Appeal No. ED109793

IN THE MISSOURI COURT OF APPEALS

EASTERN DISTRICT

MARY LOU WATSON, et al.,

Plaintiff

v.

RAINTREE PLANTATION PROPERTY OWNERS ASSOCIATION, INC., et al.

Appeal from the Twenty-Third Judicial Circuit Court, Jefferson County, Missouri
Special Judge Honorable Michael J. Fagras, Division 4
Cause No. 15JE-CC00809

RESPONDENT'S BRIEF

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JURISDICTIONAL STATEMENT

Respondent adopts Appellants' Jurisdictional Statement and agrees jurisdiction of this appeal lies in this Court.

INTRODUCTION

A. THE ORIGINAL PLATS

The Raintree Plantation Subdivision was developed in 1979 by Raintree Plantation, Inc. The development consisted of 19 plats (now known as sections 1-19) containing approximately 2,265 lots. The Subdivision was designed to be a high-end "Resort" community, complete with a lake and a full country club (the "Club") that would provide a golf course, clubhouse, restaurant/bar, swimming pool, tennis courts, and other amenities. The developers chose to separate a contiguous tract of land from the Raintree Plantation property, that would be owned by a private entity to operate the Club as a for-profit company, subsidized by the lot owners of Sections 1-19. (LF; D66).

To memorialize the subsidy, the developers included Paragraph 4(c) in the Raintree "Covenants and Restrictions" that require **ALL** lot owners to pay annual dues to the Club in an amount to be determined by the Club owner. Moreover, the terms and conditions set forth in Paragraph 4(c) can be "modified or terminated" only by the Club. (App _; Ex. D admitted into evidence at the Final Fairness Hearing; LF; D66).

There may be some disagreement over who did/did not pay the annual dues after the 1979 Covenants and Restrictions were recorded, but the obligation ALL lot owners in Sections 1-19 to pay the annual paragraph 4(c) dues is unassailable.

B. ADDING SECTIONS 20-25

In the mid-1980s, the developer of Sections 1-19 endeavored to add additional plats to the subdivision. By this time, Sections 1-19 had organized a Property Owners Association "POA" that owned the common property of the subdivision and generally collected annual assessment and maintained the POA common grounds.

In order to effectuate the smooth assimilation of the additional plats (Sections 20-25) into the Raintree Subdivision, the POA and the developer entered into a contract in 1987. ("The 1987 Contract"). (App _; Ex F admitted into evidence at the Final Fairness Hearing; LF; D69). The essential terms of The 1987 Contract provided as follows:

- The developer would acquire adjoining property and develop the tract into Plats and Lots similar to that which already existed in Sections 1-19;
- The new platted lots would be subject to the same Covenants and Restrictions as existed for Sections 1-19;
- Developer will construct a lake in the newly acquired property for the benefit for all lot owners in Raintree Plantation;
- The POA would collect regular assessments from the lot owners in the new sections and hold the assessments in escrow for a period of three years. Provided the developer completes the new development according to certain specifications, at the end of the three-year period the POA would pay over the escrowed assessments to the developer;

- The developer will make improvements to the club amenities including:

    i. Install proper lighting on the tennis courts;

    ii. Install a new driving range; and,

    iii. Enlarge the Pro Shop, kitchen and bathrooms in the Club House.

- The POA is granted the right to purchase the club for $1,650,000 through December 31, 1988 (The right was never exercised).

- Once completed, the streets and roads will be dedicated and conveyed to the POA along with the new lake, and any common property.

- By Addendum executed on July 22, 1987, the developer gave assurance that the recorded documents for the new sections would bind each lot owner in the new sections to pay the Paragraph 4(c) annual dues set forth in the Covenants and Restrictions which would be set at a minimum of $120/lot.

(LF; D69; App _Ex. F admitted into evidence at Final Fairness Hearing).

To be clear, The 1987 Contract was made before any new sections or lots were platted. The 1987 Contract was merely an expression of intention and resulting obligations if the intentions were carried out. (App _Ex. F admitted into evidence at Final Fairness Hearing) As such, the Contract itself did not create an obligation for the new Sections to pay the Paragraph 4(c) dues; that obligation would arise upon the fulfillment of the obligations and benchmarks of The 1987 Contract and the subsequent recording of Plats (see App _ Ex.). Each Plat that was recorded for

Sections 20-25 made the section subject to the 1979 Raintree Covenants and Restrictions by adapting the following legend on each Plat: "All property in this Subdivision is hereby made subject to the restrictions and conditions as contained in the instrument filed for record hereof in the Recorders Office of Jefferson County, Missouri, Book 372, Page 1064. (App __; Ex. G admitted into evidence at the Final Fairness Hearing).

To ensure the public record would be complete with regard to the newly developed sections, the developer filed an Amendment to the 1979 Covenants and Restrictions (the "1987 Amendment"). (App _; Ex. E admitted into evidence at the Final Fairness Hearing; LF; D68). The 1987 Amendment purported to restate the 1979 Covenants and Restrictions as applicable to Section 1-19 and any additional sections that should be platted from time to time (Sections 20-25). (LF; D68).

Paragraph 4(c) of the 1987 Amendment remained identical to Paragraph 4(c) of the original 1979 Covenants and Restrictions, except to add that dues be set at $120/lot and unpaid dues would a lien on the unpaid lot. (LF; D68). There was no mention that Paragraph 4(c) was applicable only to Sections 20-25 nor that the provision was inapplicable, or optional, for the existing sections 1-19. In fact, the opposite was true, in that, the provision still applied to "All Lot Owners…". Paragraph 4(c) has not changed since 1987 and remains identical to the 1979 version, save for the irrelevant lien language.

C. THE 2008 LITIGATION (KRAMER DECISION)

In 2008 a few residents from Sections 20-25 filed a class action suit seeking a declaration that Section 20-25 lot owners had no obligation to pay Paragraph 4(c) dues to the Club, and if they did, they had the power to modify Paragraph 4(c) to eliminate the obligation. (LF; D69). Judge Kramer decided the case on cross motions for summary judgment, holding Paragraph 4(c) was unambiguous in establishing the lot owners' obligation to pay annual dues to the Club and only the Club could modify or terminate the obligation to pay Paragraph 4(c) dues. (This became known as the Kramer Decision). (LF; D69). Sections 1-19 were not mentioned in Judge Kramer's ruling presumably because Sections 1-19 lot owners' obligation to pay the Paragraph 4(c) dues was uncontested.

In Affirming Judge Kramer's ruling, the Court of Appeals held the preamble language of Paragraph 4(c) that states "**All** lot owners shall be members…", means all lot owners have a mandatory obligation to pay annual dues to the Club and the lot owners have no right to terminate or modify the obligation. (See *Anderson v. Kremer Restaurant Enterprises,* (ED 97147) unpublished opinion at LF; D70).

D. THE 2013 LITIGATION (WILLIAMS DECISION)

In 2012, unhappy with the *Kramer* decision and dissatisfied with the lack of benefit and amenities provided by the Club, the entire Subdivision (Sections 1-25 and Raintree Forest, inclusive) voted to eliminate Paragraph 4(c) from the Covenants

and Restrictions seeking termination of any obligation for lot owners in Raintree Plantation to pay dues to the Club. Naturally, the Club filed suit to set aside the vote and enjoin Raintree Plantation Subdivision from further effort to terminate or amend Paragraph 4(c). (See *Jefferson County Raintree Country Club v. Raintree Plantation Property Owners Assoc.("RPOA") Inc*., Case # 13JE-CC00841, at LF; D71). The parties in the 2013 litigation were the Club as Plaintiff and the POA as Defendant; there were no other parties to the action and, unlike the *Kramer* litigation, this case was not certified as a class action. Like in *Kramer*, the case was submitted to Judge Stanley Williams on cross motions for summary judgment. Judge Williams ruled the vote to terminate Paragraph 4(c) dues was valid as to sections 1-19 and Raintree Forest but null and void as to Sections 20-25; hence placing the full burden of Paragraph 4(c) dues on Sections 20-25. (LF; D71).

