

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

DERALD MORGAN, RICK AND CINDY)
GRAVER, WILLIAM AND GLORIA PHIPPS,)
and DAVID LOTT,)

Complainants,)

v.)

File No. WC-2017-0037

CARL RICHARD MILLS,)
CARRIAGE OAKS ESTATES,)
DISTINCTIVE DESIGNS, and)
CARING AMERICANS TRUST)
FOUNDATION, INC. (f/k/a Caring)
Americans Foundation, Inc.))

Respondents.)

**SUGGESTIONS IN OPPOSITION TO
RESPONDENTS' MOTION TO DISMISS**

On September 6, 2016, Respondents moved to dismiss Complainants' Amended Petition filed in the above-captioned matter on the basis that the Missouri Public Service Commission (hereinafter "PSC") lacks jurisdiction over the Respondents and the claims asserted in the Amended Petition. Complainants now file the following Suggestions in Opposition to Respondents' Motion to Dismiss, on the basis that PSC does, in fact, have jurisdiction to hear this matter:

I. Background Information

Carriage Oaks, LLC (hereinafter "Carriage Oaks") owns, operates and maintains the water and sewer systems located at Carriage Oaks Estates subdivision. SEE Findings of Fact, Conclusions of Law and Judgment entered by the Honorable Jack Goodman on June 18, 2015, ¶35, attached hereto as **Exhibit 1**. None of the owners in Carriage Oaks Estates subdivision are members of Carriage Oaks, nor do they have any control or authority over Carriage Oaks. There

also exists an Association known as Carriage Oaks Estates Homeowners Association (hereinafter the “Association”), in which all owners in Carriage Oaks Estates subdivision are members. However, Respondent Carl Mills controls the majority voting interest in the Association by way of his position as developer, and runs the Association as he sees fit. Declaration of Restrictive Covenants & Easements for Carriage Oaks Estates, attached to Respondents’ Motion as **Exhibit A**. All decisions as to what maintenance and repair work are done to the water and sewer systems are made by Carl Mills as owner of Carriage Oaks, and all decisions as to payments to Carriage Oaks are made by Carl Mills, via the Association.

Each year, the owners in Carriage Oaks Estates subdivision pay an assessment to the Association, which Carriage Oaks uses to reimburse itself for all costs and expenses related to the water and sewer system. SEE 2015 General Ledger of Expenses of the Association, attached hereto as **Exhibit 2**. In addition, Carriage Oaks pays itself a fee every year for the so-called “services” it provides to the Association in maintaining and operating the water and sewer system. See Invoice for 2014 Services, attached hereto as **Exhibit 3**. Thus, the Association bears all of the expenses and costs associated with the water and sewer system, and then is forced to pay Carriage Oaks a fee for its services. **Exhibit 2; Exhibit 3**.

In or around mid-2016, Carriage Oaks purportedly transferred ownership of the water and sewer systems to Caring Americans Trust Foundation, Inc. (hereinafter “Caring Americans”), a Missouri non-profit corporation also under the control of Carl Mills. Like Carriage Oaks, none of the owners at Carriage Oaks Estates subdivision are members of this non-profit corporation, nor do they have any control or authority over the non-profit corporation. Complainants, through their counsel, sent multiple requests to Carl Mills asking that he transfer ownership of the water and sewer systems to either the Association or a new non-profit corporation in which all of the owners

were members. Complainants repeated requests were ignored, and they were left with no choice but to file their Complaint with PSC.

Now, Respondents have filed their Motion to Dismiss arguing that PSC lacks jurisdiction to hear the Complaint on the basis that Caring Americans is not a public utility subject to PSC regulations. Complainants contend that this Motion should be denied for the following reasons: (1) Caring Americans is a public utility in that it receives a financial gain for providing the water and sewer services; and (2) that the public interest analysis requires PSC to retain jurisdiction because the owners are not members of the corporation providing water and sewer service.

II. Caring Americans Trust Foundation, Inc. is a Public Utility Providing Services for Gain.

As pointed out in Respondents' Motion, the PSC has jurisdiction to regulate public utilities, which includes both water and sewer corporations. Section 386.020(59) RSMo., defines a water corporation as "every corporation...and person...owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water." Further, Section 386.020(49) RSMo., defines a sewer corporation as "every corporation...or person...owning, operating, controlling or managing any sewer system, plant or property, for the collection, carriage, treatment, or disposal of sewage anywhere within the state for gain, except that the term shall not include water systems with fewer than twenty-five outlets." Both Carriage Oaks and Caring Americans are public utilities subject to PSC regulation because they operate the water and sewer systems at Carriage Oaks Estates subdivision for gain.

