In the Missouri Court of Appeals
Eastern District

DIVISION TWO

RAINTREE PLANTATION PROPERTY OWNERS ASSOCIATION, INC.,	)	No. ED109793
	)	
	)	Appeal from the Circuit Court of
Respondent,	)	Jefferson County
	)	Cause No. 15JE-CC00809
vs.	)	
	)	
DAVID TUCKER, et al.,	)	Honorable Michael J. Fagras
	)	
Respondents,	)	Filed: May 24, 2022

Before Robert M. Clayton III, P.J., Gary M. Gaertner, Jr., J., Thomas C. Clark II, J.

MEMORANDUM SUPPLEMENTING ORDER AFFIRMING JUDGMENT PURSUANT TO RULE 84.16(b)

This memorandum is for the information of the parties and sets forth the reasons for the order affirming the judgment.

THIS STATEMENT DOES NOT CONSTITUTE A FORMAL OPINION OF THIS COURT. IT IS NOT UNIFORMLY AVAILABLE. IT SHALL NOT BE REPORTED, CITED, OR OTHERWISE USED IN UNRELATED CASES BEFORE THIS COURT OR ANY OTHER COURT. IN THE EVENT OF THE FILING OF A MOTION FOR REHEARING OR TRANSFER TO THE SUPREME COURT, A COPY OF THIS MEMORANDUM SHALL BE ATTACHED TO ANY SUCH MOTION.

This case illustrates the tangle of issues arising from successive litigation involving the same subject matter. Appellant Mary Lou Watson (Watson or Objector) appeals from the third court decision in the last eleven years related to the interpretation and application of a single paragraph of the Raintree Plantation Subdivision (Subdivision or Raintree) restrictive covenant. Two previous decisions established contradictory rules for different portions of the Subdivision, without support in the covenant's language. The trial court's unenviable task was to reconcile as best it could these two previous adjudications with a unified rule for the entire Subdivision. The court deftly navigated this thicket, did not abuse its discretion, and its determinations did not misapply the law. We affirm the judgment.

Facts and Procedural Background

Raintree was established in 1979. The Subdivision was designed as a resort community, which included a lake, a country club and the residential properties. Originally the Subdivision consisted of 19 plats, known as Sections 1-19. The Subdivision arrangement was memorialized and recorded in a restrictive covenant. The covenant's paragraph 4(c) addresses the relationship between Raintree Country Club (Club) and the subdivision residents and has been the subject of most of the later litigation and controversy.

In 1987, six new plats were added to the Subdivision and further identified as Section 20-25. At the same time, an "Amended Covenant and Restriction Covering Lots in Raintree Plantation Subdivision" (Covenant) was entered. As amended and restated in 1987, paragraph 4(c) reads as follows:

> All lot owners have a non-transferrable right to, and shall be deemed social members of any country club or golf course constructed on property heretofore owned by RAINTREE PLANTATION, INC., subject to their payment of dues and user charges. Such membership can be modified or terminated by the owner or governing body of the Club or Golf Course. No dues schedule termination or modification shall be reviewable by any Court or Government Agency. Annual dues as established solely by such Club or Golf Course may be collected by

> Grantor and turned over to the Club or Course. If any lot owner fails or refuses to pay said dues, all lots owned by that individual will lose all rights to be a member. In addition, all unpaid and delinquent dues presently set at $120.00 shall be treated as unpaid assessments and shall become a lien on said lot and enforceable the same as unpaid assessments with any penalties provided herein.

This Covenant remains in effect.

The Covenant also creates a Raintree Property Owners' Association (POA). The Raintree lot owners vote on the POA's board membership and they may also vote on matters involving the Subdivision. The Covenant clarifies that "matters requiring a vote" include "assessments, altering or deleting the restrictions, or electing trustees or Board of Directors of the [POA], and approving and amending by-laws of any such [POA]."

