

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT INDEPENDENCE  
16<sup>TH</sup> JUDICIAL CIRCUIT

RAINTREE LAKE CORPORATION,	)	
	)	
and	)	
	)	
PROPERTY INVESTMENT	)	
GROUP, L.L.C.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No.01CV203144
	)	
RAINTREE LAKE PROPERTY	)	Division 13
OWNERS ASSOCIATION, INC.	)	
	)	
Defendant.	)	

**PLAINTIFFS' MOTION TO AMEND**  
**PETITION FOR DECLARATORY JUDGMENTS, APPLICATION FOR**  
**PRELIMINARY AND PERMANENT INJUNCTIONS**  
**AND PETITION FOR DAMAGES**

COME NOW plaintiffs, Raintree Lake Corporation ("RLC") and Property Investment Group, L.L.C. ("Investment Group") and move this Court for an Order allowing them to file their First Amended Petition for Declaratory Judgments, Application for Preliminary and Permanent Injunctions and Petition for Damages (attached hereto as Exhibit "A"). RLC and Investment Group direct the Court to their Suggestions in Support of their Motion to Amend filed concurrently herewith and fully incorporated herein.

WHEREFORE, RLC and Investment Group pray this Court grant their Motion allowing them to amend their Petition for Declaratory Judgments, Application for Preliminary and Permanent Injunctions and Petition for Damages and for such other orders and judgments as may be just and reasonable.

Respectfully submitted,

KING HERSHEY  
A Professional Corporation

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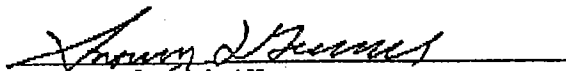
ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was sent via mail, postage prepaid, this 24th day of April, 2001, to:

Mr. Joe Willerth  
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ATTORNEY FOR DEFENDANT RAINTREE LAKE PROPERTY  
OWNERS ASSOCIATION

  
\_\_\_\_\_  
Attorney for Plaintiffs

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT INDEPENDENCE  
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RAINTREE LAKE CORPORATION, )  
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GROUP, L.L.C., )  
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Plaintiffs, )  
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vs. )  
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RAINTREE LAKE PROPERTY )  
OWNERS ASSOCIATION, INC. )  
)  
Defendant. )

Case No.01CV203144

Division 13

**FIRST AMENDED**  
**PETITION FOR DECLARATORY JUDGMENTS, APPLICATION FOR**  
**PRELIMINARY AND PERMANENT INJUNCTIONS, AND**  
**PETITION FOR DAMAGES**  
[EC; EA; CE]

COME NOW plaintiffs Raintree Lake Corporation ("RLC") and Property Investment Group, L.L.C. ("Investment Group") and plead their First Amended Petition for Declaratory Judgments, Application to the Court for Preliminary and Permanent Injunctions and Petition for Damages against defendant, Raintree Lake Property Owners Association, Inc. ("RLPOA"), stating and alleging as follows:

**PARTIES, JURISDICTION AND VENUE**

1. RLC is a Missouri corporation in good standing with its principal place of business in Lee's Summit, Jackson County, Missouri.
2. Investment Group is a Missouri limited liability company in good standing with its principal place of business in Lee's Summit, Jackson County, Missouri.

3. RLPOA is a Missouri non-for-profit corporation in good standing and an association of property owners in a development located in Lee's Summit, Jackson County and Cass County, Missouri which is known as Raintree Lake.

4. This Court has jurisdiction over this cause because it alleges violations of the laws of the State of Missouri and involves property located in Missouri.

5. Venue is proper in this county pursuant to § 508.010, RSMo, in that all parties have their principal places of business in Lee's Summit, Jackson County, Missouri.

#### STATEMENT OF FACTS

6. On September 24, 1973, Raintree Lake Development Corporation executed a Declaration of Covenants, Conditions and Restrictions ("Declaration of Covenants") which was recorded in the office of the Director of Records for Jackson County, Missouri, at Independence and in the office of the Recorder of Deeds for Cass County, Missouri, a copy of which is attached to plaintiff's original Petition/Application as Exhibit "1" and incorporated herein by reference as Exhibit "1".