As Respondents sole legal authority for why it does not operate the water and sewer system for gain, they rely on *Hurricane Deck Holding Co. v. Public Service Com'n of State*, 298 S.W.3d 260 (Mo. Ct. App. W.D. 2009). In *Hurricane*, one of the issues before the court was whether a

subdivision developer was operating a water and sewer system for gain. *Id.* The court noted that the phrase “for gain” was not specifically defined in the Public Service Commission Act; however, the court relied on the dictionary definition of gain in finding that “for gain” means “the operation of a water or sewer system for the purpose of receiving compensation.” *Id.* at 267; SEE ALSO *Osage Water Co. v. Miller County Water Auth., Inc.*, 950 S.W.2d 569, 574 (Mo. App. S.D. 1997). The court ultimately held that the developer was operating for gain, or compensation, when it sent a letter to homeowners itemizing costs for the water and sewer systems, and requesting payment from the homeowners. *Id.* Whether the developer received compensation or not was of no consequence to the court, it was the mere act of requesting compensation. *Id.* The court concluded that the developer was a “public utility” subject to PSC regulation. *Id.*

Respondents argue that they are not operating for gain because they do not receive a financial gain in providing the water and sewer services. Respondents further argue that the money received from the Association does not cover the costs to operate the water and sewer systems. Based on the Western District’s ruling in *Hurricane*, whether the Respondents make money is irrelevant in the analysis of whether it is operating for gain. Further, contrary to what Respondents have stated in their Motion, there is evidence that Respondents actually operate for gain.

As noted above, each year Respondents send an invoice to the Association requesting compensation for the “services” it provides in maintaining and operating the water and sewer system. **Exhibit 3.** Additionally, all expenses and costs associated with the maintenance and repair of the water and sewer systems are paid by the Association. **Exhibit 2.** Thus, there is no evidence whatsoever to support Respondents’ contention that it operates at a loss. Respondents are compensated as defined in the Western District’s ruling in *Hurricane* and, therefore, operate for gain.

Respondents also argue that they are exempt from the statutory definition of a sewer corporation because the sewer services provided by Respondents only serve five outlets. Upon information and belief, there are actually seven lots currently receiving sewer service from the sewer system. Further, there are approximately 60 lots in Carriage Oaks Estates subdivision that are connected to the sewer system, and would receive service as soon as the lots are developed. The developer has the undeveloped lots listed for sale and is actively marketing them to the public for development. Thus, while only five or seven lots may currently be receiving service, far more than twenty-five lots are connected to the sewer system with the potential for receiving service.

III. Public Interest Analysis Requires PSC to Retain Jurisdiction Because the Owners are Not Members of the Entity Controlling the Water and Sewer Systems.

In *State ex rel. M.O. Danciger & Company v. Public Serv. Comm'n*, the Missouri Supreme Court held that for a company to be considered a public utility its services must be devoted to the public use. SEE *Orler v. Folsom Ridge, LLC*, WC-2006-0082 (Mo. P.S.C. 2007) (citing *State ex rel. M.O. Danciger & Company v. Public Serv. Comm'n*, 205 S.W. 36 (Mo. banc 1918)). Stated another way, an entity is a public utility if it provides service to the general public indiscriminately. SEE *Orler v. Folsom Ridge, LLC*, WC-2006-0082. Finally, in the case, *In the Matter of Rocky Ridge Ranch Property Owners Association for an Order of the Public Service Commission Authorizing Cessation of the PSC Jurisdiction and Regulation Over its Operations*, the Commission determined that whether or not a not-for-profit corporation was considered a public utility turned on whether the utility customers were members of the not-for-profit corporation, also known as the "Public Interest Analysis." See *In the Matter of Rocky Ridge Ranch Property Owners Association for an Order of the Public Service Commission Authorizing Cessation of the PSC Jurisdiction and Regulation Over its Operations*, Case No. WD-93-307 (Mo. P.S.C.).

In *Rocky Ridge Ranch*, the Commission's staff had recommended three criteria for determining whether a not-for-profit qualified as a public utility. *Id.* The Commission ultimately decided that only one of the criteria was important, which was that the not-for-profit corporation must have all of its members as utility customers, and operate the utility only for the benefit of its members. *Id.* The Commission reasoned that the one criteria of membership satisfied the test set forth in *Danciger*. *Id.* The Commission determined in *Rocky Ridge Ranch* that the utility customers were all members of the Association and, therefore, held that the membership criteria was met. *Id.*

In the present case, none of the owners receiving utility service were ever members of Carriage Oaks, nor are they members of Caring Americans. The owners at Carriage Oaks Estates subdivision have no control or say over the operations of the water and sewer system, and there is nothing preventing Carriage Oaks or Caring Americans from providing water and sewer service to other persons or entities. The public interest analysis under *Rocky Ridge Ranch* requires the Commission to retain jurisdiction over this matter.

