

NATIONAL DEVELOPMENT CO., INC.

TIME STUDY CASE FILED

S.

Cause No.

TRUSTEESHIP OF WOODLAND LAKES, et al.

Second Time Spent by Judge or Magistrate

APR 25 1986

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

MUST BE COMPLETED WHEN FILING A NEW CASE

86-0852-C-3

☐

This case was previously filed as case number

_____ and assigned to Judge _____

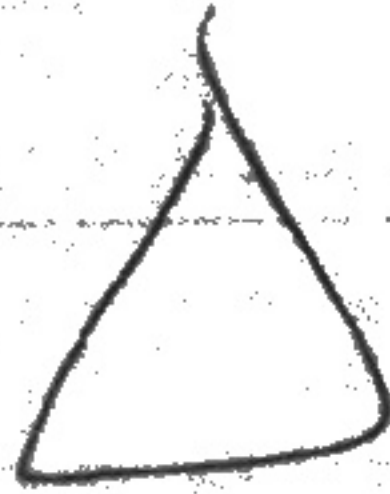
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This case has never before been filed and is to be opened as an original proceeding.

Joseph H. Mueller
Signature of Attorney of Record

Joseph H. Mueller, No. 17652
Moser, Marsalek, Carpenter,
Cleary, Jaeckel & Keaney
Attorney for Plaintiff
314 N. Broadway, Suite 360
St. Louis, Missouri 63102
421-5364

**PRE-TRIAL
MATERIAL**



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED
JUN 03 1986

NATIONAL DEVELOPMENT CO., INC.,
Plaintiff,

vs.

TRUSTEESHIP OF WOODLAND LAKES,
et al.,
Defendants.

EYVON MENDENHALL
U. S. DISTRICT COURT
No. 86-852C(19) DISTRICT OF MO.

TIME STUDY CASE

Record Time Spent by Judge or Magistrate
COMPLIANCE OF DEFENDANTS WITH
ORDER OF COURT RELATING TO TRIAL

Comes now Defendants and for their compliance with the
order of Court relating to trial, states as follows:

I. JOINT STIPULATION OF UNCONTESTED FACTS

Joint Stipulation of Uncontested Facts is attached hereto.

II. WITNESSES

Defendants will call the following witnesses: Marjorie Schroer,
Neil Gilbert, Donald Bush, Alma Brown, Wilbert F. Meyer Jr., Kerry E. Meyer,
James R. Clutter, and Pamela Breen. Defendants may call one or more of
the following witnesses: Debbie Clutter, and Wm. Wayne King.

Furthermore, Defendant reserves the right to call any of the witnesses
listed by Plaintiffs in their compliance with the order of Court relating to
trial.

III. EXHIBITS

Defendants will offer the following exhibits:

A. Article VII Amendments, Recorded September 3, 1985.

B.C. Notes Taken at Annual Meeting, April 9, 1985.

D. Amended Trust Indenture and Restrictive Covenants and Conditions
pertaining to a Subdivision of land in Washington County, Missouri, as Amended,
recorded May 16, 1986.

Defendant reserves the right to offer any of the exhibits listed by Plaintiff in its compliance with the order of court relating to trial.

IV. DEPOSITIONS AND INTERROGATORY ANSWERS


Inasmuch as no interrogatories have been propounded, nor any depositions obtained, as of this date, no such items will be offered into evidence.

Defendant reserves the right to amend its compliance with the order of court relating to trial if interrogatories are propounded or depositions obtained prior to the trial of this cause.

V. FINDINGS OF FACT/CONCLUSIONS OF LAW/TRIAL BRIEF

Defendant's Suggested Findings of Fact, Conclusions of Law and Trial Brief are attached herein.

A copy of the foregoing mailed this
2nd day of June, 1986 to:
Joseph H. Mueller, Attorney for
Plaintiffs.


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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

JUN 03 1986

NATIONAL DEVELOPMENT CO., INC.,
Plaintiff,

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

vs.

TRUSTEESHIP OF WOODLAND LAKES,
et al.,
Defendants.

TIME STUDY CASE

Record Time Spent by Judge or Magistrate

JOINT STIPULATION OF FACTS

1. Plaintiff, National Development Co., Inc., (herein after "NDC") is a corporation duly organized and existing under the laws of the State of Texas and having its principal place of business in the State of Texas.


2. Defendant, Trusteeship of Woodland Lakes, is a legal entity and has the right to be sued, in accordance with an Amended Trust Indenture and Restrictive Covenant and Conditions Pertaining to a Subdivision of Land in Washington County, Missouri.

3. Defendants James R. Clutter, Wilbert Meyer and William W. King are Trustees of Woodland Lakes and reside in Washington County, Missouri.

4. Plaintiff NDC is a land development company and owns, in fee simple, a substantial amount of ground in Woodland Lakes Subdivision, located in Washington County, Missouri. Plaintiff NDC sells lots and offers for sale lots in the subdivision to prospective purchasers.

5. Defendants have levied an annual assessment on each lot owner, including Plaintiff NDC, for the unsold plotted lots for prior years, together with assessments for the current year, 1986.

A copy of the foregoing mailed this
2nd day of June, 1986 to: Joseph H.
Mueller, Attorney for Plaintiffs.


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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED *PL*

JUN 03 1986

NATIONAL DEVELOPMENT CO., INC.,
Plaintiff,

vs.

TRUSTEESHIP OF WOODLAND LAKES,
et al.,
Defendants.

