

## The State of Homestead Litigation- 2022 Year End

This past year saw the courts trying to catch up with the backlog of cases as a result of COVID. The Homestead lawsuit was no exception. Our case is entering its third year of litigation and we are moving towards a trial.

### **BREAKING NEWS:**

**We now have a five-day jury trial scheduled to begin September 6, 2023!**

Despite the slow pace, a lot has happened this past year. There were over a dozen contested motions filed by the parties, the City of Lynden was dismissed from the case, and a local business owner made an offer to buy the golf course. We made 18 Paradise a formal offer to settle. They refused without giving reasons. And so, our pursuit of justice and fairness continues and reasons for the lawsuit remain unchanged:

[1] Homestead residents have no representation regarding our community including how much maintenance fees will be charged, and

[2] there is no accountability as to what maintenance fees are being used for.

We have been streamlining and focusing the claims in the case since the original complaint was filed. The essence of the case has two parts: first, the removal of the Sixth and Seventh Amendments; and second, giving control of the Common Open Space and homeowners association to the homeowners. Those claims are primarily made under the Consumer Protection Act, which prohibits unfair and deceptive acts and practices. We attempted to dismiss MJ Management LLC, Mick O'Bryan and Josh Williams because they are being fired by 18 Paradise and will no longer be involved, and because they seem to have no ability to pay any significant judgment. However, they insisted on staying in the case to assert some claim for back maintenance fees, so we are asking the court to reinstate our claims. However, we expect the case to go to trial only against 18 Paradise because it is the Declarant and owner of the Common Open Space.

The following summarizes events in 2022 in further detail.

### **I. The Lawsuit**

#### **A. The Judge**

This case was initially assigned to Judge Robert Olson and in the fall of 2021 was reassigned to Judge David Freeman. Judge Freeman is our current Judge. Two motions argued before Judge Freeman in 2022 still await decisions from the Court.

#### **B. The Depositions**

In 2022, depositions were taken from Mick O'Bryan, Mike Martin (City of Lynden Administrator), and Raymond Chou (18 Paradise). The 18 Paradise deposition provides significant useful evidence regarding its management of the golf course and Common Open Space, and its relationship to its agents MJ Management, LLC.

Previous depositions had been taken from Jim Wynstra (former CEO of Homestead Development, Inc. - the original developer and declarant), Alex Crabtree (accountant for MJ Management), Mark Sandal (City of Lynden Public Works), Patrick Starr (Real Estate agent for Mao Chen/18 Paradise), Josh Williams, and Mick O'Bryan.

### **C. Plaintiffs' Motions and Court Orders**

1. Hearing Date March 4, 2022. Motion for Reconsideration of Partial Summary Judgment Re: 6th Amendment to CC&Rs. Judge Freeman reserved judgment and has promised a decision as soon as he is able.
2. On April 1, 2022, Judge Freeman signed an Order granting Plaintiffs' Motion for Partial Summary Judgment Re: Common Open Space.  
NOTE: This motion was initially argued on August 13, 2021, before Judge Olson and again on October 29, 2021, before Judge Freeman. This entered order confirms, among other things, that Common Open Space is limited to a defined area, and most importantly, **DOES NOT INCLUDE THE GOLF COURSE.**
3. Hearing Date July 15, 2022. Plaintiffs' Motion for Leave to file 3rd Amended Complaint. Judge Freeman granted the motion.  
NOTE: This amendment simplifies the case by removing MJ Management as a defendant in the case, as they are merely an agent for 18 Paradise. Later on, MJ stated that they wanted back into the case to assert a counterclaim for unpaid maintenance fees. However, this was simply a ploy to prevent the Court from setting a trial date. Their counterclaim is legally defective because only 18 Paradise has any right to claim and collect maintenance fees. In a lawsuit, Court Rule 17 prohibits agents from suing in the name of the real party in interest. 18 Paradise is the Declarant and the only real party in interest.
4. Hearing Date September 16, 2022. Plaintiffs' Motion for Partial Summary Judgment Re: Agency. Judge Freeman granted the motion.  
NOTE: The Court Order notes undisputed evidence and establishes the following facts as a matter of law in this case.
  - MJ Management acted as agent of 18 Paradise under their 2017 Lease Management Agreement.
  - MJ's execution and recording of the 6th and 7th Amendments was within the general scope of the agency relationship.
  - The Lease Management Agreement required MJ to obtain 18 Paradise's express permission before signing and recording the 6th and 7th Amendments.
  - MJ failed to obtain 18 Paradise's express permission before signing and recording the 6th and 7th Amendments to the Declaration.
5. On December 8, 2022, Plaintiffs filed a Motion for Leave to file a 5th Amended Complaint. The Motion was granted during the January 6, 2023 motion hearing, and the 5<sup>th</sup> Amended Complaint has been filed.  
NOTE: MJ requested an award of costs, which was also granted, however, that award will be the subject of a motion to reconsider. Stay tuned.
6. Plaintiffs' Motion for Partial Summary Judgment RE: Maintenance Fees, was filed December 2, 2022. The Hearing Date for this motion is set for January 13, 2023.  
NOTE: The Scope of Maintenance is as defined in the Declaration Section 3.3 and includes maintaining the common open space, entry signs and landscape, mailbox surrounds, street light electrical power bills, and maintenance of lights not maintained by the City. Maintenance fees shall be used only for funding these activities.  
Based on our progress with other motions, we filed a motion for a decision on what maintenance is and whether maintenance fees can be used for golf course expenses. These questions go to the heart of the case.

