

V015-7

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

CASE TYPE: OTHER CIVIL

Ct. File No.

Afton Court Homeowners Association, Inc.,

Plaintiff,

v.

SUMMONS

Adam Murray,

Defendants.

THIS SUMMONS IS DIRECTED TO ADAM MURRAY.

1. YOU ARE BEING SUED. The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this summons.

2. YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS. You must give or mail to the person who signed this summons a **written response** called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this Summons located at:

HELTZER & HOUGHTALING, P.A.
413 Wacouta Street, Suite 430
Saint Paul, MN 55101

3. YOU MUST RESPOND TO EACH CLAIM. The Answer is your written response to the Plaintiffs' Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiffs should not be given everything asked for in the Complaint, you must say so in your Answer.

4. YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS. If you do not answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff

everything asked for in the Complaint. If you do not want to contest the claims stated in the Complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the Complaint.

5. LEGAL ASSISTANCE. You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.

6. ALTERNATIVE DISPUTE RESOLUTION. The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

HELTZER & HOUGHTALING, P.A.

Date: January 27, 2015

By /s/ Rebecca Heltzer
Rebecca J. Heltzer (#0202423)
413 Wacouta Street, Suite 430
St. Paul, MN 55101
(651) 330-8508
(651) 340-9138 facsimile

ATTORNEYS FOR PLAINTIFF

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

CASE TYPE: CONTRACT

Ct. File No.

Afton Court Homeowners Association, Inc.

Plaintiff,

v.

COMPLAINT

Adam Murray,

Defendant.

Plaintiff brings this action of breach of contract, unjust enrichment and enforcement of covenants restricting the use of certain property located in Ramsey County. Plaintiff, for its Complaint against defendant, states and alleges as follows:

JURISDICTION AND VENUE

1. This Court enjoys subject matter jurisdiction over the claims asserted by reason of Minn. Stat. § 484.01.
2. This Court enjoys personal jurisdiction over defendant Adam Murray and this matter is properly venued in Ramsey County inasmuch as the defendants resides or does business in Ramsey County and the cause of action arose in Ramsey County.

PARTIES

3. Plaintiff Afton Court Homeowners Association, Inc. (Association”) is a Minnesota nonprofit corporation with a registered address of 1627B Upper Afton Road, St. Paul, MN 55106.

Ramsey County, Minnesota.

4. Defendant Adam Murray is the owner of a town home located at 1625A Upper Afton Road, St. Paul, MN 55106, legally described as "Lot 6, Block 1, Afton Court 2, Ramsey County, Minnesota, together with appurtenant easements created pursuant to Declaration Document No. 2186741, as amended" (the "Property"). Upon information and belief, Adam Murray resides at 385 Cimarron, Lake Elmo, MN 55042 as this is the address listed with Ramsey County Property Records & Revenue as the correct mailing address for Mr. Murray as the taxpayer for the Property.

FACTS

5. Defendant Adam Murray became a member of the Association through his ownership of the Property and thereby became obligated to abide by the terms and conditions set forth in the Declaration of Covenants, Conditions and Restrictions ("Declaration") for the Association. The Declaration was recorded in the Ramsey County Recorder's Office on July 27, 1983 as Document No. 2186741. An Amendment to Declaration of Covenants, Conditions and Restrictions was recorded on November 6, 1984 as Document No. 2242370. A second Amendment to Declaration of Covenants, Conditions and Restrictions was recorded on November 5, 1986 as Document No. 2341805.

6. The Declaration establishes restrictive covenants that run with the real property. The Association and defendant Murray are both bound by the restrictive covenants as set forth in the Declaration.

7. Pursuant to the Declaration, the Association is responsible for the repair and maintenance of common areas as well as enforcement of the restrictive covenants set forth in the Declaration.

8. As an owner of a town home, defendant Murray is also a member of the Association and subject to the governing documents of the Association inclusive of its bylaws (hereinafter "Bylaws") and rules and regulations as authorized by the Bylaws (hereinafter "Rules and Regulations").

