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JEFFERSON COUNTY, MISSOURI

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DEBBIE DUNNEGAN
Recorder of Deeds
729 Maple Street
Hillsboro Missouri 63050
636-797-5414

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OCT 27 2014

STATE OF MISSOURI)
) SS.
COUNTY OF JEFFERSON)

IN THE CIRCUIT COURT OF THE TWENTY-THIRD JUDICIAL CIRCUIT
OF MISSOURI AT HILLSBORO, JEFFERSON COUNTY, MISSOURI

JEFFERSON COUNTY RAINTREE COUNTRY CLUB, LLC. AND DKAAT PROPERTIES, LLC.,	)	
Plaintiffs,	)	Case No. 13JE-CC00841
vs.	)	Special Judge Sitting STANLEY D. WILLIAMS
RAINTREE PLANTATION PROPERTY OWNERS ASSOCIATION, INC.	)	
Defendant.	)	

JUDGMENT

The Partial Summary Judgment as entered by the Court on October 22, 2014, shall be deemed final in all respects except that a sentence in the third full paragraph on page 3 of said Judgment is corrected to read, "The 2011 Judgment was affirmed on appeal."

In conformity with the earlier Partial Summary Judgment, the Court finds that the language of 4c of the 1987 Covenants and Restrictions, recorded at Bk 372 Pages 1064-1067, as set out below only applies to Sections 20-25 of Raintree Plantation Subdivision and has no applicability to Sections 1-19 and Raintree Forest and further, that the Raintree Plantation Property Owners Association shall be forever prohibited from amending, deleting or modifying in any way the below language.

> **All lot owners have a non-transferable right to, and shall be deemed social members of any country club or golf course constructed on property heretofore owned by RAINTREE PLANTATION, INC., 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 as provided herein.

The parties further agree that as part of the Judgment sixty (60) days from the date of the entry of the Judgment, the injunctions as entered against both Plaintiffs and Defendant shall be dissolved and the bonds as posted by the respective parties returned to them.

This judgment disposes of all claims of all parties.

Each party to bear its own costs and attorney fees.

Forty days from the date of this Judgment the Clerk shall record this Judgment at the Recorder of Deeds Office for Jefferson County.

ROBERTS, WOOTEN & ZIMMER, L.L.C.
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THE SCHNAARE LAW FIRM
Stanley D. Schnaare
Anthony R. Dorsett
321 Main, P.O. Box 440
Hillsboro, MO 63050
(636)789-3355

By: _____
Stanley D. Schnaare #29382

Entered this 27th day of October, 2014

SO ORDERED: _____
Stanley D. Williams Judge

IN THE CIRCUIT COURT OF THE 23RD JUDICIAL CIRCUIT
OF MISSOURI AT HILLSBORO, JEFFERSON COUNTY, MISSOURI

JEFFERSON COUNTY RAINTREE COUNTRY CLUB, LLC, et al.,	)	
Plaintiffs,	)	
vs.	)	Case No. 13JE-CC00841
RAINTREE PLANTATION PROPERTY OWNERS ASSOC., INC.,	)	
Defendant,	)	
RUTH ANN ELLISON, et al.,	)	
Intervenors.	)	

JUDGMENT
GRANTING SUMMARY JUDGMENT MOTIONS IN PART

On September 30, 2014, the parties appeared in person and/or by counsel. The Motions for Summary Judgment filed by all parties were argued and submitted.

On this date, the Court finds there is no genuine issue of material fact and that Judgment should be entered as a matter of law as set forth hereafter.