Judge Williams' decision was not appealed.

Support for the plainly illogical conclusion reached by Judge Williams is not apparent in his opinion but could possibly be explained by his misconception that Paragraph 4(c) was adopted in 1987 as the result of The 1987 Contract. Indeed, on page 3 of his opinion, Judge Williams finds:

> "The [*Kramer* decision] determined that Paragraph 4(c) was adopted in response to a specific Contract between the POA and the original developer when Sections 20-25 were added to the Subdivision."
>
> (LF; D71 p. 3)

Perhaps, Judge Williams was unaware that Paragraph 4(c) was present in the original 1979 Covenants and Restrictions applicable to Sections 1-19, and Raintree Forrest, and remained unchanged except for The 1987 Amendment that only added a lien enforcement mechanism.

E. CURRENT LITIGATION

In the Fall of 2015, faced with the conflict between the *William* decision and the precedent set by the *Kramer* decision, the Club initiated a petition to require a Subdivision vote to increase the current regular assessment and set the Paragraph 4(c) dues at $240 for each and every lot in the Raintree Plantation Subdivision. The Club obtained signatures of 250 lot owners and delivered the petition to the POA for presentation on a ballot. The POA refused to place the two initiatives on a ballot and filed suit (the instant action) seeking a declaration from the Court to prevent the Club from proceeding with the vote. (LF; D36). In its allegations and claims for relief, the POA asserted it would be an unreasonable burden to require Sections 1-19 to pay Paragraph 4(c) dues equally with Sections 20-25 and would therefore violate the rights of Sections 1-19 owners in favor of Sections 20-25 owners. It also asked the Court to abridge Sections 20-25 right to sign the Club's petition **and** to prevent the Section 20-25 lot owners from voting in the event a ballot was held. (LF; D36).

The POA requested preliminary injunction to prevent the vote from going forward, which was denied by the Court (LF; D1 docket entry of 11/23/15).

The case sat dormant until May 26, 2017, when a resident in Sections 20-25, Bryan Pyle, filed his Motion to Intervene in the litigation. (LF; D57). Mr. Pyle's petition requested the Court to declare all lot owners in the Raintree Plantation Subdivision were obligated to pay Paragraph 4(c) dues, among other related claims. His Petition highlighted the fact that the Section 20- 25, paragraph 4(c) assessments had increased from $195.00/year in 2012 to $831.00/year in 2016. Mr. Pyle eventually moved out of the area and the current Intervenor, Dottie Schwantner, was substituted in his place. (LF; D1 4/7/19 entry).

After Mr. Pyle's Motion to Intervene, the POA changed counsel and filed its First Amended Petition, essentially, join the Intervenor in his request to make Paragraph 4(c) applicable to ALL lot owners in Raintree Plantation. (LF; D2). From July 2017, until the date settlement was reached, counsel and the litigants were fully engaged in discussions to settle all disputes in the case, including attending a full day of mediation. (LF; D11, p. 5).

The trial court certified the case as a Rule 52.10 class action on January 29, 2020 and the parties continued to aggressively negotiate a settlement of all claims. (LF; D44).

The parties finally agreed to terms for a Settlement Agreement that was preliminarily approved by the trial court on June 3, 2020. (LF; D9). In pertinent part, the Settlement Agreement provided:

a) All lot owners will pay $255/year for annual Paragraph 4(c) assessments;

b) Any increase in the assessment will be limited by CPI up to a maximum increase at 2%. Under the prior version of 4(c), the club was not limited in the amount it could increase the 4(c) obligation in any one year;

c) Other benefits set forth in Article III Sections A-L of the Settlement Agreement (LF; D4, pgs. 6-8).

After notice was given to the class and objections to the settlement were filed, the Court concluded an 8-hour Final Fairness Hearing (see TR pgs. 1-319) thereafter issuing its Findings of Fact, Conclusions of Law and Judgment approving the Settlement Agreement and overruling the objections (LF; D4). This appeal by objector Mary Lou Watson followed.

ARGUMENT

I. The trial court properly refused to apply the doctrine of res judicata because the Williams Judgment has no preclusive effect and there is no identity of the parties.

Standard of Review

A judge-tried case is affirmed on appeal unless it is not supported by substantial evidence, it is against the weight of the evidence, or it erroneously declares or applies the law. *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976); *Ridgeway v. TTnT Dev. Corp.*, 126 S.W.3d 807, 812 (Mo. App. 2004). A judgment is presumed correct and the appellant has the burden of proving it erroneous. *Wingate v. Griffin*, 610 S.W.2d 417, 419 (Mo. App. 1980). The evidence and all reasonable inferences are viewed in the light most favorable to the judgment and all contrary evidence and inferences are disregarded. *Arndt v. Beardsley*, 102 S.W.3d 572, 574 (Mo. App. 2003). When reviewing a bench-tried case, the appellant court's primary concern is the correctness of the trial court's result, not the route taken to reach it. *Edgar v. Fitzpatrick*, 377 S.W.2d 314, 318 (Mo. banc 1964). Regardless of whether the trial court's proffered reasons are wrong or insufficient, if the correct result was reached, the appellate court must affirm. *Smith v. Estate of Harrison*, 829 S.W.2d 70, 73 (Mo. App. E.D. 1992). Any questions of law are reviewed de novo. Jas Apartments, Inc. v. Naji, 354 S.W.3d 175, 182 (Mo banc 2011).

Analysis

Res judicata does not bar this dispute because the Williams Decision was inequitable and inconsistent with the Kramer Decision, which was affirmed by the Court of Appeals, Eastern District. Further, the necessary elements of res judicata are not present. Therefore, the Williams Decision has no preclusive effect and the trial court properly refused to apply the doctrine of res judicata. This Court should affirm.

In their brief, Appellants claim the Williams Decision meticulously followed the precedence of the Kramer Decision, despite its clear inconsistencies. (Brief, p. 18). Appellants also represent the trial court failed to fully articulate its reasoning why the Williams Decision as inequitable and not considered a "proper Judgment." (Brief, p. 17; LF, D11, p. 4).

Contrary to Appellants' assertions to the contrary, the trial court discussed the inconsistencies between the Kramer and Williams Decision in great detail in both its Order and Judgment of April 29, 2020 (LF; D80) and in the Final Fairness Findings of Fact and Conclusions of Law dated March 31, 2021 (LF; D11).

The Raintree Covenants and Restrictions[1] were recorded on November 1, 1979, containing Paragraph 4(c), which required "all lot owners" to pay annual dues to the Country Club. (D11). In 2008, lot owners in Sections 20-25 filed suit seeking a declaration that Sections 20-25 had no obligation to pay 4(c) dues to the Club, or alternatively had the power to modify 4(c) dues to eliminate the obligation. (D11 *Id*.). This was resolved by the "Kramer Decision," finding Sections 20-25 were obligatory Club members because the 1979 Covenants required 4(c) dues from all lot owners. (LF; D11). To be sure this the Court affirmed the Kramer Decision decisively finding that the amended Section 4(c) dues are mandatory and only the Club can amend or modify the provision. (LF; D70). This court held;

"If membership in the country club and corresponding payment of dues were indeed voluntary and terminable or modifiable at the will of the lot owner, as plaintiffs argue, no reason whatsoever would have existed to include Paragraph 4(c) in the Amended Covenants and Restrictions. Furthermore, we read the terms of the agreement as a whole, giving each term its plain, ordinary and usual meaning, and we construe each term so as to avoid rendering other terms meaningless. *Id.* Read as a whole, the language of Paragraph 4(c) makes clear that country club membership

[1] Appellants do not include a copy of the Certified Covenants and Restrictions; the only copy they include in the Legal File is an unnotarized copy attached to Appellant's objection at LF; D51. At the Final Fairness Hearing it was established these were not the official versions of the covenants and restrictions (See TR. Pg. 151, lns 15-25; pg. 152, lns 1-25; pg. 153, lns 1-25; pg. 154, lns 1-18). The official 1979 Covenants and Restrictions can be found in Book 644, pp. 823-831 and were provided to the trial court as Indentures Exhibits D (App_).

and corresponding payment of dues are mandatory." All lot owners "should be deemed social members of any country club or golf course constructed on property heretofore owned by [the developer]…" This language clearly indicates the mandatory nature of membership is the country club." (LF; D70).