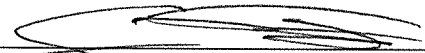
IV. Conclusion

Caring Americans qualifies as both a public water and sewer corporation, as it is operating the water and sewer systems at Carriage Oaks Estates subdivision for gain. However, even if the Commission determined that it was not operating the water and sewer systems for gain, the public interest analysis under *Rocky Ridge Ranch* requires the Commission to retain jurisdiction, as none of the owners receiving water and sewer service are members of the not-for-profit corporation. Respondents' Motion to Dismiss should be denied, and the Commission should retain jurisdiction over this matter.

Respectfully submitted,

SCHENEWERK & FINKENBINDER,
ATTORNEYS AT LAW, LLC

By:

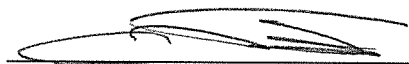

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CERTIFICATE OF SERVICE

The below signed counsel hereby certifies that a true and accurate copy of the foregoing was sent to all counsel of record via email on this 16 day of September, 2016.

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IN THE CIRCUIT COURT OF STONE COUNTY, MISSOURI

DERALD MORGAN, et ux.

Plaintiffs,

vs.

CARRIAGE OAKS ESTATES
HOMEOWNERS ASSOCIATION, et al.

Defendants.

Case No. 13SN-CC00046

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This matter comes on from advisement, the matter having been tried to the Court on the 11th day of February, 2015, at which time Plaintiffs appeared in person and by their attorneys Karl Finkenbinder and Cody A. Fenton, and Defendant Carl R. Mills appeared in person and by attorney Richard Anderson, and all other Defendants appeared by their corporate representative, Carl R. Mills, and by their attorney, Richard Anderson. Evidence was adduced on behalf of the Plaintiffs and all Defendants.

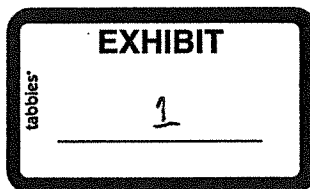
The Court has considered the testimony of each witness and has made judgments regarding the credibility of each witness. The Court has accepted some of the testimony of each witness as credible and rejected other parts of the testimony of each witness as not credible. The judgment of this Court is consistent with the Court's determination of the credibility of the evidence and of the witnesses.

After carefully considering the testimony and credibility of the witnesses, the trial exhibits and proposed findings of fact and conclusions of law of the parties, the Court finds as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Plaintiffs, John Derald Morgan and Elizabeth June Morgan, husband and wife, own Lot 3A/4A in Carriage Oaks Estates subdivision (hereinafter the "subdivision").
2. Defendant Carl R. Mills is the President of Carriage Oaks Estates Homeowners Association, Inc (hereinafter the "Association"), a Missouri not-for-profit corporation.
3. Defendant Carl R. Mills testified that he is both the sole member and managing member of Carriage Oaks, LLC.
4. Defendant Carl R. Mills testified that Distinctive Designs is a subsidiary of Mills Properties Group, LTD, which entities are owned by Defendant Carl R. Mills.

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JUN 18 2015
STONE COUNTY

Plaintiffs Own and Shall be Assessed for Only One Lot

5. According to the Replat of Carriage Oaks subdivision Phase II, filed by Defendant Carriage Oaks, LLC, in 2008, Plaintiffs only own one lot in Carriage Oaks Estates subdivision ("Replat", Plaintiffs' Exhibit 6). Defendant Mills also repeatedly testified that Plaintiffs only own one lot according to the current plat.

6. Since 2008, Plaintiffs have paid one assessment per year for the single lot they own in Carriage Oaks Estates subdivision.

7. Defendant Association has assessed Plaintiffs two assessments per year since 2009, despite the fact that Plaintiffs only own one lot.

8. On July 29, 2011, Defendant Association recorded a lien against Plaintiffs' property for the unpaid second assessment allegedly owed by them ("Assessment Lien", Plaintiffs' Exhibit 17).

9. Defendant Carl R. Mills, as President of the Association, testified at trial that, historically, assessments have been done on a per lot basis.

10. Defendant Carl R. Mills testified that dating back to when the first lot was purchased in 2003, lot owners have always been assessed one assessment for each lot owned in the subdivision.

11. Defendant Carl R. Mills admitted that assessments had never been based on square footage of a lot, the size of house on a lot, where the lot was located in the subdivision, the amount of road frontage a lot had, or the amount of utilities used by a particular lot.

The Declaration and Bylaws are Unambiguous

12. Purchasers of lots in Carriage Oaks Estates subdivision are subject to the Declaration of Restrictive Covenants and Easements for Carriage Oaks Estate R-1, recorded at book 380, page 1056 in the Stone County Recorder's Office ("Declaration", Plaintiffs' Exhibit 2).

13. A Declaration is a restrictive covenant between the developer, the association, and its members, and as such, is considered "a private contractual obligation generally governed by the same rules of construction applicable to any covenant or contract." *Wildflower Community Association, Inv. v. Rinderknecht*, 25 S.W.3d 530 (Mo. App. W.D. 2000) (quoting *Kling v. Taylor-Morley, Inc.*, 929 S.W.2d 816, 819 (Mo. App. W.D. 1996)).

