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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,

Defendant.

No. 20-2-00701-37

FOURTH AMENDED COMPLAINT

CLASS ACTION

Judge David E. Freeman

For their Complaint, Plaintiffs allege as follows:

I. PARTIES

1. Plaintiff Scott Hillius ("Hillius") is a resident of Whatcom County and the owner of residential property in the Homestead Planned Residential Development, Lynden Washington ("Homestead PRD").
2. Plaintiff Tom Staehr ("Staehr") is a resident of Whatcom County and the owner of residential property in the Homestead PRD.
3. Plaintiff Randy Drubek ("Drubek") is a resident of Whatcom County and the owner of residential property in the Homestead PRD.
4. Plaintiff Mark Miedema ("Miedema") is a resident of Whatcom County and the owner of residential property in the Homestead PRD.
5. Plaintiffs Daniel and Sonja Lyons ("Lyons") are residents of Whatcom County and the owners of residential property in the Homestead PRD.

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1 6. Plaintiffs Douglas and Angelique Scarlett (“Scarlett”) are residents of Whatcom County and
2 the owners of residential property in the Homestead PRD.

3 7. Plaintiffs Steven and Lisa Zehm (“Zehm”) are residents of Whatcom County and the owners
4 of residential property in the Homestead PRD.

5 8. Plaintiff Ronald Saran (“Saran”) is a resident of Whatcom County and the owner of
6 residential property in the Homestead PRD.

7 9. Defendant 18 Paradise LLP (“18 Paradise”) is a Washington limited liability partnership.

8 **II. JURISDICTION AND VENUE**

9 10. This Court has personal and subject matter jurisdiction over the parties and claims in this
10 action.

11 11. Venue for this action is appropriate in Whatcom County Superior Court pursuant to RCW
12 Chapter 4.12.

13 12. On November 13, 2020, the Court certified this action as a class action pursuant to CR 23.

14 **III. FACTUAL ALLEGATIONS**

15 13. The Homestead Planned Residential Development (“PRD” and “Homestead PRD”) was
16 formed in 1992 by Homestead Northwest, Inc. (“HNW”). It consists of approximately 250
17 acres consisting of residential areas and a golf course.

18 14. The Homestead PRD was expected to be completed by 2007, but completion was delayed
19 by market conditions and HNW’s financial problems. HNW sold the golf course and what
20 was left of the Homestead PRD in 2010 to Raspberry Ridge, which finished the PRD and
21 then sold the golf course to defendant 18 Paradise in 2013.

22 15. When HNW recorded the Master Declaration of Covenants, Conditions, Restrictions and
23 Reservations for Homestead, a Planned Residential Development (the “Declaration”) on
24 June 24, 1992, it took an unusual approach in several respects.

25 a. Although the Homestead PRD included Common Open Space (“COS”) that was
26 required by the PRD Ordinance, HNW retained ownership of the COS. Private
27 ownership of the COS is prohibited by section 19.29.090(D) of the PRD Ordinance.

1 b. Although the Declaration says that the Homestead Owners Association (“HOA”) was
2 formed, the Declaration **prohibited it from organizing or acting unless and until**
3 **HNW decided to transfer the COS to it.** HNW retained complete declarant rights
4 under the Declaration. The PRD ordinance requires every PRD to have a functioning
5 homeowners association.

6 c. The Declaration assesses a Joint Maintenance Fee against all Homestead owners subject
7 to the PRD to cover the expenses of maintaining the COS.

8 16. When HNW sold the remainder of the Homestead PRD to Raspberry Ridge in 2010, the
9 sale included the declarant rights. When Raspberry Ridge sold the golf course to 18 Paradise
10 in 2013, that sale also included the declarant rights. 18 Paradise is the second successor
11 declarant of the Homestead PRD.

12 17. When the Declaration was recorded, the Homestead PRD contained only 33 lots, and the
13 COS was limited to Tract A of the Maberry Plat. The Declaration provided that additional
14 property could be made subject to its terms and additional COS could be designated in
15 phasing amendments.

16 18. HNW recorded a series of phasing amendments that identified additional property subject
17 to the Declaration and designated additional COS. Under the phasing amendments, only
18 residential platted property within the Homestead PRD area is subject to the Declaration.

