

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED
MAY 27 1986

EYVON MENDENHALL
U. S. DISTRICT COURT
E. DISTRICT OF MO.

NATIONAL DEVELOPMENT CO., INC.,)
Plaintiff,)
vs.) No. 86-852C(1)
TRUSTEESHIP OF WOODLAND LAKES,)
et al.,)
Defendants.)

PLAINTIFF'S SUGGESTED CONCLUSIONS OF LAW

1. This Court has jurisdiction over this matter. Plaintiff National Development Co., Inc. and defendants are of diverse citizenship and the amount in controversy exceeds Ten Thousand Dollars (\$10,000) exclusive of costs and interest.

2. The purported amendments enacted on or about August 24, 1985 and April 12, 1986 are illegal, void and of no force or effect because they were illegally and invalidly enacted in that a quorum was not present at the meetings in which they were supposedly enacted, in violation of the Amended Trust Indenture.

3. Pursuant to the Amended Trust Indenture, annual assessments of the property owners are not to be levied until November 15 of the year for which the assessment is being levied.

4. Plaintiff NDC has no adequate remedy at law for the acts complained of in plaintiff's complaint unless defendants are enjoined and restrained from levying assessments prior to November 15 of the year for which the assessment

is levied and from attempting to enforce the purported amendments proposed in the August 24, 1985 and April 12, 1986 meetings of property owners of Woodland Lakes.

A copy of the foregoing mailed this
27th day of May, 1986 to:
Norman Stricker, Attorney for
Defendants.

J. H. Mueller
Joseph H. Mueller, No. 17652
MOSER, MARSALEK, CARPENTER, CLEARY,
JAECKEL & KEANEY
Attorneys for Plaintiff
National Development Co., Inc.
314 North Broadway, Suite 360
St. Louis, Missouri 63101-2088
314-421-5364

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NATIONAL DEVELOPMENT CO., INC.,)

Plaintiff,)

vs.)

TRUSTEESHIP OF WOODLAND LAKES,)
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Defendants.)

No. 86-852C(1)

EYVON MENDENHALL
U. S. DISTRICT COURT
E. DISTRICT OF MO.

PLAINTIFF'S TRIAL BRIEF

National Development Co., Inc. (hereinafter "NDC") brings this action against the Trusteeship of Woodland Lakes, James R. Clutter, Wilbert Meyer, and William W. King to obtain injunctive relief and a declaratory judgment. The primary legal issues in this case center on the proper interpretation of the Amended Trust Indenture.

The issue regarding the proper procedure and timing for the collection of annual assessments is governed by Article III, paragraph 1(A) of the Amended Trust Indenture. Said provision provides that the uniform annual assessment shall be made on November 15th of each year. Accordingly, defendants are in violation of the Amended Trust Indenture when they attempt to collect the annual assessment prior to November 15.

The issue regarding the legality and affect of the purported amendments enacted on August 24, 1985 and April 12, 1986 is governed by Article I, paragraph 3 of the Amended Trust Indenture. Said provision provides: "A majority of the lot owners shall constitute a quorum at the respective

meeting of each." Accordingly, since a majority of the lot owners were not present at the August 24, 1985 and April 12, 1986 meetings, no quorum was present. Therefore, the amendments voted on at said meetings are void and have no legal affect.

The propriety of permanent injunctive relief is determined by balancing the interest of the parties-the hardship on the plaintiff if relief is denied as opposed to the hardship to defendant if it is granted. 11 Wright and Miller. Federal Practice and Procedure: Civil §2942 at 366-367 (1973). The major prerequisite to obtaining injunctive relief is the finding that plaintiff is being threatened by some injury for which he has no adequate remedy at law. Id. at 368-69. Accordingly, the court should consider the potential harm as well as the injury already sustained as a result of the acts of the defendants in determining what relief is appropriate.

A copy of the foregoing mailed this
27th day of May, 1986 to:
Norman Stricker, Attorney for
Defendant.

Joseph H. Mueller
Joseph H. Mueller, No. 17652
MOSER, MARSALEK, CARPENTER, CLEARY,
JAECKEL & KEANEY
Attorneys for Plaintiff
National Development Co., Inc.
314 North Broadway, Suite 360
St. Louis, Missouri 63101-2088
314-421-5364

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

OCT 28 1986

EYVON MENDENHALL
U. S. DISTRICT COURT
E. DISTRICT OF MO.