7. Raintree Lake Development Corporation was designated as "Developer" and "Declarant" under the Declaration of Covenants. (Exhibit "1", p. 4).

8. The Declaration of Covenants provided for the creation of the RLPOA to which the Developer and Declarant delegated and assigned its powers of owning, maintaining and administering the community properties at Raintree Lake. (Exhibit "1", p. 2).

9. The Declaration of Covenants provided for three (3) classes of voting membership in the RLPOA: Class A (owners of single family residential lots); Class B (owners of multi-family residential units or commercial units); and Class C (the Developer). (Exhibit "1", p. 6).

10. The Declaration of Covenants also provided for yearly assessments to be paid by the members of the RLPOA. (Exhibit "1", p. 11).

11. On September 28, 1973 Articles of Incorporation for the RLPOA ("Articles of Incorporation") were filed with the Missouri Secretary of State creating the not-for-profit corporation to act as the property owners association at Raintree Lake, a copy of which is attached to plaintiff's original Petition/Application as Exhibit "2" and incorporated herein by reference as Exhibit "2".

12. The Articles of Incorporation provided for the creation and election of a Board of Directors of the RLPOA. (Exhibit "2", p. 5).

13. The Articles of Incorporation provided for a Board of Directors to be composed of nine (9) directors elected by classes according to the classes of voting membership with one (1) director to be elected by Class A members, one (1) director to be elected by Class B members and seven (7) directors to be elected by the Class C member. (Exhibit "2", p. 5).

14. An Amendment of the Declaration of Covenants, Conditions and Restrictions was executed on May 21, 1984 and was recorded in the office of the Director of Records for Jackson County, Missouri, at Independence, a copy of which is attached to plaintiff's original Petition/Application as Exhibit "3" and incorporated herein by reference as Exhibit "3".

15. The Amendment of the Declaration of Covenants provided that the Developer (Class C member) would be entitled to three (3) votes for each residential Lot in which it held an interest and three (3) votes for each 5000 square feet, or major fraction thereof, of developed multi-family residential or commercial floor space. (Exhibit "3", p. 2).

16. The Amendment of the Declaration of Covenants further provided that the Class C membership would terminate and be converted to Class A or Class B membership upon the

earlier of: (1) the total votes outstanding in Class A membership and Class B membership equaled the total votes in the Class C membership; or (2) on January 1, 1994. (Exhibit "3", p. 2).

17. An Amendment of the Articles of Incorporation of the RPLOA was filed with the Missouri Secretary of State on August 2, 1984, a copy of which is attached to plaintiff's original Petition/Application as Exhibit "4" and incorporated herein by reference as Exhibit "4".

18. After the creation of the RPLOA, By-laws were adopted to govern its operation.

19. The By-laws of RPLOA were amended on May 22, 1984, a copy of the amended By-laws as of that date are attached to plaintiff's original Petition/Application as Exhibit "5" and incorporated herein by reference as Exhibit "5".

20. The provisions of the By-laws, as they existed on May 22, 1984, governing voting rights of the classes of members and the calculation of annual assessments were identical to those provisions contained in the Declaration of Covenants, as amended.

21. On December 27, 1990 a group of homeowners in Raintree Lake filed a Petition for Declaratory Judgment in the Jackson County Circuit Court against Pyramid Development Corp. ("Pyramid"), the successor to Raintree Lake Development Corporation the original Developer and Declarant in Max Marshall, et al. v. Pyramid Development Corporation, et al., Case No. CV90-33845.

22. On or about March 21, 1991 the Court made a Judgment Entry in Marshall finding that pursuant to the Amendment of the Declarations made on May 21, 1984 (Exhibit "6") the Class C status of Pyramid was terminated and was converted to Class A and Class B membership as appropriate and that the Board of Directors of RLPOA would consist of three (3) directors elected by Class A members, three (3) directors elected by Class B members and (3) directors elected jointly by Class A and Class B members. A copy of the Judgment Entry is

attached to plaintiff's original Petition/Application as Exhibit "6" and incorporated herein by reference as Exhibit "6".