9. Pursuant to the Declaration and Bylaws, the Association levies annual and special assessments (collectively "Assessments") against the individual real property lots where the town homes are located subject to the Declaration to pay maintenance and administrative costs.

10. Pursuant to the Declaration, "any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of five (5%) per annum".

11. Pursuant to the Declaration, each Assessment, "together with interest, costs and reasonable attorney's fees shall be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due".

12. The annual assessments charged to each town home lot are determined by the Board of Directors of the Association in the final months previous to the following year. The annual assessments are payable in monthly installments. The monthly installment for the annual assessment charged to the Property was \$208.00 in 2014 and 2015. Defendant Murray did not pay the monthly installment for the annual assessment for the months of July – December 2014 and January 2015, subjecting him to finance charges.

13. The Association also charges to each lot owner a special assessment of \$100 each quarter. Defendant Murray did not pay the quarterly special assessment for the months of August and November 2014.

14. The Rules and Regulations grant the Association the authority to charge individual

owners for excess charges associated with an owner's accumulation of excess garbage and overflow from the designated sanitary containers.

15. The Association has charged defendant Murray \$172.32 for excess refuse related to defendant Murray's occupancy of his town home.

16. The Rules and Regulations prohibit the rental of town homes until an owner has "lived in the unit a minimum of a year from their date of occupancy".

17. The Rules and Regulations require an owner of a town home who is renting out the town home to provide the Association the owner's new contact information inclusive of new address.

18. The Declaration prohibits a town home owner from allowing noxious or offensive activities upon their property that may become an annoyance or nuisance to the neighborhood.

17. The Declaration prohibits any "activity which disturbs the peace, comfort or serenity of the owners".

18. The Rules and Regulations contain parking regulations that apply to all owners, inclusive of defendant Murray. The parking regulations specifically prohibit the long-term storage of trailers.

19. The Rules and Regulations require that all pets must be leashed when on any Association common property and pet owners must clean up all pet waste.

20. Upon information and belief, defendant Murray leased either a part of or all of the Property to Louis Miranda and other unknown persons in late spring or early summer 2014.

21. Upon information and belief, defendant Murray vacated the Property on or about October 1, 2014, leaving it in the sole possession of defendant Murray's tenants. Defendant Murray

has not provided the Association his new address as required by the Rules and Regulations.

22. Defendant Murray had not occupied the Property for one full year prior to vacating it and leasing it to third parties.

23. Upon information and belief, defendant Murray did not properly register his town home as a rental property with the City of St. Paul pursuant to City ordinances and did not acquire a Certificate of Occupancy allowing his town home to be used as a rental property.

24. The occupants of the Property have a dog that they allow to run off-leash in violation of the Rules and Regulations.

25. The occupants of the Property have dumped refuse and garbage from the Property onto the back deck of the Property which then subsequently blew off the Property onto common areas causing neighboring property owners to complain to the Association.

26. The occupants of the Property have allowed their dog to excrete on the back deck of the Property causing unsightly and unsanitary conditions which negatively affect the other Association owners and the value of their homes.

27. The occupants of the Property have overflowed the trash containers servicing the Property resulting in added trash hauling costs in the amount of \$172.32 which have been assessed to defendant Murray and remain unpaid.

28. Defendant Murray has allowed a trailer to be parked upon his Property underneath his deck and in the back yard area in violation of the Rules and Regulations.

29. By an email to an Association Board member dated October 16, 2014, defendant Murray notified the Association that Mr. Murray believed his tenants are dealing drugs from the Property. The occupants of the Property have a continual stream of traffic into and out of the

Property at all hours of the day and night which upon information and belief, the Association believes may be related to illegal drug trafficking at the Property or the operation of a commercial business which is in violation of the Declaration's restrictive covenants.

30. Since February 1, 2014 through the date of this Complaint, there have been 12 police calls to the Property to address the noxious and offensive activity that has been occurring on the Property.

31. Despite demands made to defendant Murray to abate the Declaration's prohibition against noxious and offensive activity at the Property as well as other violations of the Rules and Regulations, defendant Murray has done nothing to abate the activity occurring within and on his Property.