NATIONAL DEVELOPMENT CO., INC.,

Plaintiff,

vs.

TRUSTEESHIP OF WOODLAND LAKES,
et al.,

Defendants.

No. 86-852C(1)

ORDER

Pursuant to the order and memorandum filed herein on September 16, 1986,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that each party shall

bear its own costs.


UNITED STATES DISTRICT JUDGE

Dated: October 28, 1986

THE STATE OF NEW YORK

In SENATE,
January 14, 1903.

REPORT OF THE COMMISSIONERS OF THE LAND OFFICE,
IN ANSWER TO A RESOLUTION PASSED BY THE SENATE,
JANUARY 14, 1903.

ALBANY: J.B. LIPPINCOTT & CO., PRINTERS, 1903.

THE LAND OFFICE, created by Chapter 108 of the Laws of 1892, has the honor to acknowledge the receipt of a resolution of the Senate, passed on January 14, 1903, relating to the report of the Commissioners of the Land Office. The report is herewith submitted, and it is respectfully requested that the same may be printed and distributed to the members of the Senate.

Very respectfully,
JAMES C. HARRIS,
Commissioner of the Land Office.

ALBANY, N. Y., JANUARY 14, 1903.

THE COMMISSIONER OF THE LAND OFFICE,
ALBANY, N. Y.

RECEIVED

JAN 14 1903

THE COMMISSIONER OF THE LAND OFFICE,
ALBANY, N. Y.

United States District Court

EASTERN DISTRICT OF MISSOURI

OFFICE OF THE CLERK

1114 MARKET STREET

Saint Louis, Missouri 63101

EYVON MENDENHALL
CLERK

October 28, 1986

PHONE: 314-425-4315
FTS 279-4315

RE:

Cause No. 86-852C(1) National Development Co., Inc. vs. Trusteeship of Woodland Lakes, et

Joseph H. Mueller
MOSER, MARSALEK, CARPENTER,
CLEARY, JAECKEL & KEANEY
314 N. Broadway, Ste. 360
St. Louis, MO 63102

Norman Stricker
109 Oak St.
Potosi, MO 63664

X Enclosed is a copy of an ORDER
entered this date by the Honorable
John F. Nangle in the above-styled
cause.

Enclosed is a copy of an ORDER
AND MEMORANDUM entered this date
by the Honorable John F. Nangle
in the above-styled cause.

Enclosed is a copy of a MEMORANDUM
AND ORDER entered this date by the
Honorable John F. Nangle in the
above-styled cause.

Enclosed is a copy of an ORDER by
the USCA entered this date in the
above-styled cause.

Enclosed is a copy of a MANDATE
by the USCA entered this date in
the above-styled cause.

Sincerely,

EYVON MENDENHALL, Clerk

By:

Orick Lopez
Deputy Clerk

enc.

MICROFILM

FILED

SEP 16 1986

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

EYVON MENDENHALL
U. S. DISTRICT COURT
E. DISTRICT OF MO.

NATIONAL DEVELOPMENT CO., INC.,

Plaintiff,

vs.

No. 86-852C(1)

**TRUSTEESHIP OF WOODLAND LAKES,
et al.,**

Defendants.

TIME STUDY CASE

**Record Time Spent by Judge or Magistrate
ORDER**

Pursuant to the memorandum filed herein this day,

IT IS HEREBY DECLARED that the amendments passed at the April 9, 1985 meeting are valid and enforceable.

IT IS FURTHER DECLARED that the amendments passed at the August 28, 1985, and April 12, 1986, meetings are invalid and unenforceable and that a quorum under the Woodland Lakes Trust Indenture is defined by the version of the trust indenture recorded on April 18, 1983.

IT IS HEREBY ORDERED that plaintiff's prayer for a permanent injunction against enforcement of the April 9, 1985, amendments be and is dismissed.

IT IS FURTHER ORDERED that defendants be and are permanently enjoined from enforcement of the amendments passed at the August 28, 1985, and April 12, 1986, meetings.

IT IS FURTHER ORDERED that the temporary restraining order of this Court entered on April 25, 1986, be and is dissolved and that plaintiff's prayer for permanent injunctive relief on this ground be and is dismissed.


UNITED STATES DISTRICT JUDGE

Dated: September 16, 1986

CONFIDENTIAL

[illegible]