In 2008, owners in Sections 20-25 brought a class action lawsuit seeking to terminate their membership at the Club. The trial court certified a plaintiff class consisting of only the lot owners in those Sections. The Club was a named defendant. In 2011, the circuit court entered judgment in favor of the Club (2011 decision). Following the language of the Covenant, the court interpreted paragraph 4(c) to create "mandatory membership" at the Club for those living in Sections 20-25. Analyzing the language specifying that membership "can be modified or terminated by the owner or governing body of the Club or Golf Course," the court concluded that only the Club, not the individual lot owners, may terminate Club membership. This initial 2011 decision was appealed to this court, which affirmed the trial court in an order with a supplemental memorandum pursuant to Rule 84.16(b).[1] In affirming the judgment, this court paraphrased the Covenant's requirement as follows: "All lot owners 'shall be deemed social

[1] All rules references are to Missouri Supreme Court Rules (2022). The previous decision is *Anderson v. First State Community Bank of Hillsboro, Missouri*, Case No. ED97147 (Mo. App. E.D. Mar. 27, 2012). Pursuant to Local Rule 405, we consider our decision in *Anderson* when analyzing this related case.

members of any country club or golf course constructed on property heretofore owned by [the developer] . . .'" *Anderson*, supplemental memorandum at *5.

In 2012, the Raintree lot owners voted to approve an amendment eliminating Paragraph 4(c) from the Covenant. This prompted a second round of litigation, where the Club sought to compel the payment of dues. This case was not a class action; the Club was the plaintiff and the POA was the sole defendant. In an interlocutory "Judgment Granting Summary Judgment Motions in Part," the circuit court concluded that the vote eliminating Paragraph 4(c) was ineffective as applied to Sections 20-25 because the 2011 decision unequivocally stated that the Sections 20-25 lot owners were Club members and only the Club could terminate their membership.

The court reached a different conclusion, however, about the applicability to the lot owners in Section 1-19, and to a third portion of the Subdivision called Raintree Forest. Considering the "2011 Judgment specifically did not govern these other portions of the Subdivision," the court concluded that the vote eliminating Paragraph 4(c) was valid as applied to Sections 1-19 and Raintree Forest. The court set the matter for trial on the remaining disputed issues. Subsequently, the parties agreed to a "Judgment" that absorbed the court's partial summary judgment, further clarifying that the "Partial Summary Judgment . . . shall be deemed final in all respects" except for one minor correction not relevant to this appeal. Notably, this decision (the 2014 decision) clearly specifies that paragraph 4(c) "only applies to Sections 20-25 of [Raintree] and has no applicability to Sections 1-19 and Raintree Forest," and that the POA "shall be forever prohibited from amending, deleting or modifying in any way" the language of paragraph 4(c).

Following the 2014 decision, the minority of lot owners possessing in Sections 20-25 were required to pay Club dues while the majority of lot owners living in Sections 1-19 were not. Subsequently, the amount of dues assessed on Section 20-25 rose dramatically, from $239.29 in 2014 to $938.12 in 2021. In 2015, the Club sought to adopt by a vote of the residents a new rule imposing an equal assessment of club dues on all lots, as well as a new rule requiring a vote for any future fee increases. The POA filed suit to prevent a vote on the Club's proposal, initiating the third (and current) round of litigation on this subject. In its petition, the POA sought to proceed on a class basis representing all Raintree lot owners.

After successful intervention by a lot owner possessing in Sections 20-25, the POA reversed its position and filed an amended petition, this time seeking a judgment establishing that all Raintree lot owners were subject to paragraph 4(c). The POA also requested that the court set aside the 2014 decision on equitable grounds pursuant to Rule 74.06(b)(5). Following settlement discussions between the parties, a class of all Raintree lot owners was certified pursuant to Rule 52.10, allowing class adjudication "by or against the members of an unincorporated association."

In March 2020, a lot owner possessing in Sections 1-19, Susan Rauls, sought to intervene in the case. The trial court denied intervention, concluding that Rauls had been aware of the litigation for years and her intervention was untimely. Rauls did not appeal that decision.

On June 3, 2020, the circuit court granted preliminary approval of a class settlement providing that all Raintree lot owners are members of the Club and subject to Club dues. The proposed settlement sets the annual dues at $255 per lot and allows a maximum yearly increase limited to the amount of the annual Consumer Price Index increase, and not to exceed 2%. The circuit court ordered that notice be given to the class.