19 19. On April 6, 2022, the Court in this action entered an order defining the term “Common
20 Open Space” for the Homestead Declaration as:

21 Platted areas within the Homestead PRD that are: (1) identified on the face of a
22 plat as “Common Open Space” or “Open Space;” (2) delineated on a plat but not
23 identified as a lot; and (3) easements on the face of a plat for ingress and egress,
24 pedestrian use, or pathways. **Except:** (1) areas dedicated to the City of Lynden for
25 roadways and utilities; (2) areas that are also identified as utility easements, (3)
26 unplatted areas, and (4) **areas within the golf course, clubhouse, R.V. storage**
27 **and maintenance areas.**

20. The COS is limited to the areas within the definition set forth in the Court’s order.

1 21. Paragraph 3.3 of the Declaration provides that "The Declarant shall manage and maintain
2 the Common Open Space," and that "All costs and expenses of maintenance of and
3 improvements to the Common Open Space shall be paid by the Declarant...."

4 22. Paragraph 3.3 of the Declaration defines the term "maintenance" as management and
5 maintenance of the COS, and further provides that "Maintenance also includes maintenance
6 of entry signs and landscape, mail box surrounds, street light electrical power bills, and
7 maintenance of lights not maintained by the City of Lynden." The definition of maintenance
8 in section 3.3 of the Declaration is complete and exhaustive.

9 23. Maintenance under the Declaration does not include work on the golf course or
10 infrastructure of the Homestead PRD unless specifically set forth in section 3.3 of the
11 Declaration.

12 24. Paragraph 3.3 of the Declaration also provides that "payments for costs and expenses shall
13 be funded by joint maintenance fees provided by Parcel Owners other than the Declarant."
14 The intent of the Declaration was for the maintenance fee to be used to pay costs and
15 expenses of maintenance.

16 25. The Assignments to Raspberry Ridge and to 18 Paradise both state that the purpose of the
17 maintenance fee was to "recover the costs for services and maintenance of the Common
18 Open Space as from the owner of any lot or parcel as provided for in the Master Declaration,
19 as amended." Raspberry Ridge and 18 Paradise were assigned only the right to recover the
20 costs for services and maintenance of the COS.

21 26. The initial maintenance fee was \$25 per parcel per month. Paragraph 3.5(e) allowed the
22 declarant to increase the maintenance fee up to 5% each year by giving a notice during
23 December of the year before the increase would take effect.

24 27. HNW did not increase the maintenance fee from 1992 to 2005. Between 2005 and 2008,
25 HNW increased the maintenance fee from \$25 to \$30 per month.
26
27

1 28. After acquiring the golf course and declarant rights in 2013, 18 Paradise regularly increased
2 the maintenance fee by the allowable 5%. By 2019, 18 Paradise had increased the fee to \$36
3 per month.

4 29. In 2017, 18 Paradise entered into a management and lease agreement with MJ Management,
5 LLC ("MJ Management"). At all times since, MJ Management has acted as the agent of 18
6 Paradise with respect to the Golf Course and declarant rights.

7 30. On July 1, 2019, on behalf of 18 Paradise, MJ Management caused the Sixth Amendment
8 to the Declaration to be recorded in the name of 18 Paradise. The Sixth Amendment
9 permitted 18 Paradise, as declarant, to impose special assessments.

10 31. On August 9, 2019, 18 Paradise notified Homestead parcel owners that it was imposing an
11 \$83.00 special assessment on each Homestead parcel pursuant to the Sixth Amendment.

12 32. RCW 64.90.525(3) provides that a homeowners association may propose a special
13 assessment at any time, and that the special assessment must be approved by the members
14 of the association. 18 Paradise did not seek or obtain homeowner approval of the special
15 assessment.

16 33. Through its agent MJ Management, 18 Paradise assessed and collected the special
17 assessment. 18 Paradise did not comply with RCW 64.90.525(3).

18 34. The proceeds of the special assessment were used for the benefit of 18 Paradise.

