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**IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT,
LAW DIVISION**


JOHN KINSLER, AJAY JHA,
THE JAMES WILLIAM
SULLIVAN LIVING TRUST
DATED JULY 29, 2005, THE
PITZELE FAMILY TRUST
DATED AUGUST 6, 2014,
ARUN KUMAR, THE EDGAR C.
WELLS III AND RENEE K.
WELL REVOCABLE TRUST,
NUMBER 1, HARSHA
VIJAYAKUMAR, and SANJEEV
PALANISWAMY,

Plaintiffs,

v.

MAISON DU COMTE, INC., an
Illinois corporation, RUSSELL
McELWAIN, and MERYL
McELWAIN,

Defendants.

	
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Doc# 1634244056	Fee \$66.00
RHSP FEE:\$9.00 RPRF FEE: \$1.00	
KAREN A. YARBROUGH	
COOK COUNTY RECORDER OF DEEDS	
DATE: 12/07/2016 04:13 PM PG: 1 OF 15	

No. 2016 CH 15800

RECORDING COVER PAGE FOR VERIFIED COMPLAINT

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

JOHN KINSLER, AJAY JHA, THE JAMES
WILLIAM SULLIVAN LIVING TRUST DATED
JULY 29, 2005, THE PITZELE FAMILY TRUST
DATED AUGUST 6, 2014, ARUN KUMAR, THE
EDGAR C. WELLS III AND RENEE K. WELLS
REVOCABLE TRUST, NUMBER 1, HARSHA
VIJAYAKUMAR, and SANJEEV
PALANISWAMY,

Plaintiffs,

v.

MAISON DU COMTE, INC., an Illinois
corporation, RUSSELL McELWAIN, and MERYL
McELWAIN,

Defendants.

2016CH15800
CALENDAR/ROOM 13
TIME 00:00
Pet Accounting

Case No.:

Hon.

VERIFIED COMPLAINT

NOW COME plaintiffs John Kinsler, Ajay Jha, The James William Sullivan Living Trust dated July 29, 2005, The Pitzele Family Trust dated August 6, 2014, Arun Kumar, the Edward C. Wells and Renee K. Wells Revocable Trust, Number 1, Harsha Vijayakumar, and Sanjeev Palaniswamy (collectively "Plaintiffs"), by and through their attorneys Brown, Udell, Pomerantz & Delrahim, Ltd., and for their Verified Complaint against defendants Maison Du Comte, Inc., an Illinois corporation, Russell McElwain, and Meryl McElwain, state as follows:

PARTIES

1. Plaintiffs John Kinsler, Ajay Jha, Arun Kumar, Harsha Vijayakumar, and Sanjeev Palaniswamy each are individuals and residents of Cook County, Illinois. Plaintiffs The James William Sullivan Living Trust dated July 29, 2005, The Pitzele Family Trust dated August 6, 2014, and the Edward C. Wells and Renee K. Wells Revocable Trust, Number 1 are trusts

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formed under the laws of the state of Illinois. Each of the Plaintiffs owns title in a townhouse unit located within the common interest community known as Maison Du Comte of Inverness, located in Inverness, Illinois.

2. Defendant Maison Du Comte, Inc. ("Developer") is an Illinois corporation with its principal place of business located in Cook County, Illinois. Developer is the developer of the common interest communities known as Maison Du Comte (located in Palatine, Illinois (hereinafter referred to as "MDC Palatine")) and Maison Du Comte of Inverness (located in Inverness, Illinois and adjacent to MDC Palatine (hereinafter referred to as "MDC Inverness")). Developer owns a townhouse unit within MDC Inverness (the "Developer Unit") commonly known as 1416 Rue Paris, Inverness, Illinois and legally described on Exhibit A attached hereto.

3. Russell McElwain ("Russell") is an individual and, on information and belief, a resident of Cook County, Illinois. McElwain is the President of Developer and a director of the board of directors (the "Board") of the Inverness HOA.