### **D. Preliminary Governing Order**

The collection of maintenance fees continues to be governed by a stipulated Court Order entered into Court on September 15, 2021, at 3:15 pm. The Governing Order prevents 18 Paradise and its agents from harassing homeowners for payment of maintenance fees in excess of the pre-dispute \$36/month.

*d. In the event that a Homeowner **sells or refinances** his or her property while this action is pending, the escrow agent in the transaction shall be instructed to collect the amount of the maintenance fee claimed by Declarant to be owing. Upon closing of any such sale, a portion of that amount equal to a \$36.00 monthly payment for every delinquent month shall be disbursed to Declarant. The additional monthly \$57.00 shall be placed in the registry of the Court under this cause number and be disbursed pursuant to order of this Court.*

The Court has advised that to date, 15 Homestead homeowners, selling or refinancing, have taken advantage of this Governing Order and had disputed maintenance fees placed in the registry of the Court, pending the outcome of this case.

## **II. The City of Lynden**

### **A. The Argument**

City of Lynden Motion for Summary Judgment was filed August 19, 2021. The City of Lynden contends, as they have from the start, that they have no obligation to Homestead property owners to enforce city ordinances (enforcement would provide a resolution to the dispute at Homestead), and that they should be dismissed from the case. The City contends that they are free to enforce their ordinances, or not, to whomever they choose. **The Homestead PRD is the only PRD in Lynden that does not have a homeowner’s association, as required by City ordinance.**

The ruling: Judge Freeman granted the motion because the City did not owe a specific duty to Homestead owners individually. The Order Granting Summary Judgment in Favor of the City of Lynden was signed February 10, 2022.

### **B. The Petition**

A petition with over 300 Homestead residents’ signatures was presented to the City of Lynden on August 19, 2021, requesting their assistance in resolving the dispute between residents and Homestead Owners and management regarding increased maintenance fees. On February 17, 2022, Mayor Korthuis answered the petition. Following is a list of the most important of the Mayor’s responses, and Comments to the responses.

1. **Q.** Why was an HOA never created as required by City code/ordinance?  
**A.** The PRD agreement references an HOA and staff reports reference an “anticipated” HOA, so this requirement was met.
2. **Q.** Why were common areas never defined as required by City code/ordinance?  
**A.** Staff research indicates that the Homestead PRD included platted common areas as well as private streets and walkways.
3. **Q.** Why was a final PRD Agreement never approved by the City as required by City ordinance?  
**A.** The document in question was labeled as preliminary, but due to a scrivener’s error, it was really the final PRD agreement.
4. **Q.** Why was a final PRD Agreement never recorded with Whatcom County as required by City code/ordinance?  
**A.** Unknown.
5. **Q.** Why were amendments to the CCRs never reviewed by the City as required by the PRD Agreement and City code?  
**A.** The City never gave consent to any amendments to the Homestead CCRs. The City reviews CC&R changes only for consistency with City development standards.

The City's response to the Petition generally confirms something that we suspected. The Homestead PRD was formed right after the ordinance allowing PRDs was enacted, and it was the City's first. The City had no experience with PRDs and it invented the process as it went. The whole thing was slapdash, and many requirements were missed. That is understandable, but the City's refusal to take responsibility and clean up its mess is not.

### **III. The Golf Course**

The Homestead Golf Course is currently owned by Mao Chen (18 Paradise) a Chinese national who resides in Vancouver, BC. It is believed that Mr. Chen has never seen the golf course. Mr. Chen has a history of neglecting properties and has made minimal to no investment in golf course improvement. The sale of the golf course to anyone would not be a bad thing.

#### **A. MJ Management Purchase Proposal**

In 2019 MJ Management met with Peoples Bank and the City of Lynden in an attempt to obtain financing for the purchase of Homestead Golf Course. Their proposal included an income stream in the amount of \$645,792 from maintenance fees collected from Homestead parcel owners. If the plan was successful, additional maintenance fees would likely be needed to fund common space maintenance.

