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Redefining "Amend": For the "Better" of Whom?

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NOTE

Redefining "Amend": For the "Better" of Whom?

Trustees of Clayton Terrace Subdivision v. 6 Clayton Terrace, LLC, 585 S.W.3d 269 (Mo. 2019) (en banc)

Clayton A. Voss[*]

I. INTRODUCTION

In *Trustees of Clayton Terrace Subdivision v. 6 Clayton Terrace, LLC*, the Supreme Court of Missouri overturned eighty years of legal precedent regarding the ability of homeowners to amend residential subdivision agreements to place further burdens on the use of real property.[1] The court established that subdivisions can now *increase* the burdens on their lot owners, provided that the minimum number of owners, as required by the amendment provision in the subdivision indentures, support the new restriction.[2] The court's holding signifies a shift away from the traditional principle that a covenant authorizing a requisite majority of owners to "amend" or "modify" a residential subdivision's set of restrictions does not permit the adoption of *new* burdens.[3] It thus undermines Missouri's policy of promoting "the free use of property unless property owners have voluntarily and unambiguously surrendered

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1. 585 S.W.3d 269, 282 (Mo. 2019) (en banc) [hereinafter *Clayton Terrace*] ("*Van Deusen*, for this reason, should be limited to its own facts, and has no persuasive – let alone binding – force under the present facts or in cases using different language.") (citing Van Deusen v. Ruth, 125 S.W.2d 1, 2–3 (Mo. 1938).

2. *See Clayton Terrace*, 585 S.W.3d at 282.

3. This principle has been enforced in a number of appellate court decisions since *Van Deusen*. 125 S.W.2d 1 (Mo. 1938). *See, e.g.*, Jones v. Ladriere, 108 S.W.3d 736, 739–40 (Mo. Ct. App. 2003); Webb v. Mullikin, 142 S.W.3d 822, 827 (Mo. Ct. App. 2004); Bumm v. Olde Ivy Dev., LLC, 142 S.W.3d 895, 904 (Mo. Ct. App. 2004); Hazelbaker v. Cnty. of St. Charles, 235 S.W.3d 598 (Mo. Ct. App. 2007).

their rights."[4] By allowing "amend" to mean "add," the court has opened the door to homeowners' associations imposing additional prohibitions on a lot owner's use of property; this should be a cause for concern in a state that has staunchly protected "the free and untrammeled use of real property."[5]

Part II of this Note outlines the facts that led to the dispute in *Trustees of Clayton Terrace* and the court's holding. Part III examines Missouri's well-established case law holding that amending restrictive covenants to include additional burdens on the use of real property requires unanimous consent from all affected property owners. Part IV summarizes the court's holding in *Trustees of Clayton Terrace* and explains the reasoning behind its departure from earlier case law. Finally, Part V discusses the potential ramifications of the Supreme Court of Missouri's decision to allow the imposition of additional restrictions on subdivision lot owners with less than unanimous approval and argues that the court may have been quick to dismiss Missouri's longstanding precedent.

II. FACTS AND HOLDING

In *Trustees of Clayton Terrace*, a dispute arose after the Trustees of Clayton Terrace Subdivision ("Trustees") sought to enforce a "one residence per lot" restriction included in the amended subdivision indentures to prevent a developer, 6 Clayton Terrace, LLC, from splitting Lot 6 into two separate lots.[6]

Clayton Terrace Subdivision ("Subdivision"), a residential subdivision in Frontenac, Missouri, was established by plat in 1923.[7] The Subdivision was subject to the original indentures recorded with the plat, which provided for the election of subdivision trustees.[8] The Trustees owed a fiduciary duty to the lot owners and had "the power to enforce the restrictions" included in the indentures.[9] The indentures stated the restrictions would be "in force and binding upon the owners of this Subdivision for a period of twenty-five years from date of this instrument, unless amended or extended by two-thirds of the lot owners in this Subdivision and publicly recorded."[10] In 1928, the Subdivision adopted

4. *Clayton Terrace*, 585 S.W.3d at 288 (Powell, J., concurring in part and dissenting in part).

5. *Id.* at 287 (quoting Steve Vogli & Co. v. Lane, 405 S.W.2d 885, 889 (Mo. 1966)).

6. *Id.* (majority opinion).

7. *Id.* at 273.

8. *Id.* at 273–74.

9. *Id.* at 274.

10. *Id.* at 273.

an amendment, which provided that "only one residence shall be erected on each lot."[11]

The Subdivision had twenty-two residential lots, among them a 2.3-acre property referred to as Lot 6.[12] Jane Huey lived in a house on Lot 6 until she died on October 15, 2011, at which point her daughter, Jeanette Huey, as trustee of her mother's trust, assumed responsibility for the lot.[13] In September 2012, Ms. Huey listed Lot 6 with a realtor, and in January 2013, she agreed to sale terms with Century Renovations, LLC ("Century Renovations").[14] Century Renovations planned to acquire Lot 6 to lease it to developer Kevin McGowan, until McGowan could secure the funding necessary to purchase it from Century Renovations.[15] McGowan was a career real estate developer who intended to split Lot 6 into two lots.[16] On the day before closing, Century Renovations established 6 Clayton Terrace, LLC ("6 Clayton Terrace") and assigned it the sale contract for Lot 6.[17] Ms. Huey sold Lot 6 to 6 Clayton Terrace on February 15, 2013.[18]

After the sale, McGowan leased the home on Lot 6, moved in with his children, and made substantial renovations to the house.[19] While neither McGowan nor 6 Clayton Terrace formally notified the Trustees of their intent to split the lot, 6 Clayton Terrace provided evidence that McGowan's nine-year old son told a Subdivision resident about the plan after closing, who then relayed the information to the Trustees.[20] The Trustees were concerned about the potential subdivision of Lot 6, but they

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11. *Id.* Since 1923, the restrictions included in the original indentures have been amended, extended, and renewed five times by two-thirds vote, including the 1928 amendment. *Id.* at 273–74.

12. *Id.* at 273; The Subdivision originally had twenty-three recorded lots in 1923 before portions of certain lots were eliminated for the construction of a highway access ramp, and the remaining lots were reconfigured into 22 lots. *Id.* at 273 n.1.

13. *Id*. at 273–74.