Findings

The following factual findings are entered of record:

1. Raintree Plantation Subdivision ("Subdivision") is a subdivision located in Jefferson County, Missouri. All lots within the Subdivision are subject to certain covenants and restrictions which have been amended various times since the creation of the Subdivision (Defendant's Statement of Uncontroverted Facts ["DSUF"] No. 2).
2. The Subdivision currently consists of platted Sections 1 through 25 and Raintree Forest (DSUF 1).
3. The original Covenants and Restrictions for the Subdivision ("Original Restrictions") were recorded with the Jefferson County Recorder of Deeds Office on or about November 5, 1979 (DSUF 3). The Original Restrictions contain provisions pertinent to this litigation.
4. The original developer of the Subdivision was Raintree Plantation Inc. Raintree Plantation Inc. is sometimes referenced in the various restrictions as the "Grantor."
5. The Original Restrictions were amended in 1981 and 1982. These amended restrictions did not materially alter the Original Restrictions' provisions pertinent to this litigation.

6. On or about July 30, 1987, Amended Restrictions ("1987 Restrictions") were recorded with the Jefferson County Recorder of Deeds (DSUF 6). The 1987 Restrictions contain provisions pertinent to this litigation.
7. The lots in Sections 1 through 19, Raintree Forest, and Sections 20 through 25 are subject to the 1987 Restrictions (Intervenors' Statement of Uncontroverted Facts ["ISUF"] No. 71).
8. The 1987 Restrictions were amended in 1998 and 2004. These amended restrictions did not materially alter the Original Restrictions' or 1987 Restrictions' provisions pertinent to this litigation.
9. The Subdivision's Restrictions were also amended in 2005 ("2005 Restrictions") (DSUF 20). The 2005 Restrictions contain provisions pertinent to this litigation.
10. Other Subdivision Restriction Amendments were filed of record at various times, but these amendments are not relevant to the issues in this case (DSUF 22).
11. In 2003, an Assignment of Rights was executed on behalf of Raintree Plantation Inc., assigning certain rights to Defendant Raintree Plantation Owners Association, Inc. ("RPOA") and is attached as Exhibit 2 (PSUF 56).
12. Included within some of the Subdivision surveys are portions of the golf course involved in this litigation (Plaintiffs' Statement of Additional Uncontroverted Material Facts ["PSUF"] Nos. 65 through 70).
13. The Subdivision Restrictions were the subject of prior litigation. A Judgment ("2011 Judgment") was entered in Cause No. 08JE-CC01575 of the Jefferson County Circuit Court on July 1, 2011. A copy of the 2011 Judgment is attached as Exhibit 3 (PSUF No. 58). The 2011 Judgment was appealed and affirmed on appeal.
14. In response to the 2011 Judgment being affirmed, an election was conducted in September 2013 seeking to amend the Subdivision Restrictions. While Plaintiffs and Intervenors object to the election, they supplied no legal or factual basis to preclude a factual finding that the election was properly conducted (DSUF 38 through 43).
15. Overall, in the 2013 election, 280 lot owners voted in favor of removing Section 4c of the 1987 Restrictions and 159 votes against removing Section 4c. In reference to the possible interposing of the 2011 Judgment with the subject amendments, the votes were distinguished between certain portions of the Subdivision. Subdivision lot owners in Sections 1 through 19 and Raintree Forest voted 206 to 119 in favor of removing Section 4c; Subdivision lot owners in Sections 20 through 25 voted 63 to 38 in favor of removing Section 4c and Subdivision lot owners owning lots in Sections 1 through 19/Raintree Forest and Sections 20 through 25 voted 11 to 2 in favor of removing Section 4c (DSUF 44).

Discussion

The attorneys submitted excellent legal arguments regarding their respective positions. Each summary judgment motion included separate Statements of Uncontroverted Material Facts ("Statements"). The Findings above are generally those facts not in dispute that are relevant to the Court's determination. Other factual findings may not be specifically set forth but are in accord with the judgment herein.

The case concerns various subdivision restrictions of Raintree Subdivision ("Subdivision") and their interaction with the golf course and country club ("golf course")

contained within the Subdivision. From the Subdivision's beginning, the golf course has been an integral part of the Subdivision development. While included in the Subdivision's surveys and Subdivision Restrictions from the beginning, the golf course has legally operated as a separate entity. It is not owned by Defendant ("RPOA") or its predecessors. The golf course has changed ownership in recent years. It is currently owned by Plaintiff DKAAT, LLC ("DKAAT") and managed by Plaintiff Jefferson County Raintree Country Club LLC ("Club").