And if there were any doubt about who could amend Paragraph 4(c), that was also decided in the Kramer Decision, and affirmed by this Court, when it recognized the trial court held "only the country club owner or governing body can terminate or modify a lot owners membership" lending this court to conclude "that a lot owner is not free to terminate or modify membership whenever he or she chooses." (LF; D70).

Despite this clear precedence, the Williams Decision declared Sections 1-19 and Raintree Forest were not subject to mandatory Club dues, allowing those lot owners to eliminate their 4(c) obligation. (LF; D71). The Williams Decision was based on the fiction that Paragraph 4(c) was first recorded in 1987, when Sections 20-25 were added to the Subdivision. (LF; D71 p. 6). Appellants' argue Paragraph 4(c) is *only* applicable to Sections 20-25, but as evidenced by the 1979 Covenant, Paragraph 4(c) and resulting mandatory 4(c) dues existed prior to the addition of Sections 20-25. By Appellants' logic, the original 1979 Covenants only obligates 4(c) dues from non-existent lot owners in non-existent lots.

Under *stare decisis*, courts are bound by earlier judicial decisions when the same point arises in later litigation. *State v. Chase*, 490 S.W.3d 771, 774 (Mo. Ct.

App. 2016). If a new case involves the same or analogous issues to those previously decided, that decision has authoritative precedent. *Id*. This appeal involves an analogous issue to the Kramer Decision. When faced with the inconsistencies between the Kramer Decision and Williams Decision the trial court was "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[]." (*Id*.). By finding Sections 1-19 and Raintree Forest not subject to mandatory 4(c) dues, the Williams Decision abrogated an essential element of the Kramer Decision —4(c) Club dues were mandatory for ***every*** Raintree lot owner. The Williams Decision violated stare decisis with its inaccurate and illogical holding, and the trial court properly refused to give it preclusive effect and properly followed the Kramer Decision's holding, affirmed by this Court by determining every lot owner in the Raintree Subdivision is obligated to pay 4(c) dues.

Appellants now urge this court to make the same mistake Judge Williams made when he found the 1987 Addendum magically relieved sections 1-19 from paying 4(c) assessments. In fact, the only change made to Section 4(c) as a result of the 1987 Addendum (LF; D67) and subsequent 1987 Amendment (LF; D68) to the indentures was to establish the 4(c) assessment as a baseline for all lot owners to pay for the paragraph 4(c) assessment that the assessment would be a lien on the lot owners property if unpaid. The Addendum provides as follows:

> "1. Raintree shall require through the Covenants and Restrictions which apply to all new sections of Raintree Plantation, Inc. that property owners pay, as a mandatory provision of ownership a minimum of $120.00 for a social membership in Raintree Golf and Country Club or a greater amount as may be changed for said membership in the future."

The appellants' blind ambition to be relieved of the paragraph 4(c) obligation to pay assessments strains their interpretation of the paragraph 4(c) into this absurd result, particularly considering that the time of the 1987 Contract and its Addendum, Sections 20-25 had not yet even been platted. (LF; D67). According to the 1987 Contract, the Addendum was to apply only when/if the new sections ever plotted and developed. (1987 Contract generally).

Appellants seize on the phase "apply to all new sections" to satisfy their interpretation that Sections 1-19 should be relieved of their paragraph 4(c) obligations. The obvious interpretation of the Addendum is that the developer makes clear that paragraph 4(c) will apply to any new sections that are developed and added to the Subdivision. There is no exclusionary language pertaining to the Sections 1-19, and why would there be? Plus, if the developer was going to take the magnanimous step of relieving Sections 1-19 of its obligations to pay the 4(c) assessments, wouldn't that provision be delineated in no uncertain terms, particularly considering that Sections 20-25, at this time, did not even exist and were merely being contemplated? It is telling that Appellants only include the Addendum

to the 1987 Contract in their legal file. Perhaps it omitted the actual contract from their legal file because it very well explains how the rights and obligations of Sections 1-19 do not change, only that the new sections, if built, will join those rights and obligations. (LF; D67; App ____; Exhibit F admitted into evidence at the Final Fairness Hearing).

For example, in a "Whereas Clause" in the 1987 Contract, the developer clearly explained that even if new sections are added to Raintree, the new sections and old sections will exist as one Subdivision under the same covenants and restrictions that Sections 1-19 have been bound since 1979. The "Whereas Clause" states:

"Raintree is considering acquiring property adjoining certain of the subdivisions in Raintree so as to develop said property and turn it into and make it part of the existing Raintree Plantation and it is desired by both parties that in order to provide additional subdivisions and roads that it is to all parties' advantage that certain agreements be made between POA and Raintree so that said subdivision as they are mapped out and plats are recorded shall become a part of Raintree Plantation and subject to the control of the POA as the other subdivisions are and subject to the right of the now property owners to use all amenities in Raintree Plantation and case votes as members."

Nowhere in the 1987 Contract is there any mention, whatsoever, that the paragraph 4(c) assessments are voluntary or that Sections 1-19 are relieved of the paragraph 4(c) obligation to pay the assessments. To be sure, the developers clearly stated intent was for there to be one class of members in Raintree Plantation and that is how the subdivision has been governed and managed since 1979. This point is highlighted by the evidence revealing that whether you purchase a lot in Sections 1-19 or 20-25 each purchaser is given an identical "Certificate of Membership" (Compare Appellant Mary Lou Watson's Certificate at LF; D49-50 with Intervenor, Dottie Schwantner's Certificate at App ___).

Further, the application of the *res judicata* doctrine shows the necessary elements are not met. Res judicata is only applicable if four identities are established: (1) identity of the things sued for; (2) identity of the cause of action; (3) identity of the persons or parties to the action; and (4) identity of the quality or status of the person for or against whom the claim is made. *King Gen. Contractors, Inc. v. Reorganized Church of Jesus Christ of Latter-Day Saints*, 821 S.W.2d, 501–502 (Mo. banc 1991). Later litigation, including claims that could have been brought earlier, is not precluded unless the four identities have been met. *Lauber-Clayton, LLC v. Novus Properties Co*., 407 S.W.3d 612, 618 (Mo. App. E.D. 2013). Here, appellant does not address the identities, perhaps because the identity of the parties

cannot be established. An examination of the identities clearly shows they are not present here.

For the purposes of res judicata, a party is "identical" when it is the same party who litigated the prior suit or when the new party was in privity with the party who litigated the prior suit. *Lomax v. Sewell*, 50 S.W.3d 804, 809 (Mo. App. W.D. 2011). Parties are in privity when the interests of the party and non-party are so closely intertwined that the non-party can fairly be considered to have their day in court. *Lauber-Clayton, LLC*, 407 S.W.3d at 617.