4. Meryl McElwain ("Meryl") is an individual and, on information and belief, a resident of Cook County, Illinois. Meryl is a director of the Board of the Inverness HOA.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 735 ILCS 5/2-209. Defendants have transacted business in Illinois, breached fiduciary and contractual duties in Illinois, and otherwise have such minimum contacts with the State of Illinois sufficient to subject them to the Court's personal jurisdiction.

6. Venue is proper in Cook County pursuant to 735 ILCS 5/2-101 because all or part of the transactions giving rise to this action occurred in Cook County.

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FACTUAL BACKGROUND

7. In or about 2002, Developer began developing certain real property located in Palatine, Illinois as the first phase of a luxury townhome development that would ultimately extend into adjacent real property located in Inverness, Illinois upon the completion of the second phase of the development. Attached as Exhibit B is a rendering of the two phases of the development created by Developer for the purpose of marketing for sale the individual townhomes located in MDC Inverness.

8. The first phase of this development became what is now known as MDC Palatine, while the second phase became what is now known as MDC Inverness.

9. On or about September 27, 2005, Developer executed the Declaration of Covenants, Conditions, Easements and Restrictions dated September 27, 2005, and recorded with the Cook County Recorder of Deeds on November 18, 2005, as Document No. 0532232045 (the "Inverness Declaration"), in order to organize the common interest community to govern MDC Inverness. A true and correct copy of the Inverness Declaration, including the Bylaws of the Maison Du Comte of Inverness Homeowners Association (the "Inverness Bylaws"), is attached hereto as Exhibit C.

10. Pursuant to the Inverness Declaration, the Maison Du Comte of Inverness Homeowners Association (the "Inverness HOA") was organized as a Common Interest Community, as defined in the Illinois Compiled Statutes, as may be amended from time to time. (Inverness Declaration Art. 13.) On information and belief, Developer organized the Inverness HOA as a not-for-profit corporation under the name "MDCHOA," but according to the Illinois Secretary of State, MDCHOA was involuntarily dissolved on or about August 13, 2010. On information and belief, the Inverness HOA is currently organized as a not-for-profit corporation under the name "Rue Paris HOA."

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11. Pursuant to the Inverness Declaration and Inverness Bylaws, Developer was empowered to take all actions as the board of the Inverness Association and to appoint the members of the board. The Developer's authority to control the Inverness Association was to last for a period no longer than five (5) years from the date of the Inverness Declaration, at which time the Developer was obligated to turn over control of the Inverness HOA to the members of the Inverness HOA.

12. The Inverness Declaration is dated September 27, 2005. Thus, the "Turnover Date," as defined in the Inverness Bylaws, was to be no later than September 27, 2010.

13. On information and belief, pursuant to its authority under the Inverness Declaration, Developer appointed Russell and Meryl as directors of the Board of the Inverness HOA.

14. The Inverness Declaration and Inverness Bylaws empower and obligate the Board to govern and control the administration and operation of the Inverness HOA and the common areas of the common interest community, including budgeting, collection of assessments, maintenance of landscaping, snow removal, seal coating of driveways, and maintenance of water, drainage, and sewer facilities serving the Inverness HOA.

15. Developer, Russell and Meryl (collectively the "Developer Defendants") have complete control and authority with respect to the management and operation of the Inverness HOA and Plaintiffs' interests in the Inverness HOA.

16. Section 4.3 of the Inverness Declaration provides that the Board shall, prior to September 1 of each year, prepare a budget for the Inverness HOA accounting for estimated expenditures and reasonable amounts necessary for a reserve to operate the Inverness Association for the following calendar year. Prior to October 1 of each year, the Board is

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required to notify each unit owner within the Inverness HOA of the estimated budget, the unit owner's proposed monthly assessment, and a request for comments or suggestions on the budget (provided within 30 days) to be considered at a meeting to be held prior to January 1 of the following year.

