as discussed in RPOA's Point I, the trial court's judgment included myriad circumstances of the mistakes the Williams Judgment made and the inequities resulting therefrom.

B. The Trial Court Did Not Make Any Amendment to the Indentures, the Settlement Agreement Did.

Next, the Appellants attempt to construe the trial court's incorporation of the Settlement as the trial court directly amending the Raintree Restrictions and Covenants. This is a critical distinction as the trial court in this case did not make any amendment. The trial court did not alter or rewrite the language of Paragraph 4(c) at any place in its judgment. (L.F. Doc No. 11). Prior to the Judgment, Paragraph 4(c) read:

> "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 owner by RAINTREE PLAINTATION, INC…. Annual dues as established solely by such Club or Golf Course."

(L.F. Doc No. 11). There is no place in the Judgment where the trial court changes this language. *Id.* All that the trial court did was incorporate the settlement agreement into its judgment, which only had the effect of declaring that 4(c) applied to all lot owners. *Id.* There was never any actual change of language or amendment to the text.

Because Rule 74.06 does not require a recitation of the elements of fraud or mistake to activate its mandate and because the trial court did not amend the restrictions and covenants with its judgment Appellants' Point VI fails. Consequently, this Court should affirm the decision of the trial court.

CONCLUSION

Here, all of Appellants' Points I though VI should be rejected by this Court as they either undermine the law of this state (Point I), are disingenuous and bleated attempts to delay settlement of this lawsuit (Points II, III and IV), it was not an abuse of discretion approve settlement agreement (Point V) and misconstrue the judgment of the court and the requirements of Rule 74.06 (Point VI). Consequently, the decisions of the trial court should be affirmed.

Therefore, RPOA respectfully requests that this Court affirm the trial court's decisions in this matter.

Respectfully Submitted

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CERTIFICATE UNDER RULE 84.06(c)

I, Ted D. Disabato, hereby certify that I am one of the attorneys for TdD Attorneys at Law LLC, and that the foregoing Brief of Respondent:

(1) Includes the information required by Rule 55.03;
(2) Complies with the limitations contained in Rule 84.06(b);
(3) Complies with the page limits of Special Rule 360; and
(4) Contains 4,858 words.

The undersigned further certifies that the electronic mail message in lieu of a floppy disk submitted with this Brief has been scanned for viruses and is virus-free.

/s/Ted D. Disabato
Ted D. Disabato

CERTIFICATE OF SERVICE

I, Ted D. Disabato, hereby certify that I am one of the attorneys for TdD Attorneys at Law, and that on February 28, 2022, I caused one copy of the aforesaid Brief of Respondent Raintree Plantation Property Owners' Association, Inc., to be served by the Courts electronic filing system and a copy by electronic mail message in lieu of floppy disk, addressed as follows:

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