Lauber-Clayton involved a complicated procedural history between several Lauber entities and several Novus entities after a real estate transaction. *Id*. at 614. On appeal, Novus Properties alleged res judicata barred the subject of its dispute with Lauber-Clayton because Novus Properties previously defended itself against actions regarding the same transaction brought by two Lauber entities. *Id*. at 619. Lauber-Clayton was also previously involved in litigation against Novus Holdings regarding the same transaction. (*Id*.) However, because Lauber-*Clayton* was not involved in litigation with Novus *Properties*, the appellate court found there was no identity of the parties. *Id*. (emphasis added). The appellate court also found no evidence that Novus Properties was in privity with Novus Holdings. *Id*. Because the parties were not identical or in privity, the doctrine of res judicata was inapplicable. *Id*. at 620.

Here, there is no identity of parties with the Williams Decision. Parties to the Williams Decision include Raintree Country Club, DKAAT Properties, LLC, and Raintree POA (LF; D71). While Raintree Country Club, DKAAT Properties, LLC, and Raintree POA are also party to the present dispute, Intervenor Dottie Schwantner, was not. Intervenor Schwantner therefore cannot be considered to have her day in court. Thus, there is no identity of the parties and the doctrine of *res judicata* is inapplicable.

The trial court determined the Williams Decision was inequitable and inconsistent with the Kramer Decision and properly refused to apply the doctrine of res judicata. Even if the Williams Decision did not contravene a holding affirmed by the Eastern District, Intervenor Schwantner was not party to the Williams Judgment and was not in privity with any such party. Therefore, there is no identity of parties and the doctrine of res judicata is inapplicable. The trial court's refusal to apply res judicata was proper and should be affirmed.

II. The class was properly certified under Rule 52.10 because the 1979 recorded covenants and restrictions binds all lot owners in the Raintree Subdivision by contract and constitutes a nonjural entity with interests compatible to Intervenor Schwantner's, and equity doctrine of virtual representation supports class treatment.

Standard of Review

A judge-tried case is affirmed on appeal unless it is not supported by substantial evidence, it is against the weight of the evidence, or it erroneously declares or applies the law. *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976); *Ridgeway v. TTnT Dev. Corp.*, 126 S.W.3d 807, 812 (Mo. App. 2004). A judgment is presumed correct and the appellant has the burden of proving it erroneous. *Wingate v. Griffin*, 610 S.W.2d 417, 419 (Mo. App. 1980). The evidence and all reasonable inferences are viewed in the light most favorable to the judgment and all contrary evidence and inferences are disregarded. *Arndt v. Beardsley*, 102 S.W.3d 572, 574 (Mo. App. 2003). When reviewing a bench-tried case, the appellant court's primary concern is the correctness of the trial court's result, not the route taken to reach it. *Edgar v. Fitzpatrick*, 377 S.W.2d 314, 318 (Mo. banc 1964). Regardless of whether the trial court's proffered reasons are wrong or insufficient, if the correct result was reached, the appellate court must affirm. *Smith v. Estate of Harrison*, 829 S.W.2d 70, 73 (Mo. App. E.D. 1992). We review an order granting or denying class certification solely for an abuse of discretion. *Koger v. Hartford Life Ins. Co.* 28 S.W. 2d 405, 410, (Mo. App. E.D. 2000).

Analysis

Rule 52.10 requirements are met because the lot owners of the Raintree Subdivision constitute a nonjural entity and Intervenor Schwantner's interests were

compatible with the Subdivision's interest, particularly when it is acknowledged Section 4(c) of the covenants and restrictions apply to all lot owners in Sections 1-25 and Raintree Forrest. Further, the doctrine of virtual representation supports treating this case as a class. The trial court's certification of the Class under Rule 52.10 should be affirmed.

Rule 52.10 exists to provide a vehicle for nonjural entities to litigate claims of common interest when it is impracticable to bring every member of the entity before the court. *Executive Bd. of Mo. Baptist Convention v. Carnahan*, 170 S.W.3d 437, 445 (Mo. App. W.D. 2005). Nonjural entities are an "aggregate of persons, voluntarily associated together for a common purpose, held together by common interests, and submitted to a common government." *State v. Kansas City Firefighters Local No*. 42, 672 S.W.2d 99, 118, 123 (Mo. App. 1984). Rule 52.10 only requires the nonjural entity's representative to fairly and adequately protect the interests of the entity's members. *Id*. The interests of the entity and its members are adequately represented when the interests of the class representative are compatible with interests of the entity. *Firefighters Loc. No. 77 v. City of St. Joseph, Mo*., 822 S.W.2d 866, 870 (Mo. App. W.D. 1991).

The trial court properly certified the Class under Rule 52.10 because the Class is a nonjural entity whose interests are compatible with Intervenor Schwantner's interests. The Raintree Subdivision consists of an aggregate of persons who

voluntary purchased lots in Sections 1-25 and Raintree Forest. These lot owners are voluntarily associated for and held together by their common interest in the Raintree Subdivision and are governed by the Raintree Covenants and Restrictions as recorded in Book 644, pgs. 823-831 of the Jefferson County Recorder of Deeds. (LF, D2, p. 1). The collective Raintree lot owners are therefore a nonjural entity, and the Class was accordingly properly defined as "all property owners of record in the Raintree Subdivision in Jefferson County, Missouri, Plats 1-25, and Raintree Forest." (LF, D43, p.1).

Intervenor Schwantner fairly and adequately represents the Class's interest. Prior to entry of the Settlement Agreement, the trial court found Intervenor Schwantner's interests compatible with the Class when denying the application of Susie Rauls to intervene in this case purporting to represent the interests of lot owners in Sections 1-19. (LF; D62). Like Appellants, the would-be intervenor alleged Intervenor Schwantner's interests were antagonistic to Section 1-19's because Intervenor Schwantner did not own property in Section 1-19. (LF; D62) However, the trial court found the would-be intervenors' claims to be "essentially identical and/or substantially similar to" the claims asserted by Intervenor Schwantner, denying the motion. (LF; D80). Because Intervenor Schwantner's interests are compatible with the Class's interest, Rule 52.10's only requirement is met. The trial court properly certified the class under Rule 52.10.

Appellants offer no suggestions regarding the proper vehicle to resolve the subdivision dispute, perhaps because a 52.10 class is the best way to achieve the accomplished result and only way to achieve due process. Every Raintree lot owner has an interest in the continuation of the Subdivision and the restriction of the dispute with the Club and the lot owners are too numerous to individually bring before this court. The 52.10 class promotes judicial economy and prevents the burden of litigating hundreds possibly thousands of individual cases, with the risk of inconsistent decisions. The less burdensome, more informal requirements are suitable for a 52.10 class in this case.

Even if a 52.10 class was not the proper procedural mechanism (it is), the trial court's treatment of the Class and approval of the Settlement Agreement is proper under the doctrine of virtual representation. This doctrine is applicable when many parties have a common or general interest in the issue of litigation and the parties are so numerous it is impracticable to bring them before the court. *Robinson v. Nick*, 235 Mo. App. 461, 136 S.W.2d 374, 385 (1940). Individuals from the class who become party to the suit represent the class due to their shared common interest. *Id*. at 385. Virtual representation is a well-recognized equitable doctrine, based upon considerations of necessity and paramount convenience. *Sierk v. Reynolds*, 484 S.W.2d 675, 680 (Mo. App. 1972). Courts invoke this doctrine as justice requires. *Id*. Virtual representation does not require statutory permission, although its

application is similar to the operation of a class action. *Brown v. Bibb*, 201 S.W.2d 370, 374 (Mo. banc 1947). And Rule 52.10 itself "is an expression of the equitable doctrine of virtual representation." *Carnahan*, 170 S.W.3d at 445.