17. Pursuant to Section 2.9 of the Inverness Bylaws, directors and officers of the Inverness HOA are personally liable to the unit owners and/or the Inverness HOA for acts or omissions constituting gross negligence or fraud.

18. Developer Defendants have failed to provide notice to the members of the Inverness HOA as required by Section 4.3 of the Inverness Declaration. Specifically, at no time have Developer Defendants, acting in their capacities as directors of the Board of the Inverness HOA, provided to Plaintiffs the proposed budget for the Inverness HOA, the proposed assessment amount due from each Plaintiff, or a request that Plaintiffs provide to the Board any comments or suggestions regarding the budget. Instead, Developer, Russell, and Meryl merely sent to Plaintiffs, on a monthly basis, an invoice for assessments allegedly due.

19. On information and belief, Developer Defendants failed to properly prepare an estimated budget for the Inverness HOA on an annual basis.

20. The common areas of the Inverness HOA have experienced significant deterioration as a result of the failure by Developer Defendants to cause the Inverness HOA to properly maintain such common areas, including but not limited to the failure to: (i) seal driveways, thereby allowing the deterioration of the driveways; (ii) provide for and maintain adequate drainage, resulting in the flooding of unit owners' yards; (iii) properly care for and maintain trees, allowing several trees to die; and (iv) maintain and repair gates and other common elements.

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21. On information and belief and despite their knowledge of the deteriorated common areas, Developer Defendants failed to properly budget for adequate reserves for the Inverness HOA, leaving the Inverness HOA with insufficient funds to remedy the common area problems that defendants have neglected.

22. Notwithstanding the fact that the Turnover Date under the Inverness Declaration and Inverness Bylaws was to occur no later than September 27, 2010, Developer Defendants failed to timely turn over control of the Inverness HOA to the members of the Inverness HOA.

23. On information and belief, Developer Defendants have utilized, or permitted the utilization of, funds belonging to the Inverness HOA to pay for personal obligations of the Developer Defendants or obligations of affiliates of the Developer Defendants relating to other real estate development projects and for the benefit of the Developer Unit, to the detriment of the Inverness HOA.

24. On information and belief, Developer Defendants purposely refrained from turning over control of the Inverness HOA in order to keep the assessments to the members of the Inverness HOA artificially low. In doing so, Developer Defendants prevented the Inverness HOA from collecting sufficient funds for the necessary maintenance, repairs, and reserves for the Inverness HOA. Notwithstanding their obligations as directors of the Board of the Inverness HOA, Developer Defendants' motive in maintaining artificially low assessments was to attract buyers for the townhouses owned by Developer, thereby benefiting Developer to the detriment of the Inverness HOA, leaving the Inverness HOA with improperly maintained common areas and inadequate reserves.

25. On information and belief, Developer has failed to pay assessments due to the Inverness HOA pursuant to Article 4 of the Inverness Declaration. Developer Defendants have

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known about Developer's failure to pay assessments to the Inverness HOA but have failed to take any action to collect such assessments or otherwise enforce the Inverness HOA's rights against Developer or the Developer Unit.

COUNT I: BREACH OF FIDUCIARY DUTY (Against Developer Defendants)

26. Plaintiffs reallege Paragraphs 1 through 25 above as if fully set forth herein.

27. As directors of the Inverness HOA and by virtue of the control and authority granted by the Inverness Declaration and Inverness Bylaws, Developer Defendants owe fiduciary duties to the members of the Inverness HOA, including Plaintiffs, with respect to the management and operation of the Inverness HOA.