Following preliminary approval of the class settlement proposing to distribute the fee assessment among all lot owners regardless of their section number affiliation, Watson and a minority of Raintree residents rose in opposition. On July 7 and 12, 2020, Watson filed two objections to the proposed settlement.[2] In total, 299 objections (167 timely) were filed, out of a total of 2,281 lot owners possessing in the Subdivision. On January 13, 2021, the court conducted a final fairness hearing and heard Objector's motion to dismiss and to decertify the class. On March 31, 2021, the court overruled Objector's motions and objections, entered judgment and set aside the 2014 decision. Specifically, the court found "the 2014 decision failed to follow the [2011] Decision," recognized the incompatibility of these decisions and further held that the class is relieved from any binding effect in the 2014 decision pursuant to Rule 74.06(b)(5). The circuit court approved the proposed settlement. Objector now appeals.

Jurisdiction on Appeal

Initially, Respondents move to dismiss the appeal because Objector did not intervene and was not a party below. We conclude that Missouri law is to the contrary and deny the motion.

In Missouri, "[t]he right to appeal is purely statutory and, where a statute does not give a right to appeal, no right exists." *Planned Parenthood of St. Louis Region v. Missouri Dep't of Soc. Services*, 639 S.W.3d 449, 454 (Mo. App. E.D. 2021) (quoting *Wilson v. City of St. Louis*, 600 S.W.3d 763, 767 (Mo. banc 2020)); *see also State ex rel. Koster v. ConocoPhillips Co.*, 493 S.W.3d 397, 399 (Mo. banc 2016). "An appeal without statutory sanction confers no authority upon an appellate court except to enter an order dismissing the appeal." *Id.* (quoting *Wunderlich*

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[2] Watson filed both individually and as a member of a group of "Designated Objectors." Among this group of objectors, only Watson has appealed. For ease of reading, we refer to both Watson's individual submissions and her filings as part of the objector group interchangeably as "Watson's" or "Objector's" in this Opinion.

v. Wunderlich, 505 S.W.3d 434, 436 (Mo. App. W.D. 2016)); *Fannie Mae v. Truong*, 361 S.W.3d 400, 405 (Mo. banc 2012).

Section 512.020 governs the general right to appeal a civil judgment.[3] The statute provides the right to appeal to any "party to a suit aggrieved by any judgment." *Id.* Objector was not a named party and did not attempt to intervene. But she participated extensively as an objector and is bound by the court's class action judgment. Therefore, the question presented is whether Objector is a "party" who may appeal under § 512.020 and Rule 52.10.

The Western District recently addressed this same question in *Paulson v. Dynamic Pet Products, LLC*, 560 S.W.3d 583, 589 (Mo. App. W.D. 2018). Citing *Devlin v. Scardelletti*, 536 U.S. 1, 10 (2002), the court held that an objector could appeal in class actions without becoming a party through intervention. *Paulson*, 560 S.W.3d at 589. While our class action rules (Rules 52.08 and 52.10) are not identical to their federal analogs (F.R.C.P. 23 and 23.02), they are closely parallel, and federal precedent is therefore persuasive here. *Ralph v. American Family Mut. Ins. Co.*, 809 S.W.2d 173, 174 (Mo. App. E.D. 1991). Considering *Devlin* and *Paulson* hold that the objector is a party for appeal purposes, we similarly conclude Watson enjoys that status under the rule and § 512.020. As an objecting class member, Watson will be bound by the judgment and has a right to be heard on appeal. The motion to dismiss is therefore denied.

Discussion

Point I — Res Judicata

In Point I, the Objector argues that the judgment must be reversed because it failed to respect the *res judicata* effect of the 2014 decision. This point fails to adequately challenge the

[3] All statutory references are to RSMo. 2016.

basis for the trial court's decision. The circuit court concluded that the 2014 decision was "inequitable" and set it aside under Rule 74.06(b)(5). The rule provides:

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment or order [if] . . . it is no longer equitable that the judgment remain in force.

This rule permits relief from a judgment that has "prospective" (i.e., future-looking) effect through traditional equitable methods. *Hollins v. Capital Sols. Investments I, Inc.*, 477 S.W.3d 19, 26 (Mo. App. E.D. 2015) (quoting *Juenger v. Brookdale Farms*, 871 S.W.2d 629, 631 (Mo. App. E.D. 1994)). The trial court properly applied this rule in setting aside the 2014 judgment.

