

ACKNOWLEDGEMENT

STATE OF MISSOURI)
) ss.
COUNTY OF WASHINGTON)

On this 8 day of May, 1986, personally appeared before me William Wayne King, James R. Clutter and Wilbert F. Meyer, Jr., who stated to me that they are Trustees of Woodland Lakes Subdivision, a subdivision in Washington County and that they executed this instrument with the authority of the property owners of Woodland Lakes Subdivision and by the authority granted to said Trustees in the Trust Indenture and Restrictive Covenants and Conditions pertaining to said subdivision, and acknowledged that they executed this instrument as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto affixed my signature and notary seal this 6 day of May, 1986.

Kay E. King
Notary Public



My commission expires:

March 31, 1987

FILED
9 O'clock 40 Minutes AM

MAY 16 1986

Leonard D. Boyer
By Kathy Atkins

\$ 32.00 pd.

STATE OF MISSOURI,)
County of Washington)

RECORDED

I, LEONARD D. BOYER, Clerk of the Circuit Court and Ex-Officio Recorder of said County do hereby certify that the within instrument of writing was, at _____ o'clock and _____ minutes, M., on the _____ day of _____ A. D. 19____.

I for record in my office and is recorded in the records of this office in book _____ page _____.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal at Potosi this _____ day of _____ A. D. 19____.

Clerk and Recorder

Deputy

POST

~~PRE-TRIAL~~
MATERIAL



TIME STUDY CASE

Record Time Spent by Judge or Magistrate

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

JUN 25 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)

FILED

JUN 25 1986

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

DEFENDANTS BRIEF

Defendant, Trusteeship of Woodland Lakes, maintains security at Woodland Lakes for the benefit of lot owners and the developer. No one with a legitimate reason to enter upon the property is refused entry thereto. Plaintiffs have made no showing by way of evidence that anyone with a legitimate reason for entry was or will be denied access to Woodland Lakes.

Article III, paragraph 1(A) of the Amended Trust Indenture provides that the uniform annual assessment should be made on November 15th of each year. Issue was raised whether assessments were to be paid in advance on November 15th, for the year beginning on November 15th. Defendants now understand that Plaintiff has withdrawn objection to collection of assessments in advance, so long as "new purchasers" are not assessed for the year in which they purchase. Defendants have no objection to that arrangement.

RECEIVED

JUN 25 1986

**EYVON MENDENHALL, Clerk
U. S. DISTRICT COURT
E. DISTRICT OF MO.**

The issue involving the amending of the Amended Trust Indenture at the April 9, 1985 meeting is one of fact. Plaintiff controlled said meeting, therefore, the burden of proof is upon,

Plaintiff to show that the amendments, paragraphs 3, and 4 of Article VII Amendments, recorded September 3, 1985, (Defendants exhibit A), are void. Reliance Life Ins. Co. V. Burgess, 112 F.2d 234 (8th Cir. 1940) cert. denied 311 U.S. 699., McCormick on Evidence 2nd Ed. §337 at 788 (1972). Plaintiff comes now, six months after the amendments are recorded and incorporated into the Amended Trust Indenture and 1 year after the amendments were passed, and declares that the Amended Trust Indenture has never been amended. Plaintiff, by its witnesses, Dick Erkenbeck, and Karen Lancaster, attempted to prove that all votes taken at the April 9, 1985, other than for election of trustees, were for that meeting alone, and that no mention was made of amending the Trust Indenture.

No reason was offered by any of Plaintiff's witnesses for Plaintiff's failure to timely object to the amendments when they were recorded and incorporated into the Amended Trust Indenture. Best evidence of the proceedings of the April 9, 1985 meeting would be recorded minutes, taken by the secretary, showing that no amendments were passed. No such minutes were produced by Plaintiff for admission into evidence.

Defendants introduced handwritten notes of the proceedings of the said April 9, 1985 meeting into evidence. (Defendants' exhibits B, and C) Plaintiff's witness, Karen Lancaster, adopted Defendants exhibit C as her notes and attempted to explain why

they were so sketchy and why the format of the notes did not follow her recollections of the format of the meeting. The notes taken by Defendant's witness, Kerry E. Meyer, Defendants exhibit B, reflect her education and over 20 years experience in the field of secretarial practice. The tenor of the notes taken by Kerry E. Meyer demonstrate an intent that the Indenture was being amended. (Last paragraph page 1 and first paragraph page 2, Defendants exhibit B) She specifically noted proceedings which affected her, as a property owner, and omitted those that did not.


Defendant's witnesses, Kerry E. Meyer, Donald Bush, Alma Brown, and Jim Clutter were present at the meeting of April 9, 1985. The testimony of Defendant's witnesses corroborate the notes taken by Defendant's witness and the recorded amendments, paragraphs 3, and 4, Article VII Amendments. Plaintiff's witnesses exhibited severe memory loss when asked key questions concerning important events at the said meeting. Defendant's witnesses suffered no such memory loss.

Plaintiff has discovered, after the fact, that the game has been given away. It now asks the Court to wrench control away from the property owners and restore said control to Plaintiff. Plaintiff alleges that this is necessary if it is to continue profitably developing and selling its remaining property. Plaintiff, however, offered no evidence that the Trusteeship is run less well now than when the Trusteeship was controlled by Plaintiff. The Amended Trust Indenture looks to an orderly transfer of control of the Trusteeship from the developer to the

property owners.(Plaintiffs exhibit 1) There has been no showing that public policy demands that the transfer of control, now begun, should be halted or reversed.

Plaintiff raises an issue in paragraph 12 Count I of the Compliant concerning assessments made by Defendants upon property owned by Plaintiff. Plaintiff, in its prayer, did not ask for remedy of this issue. Testimony at trial indicated the issue is of vast proportions. Resolution of this issue will require a large amount of time. There were also indication at trial that others, not parties to this action, would be necessary parties in an action that would resolve this issue. The inclusion of this issue for resolution in this case would delay judgement for perhaps more than a year. Defendants have labored under the present Temporary Injunction for 2 months and are deserving of prompt relief.

The amendments passed at the April 9, 1985 meeting and recorded September 3, 1985, are valid amendments to the Amended Trust Indenture. There has been no showing of present or impending harm to Plaintiff requiring injunctive relief. The resolution of this case should not be delayed to resolve the issue of assessments owed.


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Potosi, Missouri 63664
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