The Subdivision contains hundreds of lots with hundreds of lot owners. Not surprisingly, the lot owners have divergent views on the golf course's relationship to the Subdivision. From the Subdivision's beginning, the golf course imposed assessments on lot owners with the golf course having sole control over the amount of the assessments.

At oral argument on the summary judgment motions, RPOA asserted these assessments constituted "taxation without representation." RPOA's argument is spurious. Every owner within the Subdivision was legally aware of the golf course's assessments. Every lot owner purchased their property subject to this requirement.

In prior litigation, the former owner of the golf course and owners of lots within Subdivision Sections 20 through 25 sought a declaration regarding paragraph 4c of the 1987 Restrictions. The 2011 Judgment determined that paragraph 4c was adopted in response to a specific Contract between the RPOA and the original developer when Sections 20 through 25 were added to the Subdivision. The amendment was to assist the golf course's owner in part based on certain improvements the golf course owners were required to make under the subject Contract. The 2011 Judgment determined that the 4c assessments were mandatory assessments on all lot owners within Sections 20 through 25. The 2011 Judgment further determined that the lot owners within Sections 20 through 25 have no right to modify or terminate the golf course membership or their obligation to pay the assessments. The 2011 Judgment was appealed by the RPOA and was affirmed on appeal. In all respects, the 2011 Judgment is binding on DKAAT, the Club and lot owners within Subdivision Sections 20 through 25.

In apparent response to the 2011 Judgment, the RPOA held the 2013 election to delete the assessments by amending the Restrictions and deleting paragraph 4c in its entirety.

The current summary judgment motions hinge on the legality of amending the restrictions to eliminate golf course assessments. A brief history of the various restrictions may assist in this discussion.

The Original Restrictions and 1987 Restrictions, paragraph 4b, in part, contained virtually the identical language regarding the golf course:

> "It is clearly understood that any water and sewer system or golf course or club facility that may be installed shall not be subject in any way to the provisions of these restrictions, except as they provide for easements for such utilities, same shall be owned independently by private corporations."

RPOA was assigned the original Grantor's rights set forth from the Subdivision Restrictions' inception by an Assignment in 2003. That Assignment specifically exempted the RPOA's right to amend or abrogate the paragraph 4b provisions regarding the golf course and utilities.

The Original Restrictions included this provision regarding golf course assessments in paragraph 4c:

> "All lot owners have a non-transferable right to, and shall be deemed social members of any country club or golf course constructed on property heretofore

owned by RAINTREE PLANTATION, INC., 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 termination or modification shall be reviewable by any Court or Government Agency. Annual dues as established solely by such Club or Golf Course may, unless the lot owner objects, may be collected by Grantor and turned over to the Club or Course. If any lot owner fails or refuses to pay said dues for any two (2) consecutive years, or fails to promptly pay any use fees and charges, all lots owned by that individual will lose all rights to be a member."

In various amendments from 1979 through 1987, the amendments to the Original Restrictions continued the above identical language.

The 1987 Restrictions modified paragraph 4c as follows:

"All lot owners have a non-transferable right to, and shall be deemed social members of any country club or golf course constructed on property heretofore owned by RAINTREE PLANTATION, INC., 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 as provided herein."

Plaintiffs and Intervenors hinge their arguments on the above provisions and the 2011 Judgment mandating golf course assessments on Subdivision Sections 20 through 25.

The Original Restrictions and 1987 Restrictions authorized amendments to the Restrictions in paragraph 4a with the following identical language:

"These restrictions including assessments may be amended, removed, abrogated or modified in any way by the Grantor or by a vote of over fifty percent (50%) of the votes cast pursuant to the methods set forth in paragraph 4b, of these restrictions. Conclusive evidence of said approval shall be by document executed by the Grantor, or its assigns, and filed for record in the Recorder's Office of Jefferson County, Missouri."