28. Developer Defendants breached their fiduciary duties to Plaintiffs by:

- a. Failing to turn over control of the Inverness HOA as required by the Inverness Declaration and Inverness Bylaws;
- b. Misappropriating and/or allowing the misappropriation of funds of the Inverness HOA for use in other development projects controlled by Developer or other entities in which the defendants have a financial interest and for the benefit of the Developer Unit;
- c. Failing to properly prepare or disseminate annual budgets for the Inverness HOA;
- d. Failing to budget for adequate reserves for the Inverness HOA;
- e. Failing to maintain the common areas of the Inverness HOA; and
- f. Failing to collect assessments from Developer or otherwise enforce the Inverness HOA's rights against Developer and any Developer-owned units.

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29. Developer Defendants' breaches as set forth above resulted from Developer Defendants' gross negligence, fraud and/or intentional misconduct.

30. Plaintiffs have been damaged by Developer Defendants' breaches in that they have been deprived of their rights under the Inverness Declaration, have suffered damages to their interests in the deteriorated common areas, and will be forced to pay higher assessments in the future in order to correct for Developer Defendants' failure to maintain the common areas, create an adequate reserve, and collect assessments from Developer. In addition, Plaintiffs and other members of the Inverness HOA have been deprived of the benefit of the assessments they paid to the Inverness HOA for the purpose of maintaining the common areas of the Inverness HOA due to Developer Defendants' misappropriation of such funds for their personal use or the use of their affiliated entities.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against Developer Defendants on Count I awarding Plaintiffs compensatory damages and punitive damages in amounts to be proven at trial and such other and further relief as the Court deems just.

COUNT II: BREACH OF INVERNESS DECLARATION AND BYLAWS (Against Developer Defendants)

31. Plaintiffs reallege Paragraphs 1 through 30 above as if fully set forth herein.

32. The Inverness Declaration and Inverness Bylaws constitute binding agreements between Developer Defendants and Plaintiffs with respect to the management and operation of the Inverness HOA.

33. Pursuant to the Inverness Declaration and Inverness Bylaws, Developer Defendants were obligated to:

- a. Turn over control of the Inverness HOA no later than September 27, 2010;

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- b. Prepare and disseminate a budget for the Inverness HOA on an annual basis;
- c. Provide Plaintiffs an opportunity to comment on the proposed annual budgets for the Inverness HOA;
- d. Collect assessments of the Inverness HOA;
- e. Utilize assessments collected from Plaintiffs solely for the purposes set forth in the Inverness Declaration and Inverness Bylaws; and
- f. Maintain the common areas of the Inverness HOA.

34. Developer Defendants breached their obligations pursuant to the Inverness Declaration and Inverness Bylaws by, among other things:

- a. Failing to turn over control of the Inverness HOA;
- b. Failing to properly prepare and disseminate annual budgets for the Inverness HOA;
- c. Failing to provide Plaintiffs with an opportunity to comment on the proposed annual budgets for the Inverness HOA;
- d. Failing to collect assessments from Developer or otherwise enforce the Inverness HOA's rights against Developer and the Developer Unit;
- e. Utilizing or allowing others to utilize assessments collected for the Inverness HOA for purposes other than the Inverness HOA; and
- f. Failing to maintain the common areas of the Inverness HOA.

35. Developer Defendants' breaches as set forth above resulted from Developer Defendants' gross negligence, fraud and/or intentional misconduct.

36. Plaintiffs have been damaged by Developer Defendants' breaches as set forth above.

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WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against Developer Defendants on Count II awarding Plaintiffs damages in an amount to be proven at trial and such other and further relief as the Court deems just.

COUNT III: ACCOUNTING (Against Developer Defendants)

37. Plaintiffs reallege Paragraphs 1 through 36 above as if fully set forth herein.

38. As directors of the Inverness HOA and by virtue of the control and authority granted by the Inverness Declaration and Inverness Bylaws, Developer Defendants owe fiduciary duties to the members of the Inverness HOA, including Plaintiffs, with respect to the management and operation of the Inverness HOA.