23. On April 21, 1992 the Court in Marshall issued its final judgment which made certain findings regarding annual assessments due to the RLPOA from Pyramid and the authority of the Board of Directors of RLPOA to increase the yearly assessments on property owners without a vote of RLPOA's members.

24. The final judgment of the Court in Marshall was appealed to the Missouri Court of Appeals, Western District on May 29, 1992.

25. On January 1, 1993 the RLPOA was forfeited by the Missouri Secretary of State for failure to file its Annual Registration Report.

26. On March 25, 1993 the RLPOA held an Annual Meeting of its members.

27. No contemporaneous minutes of that meeting were kept by the RLPOA.

28. A copy of reconstructed minutes of the March 25, 1993 meeting, prepared by the RLPOA in 2000, is attached to plaintiff's original Petition/Application as Exhibit "7" and incorporated herein by reference as Exhibit "7".

29. At the March 25, 1993 meeting the members of the RLPOA voted on a proposed change to the By-laws of the RPLOA concerning a change in the composition of the Board of Directors of the RPLOA by allowing Class A members to vote for seven (7) directors and Class B members to vote for two (2) directors with no directors being elected jointly by Class A and Class B members, a copy of the ballot used in this vote is attached to plaintiff's original Petition/Application as Exhibit "8" and incorporated herein by reference as Exhibit "8".

30. Although no record is available indicating the number of votes cast for or against the proposed change to the By-laws the reconstructed minutes for the meeting allege that the proposed changes were "passed." (See Exhibit "7").

31. On April 5, 1993 the Missouri Secretary of State issued a notice that rescinded the forfeiture of RPLOA, a copy of which is attached to plaintiff's original Petition/Application as Exhibit "9" and incorporated herein by reference as Exhibit "9".

32. On or about May 18, 1993 the Missouri Court of Appeals, Western District issued its written opinion in the appeal of the Marshall case in Marshall v. Pyramid Development Corp., 855 S.W.2d 403 (Mo. App. W.D. 1993), a copy of the Court's opinion is attached to plaintiff's original Petition/Application as Exhibit "10" and is incorporated herein by reference as Exhibit "10".

33. On or about September 28, 2000, Pyramid entered into a Developer Rights Assignment Agreement with RLC and Investment Group whereby it assigned its rights as "Developer" and "Declarant," as those terms were defined and used in the Declaration (Exhibit "1"), to RLC and Investment Group, a copy of which is attached to plaintiff's original Petition/Application as Exhibit "11" and incorporated herein by reference as Exhibit "11".

34. On an undetermined date a Notice of a Special Meeting of the members of the RPLOA was issued scheduling a Special Meeting of the members for Tuesday, January 23, 2001 at 7:00 p.m., a copy of the Notice is attached to plaintiff's original Petition/Application as Exhibit "12" and is incorporated herein by reference as Exhibit "12".

35. The stated purpose of the Special Meeting on January 23, 2001 was to allow the members of the RPLOA to vote on proposed changes to the By-laws of the RPLOA submitted by a "By-law Committee."

36. A copy of the By-laws which the RLPOA promulgated to its members that it claimed to be the most current version of the By-laws prior to the Special Meeting on January 23, 2001 is attached to plaintiff's original Petition/Application as Exhibit "13" and incorporated herein by reference as Exhibit "13".

37. The proposed changes to the By-laws included, but were not limited to, changes in the rights of Class B voters with regard to their election of representatives to sit on the Board of Directors of the RLPOA.

38. The proposed changes called for one (1) of the two (2) Class B Director positions to be changed to an "at large" director elected jointly by Class A and Class B members of the RLPOA. (Exhibit "12", pp. 3-4).