The 2005 Restrictions altered the 4a language by deleting references to Grantor, reading as follows:

These restrictions including assessments may be amended, removed, abrogated or modified in any way by a vote of over fifty percent (50%) of the votes cast pursuant to the methods set forth in paragraph 4b, of these restrictions. Conclusive evidence of said approval shall be by document executed by the Raintree Plantation Property Owners' Association, Inc., and filed for record in the Recorder's Office of Jefferson County, Missouri."

Defendant RPOA hinges its argument on these provisions authorizing amendments to the Restrictions.

Unfortunately, no Missouri case supports any party's legal position. As referenced in the parties' excellent legal memorandum, some general legal principles apply in reviewing Restrictions. Restrictive covenants are strictly construed because the law favors the free use of real property. When the language of a Restriction is clear and unambiguous, its meaning must be given effect. See, e.g., Country Club Dist. Homes Ass'n. v. Country Club Christian Church, 118 S.W. 3d 185 (Mo. App. W.D. 2003). To the extent an ambiguity exists, language in the entire instrument, not just one clause, shall be considered. If a restriction's meaning is in doubt, the court must inquire into the parties' intentions and purposes. See, e.g., Paddock Forest Residents Ass'n., Inc. v. Ladue Service Corp., 613 S.W. 2d 474 (Mo. App. E.D.1981).

The 2011 Judgment provided that the paragraph 4c language "while clear on its face...[it] also implements the intent of the original developers and the ...[RPOA]...as shown by their Contract...."

The 2013 election was properly conducted. However, the election invalidly amended the paragraph 4c Restrictions. Deleting paragraph 4c was prohibited by the 2011 Judgment as to Sections 20 through 25 of the Subdivision. The 2011 Judgment referenced that paragraph 4c was clear. The 2011 Judgment further determined the golf course assessment requirements referenced in paragraph 4c were part of a contract to generate improvements to the golf course and Subdivision. Approving the 2013 election as to Sections 20 through 25 would violate the exact language and underpinnings of the 2011 Judgment.

The more problematic issue concerns the 2013's election validity as to Sections 1 through 19 and Raintree Forest of the Subdivision. The 2011 Judgment specifically did not govern these other portions of the Subdivision. The 2011 Judgment determined that the addition of Sections 20 through 25 into the existing Subdivision was the foundation in part for the amendment to paragraph 4c. The same rationale would not apply necessarily to other Sections of the Subdivision. The Court could find no case supporting the general proposition that certain provisions in Restrictions could not be properly amended. Paragraph 4a is clear on its face. Plaintiffs' reliance on paragraph 4b's provisions is misplaced. Although referenced in some of the Subdivision's plats, the golf course is not within the Subdivision boundaries and is owned by a private entity, not the lot owners or the RPOA. The 4b provision is to protect third parties (such as Plaintiffs or an electric utility or a water utility) from being controlled in any way by the RPOA or Subdivision lot owners.

This judgment does not resolve all issues in this case. The case is currently set for trial on October 27 and 28, 2014 on all remaining factual and legal issues.

Orders and Judgment

It is ORDERED, ADJUDGED and DECREED as follows:

1. The Motion(s) for Summary Judgment filed by all parties are granted in part and denied in part.
2. The RPOA's 2013 election amending paragraph 4c of the Restrictions by deleting paragraph 4c in its entirety is declared null, void and of no effect as to Sections 20 through 25 of the Subdivision.

3. The RPOA's 2013 election amending paragraph 4c of the Restrictions by deleting paragraph 4c in its entirety is declared valid and in full force and effect as to Sections 1 through 19 and Raintree Forest of the Subdivision.
4. This case is not yet final for appeal.
5. The case remains set for trial on October 27 and 28, 2014 on all remaining issues.