While not directly identified as such, the doctrine of virtual representation has been utilized by Missouri Courts when faced with disputes over subdivision assessments. Missouri's Eastern District and Supreme Court respectively required all subdivision lot owners—as a class—to pay an equal portion of assessments that paid for the subdivision's obligation, disallowing a minority amount of lot owners' attempts to exempt themselves. *Colvin v. Carr*; *Lake Tishomingo Property Owners Ass'n v. Cronin*, at 857 (Mo. banc 1984). The reasoning behind these decisions is discussed more fully in Part VI, but both courts acknowledged their inherent authority in equity to require all members of subdivision communities to bear their share of assessments. *Colvin*, 799 S.W.2d at 158; *Lake Tishomingo*, 679 S.W.2d at 857. By certifying the Class and approving the Settlement Agreement, the trial court in this case properly used its equitable authority to bind all Raintree lot owners as a class. And dispensing with the fiction that paragraph 4(c) only applies to Section 20-25 and recognizing all lot owners in Raintree (Section 1-25 and Raintree Forrest) have the obligation to pay 4(c) assessments, Schwantner is clearly an adequate representative in her quest to establish a more fair agreement with the Club, on behalf of all lot owners in Raintree.

Accordingly, the trial court's certification of the Class was proper under both Rule 52.10 and the doctrine of virtual representation. This Court should affirm.

III. Class Representative Schwantner fairly and adequately protected the interests of all Raintree Subdivision lot owners.

Standard of Review

A judge-tried case is affirmed on appeal unless it is not supported by substantial evidence, it is against the weight of the evidence, or it erroneously declares or applies the law. *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976); *Ridgeway v. TTnT Dev. Corp.*, 126 S.W.3d 807, 812 (Mo. App. 2004). A judgment is presumed correct and the appellant has the burden of proving it erroneous. *Wingate v. Griffin*, 610 S.W.2d 417, 419 (Mo. App. 1980). The evidence and all reasonable inferences are viewed in the light most favorable to the judgment and all contrary evidence and inferences are disregarded. *Arndt v. Beardsley*, 102 S.W.3d 572, 574 (Mo. App. 2003). We review an order granting or denying class certification solely for an abuse of discretion *Koger* at 410.

Adequacy of class representation is a determination within the discretion of the trial court. *Doyle v. Fluor Corp*., 400 S.W.3d 316, 321 (Mo. App. E.D. 2013). "The trial court abuses its discretion when its ruling is clearly against the logic of the circumstances before the trial court and is so unreasonable and arbitrary that the ruling shocks the sense of justice and indicates a lack of careful deliberate

consideration." *Dieser v. St. Anthony's Medical Center*, 498 S.W.3d 419, 434 (Mo. banc 2016).

Analysis

A member of an unincorporated association may be named as class representative if the member will fairly and adequately protect the interests of the association and its members. Mo. Sup. Ct. R. 52.10. Intervenor Schwantner was named Class Representative in the trial court, Order and Judgment filed January 29, 2020. (LF; D44). The trial court analyzed Intervenor Schwantner's adequacy to represent the interests of every Raintree lot owner determining Schwantner would adequately and fairly represent the interests of all Raintree Subdivision lot owners. (LF, 44; LF D11).

Appellant suggests Intervenor Schwantner is an inadequate Class Representative because she does not own property in Sections 1-19. (Brief, p. 31–32). This argument was previously raised by Susan Rauls, a lot owner in Sections 1-19, in her Motion for Intervention (LF; D62). Interestingly, Rauls' asserted claims and request for relief were substantially similar to the claims and relief already requested by Intervenor Schwantner, including a request for the court to "declare, consistent with the 2011 judgment that all lot owners in plats 1-25 and [Raintree Forest] have the obligation to pay an equal amount of IV(c) dues . . ." (LF; D63).

Even Susie Rauls, a lot owner in Sections 1-19 realized the proper application of paragraph 4(c) binding all lot owners to fulfill its obligations.

The trial court noted Rauls' petition proposed almost identical requests for relief to the relief already requested by original intervenor Bryan Pyle (succeeded by Intervenor Schwantner). (LF; 63). Logically, the trial court denied Rauls' Motion to Intervene, finding Intervenor Schwantner adequately represented Rauls' interests because the substance of Rauls' petition was no different than Intervenors (LF; 63). The trial court's determination that Intervenor Schwantner fairly and adequately represented the interests of every Raintree lot owner was reasonable and the result of careful consideration; and particularly after the unremarkable determination that all lot owners in the Raintree Subdivision, Sections 1-25 and Raintree Forest must share in the paragraph 4(c) assessments.

Nonetheless, Appellants Intervenor Schwantner is unsuitable because several Objectors do not personally know her. (Brief, p. 32–34). Even if a personal relationship between class members and class representative was required (it's not), it is unsurprising that 2,281 lot owners do not personally know each other. It is even more unsurprising that Objector Donald Bickowski testified to his lack of personal knowledge of Class Representative Schwantner, as Objector Bickowski has not been to his Raintree lot in fifteen years. (TR at 102).

Out of the 2281 lot owners in the subdivision only 167 (7%) filed timely objections. If you count all objections timely and untimely, only 13% of the lot owners submitted objections. Conversely, the overwhelming majority of lot owners either support the settlement or are indifferent (See App _; Exhibit A admitted into evidence at the Final Fairness Hearings).

At the Final Fairness Hearing, the trial court even commented that it had received far more communications from Raintree residents in support of the settlement than objectors. (TR p. 31, lns 14-22). Moreover, due to the inequity, animosity and reoccurring litigation and negative affect on housing values caused by the Williams Decision the overwhelming majority of lot owners support the Settlement Agreement. (TR p. 265, lns 5-25; pgs. 266-270).

The trial court carefully and deliberately considered the adequacy of Intervenor Schwantner as class representative on several occasions, finding she fairly and adequately represented the interests of the Subdivision. The trial court's determination was reasonable and therefore not an abuse of discretion. This Court should affirm.

IV. Class members' due process rights were not violated because Intervenor Schwantner fairly and adequately protected the interests

of all Raintree Subdivision lot owners and class members received notice and an opportunity for input.

Standard of Review

A judge-tried case is affirmed on appeal unless it is not supported by substantial evidence, it is against the weight of the evidence, or it erroneously declares or applies the law. *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976); *Ridgeway v. TTnT Dev. Corp.*, 126 S.W.3d 807, 812 (Mo. App. 2004). A judgment is presumed correct and the appellant has the burden of proving it erroneous. *Wingate v. Griffin*, 610 S.W.2d 417, 419 (Mo. App. 1980). The evidence and all reasonable inferences are viewed in the light most favorable to the judgment and all contrary evidence and inferences are disregarded. *Arndt v. Beardsley*, 102 S.W.3d 572, 574 (Mo. App. 2003). When reviewing a bench-tried case, the appellant court's primary concern is the correctness of the trial court's result, not the route taken to reach it. *Edgar v. Fitzpatrick*, 377 S.W.2d 314, 318 (Mo. banc 1964). Regardless of whether the trial court's proffered reasons are wrong or insufficient, if the correct result was reached, the appellate court must affirm. *Smith v. Estate of Harrison*, 829 S.W.2d 70, 73 (Mo. App. E.D. 1992). We review an order granting certification soley for an abuse of discretion. *Koger* at 410.

Analysis

As set forth in Point III, Intervenor Schwantner adequately and fairly represented the interests of every Raintree lot owner as Class Representative. As class representative, Schwantner entered into a settlement agreement which (re)established every Raintree lot owner's obligation to pay 4(c) dues, as well as parameters for the condition of the amenities and establishing a cap on the amount the Club can raise the paragraph 4(c) assessment in any given year. (LF; D4 p. 6). on assessment raises. The Class was sent a court-ordered notice and had considerable opportunity to voice their opinions. Accordingly, no Class members' due process rights were violated.

When conducting a 52.10 class action, courts are permitted, but not required, to order that notice be given to class members. Mo. Sup. Ct. R. 52.10; Mo. Sup. Ct. R. 52.08(d). Appellants incorrectly assert no notice was given to Class members. (Brief, p. 36; 38).