14. *Id*. at 274.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.* at 274–75. These changes would have been evident to anyone living near or passing by the home. They included: a) the demolition and removal of certain walls; b) combining the former kitchen and dining room into a single kitchen space which, as of the date of trial, remained in an unfinished condition; c) reconfiguring the layout of the upstairs so as to increase the number of bedrooms; d) raising the floor in the sunroom; e) walling off the French doors from the sunroom leading to the greenhouse; f) cutting through the brick exterior to add an additional door to the exterior; g) removing trees and clearing substantial brush and plantings from the grounds; h) refinishing the swimming pool; i) replacing the pool's heating and filtration system; and j) repairing/replacing the concrete decking around the pool. *Id.*

20. *Id.* at 275.

decided not to discuss it with McGowan or take any action to prevent it.[21] Meanwhile, 6 Clayton Terrace proceeded with its plan to split Lot 6 and sought approval from the Planning and Zoning Commission of the City of Frontenac.[22] In April 2014, 6 Clayton Terrace filed an application with the City of Frontenac to subdivide Lot 6 into two lots – Lots 6A and 6B.[23] The Trustees appeared at public meetings in opposition to 6 Clayton Terrace's proposal to subdivide Lot 6.[24] The City of Frontenac informed the Trustees that it did not have authority to enforce the Subdivision's private indentures and was bound solely by the city's ordinances, which required only that each lot be larger than one acre.[25] Accordingly, Frontenac approved 6 Clayton Terrace's application on the grounds that it did not violate any municipal ordinances.[26]

In August 2014, the Trustees filed a two-count petition against Ms. Huey and 6 Clayton Terrace seeking declaratory and injunctive relief.[27] Count II sought an injunction to prevent 6 Clayton Terrace from dividing Lot 6 into two lots and constructing a residence on the newly-established sub-lot, claiming the split would violate the "one residence per lot" restriction.[28] 6 Clayton Terrace denied the Trustees' claim and asserted affirmative defenses, including that the "one residence per lot" restriction added to the original indentures in 1928 was invalid because it was adopted without unanimous consent of the lot owners.[29]

On Count II, the trial court found in the Trustees' favor, enjoining 6 Clayton Terrace from dividing Lot 6 and constructing an additional home.[30] The trial court reasoned that because the indentures "neither expressly prohibited nor expressly allowed for the subdivision of lots," the intent of the indentures governed.[31] Thus, in light of all the provisions of the indentures, the trial court concluded that the Trustees intended for the

21. *Id.* Two of the concerned trustees were made aware of the plan to subdivide Lot 6 within ten days of the closing and they chose to "just wait and see" and hoped "[it wasn't] going to be an issue." Trustees of Clayton Terrace Subdivision v. 6 Clayton Terrace, LLC, 2018 WL 3028991, at *2 (Mo. Ct. App. June 19, 2018).

22. *Clayton Terrace*, 585 S.W.3d at 275.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* Not relevant for the purposes of this Note, Count I sought a declaratory judgment against Ms. Huey for the court to declare the sale of Lot 6 to 6 Clayton Terrace void, claiming she violated the amended indentures by failing to provide fifteen days' written notice to all of the Subdivision lot owners and failing to accept one lot owner's offer to purchase Lot 6. *Id.*

29. *Id.*

30. *Id.* at 276.

31. *Id.*

limitation of "one residence per lot" to prohibit subdivision of the original lots.[32] Furthermore, the court found that 6 Clayton Terrace's failure to give notice of its plan to the Trustees was an act of bad faith, which constituted "special circumstances" and justified an award of substantial attorney's fees in its judgment against 6 Clayton Terrace.[33] 6 Clayton Terrace appealed.[34]

On appeal, 6 Clayton Terrace raised five points, two of which are relevant here.[35] First, 6 Clayton Terrace claimed the "one residence per lot" provision was invalid and unenforceable because it was never unanimously approved by the Subdivision lot owners.[36] In its second point, 6 Clayton Terrace asserted that even if the one-residence limitation was valid, it did not prohibit splitting a lot and constructing a residence on the new sub-lot.[37] The appellate court denied 6 Clayton Terrace's first point, holding that the "one residence per lot" restriction was not a new burden and thus did not require unanimous consent to be valid and enforceable.[38] However, reversing the trial court's decision, the appellate court granted 6 Clayton Terrace's second point.[39] The court reasoned the "one residence per lot" restriction did not by its "plain and clear language" preclude the subdivision of a lot.[40] Furthermore, the court stated that the "one residence per lot" provision was a restriction on the use of property, and "[r]estrictions, being in derogation of the fee conveyed, will not be extended by implication to include anything not clearly expressed."[41] The Missouri Court of Appeals therefore held that 6 Clayton Terrace's subdivision of Lot 6 was not prohibited by the "one residence per lot" restriction in the indentures.[42]

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32. *Id.*

33. *Id.*

34. *Id.* The Trustees also appealed the trial court's ruling in Ms. Huey's favor on Count I, referenced above, finding no violation by Ms. Huey with regard to the sale and additionally finding in favor of Ms. Huey on her abuse of process counterclaim against the Trustees for bringing Count I against her for the "improper purpose of preventing 6 Clayton Terrace from constructing another residence on Lot 6." *Id.*

35. Trustees of Clayton Terrace Subdivision v. 6 Clayton Terrace, LLC, 2018 WL 3028991, at *3 (Mo. Ct. App. June 19, 2018).

36. *Id.*

37. *Id.*

38. *Id.* at *6.

39. *Id.*

40. *Id.*

41. *Id.* (quoting Van Deusen v. Ruth, 125 S.W.2d 1, 3 (1938)). The Supreme Court of Missouri articulated the principle that restrictive covenants will be strictly construed more clearly in *Vinyard v. St. Louis Cty.*, 399 S.W.2d 99, 105 (Mo. 1966) ("Restrictive covenants will not be extended by implication to include anything not clearly expressed in them.").

42. *Trustees of Clayton Terrace Subdivision*, 2018 WL 3028991, at *6.