Objector's argument does not address this issue under Rule 74.06(b)(5) or traditional notions of equity. A Rule 74.06 action is a separate proceeding and appellate review analyzes the trial court's decision to set aside a judgment for abuse of discretion. *See In re Marriage of Hendrix*, 183 S.W.3d 582, 587 (Mo. banc 2006). While Objector's point briefly references the court's decision to set aside the 2014 decision, the primary focus is on *res judicata*. More to the point, the body of Objector's argument targets the 2014 decision's supposed *res judicata* effect, not the trial court's application of Rule 74.06(b)(5). Objector's brief does not adequately raise or preserve a challenge to the judgment setting aside the 2014 decision. *See Lexow v. Boeing Co.*, SC99199, at *6 (Mo. banc Mar. 15, 2022) (dismissing appeal; noting "allegations of error not briefed or not properly briefed shall not be considered in any civil appeal") (citing *Macke v. Patton*, 591 S.W.3d 865, 869 (Mo. banc 2019), and Rules 84.04(d) and 84.13(a)). The only issue presented is *res judicata*, but a judgment that has been set aside lacks *res judicata* effect. *Cf. Walker v. Walker*, 280 S.W.3d 634, 636 (Mo. App. W.D. 2009) (*res judicata* does not bar Rule 74.06 claim). Contrary to Objector's argument, the point lacks merit and is denied.

Objector's failure to adequately challenge the trial court's Rule 74.06 determination has a significant impact. Her arguments in all five of her points on appeal rely, implicitly or explicitly,

on the 2014 judgment and the distinction it drew between Section 20-25 lot owners and other Raintree lot owners. Considering the trial court's decision to set aside the 2014 judgment is relevant to every other point on appeal, we also address the equitable basis for the trial court's decision. The 2014 decision failed to follow the 2011 decision's reasoning and created a distinction between Raintree property owners without correctly applying the Covenant's language. The subsequent increase in Club dues assessed to those living in Section 20-25 demonstrate the effects of this inequitable result. Significantly, both the Club and the POA now agree that the 2014 decision must be set aside after both parties participated in the litigation that led to that judgment. This supports the trial court's conclusion that it is no longer equitable for the previous 2014 decision to remain in effect, especially where the same 2014 decision was at least partially finalized by agreement.[4]

In short, the trial court did not abuse its discretion in setting aside the 2014 decision. Objector fails to challenge that determination on appeal. As a result, her *res judicata* claim fails.

Points II and III — Certification of Class

In point II, Objector appeals the circuit court's decision to certify a class of all Raintree lot owners and denying Objector's motion to decertify. In Point III, Objector challenges a similar court decision appointing Dottie Schwantner as a class representative and objects to class certification for that reason. The arguments substantially overlap and we consider them together.

Our review of a class certification decision is limited. Whether a case should proceed as a class action "rests within the sound discretion of the trial court." *State ex rel. Coca–Cola Co. v. Nixon*, 249 S.W.3d 855, 860 (Mo. banc 2008). "An abuse of discretion occurs when a trial

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[4] Considering Objector was not a party to the 2014 decision, any hypothetical *res judicata* claim is further attenuated.

court's ruling is clearly against the logic of the circumstances then before the court and is so unreasonable and arbitrary that it shocks the sense of justice and indicates a lack of careful, deliberate consideration." *Hancock v. Shook*, 100 S.W.3d 786, 795 (Mo. banc 2003). "If reasonable persons can differ as to the propriety of the trial court's action, then it cannot be said that the trial court abused its discretion." *Id.*

This case was formulated as class action under Rule 52.10, which states as follows:

> 52.10. Actions Relating to Unincorporated Associations
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> An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 52.08(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 52.08(e).
>
> Nothing in this Rule shall be construed to affect the rights or liabilities of labor unions to sue or be sued.