The Raintree Settlement Agreement was preliminarily approved on June 3, 2020, and the trial court ordered the parties to send Class members a Class Settlement Notice, via first class mail, finding "such notice satisfies the requirements of due process" and to publish the notice in a legal newspaper (LF; D9). Accordingly, the Class Settlement Notice was published in the Jefferson County Countian newspaper on June 12, 2020, providing notice to all Class Members. (LF;

D4). The Class Members therefore received reasonable notice as ordered by the trial court.

Further, contrary to Appellants' assertion, Class members had ample opportunity to voice any input to the trial court. Class members had thirty days after notice of the proposed settlement to submit any objections. (LF; D4 at p. 6)). Out of 2,281 lot owners, only 167 objections were timely filed. (LF; D11 at p. 6). All objectors who requested to voice their objections were permitted to testify at the Final Fairness Hearing, which was anticipated to last three hours. (LF; D11 at p. 2). The Final Fairness Hearing instead lasted eight hours, as the trial court allowed every witness to testify, despite the duplicative nature of the objectors' testimony and their attempts to relitigate the Kramer Decision. (LF; D11 at p. 2; TR generally). Class members had the opportunity to voice any objections related to the Settlement, not only due to the notices noted above, but also, the result of innumerable communications in the community as highlighted in Intervenors Suggestions in Opposition to Susie Raul's Motion to Intervene in this lawsuit.

Throughout the course of the litigation there have been countless instances in which this case was discussed and disseminated to the Subdivision at large, including but limited to:

- Raintree POA Office – the office is open Tuesday – Friday 9:00 a.m. – 3:00 p.m. and Saturday from 9:00 a.m. – 1:00 p.m. Meeting minutes,

financial reports and committee notes are available on a wall rack in the office; office staff are available to answer questions and legal documents are available upon request.

- Raintree POA Website (www.raintreepoa.net) -- provides access to:

    i. 2018, 2019, 2020 meeting minutes. A sample of minutes discussing this lawsuit is attached as **Exhibit J – 17 pages**.

    ii. A Legal Update tab that includes a Legal Timeline document that is current to 2019 and highlights this lawsuit. (*See* Timeline at **Exhibit K – 28 pages**)

- Annual Newsletters – these are posted to the website and mailed to the lot owners. Attached are relevant pages from the 2019 Annual Newsletter and the Spring 2019 Newsletter at **Exhibit L – 2 pages.**

- Raintree Facebook Page – the subdivision has its own Facebook page where items of subdivision interest are regularly discussed. Examples of posts relative to the issues in this case are attached as **Exhibit M – 19 pages.**

- Nextdoor App – similar to Facebook, this is a social media app accessible by the general public to have open discussion about issues relative to their neighborhood. The app is frequently used by Raintree owners to discuss subdivision matters. Examples of discussions relative to the lawsuit are attached as **Exhibit N – 4 pages.**

- YouTube – since the spring of 2018, all POA Board meeting minutes have been recorded and posted to YouTube. Relevant posts concerning this case are:

    i. December 2018 meeting – https://youtu.be/Zebr2sOVR-s

    ii. January 2019 meeting – https://youtu.be/imqjdhlgCDg

- The Club Website, www.raintreecountryclub.net – the country club website has an entire section dedicated to subdivision issues including this lawsuit. See www.raintreecountryclub.net/raintree_POA_issues/

- Subdivision Meetings –
    i. The POA annual meetings are open to all lot owners.
    ii. Monthly board meetings are also open to all lot owners.
    iii. Other meetings – many meetings have taken place to discuss legal issues and this lawsuit in particular:
        a. Special open forum meeting held prior to the 2018 Annual Meeting at Jefferson County Community College;
        b. Various open meetings have been held at the POA office from time to time to discuss court cases including this litigation on various dates from July 2016 to present.

(LF; D64).

The trial court found this to be significant notice to residents in the Raintree Subdivision of the lawsuit, and that their rights may be affected. (LF; D80).

Less than 14% percent of the Class objected to the Settlement Agreement, with the vast majority being form objections prepared and sent to Raintree lot owners by Objector David Staloch. (LF; D11 p. 6). Objector Staloch's form requested lot owners to vote out Raintree POA Board Members who supported the Raintree Settlement in the September 2020, listing those members by name. (LF; D82). The form objection also listed the names of candidates who opposed the Raintree Settlement, including Objector Staloch, urging lot owners to support those candidates. (LF; D82). Nevertheless, Staloch and his preferred candidates failed to receive enough votes for selection to the Raintree POA Board—but every "pro-

settlement" candidate was elected. (App _; Ex. R admitted into evidence at the Final Fairness Hearings. Clearly, the overwhelming majority of the Subdivision supports the Raintree Settlement Agreement and the trial court properly found the settlement agreement to be fair.

Appellants' arguments regarding the adequacy of representation by Intervenor Schwantner and Class members' due process rights have no merit because they are merely pretext for their attempts to challenge the Kramer Decision. The trial court provided Class members with notice and an opportunity to voice input, and the overwhelming majority of the Class support the settlement. Therefore, no Class members' due process rights were violated.

V. The Raintree Settlement Agreement is fair, adequate, and reasonable.

Standard of Review

The approval of a class action settlement is affirmed on appeal unless it is not supported by substantial evidence, it is against the weight of the evidence, or it erroneously declares or applies the law. *Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 265 (Mo. Ct. App. 2011); *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976). The appellant has the burden of proving the court's approval erroneous. *Wingate v. Griffin*, 610 S.W.2d 417, 419 (Mo. App. 1980). The evidence and all reasonable inferences are viewed in the light most favorable to the settlement and all contrary evidence and inferences are disregarded. *Arndt v. Beardsley*, 102 S.W.3d

572, 574 (Mo. App. 2003). The appellant court's primary concern is the correctness of the trial court's result, not the route taken to reach it. *Edgar v. Fitzpatrick*, 377 S.W.2d 314, 318 (Mo. banc 1964). Regardless of whether the trial court's proffered reasons are wrong or insufficient, if the correct result was reached, the appellate court must affirm. *Smith v. Estate of Harrison*, 829 S.W.2d 70, 73 (Mo. App. E.D. 1992). We review an order granting or denying class certification solely for an abuse of discretion. *Koger* at 410.

Analysis

When determining the fairness of a settlement agreement, courts consider the following factors: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiff's success on the merits; (5) the range of possible recovery; and (6) the opinions of class counsel, class representatives, and absent class members. *Bachman v. A.G. Edwards, Inc.,* 344 S.W.3d 260, 266 (Mo. Ct. App. 2011). The Settlement Agreement resolved the inequity caused by the Williams Decision, and its irreconcilable conflict with the Kramer Decision, an examination of these six factors show the Settlement Agreement is fair.

First, other than the parties' agreement to settle the case, Appellants cite no evidence of fraud and collusion. The parties have been fully engaged in discussions

to settle this dispute since July 2017. (LF; D11 p. 5). These discussions included a full day of mediation and eventually led to class certification on January 29, 2020. (LF, D11 p. 5). After 5 years of litigation, the parties finally reached an agreement filed a joint motion for approval of the Settlement on June 3, 2020. (LF; D1 p. 30). Appellant's baseless accusations of fraud and collusion are unfounded, especially when attempting to minimize the arms-length negotiations which produced the Raintree Settlement Agreement. When faced with the lack of evidence regarding fraud of collusion, it is no surprise Appellants' argument is largely based upon an objector's opinion regarding the Raintree POA's interests as "golfers." (TR 237-241).

Second, this litigation was procedurally and substantively complex, and considerably expensive. The current litigation began in 2015, lasting over six years. The litigation saw multiple motions to dismiss, contested motions to intervene, all day mediations and amended petitions. The Settlement Agreement resolved the need for further litigation, promoting judicial economy and saving all parties potential years of additional litigation and expense. Likewise, the stage of the proceedings supports the trial court's determination of the fairness of the Raintree Settlement. As addressed, the current action has lasted seven years, and the settlement agreement is the result of extensive negotiations between the parties.