19 35. On December 3, 2019, on behalf of 18 Paradise, MJ Management caused the Seventh
20 Amendment to the Declaration to be recorded in the name of 18 Paradise. The Seventh
21 Amendment added a sentence to the Declaration stating that:

22 The failure to increase maintenance fees in one or more years does not waive the right
23 to increase fees the following year up to the maximum combined amount for all years.

24 36. On December 4, 2019, 18 Paradise's agent MJ Management sent a notice to Homestead
25 parcel owners falsely stating that the Maintenance Fee increases from 2016-2019 "have been
26 inadequate in covering the bare minimum expenses required to maintain the common open
27 space and cannot continue to operate at a deficit."

1 37. The December 4, 2019 notice stated that the maintenance fee would retroactively increase
2 158% to \$93 per month effective January 1, 2020.

3 38. The increase was imposed to increase profits from the maintenance fee.

4 39. 18 Paradise did not comply with RCW 64.90.525.

5 **IV. CLASS ACTION ALLEGATIONS**

6 40. Plaintiffs bring this action on behalf of themselves and on behalf of a class consisting of
7 Parcel Owners subject to the Master Declaration (the "Class Members").

8 41. The Class Members consist of the owners of a fee interest in real property that is subject to
9 the Declaration.

10 42. The class consists of approximately 600 property owners.

11 43. It would be impractical at best to join all Class Members in a single action.

12 44. The legal and factual issues in this action are identical with respect to each of the Class
13 Members. Each of the Class Members were subject to exactly the same monthly maintenance
14 fee for exactly the same reason.

15 45. The claims of the named plaintiffs are typical of claims of the Class Members because all
16 class members have the same claims against the same defendant.

17 46. The named plaintiffs are personally and financially prepared to fairly and adequately
18 represent the interests of the Class Members.

19 47. If the Class Members each brought their own actions, there would be a high risk of
20 inconsistent adjudications of legally identical claims and/or res judicata or collateral estoppel
21 effects of earlier cases on later ones.

22 48. The Court's determination of the merits of the claims of some of the members of the class
23 would as a practical matter decide the merits of the claims of other members who did not
24 participate in the action.

25 49. 18 Paradise has acted in exactly the same manner with respect to all Class Members. The
26 Court should render a single decision applicable to all Class Members.
27

1 50. The common questions between members of the class predominate over any potential
2 differences. Potential differences primarily concern the period and resulting amount of
3 damages, but all claims will be decided under the same standard.

4 51. A significant portion of Class Members have already opted to participate in this class action
5 and have requested class action certification.

6 52. The Court should certify this action as a class action pursuant to CR 23.

7 53. On November 13, 2020, the Court certified this action as a class action pursuant to CR 23.

8 **V. CAUSES OF ACTION**

9 **A. Consumer Protection Act, RCW Chapter 19.86.**

10 54. RCW 19.86.02 prohibits unfair or deceptive acts in trade or commerce.

11 55. Defendant 18 Paradise and its agents have engaged in unfair and deceptive acts, including
12 the following:

- 13 a. Charging a maintenance fee in excess of the amount necessary to perform maintenance
14 as defined by the Declaration;
- 15 b. Commingling the maintenance fee with golf course funds and failing to maintain accurate
16 accounting of the funds;
- 17 c. Increasing the maintenance fee for reasons other than covering the actual cost of
18 maintenance as defined by the Declaration;
- 19 d. Misrepresenting the adequacy of the maintenance fee and the need for increases;
- 20 e. Recording the Sixth Amendment;
- 21 f. Recording the Seventh Amendment;
- 22 g. Collecting maintenance fees under the Sixth and Seventh Amendments; and
- 23 h. Maintaining private ownership of the COS.

24 56. Each act described in the foregoing paragraphs is a separate and distinct violation of the
25 Consumer Protection Act and with respect to each individual class member.

26 57. The conduct of 18 Paradise alleged above constitutes unfair and deceptive acts or practices
27 in violation of RCW 19.86.020.

1 58. 18 Paradise committed the unfair and/or deceptive acts and practices in the conduct of its
2 business.

3 59. The unfair and deceptive acts and practices occurred in trade or commerce.