SO ORDERED:

10-21-14

HONORABLE STANLEY D. WILLIAMS
SPECIAL JUDGE

CC: Attorneys or parties of record

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IN OFFICIAL RECORD OF
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MARLENE CASTLE
RECORDER OF DEEDS
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ASSIGNMENT OF RIGHTS BETWEEN RAINTREE PLANTATION, INC. AND RAINTREE PLANTATION PROPERTY OWNERS' ASSOCIATION, INC.

This assignment of rights is entered into on this 19th day of December, 2003, by the respective signatures below by and between RAINTREE PLANTATION, INC., hereinafter referred to as "RAINTREE," and the RAINTREE PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., hereinafter referred to as the "P.O.A."

WHEREAS, RAINTREE is a Missouri corporation in good standing, and;

WHEREAS, P.O.A. is a Missouri not-for-profit corporation in good standing, and;

WHEREAS, RAINTREE initially acquired all of the real estate contained in what is commonly referred to as the Raintree Plantation Subdivision, including subsequent additions, and;

WHEREAS, RAINTREE by its act of acquiring, sub-dividing, and restricting the land is the Grantor referred to in all recorded documents, and;

WHEREAS, RAINTREE desires to conclusively establish its intent, that the P.O.A. is its assignee of RAINTREE'S power pursuant to the covenants and restrictions as originally filed and subsequently amended, relating to Raintree Plantation and;

WHEREAS, the P.O.A. was organized at the direction of Grantor and has continuously operated to regulate activities in RAINTREE, enforce covenants and restrictions, maintain and

EXHIBIT 2

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repair facilities, roads, and other areas used by the common members, make improvements, create or modify covenants and restrictions, collect assessments, liens and other charges, engage in litigation for the purposes of enforcement of its legal position and the position of its members, contract with other parties for the benefit of the organization and its members, provide for the common security of itself and the membership, function as a defacto governing body for the subdivision and its membership, provide for the redress of the membership, and to financially plan for and manage the subdivision.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING, RAINTREE does hereby irrevocably assign to the P.O.A. all rights RAINTREE has as Grantor for Raintree Subdivision, including increasing the burden upon the land if approved by the methods and manner provided in the covenants and restrictions. Provided, however, this assignment of rights as Grantor does not assign to the P.O.A. any right to amend or abrogate the provisions of the last sentence of paragraph 4b of the Amended Covenants and Restrictions Covering Lots In Raintree Plantation Subdivision (Revised 9/23/03, or its predecessor Covenants and Restrictions), nor does it assign to the P.O.A. any right to collect dues or charges from the country club and golf course constructed on the property as provided in paragraph 4c of the Covenants and Restrictions described above. The dues and charges for the country club and golf course, including any delinquent and past due dues, shall be collected by Raintree Country Club, Inc. or its successors or assigns.

RAINTREE further ratifies all actions taken by the P.O.A. and the membership in adopting all changes in the covenants and restrictions heretofore passed by the members of the P.O.A.;

Further, RAINTREE ratifies the By-Laws and all changes thereto, as well as all rules and regulations formulated by the P.O.A. in accordance with its authority under the covenants and restrictions and pursuant to its own By-Laws.

RAINTREE delegates and assigns the duty and right to file suit, recover judgment, enforce judgment and the like, to effectuate its management role in the subdivision.

NEVERTHELESS, all of the foregoing aside, RAINTREE continues to reserve unto itself all rights and powers it may have as a lot owner and member of the P.O.A. should it own any lots in the development; as if it were not a party to this Assignment.

The undersigned Grantor, by its executive officer, hereby executes this Assignment of Rights, stating that he is acting on the full authority of RAINTREE PLANTATION, INC. and that by corporate action, the officer has been empowered to enter into this assignment.

RAINTREE PLANTATION, INC.

By: _____
Norville K. McClain, Jr., President

State of Missouri)
) s.s.
County of St. Louis)

On this 19th day of December, 2003 before me personally appeared NORVILLE K. MCCLAIN, JR., President of RAINTREE PLANTATION, INC., known to me to be the person who executed the within Assignment of Rights in behalf of said corporation and acknowledged to me that he executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in St. Louis the County and State aforesaid, the day and year first above written.