The fourth and fifth factors are also met, because at the bottom range of possible recovery, the Club would be to raise the Section 4(c) dues, unilaterally, to whatever level, if desired. The resulting inequities had a negative impact on Raintree's reputation as a subdivision, putting every Raintree lot owner's property values in jeopardy. (TR at 265-66). The Settlement Agreement resolved this inequity by (re)requiring every Raintree lot owner to bear an equitable share of assessments, at a reasonable rate with pertinent caps. (LF; D4).

Finally, the overwhelming majority of absent class members support the Raintree Settlement agreement, as addressed more fully in Parts III and IV. Less than fourteen percent of Raintree lot owners objected to the settlement, and none of these objectors alleged the settlement was unfair. (CLF; D11 p. 6). None of the objectors claim the actual terms of the agreement are unfair. In fact, several of the testifying objectors hadn't read the Settlement Agreement or just didn't have a clear understanding of its terms. (TR pgs. 109-112, p. 113, lns 1-11, p. 176, lns 24-25, pgs. 177-178, p. 179, lns 1-10). One objector stated his opposition to the settlement was partially because he believed the rate of the mandatory assessments were solely in control of the Club, even though the Settlement Agreement strips the Club of the untethered right to unlimited increasing in assessments. (TR, 109-113; LF; D4 at p. 7, III.K.)

Most significant is the fact no objector contested the fairness of the settlement. No objector claimed that an annual fee at $250.00 (See LF; D4 p. 7) was unfair or unreasonable; or that the maximum allowable annual increase in assessments will not exceed the costs of living CPI index in St. Louis, Missouri where, prior ot the settlement the class was to increase the annual dues in any amount at its discretion; (See LF, D4 p. 7) or at of the other benefits bestowed upon the class membership by virtue of the Settlement Agreement (see LF; D4 pgs. 6-7). The objections made by the objectors related solely to their twisted, and misreading of paragraph 4(c) and their contention it magically does not apply to them (See Objectors testimony at TR generally, see also objectors at LF; D45 and LF; D53.

Appellants motivation in their complaint that the Settlement Agreement is unfair is ironic given their support of the proposition that are approximately one quarter of the lot owners in the subdivision (Sections 20-25 and Raintree Forrest) should shoulder the full cost of 4(c) dues so that the remaining ¾ of the subdivision (sections 1-19) might enjoy the benefits of the club.

The irony of testing the fairness of the Settlement Agreement when the Appellant's proffer the most unfair result which they contend is fair for the lot owners in 20-25 the full burden of the 4(c) dues, essentially relieving the 1-19 lot owners from an obligation that had that had the subdivision was

formed. Their portion is presently absurd and inequitable and they shouldn't be given a "free ride." (See *Colvin v. Carr,* 799 S.W.2d. 153, 158 (Mo App. ED 1990), holding that the court would use its "inherent equitable powers" to compel payment of [assessments]" because "it is unfair that the fees lot owners who are unwilling to pay the [assessments] should be given a free ride by the paying lot owners.")

At the heart of the Appellants is that Section 4(c) dues not apply to them. Indeed, in their brief, the Appellants repeat the following Section 4(c) was adopted in the 1987 Amendment to the indentures. (Appellants Brief at 18). This same was impressed upon Judge Williams in the 2017 and in Judge Williams confused finding that "the [Kramer Decision] determined that 4(c) was adopted in response to a specific between the RPOA and the original developer when sections 20-25 were added to the subdivision." This conclusion is partially false. Section 4(c) has been a binding obligation on all lot owners since the inception of the subdivision in 1979. Section 4(c) appears in the 1979 indentures as follows:

"All lot owners have a non-transferable right to, and shall be deemed social members of any country club or golf course contracted on property hereinafter owned by Raintree Plantation, Inc. , subject to their payment of dues and other charges such membership can be modified or terminated by the owner or governing body of the club or golf course. No termination or modifications should

be reversable by any court or governmental agency. Annual dues as may be collected by Grantor and turned over to the Club or Course. If any lot owner fails or refused to pay said dues for any two (2) consecutive years, or fails to promptly pay any _____ fees and charges, all lot owners by that individual will lose all rights to be a member." (LF; D3 pgs. 3-4).

Section 4(c) was an obligation _____ by ___ lot owners of the subdivision as _____ and was unchanged by the 1987 amendment, which appears as follows and remains unchanged:

"All lot owners have a non-transferable right to any country club or golf course constructed on the property _____ 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 scheduled termination or modifications shall be _____ 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 Golf Course. If any lot owner fails or refused 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 should be treated as unpaid assessments and shall become a lien on said lot and enforceable the same as unpaid assessments with any penalties as provided herein."

Obviously theobligation of all lot owners in the Raintree Subdivision to pay 4(c) assessments has existed since plotting of the first section in the subdivision and has not changed.

Still the Williams decision that burdened approximately ¼ of the residents (sections 20-25) with payment of 4(c) dues resulted in astronomical dues increases for the Section 20-25 lot owners as follows.

YEAR	**ANNUAL DUES**
2012	$195.00
2013	$225.00
2014	$225.00
2015	$525.00
2016	831.00

(LF; D58, p. 5).

And not only has this inequity caused the Section 4(c) dues to quadruple for Section 20-25, it also has a double whammy effect of reducing the desirability at homes in Section 20-25. The testimony at Amanda Chapman is highlighted in Appellant's Brief and highlight the inequity and unfairness beset upon the lot owners in Sections 20-25.

Ms. Chapman said she "purchased [in Sections 7-19] because I knew it was not part of Sections 20-25…. And there was no way I was going to purchase a

property in which country club dues were mandatory." (see Appellants Brief at 27; TR p. 186, lines 1-7).

So, as a result of Judge Williams misinterpretation of paragraph of Section 4(c) and the Kramer Decision, not only are the minority of residents who reside in Sections 20-25 burdened with paying dues for the entire subdivision, but also, a premium is placed on those lots/homes in Section 1-19, and the Section 20-25 lots/homes are disconnected due to this inequitable burden.

The six factors support the trial court's determination that the Raintree Settlement was fair, adequate, and reasonable. Appellants' attempt to cast the Settlement Agreement as providing preferential treatment to Sections 20-25, even though objectors themselves acknowledge it is unfair to require Sections 20-25 to solely bear the obligation of 4(c) dues. (TR, 227). It is axiomatic that every Raintree lot owner is responsible for the Subdivision amenities, and the Raintree Settlement Agreement resolves the inequity of 4(c) for all lot owners. The trial court's approval of the Raintree Settlement Agreement should be affirmed.

VI. The trial court properly used its inherent equitable authority to authorize the Raintree Settlement Agreement and Judgment as amendments to Paragraph 4(c) of the Restrictions.

Standard of Review

A judge-tried case is affirmed on appeal unless it is not supported by substantial evidence, it is against the weight of the evidence, or it erroneously declares or applies the law. *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976); *Ridgeway v. TTnT Dev. Corp.*, 126 S.W.3d 807, 812 (Mo. App. 2004). A judgment is presumed correct and the appellant has the burden of proving it erroneous. *Wingate v. Griffin*, 610 S.W.2d 417, 419 (Mo. App. 1980). The evidence and all reasonable inferences are viewed in the light most favorable to the judgment and all contrary evidence and inferences are disregarded. *Arndt v. Beardsley*, 102 S.W.3d 572, 574 (Mo. App. 2003). When reviewing a bench-tried case, the appellant court's primary concern is the correctness of the trial court's result, not the route taken to reach it. *Edgar v. Fitzpatrick*, 377 S.W.2d 314, 318 (Mo. banc 1964). Regardless of whether the trial court's proffered reasons are wrong or insufficient, if the correct result was reached, the appellate court must affirm. *Smith v. Estate of Harrison*, 829 S.W.2d 70, 73 (Mo. App. E.D. 1992).