EYVON MENDENHALL
U. S. DISTRICT COURT
E. DISTRICT OF MO.
No. 86-852C(1)

TIME STUDY CASE

DEFENDANTS SUGGESTED FINDINGS OF FACT *Record Time Spent* by Judge or Magistrate

1. Plaintiff, National Development Co., Inc. (herein-
after "NDC") is a corporation duly organized and existing under
the laws of the State of Texas and having its principal place of
business in the State of Texas.
2. Defendant, Trusteeship of Woodland Lakes, is a legal entity
and has the right to be sued, in accordance with an amended Trust
Indenture and Restrictive Covenants and Conditions Pertaining to a
Subdivision of Land in Washington County, Missouri.
3. Defendants James R. Clutter, Wilbert Meyer and William W. King
are the current Trustees of Woodland Lakes and reside in Washington
County, Missouri.
4. Plaintiff NDC is a land development company and owns, in
fee simple, a substantial amount of ground in Woodland Lakes Subdivision,
located in Washington County, Missouri.
5. In late 1979, Plaintiff NDC began selling lots and offering
for sale lots in the Woodland Lakes Subdivision to prospective purchasers.
6. On or about May 20, 1980, a Trust Indenture Agreement regarding
the Woodland Lakes Subdivision was signed and duly recorded.

7. On or about April 9, 1985, an annual meeting of property owners was held at Woodland Lakes Subdivision, attended by Richard L. Erkenbeck who voted proxies of Plaintiff, NDC, representing more than 90 percent of the lots in said subdivision at that time.

8. A quorum was present at the April 9, 1985 annual meeting of property owners of Woodland Lakes Subdivision.

9. Amendments were proposed at the April 9, 1985 annual meeting of property owners of Woodland Lakes Subdivision and said amendments were adopted by virtue of Richard L. Erkenbeck's proxy vote; and duly recorded as Article VII amendments 3 and 4.

10. On or about April 11, 1983, an Amended Trust Indenture was signed and duly recorded as required by the Office of Interstate Land Sales Registration and controlling regulations of the Department of Housing and Urban Development (HUD).

11. Richard L. Erkenbeck, a Vice President of NDC served as Trustee of Woodland Lakes Subdivision until April, 1985 when he was replaced by Defendants Jim Clutter, Wayne King, and Bill Meyer.

12. Property owners of Woodland Lakes Subdivision enacted certain amendments to the Amended Trust Indenture at the August 24, 1985 Special Meeting of Property Owners. Said amendments are set forth in "Article VII-Amendments" as signed and filed on or about September 4, 1985.

13. On or about April 12, 1986, an annual meeting of the property owners of Woodland Lakes Subdivision was held. That Defendants denied representatives of NDC the right to vote at said meeting because annual assessments were due and unpaid.

14. A quorum was present at the April 12, 1986 annual meeting of the property owners of Woodland Lakes.

15. The property owners of Woodland Lakes Subdivision enacted certain amendments to the Amended Trust Indenture at the April 12, 1986 Annual Meeting of the Property Owners of Woodland Lakes. Said amendments are set forth in the Amended Trust Indenture and restrictive Covenants and Conditions pertaining to a Subdivision of land in Washington County, Missouri, as Amended, recorded May 16, 1986.


16. Defendants have levied an annual pro-rated assessment for the year 1986 on each lot owner, including Plaintiff NDC, for the unsold platted lots as provided for in the Amended Trust Indenture,

17. Plaintiff owes annual pro-rated assessments for the years 1983, 1984, 1985, and 1986.

18. Richard L. Erkenbeck made expenditures from Trustee Funds which were not for legitimate Trustee expenses.

19. Plaintiff has made a number of expenditures for improvements, repairs, and development of the Woodland Lakes Subdivision.

A copy of the foregoing mailed this
2nd day of June, 1986 to: Joseph H.
Mueller, Attorney for Plaintiff.


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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

JUN 03 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.

TIME STUDY CASE

TRIAL BRIEF

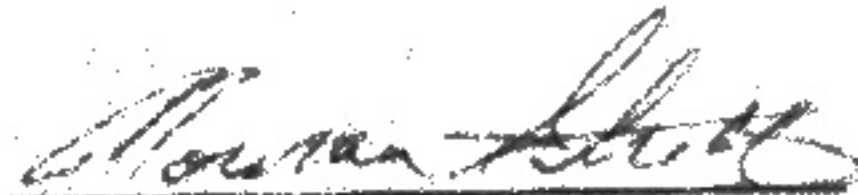
Record Time Spent by Judge or Magistrate

National Development Co., Inc. (hereinafter "NDC") brought 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 legal issue in this case centers on the proper interpretation of the Amended Trust Indenture.

The issue regarding the legality and affect allowing NDC to make expenditures allegedly beneficial to the property owners, as offsets to assessments owed is governed by Article III, paragraph 1(c) of the Amended Trust Indenture. Said provision provides: "... the assessments hereunder shall apply to the developer on the same basis as other lot purchasers and owners.", accordingly, since other property owners are not allowed to make offsetting expenditures in lieu of assessment payments, NDC cannot, therefore make such offsetting expenditures which are not permitted to be made by other property owners.

The law of the case, in this case, appears to be nonexistant. Accordingly, the court should consider the potential harm to both Plaintiff and Defendant, determining, in doing so, if an adequate remedy at law exists for either injured party.

A copy of the foregoing mailed this
2nd day of June, 1986 to: Joseph H.
Mueller, Attorney for Plaintiffs.


Norman Stricker #33254
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109 Oak Street
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