

NORMAN STRICKER

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WOODLAND LAKES TRUSTEES
Woodland Lakes Box 12
Sullivan, Missouri 63080

OCTOBER 1, 1986

STATEMENT THROUGH SEPTEMBER 30, 1986

Court Appearance	4.0	hours
Research	4.0	hours
Client Conference	4.5	hours
Total Hours 12.5 @\$100.00 per hour	\$1250.00	
Mileage 140 miles @25c per mile	\$ 35.00	
Long Distance Telephone Charges	\$ 4.09	
TOTAL DUE	\$1289.09	

TIME STUDY CASE

Record Time Spent by Judge or Magistrate
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

OCT 15 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.)

OBJECTIONS OF PLAINTIFF TO DEFENDANT'S BILL OF COST

COMES NOW Plaintiff and objects to Defendant's Bill of Cost on the following grounds:

1. Defendants are not entitled to costs since they are not the "prevailing party" as required by Rule 54(d) in the Federal Rules of Civil Procedure.

2. This Court's Order of September 16, 1986 did not award costs in favor of Defendants.

3. The items Defendants are seeking to have taxed as cost (attorney's fees and expenses) are not recoverable as costs in this action.

WHEREFORE, Plaintiff prays this Court enter its Order denying the taxation of Defendant's Bill of Cost.

A copy of the foregoing mailed this 15th day of Oct., 1986, to:
Norman Stricker, Attorney for Defendants, 109 Oak Street, FOTOSI,
MO 63664.

J. H. Mueller
JOSEPH H. MUELLER, No. 17652
MOSER, MARSALEX, CARPENTER, CLEARY,
JAECKEL & KEANEY
Attorneys for Plaintiff
NATIONAL DEVELOPMENT CO., INC.
314 North Broadway, Suite 360
St. Louis, Missouri 63102-2088
(314) 421-5364

FILED
OCT 15 1956
U.S. DISTRICT COURT
E. DISTRICT OF MO.

RECEIVED
OCT 15 1956
EVON HENNINGSEN, JR.
U. S. DISTRICT COURT
E. DISTRICT OF MO.

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EYVON MENDENHALL
U. S. DISTRICT COURT
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NATIONAL DEVELOPMENT CO., INC.,

Plaintiff,

vs.

No. 86-852C(1)

TRUSTEESHIP OF WOODLAND LAKES,
et al.,

Defendants.

MEMORANDUM IN SUPPORT OF PLAINTIFF'S OBJECTIONS TO DEFENDANTS' BILL OF COSTS

Plaintiff has filed Objections to Defendants' Bill of Costs. Plaintiff offers the following suggestions in support of its objections.

The present case was tried to this Court sitting without a jury. This Court filed its Findings of Fact and Conclusions of Law on September 16, 1986. This Court's Order entered September 16, 1986, declared that one set of Amendments to the trust indenture were valid and enforceable and that two other sets were invalid and unenforceable and enjoined Defendants from attempting to enforce the latter of Amendments.

These Defendants have now submitted a Bill of Costs and are seeking to have their attorney's fees and his expenses, i.e., mileage and telephone related expenses, taxed as costs. Initially, the submission of a Bill of Costs by Defendants is improper because they are not the prevailing party in this action. Rule 54(d) of the Federal Rules of Civil Procedure provides, in pertinent part:

Except when an express provision therefore is made either in statute of the United States or in these rules, cost shall be allowed as of course to the prevailing party unless the Court otherwise directs . . . (emphasis supplied).

The following information is being furnished to you for your information only. It is not intended to constitute an offer of insurance or any other financial product. The information is based on the information provided to us by the company and is not intended to be a substitute for the actual policy or contract. The information is provided for your information only and is not intended to be a substitute for the actual policy or contract. The information is provided for your information only and is not intended to be a substitute for the actual policy or contract.

THE ABOVE IS A SUMMARY OF THE INFORMATION RECEIVED FROM THE SOURCE.

RECEIVED

OCT 15 1966

1. **NAME** _____
 2. **DATE** _____
 3. **PERIOD** _____
 4. **SCORE** _____

It is well settled that if a Plaintiff prevails on certain issues in a declaratory judgment action, the Plaintiff is deemed the prevailing party for purposes of awarding costs. Englehard Indus., Inc. v. Sel-Rex Court., 255 F. Supp. 620 (D.C.N.J. 1966) affirmed 384 F.2d 877 (3rd Cir. 1967). Such is the situation in the present case, National Development Co., Inc., Plaintiff herein, prevailed on the issues concerning two sets of the Amendments. Although it did not prevail in regard to the remaining set of Amendments, Defendants would not be considered the prevailing party in the action. Furthermore, this Court did not order that the cost of this action be awarded to either of the parties herein. Accordingly, Defendants are not entitled to costs.

