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September 26, 2020

Phil Buri
Buri Funston Mumford & Furlong, PLLC
1601 F. Street
Bellingham, WA 98225

Re: Hillius

Dear Phil:

I have been giving a lot of thought to Ben's email to you and me on August 28. I did not really expect him to answer my questions, and if he did, I was not expecting those answers. He said:

1) There is no option to purchase the golf course, but 18 Paradise have discussed a possible sale, and it is an option the parties are both considering.

2) Mr. Chen was not involved with preparation of the amendments and did not approve them.

3) Mr. Chen did not authorize the financial documents produced by MJ at the meeting you describe and does not have any ability to comment on them substantively.

4) 18 Paradise did not receive the fees you describe as increased payments.

He added that "the general concept is that MJ had the authority to manage the course and common areas, which included collecting fees from homeowners and maintaining the common areas."

Clearly, MJ Management did not have the authority to act as the Declarant under the Declaration. Paragraph 8.2.1 of the Declaration provides that

> So long as the Declarant retains ownership of the Common Open Space the Declarant specifically reserves for itself, its successors and assigns the absolute, unconditional right to alter, modify, change, revoke, rescind or cancel any and all of the restrictive covenants contained in this Declaration or hereinafter included in any subsequent Declaration provided that nothing herein shall prejudice or otherwise impair the security of any mortgagee of record as to any lot or parcel, Within forty-five (45) days after any such change in the Declaration the Declarant shall provide written' notice of the change to Parcel Owners.

The original declarant was Homestead Northwest, followed by Raspberry Ridge LLC, and then 18 Paradise LLP. 18 Paradise now arguably has the right to amend the Declaration.

In August and December of 2019, Mick O'Bryan executed and recorded the Sixth and Seventh Amendments to the Declaration. He purported to sign them as 18 Paradise LLP.

DATED this 28 day of JUNE, 2019

William M. O'Bryan
18 Paradise LLP
By its: MS MANAGEMENT, LLC

DATED this 3 day of DEC, 2019.

Mike O'Bryan
18 Paradise LLP
By its: MJ Management LLC, Acting Agent

According to the owner of 18 Paradise, MJ Management did not have permission or approval to record these documents. In fact, 18 Paradise did not even know about them, nor did it receive the resulting funds.

It appears to me that O'Bryan committed a Class C felony in recording the documents. Pursuant to RCW 40.16.030:

> Every person who shall knowingly procure or offer any false or forged instrument to be filed, registered, or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in such office under any law of this state or of the United States, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than five thousand dollars, or by both.

Moreover, RCW 9.38.020 appears to make O'Bryan's actions a gross misdemeanor.

> Every person who shall maliciously or fraudulently execute or file for record any instrument, or put forward any claim, by which the right or title of another to any real or personal property is, or purports to be transferred, encumbered or clouded, shall be guilty of a gross misdemeanor.

The nature of the documents suggest that they were prepared by an attorney, but the notaries are employees of Whatcom Educational Credit Union. We obviously will need to determine how the documents were created.

In *State v. Price*, 94 Wn.2d 810, 620 P.2d 994 (1980), the Supreme Court interpreted what RCW 4.16.030 means by "instrument."

> No Washington case has construed RCW 40.16.030. Other jurisdictions, interpreting identical or similar statutes, have reached conflicting results.
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> * * * *
>
> We agree with the approach of the New York court in interpreting a somewhat similar statute.

> To begin with, the term instrument is not one susceptible to an exact, precise and inelastic definition. It is employed in many different contexts in our law and its meaning shifts, sometimes subtly, sometimes not, depending on the context.... While in all cases the term serves to identify a class of paper writings, the type of document sought to be included in, or for that matter excluded from, the scope of a particular statutory enactment varies with the purpose that enactment seeks to serve....
>
> When a claim is made that a particular document is not an instrument within the meaning of the statutory prohibition, the character and contents of the document must be closely analyzed. The court must not only ascertain whether the particular document falls within the literal scope of the statute but also whether the document is of a character that the mischief the statute seeks to prevent would ensue if the document were filed. Where both standards are satisfied, the document,[620 P.2d 999] of course, is an instrument as that term is utilized in this statute.

*People v. Bel Air Equip. Corp.*, 39 N.Y.2d 48, 54-55, 382 N.Y.S.2d 728, 346 N.E.2d 529 (1976).

> With that background, we determine that the legislature intended that RCW 40.16.030 encompass a document which is required or permitted by statute or valid regulation to be filed, registered, or recorded in a public office if (1) the claimed falsity relates to a material fact represented in the instrument; and (2a) the information contained in the document is of such a nature that the government is required or permitted by law, statute or valid regulation to act in reliance thereon; or (2b) the information contained in the document materially affects significant rights or duties of third persons, when this effect is reasonably contemplated by the express or implied intent of the statute or valid regulation which requires the filing, registration, or recording of the document.

*State v. Price*, 94 Wn.2d 810, 620 P.2d 994 (1980).

Applying this standard to the Sixth and Seventh Amendment, each document represents that it was executed by 18 Paradise LLP. That representation was false. The second requirement is satisfied because the information contained in the document materially affected significant rights of third parties.

The Sixth and Seventh Amendments are void *ab initio*. The additional fees paid pursuant to them were received by MJ Management and O'Bryan, not 18 Paradise. At a bare minimum, those amendments need to be vacated, and all amounts paid pursuant to them must be refunded.

This information also calls into question the increases in the fee in 2016-2019. Paragraph 3.5(e) of the Declaration provides that:

> The Declarant shall have the right and power to increase the maintenance fee each calendar year. Notices of fee adjustment shall be sent to Parcel Owners in December of each year where an adjustment has been made for the following calendar year.

The notices sent in 2015 and 2016 came from David Mocini, but we understand that MJ Management sent the notices in 2017 and 2018. Based on Chen's statements about the Sixth and Seventh Amendments, we question whether he knew about or authorized the 2017 and 2018 Notices.

Whether Chen authorized them or not, they were ineffective. Paragraph 3.5(e) of the Declaration, notice of an annual increase must be sent to the homeowners "in December of each year where an adjustment has been made for the following calendar year." However, the notices for 2018 and 2019 were sent in November of the prior year. Those increases must be vacated and refunded as well.

The bigger question is where we go from here. If your clients do not immediately take action to correct title, we will take all necessary steps to make that happen. Your clients have dug themselves a deep hole, and they may have dragged 18 Paradise into it. Their dream of a $93 fee has gone up in smoke, and they need to start thinking about self-preservation. We have no interest in turning this case into a bigger fight, but your clients' actions will determine our next step. I know that they do not have the final say in this, but I suspect that they and you have some influence.

With a monthly fee of $33 instead of $93, I doubt that it makes economic sense for Chen to fight this action. He is a smart enough businessman to know a losing hand when he sees one. Ben's disclosures have increased the anger on our side, but I continue to think that the best outcome would focus on a simple transfer of the common areas and declarant rights with mutual releases. I am far out in front of my clients, and I cannot make any guarantees, but I am willing to work for that solution if the defendants act promptly.

This feels like our last best hope to resolve this without a long and expensive fight. The ball is in your court.

Sincerely,

Matthew F. Davis

cc: Ben Vandenberghe