Christine M. Roche

NOTARY PUBLIC – CHRISTINE M. ROCHE
(Please print name)

My Commission Expires:

CHRISTINE M. ROCHE
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI
ST. LOUIS COUNTY
MY COMMISSION EXPIRES: OCTOBER 31, 2004

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IN THE CIRCUIT COURT OF THE TWENTY-THIRD JUDICIAL CIRCUIT
OF MISSOURI, AT HILLSBORO, JEFFERSON COUNTY, MISSOURI

RICHARD ANDERSON, ET AL Plaintiffs, vs. KREMER RESTAURANT ENTERPRISES, LLC, d/b/a RAINTREE COUNTRY CLUB, Substitute Defendant for Michael Kremer.	)	Cause No. 08JE-CC01575

JUDGMENT

This action is presented to the Court on Motions for Summary Judgment filed by both Plaintiffs and Defendant. On July 1, 2011, the Court heard oral argument from the parties, and the parties orally stipulated that this case should be resolved upon these Motions for Summary Judgment and under the facts presented by the parties in these Motions for Summary Judgment. In addition to oral argument, the Court has reviewed the Motions for Summary Judgment submitted by the parties and all the facts presented therein.

On August 9, 2010, and by stipulation of the parties, this Court granted Class Action status to Plaintiffs' action. The Class is defined as follows:

> All lot owners of real property located within Sections 20 – 25 of Raintree Plantation Subdivision located in Jefferson County, Missouri, that are burdened by the Restrictive Covenants recorded at Book 372, Page 1065 of the land records of Jefferson County, Missouri.

Sections 20 - 25 of Raintree Plantation Subdivision are shown in the records of the Recorder of Deeds of Jefferson County, Missouri as follows:

Raintree Plantation Section 20 – recorded in Plat Book 92, Page 20
Raintree Plantation Section 21 – recorded in Plat Book 92, Page 22
Raintree Plantation Section 22 – recorded in Plat Book 92, Page 24
Raintree Plantation Section 23 – recorded in Plat Book 92, Page 26
Raintree Plantation Section 24 – recorded in Plat Book 93, Page 1
Raintree Plantation Section 25 – recorded in Plat Book 93, Page 3.

Notice of this Class Action was sent by regular mail to all members of the Class and was published as required by the Rules of the Missouri Supreme Court. Therefore, this Judgment binds all Class Members, their successors and assigns.

By consent of the parties at oral argument, the original named Defendant, Michael Kremer, was dismissed from this action and Kremer Restaurant Enterprises, LLC was substituted as Defendant in this cause as the necessary and proper Defendant is the owner and operator of Raintree Country Club.

Resolution of this case is dependant on the provisions of Paragraph 4c of the Amended Covenants and Restrictions relating to Raintree Plantation Subdivision as recorded in Book 372, at Page 1065 of the records of the Recorder of Deeds of Jefferson County, Missouri. Paragraph 4c provides as follows:

> All lot owners have a non-transferable right to, and shall be deemed social members of any country club or golf course constructed on property heretofore owned by RAINTREE PLANTATION, INC., 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 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 as provided herein.

The provisions of Paragraph 4c were inserted in the Amended Covenants and Restrictions applying to Sections 20 -25 of Raintree Plantation Subdivision pursuant to a Contract that was entered into between the original developer, Raintree Plantation, Inc., and the Raintree Plantation Property Owner's Association. From the documents, it is apparent that it was the intention of those parties to provide for an assessment to aid the owner and operator of the Country Club. A

recitation of the additional facts submitted by the parties is not necessary to this Judgment, as the Judgment turns on the language of Paragraph 4c itself.

Based upon the stipulation of the parties that this matter should be resolved based upon these Motions for Summary Judgment and the Facts submitted therein, and upon this Court's review of the Facts submitted, the Court finds there is no issue of material fact between the parties, and this matter may be decided upon the Motions for Summary Judgment.