39. The proposed changes to the By-laws included, but were not limited to, a change in the rights of Class B voters with regard to voting on amendments to the By-laws by the members.

40. The existing By-laws provided that they could be amended by a "vote of a majority of a quorum of members." (Exhibit "13", Article XV).

41. The proposed changes allowed for an amendment of the By-laws by a "vote of a majority of the total votes of the Association, without regard to class, or by a vote of two-thirds of a quorum of Members present..." (Exhibit "12", p. 13).

42. The Special Meeting was held on January 23, 2001 and after discussion a vote was taken of the members on the proposed amendments to the By-laws.

43. An issue was raised as to whether RLC and Investment Group could vote on the proposed amendment because the RLPOA claimed that RLC and Investment Group were not current in the payment of the assessments on the property they owned in Raintree Lake.

44. At the time of the meeting RLC owned forty four (44) residential lots and Investment Group owned one (1) commercial lot in Raintree Lake.

45. After tabulation of the votes Don Archer ("Archer"), the Chairman of the Board of Directors of the RLPOA announced that 275 Class A members and 29 Class B members voted to accept the proposed amendments to the By-laws and 27 Class A members and 65 Class B

members voted to reject the proposed amendments to the By-laws. Archer further announced that if RLC was accorded 44 votes and Investment Group was accorded 1 vote, and the votes were counted 275 Class A members and 29 Class B members voted to accept the proposed amendments to the By-laws and 71 Class A members and 66 Class B members voted to reject the proposed amendments to the By-laws.

46. After Archer announced the results of the election he ruled the proposed amendments to the By-laws had failed to pass by a 2/3 majority of each Class, as required by Missouri statute, and that the proposed amendments failed.

47. A motion was then made and seconded challenging Archer's ruling and the members then voted on whether to overrule Archer.

48. A tabulation of the votes on Archer's ruling was made and Archer announced that 25 Class A members and 65 Class B members voted to affirm his ruling and 305 Class A and 29 Class B members voted to overturn his ruling. Archer further announced that if RLC's and Investment Group's votes were counted 69 Class A and 66 Class B members voted to affirm his ruling and 305 Class A and 29 Class B members voted to overturn his ruling.

49. Archer announced that he had been overruled and that the proposed amendments to the By-laws were deemed adopted.

**COUNT I: PETITION FOR DECLARATORY JUDGMENT THAT THE  
AMENDMENTS TO THE BYLAWS OF THE RLPOA PASSED ON MARCH 25, 1993  
WERE ILLEGAL BECAUSE THEY WERE PASSED AT A TIME WHEN THE RLPOA  
HAD BEEN FORFEITED BY THE MISSOURI SECRETARY OF STATE**

[EC]

50. RLC and Investment Group hereby incorporate paragraphs 1 through 49 of this First Amended Petition and Application by reference as through fully set forth herein.

51. At the March 25, 1993 RLPOA Annual Meeting of members the RLPOA voted on a proposed change to its By-laws concerning the composition of the Board of Directors of the RPLOA.

52. At the time of this meeting the trial court in Marshall had ordered that the Board of Directors of the RLPOA would consist of three (3) directors elected by Class A members, three (3) directors elected by Class B members and three (3) directors elected jointly by Class A and Class B members. (Exhibit "6", pp. 4-5).

53. At the March 25, 1993 RLPOA Annual Meeting the members voted to amend the By-laws of the association to change the composition of the Board of Directors so that it would consist of seven (7) directors elected by Class A members and two (2) directors elected by Class B members.

54. At the time of the March 25, 1993 Annual Meeting the RLPOA was forfeited for failure to file its annual report. (Exhibit "9").

55. On March 25, 1993 the relevant statute governing forfeiture of nonprofit corporations was Section 355.507, RSMo.

56. Section 355.507, RSMo did not provide for the relation back of any reinstatement to the date of forfeiture of a nonprofit corporation.

57. The action of the RLPOA in amending its By-laws to change the composition of the Board of Directors on March 25, 1993 was illegal due to the fact that it was taken while the RLPOA was forfeited.