14. Unless the contractual provisions are ambiguous, the contract language alone is used to determine the parties' intent. *Rinderknecht*, 25 S.W.3d at 534 (citing *Dwyer v. Unit Power, Inc.*, 965 S.W.2d 301, 307 (Mo. App. W.D. 1998)).

15. The Court finds the provisions of the Declaration and Bylaws to be unambiguous, and looks to the language found in the Declaration to determine the intent of the parties.

16. Article V of the Declaration provides the following with respect to assessments: "Rates for any of the foregoing charges or assessments, once established, may be changed from time to time as may be necessary to meet economic practicalities or the expected costs of future needs; but in every instance shall be uniform as to comparable properties within the Subdivision..." Art. V, Sec. 3 Declaration. [Emphasis Added]

17. Carriage Oaks Estates subdivision is subject to the control of the Association.

18. The Association is subject to the Bylaws of Carriage Oaks Estates Homeowners Association (the "Bylaws") adopted on October 20, 1999.

19. Article VI of the Bylaws, relating to the duties of the Board of Directors, states as follows:

Section 2. Duties. It shall be the duty of the Board of Directors to...:

(c) As more fully provided herein and in the Declaration:

(1) To fix the amount of the quarterly, semi [sic] annual or annual assessment in accordance with the Declaration against each Lot at least thirty (30) days in advance of each assessment period...

Art. VI, Sec. 2(c)(1) Bylaws.

20. The Declaration and Bylaws are unambiguous, and when read together it is clear that the assessments are to be assessed against each lot.

21. The Court finds and holds that Plaintiffs only own one lot in Carriage Oaks Estates subdivision, as the Replat filed by Carriage Oaks, LLC, shows Lot 3A/4A as one lot on the plat.

22. The evidence shows that to date there have been no criteria used to determine how assessments should be charged to owners in the subdivision other than a uniform assessment per lot owned.

Lots Repurchased by Developer

23. Defendant Carriage Oaks, LLC, is the Developer of Carriage Oaks Estates subdivision.

24. Defendant Carl R. Mills admitted that Defendant Carriage Oaks, LLC, has repurchased four lots that were sold from its original inventory.

25. Defendant Carl R. Mills admitted that Defendant Carriage Oaks, LLC, does not pay assessments on the lots that it repurchased and placed back into inventory.

26. It is the position of Defendant Carriage Oaks, LLC, that it is not responsible for paying assessments on lots it has repurchased.

27. Defendant Carriage Oaks, LLC, relies on the language found in Article V of the Declaration which states that lot owners are liable for assessments, "...subject only to the

exclusion of charges or assessments as against lots owned by the Developer/Owner **but not sold or built on.**" Art. V, Sec. 3 Declaration [**Emphasis Added**].

28. A plain reading of this section reveals that the Developer is only exempt from paying assessments on lots that have neither been sold nor built on. There is no mention of an exemption in the Developer's favor for lots that it repurchases after it has already sold the lots.

29. The Court finds and holds that the four lots are lots that have been sold, and that the Developer's exemption found in Article V, Section 3 of the Declaration no longer applies to those lots.

Water and Sewer System

30. Plaintiffs requested a declaratory judgment that Defendants could not sell the water delivery system serving Carriage Oaks Estates Subdivision.

31. Article IV of the Declaration states as follows:

"The costs for the central water well and sewer treatment facility including piping, valves, pumps, motors, **tanks** and all components necessary for the operation of such, **shall be born [sic] by the Owner of the development and installed by the developer.**" [**Emphasis Added**]

32. The Declaration of Restrictive Covenants and Easements for Carriage Oaks Estates, Article IX, Section 4(D) states: "The Association will allow the Developer/Owner to transfer and convey to any public authority, municipal corporation or private corporation certificate (sic) by the Public Service Commission of Missouri, said sewage/disposal/ treatment system, and or Central well either with or without monetary consideration therefore, and such conveyance shall be any (sic) such public authority municipal corporation, or certificate private corporation capable of accepting such conveyance and thereafter performing all functions relating to the construction, maintenance, operation, repair, improvement and regulation of the systems." Article III, Section 21 of the Declaration further states that "[A]ny right, power or authority reserved herein [to] the Developer/Owner, by written instrument filed or recorded, may be sold by the Developer/Owner to a property owners association, private or public utility, or private corporation." The Court finds no reason the above provision is not binding upon the parties as written and denies that request of Plaintiffs. Defendant Carl R. Mills testified that Defendant Carriage Oaks, LLC, installed the water and sewer system for Carriage Oaks Estates subdivision.

33. Defendant Carl R. Mills testified that Defendant Carriage Oaks, LLC, still owns the water and sewer system utilized by Carriage Oaks Estates subdivision.

