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October 1, 2020

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

Re: Hillius et al v 18 Paradise, LLP et al

Dear Phil:

I am following up about the meeting that Mick O'Bryan proposed to discuss a possible resolution of the Homestead matter. As you know, O'Bryan delivered a letter to all of the plaintiffs on September 24 proposing a meeting at the Lynden City Annex building on October 2. Although his letter asked that only the plaintiffs and a City of Lynden officer be present, Mick told the plaintiffs that he was inviting other Homestead residents and the Lynden Tribune.

On September 25, I sent you and Ben Vandenberghe an email confirming the plaintiffs' willingness to negotiate a settlement but pointing out that O'Bryan appears to have no authority to reach an agreement for 18 Paradise.

On September 28, you sent me a letter declaring that 18 Paradise delegated its authority to act as declarant to MJ Management. I responded with an email the same day seeking clarification about O'Bryan's authority. When I did not receive any additional explanation from you, I sent an email to Ben asking him to explain the scope of MJ Management's authority. He responded with an email that simply states

> I'm not going to respond to your letter to Phil. I anticipate this response meets with your expectations.

Needless to say, his response did not meet my expectations because I still have no idea what, if any, authority O'Bryan has.

On September 28, O'Bryan delivered a supplemental letter to the plaintiffs. He did not directly address the authority question, and what he did say was troubling.

> We can address the current property owner, (Mr. Chen), and any future owners, when the time is right. If management, and the homeowners, can come together with a plan for the entire community, we believe the current ownership will be satisfied with the resolution.

We have to assume that O'Bryan has no actual authority and just hopes that if he can work out an agreement, the owner will agree to it. With all due respect, that is no reason to have a meeting.

The plaintiffs very much want to negotiate a fair settlement to this, and we are prepared to meet on short notice. However, there is a right way to do things. The parties and their

attorneys need to attend. The press and nonparties do not. For a meeting to be productive, we need to exchange all essential documents beforehand. Foremost among them is whatever agreements exist between O'Bryan or MJ Management and Chen. We also should exchange written settlement positions in advance of the meeting so that we don't waste time with the background.

I think it makes sense to revisit the plaintiffs' expectations for any negotiations. Homestead is a 1992 subdivision, and the owners still have no say in their own HOA. The HOA is still under declarant control, but the "declarant" is not even the developer. 18 Paradise is owned by a Chinese businessman who lives in Vancouver. His only relationship to the neighborhood is that he bought the golf course in 2013. He acquired the declarant rights when he bought the golf course, but there is not even a relationship between the subdivision and the golf course. No one is going to think that this arrangement makes sense. In fact, when you and I began communicating about this case, you described the request to incorporate the HOA and transfer the common areas a "reasonable proposal." Those requirements are not negotiable.

The question of course is why your clients or Chen would oppose such a reasonable request. The only logical answer is money. Even before your clients purported to increase the fee to $93, it was generating over $250,000 per year of revenue. Anything left after paying expenses was pure profit. In a meeting with homeowners, Josh Williams said that Chen values the golf course at $500,000 and the income stream from the maintenance fees at $3 million. At the $93 rate, that value would exceed $10 million. The only reason why your clients and 18 Paradise oppose this lawsuit is to maintain those profits.

As I see it, this puts 18 Paradise and your clients in an impossible situation. If you deny the profits, then your position makes no sense. If you admit the profits, then you will have to defend a larcenous position. And if the maintenance fee was already profitable at $36, then your clients' attempt to almost triple it will be exposed as naked greed. That is doubly true considering that the Declaration is a perpetual encumbrance.

I hope that your clients and Chen appreciate the record that you have created. In the 2017 and 2018 fee notices, your clients represented that the increases in the fee were necessary because of rising costs. They said the Sixth Amendment and special assessment were needed to "cover the unanticipated costs" of the storms. When they announced the Seventh Amendment and the increase to $93, your clients said that past increases "have been inadequate in covering the bare minimum expenses required to maintain the common open space and cannot continue to operate at a deficit." They provided a profit and loss statement claiming that they spent $356,000 on common area maintenance in 2018, and a 2020 budget for another $650,000. In your September 28 letter, you said that "MJ Management spent all assessments on expenses to maintain the Homestead's facilities. The assessments were less than the expenses for maintaining the Homestead and its amenities." If those statements are proven false, then your clients have committed fraud.

Ben has taken the same approach. 18 Paradise denied the allegation in paragraph 77 of the Complaint that it has made a profit on the maintenance fees. He has made a number of other statements generally denying a profit motive with respect to the maintenance fees.

If you and your clients are telling the truth, they get no benefit from the maintenance fees or declarant rights, and they should be eager to part with them. If your clients have not been truthful, they will face consequences in this action.

All this begs the question why 18 Paradise and your clients would agree to walk away from a guaranteed income stream. First and foremost, I would argue they should because a court will force them to if they refuse to agree. On top of that, our clients would have a right to disgorgement of improper profits, and that is a subject that is open to negotiation. Based on what we know, it looks like the fees have generated about $200,000 per year in profit, and we have claims under the Consumer Protection Act. Your clients and 18 Paradise have an opportunity to make a bad situation much less worse, but only if they are realistic and deal with reality.

Thank you.

Sincerely,

Matthew F. Davis

cc: Ben Vandenberghe