After the opinion by the Missouri Court of Appeals, the Supreme Court of Missouri granted transfer.[43] The court addressed the same relevant issues as the appellate court: (1) whether the language in the indentures that restrictions may be "amended or extended by two-thirds of the lot owners" granted authority to add new burdens to the indentures, and (2) if so, whether the "one residence per lot" provision restricted subdividing lots.[44]

On the first issue, the court held that "amend" in the context of subdivision indentures means "to change or modify in any way for the better," which in turn gives the requisite majority of lot owners the power to not only alter existing restrictions, but also to add new restrictions.[45] Thus, the "one residence per lot" limitation was valid and enforceable.[46] On the second issue, the court held that when a restrictive subdivision covenant – read in the context of the entire instrument – indicates a specific intent, the restriction should not be so narrowly construed as to defeat its plain purpose.[47] Because the court found the "one residence per lot" provision was clearly intended to limit the residences to one per original lot, 6 Clayton Terrace could not split Lot 6 in two.[48]

III. LEGAL BACKGROUND

A. Missouri's Attempted Balance of the Principles of Contract and Property Law

Missouri courts traditionally treated restrictive covenants in residential subdivision indentures as "private contractual obligations" and, therefore, applied the principles of contract law when interpreting a subdivision's covenants.[49] The primary rule in the interpretation of a covenant or contract is to determine the intent of the parties and to give effect to those intentions.[50] To ascertain the parties' intent, courts give the words of the contract their "natural, ordinary, and common sense

43. Trustees of Clayton Terrace Subdivision v. 6 Clayton Terrace, LLC, 585 S.W.3d 269, 276 (Mo. 2019) (en banc).

44. *Id.* at 279–80.

45. *Id.* at 282.

46. *Id.*

47. *Id.* at 282–83.

48. *Id.* at 284.

49. *See* Brentmoor Place Residents Ass'n v. Warren, 816 S.W.2d 7, 11 (Mo. Ct. App. 1991); *see also* Arbors at Sugar Creek Homeowners Ass'n v. Jefferson Bank & Tr. Co., 464 S.W.3d 177, 183 (Mo. 2015) (en banc).

50. *Arbors*, 464 S.W.3d at 183.

meaning" in light of the contract's terms "read as a whole."[51] Additionally, courts construe each term of a contract in effort to avoid rendering the other terms meaningless.[52]

While Missouri law acknowledges the right of property owners to collectively restrict their property rights for a common purpose and seeks to enforce the intent underlying a subdivision's covenants, Missouri simultaneously strives to protect "the free and untrammeled use of real property."[53] This conflict lies at the intersection of contract and property law, where courts must interpret residential subdivision covenants in the face of the right of property owners "to specify the uses to which land may be put and … to prevent use for any purpose not included."[54] Missouri law disfavors restrictive covenants because they undermine property rights, and it generally refuses to extend the meaning of ambiguous restrictions "by implication to include anything not clearly expressed."[55]

Furthermore, courts resolve ambiguities in restrictive covenants "in favor of the use complained of."[56] Accordingly, when Missouri courts have had the opportunity to interpret ambiguous restrictive covenants in residential subdivision indentures, the restrictions have been narrowly construed in favor of the free use of property.[57] However, strict construction "should never be applied in such a way as to defeat the plain purpose of the restriction,"[58] and the "right of one property owner to the protection of a restrictive covenant is a property right just as inviolable"

51. Wilshire Const. Co. v. Union Elec. Co., 463 S.W.2d 903, 906 (Mo. 1971); Dunn Indus. Grp., Inc. v. City of Sugar Creek, 112 S.W.3d 421, 428 (Mo. 2003) (en banc).

52. *Dunn*, 112 S.W.3d at 428.

53. Steve Vogli & Co. v. Lane, 405 S.W.2d 885, 889 (Mo. 1966).

54. Trustees of Clayton Terrace Subdivision v. 6 Clayton Terrace, LLC, 585 S.W.3d 269, 287 (Mo. 2019) (en banc) (Powell, J., concurring in part and dissenting in part) (quoting Matthews v. First Christian Church of St. Louis, 197 S.W.2d 617, 620).

55. Trustees of Clayton Terrace Subdivision v. 6 Clayton Terrace, LLC, 2018 WL 3028991, at *6 (Mo. Ct. App. June 19, 2018) (quoting Van Deusen v. Ruth, 125 S.W.2d 1, 3 (Mo. 1938) ("Restrictions, being in derogation of the fee conveyed, will not be extended by implication to include anything not clearly expressed."); *see also* Andrews v. Metro. Bldg. Co., 163 S.W.2d 1024, 1028 (Mo. 1942).

56. *Andrews*, 163 S.W.2d at 1028 (quoting Mathews Real Estate Co. v. National Printing & Engraving Co., 48 S.W.2d 911, 913 (Mo. 1932)).

57. Blevins v. Barry–Lawrence Cnty. Ass'n for Retarded Citizens, 707 S.W.2d 407, 408 (Mo. 1986) (en banc); Shepherd v. State, 427 S.W.2d 382, 386–87 (Mo. 1968); St. Louis Union Trust Co. v. Tipton Electric, 636 S.W.2d 357, 359 (Mo. Ct. App. 1982); Udo Siebel-Spath v. Constr. Enters., 633 S.W.2d 86, 88 (Mo. Ct. App. 1982).

58. *See, e.g.*, Berkley v. Conway P'ship, 708 S.W.2d 225, 227 (Mo. Ct. App. 1986); Weiss v. Fayant, 606 S.W.2d 440, 442 (Mo. Ct. App. 1980); Buoncristiani v. Randall, 526 S.W.2d 68, 72 (Mo. Ct. App. 1975).

as the right to the free and untrammeled use of his property.[59] In short, Missouri attempts to strike a balance between the competing interests of contract and property law, refusing to extend and restrict property use further, but also construing clear language so as not to defeat the purpose of the restraint.

B. Van Deusen *and Missouri's Traditional Definition of "Amend"*

Missouri courts have applied these contract and property law principles in cases where they have been asked to interpret the meaning of "amend" in the context of residential subdivision covenants.[60] *Van Deusen* was the landmark case in Missouri law for interpreting the extent of power conveyed by terms such as "amend" or "modify" in subdivision provisions authorizing changes by a requisite majority vote.[61] Since the Supreme Court of Missouri's *Van Deusen* decision in 1938, Missouri courts have generally held that a provision authorizing a requisite majority of lot owners to "amend" or "modify" a subdivision's covenants cannot be construed to permit the adoption of *additional* restrictions.[62] It is a well-established principle in Missouri law that amending restrictive covenants to increase burdens on the use of real property requires *unanimous* consent.[63] Thus, the rule in Missouri has been that a new restrictive covenant is "invalid and unenforceable if it imposes new burdens upon the affected property owners" without unanimous approval.[64]

In *Van Deusen*, the original restrictions included in the subdivision agreement for Davis Place, a real estate subdivision, permitted the building of apartments, stores, and other commercial buildings only on lots facing specific roads.[65] The agreement stated that the restrictions could be

59. Marose v. Deves, 697 S.W.2d 279, 289 (Mo. Ct. App. 1985) (citing Proetz v. Cent. Dist. of Christian & Missionary All., 191 S.W.2d 273, 277 (Mo. Ct. App. 1945)).