34. No party adduced credible evidence to contradict ownership of the water and sewer system by Defendant Carriage Oaks, LLC.

35. The Court finds that Carriage Oaks, LLC, owns the Water and Sewer systems serving the subdivision.

36. In their proposed judgment with findings of fact and conclusions of law, Plaintiffs

included an order declaring that Carriage Oaks, LLC, owns the water and sewer system, and that Carriage Oaks, LLC, is responsible for the costs of upgrading the water tank to accommodate higher water usage. However, in their Second Amended Petition, Plaintiffs prayed for an order declaring that the Association was the owner of the sewer and water system and made no prayer for relief that any Defendant be required to upgrade any part of the system. While the evidence supported such relief, it was not included in the pleadings and there is no evidence the Defendants were on notice such relief would be pursued at trial.

Record Production

37. Section 355.826 RSMo., provides that a member of a nonprofit corporation has a right to inspect the records of the corporation upon reasonable request.
38. Carriage Oaks Estates Homeowners Association is a Missouri nonprofit corporation that is subject to the provision of Chapter 355 RSMo.
39. Pursuant to Article IX, Section 1 of the Declaration, Plaintiffs, as owners of a lot in Carriage Oaks Estates subdivision, are members of Carriage Oaks Estates Homeowners Association.
40. Plaintiff Darold Morgan testified that he had sent Defendants two written requests to inspect the records of the Association.
41. Plaintiff Darold Morgan testified he did not have the opportunity to review the records of the Association until after this lawsuit was commenced and discovery was propounded.
42. The Court finds that Plaintiffs were entitled to inspect the records of the Association.

The Association Improperly Paid \$1500 in Fees

43. Defendant Carriage Oaks, LLC, was involved in a dispute with Plaintiffs regarding whether or not the subdivision roads were installed properly.
44. This dispute did not involve the Association, as the roads were installed by Mills Properties Group, LTD.
45. The roads have been dedicated to the Association, and the Association is responsible for their repair and upkeep.
46. The adequacy or deficiency of the road installation was not an issue that was tried before this Court.
47. The issue before this Court was whether it was proper for the Association to pay legal and architectural fees of \$1,500.00 associated with the dispute over the road installation.
48. Defendant Carl R. Mills admitted that the legal costs and architectural fees for Mills Properties Group, LTD, in preparing to defend itself against the aforesaid claims were paid out of the Association's account.

49. Standing is a threshold question which must be addressed prior to the merits of a litigant's claim, because if a party lacks standing a court has no jurisdiction to grant the relief requested and the case must be dismissed. *Miller v. City of Arnold*, 254 S.W.3d 249, 252 (Mo.App. E.D.2008); see also *State ex rel. Williams v. Marsh*, 626 S.W.2d 223, 227 n. 6 (Mo. banc 1982) (standing is considered "a jurisdictional matter antecedent to the right of relief."). *Brunner v. City of Arnold*, 427 S.W.3d 201, 211 (Mo. Ct. App. 2013), transfer denied (Jan. 30, 2014), transfer denied (Apr. 29, 2014)

50. The court finds that Plaintiffs, as members of the Association, which is a not-for-profit corporation, lack standing to bring an action for unjust enrichment on behalf of the Association against Mills Properties Group. LTD. Rather, the appropriate action would be a derivative action to challenge the *ultra vires* acts of the not-for-profit corporation. *Blue Cross & Blue Shield of Missouri v. Nixon*, 81 S.W.3d 546, 552 (Mo. Ct. App. 2002).

Trespass onto Plaintiffs' Property

51. The court found no credible evidence to support Plaintiffs' claim for trespass.

Attorney's Fees

52. Plaintiffs assert that they incurred attorneys' fees in bringing this suit, which sought a declaratory judgment that the Association is to have an annual meeting and to pass an annual budget, as well as to enforce their right to inspect the records of the Association.

53. The issues regarding the annual meeting and annual budget were resolved on summary judgment granted in favor of Plaintiffs.

54. Not until the hearing on Plaintiffs' Motion for Summary Judgment, less than two weeks before the trial of this matter, did Defendants admit they were required to have an annual meeting and pass an annual budget.

55. Plaintiffs were not given the opportunity to inspect the records of the Association until after the lawsuit had been filed and written discovery was sent to Defendants.

