

United States District Court

EASTERN DISTRICT OF MISSOURI

OFFICE OF THE CLERK

1114 MARKET STREET

Saint Louis, Missouri 63101

EYVON MENDENHALL
CLERK

September 16, 1986

PHONE: 314-428-4318
FTS 278-4318

RE:

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

Joseph H. Mueller
314 N. Broadway, Ste. 360
St. Louis, MO 63101

Norman Stricker
109 Oak St.
Potosi, MO 63664

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.

XXX 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:

Chuck Loyes
Deputy Clerk

enc.

Opinion Supplemental Information Form

1 **Complete Name of Case**

SEE COPY OF DOCKET SHEET

2 **Docket Number(s)**

SEE COPY OF DOCKET SHEET

3 **Court**

District and Division

EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION

4 **Date opinion, memo,
order filed**

September 16, 1986

5 **Judge**

(If three-judge court please
give all names and indicate
concurrence and dissent.)

Honorable John F. Nangle

6 **Attorney(s) for
Plaintiff or Petitioner**

SEE DOCKET SHEET

7 **Attorney(s) for
Defendant or Respondent**

SEE DOCKET SHEET

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED *R*
MAY 22 1986

NATIONAL DEVELOPMENT
Co., INC.,
Plaintiff,

vs.

TRUSTEESHIP OF WOODLAND LAKES
and JAMES R. CLUTTER, Trustee,
WILBERT MEYER, Trustee, and
WILLIAM W. KING, Trustee,
Defendants.

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

Cause No. 86-085

TIME STUDY CASE

Record Time Spent by Judge or Magistrate

ANSWER TO COMPLAINT AND COUNTERCLAIM

COUNT I - INJUNCTIVE RELIEF

Comes now Defendants, Trusteeship of Woodland Lakes and James R. Clutter, Trustee, Wilbert Meyer, Trustee, and William W. King, Trustee, and for their answer to Count I of Plaintiff's Complaint, states as follows:

1. answering said Complaint Defendants admit the allegations in paragraphs 1, 2, 3, 4, and 5 of said Complaint.

2. Furthering answering said Complaint, Defendants deny the allegations contained in paragraph 6 of said Complaint.

3. Further answering said Complaint, Defendants admit the allegations contained in the first sentence of paragraph 7 of said Complaint, and deny the allegations contained in the second sentence of said paragraph 7 of said Complaint.

4. Furthering answering said Complaint, Defendants deny the allegations contained in paragraph 8 of said Complaint, and affirmatively state that they did enact certain amendments to the said amended trust indenture on August 24, 1985 and on April 12, 1986.

5. Further answering said Complaint, Defendants deny the allegations contained in paragraphs 9, 10, 11, and 12 of said Complaint.

WHEREFORE, Defendants pray for judgement of the court dismissing Count I of Plaintiff's Complaint, and for their costs expended in defending against this action, and for such other orders and relief as the court may deem meet and proper.

COUNT II - DECLARATORY JUDGEMENT

Comes now Defendants, Trusteeship of Woodland Lakes and James R. Clutter, Trustee, Wilbert Meyer, Trustee, and William W. King, Trustee, and for their answer to Count II of Plaintiff's Complaint, states as follows:

1. Answering said Complaint, Defendants admit the allegations contained in paragraph 1 of said Complaint.

2. Further answering said Complaint, Defendants deny the allegations contained in paragraph 2 of said Complaint.

3. Further answering said Complaint, Defendants deny the allegations contained in paragraph 3 of said Complaint, and affirmatively state, that certain amendments to the amended trust indenture were enacted on April 12, 1986.

4. Further answering said Complaint, Defendants deny the allegations contained in paragraphs 4 and 5 of said Complaint.

WHEREFORE, Defendants pray for judgement of the court dismissing Count I of Plaintiff's Complaint, and for their costs expended in defending against this action, and for such other orders and relief as the court may deem meet and proper.

COUNTERCLAIM

DECLARATORY JUDGEMENT

Comes now the Defendants, Trusteeship of Woodland Lakes and James R. Clutter, Trustee, Wilbert Meyer, Trustee, and William W. King,

Trustee, and for their cause of action state:

1. Defendants incorporate herein paragraphs 1 thru 5 of Count I of Plaintiff's Complaint, herein, as if the same were fully set forth in its entirety.

2. That Mr. R. L. Erkenbeck, a vice president of Defendant, National Development Co., Inc., became trustee of the Woodland Lakes Trusteeship upon execution of the original trust indenture through appointment by Defendant, National Development Co., Inc., and retained his position as said trustee until April 9, 1985.

3. That on or about April 9, 1985, an annual meeting of the trusteeship was held at which said meeting the said R. L. Erkenbeck presided

4. That at said April 9, 1985 meeting the amended trust indenture was further amended as follows:

ARTICLE VII

AMENDMENTS

...

3. This indenture may be modified or amended by a fifty-one percent (51%) vote of the property owners present at a duly called and scheduled meeting of the Association.

4. Any person shall be considered as an owner entitled to vote for any purpose provided for in this indenture provided said person is the owner by fee simple title, warrenty deed or purchaser of the property under contract for deed; and provided that said person shall have fully paid all assessments which may be lawfully make by or under authority of this indenture.

5. That the amendment designated 4. of said article VII, amendments does not change the one vote per lot previously existing but changes the person or entity possessing the right to caste such vote.

6. That the amendment designated 3. of said article VII, amendments which provides that the indentures may be modified or amended by a fifty-one percent (51%) vote of the property owners present at a duly called and scheduled meeting of the Association, must be construed as changing

the quorum requirement to "the property owner present at a duly called and scheduled meeting of the association".

7. That the said R. L. Erkenbeck cast the proxy vote for all lots owned by National Development Co., Inc., in favor of the amendments, at the said April 9, 1985 meeting, which said proxy vote included more than 90% of the lots then eligible to vote, therefore, National Development should not now be heard to complain that these amendments are illegal and invalid.

8. That on August 24, 1985 and on April 12, 1986 amendments were proposed, voted on and passed by more than 51% of the property owners present at the respective meetings held on those dates.

9. That no person or entity who was an owner by fee simple title, warrenty deed or purchaser of the property under contract for a deed, was denied the right to vote if the assessment due on said lots had been paid on or before the day of said meeting.

10. That assessments were collected by National Development Co., Inc., through the trustee appointed by it, in advance, on a pro rated basis.

11. That National Development Co., Inc., should not now be heard to complain when the Defendants follow in its footsteps by continuing the practice of collecting assessments, in advance, on a pro rated basis.

WHEREFORE, Defendants pray for a judgement of this court declaring that:

- a. The property owners present at a duly called and scheduled meeting of the association constitutes a quorum for purposes of conducting business at any such meeting.
- b. The amendments enacted at the meeting held on April 9, 1985, August 24, 1985, and April 12, 1985 are legal and valid.
- c. The trusteeship may continue the practice of collecting assessments.

in advance, on a pro rate basis, and for such other orders and relief as the court may deem meet and proper.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by enclosing the same in an envelope addressed to such attorneys at their business address as disclosed by the pleadings of record herein, with postage fully prepaid and by depositing said envelope in a U. S. Post Office mail box in Potosi, Missouri on the 11th day of May, 1986

Norman Stricker

Norman Stricker

Norman Stricker #33254
Attorney for Defendant
109 Oak Street
Potosi, Missouri 63664
(314) 438-4062