This "rule provides class status for the members of an unincorporated association 'to give "entity treatment" to the association when for formal reasons it cannot sue or be sued as a jural person . . .'" *Executive Bd. of Missouri Baptist Convention v. Carnahan*, 170 S.W.3d 437, 445 (Mo. App. W.D. 2005) (quoting *State ex inf. Ashcroft v. Kansas City Firefighters Local No. 42*, 672 S.W.2d 99, 118 (Mo. App. W.D. 1984)). An unincorporated association of this type may be governed by its own internal rules, constitution and by-laws. *Id.* at 445-46. It may sometimes be unclear who has the "standing" to bring an action on the association's behalf. *Id.* at 445. Regardless, "Rule 52.10 indicates that *someone* has the ability" to do so. *Id.*

Objector argues that this case should not have been certified under this rule because the class in question, all Raintree lot owners, lack the requisite association relationship necessary to constitute an unincorporated association and the class

representative, the Intervenor, was an inadequate class representative because she owns a lot in Sections 20-25. We disagree.

The Raintree property owners entered a voluntary association relationship when they purchased a lot within Raintree and became subject to its Covenant and the governance mechanisms of the Subdivision. That association relationship is sufficient to support class certification under Rule 52.10. Like *Carnahan*, Raintree operates according to a set of written rules or by-laws and functions as an unincorporated association. In fact, Missouri courts have previously utilized class-action procedures, without extensive discussion, in disputes involving subdivision assessments. *See Lake Tishomingo Property Owners Ass'n v. Cronin*, 679 S.W.2d 852 (Mo. banc 1984); *Lake Wauwanoka, Inc. v. Spain*, 622 S.W.2d 309 (Mo. App. E.D. 1981). Class-action procedures are appropriate here pursuant to Rule 52.10.

Although Objector opposes Intervenor's involvement, the *Carnahan* court holds that Rule 52.10 commands "*someone* has the ability" to act as representative of the unincorporated association. 170 S.W.3d at 445. Clearly, any owner in Raintree would have some degree of interest in the outcome of these proceedings. All lot owners share the class's core interests, which is reconciliation of the irregular previous judgments and a long-term resolution of the ongoing litigation issues plaguing the Subdivision. The parties in this case took extraordinary steps, well beyond what is required by Rule 52.10,[5] to give notice to all Raintree property owners and hear their objections to the proposed

[5] Class certification and representation has additional requirements under Rule 52.08, which requires common questions of law and fact, that a representative's claims be "typical" of the class, and additional procedural steps. Our analysis is not applicable under Rule 52.08.

resolution. These measures demonstrate Intervenor's vigorous, fair and appropriate actions as class representative.

As a result, Objector was notified of the proceeding and had a full and fair opportunity to develop her position through months of litigation. Having heard her argument, the trial court simply rejected it as lacking merit. This does not reflect on the inadequacy of any representation. While in every way benefiting from a procedure consistent with the most fundamental and revered due process standards, Objector advocated for an alternative outcome — specifically, to maintain the 2014 decision — that was addressed and litigated on the merits.[6] Moreover, the Covenant created the POA, whose board members are elected by vote of the lot owners, to provide representation to everyone purchasing a Raintree lot. The POA's participation and eventual consent to the settlement agreement further supports our conclusion that the class was well represented in this matter. The trial court did not abuse its discretion in certifying a class and these points are denied.

Point IV — Due Process

Objector's fourth point contends that the judgment violated Objector's due process rights under the U.S. Constitution's Fourteenth Amendment. The target of Objector's due process objection is the trial court's certification of a class and our review is again for abuse of discretion. *State ex rel. Coca–Cola Co.*, 249 S.W.3d at 860.

"The essence of due process guarantees [1] notice and [2] an opportunity to be heard." *Carmed 45, LLC v. Huff*, 630 S.W.3d 842, 854 (Mo. App. E.D. 2021). "This does not mean that

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[6] Although the circuit court reserved a more-than-adequate one-half of one day to accommodate the arguments raised by Objector and her like-minded associates, ultimately the court accepted their collective testimony for a period of time closer to eight hours to ensure everyone was heard and had an opportunity to participate to the process.

the same type of process is required in every instance; rather due process is flexible and calls for such procedural requirements as the particular situation demands." *St. Louis Ass'n of Realtors v. City of Florissant*, 632 S.W.3d 414, 426 (Mo. App. E.D. 2021) (quoting *State ex rel. Nixon v. Peterson*, 253 S.W.3d 77, 82 (Mo. banc 2008)).