60. *See, e.g.*, Van Deusen v. Ruth, 125 S.W.2d 1, 2 (Mo. 1938); Bumm v. Olde Ivy Dev., LLC, 142 S.W.3d 895, 903 (Mo. Ct. App. 2004); Jones v. Ladriere, 108 S.W.3d 736, 739–40 (Mo. Ct. App. 2003); Webb v. Mullikin, 142 S.W.3d 822, 827 (Mo. Ct. App. 2004); Hazelbaker v. Cty. of St. Charles, 235 S.W.3d 598, 602 (Mo. Ct. App. 2007).

61. *See* Trustees of Clayton Terrace Subdivision v. 6 Clayton Terrace, LLC, 585 S.W.3d 269, 282 (Mo. 2019) (en banc) (stating cases with similar facts have been decided based on an interpretation and application of *Van Deusen*).

62. *Van Deusen*, 125 S.W.2d at 2–3.

63. *See Bumm*, 142 S.W.3d at 903; *Van Deusen*, 125 S.W.2d at 2–3; *Jones*, 108 S.W.3d at 739–40; *Webb*, 142 S.W.3d at 827; *Hazelbaker*, 235 S.W.3d at 602.

64. *Bumm*, 142 S.W.3d at 903 ("[A] new restrictive covenant, adopted by majority vote only, is invalid and unenforceable if it imposes new burdens upon the affected property owners."); *accord Van Deusen*, 125 S.W.2d at 2–3; *Jones*, 108 S.W.3d 739–40; *Webb*, 142 S.W.3d at 827; *Hazelbaker*, 235 S.W.3d at 602.

65. *Van Deusen*, 125 S.W.2d at 2.

"modified, *amended*, released, or extinguished" at any time after ten years by a vote of the owners of seventy-five percent of the subdivision's "frontage."[66] Eleven years after Davis Place adopted the original restrictions, a modification agreement, purportedly made with the approval of the requisite majority but not with unanimous approval, increased prohibitions on the erection of apartments and commercial buildings.[67]

The plaintiffs, whose lots were affected by the change, filed a suit to invalidate the amendment on the grounds that the language of the original agreement did not permit the requisite majority of frontage owners to *increase* burdens on the subdivision.[68] The plaintiffs contended that the words "modified" and "amended," as used in the original agreement, could not be construed to authorize additional restrictions.[69] The trial court ruled in the plaintiffs' favor, and the Supreme Court of Missouri upheld that ruling on appeal.[70] In support of its decision, the court held that "amended" as used in a provision authorizing changes to a subdivision agreement means "an amelioration" and should not be interpreted in a way that would authorize new burdens.[71] Furthermore, the court noted that interpreting "amended" to authorize the imposition of new restrictions on the subdivision would mean overturning the well-established principle of strict construction of restrictive covenants.[72]

The Missouri Court of Appeals, Eastern District, applied the *Van Deusen* court's reasoning to a similar set of facts in *Jones v. Ladriere*.[73] In *Jones*, Ladriere purchased a vacant lot in the Berkley Lane subdivision with the intention of constructing a residence.[74] The subdivision agreement provided that the restrictions could be "altered, *amended*, changed or revoked" by a two-thirds vote.[75] After Ladriere had plans drawn up and obtained a building permit from the City of Ladue, a large majority of the other lot owners passed a new restrictive covenant which specifically prohibited construction on the vacant lot purchased by Ladriere.[76] The subdivision trustees filed a petition for declaratory and

66. *Id.* (emphasis added).

67. *Id.*

68. *Id.* As mentioned above, the requisite majority in this case constituted property owners "owning seventy-five per cent of the total number of front feet of the subdivision." *Id.*

69. *Id.*

70. *Id.*

71. *Id.* at 3.

72. *Id.*

73. Jones v. Ladriere, 108 S.W.3d 736 (Mo. Ct. App. 2003).

74. *Id.* at 737.

75. *Id.* at 739 (emphasis added).

76. *Id.* at 737. Amendment No. 4 added Article VIII to the subdivision agreement. *Id.* Article VIII purported to limit the construction of single-family

injunctive relief seeking to prohibit Ladriere from constructing a residence on his property.[77] The trial court found the new amendment enforceable, held in the trustees' favor, and enjoined the construction.[78] The Eastern District reversed the trial court's judgment and held that, as in *Van Deusen*, nothing in the language of the amendment provision gave lot owners "the power to add new burdens or restrictions not found in the original Agreement" by the requisite two-thirds vote.[79]

One year after the *Jones* decision, the Eastern District again relied on *Van Deusen* and held that language similar to that in *Jones* and *Van Deusen* did not sufficiently evidence an intent to authorize new restrictions by requisite majority vote.[80] In *Webb v. Mullikin*, the subdivision agreement, adopted in 1960 and amended in 1990, provided that "a majority of the lot owners. . .may amend these restrictions," so long as the subdivision Trustees propose the amendment.[81] In 2002, a majority of the lot owners approved an amendment to the restrictions, proposed by the Trustees, that included a new yearly assessment for maintenance of the recreational club located next to the subdivision, which was not included in the original agreement.[82] Eight property owners in the subdivision brought an action to enjoin enforcement of the 2002 amendments.[83] The Eastern District reversed the trial court's judgment that the amended agreement was lawful.[84] Citing both *Van Deusen* and *Jones* in its decision, the appellate court interpreted the language "may amend these restrictions" to permit the requisite majority of lot owners "to *change existing* covenants but *not to add new* or different covenants."[85]

In 2004, the Missouri Court of Appeals, Southern District, adhered to the principles established in *Van Deusen* by holding that even language more explicit than the amendment provisions in *Van Deusen*, *Jones*, and *Webb* was still insufficient to authorize additional burdens.[86] In *Bumm v. Olde Ivy Development, LLC*, the set of nine restrictive covenants recorded in 1955 with the subdivision plat included an amendment provision that expressly stated the restrictions "may be amended, repealed or *added to* at any time by the owners of a majority of the lots."[87] In 2002, a majority of

dwellings to the properties identified by a residential address. *Id.* at 738. The vacant lot purchased by Ladriere did not have a residential address. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* at 740.