Secondly, the items set forth as costs in Defendants' Bill of Costs are not taxable as costs. Defendants list in their Bill of Costs attorney's fees incurred in the defense of Defendants in the amount of \$13,400.00 and mileage and telephone expenses incurred by their attorney in the amount of \$507.19. As a general rule, attorney's fees and expenses are not taxable as costs. See Wright, Miller and Kane: Fed. Prac. and Pro. Section 2675 and cases cited therein. In addition, there are no applicable statutes or rules which would support the taxation of these items as costs. This Court's Order of September 16, 1986 does not provide for an award of attorney's fees. Therefore, pursuant to the general rule, attorney's fees and attorney's expenses are not taxable as costs in this action.

In conclusion, Plaintiff respectfully request this Court to enter its Order denying the taxation of all items listed in Defendants' Bill of Costs based on the foregoing reasons.

A copy of the foregoing mailed this 15th day of Oct., 1986, to:
Norman Stricker, Attorney for Defendants, 109 Oak Street, Potosi,
Missouri 63664.

J. H. Mueller

JOSEPH H. MUELLER, No. 17652
MOSEK, MARSALEK, CARPENTER, CLEARY,
JAECKEL & KEANEY
Attorneys for Plaintiff
NATIONAL DEVELOPMENT CO., INC.
314 North Broadway, Suite 360
St. Louis, Missouri 63102-2088
(314) 421-5364

CONTRACT FOR DEED

Contract, made and entered into this 25th day of May, 19 86 by and between NATIONAL DEVELOPMENT COMPANY, INC., hereinafter referred to as "SELLER", and Donald M Bush

County of St. Louis State of Missouri
 hereinafter referred to as "BUYER", and
 WITNESSETH: That on the terms and conditions herein contained the SELLER agrees to sell and convey by Warranty Deed to the BUYER Tract or Lot No. 16 in Block No. 171 Section No. 16 of WOODLAND LAKES in Washington County, Missouri, the plat of said lands appearing on record in the County Recorder's Office, Washington County, Missouri, subject to easements, covenants, reservations and restrictions of record. Said restrictions being filed in Book 171 at Page 779 in the office of the Recorder of Deeds of Washington County, Missouri.

The BUYER agrees to purchase said Tract or Lot, and pay therefor the sum of
Four Thousand Three Hundred Fifty Six and 90/100 Dollars (\$ 4356.90)

payable by the BUYER to the SELLER at Sullivan, Missouri, as follows:

Three Hundred Fifty Six and 90/100 Dollars (\$ 356.90)

on the execution of this contract, the receipt whereof is hereby acknowledged, and the balance of

Four Thousand and 00/100 Dollars (\$ 4000.00)

in monthly installments as follows:

Eighty Four and 99/100 Dollars (\$ 84.99)

on the 25th day of July, 19 86 and the same amount in monthly payments thereafter consecutively without default until the principal and interest are fully paid, with interest at the rate of ten per cent (10%) per annum, computed monthly on the unpaid balance, both interest and principal payable monthly, as evidenced by a certain promissory note of even date in the sum of the above-mentioned balance, executed by BUYER, maturing and bearing interest as therein provided and containing the usual attorney's fees and acceleration of maturity clauses. BUYER may prepay this debt without penalty and any unearned interest shall be credited based on the "Rule of 78's".

All payments under this contract shall be made at the Bank of Sullivan, Sullivan, Missouri.

When the purchase price and interest are fully paid, the SELLER shall execute and deliver or cause to be delivered to the BUYER, a Warranty Deed with restrictions as provided in this contract, conveying said property to the BUYER.

In all cases time is the essence of this contract, and upon default of any provision of the promissory note, interest on the unpaid balance from the date of said default shall be at the rate of ten per cent (10%) per annum. In addition, upon default, SELLER shall have the right to rescind this agreement, and all monies paid hereunder and upon such note shall be retained by the SELLER as agreed liquidated damages and/or rent of said property for breach of this agreement; and it is further agreed that each such default hereunder shall be a fresh breach of this contract and that failure of the SELLER to exercise its option at the time of any one default shall not operate to bar its right to exercise its option upon any subsequent default of the BUYER. A letter addressed and mailed to BUYER at 11828 Foxwood Dr Maryland Heights, MO 63043 shall be sufficient notice of the exercise of such option by the SELLER. If SELLER has exercised its option and subject to SELLER'S approval in writing, BUYER may reinstate this contract upon payment of delinquent installments and upon payment of an amount equal to ten per cent (10%) of the unpaid balance as penalty.

