

**Summary of SC94693, *The Arbors at Sugar Creek Homeowners Association, et al. v. Jefferson Bank & Trust Co. Inc. and McKelvey Homes LLC***

Appeal from the St. Louis County circuit court, Judge Gloria C. Reno  
Argued and submitted May 13, 2015; opinion issued June 30, 2015

**Attorneys:** The homeowners were represented by Mark B. Leadlove, Daniel M. O’Keefe and Christopher M. Blaesing of Bryan Cave LLP in St. Louis, (314) 259-2000. Jefferson Bank was represented by Richard A. Ahrens of Lewis Rice LLC in St. Louis, (314) 444-7600. McKelvey was represented by J. Vincent Keady Jr. of Stinson Leonard Street LLP in St. Louis, (314) 719-3050. The Missouri Bankers Association, which submitted a filing as a friend of the Court, was represented by Keith A. Thornburg of Jefferson City, (573) 636-8151.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** In a dispute involving a subdivision and competing homeowners associations, both the homeowners and the bank that took ownership of a majority of the subdivision lots following its foreclosure of the original developer’s loans appeal the circuit court’s judgment. In a 6-1 decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms the circuit court’s judgment in all respects, except that the Court reverses the circuit court’s granting of the bank’s motion for reimbursement. The proper homeowners association for the subdivision was the one created by the bank. The bank’s lot ownership gave it 72 percent of the eligible votes, allowing it to amend the declaration to substitute the homeowners association and remove the residency restriction for board members. It did not violate its duty of good faith and fair dealing, and the amendments did not require unanimous approval of all lot owners. The circuit court did not err in granting declaratory judgment to the bank and its new developer on the homeowners’ claims regarding the developer’s proposed building plans and one new home. The court’s decision was supported by the evidence, was not against the weight of that evidence and did not erroneously declare the law. The circuit court also did not err in granting judgment to the homeowners on the bank’s counterclaims related to a notice the homeowners were required to file by state law. The circuit court did err, however, in granting the bank’s motion for reimbursement of expenses it incurred for upkeep of the subdivision. Only the homeowners association was authorized to assess such expenses – on an annual basis through a budget.

Judge Richard B. Teitelman dissents from the principal opinion to the extent it holds the bank’s actions did not violate the implied covenant of good faith and fair dealing.

**Facts:** Evolution Development LLC took out loans from Jefferson Bank & Trust Company to develop an 18-lot subdivision in Des Peres called The Arbors at Sugar Creek. Evolution recorded a declaration of covenants, conditions and restrictions and established a homeowners association to govern the subdivision. Part of the associations’ responsibility was ensuring homes built in the Arbors met certain standards described in the declaration. Evolution built and sold homes on five lots before declaring bankruptcy, leading Jefferson Bank to foreclose. Because Evolution failed to file the proper paperwork, the Missouri secretary of state administratively dissolved the homeowners association. After the foreclosure, Jefferson Bank partnered with McKelvey Homes

LLC to build homes on the remaining 13 lots in the Arbors. The existing homeowners believed McKelvey's plans violated the subdivision's declaration. They established a replacement homeowners association, expelled Jefferson Bank from the association and issued a statement to McKelvey that its homes were not in compliance with the declaration. Jefferson Bank then obtained the declarant rights from Evolution and sent notice to all lot owners calling a meeting to establish a separate homeowners association. As owner of 13 of the 18 lots, the bank used its majority position to make the new homeowners association the authorized association for the subdivision, to amend the requirements for board membership and to elect the board. The homeowners refused to participate, and so the bank elected three of its officers as the board members. The homeowners sued the bank and McKelvey, raising five claims. The bank counterclaimed, raising three claims against the homeowners. The circuit court granted judgment on the pleadings to the homeowners on two of the bank's claims and to the bank and McKelvey on all but one of the homeowners' claims. It held a four-day trial on the remaining competing claims for declaratory relief, ultimately granting relief in favor of the bank and builder. The court also sustained the bank's motion for reimbursement of expenses it had incurred in upkeep of the subdivision. The homeowners appeal, and the bank cross-appeals.

**AFFIRMED IN PART; REVERSED IN PART.**

**Court en banc holds:** (1) The proper homeowners association for the Arbors was the one created by the bank. Once the original association was dissolved administratively, it was incapable of revival, but the declaration provided for amendment by vote of at least 67 percent of the eligible votes. At the time the bank amended the declaration to substitute its association as the official homeowners association, its lot ownerships gave it 72 percent of the eligible votes.

(2) The bank properly eliminated the limitation on board membership by amending the declaration. Originally, the declaration required that board members be residents of the Arbors. Jefferson Bank used its 72-percent share in the subdivision to amend the declaration to remove the residency requirement. Jefferson Bank did not violate its duty of good faith and fair dealing in making this change. There was no subterfuge by the bank. It did not divide the lots it owned to create the illusion that it had a 67-percent interest in the subdivision that would allow it to amend the declaration. It provided fair notice, held discussion about the amendment and followed the terms of the declaration in good faith. The amendment did not require unanimous approval of the lot owners. All of the cases the homeowners cite involve issues of new restrictions being placed on land in a subdivision governed by a restrictive covenant or additional fees being imposed on lot owners in a subdivision governed by a restrictive covenant. Jefferson Bank, on the other hand, actually removed a restriction – the residency restriction for board members.

(3) The circuit court properly granted declaratory judgment in favor of Jefferson Bank and McKelvey. Based on the evidence, the circuit court determined that the new homeowners association board's decisions were reasonable and in good faith. That decision is supported by substantial evidence, is not against the weight of that evidence and does not erroneously declare the law. The board members reasonably relied on the opinions of an architect and independent real estate appraiser regarding McKelvey's building plans and the compliance of a new home with the declaration. They determined that the home would be harmonious with existing homes and that a diversity of architectural styles could be used harmoniously in the subdivision without

diminishing the value of current homes or the subdivision as a whole. Further, the evidence supported the circuit court's decision that the new home did not violate the architectural requirements of the declaration.

(4) The circuit court erred in granting Jefferson Bank's request for reimbursement from the homeowners and McKelvey for expenses the bank incurred for upkeep of the subdivision. The bank did not have authority, under the declaration, to determine and request a pro rata assessment of the homeowners. Only the new homeowners association had the authority to impose an assessment for expenses – on an annual basis through the adoption of a budget. The court's decision granting the bank's motion for reimbursement is reversed.

(5) The circuit court did not err in granting judgment in favor of the homeowners on the bank's counterclaims of slander of title and abuse of process in the homeowners' filing a lis pendens (notice of a lawsuit involving real property). A state statute required the homeowners to file the lis pendens giving notice of their civil action affecting real estate. The homeowners were entitled to judgment as a matter of law on these counterclaims.

**Dissenting opinion by Judge Teitelman:** The author dissents from the principal opinion to the extent it holds Jefferson Bank's actions did not violate the implied covenant of good faith and fair dealing. Missouri courts have recognized a party engages in bad faith by using contract language allowing unilateral action to deny the other party from expected benefits flowing from the contract. The original declaration gave the homeowners the significant benefit of self-governance of the subdivision by establishing that only residents could be association board members and further ensured a general development plan for the mutual benefit of all owners as well as the participation of every owner in governing and administering the neighborhood. The evidence supports a conclusion that the bank used its majority status to transition unilaterally to exercise authority for its own admitted short-term financial interests.