

**IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI  
ASSOCIATE DIVISION**

<i>SACRE COEUR II HOMEOWNERS</i>	)	
<i>ASSOCIATION TRUSTEES, ET AL.,</i>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>Cause No. 09SL-AC09702</b>
<b>v.</b>	)	
	)	<b>Division No. 36M</b>
<b>RICHARD M. TURNER,</b>	)	
	)	
	)	
<b>Defendant.</b>	)	

---

**FINDINGS OF FACT,  
AND CONCLUSIONS OF LAW  
ORDER AND JUDGMENT**

The above entitled action was called for trial on August 24, 2009 at which time the Plaintiff was present and represented by counsel and the Defendant was acting pro se. After the Plaintiff rested their case the Defendant attempted to present their case, including affirmative defenses which had not been plead prior to trial and requested at that time they be allowed to obtain counsel. The court granted the Defendant's request for continuance over the Plaintiff's objection. The Defendant through their counsel filed affirmative defenses and a counter petition on November 9, 2009. The court held a hearing regarding the Plaintiff's motion to strike the affirmative defenses and the counter petition on November 23, 2009 ruling the affirmative defenses would not be struck but the counter petition was struck by the court. The matter was again called for trial on December 14, 2009 and evidence was presented by both parties.

**FINDINGS OF FACT**

1. The lots in the Sacre Coeur II subdivision are subject to the Indenture of Trust and Restrictions (“Restrictions”) as filed in the St. Louis County Recorder of Deeds and introduced as Plaintiffs’ Exhibit 1.
2. The Restrictions provide that all lot owners must pay the proportionate share of common assessments.
3. Richard Turner is an owner and has an interest in the residence commonly known and numbered as 1078 Patience Drive, Florissant, Missouri 63034. Mr. Turner testified that he purchased the residence in 1985 and that he continues to own the property although he has not resided there since 1993.
4. The residence located at 1078 Patience Drive, Florissant, Missouri 63034 is a home subject to the Restrictions of the Sacre Coeur II Homeowners Association.
5. Defendant has failed to pay the annual assessments from 2003 through 2009 in the amount of \$700.00. The Defendant testified that he has not paid any assessments since 1988. He further testified that he believed he was permitted not to pay those assessments if he maintained property he believed was common ground although not actual agreement was ever memorialized by the association.
6. The Restrictions authorize the imposition of interest charges at the rate of 12% per annum on any past due common expense assessments or installments thereof.  
(Restrictions at Article V subsection 2).
7. As of the date of the filing of the Petition, defendant owed \$299.00 in accrued interest on the past due assessments.
8. Plaintiffs are entitled to recover the costs of collection including reimbursement of lien fees pursuant to the restrictions. (Restrictions at Article V, subsection 2).

9. The Defendant owes the Plaintiffs \$413.00 for the recovery of costs of collection and reimbursement of lien fees.
10. The Restrictions authorize the Plaintiffs to recover its reasonable attorneys' fees and court costs from the Defendant. (Restrictions at Article VI and V, subsection 2).
11. The Plaintiffs are entitled to recover from the Defendant \$4,529.00 as and for its reasonable attorneys' fees and costs.
12. Defendant has not lived at the residence at 1078 Patience Drive, Florissant, Missouri 63034 since 1993.
13. The Defendant testified that since he moved from the residence in 1993 he has not personally performed any grass cutting for the common ground. Rather he testified that his children who reside at the property have preformed such work. As the Defendant has not performed any services to the common grounds of the association since 1993.
14. Other than the island of the cul-de-sac, Defendant did not mow any other common grounds. The Defendant mistakenly believed that he was mowing common ground behind his house, when in fact the property in which he alleges to have mowed was not common grounds of the association.
15. There was no waiving of assessments given to the Defendant from 2030 through 2009.

### **CONCLUSIONS OF LAW**

1. The applicable statute of limitations is V.A.M.S. §516.110, which requires an action upon any writing for the payment of money to be brought within ten years.
2. The Restrictions are a valid and binding contract between the Defendant and all other owners of lots in the Sacre Coeur II subdivision, which may be enforced by the Plaintiff Trustees herein.

3. Plaintiffs carried its burden and proved that they are entitled to recover assessments, interest, collection costs and attorneys' fees from Defendant pursuant to the Restrictions.
4. Defendant failed to carry his burden to prove that he performed work for the Homeowners Association which would entitle him to payment from the Association or waiver of payment of assessments.
5. Defendant failed to carry his burden to prove that there was any authority to waive the assessments pursuant to the Restrictions.
6. Plaintiff is entitled to recover from Defendant reasonable attorneys' fees pursuant to Article VI Section 17.
7. Plaintiff is also entitled to recover its reasonable attorneys' fees pursuant to Article V Section 2 wherein the Restrictions states that, "such assessment may be enforced in the same manner as is provided by law for the enforcement of special tax liens against real estate" which said law allows for the recovery of attorneys' fees. For failing to carry his burden, the Defendant is not entitled to the offset of any amounts that are owed to the Plaintiffs by Defendant.
8. For failing to carry his burden, the Defendant is not entitled to recover anything from Plaintiffs.

Wherefore for the previously stated reasons the court enters judgment in favor of the Plaintiff's and against the Defendant in the amount of \$700.00 in unpaid assessments, Interest in the amount of 12% per annum \$306.00, recovery costs \$413.00 and attorney fees of \$4,529.00 for a total of \$5948.00.

SO ORDERED:

---