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WHATCOM COUNTY
WASHINGTON
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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
REVISION OF COURT'S ORDER ON
PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT

Judge Robert E. Olson
February 26, 2021
Motions Calendar

This matter came before the Court on the motion of Plaintiffs for reconsideration on partial summary judgment. Plaintiffs request that the Court revise its order as set forth here. Plaintiffs have endeavored to substantively change only the rulings addressed in this motion and to preserve the balance of the Court's ruling.

Redline:

2. This Court ~~finds there are genuine issues of material fact that remain in dispute, including~~ rules as follows:

a. ~~The intentions of Defendants 18 Paradise LLP and MJ Management in establishing their contractual obligations with one another and the degree to which MJ Management had agency, whether express, implied or apparent, to act as Declarant, or whether, in the absence of clear agency, Defendant 18 Paradise has ratified the actions of MJ Management; Because the parties have concurred on the record in this respect, the Court rules as a matter of law pursuant to CR 56(d) that 18 Paradise and MJ Management intended for the Lease Agreement to delegate full declarant rights to MJ Management and to confer on MJ Management complete discretion with respect to the exercise of those rights;~~

b. ~~Questions of fact preclude summary judgment whether Whether, given the historical circumstances of a failure by the Homestead property owners to form a governing homeowners' association, a change in neighborhood conditions has occurred that impacts or modifies the~~

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1 Declarant's authority to amend the development's restrictive covenants; the plan of
2 development set forth in the Declaration authorizes the adoption of the Sixth and Seventh
3 Amendments by less than the unanimous consent of the affected homeowners;

4 c. ~~Whether any attempt by Plaintiffs to assert invalidation of the Sixth and Seventh~~
5 ~~Amendments on the grounds that they violate the Revised Code of Washington (RCW) 64.90 et~~
6 ~~seq. is tenable as a matter of law or equity where the Plaintiffs are homeowners all of whom~~
7 ~~have failed to form a governing association and board, and whether the homeowners knew or~~
8 ~~had a reasonable opportunity to assert their homeowner rights as against the Declarant and~~
9 ~~whether an unreasonable delay in asserting those rights represents a detriment to the Defendants~~
10 ~~legally or financially; Questions of fact preclude summary judgment whether the Sixth and~~
11 ~~Seventh Amendments violated applicable statutes and ordinances, and, if so, whether such a~~
12 ~~violation would invalidate the amendments;~~

13 d. ~~Whether the conduct of the Defendants 18 Paradise LLP and MJ Management was~~
14 ~~reasonable and consistent with the general plan of development given the apparent emergent~~
15 ~~need for common area maintenance and repair over parts of the development in which all~~
16 ~~homeowners have a collective interest Questions of fact preclude summary judgment whether~~
17 ~~the Sixth and Seventh Amendments violated the plan of development as set forth in the~~
18 ~~Declaration;~~

19 e. Pursuant to CR 56(d), the Court rules as a matter of law that the "Common Open Space" as
20 that term is used in the Declaration is limited to the property described in paragraph 1.3.8 of the
21 Declaration and the phasing amendments recorded in compliance with paragraph 3.8 of the
22 Declaration.

23 and

24 f. Pursuant to CR 56(d), the Court rules as a matter of law that the maintenance fees assessed
25 under the Declaration may only be spent on maintenance of the Common Open Space as
26 defined in paragraph 1.3.8 of the Declaration and the maintenance set forth in paragraph 3.8 of
27 the Declaration, to wit, maintenance of the entry signs for the residential development and
surrounding landscaping, and mail box surrounds, payment of electric bills for street lights
serving the Homestead PRD, and maintenance of street lights withing the Homestead PRD to
the extent not maintained by the City of Lynden.

3. This Court reserves on the question of whether the failure by Defendants 18 Paradise LLP and/or
MJ Management to seek approval of the City of Lynden to enter the Sixth and Seventh
Amendments has a negating effect on their entry or enforcement. This Court observes as dicta that
one party may have differing obligations to different parties wherein a failure to act vis-a-vis one
party does not necessarily limit the acting party's authority over the third. Further, it is unclear
whether Plaintiffs have standing to bring an action to invalidate the Sixth and Seventh Amendments
on the basis that they violate some part of Title 19 of the Lynden Municipal Code (LMC) or
whether any enforcement action must be brought by or through the City itself. Finally, LMC 19.29
et seq. requires the formation of a homeowners' association, which, as previously noted, has not
occurred, meaning that Plaintiff Homeowners appear to be equally in violation of the code they
complain the Declarant has violated by entering the Sixth and Seventh Amendments. The Court
finds insufficient evidence to rule on the question whether the failure to obtain the City's approval
of the Sixth and Seventh Amendments has any legal effect on the validity of the amendments.
These questions are reserved without prejudice.

1 4. Nothing in these rulings serves to establish that the Sixth and Seventh Amendments are valid or
2 invalid in fact or law, ~~but a trial will be necessary to fix these questions~~

3 The Court having considered the motion, the responses of defendants, and oral argument,

4
5 IT IS HEREBY ORDERED that Plaintiffs' request for Revised Order is granted.

6
7 DATED this ____ day of _____, 2020.

8
9 _____
10 Judge Robert E. Olson

11 Presented by:

12 DAVIS LEARY PLLC

13 By 

14 Matthew F. Davis, WSBA No. 20939
15 Attorneys for plaintiffs
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