56. Other than litigation expenses, Plaintiffs offered no proof of any damage sustained by Plaintiffs by reason of the failure of the Homeowners' Association to have annual meetings or adopt annual budgets. Plaintiff J. Derald Morgan testified he incurred approximately \$28,000 in attorneys' fees, but offered no evidence or testimony as to what part of those fees was incurred specifically in regard to enforcing a right to annual meetings, budgets or review of corporate records as opposed to the issues related to lot assessments or Plaintiffs' claims related to unjust enrichment or trespass.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Judgment be and is hereby entered on Plaintiffs' Second Amended Petition as follows:

On Count I of Plaintiffs' Second Amended Petition, the Court Orders and Declares that Plaintiffs only owe one assessment for the one lot (Lot 3A/4A) they own in Carriage Oaks Estates subdivision, to wit:

All of Lot Three-A/Four-A (3-A/4-A), formerly separate lots Three-A (3-A) and Four-A (4-A), final plat Carriage Oaks Estates, Phase Two (2), Stone County, Missouri, according to the recorded plat thereof

and Plaintiffs are current in their payment of assessments due to date;

Under Count I of Plaintiffs' Second Amended Petition, the court Orders and Declares that the four lots described as follows:

All of Lot Ten "A" (10A), Final Plat Carriage Oaks Estates Phase II, According to the Recorded Plat Thereof, in Plat Book 51, Page 97, Stone County Recorder's Office, Stone County, Missouri AND

Lot 7, Carriage Oaks Estates, Phase 1, Final Plat, A Subdivision per the Recorded Plat Thereof, in Stone County, Missouri, Book 45, Pages 62-65 AND

All of Lot Nine "A" (9A), Replat of a Part of Carriage Oaks Estates Phase II & Adjacent Land S12-T22N-R23W, According to the Recorded Plat Thereof, in Plat Book 71, at Page 22, Stone County Recorder's Office, Stone County, Missouri AND

All of Lot (6A) Final Plat of Carriage Oaks Estates, Phase II According to the Recorded Plat Thereof, In Plat Book 51, Page 97, Stone County Recorder's Office, Stone County, Missouri, (Which Drawing Was Replaced by) Final Plat Drawing No. 6-0804096FINAL Dated Nov. 17, 2008, By CConsent of Lot Owner Williams Above and Filed for Record in Stone County, Missouri on Dec. 1, 2008, Instrument No. 200800020009 IN Book 71, Page 22 and 23

(all per Plaintiffs Exhibits 39, 40, 41, 42)

repurchased by Defendant Carriage Oaks, LLC, are not exempt from assessment by virtue of being repurchased by the developer of the subdivision and have not been exempt since they were originally sold by the developer of the subdivision. The Court further Orders and Declares that the Association shall assess the aforesaid lots for all years due and unpaid under this Order.

Under Count I of Plaintiffs' Second Amended Petition, Plaintiffs requested a declaratory judgment that Defendants could not sell the water delivery system serving Carriage Oaks Estates Subdivision. The Court denies that request.

On Count I of Plaintiffs' Second Amended Petition, the Court previously entered partial summary judgment and ordered Carriage Oaks Estates Homeowners Association to hold an annual meeting and pass an annual budget, but reserved the question of attorney fees. As the award of attorney fees in such claims is discretionary under §355.241.3, R.S.Mo., and no appropriate evidence was presented, the court declines to award attorney fees on Count I.

On Count II of Plaintiffs' Second Amended Petition, the court finds that Plaintiff J. Derald Morgan testified he incurred approximately \$28,000 in attorneys' fees, but offered

evidence or testimony as to what part of those fees was incurred specifically in regard to enforcing a right to review corporate records, as opposed to the issues related to his obligation for payment of assessments, or his claims related to unjust enrichment or trespass. Given the lack of evidence of attorney fees incurred on this claim, the court awards Plaintiffs an attorney fee of \$1,000.00 on Count II.

On Count III of Plaintiffs' Second Amended Petition, the Court enters an order quieting title to Plaintiffs' property described as follows:

All of Lot Three-A/Four-A (3-A/4-A), formerly separate lots Three-A (3-A) and Four-A (4-A), final plat Carriage Oaks Estates, Phase Two (2), Stone County, Missouri, according to the recorded plat thereof

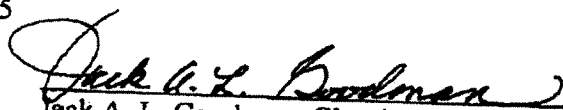
in Plaintiffs John Derald Morgan and Elizabeth June Morgan, husband and wife, against any claims of Defendants, and ordering that the lien filed against Plaintiffs' property described above and filed for record as Instrument number 201100012084 in the office of the Recorder of Deeds for Stone County, Missouri, is invalid, and that Defendants shall release said lien;

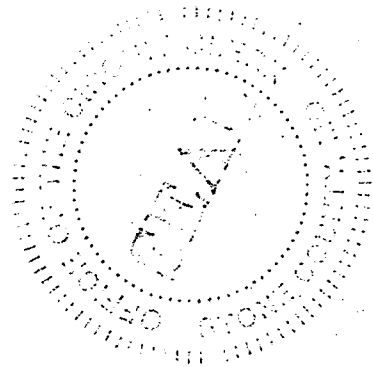
On Count IV of Plaintiffs' Second Amended Petition, the Court hold that it lacks jurisdiction to grant the relief sought by Plaintiffs, as Plaintiffs lack standing to assert a claim for unjust enrichment on behalf of the Carriage Oaks Estates Homeowners Association;

On Count V of Plaintiffs' Second Amended Petition, the Court enters judgment for Defendants.