4 60. The unfair and/or deceptive acts and practices set forth herein affected the public interest
5 pursuant to RCW 19.86.093 because they injured hundreds of Homestead PRD homeowners
6 and have the capacity to continue to injure hundreds more.

7 61. Plaintiffs and the members of the class have been injured in their business or property as a
8 proximate result of the unfair and/or deceptive acts and practices because they incurred
9 financial losses in the amount of the payments made and because their properties lost value
10 as a result of the arbitrary and high-handed maintenance fee increases and collection
11 practices.

12 62. The unfair and/or deceptive acts and practices as alleged herein were the direct and
13 proximate cause of the harm incurred by plaintiffs and members of the class.

14 63. Plaintiffs and members of the class have incurred damages in an amount to be proven at
15 trial.

16 64. Pursuant to RCW 19.86.090, plaintiffs and members of the class are entitled to exemplary
17 damages of three times their actual damages up to \$25,000 per violation.

18 65. Pursuant to RCW 19.86.090, plaintiffs and members of the class are entitled to a permanent
19 injunction prohibiting 18 Paradise from continuing its unfair and/or deceptive acts or
20 practices.

21 66. Pursuant to RCW 19.86.090, plaintiffs are entitled to an injunction for 18 Paradise to cease
22 its private ownership of the COS.

23 **B. Declaratory Judgment – Declaration.**

24 67. Pursuant to RCW 7.24.020, plaintiffs are entitled to have determined any question of
25 construction or validity arising under a contract to which they are party or in which they
26 have an interest.

27 68. Plaintiffs are parties to the Declaration and have a sufficient interest in it.

1 69. A justiciable dispute exists between the parties concerning the meaning and interpretation
2 of the Declaration, including the following:

- 3 a. The definition of COS;
- 4 b. The definition of maintenance;
- 5 c. Whether the Sixth Amendment is valid;
- 6 d. Whether the Seventh Amendment is valid;
- 7 e. Whether the use of the maintenance fee is limited to maintenance as defined by the
8 Declaration; and
- 9 f. The identity of the properties that are subject to the Declaration.

10 70. The Court should enter a declaratory judgment that:

- 11 a. COS has the definition set forth in paragraph 1.3.8 of the Declaration;
- 12 b. Maintenance is limited to the cost of maintaining the COS as defined by the Declaration,
13 and “includes maintenance of entry signs and landscape, mail box surrounds, street light
14 electrical power bills, and maintenance of lights not maintained by the City of Lynden.”
- 15 c. The Sixth Amendment is invalid and void;
- 16 d. The Seventh Amendment is invalid and void;
- 17 e. Identifies the properties that are subject to the Declaration.

18 **C. Declaratory Judgment – PRD Ordinance.**

19 71. Plaintiffs are persons whose legal rights are affected by a municipal ordinance because they
20 own property in the Homestead PRD, which is subject to the PRD Ordinance.

21 72. A justiciable dispute exists between the parties concerning the PRD Ordinance, including
22 the following:

- 23 a. Whether the Declaration established a homeowners association as required by the PRD
24 Ordinance; and
- 25 b. Whether the declarant’s ownership of the COS violates section 19.29.090.

26 73. The Court should enter a declaratory judgment that:
27

- 1 a. The Declaration violates the requirements of sections 19.29.020 and 19.29.090 to
2 establish an HOA; and
3 b. The declarant's ownership of the COS violates section 19.29.090.

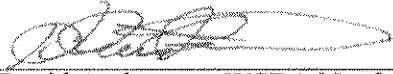
4 **VI. RELIEF REQUESTED**

5 Based upon the foregoing, Plaintiffs requests this Court enter judgment as follows:


- 6 1. Awarding plaintiffs damages and treble damages under the Consumer Protection Act;
7 2. Issuing a permanent injunction to 18 Paradise to cease its unfair and deceptive acts and
8 practices and to cease its private ownership of the COS;
9 3. Entering declaratory judgment as set forth above;
10 4. Granting plaintiffs such additional relief as may be provided for by law; and
11 5. Awarding plaintiffs costs and attorney fees as provided by law.

12
13 DATED this 26th day of July, 2022.

14 ANDERSSON CROSS BORDER LAW CORPORATION

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