80. *See* Webb v. Mullikin, 142 S.W.3d 822 (Mo. Ct. App. 2004).

81. *Id.* at 827.

82. *Id.* at 824.

83. *Id.* at 823, 825.

84. *Id.* at 828.

85. *Id.* at 827 (emphasis added).

86. Bumm v. Olde Ivy Dev., LLC, 142 S.W.3d 895 (Mo. Ct. App. 2004).

87. *Id.* at 897–98 (emphasis added).

the lot owners approved two new restrictive covenants, which included a prohibition on "replatting" any subdivision lot as a separate subdivision or as a portion of another subdivision.[88] When the defendant recorded a plat for a new subdivision development that included a partial replat of certain lots in the original subdivision, the plaintiffs sought to enforce the 2002 restrictions to preclude replatting of the lots.[89] The court reaffirmed the rule that "a new restrictive covenant, adopted by majority vote only, is invalid and unenforceable if it imposes new burdens."[90] Relying on *Van Deusen*'s definition of "amend" in the context of a modification provision and its application in *Jones* and *Webb*, the *Bumm* court held that strict construction rendered even the words "added to" insufficiently explicit to permit a non-unanimous, requisite majority to adopt additional restrictions.[91] Thus, the 2002 restrictions were invalid and unenforceable because they constituted a new burden on the subdivision lot owners.[92]

Given Missouri case law's consistent application of *Van Deusen*'s definition of "amend" in residential subdivision cases, 6 Clayton Terrace argued that the court should construe the "amended or extended" language like the courts did in *Jones*, *Webb*, and *Bumm*.[93] Specifically, 6 Clayton Terrace asked the court to hold that use of the word "amended" in the Subdivision indentures was not sufficiently explicit to permit the addition of the "one residence per lot" restriction without unanimous lot owner approval.[94]

IV. INSTANT DECISION

On transfer from the Missouri Court of Appeals, the Supreme Court of Missouri unanimously agreed to abrogate *Jones*, *Webb*, and *Bumm*, holding that the amendment provision's language that restrictions would be in force "unless amended or extended" was sufficiently specific to permit adding restrictions.[95] Judge Powell and Judge Fischer agreed with the majority on the validity of the "one residence per lot" restriction, but

88. *Id.* at 898 (emphasis added).

89. *Id.* at 897–99 (emphasis added).

90. *Id.* at 903.

91. *Id.* at 904–05 ("As in *Van Deusen, Jones* and *Webb,* we strictly construe this language to mean that the Unit 2 lot owners may change, repeal or supplement existing covenants, but they may not add new burdens or different covenants by majority vote.").

92. *Id.* at 905.

93. Trustees of Clayton Terrace Subdivision v. 6 Clayton Terrace, LLC, 585 S.W.3d 269, 281 (Mo. 2019) (en banc).

94. *Id.*

95. *Id.* at 282.

they disagreed with the majority's conclusion that it precluded subdividing a lot within the Subdivision and building one residence on each sub-lot.[96]

A. Majority Opinion

The Supreme Court of Missouri rejected 6 Clayton Terrace's assertion that the original indentures did not expressly permit the addition of restrictions pursuant to the amendment provision.[97] The court chose not to follow *Van Deusen*, reasoning that *Van Deusen*'s narrow definition of "amend" was only applicable to the facts and unique language of the particular indentures in that case.[98] Thus, the court concluded *Van Deusen* "has no persuasive – let alone binding – force under the present facts or in cases using different language."[99]

After freeing itself from the *Van Deusen* precedent that led Missouri appellate courts to interpret the use of "amend" narrowly,[100] the court imparted a broader meaning on the words "amended or extended."[101] The court stated "amend" means "to change or modify in any way for the better" and to "extend" means "to cause to be longer."[102] The court used these definitions to support its conclusion that the language of the indenture was intended to permit two-thirds of the homeowners to add restrictions, as both "amend" and "extend" inherently broaden the reach of the list of restrictions either in effect or in time.[103]

As evidence of the indentures' intended meaning, the court noted the lot owners had adopted amendments that added restrictions multiple times by a less-than-unanimous vote over the life of the Subdivision.[104] Furthermore, the court observed that nothing in the context of the indentures suggested the words "amend" and "extend" were used in a way other than their normal meaning.[105] Therefore, the court concluded the

96. *Id.* at 287 (Powell, J., concurring in part and dissenting in part).

97. *Id.* at 279.

98. *Id.* at 281.

99. *Id.* at 282.

100. The *Van Deusen* court determined that "amend" in the context of a restrictive covenant means an "amelioration of the thing (as by changing the phraseology of an instrument, so as to make it more distinct or specific) without involving the idea of any change in substance or essence." Van Deusen v. Ruth, 125 S.W.2d 1, 3 (Mo. 1938).

101. *Clayton Terrace*, 585 S.W.3d at 281.

102. *Id.* (quoting *Webster's Third New International Dictionary* 68 (3d ed. 1966)).

103. *Id.* ("As noted above, the Clayton Terrace indentures state "[t]he following restrictions shall be in force and binding upon the owners of this Subdivision for a period of 25 years from date of this instrument, unless amended or extended by two-thirds of the lot owners.").

104. *Id.*

105. *Id.* at 282.

plain language of the original indentures granted lot owners, with the requisite majority vote, the power to change or modify the list of restrictions in any way they believed was "for the better," including by adding restrictions.[106] Consequently, the addition of the "one residence per lot" restriction was a permissible amendment given that it was approved by the requisite two-thirds of the owners.[107]

The court also rejected 6 Clayton Terrace's argument that, even if the "one residence per lot" limitation was valid, it did not prohibit dividing Lot 6 into two lots and building a residence on each sub-lot.[108] The court determined that the term "each lot,"[109] when considered in the context of the entire indentures, unambiguously referred to the twenty-three lots included on the plat that accompanied the original indentures.[110] The court also noted other situations in the indentures that evidenced an intent not to allow subdivision of existing lots.[111] For example, the court referenced the "right of first refusal" provision in the indentures, which stated if lots are purchased by more than one owner, the owners must take pro rata shares in the single lot and are not permitted to divide the lot pro rata.[112] The court reasoned that this restriction and the "one residence per lot" limitation would be effectively meaningless if a lot owner could circumvent them simply by subdividing the lot after purchase.[113] Thus, the court concluded that because the lot owners adopted the "one residence per lot" restriction with a clear intent – to protect the homeowners of the Subdivision by limiting each original lot to one residence – 6 Clayton Terrace could not avoid the restriction by subdividing Lot 6.[114]