Mick and Josh wanted to buy the golf course since 2017, but they had no money to do it. They recognized that they were receiving over \$200,000 a year in maintenance fees and thought that increasing the maintenance fee would provide them the needed funds. They met with Peoples Bank and the City of Lynden in 2019 to pitch their proposal. Although they admitted their plan to use maintenance fees, no one objected on that ground.

#### **B. Pending Sale**

Mr. Duane Scholten, a local Lynden businessman has made an offer for the purchase of the Homestead Golf Course. The sale is contingent on the lawsuit being resolved.

Scholten claims that he will have a new graduated maintenance fee structure that will charge homeowners at different rates depending on where they live. The new rate structure will provide Scholten with a revenue stream of around \$500K per year. Scholten also proposes to charge homeowners to subsidize the golf course, fund the Homestead stormwater system and pay for maintenance of trees and sidewalks, all of which are not included in the current CCRs. Other than these changes, Scholten's ownership would look the same as that of the current owner. Homestead property owners would have no HOA or representation, there would be no accountability of where the maintenance fees would be spent, and Scholten could change the Declaration and/or increase fees at any time, without the consent of property owners.

It is a mystery why Scholten has offered Chen more than Chen paid for the golf course in 2013. Golf courses have not increased in value since 2013 even if they are maintained. Scholten needs \$500,000 a year of maintenance fees because he is paying too much for the golf course. Golf courses are generally worth 1.6 times annual revenues, which would make the Homestead Golf Course worth about \$1.2 million.

### **IV. 2023**

#### **A. Litigation strategy moving forward**

We have made a lot of progress in the case. We finally have an order defining the Common Open Space and an order that MJ Management did not follow required procedure with the Sixth and Seventh Amendments. 18 Paradise has been dragging its feet and stalling since the case was filed, and when a party does that, we have to fight them every step of the way until they run out of room. The long, drawn out process was necessary, but it is close to an end, and all of our efforts should start to pay off. We are now moving forward with substantive motions and steps directed at the big issues. In 2023, we will continue to hold meetings to provide all Homestead owners with an opportunity to ask questions directly to our attorneys.

## B. Attorney's fees

Our attorneys have been working hard on our case, at a reduced rate. Additional costs must be paid for their paralegal and other staff, and court costs. Costs and fees are currently being paid by a small number of Homestead residents. If you believe in obtaining a fair resolution to this dispute, please share in the costs. If all residents paid \$10/month towards legal costs it would be more than enough.

When the Sixth and Seventh Amendments were announced, the anger and outrage among Homestead homeowners was pretty much universal. It quickly became clear that discussions and negotiations would go nowhere, and a lawsuit was the only alternative to ever-escalating fees. Our attorneys believed in our case to agree to be paid half their normal rates while the case progressed and to seek the rest from 18 Paradise. Our attorneys continue to work on our behalf every day. Homeowners can focus on life in general because our attorneys focus on the case. Instead of many people contributing a small amount, a few people have stepped up and contributed significant amounts, and even then, we are not covering the reduced rates. It is not fair to expect something for nothing, and if everyone would contribute \$10 per month, our attorneys could be paid, and no one would have to contribute more than their share.

A trust fund has been created under the direction and control of an independent firm, Boundary Bay Law, to accept homeowner contributions and pay the expenses of the lawsuit. Below we've listed convenient ways to contribute to the Homestead Class Action.

Please visit the Homestead Class Members Website often for the latest updates regarding the Class Action at [www.homestead-hoa.org](http://www.homestead-hoa.org). If you have not done so, we encourage you to register at the website for email updates. If you have any questions or comments, you may reach the attorneys for the plaintiffs through the website, or email [inquiries@homestead-hoa.org](mailto:inquiries@homestead-hoa.org).

### HOMESTEAD CONTRIBUTIONS

#### CHECKS

Payable To: **Boundary Bay Law In Trust**  
(Homestead Class Action)

#### Mail Payments To:

Boundary Bay Law, PC,  
1050 Larrabee Ave,  
Suite 104, Box 336  
Bellingham, WA 98225

#### CREDIT CARD

CREDIT CARD or ECHECK



Payments can be made using this link or the QR code:

<https://app.clio.com/link/v2/2/2/79979c78d98c9ce396e32bee84bead7e?hmac=2c32172548b6002ef709a6912a299ebd6f55db473493bba45353e2a55f389cc7>

The eCheck link can be found on the credit card page just below the section for entering credit card information.

**NOTE:** Please note fees will be deducted by our credit card process server. The Homestead account will be credited by the amount received, not the amount sent.

#### ELECTRONIC PAYMENT OPTIONS

ZELLE

Acct: Boundary Bay Law, PC – email: [nickb@bbaylaw.com](mailto:nickb@bbaylaw.com)

PAYPAL



Payment can be made using this link or the QR code:

<https://paypal.me/boundarybaylaw>

**NOTE:** Please note fees will be deducted by Paypal. The Homestead account will be credited by the amount received, not the amount sent.