The Court further finds that there is an actual controversy existing between the parties. Declaratory Judgment is proper to resolve the issues between all Class Members and Defendant in one action. Judicial economy is served by this Class resolution rather than doing so in individual actions between the Class Members and Defendant.

OPINION

Plaintiffs contend in this action that the provisions of Paragraph 4c do not provide for a mandatory assessment against Plaintiffs and further, the provisions of Paragraph 4c permit Plaintiffs to modify or terminate such membership and the obligation to pay the assessment. A number of the Plaintiffs have not paid their assessments pursuant to Paragraph 4c for varying number of years. Many other members of the class have paid their assessments.

Conversely, Defendant contends that Plaintiffs are required to be social members and pay the assessments as required by Paragraph 4c, Defendant further contends that under the language of Paragraph 4c Plaintiffs have no right to modify or terminate the obligations to pay the assessments. The right to modify or terminate the obligation to pay the assessment belongs solely to the owner of the club or golf course or the governing body of the club or golf course.

By the plain language of Paragraph 4c, Plaintiffs are "deemed social members" of the Country Club and Golf Course. This is a mandatory membership which applies to Plaintiffs by

reason of their purchase of lots in Sections 20 -25 of Raintree Plantation Subdivision. Plaintiffs actually knew, or constructively knew, of this membership at the time of their purchase of their lot. As provided in Paragraph 4c, annual dues may be charged to the members. Therefore, Plaintiffs are required to pay the assessments charged under Paragraph 4c.

The second issue is the meaning of the sentence: "Such membership can be modified or terminated by the owner or governing body of the club or golf course." Does the word "owner" in that sentence refer to the owner of the club or golf course or a lot owner or property owner? Plaintiffs contend that it refers to the lot owner or property owner, and Defendant contends that it refers to the owner of the club or golf course.

Defendant has cited to this Court the cases of Henrick Motor Company v. Fischer Oldsmobile Company, 421 S.W. 2d 58, 66 (Spr. Ct. of App., 1967), and TAP Pharmaceutical Products Inc. v. State Board of Pharmacy, 438 S.W. 3d 140, 144 (Mo. Banc, 2007) citing Counsel Plaza Redevelopment Corp v. Duffey, 439 S.W. 2d 256, 232 (Mo. Banc, 1969). These cases deal with the application of the word "or." This Court has considered all three cases, and has particularly considered the TAP case. In that case, the Court considered the following language:

> Missouri agrees to release and refrain from instituting, directing or maintaining any **administrative claim or any action seeking exclusion from the State of Missouri's Medicaid Program against TAP...for the Covered Conduct** for TAP's conviction in the criminal action. (emphasis added) p. 144 .

In interpreting the word "or" in that paragraph, the Court found that this paragraph released "(1) any administrative claims related to the Covered Conduct *or* (2) any action seeking exclusion from Missouri's Medicaid Program based on the Covered Conduct" Id.

There, the application of "or" meant that the phrase "for the Covered Conduct" modified both "any administrative claim" and also "any action seeking exclusion from the State of Missouri's Medicaid Program against TAP."

Similarly, in this case, application of the word "or" means that the phrase "of the club or golf course" modifies both the word "owner" and the phrase "governing body." That being the case, it is not the lot owner or property owner who has a right to modify or terminate the membership, but the owner of the club or golf course that has that right.

This reading of Paragraph 4c is bolstered by the fact that, except for this sentence in Paragraph 4c, the word "owner" throughout the Amended Covenants and Restrictions is in every instance modified in some fashion by words such as "lot owner," "property owner," or derivations thereof. In Paragraph 4c itself, the first sentence refers to "All lot owners," and later in Paragraph 4c a reference is made to "any lot owner." If it was intended that "owner" referred to the lot owners or owners of property, a modification would have been made as it is made throughout the Amended Covenants and Restrictions.