The costs of this action are taxed to the Defendants. This judgment is final for purposes of appeal. Parties are instructed to retrieve their exhibits from the Circuit Clerks office after June 22, 2015.

SO ORDERED this 18th day of June, 2015

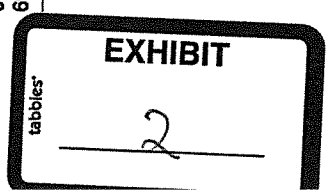

Jack A. L. Goodman, Circuit Judge



FILED
CIRCUIT COURT
JUN 18 2015
STONE COUNTY

Carriage Oaks Estates HOA, INC
General Ledger
As of December 31, 2015

Type	Date	Num	Name	Memo	Split	Amount	Balance
US Bank							
Check	1/28/2015	1451	Neel Mills		Maintenance	-90.00	649.69
Check	1/30/2015	1452	Century Tel		Utilities	-37.15	559.69
Deposit	1/30/2015	Dep	Phillips	Deposit	Assessment	1,250.00	522.54
Deposit	1/30/2015	Dep	Funk	Deposit	Assessment	1,250.00	1,772.54
Deposit	1/30/2015	Dep	Mills	Deposit	Assessment	4,272.54	3,022.54
Deposit	1/30/2015	Dep	Morgan	Deposit	Assessment	1,250.00	4,272.54
Check	2/4/2015	1453	White River Electric	Deposit	Water & Sewer U...	-166.91	5,522.54
Check	2/17/2015	1454	Century Tel		Utilities	-43.15	5,312.48
Deposit	2/19/2015	Dep	Graner	Deposit	Assessment	1,250.00	6,562.48
Deposit	2/19/2015	Dep	Sykes	Deposit	Assessment	1,250.00	7,812.48
Deposit	2/19/2015	Dep	Lot	Deposit	Assessment	1,250.00	9,062.48
Check	3/2/2015	1455	White River Electric		Water & Sewer U...	-135.26	8,927.22
Check	3/5/2015	1456	BBP Lab		Sewer Treatment...	-125.00	8,802.22
Check	3/17/2015	1457	Century Tel		Utilities	-37.15	8,765.07
Check	4/1/2015	1458	Steve holiday		sewer Plant Serv...	-65.00	8,700.07
Check	4/8/2015	1459	White River Electric		Water & Sewer U...	-142.36	8,557.71
Check	4/16/2015	1460	Nippis Fritz & Assoc		Tax Return	-255.00	8,302.71
Check	5/2/2015	1461	BBP Lab		Sewer Treatment...	-125.00	8,177.71
Check	5/10/2015	1462	White River Electric		Water & Sewer U...	-194.06	7,983.65
Check	5/18/2015	1463	C R Mills		Supplies	-50.25	7,933.40
Check	5/18/2015	1464	Century Tel		Utilities	-37.20	7,896.20
Check	5/22/2015	ACH	US BANK		order new checks	-105.59	7,790.61
Check	5/22/2015	1465	Scott Mathas		Maintenance	-287.00	7,503.61
Check	6/2/2015	1466	White River Electric		Water & Sewer U...	-220.04	7,283.57
Check	6/2/2015	1467	Richard Anderson		Legal Fees	-2,000.00	5,283.57
Check	7/3/2015	1468	Richard Anderson		Legal Fees	-8,773.15	-3,489.58
Deposit	7/3/2015	Dep	C R Mills	Deposit	Loan from C R M...	6,000.00	2,510.42
Check	7/10/2015	1469	White River Electric		Water & Sewer U...	-221.24	2,289.18
Check	7/16/2015	1470	S & L Enterprises		sewer Plant Serv...	-499.55	1,789.63
Check	7/22/2015	1471	Brenn Tag Mid South		Supplies	-408.73	1,382.90
Check	8/6/2015	1472	Century Tel		Utilities	-37.77	1,345.13
Check	8/6/2015	1473	White River Electric		Water & Sewer U...	-329.94	1,015.19
Check	8/18/2015	1474	Century Tel		Utilities	-37.76	977.43
Check	8/25/2015	1475	Alan Grlin		Maintenance	-112.00	865.43
Check	8/25/2015	1476	Steve holiday		sewer Plant Serv...	-1,695.28	-829.85
Check	8/28/2015	1477	C R Mills	Deposit	Loan from C R M...	2,000.00	1,170.15
Deposit	8/28/2015	dep	White River Electric		Water & Sewer U...	-355.86	814.29
Check	9/8/2015	1478	BBP Lab		Sewer Treatment...	-125.00	689.29
Check	9/13/2015	1479	Mo Dept of Natural Res...	Deposit	State Operating ...	-300.00	389.29
Check	9/25/2015	1479	C R Mills		Loan from C R M...	2,000.00	2,389.29
Check	9/28/2015	1480	Mike Stalzer Eng		Water System Ev...	-300.00	2,089.29
Check	10/15/2015	1481	Century Tel		Utilities	-37.76	2,051.53
Check	10/15/2015	1482	White River Electric		Water & Sewer U...	-310.30	1,741.23
Check	10/20/2015	1483	Century Tel		Utilities	-82.72	1,658.51
Deposit	10/25/2015	dep	Carriage Oaks LLC	lots 6A 7-9A 10A	Assessment	12,310.00	13,968.51
Check	10/28/2015	1484	Distinctive Designs	invoice 61347...	Re Pay Loan for s. Holiday Park	12,105.52	11,862.99
Check	10/28/2015	1485	Distinctive Designs	water and sewer...	Maintenance	-6,250.00	5,612.99
Check	11/2/2015	1486	BBP Lab		Sewer Treatment...	-125.00	5,487.99