Analysis

Missouri courts have inherent authority to require members of subdivision communities to bear their equitable share of expenses necessary to preserve the subdivision. *Colvin v. Carr*, 799 S.W.2d 153, 156 (Mo. App. 1990); *Lake Tishomingo Property Owners Ass'n v. Cronin*, 679 S.W.2d 852, 857 (Mo. banc

1984); *See Weatherby Lake Improvement Co. v. Sherman,* 611 S.W.2d 326 (Mo. App. 1980). The Williams Judgment failed to follow the Kramer precedence and was inequitable, and the majority of Raintree lot owners agree *every* Raintree lot owner has an obligation to pay an equal share of 4(c) dues in order to preserve the Subdivision. Therefore, the trial court properly used its inherent equitable authority to authorize the Judgment and Raintree Settlement Agreement as Amendments to Paragraph 4(c).

In *Lake Tishomingo* the Missouri Supreme Court discussed the courts' inherent equitable authority to require subdivision owners to pay equal subdivision assessments. *Lake Tishomingo*, 679 S.W.2d at 857. There, the subdivision required approximately $170,000 to dredge its lake after an accumulation of sediments caused pollution and prevented boating or fishing. *Id*. However, the covenants and restrictions limited lake assessments to fifty-five cents per front foot, which was insufficient to finance the dredging. *Id*. at 854. Prior to the need for dredging, a class action was filed in the City of St. Louis against Lake Tishomingo's developer for a different dispute. *Id*. at 855. Those parties reached a final settlement in the form of a consent decree, but the court lacked jurisdiction and instead labeled its judgment as advisory, subject to an appropriate filing in Jefferson County. *Id*. at 855–56. A new class action was filed and approved, allowing a majority vote to amend the subdivision restrictions. *Id*. at 856.

Accordingly, the majority of Lake Tishomingo lot owners voted to approve a special assessment of $.60 per foot to finance the dredging, in order to preserve the desirability of the lake and subdivision. *Id*. at 854. The *Lake Tishomingo* respondents filed suit against lot owners who refused to pay the assessment, alleging it violated the $0.55 cap set forth in the indentures. *Id*. at 855. The trial court ordered the lot owners to pay the special assessment. *Id*. at 856. This was reversed by the Eastern District, and the Missouri Supreme Court ordered the cause transferred. *Id*. at 853.

Like Appellants here, the *Lake Tishomingo* appellants relied on *Lake Wauwanoka, Inc v. Spain*, 622 S.W.2d 309 (Mo. App. 1981). The Missouri Supreme Court acknowledged both the St. Louis City and Jefferson County courts lacked the power to amend or reform the original covenants without proof of fraud or mistake. *Tishomingo*, 679 S.W.2d at 856. However, the Court went on to hold:

> The evidence regarding the dredging operation reflects that it was both reasonable and necessary for the preservation of the property value of the more than 900 lots in the subdivision. Under the unique circumstances attending this case, our sense of fairness and justice compels us to enforce the clear equitable obligation of appellants to bear their share of the costs necessary for preserving the common property essential for continuation of the subdivision. Thus understood, the voluntary assessment made and honored by the great majority of property owners was enforceable by the trial court under the court's power to render equity.

Id. at 857. This reasoning was later applied by the Eastern District in *Colvin v. Carr*, 799 S.W.2d 153 (Mo. App. 1990), whose facts are also comparable to the present dispute.

In *Colvin*, the Eastern District overturned the lower court's finding that an increase to the subdivision's lot assessment violated the subdivision's original Trust Agreement. *Id*. at 156. The subdivision's initial 1905 Trust agreement imposed an assessment of fifty cents per front foot plus fifty dollars per lot. *Id*. at 154. When the trust terminated in 1966, the Parkview lot owners adopted a new Agreement imposing an assessment of fifty cents per front foot plus $50 per lot but allowed incremental change by majority vote. *Id*. Lot owners consistently extended the per lot assessment until 1981, where the assessment was increased to $225. *Id*.

In 1988, the majority of Parkview lot owners desired to raise both assessments in order to fund private security patrols, due to safety concerns over the location in University City. *Id*. at 154; 158. Colvin and several other lot owners who purchased their homes after 1966 ("Respondents") sought a declaratory judgment limiting subdivision assessments according to the 1905 Agreement. *Id*. at 154. The trial court found the 1966 Agreement was inapplicable to Parkview lot owners who purchased homes after it was adopted. *Id*. at 155.

However, the appellate court used its equitable power to overturn the trial court, reasoning "it is unfair that the few lot owners who are unwilling to pay the increased assessments should be given a free ride by the paying lot owners. Therefore, we use our inherent equitable authority to compel payment of the increased assessments." *Id*. at 158. The private security patrols were deemed necessary for the preservation of Parkview because the majority of lot owners supported the objective. *Id*. Further, because the assessments posed by the 1905 Trust would provide insufficient funding for the patrols, the "trial court erred by not exercising its inherent authority to require Respondents to bear their equitable share of expenses." *Id*. at 156. Missouri courts have inherent authority in equity to require every lot owner in a subdivision to pay their equal share of Subdivision expenses.

Here, the trial court properly utilized its inherent equitable authority to (re)require 4(c) mandatory club dues from *every* Raintree Subdivision lot owner. The Williams Judgment subjected *only* Sections 20-25 to mandatory Club fees, causing these fees to quadruple to almost $1,000. (TR at 233). This obvious inequity has had a devasting negative impact on the Subdivision's reputation and property values. (Tr at 266, 272; LF; D4). The Raintree Settlement Agreement resolves the inequity by requiring 4(c) dues from every Raintree lot owner. Further, to the extent the Settlement Agreement is considered and amendment to

Section 4(c) of the covenants and restrictions, it is an amendment authorized by the very language of Section 4(c) and the holding is Kramer than only the Club can amend Section 4(c). Here, the Club is a party to the Settlement Agreement thereby authorizing and affirming the change in Section 4(C).

Like *Colvin* and *Lake Tishomingo*, the affirmative support of Raintree lot owners is evidence the Raintree Settlement Agreement is essential to the preservation of the Subdivision. Likewise, the trial court recognized the inequity in allowing the few objectors to receive a "free ride" from Sections 20-25. All lot owners have an equitable obligation to bear their share of 4(c) mandatory dues, which are essential for continuation of the Subdivision. The Club, as the only part permitted to choose 4(c), support that the trial court had authority to authorize the Judgment and Raintree Settlement Agreement as Amendments to Paragraph 4(c). This Court should affirm.

CONCLUSION

The trial court properly set aside the Williams Judgment because it was inequitable and inconsistent with the Kramer Judgment, and the doctrine of res judicata is not applicable. Class certification under Rule 52.10 was proper because the Raintree Subdivision constitutes a nonjural entity and Class Representative Schwantner had interests compatible to the Subdivision's interests; class treatment of the Subdivision was also required by equity. Class Representative Schwantner

fairly and adequately protected the interests of all Subdivision lot owners, and the Class's due process rights were not violated. The Raintree Settlement Agreement was fair, adequate, and reasonable and the trial court had inherent equitable authority to authorize the Raintree Settlement and Final Judgment as Amendments to Paragraph 4(c) of the Restrictions. This Court should affirm the trial courts approval of the Settlement Agreement.

CERTIFICATE OF SERVICE AND COMPLIANCE

I certify on February 28, 2022, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all attorneys of record. I also certify this brief complies with Supreme Court Rule 84.06(b) and this Court's Special Rule 360 because it contains 12030 words, excluding the cover, table of contents, table of authorities, certificate of service, certificate of compliance, signature, and appendix, as determined by the Microsoft Word software used to prepare this document.

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