While the language of Paragraph 4c is clear on its face, that language also implements the intent of the original developers and the Raintree Plantation Property Owner's Association, Inc. as shown by their Contract. Further, if the lot owner had an unqualified right to modify or terminate its obligations to pay assessments under Paragraph 4c, the assessment would be merely voluntary. It cannot reasonably be found from the language of the Agreement between the original developer and the Raintree Plantation Property Owner's Association, Inc. that a voluntary assessment was intended. Additionally, enforcement of the assessment levied in Paragraph 4c is necessary in equity to preserve the property values in Raintree Plantation Subdivision.

JUDGMENT

IT IS THEREFORE THE JUDGMENT AND ORDER of this Court as follows:

1. The language of Paragraph 4c of the Amended Covenants and Restrictions as recorded in Book 372 at Page 1068 at the records of the Recorder of Deeds of Jefferson County, Missouri is not ambiguous and does not need interpretation by this Court.

2. Plaintiffs Class Members, and their successors and assigns, as the owners of lots in Sections 20 – 25 of Raintree Plantation Subdivision, as shown by the records of the Recorder of Deeds of Jefferson County, Missouri, are social members of the club and have a mandatory obligation under the language of Paragraph 4c to pay the assessments levied by the club or golf course.

3. Plaintiffs Class Members, and their successors and assigns, as the owners of lots in Sections 20 – 25 of Raintree Plantation Subdivision as shown by the records of the Recorder of Deeds of Jefferson County, Missouri, have no right to modify or terminate such membership or the obligation to pay the assessments required by Paragraph 4c of the Amended Covenants and Restrictions. Such memberships and the obligations to pay the assessments required by Paragraph 4c can only be modified or terminated by Defendant, or Defendant's successors or assigns.

4. By consent of the parties, Defendant Michael Kremer is dismissed from this action, with prejudice, and Kremer Restaurant Enterprises, LLC is substituted as Defendant.

5. The costs of this action, including all costs of notification of the Class Members and all publication costs, are taxed against Plaintiffs.

6. A copy of this Judgment shall be recorded with the Recorder of Deeds of Jefferson County, Missouri.

Judgment is so entered this 7 day of July, 2011.

THE HONORABLE GARY P. KRAMER
CIRCUIT JUDGE, DIVISION TWO

FILED
OCT 27 2014

AGREEMENT

Comes now the parties and stipulate and agree that the Defendant Raintree Planation Property Owners Association, Inc., shall hold a board meeting of the POA within twenty (20) days of today's date to vote if any appeal will be taken from the Judgment entered this date.

If the POA votes to appeal, the Judgment will be set aside and the parties agree and consent that the evidence may be reopened so that additional evidence may be received from all parties including evidence of the applicability and the amount of attorney's fees and further that the intervenors may reassert their claim.

Parties further stipulate and agree that if no timely appeal is taken, then the Judgment shall be recorded and all parties will bear their own attorney's fees and costs.

DKAAT and JCRCC agree that they shall make no further efforts to collect mandatory dues from any lot owners in Sec.1-19 and Raintree Forest but the parties agree that this agreement shall not be construed that any collection efforts in the past were improper or to prevent the collection of voluntary dues from lot owners in Sec.1-19 and Raintree Forest.

Agreed to this 27th day of October, 2014.

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THE SCHNAARE LAW FIRM
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Exhibit 1

Hillsboro, MO 63050
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By:_____
Stanley D. Schnaare #29382

SAUERWEIN, SIMON & HEIN, P.C.
William L. Sauerwein
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St. Louis, MO 63105

By:_____
William Sauerwein #37523

I certify and attest that the above is a true copy of the original record of the Court in case number 13JE-CC00841 as it appears on file in my office.

Issued 12/9/2015

Howard Wagner, Circuit Clerk
Jefferson County Circuit Court

By Amy Herget
Deputy Clerk

23rd JUDICIAL CIRCUIT COURT
JEFFERSON COUNTY, MO