

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT INDEPENDENCE**

RAINTREE LAKE PROPERTY OWNERS )	)	
ASSOCIATION, INC., )	)	
	)	
Plaintiff, )	)	
	)	Case No.1416-CV29713
v. )	)	Division 12
	)	
LEWIS W. STOUT, JR., et al., )	)	
	)	
Defendants. )	)	

**JUDGMENT**

NOW on this 28th day of August, 2015, the Court enters judgment on the above-captioned matter. A trial on the merits was conducted on August 21, 2015. Plaintiff Raintree Lake Property Owners Association, Inc., having appeared by representative and by counsel, James H. Ensz. Defendants Lewis W. Stout, Jr. and Marla R. Stout, having appeared in person and by counsel, Theodore Hoefle. Evidence was presented and testimony heard. The Court took the matter under advisement.

The Court having considered the pleadings, evidence, and the arguments of counsel hereby enters the following findings of fact, conclusions of law and judgment.

**FINDINGS OF FACT**

1. Plaintiff Raintree Lake Home Owners Association (hereinafter “Raintree Lake” or “Plaintiff Raintree Lake”) filed its Petition for Mandatory Injunction and Associated Relief on December 29, 2014, requesting that the Court order Defendants Lewis W. Stout, Jr. and Marla R. Stout (hereinafter “Defendants”) to remove their purple-colored swing set from their property and the subdivision, that the Court award fines, and that the Court award reasonable attorney fees and costs incurred.
2. Defendants filed their answer to Plaintiff’s Petition for Mandatory Injunction and Associated Relief on February 27, 2015, asserting various affirmative defenses.
3. A trial on the merits was conducted on August 21, 2015 before this Court.
4. Plaintiff presented evidence alleging that Defendants were parties to “Declarations of Covenants, Conditions and Restrictions” (hereinafter “Restriction

Agreement”), dated October 29, 1973, and that Defendants were in violation of Article VII, Section 3 of the Restriction Agreement by the erection of the purple swing set at issue in the above-captioned matter.

5. Article VII, Section 3 of the Restriction Agreement provides that Defendants will not make “improvements, alterations, repairs, change of paint colors, excavations, changes in grade or other work which in any way alters the exterior of any property or the improvements located thereon” or “as relates to any structure on the property to commence it, erect it, make it, or do it” without prior written approval of the property owners association’s Architectural Review Board.

6. Plaintiff Raintree Lake presented evidence suggesting that Defendants were in breach of the Restriction Agreement when they erected a purple-colored swing set on their property without the written approval of the Architectural Review Board.

7. Defendants presented evidence that attempts were made to obtain the approval of the Architecture Review Board but that an arbitrary standard was used by the Board, preventing the approval.

8. Defendants also presented testimony that the color of the swing set met the requirement as set forth in the Raintree Lake Property Owners Association Architectural Review Board Guidelines which states for swings sets and play equipment: “Color: must be subdued and within harmony with other colors of the community including slides, swings and canopies.”

### **CONCLUSIONS OF LAW**

Plaintiff Raintree Lake failed to establish that it is entitled to injunctive relief pursuant to § 526.030, R.S.Mo., and is therefore not entitled to judgment on its Petition for Mandatory Injunction and Associated Relief. An action seeking an injunction is an action in equity. “An injunction is an extraordinary and harsh remedy and should not be granted where there is an adequate remedy at law.” *City of Greenwood v. Martin Marietta Materials, Inc.*, 311 S.W.3d 258, 265 (Mo. App. 2010) citing *City of Kansas City v. N.Y.-Kan. Bldg. Assocs., L.P.*, 96 S.W. 3d 846, 855 (Mo. App. W.D. 2002). The elements for a claim for injunction include: (1) irreparable harm, and (2) lack of adequate remedy at law. *Id.* Irreparable harm may be found when pecuniary remedies fail to provide adequate reimbursement for the improper behavior. *Id.* at 266. There is no

“adequate remedy at law” when damages will not adequately compensate the plaintiff for the injury or threatened injury. *Id.* at 265-266.

Plaintiff Raintree Lake failed to present evidence as to the element of irreparable harm. There was no evidence presented to this Court that Plaintiff Raintree Lake will or has suffered irreparable harm as a result of the erection and/or color of the swing set. Although, as stated previously, irreparable harm may be found when pecuniary remedies fail to provide adequate reimbursement for the improper behavior, the evidence before the Court was that Defendants were initially fined in regards to the swing set but that fine was then set aside by Plaintiff Raintree Lake’s own Appeals Board. Plaintiff Raintree Lake failed to meet the first element required under Missouri law for permanent injunctive relief and therefore is not entitled to the relief requested in its Petition for Mandatory Injunction and Associated Relief. As the Court has found that Plaintiff Raintree Lake failed to prove the element of irreparable harm, the Court finds that it is unnecessary to address the second element, that there is no adequate remedy at law.

**JUDGMENT**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Court finds in favor of Defendants and against Plaintiff as to Plaintiff’s Petition for Mandatory Injunction and Associated Relief.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff’s request for the award of fines is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff’s request for reasonable attorney fees is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants’ request for reasonable attorney fees is denied.

IT IS SO ORDERED.

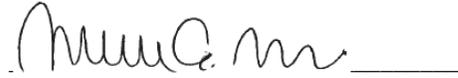
Date: August 28, 2015

  
\_\_\_\_\_  
Judge Jennifer M. Phillips  
Division 12

**CERTIFICATE OF MAILING**

It is hereby certified that a copy of the forgoing was sent via the e-filing system  
this 28th day of August, 2015, to the following:

JAMES H ENSZ  
THEODORE ROY HOEFLE

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Law Clerk