39. Developer Defendants breached their fiduciary duties to Plaintiffs.

40. On information and belief, Developer Defendants have failed to properly budget for the Inverness HOA, have misappropriated or knowingly permitted the misappropriation of funds of the Inverness HOA to benefit themselves or their affiliates, and have failed to collect assessments owed to the Inverness HOA by Developer.

41. The books and records of the Inverness HOA and other documents necessary to determine the true and accurate accounts of the Inverness HOA and the amounts owed by Developer Defendants to Plaintiffs and/or the Inverness HOA are exclusively within Developer Defendants' possession and control, creating a need for discovery. Absent an accounting, a complete determination of the amounts owed by Developer Defendants cannot be made.

42. Absent an accounting, Plaintiffs lack an adequate remedy at law.

43. Plaintiffs are entitled to an accounting of the Inverness HOA.

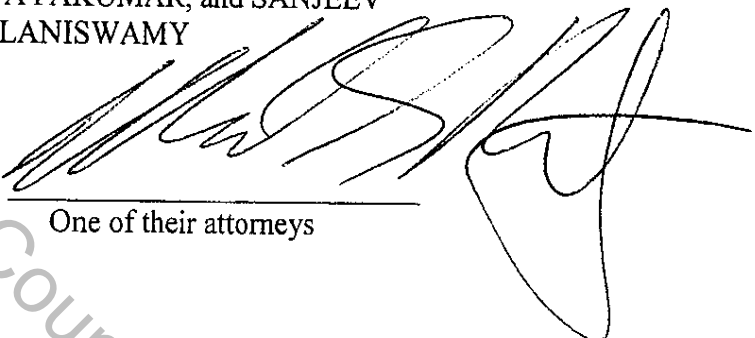
WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against Developer Defendants on Count III directing Developer Defendants to provide a full

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and complete accounting of the business of the Inverness HOA, including all income, expenses, payments, assessments, and budgets, and awarding Plaintiffs such other and further relief as the Court deems just.

Dated: December 6, 2016

Respectfully Submitted,
JOHN KINSLER, AJAY JHA, THE JAMES
WILLIAM SULLIVAN LIVING TRUST DATED
JULY 29, 2005, THE PITZELE FAMILY TRUST
DATED AUGUST 6, 2014, ARUN KUMAR, THE
EDGAR C. WELLS III AND RENEE K. WELLS
REVOCABLE TRUST, NUMBER 1, HARSHA
VIJAYAKUMAR, and SANJEEV
PALANISWAMY

By: 
One of their attorneys

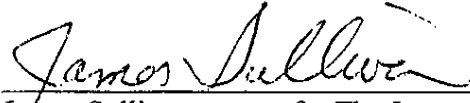
Michael S. Pomerantz
Bryan D. King
Brown, Udell, Pomerantz & Delrahim, Ltd.
225 W. Illinois St., Suite 300
Chicago, IL 60654
Tel: (312) 475-9900
Fax: (312) 475-1188
bking@bupdlaw.com
Attorney No. 34089

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VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the responses to interrogatories above set forth information as is presently available, and that such responses are true and correct, except as to matters therein stated on information and belief, and as to such matters, the undersigned certifies as aforesaid that he/she verily believes the same to be true.



James Sullivan, trustee for The James William
Sullivan Living Trust dated July 29, 2005

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COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

EXHIBIT A

COOK COUNTY
RECORDER OF DEEDS

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EXHIBIT A

LEGAL DESCRIPTION OF DEVELOPER UNIT

UNIT #31, BEING THE EASTERLY 27.97 FEET OF THE WESTERLY 61.03 FEET OF LOT 8, IN THE MAISON DU COMTE OF INVERNESS SUBDIVISION, BEING A SUBDIVISION OF PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, RECORDED NOVEMBER 18, 2005 AS DOCUMENT NUMBER 0532219053, IN COOK COUNTY, ILLINOIS

Common Address: 1416 Rue Paris, Inverness, Illinois
PIN #: 02-28-301-065-0000

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