

FILED
COUNTY CLERK
2020 NOV 25 1 P 3:06
WHATCOM COUNTY
WASHINGTON
BY _____

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR WHATCOM COUNTY

SCOTT HILLIUS, et al.,
Plaintiffs,

v.

18 PARADISE LLP et al.,
Defendants.

No. 20-2-00701-37

~~PROPOSED~~ ORDER GRANTING
RECONSIDERATION OF MOTION FOR
CLASS ACTION CERTIFICATION

Judge Robert E. Olson

This matter came before the Court on the motion of plaintiffs for an order reconsidering the Court's order denying class action certification pursuant to CR 23. The Court having considered the motion, the responses of defendants, and oral argument,

IT IS HEREBY ORDERED that plaintiffs' Motion for Reconsideration is granted;
IT IS FURTHER ORDERED that the Court certifies the following class for purposes of this Order (the "Class"): Every person or entity who is a record owner of a fee or undivided fee interest in any Lot or Condominium Unit that is subject to the Master Declaration of Covenants, Conditions, Restrictions and Reservations for Homestead, a Planned Residential Development, recorded under Whatcom County recording number 920624017 (the "Declaration").

IT IS FURTHER ORDERED that the Court makes the following findings and Rulings regarding CR 23(a). CR 23(a) sets forth four criteria for whether a case meets the prerequisites for a class action, and all four criteria must be shown.

1. The Class is so numerous that joinder of all members is impracticable;

DAVIS LEARY PLLC
3233 56TH PL SW
Seattle, WA 98116
206-578-5800

COPY

- 1 2. There are questions of law and fact common to the Class, including the validity of the increases
2 to the maintenance fee assessed under the Declaration.
- 3 3. The claims or defenses of the representative parties are typical of the claims or defenses of the
4 class because all of the claims arise from a common course of conduct and are based on the
5 same legal theories; and
- 6 4. The representative parties will fairly and adequately protect the interests of the class because
7 the interests of the plaintiffs are not adverse or antagonistic to the interests of the class, and the
8 Court is satisfied that counsel will vigorously prosecute this action.

9 The Court therefore finds that the prerequisites of CR 23(a) have been satisfied.

10 IT IS FURTHER ORDERED that the Court makes that the Court makes the following findings
11 and Rulings regarding CR 23(b). CR 23(b) sets forth three alternative grounds to certify a case as a
12 class action. Only one of those criteria needs to be established.

- 13 1. Pursuant to CR 23(b)(1), the Court finds that the prosecution of separate actions by or against
14 individual members of the class would create a risk of inconsistent or varying adjudications
15 with respect to individual members of the class regarding the Declaration, and that the
16 determination of the claims of the plaintiffs would as a practical matter decide the claims of
17 absent class members. The outcome of this action will determine many of the rights and
18 obligations of all class members whether this case proceeds as a class action or not. The CR
19 23(b)(1) requirements are satisfied.
- 20 2. Pursuant to CR 23(b)(2), the Court finds that the plaintiffs allege the same course of conduct
21 by the defendants towards all members of the Class. Plaintiffs are seeking injunctive and
22 declaratory relief, and if granted that relief should apply equally to all members of the class.
23 The CR 23(b)(2) requirements are satisfied.
- 24 3. The Court finds and rules that that the questions of fact and issues of law raised in the Complaint
25 apply equally to all members of the Class. Those common questions and issues predominate
26 over any potential differences that may exist between the claims. All of the claims should be
27

1 decided in an single action with a result that is binding on the entire Class. The CR 23(b)(3)
2 requirements are satisfied.

3 IT IS FURTHER ORDERED that plaintiffs are appointed as class representatives and Andersson
4 Cross-Border Law Corporation and Davis Leary PLLC are appointed as Class Counsel.

5 IT IS FURTHER ORDERED that plaintiffs shall prepare a list of the names and addresses of all
6 Class members and file said list with the Court. Plaintiffs shall make reasonable efforts to determine
7 the best mailing address for each property subject to the Declaration, including mailing addresses for
8 absentee owners.

9 IT IS FURTHER ORDERED that plaintiffs shall send written notice by first class mail with a
10 prepaid response envelope to all known members of the Class, which notice shall advise each member
11 as follows:

12 (A) The Court will exclude a member from the Class, if the member so requests by March 31, 2021.

13 (B) The judgment, whether favorable or not, will include all Class members who do not request
14 exclusion;

15 (C) Any member who does not request exclusion may, if the member desires, enter an appearance
16 through counsel; and

17 (D) the Notice shall contain forms that class members may sign to support or opt out of this action.

18 IT IS FURTHER ORDERED that plaintiffs shall establish internet and/or electronic means by
19 which members of the Class can communicate with Class Counsel and to keep the Class informed of
20 the progress of the case.

21 IT IS FURTHER ORDERED that plaintiffs shall maintain a record of all members of the Class
22 who contact Class Counsel and submit monthly reports to the Court identifying the members of the
23 Class who have and have not communicated with Class Counsel.

24 DATED this 25 day of November, 2020.

25
26 **ROBERT E. OLSON**

27 _____
Judge Robert E. Olson


DAVIS LEARY PLLC
3233 56TH PL SW
Seattle, WA 98116
206-578-5800

1
2 Presented by:

3 DAVIS LEARY PLLC

4
5 By 
6 Matthew F. Davis, WSBA No. 20939
Attorney for Plaintiffs


7 ANDERSSON CROSS BORDER LAW CORPORATION

8
9 By 
10 K. David Andersson, WSBA No. 24730
11 R. Dallan Bunce, WSBA No. 47213
Attorneys for Plaintiffs


12 BURI FUNSTON MUMFORD FURLONG PLLC

13
14 By 
15 Phillip Buri, WSBA No. 17637
Attorney for MJ Management, LLC

16 MONTGOMERY PURDUE BLANKINSHIP & AUSTIN PLLC

17
18 By 
19 Benjamin I. Vandenberghe, WSBA No. 35477
20 Henry G. Ross, WSBA No. 51591
Attorneys for Defendant 18 Paradise, LLP

21 CARMICHAEL CLARK PS

22 By  approved as to form
23 Lisa M. Keeler, WSBA No. 39463
24 Robert A. Carmichael, WSBA No. 14008
Attorneys for Defendant City of Lynden

25
26
27
DAVIS LEARY PLLC
3233 56TH PL SW
Seattle, WA 98116
206-578-5800