

The State of Homestead Litigation – 2023 Year End

To Homestead Class Members:

The past year saw two attorneys leave the case, and a new party and three new attorneys enter the case. The net result was a waste of time and a nearly eight-month delay in the scheduled trial date. The trial that was originally scheduled for September 6, 2023, has now been rescheduled beginning in April of 2024.

The reason for the lawsuit remains unchanged:

[1] The defendants continue to insist on taxation without representation. Homestead residents have no representation regarding their community, including how much maintenance fees will be charged.

More than 30 years after the Homestead Planned Residential Development (PRD) was formed, its homeowners have no voice in their own homeowner's association or how their maintenance fees are spent. A Chinese businessman who lives in Vancouver has complete control over the covenants and the maintenance fee. He refuses to turn the association and covenants over to the homeowners. We believe that the homeowners should control their own homeowner's association and covenants. Homestead is the ONLY PRD in Lynden without a homeowner's association.

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

A large percentage of the maintenance fee is being spent on the golf course instead of Common Open Space maintenance. Homestead owners are subsidizing the golf course without any benefit. The businessman in control of the homeowner's association increased the monthly maintenance fee from \$36 to \$93 in one year and claims the right to increase the maintenance fee by 5%, or more, every year. In 5 years, the monthly maintenance fee will be \$113. In 10 years, it will be \$144, and in 20 years it will be \$235. He views the declarant rights as his property and claims the right to continue and increase the maintenance fee forever and to spend without accountability.

The following summarizes events in 2023 in more detail.

I. The Lawsuit

1. The Judge

Judge David Freeman is presiding over the case. Judge Freeman is taking his time. A motion filed with the court on February 22, 2022, on the validity of the 6th amendment to the Declaration still awaits a decision from the Court.

2. Depositions

- a. On March 28, depositions were taken from five Interveners.
- b. On June 21 and 22, attorney Henry Ross representing 18 Paradise took depositions from the Plaintiffs.

- c. On July 20, depositions were taken from Cynthia Polley of Birch Bay Tax and Accounting, and from Joshua Williams and Mick O'Bryan of MJ Management
- d. At an evidentiary hearing on October 25 and 26, depositions were taken from Joshua Williams and Mick O'Bryan of MJ Management, and from Plaintiff Scott Hilius.

3. Motions and Court Orders

- a. Hearing Date – March 4, 2022. Motion for reconsideration of Partial Summary Judgement Re: **Invalidity of 6th amendment to CC&Rs**. Judge Freeman reserved judgement and has promised as soon as he is able. Despite numerous requests, Judge Freeman has not made a ruling.
- b. On January 11, 2023, Plaintiffs filed the **Fifth Amended Complaint**.
- c. Hearing Date – January 13, 2023. Motion for Partial Summary Judgement Re: **Clarification of Maintenance fees**. The motion asks the court to rule that maintenance fees shall be used only for the scope defined in Section 3.3 of the Declaration. The motion was denied as the court ruled that there may be extrinsic evidence that includes maintenance of the Homestead Stormwater drainage system (HSDS) as part of the maintenance scope that Homestead Parcel Owners are responsible for. This ruling was made despite the facts that: a) the court has already ruled that the golf course is not part of the Common Open Space, b) in addition to Homestead Parcel Owners, the HSDS is utilized by the Homestead Golf Course, several private businesses, five developments outside of the Homestead PRD, and over 3 miles of public streets, c) there are no defined inspection requirements or defined maintenance requirements for the HSDS, d) City municipal code requires the property owner to maintain private stormwater systems.
- d. On February 6, 2023, Plaintiffs filed a Motion for Reconsideration on Motion for Partial Summary Judgement RE: **Maintenance Fees**. The Motion disagreed with the court's use of extrinsic evidence.
- e. On February 16, 2023, Plaintiffs filed a Motion for Partial Summary Judgement RE: **MJ Management Counterclaims**. That motion requested dismissal of MJ counterclaims because there were not the real party in interest. The Court denied that motion.
- f. Date – March 27, 2023. Motion for reconsideration of Partial Summary Judgement Re: **Clarification of Maintenance fees**. The motion argued that extrinsic evidence can only be considered when the CC&Rs are ruled ambiguous. Notwithstanding the clear language of the CC&Rs the Court indicated that there might be extrinsic evidence which might come out at trial. The court denied the motion without a written decision.
- g. On June 8, 2023, Plaintiffs filed a Motion to **Compel MJ to provide electronic financial records**. Plaintiffs have been asking for electronic financial records from MJ Management for over 2 years. Prior Financial documents provided by MJ in court filings are inconsistent and appear manufactured to show artificial losses.
- h. On June 8, 2023, Phil Buri coincidentally filed a motion to withdraw as counsel for MJ Management. Plaintiffs objected to the motion on the grounds that it would threaten the scheduled trial. The Court assured the parties that it would make every effort to keep the trial as scheduled. Buri's motion to withdraw was granted at a June 23 hearing.