Each lot is subject to restrictive covenants filed of record which run with the land. BUYER agrees to comply fully with these covenants. The SELLER or its successor or assigns or the trustee provided in the restrictions may prosecute proceedings at law or equity to prevent or remedy the violation of said restrictive covenants.

BUYER acknowledges that he has inspected the above-described property and is thoroughly familiar with the location and condition of said property, and BUYER hereby accepts said property in its present condition.

The SELLER agrees to pay all taxes up to and including the year of 19 85 on the property covered by this contract. The BUYER shall pay all taxes and assessments against said property thereafter, promptly as they accrue. If the BUYER fails to do so, the SELLER shall have the right to pay such taxes and assessments and the BUYER shall reimburse the SELLER for any amount thus paid, with interest at the rate of ten per cent (10%) per annum from the date of payment, for which the SELLER shall have a lien on the property to secure reimbursement thereof.

It is understood that the BUYER will be obligated to pay an assessment of Forty Dollars (\$40.00) per lot per year for the purposes stated in the restrictions as referred to herein.

No assignment or transfer of this contract by the BUYER shall be binding on the SELLER unless an assignment is endorsed upon this contract and the name and address of the assignee is furnished by the BUYER to the SELLER and the assignee delivers to the SELLER a written assumption of this contract and agrees to its terms.

Upon default hereunder BUYER shall then become a tenant of the SELLER as a tenant from month to month and agrees to pay \$ 84.99 per month as rent for such premises, said rent becoming due and payable monthly in advance.

The BUYER consents to and agrees to each and all of the conditions and terms of this contract and it is agreed that the contract is to be performed in Washington County, Missouri.

BUYER has the option to revoke this contract until midnight of the seventh day following the signing thereof by notifying the SELLER prior to the expiration of that period.

The SELLER is responsible for construction of roads, lakes and related facilities such as the bathhouse, beach and boat ramps. The estimated date for completion of the roads is October 1, 1982. The estimated date for completion of the dams is July, 1981. Filling of the lakes is estimated for June 1, 1982 dependent upon rainfall in the area. The estimated date for completion of the related lake facilities such as the bathhouse, beach and boat ramps is December 31, 1981. The SELLER is also responsible for construction of the sewage disposal facility in the camper area of Section 1. The estimated date for completion of that facility is December 31, 1980. After completion of the roads, dams, lakes, bathhouse, beach, boat ramps, and the sewage disposal facility in the camper area in Section 1, they shall thereafter be maintained by the trusteeship provided for in the restrictive covenants applicable to the subdivision.

The BUYER shall be responsible for providing and maintaining water and sewage facilities which shall conform to the restrictive covenants applicable to the subdivision and the wastewater disposal plan approved by the Missouri Department of Natural Resources. The BUYER shall also be responsible for providing any desired electric, telephone, or gas service.

This contract is not binding upon the SELLER until executed by one of its duly authorized officers or agents. It is understood and agreed that there are no terms or conditions to this sale other than those appearing in this contract. Executed in duplicate upon the day and date first above written.

NATIONAL DEVELOPMENT, INC.

By: R L Eckenbeck
 Seller

Donald M. Bush
 Buyer

\$ 4000.00 Sullivan, Missouri 63080 May 25th A.D. 19 86
 FOR VALUE RECEIVED, I, we, or either of us, the undersigned, promise to pay to NATIONAL DEVELOPMENT COMPANY, INC., or order, the sum of Four Thousand and 00/100 Dollars (\$ 4000.00)
 in monthly installments as follows: Eighty Four and 99/100 Dollars (\$ 84.99)

on the 25th day of July, 19 86, and the same amount in monthly payments thereafter consecutively, without default, until the principal and interest are fully paid, with interest at the rate of ten per cent (10%) per annum, computed monthly on the unpaid balance, both principal and interest payable monthly at Sullivan, Missouri.

Buyer may prepay this note without penalty and any unearned interest (finance charge) will be credited based on the "Rule of 78's".

It is understood and agreed that upon default or failure to pay this note, or any installment, when due, interest upon the unpaid balance of the note shall be at the rate of ten per cent (10%) per annum, and at the election of the holder of said note mature the full amount of said note, and it shall at once become due and payable, or permit the undersigned to reinstate the note upon payment of all delinquent installments and upon payment of an amount equal to ten per cent (10%) of the unpaid balance as penalty.

And it is hereby especially agreed that if this note is placed in the hands of an attorney for collection, or collected by suit, or in probate or bankruptcy proceedings, the undersigned agree to pay ten per cent (10%) additional on the principal and interest then due hereon as attorney's fees.

Address 11828 Foxwood Dr Maryland Heights, MO 63043
 Phone 739-8379

Donald M. Bush

DEPT 5 EX E