B. Concurrence in Part, Dissent in Part

Judge Powell authored an opinion concurring in part and dissenting in part. Judge Powell agreed with the majority opinion's definition of "amend" and its authorization of additional restrictions by the requisite two-thirds vote, but he disagreed that the "one residence per lot" provision restricted subdivision of a lot.[115] He reasserted the principle that "courts fail to zealously protect the fundamental right to freely own and use private

106. *Id.*

107. *Id.*

108. *Id.*

109. As noted above, the actual language of the restriction provided that "only one residence shall be erected on each lot." *Id.* at 273.

110. *Id.* at 283.

111. *Id.* at 284.

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.* at 287 n.1 (Powell, J., concurring in part and dissenting in part).

property by enforcing restrictions that do not appear in the text of a covenant."[116] Judge Powell stated the plain and obvious purpose of the "one residence per lot" limitation was to prohibit the construction of multiple residences on a single lot.[117] Thus, in his opinion, inferring a "no subdivision" restriction into the "one residence per lot" provision violated the Supreme Court of Missouri's precedent favoring the free use of property unless property owners have voluntarily and unambiguously surrendered their rights.[118]

Judge Powell reasoned that because the provision does not address lot owners' authority to split their lots into sub-lots, the only way to conclude the covenant prohibited such a division was to infer that the phrase "each lot" limits the total number of lots to those in existence when the Subdivision adopted the covenant.[119] He considered such an inference, while plausible under the circumstances, was not clearly expressed in the covenant. He asserted that inference would violate the principle that restrictive covenants should "not be extended by implication to include anything not clearly expressed in them."[120] Therefore, Judge Powell concluded that 6 Clayton Terrace should have been free to subdivide its lot.[121] While this Note focuses on the meaning of "amend" in residential subdivision agreements, the court's disagreement on the interpretation of the "one residence per lot" restriction demonstrates the struggle to balance the principles of property law and contract law.

V. COMMENT

The Supreme Court of Missouri's seminal decision in *Van Deusen* created a standard that was repeatedly echoed and applied not only by that court and each of the Missouri's appellate divisions for eighty years thereafter, but also by appellate and supreme courts in other states.[122] Thus, based on previous interpretations of the meaning of the words "amend" and "modify," the established law in Missouri at the time of trial was that subdivisions could amend the restrictive covenants at any time

116. *Id.* at 287 (citing Steve Vogli & Co. v. Lane, 405 S.W.2d 885, 889 (Mo. 1966) (en banc)).

117. *Id.* at 288.

118. *Id.*

119. *Id.*

120. *Id.* (citing Vinyard v. St. Louis Cty., 399 S.W.2d 99, 105 (Mo. 1966)).

121. *Id.*

122. Van Deusen v. Ruth, 125 S.W.2d 1, 2–3 (Mo. 1938); *see* Boyles v. Hausmann, 517 N.W.2d 610, 616 (Neb. 1994); Grace Fellowship Church, Inc. v. Harned, 5 N.E.3d 1108, 1114 (Ohio Ct. App. 2013); Webb v. Finger Contract Supply Co., 447 S.W.2d 906, 908 (Tex. 1969).

with unanimous consent of the lot owners.[123] However, when amendments were adopted by less than unanimous vote, as happened in this case, the reviewing court must determine if the amendment imposed a new or additional burden upon the affected property that did not previously exist.[124] If it did impose a new burden, Missouri law dictated it must be adopted unanimously, and amendment by any lesser majority vote rendered the new restriction invalid and unenforceable.[125]

Without the Supreme Court of Missouri's willingness to limit *Van Deusen*'s applicability and redefine "amend" as it applies in the context of residential subdivision indentures, 6 Clayton Terrace almost certainly would have succeeded in splitting Lot 6 into two sub-lots because the restriction limiting "one residence per lot" was an additional burden not contemplated when the Subdivision adopted the original indentures.[126] However, after *Trustees of Clayton Terrace*, *Van Deusen* is no longer binding law. While the court in the instant case did not expressly overrule *Van Deusen*, it effectively eliminated future reliance on its holding by characterizing its reasoning as "suspect" and its definition of "amend" as "unaccountably narrow."[127] The Court further noted that the numerous appellate cases relying on *Van Deusen*, such as *Jones*, *Webb*, and *Bumm*, do not hold precedential value because they were "decided in error based on a misinterpretation and misapplication of *Van Deusen*."[128]

While *Trustees of Clayton Terrace* marks a shift in Missouri jurisprudence, Missouri is not the first state to permit a requisite majority of lot owners to adopt new restrictions pursuant to a subdivision's amendment provision.[129] It is likely that the Supreme Court of Missouri was aware of a trend in the law in favor of allowing a requisite majority to add new restrictions, and the court's appreciation of that trend may explain its overwhelming willingness to depart from Missouri's existing law. For example, in *Evergreen Highlands Ass'n v. West*, the Colorado Supreme Court permitted a requisite majority of lot owners in a residential

123. *See, e.g.*, Steve Vogli & Co. v. Lane, 405 S.W.2d 885, 888 (Mo. 1966); Bumm v. Olde Ivy Development, LLC, 142 S.W.3d 895, 903 (Mo. Ct. App. 2004); Pearce v. Scarcello, 920 S.W.2d 643, 644 n.3 (Mo. Ct. App. 1996); Kauffman v. Roling, 851 S.W.2d 789, 792 (Mo. Ct. App. 1993).

124. *See, e.g.*, *Bumm*, 142 S.W.3d at 903; Hazelbaker v. Cty. of St. Charles, 235 S.W.3d 598, 602 (Mo. Ct. App. 2007).

125. *See, e.g.*, *Van Deusen*, 125 S.W.2d at 2–3; *Hazelbaker*, 235 S.W.3d at 603; *Bumm*, 142 S.W.3d at 903; Jones v. Ladriere, 108 S.W.3d 736, 740 (Mo. Ct. App. 2003); Webb v. Mullikin, 142 S.W.3d 822, 827 (Mo. Ct. App. 2004).