Here, the record shows that Raintree property owners had ample notice of the litigation regarding Club dues. In addition to the formal class notice provided by order of the court, the ongoing progress of these legal proceedings was discussed at open POA meetings and both the minutes and in some cases audio recordings of those meetings were posted publicly online. In addition, the record shows that the ongoing litigation was discussed in a variety of other public fora preceding the settlement. These facts show more than satisfactory notice for purposes of due process. In addition, the circuit court gave Raintree lot owners a full opportunity to be heard and voice their objections, both in writing and in a lengthy hearing. The two core requirements of due process — notice and an opportunity to be heard — are present here. The point is denied.

Point V — Settlement Fairness

Objector's fifth point contends that the trial court erred in approving the parties' settlement agreement as fair and reasonable. "In reviewing the class-action settlement to determine whether it is fair, reasonable, and adequate . . . we apply an abuse of discretion standard." *Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 265 (Mo. App. E.D. 2011).

The settlement in this case provides substantial benefit to Raintree lot owners. By setting the annual club assessment at a fixed sum ($255) and mandating that it can only increase by the lesser of CPI inflation or 2%, the settlement eliminates the Club's right to unilaterally set Club dues. This substantial benefit to lot owners strongly weighs in favor of the trial court's decision to approve the settlement.

Objector argues that the settlement is unreasonable because it imposes Club dues on every lot owner and, Objector contends, only owners possessing in Sections 20-25 should be required to pay Club dues. In other words, Objector reiterates her complaint that the court did not follow the 2014 decision. Again, however, Objector's arguments fail to undermine the trial court's decision to set aside that judgment. Having already concluded that the court appropriately set aside that decision when addressing Point I, and that Objector's appeal fails to adequately challenge that determination, we do not find that the court abused its discretion in approving a settlement that imposed dues equally on all Raintree lot owners. Moreover, the trial court cannot abuse its discretion when treating all lot owners the same, as reinforced in the plain language of the Covenant. Point denied.

Point VI — Lack of Jurisdiction

Objector's final point contends that the circuit court "had no jurisdiction to amend" the Covenant. Challenging the circuit court's subject matter jurisdiction, Objector's point is meritless because Missouri's circuit courts have "original jurisdiction over *all* cases and matters, civil and criminal." *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249, 253 (Mo. banc 2009) (quoting Mo. Const. Article V, section 14 and adding emphasis). Nonetheless, we exercise our discretion to review the substance of plaintiff's arguments and determine whether the trial court exceeded its authority.

In essence, Objector asserts that the trial court went too far when entering relief that effectively amended the Raintree Covenant. Objector cites *Lake Wauwanoka*, 622 S.W.2d 309, which held that the court lacked authority to judicially reform a restrictive covenant. Respondents counter by citing *Lake Tishomingo*, 679 S.W.2d 852, and other cases concerning

the courts' inherent authority to equitably distribute the costs of maintaining a subdivision, even when not specifically enumerated in the subdivision covenant.

While Respondent's citation to *Lake Tishomingo* and its companions is helpful, we do not need to rely on those cases here. Unlike in *Lake Tishomingo*, the Raintree Covenant obligates the lot owners to pay dues. In *Lake Tishomingo*, the court exercised its own inherent authority to achieve an equitable result, requiring all lot owners to contribute. 679 S.W.2d at 857. Here, the circuit court did not need to exercise its inherent authority to create this result. Rather, that was the result mandated by the Covenant itself, which imposes the payment obligation by express language in paragraph 4(c). The circuit court correctly interpreted the parties' agreement and the language of the Covenant, formalizing an outcome within the intent and meaning of the parties. The court-approved settlement agreement does not contradict or amend the Covenant; it addresses ambiguities both in its terms and created by previous litigation.[7] *Lake Wauwanoka* does not apply and the point is denied.

Conclusion

The judgment of the trial court is affirmed.

PER CURIAM.

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[7] Pursuant to the settlement agreement, the parties chose to limit the Club's ability to increase assessment rates. The amount of the assessment is capped and any incremental increase rate is strictly defined. The Club did not appeal this limitation on its authority and Objector does not challenge it on appeal.