Carriage Oaks Estates HOA, INC
General Ledger
As of December 31, 2015

Type	Date	Num	Name	Memo	Split	Amount	Balance
Check	11/2/2015	1487	White River Electric			-232.84	5,255.15
Check	11/28/2015	1488	White River Electric			-160.30	5,094.85
Check	12/19/2015	1489	Century Tel	phone gate		-39.38	5,055.47
Total US Bank						4,405.78	5,055.47
Accounts Receivable							0.00
Total Accounts Receivable							0.00
Undeposited Funds							0.00
Total Undeposited Funds							0.00
Furniture and Equipment							0.00
Total Furniture and Equipment							0.00
Marketable Securities							0.00
Total Marketable Securities							0.00
Other Assets							0.00
Total Other Assets							0.00
Security Deposits Asset							0.00
Total Security Deposits Asset							0.00
Accounts Payable							0.00
Total Accounts Payable							0.00
Payroll Liabilities							0.00
Total Payroll Liabilities							0.00
Other Liabilities							0.00
Total Other Liabilities							0.00
Opening Balance Equity							-458.45
Total Opening Balance Equity							-458.45
Perm. Restricted Net Assets							0.00
Total Perm. Restricted Net Assets							0.00
Temp. Restricted Net Assets							0.00
Total Temp. Restricted Net Assets							0.00
Unrestricted Net Assets							-191.24
Total Unrestricted Net Assets							-191.24

Distinctive Designs Ltd.

Div. Mills Properties Group Ltd.

209 Falling Leaf Court
Branson West, MO 65737
(417) 338-8870
Fax (417) 338-0521

Jan. 30, 2015

Paid 10-28-15
CK # 1485

Invoice for 2014 Services

Carriage Oaks Estates Subdivision
209 Falling Leaf Court
Branson West, MO. 75737

Management for calendar year 2014 of, Carriage Oaks Estates Subdivision, Sewer Treatment Plant & Water Well, Facilities. Operating and Maintaining these facilities includes: A weekly check of operating equipment, for functioning ability of motors, monitors and signaling devices, inspection of grounds for fallen trees, overgrown vegetations, including filter bed, and checking chemical levels. Collecting water samples from the Water Well annually, until at least ten homes, or twenty five persons reside in the subdivision. Collect samples of sewer treatment plant quarterly, and prepare a test report as required for the MDNR. The monthly cost is \$350.00, and does not include grounds maintenance work on or around the Well or Wastewater Treatment Facility. Chemicals used at the facilities, and testing are separate including Chlorine Tablets, De-Chlorination Tablets, Prestofloc C-100 55 gallon drums. And are determined by the commercial suppliers are subject to change, will be supplied at cost.

Cost for 2014 year above described services. \$4,200.00

Maintenance costs being separate from above, include: Sewer Treatment Plant facility, Brush-hogging, as needed for large growth, regular mowing for small grass areas, weed-eating for steep inclines and outside Filter Bed fenced area, removal of overgrown brush, cut up and/or remove fallen trees near filter bed. Remove vegetation from filter bed in Spring and Fall, or as required by MDNR. Accompany MDNR on any inspections requested. Clean Recirculation Pumps/Motors and Filter Baskets in Recirculation Tank annually for fecal material. Check each year, and Pump out Flocculation Tank as needed. Renew Operating Permit with MDNR when required, and keep permit current annually. Schedule all Carriage Oaks property owners to pump out Septic tanks, and clean Pump/motor and filter baskets every three (3) years in August starting 2014 year.

Cost for 2014 year above described services. \$2,250.00

All other outside service costs such as, vendors supplying repairs of/or new equipment, electricians, repairmen, new requirements from the MDNR, engineers or skilled labor for repairs or all pearls, and pumping outservices, are not included in the above invoice.