- i. On July 31, 2023 Jeff Possinger and Reid Meyers, new counsel for MJ Management filed an emergency motion to stay the trial for at least six months, so they could get up to speed. Plaintiffs objected to the delay and as a compromise to keep the scheduled trial offered to dismiss the MJ defendants, without prejudice, if 18 Paradise and the Court agreed. 18 Paradise would not agree.
- j. On August 31, 2023, new counsel for MJ filed a motion to dismiss Plaintiffs' counsel. A hearing for this motion is scheduled for January 16, 2024.
- k. On August 31, 2023, new counsel for MJ filed another emergency motion to prevent Plaintiffs' counsel from questioning Mick and Josh on their conflicting sworn declarations. At a September 8, 2023, hearing, judge Freeman ruled that Mick and Josh could only be questioned at an Evidentiary hearing presided over by judge Freeman.
- l. On September 20, 2023, new counsel for MJ filed yet another emergency motion before Judge Grochmal for a temporary restraining order (TRO) requiring Plaintiffs to remove certain four postings from its website. At a September 21, 2023, hearing, judge Grochmal granted the TRO.
- m. On October 6, 2023, Plaintiffs filed a Motion to reconsider **Protective Order and Temporary Restraining Order**. The Court found that at least one of the four postings [Management and Lease Agreement] was placed in the public domain by 18 Paradise and therefore could not possibly be confidential.
- n. On October 13, 2023, over the objection of the Plaintiffs Judge Freeman entered findings of fact and law, drafted entirely by MJ, in favor of a Preliminary Injunction.
- o. On October 25 & 26, 2023 the Court held an evidentiary hearing in lieu of Plaintiffs deposition.
- p. On November 27, 2023, Plaintiffs filed a Motion to **Dissolve Preliminary Injunction**.
- q. On December 8, 2023, Plaintiffs filed a **Class Action Status Report** with the court.

II. The Interveners

On January 10, a motion to intervene in the lawsuit was filed by attorney Mary Reiten who is representing a group of 14 Homestead homeowners. The goal of the Interveners was to end the lawsuit so that the golf course could be sold to Duane Scholten. The Interveners are opposed to forming an HOA and are content with the current relationship with the Declarant. They filed a motion to have the class action decertified and to have Plaintiffs' attorneys account for voluntary donations to support the lawsuit, yet they don't ask for 18 Paradise to account for where residents' mandatory maintenance fees are spent. The motion was denied by the court, and, as a result, the majority of Interveners (9 of 14) voluntarily dismissed themselves from the case.

III. 18 Paradise, L.L.P.

After terminating their lease agreement with MJ Management, on June 1, 18 Paradise was awarded judgement against MJ for unpaid lease fees in the amount of \$265,640.00.

On July 26, attorney Henry Ross filed a motion of withdrawal from the case. Attorney Ben Vandenberghe continues to represent 18 Paradise.

IV. MJ Management

On March 21, MJ attorney Phillip Buri filed a counterclaim against the Plaintiff class, requesting that the court rule that class members who have paid less than the \$36 monthly maintenance fee since the beginning of the lawsuit must pay what they owe to MJ Management. Shortly after, on May 24, Buri filed an attorney lien against MJ Management in the amount of \$55,860.29 for unpaid attorney fees, and on June 8, Buri filed an intent to withdraw from the case. Buri's motion to withdraw was granted at a June 23 hearing.

Also on June 8, Mick O'Bryan sent an email to Plaintiffs' attorneys requesting a meeting with him and Josh Williams. O'Bryan had requested the meeting to discuss if and how he and Williams could be dismissed from the lawsuit. O'Bryan contended that they were not told by their attorney Phillip Buri, that they HAD been dismissed from the lawsuit per the Third Amended Complaint and/or knew nothing about any counterclaims. After receiving written consent and approval from Phillip Buri, Plaintiffs' attorneys met with O'Bryan and Williams on June 12. During the meeting, Plaintiffs' attorneys requested that MJ's electronic accounting records be turned over to Plaintiffs accounting expert for review. With O'Bryan's consent and approval, and pursuant to a subpoena, MJs accountant, Birch Bay Tax and Accounting, turned over the accounting records on June 27.

On July 31, attorneys Jeffrey Possinger and Reid Meyers filed a Motion of Appearance stating that they are now representing Mick O'Bryan, Josh Williams, and MJ Management. Also filed with the court was a Motion to delay the trial by six months.

V. The Golf Course

On June 21, Homestead Property Owners received a letter from Mao Hua Chen (18 Paradise) stating that the Homestead Golf Course was temporarily closed and will be maintained in a limited capacity by 18 Paradise. Notwithstanding the closure of the golf course, the notice requires that homeowners mail maintenance fees payable to 18 Paradise at a Lynden post office box.

VI. 2024 – Leading up to Trial

1. A hearing regarding defendants' motion to dismiss Plaintiffs' counsel is scheduled for Tuesday January 16, 2024.
2. Plaintiffs intend to file further motions to narrow the scope of issues in dispute at trial.

Trial is scheduled for two weeks beginning on April 30, 2024.

3. Attorney's fees

Litigation costs such as court reporters for depositions and hearings as well as modest attorney fees at reduced rates for Matt and David are paid for by contributions from Class Members who support the litigation. These 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. More information on the Trust Fund can be found here: [Trust Fund – Homestead Parcel Owners \(homestead-hoa.org\)](http://homestead-hoa.org).