126. Trustees of Clayton Terrace Subdivision v. 6 Clayton Terrace, LLC, 585 S.W.3d 269, 281–82 (Mo. 2019) (en banc).

127. *Id.* at 282.

128. *Id.*

129. *See, e.g.*, Evergreen Highlands Ass'n v. West, 73 P.3d 1, 7 (Colo. 2003) (en banc).

subdivision to "change or modify" existing covenants by adding new covenants.[130] In *Evergreen Highlands*, a homeowner who was opposed to an amendment which required mandatory assessments be paid to the homeowners' association argued that the amendment was a "new" covenant requiring unanimous consent and was thus invalid – the same argument made by 6 Clayton Terrace.[131] The Colorado Supreme Court looked to how other jurisdictions interpreted similar amendment provisions and held that the terms "change" and "modify" authorized the addition of new covenants.[132] This analysis of the language used in the *Evergreen Highlands*' modification clause mirrors the Supreme Court of Missouri's interpretation of the words "amend" and "extend" in *Trustees of Clayton Terrace*, as well as a meaningful trend of case law from other states.[133]

The Missouri Court of Appeals, Eastern District, had a chance to adopt *Evergreen Highland*'s analysis one year later in *Webb* but instead applied the *Van Deusen* precedent, citing cases in other states, such as *Boyles v. Hausmann* from Nebraska, as additional support.[134] This further enforced Missouri's disfavor of restrictive covenants and tendency towards giving the benefit of the doubt in interpreting amendment provisions in favor of upholding property rights.[135] Thus, the fact that the Supreme Court of Missouri buried such a substantial change of precedent within the *Trustees of Clayton Terrace* decision indicates the court may have overlooked the possible repercussions of its ruling.[136]

The lack of any language in the *Trustees of Clayton Terrace* opinion limiting application of the new rule indicates the court may have been quick to limit *Van Deusen*'s precedential value and to throw out other cases applying *Van Deusen* to similar facts.[137] For example, the *Evergreen Highlands* decision carefully noted that "the severity of consequences," specifically how "substantial and unforeseeable" the impact is on the objecting lot owner, may result in courts invalidating amendments adopted by consent of the requisite majority.[138] The Supreme Court of Missouri

130. *Id.* at 2.

131. *Id.* at 3.

132. *Id.* at 3–4.

133. *Id.* at 4–5; *see also* Zito v. Gerken, 587 N.E.2d 1048, 1050 (Ill. App. Ct. 1992); Sunday Canyon Prop. Owners Ass'n v. Annett, 978 S.W.2d 654, 657 (Tex. App. 1998); Windemere Homeowners Ass'n, Inc. v. McCue, 990 P.2d 769, 773 (Mont. 1999).

134. Webb v. Mullikin, 142 S.W.3d 822, 827 n.3 (Mo. Ct. App. 2004) (citing Boyles v. Hausmann, 517 N.W.2d 610 (Neb. 1994)).

135. *Id.* (citing Van Deusen v. Ruth, 125 S.W.2d 1, 3 (Mo. 1938)).

136. Trustees of Clayton Terrace Subdivision v. 6 Clayton Terrace, LLC, 585 S.W.3d 269, 281–82 (Mo. 2019) (en banc).

137. *Id.* at 282.

138. *Evergreen*, 73 P.3d at 6.

did not include similar limiting language in its *Trustees of Clayton Terrace* opinion.[139] Thus, *Trustees of Clayton Terrace* would seem to allow homeowners to add restrictions and increase burdens by a requisite majority vote in all situations with similarly worded amendment covenants.[140]

Prior Missouri case law in tension with *Van Deusen* may have provided further support for the *Trustees of Clayton Terrace* decision. For example, in *Lake Tishomingo Prop. Owners Ass'n v. Cronin*, the Supreme Court of Missouri upheld a less-than-unanimously approved amendment imposing a special assessment on the lot owners for nonroutine maintenance of the subdivision's community lake.[141] A majority of voting lot owners approved a one-time special assessment, recorded as an amendment to the subdivision covenants, for dredging necessary to preserve a 120-acre community lake and the property value of the 930 lots surrounding it.[142] The court noted that "under the unique circumstances" of the case, the special assessment was enforceable only under the court's power to "render equity."[143] In fact, the court stated it was "undisputed that the special assessment was not authorized by the covenant restrictions contained in the original indenture and no provision … permitted their subsequent modification."[144] Thus, the court was not enforcing an increased burden or additional restriction on the lot owners' *use* of their property adopted as an amendment to the original indentures, but it was recognizing that the lot owners had a contractual obligation to bear their fair share of the cost of preserving the subdivision's common properties.[145] While *Lake Tishomingo* creates possible precedent for *Trustees of Clayton Terrace*, the court's narrow holding and equitable enforcement of a less-than-unanimously approved amendment to the original subdivision indentures does not create the same cause for concern created by *Trustees of Clayton Terrace*.[146]

Under the new precedent established by *Trustees of Clayton Terrace*, any residential subdivision indenture that allows for amendment by a requisite majority vote now authorizes the imposition of additional restrictions or burdens on property owners who may not have voluntarily

139. *Clayton Terrace*, 585 S.W.3d at 282.

140. *Id.*

141. Lake Tishomingo Prop. Owners Ass'n v. Cronin, 679 S.W.2d 852, 857 (Mo. 1984) (en banc).

142. *Id.* at 854.

143. *Id.* at 857.

144. *Id.* at 853 (alteration in original).

145. *Id.* at 857.

146. *Id.*

surrendered their rights.[147] The court further solidified the practice of interpreting amendment provisions in subdivision cases in a manner consistent with the general principles of contract law.[148] Proponents of this policy will see it as promoting a more reasonable and ordinary reading of a subdivision's indentures and will permit subdivisions, condominiums, and residential communities across the state to make common sense changes and improvements to their restrictions. While this will likely prove to be sound policy in many instances, it marks a substantial deviation from Missouri law's existing policy of interpreting amendment provisions narrowly in favor of the free use of property.[149] The court's decision in *Bumm* exemplifies Missouri courts' staunch protection of this policy.[150] The *Bumm* court concluded that even the words "added to" in the indenture's amendment provision were not sufficiently explicit to permit the addition of restrictions by less than unanimous vote.[151]

Missouri courts' traditional adherence to the principle of narrowly construing amendment provisions stems from concern for the ramifications of giving homeowners' associations significant power in making rules – and justifiably so.[152] Now, a simple requisite majority of lot owners in a subdivision can vote to do any number of things, including increasing restrictions on land use beyond subdivision residents' expectations when they purchased their lots.[153] A reasonable explanation for the *Trustees of Clayton Terrace* holding may be that, because the disputed amendment occurred *prior* to their purchase of Lot 6, McGowan and 6 Clayton Terrace were on notice that the "one residence per lot" restriction might preclude their ability to split the lot.[154] Thus, McGowan and 6 Clayton Terrace were not the most sympathetic figures – they were real estate developers who bought Lot 6 with the knowledge that the Subdivision covenants may prevent them from carrying out their plan.