32. Upon information and belief, defendant Murray does not currently occupy the Property as his primary residence.

COUNT ONE
VIOLATION OF COVENANTS

33. Plaintiff restates and realleges each and every allegation and thing in all the proceeding paragraphs as though fully set forth herein.

34. Defendant Murray has breached the restrictive covenants encumbering the Property by failing to pay assessments, interest and late charges therein which amount total \$1,843.86 as reflected on the Statement attached hereto as Exhibit No. 1.

35. Defendant Murray has breached the restrictive covenants encumbering the Property by leasing out the Property in violation of the Rules and Regulations.

36. Defendant Murray has breached the restrictive covenants encumbering the Property by allowing drug trafficking or some other form of commercial business to occur on the Property in

violation of the Declaration.

37. Defendant Murray has breached the restrictive covenants encumbering the Property by allowing activity from the Property that “disturbs the peace, comfort or serenity of the owners” as reflected in the over 12 police calls, the presence of excess refuse, storage of a trailer, the presence of a commercial vehicle, repeated parking violations, excrement of pets on the deck, the failure to leash pets that run free in common areas and the continual flow of commercial traffic to and from the Property.

38. Defendant Murray has breached the restrictive covenants encumbering the Property by not keeping the garbage and trash flowing from his Property within the appropriate sanitary containers.

39. The Association has suffered damages by the failure of defendant Murray to pay the monthly assessment, special assessments and excess garbage fees in an amount in excess of \$1,843.86, plus attorney fees and costs associated with the Association’s enforcement of the Declaration, Bylaws and Rules and Regulations.

40. The Declaration allows for the Association to seek an equitable remedy to enforce the terms of the Declaration.

41. The Association is also entitled to an Order enjoining defendant Murray from violation of the Declaration and its restrictive covenants and the Rules and Regulations, directing that he abate the violations forthwith.

COUNT TWO
BREACH OF CONTRACT

42. Plaintiff restates and realleges each and every allegation and thing in all the proceeding paragraphs as though fully set forth herein.

43. By purchasing the Property, defendant Murray knowingly agreed to be bound by the terms of the Declaration, the Bylaws and the Rules and Regulations and benefited from the enforcement of their provisions.

44. Defendant Murray, as a member of the Association, has an obligation to comply with the Declaration, Bylaws and Rules and Regulations.

45. The Declaration, Bylaws and Rules and Regulations are each independently enforceable agreements between the Association and defendant Murray.

46. The Association has satisfied all of its contractual obligations to defendant Murray.

47. Defendant Murray has by failing to pay the Assessments, is in breach of the Declaration and Bylaws.

48. Defendant Murray, by leasing his Property to third parties prior to the expiration of one continuous year of occupancy by himself is in breach of the Rules and Regulations.

49. Defendant Murray, by allowing noxious and offensive activity, including but not limited to possible drug dealing or other commercial activity from his Property, is in violation of the Declaration.

50. Defendant Murray, by allowing the occupants of the Property to allow their dogs to run off leash, is in violation of the Rules and Regulations.

51. Defendant Murray, by storing a trailer on his Property is in violation of the Rules and Regulations.

52. Defendant Murray, by failing to pay the Assessments, is in breach of the Declaration and Rules and Regulations and the Association has been damaged in the amount of \$1,843.86, plus attorney fees and costs associated with the Association's enforcement of the

Declaration, to be determined with greater certainty at trial.

COUNT THREE
UNJUST ENRICHMENT

53. Plaintiff restates and realleges each and every allegation and thing in all the proceeding paragraphs as though fully set forth herein.

54. The Association has furnished certain services to defendant Murray for which the Association is entitled to compensation.

55. Defendant Murray will be unjustly enriched if he is allowed to benefit from the services provided by the Association without compensating the Association for the services.

56. The Association is entitled to judgment against defendant Murray for the reasonable value of services provided based upon the amount of unpaid Assessments, which amount is currently in excess of \$1,843.86, to be proven with greater certainty at trial.

