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**SUPERIOR COURT OF WASHINGTON
COUNTY OF WHATCOMBY**

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| <p>SCOTT HILLIUS, <i>et al.</i>, Plaintiffs, v. 18 PARADISE LLP, <i>et al.</i>, Defendants.</p> | <p>No. 20-2-00701-37 COURT'S ORDER ON PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT</p> |
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THIS MATTER CAME ON FOR HEARING by this Court on January 22, 2021, on the Plaintiffs' Motion for Partial Summary Judgment, and the Court having considered the arguments of the parties and reviewed documents filed in support and opposition thereof consisting of the following:

1. The Complaint filed by the Plaintiffs on May 29, 2020;
2. The First Amended Complaint filed by the Plaintiffs on September 16, 2020¹;
3. Plaintiffs' Motion for Summary Judgment filed December 18, 2020;
4. The Amended Declaration of Matthew Davis filed December 21, 2020;
5. Defendant MJ Management's Memorandum in Opposition to Summary Judgment filed January 11, 2021;
6. The Declaration of Mick O'Bryan filed January 11, 2021;
7. The Declaration of Raymond Chou filed January 11, 2021;
8. Defendant 18 Paradise. L.L.P.'s Joinder to Defendant MJ Management's Response to Motion for Partial Summary Judgment filed January 11, 2021;

¹ This Court reviewed a document entitled "First Amended Complaint" filed by the Plaintiffs on September 8, 2020, but it appears that this document was duplicated by the First Amended Complaint filed on September 16.

9. The Plaintiffs' Reply on Motion for Partial Summary Judgment filed on January 19, 2021;
10. Defendant City of Lynden's Memorandum Re: Plaintiffs' Motion for Partial Summary Judgment filed January 19, 2021;
11. The Declaration of Heidi Gudde filed January 19, 2021

and the Court being otherwise fully apprised in the premises, makes and enters the following Findings, Conclusions and Order:

FINDINGS, CONCLUSIONS AND ORDER

1. This Court does not assess credibility of witnesses on a motion for summary judgment. *American Exp. Centurion Bank v. Stratman*, 172 Wn.App.667 at 676.
2. This Court finds there are genuine issues of material fact that remain in dispute, including
 - 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;
 - b. 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 Declarant's authority to amend the development's restrictive covenants;
 - c. Whether any attempt by Plaintiffs to assert invalidation of the Sixth and Seventh Amendments on the grounds that they violate the Revised Code of Washington (RCW) 64.90 *et seq.* is tenable as a matter of law or equity where the Plaintiffs are homeowners all of whom have failed to form a governing association and board, and whether the homeowners knew or had a reasonable opportunity to assert their homeowner rights as against the Declarant and whether an unreasonable delay in


asserting those rights represents a detriment to the Defendants legally or financially;
and

- d. Whether the conduct of the Defendants 18 Paradise LLP and MJ Management was reasonable and consistent with the general plan of development given the apparent emergent need for common area maintenance and repair over parts of the development in which all homeowners have a collective interest.
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-à-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.
4. Nothing in these rulings serves to establish that the Sixth and Seventh Amendments are valid in fact or law, but a trial will be necessary to fix these questions.

WHEREFORE, Plaintiffs' Motion for Partial Summary Judgment is DENIED.

Dated: _____

2/1/21



Robert E. Olson, Judge
Whatcom County Superior Court
Department One