58. The reinstatement of RLPOA which occurred on April 5, 1993 did not relate back to the date of RLPOA's forfeiture.

59. Since the amendment of the By-laws changing the composition of the Board of Directors was illegal any enforcement or exercise of the amendment is illegal.

60. Since the amendment of the By-laws changing the composition of the Board of Directors was illegal the composition of the Board of Directors of the RPLOA should be composed as ordered by the trial court in Marshall: three (3) directors elected by Class A members; three (3) directors elected by Class B members; and three (3) directors elected by Class A and Class B members jointly. (Exhibit "6", pp. 4-5)

WHEREFORE, RLC and Investment Group request the Court enter a judgment declaring RLPOA's amendment of its By-laws on March 25, 1993 was illegal because the RLPOA was forfeit at the time the amendment was made, enter a judgment declaring that the Board of Directors of the RPLOA should be composed of three (3) directors elected by Class A members, three (3) directors elected by Class B members, and three (3) directors elected by Class A and Class B members jointly, and for such other and further relief the Court deems just and equitable.

COUNT II: PETITION FOR DECLARATORY JUDGMENT THAT ANY  
ASSESSMENTS WHICH HAVE BEEN PAID BY PLAINTIFFS OR PRIOR  
DEVELOPERS/DECLARANTS TO THE RLPOA SINCE 1991 FOR RESIDENTIAL LOTS  
THEY HAVE NOT CONVEYED SHOULD BE REFUNDED  
[EC]

61. RLC and Investment Group hereby incorporate paragraphs 1 through 60 of this First Amended Petition and Application by reference as though fully set forth herein.

62. In Marshall v. Pyramid Development Corp., 855 S.W.2d 403, 408 (Mo. App. W.D. 1993) the Court of Appeals, in reversing the trial court, held that Section 7 of the Declaration of Covenants prohibited the commencement of any assessments against the Developer until the Developer's "property is conveyed (residential lot), or occupied (multi-family or commercial unit)." (Exhibit 10, p. 408).

63. In Marshall the Court of Appeals remanded the case to the trial court and ordered it to enter a judgment in accordance with its opinion. 855 S.W.2d at 409. (Exhibit "10", p. 409).

64. The trial court entered its Judgment in accordance with the opinion of the Court of Appeals on July 28, 1993.

65. Despite the ruling by the Court of Appeals in May 1993 and the Judgment of the trial court on July 28, 1993, the RLPOA continued to demand assessment charges against the Developers, including RLC, Investment Group and Pyramid, as defined by the Declaration of Covenants.

66. The RLPOA's demand of assessment charges against the Developers was in violation of the opinion of the Court of Appeals and the Judgment of the trial court entered on July 28, 1993.

67. Although the Developers paid certain assessments charged against them on residential lots they owned following 1991 they were under no obligation to do so.

WHEREFORE, RLC and Investment Group request the Court enter a judgment declaring the RLPOA's demands for assessments on RLC, Investment Group and Pyramid following July 28, 1993 were a violation of the trial court's Judgment of that date, that any assessment charges paid by RLC, Investment Group, and/or Pyramid following 1991 to the RLPOA should be refunded to RLC and Investment Group, the current Declarants/Developers and for such other and further relief the Court deems just and appropriate.

**COUNT III: PETITION FOR DECLARATORY JUDGMENT THAT PLAINTIFFS  
SHOULD NOT BE CHARGED ANY ASSESSMENTS ON RESIDENTIAL LOTS THEY OWN  
BY RLPOA UNTIL SUCH TIME AS THEY CONVEY THE RESIDENTIAL LOTS**  
[EC]

68. RLC and Investment Group hereby incorporate paragraphs 1 through 67 of this First Amended Petition and Application by reference as though fully set forth herein.

69. No assessments may be made on property owned by RLC and Investment Group in Raintree Lake until their residential lots are conveyed or their multi-family or commercial units are occupied.