NOW THEREFORE, plaintiff prays for the following relief against defendant Murray:

1. Judgment against defendant Murray in an amount in an amount in excess of \$1,843.86 as determined at trial;
2. For an Order granting a permanent injunction directing defendant Murray as follows:
 - a. to remove from the Property his tenants who are occupying the Property in violation of the Association's Rules and Regulations;
 - b. enjoining the storage of defendant's trailer in violation of the Declaration and Rules and Regulations;
 - c. enjoining occupants of the Property from allowing dogs to run off-leash;
 - d. enjoining occupants of the Property from overflowing the trash containers

serving the Property;

- e. enjoining occupants of the Property from allowing trash and refuse to blow off the Property onto Association common area property;
- f. enjoining the operation of a commercial business from the Property in violation of the Declaration;
- g. enjoining the storage of commercial vehicles at the Property in violation of the Declaration.

3. For such other and further relief as the Court may deem just and equitable.

Dated: January 27, 2015

HELTZER & HOUGHTALING, P.A.

By /s/ Rebecca Heltzer

Rebecca J. Heltzer (#0202423)
413 Wacouta Street, #430
St. Paul, MN 55101
651-330-8508
651-340-9138 facsimile
rebecca@heltzerhoughtaling.com

ATTORNEYS FOR PLAINTIFF

ACKNOWLEDGMENT

The undersigned hereby acknowledges that cost, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minnesota Statutes Section 549.211, subdivision 2, to the party against whom the allegations in this pleading are asserted.

/s/ Rebecca Heltzer

Statement

Afton Court Homeowners Association
2251 Larpentuer Ave
Unit D
Maplewood MN 55109

Date
1/2/2015

To:
Adam Murray 1625A Upper Afton Rd St Paul, MN 55106

		Amount Due	Amount Enc.		
		\$1,843.86			
Date	Transaction	Amount	Balance		
06/01/2014	INV #1566. Due 06/01/2014. Orig. Amount \$208.00. --- Dues \$208.00	12.00	12.00		
07/01/2014	INV #1582. Due 07/01/2014. Orig. Amount \$208.00. --- Dues \$208.00	208.00	220.00		
08/01/2014	INV #1598. Due 08/01/2014. Orig. Amount \$208.00. --- Dues \$208.00	208.00	428.00		
08/01/2014	INV #1614. Due 08/01/2014. Orig. Amount \$100.00. --- Capital Expense Acct \$100.00	100.00	528.00		
08/25/2014	INV #FC 6. Due 08/25/2014. Orig. Amount \$1.10. Finance Charge --- Fin Chg \$1.10 --- Invoice #1566 for 12.00 on 06/01/2014 --- Invoice #1582 for 208.00 on 07/01/2014	1.10	529.10		
09/01/2014	INV #1630. Due 09/01/2014. Orig. Amount \$208.00. --- Dues \$208.00	208.00	737.10		
09/22/2014	INV #FC 11. Due 09/22/2014. Orig. Amount \$2.44. Finance Charge --- Fin Chg \$2.44 --- Invoice #1566 for 12.00 on 06/01/2014 --- Invoice #1582 for 208.00 on 07/01/2014 --- Invoice #1598 for 208.00 on 08/01/2014 --- Invoice #1614 for 100.00 on 08/01/2014	2.44	739.54		
10/01/2014	INV #1646. Due 10/01/2014. Orig. Amount \$208.00. --- Dues \$208.00	208.00	947.54		
11/01/2014	INV #1662. Due 11/01/2014. Orig. Amount \$208.00. --- Dues \$208.00	208.00	1,155.54		
11/01/2014	INV #1679. Due 11/01/2014. Orig. Amount \$100.00. --- Capital Expense Acct \$100.00	100.00	1,255.54		
12/01/2014	INV #1695. Due 12/01/2014. Orig. Amount \$208.00. --- Dues \$208.00	208.00	1,463.54		
12/18/2014	INV #1711. Due 12/18/2014. Orig. Amount \$172.32. --- Excess Refuse, etc. \$172.32	172.32	1,635.86		
01/01/2015	INV #1712. Due 01/01/2015. Orig. Amount \$208.00. --- Dues \$208.00	208.00	1,843.86		
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	380.32	208.00	308.00	947.54	\$1,843.86

EXHIBIT

#1