However, after the holding in *Trustees of Clayton Terrace*, it is not difficult to imagine increased instances of a buyer's detrimental reliance on subdivision covenants as they exist at the time of purchase.[155] There are likely to be more cases like *Jones*, where a good-faith buyer, knowing and relying on the subdivision's restrictions at the time of purchase, buys

147. Trustees of Clayton Terrace Subdivision v. 6 Clayton Terrace, LLC, 585 S.W.3d 269, 282 (Mo. 2019) (en banc).

148. *Id.* at 280.

149. *Id.* at 282; *see also* Van Deusen v. Ruth, 125 S.W.2d 1, 3–4 (Mo. 1938); Webb v. Mullikin, 142 S.W.3d 822, 827 (Mo. Ct. App. 2004).

150. Bumm v. Olde Ivy Development, LLC, 142 S.W.3d 895, 903 (Mo Ct. App. 2004).

151. *Id.* at 904–05.

152. Van Deusen v. Ruth, 125 S.W.2d 1, 3 (Mo. 1938).

153. *Clayton Terrace*, 585 S.W.3d at 282.

154. *Id.* at 273–74.

155. *Id.* at 282.

a property with the intention to use it for a permitted purpose only to then have the homeowners' association, after learning of the purchaser's intended use, adopt an amendment that takes away an existing right.[156] Under the precedent established by *Trustees of Clayton Terrace*, more sympathetic characters than career real estate developers, like the lot purchaser in *Jones*, will be stuck with a piece of property they can no longer use for its intended and anticipated purpose.[157]

It is easy to identify further areas of potential conflict associated with giving homeowners' associations the ability to impose new restrictions on subdivision lot owners. Subdivisions and residential communities now have more flexibility in restricting lot owners' ability to use their property for short-term rentals in the form of Airbnb, VRBO, and other similar internet-based rental services, which seems likely to be an increasing source of dispute as the demand for such services continues to grow.[158] For example, imagine you own a home, located in a residential subdivision, that you only live in during the summer. The rest of the year, while living elsewhere, you generate additional income renting out your summer home via Airbnb. If your neighbors decide they do not appreciate having renters come and go, *Clayton Terrace* gives them the ability to preclude you from renting out your home.[159] They must only garner the requisite majority vote of approval, as provided in the subdivision indenture's amendment provision, needed to pass an amendment prohibiting renting homes in the subdivision.[160] This may be a relatively easy task depending on the size of the subdivision and the requisite approval necessary. Based on *Clayton Terrace*'s definition of "amend," this would likely be a valid and enforceable restriction.[161] The same can be done with a multitude of other issues facing subdivisions, such as fences, livestock, and other perceived "nuisance" activities.[162]

Not only may this change in eighty years of precedent have significant implications for subdivision lot owners, but it may also lead to more cases involving amendments to residential subdivision indentures.

156. Jones v. Ladriere, 108 S.W.3d 736, 737–38 (Mo. Ct. App. 2003).

157. *Clayton Terrace*, 585 S.W.at 282.

158. *See Airbnb Records 30% Growth Rate in First-Quarter on Booking Strength*, REUTERS (Aug. 16, 2019 8:47 PM), https://www.reuters.com/article/us-airbnb-results/airbnb-records-30-growth-rate-in-first-quarter-on-booking-strength-source-idUSKCN1V700L [https://perma.cc/Y9LF-BE5F]. Airbnb Inc. recorded $9.4 billion in total booking value in the first quarter of 2019, up 31% from the first quarter of 2018. *Id.* This coming after the company reported 40% revenue growth in 2018 compared with the previous year. *Id.*

159. *Clayton Terrace*, 585 S.W.3d at 282.

160. *Id.*

161. *Id.* For the purposes of this hypothetical, it is assumed the amendment provision contains similar language to those discussed in the aforementioned cases.

162. *See id.*

In other words, reducing the barriers to amending subdivision indentures paves the way for an increase in litigation involving attempts by homeowners' associations to exact more control. After *Clayton Terrace*, all that stands in the way of an overbearing neighbor mandating how you can and cannot use your property is the support of a requisite majority of lot owners, which may be as low as a simple majority, and the condition that the amendment be a "change or modif[ication] in any way for the *better*."[163] The Supreme Court of Missouri may soon have to consider what constitutes a change for the "better."

VI. CONCLUSION

Trustees of Clayton Terrace held that "amend" in the context of subdivision indentures does not imply that changes can only be less restrictive, but instead means "to change or modify in any way *for the better*."[164] In so holding, the Supreme Court of Missouri reversed the standard established in *Van Deusen* that subdivision indentures and similar restrictive covenants could not be amended to add burdens without unanimous approval – a standard that has been applied by Missouri courts for more than eighty years.[165] An amendment to subdivision indentures is now valid and enforceable if it garners the number of votes required by the terms of the indentures, regardless of whether the amendment adds a new restriction or eliminates an existing one.[166] The Supreme Court of Missouri should not be surprised if its reversal of the "unanimous consent" requirement for increasing burdens on residential subdivision lot owners creates more problems for Missouri subdivisions and the property rights of lot owners than it seemed to envision. The court may have overlooked that what is "better" for some, may not be "better" for others. Just ask 6 Clayton Terrace.

163. *Id.* (emphasis added). The term "requisite majority," as used in this sentence, implies that the subdivision agreement allows for amendment by some form of a majority vote – a necessary condition for this proposition to be true.

164. *Id.*

165. *Id.* at 281–82 (citing Van Deusen v. Ruth, 125 S.W.2d 1, 3–4 (Mo. 1938)).

166. *Id.* at 282.